

BG44
Vol. 252
#3

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

Volume 42

- Held: January 19, 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:
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- 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. A. 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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7656 STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 JANUARY 19, 1988 - 9:33 a.m.

2 MR. CHAIRMAN

3 Mr. Orsborn?

4 MR. ORSBORN

5 Thank you, My Lord. I have two exhibits to be filed. One is a
6 compilation of six excerpts from the Cape Breton Post, I think a
7 couple of which have already been introduced individually but
8 this is a sequential group, May 29, 31, June 1, 2, 3, and 5, 1971. I
9 believe the next number is 105.

10 EXHIBIT 105 - SIX EXCERPTS FROM CAPE BRETON POST DATED
11 MAY 29, 31, JUNE 1, 2, 3, and 5, 1971.

12 MR. ORSBORN

13 And the second is entitled "Volume 37" and is a transcript of a
14 June, 1984 Examination for Discovery of Heather Matheson in the
15 action John F. MacIntyre v. Canadian Broadcasting Corporation. I
16 believe that will be 106.

17 EXHIBIT 106 - VOLUME 37. TRANSCRIPT OF JUNE, 1984
18 EXAMINATION FOR DISCOVERY OF HEATHER MATHESON, JOHN F.
19 MACINTYRE V. CANADIAN BROADCASTING CORPORATION.

20

21 HAROLD FRANCIS WHEATON, still sworn, testified as follows:

22

23 EXAMINATION BY MR. ORSBORN, Cont'd.

24

25 Q. Staff Wheaton, I'd like to move back to Volume 34, if you

1 would, please, and pick up pretty well where we left off at
2 pages 58 and 59, your report of 22nd of March '82. I'd just
3 like to touch on the paragraph at page 59, Paragraph 6. And
4 in this paragraph, you are setting out what appears to be
5 information you received from Mr. Alolphus Evers. Would
6 that be correct?

7 A. Yes, sir.

8 Q. As I read that paragraph, you're indicating that there were
9 nine fibres found in total on the knives, four fibres on the
10 handle of Exhibit 8, two from the taper on the handle of
11 Exhibit 8 and three on the envelope.

12 A. Yes, sir.

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. And you then set out that three were from the stuffing of Mr.
16 Seale's coat or consistent with that stuffing, three from the
17 wool of Mr. Seale's coat and three in the envelope of Mr.
18 Marshall's coat? Is that correct?

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

20 Q. And does that reflect the information that the, the verbal
21 information you received from Mr. Evers? As I read it, you
22 did not have his report at this time.

23 A. That would reflect the verbal information I recall as reported
24 on prior to receiving this.

25 Q. Yes, thank you. Did you advise Mr. Edwards of those

1 findings?

2 A. Yes, sir.

3 Q. I won't bother referring you to the volume but in Volume 29
4 at page 33, Mr. Edwards makes a note of his discussion with
5 you. It's dated March 17th. I'm not concerned about the
6 date. He indicates that a total of 12 fibres, and take my word
7 for it, and not...

8 A. Yes, I certainly will, sir.

9 Q. Could you suggest any reason for the difference from what
10 you write and what he writes?

11 A. There may have been some extraneous fibres, sir. These lab
12 reports sometimes, I hadn't received the report but Mr.
13 Edwards may have told me of some other fibres which were
14 inconsistent with anything, really. These, I believe, were all
15 consistent.

16 Q. Okay.

17 A. That's to my recollection without refreshing my memory.

18 Q. If I may then turn to the report filed by Mr. Edwards which is
19 found in this same volume toward the end of it at page 129.

20 A. Yes, sir.

21 Q. Looking at Mr. Edwards' conclusions there and adding up the
22 figures that he has in Conclusions 1, 2, and 3, I find a total of
23 26 fibres that are consistent and spread among the various
24 knives. Can you offer any suggestion as to why your note
25 would read nine and Mr. Edwards' note read 12 and then

- 1 Mr...Sorry, Mr. Evers' report total 26 consistent fibres?
- 2 A. No, I can't, sir.
- 3 Q. Okay, thank you.
- 4 A. Other than, as you said, one was done verbally over the phone
5 and the other one was an official report from the Crime
6 Detection Laboratory.
- 7 Q. The next notes I find in chronology would be the 23rd of
8 March, and this is taken from your own notes, second page of
9 your notes at the front of Volume 34, and Item #12 of those
10 notes indicates that you found this fruit basket in the Ebsary
11 home. Page two of Volume, in Item #12.
- 12 A. Yes, sir.
- 13 Q. Why did you go back and seize the basket?
- 14 A. Because it occurred to me that there could be fibres in the
15 basket. So the basket was then seized and forwarded to the
16 lab. I believe Sergeant Arsenault of my Drug Section took it
17 up personally.
- 18 Q. And you described it for us yesterday, I believe.
- 19 A. Yes, sir.
- 20 Q. Sort of a wooden type fruit basket?
- 21 A. Yes, sir, fruit basket such as one would buy peaches in.
- 22 Q. Do you know where it is now?
- 23 A. No, I don't, sir.
- 24 Q. Did you ever see it again after you shipped it off?
- 25 A. I don't recall seeing it, no.

- 1 Q. On page 60 of Volume 34, sir, I believe is the exhibit report
2 relating to the seizure of the basket, would that be correct?
- 3 A. This exhibit report, yes, it refers to the basket as well as other
4 things.
- 5 Q. I note that the, and you certified this on the bottom, I see.
- 6 A. Yes, sir.
- 7 Q. The address shown for the seizure is 68 Falmouth Street?
- 8 A. Yes, Items 2 and 3 were seized from 68 Falmouth Street and
9 Item 1 was seized from Mechanic Street.
- 10 Q. So Item 1 was not seized from Falmouth Street?
- 11 A. No, sir.
- 12 Q. Moving again, sir, to your notes back on page two, the 25th of
13 March. I'm looking at Item #15 on page two.
- 14 A. Yes, sir.
- 15 Q. You have a note referring to a contact with Constable Gary
16 Green. Why did you contact Constable Green on that date?
- 17 A. I believe, to the best of my recollection without having the
18 dates in front of me, that Mr. Ratchford had phoned me and
19 requested a meeting. I went, I believe, with Corporal Carroll
20 to the Sydney Academy where Mr. Ratchford was working
21 and as a result of a conversation with Mr. Ratchford, I
22 contacted Constable Green in Ottawa.
- 23 Q. Your report, sir, and we'll get to it in a moment, indicates that
24 Mr. Ratchford contacted your office on the 29th.
- 25 A. 29th.

1 Q. Of March and provided you with a statement as of that date
2 and I'm trying to understand if you contacted Constable Green
3 prior to any contact from Mr. Ratchford?

4 A. I don't recall. I don't have an independent recollection
5 without refreshing my memory from reports which order it
6 came in.

7 Q. Other than information provided to you by Mr. Ratchford,
8 would you have any reason to contact Constable Green?

9 A. Do you have the date that I interviewed Donna Ebsary, sir?

10 Q. There was an interview with her on the 2nd of April, I
11 believe, or a telephone conversation with her.

12 A. Yes. No, I honestly don't recall.

13 Q. Did you take a statement from Constable Green?

14 A. No, I did not.

15 Q. Are you able to expand on the note which is shown in Item
16 15 which relates your conversation with Constable Green?

17 A. Yes, sir.

18 Q. I'm sorry, was this a telephone conversation or face to face?

19 A. This was a telephone conversation and in it Constable Green
20 recalled David Ratchford telling him that Donna Ebsary, Donna
21 Ebsary's father washed blood off a knife the night of the Seale
22 murder and that at that time Constable Green advised me he
23 was attending karate classes being taught by Mr. Ratchford,
24 and as well as Donna Ebsary, and that he interviewed Donna
25 Ebsary and felt that she was truthful and felt that it was a

1 matter of some consequence, so he went to the Sydney City
2 Police and saw Detective Billy Urquhart and he received a
3 very cool reception from Billy Urquhart and he was as much
4 as told that it was none of his business and he left. As a
5 result of that, he then came to see one of the members of the
6 General Investigation Section, the plain clothes section in
7 Sydney and told him as well. And he felt that he had done
8 his duty at that time but nothing further was done on it.

9 Q. Do you know in what time period this was taking place?

10 A. The date that Constable Green went down to interview...

11 Q. Yes.

12 A. Mr. Urquhart, Detective Urquhart? No, I don't, sir.

13 Q. Do you know which member of the Sydney GIS he spoke to?

14 A. He felt it was, at that time, Sergeant Brooks.

15 Q. Did you speak to Sergeant Brooks?

16 A. No, I did not.

17 Q. Did you speak to Detective Urquhart?

18 A. Yes, I did, sir.

19 Q. When did you speak to him about it?

20 A. During this same time period and he recalled the incident and
21 he didn't acknowledge that he gave him a cool reception but
22 did acknowledge that he came down and that the case was
23 handled by Chief MacIntyre and he had, if he wanted to go
24 any further with it, he should see him.

25 Q. Did you make any notes of your discussion with Detective...

- 1 A. No, I did not.
- 2 Q. Urquhart? Did you approach him specifically to inquire about
3 this incident?
- 4 A. Yes, sir. This would be during the period when we were
5 interviewing all the Sydney City Policemen involved in the
6 matter.
- 7 Q. Okay, we'll come to that. Looking at the steps that Constable
8 Green took when he was provided with this information by
9 Donna Ebsary and David Ratchford, do you have any comment
10 or opinion, albeit with hindsight, as to whether the steps he
11 took were appropriate?
- 12 A. Constable Green did what he could, I feel. He went to the
13 source of the investigation. In hindsight, he could have
14 submitted a report, a formal report, but he did report it to
15 his superiors in the force. I felt he took reasonable steps,
16 based on his knowledge at the time. But he probably, in
17 hindsight, should have submitted a formal report and there
18 should have been a more thorough investigation into it.
- 19 Q. The gentleman you referred to, Mr. Brooks, would he be
20 Constable Green's superior?
- 21 A. He was the sergeant in charge of the plain clothes section
22 which I later became in charge of in Sydney at that time.
- 23 Q. And would he be the appropriate person for Constable Green
24 to report to?
- 25 A. Yes, sir.

1 Q. Moving back then, sir, to page 64, and looking at Paragraph 4
2 which relates to your discussions with Mr. Ratchford, one
3 small point. You're referring, I guess, Mr. Ratchford contacted
4 the office and wanted to see a member. He testified, I think,
5 that you appeared at Sydney Academy out of the blue. Do
6 you have a recollection of Mr. Ratchford calling the office
7 before you spoke to him?

8 A. Yes, sir.

9 Q. And he provided you the statement which was, I think,
10 attached to that report on page 68?

11 A. Yes, sir.

12 Q. That same report, sir, on page 65, Paragraph 5, makes
13 reference to, Paragraphs 5 and 6, to a Miss Couture and then a
14 Miss Floyd contacting the office. And I gather they contacted
15 the office as a result of press coverage. Had there been an
16 invitation go out for, inviting people to come and talk to you?

17 A. No, there had not, sir, but I was inundated with calls from
18 people.

19 Q. What type of calls?

20 A. They varied. Calls from press people from all over Canada
21 during this investigative portion of it and some from the
22 United States. Calls from citizens in Sydney wishing to help,
23 such as this. Calls from citizens in Sydney advising of what
24 they considered to be wrongdoing by Chief MacIntyre in
25 various things they had to do with him.

1 Q. What did you do with the calls from people that felt they
2 knew something about this Marshall matter?

3 A. I looked into them.

4 Q. What does that mean?

5 A. I went out and talked to them, assigned my men to go out and
6 talk to them. Corporal Carroll fielded some. Constable Hyde,
7 who was in the Crime Investigation end of it, interviewed
8 some people.

9 Q. Would there then have been people spoken to whose names
10 do not appear in these reports?

11 A. Yes, sir.

12 Q. Do you have any notes anywhere of who was seen?

13 A. I did not make an index of it, no, sir.

14 Q. Would you know if your members who you sent out would
15 have a record of people that they spoke to?

16 A. They may.

17 Q. Can you give us any idea of how many people you asked to be
18 interviewed?

19 A. Perhaps five, six, something like that. I know Mr. Ratchford
20 came in as a telephone call. There was a lady who Donna
21 Ebsary had spoken to and who, in an airport or something
22 going to Boston, and I believe Constable Hyde interviewed
23 her. There was perhaps five or six.

24 Q. I'm thinking particularly of people that might have given you
25 information and their names don't show up on these reports.

1 A. If I felt the information was pertinent, it's in this report. But
2 if it's extraneous information or information which had
3 already been previously covered by another witness which
4 was closer to the scene and not so much hearsay type of
5 thing, third-hand information, I didn't include it in the report.

6 Q. You mentioned that there were people that telephoned and
7 wanted to talk about instances of wrongdoing by Chief
8 MacIntyre?

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

10 Q. Would I gather that these would be instances on a... related to
11 the Marshall matter?

12 A. That's right, sir.

13 Q. How many people phoned with allegations such as that?

14 A. Again, I did not keep record of it. There were a number, five,
15 six. I remember one that came forward at that time was a
16 Mrs. Clements, who I believe has given evidence before this
17 Commission of Inquiry. She phoned complaining about what
18 had happened to her daughter.

19 Q. What did you do with complaints of this nature?

20 A. I wasn't investigating the chief. I believe at the time I
21 probably noted the name and so on and asked if they wished
22 to go any further with it that they should send their
23 complaint to the Attorney General of the Province of Nova
24 Scotia or the mayor of Sydney.

25 Q. You did not feel it was your mandate to...

1 A. I was not investigating the Sydney City Police. I gave them
2 the avenues if they wished to make an official complaint to
3 make it and that was it.

4 Q. Page 65 refers to statements that were taken from Barbara
5 Floyd and Deborah Couture and they're attached to your
6 report. I don't propose to go through them, other than that in
7 Barbara Floyd's statement, there is a reference to contacting
8 one of the lawyers and she wasn't sure if it was defence or
9 prosecution. I don't know if you recall that or not.

