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SUPERIOR COURT OF JUSTICE

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HER MAJESTY THE QUEEN

and

ANNA WESLEY

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VOLUME IV

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SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

and

ANNA WESLEY

P R O C E E D I N G S A T T R I A L

BEFORE THE HONOURABLE MR. JUSTICE R. BOISSONNEAULT
on April 26, 1999 in COCHRANE Ontario

Charges: Assault (5), Noxious substance (3),
Assault cause bodily harm (2)

V O L U M E I V

APPEARANCES:

D. Fuller

Counsel for the Crown

G. Charlebois

Counsel for the Accused

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SUPERIOR COURT OF JUSTICE

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Transcript Completed: October 9, 2003

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SUPERIOR COURT OF JUSTICE

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U P O N R E S U M I N G

....JURY ENTERS

MS. FULLER: I'd like to call Gerald Kioke to the stand.

COURT CLERK: Gerald Kioke.

MS. FULLER: He will need an interpreter.

COURT CLERK: Gerald Kioke.

MS. FULLER: I think it's Gerard, actually.

COURT CLERK: Gerard.

MS. FULLER: I haven't been asking that the interpreter be re-sworn and I--because for the most part we've been using this same two or three interpreters who have been sworn.

THE COURT: Well, if the interpreter has been sworn, she does not have to be sworn again.

MS. FULLER: Thank you, Your Honour.

COURT CLERK: I simply want to remind you of your oath, okay?

GERARD KIOKE: SWORN

Testified through official interpreter -
Cree/English.

THE COURT: Would you ask Mr. Kioke to speak louder and into the microphone?

EXAMINATION IN-CHIEF BY MS. FULLER:

Q. Mr. Kioke, I understand you were born on September the 10th, 1940, in Attawapiskat?

INTERPRETER: Excuse me, the month?

MS. FULLER: September the 10th?

A. Yes.

Q. And that you went to Ste-Anne's Residential School in Fort Albany?

A. Yes, that's where I was.

5 Q. And do you remember when you went to that school what year or years you were at the school?

A. 1951 and '52.

Q. And I understand that you lived in the dormitory?

A. Yes, that's where.

10 Q. And among the boys that you lived with for part of that time was Eli Tookate at the school?

A. Yes.

Q. And how did you know Eli Tookate?

15 A. Eli is my first cousin. That was my father's...my father's sister's son.

Q. And while you were at the school together did you see something happen to Eli in the diningroom?

A. Like I said, he vomited. And he was fed his own vomit.

Q. By who?

20 A. Anna Wesley, that was that sister's name.

Q. And do you remember what meal of the day it was, or what you had been eating...he had been eating?

A. It was uh the lunchtime.

25 Q. And do you know what the boys...you and he and the others were eating?

A. It was mixed meat with potatoes.

Q. And where were you seated in relation to where he was seated at the dining room table?

30 A. I was seated on the right-hand side and he was sitting on my left.

Q. Were they chairs or benches?

A. They were benches.

Q. And can you tell me whether or not he vomited a little bit or a lot?

5 A. That I really can't say whether he vomited or not, but I...but I know that I saw him vomiting.

Q. And where did he vomit?

A. Right in his plate.

Q. And you indicated...you said that Anna Wesley fed him his vomit, with what?

10 A. Uh a spoon that's what she uses.

Q. And how is it that you remember this after all those years?

15 A. To my knowledge that was the first time that I ever seen anybody doing that, and that's the reason why I had remembered it for all these years.

Q. And how did it make you feel to see that?

MR. CHARLEBOIS: How relevant is that, Your Honour, Mr. Kioke is not a complainant?

20 MS. FULLER: Two reasons, Your Honour, it...it bears on the issue of the quality of his memory and the reason for it, and it also bears on the issue of intent to annoy or aggrieve.

THE COURT: Go ahead.

25 A. At first...at first I didn't feel anything or I didn't even uh think about it, but after awhile when I used to think about it, it started to affect me.

Q. In what way?

A. You asked me how I was affected by it...

Q. Yes.

30 A. ...you see me now sitting here and my interpreter is behind me, and that's the reason why I didn't go back to school because of that.

583.

G. Kioke - in-Ch.

G. Kioke - Cr-ex.

Q. Now, you spoke to the police in August of 1993, and gave them a statement?

A. Yes, somebody came and got me and I was told that the police wanted to see me, and of course I went.

MS. FULLER: I'm sorry Madam Interpreter, that was "August of 1993", you indicated to him?

INTERPRETER: Did I say 1993?

MS. FULLER: I thought you said 94, but I...just to clarify. I think you said 1994.

INTERPRETER: Yes, I said...

MS. FULLER: And the question was: Did the police come to speak to you in August of 1993?

A. That's when the time when they came got me.

Q. And do you know if when you spoke to the police you...whether the police had already spoken to Eli Tookate or not?

MR. CHARLEBOIS: How would he know that, Your Honour?

THE COURT: That's right.

MS. FULLER: Fine, Your Honour. Those are all my questions, thank you.

CROSS-EXAMINATION BY MR. CHARLEBOIS

Q. You told us that you and Mr. Tookate are first cousins, is that right?

A. Yes.

Q. What exactly is the link? In other words, is it your father, his mother or vice versa?

A. My uh...that was my father's first cousin, uh Eli's mother.

Q. Now...are you older than Mr. Tookate?

A. Yeah, I am...I am older than him.

Q. By about four years or so, right?

A. Maybe around there.

5 Q. Before you went to school at Ste-Anne's did you live in Attawapiskat?

A. Yes.

Q. And before Mr. Tookate went to Sainte-Anne's did he live in Attawapiskat too?

10 A. They used to live in Attawapiskat and after that they went and lived in Moosonee.

Q. Before you went to Ste-Anne's did Mr. Tookate live in Attawapiskat?

A. Yes, that's where they were.

15 Q. Do you know or do you remember which of the two of you went to Ste-Anne's first?

A. I was there the first one.

Q. Okay. Do you remember how long you had been at the school before Eli came?

A. I was there the first one.

20 Q. Okay. Do you remember how long you had been at the school before Eli came?

A. I was there uh one year prior...prior his coming...like, prior...prior to that.

25 Q. Now, when you were asked when you had been at the school you said--I wasn't sure whether you said 1951 and 1952, or 1951 or 1952.

A. The first time I went in there was in 1951.

Q. Is there anything special that allows you to remember that it was 1951 instead of a different year?

30 A. The reason why that I can remember it so clearly was uh that's when the Premier George died.

INTERPRETER: No, sorry my mistake.

A. That's when King George died in 1952, so I was...that's why I can...I can clearly remember being there in 1951.

Q. In...

INTERPRETER: In Fort Albany.

Q. In...in--sorry, in 1951 or 1952?

A. In 1951, I was there in Fort Albany because King George died in 1952.

Q. Okay. Now you told us you only went to that school for a year and a half, is that right?

A. Yes, that...that's the only length of time I was there.

Q. Did you go to a different school after that?

A. No.

Q. What did you do after that?

A. I did what everybody else was doing...the life...the life of years ago, like uh trapping.

Q. When you returned home to Attawapiskat did you enjoy a good relationship with your parents?

A. Yes.

Q. Did you tell your parents what you had seen about Eli?

A. Yes.

Q. What if anything, do you remember your parents doing about it?

A. I...I don't remember if they did anything about it...if they ever did anything.

Q. Yet, one of your parents was related to one of Eli's parents, right?

INTERPRETER: Excuse me, uh can you repeat that

so...

MR. CHARLEBOIS: Sure.

INTERPRETER: ...I can clearly specify exactly what you mean so he can understand, please?

MR. CHARLEBOIS: Q. Yet, one of your parents was related to one of Eli's parents, correct?

5 A. Yes.

Q. You've known Eli for most of your life, is that right?

A. Yes.

10 Q. And in fact, right now both of you live in Attawapiskat, is that right?

A. Yes.

Q. How long have the two of you been living in the same community of Attawapiskat...roughly?

15 A. He comes...he comes and goes...he comes in and goes again because he lives in Kashechewan also.

Q. Do you see Eli Tookate regularly? Say over the last four or five years have you seen him regularly?

A. I only uh saw him occasionally.

Q. Do you consider you and Eli to be good friends?

20 A. Yes.

Q. Did you ever tell Eli that you had made a statement to the police?

A. Never.

Q. Did Eli ever tell you that he had made a statement to the police?

25 A. Never.

Q. Did you and Eli ever discuss together your life at Ste-Anne's?

A. No.

30 Q. In all these years that you have been good friends the two of you have never once discussed the period of time that you were both at Ste-Anne's, is that what you're

telling us?

A. Never.

Q. Hmm, never came up?

A. I far as I know, never.

Q. Do you know what a lawsuit is, Mr. Kioke?

A. I don't know what exactly what you mean.

Q. Did Eli ever tell you anything about hoping to get money from coming to court?

A. Never.

Q. Thank you, sir.

THE COURT: Re-examination?

RE-EXAMINATION BY MS. FULLER:

Q. Were you in Fort Albany at Ste-Anne's School when King George died in 1952?

A. Yes, I was there.

Q. Thank you.

THE COURT: Thank you very much, sir, you may step down. I am told that the second witness expected to testify this afternoon missed his plane?

MS. FULLER: Apparently, Your Honour.

THE COURT: Apparently?

MS. FULLER: Yes.

THE COURT: In any event, he's not here?

MS. FULLER: Yes...there's some issues.

THE COURT: Well, we fully expected to have another witness testify this afternoon, he is not here, it is ten after three, we have to resume tomorrow morning at ten o'clock? You are excused for the day.

....JURY RETIRES (3:15 p.m.)

THE COURT: Miss Fuller, I guess you have no idea whether the witness will be here tomorrow at ten?

MS. FULLER: I've...

THE COURT: Or your hoping, but...

MS. FULLER: I've done everything in my power...

THE COURT: Yeah.

MS. FULLER: ...to ensure he's here.

THE COURT: If he is not here at ten what is in store for--do you have another witness?

MS. FULLER: I have another witness that I...

THE COURT: Oh, okay.

MS. FULLER: ...I have up my sleeve that were--I've got Detective Constable Delguidice getting here.

THE COURT: Okay, great. So, ten o'clock we'll resume tomorrow. Anything else before we break?

MR. CHARLEBOIS: Just for my own scheduling here.

Because the other two witnesses are not local, the two that are left; if for whatever reason those

witnesses don't show up tomorrow morning, would I

be put to my election tomorrow morning, or is that

something that as we had earlier discussed today in

your chambers, I could postpone until the end of

the day tomorrow?

THE COURT: Mr. Charlebois, rest assured that whatever I said in my chambers I will standby. I will not change my mind.

MR. CHARLEBOIS: No, I wasn't suggesting you would, Your Honour, it's just that if we run out of witnesses...

THE COURT: Well, then...

MS. FULLER: Your Honour, I don't know what...I

really don't know what the situation will be by tomorrow morning...

THE COURT: Let's wait and see.

MS. FULLER: ...and I don't like to...

THE COURT: Listen...

MR. CHARLEBOIS: Okay.

THE COURT: Listen, let's just wait and see. And you made your request. Your request is very reasonable. Your request was granted in chambers. For the purposes of the record, you can have the time...

MR. CHARLEBOIS: That's right...

THE COURT: ...that you feel is necessary to make whatever decision you have to make as the trial goes on.

MR. CHARLEBOIS: Thank you.

THE COURT: Is that okay?

....JURY RETIRES (3:15 p.m.)

R E C E S S

WEDNESDAY, MAY 12, 1999

U P O N R E S U M I N G :

....HIS HONOUR DEALT WITH ANOTHER MATTER OF SENTENCING.

....HIS HONOUR ADDRESSED A SCHOOL CLASS IN COURT

....MS. FULLER ADDRESSED A SCHOOL CLASS IN COURT

....MR. CHARLEBOIS ADDRESSED A SCHOOL CLASS IN COURT

THE COURT: Miss Fuller.

MS. FULLER: Thank you, Your Honour. Your Honour, the Crown would like...through the next witness, to adduce similar fact evidence with respect to the

5 charges of administering a noxious substance. As Your Honour is aware, there are three counts on the indictment alleging that the accused committed those offences and that the manner in which they were committed was to force students at this residential school to eat their own vomit in the dining room in front of their school chums.

10 The evidence of Eli Paul-Martin is on another matter. He's the complainant in his own right, but one of the things he told the police with respect to the...his experience at Ste-Anne's was, and I will quote from his statement, "I saw one time, it was supper time, I guess, it's that this boy was vomiting in his bowl, Sister Anna Wesley made him eat it, I can't remember his name, but he was from Winisk."

15 At the preliminary hearing, I attempted to adduce that evidence, and asked Eli Paul-Martin, "Did you ever see anybody throw-up in the food--vomit or throw-up in their food?" And his answer was, "I saw one boy, he got sick, he threw up in his food, threw up in his plate, I don't remember that boy..." and at this point Mr. Charlebois objected. He was aware that this evidence was going to be adduced with respect to similar fact. The judge ruled against me and indicated that he would not specifically relate to any one count. And...

20 THE COURT: Any reasons other than that?

25 MS. FULLER: Um..."I think it is highly prejudicial

and does not relate specifically to anyone."

"Thank you, Your Honour."

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Now, of course at the trial the court said, "Well, maybe an attempt at a..." and then it's unclear...the court reporter said "unclear" "an innocent motive", I think it was probably to rebut "innocent motive" and essentially the position of the judge at the preliminary hearing was that it was not inappropriate for him...where there was no allegation with respect to that matter in front of His Honour.

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THE COURT: So his reasoning at the preliminary was that as it was not related to any one identifiable count, it was not admissible?

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MS. FULLER: That was how I understood it...

THE COURT: Okay.

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MS. FULLER: ...Your Honour, because he indicated maybe at trial it would have...go to issues of innocent motive...or innocent association.

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As Your Honour knows, the test with respect to similar fact is...well it's essentially whether it's...whether the evidence is more...there's a test of whether or not it is more relevant than it is prejudicial. And we have to assess the relevance of the evidence. There are purposes in assessing the relative...relevance versus prejudicial value. We look at the purposes for which it is tendered.

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Now, as Your Honour knows one of the main purposes

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for calling similar fact evidence is to prove identity, and in those cases of course there is often a one, two, or a series of individuals who indicate that things happened to them that were similar, and by a person who may be the accused. And usually is it for the court to decide whether that person...that they had a certain action done to them was the accused or not. And that's where it's specifically identity. And an example would be in a series of bank robberies, where no one's disputing that the bank robberies took place, no one's disputing that the series sexual assaults took place, the issue is; yeah, but who did them? And sometimes there are identifying marks of a *modus operandi*, of the harm done to the victim, of the methods of concealment, or the voice, or the words used, that identify the perpetrator in all of those matters as being the same as the perpetrator--or the alleged perpetrator before the court. And in those cases there has to be a striking degree of similarity.

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It is important that we appreciate here that identity is not an issue for the similar fact evidence. If the allegation here is not whether or not Anna Wesley was responsible for forcing these children to allegedly eat their vomit, or allegedly forcing these children to eat their vomit, but whether it happened at all, that is it is to prove the *actus reas*. And the Crown's submission would be that as it is not called to prove identity and where identity is not essentially an issue, there

5 is a more relaxed standard of admission of that evidence. But in any event, Your Honour, I can hardly imagine a case where the similar fact evidence would be more strikingly similar than in this case.

10 THE COURT: Let me ask you this: Of course in attempting to assess probative value, I have to look at the strength of the evidence, the extent of support (unclear) and the extent it tends to prove. Mechanically, would I be required to listen to the evidence, the cross-examination of the evidence in order to assess its strength, or do I simply take the statements that you have read to me in that...

15 MS. FULLER: That is--Your Honour, in...there are two ways in which this assessment is...undergone. There is, either reading in the statement or in calling *viva voce* evidence. In my experience, *viva voce* evidence is called where there is some issue as to whether the evidence is in fact similar.

20 THE COURT: What is your intention?

MS. FULLER: The intention--or the purpose?

THE COURT: No, how are you going to proceed?

25 MS. FULLER: I'm satisfied with just the court considering what I have advised you with respect to that evidence. If--as I wasn't--with respect to the other similar fact evidence. If my friend wishes...

THE COURT: Okay. Well...

MS. FULLER: *viva voce*.

30 THE COURT: ...no, no, I have my answer. And I will interrupt you for a moment, I'm sorry but, what

will be your position on that point?

MR. CHARLEBOIS: I don't have a problem with Your Honour ruling on the basis of the statement because that's all we have to go on at this stage.

5 THE COURT: Very well.

MS. FULLER: Thank you. It's the statement and the - I believe it's a few lines of the preliminary hearing.

10 THE COURT: I would like the statement photocopied for me though...both parts, the preliminary inquiry and the statement to the police officers.

MS. FULLER: Thank you, Your Honour.

THE COURT: Not this minute, just before I talk to the disposition of this motion.

15 MS. FULLER: Certainly, Your Honour. The similarities with respect to the counts in the indictment that Your Honour has heard evidence on, and the evidence you would hear from Mr. Paul-Martin are numerous. There is a nexus of time, that is during these years in the early...early
20 '50's to early '60's when all of the complainants were at the residential school. There is a nexus in place, that is, in Fort Albany in the residential school. There is a nexus in the actual scene in the dining room in all of these cases.
25 There is a nexus in relationship where the alleged person forcing the child to eat vomit is in a position of trust and responsibility as caregiver. There is a nexus in terms of the actual act, that is being forced by one means or another to eat their vomit. And it is in response to the distress
30 of a child who is sick at mealtime.

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These are discreet actions. The Crown could do a long song and dance and call a lot of evidence, but at the end of the day what we have is; child is in dining room, eats something, throws-up, and the accused forces the child to eat the vomit. That's it, that's all. And these are the...the *actus reas* of these events are quite narrow in their parameters.

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With respect to the purposes; as I've indicated one of the reasons that similar fact evidence can be found to be admissible is to prove identity. And it's not what the Crown is relying on. To prove the *actus reas*, and that is one of the reasons the Crown feels that evidence is admissible, to rebut a defence such as innocent association or accident, and again in the dining room with a number of children who with her responsibilities one could easily understand the suggestion being made that she's going by in a flurry, kids don't want to eat their food, she doesn't notice, and if they vomited it was lost on her. She's just saying, "eat your food." And in fact, one of the witnesses said those were her words when he vomited. "Eat your food".

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So there is that defence, that it rebuts in the sense that the more people you force to eat your vomit the less likelihood you are to be persuaded when you say, "Well, I don't..." you know "I didn't notice, I was preoccupied." You might have been preoccupied once, but you're not going to be

preoccupied on several occasions to that extent.

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Another intent is to show the state of mind at the time of the offence. This is a serious intent on the part of the Crown because of course as Your Honour knows the law requires that the administering a noxious substance must be with the intent to aggrieve or annoy. And again, it is to rebut any suggestion that this nun is just trying to get these kids to eat their meals and if they don't like cod liver oil, too bad.

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Again, the exercise of this event shows such an animus, such a loss of control on the part of Anna Wesley that it does provide the court incrementally with a sense of the atmosphere in this environment and of the extent to which the children were controlled and terrified.

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Another purpose for which it is admissible, and one that the Crown relies on, is to corroborate evidence of the complainant where identity or *mens rea* is not in issue. And in this case the evidence is corroborative. It's...it's my submission it's very hard for a jury to accept that someone...a human being could do this to another human being. Could do something so--cause another human being to be so degraded and so dehumanized. It's very hard for us to accept that.

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It's very easy with the passage of time to think that childhood memories got exaggerated, that maybe

this didn't happen because it's too ugly, frankly, for it to have happened.

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And another purpose is to illustrate the background and history of the relationship between the complainant and the accused. And I would refer Your Honour briefly to a case called *R. v. L.W.G.* or *G.L.W.* as they're now all called by initials. And in that case, the Alberta Court of Appeal, the accused was charged with assault and sexual assault on his wife, and at the trial evidence was admitted of the accused's violent behaviour towards the complainant on previous events, but also with respect to violent conduct towards three women, not including the complainant with whom he had an earlier relationship, and Mister Justice (unclear) in Fraser, who spoke for the majority, said that the prior assaults and intimidation visited by the accused upon his earlier partners during their relationships with him, could be and were regarded by the trial judge's persuasive that the accused had distinctive behavioural characteristics with respect to the manner in which he treated those three women. The trial judge concluded that the probative value of the evidence would substantially outweigh its normal prejudicial impact, and he was justified in receiving the evidence, and the conviction was supported.

It is to be noted, Your Honour, in that case we were talking about earlier relationships, a different period of time, whereas here we're

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talking about the scenario, the atmosphere where these children are all variously together at the same time or crossing each other's paths during this span of about...about ten years.

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A couple of other remarks of courts in these cases, that I would just bring to Your Honour's attention was a case called in *H.D.A.* (1997) Nova Scotia Court of Appeal Decision, where the court said, "The issue of credibility was more sharply defined than in most cases because the defence of denial of the event, common to each count..." because of the defence of denial of the event common to each count, "accordingly prejudiced the accused from misuse of the evidence by the jury was not a factor." And that is the case here. It's denial. It didn't happen. It didn't happen the first time, it didn't happen the second time, it didn't happen the third time. Well, what about the fourth time? What about the fifth time? And it is no answer, and there is no uh exclusionary rule that says if the Crown has enough evidence...it's got enough, it doesn't need more. If there are four witnesses to an event we could call all four. If there's 100 witnesses to an event and there's a plea of not guilty, the Crown is entitled to call all 100.
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THE COURT: What is the point?

MS. FULLER: It may be necessary if there is a denial...

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THE COURT: What is the point in telling me that the Crown should present all of its witnesses? Of course the Crown should present all of its

witnesses.

5 MS. FULLER: Because there is a tendency in a case such as this for, and I heard this remark made with respect to the similar fact evidence when we first raised it, that "The Crown doesn't need this evidence" Mr. Charlebois said. "The Crown doesn't need this evidence." And of course it is for the Crown to decide what evidence it needs.

10 THE COURT: It's up to the Crown to decide what she wishes to relate to the court in open court, after private conversations.

15 MS. FULLER: This was on the record, Your Honour, with respect to the similar fact evidence before we had discussions there was some argument in court on that issue, and one of the submissions made by my friend was that the Crown didn't need this evidence. This was--it's similar fact evidence and it was part of...of the evidence that we were initially concerned with.

20 In the case of *F.B.B.*, and again it's a Nova Scotia case. "Evidence of previous assaults by the accused on other children in the household, though not of a sexual nature, was admissible as similar fact evidence in the charge of sexual assault to reveal the regime of dominance and violence imposed by the accused upon the victim and her siblings, and to explain why no mention had been made of the abuse for over 20 years.

30 And Your Honour will recall how the expert evidence indicated that even witnessing violence has a

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traumatic effect on children, and an effect on children in terms of causing fear, and Your Honour will be aware as well that one of the...the arguments by the defence in cross-examination and positions taken is that these children should have complained if they were treated badly. And the answer...one of the answers to that in court is "these children were too terrified by the continual violent atmosphere that surrounded them." But that atmosphere has to be put before the jury in order for them to appreciate it.

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And finally, Your Honour, I would refer you to the...where it is...it is similar fact evidence is admissible to enhance credibility, to establish a pattern of behaviour by the accused that was consistent with the allegation. And that's what this case is about. This case is about credibility. Either these witnesses are telling the truth or they're not. And although there are 40 or 50 years between the events, it is not a case where one could argue they're mistaken about the details, they're mistaken about who did it. It's not a question of mistake, it's not a question about inability to recall, it's not a question of perception, it's a total question, Your Honour, of credibility.

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The position of the Crown in summary then is that this evidence is identical in its notable characteristics to the allegations before the court. That it is relevant...highly relevant to

explain animus, that it is relevant to explain context, to explain relationship, to explain the actus reas.

5 Now, I know my friend will be arguing that, well we don't have the person here, so how can the evidence of Mr. Eli Paul-Martin is that he was sitting at the table and he saw this boy from Winisk throw-up and forced to eat his vomit by Anna Wesley, but he doesn't know the boy's name. And the argument that my friend will make is that even if this is similar, the Crown shouldn't be allowed to call it, Your Honour, because we don't know who that person is. How can Anna Wesley answer that? And my answer to that is; what is more important is that 10 the evidence is not the...the vagueness as to the evidence of the complainant, but rather the certainty of the evidence of the assailant in these cases. If the evidence of the...of the witness was that...was unclear about the complainant, then its probative value would be fairly weak, but that is not the case here. This is the case of somebody who is not a complainant on these allegations of noxious substance, at all. His complaint is of a different nature, but what he is, is an independent 15 witness who when asked to speak to the police, spoke to them about incidents that he either experienced or that he witnessed. And in fact, the argument could be made that the fact that he doesn't know the name of the person who he saw treated in this fashion makes his evidence more 20 credible in view of the approach taken by Mr.

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5 Charlebois that perhaps there was collaboration between the corroborating witness and the complainant on these counts. Here there is no complainant. Here the remarks are gratuitous in the sense that there's no benefit either to the complainant or to the witness in making them.

10 I will be providing Your Honour with the briefest of statements, and the statements themselves are imperfect. All I can say to that is that the Crown did attempt to adduce that evidence at the preliminary hearing, and Your Honour heard yesterday how defence was precluded from cross-examining witnesses at a preliminary hearing, and felt prejudiced and handicapped by that with respect to other complainants because he wasn't aware of them. My argument, of course, to anticipate to that is this evidence was in front of the court, it was in the brief, I tried to explore it, Mr. Charlebois didn't wish to hear it. So, if it is unexplored in minimal at this point, it is because of the decision by Mr. Charlebois not to explore it at the preliminary hearing, and this is the forum to do so and the Crown cannot be prejudiced because it was not explored in a fuller fashion before today. But as I've indicated, it is an area that is discreet and the actus reas is a very narrow one.

30 For all those reasons, Your Honour, the position of the Crown is that the evidence is highly probative...

THE COURT: You do not have to start over.

MS. FULLER: ...and is not prejudicial to the accused, except in the sense that it strengthens the Crown's case, which is not the meaning of prejudicial as I understand the courts to take it.

THE COURT: Mr. Charlebois?

MR. CHARLEBOIS: The Crown indicates...

THE COURT: Before you start, if I could have or borrow the statements for now, I will hand them back to you, but indicate which passages are those that I am to consider...or you can tell me the page in the preliminary.

MS. FULLER: Oh, yes, thank you, Your Honour.

