

JOHN F. MacINTYRE, by Mr. Ruby

1 INQUIRY RECONVENED: 2:04 p.m.

2 MR. CHAIRMAN:

3 Mr. Ruby.

4 MR. RUBY:

5 Thank you, My Lord.

6 BY MR. RUBY:

7 Q. Let me make clear with you what meeting we're talking about.

8 I read to you page 6358 of volume 34 and the context becomes

9 clear two pages earlier at 6356. Could you turn to 6356:

10 On the bottom of that page, see the
11 note, it says, "On February 26, 1982,
12 Chief John MacINTYRE...", see that
down (at)the bottom?

13 ...came to my office
14 at which time I
15 allowed him to read
16 the statements of CHANT
and PRATICO, in which
they state they lied at
the trial of MARSHALL
in 1971.

17 Yes.

18 I also advised him in
19 general terms (of) the
investigation we had
conducted to date.

20 So that's a meeting with Scott and Wheaton on the 26 of 1982 --

21 A. Yes.

22 Q. -- where you saw those statements?

23 A. Yes.

24 Q. Now if you turn over to page 6358 and the context of that
25 metting and where you said this morning and I'm referring

1 you to your evidence again that you thought the Harriss statement
2 was very important and you put it forward at that meeting
3 at that time, correct?

4 A. Yes.

5 Q. Now you knew as you sat there with these two men that contrary
6 to the Harriss statement that you put forward, she had adamantly
7 (at times) taken the view there were two other men there.
8 You knew that?

9 A. I knew that when the first statement was taken from her.

10 Q. You knew that as you sat there with Scott?

11 A. Oh, at that time, yes, I knew about the first statement and
12 I knew about the second statement, yeh.

13 Q. Now according to the notes, there's no indication you told
14 them about that first statement, is that true?

15 A. The notes of who?

16 Q. Harriss' first statement?

17 A. The notes of who, sir?

18 Q. The notes made by the person who took the statement? You
19 had Harriss' first statement.

20 A. In -- yes, I had her's -- I had -- that was in the file.

21 Q. Yes, but you knew when you put forward that, Harriss' statement
22 was incongruous, was not the same as, was different from the
23 new Chant and Pratico statements; that the Harriss' version
24 you were putting forward was not a version she had always
25 maintained?

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1 A. That's right.

2 Q. Do you not agree with me that it is dishonest for an officer
3 in the context of a re-investigation not to tell them;
4 Inspector Scott, about those earlier statements?

5 A. I would think at that time that -- could you give me a minute
6 here, please.

7 Q. Take all the time you need.

8 A. I would think at that time that Inspector Scott would know
9 about those other statements. This is going up to his
10 office and seeing Chant and Pratico. We had a meeting before
11 that when the files were discussed. Chant and Pratico now
12 have changed their statements, but the Harriss girl's still
13 should have been seen.

14 Q. Are you saying to me that you didn't tell him because he
15 already knew about the earlier statements?

16 A. Well, I met -- I met Scott, Inspector Scott, and the Crown
17 Prosecutor early in February when I went over both cases.
18 And the Harriss girl's first statement would be in that
19 file at that time. It never left that file. It would
20 be there with the other documents.

21 Q. Are you telling me that you did not tell them about the
22 Harriss girl's earlier statements because they already knew?

23 A. It is my opinion at this time that he would know of them,
24 yes.

25 Q. How did they know about them exactly?

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1 A. Because I had the file, I told you, and I went over -- I
2 thought I went over both cases very thoroughly that afternoon.

3 Q. Do you agree with me that it would have been dishonest of
4 you --

5 A. I don't think there was anything wrong with Chant had given
6 two statements, Pratico had given two statements and Harriss
7 had given two statements in 1971 and it was the second
8 statement of each of those that was used before the court.

9 Q. Are you talking about February 3rd now, a meeting where you
10 told them about this?

11 A. Yes.

12 Q. You'll agree with me that not to tell them about it on
13 February 3rd would have been equally dishonest?

14 A. No, I don't think they'd use the word "dishonest", sir.

15 Q. What word would you use?

16 A. I don't think they'd use the word "dishonest" if you're -- if
17 you're thinking that I was hiding something on them, you're
18 wrong. That's what I mean by that. And I'm telling you
19 also that the -- that statement was in that file at that
20 time, sir, and both -- both cases were discussed.

21 Q. How does it help when it's in your file unless you draw it
22 to their attention?

23 A. Well, they -- it wasn't only in my files, things were spread
24 around the desk at that time and -- and things were taken
25 from that file at that time, I told you. And I didn't --

1 I didn't hide anything on anybody. Everything was exposed
2 there.

3 Q. You knew the 26th meeting that you were supporting a version
4 of Marshall's guilt based upon a witness whom you at least
5 knew had at times supported Marshall's innocence, correct.

6 A. That was --

7 Q. Patricia Harriss?

8 A. I wouldn't go along the same vein that you're in at all, sir,
9 I thought when I was talking to Inspector Scott that the
10 Harriss girl; that her evidence was very important and as a
11 result of that I think she was interviewed.

12 Q. Wasn't there a second aspect to this, Mr. MacIntyre? Didn't
13 you know on the 22th meeting -- 26th meeting that if Sergeant
14 Wheaton did his job properly and investigated all these
15 people, that you yourself would come under criminal
16 investigation and charges might be laid against you unless
17 someone was persuaded there was really nothing to it? Didn't
18 you know that?

19 A. No, I -- I didn't know that. I thought I carried out a
20 very good investigation in '71.

21 Q. Were you, in fact, at times during this period and after this
22 period afraid that there might be charges laid against you,
23 criminal charges?

24 A. Was I afraid?

25 Q. Did you fear or were you concerned?

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1 A. No, I didn't think there would be.

2 Q. Criminal charges might be laid against you?

3 A. I didn't think there would be.

4 Q. You're not concerned about that at all?

5 A. No, I wasn't concerned about that, no. I was concerned to
6 some extent when -- when -- when that hit the -- hit the
7 street that MacIntyre and a couple of other officers could
8 be or were going to be charged with a criminal offense in
9 this case. That's the time I got concerned, sir.

10 Q. Who was going to be charged?

11 A. MacIntyre and one or two other officers.

12 Q. Okay, take a look with me in volume 17 of Frank Edward's notes.
13 Page 12. It's a note of Friday, May 5, 1982. That's a week
14 later only:

15 After Wheaton leaves, return call
16 to Insp. Urquhart re Patterson.
17 When we finish, Chief comes on (the)
18 line.

18 Is that you?

19 A. That's me, yes.

20 Q. Asks me for news on Marshall case -
21 says they're not going to put me
22 in jail are they. Have I been talking
23 with them? Yes, I've been talking but
I'm not at liberty to say what about.
Says OK I won't ask any more questions
about it.

24 A. That was just in jest. I thought that I knew Frank Edwards
25 enough at that time to it was more said in a joking fashion,
sir.

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1 Q. Have you ever before in your life or since, joked about
2 criminal charges being laid against you in connection
3 with your investigation quality?

4 A. Not that I recall. What'd you say, joked or what?

5 Q. Joked --

6 A. Or?

7 Q. -- about criminal charges being laid against you in
8 connection with the quality of your investigation?

9 A. No, I've -- it would be -- it wouldn't be any joking matter,
10 I don't think but I did make a remark of that -- I remember
11 making a remark like that to Mr. Edwards that time just in
12 jest.

13 Q. It's not a very funny jest is it?

14 A. Well, one knew the other and I think I didn't see much wrong
15 with it. I mean I didn't think that he was going to make
16 an issue of it and write it in a book and this -- there was
17 other things said to him, I don't see it in the book here.

18 Q. I suggest to you and I want to give you a chance to answer
19 it.

20 A. Yes, sir.

21 Q. That one week earlier it was also firmly in your mind that
22 if Wheaton went ahead and did his job; criminal charges
23 may well be in the offing. True?

24 A. Where would I get that at.

25 Q. From the fact that Chant and Pratico and given statements

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1 saying that you'd bullied them and I'm using my own
2 language; into perjuring themselves at the first trial.

3 That's where you'd get that idea from?

4 A. I see.

5 Q. Do you understand?

6 A. I understand what you're saying, yes, yeh.

7 Q. And it never dawned on you at that time that if Wheaton went
8 ahead with his investigation, you might be charged criminally?

9 A. Well, I don't think -- I don't think Chant every said --
10 told the same story twice. He lied to me in '71, first and
11 then he gave me a statement which I thought was the truth
12 and which -- and which Junior Marshall was -- was -- he
13 was partly responsible and in his evidence that he gave,
14 that Junior Marshall went to gaol. And then he appeared
15 before the Appeal Court and changed his story there and I've
16 seen him on the stand here, he's still enlarging on his
17 story. I think -- I think the Court would look for fairly
18 reputable evidence in a charge like that that you're talking
19 about. And I -- I'm happy to see that everything is coming out
20 at this point.

21 Q. You haven't answered my question, sir. My question is: given
22 the statements of Chant and Pratico that you read on the 26th,
23 was it not fully present in your mind that if Wheaton went
24 ahead with his investigation properly, you might be charged
25 criminally, true or false? Were you aware, were you not aware?

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1 A. I was aware -- through this investigation I've heard several
2 charges that might be laid and that would again up to the
3 Crown, sir. I'd have nothing to do with that until it was
4 brought to my attention be -- after the charge was laid.
5 As I said here yesterday, I heard early in this investigation
6 that there would be -- there was going to be a charge laid.

7 BY MR. CHAIRMAN:

8 Q. Mr. MacIntrye?

9 A. Yes, My Lord.

10 Q. The question was put to you, I suggest, requires a simple
11 answer yes or no and the question was: were you concerned
12 at that time that criminal charges may have been laid -- might
13 be laid against you on the 26th?

14 A. I -- what date are you giving me there, February?

15 BY MR. RUBY:

16 Q. February 26th, meeting with Inspector Scott, when you read
17 the Prant and Chatico affidavit.

18 A. Oh, that -- that meeting with Scott about Pratico and --
19 no, I was -- there was no -- there was no indication at that
20 time.

21 Q. That's not the question either?

22 A. From Scott that there would be criminal charges.

23 Q. I understand there was no indication from Scott that there
24 would be?

25 A. No.

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1 Q. Did it cross your mind that you might be charged if the
2 investigation continued?

3 A. No, I don't think that crossed my mind at that time that
4 I thought --

5 Q. Thank you.

6 A. -- there'd be further investigation on this.

7 Q. I'm going to move to another area. Did you have any
8 discussions with Oscar Seale concerning whether or not
9 he should make a complaint to the authorities about Frank
10 Edwards conduct in connection with the reference in the
11 Court of Appeal? Any conversation at all about that subject
12 matter with Oscar Seale?

13 A. That he should --

14 Q. Concerning whether or not he should make a complaint about
15 Frank Edward's conduct in connection with a reference at
16 the Court of Appeal? Did you talk to him about whether
17 or not he should make any complaint about that?

18 A. I -- I don't recollect having anything to say about that
19 to Oscar Seale.

20 Q. Back to the polygraph report in 1971. I'm suggesting to you,
21 you tell me if it's true, that after you were advised that
22 Ebsary had passed and MacNeil had not with regard to the
23 -- the polygraph's report, that you and Inspector Urquhart
24 and Donald MacNeil got a hold -- got together with each
25 other and went back to MacNeil's office and you drank a forty

1 ounce bottle of liquor in celebration, did that happen?

2 A. That never happened, sir. No, sir.

3 Q. Do you remember a time in 1977 or '78 when Mrs. Marshall,
4 Senior, came to your office with a letter from Junior
5 Marshall indicating his innocence and she begged you for
6 help, do you remember that?

7 A. I remember one -- on one occasion Mrs. Marshall came to my
8 office with her husband, Donald --

9 Q. That's right.

10 A. -- Donald, yes. And they were discussing the case with me
11 and -- and I was going over the case; some of the points with
12 Donald because I knew Donald Marshall, the father well.
13 And she got up and she went out and she slammed the door and
14 Donald still remained in the office with me and further
15 discussed the thing and he left very good friends with me.
16 That's what I -- that's what I recall. And that was only
17 once.

18 Q. Let me see if I can refresh your memory on some of the
19 details of that?

20 A. Yes.

21 Q. The letter from Junior indicated his innocence and in the
22 course of reading it and discussing the case, you banged on
23 your desk, do you remember that?

24 A. No, I don't remember that, sir, no.

25 Q. Do you remember reading a letter from Junior?

2:20 p.m.

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1 A. I wasn't reading the letter from Junior, no, sir.

2 Q. Do you remember her having a letter from Junior?

3 A. No, sir; I don't remember that, sir.

4 Q. Okay, and you threw the letter down; you don't remember
5 that at all?

6 A. No, sir, I didn't throw any letter down.

7 Q. And then she got so upset she ran out of the office and did
8 indeed slam the door?

9 A. No, no, she left and slammed the -- slammed the door.

10 Q. She was upset?

11 A. I would say she was, yes.

12 Q. And you turned to Mr. Marshall and said, "What's wrong with
13 her?" And advised him you were not going to do anything
14 further about it, is that correct?

15 A. No, I wouldn't say that's correct, either. I might have
16 made the -- I would likely ask him what was wrong but he
17 said she--something to the -- the effect that she get's
18 upset or she was -- she is upset or something and he
19 remained there for some time after with me. And there was
20 none of what you're talking about there.

