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Vol. 252
#2

**ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION**

Volume 41

Held: January 18, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

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

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
Orsborn: Commission counsel

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:
Counsel for Donald Marshall, Jr.

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

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

Mr. Donald C. Murray: Counsel for Mr. William Urquhart

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

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. Al Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
MacAlpine

Mr. Charles Broderick: Counsel for Staff Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
for Sgt. Wheaton and Insp. Scott

Mr. Guy LaFosse: Counsel for Sgt. H. Davies

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

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black
United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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Witness

Staff Sgt. H. Wheaton

Examination by Mr. Orsborn..... 7485

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1 January 18, 1988 - 9:30 a.m.

2 MR. CHAIRMAN

3 Mr. Orsborn?

4 MR. ORSBORN

5 Thank you, Mr. Chairman. Two housekeeping matters prior to
6 calling the next witness. There are two volumes to be introduced
7 as exhibits. One is Volume 29, which I believe has already been
8 distributed to counsel last week. The second is Volume 34, and I
9 apologize for the late delivery to counsel but I would explain that
10 it is really nothing more than a reorganization of existing material
11 for a slightly better ease of reference, I hope. So I would ask that
12 those volumes, they are entitled "29" and "34" be filed as
13 exhibits.

14 MR. CHAIRMAN

15 We have 34 but I don't see 29 here. I presume it's on the way.

16 MR. ORSBORN

17 Well, in the interest of full disclosure, I believe they were
18 distributed to counsel, not wanting to prejudice your Lordship.
19 So you may not get it at all. There will be copies provided, My
20 Lord. The volume will be provided to Your Lordship. I won't be
21 referring to it for a little while yet. But if those two volumes
22 could be assigned a number, that would expedite matters.

23 MR. CHAIRMAN

24 I gather Volume 34 is Exhibit 98 and Volume 29 is, I presume,
25

1 is Exhibit 99.

2 MR. ORSBORN

3 Thank you, My Lord. The witness for today and probably
4 tomorrow is Staff Sergeant Harry Wheaton.
5

6 HARRY WHEATON, duly called and sworn, testified as follows:
7

8 EXAMINATION BY MR. ORSBORN
9

10 Q. Good Morning. My name is David Orsborn. I'm one of
11 commission counsel. I don't believe we've met.
12

13 A. No, that's right.

14 Q. I'm corrected on the advice of your counsel, you did not take
15 the opportunity to meet with commission counsel?

16 A. That is correct, sir.

17 Q. So neither you nor I know what the other is going to say.

18 A. That's correct.

19 Q. I believe your title is Staff Sergeant Harry Wheaton?

20 A. Yes, I am a Staff Sergeant in the Royal Canadian Mounted
21 Police.

22 Q. How long have you been with the RCMP, sir?

23 MR. CHAIRMAN

24 Maybe we could get his full name first?
25

STAFF SGT. WHEATON

1
2
3 A. Yes, My Lord. My name is Harold Francis Wheaton. I'm
4 generally known as "Harry Wheaton." I'm a member of the
5 Royal Canadian Mounted Police, and a peace officer, and have
6 been so employed for 26 years, 7 months. I am a Staff
7 Sergeant, sir, in charge of Cole Harbour Detachment of the
8 Royal Canadian Mounted Police.

9 Q. You indicated that you had been with the force for 26 years
10 and seven months. Could you outline for the Commission,
11 please, your postings with the force?

12 A. Upon completion of recruit training in Regina, I was posted to
13 Halifax Detachment for a short period. I was then posted to a
14 three-man detachment in Sheet Harbour, Nova Scotia for a
15 period of approximately two years. I was then posted to
16 Halifax Highway Patrol. From there in '65, I went to
17 Yarmouth Highway Patrol in charge. I was later transferred
18 over to senior man in Yarmouth Detachment. In 1970, I was
19 transferred to Truro, General Investigation Section, where I
20 began my plain clothes career. In 1973, I was transferred to
21 Sydney Drug Section. I was in charge of a three-man drug
22 section in Sydney until 1975. In 1975, I was transferred to
23 Halifax, Nova Scotia, promoted to Sergeant and placed in
24 charge of the Organized Crime section in the Royal Canadian
25 Mounted Police. I remained in that position for three years

1 and then was transferred to Bridgewater, where I was in
2 charge of Bridgewater Detachment. In 1980, I was
3 transferred from Bridgewater to Sydney, Nova Scotia, where I
4 was placed in charge of the General Investigation section. I
5 remained there until June of 1982, at which time I was
6 transferred to Halifax in charge of the Internal Investigation
7 Section. I stayed in this position for approximately two years
8 and then was transferred to Halifax Subdivision to act in the
9 capacity of a Section NCO. In June of 1987, I was transferred
10 to Cole Harbour Detachment.

11 Q. So the bulk of your career, if not your entire career, has been
12 spent in Nova Scotia?

13 A. Yes, sir, with some work in the provinces of Ontario and
14 Quebec on special assignments.

15 Q. I understand. And you had two postings in the City of
16 Sydney?

17 A. Yes, sir.

18 Q. I have to ask you this, it's not at all relevant, but did you ever
19 fly a plane from New York to Paris?

20 A. No, I did not, sir. I did fly a plane, but from New York...

21 Q. I understand that.

22 MR. CHAIRMAN

23 If not, why not?
24
25

1 MR. ORSBORN

2
3 Q. To be fair to the witness, My Lord, I think the reference to
4 which I was referring indicated that he only looked like
5 somebody who should fly from New York to Paris, not that he
6 actually had. You've spent many years as an investigator
7 then, Staff Wheaton, have you?

8 A. Yes, Mr. Orsborn.

9 Q. Do you regard yourself as a good and competent investigator?

10 A. I do my best, with the facilities that God gave me.

11 Q. Perhaps before we get immersed in all the detail of this,
12 would you outline to the Commission from your experience
13 your opinion of the qualities, the characteristics of a good
14 competent police investigator?

15 A. That's a very general question, Mr. Orsborn. There are so
16 many qualities that go in to the making of a good investigator.
17 It's my opinion that in many ways they are God-given. An
18 ability to communicate is extremely important. To be as
19 analytical as one can, thorough. These God-given qualified
20 can be sharpened by training and experience and I feel that
21 good investigators in many ways are born--not made.

22 Q. Would you in any sense then downplay the necessity for
23 training?

24 A. Not at all, sir, no. I think we are learning everyday of our
25 lives and certainly training is very important.

1 Q. Not wanting to put words in your mouth, but let me suggest
2 some possible characteristics of a good police investigator and
3 if you agree or disagree, perhaps you could indicate.

4 Completeness, thoroughness?

5 A. Yes, sir.

6 Q. Accuracy?

7 A. Yes, sir.

8 Q. Objectivity?

9 A. Yes, sir.

10 Q. Independence?

11 A. Independence of what, sir?

12 Q. Extraneous influences.

13 A. Yes, sir.

14 Q. Accuracy?

15 A. Yes, sir. Those would also be the qualities in any of them of a
16 good accountant.

17 Q. I know. A couple of housekeeping matters, Staff Wheaton,
18 before we get into this. I'd ask you if you recognize these, a
19 photocopy of these notes. These, again, have been distributed
20 and they were provided to us by your counsel and I
21 understand them to be a handwritten version of a typed
22 Exhibit #90.

23 A. Yes, sir, they are similar in all respects to the notes I have in
24 my notebook.
25

1 Q. They are your notes?

2 A. Yes, sir, and they're in my hand.

3 Q. I would ask that the handwritten version be identified as an
4 exhibit, My Lord. I believe the number would be 100?

5 MR. CHAIRMAN

6 We already have a typewritten copy, Exhibit 90.

7 MR. ORSBORN

8 Yes, My Lord.

9 MR. CHAIRMAN

10 Why don't we make this 90A so we can give it some semblance
11 of continuity.

12 EXHIBIT 90A - PHOTOCOPY OF HANDWRITTEN NOTES BY STAFF
13 SERGEANT WHEATON, WHOSE TYPED VERSION IS IN EXHIBIT 90.

14 MR. ORSBORN

15 Q. From your perusal of those notes, Staff Wheaton, are they all
16 the notes that you prepared in connection with this matter?

17 A. They are all the notes that I have in my notebook, Mr.

18 Orsborn. I would have prepared notes on pieces of foolscap,
19 perhaps, or wrote notes on files, but they are all the notes in
20 my notebook that I have on this case.

21 Q. All the notes in your possession?

22 A. Yes, sir.

23 Q. Where are the originals of those now, sir?

24 A. They're in my pocket, sir.
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Q. Would you have any objection to the originals being filed with the Commission?

A. No, sir. However, there are other notes in this notebook which do not pertain...

Q. I understand.

A. To the Donald Marshall investigation and I would ask that they be kept separate.

Q. I think that can be handled and I would ask that the originals perhaps be noted as an exhibit, then, My Lord, for perusal of any counsel should they wish. We can perhaps note them as 90B. Two other pieces of paper, Staff Wheaton. I show you the original of a statement of Mr. Greg Alan Ebsary dated the 19th of April 1982. Do you recognize that?

A. Yes, sir.

EXHIBIT 90B - ORIGINAL OF STAFF SERGEANT WHEATON'S NOTES
WHOSE TYPED VERSION IS IN EXHIBIT 90.

Q. Was that statement taken by yourself?

A. Yes, sir.

Q. I would ask that that original be filed, My Lord. I would point out that we do have a typed version of that already in evidence found at Volume 14, page 43. The date of that statement is the 19th of April 1982, Greg Alan Ebsary, and it's witnessed by Staff Sergeant Wheaton.

EXHIBIT 100 - STATEMENT DATED 19th of APRIL 1982 OF GREG

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ALAN EBSARY.

COMMISSIONER POITRAS

You'll provide us with copies of these in due time?

MR. ORSBORN

Copies are being distributed, I believe.

COMMISSIONER POITRAS

We don't have 98 nor do we have 100 yet.

MR. ORSBORN

The typed version, My Lord, is found in Volume 14 at page 43.

BY MR. ORSBORN

Q. I would also ask you, Staff Wheaton, if you recognize that statement? I realize that it might not be in your handwriting.

A. Yes, sir. This is a partially completed statement, to the best of my knowledge, in the handwriting of James Carroll and was taken from Donald Marshall at Dorchester Penitentiary on the 18th of February 1982.

Q. Were you present when that statement was taken?

A. Yes, I was, sir.

Q. Has that statement been in your possession?

A. Yes, sir.

Q. Can you explain or give us any indication why that statement has just been produced?

A. Yes, sir. In preparing myself for court, or for the Commission hearings this morning, on the weekend, or on Friday, I went

1 over some materials that I had still in my possession. 99.9%
2 of the file was left in Sydney. However, I had some papers
3 that I had brought in to Halifax for the reference before the
4 Supreme Court of Nova Scotia and unbeknown to me, these
5 two statements were, original statements were found amongst
6 those papers and I turned them over to Inspector Murphy on
7 Saturday, the Coordinator for the RCMP for this Commission.
8

9 Q. So the original statement of Mr. Ebsary and the partially
10 completed statement of Mr. Marshall were found among your
11 papers.

12 A. Yes, sir.

13 MR. ORSBORN

14 Again, My Lord, if that particular statement of Junior Marshall
15 could be identified as an exhibit. We do not have a typed version
16 of that.

17 EXHIBIT 101 - STATEMENT OF DONALD MARSHALL, JR. TO

18 CPL. CARROLL DATED FEBRUARY 18, 1982 TAKEN AT

19 DORCHESTER PENITENTIARY.

20 BY MR. ORSBORN

21 Q. Now in connection with that, Staff Wheaton, the notes which
22 we have from you, the handwritten notes, were, if my
23 memory serves me correctly, provided in response to a
24 subpoena issued to you on November 30th?

25 A. The handwritten?

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Q. Your handwritten, the photocopy of the handwritten notes that we have?

A. No, sir. The handwritten notes were supplied to my solicitor as a result of a phone call from him. It has been our position to cooperate fully with all counsel, including Commission counsel, when they make a request. A request was made to my solicitor and they were provided to him and as it is my understanding, in turn turned over to Mr. MacDonald.

Q. Do you have in your possession, sir, any other documents relating to the Marshall case?

A. Not to my knowledge, sir.

COMMISSIONER POITRAS

Sorry, Mr. Orsborn, we have a statement by Mr. Ebsary, February 23rd, 1982. Is that 101, or is that 102?

MR. ORSBORN

No, I haven't got to that yet, My Lord.

COMMISSIONER POITRAS

We don't have the other that you made reference to yet.

MR. ORSBORN

Which is that, My Lord? The Greg Ebsary one?

COMMISSIONER POITRAS

The 90A, the 100 and the 101.

BY MR. ORSBORN

Q. One further document, Staff Wheaton, and then we'll get away

1 from this, do you recognize that affidavit, sir?

2 A. I recognize the affidavit, yes, sir.

3 Q. And I'm not sure if it's possible to pick out the date, but
4 September the 7th, 1982 would be on the last page of the
5 affidavit?

6 A. It's either a "7" or a "1", sir. I'm not sure which.

7 Q. But September, 1982.

8 A. Of September, 1982.

9 Q. Was this an affidavit prepared by you in connection with the
10 reference to the Nova Scotia Court of Appeal?

11 A. Yes.

12 MR. ORSBORN

13 Again, I live in hopes, My Lord, that that has been distributed
14 properly. Does Counsel have the affidavit? We'll insure
15 distribution, My Lord.

16 EXHIBIT 102 - AFFIDAVIT DATED SEPTEMBER, 1982.

17 BY MR. ORSBORN

18 Q. Now, Staff Wheaton, have you testified earlier in connection
19 with this whole matter, given testimony in court?

20 A. I testified once, sir, I believe, in one of the Ebsary trials, sir,
21 and that was the only testimony I've given.

22 Q. I believe it was in January '85 at the third Ebsary trial, would
23 that be correct?

24 A. Could very well be, sir.
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Q. That's the only time you have testified.

