Sir Thomas Aquinas Church Hall
Cornwall Street
Halifax, N.S.
April 2, 1990
9:40 a.m.

Per: Nancy Brackett
Verbatim Reporter

IN THE MATTER OF THE DONALD MARSHALL, JR. COMPENSATION HEARING

BEFORE: The Honourable Gregory Evans, Commissioner

PRESENT: Mr. Wylie Spicer, Solicitor for the Commission

Ms. Anne Derrick, Solicitor for Donald Marshall, Jr. with Professor Mary Ellen Turpel

Mr. Jamie Saunders, Solicitor for the Government of Nova Scotia

WITNESSES: Dr. Harold McGee, Anthropologist

Mr. Noel Knockwood, Director of the Micmac Native Learning Centre, Halifax

Mr. Donald Marshall, Sr.

INDEX OF WITNESSES

MR. COMMISSIONER

Good morning, ladies and gentlemen. This is an inquiry established under the Inquiries Act by the Lieutenant-Governor in Council, directing me to inquire into, to review and to reassess the compensation paid to Donald Marshall, Jr. We propose to start our meetings at 9:30 till 12:30, and from 2:00 until we close. May I have the appearances first, please?

MR. SPICER

Wylie Spicer. I'm counsel for the Commission.

MS. DERRICK

Anne Derrick, Mr. Commissioner, for Donald Marshall, Jr. I'm here with Professor Mary Ellen Turpel.

MR. COMMISSIONER

Mary Ellen?

MS. DERRICK

Turpel, T-U-R-P-E-L.

MR. COMMISSIONER

T-U-R-P-E-L?

MS. DERRICK

That's correct.

MR. SAUNDERS

If it please the Commissioner, Jamie Saunders on behalf of the Government of Nova Scotia.

MR. COMMISSIONER

Thank you. Mr. Spicer?

MR. SPICER

Thank you, Mr. Commissioner. Mr. Commissioner, we begin this morning the final chapter of the public examination that's gone on in the last little while of the life of Donald Marshall, Jr. This chapter will fulfill certain of the recommendations contained in the Report of the Royal Commission on the Donald Marshall, Jr. Prosecution, of which you, of course, were a member. I have filed with this Commission as an exhibit the Order in Council constituting the inquiry. This Order in Council directs you to -- and I'm going to quote from the Order in Council:

> "Recanvass the adequacy of compensation paid to Donald Marshall, Jr. in light of what the Royal Commission on the Donald Marshall, Jr. Prosecution found to be factors contributing to his wrongful conviction and continued incarceration, and to determine any further

compensation which is to be paid as a result."

Those terms of reference constitute the response of the Government to Recommendation #8 of the Marshall Inquiry Report, which recommended recanvassing the compensation for Donald Marshall, Jr. in precisely the terms which now form the terms of reference for this inquiry. I think it's important at the outset to remind ourselves of the reasons why the Marshall Inquiry recommended a recanvassing of compensation at all. This inquiry is necessary because the Marshall Inquiry found two things. They found that the process by which compensation was originally determined and concluded to have been flawed. And the compensation itself was intended only to take account of the actual period of time that Marshall spent in prison, without regard to any of the factors that put him there or kept him there for 11 years. The Marshall Inquiry had the following to say about the process and about the flaws in it. I'm quoting from the Inquiry Report.

"The Commission did hear extensive evidence on the process by which compensation was eventually

granted. And notwithstanding the intentions of the Cabinet Ministers involved, the process was not fair. Marshall's emotional state following 11 years in prison was such that he simply wanted to get the matter over with. It is our view that the final outcome was most significantly influenced by the findings and comments of the Court of Appeal in the reference case. The conclusion that Marshall was involved in a robbery and the opinion of the Court that Marshall had contributed in large measure to his conviction provided the Crown with a strong basis for keeping any compensation as low as possible. We have concluded

that there was no robbery and that there was a gross miscarriage of justice which can in no way be blamed on Marshall. We do not know if the compensation negotiations would have reached a different result, had the facts, as we have found them, been available to those concerned."

Still from the Report:

"Notwithstanding the release of claims executed by Marshall, we believe it will be most unjust should that settlement be allowed to stand without any further consideration of its fairness, based on the facts as now known. Accordingly, we recommend that the Government recanvass the adequacy of the compensation paid to Donald Marshall, Jr.

> in the light of what we have found to be the factors contributing to his wrongful conviction and continued incarceration."

So that's the first aspect of it, the flawed process. The Marshall Inquiry had the following to say about what the monies that were paid in compensation represented. I quote again from the Report:

> "The Government viewed the two hundred and seventy thousand dollars ($270,000.00) as compensation for the period of time Donald Marshall, Jr. spent in jail. It did not take into consideration any negligence or wrongdoing that may have put him there or kept him there."

Notwithstanding that, Marshall was asked to and did sign a full release of any and all claims he might have had against the Crown. The monies paid to Donald Marshall, Jr. do not in any way purport to

compensate him for the inadequate, incompetent and unprofessional investigations of Sandy Seal's murder by John MacIntyre and the Sydney Police Department, the inadequate representation he received at the hands of his counsel, the failure of the Crown prosecutor to disclose the inconsistent statements of key witnesses, the failure of the Attorney-General's Department to disclose their knowledge of Jimmy MacNeil's coming forward in November 1971, and the incompetent reinvestigation by R.C.M.P. Insp. Marshall in November 1971, none of which relates to the period Marshall spent in jail. It has been more than 5 years since Donald Marshall, Jr. was awarded compensation. However, it was only with the release of the Marshall Inquiry Report and the apology by the Province of Nova Scotia that Donald Marshall, Jr. can be said to have been vindicated. Having been found innocent by the Court of Appeal in 1983, he was said to have contributed in large measure to his own conviction. That was an indignity which Mr. Marshall carried with him until this year. I mention this because you will be asked to consider, as relevant to the quantum of compensation, the period of time from the decision of the Court of Appeal in May 1983 to February of this year. I am

advised by counsel for the Government that they are prepared to treat this period of time as being part of the period concerning which you are entitled to award compensation. So we run right up to February of 1990. In fulfilling your mandate, the Order in Council directs you to take cognizance of certain of the Marshall Inquiry recommendations. They are Recommendations #4 through #7, and they are:

> "4. That there be no preset limit on the amounts recoverable with respect to any particular claim or any particular aspect of a claim.
>
> 5. That you be entitled to consider any and all factors which may have given rise to the wrongful conviction and imprisonment or the continuation of that imprisonment.
>
> 6. That appropriate legal fees and disbursements incurred by or on behalf of the wrongfully convicted

person be paid as part of the inquiry's expenses."

And finally:

"7. That the inquiry report become a public document."

The Commission counsel, counsel for Donald Marshall, Jr. and counsel for the Government of Nova Scotia have agreed on the process by which evidence will be put before you for consideration. I anticipate that there will be two days of public hearings here at the Church, during which time you will hear testimony related in large measure to the situation of Donald Marshall, Jr. as an Aboriginal person and, in particular, the nature of his relationship with the Micmac community. Counsel for Donald Marshall, Jr. has advised that submissions will be made that this relationship should be a factor in considering compensation. You will also hear testimony in the next couple of days from Donald Marshall, Sr. concerning, amongst other things, the effect that his son's imprisonment had on the family. It will be submitted later by counsel for Donald Marshall, Jr. that compensation should be paid in some respects to the family. You will also hear testimony from a person who is currently on parole

from a life sentence. He will describe the difficulties faced by a person serving a life sentence. Following completion of these public hearings, you will hear from other individuals who will describe their observations of the condition of Donald Marshall, Jr. during the prison years and following. You will also hear about this from Donald Marshall, Jr. His testimony will be given in private. There is no purpose to be served by publicly reviewing and exposing the pain which has been suffered by Donald Marshall, Jr. Such a public review would, I am told, and I have accepted, only cause further pain to Mr. Marshall. It is not our purpose here to continue the pain. And it would be a sad irony, indeed, if the process of assessing compensation itself were to form an element of Mr. Marshall's claim for compensation. In addition to testimony, it is anticipated that actuarial material and other material will be submitted to the inquiry concerning at least the loss of income suffered by Donald Marshall, Jr. as a result of the years he spent in prison. Final submissions by counsel will be made on May the 11th at the Law Courts in Courtroom No. 5. It has been agreed that Volume #1 of the Marshall Inquiry Report shall form part of

the record of this inquiry and that the findings of that Report be considered as facts in this inquiry. And I have filed a copy of Volume #1 as an exhibit to this inquiry. I should say in passing that all the exhibits and all the testimony that went into the Report itself will be considered to be part of the record, although I have not separately filed them. Donald Marshall, Jr. received two hundred and seventy thousand dollars ($270,000.00) in compensation in 1984. Of that amount, ninety-seven thousand dollars ($97,000.00) was paid in legal fees. Last Thursday, the Government, consequent upon a recommendation from you, approved an interim payment of ten thousand dollars ($10,000.00) to Donald Marshall, Jr. The net amount received in compensation by Mr. Marshall to date then is one hundred and eighty-three thousand dollars ($183,000.00). Bearing in mind your terms of reference as set out in the Order in Council, it is now the task of this inquiry to recanvass that amount. Unlike the process of the Marshall Inquiry, in this hearing the Commission counsel will not be questioning the witnesses in the first instance. Ms. Derrick will call the witnesses and will conduct a direct examination. This will be followed by Mr.

Saunders on behalf of the Government, and, finally, batting cleanup, myself. I hope that these comments will put into focus the task before you. I know that I speak for all counsel here and recognize the importance of the task before you. And we are all committed to putting the facts before you in such a way that will be of the greatest assistance in coming to a conclusion as to the appropriate and proper amount of compensation to be finally paid to Donald Marshall, Jr. Thank you, Mr. Commissioner.

MR. COMMISSIONER

The Order in Council will be Exhibit #1?

MR. SPICER

That's correct. The Order in Council in Exhibit #1.

MR. COMMISSIONER

Volume #1 of the report will be Exhibit #2?

MR. SPICER

No. The Provincial Secretary's appointment is Exhibit #2.

MR. COMMISSIONER

Thank you.

MR. SPICER

Volume #1 of the report is Exhibit #3. And there's a blue volume of exhibit material which constitutes Exhibit #4. And those have all already been filed.

MR. COMMISSIONER

Thank you. Ms. Derrick?

