

JOHN F. MacINTYRE, by Mr. MacDonald

1 INQUIRY RECONVENED: 2:04 p.m.

2 MR. MacDONALD:

3 When we were looking this morning, My Lords, at the affidavit
4 of Mr. Urquhart, exhibit "D", we wondered what it was and we
5 now determined that it indeed was the type-written copy of the
6 statement taken by Sergeant MacIntyre of --

7 MR. CHAIRMAN:

8 The same statement?

9 MR. MacDONALD:

10 The same statement.

11 MR. CHAIRMAN:

12 Okay.

13 BY MR. MacDONALD:

14 Q. We were talking about when the R. C. M. P. came in November
15 of 1971 and what you had expected of them. Did they -- did
16 they come to your office or did Inspector Marshall come to
17 your office?

18 A. Yes, I would say yes, he came to my -- I seen him when he
19 came down.

20 Q. Did you know he was coming to your office?

21 A. I'm not sure of that, sir.

22 Q. Well, did he just show up unannounced?

23 A. Well, I'm not sure of that.

24 Q. Do you remember him being at your office?

25 A. Yes.

1 Q. What do you remember about it?

2 A. I think Sergeant McKinley was with him.

3 Q. Yes.

4 A. And I remember giving them documents. My files.

5 Q. What documents did you give him?

6 A. I would; from what I can remember, I think I gave him the whole
7 file. The Marshall file and the Ebsary file.

8 Q. Would that have contained all of the statements that --

9 A. Yes --

10 Q. -- you had taken?

11 A. -- that would contain everything, yes.

12 Q. And did you give it to him with the purpose of him taking it
13 with him?

14 A. Whatever he wanted to do with it, sir, yes.

15 Q. Do you recall if you gave him anything else?

16 A. I don't think.

17 Q. Mr. Marshall testified that you had given to him the
18 Preliminary transcript, the transcript of the Preliminary
19 evidence? Did you have that?

20 A. I'm not sure whether I had that or not, sir.

21 Q. If you had it, would you have given it to him?

22 A. I would have given him everything, yes.

23 Q. He said he had a portion of the trial transcript and
24 specifically the portion referred to by the Judge in his
25 Charge to the Jury, would you have had that?

2:07 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

- 1 | A. I can't recall.
- 2 | Q. If you did have it, would you give it to Mr. Marshall?
- 3 | A. Yeh, there'd be no problem.
- 4 | Q. And then he said you gave him those statements which you
5 | said contained the "crucial pieces of evidence and nothing
6 | else"?
- 7 | A. It is my opinion that I would have -- that we would have
8 | discussed the case at that time. And it's also my opinion
9 | that I would give him the file. And that's as far as I can
10 | go on it at this time, sir.
- 11 | Q. Well, I'm not concerned so much about your opinion. You've
12 | said that you remember when he was there --
- 13 | A. Yes.
- 14 | Q. -- with you?
- 15 | A. That's right.
- 16 | Q. And I'm trying to get you to tell me then what it is you
17 | gave him, not what your opinion is?
- 18 | A. I would say that I gave him my files, sir.
- 19 | Q. And you recall giving him your entire file?
- 20 | A. That's what I would -- that's what I would say.
- 21 | Q. Do you know if he took your entire file?
- 22 | A. Again, I would say he did.
- 23 | Q. Okay, was that your intension that he would be given your
24 | entire file?
- 25 | A. Well, he would need it if he was going to -- he would need

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1 it if he was going to look into it.

2 Q. Okay, did you review with him the investigation that you had
3 carried out?

4 A. I would tell him what I had done.

5 Q. Would you have taken -- how long would that meeting last? How
6 long did it last?

7 A. I have no idea at this time.

8 Q. Do you --

9 A. It would take a while -- take a while.

10 Q. Pardon?

11 A. It would take a while.

12 Q. What does that mean?

13 A. I have no idea. I have no idea at this time.

14 Q. An hour, two hours?

15 A. Oh, yes, it would, yes. Take an hour anyway, yes.

16 Q. And during that time what you would have told him what you did?

17 A. What I did, yes.

18 Q. Did you tell him --

19 A. If there were any -- any questions that he'd asked me, I'd
20 answer them along with that.

21 Q. Any questions he asked, you would answer?

22 A. Oh, sure.

23 Q. Did you tell him then in your opinion you had the right man?
24 That the right man had been convicted?

25 A. Well, I suppose -- that's what I thought at that time, sure.

:10 p.m.

1 Q. And that's what you told him?

2 A. Well, I'd imagine. If he asked me, that's what I would tell
3 him.

4 Q. Well, do you remember telling him --

5 A. I don't remember, no. No, I don't remember that.

6 Q. You do re -- you were here when Mr. Marshall gave evidence
7 or Inspector Marshall?

8 A. Yes, yeh.

9 Q. On page 5615, he said that you gave him "the crucial pieces
10 of evidence" and he said the same thing on page 5617, "the
11 crucial material related to the eyewitnesses", that he did
12 not get the whole file? He's wrong then, is he?

13 A. Well, my recollect -- my recollection is that I gave him the
14 file.

15 Q. Did you go to the scene with him?

16 A. He says I did and I have no reason to disbelieve him at this
17 time.

18 Q. Do you remember going to the scene with him?

19 A. I don't remember too much about that.

20 Q. Did you tell him about the or discuss with him the initial
21 statements that you had received from Chant and Pratico?

22 A. I think that -- that would be in the conversation.

23 Q. What did you tell him?

24 A. Well, that the first ones I took that they were -- I didn't
25 believe them and I took second ones.

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- 1 Q. Did you give them -- are you saying here as well --
- 2 A. That's what -- that's what it would center around.
- 3 Q. Did you tell him that those young fellows first of all gave
- 4 you "cock-and-bull story" but you -- they straightened themselves
- 5 out later and gave you the true statement?
- 6 A. I don't know if I'd use them words, but that's what --
- 7 Q. Something to that effect?
- 8 A. Well, it was something to that effect.
- 9 Q. Something to that effect, thank you. Did you give him the
- 10 statement that you took from Patricia Harriss?
- 11 A. He'd have all the statements, sir.
- 12 Q. Specifically --
- 13 A. They were -- they were all in that file.
- 14 Q. And your evidence is he took the entire file?
- 15 A. That's my -- that's my recollection, yes.
- 16 Q. And would that file have contained the statement that William
- 17 Urquhart had taken from Patricia Harriss? That one that's
- 18 not signed that we looked at this morning?
- 19 A. It would contain all -- all evidence, yes.
- 20 Q. And in -- specifically would include that?
- 21 A. Well, it -- it would be there, sir, yeh.
- 22 Q. And would you have given him or would your file have
- 23 contained this statements of George McNeil and Sandy
- 24 McNeil, that one we had looked at earlier?
- 25 A. All those statements were in that file, yes.

Q. Was that

1 | what you had intended from the beginning when you wanted
2 | that the R. C. M. P. to come in and do a re-investigation
3 | that you would give them your entire file and let them go
4 | to work?

5 | A. Well, yes, if -- if -- when they did come in, if they were
6 | going to look over -- they'd have to look over my file
7 | along with the new evidence that was gathered, I'd imagine,
8 | for them to make their decision.

9 | Q. Did you discuss with Inspector Marshall the evidence that
10 | was given at trial?

11 | A. No, I don't think I went over that.

12 | Q. Didn't tell him anything at all about that?

13 | A. I don't think I went into that, no.

14 | Q. And you do remember this meeting with him?

15 | A. I don't remember the exact, you know, everything exact either.

16 | Q. When Inspector Marshall then says that all he had, to his
17 | recollection, were the second statement of Chant and Pratico,
18 | the statement of Terry Gushue and that he didn't have the
19 | statement of Harriss or other people, that's not correct,
20 | is it?

21 | A. My recollection is that I gave him everything, sir.

22 | Q. So he's not right when he says that?

23 | A. Well, that's his -- that's his opinion, sir. I -- my opinion
24 | is that I gave it -- gave him the file.

25 | Q. Yeh, and not only your opinion, your specific recollection?

2:15 p.m.

- 1 A. To my recollection, yes, yeh.
- 2 Q. Did you tell him that you were aware of the fact that Ebsary
3 had a prior conviction but that "it was a trivial offense"?
- 4 A. I wouldn't say it was a trivial offense. I don't recall
5 if I said that to him or not about the having a previous
6 conviction. I can't recall.
- 7 Q. And he in his evidence, Chief, on page 5628 and 5715 referred
8 to that and said both "it was either a trivial offense" you
9 called it or "inconsequential type of offense". Would you
10 have said either of those to him?
- 11 A. No, I don't think I would. In fact, I have no recollection
12 of saying that to him, no, about a trivial offense.
- 13 Q. But you do remember looking up Ebsary's records?
- 14 A. I do remember of -- I don't know if I looked it up or
15 somebody told me about it, sir. I can't recall.
- 16 Q. You were aware that Ebsary had been convicted of carrying
17 a twelve inch butcher knife?
- 18 A. I'm not saying that either. Whether it was a concealed
19 weapon, convicted of carrying a concealed weapon, I think
20 that's what I'd be told. I don't recall this twelve inch
21 butcher knife.
- 22 Q. If you had been told he had been arrested for concealed
23 weapon by the Sydney Police, wouldn't you go look it up
24 and see if you can get the details?
- 25 A. Well, I think the party that told me and again I don't know

1 | who that might have been; but that's what I was told at the
2 | time?

3 | Q. What?

4 | A. That it was a concealed weapon.

5 | Q. Why wouldn't you look up and find out what type of a
6 | concealed weapon, what was the offense, the details of it?

7 | A. Well, on the card it would be a concealed weapon. It
8 | wouldn't be -- that wouldn't be on it. You'd have to, I suppose,
9 | go to the report that was there at that time.

10 | Q. But the report was there?

11 | A. Yeh, well, I --

12 | Q. You knew that --

13 | A. -- guess, I didn't -- I didn't go to any report, sir.

14 | Q. Are you telling me then that all you knew is that Ebsary
15 | was convicted of having a concealed weapon?

16 | A. That's what I -- that would be my recollection, yes.

17 | Q. And you wouldn't bother to go and look up the records to
18 | find out the details of that?

19 | A. No, and I don't know when that was. Was it before Marshall
20 | arrived there or after, I don't -- I'm not sure.

21 | Q. Are you saying Marshall is incorrect when he says you told
22 | him that it had been an offense involving a knife but that
23 | it was or a concealed weapon, but that it was a "trivial
24 | offense"?

25 | A. No, I -- what I'm saying I wouldn't -- I wouldn't say it was

2:19 p.m.

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1 a trivial offense because I wouldn't know the details. If
2 I had read the report, I suppose, I would have known more.

3 Q. Did you have any discussion with Inspector Marshall about
4 your theory that Marshall had inflicted the wound on his
5 arm himself?

6 A. It's possible. It's possible, sir.

7 Q. That was your belief at that time, wasn't it?

8 A. I was looking into that, yes.

9 Q. Now after the trial of Donald Marshall, after he was convicted,
10 your belief was that that was a self-inflicted wound, wasn't
11 it?

12 A. That was an opinion that I was forming, yes.

13 Q. That was an opinion that you had formed?

14 A. Formed, I mean, yes.

15 Q. Were you of the opinion after you spoke to Jimmy MacNeil
16 and Roy Ebsary, was it your opinion that Junior Marshall
17 and Sandy Seale had been attempting to rob Ebsary and
18 MacNeil?

19 A. That is the story that -- that Jimmy MacNeil and Ebsary gave.

20 Q. Was that your -- did you accept that? Did you believe that
21 there had been a robbery attempt?

22 A. That is the story that they gave, sir, at that time and I
23 never heard that before that date.

24 Q. Did you accept it?

25 A. I left that to the -- as I told you, I turned over the files.

1 | Q. Mr. Marshall in his report said "it was the consensus of
2 | opinion that Marshall and Seale were bent on robbing
3 | someone and when asked about what that meant 'consensus
4 | of opinion', he said that was mentioned to him by you",
5 | and that it was also referred to in Ebsary's statement
6 | but undoubtedly as a result of a discussion he had with you?
7 | Do you remember discussing that with him?

8 | A. Anything I talk -- anything I talked about would be about
9 | the statements at that time. That's the first time I knew
10 | anything about that.

11 | Q. You had no previous knowledge of Seale?

12 | A. No, no, sir.

13 | Q. Did you make any attempt to find out if that was the type
14 | of thing that boy would be involved with?

15 | A. No, I have no knowledge of that.

