

COMMISSION ROYALE SUR
LES PEUPLES AUTOCHTONES

ROYAL COMMISSION ON
ABORIGINAL PEOPLES

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"for the record..."

STENOTRAN

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1 Ottawa, Ontario

2 ---Whereupon the hearing commenced at 8:45 a.m. on

3 Thursday, November 26, 1992.

4

5 **MURRAY SINCLAIR, ROUND TABLE CHAIRMAN:**

6 Ladies and gentleman, we are going to begin as we did
7 yesterday, and in keeping with the practice that has been
8 followed by the Royal Commission in its endeavours, each
9 day has begun and will begin with an opening prayer from
10 the elders. Accordingly, Mr. Ernie Benedict and Ms. Flora
11 Tabobondung are going to be asked to do the opening ceremony
12 for us.

13 **(Opening Prayers)**

14 **MURRAY SINCLAIR:** I want to assure you
15 that it was not a spiritual event that just occurred.
16 I understand we have a technical problem here, so while
17 the technicians repair the problem, we will ask those of
18 you who may not have heard the message and who may not
19 have yet attended to this business, if you would please
20 pick up the translation device from the sound technician
21 in the corner to my left. I would ask to you do that.
22 You are going to need them this morning.

23 Good morning, I think we are ready. I

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1 am told that there are too many coffee machines being
2 plugged into the building so that circuit breakers are
3 switching off. I do not if they have identified the entire
4 problem and we may experience that again. But we have
5 light, we have sound and we are now ready to proceed.

6 I just want to point out, if I can, to
7 those of you who may not have noticed, we have a bit of
8 a different physical set up today. The panels are going
9 to be working from the round table in the centre of the
10 floor. Microphones have been moved to the periphery of
11 the floor area. We again would ask you to use the
12 microphones when you are asking your questions or when
13 you want to make your point. The same time limits we
14 addressed yesterday will be adhered to. We managed,
15 despite some start-up problems to hold to them quite well.

16 I also want to remind those of you who
17 are addressing the floor from the microphones, please,
18 to identify yourself so that the recording devices can
19 be properly addressed.

20 Today we are going to begin a panel
21 concerning our discussion papers and to commence the day's
22 proceedings we will begin with some opening remarks from
23 the commissioners. I would like to mention that the table

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1 that is up here at the front will be reserved for the
2 Commissioners. If they wish to use the table during the
3 course of the day to write notes, they are welcome to that.

4 From the Commission the Honourable
5 Bertha Wilson will make some opening comments for the day.

6 **COMMISSIONER BERTHA WILSON:** Good
7 morning and welcome to day two of the Commission's round
8 table on justice issues. Yesterday we had an excellent
9 discussion of the values held by Native people which would
10 have to be reflected in a Native justice system.

11 We learned also that many initiatives
12 had been undertaken in Native communities to deal with
13 offenders in ways that reflected and gave expression to
14 those values and that these initiatives, many of them
15 undertaken without government funding, were working well
16 and could be perceived in the short-term as reforms to
17 the existing justice system.

18 On the other hand, they might also be
19 viewed in the long-term as the foundation for a parallel
20 Native justice system, if this appeared to Native people
21 to be the preferable route to follow.

22 Today, we are going to address head-on
23 the questions whether the existing justice system can be

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1 adapted to fit the needs of Native people, or whether it
2 is so alien in its fundamental features that a separate
3 or parallel system needs to be put in place.

4 An incidental question that arises is
5 whether reform of the existing system should not take place
6 in any event because it is not working well for non-Native
7 people either. Would the existing system not benefit from
8 the injection into it of some of the Native values we heard
9 discussed yesterday? In other words, is it not possible
10 to open up the existing system to a broader, a more caring,
11 and a more culturally sensitive concept of justice?

12 These are the important questions that
13 we have to deal with today.

14 Thank you.

15 **MURRAY SINCLAIR:** Thank you, Madam
16 Wilson. We would like to begin then by calling the first
17 panel together. I just want to ask you another test
18 question. Are you ready? How many of you have noticed
19 that in stating the fundamental questions in the agenda
20 that the first part of question one has been omitted?
21 None of you. I didn't think so.

22 I want to remind you that, in discussing
23 the fundamental questions in the course of the day, you

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1 will be called upon to consider all of the questions when
2 considering Question 1 a) and Question 1 b); all of Question
3 1 will be up for discussion.

4 I would like to ask the first panel with
5 moderator Brad Morse and his panellists to come forward.

6 I just want to remind you Discussion Paper D are the papers
7 prepared by Jeremy Webber and Mary Ellen Turpel. Jeremy's
8 paper is tab 3, Mary Ellen's paper is tab 1. Discussion
9 Paper E is the paper prepared by John Giokas and that is
10 tab 4. Discussion Paper F is the paper by Rod MacDonald
11 and that is tab 5.

12 Can we have those panellists and
13 Professor Morse into the pit, please.

14 We will ask those of you who are sitting
15 over here if you would move over in this direction so we
16 can get people closer to the table. You can also, if you
17 wish, feel free to move into the area behind the
18 Commissioner's table here, but to give that feeling of
19 cosiness, I think the panellists would like you to move
20 in a little closer. There are areas over here to my left,
21 feel free to do that. Again, those of you who are wearing
22 the green and yellow tags if the accommodation is needed
23 we are going to boot you out, but otherwise feel free to

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1 move in closer.

2 Again, those of you who may not have
3 heard the several announcements to this point, you are
4 likely to need translation devices in the course of the
5 day. Please obtain them from the sound booth to my left
6 in the back corner of the floor area.

7 Professor Morse.

8 **BRAD MORSE:** Since we are being formal
9 this morning, thank you, Associate Chief Judge Sinclair.
10 Good morning elders and other distinguished guests of
11 whatever colour badge you may be. Welcome.

12 As Judge Sinclair has already indicated,
13 part of the mandate for this session and the questions
14 are not quite on page 9 of the program, if that is the
15 one you are looking at, but instead would be found on page
16 4 of the program. You might look at page 4 and have that
17 in front of you. Those were the questions put to our panel
18 this morning for them to prepare papers. The papers are
19 lengthy. I encourage you to read them, if you haven't
20 already done so. Some of you may have stayed up to the
21 early morning hours slogging your way through. The panel,
22 of course, assumes that that's precisely what you did and
23 read them. In any event they are going to proceed.

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1 Once again they are being forced into
2 the unenviable position of having to condense a great deal
3 of work and extensive thought and consideration that went
4 into the operation into a brief 10-minute presentation
5 so that we can proceed. Without any further ado let me
6 introduce the panellists as they make their presentations.

7
8 Beginning first of all on my immediate
9 left with Professor Mary Ellen Turpel from Dalhousie
10 University who is probably well-known to you all.
11 Whenever anyone accuses me or I contemplate that I might
12 be a workaholic, I think of Mary Ellen and say, "I don't
13 have anything to worry about." She must write in her sleep
14 in order to produce as much as she does, an extraordinarily
15 prolific author and, more importantly, very active and
16 most recently in the constitutional discussions as the
17 Chief Legal Advisor to the Assembly of First Nations in
18 those discussions.

19 So Mary Ellen would you start us off.

20 **MARY ELLEN TURPEL, PROFESSOR, DALHOUSIE**
21 **UNIVERSITY, CONSTITUTIONAL ADVISOR TO ASSEMBLY OF FIRST**

22 **NATIONS:** Thanks for that introduction, Brad. My paper
23 addresses the question that I was asked to address,

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1 although perhaps in a bit of a different way than some
2 of the other papers. I have actually entitled my paper
3 "Don't Fence Me In" on the question of adapting the Canadian
4 criminal justice system for Aboriginal people. I have
5 prepared this paper really as a thinking piece to try and
6 frame some of the discussions that we will have today and
7 tomorrow on alternatives to the existing criminal justice
8 system and whether or not the system can in fact be adapted
9 in a minor and tinkering way to accommodate Aboriginal
10 peoples concerns, values and aspirations.

11 I am not really going to come out
12 foursquare and give you 10 arguments or justifications
13 for a parallel system, because my basic approach is one
14 of saying, "What are the justifications for the imposition
15 of the existing system on Aboriginal people?" In fact,
16 I feel that the duty to explain that is on the other side,
17 so to speak.

18 To start off, I would like to tell you
19 a little bit of a story which will also give you some
20 background about who I am and I think it ties into where
21 I am coming from in terms of criminal justice.

22 I spend some of my time as a legal
23 practitioner in a small Nova Scotia law firm. I work in

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1 a firm with five woman lawyers, or five other women lawyers.
2 Their practices touch areas like real estate. They do
3 some criminal law, family law, civil litigation, estates
4 and some human rights law. Most of my practice is in the
5 area of Aboriginal and treaty rights. I can tell you that
6 I feel largely like an oddball in the context of a law
7 firm doing this work. My colleagues are white and
8 feminist. I am in fact half-white. I have an English and
9 Scottish mother and I have a Cree father. I am probably
10 also half-feminist in the sense that I see gender
11 oppression and sexual oppression as only one part of the
12 problem that Aboriginal peoples experience. In fact,
13 sometimes I feel that I am pretty much half-everything,
14 especially half-crazy to be part of some kind of resistance
15 movement to the legal system from within. Unlike my
16 colleagues at the law firm who are engaged in fairly
17 well-known and identified modes of practice, I spend a
18 lot of my time on pretty overgrown legal pathways doing
19 a lot of historical research, travelling a great distance
20 to meet with clients and arguing a lot with government
21 bureaucrats when I can in fact get a meeting with one.

22 My files involve a lot of research into
23 the history of the colonies and the early colonial period.

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1 What I find repeatedly in my work, at least as a legal
2 practitioner, as a lawyer, is that what these European
3 colonial officials thought about Aboriginal people is very
4 important and in fact how they thought is often more
5 important than what they thought.

6 The common colonial view of Aboriginal
7 people as beasts in the field incapable of, for instance,
8 having a concept of property, these sorts of ideas, have
9 got to be of central importance when we look at Aboriginal
10 legal problems like for instance *vis-à-vis* land rights.

11 This concept of beasts in the field is
12 not something from antiquity. In fact, I take that short
13 passage, as you will see in my paper, from the recent
14 decision of the British Columbia Supreme Court in the
15 Delgamuukw case.

16 These ideas and attitudes toward
17 Aboriginal peoples have got to be of central importance
18 in assessing law and the legal system. However, I have
19 found that arguing that cultural viewpoint is relevant
20 to an assessment of law, whether it be criminal justice
21 or other areas of the law, is very difficulty. It is not
22 readily acceptable to the people who apply the law.

23 In fact, judges say this is culture and

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1 it is not law and they have to apply the law, which is
2 precisely what was said for instance by Chief Justice
3 McEachern in the Delgamuukw case that he must apply the
4 law, not cultural principles which is how in fact most
5 of the oral history in that case was discounted as being
6 not compelling evidence.

7 In terms of the law, the subjective
8 experiences of women, for instance, have been taken as
9 being valid, as we can look at the battered wife syndrome
10 defence in criminal law, and the experiences of children
11 have been taken as valid, if you look at the way in which
12 children's evidence is treated in the Khan case and in
13 child sexual abuse cases.

14 What about the experiences of Aboriginal
15 people? Why is it that *vis-à-vis* our experiences they
16 are not looked at as something relevant to the legal system?

17 Granted, there are some recent cases like the Moses case
18 in the Yukon Territory that I was very encouraged to read,
19 but for the most part these perspectives are not taken
20 seriously.

21 Moreover, what about the viewpoints that
22 are prejudicial to Aboriginal people and in fact have this
23 concept that Aboriginal peoples are beasts in the field?

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1 We have to very critically interrogate these concepts,
2 especially when they relate to ideas about Aboriginal
3 people not having a legal system, for instance.

4 Getting back to my legal practice, one
5 of the things I have noticed about my colleagues is that
6 they seem to get fairly definitive results. Their cases,
7 while they may take some time, they actually open and close
8 cases. What I found with a lot of the cases I have is
9 that they don't ever end and in fact I am just a little
10 interloper in a longer conflict.

11 A few years ago when I was retained on
12 a land claims matter, my clients were very happy to see
13 that I was a relatively young person because they said
14 it could take about 30 years and I think they are actually
15 being very optimistic. I think it will probably take about
16 100 years to solve their land dispute.

17 Obviously there are real differences in
18 the law firm, for instance, between my form of practice,
19 what I do, and the other lawyers which I think in itself
20 is a statement about differences and how important they
21 are.

22 One thing that unites me with my
23 colleagues, however, is that we all write memoranda of

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1 law. We write lots of legal opinions. The story I want
2 to tell to you to tie this together to my paper is one
3 about difference in the context of the law firm very
4 directly. I have told this story before, but I think it
5 is worth repeating.

6 A while ago I dictated a memorandum for
7 a client into my dictaphone. A dictaphone, for those of
8 you who may not know, is a little talking machine that
9 you talk into and it spits out text, someone transcribes
10 it. It is one of the few concessions to the oral tradition
11 in the legal profession. I spoke throughout my dictation
12 recently about Aboriginal people's rights in section 35
13 of the Constitution Act, 1982. I repeated this again and
14 again and again in the course of giving a legal opinion.

15
16 When my secretary, who is not my
17 secretary, but the secretary that works mostly for the
18 five other lawyers transcribed this, what I read in the
19 draft was everywhere I had said "Aboriginal people's
20 rights", it said "average little people's rights."

21 I love to tell that story because I think
22 it's funny, obviously. I think it's funny to Aboriginal
23 and non-Aboriginal people, but I think it also reveals

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1 something quite profound. The irony of this mistake, if
2 you like, this miscommunication, is more profound than
3 it is comic. In other words, seeing Aboriginal people
4 as "average little people" is in fact exactly the problem
5 we have in Canadian society.

6 I would say there are two problems
7 stemming from that. Either we are seen as average little
8 people, therefore, just to fit into this system as average
9 little people. Or, in the views, the historical views
10 which are still very much with us, we are seen as below
11 average little people to be brought up to average little
12 people.

13 The story should give you a sense of
14 where I am coming from in analyzing the criminal justice
15 system.

16 My approach to the criminal justice
17 system has been very much influenced by a passage that
18 came out of the Royal Commission report into the
19 prosecution of Donald Marshall Jr. There is a concept
20 in this passage that's been picked up in the other criminal
21 justice studies. I know they were reviewed yesterday,
22 so I will not go into anything about those studies.

23 The commissioners noted and I am to going

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1 quote -- it is in my paper so you can read it, but I'm
2 going to quote it out to you. It says:
3 "In our view, Native Canadians have a right to a justice
4 system that they respect and which
5 has respect for them, and which
6 dispenses justice in a manner
7 consistent with and sensitive to
8 their history, culture and
9 language."

10 This is a very important passage because
11 it introduced a concept of dual respect. Namely, the
12 justice system must be respectful in how it dispenses
13 justice for Aboriginal people and it must enjoy the respect
14 of Aboriginal people. The only clarification I would
15 make to this formulation is that the justice system must
16 also dispense justice in a manner consistent and sensitive
17 to Aboriginal people's human rights, including the basic
18 right of self-determination of peoples which, in my view,
19 Aboriginal people enjoy. This concept of dual respect
20 has been important to me into trying to look at the justice
21 system and see, does the current justice system in fact
22 measure up to this notion of dual respect? What about
23 some of the justice projects that are out there and how

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1 should we think about reform?

2 In order to think about reform more
3 generally, I have proposed in my paper that we think of
4 this concept of dual respect, but we also introduce another
5 framework and it is something I call 3-D vision. It should
6 not be a reflection on my paper, but mostly it was horror
7 films that were done in 3-D format. When I say 3-D vision,
8 I suggest that you look at the justice system in light
9 of what I call the three "Ds". One is difference, the
10 second is diversity, and the third is destruction.

11 First, on terms of difference: although
12 many Canadians think Aboriginal people simply imagine it,
13 Aboriginal people are in fact different culturally,
14 politically, spiritually and linguistically. The
15 difference is profound and it does vary, as I will speak
16 about when I direct my comments to the issue of diversity.

17 Aboriginal people's differences are
18 cultural differences. They are ways of understanding a
19 relationship with the world, with the land, with each
20 other. They are not biological differences that can be
21 categorized according to race, blood quantum, et cetera,
22 or other 19th century concepts of race.

23 In Canadian society there are many

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1 ambiguous and troubling images of what Aboriginal people
2 are and what they should be like and their various states
3 of civilization and development. You will see in my paper
4 that I quote a few passages from some decisions about the
5 attitudes that the Canadian society, through the judicial
6 system, exhibits towards Aboriginal people's difference.

7 Basically, I suggest that there are one
8 of two views tying into my average little peoples rights'
9 story. One is that Aboriginal peoples, or Indians, if
10 you like -- I will make it very specific because this is
11 the context it has been raised in -- Indians are either
12 too Indian, or they are not Indian enough.

13 In other words, Indians are too Indian,
14 and I think this would hold as well for Métis people and
15 the Inuit. They are too Indian in the sense that their
16 legal systems are primitive, uncivilized, in fact they
17 are not systems at all, therefore, we can't recognize them.

18 Or they are not Indian enough in the sense that you have
19 become completely acculturated. You now, as Chief Justice
20 McEachern says in Delgamuukw, participate in a cash
21 economy, you don't wear skins any more and you no longer
22 live an Aboriginal way of life.

23 So we are caught within these confines

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1 of the Canadian judicial system and Canadian thinkers put
2 on Aboriginal peoples which I am saying we should resist,
3 especially the notion that somehow Aboriginal people's
4 legal systems are not in fact systems because they are
5 too contextual, they vary too much according to the
6 specific case, they are not legal systems.

7 I would say to people who have that
8 position, you must be forgetting that British law itself
9 has been described as a mere "thing of shreds and patches"
10 and a "jumble" of disconnected elements which were put
11 together by legal theorists at important points in history,
12 like by Bentham. It is a bit of a double standard to
13 suggest that in fact the differences can be seen as being
14 simply in a context of you're too primitive, or you're
15 not Aboriginal enough.

16 The second part of the "D" is the notion
17 of diversity. Aboriginal peoples are diverse and their
18 experiences are diverse. As a result, looking at
19 adaptations to the criminal justice system has to reflect
20 that diversity.

21 A third component which is destruction
22 is the most difficult part to talk about. It is the most
23 difficult part to experience and it is the most difficult

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1 part to talk about. That is that the current legal and
2 political system, which has been imposed on Aboriginal
3 people, has had incredibly destructive impacts.

4 In fact, the imposition of the *Indian*
5 Act and other policies have, in fact, as is well known
6 to most people in this room, taken power and decision making
7 out of the hands of Aboriginal people and placed it in
8 others who supposedly know better somewhere else.

9 In fact, this power over relationship,
10 as identified in my paper, is in fact fundamentally a racist
11 relationship. It is fundamentally a colonial
12 relationship. In my view, it simply cannot be justified,
13 but it continues. The impact of this power over
14 relationship has been that Aboriginal people's forms of
15 decision making, Aboriginal culture and traditions have
16 been dramatically undermined in Canadian society. And,
17 in fact, the very sad part, which I identify in my paper
18 which I find very difficult to deal with and talk about,
19 although I do think it is important that Aboriginal people
20 discuss it, is the fact that many Aboriginal people have
21 in fact have taken on some of the modes of thinking of
22 being colonized, namely, that many people now believe after
23 residential schools, et cetera, that they are inferior,

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1 that their systems are not valid systems, that the
2 distinctions in the *Indian Act* are the right distinction,
3 that the 17 kinds of Indian in the *Indian Act* are valid
4 distinctions about who is or is not an Aboriginal person.

5 These destructive aspects are very important and the
6 criminal justice system is fully implicated in that system,
7 in my view.

8 What I would like to say in closing,
9 because it is very hard to fit in the main points from
10 my paper in such a brief presentation, obviously, and what
11 I have done in my paper is I have taken this framework
12 of what I have called 3-D vision and I have looked at
13 fundamental elements of the criminal justice system and
14 in fact identified seven in my paper. The notion that
15 crimes are against the state; the idea of the adversarial
16 system; the idea of formal written offences and defences;
17 the notion of a professional class of lawyers, a
18 professional class of judges; the notion of the involvement
19 of strangers i.e. juries; the notion of impartiality
20 generally and the concepts of punishment.

21 I have taken each of these seven ideas
22 that I have identified, and I am not saying that they are
23 the only basic elements in the legal system but they are

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1 some of the basic elements in the criminal justice system,
2 and I have tried to suggest how in fact these do not accord
3 with traditional Aboriginal values.

4 In particular, I think you will see that
5 I reserve most criticism for the very concept of the
6 adversarial system and the notion that, as the Supreme
7 Court of Canada has told us and I just quote from a recent
8 decision:

9 "The principles of fundamental justice contemplate an
10 accusatorial and adversarial
11 system of criminal justice which
12 is founded on respect for the
13 autonomy and dignity of the
14 person."

15 From a traditional Aboriginal
16 viewpoint, the adversarial and accusatorial system is not
17 very respectful. In fact, the notion that truth can be
18 arrived at through combat, that you must vigorously
19 challenge other people's viewpoints, that you in fact must
20 show hostility and angry rebuttal to be believed, to arrive
21 at truth, these are all very serious problems when you
22 look at the criminal justice system from the Aboriginal
23 viewpoint, not to mention the fact that it is extremely

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1 intimidating and the notion that it would be suggested
2 in the context of a criminal trial that you are lying and
3 to say, "Are you lying?" as a criminal justice trial
4 technique, the degree of shame and embarrassment and upset
5 that that would cause in an Aboriginal person is not
6 understood within the context of the current adversarial
7 system and it is in fact one of the reasons why many
8 Aboriginal accused persons simply plead guilty, because
9 they do not want to face that kind of shame, even though
10 they may not have in fact committed an offence.

11 In conclusion, and I hope we will have
12 a chance to talk more about some of these themes because
13 I would like to develop them further either within the
14 session or perhaps over coffee break or what have you,
15 my view is that there are certainly administrative problems
16 with the criminal justice system, how it is administered.
17 These are only the most superficial problems.

18 The more serious problems are
19 fundamental problems. I would make a plea to you in
20 considering criminal justice issues and Aboriginal people
21 that the broadest possible scope to be given to options
22 that allow Aboriginal people to establish systems based
23 on their values. That does not mean that there may

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1 not be choices made that the existing system is acceptable
2 in certain circumstances with minor adjustments; there
3 may be. What I am saying is, let's have the broadest
4 possible opening so that Aboriginal values, Aboriginal
5 traditions and spirituality can in fact be brought into
6 the criminal justice system to make it work and the
7 justification for that does not rest with Aboriginal people
8 having to prove these systems are better, prove anything
9 with respect to that.

10 All we have to say, in my view, is that
11 we are different, we are entitled to be different and the
12 existing system which has been imposed upon us has been
13 imposed on us for all the wrong reasons and we don't have
14 to justify why it has to be wound back or undone. Hence
15 my title, "Don't Fence Me In". Thank you.

16 **BRAD MORSE:** Thank you very much, Mary
17 Ellen. Let me apologize for trying to cut you short.
18 Personally, I would quite happily have listened to you
19 for far longer. Again, let me encourage you to read the
20 whole paper and hopefully we will have a chance to pursue
21 the discussions.

22 You have also done a marvellous job of
23 setting some of the parameters for the papers now to follow.

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1 So let's lead right into our next presenter this morning
2 who is Professor Jeremy Webber from McGill.

3 **JEREMY WEBBER, FACULTY OF LAW, MCGILL**
4 **UNIVERSITY:** The chief focus of my paper is a response
5 to many common Native objections to parallel systems of
6 Aboriginal justice, especially objections expressed by
7 non-Aboriginal Canadians and so perhaps to this audience
8 aren't particularly the kinds of questions that this is
9 addressed to and perhaps are ones that you have already
10 thought through for yourself.

11 The focus of the paper is also pretty
12 strongly on the very question of separateness and to what
13 extent is it justifiable. Can one justify the existence
14 of a separate system? It does not talk about the very
15 particular kind of system that one might have. It does
16 not give a blueprint for how separate it should be, but
17 just addresses the issue about whether it is acceptable
18 to have a separate system within Canada.

19 In some ways, it is an attempt to make
20 sense of a set of issues that often seem to present
21 themselves in the form of paradoxes. Let me run through
22 the three that are central to the paper.

23 One is that we all care about the notion

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1 of faithfulness to a tradition, our various traditions,
2 about the idea of maintaining the integrity of a tradition,
3 of somehow valuing the particular characteristics of our
4 culture. We want to maintain a culture, but at the same
5 time all of us who think about our cultures realize those
6 cultures aren't closed, aren't rigid, aren't static,
7 aren't frozen in time, but they have got an openness to
8 them, they have a flexibility to them that we value, an
9 adaptability. We want to think about culture in a way
10 that allows for criticism, for reform from within, reform
11 in appropriate ways. The kind of discussion that we had
12 yesterday over the issue of the procurement of lies, an
13 Inuit tradition, we want to be able to think about tradition
14 in a way that allows us to see what we value about tradition,
15 yet at the same time realize that that doesn't mean a return
16 to something that is static and defined for all time that
17 isn't subject to reinterpretation. How do we capture that
18 combination?

19 Another paradox, the second one, is that
20 there there's lot of concern for those who look at
21 traditional practices of Aboriginal justice. That time
22 language of individual rights doesn't seem to quite fit.
23 It doesn't seem to match, at least the way it intends

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1 to be applied in the general Canadian legal system doesn't
2 seem to fit very well with Aboriginal practices.

3 Sometimes that lack of fit is expressed
4 in terms of in Aboriginal systems collective rights talking
5 pre-eminence over individual rights. But then as we see
6 repeatedly, and as we especially saw for example in James
7 Dumont's paper yesterday, individual autonomy is
8 absolutely fundamental to Aboriginal cultures.

9 So how do we make sense of this?
10 Individual rights don't seem to fit, yet at the same time
11 extremely important characteristic of Aboriginal culture
12 is very frequently a great respect for individual autonomy.

13 The third one is that we care about norms
14 of equality. We are concerned with the issue of divisions
15 on the basis of race. There have been analogies made
16 between certainly the present system under the *Indian Act*
17 and apartheid, and yet on the other hand we feel that
18 falling into the language that has been developed in the
19 context of American race relations where separate but equal
20 is not equal, that doesn't seem to fit either. In fact,
21 a lot of the demands by Aboriginal peoples seem to be based
22 on notions of equality; they draw on the language of
23 equality. So how do we make sense of that?

1 In large measure, the paper is an attempt
2 to show how the problem comes down to the inadequacy and
3 the terms by which we have often discussed these kinds
4 of issues and that if we non-Aboriginal people reflect
5 back on even our experience, we realize there is more room
6 for understanding the justification for separate systems
7 of Aboriginal justice than we often understand ourselves.

8
9 In fact, in large measure, the
10 misunderstanding of the acceptability of separate systems
11 often seems to flow in part from a misunderstanding of
12 our own structures of justice and the significance of
13 culture within our own structures of justice.

14 The paper proceeds in two large steps.
15 The first one attempts to suggest what really is at issue
16 when talking about issues of being faithful to one's
17 culture, or attempting to incorporate culture into ways
18 of approaching social order. The second then addresses
19 particular objections that are often heard.

20 The paper proceeds with a particular
21 conception of culture. It suggests that often the way
22 we get into trouble in discussing issues of traditions
23 or culture is by attempting to think about culture or

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1 traditions in terms of a definite content. Culture has
2 certain very particular values, very particular
3 principles, very particular rules, defined sets of beliefs
4 that make up the culture. The culture are those beliefs.

5
6 Well, that makes it look very static and
7 I think unfortunately static. It seems to me that cultures
8 are much more dynamic than that view captures. I suggest
9 in the paper that they are perhaps best thought of as a
10 conversation, a conversation through time that still has
11 their own particular character. They have their own
12 points of reference, they draw upon a particular historical
13 experience that is distinctive to that particular
14 community in order to make their arguments. The methods
15 of discussion and resolution of issues are particular,
16 but they are not frozen in time. They have their own
17 internal resources for change, for adaptation, for reform.

18 In fact, the important value in
19 maintaining one's culture is exactly that continuity.
20 The idea of maintaining continuity with the past,
21 maintaining continuity with the conversation that has gone
22 on before.

23 Why is continuity so important? As you

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1 will see in the paper, in large measure it is because we
2 understand our identities by placing ourselves within
3 stories, by placing ourselves in time. We understand who
4 we are in part by suggesting how we got to where we are,
5 by understanding how well we are fulfilling the roles that
6 seem to be appropriate for us. It is by telling stories
7 about us, by attaching ourselves to something that has
8 gone on before. And the cutting off that can occur, and
9 that has occurred, or has been attempted with respect to
10 Aboriginal cultures is objectionable and a radical break
11 in the continuity because of its effect on the
12 understanding of who Aboriginal people are as a people,
13 their ability to understand themselves within the context
14 of what has gone before; the breaking of those stories.

15 Well, that's the conception of culture
16 that I think is important, or at least that I propose as
17 perhaps helping us understand how a culture can be dynamic
18 and yet have the continuity with the culture. It is
19 extremely important to individuals, for the reason of their
20 own individual welfare, their own individual health.

21 What about some objections that are
22 made? Often it is suggested that the very fact of taking
23 culture into account in the structuring of public

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1 institutions or a legal system, in some way subjects
2 individual rights to collective rights.

3 I am not going to go through all the
4 discussion in the paper, but just to give you the skeleton
5 of the argument, there are two real important answers to
6 that.

7 The first is that I think there has been
8 a confusion in a lot of contemporary legal theory. Well,
9 one confuses a concern with individuality with that being
10 the only element of a legal system, the only influence,
11 that everything is somehow developed off of some abstract
12 principle of individual agency. I just don't think that
13 is true of any legal system that has ever existed.

14 The commitment to individuality
15 operates at a much broader level of generality. That
16 commitment is consistent with a whole range of different
17 particular legal structures, and I give examples in the
18 paper of diverse ways in which different European legal
19 systems have dealt with things that are so fundamental
20 as conception of property, and suggest why that same kind
21 of ability to tolerate diversity, while still realizing
22 that individuality is respected, can't be true of the
23 recognition of Aboriginal traditions.

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1 I think often we are blind to the very
2 diversity within European derived legal traditions. One
3 example I give is the one of the difference between common
4 law and continental European approaches to criminal
5 procedure.

6 The second thing is the form of
7 protection of individuality differs depending on its
8 context and suggests that we should not be hung up on the
9 particular expression of individual rights that exists
10 in a society because very frequently that's tied into the
11 history of the society.

12 Lurking behind that conception of
13 individual rights is something that I think is often not
14 seen clearly enough and that is that there are often
15 arguments that individual rights might be endangered, come
16 down to issues of institutional trust or institutional
17 legitimacy. I think its extremely difficult to separate
18 issues of the particular structure of Aboriginal
19 institutions, to separate those issues off from issues
20 of whether a parallel system of justice is important.
21 If you look behind a lot of the concerns that are raised,
22 a lot of them come down to the need to suggest why
23 institutional structures, the way processes that occur

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1 in Aboriginal communities have sufficient safeguards built
2 into them, or can have sufficient safeguards built into
3 them in order to ensure that they do not go awry.

4 The other main set of objections that
5 the paper addresses are ones based on equality. There
6 are just three that I will touch on very briefly now.
7 One is the idea that Aboriginal people are getting away
8 with something when there's a separate system of justice
9 and I think that probably in the popular debate that's
10 a pretty fundamental one. I suggest in the paper a number
11 of ways in which that objection can be met. Lying
12 behind that is one that often isn't seen clearly enough.

13 I'll leave the answers to your reading of the paper. But
14 just to give you an idea of the question, I think that
15 we don't often see there is often a more visceral objection
16 existing to that, one which simply says that to have a
17 country the same rules must apply to everyone within the
18 country. So it isn't a measuring of individual welfare,
19 it is much more an issue of nationalism, of conception
20 of nation that has to be confronted directly.

