

1 INQUIRY RESUMES - 2:11 p.m.

2 EXAMINATION BY MR. ORSBORN[Cont'd.]

3
4 MR. CHAIRMAN

5 Mr. Orsborn.

6 MR. ORSBORN

7 You've been provided, My Lord, with a copy of Corporal
8 James Carroll's handwritten notes, a photocopy of those notes.
9 They consist of some twenty-eight pages and have been
10 circulated. I anticipate perhaps optimistically that Corporal
11 Carroll will be testifying this week. But in any event I would ask
12 that these notes be filed at this time, and I believe the next
13 number is 104.

14 EXHIBIT 104 - CPL. CARROLL'S HANDWRITTEN NOTES

15 Q Staff Wheaton, just before we broke for lunch we were
16 speaking of the day of February 23rd when you were at
17 Mr.Ebsary's house and you left him to go to Corporal Carroll.
18

19 A. Yes, sir.

20 Q And a statement was obtained which has been introduced as
21 Exhibit 103. And I think you testified that you waited out in
22 the car for Corporal Carroll. Did he show you the statement
23 when he came out?

24 A. Yes, sir, as I recall, he did.

25 Q And, that statement, as I read it, indicates certainly that there

1 was a robbery attempt and Mr. Ebsary, while not admitting to
2 the...to the stabbing indicates that Mr. Marshall did not do it,
3 is that...

4 A. As I recall.

5 Q. ...the correct reading of it?

6 A. I didn't read the statement when you gave it to me, I'm sorry.

7 Q. I see.

8 A. Yes, just by reading the first couple of paragraphs, yes, Mr.
9 Orsborn.

10 Q. Yes. All right. Now, if I might backtrack just for a moment,
11 Staff Wheaton, very quickly. Corporal Carroll's notes, on the
12 page...second page of those notes in about the centre of the
13 page, they indicate a patrol to Louisbourg to interview Chant
14 accompanied by yourself on the 11th of February, the first
15 statement we had was on the 16th. Do you recall a visit to
16 Louisbourg before you met Mr. Chant in the fish plant?

17 A. We made two patrols to Louisbourg, sir, that I can recall, and
18 one we met Mr. Chant in the fish plant and the other one we
19 met him at home.

20 Q. But...

21 A. My confusion is was it the same day that we...

22 Q. Was it not the same day?

23 A. ...were at the fish plant or was it the 11th we were at the fish
24 plant.

25 Q. Okay.

1 A. I...I...

2 Q. So, it's conceivable that you were at the fish plant on the 11th
3 and then came back to the...

4 A. He may have said "Come back on Saturday," or something,
5 yes.

6 Q. Okay. Get back then to the February 23rd, following the
7 initial meeting with Mr. Ebsary and the taking of the
8 statement on that day. Your report indicates that he
9 requested to meet with the Marshalls.

10 A. Yes, sir.

11 Q. Do you have a memory of that today?

12 A. Yes, I do, sir.

13 Q. What do you remember of that?

14 A. Mr. Ebsary indicated to us that if he were to meet with the
15 Marshalls that he held the key, so to speak, and those were
16 his words, not so to speak, "Held the key to this matter," and
17 he wanted to meet with the Marshalls and look at them in the
18 face and I assumed the way he was talking about it maybe
19 confess to Mr. and Mrs. Marshall. So, therefore, we arranged
20 a meeting at our headquarters in Sydney and Mr. and Mrs.
21 Marshall came in and met with Roy Ebsary.

22 Q. This was on the 23rd. Reading from page 18 of volume 34
23 paragraph 28 would...it indicates the 23rd.

24 A. Yes, sir. A meeting was held with Mr. and Mrs....

25 Q. Were you present at that meeting?

- 1 A. No, I was not. It was a private meeting at Mr. Ebsary's
2 request between himself, Donald Marshall and Mrs. Marshall.
- 3 Q. And when you say "Donald Marshall" you mean Donald
4 Marshall, Sr..
- 5 A. Donald Marshall, Sr..
- 6 Q. Yes.
- 7 A. I introduced them and Corporal Carroll was with me and then
8 we left the room and it was our conference room in Sydney
9 Subdivision and Mr. and Mrs. Marshall and Ebsary were in
10 the room and talked for some time.
- 11 Q. I see. And did you have...did you get a report of what
12 transpired at the meeting?
- 13 A. Yes. Would you like me to...
- 14 Q. Please.
- 15 A. As my memory serves me he ingratiated himself, if you will,
16 with the Ebsarys.
- 17 Q. Sorry.
- 18 A. Told Mrs. Ebsary what a beautiful woman she was.
- 19 Q. With the Marshalls.
- 20 A. This...Ebsary...Mrs. Marshall, I'm sorry. And, this is Ebsary
21 telling Mr. and Mrs. Marshall and just generally played the
22 role.
- 23 Q. Where did you get this information from?
- 24 A. From Mr. Marshall.
- 25 Q. Yes. And did Mr. Ebsary relate anything of substance...

1 A. No, sir.

2 Q. ...to them that you recall? There's a note at paragraph 28
3 that...

4 A. That's my note.

5 Q. You say at this meeting "He assured Mrs. Marshall that her
6 son did not stab anyone and that he would get him out of
7 prison." Do you recall being advised of that by Mr. Marshall?

8 A. Yes, that's right.

9 Q. Do you have any notes of Mr. Marshall told you?

10 A. No, sir.

11 Q. Do you know how long the meeting was?

12 A. No, sir, I don't have a written record of it, approximately half
13 an hour.

14 Q. Uh-hum.

15 A. Fifteen minutes to half an hour.

16 Q. And were there any conclusions reached that you were aware
17 of?

18 A. Nothing of a evidentiary nature, no, sir.

19 Q. What were the feelings of Mr. and Mrs. Marshall following the
20 meeting? Did they convey anything to you?

21 A. I think they were disappointed that something didn't come of
22 the meeting. They were naturally very concerned for their
23 son.

24 Q. And do you remember what you did after that? What was
25 the next step you took?

1 A. The 23rd.

2 Q. I would refer you to Volume 17 at page 2, Mr. Edward's notes
3 again, right in the centre of page 3 of Volume 17, there is a
4 notation there on the 23rd that you met with Corporal Carroll
5 and Mr. Edwards at his office to update him and the note
6 there is "Now believe Marshall to be innocent." Do you recall
7 indicating that to Mr. Edwards on that date?

8 A. I have no independent recollection of it, sir, but I don't doubt
9 at all the meeting took place.

10 Q. Do you know if this was the...would be the first occasion in
11 which you had advised Mr. Edwards or a representative of the
12 Department of the Attorney General of your belief that Mr.
13 Marshall was innocent?

14 A. No, sir, I don't believe it was the first occasion. I believe that
15 I...I know...I don't...that I reported that to Frank Edwards after
16 my trip to Dorchester and discussed my 18th of February
17 interview with him at that time, and the results thereof.

18 Q. But in any event, it was, if I understand you correctly,
19 certainly no later than February 23rd of 1982 in which the
20 RCMP advised...

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

22 Q. A representative of the Department of the Attorney General
23 that the belief was Mr. Marshall was innocent.

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

25 Q. That same note refers to a, what appears to be a telephone

1 conversation at eleven o'clock that night, apparently Mr.
2 Edwards calling you, note reads, "Suggested investigation not
3 complete until Chief MacIntyre questioned, though he should
4 not be privy to conduct of investigation until department has
5 had opportunity to decide upon it." Do you remember
6 receiving a call from Mr. Edwards late on February 23rd?

7 A. I don't recall that specific date and call. I know that Frank
8 Edwards and myself called one another on Saturdays,
9 Sundays, you know, there was no five-day work week in this
10 investigation at that point. And, at 11:00 p.m. it would not be
11 unusual that he did call me at that time.

12 Q. Uh-hum.

13 A. And the written notes as it's indicated suggested
14 "investigation not complete until Chief MacIntyre questioned,
15 though he should not be privy to conduct of investigation
16 until the Department has had the opportunity to decide upon
17 it," would be entirely consistent with Mr. Edwards' thinking
18 and my thinking at that time too.

19 Q. What was your thinking at that time with respect to the
20 questioning of Chief MacIntyre?

21 A. I felt that he should be questioned and given the opportunity
22 to explain and he subsequently was.

23 Q. Uh-hum. The matter about Chief MacIntyre not being privy
24 to conduct of investigation. What do you take that to mean?

25 A. Well, Mr. Edwards wished to advise his superiors of the status

1 of the investigation, Mr. Gale or Mr. Cole, I'm not sure who, of
2 the Attorney General's Department, prior to our questioning
3 of...or our bringing Chief MacIntyre up to date.

4 Q. Yes.

5 A. It wasn't questioning of him. It was bringing him up to date
6 on the investigation of the recanting statements principally at
7 this point.

8 Q. Yes.

9 A. Of Chant and Pratico, I believe. And, this was done on the
10 26th of February to the best of my knowledge.

11 Q. That.

12 A. The meeting was held with the Chief, Inspector Scott and
13 myself.

14 Q. Is there a suggestion the investigation should be done
15 without letting Chief MacIntyre know what was going on?

16 A. Not as far as I was concerned, nor Inspector Scott, and I really
17 don't believe in far...so far as Mr. Edwards was concerned. It's
18 just that this was a very delicate matter and he wished to
19 discuss it or...and a very political matter, for that matter, and
20 he wished to discuss it with the Attorney General's
21 Department.

22 Q. Why do you say it was a political matter?

23 A. Well, you have a man in a federal penitentiary who has gone
24 through the courts of this province who is now innocent and
25 everything seems to point to his innocence, therefore,

1 needless to say, the press is going to become involved at some
2 point, some decision has to be made as to what we do. Does
3 he get a Royal pardon? Does...where do we go with it? What
4 do we do with it? And, these were administrative, if you
5 will, matters, matters of some consequence to the Department
6 of the Attorney General. In that sense I use the word
7 political, I don't mean...

8 Q. Now, was this...

9 A. ...big...

10 Q. ...an assumption on your part or were these sentiments
11 expressed to you?

12 A. I beg your pardon.

13 Q. Were these sentiments expressed to you or was this an
14 assumption on your part?

15 A. This would be an assumption portion...partially and expressed
16 partially I suppose by Mr. Edwards.

17 Q. What did Mr. Edwards express to you?

18 A. I don't recall Mr. Edwards' exact words, but they would be
19 something along the line as he has written in his notes that he
20 felt that he would like to contact his Department in Halifax
21 prior to the Chief being questioned.