MR. CHARLEBOIS: The page in the transcript, Your Honour, would be...it starts at 71, 72 and the top part of 73.

THE COURT: 71 starts...okay.

MS. FULLER: And Your Honour, I have...

THE COURT: Do the exact questions...would be page 71, question 4, is that correct?

MR. CHARLEBOIS: No, Your Honour, it would start...page 71, line 10.

THE COURT: Line 10 down to...

MR. CHARLEBOIS: Down to all of 71, 72 and it ends...page 73, line 5.

THE COURT: Okay, is that correct, Miss. Fuller?

MS. FULLER: Yes, I believe that is. The reason I...want Your Honour to--and I'll provide you with a copy of the statement...I want Your Honour to have that passage is because as Your Honour knows when witnesses give statements they don't necessarily speak with absolute clarity, and

5 there's a lot of peripheral, I guess probably "maybes" that may or may not be "probablys" I guess, or "maybes" may be something else. And in this case the witness says "I guess", but it's a conversational "I guess".

THE COURT: Okay, whatever. I'm dealing with page 71 as I can see it here.

Question 9: Did you ever see anybody throw-up in their food, vomit or throw-up in their food?

10 Answer: I saw one boy who got sick and throw up in his plate.

Question: I'm sorry will you just repeat that?

15 Answer: I saw one boy throw-up in his plate, but I don't remember that boy.

Now the rest of it if I'm correct, is argument...

MS. FULLER: Yes.

20 THE COURT: ...and a ruling. So the only evidence that I have out of the preliminary inquiry is: "Did you ever see anybody throw-up in their food, vomit, or throw-up in their food?"

MS. FULLER: Yes.

25 THE COURT: "I saw one boy who got sick and throw-up in his plate." "I'm sorry, would you just repeat that?" "I saw one boy..." Answer "throw up in his plate, but I don't remember that boy."

Those are the facts that I am asked to find that similar facts exist.

MS. FULLER: No, Your Honour, that is in conjunction with the statement...

THE COURT: Okay, well...

30 MS. FULLER: ...and I'll just provide you with a copy of the statement.

MR. CHARLEBOIS: I understand it's being limited to one paragraph in the statement.

THE COURT: The paragraph in the statement has been outlined by the Crown?

5 MS. FULLER: It has Your Honour, and the point I was trying to make...

THE COURT: Well, I am just interested in what the statements are right now.

MS. FULLER: Right.

10 THE COURT: "I saw one time, it was suppertime, my guess is that this boy was vomiting in his bowl, Sister Anna Wesley made him eat it, I can't remember his name, but he was from Winisk." So those two particular extracts...

MS. FULLER: Yes.

15 THE COURT: ...of the preliminary inquiry and Eli Paul-Martin's statement to the police on the 5th...on the 22nd of June, 1993, are the two pieces of evidence that I am to consider in assessing whether they qualify under the similar fact rule, is that correct?

20 MS. FULLER: Well, yes, Your Honour, but with the provisal(ph) that, I'm assuming that my friend is acknowledging that what the witness was referring to and was stopped from saying when he said "I threw up...I saw someone throw-up in my bowl" that this is the introduction to this incident. I'm assuming that that's admitted. If that's not admitted and if we're going to be formalistic, that he might have been referring to something else, then...

30 THE COURT: I don't know what you are talking about

right now.

MS. FULLER: Well, the...the statement refers to...

THE COURT: The statement in the preliminary inquiry or the police statement?

MS. FULLER: The statement in the preliminary inquiry...

THE COURT: Yeah.

MS. FULLER: ...refers to watching or seeing some boy throw-up...

THE COURT: Right.

MS. FULLER: ...in his plate. And that was an introduction to the statement provided to the police, at which point I was interrupted from continuing to ask, "And what happened after he threw up?"

THE COURT: Your intended--then there is more than just the two statements. Your intended...or not your intended...what you expect to hear from the witnesses is that the statement in the preliminary inquiry ties in with the statement in the police statement.

MS. FULLER: Well, they're...they're...they're the same and I...perhaps...

THE COURT: They are not the same, but if your understanding is that witness will correlate them...

MS. FULLER: Yes.

THE COURT: ...that is what you are telling me?

MS. FULLER: Yes.

THE COURT: And...

MR. CHARLEBOIS: That's my understanding.

THE COURT: Okay...

MS. FULLER: Yeah.

THE COURT: ...so, now I have it.

MS. FULLER: No, I just wanted to be...

THE COURT: I do not know why it takes us

MS. FULLER: ...perfectly clear...

THE COURT: ...15 minutes to find out about five lines.

MS. FULLER: I don't want to--I want to be perfectly clear so that if--so there's no suggestion that all the witness said at the preliminary hearing was he saw a person throw-up in his bowl. How do we know that that has anything to do with the statement he gave to the police? Well, we do know, and I just want to make sure that that's conceded.

THE COURT: That is what we have been talking about for the last ten minutes, and was conceded right away that the two statements tie in, so let's get onto something else.

MS. FULLER: Thank you.

MR. CHARLEBOIS: The Crown indicates that I chose at the preliminary hearing not to explore it. That's in my submission, a misreading of Judge Miranda's decision. I objected because the evidence was clearly in my view, inadmissible. Judge Miranda asked the Crown for submissions and didn't even ask me to make further submissions.

THE COURT: What does what occurred at the preliminary inquiry in relation to what I am asked to do today have to do with anything?

MR. CHARLEBOIS: Because the Crown raised it in her submissions...

THE COURT: Well...

MR. CHARLEBOIS: ...I feel I have to answer it.

THE COURT: ...it doesn't have anything to do with anything. I will...

MR. CHARLEBOIS: I'll move onto something else.

THE COURT: ...I will decide on what I hear today.

MR. CHARLEBOIS: That's fine. Crown has also invited Your Honour to consider two decisions from Nova Scotia and one from Alberta, admittedly jurisdictions with some rather right-wing pronouncements, but in any event, without inviting Your Honour to consider *M.A.G. Ontario Court of Appeal*, that's directly on point. Bottom line in *M.A.G.* said our Ontario Court of Appeal in 1997, is that similar fact evidence basically doesn't go in unless the Crown is able to establish that it meets a number of parameters and that its probative value exceeds its prejudicial effect. That's the bottom line.

Now--and I'll be referring to speci--Your Honour to specific passages in *M.A.G.* in a few minutes.

THE COURT: I can assure you that I have read *M.A.G.* more than once, and summarized it, so if that will help you at all...

MR. CHARLEBOIS: Okay.

THE COURT: ...in the selections you will make in your reading.

MR. CHARLEBOIS: Now, the Crown has conceded that the attempt to introduce the similar fact evidence here is not to establish identity, because as we all know, identity was admitted at the outset of this trial. That it is being offered for other

purposes.

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Now, on noxious substance, we have heard from three complainants on noxious substance; Mack, Tookate, Daniel Wheesk. We have heard from two corroborating witnesses; Wesley and Kioke. What more will allowing Paul-Martin to testify on a vague allegation of what he might have seen with an unnamed student, at an unspecified time, at an unspecified year, under totally unspecified circumstances, assist the jury in arriving at its findings of fact?

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THE COURT: Are you telling me that the evidence is so vague that I should not consider it for similar fact evidence?

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MR. CHARLEBOIS: Yes, that's point one, because if you find that one cannot be similar fact, then Your Honour need not get into any other inquiry about a weighing of probative value prejudicial effect. My first submission is that it is too vague to be even considered similar fact evidence. The only nexus is that it would have happened at the residential school, that it would have involved Anna Wesley, and that it would have involved throwing-up. Yet, when you even look at the statement given by Paul-Martin there even appears to be some doubt in his mind about what he actually saw. "I saw one time, it was supertime, my guess is that this boy was vomiting in his bowl". Now, it may well be that the original handwritten statement might be of assistance to all of us because it might have punctuation marks that were missed in the course of

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transcribing it, but if the statement is accurate
and if all the punctuation...if that's all the
punctuation that there is in the actual handwritten
statement, "it was suppertime, my guess is that
this boy is vomiting in his bowl" the witness isn't
even sure whether he saw a boy vomit.

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So, my first argument is it's too vague to be
considered similar fact. If Your Honour after due
deliberation exceeds to the Crown's submission,
that it is similar fact in nature, in species, then
Your Honour has to consider whether or not for the
purpose for which it is being tendered. Crown has
indicated what its purpose is; to bolster the
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credibility of the witnesses who've already
testified, to establish the commission of the *actus
reas*, to negate innocent motive or intention.

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Now, in my respectful submission this amounts to
judicial piling on because as I've indicated, we've
had three complainants testify in front of the jury
and two corroborating witnesses testify in front of
this jury as to specific incidents that the jury
will have to weigh. What more will a totally vague
incident of the nature that I've alluded to assist
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the jury in its deliberations.

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So in my view, first you find that it's not
similar. If you find that it is similar, then the
purpose for which it is being tendered on the basis
of the whole evidence we've heard on this trial so
far, does not assist the jury and should be

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excluded on this part. If Your Honour exceeds or finds that (a) it's similar, and (b) it's got some useful purpose in assisting the jury in its determination, then Your Honour has to move onto step 3 - probative value - prejudicial effect.

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THE COURT: That is where you should maybe address your comments. You did address them a few minutes ago, on the words "my guess" and you know rather than go in a complete analysis of M.A.G....What are your comments as to the probative value of a comment "my guess"?

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MR. CHARLEBOIS: Okay. Probative value, Your Honour, is all it's going to show because it's so vague is a propensity for vial...

THE COURT: No, it is not. The witness was guessing, that has nothing to do with propensity. The witness is guessing.

MR. CHARLEBOIS: In my...

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THE COURT: That has to do with probative value. How much probative value should a trier of fact attach to a guess, as opposed to the prejudice that comes along with allowing that evidence?

MR. CHARLEBOIS: The probative value is very low in my respectful submission...

THE COURT: Okay.

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MR. CHARLEBOIS: ...the prejudicial effect is very high for obvious reasons, and the added feature that I want to bring to the court's attention is how can the accused respond to such a weak and vague allegation in front of the jury, when it is not situated at all as to time, person, alleged victim, circumstances? Miss Wesley cannot defend

5 an allegation that is being made in the abstract.
In this stage you don't even know--all we know from
Mr. Paul-Martin is that she would have been at
the school if one looks at the indictment...between
10 1952 and 1957. And that list could have happened
at any point during that period of time, if indeed
he saw it. I would without--because Your Honour
has paraphrased and annotated M.A.G., I'll simply
ask you to consider specifically at page 490,
15 paragraphs (F) and (G), and I won't bother reading
them to Your Honour. Parag...or page 494 which
addresses probative value prejudicial effect, page
494, I'll ask Your Honour to consider with great
care paragraph (G), and I will allow myself to just
20 read paragraph (G). "In assessing the prejudicial
effect of the proposed evidence, consideration
should be given to such matters as; one, how
discreditable it is; two, the extend to which it
may support an inference of guilt based solely on
bad character; three, the extent to which it may
25 confuse issues; and four, the accused's ability to
respond to it." And the last paragraph, I'll ask
Your Honour to consider...or the last two, I should
say, I'll ask you to consider, page 501, paragraph
-D- as in David, second sentence, "If the issue in
question is but a minor one, the evidence will have
less probative value and may not be worth receiving
30 given its prejudicial effect." And lastly, page
504, paragraph (H), last sentence which stretches
into the top of page 505. "The forbidden line of
reasoning is that which leads to the conclusion
that the accused committed the offence with which

5 he is charged, based not on the strength of the evidence which has a connection to the issues in the case, but rather on the strength of the evidence that he is a bad person who would have a tendency to commit this offence."

10 But I'm really hanging my hat here, Your Honour, on page 490, paragraphs (F) and(G), the first paragraphs I read into the record. And on that basis, I would ask Your Honour to not allow Mr. Paul-Martin to testify on that matter, but rather to limit his evidence to the count of assault causing bodily harm of which he is allegedly the victim.

15 Unless Your Honour has any specific points you'd like me to address, those are my submissions.

20 THE COURT: Thank you very much. Reply?

25 MS. FULLER: Thank you, Your Honour. The reason I asked the court to review the transcript is because unlike the statement which is taken in a relaxed--well, relatively relaxed environment where a number of things are discussed, and where no direction is given as to varying incidents, at a preliminary inquiry the witness is under oath, he's directed to particular incidents by specific questions. And under oath and directed to the particular incident, "Did you ever see anyone throw
30 -up in their food, vomit, or throw up in their food?" which is not ambiguous, the response was "I saw one boy who got sick and throw-up in his

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plate...throw up in his plate, but I don't remember that boy." And it's been conceded that that event is the same event that is referred to in the statement to the police where in a much less concise and concrete fashion, the witness said "I saw one time, it was supertime, my guess is this boy was vomiting in his bowl" and of course the position of the Crown is that the "guess" is about the time of day that it happened, the supertime, and not rather whether or not he was vomiting. And I would have hoped that we could have decided this not on the basis of semantics but on the basis of probative value, and it is perhaps a mistake on my part in terms of procedure. I perhaps, in light of what I'm hearing, it would have been better for me to go through a full Voir Dire calling the witness, however I had not thought that that was disputed in view of the fact that the evidence given at the preliminary hearing made it crystal clear that this witness saw somebody throw up. And since we're talking about throwing up as opposed to throw a ball, it's hard for someone to be confused about that detail.

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My friend says that this is vague, the preliminary hearing indicates that this happened at the school, in the dining room, involving vomit, involving Anna Wesley, involving her forcing a boy to eat it, who happened to be from Winisk.

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That in my respectful submission is far from vague. As I anticipated, my friend on three different

occasions said, "Well, the Crown...does the Crown really have to do this? What more will allowing this person to testify add to the case? This is judicial piling on."

Well, Your Honour, when we look at whether something will assist, we look at whether it's relevant. And if it's relevant, Your Honour, it doesn't matter if it's beating a horse to death, if it's relevant it is admissible unless it is prejudicial, and I would note that when asked in what way this is prejudicial? I did not hear my friend indicate how it is prejudicial, except to the extent that the identity of the boy has not actually...has not actually been given.

Therefore, I just want to clarify, Your Honour, that the preliminary hearing...what the preliminary hearing does clarify...and that is that the witness was not guessing when he said that the...what he witnessed was a boy from Winisk throwing up into his bowl.

R U L I N G

BOISSONNEAULT, J. (Orally):

I am asked to decide a question of the admissibility of similar fact evidence based on the evidence of two statements made by one party; one at the preliminary inquiry in May of 1998, and one statement made to a police officer of five years earlier in 1993.

5 I am told that the statements relate to the same incident, though I find no evidence to that effect. The statement in the examination for discovery was as follows: "I saw one boy who got sick and throw up in his plate." "I'm sorry, would you just repeat that?" "I saw one boy" answer "throw up in his plate, but I don't remember that boy."

10 Then we go to the statement five years earlier. "I saw one time, it was supertime, my guess is that this boy was vomiting in his bowl." "My guess" of course, could either apply to the supertime part or apply to the vomiting part, I do not know. That is not at all clear. This statement is very nebulous.

15 Now, similar fact evidence rule is simply a rule, that evidence of discreditable conduct will be inadmissible, not admissible, except when its probative value outweighs its prejudicial value. It must be found of course that is the conduct of the accused...there is no problem here. "It must be found of course if there is any relevance or materiality." Yes, there is. "Is it a discreditable conduct?" No question. What counts in the end is whether its probative value outweighs its prejudicial value. And the initial inquiry is not about the degree of similarity, but about the relevance and materiality, and what inferences are sought to be made. In this particular case, I hold that the statement, "my guess" is impossible with what we have to be attributed to either supertime

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5 or vomiting. It is a guess, and that's what it is. As such, the probative value of that comment is very weak. The prejudicial value of course is of great importance and strong.

10 So on that basis, I find that a case for the introduction of that evidence and the similar fact evidence has not been made out, and will not be presented to the jury.

15 MS. FULLER: Your Honour, there's one brief matter I have to discuss. It's--actually it involves a scar with respect to this witness.

THE COURT: I'm sorry? It involves....

MS. FULLER: The next witness has a scar and I don't--I would prefer if I could have my friend see that scar, and perhaps admit it instead of us going through his hairline like we did a few days ago.

20 THE COURT: I was going to take a break now, anyway...the morning break, okay?

MS. FULLER: Thank you.

25 THE COURT: This is your statement, by the way. This is the statement you lent me for the purposes of the motion. We'll break for 15.

R E C E S S

30 U P O N R E S U M I N G

MR. CHARLEBOIS: Before the jury comes in, Ms. Fuller, I thought we....

MS. FULLER: I've changed my approach...

MR. CHARLEBOIS: Okay.

MS. FULLER: ...my tactic, Your Honour.

MR. CHARLEBOIS: Fine.

MS. FULLER: I'm gonna handle this particular issue differently. It's an issue that Mr. Charlebois and I...

5 THE COURT: Are you asking me anything?

MS. FULLER: No...

THE COURT: Oh, okay.

MS. FULLER: ...we're not asking.

THE COURT: Good.

10JURY ENTERS (11:40 a.m.)

15 THE COURT: Members of the jury, I would like to address you for a minute or so, before we continue. I just simply like to point out to you that of course the law is a manmade science. You know, to from the ridiculous to the sublime. Back at the turn of the last millennium, it is documented that people who were accused of certain crimes had to go through the ordeal of battle. If they won, they were not guilty. If they lost, they were guilty. 20 Some people were even put into pots of boiling water, back in the 1200s. If they lasted certain minutes without dying, well fine, they were not guilty. If they died, they were guilty.

25 Now we have come a long, long way since then. As I say it is a manmade science. It is in constant flux. It is not a pure science like mathematics. Two and two will always be four. It is not a science like geometry or algebra where the answers are that, and that is what it is. So the system 30 that we have, of course, is manmade. The

5 legislature makes certain laws and if these laws
are broken people are tried before judges or
juries, according to the law. In 1982, we were
fortunate to enact the Charter of Rights and
Freedoms, which stated very clearly that a person
was presumed innocent until found guilty. Now at
that time there were several sections in the
Criminal Code that impugned against this concept of
presumption of innocence. Two examples: If one was
10 found with a quantity of drugs and charged with
possession for the purpose of trafficking, once the
Crown proved that the person was in possession,
then the accused had to prove that he or she was in
possession not for the purpose of trafficking. So
at that point the accused was not presumed
15 innocent, the accused presumed guilty and had to
prove his innocence. Another section that comes to
mind in the Criminal Code is the precious metals
section. If anyone was found in possession of
precious metals they had to prove that it was
20 theirs, that it belonged to them. The Charter of
Rights and Freedoms stated the presumption of
innocence prevails. The case was heard and the
interpretation was that that section impugned
against this presumption, therefore it was struck
25 from the code.

30 Okay, coming to the point, I was a bit dismayed to
be advised late yesterday that a copy of the 1985
Criminal Code was in your jury room. Both the
decisions on precious metals and on the drug
matters had not been decided by then. Now those

are only two examples on how the 1985 Criminal Code does not apply to 1989 (sic). You see my code here, it is a '99 code.

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You will recall at the beginning in my opening statement to you, that I was very careful to explain what your duties were. To explain what your powers were. You are the judges of the facts. Nothing I say about the facts, nothing Miss Fuller says about the facts, or Mr. Charlebois says about the facts, binds you. You are the ones that decide the facts. This is the beauty of this system. I also told you that I was the judge of the law, and that you should take the law the way I give it to you. I told you you were not investigators. I should have told you you were not legal scholars...with all the pitfalls that this could bring.

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The 1985 Criminal Code is exactly what it is...1985. I do not say that you looked at any erroneous sections, a lot of the sections or most of the sections are the same. But I did say, "leave the law to me." Do not decide this case the way you think the law is, or read about, or any of that. Take it from me. Do not decide this case by what you think the law should be or ought to be. That's wrong. For the system to work you have to follow those rules.

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Now, the great danger is this: you can go in there and perhaps no damage could be done at all, perhaps

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you could read a section and interpret it wrongly, perhaps you could read a section that has been taken totally out of the code, what happens then? Then we get a decision that carries a great risk of being wrong. But the worse part is this: is whatever you decide nobody knows. Nobody knows your reasoning in there. When I give you the law, every word, every paragraph, every punctuation mark is taken down, and if I make a mistake in giving you the law, counsel will pick it up, and we have other courts that constantly look at what we do. We have the Court of Appeal of Ontario, which would be the first step, then the second step would be the Supreme Court of Canada. But they would know exactly what I told you, and they could make a valued decision on that.

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I do not know who the Criminal Code belongs to, I do not care, but I will keep it until the end of the trial, or I will have the court officials keep it until the end of the trial. And I would urge you to apply yourself to the task that you have been selected for by counsel, judging the facts in this matter. You are going to have your hands full anyway. Let me worry about the law and put it together today, tomorrow, the day after, until I give you my charge. But, please, do not concern yourself of what you think the law is or what it ought to be.

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Is that okay? Shall we proceed?

MS. FULLER: I'd like to call Eli Paul-Martin to the

stand. Eli Paul-Martin. The Crown will be asking for the use of an interpreter.

COURT CLERK: Miss Shisheesh, I simply wish to remind you that you're still under oath.

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JOSEPH ELI PAUL-MARTIN: SWORN

Testified through official interpreter - Cree/English.

10 INTERPRETER: I just told him wherever he doesn't understand just to ask me, because I think he's able to do a few here and there.

MS. FULLER: Thank you, madam interpreter.

EXAMINATION IN-CHIEF BY MS. FULLER:

15 Q. Mr. Paul-Martin, I understand you were born in January of 1947, in Attawapiskat?

A. Yes.

Q. And can you tell me...did you go to Ste-Anne's Residential School in Fort Albany?

A. Yes, I did.

20 Q. And can you tell me, was it the first school you went to?

A. Yes.

Q. And do you recall if you went to that school for one year or for several years?

A. Several years.

25 Q. And by several, would that be three or four years?

A. Maybe more, I don't remember.

30 Q. Okay. In terms of when you started going to that school, one thing I'd like to ask you about to assist us in pinpointing it, I understand there was a fire at the school

in 1954, were you a student at the school at the time, already?

A. Yes, I was.

Q. So we know you were there in 1954?

A. Yes.

5 Q. And that would have made you about seven years old?

A. Around there...seven, I guess so.

Q. Alright. Do you remember if you were there the year before...the year before the school burned?

10 A. Before...

Q. The year before the school burned, which would be in '53.

A. I was there before...before the school burned down.

15 Q. Okay. And how did you get brought to the school? Where was your family living at the time you started school there?

A. I think we were living in Moosonee, then I was brought to Fort Albany by boat.

20 Q. And how often would you see your parents and your family once you were brought to the school at the beginning of September, I would assume?

A. As I remember it, I never saw my parents for one full year.

25 Q. Uh-hum. You stayed in the dormitory with the other boys?

A. Yes.

Q. And who looked after the boys in the dormitory at Ste-Anne's Residential School in Fort Albany?

30 A. Sister uh Mary Immaculata, they used to call her.

Q. And I understand that...Sister Mary Immaculata

looked after the boys all the time that you were at the school?

A. Yes.

Q. Do you see her in court today?

A. Yes.

Q. Where would she be?

A. She's sitting right over there.

THE COURT: Identifying the accused.

Q. Now, Mr. Paul-Martin, while you were at the school were you a happy child?

A. No.

Q. And why weren't you?

A. Because I was beaten...I saw boys who were beaten all time.

Q. By whom?

A. By Sister Mary Immaculata.

Q. Now we've heard earlier in the beginning of this trial that Sister Mary Immaculata was the religious name for Anna Wesley. Did you remember her called any nicknames or anything else?

A. No, I never heard anything.

Q. Okay. Because you were unhappy at the school what did you do Mr. Paul-Martin?

A. I ran away.

Q. And did you run away once or more than once?

A. Many times.

Q. At some point in time did your family move out of Moosonee?

A. I...I miss that.

Q. Did your parents move from Moosonee...somewhere else while you were at the school? Did they move from Moosonee?

A. They moved...they moved from Moosonee to Fort

Albany.

Q. Okay.

A. I guess a year later.

5 Q. And when you ran away would you sometimes run home?

A. Pardon me?

Q. When you ran away would you sometimes run home to Fort Albany when your parents had moved there?

10 A. Sometimes I ran away to the bush, then I went home later.

Q. Sometimes you ran away into the bush...

A. In the bush...

Q. ...and...

A. I went home later.

15 Q. And ran home later?

A. Yeah.

Q. Do you remember one time while you were there you were brought back by a priest at the school?

A. Yes.

Q. And who would that priest have been?

20 A. Uh Father Lavoie.

Q. And although I understand you don't exactly recall how old you would have been, can you tell me during this incident would you have been older than ten or younger than ten?

25 A. I was...I was younger than ten.

Q. Were you a big boy or a little boy?

A. A little boy.

Q. And who brought you back to the school on this occasion? This time who brought you back?

30 A. When is that?

Q. When you ran away this time, when you were a

little boy, that the priest brought you back.

A. Father Lavoie.

Q. And where did he bring you back to?

A. To the uh residential school.

5 Q. Right. And was there somebody there who took you from Father Lavoie?

A. By the Sister...Sister Mary Immaculata.

Q. Alright. And where did she take you? To what part of the school?

10 A. She took me inside...inside somewhere in the dormitory.

Q. Okay. And did she say things to you about your running away...and just say things to you generally?

15 A. She told me all kinds of stuff. She talked about my parents because my parents used to get into very...they used to get into a fight and arguments, and that's what she was talking to me about.

Q. So...

THE ACCUSED: Can you speak a little louder, please?

THE COURT: Are you okay, sir?

20 COURT INTERPRETER: He wants to stop now.

THE COURT: Let's take a break for the time it takes.

....JURY RETIRES (no time available)

R E C E S S

25 U P O N R E S U M I N G :

....JURY ENTERS (12:25 p.m.)

30 MS. FULLER: Q. Mr. Paul-Martin, you were talking about when Father Lavoie brought you back to the dorm--or brought you back to the school and you went to the dorm with Sister Mary Immaculata or Anna Wesley, and in the dorm she was

saying a lot of things to you, including saying things about your parents. Now, when Sister Mary Immaculata was saying these to you were you standing up?

A. I was kneeling.

5 Q. And why were you kneeling down? How did you come to be kneeling?

A. She made me kneel down.

Q. And you indicated she talked to you about your parents. Had she said things to you about your parents before?

10 A. She used to...she used to...she used to tell me all kinds of stuff, and she used to say everything as I was brought in into the school after running away. She...she used to call me a rabbit and also...