MS. DERRICK

Thank you, Mr. Commissioner. Mr. Commissioner, I'm honoured to be here today to represent Mr. Donald Marshall, Jr. in this final inquiry into the matter of his compensation. As I indicated earlier, I am here with Mary Ellen Turpel, who is an Associate Professor of Law at Dalhousie and a Cree, and has decided to obtain an earned call to the Bar of Nova Scotia and is articling with me and assisting with this file. Mr. Marshall is, no doubt, not the only wrongfully convicted person. But his is a particularly egregious example of wrongful conviction. As a young man, he was wrongly accused and convicted of the most serious crime and sentenced to life, only to be released after years of needless suffering and deprivation, to be further stigmatized by the same system that had wronged him originally. In presenting this claim, I will be calling evidence and making an argument in support of compensation for Mr. Marshall and his family, which will acknowledge the significance of Mr. Marshall's Micmac heritage and culture. Mr. Marshall is first and foremost Micmac. His people

have a long and proud history as a first nation. He is the eldest son of the Grand Chief of the Micmac nation. It is central to your understanding of Mr. Marshall, his experience and his loss that you understand his cultural and community context. To provide you with an understanding of that context, I am calling several witnesses knowledgable about Micmac culture and community. The first of these will be Dr. Harold McGee, an Anthropologist at Saint Mary's University in Halifax. I will also be calling Noel Knockwood, a traditional Micmac and spiritual leader, Mr. Marshall, Sr., Junior Marshall's father and the Grand Chief of the Micmac nation, and Dr. Marie Battiste, a Micmac educator and scholar. It will also be my submission that Mr. Marshall's experience of prison was qualitatively different because he is an Aboriginal person. You will hear from Patricia Monture, a law professor at Dalhousie Law School, who is an Aboriginal woman and who has worked with Aboriginal prisoners, and who most recently was a consultant to the Federal Task Force on Federally Sentenced Women. As to the experience of prison itself, I will be calling the evidence of a lifer, Mike Grattan, a man sentenced to life in 1971 at the age of 16 who served his time

at the Dorchester and Springhill institutions. He will articulate for you the numbing experience of life inside and the painful transition to life on the street. Mr. Commissioner, you are no doubt aware that Donald Marshall, Jr. has suffered greatly over the past 19 years. With respect, I believe it will inform your understanding of him and his pain to learn more about him from the perspective and observations of some of those who have been the closest to him since his release in 1982. I will be presenting this evidence to you in private. Much of Mr. Marshall's agony has been the subject of intense public scrutiny. It is essential that the process of compensating him for the terrible wrongs done to him not inflict further suffering or harm on him. The public interest is not served by exposing the details of the harm done to Mr. Marshall. The integrity of this process requires that Mr. Marshall's dignity and privacy be respected and preserved. In these sessions you will hear from several people who have witnessed Mr. Marshall's trauma at close hand and who have lived or continue to live with his pain and his struggle to regain a place for himself in the world. You will hear from a former lawyer, a former and present partner, a

corrections official who knew and knows Donald Marshall, Jr. well, and Donald Marshall himself. This compensation process takes place in the context of the powerful and evocative findings of the Royal Commission. These findings have been accepted by the Government of Nova Scotia and are the terrible truths upon which compensation is to be founded. As the Attorney-General said in his public response on behalf of the Government following the release of the Royal Commission Report, the need to compensate leaps off every page. The need to compensate, the moral or legal imperative to right as far as is possible the wrongs done to Mr. Marshall gives rise to this Commission and your challenging and essential task. The great burden of Your Lordship's task is the daunting degree of Mr. Marshall's loss. This must be quantified as completely as possible. In argument, I intend to address your attention to various heads of loss, and I will briefly summarize these, although in the development of submissions on behalf of Mr. Marshall, additional instances of loss may be identified. There will be losses of earnings, future pecuniary losses, loss of opportunity, pain and suffering, loss of reputation, humiliation and disgrace, loss of liberty, loss of

enjoyment of life, which might include the loss of potential normal experiences such as marriage and having a family, the loss of developmental experiences such as education and normal socialization, the loss of civil rights such as voting, the loss of kinship. There are prison indignities, prison punishment for refusing to admit guilt, impairment of future prospects such as marriage and reintegration into the community, impairment of his potential to become a Grand Chief, his burden of shame. And with respect to his family, the impairment of his self-esteem and that of his family and the deprivation of the family's kinship with Mr. Marshall. Mr. Marshall's loss is also the loss suffered by his family, whose loyalty and devotion has remained constant throughout. Their lives have been inextricably linked with Donald Marshall, Jr.'s suffering, and they must be a further part of his ultimate restoration by this Commission. Their loss is pecuniary with respect to prison visits and telephone calls over the many years, monies spent because of a State wrong, and non-pecuniary. The loss of Mr. Marshall, Sr.'s business, the family's pain and suffering, their loss of self-esteem and their loss of kinship with

their son. Also inextricably linked to Mr. Marshall is his community. I will submit that it is essential for Mr. Marshall's compensation to include a material recognition of his connection with his community and the unique cultural features that guide and govern that interrelationship. Mr. Marshall's proud cultural heritage and distinctiveness is part of his integrity as a person. His is a story of courage and dignity, and his survival a testament of the strength and resilience of his people. I will be submitting to Your Lordship that you are not fettered with respect to quantum or principle by any limits to be found in your terms of reference or in conventional precedent. The compensation of Donald Marshall, Jr. is a unique challenge, the restitution for a State wrong of enormous proportions against an Aboriginal person. Thank you, Mr. Commissioner.

MR. COMMISSIONER

Mr. Saunders?

MR. SAUNDERS

Thank you, Mr. Commissioner. I had not intended to make an opening statement. Because other counsel have done so, I will make a few brief introductory remarks. The ordeal of Donald Marshall, Jr. began

in Wentworth Park in 1971 and continued unabated until his release in 1982. Certain hardships continued to plague him like a perplexing shadow until the release of your report and the apology delivered by the Attorney-General on behalf of the people of Nova Scotia. Then, finally, Mr. Marshall was able to shed the shroud of guilt or doubt that had dogged him and stand upright as a proud and honourable man. It is against that background that the Province has asked you to return to Nova Scotia and recanvass the amount of compensation paid to Mr. Marshall and determine, as you have written, whether it can be said to be fair, given what we now know. If I may say, Mr. Commissioner, Ms. Derrick, Mr. Spicer and I have worked very closely and cordially in the last several weeks in order that the process of calling evidence in this final phase would be done quickly and yet as thoroughly as possible. While we may not always agree on the relevance of the evidence adduced, and have reserved to ourselves until final argument the weight, if any, you may choose to give to it, we have sought to assist one another in gathering and submitting facts which you may consider helpful to complete your assignment. Any one of us who has been privileged to serve in

varied responsibilities before this Royal Commission, and now this public inquiry, has the shared and common purpose of completing our work in a way that is both fair and realistic to both the victim and the system, at whose hands he suffered, to obtain a result that will impress the ordinary onlooker as being just and sensible, and with reasons to instruct and enlighten future generations or other jurisdictions whose task might some day be the same as ours.

MR. COMMISSIONER

Anything further, Mr. Spicer?

MR. SPICER

No. I'm just going to turn it over to Ms. Derrick. I believe she's ready to call the first witness.

MS. DERRICK

Dr. Harold McGee, please.

DR. HAROLD McGEE, (Sworn)

MR. COMMISSIONER

What is your first name, doctor?

MR. McGEE

Harold.

MR. COMMISSIONER

Harold McGee, M-C-G-E-E?

MR. McGEE

Yes.

DIRECT EXAMINATION BY MS. DERRICK (On Qualifications)

Q. Dr. McGee, you're an Anthropologist. Can you tell us what that is?

A. Yes, I can. An Anthropologist, as an academic profession, is a discipline that deals with the study of human similarity and variation at all times and in all places. It includes archeology, physical anthropology, linguistics and socio-cultural anthropology. My own field of specialty is in socio-cultural anthropology, with an emphasis and concentration on the Native peoples of Atlantic Canada.

MR. COMMISSIONER

Perhaps we could move the microphone up closer. Are you able to hear him?

MS. DERRICK

There's a bit of an echo, but I think we'll manage.

DR. McGEE

Is that better?

MS. DERRICK

Thank you, Dr. McGee.

BY MS. DERRICK

Q. We have a copy of your C.V. which is filed in

Exhibit #4 that Mr. Spicer handed out. And I just wanted to go through some singular features of it. You have a Doctorate in Anthropology. Is that correct?

A. Yes.

Q. With your thesis having been on, "Ethnic Boundaries and Strategies of Ethnic Interaction: A History of Micmac/White Relations in Nova Scotia"?

A. That's correct.

Q. And you obtained this from the Southern Illinois University in the U.S.?

A. Correct.

MR. COMMISSIONER

And that's being filed as Exhibit #5, is it?

MS. DERRICK

#4. Mr. Commissioner, there are a collection of materials found in Exhibit #4, which include the C.V.s of various witnesses I'll be calling, Dr. McGee's being amongst them.

MR. COMMISSIONER

All right. Thank you.

BY MS. DERRICK

Q. Dr. McGee, do any of the courses that you currently teach include an emphasis on Micmac culture?

A. Approximately every other year I teach a course

entitled, "Native Peoples of Atlantic Canada and Maine," which is being offered this coming year. So that course specifically deals with the culture and history of the Micmac people. But in my other courses, because of my own research, there is obviously mention made of examples from Micmac life, Micmac culture.

Q. And you have been a lecturer over the years of the Transition Year Program at Dalhousie University?

A. On a number of occasions, yes.

Q. And can you tell us what that program is?

A. It's a program -- an upgrading program designed to -- for 10 Black, 10 Native students, to prepare them for university, experience university life. It consists of upgrading literacy, numeracy and background courses in Native and Black history and culture.

Q. And you've also been a lecturer at the Native Counsellor Aid Program at St. Francis Xavier University in Nova Scotia?

A. There was a single workshop for Native counsellors.

Q. And you have been a research associate at the School of Education at Dalhousie University?

A. Yes, I have.

Q. And an instructor in the Micmac Bachelor of Social

Work Program. Can you tell us what that is?

A. That's a program to take Native people who are working in areas where the knowledge associated with social work programs is most beneficial, and accommodates their working schedules and lifestyles to have some of the courses in town and some of the courses near the reserves, just to facilitate their obtaining their social work degrees.

Q. You've also been involved as a consultant with respect to Micmac cultural issues. Is that correct?

A. On some occasions, yes.

Q. In your resume, I see that there's a reference to the Nova Scotia Department of Education, the Micmac television project for three years?

A. The development of the Micmac film series which I believe is still used in the Grade 5 curriculum.

Q. And what is that? What does that consist of?

A. It consists of five roughly half-hour programs in-- to be shown I think in the first part of the week in the Micmac language, then later in the week with an English voice over. It was an attempt to reconstruct Aboriginal culture on film for the educational system, for the curriculum for elementary school children.

Q. And you also were involved with the National Film

Board in the production of four sound filmstrips concerning Micmac Aboriginal culture?

A. Yes. These are covering essentially four aspects of the seasonal realm, dealing with social structure and subsistence patterns and the Aboriginal period.

Q. And I think it shouldn't go without note that that won a first prize.

A. Yes, at a New York Film Festival.

Q. In the New York Film Festival. You were also the Editorial Assistant for a book about the Micmac authored by Robert Lovett?

A. Yes.

Q. What did that involve?

A. That involved sitting down with Dr. Lovett and going through various manuscript drafts, putting him in touch with various historical sources, which he, as a linguist, wasn't familiar, and generally discussing the work with him and then editing his final draft.

Q. I see as well that you were the Manuscript Reviewer for a junior high textbook, a chapter concerning Micmac Indians.

A. Well, there's been one junior high school text and, I believe, two or three elementary school texts that I've performed that service for.

Q. You have also been a member of the Native Studies Committee at the University College of Cape Breton?
A. Yes.
Q. Is that a curriculum development committee?
A. Partially it does that. But it deals with other aspects of the program as well, the equipment of students, counselling. It deals with the entire program, but the thrust of my involvement is with curriculum development. The thrust of my involvement is largely with curriculum development.
Q. And that would be from a cultural perspective relating to Micmac culture?
A. Yes.
Q. And you are on the Advisory Board to the Micmac Native Learning Centre?
A. Yes, I am.
Q. Can you tell us what that is?
A. The Learning Centre is housed in a friendship centre. But it's a program, a multifaceted program, actually, of upgrading to receive high school diploma status as well as special training in computer skills, office management skills, and the attempt to develop, essentially, self-confidence for placement -- work placement in the larger community.
Q. And sitting on the Board with you would also be

Micmac people?

A. There are people from industry, commerce, banking and so on. And there are Native people present. And there are academics and other researchers.

Q. I note that with respect to your funded research, in 1969 you did some research into Micmac political organization at St. Francis Xavier University?

A. That was -- that would have been some funding for my Doctoral work, yes.

Q. Thank you. And in 1987, "Expressive Culture and Cultural Identity in Maritime Canada." Did that relate to Micmac culture?

A. Only peripherally.

Q. With respect to publications, a number of books, is it correct to say you've been the Editor of Native Peoples Across Canada?

A. Yes, that's quite correct.

Q. And Native Peoples and About Canada in 1983?

A. That was a -- some revision in the original.

Q. You, in 1983, co-authored with Ruth Whitehead, "The Micmacs: How They Lived 500 Years Ago"?

A. Yes, I did.

Q. What text was that?

A. That's a -- it's a children's -- it was designed or aimed for a young, oh, probably age 12 to 15 reading

audience. And it's essentially a children's book. But the concern was that it be ethnographically correct and that it fill a gap with some of the educational materials that at that time just wasn't present.