21 Q. All right.

22 A. It was -- I thought it was a very cordial meeting. I thought
23 I was -- everything went along all right that day, sir.

24 Q. Let me talk about your method of dealing with witnesses, if
25 I can, particularly the young children we were talking about,

1 Harriss and the like. In her evidence here, Patricia
2 Harriss says that while being interrogated, "you pounded your
3 fist on the desk" (pound!) like that and it scared her. Now
4 do you ever do that pounding the fist on the desk for
5 emphasis or any other reason?

6 A. I've never pound my fist on the desk when the Harriss girl
7 was present, no.

8 Q. Do you ever do that in your own ordinary life? Is that
9 something that you do from time to time striking a desk for
10 emphasis for any other reason?

11 A. No, pounding a desk -- if you're pounding desk when -- if
12 you're pounding a desk when you're taking a statement, that's
13 -- that statement is not voluntary at that time, sir.

14 Q. It's dishonourable conduct, correct?

15 A. Well, it's not conduct that should be used and -- and I don't
16 use it. I'm very -- I'm very fussy when I'm talking a
17 statement, sir.

18 Q. Let's talk about times when you're not taking statements,
19 do you pound a desk or strike a desk sometimes to make a
20 point? Is that something that you do? People do it.
21 Do you do it?

22 A. Oh, I -- I could. I could.

23 Q. You could?

24 A. I could, yes, sure.

25 Q. Do you do it often?

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- 1 A. No, I wouldn't say so.
- 2 Q. When you do, do you do it open-hand or with a closed fist?
- 3 A. I couldn't say that either, sir. I don't think it would
- 4 be closed.
- 5 Q. When Harry Wheaton was interrogating you about the way you
- 6 intimidated Harriss, questioned Harriss --
- 7 A. Yes.
- 8 Q. -- in dealing with the suggestion that she was intimidated
- 9 by the manner of questioning?
- 10 A. Yes.
- 11 Q. Did you not during that interview, strike the desk in exactly
- 12 that (pound!) same way that Harriss said it was described
- 13 when you were talking to Wheaton?
- 14 A. No, I didn't strike the desk, no.
- 15 Q. Didn't happen?
- 16 A. No.
- 17 Q. You'll agree with me, I think, that children, prospective
- 18 witnesses who are children, can be easily upset and
- 19 intimidated by interviews with the police, yes?
- 20 A. They could be, yes.
- 21 Q. And that's regardless of how kindly or friendly the police
- 22 officer is. The mere fact of being interviewed by a police
- 23 officer can be an upsetting, and intimidating, correct?
- 24 A. It could be.
- 25 Q. Assuming it happened sometimes in your experience or do you

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1 accept that as a proposition generally?

2 A. Well, I'd take that for granted. At times the people would
3 be nervous. Not only juveniles but older people.

4 Q. Older people as well?

5 A. Yeh, sure.

6 Q. All right. You're white -- weight and height at time would
7 have been what in 1971?

8 A. Oh, about somewhere in the vicinity, I suppose, between two
9 fifty, two sixty.

10 Q. And your height?

11 A. About six feet.

12 Q. Would you agree that mere presence of a police officer, such
13 as yourself, not doing anything improper but just mere
14 presence might well intimidate a young person?

15 A. I don't think just my presence would, no. Are you saying
16 that -- that'd be up to the individual, sir.

17 Q. Yes, but unless somebody was unusually frail or fragile,
18 you're saying that that mere presence wouldn't do it, correct?

19 A. Well, I'd -- I think that you'd have to be -- do something
20 more than that to them. And on the other hand, it depends
21 what they're in there for. I mean this, you know, what the
22 problem that they might encounter or expect to be encountered.

23 Q. And a normal adult wouldn't be --

24 A. Everybody acts different.

25 Q. Would a normal adult be intimidated by the mere presence of

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- 1 a police officer during questioning?
- 2 A. I'd imagine some of them would be quite nervous, sure; I'd
- 3 buy that.
- 4 Q. Would that be an unlikely situation or a likely one?
- 5 A. There would be cases of it.
- 6 Q. But it would be normal or abnormal; I'm just trying to get
- 7 your experience in this field?
- 8 A. Oh, at times I'd run into that, sir; yeh, at times.
- 9 Q. Occasionally?
- 10 A. Occasionally, yeh.
- 11 Q. Okay. And how about you? Do you get upset or intimidated
- 12 easily?
- 13 A. Not easily, no.
- 14 Q. Not easily?
- 15 A. No. When I'm taking a statement I'm very careful because,
- 16 you know, that statement might have to go before the courts
- 17 and the statement has got to be taken in a voluntary manner.
- 18 Q. What do you think about telling witnesses, adult or children,
- 19 they ought to have somebody present? An adult with the
- 20 child?
- 21 A. I like somebody -- I like somebody present if it's -- if
- 22 it's a younger person.
- 23 Q. Even you can be upset and intimidated by someone being
- 24 present at a questioning, fair enough? Even if it's just
- 25 their mere presence, isn't that true?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Could be, yes.

2 Q. It's happened, has it not?

3 A. I'm quite content here. I don't seem to --

4 Q. I can't hear you, sir?

5 A. When do you mean? I'm quite content here, yes.

6 Q. Well, you haven't always been content. Do you recall filing
7 an affidavit in the Supreme Court of Nova Scotia, Trial
8 Division, in 1984 sworn to at Sydney, Nova Scotia, on the
9 17th of August of 198 -- 1984. Tell me, that's your
10 signature?

11 A. Yes, sir.

12 Q. Do you remember that affidavit?

13 MR. RUBY:

14 My Lords, this is not an affidavit that's in the materials. It's
15 an affidavit prepared by Mr. Pugsley and I've only one copy at
16 the moment that I can get a --

17 BY MR. RUBY:

18 Q. Let me explain to you and refresh your memory. You were
19 being examined for Discovery?

20 A. Yes.

21 Q. In a civil lawsuit, John MacIntyre vs. the Canadian
22 Broadcasting Corporation?

23 A. Yes, yes.

24 Q. And Mr. Parker Donham who was the journalist involved with
25 the C. B. C. had been examined for Discovery and you'd been

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1 present at his examination for Discovery. And now was your
2 turn to be examined for Discovery?

3 A. Yes.

4 Q. And you filed an affidavit with the Court asking that he
5 be kept out of the room while you were being examined for
6 Discovery. And tell me if you agree that this is what
7 the grounds are. The first part is the quotation from
8 his examination for Discovery

9 8. THAT in my opinion, Mr. Donham
10 has reached conclusions about
11 me that were completely wrong and
12 have seriously defamed me.

13 9. THAT his investigation of the
14 Marshall affair was superficial
15 as appears from the transcript
16 of evidence referred to above.

17 10. THAT it was apparent during the
18 course of his examination on
19 discovery that he has significant
20 animosity towards me.

21 11. THAT I do not wish him to be
22 present while I am examined on
23 discovery. I would find his
24 presence upsetting and to some
25 extent, intimidating.

12. THAT it would be difficult for
me to concentrate on the questions
that will be asked me, if he is
present in a room in which I am
being examined.

Do you remember swearing that affidavit?

A. Yeh, that was after discussion with my counsel at the time,
sir.

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1 Q. What does that mean?

2 A. What does that mean that --

3 Q. That answer?

4 A. That Parker Donham was part of that -- that trial at that
5 time that was going to take place. There was some nasty
6 things said about me. And I discussed it with my counsel
7 and that's the decision we came to.

8 Q. Mr. Donham I think is here. Would you stand up, Mr. Donham?

9 Not a particularly fearsome-looking man, you'd agree?

10 A. I'm not talking about his height or his weight.

11 Q. Thank you, Mr. Donham.

12 A. I'm talking about what he had to say, sir.

13 Q. You'd agree with me then -- particular --

14 COMMISSIONER POITRAS:

15 Has that affidavit been filed?

16 MR. RUBY:

17 No it hasn't. I can undertake that, My Lord.

18 COMMISSIONER POITRAS:

19 I think we ought to, okay.

20 MR. RUBY:

21 This is the only copy I have, so perhaps I'll get copies made
22 by the Registry during the recess. I'll leave that with you
23 to peruse. Exhibit 89.

24 BY MR. RUBY:

25 Q. So the things that get you upset or intimidated can be

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1 intangible as well as tangible; that is what you can see
2 with your eyes, fair enough?

3 A. Yes, and what you hear at times, yes.
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1 Q. So when you say that you didn't do anything wrong, I'm
2 putting it to you that dealing with those children the
3 way you did had to be wrong because they very well
4 ought never to have been talked to without adults being
5 present from beginning to end as a matter of rule.

6 Do you agree with that?

7 A. No, I don't agree with that, no.

8 Q. Why not?

9 A. No. Well, Chant had his mother with him.

10 Q. Part of the time.

11 A. I'm saying all the time, sir.

12 Q. All right. And the others?

13 A. And the Harriss girl's mother, according to her, she was
14 there and according with me --

15 Q. Part of the time, according to her.

16 A. Excuse me, sir. According to myself, I knew there was a
17 lady there and if she wasn't in the room it was because
18 she wanted to stay out.

19 Q. What about the O'Reilleys, the MacNeils, --

20 A. I was never against anybody being in the room with --

21 Q. What about the O'Reilleys, the MacNeils, all the other
22 children?

23 A. Yeh, the O'Reilleys; there was one girl, 14 and the other
24 was 16 at the time and they were at the station together and
25 I talked to both of those --

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- 1 Q. Where were their parents?
- 2 A. Where were their parents?
- 3 Q. Were they there, too?
- 4 A. I couldn't say, no, but there was -- One was 16 at the
- 5 time, sir.
- 6 Q. Are you prepared to accept that children of this age
- 7 14, 15, 16 or younger ought to have their parents present
- 8 as a matter of rule?
- 9 A. At that time it wasn't always the rule at all.
- 10 Q. Except that don't you think, in your heart, that's what
- 11 ought to happen? That's the only proper way to do it.
- 12 A. Yes, if a thing was -- I suppose if a thing was real
- 13 serious it should be done but this was just questioning
- 14 people as -- if they could assist us in any way in what
- 15 they knew.
- 16 Q. Some --
- 17 A. They weren't charged with anything or going to be charged
- 18 with anything.
- 19 Q. All right. You told my friend, Mr. MacDonald, that you
- 20 never said to a witness, words to the effect, I have
- 21 a witness who saw you at this place. You told him that.
- 22 A. Again, I don't take a statement using those things.
- 23 Q. And I suggest to you the reason why you don't is because
- 24 to do so would be a dishonest practise. It's not a fair
- 25 or honorable way of conducting an investigation. Correct?

2:33 p.m.

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- 1 A. It wouldn't -- It -- No, it would be -- It wouldn't
2 be a voluntary statement if I was using those things.
- 3 Q. It would be dishonest, neither a fair nor honorable way
4 of conducting an investigation?
- 5 A. It wouldn't be right to do it.
- 6 Q. Right for the reasons I've stated?
- 7 A. Well, it wouldn't be a voluntary statement if you were
8 saying those things.
- 9 Q. I know it wouldn't be voluntary.
- 10 A. Yes.
- 11 Q. Do you also agree that it wouldn't be fair and honorable
12 way to deal with witnesses?
- 13 A. No, not in my opinion, if you're taking a statement from
14 them, no.
- 15 Q. All right. Why is it that three separate people, Barbara
16 Floyd, Maynard Chant and Mr. Pratico all say that you
17 used that technique on them?
- 18 A. Yeh.
- 19 Q. Can you help me on that?
- 20 A. No, only --there was some people said that I didn't
21 use the technique on them.
- 22 Q. I quite agree.
- 23 A. Is that correct?
- 24 Q. Some don't say it at all. You didn't have to use it.
- 25 A. Some say that --

JOHN F. MacINTYRE, by Mr. Ruby

1 Q. But sometimes you did.

2 A. Some say that I didn't use it and some say I did, sir.

3 That's all I'm saying.

4 Q. Yes. Can you explain to me why three unconnected people
5 would say that the same devise was used? Floyd, Chant,
6 Pratico.

7 A. No, I can't.

8 Q. There was language that you used at volume 33, page 6007.
9 You told us a number of times that you didn't in any way
10 indicate to them what they might have seen and on one
11 occasion you sort of slipped and I want to draw your
12 attention to it. Do you have volume 33?

13 A. No.

14 Q. I've got a volume here. Look at line 22:

15 Well, I -- The purpose of talking to
16 him...

17 This is Pratico.

18 ...was to take a statement from him,
19 and I would relate to him, of course,
20 why he was...(here)...there and
21 that --what he might know about
22 May the 30th.

23 Isn't that really the truth that you told him what he
24 might know and didn't wait to get it from him? Didn't
25 the truth just slip out, Mr. MacIntyre?

COMMISSIONER EVANS:

Mr. Ruby, we don't have that so I wonder if you'd mind repeating

JOHN F. MacINTYRE, by Mr. Ruby

1 it. I'd like to write it -- No, we just --

2 MR. RUBY:

3 I won't read it again.

4 COMMISSIONER EVANS:

5 You won't read it again? Tell me where it is, line 11?

6 MR. RUBY:

7 I'm not going to bother.

8 MR. PUGSLEY:

9 But the witness goes on to the next page and the witness
10 should be directed to his answer at the top of page 6008.

11 MR. RUBY:

12 No, I thought I already prefaced the question by pointing
13 out that many times he's told us that he didn't and this is
14 the one time where it slips out and that's what I want to
15 ask him about.