22 Q. Uh-hum.

23 A. I...I take a little exception to the word "questioned." I would
24 have used the word "appraised." The Chief was the one who
25 came to Mr. Edwards and to Inspector Scott and it's the same

1 as I said with Mr. Aronson, I feel he should be...it was my
2 feeling and I'm sure Inspector Scott and Mr. Edwards can
3 speak for themselves, but it was my feeling that the chief
4 should be appraised at every level of the investigation.

5 Q. Yes.

6 A. All the way through.

7 Q. The matter of appraising Chief on the investigation, is that a
8 part of the conduct of the investigation?

9 A. Yes, sir.

10 Q. Why would you then take direction from Mr. Edwards on the
11 the conduct of the investigation?

12 A. Because he is the Crown Prosecutor and it's not only the
13 conduct of the investigation, it's the legal aspect of the
14 investigation as well.

15 Q. You did tell us this morning, I believe, that you would not
16 take direction from Mr. Edwards on the...or the Crown on the
17 conduct itself of the investigation and you...

18 A. Yes.

19 Q. ...now told us that the questioning or appraising of the Chief
20 would be part of the conduct of the investigation.

21 A. Uh-hum.

22 Q. I'm trying to fit your testimony this morning with that of just
23 now.

24 A. It's Mr. Edwards notes, Mr. Orsborn.

25 Q. I appreciate that.

1 A> And, we would certainly be cognizant of the wishes of the
2 Crown but had we wished, and by "we" I mean Inspector
3 Scott and I, to appraise Chief MacIntyre the next day, ultra
4 vires to what Mr. Edwards said I think we would have done
5 it. But we didn't do it, I don't believe, and we appraised him
6 on the 26th of February. We would certainly be cognizant of
7 the...of the wishes of the Crown and try and follow his legal
8 expertise.

9 Q. Okay. We may come back to that point. The next date, sir,
10 that I have of anything taking place would be the 25th of...

11 MR. CHAIRMAN

12 Mr. Orsborn, before you leave the 23rd. Paragraph 28 of the
13 report, the last sentence, it makes reference to "Ebsary indicated
14 to the Marshalls and the investigators that everything hinges on
15 what happened to him on the 5th of March court appearance."
16 Are we to assume that there were...there was some discussion?

17 MR. ORSBORN

18 Thank-you, My Lord.

19 MR. CHAIRMAN

20 A day with further discussion between Ebsary and Staff
21 Sergeant Wheaton.

22 MR. ORSBORN

23 Q. The reference there to a conversation with Marshalls and the
24 investigators about Mr. Ebsary's upcoming court appearance.

25 A. Yes, sir, that...that's quite correct and there was discussion.

1 As I say, he was introduced by Corporal Carroll and myself
2 and then toward the end of it Corporal Carroll and
3 myself...Donald Marshall beckoned us into the room and there
4 was discussion. And, basically what that sentence means, I
5 felt that Ebsary was trying to fudge his way or get the Crown
6 to help him in his case of the 5th of March. And if we were to
7 put a good word in for him perhaps he would tell us
8 something about Donald Marshall and the stabbing.

9 Q. Uh-hum. What did you say to him?

10 A. No comment to him, I don't think, from me anyway.
11 Certainly didn't bend to his wishes in any way.

12 Q. There's a reference on page 15 of Volume 34, looking at
13 paragraph 21, to...

14 A. Page 15.

15 Q. Page 15, yes, sir. Paragraph 21 and it refers to a statement of
16 John Pratico taken on the 25th of February. My question is
17 prior to the 25th, between the 23rd and 25th, do you have
18 any memory of any work or contact in relation to this
19 investigation?

20 A. I beg your pardon again, sir.

21 Q. Between the 23rd and the 25th do you have any recollection
22 of any aspect of this investigation?

23 A. Not any independent.

24 Q. Yes. There's a statement taken by Corporal Carroll, I believe,
25 from Mr. Pratico, which is contained at pages 50 and 51 of the

1 volume. Is there any particular reason why you did not
2 interview Mr. Pratico?

3 A. It's just that I felt Corporal Carroll would be in a position to
4 interview Mr. Pratico better than I in that Mr. Pratico is
5 under care of the Social Services and there was a Mr.
6 Arsenault, as I recall, who was Mr. Jim Carroll's next-door
7 neighbour who was his supervisor and as he had personal
8 knowledge of Mr. Arsenault and could relate to him, I thought
9 that he should do it, and he did it.

10 Q. And did Corporal Carroll report back to you?

11 A. Yes, he did.

12 Q. After that interview.

13 A. Yes, sir.

14 Q. And what did he report to you?

15 A. Well, he brought back this statement that he had taken on the
16 25th from John Pratico.

17 Q. Yes. Did he give you any indication of his opinion of Mr.
18 Pratico?

19 A. He gave me his opinion of him, yes.

20 Q. Did he feel he was a credible person to take a statement
21 from?

22 A. As I recall Corporal Carroll was...found Mr. Pratico to be on
23 the surface very honest, very straightforward. Under
24 medication. I believe he met him at the hospital, if my
25 memory serves me correctly, where he was an outpatient and

1 used to go get his drugs for his hypertension or whatever. In
2 my recollection of it is that again we had another witness who
3 said he was pressured into lying or perjuring himself by Chief
4 MacIntyre.

5 Q. Uh-hum. Did Corporal Carroll provide you with any notes of
6 his discussions with Mr. Pratico other than the statement?

7 A. No. He may have made notes. I don't know.

8 Q. Did you ever mention any of this to Pratico yourself?

9 A. No, I did not.

10 Q. Never.

11 A. No.

12 Q. Did you ever meet him?

13 A. Yes.

14 Q. The following day then you referred to a briefing of Chief
15 MacIntyre and I believe that's referred to on the bottom of
16 page 18, Volume 34. There's a note there, I believe, by
17 Inspector...Inspector Scott, the bottom of the page, 82 02 26.
18 Is this the briefing to which you're referring, Staff Wheaton,
19 the bottom of page 18 at the end of the report?

20 A. Paragraph 29, sir.

21 Q. No, right at the bottom of the page, sir.

22 A. Oh, yes, this is the forwarding minute of Inspector Scott.

23 Q. Yes.

24 A. This would be the meeting I am referring to, yes, sir.

25 Q. Were you present?

1 A. Yes, sir.

2 Q. Just looking again at Mr. Edward's notes, Volume 17, page 5,
3 and I'm reading from the top of the...from the top of the
4 notes. "Harry Wheaton called this a.m. and he's writing on
5 March 1st to say that meeting with Chief MacIntyre had gone
6 down on Friday p.m. Just Inspector Scott attended as
7 Wheaton was involved in a surveillance exercise."

8 A. That is not correct about the surveillance exercise.

9 Q. So, you...you recall attending this meeting then with Chief
10 MacIntyre.

11 A. Oh, yes, and I recall a surveillance exercise, as well. As I say,
12 my drug section was doing privacy act thing and there was a
13 surveillance exercise. I think Mr. Edwards just got the two of
14 them mixed up.

15 Q. Okay. Was there anybody else present at this meeting with
16 yourself, Inspector Scott, and Chief MacIntyre?

17 A. No, sir.

18 Q. And where did it take place?

19 A. This took place at our headquarters on Alexander Street in
20 the City of Sydney in our conference room.

21 Q. Was the Chief asked to come down?

22 A. Yes.

23 Q. Who asked him?

24 A. I believe Inspector Scott. I don't recall asking him.

25 Q. And how long did the meeting take place? How long was it?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. It would have lasted some time. Half to three-quarters of an
2 hour.

3 Q. And what is your memory of that meeting?

4 A. The meeting was, the purpose of the meeting was to bring the
5 Chief up-to-date on the investigation. The two critical things
6 were the fact that Pratico and Chant had now advised that
7 they perjured themselves in 1971. This was outlined to the
8 Chief. Inspector Scott could give evidence better than I
9 because I think he would have been in touch with him prior
10 to this. As I recall it, the Chief was aware of that when he
11 come in. And he had some statements with him. And during
12 the meeting I recall Inspector Scott asking him why they
13 would change their story. And he basically would not answer
14 the question. He would bring up another point. At, he got off
15 on a, quite a discussion between he and Inspector Scott on the
16 wound on Marshall's arm. I recall that we discussed Pratico
17 and why would he change his story? And we got off on a
18 discussion of was it an upward thrust with the knife or a
19 downward thrust with the knife. And then we would get
20 back to point again. And finally, toward the end of the
21 meeting, I can't honestly recall if Inspector Scott put it to him
22 or I put him to him, but one of us put it to him, you know,
23 well why would these people be saying this, you know, at this
24 time. And his answer to us was in regards to Chant was that
25 he was a Born-Again Christian, you couldn't believe a word he

1 was saying, and in regards to Pratico, he was a bit of a nut
2 case anyway.

3 Q. Is that your recollection of the Chief's words or...

4 A. Yes.

5 Q. I see.

6 A. Words to that effect. And he produced statements from
7 Patricia Harriss and Terry Gushue. And he put great
8 emphasis on the statement of Patricia Harriss. That Patricia
9 Harriss could tell us that there were only two people on
10 Crescent Street that night, Marshall and Seale. And if we
11 could find Patricia Harriss that, you know, she could solve this
12 problem for us. And I recall the conversation, the meeting
13 more or less terminated and we walked out into the foyer
14 area where doors run into other offices, and it continued on
15 out there. And I was talking with John MacIntrye at this time
16 and asking, "Where can I find her?" And she had moved
17 away, John told me, some time ago and was living somewhere
18 in Ontario.

19 Q. Did you advise him during the meeting of your opinion that
20 Mr. Marshall was innocent?

21 A. It was my opinion, yes.

22 Q. Did you advise Chief MacIntrye of that?

23 A. Yes.

24 Q. What was his reaction to that?

25 A. Just nonplus. He didn't react to it.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Q. Now you say he brought some statements with him. Were
2 they in a file?

3 A. They were not in a file they were in a file, as I recall, a
4 brown, a leather-type of folder one would carry in one's, not
5 in, one with handle on it, but one might carry under one's
6 arm. And he produced them out of that and he would
7 (witness strikes document with hand), "There, look at that
8 now." And this was his style.

9 Q. Did you take any notes of that meeting?

10 A. No, I did not, sir.

11 Q. Now you say that the Chief produced a statement of Patricia
12 Harriss.

13 A. That is correct.

14 Q. What was the date of that statement?

15 A. The 18th of June 1971, as I recall.

16 Q. Was it typed or was it handwritten?

17 A. It was a photocopy of a typed statement.

18 Q. Did he give you the photocopy?

19 A. Yes, sir.

20 Q. And he produced a statement of Mr. Gushue?

21 A. Yes, sir.

22 Q. Again, a typed statement?

23 A. Typed, photocopy, yes, sir.

24 Q. And the date?

25 A. I can't recall if that was the 17th or 18th. I'm not sure.

1 Q. Did he leave that with you?

2 A. Yes, sir.

3 Q. Did he leave any other statements with you?

4 A. Not at this time, no, sir.

5 Q. Not at this time.

6 A. No.

7 Q. Did you ask for what was in his file?

8 A. Yes. Inspector Scott did in my presence and so did I. If he
9 had anything else, because it was a bit like a magician pulling
10 a rabbit out of a hat. We didn't know this existed and he
11 produced it for us and we pressed him, if he had anything
12 else to produce it at that time.