INTERPRETER: He's gonna repeat that in French because my French is not....

15 A. Mon espèce de sauvage.

Q. "Mon espèce de sauvage". And she called you that on other occasions?

A. I used to hear her calling that to other...some other boys too.

20 Q. And what mood would she be in when she would use that name for the boy?

A. At that time I didn't know how she felt, she probably was angry.

25 Q. And when she said--you said that she said other things about your parents...just generally speaking, were they good things or bad things about your parents?

A. She was uh talking in a bad way about my parents.

Q. And how did that make you feel.

30 A. I was very sad...very sad because she was doing this to me.

Q. And did anything happen to you while you were kneeling down and she was saying these things?

5 A. As far as I remember everything looks...everything seems so vague, but I know...I know there were two boys that were holding me on each side, my left and my right, that's how...that's how vaguely I remember.

Q. Okay. Two boys holding you, one on your right and one on your left?

10 A. One was standing on my left and the other one is uh...the words...my back on the right, and he was holding me on my shoulder. I think that's...I think that's what happened.

Q. And were the boys saying anything to you?

A. No.

15 Q. And did anything happen to you while they were holding you each on one side?

A. All of a sudden I was hit with something, but I don't remember, I can't recall what it was, but I know it was something...was used very hard, that's all I remember.

Q. And where were you hit, sir?

20 A. Around here on my right side of the forehead, a little up here, where he was pointing?

Q. Indicating somewhere in the hairline on the right side part...side of the head?

A. Around that area. I'm not really sure exactly where.

25 Q. And do you know whether you got a scar from being hit there?

A. As far as I know some other people already looked at it at least three times.

30 Q. And can you tell me when you were hit on the right side of your head with something very hard how did that immediately make you feel physically?

5 A. I was almost knocked down when they...when something hit me. All I could see was a splash...a splash of lightening, and then after that I started to see stars. I can't remember exactly what happened then because like I said, I almost got knocked down.

Q. Do you mean knocked down or knocked out...or both?

A. Almost knocked out.

10 Q. Okay. And because of this, because you started to see stars what did you do? Or what was your response?

A. I can't really recall what I did, but I remember I was trying to reach out for something, whether if it was her veil or her dress.

15 Q. And who was it that was standing right there wearing a veil or a dress that you could reach out and grab?

A. That nun.

Q. And is that Maria Immaculata that you referred to?

A. Yes.

20 Q. And was there anybody else there where this...in this area where you were being disciplined other than the two boys holding you down and Maria Immaculata?

A. In the dormitory there were boys already in bed. To me they looked as if they were sleeping at that time.

25 Q. But the only people who were close to you were the two boys and Anna Wesley?

A. Those were the...only the three people that I can remember that were there.

Q. And can you tell me when you were hit, on what side did you feel the pain?

30 A. On that side where I was hit on top of my head here.

Q. And how close to you was Sister Mary Immaculata when you were struck?

A. She was very close.

5 Q. From your situation in those circumstances who in your opinion struck you?

MR. CHARLEBOIS: Oh, I'd object to that, Your Honour. Perhaps the witness can be asked if he knows who struck him, but certainly not to take a guess at it.

10 THE COURT: I agree.

MS. FULLER: Q. Do you know who struck you?

A. She is the one that hit me. I'm very certain about that because I used to see her all the time hitting the boys.

15 Q. And when you say "she" again are you referring to Sister Marie Immaculata or Anna Wesley?

A. That's the one that...Sister...the one that used to be called Sister Marie Immaculata.

Q. Were you bleeding from your head wound?

20 A. I was certain I was bleeding because when I touched my...when I touched my head where I was hit, and when I was told to go to bed...and I could feel some kind of wet feeling, and I looked at it...it was blood.

Q. And did you get any medical attention for your injury.

25 A. No, nothing was done to it.

Q. And after you were struck did Sister Mary Immaculata say anything to you?

A. She sent me...as far as I can remember she sent me to bed naked.

30 Q. And did the boys say any--the two boys that were holding you, did they say anything to you after you were

struck?

A. I didn't hear anything...I didn't hear anything...anything from them...or didn't even say anything.

5 Q. And how did this make you feel about yourself as a person, being treated this way for running away?

A. What did I feel...what did I think, is that what you're asking me?

10 Q. Yeah, how did you feel as a person? How did it affect you?

15 A. Up to this day, as old...I am, it bothers me very much. I can't even pray, I can't even go to church because due to this...what had happened to me. Even though...even though I tried my best...of my ability to try to pray, but there is an obstacle there because of what happened to me while I was young...the treatment that I got when I was a little boy. Even though I...even though I like very much to go to church, but it just doesn't give me no motivation to go.

20 MR. CHARLEBOIS: I object at this point, Your Honour. The question is about how it made him feel at the time was a proper question. In terms of the long term effects, I don't think that's relevant to the issues that the jury will be called upon ultimately to determine.

THE COURT: I disagree.

MS. FULLER: Thank you.

25 A. Due to the fact, what I have seen while I was there, the treatment that I got from the religious people is beyond for me to...to imagine the treatment I had...that I had uh received while I was there...in...including some other children, the treatment that they got.

30 Q. And did you runaway again after that?

A. Yes, I runaway again that morning...that

following morning.

Q. Thank you, those are all my questions.

THE COURT: Are you going to be very long in your cross-examination?

MR. CHARLEBOIS: Sometime, yes, Your Honour.

THE COURT: Really?

MR. CHARLEBOIS: Yes.

THE COURT: We will take a break...lunch.

MR. CHARLEBOIS: At what time, Your Honour?

THE COURT: Two o'clock.

....JURY RETIRES (12:45)

THE COURT: Would you tell Mr. Martin not to discuss his evidence with anyone until he comes back?

A. Okay.

THE COURT: Two o'clock.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Bring the jury in, please.

....JURY ENTERS (2:00 p.m.)

COURT CLERK: I simply want to remind you both that you are still under oath.

CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. You told us this morning that the nun, Sister Mary Immaculata made you kneel down, is that right?

A. Yes.

Q. You sure about that?

A. Yes.

Q. Do you remember giving evidence at a preliminary hearing a year ago, actually May 11, a year and one

day ago in Moosonee?

A. Yes.

Q. And do you remember being asked questions by this lady, and then me asking you questions?

A. I think I remember.

MR. CHARLEBOIS: Page 69, last question, Your Honour, line 26 to the top of page 70.

THE COURT: Page...

MR. CHARLEBOIS: The bottom...

THE COURT: ...69?

MR. CHARLEBOIS: ...of page 69, last question...

THE COURT: Yes.

MR. CHARLEBOIS: To the top of page 70, line 4.

THE COURT: And your question is?

MR. CHARLEBOIS: The witness has just reiterated that he was sure that it's Sister Mary Immaculata that made him kneel down. That's his evidence in court today.

THE COURT: Okay.

MR. CHARLEBOIS: Q. Do you remember Ms. Fuller, this lady, asking you the following questions, and you giving the following answers in Moosonee? Question by the Crown: "I wanted to know, did you kneel of your own volition or did somebody tell you to kneel? Did somebody make you kneel? How did you find yourself on your knees on the floor?" And you answered: "I don't remember how." And then Miss Fuller said: "You don't remember how?" And you answered: "But I remember I was kneeling." Now, do you remember the Crown asking you those questions and do you remember giving the Crown those answers in Moosonee?

A. I think I remember.

Q. Now, when the Crown asked you, "I wanted to

5 know, did you kneel of your own volition or did somebody tell you to kneel? Did somebody make you kneel? How did you find yourself on your knees on the floor?" And you answer "I don't remember how", that's a different answer than the one you just gave us today, isn't it?

A. That's true what you're saying right now.

Q. You were under oath at the preliminary hearing, and you're under oath today, correct?

10 A. He's...I...I understand that and I know that I got to tell the truth because I'm in court, I have to say everything. I'm not lying what I am saying right now.

Q. You were in court in Moosonee too, and there was a man with a red sash there, a judge there too, correct?

A. I remember.

15 Q. And you were supposed to tell the truth...you had to tell the truth in Moosonee also, didn't you?

A. I know...I know that I have...I know that I have...I have to tell the truth because it is very hard sometimes to try to remember everything what had happened to you as a young child because it happened so many years ago, and it's so hard to try to remember everything.

20 Q. Why did you tell us in Moosonee that you didn't remember who made you kneel on the floor, and today you've told the jury that you're sure it was Sister Mary Immaculata who made you kneel?

25 A. I thought about it over and over again, and because I used to see Sister making other boys kneeling...make them kneel, and then I thought over and over, and that's how I remember. That's how I remembered how...who told me, and how I kneeled.

30 Q. Why didn't you tell us that in Moosonee a year ago?

5 A. At that time when I went to court in Moosonee, because it was...like, it was the first time that I ever dealt with it in court, and I couldn't remember everything because it had happened, and it is very...it's very hard for me to remember everything.

Q. This incident, the incident you told us about this morning, involving the nun, is this an incident that stayed with you for your whole life, Mr. Paul-Martin?

10 A. For a while...for a while it had left me because I had tried to forget all about it, but it seems that ever since they started to investigate everything again that's when it started to come back, and it seems like...opens up again.

15 Q. Now, you told the jury this morning how this incident had marked you, right, the effects it had on you?

A. Yes, I told him.

Q. So can we agree that it was a pretty scary incident for you?

20 A. Yes, that's true. I was very...I was pretty scared...it make me scared.

Q. Who were the two boys who were holding you when this happened?

A. I don't recall. I didn't know who the boys were. I can't remember.

25 Q. So it's an incident that marked you, it's an incident you found scary, and you don't remember the names of the boys who were holding you when this incident happened...the two boys?

30 A. I must have been very scared because it was so frightening then because when I'm frightened I don't think I could have remember everybody...or who they were.

Q. I'm not asking you who everybody was, I'm

asking you why you don't remember the names of the two boys, who according to your evidence, were holding you?

5 A. Like I said, I don't know the names of those boys. Even the boys that I went to school with, I don't...I can't remember their names. I can't...I can't...just remember anything.

Q. Do you remember if these boys who were holding you down were students who stayed in the same dorm you did?

10 A. The reason why how I can remember those boys...because so many a times that I seen Sister asking for help from those boys to--when she wants to do something to the boys, so they can be assistance of her.

15 Q. Do you agree with me, sir, that those boys who were holding you would have had to have seen what happened to you?

A. I believe that they saw what happened to me, and I'm just telling you that I just don't recall those boys.

20 Q. Okay. Were you inside the dormitory when this happened? The dormitory where everybody was sleeping, were you in the main part of the dorm?

A. Uh, that's exactly where at the dormitory, but it wasn't just around there...around where the dormitory was.

Q. Well was it inside or outside the dormitory?

A. Inside...inside near...dormitory.

25 Q. Okay. Was the dormitory one big room?

A. I can't say exactly what size that the dormitory was. I can't recall, but I know that's where those boys were sleeping, and I don't...I can't tell you exactly the size of the dormitory.

30 Q. The place where you were hit, or claim to be hit, did it happen in the room where all the other boys were sleeping?

A. That's exactly where I had...was made to kneel down, to kneel...to kneel and then that's where exactly I was hit.

5 Q. Was it dark inside that room at the time you claim you were hit?

A. I can't really say, but I know...but I know it was...it was dark but it wasn't that dark.

Q. Well try and make me understand how dark was it.

10 A. Not too dark. Meaning not bitter dark.

Q. Now you told us this morning that Sister Mary Immaculata is the one who hit you. Do you recall telling us that this morning?

A. Yes, I remember.

15 Q. Any doubt in your mind that Sister Mary Immaculata is the one who hit you?

A. I'm very positive that it was that Sister that hit me because I used to see her hitting the boys all the time.

Q. Did you see her hit you that night?

20 A. I'm not sure, but I know I'm blaming...I'm blaming Sister.

Q. I'm not asking you who you're blaming, I'm asking you simply this: Did you see Sister Mary Immaculata hit you the night of this incident you told us about in the dorm?

25 A. I didn't see...I didn't see her hitting me, but I blame it on her.

Q. In fact, you don't know who hit you, is that right, Mr. Paul-Martin?

A. I didn't see who hit me.

30 Q. So it could have been one of those two boys that was holding you, right?

A. I don't think so.

Q. Well, you also told us this morning that...and again this afternoon, that you were sure that it was Sister Mary Immaculata who hit you, and now I ask you more questions and you didn't see her hit you, right?

5 THE COURT: Well, let's...

MS. FULLER: It's not a contradiction.

THE COURT: ...let's be fair about this, okay?

10 The only direct evidence that he gave about the Sister hitting him, is that he felt sure she hit because he had seen her hit other boys before. He gave that in chief, he gave that in cross, he gave that over and over again. He didn't actually see, but his evidence is clear that he inferred it was the Sister that hit him because he had seen her hit other boys. There is nothing very complicated about that.

15 MR. CHARLEBOIS: I'm proposing, and I'd ask Your Honour to verify the transcript first of all, to establish from the witness the exchange at page 67 in examination in-chief, starting at line 20 and 21, to be followed by--that's in the examination in-chief, Your Honour?

20 THE COURT: Yeah, I see that.

MR. CHARLEBOIS: And I'd also...to dovetail that with cross-examination at the preliminary, page 83.

25 THE COURT: Yes.

MR. CHARLEBOIS: Starting at line 28, which is the second last question.

MS. FULLER: I'm sorry, where are you?

30 MR. CHARLEBOIS: Sorry, do you want the chief reference again?

MS. FULLER: I think I know the chief is page 60...

MR. CHARLEBOIS: The chief was page 67, lines 20 and 21, and the cross is page 83, line 28 to the top of page 84, line 2.

5 THE COURT: Yes? Well, wait a minute now, I don't find anything contradictory in those two passages, to what he has already testified to.

MR. CHARLEBOIS: Uh...

THE COURT: So it is not proper material for cross-examination.

10 MR. CHARLEBOIS: Could I be allowed to make submissions in the absence of the jury on that point, Your Honour?

THE COURT: Certainly.

....JURY RETIRES (no time available)

15 MR. CHARLEBOIS: And can I please ask that the witness be excluded as well?

THE COURT: Certainly.

MR. CHARLEBOIS: I see the point that Your Honour is taking, certainly to a certain extent, on the other hand, I don't want the jury left with a lingering doubt that this witness thinks or feels that it was Anna Wesley who hit him. I would like...

20 THE COURT: They will not be left with a lingering doubt that he thinks or feels. But the reason for why he thinks or feels is because he saw her hit other boys at other times.

25 MR. CHARLEBOIS: Okay.

THE COURT: Now I do not know what lingering doubt you are talking about, but if they have a lingering reasonable doubt, I know exactly what my instructions are going to be. So if you want keep questioning this man until he tells you with

5 absolute truth and absolute everything, that "Yeah, I remember it was her." So far it's not there, it's not in the preliminary inquiry, he states he doesn't know, in his examination in-chief he stated he didn't know, in his cross-examination he stated he didn't know, and in his examination in-chief he stated the only reason he thought so, because he saw her hit other people, and in his cross-examination he states the same thing.

MR. CHARLEBOIS: Okay.

THE COURT: There's nothing inconsistent with what is in the preliminary inquiry at all. So, I'm not gonna let you go.

MR. CHARLEBOIS: Okay.

THE COURT: And anyways, I think you are going to be digging yourself a hole. Bring the jury back in.

....JURY ENTERS

15 MR. CHARLEBOIS: Q. You told us that you ran away and that when you would run away you ran away into the bush and then would go to your parents?

20 A. Yes.

Q. And we've established that after the first year you were at the school, when your parents were in Moosonee, they then moved to Fort Albany, right?

A. Yes.

25 Q. And in connection with the incident you told us about this morning and this afternoon, when you ran away and Father Lavoie came to get you, did he find you at your parents' place?

A. Yes.

30 Q. So by then your parents had moved to Fort Albany, right?

A. Yes.

Q. Did you tell your parents what had happened and why you had run away from the school?

A. Yes.

Q. And did you tell them that before Father Lavoie came to get you, or just late...many years later?

A. Right after...right after I run away from the school...the reason why I run away.

Q. Okay, so just that we're clear on this, sir, when Father Lavoie came to your parents' place to get you, you had already told your parents why you had run away from the school...because you were being mistreated?

A. I had told my parents the reason why I run away before Father Lavoie came and got me.

Q. What did your parents do when Father Lavoie got there?

A. They just let me go.

Q. Did your parents, in your presence, question Father Lavoie about what you had told them?

A. They were talking alright, but I don't...I don't...but I didn't know what they were talking about.

Q. Were you there?

A. Yes, I was there inside the house.

Q. So you didn't understand what they were saying or you don't remember what they were saying?

A. I can't...I don't remember what they were saying and I don't remember what they were talking about.

Q. But in any event, even after you had told your parents about the mistreatment and why you had run away, your parents, according to your evidence, allowed you to return to the same school with Father Lavoie, is that correct?

A. Yes, they took me back...they took--yes, I was

taken back to the school, but like I said, I don't know what they were talking about.

5 Q. And I think we've established, not to confuse you, but we've established that you are sure you told you parents at that time, right?

A. True.

Q. Now, you remember giving a statement to the police in 1993 to a Police Constable Faucher at Attawapiskat?

10 A. I remember a police talking to me, but I didn't know who he was.

Q. Okay.

INTERPRETER: Meaning that he didn't know his name.

Q. Okay. And was the statement given in English or in Cree, Mr. Paul-Martin?

15 A. There was no interpreter.

Q. Okay. Now, I respect and recognize your right to give evidence in Cree, today, but were you able to speak to this police officer in English?

INTERPRETER: Repeat that question again...about the police.

20 Q. I believe something like, were you able to speak to the police in English that day, or something like that.

A. Huh, barely.

Q. Well, do you understand English, sir.

25 A. I can talk to a white man when they talk to me.

Q. Okay. Well, would you first look at the paper...the document I put in front of you, and can you tell us if that's the statement you gave to the police?

A. Let me read it first.

30 Q. Here, I have the original, it make it simpler for you. Would you start by looking at the last page of the

handwritten statement and would you tell me if that's your signature?

A. Yes, that's my signature.

Q. Okay. Is that your statement?

A. Yes, this is my statement.

Q. And how many pages are in that statement, sir?

Would you count them for us, please?

A. Five.

Q. Five, okay. It's the handwritten one, sir, that has five?

A. Yes.

Q. Okay. Now, my notes here indicate that statement started at one o'clock in the afternoon and finished at two thirty five in the afternoon. Do you remember if you were with the policeman about an hour and a half?

A. I remember the police was talking to me.

Q. Okay. And do you remember that you answered the police to such an extent that they were able to write a five page statement in English?

A. Vaguely.

Q. If I could just look at the original, please. Could I please look at it?

INTERPRETER: Oh, here. Oh, he needs his reading glasses.

MR. CHARLEBOIS: Does he have them here with him?

A. I left them at home.

MR. CHARLEBOIS: The suggestion I was going to make is that I'd put the typewritten copy to the interpreter and perhaps rely on her to verify the accuracy of the passage I'm gonna put to Mr. Paul-Martin.

THE COURT: Okay. Are you concerned at all about

the accuracy of the written statement and the typewritten statement? It was prepared by your office.

5 MS. FULLER: I'm...I haven't...It's not prepared by my office, Your Honour, and I haven't compared the...

THE COURT: Well, who is it prepared by?

MS. FULLER: Well I assume it was prepared by the police.

10 THE COURT: I would identify the police with the prosecution.

MS. FULLER: And we do like to distinguish our functions and our rolls, but...

15 THE COURT: Okay, do you want five minutes so you can compare to see if this handwritten statement is the same as the typewritten statement that was sent to Mr. Charlebois for purposes of disclosure and used for everything? Are we going to spend...

MS. FULLER: Your Honour...

20 THE COURT: ...the time to see if it is to the letter or what?

MS. FULLER: No, my concern, Your Honour, is more with the fact that the witness doesn't have his reading glasses insofar as looking at the statement and identifying it as his.

25 MR. CHARLEBOIS: Well...

MS. FULLER: And...the witness hasn't had therefore an opportunity to review it. I mean he's been handed it...

30 THE COURT: Well what do you want, do you want an adjournment so he can get his glasses?

MS. FULLER: No, Your Honour, but there is a...

THE COURT: What is the solution here?

MS. FULLER: Well, I suppose the solution I would imagine would be for the interpreter to read the statement to him in Cree.

THE COURT: That is what he just suggested.

MS. FULLER: No.

MR. CHARLEBOIS: Yes, that's what I suggested.

THE COURT: We have been doing this all during through the trial, how come there is a problem now?

MR. CHARLEBOIS: Mr. Paul-Martin has identified the signature even without his glasses...

THE COURT: Yes, he has.

MR. CHARLEBOIS: ...as being his, and it's his statement. All I propose to put to him are about three or four lines, and I would ask that the interpreter read it if he hasn't got his glasses.

THE COURT: Please do, that is what we have been doing all along.

MS. FULLER: My concern, Your Honour, is that putting three or four lines to him may not be appropriate if he hasn't had a chance to...

THE COURT: I will tell you, Miss Fuller, you know fully well that you will know whether it is appropriate or not appropriate after it is done, and then your objection can be made and I can rule on it.

MS. FULLER: Thank you, Your Honour.

THE COURT: You do not even know what lines he is going to read to him.

MS. FULLER: No, I don't, Your Honour.

MR. CHARLEBOIS: Madam Interpreter, would you take the typewritten copy, perhaps, and for the sake of

completeness and...to perhaps allay the fears of
the Crown, I'll also give you page four, the whole
handwritten statement but page 4...

COURT INTERPRETER: Where is the page started here?

MR. CHARLEBOIS: Yes, just a moment, please.

COURT INTERPRETER: He...he can try to read it. He
can...poorly, poorly do it.

MR. CHARLEBOIS: Your typewritten copy is four
pages, is that correct? Not counting the cover,
just the one with writing on it.

COURT INTERPRETER: Yes.

MR. CHARLEBOIS: Okay. Could I draw your attention,
Madam Interpreter, please, to the last paragraph of
page 3.

MR. CHARLEBOIS: Q. Mr. Paul-Martin, do you
acknowledge or remember having told the police officer in
Attawapiskat the following: "The only person I ever told..."

THE COURT: Hold it, just a minute now, you did not
tell me where that was.

MR. CHARLEBOIS: Sorry, Your Honour. Is your--
bottom of page 3 of your statement...or second last
page if you will.

THE COURT: The second last page...

MR. CHARLEBOIS: It would be identified as number
573, I think...

THE COURT: Okay.

MR. CHARLEBOIS: ...if yours are numbered.

THE COURT: Last paragraph?

MR. CHARLEBOIS: Last paragraph, third line--second
to fourth lines.

THE COURT: Okay.

MR. CHARLEBOIS: Okay. Q. Mr. Paul-Martin, do you

remember telling the police officer in Attawapiskat that day,
"The only person I ever told was my wife. It's been inside me
all my life and I'm 46 now. My wife said let it out."

5 MS. FULLER: Your Honour, before that we proceed on
that, I think that line has to be read in the
context of the line that preceded it, which is the
beginning of the paragraph, which is maybe later
on.

MR. CHARLEBOIS: I disagree with that.

10 MS. FULLER: I can mention all the other things
that...

MR. CHARLEBOIS: I dis...

MS. FULLER: ...hap--perhaps I could be allowed to
finish my...

15 THE COURT: Well...

MS. FULLER: ...objection, Your Honour.

MR. CHARLEBOIS: Perhaps if the Crown wants to make
objections that in her experience knows should be
made in the absence of the jury, the jury should be
invited to retire.

20 THE COURT: Take it easy here. The defence wishes
to put certain lines to the witness. If certain
qualifications have to be made to this line, it is
up to you to have...

MS. FULLER: To stand-up...

25 THE COURT: ...the other lines read in later. Let
him have...

MS. FULLER: I disagree, Your Honour.

THE COURT: I don't care if you agree or disagree, I
am telling you.

30 MS. FULLER: Well I'd like to make submissions on a
point.

THE COURT: Would the jury please go back to the jury room?

....JURY RETIRES

MS. FULLER: The witness...

THE COURT: Okay, the first thing I want to know is your purpose in reading "The only person I ever told was my wife. It's been inside me all my life, and I'm 46 now." For what purpose do you want to put that in...read it to him?

MR. CHARLEBOIS: To indicate that it's a different answer to a question, and that it...

THE COURT: What was his answer in direct examination or cross-examination...to that question?

MR. CHARLEBOIS: That question wasn't put to him in direct examination. It's that the witness has indicated in his evidence that he told his parents at the time, yet in his statement to the police, that "the only person I ever told was my wife" that seems to be at odds with having told his parents.

THE COURT: That's very, very misleading.

MS. FULLER: Thank you, Your Honour.

MR. CHARLEBOIS: Um...

THE COURT: He told his parents about the abuse he was getting at school and that's why he ran away.

MR. CHARLEBOIS: That's what he said on the stand.

THE COURT: That is what he said.

MS. FULLER: Here.

THE COURT: Then he says here, "Maybe later on I can mention all the other things that happened to me there. The only person I ever told was my wife."

I do not find anything inconsistent about that.
MR. CHARLEBOIS: Nowhere in the statement does he indicate, Your Honour, having told his parents at any time.

5 THE COURT: I disagree totally...

MS. FULLER: Well, yeah...

THE COURT: ...I think it would confuse the jury. It has no probative value, it does not attack his credibility one way or another. He told his parents about the abuse...

10 MS. FULLER: Running away.

THE COURT: ...that he ran away from. He told his wife about the life at school...the experience and all the abuse. Two different things. I am not arguing about it. You are not going to ask it. So bring the jury in.

15 MS. FULLER: Thank you, Your Honour.

THE COURT: What is the other area, so I can read?

MR. CHARLEBOIS: In the statement?

THE COURT: Yeah.

20 MR. CHARLEBOIS: None.

THE COURT: Okay. You can give the statements back, I guess.

....JURY ENTERS (2.55 p.m.)

25 MR. CHARLEBOIS: Q. You also told us that after you were hit with something, that you were sent to bed naked. Now what did the boys wear to bed normally?

A. I remember we used to wear something before going to bed, as far as I can remember.

Q. Pajamas or nightgowns?

A. I guess they must have called them "pajamas".

30 Q. That night did you wear pajamas to bed?

A. Nothing.

Q. Did you have your covers?

A. Yes, I was covered with something.

Q. And you told us the next morning you ran away

5 again?

