

R. v. Shawn Brant
Commissioner Julian Fantino - In-Ch.

WEDNESDAY, AUGUST 29TH, 2007:

MR. MORRISON: Commissioner Fantino,
please.

COMMISSIONER JULIAN FANTINO, Sworn:

EXAMINATION IN-CHIEF BY MR. MORRISON:

Q. You are the Commissioner of the Ontario
Provincial Police?

A. I am.

Q. How long have you been a police officer?

A. Since February of 1969.

Q. You're aware, of course, of the blockade
of the CN line at Deseronto Road on April 20th to 21st of 2007?

A. Yes, Sir.

Q. You personally came to Napanee during that
blockade?

A. I did.

Q. Do you recall what time it was that you
arrived?

A. No, I don't.

Q. Why did you come?

A. We had a very large deployment of police
officers due to the circumstances that were prevailing at that
time, and I felt that on the basis of information that I had
that it was my responsibility to be there in those
circumstances.

Q. Once you were here in Napanee, what was
your role to be?

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A. Basically as a sounding board for advice, and in the event that a critical decision had to be made to be consulted on that, and to provide direction as I saw fit and determined depending on circumstances.

Q. Dealing with one issue in particular, who would make the final decision in terms of the use of force?

A. I would be.

Q. Alright. I'm not going to take you through everything that you did while here, but just address a couple of issues. You participated in meetings with various officers at various times?

A. I did.

Q. In any of those meetings, was there any discussion about offering some sort of immunity to Mr. Brant in order to induce him to end the blockade?

A. Absolutely not.

Q. Did anyone raise that issue, however remotely, in your presence?

A. No, they did not.

Q. What was your view in relation to the laying of charges relating to the blockade?

A. Depending on how the blockade unfolded, or the freeing up of the blockade, either at the time or subsequent to some other resolution, peaceful resolution that was to be made, it was my intent that there be a criminal investigation conducted with a view to laying criminal charges.

Q. Did you make that view known to others?

A. I did, yes.

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Q. The original information containing charges against Mr. Brant, relating to the April blockade, was sworn on April the 25th of 2007. What role, if any, did you have in the laying of those charges?

A. I made sure that there was a follow-up criminal investigation conducted. I did indicate that once that was done that the matter be reviewed by the appropriate crown attorney, and that if criminal charges were warranted, that they be laid.

Q. Did you have a personal view in terms of the laying of the charges?

A. I had a more professional view that what did in fact happen constituted a criminal offence of sorts, and I expressed that view.

Q. Very good. Did you direct anyone to lay charges?

A. No, I did not.

Q. As I said a moment ago, the original information containing the charges relating to the April blockade was sworn on April the 25th. Before that date, were you aware that First Nation's officers may have conveyed an offer of immunity to Brant?

A. No, I was not.

Q. And moving to the blockade of June 28th to 29th of 2007, you again came to the area where the blockades were taking place?

A. That's correct.

Q. And why was that?

A. The same reasons as the previous circumstances, only this time heightened by information that I

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had made available to me with regards to the potential of violence, the potential use of firearms in conflict with the police. So, I was more preoccupied this time around.

Q. The OPP took the step of stopping traffic on the 401 and setting up detour routes before any blockade had been physically established on the 401 highway. Is that fair?

A. Yes, that's correct.

Q. Why was that done?

A. The circumstances as they were unfolding created in our mind, our assessment, our judgment, the belief that the blockade would be effected by the demonstrators, or the protestors, whatever, and we felt that there was going to be a very significant safety issue, public safety issue, if that were to happen, and I basically felt that the blockade was in effect anyway because of the convergence of activities on the overpasses to the 401, that in fact we were going to lose the 401 and have thousands of people trapped there in the process.

Q. You personally took a role in dealing with Mr. Brant in relation to the blockades, and in particular, to freeing up Highway 401, and you had telephone conversations with him?

A. Yes, I did.

Q. Now, when was the first conversation according to your notes?

THE WITNESS: Your Honour, if I may be allowed to refer to my notes?

THE COURT: Alright. Is there any objection?

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MR. ROSENTHAL: I have no objection to that.

THE WITNESS: Thank you, Your Honour.

THE COURT: Alright. Counsel has been kind to allow all the officers the privilege to refer to their notes without making too much fuss about it so, you may refer to your notes for the purpose of refreshing your memory and subject to questions that counsel may have later on.

THE WITNESS: Thank you, Your Honour.

THE WITNESS: A. The first conversation was at approximately 2:04 a.m.

MR. MORRISON: Q. Just outline the details of the conversation as you recall them now, please.

A. Well, in essence there was a cordial conversation, it was not a confrontational tone to it.

THE COURT: Q. Commissioner, I hate to interrupt you, but could you confirm the date? I missed that.

THE WITNESS: A. Yes, that would have been the 29th of June, Your Honour.

THE COURT: Thank you.

THE WITNESS: A. Thank you. And the context of my conversation was to implore upon Mr. Brant to free up the 401 and free up the CN line blockade. I spoke about this being a weekend when so many people were traveling, children being out of school for that weekend, first weekend, the inconvenience of it all, holding people hostage in that regard. That was the context of the conversation imploring upon Mr. Brant to give up on the blockade of the 401 and the

CN track.

MR. MORRISON: Q. What was his response to you?

A. Well, he was - obviously didn't agree, maintained the blockade, indicated that we would talk further. I pressed him to continue to dialogue and continue speaking, that we would talk later once he grabbed a couple of hours sleep. He was tired and all of that. And we agreed that we would talk in about an hour which would have then made it about 3:15, and I asserted with him that we would, in fact, speak in about an hour, and we agreed that we would.

Q. It's implicit, in what you've just told us, but did Mr. Brant in any way deny that he and his group were controlling Highway 401?

A. Uh, no, not all, in fact, not only the 401 Highway, but also the CN track locate.

Q. You did, in fact, have another conversation with Mr. Brant, albeit not at 3:15. Approximately what time did the second conversation - or when did it take place?

A. About 3:40 a.m. the same day, the 29th of June.

Q. And similarly, could you just outline the essence of the conversation for us?

A. It was again very much along the same lines as the first conversation, imploring upon Mr. Brant to give up the blockade of both the 401, the CN line, more discussion about bringing closure to the ordeal, and that was basically the context of the conversation.

Q. Now, Mr. Brant raised something, a concern

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that he had relating to the April blockade. Is that fair?

A. There was a discussion in that time frame where he indicated that there had been agreements made at an earlier time, and that those agreements, or that agreement, had been broken.

Q. What agreement was he referring to?

A. I - contextually, I believe, that there was his understanding of his belief that there were not going to be any criminal charges with relation to the previous blockade. I knew nothing about that having been the case, that haven't been said, that haven't been promised to him, or whatever agreement he was talking about was not something I understood happened, and I basically indicated to him that there was no immunity with regards to what was taking place, and that I had never given immunity in all my career to anyone. So, I again just implored upon him to give it up.

Q. Did Mr. Brant agree to end the blockade of the 401 or indeed the other two during this conversation?

A. No, he did not. He maintained steadfast that it was going to continue.

Q. Well, what was Mr. Brant to do following the conclusion of this phone call?

A. Well, his thing was that he was going to go and talk to people and so forth, and that was fine with me because I had also interceded with a number of people to approach Mr. Brant to have him back off and allow the blockade to come down. So, it was just a matter of continuing to dialogue and I felt that as long as we kept on talking there was some hope that he would surrender the blockade.

Q. I'll ask you the same question as I did in

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relation to the first conversation, although it's implicit in all of your answers, did Mr. Brant in any way deny that his group was controlling the 401 Highway?

A. No, nor did I ever understand that he wasn't in control.

Q. Right. There was a third conversation, I understand.

A. Yes, Sir, there was.

Q. At about what time?

A. That would have been about 6:35 a.m., again the 29th of June.

Q. Similarly, just outline what you recall of it.

A. Well, yes, I again consistently reiterated my request initially that the blockade be vacated. I went in and spoke about how it was my understanding that the blockade, what he was doing and his supporters, were not, in fact, supported by the greater community. I spoke about how there had been two motor vehicle collisions that happened as a result of having to re-route away from the 401, tried to implore upon him to understand how much harm was being caused to so many people in this regard, innocent people. And eventually I told him that I was no longer negotiating with him, that I was now demanding and telling him that it was to be finished.

Q. There were, in fact, plans underway at that time for a forced removal of the blockade, were there?

A. Uh, yes, there was. There comes a time when the balance of the greater public good shifts, and the feeling was that under the circumstances, this situation could

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no longer continue, and we were, in fact, preparing to move on the blockades.

Q. How did the conversation end with Mr. Brant in terms of - I mean, put more directly, what was his response to your demand that the blockade come down?

A. Well, the same, going back to talk to people and those kinds of issues, but no commitment to take it down.

Q. Now, a short time later, there was some initiative to arrange a face-to-face meeting between you and Mr. Brant, was there?

A. There was.

Q. How did that come about?

A. Well, it was again over the telephone, again trying to get these issues resolved in a peaceful way. I felt that if I was able to speak directly with Mr. Brant, face-to-face, that I could have more of an impact on him, but he declined.

Q. He declined. However, some time after that you received some information to the affect that Mr. Brant was now prepared to give up the 401, and you then subsequently spoke to him in person to confirm?

A. That's correct.

Q. What time was that call, according to your notes?

A. About 8:25 a.m.

Q. Alright.

A. Also on the 29th.

Q. And tell us basically what that conversation consisted of.

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A. Well, it was finally a resolution that he and his followers were freeing up the 401, which was appreciated finally to the extent that we could re-use the 401, or citizens could re-use the 401, but I pressed him further with regards to the blockade of the CN line, and Number 2 Highway as well, and he refused to surrender those.

Q. You spoke to Mr. Brant again, I understand, sometime afternooon, still on the same day, the 29th?

A. Uh, yes, that was again about opening up the CN. This is now after the 401 was freed up, again imploring upon Mr. Brant to free up the CN line. I indicated to him that he had blockaded the line since about nine p.m. the night before, and that it was time to call it quits, and he refused.

Q. Did you ever go to the site, or near to the site of any of the blockades?

A. Eventually later in the day I wanted to get a visual perspective of the blockade of the CN line, and, you know, we talked so much about where that was, I just didn't know myself so, I went out, but I didn't actually go to the blockade, I stayed several hundred yards away.

Q. Alright. Through all of this, you were aware that an emergency part six wire tap was running on Mr. Brant's phone?

A. Yes, I was.

Q. What role did you have, if any for that matter, in the decision to establish that wire tap?

A. None whatsoever.

MR. MORRISON: Thank you. Those are my

questions.

CROSS-EXAMINATION BY MR. ROSENTHAL:

Q. Good morning, Sir.

A. Good morning, Sir.

Q. It brings back fond memories seeing you in the box and me over here. Does it bring back fond memories to you, Sir?

A. Uh, I always have fond memories of you, Sir.

Q. Thank you. I should begin by an apology that we're under great time pressure at this inquiry that was originally scheduled for five days, and then His Honour wasn't available the last two days so, we're down to three days so, we're moving along very quickly. So, I'm going to try to move as quickly as I can, and would respectfully request that you try and answer as quickly as you can.

A. Yes, Mr. Rosenthal.

Q. Now, this is a document that I have. A copy of that was taken off the Internet. I wonder if you'd find it a document that you can acknowledge is accurate copy. It's called, "A Framework for Police Preparedness for Aboriginal Critical Incidents."

A. Yes, I'm familiar with it.

Q. You're familiar with this document, Sir?

A. Yes. Yes.

THE COURT: Just so I can get it, it is called framework for

MR. ROSENTHAL: "A Framework for Police Preparedness for Aboriginal Critical

Incidents", and it's put out by the Field Support Bureau of the Provincial Command of Field and Traffic Services.

MR. ROSENTHAL: Q. Is that correct?

THE WITNESS: A. Yes, Sir.

MR. ROSENTHAL: I'll be asking a couple of questions about this document and I should like to enter it as the next exhibit as well.

THE COURT: What exhibit are we at?

COURT CLERK: Twenty-nine.

THE COURT: Exhibit 29 that would be.

MR. ROSENTHAL: That's the nicest looking copy so, I'll ...

THE WITNESS: Okay. Thank you.

MR. ROSENTHAL: ... make that an exhibit if I may.

COURT CLERK: Exhibit 29.

EXHIBIT NUMBER 29: Document titled, "A Framework for Police Preparedness for Aboriginal Critical Incidents" - Produced and Marked.

MR. ROSENTHAL: Q. I just want to highlight a couple aspects of this quickly. If you look at the first page after the title page ...

THE WITNESS: A. Yes.

Q. ... at the end of the introduction, it's the role of the OPP and all of its employees - at the end of it - to make every effort prior to a critical incident to understand the issues and to protect the rights of all involved parties throughout the cycle of conflict. Do you

believe that that's accurate as to the role?

A. Yes.

Q. And in general we can summarize for to suggest the essence of this document that's indicating that with respect to aboriginal protests and blockades, there are some special concerns given the historical rights of those people, right? Is that a fair summary?

