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ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

VOLUME XXXV

Held: DECEMBER 10, 1987

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

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

Counsel: George MacDonald, Q.C., Whyllie Spicer, and  
David Orsborn: Commission Counsel

Clayton Ruby, Ms. Marlys Edwardh, and Ms. Anne  
S. Derrick: Counsel for Donald Marshall, Jr.

Michael G. Whalley, Q.C.: Counsel for City  
of Sydney

Ronald N. Pugsley, Q.C., Joel Pink, Q.C.:  
Counsel for John F. MacIntyre

Donald C. Murray: Counsel for William Urquhart

Frank L. Elman, Q.C., and David G. Barrett:  
Counsel for Donald MacNeil estate

Jamie W. S. Saunders, and Darrel I. Pink:  
Counsel for Attorney General

James D. Bissell: Counsel for the R.C.M.P.

Al Pringle: Counsel for Correctional Services  
Canada

William L. Ryan: Counsel for Evers, Green  
and MacAlpine

Charles Broderick: Counsel for Carroll

S. Bruce Outhouse, and Thomas M. Macdonald:  
Counsel for Wheaton and Scott

Guy LaFosse: Counsel for Davies

Bruce H. Wildsmith, and Graydon Nicholas:  
Counsel for Union of Nova Scotia Indians

E. Anthony Ross, and Kevin Drolet: Counsel  
for Oscar N. Seale; E. Anthony Ross, and Jeremy  
Counsel for Black United Front

Court Reporters: J. Graham Robson, and  
Judith M. Robson, OCR, RPR

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INQUIRY RECONVENED AT 9:34 o'clock in the forenoon on Thursday, the 10th day of December, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia.

1 MR. MacDONALD:

2 Before I conclude the -- my examination of Chief MacIntyre, My  
3 Lords, at the meeting of Counsel yesterday afternoon, we explored  
4 the question how long the examination -- or the cross-examination  
5 of Mr. -- Chief MacIntyre may take to determine if we may be able  
6 to finish the Sydney phase of the hearings tomorrow if we could  
7 sit. I understand Chief MacIntyre is prepared to sit an extra day  
8 if we could conclude tomorrow, and having discussed it among Counsel,  
9 we're confident that we could do that if Your Lordships are pre-  
10 pared to sit tomorrow.

11 MR. CHAIRMAN:

12 Okay. Yeh. We're certainly prepared to sit tomorrow. It may  
13 deprive us of the opportunity of having Christmas dinner at Holiday  
14 Inn, but we'll make the supreme sacrifice; we'll sit tomorrow.

15 MR. MacDONALD:

16 Thank you, My Lord. I have had marked, My Lords, as Exhibit 87  
17 and distributed to Counsel portions of the notebook of Corporal  
18 Clarke, who is the R.C.M.P. officer who accompanied Chief MacIntyre  
19 when Donald Marshall, Jr., was arrested; and I had read a portion  
20 of those notes to him yesterday about Donald Marshall being in  
21 the car and sobbing, and I just wanted to file those for the record.

22 BY MR. MacDONALD:

23 Q. Chief, I just have a couple of questions, sir.

24 MR. CHAIRMAN:

25 Can you have that typed in due course. It might help.

JOHN F. MacINTYRE, by Mr. MacDonald

1 MR. MacDONALD:

2 Thank you. We'll try to accommodate you on that.

3 BY MR. MacDONALD:

4 Q. Just a couple of things to clear up, Chief MacIntyre. A couple  
5 of times yesterday you made reference to the Marshall file and  
6 the Ebsary file, at least that's what I understood. Did you  
7 have a separate file for each of those; that is, in 1982 when  
8 the R.C.M.P. were doing the re-investigation?

9 A. No, I think I -- My opinion on that and my recollection would  
10 be I'd keep everything together. It was all connected.

11 Q. So when you said you were reviewing with, do you remember --  
12 with Scott and Frank Edwards?

13 A. Yes.

14 Q. You were reviewing, you said, the Marshall and Ebsary files.  
15 You meant you were reviewing the Marshall case leading up to  
16 his conviction and then the November incident when the Ebsary  
17 matter came up, is that correct?

18 A. That's right. That's my recollection, yes.

19 Q. Thank you. The other point I wanted to just confirm with you  
20 is the reference that was in Frank Edwards' notes to the Deputy  
21 Attorney General putting his hand on your shoulder and saying,  
22 "That fellow was the author of his own misfortune." I just  
23 wanted to confirm the timing on that. You visited Gordon Gale  
24 in April -- on April 16th, 1982.

25 A. Yes.



JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. The note about the laying on of hands is dated January, 1983,  
2 which is --

3 MR. CHAIRMAN:

4 Only the best attorney could put the question that way.

5 BY MR. MacDONALD:

6 Q. January of 1983. Were you in Halifax at the Attorney General's  
7 Office -- Is it possible you were there on a couple of occasions.

8 A. Speaking about Mr. Gale -- he was talking about or Mr. --

9 Q. Or Mr. Coles -- or the Deputy?

10 A. No, this was the meeting that I had with Mr. Gale.

11 Q. Okay. Thank you. Now, I had said yesterday, Chief, that I  
12 wanted to just give you an opportunity again with respect to  
13 certain conflicts that I think exist and get your comment. Would  
14 you agree with me that the conviction of Donald Marshall, Jr.,  
15 initially was based primarily on the fact that there was evidence  
16 of two independent witnesses, who were eyewitnesses, that those  
17 witnesses, as far as everyone knew, had no opportunity to  
18 collaborate and did not collaborate, and that they would have  
19 no motive to lie and to -- to lie and say that Junior Marshall  
20 had stabbed someone. That was at the basis of the decision,  
21 wasn't it?

22 A. I would say so, yes.

23 Q. Now, before this Commission, both Mrs. Harriss and Mrs. Chant  
24 have testified that you asked them to leave the room while their  
25 children were being interrogated because -- somewhat to the

1 effect -- because you would be able to get better results then.

2 A. Yeh.

3 Q. These are two people, I suggest, that are independent, didn't  
4 collaborate, and would have no motive to get on and tell any-  
5 thing other than the truth, but you say that did not happen.

6 Is that correct?

7 A. I think I said yesterday, if my memory serves me right, that  
8 Mrs. Chant did not leave the room at all during the entire  
9 taking of that statement.

10 Q. And you did not say to Mrs. Harriss, "Leave the room because  
11 it'll be better that way."?

12 A. I think my answer on that was that she was there, but I wasn't  
13 sure whether she was in the room for a time or out of the room.  
14 That was my answer to that, sir.

15 Q. Barbara --

16 A. She -- Excuse me. She said that she was in the room for quite  
17 some time, yeh.

18 Q. Barbara Floyd and John Pratico and Maynard Chant and Mrs. Chant  
19 all say that you told them, individually, that you had a witness  
20 who had seen them in the park on the night of the slaying and  
21 that that's something you told them trying to get them to give  
22 evidence. Now, those people as well would be independent,  
23 supposedly would've had no motive to tell anything but the  
24 truth.

25

JOHN F. MacINTYRE, by Mr. MacDonald

1 MR. PUGSLEY:

2 Justice, is my friend presenting an argument or is he presenting  
3 evidence or --

4 MR. MacDONALD:

5 I'm giving him the opportunity, My Lord, to see if he has any -- if  
6 he can suggest any motive that these people might have.

7 MR. PUGSLEY:

8 Well, it's a form of argument. It's --

9 MR. CHAIRMAN:

10 Well, I treat it as a fair question, in this sense, that Mr.  
11 MacIntyre should be given the opportunity, and I assume this is the  
12 last time he will be in the witness box, to answer any probable  
13 reason -- reasonable suggestion as to how these vital matters in  
14 the -- during the period of investigation could have occurred.  
15 I don't think it is, Mr. Pugsley, an attempt -- I don't think that  
16 line of questioning in any way prejudices your client. It seems  
17 to me it affords him an opportunity, which may be the last oppor-  
18 tunity, to let us have the benefit of his views.

19 MR. PUGSLEY:

20 Fine, My Lord.

21 COMMISSIONER EVANS:

22 I think what Mr. Pugsley is objecting to is the form of the question.

23 MR. PUGSLEY:

24 I -- My friend was almost addressing argument in the form and asking  
25 the Chief to agree to it, and if there's no response, then he in

JOHN F. MacINTYRE, by Mr. MacDonald

1 effect has impliedly agreed with Mr. MacDonald's assertion.

2 COMMISSIONER EVANS:

3 That's what I understood.

4 MR. MacDONALD:

5 All right, My Lord. And I don't intend to do that, and I'll just  
6 put the prevarious things to Mr. MacIntyre and ask if he has any  
7 comment.

8 MR. CHAIRMAN:

9 What I would like to hear from Mr. MacIntyre as to whether he agrees  
10 with the position put by you that these various witnesses were  
11 independent of each other.

12 MR. MacDONALD:

13 You want his comment on that?

14 MR. CHAIRMAN:

15 Yeh. Well, whether agrees that they were.

16 MR. MacDONALD:

17 Okay.

18 MR. CHAIRMAN:

19 As far as he knows, now.

20 MR. MacDONALD:

21 Okay.

22 MR. CHAIRMAN:

23 They may be --

24 BY MR. MacDONALD:

25 Q. Let me go back with that then, if I could, Chief MacIntyre. I

JOHN F. MacINTYRE, by Mr. MacDonald

1 had suggested to you that Mrs. Harriss and Mrs. Chant would be  
2 independent of each other, would you agree with that?

3 A. I would think so, yes.

4 Q. And Barbara Floyd, John Pratico, and Maynard Chant, would they  
5 be independent of each other?

6 A. I couldn't say that. They were a younger group, and they  
7 associated at dances and what have you. I couldn't say that.

8 Q. Thank you. Maynard Chant, Mrs. Chant, and Wayne Magee have all  
9 said in testimony to this Commission that during the  
10 June 4, 1971, interview at Louisbourg, you said something to  
11 the effect to Maynard that the evidence you are giving is not  
12 consistent with that evidence I have from another witness, and  
13 that you would then question him some more. You were referring  
14 to evidence you had from another witness. Would you say that  
15 Mrs. Chant, Maynard Chant, and Wayne Magee would be independent  
16 in that respect?

17 A. Yes, I would say that, yes.

18 Q. Maynard Chant, John Pratico, Mrs. Chant, Patricia Harriss,  
19 Mrs. Harriss, and Mrs. Clemens all said that you had threatened  
20 various witnesses with serious consequences if they did not  
21 tell the truth. You had denied that. Would you say that each  
22 of those people would be independent?

23 MR. PUGSLEY:

24 I wonder if my friend could be a little bit more particular. And how  
25 can it be argued that Mrs. Chant and Maynard Chant are independent?

JOHN F. MacINTYRE, by Mr. MacDonald

1 They're mother and son, living in the same house, opportunity to discuss  
2 the thing. I mean --

3 MR. CHAIRMAN:

4 They're certainly not independent of each other. There may be the  
5 protective tendency of mother for son.

6 BY MR. MacDONALD:

7 Q. Let's take one of the Chant's out of there then. Maynard Chant,  
8 John Pratico, Harriss -- I suppose we should take Mrs. Harriss  
9 out of there too -- and Mrs. Clemens, how about that group?

10 A. Well, I believe Maynard Chant and the mother, isn't there  
11 evidence in '82 that they were questioned together and what have  
12 you? The Harriss girl and her mother I think would be in the  
13 same category.

14 Q. Al Marshall -- I don't want to put this one because some people  
15 haven't given evidence yet. The O'Reilley twins and Patricia  
16 Harriss have all said they did not collaborate to have Patricia  
17 Harriss say that she was to tell the police that they -- she  
18 had seen an old, grey-haired man in the park. Would you say  
19 that those people would be independent?

20 A. I -- All I can say about them that they were known to one another  
21 and went to school together and were friends.

22 Q. Thank you. And finally, Chief, in Volume 16 at the last page  
23 I believe of -- No, it's page 221, sir. That is a letter to  
24 you from the Attorney General?

25 A. Yes.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Dated April the 20th of 1982 where he is requesting to you that  
2 you deliver to Harry Wheaton all papers in your possession deal-  
3 ing with Donald Marshall, Jr., case. Now, had you ever been  
4 involved in the situation before where the Attorney General  
5 had directed you -- or requested you to turn over your files?

6 A. Not that I can recall, sir.

7 Q. And I'm showing you a document that was marked Exhibit 88. You  
8 had asked me yesterday, Chief MacIntyre, the date of a listing  
9 of documents that were turned over to Harry Wheaton. Is that  
10 the listing that was prepared at your office?

11 A. Yes, it would be, yes.

12 Q. And the practice that was followed, I understand, is that you  
13 would have Sergeant Wheaton initial opposite each statement  
14 that -- or each piece of paper that was given to him, is that  
15 correct?

16 A. That's correct, yes.

17 Q. Was Sergeant Wheaton alone at that time or did he have someone  
18 with him?

19 A. I believe -- My recollection is that there was somebody with  
20 him.

21 Q. And if you -- I'll just direct your attention to one document,  
22 and that is on the -- under the first page. It says:

23 Typewritten copies of Statements:

24 A. Yes.

25 Q. It says:

JOHN F. MacINTYRE, by Mr. MacDonald, by Mr. Ruby

1 Statement of Patricia Ann Harriss -  
2 June 18, 1971.

3 A. Yes.

4 Q. Do you see this?

5 A. Yes.

6 Q. And I'm trying to find -- Yes, on the last page, there's  
7 reference to original statements. And you see opposite "P.A.  
8 Harriss":

9 One Statement given to S/S Wheaton  
10 already.

11 Q. Do I take it from that that at some time you had already given  
12 Wheaton one statement from Harriss, and after the Attorney  
13 General directed you to turn over everything that you were  
14 then giving him another statement?

15 A. Yes, that's what it says here.

16 MR. MacDONALD:

17 Thank you, Chief, you've been very patient.

18 MR. CHAIRMAN:

19 Oh, yes, I'm sorry, Mr. Ruby.

20 MR. RUBY:

21 Thank you, sir.

22 BY MR. RUBY:

23 Q. Mr. MacIntyre, you were in charge of this investigation?

24 A. Yes, sir.

25 Q. And you accept that Mr. Marshall did not in fact stab Seale,

9:51 a.m.



JOHN F. MacINTYRE, by Mr. Ruby

1 is that correct?

2 A. That was the -- That's what the Court brought down, yes.

3 Q. And you accepted that as I understood your evidence the other  
4 day?

5 A. Yeh, I respect the decision of the Court, sir.

6 Q. I understand that you respect it. Do you accept it?

7 A. Yes. Yeh.

8 Q. Sixteen years have passed.

9 A. Yes.

10 Q. And the trial, conviction, two R.C.M.P re-investigations, a  
11 Reference, and a Court of Appeal over those years, correct?

12 A. That's right.

13 Q. Junior Marshall went to prison, and you went on to retire as  
14 Chief of Police of Sydney.

15 A. That's correct.

16 Q. In all those years, you have never said a simple "I'm sorry"  
17 to Mr. Marshall for your role in this, have you?

18 A. No. No.

19 Q. Would you like to take that opportunity now just to say a  
20 simple "I'm sorry?"

21 COMMISSIONER POITRAS:

22 Could you give us one second, please?

23 MR. CHAIRMAN:

24 Mr. Ruby, the consensus is that's not an appropriate or proper  
25 question to put to that witness. These are conclusions that we

JOHN F. MacINTYRE, by Mr. Ruby

1 have to make after we hear all of the evidence, and whether this  
2 witness says he's sorry or not will not aid us in reaching the  
3 conclusions that we have to reach.

4 MR. RUBY:

5 Just so that Your Lordship understands, I'm trying to understand  
6 what this man's feelings are about what his role in the case was  
7 vis-à-vis Mr. Marshall, and I would've thought that that would be  
8 helpful in an assessment of the man's character and provide a  
9 context for the factual evidence he's given.

10 MR. CHAIRMAN:

11 Well, he's been -- For the past three days, these questions have  
12 been put to him repeatedly in a different form, and we now have  
13 before us the statement by this witness that he now accepts the  
14 fact that Donald Marshall, Jr., did not stab Sandy Seale. Whether  
15 he tells Donald -- says publicly to Donald Marshall, "I'm sorry,"  
16 or privately or at all, won't help us and is straying away from  
17 what we are called upon to decide.

18 MR. RUBY:

19 Q. Let me move then, sir, to another area. Would you agree with  
20 me that being a police officer requires a very high duty to  
21 to the accused and particularly a duty to be fair to him?

22 A. Yes, sir.

23 Q. And it also requires a police officer who is willing and capable  
24 of carrying out an honest and competent police investigation.

25 A. Yes, sir.

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. Let me ask you about a few matters in connection with that.  
2 We've heard evidence that in the police car after his arrest,  
3 Mr. Marshall said that he didn't do this crime. You have  
4 no note of that conversation, correct?

5 A. No, I don't recall that.

6 Q. Now, you said you have no recollection of it in your questions  
7 and answers -- your answers to my friend. Are you saying you  
8 had no recollection or that it did not happen?

9 MR. PUGSLEY:

10 I'm sorry. I think the question is that did this witness know  
11 that Marshall said in the police car that he didn't do the crime?

12 MR. RUBY:

13 Let me put it again.

14 BY MR. RUBY:

15 Q. When you answered --

16 MR. PUGSLEY:

17 Is my friend asking him whether or not that did not happen? I  
18 mean, he wasn't there.

19 MR. CHAIRMAN:

20 Ruby's question to Mr. MacIntyre, as I understand it, was, does --  
21 is -- did he say or is he saying that he has no recollection of  
22 Donald Marshall, Jr., saying, when he was being -- after his arrest  
23 and he was being transported, --

24 MR. PUGSLEY:

25 Oh, I'm sorry. I misunderstood the question.

JOHN F. MacINTYRE, by Mr. Ruby

1 MR. CHAIRMAN:

2 -- whether he said -- whether this witness said I -- he didn't say  
3 it --

4 MR. PUGSLEY:

5 I'm sorry.

6 MR. CHAIRMAN:

7 -- or "I have no recollection of his saying it."

8 MR. PUGSLEY:

9 I beg your pardon. I didn't understand the question was to refer  
10 to the shipment -- or the transfer to Baedek. I thought it was  
11 immediately after the incident. Pardon me, Mr. Ruby.