A. Yes, that's what I said.

Q. I think you told us you ran away naked, is that

right?

A. I didn't say I run away naked.

Q. Oh, I'm sorry. Were you wearing clothes when

10 you ran away?

A. I was wearing clothes.

Q. Now you also said that the nun called you

"espèce de sauvage", right?

A. That's what she...that's what she said.

15 Q. Okay. Now this nun, Sister Mary Immaculata, she was Cree herself, was she not?

A. Now, today...today I know she's a Cree, but at that time I didn't know whether...who she was.

Q. Okay. But just so we're clear, now you know that she is Native and you are Native as well, correct?

20 A. Not at the moment...at the present time, that's not what I mean. I mean after leaving the school, that's when I found out that she was a Native.

Q. Okay. And it's your evidence, sir, that she as a Native called you that word?

25 THE COURT: In fairness, again, those words...

MR. CHARLEBOIS: Okay.

THE COURT: ...not that word because the combination...

MR. CHARLEBOIS: "Espèce de sauvage".

30 THE COURT: ...of both has a different...or--well,

yeah, okay. I'll leave it at that.

MR. CHARLEBOIS: Q. Okay, it's your...

A. That's what she called me.

5 Q. Do you agree, Mr. Paul-Martin that it would be unusual for a Native person to call another Native person those words?

MS. FULLER: Objection, Your Honour.

THE COURT: I agree.

MR. CHARLEBOIS: I have no further questions.

10 THE COURT: I've heard Francophones call Francophones names, I'm sure you have too.

MR. CHARLEBOIS: I didn't hear the--what you said, Your Honour.

15 THE COURT: I said, I've heard Francophones call Francophones names, and I'm sure you have too.

MR. CHARLEBOIS: I have no further questions of this witness.

MS. FULLER: Just a couple of questions.

20 RE-EXAMINATION BY MS. FULLER:

Q. Your parents, were they Roman Catholic, Mr. Paul-Martin?

INTERPRETER: Excuse me, can you repeat that?

Q. Your parents, were they Roman Catholic?

25 A. Yes.

Q. And what was their attitude towards the priests, the brothers and the nuns in Fort Albany?

A. I don't know.

Q. Alright. Did your parents go to church when you were a child?

30 A. I remember sometimes they used to go to church.

Q. I have no further questions, thank you.

THE COURT: Did your parents consider the priests and the nuns as people in authority?

A. As far as I remember, I used to hear talking about them, that they had more authority figures and more power.

THE COURT: Did your parents think so?

A. I can't answer...I can't answer...I can't answer to that because I never asked my parents.

THE COURT: Are there any questions arising out of mine?

MR. CHARLEBOIS: No, Your Honour.

THE COURT: Next witness. Oh, I'm sorry, sir, thank you very much.

MS. FULLER: The next witness I would like to call is Leo Loone. And I believe there is a small issue that Mr. Charlebois wishes to address in the absence of the jury with respect to that.

THE COURT: Okay, we will take the afternoon break then, and we can...

MS. FULLER: We can talk.

THE COURT: ...do the Loone motion and...

....JURY RETIRES (3:06 p.m.)

THE COURT: Okay, what evidence can we...expect from Leo Loone that's objectionable?

MS. FULLER: Leo Loone's evidence is as I've indicated earlier...the evidence...just briefly with respect to a witness saying the accused before the court assaulting George Wheesk in response to his skating injury. When questioning him this morning, I asked him some generic questions about

5 Fort Albany, that came out as a result of cross-examination by Mr. Charlebois, of the witness, George Wheesk, and you will recall that Your Honour held that that was not an appropriate avenue for re-examination of George Wheesk.

THE COURT: Please, let me...clue me in as to the evidence.

10 MS. FULLER: It is the evidence about the families in Fort Albany trapping and whether the Wheesk's, who were his neighbours, whether they went trapping and whether they were home in the winter or away in the winter, and during what periods...depending on what Mr. Wheesk did for a living.

THE COURT: What the neighbours were doing?

15 MS. FULLER: What the Wheesk's were doing because...

THE COURT: Why did I say it is not proper in re-examination? Was it something that did not clarify anything or did I say--I know you probably disagreed, but did I say that or...

20 MS. FULLER: Yeah. Your Honour said that I could have asked it in-chief. But the point of the cross-examination of George Wheesk was to contradict something said by his brother Daniel Wheesk, who wasn't cross-examined on it. Daniel Wheesk said that he didn't come home on the weekend and that his parents were trappers, and that they were gone for the weekend.

25 THE COURT: Okay.

MS. FULLER: George Wheesk, nothing was--there was no cross-examination on that point.

30 THE COURT: Okay.

MS. FULLER: When George Wheesk was cross-examined,

5
10
15
Mr. Charlebois said, "So, your mother worked in the laundry, and you came home every weekend, and your brother came home every weekend, and the kids in Fort Albany came home every weekend?" and George Wheesk said "Yes, sir, no, sir, three bags full, sir" to all those questions. Leo Loone, when I spoke to him, I said, "So what is the story in Fort Albany? Were there families..." and he said, "Yeah, a lot of them especially in the early '50s were trappers and you would go out trapping before the freeze-up and you would home at break-up." And I said, "What about the Wheesk's?" who were his neighbours, and he said, well, in the early '50s they were trappers, he was away and then they got jobs at the mission.

THE COURT: So they would leave when winter set in and come back at break-up?

MS. FULLER: Yeah. And so George has contradicted Daniel on this, but I think the contradiction which I wasn't allowed to explore, and frankly I don't know whether it would have been very fruitful, was that in that space of time things changed from the early '50s to the early '60s.

THE COURT: Does this go to the issue of credibility of somebody here?

MS. FULLER: It goes to the issue of credibility of Daniel Wheesk whose evidence is unchallenged on those points, but Mr. Charlebois will be saying, "You could have gone home" "You could have gone home on weekends and spoken to your parents about all of the things that happened to you." And his evidence is "I couldn't go home, I was at the

30

school. I was stuck at the school." And Mr. Charlebois' evidence would be, that's not what his brother says.

5 So, it's evidence that comes out in the course--or naturally arises in the course of a trial, and the Crown, in my respectful submission, should have the opportunity to patch up misunderstandings.

10 THE COURT: Well you can put up any witness you want, as far as the weight, the relevance, this, that and everything else is up to the jury. Why couldn't she put that witness up now?

15 MR. CHARLEBOIS: A number of reasons in submission. First of all...question the issue of relevance. Loone is a student at the school; one. He might well be able to tell us what his own family and parents were doing. How could he know what the Wheesk's were doing when we got evidence on that point from the two Wheesk brothers who...

20 THE COURT: Well he lived next door.

MR. CHARLEBOIS: If Loone is at the school, how would he know what the Wheesk family is up to?

THE COURT: Because is Loone's evidence going to be that he was at the school seven days a week?

25 MS. FULLER: Well he will talk about in the '50s how...for him he would be allowed to go home on Sunday afternoons because in the early '50s they weren't even allowed to go home on weekends but only part of Sunday after church.

30 MR. CHARLEBOIS: I have a problem as to relevancy of the evidence because we've got evidence from two sons who certainly knew where their parents were,

far better than the next door neighbour's kid. And secondly...

THE COURT: Sometimes not.

5 MR. CHARLEBOIS: ...and secondly, I'll remind the court that the Loone statement was one that was debated, along with the Scott statement, I think it was yesterday or the day before yesterday, and I agreed to abandon my *Stinchcomb* motion insofar as that portion of the Loone statement the Crown wanted to introduce. Now...

10 THE COURT: Well...

15 MR. CHARLEBOIS: ...nowhere in the Loone statement is there any reference to the Wheesk's, other than what he claims to have seen George Wheesk in a skating injury.

THE COURT: Will this make any difference to the outcome? Any?

MS. FULLER: Your Honour...

20 THE COURT: I do not understand what you are--I am going to be quite frank with you right now, you are talking about evidence that came in three weeks ago, two weeks ago...

MS. FULLER: No, this...

25 THE COURT: ...statements that were talked about a couple of weeks ago. I do not understand what your relative points are, so I am not prepared to rule. If you want to clarify your positions, great, I will rule. But right now, all I know is that I have one issue; did the Wheesk's trap from the time winter set in to the time of break-up? Yes or no. And that answer will affect the answers given by
30 these two witnesses prior in the trial.

That is all I know.

MS. FULLER: It's the Wheesk's and the Fort Albany community that many of those children were left in the schools because their families were out trapping for the...from freeze up to thaw.

THE COURT: Is that all the evidence you want to put in?

MS. FULLER: Well, no, Your Honour, because there is also the supporting evidence of--but this is just generic information to clarify points...

THE COURT: How...

MS. FULLER: ...raised.

THE COURT: ...can she be denied the right to put in evidence that families in the early '50s operated this way?

MR. CHARLEBOIS: Because that evidence could and should have come from the complainants in this trial, not generically. It's like asking a Cochrane resident, "Well, what do people in Cochrane do in the winter?" "Well, some do this and some that" you can't paint them all with the same brush.

THE COURT: Well, I do not think that on that basis that evidence is objectionable. I think that that evidence could have given by the first witness. As a matter of fact, the first witness gave us a lot of generic evidence. Much, much generic evidence that nobody objected to, everybody was happy to receive. If there is a witness here that can tell us the life of the early '50s in Fort Albany, Winisk, Attawapiskat, and it is relevant to some of the issues, I cannot deny the Crown that right.

MR. CHARLEBOIS: How then is it relevant, Your Honour?

5 THE COURT: Well, maybe we will find out after the--if it is not relevant the jury will realize it and they will be told about it.

10 And I have a hard time imagining how the life in Attawapiskat, Winisk, Fort Severn, whatever, of the average First Nation family is not relevant to five year olds spending ten years of their lives away from home. There is relevance there. So, it is clarified to an extent that I am satisfied that the evidence should go in.

15 MR. CHARLEBOIS: Now, the other thing, while we're in the absence of the jury, that certainly doesn't have to be decided now, but just to alert Your Honour and the Crown to that, is that if my understanding is correct, Mr. Loone is going to be the last witness for the Crown, can I ascertain that at this point?

20 THE COURT: Is that...

MS. FULLER: That is correct.

THE COURT: Yeah.

25 MR. CHARLEBOIS: After Mr. Loone has testified and whenever Your Honour feels it's appropriate, whether it's this afternoon or tomorrow morning, on count 3 on the indictment, that's the witness who just testified, I'm going to be moving for directed verdict of acquittal on the A.B.H.

30 THE COURT: Well, please, let's do one thing one step at a time. I am having enough difficulty ascertaining what both of you want right now...or

are submitting right now. Let's do that tomorrow or...

5 MR. CHARLEBOIS: That's okay, it's just that Your Honour has, I think appreciated from us when we kind of told you where we're going with things, so that's what I'm trying to do now.

THE COURT: Okay, fine, if you want to bring an application for directed verdict...anytime. Mr. Loone will be the next witness...

10 MS. FULLER: Yes.

THE COURT: ...and we will break for 15 minutes.

MS. FULLER: Thank you, Your Honour.

THE COURT: How long do you think Mr. Loone will be?

15 MS. FULLER: Mr. Loone will not need an interpreter and he's quite an articulate witness, so I think he will be about...in chief about 15 minutes max.

THE COURT: No, if he is going to talk about the life in the '50s, I do not know why he should be much more than that.

20 MS. FULLER: No.

THE COURT: Okay.

R E C E S S

U P O N R E S U M I N G

25 COURT CLERK: Please bring in the jury.

THE COURT: Just a minute. If this is the last witness...

MS. FULLER: It is Your Honour.

THE COURT: ...tomorrow morning we will hear the argument on directed verdict...

30 MR. CHARLEBOIS: It's only on one count, sir.

THE COURT: Yeah, I know what you mean, I know which

one. Then...

MR. CHARLEBOIS: Then I'm put to my election.

THE COURT: Okay, then you have time to think from now until tomorrow.

MR. CHARLEBOIS: That's right.

THE COURT: Okay, good enough.

MR. CHARLEBOIS: And regardless, I take it, the jury addresses are only on Friday?

THE COURT: That is fine with me. I thought you wanted to get to Ottawa?

MR. CHARLEBOIS: Well...

THE COURT: I am prepared to hear the jury addresses tomorrow if you have time to prepare.

MS. FULLER: Well...

THE COURT: If you wish more time...

MS. FULLER: ...it depends on what I hear from....

THE COURT: Okay. Anyways, I will leave that up to you.

MR. CHARLEBOIS: I informed--made a gentleman's and gentlewoman's agreement with the Crown that...

MS. FULLER: Gentleperson's.

MR. CHARLEBOIS: ...gentleperson's agreement with the Crown that by supertime tonight I would inform her...

THE COURT: Okay...

MR. CHARLEBOIS: ...of my election.

THE COURT: That's fine. Tomorrow we will proceed with the motion on the directed verdict, so I will ask the jury to stay home tomorrow, or I will ask the jury to come in, in case...

MS. FULLER: Oh, they might be.

THE COURT: ...you are ready. Oh, no, they have to

come in in any event.

MS. FULLER: Well...

MR. CHARLEBOIS: Yes.

MS. FULLER: ...if...

MR. CHARLEBOIS: ...if I call evidence.

THE COURT: Yeah...no...sorry...good, thank you. It is finely going through. It is getting late for me, as you probably have realized.

MR. CHARLEBOIS: The only thing I wanted to ascertain, it's probably just as helpful to the Crown to know as well, assuming that the defence calls no evidence and not withstanding that I would like to get to Ottawa for the other event, my primary responsibility is here, and...

THE COURT: Absolutely.

MR. CHARLEBOIS: ...I would be...I would appreciate the day in that event, if no evidence is called, to prepare my jury address and address the jury Friday, rather than tomorrow.

THE COURT: So we tell the jury not to come in tomorrow?

MR. CHARLEBOIS: No, we should...

THE COURT: Oh...

MS. FULLER: Well...

MR. CHARLEBOIS: ...in case I call evidence.

MS. FULLER: ...if they call evidence. Your Honour...

THE COURT: You know, sometimes you just have to add a whole bunch of things to what the real issue is. Do I call the jury in tomorrow? Yes. Let's leave it at that.

MS. FULLER: Yes. Your Honour, the only other thing

I should alert Your Honour to is I don't want to
officially close my case until I review all my
evidence tonight. There may be some slight...

THE COURT: Listen, that's...

MS. FULLER: ...amendments to the time frame...

THE COURT: ...entirely up to you. How can I insist
that you...

Ms. Fuller: Alright.

THE COURT: ...close your case? Of course not. I
am glad that you are only going to spend 15 minutes
with this witness, though.

Please call the jury in.

MS. FULLER: Thank you.

....JURY ENTERS (no time available)

MS. FULLER: Yes, I'd like to call Leo Loone to the
stand, please.

COURT CLERK: Leo Loone.

LEO LOONE: SWORN

THE COURT: Mr. Loone, the accused has a hearing
aid, so she has difficulty hearing. I would like
you to raise your voice and speak into the
microphone, then she will understand everything you
say.

MR. LOONE: Okay.

EXAMINATION IN-CHIEF BY MS. FULLER:

Q. Mr. Loone, I understand that you were born and
raised in Fort Albany?

A. Yes, I was.

Q. And that you still live there?

A. I still live there, yeah.

Q. And what are you doing there these days?

5 A. I'm on the uh First Nation Council. I'm the
head councillor on the Fort Albany First Nation Council and
also my profession is uh as mental health worker in the mental
health program.

10 Q. And I understand that you went to Ste-Anne's
residential school from the fall of '58 until some time in
1963?

A. Yes, I was.

15 Q. And can you tell me, sir, living in Fort
Albany, whether or not when you were growing up in the
'50s...let's talk about the '50s now, first of all, were there
many families in Fort Albany that made their living by
trapping?

A. Yeah, there was uh...there was quite a few
families that were living uh nomadically. Like living off the
land...

20 Q. And for those...

A. ...trapping and hunting.

25 Q. And for those of us who haven't lived that way,
when you make your living as a trapper what does that mean in
terms of when you start the season, when you finish the season,
and who goes with you?

A. Um, most of the activity uh in uh in trapping
would involve the families going out to uh their trap lines,
say in the early fall...

30 Q. And why would that...

A. ...and...

Q. Why would you want to go in the early fall?

A. Well their main form of transportation was by

canoe, so they had to go by open water...

Q. Uh-hum.

A. ...so they would have move their uh...their uh gear and their families and...by freighter canoes up the river.

Q. Before the freeze, I guess.

A. Before freeze-up, yeah.

Q. Uh-hum. And then when would they come back?

A. Um, there would be uh families that would come back just before Christmas for the festivities. Uh, but most of the time it was only the men that would come back to get the grub stake(ph). But uh families would sometimes be out there for the whole uh winter season until the next break-up in the spring...when it's open water again they'd return to the community.

Q. They'd return with break-up with the open water.

A. Yeah.

Q. Now, did that change in the '60s? Was there a change in lifestyle?

A. Uh, it probably changed earlier..earlier on. Uh because there was the uh...there was uh construction of the school happening at the time. There was a lot of...I guess there was some work that had to be done by the mission at the time, so a lot of people were called back to work in the...in the uh...those projects.

Q. Uh-hum. There were a lot of projects that were sponsored by who?

A. By the R.C. Mission...the Roman Catholic Mission.

Q. Uh-hum. Now...

THE COURT: I'm sorry, sir, the R.C.?

A. The Roman Catholic Mission...R.C. Mission.

Q. And are we talking about the Oblates and the Sisters of Charity...

A. Yeah, the...the Oblates, yeah, mostly, yeah.

5 Q. Uh-hum. And so, gradually trapping became less and less a means of support and a lifestyle?

A. Uh, yeah, because uh at the time, I guess, if we can go back, uh during the '50s there was less dependance on the general welfare...

10 Q. Uh-hum.

A. ...assistance program also...until the formal, like uh that program was only available...only after in the late...uh, in the mid '60s.

15 Q. I see.

A. So people were more or less had to make a living. Try to make their own...trying to make their own living out of hunting and fishing, and so the dependance on the general welfare seemed to have drawn the residents back into just staying in the community and waiting for the monthly cheque.

20 Q. And how important was the Catholic Church in the community of Fort Albany in the '50s.

A. The uh...even early on that that uh the Church had a lot of influence in the lifestyle of the whole community. They had a lot of influence.

25 Q. Uh-hum.

A. They were more or less being uh looked up to or depended on.

30 Q. Now, your father for instance, how did he make his living?

A. He uh, I guess when he was young he uh, like when we were just a young family we used to be out and uh before my school years, he used to tell us stories about the

time we were living off the land, trapping and hunting most...most of the year. And uh...

Q. By the time you started to go to school had your father gotten a paying job?

5 A. Yeah, he went to work with the uh...with the Roman Catholic Mission in Fort Albany, and he...and we settled in the community.

Q. Alright. And can you tell me, even with your family living in Fort Albany and your father working there, what would happen in the '50s on weekends?

10 A. Uh during our boarding school uh uh years of residential school uh even if our parents were in the community uh the only visiting privileges we had were a few hours on Sundays. We couldn't go back to our families to...to stay overnight, even.

15 Q. And did that gradually evolved through the '60s to more visitation with families to weekend visits and then gradually the withdrawal of the boarding residential aspect of the school in the early '70's?

20 A. Yeah, yeah, that's true, that's what happened, yeah.

Q. Now, I understand that you happened to be...living in Fort Albany, you were the neighbours to the Wheesk's? There may have been many Wheesk families, but the Wheesk's who had a son George and a son Daniel?

25 A. Yeah, George and Daniel and uh...families...the Wheesk family...particularly George's...were our neighbours, yeah.

Q. Uh-hum.

A. And George and Daniel and I grew up together.

30 Q. And do you know, sir, I understand that at some point in time Mr. Wheesk worked as a baker?

A. Yeah, he...he did. He did work as a baker for the Roman Catholic Mission bakery.

Q. And what's your best estimation of when that happened?

5 A. Probably uh...my best recollection would probably be around the '60s.

Q. Okay. The early '60s?

A. Early '60s.

10 Q. And can you tell me before then how Mr. Wheesk supported his family?

A. He uh...he pro...he was out...he was also a trapper like most of the people were before uh...before they settled in the community.

15 Q. Alright. So, then in the late '50s when George and Daniel were at school...do you recall whether or not they would have been at the school on the weekends or whether the rest of their family would have been away trapping in the late '50s?

A. If...if their father and their family was away they wouldn't...they wouldn't be allowed to go home at all.

20 Q. Okay. And then once their father got a job as the baker, they like you, could have gone home Sunday afternoon...

A. Sunday...Sunday...

Q. ...for a few hours?

25 A. ...afternoons, yeah, just for a few hours.

Q. Alright. Now, as well I understand that at some point in time Mrs. Wheesk got a job too at the school?

30 A. Uh, she did, I recall seeing her working at the uh...at the...uh, at the residential school, uh, laundry. She was a laundress there.

Q. Alright, and do you remember when that

happened?

A. To the best of my recollection that would probably be around mid '60s, late '60s...

Q. Okay.

A. ...and early '70s.

Q. Now, sir, can you tell me, did you see George Wheesk at a time when you were both at the school, injured at the school?

A. The uh...to the...to the best of my recollection, yes, I did see him, uh, uh, have a...he had an injury.

Q. Alright. And what time of year was it?

A. It was uh, probably around winter...winter months.

Q. Uh-hum. And the reason that you think it was winter months, I understand it's because the type of injury it was?

A. Yes.

Q. And what type of injury was it? What caused the injury?

A. What had...what had...what had uh happened was he had, I guess, an accident on the skating rink where he scraped his knee...

Q. Okay.

A. ...and uh he got a knee infection.

Q. Alright. Now, you, I understand, didn't give him medical attention or see the knee, but you did see symptoms that there was something wrong with his leg?

A. Yes.

Q. And what was it that you saw that you observed about George Wheesk?

A. He uh...he was uh...he was limping, he

couldn't...he couldn't stand on his leg. It was so badly injured that uh he was...he was almost unable to walk.

Q. And how noticeable was it?

5 A. It was quite noticeable. He'd...uh, I'd see him, like, we'd have to get in a...in a single line when we lined up to go up to our dorm or to go to another area at the school we had to line up, and he would be left behind. Like he'd start...he'd fall. He wasn't...wasn't able to catch up with the other...with the other children.

10 Q. And what was it that caused him not to be able to catch up with the children, or keep up with them?

A. Because he had...he had the injury. He couldn't stand on his leg...

Q. Okay.

A. ...so he had to crawl.

15 Q. And, now is this--are we talking about crawling or limping or dragging his leg or...

A. He...he was dragging his leg.

Q. Uh-hum.

20 A. He was dragging on his leg, and on his other good knee, he would uh...and then he would use both hands...

Q. And...

A. ...to drag....

Q. ...do you know who was looking after the boys at this time?

25 A. Um, yeah, I...I know uh...I know the supervisor, yeah.

Q. And who was it?

A. Well, we used to know her by uh her name "Sheshe"(ph), we used to call her, but her real name was Sister Maria Immaculata, I think, or something like that.

30 Q. Huh-hum. And "Sheshe"...

A. But her...her name is Anna Wesley.

Q. Right.

A. She's sitting...she's sitting over there.

5 Q. Indicating the accused. Do you know if she was, by her actions, by her actions whether it was apparent that she was aware of his injury...by her actions?

A. Uh, it was quite obvious.

MR. CHARLEBOIS: Your Honour is shaking your heading saying "no" is it no to my objection?

10 THE COURT: Let's hear your objection.

MR. CHARLEBOIS: I'm sorry?

THE COURT: Let's hear your objection.

MR. CHARLEBOIS: How can this witness know what was in the mind or head of Sister Mary Immaculata?

15 THE COURT: I agree.

MS. FULLER: Q. What was her response to his falling behind and not being able to keep up with the other boys and dragging his leg?

20 A. Um, it seems like she was um mad with him. She was quite...she seemed quite upset with George not being able to be uh caught up with the rest of the uh of the boys in line, so she would um she would hit him, slap him.

Q. Where?

A. Uh around the head area. Tell him to get up.

Q. Tell him to get up?

25 A. Yes.

Q. And would he get up?

A. He couldn't.

Q. And how is it that you remember this incident after so many years?

30 A. I...I remember it as if it was yesterday because it was so uh, uh cruel. Like I found--I felt very

sorry for George.

Q. Thank you.

THE COURT: Cross-examination.

5 CROSS-EXAMINATION BY MR. CHARLEBOIS:

Q. These were slaps, when you said that she would hit?

A. Uh, they were, yes.

Q. Okay. Openhanded slaps?

A. Uh, yeah.

Q. Now, during the period of time--you said you went there from '58 to '63, is that correct?

A. Uh, around...around that area. Around that time, yes...

Q. Okay.

A. ...but I'm sure that I went...I was first...my first uh year was 1958.

Q. What you're unsure of is how long you were there, is that correct?

A. The uh...there was a period of time when uh we were first pulled out by our parents. Like my father pulled us out, uh went to the uh Father in-charge at the R.C. Mission, to tell him that he wasn't going to be letting his kids go into boarding school anymore, that he was gonna let us attend school from home. So, I was very young then, and I...I seem to recall it was around uh '63...1963, in the fall.

Q. Okay. So, as I understand it, did you just go there for one period of time and then you were pulled out and never went back, or you eventually returned?

A. We...what...what had happened was uh we would go there, like there's a period of time when we were uh cut off from the community because we lived...the village was on the

island...

Q. Right.

5 A. ...and we wouldn't have to go back into the school and...during those periods of time when there was a break-up, we would be residing in the school during those uh few weeks in the spring...

Q. Okay, but...

A. ...after that.

10 Q. ...just so I'm clear on something. When your father made the decision to educate you at home, did you ever then return to attend Ste-Anne's?

A. Uh, yeah, to go to school, yeah.

MS. FULLER: Day student.

MR. CHARLEBOIS: What did you say?

MS. FULLER: Day student.

15 MR. CHARLEBOIS: Q. Was Sister Mary Immaculata the supervisor for the entire period of time that you were there?

A. Uh, pretty well, yeah.

20 Q. And just so I'm clear. Is it your evidence that you left Ste-Anne's in 1963 or was it before or after that?

A. To the uh best of my recollection that's what I stated earlier in my...in my statement and also what I just said right now.