A. Yes, sir.

Q. Now you were stationed in Sydney in 1982?

A. Yes, sir.

Q. And you were plain clothes coordinator at that time?

A. Yes, sir.

Q. What does that mean?

A. That means, sir, I was in charge of the various plain clothes sections which were responsible for policing, if you will, on the Island of Cape Breton. Coming under me, I had a five-man drug section composed of a sergeant, a corporal, and three constables; a Customs and Excise section composed of a corporal and a constable; a Criminal Investigation Section composed of a corporal and a constable. And I was the coordinator of all these men and we investigated crime in the Island of Cape Breton.

Q. As such, then, would you do investigations yourself or simply monitor the work of others?

A. Principally monitor the work of others and the more important investigations; i.e. murders, et cetera, I would actively take part in.

Q. In your capacity as plain clothes coordinator, would you have association with members of the Sydney Police Department?

A. Yes, I would, sir.

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Q. And when you had earlier been stationed, I think, in the drug section, was it, in Sydney?

A. Yes, sir.

Q. In that capacity, you had association with the Sydney Police Department?

A. Yes, sir.

Q. Specifically, had you had association with John MacIntyre?

A. Yes, sir.

Q. With William Urquhart?

A. Yes, sir.

Q. With Michael Bernard, or Michael R. MacDonald?

A. Yes, sir, not to a great deal but I knew Michael R. MacDonald. Or "Red Mike" as we knew him.

Q. Had you had association with Donald C. MacNeil, the crown prosecutor?

A. Yes, sir.

Q. With Louis Matheson?

A. Yes, sir.

Q. And had you had association with Mr. Moe Rosenblum?

A. Yes, sir.

Q. Simon Khattar?

A. No, sir.

Q. Your associations with the members of the Sydney Police Department, could you give us some idea of the nature of the

1 association? For example, with John MacIntyre, had you
2 worked with him on cases or simply social meetings or what?

3
4 A. You mean between '73 and '75 or in '82 or the entire?

5 Q. Both.

6 A. Well, I'll go back to the beginning. Between '73 and '75, as
7 the NCO in charge of a drug section, I would say that 80% of
8 my work was within the City of Sydney. As such, I worked
9 very closely with the Sydney City Police, as they did not have
10 a drug section at that time. In that regard, I had
11 conversations with Chief Goldie and Deputy Chief MacIntyre
12 in reference to sending one of their men up to work with us
13 and train him to do drug work. This was done. Deputy Chief
14 MacIntyre at that time was principally involved, to my
15 knowledge, with the administrative end of the Sydney City
16 Police. My dealings principally were with Chief Goldie and
17 the men on the street, if you will. On coming to Sydney again
18 as plain clothes coordinator, I had occasion to see and speak
19 with Chief MacIntyre at this time. I did not know him
20 socially. I knew him, we spoke. He may have attended our
21 regimental ball, I believe, and we spoke there. But other than
22 that, we did not visit one another's homes or did not know
23 one another other than a social manner.
24
25

1 Q. What about William Urquhart?

2 A. William Urquhart I knew, I think, a good deal better than I
3 knew Chief MacIntyre, because William Urquhart took part
4 in investigations. He was in the detectives division of the
5 Sydney City Police in both my first posting and second posting
6 there and we did, on occasion, work together. We came to
7 Halifax together, I recall, in the 81 - '82 period on a joint
8 investigation type of thing and I knew William Urquhart
9 quite well.

10 Q. Would you have been on a first-name basis with him?

11 A. Oh, yes.

12 Q. And what about with Deputy Chief MacIntyre as he was then?

13 A. Ah.

14 Q. First-name basis.

15 A. Yes, yes.

16 Q. Did you have any closer association with Chief MacIntyre
17 when you were plain-clothes coordinator?

18 A. Not really, sir, no, I wouldn't say, other than the Marshall
19 case, of course.

20 Q. Of course. What about with Red Mike MacDonald?

21 A. Red Mike MacDonald, no. I knew Red Mike MacDonald again
22 in my first posting there as an administrative NCO more or
23 less. He was on the desk. We locked up prisoners
24 occasionally in the Sydney City Police cells and this type of
25 thing, and I knew him, but I did not know him well. I would

1 not know him as well, for instance, as I knew John MacIntyre
2 or Billy Urquhart.

3 Q. On either of the occasions when you were posted in Sydney
4 did you have occasion to cooperate on an investigation with
5 either Deputy Chief or Chief MacIntyre?

6 A. In which the Chief or Deputy Chief was actively involved, sir?

7 Q. When Mr. MacIntyre was involved.

8 A. No. Other than the Marshall case.

9 Q. Other than that.

10 A. I cannot think of any case that he was actually actively
11 involved.

12 Q. Prior to the time of the Marshall case then from your contacts
13 with and knowledge of John MacIntyre, did you form any
14 opinion of Mr. MacIntyre as a policeman, as an investigator?

15 A. Prior to the Marshall case?

16 Q. Yes.

17 A. I never really gave it all that much thought, sir.

18 Q. The same question with respect to William Urquhart.

19 A. William Urquhart I worked more closely with as a police
20 officer, and I would have had a better opportunity to form
21 some opinion of William Urquhart. You're asking me my
22 opinion of William Urquhart.

23 Q. Did you form any opinion of William Urquhart as a policeman
24 as an investigator prior to the Marshall case.

25 A. Prior to the Marshall.

1 Q. Yes.

2 A. My opinion...I didn't form one, but if you're asking me my
3 opinion of William Urquhart prior to the Marshall case. I just
4 want to be specific what you're asking Mr. Orsborn.

5 Q. Well, presumably if you didn't form one you don't have one.

6 A. I don't know really. I had no reason to think of it in those
7 terms of William Urquhart.

8 Q. What association did you have in both of your postings with
9 Donald C. MacNeil?

10 A. Donald C. MacNeil.

11 Q. Yes.

12 A. Donald C. MacNeil was the crown prosecutor in Sydney on my
13 first posting there between '73 and '75. He prosecuted all my
14 cases involving the Criminal Code of Canada. I...Donald
15 MacNeil more or less held court quite often in his office prior
16 to going to court, if you will, and police officers would often
17 drop in there and talk. He was a very gregarious man, and I
18 knew him in that context. I also knew Donald C. MacNeil
19 socially. I visited his cottage, this type of thing. I had a good
20 knowledge I thought of Donald C. MacNeil.

21 Q. Did Mr. MacNeil at any of your social visits or any of his
22 holding court, as you put it, did he raise the Marshall case?

23 A. Yes.

24 Q. In what context was that raised?

25 A. As Crown and police officers often will, lawyers and police

1 officers, we talked about cases and I recall him, vaguely recall
2 him mentioning the Marshall case, yes.

3 Q. Do you recall what he said about it?

4 A. Not really. Not specifically, Mr. Orsborn. I recall him
5 mentioning it though.

6 Q. Is there any...anything particular that stood out in his
7 memory about the Marshall case or was it just another...just
8 another murder?

9 A. I recall it within the context of it being a rather difficult case,
10 but that...what specifically he said, I don't know. But I do
11 recall him mentioning the Marshall case, sir.

12 Q. Do you know if there was anybody else present when that
13 conversation took place?

14 A. I cannot recall, sir.

15 Q. In your dealings with the Crown Prosecutor, and specifically
16 Mr. MacNeil, what was your practise with respect to the
17 provision of the police file to Mr. MacNeil?

18 A. Mr. MacNeil was the type of prosecutor who was a very quick
19 study. If we had a case, for example, of assaulting of a peace
20 officer or something like that, you would go into see Donald
21 MacNeil usually just prior to Court quite often, because he
22 didn't have time to...this is the way he liked it, and he would
23 ask you, "What's the story?" and he would have a legal paper
24 and you would tell him. If you took statements, for instance,
25 or if you did this or that you would show him. He liked to

1 talk man to man to you and he would make his notes up for
2 court from that and then you would get up and when court
3 convened you would wander in on it and do your...do your
4 business.

5 Q. Did you have occasion to work with him on any cases that
6 were somewhat more involved than going in the morning of
7 court and talking to him?

8 A. He did it on involved cases, as well, sir. I can recall one which
9 emanated from a drug search involving a high-speed chase
10 and hit and run and then damage to the police car and
11 involved numerous witnesses. I know in that case I went in
12 before Court and we spent maybe half an hour together and
13 he asked me what each witness would say and I told him
14 what I had, and I had a prepared Crown brief. He would look
15 at it. But he really liked to make his own mind up. We
16 prepared Crown briefs on all the cases but he wouldn't
17 always...he would make his own mind up and write it on his
18 legal paper and take it to court in his own hand.

19 Q. Do you have any knowledge of Mr. MacNeil's practise with
20 respect to the provision of statements to defence counsel, for
21 example, statements that you might show him? Do you have
22 any knowledge of his practise, vis-a-vis providing that to
23 defence counsel? Did you have any occasion to observe that
24 or discuss that with him?

25 A. In the cases I was involved in I don't believe he disclosed

1 statements to the defence counsel to the best of my
2 knowledge.

3 Q. And what do you base that on, sir?

4 A. What I saw.

5 Q. What did you see?

6 A. Well, I gave him statements and I never saw him give any
7 copies of them to the defence counsel.

8 Q. But, not wanting to put too fine a point on them, but they
9 could have been provided in your absence, I take it.

10 A. Could have.

11 Q. Did you ever hear him talk to you about not disclosing
12 something to the defence?

13 A. No, sir, no.

14 Q. Did you have any association with Lou Matheson?

15 A. Yes, sir.

16 Q. What was the nature of that association?

17 A. Lou Matheson was assistant crown prosecutor and he would
18 often be present when we would be briefing Donnie MacNeil,
19 he would be there in the office. In Mr. MacNeil's absence he
20 would prosecute cases. They would decide who was actually
21 going to prosecute. He prosecuted cases for me during the
22 period I was there on the drug section and I knew him, again,
23 in a professional way and somewhat socially.

24 Q. Would you know him on a first-name basis?

25 A. Yes, sir.

- 1 Q. On any occasion prior to 1982 when this reinvestigation
2 started did you discuss or raise the Marshall matter with Lou
3 Matheson?
- 4 A. No, sir.
- 5 Q. Or he with you.
- 6 A. No, sir.
- 7 Q. Not mentioned. What was the nature of your association with
8 Mr. Moe Rosenblum?
- 9 A. Again, with Mr. Rosenblum it was of a professional nature, at
10 the courthouse. Mr. Rosenblum was one of the better known
11 defence lawyers in Sydney. He defended people who I had
12 charged in Sydney. We would talk after trials, et cetera. I
13 knew Mr. Rosenblum reasonably well, again on a first-name
14 basis.
- 15 Q. I see. Did Mr. Rosenblum when he was defending a case in
16 which you were involved ever approach you with respect to
17 obtaining statements or information?
- 18 A. Not really, no, sir.
- 19 Q. Not really, is that...
- 20 A. No, sir.
- 21 Q. ...a no?
- 22 A. That's a no, sir.
- 23 Q. Did Mr. Rosenblum, to your knowledge, ever complain about
24 not having received statements of witnesses that were
25 testifying at trial?

1 A. No, sir.

2 Q. Now, you spoke of Mr. MacNeil and disclosure. I presume
3 you would sit in court when these cases were being
4 prosecuted, or at least a number of them.

5 A. Yes, sir.

6 Q. Did you have occasion to hear any witnesses being cross-
7 examined by defence counsel on statements which you had
8 taken?

9 A. Witnesses being cross-examined by defence on statements I
10 had taken?

11 Q. Yes.

12 A. Yes, sir.

13 Q. Would that then lead you to believe that they were aware of
14 the statements you had taken?

15 A. They're...are you speaking...

16 Q. That defence...

17 A. You said witnesses or accused persons now, sir?

18 Q. Either.

19 A. Okay. Well, we would normally have a...principally it would
20 be accused persons and we would have a voir dire. The
21 Crown would go first and we would have a voir dire, and the
22 defence would certainly know we were going to introduce
23 that statement. As far as witnesses, the witness would get on
24 the stand and stand on his own face, and...

25 Q. Uh-hum.

1 A. ...give his evidence before the Judge.

2 Q. Did you have occasion to hear witnesses then, leaving aside
3 accused, to hear witnesses cross-examined on statements
4 which you had taken from them?

5 A. Not that I can recall, sir, no.

6 Q. Prior to the Marshall case had you ever had occasion to
7 reinvestigate or review the work of another police force?

8 A. Yes, sir.

9 Q. Is that a difficult thing for you to do?

10 A. I've had to do it on two occasions, and I find it a difficult
11 thing, yes.

12 Q. Why is that?

13 A. Well, police officers are a fraternity and you feel a certain
14 loyalty to one another. It's a delicate matter. Quite often
15 when you're interviewing...investigating another police force
16 you will know that in the future you will have to go work
17 with these men and rapport between forces, between
18 municipal forces and the federal force is very important, and
19 it is a delicate task which you try to handle with diplomacy.

20 Q. Uh-hum. I'd like to start, sir, on the reinvestigation of the
21 Marshall case and I will be referring primarily to Volume 34,
22 Exhibit 98, which I believe you have in front of you. And,
23 insofar as I can I'm going to try and take it chronologically
24 which might mean hopping around a little within the...within
25 the reports. What was your first indication that you were

1 going to be involved in looking at the Marshall case?

2 A. On the 3rd of February, the afternoon of the 3rd of February,
3 Inspector Donald Scott, my immediate supervisor, came to my
4 office and presented...

5 MR. CHAIRMAN

6 1982.