16 BY MR. RUBY:

17 Q. Isn't what slipped out there the truth?

18 A. Well, there's a -- What I meant by that is on the next
19 page, sir:

20 I would just tell him...(what)
21 ...I was investigating -- what I
would...(like to)..

22 ...what I would likely tell him
23 that I was investigating a stabbing
over at the park on Friday night,
24 and I was...(and what)...

25 ...I was wanting to know if he...(was)
...able to tell me anything about
it.

JOHN F. MacINTYRE, by MR. Ruby

1 Q. I'm suggesting to you that what happened is that
2 you, in fact, did tell him what he might have seen
3 -- ought to have seen and that was --

4 A. I never -- I never said that to him or anybody else
5 when I was taking their statement. I wanted to know
6 what they wanted to know, not what I wanted to hear
7 and not what I thought. It's what they thought when
8 I was taking a statement from them, sir.

9 Q. And that was, I suggest, your way of getting them --

10 A. And I took --

11 Q. -- to give the evidence you wanted given.

12 A. No, I wouldn't suggest that at all, sir, and I would
13 say that you were wrong on that suggestion.

14 Q. You put forward the theory at a number of points that
15 Junior Marshall was calling up people, telling them
16 they were being -- if they were interviewed by the
17 police, to talk about a grey-haired man, presumably
18 the one he described. Is that correct?

19 A. Yes, that's right.

20 Q. What's your basis for that?

21 A. I think if you look at the Mary O'Reilley statement you'll
22 see the basis for that, sir.

23 Q. Volume 16, page 75.

24 A. On page 70, yes.

25 Q. 75?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yes.

2 Q. Did you discuss this matter with
3 Patricia Harriss?

4 Yes.

5 Did you tell her about the
6 grey haired man?

7 A. I told her there was supposed
8 to be a grey haired man there.
9 I told her if she was questioned
10 by the police, she should tell
11 about the grey haired man that
12 Jr. told me about.

13 Is that the passage?

14 A. That's right, yes.

15 Q. And that's the only foundation you can think of?

16 A. That is the passage that I was talking about, yes.

17 Q. That's the foundation for your theory?

18 A. Yes, that he had told this girl that, yes.

19 Q. Let me draw to your attention, that it nowhere says
20 that Junior told her to tell anyone anything. Isn't
21 that true?

22 A. Well, she's -- Her passage is:

23 I told her...

24 meaning the Harriss girl,

25 ...if she was questioned by the
26 police, she should tell about the
27 grey haired man that Jr. told me
28 about.

29 So, --

30 Q. Do you agree with me that at nowhere --

JOHN F. MacINTYRE, by Mr. Ruby

1 A. It -- It infers that.

2 Q. It nowhere says that Junior told her to tell anything.

3 That's your own idea, isn't it?

4 A. Yes, and that's what I would take from that statement
5 there, that Junior told her that and she told Junior
6 Marshall. That would be my -- that she told the Harriss
7 girl. That would be my impression of that sentence.

8 Q. Well, but you've gone a third step, not merely that Junior
9 told her about the green haired -- the grey haired man
10 which is clearly here, not merely that she told that to
11 Harriss, which may be fantasy but you add a third element
12 in, that Junior told her to do so and that I suggest
13 is pure makeup on your part. Do you agree?

14 A. No, I don't agree, sir.

15 Q. Where does it come from?

16 A. Because that's what I took from that statement at the time.

17 Q. Do you agree it doesn't say that?

18 A. That's what I took from it, sir.

19 Q. Do you agree it doesn't say that?

20 A. I think on page one here, you'll see that they're talking
21 about it. She said:

22 He called...

23 I have to get back further.

24 Did you know the late Sandy Seale?

25 No.

JOHN F. MacINTYRE, by Mr. Ruby

1 (Did)...you know Donald, Jr.
Marshall?

2 Yes.

3 How long?

4 1 yr.

5 Did you see him that evening?

6 No.

7 (What)...did you... --
8 When did you see him?

9 He called...(me)...Saturday
10 morning. He was looking
for Kate, my sister. He
11 talked to me & her.

12 Q. What was the conversation?

13 About what happened down at the
Park - the stabbing.

14 Q. What did he say?

15 A. He said there was a grey haired
man down there. He said 2 men.
16 One man asked him for a
cigarette. Then Sandy Seale
17 Didn't have a cigarette. (Then)...
Jr. said that, one fellow said
18 O.K. Blackie and he stabbed him.

19 and so forth. Now:

20 A. One (man)... -- One had
grey hair. He said he was 30 to
21 40 yrs. old and when it happened
he said he tried to call from a
22 woman's house and...

23 so forth,

24 ...he said he called.

25 and that's cut off.

JOHN F. MacINTYRE, by Mr. Ruby

1 Did Jr...(Marshall)
...know those fellows?

2 He said they were pretty nice
3 first.

4 Did he call anymore?

5 He called again - my sister Kate.

6 (What did he get)...How did
7 he get your phone no. It is
unlisted. (If)

8 When I was going with Pius Marshall
Jr.'s brother, I gave it to Pius.

9 Did you discuss this matter with
10 Patricia Harriss?

11 Yes.

12 Did you tell her about the
grey haired man?

13 I told her there was supposed
14 to be a grey haired man there.

15 So before that, that's what Marshall told her, sir.

16 I told her if she was questioned
17 by the police, she should tell
about the grey haired man that Jr.
18 told me about.

19 So, I mean, that's the inference I drew from that, sir,
20 that Junior had told her about the grey haired man and
21 she told the Harriss girl what Junior said to her and
22 if she was questioned, what she should say.

23 Q. Well, it's clear, is it not? Tell me if you agree with me.

24 A. Yeh.

25 Q. That's she's saying one, I learned about the grey haired man

JOHN F. MacINTYRE, by Mr. Ruby

1 from Junior. Yes.?

2 A. Yes.

3 Q. Two, I told Pat Harriss that if she was questioned by
4 the police, she should tell them about the grey haired
5 man.

6 A. Yeh.

7 Q. True?

8 A. That's right, yes.

9 Q. But nowhere does it say or suggest that Junior told her
10 to do those things. Correct?

11 A. No, it doesn't say here that he did but that's the inference
12 I took from it, sir.

13 Q. Do you agree it's without foundation?

14 A. What's that?

15 Q. Your inference was one without foundation?

16 A. Well, I don't think absolutely without foundation.

17 Q. If I characterize it as your fantasy, that would not
18 be correct?

19 A. No, I don't -- I think there's enough food in this
20 statement here to -- for me to draw conclusion from it and
21 that's what I done, sir.

22 Q. Let me talk about -- Let me show you how it gets embellished.
23 Turn with me to volume 15, page 246 which is you testifying
24 under oath in this C.B.C. law suit. Question 784 on
25 page 246 of volume 15. Have you got that portion?

A. Yes.

1 Q. Okay, I know the description-

2 A. You know, and then you have
3 Marshall calling up people...

4 No longer one person. He's: ...

5 ...calling up people that were
6 around the area of the dance...

7 That's the first place.

8 ...the park...

9 The second place.

10 ...and what have you...

11 Third general area.

12 ...that night, telling
13 them...

14 Again more than one person.

15 ...if they were interviewed by
16 the police to talk about a gray
17 haired man you see.

18 A. Yeh.

19 Q. Fantasy?

20 A. Yes. No, Mary and Kate are two people.

21 Q. Mary and Kate?

22 A. They are two sisters and he talking --

23 Q. And who's -- Where's Kate's statement that Junior told
24 her this?

25 A. Mary -- I'm saying that Mary and Kate are two sisters
and he was talking with both of them and he related this
to -- he related this -- told this story to Mary and I, again,

1 I didn't --

2 Q. Katherine O'Reilley's is at page 78 of volume 16. Do
3 you want to show me where she says this? Where does
4 she tell --

5 A. I don't think that it's in her statement of -- What
6 did you say -- What page?

7 Q. Then why did you bring Kate into this?

8 A. Because the two of them -- he had been talking to the two
9 of them and this is what he said to Mary and no doubt --

10 Q. And what made you think Kate --

11 A. -- no doubt that Kate would know about it.

12 Q. Why? What makes you think that?

13 A. Well, I think they were two sisters and they would be both
14 discussing it.

15 Q. How do you know they're both there at the time?

16 A. Well, Kate is the one he called and I think Mary talked
17 first and, I mean, that's what she said in her statement.

18 Q. The top of page 75:

19 He called again -- my sister Kate.

20 There isn't the slightest hint of what he was talking to
21 Kate about. It could have been the weather or the latest
22 T.V. program. Correct?

23 A. And it could have been other than that.

24 Q But you chose to believe the worst possible thing about
25 Junior Marshall, didn't you?

JOHN F. MacINTYRE, by Mr. Ruby

1 A. No, I didn't, sir. I took -- I took it from this statement
2 here of Mary's that this is what -- that was conveyed
3 to the Harriss girl.

4 Q. You invented that Kate got this as well.

5 A. No, I didn't invent anything. I knew, at this time,
6 that Junior Marshall had told Mary and Mary had told
7 the Harriss girl according to this and that is not
8 inventing anything, sir.

9 Q. The two statements are interesting and let's talk about them
10 for a moment.

11 A. Yeh.

12 Q. In volume 16, page 129 is that interesting hand-scrawled
13 note.

14 COMMISSIONER EVANS:

15 129?

16 MR. RUBY:

17 129.

18 BY MR. RUBY:

19 Q. Now, it's clearly not a statement because it's not on
20 statement-taking paper.

21 A. No.

22 Q. You'd agree to that?

23 A. That's right.

24 Q. If you turn to the next pages, they're all your own little
25 notes about what you're going to do. Correct? Things to be done?

2:46 p.m.

JOHN F. MacINTYRE, by Mr. Ruby

1 A. Yes. They're marked there, yes.

2 Q. Yes?

3 A. Yeh, they're notes that I made. I don't know that --

4 Q. About things to be done?

5 A. I don't know if it's all things to be done. It's notes
6 that I made, sir, for some reason at the time.

7 Q. Some of them are things to be done?

8 A. Yes. Oh, yes.

9 Q. Yes. And I suggest to you that that one, particularly
10 the middle paragraph, that whole page 129 is a thing
11 to be done. You have sat down and jotted down on your
12 own little note paper what you intend to make that poor
13 girl say, only you never got around to doing it in her
14 case but you did with Mary O'Reilley. You --

15 A. I don't agree with you, sir. This here must have came
16 to me from somebody else and that's why Mary O'Reilley and
17 Katherine O'Reilley were called in to get a statement from.
18 That's why the note was made, sir. I didn't -- I'd have
19 to get that from somebody. I didn't know those people.

20 Q. Is it not the case you knew at this point in the investigation
21 that though Pat Harriss had signed a statement saying there
22 was no two men there, contrary to her own initial statement,
23 that she was pretty fragile in terms of whether she would
24 stand up and say that in court and you knew that because
25 you told my friend you went back to talk to her and she was

JOHN F. MacINTYRE, by Mr. Ruby

1 once again adamant about those two men. Isn't that true?

2 You knew all that.

3 A. Yeh.

4 Q. Yes?

5 A. Yes, sir.

6 Q. Well, if she jumped ship and told the truth, you wanted
7 to have some documents with which to prove that she
8 would then be lying. Document number one, the O'Reilley
9 girl's statement. "I told Pat Harriss to tell the
10 police about the grey haired man." If she did that, you
11 can contradict her with that statement. True?

12 A. No. I didn't have that statement that time. I had this
13 handwriting at that time. The Mary O'Reilley statement
14 was taken several hours after the Harriss girl's was taken
15 -- taken on the same date and this is only notes that
16 you're looking at here at 129, sir, and if you look at the
17 Harriss girl -- at Mary O'Reilley's statement it's dated
18 and it's dated after the statement was taken from
19 Harriss.

20 Q. This though is referrable -- 129 seems referrable to
21 Harriss.

22 The O'Reilley twins told me to tell
23 the story...

24 You hadn't yet got around to getting a statement in
25 writing signed by Harriss --

JOHN F. MacINTYRE, by Mr. Ruby

1 A. No.

2 Q. -- to that effect.

3 A. So that --

4 Q. And I suggest that you'd never went farther than the draft
5 we see at 129. True?

6 A. I got a -- I got a statement from the O'Reilley girls --

7 Q. That's right.

8 A. -- after the Harriss girl gave her statement, sir.

9 And if you look at the date, it'll prove that.

10 Q. If she jumped ship, Harriss, and started talking again
11 about the two grey -- the two men, one of them with grey
12 hair, would it not be useful to have the O'Reilley girl's
13 statement and a statement from herself, if you could get
14 it, to contradict her and say that well, I was told to
15 say this?

16 A. She did talk about a grey haired man the night I took
17 the statement from her but I think what I was after on that
18 particular night was the chap that was with her by the
19 name of Gushue said there was only one other with Marshall
20 and that statement was taken at 11:40 p.m. that night.

21 Q. Can you offer me --

22 A. And she said, in an earlier statement, that there was two
23 people with Marshall, one on each side of him, when her
24 and Gushue came along. Now, they were both together on that
25 night. One says there was two people there and one says there

1 was three people there.

2 Q. Can you give me any other explanation from the one I've
3 suggested to you for the existence of that note at page
4 129 on the paper it's written on together with all the
5 other notes of things to do and notations in the course
6 of the investigation? What's your explanation, if not
7 that?

