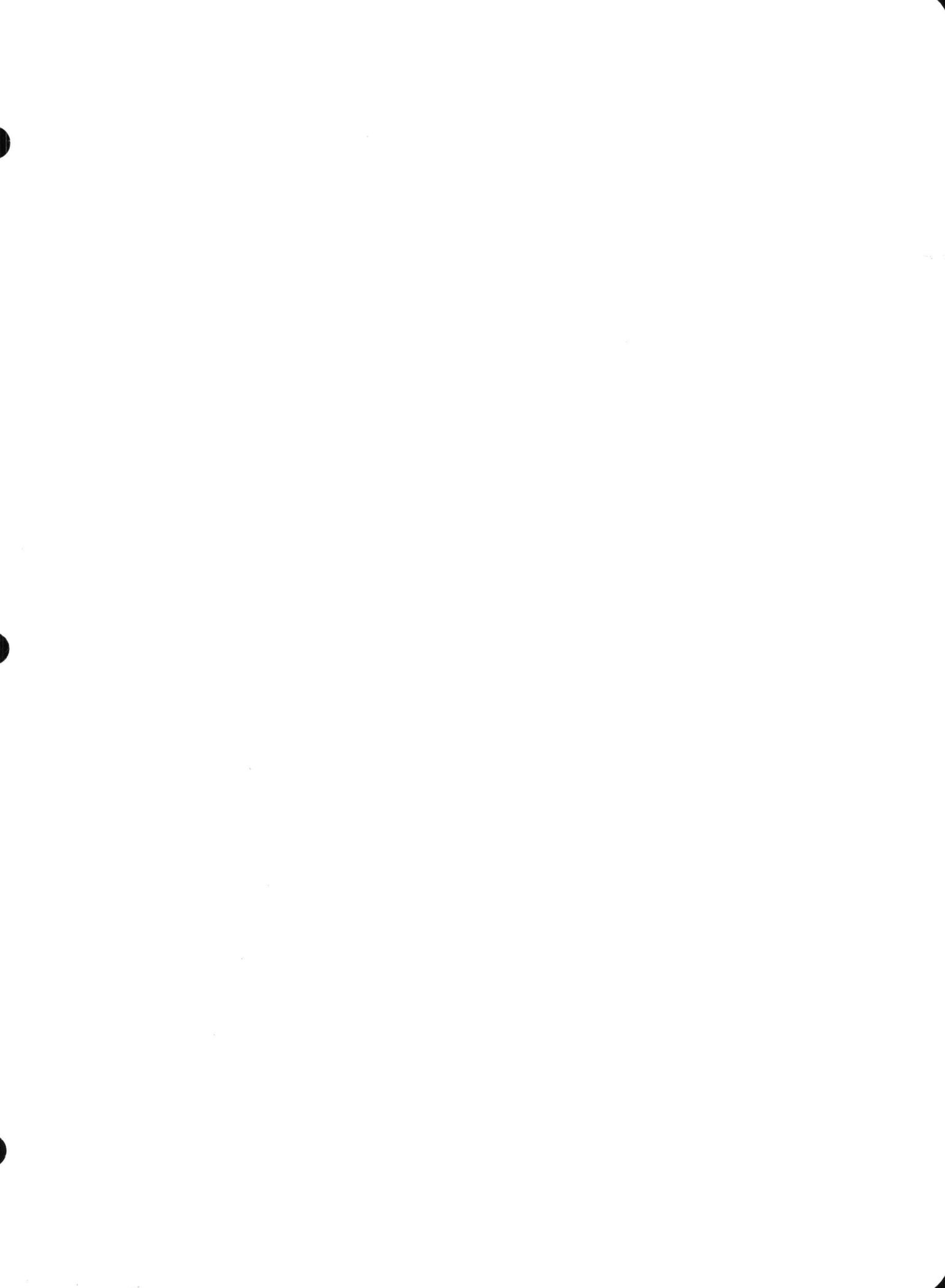


I N D E X

VOLUME 17

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1

NOTES RE CONSULTATIONS ON MARSHALL CASE

Feb. 3/82

1:30 p.m. met at my office with Chief MacIntyre and Insp. Scott - Chief MacIntyre briefed us on investigation which led to Marshall being convicted of murder in 1971 (by Sup. Ct. jury) - Main point is that conviction obtained because of evidence of two teenage boys - Chant and Pratico (unknown to one another) who had given police written statements stating that Marshall and Seale had been accosted by two individuals. Subsequent statements said Marshall had done stabbing.

Oct. '71 - one MacNeil states that one Roy Ebsary had done stabbing.

- investigation turned over to R.C.M.P. who did polygraphs: MacNeil - non-conclusive  
Ebsary - truthful

Oct. '79 - one Mitchell Bayne says Ebsary admitted stabbing - see letter from Aronson Jan. 26/82.

Feb. 16/82

- met at office with Harry Wheaton and Jim Carroll - advised that they had interviewed

1. Mitchell Bayne Sarson - not impressed by him - drug trafficker and friend of Marshall's
2. Ebsary's wife
3. Learned that Pratico has severe psychological problems.
4. Were going to interview Chant that evening.

- Would get back to me in a week. - Had transcript of trial. Chant and Pratico had been cross-examined on previous statements.

Feb 21/82

- also discussed fact that press and particularly Parker Donham was digging into the case. Told them that Billie Urquhart had called me at 9:25 a.m. on Feb. 15th when he advised that Donham had been to C.B. Post and had been digging out old newsclippings re the offence.

- We agreed that facts given out would be at minimum - that I would confirm that R.C.M.P. were investigating. No objection from Wheaton. (Cpl. Carroll though present did not take part in meeting. Mentioned that he was updating his notebook only.)

Feb. 21/82

Returned call to Parker Donham (he had called day before - see attached message).

- Discussed TV interviews of week before re Olson. Stated he had been calling me on Feb. 15th to ask for definition of "theft by conversion". Said "while I have you want to ask you about Marshall case - said he had originally intended to wait and call me after he had a few more facts. Told him the matter was being investigated by R.C.M.P. and that he would get full story after investigation completed. He said "Harry Wheaton is the investigator is he?" and I confirmed that he was. (Sat. Feb 13th C.B. Post had noted in BTL column that family trying to get case reopened). "Well can you tell me anything about case." Told him that everything from then on was strictly off the record and he acknowledged that it was. Briefly told him that Marshall convicted by judge and jury in June '71. Two witnesses Chant and Pratico had given evidence. They had earlier given written statements which were known to Defence at time of trial and both were cross-examined on them. He asked how the case had arisen and I told him that a lawyer had been making inquiries (told him name of lawyer and date of letter - did not read contents - also reminded him of BTL comment which he acknowledged he had seen. Told him that an individual claimed that another had confessed to him in 1979 that he had in fact stabbed Seale. He wanted names but I told him that that was all I was going to say for now; the rest would be told when the investigation was complete.

Re: Chief  
MacIntyre

This a.m. (Sun. Feb. 21/82) met at Sydney police station with investigators on Weatherbee case - Chief MacIntyre kept me back and asked about Marshall investigation. Told him (Urquhart present) that I couldn't say much about it - that it was an independent investigation and that when it was all over I would like to be able to say that here are the results of an independent investigation and that Chief MacIntyre had no part in nor influence on it. Chief mentioned Donham and that he heard Donham was questioning witnesses - was quite upset about the whole matter. - Told them I spoke with Donham but told him nothing which was not already public record.

3

Harry Wheaton Phoned Harry at home at approximately 3:30 p.m. Told him about conversation with Chief and that I had received several inquiries from Chief re progress of the investigation. Told him I was concerned about awkward position I was in - that I had been deliberately vague about situation until today when I told him as above. Harry said there had been new developments and that he and Scott had decided there would be no further communication until report for Attorney General was ready. At that time they would sit down with me and discuss it. I said that was best for me because now I could honestly say to Chief "I don't know."

Told Harry I had spoken with Donham after our meeting - that I told him R.C.M.P. investigating and that he knew Harry was the investigator. Told him that as precaution I went off the record but only related matters which were of public record. Also that matter had been raised by lawyer and lawyer's name.

Asked him whether Ebsary had been called at the trial and he said no. (Had earlier mentioned that there had been leaks about the case so if Donham got Ebsary's name it would be obvious that someone had been talking.)

Tues Feb. 23/82 Met at office with Wheaton and Carroll - they updated investigation. Now believe Marshall to be innocent.

11:00 p.m. - call Wheaton - suggested investigation not complete until Chief MacIntyre questioned though he should not be privy to conduct of investigation until Dept. has had opportunity to decide upon it.

Wed Feb. 24/82 Off work for personal reasons.

Thurs Feb. 25/82 spoke with Gale and Herschorn, briefed them on progress of investigation. Gale had already been briefed by Christen.

- Phoned Harry Wheaton after I began reading transcript and realized that trial was in Nov. '71 and not June '71 as I originally thought. (Believe Chief MacIntyre had given this date during our first meeting.)

- Also told Wheaton that sections which may be relevant were ss. 617 and 683 of the Code. He was going to put those sections in his report as observing scrutiny.

2:45 p.m. (phoned) spoke with Cpl. Carroll re Allen case. Mentioned he had spoken to Pratico who said he had been pressured by police to lie.

Feb. 25/82

-3:40 p.m. - Returned call to Mr. James Warren, 983A Westmount Road (539-2786) - said he was brother-in-law of Sandy Seale. Had heard rumors that R.C.M.P. were investigating and family was concerned that Marshall was going to be let out of jail. Asked him for source of rumors and he mentioned he "heard it around" and also from mother-in-law who lives in New Waterford.

- Told him R.C.M.P. were looking into it but I could not comment further. Told him not to worry. I would take name and address and probably would contact him at some future date.

-Immediately phoned R.C.M.P. - spoke with Wheaton and advised him of above.

Feb. 25/82

9:00 p.m. - phoned Harry Wheaton at home. - told him I had just finished reading transcripts of evidence of Chant and Pratico. Told him that it was now my opinion that Crown never disclosed first statements to Defence.

(Just occurred to me while writing that possibly the 1st statements were mentioned during the preliminary inquiry - this is very doubtful because surely defence would have cross-examined on them at trial.)

(Also my feeling, though I didn't mention to Wheaton, that Rosenblum and Khattar should be specifically asked whether they were aware of existence of 1st statements.)  
- Harry mentioned latter possibility though we didn't pursue it further. He also stated that he and Scott were going to see MacIntyre tomorrow.

Wheaton doubtful whether Defence ever learned of further investigation which probably was in progress while the case was under appeal.

Feb. 26/82

9:05 a.m. - H. Wheaton phoned to confirm my opinion that Defence did not know of previous inconsistent statement. I told him that in my opinion they did not. H. Wheaton said he and Scott were going to see Chief MacIntyre this morning.

9:30 a.m. phoned Herschorn - told him of above.

11:35 a.m. - H. Wheaton dropped off Preliminary Inquiry transcript and Vol. 2 of trial transcript.

(Vol. 1 and factums, decision and charge had been left here by Wheaton on Tuesday, Feb. 23)

- H. Wheaton conf'd that meeting with Chief MacIntyre was in p.m.

March 1/82  
Notes began  
4:00 p.m.

5

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

- Said MacIntyre had dismissed whole thing out of hand and Scott did not have sufficient details to pin him down. (Remember wondering why Wheaton had not thought this investigation more important than surveillance exercise but I did not communicate this to him.) Said Chief pinned his argument on fact that Marshall had met Harris and Gushue in park and they said there was only one other person.

1:30 p.m. Harry Wheaton had left message re important message and I returned his call. Said he had interviewed Patricia Harris who had given statement - he read it to me.

- said she had been pressured by police - that there was more than one person present at time she met Marshall.
- Said her parents were not allowed to be present. (mother told her she had been ordered to leave police station).
- Wheaton requests that I interview her.

3:00 p.m. Wheaton and Carroll arrive. P. Harris arrives a few minutes later. I question her in their presence.

- She confirms above. Says she gave more than one statement. That she was in tears; that Gushue was brought in during questioning - that she and he felt it would be best to get it over with though she can't recall discussing with him the number of people who were in the park. - says she can only recall Urquhart's name though others were present.

- says she was first questioned a few days after the incident.

- feels the police acted improperly.

- said she was not convinced at time that Marshall was guilty.

- said she was aware of what his defence would be prior to giving evidence at preliminary on July 5/71

- didn't meet with prosecutor MacNeil.

- says she doesn't know where Gushue is now.

Impression - truthful person doing her best to recall though having difficulty because of passage of 11 years.

- said no one had contacted her prior to today when S/Sgt. Wheaton contacted her. Was very surprised to say the least.

- Says that she had been troubled by evidence she had given at time - has discussed with her parents since.