16 | Q. And made no effort to find out either?

17 | A. No.

18 | Q. You knew his father?

19 | A. Yes.

20 | Q. You knew his father was well respected?

21 | A. Reputable citizen, yes.

22 | Q. And you the boy was?

23 | A. I never heard anything to the contrary.

24 | Q. And yet you didn't make any effort to find out if, in fact,
25 | he was involved in this -- in a robbery?

2:22 p.m.

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1 A. The robbery only came to my attention on November the 15th,
2 sir. Or the attempted robbery.

3 Q. Did you have any discussions with Inspector Marshall about
4 your impression of Jimmy MacNeil?

5 A. No, I don't believe I did.

6 Q. Mr. Marshall testified on page 5623 that you had said
7 MacNeil's story was "a cock-and-bull story". Did you say
8 that to him?

9 A. No, I didn't believe that at the time.

10 Q. You didn't believe that?

11 A. I didn't believe that at the time, no.

12 Q. Did you believe it at any time?

13 A. No, I left that to somebody else, sir.

14 Q. Did you have any discussions with Mr. Marshall about the
15 evidence that was given at the Preliminary Inquiry?

16 A. No, not that I recall.

17 Q. Did you tell Marshall that Junior -- that Junior Marshall
18 had taken the sutures out of his own arms -- and own arm
19 and flushed the bandages down the toilet?

20 A. Could have been discussed. That could have been discussed.

21 BY MR. CHAIRMAN:

22 Q. Well, am I to note the answer to that as yes or no?

23 A. I can't say that -- that -- that I'm sure it was discussed;
24 but it could have been discussed, My Lord. Because I had
25 -- because I had that -- I checked on that at the -- before

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1 | that and I checked on the -- I knew that -- about the
2 | sutures and I knew about the bandage. I did inquire about
3 | the bandage before that, so I had knowledge of that and
4 | I could have -- I could have discussed that with him because
5 | there was the -- there was the cut, there was the jacket,
6 | there was the -- there was the stitches and there was
7 | the bandage and other things that did come into play in
8 | my thoughts at the time.

9 | BY MR. MacDONALD:

10 | Q. They were still -- they were in your mind at that time?

11 | A. Yes, they were, sure.

12 | Q. And were you telling Marshall of your theory that this was
13 | a self-inflicted wound?

14 | A. As I said, I could have. I could have. I could have said
15 | that because I knew -- that's what I was thinking.

16 | Q. If you will accept from me, Chief, that there's no reference
17 | in the Preliminary evidence --

18 | A. Yes.

19 | Q. -- about Marshall taking the bandages off his arm and flushing
20 | down the toilet. No evidence of that. Would you agree that
21 | you're the only source that Marshall -- Inspector Marshall
22 | would have got that information from when he refers to it
23 | in his report?

24 | A. I was told that by the bandage I think it was by one of the
25 | gaolers. The stitches I was told that by Doctor Virick -- I

1 was told that by Doctor Virick who was the attending physician.
2 That's where my knowledge came from.

3 Q. You were told that by Doctor Virick that Junior had flushed
4 the bandages down the toilet?

5 A. No, I said I was told about the bandage from one of the
6 gaolers, sir.

7 Q. Oh, I'm sorry.

8 A. And I was told by the stitches being removed by Doctor Virick.
9 And how that came about, Doctor Virick -- he was supposed
10 to arrive at the hospital on a certain date at a certain time
11 to have the stitches removed. He didn't arrive and when he
12 called the hospital, what Doctor Virick conveyed to me, that
13 he had taken the stitches out himself with a, I believe, he
14 said with a pocket knife.

15 Q. Look at page 207 in volume 16.

16 A. Yes, sir.

17 Q. On the top of page 207 that paragraph numbered 7, do you
18 see where it says:

19 While in gaol, MARSHALL removed
20 the bandage from his arm and
21 flushed it down the toilet and
22 even removed the sutures himself,
23 suggesting that he did not want
24 to have anything around with his
25 blood on that could be picked up
by the police from which his blood
type might be determined.

24 Did you tell that to Marshall, Inspector Marshall?

25 A. I could have said that to -- to Sergeant Marshall because I

1 | did check on the bandage there with the gaoler.

2 | Q. Was that your belief in November of 1971 that:

3 | MARSHALL removed the bandage...
4 | flushed it down the toilet...
5 | removed the sutures...(because)
6 | he did not want...anything around
7 | with his blood on (it)that could
8 | be picked up by the police...?

9 | A. I suppose that -- that would be left to the imagination. The
10 | bandage could not be found the gaoler told me at the time and
11 | -- and it was removed in the gaol.

12 | Q. Was that your belief --

13 | A. And that -- that -- I could have had that in my mind, sure.

14 | Q. That was your belief in November of 1971?

15 | A. Well, it could have been.

16 | Q. It was, wasn't it?

17 | A. I say, very well could have been, yes.

18 | Q. On that page also, Chief MacIntyre, on page 207, paragraph
19 | number 9. First of all were you aware that a polygraph
20 | test was administered to Ebsary and MacNeil?

21 | A. Yes, I believe I was, yes.

22 | Q. And were you told the results?

23 | A. I'm not sure of that. I'm not sure of that. I guess I didn't
24 | discuss -- I didn't discuss any results after everything was
25 | over, so I'm not sure.

26 | Q. You knew that the R. C. M. P. were carrying out a
27 | re-investigation of your work, yes?

- 1 A. Yes.
- 2 Q. And you had spoken with the man who was in charge?
- 3 A. Yes.
- 4 Q. And ultimately you knew that something had been -- you knew
5 that a polygraph was going to be taken? Yes?
- 6 A. Yes, I knew that, yes.
- 7 Q. And are you telling me that you didn't get the results? You
8 didn't -- you weren't told what Marshall concluded?
- 9 A. Well, I -- give me that again.
- 10 Q. Are you telling me that you were not told the results of that
11 polygraph and the conclusions that Inspector Marshall
12 reached?
- 13 A. Well, I -- I said that I could have been told. I'm not sure;
14 but there was nothing came out of it so I figured that --
15 polygraph -- nothing came out of the polygraph.
- 16 Q. You would have been very interested, Chief, in knowing if
17 the independent review of your work had been carried out and
18 what the result was?
- 19 A. I had -- I had no report on the results, sir. And that whatever
20 the Crown had, I didn't have anything.
- 21 Q. Did Donnie MacNeil ever tell you what the result was?
- 22 A. I don't remember any discussions with Donnie over this.
- 23 Q. So nobody ever told -- ever told you what Marshall, Inspector
24 Marshall concluded?
- 25 A. No, I have some recollection of Inspector Marshall coming to

1 | the station one afternoon and I think that I had somebody
2 | in the office at the time and it was -- he just said we're
3 | on our way and he said there was nothing to that and he
4 | said, I'll see you later and went. I didn't have no discussion
5 | with him whatsoever.

6 | Q. Is that what he told you?

7 | A. That's what I -- that's what I -- that's all I remember about
8 | that now, sir.

9 | Q. So there's nothing to that?

10 | A. Nothing to that. Something along them lines and that was it.

11 | Q. And you were prepared to accept Inspector Marshall's
12 | conclusion, of course, weren't you?

13 | A. Yes.

14 | Q. Did you ever see a copy of or when did you first see a copy
15 | of the report that Inspector Marshall prepared? And that's
16 | on page -- starts on page 204 and continues in that volume
17 | 16.

18 | A. That was just lately.

19 | Q. Just lately?

20 | A. Just lately, sir, yes.

21 | Q. Was it after -- by just lately, you mean within the last
22 | months?

23 | A. No, since this -- since this -- since '82.

24 | Q. Since '82?

25 | A. Since '82, yeh.

JOHN F. MacINTYRE, by Mr. MacDonald

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Q. Okay.

A. In fact in '82, when I did get the -- Mr. Aronson's letter,
I was in touch with Halifax at that time to get the names
of the people that carried out the polygraph test.

A handwritten signature or set of initials, possibly 'JFM', is written across the diagonal line of the page.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Now, I asked you before to look at paragraph number nine
2 of that Marshall report. It says:

3 ...EBSARY and McNEIL, somewhat
4 intoxicated, happened to
5 walk through the park and were
6 accosted by SEALE and MARSHALL.

6 Did you have any discussion with Inspector Marshall as
7 to whether Ebsary and MacNeil were intoxicated?

8 A. No. No, I didn't. I don't recall that.

9 No. Ebsary and MacNeil, they had their statements at that
10 time.

11 Q. That's correct.

12 A. Yeh.

13 Q. And Ebsary says they were at the tavern?

14 A. That's right, the State Tavern that evening, yeh, and they
15 did consume liquor there.

16 Q. And MacNeil says they were at the tavern but there's nothing
17 that suggests that they were intoxicated in any way.

18 A. No, they had some liquor. MacNeil said that -- I think
19 MacNeil said in his statement that he wasn't -- well, he
20 wasn't drunk. That's what he said.

21 Q. Well, in any event, his statement will speak for itself.

22 A. Yeh.

23 Q. They were -- He goes on to say:

24 Their attacks were not successful
25 and following the altercation a...

1 ...violent argument ensued
2 between the two attackers...

3 and so on and then Marshall

4 ...inflicting a superficial
5 wound on his own forearm
6 to divert suspicion from
7 himself...

8 That was your belief as well isn't it? That's why the
9 cut was on Marshall's arm.

10 A. That's what I was looking into, sir, at my -- during my
11 investigation, yes.

12 Q. And that's what you believed in November of 1971?

13 A. I still had no answer for it at that time.

14 Q. In 1971, November, you believed that Marshall

15 ...inflicted a superficial wound
16 on his own forearm to divert
17 suspicion from himself...?

18 A. That's right.

19 Q. And then Marshall's report goes on to say:

20 ...before he...

21 that's Junior Marshall

22 ...made a pretense of summoning
23 aid...

24 Did you have any discussion with Inspector Marshall about
25 that topic? Whether Junior Marshall had attempted to
 get assistance for Sandy Seale or not?

 A. I couldn't have said -- I couldn't say but that could have
 came up, sir.

1 | Q. But you don't remember?

2 | A. No, I don't remember that.

3 | Q. Did you have any dealings with this case after the time
4 | Inspector Marshall left Sydney in November of 1971, say
5 | between 1971 and 1973?

6 | A. At a later time. Later time. I'm not just sure of the
7 | date. I thought it was somewhere around '74 or somewhere
8 | around there -- '74. It could have been later. I don't
9 | know but with it -- between that and '75, I put it, I had
10 | a visit from a --an R.C.M.P. officer.

11 | Q. Who was that?

12 | A. I don't -- Gene Coles.

13 | And I don't know whether he was a Corporal or a Sergeant
14 | at that time and he had told me that he had a complaint
15 | and he wanted to know if he could see my file, the Marshall
16 | file, and I gave him the Marshall file and gave him some
17 | space and he spent considerable time on it that particular
18 | day and he returned the file to me and told me that he
19 | would be able to answer the complaint that he got. Then
20 | he left the station.

21 | Q. Look at page 213 of volume 16.

22 | A. Two what, sir?

23 | Q. Two one three, two thirteen.

24 | A. Not here.

25 |

2:37 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

1 MR. MacDONALD:

2 Sorry, My Lord, I referred to a document that we had been
3 given that we had been asked to remove from the files and
4 replace with the so-called 'will-say' statement. So if I
5 can now frame it in the -- in that form.

6 MR. PUGSLEY:

7 I'd like to have a little more explanation about that before
8 my -- This is something we have not seen.

9 MR. MacDONALD:

10 He's not -- They've not seen it, My Lord. What it is, is a
11 statement that was taken from a member of the R.C.M.P. by
12 an R.C.M.P. man in 1987 in the course of their preparing
13 their -- doing their own review of their force with respect
14 to this Inquiry and the same as many statements, I'm sure,
15 have been taken by Mr. Pugsley or others of people that they
16 talked to and we were asked not to include this in the documents.
17 That's why it's not there. It's a statement that was taken
18 by an R.C.M.P. officer of another R.C.M.P. officer.

19 MR. CHAIRMAN:

20 Well, do I assume that it is going to be put in evidence.

21 MR. MacDONALD:

22 The document will not be put in evidence but the man will
23 be called and what he has said on this statement will be
24 put into evidence.

25 MR. CHAIRMAN:

We don't have it.

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1 | MR. MacDONALD:

2 | You don't have it.

3 | MR. CHAIRMAN:

4 | We have 212 is a statement -- Let's see. It has re Marshall --
5 | Donald Marshall Junior - 1997. What's that? Dorchester Penitentiary.