10 A. I recall that interview very well, yes, sir.

11 Q. Did you take any steps to ascertain which of the lawyers she
12 had contacted?

13 A. Not really, no, sir.

14 Q. Paragraph 6 on page 65 also refers at about five or six lines
15 from the bottom of an interview with Ricky Risk.

16 A. Yes.

17 Q. A gentleman at the dance. Was there a statement taken from
18 Mr. Risk?

19 A. He was interviewed. A statement was not taken. He could
20 neither confirm or deny. He just didn't remember.

21 Q. Do you know who interviewed him?

22 A. I cant recall if it was myself or Corporal Carroll.

23 Q. Do you know if there are any notes of that interview?

24 A. Not to my independent recollection, sir.

25 Q. I belive, sir, the next thing chronologically will go back to

1 page 63 and it's an exhibit report relating to seizure of a navy
2 coat and other items of clothing from Mr. Ebsary's residence?

3 A. Yes, sir.

4 Q. And that seizure was made by Constable Hyde?

5 A. Yes, sir.

6 Q. Now in your report on the next page, page 64, Paragraph 2
7 about six or seven lines from the bottom of that paragraph,
8 you say "numerous cuts were noted in the lining of that coat,"
9 is that correct?

10 A. Yes, sir.

11 Q. I take it you actually saw this coat?

12 A. Yes, sir.

13 Q. When you say "numerous," how many, what are you talking
14 about? Three? Ten?

15 A. The coat looked like there were cuts and little striation marks
16 like a sharp knife had been carried in it, in the pocket of the
17 Burberry and there were penetration marks, cuts, striations.

18 Q. These were in the pocket area?

19 A. In the pocket area, yes, sir. I believe some in the lining as
20 well.

21 Q. How big were they?

22 A. They varied in size, sir, from very small to maybe an inch,
23 two inches.

24 Q. I understand that you were then...

25 A. The pocket wasn't completely shredded or anything like that

1 but there were cuts.

2 Q. I understand that you asked the laboratory for assistance in
3 examining these cuts?

4 A. Yes, sir.

5 Q. If I could just direct your attention to the report on that at
6 page 134 of this volume.

7 A. 134?

8 Q. 134, yes, sir.

9 A. Yes, sir.

10 Q. Particularly looking at #2 under "Purpose". It says:

11
12 To examine Exhibit 12 to determine if the
13 separation in the back of the coat is a cut
14 or a tear.

14 And then the conclusion, Item #2, talks about the separation
15 in the back of the coat indicative of being cut. The only
16 question I have, sir, is your report refers to numerous cuts
17 and the lab report refers simply to one separation. Can you
18 offer any explanation for the difference?

19 A. Well, if you'll notice in the purpose at 2, "examine Exhibit
20 12," which I assume is the coat, yes, "...to determine if the
21 separation on the back of the coat is a cut or a tear."

22 Q. Yes.

23 A. So then in 2 of their conclusion, they say "the separation in
24 the back of the coat in Exhibit 12 is indicative of being cut."

25 Q. Yes.

1 A. I don't see anything in that about the pocket.

2 Q. Why you do not ask for an analysis of the other cuts in the
3 coat?

4 A. This is a report prepared by the Crime Lab. This is not my
5 report at...

6 Q. But the request would be yours?

7 A. I beg your pardon, sir?

8 Q. Would the request for assistance be yours?

9 A. I would have talked to Constable Hyde about it. It's Constable
10 Hyde that submitted the report. I would have talked to him,
11 yes.

12 Q. His request, I think, is on page 133 and he indicates in the
13 centre of that page, "It is also requested that the inner lining
14 of the blue coat be examined."

15 A. Yeah.

16 Q. "To determine if the cut was made by a knife or it was torn."
17 I take it you were not concerned about the serrations in the
18 pocket?

19 9:58 a.m. *

20 A. No, sir. Well, I really can't comment on it. At this date
21 Constable Hyde prepared this report and sent it forward. The
22 difference in the report and the lab report, there were cuts in
23 the pocket is all I can say and why they weren't examined I
24 don't know. There is a difference there.

25 Q. Again, moving forward in time, sir, on page 65 there was a

1 reference to a telephone conversation with Donna Ebsary on
2 April the 2nd, it's found in paragraph 5. This is also reflected
3 in your notes. Do you remember that telephone
4 conversation?

5 A. Yes, sir.

6 Q. Was that the first time that Miss Ebsary had been spoken to
7 in connection with this matter?

8 A. Yes, sir.

9 Q. And who was the conversation between?

10 A. Donna Ebsary and myself.

11 Q. Was there anybody else present at your end?

12 A. No, sir.

13 Q. Do you have any notes of that conversation?

14 A. Yes, sir.

15 Q. What does that note say?

16 A. It says, "2nd of April, '82, interview with Donna Ebsary by
17 phone."

18 Q. Do you have any notes of the substance of the conversation?

19 A. No, sir. In my report, of course, I have...

20 Q. I understand that, sir. When you were writing this report
21 then would you be relying on your memory?

22 A. I would have been relying on my memory or at times I would
23 take a piece of foolscap paper and make note on that and then
24 transfer that to a written report.

25 Q. Okay. Would that conversation have been taped?

1 A. I have a very vague recollection that I did tape that, I'm not
2 sure if I did or not, but I have a vague.

3 Q. Would you know if there was any transcript prepared?

4 A. No.

5 Q. Would the tape still be available?

6 A. No, no, I don't have it, no. But I knew it was an important
7 conversation and I either made notes of it at the time or I
8 may have taped it.

9 Q. If you had made notes, where would they be now?

10 A. They would probably be disposed of when I submitted a
11 written report on it.

12 Q. I see. So, on page 67 there is a reference to a briefing with
13 Chief MacIntyre on April the 5th, this is in paragraph 9, and
14 Inspector Scott's forwarding memo. Were you present at that
15 briefing?

16 A. Yes, I was, sir.

17 Q. What do you remember of that briefing?

18 A. This briefing was held, again, after new information had come
19 to light in relation to the knives and we had now information
20 from the Crime Detection Laboratory that, in fact, they had
21 found a knife which bore fibres similar in all respects to the
22 fibres in Seale's jacket, which to me indicated that it was the
23 murder weapon. Inspector Scott was made privy of that and
24 he arranged a meeting so that he...we could advise the Chief.
25 Again, he was brought up to date of any new materials and it

1 was at this that the meeting was held in, as I recall, in
2 Inspector Scott's office this time. Inspector Scott advised
3 Chief MacIntyre, as I said, and I didn't take a very active part
4 in that meeting. I sat there and listened more or less. As I
5 note in my report, the Chief was asked if there was any other
6 avenues we should explore, either of a rebuttal nature or of
7 obtaining new evidence. I certainly heard that being
8 discussed and he had no suggestions to offer in this regard.

9 Q. Was there anyone else present besides yourself and
10 Inspector...

11 A. Inspector Scott, myself and the Chief and the meeting more or
12 less came to an impasse, or there was no further discussion. I
13 got up and left and then there was further time between the
14 Chief and Inspector Scott, I believe, because the Chief did not
15 leave with me.

16 Q. Uh-hum. What was the Chief's reaction to your findings on
17 the fibres?

18 A. There was...he was basically, ah, no reaction to it. He didn't
19 say, "Isn't that amazing," or anything like that. He, as a
20 matter of fact, as I recall it, brought up another subject and
21 we went off on another tangent.

22 Q. Another subject related to the Marshall matter?

23 A. Well, yes. I believe at this time he was saying a Terry Gushue
24 is a mysterious person.

25 Q. Uh-hum. Was the Chief giving you any indication that he

1 | agreed with your assessment at this point that Mr. Marshall
2 | was innocent?

3 | A. That he agreed that Mr. Marshall was innocent.

4 | Q. Yes.

5 | A. No, he certainly gave no indication of that, sir.

6 | Q. Did he give any indication to the contrary?

7 | A. Yes. Yes. I would say my general impression of that
8 | interview when I left that meeting is that the Chief still did
9 | not believe that Marshall stabbed Seale. I mean that he
10 | believed that Marshall did stab Seale, and the next thing that
11 | came as a result of that was the phone call from or...Inspector
12 | Scott a few days later come in and advised me that the Chief
13 | had been in to see the Attorney General.

14 | Q. Yeah. I'll come to that. Did you take any notes while you
15 | were present at the meeting?

16 | A. No, sir, I did not.

17 | Q. How long were you present?

18 | A. I don't recall this as being a very long meeting. I was present
19 | maybe five, eight, ten minutes at the most.

20 | Q. Okay. You used the word "impasse". What happened in the
21 | meeting to lead you to describe it as an impasse?

22 | A. Well, there wasn't an agreement. I don't believe the Chief
23 | feels that it was the knife that stabbed Seale. I got that
24 | distinct impression.

25 | Q. Uh-hum. Do you have any knowledge of what transpired in

1 the later discussions between Chief MacIntyre and Inspector
2 Scott?

3 A. No, not really. Inspector Scott and I did discuss after the
4 Chief had left, either that day or the next day, we had a lot of
5 discussions about it and I believe his feeling was the same as
6 mine as I recall it.

7 Q. On the report, sir, that was filed on the 6th, I'm looking at
8 page 66, paragraph 7 (E), just a minor point. You now say in
9 paragraph (E) "Lab evidence of a total of twenty fibres
10 belonged to the jackets of Seale and Marshall." This again is a
11 different...

12 A. A different figure.

13 Q. Different number. We've got nine, we've got twelve...

14 A. Based on updating.

15 Q. ...we've got twenty-six, we've got twenty.

16 A. Yeah.

17 Q. Can you...

18 A. It's sort of an updating of knowledge I believe, sir, from the
19 lab and then we get the report. The first is my phone call
20 from Adolphus Evers and then the report comes from the lab
21 and then in the report, as you can see how they're written, it's
22 a little complicated, you have to look up to see what one is
23 and what one contained and then what two is and two
24 contained. And I think what I'm doing is consolidating the
25 whole thing and saying simply a resume of the evidence is

1 that a total of twenty fibres. Now, I haven't counted the
2 report. If I miscounted then I 'm sorry. But that's what I
3 thought at the time.

4 Q. Your last paragraph, in the last sentence says, "Investigation
5 to continue." At that point, sir, and we're looking at the about
6 the 6th of April, what exactly were you investigating?

7 A. The 6th of April.

8 Q. Yes.

9 A. By this time we would have completed the Marshall end of
10 the investigation if you will, in that Marshall was out of
11 Dorchester Penitentiary, was in a halfway house, I believe.
12 We were then compiling our evidence in reference to the non-
13 capital murder charge against Mr. Roy Ebsary and the Crown
14 Prosecutor felt confident that we had sufficient evidence to
15 lay that charge and investigation would continue to wrap up
16 any loose ends in that regard, and I was, I believe, more or
17 less, waiting instruction insofar as what should we do about
18 the Sydney City Police.

19 Q. So, you were...if I understand you correctly, and please
20 correct me if I'm wrong, you felt that the investigation into
21 Mr. Marshall's guilt or innocence had been pretty well
22 wrapped up. There were some loose ends to tie up in
23 Mr.Ebsary's investigation.

24 A. Yes, sir.

25 Q. And you were waiting instructions on an investigation into

1 the Sydney City Police?

2 A. That is correct, sir, yes.

3 Q. Why would you await instructions for that at this time? Did
4 you feel an investigation was necessary?

5 A. I did, yes, sir.

6 Q. And do you need instructions to start an investigation?

7 A. I certainly do, sir.

8 Q. From who?

9 A. I beg your pardon.

10 Q. From who?

11 A. I would suggest the instructions should come from my
12 immediate officer commanding via the route from the
13 Attorney General's Department to the criminal operations
14 officer or CIB officer, Superintendent Christen, to Inspector
15 Scott, then to me, would be the proper procedure.

16 Q. And when you speak of an investigation, are you speaking of
17 an investigation in the nature of an inquiry or an
18 investigation in related to a suspected criminal offence?

19 A. A investigation in regards to a suspected criminal offence.

20 Q. And is it your normal practise with respect to starting
21 investigations with respect to criminal offences, suspected
22 criminal offences, that you would await direction from the
23 Department of the Attorney General?

24 A. If that individual is the Chief of Police of a city or town in the
25 Province of Nova Scotia, yes, sir.

1 Q. Why?

2 A. Because based on my own experience, having investigated
3 two Chiefs of Police in this Province, that is the direction that
4 they came from. This would be the third and I would expect
5 it to be handled in a similar manner.

6 Q. Although that may have been done in the past, can you
7 suggest any reason why that...you should, in fact, await that
8 direction? If you chose to investigate me, you wouldn't wait
9 for the Department of the Attorney General to tell you, would
10 you?

11 A. No, but if I were to chose to investigate the Chief of Police for
12 the City of Dartmouth I would.

13 Q. Why?

14 A. Because he is a public officer and a peace officer and as such
15 one would normally expect direction from the Attorney
16 General's Department. You would submit your report
17 outlining what evidence you had as has been done here, and
18 what reasoning you had, and then you would await
19 instructions. Those instructions, as I say, through the
20 Mounted Police channels would normally come from the CIB
21 officer who has weekly meetings with the Attorney General's
22 Department.

23 Q. Okay. That's a point we'll come back to, given some other
24 references and some of your...

25 A. Yes, sir.

- 1 Q. difference and if I'm wrong on poor addition is all I can say.
- 2 Q. Mr. Evers reported to you on the basket also.
- 3 A. Yes, sir.
- 4 Q. At paragraph 3 refers to "Four fibres being found in the
5 basket". Just out of curiosity do you have any idea how one
6 examines one of these peach baskets microscopically?
- 7 A. I haven't.
- 8 Q. No, I don't either. Do you know if they would...if those four
9 fibres, do you know if they were the only fibres found on the
10 basket?
- 11 A. Do I know if they were the only fibres found in the basket?
- 12 Q. Yes.
- 13 A. No, I do not have any independent recollection unless there is
14 something written in a report somewhere.
- 15 Q. Do you recall, sir, if you met with Mr. Aronson on or about the
16 14th of April?
- 17 A. Of April.
- 18 Q. Yes.
- 19 A. I could have, sir. I don't seem to have any note of it.
- 20 Q. I'm referring to Mr. Aronson's notes, looking at volume 29,
21 which I believe is Exhibit 98 or 99, I'm not sure which.
- 22 A. Volume 29.
- 23 Q. Volume 29, yeah, the red book. And the...
- 24 A. Page.
- 25 Q. Page 2 of that book. And, the note at the top of that page and

1 I'm assuming "cw" means "conversation with" and the initials
2 following that appear to be "HW" and they appear a couple of
3 times on the subsequent pages. 8:45 to 12:40. Do you recall
4 having an interview with Mr. Aronson for about four hours?