Q. You've written numerous journal articles and book chapters, I note on page 6 of your resume, relating to Micmac culture. Is that correct?

A. Oh, for sure, yeah.

Q. And you've read a number of papers as well at various conferences?

A. Yes.

Q. These are found on pages 7 and 8 of your resume. And you've done a number of media presentations, I see, as well. For example, in 1981, "An Interview on the IDEAS Program Concerning Early Contact Between Micmacs and Europeans."

A. Yes.

Q. And in 1985, an interview concerning Micmac history for a six-part Radio Quebec series?

A. Yes.

Q. And numerous book reviews relating as well to Micmac cultural issues?

A. Many of them do, yes.

Q. And, indeed -- I'll just follow the activity,

including bibliographies, Micmac material, cultural inventories, found on pages 10 and 11?

A. Right.

MS. DERRICK

Mr. Commissioner, it's my intention to have Dr. McGee qualified as an expert Anthropologist.

MR. COMMISSIONER

I'm satisfied that he is qualified in his specialty.

MS. DERRICK

Thank you.

MR. COMMISSIONER

Well qualified, I might say.

MS. DERRICK

Thank you.

DIRECT EXAMINATION BY MS. DERRICK

Q. Dr. McGee, could you describe the Micmac nation? What is it?

A. At present?

Q. Yes.

A. The Micmac nation consists of people whose heritage and cultural background stem from a group of people who resided in the Maritime Provinces, including the Gaspe, northern New Brunswick, Prince Edward Island, Nova Scotia and portions of Newfoundland, and today would include some communities in New England,

including Maine, and a very large settlement in the City of Boston.

MR. COMMISSIONER

I'm sorry. I didn't hear the last part.

DR. McGEE

In the city of Boston. There's a large Micmac community in Boston.

BY DR. McGEE

A. But the nation, as perceived by the people themselves, would include status and non-status people, not just those that are on -- who are on the Band list.

Q. And these people would be found in the Gaspe region, in P.E.I., in Newfoundland and throughout Nova Scotia?

A. Yes.

Q. And also in New England.

A. In New England.

Q. In the present day.

MR. COMMISSIONER

Could you give me some indication of the number we're speaking of?

DR. McGEE

I believe, in terms of status, we're probably looking at figures of around 15,000. But when you

include non-status people, I would think that would probably be closer to 25,000 to 30,000.

MR. COMMISSIONER

So about an equal number of status and non-status.

DR. McGEE

Roughly, yes, people who acknowledge some Micmac heritage.

BY MS. DERRICK

Q. Dr. McGee, are you able to say what is status and what is non-status, now that you've mentioned it?

A. The status person is someone whose name is on a Band -- on a list in Ottawa, indicating that they are a Native person. And it's essentially the legal definition of an Indian in this country, is if your name is on a list in Ottawa, you are an Indian.

Q. And this is found in the Indian Act.

A. This is part of the Indian Act. And there are various ways by which people who have cultural links to Native communities who are not on that list, such as enfranchisement, either voluntary or forced.

Q. And these would constitute non-status people?

A. These would constitute the non-status people.

Q. What does the term "culture" mean in ethnological terms?

A. This is my Doctoral exams all over again, isn't it?

The concept of culture is one that focuses on the notion of a world view of people having distinctive ways of perceiving and adapting to the world. So that it's an adaptive process that is other than a biological adaptation to environments. So that it consists of learned, shared behaviours that human beings have acquired in response to adapting to particular circumstances. But it also involves the perception of that environment. And one of the aspects -- or one of the conclusions or observations of ethnological inquiry is that peoples around the world perceive and conceptualize how the universe is structured and how the universe functions as being different. And, consequently, their behaviours and actions to respond to that differ. So, as a source of cultural difference, it is this difference in world view or perception of how the world is structured.

Q. And have you already in that definition described what a "world view" is?

A. Well, a world view is something that -- as it rests within the individual, is all of the factors that involve an individual's conceptualizations about the universe and how it operates. And there are a variety of sources for that. Some are from the

inculcation process of just learning to be human and are directed by the social environment in which they find themselves. And, as well, there's one's own personal experience. So a personal world view is, I suppose one could say, a private culture that one carries around with one to deal with the world. But when spoken of in the sense of a community, one can then talk about a community world view, which is a shared set of premises about the nature of the universe.

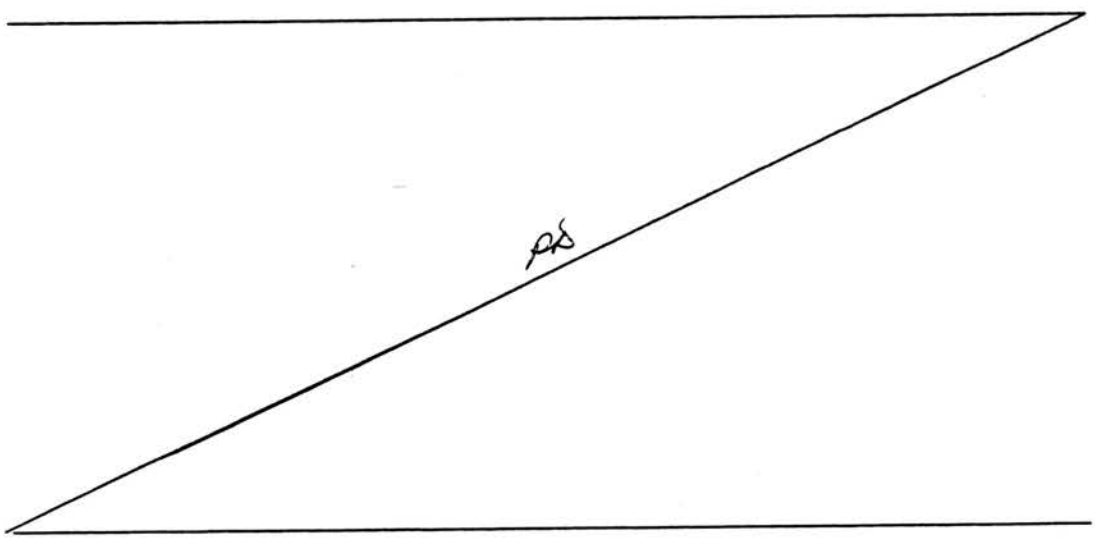
Q. And when you talk about learning to be human, does this involve learning to interact with other people, other people in your culture and outside of your culture?

A. Certainly. It involves defining of appropriate and proper social behaviour. It is concerned with appropriate behaviour for dealing with human-made artifacts and as well as with the physical world. But certainly social relationships are a large part of that.

Q. What factors contribute to the development of a world view for the Micmac?

A. The sources for the Micmac I think stem from essentially three major categories of information or three traditions. And one of those is the tradition

that I think can be linked directly to the Aboriginal period and one that we would call "traditional Micmac culture." Or I think popularly it would be referred to as "traditional Micmac culture." The other has to do with adaptation to a condition -- at least for the present culture, adaptation to the conditions of poverty. And one has what in the social science literature is referred to as the "culture of poverty," which is a series of adaptive strategies for dealing with that condition. A third source are those sets of values and sets of traditions that exist in the larger dominant society in which contemporary Micmac communities are encapsulated.



Q. And what are the factors that contribute to the development of a world view in the dominant society?

A. I think there are -- again, one of the primary ones stems from language and the nature of the structure of Indo- European languages, but, more specifically, I think there are two sometimes conflicting sources of value, and those are from the marketplace, the establishment of our economy, the way that we -- it is essentially a market orientation. And the other stems from Judeo-Christian-Islamic traditions of oneness, wholeness, fairness and so on. So, one is concerned essentially with advantage and power and the other is concerned with fairness and equity, I would argue. And from language one gets a linearity of thought, a sequential structuring of cause and effect that's absent in some language traditions. So, from language one gets our sense of logic and cause and effect relationships, from our commercial transaction one gets this emphasis on advantage and power, and from religious traditions one gets notions of oneness, wholeness, fairness and equity.

Q. Are some of these features that you've described, particularly the ones to do with language and the commercial transactions, absent from the world view

of the Micmac?

A. They're not absent, because, as I mentioned earlier, part of the tradition of a comtemporary Micmac person is that they too are subject to acquiring these, so that it's not something that is absolutely foreign. But if one takes a look at the traditional aspect, it's clearly definitely not a part of the traditional orientation. Micmac as a language is verb-oriented rather than subject-oriented as is English and focuses more on relationships and states of being rather than on temporal sequencing of events. With respect to the market aspect, traditionally and to, I think a large degree, contemporarily, that sense of seeking advantage in human interaction just isn't there to the same magnitude or to the same degree that it is in the larger scciety. Notions of reciprocity, notions of gift exchange, notions of balance exist more prominently in Micmac world view.

Q. And I will be coming back to that, Dr. MacGee. Can you tell us how Micmac culture and traditions have been recorded?

A. Well, the kinds of information that anthropologists have recourse to for the study of the history of particular ethnic groups stems from the -- as I say,

if we're concerned with the full history, it stems from artifactual examinations through archeology. So, one source is recorded in the manufacturing of things and their disposition, but for the recent period, within the last 500 years, much of the information that we have stems from European accounts, written accounts, and to a certain extent through oral traditions and oral history of the Native people themselves. Some of my own research sees or acknowledges that in some aspects of expressive behavior, recreational behavior, games and art, that much of a model, if you will, for that world view is presented in those areas. So, there are a number of places that one can go to ascertain what a people's world view is. For the Micmac, the bulk of our evidence as academics rest on oral tradition, rest on the written traditions of the English and the French in this area and the few visiting Germans and Spaniards who happened to move through this area.

Q. And where are the culture and traditions of the Micmac to be found?

A. It's to be found largely in their behaviors, largely in their behaviors, largely in the way with which they interact with one another, and in terms of

their own traditions of transmission of information through time, through story-telling and anecdotal accounts of events that occurred to themselves, and, more formally, through various kinds of celebrations, particularly those at the St. Ann's Day celebration in July at Chapel Island.

Q. And these would constitute ceremonies as well, traditional ceremonies?

A. Certainly there are ceremonies, many of them involve today Catholic church ritual, but there are also traditional aspects that take place as well which involve annual -- the meetings of the Grand Council and the reading -- up until the loss of some wampum belts in the mid 1950's, reading of traditional wampum belts, which are treaties with the Mohawk nation in (Cognawack?).

Q. What is a wampum belt?

A. A wampum belt? Well, there are two types of wampum belts, actually three types. The ones that were read in Chapel Island were belts that confirmed or validated treaties with foreign nations such as the Mohawk and consisted of belts of beads with distinctive patterns that served as a nomonic device and symbolic device commemorating a verbal agreement. Other types of wampum -- traditionally, a wampum

comparable to that would have been used to validate other kinds of transactions such as marriages and various kinds of agreements between communities. The second type of wampum belt is a messenger, called messenger wampum, and it's usually in the form of a string of beads in which the placement of beads serves sometimes as a census of family heads and sometimes it serves as coding a message that a runner would have given to a community. So, there are essentially two types of wampum. But what's significant is not so much the artifact itself but rather the stories that go with it and the validation is in the retelling of the agreement, the retelling of the arrangement, and so that what's of primary importance is what's inside of people's heads rather than any kind of physical manifestation of that. So that regardless of whether a wampum belt survived, the relationship would still be maintained. So that one of the sources of tradition is that at Chapel Island the Grand Council has private meetings in which they discuss national business and that information then is disseminated to the other people, to the other residents or people in the communities.

Q. And this is part of current-day cultural traditions,

is it?

A. Yes, very much.

MS. DERRICK

Mr. Commissioner, I'm going to now get into an area where I'm going to be referring to some of the material in Exhibit 4. It's a fairly consistent line of questioning. It might be a good opportunity for a short break.