6 | MR. MacDONALD:

7 | Yes.

8 | MR. CHAIRMAN:

9 | And then it goes down to -- it ends with
10 | ...the plunging of the...
11 | and then -- the weapon.

12 | MR. MacDONALD:

13 | Then at 214.

14 | MR. CHAIRMAN:

15 | Then we go to 214?

16 | MR. MacDONALD:

17 | Yes.

18 | MR. CHAIRMAN:

19 | That's the end of that particular statement there -- or
20 | whatever it is.

21 | MR. MacDONALD:

22 | Yes. 213 has been removed from document.

23 | MR. PUGSLEY:

24 | I don't quite understand what my friend proposes doing now. Is --
25 |

JOHN F. MacINTYRE, by Mr. MacDonald

1 MR. MacDONALD:

2 Why don't you let me do it and then if you're going to object,
3 object at the time.

4 COMMISSIONER EVANS:

5 It may be to late then.

6 MR. PUGSLEY:

7 That's right.

8 MR. CHAIRMAN:

9 You're -- It's not an unreasonable question to make. Would you -

10 MR. MacDONALD:

11 What -- Which isn't the unreasonable one?

12 COMMISSIONER EVANS:

13 What you propose to do.

14 MR. CHAIRMAN:

15 What are you proposing to do?

16 MR. MacDONALD:

17 I merely propose to ask the witness about a conversation that
18 he had with Inspector Coles in 1975.

19 MR. CHAIRMAN:

20 Well, that's -- there's nothing wrong with that.

21 MR. MacDONALD:

22 No, I didn't think there was.

23 MR. CHAIRMAN:

24 No.

25

JOHN F. MacINTYRE, by Mr. MacDonald

1 | MR. MacDONALD:

2 | That's why I invited my friend to wait and then maybe he would
3 | see that he's getting apprehensive for no reason.

4 | BY MR. MACDONALD:

5 | Q. Chief, do you remember having a discussion with Eugene
6 | Cole in 1975 in September? You've already told us
7 | about that.

8 | A. Yes.

9 | Q. And he reviewed your file, didn't he?

10 | A. That's right.

11 | Q. And did you not tell him that Roy Ebsary had been given
12 | a lie detector test and found to be clear and not involved
13 | in the murder?

14 | A. I don't recall telling him that at all, sir. There was
15 | no discussion with me that I can recall in regard to
16 | that file. He came into the station to my -- my recollection
17 | and he had a complaint and he wanted to see my file and I
18 | see nothing wrong with showing the file and I provided
19 | the space for him and I didn't enter -- I didn't enter
20 | that room while he was there and I would say he was there
21 | for anywhere -- around two hours or more. It was quite some time
22 | in the afternoon and when he came out he passed my
23 | file back and he said he'd be able to answer the correspondence
24 | that he had, that he got everything he wanted and he left
25 | and I didn't hear no more, sir.

2:41 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

- 1 Q. At that time would you have known that Roy Ebsary had
2 been given a lie detector test and found to be cleared
3 and not involved in the murder?
- 4 A. I think I answered that already. I told you that Marshall
5 told me everything was finished or everything was all right
6 or something, and he was leaving and that was it. I
7 have no correspondence on this case after that, sir.
- 8 Q. You would have assumed then that Ebsary passed the
9 polygraph?
- 10 A. I would have assumed that everything -- that everything
11 was all right, yes.
- 12 Q. Okay.
- 13 A. And that's all I know about that other incident, sir.
- 14 Q. Now, the -- Do you remember an incident in 1973 or '74
15 involving David Ratchford? Do you know David Ratchford?
- 16 A. I know him, yes. I knew -- I know of him. I know that
17 he ran a -- an athletic place on Charlotte Street and that.
- 18 Q. Do you remember him coming to your -- to the station in
19 1973 or 1974 with Donna Ebsary?
- 20 A. No, sir.
- 21 Q. Do you remember him coming at all?
- 22 A. No, sir.
- 23 Q. He has testified and you heard his evidence, didn't you, that
24 he attended and -- in a room where you and Detective Urquhart --
25 and he told you -- he told Mr. Urquhart with you present

1 | that Donna Ebsary knew that her father had been involved
2 | in the murder. You heard Ratchford give that evidence?

3 | A. Yes, I did.

4 | Q. And is that --

5 | A. I think also there was a letter produced at that same day
6 | at the end of that and if I -- my memory serves me right
7 | is that he at that time that it was said that he called
8 | Urquhart or somebody else at the station by phone and
9 | I got from that that he wasn't at the station at all but
10 | Donna Ebsary and him were never into see me. No.

11 | Q. You -- That's your evidence. He was never there?

12 | A. That's not -- That's right. On that the only conversation
13 | I remember having with Ratchford was one time he spoke
14 | to me about doing something in the line of police training
15 | -- for the police, I mean, as a body he would give a price
16 | on it and what have you but that was not around that time
17 | at all.

18 | Q. Did Urquhart ever tell you that he had been contacted by
19 | David Ratchford?

20 | A. Not that I can recall. Not that I recall, sir, and I had
21 | no dealings with him or Donna Ebsary.

22 | Q. What about Constable Gary Green? Do you know him?

23 | A. I've heard the name. I think probably I'd know the man
24 | if I seen him. I don't -- I've heard that name.

25 | Q. We understand that Constable Green will testify that he

2:44 p.m.

1 attended at the Sydney Police Station and spoke with
2 Mr. Urquhart to tell him that Donna Ebsary had evidence
3 that her father had killed Sandy Seale.

4 A. I have no -- I have no recollection of that, sir.

5 Q. He -- Did Sergeant Urquhart ever tell you about Constable
6 Green's attending?

7 A. I never heard about that.

8 Q. Never heard about it at all?

9 A. No.

10 Q. You knew Al Marshall, didn't you?

11 A. Yes, I knew Al Marshall, yes.

12 Q. He had been in Sydney -- stationed here a couple of times
13 during your tenure.

14 A. I heard him say that, yes.

15 Q. Do you remember that?

16 A. I knew he was in the area. I thought he was in Glace Bay
17 or Waterford for a while and not until I heard on the
18 stand did I know that he was in Sydney, I think, '74 or
19 '75.

20 Q. No, he testified he was in Sydney from '58 till '59 --

21 A. Yes.

22 Q. -- and then from '62 to '64.

23 A. Yeh, it could have been.

24 Q. Did you know him socially?

25 A. No, no. No, no.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Professionally? Did you do some investigations with
2 him?

3 A. Yeh, he related the other day I did and when he
4 related the case I remembered the case fairly well-- one
5 of them. It was a series of rapes in the city and a
6 Volkswagen, I think, car was involved and some of it --
7 some of the goods were found in the county. I remember
8 that case when he mentioned it.

9 Q. Do you have page 215 in your book? That is a note signed
10 by Inspector Urquhart in 1981. Have you ever seen that
11 note before?

12 A. No.

13 Q. And in that note Inspector Urquhart is saying he notified
14 the Crown Prosecutor

15 ...as Dan Paul told...(him)
16 ...that Roy Ebsary is the one
17 that stabbed Sandy Seale in the
18 park. This information came
19 from Jr. Marshall. I told Paul
20 that was not enough information.
21 He is going to try and get the name
22 the person who gave the name of
23 Ebsary to Jr. Marshall.

24 Did Mr. Urquhart tell you about that contact?

25 A. I have no recollection of this at all.

Q. And that this -- You'll notice down the bottom that

23 The...information...(was)...given
24 to Deputy Chief M. J. MacDonald.

24 You would have been Chief of Police in that time, would you?

25 A. Yes.

2:48 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Was it your --

2 A. In '81, yes.

3 Q. The Deputy just didn't advise you of this though?

4 A. No, I must have been away on vacation or something at the
5 time.

6 Q. Were you contacted by the Correctional Services during the
7 time Junior Marshall was in gaol and asked for your comments
8 as to whether he should be allowed to come home on day
9 parole and these sort of things?

10 A. I believe I was, yeh.

11 Q. I think 69. Exhibit 69. Exhibit 69, Chief, is a report
12 from the Correctional Services, I believe, dated March
13 2nd, 1978.

14 A. Yes.

15 Q. And I want to direct you to page number two of a -- an
16 attachment to it. It says this:

17 Chief John MacIntyre was the
18 investigating detective. He
19 was contacted at his office at
the Sydney...Police Department
and recalled the incident quite
clearly.

20 And that's the incident being the stabbing of -- the
21 murder of Sandy Seale.

22 A. Yeh.

23 Q. There is no doubt in his mind
24 whatsoever about the guilt of
our subject. The case was proven
25 conclusively in Court with two
eye-witnesses and also conclusive...

1 ...evidence from the Identification
2 Section of the Royal Canadian
3 Mounted Police. According to Chief
4 MacIntyre the cuts on our subject
5 were self-inflicted and were not
6 inflicted by either party at the
7 scene of the murder. Chief MacIntyre
8 would be opposed to MARSHALL coming
9 to this area on a three-day Temporary
10 Leave of Absence. He feels...there
11 night still be some reprisals from
12 the black community and recalls that
13 the entire MARSHALL family had to
14 move out of Sydney because of
15 possible reprisals. During my house
16 visit at the Marshall home, Pius
17 recalled that he had to sit in the
18 upstairs window alone with a shotgun
19 while his family resided in Whycomagh.

20
21 Do you remember being contacted by people from the
22 Correctional Services to determine -- to get your advise
23 whether Junior Marshall could -- should be granted the
24 three-day temporary leave of absence?

25 A. I have a faint recollection of something like that, yes.

Q. And you were opposed to that?

A. That's what this says, yes.

Q. And were you?

A. Well, I likely was, sir.

Q. You likely were?

A. Likely were, yeh.

Q. And it -- you were opposed because of your concern that
there could be some racial trouble, is that correct?

A. I don't remember just what I did say at that time, sir.

I have no -- That's what this here says --

2:51 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Well, did you --

2 A. And --

3 Q. Would you be concerned that if Junior Marshall had come
4 home on a three-day temporary leave of absence there would
5 be reprisals from the Black community?

6 A. I don't recall saying from the Black community.
7 I guess that's the way I felt at the time, sir, and that's
8 likely what I said.

9 Q. During the course of your investigation leading up to the
10 charging and conviction of Donald Marshall Junior was there
11 any suggestion of a racial problem going to arise?

12 A. I wasn't in on any of that, sir. I wasn't in on any of that
13 but the family did move up to Whycocomagh at the time or
14 some of the family at least. One of the brothers was
15 at the house when I did visit it on the Reservation, but the
16 rest of the family had gone up there.

17 Q. Was it normal for the Correctional Services people to contact
18 the local police chief to determine if paroles or temporary
19 absences should be given to prisoners?

20 A. They done that on several occasions.

21 Q. Was it a normal thing? You must have a bunch of people from
22 Sydney from time to time that are in gaol?

23 A. Yes, they would check. I wouldn't say they'd check in every
24 case but they did on some of them and --

25 Q. You know --

2:54 p.m.

1 A. -- they would try and get a concensus of opinion, I suppose
2 from several people.

3 Q. Do you know if they checked with you about Junior Marshall
4 on more than one occasion?

5 A. No. No, sir.

6 Q. They did not or you just don't remember?

7 A. No. No, I can't remember any other time that they did.

8 Q. When did you become Chief?

9 A. 1976, sir.

10 Q. Chief? 1976 -- Chief of Police?

11 A. Yes.

12 Q. When you became Chief did the structure of the police
13 force change?

14 A. Not right away, sir. I had some changes in mind. I had
15 some things in mind and I -- after several discussions with
16 police and the Police Commission and the union and what have
17 you. There was some new appointments that I wanted to make
18 that -- in the restruction that weren't in the department
19 before such as the rank of inspectors, a training program
20 that I wanted to put into force and some other changes and
21 they took a couple of years to get that ironed out. That
22 had to be ironed out between myself, the union executive and
23 the Police Commission and there was several things to be
24 discussed and finally things were agreed upon and I carried
25 out the restructuring of the police department with

1 the backing of the Sydney Police Commission.

2 Q. And what you did was put in a couple of inspector levels,
3 did you?

4 A. Inspector levels and changed the promotion end of it.

5 Q. To what?

6 A. Well, to -- then I adopted -- I got some money out of the
7 city for courses to give the men some training and then
8 there was--the Nova Scotia Police Commission were brought
9 into it and those -- when a promotion came up there was
10 exams to be written and they carried on the -- they took
11 that role over and the men were rated and promotions came
12 from that -- from there on.