A. That's correct.

Q. And given the need for a mutual respect between their culture and the culture of the OPP?

A. Yes.

Q. And one of the important aspects of the aboriginal phase on operations officers, indicated on page 3, at the first bullet point under that, is to forge the trusting relationships between the OPP and aboriginal communities, right?

A. Yes.

Q. And that's - that's important to the operation of the OPP in situations such as are before the court?

A. In all situations, yes.

Q. I'm sorry, Sir?

A. In all situations.

Q. In all situations?

A. Yes.

Q. But in particular, in dealing with blockades and related kinds of protests?

A. Not necessarily

Q. Okay; and then if you could look here just on the fifth page, just to highlight a couple of bullet

points, under the heading, "What Can be Done", about the fifth or sixth bullet point,

Always be honest, overt and consistent. Honesty is the best way to earn trust.

and the next bullet point,

Build positive, trusting relationships with members of the community, First Nation's police officers and other agencies. That is a part of the OPP position with respect to policing aboriginal persons, right?

A. Yes, specifically, but I would say that that applies to all the people we deal with.

Q. Yes. You would want to honest with everyone, right?

A. That's our mandate, yes.

Q. But there are particular concerns given cultural differences and previous misunderstandings with respect to aboriginal peoples, and that's why it's mentioned here, right?

A. Yes, Sir.

Q. And if we could turn to page seven just briefly, under the heading "Position". I just want to highlight the sixth bullet point, I believe.

Explain that police, whenever possible, will respect core cultural values.

That's one of their positions, right?

A. Yes.

Q. And that's all, in the light of time, that I'll highlight then that document, if I may, Sir.

A. Okay.

Q. Now, I gather that your goal, your primary

goal, both with respect to the April and the June incidences, was to prevent any kind of violence, right?

A. Yes, Sir.

Q. That's the number one priority in any such situation?

A. That's correct.

Q. And you are happy that that goal was achieved in both cases?

A. Uh, to some extent, yes. But not everyone's happy.

Q. I'm sorry?

A. But not everyone's happy.

Q. Not everyone's happy?

A. No.

Q. But - no, but that goal was achieved. There was no violence at either the April or June incidents ...

A. Yes.

Q. ... that are before this court, right?

A. Yes.

Q. And, in fact, we have an exhibit that was entered as an exhibit earlier, a press release that's exhibit 5 - I won't turn you to it necessarily - issued on June 30th. It describes the event, and the headline is peaceful, right?

A. Yes.

Q. And let me put it to you that it was a combination of the protesters and the OPP that together somehow, in spite of different interests and in spite of some conflicting values at the beginning, led to a peaceful resolution, both in April and in June. Is that fair to say?

A. That's fair to say, yes.

Q. Right. Now, with respect to Mr. Brant, I gather you learned something about him during April and then you had more direct interaction with him in June, right?

A. Yes.

Q. Prior to April, you had not had any interaction with Mr. Brant personally?

A. That's correct. I didn't have any interaction with him in April personally either, Sir.

Q. Yes, but you hadn't even - prior to April, you hadn't even had indirect interaction with him such as you had in April, right?

A. No, I knew quite a bit about Mr. Brant prior to April.

Q. I see. You had been informed by others and perhaps done some googling research or something, and learned something about Mr. Brant prior to April?

A. I knew who I was dealing with, yes.

Q. Now, we have to - in the scribe notes for April 20th - I won't turn you to it unless you wish to see it - there's a statement attributed to Superintendent Sweeney that Brant is true to his word, and then Detective Weese said - testified here at the beginning of this week, and he indicated that as far as he knows, that is the general reputation among the OPP, that he may not like what he says, but they haven't found that he breaks his word. Isn't that fair?

A. Well, that's the opinion of the impression given obviously by the people who spoke here.

Q. I'm sorry? That's the impression that you've gotten from, as well as other OPP Officers have gotten

from the interactions with Mr. Brant, right?

A. That was not my impression, although obviously other people have it.

Q. I see. Okay. I'm going to go out of order. I was going to begin with April, but maybe we'll start in June and work our way backwards, if you would. Now, with respect to the phone conversations that you had with Mr. Brant in June, in the very first conversation, Mr. Brant informed you that he doesn't have the ability to speak for everybody, right?

A. He did say that, yes.

Q. Yes. And he informed you of that several times throughout your conversations that he didn't, right?

A. Oh, that he had to speak to other people, yes, that was a ...

Q. Yes.

A. ... theme that he developed, yes.

Q. Yes, and you understood, did you not, that this was a part of the culture that Mr. Brant and his group were part of that they didn't have a leader in the sense that, for example, you are the leader of the OPP, you are the Commissioner of the OPP, if you say something, it goes, and other people have to do it, but they had the tradition where they operated by consensus, and then they had a spokesperson who reflected that consensus. Did you understand that, Sir?

A. No, not at all. I felt all along that Mr. Brant was in charge. I felt all along that his rhetoric was more a stalling tactic, and I say that because I had a number of other people approach Mr. Brant to get him to back down, people from his own community, and he obviously refused.

Q. Sir, you had - you understood that within his community, meaning the Mohawks of the Bay of Quinte, there were political differences about how to achieve their goals, right?

A. That may be the case.

Q. Didn't you get that understanding, Sir?

A. No, I don't.

Q. You didn't get that understanding?

A. No, other than there was different opinions about Mr. Brant's actions.

Q. Well, okay, let's call it different opinions about that kind of an action in achieving their goals, right?

A. Yes.

Q. You knew that?

A. Yes.

Q. And you called on some of the people who had the opposite opinion from Mr. Brant as to how to achieve those goals to try to dissuade him from participating in a blockade, right?

A. Uh, by taking a blockade down.

Q. Yes.

A. Yes.

Q. And first before it occurred trying to dissuade him and his colleagues who were planning to do a blockade, and then while it was in progress, trying to convince them to take it down, right?

A. Uh, not before because I had no idea or notion as to what Mr. Brant was going to do. Other than the rhetoric I heard, his comments about using firearms against

the police if the police moved in, those kinds of issues, but until the blockade actually started, I had no knowledge as to what Mr. Brant was actually going to do.

Q. Well, didn't he, in fact, with respect to firearms - let's deal with that. Didn't he simply say that if the police came after us, or words to that affect, we could respond?

A. Uh, I don't know if I can agree with that in total. My state of mind at the time was that firearms were at play and available, and that there was a predisposition to using those firearms against the police.

Q. I see. Well, what gave you that state of mind, Sir?

A. Uh, the information that was made available to me, even from the media, from Mr. Brant's own reported rhetoric in the media.

Q. What specifically led you to have the state of mind as you've - are you talking about April as well as June, or just June?

A. I'm talking about June primarily, yes.

Q. Okay. What gave you that state of mind as you prepared to participate in the June incident?

A. Uh, information that was provided to me, and information that I gleaned from the media as well, rhetoric attributed to Mr. Brant.

Q. And on the first phone call to you, didn't Mr. Brant tell you that Mr. Fontaine had expressed his desire for a peaceful day and you know that's our mandate, that's what we're trying to do? Didn't he tell you that?

A. Uh, probably did.

Q. Yes, right early on, right?

A. Yes.

Q. In your phone conversation? You said to him at some point, "What, do you want to get everybody killed, is that what you want?", at some point before you said what I just said, right?

A. That goes to my state of mind as to what I knew was at play.

Q. Indeed, but then he responds, "No, that's certainly not my intention.", right?

A. Well, that's not the information I had, but

Q. But didn't he respond, that's certainly not my intention?

A. Yes.

Q. He did? And that didn't affect your state of mind at all?

A. Not at all.

Q. No, 'cause you were convinced ...

A. Absolutely

Q. ... that he had a more aggressive state of mind?

A. Absolutely convinced.

Q. I see. And then Mr. Brant went on to say that Mr. Fontaine expressed his desire for a peaceful day and that's our mandate, and that didn't sway you either, did it?

A. No.

Q. Okay; and then didn't Mr. Brant tell you, in addition to having told you at the outset of your first conversation, that he doesn't have the ability to speak for

everybody? He told you that he'll broker your suggestion and then we'll talk about it, meaning - and you understood him to mean he'd have to present it to other people and get back to you, right?

A. That's what he said.

Q. Yes.

A. I don't know what his meaning was.

Q. Well, what do you take from, in the context including the earlier passage that I read to you, what do you take from the statement, I'll broker your suggestion?

A. A stalling tactic.

Q. I'm sorry?

A. A stalling tactic.

Q. A stalling tactic. I see. And then in your first conversation, I put it to you that throughout the first conversation, in fact throughout all the conversations you had with Mr. Brant, he was very respectful of you in his speech. Is that true?

A. Yes, he was, and I of him.

Q. Well, you say and you with him, didn't you tell him during that very first conversation, "I don't want to get on your bad side, but you're going to force me to do everything I can within your community and everywhere else to destroy your reputation." Did you tell him that?

A. Yes.

Q. Was that being respectful to him?

A. Absolutely. Under the circumstances, yes. I felt that he needed to know what was at play ...

Q. Okay.

A. ... and the consequences.

Q. And then he told you, did he not, when you told him that you're imploring him to call it quits, he said, "Yeah, I'll make a deal with you. I'll certainly talk to people about it.", and then you said, "Would you do it now Shawn?", and he said, "Well, I'll start, I'll start by talking to people."

A. Yes.

Q. Is that true?

A. That's what he said, yes.

Q. And then Shawn said to you, "You know, with the greatest respect, I can't make that decision on my own, it's not within my - it's not me" something like that, right?

A. He said that, yes.

Q. You didn't believe him?

A. No, I did not.

Q. You didn't have enough understanding of the way aboriginal people work in these situations to believe him when he says he has to go back to others before he could make a commitment to you that there'll be anything?

A. My understanding was that Mr. Brant was in absolute charge and in control of what was happening, the events that were taking place.

Q. I see. Well then, didn't Mr. Brant try to explain that further to you? For example, didn't he say to you, "Well, I'm saying it's not within my power to do that, and really if I said to you that people would just tell me to fuck off anyway and they'd tell me to go home. It has to go through the process, and what I'm telling you is that I'll start talking to people about that." He told you that,

didn't he?

A. Yes, he did.

Q. And didn't you then begin to think that maybe there's a little bit of truth to that, maybe there is a process he has to go through, and that he was honestly describing that to you, and he was going to get back to you?

A. Not at all.

Q. Didn't occur to you that it might be true?

A. No, it did not.

Q. I see. And then you said to him something like, so, Shawn we've got to deal, we're going to start moving this along, are we, and he said something, well, we have an understanding, you know - and then you interrupted him about suicides and so on. You kept on convincing - trying to convince Mr. Brant that he should personally make a commitment to you to stop this thing right now, right? That's the essence of what you were trying to do?

A. And the reason for that is that I believe he was in control.

Q. I see. And you say that you were respectful to him. You agree he was respectful to you, but you say you were respectful to him?

A. Yes.

Q. I'd like your opinion, upon reflection, if this sounds respectful, first, if you said it, and then secondly, if you feel that it was respectful to Mr. Brant. "You know, if you pull this off, I'm liable to say that your issues are critical and they're important and I'll speak to that, but if you don't, then I'm going to go the other way, and I'm going to say that you're just destroying, and you're

abusing, and you're using the people, and you're actually being a mercenary about it, using the suicide of children and all those legitimate issues, and you don't want that because I think I can play the media routine like you do." Did you say that to him?

A. I did.

Q. Was that being respectful?

A. Under the circumstances, absolutely.

Q. I see. And he told you in response to that that he put two of his own babies in the ground. Do you remember that?

A. Uh, he said that.

Q. Yes. And then you had a second phone call with him at about 3:43 in the morning, right?

A. Yes.

Q. And you complained that Mr. Brant had missed a deadline. You wanted him to call you back at 3:15. Do you recall that?

A. We had agreed to 3:15, yes.

Q. Well, he had explained to you the difficulty he had, he didn't know how much time, and then you said, "Call me back. I want a definite time, make it an hour." And he said, "Well, okay." Right?

A. Yes.

Q. I see. And then now it's 3:40, after 3:15, and you said to him, "You missed the deadline. I thought you would call back at 3:15." Right?

A. Yes.

Q. And then he said, "Hey, I've been doing what I said I was going to do, and" and then you

interrupted,

"How are you making out?" and he said,

"Well, it's coming along, you know. To be honest with you, running back and forth and having the wife bring me the phone and interrupting really isn't that helpful. Well, but we're doing our best here, you know."

Now, did you not understand that he was explaining to you that he is in the process of having the discussions with people that were necessary to reach a decision on how to respond to your request?

A. I understood that that's what he said.

Q. And, Sir, that's what he said, but you didn't believe him?

A. I did not.

Q. I see. And then you said to him, "I'll tell you what, if you pull this off in the next little while, I'll let you take all the credit, alright." You told him that, right?