13 Q. Did you...

14 A. The meeting was not an unfriendly meeting. The meeting
15 was, tried to be as cordial as we possibly could.

16 Q. Were there documents left in this accordion file that he did
17 not give you?

18 A. He didn't have an accordion file, sir.

19 Q. I'm sorry.

20 A. He had a brown leather briefcase...

21 Q. I'm sorry.

22 A. The one you would hold without a handle.

23 Q. Well did you see other documents in the case other than the
24 two which you were provided with?

25 A. Not that I recall.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

- 1 Q. So it was just these two pieces of paper handed over.
- 2 A. That's correct, sir, yes.
- 3 Q. At that time had you wished, could you have compelled
4 production of any statements in the Chief's possession?
- 5 A. We could have obtained, I feel, probably a search warrant. I
6 had enough evidence possibly to get a search warrant.
- 7 Q. But there were avenues open to you to compel production.
- 8 A. Yes, sir. There were avenues open to us. The relations
9 between the Mounted Police and Sydney City Police would
10 have went to zilch but we could have done it.
- 11 Q. And was, during your investigation, was the relationship
12 between the Sydney Police and the RCMP of concern to you?
- 13 A. Yes, it was, sir.
- 14 Q. And was that a factor which perhaps dissuaded you from
15 demanding the file at this point?
- 16 A. We demanded the file as far as that goes verbally. We just
17 didn't get a search warrant and go down and search for it.
18 For one City, for the Mounted Police to go search the City
19 Police is quite a thing, really, and you, and there, again, as
20 you, one would normally go to the Attorney General's
21 Department and request instructions in this regard. In
22 previous Chiefs of Police that I have investigated I have
23 always received instructions from the Attorney General's
24 Department in this regard.
- 25 Q. As best as you can recall, Staff Wheaton, can you indicate to

1 us how the file was demanded and take this meeting of the
2 26th of February. Can you, as best as you can, tell us what
3 the words were...

4 A. Just politely asked. "John, do you have anything else, now,
5 that you could give us? Any other written things? Any other
6 things that you can tell us?"

7 Q. And what was the response?

8 A. "No." Or, to change the subject to another subject. "That
9 wound, I don't think that knife was a thrust upward. I think
10 it was thrust downward."

11 Q. Now you've indicated to us when you met with Chief
12 MacIntyre on, I believe, the 4th of February, the first time
13 you met with him...

14 A. Yes, sir.

15 Q. You put similar questions, similar statements to him. "Have
16 you got anything else?" And here on the 26th of February
17 additional statements are being given to you. Did that give
18 you any concern?

19 A. Yes, sir. Yes.

20 Q. What did you do about it?

21 A. What did I do about it?

22 Q. Yes.

23 A. Continued on with my investigation as best I could. But it
24 made me really wonder, "Is this man misleading me?"

25 Q. Well, I'm not wanting to press it unduly but you were told on

1 the 4th of February there are no more statements.

2 A. Yes, sir.

3 Q. You ask again on the 26th of February after two more are
4 produced and you are, again, told, no. Why did you not, in
5 light of that, take other steps to secure production of the file?

6 A. The only other step, sir, we could have taken was to get a
7 search warrant and go search the Sydney City Police and that
8 was discussed. It was Inspector Scott's feeling that this
9 should not be done. It was Mr. Edwards' feeling, and I'm not
10 just sure of the date, that it should be done, in point of fact.
11 And to be quite frank I ended up somewhere in the middle.

12 Q. So we have a should and we have a should not and where
13 were you?

14 A. I was somewhere in the middle. I did not want to ruin the
15 relations with the Sydney City Police and, yet, I felt that this
16 man was misleading us in our investigation and that all I
17 could do was carry on as best I could and wait, basically, for
18 some instructions from the CIB Officer or Mr. Edwards
19 receiving some instructions.

20 Q. Who was the CIB Officer?

21 A. It was Superintendent Christen. I knew that Inspector Scott
22 was in telephone conversations with him. As I say, in
23 previous Chiefs of Police that I've investigated, it is the CIB
24 Officer, from the Attorney General's Department, that is
25 always instructed. I have been involved in search of city, not

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Sydney, but town police offices before under a search
2 warrant, and they came that way. And I more or less thought
3 that eventually we would end up there and we did.

4 Q. Do I take it from the fact that you, in fact, briefed the Chief on
5 the 26th of February that you had been advised by the
6 Department of Attorney General that it was okay to go ahead
7 and brief the Chief?

8 A. I can't really recall. I would have had conversations with Mr.
9 Edwards. I don't know if they gave the green light, if you
10 will, but like I said earlier, if it were Inspector Scott's decision
11 or Superintendent Christen's decision, not mine, I'm not high
12 enough up the totem pole, but it would be done.

13 Q. Would you have direct communication with Superintendent
14 Christen on a matter such as this or would it be through you
15 to Scott to Christen?

16 A. I've never spoken to Superintendent Christen throughout this
17 investigation. The pecking order is from me to Inspector
18 Scott to Superintendent Christen.

19 Q. And that's observed.

20 A. That's observed.

21 Q. And from you down to Carroll.

22 A. And from me down to Carroll.

23 Q. And he can stay with Mr. Ebsary.

24 A. That's right.

25 Q. What instructions, if any, did you receive from Inspector Scott

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 following this meeting with the Chief?

2 A. I received instructions from him to interview all the
3 witnesses in the case. To go over all the witnesses. And to do
4 everything that I could to find Patricia Harriss because the
5 Chief was putting great reliance on Patricia Harriss and that
6 she was a very honest person and so on.

7 Q. Well, just so I'm clear on your discussions to date with the
8 Chief. You had a meeting with him on the 4th. At that time
9 the statements you had had been provided to you by
10 Inspector Scott, is that correct?

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

12 Q. And you had a second meeting with the Chief on the 26th of
13 February.

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

15 Q. Were there any other meetings with the Chief between those
16 two dates?

17 A. Not that I can recall, sir.

18 Q. And did you then go look for Patricia Harriss?

19 A. Yes, I did, sir.

20 Q. And you found her?

21 A. Yes, sir.

22 Q. And the reference to Miss Harriss is found, I believe, on page
23 16 at paragraph 25. And the statement you took from her is
24 reproduced in typed form at page 54.

25 A. 54?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Q. The statement itself, yes.

2 A. Yes, sir.

3 Q. And that was, I believe, on the 1st of March.

4 A. Yes, sir.

5 Q. Do you have any memory now of steps in the investigations
6 between the 26th of February and the 1st of March?

7 A. From what...

8 Q. From the date of your meeting with the Chief...

9 A. The 26th, yes, sir.

10 Q. 26th, up until the date of the statement from Miss Harriss
11 which, I believe, is 1st of March. Anything you recall taking
12 place inbetween there?

13 A. No, I have no independent recollection, no.

14 CHAIRMAN

15 Did you have any difficulty finding Patricia Harriss, Staff
16 Sergeant?

17 A. Not really, My Lord. She had just returned home.

18 CHAIRMAN

19 I see. She, I gather she had been living in Toronto before
20 that.

21 A. She had been, My Lord, yes.

22 Q. And where did you find, Miss Harriss?

23 A. At her family home on King's Road.

24 Q. And what do you recall of your meeting with her?

25 A. I called the home and, on the day previous, and found that

1 she was, had returned home and she readily agreed to come
2 in the following day. She had some appointments and so we
3 set the interview up for over the lunch hour, as I recall it.

4 And she came in and we had a narrative conversation at the
5 end of which I...

6 Q. Sorry, was there anybody else present?

7 A. No, sir.

8 Q. Okay, thank you.

9 A. And I, after the narrative conversation I then took a
10 statement from Mrs.[sic] Harriss line-by-line. As she'd tell me
11 line one, I would write line one and then I'd say, "Continue"
12 and then she would continue and I took the statement line-
13 by-line. She read the statement afterwards and signed it and
14 I signed it. And then we went, I called Frank Edwards and
15 set up an appointment. Mr. Edwards who, I believe, was out
16 for lunch at first and then we went down to his office after
17 lunch and he interviewed Mrs. Harriss. Miss Harriss.

18 Q. The statement that we on page 54, does that represent an
19 accurate summary of what Miss Harriss told you?

20 2:48 p.m.

21 A. I haven't compared the handwritten statement to this, Mr.
22 Orsborn, but...

23 Q. Assuming that they are the same.

24 A. The same, yes, sir.

25 Q. Did you take any notes of your meeting other than the

1 statement?

2 A. No, sir, I don't believe I did.

3 Q. Uh-hum.

4 A. I made an enquiry, I see, as a result of taking the statement,
5 the 23rd of March my notes are.

6 Q. Do you know whether or not she told you at this interview
7 that Inspector Urquhart had taken a statement from her on
8 the 17th of June?

9 A. She told me that there were several statements taken from
10 her prior to the one which I showed her, the morning of the
11 18th statement, and as I recall it, when we spoke in the
12 narrative before she said they "crumpled them up and threw
13 them on the floor".

14 Q. Uh-hum. The reason I asked, sir, is that a statement in Mr.
15 Harris' book, Justice Denied, have you read the book?

16 A. Yes, I have, sir.

17 Q. And I'm reading at page 335, 334-335, and middle of 335, it
18 says:

19
20 After Patricia Harriss left, the two RCMP
21 members exchanged quizzical looks and
22 not just because they now had all the key
23 witnesses at Marshall's original trial
24 charging that the Sydney detectives had
25 coerced them into signing false statements.
Harriss had referred to an earlier
statement she'd given to Urquhart in which

she claimed to have seen at least two people
on Crescent Street...

And on page 334 it says,

Harriss, who was fourteen in 1971, said
she was interrogated by then Detective
William Urquhart, who took a statement
from her at 8 p.m. that evening.

Did Patricia Harriss tell you that on this first interview?

A. He's saying that there were two people in my office when I
interviewed Patricia Harriss. I interviewed her alone.

Q. Yes. It would seem apparent there was two people there.

A. No.

Q. And it's also apparent that at this initial interview you were
advised of the fact that there was an eight o'clock statement
from William Urquhart or taken by William Urquhart.

