

ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

VOLUME XXIII

Held: November 3, 1987

At: St. Andrew's Church Hall  
Bentinck Street  
Sydney, Nova Scotia

Before: Chief Justice T. A. Hickman, Chairman  
Assoc. Chief Justice L. A. Poitras, Commissioner  
Hon. G. T. Evans, Commissioner

Counsel: George MacDonald, Q.C., Wylie Spicer, & David Orsborn:  
Commission Counsel  
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Charles Broderick: Counsel for Carroll  
S. Bruce Outhouse: Counsel for Wheaton & Scott  
Guy LaFosse: Counsel for Davies  
Bruce H. Wildsmith, & Graydon Nicholas:  
Counsel for Union of Nova Scotia Indians  
E. Anthony Ross, & Kevin Drolet: Counsel for Oscar N. Seale  
E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

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INQUIRY RECONVENED AT 9:33 o'clock in the forenoon on Tuesday, the 3rd day of November, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia.

1 MR. SPICER:

2 Good morning, My Lords. The first witness this morning is Tom  
3 Christmas.

4 THOMAS JOSEPH CHRISTMAS, being called and duly sworn, testified as  
5 follows:

6 BY MR. SPICER:

7 Q. What's your full name, please, Mr. Christmas?

8 A. Thomas Joseph Christmas.

9 Q. And where do you live?

10 A. 27 Maillard Street. 27 Maillard Street.

11 Q. Is that on Membertou?

12 A. Yes.

13 Q. How old are you ?

14 A. Thirty-three.

15 Q. Thirty?

16 A. thirty-three.

17 Q. Okay. I think we're going to have to perhaps talk a little  
18 slower, Tom, because it's going to go too fast.

19 Q. Are you married?

20 A. No.

21 Q. Do you have any kids?

22 A. Yes.

23 Q. How many?

24 A. One.

25 Q. How old?

- 1 A. Three and a half.
- 2 Q. What language do you speak at home?
- 3 A. English and Micmac.
- 4 Q. And your child is speaking English or Micmac or --
- 5 A. Yes, like I teach him, you know.
- 6 Q. What language would you speak around the house?
- 7 A. English and Micmac.
- 8 Q. English and Micmac?
- 9 A. Yes.
- 10 Q. Can you speak up a little bit?
- 11 A. Yes.
- 12 Q. Okay. Have you always lived in Membertou?
- 13 A. Yes.
- 14 Q. Tell us something about your schooling. Did you go to the
- 15 day school?
- 16 A. Yes, I did.
- 17 Q. Do you remember what years that would've been?
- 18 A. About '64 or '65.
- 19 Q. And what grades would you have been in when you were going to
- 20 the day school on the Reserve?
- 21 A. One, two, and three.
- 22 Q. One, two, and three? And was -- Were you taught in the English
- 23 language at that school?
- 24 A. Yes, we were.
- 25 Q. How did you find being taught in English in grades one, two,

- 1 and three?
- 2 A. I don't know. You just have to listen, I guess, and --
- 3 Q. Did you understand everything that was going on?
- 4 A. Oh, yeh, you know. It was put over and over to you, you know.
- 5 Q. Sorry?
- 6 A. It was put over and over to you. You had to, you know, had to
- 7 pick it up, you know.
- 8 Q. When you started going to the Indian day school on the Reserve,
- 9 did you speak any English at all?
- 10 A. Not at home, no. We just spoke Micmac.
- 11 Q. So when you went to that school, you would've been, for the
- 12 first part of your life, speaking nothing but Micmac?
- 13 A. Yes.
- 14 Q. And then you go to the day school, and you had to start being
- 15 taught in English?
- 16 A. Yes.
- 17 Q. Could you read any English at all?
- 18 A. Oh, yeh.
- 19 Q. When you first went to the school?
- 20 A. Oh, no, no, just --
- 21 Q. No.
- 22 A. No.
- 23 Q. I think you indicated to me a minute ago that you went in
- 24 grades one, two, and three at the school on the Reserve?
- 25 A. Yes.

- 1 Q. And did you get through those three grades in three years?
- 2 A. Yeh. I think so, yeh.
- 3 Q. Think so?
- 4 A. Yeh.
- 5 Q. From that school, where did you go to school next?
- 6 A. St. Anthony Daniel.
- 7 Q. St. Anthony Daniel?
- 8 A. Yeh.
- 9 Q. How many -- For how many years were you at St. Anthony Daniel?
- 10 A. Three or four.
- 11 Q. Three or four?
- 12 A. Yeh.
- 13 Q. Again, how did you find being taught in English at that school?
- 14 A. It was a little harder, you know.
- 15 Q. Hard?
- 16 A. It was a little harder, yes, you know.
- 17 Q. And why was it a little hard?
- 18 A. We were with like a bunch of White kids with you and you know
- 19 you're like split up, you know, and they were never together like
- 20 you were in day school.
- 21 Q. Are you saying that it was difficult because instead of there
- 22 being all Indians as they were in the Indian day school --
- 23 A. Yes.
- 24 Q. When you moved to St. Anthony Daniel, you were split up?
- 25 A. Yes.

- 1 Q. Is that what you're saying? And why would that make it  
2 difficult for you at St. Anthony Daniel?
- 3 A. I don't know. It's just different, you know. You weren't used  
4 to it and, you know, you were always together like, you know.
- 5 Q. You were always together at the day school?
- 6 A. Yes, like you know.
- 7 Q. Did you find it different then by reason of the fact that there  
8 were White children in your class now?
- 9 A. Oh, yeh, you know. There was a big difference, you know. We  
10 were teased and you know and --
- 11 Q. Okay. If we could just stop for a sec, Tom. I think we're  
12 having a little trouble picking this up. Can you -- Can we  
13 move the mike a little closer? Okay. Maybe we can just speak  
14 a little louder, and I'll let you know if we're not hearing  
15 each other. Okay. In St. Anthony School -- St. Anthony  
16 Daniel, you indicated to us that it was different.
- 17 A. Yes.
- 18 Q. Okay. And can you tell us in what way you felt it was different?
- 19 A. Well, it was just, you know, you couldn't -- You know, it was  
20 pretty hard speaking English, you know, and what you learned  
21 and all that, you know, and when you get to this other school,  
22 you know, it seems to be that they're using big words at you  
23 and, you know, and --
- 24 Q. You're -- You're going to have to speak up. Okay?
- 25 A. Yeh, okay.

- 1 Q. Yell at me or something. If I understand you correctly, you're  
2 that it's because -- at least partly because you're being  
3 taught in English and are using big words. Is that what I  
4 heard you say?
- 5 A. Yeh, like, you know, a few words like, you know, that were --  
6 like you never heard before, you know, and --
- 7 Q. Some of the words that you were hearing, you hadn't heard  
8 before?
- 9 A. Yeh, you know, and the work and the homework you do and all that  
10 you know, and we weren't doing it, you know, and --
- 11 Q. You weren't doing the homework?
- 12 A. No, you know.
- 13 Q. How come?
- 14 A. I don't know. We were just put back on our Reservation and,  
15 you know, we hung around together and, you know, that was it,  
16 you know, and --
- 17 Q. Were you able to get any help with your homework?
- 18 A. Oh, yeh, you know. My sisters used to help me, you know. They  
19 were --
- 20 Q. Sister?
- 21 A. Yeh.
- 22 Q. Yeh. And were you living with your mom and dad at the time?
- 23 A. Yes, I was.
- 24 Q. Okay. Where -- Were they able to give you any help with your  
25 homework?

- 1 A. Oh, yeh, my father used to read and all that, you know, and  
2 you know he worked in town and all that before, you know, and  
3 Q. He worked?  
4 A. In town, you know.  
5 Q. In town?  
6 A. Yes.  
7 Q. Doing what?  
8 A. He used to work at Stephens Building Supplies in the yard there.  
9 Q. On a fork-lift or something or in --  
10 A. There wasn't a fork at that time. Just, you know, a horse  
11 and a wagon or something, you know. I don't know.  
12 Q. For how many years were you in the St. Anthony Daniel school?  
13 A. Four. Four years, five years.  
14 Q. Did you fail any of those grades?  
15 A. Once, I think, twice.  
16 Q. Once or twice? What was the final grade that you completed  
17 at St. Anthony Daniel?  
18 A. Six.  
19 Q. You completed grade six?  
20 A. Yeh.  
21 Q. Did you go on to the -- to junior high after that?  
22 A. No.  
23 Q. What happened?  
24 A. I was charged in Juvenile Court, eh.  
25 Q. You were charged in Juvenile Court?

- 1 | A. Yes.
- 2 | Q. And was that after you finished grade six?
- 3 | A. Yeh, that --
- 4 | Q. And as a result of being charged in Juvenile Court, what hap-  
5 | pened to you?
- 6 | A. I was about fourteen, I guess, fifteen.
- 7 | Q. Fourteen or fifteen?
- 8 | A. Yeh. I was charged with assault with two girls. There was a  
9 | knife involved or something.
- 10 | Q. What happened to you as a result of that, Tom? Did you go to  
11 | Shelburne?
- 12 | A. Yes, I went to the reform school in Shelburne.
- 13 | Q. Right. And that's the Shelburne reform school -- boys' school?
- 14 | A. Yes, in Nova Scotia.
- 15 | Q. For how long were you there?
- 16 | A. Seven months, eight months.
- 17 | Q. Seven or eight months?
- 18 | A. Yeh.
- 19 | Q. When you came back from the Shelburne school, did you go back  
20 | into St. Anthony Daniel?
- 21 | A. No.
- 22 | Q. Did you go back to school at all?
- 23 | A. No, I wasn't accepted in.
- 24 | Q. Sorry.
- 25 | A. I wasn't accepted nowheres and --

- 1 Q. You weren't accepted?
- 2 A. No.
- 3 Q. Did you try and get back into school?
- 4 A. Yes, I tried.
- 5 Q. And what happened when you tried?
- 6 A. They told me they had no record of me or, you know, what school--
- 7 Q. Sorry?
- 8 A. They had no record of me and what school I came from and every-
- 9 thing, you know, I told my -- I did some school in the reform
- 10 school in Shelburne and all that, you know, boys' -- school
- 11 for boys and all that, eh. But, you know, they said it was
- 12 something about a criminal charge involved and all that, you
- 13 know.
- 14 Q. Are you telling me that when you came back from the Shelburne
- 15 boys' school, you tried to get back into school in Sydney?
- 16 A. Yes.
- 17 Q. And that you couldn't get back in?
- 18 A. No.
- 19 Q. And are you able to tell us why you couldn't get back in?
- 20 A. They told me they had no record of me and, you know, and --
- 21 Q. Didn't have any record of you where? At St. --
- 22 A. From the last school I was at, eh. They wanted the last school
- 23 I was at.
- 24 Q. The school you were at prior to -- Yeh.
- 25 A. You know, and I remember I finished grade six and all that and

- 1 I should be going to Sheriff or Park.
- 2 Q. Sheriff being a junior high?
- 3 A. Yes, you know, I was put in that school and like -- At least
- 4 I tried to get back in, but I was just -- I wasn't taken and
- 5 that's that. Said I had a criminal charge against me.
- 6 Q. Can you just remember, Tom, to speak up for us, okay? When you
- 7 came back then is what you're telling me that you tried to
- 8 get into Sheriff and you couldn't get in?
- 9 A. Yes.
- 10 Q. Okay. And what did you then?
- 11 A. Well, I didn't bother going back. I just went home and --
- 12 Q. How old were you then?
- 13 A. Fifteen, sixteen.
- 14 Q. Is grade six then the last grade -- last school grade that you
- 15 ever completed?
- 16 A. Yeh, but I did seven and eight work in Shelburne, eh, you know,
- 17 when I was in that school, eh, you know, I did school in there,
- 18 eh.
- 19 Q. Do you know whether or not -- Do you consider that you com-
- 20 pleted grade eight or that you just did some work in those
- 21 grades?
- 22 A. Well, I completed the books they gave me and everything, you
- 23 know, and, you know, and I did good on them and --
- 24 Q. At Shelburne?
- 25 A. Yes.

- 1 Q. And then when you came back here, you couldn't get back into  
2 school. You went back to the Reserve?
- 3 A. Yeh.
- 4 Q. Were you living at home?
- 5 A. Yes.
- 6 Q. And what were you doing with yourself during the day?
- 7 A. Just hanging around, you know, and staying home and hanging  
8 around with the young fellows.
- 9 Q. Hanging around with?
- 10 A. Hanging around with my buddies on the Reserve that weren't  
11 doing nothing either, eh, just --
- 12 Q. Who would your buddies on the Reserve have been that weren't  
13 doing anything either?
- 14 A. Junior Marshall and Artie Paul.
- 15 Q. Junior Marshall and Artie Paul?
- 16 A. Yeh.
- 17 Q. Anybody else?
- 18 A. Well, there were some boys that were in school, but I was  
19 hanging around with them too, eh, you know.
- 20 Q. Were Junior and Artie in school at the time?
- 21 A. No.
- 22 Q. No?
- 23 A. No.
- 24 Q. Well, what sorts of things would you do?
- 25 A. Play ball, hockey -- winter-time we'll play hockey.

- 1 Q. Was Junior working at the time?
- 2 A. He used to work with his father off and on like, you know.
- 3 Q. Yes.
- 4 A. Yes.
- 5 Q. And when would this have been? 1969, 1970, around there?
- 6 A. Yeh, about that year, yeh.
- 7 Q. About that time?
- 8 A. Yeh. '70.
- 9 Q. What about Artie? Was he working?
- 10 A. I think Artie was in -- just finished doing a carpenter trade
- 11 or something like that.
- 12 Q. Carpentry trade?
- 13 A. Yeh.
- 14 Q. Did he have papers?
- 15 A. I don't know if they were giving papers that time or not, you
- 16 know.
- 17 Q. But he was working as a carpenter?
- 18 A. But he -- Yeh, he was doing the trade, you know.
- 19 Q. Were you working at all at this time?
- 20 A. No.
- 21 Q. You were just living at home?
- 22 A. Yeh.
- 23 Q. Would you from time to time go down and -- leave the Reserve
- 24 and go down into Sydney?
- 25 A. Oh, yeh.

- 1 Q. What sorts of things would you do when you went down to  
2 Sydney?
- 3 A. Oh, just, you know, visit around here and there, you know.
- 4 Q. Visit around here and there?
- 5 A. Yeh.
- 6 Q. Did you used to hang around the park at all?
- 7 A. Oh, yeh.
- 8 Q. There's been -- I think you know because you've been here most  
9 days -- heard some of the evidence about drinking in the park  
10 and that sort of stuff. Can you tell us from your own experi-  
11 ence whether you and Junior and Artie were drinking in the park  
12 from time to time?
- 13 A. Oh, yeh, you know, we had our share of drinking in there and,  
14 you know, he had his own group. I had like friends of mine,  
15 you know, we used to --
- 16 Q. Who had his own group? Sorry.
- 17 A. Like, you know, like Artie and Junior would go with one bunch  
18 of girls and we go the other way, you know, and --
- 19 Q. So you didn't hang around in the same group when you got down-  
20 town, is that what you're saying?
- 21 A. Oh, we did like, you know, so long and then it was --
- 22 Q. Yes.
- 23 A. -- you know, it was time for the girls to go home, you know.  
24 We used to walk them home and all that, you know, and --
- 25 Q. Where did you used to get the booze from?

- 1 | A. Oh, just in town at the liquor store.
- 2 | Q. The liquor store?
- 3 | A. Yeh.
- 4 | Q. Did you ever have to bum money in order to get it?
- 5 | A. Oh, yes, yes. That's what we used to do like, you know. We  
6 | used to bum -- you know, bum our friends and all that, you  
7 | know, and chip in whatever we had, you know, and I suppose  
8 | it wasn't very expensive at that time, you know, and two  
9 | dollars, you know, and --
- 10 | Q. And when you were doing this bumming money, would you split  
11 | up and then get back together again after you'd all done it  
12 | and see how much you had?
- 13 | A. Oh, yeh, you know, there's times we did that, you know.
- 14 | Q. Did you ever use force when you were bumming money?
- 15 | A. No, we never did that. It wasn't much we were asking for, you  
16 | know.
- 17 | Q. How much -- What kind of money are we talking about?
- 18 | A. Ten cents, five cents, you know.
- 19 | Q. And would you -- Are you able to tell us whether or not you  
20 | would've been bumming money mostly from other kids or from  
21 | grownups or --
- 22 | A. Oh, yeh. Kids and grownups, you know, and -- Not small kids,  
23 | you know.
- 24 | Q. No.
- 25 | A. Only, say --

- 1 Q. Kids your own age or so?
- 2 A. Yeh.
- 3 Q. And also from older people as well?
- 4 A. Oh, yeh. Yeh.
- 5 Q. Would you normally be bumming money just to take care of that
- 6 day's needs? In other words, would you be bumming money and
- 7 thinking about well you're going to need this in two or three
- 8 days or were you just doing it to get money to get liquor for
- 9 that day?
- 10 A. Just for that day, you know, and bum for cigarette money, you
- 11 know, and --
- 12 Q. Yes.
- 13 A. Bum for cigarette money or, you know, bum for cigarettes, you
- 14 know.
- 15 Q. But always directed towards what you needed for that particular
- 16 day?
- 17 A. Yeh, you know.
- 18 Q. Were you ever with Junior when he was bumming money from
- 19 people?
- 20 A. Oh, yeh, a few times, you know.
- 21 Q. Did you ever see Junior use force on anybody?
- 22 A. No, not really that I recall, you know.
- 23 Q. Junior a good friend of yours?
- 24 A. Oh, yeh. I am.
- 25 Q. You indicated a couple of minutes ago that there were girls

1 | that people used to hang around with. Did you used to hang  
2 | around with the same group of girls as Junior?

3 | A. No, not -- You know, I knew them like, you know. Like we hung  
4 | around all together, you know, but --

5 | Q. Right.

6 | A. Later on we used to go our way like, you know, my friends I  
7 | had like, you know.

8 | Q. You had some friends down the Pier, didn't you ?

9 | A. Yes, I did, you know. That's where I used to hang out at  
10 | that time, you know, down the Pier area, you know.

11 | Q. And were the friends that you had down the Pier Black kids?

12 | A. No, White kids.

13 | Q. White kids?

14 | A. Yes.

15 | Q. Did you used to go to the dances and that kind of stuff from  
16 | time to time?

17 | A. Oh, yeh, you know.

18 | Q. Was some of this drinking also taking place in the graveyard?

19 | A. I just recall once, twice, you know.

20 | Q. Was that a place you used to go to that sort of area that we've heard  
21 | referred to as a jungle up by the graveyard?

22 | A. Yes, you know. We used to go through there coming from the  
23 | Reserve we used to go to the graveyard.

24 | Q. You would come down the back of that graveyard from the  
25 | Reserve and down towards town?

- 1 | A. Yeh.
- 2 | Q. Is that right?
- 3 | A. Yeh, I used to.
- 4 | Q. And did you used to hang out -- hang around in that part of  
5 | the graveyard?
- 6 | A. Later on, you know, later on that year like, you know.
- 7 | Q. Later on -- Sorry. Later on when?
- 8 | A. Like in the fall time, you know. We were being chased out of  
9 | the park and, you know, we were being --
- 10 | Q. Who would chase you out of the park?
- 11 | A. The police.
- 12 | Q. What -- And what would they say to you if they came up to you?
- 13 | A. They just come up to you and tell you to stop, you know, and --
- 14 | Q. And what would it be that you'd be doing that they'd be  
15 | telling you to stop?
- 16 | A. Just standing around.
- 17 | Q. Would this normally be in the evening?
- 18 | A. Oh, yeh, you know. Nine, ten o'clock, you know.
- 19 | Q. Nine or ten o'clock? And what's -- What would they say to you?
- 20 | A. They asked us what we were doing there and, you know, and they  
21 | come out and start searching us and everything, you know, and  
22 | we're telling them, you know, we're just standing around, you  
23 | know. They say, "You got no business around here now," like,  
24 | you know. They asked, you know -- I -- They tell the girl  
25 | to -- she should be home and all that, you know.

- 1 Q. Sorry. I didn't hear that part.
- 2 A. Tell the girls that, "You should be home and what are you doing  
3 hanging around the park, you know, this hour," and all that,  
4 you know, and --
- 5 Q. Tell the girls that?
- 6 A. Yeh, you know, and we tell them, "Well, we're going to take  
7 them home," and all that. Tell us, "Well, you're coming with  
8 us," you know.
- 9 Q. Let's just go through that again. I didn't catch part of  
10 that.
- 11 A. You know, when they used to come around, they used to stop  
12 us right.
- 13 Q. This is the police?
- 14 A. Yeh, you know, and --
- 15 Q. Okay.
- 16 A. -- they ask us what we're doing there and all that, you know.  
17 We might of had a drink earlier part of the evening, you know,  
18 but -- No, we weren't staggering around or, you know, we  
19 weren't really falling down or nothing, you know. You know,  
20 at times we were -- Sure, I admit we were drunk, you know, and  
21 they'd come, you know. We were picked up. We were put in  
22 goal, you know.
- 23 Q. All right. We'll get to those occasions, but did the police  
24 tell you to leave the park area, for instance?
- 25 A. Oh, yeh, you know. They tell us to get back on the Reservation,

- 1 | you know, where we belong and -- because we -- At the time,  
2 | you know, we were going around with long hair and all that, you  
3 | know.
- 4 | Q. Yes.
- 5 | A. Hair was long and, you know, I guess the way we were dressed  
6 | and all that, you know, they --
- 7 | Q. Did you get the impression that they wanted you to go back to  
8 | the Reserve? Is that what you --
- 9 | A. Yes, you know.
- 10 | Q. Okay. And what about the girls that you were hanging around  
11 | with? What would they say to the -- What would the police  
12 | say to the girls?
- 13 | A. What's that again?
- 14 | Q. What would the -- If you were hanging around in the park,  
15 | yourself and a bunch of girls, what would they say to the  
16 | girls? Would they tell them to go home or what sort of  
17 | comments would they make to them?
- 18 | A. Yeh, they -- No, they send them home and all that. They  
19 | tell them, you know, not to, you know, bother with us  
20 | and all that, you know, that we're nothing but trouble and --
- 21 | Q. Would these be White girls?
- 22 | A. Yeh.
- 23 | Q. Do you remember any -- Do you remember specifically any police-  
24 | men who ever made that kind of comment to any of the White  
25 | girls when you were there?

- 1 | A. Oh, yes, a few cops I can remember, you know.
- 2 | Q. Do you remember the names of those -- If you don't, just
- 3 | say you don't.
- 4 | A. No, not really. No, I can't really -- You know, they really --
- 5 | They gave us sass and all that, you know. They gave us --
- 6 | Q. They gave you what?
- 7 | A. They gave us sass and all that, you know. Like they start on
- 8 | us like, you know, like start calling us down first, you know,
- 9 | they, you know, see what reaction they get off us, you know,
- 10 | and sometimes we answer them back, you know, and that's
- 11 | what they wanted, you know, something they can, you know,
- 12 | put us in for, you know, instead of us -- instead of them,
- 13 | you know, driving us home or sending us back to the station,
- 14 | or they'd put us in the old Sydney lock-up, you know.
- 15 | Q. Were there any occasions when you spent the night in the
- 16 | Sydney lock-up and then weren't charged or just spent the
- 17 | night there and then were thrown out the next day?
- 18 | A. That was a later part, yeh, and --
- 19 | Q. Okay. But were there occasions when you would've spent the
- 20 | night there and then not been charged with anything the next
- 21 | day?
- 22 | A. Oh, yeh, yeh. I was picked up before that, you know, before
- 23 | I was charged, you know, for damaging property and all that,
- 24 | you know.
- 25 | Q. Okay. We'll get to that. All I want to know for the moment

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is whether or not there would've been occasions when you would've been picked up in the park, taken to the Sydney lock-up, spent the night there and then let go the next day without anything else happening to you?

A. Yeh, we were just fined if we got drunk, you know, or --

Q. Those would be occasions though when you would end up being charged under the Liquor Control Act, right?

A. Yes.

Q. Okay. Were there any occasions when you weren't charged?

In other words, when you just sort of used -- When the Sydney lock-up was just a place where you were put for the night, and then the next day, let go.

Q. I was brought up once for resisting arrest and I think it was assaulting a police officer or something like that. And that took place on George Street.

Q. Do you remember any nights when you were just put in the lock-up and then let go without any of these other things happening to you -- without being charged with anything?

A. No, I don't.

Q. Okay. We've seen this material before maybe. This is Volume 22, page 7. Do you remember being charged in connection with the knocking over of the MacIntyre headstone?

A. Yes, I do.

Q. And if you just turn over to the next page, there's what would seem to be a statement there. Before we get to the statement

- 1           itself, can you tell us what happened? Were you picked up by  
2           the police in connection with this gravestone incident?
- 3    A. Yes. We were all -- Well we called it a round-up at that time,  
4           you know.
- 5    Q. You were all --
- 6    A. Picked up, you know, round-up. That's we called it that time,  
7           you know.
- 8    Q. Rounded up?
- 9    A. Yeh, like all the same -- It was the same bunch of boys that  
10           were always picked up there, you know.
- 11   Q. How many people were picked up in connection with the grave-  
12           stone incident?
- 13   A. About seven.
- 14   Q. Do you remember who they were?
- 15   A. Junior Marshall, myself, Stewart Marshall, Artie Paul was asked  
16           about it.
- 17   Q. Was Artie Paul picked up?
- 18   A. Yes, he was.
- 19   Q. Okay. Anybody else?
- 20   A. One of the Tobin boys were in with us.
- 21   Q. Tobin boys? There are two of them?
- 22   A. Just one, I think.
- 23   Q. One of them?
- 24   A. Yeh.
- 25   Q. Do you remember his first name?

- 1 A. Doc Tobin or Dennis Tobin is his real name.
- 2 Q. Doc?
- 3 A. They call him Doc Tobin, yeh.
- 4 Q. Yes. And were you all together when you were picked up?
- 5 A. And James Gould was another guy, but he's dead now, eh.
- 6 Q. He was another guy that was picked up?
- 7 A. Yes.
- 8 Q. Okay. Were you all together when you were picked up?
- 9 A. No, we were just -- They came to our homes and picked us up
- 10 like, you know, one by one, eh, you know.
- 11 Q. Did you all end up at the police station at the same time?
- 12 A. Yeh, we were all put in the lock-up.
- 13 Q. In the lock-up? Do you remember what day of the week it was?
- 14 A. I think it was in the morning that time. I don't know, it
- 15 was -- I think it on a weekday or something like that. No,
- 16 it was on a Friday or something like that.
- 17 Q. On a Friday?
- 18 A. Yeh.
- 19 Q. Do you remember who it was that picked you up?
- 20 A. John MacIntyre and Bill Urquhart.
- 21 Q. And when -- Did they come to your house to get you?
- 22 A. Oh, yeh. Yeh.
- 23 Q. Did they say anything to you when they picked you up about
- 24 why you were being picked up?
- 25 A. No, just told me they wanted to see me about -- They asked

1 | some questions, you know.

2 | Q. And did you go voluntarily to the police station with them?

3 | A. Yeh. Well, I said, "Sure," you know. I know I never did  
4 | nothing to hide, eh, you know. So we went down the station  
5 | and --

6 | Q. So you went down -- You went down to the police station  
7 | and there were a bunch of you together. Where were you? In  
8 | the lock-up.

9 | A. Yeh, in the lock-up, yeh.

10 | Q. Were you questioned by any of the police officers in connection  
11 | with this incident?

12 | A. Later on, yeh, you know. Later on.

13 | Q. Later on in the day?

14 | A. Yeh, like they brought me in and they told me about that my  
15 | friends said I damaged some headstones and all that.

16 | Q. Who was it that said to you your friends said you damaged the  
17 | headstone?

18 | A. John macIntyre.

19 | Q. Did he tell you who the friend was?

20 | A. He said Junior Marshall and Stewart Marshall.

21 | Q. Now, am I -- I just want to be sure I'm getting this right.  
22 | Did he say to you, to your recollection, "Junior Marshall  
23 | and Stewart Marshall said that you damaged the gravestone,"  
24 | or something like that?

25 | A. Yeh, he had a statement in my face and this.

1 Q. Sorry. He had a --

2 A. He had a statement in his -- in my face like and he told me,  
3 "I got it all written down here what these fellows told me,  
4 you know, that you're involved with this headstone."

5 Q. Did he let you read that statment?

6 A. No, he just --

7 Q. Were you alone in the room with --

8 A. Yes, I was.

9 Q. -- Mr. MacIntyre at the time?

10 A. Just me and MacIntyre and Urquhart were in there together.

11 Q. I see. What --Did you know anything about the gravestone  
12 incident?

13 A. No, I didn't.

14 Q. Did you have anything to do with it?

15 A. No. No.

16 Q. If you just look at page 8. That's the page you got there.

17 A. Yeh.

18 Q. It would seem to be an unsigned statement of something that  
19 you had said. I'll just read it:

20 Thomas Joseph Christmas, age six-  
21 teen years, born May 4, 1954,  
22 living at 27 Maillard, Membertou  
Reserve.

23 Me and two other White guys tipped  
24 over the big, black MacIntyre head-  
stone. One guy's name was Rick, I  
25 don't know the other fello's name.  
I was walking through the grave-  
yard, and I met two fellows and  
asked for a smoke. We talked for a

1 while. They asked if there was a  
2 dance. I told them no. Rick had a  
3 black leather jacket. I asked him  
4 where he was from. He said he was not  
5 from Sydney.

6 And then it seems -- says:

7 Would not sign.

8 Do you remember giving that information to Sergeant Urquhart?

9 A. No, that's just one thing that I remember, you know, that's in  
10 there, you know, that I said. But about the black leather  
11 jacket and them not being from Sydney, I don't, you know --  
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1 Q. Did you give a statement unsigned as it is on page eight?

2 A. Yes, I gave them a statement but that's not the statement there  
3 I gave.

4 Q. Well, what did you tell them?

5 A. Well, that's later on in the evening, eh, I finally -- they  
6 finally break me. I mean not break me, but I mean they were  
7 making -- that's when they're -- that's when they were really  
8 putting the pressure on me, you know, and --

9 Q. Well, this statement would seem to be dated. It's either  
10 three thirty-five or five thirty-five p.m.

11 A. That's what I mean. That's the time I -- I'm in the lockup  
12 all that morning right through dinner hour and all that afternoon,  
13 you know, and they're taking us one by one in this room, and then  
14 they were telling us that we're doing all this stuff and, you  
15 know, and we're trying to -- we're telling them, "No, we're  
16 not". We said, "We're not doing nothing wrong, you know".