5 A. This was in April.

6 Q. Yes, sir. April 14th, I believe.

7 A. I can recall having two interviews, I believe, with Mr.
8 Aronson, one near the...relatively near the first of the
9 investigation, one later on.

10 Q. Yes. This is a fairly lengthy interview and...

11 A. Yes.

12 Q. I believe that his notes on pages 2, 3 and 4 refer to that
13 interview. I stand to be corrected by Mr. Aronson. But it is
14 apparent that the three or four pages there refer to fairly
15 detailed discussion of the results of the investigation.

16 A. Yes, sir.

17 Q. Do did you, in fact, then brief Mr. Aronson?

18 A. Yes, I did, sir.

19 Q. Was there anybody else present to your recollection?

20 A. Not that I can I recall. I believe just Mr. Aronson and myself.

21 Q. Were you authorized to brief Mr. Aronson in this fashion?

22 A. Mr. Aronson was the complainant in this investigation and it
23 would be in order to advise the complainant of the status of
24 the investigation. I didn't go for...I didn't ask anyone for any
25 authorization. I may have mentioned it to Inspector Scott in

1 conversation, I don't know.

2 Q. Is that your normal practise, sir, that the complainant in an
3 investigation is kept advised as to the progress?

4 A. Yes, sir.

5 Q. Right at the top of page 2 it appears to be a note from Mr.
6 Aronson after following your initials, it says, "A redneck
7 atmosphere in Sydney." Do you know if that's...you made that
8 comment to Mr. Aronson?

9 A. I recall that comment, because in Mr. Aronson's first
10 interview with me he used that expression.

11 Q. Mr. Aronson did.

12 A. Mr. Aronson did, that there was a redneck atmosphere in
13 Sydney. I had been stationed in Sydney between 1973 and
14 1975 and I very much enjoyed my time in Sydney and very
15 much enjoyed the people of Sydney. I disagreed with him
16 that there was a redneck atmosphere in Sydney in 1971 in
17 the first meeting. By the April meeting I had talked to
18 educators in the town, I had talked to lawyers, doctors,
19 merchants I knew who were present in 1971 and I learned
20 that, in fact, Mr. Aronson was right. There was a rednecked
21 atmosphere.

22 A. What does that phrase mean to you?

23

24

25

1 conversation, I don't know.

2 Q. Is that your normal practise, sir, that the complainant in an
3 investigation is kept advised as to the progress?

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6 Aronson after following your initials, it says, "A redneck
7 atmosphere in Sydney." Do you know if that's...you made that
8 comment to Mr. Aronson?

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13 Sydney. I had been stationed in Sydney between 1973 and
14 1975 and I very much enjoyed my time in Sydney and very
15 much enjoyed the people of Sydney. I disagreed with him
16 that there was a redneck atmosphere in Sydney in 1971 in
17 the first meeting. By the April meeting I had talked to
18 educators in the town, I had talked to lawyers, doctors,
19 merchants I knew who were present in 1971 and I learned
20 that, in fact, Mr. Aronson was right. There was a rednecked
21 atmosphere.

22 A. What does that phrase mean to you? A. That there was
23 some racial problems in the City. Redneck being a
24 connotative of the southern United States sort of thing. And,
25 that in point of fact, when I did this investigation I found that

1 these people indicated to me that there was racial problems
2 in the City of Sydney in 1971 and if Mr. Aronson made a note
3 of it it was probably because I said, "You were right, Stephen."

4 Q. Uh-hum. You mentioned having discussions with doctors,
5 lawyers, educators.

6 A. Yes, sir.

7 Q. Did you approach these people with the idea of getting a
8 feeling for what the atmosphere was in Sydney in 1971?

9 A. These would be people I knew socially or through my work,
10 lawyers at the courthouse, school teachers, neighbours,
11 who...you try to draw a cross-section of opinion and you put it
12 to them, "What was it like here in 1971 being a school teacher
13 in Sydney Academy?" and they would tell you.

14 Q. Can you tell us the type of information you received that led
15 you to change your opinion about the redneck atmosphere?

16 A. Well, this was the post-Martin Luther King period. This was
17 the period in society of the hippy generation, if you will,
18 when our young people became very mobile. This was a
19 period in Sydney, so I was told, and I have every reason to
20 believe I was told correctly, when there were problems in
21 Wentworth Park. That citizens felt that they couldn't safely
22 walk through the park. There were white-black feelings in
23 the Sydney Academy from a teacher I spoke to. There...it was
24 a turbulent time, I think if one looks reflectively at society as
25

1 a whole, and it was turbulent time in the City of Sydney in
2 that regard.

3 Q. Uh-hum. What was the colour of the people that you spoke
4 to?

5 A. I beg your pardon, sir.

6 Q. What was the colour of the people that you spoke to?

7 A. The colour of the people I spoke to. White, blacks, one black
8 chap I knew in Whitney Pier and native Indians.

9 Q. You spoke to native Indians.

10 A. Yes, sir.

11 Q. How many?

12 A. I recall speaking to Mr. Marshall, Donald Marshall, Sr. I recall
13 speaking to Roy Gould who ran a newspaper.

14 Q. Did you speak to them with a view to getting their opinions
15 on the atmosphere in Sydney?

16 A. This would generally, as I suppose is my style be it right or
17 wrong, in conversation I would meet these people and this
18 would be in my mind because I didn't agree with Aronson in
19 the first instance. And, I wanted to find out what it was like.
20 I knew what it was like when I came in '73.

21 Q. Uh-hum.

22 A. But I didn't know what it was like there in 1971 and I
23 wanted particularly to know what was going on down around
24 that park area. So, in conversation with these people I would
25 mention it or bring it up and they would give me their

1 opinion and I would just sort of sift through and try to draw a
2 form of opinion of my own.

3 Q. What was the situation in your opinion in 1973 to '75 when
4 you were there?

5 A. '73-'75 we were still in, if you will, the hippy generation, but
6 it was...the racial attitude of white versus black versus native
7 I didn't really see it in Sydney at that time. It was more of a
8 peace and love generation at that time and it...I didn't
9 personally notice any great confrontations or I certainly did
10 drug work down around the park area and in the back
11 parking lots of the taverns of Sydney, et cetera, et cetera, and
12 I didn't notice any great racial bigotry, to be quite honest
13 with you, sir.

14 Q. So, do I understand that you formed the opinion that there
15 was a change from 1971 to...

16 A. Yes, sir.

17 Q. ...1973?

18 A. Yes, sir.

19 Q. And from what you are telling us your opinion was it would
20 be a fairly abrupt change?

21 A. Yes, sir.

22 Q. Fairly noticeable.

23 A. Yes, sir.

24 Q. In the course of your looking into Mr. Marshall's case, did you
25 form any opinions on whether or not Mr. Marshall's race or

1 Mr. Seale's colour or race played any part in the way the
2 investigation or prosecution was conducted or the conviction
3 entered?

4 A. It's very difficult to answer that as one was not there.
5 Are...you're asking me my opinion.

6 Q. Did you have occasion to form any opinion during the course
7 of your investigation? The reason for asking is when you
8 were speaking to Mr. Aronson you...you're speaking of
9 matters of race and tension in 1971. And, I wonder why you
10 would mention that if you feel it was somehow relevant to
11 Mr. Aronson's...

12 A. Oh, the reason I mentioned it is that it was brought up by Mr.
13 Aronson in the first place and then in...later on I brought it up
14 that he was probably quite right. That's the reason. It was a
15 point brought up by Mr. Aronson that went along, if you will,
16 with his letter of complaint and verbally to me. So, it was a
17 matter I had in my mind as I was looking into this.

18 Q. Yes.

19 A. But for me to know what the jury was thinking in 1971 or
20 what the Judge was thinking or what the police, it's very
21 difficult to say not having been there and not being on...

22 Q. Well, you talked to a number of witnesses.

23 A. Yeah.

24 Q. A number of policemen were interviewed. You made mention
25 yesterday of a comment that...one comment that Chief

1 MacIntyre made to you. Was there anything at all that came
2 up in your investigation that would lead you to believe one
3 way or the other that Mr. Marshall's race and Mr. Seale's
4 colour was a relevant factor in Mr. Marshall's conviction?

5 A. My opinion now, sir.

6 Q. Based on your investigation.

7 A. Based on my investigation, is that it did play some part. Now,
8 how great a part I really don't know. But I believe there was
9 some part played, yes.

10 Q. And are you able to give us the basis to that opinion?

11 A. As you just said, from my interviews, from my discussions
12 with Chief MacIntyre, from my investigation of this thing, this
13 crime, from my speaking to various levels and strata of
14 society in Sydney.

15 Q. Other than the comment yesterday you attributed to Chief
16 MacIntyre in speaking of Dr. Virick, were there any other
17 comments or statements made by Chief MacIntyre that would
18 support your opinion you just gave us?

19 A. I cannot honestly recall any comments by Chief MacIntyre
20 relative to blacks. I can recall general impressions that I
21 received from the Chief in relation to Indians and I don't
22 think he particularly cared for Indian people. But the Chief
23 also, for instance, Margaret Pratico, when I brought it to his
24 attention that...about John not knowing about the murder
25 until he heard it on the radio, his answer was, "You can't

1 believe her; she's a Hawco from the Pier. Now, what that's
2 supposed to mean, I don't know. I don't know if Hawco's
3 from the Pier are what colour...

4 Q. Hawco meaning a surname.

5 A. Hawco is a last name common in Sydney. I believe it's
6 normally a white person. When I had my interview after
7 Patricia Harriss, for example, who was a witness who he
8 relied on and when...after she came in and gave the recanting
9 statement I went to the...a few days later and advised the
10 Chief and then he proceeded to berate her morals and say her
11 mother was one of the first single parents in Sydney. So,
12 when one says to any definitive race, the Chief displayed
13 some bigotry toward whites, blacks and natives, or people
14 who didn't agree with him.

15 Q. Moving to the 15th of April, Staff Wheaton, the day after your
16 interview with Mr. Aronson and I'm referring primarily to
17 Mr. Edwards' notes now, Volume 17, at page 7 of those notes.

18 MR. PUGSLEY

19 What page?

20 MR. ORSBORN

21 Page 7 of Volume 17.

22 Q. And, Mr. Edwards make the note there that...he's making
23 these notes with reference to Friday, April 16th, and he said,
24 "I had been advised the day before by Wheaton that
25

1 MacIntyre had been to the Department." I presume that
2 means the Department of Attorney General.

3 A. Yes.

4 Q. Do you remember advising Mr. Edwards that Chief MacIntyre
5 had visited the Department of Attorney General?

6 A. You've lost me a little bit, Mr. Orsborn. Page 7.

7 Q. I'm sorry, page 7, and see on the left-hand side there it says,
8 "Notes made Monday, April 19th, beginning at 9:00 a.m.,
9 Friday April 16th." Volume 17.

10 A. I'm into Volume 17, and I have page 7 which starts, "Called H.
11 Wheaton." Oh, sorry, Mr. Orsborn. "Called G.Gale in the a.m. to
12 ask him about Chief MacIntyre's visit."

13 Q. Yes.

14 A. "I had been advised that day before that Wheaton...by
15 Wheaton that MacIntyre had been to Department."

16 Q. Yes. That...do you recall advising Mr. Edwards that Chief
17 MacIntyre had visited the Department?

18 A. Yes, sir, I undoubtedly did.

19 Q. Do you recall how you found out that Chief MacIntyre had
20 visited the Department?

21 A. Yes, sir, Inspector Scott advised me that he had been
22 contacted by Superintendent Christen, who in turn advised
23 him he had been contacted by Gordon Gale. Superintendent
24 Christen was somewhat upset, according to Inspector Scott,
25 wanted to know what was going on in Sydney. MacIntyre

1 had been in and complained about the investigation that was
2 being done and had with him a number of statements and
3 was showing these to Mr. Gale and so on and so forth and
4 they were statements from the Ebsary family. Inspector Scott
5 advised me that he told Superintendent Christen if he has
6 statements we don't know anything about them and we had
7 been pressing him to get them, and he's fully...and we would
8 certainly like to have them, and we'd like to have everything
9 he has.

10 Q. Uh-hum.

11 A. And it was this conversation which subsequently precipitated,
12 in my opinion, the order made by the Attorney General on the
13 20th of April.

14 Q. Yeah. Okay. We'll get to that. Following your conversation
15 with Mr. Edwards in which you advised him of this visit, let
16 me ask you this, did he know about it when you called? It
17 appears that...

18 A. I think he did.

19 Q. You think he did.

20 A. Yes.

21 Q. What did you do then following your conversation with Mr.
22 Edwards?

23 A. What did I do? I went about my duties, sir. I don't
24 specifically recall.

25

1 Q. There is a...there's a note, again on the next page, from Mr.
2 Edwards referring to Friday, April 16th, when Mr. Edwards
3 called, I believe, and he asked you whether you knew about
4 the earlier statements from the Ebsarys. Do you remember
5 that?

6 A. Yes, sir, yes.

7 Q. What was the substance of that conversation to your
8 recollection?

9 A. Just what Mr. Edwards has recorded here, said "That on two
10 occasions they had briefed MacIntyre," which we had, the
11 26th of February briefing and the later in March briefing.
12 Asked him whether he had any further...anything further
13 which might help in the investigation and he said, "He had
14 said no," which he had. "It is now clear that MacIntyre has
15 been less than forthright throughout and I believe that from
16 the beginning he has set out to have the investigation reach a
17 predetermined goal, at best he has been manipulative. " I
18 would not disagree with the conclusions that have ...

19 Q. These are Mr. Edwards' words.

20 A. By Mr. Edwards, no.

21 Q. The notes refer to a meeting that day between yourself,
22 Inspector Scott and Mr. Edwards. Do you remember that
23 meeting on the 16th, sir, which was a Friday?