7 MR. WHEATON

8 1982, My Lord, yes.

9 A. Came to my office, which was just down the hall from his, and
10 advised me that he had been at a meeting with Chief
11 MacIntyre and Crown Prosecutor Frank Edwards earlier in the
12 day. And, that the Chief had requested that the RCMP
13 investigate a letter of complaint from Mr. Stephen Aronson.
14 It was the recommendation of the Crown Prosecutor to
15 Inspector Scott, as he advised me, that it would be a good
16 procedure for us to investigate this matter as the original
17 chief investigator of it was the Chief himself, John MacIntyre,
18 and that he was assigning me to the file.

19 Q. If I may just stop you. Is it your recollection that...what was
20 the title of Mr. Scott, I'm sorry?

21 A. Inspector.

22 Q. Inspector.

23 A. He was the officer commanding of Sydney Subdivision.

24 Q. Is it your recollection that he advised you it was the
25 recommendation of the Crown Prosecutor that the RCMP

1 should be involved in this investigation?

2 A. Yes, sir.

3 Q. Thank-you.

4 A. As well as the feelings of the Chief of Police, John MacIntyre.

5 Q. Was that conveyed to you by Inspector Scott?

6 A. That was conveyed to me by Inspector Scott.

7 Q. I see. Thank-you. Would you continue?

8 A. He then gave me the letter or a photostatic copy of the letter
9 from Stephen Aronson and asked me to look into that letter.

10 He also gave me a number of copies of statements, and from
11 the letter it would appear that the witness Mitchell Bayne, as
12 it was noted in the letter, lived in Pictou, Twining Street.

13 And, he made the comment, "You have my permission to go to
14 Pictou and look into this matter."

15 Q. Now, did Inspector Scott express any opinions to you about
16 the investigation?

17 A. My...I don't recall specifically him expressing an opinion to me
18 other than it was a very...that it shouldn't take me too long to
19 do. We had a great many things on the go that...at that time
20 within my section, the drug section had an invasion of privacy
21 under Section 178 of the Criminal Code. There were a
22 number of things going on and I recall him expressing the
23 opinion "This shouldn't take too long."

24 Q. If you only had known.

25 A. Yes.

1 Q. How long were you talking to Inspector Scott?

2 A. Not for any great length of time, maybe five minutes.

3 Q. Now, you say he gave you a photocopy of the letter from Mr.
4 Aronson and he gave you some statements. Did he give you a
5 list of those statements?

6 A. No, sir.

7 Q. Were they handwritten or typed?

8 A. To the best of my recollection they were photostats of typed
9 statements.

10 Q. Were they just statements or were there police reports
11 included as well?

12 A. I don't recall any police reports, sir.

13 Q. Did you yourself make any notes of that meeting with
14 Inspector Scott?

15 A. No, I did not, sir.

16 Q. Did you make any list yourself of what Inspector Scott had
17 given you?

18 A. No, I did not, sir.

19 Q. Were there transcripts included in that?

20 A. No, sir.

21 Q. Do you know how many statements you were provided with?

22 A. No, sir.

23 Q. Would it have been more than ten?

24 A. No, sir. There were less than ten I would say, but I can't...I
25 didn't make an index and I can't say which specific

1 statements I was given at that time. But there were not a
2 great number.

3 Q. I see. Were there any handwritten notes or reports at all?

4 A. Not that I can recall.

5 Q. Were these given to you loose or were they in a file?

6 A. They were loose, sir.

7 Q. And you didn't sign a receipt for them or anything.

8 A. No, sir.

9 Q. And what did you do then?

10 A. I reviewed the statements that I was given and read the
11 letter from Stephen Aronson. It really didn't make a...

12 Q. Was this the same day?

13 A. Yes. As I recall it was in the...sort of the later afternoon. It
14 really didn't give me a complete picture of what was going on
15 here.

16 Q. What was the picture that you did get?

17 A. The picture that I did have was that Mr. Aronson, from the
18 letter, it appeared to me Mr. Aronson had been contacted by
19 Donald Marshall and advised that this Mitchell Bayne had
20 information to the effect that he...Roy Ebsary had, in fact,
21 committed the murder, and that I believe...if I had the letter I
22 could refresh my memory. But I believe that he said he lived,
23 in the letter he said, yes, he said he lived with Ebsary for a
24 period of time in the latter part of the 1970s I believe.

25 Q. If you need that letter, Staff Wheaton, it's at page 22 of the

1 volume you have in front of you. The numbers are at the top
2 of the page.

3 A. Yes, thank-you, sir. This was basically the mandate that I had
4 been given by Inspector Scott was to go out and investigate
5 this and in Mr. Aronson's letter he says, "One individual,
6 Mitchell Bayne," and I see the name "Sarson" handwritten in
7 and it looks like my handwriting,

8 ...of 11 Twining Street, Pictou, who in
9 October 1979 was living in Sydney with
10 Roy Ebsary. Ebsary, according to Bayne,
11 raised the matter of the Seale murder and
12 told Bayne that it was, in fact, he, Ebsary,
13 who committed the murder. I spoke with
14 Bayne personally and he told me that
15 Ebsary had indeed confessed to him.
16 Recently I was advised that Ebsary has
17 been charged with an assault in Sydney
18 area. May I, therefore, ask that you look
19 into Mr. Bayne's story to determine
20 whether it warrants further action on your
21 part.

22 And this was addressed to the Chief. So, I took that as what I
23 was looking into was the request of Mr. Aronson.

24 Q. Yes. Now, from the statements that Inspector Scott provided
25 you with what kind of a picture, if anything, did you get of
the events of May 28-29th, 1971?

A. Basically that there were two eye-witnesses to this murder, a
chap...gentleman by the name of Chant, and a gentleman by
the name of Pratico, and that they had seen Marshall stab

1 Seale.

2 Q. Uh-hum.

3 A. There were a number of other statements there that, sort of
4 extraneous, I...they just didn't make any sense of why they
5 were there and I wondered why they were there. They were
6 sort of peripheral witnesses I felt, who may have been in the
7 park at the time.

8 Q. Did you make any notes when you were reviewing the
9 statements?

10 A. No, I did not. But I did call John MacIntyre and set up an
11 appointment for the following day to get the thing clear in my
12 mind.

13 Q. I see. Did you do anything else other than review the
14 statement and phone Chief MacIntyre on the...this first day?

15 A. I believe it was in the late, again in the late afternoon of the
16 first day or the morning of the fourth... the second day, that I
17 called Mr. Edwards to see about the possibility of getting a
18 transcript of the trial in this matter, which would help me get
19 it clear in my mind what had taken place.

20 Q. Uh-hum. Did you request a record check on Mr.Ebsary?

21 A. Not that first day, no, sir.

22 Q. And I understand what you said, that you contacted Chief
23 MacIntyre to arrange an appointment.

24 A. Yes, sir.

25 Q. And did you , in fact, have an appointment with Chief

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 MacIntyre?

2 A. Yes, he readily agreed to meet with me the following day.

3 Q. He readily agreed.

4 A. Yes, sir.

5 Q. And did you meet with him?

6 A. Yes, I did, sir.

7 Q. And what is your recollection of that meeting?

8 A. This was a rather lengthy meetings that took place in the
9 Chief's office at Sydney City Police, and I took a copy of the
10 letter and the statements that I had received from Inspector
11 Scott down with me. And I had a lengthy discussion with
12 Chief MacIntyre and I asked him for any help he could give
13 me in understanding what had taken place. And, he
14 proceeded to explain to me what had taken place.

15

16 10:17 a.m.

17 Q. What was the explanation?

18 A. It was rather lengthy and...

19 Q. Do you have notes of that meeting, I'm sorry?

20 A. I beg your pardon.

21 Q. Do you have any notes of that meeting?

22 A. No, I do not. He, first of all, addressed the matter of this
23 letter and he advised me that he had since the time, and even
24 prior to the time Marshall was convicted this had been a long
25 and lengthy one for him. That he had received a number of

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1 complaints and so on and so forth. That he had received a
2 letter from the Black United Front while doing the
3 investigation and he had. ah, since Marshall was convicted
4 had been badgered by the Marshall family to the point where
5 at one point he had to kick them out of his office. Marshall
6 had complained previously to numerous areas of officials who
7 had came to him and wanting to get out of jail, et cetera, et
8 cetera. I recall him...basically the first of his conversation was
9 addressing the letter itself. Then...the Chief often referred to
10 me as "Young Fellow" or "Sonny" and I took no offence to that,
11 by the way. And, it was like an older person talking to a
12 younger person, and he more or less lectures in the way he
13 talked, and he went into a description of his investigation.
14 And in that description of the investigation he told me that,
15 you know, the murder had taken place on Crescent Street.
16 That he had worked at it for about a week. Two young
17 fellows appeared in the...were in the park area. They had
18 witnessed the murder. That the Indians had paid for Moe
19 Rosenblum and Simon Khattar and given them a blank cheque
20 to defend and they did defend it. That the two witnesses,
21 Chant and Pratico, were fine young men and that they stuck
22 to their story no matter how hard they were cross-examined,
23 and they were eye-witnesses to the murder itself. He had
24 some difficulty discovering them, if you will, and that one
25 night he went to the park, the murder...

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 Q. I'm sorry. When you say "had difficulty discovering them"
2 what do you mean? What did you take him to mean?

3 A. I took the inference that the...he had difficulties solving the
4 crime.

5 Q. I see. It wasn't a difficulty in finding out where Chant and
6 Pratico were.

7 A. Not like who lived where, no.

8 Q. I'm sorry.

9 A. But difficulties in solving the crime. The crime remained
10 unsolved for approximately a week. One night he went to the
11 park and walked around and made his mind up as to how it
12 happened, or it came to him how it happened. He then went
13 out the next day...

14 Q. Do you remember him actually saying that to you, that it...

15 A. Yes.

16 Q. ...just came to him how it happened?

17 A. Yes. Or words to that effect.

18 Q. Uh-hum. Do you regard that as significant?

19 A. Not at the time.

20 Q. And I ask again, you're relying totally on your own memory
21 for...

22 A. Yes, I am, sir.

23 Q. For this testimony.

24 A. And, as I say, those are words to that effect, not those specific
25 words necessarily.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

7517

- 1 Q. Were...
- 2 A. There are portions of this conversation which I do remember
- 3 the exact words.
- 4 Q. Uh-hum. Was there anyone else with you?
- 5 A. No, sir.
- 6 Q. Okay. Go ahead, please.
- 7 A. He said after that night in the park the next day he and Billy
- 8 worked on the case and he went out and he picked up Pratico,
- 9 and Pratico hadn't been truthful with him. And, he brought
- 10 him in and he went at it. And he cracked him. He then went
- 11 to Louisbourg.
- 12 Q. Sorry. Let's stop you. When you say "cracked" is that your
- 13 word or his?
- 14 A. His word, that was his word because he used it twice. He then
- 15 went to Louisbourg, he and Billy, and picked up Chant and
- 16 went at him and he cracked him too.
- 17 Q. Again, is that your word or his word?
- 18 A. His word. He was being very...smiling, very, he was like
- 19 telling me of an accomplishment. Again, his..."Billy and I got
- 20 in the car and drove that old car back to Sydney and made
- 21 one of the fastest trips it ever made and went to Donald
- 22 MacNeil."
- 23 Q. Your words or his words?
- 24 A. His words.
- 25 Q. So, do I understand that he did indicate to you in this

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1 interview that neither Chant nor Pratico had been truthful
2 when they were first interviewed?

3 A. Yes, sir.

4 Q. Did know that before you spoke to the Chief?

5 A. I believe I had two statements from Chant and Pratico, yes,
6 sir.

7 Q. How long were you talking to the Chief this say?

8 A. This was quite a lengthy discussion. He had explained the
9 case to me in his own...

10 Q. An hour, two hours.

11 A. Hour, hour and a half.

12 Q. What else do you remember of that conversation?

13 A. From there he said he went to Donald MacNeil and Donald
14 MacNeil said "Charge him and get a warrant." He then
15 indicated, told me that he went to Baddeck and got one of our
16 fellows and he knew Marshall was down there in the Indian
17 reservation. Together with one of our members he went out
18 and arrested Marshall and brought him back to Sydney. He
19 then went into some areas of the trial. I remember him
20 talking to me about the wound and Marshall taking the
21 stitches out of his own arm and how to...to keep him from
22 getting a blood sample, and that the doctor went out and the
23 stitches were missing. On that point I asked him why he
24 didn't ask the doctor to get a blood sample and his answer to
25 me was "Those brown-skinned fellows all stick together."

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1 Q. And what did you understand by that?

2 A. I asked him what he meant and he said that Dr. Virick, I took
3 from the name was probably an East Indian or Pakistani was
4 the Indian doctor.

5 Q. Yes.

6 A. Which treated Indians on the reserve, I took from that. We
7 had more conversation. The conversation lasted about an
8 hour, an hour and a half. We discussed Pictou and he brought
9 to my attention that Donald Marshall had escaped jail and
10 went to Pictou and was found there with a girl. And, he felt
11 probably that they had gotten their heads together in
12 Dorchester, from reading this letter, or had gotten their heads
13 together somehow and he has "Here is Donald Marshall
14 concocting another story. "

15 Q. Okay. Did he talk to you about the nature of Donald
16 Marshall's escape?

17 A. Yes, sir. He told me that he escaped by paddling a canoe
18 down the river from Dorchester to Pictou.

19 Q. His words.

20 A. I beg your pardon.

21 Q. His words.

22 A. His words.

23 Q. Was there any discussion of Roy Ebsary?

24 A. I beg your pardon, sir.

25 Q. Was there any discussion of Roy Ebsary?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 A. Roy Ebsary, yes, I brought that up because he was mentioned
2 in the letter and he suggested that I speak to Woody
3 Woodburn, Horace Woodburn is the proper name, who was
4 the investigator of a present stabbing with Ebsary and that he
5 could tell me about him, but he didn't seem to know too much
6 about Ebsary.