- Asked her not to discuss with anyone - fewer people who know the better.

Fri., Mar 5/82

*see also  
page 11-12*

Met at office with H. Wheaton - mentioned he was going to Dorchester on Monday, March 8 to take statement from Marshall. Updated investigation.

Later W. Urquhart called re unrelated matter. Chief came on phone; wanted to know about Marshall - told him I was not at liberty to discuss.

Mon or Tues  
March 8, 9

Urquhart comes to office - tries to find out about investigation - tell him I'm not at liberty to discuss.

Had meeting with Wheaton - didn't record date.

Wed. Mar 17/82

- met at noon with Wheaton - says he has talked to Lew Matheson.

Mon. Mar 22/82

3:10 p.m. - Ian MacNeil called - wants to be remembered when story breaks - said he had been speaking with Aronson no comment - family - n/c - Told him I couldn't comment - called H. Wheaton and advised him of call. (Ian knew of 3 options - parole, new trial, pardon)

- 3:50 p.m. - Dr. Donovan called - is going to record cat scan for Ebsary - advised Wheaton.

4:00 p.m. - Spoke with Wheaton - said he had been contacted by Dolphe Evers who confirmed that fibers on knives taken from Ebsary's wife's basement came from Marshall's jacket (he had saved original exhibit).

- Wheaton asked me to check at Court House for Seale's jacket - I did and returned call and not there.

4:20 p.m. - Returned call to B. Urquhart - said he was disturbed that he was hearing about Marshall case on the street - said he heard parole, pardon, new trial (no doubt in my mind he had been speaking with Ian MacNeil - told him I was privy to the investigation and couldn't comment.

Notes made  
Sun Mar 28/82

- First learned that story broke while en route to Halifax on Wednesday, March 24/82.

- Thurs. March 25 - while in Halifax - learn from Anne that story had been carried on front page of Wednesday's C.B. Post - also that Pratico had been interviewed on radio and had denied changing his story.

- Learned from other family members that jury foreman, Simon Khattar & Chant were also on radio.

- 12:30 p.m. today Ian MacNeil called me at home. Was aware of Ebsary and also that we had enough evidence to charge Ebsary. Speculated that Marshall could be pardoned and then Ebsary charged with murder. No comment.

7

- Called H. Wheaton - will bring me copy of report tomorrow - told him about Ian Mac Neil

- B. Urquhart called me - wanted to know if Ebsary was being charged on Tuesday - told him no - that he was probably going to M.S. Hospital.

Gary Green Billy Urquhart

Barbara Floyd  
Pratico not in park  
Int. by MacIntyre &  
Mullowney

Ratchford - Donna Ebsary  
(father had  
admitted to her)

Notes made Mon Apr 19/82  
beginning at 9:00 a.m.

Fri. Apr 16/82

Called G. Gale in the a.m. to ask him about Chief MacIntyre's visit. (I had been advised day before by Wheaton that MacIntyre had been to Dept.) Gale advised Chief had been there with Marshall file. Two points struck Gale:

1. Mitchell Sarson: when Marshall had gone AWOL in 1979 he had stayed with Sarson's sister. Told him that I believed the R.C.M.P. report made clear that Sarson wasn't most reliable witness.
2. That Chief had produced statements from Ebsary's wife, son and daughter which were opposed to what they were saying now. I said that if such was the case the probable explanation was that they were living in fear of Ebsary at the time.

 Told him I was concerned about fact that Chief was producing statements now which neither I nor the R.C.M.P. had known about before - told him I would confirm this with R.C.M.P. and get back to him.

Gale also under impression that someone had recently been charged with threatening witness - I replied that if so it was not to my knowledge. He also believed Chief had said that Ebsary had been charged on night in question with carrying a 12" butcher knife - told him I believed that related to April, 1970 incident. (R.C.M.P. later confirmed this was so.)

- Significant that Chief left nothing with Gale - collected all papers before leaving.

Gale and I also spoke about Aronson and letter dated April ??, 1982 - can't recall contents.

Fri Apr 16/82

After call with Gale, phoned Wheaton who confirmed that they had known nothing about earlier statements by Ebsary's wife and family. Said that on the two occasions when they had briefed MacIntyre they had asked him whether he had anything further which might help the investigation - he had said no. (It is now clear that MacIntyre has been less than forthright throughout and I believe that from the beginning he has set out to have the investigation reach a predetermined goal; at best he has been manipulative.)

Chief MacIntyre: - now seems clear that he used the Feb 3/82 meeting to "set up" both Scott and myself, i.e. he produced only those parts of the file for which he had an explanation e.g. both statements from each of Chant and Pratico - results of November 1971 R.C.M.P. investigation, his theory re Mitchell Sarson. He probably felt the R.C.M.P. would merely go and check Sarson - that would lead them back to Ebsary who had already passed the polygraph. Doubtful that he figured on the detailed investigation which ensued. (Feelings shared by Scott at our April 16th p.m. meeting described below.)

- Significant that Chief has always retained full file in his possession and only turned over what was specifically asked for. e.g. did not volunteer fact of previous statements by Ebsary's wife nor the statement of Patricia Harris wherein she describes a person like Ebsary.

- At time of first briefing by R.C.M.P. he pointed to Harris testimony as being proof that Marshall story was not true - then R.C.M.P. interviewed Harris who gave her story which damaged Chief's theory. He then related to G. Gale why Harris was unreliable witness who couldn't be believed.

In call with Wheaton, he suggested that he, Scott and I meet. I agreed - he phoned back to say meeting was on for 2:00 p.m. - had meeting I suggested that they should demand file and all information from Chief and threaten use of search warrant if necessary. They wanted a direction to Chief from A.G. to turn over information.

- Also discussed having a meeting in Halifax with Brass I agreed and they were going to try it on Christen.  
- they, as stated, denied knowing of previously existing Ebsary statements.

- I phoned Gale again and told him of above meeting - said he would wait until Monday to hear from Christen.

Sat Apr 17/82

1:45 p.m. - Wheaton called me at home to say they had almost completed taking statement from Donna Ebsary and we agreed to meet at my office at 2:30 p.m. Also briefed me on what she was saying.

While on phone told me that he and Herb Davies had gone down to see Chief MacIntyre late Friday p.m. and had spent a couple of hours with him. After being pressed Chief turned over previous written statement by Patricia Harris in which she described someone matching Ebsary. (Wheaton said Chief went scarlet when pressed about this statement) - also turned over November 1971 statements of Mary & Greg Ebsary (probable that R.C.M.P. had seen these during 1971 investigation which is an out for MacIntyre).

Also told me that Herb Davies had noticed Chief skipped some of the information on floor behind desk - believes it was some information with transcript attached relating to threat by Xmas against Pratico - believes there was a charge against Xmas at time.

- Said he also saw Prosecutor MacNeil's notes on Chief's file.

- Left with only statement and a few other papers - still did not demand full file and all information from Chief.

Meeting with Donna Ebsary - my office 2:30 p.m. Saturday, April 17, 1982 - met with above noted and S/Sgt. Wheaton - 24 years old - working in Boston - no work visa - extremely anxious that publicity will alert American authorities to her situation - working in some sort of furniture factory - didn't volunteer particulars and I didn't press.

- she has some university training (2 yrs) and has completed M.S. Grade XII - is embittered because of youth spent under father's roof - says she has trouble mixing with people to this day - was not allowed to have friends or bring anyone home. Was not allowed out of own yard except to attend school. Is obviously a bright individual who articulates very well - says she has vivid recollection of night of Seale murder.

- Gave written statement to Wheaton which I read as I interviewed her. Describes MacNeil and Father coming home on night of murder and father washing brown handled knife. (Not consistent with Exhibit #8 - probably murder weapon) - says he took it upstairs and she looked for it on several occasions afterwards but could never find it.

Sat Apr 17/82

Also described re-enactment of murder by her father for her uncle Bob Ebsary from Newfoundland. Her description of that event matches perfectly with Marshall's most recent statement and also that of MacNeil particularly the words: "you want what I've got...etc."

She said that in 1971 - she was not questioned by the City Police - she waited outside police station in car with dog for hours while her father, mother and brother were questioned. (Though she couldn't remember, this was undoubtedly during the Nov '71 investigation.)

Told me about her home life and fact that her father could be very violent - always had knives. Would break up furniture or sell it for booze. Was always "bringing stray males home."

- She left after assuring me she would cooperate.

Told Wheaton that I thought he should get entire file from City Police. Said he would go down Monday and get it.

Mon Apr 19/82

This a.m. - phoned by Herschorn on unrelated matter - told him there were new developments in Marshall - he phoned me back with him and Gale on conference phone. Briefed them thoroughly on above. Suggested that investigation should now focus on city police - Gale was going to speak with Attorney General re direction to City Police under Police Act to turn everything over to R.C.M.P.

Phoned Wheaton - told him I wanted copies of newly acquired statements - he also advised that Scott told him they now had enough to investigate and not to go to MacIntyre for rest of file. Would bring statements down this p.m.

1:30 p.m. Wheaton arrived with statements of Ray, Greg & Mary Ebsary dated Nov. 15/71; Donna Ebsary 17 April 82; Patrician Harris 17 June '71 - also is going to provide me with Chant and Pratico 2nd statements.

- note Patricia Harris not complete - i.e. may have been a p. 2.

- also showed me statements of O'Reilley girls at least one of whom said she had told Harris to say she saw old man with white hair and long coat. Note this statement was taken before Harris' 2nd statement, though police could have previously been aware of what O'Reilley was going to say thus affording them an excuse for not believing Harris' first statement.

Mon Apr 19/82

Insp Scott called just as Wheaton was leaving. Said he was concerned about Harris statement and fact that MacIntyre had been holding back. Said that they had briefed Christen, were preparing a presentation, and expected that there would be a meeting.

Told him that I was disappointed that they still didn't take all of file from Chief. He said they couldn't be sure of getting it all that way.

Said they would keep me informed. Told him Gale expected to hear from Christen and that there would likely be further developments in the week.

In meeting with Wheaton also discussed advisability of questioning Rosenblum. Told him it would be extremely material to the admissibility of the present testimony of Chant and Harris to show that Defence did not know of this evidence at the time. - i.e. must be able to show that this evidence was left out by defence for tactical reasons.

Had visit from Allan Story, writing for Globe and Mail. Knew Donna Ebsary's name and fact she was in Boston. (Apparently got it from Ratchford) said Wheaton down in Boston last weekend - I told him this was not so. Said he had been told by City Policeman that I was wondering who next Chief was going to be. I denied making such a statement.

April 20/82

Called H. Wheaton and told him of Story's visit.

10:15 a.m. Ian MacNeil visited - discouraged him from contacting witnesses - told him case would be ruined if they took off.

Fri March 5/82

a.m. - Jim Carroll at office re Allen case - says he's going to see Ebsary when he leaves.

3:30 p.m. approximately - Harry Wheaton comes to office. says he's had another meeting with Ebsary's wife and son. Says that after polygraph Ebsary stays in his room for 7 years. - confirms that he has fetish about knives and Wheaton takes them and sends to lab.

Is going to Dorchester to take statement from Marshall on Monday. Wants to know if I can suggest any questions. Tell him I'll think about it and call him at home on weekend.

Fri Mar 5/82

12

14

After Wheaton leaves, return call to Insp. Urquhart re Patterson. When we finish, Chief comes on line. Asks me for news on Marshall case - says they're not going to put me in jail are they. Have I been talking with them? Yes, I've been talking but I'm not at liberty to say what about. Says OK I won't ask any more questions about it.

Wed July 12/82

1. Chant

2. Pratico

3. Harris

My office - present John MacIntyre, Mike Whalley, H. Wheaton  
Began with summary of Chambers appr.

Chant - 2 st'd May 30 and June 4

- also read Feb 16/82 statement

- summarized

1. May 30, 1971 statement - meeting with Mike MacDonald before this statement - can't recall whether this statement was specifically read over by Don MacNeil - doesn't remember whether Lew was in on conversations.

- p. 116, 117 - of transcript - Chant says he told untruth when questioned by the City Police.

May 30th - MacIntyre only witness - Mike MacDonald says he didn't.

2. June 4, 1971 - admits his handwriting on last page of original - knew nothing about Chant's probation - says all persons named were there - Burke definitely there the whole time - mother there the whole time - MacGee there whole time - something about "milk money" - doesn't know who brought it.

Re: Chant

- says he did not discuss Chant's criminal record with MacGee prior to meeting

- no threats or questions by anyone to Chant during meeting.

- warrant issued when (probably same day)

- says he discussed with Donnie - and Donnie ordered charge

- says he didn't mention Pratico's earlier statement on June 4th

- Between May 30 and June 4 - absolutely no conversation between Chief and Chant

- When did he take Chant down to tracks? - Can't recall exactly when that was.