24 A. I don't recall...I recall there was a meeting. I don't know what
25 date it was on.

1 Q. I see.

2 A. I don't have it in my notes.

3 Q. Mr. Edwards' notes indicates that it was at two o'clock. Can
4 you give us your recollection of that meeting?

5 A. Yeah. This was a meeting to sort of get together as a result of
6 the Chief's complaint to the Attorney General's Department
7 and more or less consolidate our positions to where we were
8 with the Crown and the police.

9 Q. Your position with the Crown.

10 A. I beg your pardon, dear. I'm sorry. I talk to my wife too
11 much. I'm sorry. I beg your pardon, sir.

12 Q. It's a good thing you sent Jim Carroll that when you did.

13 A. I do that to him sometimes, not Mr. Ebsary though.

14 Q. That's right. Your position with the Crown. I'm not sure I
15 understand what you're getting at.

16 A. Well, as you recall, we discussed yesterday the...it was...we
17 had finished the first two parts of this investigation by April.
18 We were pretty well finished preparing for the Ebsary trial,
19 we were collecting the loose ends, and now what do we do
20 about the misleading of the Chief and should there be a
21 further investigation. Should we get a search warrant, for
22 instance, and search his house or his office? What's going to
23 come of this? More or less review the evidence we have, see
24 where we go. That's how I recall it. I haven't read these
25 notes completely and I don't know what's in...

1 Q. Do you have any notes yourself of that meeting?

2 A. I don't, sir, no.

3 Q. Do you remember if you were asked by Mr. Edwards at that
4 meeting to again demand the file from Chief MacIntyre?

5 A. We could have been, sir.

6 Q. Mr. Edwards notes that...indicate that you threaten the use of
7 a search warrant if necessary.

8 A. Yes, that came up, yes, sir.

9 Q. Were you prepared to use a search warrant to get the file?

10 A. As I said yesterday, we felt that was a bit in the extreme.

11 Inspector Scott felt that it was, and I concurred. As I said, my
12 position had to be somewhere in the middle there, I suppose,
13 between Mr. Edwards and Inspector Scott and I can
14 appreciate both point of views and yet I was the one that
15 would do the work, if you will.

16 Q. Uh-hum.

17 A. There was also, I believe, Inspector Scott had some assurance
18 from Superintendent Christen that he was going back to the
19 Attorney General's Department and asking them for some
20 direction, again, in regards to these statements that the Chief
21 had popped up with. So, we were more or less waiting to see
22 what was happening there, and so we had a discussion with
23 the Crown.

24

25

1 Q. Let me be sure I understand this here. Is it your evidence
2 that on that day you did not believe you had either the
3 instruction or a mandate to investigate the Sydney Police?

4 A. That is correct, sir, yes.

5 Q. Okay. At that day what investigative purpose would there
6 have been to obtain the rest of the file from Chief MacIntyre?

7 A. We were still faced with Mr. Ebsary before the courts. There
8 still could be witnesses that should be interviewed. He was
9 popping up with these statements and we felt that we should
10 have the whole file. Also, sir, there was the question, I had
11 some information to the effect that he may even have had
12 Seale's jacket. He was keeping a little museum I was told of
13 his achievements as a policeman.

14 Q. Who told you that?

15 A. A Sydney City Police officer.

16 Q. Which one?

17 A. Constable Mroz.

18 Q. Uh-hum. So, on Friday then, April the 16th, if I understand,
19 you had an investigative mandate with respect to at least Mr.
20 Ebsary that would have covered your obtaining the rest of the
21 file.

22 A. Would you repeat that question?

23 Q. You had a mandate, certainly at this time, to investigate Mr.
24 Ebsary.

25 A. Yes, sir.

1 Q And it was your belief on this date that the file and whatever
2 else Chief MacIntyre may have had may have been relevant
3 to Mr. Ebsary.

4 A. There could have been that connotation, yes, sir.

5 Q You didn't need the direction from the Attorney General to
6 investigate the Sydney Police in order for you to go after the
7 file.

8 A. That...that logic really does not hold true. You're still
9 investigating the Sydney City Police. He's still a public officer
10 and a peace officer. And, if you check the Criminal Code there
11 are sections where public officers you have to have direction
12 from the Solicitor General or the Attorney General, I believe,
13 if my memory serves me correctly. And I think going
14 through the back door like that would have been poor
15 practise to use one method to get a search warrant to get
16 something else.

17 Q Were you not interested in looking at the file to see if the
18 material was relevant to your investigation of Mr. Ebsary?

19 A. Certainly was, sir, yes.

20 Q Okay. Was Mr. Edwards pressing you to go after the file?

21 A. Mr. Edwards was giving us his opinion, I would say, yes.

22 Q Uh-hum. And was he pressing you to go after the file?

23 A. No, I wouldn't say. I felt no pressure from Mr. Edwards, no.

24 Q Now...

25 MR. CHAIRMAN

1 What was Mr. Edwards' opinion?

2 STAFF SGT. WHEATON

3 It was Mr. Edwards' opinion that we should get a search
4 warrant and go down and search.

5 Q. And I take it from what you said this morning and yesterday
6 that Inspector Scott disagreed with that and you were
7 caught...

8 A. In the middle sort of, yes. And I...as I also said yesterday, I
9 would follow the instructions of my officer commanding.

10 Q. Of course. And, I think we've covered this, but can you tell us
11 again the...your understanding of the basis for Inspector's
12 Scott's objection?

13 A. Well, as I previously said, we had to continue doing police
14 work in the City of Sydney. There were a number of other
15 police officers, other than myself, involved, you know, with
16 the Sydney City Police on almost a daily basis. It was very
17 important to maintain a good rapport with the City of Sydney.
18 Plus that the matter was still being considered by the
19 Attorney General's Department, as I understood it from
20 Inspector Scott, vis-a-vis Superintendent Christen, and that
21 there was a good chance, and as it turned out, it was
22 forthcoming that the Attorney General did make an order that
23 we go seize the file.

24 Q. Now, Mr. Edwards' notes at page 8, as you read, refer to his
25 opinion that Chief MacIntyre had set up both Scott and Mr.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Edwards, produced parts of the file and hoped that the
2 investigation would be a short one. And, his note reads,
3 "Feelings shared by Scott at our April 16th p.m. meeting
4 described below." Do you recall at that meeting whether or
5 not this was discussed, the fact that Chief MacIntyre set you
6 up."

7 A. Yes. Yes.

8 Q. What do you recall of that discussion?

9 A. I recall it basically as Mr. Edwards has it noted in his notes.

10 MR. CHAIRMAN

11 Discussed with whom and between whom?

12 STAFF SGT. WHEATON

13 I beg your pardon, sir.

14 MR. CHAIRMAN

15 Who were those discussions between?

16 MR. ORSBORN

17 This is speaking of a meeting between yourself, Mr. Edwards
18 and Inspector Scott.

19 STAFF SGT. WHEATON

20 Yes, My Lord.

21 MR. CHAIRMAN

22 The three of you were there.

23 STAFF SGT. WHEATON

24 The three of us in Mr. Edwards' office.

25 MR. CHAIRMAN

1 All right. Thank-you.

2 MR ORSBORN

3 Q. Did Inspector Scott indicate his agreement with Mr. Edwards'
4 point of view? Did he indicate that he agreed that Chief
5 MacIntyre had set him up?

6 A. I don't know as Inspector Scott would use the words "set up."
7 I recall it that we felt that we were misled, perhaps used a
8 bit.

9 Q. Uh-hum. And...

10 A. "Set up" is Mr. Edwards' comment and these are his notes, one
11 can derive and use the vocabulary that he wishes, I suppose.

12 Q. Um. Did you share the opinion that you had been misled and
13 used?

14 A. I felt definitely that I had been misled by Chief MacIntyre,
15 yes, sir.

16 Q. Yes.

17 A. Knowingly.

18 Q. Knowingly misled.

19 A. Yes, sir.

20 Q. And over how long a period had you felt that you had been
21 knowingly misled?

22 A. It was a progressive thing as I found things out then I would
23 ask myself well why didn't...why did he say, i.e. that Chant
24 was a fine witness? When I got the transcript and read it I
25 found that at trial he was a hostile witness, declared a hostile

1 witness by the Crown and the Chief was the informant.
2 Pratico was a fine witness but yet Pratico recanted in the
3 hallway to the Sheriff, et cetera, and went into...with the
4 Chief and the Crown Prosecutor and then went on the stand
5 and said he saw it. He knew, I felt he would know these
6 things and yet he didn't tell me these things. He
7 told...portrayed it to me in a totally different way.

8 Q Uh-hum.

9 A. Therefore, I felt I was misled, yes, sir.

10 Q Given that you felt that you were misled and I gather
11 Inspector Scott shared that opinion, I don't understand why
12 you still had that reluctance to go after the file.

13 A. Because of Chief MacIntyre's position, (a) as Chief of Police in
14 the City of Sydney, and (b) there was a good chance that we
15 were going to get an order from the Attorney General's
16 Department.

17 Q How did you know that?

18 A. From the conversation with Inspector Scott and he had
19 conversation with Superintendent Christen and I understood
20 it that it was Superintendent Christen's feeling, well, if he's
21 got statements we should bloody well have them and I'm
22 going back to the A.G.'s Department and put our position to
23 them. And, I assume he did because it was forthcoming that
24 the order was made by the Attorney General, Mr. How.

25

1 Q Do I understand you to be saying that even though you may
2 be misled that you would nonetheless require instructions
3 from the Attorney General before commencing an
4 investigation into a police department?

5 A. That is correct, sir, yes.

6 Q Are there any other groups, individuals, organizations,
7 companies that you can think of where you would require the
8 instructions from the Attorney General's Department before
9 commencing an investigation?

10 A. There is a...as I say, I'm not an expert in the law, but I know
11 that there are sections of the Criminal Code where it is
12 specified that this must be done. I can only comment on
13 police practises that I have known and from...as I said,
14 previously, from being stationed here in Nova Scotia.

15 Q Uh-hum.

16 A. And that it was done in those instances, and in my opinion I
17 think that the Attorney General as being chief law
18 enforcement officer for this Province it is only proper that it
19 should come from him. That is my opinion.

20 Q I was thinking less of the Criminal Code than of police
21 practises. From your knowledge of police practises are there
22 any other types of individuals, groups or organizations, or
23 companies where you require instructions from the Attorney
24 General before you commence an investigation? I'm not
25 thinking about prosecution, I'm thinking of an investigation.

1 A. You're thinking of...could you rephrase it, sir, so I could
2 answer you.

3 Q. I'm sorry. You've told us you required the instructions of the
4 Attorney General to investigate a police department.

5 A. Yes, sir.

6 Q. Are there any other groups, departments, companies, people
7 that you would require the instructions of the Attorney
8 General before you would commence an investigation from
9 your knowledge of these practises?

10 A. Yes, sir.

11 Q. And what are those?

12 A. If one were investigating, for instance, judges, one would
13 gather the evidence that would come to you from the
14 complainant and then submit a report indicating that this
15 evidence was here and request instructions to continue it. I
16 feel that perhaps I answered your question too quickly. If
17 you, as a lawyer for this Commission, I felt committed an
18 offence, I would submit a report to the Attorney General's
19 Department. I would continue...I would do an investigation, I
20 would listen to the complaint, but I would still submit a
21 report to the Attorney General's Department. We have
22 instructions in the Mounted Police that anything, even a...that
23 will come to the attention of the press, we are to submit an
24 immediate telex to the CIB officer, you know. The Mounted
25

1 Police is a disciplined organization, sir, and we have to report
2 upward.

3 Q. Let me be sure we're not at cross purposes. I'm speaking
4 simply of the initiation of an investigation. I'm not thinking
5 about filing reports or laying charges or beyond that. And,
6 I've understood your evidence to be before you ...before you
7 started an investigation into the Sydney Police you required
8 instructions from the Attorney General. Now, if I've
9 misunderstood your evidence correct me, please.

10 A. Yeah, well, as I say, if information came to light during the
11 course of the investigation, as it did in this one, that we had
12 various levels, then I would submit reports at various levels.
13 I suppose I am investigating at that level without the
14 permission of the Attorney General, yes, sir. But when it
15 comes down to the laying of charges, the getting of a search
16 warrant, the nub of the investigation, as we were into here,
17 the obtaining of a search warrant, then it was...the matter has
18 been reported, as this matter has to the Attorney General up
19 to that level, and again I can only rely on what's happened to
20 me in the past. And, in my past investigation in relation to
21 the Antigonish Town Police the Attorney General's
22 Department appointed two lawyers, Mr. Milton Veniot and
23 Mr. William MacDonald, who we went in and we met with and
24 they helped us prepare the search warrants in that case, and
25 then we went and searched the Antigonish Town Police.

1 Q. OK.

2 9:47 a.m.*

3 A. Now I would expect that same thing to happen in this
4 instance.

5 Q. Were any conclusions reached at this meeting with yourself,
6 Inspector Scott, and Mr. Edwards with respect to the steps
7 that you would take?

8 A. Yes, sir, as noted with, by Mr. Edwards in his note, we
9 discussed having a meeting in Halifax with "the brass," as he
10 refers to it. I felt that, and Mr. Edwards felt, and I expect
11 Inspector Scott will be giving evidence for himself, and as I
12 recall it, he agreed that it would be a good idea to go to
13 Halifax and sit down around a table with members of the
14 Attorney General's Department and try to, and bring them up
15 to date on what was going on here in Sydney, where we were
16 at, and get some direction where we'd go from here. This was
17 never done.

18 Q. Why not?

19 A. We were never, despite the fact that it was channelled in by
20 Mr. Edwards directly to the Attorney General's Department
21 and it was Inspector Scott channeling information to
22 Superintendent Christen, we were never invited to go to the
23 Attorney General's Department.

24 Q. To your knowledge, was a meeting requested?

25 A. I had every reason to believe that a meeting was requested

1 by Mr. Edwards and Inspector Scott had indicated that he was
2 in close liaison with Superintendent Christen. I wasn't privy
3 to their conversations, sir.