7 Q. Was there any...was there any discussion about Patricia
8 Harriss?

9 A. The name never occurred.

10 Q. Was there any discussion about efforts to locate other
11 potential witnesses and I'm thinking, for example, of the
12 driver of the car who drove Mr. Chant and Mr. Marshall
13 around the park or Mr. Patterson, whose name crops up in a
14 couple of statements. Was there any comment by the Chief
15 that "We tried to find these people and couldn't"?

16 A. Never came up, sir, no.

17 Q. Did the Chief provide you with any additional documentation
18 at this first meeting?

19 A. No, sir.

20 Q. Did you ask for any?

21 A. Yes. Yes, I did, and I asked for any help that he could give
22 me and if there's anything further now that you can tell me,
23 and it was a searching type of interview by me and it was...he
24 was telling me what his version was, and I was very
25 interested in anything I could get to help me do a thorough

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 and complete job, well knowing that this letter would require
2 a report on my behalf and would probably be very well
3 scrutinized by the Attorney General's Department.

4 Q. Yes. Did Chief MacIntyre refer to any documents during the
5 course of your first discussion with him?

6 A. No, sir.

7 Q. Were there any documents or file apparent to you on the
8 desk that might possibly relate to the Marshall case?

9 A. No, sir. I took it I had what there was to have.

10 Q. Did you specifically request his file at this meeting?

11 A. I asked the Chief if there was any further documentation he
12 had or anything he could tell me when I...just before I left
13 that would help me look into this letter.

14 Q. Okay. I...

15 A. I did not use...I cannot recall using the specific words "file". I
16 asked him "Is there any documentation, anything you can
17 help me with?"

18 Q. Do I understand that you did ask for documentation?

19 A. Yes, yeah.

20 Q. What impression, if any, did you form about your task
21 following this interview?

22 A. My impression on leaving it was that there were two
23 extremely good eye-witnesses to the matter, it had been
24 capably defended by a lawyer, one of whom I knew very
25 well, been appealed, et cetera, that there was really no need

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1 to interview Chant or Pratico and that I should direct my
2 efforts towards Ebsary, look into Ebsary and Mitchell Bayne
3 and find out what the background on these two gentlemen
4 were and why there may be some collusion between Marshall
5 and Bayne, they might concoct a story to get Marshall out of
6 jail.

7 Q. Were you aware at the conclusion of this first interview with
8 the Chief that this matter had been looked at previously by
9 the RCMP?

10 A. On the 4th, you're asking me.

11 Q. Yes.

12 A. Yes. Yes, I was aware of that.

13 Q. And do you recall how you became aware of that?

14 A. The Chief told me.

15 Q. Could it have been Inspector Scott?

16 A. I know it came up in the conversation between the Chief and
17 I because this was another point that he brought up, that Al
18 Marshall, that Al Marshall of the Mounted Police, as a result
19 of Jimmy MacNeil coming forward had come down and looked
20 into the entire matter and concluded there was nothing wrong
21 and that a polygraph examination had been done and, in fact,
22 the Chief had told me that he had either talked to Gene Smith
23 or was in the process or had written Gene Smith, the
24 polygraphist who was known to me.

25 Q. Uh-hum.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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- 1 A. And everything was hunky-dory.
- 2 Q. Until the time you spoke to the Chief had you seen any
3 reports of that investigation?
- 4 A. No, sir.
- 5 Q. Did the Chief provide you with any reports of that
6 investigation?
- 7 A. No, sir.
- 8 Q. Did he indicate to you that any other investigation or review
9 or query had been made by the RCMP?
- 10 A. No, sir.
- 11 Q. Does the name Eugene Cole refresh your memory at all?
- 12 A. Yes, I know Eugene Cole but he had never mentioned Eugene
13 Cole, as a matter of fact I did not even know that Eugene Cole
14 was involved in any way until the Commission investigators,
15 ah, and I read it in the paper.
- 16 Q. So, if I may summarize, where you were after this interview,
17 you spoke with the Chief for an hour, approximately an hour
18 and a half, and you requested documentation. There was no
19 paper passed hands between you, is that correct?
- 20 A. No, sir.
- 21 Q. Okay. And your inclination following this interview was to
22 follow up the Ebsary-Sarson story.
- 23 A. That was my mandate from Inspector Scott to investigate this
24 letter and that's what I did, yes, sir.
- 25 Q. Did you report back to Inspector Scott following your

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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discussion with the Chief?

A. Yes, sir.

Q. What was your report?

A. I didn't write a report. Inspector Scott's office and my office were on the second floor of our headquarters' building on Alexander Street and when you come up the stairs Inspector Scott could see everyone coming and going. It was a common procedure that Inspector Scott would call me into his office and I feel that on the 4th I did speak to Inspector Scott and I also spoke to James Carroll who was my corporal in charge of the criminal investigation part of my unit and discussed the case with him.

Q. Why did you do that?

A. I beg your pardon.

Q. Why did you speak to Corporal Carroll?

A. After speaking with the Chief I could see where...and Horace Woodburn, I spoke to him, as well, on the 4th.

Q. Okay.

A. I could see where there were a number of avenues that I wanted to check prior to going to Pictou and...

Q. Perhaps we'll back up then and...

A. I would need some help with the leg work.

Q. Okay. Tell us about your contact with Horace Woodburn?

A. Yes, sir. Horace Woodburn, again, was known to me previously from my drug time there, as he worked drugs, and

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 I discussed the present investigation he was doing into a
2 stabbing of, I believe it was, a Goody Mugridge by Roy Ebsary
3 and a trial was in the offing. And, he described Ebsary to me
4 as being a very bizarre old gentleman who had a fascination
5 with knives, who in this investigation after he had been
6 brought down and interrogated for some time in the early
7 morning hours went back to the Sydney Hospital and went
8 into the room where Mr. Mugridge was laying in an oxygen
9 tent and proceeded to whisper in his ear, "Your brother
10 stabbed you." This indicated to me I was dealing with a very
11 unusual character and that I should look into him rather
12 carefully, prior to going to Pictou to see Mitchell Bayne. And
13 so then...so I returned and enlisted Corporal Carroll's help.

14 Q. Did you make any notes of your meeting with Horace
15 Woodburn?

16 A. No, sir.

17 Q. Just out of curiosity, you have a lengthy meeting with Chief
18 MacIntyre and then a follow-up meeting with Constable
19 Woodburn, why would you not have made notes?

20 CHAIRMAN

21 What was before that?

22 MR. ORSBORN

23 I'm sorry. The question was why he would not have made
24 notes of these discussions with Chief MacIntyre and with
25 Inspector Woodburn.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 A. At that juncture I never believed I would be where I am
2 today. I was investigating a letter of complaint. I saw no
3 particular need to make notes on the matter. I felt from my
4 conversation from the Chief there probably was collusion
5 between the chap in Pictou and Marshall in jail and that I
6 would go on and investigate it and probably come back from
7 Pictou and write a report and conclude the matter.

8 Q. Were you taking the investigation seriously at that point?

9 A. Yes, sir.

10 Q. Would the practise or the fact that you did not make notes of
11 your investigation at this stage, is that consistent with your
12 normal practise?

13 A. Yes, sir.

14 Q. So, you do not make notes in the early stage of an
15 investigation at the time?

16 A. So, investigators, as I have said, and I hope...I didn't mean to
17 be flippant, that some people are like an accountant, we all
18 have different styles and I use a notebook principally to
19 refresh my memory. If I think I'm going to court or if it's a
20 matter in which I'm going to court, for instance, you seize
21 knives, I would record the registration number and the date
22 and whatever and so that I could refresh my memory before
23 the court, and that's what I would principally use my
24 notebook for. Or information that I had received say from an
25 informant or from another police force or things like that. It's

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1 principally used as an aid to refresh my memory. Other
2 people use a notebook in the force to, ah, each day they put
3 the date and they write everything they do.

4 Q. We've seen some of them.

5 A. I unfortunately don't.

6 Q. Following your conversation with Inspector Woodburn did
7 you request the records check on Mr. Ebsary?

8 A. Yes, I did, sir.

9 Q. And what was the result of that?

10 A. The result of that record check left me with the impression
11 that in 1970 and 1971 Mr. Ebsary was a dangerous drunk. I
12 based that on the fact that in 1970 and early '71 there were, I
13 believe, two charges of illegal possession under Section 76(2)
14 of the liquor act, and a charge of being drunk in a public place
15 under section 85 of the liquor act, and a possession of
16 carrying a concealed weapon. From that that is my opinion
17 that I would get from a record like that.

18 Q. Uh-hum.

19 A. This man drinks, this man is dangerous.

20 Q. And, following your discussion with Inspector Woodburn was
21 it the following day then that you enlisted Corporal Carroll's
22 help?

23 A. No, it was the 4th I mentioned to Jim that the following day I
24 was going to start making some inquiries and I asked for his
25 assistance.

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1 Q. What specifically did you want his assistance for?

2 A. To come with me to Pictou for one thing

3 Q. Uh-hum.

4 A. I...a police officer has sources of information, and there's an
5 old saying, a police officer is often only as good as his
6 sources. I was interested in Corporal Carroll through his
7 sources, if you will, casual, social, whatever, to see what he
8 could find out about Ebsary.

9 Q. Uh-hum.

10 A. And I, for my part, began interviewing people. I went to the
11 next-door neighbours on Falmouth Street. I spoke to them
12 about Ebsary, neighbourhood inquiries type of thing. And, it
13 was within this time period, the next few days, that I also
14 spoke to Mary Ebsary, and I believe it was from Mary Ebsary
15 I learned the proper name of Mitchell Bayne as being Mitchell
16 Bayne Sarson, and discussed his being in their home.

17 Q. Well, these neighbourhood enquiries that you conducted were
18 in the area of Falmouth Street, Mr. Ebsary's residence?

19 A. Yes, sir.

20 Q. Do you have any notes of those inquiries?

21 A. No, sir.

22 Q. No notes of the names of the people that you spoke to.

23 A. No, sir.

24 Q. What did you learn from those inquiries?

25 A. I learned that what Mr. ...what Horace Woodburn had told me

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 was quite correct, that he was indeed a dangerous sort of
2 individual and a bizarre character who dressed with a blue
3 Burberry which he wore over his shoulders like a cape, that
4 he often wore a string of medals, that he was bisexual. I
5 learned from Mary Ebsary some of the goings on in the home
6 and I learned of the...what happened with Sarson and Ebsary
7 in the home, in the Ebsary home.

8 Q. Was she surprised to see you when you showed up?

9 A. I beg your pardon, sir.

10 Q. Was Mary Ebsary surprised to see you?

11 A. Mary Ebsary was a very gracious lady and she, in my opinion
12 at that first meeting was a bit, very, a bit defensive of her
13 husband, Roy, a bit of an embarrassment to her, but by the
14 same token she wasn't going to sell him down the river sort of
15 thing and say too many nasty things about him really.

16 Q. Was she reluctant to speak to you ?

17 A. Yes.

18 Q. And did you make any notes of your first conversation with
19 her?

20 A. I believe there are notes in my notebook, if I might refresh
21 my memory, sir.

22 Q. Please.

23 A. The first note in my notebook is "Mary Ebsary, 46 Mechanic
24 Street, across from taxi stand," and I believe that's her
25 telephone number at that time, 539-4399. I would have

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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1 made inquiries to find out where she lived and who she was
2 and that would be my...my first note on this case.

3 Q I see. But do you have any notes of the substance of your
4 conversation?

5 A. No, sir.

6 Q The notes that you have in your notebook as you scroll
7 through the pages would they be in chronological order?

8 A. Not always but generally, not always.

9 Q Following your first discussion with Mary Ebsary, were your
10 suspicions or interests or anything aroused in any way?

11 A. My interest certainly was. I learned a very intimate
12 relationship between Sarson and Roy Ebsary had taken place
13 and as a result of that they both had been ejected from the
14 Ebsary home. She had it with them. However, like I say she
15 was not at the point of really damning Roy. It was just that
16 she could no longer live that way.

17 Q She gave you no statement at this stage, did she?

18 A. No, and she was a bit of a reluctant witness at this point.

19 Q Was there anybody with you when you spoke to her first?

20 A. No, sir.

21 Q Following then your neighbourhood inquiries and your
22 discussion...your first discussion with Mrs. Ebsary, what did
23 you do?

24 A. I believe within the next few days and the next note in my
25 notebook is "Jimmy MacNeil, 222 Mount Pleasant." I found it

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1 interesting as to why Mr. MacNeil would come forward and
2 tell the...tell the Sydney City Police that Roy Ebsary had
3 committed this crime. So I wanted to talk to him. I...perhaps
4 it's in the booklet, the date that I did on his statement,
5 because...

6 Q. Yes, it's...

7 A. ...I think there's a statement from him.

8 Q. There's a typed version of that, Staff Wheaton, at page 42 of
9 that booklet and it's dated the 8th of February.

10 A. Yes. Yeah. I would have seen Mary Ebsary some time
11 between the 4th and the 8th and I saw James MacNeil and I
12 was accompanied by Constable Doug MacLean on that
13 interview.

14 Q. Why would you have somebody accompany you on that
15 interview and say not on the first interview with Mary
16 Ebsary?

17 A. At this juncture, excuse me, Constable MacLean was on the
18 customs and excise section actually. I can offer, there's no
19 significance really other than that perhaps, like I say, I may
20 have been looking for a little help.