21 The last one that I think is often very
22 frequently influential in the public debate is the extent
23 to which an Aboriginal system of justice seems to come

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1 down to a system of justice based on race. That has to
2 be address head-on, and addressed honestly. As you will
3 see from the paper, and as you have seen from all of the
4 discussions during this session, at least at the level
5 of justification, the justification for Aboriginal systems
6 of justice is based on culture not based on biological
7 factors.

8 That doesn't quite finish the question
9 though, because of course in the way our societies have
10 evolved there is at least a substantial co-incidence
11 between ethnicity, Aboriginal ethnicity and Aboriginal
12 culture today. I think it's important to demonstrate
13 how Aboriginal communities have always been open, not just
14 been biologically defined, and how Aboriginal systems of
15 justice are not simply to be based on issues of ethnicity
16 at the territorial component. They will also have a
17 possibility of opting out.

18 Well, you have got there the thumb-nail
19 sketch of the argument. Two points that I will leave you
20 with. One is that once again the issue that I think one
21 is concerned with in considering issues of separate systems
22 of Aboriginal justice is the question of re-establishing
23 the continuity. It's not a return to a pre-contact

1 institution. It is a matter of re-establishing the
2 continuity and so involves to a certain extent recreation,
3 adaptation, reinvention. The extent to which in that
4 process separateness will be required depends on the extent
5 to which the different communities' conversation can or
6 cannot find an adequate place within the structures. One
7 can imagine all kinds of solutions in which one might not
8 adopt simply an entirely separate system, but one can
9 imagine that the appropriate solution might be a
10 co-existence of different approaches for dealing with a
11 particular situation, or for different institutional
12 responses to different kinds of problems of social order.

13 What I have attempted to do in the paper
14 is attempted to suggest how we should think about that
15 justification, and when thinking about that, and when
16 considering them in the context of very particular
17 Aboriginal communities, one can perhaps have a clearer
18 idea of what particular kinds of accommodation might be
19 appropriate.

20 Thank you.

21 **BRAD MORSE:** Again my apologies for
22 rushing you along. I am beginning to feel that moderating
23 these sessions is about as close to being a judge as I

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1 ever want to get: sentencing people to be silent when they
2 have much to say.

3 Moving right along, our third speaker
4 whose paper, if you are trying to follow these through
5 is tab 4, is John Giokas, a man who has lived a variety
6 of different lives, including in the Department of Justice
7 in the development of their Aboriginal Justice Initiative
8 launched September of last year and now more recently as
9 an independent consultant.

10 **JOHN GIOKAS, BARRISTER AND SOLICITOR,**
11 **CONSULTANT, FEDERAL GOVERNMENT ON ABORIGINAL JUSTICE AND**
12 **SELF-GOVERNMENT ISSUES:** I would like to begin first by
13 acknowledging the presence of our elders today and to thank
14 them for sitting through what are very long days for all
15 of us. I would also like to acknowledge my own teachers.

16 I am not going to name them, but they are in the audience
17 today and one of them is at the table with me.

18 I am not a professor of law. I am a
19 former practitioner -- and I don't assume that you have
20 read my paper. There is no page 15 which was a word
21 processing error on my part. That's an unedited version
22 you have and I am told I am going to be providing you a
23 better version later on.

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1 The topic assigned to me was, how can
2 the Canadian justice system be adapted to accommodate the
3 concerns of Aboriginal people. I was also asked to look
4 at specific areas and propose what could be done. As you
5 can tell from the paper -- those of you have read it -- the
6 how over took the what, and my approach is basically an
7 approach and I think it comes from my own background.

8 I was a criminal lawyer in Vancouver
9 doing legal aid which explains why I am living in Ottawa
10 now doing something else, for those of you who are familiar
11 with the legal aid history in British Columbia. I worked
12 on the Delgamuukw case for the Federal Government. I left
13 shortly thereafter, along with three of my fellow
14 researchers and we went on to other things working on the
15 same issues from a different perspective.

16 I have been a professional lobbyist and
17 the in-house lawyer for the Canadian Bar Association.
18 I suppose, if I have any specialty, it is in government
19 relations and I am more a policy analyst than an Aboriginal
20 law lawyer or an expert in any particular area.

21 With that apology, I would like to skip
22 ahead and tell you what my basic approach is. You won't
23 find it in the paper, but the basic theme that I am setting

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1 out can be summarized in one word and that is "emergence".

2

3 I believe that a new order is emerging
4 in Canada. It involves all areas of the relationship
5 between Canadian society and Aboriginal peoples. I
6 believe this new order has not yet completely emerged.
7 It has not become completely visible to everybody. It
8 will with the passage of time, I firmly believe that and
9 I believe that Aboriginal peoples are much more aware of
10 this emerging new order, for reasons which I am not
11 competent particularly to go into, but I believe that
12 that's the case and I think the rest of Canada is trying
13 to catch up.

14 The real issue from my perspective and
15 the topic I was assigned was really to talk about what
16 the government could do. I am less interested in what final
17 form these new arrangements will take: separate, parallel,
18 linked variations than I am in knowing whether there is
19 any way government can participate in these changes within
20 the current constitutional framework. I believe that
21 there is. I believe it can only be done by following a
22 certain approach. I am going to try and outline in 10
23 minutes what my approach is.

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1 Forgive me, I am going to be reading a
2 little bit from my paper because I didn't know I was going
3 to have to do a presentation until yesterday.

4 One of the most startling features about
5 the present debate and one of the things that strikes me
6 is that there is so much consensus and at the same time
7 there is so much disagreement. I have set out four areas
8 where I think there is both consensus and disagreement.

9
10 Number one, the current justice system
11 has failed Aboriginal people. I think we all agree that
12 that's the case.

13 Number two, the solution is increased
14 responsibility to Aboriginal peoples to define and resolve
15 their own problems on their own terms.

16 Third, I think we would agree that, given
17 the diversity of Aboriginal peoples across Canada, those
18 definitions and solutions will not be the same.

19 And four, and perhaps this is the most
20 contentious part of my paper, I don't believe that those
21 definitions and solutions can exist apart from the existing
22 system, at least at the outset.

23 As I said, I am not going to talk about

1 what final form these definitions and solutions will take
2 because I just don't believe it can be predicted and I
3 don't think it's my place to do that.

4 I think disagreement is basically over
5 the details of these four areas that I say are areas of
6 consensus. I like would like to go through them briefly
7 with you.

8 The first area is justice system
9 failure. I think we can agree on three themes about the
10 failure of the justice system. Number one, there is
11 over-representation of Aboriginal people throughout the
12 criminal justice system. What we disagree on are the
13 causes.

14 Criminologists like Carol LaPrairie are
15 the strongest advocates for the view that we have to look
16 at those problems in terms of age, class, the type of
17 offence for which people are being convicted and the repeat
18 offender phenomenon. I have referred to Carol in the
19 footnotes for an analysis of where different explanations
20 are for this phenomenon of over-representation.

21 I think a second area, second theme, in
22 the failure of the justice system is discrimination. We
23 all agree there is discrimination overt and systemic in

1 the system. Once again, there is disagreement about how
2 bad it is. There is disagreement about whether it is
3 discrimination at all.

4 Carol LaPrairie's view is that there may
5 not be discrimination, there may simply be more on-reserve
6 status Indians committing more crimes of a certain type;
7 more status Indians in urban environments committing
8 crimes. She would say that the problem is that we are
9 treating everybody the same and there happen to be more
10 Aboriginal people committing certain crimes.

11 The third theme from the failure of the
12 justice system is the profound, and I believe growing,
13 alienation of Aboriginal people from the current justice
14 system. It is my belief that this is probably the most
15 serious aspect of the problem from the point of view of
16 government.

17 One of the reasons for that is because
18 the alienation of Aboriginal peoples in terms of their
19 personal experiences has become tied into the larger
20 political struggle being waged by Aboriginal people for
21 new power-sharing agreements. I am going into get into
22 this a little later.

23 There are other areas where we agree.

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1 We know that the criminal justice problems throughout
2 Aboriginal communities' societies are due in large part
3 to socio-economic factors. But beyond that simple
4 statement, we disagree about what the causes and precise
5 relationships are between the criminal justice problems
6 and socio-economic problems.

7 Michael Jackson wrote an article
8 recently and he crystallized three of the areas where we
9 disagree about the relationship. One is the whole notion
10 of cultural difference. The cultural differences are so
11 great from this point of view that Aboriginal peoples are
12 unable to participate fully in the cash economy of the
13 dominant Canadian society.

14 Another way of explaining this is to look
15 at the whole question of economic and social disparities
16 as such. Aboriginal people are less well educated, they
17 are far from mainstream society. In terms of traditional
18 class structures they are socio-economically deprived.
19 The third explanation is the effect of colonialization
20 in Canada, the destruction that that has reaped on
21 Aboriginal peoples and the fact it has made them poor beyond
22 poverty, in Michael Jackson's words.

23 Moving on to the notion of increased

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1 Aboriginal responsibility for justice, I think we all agree
2 that all the provincial inquiry reports say that that's
3 part of the solution. The federal government document that
4 I have associated with says that's the solution. The Prime
5 Minister of Canada, on a couple of occasions, has said
6 that that's the solution.

7 It's inevitable, given the mobilization
8 of aboriginal peoples throughout the world and in Canada
9 since the end of the Second World War. I think it is an
10 inescapable fact. This mobilization has been
11 accompanied by an expansion of human rights consciousness
12 internationally and nationally. Most of the people -- I
13 would suggest that many of the people in this audience
14 are lawyers who are very conversant with this human rights
15 language. We speak this language now. We have become
16 somewhat familiar with it. This type of language was
17 beginning to dominate the debate. I think this human
18 rights revolution explains the curious dominance, in my
19 view, of the debate by lawyers. I can't remember the last
20 time an Aboriginal community said, "We are having real
21 problems, send us six lawyers."

22 So given the fact that we seem to agree
23 that the solution is increased Aboriginal responsibility,

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1 what is it that prevents us from doing that? I think the
2 major impediment has been the merging of the more abstract
3 debate about human rights with the day-to-day criminal
4 justice issues that are facing Aboriginal communities.

5 I suggest in my paper that we now have
6 two tracks for resolving these problems: one is the rights'
7 track. This rights' track is sometimes referred to in
8 some inquiry reports as the "political agenda of Aboriginal
9 peoples." I am not disparaging it or undermining it.
10 I am suggesting it is one track.

11 The other track is what I might call the
12 "empirical community level approach." I suggest in my
13 paper that the terms in which the debate has now been cast
14 has created something of a false dichotomy between the
15 two tracks, as if they were mutually exclusive. The entire
16 process has been hijacked by the dichotomy. All action
17 has been arrested while we play out this the debate.

18 I suggest that the real issue is whether
19 there is any kind of blueprint for action and I suggest
20 that there isn't. I suggest that the starting point for
21 all the action will be the same. It will be in the
22 community, whether we are talking from a human rights point
23 of view or from an empirical community-based point of view.

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1 I suggest that the fact that many
2 Aboriginal communities are not standing still waiting for
3 this debate to be played out is proof that that's where
4 we should be focusing our efforts. The Department of
5 Justice knows of a hundred community projects going on.
6 I suggest there are several hundred.

7 I agree with James Zion in his paper that
8 many Aboriginal communities are actually practising
9 Aboriginal common law, with or without the knowledge or
10 assistance of governments. I think two things are evident.
11 We can't wait any longer to resolve this debate about
12 human rights, the inherent right to self-government. I
13 also suggest that we can't ignore the political dimension
14 of the problem.

15 I am going to go very quickly and tell
16 you that I agree that we have to pay attention to both
17 poles of the debate and I suggest that government can only
18 play a useful role if its initiatives, if its efforts,
19 are tied into the ongoing agenda of Aboriginal communities,
20 which means that government cannot go in the way it has
21 been going in and saying, "This is what we are going to
22 do." Government has to come in on a true tripartite basis
23 and has to say, "What are you doing?" and, "How can we

1 help?"

2 Government will have to amend its
3 cost-sharing formulae. It is going to have to get much
4 more committed, particularly the federal government, in
5 long-term cost-sharing. It will have to do that not only
6 to be effective, but also to convince the provinces that
7 they should come into this debate again and participate.

8 The provinces are experiencing severe problems with the
9 federal government because it is just no longer a credible
10 partner in some of these cost-shared areas.

11 I am going to wrap it up by telling you
12 that my basic proposal is to follow the suggestions of
13 Michael Jackson. I suggest alternate dispute mechanisms
14 of all kinds. To exploit the flexibility of the existing
15 system is the way to start. I suggest, in line with an
16 earlier paper he wrote, that the same kind of approach
17 can be applied at the sentencing stage. There are many,
18 many -- the criminal justice system is nothing if not open
19 and flexible. It can be exploited.

20 I agree it will require the willing
21 participation of justice officials. This is one of the
22 areas that I think the inquiry reports have really missed
23 the boat. We haven't focused on the defence bar enough.

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1 If the defence bar were doing their job better, we would
2 be bringing more issues of cultural difference, more issues
3 of lack of fairness in terms of how bail conditions are
4 imposed, we would be bringing these to the fore making
5 judges aware.

6 I am going to wrap it up by saying that
7 I agree with Mary Ellen Turpel and Patricia Monture when
8 they suggest, in an earlier paper they did for the Reform
9 Commission, we have to follow two simultaneous projects
10 at the same time. We have to repair the existing
11 system. Government can do that, they are starting to do
12 it, however haltingly. This Commission can spur them on.

13
14 We also have to begin working at the
15 community level and it has to be opened ended. The
16 government has to come in with the view that we don't know
17 where these community-based systems are going to go and
18 we are not going to worry about it because they are going
19 to go where they are going to go, just like the larger
20 debate about self-government and inherent right is going
21 to go where it's going to go.

22 As I said at the outset, I believe it's
23 an inevitable movement towards new power-sharing

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1 arrangements. I don't necessarily agree we are going to
2 end up with separate or parallel, I just don't know. I
3 suggest that's the only legitimate approach that
4 government at both levels can take at this stage in the
5 debate.

6 Thank you very much.

7 **BRAD MORSE:** Thank you very kindly,
8 John. Again, let me encourage you to read the paper,
9 particularly as John has indicated he does attempt to run
10 through these two tracks on a sectoral basis looking at
11 particular aspects of the criminal justice system one by
12 one.

13 Moving right along to Professor Roderick
14 MacDonald of the Faculty of Law at the University of McGill.

15 **RODERICK A. MACDONALD, FORMER DEAN OF**
16 **LAW, MCGILL UNIVERSITY:** Thank you, Brad. My topic
17 differs slightly from those that have already been
18 presented this morning. It is to assess to what extent
19 would the process of adaptation of the existing system
20 of Canadian law involve reforms beneficial to society as
21 a whole and be to segments of society such as the poor,
22 women and cultural minorities.

23 My focus, therefore, is on problems of

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1 law and justice as they affect primarily non-Aboriginal
2 communities. I should like to start with a little
3 preliminary clarification of issues that I address in the
4 paper prior to launching into the conclusions that I have
5 reached.

6 The first is that I think it is very
7 important at this juncture that we understand the
8 differentiation between the concepts of justice and the
9 concepts of law, especially in the professional legal
10 community. It is very easy to conflate the two and to
11 believe that the only way that you can have a system of
12 justice, or the only way you can achieve justice of any
13 description is through a recognizable system of law.

14 I would suggest that the very
15 characterization of the agenda of access to justice, which
16 has dominated much of our professional concern about the
17 failures of the existing system, reflects quite well the
18 problems of this conflation.

19 On the first point, the epithet "access
20 to justice" demonstrates that in fact we are not concerned
21 about justice at all. What it is that we are concerned
22 about are things like access to courts, better legal aid
23 systems, small claims court and so on. That's "a surrogacy

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1 of substance" I call it in the paper.

2 I also suggest that we are suffering a
3 surrogacy of form, because rather than worrying about the
4 outcomes of these processes, be they official processes
5 or other, we are more concerned about inputs. We have
6 had a surrogacy of procedure. No longer are we concerned
7 with justice, we are concerned with access.

8 So that the first thing that one should
9 do in reconstructing a conception of failings of the legal
10 system generally is to resituate the place that the legal
11 system plays in the broader context of the achievement
12 of justice in Canada societies. That's the first point.

13 Along with this point, it is worth noting
14 that once you disassociate the concept of justice from
15 the concept of law, and the theory of or theories of
16 justice, which in here in official concepts of law a much
17 broader place is opened up for ordinary people's
18 conceptions of justice, you do not have a monolithic and
19 universalist conceptions of justice. You don't bow down
20 to the alter of Immanuel Kant and modern day justice
21 theorists. You are concerned more with issues of what
22 could be described by or what has been described by
23 anthropologists as local justice.

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1 My second preliminary clearing away is
2 very important in considering the topic which I have been
3 assigned to understand how much of our conception of the
4 failings of the legal systems has been driven by agenda
5 which is the agenda of the criminal law.

6 I spent two years in the late 1980s
7 chairing a task force for the Ministry of Justice of Quebec
8 into access to civil justice. If there's one thing that
9 was clear to me at the conclusion of that task force, it
10 is that most people's experiences with the concept of
11 justice however, that is understood, is not with criminal
12 justice. Most people's experience with justice is in the
13 day-to-day interactions they have with each other, be these
14 interactions at an individual level, within families,
15 within neighbourhoods, within communities. In fact, the
16 notion of access to justice, the preoccupation with the
17 criminal justice system in understandings of access to
18 justice is one more indication of the surrogacy of
19 substance which the topic has suffered from.

20 The third preliminary clearing away is
21 that the way we have structured discussion of access to
22 justice is designed necessarily to privilege certain kinds
23 of solutions which are the solutions which we -- and we,

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1 I, as a university professor and as a lawyer would tend
2 to recommend. We have set up the notion or the
3 discussion of access to justice as a question of removing
4 barriers to access to justice and this is a highly
5 instrumentalist metaphor. It suggests that there is some
6 perfect justice out there and things would be wonderful
7 if only we chopped away or broke down these artificial
8 things that stand in the way of us achieving it. This
9 logic of barriers leads to a consideration of things like
10 cost, delay, complexity of the system, and so on.

11 The task force was confronted very early
12 in its deliberations, and I think it's central to its final
13 report, with the phenomenon that the principal "barriers"
14 to access to justice are not objective barriers at all,
15 they're subjective barriers and subjective barriers are
16 of two sorts: one is knowledge and the other is
17 psychological.

18 So that when one considers failings of
19 the legal system for Canadians generally and for particular
20 groups and segments of society such as the poor, women
21 and cultural communities, one has to realize that the
22 principal failings are not failings that institutional
23 redesign and money are going to fix. They are fundamental

1 failings of perception, attitude and knowledge.

2 The fourth preliminary point is that
3 much of the work on access to justice has focused on access
4 to justice as if justice was delivered by certain dispute
5 settlement institutions. Another conclusion of the task
6 force on access to justice was that the principal failings
7 of access to justice in any epidemiological sense were
8 failings at the level of access to processes by which law
9 is generated and law is administered. Alienation from
10 political processes, alienation from administrative
11 processes, alienation from executive processes are much
12 more profound than alienation and inaccessibility to
13 courts and other dispute resolution tribunals.

14 I want to read one paragraph here because
15 I would like to focus now on the psychological and
16 informational difficulties.

17 There are four main ways in which the
18 perception of alienation is manifest in the minds of
19 ordinary people. First of all, many people do not perceive
20 that they have a problem which is defined as a legal problem
21 by the official system. And when they do, when they're
22 told that they do, they are intimidated by the knowledge
23 that what they have is a legal problem rather than just

1 a problem. One of the best ways of disempowering someone
2 is to give the experience that they have an official label
3 that sounds like it is going to be dealt with by somebody
4 or some thing beyond their immediate experience.

5 Second, many people have a mistrust of
6 the logic of a system that requires them to take an
7 extremely narrow view of what is relevant to any
8 disagreement and to frame their complaint in terms of a
9 right to assert, or to engage in a win-or-lose procedure
10 before a third party who doesn't come from or understand
11 their socio-cultural, economic circumstances.

12 Third, many are disheartened by the
13 official justice system because its substance, especially
14 on the civil litigation side, seems remote and
15 uncomprehending of the values they hold and they have no
16 way of making their voices about how to correct this
17 substantive disempowerment heard.

18 Finally, the system responds to a logic
19 which favours a certain class of citizen over others.
20 Essentially that certain class of citizen which is favoured
21 is me. Women, cultural communities, the disabled, the
22 young, the old, the poor, as well as Aboriginal peoples,
23 all find the system unresponsive to their particular

1 circumstances, be this in regard to its substantive rules,
2 its institutional structure, its procedure, its remedies
3 and its monolithic and universalist conception of justice.

4 These are fundamental failings of the
5 system and they are tracked.

6 Well, in two minutes I will skip my next
7 three points. It's a good way to get from page 36 to page
8 68.

9 I want to make two linking comments
10 before I get to the conclusion. Linking comment number
11 one is that one of the principal ways of understanding
12 access to justice problems is to understand that what we
13 call conflicts or disputes, excuse me, in alternative
14 dispute resolution mechanisms are in fact already
15 constructions of a legal system, because what we assume
16 is that the legal system has constructed the dispute out
17 of a conflict and then said, "By the way, go somewhere
18 else than the courts to solve it."

19 But the first step which is to construct
20 the legal dispute is also driven by the logic of the system,
21 so that if one is really interested in access to justice
22 and alternative dispute resolution, one should recognize
23 that the courts are the principal alternative, and most

1 people deal with, understand, their conflicts long before
2 the legal system brands them a dispute.

3 The second point is that any approach
4 to access to justice must deal with substantive questions.

5 If anything that the task force revealed it is that issues
6 which look like procedural issues are masks for issues
7 which deal with the substance of the legal system and the
8 rights which the legal system assigns and, in fact, the
9 very fact that it talks about people in terms of rights.

10 So to conclude. I have tried to provide
11 a summary of principal access to justice issues which have
12 arisen in the last little while. I would suggest that
13 a reconsideration of the problems which have traditionally
14 been considered as access to justice issues, as well as
15 those problems of justice dismissed from the inquiry of
16 access to justice because they don't relate to questions
17 of access can be reconceptualized, and I spend most of
18 the paper dealing with this, through a theoretical
19 perspective known as legal pluralism and that this
20 perspective suggests a fundamental commonality for access
21 problems for both Aboriginal and non-Aboriginal peoples.

22

23 This commonality reduces to a crucial

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1 insight that the traditional monist or legal liberal
2 perspective conceals the multiplicity of legal orders
3 which exist right now in Canadian society, and the most
4 significant failures of the present system of justice are
5 failures of recognition of these other systems and not
6 failure of access to the official system.

7 **BRAD MORSE:** There is problem having
8 four lawyers, three of whom are academics and a policy
9 analyst all speaking first thing in the morning from a
10 microphone.

11 *Finalement, on aura l'occasion d'avoir*
12 *quelques commentaires aux questions, mais il est*
13 *nécessaire que les interventions soient très, très brèves.*

14 And also let me ask you in making your
15 questions or comments that they be very specific to the
16 particular presentations that were just given. We are
17 moving into a round table shortly to pursue some of this
18 in a slightly different format and then overall there is
19 a plenary discussion at the end of the day for people to
20 discuss the issues that have been raised more broadly.

21 So in the couple of minutes, seconds,
22 that we have left, let me invite you to seize the
23 opportunity to put a very specific question or comment

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1 to any or all of the four speakers this morning.

2 **ALAIN BISSONETTE, MEMBER OF THE HUMAN**
3 **RIGHTS OF QUEBEC TRIBUNAL:** D'abord, je voudrais remercier
4 chacun des panellistes et j'aimerais poser une question
5 au professeur MacDonald.

6 Vous avez évidemment oublié
7 quelques-uns des arguments dans votre texte, j'aimerais
8 simplement vous donner l'opportunité d'en parler un peu
9 plus en détail, lorsqu'à la page 44, vous parlez du fait
10 qu'au fond "il n'y a pas que les institutions étatiques
11 qui créent un ordre normatif".

12 Alors, j'aimerais simplement que vous
13 ayez l'occasion pendant deux minutes d'en parler un peu
14 plus longuement parce qu'il me semble, quant à moi, que
15 cette reconnaissance étatique entraîne énormément de
16 conséquences qui peuvent modifier les institutions non
17 étatiques qui créent des normes. Je pense que ce qui est
18 intéressant dans ce document, c'est de nous montrer comment
19 ces institutions qui ne sont pas reconnues par l'État
20 créent cet ordre normatif.

21 **RODERICK MACDONALD:** If you don't mind,
22 I will speak in English because I can do it quicker and
23 I also notice there is an absence of écouteurs.

1 The point that I was trying to suggest
2 in the paper is that much of what we discovered in the
3 Access to Justice Commission was that most people's
4 alienation from the system came from the fact that the
5 system was unresponsive to their experience. The reason
6 why one begins to see that as an access to justice issue,
7 or one does see that as an access to justice issue, is
8 simply because you believe that justice is the official
9 product of the state and that the only way you get it is
10 through the official legal system of the state.

11 But any sociologist and any
12 anthropologist will tell you in any given territory there
13 are multiple legal orders, multiple normative systems
14 already in existence that function extremely effectively
15 in dealing with interpersonal relationships.

16 So the question one should ask is, to
17 what extent is the problem of access to justice a result
18 of a conception about law and the legal system which is
19 itself an artificial construction? If one were to turn
20 the question on its head and say, how legal systems compete
21 for attention in the lives of ordinary people every day,
22 and one came at it from a perspective of legal pluralism,
23 one would realize that perhaps inaccessibility to the

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1 official system is a bonus, and really what we ought to
2 be doing is recognizing and legitimating these multiple
3 legal orders that already exist and paying attention to
4 trying to nurture the resources that people have for
5 building their own legal systems. That's the gravamen
6 of the first 50 pages of the paper.

7 **BRAD MORSE:** Are there other questions
8 or comments? Judge Scow?

9 **ALFRED SCOW, B.C. PROVINCIAL COURT**

10 **JUDGE:** (Kwakwala language -- no translation)

11 My name is Alfred Scow. I am a
12 Hereditary Chief of the Kwicksutaineuk Tribe and I said
13 that I feel privileged and honoured to be invited to this
14 process. I feel encouraged every time I listen to the
15 various speakers who have spoken on the ways in which I
16 know the justice system in which I have been working has
17 failed in so many different ways to accommodate the
18 differences in the cultures, not only of our people but
19 of people coming from in from other countries.

20 I am hopeful that the Royal Commission
21 on Aboriginal Peoples is not another window dressing that
22 we have seen so often in the past.

23 There is a failure as well, not only

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1 within the participants in the legal system, there has
2 been a failure on the parts of the governments to pay
3 attention to what they have been told over the years.
4 All of us know that many of the things that have been said
5 here today and yesterday and in other inquiries, we all
6 know what those failings are, and we all have been told
7 how we can resolve them and now this Commission is being
8 told the very same thing again.

9 I must say that I am encouraged because
10 I heard the Minister of Justice yesterday imply that
11 something is going to be done. She did not come out and
12 promise that many things will come out of this Commission.
13 She did not acknowledge the failure, in so many words,
14 of the governments to act on prior submissions and
15 arguments and recommendations.

16 I want to say how much I have learned
17 and how much I appreciate being here.

18 I know there are time limitations but
19 I did want to say one thing to the members of the Commission
20 and that is, it is a mistake to view the justice issues
21 in isolation of the governing piece of legislation that
22 we Indians live under and that is the *Indian Act*.

23 The *Indian Act* contains so many unjust

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1 provisions, so many Draconian provisions that it has led
2 to almost a total destruction of the foundations of the
3 culture of the First Nations' people of this country.
4 So the issue of self-government is very relevant to the
5 deliberations of this Commission because what
6 self-government means is that we will have a responsibility
7 and where we go from here on in this society it will mean
8 that we will have more responsibility. It will mean that
9 we will have a say in what happens to us and what we do.

10 The *Indian Act* did a very destructive
11 thing in outlawing the ceremonials. This provision of
12 the *Indian Act* was in place for close to 75 years and what
13 that did was it prevented the passing down of our oral
14 history. It prevented the passing down of our values.
15 It meant an interruption of the respected forms of
16 government that we used to have, and we did have forms
17 of government be they oral and not in writing before any
18 of the Europeans came to this country. We had a system
19 that worked for us. We respected each other. We had ways
20 of dealing with disputes. We did not have institutions
21 like the courts that we are talking about now. We did
22 not have the massive bureaucracies that are in place today
23 that we have to go through in order to get some kind of

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1 recognition and some kind of resolution.

2 I want to close by saying that if I ever
3 have a need for a lawyer, I am going to hire Mary Ellen.

4 **BRAD MORSE:** Thank you, Judge Scow.
5 Good choice, but I'm sure you will never need one.

6 Thank you as well, not only for your
7 comments, you have also made my job a little easier and
8 I think that was an excellent way to close this session.

9 Our panellists have all helped set the
10 stage for what should be an exciting day to come. We have
11 already gone 15 minutes over. I am told the hook is coming
12 here. We are 15 minutes past time, so we are going to
13 move right along.

14 Let me invite you to join with me in
15 thanking our panellists and move on from there.

16 **MURRAY SINCLAIR:** Thank you, panel,
17 that was an excellent job. We are going to take a short
18 break, shorter than the agenda allows. We are going to
19 take 10 minutes. I am advised that the lights have to
20 be turned off. Hang on to your translation devices.

21 Also some of you will be approached I
22 understand by Stonehaven Productions to do interviews in
23 the course of the day. We would ask you to please hold

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1 to those interview commitments if you do them. Ten minutes
2 for your coffee.

3 ---Recess at 10:30 a.m.

4 ---Upon resuming at 10:50 p.m.

5 **MURRAY SINCLAIR:** Ladies and gentlemen,
6 would you please resume your seats. We would like to start
7 the second panel, second session.

8 In case you have forgotten, let me run
9 quickly through the list: Leroy Littlebear, Tom Goodson,
10 Réjean Paul, Allison Scott, Ovide Mercredi, James McCrae,
11 James Langston, Chesley Andersen, Joanne Barnaby, Alain
12 Bissonnette, Martha Flaherty and Jacques Auger. All of
13 you whom I have just called, to the centre table in order
14 that we can begin the panel discussion.

15 Ladies and gentleman, I would like to
16 begin by way of introducing this issue to draw your
17 attention to your agenda and to point out that on the second
18 day the Commission has established that this format is
19 going to involve a panel of distinguished and in some cases
20 almost extinguished people -- right, Leroy? -- who have
21 been brought together in order to discuss the fundamental
22 questions that have been raised both by the Commission
23 and in the papers that have been discussed to this point.

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1 We have asked these panellists if they
2 would volunteer their time and effort in the course of
3 this day and in the course of these proceedings and they
4 have all graciously consented to do that. We are very
5 appreciative of the fact that they have willingly come
6 forward -- some of them, in any event.

7 I see there are still some empty chairs
8 there. We can't have empty chair and if we do, we will
9 fill them in with other bodies.

10 The round table format is intended to
11 allow for the expression of various viewpoints and concerns
12 and questions on the fundamental questions, or on the
13 issues that are raised in the papers. I do want to point
14 out that the panel is being asked to devote its attention
15 or direct its attention to Question 1.

16 Question 1 is set out on page four of
17 your agenda and it reads as follows:

18 "The present justice system has failed Aboriginal people.

19 Can the system be adapted to correct its
20 shortcomings?"

21 a) Does the difficulty of adaptation lie
22 in fundamental elements of the
23 existing system such as

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- 1 i) the adversarial nature of the
2 process, including the method of
3 assessing credibility?
4 ii) the emphasis on punishment as
5 opposed to healing? and the
6 concepts of guilt and innocence?"

7 That's the first question this panel is
8 being asked to deal with. Accordingly in a moment I will
9 turn the issue over to our moderator. Our moderator for
10 this panel is an Aboriginal lawyer who has been quite active
11 in the Aboriginal bar and nationally through his
12 employment, Mr. Marc LeClair.