4 Q. I see. Now your own notes, Staff Wheaton, page three of
5 Volume 34, the red volume, third page, and Item #26.
6 Volume 34, page three.

7 A. 24?

8 Q. I'm sorry, Volume 34, page three.

9 A. Yes, sir, page three.

10 Q. The typed version of your own notes.

11 A., Yes, sir.

12 Q. And Item #26 refers to an interview on that same Friday?

13 A. Yes, sir.

14 Q. The 16th, with Chief MacIntyre, Corporal Davies, and yourself.
15 Do you recall visiting the chief on that day?

16 A. From refreshing my memory by going through my police
17 reports, et cetera, I believe that date to be incorrect and it
18 should read the "26th of April."

19 Q. Are you sure about that, sir?

20 A. I put a "1" instead of a "2", sir.

21 Q. How did you refresh your memory?

22 A. By reading the reports that I had written back in 1982 and
23 following the paper trail that came from the Attorney
24 General's Department.

25 Q. Well, let me check a couple of things with you then. If I can

1 refer you back to Frank Edwards' notes, Volume 17, at page
2 nine. You'll see his date there is Saturday, April the 17th?

3 A. Yes, sir.

4 Q. In the second paragraph, he's speaking of a phone
5 conversation with yourself. He says:

6
7 While on phone told me that he and Herb
8 Davies had gone down to see Chief
9 MacIntyre late Friday p.m. and had spent a
10 couple of hours with him.

11 And then it goes on in some details. Does that in any way
12 shake your recollection?

13 A. I can't comment on Mr. Edwards' dates. I think he's wrong.
14 Mr. Edwards would have gotten dates from me and I was
15 wrong, as he wasn't there at the meeting.

16 Q. Is it your evidence then, sir, that this visit to the chief's office
17 with Corporal Davies was following receipt of the letter from
18 the Attorney General?

19 A. That is correct, sir, yes.

20 Q. Do you have Exhibit 88? Exhibit 88 is the typewritten copy
21 of the records turned over by the Sydney Police Department
22 to you. It would be a loose exhibit, sir.

23 A. Volume 34, sir?

24 Q. No, it's a loose Exhibit 88.

25 A. Yes, sir.

Q. Do you recognize Exhibit 88?

1 A. Yes, sir.

2 Q. What is it?

3 A. This is an index prepared or was waiting for me at Chief
4 MacIntyre's office. It was prepared by Chief MacIntyre or
5 someone on his behalf when I visited the office on the 26th of
6 April, 1982 with Herb Davies.

7 Q. I just point out that although the typed date is April 26th, the
8 date with your initials on the right-hand side top of the page
9 appears to be the 27th of April and there are other initials
10 underneath there at the same time which appear to Corporal
11 Carroll's.

12 A. That is correct, sir. That would be the date for continuity of
13 the exhibit that I turned over to Corporal Carroll in April, on
14 the morning of April the 27th at 11:31 a.m. Corporal Carroll
15 acknowledges receipt of it, initials it, and dates it as well. At
16 this time, I had been turning, started turning exhibits over to
17 Corporal Carroll as I was being transferred to Halifax and he
18 would be carrying on with the investigation. I left in June
19 from Sydney, the latter part of April I had been interviewed.

20 Q. I'll just check one more item to see if we can get the matter of
21 the dates settled. I'm looking at Exhibit 104, which is a copy
22 of Corporal Carroll's notes. The 12th page of Exhibit 104.

23 A. 12th page, sir?

24 Q. 12th page. The date is 82/04/27. Do you have that there?

25 A. Yes.

Q. 82/04/27?

1 A. Yeah.

2 Q. What appears to be Corporal Carroll's notes on the 27th, 9-5
3 p.m., "office call polygraph [something] re perfect to Sydney
4 Police Department records from Chief MacIntyre."

5 A. Yes.

6 Q. Did Corporal Carroll, to your knowledge, go to the Sydney
7 Police Department on April 27th to get the records from Chief
8 MacIntyre?

9 A. He could have went to the Sydney Police Department. I
10 assume the records from MacIntyre that he's talking is this
11 index that I turned over to him on the 27th.

12 Q. I see. Is it then your evidence today that you did not visit
13 Chief MacIntyre's office on the 16th of April?

14 A. Not to the best of my recollection, sir.

15 Q. And you visited him on the 26th?

16 A. That is correct, sir.

17 Q. Of April?

18 A. Yes, sir.

19 Q. And that was in response to the letter from the Attorney
20 General turning over the files.

21 A. That is correct, sir, yes.

22 10:55 a.m. INQUIRY RECESSED UNTIL 11:13 a.m.

23
24 BY MR. ORSBORN

25

1 Q. Staff Wheaton, when we broke we were just looking at the,
2 seeing if we could account for the difference in the dates on
3 your notes and you now say it should be the 26th. Could you
4 tell us again how you've come to the conclusion that it should
5 be the 26th?

6 A. I come to that conclusion, sir, based on, I just forget which
7 volume it is, I believe it was my sort of overall
8 comprehensive report on the thing, in which I state to my
9 headquarters in Halifax, which would have gone through
10 Inspector Scott, that it was the 26th of April, 1982 that I met
11 with Chief MacIntyre and he handed over the file. I also have
12 reviewed the correspondence in our division file and I find
13 that the letters written by the Attorney General's Department
14 to the mayor of Sydney and the chief of police were dated the
15 20th of April. There's a letter, memorandum from the
16 Attorney General's Department to our headquarters with
17 attachments of the two previous mentioned letters dated the
18 21st. And the bottom of that is date stamped signed by, I
19 believe, Corporal Stutt of our Readers Department, forwarded
20 to Sydney on the 23rd. I know that I showed that letter to
21 Sergeant Davies, then Corporal Davies, prior to our trip to the
22 Sydney City Police on the 26th of April and I recall the
23 incident very clearly and I recall in our opening conversation
24 the chief producing this index and telling me that he had his
25 sister, Kay, prepare it that morning.

1 Q. So your recollection then is based, if I understand it, on the
2 basis of your own comments in one of your reports, and I can
3 direct you to one.

4 A. Yes, sir.

5 Q. The fact that the Attorney General's letter was not dated until
6 the 20th and it would not be received by you until after that.

7 A. That's right.

8 Q. And also you remember showing that to Corporal Davies.

9 A. That's right.

10 Q. Is that correct? And is it possible you could be wrong?

11 A. Yes, sir.

12 Q. Okay, how possible?

13 A. Very, very slight, I think, but I'm human.

14 Q. I thought yesterday when we were talking about the
15 investigators, we were talking about God-given talents and
16 we're now coming down to a level of humanity.

17 A. That is correct, sir.

18 Q. If I could just direct your attention, Staff Wheaton, to Volume
19 20. Do you have that in front of you?

20 A. I don't believe I do, sir. Thank you.

21 Q. At page 11 of that volume, Staff Wheaton, and Paragraph 14,
22 towards the bottom of Paragraph 14, and this is a report
23 written by you in May of 1983. You say in Paragraph 14:

24

25

In reviewing the Sydney Police file after

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 the order had been made by the Attorney
2 General that they turn over all
3 documentation, I found a partially
4 completed statement dated 17th of June
5 '71, 8:15.

6 Is that the comment or the type of comment you're referring
7 to as supporting your recollection of it being the 26th when
8 you visited the Sydney Police Department?

9 A. Yes, sir, and there's another report somewhere, sir, in which I
10 stated that it's the 26th.

11 Q. I'll look for that. You met with Mr. Edwards, Inspector
12 Scott...Let me back up just a little bit. The note that you made
13 with respect to the meeting, reproduced on page three of
14 Volume 34, when did you make that note?

15 A. Note made dated 16th of April, incorrectly dated?

16 Q. Yes.

17 A. I would have made that in the afternoon of the 26th of April,
18 1982 at my office in Sydney.

19 Q. Did you discuss the content of that with Corporal Davies
20 before you wrote it?

21 A. Corporal Davies and I, yes, had a discussion en route from the
22 Sydney City Police office to our office in the subdivision
23 headquarters building as to, I read the partially completed
24 statement.

25 Q. Can you offer any explanation as why Mr. Edwards would
have a detailed chronology going through April 16th, April
17th, which, and April 19th, which would be at variance with

1 that?

2 A. The only reason that I could think of, Mr. Edwards was not
3 there when this meeting was held with the chief, Corporal
4 Davies, and myself and Mr. Edwards and I may very well
5 have met at the end of the week or some period of time
6 down the road and I probably incorrectly was reading from
7 my notebook and gave him this wrong date and he may have
8 been playing catch-up ball in writing his notes, I don't know.
9 But he could very well have gotten that wrong date from me
10 because I certainly have it wrong. I put a "1" down instead of
11 a "2".

12 Q. Are you suggesting that on occasion Mr. Edwards made catch-
13 up notes on the strength of your own notes?

14 A. You'd have to ask Mr. Edwards. I don't know.

15 Q. Did you ever see Mr. Edwards making notes when you were
16 yourself referring to your notebook?

17 A. I know I read to Mr. Edwards out of my notebook at various
18 times throughout this investigation, yes, sir.

19 Q. And did you see him making notes at those times?

20 A. Yes, I've seen Mr. Edwards making notes, yes, sir. Now
21 whether it was notes for these notes or notes on a legal pad
22 or, he kept records, yes, sir.

23 Q. Now this meeting that you had with Inspector Scott and Mr.
24 Edwards on the 16th was precipitated, I understand, by Chief
25 MacIntyre showing, was it the Ebsary statements, to Gordon

1 | Gale?

2 | A. That's correct, sir.

3 | Q. And you were concerned that you didn't have these
4 | statements.

5 | A. Yes, sir.

6 | Q. And when we say "the Ebsary statements," we speak of the
7 | November '71 statements of who?

8 | A. Of Mary Ebsary, Roy Ebsary, and I believe, Greg Ebsary.

9 | Q. So as of the 16th, you didn't have those statements.

10 | A. Not to my knowledge.

11 | Q. When were those statements turned over to you?

12 | A. The 26th of April, 1982, sir.

13 | Q. Did you have them before the 26th of April?

14 | A. Not to my knowledge.

15 | MR. CHAIRMAN

16 | Turned over to you by whom?

17 | STAFF SGT. WHEATON

18 | From Chief MacIntyre, My Lord.

19 | MR. CHAIRMAN

20 | On April the 26th, '82?

21 | STAFF SGT. WHEATON

22 | Yes, My Lord.

23 | BY MR. ORSBORN

24 | Q. If I could direct your attention, Staff Wheaton, to Exhibit 100.

25 | A. In book...

1 Q. No, it's a loose exhibit, sir, the statement of Greg Ebsary, the
2 handwritten statement of Greg Ebsary?

3 A. Yes.

4 Q. Do you have that, sir? What is the date of that statement, sir?

5 A. That statement is dated the 19th of April, 1982.

6 Q. Whose handwriting is this?

7 A. That is my handwriting, sir.

8 Q. Could you read the first paragraph of that statement, please,
9 sir?

10 A.

11 Tonight Harry Wheaton of the RCMP is
12 showing me a statement which I gave to
13 the Sydney City Police back in November
14 of 1971. I remember being down at the
15 police station and it looks reasonably
16 accurate as far as it goes.

17 Q. I'm reading, I won't bother to refer you to it, but I'm reading
18 from Volume 14 at page 17, a typed copy of a statement of
19 Mary Ebsary and this is also dated the 19th of April, 1982
20 and witnessed by yourself and in the last paragraph of that
21 statement, it reads:

22 I have read the statement shown me
23 tonight by Harry Wheaton. I was only at
24 the station once and this must have been
25 it.

23 A. And that one was dated when, sir?

24 Q. The same date, sir.

1 A. The 19th of April?

2 Q. The 19th of April.

3 A. Yeah.

4 Q. Does that in any way...

5 A. That refreshes my memory further, sir, that I must have
6 shown them statements that I had obtained from the Sydney,
7 from Inspector Scott probably. If I showed them statements
8 and I dated this the 19th of April.

9 Q. So do we take from that then that you had the Ebsary
10 statements prior to the 26th of April?

11 A. I must have had them, sir, if I showed them to them, yes.

12 Q. And does that not further suggest that, in fact, your note on
13 page three of a meeting showing the 16th of April is, in fact,
14 the correct date?

15 A. How do you figure this one now?

16 Q. Does it not suggest to you that the note that you show of your
17 meeting with Chief MacIntyre and Corporal Davies as shown
18 as having occurred on the 16th of April, perhaps occurred on
19 the 16th?

20 A. No, it did not, no. It occurred, I feel, on the 26th of April
21 because I know I had the letter from the Attorney General's
22 Department and I know I showed it to Corporal Davies and I
23 know the chief had also received the letter from the Attorney
24 General's Department. Now there were quite a number of
25 statements floating around here in this investigation. There

1 were handwritten statements, there were typed statements,
2 there were photocopied statements. What statements the
3 chief had and what date from Mary, Greg Ebsary, and Roy
4 Ebsary, I don't know.

5 Q. But nonetheless you've told us that as of the meeting that you
6 had with Frank Edwards and Inspector Scott on the 16th of
7 April, you've confirmed that you did not have the statements
8 from the Ebsarys.

9 A. I did not know on the 16th of April when I had the meeting
10 with Mr. Edwards and Inspector Scott at his office what
11 statements the chief had taken to Halifax. I hadn't seen
12 them. I still really don't know.

13 Q. There is reference in the, I believe, in Mr. Edwards' notes that
14 it certainly is clear that the statements that got everybody
15 upset were the statements of Ebsary's wife and family. Now
16 you've told us about five minutes ago, sir, that as of that
17 meeting that afternoon, you did not have the statements of
18 Mary and Roy and Greg Ebsary. Did you not tell us that?

19 A. Yes, to the best of my knowledge five minutes ago, but you've
20 just shown me things that would indicate that I had a
21 statement, yes, I don't...It would certainly appear if I took a
22 statement from Gregory Ebsary on the 19th and shown him
23 statements of the Sydney City Police, it would certainly
24 indicate to me that these were statements taken by in 1971
25 and that I would have had them in my possession.

1 Q. Well, as of the 16th of April then when you met with Mr.
2 Edwards and Inspector Scott, what statements were being
3 held back then by the chief?