25 Q. Is what, sir?

A. 1963.

Q. Okay. And in 1963, when you left...

A. Uh-hum.

30 Q. ...was Sister Mary Immaculata still the nun who was in charge of the boys?

A. Hum...she was...she was probably, yeah.

Q. Well, are you sure or are you unsure?

5 A. Uh, I know she left sometime before--like there was a...an...a...there was a period of time when there was uh a changeover in how the school was operated. Uh, but, I'm...I'm unsure of when...when specifically at that time because it was my...I wasn't interested.

Q. That's not what I'm asking you, sir.

A. Yeah.

10 Q. You've established for the jury that you feel you left the school in 1963, that that's your best recollection, is that correct?

A. Yeah, that's...that's around...around...around that time, yes. I was quite young then, yeah.

15 Q. Okay, let's see if we can narrow it down. At the time that you left the school for good, do you remember if President Kennedy had been assassinated?

A. Um, yeah, uh-hum.

Q. So at the time President Kennedy was assassinated you were still at Ste-Anne's Residential School, is that correct?

20 A. I was probably still there, yes.

Q. Okay, well you keep using the word "probably", sir. Were you, or weren't you, or you don't know?

A. Uh...well, to the best of my recollection I was...I was in school, yes.

25 Q. At that school?

A. At that school, yes.

Q. Okay. And can we agree that President Kennedy was assassinated...22nd, November 1963?

A. Yes.

30 Q. At that time, 22nd, November 1963, was Sister Mary Immaculata still looking after you and the other boys at that school?

A. Probably not me because I was already at day school. I don't know about the others.

Q. Okay. Twenty-second of November 1963, did you still see Sister Mary Immaculata working at that school?

5 A. Um...I remember...I was...I was quite young. I...I...I don't...I seem to think she was still there, yeah.

Q. I'm sorry, there was some rustling, I didn't hear your answer. Would you repeat that, please?

A. I sa...I was quite young then...

10 Q. Yes.

A. ...like I was only ten or something.

Q. But then you added something else about "still there" and I missed that.

A. Yeah.

15 THE COURT: "I think she was still there"

A. I think she was still there.

MS. FULLER: "I seem to think she was still there".

A. I seem to think she was still there, yeah.

20 Q. During the time that you were there and that she was looking after you and the other boys, how big a group was it, Mr. Loone?

A. Um...it was quite a big group. It was over uh over a hundred boys, I think.

25 Q. Okay. And from what you could see was she the only nun looking after the boys, except when they were in class?

A. Uh, yes.

Q. And this was like seven days a week, is that correct, except in the summertime?

A. Uh, yes.

30 Q. So early in the morning 'til late at night and full-time on weekends?

A. Yeah.

Q. Do you remember the range of age that the boys had when you were there? They would range from what age to what age, from what you can remember?

5 A. Um, I remember the mandatory age for you to be in school was to be six years old. That's the time that I went into school myself.

Q. Okay. And what about the older boys, how old would they have been?

10 A. They would have been probably around 14...15.

Q. And do you remember Sister Mary Immaculata as being a small sized nun compared to the other nuns?

A. Not...not for me as a little boy, no.

15 Q. Okay. Were some or many of the bigger boys or older boys rather, bigger than Sister Mary Immaculata...bigger in size?

A. Um...I'm not sure.

20 Q. From your perspective as an adult today would you agree that it was quite a job for one person to look after a group of 100 or so boys...alone?

A. You'd have to have the right person in there.

Q. I'm sorry?

A. You'd have to have the right person in there to...to be able to do the job.

25 Q. Now, you've indicated that you occupy a position of the council at Fort Albany?

A. Yes, I'm on the First...uh, First Nation Council, yes, I am.

Q. Okay. And have you been occupying that position for many years?

30 A. Yes, eight yea...eight years. I'm on my fourth term...two-year term. Fourth two-year term.

Q. Okay. So, you're part of the elective government then...

A. Yes.

Q. ...for Fort Albany?

A. Yes, I am.

Q. Okay. Did you have anything to do with the organization of the healing conference in 1992?

A. Um...yes, I did, because of the work that I'm involved in, yes.

Q. Okay. Did you attend the healing conference?

A. Uh, no, because that was the time my father was uh was ill with cancer, and I had to be with him, going to treatment.

Q. Thank you, sir, I have no further questions?

THE COURT: Re-examination?

MS. FULLER: No, re-examination, thank you.

THE COURT: Thank you very much, sir.

A. Okay.

THE COURT: You can step down. Anymore witnesses for today?

MS. FULLER: I don't think so, Your Honour.

THE COURT: Members of the jury, I want you to come back here tomorrow at ten a.m.

....JURY RETIRES (4:00 p.m.)

THE COURT: Okay, we will adjourn until tomorrow.

By the way, in the event that I would grant the motion, would you want that to be cared for with the jury immediately, or wait until I give my charge? I would think I would deal with it immediately. No, now that I think of it, it is proper that I deal with it immediately if it is granted.

MR. CHARLEBOIS: That would be my preference because otherwise...I mean...

THE COURT: It is the proper way.

MR. CHARLEBOIS: Yes.

THE COURT: Okay.

R E C E S S

U P O N R E S U M I N G

THURSDAY, MAY 13, 1999

COURT CLERK: Are you ready for the jury?

MS. FULLER: No.

THE COURT: No? Do you have a motion?

MS. FULLER: Yes. Your Honour, Mr.

Charlebois...I'll speak for him...does have a motion, but in addition, I have a couple of housekeeping matters that I'd like to take care of with respect to the indictment. And pursuant to s.601(2) C.C.C...

THE COURT: Is this objected to, by the way?

MR. CHARLEBOIS: No, we've discussed it.

THE COURT: Okay.

MS. FULLER: Count #1, I would ask that the...

THE COURT: Okay, just a second now, while I try to organize myself. I left the indictment upstairs.

No, okay, I got it. This is the original? Right, copy of the original, madam clerk?

COURT CLERK: It should be--yeah, it's my writing.

THE COURT: Count #1...

MS. FULLER: If the parameters of the time frame could be September 1, 1956 to June 30th, 1962.

THE COURT: 56 to 62. Just to inquiring as to

mechanics; I will tell the jury this. Will a new indictment be prepared?

MS. FULLER: We can't do that, Your Honour, in the middle of trial.

5 THE COURT: Okay.

MS. FULLER: We have to go with the indictment, but they can be provided a copy...a new copy of the amended one.

THE COURT: Okay.

10 COURT CLERK: (Inaudible)

THE COURT: The old one is the indictment and these are simply amendments to it?

MS. FULLER: Yes.

THE COURT: Okay. 56 and 62.

15 MS. FULLER: Count 2 - the date, 1965, changed to 62. So it's September 1st, '58 to June 30th, '62. Count 3, the closing date, December 31, '57, as opposed to '56. There's nothing on page 2. Count 8...

THE COURT: Uh-hum.

20 MS. FULLER: September 1st, '58 to June 30th, '62.

THE COURT: Uh-hum.

25 MS. FULLER: And similar to count 9. September 1st, '58 to June 30th, 1962. And this is to have the indictment comply with the evidence according to 601(2), and according to the sections of the Code in the Supreme Court of Canada decision in G.B.A.B. and as C.S., that indicates that in trials of this nature...

THE COURT: I agree.

30 MS. FULLER: ...time is not an essential element.

THE COURT: You have a motion to make?

What is your motion?

MR. CHARLEBOIS: I'm moving a directed verdict of acquittal on two counts.

THE COURT: On two counts?

MR. CHARLEBOIS: Two counts. I informed Ms. Fuller of this last night, that I had found the second count...

THE COURT: On the second count?

MR. CHARLEBOIS: No, I'm sorry, Your Honour, that I had found a second count on which a motion would be made. Basically, my motion is being made on counts 3 and 4.

THE COURT: Just a minute now.

MR. CHARLEBOIS: Three is the assault bodily harm on Edmond Mudd, four is the assault bodily harm on Eli Paul-Martin.

THE COURT: Okay.

MR. CHARLEBOIS: I'll deal with Paul-Martin first because he's the witness who's freshest in our collective minds. We heard from him yesterday.

THE COURT: I'll ask Miss Fuller to deal with that matter first.

MS. FULLER: Certainly, Your Honour.

As you know, Your Honour, this...a directed verdict of acquittal is available if there is no evidence upon which a jury properly instructed could acquit. And obviously it is not the same thing as if there is no evidence upon which the trial judge would acquit, but rather no evidence. It is exactly the same test as for a committal for trial and of which there was a committal in this case.

5 In the evidence we heard yesterday on Eli Paul-
Martin, there's no point really in reviewing the
legal authorities. To make my point, I thought I
would offer Your Honour an analogy. If the Crown
were prosecuting someone for child abuse, and it
was either a child with say, broken ribs, or
lacerations, and it was suggested that--or baby
shaking case for instance, and it was suggested and
suspected that the parents were responsible. And
10 the reason the parents were suspected to be
responsible is that they were the only people who
looked after the child. In that situation, what
does happen is that both parents will either not
give a statement or will give a statement
indicating it wasn't me. The child of course in
15 that situation doesn't give an opinion, because the
child is usually of tender years and can't give an
opinion. In those situations, Your Honour, these
cases go before a jury, and these cases often
result in convictions, and in none of these cases
20 do we have a situation like this one, where--or to
put it another way, in those cases invariably there
is not evidence that either parent was with the
child at the moment of the assault. And the reason
we rarely have that information is because what
25 will happen is that some months later a doctor will
say, "I can tell by the x-rays that there was
broken ribs, and this has occurred in the last
three months. So in those cases, we don't even
have the actual presence of the parent at the time.
30 And we don't even now the time when the assault
took place with any proximity. We invariably do

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not have evidence that at the moment of the assault
one of the parents was in a hostile frame of mind,
because again, we don't know the precise moment.
And the accused and the police and the witnesses
have no idea. They know only that the child was
living with the parents during the several weeks or
months before this took place.

10
In none of these cases do we have a situation where
the accused parent, either one of them, is not only
with the child at the moment of the assault, in a
hostile mood, but about to punish the child, as we
have in this case.

15
Nor do we have in those cases a situation where the
parent is with the child, in a hostile mood, about
to punish the child, at the moment of the assault
with a history of punishing children in a physical
fashion. In those situations, Your Honour, the
juries and judges apply inductive, deductive
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reasoning, all manners of reasoning.

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Now, Mr. Paul-Martin's insight and analytical
abilities to make the connections needed, frankly
aren't that good, which is why I didn't delegate to
Mr. Paul-Martin the job of making my legal arguments.
Nor is it the test, what reasons Mr. Paul-Martin can
draw on without insight and the capacity for
thoughtful reflection of what the evidence might be,
and what connections could be drawn from the evidence
in its totality. Nor does Mr. Paul-Martin even know
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the evidence in its totality.

We can't of course punish the victim for not being able to pull the case together for us.

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But, Your Honour, what you have heard is two and a half weeks of a scenario of a...let's call it a large household, but a household in which there was a reign of terror, in which the only rules were Anna's rules, an atmosphere where other household members were terrified. Evidence day after day from every single witness, that Anna Wesley was in total control of the dining room and total control of the dormitory. And in both of these cases the alleged assault occurred in the dining room and in the dormitory, alternately.

What we have here of course is a re-creation of the Anna Wesley...let me call it the "Anna Wesley Show". No one--you've heard days of evidence that--and the context and the surrounding circumstances of the household have been held by courts over and over again to be taken into consideration. No one moved in that household without her permission. This is not a case of it could be one of hundreds of boys.

We have evidence of Daniel Wheesk who indicated he was told to stand by his bed, and we know that Daniel Wheesk was knocked down and struck for doing more than that. For not just standing by his bed, but for stripping the sheets.

There is no evidence that the two boys that were

5 holding down Mr. Eli Paul-Martin were any more than
props...props for Anna Wesley. The only way, with
the evidence that Your Honour has heard, the only
conceivable way that those...either of those boys
could have struck Eli Paul-Martin is as an agent
for Anna Wesley on her direction because the
evidence is clear and has been repeated time and
again, that under her direction, under her control,
no one moved without her permission.

10 You've heard evidence as well from witnesses that
not only was talking, in terms of we want to look
at the environment of the scene of the crime, these
environments were orderly, or as Daniel Wheesk
said, "She went to extreme measures to maintain
15 order. Boisterousness was not allowed. Horseplay
was not allowed."

20 The suggestion that one of these boys who were
holding down Eli Paul-Martin, suddenly got a notion
in his head to pick-up something and deck Eli Paul-
Martin, and just about render him unconscious and
cause a laceration, is an enormous stretch, Your
Honour, and not consistent with everything that we
know about the environment....And the only thing we
25 know about the two boys is that they were saying
nothing, they were holding the accused, she was
standing right there, and in fact, as soon as he
was struck, he reached out because he was stunned
and he reached for her robe, her dress or her veil.
And Anna Wesley--the purpose of Anna Wesley's being
30 there was to take back Eli Paul-Martin from Father

5 Lavoie, bring him up to the dorm and to punish him. And we know that she was going to punish him because he was on his knees. Whether or not she told him to get on his knees, whether or not he was pushed on his knees, he was on his knees, just as Your Honour will recall, Edmond Mudd was told to kneel when he was kicked in the head. That was his punishment. Just as Tony Tourville was told to kneel and was slapped in the head for coughing--or excuse me, Luke Mack, just as all of these instances were surprise sucker punches or kicks or slaps, while the complainants were in positions of utter submission and vulnerability.

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15 There is no direct evidence of Anna Wesley actually striking the complainant. And Eli Paul-Martin is unable to articulate how he knows with absolute certainty that it was Anna Wesley, but we know why. We know that there's evidence that makes it clear that it would be impossible for--and there's only two other people it could be. It would be impossible both because of the nature of the circumstances and the event that was taking place, and the purpose of this interaction for it to be anyone else but Anna Wesley.

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30 This case is 100 fold stronger than any case of a child abuse involving a household where nobody saw it happen and we know it's one of the two or three of them in the household. It is 100 fold stronger for numerous reasons, and the evidence in my respectful submission is ample, it is incremental,

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it is...it is wider than the ambit of just Eli Paul-Martin's statement because of course it's absolutely true. If someone were to find that Eli Paul-Martin, or that the accused should be convicted because Eli Paul-Martin said, "I'm sure it's her because I used to see her hitting a lot of kids" the Court of Appeal in a heartbeat would not necessarily throw the case out, Your Honour. It would send the case back, and say "that is not relevant for the consideration of the trier of fact." But the fact that Eli Paul-Martin comes up with that explanation does not mean that there is not evidence before the court that the trier of fact can use to come to the conclusion, the inescapable conclusion that it was Anna Wesley who just as she did with the other boys, punished Eli Paul-Martin as she was about to do for running away, which was forbidden, and sending him to bed naked.

THE COURT: How about count #3?

MR. CHARLEBOIS: Find my notes on Mr. Mudd, please. Mr. Mudd told us in examination in-chief "I heard footsteps...her footsteps" and he alleges he's kicked. "I did not see Anna Wesley hit me, but there's no doubt in my mind that she is the one who kicked me" that's as good as it gets.

Now, it's an area that I shied away from in cross-examination for obvious reasons, and the context that we have is that the diningroom is full of children, and that we have no evidence of who

actually kicked Mr. Mudd in the back.

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It's not because this case involves--and I just want...because the Crown has raised it in her submissions, which I suppose would be the same submissions for Mr. Mudd as for Mr. Paul-Martin, so at this point I'm limiting my comments to Mr. Mudd, I believe that's all Your Honour wants me to address, is that correct?

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THE COURT: That is what I requested.

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MR. CHARLEBOIS: In connection with Mr. Mudd, the Crown's argument...she's given us the scenario of domestic assaults, the scenario of sexual assaults, the scenario of baby shaking cases, well, Your Honour, at this stage of the proceedings, indeed at any stage of the proceedings, criminal procedure remains the same, criminal procedure's not dictated by what kind of a case we're trying. And the fact is that there is no direct evidence on the part of Mr. Mudd as to who kicked him.

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THE COURT: You do not direct evidence, circumstantial evidence is sufficient, is it not?

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MR. CHARLEBOIS: I agree, but when you've got the witness telling us "I didn't see Anna Wesley hit me, but there's no doubt in my mind that she is the one who kicked me", he doesn't advance any reasons, so in my submission it becomes speculation on the part of Mr. Mudd, and nothing more than speculation. And then consequently, that speculation should be removed from consideration by the jury much to the same extent as--no--should be removed from consideration of the jury. And that

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the jury should just have to address those counts on which there is sufficiency.

5 And I submit respectfully that there is much analogy between the Paul-Martin situation and the Mudd situation, as to how they arrive at the conclusion in their minds that it's Anne Wesley who hit them. But there's no direct evidence. And further more in assessing Mudd, I would ask Your Honour to keep in mind that at the time that Mr. Mudd is allegedly kicked the dining room is full of people.

10 I won't bore the court with the law. The law on this point's very clear. It's really a factual determination for Your Honour to make at this point, and unless I haven't answered all of the questions Your Honour might have, these are the points I would ask you to consider on Mr. Mudd.

15 THE COURT: Thank you. You do not have to argue...

MS. FULLER: Your Honour, there was just...

20 THE COURT: ...on Mr. Mudd.

MS. FULLER: ...there was just one more point that I forgot on Eli Paul-Martin. And that is if I may have the indulgence of the court, and that is, Your Honour, when I referred to the fact that in this case we have evidence of not only opportunity and inclination, but of manifested hostility, I forgot to draw the court's attention to the evidence of the hostility, and that is the badmouthing at the time that the victim was struck, and I deliberately

asked this question, "At the time that your parents were being badmouthed and you were being called "un espèce de sauvage" what happend?"

THE COURT: I saw that, and it is immediately preceding the evidence of the alleged assault.

R U L I N G

BOISSONNEAULT, J. (Orally):

I do think that a case has been made out for a directed verdict in relation to Eli Paul-Martin.

I do not find that a case for a directed verdict has been made for Edmond Mudd.

My reasons are this: First of all, Eli Paul-Martin, I find there is no evidence. The evidence as I have it as follows: Two boys were holding me, I was hit with something, I don't know what, but it was hard...on the right side of my head, I was trying to reach out to grab the veil and the dress, Anna was there, ~~no one else was there, just the two~~ boys were there." "She was how close?" "Very close." "She is the one that struck me. I am certain because I was used to seeing her hit boys." That was his evidence on that part. Further on..."Did you see her hit you?" "No, but I'm sure because of her hitting other boys. I didn't see her hitting me, but I blame it on her." "You don't know?" "I didn't see who hit me." "Could have been one of the boys?" "I don't think so." So, I don't have any direct evidence, nor do I have any circumstantial evidence.

5 Propensity itself....Don't like that? You do not have to like my rulings. Propensity in itself is not sufficient. Opportunity is not enough. There must be some evidence that could go to the jury, in order for them to arrive at a verdict of guilty.

10 In this case, Eli Paul-Martin, there is none, and I will direct the jury that a finding of not guilty be entered.

15 As for Mudd, there is evidence that a jury could consider. "She addressed me: "Wait, I will get you in the diningroom." "She said, "Kneel down." Obviously she was in total control. "I could hear her footsteps approaching. Sister Anne was the only one with hard shoes. We all had running shoes."

20 I wish you would stop flipping your pages while I am giving the ruling, it is distracting me.

25 "We had running shoes." She later told him: "That's what happens when you don't listen when you are spoken to." He does admit he didn't see her kick, but he states "there's no doubt in my mind that she kicked me."

30 With the utterances made by--or allegedly made by Anna Wesley, with the shoe evidence, with the fact that he stated: "No one else was close to me when I was hit", I believe that there is sufficient evidence for the jury to consider and arrive at a

finding of guilt, if they so choose.

We ready for the jury?

5 MR. CHARLEBOIS: One point that I wanted to address now, to prevent having to ask the jury to leave at some point. Miss Wesley, will after the Crown formally closes its case, be testifying.

10 THE COURT: Well, why don't you wait until the Crown closes its case?

15 MR. CHARLEBOIS: Okay, it's just there's a question of a picture here, and I'll need a determination. I could do it in the course of her evidence, but it will require the jury to leave.

20 THE COURT: Okay, go ahead. Well, what's the picture?

25 MR. CHARLEBOIS: It's a picture--Miss Wesley has no pictures of herself, but this is a picture of a fellow nun at the time, depicting the habit that they wore, and it's going to be germane in some of the questions I'll be putting to her. And although she could say that that's not that she took or a picture of her, that the habit that she wore in those days was exactly what's depicted in this, because all the nuns wore the same outfit.

30 THE COURT: Is there any objection to that picture going in for that purpose?

MS. FULLER: I haven't seen the picture, so I wouldn't know, Your Honour.

MR. CHARLEBOIS: And the purpose for the picture would....

MS. FULLER: No objection.

MR. CHARLEBOIS: Thank you.

THE COURT: Okay, are we ready for the jury?

MR. CHARLEBOIS: Yes.

THE COURT: The Crown has formally closed its case?

MS. FULLER: Yes, Your Honour.

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.....JURY ENTERS (no time available)

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THE COURT: Members of the jury, the Crown has now formally closed its case. Prior to closing the Crown's case, a motion was made under the criminal code, to amend the indictment in certain aspects. That amendment was granted, there was no problem with that. I will tell you what the amendments are now, but you will be supplied with fresh copies with the amendments probably circled, on top of what was originally in the indictment.

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The Crown is entitled to apply for and be granted under the proper circumstances the right to amend the indictment to conform to the evidence that was given. It is granted and the amendments are as follows: in count #1, we have the dates between September 1st, 1958, and June 30th, 1965. Instead of 1958, it has been amended to 1956. Nineteen sixty five has been amended to 1962. Okay. I do not want to go to fast here, are you ready? Count #2, 1965 has been amended to 1962. Count #3 has been amended from December 31st, 1956, to 1957. And then we go to count #8, I believe, and the amendment in count #8, 1966 will become 1962. In count #9, 1966 will become 1962. Now do you want me to go over that again or are you okay? In any

5 event, you will be getting another copy, but the original is the indictment. You will be getting another copy with the amendments shown on that copy as amendments, so you don't have to go back and forth. So we are okay there?

10 At the conclusion of the Crown's case, defence counsel brought a motion for what we call a directed verdict, on one count, and that is count #4, involving Eli Paul-Martin. It is most important that a man should not be convicted of a crime of which he is not guilty...or a woman. I have carefully reviewed the evidence related to count #4, related to Eli Paul-Martin. I have come to the conclusion that the prosecution has not made out a sufficient case to justify a conviction. In these circumstances, and probably only in these circumstances, I, as the judge of the law, have the authority to direct you as a matter of law to find a verdict of not guilty.

20 I will briefly go over the evidence. If you recall his evidence, he stated something to the effect that two boys were holding him. "I was hit with something, I don't know what, but it was hard and on the right side of my head. I was trying to reach out to grab her veil and dress. Anna was there, no one else was there, other than the two other boys." So the only people close were the two boys and Anna. "She was the one that struck me, I'm certain because I used to see her hit other boys." That's not direct evidence and that's not

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5 circumstantial evidence. Later on he was asked whether he saw her hit him. His answer was "No, but I'm sure because of her hitting others. I didn't see her hitting me, but I blame it on her." "I didn't see who hit me." "Could it have been one of the boys?" "I don't think so."

10 Now, "propensity", you have heard other evidence that alleges she struck other boys. Propensity in itself is not evidence upon which a jury can convict.

15 Secondly, "opportunity". She was there. Also standing on its own, is not evidence upon which a jury can convict. For example: If you hire three tradespeople to come and work at your home one day at different times, you forget \$500 on your dresser, at the end of the day the fact that one of these people maybe be a thief, an alleged thief, a convicted thief, and that he had the opportunity, is not evidence upon which you can convict. You might say, "Well, he had the propensity because he was a thief and he was there, so it must be him." That is not evidence upon which you can convict.

25 So in the case count #4, I therefore have concluded that as a matter of law the verdict must be not guilty, in relation to that count. And I would ask your foreperson when you deliberate to enter that finding of not guilty. As a matter of law and effect, I'm withdrawing this count from you and the entering of the verdict will be made by myself, as

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well as the...before me.

Other than that I believe we're prepared to proceed. Is there anything else?

MR. CHARLEBOIS: Over the last two and a half weeks you've heard from various witnesses one version of what life was like at Ste-Anne's Residential School in the early '50s to the early '60s. Now, as His Honour had told you at the beginning, it was very important to keep an open mind until all the evidence was in. Now you are going to hear from Anne Wesley, that, yes, she was there, when she was there, what she did there, and what life was like there. And without explaining anything further to you, I think the best evidence can come from Anne Wesley.

Miss Wesley, would you take the stand, please?

ANNA WESLEY: SWORN

EXAMINATION IN-CHIEF BY MR. CHARLEBOIS:

Q. Miss Wesley, what's your date of birth?

A. July 26, 1926.

Q. So you'll be 73 this summer?

A. This coming summer, yes.

Q. You ever been in trouble with the law?

A. Never.

Q. Where were you born?

A. Attawapiskat.

Q. And what is your cultural heritage?

A. Native...Cree...Indian.

Q. Okay. And were both your parents Native-Cree?

A. Yes.

Q. Where did you grow up?

A. Attawapiskat.

Q. And I understand that at some point you attended school at Ste-Anne's as a student, is that right?

A. Yes.

Q. And do you know when you went to Ste-Anne's?

A. September 1934 to June 1941.

Q. Okay. And what grades did you complete at Ste-Anne's?

A. Seven.

Q. And you started in what grade?

A. One.

Q. And you finished?

A. I finished up to seven, yes.

Q. Okay. Now after you finished school at Ste-Anne's in 1941 where did you go?

A. I went back home to Attawapiskat.

Q. Okay. Now without getting into a great deal of detail, what did you do in Attawapiskat? Did you work? What did you do?

A. Yes, I work at the store first...Hudson's Bay Company Store, and it was too cold for me in the winter when there is no furnaces like we have today...

Q. Yeah.

A. ...so I went b...I went to work for the Hudson's Bay Company manager's wife.

Q. Okay, and what type of work did you do there?

A. Housekeeping and looking after her three children...helping in there.

Q. Okay. And roughly how many years did you do that?

A. For five or six years.

5 Q. Okay. Now, after you completed grade 7 at Ste-Anne's in 1941, did you get any further schooling? Did you go to highschool? Did you go any further than grade 7?

A. No. No, but I did upgrading...personally, there was someone else helping me in the house, but I never went to highschool.