MR. COMMISSIONER

Yes. I wonder if we can have the volume turned up. I don't know whether the audience can hear or not, but one of the advantages or purposes of a public hearing is so that the public can hear, and they seem to be straining at the bit down there to hear.

DR. MCGEE

I'm sorry, I should ---

MR. COMMISSIONER

It's a combination of the witness and probably the volume could be turned up.

DR. MCGEE

I'll raise my volume.

MR. COMMISSIONER

Okay. How long a recess do you wish, then?

MS. DERRICK

10 minutes or so.

MR. COMMISSIONER

Pardon?

MS. DERRICK

10 or 15 minutes.

MR. COMMISSIONER

Okay. We'll adjourn for 10 minutes, then.

(10-MINUTE BREAK)

THE REGISTRAR

Please be seated.

BY MS. DERRICK

Q. Dr. McGee, in front of you you have Exhibit 4 and in it there's a chapter written by a Father LeClercq about the Gaspesian Indians and it is entitled "New Relation of Gaspesia" with the customs and religion of the Gaspesian Indians, and I just want to ask you a little bit about that chapter. First of all, who was Father LeClercq?

A. Father LeClercq was a Catholic missionary who came to Acadia, to the New World, and spent most of his missionary work here in northern New Brunswick around the Miscou area, and I believe he spent approximately 12 or 13 years in that region, in that area, and became quite familiar with Micmac people in that region and spoke the language fluently and is partially credited with the development of the

hieroglyphic writing system that was used to maintain the church catechism and prayers and so on.

Q. And who were the Gaspesian Indians?

A. Gaspesians are the Micmac resident in the western Micmac district. There are seven traditional regions or divisions of the Micmac and the Gaspesians would have been the western most in what is today the Gaspe Peninsula, the Restigouche River, and probably including much of the communities surrounding the Bay of Chaleur.

Q. And would they, therefore, be the direct forebearers of the Micmac today?

A. Yes.

Q. And from your scholarly study of the Micmac, do the cultural traditions that you see of the Gaspesians -- would they have been shared amongst other Micmac living in other parts of the Micmac nation when Father LeClercq lived there?

A. Well, certainly, by and large. The only differences that would have existed would have been just those in consequence to different seasonality of the Gaspe versus that of Cape Sable, but essentially the cultural patterns are the same.

Q. And so it would be reliable then to generalize on

what Father LeClercq reports in this article about the Gaspesians to other Micmac living in other parts of the Atlantic region?

A. Certainly. Certainly.

Q. On P.244 of his article, LeClercq talks about attitudes amongst the Gaspesians with respect to injuries done by them and injuries done to them, and I'm referring to the middle part of the page there where he says:

> "Also, they endure with patience the severest punishments when they are convinced that they have deserved them and that one has reason to be angry against them. They even make considerable presents to those who punish them severely for their misbehavior in order, say they, to remove from the hearts of the former all the bitterness caused by the crime of which they are guilty."

And then down at the first part of the second paragraph:

> "It is not the same, however,

> when they are ill-treated without cause, for then everything is to be feared from them, as they are very vindictive against strangers. They preserve resentment for the ill-treatment in their hearts until they are entirely avenged for the injury or for the affront which will have been wrongly done them."

Can you discuss this, what this means.

A. In the former quote, the first section which you read, I think there's -- well, taken together I think they both indicate a strong sense of fairness, a strong sense of personal responsibility for one's actions, and that the former quote indicates a sense in which, when they have wronged, one of the things that's significant for instituting restitution besides accepting the conditions placed on them by the person whom they have wronged is the giving of gifts to re-establish or to generate a sense of restitution so that the relationship between the two parties can be again equitable and again back to this notion of sense of balance

between relationships. The second quote I think is quite significant because it relates to this notion of personal autonomy, which I think is very strongly developed in a Micmac world view, and that's the sense that if someone has been wronged, if someone does a wrong to you, it's essentially a challenge to your self-worth, to your sense of self-identity, and demands a comparable kind of gift-giving from the person who has wronged you in order to again establish not a -- to re-establish the conditions that existed prior to the breach, prior to the insult, or prior to the wrong.

Q. And would these be gifts to the individual who has been wronged?

A. By and large, they would be gifts to the person who has been wronged. There are instances in which -- when the wrong has been, in a sense, a -- rather than between individuals, between communities where one community will compensate another community, but this example that you're reading now pertains to individuals and certainly it was within the realm of the traditional culture to focus on individual wrong.

Q. On P.245 of this article, LeClercq talks about some of the cultural features of the Micmac community.

He says in I think it's the second full paragraph there:

> "They are so generous and liberal towards one another that they seem not to have any attachment to the little they possess, so they deprive themselves thereof very willingly and in very good spirit at the very moment when they know that their friends have need of it."

And farther on, he says:

> "Hospitality is in such great esteem amongst our Gaspesians that they make almost no distinction between the home born and the stranger. They give lodging equally to the French and to the Indians who come from a distance and to both they distribute generously whatever they have obtained in hunting and in the fishery giving themselves little concern

if the strangers remain among them weeks, months, or even years."

And he goes on further:

"They are also good-natured to their guests whom for the time they consider as belonging to the wigwam, especially if they understand even a little of the Gaspesian tongue. You will see them supporting their relatives, the children of their friends, the widows, orphans and old people without ever expressing any reproach for the support or the other aid which they give them. It is surely necessary to admit that this is a true indication of a good heart and a generous soul."

Can you comment on this and tell us from your study of the Micmac whether what is reported here has any cultural application today?

A. One of the -- there are a number of things that practically all of the early observers note for the

Micmac, and this notion of what the Europeans called generosity is one of them. So, it was clearly a widespread cultural belief and not something just restricted to the Gaspesians, and it's something that exists in the historical record through time. You can find it in the records in the 19th Century, in the 18th Century, and it's a practice that I've certainly found in contemporary society as well. The notion of generosity to the strangers is certainly there, but when there is a person in need within the community, people see to it that that individual has food on their table and so on in ways that don't threaten that sense of self, in ways that don't threaten that person's sense of autonomy or sense of pride or sense of dignity. Food, clothing and other things manage to find themselves in these people's households.

Q. And you're speaking in a comtemporary ---

A. Very much in a contemporary situation, yes. Or contrary-wise, sometimes if the household is under stress, some of the members of that household may visit other households for extended periods of time, which is another way of again distributing -- of looking after that household without threatening its sense of autonomy or its sense of integrity.

So, notions of where LeClercq mentions putting people up in one's home and so on, it's still very much an active way by which the community looks after its own members, periods of adoption for short or long term depending upon the need.

Q. On P.247, LeClercq, in the middle of the page, says:

> "The Gaspesians, however, are so sensitive to affronts which are offered them that they sometimes abandon themselves to despair or even make attempts upon their lives in the belief that the insult which has been done them tarnishes the honor and the reputation which they have acquired whether in war or in hunting."

Can you comment on the response of the Gaspesians to insult and injury, and is there a current cultural context arising from this?

A. Okay. This question of despair, this question of attack on one's integrity, again is mentioned by the -- certainly, through the 17th and 18th Centuries this question of affront is clearly a continuous cultural theme. With respect to the

present day, it's still very much -- still very present, although I think sometimes the cultural response to the affront and to that hurt may have changed over time in the sense of rather than seeking immediate confrontation or attempts to seek restitution, oftentimes the present despair, I think, results in withdrawal and removal of oneself from the source of confrontation.

Q. And that withdrawal and removal arising from a sense of insult and injury, is that what you're telling us?

A. Yes.

Q. Also, in the materials before you is a published letter from Monsieur De La Varenne, which is dated May 8, 1756, and found at the Yale University library in New Haven, Connecticut. You're familiar with this writing?

A. Yes.

Q. Can you tell us about Monsieur De La Varenne?

A. This letter is contained in a larger document that has been attributed to (Yabbi Mayard?) and it was a combination or a collection of materials published in England shortly after it was written and it consists of a series of the translations of the original source material as well as some footnotes provided by the English publisher. But De La

Varenne was a French official at Louisbourg and had familiarity and interaction with the Micmac while there.

Q. And on P.99 of this letter, there's a reference near the bottom of the page about the Micmac preferring death to captivity as a consequence which may be far more cruel to them. Can you describe some of the historical reactions demonstrated by the Micmac to the loss of liberty, and does this caption from this letter deal with that?

A. Certainly, both the English and French sources -- just some background. One of the practices in dealing with conflict between the English and the Micmac and other Native peoples was the practice of maintaining hostages as a practice of ensuring conformity to particular agreements or understandings through the use of holding hostages, and it was something that the Micmac and other Native peoples in this region found extremely distasteful and extremely objectionable, and especially in circumstances where the parties that were being held as hostage or as surety for these activities were either not involved or were, I suppose as we would say, innocents -- it sometimes included children, it sometimes included women -- and the Micmac reaction

to that was to attempt to secure the liberty of these peoples with all dispatch that they could arrange. Their primary concern was to release hostages being held by the British. The notion of -- so, that's with relationship to the English. With relationship to Native peoples with whom they were in hostile actions or engaged in hostilities, with whom they were engaged in hostilities, again the notion of captivity was a tremendous threat to the sense of autonomy, the sense of self-worth, and was a repugnant condition.

Q. How have the Micmac traditionally responded to negative social environments?

A. I'm not entirely sure. In what sense? I mean, by the whole adaptive process, the fact that you have a Micmac nation today that's an identifiable nation, suggests that the mechanisms that they employ are clearly working. But the kinds of conditions of negative involvement include the conditions of poverty, the conditions of discrimination, the conditions of being considered somehow -- in a hierarchical system that exists sometimes in western society as being somehow less than other people, the response, I think, has been to maintain a very private and a very personal sense of the falsity of

those kinds of perceptions by others and by frequently -- as I mentioned earlier, this notion of withdrawal, this notion of encapsulation, this notion of removal of oneself from the source of hostility. As a Micmac if you set about to create a negative situation for me, I'd just simply remove myself from your presence and don't bother with you, or, if I can't do that, then I'd close you out through some kind of a mental process. It's a withdrawal from the sources of confrontation, or at least the way things have developed.

Q. Can you tell us how the contemporary Micmac community is structured?

A. I find the Native communities in Canada to be among some of the most complex social structures that exist, because there are a multiplicity of levels of decision-making, of governing. One has an indigenous traditional system that's still very operative for reaching certain kinds of decisions, one has an imposed Canadian government procedure through the Indian Act and the establishment of band councils and so forth, one has the church, the presence of the church and the role of the priest in the community in terms of decision-making, one has a variety of Native organizations and associations

operating in the communities, and at the level of governments, they're extraordinarily complex communities. At the level of interpersonal relationships, the level of day to day activities, one still has very much a focus on kinship and household composition and structure to link and to affiliate people with one another, so the family structure is extraordinarily important for understanding the communities. There are certainly, as well, patterns of friendships, age-mated friendships, that are established as well. But I would say if one had to find a short description of the structure of the communities, it would be with a certain degree of ambivalence with respect to governments in that there are these multiple levels of decision-making but a source of strength in a sense of there is a home, there is a family connection, there is a place where when one's autonomy is threatened by whatever forces, threatened in the outside world or within the community, there is a family structure that can reinforce the -- that allows the expression of onself in a non-threatening way. So, Native peoples who have examined their own communities have expressed to me that there is this tremendous

ambivalence about the communities. On the one hand, it's a source of the poverty and the isolation from the larger society, but, on the other hand, it's a source of strength and a source of regeneration and of healing. So, the community serves both those functions.