A. By Patricia Harriss.

Q. Yes.

A. Patricia Harriss told me that William Urquhart had taken
statements, partial statements from her, as I recall her telling
me, she told me that she was getting ready to go to the first
show which started at seven o'clock. She was picked up by
the Sydney City Police, taken down to their office. The first
person to interview her was William Urquhart. She told him
the truth, he wouldn't believe her, and when she would come
to the part of how many people were on the street he would
take the statement, crumple it up and throw it on the floor

1 and then start again.

2 Q. How many times did you interview Patricia Harriss?

3 A. I spoke to her a number of times. As far as a formal
4 interview and taking a statement, just this one, Mr. Orsborn.

5 Q. The name Detective Urquhart does not appear on that
6 statement. And given what she told you could you tell us
7 why it would not show up on the statement?

8 A. No, sir.

9 Q. This business about going to the first movie doesn't appear on
10 that statement.

11 A. That's correct, sir.

12 Q. Where does that information come from then?

13 A. From Patricia Harriss. Like I say we had a narrative
14 conversation first, then I got my pad out and I said, "Now,
15 Patricia, " as I do with most, "Tell me what you wish to tell
16 me," and they would give it to me sentence by sentence and I
17 would write it down. When finished I would read it back to
18 them, ask them if there was any errors, omissions, anything
19 they wanted changed, and if they did I would change it and
20 have them initial it and I would initial it, then I would give
21 the statement to Miss Harriss and she would read and I...and
22 if she wished to sign it then she would sign it and she did.

23 Q. So, the reference to William Urquhart and the reference to the
24 movie, you're telling us were made by Patricia Harriss were
25 not included on the statement but were retained in your

1 memory, am I...

2 A. That's correct.

3 Q. ...putting too many words in your mouth?

4 A. That's right, sir, yes, yes.

5 Q. Why did you want Frank Edwards to interview Miss Harriss?

6 A. Well, we had two recanting witnesses here, Chant and Pratico,
7 and now we have a third one telling basically the same story
8 with some modifications in semantics, but basically the thrust,
9 that they were browbeaten, to use her word, there was desk
10 pounding, there was pressure put on them and in the case of
11 Chant and in the case of Pratico Mr. Edwards had never had
12 the opportunity really to speak to them at that time. Miss
13 Harriss during this meeting was most adamant. She was
14 extremely upset with what the Sydney City Police had done
15 with her and I thought this would be a great opportunity for
16 Mr. Edwards, who might eventually end up prosecuting a
17 case, to see the witness in that frame of mind, and I wanted
18 him to see her. Also, he was in dealings with the Attorney
19 General's Department at that time and needless to say there
20 was...it took some convincing to convince them. Mr. Edwards
21 was the one who was talking to Gordon Gale and he was
22 talking to Gordon Cole.

23 Q. I'm sorry, it took some convincing to convince them of what?

24 A. Marshall's innocence.

25 Q. Okay. Were you aware that there were problems convincing

1 them of Marshall's innocence?

2 A. I felt there were, yes, yes.

3 Q. What was the basis of that feeling?

4 A. Conversations with Mr. Edwards.

5 Q. And what was the substance of those conversations?

6 A. I can't recall the specific substance. This was a very dramatic
7 step and they wanted their I's dotted and T's crossed I felt.

8 Q. Was Patricia Harriss' story any more dramatic than that of
9 Mr. Chant and Mr. Pratico?

10 A. I didn't interview Mr. Pratico. It was on the same calibre
11 almost as Mr. Chant, very similar.

12 Q. Uh-hum. Did you ask Mr. Edwards to interview Mr. Chant?

13 A. No, I did not, sir.

14 Q. Why not?

15 A. Well, we were in Louisbourg at the time and it was at night,
16 and as I recall in the middle of a snowstorm when I drove
17 home.

18 Q. Subsequently did you ask Mr. Edwards to interview Mr.
19 Chant?

20 A. I believe he did.

21 Q. Uh-hum. Did you ask him to?

22 A. I can't recall specifically.

23 Q. Was it the fact that Miss Harriss was all fired up that put this
24 in your mind?

25 A. Yes. Yes, in a way.

1 Q Why?

2 A. I felt that for a Crown it's important to see the witness who
3 could...a person could who could eventually be a witness in
4 this matter. We after all had to try Ebsary. We...after all the
5 business of what's going to happen with Marshall. So, I felt it
6 important that the Crown interview the witness.

7 Q Did you take any notes during the meeting with Mr. Edwards?

8 A. No, I did not, sir.

9 Q Following the meeting with Mr. Edwards and Miss Harriss did
10 you receive any instructions or guidance as to what step to
11 take in the investigation?

12 A. I would have had conversations, yes, again with Inspector
13 Scott and with Mr. Edwards.

14 Q Uh-hum. And what, what if any instructions were you
15 given?

16 A. I'm afraid I'd have to refresh my memory by my written
17 report.

18 Q The next...

19 A. One of the things I did was Mrs...Miss Harriss indicated that
20 she was so overwrought, her and her mother, that they went
21 to a lawyer the next day.

22 Q Uh-hum.

23 A. So, I subsequently, according to my note, on the...

24 Q Not dated.

25 A. Not dated. I subsequently contacted Mr. A.O.Gunn, a lawyer

1 in the City of Sydney, a very elderly man, and very graciously
2 looked in his date book which he kept back to that time and
3 found that he did, in fact, have an interview with Patricia
4 Harriss and her mother on the 28th of June, 1971, at 4:30
5 p.m.

6 Q. Did Mr. Gunn relate to you his memory of that encounter?

7 A. Yes, he did.

8 Q. What was it?

9 A. Basically all he could remember was that they came in, they
10 were upset, something to do with the Sydney City Police and
11 he told her to tell the truth.

12 Q. Uh-hum. Page 55 of Volume 34 there is a statement taken
13 from Mr. Gushue, which appears to be the 2nd of March,
14 which would be the day following your meeting with Miss
15 Harriss. Do you remember meeting with Mr. Gushue?

16 A. Yes, I do, sir.

17 Q. What was your impression of him?

18 A. My impression of Mr. Gushue.

19 Q. Yes.

20 A. My impression of Mr. Gushue was that he was a young man
21 who was a bit of a rounder.

22 MR. CHAIRMAN

23 What is a rounder?

24 STAFF SGT. WHEATON

25 By that, My Lord, I mean one who attends taverns, and is just

1 generally, may have a job, may not have a job...

2 MR. CHAIRMAN

3 Would that be...

4 STAFF SGT. WHEATON

5 Living with a young lady who...

6 MR. CHAIRMAN

7 Would that be the equivalent of what's known as yuppie
8 today?

9 STAFF SGT. WHEATON

10 I think a yuppie today would be distinctly more affluent, sir.

11 MR. ORSBORN

12 Q. Did you talk to Mr. Gushue about any contacts he may have
13 had with the Sydney Police?

14 A. Yes, I did.

15 Q. What, if anything, did he tell you?

16 A. Mr. Gushue told me that the Sydney City Police gave him a
17 hard time but that was their job.

18 Q. Uh-hum. I don't see any reference to that in his statement on
19 page 55. Is this again...

20 A. No, sir.

21 Q. ...something that would be in your memory?

22 A. Yes, sir. Do you wish me to set the stage for that statement of
23 what happened?

24 Q. Gushue's statement.

25 A. Yes.

1 Q. Go ahead.

2 A. Ah.

3 Q. And you're speaking of the statement he gave you or the
4 statement that he gave the Sydney Police?

5 A. The statement he gave me, sir.

6 Q. Okay. I had tried actually to get ahold of Mr. Gushue for
7 several days prior to this, and as I say I dropped down in the
8 evening and he'd usually be out at a tavern. He was living
9 with a young lady on the fifth floor of an old home in Sydney.
10 I eventually waited in the morning until he was going to work
11 and caught him then and he agreed to see me that evening. I
12 met...waited for him until he come home, we went up to the
13 apartment. We went in. He was with the young lady and we
14 engaged in general conversation. He was a reluctant witness.
15 He did not wish to give a statement. He said really he
16 couldn't remember how many people there were on the street
17 that night. He was drunk. He really...I referred him back to
18 his evidence in court in 1971 and he said, well, basically, "If
19 you read it you'll see I couldn't remember there either."
20 He...after about ten minutes into the conversation he asked if
21 I minded if he poured a drink and I said, "Well, I'd prefer you
22 not to," and he said, "It's my house, I'm going to have a
23 drink...care for one," and he went over and poured himself
24 about a half a water glass full of rum. Then he came back and
25 sat down at the table with me again.

- 1 Q. And you got the full story.
- 2 A. I beg your pardon.
- 3 Q. You got the full story then.
- 4 A. Yes. And I asked him if he would mind just giving me a short
5 statement to that effect. He agreed and he gave me a very
6 short statement.
- 7 Q. Uh-hum. Now, when he said that the Sydney Police gave him
8 a hard time, did you ask for details of that?
- 9 A. Yes.
- 10 Q. What were the details?
- 11 A. He couldn't remember.
- 12 Q. Just remembered the hard time.
- 13 A. Yes. And he felt that was their job.
- 14 Q. Okay. The next statement I see, Staff Wheaton, is on page 87,
15 and forgive me if I appear to be sort of leading you with
16 dates, and if at any time I jump to a date and there is
17 something happened in between please jump in.
- 18 A. No.
- 19 Q. But in the event that you have no independent recollection
20 other than these notes it will speed things along.
- 21 A. Fine, sir.
- 22 Q. Page 87 it indicates a statement taken from a Sheriff Wayne
23 Magee on the 2nd of March of 1982, which would be the same
24 day as you saw Mr. Gushue. Do you recall speaking to Sheriff
25 Magee on the 2nd of March?

1 A. Yes. I do recall speaking to Sheriff Magee. I don't have a
2 recollection of the date, but I do recall.

3 Q. Uh-hum. Why did you see him?

4 A. Sheriff Magee's name was one of the names that appeared on
5 the back page of the Chant statement, sir.

6 Q. Uh-hum.

7 A. And I...it was at that point in my investigation trying to
8 interview all the people that were named on that statement
9 to see if they were actually present in the room when John
10 MacIntyre took the statement.

11 Q. Uh-hum. Why were you concerned on the 2nd of March
12 about how that statement was taken?

13 A. Because in analyzing it the last page of that statement, I
14 believe the names all appear and then it says, "Billy and I",
15 which I thought to be an odd way of having people sign the
16 bottom of a statement, but yet when I...as I recall when I
17 looked at each page on the thing William Urquhart's and John
18 MacIntyre's name appeared but the other people's names did
19 not appear, just at the back page.