- Between June 4 and July 5 didn't have any conversations with Chant

- Can't recall any meetings between July 5 and Nov. 2.

- Chant says during adjournment at trial when he was declared hostile witness, he was pressured by police and prosecutor to give evidence - MacIntyre says he can't recall

Wed July 12/82

Urquhart - says Burke there whole time

13 - Chant's mother there whole time

came right back to Crown's office and spoke to Don MacNeil - Sgt. MacIntyre authorized to lay the charge.

Patricia Harriss

June 17 8:15 p.m. -

June 18 1:20 a.m. -

March 1/82

J.F. MacIntyre

- doesn't recall who was with her, but there was someone.
- doesn't recall other person being kept out of office.
- doesn't recall 8:15 p.m. statement
- can't recall how long he was present during questioning.
- may have thought she was over 16.
- can't recall whether he spoke to O'Reilly previously.

Urquhart

- Doesn't recall interview with Harriss
- doesn't recall O'Reilly
- doesn't recall mother being there at the time
- no banging desk and hollering

Refer to Gushue statement

John Pratico

- did he know him before? had known him to see him before.

May 30 - figures he was lying when he gave 1st statement

June 4 - just 3 present

- didn't believe 1st statement

- told him he wanted truth

- wouldn't say he was totally reliable but placed credence where his story was corroborated by other witnesses (Chant and Harriss)

- wasn't aware that he was in N.S. Hosp. between July 5 and Nov. never

MacIntyre believes prosecution was aware of all statements

Urquhart - no pressure tactics June 4

- has no independent recollection of interview

- was witness only

Ebsary - doesn't think he had any knowledge of Ebsary prior to Seale murder - (Urquhart concurs)

- 1st knowledge was in November when MacNeil came forward.

- didn't know of previous conviction for carrying concealed weapon - April '70

U & M - don't recall any lineup.

Search for knife - creek drained

- no results

Wed, July 21/82

Received call from G. Coles. - advised that he was getting feedback from source he wouldn't identify regarding lack of impartiality by the Crown - said he wouldn't want us to prejudge the situation.

Became evident in our conversation that complaint had come from Mike Whalley. Told him that when I met with Whalley, MacIntyre and Urquhart (Wheaton present) on Monday, July 12, that I told them that I didn't believe Marshall had done murder, that there was sufficient evidence to charge Ebsary.

G. Coles said they were concerned that I wasn't calling enough witnesses. Magee was one of the names mentioned - told him I had prepared affidavits for Urquhart, MacIntyre and Magee. That all affidavits would be reviewed by Mike Whalley, that I would make any changes they wished.

- that I was interested in getting fully story out.

Thurs, July 22/82

- 10:30 a.m. to 12:15 p.m.
- Whally, MacIntyre. and Urquhart come to office with affidavits I had previously drafted.
- Urquhart and MacIntyre want to delete paragraph regarding their lack of knowledge of John Pratico in 1971. Chief says it's possible that Pratico's mother would have told him her son was on pills at the time.
- MacIntyre wants paragraph added relating to statements he took from the Ebsary's on Nov. 15, 1971 after he had learned about Ebsary's possible involvement in stabbing from MacNeil.
- Told them I would make requested changes and have them sign revised affidavits.
- Left them alone in my office to read Aronson's affidavits while I talked in other office with V. King R.C.M.P. commercial crime about another matter. When I returned the Chief was reading the R.C.M.P. report - and did not leave until he completed same.
- Assured them that I would do everything possible to have their side of story presented.

**John's Affidavit**

- Para. 15 - delete,
- 25 & 27 Insert Para between 27 and 28 relating to statements taken from Roy, Greg and Mary.

Nov. 6/82 Re: Oscar Seale 562-1792

- Gordon Gale called this a.m. to advise that he had just spoken by phone with Mr. Seale. Latter concerned that I was not being straight with him and wondered what I was going to do to protect his son's reputation.

- Told Gordon I would call Seale.

4:25 p.m. - (Brian present) phoned Seale - asked him if he wished to speak. Said yes he was waiting for my call. Said he was concerned that I did not know about his son.

- suggested that he was concerned about his son's reputation. He agreed. Told him that he should seek independent legal advice - wanted me to recommend - told him no but referred him to Barristers' Society referral service.

- Started to ask me about case - replied that because he felt that I had either misled him or deliberately lied in the past that future communication should be through his solicitor.

- Pressed me about lie: "Well, didn't you? Didn't you tell me that Marshall had taken the polygraph. Told him I definitely had not; I had never lied to him. "Well am I dreaming it up". Told him I did not know where he was getting it. He said "Don't put me down".

Told him that all I was interested in was getting at the truth. You're saying I'm a liar and I'm saying I'm not - so we have a stand off.

- Started to ask me another question but I told him I was stopping here and reiterated that he should retain a lawyer and communicate with me through him.

Dec. 6/82 Re: telephone conf. Martin Herschorn re Donald Marshall  
conf. 11:00 a.m. Notes 12:15 p.m.

- Phoned Martin Herschorn re unrelated matter - said he was just going to phone me. Inquired as to reasons why I had decided not to call police officers. Told him that Court had signalled that they did not want to get into that. When I was asking for leave to cross on O'Reilly statement, C.J. had made the point that witnesses now admit they had lied, no point in getting into why they had lied. (Recalled that he had made at least three references in that vein.

Also told him that I had conferred with Mike Whally during the noon adjournment on Dec. 2/82. At that time Whally agreed that there was not much point calling police because he felt it was obvious that all the witnesses were lying anyway.

Dec 6/82

- Also told Martin Herschorn that the City Police had fared far worse in the press than they had in court. Told him that cross-examination had lessened the impact of the evidence of Harriss and Chant. - Chant agreed that he had believed Marshall guilty anyway - that his mother and probation officer present when 2nd statement taken, and that the police had kept pressing him for the truth.

- told him that Eddie MacNeil of Police Commission had commended me on the job and said he would phone MacIntyre to tell him about it. Also Oscar Seale had phoned office on December 3rd and left work that he thought I had done a good job.

Bottom line was that police had come through in best possible light and calling them would not have improved their position.

Martin Herschorn asked whether I had been pressed to give any theory, and I reminded him of our talk on Dec 2/82 wherein I had told him and Bob Lutes that when pressed I told the Court that the Crown's position was inquisitorial rather than adversarial. Also reminded him of earlier conversations wherein I told him that the day would probably come where we would have to take a position and that in my professional opinion, we should at that time advocate Marshall's acquittal. M. Herschorn said I should hold off giving such an opinion as long as possible because the Deputy Attorney General was concerned that we should not appear to be espousing any particular theory. I replied that I would do my best but that sooner or later a position would have to be taken.

Mon Jan 17/83 Notes re Marshall

Received unannounced visit at office by Chief John MacIntyre ostensibly to discuss necessity of having wiretap done in arson case being investigated by police.

Told him I had made copy of Dec 1 & 2/82 proceedings re Marshall - as I told him I would do during discussion at police station in August.

- Chief then began to rehash facts of case and try to ascertain what my views now were at this stage of the proceeding. Told me he would go to his grave believing that Marshall had inflicted the wound to his left arm himself. (Ref'd to fact that expert had said jacket was cut as well as torn)

Mon Jan 17/83

Also said that reason Marshall had removed stitches in arm was so that no blood sample could be taken from him when he returned to hospital to have stitches removed. I queried whether Marshall knew that MacIntyre had arranged with Dr. to have blood sample taken and he said that he had not.

- Ref'd to Marshall going back to scene and staying out of Seale's line of vision so that Seale could not identify him as the assailant (Begg question of why Marshall would have gone back in the first place)

- Was noncommittal on my position. (Mentioned during conversation that he would like to see my factum, I didn't acknowledge that I had heard the request.

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

Jan 24/83

Telephone Conference with Gordon Gale

If Court accepts evidence given, then they have no option but to acquit.

G. Gale said it was not the sort of thing to be talked about over the phone, that I should come to Halifax so the four of us could talk about it.

(Had initially told me that he, Martin and Coles had discussed my letter - not sure that he and Martin agree with me - feels that a reasonable compromise position could be taken.

Told him I would fly up in the a.m., i.e. Jan 25/83.

Jan 25/83

7:15 leave

7:58 arrive Halifax

Preparation for Jan 25/83

- Refer to original appeal factum - how strong was Crown's position?
- Refer to early memo's to Dept. - did I make it clear that eventually we'd have to support acquittal? -----
- Is suggested "compromise", a compromise of my professional integrity?
- Is there risk that a new trial would be ordered if we waffle. Best scenario: acquittal, then lay charge against Ebsary the same day Supreme Court acquits.

Jan 25/83

- Fact that Ebsary to be released and constitutes danger
- Do they want me to say that I have been instructed by the Deputy Attorney General not to take a position in this matter?
- Trying to shift onus of decision onto Court and escape complicity in or responsibility for that decision.
- Whole problem would not have arisen save for Whalley's visit.

Notes of Jan 25/83  
 Meeting in Hfx  
 (Made Jan 26/83)

Attended at the office of the Deputy Attorney General (Coles. Present were Coles, Gale and Herschorn.

- Meeting lasted approximately 2½ hours and began with Mr. Coles explaining his perception of the role the Crown ought to play in this case. Basically, he said that the Crown should outline the strengths and weaknesses of the evidence of the various items of evidence and then say to the Court, "if you believe this, you can rule one way, but if you don't, you can rule another way. Although he maintained that such a posture would be a Crown position, I disagreed.

- It was my view that the Crown should take a definite position on ultimate disposition of the case and that should be that Donald Marshall be acquitted.

- Same points canvassed a number of times and at one point Coles threatened to take me off the case - told him I would prefer that he take me off the case than order me to adopt his "position" in court - in which case I advised that I would tell the court that I had been directed by the Deputy not to take a position on the case.

- Coles said that there was not time for him to take me off the case but if there were he would do so because he was not comfortable with my position.

- Stated that it was not role of Crown to take position that it was the responsibility of the Court to make the decision - agreed with him on latter point but not on former - reminded him that Crown in its factum in 1972 had taken position that the appeal should be dismissed.

- Coles said this was a different type of case and Crown was not cast in its usual role - that furthermore we were now dealing with questions of fact not of law - that there was no theory of the Crown.

- Told Coles there was a Crown theory and that even if it were straight question of fact, Crown should still take a position.

- In the end Coles said - "We're in your hands, try not to create more problems for me than I already have."

- Feb 8/83 Brooks McGuire, Campbell St., age 28 - 17 yrs old in 1971
- was at dance (St. Joes)
  - common knowledge that M & S were fighting that night - though he didn't see it
  - common knowledge the two of them hated each other. (not best of friends)
  - named other people - Mike Jamael (Tom Jamael's son) - Florida
  - another fellow attending university in Ontario
  - M.B. McGuire said he had not seen incident himself
  - Information provided by Cpl. Woodburn
  - relayed to Cpl. Carroll
- Feb 9/83 - told him I didn't think there was anything worth following up at this point.
- Feb 15/83 - spoke with Insp. Scott and Cpl. Carroll
- re Brooks McGuire and Irving Cameron
  - Scott couldn't recall latter party only fact that he had been told of someone by Chief MacIntyre. I told Scott that Carroll had appraised me of conversation he had had at Correction Centre with Cameron - Scott said he thought statement should be taken from McGuire just to confirm that he had not actually seen anything - told him it would do no harm but I left it up to him.
  - Told him Woodburn had not gotten back to me with more names from McGuire

- Feb 23/82    1. not complete until Chief MacIntyre questioned  
              2. should not be privy to conduct of investigation
- Feb 26/82    - Scott briefs MacIntyre
- April 16/82   - MacIntyre meets with Gale  
              - Scott and I and Wheaton meet - I told them they should demand file  
              - they want directions from Attorney General  
              - Wheaton and Davies go to Chief - but leave without demanding file.
- Sat Apr 17/82 - telephone call with Wheaton - again tell him to demand file - said he would go Monday and get it.
- Mon Apr 19/82 - phone conference with Gale and Martin Hershcorn - told them I thought investigation should now focus on City Police - Gordon Gale said he would get direction under Police Act from Attorney General to turn everything over.  
              - phoned Wheaton - Scott had told him they now had enough and not to go get file - Scott phones later and I told him I was disappointed they hadn't demanded file.
- April 20/82   - Attorney General's letter to MacIntyre

①

Notes re Consultations on Marshall Case.

Feb. 3/82

1:30 p.m. met at my office with Chief MacIntyre and Det. Scott. - Chief MacIntyre briefed us on investigation which led to Marshall being convicted of murder in 1971. (by Sup. Ct. jury.) - Main point is that conviction obtained because of evidence of two teenage boys - Chant and Pratico (unknown to one another) who had given police written statements stating that Marshall + Seal had been accosted by two individuals. Subsequent statements said Marshall had done stabbing.