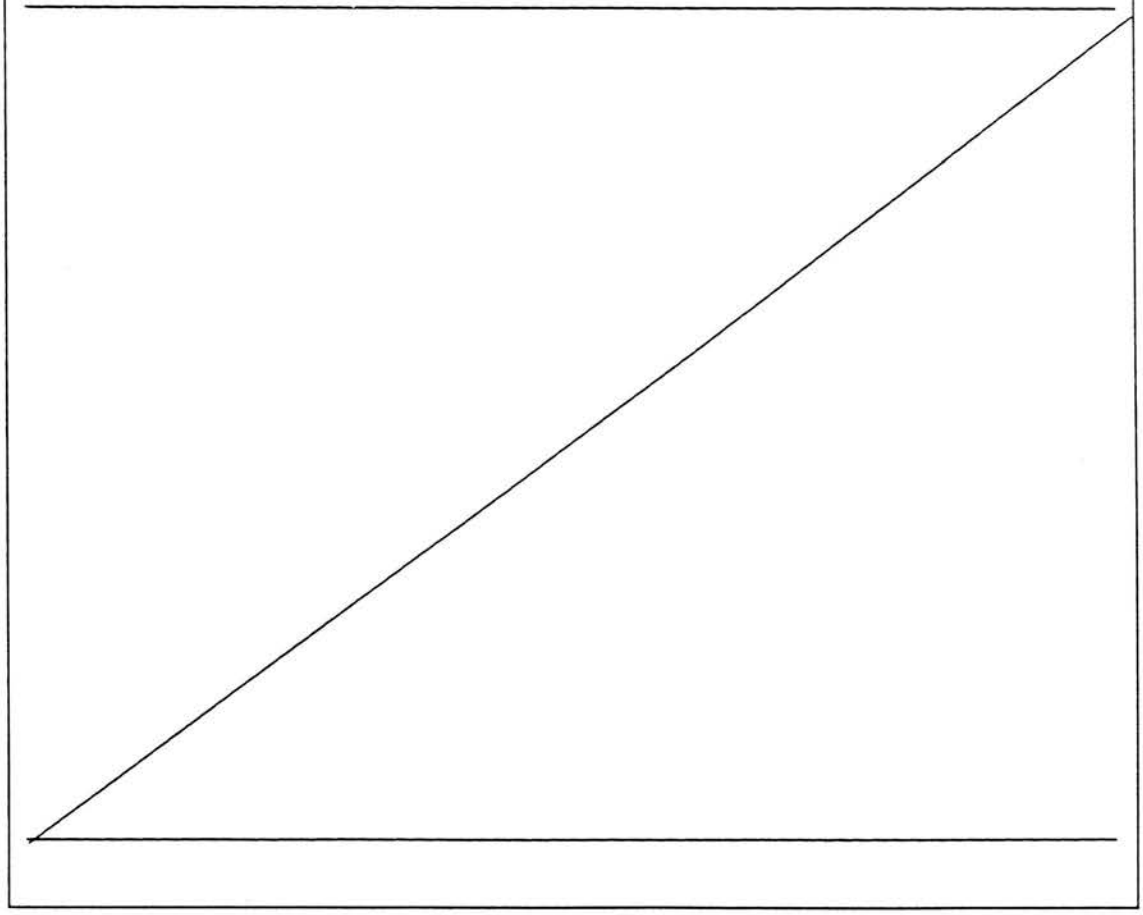
Q. And when you talk about family in that context, are you referring to the extended family as being a characteristic of that?

A. Certainly, yes. I mean, there's one's household, but there are clearly other individuals to whom one is linked and connected, and, as mentioned earlier, through this notion of sharing individuals between household through short periods of adoption and co-residence. There is a very strong sense of being linked and connected to people other than one's own household members.

Q. And in contemporary Micmac cultural terms, how would you define "kinship"?

A. Well, I think kinship in contemporary terms are those individuals with whom one has these kinds of links and extends kinship terminologies to people, but it's not restricted to blood relatives, it's not restricted to people by either descent or marriage, it can include other people, as I say, again through

this process of adoption. I know of circumstances or situations where perhaps unrelated children come to live in a household and wind up with two sets of parents, and so their kinship connectedness or their sense of kinship becomes much broader in that it includes the fostering families as well as the families of orientation. So, this notion of kinship, I think the sense of fostering, the sense of caring, the sense of looking after is a prominent feature.



Q. What are the attitudes in the Mic Mac culture towards parents?

A. Parents are sources of support, sources of this kind of nurturing that I've been mentioning, this sense of fosterage, if one's speaking of children, and a child, in relation to an adult parent. If one's speaking of adults, and their relationship to adult parents, it's one of reverence and one of placing that individual in a category of being an elder. But I should emphasize that it's, in a sense, an earned status. It's not something that is immediately derivative of having given birth to, or having fathered a particular child. It's based on these notions of action, these notions of respect, these notions of nurturing and fostering. So that, an elder is not revered because they are old. An elder is revered because the elder is wise, because the elder behaves as an elder should behave. And similarly, with parents. A parent is not honoured because they are the parent. A parent is honoured because they act in an honourable parental fashion, or manner. So that, back to this sense of personal integrity. The parent that nurtures, or encourages, or develops that sense of integrity, is a wise parent, and one who will be honoured and treated with respect. The parent who denies, or who threatens that sense of

autonomy, someone will seek another parent. Someone will seek someone else in the community who can provide that kind of nurturing, or else, others will remove a child whose autonomy is threatened, and place them in a situation where that nurturing takes place. So the relationship of the attitude towards parents, is much like the attitude towards any elder who behaves as an elder, with all the -- elder is not just simply an older person, but a title of respect. And people who deserve that respect, frequently are parents.

Q. What are the attitudes in Mic Mac culture, towards siblings?

A. Sibling relationships are extraordinarily strong. Some of my own research with 19th century aural traditions, and I think an examination of the early historical literature, as well as contemporary involvement, suggests that some of the strongest kinship bonds in native communities, in the Atlantic region, are those between siblings. There's a very close affinity between siblings.

Q. What about attitudes towards grandparents?

A. Grandparents, again, fall under this category of respected elder. And those -- a grandparent is probably the ultimate term of respect to give to any person. So that one may address a respected elder by

the term "grandparent." It's, in a sense, the paramount form of -- term of address to signify respect.

Q. What are some of the important values that underlie the Mic Mac community? I believe you may have addressed some of them.

A. Yeah. Before leaving kinship, I might mention the term for Uncle, Nugumis -- I may be mispronouncing that -- but the people with whom I've discussed the etymology or significance of that word, is that it's one who looks after, or one who cares. So that, even the term that is used for a collateral relative, is, again, focusing on this nurturing, focusing on this caring, focusing on this sense of responsibility for the well-being of those under your care.

Q. And I take it, from what you're describing, that when you're saying the use of the term Uncle, you're not just, from the Mic Mac community perspective, referring to someone who is the brother of a mother or father?

A. Well as a kinship term, that term is now used for those individuals. But the significance is that an Uncle is like -- assumes some of the aspects, or duties, or roles that I think those of us in the West tend to associate with a parental role. So that, those of us from a European tradition, tend to compartmentalize or

to isolate, or to fit very specific behaviours, to particular individuals. In this instance, the whole concept, or the whole term, of Uncle, is one that suggests a much broader notion of coverage of responsibility for one's charges, for those who are younger than one's family members. Your present question of, what are some of the values of ---

Q. Yes, underlying the Mic Mac community.

A. I think one of -- again, as I've mentioned several times, this notion of personal autonomy is an extremely significant and an extremely important value. And that much of what the inculturation process is concerned with, is developing individuals who have a sense of -- a well-developed sense of self, and a sense of competence, and being able to get by, to survive in the world. And I think that can be, again, demonstrated to reflect Aboriginal value. One can find linkages throughout the historical period, to link that sense of -- I hesitate to use the word individualism, because it carries certain connotations in our own society of isolation, of cutting oneself off from others. We tend to think of the individual person as someone who can get along without others. But the Mic Mac notion of autonomy is one of a competent, self-reliant person, who is linked to, and integrated with, other autonomous

beings, other autonomous persons in the community. And the traditional political decision-making process, which is essentially one of consensual government, one of consensus, emphasizes both that autonomy and the connectedness, by seeking resolution to community problems, through negotiation, through discussion, through sometimes endless discussion -- not endless, but long-term discussion -- frustrates Westerners sometimes. And again, the early accounts mention the long harangues that people would make. Or they emphasize the oratorical skills of particular leaders. And much of the reason for that, is that one did not -- a traditional Mic Mac leader, and I would argue most contemporary Mic Mac leaders, don't impose their will through the control of sanctions, or through the use of sanctions, but rather, through the use of oratory, and through the use of convincing others. And much of the reason for that, is that that is a way that one can achieve political decisions, without challenging anyone else's self-worth. It's a way by which all members' self-worth can be maintained. So this sense of consensual decision-making, the sense of community, of autonomous but connected people, I think are important values. This concern of caring for others, again, is related to that, in that, if you see a household or an

individual who is down on their luck, their sense of autonomy is being -- their absense of that sense of autonomy is being made public. And so one seeks ways of re-establishing that individual's ability to present themself in the community, in the public, without being demeaned in any way. So that the processes by which help comes to that individual, comes to them in a way that, again, doesn't threaten the sense of self.

Q. So is it an important part, then, of the Mic Mac culture, to take an interest in what is happening to other people in the community?

A. Absolutely. Definitely.

Q. Can you describe a little bit about that?

A. Well again, I think the -- from my own work, where I've seen that happen, or instances, again, of children being re-allocated to households, I've seen it in the sense of personal tragedy in the forms of, let's say, a death in a family, where the entire community will come to the support of widowed people and so on. I mean, there are a number of instances in which individuals who are in need, have those needs fulfilled. So that, the community as a whole, looks after other members in the community, usually, again, through various forms of gift giving or temporary hospitality.

Q. Can you describe some points of continuity, between what we see in the Mic Mac community today, and what we understand to have been the historical values of Mic Mac culture?

A. Yeah. Perhaps I can give a description of a council meeting, a Town Council Meeting, that I attended -- or a Band Council Meeting I attended in Whycocomagh a number of years ago, in the early '70s. It was a meeting that was called, to discuss the fact that, people who had gone through job training programs, had difficulty getting into labour unions, and getting labour wages, or union wages, on jobs that they were engaged in. And I know that because, the person with whom I attended this meeting, explained it to me afterwards. And you could pick up the odd phrases of, "on-the-job training," and "two ($2) or three dollars ($3) an hour," and so on.

Q. The meeting was conducted in Mic Mac?

A. The meeting was conducted in Mic Mac. But in many ways, because the meeting was conducted in Mic Mac, I was able to make some observations about how decisions are reached, that could just have easily have been written in the 1600s or in the 1700s. A couple of things about this meeting, that are important to note, before describing the meeting itself, is that, it was

called only after both the elected Chief and the Priest were off the community. And the reason for that was that the elected Chief would not hold a meeting without the presence of the Priest. And the Priest insisted that all meetings be conducted according to Robert's Rules, with various kinds of white procedures, to demonstrate democracy at work. So the Priest and the Chief were absent. The meeting was called. And the arrangement of the room was somewhat comparable to this. There was a row of tables in the front, much like this, but closer to the stage, much where your table is now, Mr. Commissioner, and with chairs arranged, as they are in this hall. And people were sitting around the table, and in the chairs. And conversation was taking place, with rising and falling pitch, and conversational tones. But after a while, I noted that the intonation pattern had shifted, and that there was an even-toned, a very formal kind of speaking taking place, and that people were beginning to -- the number of people speaking began to reduce. But people would listen to one speaker for a while. And someone else would pick up. And I didn't realize the meeting had started. No one had called the meeting to order. No one had said, "The meeting is about to begin." But there was a shift in the manner of

delivery. And there was a shift in frequency of conversation. Now on occasion, you might have two people speaking at once. But there was no attempt, of either party, to either shout the other person down, or any attempt to say, "Wait a minute. I'm speaking, you know, be quiet." There was no attempt to infringe upon anyone else's ability to speak, or right to speak, at any time. But the individuals who were talking simultaneously, would begin to look around and note, through various facial gestures, and other non-linguistic communication cues, that they weren't being listened to. And then they would be quiet. So that, everyone who chose to, had the right to speak, and had the right to speak, when they chose to. And after a while, you started noticing people nodding in agreement, or accepting a particular frame work. And the meeting ended, when everyone had incorporated, or had adopted, a common perspective, a common viewpoint. There was no voting. There was no, "It is now moved." There was no public announcement. But there didn't have to be, because everyone who was present, had incorporated that into their own action. Their own action, from there on out, would be in accordance with the action of others, because they had accepted and had agreed to some position. I knew the meeting was over,

when people began to, again, speak in a modulated fashion, and people started getting up and having coffee, and doing other things. But reading some of the accounts of early historical meetings, in which decisions are made, treaty negotiations, political, some of the early Jesuits' writings, that meeting could have been held in the 1600s, in the 1700s. The pattern was very much the same. Now, is that the way in which all political decisions are made? And the answer to that is, "No." But it's still very much present. And it's still very much alive. And it's still very much one way that people deal with certain issues. So this notion of consensual decision-making is something that is still a value that is held in high esteem in the Native community.