20 Q. I understand that. But was there a particular concern about
21 the way the statement was taken on the 2nd of March of
22 where we were?

23 A. Chief MacIntyre had indicated to us that all these people were
24 present in the room when he had taken that statement and I
25 wanted to interview each one to see if they were in the room.

1 Q Okay. Sheriff Magee indicated, second last line of that
2 statement, on page 87, "After the statement was taken we all
3 signed it." Do you recall Sheriff Magee telling you that?

4 A. Yes, sir.

5 Q When Sheriff Magee testified before this Commission he said,
6 now, "As soon as this statement was completed I had a
7 question in my mind as to whether or not we actually signed
8 it or our names were just written down, and I told Staff
9 Wheaton after I signed it I'm not really sure about that part."
10 I believe I'm putting his testimony correctly. Do you recall
11 Sheriff Magee raising a question about that?

12 A. Sheriff Magee raising a question about whether they all
13 signed the statement.

14 Q Yes. Having second thoughts about that...that particular
15 wording there after he had signed the statement.

16 A. No, sir. I recall prior to the statement being taken Sheriff
17 Magee had some, you know, doubt in his mind.

18 Q Uh-hum. If he had raised the question after he had signed
19 the statement would it be your practise to allow a correction
20 to it?

21 A. Oh, yes, and it would have been shown to him and read to
22 him, like I say, and asked if there was any corrections.

23 MR. CHAIRMAN

24 Did Sheriff Magee ever call you later?

25

1 STAFF SGT. WHEATON

2 No, My Lord, he didn't, no.

3 MR. ORSBORN

4 Q Who asked to see Sheriff Magee or was this of your own
5 volition that you went to see him?

6 A. It was on my own volition, sir. I knew Sheriff Magee as he
7 was the Chief of Police in Louisbourg when I was stationed
8 there in the drug section.

9 Q Uh-hum. Did you believe him when you took the statement
10 from him?

11 A. Yes, sir, I believe he was telling me what he had in his mind.

12 Q Is that a long way of saying you believed him?

13 A. Well, I didn't believe it...I didn't really think in my mind that
14 he had been there. But if he thought in his mind that he was
15 there, fine, I would record it.

16 Q Going back to page 13 of Volume 34.

17 A. Page 13.

18 Q Page 13, and particularly paragraph 14. Again, if my
19 chronology is correct, on the 4th of March, two or three days
20 following this, there was a further interview with Mary and
21 Greg Ebsary from which their statement resulted, and that
22 statement is at page 41. Had you had discussions with the
23 Ebsarys prior to taking this statement from them on March
24 4th?

25 A. Page 41 the statement is, sir.

1 Q I believe it's at page 41, yes, yes.

2 A. Yes. I would have had conversations with Mary Ebsary prior
3 to that and I believe Greg.

4 Q Were you sort of building up a rapport with the Ebsarys over
5 that time?

6 A. Yes, sir.

7 Q What was the nature of your contacts with them?

8 A. My first contact with them was to find out what the story was
9 with the chap who...there was a border at their house, Mr.
10 Sarson. Then as the investigation progressed there would be
11 various points that would require some clarification and I
12 would contact Mrs. Ebsary.

13 Q Do you have notes made of those contacts?

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

15 Q Now, you took a statement from both Mary and Greg Ebsary.
16 Is that a usual or a common practise to take a statement from
17 two people?

18 A. No.

19 Q Why would you do it in this case?

20 A. They were both present and they were both telling me...both
21 involved in the conversation and the taking of the statement,
22 and offering various things and so, therefore, I took a
23 combined statement from the two of them. We were seated
24 in the kitchen and Mary was at the table and Greg was
25 standing in the doorway and I took it from both of them.

1 Q. Uh-hum.

2 A. You would prefer to have an individual alone when taking as
3 statement.

4 Q. Yes. And at the conclusion of that statement they say, "In
5 regards to this murder we cannot say if he did it or didn't do
6 it, but we certainly feel he is capable..."

7 A. Uh-hum.

8 Q "...of it." That was their opinion expressed...

9 A. That was their opinion and these opinions...they were both
10 agreeing with one another and, yes.

11 Q. In paragraph 14 you refer to Mr. Ebsary being violent when
12 he's drinking and Mrs. Ebsary having "to dress the two
13 children and get them out of the house as she feared for their
14 safety." Again, that doesn't appear in the statement. Is this
15 something from your memory, Staff Wheaton?

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

17 Q. Okay. I'd like to talk to you for a little bit about the knives
18 that you obtained. What is your memory of coming into
19 possession of those knives?

20 A. I was at the Ebsary home. I was talking with Greg Ebsary and
21 Mary Ebsary and the subject of the fact that the knife had
22 never been found in this murder came up and then we got
23 talking about Roy and his fetish for knives and I asked them,
24 "Are there still any knives around from the days when you
25 lived on rear Argyle?" And Greg said, "Yes," that when they

1 moved that he had brought a number of the knives that Roy
2 would have had at that time up, and as I recall he said he put
3 them in a junk drawer and then he moved them from there to
4 a fruit basket down in the basement.

5 Q. Uh-hum.

6 A. So, I said, "Well, let's...would you mind going down to the
7 basement and we'll have a look and see if it's still there." And
8 we went to the basement. We found the fruit basket up over
9 a beam, Greg did, and handed it to me and said "These
10 are...these would be the knives that I moved up from rear
11 Argyle to the present home on Mechanic," and that Roy would
12 have been...have been prone to carry it in in 1971.

13 Q. Did you enquire about the history of those knives from 1971
14 until the time you took possession of them?

15 A. Yes, sir.

16 Q. And, between Mary Ebsary and Greg Ebsary, who provided
17 you with a history of the knives?

18 A. Both.

19 Q. And what was the history that was related to you?

20 A. That they...Greg had moved them up to Mechanic Street. That
21 they had been...

22 Q. When was that?

23 A. To the best of my recollection approximately a year after the
24 murder of 1972, and that they had been placed in more or
25 less of a junk drawer in a hutch, they showed me, in their

1 dining room. Some of them they felt would have been used.
2 Some of them weren't used. They weren't sure which ones
3 were used and which ones weren't used. That some of them
4 would have been washed, some of them may not have been
5 washed. They...and that they were more or less taking up
6 space and one spring house cleaning they were put in a fruit
7 basket and put down in the cellar out of the way.

8 Q. You state in your report at page 13, paragraph 14, about ten
9 lines up from the bottom of the paragraph, "These knives had
10 been placed over a beam in the basement and had never been
11 touched."

12 A. That's right, sir.

13 Q. Is that accurate?

14 A. To the best of my knowledge, yes.

15 Q. Well, you just told just that the Ebsarys said that some of
16 them were washed, some of them weren't, some of them were
17 used and some were not.

18 A. Not after they were placed in a fruit basket in a basement.

19 Q. When were they placed...

20 A. That was...they were placed...that was when they were...some
21 were used, some weren't, some were washed, some weren't.
22 That was when they were upstairs in the hutch. Once they
23 were placed in the basket it was my understanding from Greg
24 Ebsary and certainly by the looks of the fruit basket, it was
25 covered with dust and cobwebs, that they hadn't been

1 touched. They had sat down there for quite a number of
2 years.

3 Q. Just reading this then, sir. "Greg Ebsary turned over ten
4 knives which would have been in Roy's possession at the time
5 of the murder, photo attached. These knives had been placed
6 over a beam in the basement and had never been touched."
7 The impression I would take from reading that is that they
8 had never been touched...

9 A. Yeah.

10 Q. ...since the time of the murder.

11 A. I see your point, Mr. Orsborn, and it is not mentioned in my
12 report that they had been upstairs in the hutch for some
13 period.

14 Q. So, these knives had been used or washed or whatever.

15 A. During that time some of them had, some of them hadn't.

16 Q. I believe, Staff Wheaton, that you complete some kind of
17 exhibit report, do you not, when you make a seizure of this
18 nature. I just direct your attention to page 57. It's not
19 terribly important, I'd just like to understand how the forms
20 are made up.

21 A. Yes, sir.

22 Q. And is this the report that you complete after you make a
23 seizure of this nature?

24 A. Yes, sir, yes.

25 Q. And, this, I take it, would confirm that you made the seizure?

- 1 A. Yes, sir.
- 2 Q. And you say, "Seizing same at the residence of Roy Ebsary,"
3 would be the place at which the knives were seized, and I'm
4 assuming by "this residence of Roy Ebsary" you mean Mary
5 and Greg.
- 6 A. I meant, yes, really.
- 7 Q. But this confirms where you...where you ...where you seized
8 the...
- 9 A. Yes, yes, sir.
- 10 Q. Okay. And then there's the descriptions and then the bottom
11 there it says "Certified correct". There's no signature there
12 but does the fact that your name is typed there confirm that
13 what's on that report is correct?
- 14 A. Yes, sir.
- 15 Q. Okay. Now, do I understand that you then forwarded those
16 knives to...let me back up a bit. You took the fruit basket
17 down.
- 18 A. Yes, sir.
- 19 Q. To a layman when you pick up fruit baskets and knives and
20 whatnot are you concerned with fingerprints?
- 21 A. This was a very dusty old fruit basket and I really wasn't
22 worried about any fingerprints on the basket itself. Insofar
23 as the knives were concerned it was so long ago and so many
24 things had happened to the knives, ah, I was careful with
25 them but I wasn't as careful as I might be if I were at the

1 scene of a crime to not handle at all.

2 Q. How big was the basket?

3 A. It's the type of basket that you would buy peaches or
4 something in, about yea big and sort of oval shaped, made of
5 wood with a round handle.

6 Q. Twelve to eighteen inches long.

7 A. Yes.

8 Q. And with a wooden handle on it.

9 A. Yes, sir.

10 Q. And how were the knives placed in the basket, were they just
11 loose?

12 A. Just loose.

13 Q. And was there anything else in the basket other than the
14 knives?

15 A. No, sir.

16 Q. What did you do then when you retrieved them from the
17 basement?

18 A. I took them up and placed them on the kitchen table.

19 Q. You picked each knife up.

20 A. I...I...as I recall I dumped them out on the kitchen table.

21 Q. Were they dirty?

22 A. Yes, they were dusty. They weren't any...there was no fresh
23 dirt. They certainly looked as if they had been there for an
24 awfully long while and there was dust and cobwebs and what
25 have you clinging from the basket to the beam and then the

1 basket itself was dusty and old.