4 A. I can again only go by reports or notes here that I was not
5 privy to the meeting between Mr. Gale and the chief. I
6 understand they were some statements from the Ebsarys.
7 Now whether they were these statements, I assume they
8 probably were, I don't know.

9 Q. But when you met with Inspector Scott and Mr. Edwards, did
10 you say, "No, that's not right, because here I've got these
11 statements already. Here they are."

12 A. No, I didn't, sir. I didn't know what statements the chief had
13 in Halifax.

14 Q. Mr. Edwards' note, again, I appreciate it's his note on page
15 seven, indicates that Chief MacIntyre left no statements with
16 Gordon Gale. So, you know, presumably no statements came
17 through Mr. Gale's office.

18 A. No.

19 Q. Can you tell us where you would have received the
20 statements that you got, that you showed the Ebsarys on the
21 19th?

22 A. I can only assume that I received them from Inspector Scott
23 and they were part and parcel of either the first batch of
24 statements he gave me from the 3rd of February meeting or,
25 as I said earlier yesterday, there was another meeting, I

1 believe, between Inspector Scott and Chief MacIntyre in
2 which later on at some date when she come in with some
3 more statements. And then there was, of course, the 26th
4 meeting when the Gushue/Harriss statement appeared.

5 Q. Again, reading Mr. Edwards' notes at the top of page eight:

6
7 After call with Gale, phoned Wheaton who
8 confirmed that they had known nothing
9 about earlier statements by Ebsary's wife
10 and family.

11 A. Gale phoned Wheaton?

12 Q. No, no, I'm sorry, at Volume 17, page eight, this is Mr.
13 Edwards' notes. He says that he phoned Wheaton who
14 confirmed that they had known nothing about earlier
15 statements by Ebsary's wife and family. I'm sorry, Volume
16 17?

17 A. Page eight?

18 Q. At page eight, yes, sir.

19 A. Now we're dealing with Mr. Edwards' notes?

20 Q. Mr. Edwards' notes, yes, Friday, April 16th.

21 A. Friday, April 16th, yes, sir.

22 Q. And he says: "Phoned Wheaton who confirmed that they had
23 known nothing about earlier statements by Ebsary's wife and
24 family."

25 A. Uh-huh.

Q. Are you suggesting that his note is incorrect?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. I'm suggesting it is incorrect, yes, sir, or being taken out of
2 context.

3 Q. Right.

4 A. I don't know. I wouldn't say it's incorrect. Mr. Edwards
5 might be able to offer some explanation.

6 Q. So as of the 16th of April...

7 MR. CHAIRMAN

8 Incorrect in what sense? Incorrect as to the date, Friday, April
9 the 16th, 1982? Or incorrect when it says that you confirmed that
10 you had known nothing about earlier statements of Ebsary's wife
11 and family?

12 STAFF SGT. WHEATON

13 It would appear to me, My Lord, that it would be incorrect in
14 regards to date.

15 MR. CHAIRMAN

16 To date.

17 STAFF SGT. WHEATON.

18 The 16th.

19 MR. CHAIRMAN

20 Well, all right, let me set that for a moment, that it should have
21 been, the date should have been April the 26th, 1982 when Mr.
22 Edwards called you, it would be unlikely that you would have
23 confirmed that you knew nothing about the earlier statements of
24 Ebsary's wife and family on the 26th, wouldn't it? Because you've
25 just told us the statement on the 19th refers to it.

1 STAFF SGT. WHEATON

2 Yes, sir, that's right. Yes, My Lord. Now what, as I say, preceded
3 that conversation, I don't know, or what was in, or what
4 statements were shown by the chief to Mr. Gale. I say I know
5 nothing about earlier statements. Well, I should have, I obviously
6 should have had these statements, according to this, the statement
7 of Greg Ebsary, as you say, and Mary Ebsary. Now there may be
8 some explanation for it, I just don't, I can't provide it, I'm sorry.

9 BY MR. ORSBORN

10 Q. Do you know how many statements were provided by Mary
11 and Greg and Roy Ebsary to the Sydney Police in November of
12 '71?

13 A. I have no independent recollection at this juncture as to how
14 many, whether there was one provided to them, two provided
15 to them.

16 Q. How many do you know of?

17 A. To the best of my knowledge without going through volumes,
18 I only can recall one.

19 Q. One.

20 A. From each person as provided to Sydney City Police in 1971.

21 Q. That's the evidence that we...

22 A. Yes.

23 Q. We have.

24 A. Now if there was more, I don't know.

25 Q. Neither do we. With respect then to the statement provided

1 by Mary Ebsary, when did that statement first come to your
2 attention?

3 A. I don't have an index of it, sir. I wished I did but I don't have
4 a date when, other than that there were statements turned
5 over to me by Inspector Scott on the 3rd after the meeting.
6 There were statements turned over to me, I believe,
7 sometime later by Inspector Scott. There were statements
8 turned over to me on Harriss/Gushue on the 26th of
9 February. And there were statements turned over to me on
10 the 26th of April 1982 by Chief MacIntyre.

11 Q. You would agree...

12 A. Now the only index I have of any of those statements being
13 turned over was that prepared by Chief MacIntyre on the
14 26th of April 1982.

15 Q. You would agree that it would not be the 26th of April, '82?

16 A. I beg your pardon?

17 Q. You would have to agree that it was not the 26th of April,
18 1982?

19 A. That the chief turned over these statements to me?

20 Q. That you first had knowledge of the Ebsary statements.

21 A. No, I had knowledge of the Ebsary statements earlier than
22 that, yes, sir, I had had to have, yes.

23 Q. Did you show them to the Ebsarys?

24 A. I believe I did, yes. I just unfortunately don't have an index
25 of them.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 11:33 a.m.

2 COMMISSIONER EVANS

3 When Inspector Scott first received the statements from Chief
4 MacIntyre, did he keep a copy of it? Or was there any
5 inventory or any list of statements?

6 MR. ORSBORN

7 No, My Lord, the evidence I think yesterday from Staff
8 Wheaton is that there was not.

9 COMMISSIONER EVANS

10 Well that was the...

11 A. No, sir, no, My Lord. I did not index them.

12 COMMISSIONER EVANS

13 And do you know whether you got everything from Scott that
14 MacIntyre gave to Scott?

15 A. I believe I did, My Lord.

16 COMMISSIONER EVANS

17 But you were not there originally because there'd been some
18 conversation between Scott and MacIntyre before your
19 arrival into the evidence.

20 A. That is correct, My Lord, yes.

21 COMMISSIONER EVANS

22 And some of these of the 26th, and which there is an
23 inventory, these are copies of statements that previously had
24 been given to you. Some of them, at least.

25 A. That's correct, My Lord. I had a goodly number of those

1 previously.

2 Q. Now the statements that Mary and Greg Ebsary gave to the,
3 sorry, gave to the Sydney Police do not appear anywhere in
4 their own statements until you take a statement from them
5 on the 19th of April. And you had previously taken a
6 statement from them, I believe, on the 12th of March? I
7 think you took a joint statement from them...

8 A. Yes.

9 Q. Somewhere around that time.

10 A. It was in the kitchen, yes, sir.

11 Q. Once you were aware of those 1971 statements would that
12 not be something that you would want to put to them fairly
13 urgently? Ask for their comments on it?

14 A. I would think so.

15 Q. And given that the reference to both statements of April
16 19th, is it a possible conclusion that you were not aware of
17 the Ebsary statements until a short time before the 19th?

18 A. It could be. I don't recall when I got those statements. I...

19 Q. Is it possible you had them for a month?

20 A. I don't know. I just don't know.

21 Q. If you had had them on the 3rd or 4th of February and got
22 them from Inspector Scott is...

23 A. I think I would have done something with them...

24 Q. Before that.

25 A. Yes, sir.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

- 1 Q. If it was before the 19th of April.
- 2 A. Yes. Yes, sir.
- 3 Q. And does that not then further suggest to you that your
4 notation about the 16th of April is correct?
- 5 A. No, the 16th of April is, no, it does not, sir. I know what I did
6 and I know what took place at the meeting. I feel that I put
7 the wrong number down. I put a one instead of a two, sir.
- 8 Q. Well, we'll try and keep our chronology straight so we'll come
9 back to a 16th, they, the 26th a little later. On the 17th of
10 April, which I believe was a Saturday, and I'm referring to a
11 statement you took at page 78 of Volume 34. This is a
12 statement that you took from Donna Ebsary.
- 13 A. Yes, sir.
- 14 Q. How did Miss Ebsary strike you as a potential witness?
- 15 A. Very good, sir.
- 16 Q. What was your impression of her?
- 17 A. She seemed to be a very steady person. She, I was impressed
18 with my interview with her.
- 19 Q. Did you discuss with her in any detail the communication
20 with Mr. Ratchford, Corporal Green and Detective Urquhart?
- 21 A. Yes, sir.
- 22 Q. There is a reference on page 79. It says, "We got a hold of
23 Sydney Police and we got a hold of Cst. Gary Green." Do you
24 recall any discussion with her about that contact other than
25 what appears in the statement?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. Again, as I recall this statement, Miss Ebsary flew over from
2 Boston, made an arrangement and we came to our...she came
3 to my office and we had a talk, a long talk about what had
4 happened and then it was reduced to writing and she gave it
5 to me sentence-by-sentence and I wrote it down and, there
6 could have been things in the narrative discussion that are
7 not included in the statement.

8 Q. I see. Do you have any recollection of whether she told you if
9 she, herself, had spoken directly to Cst. Green or to Detective
10 Urquhart?

11 A. I recall her telling me that she had spoken to Cst. Gary Green
12 and, as I recall it, and again I haven't read this statement
13 probably since 1982. That Gary Green went to Detective
14 Urquhart.

15 Q. So in your memory there's no direct communication between
16 Donna Ebsary and Detective Urquhart.

17 A. Not that I recall.

18 Q. Going back to Mr. Edwards' notes, Volume 17, page 9. At the
19 top of page 9, dated Saturday, April 17th, Mr. Edwards writes
20 at 1:45 p.m., sorry, do you have that...

21 A. Which volume was that in?

22 Q. Volume 17.

23 A. Volume 17. Page 9?

24 Q. Page 9. And he writes at 1:45 p.m.,
25

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

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

6 Do you remember briefing Mr. Edwards?

7 A. Yes, I do. I recall calling him after the meeting.

8 Q. And is his date of Saturday, April 17th, correct?

9 A. I believe it is. I know it was on a Saturday that we met.

10 Q. Well her statement is, itself, dated the 17th.

11 A. Yes.

12 Q. And it's, did you then meet with Mr. Edwards and Miss
13 Ebsary?

14 A. Yes, we did.

15 Q. Why would you do that?

16 A. Donna Ebsary, at first, was a reluctant witness to come
17 forward and she was living in the United States and I made
18 arrangements to get an airline ticket for her, et cetera, and
19 she was only going to be here for a brief period of over the, I
20 believe that was a holiday weekend actually. And was flying
21 back to the United States afterwards.

22 Q. Was there any discussion with Mr. Edwards at that meeting
23 about getting further files or statements from Chief
24 MacIntyre?

25 A. Getting further...

 Q. Files, statements from the Chief?

 A. Not that I recall. There may have been, I don't recall.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Q. Mr. Edwards writes in the middle of page 9, this is after the
2 details which we spoke of earlier:

3 Still did not demand full file and all
4 information from Chief.

5 (And he writes also at page 10, at the bottom of the note for
6 Saturday, April 17, this is following the discussion with Donna
7 Ebsary.)

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

10 A. That's Mr. Edwards' note, yes, sir.

11 Q. Do you have any recollection of that?

12 A. Not really. It could very well have taken place.

CHAIRMAN

13
14 Before you leave page 9, on the assumption that, Staff
15 Sergeant Wheaton, on the assumption that Saturday, April the 17,
16 1982, is a correct date, of Mr. Edwards' notes, he indicates on the
17 second, in the second paragraph where you had described a
18 meeting between you and Herb Davies and Chief MacIntyre, that,
19 also I presume that refers to Chief MacIntyre. "Turned over
20 November 17, 1971, statements of Mary and Greg Ebsary." That
21 would seem to me as if you must have had them on the 16th of
22 November at the latest, of April. Would you agree?

23 A. Yes, My Lord. Based on those notes I would agree. But based
24 on my independent recollection I know that I did not go down
25 and interview the Chief and get the file until after I had

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 received that, the letter from the Attorney General's
2 Department directing that I do so and I know I did not
3 receive that letter until, the 21st it was mailed in to our
4 headquarters and mailed out of there on the 23rd.

CHAIRMAN

5
6 You, I gather, did not take any notes, or if you took them
7 you didn't keep them.

8 A. No, My Lord, I don't.

CHAIRMAN

9
10 So we have...

11 A. The only note I have is this one which I feel the date on the
12 top is incorrect. The content of it I have no problem with, but
13 the date at the top...

CHAIRMAN

14
15 So let me, I'm having difficulty trying to get these dates
16 straightened out. This is why I'm pursuing it, amongst other
17 things, reasons. Your evidence is that your date of April the 16th,
18 1982, is incorrect.

19 A. That's correct, My Lord.

CHAIRMAN

20
21 And you also say that the date of Friday, April the 16th,
22 1982, shown in Mr. Edwards' notes referring to the same matters,
23 that's also incorrect.

24 A. Yes, it would have to be because I didn't do those things on
25 the 16th, I did them on the 26th of April.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 CHAIRMAN

2 Now we turn to Saturday, April the 17th and my
3 understanding is that you, your testimony is that, at least the
4 reference to Donna Ebsary is correct.

5 A. It was on a Saturday, My Lord, when I did the interview with
6 Donna Ebsary.

7 CHAIRMAN

8 So that...

9 A. And it would appear that from the date on the top of her
10 statement it was the 17th, My Lord, yes.

11 CHAIRMAN

12 And, therefore, we can conclude that Mr. Edwards' date of
13 Saturday, April the 17th, 1982, is correct as well.

14 A. That's right, My Lord.

15 CHAIRMAN

16 But then you say that there is another error in that
17 statement, note of Mr. Edwards when he says that you told him,
18 you or Davies, that Chief MacIntyre had, on the Friday before, the
19 day before, namely April the 16th, turned over the statements of
20 Mary and Greg Ebsary.