17 Q. What do you say as to the statement on page eight, are you  
18 telling us that you didn't give that information to Sergeant  
19 Urquhart?

20 A. Not this statement here I didn't give, you know.

21 Q. Are you telling us you didn't say to Sergeant Urquhart that:  
22 "Me and and two other White guys tipped over the big black  
23 MacIntyre headstone"?

24 A. It wasn't White guys that I said.

25 Q. I'm sorry?

- 1 A. It wasn't -- It wasn't White guys that I said.
- 2 Q. Did you -- Were you involved in tipping over the gravestone?
- 3 A. No, I wasn't.
- 4 Q. Did you ever tell Sergeant Urquhart that you were?
- 5 A. No, I never told him I was -- I ever -- Well, I was one of the
- 6 guys that never, you know, really spoke up to the police, eh.
- 7 No, I -- I just heard them out, eh, you know, and they
- 8 questioned me and they -- I'd just tell them I don't -- You
- 9 know, there was things that I never -- I never really did
- 10 that they were accusing me -- that they were telling me I
- 11 did it.
- 12 Q. All right. Let's just deal for the moment with this first
- 13 incident of the gravestone. If I understand you correctly,
- 14 you're telling us that you didn't have anything to do with
- 15 knocking over the gravestone?
- 16 A. Yes, that's what I'm saying.
- 17 Q. Is that right?
- 18 A. Yes.
- 19 Q. You weren't there and you didn't have anything to do with it?
- 20 A. That's right.
- 21 Q. And that you didn't give this statement to the police which is
- 22 contained on page eight, the one that you're looking at?
- 23 A. Well, the statement I read is not the one I gave, you know. I
- 24 remember what I gave.
- 25 Q. What did you tell them?

- 1 A. Well, I told him, "All right", because he came in and he told  
2 us that if we get this headstone business over with the sooner  
3 you people will be released from gaol.
- 4 Q. Yes. Who told you that?
- 5 A. One of the detectives.
- 6 Q. Do you remember which one?
- 7 A. No, they were looking in through like a little window in a  
8 doorway like and they were telling us. Like we were all --  
9 We were locked up in the cells, eh, like we were just in a gaol  
10 like, you know. We were all talking.
- 11 Q. All right. At the point you're being told this are you telling  
12 us that you were all together in a room and the police officers  
13 were looking through a window?
- 14 A. Yeh, like --
- 15 Q. And they were telling you what, the sooner you give a statement  
16 the quicker you get out of here?
- 17 A. You see what it was -- I guess what got to them at that time,  
18 like we spoke Indian pretty good, eh, you know we -- That's  
19 our language. We spoke Micmac and there was -- there was  
20 ways that we can -- that we can say things to each other in  
21 gaol or when we were picked up, you know. As were were being  
22 driven in the police car, you know, we can talk in Micmac,  
23 you know, before we even got to the station sometimes and I  
24 think that they didn't -- they didn't like that too much at  
25 the times, no.

- 1 Q. On this -- With respect to this particular offense, the  
2 gravestone charge, did you eventually go to trial on that?
- 3 A. Yes, I did. Yeh.
- 4 Q. Was anybody else charged?
- 5 A. No, just myself.
- 6 Q. You were charged. Did you plead guilty?
- 7 A. That was -- Me and Stuart Marshall were actually questioned  
8 about it, you know. We were the ones that were really -- They  
9 used James Gould as their witness against us that time.
- 10 Q. I'm sorry, there was --
- 11 A. They were using James Gould's name on a statement saying that  
12 he seen us with other fellows doing it.
- 13 Q. And when you got to Court on this did you plead guilty?
- 14 A. Well, the statement I gave that time wouldn't have -- would that  
15 make sense to the Courts, you know, so I even told them.--I  
16 told the boys to come back in a cell that time I went to the  
17 lockup what statement I gave him and, you know, they'd say,  
18 "Well, at least, you know it'll get it off their minds for  
19 a while", you know, because there was other charges involved,  
20 eh.
- 21 Q. What do you remember about when you went to Court on this charge  
22 though? Do you remember whether you just went in and pleaded  
23 guilty?
- 24 A. I think I pleaded not guilty at the time and we were all put  
25 in the County Gaol.

1 Q. That's after?

2 A. That's the time of this incident here. Like we were brought to  
3 trial on it. We were brought to Court, you know, like --

4 Q. And you don't remember yourself whether or not you pleaded  
5 guilty or whether you went in and were found guilty?

6 A. Oh --

7 Q. In other words, whether there was a trial.

8 A. I don't think there was a trial, no. It was just -- I think  
9 they just went by the statement that I -- they had, but the  
10 statement that I wanted them to read that time would not have  
11 made sense to them, you know, what I said, you know. I put  
12 myself in a place where, you know, I was alone in a graveyard,  
13 eh. These two people never existed, you know. I just made  
14 it up, I don't know to get smart with them or just do --

15 Q. Well, why did you -- What was it that you made up?

16 A. Well, they asked me -- We seen you in -- You went through  
17 the graveyard. I was going to a dance that night. I said,  
18 "Yeh, I went through the graveyard". He said, "Well, that's  
19 the night we're talking about". I said, "Well..." -- I said,  
20 "I never tipped over no headstones".

21 Q. Who are you talking to now, Tom?

22 A. John MacIntyre. So I said, "I don't know what you're talking  
23 about". I said, "I never did nothing". So he told me --  
24 You're not talking -- You're not co-operating with me now.  
25 That, you know, you don't want to tell us nothing. So they

- 1 |       telly me to get back in the lockup. So I go back and I'm telling  
2 |       the boys what they want, you know, in Indian. It ends up going  
3 |       through because they're bringing another guy in, and I'm telling t  
4 |       not to say nothing, you know, because let's see what they got  
5 |       first, you know, before we start talking, you know.
- 6 | Q. See what information the police have before you tell them  
7 |       anything?
- 8 | A. Yeh, because they're using different -- they're using our friends  
9 |       names on statements :       they got. They're telling us that  
10 |       your friend here told us that you did -- you did this, you know,  
11 |       and, you know, you're just finished talking to your friend  
12 |       and he said he never gave nothing, you know, he never said  
13 |       nothing to -- and we're getting --
- 14 | Q. This offense is one you got two years probation on. Is that  
15 |       right?
- 16 | A. Yes, that's the one there, yeh.
- 17 | Q. Did you have a lawyer in connection with this charge?
- 18 | A. No, I don't think so.
- 19 | Q. Did you have a Court Worker?
- 20 | A. No, I --
- 21 | Q. Did you make any attempts to contact -- to get yourself either  
22 |       a Legal Aid lawyer or another lawyer or Court Worker?
- 23 | A. I never knew nothing about that then.
- 24 | Q. You never knew anything about it?
- 25 | A. No.

- 1 Q. Did you know whether or not Legal Aid was available to you  
2 in November of 1970?
- 3 A. No, they never told us, no, there was one there. We took it  
4 that if you needed a lawyer at that time you had to have money,  
5 you know, to -- you know, like we never knew about Legal Aid  
6 or --
- 7 Q. Was there -- Was there a Native Court Worker Program at the  
8 time?
- 9 A. I can't really recall at that time. There was some people--  
10 Like we -- We dealt with the Council and the Chief and, you  
11 know, the Councillors, you know. There was never no Court  
12 Worker, you know. We went directly to the Chief, you know, and  
13 told him we had problems. We told him, you know, and --
- 14 Q. Did you know whether -- Did you know at any time when  
15 Bernie Francis was working as a Court Worker, that that's  
16 what he was doing?
- 17 A. Yeh, he was like -- Yeh, he was into the law at that time,  
18 you know, he was getting involved, you know.
- 19 Q. But at the time of this gravestone incident you didn't know  
20 anything about Legal Aid and you didn't know anything about  
21 getting a lawyer. Is that right?
- 22 A. That's right, I nevered.
- 23 Q. So you didn't have a lawyer?
- 24 A. No.
- 25 Q. Well, did anybody explain to you -- Did anybody explain to you

- 1 | probation and I wasn't on probation too long, you know.
- 2 | Q. Do you remember talking to anybody before you were sentenced,
- 3 | any probation officers or anybody from the Court?
- 4 | A. I can't really recall. I just remember just being in gaol
- 5 | that week and taken to Court and released again.
- 6 | Q. You were on remand for a week and you went to Court and you
- 7 | either pleaded guilty or were found guilty, you got two years
- 8 | probation?
- 9 | A. Yeh, and I was --
- 10 | Q. How long were you in Court? Do you remember how long this took?
- 11 | A. There was a few other people, you know, in Court that day.
- 12 | It was pretty --
- 13 | Q. Do you remember how long your case took?
- 14 | A. I don't know. Five -- Five minutes I guess.
- 15 | Q. Five minutes?
- 16 | A. Ten minutes at the most.
- 17 | Q. Was Junior Marshall in the courtroom the same day?
- 18 | A. I think he was because he was put back in County Gaol and
- 19 | Artie Paul was put back in the County Gaol.
- 20 | Q. Do you remember what Junior was there for that day?
- 21 | A. He was charged with giving minors a drink.
- 22 | Q. Giving liquor to minors?
- 23 | A. Yeh, giving liquor to minors.
- 24 | Q. Was -- Was -- Do you remember whether his trial on that charge
- 25 | was the same day as you were in there on the gravestone charge?

- 1 A. I -- I really don't know, you know. I was just -- I know  
2 they were sentenced back to gaol and I was released on two  
3 years probation.
- 4 Q. And you don't really know what -- You didn't see what Junior  
5 was doing in Court that day?
- 6 A. No. No, we were in Court early -- We were -- When the charges  
7 were first brought up against us, you know, charged ahead on  
8 us, that's not when we were in Court together. After that we  
9 came back and I was on remand for a week.
- 10 Q. Right.
- 11 A. And they brought me back in on this headstone business and I  
12 was put on two years probation then.
- 13 Q. On the day that you were in Court on the headstone incident  
14 and not on the day you first went in but on the day you went  
15 in when you were sentenced, was Junior there that day?
- 16 A. I think we were all brought back to Court, yes.
- 17 Q. And do you have any recollection what Junior was doing there  
18 beyond, I think you said it was something to do with the liquor  
19 to minors?
- 20 A. Yeh, we were all -- I don't know. We were just going along  
21 with the -- going along with the police, whatever they had,  
22 you know, but we know we were doing nothing, you know, out  
23 of the -- out of the ordinary there, you know. We know we  
24 never -- I know myself I never did nothing wrong, you know,  
25 and the boys knew there was a bunch of people down -- We're sure--

1 | Q. What are you telling us? Are you telling us today that you  
2 | didn't have anything to do with the gravestone incident but  
3 | that you ended up getting two years probation. Is that what  
4 | you're saying?

5 | A. Yeh, you know, like the statement that we gave we figured that  
6 | they'll read it out in Court. That's what we we're waiting  
7 | for, the statements that we gave at the police station to --  
8 | to be released from gaol, you know. They say -- Like they  
9 | told us, you know, you guys -- you people -- you young fellows  
10 | start getting your act together now and tell us what's going  
11 | on there and the sooner you guys get it over with, the sooner  
12 | you guys will be released. And we were --

13 | Q. You're now talking about the night you were at the lockup  
14 | being questioned on the Friday?

15 | A. The day -- That's the day we were brought in --

16 | Q. Yes.

17 | A. --that I'm talking about like, you know, and -- you know,  
18 | and you got to -- you got to give them -- you got to give  
19 | them a statement or, you know, they're going to make one up  
20 | anyway is the way I look at it, you know.

21 | Q. Well, why do you have to give them a statement?

22 | A. Well, they were pressuring you and they were telling you that  
23 | these people seen you, eh, you know. They say your friends  
24 | say that -- they gave us this statement that you did it,  
25 | you know, and they put us back in that same -- where they bring

- 1 | him out and put me back in the cell, you know, and like, you  
2 | know, they were switching us around and all that there just  
3 | to get statements off us, you know, and --
- 4 | Q. Between the date of the -- of this offense, the gravestone  
5 | charge, the one that you got two years probation for, and  
6 | May -- the following May in 1971, were you in and out of  
7 | Court again between -- between the time of the gravestone  
8 | charge and the time of the Sandy Seale murder?
- 9 | A. Yeh, I was picked up for intoxication where they found us in  
10 | town, you know.
- 11 | Q. And that was in December and you got a ten dollar fine?
- 12 | A. Yeh, something like that anyway.
- 13 | Q. Did you -- Did you go to the dance at St. Joseph's Church on  
14 | the night of May 28th, the night of the Seale incident?
- 15 | A. Yeh, I think I was there, you know.
- 16 | Q. You think you were there?
- 17 | A. I think -- Yeh, I was there. Yeh.
- 18 | Q. Do you remember who you went with?
- 19 | A. I went with -- We all went down the park earlier, the park, eh.
- 20 | Q. I'm sorry, you went down to the park earlier?
- 21 | A. Yeh, that evening, you know, but I wasn't with Marshall or  
22 | Artie and those fellows. I was with another bunch of young  
23 | fellows you know.
- 24 | Q. Who were you with that night, Tom, down the park before you went  
25 | to the dance?

- 1 A. I was with Bobby Christmas
- 2 Q. Bobby Christmas?
- 3 A. Yeh, and Edmund Christmas.
- 4 Q. Edmund Christmas?
- 5 A. Yeh.
- 6 Q. Anybody else?
- 7 A. Stuart Marshall and Earl Herney, you know, and guys like that,
- 8 you know.
- 9 Q. I'm sorry, what kind of guys?
- 10 A. I mean fellows like that, you know, guys I knew like, you know.
- 11 Q. But you weren't with Junior?
- 12 A. No, I wasn't with Junior then.
- 13 Q. Do you remember leaving the dance?
- 14 A. Yeh.
- 15 Q. And do you remember where you went after you left the dance?
- 16 A. We took the girls back to the Pier.
- 17 Q. And the girls you were with were from the Pier?
- 18 A. Yeh.
- 19 Q. Did you -- Did you see Junior at all at that point after you
- 20 left the dance and when you were taking these girls home?
- 21 A. No, I never seen him at all then.
- 22 Q. Did you see Junior that night at all?
- 23 A. Yeh, after I came back from the Pier, well, that was after
- 24 one, I guess, one-thirty. I had to walk from the Pier area
- 25 to Membertou, you know.

- 1 Q. And when did you see Junior?
- 2 A. Oh, one-thirty, two o'clock that morning I guess, you know.
- 3 Q. Were you back at the Reserve when you saw him?
- 4 A. Yeh.
- 5 Q. And where did you see him?
- 6 A. I met him on the road right in -- right in front of his place  
7 there, you know, where he used to live on Membertou Street.
- 8 Q. Was he walking, getting out of a car, or what was he doing?
- 9 A. I think he was getting out of a car at the time, you know,  
10 and -- I was on the -- I was already on Membertou myself there  
11 and --
- 12 Q. I'm sorry, you were?
- 13 A. I was already on Membertou myself and I -- you know, and, you  
14 know, they said something about somebody getting knifed down  
15 the park or something like that, you know.
- 16 Q. Did you know by the time you saw Junior at one-thirty or  
17 two o'clock in the morning that there had been a knifing in  
18 the park? Did you already know that before you saw Junior?
- 19 A. No, somebody was saying something about it, you know, like the  
20 people that are with Junior and he told me that --
- 21 Q. Do you think you had heard about it though before you saw  
22 Junior?
- 23 A. Yeh, there was people talking about it like. There was --
- 24 Q. On the Reserve?
- 25 A. On the Reserve, yeh, you know, there was like girls on the

- 1 Reserve --
- 2 Q. Now you see Junior getting out of -- getting out of a car?
- 3 A. Yeh.
- 4 Q. And did you talk to him?
- 5 A. Yeh, you know, he came over and he asked me where I was at and
- 6 I told him I was -- I was down the Pier and I just got back up
- 7 and all that and I asked him -- He said, "I got nailed on" --
- 8 He said, "I got nailed tonight".
- 9 Q. He said, "I got"?
- 10 A. I got nailed. Like, you know, I --
- 11 Q. Got nailed?
- 12 A. Yeh. I said, "What happened"? And he told me that him and --
- 13 Q. Now take your time with this. What did he tell you?
- 14 A. That him and his friend, they were in the park and two guys
- 15 came up and -- they were an old fellow and one young fellow
- 16 there that -- He said, "Oh, we" -- I guess they were -- I
- 17 guess they were bumming around. Junior was bumming around at
- 18 that time or --
- 19 Q. Who is generally bumming around?
- 20 A. Junior is, you know, and -- You know, like he'd -- he used
- 21 to ask for money and all that, you know. He never had to
- 22 force nobody or -- so he said, "I asked this guy for a
- 23 cigarette or something, hey".
- 24 MR. ROSS:
- 25 Mr. Chairman, I'm --

1 MR. SPICER:

2 You can't hear?

3 MR. ROSS:

4 --having some difficulties with this witness. I find him hard  
5 to hear.

6 BY MR. SPICER:

7 Q. So why don't we just -- Mr. Ross, is having a little difficulty  
8 hearing you. If you could just go back to the beginning of  
9 your conversation with Junior that night, take you time and  
10 speak up as best you can?

11 A. I meet him on the road when I came back from the Pier, you  
12 know.

13 Q. Yes.

14 A. You know, we were -- we were drinking down at the dance --  
15 earlier but by the time we got back, you know, we were sober.  
16 In other words, he never had that much to drink, you know,  
17 and -- so I get back on the Reserve and I meet -- I met -- I meet  
18 Junior and I know there's girls and guys talking about this  
19 incident, a knifing taken place, hey, down the park.

20 Q. When you were talking to Junior, are there other people around  
21 or is it just you and Junior?

22 A. There's other people around, you know.

23 Q. Was Kevin around, Kevin Christmas?

24 A. You know, I can't -- I don't really -- I can't remember, you  
25 know, like there was -- who was there at the time. I remember

- 1 | there was girls and there was guys, you know, but I can't  
2 | actually give straight names right out, you know. I mean --  
3 | You know, what I'm trying to say, you know.
- 4 | Q. All right. Now tell us -- tell us again, and speak up as much  
5 | as you can, what it was that Junior said to you about the  
6 | incident?
- 7 | A. He told me that he was down the park. He asked me where I was  
8 | at, you know. He said, "Where did you go"? I told him that  
9 | I was at the dance and that I went down the Pier after the  
10 | dance was over. I said, "I took the girls back to the Pier".  
11 | And he -- so he told me about the knifing taking place, eh.
- 12 | Q. What was it that he told you?
- 13 | A. He said that he got nailed, eh, he got stabbed in the arm.  
14 | I got --
- 15 | Q. Did he show you his arm?
- 16 | A. Yeh, he showed me. He said, "I got nailed in the arm". As  
17 | if --
- 18 | Q. Did he have a bandage on?
- 19 | A. Yeh, he had a bandage on and he was trying to take the bandage  
20 | and show me the cut and all that. I said, "I" -- So I believed  
21 | him. I said, "You don't have to take it off". But the band --  
22 | the jacket was tight on his arm and all that, eh, so he told  
23 | well just take that off, eh, you know, cut that off.
- 24 | Q. Did you cut that for him then?
- 25 | A. Yeh, I had a jack knife at the time and I cut the sleeve off,

1 | you know, and -- you know, but he wanted to take the whole  
2 | bandage off and everything. And I said, "No, leave it on".  
3 | So he told me that -- what happened to his friend, there,  
4 | you know, Sandy, you know.

5 | Q. Did he describe Sandy as his friend?

6 | A. Yeh, he said, "My buddy, you know, they got him in the chest --  
7 | in the stomach". He said, "He's gone to hospital". He said,  
8 | "I was" -- "The police drove me down there and they stitched  
9 | me up and they"-- I guess there was police officers down  
10 | there and everything, you know, and they didn't -- they let  
11 | him go that night. They brought -- They drove him back up  
12 | again, you know, and --

13 | Q. Did -- Did Junior say anything to you by way of describing the  
14 | two other people in the park?

15 | A. Yeh, he told me that there was one short fellow and one tall  
16 | fellow, eh. He said, "The little old fellow had white hair and  
17 | he had black clothes on". Like they were dressed something  
18 | like priests, you know. He was thinking it was some priests, you  
19 | know, or -- He said --

20 | Q. Did he say anything to you about any conversation that might have  
21 | taken place between them?

22 | A. I don't know if he said something about a cigarette, bumming  
23 | a cigarette or a light that night you know. Somebody was bumming  
24 | a light or a cigarette that night, you know.

25 | Q. Do you -- Do you have -- Do you remember who it was that was

- 1       said to have been doing the bumming, was it Junior and Sandy  
2       or was it these other guys that they ran into?
- 3   A.   I don't know if it was Junior that night that told me that  
4       he bummed a cigarette or the old fellow bummed him for a  
5       cigarette or something or -- but I just -- you know, I just  
6       told him, you know, we'll see, you know, what happens. So  
7       we'll see what comes out. But he told me that -- that his  
8       friend -- He said, "He must be" -- He said, "He's in bad  
9       shape, you know".
- 10   Q.   His friend was in bad shape?
- 11   A.   Yeh, you know. He said, "I have to take" -- He said, "When he  
12       went" -- The old fellow came at him, eh.
- 13   BY MR. CHAIRMAN:
- 14   Q.   Mr. Christmas, when Junior was describing this incident to you  
15       did he say which of the two men was dressed like a priest?
- 16   A.   Pardon?
- 17   Q.   Did he say which of the two men --
- 18   A.   The old fellow. The small --
- 19   Q.   The old fellow?
- 20   A.   Yeh, the small fellow.
- 21   Q.   The small fellow was dressed like a priest?
- 22   A.   Yeh.
- 23   Q.   Thank you.
- 24   BY MR. SPICER:
- 25   Q.   Did you question Junior at all about the incident that night?

- 1 Did you say, "Well, why did this" -- "Why did these guys do it?",  
2 or "Why did this happen"?
- 3 A. No, we just went -- went to a place, you know, and they were  
4 all drinking at this place, you know, and -- you know, and  
5 he told them that he -- that they got jumped down the park and  
6 his friend got stabbed and he was stabbed in the arm and all  
7 that, you know.
- 8 Q. Is this some time later? Now you're saying you went to somebody's  
9 place?
- 10 A. Yeh, like later on that night, you know, we were --
- 11 Q. Where did you go?
- 12 A. I'm not too sure I think it was Jamie Joe's place.
- 13 Q. I'm sorry.
- 14 A. James Joe.
- 15 Q. You went to his place with Junior?
- 16 A. Yeh.
- 17 Q. And were there other people there as well?
- 18 A. Yeh, there was James Joe and a few other friends there like, you  
19 know. Junior Marshall related to them, you know, and so  
20 we went over there and -- after --
- 21 Q. Junior was related to them. Is that what you're saying?
- 22 A. Yes, he was related to James Joe and the people that were  
23 there, you know.
- 24 Q. What time of the evening would that have been?
- 25 A. Oh, that's after two-thirty, three o'clock in the morning, you

1 know.

2 Q. All right. Do you remember what -- what it was that Junior  
3 told those people?

4 A. Well, the same thing that he told me like, you know, one old  
5 guy and one tall fellow, eh.

6 Q. Were -- Were either yourself or any of those people that were  
7 at your friend's place questioning Junior about what happened  
8 or did he just tell his story?

9 A. Yeh, he just told them, you know, what -- what happened, you  
10 know, but nobody -- nobody ever questioned him about it like,  
11 you know. They just thought well, he got into a fight or  
12 something, you know.

13 Q. Wait a second, sir. What did you say?

14 A. Like we just -- Like some people thought he just got into a  
15 night fight or something, you know, and that was it, you know.  
16 It never -- Because -- The people on the Reserve never knew  
17 what we were doing, you know; the older people, you know, they  
18 never know exactly what we were doing in town or --

19 Q. The house that you went to later on that evening though, were  
20 the group of people that you saw there, were those kids your  
21 own age or were they adults?

22 A. They're older than us.

23 Q. Older than you?

24 A. Yeh.

25 Q. And are you telling us that -- that what happened when you got

1 | to that house was that Junior told his story?

2 | A. Yeh, he told us what -- what happened, you know, and he  
3 | described the guys and we were drinking there, you know.

4 | Q. You were drinking at this house later?

5 | A. Yeh, you know, I had a few drinks with them and we left and  
6 | I think he went to Artie's that night. I went home anyway.  
7 | I told him I got to hike -- head off home, you know, because  
8 | I was tired, really tired, you know, and -- So he said,  
9 | "All right, I'll see you tomorrow anyway". So --

10 | Q. You think Junior went to Artie's?

11 | A. Yeh.

12 | Q. Did you see Junior at all during the -- during the week from  
13 | the time -- from the night of the stabbing until the time he  
14 | was charged the next Friday?

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*SMR*

1 A. I'd seen him, I think the day -- I think the day after or  
2 a couple of days after.

3 Q. Where did you see him?

4 A. It was on the Reservation there, you know.

5 Q. And what did you talk about?

6 A. Well, he just asked me, you know -- well, I never -- never  
7 questioned him, you know. And he never told me that -- that  
8 the cops, you know, were questioning him about -- about him  
9 stabbing his friend and all that, you know. I still believe  
10 what he told me, you know, and I never --

11 Q. Did you talk to him during this second meeting; did you talk  
12 to him about the incident again?

13 A. I'd just tell him, you know, just tell about the guys that  
14 we met in the Park and, you know, that -- that after he got  
15 stabbed, you know.

16 Q. Did -- well, did he tell you tell you the story again the  
17 next time you saw him or what -- what was it that you talked  
18 about?

19 A. Yeh, yeh, he told -- he told me that he was being questioned,  
20 you know, and that it seems to me that they don't -- they  
21 don't believe me. They're not believing me or something.  
22 I just tell him that, you know, what really happened, you  
23 know, and --

24 Q. Was he of the -- was he of the -- of the -- of the feeling  
25 as he expressed to you that he wasn't being believed by the  
police?

- 1 | A. Yeh, yeh, you -- you know, he was really scared, you know and  
2 | so --
- 3 | Q. How could you tell he was scared?
- 4 | A. Just the way he was explaining it to me. It was like, more  
5 | like stuttering and kind of put it together like, you know,  
6 | and telling me that, you know; I said just tell them, you  
7 | know, -- just tell them what -- what really happened, you  
8 | know and he said I -- so, you know, he left me that day and  
9 | I went home again, you know.
- 10 | Q. Is that the only other time you saw him up until the time  
11 | he was charged?
- 12 | A. Yeh, that was -- about once or twice I seen him that day --  
13 | that week, you know, so --
- 14 | Q. Did you see -- did you see John Pratico at all during that  
15 | week?
- 16 | A. Yeh, we were hanging around before that, like you know,  
17 | around the Park area and all that, you know; you know, we  
18 | knew the guy and --
- 19 | Q. You knew John Pratico generally?
- 20 | A. Yeh.
- 21 | Q. Okay, during that week between the time that of the stabbing  
22 | on the night of the 28th and the time that Junior was  
23 | charged, the next Friday, did you see Pratico at all during  
24 | that week?
- 25 | A. I think -- yeh we were down the Park, you know.

- 1 Q. During the week?
- 2 A. Yeh.
- 3 Q. Would you have been talking to Pratico about what Junior said
- 4 he had seen and what happened?
- 5 A. No, no, I never.
- 6 Q. You wouldn't have been?
- 7 A. No.
- 8 Q. What would you have been talking to him about?
- 9 A. Well, we was -- we was going to bum around and all that, you
- 10 know. And how we were going to get our liquor, you know,
- 11 and what is --
- 12 Q. Are you able to tell us whether or not at any time during
- 13 that week, that is the week from the time that the incident
- 14 took place to the time that Junior was charged, whether you
- 15 discussed Junior's description of what had happened with
- 16 John Pratico?
- 17 A. No, I wouldn't.
- 18 Q. You didn't?
- 19 A. No.
- 20 Q. Did John Pratico say anything to you about being questioned
- 21 by the police?
- 22 A. No.
- 23 Q. He never mentioned that he had been questioned by the police?
- 24 A. No.
- 25 Q. On that following Friday, you -- did you go to a dance again

- 1 the next week?
- 2 A. Yes, I did, yeh.
- 3 Q. And what happened -- what happened at that dance?
- 4 A. Well -- well, the earlier part of that day -- the evening,  
5 Junior was saying something about going to Whycocmagh because  
6 of some threat calls he was getting. And -- they were talking  
7 about "Black Panthers" coming down or something like that,  
8 you know, and did I -- Sam was really scared and his mother  
9 was really scared and, you know, and they had to go to  
10 Whycocomagh, you know. So I said, all right, you know, I'll  
11 see you when you get back, you know.
- 12 Q. That was during the day on Friday?
- 13 A. Yeh, so I said I'm going -- I'm going -- going to the dance  
14 tonight any way, you know, and so he said all right, you know,  
15 and I asked later on -- that's the last I seen Junior until  
16 I heard that he was char -- picked up and charged for murder,  
17 you know.
- 18 Q. Where did you find that out, Tom?
- 19 A. At the dance. When I got to the dance that night, eh.
- 20 Q. And who -- do you remember who told you?
- 21 A. A girl I knew, eh, you know.
- 22 Q. Do you know what her name was?
- 23 A. Mary -- Mary Hawkins.
- 24 Q. Mary Hawkins?
- 25 A. Yeh.

- 1 | Q. And she told you what, that Junior had been charged?
- 2 | A. She told me -- she called me over to the window and like
- 3 | we're -- like before -- like we're trying to get a way of
- 4 | getting liquor before we got into the dance, like you know.
- 5 | We had our dance money but we -- we were still bumming and
- 6 | this girl called me over and told me about Johnny putting
- 7 | a finger on Junior.
- 8 | Q. She told you about Johnny -- this is John Pratico you're
- 9 | talking about now?
- 10 | A. Yeh.
- 11 | Q. What did she tell you he'd done?
- 12 | A. She said that he seen Junior Marshall -- Donald Marshall, eh --
- 13 | Junior and that he seen him stabbing Sandy.
- 14 | Q. So that I understand you correctly. Did she tell you that
- 15 | Pratico had said that he saw Junior do the stabbing?
- 16 | A. Yeh.
- 17 | Q. And she told you that at the dance on the Friday night?
- 18 | A. Yes.
- 19 | Q. And what did you do as a result of that?
- 20 | A. So I asked where Johnny was at. I thought, you know, I thought
- 21 | Johnny would be in the dance or his brother -- the girl's
- 22 | brother was with me, you know; he was hanging around with
- 23 | Johnny too, eh.
- 24 | Q. This is --
- 25 | A. Howard.