Oct '71 - MacNeil states that Roy Ekery had done stabbing. - Invest. turned over to RCMP who did polygraphs: - MacNeil - non-conclusive  
Ekery - truthful.

Oct '79 - one Mitchell Byrne says Ekery admitted stabbing - see letter from Aronson Jan 26/82.

Feb 16/82

- met at office with Harry Wharton + Jim Carroll - advised that they had int. Mitchell Bayne Sarson - not impressed by him. - Ekery's wife + friend of Marshall

- ① Ekery's wife
- ② Learned that Pratico has severe psych problems
- ③ were going to int. Chant that evening.

- would get back to me in a week. Had transcript of trial. C.P. had been cross-examined on previous statements.

Notes and Feb. 21/82

more discussed fact that per + particular  
 Richard Hanham was blagging into the case. I told  
 them that Willie Woodard had called me at  
 11:25 pm on Feb 15 when he advised that  
 Hanham had been to 16 Post + had been  
 digging out old newspapers re the offence.  
 We agreed that Spets quin did  
 would be at minimum + that I would  
 confirm that RCMP were investigating re  
 deception from Wikator. (Cpl. Carroll through  
 present Wikator, take part in meeting. Mention  
 that he was updating his notes on day.)

Returned call to Richard Hanham (He had called day  
 before - re a truck + usage.)  
 - discussed the interview of Jack to per  
 in Oregon. Stated he had been calling me on Feb 15  
 to ask for definition of " theft by conversion".  
 Said while I have you would be ask you about  
 Marshall case - said he had originally intended  
 to visit + call me after he had a few more  
 facts. Told him the matter was being investigated  
 by RCMP and that he would get a full  
 story after investigation completed. He said  
 " Harry Wikator, is the investigator in it" and  
 it confirmed that he was. ( Sat Feb. 13 Ch Post  
 had noted in both columns that family ~~was~~ trying  
 to get case re - opened. " Well can you tell  
 me anything about case" Told him that in writing  
 from this on was strictly of the record +  
 I acknowledged that it was. Briefly told him  
 that Marshall convicted by judge + jury in June. I  
 gave witness Chant + Spets, full given names.  
 I had earlier given written statements which were  
 known to be false at time of trial + which  
 were cross-examined on them. He asked how

(3)

the case had arisen and I told him that a lawyer had been making inquiries (told him name of lawyer and date of letter - did not read contents - also reminded him of BTR comment which he acknowledged he had seen. Told him that an individual claimed that another had confessed to him in 1971 that he had in fact stabbed Seale. He wanted names but I told him that that was all I was going to say for now; the rest would be told when the investigation was complete.

Re. Chief McIntyre: This a.m. (Sun Feb. 21/82) met at Sydney police station with investigators on Weatherbee case - Chief McIntyre kept me back and asked about Weatherbee investigation. Told him (roughly present) that I couldn't say much about it - that it was an independent investigation and that when it was all over I would like to be able to say that these are the results of an independent investigation & that Chief McIntyre had no part in over suspicion on it. Chief mentioned Bohage who that he heard Bohage was questioning witnesses - was guilty upset about the whole matter - did think spoke with Bohage but told him nothing which was not already public record.

Henry Whiston phoned Harry at home at approx. 3:30 p.m. Told him about conversation with Chief & that it had provoked several inquiries from Chief re progress of the investigation. Told him I was concerned about upward position I was in - that I had been deliberately vague about situation until today when I told him as above. Harry said there had been previous doubts & that he & Gott had decided there would be no further communication until report for A.S. was ready. At that

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(4)

they would sit down with me & discuss it. I said that was best for me because now I could honestly say to Chief "I don't know".

Told Harry I had spoken with Donham after our meeting - that I told him RCMP investigating & that he knew Harry was the investigator. Told him that as presbyterian I went by the record but only created matters which were of public record; also that matter had been raised by lawyer & lawyer's name.

Asked him whether Ekary had been called at the trial and he said no. (Had earlier mentioned that there had been leaks about the case so if Donham got Ekary's name it would be obvious that someone had been talking.)

Tues. - Feb 23/82

met at office w. Weston  
and Carroll - they updated investigation  
Now believe Marshall to be innocent.

11:00 p.m. - call Weston - suggest  
investigation not completed until chief  
McIntyre questioned through the absence of  
not be privy to conduct of investigation  
until dept has had opportunity to decide  
upon it.

Weds - Feb 24/82 - off work for personal reasons

Thurs - Feb 25/82 - spoke w. Dale & (Kerby)  
briefed them on progress of investigation  
Dale had already been briefed by Weston.

- phoned H. Weston after  
I began reading transcript & realized that  
trial was in Sec. 371 and not June '71 as  
I originally thought. (Believe chief McIntyre had  
given this date during our first meeting.)

- also told Weston that sections  
which may be relevant were ss. 617 and  
683 of the Code. He was going to put  
those sections in his report as securing  
evidence.

2:45 p.m. (phone) spoke with Cpl. Carroll  
re Allen case. Mentioned he had spoken to  
Prater who said he had been persuaded by  
police to lie.

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(6)

Thurs. Feb 25/82. - 3:40 p.m. - Returned  
 call to Mr. James Warren, 983A Westmount Rd.  
 (539-2786) - said he was brother-in-law  
 of Sandy Seal. Had heard rumors that  
 RCMP were investigating & ~~was~~ family  
 was concerned that Marshall was going to  
 be let out of jail. Asked him for source of  
 rumors and he mentioned he "heard it  
 around" and also from mother-in-law  
 who lives in New Waterford.  
 - Told him RCMP were looking  
 into it, but I could not comment  
 further. Told him not to worry. I would  
 take name & address & probably I would  
 contact him at some future date.

- Immediately showed RCMP - spoke  
 with Wheaton & advised him of above!

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Re: Marshall Feb 25/82.

9:00 p.m. - phoned Harry Wheaton at home.  
 - told him I had just finished reading transcripts of evidence by Chant & Prater. Told him that it was now my opinion that Crown never discovered 1st statements to Defense.

(Just occurred to me while writing that possibly the 1st statements were mentioned during the preliminary inquiry - this is very doubtful because surely Defense would have cross-examined on them at trial.)

(also my feeling, though I didn't mention to Wheaton, that Rosenblum & Prater should be specifically asked whether they were aware of existence of 1st statements.) - Harry mentioned latter possibility though we didn't pursue it further. He also stated that he & Scott were going to see Mr. Lutzie tomorrow.

Wheaton doubted whether Defense ever learned of further investigation which probably was in progress while the case was under appeal.

FE 109

⑧

Re: Marshall Feb 26/82.

9:05 a.m. - H. Wheaton phoned to you firm  
 my opinion that Refuse did not know  
 of previous inconsistent statement. I told  
 him that in my opinion they could not. H.W.  
 said he & Scott were going to see Chief McIntyre  
this morning.

- 9:30 a.m. phoned Hershorn to  
 him of above.

11:35 a.m. - H. Wheaton dropped off Prelim.  
 Inquiry transcript & Vol. 2 of Trial  
 transcript (Vol I + postures, decision +  
 charge had been left here by Wheaton  
 on Tues. Feb. 23).

- H.W. conf'd that meeting with  
Chief McIntyre was in p.m.

FE 109

Notes began 4:00 p.m. Re Marshall - Wash 1/8

H. Wheaton called this a.m. to say that meeting w. Chief McCutpre had gone down in Frisco, Tex. - just drug. Scott attended as Wheaton was involved in a surveillance exercise.

- Said McCutpre had dismissed whole thing out of hand & Scott did not have sufficient details to pin him down. (Remember wondering why Wheaton had not thought this investigation more imp't. than surveillance exercise but I did not communicate this to him.) Said Chief pinned his argument on fact that Marshall had one Harris & Gushere in park & they said there was only one other person.

1:30 p.m. H. Wheaton had left message re imp't. message and I returned his call. Said he had interviewed Patricia Harris who had given statement - he read it to me. - Said she had been pressured by police - that there was more than one person ~~in~~ present at time she met Marshall. Said her parents were not allowed to be present. - Wheaton requests that I interview her.   
 (Wheaton told her she had been ordered to leave police station)

3:00 p.m. Wheaton & Carroll arrive. P. Harris arrives a few minutes later. I question her in their presence. - She confesses above. Says she gave more than one statement that she was in tears; that Gushere was brought in during questioning - that she & he felt at would be best to get it over with though she can't recall questioning with him the no. of people who were in the park.

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March 1/82 - ad

says she can only recall Hubbard's name  
though others were present.

- says she was first questioned a  
few days after the incident.

- feels the police acted improperly.

- said she was not convinced at the  
time that Marshall was guilty.

- said she was aware of what his father  
would be prior to giving evidence at trial  
on July 5/71.

- didn't meet with prosecutor McNeill

- says she doesn't know where Susan  
is now.

Impression - truthful person doing  
her best to recall though having difficulty because  
of passage of 11 years.

- said no one had contacted her  
prior to today when Sgt Wheaton contacted her.  
Was very surprised to say the least.

- says that she has been troubled by  
evidence she has given at times - has discussed  
with her parents since.

- asked her not to discuss with  
anyone - fewer people who know the facts.

4:15 p.m. : notes concluded

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Fri. March 5/82.

Met at office w. H. Wheaton - mentioned  
he was going to Berkeley on Mon. Mar  
to take statement from Marshall. Upd  
investigation

Peter W. Ugruhart called re  
unrelated matter. Chief came on phone  
wanted to know about Marshall -  
told him I was not at liberty to discuss

Mon or Tues March 8, or 9.

Ugruhart comes to office - tries to find  
out about investigation - I tell him I'm  
not at liberty to discuss.

Had meeting with Wheaton - didn't record  
date.

Weds March 17/82 - met & moon  
w. with Wheaton - says he has talked  
to Lew Matheson.

Mon. March 22/82 - 3:10 p.m. - Jan 7 p.m.  
called - wants to be remembered when  
story breaks - says he had been speaking w. Aronson  
no comment - family - N/C - told him I couldn't  
comment - called H. Wheaton + advised him of  
call. (Jan knew of S options - parole, new trial, parole)

- 3:50 p.m. - Dr. Donovan called - is going  
see. at show for Stuary. - advised Wheaton.

Mon., March 22/82 (cont.)

~~4:00 pm~~ Spoke with Wheaton - said he had been contacted by Dolph E. Evers who confirmed that fibers on knives taken from Osborn's wife's basement came from Marshall's jacket (He had saved original exhibit)

Wheaton asked me to check at Court house for Seal's jacket - I did & returned call & not there.

4:20 - Ret. call to B. Hegubart - said was startled that he was hearing about Marshall case on the street - said he heard parole, pardon, new trial (No doubt in my mind he had been speaking with Dan ~~officer~~). Told him I was privy to the investigation & couldn't comment.

13.

Notes made Sunday March 28/82

- First learned that story broke while en route to Hqs. on Weds, March 24/82.

- Thurs March 25, while in Hqs - learned from Ann that story had been carried on front pg. of Wednesday's C.B. Post - also that Patrick had been interviewed on radio & had denied changing his story.

- Learned from other family members that jury foreman, Justice, & Swiss Matter & Aunt Irene also on radio.

- 12:30 pm, today Dan Jiffail called me at home. Was aware of Ekary & also that you had strongly urged to charge Ekary. Speculated that Marshall would be pardoned if this Ekary charged w. murder. - No comment.

- Called K. Wheaton - will bring me copy of report tomorrow - told him about Dan & Jiffail.

- S. Uehart called me. - wanted to know if Ekary was being charged on Tues. - told Jimmie - that he was probably going to N.S. Hosp.

Very Greene → Billy Uehart →

Barbara Eby  
Justice met in Park.  
Out by MacLure & Mullen

Patricia - Janne Ekary (father had admitted to her)

FE 107

34  
Notes made Mon. April 19/82  
beginning at 9:00 a.m.  
Re Marshall.

Friday, April 16/82.

Called J. Gale in the a.m. to ask him about Chief Mitchell's visit. (I had been advised long before by Wheaton that Mitchell had been to Dept.) Gale advised Chief had been here with Marshall file. Five points struck Gale: (1) Mitchell's version; when Marshall had gone AWOL in 1979 he had stayed with Garrison's sister. Told him that I believed the RCMP report made clear that Garrison was not a most reliable witness.

(2) That Chief had produced statements from Eksary's wife, son & daughter which were opposed to what they were saying were. I said that if such was the case the probable explanation was that they were lying in fear of Eksary at the time.

Told him I was concerned about fact that Chief was producing statements now which in the RCMP had known about before - told him I would compare this with RCMP and get back to him.