13 Along with Marc will be the following
14 panellists: Mr. Leroy Littlebear Professor of Native
15 American Studies at the University of Lethbridge and
16 co-author of several publications on Aboriginal justice
17 and self-determination. He was and is a member of the
18 task force on the Criminal Justice System and its impact
19 on the Indian and Métis people of Alberta. We also have
20 His Honour Judge Thomas Goodson Paul from the Provincial
21 Court of Alberta. We also have the Honourable Réjean Paul,
22 Judge of the Quebec Superior Court and Deputy Judge of
23 the Northwest Territories and Chairman of the Cree-Naskapi

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1 Commission. Allison Scott is the Constitutional
2 Negotiator for the province of Nova Scotia and formerly
3 worked for the Department of the Attorney General
4 responsible for Aboriginal matters. Ovide Mercredi, the
5 National Chief for the Assembly of First Nations and also
6 a member of the bar for the province of Manitoba; the
7 Honourable James McCrae, Minister of Justice and Attorney
8 General for Manitoba; James Langston, Chief Crown
9 Prosecutor for the Lethbridge and Macleod Judicial
10 District in the province of Alberta; Chesley Andersen,
11 Vice-President of the Inuit Tapirisat of Canada,
12 Constitutional Negotiator and former Director of Land
13 Claims for the Labrador Inuit; Joanne Barnaby, Executive
14 Director for the Dene Cultural Institute and former
15 Research Director for the Dene and Métis Land Claims
16 Secretariat; Alain Bissonnette, Member for the Human
17 Rights of Quebec Tribunal since 1990 and the author of
18 various publications on Aboriginal issues and human
19 rights; Martha Flaherty, President of the Inuit Women's
20 Association of Canada and land claims representative for
21 the Inuit of the Eastern Arctic. Is Martha there? No.
22 One missing. Jacques Auger, Coordinator for Native
23 Affairs, Deputy Minister's Office, Department of Justice

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1 for Quebec.

2 Marc, take it away.

3 **MARC LECLAIR:** We heard yesterday from
4 a couple of the people who delivered papers about some
5 of the values that Aboriginal people hold and some of the
6 norms and concepts of justice that are important to
7 Aboriginal people and we heard some of the unique focuses
8 that some Aboriginal women hold.

9 We heard this morning first an
10 assessment of the fundamental justifications for a justice
11 system and then much of the focus was on how it might be
12 adapted. Our task today is to look this morning at three
13 particular elements of the existing justice system to see
14 if it can be adapted.

15 Later on in the debate, Question 3 deals
16 with if we can't adapt the existing system, should one
17 or more separate Aboriginal justice systems be
18 established? We are going to get to that question. I
19 just ask the panellists to focus in on the existing system.
20 We have just under two hours.

21 Perhaps if some one wants to kick it off,
22 the first element of the existing justice system that has
23 been identified as a problem has been the adversarial

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1 nature of the process, including the method of assessing
2 credibility. I wonder if anyone would want to focus in
3 on that.

4 **LEROY LITTLEBEAR, PROFESSOR, NORTH**
5 **AMERICAN STUDIES, UNIVERSITY OF LETHBRIDGE:** Unlike my
6 friend Don Worme, I am not here to tell you a tall story,
7 but I will tell you a short story.

8 Yesterday I was being quoted not so much
9 for my knowledge, but for the one-liners that I guess I
10 am known for. I thought it was incumbent on to me to tell
11 you a short story about a policeman, a cross-eyed
12 policeman, who had three Indian suspects in front of him
13 and it was for break and entry.

14 He lined them up in front of him and he
15 said, looking at the first guy, "Did you do it?" The second
16 guy answers, "No, I didn't do anything." He says, looking
17 at the second guy, "Shut up, I wasn't talking to you."
18 The third guy says, "I never said anything."

19 I would like to set a context for the
20 question and I think the context very briefly I am going
21 to set speaks to the question about whether or not the
22 system, especially the adversarial aspect of the system,
23 can actually be adapted to take in the notions of law and

1 justice that Aboriginal people have.

2 The difference between Aboriginal
3 people and western society with regard to law and justice
4 has been mentioned here and there throughout the
5 presentation, and it is this: every society has social
6 control mechanisms to resolve disputes within the society.

7 Aboriginal people's approach to those control mechanisms
8 is internalization of the social controls in the person,
9 in the individual person, so that you could say the control
10 is geared and applies at the source. When you internalize
11 the social control mechanisms there is no need for
12 elaborate, complex, external control mechanisms.

13 Western society, on the other hand,
14 being largely acultural -- and you can challenge me on
15 that. I would be glad to take you on -- being largely
16 acultural externalizes the social control mechanism.
17 That externalization of the social control mechanisms
18 results in a need for elaborate complex social controls
19 resulting in the need for police, courts and corrections.

20 And there's lots of ramifications that arise out of that.

21 The question is about whether we can
22 control, whether we can adjust the existing system,
23 especially the adversarial system, and I would also like

1 to speak to the third part of it, the concept of guilt
2 and innocence. I would like to just briefly quickly quote
3 out of a paper that I think is available over here if you
4 have haven't seen it that I had written a number of years
5 ago called the "Dispute Settlement of the Canadian
6 Naidanac" and I would like to quote from it.

7 "The Naidanac believe that the best and only way to bring
8 about justice is through the verbal
9 battle. This is a fight theory of
10 justice that assumes a disputatious and
11 contentious transgressor. The Great
12 Spirit knows they are not!

13 It assumes that in a dispute settlement
14 each tribesman, in the sacred chamber's competitive
15 strife, will, through his talking specialist --
16 Which is the lawyer.

17 "-- intelligently and energetically use
18 the evidence to present a story
19 favourable to him and unfavourable to
20 his opponent; and thereby the dispute
21 shaman and the tribal listeners --

22 Which are the strangers that Mary Ellen was referring to.

23 "-- will discover the truth. The shaman

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1 will then apply the tribal social policies embodied in
2 the sacred birch bark code to these actual facts --
3 And the important thing is this: "and somehow" the dispute
4 shaman, who is the judge, "miraculously" avoids the
5 mistaken application of the facts. He somehow always
6 avoids. In other words, from two set of lies being told
7 by either side, the judge is supposed to come up with the
8 truth.

9 Well, let me ask you, with that kind of
10 assumption in the system, can we ever get at the truth?

11 In other words, how much is it going to take to actually
12 change that basic approach and those basic assumptions?

13 With regard to guilt, the interest that
14 the adversarial system is geared towards is either/or.
15 You are either guilty or not guilty. The only thing that
16 the judge is interested in is, did you or did you not commit
17 the action you are accused of? There is no way and there's
18 no allowance within that approach to somehow mitigate the
19 notion of guilt.

20 In other words, the judge does not have
21 and is not in a position to really take the overall
22 contextual situation within which the supposed offence
23 occurred. He simply wants to know whether or not you

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1 committed or did not commit the offence. You might be
2 able to mitigate sentences and so on but not the notion
3 of guilt.

4 With that kind of trap within which the
5 adversarial system finds itself, especially a judge, my
6 answer to the question is no. You have to have a separate
7 justice system, a very radically different system to be
8 able to cater to the special needs of Aboriginal people.

9 **MARC LECLAIR:** Before we go on, Teresa
10 Nahanee will join us because Martha Flaherty was unable
11 to. Teresa is the Constitutional Adviser to the Native
12 Women's Association of Canada.

13 **JAMES H. LANGSTON, CHIEF CROWN**

14 **PROSECUTOR FOR THE LETHBRIDGE AND MACLEOD JUDICIAL**

15 **DISTRICT:** From a practical point of view, I am a line
16 prosecutor so I have to be concerned about these kinds
17 of issues. I will not tell you about the experiences that
18 I have had at the hands of Native people and the odysseys
19 upon which I have entered and have found somehow a bit
20 of an insight into Nativeness. A small story.

21 A Native police force which exists
22 within the jurisdiction that I prosecute had a meeting
23 not long ago. Some very good police officers are part

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1 of that Native police force. One of the bright young men
2 on that police force, after we had negotiated the terms
3 of this discussion, indicated to me that he and the others
4 of his kind felt very uncomfortable going to court and
5 giving evidence. Now, if that had been an RCMP officer
6 who had suggested that, you would have found the inspector
7 leaping over the desk, grabbing him by the throat and
8 chastising him.

9 What it did was crystallize the fact that
10 we don't understand your culture. What this Native
11 constable was telling me and everybody else there was that
12 the whole adversarial process is inappropriate. It is
13 one that he had not grown up with, he did not feel
14 comfortable with, and he had great difficulty coming to
15 grips with.

16 The offshoot of that is that you can then
17 begin to understand the reluctance and the difficulty with
18 which police officers in Native communities approach their
19 work. They are travelling to the beat of two inconsistent
20 kinds of cultural ethics. It is incumbent on us to try
21 and resolve that problem. If we talk about the adversarial
22 system, it is inappropriate to your cultural and it is
23 sometimes inappropriate to ours. Another example. I

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1 was in court one day and there was an assault charge.
2 The victim was about 6 foot 8, weighed 280 pounds. He
3 was so big he had trouble getting through the doorway of
4 the courthouse.

5 The accused was a man of about 5 foot
6 2. So I, as the diligent prosecutor, begin the case and
7 I ask all of the usual questions: Where it did happen?
8 What happened? It was over a land dispute and the little
9 old man had smacked the big young man who felt it was
10 appropriate to bring a charge. We get to the point where
11 I ask the victim to identify the accused. This big
12 mountain of a man stands there and he says, "He's over
13 there," and I of course say, "Would you point him out?"
14 He says, "He's over there." I said, "Would you point
15 to him?" He said, "I'm not pointing to him."

16 What was going on in the court was
17 totally lost to all of us. What was happening is in that
18 culture this big mountain of a man would not and could
19 not point at this old revered spiritual elder. That was
20 lost on all of us. The adversarial system is
21 inappropriate.

22 Part of it is because we are travelling
23 to the beat of a different drum. We use the same words

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1 but we have a different meaning.

2 I would meet a with a number of elders
3 on the Blood Tribe. They are very gracious, kind people
4 who understand my foibles, I think, and overlook a lot
5 of what I do that is wrong. One of the women who is among
6 this panel of elders sits there, I think, in amazement
7 and watches all of the incorrect things I do. I am terrified
8 of this woman, quite frankly, and she points out a lot
9 of what I do wrong. But she is a dear, dear person.

10 Another elder on that panel is a man whom
11 I have known for a long time in terms of the context of
12 these discussions. After about the third or fourth
13 meeting he drew me aside and said, "Do you remember me?"
14 He said, "Fifteen years ago you were a prosecutor in
15 Waterton Park," and it suddenly began to become clear to
16 me. He said, "You prosecuted me for cutting down trees
17 in the park."

18 At that time 15 years ago that was a
19 tremendously horrible offence. It was just short of
20 stealing cows and stuff. He had waited for three meetings
21 just to see what I was talking about before he addressed
22 this long-standing issue of why I, an impudent dog-faced
23 pup, would have had the audacity to vehemently prosecute

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1 him for cutting down trees.

2 Had I known then what I know now, he
3 wouldn't have be prosecuted. Of course, that would have
4 caused a letter-writing campaign from the superintendent
5 of the parks as to why I hadn't taken the appropriate action
6 because he lost a few willow trees for a sweat lodge.

7 Our adversarial process is
8 inappropriate. The solution I think in the short-term,
9 and it picks up the conversation that was going on at the
10 table with the previous speakers, is we have to adapt,
11 and to adapt we have to avoid that kind of a process.
12 Put in place in a community an alternate method of dealing
13 with those difficulties. Reserve to the courts only those
14 things which cannot be resolved through an internal
15 mechanism. We have talked about that, we have alluded
16 to it and I bet you if you canvassed everyone at this table
17 we are probably all in agreement that that's the approach
18 we are going to take. Why? Because it works.

19 One of the elders I speak to put it this
20 way -- he's kind of a sport's buff. He said, "Listen,
21 we have talked about a lot of things. We are heading toward
22 the goal line, we are on the 20 yard line, but we need
23 some help to move the ball." I see my role, to some

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1 degree, as being that facilitator, that gatekeeper, to
2 try and open some doors to the people who have a legitimate
3 interest in solving the problems in their community because
4 they know better than I what those problems are, and I'll
5 bet they know better than I how to solve them. That's
6 where we have to go.

7 The simple answer to this is the
8 adversarial system doesn't work. It probably doesn't work
9 a whole lot in our system either. As Leroy says, when
10 you have two liars up there they don't believe they are
11 liars, of course. But everyone wants to tell the truth
12 through his eyes and I do the same. My view of reality
13 is governed by the people with whom I am in contact.

14 When I talk of Nativeness it is because
15 of Cree and Blackfoot and Peigan influences. It may not
16 be something that you are comfortable with from your
17 background. When I talk about the wonder of coming upon
18 a sun dance lodge in the middle of nowhere and seeing this
19 intricately constructed building with all of these colours
20 on it, you think a society that can do that cannot govern
21 and judge itself? Absolutely they can.

22 **MARC LECLAIR:** Thank you, James. We
23 will go to Joanne.

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1 **JOANNE BARNABY, EXECUTIVE DIRECTOR DENE**

2 **CULTURAL INSTITUTE:** I want to tell you a little story
3 about what happened to me a few months ago.

4 I am the Executive Director of the Dene
5 Cultural Institute and in that capacity I was subpoenaed
6 to attend a sentence hearing that involved an elder who
7 had been charged and convicted of assault. My first
8 reaction was, why me? I'm not a cultural expert. There
9 are people with far greater cultural expertise than I.

10 I know why I got the job that I got.
11 I've got "white" skills. I can do fund raising. I can
12 do proposals. I can do all kinds of things. The cultural
13 attributes that I have is my interest, my personal and
14 demonstrated interest, in learning about our cultural.
15 I am not an expert by any means and it really upset me.

16 I called up the judge, which I apparently
17 wasn't supposed to do, and I called up the defence lawyer,
18 and I called up the prosecutor's office and I told them
19 all the same thing. I said, "I don't consider myself an
20 expert, there are better people to act as an expert in
21 this hearing." They wouldn't let me off the hook.
22 Probably if my ego hadn't gotten in the way, I would have
23 refused to attend and I would have been charged.

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1 But I did attend and I tried to be
2 responsible about it. I went a couple of days ahead to
3 the community where the case was going to be heard and
4 spent a couple of days talking to the defendant, the elder.

5 What I learned in a couple of days in
6 sitting with him and listening to him was that he was really
7 depressed. He felt worthless. He felt unneeded. He
8 felt no respect for himself, respect for him. He felt
9 that his people had no respect for him. He felt that he
10 had come from his own personal experience. He had spent
11 about 40 years living on the land, living a very traditional
12 life and he was in the community. He had moved to town
13 about 20 years ago and his life began to fall apart. He
14 lost his role as an educator, as a teacher. He lost his
15 role as a leader. He was displaced by the chief and band
16 council system. He didn't feel he had anything to give
17 in the community life context and he was striking out.
18 He was striking out in anger and he had no hesitation about
19 acknowledging his actions and his guilt. He had no
20 hesitation about facing the sentencing hearing.

21 When the hearing started, after we went
22 through the process of determining the question of whether
23 or not I could be considered an expert witness, which I

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1 didn't contribute to one iota, by the way, the kinds of
2 questions that were asked of me I felt were totally
3 irrelevant to the situation. The kinds of questions that
4 were asked of the defendant, of the elder, were totally
5 irrelevant and didn't address the real problem, didn't
6 address his depression, didn't address his need for
7 healing, didn't address his need to gain a sense of place,
8 a sense of self-respect once again and to contribute to
9 community life.

10 Instead, the lawyer asked him because
11 the question that the sentencing hearing was focusing on
12 was whether or not he should be allowed to carry firearms
13 given he had been convicted of assault, and so the lawyer
14 asked him, "How much do you depend on hunting and trapping?"
15 The elder said, "Not very much at all." Very sadly he
16 said that.

17 In fact, he still spends about half of
18 the year in total out on the land, but his own lawyer didn't
19 understand the elder's context. He didn't understand that
20 relative to what he wanted to do, relative to his full
21 life experience, he was not spending much time on the land
22 at all from his perspective.

23 Of course, if the defence lawyer knew

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1 anything about our culture, he would have probed further
2 and found out exactly the extent of his continued
3 dependence on firearms for hunting. I really thought
4 about it long and hard and I thought about a request that
5 had been made to our organization just three, four years
6 ago from the territorial government about whether or not
7 we would help them set up a judicial education program.

8 Our elders' council said no, because they thought that
9 we could better spend our time working internally in our
10 community to revitalize our own system, to revitalize and
11 re-educate our own people about our own ways. They felt
12 that that was a more appropriate role and a better use
13 of our time.

14 I thought again about that after this
15 case and I was even more convinced that really the only
16 ones who could truly benefit from educating the current
17 system about our culture is that system. It is not going
18 to be our people. It is going to take lot of time, energy
19 and resources that should be spent in our communities
20 decolonizing ourselves, dealing with the symptoms of
21 oppression that we are faced with, the violence that we
22 are acting out. I'm even more convinced of that after
23 hearing the discussions in the last couple of days. Thank

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1 you.

2 **MARC LECLAIR:** Before we go to Jim, just
3 to get a sense of where we are at, Leroy set the focus
4 by saying that the system we have now is the externalization
5 of social control and that there's no room for contextual
6 type evidence and James was talking about confirming that
7 it's not culturally appropriate and Joanne has given us
8 a concrete example as to where the cultural characteristics
9 or the cultural aspects were not accommodated within this
10 so-called externalized social control mechanisms.

11 The focus of this discussion, a little
12 more comment: is there any way within that process, the
13 adversarial process itself, that we can build in these
14 more socially acceptable and culturally acceptable notions
15 that Joanne has talked about? I'll go over to Jim.

16 **JAMES C. McCRAE, MINISTER OF JUSTICE AND**
17 **ATTORNEY GENERAL OF MANITOBA:** Thank you, Marc. I think
18 in the course of my short comments I might get to that
19 part of the question. I do feel quite pleased to be part
20 of this round table. Indeed, on coming here I had some
21 worries as a provincial politician coming to a round table
22 like this about what would be the utility and what would
23 flow from this, but after a day and almost a half I have

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1 no hesitation in saying I belong here and need to be here.
2 I feel very good about that. I am going to get
3 rather specific about the question that we are discussing
4 here today. There is no one in this room who will not
5 acknowledge that the justice system has fallen far short
6 of the needs and expectations of Aboriginal people, but
7 also many of the rest of us too. So thanks to the
8 Aboriginal people, we may end up with a justice system
9 some day that will serve all of us better.

10 To get to the specific question, I think
11 I have to say that we are not dealing with a regional
12 problem, but a problem that is national and that's shown
13 by the task forces in most provinces over the last number
14 of years. The solutions to the problems that we have will
15 be as diverse as the number and nature of the Aboriginal
16 communities that there are across this country. Just
17 as an aside and in a very general way, I have to say that
18 this Royal Commission is looking at a whole range of issues,
19 justice being one of them. So that as justice ministers
20 and others involved in the industry, if I can call it that,
21 we think of our industry as the be-all and the end-all.
22 Well, it isn't. If we solved all of the justice problems
23 that would be very nice, but it should not be seen as a

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1 panacea because there are social-economic problems that
2 go far beyond dealing with them all in the justice system.

3 I have to tell you I have a problem with
4 the question. I think we can solve the problem immediately
5 if we take out the word "or" between a) and b), because
6 we are talking about adversarial problems and credibility
7 and punishment and healing on the one side, and saying
8 is all that the problem, or is it the administration of
9 the court system, in fact? It is both, so if you took
10 out the word "or", if everyone would agree, then we can
11 carry on.

12 I do not think that question as it is
13 framed really reflects the nature of the problem and the
14 challenge facing us, so if we just took that out we would
15 be all right. It can't be an either/or question. We have
16 to address all the issues raised by the question. I
17 believe that the first step involves the successful merging
18 of Aboriginal and non-Aboriginal approaches to dispute
19 resolution. This could address problems caused by the
20 adversarial model and its terms and its concepts.

21 In other words, ever since the
22 Aboriginal Justice Inquiry in Manitoba which raised the
23 concept of separate systems that has become to some extent

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1 too much of the focus of the discussion, the fact that
2 we are talking about separate systems versus other kinds
3 of systems. I really hope the Royal Commission will
4 address this very carefully because separate systems seems
5 to me to be a matter of definition.

6 We do obviously have to deal with the
7 question of adversarial problems and guilt and innocence
8 problems. There are ways, I suggest, that we can do that,
9 but we also have to make changes to the administration
10 of existing police courts and the correctional service.

11
12 Even doing all of that wouldn't be
13 sufficient, because we need to concentrate on the
14 development of the community justice structures to
15 increase the ability of communities to resolve problems
16 in culturally appropriate ways.

17 In other words, while Grand Chief
18 Mercredi sitting beside me and myself and Bob Mitchell
19 and Yvon Dumont, Rosemarie Kuptana and Ron George all have
20 constituencies and they are diverse in one way or another,
21 but the Aboriginal constituency is extremely diverse and
22 if we get bogged down in trying to define what a separate
23 system should look like, we will discuss that until we

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1 are all extremely old and even then we might not finish
2 the discussion.

3 Meanwhile there are communities crying
4 out for justice and I am in a position and so is Bob Mitchell
5 and other Attorneys General across this country to work
6 with those Aboriginal communities and start bringing
7 better systems of delivering justice to Aboriginal people
8 and that justice should in most cases be delivered by
9 Aboriginal people.

10 I am not taking a lot of issue with the
11 initial spokesman, Mr. Littlebear about separate systems
12 in a real sense because I think we are all recognizing
13 what the problems are. But I'm just afraid if we get into
14 a prolonged debate about what a separate system in this
15 country should look like, we are going to have a problem.

16 I don't think someone sitting in Ottawa, even in
17 consultation with, in all due respect, a person of the
18 calibre and stature of Grand Chief Mercredi can sit down
19 and write out what a separate system should look like
20 because it may not work at St. Theresa Point; it may not
21 work at The Pas or in some other place across this country.

22 In fact, I am satisfied it won't, because you are going
23 to have to have site-specific solutions to problems that

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1 develop there.

2 New initiatives need to acknowledge
3 things like the current constitutional and legal framework
4 is there as long as it remains there and we can't ignore
5 that, but there is sufficient room, in my humble opinion,
6 within those boundaries to achieve the goals of many, if
7 not all, Aboriginal communities in this country.

8 I believe very strongly the solutions
9 lie in alternative dispute resolution models, plural, and
10 I can't underline enough community-based and
11 community-developed and there's nothing about the programs
12 that we heard about yesterday and that I made brief
13 reference to yesterday with respect to some programs
14 operating in Manitoba. There's hardly any limit to what
15 can be done in an appropriate way to deal with the problems
16 that are arising. Some are not arising because of the
17 justice system, but because of the economic system and
18 our justice system is simply a poor way of dealing with
19 some of the problems that arise because of a bad economic
20 situation.

21 Those alternate dispute resolution
22 models can address the problems and issues identified by
23 the Aboriginal peoples at this current round table. ADR

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1 models represent a way that communities and existing
2 justice agencies can move ahead together to address
3 criminal justice problems as well as other justice
4 problems.

5 Alternate dispute resolution provides
6 the opportunity for each community to develop its own
7 approach that best meets its individual needs and I think
8 this is going to be the right way to go. We have already
9 started and we can continue starting tomorrow or the day
10 after tomorrow when we leave this conference, so that
11 hopefully by the time the Royal Commission makes its
12 report, much more work will have been done and the Royal
13 Commission hopefully will be able to acknowledge that some
14 more work has been done.

15 For goodness' sakes, we don't need to
16 spend too much more time identifying the problem. The
17 discussion of the pilot projects demonstrates that those
18 models can be used in a range of communities.

19 The St. Theresa Point model that I
20 referred to yesterday from the floor has referred only
21 six children to the other justice system in the last three
22 years and they have dealt with hundreds and hundreds of
23 cases quite successfully, I suggest.

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1 The Hollow Water Healing Circle serving
2 four communities in Manitoba, serving Aboriginal and Métis
3 people, combines the efforts of many people in the
4 community, certainly including Aboriginal women as well.

5 I mean, if you want to leave the Aboriginal women out
6 of any of these models that we are going to develop, don't
7 bother developing them because Aboriginal women are very
8 much the strong players and need to be empowered even
9 further in Aboriginal communities in order to develop
10 programs that will work for them and for Aboriginal
11 children.

12 You can't go ahead successfully in a
13 sustained way without federal, provincial and Aboriginal
14 participation. The tripartite process is the most
15 effective method of demonstrating that all three parties
16 have a role and a responsibility to play and contributions
17 to make to the whole process.

18 We heard yesterday about political will.

19 It doesn't just need to happen at the level of
20 non-Aboriginal governments. There has to be political will
21 in the communities or nothing that is developed will work.

22 If non-Aboriginal governments come along and say you have
23 a terrible problem, here's a solution for you, a few years

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1 down the road it will be said here was a another case where
2 non-Aboriginal governments tried to do the thing for the
3 people and here again it didn't work because it wasn't
4 developed with the people.

5 So the time has passed for all the study
6 and I say, with great respect to all the social scientists
7 in this room, that we already have lots of information
8 at our disposal. We have to turn our attention to
9 considering how best to use it. We can evaluate the new
10 initiatives that we have going rather than simply exploring
11 different angles to old and known problems. There is lots
12 of information out there, I suggest.

13 One particular area that I know
14 desperately requires action is the area of family violence.
15 But this is the one area where we are not through figuring
16 out all the problems, I don't think, because I've listened
17 to two distinct approaches to the issue and I have to
18 confess that I come down on the side of the point of view
19 put forward by some of the Aboriginal women who still have
20 some concerns about how best to deal with family violence
21 issues. They desperately need to be dealt with.

22 If I may commend one particular
23 approach, that being the approach of Dorothy Pedlar, a

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1 lawyer in Manitoba who took a very comprehensive look at
2 family violence in general, and just like Aboriginal
3 justice, family violence can't be dealt with with only
4 one particular thrust or one particular focus. It is a
5 multi-dimensional issue and I really want to see this issue
6 discussed almost separate from everything else because
7 it is such a crucial problem. The papers that we have
8 very dramatically illustrate the need to address the issue
9 and ensure the participation of Aboriginal women in justice
10 reforms.

11 These are some of the issues I see as
12 fundamental to the development of new initiatives to
13 increase a community-designed and driven justice system.
14 The two themes are community and Aboriginal participation
15 of course. You can't design hundreds of separate systems
16 at this table today or even by way of a report of a Royal
17 Commission, I suggest. Until we can do all of that, we
18 must adapt the system we have and make it far better, and
19 we can only do that with the participation of Aboriginal
20 people.

21 Thank you, Marc.

22 **MARC LECLAIR:** Thank you, Jim. I think
23 it's very useful. The nature of the system is one thing,

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1 but how it is operated is important and I think that the
2 community-based approaches rather than top-down
3 approaches are important.

4 The reason why I say that is Murray
5 passed me a note asking that even if a fully operational
6 justice system for Aboriginal peoples is implemented,
7 there are still going to be a lot of people caught in the
8 existing system. Jim pointed out the practical realities
9 we are going to go community by community, we are not going
10 to top down, it is not just going to come tomorrow. We
11 really have to focus on, is it possible to adapt the
12 existing system and how might that be done?

13 I meant to give everyone a chance to
14 speak. I am going to go to Alain and others who haven't
15 spoken yet. Just let me know when you are comfortable
16 saying something.

17 **ALAIN BISSONNETTE:** Merci, monsieur le
18 président. Avec votre permission, je parlerai en français
19 en espérant que vous avez tous vos écouteurs.

20 Ce que j'aimerais dire, c'est un peu à
21 la suite de ce que Leroy nous a indiqué tout à l'heure.

22 C'est qu'il me semble que oui, sans doute qu'il faut penser
23 au problème d'adaptation du système dominant, mais je crois

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1 aussi qu'on peut élargir la réflexion, surtout si on
2 s'inspire des documents qui nous ont été présentés par
3 Mary-Elen Turpel et Jeremy Webber.

4 Je crois que lorsqu'on fait cette
5 réflexion, on doit penser à -- évidemment, c'est une
6 discussion qui est peut-être moins pratique que ce qui
7 a été abordé il y a quelques secondes, mais au plan
8 théorique, je pense qu'on doit réfléchir à beaucoup de
9 non-dits, des choses qui ne sont pas dites clairement.
10 On doit penser également à nos mythes fondateurs, à la
11 rationalité qui est utilisée par le système de justice
12 et ensuite à ce que chacun d'entre nous, nous jugeons
13 essentiel pour le maintien et la reproduction de l'identité
14 du groupe.

15 En fait, la question fondamentale, je
16 pense qu'elle a été soulevée notamment par le professeur
17 MacDonald ce matin: Où se situe le système judiciaire
18 par rapport à la justice? Mais encore là, il reste à savoir
19 qui définit la justice, selon quels critères, où est la
20 frontière entre le juste et l'injuste.

21 J'aimerais poursuivre un peu la
22 réflexion de Leroy en vous proposant deux modèles. Moi,
23 je prétends que ces modèles s'appliquent aussi bien à notre

1 société qu'aux sociétés autochtones. Je pense qu'on peut
2 poser comme hypothèse que dans certaines sociétés, la
3 justice naît de l'intérieur de la communauté. C'est la
4 communauté elle-même qui met en oeuvre un processus.

5 Et contrairement à ce qui a été affirmé
6 ce matin, notamment par Leroy, en occident, avant le
7 onzième siècle, et en occident encore aujourd'hui, bien
8 souvent des communautés elles-mêmes mettent en oeuvre des
9 processus pour assurer la cohésion sociale. Bien souvent,
10 ces communautés, lorsqu'elles interviennent, ce n'est pas
11 en fonction d'une norme préétablie. Il s'agit moins
12 d'imposer une norme que de maintenir la cohésion sociale.

13 Et dans ce modèle communautariste, la personne a des
14 responsabilités envers sa communauté comme la communauté
15 en a envers la personne. Ça, c'est un des pôles.

16 L'autre pôle, c'est un modèle où la
17 justice vient de l'extérieur où en fait, une autorité
18 unique a finalement la seule interprétation juste d'une
19 norme préexistante. Notre modèle de la Cour suprême, tout
20 le monde peut se tromper sauf la Cour suprême. Donc, il
21 y a une seule autorité qui est juste. Et c'est toujours
22 une interprétation d'une norme préexistante. Alors, face
23 à cette autorité extérieure, l'individu est seul.

1 Et la notion de punition, je la rattache
2 finalement à un modèle qui est ancré dans la religion
3 monothéiste où finalement, face à Dieu, l'individu est
4 coupable, peu importent ses rapports avec sa communauté.

5 Et dans ce modèle finalement, ce qui aide l'autorité
6 ultime à interpréter la norme, ce sont les gens qui
7 constituent une élite et qui essaient de distinguer comment
8 la norme doit être interprétée.

9 Je dis, ce sont deux modèles, deux pôles,
10 mais je dis également que toutes les sociétés, aussi bien
11 la nôtre que les Autochtones, nous vivons dans la réalité
12 en utilisant l'un ou l'autre de ces pôles et en utilisant
13 entre ces pôles ce que j'appellerais trois ordres
14 différents. Et ce sur quoi je veux insister, c'est qu'à
15 mon avis, les Autochtones ne sont pas obligés d'être
16 limités à un seul de ces ordres.

17 Alors, les ordres je les nommes: Je
18 parle de l'ordre négocié. Je pense que le modèle auquel
19 on référerait de type communautariste fait en sorte qu'on
20 négocie un ordre qui va régner dans la communauté. Mais
21 je prétends que dans l'ordre imposé, où on fait appel à
22 une autorité ultime, les Autochtones eux aussi peuvent
23 recourir à ce principe de l'ordre imposé.