A. Yes.

Q. And then Mr. Brant told you - you alluded to this a bit in your direct evidence - "Well, you know, to be honest with you, you know, we had an agreement the last time, and it was an agreement on the tracks, and there was an agreement for immunity, and it was my understanding ...", and you interrupted,

"Well, no, no", and he continued,

"... that there was a pressure from you and a direction to lay charges against me.", and you said,

"Oh, no.", and Mr. Brant said,

"You know, I mean so when", and you said - and there was

some simultaneous talking going on evidently - you said, "Shawn, there's no", and then Shawn said to you, "We're talking about building a relationship and building trust.", and you said, "I've never given immunity in my life to anybody." and Mr. Brant responded,

"Well, certainly your officers did.", and you said, "Well, but I can't speak to that right now, Shawn. We have another emergency here and let's deal with this one now. When I said, I'll let you take the credit, you can tell the media that you decided to pull the plug, otherwise it won't look that pretty.", and then Shawn said - I'm going to be asking you at the end of this if you agree that these words were said -

"Well, you're asking me to talk to people and convince them of your word and your integrity, and to be honest with you, you know, people are throwing it right back in my face, and they're saying, Shawn, didn't you get fucked the last time, and isn't this the same person who ordered those charges and, you know, it's not an easy go, I mean, there's not a lot of trust between us, and I'm speaking", and you said,

"Well" and Shawn said,

"Personally I'm speaking to the organization and", and you said,

"Shawn, your whole world's going to come crashing down on this issue." Do you recall those words in the conversation, Sir?

A. Those words were said, yes.

Q. Those words were said, and did you understand then that at least the idea that in April there had been a promise of immunity that was broken by the police, was,

according to what Shawn was telling you, one of the problems he was facing in having discussions aimed to resolve the June issue, right?

A. I can't read his mind, Sir. I can only agree to the words spoken. I have no way of knowing what he was getting at at that time.

Q. But you understood the words in the way I just said, right?

A. Oh, yes, I understood the words.

Q. You understood that he was telling you, look, I'm having a problem here in talking to people because I say they want to negotiate this and this, and they say back to me, well, Commissioner Fantino he's the same one who broke the deal in April, how can we trust anything. You understood that was what Shawn was telling you, right?

A. In a general context, yes.

Q. Yes, and you didn't respond with any attempt to explain the situation any further, did you? You said - you just said, "... your whole world's going to come crashing down.", right?

A. I also told him there's no immunity ...

Q. Yes.

A. ... so, to put it in context, Mr. Rosenthal, had I been involved or engaged or knowledgeable with regards to what he was talking about, I wouldn't have been speaking as I did about no immunity having been given by me at any time ever.

Q. But don't you agree at least in retrospect, Sir, that you should have at least shown him enough respect to discuss the issue with him instead of

saying, "... you're going to come crashing down." Shouldn't you have at least said, jee, it's unfortunate that there was a misunderstanding, let's see if we can try and regain some trust in spite of that misunderstanding, or something to that affect?

A. Oh, no, not at all. I don't take anything back that I said to Mr. Brant in those circumstances at any time.

Q. And it wouldn't have been appropriate to have an approach such as I've just suggested to you?

A. Not at all.

Q. Not at all?

A. No. You've got my word, Sir, and you know what I said, and I stand by that.

Q. I see. And in your view is this consistent with the principles in the document that we glanced at earlier?

A. Under those circumstances when thousands of people are being held hostage by what clearly is an illegal act, the extraordinary impact on citizens, the extraordinary impact on hundreds of police officers having to converge on a situation that was clearly a criminal act, the issue of the greater public good, in all of that context, Sir, I believe that I behaved honourably and I would do the exact same thing again.

Q. Sir, I put it to you that the document that we looked at and the concerns of the Ipperwash inquiry and many other concerns that you're aware of, have indicated that in situations like this, for the public good as well as for the respect of the protesters involved, it's important to

understand where they're coming from ...

A. Mr. Rosenthal

Q. ... and deal with their cultural values and so on.

A. Mr. Rosenthal, there's nothing in the spirit, the intent, or the written word in this document that justifies criminal conduct or that exonerates people from accountability from criminal conduct, or that it absents me as a law enforcement officer from exercising discretion or using the authority bestowed upon me to effect a lawful purpose.

Q. And doesn't though that document and many other documents speak to the way you should do that in situations involving aboriginal protesters?

A. Mr. Rosenthal, these are guidelines and they're principles, they're not a firm and fixed mandated way of doing business. The end role, or the end result here, if you look at page one, promoting and developing strategies that minimize the use of force to the fullest extent possible. And we did that all along, all the time, be it in April, or in June with regards to Mr. Brant.

Q. Continuing with the second phone call in June, you kept on saying to Mr. Brant words to the affect of, well, why don't we just call it quits, and so on, right?

A. Yes.

Q. And then he said to you, "Are you going to let me do my job?", and you said, "Yeah, hurry up though." and he said, "Okay." Right?

A. Yes.

Q. You understood when he said, "... let me

do my job", you understood that what he meant by that, whatever you may have thought of it, what he meant by that was his job of communicating with the other people and bringing back a response to you, right?

A. Mr. Rosenthal, you're asking me to go into Mr. Brant's mind and interpret what he said. All I can tell you is that that's what he said. What I believe is something totally different.

Q. I asked you if you understood that what he meant was what I described. Did you not, Sir?

A. I only can refer to the words spoken. That's what he spoke. What he meant, you'll have to ask him.

Q. I see, and you're not going to tell me what you took from it?

A. I took from it another stalling tactic.

Q. I'm sorry, you took?

A. Another stalling tactic.

Q. I see. You thought he was just stalling. And then he said to you, "I'll call you back as soon as I have some answers." Do you recall that?

A. Yes.

Q. And then a little later he said, "You know, there's a process that I've got to work through, and that's just the way it is and", to which you responded, "I guess I have to tell you that I have a process to work through too and", and then he responded, "Oh, and I understand that, I understand that also.", and you said, "I'm trying to meet you halfway, Shawn.", to which he responded,

"I know and I'm doing the same.", and then you said, "So, can you give me a time?", and he said, "Well, right now I'm doing the job and I'm talking to you and I'm not doing my job because of that." Were those words spoken, Sir?

A. Yes, Sir.

Q. And then a little bit after, Mr. Brant said to you, "I'm a man who keeps his word, I'm a man who has honour, and I think people can vouch for that, and if you want to give me the opportunity, give me the opportunity. If you want me to play phone tag, then I'll do that, but I'm not going to do it any quicker if that's the case." So, again I would ask you, did you not understand that what he meant - I appreciate you thought all of this was stalling tactics - but didn't you understand that what he meant was that he needed the opportunity to be speaking to the people and if he's on the phone with you, he can't be doing that, and from his perspective he was saying, it will be quicker if you let me talk to them and resolve it and then get back to you, right?

A. Mr. Rosenthal, I can only accept the words spoken. What intent was behind those words, you'll have to speak to your client.

Q. You had another phone call with Mr. Brant that started at about 6:40 in the morning on the 29th of June. Is that correct?

A. Yes, Sir.

Q. Then you asked him - and that was a respectful beginning - and you said, "Good morning, Shawn.", and he said, "Good morning, Mr. Fantino.", and you said,

"How are you doing?", and he said,

"Not bad, thanks." right?

A. Yes.

Q. And then you asked, "Are we making any progress?" Now, what did you mean by that? Did you not mean was he making any progress in getting consensus from the group as to what to do?

A. No, was he making any progress, him backing down.

Q. Him backing down, right?

A. Yes.

Q. I see. And Mr. Brant responded to you, "Well, we're sitting here speaking, but shortly we're just burning some tobacco ..." You understand that burning tobacco has special significance within the culture of First Nations?

A. Yes.

Q. "... and we'll be speaking again with Constables Ron Maracle and Jason Brant so, yeah, I think we're making some progress." And then you bring to his attention, something happening with the Mohawk Council at Akwesasne, right?

A. That's correct.

Q. And you put to Mr. Brant, "We heard that the thing may go up in smoke because of all that's happening here and your people in Akwesasne community are quite upset, they're offended", and so on. And you were trying to suggest to him that the actions that he and his colleagues were involved in were upsetting people in Akwesasne, right?

A. I was making him aware of some issues that

had been brought to my attention by other First Nations people, that Mr. Brant's activities were, in fact, interfering with other peaceful situations happening elsewhere.

Q. And he said, among other things, that he would take that into consideration, right?

A. Yes.

Q. And he indicated respect for the people in Akwesasne in general, right?

A. Yes.

Q. And he said, "I'll certainly bring it up when we're having discussions, which we're about to do shortly, and I know Constables Ron Maracle and Jay Brant are patiently waiting for me to get to those discussions, and I'm anxious too as well to engage in those talks so, if we could - then I'll certainly like to do that and then maybe I'll bring you up and apprise you with answer that you might satisfactory." He said something to that affect, Sir?

A. I said those things, yes.

Q. And then you responded, "I think we're running out of time, Shawn. You know, we've been back and forth all night on this, and we've got a lot of very angry people who are absolutely beyond themselves with what's going on, and, you know, we just have to close shop here, and we can't go on any longer to be honest with you.", and he responded,

"Yeah, well, you know, I certainly appreciate that and I know that sometimes the wheels turn slowly, but, you know, it's important that, you know, we came in here on a consensus and we need to resolve this on a consensus. And, you know, I'm

sure that", and he speaks about some of the people you've spoken of, that they would appreciate what was being done.

Do you recall words to that affect, Sir?

A. Words to that affect were spoken, and I did not believe him because there were quite a number of people in the Tyendinaga community, Deseronto, First Nations people, that were not in agreement with what Mr. Brant was doing.

Q. And do you not recognize, Sir, that among First Nations people, just as among any other community of people, there are disagreements about how to proceed on various issues?

A. And that's why I said to you earlier, Sir, about the consensus. I didn't believe that there was consensus.

Q. Now, you - throughout the whole time, you felt that it was a just a stalling tactic by Mr. Brant, eh?

A. Pretty well.

Q. Well, why did you keep talking to him?

A. Because that's what I've been trained to do, and that's what we should be doing regardless of what situation prevails. The end game, or the end goal was always to achieve a peaceful outcome no matter what amount of talking or what, in fact, the talking was all about.

Q. And you spoke to Mr. Brant about inconvenience to people, and he assured you it's not their intention to create that kind of animosity, and that they were taking that into consideration, and they're looking at bringing this issue to a resolve and, you know, I think there needs to be an opportunity to have those discussions. He

told you words to that affect, right?

A. Yes, Sir.

Q. And you said, "We've given you the opportunity for the last number of hours. This is not a big issue, you're in charge, you're responsible, you can pull the plug. You know darn well you're not supported by a whole lot of people in First Nations so,", and Mr. Brant responded, "Well, you know, with the greatest respect, Mr. Fantino, we have, you know, two officers here that we've been engaging in discussions with and we have a good relationship with them, and they're certainly expressing similar view points that you're bringing up now, and with the greatest respect, I'd like the opportunity to pursue with those officers, and I think it might be more appropriate if they conveyed that message back to you, and we dealt directly with our officers and we're satisfied with their honour and integrity." Did he tell you words to that affect?

A. Words to that affect were spoken, yes.

Q. And you responded, "Shawn, you're missing the point....", right? And then you amplified that, "You're missing the point, it's not about your officers, you're blocking land that's not yours, you're interfering with the safe passage and free flow of people's entitlement to travel along the various highways", and so on, right?

A. Yes.

Q. And you said, "Your reputation is going to be worn by not seeing any responsibility towards all those fine people that are not in agreement with you, but who are part of your community who don't appreciate what you're doing.", right? You said something like that to him?

A. Yes.

Q. And he responded, "Yeah, but I did have - and we did have discussions with some of those people. I believe there were four individuals who came in. They delivered a message to me this morning, and we certainly listened to them, and I think that, you know, we should just stick with the proper course of discussions, and again with the greatest respect, I'd just like the opportunity to do that in the way that we have, right now, and I certainly trust the gentlemen and we're both confident that a reasonable resolution can be reached in a short length of time, and we're not asking for, you know, a great deal, and we're simply only asking for the opportunity to engage in those discussions and do it in the most appropriate way." He said words to that affect, Sir?

A. Yes.

Q. And then you responded, "Because of the traffic situation, people have to be re-routed, and we've already had two persons injured in motor vehicle collisions."

A. Yes.

Q. And you ascribed that in your direct evidence to Mr. Brant and his colleagues, but on the 401 there's a lot of accidents too, right?

A. We're talking about this particular event, Sir.

Q. No, but in general, you can't say that there wouldn't have been five accidents if the 401 was opened in this period, and more serious accidents because they were going faster, right?

A. I was convinced that these have happened

because of the extraordinary difficulties caused with the re-routing attributed to Mr. Brant.

Q. And then you told Mr. Brant, "Enough is enough now. You've worn our patience down. The tolerance of the public is saturated. There's no more charity and no more putting up with this. I'm now warning you to pull the plug on this because the end of the day you're going to be the big loser, as well as the communities you think you're representing because they're not with you.", to which Mr. Brant responded,

"I certainly appreciate your concerns, and I share them as well, and we'll have an answer back and a solution to that issue I'm confident in a very short length of time. We're simply about to", and you interrupted,

"Shawn, ...", and then he continued,

"... start burning tobacco, and that allows us to have some clarity on the issue.", and you then responded,

"Shawn, we're not negotiating anymore. We've done it all night. I'm telling you for the sake of all that's decent and holy, and the things you're trying to achieve, and to ensure the reputation and the credibility of First Nations people, which I think has been very severely damaged, I'm now telling you to pull the plug or you'll suffer grave consequences.", he said, "Okay.", you said,

"Okay."