21 Q. Do you recall...

22 A. "You take this angle, I'll take this angle."

23 Q. Do you recall that meeting with Mr. MacNeil?

24 A. Yes, I do, yes.

25 Q. What condition was Mr. MacNeil in?

1 A. Mr. MacNeil was living in a small home in the Whitney Pier
2 area. He was..the interview took place in the kitchen. I recall
3 it was very hot with the oil stove going. He seemed to
4 become a little excited that I had arrived and I told him why
5 I was there and what I was investigating., the fact that we
6 had received a letter from ...the Chief of Police for the City of
7 Sydney had received a letter complaining that Donald
8 Marshall didn't do the murder and that Roy Ebsary did do the
9 murder, and I would like for him to tell me about that. His
10 condition seemed excitable. He advised me that he had bad
11 nerves and was taking some medication for it.

12 A. I asked him if he was capable of telling me and "Do you know
13 the difference between right and wrong?" and so on and he
14 said that he did. He seemed lucid to me and seemed to have a
15 good understanding of it. He didn't really, again, he was a
16 reluctant witness. He really didn't want to become involved
17 again.

18 Q. What is your practice when you're taking a statement? Is
19 there a question and answer approach or do you let them talk
20 and then write it down afterwards? What's the normal
21 practice?

22 A. My normal practice is that I will assess the individual and the
23 statement will be taken...It's such a broad spectrum. A
24 warrant statement, I might take different than a statement
25 from a witness. A warrant statement, of course, you would

1 warn the individual. A witness, I would not warn the
2 individual. I have a tendency to take narrative statements
3 rather than question and answer statements and I let the
4 man tell me the story, usually, and may ask him a few
5 questions after he clarifies certain points and then I reduce it
6 to writing and read it to him and if he can't read, I'll try to
7 get someone who can read and read it to him and then ask
8 him if he wishes to sign it.

9 Q. But you would listen to the story, ask clarifying questions and
10 then reduce it to writing?

11 A. And let him give it to me as his words, not mine.

12 Q. The reduction to writing would be the words coming to you
13 from the witness?

14 A. No, the words coming from the witness to me.

15 Q. Yes.

16 A. In this case, I would say, "Jimmy, now do you want to tell
17 me," and he would tell me, "I remember the Seale murder." I
18 would write, "I remember the Seale murder. That night Roy
19 Ebsary and I were at the State Tavern on George Street,
20 Sydney," and then write that. Sentence by sentence.

21 Q. You write as he's talking.

22 A. And quite often witnesses will get ahead of you and you'll ask
23 them to slow down.

24 Q. How many times did you see Mr. MacNeil?

25 A. On that day or total?

1 Q. Total?

2 A. I've seen him numerous, many, many times, maybe a
3 hundred times.

4 Q. Did you interview him?

5 A. Did you say "see him" or "interview him," sir? I'm sorry, I
6 thought you said "see him."

7 Q. No, a poor choice of words on my part. How many times did
8 you interview him?

9 A. I interviewed him once.

10 Q. Once. And I believe in this statement, he indicates, "Roy
11 stabbed the Negro and sort of come at the Indian."

12 A. I beg your pardon, sir?

13 Q. He indicates in this statement, towards the end of it, "Roy
14 stabbed the Negro and sort of come at the Indian." Did you
15 believe him? The last sentence, I believe.

16 A. That's what the man told me. This was very early in the
17 investigation and I neither believed nor disbelieved him.

18 Q. What did you do then following the interview with Mr.
19 MacNeil?

20 A. I did a number of other interviews. Again, checking
21 backgrounds and what have you. Until such time that I was
22 prepared to go up and interview Mr. Sarson.

23 Q. Do you have any notes of your activity between seeing Mr.
24 MacNeil and Mr. Sarson?

25 A. No, sir, I don't believe so.

1 Q. Are you able to indicate from your memory what type of
2 inquiries they were that you conducted?

3 A. They were basically inquiries of, I believe I did a few of the
4 witnesses that I had been given statements of. I believe I
5 talked to Mr. Edwards, the crown prosecutor prior to going to
6 Pictou. I talked to Inspector Scott prior to going to Pictou. I
7 talked to Eugene Cole prior to going to Pictou. He was in
8 charge of Pictou Detachment. I did a records check on
9 Mitchell Bayne Sarson.

10 Q. So I don't misunderstand you, why did you talk to Eugene
11 Cole?

12 A. Eugene Cole was the sergeant in charge of Pictou Detachment
13 where Mr. Sarson lived and I was interested in getting
14 background on Mr. Sarson. This is my normal pattern prior to
15 interviewing anyone. I like to know what people are like
16 prior to going into an interview.

17 Q. What did you find out?

18 A. He recalled him and said that he lived down near the tavern,
19 a bit of a druggie. I don't believe he knew at that time, he
20 may have told me, I can't recall if it was during that phone
21 conversation or after the Sarson interview, I went to the
22 Pictou office and talked to Eugene Cole and it was either/or
23 that I learned that Marshall during the escape had gone and
24 stayed with Shelly Sarson and I believe one of Sergeant Cole's
25 men had been stationed there at the time. I'm not sure. He

1 knew of it and I gained information of it, anyway, during my
2 trip to Pictou with Corporal Carroll.

3 Q. At page 45 of that Volume 34, there is a typed version of a
4 statement from Mitchell Sarson. It indicates it was taken by
5 yourself and Corporal Carroll and was on the 9th of February,
6 which would be the day following your statement from Mr.
7 MacNeil.

8 A. I beg your pardon?

9 Q. The statement is indicated as having been taken on the 9th of
10 February.

11 A. Yes, sir.

12 Q. And that would be the next day following your discussions
13 with Mr. MacNeil, the statement from him was on the 8th?

14 A. Yes.

15 Q. Okay. Other than the statement, did you take any notes of
16 your discussions with Mr. Sarson?

17 A. I don't believe I did, sir, no.

18 Q. What were your impressions of Mr. Sarson?

19 A. My impressions of Mr. Sarson? He was a very thin young
20 man, rather anaemic. Again, I asked him if he was taking any
21 medication because he was a little hyper. He looked like a
22 chap who might use illegal drugs. I left with the impression
23 that he basically seemed to be honest but there was a
24 possibility of collusion between he and Marshall in cooking
25 this story up. That possibility was there.

1 Q. How many times did you interview Mr. Sarson?

2 A. Once.

3 Q. Did you ever consider the use of a polygraph for Mr. Sarson?

4 A. Not that I can recall at that juncture, no.

5 Q. Is this a tool that you yourself have used in the course of any
6 investigations?

7 A. I beg your pardon, sir? I'm sorry, I'm a little hard of hearing.

8 Q. I'm sorry, I tend to speak a little bit low. Have you had
9 occasion to use a polygraph in any investigations that you
10 have been involved in?

11 A. Many times, sir, yes.

12 Q. What is your opinion on the proper use of the polygraph in an
13 investigation?

14 A. I feel that the polygraph is a good aid to an investigator but it
15 is not the panacea to cure all ills and it should be used as an
16 aid.

17 Q. An aid for what?

18 A. Good investigation, good legwork, interviewing witnesses, et
19 cetera, putting together a case. I have never had a case
20 where a polygraph has been used in court.

21 Q. Do you have any reluctance to use it?

22 A. I have no reluctance to use it, no.

23 Q. Now if my chronology is correct, and please tell me if I'm
24 wrong, would be shortly following your interview with Mr.
25 Sarson that your first report was filed, and I'm looking

1 particularly at pages five through eight of Volume 34. I'd just
2 like to ask you about this dating so I understand it. On page
3 five, there is a...Do you have it, Staff Wheaton?

4 A. No, I haven't.

5 Q. Page five of the volume.

6 A. It's way toward the front, is it?

7 Q. Yes.

8 A. Yes, sir.

9 Q. There is a date there, '82/02/03, that would be the third of
10 February. What does that date represent?

11 A. That date represents to me the date that Inspector Scott
12 advised that on that even date, on that date he, on the 3rd of
13 February, he had attended a meeting requested by Chief John
14 F. MacIntyre of the Sydney Police Department in the office of
15 Crown Prosecutor Frank Edwards and then there seems to be
16 some scenario of what happened in that meeting. Perhaps for
17 clarification, if I might, Mr. Orsborn, this is an occurrence
18 report, as noted at the top. Within the Mounted Police, this is
19 a sort of, this is not an official report, if you will. It would not
20 leave my office. It's a bit of a running chronology. It's an in-
21 house type of thing. It is not a report that I would submit to
22 Halifax. That would be done on what is known as, again,
23 Mounted Police terminology, "C237" and it would be done in a
24 more official and perhaps more precise manner.

25 Q. The bottom right-hand corner of that page five, there is a

1 date in handwriting which appears to be 82/02/12. Would
2 that be the date on which the pages were completed?

3 A. It's cut off in my copy but it does bear my signature "W" in
4 my hand and it could mean that that would be the date that I
5 read that. That would be typed by my secretary.

6 Q. I'm just trying to understand the time period covered by the
7 substance of the report. Would it be fair to assume that it
8 would cover activity between the third of February and the
9 12th of February?

10 A. That would quite probably be it, sir, yes.

11 Q. I'd like to move to page nine. A lot of the material is covered
12 in your subsequent report, so I won't duplicate it. The report
13 on page nine commencing at page nine and running through
14 for a number of pages after that, and the date at the top is
15 82/02/25.

16 A. Yes, sir.

17 Q. Is this what you call a "C237"?

18 A. Yes, it's noted on the bottom left there, yes.

19 Q. Okay, good. And the date at the top, 82/02/25, what does
20 that date represent?

21 A. That date, again, could mean the date that...This is a formal
22 report which I would submit to my officer commanding,
23 Inspector Scott, for furtherance to Halifax, if he's agreed with
24 it. He would proofread it and it would indicate possibly the
25 date. This type of report, I would...The first type, I would

1 dictate to my secretary. This type, I would write in longhand.
2 It could mean the date that I sat down to begin writing it in
3 longhand. It doesn't necessarily mean, you know, the date
4 that even that my secretary got it. It might take me two days
5 to write it, vis-a-vis phone calls or going doing this or that or
6 the next thing.

7 Q. The reason I ask is there is a, I believe, some activity in the
8 report that occurred subsequent to the date mentioned,
9 82/02/25.

10 A. Oh, yes.

11 Q. This would be the date on which you start compiling it?

12 A. Yes, and then subsequent things could have happened and I
13 noted the, at the end of the report, there's a forwarding
14 minute.

15 Q. Right.

16 A. Dated the 12th.

17 Q. Right.

18 A. That would have been the date that Inspector Scott started to
19 write his forwarding minute to the...

20 Q. So the report would not cover anything following that 12th of
21 March date.

22 A. I haven't read the report.

23 Q. Well, I would assume it wouldn't.

24 A. But I would assume it wouldn't. I'd have to read it.

25 11:00 INQUIRY RECESSED UNTIL 11:22 A.M.

1 BY MR. ORSBORN

2 Q. Staff Wheaton, I'd like to go to the report which starts on
3 page nine of Volume 34, dated 82/02/25, at the top, ask a
4 number of questions about some of the comments in the
5 report and then again dealing with your contact with the
6 witnesses, trying to keep it as chronological as possible. You
7 note in Paragraph 3 of the report, the last couple of sentences
8 of Paragraph 3:

9 The chief [referring to Chief MacIntyre]
10 turned over all statements taken in the
11 case and thoroughly explained the case to
12 Inspector Scott and later to myself. The
 description of the offence is as follows.

13 When you say "the chief turned over all statements," what are
14 you referring to? What meetings with the chief?

15 A. This would be the meeting that Inspector Scott had with the
16 chief on the 3rd and the meeting that I had with the chief on
17 the 4th. I believed at that juncture, in Paragraph 3 as I state,
18 that I had all the statements in the case. The chief had led
19 me to believe that, told me that, I believed that.

20 Q. That paragraph then refers to your one meeting with him and
21 then Inspector Scott's briefing of you.

22 A. Inspector Scott's briefing of me and my meeting with Chief
23 MacIntyre on the 4th.

24 Q. Now in Paragraph 5 when you're describing the offence, you
25 say:

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On the date in question, the Sydney City Police had three vehicles on duty which were immediately dispatched to the scene.

What was the basis of your conclusion that three vehicles were dispatched to the scene?

A. This would be from my conversation with the chief. I don't believe I had their occurrence reports at that time, sir.

Q. I see. If I can direct your attention to page 26.

A. I may have, but I don't recall.

Q. Page 26 of the report, sorry, of the volume, page 26?

A. I'm finding numbers here, sir, and numbers up here. Which of the two, like there's a number here and a number here. This is the numbers up in the upper right? Okay.

Q. I just direct your attention to the third line there. This is a copy of a continuation report of the Sydney Police Department dated May 30th, 1971.

A. Yes, sir.

Q. Constables Walsh and Mroz. The third line talks about "Cars 1, 4, 3". Is it possible that that would be the source of your information?

A. Yes, sir.

Q. Did you, in fact, check to see whether or not three cars were dispatched to the scene?

A. I believe the chief and I discussed it and I would have taken it on the basis of this.

1 Q. The statement.

2 A. And later, Walsh, Mroz, and the police officers, but I don't
3 believe they were interviewed at this juncture.

4 Q. Is that an accurate statement, that there were three vehicles
5 dispatched to the scene? I should point out that our
6 evidence is, and I think the rest of the documentation
7 indicates, that there were only two vehicles on duty at the
8 scene.

9 A. In the first sentence, it states that,

10
11 At this time as a result the police called to
12 the vicinity and all cars on the town side
were dispatched.

13 So there may have been car, of the three cars--1, 4, and 3, one
14 of them may not have been on the town side, I assume.