8 Q. The explanation of this is that I decided I was going to
9 get a statement from those O'Reilley girls on that day which
10 I got.

11 Q. All right.

12 A. And as you see talking about the grey haired man is
13 only in one statement, I believe, of the O'Reilleys, Mary;
14 and Kathleen's, it's not on that statement at all so that --

15 Q. If that's true, sir --

16 A. Yes.

17 Q. -- why didn't you ask the question of Kate? You talk
18 about the O'Reilley girls but Kate never is asked this
19 question.

20 A. No.

21 Q. Why?

22 A. I didn't ask it, I guess, at that time.

23 Q. I ask you again, what explanation can you give me for
24 section -- page 129 other than the one I've suggested?

25 A. I just didn't ask the question, I guess. It was Mary O'Reilley --

JOHN F. MacINTYRE, by Mr. Ruby

1 It was Mary O'Reilley that I was -- that told me that
2 Marshall was talking with her.

3 Q. Let me see if I understand the sum of effect --

4 A. What's that, sir?

5 Q. Sorry, I don't want to cut you off. You go ahead.

6 A. No. No, it's all right. Go ahead.

7 Q. Let me see if I understand the sum and effect of your
8 evidence. One, all the assumptions you made were reasonable
9 as far as you're concerned. Yes?

10 A. At the time, yes.

11 Q. And the investigation was proper and competent as far
12 as you're concerned?

13 A. I done what I could on the investigation. I thought
14 that I -- I done it proper. I brought it to the Crown,
15 the Crown seen fit to lay a charge and then to -- and
16 took it before the Court, sir.

17 Q. The treatment of witnesses was fair and honorable?

18 A. Yes.

19 Q. And if anything went wrong in this case, it's sure not
20 your fault?

21 A. That's correct.

22 MR. RUBY:

23 Thank you, sir.

24 MR. MacDONALD:

25 Mr. -- My Lord, with your permission, Mr. Nicholas, has asked

JOHN F. MacINTYRE, by Mr. Nicholas

1 if he could follow Mr. Ruby and all counsel have agree to that.

2 MR. CHAIRMAN:

3 Fine. Mr. Nicholas?

4 MR. NICHOLAS:

5 Yes. Thank you very much, My Lords.

6 BY MR. NICHOLAS:

7 Q. Now, Mr. MacIntyre, we've already been introduced. My
8 name is Graydon Nicholas representing the interests of
9 the Union of Nova Scotia Indians.

10 A. Yes, sir.

11 Q. And I want to explore certain areas, of course, with you.
12 The first one being in your previous testimony this week
13 you've indicated that you received some training in Halifax
14 in -- around 1950?

15 A. I did, yes.

16 Q. Yes.

17 A. In the early 50's, sir.

18 Q. In the early 50's, yes.

19 A. Somewhere between '50 and '55. '54 or around there, yeh.

20 Q. Now, in that training that you undertook in Halifax, was
21 any of that training given to you about how you would handle
22 Indians or other manority groups?

23 A. Not that I recall, sir, no.

24 Q. So, you weren't told how you would handle Indian juveniles?

25 A. No.

1 Q. Or if interpreters would be required?

2 A. No, I don't remember that being on the agenda at all.

3 Q. Or if interpreters would be required?

4 A. No.

5 Q. During your earlier years as a peace officer, did you
6 have that many crimes you had to investigate on the
7 Membertou Indian Reserve?

8 A. There was the odd one. Not -- there wasn't too many complaints.

9 Q. No. What would you normally do when you did go to the
10 Reserve to investigate, Mr. MacIntyre?

11 A. That time you'd pick up whoever you wanted to talk to and
12 --like you would do anywhere else, sir. Discuss the
13 matter with them and if -- and investigate and if there
14 were charges to be laid, they were laid, sir, and they
15 were brought before the Court, sir.

16 Q. Now, did you assume that, in fact, you had jurisdiction on
17 that Reserve to conduct those investigations, Mr. MacIntyre?

18 A. Well, the City Police were policing the Reserve. Now --

19 Q. This -- I'm talking about your early years as a peace
20 officer.

21 A. Yeh, I don't know -- and I'm talking -- I thought this
22 -- I don't know what year the contract was signed with the
23 City but it was quite a few years ago and I had no knowledge
24 of the time but I remember for garbage and police protection,
25 fire protection and what have you and I knew nothing except

1 the contract was signed and we did make patrols on the
2 Reserve area; we did investigate out there.

3 Q. But isn't the agreement you're talking about around 1974?

4 A. I'm not sure of the year, sir, but --

5 Q. How about prior to this particular incident? This
6 is what I'm trying to get at. This --

7 A. I think it'd be earlier than '74, sir.

8 Q. But prior to 1971, then, did you investigate any major
9 crimes on the Membertou Reserve?

10 A. I wouldn't be able to tell you the years but I've been
11 up there on complaints and was in on the Reserve and checked
12 with Indian people that were making complaints. I've been
13 up there. It's long before 1974. I remember it was either
14 rape or indecent assault charge I was on there at one time
15 and the charge was reduced to indecent assault and it was
16 including -- it was a White -- an Indian girl that was
17 involved with a White chap and I charged him and he was
18 convicted of the offense, and other offenses. I can't just
19 tell you --

20 Q. I'm just wondering on those particular occasions in your
21 earlier career, the fact that that may be a separate
22 jurisdiction, it was of no concern to you as a peace officer?

23 A. No. No. There was -- within the City of Sydney, sir.

24 Q. I see.

25 A. Yeh.

1 Q. You've heard some of the testimony from some of these
2 young people, I believe, about the conduct between Indians
3 and the young girls at the park concerning drinking? Have you not?

4 A. Yes. Yes, I have.

5 Q. Yes. And was that a major concern of the Sydney Police
6 Force at the time that these young Indian men would come
7 and frequent the park and influence these girls into --

8 A. Well, that would be more or less -- That would be more along
9 the patrolmen area, checking the parks and that, than it
10 would be -- I never thought it was a problem, to be honest
11 with you. They'd be there like everybody else but I didn't -

12 Q. That --

13 A. -- I didn't encounter --

14 Q. I'm sorry.

15 A. -- problems that I can relate to you.

16 Q. But ordinarily detectives of your particular position would
17 not be concerned with the investigations of these offenses,
18 would they?

19 A. Oh, if they were serious offenses, yes. If they were
20 serious offenses, yes, or if they were offenses that they
21 came in contact with.

22 Q. And in the -- in your experience then how often would you
23 have laid charges against Indians for supplying liquor to
24 minors under the Liquor Control Act of this province?

25 A. Not too often. I've -- I'd have to, you know, it would skip

1 my memory by now but there was -- there was one or two occasions
2 I believe.

3 Q. It would be rare then?

4 A. It would be rare. Oh, yes, sure.

5 Q. And would normally this kind of investigation be handled by
6 other patrolmen?

7 A. It could depend just how it came up. You know, what I mean
8 by that is that how they came across it. Did somebody witness
9 somebody doing this or was it the complaint of somebody else
10 that they had to go and investigate. It just depends, as
11 I said, on the --

12 Q. Yeh, were you made aware, Mr. MacIntyre, that some of these
13 young women had been stopped by the police in the city and
14 told not to frequent with Indian boys?

15 A. No, I heard that evidence here the other day. I don't recall
16 that incident.

17 Q. So you had no prior knowledge of this?

18 A. that was that incident. I don't recall that, no.

19 Q. I see. Now, upon your -- prior to your promotion as the Chief
20 of the Sydney Police, had you undertaken any particular training
21 concerning the unique culture or the unique language or the
22 unique circumstances of the Indians of Membertou?

23 A. No, sir.

24 Q. No one made no such offers to you?

25 A. No.

Q. And you took no initiative also to get involved?

3:00 p.m.

JOHN F. MacINTYRE, by Mr. Nicholas:

1 A. No, I didn't. No.

2 Q. Upon your promotion then as Chief of the Police of the
3 Sydney -- City of Sydney, was it a concern to you that
4 relations were deteriorating between the Indians of Membertou
5 and citizens of Sydney or its police force?

6 A. No, I think that there were -- there was one chap out there,
7 I recall. I believe his name was Paul. He was appointed
8 special council -- constable by the Band Council and of
9 course, he wouldn't know anything about police work in
10 general and I think I took it upon myself to get in touch
11 with the Halifax Police. They had a school going there
12 for two weeks and I think I was (I hope I was.) instrumental
13 of getting him in that school for two weeks to learn the
14 -- to learn the principles of it. I also had one or two
15 meetings with him discussing myself the serious crimes
16 that he shouldn't get into without getting in touch with
17 us and evidence and what have you and what have you.
18 Now I think his name was Paul and he did attend -- he
19 did attend the Halifax Police School.

20 Q. Did Mr. Paul at any time indicate to you, Mr. MacIntyre,
21 that he also wanted to undertake training at Holland
22 College?

23 A. I'm not sure of that. I'm not sure of that. He could
24 have. He could have. He could have, sir.

25 Q. Now when again you were given the responsibility of the
Sydney Police, are there any specific or concrete measures

JOHN F. MacINTYRE, by Mr. Nicholas:

1 that you implemented to improve relations between the
2 residents of the Membertou Reserve and the Police in
3 inforcing laws?

4 A. I think we -- I think there was a request at some -- at
5 spot -- time for increased police surveillance. I think
6 we had cars -- men in cars visiting the area more and
7 it wasn't a -- it wasn't a great problem area. It was
8 a -- there'd be very few getting out of line. Most of
9 the people up there were the same as everywhere else,
10 very respectable and trying to get along in life and
11 facilities improved as the years went by, housing and
12 other things. We didn't have -- we didn't have that many
13 calls up to the reservations but it was just a precautionary
14 nature that I'd like to see the patrols increased when
15 the police were in that area of the City.

16 Q. Perhaps, Mr. MacIntyre, just to give myself some background
17 you can explain to me how the Sydney Police Commission
18 functions?

19 A. How they function?

20 Q. How they function, yes.

21 A. Well, there's a six member -- there's six councillors
22 on the police committee and the Mayor is the chairman
23 of the Police Commission. And the City Manager sits in
24 and the City -- the City Solicitor sits in on it, they
25 hold meetings. I think they have to have a meeting at

JOHN F. MacINTYRE, by Mr. Nicholas:

1 least every three months but sometimes -- usually it's
2 monthly. And they handle different functions
3 that are brought before them and complaints and what have
4 you at that time.

5 Q. So if someone had a complaint about the nature of the
6 police services or the quality of the police services, they
7 should probably be lodged with the Sydney Police Commission.

8 A. Either the Chief of Police or the Police Commission.

9 Q. And would the Police Chief be expected to table this with
10 the Police Commission?

11 A. Not if it could be handled -- Not if it could be handled
12 through his office. If not -- If not, then it would be
13 taken before the Police Commission.

14 Q. In the Police Commission itself, are there in its membership
15 any membership at large to represent any particular --

16 A. There didn't -- There didn't used to be but now I believe
17 there's one representative of the Government on it, a
18 representative and I think there's two other lay-people
19 on it.

20 Q. To your knowledge at this time, are there any Indians
21 represented on that Police Commission?

22 A. Is there any what, sir?

23 Q. Are there any Indians from Membertou represented on that
24 Police Commission today?

25 A. No, and there never was to my knowledge in the forty-two
 years I was there.

JOHN F. MacINTYRE, by Mr. Nicholas:

1 Q. Now perhaps if I can just refer you to the exhibit 66
2 which was shown to you yesterday.

3 A. Yeh.

4 Q. Now I would like to ask you some questions with regard
5 to that. Have you got the --

6 A. Do you mean this here?

7 Q. You've got it. Oh, good. Now yesterday, you indicated
8 you were quite offended with the preliminary language
9 of this particular proposal, were you not?

10 A. I read it, yeh, and there were some -- not what they were
11 after or the grant they were after, sir, but one of the
12 -- one or two of the things that were on it.

13 Q. Could I have you perhaps point those out to me, which
14 of those particular sections you found very offensive,
15 Chief?

16 A. I'll have to have a few minutes to read this, sir.

17 Q. Yes, okay.

18 A. Yes, sir.

19 Q. Yes, could I have you indicate, please, on which of those
20 pages you found the wording or the premise particularly
21 offensive or not acceptable to you?

22 A. I think the last paragraph there on the page, on the introduction
23 there

24 FOR A GREAT NUMBER OF INDIANS, THEY ARE
25 CONSTANTLY PICKED ON BY THE POLICE OFFICERS.
THEY DON'T HAVE TO BE DRUNK....THEY COULD
BE STANDING ON (THE) STREET CORNER, DRIVING

JOHN F. MacINTYRE, by Mr. Nicholas:

1 AROUND THE CITY OR HIGHWAYS AND THEY LOOK
2 INDIAN. POLICE OFFICERS OFTEN FEEL THREATENED
3 BY MINORITY GROUPS AND THEREFORE SINCE THEY
4 HAVE AN UPPER HAND, THEY ENFORCE THEIR
5 AUTHORITY.

6 Well, I never run into a situation like that in my police
7 department, sir, while I was --

8 Q. At least you did -- You didn't have knowledge of it?

9 A. I didn't have knowledge of that, no. And I -- I didn't
10 have -- Yeh, I didn't have any knowledge of that happening
11 in our department, in the Sydney department --

12 Q. Now having heard what -- I believe it was the O'Reilly
13 girls who testified here to the fact that on one evening
14 peace officers in fact stopped them and in fact, went
15 to their homes and told their parents that they were
16 hanging around with Indians. That -- but you said that's
17 not in your knowledge?