13 Q. As a result of exams being written and supervised by the
14 Commission?

15 A. By the Nova Scotia Police Commission, sir.

16 Q. And that was the change that you implemented?

17 A. That's correct, sir.

18 Q. Okay.

19 A. And other changes with it.

20 Q. What changes, if any, did you implement with respect to the
21 records that were kept?

22 A. Well, the records at that time, they were all helter skelter
23 but -- I suppose a word you could use and we done
24 away with the courtroom we had there and we made a records
25 room out of it. Got it -- all new equipment in there and

2:57 p.m.

1 | all the records then were kept in that room that were
2 | connected with the police department and they were all
3 | set up and there was a -- two men sent -- one man sent
4 | away and studied other systems and he came back and
5 | we got a system in place.

6 | Q. When you retired in -- Was it '84?

7 | A. '84, sir, yes.

8 | Q. When you retired in '84 had the systems be -- been changed
9 | such that if there was an incident similar to the Seale
10 | stabbing where you had a knife offense and you wanted to
11 | get information on any other knife offenses in Sydney
12 | in the past few years, could you get that in your department?

13 | A. I don't think they were kept separate, that type of thing
14 | that your asking about there.

15 | Q. It's still kept by name, wasn't it?

16 | A. By name but the --

17 | Q. As long as you knew the name of somebody you could find --

18 | A. If you knew the name you were all right, yes, and it would
19 | only take seconds to look it up.

20 | Q. Yeh, but if you don't know the name, you don't have any --

21 | A. No.

22 | Q. -- any way else to get it?

23 | A. No, I wouldn't say so, sir.

24 | Q. So, in 1984 as well, just given a brief description of a
25 | fellow with grey hair, trampish looking, using a knife, that's

1 not going to -- you've no way to get into your records to
2 find out if you had anything there about such a person?

3 A. No, you'd have to come up with the name and then there
4 would be reports on -- that could be plucked in a very
5 short time.

6 Q. And that's still the case when you left then.

7 A. That was the --

8 Q. If you didn't know the name you weren't going to find out.
9 So to put it in the context of this case, if someone had
10 -- came and said I saw Roy Ebsary last night stab somebody
11 you could find out if he stabbed anyone else before but
12 that's about the only way you could do it?

13 A. That's right, yeh.

14 Q. What about the training of the men? What changes, if any,
15 did you implement there?

16 A. Well, there was courses -- courses had to be given for --
17 training for the men?

18 Q. Yes.

19 A. I got a training budget set up from the Sydney Police
20 Commission and it was allotted for that purpose, for training
21 and men went away on different courses.

22 Q. Were your detectives given courses in basic investigative
23 techniques, something like that?

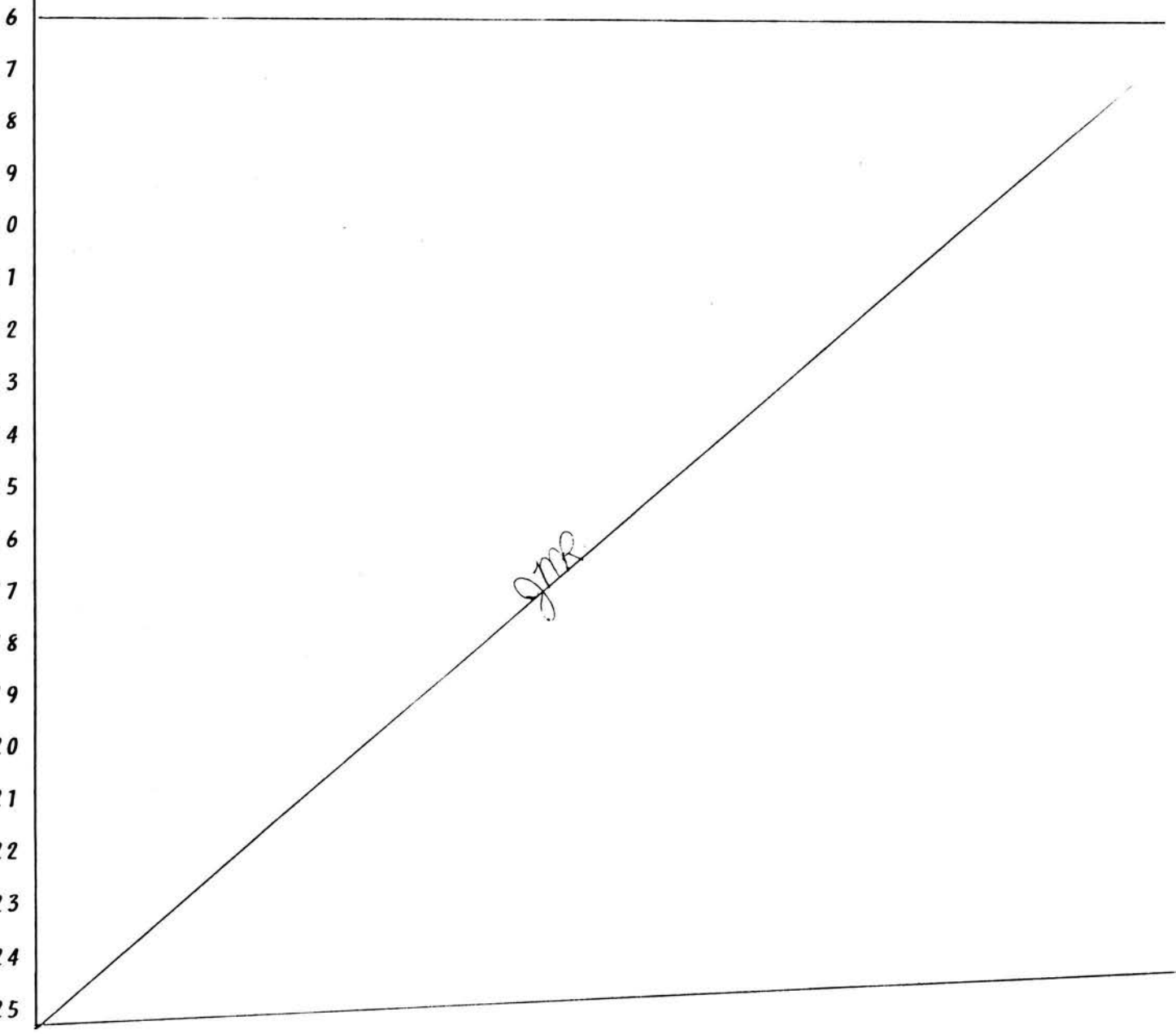
24 A. They were away on that, yes, some of my detectives and
25 we formed our own ident section, photography section, drug

3:00 p.m.

1 section. They were sent on courses -- Holland College
2 in Charlottetown and Debert.

3 Q. Were all of your detectives given training in investigative
4 techniques?

5 A. No, I wouldn't say them all, sir.



1 Q. Was there a tactical squad so-called set up in the Sydney
2 Police force during the time you were Chief or Deputy?

3 A. Not -- No, not during the time I was Chief or Deputy, no.

4 Q. When was -- Was there one set up?

5 A. There was one set up at one time, yes. I think -- In the
6 early '70's, yeh.

7 Q. Did it have anything to do with the Seale killing?

8 A. No.

9 Q. What was the purpose of that squad?

10 A. The purpose of that squad was to have men trained in case
11 they were needed for -- for certain things that might
12 happen such as, people barricading themselves in buildings
13 or armed and what have you and -- so that the police would
14 have protection also for themselves and know what to do
15 in certain circumstances and there was a couple of men, I
16 think it was that was put in charge of it and they would be
17 able to give direction and what have you.

18 Q. Do you know who those -- Who was in charge of it?

19 A. I believe -- I believe Arthur -- Corporal Arthur Woodburn
20 I believe was in charge of --

21 Q. It didn't last very long?

22 A. And I believe -- Excuse me, and I believe Ambrose MacDonald
23 was one of the others.

24 Q. It didn't last very long, did it?

25 A. A year or two. I don't know just what happened there.

1 Q. It wasn't there when you were Deputy?

2 A. It was suspended. No, no, I didn't have any.

3 Q. When you were Chief what was the relationship between the Sydney
4 Police and the -- and in particular with respect to the policing
5 of Membertou? Who did the policing out there?

6 A. The City Police, and they had -- for a period of time they
7 had a member there who would be appointed by the Band Council.
8 One I remember in particular, I believe his name was -- I
9 believe his name was Dan Paul. I did discuss police work with
10 that chap and warned him of the pitfalls and what he should handle
11 and when it's a serious nature he should get in touch with
12 the City Police for assistance and what have you and I
13 recall calling the -- getting in touch with Halifax for
14 the Halifax school. They had a program on there every
15 summer training police and police methods and I remember
16 getting in touch with them and having him getting-- getting
17 him in the school on one occasion.

18 Q. Do you recall in 1978 a proposal was put forth by the Native
19 Communities Association involving community relations and
20 the law? They wanted to have a special study carried out.
21 I'll show you Exhibit 63.

22 A. Yes.

23 Q. And Exhibit 66.

24 A. What do you want here? What --

25 Q. What 66 is as I understand it is the proposal to carry out

1 a study of police relations and the community. Any --

2 A. What is your question, sir?

3 Q. Well, the -- that was in request by the Natives for a --
4 for a special study to be carried out on police relations
5 and the law. As I understand it the last page, it
6 hopefully will bring police officers to understand the Indians
7 and their problems and will avoid possible racial discrimination.
8 Now you were asked to endorse that project and you refused.
9 There's your letter. It's in Exhibit 63, the letter of
10 August 2. That project was endorsed by the R.C.M.P., by the
11 Major of Sydney, by the M.P. for Sydney, by the Sydney
12 Detachment of the R.C.M.P. You were the only one against
13 it. Can you tell us why? Do you have any recollection
14 of that?

15 A. Well, yes, I have some recollection of this. I thought I
16 had a discussion with -- with one of the gentleman that was
17 responsible for sending this to me.

18 Q. And?

19 A. And I didn't think it was proper what was in here as far
20 as we were concerned, not the whole document, but, for
21 example, in the front here, for a great number of Indians
22 they are constantly picked up by police officers. They
23 don't have to be drunk. If they're standing on a street corner
24 or driving around the city and highways and they look Indian,
25 police officers often feel threatened by minority groups

3:05 p.m.

1 and therefore, since they have upper hand, they enforce their
2 authority and I didn't go along with that type of thing because
3 at our station I never seen that take place or happen, sir,
4 and if they were locked up they'd be locked up for a reason
5 and -- and -- and go before the Court like anybody else and
6 I -- I didn't like the assumption that I was endorsing
7 their -- I wouldn't endorse something like that unless there
8 was grounds to believe that, sir.

9 Q. What I understood is they wanted to have a study carried out
10 to find out if, in fact, that was correct?

11 A. I'm talking -- That's not -- That is not my feelings on the
12 thing at the time and they were told that by me I think if
13 you check with them and I told them that if that was cleaned
14 up that --

15 Q. Well, we have your --

16 A. -- I'd see no problem with it.

17 Q. -- we have your letter --

18 A. But I think I had somebody come in to see me. That's my
19 recollection.

20 Q. Were you interested in having a study carried out that
21 would hopefully bring police officers to understand the
22 Indian and their problems and avoid possible racial
23 discrimination?

24 A. I would have no problem with that at all.

25 Q. But you weren't prepared to endorse this particular study?

JOHN F. MacINTYRE, by Mr. MacDonald

1 A. No -- Just because of what I read in the front. That was
2 all. And I think -- I think there was two people down to
3 see me after and I explained it to them.

4 Q. Roy Gould has talked about it in his evidence and --

5 A. Yeh.

6 Q. --and that's in the record. Now in 1982 there was another
7 reinvestigation of the Marshall case. Do you recall that?

8 A. Yes.

9 Q. And that was prompted by a letter that you received from
10 Steve Aronson?

11 A. Yes.

12 MR. MacDONALD:

13 Could I have seventeen and nineteen. One of them may be over
14 there.

15 MR. CHAIRMAN:

16 I wonder if this is a good time to break.

17 MR. MacDONALD:

18 This would be a good time.

19 MR. CHAIRMAN:

20 We'll take a short break.

21

22 INQUIRY ADJOURNED AT: 3:10 p.m., AND RECONVENED AT: 3:27 p.m.

23

24 BY MR. MacDONALD:

25 Q. Chief MacIntyre, in January of 1982 you received a letter from

3:10 p.m.