12 BY MR. RUBY:

13 Q. Just to make sure you understand it. You had said yesterday  
14 or the day before, I'm not sure which it was, that you had no  
15 recollection of that happening, and I'm wondering whether  
16 you're saying that you have no recollection or whether you're  
17 also saying that did not happen.

18 A. I have recollection of it happening.

19 Q. Are you also saying that it didn't happen?

20 A. I don't remember anything about that, sir; so that would have  
21 to be my answer.

22 Q. Do you accept then the officer -- Clarke's evidence as being  
23 accurate when he says that it was said in the car?

24 A. I can't accept anything if I have no recollection of it, sir.  
25 I -- It -- Where was this supposed to be said?

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. In the car coming from Baddeck, as I understand -- or to Baddeck.  
2 From Whycomag to Baddeck. And Marshall --

3 MR. CHAIRMAN:

4 This is anticipated evidence. This is --

5 MR. RUBY:

6 Yes.

7 MR. CHAIRMAN:

8 There's no evidence so far --

9 BY MR. RUBY:

10 Q. But Officer Clarke, we're told, will say, and I have his state-  
11 ment, Exhibit 87, which were his notes, that Marshall put his  
12 hands over his head, and you told him to sit up, and you

13 ...told him to sit up & at this  
14 time he said "I did not do it"

15 -- They --

16 ...were the only words (spoken)  
17 during the time I was with them.

18 And that'd be on the drive. Are you accepting that as being  
19 a truthful account?

20 A. I don't recall. All I can say to you, Mr. Ruby, I don't recall  
21 Marshall doing any talking in the police car. And that's  
22 what I'm -- That's what I'm going by, my own recollection, sir.

23 Q. And are you saying were you -- had there been any such conversa-  
24 tion int he police car, you would've marked it down in your  
25 notebook and, therefore, you can say it did not happen?

1 A. I wouldn't say that, that I would've marked it down in my note-  
2 book. I -- As you probably already know, I gave a warning  
3 before he got in the car. He was very quiet all the way to  
4 Sydney. I don't recall anything being said by us or by him.

5 Q. All right. You're agreeing with me now, I take it, that he  
6 may well have said it, and you would not have marked it down  
7 in your notebook, correct?

8 A. No, I'm telling you that I have no recollection of that being  
9 said.

10 Q. I understand that. I want to go to the second stage. You have  
11 no recollection of it being said; nevertheless, he may well  
12 have said it, and you would not have marked it down in your  
13 notebook. Is that true?

14 A. Then if I did hear that, I would say that I would have to make  
15 that decision at that time, and I have no recollection in my  
16 notebook about that.

17 Q. You would've made the decision as to whether to mark it down  
18 at that time.

19 A. That's right.

20 Q. Your decision may have been to mark it down, and it may have  
21 been not to mark it down, is that fair?

22 A. Well, I would 've been -- I would've remembered it, sir.

23 Q. Answer my question, please.

24 A. Yes.

25 Q. Your decision would've been to mark it down or not to mark it

JOHN F. MacINTYRE, by Mr. Ruby

1 down?

2 A. It could be.

3 Q. But you're not able to tell us which it would've been?

4 A. That's right. It could be.

5 Q. It could be either way?

6 A. It could be, yes.

7 Q. Would you not agree with me that any police officer owing a  
8 duty of fairness to the accused who hears him say, "I didn't  
9 do it," and yet makes no note of it and later forgets it, is not  
10 being fair and honest to that accused? Do you agree?

11 A. No, I wouldn't agree with you on that, no.

12 Q. Why would you not agree with it?

13 A. I think I'd remember that, sir, if he said it. I'd -- And I  
14 wouldn't -- And I don't think I would forget it either in that  
15 short distance.

16 Q. You have previously agreed with me that it may have been said,  
17 you may not have written it down, and you may have forgotten  
18 it. You've said that.

19 A. I said that I don't recall it being said, sir.

20 Q. Yes.

21 A. Yeh. That's what I said.

22 Q. You don't recall it being said.

23 A. No. No.

24 Q. You may have written it -- may have heard it; you may have not  
25 written it down; you may have forgotten it. You agreed with

10:00 a.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 all that.

2 A. Yes. I have no recollection of it all, sir.

3 Q. Yes, you agreed with all that?

4 A. I have no recollection of it being said.

5 Q. I heard that in the beginning.

6 A. And I haven't -- And I didn't hear it being said. I have no  
7 recollection of it at all.

8 Q. You didn't hear it being said is what you're saying?

9 A. No. And if it was said, I have no recollection of it.

10 Q. All right.

11

12

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*gms*



JOHN F. MacINTYRE, by Mr. Ruby

1 Q. Do you agree with me that it might have been said?

2 A. Well, according to him.

3 Q. And what about you?

4 A. No, I have no recollection.

5 Q. You're saying it was not said?

6 A. That's my -- That's my answer, sir.

7 Q. It was not said?

8 A. I have no recollection of it, sir. Yeh, that's right.

9 Q. Yes. I know you have no recollection of it, but do you deduce  
10 from that that it, therefore, was not said?

11 A. Repeat your question again.

12 Q. I know you have no recollection of it, but do you deduce from  
13 that that it was not said?

14 A. No, it could have been said, but I have no recollection of it,  
15 sir, so I can't say that I -- that I did hear it.

16 Q. If it could have been said, would you not agree with me that  
17 no honest police office would, in fact, hear it and refuse  
18 to mark it down in a notebook?

19 A. I think it should have been -- it should be marked down, yes.

20 Q. Would you agree with me that no honest police officer would  
21 hear it and then refuse to mark it down in his notebook?

22 A. Well, there's things -- there's times that people don't mark  
23 things in their notebook, and I never marked everything in my  
24 notebook and I still think I'm honest, sir.

25 Q. All right, so an honest police officer --

JOHN F. MacINTYRE, by Mr. Ruby

1 A. And I'm trying to be honest with you this morning with what  
2 I'm saying, sir.

3 Q. An honest police officer could nevertheless fail to mark it  
4 down even though he heard it, correct?

5 A. They could, sure.

6 Q. Would an honest police officer in charge of this investigation --  
7 Could an honest police officer in charge of this investigation  
8 fail to put the description of a man that Junior Marshall said  
9 committed the killing out to the police for a thorough search.  
10 Is that possible?

11 A. I think the police knew what -- they had the description of  
12 what Marshall had to say.

13 Q. How? How did they get that description?

14 A. Well, by their -- by their reports and their reports differed.

15 Q. What reports for searching show that they had a description  
16 of the man Junior Marshall had described? Can you point to any  
17 of them?

18 A. Just what they had at the time when they were patrolling, and  
19 keep it in mind, I think some of them were checking -- if my  
20 memory serves me right, checking boats, checking hotels and  
21 what have you.

22 Q. You have, I take it, seen no document and no evidence suggests  
23 that that description was circulated to police officers  
24 generally that evening or the next morning, correct?

25

JOHN F. MacINTYRE, by Mr. Ruby

1 MR. PUGSLEY:

2 If he wishes to refer to the reports and the documents, there's  
3 a fair number of them and certainly some of them do contain a  
4 description of Marshall and certainly some police officers made  
5 a search for what Marshall described and that's found on page ten  
6 of document -- of Volume 16.

7 MR. RUBY:

8 May I --

9 BY MR. RUBY:

10 Q. Do you see page ten in Volume 16?

11 A. No, that's not here. Oh, 16.

12 Q. Page ten.

13 A. Page ten.

14 Q. It's a document by Constable Mroz, and the description given in  
15 that document you'll see in the second paragraph is first:

16 ...a man in his mid 40(s, very tall  
17 and having white hair. The second  
18 man had been described as having been  
much shorter and younger...

19 And that's the description Mroz had. The original description  
20 given to Officer MacDonald was as follows--

21 A. Excuse me, one minute, sir. It says that description  
22 is according to the description offered by Marshall.

23 Q. That's what it says all right.

24 A. Well, this is the report I'm looking at, sir.

25 Q. But the original description offered by Marshall --

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yes.

2 Q. -- and MacDonald was --

3 COMMISSIONER EVANS:

4 What page?

5 MR. RUBY:

6 Exhibit 38, My Lord.

7 MR. MacDONALD:

8 Exhibit 38, with respect, My Lord, the notes of M.R. MacDonald.

9 BY MR. RUBY:

10 Q. I'm on the fourth page in. This is the description actually  
11 given and marked down that night?

12 A. Yeh.

13 Q. The page starts "Heavy set". "Heavy set, short".

14 You'll notice that in the large block the word "short"  
15 becomes "very tall"?

16 A. Yes.

17 Q. "Dark blue coat TO KNEES"?

18 A. Yes.

19 Q. "Hair-grey"?

20 A. Yes.

21 Q. "Black low (cut) shoes"?

22 A. Yes.

23 Q. "Wearing glasses. Dark rims".

24 A. Yes.

25 Q. That's the first man?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yes.

2 Q. The second name:

3 Tall - 5-11.

4 Black Hair

5 Clean Shaven

6 Corduroy coat, 3/4 length

7 And I can't make --

8 A. "Brown in color."

9 Q. "Brown in color"?

10 A. Yes.

11 Q. That's the description and I suggest to you it never got  
12 circulated, do you agree?

13 A. Well, you're talking -- you're talking now, Mr. Ruby, about  
14 two descriptions, one by other men that were at the scene that  
15 night and it was a tall, grey haired man and there it says  
16 a short, grey haired man, and both were supposed to have been  
17 received from Marshall.

18 Q. Detective MacDonald is in charge of the investigation that  
19 night?

20 A. He was, but those policemen here were on the scene also and  
21 have this description from Marshall.

22 Q. Well, it doesn't say he got it from Marshall, does it?

23 A. What's that?

24 Q. It doesn't say he got it from Marshall, does it?

25 A. Who? It doesn't say who --

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. Mroz doesn't say he got it from Marshall?

2 A. It does.

3 MR. PUGSLEY:

4 It does say it.

5 BY THE WITNESS:

6 A. It does, "according to Mr. Marshall".

7 BY MR. RUBY:

8 Q. "According to the description on page ten offered by Marshall".

9 It doesn't say whether it's first, second, third or fourth,  
10 fifth hand.

11 A. Well, that would be left open for interpretation I guess.

12 Q. It certainly is open for interpretation, isn't it?

13 A. Yeh, but I would say that Mroz was -- was there that night  
14 and that's what -- that's what his report says.

15 Q. And you have no information that Mroz actually got the  
16 description from Marshall, do you?

17 A. I wasn't there that night, sir, no.

18 Q. You have no such information, correct?

19 A. Just what's in the report, sir, here.

20 Q. Yes, but you say it's open to interpretation. It's ambiguous,  
21 is it not?

22 A. No, I'd take it if I was reading that that he got that from  
23 Marshall.

24 Q. But you do know from the evidence that MacDonald spoke to  
25 Marshall?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yes.

2 Q. Directly?

3 A. Yes.

4 Q. And he's the man in charge?

5 A. Yes.

6 Q. And he's the only detective on?

7 A. The only detective on that night, yes.

8 MR. CHAIRMAN:

9 Which MacDonald are we speaking of --

10 MR. MacINTYRE:

11 That's M.R.

12 BY MR. CHAIRMAN:

13 Q. That's M.R.

14 A. Detective M.R.

15 Q. Now if you turn to page 11 of 16 -- of Volume 16 which would  
16 appear to be the actual crime report that is copied on page  
17 ten. I see Constable Mroz, Dean Walsh and MacDonald -- I don't  
18 know if that's a M.R. MacDonald or that's another MacDonald.

19 A. Mroz, Dean, Walsh, and -- Yes -- No, that is Martin McDonald.  
20 He was a Corporeal at the time and he's deceased now.

21 Q. These were all police -- These were all Police Constables --

22 A. All police officers that were on the call that night.

23 Q. All right.

24 COMMISSIONER EVANS:

25 That's -- What's in the crime report is in the -- As I understand

JOHN F. MacINTYRE, by Mr. Ruby

1 | that is the crime report that was filed at the police station?

2 | MR. RUBY:

3 | I'm not sure if it's the only crime report, but it's certainly a  
4 | crime report.

5 | MR. CHAIRMAN:

6 | Would you ask this witness what is the significance of Constables  
7 | Dean and Walsh, Corporal MacDonald and Mroz signing that crime  
8 | report.

9 | BY MR. RUBY:

10 | Q. Can you assist us in that, the signatures at the bottom, they  
11 | look like -- it doesn't look like signing to me, but if you  
12 | turn to page --

13 | MR. CHAIRMAN:

14 | No, it doesn't, does it.

15 | BY MR. RUBY:

16 | Q. -- eleven --

17 | A. Yes.

18 | Q. You've got a document headed "Crime Report"?

19 | A. Yes, I have. Yes.

20 | Q. What is that document for? What is it?

21 | A. It's a report with their description of what they've known at that  
22 | time.

23 | Q. And "their" report -- Was it Mroz's report because it looks  
24 | like all the signatures on the left-hand side or the names  
25 | were written in the same hand?



JOHN F. MacINTYRE, by Mr. Ruby

1 A. That's right.

2 Q. Is that Mroz's hand?

3 A. That's -- Yeh, I would say so.

4 Q. So he's describing who was working on it rather than anything  
5 else?

6 A. What's that you're --

7 Q. The list of names to the little bottom left is who's working  
8 on the case at that time?

9 A. There would be -- Yes, that is -- that is some of them, sir.  
10 They'd be other men out also.

11 Q. Okay. That's the report of Mroz only I gather?

12 BY COMMISSIONER EVANS:

13 Q. I understood that Mroz was the -- Was he a Constable or  
14 the Chief --

15 A. He was a Constable, yes.

16 Q. Well, was he the senior Constable on the -- of that group?

17 A. No, I believe Walsh would be the senior Constable.

18 COMMISSIONER EVANS:

19 What you're asking him, Mr. Ruby, is why would everybody sign  
20 it? Is that the --

21 MR. RUBY:

22 No, I was suggesting that they were not signatures because they  
23 were all in Mroz's handwriting and I think he's accepted that.

24 BY MR. RUBY:

25 Q. This is Mroz's report. Right. So the description got more

10:12 a.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 detailed and it was given to the officer in charge. Is that  
2 given to MacDonald? Correct?

3 A. MacDonald was one of the officers that was there but I can't  
4 say how many were talking to Marshall on that night.

5 Q. MacDonald --

6 A. He was one of the -- Yes, he was one of the officers.

7 Q. His notes indicate that he talked to Marshall, correct?

8 A. Yes, and so do all the other police --

9 MR. PUGSLEY:

10 He's confused. He thinks MacDonald -- He thinks you mean  
11 Constable MacDonald.

12 BY MR. RUBY:

13 Q. I mean the Sergeant John R. MacDonald.

14 A. M.R. MacDonald.

15 Q. M.R. MacDonald?

16 A. Yes.

17 Q. Sorry, there's two M.R. MacDonald's apparently.

18 A. Yeh.

19 Q. Then let me come back to my issue. That description, the  
20 detailed description given to the officer in charge, the  
21 only Sergeant on the particular investigation that night was  
22 never circulated, correct?

23 A. Well, it was circulated among all the men.

24 Q. Well, then how come Mroz missed the boat so thoroughly?

25 A. You never saw you said yesterday the handwritten notes of

JOHN F. MacINTYRE, by Mr. Ruby

1 M.R. MacDonald. That's what you swore to yesterday?

2 A. Yes.

3 Q. So how do you know whether they were communicated or not that  
4 night?

5 A. The men -- the other men -- What I'm saying is the other men  
6 had the description also.

7 Q. They had a different description, didn't they?

8 A. That's what I'm saying, yes.

9 Q. An inadequate -- inaccurate description, yes?

10 A. Both given by Marshall though.

11 Q. May be given by Marshall.

12 A. Well, according to --

13 Q. You said a minute ago it was their interpretations.

14 A. Excuse me, sir, according to the report of Mroz's he said --  
15 he indicated that -- that it was from Marshall. That's the  
16 interpretation I took of it.

17 Q. You just told me a minute ago, did you not, under oath?

18 A. What's that?

19 Q. That it was open to interpretation that particular question?

20 A. That's the interpretation I took off of it, I said, sir.

21 COMMISSIONER EVANS:

22 Mr. Ruby, I'm getting a little confused about these -- not only  
23 the number of MacDonald's but over the fact that M.R. MacDonald,  
24 he made some handwritten notes but they were never put on the  
25 crime report as far as I've been -- as I understand it and it

JOHN F. MacINTYRE, by Mr. Ruby

1 | was never left at the police station apparently.

2 | MR. RUBY:

3 | That's it.

4 | COMMISSIONER EVANS:

5 | So that the report that would be available to the detective or  
6 | the Chief and anybody else in the police station is a report that  
7 | is made by Mroz.

8 | MR. RUBY:

9 | And which is inaccurate.

10 | COMMISSIONER EVANS:

11 | That may well be.

12 | MR. RUBY:

13 | And my question, where I'm going is, all right, you've got a duty  
14 | of fairness and honesty to this accused person, surely it includes  
15 | calling up the officer you've placed in charge and saying, "What  
16 | have you got as a result of your night's work" and that's where  
17 | I'm going next.

18 | COMMISSIONER EVANS:

19 | Where is the responsibility there?

20 | MR. RUBY:

21 | Both ways!

22 | COMMISSIONER EVANS:

23 | You say it's a responsibility of the -- of the Chief, this witness,  
24 | to find out from Detective M.R. MacDonald what statement he got  
25 | if there is already a statement on the file from Mroz who was at

JOHN F. MacINTYRE, by Mr. Ruby

1 the scene?

2 MR. RUBY:

3 Yes, I say that because if you chose to stay in bed rather than  
4 go to the investigation and when you do show up the next morning  
5 you're supposed to speak to the man you left in charge and  
6 debrief him or see that he debriefs you if that's not part of  
7 your ordinary procedure in that force. That's what I want to  
8 ask about.

9 BY MR. RUBY:

10 Q. You come in the next morning, correct?

11 A. Yes, sir.

12 Q. And you've left M.R. MacDonald in charge? Yes?

13 A. He was in charge, yes.

14 Q. And surely then you as an honest police officer mindful of  
15 your duty of fairness toward the accused say, "Well, M.R., what  
16 did you do; what did you find out; tell me everything you know".  
17 Correct?

18 A. Well, I had enough -- I had some information the next morning,  
19 sir, to work on and M.R. wasn't there the next morning for me  
20 to talk to, and I carried on with that information.