Mr. Brant said, "Thank you, Sir.", you said,

"Thank you.", Mr. Brant said,

"Bye now.", you said,

"Bye."

Is that correct?

A. Yes.

Q. Now, Sir, I've been reading from transcripts that I was just provided this morning of these phone conversations. Were these transcripts made as a result of the wire tap of Mr. Brant's phone that the crown attorney alluded to in his examination of you?

A. That's my understanding, yes.

Q. I see. Now, that wire tap you said was instituted without your knowledge. Is that correct?

A. That's correct.

Q. When did you first obtain knowledge that there was a wire tap in place?

A. When I was briefed on the existence of firearms and the potential use of firearms against the officers.

Q. When was that?

A. Some time before that evening.

Q. Before that evening?

A. I believe on the 28th or thereabouts.

Q. I see. On the 28th?

A. Yes.

Q. So, sometime on June 28th you were informed that a wire tap had been placed on Mr. Brant's cellular phone?

A. There was some discussion about what procedures or what course of action we would take to prevent violence and how we were going to deal with it. This was left to the people who were basically developing the operational plan.

Q. So, there were some discussions that you were a party to about how you would deal with violence?

A. I was briefed on the existence of firearms, the intent to use firearms against the police, those kinds of issues. I was aware of those situations, yes.

Q. And you were, as part of that briefing, you were given the knowledge that a wire tap either was in place, or was shortly to be put in place on his phone, right?

A. I believe there was discussion about what lawful means we had available to us to ensure the issue of potential violence and firearm use, and all of those things, were addressed properly.

Q. And who was involved in those discussions with yourself?

A. Oh, I can't even begin to tell you now, I don't know.

Q. I'm sorry?

A. I don't know.

Q. Well, would you please take your mind back and try to remember?

A. Well, it was officers that were engaged or involved in this operation.

Q. So, there was discussion about what means might be used in order to deal with that potential violence, right?

A. Yes.

Q. And one of the means was a wire tap that was being discussed?

A. Uh, some of these issues were talked about, yes.

Q. And one of the means that was discussed was a wire tap?

A. A whole lot of things were discussed, Sir. I can't specifically tell you when, or who, or why.

Q. I appreciate that, but was one of the things discussed a wire tap?

A. I believe there was some suggestion of that, yes ...

Q. Yes.

A. ... as a possibility.

Q. And this was in the evening of June 28th?

A. Oh, I can't tell you that, I don't know.

Q. Okay. So, at that time at that discussion, wire tap was just a possibility, it was not yet in place, was your understanding?

A. My understanding was that all possibilities were being considered, including a potential wire tap, yes.

Q. And what was your understanding as to who would consider those possibilities and then make a final decision as to which of the possibilities would be employed?

A. The people who were developing the operational plan.

Q. Now, by the time you were speaking to Mr. Brant, and the conversations we've just discussed, you knew that there was a wire tap on it, did you not?

A. No, I did not.

Q. You did not know?

A. No.

Q. I see. When did you first find out that there had in fact been a wire tap placed on Mr. Brant's phone?

A. Times after the 29th.

Q. Sometime after the 29th?

A. That's correct.

Q. Who told you?

A. Again, Sir, I don't know.

Q. You don't know?

A. No.

Q. Where did you find it out? Where were you? Were you back in your office?

A. I can't begin to tell you. I don't know.

Q. What were you told about the nature of a wire tap at that time?

A. That there had been one going, trying to locate the firearms, and trying to get a head start on the potential of violence.

Q. I see. And were you told for how long that wire tap was in place?

A. I have no idea.

Q. You were not told?

A. No.

Q. Were you told that the wire tap was instituted without there having been any judicial authorization for the wire tap?

A. I have no knowledge of how it was obtained.

Q. You had no knowledge of that?

A. No, Sir.

Q. As far as you know, it might have been a standard wire tap where an officer

A. I have no knowledge how it was obtained.

Q. But I just - if I may finish my question -

just, as far as you knew, it could have been just a standard wire tap when an officer applies in front of a judge for authorization for a wire tap, right?

A. Or in an emergency.

Q. Or in an emergency?

A. That's correct.

Q. How many emergency wire taps have you been aware of being instituted in the OPP?

A. I have no knowledge.

Q. You have no knowledge of any, in fact, right?

A. I have no knowledge at all one way or the other. Your question of any ...

Q. Yes.

A. ... makes you believe that I have a number. I have no knowledge of any, period.

Q. Right. Good. And you have no knowledge of any such wire taps being instituted

A. One way, there could be 100 and I wouldn't know about it. There could be none and I wouldn't know about it.

Q. Right. You've been a police officer in various forces. How many different forces, Toronto, London, Newmarket, OPP, any others?

A. Four.

Q. Four. Okay. I got them all. In all your years in all those forces as you worked your way up from the ranks, did you ever institute an emergency wire tap?

A. Personally, no.

Q. No. Did you ever hear of one being

instituted?

A. I know there's provisions for it.

Q. You know there's provisions for it?

A. Yes.

Q. Okay. It's provided for in the *Criminal Code*, right?

A. Yes.

Q. When did you first find out that this wire tap was instituted without judicial authorization?

A. I don't know, Sir.

Q. Would it have been before I referred to that this morning, would it not?

A. Yes, of course.

Q. At least a month or two ago?

A. Probably not. I can't - I don't know.

Q. You can't give us any rough estimate as to when you found out?

A. No.

Q. Now, we understand from evidence at this preliminary inquiry that there was some discussion as to whether or not to reveal to the defense that this wire tap had existed.

A. I have no knowledge of that.

Q. You were not privy to any such discussion?

A. Absolutely not.

Q. And have no knowledge of it at this very moment?

A. Again, I do not.

Q. You indicated, you are familiar with the fact that the *Criminal Code* does provide for the possibility

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of a wire tap without judicial authorization, right?

A. That's my understanding, yes.

Q. Yes, and there is section 184.4 of the *Criminal Code*, which is headed, "Interception In Exceptional Circumstances", and we were given that letter from Detective Staff Sergeant Pat Finnegan, of the OPP, indicating that there was an interception of Mr. Brant's telephone, pursuant to section 184.4 of the *Criminal Code*. Is that in accordance with your knowledge as to

A. I know nothing about the letter you speak of.

Q. Know nothing about it? You recognize, Sir, that a wire tap is an extreme invasion of a person's privacy, do you not?

A. It all depends how you come at that issue.

Q. Explain what you mean by that, Sir?

A. I think that there's provisions in the *Criminal Code* to allow, in our laws, to allow those activities to take place if and when justified.

Q.. I wasn't suggesting it may not be justified in some circumstances, but you do recognize it's an extreme invasion of a person's privacy, do you not?

A. Yes.

Q. Yes. And would you, as Commissioner of the OPP, then be very concerned that wire taps should not be instituted unless they are properly instituted?

A. That would be my understanding, yes.

Q. But that you would have a serious concern, as Commissioner, that any wire tap that any of your officers

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instituted would be done properly, right?

A. It would be up to them to justify their reasons, or their rationale.

Q. Yes.

A. Yes.

Q. And it would be your responsibility to ensure that wire taps were not instituted by your officers unless it was pursuant to law, right?

A. Ultimately it would be accountable, yes.

Q. Yes. And I'm suggesting to you, Sir, that it's therefore your responsibility, having understood that this wire tap was obtained without judicial authorization, to conduct an investigation as to who did the obtaining, how it was obtained, and under what circumstance. Would you agree that you have that responsibility, Sir?

A. Not necessarily.

Q. I see. Not necessarily. Explain.

A. Are you suggesting that there was some improper conduct involved?

Q. What I am suggesting to you, Sir, that it was known for months that this event would take place, and the conclusion that you came to from what you read in the papers, as you told us, about possible arms and violence from Mr. Brant, was a conclusion you came to way before June 28th.

A. Not way before, Sir. I think it was within a very short time of June the 29th.

Q. Okay. When did you become - when did you reach that conclusion?

A. Within a very short time of the event

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actually taking place.

Q. I see.

A. And that's why I went to Napanee myself.

Q. Oh, you wouldn't have gone if you hadn't heard about arms?

A. Probably not.

Q. I see. In April did you hear about arms?

A. Uh, probably not.

Q. But you went to Napanee, didn't you?

A. That's correct.

Q. How come you went in April and you wouldn't have gone in June?

A. Because that's a decision I chose to make.

Q. I see. So, when do you say you first decided that you would come to Napanee in June?

A. Uh, the night of the 28th into the 29th.

Q. That's when you made that decision?

A. That's when the blockade unfolded.

Q. Yes.

A. And that's when I decided I would come to Napanee.

Q. Would you - do you keep a diary, Sir, a daily diary?

A. Uh, not normally, no.

Q. Do you have a secretary who keeps your appointments?

A. Uh, yes, I do.

Q. Yes. You have - there would be a record of what appointments you might have had scheduled on June 28th

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and June 29th?

A. I had no appointments other the National Day of Action.

Q. Now, you don't know, you say, at what time you had those discussions about a possible wire tap?

A. That's correct.

Q. Sometime on June 28th?

A. I believe so, yes.

Q. Maybe June 27th?

A. I don't think so.

Q. Were you in Napanee already?

A. No, I came to Napanee the evening of the 28th.

Q. So, you had those discussions by telephone?

A. I don't know where I had those discussions, or how, or with whom.

Q. I see. Given these circumstances as you understand them now, you don't feel that you should conduct an investigation as to how this wire tap was instituted?

A. No, I don't, Sir.

Q. Do you have any notes in your notebook, or otherwise, as to when you learned that Mr. Brant might possibly use weapons?

A. Or his followers. I believe it was on or about the 28th.

Q. Do you have any note I asked you, Sir?

A. No.

Q. You learned that from newspaper articles

you told me earlier?

A. Some of that information came from the media, yes.

Q. And what media did you learn it from?

A. I don't know, Sir.

Q. And what you read in the media was to the effect that if police officers attacked the protesters, there might be guns near by, right? That's what you read in effect, right?

A. My understanding was that guns were in fact going to be used on the police officers.

Q. Under what circumstances?

A. If the police officers moved to enforce the laws of this land.

Q. And where did you get that understanding?

A. Information provided to me.

Q. By whom?

A. By people in my circle of OPP officers.

Q. And who?

A. Well, I can't begin to tell you, Sir.

But the other thing I should mention is that those things were also reported in the media.

Q. And they were reported in the media for several weeks, in fact, right?

A. I can't say that. I don't know.

Q. Approximately how long?

A. My recollection is that I became intimately aware of the potential use, or the intended use, of firearms on our police officers on or about the 28th.

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Q. I see. And you became aware of it then?

A. Yes.

Q. And you were informed by other officers, you told us then?

A. And things I was made aware of from the media attributed to Mr. Brant, comments attributed to Mr. Brant.

Q. Now, you've made some notes with respect to this matter, right?

A. Yes.

Q. Did you note anything about weapons, Sir?

A. Uh, no, I don't believe so.

Q. In your notes?

A. Uh

Q. You didn't? Would that not be one of the most crucial things to note, Sir?

A. It may have been.

Q. Yes. If there really was a report of possible weapons that you believed, you would have noted it wouldn't you, Sir?

A. Not necessarily, no.

Q. Why not?

A. 'Cause other people did.

Q. Other people noted it?

A. Yes.

Q. Who noted it?

A. Obviously the people that are applied for the intercept.

Q. I see. And who are those people? You

don't know?

A. No.

Q. Could you make a phone call and find out? You're the Commissioner of the OPP. Can you find out who instituted this wire tap, this extraordinary wire tap against Mr. Brant?

A. Oh, I suppose I can do.

Q. Would you do that during the break this morning, Sir?

A. Well, I don't know where to start.

Q. You don't where to start?

A. No.

Q. You don't know where to start well, perhaps you could start by speaking to Officer Finnegan, okay? And see if you can, during the break, determine how this wire tap came into existence, Sir. Okay?

A. It came into existence as a result of the provisions in the *Criminal Code* that allow for emergency wire taps, for emergency intercepts.

Q. Yes, but I'm interested in who made the decision, on what basis, what was the evidence in support of the requirements of that section of the *Code*, and so on. Can't you determine that, Sir?

A. I'm not going to undertake to do that, Sir.

Q. I see. Now, Sir, would you agree that if there is a wire tap of a person who becomes a defendant in a criminal matter, then the results of that wire tap must be disclosed to the defense?

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A. I can't speak to all the circumstances, Sir. I don't know the intimacy of the regulations.

Q. So you don't agree with that in general?

A. No, I said I don't know the intimacy of the regulations, and there's circumstances that prevail in every circumstance. There's no absolutes.