- 1 Q. -- Mary Hawkins brother?
- 2 A. Yeh, Howard Hawkins.
- 3 Q. Howard Hawkins?
- 4 A. Yeh, he was hanging around with Johnny that time and so, you  
5 know, I -- so -- you know, he told me that he seen Junior,  
6 that he was, you know, something sitting in the bushes.
- 7 Q. Let's just wait until we get to that after. You left -- did  
8 you leave -- did you leave the area of the dance with Howard  
9 Hawkins?
- 10 A. Yeh.
- 11 Q. And go over to John Pratico's?
- 12 A. Yeh, we did, yeh.
- 13 Q. Right, what happened when you got to John Pratico's place?
- 14 A. Well, I went to the door and I knocked on the door and  
15 his mother opened the door for me and --
- 16 Q. And what did you say to her?
- 17 A. I asked her if Johnny was home and she said yes, he is, you  
18 know, and I seen Johnny standing in the hall and I asked  
19 Johnny to come out and talk to me for a minute, you know.  
20 So he said, sure, I'll be out, you know, and so --
- 21 Q. And did he come out and talk to you?
- 22 A. Yeh, he came out with his friend there and so I went off --  
23 I got off the step and got on the sidewalk. So his buddy  
24 come off the step and I go --
- 25 Q. Who was his buddy?

- 1 A. Jackie Ferguson.
- 2 Q. Jackie?
- 3 A. Ferguson.
- 4 Q. How do you spell the last name?
- 5 A. Ferguson.
- 6 Q. Ferguson, okay.
- 7 A. So I tell him to -- I wanted to talk to Johnny, you know, and  
8 so he keeps walking and so I'm standing.
- 9 Q. Who keeps walking -- Ferguson?
- 10 A. Yeh, Ferguson, he keeps -- I told him, you know, I want to  
11 talk to him. I want to see Johnny. And my friends are on  
12 the other side of the road sitting on the library, like  
13 you know, lawn like, eh.
- 14 Q. Who are your friends?
- 15 A. Howard Hawkins and Lawrence Paul and I think my brother was  
16 with me that time. I'm not too sure now; my brother or my  
17 nephew one of them. So I'm talking to Johnny and Johnny tells  
18 me that -- I asked him, you know, what's -- what's the -- are  
19 you going around telling people that you seen Junior stabbing  
20 Sandy.
- 21 Q. What did he say?
- 22 A. He saw -- he looks at me and he starts telling me that it  
23 wasn't his -- it's not my fault, you know; it's not my fault.  
24 I said what do you mean. You had no business going, you know;  
25 he said I was picked up by the police and they -- they --

1           they were questioning me there, you know.

2           Q. This is John Pratico talking to you now?

3           A. Yeh, you know, he's telling me that -- you see, they kept  
4           telling me that I seen Junior in the Park with Sandy, eh.  
5           And I said, well, what did you tell them? He said, well,  
6           I told them I went through the Park and all that and said  
7           they were going on and on, you know. So I just told him,  
8           I said, well, you better go back and tell, you know, I told  
9           like how I felt about the cops. I said, you better go back  
10          and tell these pigs, you know, that you're not telling the  
11          truth, you're lying, you know and -- or if you don't I'm  
12          going to come back and see you again, you know.

13          Q. Did -- did he tell you -- did John Pratico tell you that he,  
14          in fact, hadn't seen anything?

15          A. Yeh, he told me that he never -- that's he wasn't -- he  
16          said I don't -- he said, I never seen nothing. So I said  
17          well, you go back and tell them that.

18          Q. What did he say?

19          A. He said -- he said how they press -- they pressed him like,  
20          they pushed him to like -- they pressed him, eh, like, you  
21          know; they were giving him pressure & all that and he told  
22          me that I'm not even supposed to be talking to you, you  
23          know. So and this police officer comes out of Acadian Lines  
24          and Jackie Ferguson hollers to him and I tell Johnny I got  
25          to go and I just run down the street, eh.

1 Q. During the conversation that you had with John Pratico, did  
2 you at any point suggest to -- to Pratico that he had  
3 squealed on Junior?

4 A. No, he never said he squealed. He said he told me that  
5 he was more like pushed into it like, you know, he was --

6 Q. Did you -- did you ever suggest though to Pratico, "listen  
7 you squealed on Junior"?

8 A. Yeh, that's what -- that's what I told him, you know, I  
9 said --

10 Q. That's what you said to him?

11 A. -- yeh, I told him that I heard that he had squealed on  
12 Junior. That he seen him stabbing Sandy. I said, you're  
13 lying. You never seen nothing, like you know.

14 Q. Did you tell him you're lying or did --

15 A. Yeh, I told him that you're lying. He says, you know --  
16 I believe -- I believe my friend before I believed you, eh,  
17 you know.

18 Q. And what did he say to that?

19 A. Oh, he just told me that he -- that he was scared, like,  
20 you know. The police were talking to him and all that, you  
21 know and said -- so I, you know, I told him to go back and  
22 tell them, you know, that you're -- that you never seen  
23 nothing, you know, and tell the truth, you know.

24 Q. So when you told him to go back and tell the police that  
25 you didn't see anything, were you telling him just to go and

1 | do that or had he told you at that point that he hadn't seen  
2 | anything?

3 | A. I told him to go back and tell them that he never seen  
4 | nothing and he wasn't in the --

5 | Q. All right, at that point in time when you told him that,  
6 | had he told you by then that he hadn't seen anything?

7 | A. No, he said, you told me -- he told me like he was more  
8 | like pushed like, eh, he was pressed, you know. You know,  
9 | that -- to -- he was talking to John MacIntyre and Bill  
10 | Urquhart, eh, about what to say, you know. Those were the  
11 | police officers that were working on the case at that time,  
12 | eh, you know. And I had my dealings with MacIntyre and  
13 | Urquhart before this incident, you know, and I knew how  
14 | these police -- these police officers reacted to questioning  
15 | and all that, you know. I knew what Johnny was talking when  
16 | he told me that he was pressured and all that. Like I just  
17 | told him, well, you go back and tell them that you never  
18 | seen nothing and you don't know nothing about this case,  
19 | you know. I don't know why you're going telling them that  
20 | you seen Junior stabbing this guy and --

21 | Q. All right, Tom, just when you told him that, when you said  
22 | go back and tell them that you didn't see anything, had --  
23 | had Pratico said anything to you at -- by then to indicate  
24 | to you that he hadn't seen anything?

25 | A. He just told me that the cops pressured him and, you know.

1 Q. And he didn't say to you, well, I really didn't see anything?

2 A. No, he never really said that he never really had seen anything,  
3 you know. He just told me that the cops pushed him and you  
4 know, it wasn't his fault. He told me, you know, it's not  
5 my fault and that the cops were pushing me to it and all that.  
6 You know, he told me, to stay away from this, you know. So  
7 I just told him, you know, well, you go back and I told I  
8 thought we were friends and all that, you know. And I said  
9 no, and we took care of the guys, I said, that we were  
10 friends and like we were talking, you know, there was no  
11 -- wasn't really nothing -- no fighting involved nothing,  
12 you know. I wasn't -- just told the guy that I -- I didn't  
13 believe like what he was saying.

14 Q. At -- if you want to flip to page 27 of that volume, Tom.  
15 This is the testimony that was given by -- by John Pratico  
16 at the time of his -- at the time of your Preliminary on  
17 the obstruction charge. And about half way down here Pratico's  
18 being questioned and it says:

19 (Christmas.) What took place?

20 And the answer is

21 Christmas went and hollered  
22 to me. I didn't answer him  
23 And then he said some here,  
24 come on down the Park, we  
25 have some words to say.  
And Marshall -- Donald Marshall  
he did not stab Seale. So I  
never said nothing to him, I  
just kept walking. So he went

1 and cursed and said you squealed  
2 on Marshall; now you're going to  
get it.

3 Do you remember saying that to John Pratico?

4 A. No, I don't, no.

5 Q. You don't remember saying that?

6 A. No.

7 Q. And I just kept on walking.

8 A. No, we -- we were talking. We stood there and we spoke.  
9 We were talking to each other, eh.

10 Q. All right, let's just go through the rest of what he says  
11 you said.

12 A. All right.

13 Q. He's being asked now:

14 Pardon me, you say he cursed  
15 what exactly did he say?

16 And he's now saying that you said:

17 You fucker, you squealed on  
Donald.

18 Do you think you might have said that to John Pratico?

19 A. No, I just told him that, you know, I asked him, you know --

20 Q. And then:

21 And what else did he say?

22 And then he...

23 That would be you. ...

24 ...starting shaking his fist.

25 Do you remember shaking your fist at John Pratico?

1 A. No.

2 Q. No. And the last one:

3 And what did he say when he shook  
4 his fist at you?

5 And Pratico is saying here that you said:

6 You're going to get it.

7 Do you have any recollection of saying that to John Pratico?

8 A. Yeh, I told him that if he didn't go back to the cops and  
9 tell them the truth --

10 Q. Yes.

11 A. -- and I was going -- and I told -- I was coming back, you  
12 know.

13 Q. And this conversation finished because of a police officer  
14 came across from the Acadian Lines, is that what you were  
15 saying?

16 A. Yes, a police officer showed up on the street there and  
17 everybody just ran --

18 Q. Took off?

19 A. -- away -- took off, you know.

20 Q. Were you then picked up the next day by the police?

21 A. Yeh, I was picked up the next day.

22 MR. SPICER:

23 Perhaps, my Lord, before we get to that, if we could take five  
24 or ten minutes.

25

1 MR. CHAIRMAN:

2 Sure, okay.

3 INQUIRY ADJOURNED: 10:44 a.m.

4 INQUIRY RECONVENED: 11:06 a.m.

5 BY MR. SPICER:

6 Q. Just at the time that we took the break there a few minutes  
7 ago, you were starting to say that you were picked up the  
8 day following the incident with John Pratico?

9 A. Yeh, the next -- the next morning.

10 Q. The next morning?

11 A. It would be Saturday.

12 Q. Who were you picked up by?

13 A. Bill Urquhart and MacIntyre.

14 Q. Urquhart and MacIntyre?

15 A. Yeh.

16 Q. Where were you when you were picked up?

17 A. Home.

18 Q. At home?

19 A. Yeh.

20 Q. Were you taken down to the police station?

21 A. Yes, I was.

22 Q. Did you know when you were going to the police station why  
23 you were being taken there?

24 A. No.

25 Q. Had MacIntyre or Urquhart said anything to you about why it

- 1           was they wanted you to go to the station?
- 2       A. No, they were just talking to themselves, like you know and
- 3           I was sitting in the back seat, you know, just --
- 4       Q. What -- what was it that they said to you though that got
- 5           you into the car in the first place?
- 6       A. Well, they told that they had some questions -- they wanted
- 7           to ask me some questions about something.
- 8       Q. Did they -- did they tell you what it was about?
- 9       A. No.
- 10      Q. You got in the back of the police car and you went down to
- 11           the station?
- 12      A. Yes.
- 13      Q. And were you questioned further when you got to the police
- 14           station?
- 15      A. No, they were -- they were more like telling me what I did,
- 16           you know, instead of taking a statement from me, you know.
- 17      Q. Were you questioned at the police station?
- 18      A. Yes, I was.
- 19      Q. By whom?
- 20      A. MacIntyre and Urquhart.
- 21      Q. And what were they questioning you about?
- 22      A. About me threatening Johnny Pratico.
- 23      Q. And what did you tell them about that incident?
- 24      A. I said I never bothered the guy or never -- never touched him.
- 25      Q. Do you know how long the questioning went on for?

1 A. They were -- they were telling me that people -- they got  
2 witnesses and that Johnny told them that I -- there was  
3 a knife was involved and all that. They wanted to know  
4 where the knife was at I had.

5 Q. They told you that there was a knife involved with respect  
6 to your threatening of John Pratico?

7 A. Yes.

8 Q. Did you have a knife that night?

9 A. No.

10 Q. What else was said during that questioning, Tom?

11 A. Well, I -- like I was -- I wouldn't answer them. I wouldn't  
12 tell them -- you guys got that much, you know, take it to  
13 court, you know, or -- no I didn't -- I didn't answer them  
14 at all. It was more like listening to them, you know, they  
15 were -- they were reading out statements to me, eh, you  
16 know, and people --

17 Q. I'm sorry there were statements?

18 A. They were reading out statements that people said, you know,  
19 they said so and so told me that you did this and he seen  
20 you and all that.

21 Q. And what did you say to all of that?

22 A. I just told them if you got that, take it to court.

23 Q. And did you spend some time on remand to -- between the time  
24 that you were taken down to the station that day and the  
25 time of your Preliminary?

1 A. Yes, I went -- I went that same morning Marshall was brought  
2 up for murder. He was -- when he was brought in Monday  
3 morning. Because he was charged Friday. I was picked up  
4 about Saturday morning but, you know, I was released and I  
5 come -- I walked to the court house that morning. That  
6 Monday morning. They were just bringing Marshall in that  
7 time when I got to the court house and Junior asked me  
8 why I -- what I was doing down there and I told him something  
9 about --

10 Q. That's on the following Monday?

11 A. That's the following Monday, yeh, in the morning -- court.

12 Q. Will you look at page 18, Tom, of that volume. Eighteen and  
13 nineteen. And so we can get straight what it was that  
14 happened. That's dated June the 7th which would have been  
15 the following Monday. Was that the day that you were  
16 first taken into court?

17 A. Yes.

18 Q. And then you were remanded on that date to the 10th and then  
19 if you will flip over the page to 19, you'll see on the 10th  
20 you were remanded until the 11th. Do you see that at the  
21 top on page 19 in the right. At the top it says June 10, 1971?

22 A. Yes.

23 Q. And then you were remanded until the 11th day, so you were  
24 just remanded for just one more day. So you were -- you were  
25 in gaol that week then, were you?

1 A. Yes, I was with -- we were -- both of us were remanded to  
2 the County Jail for six months.

3 Q. Both yourself and Junior?

4 A. Yeh.

5 Q. All right, we'll get to that in a minute. Your Preliminary  
6 Hearing on the obstruction charge, if you'll look on page  
7 22, you'll see that that was on Friday, June the 11th.

8 A. Yes.

9 Q. Now at that Preliminary Hearing you -- you were represented  
10 by Frank Elman; do you remember that?

11 A. Yes.

12 Q. How was it that you got a lawyer for this particular charge?

13 A. I don't know. It's -- I don't know if -- I don't know. I  
14 think we had -- that was in '71 and we had a court worker  
15 that time and you know, we had people, you know, taking  
16 care of the court system for us at that time, you know. And  
17 it wasn't just going up no more and being alone, like you  
18 know. We had somebody in the aisles for us, like you know,  
19 to understand the charges -- to tell us do we understand  
20 the charge and no what -- what it is. And I told him I  
21 didn't understand the charges they were reading out to me,  
22 you know -- you know.

23 Q. You told them that when?

24 A. That day at, you know --

25 Q. The first day?

1 A. The first day, yeh, that I was charged. I said, I don't  
2 understand the charge you've got up against me, you know,  
3 I don't --

4 Q. Did you have a lawyer that first day?

5 A. No, I think I had the lawyer come around after.

6 Q. After that?

7 A. After the charges were read and everything, after we were  
8 remanded cause as far as me giving statement to the  
9 police that time, I didn't give them nothing, you know; they  
10 just -- they had -- they had a charge on me and they had  
11 -- they had Marshall with me and he was charged for murder  
12 and I was charged for threatening the witness or something.

13 Q. Is it your recollection then that on the day that you first  
14 -- you first went into court, that would be the following  
15 Monday, on the 7th?

16 A. Yes.

17 Q. And you indicated to the court that you didn't understand  
18 the charges. At that point in time you didn't have a lawyer  
19 but you got Frank Elman sometime between then and the 11th,  
20 the date of your Preliminary?

21 A. Yeh.

22 Q. Okay, did you arrange to get a lawyer yourself or did the  
23 court worker do that for you?

24 A. I don't know if the courts got him for me that time or if  
25 the court worker got a hold of him or -- but I -- I knew that

- 1 Marshall had lawyers and you know, he -- but he had paid  
2 lawyers that time.
- 3 Q. But as to yourself you ended up with Frank Elman?
- 4 A. Yeh, he was working for Legal Aid system that time.
- 5 Q. Did you have an opportunity to speak to Mr. Elman before you  
6 went to court on the 11th for your Preliminary?
- 7 A. Yeh, I think he come up and I think he took -- took the  
8 charge that time -- the charge that was read out to me.  
9 And he said he'll like stand for me, like you know -- so  
10 I -- he answered me later on, I guess -- he asked me if I  
11 had a statement. I said no, I never gave no statement knowing--
- 12 Q. Did he come and see you in gaol?
- 13 A. I think he was talking in the court house that time, like,  
14 inside the -- in the courtroom like.
- 15 Q. Would that have been on the 7th, the first day you were in,  
16 or it's for the 11th when you went back to the Preliminary?
- 17 A. I think it was -- I think come back on the hearing, yeh,  
18 you know.
- 19 Q. Would that have been the time you're talking about when you  
20 were talking to Mr. Elman?
- 21 A. No, I was -- I was just by my own then, like, the court  
22 worker and myself and Marshall and --
- 23 Q. That's the first day on the 7th?
- 24 A. Yeh, that's -- that's -- yeh, the first part and later on the  
25 lawyer come see me, like you know.

- 1 Q. All right, now you say the lawyer -- later on the lawyer  
2 came -- came to see you. Did he come to see you during that  
3 week that you were on remand; do you remember?
- 4 A. I can't really pinpoint it but I think he did, you know,  
5 at the time though.
- 6 Q. And did you have any opportunity to discuss what happened  
7 with Mr. Elman before you got to the Preliminary?
- 8 A. No, I just told him that I -- I never -- I don't -- they  
9 talk about a knife and then I threatened this guy with a  
10 knife and stuff like that, you know. They -- that I heard  
11 in the police station, you know, what the police were telling  
12 me, you know, I just told --
- 13 Q. You did talk to Mr. Elman about it before the Preliminary?
- 14 A. I must have, you know, because --
- 15 Q. Do you remember whether or not you would have told Mr. Elman  
16 what John Pratico had said to you that night?
- 17 A. No, I never -- I just -- I was more -- more interested like --  
18 worried about the charge, eh, you know, it was -- they told  
19 me that it was a serious offense I was up on, you know, and  
20 -- and I just -- I just told them that I never bothered the  
21 guy. I never threatened him nor I never bet him up, you  
22 know.
- 23 Q. During that week that you were on remand, Tom, Junior was  
24 also in gaol wasn't he?
- 25 A. Yes, he was.

1 Q. Did you have an opportunity during that week to discuss with  
2 Junior Marshall anything further concerning the Seale case?

3 A. Yeh, we talked about my -- my charge. What happened, you  
4 know, what I -- what I did. And I told him, you know.

5 Q. What did you tell Junior?

6 A. I just told him that I went -- I went down and I heard that  
7 Johnny's the one that put the finger on him.

8 Q. Johnny was going to put the finger on him?

9 A. Johnny's the one that put the finger on him.

10 Q. Johnny's the one who put the finger on him?

11 A. Yeh, he was one of the eye witness that --

12 Q. Yes.

13 A. -- that he seen him stabbing buddy here, Sandy.

14 Q. What did Junior say to that?

15 A. He said he's crazy. I said that's -- I know that. I think  
16 that's where -- they throw me in here -- he's crazy -- I  
17 went over and told the guy to go back and tell the cops  
18 he never seen nothing.

19 Q. Do you remember whether or not you would have said anything  
20 to Junior about whether John Pratico had said to you that  
21 he'd seen anything at all?

22 A. Yeh, he say -- I told him that he told the cops that he had  
23 seen -- he seen you stabbing Sandy. And that's when something  
24 about a bush or something come up that time.

25 Q. Something about the bushes?

1 A. Bushes or something that he was in the bushes or something.

2 Q. Yes, what was Junior's response to that?

3 A. He was -- he was mad that I told him that, eh. He just  
4 kept telling me that the guy was crazy. And I said he's  
5 crazy -- he's not -- that he never seen nothing. He said  
6 I never did nothing.

7 Q. At that point in time, Tom, did you -- did you think that  
8 you knew that Pratico wasn't telling the truth?

9 A. Yeh, I knew. I believed Junior. Like I said, I believed  
10 Junior more than I believed him.

11 Q. Right, and is it -- at that point in time was the only thing  
12 you had to go on as to who you believed was that you wanted  
13 to -- you preferred to believe Junior than to believe John  
14 Pratico?

15 A. Yeh.

16 Q. Okay, did you have any discussion with -- with Junior during  
17 that week when you were on remand about the stabbing itself.  
18 Did Junior give you any more information about what had  
19 happened that night?

20 A. No, just what he told me -- where they had parted at the  
21 time, like, you know, about -- about that old fellow and that  
22 -- the other guy. Same -- same thing, you know, that -- and  
23 you know his scar was -- his arm was healing up, you know,  
24 while we were in gaol and all that and he still had his arm  
25 -- and that, you know, and he told me that he'll never forget,  
you know, what happened, you know.

- 1 Q. Were the stitches still in his arm at that time?
- 2 A. Yes, they were still in his arm when we were in gaol together,  
3 you know.
- 4 Q. Yes. If you could flip to page 42 of that volume Tom.  
5 Mr. Francis -- Bernie gave some testimony yesterday that  
6 I think he got you out on bail in connection with this  
7 obstruction charge at some point. Do you remember that  
8 happening?
- 9 A. Yes, I do.
- 10 Q. Do you remember when you got out on bail?
- 11 A. Yeh, It was in the afternoon. I don't know what day it was.  
12 It was in the afternoon anyways. I seen him about sometime  
13 in July.
- 14 Q. And for how long were you out?
- 15 A. Oh, not to long. Two weeks, three weeks. Not to long.
- 16 Q. What happened?
- 17 A. I was charged for break and enter.
- 18 Q. If you want to flip to page 46. Is that the charge that you  
19 refer to as break and enter?
- 20 A. Yes, that's the charge. Yeh.
- 21 Q. That's the one?
- 22 A. Yeh.
- 23 Q. And is it -- was it as a result of this charge coming up that  
24 your bail was revoked?
- 25 A. Yes, it was. Yeh.

1 Q. Then you went back into gaol again?

2 A. Yes.

3 Q. In connection with the charge that you've been referring to  
4 a B. & E., do you remember who you were picked up by?

5 A. I know it was detectives. I don't know if MacIntyre was  
6 involved that time or Bill Urquhart. I know Bill Urquhart,  
7 MacIntyre or it was Mike MacDonald at the time. I know it  
8 was one of those -

9 Q. One of those three?

10 A. Yeh, you know.

11 Q. One of MacDonald, Urquhart or MacIntyre?

12 A. Yeh.

13 Q. Do you -- Are you able to tell us today whether or not  
14 you remember which one it was?

15 A. I can't really pinpoint who. I just remember  
16 the police wanting me again, you know and --

17 Q. The information is sworn by MacDonald.

18 A. Yeh.

19 Q. Does that help you at all?

20 A. I remember MacDonald being there, you know. Like I said  
21 he was in and out of the offices with MacIntyre and Urquhart,  
22 you know.

23 Q. You then spent some more time in gaol waiting for your  
24 -- for this charge to come up? Is that right? Your B & E?

25 A. Yes.

- 1 Q. And if you want to flip to page 44 and I want to look --  
2 hold on to that one and at the same time have a look at  
3 47. Now 47, Tom, would indicate that with the respect  
4 to the B & E charge you re-elected to Provincial Magistrates  
5 Court on October the 5th and plead guilty to that charge.  
6 That's the dwelling house offense.
- 7 A. Yeh.
- 8 Q. Do you remember doing that?
- 9 A. Yeh, I remember changing my plea to guilty on that charge  
10 there, yeh.
- 11 Q. All right. And at the same time if you go back to page  
12 44 you'll see that on the same day you re-elected on the  
13 obstruction charge and there was no evidence offered and  
14 the charge was dismissed. Do you remember that?
- 15 A. Yeh.
- 16 Q. Now, are you able to tell us why it was that you pleaded  
17 guilty to the dwelling house offense? The one that you  
18 call the B & E.
- 19 A. Just to where the officer going around in the court house  
20 that time with the Crown Prosecutor and, you know, you never  
21 had no say in court, you know, and they just --
- 22 Q. Well, help me out a little bit more on this Tom. I don't --  
23 I want you to try and give us some understanding of why it  
24 is that you would have pleaded guilty to -- to that offense?
- 25 A. Oh, yeh. I know -- They told me that, you know, plead guilty

1 to the charge and it would only be -- probably you'd get  
2 a few months out of it, eh, you know.

3 Q. At the time in October when you pleaded guilty to the dwelling  
4 house offense and the obstruction charge was dismissed, were  
5 you represented by a lawyer at that time?

6 A. I don't recall a lawyer that time this happened, you know.  
7 I was up on one charge and I was more worried about the  
8 first trial I was up on. That obstruction charge that they --

9 Q. You were more worried about the obstruction charge?

10 A. Yeh.

11 Q. Why was that?

12 A. Cause, you know, what it meant to us, you know. It --

13 Q. What did it mean to you?

14 A. That Marshall was going to bring me in court as a witness  
15 for him, you know. To tell them what happened to Johnnie and  
16 why I went to him, you know.

17 Q. Am I understanding you correctly? You're saying that you  
18 were more worried about the obstruction charge because you,  
19 I paraphrase this, but you wanted to be able to be at Marshall's  
20 trial, is that what you're saying?

21 A. Yeh.

22 Q. And why was that?

23 A. To be a witness for him that one of the eye-witnesses weren't  
24 -- wasn't telling the truth.

25 Q. And how did you know that that eye-witness wasn't telling the

1 | truth?

2 | A. Well, Marshall kept telling me that he never did it and I  
3 | believed him, you know, and, you know, he told me what  
4 | happened over and over again, you know.

5 | Q. So on October the 5th when you plead guilty to the B & E  
6 | offense, did you have any discussions yourself with the  
7 | Crown Prosecutor or the police about what was likely to  
8 | happen to you if you pleaded guilty?

9 | A. I remember somebody saying you'll just get two or three  
10 | month out of it, you know.

11 | Q. Were you told that?

12 | A. Yeh, I was told that by one of the police, you know.  
13 | Guilty charge and, you know, and you'll probably get two, three months  
14 | out of it, you know.

15 | Q. And are you certain, today, that you were told that before  
16 | you changed -- before you pleaded guilty to that offense?

17 | A. Yes, because I was on probation at the time, you know,  
18 | and I was -- I figured, you know, two or three months the  
19 | most I would get cause I was never in gaol any length  
20 | of time, like, months or something like that. You know  
21 | I was just on remand. I was in gaol. I was in and out, out  
22 | of lock-ups, you know.

23 | Q. Do you remember any discussion, Tom, about -- to the effect  
24 | that if you pleaded guilty to the B. & E. charge that the  
25 | obstruction charge would be withdrawn? Do you remember

1 anything about that at all?

2 A. I remember -- I remember the evidence in the obstruction  
3 charge and everything, you know, and I, you know, I understood  
4 the lawyer -- what the lawyer had to say and, you know, the  
5 Crown about the evidence they had on me and all that, you know,  
6 and plus, you know, I was told that case would be dismissed  
7 and I understood that there was not -- there was no evidence  
8 in their courts that I -- there was any way there was any  
9 violence used or -- or --

10 Q. Do you remember any discussion around this time, around  
11 October the 5th, that if you pleaded guilty to one the  
12 other one would be withdrawn? Were you part of any conversation  
13 about what was going to happen?

14 A. No. No I wasn't. I was never --

15 Q. Other than you indicated to me a couple of minutes ago that  
16 somebody said to you well, if you plead guilty to this you  
17 get two or three months.

18 A. Yeh, I just seen police officers going to the Crown with  
19 papers, you know, and, you know, the Crown going to the  
20 -- going up the Judge and reading out papers to each other  
21 and going back and stuff like that, you know.

22 Q. Did you know on that day, on October 5th, what was going on?  
23 Did you know that the obstruction charge was going to be  
24 withdrawn and in turn you were going to plead guilty to the  
25 other one?