15 Q. Okay. In Paragraph 6 on page 10, the following page, your
16 note is in Paragraph 6:

17 Numerous neighborhood inquiries were
18 conducted and statements taken.

19 I understand this would refer to the 1971 investigation? Is
20 that, this is your comment on the 1971 investigation.

21 A. Yes, sir.

22 Q. What would be the basis of that statement?

23 A. Again, my conversation with the chief and the statements
24 turned over to me by the chief, or by Inspector Scott.

25 Q. Paragraph 7, about eight or 10 lines from the bottom of the

1 page, you say: "There is no statement taken from Patterson,"
2 because he is referred to, I think, in two or three statements.
3 "No statement taken from Patterson and to date he cannot be
4 located." Who advised you that he could not be located?

5 A. No one advised me, sir. I'm saying that there were no
6 statements taken from Patterson and to date he cannot be
7 located. That meant I could not locate him either.

8 Q. What efforts did you make to locate him?

9 A. I looked around the City of Sydney. I made inquiries. I
10 contacted sources. I spoke to Sydney City Police people. As a
11 matter of fact, I even spoke to the investigators for the
12 Commission to see if they ever located him. No, I couldn't
13 locate him and I don't believe he's been located.

14 Q. You spoke to the investigators for the Commission back in
15 1982?

16 A. No, I mean now. I don't believe he's ever been located.

17 Q. Incredible foresight.

18 A. No, I didn't realize you meant in '82, sir.

19 Q. Sorry, in 1982, did you make these efforts in 1982?

20 A. Yes, sir.

21 Q. What Sydney Police people did you talk to?

22 A. I don't remember specifically which one, which members.

23 Q. Did you speak to any members of his family?

24 A. I did not find the family.

25 Q. Did you see if he had a police record?

1 A. I don't recall doing that.

2 Q. On a similar vein, Staff Wheaton, in Paragraph 8, there is
3 reference in that paragraph to Mr. Chant returning to Mr.
4 Seale in the company of others. Mr. Chant has testified that
5 he went around the park in a car.

6 A. Yes, sir, may I read the paragraph?

7 Q. Please.

8 A. What's your question, first of all?

9 Q. The question is whether or not, number one, you inquired as
10 to what efforts were made to locate these others in 1971 and
11 what efforts, if any, you made in 1982 to locate them?

12 A. Well, I didn't investigate it in 1971, sir. In 1982, I made
13 considerable efforts to try to find out who had taken Marshall
14 from side of the park to the other and to follow the path of
15 Mr. Chant.

16 Q. What efforts did you make to find these people then in
17 1982?

18 A. Find which people now?

19 Q. The people that had driven Mr. Chant around to Mr. Seale?

20 A. May I just read the paragraph you're referring to?

21 Q. Please.

22 A. So you're asking me what efforts I made in 1982 to find out
23 who was driving the car that conveyed Chant and Pratico
24 back to the scene of this murder?

25 Q. That was one question, yes.

1 A. Okay. In that regard, I interviewed Mr. Chant and Mr.
2 Marshall. I tried to obtain a description of the car. Either
3 myself or one of the other officers had spoken to Mr.
4 Mattson, who looked out his upstairs window to see if he
5 could get a description and had a description of the car. As I
6 recall, the closest I ever came to it it was a brown Chevelle or
7 Nova motor vehicle. I believe the people, the guy and the
8 girl, there was a chap and his girlfriend who were first at the
9 scene after Marshall left the scene and came back. They
10 weren't there but they were in the area and I believe they
11 talked to, he was talked to. I don't know if she was. In
12 regards to, did you see a brown car go by.

13 Q. Did you raise with Chief MacIntyre, ask him what efforts he
14 made to locate the car and its occupants?

15 A. I have no recall whether I did or didn't. I may have, sir, I
16 don't know.

17 Q. Did you raise with Chief MacIntyre the efforts that he made
18 to locate Mr. Patterson?

19 A. Yes.

20 Q. What was his response?

21 A. He couldn't find him.

22 Q. Did he say what steps he took to find him?

23 A. No.

24 Q. Did you ask him?

25 A. Not that I recall.

1 Q. And then Paragraphs 8 and 9, you refer to the two statements
2 of Mr. Chant and Mr. Pratico. I'm just curious, the later
3 statements of Mr. Pratico and Mr. Chant taken on the 4th of
4 June were not attached to your report. Is there any reason
5 for that?

6 A. They were not attached to my report?

7 Q. No. I think in a subsequent report you were asked to provide
8 them.

9 A. I have no...

10 MR. PUGSLEY

11 No what?

12 STAFF SGT. WHEATON

13 A. No comment.

14 MR. ORSBORN

15 I'm sorry?

16 MR. PUGSLEY

17 I didn't hear the response.

18 MR. ORSBORN

19 He didn't have an answer as to why they were not attached.

20 BY MR. ORSBORN

21 Q. You indicate again, sir, Paragraph 10, right in the middle of
22 Paragraph 10:
23
24
25

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Chief MacIntyre advises he [and this is
2 referring to Chant] lied in the first instance
3 at the instigation of and from fear of
4 Marshall.

5 A. Yes, sir.

6 Q. What was the basis for that statement, sir?

7 A. That's what Chief MacIntyre advised me.

8 Q. In your interview with him on the 4th.

9 A. Yes, sir.

10 Q. Did he say why Mr. Chant was afraid of Marshall?

11 A. Yes, he feared for his safety, according to the chief.

12 Q. Did he indicate that Mr. Marshall had threatened him?

13 A. Yes, and other Indians had staked out his house and this sort
14 of thing.

15 Q. Mr. Chant?

16 A. Mr. Chant's? No. I mean Mr. Pratico. I thought you were
17 saying...I'm sorry. I've got the two of them mixed up here.
18 You're referring to Mr. Chant now?

19 Q. I believe he's the subject of your comment in Paragraph 10.

20 A. Yes. Okay, in Mr. Chant's case, the same, a fear of Mr.
21 Marshall or, as Chief MacIntyre indicated, the Indians. Not as
22 many overt acts, if you will, in the case of Mr. Pratico but
23 that's what he advised me.

24 Q. How were you aware of that?

25 A. Jimmy MacNeil told me.

Q. In the interview.

- 1 A. Yes, sir.
- 2 Q. Any other sources?
- 3 A. Not to my independent recollection, sir, no.
- 4 Q. How long were you with Mr. Marshall on the 18th?
- 5 A. Approximately half an hour, sir.
- 6 Q. That Mr. Chant was afraid of Indians of which Mr. Marshall
7 was one?
- 8 A. Yes.
- 9 Q. The reference again in that paragraph, the following sentence:
10 It will noted that the second statement is signed by Detective
11 MacIntyre, et cetera, et cetera, and other names listed. Was
12 that your conclusion that the statement was signed?
- 13 A. Which? This Paragraph 10, sir?
- 14 Q. Yes, right in the middle. We noted that the second statement,
15 this is from Maynard Chant, is signed by Detective Sergeant
16 John MacIntyre, William Urquhart, Mrs. Chant, et cetera.
- 17 A. Yeah, that was my feeling at that point in the investigation.
- 18 Q. What was that feeling based on?
- 19 A. My conversation with Chief MacIntyre and my... I really can't
20 recall if I had, you know, I had the second statement. My
21 viewing of the second statement...
- 22 Q. Perhaps if you were to have Volume 16, please, at page 46,
23 Staff Wheaton, there is a typed version of that statement.
24 Page 46?
- 25 A. Yes, sir.

1 Q. And the names appear at pages 48 and 49. The question is
2 whether or not from viewing of that statement, would you
3 draw the conclusion that it was signed by those persons?

4 A. Yes.

5 Q. So then would it be fair to say that this is then your
6 conclusion that the statement is signed and not Chief
7 MacIntyre suggesting to you that it was signed?

8 A. No, a combination of both, sir.

9 Q. A combination of both? When you wrote this report, had you
10 seen any handwritten statements?

11 A. No, sir.

12 Q. I think that pretty well completes in your report the
13 summary of the evidence itself. Did you have occasion to
14 meet with Mr. Aronson at any time during the early stage of
15 your investigation?

16 A. Yes, sir.

17 Q. Do you know when that was?

18 A. No, sir.

19 Q. I should point out that we expect that Corporal Carroll when
20 he testifies will refer to his notes and there is a notation of an
21 interview with Mr. Aronson on the 11th of February. Would
22 that be...

23 A. That would be consistent.

24 Q. About right?

25 A. Yes.

1 Q. Did you meet Mr. Aronson with Corporal Carroll?

2 A. Yes, sir.

3 Q. Why did you meet him?

4 A. He came to our office and asked for an interview.

5 Q. What was the substance of that interview?

6 A. To discuss his letter to Chief MacIntyre. He was aware that
7 we were investigating it and wished to discuss it with us to
8 see where we were going with this complaint.

9 Q. Did you tell him?

10 A. Yes, sir.

11 Q. Were you under any restrictions at all as to what information
12 you could impart to people inquiring?

13 A. One is always under restrictions, in a way, in an
14 investigation. It would depend on who was doing the
15 inquiring. In this case, it was Mr. Aronson. He made the
16 initial complaint and as the complainant, I felt that he had a
17 right to know where we were going with our investigation.

18 Q. You didn't need anybody's permission to speak to him.

19 A. No, sir.

20 Q. And you advised him what had happened in your
21 investigation to date?

22 A. Up until that time, yes, sir.

23 Q. Did you provide him with copies of any statements?

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

25 Q. Again, trying to go in order. Your own notes indicate that you

1 spoke to Mrs. Pratico on the 15th of February and that
2 interview, I believe, is referred to in Paragraph 19 on page
3 14. Do you have any notes of that interview with Mrs.
4 Pratico?

5 A. I did not interview Mr. Pratico, sir, Corporal Carroll did.

6 Q. I'm sorry, Mrs. Pratico.

7 A. Mrs. Pratico?

8 Q. Mrs. Pratico, I'm sorry.

9 A. I'd have to look at my notebook, sir, if I could, to refresh my
10 memory. I don't know if I made notes of that or not. Yes, I
11 have an interview here of Mrs. M. Pratico, mother of John L,
12 10 a.m., 15th February '82.

13 Q. Do you have any notes of the substance of the interview?

14 A. No, sir.

15 Q. The comments then in Paragraph 19 about what Mrs. Pratico
16 has stated to you, are these then relying on your memory?

17 A. Yes, sir.

18 Q. Mrs. Pratico indicated to you that her son was afraid of Mr.
19 Marshall getting out of jail and killing him. Did she indicate
20 the basis for that fear?

21 A. She indicated to me back in 1971 there were problems with
22 Indian boys being parked across the street from their house
23 at one point. And that since the trial, he still up to 1982 had
24 a fear that Marshall would one day get out of jail and kill him.

25 Q. Was there any suggestion by Mrs. Pratico that her son, John,

1 had lied at trial?

2 A. That he son, John, had lied where, sir?

3 Q. At trial?

4 A. No, sir.

5 Q. So she...

6 A. In a way, and in another way there was.

7 Q. What was that other way?

8 A. Because it was in that interview with Mrs. Pratico that she
9 stated or told me that on the morning when it was on the
10 radio that there had been a murder in the park, he didn't
11 know who committed the murder. He asked her what the
12 radio said. So while she didn't make any confessions to me,
13 but in her narrative to me, this indicated that if he had been
14 in the park and been a witness to the murder, he should have
15 known without having to ask his mother the next morning.
16 And his mother was aware of that. She told me that.

17 Q. Why would that comment not appear in your report?

18 A. I really can't explain that. It does, I believe, appear in
19 subsequent reports.

20 Q. There's a notation in...I'm sorry?

21 A. If I might just expand on this, I don't know exactly where we
22 are in the report. The way the report is written, it's written
23 over a considerable period of time or a fair period of time. In
24 the first portion, I outlined what I knew and from the 3rd on
25 through, what the chief had told me, and then I break down

1 each witness and I give what happened back in '71 and then I
2 continue on as the investigation continued on. And what was
3 known at one time in the investigation and what was
4 subsequently found out in another time of the investigation,
5 was two different things.

6 Q. There's a notation, sir, in Frank Edwards' notes and, for the
7 record, I'll simply refer to Volume 17 at page one. He has a
8 note of a meeting with you and Corporal Carroll on February
9 the 16th.

10 A. Yes.

11 Q. Do you have any recollection of meeting Mr. Edwards at that
12 date?

13 A. Not an independent recollection, no, sir. I had numerous
14 meetings with Mr. Edwards during the investigation.

15 Q. What was the formal relationship between yourself and Mr.
16 Edwards during this investigation? Were you reporting to
17 him?

18 A. Mr. Edwards was the crown prosecutor and as I proceeded
19 with the investigation or things of an evidentiary nature were
20 found out, I would report it to him on that date or maybe at
21 the end of the week to recap what had come up that week,
22 depending on Mr. Edwards' court schedule and my schedule.
23 We maintained a loose liaison and if it was a really critical
24 matter or what have you, we would call one another.

25 Q. Would you take direction from him?

1 A. Oh, yes, yeah, legal direction.

2 Q. Would you take direction from him as to the course of your
3 investigation?

4 A. I would take into consideration his opinion, but the conduct of
5 the investigation would be up to myself and Inspector Scott,
6 or our bosses or our immediate superiors in Halifax or the
7 Attorney General's department.

8 Q. So the conduct of the investigation, who to see, who not to
9 see and when to see them, would be through the RCMP line?

10 A. Yes.

11 Q. Just let me understand that line of authority, then you said
12 Inspector Scott, he was your superior in Sydney?

13 A. He was my immediate superior, yes, sir.

14 Q. And you would report to him?

15 A. I would report to him.

16 Q. And beyond Inspector Scott, where do we go?

17 A. He would then report to Superintendent Christian, the
18 Criminal Operations officer, or as we called them in those
19 days, the "CIB officer," who would then liaise with the
20 Attorney General's Department.

21 Q. But you would not take direction on the conduct of the
22 investigation from Mr. Edwards?

23 A. I would take into consideration what he said.

24 Q. But the word was "direction".

25 A. But I... Mr. Edwards would not direct the RCMP on how to do

1 their job as such.