1 Il y a également des conflits qui
2 naissent non seulement entre les membres de la communauté,
3 mais à l'égard d'entités extérieures à la communauté.
4 Et s'il n'y a pas de lien de parenté entre les membres
5 d'une communauté et ceux de l'autre communauté, mais
6 parfois, le recours à l'ordre imposé à une autorité ultime
7 qui tranche un débat peut être utilisé par les Autochtones
8 comme il peut l'être par nous.

9 J'ajoute qu'il y a également un ordre
10 dont on parle peu souvent et que certains Autochtones
11 utilisent comme certaines personnes ailleurs dans notre
12 société, c'est l'ordre contesté. On ne règle pas tout
13 par la résolution des conflits. Certains conflits ne sont
14 jamais réglés.

15 Évidemment, ce qui nous préoccupe nous,
16 ici, c'est je pense d'essayer de voir comment en arriver
17 à faire en sorte que les personnes qui vivent des problèmes
18 devant l'appareil de justice en vivent moins. Et ce qui
19 nous préoccupe beaucoup, c'est comment l'État va
20 reconnaître des processus qui sont plutôt de type
21 communautariste. Je pense que c'est essentiel.

22 Mais ce que j'aimerais souligner - cela
23 a été évoqué ce matin - c'est qu'à l'origine, les systèmes

1 juridiques ou les systèmes de création de l'ordre social
2 au sein des communautés autochtones n'ont pas eu besoin
3 de quelque reconnaissance étatique que ce soit. Et ce
4 que j'ajoute, c'est qu'il y a aujourd'hui au Canada des
5 groupes autochtones qui ne réclament absolument pas cet
6 reconnaissance étatique. Je pense qu'il faut le savoir.

7 Il faut prendre en considération le fait qu'il y a des
8 mécanismes qui fonctionnent sans la reconnaissance de
9 l'État.

10 Ceci étant dit, il est certainement --
11 et là, j'approuve ce qui a été dit il y a quelques minutes
12 - pratique d'avoir également des systèmes qui ont cette
13 reconnaissance étatique, ne serait-ce que pour assurer
14 une cohésion entre l'ensemble des membres de la société
15 canadienne. Mais je crois qu'il ne faut pas uniquement
16 s'orienter vers ce type de solution, parce que cela ne
17 sera pas le seul type de solution.

18 Au fond, je pense que quel que soit le
19 type de mécanisme utilisé, une des questions fondamentales
20 est toujours liée à l'autorité. Jusqu'à quel point la
21 personne qui est devant, que ce soit un juge, que ce soit
22 un comité de justice, reconnaît l'autorité qui est devant
23 lui. Et dans ce cas, on peut retrouver aussi bien des

1 personnes d'origine autochtone qui agissent comme des
2 juges dans notre processus de décision, mais s'ils
3 reconnaissent l'autorité du juge en question, beaucoup
4 peut être fait. Comme par ailleurs, on peut retrouver
5 des juges venant de la société canadienne qui utilisent
6 un processus de décision beaucoup plus communautariste
7 et dans ce cas-là, les membres de la communauté peuvent
8 accorder une autorité aux juges.

9 Voilà ce que je voulais apporter ce
10 matin. Je suis conscient que c'est une approche beaucoup
11 plus théorique, mais je pense qu'elle peut être utile,
12 du moins je l'espère.

13 **MARC LECLAIR:** Well, I don't know how
14 much more theoretical it is. We have heard over the last
15 couple of days that the justice system doesn't work for
16 anybody. Maybe one of the reasons why is because it's
17 too externalized. I have a sense many Canadians would
18 like to see it more internalized and we repatriate the
19 justice system back in the community.

20 That's what Aboriginal people are saying
21 and the point of convergence with Jim is that what is
22 happening in pilot projects here and there is a
23 repatriation of the justice system to make it more

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1 adaptable, so it is not as theoretical. The question
2 though is, can we repatriate this justice system back to
3 the community and how do we do that? We have a few
4 initiatives going. Réjean?

5 **RÉJEAN PAUL, JUDGE OF THE QUEBEC**

6 **SUPERIOR COURT AND DEPUTY JUDGE OF THE NORTHWEST**

7 **TERRITORIES:** As you know, I am the Chairman of the
8 Cree-Naskapi Commission following the modern treaty of
9 the James Bay and Northern Quebec Agreement. I have served
10 for the past six years as a mediator in conflicts arising
11 between the federal and provincial governments and the
12 Crees of the James Bay area and the Naskapi and it was
13 successful. They liked the idea. It was informal. I
14 let the Aboriginal people tell what they had to say. I
15 sat with them. Unfortunately, I don't speak Cree but I
16 have a member on my Commission who is a respected leader
17 from Quebec and we settle a lot of disputes between two
18 governments and the Crees and the Naskapis. That system
19 can very well be implemented in relation to the criminal
20 justice system.

21 I am also a Supreme Court Judge of the
22 Northwest Territories. Each time I go there, I feel that
23 I'm totally or practically useless to the community. I

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1 went to Paulatuk, a very remote community near the Beaufort
2 Sea. There was a minor crime that I had to deal with;
3 it was a mischief, in fact.

4 What do you do in that community with
5 a jury system? It is a community of 125 people living
6 there. Everybody knows what happened. So I was there
7 explaining to this panel of 12 men -- at that time it was
8 only men -- what was the burden of proof what the reasonable
9 doubt was. Well, my usual charge lasts approximately 30
10 minutes. So at the end of it I had no room so I sat there
11 and I have a bad habit of smoking, so I had my cigarette.

12 Then the RCMP Constable came in and said, "My lord, they
13 are ready." I said, "They are ready for what, after
14 approximately one minute?" He said, "Their verdict."
15 So I said, "I forget something."

16 Finally, the accused was found not
17 guilty. I went to the chief and I said, "Chief, did I
18 miss the point because I explained to them the subtle
19 distinction between the honest belief about the consent,
20 as the Supreme Court of Canada has told us in Papajohn."
21 The chief said, "No, my lord, he is well-known in the
22 community. So the guy was not guilty and we knew well in
23 advance before you arrived."

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1 So here we were a prosecutor and a
2 defence attorney, et cetera. During the whole trial the
3 guy was there raising his hand. He was speaking in
4 Inuktitut and he was telling me, "I did it but I was drunk.
5 I did it but I was drunk." I said, "Refrain from talking
6 because it's a statement from the dock."

7 Thirdly, based on these two experiences,
8 I think that the time has come for changes. If we wait
9 for the legislators to change something, we will be here
10 -- probably I will have lost all my hair and maybe I'll
11 be dead. But there are possibilities to change that.

12 Why not amend the *Criminal Code* with a
13 simple amendment stating that a council of elders in a
14 community, or something like that depending on each
15 community. They might prefer a justice of the peace or
16 a council of elders and that will depend on each community
17 which will apply the system that they want in their
18 community. If they need judges like me who have a keen
19 interest in Aboriginal issues or are of Aboriginal descent
20 and who know very well criminal law might be of assistance,
21 that might be a practical solution and it can be implemented
22 very quickly in remote communities.

23 Now, the problem is what do we do with

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1 the people living in areas like Winnipeg, downtown
2 Winnipeg, Montreal, et cetera? To this I have no answer
3 for the moment because I've given that topic a lot of
4 thought. But at least for these isolated communities,
5 why not try that?

6 Finally, Mr. Chairman, I would mention
7 this: we are trying the best we can as judges to work within
8 the existing system and try to take into account the
9 fantastic cultures of our Aboriginal people in Canada.
10 I will give you one example.

11 I was sitting in the Northwest
12 Territories and the guy was charged with drawing graffiti
13 on the wall of the school. It was a proper case for a
14 probation order. We had no probation formulae, we had
15 nothing. There was no probation officer there. As I was
16 there for approximately 15 or 12 cases I decided that I
17 would be the supervisor. So my sentence was finally this.

18 I just mention probation order but that was not important.

19 I said, "You will repaint, young man, the wall of the
20 school and I will supervise it because if it is not done
21 properly I am here until Friday and you better do your
22 job properly."

23 I was checking after every recess if he

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1 was doing it properly. It was perfectly done. So my
2 sentence was clearly illegal, but the community was happy
3 and the young man learned his lessons.

4 So that is my experience, Mr. Chairman.

5 **MARC LECLAIR:** We are going to go to
6 Teressa and then Jacques.

7 **TERESSA NAHANE, ADVISOR FOR THE NATIVE**
8 **WOMEN'S ASSOCIATION OF CANADA:** Martha Flaherty was
9 supposed to be here this morning and I am really sorry
10 that she is not.

11 I have four points that I want to make.
12 The first one is that in my first year criminal law class
13 at the University of Ottawa we spent about a third of our
14 time studying the conflict between Aboriginal peoples and
15 the law. The conclusion of the white students was
16 basically that we were dealing with a -- we may as well
17 have been dealing with lower class criminals when you are
18 dealing with Native people in the context of law, which
19 was difficult to sit through and very difficult to deal
20 with personally because you can not help but have an
21 identification when people are talking about your own
22 people.

23 I went to a luncheon meeting that I was

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1 invited to by Mary Ellen Turpel when she met with the Law
2 Reform Commission before they started their study or in
3 the middle of their study for what is now called Report
4 34. I believe I spoke with John Briggs at that time who
5 had also been involved in the Marshall Inquiry report.
6 I did see the letter of reference from the Minister of
7 Justice for the study that was to be done by the Law Reform
8 Commission.

9 I said at that time that if they are
10 looking at what is wrong with the criminal justice system
11 and how it interrelates with Aboriginal people, that if
12 they came to an honest conclusion, then they must come
13 to the conclusion that there is nothing wrong with the
14 system because you have a system which is design to protect
15 people like them from people like us. That is why we have
16 so many people incarcerated in Canadian jails right now.

17

18 One of the first questions that you have
19 here is to deal with the adversarial nature of the process
20 and whether or not anything can be done about that to
21 improve the situation with Aboriginal peoples.

22 I guess my conclusion is that in a system
23 where the majority of Aboriginal accused plead guilty and

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1 therefore really do not get a trial, they simply get a
2 sentence and they usually get a jail sentence -- if they
3 get a fine they cannot pay a fine -- that this is not an
4 adversarial system.

5 This is not a system in which Aboriginal
6 people are delivered justice. When they have legal aid
7 lawyers that encourage the majority of their clients to
8 go to court and to plead guilty, you know what you have
9 is really delivering the cheapest form of justice possible
10 because it saves the system a lot of money, it saves the
11 police having to investigate, it saves having to collect
12 a lot of evidence, it saves on the cost of witnesses, it
13 saves on the cost of lawyers' fees, Crown attorneys,
14 judges, and so everybody simply gets processed in a system
15 where the honesty of Aboriginal people is such that they
16 will plead guilty and they don't see any reason not to.

17

18 They don't go into whether or not any
19 of their rights have been infringed in this process. I
20 don't think that people really advise them what their
21 rights are, not if they can simply go there and plead guilty
22 and get sent to jail.

23 What we are discussing here is really

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1 the structure of the process and access to justice. I
2 think the problem is much deeper than simply the system
3 of justice. I think it is the rules that we are playing.
4 It is *Criminal Code* and the purpose of criminal law in
5 the western tradition and the purpose of criminal law here
6 in Canada. The purpose of criminal law is not for
7 Aboriginal people and has never been for Aboriginal people
8 or for their protection.

9 I think that you can see that very
10 clearly when you look at this move towards native
11 justice -- whatever that is -- and really the desire of
12 Aboriginal women for more access to justice. They
13 actually do want policing in their communities; they do
14 want the high level of violent activities towards women
15 and children to stop. In fact, I want to say more about
16 that when I talk about punishment.

17 Punishment. A number of theorists and
18 frankly for myself, I can only speak of theory as well
19 -- a number of theorists have suggested that punishment
20 is inappropriate for Aboriginal people. There has been
21 some discussion at this meeting yesterday, for example,
22 that punishment is not an Aboriginal concept but, in fact
23 as Zebedee said yesterday, banishment or death were

1 traditional forms of punishment.

2 In looking at the history of family
3 violence among the Dene, if there was violence against
4 women and children, the accused or the perpetrator was
5 asked to appear before a council of elders and that person
6 may be reprimanded, but if that kind of behaviour continued
7 the person would get a death sentence.

8 I think we have to look at punishment
9 within the current context. I think there is a lot of
10 idealization of justice. I think people do want to return
11 to some other time when we lived in a more idealized
12 society. But, in fact, for life for Aboriginal women and
13 children in our communities we are not living in an
14 idealized time. I think we are living probably in the
15 worse of times and in fact people do want, particularly
16 those accused of crimes against the person, they do want
17 those people to be punished in some fashion.

18 I discussed with the Inuit Women's
19 Association when Mary Silat (PH) was the president of that
20 organization -- they made the decision to take a case
21 against the judiciary in the Northwest Territories for
22 lenient sentencing of sex offenders. This meant that they
23 wanted the law to be applied as it is elsewhere in the

1 country. They wanted the same sentencing given to the
2 Inuit males as is given to other Canadians. For this crime
3 they wanted the sentence that had been set by the Alberta
4 Court of Appeal to be three years incarceration. The
5 judiciary in the Northwest Territories had set the sentence
6 at two years less a day to keep the Inuit in the Northwest
7 Territories.

8 There was a phone call with the Inuit
9 in the communities and they were informed that if they
10 were to ahead with their court action they may also be
11 asking for more stringent sentencing of their men. In
12 fact, they agreed to it. They agreed that if men were
13 going to behave in this fashion that they could not be
14 in the community. Until there is some other kind of system
15 put in place where these kinds of crimes can be controlled,
16 then they are going with this kind of system.

17 I want to mention as well, since I had
18 studied sexual assault in the Northwest Territories, that
19 from one of my students in my class at Queen's University,
20 a student from Sweden, they said that they did have a system
21 formerly of fly-in judges who came into the community,
22 dispensed justice and left again. The cantons decided
23 to put an end to fly-in justice and today they elect their

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1 judges within the community. They administer a national
2 code and this gives people more control over the judiciary
3 and the justice system. I think it would be worth-while
4 looking at something like that for the isolated
5 communities.

6 I don't think the system is adversarial.
7 I don't think the problem is the system. I think it's
8 the rules that we play by. I agree there have to be
9 amendments to the *Criminal Code*. In addition to looking
10 at the culture considerations of Native people, we also
11 have to consider the impact of the *Criminal Code* upon women:
12 Canadian women and Aboriginal women. I think that would
13 probably do a lot more than what we are doing.

14 There are something like 400 justice
15 pilot projects in Canada right now. This is a good way
16 to go about adjusting the system to Aboriginal people,
17 but I think we have to change the rules as well.

18 **MARC LECLAIR:** Thank you, Teresa. As
19 usual, you don't pull any punches. One of the things that
20 struck me in reading the Royal Commission's first piece
21 on the number of reforms or commissions that have come
22 in the past has been the recommendations being on the books
23 for so long without being implemented. There is something

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1 in what I saw that the system itself sometimes blocks reform
2 and the attitudes in the system.

3 You raised a new question which the
4 others haven't addressed which is this notion of
5 punishment. Hopefully when we get around the first round,
6 we might get back into the issue of punishment.

7 Jacques.

8 **JACQUES AUGER:** Je vous remercie,
9 monsieur le président. J'aimerais d'abord dire un mot
10 simplement pour saluer les aînés, les membres de la
11 Commission et tous les participants et les remercier,
12 évidemment, de m'avoir invité et de me donner cette
13 occasion de discuter avec vous de l'administration de la
14 justice en milieu autochtone.

15 Vous m'avez présenté tantôt comme le
16 coordonnateur aux affaires autochtones au ministère de
17 la Justice du Québec. C'est un rôle que je joue depuis
18 plusieurs années maintenant et qui m'amène à tenter
19 d'amener les Autochtones à discuter avec les autorités
20 du ministère de la Justice des problèmes qu'ils ont et
21 de trouver avec eux les solutions à ces problèmes-là.
22 En somme, je joue un rôle d'intermédiaire entre les
23 différentes directions générales et le bureau du

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1 sous-ministre et les nations autochtones au Québec.

2 Pour traiter du sujet d'aujourd'hui, on
3 parle de difficultés d'adaptation du système. Il y a
4 plusieurs motifs qui sont soulevés, de caractéristiques
5 fondamentales. Il y a une chose qui n'a pas été dite
6 encore, je pense, et qui me paraît importante, qui touche
7 la communication. Je crois sincèrement que dans tout
8 problème, quel qu'il soit, il y a toujours un problème
9 de communication à la base, un problème de manque
10 d'information, un problème d'échange, d'écoute, de respect
11 de l'autre, de ce que l'autre pense, de ce qu'il a à dire.

12
13 Cela a peut-être été historiquement un
14 des facteurs qui fait que l'on se retrouve aujourd'hui
15 dans une situation comme celle dans laquelle on est et
16 qui nous amène à faire le constat, effectivement, que le
17 système judiciaire ne répond pas aux besoins des
18 Autochtones. Si on s'était peut-être plus écouté, si on
19 avait échangé plus, on n'en serait peut-être pas là
20 aujourd'hui.

21 De façon plus précise à la question qui
22 est posée, je pense qu'on doit répondre "oui" à l'effet
23 que le caractère contradictoire, la prépondérance de la

1 sanction sur la guérison, les concepts de culpabilité et
2 d'innocence sont autant de caractéristiques qui font que
3 le système est difficile à adapter.

4 Au Québec, depuis plusieurs années, nous
5 nous sommes penchés également sur ces questions et nous
6 avons fait le même constat. Je pense que tous s'entendent,
7 toutes les études qui ont été faites déjà au Canada et
8 dans les différentes provinces arrivent à ce constat-là.
9 Chez nous aussi, on a fait la même constatation.

10 Les échanges évidemment que nous avons
11 aujourd'hui par le biais d'une commission, les enquêtes
12 qui ont eu lieu, palient à ce problème de communication
13 auquel je faisais allusion tout à l'heure. Au Québec,
14 nous avons eu l'occasion également, au mois de février
15 dernier, d'avoir un échange qui se voulait officiel dans
16 un cadre important, qui était celui du Sommet de la justice.

17 Il y a une table qui a été organisée, parmi plusieurs
18 autres tables, pour discuter spécifiquement de la question
19 de justice et d'administration de la justice en milieu
20 autochtone. Le ministre de la Justice a fait
21 effectivement ce constat avec les Autochtones à l'effet
22 que le système ne répondait pas aux besoins.

23 Il s'en dégage peut-être deux avenues,

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1 l'une où on souhaite travailler au Québec à améliorer
2 l'administration de la justice, à améliorer le système
3 existant dans la mesure du possible pour répondre aux
4 besoins des Autochtones qui sont traduits devant les
5 tribunaux. Par ailleurs, on veut également travailler
6 de concert avec les Autochtones, en "partnership" avec
7 les Autochtones, pour développer des modèles
8 d'administration de la justice, qui leur permettraient
9 évidemment de s'impliquer, des modèles communautaires qui
10 répondraient mieux à leurs besoins et qui tiendraient
11 compte, justement, de leurs valeurs socio-culturelles.

12 Ce sont des engagements formels que M.
13 Rémillard a pris lors du Sommet de la justice à Québec
14 et qui m'enchantent, je ne vous le cache pas, parce qu'il
15 y a longtemps que moi-même je travaille sur ces questions,
16 que je suis conscient des difficultés, et j'étais très
17 heureux de voir l'orientation que prenait mon ministre
18 dans ce dossier-là.

19 Il est sûr que les corrections qu'on peut
20 apporter au système actuel vont palier à certains
21 inconvénients. Mais comme vous tous ici, je pense que
22 je suis d'accord que ce n'est pas la seule avenue. Il
23 faut aussi développer, comme je le mentionnais tantôt,

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1 des modèles qui vont permettre aux Autochtones de
2 s'impliquer eux-mêmes dans l'administration de la justice
3 dans leurs communautés. Nul mieux qu'eux, je pense,
4 peuvent apporter les solutions aux problèmes qu'ils vivent
5 et qui sont des problèmes sociaux qui découlent de tout
6 problème économique. Enfin, tout s'enchaîne.

7 Je pense que je peux terminer là-dessus
8 en disant que si, effectivement, on se regroupe pour
9 travailler dans ce sens-là et qu'on permet le développement
10 de modèles de justice autochtone, peu importe le modèle
11 - je ne veux pas m'arrêter ici à préciser: est-ce que ce
12 doit être une justice parallèle, une justice complètement
13 indépendante ou pas - je pense qu'il doit y avoir des liens.

14 Et les modèles qui devraient être développés doivent
15 convenir à tous, autant aux Autochtones qu'aux non
16 Autochtones.

17 Je pense d'ailleurs que c'est un des
18 objectifs de la Commission royale d'apporter des solutions
19 aux problèmes autochtones quels qu'ils soient, non
20 seulement dans le domaine de la justice mais aussi dans
21 les autres, mais des solutions qui seront satisfaisantes
22 pour l'ensemble des Canadiens et les Autochtones qui vivent
23 au Canada. Je pense que c'est la seule façon pour

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1 atteindre cette harmonie que nous recherchons tous.

2 Je vais terminer là-dessus, en vous
3 remerciant beaucoup.

4 **MARC LECLAIR:** I'm going to give those
5 who haven't spoken an opportunity to speak on this and
6 then perhaps we could look at the punishment issue.

7 One of the things that struck me is that
8 Ovide and Jim and I and others were involved in the
9 constitutional discussions quite heavily. One of the
10 things in the justice area really is the power to define
11 conduct which is unbecoming to the community. That's
12 primarily been done by federal and provincial governments
13 within the existing federal state.

14 We had worked towards expanding the
15 notion of federalism to have recognized in the constitution
16 our ability to do just that, to define conduct which is
17 unacceptable to the community and, secondly, to do
18 something about it and to do it in our own way, perhaps
19 not through the adversarial system but perhaps through
20 using certain components of it or adjusting it.

21 What we have got so far, it seems to me
22 from the discussions, just to summarize, is we have many
23 that are saying that we can adapt the existing system,

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1 that there are institutional forces that are preventing
2 adaptation, but there seems to be a willingness to try
3 new things.

4 We have some opinion which is saying that
5 perhaps the existing system is not capable of adapting
6 to meet the needs, although it will be interesting to hear
7 from Leroy in the second round whether if he would focus
8 his comments to the existing system to see whether or not
9 it is capable of adaptation, because you didn't really
10 get to that point, you were focusing on the dichotomy
11 between the two, and the same with Alain.

12 If there are no others that wish to speak
13 in the first round perhaps Leroy we will go to you, or
14 Chesley before we go to Leroy.

15 **CHESLEY ANDERSEN, VICE-PRESIDENT OF THE**
16 **INUIT TAPIRISAT OF CANADA, CONSTITUTIONAL NEGOTIATOR AND**
17 **FORMER DIRECTOR OF LAND CLAIMS FOR THE LABRADOR INUIT:**

18 I have been listening quite intently to all of the
19 discussion that has been happening because there are number
20 of issues that come out of the type of discussion that
21 we have on justice. To sort of illustrate that, I have
22 to go back a little to the history of my people in Labrador,
23 the Inuit, and just give you a very a quick overview.

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1 In the 1700s the Meridian Church were
2 the first people who came in contact with the Inuit in
3 Labrador. What they did was basically to bring community
4 groups of little small groups into one larger system.
5 They started to use education, trying to use a writing
6 system and so on to teach their practices of religion.
7 Part of the system included trade and goods for trade which
8 unless you became a member of the Meridian Church you
9 weren't allowed to buy from this trading partner.

10 They also accumulated with that through
11 the British Crown 600,000 acres of land that was granted
12 to them in order to civilize these people, the Inuit.
13 Of course the land is held in trust and still is held in
14 trust because there isn't a land claims settlement.

15 To take it the next step further
16 generally what happened is that the Meridian Church went
17 to a certain point of using elders as the system within
18 communities that was the governing bodies. They came to
19 a problem. They came to a conflict of laws with the law
20 system that was in place and then the rule of law as
21 practised by the community elders, in particular in
22 criminal matters. So then we have to adapt to a new system
23 which was initially the rangers and then the RCMP and with

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1 that comes the government systems of education, policing,
2 and the justice system.

3 Because the elder system which was
4 existing was eroded over a period of time and then became
5 more a function of church duties than actual powers, what
6 has happened in particular in one of our communities we
7 have ended up with probably one of the largest suicide
8 rates in Canada. We have a court docket that is constantly
9 overloaded.

10 There are a couple of things that are
11 happening. We were lucky in enough in 1985 to get a judge
12 who happens to be Inuk from Labrador and he is trying to
13 work within the system to deal with many of the issues.

14 Basically, what has happened is the
15 whole system is eroded, and it has eroded to a point of
16 where it is starting to hit bottom and people are starting
17 to say that this has gone far enough, we now have to take
18 over our own ideas of what we want to see, let's not have
19 people from the outside come in and tell us how to run
20 a social system, a justice system any more, we have to
21 do it. It is a long road back; it is a hard road back.

22 Obviously the system hasn't worked. So
23 I don't think the current justice system the way it's

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1 structured is going to work. There has to be at the
2 community level a system to allow for not necessarily
3 traditional but customary type ways of dealing with issues
4 to be resolved. If there is going to be overlap between
5 the current system and whatever system is put in place
6 for Aboriginal people, so you have to have some form of
7 mediation role between the two systems. That gets us to
8 looking at a system that can be implemented over a period
9 of time and can work. I firmly believe that.

10 The other aspect of it which is under
11 point b), I think the difficulties -- and the difficulties
12 just don't -- we obviously have to take over the justice
13 system ourselves in order to make it work for us. But
14 along with that comes all the other problem areas like
15 health, like education. Language has been one which has
16 been tough for us. It's kept alive, but a lot of the
17 younger people don't write very well in the language
18 because it wasn't taught in the schools for approximately
19 12 to 15 years. It's coming back now, but it wasn't in
20 there for 10 to 15 years so that age group has lost written
21 skills.

22 You have to have all these things
23 integrated somehow if you are going to bring our

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1 communities back into existence. For us, the process to
2 do it in is through a land claims agreement which currently
3 is stalled, but nevertheless it's still the avenue people
4 like to see as being the way of doing it.

5 If something isn't done fairly soon, a
6 lot of the suicides that I mentioned are people who are
7 caught between the lines. They are bright. They are not
8 quite sure how to adapt to the white system or to go back
9 into their own system in a way which the elders would have
10 given them guidance in the past but now because they don't
11 have a forum, it's not being dealt with.

12 To just give you an example, some of the
13 younger people coming up, and I'm talking ages 12 to 15,
14 have found a way of beating the system by saying, "Because
15 my community is poor and there are a lot of social problems,
16 in order to beat the system I want to go to jail for the
17 cold months of the year. So what do I have to do? How
18 many windows do I have to break? What do I have to steal
19 in order to get me from where I am now into a warm place
20 for the winter?" That has actually happened.

21 In the past under the elder system it
22 was probably too strict and that has to be looked at.
23 There was a system where not just the elders who were

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1 elected within a community, but also all of the responsible
2 people in the community were sending these kids home in
3 evening time and so on at reasonable hours. That system
4 was in place and that's not there now.

5 So when we talk about punishment,
6 punishment through a process that tells you, you can go
7 away to a place where it's warm for the winter, is obviously
8 not working in our communities. When you talk about
9 punishment from the perspective of Teresa Nahanee for
10 something that a male person has done against a female
11 person and you need stronger punishment, maybe the stronger
12 punishment doesn't come from a jail sentence or something
13 like that. It comes from having to go back and face the
14 individual and try to work out the problems.

15 To me, the healing process has more role
16 here than an actual punishment role. Granted, I think
17 that there are areas that step over the line on either
18 side and one of them is if there is murder then how do
19 you deal with that kind of scenario?

20 Those are areas that we have to look at
21 and consider. But I don't think punishment can be
22 addressed by imposing sentences, by sending kids out to
23 a place where they are warm and so on. It has to come

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1 from within and has to be dealt with.

2 That brings back something which we have
3 lost in a sense and that goes to the whole issue of
4 collective right versus individual right. It is broken
5 to a point in our communities where there's much more
6 emphasis placed on the individual rights versus the rights
7 of the collectivity, of the unit as a whole. Until we are
8 able to work ourselves back into being the collectivity,
9 looking after our children, looking after those problems
10 that are caused within the community while they are there
11 and looking for solutions that are sensible, that resolve
12 the problem instead of just foregoing the problem for a
13 matter of five years while somebody is in jail, those are
14 the kinds of answers we need.

15 **MARC LECLAIR:** Chesley, it is a welcome
16 reminder that we need to look at the environmental factors
17 and see justice in the proper context. Changes to the
18 existing system are not a panacea for all concerns.

19 We have only got seven or eight minutes
20 left. I don't want to put you on the spot Ovide, but I
21 know it usually takes you at least six minute to clear
22 your throat.

23 **OVIDE MERCREDI, NATIONAL CHIEF OF THE**

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1 **ASSEMBLY OF FIRST NATIONS:** Mr. Chairman, by saying
2 nothing, I was saying something, because the topic is
3 reforming the existing system, a policy that I don't
4 necessarily advocate as an exclusion to a parallel system
5 of justice. To me, the fundamental question has nothing
6 to do with the mechanics of the system. The fundamental
7 question is, do we want to revise the *status quo* as an
8 alternative to a parallel system of justice? The answer
9 is no, we don't want to do that because any system is capable
10 of change if the political will is there.

11 In some cases, if the political will is
12 not there it can be forced upon the decision makers by
13 the people themselves taking matters into their own hands,
14 so the system is capable of changing by its own initiatives
15 or from external forces beyond its own controls.

16 There's no question about it, the system
17 is capable of changing. But for me as one of the leaders,
18 one of the Indian leaders, I have to be concerned about
19 the issue of adaptation. Does the adaptation of the system
20 mean more assimilation for the people I represent? By
21 adapting the system are we in fact curtailing the
22 development of our own system of justice as Aboriginal
23 people?

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1 I raise these as fundamental questions
2 because of our experience with the system as a whole, the
3 political system and the legal system in Canada. Each
4 time our people assert jurisdiction they are told they
5 don't have it. If they want to make progress in terms
6 of Indian child welfare, they have to recognize the
7 existing system as it is, the provincial law and the child
8 welfare system.

9 Because we are practical people, we are
10 reasonable people, we take these initiatives, we agree
11 to it on an interim basis and lo and behold six years later,
12 10 years later an interim system becomes a permanent
13 mechanism. This is what I'm concerned about.

14 If you really want fundamental change,
15 where do you focus your energies? On the system that you
16 are highly critical of for just cause, or do you divert
17 your energies on the restoration of your own authority
18 to govern yourself?

19 As one of the political leaders, my
20 answer is, I think we direct our energies to the restoration
21 of our own jurisdiction over the administration of justice.

22 That's not to say that we can't change the existing system,
23 but there has to be some very basic understanding, some

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1 principles that we agreed to before we engage in
2 fundamental reforms with the existing system.

3 I would want myself to hear a major
4 policy announcement from the Minister of Justice and the
5 federal government making it very clear that they are for
6 reform, fundamental reform, not just of the existing system
7 but also the recognition of the inherent authority of our
8 people to their own systems of justice. Then we can begin
9 to work on both in tandem.

10 The alternative of just proceeding on
11 the basis of the system as it is and making modifications
12 there is not very attractive. It is not attractive for
13 the reasons I cited. Ratification could mean delaying
14 the development of our own system of justice.

15 You take, for example, this issue here
16 that's been framed as perhaps one of the reasons why the
17 system might be incapable of changing, something called
18 the adversarial nature of the system. The least of our
19 problems is the adversarial nature of the system. Anyone
20 can change that. Our people are doing it, *de facto* changes
21 to the adversarial nature of the system. The people in
22 St. Therese have ignored the system, placed their own idea
23 of dealing with juvenile matters in their communities

1 recognizing this for harmonic and specific purposes. They
2 referred only three cases to the adversarial system, but
3 the fact of the matter is they are dealing with the matter
4 of juvenile delinquency according to their own values and
5 priorities and consistent with their own cultural methods
6 of dealing with negative behaviour.