- 1 A. No, I just wanted to get out of there, you know, get it  
2 over with and, you know, so that's why I figured, you know,  
3 I'd -- give me two or three months, you know, I'll be still  
4 around for --
- 5 Q. You'd still be around for what? For the trial?
- 6 A. Junior Marshall's trial, eh. It was going up on Supreme  
7 Court in November, you know.
- 8 Q. And do you have any memory at all as to what happened with  
9 respect to withdrawing the obstruction charge?
- 10 A. No, I don't.
- 11 Q. Don't remember anything about that?
- 12 A. Don't remember nothing about it.
- 13 Q. Were you surprised when you got two years?
- 14 A. Yeh, I was. You know, I was.
- 15 Q. Why were you surprised?
- 16 A. I was only about 16, 17 and I was -- I had never really did  
17 length of time, you know.
- 18 Q. Had you ever been in a Federal Penitentiary before?
- 19 A. No, it was my first time.
- 20 Q. And did -- You expected to do some time?
- 21 A. I expected some time in the county gaol, like you know.
- 22 Q. What did you think about going back to the county gaol?
- 23 A. Well, I knew Indian people that were in there and, you know,  
24 I wasn't -- I wasn't scared or-- I knew I would -- You know,  
25 Indian people hung together and they more or like mingle with --

- 1 together, you know, and --
- 2 Q. And there were other Indian people in the county gaol  
3 anyways was there?
- 4 A. Oh, yes. You know there was -- half the gaol was full  
5 that time, like you know.
- 6 Q. With Indians?
- 7 A. Indians, yeh.
- 8 Q. The document that we've had marked already as exhibit 70  
9 which is the parole conditions that I handed out to you  
10 a few minutes ago. Tom, I'm going to show you a document  
11 we've had marked exhibit 7. Do you recognize what that  
12 is?
- 13 A. Yes, I do.
- 14 Q. And is that your parole conditions after you spent time  
15 on the B. & E. charge?
- 16 A. Yes.
- 17 Q. On the second page of that it says  
18 Report to police. Report to supervisor.  
19 Are you able to tell us where it was that you were supposed  
20 to be reporting?
- 21 A. Yes, to the City Police. Sydney Police Station down there.
- 22 Q. Sydney Police Station. So you weren't reporting as a condition  
23 of your parole to anybody on the Reserve?
- 24 A. No, I had a Parole Officer that time and I had to -- like the  
25 Court Worker, you know, he kept tabs with my Parole Officer and

- 1 | the John Howard Society at that time.
- 2 | Q. Right. And when you were keeping contact with these people  
3 | the location you would go to would be off the Reserve, is  
4 | that correct?
- 5 | A. Yes, I had to go in town to report.
- 6 | Q. And on the first page of exhibit 70 on the left hand top  
7 | it -- one of the conditions of parole is  
8 | To refrain from the use of all intoxicants.
- 9 | A. Yeh.
- 10 | Q. In other words you weren't to drink.
- 11 | A. That's right. I know.
- 12 | Q. Right. Did you discuss that condition with anybody at the  
13 | time?
- 14 | A. No, I never -- They just -- just -- when they said alcohol was  
15 | involved in my case and all that, you know, and I was sentenced  
16 | to the institution, to the Federal prison there and said more  
17 | likely if you were sober none of this would have taken place,  
18 | you know.
- 19 | Q. Yes.
- 20 | A. While I was in the institution there.
- 21 | Q. Do you remember at time of the -- on October the 5th when  
22 | you got the two years, do you remember whether anything was  
23 | said in the court room about whether there ought to be a  
24 | pre-sentence report in connection with this offense?
- 25 | A. No, I figured the court probably knew I was already on two

- 1 | years probation, you know, and, you know, it was  
2 | one of the things that I wasn't supposed to be back in that  
3 | court house, you know or in front of that judge, you know.
- 4 | Q. You thought the judge already knew who you were?
- 5 | A. Yeh, he already knew who I was and, you know, the people I  
6 | chummed around with, you know.
- 7 | Q. So there was no mention made of any kind of pre-sentence  
8 | report?
- 9 | A. No, there was never -- never heard no -- nothing like that,  
10 | you know, just --
- 11 | Q. When you got out on parole in the following July, did you  
12 | deal then with this Mr. Smith? Was that your Parole  
13 | Supervisor?
- 14 | A. Yeh. Yes, he was. Yeh.
- 15 | Q. John Howard Society?
- 16 | A. Yes.
- 17 | Q. How did you feel you were treated by the John Howard Society?
- 18 | A. They were pretty good, you know, and they asked -- well they -  
19 | well, when I went out for my parole that time was no bad  
20 | deals from Reservation, you know. They wanted me back home  
21 | and my family wanted me back home and as far as sitting  
22 | on it, there was no -- just reporting to the John Howard  
23 | Society and all that and I had to -- I had a Parole Officer  
24 | I had to go up to and all that, you know.
- 25 | Q. Was that Mr. Smith or was he your supervisor?

1 Q. It was Brian Smith, my Parole Officer.

2 A. Right. And you felt you were treated fairly by John  
3 Howard Society?

4 A. Oh, yeh. I was, yeh.

5 Q. By the time you got out in July of 1972 had Junior Marshall  
6 arrived at Dorchester at that point?

7 A. I was in Springhill along -- and I heard on the radio that  
8 he was found guilty of the charge.

9 Q. And that would have been in November?

10 A. That would have been November, yeh. I wasn't --

11 Q. Did you keep in touch with Junior at all following his  
12 conviction to the time you got out in July?

13 A. Yes, I was keeping in touch with him when I was up -- when  
14 I was in Dorchester and when he was still in the county  
15 gaol waiting for his trial to come up I was still in contact  
16 with him through letters, you know, and --

17 Q. You were writing back and forth?

18 A. Yeh, we were.

19 Q. Was he writing to you or were you doing all the writing?

20 A. We were writing back and forth. You know, he kept telling  
21 me that I should be -- I don't know -- he's going to  
22 try to get me up as my witness, you know, as to what  
23 happened between me and Johnnie and all that, you know. So  
24 I kept writing to him, "don't forget to get the lawyer to  
25 contact me" or get, you know, "the courts to bring me back down

THOMAS J. CHRISTMAS, by Mr. Spicer

1 and to testify.

2 Q. To Sydney to -- for the trial?

3 A. Yeh.

4 BY MR. CHAIRMAN:

5 Q. Were you in Dorchester all the time or did you move over  
6 to Springhill?

7 A. I was in Dorchester for a length of time. I think it was  
8 30 days or something like that and I was transferred down  
9 from Dorchester to Springhill.

10 BY MR. SPICER:

11 Q. And were you in Springhill when you were finally released  
12 in July of '72?

13 A. Pardon?

14 Q. When you got out on parole --

15 A. Yes, I was in Springhill.

16 Q. You were released from Springhill not from Dorchester?

17 A. Yes, I was in Springhill.

18 Q. Just a couple of other things, Tom. There was some suggestion  
19 in some of the earlier testimony that, and it was denied I believe  
20 that one of the police officers, Wyman Young, I think it  
21 was suggested to him during his testimony, that he had thrown  
22 a billy club at you and hit you on the back. Do you have  
23 any recollection of that incident?

24 A. Yeh, I was standing on -- Well, they come up to me in the  
25 early part of the evening, like, a little earlier. They come

1 to me, the police, and they told me to get out of the park and  
2 get --

3 Q. Do you remember when this happened? Was this prior to  
4 the Sandy Seale thing?

5 A. Yes, before that. Yeh.

6 Q. Before that?

7 A. Yeh. And I was told to get out of the park. Go home, you know  
8 and so I left and I walked around and there was a bunch of  
9 people around by the tracks by the park.

10 Q. Yes.

11 A. So I came over there and I was looking around for some  
12 of my friends there, you know. So we were all standing around  
13 and I asked for some guys that I knew, like, some people  
14 were they were at and they didn't know. They -- Well, they  
15 didn't know where --

16 Q. The police came and asked you if you knew where some people  
17 were and you didn't know where they were?

18 A. No. I was asking where some of my friends were.

19 Q. Oh, I see. Okay.

20 A. You know, and that's when the police arrived. There was  
21 a bunch of girls and I think there was a fight or something  
22 early in the park that evening with two White fellows fighting  
23 at the park that time or close by that area, you know, and  
24 so all the people were all standing around, you know, and so  
25 I was standing there and the police car stopped and they see me

- 1 in the crowd again and he hollered to me.
- 2 Q. Who's he now?
- 3 A. One of the cops.
- 4 Q. Do you know who it was?
- 5 A. Wyman Young.
- 6 Q. Yes.
- 7 A. He hollered to me. He said hold it, didn't we just send you  
8 home a while back and I looked at him and he was coming out  
9 of the car and I was telling the people to move, you know.  
10 I started running down -- I start running cause they were  
11 front of me like. Instead of running towards that park I --
- 12 Q. Was he chasing you?
- 13 A. Yeh, he come and started chasing me.
- 14 Q. Yes, and what happened?
- 15 A. That's when I got struck with the billy bat.
- 16 Q. How did that happen?
- 17 A. One of the -- I guess the police officer threw it at me and  
18 hit me on the back and I hit a tree. I fell on the ground  
19 and I was getting up and that's when he grabbed ahold of  
20 me and threw me back on the ground and --
- 21 Q. Who's he now?
- 22 A. That police officer. Wyman Young.
- 23 Q. Were you taken to the police station?
- 24 A. Yes, I was charged for resisting arrest and I think assaulting  
25 the police. I was -- cause the way he was handling me taking

1 me to the police car, you know. I had long hair at that time  
2 and he had me by the hair and he was like, more like, dragging  
3 me back to the -- He was telling that -- weren't you  
4 already told to leave the area and all that, you know. Why  
5 don't you people listen and all that. And I was telling  
6 him I -- Well, I never did nothing wrong to start with, you  
7 know, why should leave, you know, and that's when we were--  
8 we were given little booklets from the Indian Reserve that  
9 time about --

10 Q. I'm sorry I missed that?

11 A. I said we were given little booklets about how police handle  
12 you and all that, you know like, about the law and all that.

13 Q. Who gave you these booklets?

14 A. The people from the Reserve. I don't know if it was Roy Gould tha  
15 time who gave it to us or Bernie Francis, you know. It was  
16 little white booklets they gave and told us what -- you know,  
17 all the charges, you know. How to be -- like, handle the  
18 police or how to come out with police and all that, you know.

19 Q. Was this a book of information then that was provided to you -

20 A. Yeh.

21 Q. -- by people on the Reserve?

22 A. Yes, it was.

23 MR. SPICER:

24 Okay. Thanks very much.

25

1 BY MR. CHAIRMAN:

2 Q. Mr. Christmas did you give evidence at the trial of Junior  
3 Marshall?

4 A. No, I never did.

5 BY MR. SPICER:

6 Q. Just one point I forgot, Tom. I'd asked you earlier if --  
7 about this -- over the course of the years you've accumulated  
8 criminal record which I'd like put in evidence?

9 A. Yes.

10 MR. CHAIRMAN:

11 When counsel are cross-examining witnesses I would appreciate if  
12 they would identify themselves to the witness and indicate the  
13 person for whom they are appearing.

14 BY MS. DERRICK:

15 Q. Mr. Christmas, my name is Anne Derrick and I represent  
16 Junior Marshall.

17 A. Yes.

18 Q. You were saying earlier in your testimony that before you  
19 went to school as a young child you had spoken Micmac in  
20 your home. Is that correct?

21 A. Yes.

22 Q. And that would have been the only language spoken in your  
23 home at that time. Is that correct?

24 A. Yes.

25 Q. So you must have had considerable difficulty understanding

- 1 | what went on in the classroom when you started school. Is  
2 | that your recollection?
- 3 | A. Yes, that's what I say. You had to more like listen and  
4 | sort of -- more of like listen and pick up.
- 5 | Q. You tried to pick it up by listening?
- 6 | A. Yeh, just by listening you picked it up, like you know, what  
7 | was going on around you.
- 8 | Q. Is that right? And was that hard for you to do at the beginning?
- 9 | A. Yeh, it was, you know.
- 10 | Q. Mr. Christmas you've also told us that you remember as a  
11 | teenager that there was bumming going on in the park. Is  
12 | that correct?
- 13 | A. Yes.
- 14 | Q. Bumming for small amounts of money?
- 15 | A. Yes, that's true.
- 16 | Q. In your experience was it that teenagers hanging around in  
17 | the park would first of all try and bum money from each other?  
18 | From their friends? People that they knew?
- 19 | A. Yeh, people you knew.
- 20 | Q. People that you knew?
- 21 | A. Yeh.
- 22 | Q. Was it mostly Indian kids that were hanging around the park  
23 | when you were a teenager?
- 24 | A. Pardon?
- 25 | Q. Sorry. Was it mostly Indian kids that were hanging around the

1 park when you were a teenager?

2 A. No, there was White kids there and coloured kids, Indian  
3 kids, you know.

4 Q. And so there was a -- there were a variety of kids that  
5 would use that has a hangout?

6 A. Yes. Yeh.

7 Q. Now, you've told us that there was alledgedly a headstone  
8 incident for which you were picked up for questioning?

9 A. Yes.

10 Q. And on the occasion of your being questioned at the police  
11 station, is it your recollection that Sergeant Urquhart,  
12 Sergeant MacIntyre and Detective M. J. MacDonald were  
13 around the police station during that day?

14 A. Yes.

15 Q. And did each one of them speak to you on various occasions  
16 throughout the day?

17 A. Yes, they did. Yeh, they were taking us out, taking us  
18 back in the lockup and --

19 Q. So you would have spoken to each one of those men at some  
20 point during that day?

21 A. Yeh, we were all --

22 Q. Is that correct?

23 A. Yes.

24 Q. And was it after you had been told by one of these police  
25 officer that you're friends had fingered you for this incident

- 1 | that you gave a statement to the police?
- 2 | A. Yeh.
- 3 | Q. Do you remember which police officer that was that told  
4 | you your friends had put the finger on you?
- 5 | A. Well, MacIntyre was doing all the questioning, like. He  
6 | had the papers and he was telling me that your friend just  
7 | told us that you and so and so did -- just did this and that,  
8 | you know, and --
- 9 | Q. So it was Sergeant MacIntyre who said this to you?
- 10 | A. Yeh.
- 11 | Q. I just want to ask you some questions about your relationship  
12 | with John Pratico. Prior to Mr. Seale being stabbed is  
13 | it correct that you had known John Pratico for about a year?
- 14 | A. Not about a year. About -- for almost a year anyway. Not  
15 | a -- after a year, you know.
- 16 | Q. And you and the other Indian boys had had a very friendly  
17 | relationship with him, is that correct?
- 18 | A. Yes. Yeh, I did. Yes.
- 19 | Q. And that relationship involved your sharing things with him.  
20 | Is that --
- 21 | A. Yes, I recall taking him home and lent him some of the  
22 | clothes I had and he ate off my table, you know.
- 23 | Q. So he went home for meals and --
- 24 | A. Yeh.
- 25 | Q. -- was given some of your clothes?

- 1 A. Yeh.
- 2 Q. Do you remember also sharing cigarettes with him and liquor?
- 3 A. Oh, yeh.
- 4 Q. And also paying his way into dances?
- 5 A. Well, not paying his way, like you know, if he was short so
- 6 much, you know, whatever we had, you know, we --
- 7 Q. So pooling your money --
- 8 A. Yeh.
- 9 Q. -- to assist him to go to a dance as well?
- 10 A. That's right, yeh.
- 11 Q. And was it true that at times you also protected him from
- 12 other people bothering him?
- 13 A. Yeh, the other people -- if another strange, like, kids
- 14 who I didn't even know bothered him or something like that
- 15 you know.
- 16 Q. Sorry. I missed that Mr. --
- 17 A. Like, other kids that didn't know him, like, bothered him or
- 18 we didn't know them, you know, and they come around and started
- 19 trouble like, people that we knew, eh, you know.
- 20 Q. But you would stick up for him? Is that correct?
- 21 A. Yeh, we'd stick up for him. Yes.
- 22 Q. And was it your experience that you knew him to stretch
- 23 a story to impress you?
- 24 A. No, I never -- never took him as that. He was just a little
- 25 slow and it was more like he was more scared and, like you know,

- 1 he was always looking at us and, you know.
- 2 Q. Did you ever know him to exaggerate things or tell you lies?
- 3 A. Well, he said he got -- he had a few fights and all that, you  
4 know, and there was -- He said he took on three or four guys,  
5 you know, and--
- 6 Q. But that wasn't true.
- 7 A. That wasn't -- We can tell, you know, the guy never -- I  
8 don't think he ever fought --
- 9 Q. So you -- Sorry.
- 10 A. He never fought before like, you know.
- 11 Q. You knew some of the things he told you weren't true?
- 12 A. No, they were true. Yeh.
- 13 Q. Now, on May 28th did you go to the dance at St. Joseph's?
- 14 A. Yes, I did go.
- 15 Q. And is there a lumber yard near St. Joseph's church?
- 16 A. Yeh, there was one down by -- down by the park there, yeh.
- 17 Q. Can you indicate where that would be on this map that you  
18 have behind you of roughly where it would be?
- 19 A. Right by the tracks there. Around that area here.
- 20 Q. Beyond George Street.
- 21 A. Yeh, right around there.
- 22 Q. Is that what you're indicating?
- 23 A. Yeh.
- 24 Q. Were you aware that John Pratico was taken to that lumberyard  
25 on that night of May 28th because he was drinking and that

- 1 he was sick there?
- 2 A. No, I don't recall that.
- 3 Q. You don't recall hearing about that?
- 4 A. No, I never.
- 5 Q. And were you involved in looking after him in any way that  
6 night?
- 7 A. No, I was hanging around with girls from the Pier area then.
- 8 Q. Did you see him at all on that evening?
- 9 A. I don't know if I seen him on that night or not, you know,  
10 but I was only mostly dancing.
- 11 Q. So you can't recollect seeing him that evening?
- 12 A. No, I can't.
- 13 Q. You saw Mr. Marshall -- Junior Marshall later that evening  
14 at the Reserve and you say that there were other people  
15 around when you were talking with him. Is it possible  
16 that Stuart Marshall was one of those people?
- 17 A. Well, he could be, you know.
- 18 Q. And could it have been Stuart Marshall that, in fact, cut  
19 the cuff of Junior Marshall's jacket to relieve the pressure  
20 on this arm?
- 21 A. I guess. I think that's where we got the knife from. Stuart  
22 Marshall.
- 23 Q. You got the knife from Stuart Marshall?
- 24 A. I think so, yeh.
- 25 Q. Do you recollect whether it was Stuart Marshall or yourself

1 that actually cut the jacket?

2 A. No, we were both standing, like you know, standing like this.  
3 Like, you know, we were talking first and then he told me  
4 about his arm and he was trying to put his jacket up over  
5 the bandage that was -- like it was bandaged up, eh. And  
6 his arm was like -- the bandage and sleeve was caught in  
7 the middle, like, and we were trying to get it up more,  
8 like, you know, we were --

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1 Q. So you and Stuart were helping him?

2 A. Yeh, we were helping him.

3 Q. And what did you use, just an ordinary kitchen knife, a  
4 paring knife?

5 A. Just an ordinary jack knife.

6 Q. Did you go down to the park later with Junior that night to  
7 look for the two men he'd described?

8 A. No.

9 Q. Throughout that week before Junior Marshall was arrested, did  
10 you hear people on the Reserve saying that if the police didn't  
11 find out who was responsible for Sandy Seale's murder that they  
12 were going to blame Junior Marshall?

13 MR. MURRAY:

14 Just a sec. Perhaps if someone specific made that remark she could  
15 specifically refer him to that remark.

16 BY MS. DERRICK:

17 Q. Do you recall Kevin Christmas having said that?

18 A. I don't -- I don't really recall it, you know.

19 Q. And you don't recall being there when it was said to Junior  
20 Marshall?

21 A. No, I don't.

22 Q. When you saw John Pratico during the week before Mr. Marshall  
23 was arrested, on no occasion did he tell you that he had  
24 seen anything in the park on the night Mr. Seale was stabbed,  
25 did he?

1 A. No.

2 Q. Do you recall Mr. Marshall -- Junior Marshall telling you that he  
3 was going to leave the Reserve, and that was the last time you  
4 saw him before he was arrested? Is that correct?

5 A. Yeh, we were -- we were sitting sitting in front of a -- we  
6 were sitting on Roy Gould's lawn at the time. We were talking  
7 there and he was telling me that his family and him were going t  
8 Whycomomagh til you know, this thing. They found that after  
9 the stabbing and you know, he never -- I know I never  
10 thought that they were going to charge the guy myself, eh, you  
11 know.

12 Q. That was sometime on that Friday, June 4th, was it?

13 A. Yes, it was before that Friday, you know.

14 Q. Had Junior told you about anonymous telephone calls to the  
15 Marshall home?

16 A. Yeh, he told me that he was getting -- his mother was getting  
17 upset because people were calling up and --

18 Q. So he told you that his mother was frightened by these calls?

19 A. Yeh, she was like more --their mother was more upset and scared.

20 Q. Mr. Christmas, when you were serving time in Springhill, I  
21 believe you told us that you were corresponding with Junior  
22 Marshall, (Is that right?) writing letters back and forth to  
23 him?

24 A. Yeh.

25 Q. Was there an occasion when you were stopped from doing that?

- 1 | A. Yes, that was -- that's the night -- that's later on after I  
2 | was released I was brought back to prison for violating my  
3 | parole and the City Police, MacIntyre and Urquhart again, they  
4 | were -- they had me up for -- Well, there was a guy robbed on  
5 | the Reserve. A White man was robbed on the Reservation, and  
6 | in the earlier part of the evening-I knew this woman that was  
7 | drinking with the man, so me and Artie Paul went over and we  
8 | had a few drinks with them and we left, and --
- 9 | Q. And did you end up getting charged for an offense as a result of  
10 | this?
- 11 | A. I was questioned about it. This man woke up that morning and his  
12 | money was missing. I don't know if he was -- they say he was  
13 | assaulted or -- I don't think he was assaulted or nothing like  
14 | that and they asked who was -- who was he -- who does he  
15 | remember last being with him or -- and the woman -- that Indian  
16 | woman told the police that it was me and his brother were there  
17 | the earlier part of that evening.
- 18 | Q. So this resulted in a violation of parole?
- 19 | A. Yes.
- 20 | Q. And you went back to prison?
- 21 | A. I went back for fifteen months.
- 22 | Q. And you continued to correspond with Junior Marshall?
- 23 | A. Yeh, well, I was in Springhill and he was in Dorchester.
- 24 | Q. Were you prevented from doing that at that time?
- 25 | A. I was writing letters to him back and forth from Springhill,

1 | you know, and I was writing back home, you know, to my  
2 | parents and my sisters and all of a sudden they told me that  
3 | there was no more writing to other inmates in other gaols, and  
4 | I asked them why and they said, "You got to be really close to  
5 | him like". You got to be a brother to him, you know. And they  
6 | said -- I asked them, you know, what about being like a first  
7 | cousin or relations and all that, you know, and he told me,  
8 | no. He said, "You just can't go on writing letters to him  
9 | any more". So I didn't think nothing of it, you know. I said,  
10 | "All right, you know". But I had ways of getting the letters up  
11 | there anyway, you know, like --

12 | Q. But officially you weren't permitted to continue writing to  
13 | Mr. Marshall?

14 | A. No, I wasn't permitted to write letters to Marshall.

15 | Q. You were eventually released from prison, and in 1979, did you  
16 | visit Junior Marshall in prison?

17 | A. In '79? No, I never -- I never visited Marshall in prison.

18 | Q. You didn't -- You didn't at any time didn't visit --

19 | A. I was -- just when I was transfered from Springhill to a Farm  
20 | Camp in Dorchester, that's the only correspondence I had with  
21 | the guy since he was arrested and convicted.

22 | Q. Did you see him on that occasion?

23 | A. No, we never seen each other. We spoke to each other though,  
24 | but we were told -- I was told to get away from the wall that  
25 | time, and not to --

1 Q. You just had a conversation at that --

2 A. Yeh, we just had a little talk and, you know, he was -- he was  
3 just telling me what's going on and all that and I told him,  
4 I don't know, you know. He said, "What are you doing up  
5 here"? I said, "I don't know". "I didn't want to come up  
6 here". "I was just put here, you know". Because I was -- I was  
7 transfere~~d~~ from out of Springhill where I liked it. I told them  
8 that I didn't want to -- I wasn't a farmer, you know. I didn't  
9 know nothing about farm work and all that, you know, and  
10 they said, "Well, then it's the best time to take it, you know;  
11 you'll learn something, you know".

12 MS. DERRICK:

13 Okay. Thank you, Mr. Christmas.

14 BY.MR. MURRAY:

15 Q. Mr. Christmas, my name is Donald -- Donald Murray and I'm  
16 here representing John MacIntyre this morning.

17 A. Yes.

18 Q. There was some evidence this morning from Commission Counsel  
19 that in the week between the stabbing of Sandy Seale and the  
20 time when Donald Marshall was charged that you were in the  
21 company of John Pratico and I believe you said, down at the  
22 park?

23 A. Yeh, we were hanging around down by the park, you know.

24 Q. And would that have been two or three times, two or three  
25 different occasions when you saw John Pratico down at the park?

1 A. It might have been, yeh, two or once anyway, you know.

2 Q. And is it possible that during that week John Pratico was  
3 in your home?

4 A. No, it was before that.

5 Q. So you're saying that he did not -- was not in your home between  
6 the time of the stabbing and the time when Donald Marshall was  
7 charged?

8 A. No, he was in my house before the stabbing. He was -- We were  
9 already hanging around and that's before the stabbing took  
10 place that he was -- he arrived up on the Reservation and  
11 come to my place, you know, and --

12 Q. I'd like you to look at Exhibit 48 which you have in front of  
13 you, page 29. On that page Mr. MacNeil is questioning John  
14 Pratico and about line 20 --

15 A. Pardon?

16 Q. About line 20 which is about halfway down the page.

17 A. Yes, I see.

18 MR. CHAIRMAN:

19 Which page -- Which page are we on?

20 MR. MURRAY:

21 We're on page 29 of Exhibit 48 which is page 8 of the transcript  
22 of the Preliminary.

23 BY MR. MURRAY:

24 Q. Why don't we start with the question:

25 Q. You and Tom Christmas are very friendly?

1 A. Yes, sir, we were.

2 Q. Up until when?

3 A. Until Friday.

4 Q. Friday morning or Friday night?

5 A. Friday evening.

6 And I believe at that time during this he's referring to the  
7 time when you and he met on his doorstep?

8 A. Yeh.

9 Q. Q. Until he came to your house?

10 A. Until he came to my place, sir?

11 Q. When were you at the Reserve,  
12 Membertou, on, was it Wednesday  
of that evening, that week?

13 A. That week, Wednesday.

14 Q. You had dinner at his home?

15 A. Yes, sir.

16 Does that assist your recollection as to whether John Pratico  
17 was in your home during that week?

18 A. That's what Johnny Pratico is telling the police. I don't --  
19 You know, I know when he came over and I had him in my place.  
20 But I don't know if it was that week. I'm saying I don't know  
21 if it's that week or that year, but I know that he was in the  
22 house and I brought him home with me and, you know, I -- I  
23 was -- I trusted the guy that much to bring him in my home,  
24 you know, and --

25 Q. Yes. Certainly, and if I understand your evidence this morning

- 1 and the answer you've just gave, it's possible that he had  
2 been up there that week?
- 3 A. Yeh, it's possible he was -- I know he wasn't up that week,  
4 you know.
- 5 Q. I thought that's what you just said that it's possible that he  
6 could have been up that week?
- 7 A. No, no, I said it was possible in that -- in that -- in that  
8 year in between. I know it wasn't that final week, you know,  
9 because before that -- before this incident took place we were  
10 still hanging around and he was already on the Reservation.
- 11 Q. Yes.
- 12 A. He was already up there before this incident took place, you  
13 know. We already knew Johnny.
- 14 Q. All right. Was the topic of Donald Marshall, Jr.'s involvement  
15 in this stabbing in the park quite a subject of conversation  
16 between you and your friends?
- 17 A. Yeh, it was pretty -- you know, we kept to ourselves, you  
18 know, around the Reserve, you know, and we never -- we never  
19 spoke to it with no White people, you know, or --
- 20 Q. But when you were in a group you would discuss certain aspects  
21 of what has happened as you understood?
- 22 A. Like, you know, we understood what Marshall told us and that's  
23 what, you know -- We believed him. He told us that two guys  
24 came up to him and something about a cigarette being bummed or  
25 he asked for a cigarette or a light, you know, and he described --

1 He said, "I have" -- "I got something for you", and that's  
2 when the stabbing took place.

3 Q. And my question to you, sir, is whether you after having  
4 discussed it with Donald Marshall on the night of the stabbing,  
5 would have discussed it among your friends when you were within  
6 a group?

7 A. Well, I didn't, you know, myself, eh, you know. I kept it to  
8 myself, you know, and I just waited, you know. I -- The results  
9 like -- you know, we believed -- we didn't figure that -- I  
10 didn't figure that he was ever going to get charged for this  
11 murder.

12 Q. Was the subject discussed?

13 A. I don't know if it was discussed or not, no.

14 Q. So your recollection from that last answer is you can't tell us  
15 whether or not it was discussed? Your recollection is that it  
16 was not but you can't say that it was not?

17 A. Pardon? I can't --

18 Q. Your recollection as far as I take it from your answer is that  
19 you cannot recall whether or not it was discussed, but --

20 A. Like I say it might have been with other people. I don't know,  
21 you know. What I -- What Marshall told me, I just believed him  
22 and then I just told him no, we'd wait for the results of what  
23 comes out, you know, like he told us that his friend was badly  
24 hit, you know, and it happened so quick, you know, it was just  
25 a matter of -- in a matter of seconds this went down, you know.

- 1 Q. You mentioned in discussing this incident with the gravestone  
2 that you and five or six friends were kept in the lockup and  
3 one would go out at a time and then you would come back and  
4 discuss in Micmac what had been going on in the other rooms  
5 outside the lockup. Is that correct?
- 6 A. Yeh, that's what we were saying.
- 7 Q. Was that a common process among -- along Native -- Native  
8 boys who were picked up?
- 9 A. Yes, it was.
- 10 Q. And the process, I take it, was something to the effect of,  
11 let's find out what the police are looking for and we'll discuss  
12 it among ourselves to make sure that our backs are covered?
- 13 A. Yes, we're -- we're discussing that in the lockup as we were  
14 coming in.
- 15 Q. Yes.
- 16 A. We were meeting each other and we were telling each other what's  
17 going on in Indian because, you know, the police officer won't  
18 understand what you're saying. They're telling us to shut up  
19 and speak when you're spoken to, you know, and we're going on  
20 telling them then what they want to know, like, you know,  
21 what they're asking us -- what they want. We're telling them --  
22 I'm telling my friend as I'm going in, go out and ask the officers  
23 what they want, you know. And they say, "Well, don't worry  
24 about it, you know." We'll see -- We'll get to the bottom of  
25 this.

- 1 Q. Now you would often go through this process I suggest with --  
2 any time you had an involvement with the police you would  
3 discuss it among your friends to try to protect each other?
- 4 A. See we're -- Yeh, if we're picked up, you know, and if we  
5 know what we're in there for -- If we're in there for being  
6 drunk, you know, it's just the matter of a drunk fine or five  
7 or ten days in gaol, the most you can get out of it.
- 8 Q. Right.
- 9 A. All right. But --
- 10 Q. But something more serious --
- 11 A. But, you know, there's things where we were brought in -- we're  
12 brought out of the lockup and they say, the detectives--the detectiv  
13 want to talk to you about something. And then they'd bring  
14 you in the office and they'd question you as to where were you  
15 last night, you know. We went on this area of town or down the  
16 Northend or other parts of town, the Ashby area and all that,  
17 and they asked me where were you -- where like -- Myself,  
18 where I was, I'd tell them I was down the Pier. And they'd  
19 say, "Well, how did you get home from the Pier", and all  
20 that, and I'd just tell them that I went through the tracks,  
21 you know. They'd say, "Why didn't you take the bus over"?  
22 "Why didn't you walk on the street?", and all that. I'd say,  
23 "Well, it's just faster going home through the tracks", you  
24 know, and I was more avoiding the cops. If I walked on the  
25 street and the police cruiser drove by they'd ask me what was

- 1 I doing on that part of town, you know, and I said, "I was  
2 avoiding the streets as much as possible."
- 3 Q. When you met John -- Donald Marshall, Jr., that night of the  
4 stabbing with the others, whoever they were, and you don't  
5 recall who they were I take it?
- 6 A. Well, there was girls and guys there, you know, but I don't --  
7 I can't really pinpoint names, you know, like I said.
- 8 Q. When you met him that night--I take it that you did go through  
9 that same process with him of making sure that his position  
10 was protected? You asked him questions about what had happened  
11 to try to make clear in his own mind and yours what the  
12 evidence was?
- 13 A. Well -- Yeh, well, what he told me, you know, like -- He told me  
14 that it was two guys that come up and, you know, they knifed  
15 Sandy and that he was pricked himself -- that he got cut in  
16 the arm and all that.
- 17 Q. Yes.
- 18 A. And I believed what he said, you know, and he told -- he described  
19 the guys, you know, the people that were -- that after they  
20 did it, he described them the best way he could because --
- 21 Q. And you discussed that with him?
- 22 A. Yes, you know, and even after -- after that I was -- When I  
23 was even in the drunk tanks after he was convicted, after I  
24 was released in prison when I was brought in drunk tanks, I  
25 looked at every old guy that walked in that gaol. I asked them,

1 | you know, if he knew Marshall or if he knew anything, but  
2 | you know, they were just in there for drunk, you know, but I  
3 | asked around, you know.