Gale also made impression that someone had recently been charged with threatening witness - I replied that if so it was not to my knowledge. He also believed Chief had said that Eksary had been charged on night in question with carrying a 12" butterfly knife - told him I believed that related to April, 1970 incident. (RCMP later confirmed this was so.)

- Significant that Chief left nothing with Gale - looked at all papers before leaving. Gale and I also spoke about Thomson and letter dated April ??, 1982 - can't recall contents.



CROWN PROSECUTOR'S OFFICE  
CAPE BRETON COUNTY  
SYDNEY, N. S.

FE 71

77 Kings Road  
Sydney, Nova Scotia  
B1S 1A2  
May 4, 1982

M E M O R A N D U M

TO: Frank C. Edwards, Crown Prosecutor  
FROM: Brian D. Williston, Asst. Crown Prosecutor  
RE: Donald Marshall Case

My only involvement re the above was a telephone call I received late on the afternoon of August 26, 1981, from William Urquhart of the City Police who stated that one Dan Paul of Membertou had come into his office that day. Mr. Paul was a Native Court worker at that time and stated that he had a message from Donald Marshall that Roy Ebsary of Falmouth St., was the one who murdered Sandy Seale.

Inspector Urquhart indicated that it was his intention to re-interview Dan Paul to gather information regarding witnesses who could support this allegation. At the same time, he indicated that the name of Roy Ebsary had surfaced in 1971 but he was cleared at that time as the investigation proved negative. He indicated that he was not looking for advice on the case but only wanted to say that Dan Paul had come in with this information and he would check it out. He further indicated that he would apprise you of the situation if their investigation turned up any facts in support of this allegation.

On that note, I made a brief memo to file in the event that further information was uncovered. Some time later, I was informed by Inspector Urquhart that Dan Paul did not return as

requested to supply the police with background information regarding the allegation. As far as I knew, the Sydney Police would keep the matter open pending further particulars and information from Dan Paul. At no time was I informed that the Sydney Police had received any other information on the Donald Marshall case nor was I shown any information in their files concerning the case.



Brian D. Williston  
ASST. CROWN PROSECUTOR

BDW:ami

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April 16/82 - cont'd.

After call w. Hall, showed Wharton who soon pointed that they depend on our nothing relevant earlier statements by Eksey's wife + family. Said that on the two occasions when Gary had briefed "M" they had asked him whether he had anything further which might help the investigation & he had said no. (It is now clear that "M" had been less than forthcoming throughout and I believe that from the beginning he has set out to have the investigation reach a predetermined goal; at best he has been manipulative.)

Chief "M" Wharton - more so-called that we used the Feb 3/82 meeting to "set up" both Scott and myself, i.e. he prepared only those parts of the file to which we had an interpretation e.g. statements from "M" + "M" - results of November 1971 RCMP investigation, his theory re Mitchell, Sarson. He probably felt the RCMP would, inevitably go & check Sarson - that would lead them back to Eksey who had already passed the photograph. Doubtful that he figured in the detailed investigation which ensued. (Feelings shared by Scott at our April 16 p.m. meeting described below.)

- Significant that Chief has always retained full file in his possession and only turned over what was specifically asked for, e.g. did not volunteer fact of previous statements by Eksey's wife nor the statement of Patricia Harris wherein she describes a person like Eksey.

- At time of first briefing by RCMP he pointed to Harris testimony as being proof that Marshall story was not true - then RCMP interviewed

April 16/82

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Harris who gave her story which damaged Chief's theory. He then related to S. Bull why Harris was unreliable witness who wouldn't be believed.

In call with Wharton, he suggested that he, Scott and I meet. I agreed - he phoned back to say meeting was on for 2:00 p.m. - had a meeting I suggested that they should demand file and all info from Chief and threaten use of search warrant if necessary. They wanted a statement to Chief from Andy. to turn over info. - Also discuss having a meeting in Halifax with Kris - I agreed if they were going to try it on Christiano - they as stated, denied knowing of previously meeting Henry & the wife. - I phoned Kelly again and told him of ~~the~~ meeting - said he would wait until Monday to hear from Christiano.

Saturday April 17/82. - 1:45 p.m. Wharton called me at home to say they had almost completed taking statement from Donna Ekbery and we agreed to meet at my office at 2:30 p.m. Also dropped some on what she was saying. Mike on phone - told me that she and Herb Davies had gone down to see Chief McPherson late Friday p.m. and had spent couple of hours with him. After being pressed Chief turned over previous written statement by Patricia Harris in which she described someone matching description (Wharton said Chief went scarlet when pressed about this statement) - also turned over <sup>Nov</sup> 1971 statements of Mary & Greg Ekbery (probable that K.M.P. had seen these during 1971 investigation which is an out for McPherson.) Also told me that Herb Davies had

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April 17, 1982 - cont.

noticed Chief skip some of the information on floor behind desk - believes it was same info with transcript attached relating to threat by James against Justice - believed there was a charge against James at time.

- Said he also used Prosecutor McNeil's notes in Chief's file.

- Left with only statement and a few other papers - still did not know full file and all info from Chief.

Meeting w. Donna Ebsary. - my office 2:30, Sat, April 17/82. - met w. absent-minded + 5/8 Sgt Wharton. - 27 yrs old - working in Boston - no work visa - extremely anxious that publicity will alert American authorities to her situation - working in some sort of furniture factory - didn't volunteer particulars and didn't press.

- She has some university training (2 yrs) and was completed P.S. grade XII - is embittered because of youth spent under father's roof - says she has trouble making with slope to this day - was not allowed to have friends or bring anyone home. Was not allowed out of own yard except to attend school. Is obviously a bright individual who articulates very well. - Says she has vivid recollection of night of Seale murder.

Wrote written statement to Wharton which I read as I interviewed her. Describes McNeil + father coming home on night of murder + father washing brown handled rifle. (Not consistent with ex #8 - probably improper weapon.) - Says he took it upstairs and she looked for it on several occasions afterwards but could never find it.

April 17/82 cont'd. 5.

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also described re-enactment of murder by her father for her Uncle Bob Cherry of New N.H. Her description of that event matches perfectly with Marshall's most recent statement and also that of "Mappit" particularly the words: "you don't what I've got ... etc."

She said that in 1971 - she was not questioned by the City Police - she waited outside Police station in car with her father while her father, mother & brother were questioned. (Though she couldn't remember, this was undoubtedly during the Nov. '71 investigation)

Told me about her home life and fact that her father could be very violent - always had pipes. Would break up furniture or sell it for booze. Was always bringing stray males home.

- She left after assuring me she would cooperate.

- Told Wheaton that I thought he should get entire file from City Police. Said he would go down Monday and get it.

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Monday April 19/82.

This a.m. - phoned by Auburn on unrelated matter - told him there were crew dumps in Marshall - he phoned me back with he & Sal on conference phone, Briefed them thoroughly on above. Suggested that investigation should now focus on city police - Sal was going to speak w. A-S. re direction to City Police and Police Act to turn everything over to RMP.

Phoned Wheton - told him I wanted copies of newly acquired statements - he also advised that Scott told him they were not enough to investigate - and not to go to W. A-S. for most of file. Would bring statements down this p.m.

1:30 p.m. Wheton advised w. statements of Gay, Greg + Mary Ebsary dated Nov. 15/71; Patricia Ebsary 17 April 82; Patricia Harris, 17 June 71. - also is going to provide me with Chand + Pralio, 2nd statements. - note Patricia Harris not complete - it may have been a p. 2.

\* - also phoned me statements of O'Reilly girls, at least one of whom she said she had told Harris to say she saw old man with white hair and long coat; - note this statement was taken before Harris' 2nd statement, though police could have previously been aware of what O'Reilly was going to say thus. Depending there an excuse for not believing Harris' first statement.

Insp. Scott called just as Wheton was

April 19/82 - 7/

FE 107

Baying. Said he was concerned about Harris statement & said that M. J. [unclear] had been hobbling back. I said that they had briefed Christian, were preparing a presentation and expected that there would be a meeting. ~~Just~~

Told him that I was disappointed that they still didn't take all of [unclear] from [unclear]. He said they couldn't be sure of getting it all that way.

Said they would keep me informed. Told him Gale expected to hear from Christian and that there would likely be further developments in the week.

An meeting with H. Wharton also discussed advisability of questioning Reenblum. Told him it would be extremely material to the admissibility of the present testimony of O'Quinn & Harris to show that Reenblum did not know of this evidence at the time, - i.e. must be able to show that this evidence was left out by Reenblum for tactical reasons.

Had visit from Allan Story, writing for Globe and Mail. Knew Donna Ebiary's name & said she was in Boston. (apparently got it from [unclear]) Said Wharton down in Boston last weekend - I told him this was not so. Said he had been told by City Policeman that I was wondering who next Chief was going to be. Denied making such a statement.

April 20/82 - called H. Wharton & told him of Story's visit.

10:15 am Jan M<sup>r</sup> Neil visited - discouraged him from contacting witnesses - told him case would be ruined if they talk of

FE 105

Fri, March 5/82

Re: Marshall

2:00 p.m. Jim Carroll at office re Allen  
Cesce - says he's going to see  
Eksary when he leaves

3:30 pm approx - H. Wheaton comes to office,  
says he's had another meeting with  
Eksary's wife & son. Says that  
after polygraph Eksary stays in his  
room for 7 years! - Confirms  
that he had pictures about  
Munies and Wheaton takes them  
& sends to lab.

Is going to Dorchester to take  
statement from Marshall on May.  
Wants to know if I can suggest  
any questions. I'll tell him I'll  
think about it & call him at  
home on weekend.

After Wheaton leaves, return  
call to Insp. Whelan re Johnson  
When we finish, Insp. comes on line.  
Asks me for news on Marshall  
case - says they're not going to  
put me in jail are they. Hahah. I  
been talking with them? Yes, I've  
been talking but I'm not at liberty

to say what about. Says OK  
I won't ask any more questions  
about it.

FE 104

Wed. July 12/82.

My office - present  
 John MacIntyre  
 Mike Whalley  
 Harry Wharton  
 JCB.

1. Grant
2. Pontus
3. Harris.

Began with summary of Chambers app.

Grant - 2 of's May 30 and June 4  
 - also read Feb 14/82 statement.  
 - summarized

① May 30, 1971 statement - meeting w. Mike MacIntyre & Donnell before this start.  
 - can't recall whether this statement was specifically read over by Don. MacIntyre  
 - doesn't remember whether Law was on conversations.

- p 117 - of transcript - Grant says he told truth when questioned by the City Police.

May 30 - MacIntyre only witness - Mike MacIntyre says he didn't.

June 4/71.

→ admits his handwriting on last p. of original.  
 → knew nothing about Grant's production.  
 - says all persons named were there  
 - Burke definitely there the whole time  
 - Mother there the whole time  
 - MacIntyre there whole time -  
 - something about "nick money" - doesn't know who brought it.

FE 104

L.

Re Chant.July 12 cont'd

- says he did not discuss Chant's criminal record with Massee prior to meeting
- no threats or questions by anyone to Chant during meeting
- Warrant issued when (probably same day) says he discussed with Dennis - and Dennis ordered, Whisper
- says he didn't mention Prater's earlier statement on June 4.
- Between May 30 and June 4 - absolutely no conversation between Chief + Chant.

Between June 4 and July 5

- When did he take Chant down to tracks? - Can't recall exactly when that was
- Between June 4 and July 5 didn't have any conversations with Chant.
- Can't recall any meetings between July 5 and Nov. 2.
- Chant says during cross-examination <sup>of trial</sup> when he was declared hostile witness, he was pressured by police + prosecutor to give testimonial - Whisper says he can't recall such a meeting.

Urquhart.

- says Burke there whole time
- Chant's mother there whole time.
- came right back to Grouse's office + spoke to Dennis - Det. McDuffie authorized to lay the charge.

FE 104

July 12, 1983

Patricia Harris.

① June 17/1983 8:15 pm. -  
 June 18/83 1:20 a.m. -  
 March 1/82.

D.F. May 1983

- doesn't recall who was with her, but there was someone.
- doesn't recall other person being kept out of office.
- doesn't recall 8:15 pm. statement.
- can't recall how long she was present during questioning.
- may have thought she was over 16.
- I can't recall whether she spoke to O'Keilly previously.

Urguhart - doesn't recall interviews with Harris.  
 - doesn't recall O'Keilly  
 - " " mother being there at the time.  
 - no banging desk + chalking.

Refer to Gushue street.

FE 104

July 12 cont'd. (14)

John Bratic

- did he know him before? had known him to see him before.
- May 30 - figured he was lying when he gave 1<sup>st</sup> statement
- June 4 - just 3 present
- ~~know~~ didn't believe 1<sup>st</sup> statement
- told him he wanted truth.