7 The system can change itself through
8 laws, or through new case law. You take for instance when
9 it comes to Indian child welfare, the adversarial nature
10 of that system is the least of our problems. Our big
11 problem is something called the best interests of the
12 child, the definition of that test as established by
13 legislation which, by the way, in some provinces has been
14 modified to recognize cultural considerations, but who
15 makes the determination of cultural considerations and
16 what are the cultural factors to be taken into
17 consideration? It's still very much in the control of
18 the people within the system to define the best interests
19 of the child, even with those modifications to the law.

20 Our system is more basic. Our problems
21 with the system are more basic than these questions
22 suggest, because the issue of healing, the issue of
23 punishment, of guilt and innocence are all features of

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1 any system of justice whether Indian people have it or
2 not, or other people do it. In every society there are
3 concepts of punishment.

4 In terms of the existing system, they
5 have been developed over time to deal with a highly
6 populated society. But we live in essentially small
7 communities where, as one of the speakers indicated, people
8 know exactly what is going on and there's no privacy in
9 terms of the affairs of human beings because of the fact
10 that people live in such close proximity to each other
11 and the social networks are so inter-related.

12 Our own way of life will force a system
13 to evolve that is somewhat different than the one that
14 a modern society has that's urbanized and not rural in
15 its focus.

16 I think we begin with political will.
17 We begin with what my friend Jim McCrae said, beginning
18 to work with the people in setting up systems of justice.
19 The only point of departure that I would have with him
20 is those systems of justice evolve not from the current
21 system of justice that he administers, but from a system
22 of justice that our people want recognized pursuant to
23 their own powers of self-government through their inherent

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1 right to govern themselves. Then we begin to work out
2 the mechanisms of how we relate to each other, how one
3 system functions and what the relationships will be between
4 two parallel systems of justice.

5 Those are not impractical problems.
6 Those can be resolved in a political table where the
7 Minister of Justice is present along with the Attorneys
8 General and leaders representing the Aboriginal people.
9 We can work out the mechanics of the relationships between
10 the two separate systems of justice.

11 We don't have to resolve these issues
12 about what is a better system of justice, one that is
13 adversarial or non-adversarial; one that is based on
14 punishment or healing; or one that is based on guilt or
15 innocence. Those are issues that will find answers as
16 we evolve those systems of justice. Because the basic
17 principle, and this is where I am in full agreement with
18 Jim McCrae, is that any of these systems of justice, if
19 they are going to function, have to have the support of
20 the people, so the fundamental principle is the consent
21 of the people.

22 My sense of our development right now
23 and my analysis of our political situation is such that

1 my view is that our people are more inclined right now
2 to pursue their own inherent path to the exercise of the
3 administration of justice than to allow themselves to be
4 told what to do and how to make reforms within the existing
5 system that's a cause of a lot of agony in their lives.

6

7 I will end my comments on that positive
8 note.

9 **MARC LECLAIR:** Well, thank you Ovide.
10 That was worth waiting for. Narrowing the point of
11 departure with Jim and Ovide, both are saying that
12 community-based initiatives are where you start. Who has
13 the authority? There's no need to get into some senses
14 whether you have the authority to start yourself. That
15 was a political issue which we were successful in winning
16 in the constitutional discussion, although we weren't able
17 to follow through.

18 Ovide, when you were suggesting the
19 justice ministers, do you think on some of these reforms
20 it would be possible -- without the constitutional
21 amendment -- to begin some dialogue with justice ministers
22 and attorneys general on the approach which you are
23 advocating which is community-based up?

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1 Perhaps just to put Jim on the spot, is
2 that something that he thinks would be useful for that
3 kind of dialogue to take place? It is not constitutional
4 dialogue in a sense, it is just a question of working out
5 relationships. Can that take place without a
6 constitutional process?

7 **JIM McCRAE:** If we want to insist that
8 we have to go the route that Grand Chief Mercredi is saying,
9 we are going to have to get into some rather major
10 discussions and maybe even constitutional. But also to
11 get to where we need to arrive at in a more immediate term,
12 I insist that we need to have three parties at the table.

13 The reason I insist on that is because
14 of the funding arrangements, short and long-term. But
15 I think that if there was no funding issue, in many, many
16 cases, provinces and Aboriginal communities could get
17 together and design better programs. But when it comes
18 to the funding issue, I think we need all three parties
19 at the table.

20 But on the more structural separate
21 system argument, which I believe I hear Grand Chief
22 Mercredi making, I don't see anything wrong with that as
23 a goal. I don't. But I don't see it being achieved

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1 immediately and the need is immediate. So let's deal with
2 the need and obviously the debate is going to go on for
3 some time yet.

4 Maybe we don't have to get old, Ovide,
5 on this point before we arrive at it, but it's' going to
6 take a longer time than the people -- what was it that
7 Mary Ellen called it, the average little person, the
8 Aboriginal people out there who desperately require a
9 better deal. They can't wait for Ovide and I to sort out
10 the constitutional machinations of all of this. We have
11 to get down to work. I think there's probably agreement
12 that we can do that. But I'm not discarding forever the
13 idea of discussing what it is that Ovide would like to
14 discuss. I hope he will join with me in getting on with
15 the immediate need that is there.

16 **OVIDE MERCREDI:** The point I am
17 advocating is what should be the route for the reform?
18 If we are talking about reforms to the administration
19 of justice, what should be the route for the reform?
20 Should we be saying to the Aboriginal people, since we
21 have an existing system that hasn't served you well, which
22 we believe can be modified and adapted to serve you better,
23 let's create a branch that becomes the route for the reform.

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2

The alternative, which is one I
advocate, is that while I see the necessity of reform of
the existing system and that should be worked in tandem
with the proposal I am making, is that the route for reform
should be the inherent right to self-government.

7

You don't need the explicit recognition
of the inherent right in the constitution to begin to make
fundamental changes in the administration of justice.
What you need is the political will to recognize that there
is this pre-existing right and that you begin to work with
the people and their leaders to implement that right in
practical matters involving things like the administration
of justice.

15

This principle can be extended to other
more troublesome areas for my friend here in the area of
gaming, because if you take that approach you give a
political recognition to an existing treaty and Aboriginal
right then you eliminate the friction, you eliminate the
resistance and create an environment of positive energy
so that people can begin to work for practical solutions
on these troublesome problems that we all face together,
because we face them together.

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1 If laws have to be modified then laws
2 should be modified, but it's how it's done that's
3 important. The *Criminal Code* can be used as a vehicle
4 for reform, particularly in gaming, but also in this area
5 of the administration of justice if it doesn't diminish
6 the inherent right to self-government.

7 It is possible for Parliament to
8 recognize the inherent right through legislation by doing
9 it in a way which does not grant the inherent right through
10 legislation, you see. In other words, essentially vacating
11 the field, removing its own jurisdiction by creating an
12 opportunity for the Indian people to fill the vacuum in
13 accordance with their own values and priorities.

14 So we have the political and legal
15 instruments to make reforms now in the administration of
16 justice. So to argue for constitutional reform, explicit
17 recognition of the right, is to ignore the legal
18 instruments available to us and one of them is the existing
19 treaties in western Canada. Upon our reading of the
20 treaties from the spirit and intent of the Indian
21 perspective, there is a system in there for policing, there
22 is a system in there for the administration of justice,
23 there is a system there that recognizes the importance

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1 of applying laws, not just white law but Indian law. It
2 doesn't say specifically Indian law, it doesn't say
3 specifically white law, but it refers to laws.

4 I think we can make progress by being
5 more creative in terms of our respective approaches to
6 these problems.

7 We will make less progress if we try to
8 impose a system on the Aboriginal people and argue
9 adaptations to take into account cultural considerations,
10 because it is not just cultural considerations that our
11 people want. They want their self-esteem and part of that
12 self-esteem comes from the realization that you have the
13 power as a people to govern yourself and that one track
14 of reform negates that self-esteem.

15 So what is more important? Preserving
16 a system with modifications, or working with the Aboriginal
17 people to make advances and to begin to implement their
18 inherent right? My answer is that most governments, in
19 fact I think all governments recognize the inherent right
20 to self-government.

21 There is a political decision that was
22 made by all governments in the Charlottetown Accord that
23 we should take advantage of, rather than retrench by

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1 applying little policies and maintaining the existing
2 laws, let's use that avenue for the reform that we all
3 agreed to do.

4 **MARC LECLAIR:** Thank you. Well, as
5 usually, we have run out of time. I just want to give
6 some comfort to the commissioners. The answer to the
7 question, can the system be adapted to correct its
8 shortcomings is yes and no. And what else would you expect
9 from this many lawyers in the room?

10 Generally speaking though there is a
11 decided opinion that the justice system or justice should
12 be repatriated to the Aboriginal community. That is of
13 critical importance and Ovide has reminded us that the
14 means to achieve that are very important. In fact, if the
15 proper means are not adopted then it's not likely we can
16 achieve the ends.

17 On behalf of the room, I want to say that
18 I enjoyed this session a great deal and I want to thank
19 all of the panellists. It is time for lunch.

20 **MURRAY SINCLAIR:** Thank you very much,
21 Marc, and thank you very much panellists, thank you
22 participants. I just want to commend you all for
23 restraint, particularly some of you. I wasn't quite sure

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1 where you were over there.

2 I want to ask if the next panel would
3 be available to commence at 1:30. We are going to commence
4 right on time.

5 I would point out to those of you who
6 have been asking for summaries of yesterday's discussion,
7 the summaries from yesterday are available and will be
8 distributed as you leave the room from the registration
9 table. Please take a copy.

10 The theme for lunch is all for lunch and
11 lunch for all --

12 ---Luncheon adjournment at 12:45 p.m.

13 ---Upon resuming at 1:45 p.m.

14 **MURRAY SINCLAIR:** My apologies to you
15 for interrupting a wonderful meal by work, but I assure
16 you that I am used to the fact that I have no friends because
17 I am a judge and accordingly the fact that all of you now
18 hate me makes no difference to my sense of identity.

19 We have a deal of work to do and so I
20 want to make sure that we get it done. In keeping with
21 that, I would like to begin with the second panel of this
22 afternoon. I might indicate that the audience are
23 universal in their request, panel, that we want some lively

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1 discussion and lively debate there.

2 After you are finished, we are going to
3 take a short break for coffee, so keep that mind and as
4 well we are then going to have a full discussion from all
5 participants from the floor beginning at approximately
6 3:30, if we can do that.

7 I would like this panel to consider
8 wrapping its session up about 3:30 p.m., if you can look
9 at that as a target. If you go over, just remember that
10 you are cutting into the time for the afternoon discussion
11 by all participants.

12 This panel will be moderated by Don Worme
13 who was, until recently, the President of the Indigenous
14 Bar Association, is a practising lawyer in Saskatchewan.

15
16 On the panel we have with us Mr. Gilles
17 Favreau, Deputy Commissioner of Operations for the Royal
18 Canadian Mounted Police; James Graham, Assistant Deputy
19 Minister, Corrections Branch, Ministry of the Attorney
20 General in the province of British Columbia; Mr. Frank
21 McKay, Chief of Police of the Dakota-Ojibway Tribal Council
22 Police Force and President of the First Nations Chiefs
23 of Police Association; Carol Montagnes, Executive

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1 Director, Ontario Native Council on Justice, staff member
2 of the Ontario Native Council on Justice since 1984 and
3 Vice-President, Aboriginal Legal Services of Toronto; Mr.
4 Gerry Morin who is a lawyer in the province of Saskatchewan
5 and has degrees in social work and in law; Mr. Allan Cawsey,
6 Justice of the Court of Queen's Bench of Alberta, former
7 Chief Judge, Provincial Court of Alberta, Chairman of the
8 task force on the Criminal Justice System and its impact
9 on the Indian and Métis people of Alberta; Mr. Jean-Charles
10 Coutu, judge of the Quebec Superior Court and coordinator
11 for the court circuit system for the Aboriginal districts
12 in 21 Cree and Inuit villages in the James Bay, Hudson
13 Bay and Ungava Regions; Régis Larivée, Native coordinator,
14 office of the Deputy Minister, Public Security, province
15 of Quebec, Vince Del Buono, president and founder of the
16 Society for the Reform of Criminal Law in British Columbia;
17 Sheila Genaille, president of the Métis National Council
18 of Women, research director for the Métis Nation of Alberta
19 and an adviser with the Constitutional Reform Committee;
20 James J. Igloliorte, Provincial Court Judge of
21 Newfoundland and Circuit Court Judge for Labrador since
22 1985 and Larry Chartrand, director, Indigenous Law Program
23 at the University of Alberta and Vice-President of the

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1 Indigenous Bar Association, a member of the board of
2 directors and justice committee chairperson for the
3 Indigenous Bar Association.

4 That's our panel for this afternoon. I
5 welcome you all and again I want to thank all of you for
6 volunteering to participate on this panel. I now turn
7 matters over to our moderator, Mr. Donald Worme.

8 **DON WORME:** Thank you very much, Mr.
9 Chairman and ladies and gentleman at the panel here and
10 of course ladies and gentleman in the room. Welcome to
11 the Murray Sinclair show!

12 Indeed, welcome to the second round-
13 table discussion on justice issues. We have of course
14 very eminent guests here. We have all heard something
15 of their backgrounds. Our obligation and indeed your
16 obligation and duty at this point is to share some of your
17 views on the various justice issues with the Commissioners
18 that will ultimately assist them in shaping their
19 representations at the end of the day.

20 The issue that we are looking at today
21 is, can the existing system be adequately reformed? We
22 have heard some discussion on that this morning already.

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1 Perhaps before we get there, however,
2 in the way things have progressed so far, I would like
3 to tell a short story.

4 It was said by a very wise man -- in fact
5 quite recently, Murray just told me this about 10 minutes
6 ago -- that no matter how far you travel you will not get
7 to the place you want to be at if you are on the wrong
8 road. We got some sense of that this morning. We had
9 a rather unusual occurrence. I say it is unusual in the
10 sense that we had Minister McCrae and Ovide Mercredi
11 virtually agreeing on a subject. I suppose that is not
12 entirely unusual, but they did both agree that fundamental
13 changes are necessary, although there was bit of a
14 divergence at that particular point.

15 What we want to do here, panel, today
16 is talk a little bit further about that, to maybe discuss
17 specifics of more precisely what is fundamental change.

18 I am cognizant of the comment made by Minister McCrae
19 that we ought not to engage in trying to map out or try
20 to structure that mechanism of Aboriginal justice at this
21 point. Nonetheless, I think it is incumbent upon to us
22 add a little more flesh to the skeleton.

23 I am going to Gerry Morin if perhaps he

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1 might start things off and if he might address us, again
2 as closely as possible stick to the issues, please.

3 **GERRY MORIN, DEGREES IN SOCIAL WORK AND**

4 **LAW:** One of the areas that I want to look at in addressing
5 these questions certainly is relating to Treaty 6 areas
6 which is basically the traditional lands that a lot of
7 people recall covers parts of Sohitsuan (PH) which other
8 people then call Saskatchewan.

9 What are some of the things, the existing
10 system in terms of administrative aspects. One of the
11 things I look at is policing. Policing is one of the
12 components with respect to the criminal justice system
13 along with corrections and the court. I think the centre
14 of all of it is the community. Only recently, the
15 community has also now included the Aboriginal community.
16 Before that, "community" was a generic term that seemed
17 to almost cover everybody. I think only in recent times
18 the pendulum has started to swing to recognize that there
19 are pockets of community that have not adequately been
20 represented within that framework.

21 Most recently, I know that policing has
22 been scrutinized within the general public and it has
23 always been interesting to me to look at that whole aspect

1 and say in rural communities, northern communities the
2 RCMP or any police force do the investigation and they
3 are supposed to do it impartially. But then they become
4 the prosecutors. How impartial is that?

5 When you look at those type of systems
6 in play, what have been some of the major underlying
7 problems with respect to the Marshall Inquiry, for
8 instance? Undue influence by the police was certainly
9 one area. That's couching the term that people were being
10 bullied in certain situations.

11 In Milgaard there are now some questions
12 -- and that's in the non-Indian community -- some questions
13 with respect to policing have arisen. The Nepoose case
14 in Alberta, undue influence, not bringing all the evidence
15 forward.

16 How impartial are they with respect to
17 this particular system when they play both roles in terms
18 of not only being the investigator but to make sure show
19 that the prosecution has all the evidence to prosecute
20 the person and perhaps in some instances hide or ignore
21 what they don't believe fits into their theory as to what
22 will constitute guilt? So not all the evidence is brought
23 in.

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1 In terms of corrections, I have recently
2 had the opportunity to do an investigation in a
3 correctional centre in Saskatchewan. That report has now
4 been made public. When I heard terms like "tar pot" and
5 "wagon burner", being terms used within a correctional
6 centre, I looked at it and said, these people that work
7 in a correctional centre are the front line apart from
8 the enforcement aspect. How are people to feel that
9 they're going to correct themselves within that particular
10 framework when I continually hear those type of negative
11 comments? When you hear the most derogatory terminology
12 being used, how are they going to feel good about themselves
13 in leaving this particular facility?

14 One of the aspects of doing that
15 investigation was of course dealing with the union, to
16 a certain extent, and it was interesting to note that the
17 Aboriginal employees did not bring their union shop
18 steward, whereas the non-Aboriginal participants brought
19 in their shop steward. It set the tone for how much
20 participation we were going to get in looking at that
21 particular issue of racism. Racism in that small
22 confinement of what we call correctional centre.

23 I'm just touching on some areas, because

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1 this question relates to different areas within it.

2 One of the other areas that I am involved
3 in and it is something that is not complete yet is the
4 Nerland LaChance inquiry. Here is a particular process
5 that has been set up to look at the question of racism,
6 whether it played any part in the killing of Mr. Leo
7 LaChance. We all know one of the aspects of this
8 particular case dealt with the informant issue. The
9 courts have stated that the interests of the public
10 override what other interests there might be in resolving
11 that particular issue. The question begs the question,
12 I suppose, who is the public in that situation?

13 I heard one gentleman talk earlier this
14 morning about we cannot revive things that have happened
15 in the past with respect to being able to identify what
16 it is we need to develop in order to make things work and
17 more definitively into parallel systems or otherwise.
18 Courts all the way to the Supreme Court rely on the notion
19 of a law that was developed in the 1770s of Haida Indian
20 foremen. Now what older law is there? I suppose in that
21 sense common law, if you want to call it.

22 I suppose there is also another
23 competing interest: man cannot profit from his own wrongs.

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1 In looking at that whole issue, one of the fundamental
2 questions that bothered the Prince Albert Tribal Council
3 and David LaChance, the brother of the late Leo LaChance
4 was that if the question could not be answered what were
5 we doing there? Are we wasting our time in involving
6 ourselves in a process that does not want to deal with
7 the truth? What is the truth in relation to that
8 particular area? That was the question they had to deal
9 with.

10 They resolved it in their own manner in
11 a manner that they felt all right with in terms of relying
12 on what they say is their traditional and oral history
13 of dealing with everything on the table in order to get
14 at the truth.

15 In other words, what is justice? To get
16 at justice you must get at all the facts. If you are going
17 to couch your law on the basic premise of the interests
18 of the public, you must also include that pocket of the
19 community which is a minority within that framework.

20 I remember the questions being posed
21 with respect to my apparent lack or dissertation of the
22 law, but I remember saying, common law as it now stands,
23 we never had a role in that common law because it came

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1 from England, it came from other parts. We never had an
2 opportunity to develop in common law principles. We have
3 a short history in relation to the common law as relates
4 to the major judicial circles. It is only since the 1960s
5 we have had a vote in this particular community, so that's
6 short in that sense of having played a role in what
7 particular influences there are in our communities -- 32
8 years, that's very short history in relation to being able
9 to participate in things that affect you, so common law
10 we were not a part of it.

11 I suppose we look at it and say we don't
12 agree with it and we do things that go to the truth of
13 the matter. So if one is to hide behind law and not deal
14 with the truth, there is something fundamentally wrong
15 in looking at justice or the equity of it, if one can look
16 at it that way.

17 Those are my comments in order to try
18 and stay within the framework, Don.

19 **DON WORME:** Thank you very much Gerry
20 for those short comments. I guess it has often been said
21 that courts are courts of law and not courts of justice.

22 In that sense I take it your response to the question
23 is that the existing system is not able to be adequately

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1 reformed.

2 I noted you had already made the comment
3 that cast, I suppose, some aspersions at least on the
4 delivery or impartiality of the delivery of policing
5 service.

6 I am going to ask Gilles Favreau if he
7 would respond to that and perhaps Frank McKay, you might
8 also have a view and again looking at the issue of whether
9 or not the existing system can be adequately reformed.

10 **GILLES FAVREAU, DEPUTY COMMISSIONER OF**
11 **OPERATIONS, ROYAL CANADIAN MOUNTED POLICE:** I won't waste
12 much timing answering or trying to get the element out
13 of this alphabet soup that was just announced because most
14 of those cases which represent this alphabet soup, whether
15 we like it or not, are still in front of the courts and
16 as a peace officer I am in a real bad spot to discuss them.

17 I prefer to look at what we have been
18 trying do for the last couple of days here and what we
19 have been, as an organization, the RCMP in particular,
20 trying to do for the last four or five years, at least
21 since 1988 with the Head report. We didn't need anybody
22 to tell us that something was wrong and we started looking
23 and the Head report which is the map right now for

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1 Aboriginal policing for the RCMP came up with about 100
2 recommendations.

3 I want to get back more to the question
4 as to can it be reformed? It has been said already several
5 times that the justice system as it is now is not serving
6 anybody very well. I think because over time and in
7 particular in the last three years or so it has become
8 more and more and more complicated and only some -- and
9 I say "some" -- lawyers would agree to it, would agree
10 between themselves. I was very surprised in the last two
11 days that I was hearing lawyers agree between them because
12 in a 35 year career I could never get a legal opinion from
13 two lawyers that would be identical. So that's how
14 complicated our system has become.

15 We have across Canada already some
16 diversion programs in several reserves in several towns
17 that are working extremely well and we are part of this
18 as peace officers. I think it has been said this morning
19 by the Attorney General and also by Mr. Mercredi if you
20 look at both of their answers, we have to move ahead in
21 finding solutions now and the long-term solutions will
22 have to follow later because we could wait forever.

23 What I am saying is that, yes, there were

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1 some terrible mistakes made in the past. I think that
2 previous meetings of that sort here have addressed that
3 and we won't come back to that. We already did our *mea*
4 *culpa, mea culpa, mea maxima culpa*. I will not do it for
5 an eternity.

6 What I am trying to do now is to address
7 the future and how do we police with the community instead
8 of policing the community. We have to move ahead in
9 finding new ways of being more sensitive to the community.
10 We have to go to alternate programs.

11 However, I think there will always be
12 a need for a general system where everybody could find
13 his place in, because a lot of the remarks that we have
14 been hearing for the last two days, some of them are not
15 really realistic. There are some real criminals out
16 there. You know, you are talking about breaking windows
17 and painting walls of the school. There are other things
18 in this world going on that have to be addressed and you
19 wouldn't address them by saying prayer to them or telling
20 them how deceived you are or by trying to dump them into
21 another community. These are factual problems that have
22 to be addressed. Everybody who is working in this very
23 imperfect justice system of ours realizes that at some

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1 point in time we have to come together and say well, there
2 are some very serious cases, and we should address them
3 or agree to address them in the same fashion, and there
4 are less serious problems in communities that should be
5 addressed differently.

6 As an example, we have one municipality
7 or a reserve that we police and there are about 700
8 inhabitants and we are making 800 arrests per year. So
9 you could say, well, Jesus, we are making too much arrests,
10 but the problem is much deeper than that, so we have to
11 address that as well.

12 I will stop there because I don't want
13 to take the floor.

14 **DON WORME:** Thank you very much.
15 Perhaps we will give you an opportunity to respond further.

16 I am not as certain perhaps that there is a criminal
17 lurking behind every tree on every reserve. Maybe Frank
18 you might tell us a bit more about that, or is that in
19 fact the case?

20 **FRANK MCKAY, PRESIDENT OF FIRST NATIONS**
21 **CHIEFS OF POLICE ASSOCIATION:** Thank you, Mr. Worme.

22 I want to make a comment regarding our
23 police department. Initially the reason why we developed

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1 our police force back in '77 was we weren't satisfied with
2 the RCMP service that we had in our area. The simple fact
3 is that they don't understand our culture and traditions
4 and they don't speak our language; they don't live on our
5 reserves and they don't understand us. We decided that
6 we had to have our own police department.

7 I want to make reference to Grand Chief
8 Ovide Mercredi's comments that it takes political will
9 to make the change and at that time the NDP government
10 in Manitoba had the political will to make the change and
11 assisted us and guided us to develop our police force and
12 15 years later we are still here. We didn't make too much
13 progress as far as getting proper funding and all that,
14 but we are still surviving.

15 But back to your comments, the prayers
16 and counselling by our elders does work. We have
17 experienced that. We have talked to our own elders, our
18 own people that are respected in our community. When they
19 speak to our young people, they listen, they tend to listen.
20 They don't just speak to them in 30 seconds and hope that
21 wonders will happen and that they would change, but over
22 a period of time they do change.

23 I think that our elders are just as

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1 capable as the psychologists that are available in the
2 white world. We have our own psychologist and I think
3 our elders are just as capable of providing that
4 counselling service to the people in trouble on our
5 reserve.

6 Most of the time maybe it's alcohol
7 abuse, or whatever it is, but who doesn't have alcohol
8 abuse in society? We all need to be counselled at
9 different stages of our life. Ourselves, as police
10 going on the reserve, we take it upon ourselves to do some
11 of that counselling ourselves. Just because we are
12 policemen on the reserve, it doesn't mean we are going
13 to exclude all the other social non-policing matters to
14 somebody else. We are there as a community member and
15 we provide counselling wherever we need to do that.

16 If somebody has a disfunctioning family
17 setting, like if they want to talk to us, well we do that.

18 It is not a police matter, but we are still doing our
19 job because we are part of that community. My policemen
20 live right on the reserve. Their kids go to school with
21 maybe a problem family. They come and visit us we and
22 we visit them. If we hear that they need some kind of
23 help, we do that.

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1 That's the big difference between our
2 Indian policing department versus the RCMP or city police
3 is that non-policing matters they won't get involved in.
4 However, we as an Inuit police department, we get involved
5 in all areas of social or any kind of problems on the
6 reserve.

7 So I would like to say that it is working
8 and hopefully the governments can see it and support us
9 financially and morally.

10 **DON WORME:** I wonder if you might just
11 respond as well then to something that Deputy Commissioner
12 Favreau mentioned. He said that we are not talking about
13 breaking windows. We are not taking about graffiti on
14 walls. What about the more serious things, and they are
15 in fact happening in our communities? For example, we
16 had the people from the Native Women's Association speaking
17 this morning on some of those kinds of issues.

18 **FRANK MCKAY:** Although in our
19 experiences in the last several years, we have little major
20 crime on our reserve, murders and that kind of major crime.
21 However, we do have social problems such as spousal
22 assaults and things like that. It is all as a result of
23 the alcohol abuse. We work with the child and family

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1 services, as well as the alcohol counsellor that we have
2 on the reserve and we all have a major part in
3 rehabilitating these people as a family unit. They do
4 receive counselling from all the social agencies
5 on-reserve as well as ourselves as policemen and we don't
6 really try to evict people out of the community or anything
7 like that, we just try to work with them.

8 However, I guess the outside white
9 people's courts have to deal with these people. However,
10 I don't think in my experiences that they have thought
11 of their own community.

12 **DON WORME:** In your perspective, can the
13 existing system be adequately reformed by having policemen
14 go beyond simply enforcing the law, as it were, and taking
15 on these other roles?

16 **FRANK McKAY:** We are doing that. I
17 think that this is the way us Indian people want to go.
18 Just because you are a lawyer, doesn't mean that's all
19 you are going to do. You have a place in the community
20 and not only in the area that you are a professional in
21 it, but you do have a concern for the whole community
22 setting, so as a result you take it upon yourself do
23 whatever necessary to provide some help to the community

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1 to make it a better community.

2 **GILLES FAVREAU:** Just to make one point
3 from what Frank was saying, I think he has touched on the
4 point the RCMP did not understand us, et cetera. That's
5 exactly true. One big mistake that the RCMP did over these
6 years was not to emphasize the necessity of recruiting
7 Native people to do policing on the reserve. We were a
8 system of people walking into a village staying there maybe
9 for two years then changing around, or we were some sort
10 of a patrol that would go in, try to solve a problem and
11 get out.

12 You might be interested to know that we
13 have over 400 Native policemen and women now in the force
14 and we are aiming for about 1,500 and we have programs
15 to recruit more natives. It is a problem and we should
16 have seen this a long time ago, you are right.

17 **DON WORME:** What about that, Justice
18 Cawsey? Adding Native police forces, is that the kind
19 of reform that Aboriginal people were talking about when
20 you were doing the task force work?

21 **ALLAN CAWSEY, CHIEF JUDGE PROVINCIAL**
22 **COURT OF ALBERTA, CHAIRMAN OF THE TASK FORCE ON THE CRIMINAL**
23 **JUSTICE SYSTEM AND ITS IMPACT ON THE INDIAN AND MÉTIS PEOPLE**

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1 **OF ALBERTA:** Some of them were. We ran into good
2 Aboriginal police forces, we ran into bad ones. Alberta
3 has very little experience with Aboriginal police forces.
4 We have one on the Blood Reserve, we have one on the Bull
5 Reserve, and one being developed in the Lesser Slave Lake
6 area, but generally, we had so little experience with
7 Aboriginal police that I wouldn't be in a position to pass
8 an opinion on it.

9 We did get a feeling from the people that
10 we visited that they would like to have police who are
11 more culturally sensitive. On the other hand, we went to
12 the penitentiaries and jails and the young offenders
13 centres and we heard over and over again, "We want nothing
14 to do with band police." They used the expression, "if
15 something happens we want a real policeman," and that is
16 what they told us.

17 That's the only comment I would have to
18 make on that.

19 **DON WORME:** Judge Coutu.

20 Perhaps you would don your translation
21 devices.

22 **JEAN-CHARLES COUTU, JUDGE OF THE QUEBEC**

23 **COURT:** Je m'adresserai à vous en français tout d'abord

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1 pour vous dire que je ne suis pas un juge de la Cour
2 supérieure tel qu'on l'a annoncé, mais je suis un juge
3 de la Cour du Québec, qui est au niveau d'une cour
4 provinciale, mais qui s'appelle maintenant la Cour du
5 Québec depuis quelques années. Depuis 18 ans, je siége
6 dans les communautés inuites et crie de la Baie James,
7 de la Baie d'Hudson et de la Baie d'Ungava.

8 Je dois vous dire que lorsque j'assiste
9 à des réunions comme celle-ci et lorsque j'ai à prendre
10 la parole, j'ai l'impression de toujours me répéter, parce
11 que depuis 1983, j'essaie de convaincre tout le monde que
12 nous devons adopter de nouvelles voies, de nouveaux modes,
13 de nouveaux systèmes de justice pour les communautés
14 autochtones du Québec, et principalement celles dont je
15 me suis occupé, qui sont 21 communautés qui sont dans le
16 nord du Québec, et également ce qu'on appellerait le sud
17 du Québec, mais qui est également à 400 milles de Montréal.

18 Il y a également plusieurs autres communautés, de sorte
19 que dans ma région, nous avons à nous occuper au-delà de
20 30 communautés autochtones.