10 Q. Okay. Now, what languages do you understand and speak fluently, other than English, of course?

A. Cree.

15 Q. Now, I understand that at one point in your life you decided to join the Sister of Charity Ottawa...Les Soeurs Grise, is that right?

A. Yes.

Q. And do you remember when it was that you decided to join?

A. It was in 1948.

20 Q. Okay. So you would have been about 22 years old at that time?

A. Yes, but I...I went to Ottawa only in 1949.

Q. Okay. So in 1948 you decide to join the religious order...and did they give you any kind of training initially? Where did you go?

25 A. I went to Fort Albany. I work with the Sisters to learn French a little bit.

Q. And when did you work for the Sisters...what year?

A. 1948.

30 Q. Okay. And how long were you there?

A. One year.

Q. And after that, after you finished your initial working in--well first of all, in 1948, where were you working, which portion at Fort Albany were you working at?

5 A. Most of the time I...I was translating...working with the typewriter or printing papers, like...like the old style of machine that they used.

Q. Mimeograph machines.

A. Yes, that's right, yeah.

10 Q. Okay. So, that in 1948 or so, for that year you're at Fort Albany you were doing kinda clerical duties?

A. What do you mean "clerical"?

Q. Well what you've just described to us there...

A. Yes, yes, yes.

15 Q. Okay. And you said that afterwards you went where?

A. I went back home for the summer...1948...1949, I mean, and I came back to Fort Albany in July, and then I left Fort Albany in August to go to Ottawa.

Q. And what was the purpose of going to Ottawa?

20 A. To go...to enter the congregation...to the postulate and novicia (ph).

Q. Okay. And is that basic training for a nun...Postulate and novicia, is that the basic training...

A. Yes.

Q. ...that nuns go through?

25 A. Yes. Yes.

Q. And where was that held, at the head office, the mother house?

A. Mother house in Ottawa (unclear) Briere.

30 Q. Okay. And you were there for novicia and postulate for how long?

A. Postulate for one year and novicia for one year

complete.

Q. Okay. Now after you had finished your training as a nun in Ottawa--or when did you finish your training as a nun...what year?

5

A. 1951.

Q. Okay.

A. In July.

Q. And at that point when your training was finished where did the nuns send you to work as a nun?

10

A. To Fort Albany.

Q. Okay. To the residential school, Ste-Anne's?

A. Yes.

Q. And when did you arrive there?

A. It must be somewhere in late August.

15

Q. Of 1951?

A. 1951, yeah.

Q. And how long did you continue to work at Ste-Anne's residential school after you got there in August of '51?

A. To 1962.

Q. Okay. And when did you leave in 1962?

20

A. Around the 2nd of July.

Q. Okay.

A. After the school year.

Q. So you worked at Fort Albany then for about 11 years?

25

A. Yes.

Q. And we'll come back to your life at Fort Albany, but maybe let's just continue a little bit. Where did you go after you left Albany in '62?

A. I went to Ottawa for one year.

30

Q. Head office again?

A. Head office again, yes.

Q. Okay. And then what did you do after that?

A. They send me to Fort George, Quebec.

Q. Okay. And how long did you stay at Fort
George?

A. Nine years.

Q. And what kind of work were you doing at Fort
George?

A. I was helping at the clinic, translating,
helping the nurses and helping the x-ray, and...go...the nurse
how the doctor was visiting the patients outside of the
hospital, I was always with them to...

Q. Okay.

A. ...translate.

Q. And...so '63...nine years...that's 1972, is
that right?

A. Yes.

Q. Now I understand that at one point you decided
to leave the order of the Grey nuns, is that right?

A. Yes.

Q. And when did you leave the religious order?

A. I wrote my letter (inaudible) according the
mother general in Ottawa...in September. It took me only three
weeks when I got the answer that I was...I was free.

Q. Okay.

A. So, I went...Oh, okay, go ahead.

Q. So when you left the Order...

THE COURT: I didn't get the year.

Q. 1972, is that correct, Miss Wesley?

A. Yes.

Q. Now when you left the order did you just quit
or did you go through channels?

A. To?

Q. Did you just quit or did you do it officially?

A. I did...I did it very, very well. I came out through the front door and not...not from the backdoor.

5 Q. Okay. Now after you were freed or allowed to leave the order what did you then begin to do? What did you do after 1972?

A. I went home for the month of September...

Q. To Attawapiskat?

10 A. To Attawapiskat. I was planning to stay there and then...

Q. Then what happened?

A. The priests from Moosonee diocese knowing that I was able to write and translate and play the organ in the church, they asked me to come to Moosonee...

15 Q. Alright.

A. ...to work for the diocese.

Q. And did you go to Moosonee to the diocese?

A. On the 12th of October 1972.

Q. Okay.

20 A. By the last plane...the planes were landing only on the river at that time. There was no airstrip and the ice was forming on the river.

Q. Okay. And what kind of work did you do at the diocese after you got there in '72?

25 A. Almost the same thing as I did in...write and translating, working for the church, help...help information of the people, receiving the people in the information office.

Q. Okay. And I understand that you're still working full-time for the diocese?

A. Exactly at the same place.

30 Q. Doing the same work?

A. Same work almost...translating and so on.

Q. Okay. So you're almost 73...you're still working full-time?

A. Yes.

5 Q. Now I want to show you a photograph. And I understand that this is not a photograph of you or a photograph that you took, is that correct?

A. Yes.

Q. Well, I'll show you the photograph first.

10 MR. CHARLEBOIS: And the photograph will be made an exhibit, Your Honour. I'll get the witness to describe the photograph, and with your permission I'll show it to the jury.

THE COURT: Certainly.

15 MR. CHARLEBOIS: Q. Now, that photograph appears to show a nun, is that right?

A. Yes.

Q. And is that nun wearing the uniform or habit of the Soeurs de la Charité d'Ottawa or the Grey Nuns?

A. Yes.

20 Q. Okay. Now, the habit or uniform that we see the nun wearing in that picture, how did that compare to the habit that you wore for the 11 years you were at Fort Albany?

A. Exactly the same.

Q. Okay. And did the uniform change from winter to summer?

25 A. Never.

Q. And was that also the same uniform that you wore when you--the nine years you were at Fort George?

30 A. No. I cannot ex..exactly...what was it '67 or '68, they start to change the uniform. Make the dress shorter, veil and everything.

Q. They got more modern?

A. Eh?

Q. They became more modern in '67 or '68?

5 A. More modern, yes, yes, yes. In '68 or '67 or '68, but I was still in Fort George. But when I was at Fort Albany this the thing that they wear 24 hours a day for years and years.

Q. Okay.

10 MR. CHARLEBOIS: Now....and this will become germane, Your Honour, as I delve further into the evidence.

MR. CHARLEBOIS: Q. Could you please describe for the members of the jury how many layers there were to this uniform...to this habit and what it consisted of?

15 A. The first...the outside dress...I'll call it dress, it's about four...four yards around your body with large pleats all over...about one inch from the ground.

Q. Okay.

A. The second one is the same material...about not exactly three yards...and almost touching the ground too...too.

Q. Okay.

20 A. The third one is cotton...small one...shorter than the other ones. And the...

Q. So...

25 A. ...the veil and everything black...the veil came to about your waist.

Q. And did you have to wear all three layers all the time or did it depend on the temperature outside?

A. All the time.

Q. So in June you'd be wearing the same three layers as in January?

30 A. Yes, sir.

Q. Now did the nuns all wear the same kind of

shoes or was that left up to each nun's choice?

A. Left up to each one.

Q. Okay. And did you always wear the same footwear in Fort Albany or did you change depending on the seasons?

A. Um...it depends on the season because I...I used to go out very often with the boys. I used to wear running shoes...flat ones for women.

Q. Um-hum.

A. And in...black ones with a little--not high heels, just half an inch heels because I could not wear shoes with high heels or one inch heels.

Q. Okay.

MR. CHARLEBOIS: Your Honour, after I show the photograph to the jury, I'll ask with your permission that it be entered as an exhibit.

THE COURT: How about now?

MR. CHARLEBOIS: I'm sorry?

THE COURT: Can I see?

MR. CHARLEBOIS: Oh, I'm sorry, Your Honour.

A. I'm sorry.

THE COURT: Thank you. Why don't you make it an exhibit now?

MR. CHARLEBOIS: Very well.

COURT CLERK: Exhibit number four.

EXHIBIT NUMBER 4 - Photograph re: nun's habit -
Produced and Marked.

MR. CHARLEBOIS: Q. Now when you arrived at Ste-Anne's Residential School in...summer of 1951 what was your religious name?

A. Soeur Marie Immaculata.

Q. Okay. And that of course, that religious name,

always stayed the same, the whole...

A. Yes...

Q. ...time you...

A. ...that was...

5

Q. ...were a nun, right?

A. ...that was the name that was given to me at my profession.

Q. Okay. Now, when you got there what job or task were you given to do in 1951?

10

A. Boys' supervisor.

Q. I'm sorry?

A. Boys' supervisor.

Q. Okay. And when you got there roughly how many boys were you supervising?

15

A. They arrived...me, I arrived in August and they started to arrive in September. There were about 40 boys.

Q. Okay. And was there anyone else helping you to supervise those 40 or so boys?

A. No.

Q. Do you need water?

20

A. Yeah. Thank you.

Q. Now, in the 11 years that you were there, until 1962, did the group always have about the same number of boys or did the group grow bigger?

A. It grows...it grows bigger every year.

25

Q. Okay. And by the time you left in 1962, how many boys were you then supervising?

A. The last year was 106.

Q. And was anybody helping you to supervise as the group grew larger and larger?

30

A. No.

Q. These boys ranged in age from about what age

'til what age?

A. Six to 16.

Q. And the boys would be at the school...what from September until June?

5

A. Yes.

Q. And they would go to class how many days a week?

A. At that time there was school in...in the half a day on Saturday.

10

Q. So five days a week, then a half day Saturday?

A. Yes.

Q. And did that change as the years went by?

15

A. It changed around 1958, when the Indian Affairs started to ask the children who have their parents in the village to go home and to come to the school as day student...for awhile.

Q. Well at one point did they drop the school on Saturdays?

A. Yes.

20

Q. Now, what time did you start looking after the boys in the morning?

A. Well, six o'clock.

Q. And until what time did you look after the boys at night?

25

A. Well, they went to bed at nine o'clock, so I still there, and I stayed at the same...same dormitory with them. I have a room just beside them.

Q. And on weekends did you look after them all the time?

A. Full-time.

30

Q. Now, in the summertime did all of the boys go home or just some of the boys?

A. All the boys went home.

Q. Okay. Were there any boys who would stay at the school in the summertime?

5 A. The Children's Aid Society brought the children--I'm not sure what year, but I think it was 1957 or '58, after that date the children...about six or seven boys...was the same thing at the girls, stayed in the school during summer.

Q. Before '57 or '58 or after?

10 A. I cannot say exactly what year, but somewhere there... '57, '58, '59, I'm not sure.

Q. Okay. Well, before the Children's Aid started bringing children to the school in the summertime, during the first few years that you were working as a nun there, were there any students staying there during the summer?

15 A. Never.

Q. And when the Children's Aid started bringing boys to the school was it always basically the same number or did the numbers change in the summer?

A. It's always the same number.

20 Q. And how many boys was that?

A. Six or seven.

Q. So, basically during the school year when the boys were not in class would it be fair to say you were looking after them all the time?

25 A. Yes.

Q. And in the summertime when the boys were going back to their families were you given some vacation or holiday or time off?

30 A. Two weeks of vacation and the other days I replaced sisters who was working in the kitchen or in the laundry or helping here and there...or preparing all the

clothes and every fall didn't...coming here...the children that they are going to use.

Q. So basically you were still working in the summertime?

A. All the time.

Q. And when you say you'd get two weeks vacation did you stay in Fort Albany?

A. I stayed there, yeah. Every three years though I went home to see my mother. At that time the nuns went home only every three years.

Q. Oh, you mean even when you had vacation, you had to stay where you were posted?

A. Yes.

Q. And then every three years you could spend your vacation where you wanted?

A. Just for a few days.

Q. Now, we've heard during this trial that most of the boys that you looked after were of Cree background, is that right?

A. Yes.

Q. And did the boys have a nickname for you in Cree?

A. Yes.

Q. And what was it.

A. Jesheshwan(ph).

Q. And what does that mean in English? Is it translatable?

A. As they said, it's "yellow legged bird".

Q. "Yellow legged bird"?

A. Yes.

Q. Okay. Do you have any idea why the boys would nickname you "yellow legged bird"?

5 A. They said I was very good whistling when I have my real teeth. So I used to whistle and that bird sound like that. That's why they called me that.

Q. Okay.

THE COURT: Maybe we will stop now for the morning break. I know it is pretty short for you, but we have been here for a while.

A. Thank you.

....JURY RETIRES (12:05 p.m.)

10 R E C E S S

U P O N R E S U M I N G :

....JURY ENTERS (time unavailable)

15 THE COURT: Members of the jury, the court clerk has amended a photocopy of the indictment. The only problem with this is that, of course you have pencils and whatnot, and you wrote down certain things, I hope it doesn't confuse you about what has been entered into and highlighted in yellow by the court clerk is what the amendments are, so I think you should get a copy of the amended indictment.

20 MR. CHARLEBOIS: Q. During the 11 years you were there, Ms. Wesley, did your job remain the same or did your duties and responsibilities change at any point?

A. No.

Q. Would you please describe briefly for the jury what your job was in terms of looking after the boys.

30 A. Well...I was there to look after them, and their health, clothes, everything. I was not able to be...mother for them all the time, when there's so many...

5 or father for them all the time because so many. But I was responsible for their health, when they are sick or... 'til the nurse and so on. And having good behaviour. And they are not good, I have to go and report to the mother superior and her report to the principal.

Q. Now, I understand that while you were working there as supervisor of boys, there was a major fire at the school, is that right?

A. Yes.

10 Q. Do you remember the date of that major fire?

A. The 4th of April, five o'clock in the morning, 1954.

Q. Okay. And the building that burned down--first of all, did the building burn down completely?

15 A. Yes.

Q. And in that building, the one that burned down, what had that building been used for?

20 A. The first floor was the two recreation rooms of boys and girls, and there were two or three classrooms. The second floor was the girls' dormitory. The third floor was the boys' dormitory.

Q. Okay. So, the rec rooms were on the ground floor and the boys dormitory on the third floor, right?

A. Yes.

25 Q. Okay. Before the fire, did the boys eat in the same building, the one that burned down?

A. No, the dining rooms were in the other building across the creek.

Q. Okay, across the creek. How far a walk was that?

30 A. Well, about four or five minutes.

Q. Okay. And before the fire where did the boys

go to school...to class?

A. In the house...that...that school that burned down. The classrooms were on one side on the first floor and the recreation rooms...the first floor.

5 Q. Okay. So basically, before the fire, all of the boys activities except eating would take place in the building that burned down, is that right?

A. Yes.

10 Q. Now let's talk about that dormitory in the old building...the one that burned down, for a minute. Describe for us the dormitory, was it many rooms or one big room?

A. Just one big room.

Q. Okay.

A. And I had my room in one corner.

15 Q. Okay. Now in the old dormitory, the one that burned down, were there any washrooms?

A. No, there was no water in that building.

Q. Okay.

20 A. No running water, I mean, as...as the houses are today.

Q. What would the boys use to either urinate or defecate?

A. Pails.

Q. And was there a special room where these pails were...where the boys would go to use the pails?

25 A. The houses...they used to call cottage windows...windows made like this...a little around there...

Q. Okay.

A. ...and put the pails there, and a curtain as a door.

30 Q. Okay.

A. And one on each side of the dormitory.

Q. And did the boys, whether during the day or during the night, have to get permission to go use these pails?

A. All the time.

Q. Okay. And who would they get permission from?

5 A. Well...to be used...so they are using them...they don't need any special permission.

Q. Okay. Basically, if a student needed to go urinate would he have to go ask you or somebody else permission...

10 A. No one.

Q. ...to use the pails?

A. No, no.

Q. So there was no running water?

A. No.

15 Q. What about the building--let's talk about the building where the boys ate, okay...

A. Yes.

Q. ...the one that was across the creek?

A. Yes.

Q. That building did not burn down, right?

20 A. No, it's still there.

Q. And the dining room, was it one big room or several rooms?

25 A. There was a dining room for boys, dining room for girls, dining room for the brothers, and dining room for the sisters, a kitchen...

Q. Okay. How was that dining room heated?

A. In that house, you mean?

Q. In that house, yes.

30 A. There was...I don't know how to call it in English..."une grille" and "une grillage" in French.

Q. "Griade"?

A. "Grillage", how do you call that in English?

MR. CHARLEBOIS: I would submit, Your Honour, it's called a "grate" G-R-A-T-E.

A. Grate.

MR. CHARLEBOIS: Q. Okay.

A. On each side of the house...and there was no real furnace, there are two poly drum oil...oil barrels attached together, that the brothers made the door on one end, and sitting there we could see them from the...from the screen...I mean from the grillage, and the heat goes...there were kind of two pipes or steel or metals that go up like that to send the heat to the second floor.

Q. Okay. In that dining room--do you know what a hot water radiator is, or a cast iron radiator for heating?

A. I know them because these things were...the first school that burned in 1939, there were radiators with hot water. That's how I know what kind of radiators they are.

Q. Okay. In the house that was used as a dining room were there any radiators or just those grillage?

A. No radiators, just two grillage on this side and one on the other side of the house...like this in the hallway. The boiler was beside the kitchen stove, to have some hot water, and the other side, the heat that sent up to the hospital...the hospital was on the second floor, one...just half of the house.

Q. Okay. Now, after the fire destroyed the rec room, classroom and dormitories was a new building built after 1954?

A. Yes, it was starting building when it happened. They were starting to build it just beside the school that burned down, and they used to cover it during winter to preserve the bricks and the cement, it was still water, they

put temporarily (sic) roof on these things...

Q. Okay.

A. ...and that's the way the fire started because one spring it was very windy in the morning, a spark fell somewhere...

Q. Okay.

A. ...and started the fire.

Q. Okay. Now, how long--do remember--we know the fire took place April 4th, 1954?

A. Yes.

Q. Do you know when the new building to replace it opened?

A. Uh, well, in the fall of 1954, one part...not...not exactly finished...we use it...boys dormitory and recreation room. This is the part of the laundry today. And gradually build...build the new school, '55, '56, '57, I think the new school was opened only around 1958 or '57.

Q. Okay. So, as I understand what you're telling us; the first thing they rebuilt after the fire was a dormitory, is that right?

A. For the boys and for the girls upstairs.

Q. And was that built next to the structure that burned down or on top of it?

A. It...the same place.

Q. Okay.

A. It's...it's...the temporarily (sic) roof covering that burned down, it went to the old school...was just beside it, that's...that's the way the school burned.

Q. Okay. Now, when that new building was finished, were the rec rooms still on the ground floor?

A. Yes.

Q. And when that new building was finished, what

level was the boys' dormitory on?

A. The third floor again.

Q. Okay. Was there any difference between the old dormitory and the new dormitory? Or did it look the same?

5 A. The new dormitory had everything...toilets, washrooms, showers, and everything.

Q. Okay. And did you still have your room in the new dormitory?

A. Yes, just beside...in one corner.

10 Q. And was it still one big room this new dormitory.

A. It was...there was a separation...kind of a section in the middle. On one side you have 50 beds, on the other side 50 beds, and the heater in them, in the middle was the washrooms, showers, and everything. But the dormitories on each side.

15 Q. Okay.

A. And on one...on...on...on each side...my room here, and there was another room here, one of the lady teachers was sleeping there.

20 Q. Okay. So, basically the new dormitory was different, in that it had running water and showers and toilets?

A. Yes.

25 Q. Now, meals, even after the new building was built, where were the meals taken, still in the old house you've told us about?

A. No. The last...the last thing to move to the new school was the kitchen and the dining rooms.

30 Q. Okay. And do you remember when you started using the kitchen and the dining room in the new building?

A. It's about 1958.

Q. Okay. And do you know what happened...what they did with the old house at that point? Was it given some other use?

5 A. They use it for...it became the hospital.

Q. Now when they moved the kitchen and the dining room to the new building was it the same building you've just described for us, the one with the dormitory, with the running water, the rec rooms?

10 A. The...the dormitory, the rec rooms...across from on this side, in the middle was the laundry, kitchen...on top of this kitchen and dorm--and laundry was the girl's dormitory, and on this side in another large building were the dining rooms and orphanage.

15 Q. Okay. So, the dining rooms were on the ground floor?

A. Yes. Oh, yes, the last part I was talking about, upstairs were the sisters' quarters...where the sisters are staying and the chapel.

20 Q. I'm sorry, when did you tell us that the move was for the dining room?

A. It's about '58, I think.

Q. Okay.

A. So about--yeah, that's right.

25 Q. Do you remember how the new building was heated?

A. Real furnaces. Real furnaces.

Q. And were there any radiators in the new building?

A. Yes.

30 Q. Now, throughout this trial we've heard from various witnesses from the Crown that there were many rules in that school, is that true?

A. Uh, yes.

Q. Okay. Were you the person who made up the rules insofar as they dealt with the boys?

A. No.

Q. Who made the rules?

A. Mother Superior and the princ...principal.

Q. Okay. And when you got there in 1951, first few days you were there as supervisor of the boys, did you know what the rules were? How did you learn the rules?

A. When I took the position to work there Mother Superior told me, the principal told me the rules are all framed, hanging there, these are the rules to follow.

THE COURT: I did not understand that, I am sorry.

MR. CHARLEBOIS: I believe she said that the rules were framed, the rules were there to follow.

Framed...

A. Framed like a picture...yes, yes.

THE COURT: Framed in a...okay.

MR. CHARLEBOIS: Encadré.

MR. CHARLEBOIS: Q. Do you remember where they were framed? Like where they were located?

A. Inside the recreation room there was a corner there with a desk for the supervisor, and the same for the girls...and the rules are there.

Q. And do you remember which language those rules were written in?

A. In English.

Q. And in the 11 years you were there did the rules change sometimes from year to year...new rules added, old rules dropped?

A. No. It's almost the same all the time.

Q. Were you as supervisor of the boys allowed to

make additional rules over and above the rules made by the principal and Mother Superior?

A. Never.

5 Q. When the boys would come in in the fall would the rules be explained to the boys by somebody?

A. By me.

Q. Okay. And when boys who had--were the rules explained just to the new boys or were the rules re-explained to the boys that would come back for a second or a third year?

10 A. The whole group.

Q. The whole group?

A. The whole group.

15 Q. Now, let's talk about the rules for a few minutes. You told us that in the old building the boys did not need permission to go use the pails, they could go when they wanted to, right?

A. The old building?

20 Q. You told us earlier that in the old building the boys could urinate or defecate in the pails without getting permission.

A. Yes.

25 Q. Now, in the new building did the boys need permission to use the toilets or the sinks?

A. They don't need any permission.

Q. Okay.

30 A. They never needed the permission. They could go there anytime they want. Now they had modern toilets, washrooms and everything.

Q. Okay. Now, in the dormitory, did the boys spend any time in the dormitory except when they would wake up in the morning and before they would get ready for bed at night?

A. Not during the day. Well, sometimes when it is raining outside they will take kind of a nap after lunch.

Q. Okay. And were the boys--on days that the boys were not in school, Saturday or a Sunday, were the boys allowed to go the dormitory during the day or not?

A. No. No.

Q. That was a rule?

A. That was a rule, yeah.

Q. And in the morning when the boys would get up, or in the evening when the boys were getting ready for bed, were they allowed to talk in the dormitory?

A. No.

Q. Okay. And was that a rule you made?

A. No, that was made for the...the authorities.

Q. And by that you mean Mother Superior or the principal?

A. Yes.

Q. Now, what about in the recreation room, were the boys allowed to talk in the recreation room?

A. As much as they want.

Q. And what about when they were playing outside, were they allowed to talk?

A. Yes.

Q. Was there any restriction on which language they had to speak?

A. Never. Speak Cree. You're free to speak Cree.

Q. And in the dining room were they allowed to speak?

A. When I was a boarder myself, it was always silent in the dining rooms except on Christmas days and New Years. When I arrived in Fort Albany in 1951 the rules were changed. The boys...the children were allowed to speak in the

dining room every dinner and sometimes supper.

Q. Okay. And when you say dinner, which meal of the day do you mean by that?

A. Lunch.

5 Q. So what about breakfast, could they speak at breakfast?

A. No.

Q. And most suppers, could they speak at most suppers or not?

10 A. It depends. Sometimes they'll speak at the-- sometimes it's written "no". Sometimes it's silent.

Q. Okay. Were you the one who would decide if they could speak at mealtime or not?

A. No, it's all written in the rules.

15 Q. Who did you report to? Did you report directly to Mother Superior or was there another nun that you reported to?

A. Reported for what?

Q. Who was your boss when you were there?

A. Mother Superior.

20 Q. And would Mother Superior sometimes come to the dining room or come to the dorm?

A. Not very often.

Q. Now, the boys in the dining room, would they eat at individual tables or long tables and benches?

25 A. Long tables and benches.

Q. Okay. And were the boys assigned places to eat or could they eat with whoever they want?

A. They assigned...they have their own place every day.

30 Q. And they'd keep the same place every day?

A. Yes.

Q. And how are these assignments made, do you know? Did it go on sizes, age...how did it go?

A. Yes, size.

Q. And who decided the seating assignments?

A. The same thing. It's written on the rules.

Q. Okay. But are you the one who would pair the boys? Maybe you don't understand what I'm asking. Who would decide; "You boys are sitting at this table, you boys are sitting at that table, you boys are sitting at this different table"?

A. Me.

Q. How was the food delivered to the boys in the dining room?

A. The kitchen staff will bring the pails, pots, tea pots, and trays where the bread are.

Q. Okay. And would the kitchen staff serve the food or would you serve the food?

A. Sometimes they will and sometimes I was.

Q. Would anyone come over and help you out during mealtime?

A. No.

Q. Now let's talk about cod liver oil for a minute. While you were there, did the boys have to take cod liver oil?

A. We were...we were asked to give them their cod...cod liver oil from the Moose Factory doctors and nurses because there was lots of tuberculosis going on.

Q. Did the cod liver oil start as soon as you got there or did the cod liver oil start only sometime after you got there?