- wouldn't say he was totally reliable but placed credence where his story was corroborated by other witnesses (Cant + Harris)

- wasn't aware that he was in U.S. hosp. between July 5-11.

- never

McIntyre - believes prosecution was aware of all statements.

Urgahart - no pressure factors June 4.  
 - has no independent recollection of interview - was witness only.

FE 104

July 12 out of 15Elsary.

- doesn't think he had any  
 knowledge of Elsary prior to  
 Seal murder. - (what concerns)  
 - for knowledge was in November  
 when Miss Hill came forward

- didn't know of previous conviction  
 for carrying concealed weapon, April 1970

U+M. - don't recall any lineup.

Search for knife. - area skinned.  
 - no results.

FE 102

Re Marshall

Weds. July 21/82. Rec'd call from G. Coles.  
 - advised that he was getting feedback from  
 source he wasn't entirely regarding lack  
 of impartiality by the board. - said he wouldn't  
 want as to prejudge the situation.

Became evident in our conversation  
 that complaint had come from Mike Whalley.  
 Told him that when I met with Whalley, MacIntyre  
 and Argonaut (a letter present) on Monday  
 July 12, that I told them that I didn't  
 believe Marshall had done murder, that  
 there was sufficient evidence to charge  
 Eksey.

G.C. said they were concerned  
 that I wasn't calling enough witnesses -  
 Magee was one of the names mentioned.  
 Told him I had prepared affidavits  
 for Argonaut, MacIntyre and Magee.  
 That all affidavits would be reviewed  
 by Mike Whalley, that I would make  
 any charges they wished.  
 - that I was interested in getting  
 full story out.

Re Marshall

News. July 22/72 - 10:30 am to 12:15 pm.

I usually, with Maturate, and Chapman  
come to office with affidavits I had  
previously drafted.  
Chapman & Maturate want to  
delete paragraph regarding their lack of  
knowledge of John Prater in 1971. Which  
says it is possible that Prater's mother could  
have told him her son was on pills at the  
time.

Maturate wants P added relating to  
statements she took from the Edsberg's on  
Nov 15, 1971 after he had learned about  
Edsberg's possible involvement in slitting  
front of face.

I got them I would make  
requested changes & have them sign  
revised affidavits

Left them alone in my office to  
read Rogerson's affidavits which I had  
in other office with U. King. Rogerson's  
crime about another matter. When I  
returned the chief was reading the Rogerson  
report - and did not leave until  
I completed same.

Agreed from that I would do everything  
possible to have their side of story presented.

F-E 106

John's affidavit July 22.

FP 15 - delete.

25. + 27. Insert FP between

27 and 28 relating to  
statements taken from Roy,  
Greg and Mary.

FE 100

Nov. 8/82.

Re. Oscar Seal  
-562-1792.

- Gordon Gale called this a.m. to advise that he had just spoken by phone with Mr. Seal. Latter concerned that I was not being straight with him and wondered what I was going to do to protect his son's reputation!

- Told Gordon I would call Seal.

4:25 p.m. - (Brian present) - phoned Seal - told asked him if he wished to speak, said yes he was waiting for my call. Seal was concerned that I did not know about his son.

- suggested that he was concerned about his son's reputation. He agreed, told him that he should seek independent legal advice - wanted me to recommend I told him no but referred him to Bristow's Society referral service!

- started to ask me about case - asked that because he felt that I had either misled him or deliberately lied in the past that future commutation should be through his solicitor.

pressed me about lie: "Well, didn't you? Didn't you tell me that Marshall had taken the polygraph. Told him I definitely had not. I had hyperthrust to him. "Well am I dreaming it up" Told him I did not know where he was getting it. He said "Don't put me down" Told him that all I was interested

BSC

FE 100

2.

Ans. Sel Nov. 8/82

was getting at the truth. \* Insert

Started to ask me another question  
but I told him I was stopping here & advised  
that he should return a bundle of documents  
with me through him.

Bob

Ques \* You're saying I'm a liar and  
I'm saying I'm not - so we have  
a stand off.

Dec 6/82 (2)  
 - I had conferred with Mike Whalley during the moon adjudgment on Dec 2/82, at that time Whalley agreed that there was not enough point, calling police because he felt it was obvious that all the witnesses were lying anyway.  
 I also told M.H. that the City Police had passed far worse in the press than they had in court. I told him that cross-exam had lessened the impact of the evidence of Harris & Stuart.  
 - Christ agreed that he had believed Marshall guilty anyway.

Re: tel conf  
 Martin Herston Dec. 6/82.  
 re: Marshall Marshall Conf 11:00 am  
 9/15/82 12:15 p.m.  
 - Phoned M.H. re unrelated matter - said he was just going to phone me. Inquired as to reasons why I had decided not to call police officers. Told him that Gt. had signalled that they did not want to get into that. When I was going to go down to cross on O'Reilly Street, Gt. had made the point that witnesses were adamant they had lied, no point in getting into why they had lied. (Recalled that he had made at least three references in that vein.)  
 Also told him that

Dec 6/82 (3)  
 that his mother & probation officer present when 7<sup>th</sup> of W taken, and that the police had kept pressing him for the truth.  
 I told him that Eddie McNeill of Police Comm. had commended me on the job & said he would phone Whalley to tell him about it. Also Alan Seal had phoned office on 12/3 and left word that he thought I had done a good job.  
 Bottom line was that police had come through in best possible light.

Dec 6/82 (4)  
and calling them would  
not have improved their  
position.

M.H. asked whether I  
had been pressed to give any  
theory, and I reminded him  
of our talk on Dec 2 for which  
I had told him & Bob Lutes  
that when pressed I told the  
Ct. that the Government's position  
was inquisitorial rather than  
adversarial. Also reminded  
him of earlier conversations  
wherein I told him that the  
Ct. would probably come where  
we would have to take

Dec 6/82 (5)  
a position and that in  
my professional opinion  
we should at that time  
advocate Marshall's argument.  
M.H. said I should not  
do or give such an opinion  
as being as helpful because  
the Deputy A.G. was  
concerned that we should  
not appear to be espousing  
any particular theory. I replied  
that it would be my  
best bet that that position  
later a position would have to  
be taken.

Notes re Marshall - Monday, Jan 17/85

- Rec'd unannounced visit at office by Chief John McIntyre ostensibly to discuss necessity of having verbatim done on arson case being investigated by police.

- Told him I had made copy of Dec 1 + 2/84 proceedings re Marshall - as I told him I would do during discussion at police station in Dept.

- Chief then began to rehash facts of case + try to ascertain what my views now were at this stage of the proceeding. Told me he would go to his grave believing that Marshall had inflicted the wound to his left arm himself. (Ref'd to fact that expert had said pistol was cut as well as torn)

Also said that reason Marshall had removed stitches in arm was so that no blood sample could be taken from him when he returned to hospital to have stitches removed. I queried whether Marshall knew that McIntyre had arranged with Dr. to have blood sample taken and he said that he had not.

- Ref'd to Marshall going back to scene and staying out of Seal's line of vision so that Seal could not identify him as the assassin (Big question of why Marshall would have gone back in the first place)

- Asked Chief who we would call if a new trial were ordered. He responded that he did not know who could be called.

- Was uncommitted on any position. (Mentioned during conversation that he would like to see my report, I didn't acknowledge that I had heard the report)

FE 87

Mon. Jan 17/83

Toward end of conversation Chief told me that he had had a meeting with the Deputy A. G. and that at end of that meeting, Deputy had walked around table, placed his hand on Chief's shoulder and said, "As far as I'm concerned, that fellow was the author of his own misfortune."

FE 90

Th. conf. S. G. L., Jan 24/83.

Re Marshall.

if Cart's assets evidence given, then they have no option but to acquit.

G.L. said it was not the sort of thing to be talked about over the phone, that I should come to Hfx so the four of us could talk about it.

(Had initially told me that he, Martin & Cole had dismissed my letter - not sure that he + Martin agree with me - feel that a reasonable compromise position could be taken)

Told him I would fly up in the a.m., i.e. Jan 25/83.

FE 98

→ 7:15 leave  
 → 7:58 arr. Hqs.

→ Prep. for Jan 25/83 meeting

- Refer to original appeal situation - how strong was Crown's position?

- Refer to early memo's to Dept - did I make it clear that eventually we'd have to support acquittal?

- Is suggested "compromise", a compromise of my professional integrity?

- Is there risk that a new trial would be ordered if we waffle.

Best scenario; acquitted, then lay charge against Ebsary the same day by 4 acquits.

- Just that Ebsary to be released + const's danger.

- Do you think they want me to say that I have been instructed by the Deputy A.G. not to take a position in this matter?

- Trying to shift onus of decision onto Court + escape complexity in Dr responsibility for that decision.

- Whole problem would not have arisen save for Whalley's unit.

[und a.m. Jan 26/83]  
 Notes of Jan 25/83 meeting in Hqs.  
 Re: Donald Marshall Jr.

Attended at the office of the Deputy A.G.,  
 Mr. Coles, Present were Coles, Sub & Hershorn.

- Meeting lasted approximately 2 1/2 hours  
 and began with Mr. Coles explaining his  
 perception of the role the Crown ought to  
 play in this case. Basically, he said that the  
 Crown should outline the strengths and  
 weaknesses of the evidence of the various items  
 of evidence laid then say to the Court,  
 "if you believe this, you can rule one way, but  
 if you don't you can rule another way." Although  
 he maintained that such a posture would  
 be a Crown position, I disagreed.

- It was my view that the Crown  
 should take a definite position on ultimate  
 disposition of the case, + that should be that  
 R.M. be acquitted.

- Same point canvassed a number of  
 times and at one point Coles threatened to  
 take me off the case - told him I would  
 prefer that he take me off the case than  
 order me to adopt his "position" in court -  
 in which case, I advised that I would  
 tell the Court that I had been directed by the  
 Deputy ~~not~~ to take a position on the case.

- Coles said that there was not  
 time for him to take me off case but if there  
 were he would do so because he was not  
 comfortable with my position.

- Stated that it was not role of  
 Crown to take position that it was the  
 responsibility of the Court to make the  
 decision - agreed with him on latter point  
 but not on former - reminded him  
 that Crown in its factum in 1977 had taken  
 position that the appeal should be dismissed.  
 Coles said this was a different type of

FE 701

case of Brown was not cast in its usual  
● role - that furthermore we were now  
dealing with questions of fact not of  
law - that there was no theory of the  
Crown.

- told Coles there was a Brown theory &  
that even if it were straight question of  
fact, Crown should still take a position

- In the end Coles said - "We're in your  
● hands, try not to create more problems for  
me than I already have"

Feb. 8/83.

Brooks McGuire <sup>Compellat.</sup> age 28 -  
 17 yrs det in 1971.

- = was at dance (St. Joseph)
- common knowledge that M & S were fighting that night - though he didn't see it.
- common knowledge the two of them hated each other. (not heard of friends)
- named other people - Mike Jamaal (Tom Jamaal's son) - Florida

→ another fellow attending university in Ontario  
 - NB. McGuire said nothing else he had not seen incident himself.

info provided by  
 Cpl Woodburn

relayed to Cpl Carroll  
 Feb 9/83 - told him I didn't think there was anything worth following up at this point.

Feb. 15/83 - spoke w. Insp. Scott & Cpl Carroll  
 - re Brooks McGuire & Irving Cameron.  
 - Scott couldn't recall latter party only said that he had been told of someone by Chief McGuire  
 told Scott that Carroll had apprised me of conversation he had had at Corr. Centre w. Cameron. Scott said he thought statement should be taken from McGuire just to confirm that he had not actually seen anything - told him it would do no harm, but I left it up to him.  
 - Told him Woodburn had not gotten back to me w. more names from McGuire.

FE 99

Feb 23/82 - O not comp until Chief M. questioned 6.

ⓐ should not be joining to conduct of interest!

Feb. 26/82 - Scott brief MacIntyre

April 16/82 - MacIntyre meets w. Gale.

- Scott + I + Wharton meet - I told them they should demand file - they want direction from AG.

- W, + Davies go to chief - but leave w/o demanding file

Sat April 17 tel call with Wharton - again tell him to demand file - said he would go Mon. + get it

Mon April 19 - phone conf w. Gale + MtH. - told them I thought interest should now pass on City Police - S.S. said he would get direction under Police Act from AG to turn everything over.

phoned W. - Scott had told him they now had enough & not to go get file - Scott phones later + I told him I was disappointed they hadn't dem. file.

April 20 - AG's letter to MacIntyre.

FE 56

June 11/86.

10:00am

Call from Allan Storey - he wanted to know whether I agreed with A.B. that police were now free to pursue investigation. Told him my views were irrelevant - if that's what A.B. said then his words could be taken at face value.

- asked whether I knew if there was such investigation - told him I did not know.