1 Steven Aronson and that letter is found in Volume 16 at
2 page 220.

3 A. Yes, sir.

4 Q. Do you remember receiving that letter?

5 A. Yes, sir.

6 Q. And upon receipt of it what did you do?

7 A. Upon receiving this letter here Mr. Steven J. Aronson, I
8 contacted Superintendent Doug Christian, I think it was,
9 the R.C.M.P., Halifax.

10 Q. Yes.

11 A. And my conversation with him was that I had received the
12 letter or I think I told him who it was from. I'm not sure.

13 That -- That it was in regard to the Marshall case and I
14 wanted to know who -- who done the -- I think the question
15 was asked, "Who done the polygraphs in 1971 on this?".

16 He told me it could be one of two people, one party was out
17 of the country at this time and the other party was in
18 New Brunswick. Rothsay, New Brunswick.

19 I contacted that party Eugene Smith who was with a
20 security company in Rothsay, New Brunswick just after
21 leaving the Royal Canadian Mounted Police. And talked to him
22 on the telephone and asked if he recalled it and as the
23 result of a conversation with him I had a letter from him.

24 Q. Yes, and that letter is found on page 217 of volume 16?

25 A. Two?

JOHN F. MacINTYRE, by Mr. MacDonald

- 1 Q. On 217?
- 2 A. On 217.
- 3 Q. And it's dated February 2nd and talks about your discussion
4 that was held on that day?
- 5 A. The same date, yeh.
- 6 Q. Yeh. Okay?
- 7 A. Yeh.
- 8 Q. Now having received that advice from Mr. Smith which was
9 subsequently confirmed by telephone, what did you do next?
- 10 A. Then I called -- I think I called Mr. Edwards, the Crown
11 Prosecutor for the County here, and -- at the court house
12 and told him I would like a meeting with him. I recall I said
13 that the meeting would take some time and that I would like
14 to go over a case with him. I think that's my words, "a
15 case with him". I don't know if I mentioned the Marshall
16 case or not. And Mr. Edwards set the time for the meeting
17 which was very shortly after that, just a matter of probably
18 three or four days, somewhere in that vicinity. And I also
19 called, I think, the R. -- the Inspector Donald Scott of
20 the R.C.M.P. in Sydney here in charge of the section here to --
21 I ask him if he would attend.
- 22 Q. To attend at the meeting at Frank Edward's office?
- 23 A. Yeh, that's right.
- 24 Q. Okay. Do you have volume 17? I think I've placed that there.
- 25 A. Seventeen, yes.

1 | Q. On volume 17, page one, these are notes that were made by
2 | Frank Edwards, and Mr. Edwards will be testifying later to
3 | these, but the first entry on that page one is February 3rd,
4 | 1982, and he talks about meeting with you and Inspector
5 | Scott and that's what you've just told us about? Your meeting
6 | was the day after you spoke with Eugene Smith?

7 | A. Yes, and he's got the date here. I didn't think it was that --
8 | I didn't think it was that quick but it could have been.

9 | Q. Okay. Now do you see in Frank Edward's comment there that:
10 | "Chief MacIntyre briefed us on the investigation which lead
11 | to Marshall being convicted"?

12 | A. Yes.

13 | Q. "The main point is that conviction obtained because of evidence
14 | of two teenage boys, Chant and Pratico, unknown to one another
15 | who had given police written statements saying that Marshall
16 | and Seale had been accosted by two individuals". "Subsequent
17 | statements said Marshall had done the stabbing". And then
18 | you refer to the fact in October of 1971, MacNeil came to
19 | the police and the investigation turned over to the R.C.M.P.,
20 | and about the polygraph, so you are briefing as you've just
21 | said, Mr. Scott and the Crown Prosecutor. Now after that
22 | briefing what was decided? What was going to happen?

23 | A. Could I have a minute here, sir?

24 | Q. Certainly.

25 | A. It would be that October, '71, when MacNeil states that one

JOHN F. MacINTYRE, by Mr. MacDonald

1 Roy Ebsary had done the stabbing and that would be in
2 November.

3 Q. That should be in November. That's correct. That's --

4 A. Well, November the 15th, sir.

5 Q. Yes.

6 A. Yeh, and again --

7 Q. Okay, now following that meeting with Edwards and Scott, what
8 was to be done, what was the next step?

9 A. I don't think that that's all that -- Well, there was a
10 briefing but the briefing was -- the briefing took hours.
11 I'm not suggesting that that's a full statement of what was
12 said, Chief. Just -- Just to get it on the date, that's what
13 I'm thinking of.

14 A. Well, he says the date was February the 3rd. I thought it was
15 over a weekend or something but I could be mistaken on that.

16 Q. In any event, after --

17 A. It doesn't make that much difference, no.

18 Q. After the -- As a result of that briefing what was to take
19 place?

20 A. Oh, I -- at that briefing -- that's why I want to say a little
21 more about that briefing, sir, because at that briefing I
22 discussed the Marshall case and the Ebsary case at that
23 meeting and it was a lengthy one. I would say somewhere --
24 two, two and a half hours.

25 Q. What do you mean by the Ebsary case?

1 Q. The Mugridge?

2 A. No, no. No, no. No, no. I mean the two cases in 1971, the
3 Marshall case first and then the November one.

4 Q. Okay. Well, Mr. Edwards refers to both of those, not -- not
5 in detail. I appreciate that.

6 A. No, it refers here to the Marshall case.

7 Q. So it took a couple of hours in any event?

8 A. In any event, yeh.

9 Q. What was to happen after that meeting, that's what I'm trying
10 to find out?

11 A. Well, they took some -- they took some material at that
12 meeting and --

13 Q. Who took some material?

14 A. The Inspector and Mr. -- My recollection is that the
15 Crown Prosecutor and Mr. -- it was spread out there around
16 the table and my recollection is that -- is that they kept
17 some of the documents at that time.

18 Q. Do you remember what documents they kept?

19 A. Not at this time, no, sir.

20 Q. Well --

21 A. After that I remember -- Could I follow this through.

22 Q. That February 16th doesn't refer to you?

23 A. That doesn't refer to me at all, no.

24 O. I'm just trying to find out from you, Chief, what happened?

25 A. Yeh. The next thing I thought happened that -- that I seen

JOHN F. MacINTYRE, by Mr. MacDonald

1 Ebsary at my office -- not Ebsary, but Staff Sergeant Wheaton
2 at my office.

3 Q. Did you ask that the R.C.M.P. get involved?

4 A. Yes. Oh, yes. At that time, yes, I should have asked them.
5 I should have said that, yes.

6 Q. You asked --

7 A. I asked that they would take this case over--this complaint
8 over and this thing over again.

9 Q. The same thing that you had asked in 1971?

10 A. Yes.

11 Q. Did you do the same thing in 1982? Did you say, "Here's my
12 entire file"? "Take this file and go over the whole thing
13 again".

14 A. I had my file with me and as I said at that time, they did
15 remove some -- they did remove some things that they kept.
16 That's my recollection, sir, on that day that I had the
17 meeting with them. The rest of my file was as I took it back
18 to the office.

19 Q. And you said then the next you recall you had a meeting
20 with Wheaton?

21 A. I believe that was the next thing I recall?

22 Q. And do you know when that took place?

23 A. Pardon me now, I don't -- I'm not sure whether I had a meeting
24 with Wheaton first or -- I know I had -- I had (I call them
25 bull sessions.) one or two bull sessions with the -- at the

3:37 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

1 R.C.M.P. office and I remember being up there with Inspector
2 Scott and I forget who was -- who was with him if there was
3 anybody with -- Yeh, there was. There could have been somebody
4 with him. I don't recall just now.

5 Q. You know that Harry Wheaton and Carroll were assigned to this
6 case?

7 A. Yes, I knew that later on.

8 Q. And when did you know that?

9 A. I could --

10 Q. In what period of time?

11 A. I couldn't tell you just when. I knew that Wheaton had made
12 some trips to my office and discussed some of the individuals
13 in the Seale case with me.

14 Q. What were you discussing with Wheaton?

15 A. Well, I think it was Pratico, Chant, and Harriss if I recall
16 right.

17 Q. Did you give Wheaton your file?

18 A. Wheaton never asked me for my file at any time, sir. The rest
19 of that was in the -- it was in the drawer there.

20 Q. You never -- You never offered it to him and he didn't ask
21 for it?

22 A. He never asked, no.

23 Q. Did you try from time to time to keep advised as to what was
24 happening in that investigation? Did you ask -- keep asking
25 Frank Edwards what's happening, let me know what's going on?

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1 A. I spoke to him a couple of times about it, you know, as --
2 That was very, very early on in the investigation. I -- I
3 read a lot about it in the Press, the radios and what have
4 you, at a very early stage in this investigation of what the
5 City Police had done on this case and what two statements
6 have been taken and what have you.

7 Q. And that was -- that was bothering you, wasn't it? That was
8 of concern to you that you were hearing about it in the Press,
9 but no one was keeping you advised?

10 A. Well, I thought that a case like this should be, in my
11 opinion and as a police officer, should be investigated and
12 brought to the proper authorities attention and I was hearing
13 things from outside that was taking place and listening to
14 radios and what have you, television.

15 Q. Let me take you to page three of that Volume 17. And I
16 direct you to the comment that Mr. Edwards made in his
17 notes of Tuesday, February the 23rd. See where he said:

18 Met at office with Wheaton and Carroll -
19 they updated investigation. Now believe
Marshall to be innocent.

20 MR. PUGSLEY:

21 I'm sorry, what page are you on?

22 MR. MacDONALD:

23 Three.

24 MR PUGSLEY:

25 Three. Thank you.

JOHN F. MacINTYRE, by Mr. MacDonald

1 MR. MacDONALD:

2 February 23rd, 1982.

3 BY MR. MacDONALD:

4 Q. And then eleven p.m. is the one I'm interested in, Chief:

5 -call Wheaton - suggested investigation
6 not complete until Chief MacIntyre
7 questioned though he should not be
8 privy to conduct of investigation
9 until Dept. has had opportunity to
10 decide upon it.

9 Were you ever questioned and interviewed by Harry Wheaton or
10 Carroll or Scott or anybody else?

11 A. I have -- as I told you just a minute ago, I had two -- one
12 or two discussions with Inspector Scott. I recall seeing some
13 statements, I think a couple of statements up there, two
14 or three statements. I can't say how many. And as far as
15 Staff Sergeant Wheaton is concerned, I remember him coming
16 to my office on two or three occasions and discussing as I
17 said before or asking me questions related to Pratico,
18 Chant, and Harriss.

19 Q. Were you ever -- I'll put it this way, Chief, were you ever
20 interrogated by Wheaton, Carroll, or Scott, as to your
21 conduct in the investigation?

22 A. To my conduct, no.

23 Q. Go to page four would you please in --

24 A. Yes.

25 Q. --in volume 17. And if you go down to the note, February

1 the 26th at the bottom of the page --

2 A. Yes.

3 Q. --and in the first paragraph it says:

4 H. Wheaton said he and Scott were
5 going to see Chief MacIntyre this
6 morning.

6 And then if you go over to the top of the next page it says:

7 Harry Wheaton called this...

8 morning...

9 ... to say that meeting with
10 Chief MacIntyre had gone down
11 on Friday p.m. - Just Insp. Scott
12 attended as Wheaton was
involved in a surveillance
exercise.

13 Now that's the meeting you've talked about, is it, that you
14 had with -- at least one of the meetings you had with Scott?

15 A. I couldn't be sure, sir, but I did mention it.

16 Q. Do you remember that meeting with Scott?

17 A. I remember Scott showing me some statements.

18 Q. Of what?

19 A. About the -- That the ones that I had dealt with in '71 were
20 changing their story now.

21 Q. Okay. I've given you --

22 A. It was along them lines.

23 Q. I'm sorry.

24 A. It was along them lines, yes.

25 Q. I've given you volume 19 as well, if you could just turn that

JOHN F. MacINTYRE, by Mr. MacDonald

1 up, and I'm looking at page 30.

2 A. Yes.

3 Q. On the bottom of that page, see the note, it says,

4 "On February 26, 1982, Chief John MacINTYRE...", see that down
5 the bottom?

6 A. Yes, I see that. Yeh.

7 Q. ...came to my office at which time
8 I allowed him to read the statements
9 of CHANT and PRATICO, in which they
state they lied at the trial of
MARSHALL in 1971.

10 A. Yes.

11 Q. I also advised him in general terms
12 the investigation we had conducted
to date.

13 Did he advise you that at that time the R.C.M.P. had formed
14 the opinion that Marshall was not guilty, that he was innocent?