21 Je dis que j'ai l'air à me répéter, et
22 ceci m'amène à la question numéro 1 b), les difficultés
23 d'adaptation du système actuel tiennent-elles plutôt aux

1 aspects administratifs du système existant, telle la
2 police, et cetera? Alors pourquoi, depuis 1983, si
3 personnellement je fais des efforts pour essayer de trouver
4 des systèmes parallèles ou de nouveaux systèmes pour les
5 communautés autochtones, comment se fait-il que nous ne
6 soyons pas plus avancés.

7 D'ailleurs, je dirais que tous ceux qui
8 oeuvrent dans le domaine de la justice chez les
9 Autochtones, que ce soit les procureurs de la Couronne,
10 les procureurs de la Défense, également beaucoup
11 d'officiers de justice qui travaillent dans les ministères
12 sont convaincus qu'il faut trouver de nouveaux modèles
13 d'administration de la justice.

14 Qu'est-ce qui se passe? Pourquoi cela
15 n'arrive pas? Je pense qu'il y a d'abord et avant tout
16 un manque de volonté politique. Je pense que cela c'est
17 primordial. Et deuxièmement, une certaine ignorance des
18 niveaux très supérieurs de la fonction publique, qui sont
19 très loin de ces problèmes. Les Autochtones du Québec
20 sont 50,000, sont donc une très petite portion de la
21 population, et électoralement, ce n'est pas tellement
22 rentable. J'imagine que c'est pour cela. J'essaie de
23 trouver des causes.

1 Donc, je pense que ce qu'il faut c'est
2 un changement dans les attitudes et, ce qu'on peut espérer,
3 que les rapports de cette Commission permettront d'ouvrir
4 les yeux et les oreilles de ceux qui doivent entendre et
5 de ceux qui doivent voir, et de ceux qui ont à prendre
6 des décisions.

7 D'autre part, si on revient aux
8 questions fondamentales qui sont posées par la Commission
9 à cette table ronde, doit-on trouver des solutions qui
10 sont indépendantes du système judiciaire actuel? Quant
11 à moi, je suis d'accord avec ce que M. John Giokas nous
12 disait ce matin, dans le quatrième point de son étude.
13 Les solutions autochtones ne pourront pas être
14 indépendantes du système judiciaire actuel, au moins au
15 début.

16 Et par là, je dis que même si demain
17 matin, nous décrétons que toutes les communautés
18 autochtones sont absolument libres d'adopter le système
19 de justice qu'il veulent et adapté à leur situation, je
20 ne pense pas qu'ils pourront aussi vite que cela prendre
21 en cause tous les crimes qui sont actuellement devant les
22 cours, et ils devront faire face à des situations quand
23 même qui sont au-delà des simples méfaits et des simples

1 cas, tel que disait mon ami Donald tantôt. Ils auront
2 à faire face à toutes les histoires d'horreur que nous
3 entendons devant nos cours dans les relations entre mari
4 et femme, les enfants qui sont agressée, les trafics de
5 stupéfiants et j'en passe. Et demain matin, il faudra
6 qu'ils fassent face à tous ces problèmes. Je ne pense
7 pas que les communautés qui sont de petites communautés
8 aient les armes nécessaires demain matin pour s'occuper
9 de tous ces problèmes.

10 C'est donc un long processus dans lequel
11 nous devons nous engager. Je pense qu'il faut redonner
12 aux communautés le contrôle social, parce qu'en fait, c'est
13 de cela qu'il s'agit, retrouver le contrôle social qui
14 a été perdu au cours des ans et qui a, pour de multiples
15 raisons, été donné d'abord aux missionnaires, qui a été
16 donné à la Gendarmerie royale, qui un peu plus tard a été
17 donné à la Sûreté du Québec, et qui finalement a été donné
18 aux juges qui ont commencé il y a quelques dizaines d'années
19 à faire le tour des communautés.

20 En réalité, nous ne pouvons par le
21 système de justice régler les problèmes sociaux. Il
22 faudra que les gens sur place prennent en main leur
23 destinée, petit à petit assument des responsabilités dans

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1 le domaine de la justice par de multiples programmes que
2 l'on pourra instituer. Il faudra aider à ces communautés
3 dans cette démarche et éventuellement, dans un futur qui
4 est plus ou moins lointain, ils pourront peut-être assumer
5 l'ensemble de l'autorité, si vous voulez, judiciaire ou
6 l'autorité pour assurer ce contrôle social-là. Mais je
7 ne pense pas qu'ils puissent le faire immédiatement, de
8 sorte que pour moi, je pense que l'on ne devrait pas -
9 on ne pourrait pas de toute façon - immédiatement organiser
10 un système qui soit complètement indépendant du système
11 judiciaire actuel.

12 **DON WORME:** Thank you, Judge Coutu.
13 You had mentioned something about there being
14 approximately 50,000 Aboriginal people in Quebec and
15 requiring, as a consequence of that, some kind of economy
16 of scale. I wonder if any of the other people around the
17 panel here might have a comment on that.

18 You also talked about the requirement
19 for political will and I think that's something that had
20 been echoed here in the previous panel.

21 Lastly, one comment that I think caught
22 Mr. Chartrand's attention was the social control that has
23 been seized or rather given by Aboriginal people, given

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1 to the church, given to the Surete du Quebec and whoever.

2 I wonder if the view of the Métis nation is the same in
3 the sense that social control was given away.

4 Larry, I am going to ask you to comment
5 on that. But before that, I would ask Régis Larivée, the
6 co-ordinator of Native programs if he would make a comment,
7 please.

8 **RÉGIS LARIVÉE, LEGAL ADVISOR, OFFICE OF**
9 **THE DEPUTY MINISTER, PUBLIC SECURITY, QUEBEC:** À titre
10 de responsable des dossiers en matière autochtone, en
11 sécurité publique pour le Québec, je suis à la fois un
12 peu dans l'ambiguïté d'entendre tout ce que j'entends
13 depuis deux jours.

14 D'une part, je réalise qu'il y a un écart
15 considérable, du moins de ma perception de ce qui se passe
16 au Québec versus ce qui se passe dans le reste du Canada.

17 Je vais immédiatement, en terme de services policiers,
18 étant responsable de l'implantation des services policiers
19 dans chacune des communautés au Québec, actuellement nous
20 avons déjà plus de 160 policiers autochtones qui agissent
21 dans toutes les communautés. Autrement dit, actuellement
22 il n'y a que deux communautés qui n'ont pas de services
23 policiers proprement autochtones. Dans certaines

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1 communautés, ça fait déjà depuis plus de dix ans que le
2 système fonctionne.

3 Par contre, on réalise aussi les
4 problèmes que cela nous amène. Est-ce que l'on doit avoir
5 un système complètement parallèle? Du moins, en terme
6 de services policiers, cela m'apparaît difficile de dire
7 que l'on pourrait avoir un système complètement parallèle
8 de celui qui existe. Il faut réaliser que la moyenne au
9 Québec des communautés, c'est 500 de population. Il n'y
10 a pas actuellement une seule communauté, autre
11 qu'autochtone, au Québec qui aurait les moyens de se payer
12 un service policier tels que ceux qui sont présentement
13 en place dans les communautés autochtones.

14 Évidemment, cela amène aussi qu'il y a
15 plusieurs formes de spécialisation qui nécessitent une
16 harmonisation entre les différentes forces policières.
17 C'est-à-dire qu'il est important, je pense, que les
18 services policiers autochtones autonomes puissent
19 travailler en étroite collaboration avec les autres
20 services policiers existant sur le territoire, que ce soit
21 la GRC ou que ce soit la Sûreté du Québec, dans le cas
22 du Québec.

23 Il y a des expertises très importantes,

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1 ne serait-ce qu'au niveau des enquêtes pour les crimes
2 majeurs, des drogues, plusieurs cas au niveau de la
3 violence, et cetera, qui nécessitent cette
4 collaboration-là. Il est important qu'ils puissent
5 fonctionner ensemble.

6 Mais tout en fonctionnant ensemble, je
7 pense que - du moins nous, c'est ce que nous avons choisi
8 - c'est de remettre entre les mains des Autochtones
9 l'entière responsabilité du contrôle de leur service
10 policier, ce qui m'apparaît être la voie à suivre, pour
11 différents commentaires qui ont été mentionnés. M. McKay
12 en a parlé tout à l'heure. Je pense que ceux qui sont
13 le mieux placés pour comprendre la réalité de la
14 communauté, c'est encore ceux qui l'habitent.

15 Donc, à ce niveau-là, je pense que l'on
16 a déjà rejoint ces objectifs-là et nos négociations
17 actuelles ne sont pas dans le but de remettre cela en
18 question, mais au contraire d'accentuer ce processus
19 d'autonomie et, évidemment, aussi de donner les ressources
20 nécessaires pour y arriver.

21 J'aimerais mentionner, par contre, que
22 tout en faisant cela, on réalise - on l'a réalisé
23 particulièrement dans le Grand Nord, chez les Cris - que

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1 le policier malheureusement, si on fait l'erreur d'être
2 les premiers sur le terrain à agir, il est également le
3 plus vulnérable, parce que non seulement on lui demande
4 d'être policier, mais on lui demande d'être travailleur
5 social, d'être ambulancier, d'être taxi, d'être à peu près
6 tout ce qui peut être fait dans la communauté, étant
7 peut-être le plus visible. Cela ne rend pas
8 nécessairement sa tâche facile.

9 En l'occurrence, je pense qu'au niveau
10 de la Commission, l'espoir que je fonde - et je rejoins
11 ce que le juge Coutu disait là-dedans - c'est que cela
12 puisse créer une volonté politique de mettre en place les
13 outils nécessaires. Sans être un système parallèle, il
14 faut absolument que le système soit adapté complètement
15 à la réalité autochtone. Et la meilleure façon de
16 l'adapter, c'est que ce soit les Autochtones eux-mêmes
17 qui le définissent et qui l'implantent. Je pense que les
18 niveaux gouvernementaux ne devraient servir qu'à être des
19 facilitateurs dans ce sens-là et de s'assurer que l'on
20 est capable de faire le joint entre les deux systèmes.

21 Mais j'insisterais sur ce point-là, il
22 n'y a pas de possibilité... on peut donner les meilleurs
23 services policiers, vous pouvez donner des services

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1 correctionnels adaptés, mais s'il n'y a pas un ensemble
2 de l'appareil de justice qui agit en même temps,
3 c'est-à-dire que si la justice continue de provenir de
4 l'extérieur, nos implantations au niveau des services
5 policiers n'auront servi à absolument rien. Il faut
6 absolument que cela se fasse ensemble.

7 **DON WORME:** Thank you, Mr. Larivee.
8 Sheila Genaille, would you speak to that
9 issue: Aboriginal people should not be identifying a
10 system. I guess a system that is either going to be
11 reformed within the present system or a system from within
12 the community. What does the Métis nation say on that?

13 **SHEILA GENAILLE, PRESIDENT OF THE MÈTIS**
14 **NATIONAL COUNCIL OF WOMEN:** Some people on various panels
15 have started off with a small joke. I'm going to start
16 off with a true story and for me and my people it is a
17 sad story.

18 I would like to begin by saying in the
19 last couple of couple of days we have heard from the Inuit
20 people about their various customs and presenting papers.

21 We heard from various Indian nations on the panel giving
22 papers. But where were the Métis?

23 In this country of Canada there are three

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1 Aboriginal groups recognized in the Canadian constitution:
2 they are the Indian people, the Inuit people and the Métis
3 people.

4 Six weeks ago the Métis National Council
5 and the Métis National Council of Women, who I represent,
6 met with co-chair Dussault expressing our concerns about
7 Métis people. At that time he assured us that changes
8 would be made to make sure that the Métis voices would
9 be heard. Well, the changes haven't been made.

10 The Métis people will no longer tolerate
11 to be marginalized by this Royal Commission. We will no
12 longer tolerate being excluded from this Royal Commission.
13 We will no longer tolerate being overlooked, or a week
14 prior to a round table such as this being called in and
15 saying, "You are going to participate." We will no longer
16 tolerate that.

17 We demand changes. We don't demand
18 these changes tomorrow, next week, next month. We demand
19 them immediately. If Yvon Dumont, the president of the
20 Métis National Council was sitting beside me today, he
21 would agree with me.

22 We demand changes. We have been
23 referred to as "the forgotten people of Canada." Well,

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1 the Métis people say no, we will no longer be forgotten,
2 not by this Royal Aboriginal Commission, not by the
3 governments, not by anybody.

4 Yes, we are a relatively young
5 Aboriginal nation, but we are part of this country. Our
6 history shows that we are nation builders and we continue
7 to be that way, so we will not be overlooked.

8 I am giving notice today to the
9 Commission co-chairs, to the members and to all the staff
10 of this Royal Commission, the Métis people will not
11 tolerate this any longer. We will not tolerate it.

12 Today I'm going to speak to you as a
13 generalist. As a national president, I have to generally
14 know various issues on justice, on education, on social
15 issues. I am not an expert in any of those fields. I
16 have to know generally what is happening. I don't represent
17 one province. I represent the Métis women in Canada.

18 I am going to read to you on this justice
19 issue, and might I add, not having the Métis people at
20 this table is a gross injustice to them. Take a look at
21 the penal systems in this country. How many people are
22 in our jails? Justice Cawsey did a report in Alberta.
23 It's a darn shame that a Métis male is more likely to be

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1 in jail by the time he reaches 20 years old rather than
2 being in university, and yet this Commission does not bring
3 any of our experts in to give papers to the justices, to
4 the lawyers, to the attorneys general of this country to
5 know who we are as Métis people. That is another injustice
6 to our people.

7 This is a Royal Commission on Aboriginal
8 people. Métis are Aboriginal people in this country and
9 we demand to be heard.

10 I will read from this text that was
11 prepared for me by one of our legal experts.

12 From the Métis perspective, the short
13 answer to Question 1 is both yes and no. Yes, the criminal
14 justice system must be adapted in the short-term. Changes
15 must occur to deal with some of the impacts the system
16 has when it is applied to Métis.

17 But the answer to Question 1 is also no.
18 The problems experienced by the Métis with the justice
19 system go far beyond problems that may be remedied by simply
20 sensitizing the criminal justice personnel, indigenizing
21 the system, or adding on more Métis-like structures.

22 It is essential to implement reforms to
23 the system because it is likely that, no matter what the

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1 future holds, Métis will continue to come in contact with
2 the justice system. Although it is our goal to
3 re-establish the justice system in the immediate future,
4 we are there now. We are working towards this goal. But
5 until we re-establish our justice process, our people will
6 continue to be processed in the existing system.

7 Therefore, it is critical to implement
8 the reforms and recommendations set out in the various
9 reports and inquiries to back off or save those Métis we
10 might otherwise lose.

11 But short-term adaptive changes that can
12 or may lessen the circumstances faced by the Métis must
13 be made. They must be implemented with consultation and
14 approval by the Métis. However, implementation of any
15 reforms or tinkering with the systems must not preclude
16 any justice initiatives coming from the Métis community
17 or the evolution of our communities to self-governance.

18 We have told stories of our problems with
19 the justice system to many inquiries and commissions.
20 And might I add, when this Royal Commission was struck
21 our people was saying "not another one. We have been
22 commissioned, we have been studied, when are they going
23 to implement what we say?"

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1 We have tried to provide meaningful
2 solutions that we feel will work in the short, medium and
3 long-term. They are there for you to review.

4 The study and process of law is a study
5 of comparisons. Each case builds on another.
6 Jurisdictions borrow, adopting what is good from another
7 system, project or situation and leaving what is
8 inappropriate or unsuitable. We feel that it is likely
9 that reforms proposed in the major criminal justice reviews
10 to lessen the situation of Métis people will only affect
11 us. After all, we do not live in isolation from each other.

12 It is likely that holistic, culturally
13 appropriate modes of dispute resolution implemented by
14 the Métis will impact on persons with less power in our
15 society. Some of those may be children, the elderly, the
16 economically disadvantaged, and even non-Métis people.

17 The Métis dispute resolution models are
18 flexible and adaptable. They empower and balance what
19 might otherwise be an imbalanced situation.

20 By the way, in the mainstream system,
21 for example, people comment that the quality of justice
22 services and results achieved is directly proportionate
23 to the amount of money you have to spend on a lawyer.

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1 The Métis Settlements Appeal Tribunal
2 in Alberta, the legislatively created customary dispute
3 resolution body, employs a distinctly Métis method of
4 resolving dispute between Métis, non-Métis and other
5 bodies.

6 The tribunal has been known to use
7 pre-hearing meetings and a caucus format to assess a
8 situation far in advance of even considering a hearing.
9 They do this in order to de-escalate tension between the
10 parties and decide on appropriate methods to use in a given
11 solution. Where there is an imbalance between the
12 parties, this is addressed far in advance with pre-hearing
13 facilitation.

14 Imbalances may be addressed by
15 discussion with the parties or others, referrals or
16 whatever is necessary. In a hearing phase a tribunal staff
17 member may be assigned to one of the parties to achieve
18 this balance, or a tribunal member may take a more active
19 role in the hearing process to ensure balance. By statute
20 the tribunal can employ, but is not limited to mediation,
21 conciliation and arbitration.

22 The Métis Settlement Act, for the most
23 part, places few limitations on the manner the tribunal

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1 uses to resolve disputes. Instead, it is left to the
2 tribunal members in consultation with the Métis of the
3 province of Alberta to develop resolution processes that
4 were appropriate for them.

5 This example illustrates that in our
6 community justice is not achieved by normal application
7 of rules or process. There is a recognition, understanding
8 and appreciation of the different abilities, resources,
9 situations and barriers to meaningful participation by
10 parties in the resolution of their own disputes.

11 We must remain flexible and adaptable
12 in order to achieve the right processes and, as a result,
13 the right solution. If our mode of resolving disputes is
14 beneficial to Canadian society at large then it is a good
15 development and one that we are willing to share. We claim
16 no intellectual property to our concepts. Whether or not
17 the mainstream chooses to adopt and implement the solutions
18 that we see as appropriate for us is a decision for them
19 to make.

20 But from a distinctly Métis perspective,
21 of course I feel that our manner of resolving disputes
22 may be beneficial to persons other than ourselves. Would
23 we be seeking the development of Métis systems of justice

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1 for ourselves if our perception was different?
2 Additionally, our system will aspire to some of the same
3 goals: restoration, reconciliation and rehabilitation.

4 We may not have totally corresponding
5 goals, but our systems will have many of the same goals.

6 If adopting some of the Métis methods will assist a
7 reformed mainstream system to achieve its stated goals,
8 then this is a good development.

9 Thank you very much for listening.

10 **DON WORME:** Thank you, Sheila. Your
11 comments about what you had perceived to be an oversight
12 on the part of the Commission, I am sure in so far as
13 representivity of the Métis nation have been noted and
14 perhaps that could be taken up by the Commissioners and
15 they ought to discuss that clearly.

16 Larry, I wonder if you might talk a
17 little bit further about some of the comments that Sheila
18 had made in so far as that particular dispute resolution
19 tribunal, and also maybe a little bit about the issue that
20 was talked about earlier, that is the social control
21 mechanisms.

22 **LARRY CHARTRAND, DIRECTOR, INDIGENOUS**
23 **LAW PROGRAM, UNIVERSITY OF ALBERTA:** Thank you, Don. I

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1 am not too sure if I am competent enough to discuss the
2 Métis Settlement Appeals Tribunal in the sense that
3 although I am aware of it and I know that it is a unique
4 mechanism in Alberta in the sense that there is
5 representation from non-Native parties, Métis parties,
6 and an appointed chairman and that their jurisdiction is
7 broad in the sense that any dispute on a settlement could
8 eventually go to the tribunal, including social,
9 disruptive -- including social behaviours.

10 However, I want to pick up on a couple
11 of comments made regarding police initiatives and then
12 maybe come back to look at putting some of these reforms
13 in an overall context.

14 With respect to recruitment of Native
15 police officers, I believe that's certainly a favourable
16 development. It will allow for Métis, Indian, Inuit
17 officers who are familiar with the culture to deal with
18 the individuals from those cultures. Just employing more
19 Native people is not going to be enough in the sense that
20 there has to be an awareness of who these Native people
21 are in the sense that you don't start creating more
22 conflict than you are solving.

23 A good example of what I mean by that

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1 is a situation on a reserve where the reserve is an Indian
2 reserve, however, most of the RCMP officers are Métis and
3 there is a cultural clash in that situation.

4 Another aspect, and this also relates
5 to understanding by the RCMP of where Aboriginal police
6 officers are coming from is in the sense of their
7 relationship with their other fellow police officers.
8 For example, one Aboriginal officer quit the force and
9 the problem that he perceived was that he was an
10 overcharger. What happened actually in this community
11 that he was policing was he was charging non-Natives and
12 Natives at the same rate, whereas the white officers were
13 charging more Natives and not as many whites.

14 The criticism he got from his fellow
15 officers was he was an overcharger because he was charging
16 too many of the white people instead of the Native people
17 and that reflected on his performance record. So he felt
18 obligated that he couldn't stay in the force.

19 So employing more Natives is good and
20 it is important, but they also have to be aware of the
21 differences in the indigenous nations, that there
22 differences in indigenous nations and placing the officers
23 in appropriate context is important and also being aware

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1 that there is sometimes some important personal clashes
2 that Aboriginal officers face.

3 Getting back to more of an overview with
4 respect to some of the comments made earlier with respect
5 to alcoholism on reserves, for example. We can't just
6 look at alcoholism as the problem. We have to look at
7 the underlying roots of those problems. For example, why
8 is alcoholism a problem on the reserves? It stems probably
9 from the fact that there is powerlessness on the reserves
10 that was mentioned earlier and that powerlessness has been
11 created by the imposed foreign justice system, a system
12 that is foreign to the cultural values and beliefs of the
13 indigenous nations. So we have a situation today where
14 there is a powerlessness in the community and although
15 setting up models and ideas on models for justice is
16 important, we can't forget the reality that many of these
17 communities are facing. A couple of comments made
18 earlier this morning were that one of the things we have
19 do is go to the indigenous communities, indigenous nations
20 and ask them, "How do you see progress being made in this
21 area?" I thought about that question, and I thought if
22 some of these reserves which I have visited and my parents
23 live -- well, it's not a reserve it's a Métis settlement

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1 but it's very similar to a reserve in northern Alberta,
2 these problems exist to the extent that some of these
3 communities may not know exactly how they are to solve
4 these problems.

5 I think it's incumbent upon us to not
6 to show models or encourage them to adopt into the existing
7 system. We have to have a focus on process at the very
8 fundamental level in terms of empowering the community
9 .

10 I had hoped with respect to one situation
11 that involved circle sentencing and it was talked about
12 in the context of a particular case up in the Yukon where
13 circle sentencing was created whereby the judge allowed
14 the entire community to sit in a circle and participate
15 in the decision-making process as to sentence. What
16 appeared was there was a dramatic process in how the
17 community felt about the system. In fact, they felt they
18 were empowered for a change. They felt that they had some
19 ownership over the system. Even though that's a small
20 degree of an incident where there is some recognition that
21 they are getting power, it is important to realize that
22 it's up to them to decide how they are going to take that
23 power in terms of developing their systems.

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1 Maybe one final comment, getting back
2 to the overall context of how we are looking at this
3 powerlessness. We have to realize, and we can't forget
4 that the Canadian state is built on the assumption that
5 indigenous nations weren't human and that in effect not
6 according indigenous nations the same status in
7 international law at the time of contact created a
8 situation where indigenous nations weren't considered
9 human and the existing legal system has continued to apply
10 that sort of notion which, in my opinion, is simply a
11 Canadian constitutional form of racism. We can't lose
12 sight of that fact.

13 The question then becomes not whether
14 we should reform the existing system or not, but if the
15 indigenous nations want to reform the system, how are we
16 going to assist them to do that?

17 I am sure everybody here doesn't want
18 the Canadian system to be based on a situation where it's
19 founded on racism. I think we want to ensure that indigenous
20 nations are given the same status that they deserve and
21 how do we go about allowing them and helping them now that
22 they are in this situation of powerlessness to arrive at
23 a situation where they can exercise their equal status?

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1

2 **DON WORME:** Thank you, Larry.

3 Ladies and gentleman, you will have an
4 opportunity as well later on to ask some questions during
5 the plenary session , so I would just make that announcement
6 now.

7 Judge Igloliorte, you an Innu. You are
8 also a judge in the anglo system. Are we to take from
9 that that there is some reformation going on within the
10 existing system and something that we can live with?

11 **JAMES IGLOLIORTE, PROVINCIAL COURT**

12 **JUDGE OF NEWFOUNDLAND:** From my own perspective, I would
13 rather be out of a job than to say that the final answer
14 is not going to be self-government. I think Ovide Mercredi
15 put it very eloquently that when you have a profound problem
16 then you need to have profound changes.

17 Right now anything that we are doing,
18 in my opinion, is really only a stop-gap measure and the
19 end result will have to be self-government or
20 self-empowerment and whatever mistakes that are made when
21 we do have control of our system of running our affairs
22 certainly when they are put side by side with the problems
23 and the mistakes that we have seen over the years, I think

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1 aren't going to match up.

2 Since we are resource people for the
3 Royal Commission, I think there is only one party to whom
4 this message has to be given; that is the Crown. The name
5 that we try to give so many concepts to when we are trying
6 to translate it into our various languages, it is almost
7 impossible to get that concept of a Crown across to the
8 people that you are seeing day in and day out.

9 The point raised by Mr. Mercredi is one
10 which will have to go from the Royal Commission only to
11 one party in Canada, and that party is the Crown. It means
12 the provincial and federal heads of the state, the justice
13 departments heads.

14 Even looking at the two questions we have
15 before us is really not addressing the message that has
16 to be given by the Royal Commission to the Crown.

17 **DON WORME:** Vince, as the founder of the
18 Society for the Reform of Criminal Law, I take it that
19 you have some views in that respect as well, at least as
20 far as Aboriginal people are concerned and the existing
21 system. Are the reforms that your organization proposes
22 addressing those issues as well?

23 **VINCE DEL BUONO, PRESIDENT AND FOUNDER**

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1 **OF THE SOCIETY FOR THE REFORM OF CRIMINAL LAW:** Let me
2 put this context of the process of criminal justice policy
3 development in a slightly larger context.

4 It is clear that what is going on now
5 is a period of experimentation, a period of adaptation,
6 a period of identifying problems and experimenting with
7 solutions to those problems. There is obviously not one
8 way of doing this. There are a whole bunch of initiatives,
9 some of which were presented to us in the last few days,
10 many more of which are going on in Canada at the present
11 time.

12 When you talk about a criminal justice
13 system, I don't like talking about criminal justice
14 systems, because it makes it sound like they are somehow
15 impersonal, they are somehow mechanistic. What I would
16 like to talk about in terms of all of these things are
17 community institutions.

18 When we look at the police, or the
19 courts, or the correctional system and all of the people
20 working in that, the bar, the judges, what we are talking
21 about are in fact community institutions and the question
22 I always ask is, are they serving the community?

23 Now, "community" is an elastic concept.

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1 Obviously communities could be as small as bands, as
2 neighbourhoods, or they could be as large as countries.

3 We can talk about an international community. In the
4 end, you have to ask yourself, after all of this discussion
5 has gone on, do the institutions and how they operate help
6 to build community or do they help to destroy community?

7 Regardless of how you talk about systems
8 and you talk about initiatives, the question then becomes
9 at the end of the day, do they in fact either help or destroy
10 community?

11 One of the things that I think is also
12 important to keep in context here is that no criminal
13 justice system or criminal justice institutions exist in
14 a social vacuum. In fact, they exist in the midst of a
15 whole bunch of economic and other institutions.

16 Therefore, looking at simply the
17 criminal justice system, or the criminal justice
18 institutions and the people who in fact operate and work
19 within them, the people who are the clients of those
20 institutions really cannot be done in isolation. I caution
21 you to keep that in mind at all times because that is
22 extremely important.

23 Institutions don't exist without being

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1 underpinned by a number of values. One of the things that
2 has to be talked about at all times in terms of the
3 discussion of reforming, whether it's radical reform,
4 whether it's tinkering, whether it's new initiatives, is
5 what are the values that are underlying that reform? If
6 those are hidden, or if those are not articulated, I think
7 your reform process will be in some difficulty.

8 Clearly, in terms of the community
9 institutions when we talk police, when we talk about the
10 criminal justice institutions of our country, there seems
11 to be a universal consensus here that they have failed;
12 they have not helped build Aboriginal communities. In
13 fact, they have had completely the opposite effect.

14 I think that what needs to be done at
15 this point is to have some patience -- and I know that's
16 very difficult -- with the experimentation, with the
17 adaptation, with the number of initiatives that are going
18 on. Because if there is a salvation, and I think there
19 is, and if there is progress going to be made, it is not
20 going to be made by some impersonal system, it is going
21 to be made by hundreds of people across this country who
22 are taking initiatives because they want to build their
23 communities, because they want to promote in those

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1 communities either greater social peace and harmony or
2 to build some other associated values.

3 When you are talking about reforming
4 public institutions such as we are talking about, what
5 we need to talk about is how not only we as individuals,
6 but our governmental institutions can facilitate that
7 process of community building. Those new
8 institutions are going to be different. It may be a band
9 police force, it may be a council of elders for trial.
10 They are going to be different and we have to accept they
11 are going to be different and be prepared to support those.

12
13 The question is, how are we as
14 individuals, professionals, who are associated with it,
15 people who are concerned with the community, governmental
16 officials going to facilitate that, certainly not stand
17 in its way, and hopefully promote and support the number,
18 and it's going to be hundreds and thousands of individuals
19 in this country who are working for that kind of change.

20 If you take that perspective on it, what
21 we need to do in any reform process is identify the values,
22 to support the people who are doing the reforms, to allow
23 them to in fact take initiatives, experiment, make

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1 mistakes, have false starts, not be too critical at this
2 point because this is a process of development.

3 I think that's what we are talking about
4 in terms of empowering communities, and at the end of the
5 day what we have to be talking about here in terms of
6 criminal justice systems is institutions that build
7 community, not destroy it. **DON WORME:** Thank you very
8 much, Vince.

9 **CAROL MONTAGNES, EXECUTIVE DIRECTOR,**
10 **ONTARIO NATIVE COUNCIL ON JUSTICE:** I am here on behalf
11 of the Ontario Native Council on Justice and I hope that
12 I will represent the council well.

13 I would like to begin my comments by
14 saying a few words about the Ontario Native Council on
15 Justice itself. The council is unique in Canada. It had
16 its beginnings in the planning for the Federal-Provincial
17 Conference on Aboriginal Peoples and the Criminal Justice
18 System that was held in Edmonton in 1975. At that time,
19 17 years ago, the need for change to the criminal justice
20 system was immediate.

21 The council began as the advisory
22 committee to the criminal justice system in Ontario and
23 had representatives of the Ontario justice ministries

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1 sitting on the committee as well as representatives of
2 the major Native organizations in the province of Ontario.

3 A couple of years after that in 1977 the
4 Aboriginal representatives on that advisory committee
5 decided that it was not necessary to have the Ontario
6 government represented on this committee and those
7 government representatives left and the council became
8 the Ontario Native Council on Justice, an Aboriginal body.

9 The council focuses on the criminal justice system and
10 has worked in that area on behalf of Aboriginal peoples
11 for 17 years.

12 On the council we have representatives
13 of status organizations, non-status and Métis
14 organizations, as well as representatives of organizations
15 that serve all Aboriginal people in Ontario.

16 Much of the work of the council in the
17 area of research, policy analysis and program development
18 has been aimed at changing the existing system. Keep in
19 mind that this work has been going on for about 17 years.

20 In view of all that work, it seems to me that the question
21 that the Royal Commission should ask is not whether the
22 system can change, but will it change and look at whether
23 it has changed?

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1 Recommendations made in 1975 are being
2 repeated in the most recent reports across Canada looking
3 at Aboriginal peoples and the criminal justice system.
4 Even those so-called easily implementable recommendations
5 such as Native awareness training have not been easy to
6 implement. The system has not been willing to give up the
7 time or the money or the control to Native people.