21 Q. I see. Was he far out of the country where he couldn't be  
22 reached?

23 A. Couldn't be reached at that time, yeh.

24 Q. Do you remember why?

25 A. Not at this time, sir.

10:18 a.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. Did you try and phone him?

2 A. That would be my opinion I did.

3 Q. Have you got any recollection of that?

4 A. No, but I would say that that would be my opinion. I have no  
5 recollection at this time of that.

6 Q. You're saying that's what you would likely have done?

7 A. Yeh.

8 Q. All right, and surely the next day when he came in on duty  
9 if you hadn't found out by then you'd say to him, "Look, we've  
10 got a heavy murder on our hands here". "What did you find  
11 out?". "Help me with this". "Tell me what you know". That  
12 must have happened, correct?

13 A. I was talking with him the next day, sir, that day you're  
14 talking about.

15 Q. Well, what did you ask him?

16 A. I was concerned about at that time the information received  
17 about a chap by the name of Chant who --(He went to  
18 Louisbourg with me on that particular date and interviewed  
19 him.)-- who was supposed to know something about  
20 the incident.

21 Q. You never did ask Sergeant M.R. MacDonald what he learned,  
22 what the description of the suspects were, anything like that  
23 that would yield the information you needed, correct?

24 A. No, I had my own information at that time.

25 Q. You never asked M.R. MacDonald what he had learned that night,

JOHN F. MacINTYRE, by Mr. Ruby

1 is that true?

2 A. I couldn't recollect at this time all my conversation with  
3 him, sir, at that time, but I had information at that time  
4 from Marshall.

5 Q. And did that include the description given as we've seen it  
6 M.R. MacDonald's notes?

7 A. I didn't see M.R. MacDonald's notes, sir, at that time.

8 Q. Did the information you had from Mr. Marshall regarding the  
9 description contain the information that is in M.R. MacDonald's  
10 notebook?

11 A. Mr. Marshall said the man was short with grey hair, sir, and  
12 a taller man with him. That's what I recall.

13 Q. Yes.

14 A. Yeh.

15 Q. But see you didn't do as thorough job of questioning as  
16 M.R. MacDonald had done on the night before. He got a much  
17 more detailed description, didn't he?

18 A. No, I wouldn't say that. Well, I -- of course, when I --  
19 I knew the man was short, he was grey haired. I knew that  
20 he was in his fifties and there was a taller man with him.  
21 There was no names mentioned at that time. There was no  
22 names given. Nobody knew any names at that time.

23 Q. Do you or do you not agree with me that he asked better  
24 questions and got more detailed answers than you did?

25 A. No, I don't think so, no.

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. Then let's take a look at it again to see if my memory fails  
2 me. You didn't get a description of the dark blue coat to  
3 the knees, correct?

4 A. This -- I -- This here is pretty well the description that  
5 I got from Marshall and it's here --

6 Q. That's two days later?

7 A. This was -- This was Sunday. This was Sunday that you're  
8 talking about. "The small fellow was five foot nine or ten  
9 and a hundred and ninety pounds". Marshall was supposed  
10 to -- or Ebsary was supposed to be at that time five foot  
11 two, a hundred and fifteen pounds, "hair, grey and combed  
12 back; wore glasses; black rims; age fifty years; long, wide  
13 face; long blue coat; dark blue sweater; black shoes; round  
14 toes". That's one. The other fellow, "brown corduroy; short  
15 coat; five foot eleven; a hundred and fifty pounds; hair  
16 black; short hair; age, thirty-five years." "He was wearing  
17 a blue sweater -- blue sweater; two, v-neck sweater with  
18 buttons". "Both of them thin face". That's the description  
19 I got, sir.

20 Q. Okay. And that's on a Sunday. This was taken Saturday  
21 morning?

22 A. Just a minute, sir, I was talking with Marshall though before  
23 this statement was taken, before this.

24 Q. Is that the first time you reduced it to writing?

25 A. That's correct. Yeh.



JOHN F. MacINTYRE, by Mr. Ruby

1 Q. Then obviously it's the first time you've circulated it?

2 A. No, the -- I think in the statement of Ambrose MacDonald --  
3 that Ambrose MacDonald that night too, they were looking for  
4 a short man -- a short man with grey hair and a taller man  
5 wearing blue Burberrys I believe.

6 Q. Did you direct your men to go to the park and do interviews  
7 with those who, in fact, habitually used the park to see if  
8 they would recognize a man of this description?

9 A. We gathered whatever evidence that we could get which came  
10 before us of who was in the park and I think there was a lot  
11 of statements taken from different people in this investigation  
12 and descriptions were different at times, a lot of different  
13 descriptions.

14 Q. Did you send your men to the park trying to find someone who  
15 met this description with whatever variation there might have  
16 been from person to person, Marshall's description, the one  
17 he gave to people to search amongst those who habituated the  
18 park to see if they recognized some of that description?

19 A. What time are you talking about, sir?

20 Q. At any time did you --

21 A. Just a minute now. You know, but that night when it took  
22 place I wasn't out there, sir.

23 Q. Okay. The next morning --

24 A. The people that I found out were in the park were interviewed,  
25 sir. There might have been others in the park. I wasn't advised

JOHN F. MacINTYRE, by Mr. Ruby

1 of it.

2 Q. When you came on duty did you give instructions to that  
3 effect?

4 A. Instructions to what effect, sir?

5 Q. That the descriptions should be taken by police officers  
6 to the park to see if anyone who matched that description  
7 was recognized by those who use the park?

8 A. No, I wouldn't say I did, no. I don't know what's going to  
9 be in the park for them to see at that time, sir.

10 Q. Habitual users, answer my question, are those who habitually  
11 use the park?

12 A. You mean people that hang around the park all day or all night?

13 Q. Yeh.

14 A. I don't know of anybody answering that description. I mean  
15 I don't think we have the people, you know -- they'll use  
16 the park as walkways and sitting on benches to enjoy themselves  
17 at times but I don't know what evidence I could have got there.

18 Q. I think your answer is first that you did not do that?

19 A. No, I didn't do that, no, sir. No.

20 Q. And second that you were confident that it would elicit no  
21 useful evidence?

22 A. No, I figured that I would interview everybody that came to  
23 our attention, sir, to see if they knew anything about this  
24 and there was several names that came to our attention, and  
25 we did that.

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. And did you take any steps to see that the area surrounding  
2 the park -- the homes surrounding the park -- was there  
3 something of a door-to-door search to see if anyone  
4 matching the description could be found?

5 A. No, I think the description that Marshall had given that those  
6 people were from Manitoba and then you had the police checking  
7 hotels and boats and what have you which give you some  
8 indication they weren't from the area.

9 Q. You acted on the information that was from Manitoba and you  
10 excluded the possibility that someone might be actually living  
11 or staying near the park. Is that what you did?

12 A. That's what was said, that they were from Manitoba. That's what  
13 the police were given, they were from Manitoba.

14 Q. Your Indulgence for a moment. Did you have officers who  
15 regularly patrolled the park area?

16 A. On foot, no.

17 Q. In a car?

18 A. Well, the car goes to the -- the car would go through that  
19 district and -- and keep an eye, yes.

20 Q. The information that these men were from Manitoba was not  
21 Marshall assertion but merely Marshall's passing on to you  
22 what they had told him, correct?

23 A. That's what Marshall said, yes.

24 Q. Did it not occur to you that if they were willing to kill  
25 someone they might also be willing to lie about where they

JOHN F. MacINTYRE, by Mr. Ruby

1 live?

2 A. Could have been.

3 Q. Then why put all your eggs in the basket assuming that they  
4 really actually were telling the truth when they told Marshall  
5 they were from Manitoba?

6 A. I didn't keep my eggs in -- all my eggs in a basket, sir.  
7 I kept an open mind of what I was hearing and listening  
8 to.

9 Q. But not open enough to circulate the description so that  
10 officers could search those who spent time in the park and  
11 not open enough to do a house by house search of that  
12 immediate area around the park. Is that true?

13 A. Well, I talked to people. I was around the park the  
14 following morning and I --

15 Q. How many people did you talk to?

16 A. I -- What's that?

17 Q. How many people did you talk to?

18 A. I couldn't tell you at this time how many people I talked to.

19 Q. Two, ten, a hundred, a thousand?

20 A. No, no, it wouldn't be a hundred or a thousand, no.

21 Q. And how long were you in the park that morning doing this?

22 A. I was there a considerable time.

23 Q. How long?

24 A. I can't just give you the time. I suppose probably an hour,  
25 an hour and a half.

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. An hour, an hour and a half. Were you --

2 A. Could be. There was other police with me, yeh. We were --

3 We were searching around for a weapon.

4 Q. You were searching the location?

5 A. That's right, searching for a weapon.

6 Q. So you went predominatly questioning people who spent their  
7 time in the park?

8 A. What's that, sir.

9 Q. You went predominatly questioning people who sent their time  
10 in the park?

11 A. Who are you talking about, Mike MacDonald?

12 Q. Let me try it again.

13 A. I'm not getting you clear here.

14 Q. I'll rephrase it. Sometimes my questions aren't clear and  
15 they're not intentionally unclear I assure you. You were  
16 spending your time partly doing police work but not mainly  
17 doing the questioning process I talked about?

18 A. I was open for questioning anybody if there was anybody to  
19 be questioned and I was also searching at that time for  
20 what clues might be available.

21

22

23

24

25

JMB

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. You were looking for a weapon mostly?

2 A. Weapon or any other clues, I wouldn't say that, that might  
3 be interested to me.

4 Q. That's mostly what you were doing, is that fair?

5 A. What's that, sir?

6 Q. That's mostly what you were doing?

7 A. At that time, yes, sure.

8 Q. Yes. So you're looking for people in the Park was not really  
9 not a very effective job?

10 A. No, not -- not in the Park you're talking about because there  
11 wouldn't be too -- there'd be -- you know, there might not  
12 be anybody in the Park that hour of the morning.

13 Q. Logically you'd have to go back at around the same time in  
14 the evening, fair enough?

15 A. Oh, there's people walking through the Park at different  
16 intervals to day and night, sir.

17 Q. Logically, sir, you wanted to have a chance, the best chance,  
18 of finding someone who'd recognize Ebsary, you go back at  
19 roughly the same time of day, in the evening, is that not  
20 so?

21 A. Oh, I don't know about that. Probably how many times does  
22 Ebsary come through the Park and this I don't know. People  
23 use different -- different streets to get home at times.

24 Q. You don't think it would be most logical to try the same time  
25 roughly, the evening as opposed to other times?

1 A. There could be something to it but I wouldn't -- I wouldn't  
2 buy that altogether.

3 Q. You wouldn't buy that?

4 A. No, I said altogether.

5 Q. Okay, so you've told us the sum total of the search for the  
6 other people. A few officers went around to a few places.  
7 You spent sometime while you were searching for a weapon  
8 asking people in the Park, I suggest to you that was utterly  
9 inadequate; in terms to of your duty of fairness to this  
10 accused in trying to track down the person he describes so  
11 clearly right at the time to Sergeant MacDonald, do you  
12 agree?

13 A. No, I don't agree with you, no.

14 Q. You didn't ask the R. C. M. P. for help with their Identification  
15 Section or the N. C. I. S. Branch to run through the character  
16 of the crime and see if they could produce suspects for you,  
17 is that fair enough?

18 A. Yes, that's fair.

19 Q. You knew you could have done that?

20 A. I could have. If I wanted their assistance, I could have  
21 got it from them.

22 Q. Do you not agree with me that that's a breach of your duty  
23 of fairness to the accused?

24 A. No, I wouldn't say so.

25 Q. Why not? It might have turned up the very --

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Well, I --

2 Q. -- man who did the killing?

3 A. Well, I'm the investigating officer I make those -- I make  
4 those -- I determine those things when I'm -- when I'm --  
5 when I'm at -- when I'm at -- when I'm at the spot at that  
6 time.

7 Q. Was it a mistake?

8 A. What's that?

9 Q. Was that a mistake?

10 A. A mistake. I wouldn't say so on my part, no.

11 Q. You didn't have an Ident Section?

12 A. No.

13 Q. You didn't have those skills?

14 A. No, it was my opinion at that time I didn't need the Ident  
15 Section there.

16 Q. Was that a mistake?

17 A. No, that's the type of investigation I carried out. I let  
18 the -- I -- that's the decision I made at that time, sir.

19 Q. Was it a mistake?

20 A. I'm not saying it was a mistake, no.

21 Q. Was it a better investigation because it didn't have measurements  
22 of this body at the scene, samples of the blood in the road?  
23 Things like that?

24 A. I had the -- I had the scene sketched, sir.

25 Q. But not measured?

10:33 a.m.



JOHN F. MacINTYRE, by Mr. Ruby

- 1 A. Yes, sir. Everything -- everything was --
- 2 Q. Not the location of the body?
- 3 A. Everything was done -- everything was done on that map, sir.
- 4 Q. You had the City people draw up the Park, correct?
- 5 A. I had the City people draw up the scene, sir, that interested
- 6 me.
- 7 Q. Was the body still there and on that drawing?
- 8 A. The body wasn't there, sir, no.
- 9 Q. Wouldn't it be --
- 10 A. The body was removed -- the body was removed to hospital.
- 11 The injured person was removed to hospital the night before
- 12 or the night that this took place and this sketching wouldn't
- 13 be done until the first of the week.
- 14 Q. Would it not have been useful to have a measurement done of
- 15 the location of the body?
- 16 A. I wouldn't say that that was really necessary.
- 17 Q. Would it not be useful to have samples taken of the blood in
- 18 the roadway?
- 19 A. I didn't see any blood in the roadway, sir.
- 20 Q. Of the blood around where Mr. Seale was lying?
- 21 A. I didn't see any blood around there, sir.
- 22 Q. No blood?
- 23 A. I didn't see any blood, no.
- 24 Q. You didn't order a post-mortem examination?
- 25 A. No, sir.

1 Q. You didn't order any search of the --

2 A. I thought that the specialist in charge at that time would  
3 have no problem telling what the cause of death was. He  
4 stayed with the patient. He knew the injuries and it was  
5 twenty hours later in the hospital that this man passed  
6 away.

7 Q. Did it occur to you that a post-mortem examination might  
8 well have involved scrapping the fingernails of Mr. Seale  
9 to see if any samples of bodily fluids or substances from  
10 Mr. Ebsary occurred in a struggle, which might be evidence  
11 for you to use?

12 A. Would you repeat that, sir?

13 Q. Did it occur to you that a scrapping of the fingernails  
14 of Mr. Seale might produce evidence of substances which  
15 he obtained from Mr. Ebsary in a struggle, and which could  
16 be used by you as part of the prosecution of the crime?

17 A. There was no struggle, sir, at that time given to me by  
18 Mr. Marshall. There was no struggle between the  
19 participants. It was something that happened sudden, sir,  
20 and that's the way that it was put to me.

21 Q. Even in a sudden event, would you agree with me, that there  
22 may well have been fingernail scrappings that would be  
23 useful in evidence?

24 A. In this -- we're talking about this particular event, sir?

25 Q. Yes?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. It could be.

2 Q. Do you not agree with me that fairness to the accused required  
3 and honest and competent officer to see that that was done?  
4 Because if there had been such scrappings in this case, we  
5 know it would have turned the case against Mr. Marshall in  
6 another direction?

7 MR. PUGSLEY:

8 Well, that's just full of argument. I think can we do without the,  
9 you know, the honest and fair and that kind of stuff.

10 MR. CHAIRMAN:

11 The confusion between honesty and competence--an extremely honest  
12 and honest person can be woefully incompetent and one does not  
13 relate to the other. Whether a post-mortem would have revealed  
14 any evidence that would have been helpful is purely speculative.  
15 Whether a post-mortem is good police practice is relevant. We  
16 can't presume what the post-mortem would reveal. We can only  
17 presume what it might possibly reveal. I think the question that's  
18 appropriately put to this witness is whether or not in his  
19 opinion as a police officer a post-mortem should have been  
20 requested. And secondly whether in his opinion the asking  
21 for a post-mortem in a case of this kind, constitutes good  
22 police practice. And also the third is because we've had some  
23 conflicting evidence on this, as to whose responsibility it is  
24 if you recall the evidence -- the medical evidence we had and  
25 I guess there maybe more evidence with respect to the role of the

JOHN F. MacINTYRE, by Mr. Ruby(Discussion between Commission  
and Counsel)

1 Chief Medical Examiner or whatever the title is in Nova Scotia  
2 as to who has the responsibility in the case of sudden death, to  
3 ask. But I'm more -- I think the appropriate question, Mr. Ruby,  
4 is not who's honest or who's dishonest but who is competent and  
5 who is isn't competent or wasn't competent at the time that this  
6 event occurred; competency in so far as policing is concerned.  
7 Please don't confuse the two with one with the other.

8 MR. RUBY:

9 I'm trying to keep them separate. And I'm sure Mr. Pugsley doesn't  
10 want me to -- to go into the question of honesty; but I do want  
11 to go into it. Let me explain to you why.

12 MR. CHAIRMAN:

13 Well, you can go into the question of honesty --

14 MR. PUGSLEY:

15 I'll respond to that and say I want my friend to be fair. That's  
16 what I want my friend to be, fair in his questioning.

17 MR. RUBY:

18 The issue is this. Clearly a competent police officer will do  
19 certain things; this being one of them in my view. We'll see what this  
20 view is. But an officer can be fair to that for two reasons,  
21 one because he's not competent enough to figure it out or alternatively  
22 he's just not honest in his investigation. So when I say an honest  
23 and competent officer would do it, I'm covering both of those  
24 bases. And later on I will get to the question of separating off  
25 honesty and dishonesty because either one can be a reason for not

JOHN F. MacINTYRE, by Mr. Ruby (Discussion between Commission  
and Counsel)

1 doing it. And which is the reason in this case is the purpose  
2 of my exploration in this cross-examination. Now if Mr. Pugsley  
3 is correct and you're cutting me off from that aspect.

4 MR. CHAIRMAN:

5 I'm not cutting you off. I'm not cutting you off.

6 MR. RUBY:

7 If Mr. Pugsley's correct, then I will not be able to explore the  
8 questions such as honesty in that way and I want to.

9 MR. CHAIRMAN:

10 You can explore the competency in everything that occurred at  
11 that -- during the investigation of the murder or death of Sandy  
12 Seale. When all of the evidence is in, then this Commission and  
13 this Commission only will decide on the competency, the honesty  
14 of the -- of the -- all of the witnesses in whose work and  
15 involvement is related to this -- to these issues. That's our  
16 job.