15 A. I don't -- I don't recall if he did or not.

16

17

18

19

20

21

22

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24

25

JMR

1 Q. Go over to the next page.

2 A. Yeh.

3 Q. Chief MacIntyre brought up
4 several points that we both
5 thought should be clarified
6 to determine the accuracy of
7 this investigation. As a
8 result of this meeting, I
9 requested all witnesses be
10 interviewed and in particular,
11 the Harriss girl, to determine
12 the accuracy of her statement
13 that only Marshall and Seale
14 were present as this seemed
15 critical in Chief MacIntyre's
16 mind that this proved Marshall
17 was lying.

18 Do you recall that discussion with Scott?

19 A. I would -- As I said before, we would've discussed the Harriss girl,
20 I imagine, at that meeting.

21 Q. And would you have told him that in your mind, it was critical?

22 A. That is his words, sir. I don't -- That's probably what he
23 took out of what I was saying.

24 Q. Did you tell him that the Harriss statement -- that only
25 Marshall and Seale were present, proved Marshall was lying?

26 A. Wait now, just a minute, sir. Where's that at?

27 Q. It's on the -- that top paragraph.

28 A. Yeh, it'd be only Marshall. Well, yes, Marshall said there
29 was four people there, and again, they weren't present when
30 anything took place.

31 Q. No.

32 A. Harriss or the boyfriend, Gushue. They weren't present when

1 the stabbing took place. I was trying to position them to what
2 position they were in on Crescent Street, and the stabbing
3 didn't take place at that time. The two eyewitnesses to the
4 stabbing were Chant and Pratico, but I figured that their
5 evidence was very important at the time if that's what they
6 were saying that there was only two on Crescent Street when
7 they came along at that time. That's what I was checking out.

8 Q. But in 1982 --

9 A. Yes.

10 Q. In February.

11 A. Yes.

12 Q. You were given statements that Chant and Pratico had given to
13 the R.C.M.P. where they had stated they lied at trial.

14 A. Yes, I'd -- Yes. Yes.

15 Q. At that time, were you telling Inspector Scott that the statement
16 from Harriss, that there was Seale and Marshall present, proved
17 that Marshall was lying?

18 A. No, I thought that the statement of the Harriss girl was --
19 should be looked into because of the statement she gave, and I
20 thought it very important. I thought the statement was very
21 important at the time.

22 Q. Okay. You thought the Harriss statement that you had taken on
23 June 17th was very important?

24 A. I thought so, yes.

25 Q. Okay. Let's go back to Frank Edwards' note --

1 A. Yeh.

2 Q. -- on page 5 there. This is where -- at the top where I already
3 read that Wheaton said you had met with Scott, and then he
4 said this. He said:

5 MacIntyre had dismissed the
6 the whole thing out of hand,
7 and Scott did not have suf-
8 ficient details to pin him
9 down. I remember wondering
10 why Wheaton had not thought
11 this investigation more
12 important than surveillance
13 exercise, but I did not com-
14 municate this to him. Said
15 Chief, "Pin his argument on
16 the fact that Marshall met
17 Harriss and Gushue in the
18 park and they said there was
19 only one other person."

20 Now, is that an accurate reflection of what you had told Scott
21 when you met with him on February the 26th, 1982?

22 A. I wasn't dismissing anything out of our hand at that time. I'm
23 not saying that.

24 Q. All right.

25 A. "I'm wondering why Wheaton did not think -- or thought that this
investigation more important than surveillance exercise."

Q. That's just a comment that Edward made to himself.

A. Edwards made that to himself?

Q. Yeh.

A. Wonder -- I don't know where he'd get that from.

Q. He's not suggesting you said it. Let me read you this and see
if you agree that this accurately reflects your discussion with

- 1 Scott, that you dismissed the whole thing out of hand and you
2 pinned your argument on the fact that Marshall had met Harriss
3 and Gushue in the park, and they said there was only one other
4 person? Would you accept that as an accurate reflection of your
5 discussion with Scott?
- 6 A. I talked about Harriss and the Gushue people and what they
7 had said, and I was quite surprised as -- about the other
8 two who gave those statements said they were lying because I
9 thought back under the conditions that those statements were
10 taken, and it was quite a surprise to me.
- 11 Q. But in any event, you were --
- 12 A. But I wasn't throwing it and putting anything out of hand if
13 that's the way you want to put it.
- 14 Q. You were still putting great emphasis and reliance
15 on the statement that you had taken from Patricia Harriss on
16 June the 17th in 1971. Is that correct?
- 17 A. No, I think I was suggesting what they had said at that time,
18 sir. I -- and that -- I don't think they had been seen yet.
- 19 Q. All right. We'll come back. You went to visit Gordon Gale --
- 20 A. Yeh.
- 21 Q. -- in Halifax, is that correct?
- 22 A. That's correct, yeh.
- 23 Q. And he is the -- He is in the Attorney General's Department,
24 Director of Criminal Investigations at that level, something --
- 25 A. That's right.

1 Q. Why did you go see him?

2 A. Because of the publicity that I was -- our department was
3 getting at that time, as I told you already, and the press and
4 radio and the things that were said, and I had made a call --
5 I had made a trip up to the Crown Prosecutor's Office before
6 that, and I asked him what was going on, that they were talking
7 about two statements in the press and -- that I had taken and
8 the -- that we had taken and that the -- and saying other
9 things about the investigation. I said, "Who's giving this out?"
10 and he said well, that he was talking to a reporter, and you have
11 to give him something.

12 Q. Who was -- Who said that? Frank Edwards?

13 A. Yes.

14 Q. You'd have to give them something to keep them quiet. Well,
15 I said -- I told him it wasn't very nice, and I was getting
16 pretty fed up with it, and I decided I would go up and see the
17 Attorney General's Department about it.

18 Q. And you --

19 A. And I see nothing wrong with that. He's the chief law
20 enforcement officer of the province, and I thought that
21 I'd go up there. Another one of the reporters met a gentleman
22 that I knew well and then a -- and -- at the airport and
23 suggested to him that there was going to be two or three criminal
24 charges laid against -- and that I was one of them.

25 Q. Who was that reporter?

1 | A. Alan Storey.

2 | Q. And he had told a friend of yours or someone --

3 | A. Yes, a friend of mine, yes.

4 | Q. So you were going to the Attorney General, and what were you
5 | going to seek there?

6 | A. Well, I thought it should be -- I thought a little more caution
7 | should be used and -- until there were -- until this thing
8 | went before the courts. I was still Chief of Police of this
9 | city, and it would bother me quite a bit --

10 | Q. Okay.

11 | A. -- to be getting this publicity and nothing before the Courts.

12 | Q. Did you tell Gale you were coming?

13 | A. Did I tell Gale I was coming? It wasn't Gale I going to see,
14 | sir. It was the Attorney General I was going to see, but he
15 | wasn't there that day.

16 | Q. Who was the Attorney General?

17 | A. I believe it was Harry Howe at the time.

18 | Q. Did you tell him you were coming?

19 | A. No.

20 | Q. Did you tell anyone you were coming?

21 | A. No.

22 | Q. So the Attorney General wasn't there --

23 | A. And I seen Mr. Gale, yes.

24 | Q. Did you look for the Deputy Attorney General first?

25 | A. No, I did run into Mr. Gale there, not in his office, but in

1 the general vicinity of his office, and he spoke to me, and
2 I -- told me that the Attorney General wasn't in, but to come in,
3 he'd talk with me, which he did.

4 Q. All right. Let me take you to Frank Edwards' notes on page 7
5 and where he says:

6 Notes made Monday, April the 19th.
7 but referring to a discussion he had on Friday, April the 16th.
8 Do you see that?

9 A. Page 7 here, sir?

10 Q. Yes.

11 A. Friday, April 16th, '82?

12 Q. Yeh.

13 A. Okay, yeh.

14 Q. See where is says:

15 Call Gordon Gale.

16 A. Yes, I have that, yes.

17 Q. In paragraph No. 2 there -- And this is what Mr. Edwards is
18 reporting, I understand, that Gale told him, that:

19 The Chief...

20 That's you.

21 ...had produced statements from
22 Ebsary's wife, son, and daughter,
23 which were opposed to what they
24 were saying now. I said that if
25 such was the case, the probable
explanation was that they were
living in fear of Ebsary at the
time. And then...

1 This is what Frank Edwards says:

2 ...told him..

3 And that's, I guess, Gale.

4 ...that I...

5 Frank Edwards, was concerned about the fact that the Chief was
6 producing statement now

7 ...which neither I nor the R.C.M.P.
8 had known about before. I told him
9 I would confirm this with the R.C.M.P.
and get back to him.

10 Had you given Frank Edwards and the R.C.M.P. copies of the state-
11 ments taken from Mary Ebsary, Greg Ebsary in November of 1971?

12 A. That was the re-investigation.

13 Q. Yes.

14 A. Yes, that was when Marshall was here. You're talking about
15 that case.

16 Q. Yes.

17 A. That, yeh.

18 Q. Had you given those to Wheaton?

19 A. They would -- Give what to Wheaton, sir?

20 Q. The statements that were taken from Mary Ebsary and Greg Ebsary.

21 A. I couldn't say what was kept at that meeting that I had with
22 the R.C.M.P. They kept material, as I said before, and Wheaton
23 wasn't in on that meeting.

24 Q. Did you leave anything with Gale? Did you leave him any
25 documents?

- 1 A. No, I didn't. No. I discussed the cases with Gale, but I
2 didn't leave any documents with him.
- 3 Q. Were you trying to convince Gale that Marshall was in fact guilty
4 and what the R.C.M.P. was doing -- that -- was not correct,
5 that Marshall was guilty?
- 6 A. No, I wasn't trying to convince him of that at all, sir. I
7 was trying to -- I was explaining to him what was going on
8 at the present time so -- the publicity the City Police
9 Department was getting in this case. And I think I did stress
10 in no way was I trying to -- was in it -- trying to interfere
11 (I wanted them to know that.) with the R.C.M.P. re-investigation,
12 It was the publicity, sir, that we were getting on it, that that
13 was --
- 14 Q. How was it left with Gale? Did you get any comfort, any relief?
- 15 A. Well, I had my piece, and I left, sir.
- 16 Q. Was he going to get you any relief?
- 17 A. I don't know what he was going to do, sir.
- 18 Q. What were you asking him to do?
- 19 A. I thought it could be tamed down and until -- If there was
20 anything to go before the Courts, that's be the time to, but
21 in the meantime, I thought that -- I didn't think it was proper
22 that I -- what was getting released, and it must've been getting
23 released pretty close to the source, and I wasn't comfortable
24 with that.
- 25 Q. Let's go to page 8 of Frank Edwards' notes.

1 A. Page 8? Yes.

2 Q. And this is what he records:

3 After the call with Gale, I phoned
4 Wheaton, who confirmed that they
5 had known nothing about earlier
6 statements by Ebsary's wife and
7 family. He said that on two
8 occasions when they had briefed
9 MacIntyre, they had asked him
10 whether he had anything further
11 which might help the investigation.
12 He said, "No."

13 Do you recall meeting with Wheaton?

14 A. Wheaton -- The Crown Prosecutor and Inspector of the Mounted
15 Police, I discussed both of those cases with them the first
16 time I was up there and I had my file, sir, and I'd removed --
17 They did keep some documents from it. Now, that tells you
18 that -- or I'm telling you, sir, that I discussed the Marshall
19 case first, and then I discussed the Ebsary case next at my
20 meeting with them on that day, and I want to make that very
21 clear, and discussed it very thoroughly, I would say in the
22 vicinity of two and a half hours.

23 Q. Yeh.

24 A. And I hid nothing out of that file and discussed what I thought
25 I should discuss in a full manner as to what my participation
was in that case from 1971 up, and that's what I recall, sir,
that I said on that day.

Q. Did you mean --

A. Now, when you say that nobody knew anything about the Ebsary

1 case later on, I'm not buying that.

2 Q. I'm asking you, Chief, that on two occasions, did you meet
3 with Wheaton and Carroll when they asked you if you had anything
4 further which might help the investigation, and you said no?

5 A. I don't recall meeting with Wheaton and Carroll and making a
6 statement like that, sir.

7 Q. Okay.

8 A. My file -- I want to also include that what was left in that file
9 and what was in that file at the police station, sir, was never
10 asked for by, as you say, the investigating team of Wheaton and
11 Carroll.