18 A. No, no. Not -- it wasn't in my knowledge, no, when I
19 was talking -

20 Q. So at the time you found that particular clause objectionable
21 did you contact any of your officers to see if such instances
22 were in fact being recorded somewhere or had taken place?

23 A. I couldn't say, sir, but I had no knowledge of it and
24 I think if it did take place there would be complaints
25 like there would be from anybody else about the police
26 conduct.

27 Q. Were you ever made aware of a list of complaints that

JOHN F. MacINTYRE, by Mr. Nicholas:

1 | were given to the police by Chief Gould?

2 | A. No, I think I seen they were before the hearing the other
3 | day. I don't know if I seen them or not to be honest
4 | with you.

5 | Q. Would normally complaints of that nature be kept in file
6 | in the Sydney Police Force, Mr. MacIntyre?

7 | A. It depends again on the complaint. Some would be destroyed
8 | at times after they were through if there was nothing
9 | to them or --

10 | Q. Could you indicate then --

11 | A. There was no complaints of that nature in my files when
12 | I took over, I'll tell you that.

13 | Q. Yes, okay. Could you --

14 | A. If they were there, they were removed. I didn't know
15 | anything about it.

16 | Q. Could you also then indicate on the remaining pages where
17 | another objectionable part appears?

18 | A. I think that's the one that bothered me. If I recall
19 | right, I think there was a couple of men in to see me
20 | about that and I did tell them that I didn't go along
21 | with that and if that was changed or cleaned up, that
22 | -- I didn't see anything wrong with the rest of it, I
23 | don't believe.

24 | Q. Might I --

25 | A. That's my recollection of this.

Q. And can I ask you why you didn't bring this up to the

3:12 p.m.

JOHN F. MacINTYRE, by Mr. Nicholas:

1 Police Commission?

2 A. I don't think I would have to bring it up with the Police
3 Commission, sir. I was the party in charge at the time and
4 in my opinion, this here didn't exist as far as we were
5 concerned and it was my name that was to go on this. It was
6 a -- I think I -- I think I had a discussion with somebody
7 on this. Have you been advised that they were talking to
8 me on this?

9 Q. No, no, I haven't. I'm just -- I'm wondering: Are you aware
10 then of a follow-up letter to yourself asking to give specific
11 reasons why you objected to this proposal?

12 A. I believe -- I believe it might have been -- It might have
13 been a phone call or some -- I have it in the back of my mind
14 that I did have a conversation with somebody on it.

15 MR. NICHOLAS:

16 Perhaps if I could request, I think it's exhibit 63, My Lords?

17 COMMISSIONER EVANS:

18 Is that exhibit number 53?

19 MR. NICHOLAS:

20 Sixty-three. Thank you very much. It's on page 26, My Lords.

21 MR. CHAIRMAN:

22 Thank you.

23 BY MR. NICHOLAS:

24 Q. Yes.

25 A. Yes, sir.

JOHN F. MacINTYRE, by Mr. Nicholas:

1 Q. Yes, now do you --

2 A. That letter of August the 2nd is under my handwriting, yes.

3 Q. Yes, but on page 26, do you remember receiving that letter,
4 a copy of that letter?

5 A. No, but I think -- I likely did, sir.

6 Q. And as a result of that letter, what correspondence or what
7 meetings, if any, did you have with Mr. Gould after that?

8 A. I think Mr. -- I think that -- I'm not saying it was Mr. Gould.
9 I think I had a visit from one or two of the members and we did
10 discuss what my objection was. That's my recollection of
11 it, sir.

12 Q. But the letter of -- on page 26 was written by Mr. Gould,
13 was it not?

14 A. That's correct, yeh.

15 Q. And you didn't see fit to correspond with Mr. Gould on that
16 letter?

17 A. I think that -- that might have been a phone call or something
18 but he did come to the office. That's my recollection, sir.
19 There was discussion on it and what I referred to that, I
20 recall that. It was only the one letter. I see here also on August
21 3rd where a letter went to the Police Commission.

22 Q. Exactly. That's -- Well, that's my next question.

23 A. Yeh.

24 Q. Now the letter on page 27 indicates it went to the Police
25 Commission.

JOHN F. MacINTYRE, by Mr. Nicholas:

1 A. Yes.

2 Q. Was this ever -- was this matter ever brought up at the Police
3 Commission --

4 A. I believe -- I believe again it's -- I believe this was discussed
5 with Mr. Whalley, the City Solicitor.

6 Q. The Police Commission and Mr. Whalley or were you --

7 A. I got -- I got -- What's that?

8 Q. Well, you discussed it with Mr. Whalley or the Police Commission?

9 A. I believe I did discuss this with -- about signing this and
10 I think somebody was down also from the Band to see me on
11 it. That's the best I could do for you at this point, sir.

12 Q. Now did you indicate to the Police -- So this matter was never
13 tabled in the Police Commission for discussion on their agenda,
14 I assume?

15 A. I couldn't say, sir.

16 Q. You never brought it up yourself?

17 A. No, I wasn't -- I wasn't -- I don't remember anything about
18 the Police Commission end of it because --

19 Q. Would you --

20 A. -- it went through them and I don't know.

21 Q. Would you have had an opportunity to bring such a matter up
22 in front of the Police Commission, Mr. MacIntyre?

23 A. Well, if I -- if I interviewed Mike Whalley on this or he
24 interviewed me on this, I think I would interview him on it
25 before I sent it back or made a call as he's the City Solicitor.
But as far -- and he's also the Solicitor of the Police Commission

JOHN F. MacINTYRE, by Mr. Nicholas:

1 I do not remember anything about the Police Commission, sir.

2 BY MR. CHAIRMAN:

3 Q. Mr. MacIntyre, were Minutes kept of the meetings of the Police
4 Commission?

5 A. Yes, My Lord. Yes. Now -- yes, in '78, yes.

6 BY MR. NICHOLAS:

7 Q. Now if I can refer you back again to exhibit number 66, Mr.
8 MacIntyre, other than that page, that last paragraph of the
9 introduction, how about the goals of this particular program?
10 Were you in agreement with the goals of this particular survey
11 that was to be done?

12 A. Yes, I would be in favour of that, yes.

13 Q. And did you communicate to anyone that those particular goals
14 in fact were acceptable to you?

15 A. I think I just drew my conclusion on the front here what I
16 read and conveyed that message, sir. I said nothing about
17 this here. This was -- I don't know what I said about it
18 but I wasn't -- I was in favour of it.

19 Q. Would your decision at that time, Mr. MacIntyre, have been
20 appealable to the Police Commission?

21 A. If they go to the Police Commission, yes. There -- it would
22 be, yes, and they did write.

23 Q. They did write but to your recollection, no such matter was
24 ever discussed.

25 A. No, I don't recall anything about this with the Police Commission,

JOHN F. MacINTYRE, by Mr. Nicholas:

1 no,

2 Q. Okay. Now you also indicated that when you restructured --
3 you recommended restructuring of the police -- of the police
4 force and instituted three inspectors. Now which of those
5 inspectors would have been responsible for community relations?

6 A. It would be Ambrose MacDonald.

7 Q. Now would Mr. McDonald have been involved in the evaluation
8 of this particular proposal?

9 A. I -- I don't think. I became Chief in December, 1976, and
10 as I said this morning, it took me a couple of years between
11 union -- between the union and the Police Commission, what have
12 you, to get the permission to do what I wanted to do so this
13 here was in '78 and I'm not sure just when the program started
14 rolling but those men, then, were sent away on courses at
15 that time and then the positions were made so I don't know
16 if he was in position at that time or not. It's just hard
17 to say. That's the best I can do on it for you at this point.

18 Q. Now in the development of the training budget of the Sydney
19 Police Force, were you primarily the person who would finalize
20 the training budget?

21 A. I would be the person that would ask to get the funds for
22 the training budget, yes.

23 Q. In other words, you wouldn't proceed unless you had given
24 it proper authority and authorization?

25 A. That the Police Commission had given me the money to spend

JOHN F. MacINTYRE, by Mr. Nicholas:

1 on this training, I wouldn't be able to proceed, no.

2 Q. Now in any of those training budgets, had you identified
3 expenditures to try to improve relations with the Indian
4 Community?

5 A. No, this was training the police department that we already
6 had and if any of the Indian men showed promise and that wanted
7 to do police work, they would first have to be sent over to
8 the Holland College in Charlottetown. All our recruits (I
9 think there's 35 to 38 of them now.) have passed that course
10 and that's a nine or ten-month course. To get on the police
11 department, you have to be a graduate of that college or the
12 equivalent thereof such as other police who had taken equivalent
13 training and what have you. You just couldn't walk in off
14 the street any more and join the police department.

15 BY MR. CHAIRMAN:

16 Q. They do --

17 BY MR. NICHOLAS:

18 Q. Is it not part of the -- I'm sorry, yes, My Lord.

19 MR. CHAIRMAN:

20 I just want to interject before I forget it.

21 BY MR. CHAIRMAN:

22 Q. The Holland College in Charlottetown trains police -- candidates
23 for the police department in Sydney?

24 A. Cape Breton, that's correct.

25 Q. And other municipal forces throughout the Maritimes.

3:23 p.m.

- 1 A. The Maritimes and Newfoundland. Yes, and Newfoundland is
2 included at this time. I think the Newfoundland constabulary
3 has had --
- 4 Q. Oh, yeh, but don't equate the Royal Newfoundland Constabulary
5 with a municipal policeman.
- 6 A. No, but full -- yeh, policemen, yes.
- 7 Q. Yes. The -- you say that now it's a condition precedent that
8 any candidate seeking employment with the City of Sydney police
9 force must successfully pass the --
- 10 A. Graduate.
- 11 Q. -- and graduate.
- 12 A. That's correct, My Lord.
- 13 Q. Is there any program at the College of Cape Breton or the
14 University of Cape Breton?
- 15 A. They did put on some courses out there at a time but not for
16 graduation and that, no.
- 17 Q. These were ongoing or upgrading courses?
- 18 A. Just seminars now and again that people put on but --
- 19 Q. But why I ask --
- 20 A. -- not to any extent, My Lord.
- 21 Q. Why I ask you --
- 22 A. They're not continuous. They're not continuous courses.
- 23 Q. You have some -- there are programs, I believe, available
24 in Atlantic Canada at Universities for police -- ongoing
25 courses in community relations and etcetera. They're not

1 . available in Nova Scotia, I take it?

2 A. No, we haven't been using them. We use the Canadian Police
3 College in Ottawa and the Holland Police College and Debert.

4 BY MR. NICHOLAS:

5 Q. Now with respect again to the responsibilities of a peace
6 officer in the City of -- say under your control in the City
7 of Sydney, would not one of their prime functions be to be
8 able to relate to people in the community, not just enforcement?

9 A. Oh, yes, sure they'd -- but there was no -- there was no pressures
10 on that that I know of at the time.

11 Q. Did you try to find out if there were courses available of that
12 nature?

13 A. No, I didn't, sir. No.

14 Q. Now in dealing with Indian juveniles, Mr. MacIntyre, did you
15 have that many dealings with them other than in this particular
16 situation?

17 A. I didn't get the last part of your sentence, now.

18 Q. Other than this particular incident concerning Junior Marshall,
19 did you have any other dealings with Indian juveniles?

20 A. Over the years, you mean?

21 A. Yes. I could have but they were very minor, sir.

22 Q. How about after 1971?

23 A. What's that?

24 A. How about after 1971?

25 A. '71. Well, no, see I went -- Well, I went Deputy Chief in

1 '73 to '76 and then I went Chief from '76 to '84.

2 Q. So --

3 A. It would be the department, of course, if there was any
4 -- If there was any dealings out there, it'd be the department.

5 Q. I believe you indicated that one of the ways you had explained
6 to the men working under you was to show them the technique
7 of question and answers in taking statements from individuals.

8 A. That's correct, yes.

9 Q. Now did you make any variation to that method when they dealt
10 with Indian juveniles?

11 A. No, sir. No.

12 Q. Not -- did you bring that up to them about the use of interpreters

13 A. No, I never run into that problem to be honest with you.

14 I --

15 Q. Did it ever occur to you that these Indian people would not
16 understand the language of that customary warning you have
17 recited in this court?

18 A. I haven't run into anybody on the Reserve out there that I
19 -- that had that problem that wouldn't understand me. I never
20 ran into that. And of course, as I said before, we weren't
21 out there on a daily basis either as far as problems were
22 concerned.

23 Q. So outside of investigating the supplying of liquor to minors
24 in the investigation I believe that was done with respect
25 to Mr. Marshall, did you normally handle supplying -- the

JOHN F. MacINTYRE, by Mr. Nicholas

1 offence of supplying of liquor to minors of non-Indians?

2 A. Did I normally handle it?

3 Q. Yes.

4 A. No, the department would. I think I, as I said before, that
5 I was involved in, I believe, one case there where I signed
6 the Information.

7 Q. Now these particular individuals that you came into contact
8 with, did you always refer to them as Indians as a group or
9 as individual names?