17 MR. RUBY:

18 I appreciate the conclusion is yours. But if I'm prohibited from  
19 asking questions which ask him --

20 MR. CHAIRMAN:

21 I'm simply asking you not to confuse the two but to convey and  
22 not to unfairly convey the impression that, you know, not  
23 calling for a post-mortem is a dishonest act on the part of  
24 anybody. Maybe woefully incompetent by a police officer by  
25 1971 standards, I don't, you know, that's for us to decide. And

JOHN F. MacINTYRE, by Mr. Ruby

1 | that's a proper question put to the -- put to this witness.

2 | MR. RUBY:

3 | And maybe a dishonest act by a police officer in 1971.

4 | MR. CHAIRMAN:

5 | It maybe, but that's a conclusion --

6 | MR. RUBY:

7 | And that's what I want to argue.

8 | MR. CHAIRMAN:

9 | That's a conclusion, isn't it, for us.

10 | MR. RUBY:

11 | That's -- I want to put that to him and see if he agrees with  
12 | that because by the time I'm through with the number of  
13 | examples I've got, he may be agreeing with me they were not  
14 | honest acts.

15 | COMMISSIONER EVANS:

16 | Separately, but not together.

17 | MR. CHAIRMAN:

18 | That's right. What we're asking you is to separate them.

19 | MR. RUBY:

20 | All right.

21 | BY MR. RUBY:

22 | Q. Would you agree with me that a post-mortem would produce,  
23 | among other things, evidence of fingernail scrappings if  
24 | there had been a struggle of any kind, however brief, between  
25 | Mr. Seale and his attacker that might help to identify Mr.  
Ebsary?

1 A. If I had evidence there was a struggle.

2 Q. Would you agree with me that we would be able to tell from  
3 the post-mortem examination the following things about the  
4 shape of a knife that was used, at least, in the realm of  
5 possibility not for certain but that these are the kinds  
6 of information that might well be available: the width  
7 of the blade; whether the blade had one sharp edge or two  
8 sharp edges; whether it was round like an ice-pick or  
9 flat like a knife; whether the edge was jagged or smooth;  
10 whether the blade was curved or straight. Are not those  
11 issues, issues which a post-mortem would be useful to  
12 explore?

13 A. Well, I don't know if I could answer that question, sir.  
14 I think that would be more of medical evidence than police  
15 evidence.

16 Q. I take it you weren't interested in the answers to any  
17 of these questions because you didn't ask for a post-mortem.  
18 Is that fair?

19 A. No, I didn't ask for a post-mortem, no.

20 Q. And you weren't interested in the answers to any of those  
21 questions, is that fair?

22 A. I wouldn't say that I wasn't interested. I would say that  
23 I relied on the specialists who -- who were attended to this  
24 patient at the time and he died in hospital. And it was  
25 twenty hours later. And I thought -- I thought the specialist

1 would be able to furnish me with the information that I  
2 wanted. I also had information at the time there was no  
3 struggle. There was no struggle whatsoever from the man  
4 that was with the late Mr. Seale, namely, Junior Marshall.

5 Q. You knew that you could have asked for a post-mortem?

6 A. That would be up to the coroner, sir, to decide that. And  
7 I thought that at that time, my honest opinion at that time,  
8 was that when somebody died in the hospital that the coroner  
9 would be -- would be checked by the -- checked with my the  
10 doctor.

11 Q. Okay, you knew you could have asked for a post-mortem?

12 A. That would, again, -- that would, again, I guess, have to  
13 go through the Crown or the -- yes, the police could -- could  
14 demand a post-mortem I'd imagine.

15 Q. And in this case you chose not to?

16 A. But it's the coroner that makes that decision, not the police.

17 Q. Yes, I understand; but you didn't ask?

18 A. No, I didn't ask for it, no.

19 Q. Do you not think that your duty of fairness to the accused  
20 required a post-mortem in this case?

21 A. I was -- I was satisfied at the time with -- with the  
22 advise of the specialist.

23 Q. Is your answer, no, you don't think so?

24 A. My answer is "no", to what, sir?

25 Q. Do you think your duty of fairness to the accused required a



1 post-mortem in this case?

2 A. Well, at that time, sir, that's what I done. And that's  
3 what I thought.

4 Q. I know that, sir.

5 A. Yeh.

6 Q. I'm asking you whether or not you think your duty of fairness  
7 to the accused required a post-mortem in this case?

8 A. It was my opinion. I was investigating the thing and -- and  
9 I didn't think I was unfair to the accused at the time.

10 Q. You weren't at the scene on the evening of the particular  
11 difficulty, you arose -- arise -- arrived --

12 A. No, sir.

13 Q. The next morning, what time?

14 A. Early the next morning, sir.

15 Q. And you started a search?

16 A. That's right.

17 Q. Did you cordon off the area?

18 A. We had -- I had police officers doing sections of the area.  
19 Yeh.

20 Q. Did you cordon it off?

21 A. Cordon off, what do you mean with --

22 Q. With markings, with ropes or lines of any kind?

23 A. No, no.

24 Q. People were walking through the area?

25 A. That's right.

JOHN F. MacINTYRE, by Mr. Ruby

- 1 Q. What time did you get there?
- 2 A. Shortly after eight.
- 3 Q. Shortly after eight in the morning?
- 4 A. Probably between eight and nine. I can't give you an exact
- 5 time, sir. It was early the next morning anyway.
- 6 Q. And how large an area around the particular scene did you
- 7 search?
- 8 A. We searched -- we searched a pretty good area around the
- 9 houses, fronts and backs and around the creek area and the
- 10 track area, in the location.
- 11 Q. Covered --
- 12 A. We covered -- it was on foot. We covered a very good portion
- 13 of --
- 14 Q. It didn't sound like a systematic search?
- 15 A. Well, it was quite systematic as far as I was concerned.
- 16 Q. Did you mark off particular --
- 17 A. If there was anything -- what's that?
- 18 Q. Did you mark off particular areas with particular people
- 19 and they -- they were responsible for that area?
- 20 A. They were given different areas to do, yeh.
- 21 Q. Each one with their own area?
- 22 A. That's right.
- 23 Q. No overlaps?
- 24 A. Not that I recall, no.
- 25 Q. Who were the officers who you were searching with?

10:47 a.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Well, Constable Mallowney was one and some of the officers  
2 that were on day shift that day, sir. I think there was  
3 three or four officers there.

4 Q. You don't remember their names?

5 A. What's that?

6 Q. You don't remember their names?

7 A. Not at this time, no.

8 Q. You said yesterday in your evidence that you had some  
9 recollection of Mr. Pratico during the trial changing his  
10 evidence out in the hallway, do you remember that?

11 A. Yes, I do.

12 Q. Yes, but it wasn't clear what, in fact, you did remember  
13 of that. What do you remember of that?

14 A. I haven't got a clear recollection of that at all at this  
15 time, sir.

16 Q. What do you recollect?

17 A. I heard the evidence here that it was -- it was after a  
18 discussion with Donald Marshall, Senior, and Mr. Pratico  
19 that Mr. Pratico informed somebody else and that I was  
20 supposed to be in a room with them. And at this time, my  
21 -- my mind is not clear on that, sir. And I also said  
22 that I remembered something taking place there but my  
23 mind is not clear on that, no.

24 Q. Certainly there's no suggestion that Mr. Marshall, Senior,  
25 did anything wrong or improper, correct?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. I couldn't say that, sir. There was a discussion between  
2 the two of them that's all I recall. I couldn't say that,  
3 sir.

4 Q. But you had no information that anything improper had  
5 transpired?

6 A. I had no information on what they talked about, no.

7 Q. And nothing to suggest that he done anything improper?

8 A. Not that I know of, sir. I don't know.

9 Q. Did you interview Mr. Marshall to find out what, in fact,  
10 transpired because --

11 A. No, no.

12 Q. -- you're the police officer in charge of the case?

13 A. No, I didn't.

14 Q. Why not?

15 A. I didn't, sir.

16 Q. Why not?

17 A. Well, I have no reason -- no answer for that. I didn't.

18 Q. Well, I guess one answer might be, tell me if it's correct,  
19 that you had no reason to believe he done anything wrong  
20 and, therefore, there's no reason to interview him?

21 A. I couldn't say what the conversation was, sir, so I couldn't  
22 answer that question for you. But --

23 Q. But you didn't even ask him what it was?

24 A. No.

25 Q. And you were present during the trial?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yes.

2 Q. You were sitting next to the Prosecutor?

3 A. No, sir.

4 Q. Where were you sitting?

5 A. I was -- I'd be in the audience, sir.

6 Q. You'd be in the audience?

7 A. I'd be in the audience, yeh.

8 Q. And did you hear the Prosecutor suggest that the conference  
9 with Mr. Marshall had caused the change of testimony?

10 A. The what of Mr. Marshall?

11 Q. The conference with Mr. Marshall. He with Mr. Pratico had  
12 caused the change in testimony?

13 A. I don't recall that.

14 MR. ELMAN:

15 May I ask what he's reading?

16 MR. RUBY:

17 I'm referring --

18 BY THE WITNESS:

19 A. I don't know what your -- where you're reading from there,  
20 sir.

21 BY MR. RUBY:

22 Q. I'm not reading at all.

23 A. But where's that -- so you're not reading. That's just a  
24 question.

25 Q. I'm about to refer you to volume 2 of the red volumes at

1 page 56. At line 27 in volume 2, at page 56, it starts in  
2 this subject matter:

3 But gentlemen, my learned  
4 friend Mr. Rosenblum forgot to  
5 mention to you a little  
6 conference that Pratico and  
7 with Donald Marshall, Sr.!  
8 How, what was that conference?  
9 What was that conference?

7 And he goes on down the balance of the page and quotes  
8 Pratico and at the top of page 57, he says --

9 A. Pardon me, sir.

10 Q. Go ahead, let me know when you're with me.

11 A. That's it.

12 Q. At the top of 57 what he says is:

13 "that. I made that statement  
14 or those statements I have  
15 made that are inconsistent with  
16 my evidence." He didn't use  
17 these words and I can't give you  
18 the words that he said but I can  
19 give you his meaning. "I made  
20 those statements simply because I  
21 was scared of my life!" "I was  
22 scared for my life!"

18 A. Yes.

19 Q. And then at page 64, at the bottom of page 63 the last  
20 line, the last two words on that page:

21 They admit that they are nervous,  
22 that they're frightened, that they  
23 were scared. And what would give  
24 Mr. Pratico the impression as he  
25 told you, the explanation for that  
remark yesterday, after consultation  
with Donald Marshall Sr., that he  
was scared for his life! That was  
his explanation.

JOHN F. MacINTYRE, by Mr. Ruby

1 Do you recall those passages?

2 A. No, I -- at this time, I don't.

3 Q. I want you to assume with me that they were being made and  
4 this is --

5 A. Oh, yes.

6 Q. -- an accurate transcript?

7 A. That's what it says, yes.

8 Q. Did you speak to Mr. MacNeil after that jury address and say  
9 to him, "Look we have nothing to suggest that Mr. Marshall  
10 scared Pratico into this. You've misled that jury and you  
11 should straighten it up", or words to that affect. Did you  
12 speak to him about that?

13 A. To the -- to the Crown Prosecutor about it? To Mr. MacNeil?

14 Q. Yeh?

15 A. About that, no.

16 Q. Okay, if he was under the misapprehension that Mr. Marshall, Sr.,  
17 had done something wrong, surely you have an obligation  
18 to clear that up?

19 A. I don't think he's mentioned Mr. Marshall, Senior, in this,  
20 is he, Mr. Ruby?

21 Q. You read that as referring to Mr. Marshall, Junior?

22 A. No, no, you're -- I thought your question was that you're  
23 referring that it was Mr. Marshall, Senior, that scared him?

24 Q. Yes.

25 A. I see. Mr. MacNeil doesn't make that ascertain though,

10:54 a.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 | does he?

2 | COMMISSIONER POITRAS:

3 | On page 64, the 4th line.

4 | BY MR. RUBY:

5 | Q. And what would give Mr. Pratico  
6 | the impression as he told you,  
7 | the explanation for that remark  
8 | yesterday, after consultation --

9 | A. Yes.

10 | Q. -- with Donald Marshall, Sr., that  
11 | he was scared for his life!

12 | A. Yeh, yeh.

13 | Q. That was his explanation.

14 | Why didn't you speak to him and say; "Hey, look that's not  
15 | fair to Mr. Marshall. We have no indication that his father  
16 | did that."?

17 | COMMISSIONER EVANS;

18 | Mr. Ruby, are you suggesting to this witness that when a Crown  
19 | Attorney address the Jury, if the Crown Attorney says something  
20 | out of line, that it is the responsibility of this witness or  
21 | the informant to reprimand the Crown Counsel. What are the defense  
22 | counsel there for?

23 | MR. RUBY:

24 | Yeh, I'm not sure, My --

25 | COMMISSIONER EVANS:

26 | I have never in my experience and it's fairly lengthy, ever  
27 | heard of a police officer having the temerity to suggest to a



JOHN F. MacINTYRE, by Mr. Ruby (Discussion between Commission  
and Counsel)

1 Crown Counsel that he has mis-stated the evidence or made a  
2 comment that was unfair.

3 MR. RUBY:

4 I think I --

5 COMMISSIONER EVANS:

6 And I question whether you ever have.

7 MR. RUBY:

8 No, I think I have. I think it perfectly appropriate. If the  
9 Crown Counsel is under a misapprehension as to what took place  
10 and I assume that's the case because I don't know any differently.  
11 I assume the Crown Counsel here has made a honest mistake. But  
12 surely --

13 COMMISSIONER EVANS:

14 Well, what is the defense counsel there for?

15 MR. RUBY:

16 I'm not for a minute denigrating defence counsel obligations but  
17 at the moment we have a police officer in the witness box.

18 COMMISSIONER EVANS:

19 But I understand that he says that he didn't hear what the  
20 conversation was.

21 MR. RUBY:

22 But he says also that he had no indication at all that Mr.  
23 Marshall had done anything improper. And in those circumstances  
24 I saying he should have gone and said; "You maybe under a mis-  
25 apprehension. We have nothing to indicate that Mr. Marshall did

JOHN F. MacINTYRE, by Mr. Ruby (Discussion between Commission  
and Counsel)

1 anything wrong. And that's the point I wish to put.

2 COMMISSIONER EVANS:

3 Well, just to continue on with it. What would be -- assuming  
4 for a moment that he had done that, what would be the situation?  
5 What would be the next move in the game?

6 MR. RUBY:

7 I'm prepared to assume that Crown Counsel would say; "My goodness  
8 I better speak to the Judge and get that Jury back here and get  
9 that Jury instructed that that suggestion was one which was not  
10 founded on fact and he'd better tell them about it, right now,  
11 before they finish deliberating".

12 COMMISSIONER EVANS:

13 Well, that would be an unexpected occurrence I suggest to you.

14 MR. RUBY:

15 This trial is full of unexpected occurrences.

16 MR. CHAIRMAN:

17 I suppose if you took it to its logical conclusion that there would  
18 be an obligation on police constables if they heard counsel  
19 for the accused in flights of oratory stray somewhat from the  
20 facts; go to counsel of the accused and say, "In your summation  
21 to the Jury you made asserts that are not sustained by the  
22 evidence". I've not heard of that either.

JOHN F. MacINTYRE, by Mr. Ruby

1 MR. RUBY:

2 It may well be that you wanted to draw to his attention the  
3 fact that he was stating a fact that was not correct, would  
4 that be an appropriate thing to do? The other question, of  
5 course, is whether this officer had an obligation to investigate  
6 it if it's, as the Crown counsel suggests, an obstruction  
7 of justice taken place and surely as the officer in charge of  
8 the case he has an obligation to investigate that. Let's find  
9 out what he did or didn't do.

10 MR. CHAIRMAN:

11 Anyway the question, that your putting, as I understand it, to  
12 this witness is number one, I assume --

13 BY MR. CHAIRMAN:

14 Q. You were present when the Crown Prosecutor, Donald MacNeil  
15 addressed the jury, were you, Mr. MacIntyre?

16 A. Yes, I think I was, yes.

17 Q. Do you recall his making these statements to the jury --

18 A. Not --

19 Q. -- or assertions that are --

20 A. Not at this time, no. I read them here but I don't  
21 recall.

22 Q. And my understanding is that you say you do not recall  
23 what transpired during the meeting that was attended by  
24 you and Pratico and the Crown Prosecutor and defense  
25 counsel?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Not at this time, My Lord.

2 MR. CHAIRMAN:

3 So, now your question is?

4 BY MR. RUBY:

5 Q. Did you, in fact, speak to Mr. MacNeil and tell him  
6 that so far as you were aware there was nothing to that  
7 suggestion which he'd left with the jury that Mr. Marshall  
8 had something improper?

9 A. No, sir.

10 Q. And why not? Why was that?

11 A. Because it -- the case then was before the Court and  
12 the Crown and the defense lawyers at that stage -- that  
13 was in their hands at that time.

14 Q. And you did not think it a part of your duty of fairness  
15 to the accused to point that out to him?

16 A. To the Crown Prosecutor?

17 Q. That's right.

18 A. Yes. No.

19 Q. If what he said was true, a serious criminal offense  
20 had been committed. Correct?

21 A. Well, I'd have to -- I wouldn't know what he was thinking  
22 at the time when he said that, sir, but I had no conversation  
23 with him on it.

24 Q. If, in fact --

25 A. That's as far as I can go on that.

1 Q. If the words I've suggested to you are true, that as  
2 a result of a conversation with the witness, he was in fear --  
3 left in fear of his life and that was done deliberately,  
4 that's a serious criminal offense. Correct? In connection  
5 with testimony?

6 A. Well, Mr. MacNeil is making that statement at that time  
7 and I don't know what he had in his mind.

8 Q. No, but if Mr. Marshall had done what he's suggesting, in  
9 fact, that would have been a serious criminal offense. Would  
10 it not?

11 A. Well, I can't dwell on that because I don't know what  
12 Mr. Marshall said and I'm not trying to be --

13 Q. No, assume for a moment --

14 A. -- evasive about it but I don't think it was my place  
15 at that time to say anything to Mr. MacNeil. That is  
16 my answer, sir.