12 Q. Why is it that in 1971 that you gave your entire file to
13 Marshall? That's what you said. But in 1982, you didn't do
14 that?

15 A. Well, I guess this was a little different circumstance again.
16 All they had to do was come down and ask for the file, and that
17 particular case, Marshall came to the office, and he was there,
18 and was taking it over. When I asked them in '82 to take it over
19 and Inspector -- and I thought the Mounted Police was going to
20 investigate it, but the -- I knew Inspector Scott wouldn't be
21 doing it. I didn't think so, and I didn't think that the Crown
22 Prosecutor was going to do it, but whoever was going to do it,
23 would be in to see me and ask for my file. That --

24 Q. Wasn't Wheaton in to see you?

25 A. Wheaton was in, but he never asked for any file, sir.

1 Q. Is that what you were waiting for, him to ask?

2 A. I was -- Well, I -- They had some stuff now already,
3 Mr. MacDonald, you understand, and I -- If they wanted the rest
4 of my file, I'd -- All they had to do was come and ask for it.

5 Q. But did Marshall? You were quite prepared to turn the entire
6 file over to Al Marshall, you say. You gave him everything.

7 Q. I think I explained that to you, sir, that he came in for them.
8 I gave it to him.

9 Q. Okay. Now, this is what Frank Edwards says:

10 It is now clear that MacIntyre has
11 been less than forthright throughout
12 and I believe that from the begin-
13 ning, he has set out to have the
investigation reach a pre-determined
goal. At best, he has been
manipulative.

14 A. Yeh.

15 Q. You wouldn't agree with that?

16 A. I don't appreciate that or agree with that, no.

17 Q. Chief MacIntyre; now seems clear
18 that he used the February 3rd
19 meeting to set up both Scott and
20 myself; that is, he produced
21 only those parts of the file for
22 which he had an explanation; that
23 is, both statements from each Chant
24 and Pratico, results of November,
25 1971, R.C.M.P. investigation, and
his theory re Mitchell Sarson.
He probably felt the R.C.M.P.
would merely go and check Sarson.
That would lead them back to Ebsary
who had already passed the polygraph,
doubtful that he figured on the
detailed investigation which ensued.
Feelings shared by Scott at our

1 April 16th meeting described below.

2 Now, that is saying, I understand, that at the meeting on
3 February 3rd, you only produced parts of your file that you
4 could explain.

5 A. I said already that I went over the case very thoroughly in --
6 on that particular date.

7 Q. So you would say that this commentary by Mr. Edwards is not
8 correct?

9 A. No, he's making a statement here that I was manipulative. I don't
10 buy that type of thing at all. I thought I was very truthful
11 with everybody all my life. I don't buy that.

12 Q. He goes on to say:

13 Significant that Chief has always
14 retained full file in his possession
15 and only turned over what was
16 specifically asked for. Example,
17 did not volunteer facts of previous
statement by Ebsary's wife nor the
statement of Patricia Harriss
wherein she described the person
like Ebsary.

18 Q. Did you volunteer that you had two statements from Patricia
19 Harriss?

20 A. I couldn't say on that particular day what I left there, sir,
21 out of my files, and as you will see, the statement of
22 Patricia Harriss was in that file for a long time.

23 Q. Did you tell Frank Edwards and Scott on February 3rd that you
24 had taken -- or that an earlier statement had been taken from
25 Patricia Harriss wherein she described a person similar to

1 Ebsary?

2 A. I would say that I did discuss everybody on that date, sir, but
3 I'm not sure whether I did or not, to be honest with you. I
4 thought I did.

5 Q. And we go on to read the next paragraph:

6 At the time of the first briefing
7 by the R.C.M.P., he pointed to
8 Harriss' testimony as being proof
that Marshall's story was not
true.

9 Do you recall that when you met in February 3rd? You referred
10 to the Harriss statement as proof that Marshall's story was not
11 true.

12 A. Well, at that time, I had the statements of the two eyewitnesses
13 to -- that said they seen Marshall do it.

14 Q. Yeh. Chief, you're not suggesting seriously, are you, that
15 when you met with Scott and Frank Edwards on February 3rd, that
16 you told them that you had two statements from Patricia Harriss,
17 one of which she described someone -- an old man, long coat,
18 grey hair and --

19 A. I just answered that, sir. I said that I'm not sure on that
20 point, but I thought I discussed the whole case and the two
21 cases of 1971, and that is my recollection. That is my belief.

22 Q. Okay.

23 A. And that's to the best of my ability I can tell you at this
24 point.

25 Q. Do you recall -- Let me take you to page 9 of Frank Edwards'

1 notes. And this is -- refers to a conversation on April 17th,
2 and I'm looking at the second paragraph:

3 While on the the phone, he told
4 me...

5 I think that's Wheaton.

6 ...that he and Herb Davies had
7 gone to see Chief MacIntyre late
8 Friday and spent a couple of hours
9 with him. After being pressed,
10 Chief turned over previous written
11 statement by Patricia Harriss in
12 which she described somebody
13 matching Ebsary. Wheaton said
14 Chief went scarlet when pressed
15 about this statement. Also turned
16 over November '71 statements of
17 Mary and Greg Ebsary.

18 Down to the next paragraph:

19 Also told me that Herb Davies
20 had noticed Chief slipped some of
21 the information on the floor behind
22 the desk. He believes it was some
23 information with transcripts
24 attached relating to threats.

25 A. I never slipped papers under my desk at any time.

Q. Chief, it's my understanding that Sergeant Herb Davies -- Do you
know Herb Davies?

A. No, I don't know him.

Q. You've never met him?

A. There was one or two people accompanied Wheaton to my office
on different occasions. I mean, one -- Probably once or twice.
At least once, and probably twice. One other fellow, I think.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Do you remember being --

2 A. And I don't recall the name. I might know him to see him.

3 Q. Okay.

4 A. But what you're saying -- what he's saying there that I slipped
5 papers under my desk; I definitely deny that, sir.

6 Q. And I want to put this to you, Chief, because my understanding
7 is that Davies will testify as follows: Davies will testify to
8 this Commission that he was present in your office with Sergeant
9 Wheaton at which time they were getting materials from you --
10 from your file and that you took some documents and threw them
11 on the floor, that Wheaton could not see this and that when
12 they left -- they were leaving the office, he told Wheaton,
13 "You didn't get everything." Wheaton then went back to you
14 and said, "I want everything," at which time you said, "Well,
15 I might as well give you everything." You were very embarrassed,
16 and you picked up a document from the floor and gave it to
17 Wheaton.

18 A. Yeh.

19 Q. Now, that's what Davies, I think, will testify.

20 A. Yeh. Well, I'm testifying now, under oath here, that I never
21 done such a thing, sir.

22 Q. Thank you. And I understand also --

23 A. And it's very embarrassing to even hear it -- hear of it.

24 Q. And, Chief, what I'm trying to do is give you the opportunity,
25 sir, to give your evidence on it.

- 1 A. I'm giving it now, sir.
- 2 Q. Yeh. And Sergeant Wheaton will testify as follows: That he was
3 there to get documents from you. That when they were leaving
4 the office, he was told by Davies that there were documents on
5 the floor, that you had not given them everything, that he
6 went back and asked you for the document which turned out to
7 be the first Harriss statement, that he had never seen that
8 document before, and that you had a very guilty look on your
9 face. And that's what Sergeant Wheaton will testify to.
- 10 A. Yeh.
- 11 Q. Do you deny that as well?
- 12 A. I deny that as well, sir.
- 13 Q. So both Davies and Wheaton are --
- 14 A. And I think at one point, sir, that you or one of your -- the
15 gentleman with you told me that they thought it was some other
16 document, and now it is the Harriss document.
- 17 Q. But I am -- What I am telling you, Chief, and giving you the
18 opportunity to comment on.
- 19 A. I was told at one occasion at -- of this certain thing here by
20 somebody that that was -- it was the information of Tom
21 Christmas, I believe. Is that right?
- 22 Q. That is, in fact, what -- That is Frank Edwards' notes say.
- 23 A. And somebody else now is saying that it's the Harriss -- I'm
24 telling you, sir, and this Commission here that I never slipped
25 anything under my desk, and I -- and we kept those files for

JOHN F. MacINTYRE, by Mr. MacDonald

1 eleven years, and that statement was no more important than
2 Pratico's or Chant's and the other statements that I had in
3 that file and the information that I had on it that we kept
4 for eleven years.

5 Q. So Wheaton and Davies, if they testify as I've just told you, --

6 A. Yes.

7 Q. -- will not be telling the truth. Is that correct?

8 A. I am speaking for myself, sir, in front of the Commission
9 here that I never done that. And I understand also from you
10 that Wheaton didn't see that done either until Davies told him
11 after he left my office, is that correct?

12 Q. Yes, Mr. Wheaton will say as -- not as they left, as they were
13 leaving.

14 A. As they were leaving --

15 Q. Yes.

16 A. ...that MacIntyre slipped documents
17 under his desk.

18 Q. Yes.

19 A. Yeh. And I was present there at that time. That's not what
20 I was told before either, sir. I was told before -- And it's
21 a very serious accusation, and I'm -- I was told before that
22 they both left the office and that he told Wheaton outside
23 of the office and then they returned to my office. Now I'm
24 learning that they never left the office, that he told him.
25 Well, I'd have to be present if he told him that, sir, in my

1 office. Am I right on that, sir?

2 Q. Unfortunately, we haven't yet heard from Wheaton and Davies and
3 what I'm trying to do is tell you what I understand their
4 evidence will be.

5 A. I'm denying that statement.

6 Q. What someone told you before, I can't help that. I'm telling
7 you now what I understand the evidence of those gentlemen will
8 be.

9 A. Yeh.

10 Q. And they'll be tested at the time. You deny it?
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JOHN F. MacINTYRE, by Mr. MacDonald

1 | A. I deny that sure.

2 | Q. And if they give that evidence that you did that, they
3 | are not telling the truth.

4 | A. That will be up to the Commission here, sir.

5 | Q. Okay.

6 | COMMISSIONER POITRAS:

7 | But is this evidence in connection with the Christmas matter
8 | or is it in connection with --

9 | MR. MacDONALD:

10 | No, My Lord.

11 | COMMISSIONER POITRAS:

12 | Because that is referred to in the next paragraph as indicated
13 | by Mr. MacIntyre.

14 | BY MR. MacDONALD:

15 | Q. But that is what is referred to in Frank Harris's -- in
16 | Frank Edwards' notes. You're correct, Chief.

17 | A. What's that?

18 | Q. In Frank Edwards' notes, --

19 | A. Yes.

20 | Q. If you look at page nine, see the third paragraph:

21 | Also told me that Herb Davies had noticed
22 | Chief slipped some of the information on
23 | (the) floor behind the desk, believes it was
24 | some information with transcript attached
25 | relating to threat by Christmas against
 Pratico, believes there was a charge against
 Christmas at (the) time.

25 | That's what Frank Edwards recorded.

4:14 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Now the reference to the Harriss statement is what I am
2 suggesting to you that Wheaton and Harriss -- Wheaton
3 and Davies will tell the Commission.

4 A. Well, you know, this is a very serious remark to make and
5 we have here two R.C.M.P. officers making that remark
6 and then the Crown Prosecutor making another remark and
7 on the documents that was slipped under my desk. And
8 I was also advised that they were in the office at the
9 time and I was there and what was said and another incident
10 that they had left the office and came back in. Now my
11 officer, sir, was only -- I think it's nine by sixteen
12 with a desk and three or four chairs in there, three of
13 us in there and I'm slipping documents under the desk.
14 That's something, sir, that I never done in my life.
15 Thank you.

16 Q. Thank you.

17 COMMISSIONER EVANS:

18 Mr. MacDonald, going down a little further on this, on the
19 notes where you're dealing with Herb Davies, I take it when
20 it's said

21 He also saw Prosecutor MacNeil's notes
22 on (the) Chief's file.

23 That's referring to Davies, I take it. And then the next
24 thing:

25 Left with only (the) statement and a few
other papers. Still did not demand the
full file and all information from (the)
Chief.

JOHN F. MacINTYRE, by Mr. MacDonald

1 | MR. MacDONALD:

2 | Yes.

3 | COMMISSIONER EVANS:

4 | Now what I'm asking you at this stage, is this something that Davies
5 | told the crown attorney?

6 | MR. MacDONALD:

7 | This is being related, as I understand it, My Lord, and the evidence
8 | of Mr. Edwards would be that what is recorded here is what he has
9 | told in a conversation on the phone with Mr. Wheaton. That's Sergeant
10 | Wheaton.