- asked whether I would decide on charges - told him that I expected I would review findings of any investigation of criminal matter which occurred within C.B. County. Told him that I would also confer with senior officials in the Dept, and that such should not be unusual.

- asked whether the RMP report was accurate and told him that I would not dispute its accuracy nor would I comment on it further.

Donald Marshall

June 12/70 - s. 280 CCC theft of wine - 1 day  
 Nov. 10/70 - s. 85 LCA \$10.00 + costs 1/10 days  
 Nov. 17/70 - s 87(2) LCA 1 month.

Nov 17/70 - 87(2) LCA 4 mos courses

Mar 19/71 - s. 85 LCA - \$10.00 + <sup>cost</sup> 1/10 days

May 1/71 - s. 85 LCA - 10,00. or 7 days

8. " - s 373(a) - 2 days found n/g. on bed cloth  
 - 8.

June 4/71

March 1/71 rel by Cpl Carroll  
 passed on to M. H. Kershorn.

6.6



PROVINCE OF NOVA SCOTIA

MESSAGE FE 185

TO \_\_\_\_\_

DATE July 7 TIME 11:55

WHILE YOU WERE AWAY:

MR.  -MRS.

MS.  MISS  Honey Wheaton

OF \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ LOCAL \_\_\_\_\_

- TELEPHONED
- RETURNED YOUR CALL
- WILL CALL YOU AGAIN
- PLEASE CALL
- REQUESTS AN INTERVIEW
- VISITED YOU

AT Pi. Hershoff

LEFT THIS MESSAGE

In response to the question "How did Pratie come to the attention of the police?"

7

USE REVERSE FOR: CIRCULATIONS/  
ENCLOSURES/ACTION REQUEST

FORM 182  
104.2.1/80R/1813A

CALL RECEIVED BY \_\_\_\_\_

Raymond Poirier who lived next door to Pratie in 1971 [at 90 Ventour Road] advised chief man Intyre that Pratie was a witness to the murder.



PROVINCE OF NOVA SCOTIA *FE 191*

# MESSAGE

TO <i>Frank</i>	
DATE <i>May 12</i>	TIME <i>9:40</i>

WHILE YOU WERE AWAY:

MR <input type="checkbox"/>	MRS <input type="checkbox"/>	<i>Master Hudson</i>
MS <input type="checkbox"/>	MISS <input type="checkbox"/>	
OF		
TELEPHONE NUMBER		LOCAL

<input type="checkbox"/> TELEPHONED	<input type="checkbox"/> PLEASE CALL
<input type="checkbox"/> RETURNED YOUR CALL	<input type="checkbox"/> REQUESTS AN INTERVIEW
<input type="checkbox"/> WILL CALL YOU AGAIN	<input type="checkbox"/> VISITED YOU
AT	

LEFT THIS MESSAGE

*I advised me to authorize charge on Ekstarf.*

USE REVERSE FOR CIRCULATIONS ENCLOSURES ACTION REQUEST

FORM 182  
104 2 1 80R :013A

CALL RECEIVED BY

FE 181  
 Feb. 3/83

Phoned by Wm. Higdon  
 re Frank M. Kline. Said  
 that he was surprised by  
 Aronson's move - i.e. beginning  
 civil action. Told him I didn't  
 understand it either, that I  
 believed Aronson was tough row  
 to hoe to get them civilly. Told  
 him I didn't want to go into  
 detail but that I was going  
 to put major responsibility  
 on Marshall - what happened  
 not fault of police, or courts,  
 or jury or anyone in the  
 civil justice system.

Re: Roy Newman Ekbery  
Chronology

✓ 28 May 1971 - Sanford (Sandy) Seal dies of ~~stab~~ from stab wound.

June, 1971 - Donald Marshall Jr. is charged with the non-capital murder of Seal.

July 5, 1971 - Marshall committed to stand trial after preliminary inquiry.

November 5, 1971 - Marshall convicted by Supreme Court Jury and sentenced to life imprisonment.

November 15, 1971 - James William McNeil gives statement to Sydney Police saying that it was Ekbery shot Marshall who stabbed Seal.

November 15, 1971 - Roy Newman Ekbery gives statement to Sydney Police wherein he admits being attacked in Wentworth Park but denied stabbing his assailant.

November 15-23, 1971 - RCMP took over investigation which included the administering of the polygraph to Ekbery and McNeil. Ekbery's polygraph shows he was truthful while McNeil was indeterminate. RCMP concluded that it was Marshall who had done stabbing.

May 10, 1983 - Marshall acquitted.



PROVINCE OF NOVA SCOTIA

MESSAGE

FE 180

TO <i>Frank</i>	
DATE <i>Nov 6</i>	TIME <i>11:00 &amp; 11:35</i>

WHILE YOU WERE AWAY:

MR <input type="checkbox"/>	MRS <input type="checkbox"/>	<i>Osca Seal</i>
MS <input type="checkbox"/>	MISS <input type="checkbox"/>	
OF		
TELEPHONE NUMBER <i>562 1792</i>	LOCAL	

<input type="checkbox"/> TELEPHONED	<input type="checkbox"/> PLEASE CALL
<input type="checkbox"/> RETURNED YOUR CALL	<input type="checkbox"/> REQUESTS AN INTERVIEW
<input type="checkbox"/> WILL CALL YOU AGAIN	<input type="checkbox"/> VISITED YOU
AT	

LEFT THIS MESSAGE *Wants to let you know that they were very pleased at the way you handled the school & at present*

USE REVERSE FOR CIRCULATIONS ENCLOSURES ACTION REQUEST

FORM 182 104 2 1 BOR 1013A

CALL RECEIVED BY

*... must know  
 would regardless of  
 what way it turns  
 out  
 don't want any*



# MESSAGE

TO Frank

DATE Nov. 8 TIME 10:15

### WHILE YOU WERE AWAY:

MR  MRS   
 MS  MISS  Dr. Scott

OF 5574

TELEPHONE NUMBER 539 ~~4457~~ LOCAL

TELEPHONED  PLEASE CALL  
 RETURNED YOUR CALL  REQUESTS AN INTERVIEW  
 WILL CALL YOU AGAIN  VISITED YOU

AT

LEFT THIS MESSAGE - Dr. Scott  
Mr. Deuham  
June 15/72 - called Seal & told him  
that Deuham & McQuaid had  
taken the picture - Deuham had

USE REVERSE FOR CIRCULATIONS  
 ENCLOSURES ACTION REQUEST  
 FORM 182  
 1042 1 80R 1013A

CALL RECEIVED BY OVER

come in to say that he was not notified of Scott (after Deuham left) was able to determine that Deuham was not in fact the offender.

- Said he is going to try to smooth it over by getting photos returned to Seal (if possible).

/FE 177

Oct 29/82Jim Carrollsee Eckberry.

→ Eckberry admitted  
 on tape that he had  
 stolen seal - used a  
 penknife which he later hid  
 and buried in his back  
 yard on Argyle St. - willing  
 to show Carroll,  
 - says he believes  
 that Marshall went back +  
 finished seal off.

Oct 21/82.

FE 143

Re: Marshall

- Call Gene Cole - Paton -
- Was he ordered to look into it in 1974?
- did he have Chief's file in office at station.

Patricia Harris

- check for criminal record.
- 1978 - inc. driving
- theft
- City police will provide her card.

Maynard Chant - check for record.

- Did Dave Fathford give statement?
- What about Gary Greene?

~~Mae Bryan~~  
~~Hart~~  
~~Jones~~  
~~Murison~~  
~~Mae Donald~~

Appeal Div

Rev. Donald Marshall Oct 5/82.

- make clear that affidavits were not evidence

Abramson - began by stating affidavits filed -  
- insisted that all substance put in as evidence.

Hyman  
Pratico  
Simon  
J. W. Noel  
Patricia Kassis  
Mary, Lanna Greg  
Eckers  
Wheaton  
Marshall - himself

Witnesses to would like

Pratico - bottom line is that he wants  
Pratico  
- moving for receipt of affidavits in this application.

Layler 27 CCL(2)321

FE 126

## Delphos Evers

- qualifications & experience at that time.
- knowledge of frequency of use of such material. - ~~other~~
- whether any definite distinction between material in same type of document mfg. in different countries.
- remember the brands or labels on jackets.
- any experience or training in computing probabilities.

R & D

FE 126

Decision re fresh evidence Oct 5/82.

allst appls.

James Wm. McNeil  
Dana  
Greg  
Catherine  
Donald Marshall  
Grant  
Harris

Dec 1 + 2 at 10:00 a.m.

Reserve appls. to hear ev. of  
other witnesses

Reserve an applc. to receive affidavits

FE 126

Enclosures -

1. Crime lab reports 82-04-01
2. " " " 82-04-05.
3. Statement of Emma Eksary 82-04-17
4. " " Mary Eksary 82-04-19
5. " " " " 71-11-15
6. " " Roy Eksary 71-11-15

Had the said evidence been admissible  
 on an appeal;  
 (a) Would the Court have <sup>reversed the conviction</sup> ~~reversed the conviction~~  
~~reversed the conviction~~ acquitted; and, if not,  
 (b) ~~if no~~ Would the Court have  
 ordered a new trial.

FE 126

Research - Brown's right to call  
deputy evidence - McWilliams  
(1977) 33 CCC(2) 36

Palmer (1979) 50 CCC(2) 193

McWilliams.

Cornish.

Prelim Remarks.

① Substantial argument re. appellants' position on law.

② Brown's basic position is that if Chan, Prater & Harris are heard then police should also be heard.

③ That Court will get a distorted view unless the appellant is submitted to cross-examine on his affidavit or unless the Crown is permitted to cross-examine on his affidavit. (Crown's view that certain actions of H. not only precipitated events of May 28 but also the course of the subsequent investigation & defence. Ref to McNeil's affidavit.)

checked by [unclear] to McNeil's affidavit.

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Preliminary Remarks.

The Crown's role in the proceedings  
 its role in this  
 Crown's role; <sup>in any criminal proceeding</sup> <sup>can be ambiguous at best. It</sup> <sup>is</sup> <sup>in practical terms</sup> <sup>is</sup> <sup>defined</sup> <sup>as</sup> <sup>the</sup> <sup>charge</sup> <sup>and</sup> <sup>case</sup> <sup>submitted</sup> <sup>to</sup> <sup>the</sup> <sup>court</sup>  
 to ensure that the Court  
 gets a full and balanced account  
 of the evidence. In practical terms  
 this will mean that the Crown will attempt  
 to call reply evidence to that

- <sup>Appellant's</sup> <sup>and</sup> <sup>the</sup> <sup>Crown's</sup> <sup>counsel</sup>  
 and perusal of a draft copy of the Appellant's  
 brief have revealed that there is no <sup>significant</sup>  
 significant difference of opinion between counsel on the  
 law respecting the admissibility of fresh  
 evidence. ~~Now the way of~~ That law  
 may conveniently be summarized as follows;

police evidence - req. knowledge of Justice's worth etc.

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Outline of Appellant's Brief.

Limits of a Reference

Admiss. of Fresh Ev. on Appeal.

S. 617 + Fresh Ev.

Testimony of eyewitness changing

Admiss. of Evidence Concerning the Credit of a Witness - Practice

- Dr. Miam

- Floyd, Cotie, + Beaver.

Conduct of Third Parties.

Note that he does not mention whether he will seek leave to call the Appellant.

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Law.

- ① Rules resp. admiss. of fresh evidence
- ② Scope proofs in reference  
(trend against re-adjustment.)
- ③

p. 14. issue of credibility of prime importance.

FE 126

## Reluctant Evidence

This is a case where Defense witnesses (notwithstanding they were Crown witnesses at trial)

- Crown should cross-examine these witnesses on matters which it intends to relate.

Relevance - must be considered in light of defense evidence

4 Vol. 17 F.C. typed notes.

2 Vol. 34/124

Down '1' Brownspord  
with evidence of  
Wardrop & Marshall

# BY POLICE, JUDGES *ESK 3.*

## Prosecutor Calls For Stern Action

The large number of serious crimes which have been committed in the Eskasoni area in the last several months has prompted Crown Prosecutor Donald MacNeil, to call for stern action by police and the courts of law.

"Something has to be done. Those who commit crimes have to be taught the laws of this province," Mr. MacNeil said.

He made the remarks yesterday prior to the passing of sentence by Provincial Judge MacDonald on two Eskasoni brothers, John Jerome Paul and Peter Richard Paul.

The Paul boys were convicted last week of assault causing bodily harm and John Paul pleaded guilty to a charge of creating a disturbance.

Mr. MacNeil suggested to Judge MacDonald that he check the dockets to "see the frequency of visitors from Eskasoni during the past six months."