2 Q. Did you clean them up?

3 A. No. No. I dumped them out of the basket on the table and
4 took them carefully, as one would it's a natural habit with me
5 now, you don't grab things. I just sat them around so they
6 would be spread out and I then asked Mary Ebsary to take a
7 look at them and see if she could pick out the knife that was
8 Roy's favourite at the time of the murder. Prior to this they
9 had told me he made many knives and had a fetish for knives
10 and had a grinding wheel in his basement and so on. She
11 narrowed it down to two knives. These knives were
12 sharpened on both sides and pointed on the end, had a shank
13 and both had pieces of green garden hose on them. The green
14 garden hose was used to affix the hose to the shank oblique
15 base of the knife. Two of them were quite similar. There was
16 a bit of a difference between the two of them, and she said,
17 "It would be one of those two and if I had my opinion it
18 would be that one." And she pointed at one knife and it was a
19 little bit different.

20 Q. Uh-hum.

21 A. So, I remembered what that knife was and I later went back
22 to the office and did an exhibit report and that particular
23 knife I numbered number 8.

24 Q. How did you transport the knives from the residence to the
25 office?

1 A. In the fruit basket. No, no. Not in the fruit basket. I
2 transported the knives in my brief case in a brown envelope.
3 I left the fruit basket there.

4 Q. Uh-hum. So, you picked the knives up, put them in an
5 envelope and...

6 A. Yes, sir.

7 Q. What did you then do with them?

8 A. I then made a call to Mr. Richard MacAlpine of our lab in
9 Halifax.

10 Q. What's his position?

11 A. He was with the serology department of our laboratory in
12 Halifax and discussed the fact is there any possibility after all
13 this time and if one of them should be the knife if he could
14 find any blood on it, and so on, and he said, "Send it in and I'll
15 see what I could do." So, I did. I sent the knives to Mr.
16 Richard MacAlpine. He later called me back and advised me
17 that he had not found blood but he had been in conversation
18 with Mr. Adolphus Evers of our crime detection laboratory in
19 Sackville, New Brunswick and Mr. Evers had still retained
20 samples of the Seale and Marshall clothing. Mr. Evers is a
21 hair and fibres expert. And, wanted to know if I wished the
22 knives sent to Mr. Evers. I said, "Yes, I would like them sent
23 to Mr. Evers."

24 Q. If I understand you correctly then the blood testing was done
25 on the knives before they were sent to Mr. Evers?

1 A. Yes, sir.

2 Q. And did you have conversation with Mr. Evers yourself prior
3 to his conducting the tests?

4 A. No, sir.

5 Q. Do you have any idea why he would retain samples from
6 1971?

7 A. No, sir.

8 Q. Is that practise, do you know?

9 A. No, sir.

10 Q. Did you indicate to Mr. MacAlpine what the history of the
11 knives was?

12 A. I gave him a brief history, yes, sir.

13 Q. Verbal.

14 A. Verbally, yes, sir.

15 Q. Did you indicate to him...

16 A. I also sent an accompanying report with it asking for a
17 serology test to be done.

18 Q. Did you indicated to Mr. MacAlpine the knife that had been
19 picked out by Mrs. Ebsary?

20 A. No, sir.

21 Q. Now, the samples that Mr. Evers retained came from the
22 jackets of Mr. Marshall and Mr. Seale. Did you take any step
23 to try and locate the actual jackets?

24 A. Yes, I did, sir.

25 Q. What steps did you take?

1 A. I...in an interview with Mr. Oscar Seale I asked him what he
2 knew of the jackets and in an interview with Red Mike
3 MacDonald of the City...of the Sydney City Police I asked him
4 what he knew of the jackets.

5 Q. What did you find out?

6 A. I found out that the jackets were eventually brought back to
7 the Seale home, the jacket rather, and as I recall it the...they
8 were asked to dispose of ...Mr. Seale asked the Sydney City
9 Police to dispose of the jacket.

10 Q. Who did you get this information from?

11 A. Mr. Oscar Seale and...

12 Q. You spoke to Mr. Seale yourself.

13 A. Yes, sir.

14 Q. And he advised you that the jacket had been returned to him
15 or the Sydney Police asked if they wanted it back.

16 A. They asked if they wanted it back.

17 Q. And do you know who on Sydney...

18 A. I can't recall. But it seems to me that either Red Mike called
19 him or drove to his house.

20 Q. Yes. And what was Mr. Seale's response?

21 A. That he didn't want the jacket.

22 Q. And do you know what the Sydney Police Department did
23 with it?

24 A. No, sir.

25 Q. What about Mr. Marshall's jacket?

1 A. I don't know what happened to it, sir.

2 Q. Did you take any steps to look for it?

3 A. Excuse me, I believe that Mr. Marshall's jacket was actually
4 owned by Roy Gould and was eventually returned to Roy
5 Gould by the Sydney City Police. I'm not positive by whom,
6 but I believe by the Sydney City Police.

7 MR. CHAIRMAN

8 Let's take a short break.

9 BREAK

10 3:43 p.m.

11 Q. Thank you, My Lord. Staff Wheaton when we stopped we had
12 just been discussing the jackets and I think you'd just shipped
13 the knives off to Halifax. Do you recall how the knives were
14 transported to Halifax?

15 A. By registered mail, sir.

16 Q. How were they packaged?

17 A. In an envelope and taped and sent in by registered mail.

18 Q. Were they individually wrapped?

19 A. No, sir.

20 Q. So they were in an envelope together.

21 A. That's correct, sir.

22 Q. Would that be in accordance with your normal practice of ...

23 A. No, shipping fresh...

24 Q. Shipping more than one exhibit?

25 A. If it was a fresh exhibit, I would not have one contaminate

1 the other. In this instance, I did. I did it that way and that's
2 the way I did it.

3 Q. Any particular reason?

4 A. To be quite frank with you I thought the chances of finding
5 the knife a bit remote.

6 Q. The next reference that I can find, Staff Wheaton, following
7 from that which would be the 4th of March, was a reference
8 in Mr. Edwards' notes, looking at Volume 17, page 6. And at
9 the top of page 6 you, Mr. Edwards writes of a meeting with
10 you on Friday, March the 5th...

11 A. Yes, sir.

12 Q. Do you have any memory of a meeting with Mr. Edwards?

13 A. I had many meetings. I don't have an independent
14 recollection of that meeting.

15 Q. The next statement that I can find, sir, in order of time is the
16 9th of March, and the statement is reproduced at page 52 of
17 this volume. This was from Mr. Marshall at Dorchester. Do
18 you have any recollection of anything to do with this
19 investigation between the 4th of March and 9th of March?

20 A. I have no independent recollection between the 4th of and
21 9th other than what Mr. Edwards says which...

22 Q. Yes. Your notes indicate that the statement that Mr. Marshall
23 gave you on the 19th, sorry, on the 9th of March was warned.

24 A. Yes, sir.

25 Q. Why would you do that?

1 A. Why would I warn him at that time?

2 Q. Yes.

3 A. In the first statement he had indicated that he was looking
4 for money or going to roll someone or take money from
5 someone or what have you which was an offence in itself. I
6 felt that it would be prudent to warn Mr. Marshall at that
7 time.

8 Q. And what do you recall of this second visit to Dorchester?

9 A. The second visit to Dorchester, again, was arranged through
10 the provision of prison officials. Mr. Marshall agreed to see
11 us. The interview at this time was held in the courtroom of
12 the Dorchester Penitentiary, their internal courtroom I
13 believe it is. A little bigger room. Wood paneled walls, a
14 window that overlooked a courtyard. Corporal Carroll was
15 with me again. Mr. Marshall came in, was brought in by a
16 guard and we all stood. Corporal Carroll and I were standing
17 when he came in and then we had a conversation then I
18 warned him and we sat down and wrote the statement.

19 Q. What was the conversation before you warned him?

20 A. The most, he was wearing a cap when he came in, a baseball
21 cap, and when he come in he took it off and, sort of a
22 regimented thing, and set it on the table. And he set it on the
23 table upside down. I could see a name other than Marshall in
24 it. And I said, "Is that your cap, Junior?" And he said, "Oh,
25 yes." I said, "Junior, look at the name in the sweat band." and

1 he looked at it. I said, "Junior, it's tremendously important
2 that you be honest and truthful. Now I'm going to give you a
3 warning, I'm going to take a statement. You've had an
4 opportunity since I was here last and I know what jails are
5 like, to speak to a lot of legal eagles in the cell blocks, but
6 you're the chap that wants to get out of here. Be honest and
7 be truthful with me."

8 Q. Did you give him any information on your investigation to
9 date?

10 A. No, sir.

11 Q. The statement that you took, was that in, a narrative
12 statement or was it question-answer?

13 A. This time, no, it was narrative.

14 Q. So he was not prompted. You just turned him on and he
15 talked.

16 A. Yes, sir. Sentence-by-sentence.

17 Q. The opening of that statement talks a little bit about his
18 history. It says he drank a lot and he was picked up by the
19 Sydney Police, questioned a lot by John MacIntyre. Page 52.
20 "MacIntyre didn't like me as I wouldn't talk or confess to
21 these crimes." This history, this discussion of John MacIntyre,
22 was this totally voluntarily on Mr. Marshall's part?

23 A. Yes.

24 Q. Do you have any idea why he would start off with that rather
25 than starting with the night of the murder?

1 A. That's the way he started, sir.

2 Q. He also indicates in that statement that he was willing to take
3 a polygraph test to prove that he is innocent. Did you give
4 any consideration to having Mr. Marshall submit to a
5 polygraph test as an aid to your investigation?

6 A. Did I give any consideration?

7 Q. Yes.

8 A. No, sir.

9 Q. Why not?

10 A. As I said before, a polygraph is an aid. I really didn't see the
11 need of a polygraph in this situation.

12 Q. You didn't see the need of it?

13 A. No, sir.

14 Q. Why would that be?

15 A. That was my judgement.

16 Q. Is that because you believed what you were being told?

17 A. Yes, it concurred basically with what all the other witnesses
18 were telling me.

19 Q. How long were you speaking to Mr. Marshall during this
20 interview?

21 A. I note my notes 12:03 to 12:39.

22 Q. About a half an hour.

23 A. Yes, sir.

24 Q. Following the completion of his statement, did you give him
25 any information as to the course of your investigation?

A. Yes, sir.

Q. What did you tell him?

A. I told him that there was evidence to support what he was saying. That two witnesses, I believe, or three, I just can't recall the date of Patricia Harriss' statement to me, had recanted and that the matter was going to the Attorney General. That he should try to be very patient. Not to get in any trouble in the prison system. To hold his breath and we would do what we could for him.

Q. Now would I be correct in saying that this would be the first...

A. First time.

Q. Indication that Mr. Marshall had that somebody effectively, you know, supporting his story?

A. That's correct, sir.

Q. What was his reaction?

A. He was very stoic. Very, at that, he didn't show any great emotion at that point. The only time he showed emotion was on the very first interview when he broke down and cried.