4 | Q. Specifically that night, you and Kevin Christmas perhaps and  
5 | others went through a process with Donald Marshall of asking  
6 | him questions and going into more detail and obtaining more  
7 | detail about what had happened down in the park other than the  
8 | initial things which Donald Marshall, Jr., originally told you?

9 | MR. CHAIRMAN:

10 | He didn't say that.

11 | MR. MURRAY:

12 | I'm suggesting that to the witness.

13 | BY THE WITNESS:

14 | A. Like I say, I don't recall anybody like -- or giving any more --  
15 | putting any more effects in Junior's story, like what he  
16 | already told us, you know. He told us that -- what happened and  
17 | we just, you know -- Well, we -- You know, you grew up with the  
18 | guy and you know, you hung around him day in and day out, you  
19 | knew him, you know. And you could tell the guy was scared and,  
20 | you know -- He said, "I don't know how my friend is doing".  
21 | He's still down the hospital. He said, "The police drove me  
22 | down", and he said they drove him back up, you know.

23 | BY MR. MURRAY:

24 | Q. Were you drinking that night, Mr. Christmas?

25 | A. Yes, I was drinking that night.

- 1 Q. Your major concern in going to see John Pratico on Friday  
2 night is that if he had told the story to the police --
- 3 A. None of this would have happened --
- 4 Q. Yes. If he had told the story to the police that Donald  
5 Marshall had stabbed Sandy Seale, he could be convincing in  
6 telling that story? That was your concern, was it not?
- 7 A. You know, it's just the way the guy went around, you know. You had  
8 to -- You had to know the guy. You had to hang around with  
9 the guy before you can judge him, you know. You just can't--  
10 You know how the guy was, he was pretty slow and he was more  
11 scared, you know, but he was glad that we were around him, you  
12 know. When we had cigarettes we shared with him, you know,  
13 and we told him, you know, just be yourself. Be calm. Don't --  
14 Don't act so nervous or don't be scared of us, you know.  
15 We're not going to -- If we wanted to hurt you, we would have  
16 hurt you a long time ago, you know. That's what we meant like,  
17 you know. We wouldn't have wanted you hanging around with  
18 us.
- 19 Q. My question to you, Mr. Christmas was on the Friday evening, you--  
20 were you concerned that John Pratico might be convincing in  
21 telling a story about Donald Marshall, Jr.?
- 22 A. I know he was. I know he was pressured. I know he was  
23 pressured into --
- 24 Q. Did you know that he might be convincing?
- 25 A. No, I figured that he wouldn't -- he shouldn't anyway.

- 1 | Q. Yes. Yesterday in evidence there was a comment that you may  
2 | have made a remark that John MacIntyre was not after the truth  
3 | but was after Indians. Do you recall ever making such a  
4 | remark?
- 5 | A. It would seem to us he was, like, you know, every time we  
6 | were picked up --
- 7 | Q. That was not my question, Mr. Christmas. Do you recall ever  
8 | making such a remark?
- 9 | A. About MacIntyre?
- 10 | Q. Yes.
- 11 | A. Yeh, I recall it.
- 12 | Q. When was that, sir?
- 13 | A. When we were being questioned about charges or things, you know.
- 14 | Q. When you were being questioned about what?
- 15 | A. Anything that happened in Sydney like -- like that night or --
- 16 | Q. Well, I'm looking for a time and the date. If you can give  
17 | me any more specific --
- 18 | A. I can't give you the time or date, you know. That happened  
19 | in sixteen, seventeen years ago.
- 20 | Q. Can you give me a place?
- 21 | A. You know I can't remember dates that good, you know, but I  
22 | mean days, but as far as being told and, you know, I can --  
23 | I remember being told, you know, if it wasn't for you Indian  
24 | people none of this would be happening.
- 25 | Q. So what I gather is, is that was a general impression more than

- 1 something specific arising from one incident?
- 2 A. Yes, you know.
- 3 Q. Now is that a conclusion that you came to as a result of various  
4 encounters that you had with the law?
- 5 A. Pardon?
- 6 Q. Is that a result -- a conclusion you came to as a result of  
7 various encounters that you had with the law?
- 8 A. Yeh, you know, I knew -- I knew how those -- how those detectives  
9 went about their questioning and how they, you know --
- 10 Q. And would you say the same about most or all police officers,  
11 sir?
- 12 A. Just detectives that were on that year, sure, you know, that  
13 time.
- 14 Q. Just MacIntyre and Urquhart?
- 15 A. Well, I had my -- I had my dealings with MacIntyre and Urquhart  
16 right up to '78, '79, something -- I don't know.
- 17 Q. In '78 and '79?
- 18 A. Something like that. And when he retired from it --
- 19 Q. It's your evidence, sir, that you had dealings with John MacIntyre  
20 up until 1978 or '79?
- 21 A. When he was a detective, yes.
- 22 Q. Well, was he a detective in 1978 and 1979?
- 23 A. That's what I mean. I don't know whether he was a detective.  
24 He was the Chief of Police at that time, but I know one year  
25 that he made himself -- I mean he was Chief of Police and that's

- 1 | when I -- I was released on -- I was getting out of the  
2 | Correctional Centre in Sydney here and they they were involved  
3 | in that charge I was brought up on.
- 4 | Q. And how was he involved, sir?
- 5 | A. He was the one that questioned me.
- 6 | Q. In 1978?
- 7 | A. In '77, '78, yeh -- '76 or '77.
- 8 | Q. And which charge would that have been, sir?
- 9 | A. Assault causing bodily harm.
- 10 | Q. Are you as sure about that as about every other part of your  
11 | evidence that you've given here today?
- 12 | A. Yes.
- 13 | Q. Mr. Spicer introduced a copy of your criminal record and I'd  
14 | be pleased to show you a copy but I'm sure you're familiar  
15 | with it. Did you go through trial on any of those offenses,  
16 | sir?
- 17 | A. Yes, I went to -- I went to trials on -- on the charges I was  
18 | brought on. I'd plead not guilty to them. I knew more --  
19 | I knew more -- a little more -- about the law then because I was in  
20 | prison three times, you know, all together.
- 21 | Q. Yes.
- 22 | A. And I knew more about the law and how to be handled by police  
23 | or be questioned.
- 24 | Q. Yes.
- 25 | A. To -- And this I told you.

- 1 Q. When was it you first understood the difference between -- or  
2 the meaning of pleading guilty or not guilty?
- 3 A. Oh, after I got two years.
- 4 Q. After you got two years?
- 5 A. Yeh.
- 6 Q. At the time you got two years, that was the break and enter and  
7 indecent assault charge. Is that correct?
- 8 A. Yeh.
- 9 Q. Is it your evidence that John MacIntyre was involved in that,  
10 sir?
- 11 A. Yeh, he was the one -- he was the one that picked me up and  
12 I -- well, they knew themselves -- well, they -- you know, they  
13 never got no statements off me. I wouldn't -- I used to tell  
14 them whatever you got, just take it to Court and let the Court  
15 judge, you know -- I said let me -- It's not as --
- 16 Q. May I suggest to you, sir, that the investigator on that  
17 charge was M -- Michael J. MacDonald?
- 18 A. Well, it's like I say, they were in and out. You know,  
19 MacIntyre was in and Urquhart was in. Yeh, Mike -- Michael  
20 MacDonald was in, you know. They were coming in and out of  
21 that office like there was no tomorrow.
- 22 Q. Do you know Police Constables Charlie Wall and Arnold Joseph,  
23 sir?
- 24 A. Charlie Wall? It rings a bell. I heard of some Wall officers  
25 on there, yeh.

1 Q. And Arnold Joseph?

2 A. Arnold Joseph, I don't know. I don't --

3 Q. And if I suggest to you, sir, that it was those three officers,  
4 M. J. MacDonald, Charlie Wall, and Arnold Joseph that you dealt  
5 with on the break and enter and indecent assault, those would  
6 be the officers you dealt with?

7 A. Like I told you this morning like how it would come out, you  
8 know. I didn't even know about this deal and this they were  
9 talking about yesterday or this -- you know, if my charges were  
10 brought up, then they told me to turn around and plead guilty  
11 to it and, you know, you should be just -- you might get two,  
12 three months out of it.

13 Q. But my question to you, sir, was whether it was those three  
14 officers -- whether you recollect whether it was those three  
15 officers or, in fact, M. J. MacDonald, Urquhart, and MacIntyre?

16 A. Yeh, like -- like I say, you know, they were all -- you know, I  
17 don't know why you're getting these police officers involved,  
18 like these patrol -- patrol officers because that's what they  
19 were because I knew the -- I knew the Detective Division at  
20 that time was MacIntyre, Bill Urquhart, Mike MacDonald, and  
21 "Red Nick", I think they call him. Now I don't know if  
22 "Red Nick" was a detective at that time or not, but I seen  
23 him behind a desk when we were brought in for intoxicated.  
24 That's why I knew the voice and I remember "Red Nick" too there.

25 Q. Well, you were certainly in the Detective Department, but as

- 1 | to who specifically worked on this particular charge, do you  
2 | have a specific recollection today or not, sir?
- 3 | A. I just remember MacIntyre, Bill Urquhart, and Mike MacDonald  
4 | and just -- they just went to Court with it then.
- 5 | Q. You spoke this morning about being chased out of the park by  
6 | the police. At no time, I suggest, did John MacIntyre or  
7 | William Urquhart ever chase you out of the park?
- 8 | A. No, they were --
- 9 | Q. When you were chased out of the park at times it was because  
10 | of underaged drinking, was it not?
- 11 | A. Well, most of the time we weren't, you know -- It wasn't  
12 | every night we were drunk.
- 13 | Q. That's not what I -- I asked you.
- 14 | A. I know, but I -- When we were chased out of the park we  
15 | were sent home, sure, you know. We were told to get back on  
16 | the Reservation where we belonged and --
- 17 | Q. And that was because of drinking by persons under the age  
18 | of sixteen?
- 19 | A. Sure. I understand, yeh.
- 20 | Q. I'm not sure that I understood correctly this morning when  
21 | Mr. Spicer was asking you about the statement that you gave  
22 | about this headstone incident. Do I understand it that you  
23 | gave a statement that's not the one that Mr. Spicer showed you  
24 | in the book? Is that correct?
- 25 | A. That's right.

1 Q. However, in the statement that you say you did give, you did  
2 not tell the truth to the police?

3 A. Pardon?

4 Q. In the statement that you say you did give at that time, you  
5 did not tell the truth to the police?

6 A. No, I didn't tell the truth, no.

7 BY COMMISSIONER EVANS:

8 Q. What was your answer? You didn't say that.

9 A. Do you want me to tell you like --

10 Q. I didn't hear what your answer was?

11 A. To --

12 Q. When you gave -- You were asked that you gave a statement --  
13 did you give a statement to MacIntyre and you say the one  
14 in the book is not the one that you gave?

15 A. Yeh, I did give a statement to them.

16 Q. And did you lie in that statement or did --

17 A. Yes, well, it was a lie. It was more like well you telling them  
18 about you meeting two guys from outer space and one guy was  
19 green and the other was blue and, you know, that's the guy  
20 that -- that did it.

21 MR. MURRAY:

22 Make it up as a faux pas.

23 BY COMMISSIONER EVANS:

24 Q. That's the statement?

25 A. That's right. That's the statement I gave them.

1 | BY MR. MURRAY:

2 | Q. Did Donald Marshall tell you on the night of the stabbing that  
3 | Sandy Seale had screamed?

4 | A. Like I say it was a matter of seconds that this thing went  
5 | down and, you know, I don't -- I don't recall him telling me  
6 | that anybody ever screamed or -- it just happened so fast.

7 | Q. Did Donald Marshall on that night tell you that the person  
8 | he encountered or the persons he encountered, one of them  
9 | had said -- called Sandy Seale "Blackie" or "Black bastard"  
10 | and called Donald Marshall, Junior, an "Indian"?

11 | A. He just told me this: "I got something for you, Black guy,  
12 | and I got something for you, Indian." or something like that,  
13 | you know.

14 | Q. So your recollection is something like "Black guy"?

15 | A. Yeh, like, you know, like the guy's -- I knew Sandy, you know.  
16 | He was -- He wasn't really -- really a Black guy, you know.  
17 | He was more White than -- Like you know, he wasn't really  
18 | White. Like half and half, like you know. He was not really  
19 | a dark person, you know, you could say. But that's what  
20 | Marshall told me what that fellow said to them.

21 | MR. MURRAY:

22 | If I might have a moment, My Lords.

23 | BY MR. MURRAY:

24 | Q. You testified that you had a conversation with Donald Marshall,  
25 | Junior, in the Cape Breton Correctional Centre over the weekend

1 before you both appeared in court for the first time on June  
2 7th, 1971. Is that correct?

3 A. Yes. We were both remanded to the County Gaol. We stayed in  
4 the same cell and like we bunked together. There was a bunk  
5 bed and you know, we were -- like, you know, we were the only  
6 guys that -- So he told me about the case and what he knew,  
7 what he already told me, and what I --

8 Q. And you told him what you knew.

9 A. What I was in there for, yes.

10 Q. Yes, and told him about John Pratico.

11 A. Yes.

12 Q. And that's the point at which Donald Marshall, Junior, made  
13 the remark: "He's crazy."?

14 A. "He's crazy", yeh.

15 Q. And I take it that you understood that in the sense of, "How  
16 can he be saying that? That never happened."?

17 A. That's right.

18 Q. And not that John Pratico had any mental problems that you  
19 knew of?

20 A. I never knew he had a mental problem until he testified.

21 Q. I see, testified at these Commission Hearings?

22 A. Yes.

23 MR. MURRAY:

24 I have no further questions.

25 MR. BARRETT:

No questions, My Lord.

1 | BY MR. SAUNDERS:

2 | Q. Mr. Christmas, my name is Saunders and I represent the Attorney  
3 | General and I have some questions for you.

4 | A. Yes.

5 | Q. You indicated that when you and John Pratico were on the  
6 | street outside his house, you urged Mr. Pratico to go back  
7 | to the police and tell the truth.

8 | A. Yes.

9 | Q. You recognized, sir, how important it was for Mr. Pratico to  
10 | tell the truth to the authorities?

11 | A. Yes, that's the reason I told him.

12 | Q. And you knew that that was an important thing for him to do.

13 | A. Yes.

14 | Q. Yes, and did you have that search for the truth in mind, Mr.  
15 | Christmas, when you were interviewed by Detectives MacIntyre  
16 | and Urquhart on October 28, 1970, with respect to the tomb-  
17 | stone incident? Did you know that it was important to tell  
18 | the truth to the police officers on that occasion, sir?

19 | A. Well, the way they were questioning you and everything, you  
20 | know. You know, you had no other choice but give them some-  
21 | thing they wanted.

22 | Q. Did you know that it was important to tell the truth to the  
23 | police officers investigating that incident?

24 | A. I don't know if it was important or not to me. But to me,  
25 | they were blaming -- They were blaming me for something I

1 |           wasn't doing.

2 | Q. Was it important to you to tell the truth to the policemen?

3 | A. I did. I told them as much as they want. I gave them the  
4 | statement they wanted.

5 | Q. Did you give them the truth?

6 | A. No, I didn't.

7 | Q. You lied to the police officers.

8 | A. Well, they wanted something and I gave them something. I  
9 | didn't know what they wanted. They told me there was two or  
10 | three other people involved with me and all that and they  
11 | said that they seen me doing something which I never did.

12 | Q. Yeh, the story that you gave to the police officers was false?

13 | A. Yes, it was.

14 | Q. All right, now you attended an actual hearing before the judge  
15 | on that incident. 'Is that not so?

16 | A. Yes, and --

17 | Q. Yes, and you testified, sir?

18 | A. No, I never testified or nothing.

19 | Q. Are you sure about that, Mr. Christmas?

20 | A. Yes, I'm sure.

21 | Q. I'm going to show you a newspaper clipping that I have from  
22 | the Cape Breton Post of November 18, 1970 and you'll see that  
23 | according to this article a number of accused people are  
24 | described as having appeared in court in respect to charges,  
25 | and is your middle name Joseph?

- 1 A. Yes.
- 2 Q. And were you sixteen years of age on November 18, 1970?
- 3 A. Yes.
- 4 Q. And do you see the reference in the article that you pleaded  
5 not guilty to the charge before Provincial Court Judge R. J.  
6 MacDonald?
- 7 A. Yes, but I -- That's what I was saying. That's when the  
8 papers come in. That's what we were waiting for, the statements  
9 to come out.
- 10 Q. Yes, and do you see the reference "City Police Detective  
11 Sergeants M. J. MacDonald and William Urquhart testified  
12 concerning a statement taken from the accused at the police  
13 station on October 28."
- 14 A. Yes. That's what I was saying. That's when the statement was  
15 brought up to the judge and --
- 16 Q. Exactly and you've already referred to the exhibit in Book 48  
17 which was the statement and it was marked "refused to sign" or  
18 something to that effect.
- 19 A. Yes.
- 20 Q. Yeh. And you see the last part of the article, sir, that:  
21 In it the accused said that he and two others  
22 damaged the headstone and at his trial yesterday,  
23 the accused said he was lying in his statement to  
the police. Judge MacDonald found him guilty.
- 24 Do you see that commentary in the article, sir?
- 25 A. Yes, that's what I'm saying about the statement that I --  
that I gave him wasn't brought up.

1 Q. Having been shown the article, do you now recall actually  
2 testifying before the Provincial Court Judge at that hearing,  
3 sir?

4 A. No, I don't. I don't recall testifying.

5 Q. You don't recall that.

6 A. No.

7 Q. Do you recall giving any indication to the Provincial Court  
8 Judge at that trial that you had lied to the police officers?

9 A. I told the boys I gave them a statement and you know, they'll  
10 have to bring it up in court to -- you'll hear it but which wasn't  
11 brought up. And this statement that is on this book here is  
12 not the statement that I gave him.

13 Q. Indeed, I guess it's your evidence, is it, that you've never  
14 seen that statement before; that is, in Exhibit 48?

15 A. That's right. I never seen this statement before.

16 Q. Never saw it before?

17 A. No.

18 Q. Do you recall other accused being in court that day including  
19 Junior Marshall and Dennis Michael Tobin and Arthur James Paul?

20 A. Stewart Marshall, yes.

21 Q. Yes, on the same dates?

22 A. We were all brought in court that day and the charges read  
23 out to us and --

24 Q. Do you recall Junior Marshall being convicted on that day of  
25 separate charges of giving liquor to minors?

- 1 | A. I don't know --
- 2 | Q. When you were in court.
- 3 | A. I don't know. I think he had a trial that time, Marshall, on
- 4 | that. I don't know if both charges were tried or just one.
- 5 | Q. In any event the newspaper article that I showed you indicates
- 6 | that Mr. Marshall was sentenced to five months on that date
- 7 | that you were there in court that morning on two charges of
- 8 | giving liquor to minors.
- 9 | A. Yeh, I think he got --
- 10 | Q. Do you recall that, sir?
- 11 | A. Yeh, I think he got three months on one charge and two on the
- 12 | other.
- 13 | Q. Exactly. You remember that?
- 14 | A. Yes.
- 15 | Q. Yeh, and you remember on the same date that you were there and
- 16 | Junior Marshall was there, Dennis Michael Tobin being --
- 17 | entering a plea of guilty to a charge of break and entering
- 18 | a railway van and theft of materials from that railway van
- 19 | and being sentenced on that offence.
- 20 | A. Yes, he got six months that time.
- 21 | Q. Yes. And on that same date that you were there and the others
- 22 | were there, do you remember Arthur Paul pleading guilty to
- 23 | offences of theft of radio equipment?
- 24 | A. He got six months for that.
- 25 | Q. Yes, and that was all on the same date.

1 MR. CHAIRMAN:

2 I -- The relevancy of that line of questioning is difficult to  
3 follow. Maybe it's difficult --

4 MR. SAUNDERS:

5 I've concluded with this witness the point --

6 MR. CHAIRMAN:

7 -- for me to follow.

8 MR. SAUNDERS

9 Pardon me, My Lord?

10 MR. CHAIRMAN:

11 Difficult for me to follow but tell me what it is -- why you  
12 consider that to be relevant.

13 MR. SAUNDERS:

14 Well, my point in asking this witness those questions, My Lord, was  
15 to find out what he recalled and what had happened in court that  
16 day, and I'm testing his memory as to what he in fact did and  
17 what he observed others do.

18 MR. CHAIRMAN:

19 Well, he's told us what he recalled as it relates to himself.

20 BY THE WITNESS:

21 Q. Like I say like everything took place at the police station.  
22 What you gave -- what you said but when you got to court, you  
23 had no say. You know, you were just told to sit down and wait  
24 until your name is called up. That's what I recall of the  
25 court system in Sydney that there.

1 | BY MR. SAUNDERS:

2 | Q. My information, Mr. Christmas, is that Dalhousie or Nova  
3 | Scotia Legal Aid was established in Sydney in about 1969.

4 | A. Well we were never told about lawyers at that time.

5 | Q. Yes. Tell me, sir, did you ever have a Legal Aid solicitor  
6 | on any of the occasions that you appeared in court on any of  
7 | the charges that are indicated in your record?

8 | A. Just that -- threatening that witness. That's the only time  
9 | I never knew about Legal Aid lawyers.

10 | Q. Except, though, on that occasion on that charge, threatening  
11 | a witness, you had Mr. Elman represent you.

12 | A. Yes, and I think he was from the Legal Aid system at that time.

13 | Q. You think that, do you?

14 | A. I don't -- I think. Yeh, I'm pretty sure he was. Like he  
15 | was just a young man, like, you know --

16 | Q. You indicated earlier, Mr. Christmas, that you weren't sure  
17 | whether the court had appointed a lawyer for you or whether  
18 | the case worker had appointed a lawyer. Had you ever gone to  
19 | court, Mr. Christmas, and asked the judge for a lawyer?

20 | A. They never asked me if I ever needed a judge or --

21 | Q. Never went into court and said, "Look, Your Honour, I don't  
22 | have a lawyer but I would like one."? Never did that?

23 | A. I never knew nothing about it.

24 | Q. So you never did that?

25 | A. No, I never -- I never knew that you could ask for a lawyer or

1 | you can ask for a court worker or a social worker.

2 | Q. I see. I see. And the only time that you ever had representat  
3 | by Nova Scotia Legal Aid was the incident as you recall it  
4 | involving Mr. Elman.

5 | A. Yes.

6 | Q. Throughout all of these charges from 1970 according to the  
7 | exhibit through 1986. Is that correct?

8 | A. Well, after -- After I was released, I knew more about lawyers  
9 | and systems and all that, appeals and all that.

10 | Q. Yes, so after those occasions that you were released from  
11 | incarceration, did you then get a lawyer the next time you were  
12 | before the court?

13 | A. Oh, yeh. Yes, sure.

14 | Q. You did?

15 | A. Yes.

16 | Q. All right. Have you ever been refused a lawyer any time that  
17 | you've appeared in court, sir?

18 | A. No, I never was.

19 | Q. Any time you've asked for a lawyer, one was provided to you or  
20 | you got one?

21 | A. I refused it myself, you know, if the lawyer wasn't -- Like  
22 | if the lawyer wasn't going with what I'm telling him. You  
23 | know if he's telling me he got the statement that, you know,  
24 | that these people seen you and these police officers say they  
25 | got a statement that you know -- As far as giving statements to

1 | police officers or something, I gave one statement and it's  
2 | in this book here --

3 | Q. Yeh, but my question, sir, Mr. Christmas, is: Has there ever  
4 | been an occasion when you have been turned down in --

5 | A. No, I was never.

6 | Q. -- seeking a lawyer. All right. I take it from your answer  
7 | that there have been times when you've dismissed a lawyer  
8 | because you weren't happy with him.

9 | A. Yes, if he was --

10 | Q. All right, did you get another lawyer on those occasions?

11 | A. Well they sent another lawyer in, I think, or --

12 | Q. You've never been turned down in seeking legal counsel, correct?

13 | A. I know one incident I had a lawyer working on my case and I  
14 | was sentenced to eighteen months on a charge which I -- there  
15 | was evidence in court and the lawyer himself knew that there  
16 | was evidence in court that the charge should be dismissed. He  
17 | even asked for dismiss on the charge at that time.

18 | Q. I'm sorry?

19 | A. They asked for a dismiss on the charge at that time, this  
20 | lawyer I had, the legal aid lawyer, and I was still convicted  
21 | in their court.

22 | Q. Other than that one incident, did you always have representation  
23 | when you sought it?

24 | A. I always had a lawyer when I went to court.

25 | Q. All right, okay. You're presently on probation for an offense

- 1 | that occurred in April of '86, Mr. Christmas?
- 2 | A. Yes.
- 3 | Q. That was an assault, was it?
- 4 | A. Common assault, yes.
- 5 | Q. Yeh, as I look at your record that's been introduced by
- 6 | Commission Counsel you have a number of assault-related
- 7 | offenses.
- 8 | A. That's what -- That's what I'm getting at today. It's them
- 9 | that say that I assaulted all these people which is not true.
- 10 | Q. For example, Mr. Christmas, October 12, 1976, sentenced to
- 11 | eighteen months for assault.
- 12 | A. That's the -- That's the case I'm talking about lawyer -- I'm
- 13 | loosing my lawyer in this appeal.
- 14 | Q. Yes.
- 15 | A. I'm in gaol and this lawyer tells me, "I'm going to put an
- 16 | appeal in for you. We'll take it to a different court."
- 17 | Right. And I'm sitting in this gaol -- I sat in this gaol for
- 18 | thirteen months and then I called up six months, seven months
- 19 | after asking if the appeal was going through or not --
- 20 | Q. In any event --
- 21 | A. -- and they tell me this lawyer don't further work here no more.
- 22 | Q. Yeh. In any event, Mr. Christmas, you were convicted on an
- 23 | assault charge in October of '76, and sentenced to eighteen
- 24 | months?
- 25 | A. Yes.

1 Q. In May of 1978 you were also convicted of an assault charge.

2 BY MR. CHAIRMAN:

3 Q. Before you leave that, you had been sentenced and you had  
4 instructed your lawyer to appeal.

5 A. Yes.

6 Q. And six months later when you inquire, you find that he is no  
7 -- this lawyer is no longer working for Legal Aid?

8 A. That's right.

9 Q. Did Legal Aid offer then to provide another lawyer to continue  
10 the appeal for you?

11 A. They told me there's no -- nobody could help me, you know.

12 Q. So am I entitled to assume then that your case was never  
13 appealed?

14 A. That's right.

15 Q. All right.

16 BY MR. SAUNDERS:

17 Q. And where were you incarcerated for that term of eighteen  
18 months, Mr. Christmas?

19 A. Cape Breton Correctional Centre.

20 MR. SAUNDERS:

21 Anything else on that point, My Lord?

22 BY MR. SAUNDERS:

23 Q. In May of 1978, Mr. Christmas, you were convicted again of  
24 assault.

25 A. Excuse me. Could I have the record there, you know?

1 Q. Oh, certainly.

2 MR. CHAIRMAN:

3 We have -- the record's been admitted in evidence and I -- this  
4 seems to be an unnecessary line of questioning. We have it before  
5 us. The witness has admitted that he has a lengthy record. Are  
6 you leading into something that I can't anticipate?

7 MR. SAUNDERS:

8 I took his answer to be, My Lord, that he wasn't responsible for  
9 any of those offenses.

10 MR. CHAIRMAN:

11 Well, he -- but he doesn't deny the convictions.

12 MR. SAUNDERS:

13 No, well I wasn't sure about that and that's why I asked him the  
14 question about the '78 one.

15 MR. CHAIRMAN:

16 Well my understanding is when Mr. Spicer put the record to him,  
17 he admitted that was his record and that was admitted into evidence.

18 MR. SAUNDERS:

19 Fine. I'm quite content with that, My Lord.

20 BY MR. SAUNDERS:

21 Q. Mr. Christmas, were you present during the evidence of Terrance  
22 Gushue?

23 A. Yes.

24 Q. Were you ever involved in a physical attack on Mr. Gushue?

25 A. No.

1 | Q. Answer, "no"?

2 | A. No.

3 | Q. Were you one of the young men walking with Mary O'Reilley when  
4 | she was stopped by the Sydney Police in or about May, 1971, at  
5 | about two o'clock in the morning?

6 | A. No.

7 | Q. You were not?

8 | A. No.

9 | MR. SAUNDERS:

10 | Thank you.

11 | MR. PRINGLE:

12 | No questions, My Lord.

13 | MR. CHAIRMAN:

14 | Rise until two.

15 | INQUIRY ADJOURNED: 12:30 p.m.

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1 INQUIRY RECONVENED: 2:05 p.m.

2 MR. CHAIRMAN:

3 Mr. Ross.

4 MR. ROSS:

5 Thank you, my Lord.

6 BY MR. ROSS:

7 Q. Mr. Christmas, my name is Anthony Ross and I'll be asking  
8 you some questions. I take it that apart from being cousins,  
9 you and Junior Marshall were also very good friends?