8 Programs within the correctional
9 institutions such as the Native Inmate Liaison Worker that
10 the council assisted in developing, supposedly a Native
11 community-based program for Native inmates, faces a
12 continuing struggle for control. Is this a program of
13 the ministry of correctional services, or is this indeed
14 a Native program being delivered within an institution
15 of the ministry of correctional services?

16 The question of the adaptation of the
17 current system was considered by the Ontario Native Council
18 on Justice five years ago. That was when the council
19 developed its mission statement, a statement which has
20 two streams. Those two streams were referred to in the
21 discussion by Trish Montour who I believe was on our council
22 when the mission statement of the council was developed.

23 The two streams are assisting Aboriginal

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1 communities with their justice initiatives, that is the
2 alternative stream, and at the same time working with the
3 current system to assist those Native people who are
4 currently enmeshed in that system. It was strongly felt
5 by the council that we could not forget about the people
6 who were already caught up in that criminal justice system.

7 However, in the last few years more and
8 more energy and time has been going towards looking at
9 alternatives to the current system.

10 There have been couple of reports
11 produced by the council mainly to assist communities in
12 their developing of initiatives at the local level,
13 alternatives to the current system. One of those reports
14 has been mentioned yesterday, the "Native Alternative
15 Dispute Resolutions Systems, the Canadian Future in Light
16 of the American Past", and the other report is called
17 "Models of Native Community Involvement in Criminal
18 Justice" -- not in the criminal justice system but in
19 criminal justice.

20 These reports have gone out to the
21 communities, hopefully the communities will make use of
22 these reports and will use them in their efforts to decide
23 what sort of alternatives they would like to see made to

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1 the current system.

2 With regard to pilot projects, the
3 Ontario Native Council on Justice just at the end of October
4 had a meeting with the Attorney General for the province
5 and the discussion centred around pilot projects and who
6 was making the decision as to which project proposals were
7 going to be funded, what was the selection criteria, how
8 much money was there available indeed for these pilot
9 projects. In Ontario, you should keep in mind that
10 there is a statement of political relationships signed
11 between the government of Ontario and First Nation's
12 government that talks about a partnership between the First
13 Nations government and the government of Ontario and yet
14 when it comes to the funding of pilot projects, to make
15 the selection as to what pilot projects in the area of
16 alternative justice go ahead with funding from the
17 government, that selection is made entirely by the province
18 of Ontario, that is the Attorney General.

19 The Attorney General at that time gave
20 some encouraging remarks and said, yes, the time had passed
21 for the governmental alone to be selecting what pilot
22 projects will go ahead as models for other communities
23 to look at with regard to the alternatives to the current

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1 system.

2 In Ontario, you probably know there has
3 recently been established a Commission of Inquiry into
4 Race Relations and the Criminal Justice System. It was
5 the decision of the First Nations in Ontario that First
6 Nations would not participate in that inquiry, that the
7 time for further inquiries is passed and that at the present
8 time there's discussion going on as to what the next step
9 will be with regard to a position being given to the
10 Government of Ontario. What can the government do to
11 help Aboriginal communities? I would suggest that the
12 first thing governments can do is to listen to the
13 Aboriginal organizations, to the Aboriginal people who
14 have been saying the same thing, very similar things, for
15 years and years and years; those recommendations with
16 regard to changing the existing criminal justice system.

17 What else can the governments do? They
18 can support those initiatives at the community level; they
19 can support through giving resources, giving support as
20 requested by the members of the criminal justice system,
21 and then get out of the way.

22 **DON WORME:** Thank you very much, Carol.

23 James Graham, you were the Assistant

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1 Deputy Minister of Corrections of British Columbia.
2 British Columbia, as I understand it, has perhaps the
3 highest percentage or highest number of Aboriginal people
4 in that province. We know of course from the various
5 studies that also Aboriginal people are grossly
6 over-represented in the correctional institutions.

7 Correctional institutions are
8 undoubtedly a part of the existing justice system. Is
9 there a process of reformation under way and perhaps if
10 you could speak to that from the province of British
11 Columbia.

12 You might also address the items that
13 are put forward in Question 2.

14 **JAMES GRAHAM, ASSISTANT DEPUTY**
15 **MINISTER, CORRECTIONS BRANCH, MINISTRY OF THE ATTORNEY**
16 **GENERAL IN THE PROVINCE OF BRITISH COLUMBIA:** I would
17 like to start out by thanking the Elders Flora and Ernie
18 for their prayers and guidance. As the Creator well knows,
19 we need all the help we can get in trying to resolve many
20 of these problems that we are facing here.

21 In B.C. I think that it is safe to say
22 that we are listening. The B.C. government is committed
23 to a process of self-government. We have started that

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1 in place and the first round of negotiations are occurring
2 with the Nishga people. It is a tripartite negotiation
3 with the federal government, ourselves and the Nishga
4 people. But it's a long process.

5 In B.C. we have something like 197 plus
6 different tribes. We have 38 tribal councils and when
7 we look at the process of self-government it looks like
8 we are expecting somewhere like 60 to 70 different
9 individual treaties that will be signed stating clearly
10 what self-government is.

11 On the one hand, that's a very exciting
12 concept to look at because I think it's an opportunity
13 to take a look at the way we do business, not just in the
14 justice system, but as we have been advised by the
15 Aboriginal people, a more holistic approach to the issue
16 of self-government.

17 When we look at the basis from which we
18 come in the last couple of days we have talked about having
19 to go back to our basic values and the basic value of the
20 western society has been punishment. The process that
21 we get there is adversarial. With the Aboriginal people,
22 the basic value is harmony and the process that you get
23 there is healing.

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1 Given those diverse values and processes
2 I'm faced, or the government of B.C. and the Aboriginal
3 people of B.C. are faced with a challenge of trying to
4 find a way to bring those together in a way that will solve
5 the problems that people are faced with.

6 At the same time, we can't allow the
7 system to continue the way it is, so we continue to "tinker"
8 in B.C. I think that word has been fairly well used here.

9 The justice system there is tinkering throughout it with
10 the Aboriginal policing issue.

11 The examples of what we are trying to
12 do there is best expressed with sitting down with local
13 Aboriginal people and trying to establish what they want
14 in the policing community. That has varied from simply
15 having RCMP visit the Aboriginal communities on a more
16 frequent basis to the establishment of Aboriginal police
17 forces, to the establishment of RCMP officers, both
18 Aboriginal and Caucasian, in the Aboriginal communities.

19 So we have been able to respond on a wider range to the
20 needs of the Aboriginal people.

21 I was struggling through what the second
22 question was -- would everybody benefit from the change
23 to the current system? I think that is a given with the

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1 words that have been shared here in the last two days.
2 The current justice system is in difficulty and from a
3 bureaucrat in the current justice system, I think the
4 challenge to the Aboriginal people is to help the rest
5 of the system find a more centred community-based process
6 dealing with the Aboriginal people and dealing with our
7 own people. We know from the criticisms of the people
8 today and in the last couple of days that the justice system
9 isn't working for us, whether it is the criticism of the
10 corrections service for not rehabilitating people, the
11 criticism of the police for racism over use of force, for
12 some of the inappropriate comments that occasionally come
13 from the bench regarding these things, we know the system
14 needs to be refined.

15 I think the processes we have for the
16 Aboriginal people on the reserves is well defined in the
17 end outcome, although scary they will be beneficial to
18 all.

19 Where I think the challenge remains is
20 in our urban areas where the Aboriginal people do not have
21 the benefit of the smaller communities and with the Métis
22 people where you don't have the history and the ruralness
23 of it to help form the smaller communities. It is in those

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1 areas that I think the biggest challenge is going to occur.

2 **DON WORME:** Thank you very much, James.

3 In the indigenous core meetings that we
4 have already had over the past years I think some members
5 could come up with a potential solution that the justice
6 system could be operated by Aboriginal people and everybody
7 else can just plug themselves in.

8 Frank McKay, I would ask you to make a
9 comment.

10 **FRANK McKAY:** I have two more comments
11 to make. First of all as President of the First Nations
12 Chiefs of Police Association, I would like to speak in
13 defence of the Aboriginal police departments in Alberta
14 and to the comments that our Aboriginal people want "real
15 policemen" to come and investigate whatever the problem
16 is.

17 Prior to this past year, April 1st of
18 '92, there was no Treasury Board minutes in place to address
19 the needs of Indian police departments across Canada and,
20 as a result, each one of us had tremendous effect on our
21 on operations. If the RCMP, Ottawa City Police or Winnipeg
22 City Police didn't have proper funding, I know that people
23 who live in those respective jurisdictions will have some

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1 negative comments towards their operations. This is the
2 simple fact that that's what we are facing; as Indian police
3 departments across Canada, we never had proper funding
4 in the first place. As a result, we cannot meet the needs
5 of the Indian people on our reserves.

6 It goes to show you, it doesn't matter
7 what it is as Indian people we try to do our own thing,
8 however, we are always experiencing the lack of funding
9 whether it's self-government, education, housing or
10 health, whatever it is. As police departments, we have
11 experienced that from day one. If you don't have enough
12 money, certainly it is going to affect your recruitment.

13 You are not going to attract people you want to recruit.
14 Secondly, if you hire them and if you want to send them
15 to training, you don't have the money, naturally you are
16 not going to send them to any training. Training is an
17 important part of your operations.

18 The other comment is that I have no
19 problems with the RCMP Aboriginal department where they
20 recruit our own Indian people to work with them. However,
21 I think the problem area is they still have to work under
22 the direction and the policy of the RCMP, which I think
23 all of the Indian constables are affected by that. The

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1 majority of them don't totally agree with the RCMP policy
2 or the RCMP act and naturally it affects their performance
3 out in the field.

4 The other comment I guess it's hard for
5 me to bring it up at this time, but I am going to say it
6 on behalf of my mother and on behalf of the two elders
7 we have in the room here is the comment that the Deputy
8 Commissioner stated regarding prayers. Prayers, he says,
9 that it's not going to work. But as a Dakota person, as
10 an Indian person that believes in the Indian way of life,
11 it is offending to me as a traditional person that prayers
12 are not going to help Indian people. I guess it goes to
13 show you and that's evidence that non-Aboriginal people
14 don't believe in our way of life and I never will.

15 **DON WORME:** Thank you, Frank. I am
16 going to give you a moment to respond to that, in fairness.
17 But I want to ask Gerry Morin to make a final comment.

18 **GERRY MORIN:** I am just going to make
19 a comment. I think perhaps the alphabets I used might
20 have soured the soup of my friend across. I want to add
21 a little bit of a rabbit to it in order to sweeten the
22 pot.

23 I think we have been asked to accept the

1 justice system. One of the things in trying to look at
2 justice is define it. I remember once sitting around with
3 a group of friends of mine trying to find a word that we
4 could use for hippopotamus. That's pretty difficult to
5 describe in Cree. So in trying to look at it we looked
6 at the concept of what it was before us. Hippopotamus.
7 So we did come up with something and it goes something
8 like this:

9 (Native language -- no translation)
10 Now, a literal translation to that is:
11 from the land of the blakifunk (PH) comes a wide-footed,
12 big-ass, big-mouth underwater pig.

13 It succinctly describes the picture of
14 that sort of thing. So when trying to picture what justice
15 is -- we have been able to figure out what hippopotamus
16 is, but justice has still been elusive.

17 **DON WORME:** Thank you. Mr. Favreau, if
18 you would respond, please -- not to hippopotamus.

19 **GILLES FAVREAU:** As to my comment on
20 prayers, the comment was made in a sense that some people
21 -- these hard-core criminals -- do not believe in prayer,
22 certainly not in a sense that I wanted to make smaller
23 the cooperation or the participation of people who made

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1 the prayer here.

2 What I am saying is that some people in
3 our society, unfortunately, do not care about the prayers
4 that other people might want to have them listen to or
5 pray for them.

6 Also, some people will not respond to
7 whatever kind of medication you want to do for them. That
8 was my point in stating about habitual criminals and
9 serious crime.

10 Another point that I want to make I think
11 is important. Obviously we are doing a lot not only to
12 recruit Aboriginal people but also we have put in place
13 some programs for Native Indians who do not meet the
14 criteria of the RCMP at the present time. We have put
15 in place a program that gives them two years -- they are
16 employed right away as a member of the RCMP, but they have
17 two years whether it is to get more education, learn to
18 drive, whatever is missing in order that they could meet
19 our standards.

20 We also have some cross-cultural
21 training on a regionalized basis. We have cross-cultural
22 awareness workshops and some of them take place directly
23 on-reserve. We have created an Aboriginal spirituality

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1 kit, because some of our constables or other members did
2 not know how important this was and in their approaching
3 people sometimes they made some terrible mistakes. So we
4 have created that to try to inform everyone.

5 We have started a lot of conferences out
6 west, one in the Maritimes, one in central Canada, one
7 in Ottawa right here. We have summer student programs where
8 over 60 per cent of the people participating are Native
9 people. We have created Aboriginal consultative advisory
10 committees so when we draft a policy, when we intend to
11 do something, we will have the privilege of getting some
12 people that know if it will work or not and give us some
13 good insight into it.

14 We are proposing this year to create a
15 cadet program where we are going to take some especially
16 from Saskatchewan and Manitoba to start. We want to take
17 about 60 Native young persons, send them to our training
18 camp for summer and give them a chance to know what life
19 is all about in the RCMP and maybe they will like that.

20 There is some more that I could go through.

21 The fact that a Native person who joined
22 the RCMP will be restricted to the policy of the RCMP is
23 true. But each peace officer also has some delegation

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1 that he is allowed to use. He has some discretion that
2 he is allowed to use and we are asking our people more
3 and more as a matter of fact to use that discretion in
4 communities and instead of laying charges all the time,
5 go and see the elders and go see the community and try
6 to find a solution to this. So we are aware of that and
7 we are trying to work very hard on that.

8 **DON WORME:** Thank you very much, Mr.
9 Favreau. Thank you for the explanation that you provided
10 as well at the beginning, and for those final comments.

11 I suppose that really is kind of the
12 problem right there in that your answer to Question 1 b)
13 is that the problem is simply the administrative aspects
14 and that the measures that are being proposed now by the
15 RCM Police are sufficient to address those issues. I am
16 not sure that what I am hearing and what is being said
17 through the past number of days really meets with that,
18 but I suppose perhaps we will hear more about that in the
19 next day and a half or day.

20 Judge Coutu.

21 **JEAN-CHARLES COUTU:** J'aimerais
22 ajouter quelques commentaires sur tout ce qui s'est dit,
23 principalement sur la recherche de nouveaux modes

1 d'administration de la juste.

2 D'abord, je pense bien qu'il faut se
3 rendre compte que tout cela, c'est une question de pouvoir,
4 de transmission de pouvoir, et qu'en réalité ce qu'il faut
5 admettre aussi, c'est le droit à l'erreur, lorsque l'on
6 assume ce pouvoir-là, que ce soit à n'importe quel niveau.

7 Il y a toujours le droit à l'erreur, ce que j'appelle
8 le droit à l'erreur, on a le droit de faire des fautes
9 et de commettre des erreurs et d'apprendre avec nos
10 erreurs.

11 Je voudrais juste répéter une phrase que
12 j'ai déjà dite, en fait qui est l'autodétermination, ou
13 le "self-government". En réalité, cela commence au niveau
14 local. Je pense que c'est à partir de là qu'il faut
15 l'assumer pour pouvoir en assumer un plus grand
16 éventuellement.

17 Je voudrais aussi faire remarquer que
18 dans la recherche des nouveaux modèles, ou la mise sur
19 pied de nouveaux modèles - appelez cela comme vous voudrez
20 - au niveau des communautés autochtones, il faudra
21 absolument qu'il y ait une participation très active des
22 femmes autochtones. Je pense que cela est majeur et très
23 important à cause des difficultés rencontrées et également

1 que participent aussi à ces comités, ou à cette
2 administration de justice, les jeunes. Les jeunes qui
3 vivent une situation complètement différente de celle des
4 anciens et qui vivent dans un contexte social et dans un
5 contexte moderne aussi qui échappe souvent à l'emprise
6 des anciens. Je pense qu'ils ont leur droit d'être présent
7 dans la conception de nouveaux modèles de justice.

8 Enfin, je vois que l'on insiste toujours
9 beaucoup sur l'importance de nos différences. Je pense
10 qu'il faudrait commencer peut-être aussi à insister sur
11 l'importance de nos ressemblances. Dans le fond, quand
12 vous pensez à cela, tout le système de justice, entre
13 parenthèses, des Blancs, qu'est-ce que nous voulons? Nous
14 voulons tous que l'harmonie revienne dans la communauté.

15 Nous voulons tous que le criminel revienne dans la rue,
16 qu'il puisse vivre dans son quartier avec sa famille, vivre
17 en paix avec ses voisins. Nous voulons tous la même chose.

18 Dans le fond, qu'est-ce qui est arrivé
19 fondamentalement? C'est avec notre mentalité, nous nous
20 sommes emprisonnés dans des codes de procédures, dans le
21 Code criminel, nous nous sommes créés, nous nous sommes
22 tissés en fait, une camisole de force et nous sommes prises
23 - je pense qu'en anglais on appelle cela un "straight

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1 jacket" - une camisole de force. Nous sommes pris dans
2 cette camisole de force et nous avons de la difficulté
3 à nous en défaire.

4 Dans le fond, c'est cela qu'il faut
5 faire, briser cette camisole de force. Je pense que cette
6 réflexion que nous faisons avec les Autochtones, ce qu'ils
7 nous apprennent finalement, ils nous font revenir à
8 l'essentiel. Je suis certain que les modèles que nous
9 mettrons en oeuvre, que les Autochtones mettront eux-mêmes
10 en oeuvre dans leurs communautés, seront des modèles
11 finalement pour nous pour revenir à l'essentiel et
12 retrouver nous aussi, dans nos communautés, dans nos
13 grandes villes, dans nos quartiers, et cetera, l'harmonie
14 que nous recherchons tous finalement.

15 En cela, je pense que nous nous
16 ressemblons énormément et qu'il n'y a aucune différence
17 entre nous.

18 **DON WORME:** Thank you very much, Judge
19 Coutu. Of course, as Brad Morse said this morning it made
20 his job easier and it obviously has made my job very easy.

21 At this point we will break. Far be it
22 for me to attempt to tie together this session any better
23 than you have. I believe there is a short break to 3:45

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1 at which time we will come back for a plenary discussion
2 and the floor will be opened for talks on both this session
3 as well as the previous.

4 **MURRAY SINCLAIR:** Before we break, I
5 have a few things that I would like to address.

6 Firstly the concept of a heavy-footed,
7 wide-bodied, big-ass underwater pig is a good definition
8 of justice, Gerry, so keep that in mind.

9 I would like to ask those who are out
10 there how many of you would like an opportunity to join
11 in the discussion on these questions that have now been
12 discussed by these panellists? Are there some out there
13 who would like an opportunity to share some thoughts?
14 I see one or two hands. One behind me, I saw that one,
15 yes. I have great peripheral vision. I am a judge, Jim,
16 don't forget. I see everything.

17 Does anyone else want to participate in
18 this discussion or have anything that they want to offer?

19 The reason is because Rachel who is going to moderate
20 the next panel has expressed that if there are enough
21 people, or if there is a feeling that you would like to
22 do this, that she would prefer to sit at the table here
23 with other people to continue this discussion. Of course,

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1 we are not precluding any of you who have been sitting
2 at the table also to join in.

3 We are going to try that and see if we
4 can get other people who want to voluntarily come forward
5 rather than speaking from the floor microphones because
6 we want it to be a discussion. We don't want it to be
7 series of presentations from the microphones.

8 We will take 15 minutes.

9 ---Recess at 3:30 p.m.

10 ---Upon resuming at 3:45 p.m.

11 **MURRAY SINCLAIR:** This is an open panel
12 to deal with the discussion papers that have been presented
13 and the fundamental Questions 1 a), 1 b) and 2.

14 We have a number who have come forward
15 and again I want to stress to those of you who are sitting
16 back there and earning the big bucks just by watching that
17 you are all welcome to participate. You are all welcome
18 to come forward. If you do have anything you want to
19 contribute, please come and use the microphones on the
20 table. Do not use the floor microphones, use the
21 microphones on the table because we want to ensure that
22 everyone is participating in the same manner.

23 This round-table discussion or this

1 format is intended to be an opportunity for all
2 participants who want to discuss the issues that have been
3 raised to do so. Accordingly, all participants can come
4 forward. It is going to be moderated by Rachel.

5 I don't have a list of anyone who is
6 there. So what I would ask is any one of you who is going
7 to participate if you would please identify yourself for
8 the video record as well as for transcript purposes. We
9 are going to have a problem otherwise.

10 We have until about five o'clock when
11 we will try to break, so this session is going to start
12 now. Rachel Qitsualik is going to do this sessions for
13 this. Rachel, you can take it away and begin however you
14 wish.

15 **RACHEL QITSUALIK:** Thank you very much.
16 Welcome to this part of the plenary session. The
17 discussions that we will holding during this period will
18 be based on the questions so far and the discussion that
19 have happened so far. Once you have an opinion that you
20 have in your mind, please identify yourself and feel free
21 to talk as long as you like, until I interrupt.

22 I think we can start off with Justice
23 Cawsey.

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1 **ALLAN CAWSEY:** What I have to say now
2 was intended to be said before the adjournment but we ran
3 out of time. I'm fully aware of the Native tradition of
4 not interrupting. I was told after the last session that
5 I should have interrupted and said something. Well, I
6 just want to let you know that even a Justice of the Court
7 of Queen's Bench has learned something about Native
8 traditions.

9 I am pleased to be sitting at this table
10 with respected elders. We have been guided in our
11 deliberations by their morning prayers and our minds have
12 been put at rest and ease by your closing sessions. I
13 wish to express my own feelings that it is extreme
14 worthwhile and an excellent way to start and finish a
15 meeting.

16 I was a chairman of a task force in
17 Alberta which was established to look into 32 specific
18 points. We were not given a mandate to look into the whole
19 question of Native justice. We were asked to find out
20 the impact of the criminal justice system on the Indian
21 and Métis people. Our report reflects just that. We were
22 not defending the justice system. As a matter of fact,
23 we criticised it.

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1 We took the view that government wanted
2 to know how the existing system did affect the Aboriginals.

3 There were seven people on the task force, three of them
4 are present at this meeting, and I am pleased to again
5 associate with them.

6 I have no constituency at the moment.

7 Most of the people who spoke this afternoon had a
8 constituency. The mandate of our task force expired on
9 the 23rd March, 1991.

10 In my day-time job as a judge it is
11 traditional for judges not to comment or criticize
12 government policy, so I shall not do that. What you are
13 going to hear is what I have learned on the task force
14 as a judge for the Provincial Court for seven years, as
15 a judge on the Court of Queen's Bench for 13 years, as
16 a prosecutor for 25 years and as a policeman for one year.

17 The only part of the Aboriginal culture that I haven't
18 been associated with is being sent to jail by a racist
19 policeman.

20 For the few remarks I have, I would like
21 to address my first remarks directly to the Commission
22 and ask them to keep some of the things in mind that we
23 were constantly reminded of during our hearings.

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1 Keep in mind that there are 566 reserves
2 in Canada; keep in mind that there are 2,000 different
3 bands in Alberta. Most importantly, keep in mind that
4 60 per cent of Aboriginals in Canada are urban Aboriginals
5 who have either left the reserves for reasons with which
6 we are all familiar, or have just chosen to live in urban
7 centres.

8 When you start taking the fact that 60
9 per cent of the Natives are urban, it doesn't leave really
10 too many left on the reserves. I know there are lots of
11 people on reserves. I know we have reserves with as few
12 as 38 people. I know we have a reserve in Alberta with
13 7,000 people. But these vary in size, they vary in needs,
14 they vary in culture, they vary in so many different ways
15 that, as far as I am concerned -- and this is a personal
16 opinion -- no one system can be established to serve them
17 all equitably.

18 I want the Commission to keep in mind
19 that most of the offenders we deal with are young. They
20 are children; they are kids. If we don't handle them
21 properly, they come back as adult offenders. I also want
22 you to keep in mind that the people who are being sent
23 to jail are not, as has been said this morning, writing

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1 dirty words on lavatory walls or breaking windows. The
2 people that go to jail are usually criminals. In any
3 society, whether you are an Aboriginal or not they have
4 committed an offence against society, either theirs or
5 society at large, which requires a sanction.

6 We were told in the reserves and
7 settlements, jails and penitentiaries, youth offender
8 centres and other places that we went to that there must
9 be some place to put these actors. At the moment all we
10 have is jails.

11 I accept the fact that the justice system
12 should be community-based as much as possible, in every
13 aspect, from the policing aspect, from the educational
14 aspect, from the corrections aspect. Everything possible
15 must be done in the community with full community support
16 and no initiatives forced on the community by the outside
17 culture.

18 Everything that has worked when we are
19 dealing with Natives has come from the Natives. I don't
20 know of anything that has worked that has been foisted
21 upon them from above.

22 A couple of other things that we were
23 told and I would like to ask the commission to keep this

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1 in mind -- my statistics may be out a few points, but how
2 do they say? Nine times out of 10 it may be right.

3 We were told when we started that the
4 Aboriginal population in Alberta can be categorized. Ten
5 per cent of them were traditional Aboriginals. They had
6 their spiritual connections. They never appeared in
7 court. They were the pillars of the community --

8 **RACHEL QITSUALIK:** I am sorry to
9 interrupt you. Can we try and keep focused on the question
10 that we have so far: can the system be adapted.

11 **ALLAN CAWSEY:** I will do that, but I
12 thought I would be given the same liberty the other speakers
13 were.

14 **RACHEL QITSUALIK:** All right, continue.

15 **ALLAN CAWSEY:** I will come to it then.

16 The difficulty of adaptation of the existing system,
17 firstly, with respect to policing: I have expressed a brief
18 remark on policing that there is a place for band police.

19 There are band police who are doing excellent jobs and
20 I am going to refer mostly to Alberta where we have three.

21 But we detected in our inquiry that there is a respect
22 for the Mounted Police which is historical and they don't
23 want to see it disappear.

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1 With respect to the correctional
2 systems, all I can say is that corrections should be
3 community-based as much as possible. In Alberta we have
4 a community-based provincial correctional system on the
5 Blood Reserve. We have a community-based penitentiary
6 in Hobbema.

7 I was asked to comment on bail. Bail
8 is necessary in any system. To take the parallel justice
9 system, if a person doesn't appear before the elders, if
10 a person doesn't appear before the community council, how
11 do you compel their appearance? We now have a system in
12 force in the *Criminal Code* where bail is only for two
13 purposes now -- unless the Supreme Court of Canada changed
14 the law this morning. The purpose is to appear in court
15 and, secondly, is the likelihood of reoffending. In any
16 system, do you want to have a person in your community
17 who is likely to reoffend? The other subject I was
18 supposed to direct my remarks to specifically was, would
19 the process of adaptation of the existing system involve
20 reforms beneficial to society as a whole? Of course, any
21 change to our system which was designed to serve Victorian
22 England in 1900 would certainly benefit the whole of
23 society. Of course, any emphasis on restitution would

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1 be valuable to the whole society.

2 Reconciliation, it may be possible on
3 a small reserve and not just a urban centre, but of course
4 it would be beneficial. Rehabilitation is a word that
5 has fallen out of favour, but it is coming back. If we
6 can rehabilitate people, what greater objective of
7 sentencing is there than to return a whole person to a
8 community after they have committed an offence against
9 the society mores?

10 Would the adaptation of the existing
11 system involving reforms be beneficial to segments of
12 society, such as the poor? Anything that is done to
13 benefit the Natives, who are a basically poor people
14 through no fault of their own, would also benefit the poor
15 in the non-Aboriginal society.

16 Would it benefit women? There's a great
17 deal to be said by women. It will be said by them because
18 I have not found them to be shrinking violets when it comes
19 to expressing their opinion.

20 Other cultural minorities are not
21 considered or treated the same as the Aboriginal minority
22 because of the fact that Aboriginal minorities are ours.
23 This is their home. They have no place to go if they

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1 don't like it. They have different cultural views,
2 societal views, spiritual views than the rest of us, but
3 I do believe any changes would be of benefit to the cultural
4 minorities.

5 Thank you very much.

6 **RACHEL QITSUALIK:** Before we have
7 any additional comments or responses, I would like to point
8 out that we have the privilege of having two elders at
9 our panel, Ernie Benedict and Flora Tabobondung and I thank
10 you for coming to this panel.

11 Do we have any responses or comments from
12 the floor, or from the panel?

13 **JAMES LANGSTON:** I have just one. You
14 have heard speak me before, so I won't bore you at any
15 great length.

16 Justice Cawsey's inquiry, which was
17 really an inquiry of the people, had 340 recommendations.

18 One of the things that was not included as a recommendation
19 was a question and I alluded to this arena yesterday.

20 The inquiry asked the question, what is
21 the purpose of the criminal justice system? Many of us
22 who work in that environment maybe have our own
23 preconceived ideas. I would bet that they are a very

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1 formal rigid kind of an idea as to what this system is.

2 The Commission proposed what the answer
3 was. They suggested that the criminal justice system was
4 just one element of social control, not the key element,
5 not the only element. If you accept that sort of
6 philosophy, it thereby opens up a whole horizon of other
7 agencies that equally can react in the environment of
8 social control and then the criminal justice system is
9 just one of those factors that can be used to control and
10 moderate an environment and then it's not a quantum leap
11 to suggest that when policemen start exercising discretion
12 at a level that they used to 50 years ago, but have been
13 restricted from using in the last little while, it suddenly
14 fits into that scheme. It then becomes the initiation
15 of a holistic view of how we approach things and then maybe
16 we take a different attitude toward bail, imprisonment,
17 and a whole variety of things.

18 We find infant steps being taken in the
19 process, but we are sometimes misguided. I think of a
20 situation where a judge, in all deference, gives a young
21 man the right to serve an intermittent sentence in jail.

22 He thinks he's doing the right thing and maybe
23 philosophically he is. What he forgets to remember is

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1 that this young man lives on a reserve 50 miles away from
2 the jail and doesn't have a car; he can't get to the jail.

3 So what happens? This young man who had a relatively
4 minor offence is now finding his record compounded by a
5 whole series of failing to appear in the jail, and now
6 he has become a tremendous offender simply because he's
7 caught up in the system.

8 Those are the things we have to focus
9 on. We are moving in that direction, but again I say we
10 have to ask the right questions and the answers will flow.

11 **RACHEL QITSUALIK:** How do you see that
12 being changed? What adaptations do you see, or do you
13 see any adaptations?

14 **JAMES LANGSTON:** What is happening now
15 is people are starting to look at the system and say, "Let's
16 be really innovative. Let's take some risks." If there
17 is any message that is being left by conferences such as
18 this, we all acknowledge the system isn't working very
19 well. So what is the answer? We have to be innovative
20 in our approach to changing it and we have to take risks
21 and we are going to stub our toe and we are not going to
22 have perfect systems flowing from this.

23 A story: Innovation. A judge in my

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1 area, now retired, who was I think a great jurist, used
2 to take innovative steps every once in a while. There
3 evolved in the provincial court in my area a system of
4 hand signals -- like this. This was a code that was known
5 only to the judge and the prosecutor. The judge, when
6 he found an offender who was probably deserving of a
7 discharge wanted an extra display of contrition. He
8 wanted this offender to go out and communicate by a donation
9 to some charity within the community.

10 Now, nobody except the prosecutor and
11 the judge knew the code. This code meant \$1,000; this
12 was \$500; this was \$200. I would explain to defence
13 counsel what this code meant. They would advise their
14 client. The client would go out and make contributions.
15 The charities of my community had a windfall. What would
16 happen, the receipt would come back into court and this
17 man would be given a discharge.

18 This concept offended many jurists,
19 legitimately perhaps, but it worked in most of these
20 situations until such time as one day the man came back
21 with the receipt having paid \$500 to the Red Cross by
22 cheque. Three days later, the cheque bounced. The system
23 came to an end.