A. It was there, and it was...and when I was in the school myself it was there.

Q. Okay, so cod liver oil was something that was there when you were a student in the '30s...

A. Yes.

5 Q. ...and it was still there in the early '50s when you got there?

A. Yes.

Q. And what form was the cod liver oil given in? What form...was it pills, was it capsules, was it liquid?

A. Liquid oil.

10 Q. Okay. And what was it in, like a jar, a tin?

A. A tin.

Q. And how often was cod liver oil given?

A. In my time it was...it was given to us at least twice a day...

15 Q. Okay. You mean in your time when you were a...

A. ...I...

Q. ...student or when you were a nun?

A. When I was a student.

20 Q. Okay, let's focus on when you were a nun, please.

A. Once a day.

Q. And every day?

A. Every day.

25 Q. And was it always given at the same meal or different meals?

A. Most of the times at the same meal.

Q. Which was which meal?

A. Lunch.

30 Q. And was it given before lunch, during lunch or after lunch?

A. Depends sometimes before and sometimes during the lunch, during...during the meal.

Q. Okay. So try to describe for us how the cod liver oil was administered. The vision I got here, is all the boys are seated at their benches?

A. Yes.

Q. And how would they take the cod liver oil?

A. They have...they...each of them has a spoon, so cod liver oil...oil...just passed like that...their spoons.

Q. Now, were you at the front of the table filling the spoons with cod liver oil or were you going to each boy's seating position...

A. Each boy.

Q. ...and filling his spoon?

A. Each boy and sometimes a big boy would help me for the other tables, to do the same thing.

Q. Okay. And as the group grew larger, to go up to as much as 106 boys, it must have taken quite a long time to give the cod liver oil?

A. At that time the cod liver oil was finished because capsules started around 1955 or '56.

Q. Oh, okay, so when the group grew bigger, they just had capsules to take?

A. Yes.

Q. In the years that you were giving them the cod liver oil with a spoon, roughly how many boys would there be in the dining room...ball park?

A. Oh, maybe 50, 70 or 60.

Q. Okay.

A. It's only the last four or five years that I had 100 boys.

Q. Would it take you a long time...or how long would it take you to give them the cod liver oil?

A. Not very long, especially when I...when I had

somebody else is helping me to pass it.

Q. Now, I gather cod liver oil is not very tasty, at least I remember it as not being very tasty?

A. No, no.

5 Q. What would happen when you would give a spoonful of cod liver oil to the boys?

A. What will happen?

Q. Did they all react the same way or did they react in different ways?

10 A. They took it, most of them seem to be used to it, and sometimes...some...some of them will spit it out either on their plates or in...on their napkins.

Q. And how soon after you gave it to them would they spit it out?

A. Sometimes right away.

15 Q. Was it a majority or a minority of boys who had trouble swallowing the cod liver oil?

A. It was just a few.

Q. Did any of the boys ever throw up in the dining room after taking the cod liver oil?

20 A. Yes.

Q. Did that happen often or just once in awhile?

A. Just once in awhile.

Q. How would you become aware...or would you-- first of all, would you become aware that a boy had vomited after taking cod liver oil?

25 A. He'll tell me or sometimes I'll see him.

Q. Okay. What would you do when you either saw a boy vomit after taking cod liver oil or after a boy had told you that he had vomited?

30 A. Well, I said, "Are you sick?" and he said, "yes", so I said "that's it". I asked him if he would like to

have some more stuff or some more food or some other kind and he said "no".

Q. And then?

5 A. Anyway if he asked me another kind of food, I will not have it because we are not permitted to go to the kitchen to ask for something else except the one that it's brought in.

Q. So from what I understand then, you would offer the boy some more food or not to eat, is that it?

10 A. Yes.

Q. Did you ever force any boy to eat the contents of his bowl after it had vomit and food combination in it?

A. No.

Q. Would you have done something like that?

15 A. No.

Q. Did you ever see any boy not vomit but spit out the cod liver oil as soon as you had given it?

A. Yes.

Q. And spit it out in his bowl?

20 A. Yes.

Q. When you saw a boy spit out the cod liver oil instead of vomit what would you do?

A. Nothing.

Q. Would you force the boy to eat the food and the spitted out cod liver oil?

25 A. That's what I did with one, who was very sick. Spit it out on one...one part of his plate, and this...this part was still good. But...I never forced him to eat.

Q. Okay. Now you said that one boy you forced to eat. You forced him to eat what?

30 A. Part of the still good food because he was a sick boy, and I knew that he was going down all the time...the

tuberculosis...all his family died of tuberculosis...brothers and sisters before him. He was the only supervisor (sic) today. He was only the survivor today, I mean. So I tried to help him 'cause I knew he was going down. He started to cough like tuberculosis as so on. That's the way I asked him to eat a little bit of it, but it didn't work.

Q. Now, when you asked him to eat a little bit of it, what specifically did you ask him to eat a little bit of?

A. The...the good part...he spitted...he spitted the cod liver oil on his dish like this, and this...there was still a good part on this side, but he did only about two teaspoons...two tablespoons.

Q. And did he eat those tablespoons or did you feed him those tablespoons?

A. He...he did it himself.

Q. Okay. And did you tell him to eat it?

A. Yes...because the food was still good.

Q. And had this boy vomited or just spit out the cod liver?

A. He spit it.

Q. Who was that boy, Miss Wesley?

A. Eli Tookate. And right after that I went to the nurse to ask the nurse to ask the--there was man...male nurse coming from Moose Factory every six months to check the children for tuberculosis with the test and everything. So I asked the nurse to ask the man will come the next time to take him to the sanatorium because I saw...I saw him going down with that sickness.

Q. And did he have tuberculosis?

A. He had it.

Q. Now, let's go to...let's go back to the dormitory, okay?

A. Yes.

5 Q. Before we go to the dormitory, when the boys were playing outside as opposed to the rec room, when the boys were playing outside were the doors locked or unlocked while they were playing?

A. We were told to lock them.

Q. Okay. And do you know why there was that rule to lock the doors?

A. No.

10 Q. And who had the key?

A. I have it.

Q. Okay. Now, when the boys were playing outside and the doors to get back inside were locked where were you?

A. Outside with them.

15 Q. And that was what, to keep an eye on them?

A. Yes because we were told never to leave the boys go...the girls too...all by themselves.

Q. Now, if a boy needed to use the washroom while the boys were playing outside and the doors were locked what was the boy supposed to do?

20 A. Come ask me the key...open the door for them.

Q. Okay. Would you give...

A. Or some...

Q. Sorry, go ahead.

25 A. ...sometimes there were two women working in the...sewing and repairing clothes in the boys room in one corner, if they hear the...knocking at the door, and I told them if you hear the knocking at the door, if someone wants to use the toilets, open the door for them, because sometimes, me I was quite far from the door, playing with the other boys and...(unclear).

30 Q. Would you ever refuse permission to a boy who

wanted the door unlocked to go use the washroom?

A. No.

Q. Now, let's talk about the dormitory. We're back upstairs now, okay?

A. Yes.

Q. We've heard some boys tells us that they had coughs or colds and that they would cough, in the last couple of weeks, correct?

A. Yes.

Q. Do you remember if indeed many boys would get colds at the school?

A. As soon as one boy caught a cold it will spread out and most of them will have it, and myself.

Q. Okay. Now, when the boys would get colds, I guess part of it is, they would cough, right?

A. Yes.

Q. And at night in the dormitory would the coughing disturb the other boys who were not sick?

A. Yes.

Q. And how would you know the coughing was disturbing the boys who were not sick?

A. 'Cause I could hear...could hear them "Shut up, will you stop coughing, I want to sleep."

Q. And when this would happen where would you be, in your room?

A. In my room.

Q. Would the coughing of the boys who had colds prevent you from sleeping?

A. No. And I pass the cough drops and camphorated oil...and the cough drops...cough medicine to them before they go to sleep...those who are coughing.

Q. And where did you keep the cough drops--and

what's that other thing you told us about? Camph...something?

A. Camphorated oil.

Q. Yeah, where would you keep that?

5 A. There was kind of a medicine chest cupboard
inside the dormitory where we keep the things like that.
That's where I kept it.

Q. Did you ever punish a boy for coughing by
making him kneel in the dorm, outside the dorm, at the foot of
the dorm, anywhere in the dorm, all night long?

10 A. Never.

Q. Did you ever punish a boy in any form for
coughing?

A. Never.

15 Q. Now, while you were there would boys
occasionally get sick and throw-up in their beds?

A. Sick?

Q. Did it ever happen that a boy would throw up in
is bed?

A. Yes.

20 Q. Is that something that happened often or just
once in a while?

A. Just once in a while.

Q. And what would happen when a boy would throw up
in his bed? How would you find out about it?

A. He told me.

25 Q. And what would happen, would the boy go and
tell you in the night or wait 'til morning...what happened?

A. 'Til morning. Sometimes I could hear them
coughing or sometimes talking to the other one. So I went to
see that...that...sometimes I learned that he's sick.

30 Q. What would you do when you saw that a boy
either saw or learned that a boy had thrown-up in his bed? How

would you handle it?

A. I told him to get up and try to change the bed and...dry the sheets...dry...change the sheets, pillow case...

Q. And who would change the bed?

5 A. I did and sometimes he will hep me or sometimes another one would...would help me. If it is happen right at the...in the morning, I'll leave the bed like that and the women who are cleaning up the house will do it.

10 Q. Now that we've talked about life at Ste-Anne's in general terms, I want to move onto the witnesses who've testified in this trial, okay?

A. Yes.

THE COURT: I imagine you will be sometime?

MR. CHARLEBOIS: Yes, Your Honour, obviously.

15 THE COURT: If you want to get into a new area we may as well take the lunchbreak now.

MR. CHARLEBOIS: Thank you.

THE COURT: Come back at two fifteen.

MR. CHARLEBOIS: Thank you.

20JURY RETIRES (12:45 p.m.)

R E C E S S

U P O N R E S U M I N G

25 THE COURT: Miss Wesley, I do not know how long you are going to be sitting there. I understand you are a little more comfortable now. If you become uncomfortable let us know and we can try different things.

A. Yes, thank you.

30 THE COURT: How long do you think you are going to be with the witness? The afternoon?

MR. CHARLEBOIS: From an hour to an hour and 15

minutes, still.

THE COURT: I do not imagine you want to break up your cross-examination, Miss Fuller?

MS. FULLER: No, I don't, Your Honour.

THE COURT: Okay.

....JURY ENTERS (2:23 p.m.)

COURT CLERK: Miss Wesley, I simply want to remind you that you are still under oath, okay?

A. Yes.

MR. CHARLEBOIS: Q. When we stopped for lunch we were at a point where we had discussed in general terms your activities at the school, and we're gonna to move into your recollection of the students who have testified against you, okay?

A. Yes.

Q. But before we get into that, I forgot one question I wanted to ask you this morning. How tall are you?

A. Five something.

Q. And how much did you weigh in those days?

A. Before I put the habit and the uniform on...on I was 110.

Q. And with that habit on I guess you were a little bit heavier, right...the way you described it to us?

A. One thirty.

Q. Now, the first man who testified against you was Luke Mack. Do you remember Luke Mack when he was a student at the school?

A. Yes.

Q. And was he one of the students under your care in those days?

A. Yes.

Q. Now, Luke Mack spoke to us the first week of

the trial about vomiting in his plate after he had taken cod liver oil, do you remember Luke Mack testifying about that, telling the jury about that?

A. Yes.

5 Q. Now, we've established this morning that all the boys, presumably including Luke Mack, had to take cod liver oil, right?

A. Yes.

10 Q. Do you ever remember Luke Mack being sick or vomiting after taking cod liver oil?

A. Yes.

Q. Do you remember how many times that would have happened that Luke Mack got sick after taking cod liver oil?

A. Just once...excuse...just once.

15 Q. And do you remember how old Luke Mack was when this happened, or just that it was at some point while he was at the school?

A. Uh, it's probably on his...on his second year in the school.

20 Q. Now, did you see Luke Mack vomit after taking the cod liver oil or did you just learn about it from somebody else?

A. I saw him.

Q. Okay. And what were you in the process of doing when Luke Mack got sick from the cod liver oil?

25 A. I was serving the other ones.

Q. Okay. Do you remember if you were far away from Luke Mack?

A. Uh, about a third table.

Q. About three tables down?

30 A. Yes.

Q. What did you do when you saw Luke Mack vomit?

A. I asked him if he was sick and he said "yes".

Q. Okay. Did you do or say anything else?

A. Well, I...I asked him if he would like to eat something else after, and he said, "no".

5 Q. Okay. Now, when you mean "something else" did you mean more of the same food or different food?

A. Well sometimes when they are sick like that we were allowed to go and get something in the kitchen, different from the food they had before. That's what I mean when I asked
10 him and he did not want to.

Q. Okay. Did you hit Luke Mack in the face or anywhere else on that day, and yell at him to eat the food and the vomit?

A. No.

15 Q. Did you yell at Luke Mack or call him on that occasion, "you bastard" or "wild dog"?

A. No.

Q. Did you ever hear anybody else call Luke Mack a "bastard" or a "wild dog"?

A. Yes.

20 Q. And who did you hear call him those words?

A. The boys from Winisk...his companions.

Q. And is Winisk where he was from?

A. Yes.

25 Q. Did you ever at any other time call him any of those words?

A. No.

30 Q. Now, again, in front of this jury, Luke Mack told us about a time when he had a cough and when Leo Loone had a cough...or a cold, and Mack told us that you got him to get out of his bed and made him and Leo Loone kneel on the floor somewhere inside the dormitory, that you slapped him, that you

made him and Leo kneel, and that you went back to your room, and that when he, Mack, almost fell asleep one or two times, that you would hit him. Now, do you remember that evidence as Luke Mack gave it to us in the first week of this trial?

5

A. Yes.

Q. Did you ever do that, get him out of bed, make him kneel, slap him, and then when he'd almost fall asleep come out and slap him some more?

10

A. No. That's a thing I never did, leave the boys kneel down all night and me sleep, no way.

Q. Would you sometimes make the boys kneel down as a form of punishment?

15

A. No. Most of the time I asked them to stand...stand in the corner or something like that; not for long though.

Q. Would you have punished a boy like Luke Mack for coughing if he had a cold?

A. No.

Q. Did you ever punish Luke Mack in this or any other fashion for coughing when he had a cold?

20

A. No.

Q. How about for coughing when he didn't have a cold?

A. No.

25

Q. Now, the third thing that Luke Mack told us about during this trial is him being outside during the winter needing to use the bathroom...that he couldn't get into the building because it was locked, that he defecated in his pants, and that according to his evidence, you smelled him and you hit him in the face, you called him a "wild dog"....Now do you remember him telling us about that?

30

A. Yes.

Q. Now we've already established from your evidence this morning that in fact the doors leading inside were locked when the boys were playing outside, right?

A. Yes.

5 Q. Do you ever remember an incident where Luke Mack defecated in his pants?

A. Yes.

10 Q. Why don't you tell us about that. What do you remember about that incident or that time--well first of all, did Luke Mack defecate in his pants more than one time...more than once that you can remember?

A. Just once.

15 Q. Okay. Tell us what you remember about that, please.

A. When we had...when we went into the house some boys told me that Luke wanted to go in and the doors was locked, so they never came to tell me, and the women who were working in the...in the room were not there, so we went inside the house and the other boys start to say "Skunk, skunk, we smell skunk. We smell skunk" and it was him.

20 Q. Okay. Now, when you say he smelled skunk, had he urinated or defecated in his pants?

A. Shit in his pants.

25 Q. Okay. Now, when the boys kept calling 'skunk' did you go towards Luke Mack?

A. Yes.

Q. And did you smell him too?

A. Yes.

30 Q. And it was fairly obvious he defecated in his pants?

A. Yes.

Q. How did you handle it? What did you do?

5 A. Well I told him to go to the washroom, change...clean himself and I gave him some towels. The washroom was not far from this...it was the new school.

Q. So there were regular toilets then?

A. Yes.

Q. Did you hit him for defecating in his pants?

A. No.

Q. Did you yell at him and call him a "bastard" or a "wild dog"?

10 A. No.

Q. Did you punish him for defecating in his pants?

A. No.

Q. Do you remember how old Luke was when this happened, or is it too long ago?

15 A. He probably was about seven or eight.

Q. Did you hit, slap or otherwise punish him anyway for defecating in his pants?

20 A. No. I sent him to--yes, I asked him if...if he would like to go and rest, and he said "yes" and I sent him to bed before supper, and I asked one of the boys to go and give him something in a tray, as we usually do when...when...when one of the boys is in bed sick.

25 Q. Let's get back to the coughing incident before we leave Luke Mack. Can you think of any reason or any occasion when in the middle of the night you would leave two boys alone kneeling all night?

A. Never.

Q. Now the next witness we heard from was Tony Tourville.

A. Yes.

30 Q. Now I gather you remember Tony well because he's your landlord...

A. Yes.

Q. ...to this day, right?

A. ...that's right. That's right, yes.

5 Q. And I take it you remember Tony Tourville from when he was a student at the school?

A. Yes.

Q. Did some of the boys...some of the students seem to get into to trouble more often than other boys?

A. Yes.

10 Q. What about Tony Tourville?

A. He was.

Q. He was what?

A. Troublemaker.

Q. And by "troublemaker" what do you mean by that?

15 A. Fighting with the other ones, teasing the other ones or stealing from their pockets, things like that.

Q. Now, was Tony Tourville one of the students who was at the school year round; even in the summer?

20 A. Yes. He was the first group of the Children's Aid Society. He was already marked with violence from...from his family.

25 Q. Now you heard Tony Tourville tell us first about an incident again when boys who had colds were coughing, and where you apparently stormed out of your room in the dorm, yelling that the next person who would cough would get it, that he then coughed, and that you beat him up on his face with your fists, enough that he had bruises and a bloody nose, and that there was some blood went onto his blankets, do you remember him telling us this?

A. Yes.

30 Q. Did you ever for whatever reason beat up Tony Tourville with your fists?

A. A fist, no, but slap.

Q. Did you ever hit or slap Tony Tourville hard enough that his nose began to bleed?

5 A. When I went to see him coughing that night he was already nose bleeding with the fever he had, and that's what he said, I made him...I made him nose bleeding.

Q. So, let's take it step by step. First of all, did you ever warn the boys that whoever coughed next would get it?

10 A. No. I know they cannot help it, so what...what can I do to warn them not to cough when I know they are not able to help...to stop it?

Q. How did you become aware--or what led you to go to Tony Tourville's bed that night?

15 A. He was coughing.

Q. And why did you go to his bed?

A. He was coughing in his bed.

Q. And what was your purpose in approaching his bed when he was coughing?

20 A. Because I wanted to give him some more cough drops...cough medicine...cough syrup.

Q. Okay. And when you got to the bed was he-- where were the blankets on his body?

A. Yes.

Q. No, where were the blankets?

25 A. On his body...on his body...covered himself.

Q. Okay. Do you remember if his head or his face was covered?

A. No.

30 Q. And when you approached the bed what did you see?

A. Him coughing, and I asked him...if...if he

would like to take some more cough medicine, and he said "yes", and I gave him.

Q. When did you become aware that his nose was bleeding?

5 A. There...when I gave him that.

Q. Did you ask him how come his nose was bleeding?

A. No. But I knew because when the boys are having cold or fever they always do that.

Q. Did all the boys do that or just some of them?

10 A. Some of them do that.

Q. What did you do when you saw his nose was bleeding?

A. I went to get a wet...wet towel and tried to help him to wash his face and so on.

15 Q. Did you discipline him in any fashion for having coughed or for having a bloody nose?

A. No.

Q. Let's move on to the dining room. Tony Tourville told us that you caught him in the act of putting something in the plate of another boy and that you then hit him on the head and face a couple of times with the ladle from the caldron, do you remember him telling us that?

A. Yes.

25 Q. Now, first of all, do you ever remember catching Tony Tourville in the dining room doing something like that or similar to that?

A. Yes.

Q. Do you remember exactly what he was doing?

A. He was playing with the meat, like...the meat was rolled just like meatballs...meatballs...

30 Q. Yes.

A. ...and he was rolling to the other ones that

face like that...from his spoon like this...like the boys when they are playing...that doing, so....And I...I...I asked him to stop it.

Q. And did he stop or did he continue?

A. He continue.

Q. Okay. And what were you doing at this time?

A. Well, I said "If you don't stop it" I said "me too..." I say, "I'm going to hit you with that..."...what you call that...that spoon we use to pick up the meat?

Q. A ladle?

A. A ladle...aluminum...and I just push it on his...on his head like this once.

Q. So what you're telling us is that you warned him first...

A. Yes.

Q. ...he continued to do it...

A. Yes.

Q. ...and just before you used the ladle what were you doing with the ladle?

A. I was passing the food to the other boys.

Q. Okay. Describe this ladle for us. Do you remember what it was made out of?

A. Aluminum about this long. A little cup like this at the end.

Q. Was it made out of aluminum or of steel?

A. Aluminum.

Q. Was it light or was it heavy?

A. Very light.

Q. Where did you hit him?

A. Just like this. I said "Stop it" and I said "Me too" I said "I'm going to hit you with the aluminum" just like this that's all.

Q. You're indicating the left side of the head?

A. I don't remember which side.

Q. Okay. How many times did you hit him with the ladle?

5 A. Once.

Q. Did that make him stop?

A. Not really. He stopped a few minutes later...a few minutes after.

10 Q. Did you have to hit him again with the ladle later on that meal?

A. No.

Q. Could you see whether hitting him with ladle on the side of the head bruised him at all?

A. Nothing.

15 Q. Now you heard Tony Tourville tell us that that same day after the meal, that he went outside, he was feeling sad, he was on the swings, a priest who was visiting came by to talk to him, and that you then called him back inside, you heard Tourville telling us that?

A. Yes.

20 Q. That you brought him to a room that was full of shoes and that you then began to hit him on the face, the head and the body with a shoe, do you remember him saying that?

A. Yes.

25 Q. First of all, did you ever discipline in any way Tony Tourville for speaking to the priest?

A. No.

Q. Do you remember indeed if he ever spoke to a priest?

30 A. There were some scholastic students from Ottawa every summer and most of the time after supper when it's nice they'll come to the yard to play with the boys.

Q. These scholastic students they were like seminarians?

A. Seminarians Oblates.

Q. So were they priests or student priests?

A. Students...seminarians...study to be a priest and they came to Fort Albany helping to build the new school.

Q. Okay.

A. Sometimes there were six or ten of them.

Q. Now first of all, at the time that Tony Tourville was at the school had you moved into the new building?

A. Yes, we were in the new building.

Q. When Tony Tourville arrived?

A. Yes.

Q. And was there in fact a room where shoes or footwear of any kind was kept?

A. Not on the boys side. There was one on the girls side.

Q. And how far away was that, this room where the shoes were kept from the area where you normally supervised the boys?

A. It was quite...quite far. The girls' dormitory was on the second floor and the boys' dormitory was on the third floor on the other section of the house.

Q. And the shoes that were in this room adjacent to the girls' dormitory, was it just shoes for girls, or shoes for boys and girls?

A. Just for girls.

Q. Okay. Now what about the boys where did they keep their footwear?

A. They had one on their feet and the other ones were beside their beds...just running shoes, no other kind of

shoes.

Q. Okay. Well what about in the wintertime, did they have running shoes too?

A. Uh...horsehide shoes.

5 Q. Okay. Like soft shoes or hard shoes?

A. They were quite soft. We don't see them anymore. Some of them were brown, some of them were white, made with horsehide...laced.

10 Q. Okay. Now...horsehide shoes, okay, were they like boots or shoes?

A. Shoes. Like moccasins.

Q. Okay. And that's what they wore in the wintertime?

A. The wintertime, yes.

15 Q. And in the summertime, running shoes.

A. Running shoes...and rubber boots...rubber boots were always downstairs when it is raining.

Q. Downstairs where?

A. Downstairs in the basement.

20 Q. Now, do you remember or was there a reason why there was a shoe room for girls but no shoe room for the boys?

A. I cannot remember, no. I know nothing about it.

25 Q. Did you ever bring Tony Tourville to the shoe room and hit him or slap him...

A. No.

Q. ...with shoes?

A. No.

Q. Either on that occasion or any other occasion?

30 A. No. He probably saw that room before because he had three sisters on the girls' side. There were six of the same family that Children's Aid Society brought to the school.

Q. Do you ever remember an incident where Tony Tourville sprained his ankle in the summer?

A. Later after that...after it happened, not right away.

Q. Later after what happened?

A. After he sprained his ankle.

Q. Okay. And how did you become aware that he had sprained his ankle?

A. Because he has a hard time to walk around. And I asked him what happened and he said he hit his...his ankle on the swing.

Q. And did you ask him how long ago this had happened?

A. No.

Q. And what did you do when you found out that he had sprained his ankle?

A. I...I asked him...if...to come to the hospital with me. He did not want to, he said "I don't want to stay in the hospital" so I put...in the evening I put wet towels on his ankle. And the following morning he was not too bad. It was during summer, there was no school.

Q. Did you do anything else to treat this injury?

A. No.

Q. Now, Tourville told us that you had taken the boys for a walk in the area of the graveyard...

A. Yes.

Q. Is that something you normally did?

A. Oh, yes, almost every evening we will go for a walk near...down the river where the graveyard is on the other side of the build...of the mission.

Q. And would you do that just in the summer or during the school year too?

5 A. School year too. Well it depends, if it is not too cold or there's not too much snow. But in summer if it's nice day we'll go for a walk in the evening, and they asked me to do it when I...when I don't want to, and I said "I don't have time."

Q. Any reason why you'd take 'hem for a walk in the area of the graveyard?

10 A. Yes, they liked it because some...sometimes there are berries...more berries in the bushes. We go pick some...pick them sometimes. It's just to take...take a walk before we go to the bed.

Q. Okay. Now, would you sometimes-well first of all, I take it that in Fort Albany like everywhere else, there were ditches here and there, right?

15 A. Yes.

Q. Would you sometimes make the boys jump over a ditch?

A. No.

Q. Would you allow the boys to jump over a ditch?

20 A. If...if they want to because they always want to do some exercises so that I can't do this...I can't do it, I have to it...boys are boys.

Q. And were these ditches deep or shallow?

A. Shallow. Just little....

25 Q. Now the last thing Tourville talked about was an incident in the recreation room where he was standing in the corner. He said that he probably had been punished for something he'd done during the day, and he said that you were working on plants. Now first of all, did you either on occasion or frequently work on plants...do some gardening?

30 A. In the summer when the teachers are gone down south they will leave me all their plants they have in the

school...in the classrooms, to look after them and asked me to change the earth.

Q. Did you enjoy gardening?

A. Oh, yes. I'm still...am.

5 Q. Now, you told us that Tony Tourville was one of the boys who would be getting into trouble more often some others, right?