17 Q. I know that.

18 A. And I didn't.

19 Q. I'm on a second question. Assuming that Mr. MacNeil  
20 was telling the truth, that Mr. Marshall had acted in  
21 a way to attempt to influence this witness not to speak  
22 that would have been a serious criminal offense, would it  
23 not?

24 A. Presuming that Mr. Marshall did not say anything to him.

25 Q. Yes.

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Well, Mr. MacNeil is making that accusation, sir, and  
2 then I think it's up to defense counsel, if they have  
3 anything to say about that. It's a matter for the Court  
4 at that time.

5 Q. Why would you not investigate it?

6 A. Not unless I was asked to, I don't think. It's -- this  
7 is all taking place in a courtroom setting. Conversation did;  
8 it was out in the hall --

9 Q. Crime --

10 A. -- whatever conversation there was but I'm -- I don't  
11 know anything about that, sir.

12 Q. Right, but if crime was occurring in the course of a  
13 -- in a hall court courtroom, surely that's not beyond  
14 your jurisdiction to investigate?

15 A. What is that again?

16 Q. If crimes occur in the courtroom of a hall -- hall courtroom --

17 A. I have no knowledge of any crime occurring, sir, and I have  
18 to leave it at that.

19 Q. You don't agree with me that if, as Mr. MacNeil suggested,  
20 the conversation with Mr. Marshall Senior was designed to  
21 scare the witness, that that would be a crime?

22 MR. CHAIRMAN:

23 You've lost us here on this. I've read and re-read that  
24 section and I don't get the impression from that sentence that  
25 the Crown Prosecutor is saying to the jury that what Donald

JOHN F. MacINTYRE, by Mr. Ruby

1 Marshall Senior had said scared Pratico. I interpret that  
2 as the Crown Prosecutor identifying the time that the discussion  
3 took place which was after consultation with Donald Marshall  
4 Senior.

5 BY MR. RUBY:

6 Q. But something gave him the impression that he told you the  
7 time after consultation with Donald Marshall Senior that  
8 he was scared for his life.

9 MR. CHAIRMAN:

10 That he was -- right. That's right. But the after-consultation  
11 with Donald Marshall Senior, I believe, I interpreted, fixed  
12 the time. If you recall the evidence of Mr. Khattar, that  
13 he had -- that -- and Pratico, that Pratico first mentioned  
14 to the -- unsolicited, saw Donald Marshall Senior out in the  
15 corridor and went to him and made certain statements. Donald  
16 Marshall Senior very properly sent for Mr. Khattar. Mr.  
17 Khattar in turn said, "Before I hear what you have to say,  
18 I want the Sheriff," and they got the Sheriff, Donald MacNeil,  
19 Mr. Matheson. Mr. Khattar believes that Mr. Rosenblum was  
20 also in the room, Mr. MacIntyre and Pratico, all after the  
21 initial --

22 MR. RUBY:

23 Right.

24 MR. CHAIRMAN:

25 And I interpret that as -- that when he says Pratico was scared

JOHN F. MacINTYRE, by Mr. Ruby

1 that he was scared when he was in the room with these five  
2 people and that this was there to identify the time. Now,  
3 your interpretation may be more accurate than mine but I -- that's  
4 the way I heard it -- read it rather.

5 BY MR. RUBY:

6 Q. The evidence can be found in volume 1, the first of page  
7 206. This is after the voir dire and before the jury at  
8 line 15 and you may be able to assist us to understanding  
9 the passage. Page 206. At the top you will see that  
10 he starts up:

11 Q. ...did you...discuss...with anyone  
12 else?

13 A. Yes.

14 ...Donald Marshall, Sr.

15 At line 12.

16 Q. Now why did you make that statement  
17 yesterday that Mr. Khattar referred  
18 to as being made - why did you  
19 make that statement which is inconsistent  
20 with your evidence as given before  
21 these gentlemen and HIS Lordship in this  
22 trial?

23 A. Scared.

24 Q. What's that?

25 A. I was scared.

Q. Scared of what?

A. Of my life being taken.

And then turning the page at line 28 -- line 30:



1 Q. Now, your being scared of your life,...

2 Page 207.

3 ...is that because of anything the  
4 accused said to you at any time?

5 A. No.

6 So he's leaving the implication that it was what Donald  
7 Marshall Senior said that did it and so it's --

8 MR. CHAIRMAN:

9 I didn't reach that conclusion at all. I had -- It had never  
10 occurred to me that Donald Marshall Senior had done anything  
11 to scare anyone. Indeed the evidence so far before us indicated  
12 that he acted with absolute propriety.

13 MR. RUBY:

14 But that was not before that jury, you see, that's the problem.

15 MR. CHAIRMAN:

16 And I couldn't still in reading -- and this is what we're  
17 on to in the address by the Crown Prosecutor to the jury.  
18 Wouldn't that be -- If indeed there was some evidence of  
19 tampering with a witness or intimidating a witness, wouldn't  
20 that be the duty of the Crown Prosecutor to decide what charges,  
21 if any, would be made?

22 MR. RUBY:

23 No.

24 MR. CHAIRMAN:

25 You wouldn't leave that up to the police? You'd leave that  
to the police?

JOHN F. MacINTYRE, by MR. Ruby

1 MR. RUBY:

2 The police decide to investigate and the police decide  
3 what charges to be laid, then they consult with the Crown but  
4 it's their decision.

5 MR. CHAIRMAN:

6 I see. I -- Your -- I'm not quarrelling with you on that.  
7 Your view is that if the Crown Prosecutor, during the  
8 course of a trial, comes upon evidence which may lead him  
9 to the conclusion that there may have been interference with  
10 a witness either for the Crown or for the accused that that  
11 is not the responsibility of the Crown Prosecutor to order an  
12 immediate investigation.

13 MR. RUBY:

14 He has a duty to his superiors, I would think, to pass that  
15 information on to the police with a request that it be  
16 investigated but he doesn't give orders to the police.

17 MR. CHAIRMAN:

18 The Crown Prosecutor?

19 MR. RUBY:

20 No.

21 MR. CHAIRMAN:

22 Oh, your interpretation and mine of the role of the Crown  
23 Prosecutor is somewhat different. I think the Crown Prosecutor--  
24 I don't think, I know, that a Crown Prosecutor not only as an  
25 officer of the court but as the representative of the Crown's

JOHN F. MacINTYRE, by MR. Ruby

1 first law officer, has an absolute duty if he believes, as  
2 a lawyer, that there has been any activity or obstruction of  
3 justice. He doesn't have to go to the police and say, "Do you  
4 think there should be an investigation made?" or wait for the  
5 police to come to him. His obligation is clear and unambiguous.  
6 Order.. done right away, and it's an order that must be complied  
7 with by any police officer anywhere in Canada.

8 MR. RUBY:

9 Does Newfoundland have a divided Solicitor General --

10 MR. CHAIRMAN:

11 Pardon?

12 MR. RUBY:

13 Does Newfoundland have a divided Solicitor General office?

14 MR. CHAIRMAN:

15 No, Newfoundland does not have and nothing to do -- the  
16 Crown Prosecutor represents the Attorney General, the Crown's  
17 first law officer and his duty is clear and unambiguous.

18 MR. RUBY:

19 But if he's also the Solicitor General.

20 MR. CHAIRMAN:

21 Well, whatever he has, his duty is clear. It doesn't effect  
22 his duty to order or his responsibility to order an investigation  
23 to be made if he concludes from what he's heard during the course  
24 of a trial that an offense may have been committed and I would  
25 be surprised to learn that any Crown Prosecutor would, I would hope,

JOHN F. MacINTYRE, by Mr. Ruby

1 would not interpret his role as meaning, "I have to sit back  
2 and wait until the police come to me and say --

3 MR. RUBY:

4 Oh, no.

5 MR. CHAIRMAN:

6 -- "We believe there should be an investigation."

7 MR. RUBY:

8 He does not wait until the police come to him, he goes to the  
9 police and says, "I want to advise you of some facts and suggest  
10 that you ought to investigate."

11 MR. CHAIRMAN:

12 He goes to the police and tells them to get on with the job,  
13 get out and investigate.

14 MR. RUBY:

15 Yeh, then he speaks to the person in charge of the police which  
16 in most -- some provinces is the Solicitor General and the  
17 Solicitor General makes the order or his staff does but in a  
18 divided province, which Nova Scotia is I understand right now, --

19 MR. CHAIRMAN:

20 As of now it is.

21 MR. RUBY:

22 -- that's what happens, and that's the reason why. You don't want  
23 the Attorney General making orders to the police.

24 MR. CHAIRMAN:

25 The Attorney -- The Crown Prosecutor --

JOHN F. MacINTYRE, by Mr. Ruby

1 MR. RUBY:

2 You speak to somebody who obviously ordered the police -- ran a  
3 good deal with him on his bail.

4 MR. CHAIRMAN:

5 No, I've never ordered the police to do anything but I've  
6 certainly ordered -- I've certainly seen Crown Prosecutors  
7 order the police as they should.

8 MR. RUBY:

9 An interesting debate and I think at some point we may get  
10 to it but if I may I'm going -- in light of the factual difficulty  
11 that I'm having, I'll move on to another area.

12 MR.. CHAIRMAN:

13 No, I just want to -- you know -- I was lost and I think  
14 that the interpretation that -- on the address to the jury  
15 that I've placed is a valid one, that this was for the  
16 purpose of identifying the time when the meeting took place  
17 and I've not interpreted it as meaning or even as remote  
18 a suggestion that Donald Marshall Senior acted in any manner  
19 other than with complete and absolute propriety.

20 MR. RUBY:

21 And we read it very wrongly. I read exactly the opposite way.

22 MR. CHAIRMAN:

23 Now, if you're going to move on to another area this might  
24 be an appropriate time to break.

25 MR. RUBY:

Of course.

JOHN F. MacINTYRE, by Mr. Ruby

1 INQUIRY ADJOURNED AT 11:10 a.m.

2 INQUIRY RECONVENED AT 11:26 a.m.

3 MR. RUBY:

4 I was reminded during the break that the view that I was expressing  
5 of the meaning of those passages was once shared by Justice  
6 Poitras in argument. I don't intend to say it's his considered  
7 view or final view but it was expressed during the examination  
8 of Mr. Khattar at one point so at least--so in any event I don't intend  
9 to labour the point and I'm going to move on to something else  
10 but I wanted to just draw that to your attention.

11 BY MR. RUBY:

12 Q. Tell me if I'm correct, Mr. MacIntyre, I get the impression  
13 that you don't feel at this stage that you did anything  
14 wrong, anything at all. Is that right?

15 A. No, I don't think I was -- done anything wrong at that  
16 time, no.

17 Q. When you spoke to Roy Ebsary, Greg Ebsary and Mary Ebsary  
18 in 1971, do you remember that?

19 A. I do, yeh.

20 Q. You warned the Roy Ebsary statement and you gave us the  
21 terms of the warning the other day.

22 A. Yes.

23 Q. Could you give them to us again?

24 A. The warning?

25 Q. Yeh. Slowly so that I can hear it and understand it.

- 1 A. You need not say anything. You've got nothing to hope from  
2 any promise or favour, nothing to fear from any threat whether  
3 or not you say anything. Anything you may use -- say may  
4 be used as evidence.
- 5 Q. That would have, I would take it, in many cases a discouraging  
6 effect on someone who was contemplating talking on that subject?
- 7 A. A discouraging effect on what?
- 8 Q. On someone who is contemplating talking to the police?
- 9 A. No, I -- Well, I suppose different people would take it --
- 10 Q. Is it designed to encourage people to talk to the police  
11 or designed to discourage people from talking to the police?
- 12 A. Well, it could be -- It -- That again would be up to  
13 them, sir.
- 14 Q. What's your experience as a police officer?
- 15 A. I've never had the problem that they didn't want to talk  
16 but I thought that if there was a chance that a charge  
17 might be laid, that I should warn them in case they do, so  
18 that the statement would be able to be used in court, sir,  
19 and I've always tried to -- that was my practise.
- 20 Q. And wouldn't that tend to caution people in the sense  
21 that put them on warning that they were at risk? Is  
22 that not the object?
- 23 A. Well, it could -- it could be that -- It could be.
- 24 Q. Isn't that --
- 25 A. Whatever -- Just tell them whatever they say may be used

JOHN F. MacINTYRE, by Mr. Ruby

- 1 as evidence, yes.
- 2 Q. And you'd warn them about possible criminal charge against
- 3 them. Correct.
- 4 A. Correct. Yeh.
- 5 Q. That's scary to most people isn't it?
- 6 A. Well, sure it would be.
- 7 Q. So I understand why you warned Roy Newman Ebsary because
- 8 allegations of a crime had been made and he had to be
- 9 warned, right?
- 10 A. That's correct, yes.
- 11 Q. But why on earth would you warn his wife, Mary and his son
- 12 Greg, aged 17? No one has suggested they'd committed
- 13 a crime.
- 14 A. No, but they were still members of that family and
- 15 I took it upon myself to warn them.
- 16 Q. Yeh, but why?
- 17 A. Well, they could have information that -- I figured that
- 18 they might -- they should have information if anything
- 19 was discussed about that particular crime. It was -- I
- 20 warned them at the time, sir, and I marked it on the
- 21 statement.
- 22 Q. Right, but aside from the fact that they were members of the
- 23 family of somebody who might be a criminal --
- 24 A. Yes.
- 25 Q. -- why would you give them that terrifying warning?



1 A. As a precaution.

2 Q. Precaution against what?

3 A. Well, as I just told you, they could have information  
4 and -- about the thing and I decided that I would give  
5 it to them.

6 Q. Precaution against what? Of against them having information?

7 A. Well, no. That there -- that this thing was discussed  
8 and probably they'd want to seek legal advice on it the  
9 same as anybody else before they talked to the police. It's  
10 a precaution, sir, that I used.

11 Q. I suggest to you that your object was to discourage them  
12 from speaking in a way that incriminated Ebsary.

13 A. My object wasn't, sir, to discourage them. No, sir.  
14 My object was to -- if they were -- wanted to talk to  
15 me to find out what they knew.

16 Q. Well, surely then you'd say to them, "Look, there may  
17 be a criminal charge against Roy Ebsary, your father,  
18 you should know that but I have nothing to suggest that  
19 you are in any trouble and I want you to help me with this  
20 investigation."

21 A. No, I wouldn't say that.

22 Q. Why not?

23 A. Well, that wouldn't be my line of questioning.

24 Q. Sorry?

25 A. I said, that wouldn't be my line of questioning.

1 Q. That would be a line of questioning designed to encourage  
2 them to speak freely, would it not?

3 A. I think I outlined what I was there for and asked them  
4 if they wished to tell me anything after the warning and  
5 I wrote down what they had to say.

6 Q. Your evidence then is that you didn't intend to discourage  
7 them from speaking freely?

8 A. Not at all, no.

9 Q. Do you agree with me that that would have been the logical  
10 effect of what you said to them, the warning?

11 A. To speak freely?

12 Q. To discourage them from speaking freely.

13 A. No, I wouldn't say.

14 Q. Did Harry Wheaton warn you when he spoke with you?

15 A. No, he didn't.

16 Q. If he had warned you would you have spoken to him?

17 A. I would make the decision at that time.

18 Q. Come on, sir, surely you would go running to a lawyer faster  
19 than you can skip and jump.

20 A. What's that?

21 Q. Surely you'd have gone running to a lawyer faster than you  
22 can skip and jump.

23 A. Well, there's no doubt, I suppose, I -- You might be  
24 right there.

25 Q. You're darn right I'm right.

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Well, --

2 Q. You wouldn't speak to him once he'd given the warning?

3 Correct?

4 A. That's a possibility.

5 Q. You've developed in evidence a theory that when you found  
6 that Mr. Junior Marshall had been missing the bandage  
7 in prison and that the stitches had been taken out  
8 by himself that that was an incriminating act and that  
9 was based, as I understand it, on the assumption that you  
10 wanted a blood sample from him, is that correct?

11 A. No, I was interested in getting the blood sample but I  
12 was looking at other things besides what you've said  
13 there.

14 Q. But the fact that he took the stitches out himself and  
15 the bandage was missing was viewed as incriminating together  
16 with other things in the light of your wish to have a blood  
17 sample?

18 A. It's -- No, not a blood sample, sir. A lot of people --  
19 I suppose a lot of people refused that and again I don't  
20 know about giving a blood sample.

21 Q. Well, may I refer you to volume 15, page 82. This is  
22 your evidence at the Examination for Discovery. The  
23 third line on page 82:

24 It was also pointed out at that  
25 time that there wasn't sufficient  
blood on that jacket to get a  
blood sample, but there was

1                   ...(specific)...sufficient  
2                   blood on Seale's jacket to  
3                   get a blood sample. And I  
4                   was after a blood sample of  
5                   Marshall, and Marshall, I  
6                   told his doctor about it  
7                   and the doctor said well  
8                   when he comes in, he said,  
9                   next Tuesday to get the stitches  
10                  out, and at that time he had  
11                  arrived at the County jail, he  
12                  was incarcerated there, but he  
13                  was to go up there I think on the  
14                  following Tuesday to get the  
15                  stitches out, and he said I will  
16                  try and get you a blood sample  
17                  at that time. And when Tuesday  
18                  came Mr. Marshall didn't show  
19                  up at the hospital and when  
20                  he called, my understanding was  
21                  when Doctor Verrick -- Doctor  
22                  Verrick was the doctor - when he  
23                  called the jail to see if the  
24                  client was coming down, the patient,  
25                  he was told no and he asked why,  
                  and he was told by somebody at the  
                  jail that Mr. Marshall had removed  
                  the 10 or 12 stitches from his  
                  arm with a pocket knife and...there  
                  was no sign of the bandage, and  
                  himself.

17               Q. So this --

18               A. I ask you is that the, you know, is  
19               that the actions of an innocent  
                person?

20               That's your language?

21               A. That is my language, yes.

22               Q. That's your theory?

23               A. Yes.

24               Q. So, one problem I want to point out to you with that  
25               theory and you tell me if you agree. You never asked

JOHN F. MacINTYRE, by Mr. Ruby

1 Junior Marshall if he would be good enough to voluntarily  
2 give you a blood sample, did you?

3 A. No.

4 Q. Never.

5 A. Not at any time, no.

6 Q. Isn't it a bit unfair to an accused to develop a theory  
7 of guilt like that when you have never even bothered  
8 to ask the man, would you give me one voluntarily?

9 A. No, I see nothing wrong with what I done at the time.  
10 I asked his doctor and if he's -- if he told his doctor  
11 I'm not going to give MacIntyre a blood sample, that  
12 would be it.