Q. I see. In the circumstances as you understand them surrounding this wire tap, would you agree that it would be apparent to you, as a seasoned officer, given current requirements of Stinchcombe and so on, that the content of any wire - the fact of and the contents of any wire tap would have to be disclosed to the defense?

A. It all depends on circumstances, Sir. Nothing is absolute.

Q. And you don't know enough about these circumstances to determine that?

A. That's correct.

Q. Well, now, Sir, the contents have not been disclosed to the defense, I inform you. Okay? So, we have been told - we were told in a letter from Officer Finnegan on August 24 that there had been such a wire tap, and we were told that we could review the records related to it in that letter. Okay? I'm just giving you some factual background.

A. I have no knowledge of this, Sir.

Q. Yes. Well, perhaps I'll show you the letter.

A. Oh, I don't question the letter, but I have no knowledge about the reasons for the letter or how the letter came about.

MR. ROSENTHAL: Okay. Perhaps a copy might be made an exhibit, Your Honour, since there's much discussion of this matter.

THE COURT: If you will.

MR. ROSENTHAL: Can the crown agree this is an authentic copy of this letter?

MR. MORRISON: Yes.

MR. ROSENTHAL: Yes?

MR. MORRISON: Yes.

MR. ROSENTHAL: Okay. Thank you.

THE COURT CLERK: Exhibit 30, Your Honour.

EXHIBIT NO. 30: Copy of letter from Detective Finnegen, dated August 24th, 2007, regarding a wire tap on Shawn Brant's cellular telephone - Produced and Marked.

MR. ROSENTHAL: Q. We've had evidence, Sir, from Detective - sorry if I missed saying ranks. I'm not very good at ranks, Sir - Detective Weese, I believe. Is that correct, Sir? That there was some discussion within the OPP as to whether or not to disclose the fact of this wire tap and the contents of this wire tap to the defense. So, I'm just informing you of that evidence. Sir, would you undertake, as Commissioner, to investigate why it was not until August 24th that we were informed of the existence of this wire tap, and why we still have not been provided with any tapes from the wire tap, and why we were just provided with the excerpts from the wire tap and probably the phone calls from yourself this morning?

THE WITNESS: A. I'm not going to undertake

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to do that, no.

Q. I see. Would you agree that there's a possibility that there was some impropriety by officers in obtaining this wire tap, and in failing to disclose it until very recently to the defense?

A. I'm convinced that there is no such allegation worth responding to.

Q. Well, I'm making that allegation right now, Sir. Do you understand that's an allegation?

A. And I'm not prepared to respond to it, Sir.

Q. I appreciate that.

A. I believe that everything that we did was in the greater good, and that's my understanding.

Q. And you know nothing about what happened?

A. I know lots about what happened.

Q. With respect to this wire tap?

A. No, I don't.

Q. No, but yet, you are not prepared in the circumstances to undertake to investigate what happened, and determine whether or not the wire tap was lawfully obtained?

A. That's correct.

Q. Thank you. Is there any OPP standard operating procedure or guideline with respect to emergency wire taps?

A. Uh, I'm not aware of it, but no doubt there is.

Q. I'm sorry?

A. I am not aware of it, but no doubt there

is.

Q. You have no doubt there is?

A. Yes.

Q. Would you undertake to make a phone call and make me aware of what the guidelines are?

A. No, I will not.

Q. I see. Now, scribe notes are invariably made when there is a serious incident. Is that correct?

A. Yes, Sir.

Q. And we've had evidence that scribe notes are notes that are, one might say, in lieu of personal notes from the incident commander that are taken by a scribe as to what happens surrounding the incident commander. Is that a fair description?

A. Yes.

Q. And we've been provided with scribe notes for the April incident, but we have not been provided with scribe notes for the June incident. Can you give us any explanation as to why we have not been provided with scribe notes for the June incident?

A. No, Sir.

Q. You were aware, prior to speaking to Mr. Brant, that he had said on a number of occasions that he wanted this to be a peaceful day, right?

A. Uh, not specifically. The use of firearms, or the potential use of firearms against the police, that didn't sound too peaceful to me.

Q. In addition to the - what do you recall reading in the media specifically with respect to firearms,

Sir?

A. The fact that firearms were, in fact, available, and the intent was to use them against the police if the police moved on the blockades.

Q. And you don't recall reading anything from Mr. Brant, or seeing on television, or anywhere from Mr. Brant, anything to the affect that he hoped it would be peaceful?

A. If he said it, Sir, it didn't resonate as much as the use of firearms against our police officers. It seems to be a very serious contradiction.

Q. And even when he said in his early conversation with you, that he had a mandate, along with Mr. Fontaine, to have this be a peaceful day, that didn't cut the ice with you?

A. Uh, no, it did not.

Q. In fact, there were no guns employed whatsoever. Isn't that fair?

A. Uh, there were no guns used against the police that I'm aware of.

Q. Or used against anyone?

A. Uh, but I have no knowledge that there were not guns there so, yes, no guns were used.

Q. No guns were used and you have no knowledge of any guns being present, in fact, do you?

A. Uh, my state of mind then and still today is that guns were there.

Q. Yes, they were in your mind, but they weren't - there's no evidence that they were actually there.

Isn't that fair to say?

A. My state of mind is that they were there.

Q. I see. Do you know a Detective

Inspector Ian Grant?

A. No, Sir, I don't.

Q. And do you know an Inspector Sergeant - perhaps might be his rank - named Dave Robertson?

A. Uh, not directly, no.

Q. Not directly?

A. No.

Q. You know who he is though?

A. Names mean something to me, but I don't know the person.

Q. I understand that they were somehow involved in this wire tap.

A. I have no knowledge of that, Sir.

Q. Would you be able to check that out?

A. Obviously you've got the names.

Q. Would you be able to check it out, Sir?

A. I'm not going to do that, Sir.

Q. I see. Why would you not want to assist Mr. Brant to find out everything possible about this wire tap, Sir?

A. Because you can ask that of other people, Sir. I have other matters pressing that I need to attend to.

Q. Well, could you direct someone to deal with this matter and give us full disclosure of it as soon as possible?

A. I will take my direction from the Crown

Attorney, or His Honour, but as I stated, I have no capability of facilitating your needs right now.

Q. I see. Now, let's move back to April. Do you have a copy, Sir, of the scribe notes from April?

A. I do not.

MR. ROSENTHAL: Do you have one that could that could be provided for the witness, or I can - I can have him look over my shoulder with mine if you wish, but

THE COURT: Counsel, go ahead. I interrupt you now. Do you anticipate - you have dealt with the June incident - do you anticipate being a good deal of time, or perhaps as long on the April incident as you were on the June incident, because if you are ...

MR. ROSENTHAL: Yes, I've still - we're going to be a while or so, yes, Sir.

THE COURT: Okay. So maybe it is a good time to break ...

MR. ROSENTHAL: I'm completely in your hands, Sir.

THE COURT: ... for the morning recess.

MR. MORRISON: That's fine, and I'm wondering before we recommence if we could just - counsel have a moment with you in chambers on scheduling because I think we may need tomorrow, at least some time tomorrow.

THE COURT: Well, right now you do not have tomorrow.

MR. ROSENTHAL: Maybe tonight.

THE COURT: Oh, that is not going to happen. I have made that mistake years ago working until midnight and the wee hours of the morning. Nothing very productive ever comes out of those sessions. No, we are just going to have to make do with what we have.

MR. MORRISON: Well, I do suggest

THE COURT: We will revisit those possibilities later on, but right now, you know, the ball is in your court.

MR. ROSENTHAL: But then perhaps, Sir, if my friend is suggesting a discussion, perhaps we could have a discussion with the idea of trying to accommodate to your timing, Sir.

THE COURT: We could have that discussion. We will break now.

R E C E S S :

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

MR. ROSENTHAL: Q. Good morning again, Commissioner. You're the Commissioner. There are what, four deputy commissioners these days?

THE WITNESS: A. Yes.

Q. And would they be sort of your closest circle - oh, sorry, I didn't realize that Mr. Brant was not here. Sorry. Excuse me. With your indulgence, Your Honour. Sorry to interrupt myself and you, Sir. So you

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told us there are four deputy commissioners.

A. Yes, Sir.

Q. Would they constitute your circle of advisors so to speak, or

A. More closely than others, yes.

Q. More closely than others?

A. Yes.

Q. Would some of them be among the people that you would have consulted about the possibility of weapons at the June event?

A. I can't say for sure, Sir. I don't know.

Q. Well, when you take your mind back and think about it would you probably have?

A. I may have had a discussion, and I may be the one that had initiated it. I can't tell you. I don't know.

Q. Just before the break, I had requested that you be provided with a copy of the scribe notes from April. I don't know if that's happened.

A. I haven't seen them, no.

MR. ROSENTHAL: Is it okay if the Commissioner looks on with me then?

MR. MORRISON: Yes, I would volunteer to give my copy, but it's marked so,

MR. ROSENTHAL: Yeah, well mine is marked a bit too, but not in any way that would I don't think interfere with the process.

MR. MORRISON: That's fine.

MR. ROSENTHAL: Q. So, we're looking at a

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document entitled, "Incident Culbertson Tract, Incident Commander van Straalen/Sweeney, Scribe Wannamaker, date 20 April 07".

THE WITNESS: A. Yes, Sir.

Q. And it's standard to have these kind of scribe notes at incidents of this type. Is that fair?

A. Yes.

Q. I'd just like to draw your attention to several entries here. Now, at 0849, this is then in the morning of 20 April, right?

A. Yes.

Q. We see an entry, meeting positive - and I'm not sure what that says - but then, Shawn Brant does not want violence.

A. Yes.

Q. Do you see that, Sir?

A. That's in there, yes.

Q. And were you apprised of that indication?

A. I can't say for sure, Sir. I don't know.

Q. Okay; but in the course of the event of April, you did get the understanding that some other officers had reported that Shawn Brant does not want violence. Is that correct?

A. Yes. Yes.

Q. And then at 1606 hours, on 20 April, page five of the scribe notes, there's an entry, Commissioner Fantino, Ron Gentle - is that Gary?

A. Probably.

Q. Someone MacPherson?

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A. Yes.

Q. That would Gary MacPherson?

A. Yes. Yes.

Q. Chris Lewis?

A. Yes.

Q. Larry?

A. Beechie?

Q. Beechie?

A. Uh-huh.

Q. Brian Cross, Paul Lange (ph)

(Commissioner's Assistant) is that what that is?

A. Yes.

Q. Bob Wallace, or Walls. I'm sorry. Bob
Walls?

A. Yes.

Q. R. N.

A. Initials. Nichols, is it?

Q. Oh, sorry, R. Nichols, yes. Thank you.

A. Yes.

Q. So this would indicate that at
approximately 1606 hours those persons gathered at wherever
the incident commander was at that point, right?

A. Yes, Sir.

Q. Now, it says, Paul Lange, front seat,
Commissioner's Assistant. Is Mr. Lange an officer?

A. He's a superintendent.

Q. He's a superintendent?

A. Yes, Sir.

Q. But he also has an additional title as

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your assistant, or is that an informal title?

A. He's my executive assistant, yes.

Q. I see.

A. Executive Officer.

Q. Executive Officer?

A. Yes.

Q. So he would be somebody you'd be in close consultation with on a day-to-day basis generally I would presume?

A. His duties would bring him into contact with a lot of people, yes.

Q. But with you in particular most days?

A. Yes.

Q. So, would he keep notes about information that you would give him and discussions that you and he would have?

A. Not to my knowledge.

Q. Not to your knowledge. Would he have anything to do with knowing about your schedule, like you were going to be interviewed by somebody, meet with somebody, or things like that, or do you have a secretary that does that?

A. There's a scheduling person that does that.

Q. A scheduling person that does that.
Well, what is the scheduling person's name?

A. Her name is Robinson.

Q. Robinson is her last name?

A. Robinson, Gaetanne Robinson, yes.

Q. I'm sorry, her first name is?

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A. Gaetanne.

Q. Gaetanne, G

A. G-A-E-T-A-N-N-E Robinson.

Q. Okay; and she works in your office then?

A. She works in the executive area, yes.

Q. And then it says, at 1608, Fantino arrow team. I understood from previous officer's testimony that the arrow means that the person on the one side of the arrow was conveying that information to the people on the other side. Is that your interpretation?

A. I have no knowledge of that.

Q. I see. You've looked at scribe notes in your time?

A. And everybody writes them different.

Q. I see. Okay; but it says, Fantino arrow team, try to get emergency meeting for council.

A. Yes.

Q. Now, that was of the Band Council, wasn't it?

A. The Tyendinaga Band Council, yes.

Q. Yes. And then the next page it indicates that you were to meet in person with them, right?

A. Yes.

Q. Now, then it says, Commissioner something phone. Indicated no one is supporting Brant, and then it says, advises is not in keeping with major game plan. Can you tell us what that meant, Sir? What was not in keeping with what plan?

A. I believe this was after I met with the

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Tyendinaga Council ...

Q. Yes.

A. ... and they had basically disavowed Mr. Brant's actions.

Q. I see. That's what that's reflecting?

A. As far as I can recall, Sir.

Q. Okay. Thank you. Then it says, Commissioner arrow Ron Maracle - Ron Maracle you understood was one of the First Nation's officers at this time. Is that correct?