Q. So can you tell us, Dr. McGee, if Mic Mac culture has survived contact settlement, other attempts at assimilation?

A. Absolutely. Absolutely. Culture isn't to be found in style of dress, or even in particular, -- sometimes not even in particular traditional behaviours. But it's to be found, as I suggested earlier, in this world view, in this image of how the world functions, how it operations, and how to come to grips with it, how to deal with it. And in that regard, Mic Mac culture is

distinctive, and very much alive.

Q. How do the Mic Mac regard outside authority?

A. How do they regard it?

Q. Yes.

A. They regard it -- to the degree that they have to deal with it, they accept it as part of the political milieu in which negotiation with outsiders has to be engaged in. But to the degree that -- and they deal with it to the degree that it impinges upon their own life. I think, if you were to take a survey of attitudes about Indian Affairs, you won't find a complete and total consensus. But I think you would see it as the imposition of a foreign structure. I mean, I think much of it is viewed as alien.

Q. Are notions of fairness and equality found in Mic Mac culture?

A. I would argue, yes. Certainly. Absolutely. Again, some of the materials that you've cited here, demonstrate that, as well as practically -- again, a lot of the early sources mention that we may fault these people for lots of their behaviours. But one of the things they are, is that they are honest, and they are straight-forward in their dealing with one another, and with foreigners. So those values, those qualities, I would say certainly, are part of Mic Mac culture.

Q. And in contemporary Mic Mac culture, they're found today, as well as in the historical?

A. By and large. There is that slight modification, as a result of the culture of poverty, and having to deal with people on the outside. But by and large, I would say they're still operative, although other values are also added on to that.

Q. And how is the concept of equality interpreted, in contemporary Mic Mac culture?

A. I think one of the most -- let me see if I can do this. There are a number of ways by which that's manifested. And some of them have to do with the fact that those items or those symbols that are sometimes used on the dominant society, to symbolize inequality -- items of wealth, symbols of material well-being -- are not perceived by Native people, as being an indicator of who you are, as a person. So that, one of the senses of equality is that appearances are not the place -- not the source that one finds distinctiveness. One looks for distinctiveness in one's behaviour, and how you relate to others. This notion of looking at the heart, rather than at material wealth. Now this means that someone can display material worth, within the community. And they are neither ridiculed, nor praised, because of it. In other words, it genuinely

makes no difference, in terms of the evaluation of that person's worth, and, I would argue, as a sense of their equality, or the way in which they measure equality. Another way, has to do with this notion of wrong, of being wronged, and the sense that sometimes, wrong that is unrestituted wrong, becomes a source of tension within the community at times. And that's because it's a threat to autonomy. It's a threat to that sense of integrity. So the question of the way that it's expressed, is through ways of establishing interaction patterns that emphasize personal, individual worth and autonomy. All of the factors, all of the mechanisms that exist, to create those non-threatening environments.

Q. This value of looking at the heart, as opposed to relying on appearances, is that something that the Mic Mac expect of outsiders, non-Mic Macs?

A. I don't know -- it's not something that they expect. Because of their long interaction with outsiders, they realize that it's not a value in the outside society.

Q. Is it a method of assessment that they employ with others, outside of their community?

A. But people who respond to that kind of evaluation, are quite regularly incorporated, and accepted in the community, as -- so it's something that -- they don't

see it in terms of a racial characteristic. They see it in terms of a personal quality, that some people acquire, and others don't. But in terms of their use of -- in terms of their evaluating the circumstances, their interaction with people -- as I mentioned earlier, as the multiple sources of value in the Mic Mac community, those traditional values are clearly going to be operative in dealing with others. So the short answer is, yes, they will employ those values for judging others. But do they expect to find that behaviour in others? I think the answer is, by and large, no, they don't.

Q. What is the relationship of language to culture, Dr. McGee?

A. It's, in many ways, very central to the notion of world view. And there is a fair amount of anthropological and psychological literature to suggest that language may well be a determiner of the way in which individuals perceive an environment.

Q. So what is the significance, in cultural terms, of restricting a Mic Mac's ability to use his or her language?

A. I think it depends, to a certain extent, on the age at which that restriction takes place.

Q. In the case of a young person.

A. In the case of a very young person, it can deny to them, a source of perception of the world that is meaningful and distinctive, in the way that it's used by other members of the community, and can alienate them from their community, meaning that other people have a source of knowledge about the world, that they are lacking. So not being able to learn one's language, is of that type. Not being able to speak one's language is a situation by which one doesn't have an opportunity to seek confirmation of those values that one has. So that, if one has learned -- if one's first language is prohibited, if one is restricted in expressing oneself in a first language, and must use a second language, it means that, to a large extent, one is being compelled to view the world, and to think about the world, in ways that are perhaps alien and a source of chaos, depending upon the fluency with which one speaks the second language. But clearly, not being allowed to speak one's first language, is an infringement, in terms of the way that one addresses the problems. It's a way of alienating someone, in a sense, from their own selves. It's a challenge to this notion of autonomy. One is not free to choose to speak the language of one's choice. One is not free to express one's conceptualizations of the world, in the

language of one's choice. So that, that threat to autonomy, for a Mic Mac, by not being allowed to have the freedom of choice in speaking one's language, is going to have very negative effects on one's self-image.

Q. Are there common values amongst all Aboriginal people in Canada?

A. Only -- a complicated question. The short answer is, yes and no. The yes is, the degree to which all Native peoples in this country, have had to adjust and adapt to the world view of the dominant society, there's a commonality. The degrees to which they have had to -- all Native peoples have had to adapt to the poverty conditions, and the development of a culture of poverty, there's similarity. The degree to which there is ethnic similarity depends, to a large degree, on the language spoken and the area in which one lives. For instance, there's greater similarity among speakers of Algonquian languages, than there would be between a speaker of an Algonquian language and a speaker of a Dene language.

Q. And Algonquian includes the Mic Mac?

A. And Algonquian would include the Mic Mac. So the degree to which the culture of Native peoples across the county is the same or not, depends upon whether

one's -- at what source one's looking for this culture, or this world view, or the circumstances with which they have to interact or deal.

Q. In relation then, to responding to outside authority, or outside conditions, there would be some commonly shared values?

A. There would definitely be some commonly shared values, and cultural patterns, in that regard.

Q. What do gifts symbolize, in the Mic Mac community?

A. Traditionally, I think, gifts operated at three or four levels of significance. Perhaps, in relation to statements I made earlier about treaties, gifts given at the time of treaties, including the gifts of the wampum belts themselves, are forms of validation. So that, the giving of gifts validates an understanding or a transaction, among peoples. So that's one function that it serves, is a function of validation. Another function it serves is a social one, of establishing connectedness, and of establishing various types of -- symbolizing connectedness to others. So it establishes and maintains social relationships. It serves as a means of restitution, as we saw in one of the -- in both of the accounts in the documents. It's a means of re-establishing social relationships that have been breached. So as a form of social control,

it becomes a way of establishing restitution, of re-creating equality. And it serves the economic function, that when there is disparity, one of the ways of equalizing that disparity, was by the giving of gifts. In the early historical materials, often times, the person who was acknowledged as the head of the community, was frequently also described as being among the poorest person, because they were constantly giving their wealth away to others in the community. And part of the reason for that, is maintaining the well-being of the community. And that was done through gift giving. One of the ways to manage one's political career, was to be generous, was to give gifts.

Q. And that would be perceived with favour, then, in the Mic Mac community, to be seen as being generous, and to be a gift giver. Is that correct?

A. Yes. But again, one would be seen as a gift giver, the prestige attached to a gift giver, as long as it wasn't an ostentatious kind of presentation, to establish -- to emphasize difference, rather than to establish equity. The person who ostentatiously gives parties or gifts today, is ill-favoured. But someone who can manage to give gifts, with a good heart, is someone who is respected.

Q. And each of these ways in which gifts are symbolized,

have contemporary manifestations?

A. Yes.

Q. What values underlie the concept of sharing in the Mic Mac community?

A. Sharing, I think, is much like -- in a sense, much like the sense of equity. One shares, one gives of one's possessions to others, to maintain that sense of autonomy in others, when it's threatened. But one doesn't -- there isn't an egalitarian sense, that everyone has to have exactly the same amount of stuff. So it's not sharing, in a sense of equality of all valued goods. I mean, there are clearly differences of ownership of goods. But sharing is one that occurs, largely through these patterns of gift giving, that are done, either to maintain a sense of well-being, of survival, maintain that sense of autonomy, and to be hospitable, to look after those who come to visit or to stay with you. So there is a willingness to share what one has. But there isn't a sense that one has to give all of one's worldly possessions to someone else. There's a sense in which one is in control of one's wealth, in order to maintain one's own integrity, one's own sense of autonomy, as well as looking after the sense of well-being and autonomy of others, for whom one cares, for whom one has obligation.

Q. In contemporary Mic Mac culture, does the concept of restitution have any significance?

A. I think the way in which quarrels, disputes are rectified, there clearly is a sense of restitution, a sense that, if someone has been wronged, then they will seek to have that wrong rectified, or restitution established. And there are a variety of formal and informal mechanisms for resolving those kinds of disputes, and seeking to, again, achieve balance in the social relationships.

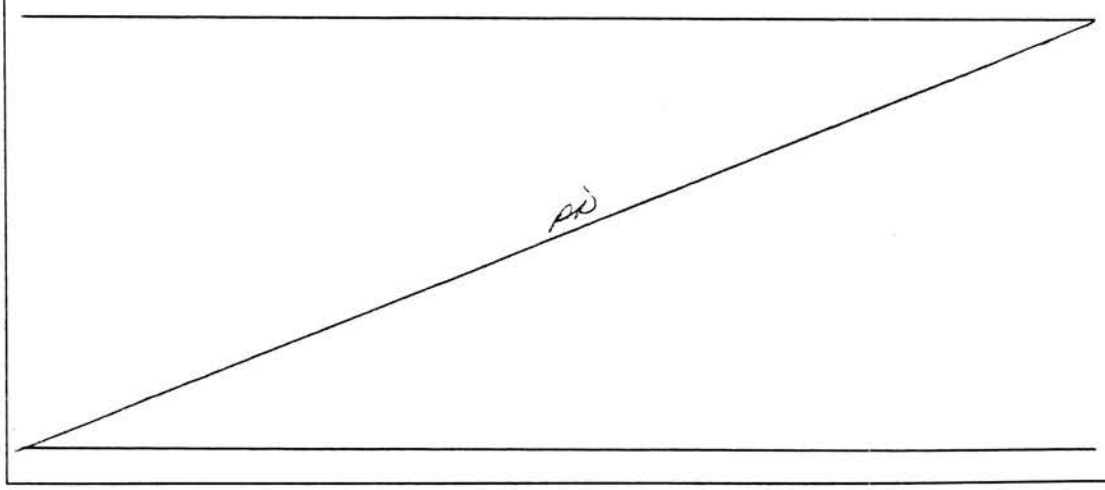
Q. Dr. McGee, in cultural terms, can you describe the effect on a Mic Mac, of being away from the community?