10 A. Yes, I said that.

11 Q. You grew up with him?

12 A. Yes.

13 Q. You chummed around together?

14 A. Yes.

15 Q. I guess you even got into trouble together from time to time,  
16 is that a fair statement?

17 A. Well, I'm not sure --

18 Q. Some kind of trouble?

19 A. A few things. Breaking windows here and --

20 Q. Pardon me?

21 A. Breaking a window here and there, it's no --

22 Q. Sure, break a window here and there. I guess you would know  
23 his friends?

24 A. Yeh.

25 Q. And his girlfriends?

- 1 A. Yeh.
- 2 Q. And I guess he would know your friends?
- 3 A. Yeh.
- 4 Q. And your girlfriends?
- 5 A. Yeh.
- 6 Q. And he would be acquainted with the relationship that you had  
7 with John Pratico?
- 8 A. Well, we were all hanging around together, yeh.
- 9 Q. Sure, and as far as the group was concerned, did you maintain  
10 a level of discipline in the group?
- 11 A. What do you mean.
- 12 Q. Well, were you a persuader or an enforcer or anything like  
13 that in the group?
- 14 A. No, I wouldn't say I was the enforcer or --
- 15 Q. I see, anyway this friendship continued -- as a matter of  
16 fact -- how long before this incident in May of 1971 would  
17 you say that you and Junior Marshall had become very good  
18 friends?
- 19 A. In '71.
- 20 Q. Yes.
- 21 A. Well, we were friends all along -- growing up.
- 22 Q. All along, yes, my suspicion. As a matter of fact you would  
23 have seen Junior Marshall quite often during the -- during  
24 the week of -- the week of the Seale stabbing and the  
25 following week, wouldn't you?

- 1 A. Well, I'd see him off and on, I'd say that, yeh.
- 2 Q. Well, is it just off an on or quite often?
- 3 A. Once or twice.
- 4 Q. Just once or twice?
- 5 A. Yeh.
- 6 Q. I see. Now my records indicate and the facts are that this  
7 incident took place on Friday the 28th of May, 1971?
- 8 A. Yes.
- 9 Q. Now you were at the dance that night?
- 10 A. Yeh.
- 11 Q. Now did you see Sandy Seale at that dance?
- 12 A. No, I don't -- not really; no.
- 13 Q. When you say not really, did you sort of see him and sort  
14 of not seeing him; is that what I am to understand?
- 15 A. No, no, there was other Coloured people there and Whites and  
16 Indians, so they were all leaving the dance. There was, you  
17 know, you don't know who's there or you're going the other  
18 way yourself and leaving the group there.
- 19 Q. Yeh, I guess the short answer to all of that is no, is it?
- 20 A. No, that's right, yeh.
- 21 Q. No you did not see Sandy Seale.
- 22 A. I didn't see him, no.
- 23 Q. No. As a matter of fact did you hang around with Sandy Seale  
24 prior to this dance?
- 25 A. No.

- 1 Q. As a matter of fact if you hung around with Sandy Seale the  
2 fact that Junior knew your friends, he would know that you  
3 were hanging around with Sandy Seale, is that correct?
- 4 A. Yeh, he'd know, yeh.
- 5 Q. And on the other hand if Junior was hanging around with  
6 Sandy Seale as friends, you would have known that also?
- 7 A. Yeh.
- 8 Q. And is it not true that you cannot say with any honesty that  
9 Junior and Sandy Seale were friends who hung around together?
- 10 A. I wouldn't know because I -- we had friends that was Coloured  
11 people down there with us too, you know.
- 12 Q. Well, that's true, well, I mean --
- 13 A. But, gee, I don't know Sandy Seale -- well -- we'd -- see I  
14 never knew where Sandy Seale was from until after, you know.  
15 I thought he was -- I always thought he was from the Pier.  
16 But he hung around with Pier fellows and you know, that's  
17 where the boys we were hanging around with. They were  
18 from the Pier area and --
- 19 Q. I hear what you're telling me but I don't think it answers  
20 my question. As far as Junior and Sandy are concerned you  
21 cannot say that they were friends; you're not in a position  
22 to say that?
- 23 A. No.
- 24 Q. As a matter of fact, you never saw Junior hanging around with  
25 Sandy?

1 A. No.

2 Q. I see. And is it fair to say then that when you heard that  
3 there was a stabbing on this Friday night -- first I must  
4 ask you, did you hear the name of the person who got stabbed?

5 A. Yeh.

6 Q. So you heard that somebody by the name of Sandy Seale got  
7 stabbed?

8 A. Yeh.

9 Q. Now this was somebody that you didn't know?

10 A. Well, I'd seen him around, like, you know, in town -- in the  
11 Park and I'd met him before. I'd seen --

12 Q. Oh, you had seen him?

13 A. -- I'd seen him before -- I'd seen him before, eh, but I  
14 never chummed around with the fellow.

15 Q. Had you seen -- did you see him in the Park -- in Wentworth  
16 Park?

17 A. Well, he chummed around the Park. Yeh, he went through the  
18 Park.

19 Q. He went through the Park?

20 A. Yes.

21 Q. You say he chummed around the Park; who was he chumming around  
22 with?

23 A. Well, there was other people around he knew, like, you know,  
24 White people and White girls and --

25 Q. You saw him chumming around in the Park with White people?

- 1 | A. Yeh.
- 2 | Q. Did you know these people?
- 3 | A. Well, I knew Barbara Floyd and --
- 4 | Q. That --
- 5 | A. Barbara Floyd and their -- their group there, you know.
- 6 | Q. But my recollection is that when Barbara Floyd was on the
- 7 | stand I asked her if she knew Sandy Seale and she didn't?
- 8 | A. Well, like she knew the bunch that hunged around, the girls and
- 9 | all that, like, you know -- you hunged around the Park at
- 10 | times -- do you understand what I'm saying, like, like --
- 11 | you know, everybody knew each other in the Park, you know.
- 12 | Q. Well, the thing I'm going to --
- 13 | A. With the group -- from this group that I'm talking about.
- 14 | Q. But what I'm going to ask you, sir, is that you give me
- 15 | information that's from your personal knowledge that you
- 16 | know personally. If it is something that somebody told you
- 17 | I will ask you about that, okay? Is that fair enough?
- 18 | A. Yeh.
- 19 | Q. Okay. Now can you say that you saw Sandy Seale with anybody
- 20 | that you personally know?
- 21 | A. Just a few guys I knew from the Pier.
- 22 | Q. A few guys from the Pier?
- 23 | A. Yeh.
- 24 | Q. Who were these guys from the Pier?
- 25 | A. Alphonse Bishop.

- 1 Q. Alphonse Bishop?
- 2 A. Yeh, and Martin Lovell.
- 3 Q. Martin?
- 4 A. Lovell.
- 5 Q. Lovell. And who else?
- 6 A. There was a few other guys but I don't recall --
- 7 Q. No, but do you remember that I asked you tell me what you
- 8 know?
- 9 A. Yes, I'm trying to -- I'd -- just like nicknames they had, eh,
- 10 you know, and --
- 11 Q. Give us the nicknames and we'll find out who they are?
- 12 A. "Winky" and --
- 13 Q. "Winky"?
- 14 A. Yeh.
- 15 Q. That's Winky Lucas, isn't it?
- 16 A. I don't know -- it must be -- I don't know.
- 17 Q. Yes. Well, any way "Winky" and who else?
- 18 A. I don't know -- some King -- last name was King any way.
- 19 Q. King, but these people that you saw him hanging around with,
- 20 this was down in Whitney Pier?
- 21 A. Yeh, they were from the Pier, yeh.
- 22 Q. And you'd see that when you visited Whitney Pier?
- 23 A. Yeh.
- 24 Q. Yeh, okay. We'll move to another area. As far as the Park
- 25 itself is concerned -- Wentworth Park?

1 A. Yes.

2 Q. Can you say in all honesty that you seen Sandy Seale hanging  
3 around in Wentworth Park, yes or no?

4 A. No.

5 Q. Thank you. So then I take it that at the time of the stabbing  
6 when you heard that somebody had been stabbed, you heard the  
7 name Sandy Seale, you knew the person?

8 A. I heard the name, yeh.

9 Q. Yes, and you -- and you identified -- you were able to  
10 connect the name with the individual?

11 A. Yes.

12 Q. Yes. Now as far as this stabbing is concerned, when you -- you  
13 spoke to Junior Marshall within five hours of the -- the  
14 stabbing, am I correct with that?

15 A. Five about -- three hours at the most, I'd have to say.

16 Q. Sure, you thought around three hours after the stabbing.  
17 And at that time did he mention to you that there was a  
18 robbery?

19 A. No, there was --

20 Q. As a matter of fact, I'm suggesting today there was no  
21 robbery and that -- would you agree that the first time you  
22 heard of the robbery was some -- some substantial time after  
23 Marshall had been convicted?

24 A. No, it was never mentioned about robbery until '82.

25 Q. '82, precisely. Now tell me did Junior tell you anything

1 about somebody saying "dig man, dig"?

2 A. No.

3 Q. And the first time you heard about that was around '82 also?

4 A. Yeh.

5 Q. And so I take it then the Friday night going into the Saturday  
6 morning, you get back at the Reserve from the dance?

7 A. From the Pier.

8 Q. Well, from -- well, from the dance you went to the Pier and  
9 then you returned to the Reserve?

10 A. Yeh.

11 Q. Yes. And at that point you spoke with Junior?

12 A. Yeh, I met him on the road.

13 Q. Yes. And from there you went over to somebody else's house?

14 A. Yeh.

15 Q. And from there, where did you go?

16 A. I went home.

17 Q. You went home. Now when you last -- before going home, the  
18 last place you saw Junior was at this house, isn't that  
19 correct?

20 A. Yeh.

21 Q. And whose house was it?

22 A. James Joe.

23 Q. James Joe?

24 A. Yeh.

25 Q. Yeh. So you left him over at James Joe's and you went home,

- 1 am I correct?
- 2 A. Yes.
- 3 Q. Yes. And when did you next see Junior after going home that  
4 morning?
- 5 A. A couple of days afterwards --
- 6 Q. I see.
- 7 A. -- a day and a half or that.
- 8 Q. So you did not see him at all on Saturday?
- 9 A. He was -- well, I heard he was down at the police station.
- 10 Q. Yes, but I'll get to what you heard. I'm going to ask you  
11 what you -- what you seen for a minute.
- 12 A. No, I never seen him after that.
- 13 Q. You didn't see him on Saturday at all?
- 14 A. No.
- 15 Q. And you didn't see him on Sunday?
- 16 A. No.
- 17 Q. You saw him sometime the next week?
- 18 A. Yeh, the following week, you know.
- 19 Q. Were you here when Roy Gould was giving evidence?
- 20 A. No.
- 21 Q. I see. Roy Gould gave evidence to the effect that there were  
22 rumors of reprisals of attacks on the Indian community. Did  
23 you hear those rumors?
- 24 A. Yes.
- 25 Q. And Roy Gould further gave evidence that as a result of

- 1           these rumors certain precautions were taken to secure the  
2           Reserve?
- 3       A.   Yes.
- 4       Q.   Do you -- and are -- were you aware the precautions were  
5           being taken?
- 6       A.   Yes.
- 7       Q.   And I understand it that there was a road-block among other  
8           things?
- 9       A.   Yes.
- 10      Q.   Did you remember the road-block with two cars?
- 11      A.   Yes, yes.
- 12      Q.   And do you recall whether or not this was done with the  
13           cooperation and the assistance of the Sydney Police  
14           Department?
- 15      A.   I really wouldn't -- I can't answer that because it was  
16           up to the Council then.
- 17      Q.   Very good. It was up to -- oh, it was a move by the Council  
18           to secure the Reserve, was it?
- 19      A.   That's right, yeh.
- 20      Q.   I see. And as far as the securing of the Reserve is concerned  
21           were you involved in that security program?
- 22      A.   No, I was just -- just there like everybody else was.
- 23      Q.   I'm going to read something to you and I'm going to ask  
24           you whether or not this is typical of the type of security  
25           that was in place?

- 1 A. Okay.
- 2 Q. Now I want you to really listen to me carefully. Now this is th  
3 report that is entered as exhibit 69 and a part of it is a  
4 conference which was or discussion which involved Pius  
5 Marshall. What he is saying here, the writer is saying:  
6  
7           During my house visit to the Marshall  
8           home, Pius recalled that he had to  
9           sit in the upstairs alone with a shot-  
10           gun while his family resided in  
11           Whycocomagh.
- 12 Now you recalled the Marshall family going over to Whycocomagh?
- 13 A. Yeh, Junior told me there that he was going to Whycocomagh.
- 14 Q. Do you recall them going over to Whycocomagh?
- 15 A. I don't know if they went -- I don't know if they left or  
16 not but I -- I was told that he -- he was going to  
17 Whycocomagh, you know.
- 18 Q. Well, just listen to me for a minute that "Pius was upstairs  
19 with a shotgun", did you know whether or not anybody else  
20 on the Reserve had armed themselves in case of trouble?
- 21 A. I don't know. I really can't say. I did see people with  
22 guns or --
- 23 Q. No, but I'm asking you what do you know? If it's none, it's  
24 none?
- 25 A. I don't -- I can't recall none of that like, you know.
- 26 Q. You cannot recall whether or not other people had armed  
27 themselves?
- 28 A. No, I can't.

1 Q. I see. Now you say there -- when -- when Mr. Spicer was  
2 questioning you, you said that there were threatening  
3 phone calls. Threatening phone calls and something about  
4 the "panthers" coming down?

5 A. Yeh, that's --

6 Q. Where were they supposed to be coming down from, did you  
7 ever find out?

8 A. Well, people who called in from other Reserves, they were  
9 coming down from Halifax.

10 Q. Pardon me.

11 A. I say they were coming down from Halifax something like that,  
12 you know.

13 Q. "Panthers" in Halifax.

14 A. Yeh.

15 Q. I see. I see, any idea what they were coming down to do?

16 A. I don't know.

17 Q. Did you try to find out?

18 A. Well, after -- after Marshall's charged for the stabbing  
19 and all that, that's when --

20 Q. After Marshall what?

21 A. -- because he was like, getting charged for stabbing and  
22 all that, you know, that's when people -- after -- you know  
23 -- they -- I guess they blamed it on Marshall right from  
24 the start.

25 Q. When you say they blamed it on Marshall, who do you mean?

- 1 | A. Well, the "Black Panthers" were coming down.
- 2 | Q. Now, sir, that I understand you, I'll move on. I understand
- 3 | that you were on remand; you were one time in the Correctional
- 4 | Center and Junior Marshall was there?
- 5 | A. Yes.
- 6 | Q. And you spoke to him from time to time during that stay?
- 7 | A. Oh, yeh.
- 8 | Q. Did you -- and did you read that book by Harris, "Justice
- 9 | Denied"?
- 10 | A. No.
- 11 | Q. You didn't know anything about it?
- 12 | A. No.
- 13 | Q. Anyway there was a section in it in which Harris reports that
- 14 | when Junior was in the Correctional Center and asked why
- 15 | he was there, he said, "Killing Seale's out of season". Did
- 16 | you ever hear him saying anything like that?
- 17 | A. I recall something like that coming up while we were in there.
- 18 | Q. While you were on the inside?
- 19 | A. Yes.
- 20 | Q. Did he say that to you?
- 21 | A. No, it was -- White people that brought that up.
- 22 | Q. I see. What do you recall?
- 23 | A. It was at that time there was some inquiry or something going
- 24 | on tv about the young seal pups getting killed --
- 25 | Q. Yes.

- 1 | A. -- and slaudered and that's when -- that's when that -- that  
2 | took place that --
- 3 | Q. Because around that time that the stabbing took place, yes?
- 4 | A. Yeh, that -- that -- that was going on on tv and everything  
5 | else and the White inmates there, like, made a joke out of  
6 | it or something like, you know. And Marshall got upset over  
7 | it and said it wasn't --
- 8 | Q. Oh, I see. It didn't originate with him?
- 9 | A. No, there was nothing to do with, like, the stabbing -- it  
10 | was just the name that was, you know.
- 11 | Q. I see, so it did not originate with -- with Marshall?
- 12 | A. No.
- 13 | Q. It originated in the -- in the prison system?
- 14 | A. Yeh, like, just what people seen on tv that's what they're  
15 | talking about, you know.
- 16 | Q. Tell me something, as far as your correspondence with Junior  
17 | Marshall when you were in gaol and he was also in gaol, you  
18 | were writing back and forth for a while, weren't you?
- 19 | A. Yes.
- 20 | Q. Well, tell me about the prison system, were they monitoring  
21 | these letters, were there a record kept of what letters went  
22 | out and what letters were received?
- 23 | A. Oh, yeh, they were written and checked.
- 24 | Q. Pardon.
- 25 | A. They were written/checked, you know.

1 Q. I see, and were -- do you know whether or not it is the  
2 system to keep a record of these things so that they can  
3 go back there and say on such and such a date, you wrote  
4 such a letter to Marshall?

5 A. There's some letters that I never got answered back and never  
6 know what ever become of them. You know, I asked Marshall  
7 if he did get a hold of them and he said, no I never heard  
8 it, you know.

9 Q. I see, so you can't tell us whether or not today there's  
10 a system in which the -- there's a recording of the letter --  
11 the -- the correspondence.

12 A. No, I don't think so.

13 Q. I see.

14 A. Just the letters I got myself.

15 Q. But just to wrap up and you will confirm for me that you  
16 never had any personal contact with Sandy Seale yourself?

17 A. No.

18 Q. And you cannot give any account of any personal contact  
19 between Junior Marshall and Sandy Seale?

20 A. No.

21 Q. And anything you can say is what somebody told you?

22 A. Just what -- what this letter acknowledges, that's what I  
23 believe in, you know.

24 Q. I see.

25 A. You know, so that I just go by what I heard now, you know.

1 Q. I guess those are my questions; thank you very much Mr.  
2 Christmas.

3 BY MR. WILDSMITH:

4 Q. Mr. Christmas, you and I have met before, so I won't bother  
5 with the introductions.

6 A. Yes.

7 Q. Dealing first, Mr. Christmas, with the rumors of racial  
8 tensions at the time that my friend, Mr. Ross, has mentioned  
9 to you, can you tell us your understanding of the relationship  
10 between the Indian and Black communities at about this time?

11 A. There were no fighting amongst each other or there were no  
12 arguments amongst each other, you know.

13 Q. No evidence -- no prior evidence of tensions --

14 A. No.

15 Q. -- between Indians and Blacks?

16 A. No.

17 Q. And I think your testimony is that in Wentworth Park itself  
18 there would often be members of the Black community, members  
19 of the White community and members of the Indian community  
20 there at the same time?

21 A. Yes.

22 Q. And when that happened, there wasn't a problem between Blacks  
23 and Indians?

24 A. No.

25 Q. Thank you. You used the -- the word in relation to some of

1 | these activities in the Park of "stemming". Am I correct  
2 | in understanding that is the same kind of expression  
3 | as bumming?

4 | A. Yeh, panhandling, you know.

5 | Q. Yes, looking for change?

6 | A. Yeh.

7 | Q. Thank you.

8 | COMMISSIONER EVANS;

9 | I didn't get the word.

10 | MR. WILDSMITH:

11 | The word is "stemming". S-T-E-M-M-I-N-G, I believe. I believe  
12 | that was a word that will appear in the record from Mr. Christmas'  
13 | testimony.

14 | COMMISSIONER EVANS:

15 | Accepted.

16 | MR. WILDSMITH:

17 | Accepted, okay.

18 | BY MR. WILDSMITH:

19 | Q. Now with -- with respect to the incident that surrounded the  
20 | MacIntyre gravestone, I believe your evidence is that the  
21 | police came to the Reserve and engaged in what you described  
22 | as a "round up"?

23 | A. Yeh.

24 | Q. And by that do you mean that they went from house to house  
25 | and picked up the six or seven youths that you identified and

1 |       took them all down to the police station?

2 | A. Yeh.

3 | Q. And am I correct in understanding that you were not told the  
4 | reason why they wanted you at the police station?

5 | A. Just told us that they want to question us to a few things.

6 | Q. About a few things?

7 | A. Yeh.

8 | Q. They didn't identify the gravestone at that time --

9 | A. No.

10 | Q. -- as being one of the things?

11 | A. Just wanted to see us down there.

12 | Q. Okay. And you indicated, I believe, that you were kept in  
13 | the lock-up?

14 | A. Yes.

15 | Q. Can you give us some idea of the length of time that you spent  
16 | at the police station from when they picked you up at your  
17 | home and took you down until you were finally released?

18 | A. It was nine --

19 | Q. I'm sorry.

20 | A. -- it was at nine o'clock that morning until about three-  
21 | thirty, four o'clock.

22 | Q. I see, and when you described being kept in the lock-up,  
23 | what did you mean by lock-up? Is that a gaol cell or a  
24 | room?

25 | A. Yeh, it's like where they kept drunks and people like, going

1 -- going to court and all that.

2 Q. Yes.

3 A. Like a cell block -- cells and --

4 Q. Was it -- were you locked into this lock-up?

5 A. No, we're all in this -- like, there's cells here like --  
6 there's a big hallway like and the cell block.

7 Q. Yes.

8 A. And you can walk around there and there's cells on each side.

9 Q. Were you actually locked up?

10 A. We were locked up in there, you know; some of us were locked  
11 up, you know. We acted up in there, eh, you know. Hollering  
12 and stuff like that, you know; they'd come in and throw one  
13 of us in the cell.

14 Q. I see. Were you -- while you were being kept down there,  
15 did you feel free to leave?

16 A. Oh, I couldn't -- couldn't leave. No, the door is locked.

17 Q. The door was actually locked?

18 A. Yeh.

19 Q. And at this point were you told that you were under arrest?

20 A. No, they just told us that they wanted to questioned us and  
21 you know, there was other people that they had seen already  
22 and --

23 Q. Did they purport to read to you any rights that you might  
24 have to counsel or make phone calls?

25 A. No.

- 1 Q. I see. I take it from the fact that they came to the Reserve  
2 and picked you up at your home, that your parents would know  
3 that you were down at the police station?
- 4 A. Oh, yeh, I had -- I had a phone that time and you know, we  
5 had a phone at the house and -- but never gave us no calls  
6 or nothing, you know. And my mother knew that I was taken  
7 by the cops.
- 8 Q. So your mother knew that you were at the police station?
- 9 A. Yeh, she know.
- 10 Q. Was there any discussion of her accompanying you?
- 11 A. No, they were just -- they say they wanted to see me, that's  
12 all, you know.
- 13 Q. Did they ask you whether you wanted somebody like your parents  
14 with you?
- 15 A. No.
- 16 Q. Okay. Now if I understand your evidence correctly, you were  
17 suggesting something about the police needing a statement  
18 before you could be released?
- 19 A. Oh, yes. They'd reading out statements to us like, you know,  
20 I never gave them statements or actually like, before like --  
21 I used to just hear them, you know, like they'll do all  
22 the talking and just answer, you know, if it's right or  
23 wrong. You know, that's how they come out there with their  
24 statements, you know.
- 25 Q. Is it fair to think that they wanted one of the group of people

1 | who were brought down there, who were rounded up to be charged  
2 | and to confess and then to be charged?

3 | A. Oh, yeh, that's -- that was the whole think, I guess, you  
4 | know.

5 | Q. And did that have something to do with why you eventually  
6 | told them something that was written down, even though you  
7 | didn't sign it?

8 | A. Yeh.

9 | Q. Now with respect to John Pratico, we've had fairly lengthy  
10 | discussion about your conversation with Mr. Pratico and about  
11 | some of the statements that Mr. Pratico made at the  
12 | Preliminary Inquiry. And the point that I want to be clear  
13 | on is whether when you told John Pratico to go back to the  
14 | police, were you telling him to go back to the police to  
15 | tell a lie about what happened?

16 | A. No, I just told him to go back and tell them, you know, --  
17 | you're not telling the truth and he told me and that the  
18 | cops pressed him and you know, they forced on him, eh, you  
19 | know. He said the cops -- the cops' fault, you know. I just  
20 | told him, well, you go back and tell him, you know, that you  
21 | never seen nothing and you don't know nothing, you know. And  
22 | tell the truth what they want, you know.

23 | Q. And your impression that if they went back and said that he  
24 | wasn't there and he didn't see anything and he doesn't know  
25 | anything, that that would have been the truth?

1 A. Pardon.

2 Q. That if Mr. Pratico had gone back and said that he wasn't  
3 there, that he didn't see anything, that he didn't know  
4 anything, that that would have been the truth. Is that  
5 your impression?

6 A. I don't think they would have believed him anyway, you know,  
7 and saying --

8 Q. I'm sorry.

9 A. I said I don't think they would have believed him anyway if  
10 he did go back and told him that time that I, you know, -- he  
11 did go back and --

12 Q. Yes.

13 A. -- you know, they did find out my name, that I went to their --  
14 to Johnny and you know, they had me picked up right away and  
15 charged, you know.

16 Q. Are you suggesting that if he went back to the police and  
17 the police knew that he had been talking to you, that they  
18 would not have believed him? Is that what you're saying?

19 A. No, I'm not saying that. You know, like I'm saying that if  
20 he -- if he did go back and tell them that how he was talking  
21 -- I told him to go back and tell them that he was lying and  
22 you know, they still wouldn't believe him anyway, you know.

23 Q. Yes, they wouldn't have believed him if he had --

24 A. No, I don't think -- I don't think they would have.

25 Q. -- said he'd been lying previously? Right. Well, what I'm

1 interested in is what was going through your mind and whether  
2 what you were trying to do was encourage him to go back and  
3 tell the truth?

4 A. Yeh, that's -- that's right. At least I went up there, you  
5 know, and I told him, you know, to go back and but he told  
6 me himself that he was pressured and you know, he was given  
7 a rough time down there. And I understood what -- what he  
8 meant.

9 Q. There was some discussion between you and --

10 A. Johnny, at that time.

11 Q. -- Mr. Spicer about whether John Pratico told you that he  
12 wasn't there and didn't see it?

13 A. No, he never -- he never said that. I told --

14 Q. He never actually told you that?

15 A. No, I -- I told him, you know, like -- I went up to him and  
16 he just told me what -- what the cops told him, you know, and  
17 to stay away from us and you know, not to hang around with  
18 us and to stay away from us.

19 Q. Okay, if I may try a different area with you. Would you  
20 say that John MacIntyre had a particular reputation amongst  
21 the Indian youth.

22 MR. MURRAY:

23 With respect, my Lord, I was going to get up and object before.

24 Mr. -- Mr. MacDonald on an earlier day objected to specific  
25 questioning by the Union for Nova Scotia Indians about John

1 MacIntyre and the Commission upheld Mr. MacDonald's objection at  
2 that time. No objection is being made now but I'd like to put  
3 one on the record that Mr. -- Mr. Wildsmith has -- has a client  
4 with interest to pursue. Those interests aren't specifically  
5 directed against John MacIntyre. And I suggest that any  
6 questions which he has along that line aren't appropriately  
7 part of these cross-examinations.

8 MR. CHAIRMAN:

9 Mr. Wildsmith, would you indicate what is the purpose of that  
10 question.

11 MR. WILDSMITH:

12 Yes, we've --

13 MR. CHAIRMAN:

14 Bearing in -- bearing in mind your client being the Union of --

15 MR. WILDSMITH:

16 Certainly. Well, I think it goes to the reputation of the police  
17 force in general with the Indian community, one particular officer  
18 who is very heavily involved in investigations, who dealt with  
19 this individual; and indeed, we've already had on record the  
20 statement that apparently Mr. Christmas has said that "Mr.  
21 MacIntyre didn't want the truth, he wanted Indians". So all  
22 of these things seem to be to me --

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 | MR. CHAIRMAN:

2 | It's -- A more appropriate way to -- I would suggest to put that  
3 | question is to ask Mr. Christmas whether, in his opinion, there  
4 | were members of the Sydney Police Department who had views toward  
5 | the Indians that he would find unacceptable. If the answer is  
6 | yes then he could give some instances. It may turn out to be  
7 | Mr. MacIntyre is one of them or there may be others.

8 | MR. WILDSMITH:

9 | Certainly.

10 | MR. CHAIRMAN:

11 | But from your -- I intended to do this earlier this morning because  
12 | I notice again counsellors beginning to ask questions that I'm  
13 | having some difficulty tying into their client's interest. Whereas  
14 | Commission Counsel have an obligation to bring forth all of the  
15 | evidence, I would hope that in the interest of the orderly conduct  
16 | of this hearing that Counsel ask questions that are relevant to  
17 | the people who they are representing. Now, I know that we can't  
18 | draw a hard and fast line -- that there's overlapping. I just use  
19 | it -- take advantage of this to once again remind Counsel. But in  
20 | the meantime, back to your question. I -- Would you rephrase that  
21 | question and then the answer will indicate what approach you should  
22 | use.

23 | MR. WILDSMITH:

24 | Certainly, My Lord.

25 |

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 BY MR. WILDSMITH:

2 Q. Mr. Christmas, my question to you is about the reputation  
3 enjoyed by particular police officers within the Indian  
4 community that you were familiar with in 1970, '71, '72.  
5 Can you tell us whether any particular police officers enjoyed  
6 a poor reputation with the Indian youth?

7 A. Oh, you couldn't really pinpoint the police officers in  
8 clothes -- officers in police clothes, you know. You know,  
9 you knew them, you know, one or two, you know, but as far  
10 as the Detective Division was, you know, they had suits on  
11 and they're the ones that were doing all the questioning --  
12 asking about things that were done, you know, and that happened  
13 and, you know, they want to know why you were -- If you were  
14 picked up for intoxication, they want to know why -- where you  
15 were picked up and why, you know.

16 Q. I'm not sure if I'm understanding your answer too well. You  
17 referred to the uniformed policemen first.

18 A. Yeh, like -- Well, you couldn't really pinpoint out a man with  
19 a uniform like, you know, by sight looking at him, you know,  
20 you couldn't -- there's police officers with glasses on and  
21 there's police officers without and they almost look the  
22 same, you know, and with the hat on it's different, you know,  
23 and --

24 Q. So you're saying --

25

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 BY MR. CHAIRMAN:

2 Q. I think what you're saying is that police officers in uniform  
3 are sometimes difficult to identify --

4 A. Yeh, difficult to --

5 MR. WILDSMITH:

6 Yes.

7 BY MR. CHAIRMAN:

8 Q. -- unless you know them --

9 A. Yeh.

10 Q. -- well.

11 A. We knew them really -- We knew like Ambie MacDonald and all  
12 them. We knew him right from --

13 Q. Who?

14 A. Ambie MacDonald. One of the police --

15 BY MR. WILDSMITH:

16 Q. Yes.

17 A. officers that testified. We knew him pretty good, you know,  
18 and --

19 Q. And what about with respect to the Detective Division?

20 A. Well, they never believed us anyway, you know. Anything we  
21 told them -- We were telling the truth, and they still wouldn't  
22 believe us anyway, you know.