Q. Paragraph 24 on page 16 of this volume, refers to a discussion you had with Supervisor Dale Cross. Do you remember speaking to Mr. Cross?

A. Yes, sir.

Q. Do you have any notes of interview, sir?

A. No, sir.

Q. And does the comment on paragraph 24 reflect your

1 conversation with Mr. Cross? That he had advised you that
2 Mr. Marshall was a good prisoner?

3 A. I beg your pardon, sir?

4 Q. Does this paragraph 24 reflect the substance of your
5 conversation with Mr. Cross?

6 A. Yes, sir.

7 Q. And Mr. Cross advised you, I take it, that if Mr. Marshall had
8 admitted his guilt he may have been out on parole?

9 A. That is correct, sir, yes.

10 Q. Was that matter discussed between yourself and Mr. Marshall
11 that if he, you know, had admitted his guilt he could have
12 been out on parole?

13 A. Not at that time, no, sir. I didn't.

14 Q. Did you discuss it with Mr. Marshall at a later date?

15 A. Yes, sir.

16 Q. When was that?

17 A. It would be after he was out, in the halfway house. Actually
18 out of the halfway house, I believe. During one of the Ebsary
19 trials, Mr. Marshall and I met in the barristers' room and sat
20 around and talked and I think at time it came up that if he
21 had of admitted to being guilty that his life in prison would
22 have been much easier. And, in fact, he would have been
23 allowed out on parole.

24 Q. His life in prison would have been easier or it would have
25 been shorter?

1 A. Both.

2 Q. I see. Did he say in which respect it would be easier?

3 A. Well, he could have become a trustee. He could have gone to
4 Springhill which he did at one point. There's an easy way to
5 do time and a hard way to do time. And Donald Marshall did
6 hard time.

7 Q. This is what he told you himself.

8 A. Yes, what he told me and what Mr. Cross told me and from
9 my review of the prison record that I read in Dorchester.

10 Q. I believe we're getting close to the end of this report, the
11 press report. And looking at paragraph 29 on page 18, and
12 this, I would presume, as being written shortly before the
13 12th of March and you're summarizing your investigation to
14 date, I believe. You say about seven or eight lines down,
15 "Ebsary has made a verbal admission, however, refuses to
16 give a written statement and is, indeed, a very strange
17 individual." Is that accurate?

18 A. Yes, sir.

19 Q. Had he not provided you with a written statement on the
20 23rd of February?

21 A. During our interview with him, sir, you're referring to.

22 Q. No, no. When you and Mr. Carroll met Mr. ...

23 A. Oh, yes. Yes, yes. He had given us a written statement then,
24 sir. Certainly not an inculpatory statement. I guess that's
25 what I meant.

- 1 Q. Is that an accurate statement?
- 2 A. He had, no, I suppose he didn't give an admission.
- 3 Q. He had given you a written statement.
- 4 A. A written statement, yes, sir.
- 5 Q. You say towards the bottom of that paragraph, "At this
6 juncture and on balancing, keeping in mind the mental
7 capabilities of the majority of the persons involved..." what
8 are you getting at there?
- 9 A. All right. First we have to look at, are you referring to the
10 mental capabilities of the persons...
- 11 Q. Yes. The majority of persons involved.
- 12 A. Yeah. Well, we have John Pratico...
- 13 Q. Yes.
- 14 A. Who had received treatment in a mental institution prior to
15 the murder in 1971, was continuing to receive mental help.
16 In 1982 we have Jimmy MacNeil who was on some
17 medication for bad nerves. He certainly knew what he was
18 doing but he was of probably average or below-average, well
19 I'm being kind in saying average, below-average intelligence.
- 20 A. We have Maynard Chant who has probably got about a
21 Grade Six education, I believe.
- 22 Q. Were you concerned about his mental capability?
- 23 A. No, I feel he certainly knows the difference between right and
24 wrong, but he's not a Ph.D and I'm trying to keep a balance
25 here as can be noted throughout this report. And that's what

1 I say, keeping the whole thing in its proper perspective. I
2 had very grave doubts about Marshall's guilt. In effect, I
3 really didn't believe he was guilty, wording it politely.

4 Q. And that sentiment was picked up by Inspector Scott in his
5 forwarding memo on Page 19. He says in the middle of that
6 page:

7
8 After reviewing this case, I feel that
9 Marshall is innocent.

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

11 Q. So again we have, at least on the 12th of March, 1982, a
12 statement from your force indicating their believe that Mr.
13 Marshall was innocent.

14 A. That's correct, sir.

15 Q. I'd just like to ask you about the...but before I do, this report
16 that was completed, is that read by anyone for drafting
17 purposes, approval purposes, content?

18 A. Yes, sir, it's checked at numerous stages along the line, if you
19 will. The first person who checks it is Inspector Scott checked
20 it. And it was discussed. The report was discussed. This was
21 sort of an all-encompassing, a wrap-up. I believe I had
22 submitted a precis prior to this for Superintendent Christen.
23 The first person who checks it, reviewed it was Inspector
24 Scott and then he added his forwarding minute to it. It would
25 then go into our reading section in Halifax where probably the

1 chief reader in the case of a murder or a delicate investigation
2 such as this, Staff Sergeant Burgess probably would have read
3 it. He was a sergeant in the reader's section or staff sergeant.
4 I'm not just sure at that time...staff sergeant. And then it
5 would go to...he would make any recommendations in hand,
6 handwritten probably to the C.I.V. officer, who was
7 superintendent Christen. He in turn would read it. If he had
8 any questions on it or anything that he wanted expanded on,
9 he would come back to me in a memorandum fashion and it
10 would then, I would assume, go over to the department of the
11 Attorney General.

12 Q. At the stage it's typed up and you sign it, before you sign it,
13 does anybody check it for content or is it your report?

14 A. I would have written that report in longhand over a period of
15 time as things were happening and my secretary would have
16 typed it and I would have read it.

17 Q. Now the attachments that are listed on Pages 20 and 21 and
18 apart from the letter from Mr. Aronson and the statements
19 that you took yourself in the course of the investigation, what
20 was the source of the other statements? For example, the
21 statements from the police and the statement of Scott MacKay
22 and others.

23 Q. Dr. MacKay, sir?

24 A. Scott, Scott MacKay.

25 Q. Were these the statements that were provided to you by

1 Chief MacIntyre?

2 A. I would have had those statements at that time, sir. And the
3 ones that from the Sydney City Police would have been
4 provided by Chief MacIntyre.

5 Q. Now you've indicated to us that you met the Chief on the 4th
6 and you met him on the 26th.

7 A. That's correct, sir.

8 Q. You provided a statement to Scott and he provided two
9 statements to you. Prior to your submitting this report, did
10 the Chief provide you with any other statements on any other
11 occasion, prior to this report going in?

12 A. To me personally?

13 Q. Or to your force.

14 A. Or to the force? I have a vague recollection of Inspector
15 Scott...there's the first group of statements that come and then
16 somewhere in the intervening time, I believe there was a
17 meeting between Inspector Scott and Chief MacIntyre which I
18 was not at. I have a vague recollection of Inspector Scott
19 giving me additional statements. However, I would have
20 acquired those statements...I would have had all these
21 statements that are noted here at the time of submission of
22 this report.

23 Q. That would follow necessarily.

24 A. Yeah.

25 Q. Were there any statements in your possession that were not

1 forwarded at this time, statements from the Sydney City
2 Police?

3 A. Not to the best of my knowledge.

4 Q. I note even that there were perhaps statements of your own
5 that were taken that were not forwarded. For example, the
6 statements from Roy Ebsary was not included.

7 A. It could be, yes, sir, yes. And if I thought that a witness were
8 a peripheral witness which added nothing to the content of
9 the report, I probably wouldn't have forwarded it, no.

10 Q. Well, let me give you some names of people who provided
11 statements to the Sydney Police and ask you whether or not
12 you can say if you had these statements in your possession at
13 that time or not. Roy Gould?

14 A. I don't know, sir.

15 Q. Marvel Mattson?

16 A. I believe I had a statement from Marvel Mattson at that time
17 from the Sydney City Police.

18 Q. Barbara Vigneau?

19 A. I don't know, sir.

20 Q. Francis French?

21 A. That statement come in early, yes, sir.

22 Q. Gary Tobin?

23 A. Yes.

24 Q. Arthur Paul?

25 A. I can't recall.

- 1 Q. Lawrence Paul.
- 2 A. Can't recall, sir.
- 3 Q. Terry Gushue?
- 4 A. Yes, sir.
- 5 Q. Mrs. Merle Davis, R.N.?
- 6 A. Yes, sir.
- 7 Q. Greg Ebsary?
- 8 A. I don't believe I had that statement.
- 9 Q. Mary Ebsary?
- 10 A. I can't recall that, sir.
- 11 Q. Roy Ebsary?
- 12 A. I can't recall that either.
- 13 Q. Rudy Poirier?
- 14 A. I can't recall having that statement, sir.
- 15 Q. Catherine O'Reilley?
- 16 A. Yes, sir.
- 17 Q. Mary O'Reilley?
- 18 A. Yes, sir.
- 19 Q. Now to be sure you understand what I'm asking you, I'm
- 20 asking you whether or not you had these statements.
- 21 A. By the 12th of March.
- 22 Q. At the time this report went in.
- 23 A. At the 12th of March?
- 24 Q. Yes.
- 25 A. The ones I have signified in the affirmative, I can recall

1 having them early in the investigation.

2 Q. What do you call "early"?

3 A. Between the 3rd of February and say, 12th of March. It's a
4 ballpark figure, but I made no independent lists, sir, and I
5 cannot give testimony that I...to the best of my recollection,
6 those ones were there.

7 Q. The list also refers to the reports of Inspector Marshall and
8 Corporal Smith.

9 A. Yes, sir.

10 Q. And I take it from the script of the report that you had
11 reviewed both reports as well?

12 A. Yes, sir, Inspector Scott was able to get the Inspector Marshall
13 report early on in the investigation.

14 Q. Was that provided to you by Chief MacIntyre?

15 A. No, Inspector Scott was formerly in charge of the Maritime
16 Crime Index Section and that report again was one that
17 normally should have been destroyed with the natural
18 destroying period of holding reports and it was saved, and
19 Inspector Scott was familiar with that. There were a number
20 of old reports being saved by, I believe, Sergeant Lohnes in
21 Halifax and he contacted him and sure enough he still had
22 Inspector Marshall's report.

23 Q. Would that have been the type of report that you would have
24 expected to find in the Sydney Police file?

25 A. Yes, one would think they should have gotten a copy from the

1 Attorney General's Department after...they should have been
2 notified and then a copy of the report could have been sent.