A. Yes, that's correct.

Q. And discussion re getting Brant to pull off CN line. So, correct?

A. That's correct.

Q. I'm going to attenuate my tour through this just in light of time. Then at 1627, on April 20, 2007, it says, Commissioner arrow team, re obstruct police scenarios in Caledonia. So you were discussing Caledonia to some extent in the course of this probably?

A. I think it came up in regards to how issues had evolved in Caledonia, but specifically, Mr. Rosenthal, I don't know what we talked about there.

Q. Okay; but - well, it says, re obstruct police scenario in Caledonia, and then - then it says, Sweeney arrow team, straight mischief blocking of railway. And then Commissioner, injunction gives authority. Am I correct in understanding, Sir, that at this point, at 1627, there was a discussion about possible criminal charges with respect to what was happening, and there was a mention of obstruct police

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as a possibility, mischief charges a possibility, and the fact that the injunction gives the police authority as well, correct?

A. I believe that's substantially correct, yes.

Q. Yes. Thank you. And then it says, at 1631 Wally arrow Commissioner, call on line 711. Does 711 have a special significance?

A. Not to me, Sir, no. I don't know what that is.

Q. It says, Commissioner arrow Don, 13 Old York Road, Commissioner to head over there.

A. That's correct. That's when I went and had the meeting with the Tyendinaga Council.

Q. I see. Oh, thank you.

A. The Band Council.

Q. With the Band Council. Thank you.

A. Yes.

Q. And then at 17 something hours, it says, Commissioner Fantino personally involve successful/peaceful stage of - can you help me with that - stage of planning?

A. Planning. It is.

Q. If it doesn't - so, am I understanding correctly - whatever the exact words may be - that what you were discussing then was that you were hoping to have a peaceful resolution of it, but you had other plans in case that didn't happen?

A. That was always the intent. The intent was always to resolve things peacefully, and use of force was

always an option.

Q. Yes.

A. Yes.

Q. And there's indication in here of that option being prepared, the use of force option being prepared.

A. That's correct.

Q. And we see the one entry suggesting that at 1718, where there's a reference to hard tack.

A. Yes.

Q. Hard tack means officer's equipment that is used when they are going to actually move on something like this, right?

A. It's safety equipment for the officers, yes.

Q. Yes. But officers wear hard tack if they're going to, for example, go in and try and remove protesters in a situation like this.

A. Potential conflict, yes.

Q. Yes. And then related to that, at 1718 there's an entry about extra resources, equipment ready, hope to take less than hour, out by dark.

A. Uh-huh.

Q. So, at 1718 evidently on April 20, that would be a little bit after five in the afternoon, there was discussion of the possibility of getting the protesters out of there by dark, right?

A. There was that discussion, yes.

Q. And I gather that one of the lessons that you and many people learned from Ipperwash is you don't want

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to do something like this at night.

A. In actual fact, we were prepared to do many things, but that certainly was a consideration at that time, the night issue.

Q. But night makes it more dangerous

A. For everyone, yes.

Q. For everyone?

A. Yes. And I understood that there was that potential so, it's a consideration always.

Q. Yes. And Ipperwash is one of the events that taught you about that concern, right?

A. No, my concern was more about the events that were taking place there at that time.

Q. Okay. Then it says, your key player for arrest, Shawn Brant, right?

A. Yes.

Q. So, certainly by 1718, it was being discussed that Shawn Brant would likely be arrested, right, at that point?

A. It appeared to be the discussions, yes.

Q. Yes. And you, by that time or even before that - well, before that time, had the understanding that at some point Mr. Brant would be charged?

A. I felt that Mr. Brant was engaged in criminal activity that needed to be dealt with, yes.

Q. Yes, and would be dealt with by a criminal charge at some point?

A. At some point, yes, if the circumstances warranted, and that's why I directed that there be an

investigation.

Q. Yes. But, I mean, from what you knew of the circumstances, there was no doubt in your mind that it warranted laying a criminal charge, right?

A. I would've arrested him, yes.

Q. Yes, and that was without any further investigation you knew enough to come to that conclusion?

A. I believe that I, myself, knowing what I knew at that time, if I had the opportunity, I would've arrested him, yes.

Q. Yes, and you expressed that view to others in the course of the discussions?

A. That was part of the discussions, yes.

Q. Yes. Now, in fact, you were asked in-chief about your suggestion to Mr. Brant that he come and meet you somewhere, right?

A. Yes.

Q. Do you recall it?

A. Yes.

Q. If he'd come and met you somewhere off-site, would you have exercised that opportunity to arrest him?

A. No, not at that time. I was going to be honouring my word as well.

Q. Okay; and then it indicates here at 1719, lower Slash Road will be open for those who want to leave peacefully, right?

A. Yes.

Q. So, the idea would've been that the plan was that the officers would approach the people on the track

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and would somehow leave an exit for those who wanted to exit, and that exit was at lower Slash Road. Is that - am I reading this correctly?

A. Well, that's what it says, but my understanding was that there were women and children and elderly people there as well, and we were concerned about their safety so, I think that's it, what that talks about.

Q. Yes; and - but I did interpret correctly in that respect, that you'd be

A. I believe so, yes.

Q. That would be their exit place?

A. Well, we wanted to facilitate people leaving, yes.

Q. Yes, and it's indicated there wouldn't be any element of surprise?

A. Oh, I don't know about that.

Q. Don't know what that refers to? We'll have a couple minutes. Is that suggesting that the protesters would be given a couple minutes warning before the officers went in?

A. I don't know.

Q. Okay. Timing might be such as peaceful. Did I read that correctly?

A. Looks like it, yes.

Q. Can you assist me as to what that means?

A. I have no idea.

Q. Later on, 1721, will have BRAVO set up. BRAVO is one of the units, I gather?

A. One of the tactical units, yes.

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Q. Tactical units. Are they part of the TRU team, or part of

A. I believe they would be, yes.

Q. Yes. The TRU team as you

A. Or Public Order.

Q. Or Public Order?

A. Yes.

Q. There were both TRU and Public Order officers on site on April 20th?

A. Yes, and I believe we had other police agencies involved as well, but I can't tell you who they were right now.

Q. And the TRU team includes teams that are informally referred to as sniper teams, right?

A. I believe they have a component, yes, of - well, they do, yes.

Q. Yes.

A. Yes.

Q. And they're referred to, as officers talk about them, as a sniper team, right?

A. I refer to them as tactical people.

Q. Others refer to them as sniper teams, right?

A. Absolutely, yes.

Q. And they're referred to as sniper teams because they are trained to do what we understand the word sniper to mean, to be able to at a distance shoot people, right?

A. If warranted, if necessary.

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Q. Yes, and they were available on April 20th?

A. I believe they were.

Q. In fact, a member of the TRU team killed Dudley George, at Ipperwash, in 1995, right?

A. Yes, so as the circumstances, yes.

Q. I'm sorry?

A. So the circumstances indicate, yes.

Q. Yes.

A. Yes.

Q. That was found in the criminal court and also by - held an inquiry, right?

A. Yes.

Q. No doubt about it, right?

A. Yes.

Q. Sorry, I'm trying to skip over as much as I can. According to this entry, Sir, at 1757, page ten of the scribe notes, Commissioner arrow teams, suggest that grab Shawn Brant and team, approximately five main players. Is that correct? Did I read it correctly?

A. Yes.

Q. And is that true that you made that suggestion?

A. Well, we discussed about that, yes.

Q. And when it says, Commissioner arrow teams, my understanding from previous witnesses that that would mean that the Commissioner said to the teams, the following. Is that fair?

A. No, not necessarily.

Q. Okay. Well, what did happen with that

respect?

A. There was a discussion about how they would approach the blockade, and who was going to do what, but I didn't direct anybody to do anything.

Q. Well, did you suggest that they grab Shawn Brant?

A. I believe I did, yes.

Q. Yes.

A. I think the word is arrest.

Q. That word is arrest?

A. My words were arrest, somebody else

Q. Somebody wrote grab?

A. That's correct. I didn't write those.

Q. I see, yes Sir, but I know, I appreciate you didn't write that, that it's written by the scribe, and what you would've said was, I suggest that you arrest Shawn Brant, not grab him?

A. It was said in the context that my state of mind and the information I had at that time is that Mr. Brant was the leader of the blockade, and I felt that as such he was one that we should arrest.

Q. But then it also says, and team approximately five main players, right?

A. Yes.

Q. So, at the time you were thinking of arresting approximately five additional people in addition to Mr. Brant. Is that correct?

A. Or that might refer to the arrest team. I don't know for sure.

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Q. Well, doesn't it say, grab Shawn Brant and team approximately five main players?

A. That team would have been an arrest team, Sir. Or is that five main players probably?

Q. I see. So, I misunderstood entirely and what you're saying is that a five member arrest team should arrest Mr. Brant?

A. Or it could mean - and I don't know for sure - it could mean that Mr. Brant and five others were identified as being subject to arrest.

Q. That's what I first suggested to you.

A. It may be. I don't know.

Q. I see. Okay; and then at 1759 it says Commissioner arrow team, advised that OPP wouldn't allow things to continue. Is that correct? Did I read that correctly?

A. Yes.

Q. And is that a reflection of you're stating, at 1759, we're not going to let this continue?

A. In the context of it can't go on forever, yes.

Q. Partially, but you didn't mean that you would end it right then?

A. That's correct.

Q. But earlier on, this discussion that we should end it before dark?

A. Yes, if possible, safely.

Q. Yes, Sir.

A. Yes.

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Q. Yes, I appreciate that. And this is around six o'clock, but in April, what time does it get dark, seven o'clock?

A. About that time.

Q. It's starting to get dark, Sir?

A. Yes.

Q. And then it says, at 1800, Sweeney to team, locate gas masks?

A. Yes.

Q. So, the team was prepared to put on gas masks and they're approaching the protesters, right?

A. Uh, that's obviously one of the options, yes.

Q. And then it says, Phillips arrow Commissioner, Brant when push comes to shove not so brave. Do you see that?

A. Yes.

Q. Now, Sir, do you recall Officer Phillips saying something to that?

A. No, I don't.

Q. It says, Phillips arrow Commissioner. It suggests that you were there, but didn't some other officers indicate it wasn't a question of bravery - Mr. Brant is very brave - but it's a question of he's somebody who's trying to avoid violence?

A. He has a funny way of going about it.

Q. Well, that's your view, but

A. And I'm expressing it.

Q. You are indeed, but was there not a view

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expressed by other officers that he was trying to avoid violence, and this officer interpreted that as a lack of bravery?

A. I can't interpret what the officer said, Sir. I can only tell you what I believed.

Q. Okay; in any event, the next line is attributed to you. It says, Commissioner, grab the nucleus and rest will scatter.

A. That's correct.

Q. You would have said something like that?

A. I believe so.

Q. And by that you meant, if we arrest the main players ...

A. The leaders.

Q. ... the main leaders, then the others will scatter?

A. That was an interpretation I made, yes.

Q. And then at 1809 it says, Wally - or maybe it's Wallace - van Straalen prepared to go hard tack at 1845, right?

A. Yes, Sir.

Q. So, that meant that at 1809 there was, you know, preparations to suit up appropriately for advancing on the protesters at 1845, right?

A. Putting an end to the blockade, yes.

Q. Yes. Then at 1809 there's an entry from van Straalen, having a community at 1830 and hopefully calling it quits. You understood that to mean that there was a community meeting at 1830 going on that hopefully would end

it, right?

A. There was all kinds of talk about how we could end it peacefully, and there was discussions about having - meeting with leaders and other leaders in the community to bring closure to the event peacefully, yes.

Q. At 1811 hours it says, Commissioner arrow team, positive meeting with van Straalen. Brant wants to meet with elders?

A. Yes.

Q. Do you recall getting that information at about that time?

A. Yes.

Q. At 1817 it says - is it Wallace or Wally?

A. I can't tell you. I don't know.

Q. Okay. An officer ...

A. Someone, yes.

Q. ... said he's concerned re window time, and then there's something that's crossed out, but I gather that would have been a concern that dark is approaching if we're going to do it, we have to do it, right?

A. Safety was a big issue as darkness approached, yes.

Q. Yes, Sir.

A. Concern for safety, everyone's safety.

Q. Yes. Oh, I appreciate that, but that's a reflection of the darkness approaching as an impediment to safety?

A. Yes.

Q. And then here it says, van Straalen to

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Sweeney, very positive meeting. They are having a community meeting at 6:30 to get consensus on what to do tonight. Do you recall being given that information?

A. I believe so, yes.

Q. And that's consistent with some of the excerpts from the transcripts of your conversation with Mr. Brant that we've referred to earlier this morning, right? That if

A. My conversation was on the 28th and - or 29th.

Q. Yes, but consistent with the idea of community meetings to have consensus?

A. Oh, I see what you mean. That's in there, yes.

Q. Yes. So we were - yeah, we were looking at June this morning, but already in April you at least got the information that the way they purported to function was by having community meetings that look for consensus, right?