2 Q. Paragraph 17, top of page 14, again on the 16th of February,
3 there is reference to an interview with Mr. Chant and a
4 statement was taken from him. Did you know or know of Mr.
5 Chant prior to interviewing him?

6 A. Yes, sir.

7 Q. What did you know of him?

8 A. In my time that I was in Sydney in charge of the drug section,
9 Mr. Chant's name had surfaced as being a petty drug dealer in
10 Louisbourg. He was very, he was a young man. I had never
11 spoken to him but I did know who he was.

12 Q. Do you recall the circumstances of that interview with Mr.
13 Chant?

14 A. Yes, I do, sir.

15 Q. What do you recall?

16 A. On the afternoon of the 16th, Corporal Carroll and myself
17 went to Sydney and Mr. Chant was employed at a fish plant
18 as a fish cutter. We spoke to the foreman who told us he was
19 on an assembly line type of operation. We went to the line
20 where he was working and I asked him if he could just come
21 over in a corner for a minute that I'd like to have a brief talk
22 with him and he, his facial expression changed. He said that
23 he would like to talk to us at home. He didn't want to talk to
24 us there. I just felt there was something funny about it after
25 we left. It was originally my intention to have, to take Mr.

1 Chant aside and ask him if what he had told Chief MacIntyre
2 and what he had given in evidence was the truth and if he
3 said it was, then I would continue on my way and continue
4 the investigation into Mr. Aronson's letter and probably
5 conclude it.

6 Q. Did you see Mr. Chant following your meeting in the fish
7 plant?

8 A. Yes, sir. That night, Corporal Carroll and I went to his
9 father's home in Louisbourg where he was living with his
10 wife and we conducted an interview with him and he gave
11 us a statement which, again, he gave it to us in narrative form
12 first and then it was reduced to writing and he dictated it
13 and I wrote it, in which he said that he basically, that he lied
14 in 1971.

15 Q. And the statement that came out of that meeting is
16 reproduced, I believe, at page 47 and 48 of this volume,
17 would that be correct?

18 A. Yes, sir.

19 Q. When you interviewed Mr. Chant, did you have with you the
20 statements that he had provided to the Sydney Police
21 Department?

22 A. I believe I did, yes, sir.

23 Q. Both of them?

24 A. Yes, sir, I had the file with me.

25 Q. Did you query Mr. Chant as to why he gave the first

1 statement on the 30th of May?

2 A. Yes, I did, sir.

3 Q. What was his response?

4 A. That he had been at the scene, taken his shirt off and placed
5 it on the Seale wound and that at the time, he was 14 years
6 old. It was really a horrendous wound and it really had an
7 impression on him and that he felt that he had told a police
8 officer that he had seen it all, meaning all of the wound itself
9 and that he was later, and that he followed his progression
10 that night to the hospital of the Sydney City Police and how
11 he got home and then on the statement of the 30th and he
12 said he said things in that statement which were not correct.

13 Q. Did he say why he gave that first incorrect statement?

14 A. He said he was pressured by the Sydney City Police.

15 Q. On the first statement?

16 A. To a degree, he felt pressure. To explain, he was caught up in
17 this thing about "I saw it all," is how he described it to me
18 and, therefore, he must have seen something. So he told them
19 he seen something.

20 Q. Was there any indication from him that he was scared of Mr.
21 Marshall or scared of Indians?

22 A. That came out during that first interview, yes.

23 Q. And from what came out during the first interview, you
24 nonetheless concluded that he gave the first statement
25 because of pressure from the Sydney Police?

1 A. That played a factor in it. He was caught up in his lie, the
2 way he described it to me. And he felt obligated to run with
3 it.

4 Q. I'm going to ask you a couple of questions about Paragraph 18
5 and the information in there, going back to page 14. You say
6 in Paragraph 18 about, again, eight or 10 lines down:

7
8 From that point on, he was interviewed by
9 the police and felt obligated to say
10 something so he repeated the story told to
11 him by Marshall in the car around the lake
12 and at the scene waiting for the police.

13 As I read that, suggesting that Mr. Chant was given
14 information by Marshall during the car trip and while he was
15 at the scene.

16 A. That's correct, sir, yes.

17 Q. What is the basis for that statement?

18 A. That's what Mr. Chant told me.

19 Q. Does that appear in his statement?

20 A. I haven't read the statement for a number of years, sir. I
21 don't know.

22 Q. If it does not appear in his statement and take my word that
23 it certainly does not appear in those words, where else
24 would it come from?

25 A. From his narrative, from talking to him.

Q. And that would then come from your memory?

A. Yes, sir.

1 Q. You have no notes of that conversation with Mr. Chant other
2 than the statement.

3 A. That's right, sir.

4 Q. Further down that paragraph, another five or six lines down,
5 you say:

6
7 He advised that the prosecutor threatened
8 him with a charge of perjury if he changed
9 his story.

10 Again, sir, take my word that that does not appear in those
11 words in the statement. Where would that information come
12 from?

13 A. Mr. Chant, sir.

14 Q. Again, from your memory?

15 A. Yes, sir.

16 Q. You indicate in this paragraph 18:

17 Mr. Chant volunteered this information to
18 the investigators absolutely without
19 prompting.

20 A. Yes, sir.

21 Q. Why did you think it was necessary to put that?

22 A. Well, the man was a bit unique in that he, it was like a
23 revelation to him or he seemed to be unburdening himself. It
24 made an impression on me, sir.

25 Q. Would it be consistent with your practice that you would
prompt people, anyway, when they were giving statements to

1 you?

2 A. No, it was just that he was so, like I say, unburdening himself.

3 Q. Anybody else present during this interview besides yourself
4 and Corporal Carroll?

5 A. I believe his wife was with him.

6 Q. What about his mother?

7 A. His mother was brought in after, or interviewed after taking
8 his statement.

9 Q. His mother was interviewed after?

10 A. Yes, because in it, he, I asked him, I don't know again if it
11 appears in the statement or not, I was interested to know if
12 he had ever told anyone else this because it was quite a
13 shocker and he said, "Yes," that he told his mother and his
14 minister. So I believe it was as I was writing the statement
15 itself or toward the end I indicated to Corporal Carroll
16 perhaps could go talk to the mother. I wanted him to do it
17 independently to see if the mother would say that. And the
18 mother did, in fact.

19 Q. Your report indicates that she was told, in fact, two years
20 prior to your...

21 A. That's what I mean. That's what I asked Mr. Chant, if he had
22 told anyone else prior to this, and he said that he had told his
23 mother and his minister.

24 Q. Did you inquire as to why nothing had been done for that
25 two-year period?

1 A. Yes.

2 Q. What was their response?

3 A. No response, really.

4 Q. Did you talk to the minister?

5 A. The minister was talked to, I believe, by Corporal Carroll.

6 Q. The next date that I'm aware of anything happening, Staff
7 Wheaton, would be the 18th of February, your visit to
8 Dorchester. Do you have any memory of anything happening
9 in this investigation between the 16th and 18th?

10 A. Again, I really don't know, sir. I could have been doing some
11 inquiries or it may have been, there's two days, it may have
12 been a weekend perhaps, I don't know.

13 Q. And we have at least a partially completed statement in
14 Corporal Carroll's handwriting of Junior Marshall dated the
15 18th of February. I understand this was taken in Dorchester.
16 Could you relate to us your memory of that visit to
17 Dorchester?

18 A. Yes, Corporal Carroll and I made arrangements with the
19 administrative staff for this visit. It was set up for that
20 date. Mr. Marshall agreed to see us. We, I have the interview
21 at 11:34 a.m. on the 18th, 18th of February 1982. Corporal
22 Carroll and I were taken by the prison staff to a small
23 interview room which consisted of a very small cubicle with a
24 long narrow table and chairs on either side. Corporal Carroll
25 was seated on one side of the table; I was seated on the other

1 side of the table. Mr. Marshall was brought in by a guard and
2 the door was shut and there we were. I introduced ourselves
3 to Mr. Marshall. He seemed rather surprised that we were
4 there and I had the letter from Mr. Aronson and I advised
5 him we were there in response to this letter and that if he
6 was innocent, that he should tell us his story, we would listen
7 to him and to be truthful with us.

8 Q Had you formed any opinions as to his innocence or guilt as a
9 result of your investigation to date?

10 A. I'd have to look at the dates again that we interviewed Chant.
11 I believe the Chant and Pratico interviews had been done and
12 I knew he was, in my mind, he was innocent. I didn't tell him
13 that.

14 Q You knew in your mind he was innocent?

15 A. Yes, sir.

16 Q What was there in your mind that brought you to that
17 conclusion?

18 A. Chant and Pratico had both recanted their statements. They
19 had both advised that they were, they had lied in 1971, as I
20 recall it and...

21 Q Just so you don't get crossed up in your dates, Staff Wheaton.
22 The first indication that we have of a statement from Mr.
23 Pratico is on the 25th of February at page 50 of that report.
24 So I would suggest...

25 A. Okay, no, well, I would just...

1 Q. Correct me if I'm wrong, that you had spoken only with Mr.
2 Chant.

3 A. Yeah, I had spoken only with Mr. Chant then and thank you
4 very much, sir. But I did have that in my mind, I will say
5 that quite frankly, because it was in my mind. I remember it
6 distinctly because I wrestled with should I tell him what I
7 have or should I not tell him what I have. And I thought I
8 will not tell him what I have because it would be very cruel
9 to a man who is in a penitentiary to say, "Why am I still in
10 here? Why don't they let me out then?" And I thought, and
11 also for his honesty to, so that he would be completely devoid
12 of any investigation done on the outside with him on the
13 inside. I wanted a very honest recount of what he had. He
14 had been in there for eleven years and I wanted to know
15 what was in his mind. But I, the Chant statement was, to me,
16 seemed very believable. The man seemed very honest. I
17 don't know, in my mind, I can only state that on the 18th of
18 February, I felt Marshall was innocent, in my own mind, my
19 own personal opinion, and that I wanted him to be very
20 honest and he talked, he started very slowly and recounted
21 what he could, again, remembering it was the Aronson angle
22 that I worked on to begin with.

23 Q. Was a partial statement taken from Mr. Marshall?

24 A. Yes, sir.

25 Q. I believe in that statement in looking at Exhibit 101, there is

1 reference there to a, at least a planned taking of money from
2 two gentlemen in the park.

3 A. Yes, sir.

4 Q. Did Mr. Marshall volunteer this information to you?

5 A. Yes, sir, and indicated to us he had never told anyone that
6 before. He didn't indicate it, he stated that.

7 Q. Did he say why?

8 A. He stated that he felt he would be charged with robbery or
9 cast him in a bad light and be further criminal repercussions
10 back in 1971. So he didn't tell his lawyers that.

11 Q. Were you aware prior to interviewing Mr. Marshall that
12 there had been a robbery attempt or a suggestion of a
13 robbery attempt?

14 A. Yes, sir, I was aware of that.

15 Q. Why was the interview not completed?

16 A. The guard came to the door. There had been a riot the
17 previous day. There was loud shouting, screaming, banging
18 on bars, what have you and he said, "Donald, I want to return
19 you to the population so you're not accused of being an
20 informant in this riot matter." I believe it was between
21 French and English factions in the jail. Donald Marshall
22 wanted to get back into that population very quickly and I
23 was led to believe from the guard that he would have to be
24 put in segregation which he didn't want to go into if he didn't
25 get back in there before the prisoners knew he was missing.

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

1 Q. Put in segregation why?

2 A. This seems to be something that has to be done in prisons and
3 I'm not, I've seen it happen before. In prisons, if an
4 individual is missing, anything is out of place, then the other
5 prisoners wants to know why. Everything has to have an
6 explanation. And there's sort of a constant balance between
7 officialdom in a prison and convicts themselves.

8 Q. Was Mr. Marshall warned prior to giving this statement?

9 A. Yes, I believe.

10 Q. There's no indication of it on the statement.

11 A. No, sir.

12 Q. Would it be your practice to put that notation on the
13 statement if he were warned?

14 A. Yes, sir.

15 Q. Anything about that interview with Mr. Marshall confirm or
16 modify your opinion that you had reached as to his
17 innocence?

18 A. He seemed very truthful to me. At one point he started to
19 cry. It was my impression that he was coming off as a very
20 truthful individual.

21 Q. Did you discuss the interview with Corporal Carroll following
22 it?

23 A. Yes, sir.

24 Q. What was that discussion?

25 A. Well, I don't believe in running a one-man show. If at all

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

1 possible I try to get other people's opinions and this is why I
2 enjoyed having Corporal Carroll with me. I. without telling
3 him my opinion I said, "What's your opinion?" and it was his
4 opinion that he was very truthful. We did this after we were
5 out in the car outside the prison itself. And that was the
6 impression that he came away with as well as myself.

7 Q. What did you do following the interview with Mr. Marshall?

8 A. Returned to Sydney and briefed Inspector Scott of the
9 interview and our impressions thereof. And our reasoning for
10 not having completed it and the fact that we would have to go
11 back to Dorchester again.

12 Q. Did you share with Inspector Scott your opinion as to Mr.
13 Marshall's innocence?

14 A. Yes, sir.

15 Q. The documentation indicates an interview with Dr. Mian on
16 the following the day, on the 19th of February. This is
17 referred to in Paragraph 20 at page 14 and there is a
18 statement from Dr. Mian at page 49 and this would be with
19 respect to John Pratico.

20 A. Yes, sir.

21 Q. Do you remember that interview, sir?

22 a. Yes, sir.

23 Q. And is Dr. Mian's statement a fair summary of that interview?

24 A. Yes, sir.

25 Q. And he indicated to you that Mr. Pratico "tends to manipulate

1 and fantasize."