13 Q. But no one did ask him?

14 A. What's that?

15 Q. The doctor didn't ask him.

16 A. He didn't go back to the hospital, I don't think, to  
17 have the stitches removed --

18 Q. That's right.

19 A. -- according to this. That's when he was going to ask him, sir.

20 Q. Let me repeat my question. Don't you think it's unfair  
21 to the accused to develop a theory of guilt like that  
22 without first asking him, "Hey, would you be good enough  
23 to give me a sample voluntarily, Mr. Marshall?" Isn't  
24 that unfair?

25 A. No, I didn't ask him, himself, but I did ask his doctor.

JOHN F. MacINTYRE, by Mr. Ruby

1 I don't think -- see anything unfair about it. He could  
2 have told his doctor, "I'm not giving MacIntyre a  
3 sample of my blood," and that would have been it, sir.

4 Q. But don't you think it's unfair not to --

5 A. No, I don't think it was unfair what I done, no.

6 Q. Don't you think it's unfair to develop such a complex  
7 theory when you didn't even ask the doctor to ask  
8 for a voluntary sample?

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

10 Q. When he applies for a three-day pass from prison -- you  
11 were questioned about this yesterday.

12 MR. RUBY:

13 Exhibit 69, My Lords.

14 BY MR. RUBY:

15 Q. I think you still have it, Mr. MacIntyre.

16 A. It's not here.

17 Q. This document that looks like this.

18 A. No.

19 COMMISSIONER EVANS:

20 The probation officer's report.

21 MR. RUBY:

22 It's the Diane (??) report in connection with  
23 the three-day pass.

24 BY MR. RUBY:

25 Q. At page 2, the paragraph -- the third paragraph!

JOHN F. MacINTYRE, by Mr. Ruby

1 Chief John MacIntyre was the  
investigating detective.

2 That's true?

3 A. Yes.

4  
5 Q. He was contacted at his office  
6 at the Sydney...Police Department  
and recalled the incident quite  
clearly.

7  
8 That's true. Yes?

9 A. Yes.

10 Q. Your memory was better then, than it is now?

11 A. Well, no I wouldn't say there would be much difference.

12 Q. Because then you couldn't have recalled it quite clearly.

13 You've --

14 A. What's that?

15 Q. You couldn't have recalled it quite clearly. You've  
16 given more "I don't recollect's" and "I don't remembers" than  
17 any other witness in this proceeding. You've sat through  
18 this proceeding?

19 A. Yes.

20 Q. Yes?

21 A. Yes, but I've been on this witness seat now for more  
22 days than any other witness also and asked more questions,  
23 I would say.

24 Q. You had a chance to read all the relevant documents in  
25 this case? Yes?

1 A. Yes.

2 Q. You refreshed your memory by sitting here and by  
3 reading those documents? Yes?

4 A. Yes.

5 Q. And you had the file in your possession until 1982?  
6 Yes?

7 A. What's that, sir?

8 Q. You had the file in your possession until 1982?

9 A. Yes, sir.

10 Q. And you feel that it's merely because you've been on  
11 the stand so long that you're saying, "I don't recollect,"  
12 so often?

13 A. No, I didn't mean it that way. You told me that I  
14 have more "no recollections" than any other -- anybody  
15 else that gave evidence. I'm saying I was longer  
16 on the stand than anybody else and probably answered  
17 or was asked a lot more questions because of that.  
18 That's all -- That was my meaning of what my  
19 answer was, sir.

20 Q. Okay. There's been some counts taken, sometimes 30,  
21 40, 50, I don't recollect, sir, words to that effect --

22 MR. CHAIRMAN:

23 (inaudible - microphone not transmitting) you know. We -- we  
24 can't get involved in pools that are going on outside.

25



JOHN F. MacINTYRE, by Mr. Ruby

1 MR. RUBY:

2 No. With the greatest respect, I want to explore his memory.

3 I think his memory is very important.

4 MR. CHAIRMAN:

5 Well you can explore his memory but what may be, you know --

6 MR. RUBY:

7 I'm going to ask him if he agrees with that estimate.

8 MR. CHAIRMAN:

9 Mr. -- If he -- All you have to do -- and you have to do and

10 I have to do is read the transcript and count. It's all

11 there. Why don't -- you started to ask him a question and

12 -- put a question to this witness and you got halfway through

13 it and stopped and I -- and you've lost me now. I can't

14 find it. I think it was on page 2 of this report?

15 MR. RUBY:

16 I wasn't proposing to go back to that just quite yet.

17 MR. CHAIRMAN:

18 Oh, all right.

19 BY MR. RUBY:

20 Q. Do you have a problem with your memory?

21 A. No, but time plays a problem at times.

22 Q. And does your experience as a police officer train you

23 to remember detail?

24 A. Yes, it does.

JOHN F. MacINTYRE, by Mr. Ruby:

1 Q. And do you agree with me that in your accounts through  
2 most of these events, you've been unable to remember detail  
3 again and again and again and again. Is that true?

4 A. Again you're getting back to the same question and the  
5 answer that I gave you. You know, there's -- what was  
6 the full score and I was down fifty-one. You know, that's  
7 the way you have to look at it. There are some things  
8 that I don't remember and I don't intend to manufacture  
9 any evidence here when I don't remember it.

10 Q. Let me come back, then, to the paragraph -- the third  
11 paragraph on page two of that report. You recall the  
12 incident not quite clearly then, just as you recalled  
13 it not quite clearly now. Fair enough?

14 A. What are we talking about, sir? What's your question?

15 Q. Is it true what is said there in the second sentence:

16 He was contacted at his office in the  
17 Sydney City Police Department and recalled  
the incident quite clearly.

18 A. Well, I -- I remembered the Marshall case, yes.

19 Q. Did you remember it clearly?

20 A. Depends -- It depends what you're asking, sir.

21 COMMISSIONER EVANS:

22 This is 1978 now we're talking about?

23 MR. RUBY.

24 Yes.

25 BY MR. RUBY:

Q. And I'm just wondering whether your memory is better it

JOHN F. MacINTYRE, by Mr. Ruby:

1 then than it is now. I think the answer is and tell  
2 if I'm correct, Chief, it was no better then than it  
3 is now.

4 Q. It depends on what you're asking me. This was '78 and  
5 this is '87.

6 A. There's no doubt in his mind whatsoever  
7 about the guilt of our subject. The case  
8 was proven conclusively in Court with two  
9 eye-witnesses and also conclusive evidence  
10 from the Identification Section of the  
11 Royal Canadian Mounted Police.

12 There was no such evidence, correct?

13 A. About what? Conclusive evidence about the Mounted Police?  
14 The Mounted Police did give --

15 Q. The Mounted Police.

16 A. The Mounted Police did give evidence (It's my understanding.)  
17 in 1971. There was a fellow there.

18 Q. Identification Section?

19 A. It was lab -- lab --

20 Q. The lab reports?

21 A. Yes, on the -- on the condition of Junior Marshall's  
22 jacket.

23 Q. Right.

24 A. And on the tissue that was found at the scene whether  
25 it was blood or not and what -- what the type was. That's  
my recollection.

Q. Good.

JOHN F. MacINTYRE, by Mr. Ruby

1                   According to Chief MacIntyre  
2                   the cuts on our subject were  
3                   self-inflicted and were not  
                  inflicted by either party at  
                  the scene of the murder.

4           Is that your own view or were you telling them what the jury  
5           must have thought?

6   A.   That was an opinion that -- of my own that was bothering me  
7           on this -- on this particular issue here, yes.

8   Q.   And then you come to the question of Temporary Leaves of  
9           Absence and you opposed it, and your reason is:

10                   He feels that there might still  
11                   be some reprisals from the black  
                  community...

12           First let me stop there. "Might still be". There had never  
13           been any reprisals, had there?

14   A.   Not that I -- No, not that I encountered, no.

15   Q.   And what was it that made you think that there might be some  
16           reprisals in the future?

17   A.   I suppose it was just an opinion of mine at the time, but  
18           one doesn't know when there might be some -- some problems.

19   Q.   You had, I suggest to you, no basis for believing there would  
20           be any problems. Is that true?

21   A.   I had no basis to believe that there wouldn't be either, sir.  
22           It was my opinion at the time that I gave, sir.

23   Q.   But, sir, surely you as a trained police officer being asked  
24           for an opinion, can't form an opinion when you say I have no  
25           good reason to believe one way or the other and consider it

- 1 a responsible opinion?
- 2 A. Well, I guess, I didn't word it like that but that's what I
- 3 mean by that.
- 4 Q. You didn't work like that?
- 5 A. What's that?
- 6 Q. You said, I guess I didn't work like that?
- 7 A. I said that could be.
- 8 Q. Surely a responsible police officer would not give an opinion
- 9 without having a basis for it?
- 10 A. I think a responsible police officer can give an opinion of
- 11 what he thinks at the time. Anything wrong with that?
- 12 Q. There's something wrong with that I suggest to you if, in
- 13 fact, there is no basis for what he thinks, that he can point
- 14 to and say yes, this is why I thought it.
- 15 A. Well, that was my opinion at the time, sir.
- 16 Q. I suggest to you that there really is no factual basis and
- 17 there's nothing that would justify this comment or explain
- 18 it?
- 19 A. No, nobody came to me and told me that if Donald Marshall
- 20 got out that there was going to be trouble, no.
- 21 Q. So there's no factual basis?
- 22 A. Not along them lines.
- 23 Q. You agree that there's no factual basis?
- 24 A. It is my opinion that there could be, sir.
- 25 Q. Do you agree with me that there's no factual basis for it?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Nobody told me there would be, no.

2 Q. Do you agree with me that there is no factual basis for  
3 it?

4 A. It's just my opinion, sir.

5 Q. Do you agree with me that there is no factual basis for your  
6 opinion?

7 A. Nobody -- Nobody else told me that, yes.

8 Q. Nobody else told you this?

9 A. Yeh.

10 Q. That from any source there is no factual basis for that  
11 opinion?

12 A. I was giving my own opinion at that time, sir, and that's the  
13 opinion that I gave, not what other people told me.

14 Q. We'll try it once more. Do you agree with me that there was  
15 no factual basis for this opinion which was indeed your  
16 own, yes or no?

17 A. It was what I was thinking at the time and that is what I gave,  
18 sir.

19 Q. Is there any factual basis for it?

20 A. Would you readdress it in another --

21 Q. Sure. Is there any fact that you can point to which would  
22 substantiate or support the opinion that you gave here?

23 A. Just what I thought myself, not other than that, no.

24 Q. And there is nothing in what you thought yourself beyond  
25 the fact that you had this opinion, correct?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. It was me that was giving that opinion, yes.

2 Q. But there is nothing to support the opinion other than the  
3 fact that you held it?

4 A. I have that opinion, yes.

5 Q. Is it true that there was nothing to support that opinion other  
6 than the fact that you held it?

7 COMMISSIONER EVANS:

8 Mr. Ruby, I hesitate to interrupt you, but would it not be a little  
9 fairer to the witness if the whole paragraph were read to him  
10 because there is a basis I suggest to you, and certainly a basis  
11 some years before where during that paragraph it says:

12 During my...visit at the Marshall  
13 home, Pius...

14 Who is the brother.

15 ...recalled that he had to sit  
16 in the upstairs (bedroom) alone  
17 with a shotgun while his family  
resided in Whycocomagh.

18 MR. RUBY:

19 That's not him though. That's the writer of the letter.

20 COMMISSIONER EVANS:

21 I realize that, but that is the --

22 MR. CHAIRMAN:

23 It's the last part of the previous sentence as well.

24 COMMISSIONER EVANS:

25 As well.

JOHN F. MacINTYRE, by Mr. Ruby

MR. CHAIRMAN:

1 He, being MacIntyre, presumably:

2 ...recalls that the entire MARSHALL  
3 family had to move out of Sydney  
because of possible reprisals.

4 MR. RUBY:

5 Yes, we'll get to that.

6 MR. CHAIRMAN:

7 No, but he recalls that they had to.

8 MR. RUBY:

9 Yes. They didn't.

10 MR. CHAIRMAN:

11 They didn't.

12 MR. RUBY:

13 No. I'll get to that in due course.

14 MR. CHAIRMAN:

15 --just for Pius.

16 COMMISSIONER EVANS:

17 Well, I think that -- Isn't it a fact that they did move out?

18 MR. RUBY:

19 No.

20 MR. CHAIRMAN:

21 Except for Pius.

22 COMMISSIONER EVANS:

23 Well, when they went --

24 BY MR. RUBY:

25 Q. Now that you have those matters as we have drawn to your  
attention, is there any factual basis to which you can turn



JOHN F. MacINTYRE, by Mr. Ruby

1 other than your opinion and point to to support the opinion?

2 A. Well, when I went to arrest Marshall in the first instance,  
3 I was met by his brother on the Membertou Reserve and that's  
4 where I went and at that time I didn't know that they had  
5 moved -- that they had gone to another district, and the  
6 brother advised me of that. If I had of known that he went  
7 to another district before that, I wouldn't have went to his  
8 house on the Reservation with the warrant in Sydney.

9 Q. And at the other location I found that Junior was there and his  
10 mother and father and members of his family had -- had gone  
11 there for their protection, but I did meet one of his  
12 brothers on the Reserve and he was at the house at --

13 Q. You say for his own protection. I suggest to you that  
14 Junior and his brother had gone to deliver groceries to his  
15 mother and some of the children --

16 A. What are you saying, sir?

17 Q. Junior and his brother had gone to deliver groceries to his  
18 mother and some of the children who had gone there because  
19 they have family there, remember that?

20 A. No, I don't remember that at all, sir, and I didn't have that  
21 information.

22 Q. All right.

23 A. I remember arriving there that day and if my recollection  
24 serves me right, that I met Donald Marshall, Sr., who I  
25 know very well and respect, and I've known him for many, many

1 | years, Sr., outside, and I believe Mrs. Marshall was either  
2 | outside or came outside of the house, and somebody then asked  
3 | Junior to come outside. I think Junior was in the house.  
4 | And I told his father that I had the warrant and I talked  
5 | with his father outside the house there, you know, and I  
6 | told him that -- and that's what I remember, sir.

7 | Q. Okay. Tell me now again whether or not there was any  
8 | factual basis to suggest that there would be reprisals, any  
9 | reprisals?

10 | A. I had nothing at that time from anybody else. It was my  
11 | opinion, sir.

12 | Q. No factual basis at all?

13 | A. Nothing from anybody else at that time, no, except what I had  
14 | known of before and I had the protection of life and property  
15 | in the City here and I got to worry about that, not only  
16 | for anybody else that might seem to do harm to Marshall  
17 | but for Marshall himself.

18 | Q. You didn't mention that you were concerned for Marshall in  
19 | this, did you?

20 | A. No.

21 | Q. I suggest that you --

22 | A. That's -- What's that?

23 | Q. No was the answer and then you -- I cut you off and you  
24 | started to say something else.

25 | A. Oh, that would -- I suppose that's -- I would say that's why

JOHN F. MacINTYRE, by Mr. Ruby

1 I gave that opinion. I've given opinions before and  
2 sometimes you form an opinion and it's right, sometimes  
3 you form an opinion and it's wrong. That's the one I gave,  
4 sir.

5 Q. And your purpose to giving it was? I'm not clear in your  
6 answer?

7 A. Well, the -- so that there'd be nothing happen. I thought it  
8 was better if he didn't get it. That's what my frame of mind  
9 was at the time.

10 Q. And you were concerned about reprisals from the Black  
11 community?

12 A. I wouldn't say from the Black community. It could be from  
13 anybody, I don't know.

14 Q. It could have --

15 A. It could be from -- It could be from them, it could be  
16 from anybody, but I wasn't singling out the Black community.

17 Q. If you look at the words, you say, "from the Black community".  
18 Is that untrue?

19 A. I didn't write this so I -- and I -- I didn't write this  
20 thing. I -- Somebody else wrote this and I have --

21 Q. Yesterday you said -- Go ahead.

22 A. Yes, I did say at that time -- I did -- or this says I said.  
23 I don't recall at this time what I did say but this here  
24 does say that:

25 . . . that there might still be  
some reprisals from the black

JOHN F. MacINTYRE, by Mr. Ruby

1 community and recalls that the  
2 entire MARSHALL family had to  
3 move out of Sydney because of  
possible reprisals.

4 Q. So reprisals from the Black community is likely what you  
5 indeed said?

6 A. During my house visit at the MARSHALL  
7 home, Pius recalled that he had to sit  
8 in the upstairs window alone with a  
shotgun while his family resided in  
Whycocomagh.

9 So that tells me that the family were residing in Whycocomagh at  
10 that time and that the only person that was home was this --  
11 was Pius who was on guard of the -- guarding the home with  
12 a shotgun. So that-- that's pretty strong and I don't think  
13 there'd be -- I imagine that was some of the reason that I  
14 was scared of reprisals.

15 Q. You didn't know that Pius was sitting in the upstairs window  
16 with a shotgun when you went to the home to arrest --

17 A. I knew he was there but I didn't see any shotgun at the time,  
18 but according to this officer -- whoever wrote this report  
19 here had that information, but it was -- it was one of the  
20 Marshall brothers that told me where the family was at, so  
21 I didn't even know they were in Whycocomagh, sir, at that  
22 time.

23 Q. Okay. But the last line, you didn't know when you answered  
24 this question about the reprisals?

25 A. That he was up in that window with a shotgun, no, I didn't

JOHN F. MacINTYRE, by Mr. Ruby

1 know that. No, he came out of the house --

2 Q. All right. So let's leave that out of the consideration for  
3 the moment.

4 A. Yeh.

5 Q. You agree that you did say, "reprisals from the black community",  
6 correct?

7 A. I might have said that.

8 Q. Likely said that?

9 A. I couldn't -- I couldn't swear to that. I didn't write that  
10 report and I -- It's -- There's a possibility that I might  
11 have said that.

12 Q. Yesterday you said, page 6335, line 6:

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

16 Likely.

17 A. I told you that I couldn't recall one way or the other.

18 Q. Today you're saying, well, I really don't know  
19 one way or the other at all. Yesterday you said, "likely",  
20 correct?

21 A. Well, that's pretty much the same thing. I don't recall,  
22 but I could have said that I said it.

23 Q. Is it the same thing?

24 A. The same what?

25 Q. The word "likely" as "I could have said it"?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yeh, well, that's what the report says, sir, and that  
2 was made in 1978.