10 A. Oh, by names, sir, if I had any problem with them.

11 MR. NICHOLAS:

12 I have no further questions, My Lord.

13 MR. CHAIRMAN:

14 All right, we'll take a break.

15

16 INQUIRY ADJOURNED: 3:30 p.m.

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25

JOHN F. MacINTYRE, by Mr. Murray

1 INQUIRY RECONVENED: 3:40 p.m.

2 MR. CHAIRMAN:

3 Mr. Murray, I guess, you're next aren't you?

4 MR. MURRAY:

5 Thank you, My Lord.

6 BY MR. MURRAY:

7 Q. Mr. MacIntyre, my name is Donald Murray. I'm here on behalf
8 of William Urquhart.

9 A. Yes.

10 Q. You stated in your evidence, I believe it was two days ago,
11 that when you were Sergeant of Detectives you had three
12 Detective Sergeants?

13 A. Yes.

14 Q. And they were William Urquhart, M. J. MacDonald and M. R.
15 MacDonald?

16 A. Correct.

17 Q. And they all began the same day?

18 A. That's correct.

19 Q. And so I take it they all had equivalent investigative
20 experience when they joined the Detective Department?

21 A. That's right.

22 Q. Your answer is yes?

23 A. That's right.

24 Q. After your departure from the Detective Branch in 1973, is
25 that correct?

JOHN F. MacINTYRE, by Mr. Murray

- 1 A. Yes.
- 2 Q. Did -- was Mr. M. R. MacDonald still there?
- 3 A. Yes.
- 4 Q. And M. J. MacDonald?
- 5 A. Yes.
- 6 Q. And William Urquhart was still there as well?
- 7 A. Yes.
- 8 Q. Mr. Urquhart, as I understand it, was there until 1983 when
- 9 he retired?
- 10 A. That's right.
- 11 Q. Were M. J. MacDonald and M. R. MacDonald still in the
- 12 Detective Department at that time?
- 13 A. No, M. J. MacDonald was Deputy Chief.
- 14 Q. You'd still as Deputy Chief and Chief yourself, know what
- 15 was going on in the Detective Department?
- 16 A. Yes.
- 17 Q. And you made it a point to keep yourself informed?
- 18 A. That's right.
- 19 Q. Do you recall the names of Bill Salmon, Roy Devoe, Geno
- 20 Magillaro and Zane Weatherbee?
- 21 A. I believe they were murder cases.
- 22 Q. Yes, and they were all individuals charged with committing
- 23 homicides in Sydney between '76 and '82?
- 24 A. Yes.
- 25 Q. And they were all investigated by William Urquhart?

1 A. William Urquhart would be the -- yes.

2 Q. And all ultimately resulted in convictions, sir?

3 A. Yes.

4 Q. What was your opinion of Mr. Urquhart's work, both as
5 Sergeant -- from your experience as Sergeant of Detectives
6 and then later as Deputy Chief and Chief?

7 A. I found him very good. A very good worker, honest and
8 reliable.

9 Q. The only specific item I'd like to refer you to about the
10 case in 1971 is exhibit 86, which is the hand-written
11 note of what appears at volume 16 at page 129.

12 A. Yes.

13 Q. That note is written on a blank sheet of white paper?

14 A. Yes.

15 Q. Appears to come from a note pad of some sort?

16 A. That's right.

17 Q. I take it from your evidence you don't know when that was
18 written?

19 A. No, there's no date on it.

20 Q. Would you be able to advise the Commission whether you made
21 that note at home or at the office or some other place?

22 A. No, I wouldn't at this time. This is a piece of paper out
23 of a notebook.

24 Q. Would it be fair --

25 A. Various -- yes.

JOHN F. MacINTYRE, by Mr. Murray

1 Q. Go ahead.

2 A. Now there's a copy of that in the book there.

3 Q. Yes, volume 16, page 129.

4 A. That's right, yeh.

5 Q. Would it be your evidence that it could have been made by
6 you at home?

7 A. It could have been. I don't know where it was made to be
8 honest with you.

9 Q. My instructions are that you would have received a message
10 to that affect the evening that Patricia Harriss was first
11 interviewed and that is the reason that you came out to
12 the office after noting that down at home?

13 A. This could have been. I would -- I would say I would
14 know about that when the Harriss girl was interviewed.

15 Q. Is that the kind of information that would lead you to come
16 out?

17 A. Yes, I'd have to, I suppose, know what was going on at the
18 station or to have a call or something and I can't tell you
19 were this was written at, to be honest with you.

20 MR. MURRAY:

21 I have no further questions of this witness.

22 MR. ELMAN:

23 No questions, My Lord.

24 BY MR. SAUNDERS:

25 Q. Mr. MacIntyre, my name is Jamie Saunders and I'd like to ask

1 you questions on behalf of the Attorney General and his
2 Department, sir?

3 A. Yes.

4 Q. Can you hear me?

5 A. Yes, sir.

6 Q. Have you been in attendance, Mr. MacIntyre, every day during
7 these Royal Commission Hearings?

8 A. I would say so, yes.

9 Q. Yes. And you were present when Mr. David Ratchford testified?

10 A. Yes, sir.

11 Q. And you heard him give evidence, sir, that on a day in 1973
12 he and Donna Ebsary went to the police department to advise
13 that Donna Ebsary had some information suggesting that her
14 father stabbed Sandy Seale?

15 A. Yes.

16 Q. Yes. And is it your evidence, sir, that that was the first
17 time you ever heard such a thing?

18 A. Donna Ebsary -- I didn't see Donna Ebsary or Ratchford.

19 Q. No, is it your evidence to this Commission that that was
20 the first time you ever heard such a thing when you heard
21 it from the mouth of David Ratchford?

22 A. I'm -- I never seen Ratchford, sir, and I didn't see Donna
23 Ebsary.

24 Q. No, so is it your evidence --

25 A. No, you mean in --

1 Q. Yes.

2 A. -- in this here?

3 Q. That the first time you ever heard that said was when Mr.
4 Ratchford said it at this Inquiry?

5 A. Yes, I heard him at this Inquiry, yes.

6 Q. So at one time was it ever suggested to you by Detective
7 Urquhart that either Mr. Ratchford or Donna Ebsary or even
8 R. C. M. P. officer Green had been in to the Sydney Police
9 Station with that kind of information?

10 A. No.

11 Q. Is that correct?

12 A. That's what I would say, yes, sir.

13 Q. Yes. If that had happened, Mr. MacIntyre, would you want
14 to be informed of it as Sergeant of Detectives?

15 A. In '70 --

16 Q. In 1971?

17 A. '71.

18 Q. Or 1973, rather?

19 A. '73, yeh, I -- yes, I went Deputy Chief in '73, sir.

20 Q. Yes. Well, as Deputy Chief would that be information that
21 you would want to know?

22 A. No, that was -- well, I'd expect them to know about it.

23 Q. Yes.

24 A. But that would then go to the man in charge of the Detective
25 Department.

1 Q. At the time?

2 A. Yeh.

3 Q. You would -- you would consider it important enough information
4 to be drawn to the attention --

5 A. Of course, I -- yes, I would say -- I would say that I would,
6 you know, it would come through the department to me.

7 Q. Thank you. And given your experience as Sergeant of Detectives
8 would you also expect it to be important enough that a record
9 or a note be made of it, sir?

10 A. I would say so, yeh.

11 Q. Thank you. With respect to the visit paid you, sir, by
12 R. C. M. P. officer Coles, do I have it that that visit
13 took place in 1975?

14 A. As I said before it was around that period, sir. I haven't
15 got the -- I don't think I have a date on it at this time.

16 Q. Do you recall the month or season of the year?

17 A. No, I -- no, sir, no. No.

18 Q. Do I take it that Mr. Coles arrived unannounced?

19 A. I believe you could say that. I'm not sure.

20 Q. Was he in uniform?

21 A. Was he in uniform? I believe so. Yeh, I knew that man to
22 see him.

23 Q. What -- you knew him to see him?

24 A. I knew him to see him, yes.

25 Q. Yes, was he an officer stationed in Sydney?

JOHN F. MacINTYRE, by Mr. Saunders

1 A. I took him to be stationed at one of the outside towns for
2 a while and then I understand that he was stationed in the
3 Sydney area.

4 Q. Thank you.

5 A. Somewhere around that time.

6 Q. Yes.

7 A. Yeh.

8 Q. Was he accompanied by anyone, sir?

9 A. Nobody.

10 Q. Did he have any paper or documentation with him to support
11 the purpose of his visit at your department?

12 A. No.

13 Q. All right. Did you ask him --

14 A. I didn't see say anything.

15 Q. No, did you ask him what authority or justification he had
16 to be in your station to look at the Marshall file?

17 A. No, only that he had a complaint. He'd like to see the file
18 and I see no problem --

19 Q. Yes.

20 A. -- with letting him see the file.

21 Q. Yes, I've heard you say that?

22 A. Yeh.

23 Q. And you cannot be more specific than that, I take it?

24 A. No, I can't, sir, no.

25 Q. All right, and you made no inquiry of Mr. Coles as to what

JOHN F. MacINTYRE, by Mr. Saunders

1 authority or justification he had to solicit the Marshall
2 file from you?

3 A. No, no, no.

4 Q. All right, and I take it, sir, you kept no records yourself
5 of the meeting with Mr. Coles or the fact that he was there?

6 A. Well, it was a short meeting and when he told me what he
7 wanted, I did get the file and I gave him a room at that time
8 and --

9 Q. I understand that.

10 A. -- and then when he -- when he -- then he returned the file
11 to me --

12 Q. Yes.

13 A. -- at a later time the same day.

14 Q. Did you -- did you make any record, Mr. MacIntyre, of his
15 visit at the station?

16 A. No, I don't know the time but I haven't got it. If I did,
17 I haven't got it.

18 Q. I'd like to turn your attention now, Mr. MacIntyre, to the
19 meeting with the Crown Prosecutor, Mr. Edwards, in February
20 of 1982.

21 A. Yes.

22 Q. This came about as a consequence of you receiving a letter
23 from a lawyer named Aronson?

24 A. Yes.

25 Q. Yes. And as I understand your evidence, Mr. MacIntyre, the

1 first thing you did upon receipt of Mr. Aronson's letter,
2 is that you called Superintendent Christian?

3 A. Right.

4 Q. And why did you do that first, sir?

5 A. I wanted to get -- I wanted to get a little handle on what
6 I was doing and -- and I called him and I told him I had
7 this letter and did he remember who was on it in '71. And
8 my -- his explanation was that it could have been one of
9 two fellows on it. And one fellow was out in Scotland or
10 England at the present time retired. And the other chap
11 was in New Brunswick. And --

12 Q. Yes.

13 A. -- he give me his name.

14 Q. And these were the two gentlemen who may have been the
15 possible polygraphist?

16 A. At that time, yes, sir.

17 Q. And you made contact with the one who was still residing in
18 New Brunswick?

19 A. The same day.

20 Q. And he turned out to be Smith?

21 A. And turned out to be Smith.

22 Q. Yeh.

23 A. And he knew about the case and said --

24 Q. And he wrote you a letter?

25 A. -- and I asked him would he mind sending me a letter as to

3:40 p.m.

1 what he'd done and what he found and what have you and he
2 sent that out, I think, the same day.

3 Q. Yes. Can you tell me, Mr. MacIntyre, why it was that you
4 didn't contact the Prosecutor, Mr. Edwards, immediately
5 upon receipt of Mr. Aronson's letter?

6 A. No, I thought I should have that knowledge so that I'd be
7 -- so that I would be more informed at that time.

8 Q. And then you contacted Inspector Scott --

9 A. I thought --

10 Q. -- and asked him to join you at a meeting with the Crown,
11 is that correct?

12 A. That's right, sir.

13 Q. Right?

14 A. That's right.

15 Q. And tell me, sir, did you tell Inspector Scott the reason for
16 the meeting you wished to arrange?

17 A. I think I told him that I had a meeting arranged. I think
18 we had to -- I had to wait a few days after I called Mr.
19 Edwards, I suppose, he had to look up his appointment book.
20 I remember advising him that this meeting would be of some
21 duration and that we -- that -- and Mr. Edwards anyway gave
22 me a time and a date.

23 Q. Mr. MacIntyre --

24 A. Yes.

25 Q. -- did you tell Inspector Scott the reason for the meeting?

JOHN F. MacINTYRE, by Mr. Saunders

- 1 A. I would say that I -- I would say that I would but I haven't
2 got any -- just can't recall now whether I did or not. To
3 be honest with you.
- 4 Q. You can't recall?
- 5 A. Anyhow -- anyhow there was no problem with him attending the
6 meeting with me with Mr. Edwards.
- 7 Q. And did you tell Mr. Edwards when you called for an appointment,
8 the reason for the meeting?
- 9 A. I told him -- I can't recall. I told him that the matter that
10 I had to discuss would take quite some time and -- and I'd
11 like to have a date that I could meet with him.
- 12 Q. Yes. And it's your evidence before this Commission that the
13 meeting was a long one. Indeed, took practically all afternoon?
- 14 A. I would -- my recollection is that meeting was somewhere
15 around two o'clock and I think it went to probably four thirty
16 or quarter to five.
- 17 Q. Or quarter to five?
- 18 A. That's my recollection, sir.
- 19 Q. Practically --
- 20 A. It was -- it was a long meeting, yes.
- 21 Q. Practically, the entire afternoon by your recollection?
- 22 A. That's my recollection, yes.
- 23 Q. Yes, sir. And those in attendance were who again, sir?
- 24 A. There's Mr. Edwards and Inspector Scott and myself.
- 25 Q. Yes, can you recall where the meeting was held?