11 | COMMISSIONER EVANS:

12 | Wheaton is telling him what Davies told Wheaton.

13 | MR. MacDONALD:

14 | That's my understanding. That's what's recorded in these notes.

15 | MR. CHAIRMAN:

16 | Wheaton and Davies were both in the office together.

17 | MR. MacDONALD:

18 | Yes.

19 | COMMISSIONER EVANS:

20 | But it's only Davies who has reported to have seen the Chief slip
21 | something into the -- onto the floor.

22 | MR. CHAIRMAN:

23 | Oh, yes, yeh.

24 | MR. MacDONALD:

25 | Well, the evidence, My Lord, as I understand it from Mr. Wheaton

JOHN F. MacINTYRE, by Mr. MacDonald

1 as I've been informed his evidence will be that having been informed
2 by Davies that this happened, he went back with Davies to the
3 Chief's desk and the Chief then obtained or took the documents
4 that were on the floor and passed them to him. So while he didn't
5 see them go to the floor -- thrown to the floor, he did see them
6 retrieved.

7 BY MR. MacDONALD:

8 Q. Now, Chief, I'm saying that that's what he's going to say.
9 I'm not saying that's a fact. That's what the evidence will
10 be.

11 COMMISSIONER EVANS:

12 Well, then the only point that I brought up that was the next
13 paragraph was that if the two of them came back in, they still
14 left and didn't ask for the complete file?

15 MR. MacDONALD:

16 That's what it appears, My Lord.

17 THE WITNESS:

18 That's right.

19 COMMISSIONER EVANS:

20 That strikes me as kind of unusual.

21 MR. MacDONALD:

22 If you go over to the next page, My Lord --

23 THE WITNESS:

24 Could I ask one question, please? They were supposed to receive
25 some documents on April the 17th. Is that what you're telling

JOHN F. MacINTYRE, by Mr. MacDonald

1 | me? Or the statements there? I'm trying to find out when they
2 | came in to get my file, what date that was on. That's what I'm
3 | looking for that they took the file from my office, the complete
4 | file.

5 | BY MR. MacDONALD:

6 | Q. We have a type-written list, Chief, of your -- of the turning
7 | over of the file.

8 | A. Yeh, but I'd like to have the date, sir. That's what I want.

9 | Q. And I --

10 | A. And I believe it's after the 20th of April, if I'm not mistaken.

11 | Q. I believe you're correct.

12 | A. And they're saying they came in there on the 17th and got
13 | documents?

14 | Q. Got some documents, yes.

15 | A. Yes, and that file -- I don't recall them getting documents
16 | on the 17th.

17 | Q. More than don't recall, you say it didn't happen.

18 | A. No, but I -- I'll check on that, sir.

19 | MR. MacDONALD:

20 | Chief -- Justice Evans, if you'll go over to page 10 on the Saturday,
21 | April the 17th, the last entry for that date, you'll see that
22 | Edwards is reported to have told Wheaton:

23 | ...I thought he should get (the)entire file
24 | from(the)City Police (and he)said he'd go
 down Monday and get it.

25 | If you'll read further on, you'll see that he was told by his
people in Halifax not to do that. And ultimately there was a

JOHN F. MacINTYRE, by Mr. MacDonald

1 letter from the Attorney General directing that the entire file
2 be turned over.

3 COMMISSIONER EVANS:

4 Right, yeh.

5 MR. CHAIRMAN:

6 I think what's causing some confusion and maybe -- you know, I
7 don't want to go through this -- these same questions again with
8 this witness (Certainly not this afternoon.) but I was left with
9 the impression that you had suggested to Mr. MacIntyre that when
10 Wheaton went back into the office after being told by Davies that
11 -- this incident concerning papers that he went back and said,
12 "I want all the files." Is that --

13 MR. MacDONALD:

14 My understanding is when he was left, he was told by Davies that
15 he has not -- he had not received everything and he went back
16 and said (This is Wheaton.) he asked for the documents that were
17 on the floor.

18 MR. CHAIRMAN:

19 Oh, I see. Not for the whole file.

20 MR. MacDONALD:

21 That's what Wheaton said. Now Davies, as I understand what was
22 said went back -- Wheaton went back and said, "I want everything."
23 so --

24 MR. CHAIRMAN:

25 All right. Well, I guess we'll hear from Davies and Wheaton in

JOHN F. MacINTYRE, by Mr. MacDonald

1 | due course.

2 | MR. MacDONALD:

3 | You will, My Lord.

4 | MR. CHAIRMAN:

5 | Yes.

6 | BY MR. MacDONALD:

7 | Q. Chief, yesterday we looked at a couple of pages here about
8 | the preparation of your affidavits that we already looked
9 | at.

10 | A. Oh, yes.

11 | Q. And can I --

12 | A. What page is that on, sir?

13 | Q. That's on page 13 -- 12 and 13. If I can just

14 | MR. CHAIRMAN:

15 | What volume?

16 | MR. MacDONALD:

17 | It's in volume 17. It's still in Edwards' notes.

18 | COMMISSIONER EVANS:

19 | Page 13?

20 | MR. MacDONALD:

21 | Twelve and thirteen.

22 | BY MR. MacDONALD:

23 | Q. If I can just summarize, Chief, and tell me if this is acceptable
24 | to you that what occurred is that you, Urquhart, and Mr. Whalley
25 | met with Edwards, discussed what was to be in the affidavit.

4:21 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Edwards prepared drafts. The drafts were reviewed by
2 you. Changes were suggested and ultimately it was put
3 in a form that you were prepared to swear to. Is that
4 a fair summary of what happened?

5 A. That could be so, sir. I remember being up there a couple
6 of times.

7 Q. On page 14 under the entry for July 22, the Thursday?

8 A. Yes.

9 Q. The -- About the fourth paragraph down, do you see where
10 it says:

11 Left them alone in my office...?

12 A. Yes.

13 Q. Okay.

14 Left them alone in my office...

15 'Them' are you, Urquhart and Whalley.

16 ... to read Aronson's affidavits
17 while I talked...(to)...in (the)
18 other office with V. King, R.C.M.P.
19 commercial crime about another matter.
20 When I returned the Chief was reading
21 the R.C.M.P. report and did not
22 leave until he completed...(the)...
23 same.

24 (I)...Assured them I would do
25 everything possible to have their
side of the story presented.

What R.C.M.P. report was that you were reading?

A. I can't tell you what that was at this time. I don't
remember.

1 Q. Do you remember reading an R.C.M.P. report in Edwards
2 office?

3 A. I don't but Mr. Edwards said I did and I don't recall it.

4 Q. Would it be fair for me to suggest that you didn't approve
5 of the way in which the reference of the Appeal Court was
6 handled by the Crown. You didn't think they were calling
7 all of the evidence that should be called.

8 A. Well, I was told that I was going to be called in the 1982
9 re-investigation -- not -- at the Appeal Court. That's
10 what we're talking about is it?

11 Q. Yes.

12 A. Yes. I advised that I was going to -- I advised Mr. Edwards
13 that I was going to go up and follow that and he advised
14 me that I would be called there and that I wouldn't -- that
15 I -- it would be no good for me to go up, that I wouldn't
16 be allowed in because I was going to be called as a witness
17 and I wasn't called and Urquhart wasn't called and Magee wasn't
18 called and those people -- other people took the stand
19 at that time of course and told that -- made certain allegations.
20 We weren't called and --

21 Q. And you thought --

22 A. I thought we should have been called. That was my -- that
23 was -- I think that was -- That's my answer to that, sir.

24 Q. Let me ask you to look then at page 16 of volume 17 and
25 down at the bottom of that page where it talks about Monday,

1 January the 17th, 1983. Do you see that?

2 A. Yeh.

3 Q. Okay. He says:

4 Chief then began to rehash...(the)
5 ...facts of...(the)...case and...
6 (tried)...try to ascertain...(why)
7 ...my views now...

8 ...what my views now were at this
9 stage of the proceeding. Told me
10 he would go to his grave believing
11 that Marshall had inflicted the
12 wound to his left arm himself.
13 (Ref'd to fact that expert had
14 said jacket was cut as well as
15 torn)

16 Did you tell that to Frank Edwards?

17 A. I could have said that to him, sir.

18 Q. Okay. And then on the next page you said or least
19 Frank Edwards records this:

20 Also said that...(the)...reason
21 Marshall had removed stitches
22 in arm was so that no blood
23 sample could be taken from
24 him when he returned to hospital
25 to have stitches removed. I
26 queried whether Marshall knew that
27 MacIntyre had arranged with...(the)
28 ..Dr. to have...(a)...blood sample
29 taken and he said that he had not.

30 Is that an accurate reflection of what you told Frank
31 Edwards?

32 A. You were ahead of me there, sir. I didn't get what the
33 Dr. said.

34 Q. Are you on the top of page 17?
35

1 A. I'm on 17, yes.

2 Q. At the very top, that first paragraph I just read.

3 A. I queried whether Marshall...
4 arranged with Dr. to have blood
5 sample taken and he said that he
6 had not.

7 I did -- I did discuss that with the doctor.

8 Q. But did Marshall know --

9 A. About trying to get a blood sample, yeh.

10 Q. But Marshall didn't know --

11 A. No.

12 Q. -- that you had arranged for that?

13 A. No, I told you that already, I think.

14 Q. Yes.

15 A. Yes.

16 Q. Down a couple of paragraphs later, I'd like to get your
17 comment on this.

18 Toward...(the)...end of...(the)...
19 conversation, ...(the)...Chief told
20 me that he had had a meeting with
21 the Deputy Attorney General and that at...(the)
22 ... end of that meeting, Deputy had
23 walked around...(the)...table,
24 placed his hand on...(the)...Chief's
25 shoulder and said "As far as I'm
concerned, that fellow was the author
of his own misfortune."

Did the Deputy Attorney General say that to you?

26 A. I wouldn't -- Yes, I did hear that remark when I was
27 in Halifax. I know it was the author or partly the
28 author, I couldn't say, but --

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Who was the Deputy Attorney General?

2 A. Well, that was -- I only spoke to one man up there, sir.

3 That was Gale.

4 Q. Gale?

5 A. Yeh.

6 Q. Okay.

7 MR. CHAIRMAN:

8 Is Gale the Deputy Attorney General?

9 MR. MacDONALD:

10 He is not, My Lord. The Deputy Attorney General is Gordon Coles.

11 BY THE WITNESS:

12 A. Yeh, there's two in the offices there, Coles and Gale. Gale
13 is the chap I talked to.

14 BY MR. MacDONALD:

15 Q. So when you're talking to Edwards, you're referring to Gale,
16 is that correct?

17 A. Yes, yes.

18 Q. And are you saying that Gale said to you something to this
19 effect, "As far as I'm concerned, Marshall was the author of
20 his own misfortune."?

21 A. I don't know if he said the author or partly the author. I
22 don't know which.

23 Q. But something to that effect?

24 A. Something to that effect, yeh.

25 Q. And that was when you had your visit with Gale that we'd

JOHN F. MacINTYRE, by Mr. MacDonald

1 | already talked about, is it?

2 | A. Yes.

3 | Q. Thank you. Now, Chief, I just want to put to you if I can
4 | some of the -- what appears to be some conflict in the
5 | evidence that we've heard and to get your comments on them.

6 | MR. CHAIRMAN:

7 | How long are you going to be?

8 | MR. MacDONALD:

9 | I won't be more than ten minutes, My Lord.

10 | MR. CHAIRMAN:

11 | Yeh, I don't want to overtire this witness but --

12 | MR. MacDONALD:

13 | In fact it's just as -- we can wait until the morning.

14 | COMMISSIONER EVANS:

15 | Why don't we ask Mr. MacIntyre.

16 | BY MR. CHAIRMAN:

17 | Q. Are you prepared to go for another ten minutes or so,
18 | Mr. MacIntyre?

19 | A. I'll -- I'll try it out. I get pretty tired at this time
20 | of day.

21 | Q. Pardon?

22 | A. I get pretty tired at this time of day.

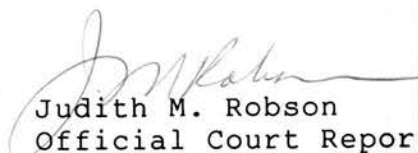
23 | MR. CHAIRMAN:

24 | Well, then we'll adjourn until tomorrow at nine-thirty.

25 | INQUIRY ADJOURNED AT 4:29 o'clock in the afternoon on the 9th
day of December, A.D., 1987.

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 9th day of December, 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
December 9, 1987