3 Q. So there was no evidence of reprisals that you knew of at  
4 all, correct?

5 A. No.

6 Q. And yet -- Is that correct?

7 A. That's correct, yeh.

8 Q. And yet by saying so in this report you affectively deny  
9 Mr. Marshall a three-day pass. Is that true?

10 A. No, I wouldn't say that's true.

11 MR. PUGSLEY:

12 I can't agree with that.

13 BY THE WITNESS:

14 A. No, I wouldn't say that. It was an opinion that I gave at the  
15 time and it was my opinion.

16 BY MR. RUBY:

17 Q. And your purpose was to deny Mr. Marshall a pass that would  
18 bring him to Sydney. Is that correct?

19 A. No, they -- I imagine the -- I imagine the Board would have  
20 to decide on that of what I had to say and what others had  
21 to say.

22 Q. What was your purpose?

23 A. My purpose -- My purpose is always for the protection of life  
24 and property when I think along those lines.

25 Q. Your purpose, I suggest, was to keep Mr. Marshall out of Sydney

JOHN F. MacINTYRE, by Mr. Ruby

1 on a three-day pass. Would you agree?

2 A. To keep Mr. Marshall out of Sydney on a three-day pass?

3 No, it was -- Well, it was my opinion that there could be  
4 reprisals of what he says.

5 Q. Was it your purpose to keep Mr. Marshall out of Sydney on a  
6 three-day pass?

7 A. They wanted my thoughts on the issue, sir, and I gave it to  
8 them at the time. They would consider that. We -- They don't  
9 go by just what the police say at times, they go also along  
10 with what other people say. They wanted by opinion, and that  
11 was my opinion at the time, sir, and I gave it.

12 Q. What did you want them to do?

13 A. And I have past experience with some of this on other occasions.

14 Q. What did you want them to do, allow Mr. Marshall to come to  
15 Sydney or not to?

16 A. Sir, I have nothing to do with that. The Board asked me for  
17 my opinion as a police officer and I gave it to them.

18 Q. You had no feelings as to whether you wanted him in Sydney  
19 or not?

20 A. Well, I gave my thoughts on it, I guess that -- it says here  
21 at the time that there could be reprisals.

22 Q. I suggest to you, sir, that, in fact, you had feelings  
23 contrary to what you've been saying. You're feelings were  
24 that you did not want Mr. Marshall here and that you put down  
25 an opinion without any foundation that would achieve that result.

JOHN F. MacINTYRE, by Mr. Ruby

1 Fair?

2 A. That was my opinion and I answered that question already to  
3 you I think that -- that that was just my opinion that I  
4 gave.

5 Q. Is the way I put it fair?

6 A. My opinion, sir.

7 Q. Is the way I put it fair?

8 A. Yeh, I guess it's fair, yeh. Sure.

9 MR. PUGSLEY:

10 Just a moment. In fairness to the witness, could you repeat the  
11 question.

12 BY MR. RUBY:

13 Q. I suggest to you that you, in fact, had feelings contrary to  
14 what you testified that Mr. Marshall --

15 A. Pardon me, sir. What did you say? That are contrary to  
16 what you testified?

17 Q. Contrary to what you testified, you, in fact, did have  
18 feelings that you did not want Mr. Marshall here on a three-  
19 day pass and that you put down that statement without  
20 foundation and fact in order to achieve that. Is that fair?

21 A. No, I don't think that's fair at all. I was asked an opinion  
22 on something and I gave it, and I knew that the Board would  
23 have opinions from other people besides me, and -- and I was  
24 just giving my own opinion at the time.

25 Q. Did you not think it was unfair to put down the suggestion of



JOHN F. MacINTYRE, by Mr. Ruby

1       reprisals when there had never been any reprisals and you  
2       had no reason to think there ever would be?

3   A.   No, I don't think it was unfair, sir.       I'll tell you,  
4       as a police officer I had reprisals in other cases. There  
5       was a defence lawyer one night       wanted a man to get out.  
6       I didn't think he should get out. I talked to him and the  
7       man got bail and then went home and took a gun and the rest  
8       of the family had to get out of the house. So I did -- I  
9       have concerns not only for -- for everybody in the community,  
10       not only of any reprisals that might take place but for  
11       Donald Marshall himself. I didn't want anything to occur and  
12       that was my opinion at the time, sir.

13   Q.   You agree it's peculiar then that they didn't mention this  
14       strongly held view by you that you were really doing this  
15       for the protection of Donald Marshall?

16   A.   Sir, that is up to the party that is writing the report, sir.

17   Q.   But you told them that?

18   A.   I can't tell you at this time just what the full extent of  
19       my conversation was to them in 1978.

20   Q.   Let's turn to 1982, when Mr. Edwards and Mr. Wheaton get  
21       first access to your file. As a police officer you know  
22       that anyone doing a re-investigation cannot do it without  
23       access to the file as a whole, isn't that true?

24   A.   Yes, they should have the whole file, yes.

25   Q.   So why didn't you say, "Hey, fellows here's the file". "You'd

JOHN F. MacINTYRE, by Mr. Ruby

1 better take it all because other wise you can't do a fair  
2 job"?

3 A. Again that's not up to me to say that to them. They're  
4 experienced police officers. If they wanted the whole file  
5 they could ask for the file and receive it.

6 Q. You didn't think it would be part of your ordinary duty of  
7 fairness to say, "Excuse me, gentlemen, you're making a  
8 mistake". "You really need everything in this file". "I'm  
9 familiar with it". "You've never seen it but you need  
10 everything in it". "Don't worry, I know this file  
11 thoroughly". You didn't say that?

12 A. No.

13 Q. Why not?

14 A. Because I didn't think it was -- I was of the opinion that  
15 I gave a good account of this case and that certain  
16 documents were taken and the rest of the file was there, if  
17 they wanted that all they'd do is come in and ask for it.  
18 Nobody had asked for it, sir, at that time.

19 Q. Do you agree that any police officer doing a re-investigation  
20 would know that he had to have the whole file? Only an  
21 idiot wouldn't appreciate that, correct?

22 A. Yes, I think they should have the whole file.

23 Q. Do you agree with me that it's so basic that only an idiot  
24 wouldn't understand that he had to have the whole file?

25 MR. PUGSLEY:

Is my friend commenting on Sergeant Wheaton? I mean he's the

JOHN F. MacINTYRE, by Mr. Ruby

1 one that didn't ask for it. He's the idiot.

2 MR. Macdonald:

3 Well, My Lord, I'll have to object to that.

4 MR. RUBY:

5 I think in the midst of all the objections I got a yes.

6 COMMISSIONER EVANS:

7 As to what?

8 MR. RUBY:

9 On my question I thought.

10 COMMISSIONER EVANS:

11 As to whether Wheaton was the idiot, I wouldn't hope so.

12 BY MR. RUBY:

13 Q. Is the answer "yes" to that question?

14 A. No, I was going to say I didn't consider any of the police  
15 officers idiots.

16 Q. Do you agree with me that only an idiot would not know that  
17 as a police officer assigned to a re-investigation you had  
18 to have the whole file? It's very, very basic, agree?

19 A. They should have the whole file but I wouldn't use the  
20 word "idiot".

21 Q. How dum would you have to be to want part of a file only?

22 A. I'd have to know at this time how much of the file they  
23 left. I see one report there somewhere by Inspector Scott  
24 who said we don't need what MacIntyre got. Now we got  
25 enough here to work on, so you know, I'm not getting in the

JOHN F. MacINTYRE, by Mr. Ruby

1 middle of that, sir. I'm telling you now that they didn't  
2 ask for the whole file at any time.

3 Q. Would you not agree with me -- (I understand you say they  
4 never asked for the whole file.) that it would be most  
5 surprising to find a police officer who can walk and  
6 talk and still be stupid enough not to ask for the whole  
7 file? Yes?

8 A. Again I leave it up to what the thoughts were at that time.

9 Q. You'd have to be awfully stupid not to ask for the whole file,  
10 right?

11 A. It depends what they were missing or what they wanted -- what  
12 other things they wanted in the file.

13 Q. To leave out the things which you found left in that file, you'd  
14 have to be awfully dum?

15 A. I wasn't of that opinion that they -- I thought they'd be in  
16 to get the file, but they used -- I mean there was a document  
17 served on me to turn over the file which I did.

18 Q. I take it that I'm not going to get an answer to the question  
19 as to whether or not --

20 A. I don't like the expressions you use and I don't think --

21 Q. How would you --

22 A. --I don't think any R.C.M.P. police officer that was on the case  
23 there are idiots and I don't -- I don't class --

24 Q. Let me put it this way. Would you agree with me that nobody  
25 is dum enough acting the way you've said they had to act, namely,

JOHN F. MacINTYRE, by Mr. Ruby

1 to fail to ask for the whole file. That's quite inconceivable,  
2 isn't it?

3 A. At that time though the investigation was on they hadn't  
4 asked for the file up to that date. I have no knowledge  
5 that they weren't going to ask for it.

6 Q. Is it not inconceivable that any police officer would be  
7 that stupid as to do what you say they did?

8 MR. PUGSLEY:

9 And there's corroborative evidence for this witness's statement  
10 in the notes of Frank Edwards. I mean it's not this man's  
11 evidence alone. Frank Edwards has written in his diary that  
12 they did not ask for it.

13 MR. RUBY:

14 That's not my question and I've heard his objection and arguing.

15 BY MR. RUBY:

16 Q. May I ask you to answer the question?

17 COMMISSIONER EVANS:

18 You're asking him a question I don't know how he can answer.  
19 How stupid -- What degree of stupidity does an officer have to  
20 have before he fails to ask?

21 MR. RUBY:

22 And I put it now in terms that is it not inconceivable that  
23 any officer would be so stupid as to do what he says they must  
24 have done. And my friend is arguing the point of whether there's  
25 corroboration which is not here nor there.

JOHN F. MacINTYE, by Mr. Ruby

1 BY THE WITNESS:

2 A. Well, at a point in time they did ask for the file.

3 BY MR. RUBY:

4 Q. I'm talking about the earlier time when according to you they  
5 only asked for and got part of the file. Is it not inconceivable  
6 that a police officer would act in that way?

7 MR. PUGSLEY:

8 The question really is argumentative. The fact is that they did  
9 it and the witness has testified that they did it. Now whether  
10 or not it's inconceivable or stupid, or they're idiots is really  
11 neither here nor there and that surely is the question to put  
12 to Wheaton.

13 MR. CHAIRMAN:

14 Well, you sort of get hung on your -- strung up on your own preterite,  
15 don't you because didn't Inspector Marshall say he got all the  
16 files?

16 MR. MacDONALD:

17 Pardon me, My Lord?

18 MR. CHAIRMAN:

19 What was Inspector Marshall's evidence?

20 MR. MacDONALD:

21 That he did not get all the files.

22 MR. CHAIRMAN:

23 He didn't get the --

24 MR. MacDONALD:

25 Now you just asked me what Inspector Marshall's evidence is?

MR. CHAIRMAN:

Yes.

JOHN F. MacINTYRE, by Mr. Ruby

1 MR. MacDONALD:

2 That's his evidence?

3 BY THE WITNESS:

4 I -- I --

5 MR. RUBY:

6 This witness once again says he gave it all.

7 MR. PUGSLEY:

8 We're talking about '82, and not '71, aren't we?

9 BY THE WITNESS:

10 Yeh, it's '82.

11 MR. PUGSLEY:

12 That's what I thought the questioning was.

13 MR. MacDONALD:

14 I was only responding to a question from --

15 MR. PUGSLEY:

16 Yes.

17 MR. CHAIRMAN:

18 I suppose the question of stupidity is in the eye of the beholder  
19 and --

20 BY MR. RUBY:

21 Q. May I try the question as most recently framed.

22 Is it not -- I'm asking you if you'll agree with me  
23 that it is inconceivable that any police officer doing an  
24 investigation would ask for part of the file only?

25 A. He should have the file.

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. Is it conceivable that he should not do so? Can you conceive an officer  
2 that stupid or that wrong or that incompetent?

3 A. The file was taken by them at a later date during the  
4 investigation under the signature of a letter provided  
5 to me by the Attorney General of the Province.

6 Q. You said to me that -- You said yesterday to my friend that  
7 the document that's alleged to have been put under your desk  
8 or fallen under your desk, and kept away from the file, the  
9 first statement by Harriss was no more important than the  
10 first statement by Chant and Pratico that they did have in  
11 the file at that time. Do you recall that testimony?

12 A. Yes.

13 Q. Is it not true, however, that it was more important to you  
14 at that time in the following way, that you used that  
15 first statement by Harriss to show that her 1982 statements  
16 were lies?

17 A. No, that's not true. What I said yesterday and what I  
18 meant yesterday that Harriss and Chant gave an untrue statement  
19 the first time, Mr. Ruby, an untrue statement which just  
20 proved when they gave their second statement and Mrs. Harriss  
21 or Ms. Harriss was in that category with her first  
22 statement, so when she gave the second statement, so the  
23 three statements, the first statements weren't true. That's  
24 why I said there was no difference in it. That's what I said  
25 and that's what I meant, sir.



JOHN F. MacINTYRE, by Mr. Ruby

1 Q. You said that in 1975 there was an Inspector of R.C.M.P. in  
2 your office for two days looking at the file?

3 A. No, sir.

4 Q. How long?

5 A. I said he was in -- in for a couple of hours or so. He  
6 called on me and I gave -- I provided space for him and he  
7 looked over the Marshall file, yes.

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- 1 Q. I suggest to you that you've also said that there was no con-  
2 versation with him.
- 3 A. There was conversation with him, yes. I didn't say that, sir.  
4 I told you --
- 5 Q. Okay. What --
- 6 A. There was conversation with him when he came to my office and  
7 told me the purpose of his visit and that he'd like to see the  
8 Marshall file that he had a complaint on it.
- 9 Q. And then after he took the file, there was no further  
10 conversation?
- 11 A. After he took the file, he told me that -- He told me he was  
12 through with the file and that -- and he left.
- 13 Q. That file, you'll agree with me, is not intelligible without  
14 some explanation?
- 15 A. It just depends what you're looking for in that file, sir.
- 16 Q. If you want to understand --
- 17 A. I don't think you need explanation. If you want to see people's  
18 statements and what's in the file, I think you can read it, sir,  
19 and I'm not -- Again, I don't know what the complaint was, sir,  
20 or where it came from or just what he was looking for, but I  
21 provided him with the whole file, and he gave me the file back,  
22 and he left the office, sir. Who he was to report to then, I  
23 don't know.
- 24 Q. Would you agree with me that if he wants to understand the  
25 investigation, he has no alternative but to talk to you or

1       somebody else who understands it?

2   A.   Again, I say to you, sir, I don't know what he was looking  
3       at.

4   Q.   If he wanted to understand the investigation --

5   A.   That would be up to him, sir, to --

6   Q.   -- he would have to talk to you or somebody else who under-  
7       stood it, fair enough?

8   A.   That would be up to him, sir, to make that decision.

9   Q.   Could he have understood the investigation without talking to  
10       you or somebody else who understood the file?

11   A.   I would -- Again, you know, it depends on the documents that  
12       he wanted to see, sir. I didn't quiz him on why he came into  
13       the office, only that he was an R.C.M.P. officer who wanted to see the  
14       file. I seen nothing wrong with what I did in  
15       giving him the file, and he was -- He told me everything -- He  
16       got everything he wanted, and he left. Now, I didn't see any  
17       copy of any letters he wrote, and I don't know who he sent them  
18       to or -- I thought the complaint was from Ottawa but I'm not  
19       sure, but he did have a complaint at the time when he came  
20       in, and I accommodated him on that occasion, and he was in  
21       there a couple hours or more.

22   Q.   Tell me whether it was your view that he could've understood  
23       the investigation without speaking to you or somebody who  
24       understood that file?

25   A.   Again, I don't know what he was investigating. I didn't go

12:10 p.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 over the --

2 Q. I'm not asking you that. I'm assuming he wanted to understand  
3 your investigation.

4 A. I'm saying that, sir. I'm saying that, but whatever he wanted,  
5 he told me he was -- that he got what he wanted and he left or  
6 he was satisfied and he left; so I don't think he wanted me to  
7 go over the whole investigation with him.

8 Q. That's not my question. My question is, could he have under-  
9 stood the investigation, if that's what he wanted to understand,  
10 without speaking to you as well?

11 A. I think if he wanted to know about the full investigation,  
12 that he would ask me, and I would've went over it with him.

13 Q. Could he have done so without talking to you?

14 A. Well, there was a lot of material in the file at the time.  
15 Again, I'd leave that up to him.

16 Q. Could he have understood that file if he'd wanted to know  
17 the full investigation without talking to you?

18 A. I'm having problems with that.

19 Q. Tell me what it is you're not clear on.

20 COMMISSIONER POITRAS:

21 Mr. Ruby, I have a problem as to the relevancy of all those  
22 questions. I'll be very frank with you. I am not intervening and  
23 I have not intervened too often, but I think we're harrassing the  
24 witness to a point that should not be permitted by this tribunal, and  
25 I'd like perhaps to indicate to us the relevancy of the questions

JOHN F. MacINTYRE, by Mr. Ruby (DISCUSSION)

1 | you are now posing.

2 | MR. RUBY:

3 | I'm concerned with the question of whether or not the officer who  
4 | did that investigation did a proper job. Two hours is not a very  
5 | long period of time, and if he asked, as this witness says, no  
6 | questions of him, then I want to ask that officer when we hear  
7 | from him.

8 | COMMISSIONER POITRAS:

9 | Well, then, ask him -- Ask that particular officer but not ask  
10 | this officer.

11 | MR. RUBY:

12 | Yeh, I want to --

13 | COMMISSIONER POITRAS:

14 | All he can do is indicate to you what that man did. He's done that.  
15 | He spent two hours in his office. He may not have done a proper  
16 | job, but he did that job. The only man who can explain his actions  
17 | were the officer who was in Chief MacIntyre's office, not Chief  
18 | MacIntyre. He merely allowed him to make use of his office. As  
19 | I understand it; unless you have a contrary opinion.

20 | MR. RUBY:

21 | I thought, My Lord, that you would rule on it, that it would be  
22 | helpful for you to know whether or not in Officer MacIntyre's  
23 | view, because he knows the file better than anyone else, you could  
24 | understand that investigation without talking to him about it.