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1 I am not suggesting that that is on the
2 leading-edge of technology. But what I am suggesting is
3 we do, all of us, have to be more innovative. When the
4 community comes to us and says, "We may have a better idea,"
5 maybe these policemen can function in a different way,
6 maybe these policemen can talk to our elders and the other
7 resources here, maybe we don't need a formal structure
8 of judicial committees, maybe we need a little practical
9 common sense. When this policeman is looking for a venue
10 in which to put this offender he knows that there are many
11 things within a community he can use.

12 The elders are certainly the glue that
13 holds this all together. But maybe it is the local social
14 service agency that might be the immediate response to
15 this young man's needs. We have become such a systematic
16 society that we can't think beyond the next step. If we
17 learn anything from the people that are at this table,
18 the elders, they take a more broad holistic view and that's
19 what we have to adopt and it's an easy transition.

20 **RACHEL QITSUALIK:** Any comments?

21 **JOE MORRISON:** (Native language -- no
22 translation available)

23 For the benefit of the people that didn't

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1 understand my local Ojibway, I also have difficulty in
2 speaking English.

3 My name, as I explained in my Indian
4 language, Ojibway language, translates roughly to Weekinan
5 (PH). I am also a member of the Sturgeon Clan.

6 Part of our history, part of our cultural
7 and traditional values of the Native people is that elders
8 who have gone before us have always said that while we
9 are a visitor or a stranger in a locality that the first
10 thing that you should always do is indicate what your name
11 is and also what clan you belong to so people in the
12 community know if they have relatives or you are related
13 to them.

14 I also want to mention that I am a
15 traditional person. I'm a pipe carrier and also a keeper
16 of a traditional drum. I also want to mention that I am
17 a provincially-appointed Justice of the Peace for Ontario.

18 I do sit in court in northwestern Ontario. I do sit in
19 court in northern reserves.

20 When I came here one of the things that
21 I grappled with myself was when would be an appropriate
22 time to talk about the traditional values of the Native
23 people. I haven't seen that or heard that mentioned yet.

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1 Even though you have traditional people here, elders here,
2 that they are only the two. There are more people that
3 are recognized as elders throughout this country, but why
4 are they not here to give us the benefit of their wisdom?

5 They are the ones that have the knowledge, the verbal
6 and oral history of their community, how things were done.
7 But here we are with all the academics trying to make a
8 decision what is the best way for Native people, and yet
9 we are going back to the same situation that we have been
10 facing all along. It is the academics that are making
11 the decision for the Native people, not the other way
12 around.

13 The people that have the knowledge, the
14 education, should be the ones going out to speak their
15 wisdom and the knowledge of the elders from the communities
16 instead of the other way around. We shouldn't be all
17 sitting here. We should be out in the community talking
18 to the people that are really affected by the decisions
19 that you will be making here.

20 I know that a gentleman here indicated
21 that he has been put in jail by a racist policeman. Well
22 maybe a racist policeman has picked up the person that
23 is judges and justices of the peace to make the decision

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1 what kind of a sentence that person is going to get, so
2 we can't forget that. I can't forget that now I have the
3 authority to be able to send a person to jail and I know
4 it's a last resort that we have.

5 There are some other methods that we need
6 to consider and have always talked about. If there was
7 some way that the laws could be changed where a person
8 could be sent to a reclamation centre or a healing lodge,
9 particularly for people with alcohol problems because most
10 of the Native people that are in jail are in jail because
11 of alcohol-related offences. Now if they can be
12 able to send a person to that type of a situation or
13 institution then you wouldn't have that numbers of Native
14 people being incarcerated in jail or federal institutions.
15 If they can catch the problem before it really creates
16 a problem for the community, you are doing a lot more for
17 that community than anything else.

18 That is what I wanted to express that
19 I have a little bit of difficulty trying to understand
20 when all the lawyers were sitting up here. Why are they
21 talking about an Aboriginal justice system if they don't
22 understand their own traditions, if they don't know where
23 they came from? They haven't got that knowledge and the

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1 education of the elders from the community that are still
2 following and practising their traditional beliefs. I
3 am not talking about Christian beliefs. We as Native
4 people were given a way for us to live by.

5 I want to make a correction to one of
6 those comments that was made by one of the people that
7 was sitting up here regarding birch bark scrolls. I am
8 a member of that society that uses birch bark scrolls.
9 But in the way that context was brought out, we have never
10 done that in the way it was said. Maybe the person was
11 talking about another group of people that used birch bark,
12 but the traditional way of a birch bark scrolls that I
13 cannot talk to you about is still very much a secret
14 society. Some of the other groups that belong to that
15 society are willing to talk freely about that, but I can't.

16 I just wanted to make that clear that
17 the birch bark scrolls are there and were maintained for
18 the story of creation of our people in my area. That's
19 about all I can tell you at this time about that.

20 I just want to say that maybe some people
21 have a misconception of the birch bark scrolls. If they
22 ever hear that reference again maybe there are other Native
23 tribes in this continent that use birch bark scrolls in

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1 that manner, but certainly not the Ojibway people in my
2 area.

3 **RACHEL QITSUALIK:** Thank you very much.

4 Does anyone have any additional questions or comments?

5 **FLORA TABOBONDUNG, ELDER:** I was just
6 thinking the way the gentleman had first spoken when they
7 first started out of how to handle some of our people that
8 are getting into problems because they get into problems
9 and we usually put them down. We should not put anybody
10 down that did something wrong. We were taught to respect
11 each other and to help each other, for the person to
12 understand life.

13 Life is a cycle. We go round. And we
14 have to train that person and it's up to us as elders,
15 as mothers and fathers, to teach our children how to respect
16 life, how to respect everything that the Great Spirit gave
17 us in this land. How to respect our bodies, because he's
18 the one that made us, that made man first and then made
19 woman after for the man to have a helper with him because
20 he was getting lonesome. He didn't know what to do, so
21 the Great Spirit gave him a woman.

22 Just sitting here thinking, are we the
23 ones that are responsible for all the life, the teachings

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1 because the man is a supporter, is the one that brings
2 in everything that we need. He's the hunter. He's the
3 one that works and brings us things that we need in the
4 home. He builds our home. He feeds us. He feeds the
5 children. He clothes them. We have to look after our
6 children train them, teach them how to love the parents,
7 to love each other, to support each other, to thank the
8 Great Spirit of everyday life of what he gives us to help
9 us get the things that we need because we have to work.
10 We have to do the things that we want to do. God gives
11 us strength to be able to live and breathe and walk and
12 do things.

13 A woman, she was given the life to have
14 children. Like I said in the beginning, her medicine is
15 water. She bears children and when they are born the water
16 brings them out and that's the woman's medicine.

17 With the man, the eagle is his strength,
18 his health and his integrity. The eagle is very high.
19 He is the one that takes the message to the Great Spirit
20 when our fathers and husbands speak to him to watch over
21 their families.

22 It's probably the way you were taught
23 in your church, but ours is a little different; it's right

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1 down to earth. Our mother earth, it's alive. To us it's
2 alive. It bears fruit, it gives us trees and berries,
3 flowers that we use for medical purposes. Some of them
4 are used in the hospitals nowadays or even years before
5 when Laneenyon (PH) contacted Native people, they were
6 taught the herbs. They are used in the big hospitals.
7 They are shared.

8 Our forefathers shared and this is why
9 I think we have to share our feelings towards you to
10 understand our ways and we understand your ways, so we
11 can meet one other like this and use our best ways to work
12 together and build a nation, how we can raise our children,
13 how we can build a good communication in this world of
14 ours, because some day we are going to be one nation.

15 We are not any different, we are just
16 different in colour. We have the same heart, the same
17 body, the same eyes, every one of us. So we have to
18 understand that we are one, we become one as a nation
19 because on this turtle island we were put here. The Great
20 Spirit put us here.

21 My grandmother and my grandfather used
22 to say that some day in the future, you may see it and
23 you may not, that peoples are going to come together and

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1 understand each other and work together and share the
2 things they know together.

3 The things that I think we should really
4 help our young people with is we have our healings the
5 men do the healings, right? The men do the healings for
6 men and we do the woman's circle for the woman to understand
7 life. This is where we can train our young women to respect
8 life, to respect same as the men. To respect their way
9 of life to know, to know the work we have to do in this
10 life now to bring our nation up to the way the Great Spirit
11 wants us to walk on this land.

12 Thank you.

13 **RACHEL QITSUALIK:** Thank you for the
14 great privilege of your comments.

15 **ERNIE BENEDICT, ELDER:** I'm very happy
16 that we are coming together here and expressing those
17 things that we have already said, explaining and having
18 it recorded so that others also perhaps can get the benefit.

19 It is one of the first times that this kind of a very
20 basic dialogue has taken place, as far as I know. It is
21 a wonderful feeling for me to be a part of it.

22 Yes, I hope that you will understand then
23 that some of the words I speak may be very strange because

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1 this is a first time.

2 One of my first recollections as a young
3 boy was when my neighbour, who was an elderly man, happened
4 to wonder out into his front yard drunk, just at the time
5 when the police were going by, and so they stopped and
6 arrested him and pushed him roughly into the car. This
7 old man, drawing upon all the English that he knew, shouted,
8 "Get out of here, you Columbus boy."

9 I think that is kind of a short statement
10 of the attitude of the whole policing justice system that
11 he may have had and perhaps shared, and I believe very
12 much so that it is shared even today by the young people
13 who, seemingly without thinking or regret, have broken
14 laws and have caused much damage.

15 Indeed, the law enforcement we have
16 discussed, how it has been applied unfairly and unequally
17 among the Native people, I have seen instances of that.

18 Then also at the same time there is this feeling that
19 who is it that dares to sit in judgement upon the Native
20 people when they themselves are interlopers in our own
21 land?

22 I have already perhaps used the
23 illustration here of a Mr. Citadel who occupies one or

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1 two rooms in this vast hotel and we who number so many
2 here have gathered together. What if we decide that Mr.
3 Citadel did no longer own this hotel and moved in on him
4 and told him that we were the ones that owned it because
5 we were the majority and he the minority?

6 I have heard some lawyers speak about
7 the necessity in a court that all who wish to use the
8 facilities of that court must come into that court with
9 "clean hands." There has been no consideration, as far
10 as I know, as to whether the judge who sits in judgement
11 upon those clean hands is also clean handed.

12 Indeed, I have seen instances where a
13 judge holds a lease, has rented a piece of Indian land,
14 and then is prosecuting the Native people for fishing in
15 that same lake that he also has his summer camp on. This
16 has not been considered in the statements that have been
17 made so far and that is why I bring it up now.

18 I have also observed each of the certain
19 levels, and there are levels in the profession, levels
20 of endeavour. Judges are addressed as "my lord" and I have
21 often wondered about that kind of a usage within the courts.

22

23 The only explanation I can come up with

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1 up to this time -- I have not asked many people -- is that
2 at one time there were lords in the European countries
3 who sat in courts, in their own courts, over the actions
4 of certain commoners or serfs in their care, so-called.

5 So they have an ownership of people there and can dictate
6 the actions of the people who are within their -- I'm not
7 sure what it is, but I think sometimes it is called a fiefdom
8 or lordom -- I am not sure.

9 But generally that has come back down
10 to the Native people and even they have come into the courts
11 and all of those who work within the system the police,
12 the constables the court workers address the judge as "my
13 lord." Is that to continue? Is that kind of thinking
14 that has become customary, they say, is that to continue?
15

16 I also am confused by the terms that are
17 used, one is sometimes called "a jury of one's peers."
18 Peers, again, are some other word that has two meanings:
19 one is that they are people who are equals, are the same
20 kind of people. That is not necessarily so. I have
21 observed among the writings that I have had read about
22 England where peers are people with titles and are part
23 of the lordship idea. So we do not know what peers are.

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1 And words of that sort in the courtroom, I would think,
2 would be very confusing and I hope in time they will be
3 outlawed as inappropriate.

4 Now, that is I think a criticism of the
5 court system as I have seen it. I hope that those things
6 will be addressed by whoever it is that has some control
7 or can give some advice to the courts and to the judges
8 and all.

9 The idea that I have then is that if it
10 is true that all people are created equal and are equal
11 in the responsibility they have for their own actions,
12 their own bodies, whatever is within their control, that
13 that equality should then extend to also the court system.

14

15 Those who would pass judgement must be
16 people who are alike, and if possible those things that
17 we have discussed, that reconciliation and consensus will
18 be the order of the future day then it will be the accused
19 who will have an equal voice and an equal say in whatever
20 his future will hold.

21 It may not necessarily be punishment.

22 It may be, as has been discussed, retribution. It can
23 be restitution. It can be whatever. But the accused is

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1 one of the participants and I believe that in the
2 traditional Iroquois system the accused is one who has
3 an equal say in the proceedings and what is to be done
4 with him.

5 In the newspaper that is published in
6 Syracuse, New York, an early story was that a young man
7 had gotten drunk from the first whisky that was distributed
8 in Onondaga county. He had gotten drunk and had killed.

9 But the Onondaga tribe then intervened and said that this
10 young man was supporting a family and he needed some time
11 to get his affairs in order that the family will be assured
12 of a life. It was promised them that he was given a year
13 in which to work for his family. According to the
14 story in the papers, he was able to make some arrangements
15 for his family and even sent presents to the family of
16 those he had wronged. Then after year he had voluntarily
17 come back to be hanged. He was hanged. The first hanging
18 in Onondaga county.

19 I believe that there must come a time
20 when the equality that we talk about must be an equality
21 of all people, even those that we consider wrongdoers.

22 Thank you.

23 **RACHEL QITSUALIK:** Thank you very much.

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1 I am in kind of a really deep conflict with my own role
2 as a moderator wanting to shut people off after two minutes,
3 but I have a higher principle of respect for elders
4 overriding me at this point, so I just wanted to bring
5 that out.

6 While we have the privilege of having
7 the elders at the panel, does anyone have any questions
8 or further comments?

9 **RENEE TAYLOR, BARRISTER AND SOLICITOR:**

10 I wanted to make some comments in some way related to
11 the last speaker. I was going to speak to the issue of
12 punishment which came up this morning. One of the speakers
13 was saying there was a real concern among Native women
14 in the North regarding needing more protection, more
15 police, longer jail sentences.

16 I have to say as a lawyer, as an Indian,
17 as someone who lives constantly in a buffer zone between
18 worlds that there are indeed in our society true sexual
19 social psychopaths; there are some crazy people.

20 Most people I think would fundamentally
21 agree that, for non-violent crimes, crimes of property,
22 jail is not appropriate. But when you have socially
23 anti-social behaviour assaults of women, sexual assault

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1 of children that certainly something more is needed.

2 Now, I want to address my comments to
3 the whole notion of punishment. What seems to have worked,
4 and I have read a number of studies in my capacity as lawyer
5 regarding projects that have been longstanding in the
6 states of California and Oregon, it is coming more into
7 vogue in our system where there are victim impact
8 statements where victims sometimes come to court where
9 there is confrontation between the victim and the abuser
10 and certain things happen.

11 What is more remarkable though, maybe
12 because I do not believe jails are the answer --
13 fundamentally I have a real problem with jails -- following
14 what the old people say about what is appropriate
15 punishment, or can we in fact look at what someone has
16 done and write them off? That is what I am very afraid
17 of.

18 Something quite remarkable is happening
19 in the homelands. There is a film which touches on it
20 that was done on Round Lake where there were actual sessions
21 between abusers and those who had been abused without any
22 criminal charges ever being laid. This was a decision
23 people made in small communities they were going to deal

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1 with their own situation and what had happened. They are
2 called healing circles. There is one, to my knowledge,
3 in Victoria. There is a couple in the interior and they
4 are working. There are problems in the sense that
5 people, those in positions of authority that have a duty
6 to report are asked not to attend and people are working
7 it through because there are people who have done bad things
8 and they have gone away to jail and they have come home
9 again and they are sometimes reintegrated into the
10 community, sometimes they are crazy, crazy, crazy people.

11 There are those kinds of programs, if
12 we had systems in jail that actually responded to the
13 fundamental problems. There has been, for example,
14 experiments with drug therapy, aversion therapy. They are
15 rare and the people that get into those situations that
16 are allowed in those programs have committed the most
17 heinous of crimes and sometimes, quite frankly, some of
18 those people may be looking at parole options and so that
19 looks like a thing to go to, if you are a repeat sexual
20 offender, obviously if you are thinking about getting out
21 of the jail at some point.

22 I have to say this because I think what
23 happens if we break up the problems in tiny discrete little

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1 pieces without looking at the whole we will make
2 fundamental mistakes.

3 In Quagial (PH) a woman was sexual
4 assaulted. The assailant was scratched by the women in
5 the tribe, put in a pit, urinated on by the men, and then
6 a root, which I am not going to disclosed in this forum,
7 were rubbed in. You could never get rid of those scars.

8 Obviously we are not going to bring that
9 back, but did we have a system of dealing with very
10 anti-social behaviour? Yes, we did. All of this talk
11 about there's how many on-reserve, how many off-reserve,
12 all of this makes no sense. It makes no sense because
13 the system, as I see it, is fundamentally damaged at the
14 core.

 I was telling Cathy a story during the
15 break and she encouraged me to say it here. I have recently
16 been involved in a case that was described in a 14 page
17 particulars, which is a police report, as an Oka-like
18 situation.

19 Briefly stated, an Indian man came home
20 to his place on the reserve, went down his driveway which
21 is right down to the beach -- it has a big sign which says
22 "Indian land, no trespassing", with his 14 year old
23 daughter he was bringing home from a soccer tournament.

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1 There were a number of nude bikers swimming in front of
2 his house. He told his daughter, "Go in the house, phone
3 the police." He told them to "Get off my property."

4 One of them says, "You Indians think you
5 own the whole goddamn place." The guy is very quiet, 48
6 years old, remarkable for his age given all the facets
7 of Indianness that were criminalized in the '40s and '50s,
8 did not have a criminal record for being drunk off a
9 reserve, from violating a curfew. A lot of my people in
10 my home that are still alive have curfew violations. We
11 used to have an actual fence on the reserve. Anyway, he
12 didn't have any of that.

13 He tells them to leave. Several of them
14 come towards him. He grabs a saw off his porch. It has
15 no carburettor in it; he has been cleaning it, but it makes
16 a noise. He pulls the chain. Two of the people go off
17 on their motor cycles. One stays behind saying basically
18 racist things: "You Indians," blah, blah, muttering this
19 and that and starts to throw big rocks at his truck. They
20 bounce off the truck and one of them actually grazes his
21 daughter's head. She runs back in the house and she phones
22 the reserve family nearby and says, "Come help us. There's
23 these weird people. There's these bikers." My client

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1 didn't know that these guys were leaving. All he knew
2 was they got on their bikes. He could hear the motor cycles
3 around the property.

4 He went into the house and he grabbed
5 a gun. It had no bolt in it. He came out. The other
6 guy takes off, knocks his bike over, in the meantime takes
7 off with it. Anyway, to make a long story short, my client
8 while being arrested having made the first call to ask
9 these people to be removed from his property that he doesn't
10 know, he gets charged with assaulting a police officer,
11 resisting arrest, weapons offences, assault offences. The
12 guy whose motor cycle -- well, it turns out he ultimately
13 hurt it himself because he was in such a mess to go off,
14 claims criminal compensation for it. There is a prelim,
15 there's enough evidence to go to trial.

16 What happens is that when I phone up the
17 police officer and want to talk about what really happened
18 there, because there is all this discretion we have been
19 talking about, I get told that "Indians, they get a little
20 liquored up, they don't know what they're doing." I said,
21 "Is there any evidence whatsoever he had any alcohol?"
22 I get to the prosecutor just before trial and he starts
23 to tell me, he says, "You are going to defend this?" I

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1 said, "Absolutely." And he says to me, "You don't know
2 what they think." And I said, "Who thinks?" He says,
3 "Indians. The Indians around here are really
4 interesting," and then he proceeds to tell me what they
5 think. "Nice people when they are sober. Kind people.
6 Simple people."

7 I'm a Quagiuk khawinake (PH). We are
8 hardly simple people, nor is any one of the tribes on the
9 coast. Like other peoples elsewhere, we had what is call
10 a matrifocal society by ethnologists and anthropologists
11 and such which means men went to the women's village, this,
12 that and the other. We have our own way of being, our
13 own system of beliefs. But it is all throughout the whole
14 system.

15 I am not going to go into the all other
16 cases that I handle that are similar, but there are dozens
17 and it is all very well to say -- well, you know, Mr. Favreau
18 says things have been terrible, mistakes in the past, but
19 we are moving ahead and all this kind of stuff.

20 I am saying I am not trying to criticize
21 efforts that have been made. I think that anything anyone
22 can do to help people is to be welcome. But ultimately
23 the question before us is, can this system be adapted?

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1 I don't think so. Because so many people in the system
2 do not come from a place of malevolence. They do not come
3 from a place of hating Indian people. A lot of them are
4 very well-meaning. But they do not have the history.
5 They do not have the cultural perspective. They do not
6 have it. For all of the comments that are made regarding --

7 **RACHEL QITSUALIK:** I'm sorry to
8 interrupt your point. What do you see to be the solutions,
9 if any; adaptations; if any? So why not?

10 **RENEE TAYLOR:** I think there are lots
11 of things that can be done. We cannot today -- someone
12 suggested we are immediately going to dissolve things.
13 There has to be obviously some transition period. What
14 Indian people are saying is that we have to be able to
15 sit down and figure out how it's going to work in various
16 places. What would immediately change the system is for
17 every head of every government department to say, you have
18 to be getting communities of people together that know
19 something about this in the Indian community to give some
20 advice. It has to be immediately arrested. If anything
21 needs to be arrested, it's the system.

22 I hear all these talks about fiscal
23 restraint --

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1 **RACHEL QITSUALIK:** How?

2 **RENEE TAYLOR:** Seriously, there is no
3 one answer to that. But you have to start by getting the
4 people whether it is in urban centre which is where I mainly
5 practice. I spend a lot of time doing trial work on the
6 island because those are where my roots are and I am
7 employed to go and do that. For example, where I am in
8 Vancouver there has to immediately be a real hard look
9 at the system and say to people, these front-line
10 interveners, "You have to do this, you have to do that."
11 Because it is quite accidental. It is really quite
12 accidental at this point.

13 To be assisted, Native court workers do
14 some of the job. Some defence council are very good. Lots
15 aren't. Lots don't put up any defence. But I'm saying
16 to arrest the system -- I do not purport to speak for all
17 the Indians everywhere as an Indian woman or anything.
18 I am saying, as a practising lawyer that I think that there
19 has to be some local groups wherever Indian people are
20 in any numbers there are practical considerations and that
21 the people from all of those communities that are involved
22 in the justice system as it is have to be brought in to
23 see what immediate remedies need to be taken while our

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1 tribal councils and our leaders, our political leaders
2 pursue our goals of self-government and
3 self-determination.

4 They don't have to be mutually exclusive
5 things right now in my mind. We have very good leaders.
6 We have representation and they are pursuing our
7 interests. I am saying at a base- line level, because
8 if you ask any Indian on the reserve if they know that
9 the police motto is to serve and protect they are going
10 to laugh right into your face. They do not feel like they
11 are being served. They do not feel they are being
12 protected.

13 They are exceptions. I have met some
14 very good police officers and again well-meaning, but it
15 takes a very, very long time to understand the intricacies
16 of any particular culture and the only one that I know
17 is my own.

18 I take great exception to any suggestion
19 that there -- we are here because there are no simple
20 answers. I take great exception to -- there seems to be
21 a real inability on the part of various government
22 officials who have come to this forum to even imagine the
23 process of letting go.

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1 **RACHEL QITSUALIK:** Thank you very much.
2 Cathy Lewis.

3 **CATHY LEWIS, NATIONAL PAROLE BOARD:** I
4 am with the National Parole Board. I am not here to comment
5 on what system should be adapted, selected or chosen.
6 I am here to share with you my thoughts on whatever model
7 is developed I think there has to be the consideration
8 of talking to one another, helping one another, because
9 ultimately we are all related in that circle OF life.

10 When the components of the emotional,
11 the mental, the physical, spiritual aspects of a human
12 being are taken into consideration, those are the things
13 that are the core and fundamental in any human extension,
14 regardless of what model is considered.

15 I have seen people's minds and attitudes
16 changed through the cross-cultural education I have done
17 over the years. I have been in the system for 15 years
18 and in the last four years, I have seen a tremendous amount
19 of change in attitude. People taking risks to be
20 vulnerable, to examine their own attitudes, to examine
21 their value system, to examine the way they make decisions
22 impact on people's lives. I have seen the way they become
23 introspective to have a look at themselves and I think

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1 that is encouraging. That is all I have to say.

2 Thank you.

3 **RACHEL QITSUALIK:** Thank you very much.

4 Do you want to make a comment?

5 **JOYCE KING MITCHELL, JUSTICE OF THE**

6 **PEACE:** I am a Justice of the Peace in Akwesasne and in
7 the court of Khanawake. I want to make a brief comment
8 about the banishment. At first my reaction was to act
9 out in anger, but now I pity the person who doesn't
10 understand the term "banishment".

11 I am wondering how many other words we
12 throw out that are not understood by non-Natives.
13 Banishment to us is a system of values and if a person
14 doesn't respect the values of that community, then they
15 should take those values elsewhere and not within our
16 community.

17 I think the person who talked about
18 banishment and the idea of "dumping" somebody. We don't
19 want to dump anyone. We just want them to go where their
20 values are appreciated.

21 **RACHEL QITSUALIK:** Do you have any
22 comments, Michael Jackson? Can I ask for your input?

23 **MICHAEL JACKSON:** I find myself in a

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1 very interesting position sitting between an elder on one
2 side who is the keeper of a common law tradition of written
3 precedent and an elder -- two elders on my other side who
4 are keepers of a more ancient tradition as being keepers
5 of an oral tradition.

6 With permission of the circle, I would
7 like to take the advice of my elder to my left and take
8 the teachings and put them under my pillow tonight and
9 think about them and perhaps come back and say something
10 tomorrow.

11 **RACHEL QITSUALIK:** Go ahead Vina Starr.

12 **VINA STARR, BARRISTER AND SOLICITOR:**
13 I came up here to accompany Jim. I didn't really start
14 out with anything burning that I wanted to say. However,
15 I will conclude by sharing my dream.

16 We are all Canadians. We can in our
17 lifetime be proud of what we can share and we can truly
18 be entitled in our lifetime to hold our heads high
19 internationally with something new and that newness could
20 be to replace humanity for social control because the
21 social control only becomes necessary when the individual
22 human doesn't start out whole and is not nurtured to be
23 whole in the way that the elder described.

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1 The only thing worth working toward is
2 something that takes risk and work. I believe we are all
3 prepared to do that. That's all.

4 **RACHEL QITSUALIK:** Thank you very much.

5 **JOE MORRISON:** I want to share something
6 with you that I observed throughout my years in this world.
7 As a young boy I was born on the reserve in Lake of the
8 Woods and was separated from my family and I was put into
9 a residential school at the age of five. My family came
10 and took me out the residential school when I was eight
11 and they put me into a public school. All that time I
12 was going through that experience, I always felt some
13 negativism about being a Native person in Canada.

14 Then I joined the service, military
15 service. I was over in Germany for two years. The German
16 people are very interested in Native people and the history
17 of the Native people. I felt very welcome by their
18 interest whereas in my own experience in my own country
19 I did not feel that when I was growing up because I felt
20 that I was more to be kept down that I always had a negative
21 attitude about myself growing up.

22 Now that I got to the stage that I do
23 a lot of travelling I am beginning to appreciate all the

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1 things in life. I also begin to appreciate particularly
2 the airlines beginning to give recognition to the native
3 people, even though we are not recognized by the Government
4 of Canada as a third order or a third language and that
5 we don't have any distinct recognition of a separate
6 language.

7 I appreciate the airlines for being at
8 the forefront of that because every time I travel on a
9 plane I see those signs up there that say "exit" for the
10 English-speaking people and the arrow pointing that way,
11 and I see on the other side "sortie" for the French-speaking
12 people and also an arrow pointing that way. So that makes
13 me feel people good because the airlines are putting us
14 ahead of everybody so they gave us two exits to go out
15 in case anything happens. The French people have one side
16 and the English people have the other side. I would like
17 to leave you with that.

18 **RACHEL QITSUALIK:** I have one minute to
19 express what a privilege this has been for me; starting
20 from yesterday to today I have alternated between wanting
21 to cry and wanting to cheer. Some of the things I thought,
22 this is all academic stuff, I know all of this, what am
23 I doing here? And at other times thinking what is

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1 happening to this workshop. It has been a privilege for
2 me and I thank you all for the opportunity.

3 **MURRAY SINCLAIR:** Thank you all very
4 much. This indeed has been a roller-coaster of a day and
5 I want to thank all of you for going along on the ride
6 with us: some of you for causing the peaks and others of
7 you for causing the valleys.

8 I want to close this down with some
9 comments. I am going to ask Ernie Benedict and Flora
10 Tabobondung if they would be available to help us close
11 the day.

12 The questions that we have been asked
13 to consider today are whether the existing justice system
14 can be adequately reformed to address the concerns of
15 Aboriginal people, and if it can be, how should it be
16 reformed and if those reforms would ultimately benefit
17 the overall justice system for all people.

18 In some ways those questions, as you know
19 and as you have all witnessed today, have bothered us to
20 an extreme. They are difficult questions to answer because
21 in some ways we do not know the answer to that ultimate
22 question: can the existing system be adequately reformed?

23 We may never know unless we try, and if we try and fail

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1 we may be further along the road to despair than we are
2 now. That is of course part of the concern that Aboriginal
3 people have talked about.

4 If one were to look at it from the
5 perspective of should reforms be brought to the existing
6 system, clearly the answer has to be yes. The existing
7 system does need to be reformed for all the reasons that
8 have been discussed here today, not the least of which
9 is there are many people who are going to be caught within
10 the existing system, Aboriginal and non-Aboriginal, and
11 for those Aboriginal people who are going to be continually
12 caught up with the existing system into the future the
13 way that they are now processed has been shown to be
14 inadequate and that there are needs that they have that
15 will have to be specifically addressed.

16 As well, the existing system will need
17 to be reformed not only to address their concerns and needs,
18 but also because overall, as we all have spoken about,
19 those who have spoken today, we have all experienced the
20 frustration of dealing with a system which is not
21 adequately dealing with justice for all people.

22 For those reasons, if we asked the
23 question: should the system be reformed the answer is yes.

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1 Can it be reformed adequately for Aboriginal people?

2 We leave that for the Commissioners to contemplate.

3 Tomorrow we are going to begin with a
4 panel presentation of Discussion Papers G, H and I. We
5 would ask again that you glance at those so that the
6 presenters of those papers do not feel that they have to
7 spend a lot of time telling you what is in their paper.

8 We would like them to have some feeling that you have
9 some familiarity with that, so please do that much for
10 them.

11 In addition, we will go to a round- table
12 discussion of the last three fundamental questions and
13 we would ask you to give those some consideration as well.

14 There will be an opportunity immediately after lunch for
15 a full discussion from the floor of all of the fundamental
16 questions should there be anyone who has felt they haven't
17 had an opportunity to participate either today or tomorrow
18 morning. We want to ensure that you understand that you
19 will have that chance.

20 Before you leave the room, would you
21 please hand in your translation devices to the staff in
22 the corner.

23 Again I want to remind you that summaries

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1 of yesterday's proceedings are available on the
2 registration desk. Please take a copy. There are about
3 150 there and if you don't take them the staff have to
4 carry them and they are not looking forward to that.

5 I am advised tomorrow sometime there
6 will be a summary of this day's events distributed as well.

7
8 Friday's summary will be made available
9 to participants in the future. It certainly won't be
10 available tomorrow.

11 In closing then, we would call upon Ernie
12 Benedict and Flora Tabobondung if they would close this
13 day for us.

14 **(Closing prayers)**

15 ---Whereupon the proceedings adjourned to reconvene at
16 8:30 a.m. on Friday, November 27, 1992.