21 A. That is correct.

22 CHAIRMAN

23 All right. Okay. Thank you.

24 MR. ORSBORN

25 Q. Again, referring to Mr. Edwards' notes, and on page 10, his

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 note for Monday, April the 19th, second paragraph of the
2 Monday, April 19th, notes, he says:

3 Phoned Wheaton. Told him I wanted
4 copies of newly acquired statements. He
5 also advised that Scott told him they now
6 had enough to investigate and not to go to
7 MacIntyre for rest of file. Would bring
8 statements down this p.m.

9 Now following your meeting of the 16th with Inspector Scott,
10 Mr. Edwards and yourself, in which you felt that Mr.
11 MacIntyre was misleading you and holding statements back,
12 did you have a subsequent discussion with Inspector Scott
13 concerning getting the rest of the file?

14 A. Yes, sir. I had, following the meeting between Mr. Edwards,
15 Inspector Scott and myself, as I recall that meeting, it was
16 held at Mr. Edwards' office and then Inspector Scott and I
17 drove back to our headquarters and we certainly would have
18 discussed what took place at that meeting. What we
19 discussed if it would pertain to the file, I can't honestly
20 remember.

21 Q. Did Inspector Scott give you any instructions to go for or not
22 go for the complete file?

23 A. He gave me no instructions to go get a search warrant and
24 search the City Police or to go for a, or go and ask them for it
25 or anything. If I had instructions to that effect I would have
 done it.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Q. In Mr. Edwards' notes here that say that Scott told you that
2 you knew how to [milk?] and investigate and not to go to
3 MacIntyre for the rest of the file. Are you saying that that
4 note is incorrect?

5 A. No, I'm not saying, could you just run that note by me, I don't
6 ...

7 Q. Mr. Edwards' note indicates that Inspector Scott told you not
8 to go to MacIntyre for the rest of the file. Did Inspector Scott
9 tell you not to go for the rest of the file?

10 A. He, as I recall it Inspector Scott was not for getting a search
11 warrant to search the Sydney City Police and perhaps that's
12 what Mr. Edwards is referring to there.

13 Q. The statement that they now had enough to investigate. Did
14 Inspector Scott tell you, "We've got enough to do, don't get the
15 file?"

16 A. That's Mr. Edwards' notes...

17 Q. Did Inspector Scott tell you anything like that?

18 A. There could have been some conversation to that effect. "We
19 have enough to keep ourselves busy until a decision is made
20 by the Attorney General's Department," yes, sir.

21 Q. I see. Mr. Edwards' notes go on for that same day. 1:30 p.m.

22

23 Wheaton arrived with statements of Roy,
24 Greg and Mary Ebsary. Donna Ebsary
(your '82 statement). Patricia Harriss, 17
25 June 1971.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Do you remember visiting Mr. Edwards' office at 1:30 p.m. on
2 Monday, April 19, 1982, with those statements?

3 A. No, sir. I, and I'm not saying I didn't but I don't have any
4 recollection of it and I have no note of it. I don't think.

5 Q. Is it possible, then, that you did, in fact, visit his office on that
6 day with those statements?

7 A. I could have, yes, sir. I don't know.

8 Q. If you, in fact, then, visited his office on the 19th with a
9 statement of Patricia Harriss dated 17th of June 1971...

10 A. Then I would have had to have done the search.

11 Q. When did you get that statement?

12 A. I did not get the 17th of June statement, the partially
13 completed statement of Patricia Harriss until the search was,
14 or the letter of the Attorney General was executed at Chief
15 MacIntyre's office.

16 Q. Are you saying, then, sir, that Mr. Edwards' notes with respect
17 to the 19th at 1:30 p.m. is incorrect insofar as it refers to the
18 statement of Patricia Harriss?

19 A. Yes, sir. To the best of my recollection.

20 CHAIRMAN

21 Could you give me an explanation as to how Mr. Edwards
22 would have known the date of the statement of Patricia
23 Harriss?

24 A. Very good point, My Lord. He could only know that from the
25 fact that I had had it in my possession if his date of the 19th

1 is correct. I would have had to have done the search and
2 brought it back.

3 Q. And also the fact that the statement was not complete.

4 A. Exactly. Yes, sir.

5 Q. Can you offer any explanation why Mr. Edwards would have
6 so many errors in his note?

7 A. No, sir.

8 Q. Mr. Edwards refers on page 11 of his notes, paragraph 4,
9 Monday, April 19th, that he discussed with you the
10 advisability of questioning Rosenblum and said it would be
11 extremely material to the admissibility of the present
12 evidence of Chant and Harriss. Do you recall have a
13 discussion with Mr. Edwards about interviewing Mr.
14 Rosenblum?

15 A. I have no independent recollection. I know it was discussed
16 by us. Whether or not it was discussed on the 29th, I don't
17 know. It could very well have been, yes.

18 Q. And you related to us yesterday a discussion you had with
19 Mr. Rosenblum at the courthouse, I believe.

20 A. Yes, sir.

21 Q. Do you know if that was in response to the direction of Mr.
22 Edwards?

23 A. No, sir.

24 Q. Back to Volume 34, Staff Wheaton, at page 73. It's dated the
25 19th of April.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. Yes, sir.

2 Q. I'm just curious as to the reference in the first paragraph of
3 that to Mr. Marshall's grant of parole and one-week day
4 parole in '79 and his escape. It just sort of pops up out of
5 context. Do you recall why you noted that in this report?

6 A. Can I just take a moment to read it, sir?

7 Q. Please.

8 COMMISSIONER EVANS

9 What volume?

10 MR. ORSBORN

11 34, My Lord.

12 A. Yes, sir. I, the reason that I start the report that way was
13 further to the conversation with the Officer Commanding,
14 Sydney Subdivision. The Officer Commanding and Inspector
15 Scott had advised me that Superintendent Christen had
16 received an inquiry from the Attorney General's Department
17 subsequent to Chief MacIntyre's visit there. And in the visit
18 there apparently the Chief had brought up this business about
19 Donald Marshall being an escapee and in collusion with Sarson
20 in cooking up this entire matter. And they wanted some
21 further clarification on just exactly what did happen.

22 Q. I see.

23 A. With the Marshall escape.

24 Q. And you then relate your comments from your earlier report
25 about Mr. Sarson.

1 A. I beg your pardon, sir?

2 Q. I say you then relate some of the comments from an earlier
3 report about Mr. Sarson...

4 A. Yes, sir.

5 Q. In, and some of your conclusions with respect to his coming
6 forward. On page 74 you say in your closing paragraph there,
7 sir:

8
9 Sarson was questioned closely as to the
10 veracity of his allegations and is adamant
11 that Ebsary confessed to him.

12 How many times had you interviewed Mr. Sarson?

13 A. Once, sir.

14 Q. And would I take it then that the questioning closely as to the
15 veracity of his allegations was during that interview?

16 A. Yes, sir.

17 Q. And what was the result of that questioning?

18 A. He would adamant that Ebsary confessed to him that he had
19 stabbed Seale in 1971, or words to that...yes, sir.

20 Q. Couldn't shake him.

21 A. No. He...

22 Q. Couldn't crack him.

23 A. No.

24 Q. Do you feel he was telling the truth?

25 A. He struck me as being truthful.

Q. I don't know if you recall in the précis yesterday that you did

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 for Superintendent Christen, I believe, and I won't bother
2 you, ask you to turn it up. It's found in Volume 19 at page
3 20. You make the statement there, and it's in the latter part
4 of February 1982 that "Sarson would not make a strong
5 witness."

6 A. That's correct. I recall that.

7 Q. Now had your mind changed between...

8 A. No, not at all.

9 Q. That statement and this one?

10 A. No. No. He, not at all. And I felt that he would not make a
11 strong witness due to his appearance, his background and
12 there was, as I said in that précis I think some possibility of
13 collusion between the two. But he seemed like a, he was
14 telling the truth.

15 Q. So when you used the phrase "not making a strong witness",
16 you're not suggesting that he's not telling the truth.

17 A. No.

18 Q. I see. That report is dated the 19th. I'm not sure when it was
19 forwarded but I notice that there is not attached to that the
20 statements of Mary and Greg Ebsary that were taken on the
21 night of the 19th. Any reason why they would not be
22 attached to that report and forwarded?

23 A. This report looks to me, Mr. Orsborn, as a report written to
24 clarify points...

25 Q. Okay.

1 A. Quite probably for Superintendent Christen, the result of
2 some conversations he had with the Attorney General's
3 Department. And it was submitted probably for that purpose.
4 And those reports would be made subject to the later report
5 or something of that nature.

6 Q. Okay. Now on the 20th of April, again, according to
7 statements at page 81, Maynard Chant and his mother were
8 revisited in Louisbourg. Statements were taken. I note that
9 Cpl. Carroll went to Louisbourg to reinterview the Chants.

10 A. Yes, I believe Cpl. Carroll and Cst. Hyde.

11 Q. Any reason that you would not go?

12 A. I must have been involved in something else at the time.

13 Q. For no, no reason other than that that you can think of.

14 A. No, no, sir.

15 Q. And similarly with Mr. Burke. They conducted that
16 interview, I think, the statement is found on page 86.

17 A. Yes.

18 Q. Do I understand, then, that you yourself did not question
19 Maynard Chant in any detail about how the Louisbourg
20 interview was conducted?

21 A. I took the first statement...

22 Q. Yes.

23 A. But I didn't take the second statement, sir, no.

24 Q. On the 22nd, sir, looking at page 75 of this volume, there is a
25 statement of Dr. Virick and that was, again, taken by Cpl.

1 Carroll and Cst. Hyde. Did you request that Dr. Virick be
2 interviewed?

3 A. I quite probably did, yes, sir. I, we would sit down in the
4 morning and, or if there were, particular things came up at
5 the, some time or another and I wanted Cpl. Carroll or Cst.
6 Hyde to do a specific task, I would give it to them and they
7 would do it.

8 Q. Why did you want Dr. Virick interviewed?

9 A. He was the doctor that stitched Junior Marshall's arm. The
10 Chief seemed to be indicating that there was some mystery or
11 that Marshall had intentionally pulled stitches out and
12 washed them down the toilet or something to hide his blood
13 sample. So, therefore, I felt he was material to the matter
14 and had him interviewed.

15 Q. I think when you testified yesterday you attributed a
16 comment to Detective MacIntyre that suggested there some
17 kind of affinity or collusion between Dr. Virick and Mr.
18 Marshall?

19 A. That's correct.

20 Q. Do you know if Dr. Virick was questioned on whether or not
21 there was any such collusion?

22 A. I don't believe he was.

23 Q. Did you ask, or did you request....

24 A. I didn't ask specifically that that be done.
25

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 CHAIRMAN

2 May I ask this witness to go back for a second to page 78,
3 that same volume, Volume 34. This is, you took this statement, I
4 gather, Staff Sergeant Wheaton, from Donna Ebsary.

5 A. Yes, My Lord.

6 CHAIRMAN

7 Now at the paragraph 3 on page 78 she says, she refers to
8 what she had seen the night before.

9
10 At school everyone talked about the
11 murder and I knew they were looking for
12 an old man with a goatee, white hair and a
13 cape. Outwardly to other kids I pretended
14 it was not my father, but inwardly I knew
15 it was.

16 That may be open to an interpretation that some of the, of
17 her school chums were, had suggested to her that her father was
18 involved in this murder.

19 A. That is correct, My Lord. That's exactly what she told me.

20 12:00 p.m.

21 MR. CHAIRMAN

22 That may be open to an interpretation that some of her school
23 chums had suggested to her that her father was involved in this
24 murder?

25 STAFF SGT. WHEATON

That is correct, My Lord. That is exactly what she told me, yes.

MR. CHAIRMAN

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 She told you that her school chums, some of her school chums had
2 been pointing, you know, when this murder was current and for
3 the next day or two, had suggested to her that it was her father.

4 STAFF SGT. WHEATON

5 That is correct, My Lord.

6 MR. CHAIRMAN

7 Are we entitled to conclude then that that would have been
8 common knowledge in Sydney?

9 STAFF SGT. WHEATON

10 Yes, My Lord.

11 MR. CHAIRMAN

12 Surely if it was common knowledge in Sydney, then would you
13 anticipate that the police would have heard of this as well?

14 STAFF SGT. WHEATON

15 I find it astounding that they didn't, My Lord.

16 MR. CHAIRMAN

17 But you distinctly recall Donna Ebsary saying to you when you
18 took the statement from her that the days immediately following
19 the murder of Sandy Seale that some of her school chums had
20 suggested her father had committed that murder.

21 STAFF SGT. WHEATON

22 Yes, My Lord, I do and she even gave me a cartoon that she had
23 kept all these years that she had drawn as a school child and it
24 had a man with a knife and a "Y" in the road and a prison on one
25 side and it had "right" and "wrong" on it and it was done by a

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 child. She said that she had drawn that at that time when she was
2 going to school.

3 MR. CHAIRMAN

4 Where is that drawing now?

5 MR. ORSBORN

6 We have a photocopy of it, I believe.

7 STAFF SGT. WHEATON

8 I've only seen a photocopy.

9 MR. ORSBORN

10 There's nothing on it to identify it.

11 STAFF SGT. WHEATON

12 I received that at that time from Donna Ebsary.

13 MR. CHAIRMAN

14 Thank you.

15 BY MR. ORSBORN

16 Q. Did you query Miss Ebsary as to the names of these school
17 chums who were giving her this information?

18 A. No, I did not, sir.

19 Q. Would that not be something you might want to follow up?

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

21 Q. Do you know when you received the order of the Attorney
22 General with respect to the Sydney police files?

23 A. I don't have it dated, no, sir.

24 Q. When you did receive it, what did you do?

25 A. I cannot recall if it was Inspector Scott or myself but

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 arrangements were made to go to the Sydney City Police soon
2 after its receipt and see the chief to obtain the file.

3 Q. Chief MacIntyre testified that when he got the order, he
4 phoned your office to make arrangements for it to be turned
5 over. Do you have any knowledge of that?