A. Yes. But if I may just clear that point, when I say yes, I qualify it in that there was no consensus with the Tyendinaga Band Council, for instance, for Mr. Brant to be doing what he was doing, and going about the business of blockading and interfering with other people in the fashion that he was so, when you speak about consensus, it all depends on who you're talking about consented to what.

Q. Absolutely. So, you knew before the April business began and throughout, you knew that the Band Council did not support those activities?

A. In fact, I was told by leaders in the

Tyendinaga community that they felt Mr. Brant was out of control.

Q. You agree that First Nations community has the right to the same spectrum of political opinions as any other community? Isn't that fair?

A. Uh, yes, of course.

Q. But you understood when they were talking about consensus they were talking about consensus among the people who were doing the particular activity, right?

A. I'm not going to interpret that, Sir, because as I stated, there's a lot of people we didn't consent, that I - with whom I spoke personally.

Q. At 1826 hours here, there's an entry, in the event of lethal force, order back withdrawal. Any display of long guns and we go back, right?

A. Yes, and again, there was a concern about firearms being there at play, and that's always been a concern ...

Q. Yes.

A. ... and we didn't want to engage in any conflict or confrontation where violence may result.

Q. Absolutely. And you know generally that many First Nations people are hunters, for example, right?

A. But not hunters of the police.

Q. No, but as a result of them being hunters, they would tend to have firearms, right?

A. Lawful use of firearms is something that's available to every Canadian.

Q. Sir, I'm not trying to argue the matter

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with you, I just want to establish

A. I know what you're trying to also get me to say, and I repeat again that it's a right of every Canadian to have firearms legally.

Q. Yes, Sir. That's my point, Sir. You're aware that among the First Nations community there might be a larger proportion of people with firearms than in some other communities because of the fact that many of them are hunters, right?

A. I have no knowledge that I can validate that response

Q. So, you don't have that understanding?

A. Oh, I know that there's hunters in every community.

Q. But you don't know that there's a larger percentage in First Nations communities than in most communities throughout the country?

A. There may be. There may be.

Q. And at 1827 again, there's another concern about leaving things too late 'cause it's getting dark, right?

A. That's correct.

Q. Then at 1839, there's an entry from van Straalen to Sweeney, believes Brant would've left if not having talked to crew. You see that entry?

A. I see it.

Q. Now, Inspector van Straalen was standing exactly where you are yesterday, and was asked about that, and he indicated that what he meant by that was to the effect that Mr. Brant was - seemed to be understanding the position and

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might, if it was just himself, have left, but he felt that he had to speak to other people and couldn't just do it on his own thunder?

A. I have no knowledge of that.

Q. Okay. Were you advised of this at the time?

A. I may have been. I have no knowledge of it.

Q. And then at 1840 it says, Sweeney advises, despite situation, Brant is true to his word. Do you see that?

A. Yes, I see it.

Q. And you became aware of that observation by Officer Sweeney at that time, did you, Sir?

A. Possibly.

Q. And at 1843, Commissioner advises of concerns towards - I'm sorry, I can't quite read - concerns - oh, sorry, brought forward, right, by members re Caledonia? Did I read that correctly?

A. There was some issue about Caledonia that came up in the context of what was happening in Tyendinaga that day, yes.

Q. Yes. Just so the record will be clear, we should explain that in Caledonia there's been another sort of related incident that's been going on for some time. Is that right?

A. Uh, related to

Q. Similar, not related is the wrong word, but an incident involving First Nations persons occupying some

property, right?

A. Six Nations, yes.

Q. Yes. At 1848 it says, MacPherson gearing up to head out with TRU, right?

A. Yes.

Q. And at 1852, discussion of Culbertson Tract. Do you recall being involved in discussions of Culbertson Tract?

A. I can't remember.

Q. At 1908 there's an entry, sense is that they're probably going to move out of there, but it will probably be closer to dark. I've read that correctly, right?

A. You've read it correctly, yes.

Q. So, there's an indication of a report that the persons occupying the tracks were probably going to move out. There seemed to be discussions going in that direction, but it will be closer to dark than we were then, right?

A. It appears to be so.

Q. And then at 1926 there's an indication to Sharpe (ph), stating that they should be able to come to a resolution, correct?

A. Yes.

Q. And then at 2003, Commissioner to Beechey, suggest strongly looking at bail conditions we've read, right?

A. That's correct.

Q. Now, we've heard in this proceeding about several bail conditions involving Mr. Brant. Looking at bail conditions, did that mean bail conditions that you should request for the expected upcoming arrest of Mr. Brant?

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A. In the event he was arrested, yes.

Q. In the event he was arrested?

A. That's correct.

Q. Not any previous bail conditions that he might be violating?

A. That's correct.

Q. But what bail conditions should be asked for if he is arrested?

A. That's correct.

Q. Twenty-fourty - sorry, 2034, Commissioner advises have Fed support for back up?

A. There was a contingency plan in case we exhausted our police resources we could call on, on other police agencies, including the RCMP.

Q. And then there's entry, advise was just talking to Inspector Skinner who are looking for update. Is Inspector Skinner one of the officers in charge of the TRU team?

A. I don't know for sure.

Q. At 2129, van Straalen to Commissioner, and Gentle and Beechey, advises that Brant wants to leave at six a.m. Is that correct?

A. Yes.

Q. There's an entry, Commissioner to van Straalen, Beechey to van Straalen - something, but then - well, van Straalen, I guess it is, we don't want to fight at night. You don't want to fight at night, right? Is that what that says?

A. Uh, that relates to information that came

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to our attention that the occupiers were looking for a fight and that they were prepared for a fight, and that's why we backed off as well.

Q. I see. And then there's a discussion later on at 2133, is it worth going in at night for the sake of eight hours, and then Commissioner suggests asking CN if - I guess if there would be any additional inconvenience if left until a.m., right?

A. There was a concern expressed about the impact on goods, and not only passengers, that were stalled on the CN line, that could not any longer be preserved.

Q. Yes. So, then it was a question of asking them is it a serious problem if we leave it for eight hours. In light of the impending darkness, it would be safer to leave it for eight hours so, the thought was presumably if there's no serious problem, we're going to leave it 'til the morning, right?

A. The overarching concern throughout was to do everything we could to resolve the situation peacefully ...

Q. Yes.

A. ... however, we were under tremendous pressure because of not only the inconvenience to people, but also some safety issues, perishable goods in travel, and all those kinds of issues so, we had to make our decisions based on the greater public good and do the best we could to resolve the situation peacefully.

Q. And the pressure included some politicians were phoning you?

A. No, not at all, not a one.

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Q. You didn't speak to a politician in the course of this whole event?

A. No, Sir, not a one.

Q. And in the course of the June event?

A. Absolutely not.

Q. Okay. Continuing here, at approximately 2142 or 43, Commissioner suggest not giving Brant heads up.

A. That's correct.

Q. That was to not give him a heads up that, what? That you were going to advance, or that you

A. We wanted to have the element of surprise because of the anticipated concern for violence.

Q. I see. At 2145, protesters advise they want to stay until six a.m., right?

A. Yes.

Q. And then it says, Serge to Commissioner, damage already done, can live with that and understand the Commissioner's position. Hope that Brant will actually remove by six a.m. So, is this a reflection, at 2146, of the decision that you would not move in at night, you would wait until six in the morning and hope that they had left then?

A. That was a response back from CN officials when we were talking about the impact on CN freight and those kinds of issues, and the word I have received back is that they could wait a little bit longer.

Q. And that meant wait until the morning?

A. If it meant a peaceful outcome, yes.

Q. Yes. And then at 2147, Commissioner to Serge, the 29th of June coming up, right?

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A. Yes.

Q. So, you were already aware on 20 April that the 29th of June was the planned Day of Action, right?

A. Oh, absolutely.

Q. And you were aware that some of these same protesters might be involved in some related actions on June 29th?

A. The June 29th event, from all of my meetings with First Nations people, including Assembly of First Nations officials, was that it was going to be a peaceful event, that it was not going to result in blockades and those kinds of issues.

Q. Now, then there's an entry, if we go in we will win the battle, but then might not be so lucky re further problems, it says.

A. That's correct.

Q. So, there was a concern about the future, that if you go in in this situation, it might make future situations more difficult to handle. Is that the appropriate reading of that, Sir?

A. Or how the enforcement of the laws of the land would be interpreted in the circumstances, not knowing what the final outcome might be. For the police I mean.

Q. And then there's an entry at 2150, Commissioner to Serge, let's wait until a.m.?

A. That's correct.

Q. And then Lewis, if not out at six a.m., going in one way or the other, right?

A. That was the determination made, yes.

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Q. And that was - you agreed with that?

A. Absolutely.

Q. And at 2158, discussion re situation and the possibility of peaceful resolution, right?

A. And no support for Brant.

Q. And no support for Brant. And then just one slight addendum to these scribe notes apparently. That copy ends there, and then there's a scribe note with similar incident, but incident Commander Superintendent Gentle instead of the two gentlemen mentioned on the other one, and the date is given on this document as 20 April 07, but it's my understanding looking at it, that must be a mistake. This must be the wee hours of April 21, is that correct?

A. I think, as I recall, Superintendent Gentle came in to basically take over the night shift.

Q. Right. But then this would be the wee hours of the 21st, right?

A. The 21st. It should be the 21st, I believe yes.

Q. Yes. Yes. Thank you, so evident, yeah. So, early on the 21st ...

A. Yes.

Q. ... you got up early that morning and at 0546 Commissioner Fantino was at the Napanee Detachment, right?

A. That's correct.

Q. And then we've heard some evidence that sometime shortly after six a.m., on the 21st, the persons did leave the track, they called the school bus off the track, and

cleaned up the debris, and the track was open shortly thereafter?

A. That's correct, Sir.

Q. Now, you've indicated that you'd contacted various other persons with a request that they contact Mr. Brant at various times. Why did you not directly try to contact Mr. Brant prior to April 20?

A. I didn't see that there was a need for me to engage at that time.

Q. And similarly prior to June 28th?

A. I spoke to a lot of people, but it wasn't specifically about Mr. Brant leading up to the 28th. It was more about a peaceful outcome on the 28th and was able to secure assurances from a number of the First Nation's leaders that that was in fact the intent.

Q. Now, you did, on June 28th, or thereabouts, try to contact Mr. Brant's brother.

A. I did speak with his brother.

Q. And you did speak to him actually?

A. I did.

Q. And you wanted him to somehow restrain Mr. Brant, right?

A. I appealed to a lot of people to have Mr. Brant be respectful of the laws of the land, and try to avoid violence.

Q. And when Mr. Brant's brother indicated he didn't want to become involved in his brother's activities, you told him, you have no choice, right?

A. That's the way I put it to him, yes.

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Q. Yeah, was that respectful?

A. Absolutely.

Q. What did you mean you have no choice?

Wasn't that a threat?

A. No, not at all. I was urging a brother to intercede with another brother who was in effect heading for disaster.

Q. When the Commissioner of the OPP says to a citizen of Ontario, you have no choice, you don't understand that, Sir, as a threat?

A. Not at all.

Q. I see.

A. I think I was being perceptive, and I think I was caring enough to do everything I could to have Mr. Brant listen to voice of reason and sanity.

Q. Now, you understand that Inspector van Straalen testified here yesterday from that very spot?

A. I understand he did, yes.

Q. And you know that he testified concerning his interaction with three First Nation's officers with respect to this question of an offer of immunity with respect to Mr. Brant?

A. I have no knowledge of that.

Q. I see. Mr. Brant's brother is a lawyer, right?

A. Legally trained, I believe so, yes.

Q. And didn't you threaten that he might be charged with somehow colluding in his brother Shawn's activities?

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A. If he was harbouring or abetting him, I may have said that, yes.

Q. Yes, you said something about that even, didn't you?

A. I said I may have said something along those lines.

Q. Yes. But you weren't threatening him in any way, were you?

A. I thought I was setting out the potential outcomes very clearly, honestly, and in a forthright manner.

Q. I see.

A. And as you know, Mr. Rosenthal, that's always a possibility when an individual engages in harbouring or engaging in a support of criminal activity. That's always a possibility.

Q. So, you were saying to Mr. Brant's brother, you have no choice about becoming involved in this, and if you don't become involved, you might be charged with some involvement?

A. No, that's your interpretation. I implored upon him as a brother, as a family member, to exercise influence over Mr. Brant, and also the fact that his brother was a legally trained person, he would know the ramifications of what was taking place.

Q. Now, with respect to the Chief and the Band Council, you also gave them the understanding that if they didn't distance themselves from Mr. Brant, themselves from Mr. Brant, they might be investigated for some criminal involvement?

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A. No, not at all. What I did say to them is that Mr. Brant's law breaking and holding people hostage would work against the cause of First Nations people.