A. Of their own will? Because people leave communities ---

Q. No, in circumstances of removal.

A. Okay. First of all, the very act of being removed is, again, a threat to an individual's autonomy. They are subjected to other people's control. And that, in itself, brings a sense of loss of sense of self, with respect to oneself, and a sense of shame, with respect to the community. So that, being removed from the community, is being -- one having one's self-image diminished. Secondly, being removed from the community, is being removed from a setting by which all of those -- the world view that one personally has, is

shared by others. And if one is placed in a community other than one like the one that one's being pulled from -- in other words, if you're not being placed in another Mic Mac community -- then there is that alienation from being able to have other people relate to your actions, or understand your behaviours, because they don't possess the world view that you have. They don't understand your responses, or your reactions. And that then becomes a source of threat, in one sense, a source of chaos in your own world view. So to be separated from a community, is to be separated from a cultural milieu, in which your expectations of how the world works, are not being shared by the people with whom you have to interact. And it's a very threatening and alienating kind of circumstance.



A. The technical term to relate to that is culture shock, where you're placed in a community where other people's values, which may be different from your own, are operative. And you have to learn and adapt to those values. So to be removed from your community is, one, to be removed from a familiar cultural milieu, and it's also probably to be removed from that source of nurturing and support that one has when one is -- when one's sense of autonomy is threatened. There is then no place to go for that kind of solace. Often times, Native people who leave the reserve for work or whatever other types of activities they engage in away from a community frequently come back for that kind of healing and for that kind of nurturing for various periods, and then going back to their work communities. St. Anne's Day celebration, again, is an opportunity for many of the Micmac from Boston to come home, to get that sense of community. So to be taken from a community is an undesirable and unhealthy sort of situation.

Q. And the phenomena that you've described, are they true Micmac who have perhaps had some interaction with the outside community, but then are removed exclusively from their community?

A. I think to the degree to which they have incorporated the other world views is -- and it's a matter of degree rather than a set of absolutes. But I would argue that any person, any Native person raised in a Nova Scotia reserve community, regardless of how acculturated the community is, has this sense of loss at being separated from that community.

Q. And how is this cultural identity affected by removal for a long period of time? Is it possible to reintegrate?

A. It's possible. But people -- I've known people who have gone for various amounts of time in Europe, who have spent various amounts of time in Ontario, various amounts of time in the States, who come back to the community and who attempt to reestablish community life. And it's stressful. It presents difficulties. Many of those people -- or some of those people have -- wind up living off reserve, out of the community, and go back in and visit it. And some find more permanent ways.

Q. Does this have an effect then on such an individual's sense of self-esteem?

A. Yes, it does.

Q. And can you describe the nature of that effect?

A. Part of those reactions, because the sources of world view are both social and personal, will vary. But there is a -- I think a fairly typical Native Algonquian reaction is -- to this sense of loss of community, this loss of connectedness to the community, is to become very isolated and to become very much cut off from all sources of healing and support.

Q. And that would reflect itself how in terms of self-esteem?

A. In self-esteem, it crashes or becomes diminished, and either has to go through some kind of reintegration into the community, some kind of reestablishment of wellbeing, of connectedness, or one develops an identity with another cultural orientation where one can find that support. I'm not sure I'm answering the question that you're asking.

Q. Yes, thank you, Dr. McGee. You are. Those are my questions. And I believe my friends may have some questions. But I'm sure His Lordship would be prepared for a short break, if you would like that, Dr. McGee, before any other questions are asked.

A. It's entirely up to the court.

Q. You're happy to continue?

A. I'm happy to continue.

Q. Thank you, Dr. McGee.

CROSS-EXAMINATION BY MR. SAUNDERS

Q. Dr. McGee, a couple of concepts that I'd like your assistance on, if I might.

A. Okay.

Q. Sir, you spoke earlier, in answer to questions put by my friend, Ms. Derrick, when she asked you whether or not the concepts of equality and fairness were still values in present-day Micmac culture.

A. Right.

Q. And I noticed some hesitancy in your answer. And eventually you said, by and large, it is still found today. And then you said that it was affected to some extent by the culture of poverty. Do you recall that answer, sir?

A. Yes, I do.

Q. And I'd like your explanation as to how present-day values of fairness and equality have been impacted or affected by that culture of poverty.

A. Okay. I think the -- I guess the way to approach this is if one takes a look at the way in which, oh, let's say, 15 or 20 years ago housing was dealt with in the community. There is a sense in which a very limited amount of financial resources for the

construction and building of -- and repair of homes is available. And there's a sense then in which the question of absolute need by some kinds of measuring, numbers of broken windows and numbers of holes in floors, which might be an abstract measure of need, might get moderated by the fact that, "I'd like a house to live in." So that sense of fairness, if you will, is moderated to some extent by having to deal with Indian Affairs, bureaucracies and decision-making about the criteria for being placed on a list for various amenities.

Q. Has the reaction to the culture of poverty caused an exodus of young people leaving the reserves going to large urban centres?

A. It's certainly a factor. I don't know whether it's caused it, but it's certainly a factor.

Q. In your studies, doctor, had you noted that young Aboriginals were given a great deal of independence early on by their parents?

A. That's a one -- the question is a culturally-based question. You're asking for an evaluation in comparison to the dominant White society's notions of what is independence and a free rein kind of situation. And I would argue that my involvement with Native communities across the country suggests

that -- or, at least, certainly with Algonquian-speaking peoples -- is that that's quite a normal and traditional way of relating to children in terms of their own autonomy.

Q. So that, at a young age, children have a lot of responsibility themselves.

A. At a young age, children have an opportunity to develop a sense of competence in dealing with the world, and that what is, I think, happening is that the children are given an opportunity to learn lessons by a direct involvement with understanding the consequences of their actions. They begin to develop a sense of self-confidence by learning how the world works through direct involvement with it.

Q. To the extent, doctor, that by age 15 or 16, a young Aboriginal could be seen to be self-reliant and responsible for one's own actions?

A. I think, by and large, that's true, as long as you attach to that that, while learning this independence, while learning this sense of self-reliance and autonomy, that one is also learning responsibility for the caring and nurturement of others. So that one doesn't learn each of these values in an isolated, separated kind of milieu. But one sees that the reason for being autonomous is

not to be independent, but to be competent and to be of assistance and of aid to others, if one needs to be, certainly, for one's own self-survival, but also for the assistance of others.

Q. Have problems developed on the reserve with the exodus of young people to urban centres, such as Halifax, Boston or Toronto, in that the young persons are then using others off reserve as role models?

A. Using others?

Q. As role models?

A. Is it a problem?

Q. Yes.

A. It's -- it becomes a problem only to the degree that it causes -- what's the word I want here -- only to the degree that it causes confusion in the individual's mind as to conflicting values when they arise, and which set of values does one choose.

Q. Yes. Apart from that personal confusion, has it also created a form of dilution of traditional Micmac values on reserves?

A. Oh. A dilution of the values on the reserves?

Q. Yes.

A. I would say not.

Q. Upon the return of such young people who have been

to urban centres, has that impact been felt?

A. I think this notion of tradition, one has to take a look at what it is. It's to be found, as I mentioned earlier, in specific sets of behaviours and specific sets of artifacts. And a dynamic living, growing culture is one that does change, one that does adapt. But it adapts at a pace and under conditions under which it incorporates and it accepts and adopts those values and those world views from the outside world. There is no culture that is not unaffected or not uninfluenced by the societies and the individuals with whom members of that society interact.

Q. So, notwithstanding whatever values the young people have brought back from a non-reserve situation, the Band and Council have been able to adapt satisfactorily to that.

A. To the degree that there is still a distinctive autonomous Micmac community, yes. But as I mentioned in my opening statements, the source of value for Native communities derives minimally from those three sources, the traditional community, the culture of poverty and from the dominant society. And to say that those are present doesn't mean that the traditional values are any less significant or

any less important.

Q. You mentioned earlier, doctor, the characteristic of Micmac to judge by the heart or with the heart. And as opposed to looking at material indications of someone's prestige or respect, they would choose instead to test one's character by action and deed. Is that correct?

A. Yeah.

Q. I take it that, while a laudable characteristic, you're not suggesting that that is one peculiar to Aboriginal peoples.

A. I'm not saying it is -- no, it's not. The short answer to that is, obviously, no, it's not. But what is significant, I think, is the degree to which I think it becomes a prominent or dominant means of assessing and evaluating personal worth.

Q. You mentioned as well that the validation or the verification of stories was in the repetition of the storytelling. Did I get that right?

A. That's one way ---

Q. In the constancy or the frequency of the storytelling, it obtained its validation?

A. That's true, yes.

Q. And do I take from that, though, doctor, that stories or myths would change depending on the

perspective of the storyteller?

A. Are you speaking now of the actual narrative content?

Q. Yes.

A. That changes probably from one telling to the next telling by the same person. And it's not a published literature with a set text.

Q. In some of my readings, I've noted that gossip is something that is frequent, in that it is a form of message-sending among people in the community, that is, telling stories about one another and how they're doing and what successes or failures they've had. Is that accurate?

A. Yes.

Q. All right. What check is there in terms of gossip, doctor, in your experience? What check is there on gossiping to ensure that it is fair and accurate?

A. The check is -- there are a number of them. But one of them is simply through the ways that one would check any other source of information, through attempting to find -- I mean, if we're talking about a specific event that occurred, one would ascertain who was present and under what conditions and check one's information. If we're dealing with a question of character, a question of someone's evaluation of

someone's worth, then the questions of validation are those by which the individual's knowledge of the other individual conforms to that behaviour.

Q. And in present-day Micmac culture, if one were being gossiped about in terms of reason for failure or character or both, would one have the opportunity to discredit that kind of gossip by giving a different version or different reasons for it?

A. Certainly.

Q. You described the history and present-day characteristics and importance of gift-giving, Dr. McGee. And I'd like to take you back to something you said earlier with reference to the autonomy, and that the similarity in gift-giving had the effect of restoring one's condition prior to breach or prior to wrong, and in that way, as you elaborated, to restore the balance between giver and recipient.

A. Um-hmm.

Q. And as I read the two pieces that have been introduced in evidence and as quoted by Ms. Derrick, one referred to the situation where one would be giving a gift to either respond in kind or return a favour, whereas the other context that was spoken of in one of the earlier writings was, if one felt ill-treated without cause, then the quotation read into

the record was that the Micmac or Aboriginals would be very vindictive against strangers in that kind of context ---

A. Right.

Q. --- and would seek to avenge for the injury or the affront which they felt had been wrongly done to them.

A. Right.

Q. So there was then, I take it, this at least notion or concept of vengeance, if one felt that one had been wronged at the outset.

A. I -- absolutely.

Q. And the illustration that you gave in terms of hostage-taking, if innocents had been taken, then attempts would be made to have those people secured and with dispatch.

A. Yeah.

Q. Was it also the concept in terms of if one felt that the single or the personal entity or one's individualism was the whole, that is, if the single part was the whole? Did that carry with it the notion that one could exact vengeance or restitution on a whole group rather than just the single culprit that was felt to be responsible?

A. The degree to which that's an Aboriginal practice

and the degree to which that became the practice in the 17th and 18th century is something that I'm still attempting to resolve. But, certainly, by-- certainly within the 18th century conflicts between Micmac and the British, there are various agreements that wrongs between those two ethnic groups would be resolved by dealing with individual wrong, with the wrongs of the individual parties, and that restitution would not be sought by punishing individuals who were not involved. The tradition within the Native community is that the English consistently violated that principle by taking hostages in one part of the province when a wrong had been incurred in another part of the province. So that a ship that might have been attacked near Canso, the British would take hostages around Bear River. The Micmac found that objectionable and also against their understandings and their treaty. They came to see that that was a pattern that the English engaged in frequently. And back to this question of whether -- how one responds to the culture of another group, I think there's some sense in which the Micmac response to that was to behave, on occasion, in a comparable fashion. So by the 17th and 18th century, notions of revenge perhaps took on

a more ethnic character than perhaps it had had.