23 Q. So what you're saying is that the reputation enjoyed by the  
24 Detective Division in general with Indian youth was that they  
25 weren't interested in hearing the truth from you?

THOMAS J. CHRISTMAS, by Mr. Wildsmith

- 1 A. No, it's just to get the case over with and -- That's the  
2 way I seen it, you know, that time.
- 3 Q. What about this expression that a particular officer didn't  
4 want the truth, he wanted Indians. What -- Was that a state-  
5 ment that you made?
- 6 A. I said something like that, yeh, you know. I just don't --
- 7 Q. What does that mean?
- 8 A. That, you know, he never -- Like, you know, he never -- He  
9 don't believe us like no matter what we tell him, you know.  
10 And I like -- For instance, now, Marshall had the two best  
11 lawyers in Sydney that time, and but, you know, I still can't  
12 understand why that he was found guilty on the charge, you  
13 know, the lawyers that he had, you know, and the eyewitnesses  
14 themselves, you know, they should have been --
- 15 Q. Yes?
- 16 A. -- you know, removed from the --
- 17 Q. Would you say the same thing about all members of the Detective  
18 Division or any particular members?
- 19 A. No, just those people there I'd say today, you know, they  
20 were pretty --
- 21 Q. Which people are you referring to?
- 22 A. John MacIntyre and Bill Urquhart. They were pretty rough and  
23 hard men to talk to, you know, and --
- 24 Q. Those two detectives in particular?
- 25 A. Yeh, you know, never gave you a chance to explain it -- They

THOMAS J. CHRISTMAS, by Mr. Wildsmith

- 1 never told us about the law in other words, you know, they  
2 just -- They went along with what they seen was right, you  
3 know. They think that you were involved in something, you  
4 know, they figured that you did it. That was over with, you  
5 know. You go to court, and that's it, you know.
- 6 Q. What would happen if they didn't seem to be wanting the  
7 response that you were giving?
- 8 A. Pardon?
- 9 Q. How would they react if they didn't seem to like the response  
10 that you were giving?
- 11 A. Well, holler at you and call you a liar and stuff like that,  
12 you know. "You're nothing but a bum on the street," and
- 13 Q. I'm sorry?
- 14 A. Say that you were nothing but a bum on the street and go  
15 around, you know, and bothering people and all that, you  
16 know, and -- you know and --
- 17 Q. They were referring to bumming money?
- 18 A. Yeh, it must be or --
- 19 Q. I see. Okay. Let me take you now to the break and enter  
20 charge and the time that the obstruction charge was dismissed  
21 and you pleaded guilty to the break and enter charge. My  
22 question to you is, Can you recall what discussions you might  
23 have had with whom before you decided to plead guilty?
- 24 A. No, like I said this morning, you know, I was brought in. I  
25 never gave no statement -- nothing, you know, about the case --

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 about the break and enter, you know, I was -- Never gave no  
2 statement on it, you know, they just --

3 Q. Well, before you came to the courthouse that morning?

4 A. Well, they already had the charge out for me, you know, and --

5 Q. Yes?

6 A. -- pressed another charge and --

7 Q. But before you got there, had you already made an arrangement  
8 to plead guilty to one charge and have the other one dismissed?

9 A. Well, I kind of figured one of them would be dismissed. It  
10 was that obstruction charge, you know, and I -- the evidence  
11 I heard in that case and what really come out on it, you know,  
12 and you can just tell where the -- The people were talking.  
13 The lawyer was talking and the Crown, you know, that they  
14 really had no really solid proof that I threatened that fellow  
15 in any way, you know. There was no violence used. There was --  
16 When I was first questioned about it, there was a knife  
17 involved in -- you know, in --

18 Q. Yes. Well, what I'm trying to get at is the circumstances  
19 under which you decided to plead guilty to the break and  
20 enter charge.

21 A. Well, I just -- Like I said, I just wanted to get of there  
22 and get this thing over with. No --

23 Q. Did somebody come up to you and say something like,  
24 "Mr. Christmas, if you plead guilty to this charge, we'll  
25 withdraw or not offer any evidence on the other one."?

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 A. Well, there's police officers there and John MacIntyre but,  
2 you know, they went to the Crown, you know, and you know, it --  
3 You know, he could get no guilty plea, no --

4 Q. My question to you though is, Who spoke to you about this?

5 A. Well, one of the detectives that time, I think did or -- I  
6 know somebody told me that, you know, you'll get three -- maybe  
7 two to three months for it, you know, and --

8 Q. Well, who is it you think said that?

9 A. Well, one of the people that worked in the courthouse at that  
10 time.

11 Q. Yes. Can you identify whether it would've been police or a  
12 prosecutor or a defence lawyer?

13 A. Well, I was right by the police office and the Crown where  
14 they're -- where I was sitting, you know. You can hear what's  
15 going on and, you know, and -- that -- Not really hear that  
16 good but, you know, we can see what's going on and they were  
17 talking to themselves so and -- And then, you know, it's  
18 guilty plea --

19 Q. Was there a lawyer there representing you at that time?

20 A. I can't really say that there was.

21 Q. Okay.

22 BY MR. CHAIRMAN:

23 Q. I understood this morning that -- Wasn't Mr. Elman your lawyer?

24 A. That was for the obstruction charge that --

25 Q. The obstruction charge?

THOMAS J. CHRISTMAS, by Mr. Wildsmith

- 1 A. Yeh. See, there was another charge brought up -- the break  
2 and enter charge.
- 3 Q. I see. And Mr. Elman wasn't representing you --
- 4 A. I don't know if he --
- 5 Q. -- on it?
- 6 A. On that. I don't know. I never -- I don't know. I just went  
7 by what the cops had, you know, and the police officer charged  
8 me --
- 9 Q. But did all of this happen at the same time? The charge of  
10 obstruction was dismissed and then the second charge read to  
11 you and you pleaded guilty to that charge. Did it all happen  
12 the same morning?
- 13 A. Well, I really can't say it happened in the same morning. I  
14 think I was brought back that afternoon for a sentence or  
15 something, but I pleaded guilty to it. I figured I'd get --  
16 the most time I'd get out of it is -- three months out it.  
17 That's what I figured, you know or for the charge, you  
18 know. There was nothing that was stolen or nothing did  
19 happen, you know, and --
- 20 Q. I take it then you can't recall whether you had discussions  
21 with your lawyer, Mr. Elman --
- 22 A. No, I can't.
- 23 Q. -- before the decision was made for you that you would plead  
24 guilty?
- 25 A. No, I can't recall.

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 Q. Okay. All right.

2 BY MR. WILDSMITH:

3 Q. And I think, My Lord, -- What you're saying, Mr. Christmas,  
4 is that Mr. Elman, to your knowledge was not in court that  
5 morning?

6 A. I don't know if he was there or not, you know. He might  
7 have been there and, you know, as far as he -- We were with  
8 the court worker that time, you know.

9 Q. Yeh.

10 A. He might have been there. I'm not too sure on that like.  
11 You know, what I heard in the evidence yesterday, you know,  
12 and that there was some dealing going on, you know, which I  
13 didn't know about or that I wasn't told nothing about it,  
14 you know, and --

15 Q. Yes.

16 A. And --

17 Q. What I'm trying to get at though, Mr. Christmas, is before  
18 you decided to plead guilty, somebody must've spoken to you?

19 A. Well, I was -- Like I say, I was more concerned about that  
20 obstruction charge --

21 Q. Yeh.

22 A. -- than I was with this B&E, you know. I figured --

23 Q. Okay.

24 A. -- I'll plead guilty to it when that came up, you know, or  
25 when they have court on it or something, you know, or --

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 Q. Okay. Now, let's move to after you pleaded guilty.

2 BY MR. CHAIRMAN:

3 Q. Was -- The court worker at that time was Mr. Bernard Francis  
4 I think.

5 A. Yeh, he was like more like studying law that time. He was  
6 just --

7 Q. Pardon?

8 A. He was like more like studying law and getting into the courts  
9 and all that.

10 Q. Was Mr. Francis with you during these discussions?

11 A. No, I don't think he was there that day.

12 Q. There was no court worker there?

13 A. No, I don't think there was a court worker that day, you know.

14 Q. I see. All right. Now you can go ahead. Sorry. I just wanted --

15 MR. WILDSMITH:

16 Okay.

17 BY MR. WILDSMITH:

18 Q. So for whatever reason now you've decided to plead guilty,  
19 and you plead guilty in the court. Now, the next question  
20 I want to ask you is, Did somebody make representation to the  
21 judge on the question of sentence you should receive?

22 A. Just the police officers went up the the Crown that day and  
23 they were talking and --

24 Q. Did the prosecutor get up and speak to the judge about what  
25 he thought you should get for a sentence?

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 | A. Yeh, they -- the judge -- Crown got up and went up to the  
2 | judge or something, you know, and passed him a piece of paper  
3 | or something that time and sat back down and I was told to  
4 | stand up and --

5 | Q. To your understanding, did he say anything out loud in the open  
6 | court to the judge about what sentence you should get?

7 | A. He just told him that I was -- I appeared more than once in  
8 | front of him, you know, and --

9 | Q. I'm sorry?

10 | A. Said I appeared more than once in front of him and I was on  
11 | probation and --

12 | Q. So the prosecutor got up and said that to the court?

13 | A. He must have. That's the only way they knew of me like, you  
14 | know, and --

15 | Q. Can you recall?

16 | A. I just recall getting two years and I was shocked.

17 | Q. All right and did anybody ask you if you'd anything to say in  
18 | your own behalf?

19 | A. No, I think I was drove back to the lock-up, that's all.

20 | MR. CHAIRMAN:

21 | Mr. Wildsmith, all of this could be cleared up in about one minute  
22 | if Mr. Elman can recall. All he would have to do is stand up and  
23 | tell us whether he represented the accused and if he appeared and  
24 | made representation.

25 |

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 MR. ELMAN:

2 I recall certainly representing Tommy Christmas of the charge of  
3 intimidation and taking the Preliminary -- I didn't recall that  
4 until I saw the evidence. I was concerned about him getting out  
5 on bail at that time, and I think that that was the reason why  
6 the Preliminary was very shortly after the charge was filed  
7 against him. I believe that the charge was on a Monday and the  
8 Preliminary was on a Friday. Otherwise, we have to go to a bail  
9 application before another court and may not get in there before  
10 possibly a couple of weeks. So we did take -- have the Preliminary  
11 obviously, and at that time he was allowed out on bail. My research  
12 work thereafter was mainly with that one charge because that matter  
13 was going to go before the Supreme Court in the November term.  
14 In the meantime, of course, he was picked up on this break and  
15 enter. As I recall now, thinking back, I don't remember knowing  
16 anything about the break and enter until after he had been brought  
17 into the court. And I noticed in the records that we had that he  
18 appeared on one day after a remand on the break and enter and  
19 then appeared again the next day because I believe it's the 4th  
20 of October and the 5th of October from the records. Now, I --  
21 Bernie Francis gave evidence yesterday. I don't recall that  
22 meeting with the Prosecutor and with the -- or with the judge  
23 and the Prosecutor, but I would suspect that once I found out  
24 that Tom Christmas had pleaded guilty to this charge of break  
25 and enter, that I made representation to the Crown at that point

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 in time that it was senseless to continue with the other  
2 charge since the object of the exercise appeared to be to get  
3 Tommy Christmas out of the way prior to the Marshall trial. And  
4 as a result, I approached the Crown, obviously, and we had that  
5 charge dismissed. We offered no evidence, and it was dealt with  
6 in that fashion. And that's to my recollection, but I don't  
7 believe I represented Mr. Christmas on the break and enter.

8 MR. CHAIRMAN:

9 Thank you very much.

10 MR. WILDSMITH:

11 Thank you, My Lord, I think that's been very helpful.

12 BY MR. WILDSMITH:

13 Q. Two points arising out of that. One then -- This is the point  
14 that I'm primarily interested in. I didn't mean to end up  
15 with Mr. Elman making representations, but the point is  
16 whether anybody including yourself spoke on your own behalf  
17 to the court on the question of sentencing?

18 A. No, I never asked, you know.

19 Q. Okay. So the answer's no. Is that correct?

20 A. No.

21 Q. And can you comment on the notion that the object of the  
22 exercise was to get you out of the way before the Marshall  
23 trial?

24 A. We were both surprised, you know, the sentence that I got,  
25 you know, and I kept telling Junior to inform the court that

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 I want to be heard on that -- on this trial, you know, about  
2 one of the eyewitnesses that were involved, you know, and it  
3 Johnny Pratico we're talking about and said, you know, that  
4 what I -- what he told me and what I knew about him that time  
5 that he spoke back to me and told me how he was involved  
6 and everything, you know, and he told me about the cops  
7 pressuring him and all that. I knew then, you know, that much  
8 about that his story wasn't holding -- shouldn't hold, you  
9 know like we were brought in that time, you know, and told --

10 Q. Is it fair to think, Mr. Christmas, that it's your belief  
11 that the police wanted you out of Sydney --

12 A. Yes.

13 Q. -- because they were concerned that with you in Sydney,  
14 Mr. Pratico might end up telling the truth?

15 A. That's what I figured anyway, myself, yes.

16 Q. Now, you said that when you pleaded guilty to this charge,  
17 you expected to get two or three months. Is that what is  
18 commonly referred to in the vernacular as "county time?"

19 A. Yeh.

20 Q. And that's something that you are reasonably familiar with, is  
21 it?

22 A. Oh, yeh, yeh. Like, you know, it's a couple of months you're  
23 in goal, you know.

24 Q. And how did you feel about going to Dorchester Penitentiary  
25 rather than Cape Breton Correctional Centre?

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 | A. Well, I was scared, you know, and I was never -- never even  
2 | heard about the place, you know, I heard a little about it,  
3 | but I was never -- never expect to see it at that early an  
4 | age, you know, and --

5 | Q. Is it fair to think from your experience that Dorchester is  
6 | a far more harsh environment --

7 | A. Yes.

8 | Q. -- to be in than the Cape Breton Correction Centre?

9 | A. Yes, it is, yeh.

10 | Q. Thank you. Now, one comment you've made in relation to your  
11 | time, I think, in Springhill -- I'm not sure if I completely  
12 | understood this. It was something about not being allowed  
13 | to write letters to other Indians?

14 | A. It wasn't other Indians.

15 | MR. RUBY:

16 | Inmates.

17 | BY MR. WILDSMITH:

18 | Q. To other inmates, okay.

19 | A. No, it was just when once me and Marshall used to write letters,  
20 | and I got one letter back. It didn't go out, and I asked him  
21 | why and he said, "No, you further can't write to Mr. Marshall  
22 | anymore," or something. You know, you had to be some -- It  
23 | had to be your brother or something to keep writing to each  
24 | other from another prison.

25 | Q. Okay. So what you're saying is that you couldn't write

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 | to Mr. Marshall anymore and he to you because you were both  
2 | inmates and that inmates weren't allowed to write to each  
3 | other?

4 | A. Yes, like it'd have to be your brother before you can write  
5 | to him, you know, and -- But I seen other inmates getting  
6 | letters from other goals and some Indian -- inmates here  
7 | that couldn't read, you know. They used to get letters and  
8 | they asked me to read them to them and explain to them, you  
9 | know, what the letter meant and --

10 | Q. You mean some people get letters from other inmates?

11 | A. Oh, there's other inmates that got letters back in Dorchester  
12 | and persons that were in, you know.

13 | Q. Did you view this as a particular effort to stop communication  
14 | between you and Junior Marshall?

15 | A. I always asked -- We always ask ourselves today, you know,  
16 | that's the reason why, you know, ever since he was released,  
17 | you know, and we sat and talked, you know, and --

18 | Q. And part of the reason you have this question in your mind  
19 | is because you understand other inmates were able to write  
20 | to other inmates?

21 | A. Yeh. Yeh.

22 | Q. Okay. Now, we've had some evidence about Wentworth Park  
23 | and the activities in Wentworth Park and the activities in  
24 | particular of the police in chasing the Indian youth out of  
25 | that park. Would it be fair to describe the police conduct

THOMAS J. CHRISTMAS, by Mr. Wildsmith

- 1 as being like raids on the park?
- 2 A. Yeh, you can say that it was like raids, yeh. There was one  
3 or two police cruising sometimes, you know.
- 4 Q. Can you describe then how it would happen?
- 5 A. Well, one that would come the park and the one drive right  
6 around the park, you know.
- 7 Q. Yes.
- 8 A. They come right up -- They come up Crescent Street because we  
9 used to run up through the hill like to get out -- head for  
10 the graveyard or get in the woods like, you know.
- 11 Q. Do you mean that several cruisers would come at the same time  
12 and you would be closed in on from several different directions  
13 so you wouldn't escape, is that the idea? Yeh, that's the  
14 idea.
- 15 Q. Okay. Do you recall one particular time when this happened  
16 and you were chased by the present Chief, Boots Walsh?
- 17 A. I guess we were picked up by Boots Walsh or -- I'd say we  
18 were, yeh.
- 19 Q. Do you recall one particular time when you were chased some  
20 distance by him?
- 21 A. I know he chased other -- I mean I know he chased other  
22 fellows, you know, but, you know, they -- I never used to --  
23 just that incident I ran in. I was hit you know, and I was  
24 struck with the billy bat, you know, and --
- 25 Q. Okay. Okay, let's take us to the billy bat incident then. The

THOMAS J. CHRISTMAS, by Mr. Wildsmith

- 1 particular point I'm interested in is what the police officers  
2 said to you at that time. I think in your direct evidence  
3 you said that they said, "Why don't you get to the Reservation  
4 where you belong," or words to that effect.
- 5 A. Oh, yeh, yeh. They told me to get back to where I -- to the  
6 Reservation where I belonged, to get out of the park, and get  
7 back where I belonged on the Reservation, you know.
- 8 Q. You also said that you given "sass" if I understood your word  
9 correctly and that they called you down.
- 10 A. Oh, they always called us down, you know.
- 11 Q. How would they call you down.
- 12 A. Well, called you "a bunch of wagon-burners, you know, you're  
13 nothing but trouble around here, you know, you're just coming  
14 around town and destroying people's properties," and that's  
15 what we're being questioned about, you know, this like dif-  
16 ferent things, you know.
- 17 Q. Are these the kinds of things that the police would say directly  
18 to you to your face?
- 19 A. Yeh.
- 20 BY MR. CHAIRMAN:
- 21 Q. What time of the night or day did these events occur when you  
22 were being chased out of the park?
- 23 A. Oh, you know, 9:30, 10 o'clock.
- 24 Q. In the evening?
- 25 A. Yeh.

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 Q. Was there a curfew in that park, do you know?

2 A. There was never no curfew on the park until after the incident  
3 took place.

4 Q. I see.

5 BY COMMISSIONER EVANS:

6 Q. Was there a curfew in the city?

7 A. After the incident took place, they put a curfew on it. The  
8 park had to be closed at 11 o'clock, some days at 10. I think  
9 it was 11 and open 7 in the morning. But before there was  
10 never no sign up there that was -- the park was ever closed?

11 BY MR. WILDSMITH:

12 Q. Why did the Indian youth from the Reservation go down to the  
13 park?

14 A. Well, there was people down there that slept down there to be  
15 honest with you. You know, people did sleep down the park in  
16 the bushes.

17 Q. Yes.

18 A. And these people were from the city. They were White men, you  
19 know, like they were called winos.

20 Q. Yes.

21 A. And they sleep down there, and when we get down there, you  
22 know, they have -- they got cigarettes and they got booze,  
23 you know, and they had -- If we had enough money, we'd give  
24 it to them. They go in the liquor store for us, and we used  
25 to share what we had and, you know, there was never --

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 Q. Okay. And my last question to you, Mr. Christmas, is, Are  
2 there any other instances of contact with the police that you'd  
3 like to tell us about? Any particular complaints?

4 A. Just one charge that they brought up against me back in -- that  
5 assault charge back in -- I don't know what year that was. It'  
6 on a record anyway. The time I was sentenced to three years --

7 Q. Yes.

8 A. -- on that charge, you know, that was no evidence in that case  
9 and -- but I was still convicted in their courts and I was  
10 sentenced to three years. The lawyer I had was from the Legal  
11 Aid, and he turned and he appealed it to a court in Halifax,  
12 and that case was dismissed and I walked out of Dorchester, you  
13 know, at that time, you know.

14 Q. So you're saying that the conviction was overturned on appeal?

15 A. Yes, and I was -- I came back home and -- That time, I was  
16 going to a dance, I was sober and with a girl and Paul and  
17 heading to a dance at Sydney Forum. There's a concert going  
18 on over there and police officers come around and I was sup-  
19 posed to be in the Pen doing three years, and they must have  
20 shocked them to see me back out on the street. So I guess  
21 they didn't know nothing about this appeal going through or  
22 this appeal going up for me that I was released and I was told  
23 that the case -- oh, I don't know was overturned or was cut down  
24 so much, you know, and I was picked up by Bill Urquhart that  
25 time, and I was -- I asked him why was the reason all this --

THOMAS J. CHRISTMAS, by Mr. Wildsmith

1 I asked him why I was picked up for and he just told me,  
2 "We'll be getting a complaint from you later anyway, you  
3 know, might as well take you down there now," and they put  
4 me into the cell. I was sober and --

5 Q. Were you sober on the night that the billy club was thrown at  
6 you?

7 A. Yeh. I was sober that night too, yeh.

8 Q. You also mention in your direct testimony about coming back  
9 from the Pier after having walked a girlfriend home -- coming  
10 along the railway tracks. Was there some reason why you didn't  
11 go on the main streets?

12 A. Well, you know, they see you on the -- the City Police see you  
13 on the street, they come up and they question you and they'll  
14 search you, you know, and you know, they smell any booze off  
15 you, you'll be put in goal.

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

17 MR. CHAIRMAN:

18 Thank you very much, Mr. Christmas. Take a couple of minutes  
19 break and then we can go on with the next witness.

20 INQUIRY ADJOURNED: 2:59 p.m.

21

22

23

24

25

ARTHUR J. Paul, by Mr. Spicer

1 INQUIRY RECONVENED: 3:16 p.m.

2  
3 ARTHUR JAMES PAUL, being called and duly sworn, testified as follows:

4 BY MR. SPICER:

5 Q. Mr. Paul, can you tell us your full name please?

6 A. Arthur James Paul.

7 Q. Where do you live?

8 A. Arthur James Paul.

9 Q. All right. Where do you live?

10 A. In Sydney. 33 Gallagher in Membertou.

11 Q. Membertou? And how old are you?

12 A. 36.

13 Q. And you were born in Sydney?

14 A. Sydney.

15 Q. And shortly after you were born you moved to Shubenacadie  
16 didn't you?

17 A. Yes.

18 Q. How old were you when you moved to Shubie?

19 A. I'd say nine.

20 Q. Nine?

21 A. Yeh.

22 Q. Did you do the first three grades of school at the Residencial  
23 of Shubenacadie?

24 A. I completed all the grades. I completed all grades in  
25 Shubenacadie.

AUTHUR J. PAUL, by Mr. Spicer

- 1 Q. In Shubenacadie. And how high up did the school go?  
2 What was the last grade?
- 3 A. Well, probably I'd say around about grade seven between that  
4 -- between grade seven and grade eight.
- 5 Q. And you did everything -- all your schooling to grade seven  
6 or eight at the Shubenacadie school?
- 7 A. Yes.
- 8 Q. Okay. You never when to the Membertou School?
- 9 A. Just once.
- 10 Q. For one year?
- 11 A. Well, one year before going to Shubie.
- 12 Q. Before going to Shubie?
- 13 A. Yeh.
- 14 Q. Okay. What grade did you do -- what -- at Membertou?
- 15 A. Primary.
- 16 Q. Primary?
- 17 A. Yeh.
- 18 Q. And you were -- you spoke English or you were taught in  
19 English at that school?
- 20 A. I most -- mostly speaking Micmac.
- 21 Q. Speaking Micmac. Now, at -- when you were at the school in  
22 Membertou you say you were in grade primary? And what  
23 language were you -- were the teacher -- were you taught in?
- 24 A. English.
- 25 Q. In English? Okay. The language that you spoke at home was

AUTHUR J. PAUL, by Mr. Spicer

- 1 Micmac, is that right? Is that right?
- 2 A. That's right.
- 3 Q. Okay. You have to say yes because the machine doesn't
- 4 pick it up if you nod. Okay?
- 5 A. Yeh.
- 6 Q. And you went from Membertou to Shubenacadie?
- 7 A. Yes.
- 8 Q. And was that another school on the Reserve at Shubie?
- 9 Shubenacadie -- was that school on the Reserve?
- 10 A. Hants County. It's above -- It's across from the town
- 11 of Shubie itself.
- 12 Q. Right. And was the school on the --
- 13 A. It's up on -- It's up on a hill.
- 14 Q. Right. And was the school on the Reserve?
- 15 A. I don't know but -- I don't know if it's Crown land or --
- 16 I don't think it's Crown land.
- 17 Q. What language were you taught in at that school?
- 18 A. English.
- 19 Q. English again? Were there -- Was it all Indian children in
- 20 that school?
- 21 A. Yes.
- 22 Q. Okay. And after you finished at Shubenacadie what school
- 23 did you go to after that.
- 24 A. The Indian day-school.
- 25 Q. And --

ARTHUR J. PAUL, by Mr. Spicer

- 1 A. The Indian day-school in Sydney.
- 2 Q. In Sydney? Which school was that?
- 3 A. That's up in Membertou.
- 4 Q. On the Membertou Reserve?
- 5 A. Yes.
- 6 Q. And what grade was that?
- 7 A. Grade three.
- 8 Q. Grade three?
- 9 A. Grade three.
- 10 Q. Let me understand you correctly. Did you go out to  
11 Shubenacadie and then come back to Sydney for grade three?  
12 Where did you do grades one and two? Do you remember?
- 13 A. Grade one and two. In Shubie.
- 14 Q. In Shubie?
- 15 A. Yeh.
- 16 Q. All right. You did grades one and two in Shubenacadie and  
17 then you came to Membertou for grade three?
- 18 A. Yeh.
- 19 Q. Okay.
- 20 A. Yeh, grade three.
- 21 Q. And I think you told me one other time --
- 22 A. No.
- 23 Q. -- when we were talking about this stuff that at one stage  
24 of the game you went to St. Anne -- the St. Anthony Daniel  
25 School in Sydney.

ARTHUR J. PAUL, by Mr. Spicer

- 1 A. Yes.
- 2 Q. Do you remember what grade that was?
- 3 A. Grade five.
- 4 Q. Grade five. And I think -- And you've also told me I think  
5 before that you would have been around age 14, 15 or so at  
6 that stage --
- 7 A. Yeh.
- 8 Q. -- and you quit school after grade five?
- 9 A. Yes.
- 10 Q. Is that right?
- 11 A. That's right.
- 12 Q. Okay. And was all your instruction when you were in school  
13 in English?
- 14 A. In English. Yes, sir.
- 15 Q. And was the language you were speaking at home Micmac?
- 16 A. Just part.
- 17 Q. Just partly?
- 18 A. Just part because from Shubie -- from the years I was there  
19 I mostly spoke English.
- 20 Q. Why was that?
- 21 A. Cause when I come back -- when I came back to the Reserve  
22 I was a little disoriented.
- 23 Q. When you came back from Shubie?
- 24 A. Yeh. I was disoriented, yeh.
- 25 Q. Why were you disoriented?

ARTHUR J. PAUL, by Mr. Spicer

- 1 A. Well, people on Membertou they mostly -- they were mostly  
2 talking Micmac and it's was pretty hard to adapt to get back  
3 to the system.
- 4 Q. Right. Had you been speaking a lot of English at Shubenacadie?  
5 Is that it?
- 6 A. Yeh, a lot of English, yeh.
- 7 Q. I see. And when you came back to Membertou then were you having  
8 trouble getting back into speaking Micmac again?
- 9 A. Yes.
- 10 Q. I see. Okay. After you quit school-- I think you told me  
11 some time ago that you quit when you were 14 or 15 in grade  
12 five. What did you do after that or --
- 13 A. Oh, I went roaming around Eskasoni, Nyansa and Whycomomagh,  
14 Barra Head --
- 15 Q. What sorts of things were you doing?
- 16 A. -- Shubenacadie. Looking for odd jobs.
- 17 Q. Were you finding any?
- 18 A. Paint jobs.
- 19 Q. Did you eventually take any training to get a -- for --  
20 to get a trade?
- 21 A. Yes, I took two courses. Upgrade. I took two courses, upgrading.  
22 And I took another course, carpentry. So I got 200 hours  
23 for that. That was in '73.
- 24 Q. And is that the sort of work that you do now, Art,  
25 carpenter work.

ARTHUR J. PAUL, by Mr. Spicer

- 1 | A. Yeh. But before that I -- I bumped in to a fellow that's  
2 | was working on a Reserve. His name is Mr. Farrell. He does  
3 | -- He does foundations. So he consulted me one day to see  
4 | -- are you willing to work, you know, I need a good worker.  
5 | Q. How old were you then?  
6 | A. How old was I?  
7 | Q. Yeh.  
8 | A. I'd say I was around about 18.  
9 | Q. And so did you start doing some foundation work then?  
10 | A. Yeh. So we -- he got me going to the job and I succeeded  
11 | pretty good.  
12 | Q. You-sorry; you succeeded?  
13 | A. I guess I'll always succeeded -- he taught me a lot. He  
14 | taught me a lot.  
15 | Q. So you have been doing foundation and carpentry work over  
16 | the years?  
17 | A. Yeh, before I -- Yes, before I took the course in '73 in  
18 | Memberton.  
19 | Q. Was -- Around 1969, 1970 or so was Junior Marshall a good  
20 | friend of yours?  
21 | A. Yes.  
22 | Q. Okay. How long had you known Junior for?  
23 | A. Off and on. Yeh. Well, after I come from Shabie -- Donald  
24 | was working as drywall and occasionally Junior and I would  
25 | go out and go camping and whatnot. Go the woods and hunt, whatnot.

ARTHUR J. PAUL, by Mr. Spicer

1 Q. Is this when you were 17 and 18? About that age?

2 A. Around 16, yeh.

3 Q. Around that?

4 A. Yeh.

5 Q. Were you hanging around a fair amount with Junior in 1969,  
6 '70, '71, around that time?

7 A. Between 1970 -- between 1970, 1970 -- Wait now. 1967.

8 '68. There was another group I usually hang around with was  
9 my nephews Terry Paul, Gerald Ginnish, Harry Kavatay but  
10 their a little older than Junior. They went to school in  
11 Sydney Academy. I hung -- I hang around with them.