A. Yes.

10 Q. How would you discipline Tony Tourville when he misbehaved?

A. The one...the time that I asked...I asked him to stand in the corner for a minutes, he was fighting with...with another boy.

15 Q. This is downstairs?

A. No, in the...the recreation room.

Q. Okay. So let's start over. Were you working on the plants when he was fighting?

A. Yes.

Q. And how did you stop the fight?

20 A. I...I stopped him, I asked him to stay in the...for...for a while in the corner because the other boy was crying.

Q. Did you punish the other boy as well?

A. No.

Q. Do you remember who the other boy was?

25 A. No.

Q. Any reason why you just punished Tourville and not the other boy?

A. I know he was the one that started it.

30 Q. Now you heard Tourville tell us that all of a sudden for no reason you would have struck him from behind with both of your hands over his eyes and that at time your hands

were covered with either mud or soil, do you remember him telling us that?

A. Yes.

5 Q. Did you ever hit Tony Tourville, slap him, punch him, hit him in any fashion while your hands were covered with earth or soil?

A. Never.

10 Q. Did you ever, even with clean hands, strike Tony Tourville in the fashion that he said, like from behind with both hands a slap over his eyes?

A. No.

Q. Did you ever slap Tony Tourville as a means of discipline?

A. Yes, like this.

15 Q. Indicating an opened hand slap to the cheek?

A. Yes.

Q. Did you ever slap him anywhere other than on the cheek?

A. No.

20 Q. Did you ever slap him on the head or the back of the head?

A. No.

Q. Or the top of the head?

A. No.

25 Q. Is Tony Tourville someone that over the years you would have slapped just once or more often?

A. More often.

Q. And why was that?

30 A. Well, I said he was a troublemaker. He was always the one that started fighting or things like that with the other boys.

Q. Now the next witness we heard about was Daniel

Wheesk.

A. Yes.

Q. Do you remember Daniel Wheesk?

A. Yes.

5 Q. Now the first thing Daniel Wheesk told us about...was a time when he was pretending to draw an imaginary gun on a belt buckle that apparently had a gun engraved in it, do you remember him telling us that?

A. Yes.

10 Q. And he says that while he was pretending to draw the gun that you would have seen him in the dorm, slapped him on the face and head, and he thought it's because you were not pleased that he was playing in the dorm after finishing dressing instead of going downstairs, you heard him say that?

A. Yes.

15 Q. Now...do you remember this incident with the... Wheesk drawing a gun or pretending to draw a gun in the dorm?

A. No.

20 Q. Is this something, this drawing of a gun, even if you don't remember it, is this something that would cause you to slap a boy?

A. No.

Q. Would that have been cause for discipline?

A. No.

25 Q. Now, when the boys had finished taking a shower what were they supposed to do? Was there a rule for that too?

A. Come downstairs to the recreation room. If it...especially if it is Saturday.

Q. And were they supposed to wait until all the boys had finished showering and dressing, or...

30 A. No, as soon as they finish one or two or...come downstairs.

Q. And where were they supposed to go downstairs?

A. The recreation room.

Q. Would they be slapped or hit or disciplined for lingering or staying in the dorm too long after finishing to dress?

A. No.

Q. Now, Daniel Wheesk told us...about having thrown- up in his bowl of food, and in fact he told us that it happened to him a total of three times, do you remember him telling us that?

A. Yes.

Q. And he claims that you slapped him from behind, screamed at him in Cree, and tried to make him eat it...remember that?

A. Yes.

Q. And on at least one occasion he ate it, and at the last time he couldn't eat it and that the bowl with the vomit and the food was left sitting there for several meal times, do you remember him telling us that?

A. Yes.

Q. Now, at the risk of repeating myself, did you ever force Daniel Wheesk or any other boy to eat food mixed with vomit?

A. No.

Q. Do you ever remember Daniel Wheesk getting sick at meal time and throwing-up?

A. Yes.

Q. Do you remember how many times that happened to Daniel Wheesk?

A. Not very often, maybe once.

Q. Do you remember under what circumstances he got sick, or is it too long ago?

A. Too long ago.

Q. What do you remember of the time Daniel Wheesk got sick?

5 A. His mother was working at the laundry and she sho...she told me that Daniel was sick during the...the...during the dinner, and I said "Yes, that's right"...

10 Q. Sorry, I didn't understand that. Would you repeat that last sentence, please? Something about his mother, and then I lost it.

15 A. His...his mother told me that he was sick...he had been sick...in the dining room and she asked me if it was the first time, I said "No" I said, "because" I said, "he did not like the meat...the food that was in there". And she asked me where he is, I said, "He's outside playing. Ready to go back to the classroom."

Q. Did you ever see him get sick?

A. No.

20 Q. So you knew he was sick because his mother told you?

A. Yes.

MS. FULLER: Well, Your Honour, that isn't what her evidence had been a little earlier. I believe my friend is starting to cross-examine...

THE COURT: Sorry, I cannot hear you.

25 MS. FULLER: ...the witness.

THE COURT: I'm sorry, I cannot hear.

MS. FULLER: That the evidence that this witness gave a little earlier, I believe my friend is starting to cross-examine his witness.

30 MR. CHARLEBOIS: I don't believe so, Your Honour, I was just paraphrasing what the witness just said,

before I moved onto something else.

THE COURT: I do not think you led her into to this, and I do not think you're cross-examining her into this.

5

MR. CHARLEBOIS: I didn't think so.

THE COURT: I would proceed.

MR. CHARLEBOIS: Thank you.

MR. CHARLEBOIS: Q. What did you do when Mrs. Wheesk told you that Daniel had been sick?

10

A. Nothing.

Q. And why did you do nothing.

A. Well, I said to her, "If he's still sick tonight" I said, "I'll let you know. And if he doesn't want to eat that's up to him."

15

Q. Did you ever yell or scream at any of the boys when they would get sick in their food?

A. No.

Q. Would you ever leave the food there mixed with the vomit and the food for one, or two, or three, or more mealtimes?

20

A. That's the thing I wanted to tell you. It's not true.

Q. Okay, and why is it not true?

A. It never happened. I never do that.

Q. Okay.

25

A. All...dishes, plates, cups and everything was always cleaned up at every...each meal...after each meal.

Q. And who would empty the cups, bowls and everything else after each meal?

30

A. Some of the boys will...will stay behind, after that the woman from the kitchen will come and finish the work.

Q. Would come and finish the what, I'm sorry?

A. Finish the work. I mean...

Q. The work, okay.

A. ...finish...yes.

5 Q. Now, the other thing Daniel Wheesk told us
about is that on one occasion in the dorm he vomited in his bed
at night...and that the next morning some how or other you
became aware of what had happened during the night, and that
you told him to go and stand by his bed, wait for you, that he
then decided after a while to strip the bed, and that you
10 slapped him from behind in the back of the head, and that he
feels it's because he had started to do something that you had
not...tell him to do. Do you remember him telling us that?

A. Yes.

15 Q. Now, first, do you ever remember an occasion
when Daniel Wheesk vomited in his bed?

A. No.

Q. Is it possible that at some point he might have
vomited in his bed...you just don't remember because it's so
long ago?

A. Yes.

20 Q. How would you handle it when boys would vomit
in their bed? What would you do? What was your routine?

A. Nothing, just change the bed or leave
that...leave that bed like that for the daytime...I mean to go
downstairs, and the women who are cleaning up the place
25 will...will change the bed and so on.

Q. Would you always leave the bed to be changed by
the housekeepers?

A. Yes.

Q. Would you ever change the beds yourself?

30 A. Yes, especially when it's time for all the boys
to change their beds...in the evening...their...their time to

change the bed every two weeks. I will help them and each one would look after his own bed and then the big boys would help the little ones to do it and so on.

5 Q. What about when a boy....Was there a specific routine if and when a boy got sick in his bed though...about who changed what?

A. I..I'll do it most of the time or the women will do it...the ladies...the women who are cleaning up the house will do it.

10 Q. What about the boy, would he be asked or told to help?

A. If he wants to.

Q. Now, the next witness we heard from was George Wheesk.

A. Yes.

15 Q. You remember George?

A. Yes.

Q. George was the older brother of Daniel, right?

A. Yes.

20 Q. Now, George started by telling us that one day at lunch he saw the river break up, said the word for that in Cree, and that you hit him on both sides of his ears with both hands. Almost like this, right, that's what he told us?

A. Yes.

25 Q. And that while you were hitting him you kept saying the word "Tiens, tiens" in French, right?

A. Yes.

Q. First of all, would you ever speak French to the boys?

A. Never.

30 Q. What languages did you speak to the boys?

A. Cree.

Q. Did you sometimes speak English to them as well?

A. Yes.

5 Q. In those days did you have some understanding or a good understanding of French?

A. Not very...not very good.

Q. Now, at lunchtime--he said this happened at lunchtime, were the boys allowed to talk at lunchtime?

A. Yes.

10 Q. Okay. Now, let's assume it happened at a different meal, not lunchtime. I think you established for us that at breakfast, anyway, and sometimes at supper they could not speak, right?

A. Yes.

15 Q. How would you handle it when a boy would speak at a meal when they were not allowed to speak?

A. Nothing.

Q. How would you discipline them if they spoke?

A. How?

20 Q. How would you punish or discipline them if they spoke at a meal when they were not supposed to speak?

A. Nothing. Most of the time there were always some whisperings between them, but they were not allowed to speak loud...not from me, that was the rule.

25 Q. Did you ever hit George Wheesk or any other student for that matter, in that fashion, that is with both of your hands over both of their ears?

A. No.

Q. A boxing of the ears.

A. No.

30 Q. Sorry?

A. No.

Q. When you would slap them, how would you slap them? Where?

A. Sometimes like that. Not both hands, no.

5 Q. Okay. You're indicating the slapping of one cheek or the other cheek, and slapping of the temple?

A. Yes. But about George Wheesk, he made that story. He made that himself. Lunchtime it's always...they were always allowed to speak, so how come if...if he was whispering, how...how come I'll gonna punish him, grab him from his shoulders, drag him to the wall, and kicked him just for that. He made it all by himself.

10 Q. Now, as you said, Wheesk then told us that you dragged him to a corner, made him kneel, and that you were still slapping Wheesk, and that you then kicked him three or four times from behind in his ribs. Do you remember his telling us that?

A. Yes.

Q. Would you make a student kneel in the corner for talking at a meal when he wasn't supposed to talk?

A. Never.

20 Q. How about making him stand in the corner?

A. Never.

Q. Under what circumstances would you make them stand in a corner?

25 A. Specially when they are fighting or teasing or making the other ones cry, or doesn't want to do what we asked him to do.

Q. Did you ever kick George Wheesk or any other student for that matter?

30 A. No. With that habit I had I had a hard time to move my legs under these things.

Q. Go ahead.

A. No, that's it.

Q. Would it have been possible to kick anybody or anything, wearing that habit?

A. No...

Q. Why not?

A. ...it's impossible. It's too long, too heavy, three layers of material in front...in front of feet...could not even...I was a good skater before...when I was Attawapiskat, after I put that thing on I never went back to skate.

Q. Let's talk about the skating.

A. Yes.

Q. Do you remember George Wheesk telling us that one day in the winter he was skating and hurt his knee, couldn't walk, was walking with a limp, that he didn't tell you, that you somehow became aware of it, and that you would hit him suddenly for not keeping up with the others. Do you remember him telling us that?

A. Yes.

Q. First of all, do you ever remember Wheesk injuring...or being injured as a result of a skating accident?

A. Yes.

Q. And do you remember about how old he was?

A. Maybe he was about 13 or 12 or 13. I'm not sure. I don't know.

Q. From what you remember of George Wheesk, was there only one such accident when he got injured skating or more than one?

A. Just once.

Q. And how did you become aware that he had injured himself skating?

A. I saw him walking...limp and I asked him to go

to the hospital, he did not want to because he said he wanted...he wanted to skate some more.

Q. And what did you do then?

5 A. And...after a few days I took him...I...I went with him to the hospital when I saw his knee was swollen. And the sister who is in...was in the hospital...Sister Ste-Colombe (ph) didn't want to keep him in the hospital, so I...and she...she told me what to do to treat him, so I said, "How can you expect me to do that?" I said "Leave a boy alone in the 10 dormitory and look after 101...stay with 101 all the time? So, why don't you keep him in the hospital for a few days and do the job yourself?" So she said "I can't because I...I have to keep the beds empty for people of the village who have no beds...who lives in the tents and so on." Finally I (unclear) 15 him quite a while and then she took him to the hospital a few days.

Q. And kept him?

A. Kept him in the hospital for a few days.

20 A. Now, did you ever hit George Wheesk for not keeping up with the other boys when he was injured?

A. No.

Q. Now, let's talk about Mrs. Wheesk, the mother.

A. Yes.

25 Q. I understand that the woman--or first of all, the woman who worked at the school was their mother or their step-mother?

A. George step-mother, but Daniel own...own mother.

30 Q. Okay. And did you remember for how long Mrs. Wheesk worked at the school?

A. No.

Q. And what did Mrs. Wheesk do at the school?

A. Most of the time she was working in the laundry, sometimes in the kitchen, sometimes cleaning up the hallways and....

5 Q. Was Mrs. Wheesk working there full-time or part-time?

A. Full-time.

Q. And where was the laundry located?

A. Well it was beside the kitchen of the new building.

10 Q. Did you ever see either George or Daniel...do you ever remember seeing George or Daniel at the school speaking with Mrs. Wheesk?

A. Oh, yes...yes.

15 Q. We've talked about a lot of rules. Were the boys, or the girls for that matter--I'll backtrack a little bit. From what I understand, some people from Fort Albany worked at the school as civilians, right? To help out the church authorities?

A. Yes.

20 Q. Were the boys who had a parent working at the school allowed to speak to that parent?

A. Oh, yes.

Q. Or was there a rule that they couldn't speak to their parents at school?

A. They can speak to them when they saw them?

25 THE COURT: When they what?

A. When they meet them, or somewhere in the hallway and so on. When they meet them.

MR. CHARLEBOIS: "When they meet them" Your Honour.

30 THE COURT: They were allowed to talk them when they meet them?

A. Oh, yes.

THE COURT: Is that what the answer was?

MR. CHARLEBOIS: I believe that's what the answer it, but perhaps we can ask her to repeat. Would you like me to ask the question again, Your Honour?

THE COURT: No, she answered it.

MR. CHARLEBOIS: Thank you.

MR. CHARLEBOIS: Q. Now, Monday of this week we heard from Edmond Mudd. Do you remember Edmond Mudd?

A. Yes.

Q. Edmond Mudd is the witness who told us that he had shot a snowball at a snowman outside, gotten caught, been told by you, "Wait 'til I get you in the dining room" or words to that effect, that in the dining room you made him kneel down facing the wall, he claims that he heard your footsteps, and that he was then kicked in the back of the head, and that his head went forward hitting the radiator, that there was blood, that you then brought him to the dorm and treated him, and said something like, "This is what happens when you don't listen when you are spoken to" remember Mudd basically telling us that on Monday?

A. Yes.

Q. Okay. First of all, when Edmond Mudd was a student was he a student during the time of the old building or the new building?

A. The old building.

Q. And was he a student at a time when the meals were taken in the old house you told us about this morning?

A. Yes.

Q. Were there radiators in this old house?

A. No.

Q. Just a grillage, like you told us...

A. Yes.

Q. ...about?

A. Yes.

Q. Would you discipline a boy for throwing a snowball...

5

A. Oh, ha...

Q. ...at a snowman?

A. Why? I don't...I don't know any reason to do that. I am not...the snowman is not that important to me or to one.

10

Q. Would you sometimes warn the boys not to touch the snow or play with the snow or make snowballs?

A. Never. I know that was a big pleasure and great pleasure for them to play with the snow. Just like me, I was like that too. So....

15

Q. So, would you ever discipline a boy for throwing a snowball?

A. For throwing?

Q. Throwing a snowball.

A. Never.

20

Q. Did you ever kick George(sic) Mudd in the back of the head, or in the back, or anywhere else for that matter?

A. No.

Q. Did you ever in any fashion send or propel George (sic) Mudd's head into a radiator...

A. No.

25

Q. ...causing him to bleed?

A. You mean Edmond Mudd?

Q. Edmond Mudd, thank you...into a radiator?

A. No. As I said...there...there were no radiators in that building or the other building...there was not.

30

Q. Do you remember if you ever had occasion to

discipline Edmond Mudd in any fashion?

A. No.

Q. No, you don't remember or, no, you never had to discipline him?

5 A. I don't remember.

Q. Again, when Mudd claims that you kicked him, did you kick as a form of discipline?

A. No.

10 Q. Then we heard from Eli Tookate. Eli Tookate started out by telling us that he wet the bed one time, that you pulled him out of bed, that you hit him in the back of the neck three times, threw him on the floor, and kicked him on the back twice. Do you remember Tookate telling us that yesterday or Monday?

15 A. Yes.

Q. Did boys occasionally wet the bed?

A. No, not very often, no.

Q. Did it sometimes happen?

A. It happens, yeah.

20 Q. Do you remember if Eli Tookate was a bed wetter?

A. No.

Q. No, you don't remember or, no, he wasn't?

A. He wasn't.

25 Q. Do you remember any occasion when Eli Tookate might have had a an accident and wet the bed?

A. No.

Q. How did you handle the bed wetters?

A. Changes their beds or leave them like that 'til the women come to change the beds.

30 Q. Would you ever strike, or hit, or slap, or kick a boy for wetting the bed?

A. No.

Q. Why not?

5 A. Well, I don't feel like doing it. Kick...like I would have a hard time to kick him with that dress I had...I had on.

Q. What about slapping him for wetting the bed, would you do that?

A. Sometimes I'll push just like this. Not to real--not hit like this, no way.

10 Q. Okay, and why would you sometimes slap them for wetting the bed?

A. Well it was easy for them to go to the toilet, it's just beside him. And sometimes they are too lazy to get up or something like that. Or sometimes they're scared to get up.

15 Q. Now, again you heard Tookate tell us about having been given cod liver oil, vomiting in his plate, and you telling him he'd have to eat whatever was in the plate, that you used a spoon and forced some vomit and food into his mouth, and that he vomited again into his plate. Do you remember him telling us that?

A. Yes.

Q. Did you ever do that to Tookate?

20 A. As I said this morning, he spitted the cod liver oil, just...not all...on...on his plate, it was still a good part of it that he didn't...that the...the spit it did not touch, that the thing I asked him, I tried to ask him to eat it...to try to...to feed him because he was not eating and I saw him going down sick, and I wanted to help him, but after that he said he started to feel...vomiting again, so I stopped it and I never tried to make him eat his vomit.

30 Q. Tookate the one who wound up with tuberculosis,

like...

A. Yes.

Q. ...you told us about this morning?

A. Yes.

MR. CHARLEBOIS: Your Honour, I still have some other ground to cover with Miss Wesley, and I was wondering if I could have a few minutes, please? I'll be moving onto a different area.

THE COURT: Very well, let's take the normal afternoon break.

....JURY RETIRES (3:27 p.m.)

R E C E S S

U P O N R E S U M I N G

THE COURT: That was a long hour.

MR. CHARLEBOIS: I guess I'm back to my bad time estimating habits, Your Honour. There's a lot to cover.

THE COURT: We will go until 20 after.

MR. CHARLEBOIS: I hope to be done by then.

THE COURT: Okay. If you are, fine.

MR. CHARLEBOIS: Maybe four thirty at the very latest.

THE COURT: If you are, fine, if not....

MR. CHARLEBOIS: Thank you.

....JURY ENTERS (3:50 p.m.)

THE COURT: Go ahead.

MR. CHARLEBOIS: Q. Just before we move on to something else, I just want to go back to Edmond Mudd for a minute. Mudd had told us that after he was injured by hitting his head against the rad, that you had taken him to the dormitory and treated his wound and then told him words about,

"This is what happens when you don't listen when spoken to".

Do you remember Mudd telling us that?

A. Yes.

5 Q. Now, would you bring a boy to the dorm and leave all the other boys unattended at mealtime?

A. No.

Q. Did you ever do that on any occasion?

A. No.

10 Q. Is that something you would have considered doing?

A. No.

Q. And why not?

A. Unless if there's a very, very, serious reason, yes, but...as I said, Mudd, it did not happen that way.

15 Q. If for any reason you left the dining room at mealtime when all the students were there, where would you have to go to get help...to get somebody to replace you...I mean?

A. Mary Mother Superior.

Q. And where would her office be?

20 A. In the school, not in the old building.

Q. "Not" or "in" the old building?

A. Not in the old...not in the old building...not where...where the dining rooms are.

Q. So if you needed to get some help would you have to physically go to another building to get help?

25 A. Yes.

Q. Would that leave the boys unattended while you were gone?

A. Yes.

30 Q. Were you allowed to leave the boys unattended for any reason?

A. No.

Q. Now, some of the boys or witnesses in this trial have said that you would talk loudly or that you would yell. Would you yell after the boys?

5 A. It depends when I want to speak to them in a large group in a big house, in a big room, bigger than this and there are no micro...no loud speakers, so I have to yell. I have to shout so that everybody will hear what I say.

Q. Whether in the old building or the new building were there microphones or anything to carry your voice?

10 A. Nothing.

Q. Would you yell to keep order?

A. Yes.

Q. Is yelling something you would do often or just once in a while?

15 A. Once in a while.

Q. Under what circumstances would you yell?

20 A. Well if I...if it is time to go to bed or to go to somewhere else, and if they continue to do as they are doing or continue to speak and laugh and so on and so on, there I...I had to yell to tell them it's time to stop, it's time to do this, it's time to go there.

25 Q. Now, you've told us and shown us, and demonstrated to us several times in your evidence this afternoon, the manner in which you would slap. Did you ever do anything other than administer open hand slaps to the face or to the temple of the boys, in order to discipline?

A. The only thing I did on their face, on their heads, or sometimes shoulders, like this and the arms...

Q. Was what?

30 A. Open hands. I never used anything. I never the fist like this...either.

Q. Ever kicked them, use a stick, anything

else...a strap?

A. Never a stick, never a strap, never...kicked them. How can I kick them with that thing I...I was wearing.

5 Q. Now, you told us this morning how the group grew and grew...the group of boys every year and how you had no help, you kept looking after them alone, right?

A. Yes.

Q. Now, did you ever get frustrated?

A. Yes.

10 Q. And why would you get frustrated?

A. Well sometimes I would get deadly tired. And some...

Q. And why would you get tired?

15 A. Looking after these boys all by myself...a group like that. Sometimes I would like to do something else, but when I have to stay there all the time...all the time, it's not....

Q. And would you sometimes lose your temper with the boys?

A. Yes.

20 Q. What would cause you to lose your temper with the boys?

25 A. When I'm too tired or...or when they are not listening to me, or huh...something like that...I'm too tired or when they are not listen to what...I say. When they don't want to do what I...I said. Or when they not want to go there or to go here...like going out of the classrooms...sometimes they don't want to go.

Q. And what would happen when you would lose your temper?

30 A. Sometimes I'll just push them and say, "Come on, let's go, move on" but I never used anything else

or....just push them like this or...in open hands.

Q. When you say "open hands" you mean push or slaps?

A. Slaps or uh push.

Q. Did you ever ask for help?

A. Yes.

Q. As the group grew?

A. Yes.

Q. And who did you ask?

A. Mother Superior.

Q. And were you ever given any help, even temporary?

A. Never.

Q. Now after you left in 1962 do you remember who replaced you?

A. Brother Lauzon.

Q. Okay. And...he was a man?

A. Yes, but almost 45 years old.

Q. Okay. How big a man was he...do you remember?

A. Quite big, tall, yes. He was...he was an American.

Q. To your own personal knowledge, after you left did they ever split it down into smaller groups?

A. Right away, and I'd been asking them...asking that to the principal and the mother superior quite often.

Q. And to your personal knowledge, how many groups did they split the boys into?

A. I don't know.

MS. FULLER: Well, objection, Your Honour...

A. I don't know.

MS. FULLER: ...to her personal knowledge when she wasn't there, what type of personal knowledge would

it be if she was no longer there?

MR. CHARLEBOIS: The...

THE COURT: Can you establish personal knowledge?

MR. CHARLEBOIS: Okay.

5 MR. CHARLEBOIS: Q. How did you know that they had split your group of 100 and some odd boys into three smaller groups?

A. Two groups.

10 Q. Two groups? Okay. How did you know that they split up your group into two groups?

A. The sisters told me.

THE COURT: The evidence is inadmissible and it's not to be...

MR. CHARLEBOIS: Okay.

15 THE COURT: ...considered by you. It's hearsay evidence that cannot be tested here.

MR. CHARLEBOIS: Okay.

THE COURT: Of course you heard it though.

MR. CHARLEBOIS: Sorry?

THE COURT: Of course they heard though.

20 MR. CHARLEBOIS: Q. During the 11 years you worked there, '51 to '62, were you ever reprimanded by Mother Superior in connection with your treatment of the boys?

A. No.

Q. Do you know what a reprimand is?

25 A. Yes.

MR. CHARLEBOIS: Actually, Your Honour, those are-- faster than I thought. Those are all the questions I had of Miss Wesley?

THE COURT: Very well. I imagine your cross-examination will take more than a few minutes?

30 MS. FULLER: Yes, Your Honour.

THE COURT: Perhaps it would be best that we start tomorrow morning?

MS. FULLER: It would, Your Honour.

THE COURT: Would it be best that we start before ten o'clock?

MS. FULLER: No, Your Honour.

THE COURT: So you'll be able to complete it?

MS. FULLER: Oh, it won't be that long, Your Honour.

THE COURT: Okay.

MS. FULLER: Ten o'clock would be...

THE COURT: Very well. I know it has been a short day for you, but I can assure you that it has not been a short day for us, so breaking at five after four is a welcome thing for us. You are excused until tomorrow morning ten o'clock.

...JURY RETIRES (4:05 p.m.)

MR. CHARLEBOIS: I'd just perhaps invite Your Honour to give Ms. Wesley the usual caution about not discussing her evidence, just out of an abundance of caution.

THE COURT: Miss Wesley, it would be improper for you to discuss your evidence before you are finished being cross-examined, and that includes with anyone.

A. Yes.

THE COURT: Included your lawyer, but he would know that. Okay? So you are not to discuss this with anyone.

A. Uh-hum.

THE COURT: Thank you. Anything else?

A. Thank you.

MR. CHARLEBOIS: No, thank you.