Q. Now, you know that there were about 40 to 50 protesters involved in the April incident. Is that a fair estimate, Sir?

A. I have no idea.

Q. Something in that ball park, right?

A. I don't know, Sir.

Q. Well, according - you know something more than 20, Sir?

A. I have no idea.

Q. Do you know there were more than one?

A. Mr. Rosenthal, there were obviously more than one ...

Q. Yes.

A. ... but I don't know how many.

Q. I would say obviously more than 20, isn't that fair?

A. I don't know, Sir.

Q. In any event, it's your understanding that only one person was charged as a result of that incident, right?

A. Uh, that's my understanding, yes.

Q. And that was in accordance with your wishes, is that not true?

A. It was in accordance with the investigation carried out by our police officers in regards to the matter.

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Q. But it was also in accordance with your wishes in the sense that you did not express to anyone your wish that Mr. Brant that - sorry, that anyone other than Mr. Brant be charged? Isn't that right?

A. It was up to them to determine that, Sir.

Q. Yes. But you didn't express even a thought about anyone else except for Mr. Brant, right?

A. I indicated that there be an investigation carried out with regards to criminal charges being laid, and it was up to them to determine against who.

Q. With respect to the June incident, we have evidence that there were about 60 people perhaps involved then. Is that in accordance with your understanding of that?

A. I don't know for sure. I have no idea.

Q. What's your understanding as to how many people were charged as a result of the June incident?

A. I believe Mr. Brant was charged.

Q. And no others, right?

A. I believe that's the case.

Q. And is that in accordance with what you think should have happened as an officer?

A. It's in accordance with the integrity of the investigation carried out by our officers.

Q. Now, Sir, you told us earlier, in response to some similar kind of question about whether you as an officer would have made an arrest. Would you, as an officer, knowing what you know about June, have laid charges against anyone other than Mr. Brant as a result of that?

A. All I know, Sir, is that Mr. Brant was the

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leader and if there was evidence to charge other people I'm sure that our officers would have done that.

Q. Now, there were some informants involved in both the April and June incidents. Is that correct?

A. Uh, there were sources coming from different areas, yes.

Q. Yes. And there were some undercover police officers operating under cover through both those incidences as well. Is that correct?

A. I have no knowledge of that, Sir.

Q. You have no knowledge of it?

A. No.

Q. I see. But you do have knowledge of some informants?

A. I knew that information was coming to our attention, yes.

Q. From approximately how many informants with respect to the April matter?

A. I have no idea.

Q. From approximately how many informants with respect to the June matter?

A. I have no idea.

Q. Just one matter I wish to explore with further, Sir, as to your circle of advisers. You told us there were four deputy-commissioners. Could you tell us their names quickly, please, Sir?

A. Yes, Deputy-Commissioner Lewis ...

Q. Yes.

A. ... Deputy-Commissioner Hawks (ph) ...

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Q. Yes.

A. ... Deputy-Commissioner Carson ...

Q. Yes.

A. ... and the fourth person is a civilian phase of the CAO.

Q. A civilian so, the fourth person would not be somebody that you'd consult with about operational matters then is it?

A. Not on police matters, no.

Q. So, among your closer advisers, with respect to operational matters, would be the first three that you mentioned?

A. Depending on what the issues are.

Q. Yes, and Inspector of whatever his current rank is, Carson, was the incident commander at Ipperwash. Is that correct?

A. Uh, he was, yes.

Q. Did you expressly consult with him about either of these two incidences, the April or June one?

A. No, Sir.

Q. You didn't want to draw on his experience with respect to Ipperwash?

A. Uh, it had nothing to do with Ipperwash, what we were dealing with here.

Q. Well, Sir, you would agree that there was some similarities in the sense that there was some First Nations people who engaged in an occupation, right?

A. Yes.

Q. And the OPP was in the position of

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policing that, right?

A. Yes.

Q. Those are some similarities between Ipperwash and April and June, right?

A. Similarities are there. I suppose you can transport that belief to everything we do as a police community with First Nations people.

Q. And you were aware that there had been an inquiry into what happened at Ipperwash that went on for some several years, right?

A. Yes.

Q. And the report for that inquiry came out on May 31st, correct, of this year?

A. I believe so, yes.

Q. So, that would have been after the April incident, but before the June incident, right?

A. Yes.

Q. And with respect to the June incident coming up, did you look at any of the recommendations of that inquiry?

A. I was well briefed and versed in the recommendations and the context, and I feel very strongly that we acted in the true spirit and intent of those recommendations, and in our situation on the 28th and 29th of June, and since.

Q. I'm sorry?

A. And since in other circumstances.

Q. And who would give you the briefing that you described as a well briefing?

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A. Uh, reading the report, having met with Mr. Justice Linden, having met with legal counsel and other people involved in the Ipperwash inquiry.

Q. And you didn't discuss at all with John Carson who was the incident commander?

A. Discuss what, Sir?

Q. The Ipperwash event from the point of view of learning how to do things better in future?

A. No.

Q. Now, who else would be part of your circle of advisers, if you want to use that term or whatever term you would use, people that you would call upon for advice and information when you're dealing with an important incident such as April or June?

A. Uh, legal counsel, uh

Q. And who was that?

A. Uh, I don't think I need to disclose that, as

Q. Well, I think the name can be disclosed. I'm not going to issue about legal advice.

A. Well, I'm not going to disclose it. I think that's client/solicitor privilege. I obtained sources of information and advice from many different quarters, including legal advice.

Q. Other than from legal counsel, your advisers would include the three deputy-commissioners mentioned. Would it include the executive assistant that we mentioned earlier?

A. Not necessarily, no.

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Q. No. Okay. Who else?

A. People at the scene at the time of the event.

Q. With respect, my friend, Mr. Morton, reminds me of a well known case called Shirose, R. vs. Campbell [1999] 1 S.C.R. 565 in which there was a question as to whether the name of counsel to police officers - I believe it was RCMP in that case, was it - should be disclosed and it was felt that it should be. The advice that they gave, of course, is privileged. So, I would ask you, Sir, which legal counsel - unless Your Honour rules that I shan't - I would ask you, Sir, which legal counsel, or several counsel gave you the kind of advice that you referred to earlier?

MR. MORRISON: I think I should advise, I'm not familiar with the case that was referred to, nor do we have it before us. It is though a fundamental principle of solicitor/client privilege that, for example, a lawyer should not even disclose who his clients are, not only what advice they've sought, he should not even disclose that someone has sought advice, and similarly, I think that the principle of solicitor/client privilege applies to the name of counsel that Commissioner Fantino may have sought legal advice from time to time.

MR. ROSENTHAL: May I perhaps ask a different question first, Your Honour?

MR. ROSENTHAL: Q. May I ask first, does the OPP have in-house counsel?

THE WITNESS: A. Uh, no, we don't.

MR. ROSENTHAL: Well, I don't have Shirose here, Your Honour. My understanding is that the name of counsel for a police officer, for the police, is not privileged, but I'm in your hands, Sir.

THE COURT: So you are insisting on having this witness relate to you the name of counsel that he may have consulted?

MR. ROSENTHAL: Yes, so, perhaps, in light of my friend's position, perhaps we could leave it as follows, if it's acceptable, Your Honour, that we would both do some investigation of this from a legal point of view and then make written representations to Your Honour at some future point. His is not going to affect the disposition of the preliminary inquiry obviously, whether we get the name or not, and it's not going to affect any subsequent issues here, but it is, as you know, the preliminary inquiry is, among other things, an opportunity for the defense to learn things that will assist the defense at trial, and from that

THE COURT: Let me put it this way, I do not think that there is going to be - you are quite right - it is not going to have much of an impact today in terms of our preliminary hearing. It may be of significance to you to know the name of that counsel later on ...

MR. ROSENTHAL: Yes.

THE COURT: ... and put it this way, I am going to refrain from ruling on the particular issue because I do not see that it is a pressing issue at this point in time, and I do not want to spend a whole lot of time on that particular issue. As you know, we are pressed for time.

MR. ROSENTHAL: Yes.

THE COURT: I am going to give you this direction, however, to both of you. You might do the research. I think the crown attorney raises an interesting point, and I think you raise an interesting point. I am not well versed in that area of the law, or that specific point, and I am not going to go and do any research on my lunch hour today, I can assure you. So, my direction is this, and both of you might do a little bit of research and find out whether you can have a consensus, and I am sure that Commissioner Fantino can, if asked, can provide the crown attorney with the name of counsel, and in the event that Crown Counsel deems it appropriate, having regard to the case law, and whatever opinions he may be able to get from counsel at the Crown Law Office, then they might voluntarily agree to give it to you, in due course. You are not going to need it today, nor are you going to

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need it this week, and at the very worst you can bring back your request before a tryor of fact in the event that there is a trial, and see how that judge rules, and it may be more pressing then for you to know that information.

MR. ROSENTHAL: The only problem is before the tryor of fact, or on the eve of trial, and it may be useful to us before it so, I was simply suggesting that in the

THE COURT: Assuming that there is a committal on some counts or all the counts, or whatever, if there is no committal whatsoever you do not need to worry about it. And if there is committal then you may need to worry about it, but I can assure you, and you would know, you are not going to be getting a trial date anytime soon. You may get a committal sometime soon, but you may not get a trial date. It will give you ample opportunity to explore that possibility. We have already expended about three and one-half minutes on the issue, and I think that is three and one-half wasted minutes.

So, you have my direction. I am not saying that you raise an issue that is without merit, and I am just saying, it is essentially without merit within the confines of this preliminary hearing.

MR. ROSENTHAL: And actually I therefore

conclude my examination. Thank you
Commissioner.

MR. MORRISON: Just a couple of things in re-
examination.

RE-EXAMINATION BY MR. MORRISON:

Q. In terms of the April incident now, in the
course of Mr. Rosenthal's cross-examination, there was
testimony given that the Council of the First Nation had
disavowed Mr. Brant's actions. Do you remember that?

A. Yes, I do.

Q. And in fact it was more than a private
disavowal. There were press releases outlining the disavowal
of the actions.

A. That's correct, Sir.

Q. And there were similar actions taken by
the Council relating to the June 28th and 29th blockade.

A. Yes, that's correct.

Q. I assure you I'm not going to go far with
this, but in relation to the information that was coming to
you in relation to the risk relating to firearms for the June
28th and 29th blockade, some of your concern came from public
statements that Mr. Brant made that were reported in the
media.

A. Yes, Sir.

Q. And Mr. Rosenthal has focused on those.
I'm not asking you for the details, but some of your concerns
came from other sources of information as well.

A. That's correct.

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Q. Alright. And just one final thing, Mr. Rosenthal made extensive use of the transcripts that were provided to him of your conversations that you had with Mr. Brant during the course of the June blockades.

A. Yes, Sir.

Q. And he put one passage to you, among many, in particular, and I just want to make sure that we have the entire passage before the court as it may have some relevance. On page five, and I'm speaking of the conversation now that commenced at 6:41, you said the following, "You're missing the point. It's not about your officers. You are blocking the land that is not yours. You're interfering with the safe passage and free flow of people's entitlement to travel along the various highways that are not on your reserve, they're not part of your land, and you've come out to create great inconvenience to a whole lot of people that have got no issue with you. You have made it an issue for them so giving Tyendinaga a very bad name. The whole community's affected. You're taking the decent people down with you. The reputation is going to be worn by all. I do not see any responsibility towards all those fine people that are not in agreement with you, but who are part of your community." Now, you recall saying that passage to Mr. Brant?

A. Yes, I do.

Q. Including the suggestion the land is not yours, it's not on the reserve, all of that?

A. Yes, Sir.

Q. I'm just interested in how Mr. Brant responded to that kind of suggestion, in particular, in

relation to the land, and this isn't terribly grammatical at times, and I'm going to take a

MR. ROSENTHAL: Excuse me, Your Honour, it's not fair to characterize it as in particular in relation to the land. It's in relation to the whole long passage and the record should be absolutely clear.

MR. MORRISON: Oh, no, that's fine, that's fine.

MR. MORRISON: Q. Just hear what Mr. Brant says, and then I'm sure counsel won't object if I take out the - I don't know - numerous uhs, but, But I, yeah, I did have, and we all did, we had discussions with some of those people. I believe there was four individuals who came, and they delivered a message for me this morning, and certainly we listened to them, and, and, I think that, you know, we should just stick with the proper course of discussions, and again, with the greatest of respect, I'd just like the opportunity to do that in the way that we have right now, and - and I certainly trust the gentlemen, and - and we're both confident that a reasonable resolution can be reached in a short length of time, and we're not asking for, you know, a great deal where we're simply only asking for the opportunity to engage in those discussions and to do it in the most appropriate way.

A. Yes, Sir.

Q. I appreciate that I've taken out the uh's and things like that, but you'll agree with me that that's a fair representation of Mr. Brant's response?

A. Yes, it is.

MR. MORRISON: Thank you. Those are my questions.

MR. ROSENTHAL: Sorry. No further examination, but just for the record, I believe my friend would agree that the transcripts that have been provided to us this morning of the conversations between Mr. Brant and Mr. Fantino are three in number. I don't recall exactly how many conversations Commissioner Fantino indicated he had, but I know it was more than three.

MR. MORRISON: Yes, that's right.

THE COURT: Thank you. Are we done with this witness?

MR. MORRISON: Yes, we are.

THE COURT: Alright, and we thank you very much, Sir, and you are excused.

THE WITNESS: Thank you, Your Honour.