12 Q. Did you hang around at all with Junior in the park?

13 A. Yes.

14 Q. Okay. And addition to yourself and Junior who else would  
15 you be hanging around with in the park?

16 A. Tom.

17 Q. Tom Christmas?

18 A. Tom Christmas, yeh. There'd be John Christmas but he was  
19 a little younger. Kevin Christmas. He hung around.  
20 Cameron Paul but he mostly had to go to work. He mostly  
21 had to go to school. But there were many events at that time  
22 when we did want to out. It was particularly on the weekends.  
23 You know for the dances and --

24 Q. And that group that you were just describing would be the  
25 group that would kind of hang out together?

ARTHUR J. PAUL, by Mr. Spicer

- 1 A. Yes.
- 2 Q. Is that it? Did you ever do any pan-handling or bumming  
3 money in the park?
- 4 A. Yes.
- 5 Q. What kinds -- What sorts of amounts of money would you be --
- 6 A. Oh, not very much. A dollar fifty, seventy-five cents.
- 7 Q. What would you be getting it for?
- 8 A. Pardon?
- 9 Q. What would you be bumming it for?
- 10 A. Oh, for a bottle of beer, rum. If we could get enough -- If  
11 we do get enough we'll get a 40 ounce of Apple Jack.
- 12 Q. Did you ever go pan-handling or bumming only with Junior?
- 13 A. Yes. A few times.
- 14 Q. You did.
- 15 A. But not -- but not compulsive like.
- 16 Q. What do you mean not compulsive?
- 17 A. Not all the time.
- 18 Q. Oh, sure. Did you ever see Junior use -- use any force  
19 when he was bumming money?
- 20 A. Oh, there's other people around that you can -- well, the  
21 park is full. You see. If this particular person don't  
22 have enough well that's all right we'll go out -- we'll go  
23 to the next person.
- 24 Q. What's the answer to my question? My question was whether  
25 or not you'd ever seen Junior use any force in bumming money

ARTHUR J. PAUL, by Mr. Spicer

- 1 from people?
- 2 A. Oh, probably grabbed somebody. Probably grab someone.
- 3 Q. Did you ever see that yourself?
- 4 A. Yeh.
- 5 Q. And when you say --
- 6 A. Probably grab someone but --
- 7 Q. And would --
- 8 A. -- empty out their pockets. They empty out their pockets and  
9 no harm -- after that no harm done.
- 10 Q. Are you able to tell us whether or not in this -- on the  
11 occasions when you saw that would that be with somebody that  
12 you knew? In other words you know -- you knew the person  
13 that you were bumming the money from or you didn't know?
- 14 A. There was a few there that I knew.
- 15 Q. All right. But on the occasions that you just mentioned  
16 about Junior grabbing somebody, do you recollect whether  
17 or not that would have been somebody that Junior knew?  
18 In other words a friend or his or an acquaintance?
- 19 A. No.
- 20 Q. You don't remember?
- 21 A. No. No, it's not that I don't remember but -- It's not  
22 that I don't remember. It's just -- It was just another  
23 person that just came out of the blue.
- 24 Q. I see. Are you able to tell us how old the people were  
25 that you used to bum money from? Are they mostly kids your

ARTHUR J. PAUL, by Mr. Spicer

- 1 own age or were they older or younger?
- 2 A. No, they were older. Around 30. In there. In the early --
- 3 early 30's. A little over 40.
- 4 Q. And these would be the usual sorts of people that you'd
- 5 stop and ask for money?
- 6 A. Yeh.
- 7 Q. Would you be doing much drinking when you were down in the
- 8 park?
- 9 A. Particularly the weekends.
- 10 Q. You'd be working some of the time during the week would you?
- 11 A. Yeh, I'd be working. Yeh. I was working for Kevin Farrell
- 12 at that time. He lives down on Kings Road there.
- 13 Q. That's the foundation guy you were telling --
- 14 A. Yeh, the foundation fellow. Yeh.
- 15 Q. Do you remember ever being -- the police ever coming up
- 16 to you in the park and asking you to leave?
- 17 A. Yeh, on numerous occasions.
- 18 Q. And on those numerous occasions can you tell us what happened?
- 19 What sorts of things would happen? What would they say
- 20 to you?
- 21 A. Well, they probably say well, -- cause of a few incidences
- 22 and tell whether that was were called there. There was
- 23 bottles broken there on the street there. Do you know anything
- 24 about this, you know. So -- no, no I don't.
- 25 Q. Were you ever picked up by the police and taken down to the

ARTHUR J. PAUL, by Mr. Spicer

- 1 | cells and then let go the next day and not charged? Just  
2 | spend the night there and then get turfed out the next day?
- 3 | A. Yeh, a few times I was picked up by the police to take me  
4 | home because I was feeling pretty good.
- 5 | Q. They'd take you home directly?
- 6 | A. Yeh, they took me home directly.
- 7 | Q. To the Reserve?
- 8 | A. Yeh, usually when they do pick me up I don't say nothing.  
9 | I do not say nothing.
- 10 | Q. Were there occasions when you were -- then when you were  
11 | picked up by the police and instead of taking you to the  
12 | police station they'd drive you home?
- 13 | A. They'd drive me home, yeh.
- 14 | Q. That right. Were there other occasions when they would  
15 | take you to the police station?
- 16 | A. Yes.
- 17 | Q. On the occasions that you were taken to the police station  
18 | were you -- did you always end up getting charged of being drunk  
19 | in a public place or would they sometimes just let you go  
20 | the next day?
- 21 | A. A charge and probably drunk in a public place.
- 22 | Q. So would -- that's what would happen to you when you went  
23 | to the police station and stayed over night. You'd get charged  
24 | the next day?
- 25 | A. Yes.

ARTHUR J. PAUL, by Mr. Spicer

- 1 Q. Okay. Do you remember the night of the Sandy Seale stabbing?
- 2 A. Yes.
- 3 Q. Okay. Can you tell us what you were doing that evening?
- 4 A. Well, first I called Kate -- Kate O'Reilley.
- 5 Q. Who is she?
- 6 A. She lives out Cross Street -- 23 Cross Street.
- 7 Q. Kate O'Reilley?
- 8 A. Kate O'Reilley, yeh.
- 9 Q. Was that your girlfriend at the time?
- 10 A. Yes, she was.
- 11 Q. Okay. So you called her and then what did you do?
- 12 A. I called her and I said I'll see you down at the Tobin's
- 13 later but she -- well, she told me that she going to see
- 14 me down at Tobin's. To Intercolonial. We'll be in a -- We'll
- 15 be in the back of a car.
- 16 Q. This is the car in the back of Tobin's.
- 17 A. Yes. An old ford.
- 18 Q. Yeh, Okay.
- 19 A. An old Ford, yeh. So I was on my way down. Roy Gould and
- 20 Junior Marshall -- they were just coming from Sydney. Coming
- 21 from Halifax somewhere and --
- 22 Q. Junior just come from Halifax?
- 23 A. Yeh, Halifax or somewhere. He was glad to see me. And, like,
- 24 Junior he says "Where you going dude?" And I said "I'm going
- 25 down Intercolonial to see Kate" and he tells me "Can I tag

ARTHUR J. PAUL, by Mr. Spicer

- 1 along? Well, I said; "Oh well, suit yourself." So we had  
2 no money and -- well, I had a few dollars myself. I'd  
3 say I had around about ten dollars. So he confronted Roy  
4 Gould for some money. Ten to 15 dollars or something. That's  
5 what it was. Okay. So we proceeded to town to the liquor  
6 store. I went in.
- 7 Q. Who's we?  
8 A. Gould -- Roy Gould, I and Junior.  
9 Q. Right.  
10 A. I went in because I was the oldest -- I was the old -- well,  
11 I was 20. Eligible to get the -- to get the liquor, eh.  
12 I thought -- I think it was 21 but I took the chance to get in.  
13 Q. Close enough.  
14 A. Yeh, close enough.  
15 Q. Okay, you went in?  
16 A. Yes.  
17 Q. Went in to the liquor store?  
18 A. Yeh.  
19 Q. What did you get in the liquor store?  
20 A. Black Diamond. A quart of Black Diamond Rum.  
21 Q. And where did you go then?  
22 A. We proceeded to 76 Intercolonial Street.  
23 Q. Is that Tobin's?  
24 A. That's Tobin's.  
25 Q. Okay.

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- 1 A. Terry Tobin's.
- 2 Q. Right. What did you do there?
- 3 A. From there we got in to the car and then Doc he wanted  
4 to see Junior.
- 5 Q. Who's Doc?
- 6 A. Doc Tobin. He wanted to see Junior about something. That  
7 he was a scrapper or something. One of the girls told  
8 -- told Doc -- the one that hangs around Artie Paul he's  
9 pretty good with his fists. No, --
- 10 Q. Was everybody in the car at this --
- 11 A. Well, outside sort of hanging around before we got in to  
12 the car. So since Doc knew Pius --
- 13 Q. This Pius Marshall?
- 14 A. Yeh. And nobody tangles with Pius. Six -- you know, he's  
15 a giant, you know. That made amends anyway and that's how  
16 Doc and Junior got acquainted.
- 17 Q. Are you telling me Doc and Junior got acquainted that night?
- 18 A. Yeh.
- 19 Q. And what happened then? Did you hang around Tobin's then?
- 20 A. That night?
- 21 Q. Yes.
- 22 A. Yes. We all went in the car.
- 23 Q. What about Junior?
- 24 A. Junior? He was in the car.
- 25 Q. And how long was Junior in the car for?

ARTHUR J. PAUL, by Mr. Spicer

- 1 | A. Oh, till he wanted that urge to get a drink. A glow. He  
2 | says; I want to put on a glow. He said; He wanted to put  
3 | on a glow because -- I said; It's only a quart and not  
4 | very much. Well, I think we all had a quantity to drink.  
5 | About that much. It wasn't very much. So Doc he went in  
6 | the house to see if he could get anything from his father  
7 | and Junior got kind of impatient and honked the horn, eh.  
8 | And Mr. Tobin he come out and he was a little mad -- he  
9 | was a little mad and one of the girls told me -- one of the  
10 | girls told me; There's Mrs. Tobin. She's in there. She's  
11 | ill. So I don't blame Mr. Tobin for reacting that way.  
12 | So he's pounding at the car door and the girls were saying  
13 | Let him in and Junior said; No. No, don't let him in. He  
14 | has something in his hand. So he got -- he didn't -- he  
15 | couldn't succeed so he went back in the house and closed  
16 | the door behind him. So meanwhile the girls were debating  
17 | to go somewheres else. Our girls. Then Frenchy --
- 18 | Q. Who were the girls now? It was Kate?
- 19 | A. Pardon me?
- 20 | Q. Who are the girls we're talking about? Is that Kate and who?
- 21 | A. I think it was Marg and --
- 22 | Q. Sorry?
- 23 | A. -- I'm not quite sure if it was Marg or Theresa MacNeil or  
24 | Mary -- Mary.
- 25 | Q. Mary?

ARTHUR J. PAUL, by Mr. Spicer

- 1 A. Mary O'Reilley.
- 2 Q. O'Reilley.
- 3 A. Right. They left. Moore Tobin left. Frankie French left.
- 4 I declined to go because I wanted to stay with Kate.
- 5 Q. What did Junior do?
- 6 A. Junior? Well, Junior went with the boys heading towards
- 7 to St. Joseph's dance.
- 8 Q. Did that bunch indicate to you that that's where they were
- 9 going? They were heading down to the dance?
- 10 A. Yes.
- 11 Q. Okay. Did you see Junior again that evening?
- 12 A. Later around three o'clock but before that -- before that
- 13 when they all went Kate and I were still in the car. And
- 14 we were there for a while. We were talking away. What's
- 15 going on and see what's coming up for the summer, you know.
- 16 And this was around about twelve-thirty or something --
- 17 I didn't have a watch. This was around about twelve-thirty
- 18 and I heard the siren. I heard the siren.
- 19 Q. You heard a siren?
- 20 A. Yeh, I heard a siren and --
- 21 Q. How close is the -- where you were, Tobin's, to the park?
- 22 A. Oh, two miles.
- 23 Q. Two miles?
- 24 A. Two miles. So I heard the siren. Something developed here.
- 25 An intuition. You know, a flash insight.

ARTHUR J. PAUL, by Mr. Spicer

- 1 Q. Yes.
- 2 A. And I said; Oh, well, it couldn't be that. Nothing  
3 happened to Junior or anything. But it just lasted for  
4 around about five seconds, so I didn't tell Kate nothing.
- 5 Q. This was after you heard the siren?
- 6 A. Yeh, I heard the siren.
- 7 Q. Why would that have happened to you? Have you got any idea?
- 8 A. Oh, it's just -- It's natural I guess. Well, it happens to  
9 me a lot of times. So -- So we kept talking. Kept talking.  
10 So I told Katie; Well, I think it's time to go. So I walked  
11 her home. We got far as the warehouses there between Fairview  
12 Street -- by the time I got to Fairview Street there was  
13 a cruiser there.
- 14 Q. There was -- sorry?
- 15 A. There was a cruiser there. A police car.
- 16 Q. Where's Fairview Street?
- 17 A. That's at the north end. That's a couple of blocks from  
18 Cross Street where Kate lives. So they shone a light. Then  
19 they told me; who you with? I says; Oh, I'm with my girlfriend.  
20 He says; All right. Would you like to jump in the car with  
21 us?
- 22 Q. Was this police now?
- 23 A. Yeh. They didn't read me no rights or anything.
- 24 Q. If I could just stop you there for a moment. Had you --
- 25 A. All right.

ARTHUR J. PAUL, by Mr. Spicer

- 1 Q. Had you seen Junior by that point?
- 2 A. Pardon me?
- 3 Q. Had you seen Junior since he got out of the car to the  
4 time that you're now being picked up by the police?
- 5 A. No, I hadn't seen Junior.
- 6 Q. You hadn't seen him. Okay.
- 7 A. As far as I concerned Junior was down at St. Joseph's dance.  
8 Well, okay. They picked me up. I couldn't give -- I couldn't  
9 give you positive identification nor I can give you a  
10 general discription.
- 11 Q. As to who the officers were you mean?
- 12 A. Yeh, that's right. But they were officers. Police. City Police  
13 So I got in the back and some cases they wanted to know  
14 if I could speak first. Well, I didn't speak. So they  
15 mentioned Joan Clemens. They wanted to know what address  
16 Joan Clemens lives.
- 17 Q. Did you know the answer to that question?
- 18 A. Pardon me?
- 19 Q. Did you know where she lived?
- 20 A. Yes.
- 21 Q. Did you tell them?
- 22 A. Yes. But I -- we didn't have time. Then I started thinking  
23 about Junior.
- 24 Q. Why would that be?
- 25 A. Cause Junior used to go out with Joan Clemens.

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1 Q. Joan Clemens?

2 A. So I didn't bother saying after that. They were just talking.  
3 They were just talking their cop routine -- routine. There  
4 you go. Okay. So I showed them the house. And the  
5 intercom that they had -- intercom was going there and --

6 Q. In the police car?

7 A. Yeh, the intercom. Radio. Okay, Art we'll let you off  
8 here now.

9 Q. Where were you when they said we're going to let you off  
10 now?

11 A. At the end of Dacre Street.

12 COMMISSIONER EVANS:

13 Which street?

14 BY MR. SPICER:

15 Q. Dacre Street?

16 A. Dacre. Okay. From there -- so --

17 Q. Did you just get out of the car then and go --

18 A. Yeh, I got out of the car. They head towards St. Anthony  
19 Daniel towards town.

20 Q. Was the only thing that they asked you about Artie -- was  
21 it -- were they only asking you about Joan Clemens?

22 A. Yeh.

23 Q. That's all you remember?

24 A. Yeh. They haven't mentioned Junior and I haven't mentioned  
25 Junior. And so I -- Well, they dropped me off. I went to

ARTHUR J. PAUL, by Mr. Spicer

1 | Xavier Street. Xavier leads you to the shortcuts to Membertou.

2 | The woods.

3 | Q. Right.

4 | A. So there's two paths there. One passes the Spring Garden  
5 | Villa. There's two paths leading to Membertou. There's  
6 | a path leading to Gallagher. That's where I live. And there's  
7 | a path leading to Maillard Street.

8 | Q. Is that also in -- That's also in the Reserve?

9 | A. Yeh.

10 | Q. Did you go back to the Reserve then?

11 | A. Pardon me?

12 | Q. You were headed back to the Reserve?

13 | A. Yeh, heading back to the woods.

14 | Q. Right.

15 | A. I'm heading back to the woods and I'm still thinking --  
16 | I'm still thinking there's -- I said there's something  
17 | going on. There's something wrong. So by the time I got  
18 | to the Reserve the only thing -- the only thing I seen was  
19 | the dogs. They were barking. They were barking. Just bark.  
20 | And normally when you're on a Reservation there is always  
21 | dogs around. They -- There was another -- There was another -  
22 | And the dogs were just -- they were barking. They were  
23 | barking and barking so I just about indicated that there's  
24 | something going on.

25 |

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1 Q. You're by yourself at this time?

2 A. Yeh, I was by myself.

3 Q. Just thinking to yourself what was going on.

4 A. Yeh, I hadn't met anyone on the road. I hadn't met anyone on  
5 the road. I hadn't met anyone on the road so I got to the  
6 house.

7 Q. This is your house now?

8 A. Pardon me?

9 Q. You got to your house?

10 A. Yeh.

11 Q. Okay.

12 A. Oh, I'd say -- I'd say around about another -- I'd say another --  
13 another half hour, Junior comes walking in the door and he was  
14 pale. He had a bandage on his left forearm. I said to myself,  
15 "Fuck, Junior, what the hell happened to you"? In some cases --  
16 I knew there was something going on but I just couldn't quite  
17 pinpoint it. Junior -- I told Junior to sit down, sit down  
18 for a second. "I know you're in shock," I told him. He tells  
19 me, "You know what happened"? I tell Junior, "It don't matter  
20 what happened". He said -- He just said, "I just want to get  
21 through to you first because I just got" -- "I'm going to have  
22 to calm you down first before you give -- you've given me any  
23 details".

24 Q. Did it seem to you that he wasn't calm when he came in?

25 A. No, he wasn't calm. He was in shock. His face was pale. His

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1 face was pale. He was shaking real bad so he had to sit  
2 down for a while. I remember there was another fellow in the  
3 other room. I don't know if it was my brother or a cousin of  
4 mine from Eskasoni. We usually have a few bottles of wine there  
5 and I kind of thought I'd offer Junior a drink -- a drink of  
6 rum -- not of rum but wine just to settle him down. So we talked  
7 and so we talked, but of what -- of what he told me, but I  
8 don't know if I am obligated of saying what he told me.

9 Q. Yeh, I want to know what he told you.

10 A. You want to know, eh?

11 Q. Yeh.

12 A. Okay. He couldn't -- See, he couldn't -- he couldn't quite say  
13 to a point like -- if you would have met him a week later or  
14 something like that he probably -- he probably say it in a  
15 perspective way, but he was still in shock. His mouth was  
16 babbling there and I couldn't make him out. I said, "Just  
17 clam down and just tell me what happened". He said he was  
18 down to see the police.

19 Q. He told you he'd been down to see the police?

20 A. He was down to see the police, got stitched up, and he showed  
21 me his arm, it had stitches on there.

22 Q. Did he not have a bandage around his arm at the time?

23 A. He had a -- Well, he had a bandage and then -- and then the  
24 upper sleeve here was cut, I guess. Well, someone must have  
25 cut it in order to relieve the pressure. So -- So I told him,

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1 "Who -- Who were you with"? "Which Sandy was down the Park",  
2 but before that I was worried about Sandy". I said, "Sandy  
3 who"? First of all, I thought it was Sandy MacNeil. Well,  
4 Sandy MacNeil is a girl, eh, Sandy. This was Sandy -- Sandy  
5 Seale.

6 Q. Did you know Sandy Seale?

7 A. Sandy Seale? Yes, I knew of Sandy Seale. Sandy Seale --

8 Q. Okay. Go ahead.

9 A. Oh, we'll get that later on, yeh. So I told Junior to sit  
10 down, just sit down for around -- just sit down for a few  
11 seconds anyway, just sit down and calm down. Everything will  
12 be okay. So he said -- he started talking about this old  
13 man. This old man with grey hair and a coat -- with a cloak,  
14 claimed to be a priest, was from away somewhere. So Seale  
15 and Junior claimed there were from somewheres else themselves.  
16 I don't know. It was just one of these communications that  
17 you want to hide your identity, I guess, you know. Well, I --  
18 Well, panhandling as far as I'm concerned -- as far as I'm  
19 concerned I don't think they got too much.

20 Q. Who was doing the panhandling there?

21 A. Junior. Junior was doing the pan -- panhandling.

22 Q. Did he tell you that that night?

23 A. Pardon me?

24 Q. Did he tell you that evening that that's what he was doing?

25 A. Yeh, panhandling.

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- 1 Q. Did he tell you what he was panhandling for?
- 2 A. For money.
- 3 Q. For money. Did he tell you who he asked for money?
- 4 A. The older fellow.
- 5 Q. The older fellow. And did he tell you what the older fellow's
- 6 response was? What did the older guy do?
- 7 A. The older guy said, "Well, I got something in my pocket". "I
- 8 got something for you and your friend". But before that they
- 9 were asking about -- Before that they were asking about
- 10 bootleggers and women, you know, and before that they were
- 11 asking -- they were inviting them to their place. Well, he
- 12 pointed in one direction. He pointed that way anyway.
- 13 Q. Who is "he"?
- 14 A. Ebsary, the older fellow, he pointed, so they have -- just so --
- 15 they got into a little scuffle there. They had got into a
- 16 little scuffle. Junior had a little tangle with -- with the
- 17 taller fellow and meanwhile Mr. Seale himself had his hands
- 18 in his pocket.
- 19 Q. Yes, and what happened?
- 20 A. And Junior heard a scream.
- 21 Q. Is what you're telling me now what you remember Junior telling
- 22 you that night?
- 23 A. This is -- Yes. Yes. This is what he told me, sir, but maybe
- 24 years later it could be a different -- it could be a different
- 25 story all together, eh.

ARTHUR J. PAUL, by Mr. Spicer

- 1 | Q. No, I want -- all I want -- All I want to be sure of when you  
2 | and I are talking is that you are telling me to the best of  
3 | your recollection what Junior told you that night, the night  
4 | you saw him, the night of the stabbing?
- 5 | A. Yeh.
- 6 | Q. And is what you've just told me what Junior told you that night?
- 7 | A. Yeh.
- 8 | Q. Yes?
- 9 | A. Yeh.
- 10 | Q. Did he tell you anything else during the course of that  
11 | conversation that evening after you'd calmed him down and were  
12 | talking to him? Did he tell you anything else about the  
13 | incident?
- 14 | A. Yeh, he told me -- Yeh, he told me he was at the hospital and  
15 | there were detectives there. It was Seale -- Sandy Seale --  
16 | Young Sandford was there.
- 17 | Q. Did -- Did Junior say anything to you that night as to whether  
18 | or not Sandy was a friend of his?
- 19 | A. I'm not -- Like an acquaintance? Yeh. Yeh.
- 20 | Q. What did he say?
- 21 | A. He was his acquaintance.
- 22 | Q. Acquaintance?
- 23 | A. Yeh.
- 24 | Q. Would he have used that word?
- 25 | A. Buddy. Buddy.

ARTHUR J. PAUL, by Mr. Spicer

- 1 Q. Buddy?
- 2 A. Yeh, buddy.
- 3 Q. What about yourself, how well did you know Sandy Seale?
- 4 A. Well, the last time I seen Sandy Seale was on Henry Street,  
5 Henry Street at the Imperial -- at Holy Redeemer. It's on  
6 Henry Street at the northend--Broadway. That's the last time  
7 I seen him.
- 8 Q. When was that, Artie, was that that Friday or some time before?
- 9 A. Oh, that was before.
- 10 Q. Some time before?
- 11 A. That was before.
- 12 Q. Was he -- Was Sandy Seale a buddy of yours?
- 13 A. I just knew him to see him.
- 14 Q. You just knew him to see him?
- 15 A. I could recognize him by his smile. He had a smile -- He had  
16 features of -- Well, he was built agile and he always had  
17 a smile on his face. He was built and good --
- 18 Q. But he wasn't somebody you'd consider to be a buddy of yours?
- 19 A. Oh, no. No, no.
- 20 Q. A couple of days after the stabbing were you -- did you give  
21 a statement to the police?
- 22 A. No.
- 23 Q. Where's volume 16? Page 36 and 37. Artie, let me show you  
24 these two pages. Now page 37 of this volume is a handwritten  
25 statement. Is that your signature at the bottom?

ARTHUR J. PAUL, by Mr. Spicer

1 A. Yeh.

2 MR. CHAIRMAN:

3 What page?

4 MR. SPICER:

5 Thirty-seven, My Lord.

6 BY THE WITNESS:

7 A. Yeh, that's pretty close to it.

8 BY MR. SPICER:

9 Q. Well, do you recognize that as probably being your signature?

10 A. Probably.

11 Q. Okay, and page 36 purports to be the typewritten version of  
12 this handwritten statement, and it's dated June the 2nd, 1971,  
13 a couple of days -- three of four days after the incident?

14 A. But this wasn't the funeral, was it? Was that the funeral?

15 Q. It may have been the day of the funeral. Do you -- Do you have  
16 any recollection at all of being questioned by Sergeant MacIntyre  
17 and giving this -- giving the statement that you see here on  
18 page 36?

19 A. No, I do not have a vivid recollection.

20 Q. Do you have any recollection at all?

21 A. No.

22 Q. You have no recollection at all that you ever gave a statement  
23 to the police?

24 A. No.

25 Q. But you are satisfied that that's probably your signature at

ARTHUR J. PAUL, by Mr. Spicer

- 1 the bottom of page 37?
- 2 A. Yes, that is my signature. There's some things here I wanted to  
3 just -- There's a few misinterpretations there, misunderstanding  
4 and misquotes here. Okay. "Last Friday night I was going to  
5 my girlfriend's, Kate Tobin." I would have said Kate O'Reilley's
- 6 Q. You would have said, "Kate", is that what you're saying?
- 7 A. Yeh, Kate. I would have said, "Kate's at Intercolonial Street,  
8 "Donald Marshall, Jr., asked me where I was going". When I  
9 talk to -- When I talk to Donald Marshall, Jr., all the time,  
10 when I mention his name it's always Junior. It's always  
11 Junior. I don't come across by saying any formal words about  
12 Donald Marshall, Jr., it's always Junior. And down here --
- 13 Q. Yeh, I just want to ask you about where you're not pointing  
14 with a pen. The question is: "Did he tell you what happened"?  
15 And your answer is, "Yes, he told me him and Sandy met on the  
16 bridge in the park and there was two guys up on the hill".  
17 "They were asking for a match, and those two fellows were  
18 asking Junior if he was coloured and Junior said, 'I'm an  
19 Indian', and this fellow said, 'I hate Niggers!'. He said the short  
20 fellow with white hair stabbed Sandy and then the short fellow  
21 stabbed him in the arm". Now what do you want to say to us  
22 about that?
- 23 A. I find this here pretty complicated and --
- 24 Q. Now when you say "this here" --
- 25 A. Yeh.

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1 Q. --what section are you referring to?

2 A. Yeh. Okay. Okay. The two fellows were asking Junior if  
3 he was coloured, you know. Imagine, you know, asking Junior  
4 if he was coloured, all right. It would be the other way  
5 around if they asked Sandy if he was an Indian, and I just  
6 couldn't quite -- and I just can't quite put that into  
7 perspective.

8 Q. Well, do you remember telling the police any of this? I believe  
9 you told us you don't remember any of this?

10 A. No. No.

11 Q. And what you just told me and told us in the last few minutes,  
12 there's quite a lot more detail in what you've told us in the  
13 last few minutes than what you -- than what would seem to be  
14 written in this statement here, isn't that right, concerning  
15 what -- what Junior told you had happened?

16 A. Yeh, but this here is true.

17 Q. Now wait a sec. Which -- Which part is true?

18 A. This here is true about the bootleggers and the women.

19 Q. All right. Let me just -- so that the other Counsel will know  
20 where we are what you're saying is true regardless of whether  
21 you remember saying it or not --

22 A. Yeh.

23 Q. Q. Did Junior ever see them before?

24 A. I don't think. They also asked  
25 Junior where there were bootleggers  
and women. They also asked them  
to meet them in the park tomorrow  
night.

ARTHUR J. PAUL, by Mr. Spicer

1 Now that part you say is true regardless of the fact that you  
2 don't remember giving that statement to the police?

3 A. Yeh.

4 Q. And in the paragraph above that: "Yes, he told -- told me him  
5 and Sandy met on the bridge...", that paragraph there, is that  
6 also true regardless of whether or not you remember saying  
7 that to the police?

8 A. Undecided. It's -- In some cases it's inevitable -- not  
9 inevitable -- It's beyond my comprehension.

10 Q. What's beyond your comprehension?

11 A. Because it's just -- It's -- I know -- It's like -- It's like  
12 a blind hockey player in a dark rink looking for a black  
13 puck that's not there. It's completely out --

14 MR. CHAIRMAN:

15 Maybe Mr. Paul would like an opportunity to examine that statement  
16 a bit further and if he needs more time than this afternoon we  
17 can always adjourn until tomorrow. I'm in the hands of Counsel.  
18 Would you prefer we rise until tomorrow?

19 MR. SPICER:

20 I think it would be a good idea, My Lord. Perhaps he can have a  
21 chance to have a look this over.

22 MR. CHAIRMAN:

23 All right. We're adjourned until tomorrow at nine-thirty.

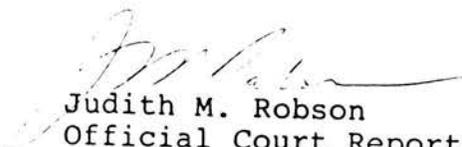
24

25 INQUIRY ADJOURNED AT 3:59 o'clock in the afternoon on the 3rd  
day of November, A.D., 1987.

WW

COURT REPORTER'S CERTIFICATE

I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 3rd day of November, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to typewritten copy.

  
Judith M. Robson  
Official Court Reporter  
Registered Professional Reporter

**Sydney Discovery Services**  
November 3, 1987