Q. So is it your evidence, doctor, that this idea of retribution or vengeance against a group as opposed to the individual that was seen to be responsible came about in reaction to actions taken by others?

A. What I'm saying is that that's an area in which I think there's some contradictory evidence in the earliest record.

Q. Yes.

A. And the degree to which that's an Aboriginal pattern, I'm not willing to -- at this juncture to make a decision about -- or a statement on. But-- so the source of that value or the source of that activity is the source of the value that says one must seek vengeance. If you're asking me when that became a Micmac value and -- I'm not able to give you an expert opinion on that at the present.

Q. All right. As well, doctor, you said that the respect paid to parents is not viewed simply by fathering a child but, rather, by action or deed and a demonstration that the respect has been earned.

A. Yes.

Q. In your studies of Aboriginal cultures, are you familiar with succession ---

A. Yes.

Q. --- and how one Chief would replace a former Chief?
A. Yes.
Q. All right. Is that a decision in the Micmac community, sir, that is taken by the Council of Micmac?
A. You're obviously not speaking of elected Chiefs and contemporary communities under the Indian Act ---
Q. No.
A. --- but, rather, traditionally.
Q. Exactly, traditional ---
A. Okay. It's a decision -- again, there's a -- there are levels of Headship or Chieftancyship. One has a Community Head or Community Chief. One has a District Head or District Chief. And one has a Nation Head or a Nation Chief. And the traditional process was one of a combination of succession within a family line, as long as there was this consensual agreement that that individual was worthy of that post or worthy of that position. Now, back to the question of does it go from father to son, that also has to be placed in the context of the adoptive practices and adoptive procedures. So that, traditionally, it could have gone from a-- from one person to a young person who would have been called "son," who would have been dealt with as

son, but who may not have been a biological descendant. Now, the other issue involves kinship ---

Q. And, historically, have there been examples of that?

A. It's -- in terms of the number -- the actual records of succession, they're relatively few. The principles of succession -- there's discussion of them in general terms. But in terms of actual transferrals in the early historical record, they're small. In terms of the more recent historical period, most of them have gone from a father to a son. But there have been instances in which it has gone to another person.

Q. And when you say, "more recently," are you speaking of the last 100 years?

A. Within the last 200 years.

Q. All right. And is there a record of that?

A. Yes.

Q. And then when you say that that kind of decision-making is consensual, by whom and in what way is that decision taken?

A. Okay. The -- before leaving this, I want to mention one more thing about the Aboriginal or traditional kinship succession. In terms of kinship, one referred to or extended the term that we would use

for "son" to individuals who were what -- whom we would call "nephews," and whom we would call "first cousins once removed." In other words, the term "son," as a kinship term, applied more broadly than to one's own offspring. Your question of in terms of what was the process of consensus and succession, a person in terms of in time of selection for the next Head person, someone would be put forward by a body of elders, by a group. And in the distant past, if there were individuals who failed to accept that individual, they were free to move and settle into another community. They were free to leave and establish a separate community in which they would consensually choose their own leader.

Q. That is to say, those who didn't accept the choice were free to go elsewhere.

A. Yes, in terms of a community leader. And in terms of district leaders, that process worked again with the heads of each of the local communities, who would discuss and select someone. They would, in turn, go back to their own communities, announce who this individual was. If there was consensus, then it would be confirmed at a later date. So there is this period of fluctuation of information back and forth from a local community to a district community

for the nation as a whole. But, in some sense, the heart of that would have been the Council. The Grand Council would be the body of respected-- they're people who have been -- who are there because they are respected individuals, in any case. And their decisions were generally acknowledged and accepted.

Q. Now, to what extent is that the same today?

A. By and large, it still functions that way. Again, there is -- you say, well, why the "by and large," why the qualification? And the qualification is largely because those decisions of the Grand Council are done in camera. They're done by the Council. I don't have access to Council meetings.

Q. Have you ever attended a meeting of the Grand Council?

A. Not of the Grand Council.

Q. Do you know how many attend Grand Council?

A. There are approximately 7 or 8.

Q. 7 or 8 officials who would make up the Grand Council?

A. Yes.

Q. Would these be officials of varying rank, to your knowledge?

A. There is the Grand Chief. There are the -- there's

the Grand Captain. There are the Captains. And there is the Wampum Keeper.

Q. Is the Wampum Keeper different than the Grand Medicine Man? Is that a different position, or do you know?

A. Well, it depends on -- I mean, are you referring to specific individuals?

Q. Yes.

A. All right. Then who are you referring to?

Q. Do you know what position Mr. Knockwood has in the Grand Council?

A. To my knowledge, I'm not sure that he is a member of the Grand Council. The Wampum Keeper is Sejeg Henderson.

Q. To your knowledge, are the members of the Grand Council able to submit candidates for the position of Grand Chief?

A. The candidacy is -- the short answer to that is, no, I don't know.

Q. Thank you, doctor.

CROSS-EXAMINATION BY MR. SPICER

Q. Dr. McGee, do you know Donald Marshall, Jr.?

A. I met Donald Marshall, Jr. -- well, I didn't meet him. What's the word I want? I was at a St. Anne's Day celebration and -- in the summer of 1970 and he

was pointed out to me. So I've -- the last time I physically saw him was roughly 20 years ago.

Q. Would it be the case that the -- you spoke of acculturation -- that the degree of acculturation that takes place depends to an extent on the level of contact that the society has with the dominant culture? In other words, it's affected by the amount of contact?

A. Yes.

Q. So that the rural community is perhaps going to be less acculturated than a community that's in an urban centre.

A. Possibly. With electronic media, certainly even very rural communities are subject to sources of value from the dominant society.

Q. But as a generalization, would my suggestion to you be the case, though, that it's more likely there would be greater acculturation in an urban setting than there would be in a rural situation?

A. The opportunity is probably greater, yes.

Q. And are you able to tell us from your experience whether or not that is a fact?

A. Well, on that issue, there is, again, evidence not only from Native communities that are encapsulated within urban settings, but also examples of European

ethnic minorities who have survived quite distinctively within urban settings. So that the degree of urbanization, I think, has to be matched with -- in a sense, with the other sources for maintenance of traditional value. And the -- I want to be cautious here with the notion -- the concept of acculturation. Because I have a sense that it's sometimes being used to refer to the loss of the traditional culture, the replacement of the traditional culture by a dominant culture. And that's, in a sense, assuming that the capacity for culture is limited as a container and that you can only have so much of one kind in it. And I think the resourcefulness of human beings and the structure of human beings is that, one, it is possible to function biculturally or multiculturally. It is possible to operate in different settings and different circumstances with a number of cultural orientations.

Q. Are you able to tell us from your experience whether or not there's a different degree of acculturation between, say, Eskasoni and Membertou?

A. Again, that ---

Q. And if you don't like the word "acculturation," perhaps you can suggest another word.

A. Okay. If you're saying that culture as an adaptive concept consists of these sets of strategies for perceiving situations and making decisions through a set of ranking of values, but how to deal with them, and if the argument -- or the question is, do people on, let's say, Eskasoni, differ as a collectivity from the people in Membertou, as a collectivity, for interacting with the larger White society, I would argue it depends on the degree to which the individuals from each community interact with the dominant society and have opportunity to use those values as choices.

Q. Okay. And does it then become the case, in order to answer that question with respect to any particular individual, you'd need to know the situation of the individual?

A. I would say that that's true.

Q. You said a number of things about values of the Aboriginal or Micmac community, fairness and equality and a couple of other things that Mr. Saunders was referring to. In providing us with those insights into the Micmac value system, do you seek to differentiate that from the value system of the dominant system, or merely to state, "These are the values of the Micmac community"?

A. Well, the ones that I would emphasize and the ones that I thought I had emphasized in the original testimony were those of autonomy and self-reliance. And it's in those areas that I would argue that there is some distinctiveness.

Q. Okay. I wanted to be sure that I got you completely, instead of saying, "Well, I think you said." Are there others then that you seek to distinguish the dominant society from the Aboriginal society? And, if so, could you tell us which ones those are that you say are distinctive as opposed to merely being possessed by the Aboriginal culture?

A. Okay. Well, I -- again, it's a question of -- I think I'm having difficulty with the semantics of the question. Because one of -- to me, one of the notions of distinctiveness is whether it is, in fact, different from, not a question of degree. And the notion of distinctiveness -- I would argue that the notion of autonomy versus the notion of individualism is the distinction, I think. In the West, we have a notion of the primacy of the individual as opposed to the autonomy of the person. So -- and I think those are different concepts. So I see that as one area of genuine distinctiveness. Now, I see the expression of various other, say,

value choices, that, statistically, one group will choose one option more frequently than another option. But that's not a question of distinctiveness in terms of value. It's a distinctiveness in terms of option, of operating, that in choosing that value as opposed to some other value. But getting at the level of primary difference, I would argue that it rests on this notion of autonomy of the individual versus the-- in Western society, the supremacy of the individual, I guess.

Q. You made a couple of comments about the effect of a Native person being removed from their community and the effect that that would have on that person. I believe you said that being away from the community means being subjected to someone else's control. And that being removed would mean having one's self-image diminished, and being removed from a place from where your world view is shared.

A. Right.

Q. Let's talk about prison for a moment, because I think that's really where that question is headed. Are you saying that those feelings would be felt more by a Native person than they would by a person of the dominant culture, or merely that those are

the sorts of things that would be felt by a Native person being subjected to that kind of situation?

A. Okay. I would think that the -- I'm not a specialist on prison culture. And I understand you're going to be having people describe prison culture. But the few academic and public materials that I -- popular materials that I do know about prison culture is that, in many senses, prison culture is the -- presents many of the dominant culture's values in extreme form, notions of power and notions of control. Notions of a sense of prison fairness may well reflect outside notions of fairness and integrity. So I would argue that for a Native person to be placed in prison, you're being placed in a situation where the dominant society's values are present. So that if you derive from the dominant society, being placed in that circumstance -- or it may be -- and if unjustly placed there, it's going to be difficult for you. It's going to be -- it's going to threaten your sense of integrity. It's going to threaten your sense of wellbeing. But, by and large, the system operates in a fashion with which you are familiar and with which you basically understand is the way the world works, but perhaps very harshly in that

circumstances. But it's the principles that govern the operation of the world. I'm saying that a Native person placed in that same circumstance would suffer greater culture shock, cultural disorientation, than would a non-Native person.

Q. And in any particular case, in the case of any specific individual, the degree to which that shock is suffered would depend on that person's degree of ---

A. Of cultural distinctiveness.

Q. Sure.

A. Yes.

Q. So in order to answer the question specifically about any particular person -- and let's be specific -- Donald Marshall, Jr. -- you'd have to know his own particular specific situation before you could answer that question.

A. Yes.

Q. Thank you.

MS. DERRICK

Mr. Commissioner, just one question arising out of that.

RE-DIRECT EXAMINATION BY MS. DERRICK

Q. Dr. McGee, for a Micmac, where do cultural interactions take place? Just on the reserve where

they may have grown up or they may live, or more broadly than that?

A. Would you repeat that, please? Where do interactions take place?

Q. Cultural interactions take place. Where is culture expressed and experienced for a Micmac?

A. Well, it would -- in terms of the traditional sets and principles, wherever you find Micmac or people who share that set of world views. For instance, perhaps Maliseet would be able to -- the Maliseet of New Brunswick would be able to share that kind of experience. But Micmac -- distinctively, Micmac cultural manifestations or behaviour would occur whenever you find people who share that culture interacting with one another. It's clearly not restricted to the reserves.

Q. And in the Micmac nation, as you've defined it for us, is the interaction throughout the Micmac nation amongst Micmac?

A. Most definitely. People are moving back and forth between communities, visiting communities. There are formal cultural meetings, as well as the more informal ones. But there is certainly a web of connectedness from Maria and the Gaspe to Yarmouth, to Konn River, to wherever one finds -- to Boston,

wherever one finds Micmac people.

Q. Thank you, Dr. McGee.

--- Upon recessing at 1:00 p.m.