3 Q. Did you have a statement of Jimmy MacNeil as he is referred
4 to in...

5 A. Yes, I would have taken a statement from Jimmy MacNeil
6 early on, sir.

7 Q. No, I'm sorry, not the statement that you took but were you
8 provided...this attachment...

9 A. Yes...

10 Q. ...refers to his statement of November 15, '71.

11 A. Yes, and that's where I found Jimmy MacNeil because that
12 was one of the ones that I got in the first batch, I believe.

13 Q. Not wanting to belabour the fact but again going back to Mr.
14 Harris' book at 312 and this is a...did you speak to Mr. Harris?

15 A. I beg your pardon?

16 Q. Were you interviewed by Mr. Harris, Michael Harris?

17 A. After the reference was over, I was interviewed extensively
18 by Mr. Harris. I was contacted once by Mr. Harris prior to
19 that.

20 Q. Reading from Page 12 (sic) and this is in quotations and he
21 says:

22

23

24

25

Harry Wheaton later recalled 'I saw no Jimmy MacNeil statements. All I saw was the eyewitnesses' statements and some of the peripheral statements like the police officers who were first on the scene.'

1 Is that an accurate statement?

2 A. No.

3 Q. 312. So again if I understand your testimony correctly, Staff
4 Wheaton, in addition to the Sydney Police statements listed
5 on Pages 20 and 21 here, your memory is that you had at least
6 the other statements which I've identified for you and which
7 you've answered in the affirmative.

8 A. To the best of my recollection, sir.

9 Q. Now you mentioned that you did up a precis of this report for
10 forwarding to Superintendent Christen. If I can direct your
11 attention to Volume 19, that red book on the corner of the
12 table there, at Page 17. Are you able to identify pages 17 to
13 20?

14 A. This appears similar to the precis which I would have
15 compiled for Superintendent Christen.

16 Q. And was the precis prior to your completing this report that
17 we've just looked at?

18 A. I believe so, sir, yes.

19 Q. Concurrently. And would I be correct in saying that certainly
20 on Page 18 of that report when you referred to John Pratico
21 that you quote verbatim from Inspector Marshall's report?

22 A. I haven't compared the two, but if you have, I wouldn't
23 disagree with you, sir.

24 Q. And on Page 20, bottom of the first paragraph on Page 20,
25 you comment about Mr. Sarson and you say:

1 He would not make a strong witness. He
2 has been convicted of possession for the
3 purpose and is presently suspected of
4 dealing in drugs.

5 Was that your opinion at that time that he would not be a
6 strong witness?

7 A. At that time, yes, sir.

8 Q. Now if I might move now to, I believe, the 17th of March and
9 again I'm going from Mr. Edward's notes, Volume 17, Page 6.
10 And he has a notation about a quarter of the way down the
11 page

12 Wednesday, March 17, '82, met at noon
13 with Wheaton. Says he has talked to Lou
14 Matheson.

15 A. Yes, sir.

16 Q. Do you have any recollection of a meeting with Mr. Matheson?

17 A. Yes, sir.

18 Q. What's your recollection of that?

19 A. I was in Port Hawkesbury, I believe, conducting another
20 investigation. I just can't recall for sure what the
21 investigation was. I believe it was an arson. I'm not positive,
22 on the 17th of March, and I met with Lou Matheson at the
23 Wandlyn Motel. We just happened to meet there.

24 Q. What did you want to know from him?

25 A. I thought it was an opportune time in a casual sort of setting

1 to tell him what I was doing and was there anything that he
2 could offer, anything in his capacity as Assistant Crown
3 Prosecutor he'd like to tell me about the Marshall case.

4 Q. And what did he tell you?

5 A. Very little actually. He said he could remember it and that
6 Moe Rosenblum did a good job defending him and Donnie
7 vigorously prosecuted it and that's about it.

8 Q. Do you have any notes of your meeting?

9 A. No, sir.

10 Q. Did you ask him if he had any files?

11 A. I can't recall if I did or didn't.

12 Q. Did you question him about his knowledge of the first
13 statements of Mr. Chant and Mr. Pratico?

14 A. During the conversation I did ask him, yes, if he knew that
15 there were two statements taken from Chant and Pratico, one
16 on the 30th and one on the 4th. And he said he did.

17 Q. He said he did?

18 A. Yes, sir.

19 Q. Did you consider at any time taking a statement from Mr.
20 Matheson?

21 A. No, sir.

22 Q. Why not?

23 A. Mr. Matheson is a judge of the Provincial Magistrates' Court
24 and I felt that he would certainly be a competent witness who
25 would, there would be no need really of taking statements.

1 He would not run away. He would always be there for me to
2 interview at a later date should the need arise.

3 Q. The next notation that I can find, sir, in terms of chronology is
4 a report on the 22nd of March. Do you have any recollection
5 of any steps being taken in the investigation in the week
6 prior to 22nd of March?

7 A. Are you reading from somewhere?

8 Q. I'm not reading from anywhere. I'm just saying on page 58
9 there's a report from the, dated the 22nd of March. I just
10 want to make sure if there's anything in your memory about
11 the days preceding that.

12 A. The days preceding the 22nd.

13 Q. Yes.

14 A. No, sir. If you were to mention instances, I can't honestly
15 recall.

16 Q. There is a memorandum from the Officer in Charge of the CIB
17 on the 16th of March and that's reproduced in Volume 19 at
18 page 42. It's from Superintendent Christen. Would I be
19 correct in saying this would be a response to your first
20 report?

21 A. Yes, sir.

22 Q. And following that you compiled the report of the 22nd of
23 March?

24 A. I beg your pardon, sir?

25 Q. Following that you compiled the report of the 22nd of March?

1 A. Yes, sir.

2 Q. That's in Volume 34 in the red book that we're using. Page
3 58.

4 A. Yes, sir.

5 Q. And you responded, for example, in Paragraph 2 by providing
6 him with copies of the statements that were omitted and
7 referring to the transcript with respect to Mr. Pratico
8 approaching the Sheriff and Defence counsel.

9 A. Yes, sir.

10 Q. Did you speak to Defence counsel about the Pratico matter at
11 trial?

12 A. I spoke to Mr. Rosenblum, I did not speak to Mr. Khattar.

13 Q. When did you speak to Mr. Rosenblum?

14 A. I don't have the date recorded in my notebook. I know Mr.
15 Rosenblum had been in Florida. It would be toward the end
16 of March, I believe, and I don't have the date recorded. It
17 was after he came back from Florida.

18 Q. What was the purpose of your speaking to Mr. Rosenblum?

19 A. To appraise him of the situation that had arisen. And at that
20 time I believe I wanted to know had he, they even been
21 offered the opportunity of having Donald Marshall
22 polygraphed.

23 Q. Do you have any notes of your conversation with Mr.
24 Rosenblum?

25 A. I have none, no, sir.

1 Q. And do you remember asking him about the polygraph
2 approach?

3 A. Yes.

4 Q. What was his response?

5 A. They had not been offered the opportunity.

6 Q. Did you ask Mr. Rosenblum whether or not they were aware
7 of the first statements of Mr. Pratico and Mr. Chant?

8 A. Yes, sir.

9 Q. What did he say?

10 A. They were not aware of them.

11 Q. Did you ask him about the incident with Mr. Pratico in the
12 courthouse?

13 A. Yes, sir.

14 Q. And what was his response to you?

15 A. He described it to me.

16 Q. What did he describe?

17 A. He described to me that it had been brought to his attention
18 by Mr. Khattar is that Mr. Pratico had been, had contacted
19 Donald Marshall, Sr. and the Sheriff advising that he had not
20 seen the murder and that, basically, the conference was held,
21 or the meeting was held and Pratico went into an office with
22 Donnie MacNeil and the Chief and then the court was
23 reconvened and he took the stand and gave his evidence that
24 he had seen it.

25 Q. Did Mr. Rosenblum advise you...

1 A. That's my recollection, it's not verbatim but...

2 Q. He then advised you that he went, Mr. Pratico went alone into
3 an office with the Chief and...

4 A. And as I recall he also said that he was cut off in his
5 examination by Judge Dubinsky quite a bit.

6 Q. Did Mr. Rosenblum advise you that Mr. Chant had been taken
7 alone into an office with Chief MacIntyre and the Prosecutor?

8 A. Mr. Chant, no, I'm sorry. Mr. Pratico.

9 Q. I'm sorry, Mr. Pratico. I'm sorry.

10 A. Yes.

11 Q. Okay. That he had gone into the office alone with Chief
12 MacIntyre and a prosecutor?

13 A. I believe the way it went, he told me that Mr. Khattar had
14 told him that.

15 Q. So you're getting it...

16 A. I'm getting it...

17 Q. Second-hand.

18 A. Hearsay. Second, third-hand, yeah.

19 Q. And we're getting another two or three steps removed.

20 A. Yes.

21 Q. Did you consider speaking to Mr. Khattar?

22 A. No, I didn't.

23 Q. Why not?

24 A. Not at that time. At this time the thrust and the direction was
25 to get Donald Marshall out of Dorchester, compile evidence as

1 to the guilt of Mr. Ebsary if it was there and follow up an
2 investigation that was eleven-years old.

3 Q. Did you tell Mr. Rosenblum that you believed Mr. Marshall
4 was innocent?

5 A. Yes.

6 Q. What was his reaction?

7 A. He was amazed. He was amazed.

8 Q. How did he express that?

9 A. I beg your pardon, sir.

10 Q. How did he express that to you?

11 A. He, verbally. He, the way he put it to me was that he did his
12 best to get, he referred to him as Donny often, but he always
13 felt deep down he was guilty.

14 Q. Did he tell you that?

15 A. Yes.

16 Q. Where did you meet Mr. Rosenblum?

17 A. I met Mr. Rosenblum in, I believe it was in the courthouse,
18 yes, in the courthouse.

19 Q. Was it a planned meeting or just a chance meeting?

20 A. No, no. It was a meeting, again, of opportune. He happened
21 to be there. He had come back from Florida, I ran into him.
22 It was not a long meeting. We just stood and we discussed it
23 and went on our way.

24 Q. Did you indicate to him that Junior was now saying that this
25 took place during a robbery?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. I don't recall telling him that, no. It was not a long meeting.
2 It was one of those things that I always felt that I would like
3 to go back and follow up on, I never did.

4 4:26 p .m. - ADJOURNED TO 19 JANUARY 1988 - 9:30 a.m.

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REPORTER'S CERTIFICATE

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I, Margaret E. Graham Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



Margaret E. Graham

DATED THIS 18th day of January , 1988, at Dartmouth,
Nova Scotia