JOHN F. MacINTYRE, by Mr. Saunders

1 A. I believe it was over at the court house at Mr. Edward's
2 office.

3 Q. At the court house?

4 A. I think it was, yes, in Mr. Edward's office.

5 Q. Yes, in the building where the Supreme Court room is
6 located, sir?

7 A. At his office over there. I --

8 Q. Well, there are a number of buildings over there?

9 A. No, but he has -- he has his own offices there. That's why

10 Q. Right, is Mr. --

11 A. No, it'd be -- '82, his offices are separate from the court
12 house. But the building is on the same lot.

13 Q. So are you telling me and the Commission --

14 A. I'm not sure.

15 Q. -- that the meeting was in the building that's separate from
16 the court house or you're not sure?

17 A. Well, wherever Mr. Edward was on that day, that's where the
18 meeting was.

19 Q. Yes. I take it that you're not exactly sure --

20 A. I'm not exactly sure at this time, no.

21 Q. -- where the meeting took place?

22 A. No.

23 Q. Right. Did anyone else join you three at the meeting, that
24 is you and Scott and Edwards?

25 A. No, I don't -- I can't recall anybody else there.

JOHN F. MacINTYRE, by Mr. Saunders

1 Q. Did you make any notes, Mr. MacIntyre, yourself, of the
2 meeting?

3 A. I don't know whether I marked that on the file or not, sir.
4 No.

5 Q. Have you looked since at the file to determine whether or not
6 you have notes describing the meeting?

7 A. Well, that particular file, I don't think I have it. I think
8 it's some other -- I think they still have it.

9 Q. Yes. Well, the file, as we understand it, was turned over
10 to the Commission lawyers and you have not seen any
11 notes.

12 A. Well, I didn't check it for --

13 Q. No, and I've not seen any notes of yours as to what went on
14 at the meeting.

15 A. Yeh.

16 Q. Do you recollect making any notes, sir?

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

18 Q. All right. And when you received the letter -- just to go
19 back a step, Mr. MacIntyre. When you received the inquiry
20 from Steven Aronson on behalf of Marshall --

21 A. Yes.

22 Q. -- about the Marshall case, where was Marshall's file?

23 A. It would be in the police station at that -- in the police
24 station.

25 Q. But where exactly in the police station was the file?

1 A. I can't recall whether it was in my office or down in the
2 detective office. It was one of the two places.

3 Q. Yes. You don't recall where you had to go to physically get
4 the file, is that correct?

5 A. No, I don't, not at this moment, no.

6 Q. It might've been in your office, or it might've been in the
7 Records' Room?

8 A. Could've been, yes.

9 Q. Yeh.

10 A. No, not in the Records' Room, sir.

11 Q. Oh.

12 A. In the detective office or my office, I'd say.

13 Q. Either in your office or in the detective's office?

14 A. Yeh.

15 Q. And did you read the file through, Mr. MacIntyre, when you
16 received Mr. Aronson's letter?

17 A. No, I can't recall reading it through.

18 Q. Did you read the file through before you met with Inspector
19 Scott and Mr. Edwards on February 3rd, 1982?

20 A. I don't recall reading the file through.

21 Q. Yes. And just so that I'm clear because you spoke earlier
22 today of there being the Ebsary file and the Marshall file,
23 am I right in saying there was only one file?

24 A. That's what I presume there was.

25 Q. Yes.

- 1 A. It would be all together anyway.
- 2 Q. I don't wish you to presume it. I want to know it.
- 3 A. Well, that's my recollection, yes.
- 4 Q. It was a single file. Correct?
- 5 A. I would say it's the one file, yes.
- 6 Q. Yes. And your best memory is that when you went to the meet-
- 7 ing with Mr. Scott and Mr. Edwards, you had the one file with
- 8 you?
- 9 A. I remember it, yes, and --
- 10 Q. And that was the only file to do with Marshall, correct?
- 11 A. Wait, now. Yes. Well, it was -- I got into the 1971 Marshall
- 12 case first and discussed that, and then after that, I got into
- 13 the Ebsary case.
- 14 Q. Yeh, but there was only one file, Mr. MacIntyre?
- 15 A. That's my -- Yes.
- 16 Q. And you had it with you?
- 17 A. What?
- 18 Q. And you had it with you?
- 19 A. Yes. Yes.
- 20 Q. Yeh.
- 21 A. Yeh.
- 22 Q. Is it possible that you're mistaken, Mr. MacIntyre, as to the
- 23 length of the meeting on February 3rd, 1982, with Inspector
- 24 Scott and Mr. Edwards?
- 25 A. No, it was a long meeting. That's my recollection now that --

1 Yeh.

2 Q. Yes. My instructions are, Mr. MacInyre, that the meeting with
3 you on February 3rd, 1982, with Mr. Edwards and Inspector Scott
4 lasted a half an hour to forty-five minutes.

5 A. No, it was much longer than that, sir.

6 Q. Okay. Is it your evidence before this Commission, Mr. MacIntyre,
7 that the file was spread out on a table on February 3rd, 1982,
8 when you met with Wood -- I'm sorry -- when you met with Scott
9 and Edwards?

10 A. That's my recollection.

11 Q. Is it possible, sir, I suggest, that you retained the file
12 physically during that meeting with the Crown and Inspector
13 Scott and merely discussed the case with them?

14 A. That is my -- not my recollection.

15 Q. You have no notes with which to refresh your memory?

16 A. No.

17 Q. All right. Do you have any distinct memory, Mr. MacIntyre, of
18 telling either the Crown Prosecutor or Inspector Scott on
19 February 3rd, 1982, that Patricia Harriss had given to you two
20 statements, the first, unsigned, and the second, signed?

21 A. No, I wouldn't have -- No, I haven't. No.

22 Q. All right. You've had an opportunity, I take it, Mr. MacIntyre
23 to review the handwritten notes and the typed version of those
24 notes made by Mr. Edwards that appear in Exhibit Book No. 17
25 before this hearing?

JOHN F. MacINTYRE, by Mr. Saunders

1 A. Yes.

2 Q. Yes? And did you have an opportunity, Mr. MacIntyre, to review
3 those notes before you took the stand on Monday of this week?

4 A. I think I -- Yes.

5 Q. Yes?

6 A. Yes.

7 Q. They've been available, as I understand it, since September in
8 this bound form, and you -- Are you telling the Commission that
9 you did read these notes as are found in Volume 17 --

10 A. Yes.

11 Q. -- before this week and you're testifying?

12 A. Yes. Yes.

13 Q. Thank you. And would you agree with me, Mr. MacIntyre, that
14 according to the notes made by Mr. Edwards, it was not until
15 March 1st, 1982, that he and the R.C.M.P. became aware that
16 Patricia Harriss had given two statements, one signed and one
17 unsigned?

18 MR. PUGSLEY:

19 Is that really relevant what Mr. Edwards' notes say and what he
20 understands what the notes say. I mean, presumably, Edwards is
21 going to give evidence and --

22 MR. SAUNDERS:

23 Edwards will give evidence.

24 MR. PUGSLEY:

25 And he'll be testifying on that point, but whether or not MacIntyre

4:00 p.m.

JOHN F. MacINTYRE, by Mr. Saunders

1 recalls from reading the notes whether March 1st was the first
2 day, is, I suggest, neither here nor there.

3 MR. CHAIRMAN:

4 That's a valid point. Mr. Saunders, you're -- We've already had
5 from this witness, on several occasions, his recollection as to
6 what happened with respect to the Harriss statement during the
7 discussion with Mr. --

8 MR. SAUNDERS:

9 Yes, My Lord.

10 MR. CHAIRMAN:

11 And it's not appropriate, in my view, for you to expect him now
12 to -- from the notes to interpret what Mr. Edwards concluded. He
13 says he can't recall, as I understand it, giving the first state-
14 ment to Mr. Edwards or to Inspector Scott, but he assumes if they
15 had the file, they must've had the statement.

16 MR. SAUNDERS:

17 Yes, he said that, My Lord.

18 MR. CHAIRMAN:

19 Yes.

20 MR. SAUNDERS:

21 I did wish to inquire of Mr. MacIntyre whether he is aware when
22 the Crown first knew of two statements given by Patricia Harriss.
23 That was my purpose in asking that question.

24 MR. CHAIRMAN:

25 Well, that's a fair question.

JOHN F. MacINTYRE, by Mr. Saunders

1 MR. SAUNDERS:

2 Thank you, My Lord.

3 BY MR. SAUNDERS:

4 Q. Mr. MacIntyre, do you know when the Crown Prosecutor first
5 learned that Patricia Harriss had given two statements, one
6 signed, one unsigned?

7 A. No, I thought I discussed it -- the case very thoroughly on
8 that day I was there. That's my recollection.

9 Q. Yes, sir. But it may be that you didn't indicate to the Crown
10 at that meeting that Patricia Harriss had in fact given two
11 statements?

12 COMMISSIONER EVANS:

13 When you're speaking of the Crown, what Crown is --

14 MR. SAUNDERS:

15 Mr. Edwards, My Lord.

16 BY MR. SAUNDERS:

17 Q. It may be that you did not say that to Mr. Edwards at the
18 meeting?

19 A. All I can say is that I had those statements with me on that
20 day, and I discussed the --

21 Q. In the file.

22 A. In the file, I did, yeh.

23 Q. Yes. Right, in any event, Mr. MacIntyre, it was only when
24 ordered to do so that you produced the file to the R.C.M.P.
25 officer? When ordered to do so by the letter to you from the

1 Attorney General, correct?

2 A. As I said this morning, I was never asked for the file.

3 Q. Yes.

4 A. And --

5 Q. But upon receiving the letter from the Attorney General, that
6 is when you turned over the file.

7 A. To turn over all the books, documents, pictures, and so forth?

8 Q. Yes, everything in the file.

9 A. Anything connected with the Marshall case, sir, that's what I
10 said.

11 Q. Because those were the instructions that you had received from
12 the Attorney General?

13 A. That's correct.

14 Q. All right.

15 A. Yeh.

16 Q. Prior to the Reference in the Court of Appeal, Mr. MacIntyre,
17 did you have occasion to discuss with Mr. Edwards the type of
18 evidence that the Crown would try to put before the Court by
19 affidavit; that is, your affidavit and Mr. Urquhart's affidavit.
20 Did you discuss that with Mr. Edwards?

21 A. The type of evidence that Mr. Edwards -- Could be put before
22 the Court?

23 A. Yes.

24 A. He told me that I was going to be called, and he told me that
25 Urquhart was going to -- that I would be called.

JOHN F. MacINTYRE, by Mr. Saunders

1 Q. Do you recollect Mr. Edwards -- I'm sorry.

2 A. Yeh.

3 Q. Yeh. Do you recollect Mr. Edwards telling you that he would
4 have to seek leave of the court to present new evidence? Do
5 you remember being told that?

6 A. No, I don't recall that, no.

7 Q. All right. Could you just turn to page -- Volume 17 of the --
8 Page 12 of Exhibit 17, Mr. MacIntyre. Do you have that booklet
9 before you, sir.

10 Q. Seventeen?

11 A. Seventeen. Yes, I have seventeen here, yes.

12 Q. Page 12?

13 A. Yes.

14 COMMISSIONER EVANS:

15 Mr. Saunders, now, you're talking about the Reference, not in the
16 Court of -- It's a Reference, I know, too, in Court of Appeal

17 MR. SAUNDERS:

18 Yes.

19 COMMISSIONER EVANS:

20 And you say that you required a leave to present evidence there?

21 MR. SAUNDERS:

22 Yes, My Lord. I'm asking this witness whether he had such dis-
23 cussions with the Crown about that.

24 COMMISSIONER EVANS:

25 I would've thought that the whole matter of the Reference was to

JOHN F. MacINTYRE, by Mr. Saunders

1 get evidence for the Court of Appeal.

2 MR. SAUNDERS:

3 Indeed.

4 COMMISSIONER EVANS:

5 What would you need a leave to present evidence -- Why would you --

6 MR. SAUNDERS:

7 A leave of the court, as I understand the record, My Lords, to
8 determine what evidence would be put before the Court and in
9 what method -- what manner, and I merely wish to find out from
10 Mr. MacIntyre whether he had discussions with Mr. Edwards about
11 that.

12 BY THE WITNESS:

13 A. I don't recall discussing what he was going to put before the
14 Court, sir.

15 BY MR. SAUNDERS:

16 Q. Yes.

17 A. All I was told, I was going to be called before the Court, and
18 I wasn't called.

19 Q. Do you recollect Mr. Edwards advising you that there was no
20 guarantee that you and Mr. Urquhart would be called as witnesses
21 at the Reference?

22 A. No. We'd be called before the Court, be talking about it in
23 1982.

24 Q. No. No. Do you recall Mr. Edwards advising you that there was
25 no guarantee that you would be called as a witness at the

1 Reference in December of 1982?

2 A. No, I was told I was going to be called. In fact, what I did
3 say --

4 Q. Yes.

5 A. -- that I was thinking about going up to Halifax, and I wanted
6 to follow this case because it was a case I was involved in,
7 and I was feeling I'd go to Halifax. I was going to, you know,
8 follow the case -- follow the court, I was. And I think his
9 words were that there's no need of you going up because you
10 wouldn't be allowed in. You're going to be called as a witness.

11 Q. Do you remember when you had that discussion with Mr. Edwards?

12 A. Well, it was some time -- I don't see -- I can't give you the
13 exact date, but it was early in the game.

14 Q. Was it -- Sure -- around the time of the actual hearing of
15 the Reference in December of 1982 that he told you that?