"I also suggest that the three provincial judges take a drastic stand against those persons from Eskasoni who are guilty of violations of the law," he added.

The Crown Prosecutor went on to say that there are many decent and respectable people living in the Eskasoni area and they have the same right as anyone else to protection from the courts.

Mr. MacNeil also suggested that the two Paul brothers and anyone else who commits a crime should not "receive praise or a medal but taught respect for the law."

Judge MacDonald sentenced the two youths to two months each in the county jail for assaulting Kenneth Stevens of Castle Bay at Eskasoni on the night of October 11.

Stevens received eye and leg bruises when struck by the Paul brothers.

John Paul received an additional two months for creating a disturbance on Oct. 10 at Eskasoni. The sentences will run concurrently.

Judge MacDonald advised the two youths to keep away from liquor.

"If you keep on drinking, the next place you will go will be Dorchester Penitentiary. If you want to make several trips to Dorchester, just keep on going the way you are," Judge MacDonald told the two boys.

"I suggest you stay away from liquor. It's going to be up to you," Judge MacDonald added.

*Cape Breton Post*  
*October 29/69*

*p. 5*

*C.B. Post*  
*Oct. 29/69 p. 5*

ESK 4

THE CAPE BRETON  
**HIGHLANDER**  
 VOL. 6 NO. 48, SYDNEY, CAPE BRETON, NOV 26, 1969 24 PAGES 10¢

## Indians seek prosecution of local Crown Prosecutor

Albert Julian, Band Manager of the big Eskasoni Macmac reservation, has asked the Nova Scotia Human Rights Commission to investigate a recent statement by Crown Prosecutor Donald MacNeil.

MacNeil, who is also the Tory MLA for Cape Breton South (Sydney), recently called for a crackdown by the courts on an alleged crimewave among residents of the reservation. He implied that the courts should be more severe, in order to teach respect for the law. Band Manager Julian retorted angrily that MacNeil sounded "more like a persecutor than a Prosecutor." He described MacNeil's statement as a "declaration of discrimination against a minority."

"What hope does anyone from Eskasoni have of getting justice when pre-trial prejudice is openly announced in the news media? Is Eskasoni this man's magic word for a guilty verdict?"



ALBERT JULIAN

# Law officer acted properly — Don hoe

ESK

Chronicle Herald

January 23/70



R. A. DONAHOE

Attorney General R. A. Donahoe says Crown Prosecutor Donald C. MacNeil, of Sydney, "acted properly" in making a statement in court objected to by the Nova Scotia Human Rights Commission.

"I cannot urge the Crown prosecutor to withdraw his remarks as he acted properly in directing the mind of the judge to conditions that he believed existed in a stated area (Eskasoni)."

Text of Mr. Donahoe's statement, and of a letter on the subject he wrote to W. A. MacKay, of Halifax, chairman of the Human Rights Commission:

A recent news release by the Human Rights Commission relating to a complaint with respect to the remarks of a Crown prosecutor made in open court has been brought to my attention. This incident was the subject of a letter to me from the Human Rights Commission dated the 17th day of December, 1969.

After giving this matter my most careful consideration, I replied to the commission by letter dated the 30th day of December, 1969. I am releasing my letter to the chairman of the Human Rights Commission with this statement for publication.

Dear Mr. MacKay:

I have your letter of December 17, 1969 with reference to certain remarks alleged to have been addressed to a judge of the Provincial Magistrate's Court by the Crown prosecutor for the County of Cape Breton. We are dealing with a matter of principle and for our purpose at this time we may assume that the remarks objected to were in fact made.

I suggest that we are dealing with a matter of principle in that we are faced with a question as to whether or not remarks properly made in so far as the administration of justice is concerned by a Crown prosecutor in a court can be considered as contrary to the spirit and intent of the Human Rights Act.

I suggest to you that the remarks were properly made in so far as the administration of justice is concerned, because a conviction had been made and the Crown prosecutor was addressing the court in relation only to sentence. His remarks, in my opinion, would not constitute grounds for appeal against sentence.

There has been a great deal written and said with regard to sentence and from time to time the emphasis has changed, but the courts generally have accepted the proposition that there are three principles of criminal justice requiring consideration in the determination of punishment—namely, deterrence, reformation and prevention.

In this particular instance, the Crown prosecutor was directing the mind of the court to punishment as a deterrent. I should like to quote part of the decision of

J. K. MacKay, J.A. of the Ontario Court of Appeal in the case of Regina vs. Willaert, 195 C.C.C. 171:

"The governing principle of deterrence, in its proper and common sense, that the emotion of fear should be brought into play so that the offender may be made afraid to offend again, and also so that others who may have contemplated offending will be restrained by the same controlling emotion. Society must be reasonably assured that the punishment meted out to one will not actually encourage others, and when some form of crime has become widespread the element of deterrence must look more to the restraining of others than to the actual offender before the court."

"I am respectfully of opinion that the true function of criminal law in regard to

der 14 years of age; six cases of bodily harm; one case involving the use of a firearm; two cases of robbery with violence; one case of damage to property; one case of carrying an offensive weapon; one case of possession of stolen property; four cases of driving while impaired and ten cases of theft or breaking and entering and theft. All of these offences were committed in the area referred to by the Crown prosecutor.

In the administration of justice, we must be concerned with the rights of the individual, classes of individuals and society as a whole.

The Crown prosecutor very properly pointed out "that there are many decent and responsible people living in the Eskasoni area and they have the same rights as anyone else to protection from the courts." An examination

spirit and intent of the Human Rights Act, but it must be kept in mind that he had a legal duty to discharge and I believe that his first duty was to acquaint the court with information that he considered relevant to the matter of sentence. The court, of course, would accept it, question it or disregard it altogether.

In conclusion:

(a) I cannot urge the Crown prosecutor to withdraw his remarks as he acted properly in directing the mind of the judge to conditions that he believed existed in a stated area;

(b) I cannot direct the Crown prosecutor to refrain from similar comments in the future as it may be his duty again in the future to direct the mind of the court to the prevalence of crime in an area;

(c) I am prepared to suggest to Crown prosecutors that they keep in mind the spirit and intent of the Human Rights Act, subject always to the discharge of their duties as officers of the court. It is their duty to present all material relevant to the guilt or innocence of an accused person and also all material relevant to the question of sentence.

It would be most improper for me to attempt in any way to direct judges as to the manner in which they should discharge their duties, as that would be an attempt to infringe on judicial independence, which is the very basis of the administration of law. Specifically, I am prepared to suggest to the Crown prosecutors that, except in most unusual circumstances, the question of race, religion, creed, colour, ethnic or national origin of an individual is not material to guilt, innocence or sentence.

I can appreciate the concern of the Human Rights Commission but, at the same time, I must keep in mind that the administration of justice is for the benefit of society as a whole.



D. C. MACNEIL

Chronicle Herald Jan 23/70

Justice's interests served

Text of Crown Prosecutor Donald C. MacNeil's statement:

In connection with the public statement issued by the Nova Scotia Human Rights Commission concerning my representations to the court after a conviction of a resident of Eskasoni last October:

I performed my duties in a manner that I considered to be in the interests of justice consistent with my position as Crown prosecutor for the county of Cape Breton.

My actions have been reviewed by the attorney-general of this province, and he has expressed the opinion to the Nova Scotia Human Rights Commission that I acted properly in directing the mind of the judge to the conditions I believed existed in the stated area.

As far as I am concerned, there was no discrimination against any class of individuals.

Punishment is in a wise blending of the deterrent and reformatory, with retribution not entirely disregarded, and with a constant appreciation that the matter concerns not merely the Court and the offender but also the public and society as a going concern. Punishment is, therefore, an art — a very difficult art — essentially practical, and directly related to the existing needs of society."

The Crown prosecutor acted properly when he brought to the attention of the judge what he believed to be an unusual number of criminal cases arising in one area of the community. His opinion is, I believe, substantiated by the list of offences attached hereto, covering a period from the latter part of December, 1968, to the early part of December, 1969.

That list shows convictions involving two cases of sexual intercourse with a female un-

der 14 years of age; six cases of bodily harm; one case involving the use of a firearm; two cases of robbery with violence; one case of damage to property; one case of carrying an offensive weapon; one case of possession of stolen property; four cases of driving while impaired and ten cases of theft or breaking and entering and theft. All of these offences were committed in the area referred to by the Crown prosecutor.

Surely, the "decent and responsible people" living in the Eskasoni area are entitled to protection against the minority who choose to break the law. One way to accomplish that end is to bring home to the offenders and would-be offenders that serious consequences will flow from their criminal acts.

The Crown prosecutor felt, obviously, that the situation was such as to justify bringing it to the attention of the judge. He did so in compliance with a principle of justice that required him to make his presentation in open court so that the accused, as well as the judge, would be aware of his statement.

It may well be that his remarks might be regarded by some as contrary to the

Halifax Chronicle-Herald

# Prosecutor's view criticized by human rights commission

The Nova Scotia Human Rights Commission says that recent statements in court by Cape Breton Crown Prosecutor Donald C. MacNeil, of Sydney, were "inappropriate and tended to be prejudicial in suggesting discriminatory treatment of Eskasoni residents before the courts and supporting such treatment in the general community."

## Text of the statement:

The Nova Scotia Human Rights Commission has concluded an inquiry into a complaint lodged by representatives of the community of Eskasoni concerning remarks made by Donald MacNeil, Crown prosecutor for the County of Cape Breton.

The complaint arose out of comments reported by the press to have been made during the course of a trial last October. The newspaper stories, which Mr. MacNeil has acknowledged were substantially correct, quoted him as saying in court that a large number of serious crimes had been committed in Eskasoni during the six months prior to the trial.

He was said to have referred to the number of persons from the area appearing in court and to have urged that "provincial judges take a drastic stand against those persons from Eskasoni who are guilty of violations of the

law." Mr. MacNeil also stated that there were many decent and respectable people in the Eskasoni area and they were entitled to protection from the courts.

According to the complainants, Mr. MacNeil's remarks promoted "pre-trial prejudice" in criminal cases involving Eskasoni residents. They felt that an accused person from their community would enter the courts at a disadvantage — that there would be an element of prejudging by both the courts and general public as a result of Mr. MacNeil's statements.

They also expressed the concern that, if Mr. MacNeil's approach to Eskasoni offenders were adopted by the courts, residents of the community would not be sentenced solely on the merits of their own case, but would be forced in some measure to pay for the transgressions of others.

Moreover, it was felt that Mr. MacNeil had identified a community that was known to be inhabited exclusively by Indians and his statements could heighten existing anti-Indian discrimination.

Immediately upon receiving the complaint, the director of human rights began an investigation, making it clear from the outset to all parties concerned that Mr. MacNeil's

remarks did not constitute a violation of any particular section of the Human Rights Act.

Mr. MacNeil was frank and co-operative in the investigation, but he contended that he had acted properly and, to support his argument, cited legal precedent which stressed the importance of sentences in criminal cases having a deterrent effect on potential offenders.

The Human Rights Commission has concluded that, although the actions of Mr. MacNeil did not constitute a contravention of a particular section of the Human Rights Act, his remarks ran contrary to the spirit of the Act and the Canadian Bill of Rights.

Moreover, the matter clearly came within the commission's jurisdiction to carry on programs of public education and information, and to co-operate with other government departments and community groups where human rights problems are concerned.

The commissioners did not presume to judge Mr. MacNeil's own attitudes, but limited their considerations to the content of his remarks and the effect that such remarks could have on the rights of individuals from Eskasoni. They agreed that, in the context of human rights concerns in Nova Scotia, Mr. MacNeil's statements were inappropriate and tended to be prejudicial in suggesting discriminatory treatment of Eskasoni residents before the courts and supporting such treatment in the general community.

The commissioners consider

the courts to be a social institution, an essential instrument of stability in society. In order to perform this social function fully, they must be free of suspicion. Justice must not only be done, but must be seen to be done.

While the commissioners expressed their confidence that the courts would not be influenced by Mr. MacNeil's proposed approach to Eskasoni offenders, they felt his remarks could create that suspicion, thereby undermining the courts in terms of their essential social function.

The commission would hope that judges and lawyers, recognizing the role of the courts in society, would refrain from references that might link or be interpreted as linking particular minority groups with particular forms of anti-social behavior.

Having reached its decision on the validity of the complaint, the commission felt that, in view of the limitations imposed upon it by virtue of the fact that this was not a formal complaint under the Act, it had to make public its findings in the matter. This was especially so because Mr. MacNeil's original remarks, made in court, had become the subject of public controversy.

It was also felt that this was fully in keeping with the commission's responsibility to carry on a program of public education in human rights matters.

Meanwhile, in addition to informing both sides in the dispute of its findings, the commission has brought the matter to the attention of the attorney-general's office.

Hallifax Chronicle  
January 23