2 A. That's correct, yes.

3 Q. The, a note on page 15, Staff Wheaton, paragraph 20, the
4 fourth line, you indicate "when confronted he becomes
5 aggressive and belligerent." I don't see that in the statement
6 from Dr. Mian. What would be the basis for that?

7 A. My basis for that, sir, it would be, as you can notice on the
8 first sentence that Dr. M.A. Mian, Director of Cape Breton
9 Hospital and Miss Anne MacLeod, hospital Staff
10 Administrator, we interviewed. They both concurred on their
11 views of Pratico.

12 Q. Right.

13 A. It would be reflecting the views of Dr. Mian and Miss
14 MacLeod, as well, I recall the, Miss MacLeod was in charge of
15 the files, opened the files and was reviewing them with me.

16 Q. Do you have any notes of that meeting other than that
17 statement?

18 A. No, sir.

19 Q. Now jumping ahead two days, the 21st, and again, if I'm
20 missing something that in your memory happened in those
21 two days please let me know. There is a notation in Frank
22 Edwards' notes, and for the record I'm looking at Volume 17
23 at page 3. And I believe it's the 21st, that you said to Mr.
24 Edwards, and this is Mr. Edwards' notes about line 6 or 7 on
25 page 3, "Harry...", I guess that's you.

1 A. Yes, sir.

2 Q.

3 Harry said there had been new
4 developments and that he and Scott had
5 decided there would be no further
6 communication until report for the
7 Attorney General was ready. At that time
8 they would sit down with me and discuss
9 it.

10 What does that mean, "there would be no further
11 communication." Let me ask you this, do you recall giving
12 information of that nature to Mr. Edwards?

13 A. Without reading what comes before and what comes after I,
14 at page 3, sir?

15 Q. Page 3, yes. At the, you see your name at the top left-hand
16 corner of the page there.

17 A.

18 Harry said there had been new
19 developments and that he and Scott had
20 decided there would be no further
21 communication until report for the
22 Attorney General was ready.

23 Q. Do you recall discussing with Inspector Scott the matter of
24 communications with Mr. Edwards?

25 A. Do I recall what, sir?

Q. Do you recall discussing with Inspector Scott what should or
should not be communicated to Mr. Edwards?

A. Not really.

Q. Do you recall indicating to Mr. Edwards that there wouldn't be

1 any further communication until a report was ready?

2 A. This says,

3 Phoned Harry at home approximately 3:30
4 p.m. and told him about conversation with
5 Chief that I had received several inquiries
6 from the Chief re progress of investigation.
7 Told him I was concerned about the
8 awkward position I was in, that I had been
9 deliberately vague about the situation until
10 today when I told him as above.

11 Q. If you don't remember, that's fine.

12 A. I don't know what the developments are. I don't doubt Mr.
13 Edwards at all but I just don't know...

14 Q. Would there be any reason that you would be concerned
15 about communicating with Mr. Edwards?

16 A. No, no.

17 Q. The next date indication that I can find, sir, is on the 22nd of
18 February when Mr. Ebsary visited your office. Are you able
19 to tell me if that's the correct chronology or not?

20 A. To the best of my knowledge, yes, sir.

21 Q. That visit is, I believe, referred to on Paragraph, on page 17,
22 Paragraph 26.

23 A. Yes, sir.

24 Q. Do you remember that visit?

25 A. Do you remember that...

Q. That visit?

A. Yes, sir.

- 1 Q. With Mr. Ebsary.
- 2 A. Yes.
- 3 Q. Was that your first contact with him?
- 4 A. I believe it was, sir.
- 5 Q. How did he strike you?
- 6 A. Bizarre. He was dressed in his full regalia.
- 7 Q. "Full regalia" meaning what?
- 8 A. Blue Burberry, medals, hat with a gold chain around, a
9 seaman's hat-type of thing. A Captain's hat. Women's
10 barrettes on his shoulders, epaulettes, as if it were rank,
11 insignias.
- 12 Q. Anything about the descriptions you had read in the
13 statements or transcripts that triggered an alarm when you
14 saw him?
- 15 A. Not an alarm, sir, but a concurrence of this is what the man
16 does look like and had been previously described.
- 17 Q. Did you make any notes of that interview with him?
- 18 A. Yes, I did, sir.
- 19 Q. And where are those notes?
- 20 A. In my notebook, sir.
- 21 Q. And that would be at, I guess, number 6, our typed version, is
22 it?
- 23 A. I beg your pardon, sir.
- 24 Q. I believe in our typed version that's number 6, I think.
- 25 A. Page 6, sir?

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

1 Q. No, no. I'm looking at our typed version of your notes. At
2 page 1, Item number 6. That simply indicates the time at
3 which he came to your office?

4 A. Yes, sir.

5 Q. Do you have any notes of the substance of the conversation
6 with him?

7 A. I believe somewhere there's a, like the beginning of a
8 statement, not in my notebook, but as I recall in, from the
9 correspondence back in our old GIS file there was a beginning
10 of a statement, as I recall. I took, asked the first question or
11 two and then turned it over to Jim Carroll because he was a
12 very difficult man to interview.

13 Q. We'll get to that. That, I believe, was the following day. But
14 do you have any notes of your conversation with him on the
15 22nd?

16 A. No, that, I'm referring to the 22nd.

17 Q. Oh, I see. Your recollection is that there was a statement
18 started on the 22nd.

19 A. Yes, sir.

20 Q. Have you seen it since?

21 A. I believe I saw it when I was reviewing the Mounted Police
22 files this weekend.

23 Q. Perhaps I might ask you then if this is the statement to which
24 you're referring. I'm showing Staff Wheaton the statement...

25 A. Yes, yeah. It's dated the 23rd but...

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

1 Q. Right. It's a statement of Roy Newman Ebsary dated the 23rd
2 of February...

3 A. Um-hmm.

4 Q. A time of 10:59 up in the top left-hand corner and it is
5 handwritten...

6 A. Yes, sir.

7 Q. Signed by R.N. Ebsary, and witness, Corporal Carroll.

8 A. Yes, sir.

9 Q. I believe that has been distributed, My Lord. Perhaps the
10 original could be identified as an exhibit.

11 CHAIRMAN

12 It would be, we gave the, the number we gave the copy was
13 Exhibit 90A, I think.

14 VOICE

15 No, this is another.

16 CHAIRMAN

17 Is this another?

18 MR. ORSBORN

19 No, this is another one, My Lord.

20 VOICE

21 It's not introduced yet.

22 A. Mr. Orsborn, if it would clear anything up ...

23 Q. Yes.

24 A. In having looked at this now and refreshing my memory by
25 looking at it, this was taken the 23rd and it was not taken at

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

1 our office. On the day following the 22nd, Corporal Carroll
2 and I went to the Ebsary home on Falmouth Street and this is
3 the statement.

4 Q. Okay.

EXHIBIT 103 - STATEMENT OF ROY NEWMAN EBSARY - 23

6 FEBRUARY

7 MR. ROSS

8 My Lord, if that's the one with 10:59 in the top left-hand I
9 think this is the one that was identified as 90A.

10 A. Is it?

11 COMMISSIONER POITRAS

12 90A are the notes. The handwritten notes of Wheaton.

13 A. I thought 90A was the...

14 MR. ROSS

15 That was 90B.

16 COMMISSIONER POITRAS

17 90B was the original of the notes. 90A is the copy of the
18 notes and 90B is the original of the notes.

19 CHAIRMAN

20 Don't blame me for confusing yourselves.

21 Q. What is your recollection, Staff Wheaton, of the, that first
22 meeting with Mr. Ebsary? And I believe your note indicates
23 that took approximately three hours and twenty-five
24 minutes.

25 A. Yes, sir.

1 Q. Do you have any recollection of that meeting?

2 A. Yes, sir.

3 Q. What is that?

4 A. My recollection of the meeting that the man was, came in
5 voluntarily. Came in to my office. I was seated behind the
6 desk. He was seated in front of the desk. Jim Carroll was
7 seated to his left. I gave him the police warning and advised
8 him that we were investigating the murder of Sandy Seale
9 and asked him if he wished to tell us anything about it. He
10 didn't answer my question. He went into great lengths about
11 religious items and how he was an ordained minister and so
12 on and then I would try to bring him back to the subject at
13 hand, then he would go off into his war experiences. How he
14 had sunk the Bismarck, et cetera. At 11:25 a.m. I left the
15 room and I returned to the room at 11:31, at which time I
16 read him Jimmy MacNeil's statement. Again, he just didn't
17 touch the subject. He would go off on another tangent and
18 this continued to approximately 1:41 at which time we were
19 getting nowhere and we'd gotten into the subject of his
20 sexuality and I accused him of being a "flaming old faggot"
21 and he got mad at me and that terminated the interview
22 pretty well.

23 Q. I can understand that. Did you get into any detail with him
24 about the incident?

25 A. I couldn't. He wouldn't, he would start talking about it and

1 then divert off to another subject. He would answer your
2 question with a question.

3 Q. What tactics were you taking with him?

4 A. My first approach was to let him talk. And he seemed to
5 thoroughly enjoy that so after about an hour of that I went
6 off on trying to question-answer, that didn't work either.

7 Q. Did you put any pressure on him?

8 A. Toward the end, yes.

9 Q. What was the nature of that pressure?

10 A. Verbal.

11 Q. What did you say to him?

12 A. Accusing him of it.

13 Q. You did accuse him of doing it?

14 A. Yes.

15 Q. What, just...

16 A. He wouldn't deny it...

17 Q. Tell me what that would....

18 A. He would say that, "Perhaps I have the key to this."

19 Q. How would you accuse him of it? Tell me.

20 A. "Did you stab Sandy Seale and Donald Marshall that night?"

21 Q. That doesn't sound like an accusation. That just sounds like a
22 question.

23 A. Well, that's how I put it to him. Words to that effect.

24 Q. Did you say, "You did it. You better tell me about it?"

25 A. Yes, I would say words to that effect.

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

- 1 Q. Would that be approved police practice in an interview?
- 2 A. At that period of the interview any statement given would
3 never had stood the test of a voir dire, so I would never have
4 had any anticipation of getting a statement in.
- 5 Q. Just go for it, right?
- 6 A. Yes.
- 7 Q. And I believe you, in fact, testified to that effect when you
8 did testify on a voir dire at Mr. Ebsary's trial. You did
9 indicate that, "I pointedly told him that he did it." Is that so?
- 10 A. Yes.
- 11 Q. Mr. Ebsary left after you...
- 12 A. Yes, sir.
- 13 Q. I believe that same day you had occasion to speak with Mr.
14 Ebsary on the telephone?
- 15 A. Yes, sir.
- 16 Q. And do you remember that?
- 17 A. Yes, sir.
- 18 Q. What do you remember from that?
- 19 A. 4:30 I received notification from my secretary that there was
20 a call for me and I went to the phone, it was Mr. Ebsary's
21 voice on the other end of the line and he made various
22 statements to me and as soon as I hung up the phone I
23 thought that they were extremely significant and I recorded
24 them then and there in my notebook.
- 25 Q. Yes. Mr. Ebsary introduced himself?

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

- 1 A. He referred to items that would lead me to believe that he
2 was exactly the same person who I was talking to earlier in
3 the day and the voice was the same as Mr. Ebsary. He did not
4 say, "This is Roy Ebsary."
- 5 Q. Did he sound sober?
- 6 A. Partially. I could tell he was drinking.
- 7 Q. And your notebook comments, I believe, are reproduced in
8 Paragraph 26 of this volume, page 17?
- 9 A. Yes, sir.
- 10 Q. And did you, in fact, send Corporal Carroll down to see him
11 that day?
- 12 A. Yes, sir.
- 13 Q. And did Corporal Carroll report anything to you following the
14 visit?
- 15 A. Basically, I believe, the contents of Paragraph 27 as I quickly
16 read them.
- 17 Q. There was no statement given that afternoon?
- 18 A. No, sir.
- 19 Q. What was your next contact with Mr. Ebsary?
- 20 A. The following day, the 23rd.
- 21 Q. And was there a statement taken from Mr. Ebsary on that
22 day?
- 23 A. The partial statement we referred to previously.
- 24 Q. Now that statement on the 23rd is signed by Mr. Ebsary and
25 witnessed by Corporal Carroll. Do you regard that as a partial

1 statement?

2 A. Well, I'm sorry, sir, a poor choice of words. No, it would be a
3 complete statement.

4 Q. That is a complete, that is a written statement.

5 A. Yes, sir.

6 Q. Do you recall the circumstances of that statement being
7 taken?

8 A. Yes, sir.

9 Q. What do you remember?

10 A. I remember going to the Ebsary apartment in this old home
11 and seating ourselves at a rather filthy kitchen table. And
12 Mr. Ebsary had been drinking. He was not drunk, but had
13 been drinking. There was a little brown dog jumping all over
14 the kitchen. It was my tact as you can see at the first of it not
15 to fool around with a lot of things. I felt he was playing with
16 us.

17 Q. Is this your writing at the beginning?

18 A. And at the beginning it was my writing. The first question,
19 first two questions are mine and then I turned it over to
20 Corporal Carroll and left as Mr. Ebsary more or less disgusted
21 me.

22 Q. You left Corporal Carroll to fend for himself.

23 A. Yes. That's right.

24 Q. A very small point, Staff Wheaton. When you were testifying
25 in January of '85 you just, and I'm reading from page 77 of

STAFF SERGEANT WHEATON, EXAM. BY MR. ORSBORN

1 Volume 8, you talk about this conversation and you say, "As
2 this conversation was getting nowhere we left." But I take it
3 that you left.

4 A. I left, yeah. I believe I waited for Corporal Carroll in the car.

5 Q. And he survived?

6 A. He made it out.

7 12:27 - 2:00 - LUNCH ADJOURNMENT

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