16 Do you remember that the Reference was held on December 2nd
17 and 3rd of 1982?

18 A. Yeh, you're talking about the Court of Appeal here.

19 Q. That's right. Yes. In Halifax.

20 A. Yeh. Oh, yeh.

21 Q. Yeh, was it around that time?

22 A. No. No. No. No. It was long before that.

23 Q. It was long before?

24 A. Oh, yes, sure.

25 Q. All right.

JOHN F. MacINTYRE, by Mr. Saunders

1 A. And that; if I was going to be subpoenaed, then I wouldn't be
2 allowed in, and I wasn't going to -- So there's no need of me
3 going up, and I didn't get any summons to appear.

4 Q. Did you go up?

5 A. No, sir, I wasn't -- No, My Lord.

6 BY MR. CHAIRMAN:

7 Q. You -- There was no subpoena issued?

8 A. No, I was told I was going to be called, and Urquhart wasn't
9 subpoenaed, and Wayne Magee wasn't subpoenaed, and I thought
10 it was unfortunate that we weren't subpoenaed because there
11 was accusations made there, and we weren't -- We didn't have
12 a chance to defend ourselves and --

13 BY MR. SAUNDERS:

14 Q. Did you -- Mr. MacIntyre, did you go to the Court of Appeal?

15 A. No, sir.

16 Q. You did not go on the 2nd and 3rd?

17 A. Well, I waiting -- I was told I was going to be subpoenaed --

18 Q. Yeh.

19 A. -- so I stayed home expecting a subpoena. I didn't get any.

20 Q. So you didn't go to Halifax --

21 A. No, sir.

22 Q. -- to attend the Court of Appeal?

23 A. No, sir, I wasn't there at all.

24 Q. All right. Did you know that the city of Sydney Solicitor,
25 Mr. Whalley, attended?

JOHN F. MacINTYRE, by Mr. Saunders

1 A. I just seen this -- I heard that lately. I didn't know -- To
2 my knowledge, I didn't know that he was up there.

3 Q. You didn't know that?

4 A. To my knowledge, no.

5 Q. How long have you known Mr. Whalley, Mr. MacIntyre?

6 A. Quite a few years.

7 Q. Yes. He's been the City --

8 A. -- Solicitor for years.

9 Q. He's been the City of Sydney Solicitor, I think, since the
10 fifties?

11 A. Yes.

12 Q. And you've known him since that time?

13 A. Oh, yes, sure.

14 Q. Yes. When did you first --

15 A. Knew him before that.

16 Q. When did you first learn that Mr. Whalley was present during
17 the argument in the Court of Appeal?

18 A. It is a long time after. I don't know how I found out, but I
19 did not know at the time that he was up there. I had no know-
20 ledge of that. I thought I was going to be called there myself,
21 and that's what I was --

22 Q. Yes. Did Mr. Whalley ever tell you that he agreed with Frank
23 Edwards, that the police officers need not be called in the
24 Court of Appeal in December, 1982?

25 A. No, I think the first -- I think, to be honest with you, the

JOHN F. MacINTYRE, by Mr. Saunders

1 first reading I got on that -- I thought I'd get that from
2 Mr. Edwards himself that they had discussed it with Mr. Whalley,
3 I believe.

4 Q. Indeed. And --

5 A. I think that's what I --

6 Q. And that's when you did that?

7 A. Now when that was now, I don't know when but it wasn't -- It
8 wasn't around that time.

9 Q. Yes. I'd just draw your attention. You have have Exhibit 17,
10 I think close at hand, and at the bottom of page 15, there's
11 a note from Mr. Edwards to that effect.

12 MR. PUGSLEY:

13 May I suggest, My Lords, that there are at least three more lawyers
14 who have to cross-examine Mr. MacIntyre. He's gone through four
15 lengthy days. We've got a full day tomorrow. I have no difficulty
16 about finishing it tomorrow, and I was going to suggest that, in
17 fairness to the witness, it might be a convenient time to adjourn.

18 MR. CHAIRMAN:

19 How much longer will you be, Mr. Saunders?

20 MR. SAUNDERS:

21 I suspect five minutes, My Lord, but what Your Lordships' --

22 MR. CHAIRMAN:

23 Finish him off.

24 MR. SAUNDERS:

25 And the witness's pleasure is.

JOHN F. MacINTYRE, by Mr. Saunders

1 THE WITNESS:

2 He can finish it off in five minutes.

3 MR. CHAIRMAN:

4 All right. You're -- Mr. MacIntyre said that he would like to -- for
5 you to conclude your cross-examination.

6 MR. SAUNDERS:

7 Thank you, My Lord.

8 BY MR. SAUNDERS:

9 Q. The bottom of page 15 --

10 MR. CHAIRMAN:

11 I'll rephrase that.

12 MR. SAUNDERS:

13 The message was conveyed, My Lord.

14 MR. CHAIRMAN:

15 That is prepared to stay as long as you are.

16 MR. SAUNDERS:

17 Thank you, My Lord.

18 BY MR. SAUNDERS:

19 Q. The bottom of page 15, are you with me, Chief? Exhibit 17?

20 A. Yes.

21 Q. Yes. And do you see the note made by Mr. Edwards there? Just
22 the last paragraph, bottom of the page, sir.

23 A. Yes.

24 Q. Yes.

25 A. Now, I would --

JOHN F. MacINTYRE, by Mr. Saunders

1 Q. And it's your evidence that you were advised by Mr. Edwards --

2 A. I believe -- Wait now, yeh. I believe it was because I read
3 this that I knew.

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JOHN F. MacINTYRE, by Mr. Saunders

- 1 Q. I see. You're no longer sure that Mr. Edwards actually told
2 you that?
- 3 A. No, but this is Mr. Edward's notes, eh.
- 4 Q. All right.
- 5 A. Yeh.
- 6 Q. And your evidence is that you were -- you were never given
7 that information by Michael Whalley?
- 8 A. Excuse me. Excuse me for one minute please. Excuse me for
9 one minute.
- 10 Q. Certainly.
- 11 A. I would think that this is where I -- that I found out about
12 it.
- 13 Q. When you say "this", for the record --
- 14 A. This is --
- 15 Q. --that is your reading of that note?
- 16 A. Yes. That's what I think, yes.
- 17 Q. Are you now saying that you do not think Mr. Edwards actually
18 told you of his discussions with Mr. Whalley?
- 19 A. No, but this is Mr. Edward's notes, eh.
- 20 Q. Those are his notes.
- 21 A. Yeh.
- 22 Q. Are you now saying that Mr. Edwards did not tell you of his
23 conversations with Mr. Whalley?
- 24 A. I can't be sure but I think this might have been what I
25 seen. I'm not sure on that point and I don't want

JOHN F. MacINTYRE, by Mr. Saunders

1 to say yes or no on it.

2 Q. Are you sure that Mr. Whalley did not ever tell you that?

3 A. That he was -- that he --

4 Q. That he agreed with Mr. Edwards that the police officers need
5 not be called?

6 A. Something tells me that I asked Mr. Whalley about this after
7 probably I seen this. I'm not sure.

8 Q. And what's your recollection of that?

9 A. My recollection was that it was something that -- that after
10 the Appeal Court was over that they had discussions, but I'm not
11 going to be sure on that because there was something there
12 but I didn't know at the time anyway Mr. Whalley was up there,
13 sir.

14 Q. Do you have any memory of what Mr. Whalley told you?

15 A. Well, I thought he -- I thought he did tell me that -- that
16 he just -- that this was discussed after the Court was over.
17 I didn't seem to get the same impression from him as I got
18 from this note.

19 Q. Do you have any other memory or recollection of what
20 Mr. Whalley --

21 A. No, that -- I have no memory of that, no.

22 Q. All right.

23 A. No. No.

24 MR. CHAIRMAN:

25 Mr. Saunders --

JOHN F. MacINTYRE, by Mr. Saunders

1 MR. SAUNDERS:

2 My Lord.

3 MR. CHAIRMAN:

4 --just for my enlightenment, who is Martin Herschorn?

5 MR. SAUNDERS:

6 Martin Herschorn is senior solicitor in the Department of the
7 Attorney General.

8 MR. CHAIRMAN:

9 And I gather from the note of Mr. Edwards that the Court of Appeal
10 had indicated that they didn't want to get into the evidence of
11 the police.

12 MR. SAUNDERS:

13 Correct. Correct, My Lord. Yeh. At the present Mr. Herschorn
14 is Assistant Director of Criminal.

15 MR. CHAIRMAN:

16 I see.

17 COMMISSIONER EVANS:

18 At some place at some time, (I'm in no hurry.) but do you have a
19 copy of that order made by the Court of Appeal with respect to the
20 witnesses that they wanted called or --

21 MR. SAUNDERS:

22 Yes, I have it here, My Lord.

23 COMMISSIONER EVANS:

24 I would like to see it some --

JOHN F. MacINTYRE, by Mr. Saunders

1 MR. SAUNDERS:

2 And it'll be in the file I presume introduced at the next -- next
3 phase.

4 COMMISSIONER EVANS:

5 Fine. Thank you.

6 BY MR. SAUNDERS:

7 Q. Mr. MacIntyre, I'd like to turn your attention now to the
8 affidavit that you swore to and which was filed with the
9 Court of Appeal. It was sworn to as I recollect,
10 July 26, 1982?

11 A. Yeh.

12 Q. Right?

13 A. What page?

14 Q. Page 10, Volume 15, Mr. MacIntyre.

15 A. Yes, sir.

16 Q. And this was an affidavit that was prepared by Mr. Edwards
17 the Crown Prosecutor for your signature, correct?

18 A. That's right. Yeh.

19 Q. Yes. And as I understand the evidence it was prepared by
20 Mr. Edwards and then given to you so that you could go away
21 and reflect upon it with Mr. Whalley the City Solicitor,
22 correct?

23 A. Yes.

24 Q. And --

25 A. Yeh.

- 1 Q. Do you remember, sir, when it was that you were first given
2 the draft affidavit by Mr. Edwards?
- 3 A. No, I don't, sir, no.
- 4 Q. If you still have Volume 17 opened in front of you, turn
5 to page 14 please. Just keep the affidavit in front of
6 you and the other booklet that we've just looked at a moment
7 ago is 17. It's the smaller one.
- 8 A. I think I was a little confused over that. At one time I
9 didn't know whether -- I didn't think I took it away from
10 there and then it was suggested that I did take it for a
11 few days and took it back, but I didn't seem to recall that.
- 12 Q. This is what I want to confirm with you?
- 13 A. You know, and it's not -- it's not in my mind that I did
14 that, you see.
- 15 Q. Yes. Well, would you please turn to page 14 then --
- 16 A. Yeh. All right.
- 17 Q. --of Exhibit 17.
- 18 A. Yeh.
- 19 Q. And look at the middle of the page and we'll see if that
20 helps. And you'll see the reference "Thursday, July 22nd,
21 1982," Mr. MacIntyre?
- 22 A. Thursday, yes.
- 23 Q. The middle of the page?
- 24 A. Yes.
- 25 Q. "10:30 a.m. to 12:15 p.m.", which is obviously close to two hours,

1 And then the second reference:

2 - Whally, MacIntyre and Urquhart
3 come to office with affidavits
I had previously drafted.

4 So does that assist you in your recollection that at some
5 earlier date Mr. Edwards had prepared this affidavit for your
6 consideration. You had obtained it and had the opportunity
7 to reflect upon it with Mr. Whalley. Does that help you,
8 sir?

9 A. I'd go along with that since I'm told this took place.

10 Q. Thank you. Yes. And during this long meeting with Mr. Edwards
11 you reviewed with him the changes that you wished made to
12 the affidavit?

13 A. There was something about that.

14 Q. Yes. And if you'd just look at the bottom of page 14,
15 Mr. MacIntyre, you'll see Mr. Edward's notes as to what it
16 was that you wanted deleted and what it was that you wished
17 added to your affidavit?

18 A. The bottom of what page?

19 Q. The bottom of the page you're looking at, I believe, sir,
20 page 14.

21 A. Oh, paragraph fifteen.

22 Q. You'll see four lines from the bottom, "John's Affidavit"?

23 A. Yes.

24 Q. "Para. 15 - delete", "25 & 27 Insert...". Do you see that,
25 sir?

JOHN F. MacINTYRE, by Mr. Saunders

1 A. Yes, I see that.

2 Q. Yeh, so does that assist your recollection that you went
3 away from that meeting with Mr. Edwards on the 22nd of
4 July, the affidavit was amended bearing in mind the suggestions
5 that you and Mr. Whalley had made and it was then given to
6 you in advance of July 26 when you swore to it. Is that
7 correct?

8 A. I -- This -- It could be, yeh. As I told you before, a little
9 problem of whether I took it with me or not.

10 Q. Okay. Having read those notes of Mr. Edwards does that help
11 you in your recollection, sir?

12 A. It could be. It could be right.

13 Q. It could be right?

14 A. It could be right.

15 Q. All right.

16 MR. SAUNDERS:

17 Those are my questions, Mr. MacIntyre. Thank you.

18 MR. CHAIRMAN:

19 We'll rise until nine-thirty sharp.

20

21

22

23 INQUIRY ADJOURNED AT 4:17 o'clock in the afternoon on the 10th
24 day of December, A.D., 1987.

25

COURT REPORTER'S CERTIFICATE

I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 10th day of December, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to typewritten copy.


Judith M. Robson
Official Court Reporter
Registered Professional Reporter

Sydney Discovery Services
December 10, 1987