25 |

JOHN F. MacINTYRE, by Mr. Ruby (DISCUSSION)

1 COMMISSIONER EVANS:

2 But, Mr. Ruby, that wasn't the request that was made to the  
3 detective. He was asked -- He was told that somebody had made a  
4 complaint. He wasn't told what the complaint was. It may have  
5 been just to see whether there was a particular letter in the  
6 file. This witness does not know what the complaint was. He gave  
7 him the file, as I understand it. He took two hours or whatever  
8 time, obviously he read it; he gave the file back; he asked no  
9 questions. Now, you're asking this witness whether that would have  
10 constituted a proper investigation of the case or the file. Well,  
11 we -- he wouldn't know that. He wouldn't know what the man was  
12 looking for.

13 MR. RUBY:

14 That's what he says took place, but I'm not prepared to accept that  
15 as being true, and I am therefore asking whether or not, in his view,  
16 had an investigation of the case been in -- what we're interested  
17 in --

18 COMMISSIONER EVANS:

19 Well, is there any evidence that the man who came from the R.C.M.P.  
20 on that particular day was going to make a re-investigation of the  
21 file?

22 MR. RUBY:

23 It seems to me that it's probably an officer who comes in response  
24 to the Green complaint -- Constable Green -- was told about the  
25 Ratchford and --

JOHN F. MacINTYRE, by Mr. Ruby. (DISCUSSION)

1 COMMISSIONER EVANS:

2 That's probably so.

3 MR. RUBY:

4 -- Ebsary -- We have not heard from that, and I don't know what  
5 that evidence is going to be.

6 MR. CHAIRMAN:

7 So far, as I understand it, Mr. Ruby, from this witness, is that  
8 a gentleman from the R.C.M.P. came to his office, said, "I have  
9 a complaint --

10 MR. RUBY:

11 Yes.

12 MR. CHAIRMAN:

13 -- in -- re: the Marshall case, and he said, "Take the file," and  
14 off he went. He came back some time later, handed him back the file,  
15 and said, "Thank you. I'm now able to deal with the complaint."  
16 Full stop. And he walked out.

17 MR. RUBY:

18 That's right. And I'm testing the credibility of that.

19 MR. CHAIRMAN:

20 The credibility of --

21 MR. RUBY:

22 Whether or not that was --

23 MR. CHAIRMAN:

24 What was said.

25

JOHN F. MacINTYRE, by Mr. Ruby (DISCUSSION)

1 MR. RUBY:

2 What happened. And particularly the part of it where he says, "I  
3 didn't speak to him, and he asked me no questions," which strikes  
4 me as rather unusual. frankly.

5 MR. CHAIRMAN:

6 Okay.

7 MR. RUBY:

8 And I want to find out whether or not if the officer was interested  
9 in more than just finding out -- looking at the particular docu-  
10 ment on file -- whether he would've asked questions, whether he could've  
11 done the investigation without doing that.

12 MR. CHAIRMAN:

13 But the question you keep putting to this witness is do you -- Does  
14 he think that that officer presumably was inept in not --  
15 not inept, whether he could've carried out a complete investi-  
16 gation without sitting down and discussing the file with him. His  
17 answer, as I interpreted it, is that if he had wanted more -- if  
18 was doing a re-investigation, "He would've asked me, and I would've  
19 told him."

20 MR. RUBY:

21 Yes. I didn't think it was a responsive answer, no.

22 MR. CHAIRMAN:

23 Pardon?

24 MR. RUBY:

25 I didn't think that was a responsive answer, but you're --



JOHN F. MacINTYRE, by Mr. Ruby (DISCUSSION)

1 MR. CHAIRMAN:

2 You don't think that's a responsive --

3 MR. RUBY:

4 I didn't think so. That's why I was pressing for an answer  
5 to the other question.

6 BY MR. RUBY:

7 Q. Could an investigation be done without asking questions of  
8 you or somebody else who understood that file?

9 MR. ORSBORN:

10 My Lord, I don't know if I can be of assistance to my friend or not,  
11 but as best we understand the evidence from Corporal Coles, who  
12 is, I believe, the R.C.M.P. officer that visited in 1975, will be  
13 based solely on Corporal Coles' notes. He is not able to tell us  
14 why he went down to the Sydney Police Station. He is not able to  
15 recall who told him to go down, nor what he reported after that.  
16 His recollection is based on his notes. His notes will indicate  
17 that he simply went down to the police station on two occasions,  
18 once on September 29th, 1975, at which time he was informed by  
19 Chief MacIntyre that Mr. Ebsary was given a lie detector test and  
20 was cleared of same. He then returned to the Sydney Police  
21 Department on October 3rd, 1975, at which time he read a file that  
22 he refers to as the Ebsary file, and that is the extent of his  
23 notes. He was not able to tell us whether he was doing an investi-  
24 gation or for what purpose he was sent down there, simply that  
25 he did go down and read a file he refers to as the Ebsary file.

JOHN F. MacINTYRE, by Mr. Ruby (DISCUSSION)

1 That may or may not help my friend, but that is our understanding  
2 of the extent of the evidence which Corporal Coles will give.

3 MR. RUBY:

4 That has helped me. Thank you.

5 BY MR. RUBY:

6 Q. Do you recall having a conversation with him -- this man wherein  
7 he asked you questions, and you told him, among other things,  
8 about the Ebsary lie detector test. Did that happen?

9 A. No, I just heard that evidence there now and I've --

10 Q. It's not evidence yet.

11 A. What's that?

12 Q. It's not evidence yet.

13 A. Well, I heard what he -- what he's going -- what he might say.

14 I just recall that officer coming to my station on one occasion  
15 and telling me -- leading me to believe that he wanted to see  
16 the file, which I produced to him. I don't -- I have no  
17 recollection of him coming twice.

18 Q. And you were quite clear that he hadn't had any conversation with you?

19 A. What's that?

20 Q. And you were quite clear that he hadn't had any conversation  
21 with you?

22 A. I might've had very little conversation, but I wouldn't -- If  
23 He had anything to say or -- we would talk, but I didn't discuss  
24 the case. I gave him the file. I definitely recall that --  
25 gave him space, not -- And I wasn't in that room with him, and

JOHN F. MacINTYRE, by Mr. Ruby

1 he went over that file and gave me the file before he left the  
2 station, and that was it.

3 Q. Did you answer a question which involved telling him about the  
4 Ebsary lie detector tests?

5 A. That wasn't on that occasion, I don't think, was it, sir. Well,  
6 that would -- No, but what you're reading there. You say he  
7 had -- he was here -- he was there -- he was --

8 MR. ORSBORN:

9 I was not giving evidence, sir. I was simply relating what our  
10 best understanding of Corporal Coles' evidence will be.

11 BY MR. RUBY:

12 Q. Assume that on one of those two occasions, you --

13 A. I'm not talking -- I'm not saying -- I don't recall two  
14 occasions. I recall one occasion, sir.

15 Q. Right. And on neither -- And on that one occasion that you  
16 recall, you say you would not have told him about the Ebsary  
17 lie detector test?

18 A. Well, I --

19 Q. All right.

20 A. If I was asked about that -- I might've had some opinion at that  
21 time; I'm not sure.

22 Q. So you may have had a conversation with him where you answered  
23 questions?

24 A. He could've asked me a question, sure.

25 Q. He may well have asked you questions about the file, and you

JOHN F. MacINTYRE, by Mr. Ruby

1 told him answers, correct?

2 A. I don't recall any of that, to be honest with you, sir.

3 Q. You don't recall it or it did not --

4 A. I don't recall two -- him coming to the station twice, no.

5 Q. Okay.

6 A. I recall him coming once.

7 Q. Do you recall having conversation with him about the file --  
8 the contents of the file, such as would result in any one of  
9 the Ebsary lie detector tests, or it did not happen?

10 A. No. No. I don't recall, sir.

11 Q. Are you saying it didn't happen?

12 A. Not to my knowledge it didn't happen, and I can't recall that.

13 Q. Can't recall it?

14 A. No.

15 Q. Let me take you to Scott and Edwards again. According to  
16 Mr. Edwards' notes, you put forward in the discussions you had  
17 with them as critical -- that it is very important that Patricia  
18 Harriss had said there was only one other person there. Do you  
19 remember that?

20 A. I would've discussed Patricia Harriss, I imagine, at that time.

21 Q. And yesterday you agreed, I think, and the notes indicated as  
22 well that you put it forward as being an important point that  
23 she had only seen one other person there.

24 A. That was in her second statement.

25 Q. That's right.

12:20 p.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yeh.

2 Q. Do you agree with me that's what you said?

3 A. In her second statement, there was one other person there with  
4 her, yes.

5 Q. But that you said to Edward and Scott that this was particularly  
6 important in evaluating the new evidence they had from Chant and  
7 Pratico because her statement showed that there only had been --  
8 there'd been no other person there beyond the man who presumably  
9 was Seale? Do you recall that? Volume 17, page 5.

10 A. I don't recall her exact words. I know we were talking about  
11 those individuals.

12 COMMISSIONER POITRAS:

13 That's Volume 17, page 13?

14 BY MR. RUBY:

15 Q. About nineteen lines down.

16 A. Page what, sir?

17 Q. Page 5.

18 A. How many lines down, sir, did you say?

19 Q. It said:

20 Chief [redacted] pinned his argument on  
21 fact that Marshall had met Harriss  
22 and Gushue in park and they said  
there was only one other person.

23 That's Harriss and Gushue. And then in Volume 19 -- Turn to  
24 Volume 19, page 31:

25 Chief MacIntyre brought up several

1 points...

2 Top of the page.

3 ...we both thought should be  
4 clarified in determining the accuracy  
5 of this investigation. As  
6 a result of this meeting, I  
7 requested all witnesses be  
8 interviewed and in particular  
9 the Harriss girl to determine  
the accuracy of her statement  
that only Marshall and Seale  
were present as this seemed  
critical in Chief MacIntyre's  
mind, and this proved Marshall  
was lying.

10 That's the passage you agreed with. Do you remember that?

11 A. There was a discussion, I believe, on that there. Yes, there  
12 was a discussion on the Harriss girl.

13 Q. Yeh. And you agree that you put it forward as being an  
14 important point that proved that Marshall was lying?

15 A. I agree that it was very important to the evidence -- as  
16 evidence at the time of the trial in '81 about Marshall and  
17 Gushue -- their position -- where they were at on Crescent  
18 Street on that particular night at a certain time, but they  
19 didn't -- There was no evidence that they seen any stabbing,  
20 just that they had received a match or a light from Marshall  
21 at that particular point, and at that time, Chatico and Prant  
22 had pointed out the same place as where they said they met  
23 Marshall within minutes.

24 Q. Let me read to you what you said yesterday.

25 A. Yeh.

1 Q. Page 6358, Volume 34, line 12:

2 Q. You were given statements that  
3 Chant and Pratico had given  
4 to the R.C.M.P. where they had  
5 stated they lied at trial.

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

7 Line 14:

8 Q. At that time, were you telling  
9 Inspector Scott that the state-  
10 ment from Harriss, that there  
11 was Seale and Marshall present,  
12 proved that Marshall was lying?

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

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

24 A. Yes, I said that.

25 Q. A. I thought so, yes.

A. Yes, I said that today to you, I thought it was important and  
why it was important.

Q. Were those questions and answers true when you gave them?

A. What, that the Harriss girl's statement was important.

Q. Because it proved --

...Seale and Marshall...

-- were the only ones --

JOHN F. MacINTYRE, by Mr. Ruby

1 ...present,...

2 -- and --

3 ...proved that Marshall was lying?

4 That's what it says here. Do you want to read it again? And  
5 then tell me if it's true.

6 A. Well, I mean, I have to know what Marshall -- What are we saying  
7 about Marshall at that time, or what was he saying about  
8 Marshall at that time when I made that statement.

9 Q. You had just been given the statement -- at line 12:

10 ...that Chant and Pratico had  
11 given to the R.C.M.P. where  
they stated they lied at trial.

12 And were you then, after you read those statements --

13 ...telling Inspector Scott that  
14 the statement from Harriss, that...

15 -- only --

16 Seale and Marshall...

17 -- was --

18 ...present,...

19 And I've used the word, "only."

20 ...proved that Marshall was lying?

21 A. No, I thought that the statement  
22 of the Harriss girl..should be  
23 looked into because of the state-  
24 ment she gave, and I thought it  
very important. I thought...(it)was  
very important at the time.

25 A. Yeh.



- 1 Q. And that would be in connection with the proof that Marshall  
2 was lying, and therefore Chant and Pratico's statements could  
3 not be relied upon, correct?
- 4 A. Well, we're dealing with Marshall in regard to the Harriss girl  
5 at this time. I think in -- I think if in Marshall's state-  
6 ment when he met Harriss and Gushue, that Seale was -- the late  
7 Mr. Seale was with him, but Seale had departed, and they talked  
8 to them alone on Crescent Street near the green apartment.
- 9 Q. Right. And you used that statement --
- 10 A. Pardon me, sir. And then when Gushue was interviewed, my recol-  
11 lection is that there was only Marshall and one other man there  
12 whom Gushue did not know -- the other man. But he knew Marshall.  
13 When she gave her first statement, she said that Gushue was  
14 there with two other men with one on each side of Marshall.  
15 In her second statement, she said there was one other person  
16 with Marshall. I thought that statement was important to be  
17 looked at, and that's my recollection, sir, at this time.
- 18 Q. It was important to be looked at because it tended to show  
19 that Chant's and Pratico's recantations of their trial testimony  
20 were false, is that correct?
- 21 A. That's the evidence that they gave lately in--in the latest  
22 trial.
- 23 Q. Right.
- 24 A. I was concerned about that, yes.
- 25 Q. At that time?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. At that time, I thought that I had the truth in 1971, sir.

2 Q. So you used Harriss's statement to try and convince them of  
3 what you'd then believed?

4 A. No.

5 Q. That you had the truth in 1971, and Chant and Pratico --

6 A. I don't think that Harriss was interviewed at that time, and  
7 I think what I was stressing at that time that Harriss's-- the  
8 Harriss girl should be interviewed, and this is what she said,  
9 and I believed her at that time.

10 Q. Good.

11 A. And as a re-investigation -- We had a bull session on several  
12 people -- more than one, and went over, and I see by this  
13 that Mr. Scott thought that those people should be interviewed  
14 because I was strongly of the opinion at that time of my con-  
15 victions. And I see nothing wrong with that, sir, talking man  
16 to man and police officer to police officer to give them my  
17 views. I also gave them the views of others besides that, and  
18 it was a conversation that took place.

19 Q. Well, why did you not at the same time as you were putting  
20 forward Harriss's statement that there was only one other  
21 person there, which -- was basically the position you were  
22 arguing at that time. Why would you not at the same time have  
23 said, "Hey, look, I'm putting it forward. It should be  
24 re-interviewed, but you've got to know that this woman was  
25 adamant for quite some time --

JOHN F. MacINTYRE, by Mr. Ruby

- 1 A. Pardon me. This woman was what?
- 2 Q. Was adamant.
- 3 A. Oh, yeh.
- 4 Q. -- for quite some time that there were indeed two people there,  
5 and that at one point, she took exactly the same position as  
6 Chant and Pratico are now taking." Why wouldn't you tell that  
7 to Scott and to Edwards?
- 8 A. Well, I thought I discussed with those people. I had my files  
9 with me when I met Mr. Edwards and Mr. Scott on that --  
10 Inspector Scott -- on that particular day. I told here in  
11 evidence -- I don't know if you were here or not -- that I  
12 went over the Marshall case first and I went over the Ebsary  
13 case, and I remember that afternoon. I think it was around  
14 two o'clock I went there. I think was about quarter to five  
15 when I left there, according to what I recollect of it, which  
16 would be quite a considerable time. I done the Marshall case  
17 first, and then I went over the Ebsary case second. Now, what--  
18 all I said there, I don't know at this time, but I discussed  
19 both cases and took that time to do it, and I thought that my  
20 file was pretty well explained at that time. Now, everybody's  
21 talking about this first--first statement of Harriss." I  
22 took the three of them. The three of them had told different  
23 stories the first time as what they told the second time in  
24 '71 and even in the evidence in the court that came out.
- 25 Q. Can I gather from that long answer that you're saying that

12:30 p.m.

JOHN F. MacINTYRE, by Mr. Ruby

1       you're sure whether or not you told them about Harriss's first  
2       statement and then the conversation where she was adamant that  
3       there were two?

4   A.   I can't recall, sir. My file -- All I can tell you is that  
5       my file was in the office, and it was open there, and several  
6       transcripts were taken from it at that time and -- to the  
7       best of my ability. And I want to tell you something else, I  
8       wasn't there to hide anything either. And I think, you know,  
9       that I discussed everybody, and I thought I'd done a fairly  
10      good job. I had advised the Crown that I was going to be some  
11      time when he made the appointment with me with what I had to  
12      discuss, and as I said yesterday, everything was in the file.

13   Q.   Mr. Scott and Mr. Edwards are honourable men?

14   A.   I took them to be, sir.

15   Q.   And you knew as you sat there that she had given a statement  
16       earlier and orally had been adamant in a way that was consistent  
17       entirely with the new evidence of Chant and Pratico. Correct?  
18       You knew that when you sat there.

19   A.   Wait now. You're saying what? Now you're saying that Harriss --  
20       that her evidence --

21   Q.   You knew when you sat at that meeting with these honourable  
22       men --

23   A.   Yeh.

24   Q.   -- who were dealing with the new statements by Chant and Pratico,  
25       that she had given an earlier statement which was consistent with

JOHN F. MacINTYRE, by Mr. Ruby

1 Chant and Pratico's evidence, which they were now discussing  
2 with you.

3 MR. PUGSLEY:

4 Excuse me, I don't think that's right at all.

5 THE WITNESS:

6 That's not right at all.

7 MR. PUGSLEY:

8 At that first statement -- that first meeting, Chant and Pratico  
9 had not been interviewed. This was the meeting of February 3rd.  
10 They hadn't seen Chant and Pratico until later on in February. I'm  
11 sorry to interrupt, but that certainly is my very distinct recol-  
12 lection that this was the first meeting that Wheaton had seen anyone;  
13 so Chant and Pratico had not been re-interviewed in '82 at the time  
14 of this meeting.

15 MR. RUBY:

16 It's twelve-thirty, and maybe it's a good time for me to look at my  
17 notes.

18 MR. CHAIRMAN:

19 All right.

20  
21 INQUIRY ADJOURNED AT 12:32 p.m.  
22  
23  
24  
25