6 A. He could very well have. I did not, I don't have any
7 independent recollection of me making the appointment. I
8 know an appointment was made to see him and he may have
9 phoned us.

10 Q. And it's your evidence then, I take it, that you visited the
11 chief's office on the 26th.

12 A. There seems to be a lot of confusion. I know I visited the
13 chief's office and, in my opinion, it was on the 26th.

14 Q. Do you know what day of the week that was?

15 A. No, I don't have any independent recollection, sir. I know it
16 was in the afternoon.

17 Q. What recollection then do you have of that visit?

18 A. Prior to going down to see the chief, I contacted Corporal
19 Davies. I showed him a copy of the letter and asked him to
20 come along with me as an observer.

21 Q. Why did you ask for Corporal Davies?

22 A. Because I wanted a witness with me at the time I received
23 this.

24 Q. Any particular reason you picked Corporal Davies?

25 A. He was there, one thing, and I considered him to be a very

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 competent police officer.

2 Q Any reason that you would not have taken Corporal Carroll,
3 where he had been involved in the investigation?

4 A. I would have taken Corporal Carroll, had he been there.

5 Q I see, okay.

6 A. So we went to the office of the Chief of Police in the City of
7 Sydney. It is not a large office but a fair size, approximately
8 maybe eight feet by ten, twelve feet, a doorway, went in. I
9 introduced Corporal Davies to the chief and I told him I was
10 there to pick up the file as per the order of the Attorney
11 General. He was expecting me. He remained seated behind
12 his desk. I was seated facing the desk. I would have been
13 seated on the right-hand side.

14 Q The right-hand side of?

15 A. Of facing his desk. Corporal Davies was sitting on the left-
16 hand side facing his desk.

17 Q On the front of the desk or to the side?

18 A. Front of the desk, and that would be the side the doorway
19 was on. The chief produced an index, Exhibit 88, which he
20 had prepared. He reached into the lower left-hand drawer of
21 his desk and withdrew two brown accordian-type file folders
22 and he began taking items out of the file folders. Sometimes
23 he would take one item out individually; sometimes he would
24 take two or three items out individually.

25 Q Were these folders placed on the desk? Were the folders

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1 placed on the desk for him to extract the documents?

2 A. The two folders were in front of me on the desk.

3 Q. So each time he withdrew a document from the folder, you
4 would see it?

5 A. Each time he would either draw one or two or a group of
6 documents. Some were contained in individual brown manila
7 file folders. He would take the folder out, open it up, and
8 then take the item inside out of that. As each item was taken
9 out, he would read it himself and say, "This is a statement of
10 Maynard Chant," for instance. And he would then hand it to
11 me over the papers. I took this index and pulled up to the
12 front of his desk and I would look then through the index.
13 They were not in any order particularly and I would find the
14 item that he was handing me and I would initial to indicate
15 that I had received that item.

16 Q. So the initials then that you have placed on Exhibit 88
17 confirm receipt of the item so identified?

18 A. That is correct, sir, yes. We went through the various items
19 as noted and I made some minor little corrections or
20 additions to. At page two, you'll note I wrote the name
21 "Noseworthy" in and the initial for that. It wasn't included in
22 his index. Statements of George Wallace, McNeil, Roderick
23 McNeil, I have written "Two in one." Mary Patricia O'Reilley, I
24 wrote "Original" on her statement on the front of it. At each
25 juncture that I made anything like an addition or to define it

1 perhaps a little more clearly, I showed it to the chief or
2 mentioned to him that I was doing it and he looked over and
3 saw me doing it and we then went to page three. And page
4 four, which is not numbered, I made some notes on that as
5 well. Then after we had finished this process, I said I was
6 satisfied that I had received these items as noted in the index
7 and "I have been initialing all along on this, Chief, do you wish
8 to sign it, too, if you agreed that I have received them from
9 you?" and he wrote his "Chief" and his signature.

10 Q. How long did the process take?

11 A. This took quite awhile. By that, I would say maybe an hour
12 and a half, in that area.

13 Q. And as the Chief extracted documents from, for example, the
14 brown file folder, were you able to ascertain that you got all
15 the documents that were in that file folder?

16 A. Well, as far as I could see looking across the desk, I had. At
17 the termination of this, I specifically asked the Chief, "Now do
18 I have everything?" And he indicated to me that I had
19 everything.

20 Q. Did he give you the file folders?

21 A. He didn't indicate it, he said it. I beg your pardon?

22 Q. Did he give you file folders themselves?

23 A. Yes, sir.

24 Q. Did he give you the brown accordian file folder?

25 A. Yes, sir.

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1 Q. So the containers in which he had his statements were
2 provided to you?

3 A. Yes, sir.

4 Q. Was there any discussion between you and the Chief about
5 the matter generally other than identifying the statements
6 then initially?

7 A. We had some discussion as we went along, yes.

8 Q. Do you recall what it was about?

9 A. Not really.

10 Q. How was the Chief?

11 A. I beg your pardon?

12 Q. How was the Chief?

13 A. Formal, very formal.

14 Q. Anybody else there with him?

15 A. No.

16 Q. Now your note says, "The Chief was asked four or five times
17 for any other statements from Patricia Harriss." This is at
18 page three of Volume 34.

19 A. Yes, sir.

20 Q. And then it says, "Last statement given, handwritten
21 statement of Bill Urquhart."

22 A. Uh-huh.

23 Q. Are you able to expand on that note and tell us what it
24 means?

25 A. Yes, sir. My secretary, in transcribing that, has cleaned up

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1 my notebook a little and put a period, I see, in here between
2 "Patricia Harriss" and "last statement given." If you look at
3 my photocopied notes, you'll see there is no period there.

4 What I was conveying there was, "The Chief was asked four
5 or five times for any other statements from Patricia Harriss, "
6 and we obtained the, as it subsequently turned out, we got
7 the last statement given, handwritten statement of Bill
8 Urquhart. But that was the one found on the floor. It wasn't
9 given to me by the chief.

10 Q. The four or five times that this statement was requested, was
11 this requested during this meeting on the 26th? Is this what
12 this is referring to?

13 A. She was, they were requested on the meeting of the 26th of
14 April. Also, though, it had been requested on the 26th of
15 February.

16 Q. Yes, I'm thinking specifically of this note. When you say "The
17 Chief was asked four or five times," did you ask him four or
18 five times for that statement during this meeting?

19 A. I would have been thinking collectively, I would think. I
20 don't think I asked him four or five times that day.

21 Q. So this note then...

22 A. I had no way of knowing, you know, until I, he picked the
23 statement up off the floor and I looked at it in the car going
24 up what that piece of paper was he threw on the floor.

25 Q. What I'm trying to get at is during the course of this meeting,

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was the Chief asked for a statement of Patricia Harriss?

A. I don't think he was specifically. He may have been asked once or twice. I think I was writing collectively there. I know that, you know, particularly during the time when he handed over the 18th of June statement of Patricia Harriss, he was four or five times that day, and I think probably that's what I was referring to.

Q. This is back on some time in February or March then.

A. 26th of February.

Q. So then the three lines that we have here,

"The Chief was asked three or four times for any other statements from Patricia Harriss. Last statement given, handwritten statement of Bill Urquhart. On Harriss showed numerous, only one read."

How much of that, if any, refers to what happened in the meeting of April 26th?

A. I've got to figure out what I'm saying here first, sir, if you'll just give me a moment. I'm referring to the statement placed on the floor, sir. "On Harriss showed numerous, only one read." Corporal Davies saw it placed on the floor. "Asked numerous times why Pratico, no explanation." During the earlier meetings, and perhaps at this one, four or times he was asked for the Patricia Harriss Statement. He gave us the last statement. The handwritten statement of Bill Urquhart

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1 on Harriss was what we got during this meeting. "Only one
2 read." The Chief was reading these as he was giving them to
3 me and he only read the one, that would be the 18th, which I
4 believe on that date he gave me another copy of that.

5 Q. The Chief was reading what as he was giving them to you?

6 A. He was reading these documents as he was handing them
7 over to me.

8 Q. Reading the substance of them?

9 A. Yes, partially. He would pick it up and say, "This is a
10 statement of Patricia Harriss given to me on such and such a
11 date," and might go into, say, some of the first paragraph on
12 it.

13 Q. I see. Your statement there then, "Last statement given." Do
14 I take it from your testimony that the word "last" refers to
15 the last statement from Patricia Harriss?

16 A. Uh-huh, he gave us the last statement from Patricia Harriss.

17 Q. Right.

18 A. The one from the 18th.

19 Q. So one should not read the note as meaning the handwritten
20 statement of Patricia Harriss was the last statement that you
21 got this day.

22 A. No.

23 Q. Now can we get to this business about the floor?

24 A. Yes, sir. Okay, after receiving these items from the chief, I
25 placed them in my briefcase and I believe Corporal Davies

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1 had a briefcase and we placed some in his. I got up then and
2 I...

3 Q. Just let me stop you, at that point you had signed your
4 statement and...

5 A. Packed our bags.

6 Q. Had your acknowledgements with the Chief.

7 A. Yes, sir, and I thanked the Chief for his cooperation and he
8 come out from around the desk to see us out sort of thing and
9 Corporal Davies went ahead, I came second, the Chief came
10 third and we continued out the door. As we, I would have
11 been in the doorway or just a step or two out the door.

12 Corporal Davies turned to me and said, "Staff, you didn't get
13 everything." He slipped one piece of paper or something on
14 the floor, a piece of paper on the floor. I turned to the Chief,
15 who was still back in his office, I may have taken one step or
16 two, and I said, "Chief, Corporal Davies tells me you slipped
17 something on the floor."

18 He stared at me for some time eye to eye and then turned
19 and said, "Well, you may as well have all of it." Or, "You may
20 as well have everything," words to that effect. And he then
21 walked toward the desk. At this time, I did not know if it
22 was on the right or left of the desk or where it was behind
23 the desk. He walked facing the desk, it would be on the left-
24 hand side; sitting behind the desk, it would be on the right-
25 hand side. Behind the desk and picked up a piece of paper.

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1 Q. Picked up from where?

2 A. From the floor under the desk on that side, which would be
3 sitting behind the desk on the right-hand side, where facing
4 the desk, on the left-hand side on the side Corporal Davies
5 had been sitting on. And he was flustered, he was red in the
6 face, and he said, "Well, you may as well have it all," or words
7 to that effect, "You may as well have everything," and gave it
8 to me. I took it and I turned and I walked out. And Corporal
9 Davies was in the office at that time as well, and we left.

10 Q. Did you look at it?

11 A. I did not look at it.

12 Q. You did not look at it?

13 A. No, sir. I went to the police car and...

14 Q. What did you do with it when he gave it to you?

15 A. I held it in my hand.

16 Q. You didn't put it in you briefcase?

17 A. No, sir.

18 Q. Okay.

19 A. I went out to the police car and Corporal Davies was driving, I
20 was in the passenger side and I said, you know, "Let's return
21 to the office," and as we drove up the hill returning to the
22 office, I read it and found that it was a partially completed
23 statement of Patricia Harriss on the 17th of June 1971
24 written by William Urquhart, I believe it was.

25 Q. Do you have any doubt at all, sir, that that partially completed

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1 statement was given to you by Chief MacIntyre after he
2 picked it up off the floor?

3 A. I have absolutely no doubt on that point. I also have
4 absolutely no doubt that I was not sitting behind his desk. I
5 was sitting in front of his desk.

6 Q. Was that an original statement, sir, or a typed one?

7 A. It was an original statement, sir.

8 Q. Do you know how it got to the floor?

9 A. Corporal Davies advised me he observed the chief slip it to
10 the floor. He said he picked it up with his left hand, reached
11 over, and put it down underneath the right-hand portion of
12 the desk.

13 Q. Did you see that?

14 A. I did not see that, no, sir.

15 Q. Can you suggest why you would not have seen that if the files
16 were on the desk in front of you?

17 A. Probably because I had my head down looking in this index
18 and trying to find whatever and signed for it, sir.

19 Q. I put to you, Staff Wheaton, that Chief MacIntyre under oath
20 here denied a number of times having slipped any statements
21 or anything onto the floor. Are you suggesting that his
22 testimony is incorrect?

23 A. I'm suggesting, I'm not suggesting, I'm stating the man
24 perjured himself.

25 Q. Before this Commission.

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1 A. Before this Commission.

2 Q. In respect of the taking of the statement of Patricia Harriss
3 and putting it on the floor.

4 A. That is correct, sir, yes.

5 COMMISSIONER POITRAS

6 Mr. Orsborn, I draw to your attention that the handwritten notes
7 show that Corporal Davis or Davies "saw them placed on the floor"
8 as opposed to the typewritten notes that referred to Corporal
9 Davies having seen "it placed on the floor." I don't know if it has
10 any relevance, I just draw it to your attention.

11 MR. ORSBORN

12 Thank you, My Lord.

13 BY MR. ORSBORN

14 Q. Just going to your handwritten notes, Staff Wheaton, and it
15 would be, appears to page 12 of your handwritten notes. You
16 can read it from there, the second paragraph:

17
18 Handwritten statements of Bill Urquhart on
19 Harriss showed numerous, only one read.
20 Corporal Davies see them placed on floor.

21 Can you suggest any reason why the "them" would be
22 changed to an "it" in a typewritten version?

23 A. No, I cannot, sir. It was one piece of paper.

24 Q. How do you know it was one piece of paper?

25 A. Because that's what the chief handed me.

Q. Did you go and look behind the desk and see if there was any

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1 more?

2 A. I stood at the desk. I didn't see any more, sir, no.

3 Q. Did you, in fact, report to Frank Edwards, having gone to the
4 chief's office and had this difficulty with the chief and the
5 statements?

6 A. Yes, I did, sir.

7 Q. Leaving aside the problem with dates and referring to Mr.
8 Edwards' notes, Volume 17, page nine, the third paragraph, I
9 guess, his notes read, "Also told me," and he's referring to a
10 conversation with yourself:

11
12 Also told me that Herb Davies had noticed
13 chief slip some of the information on floor
14 behind desk. Believes it was some
15 information with transcript attached
16 relating to threat by Christmas against
17 Pratico. Believes there was a charge
18 against Christmas at the time.

19 Do you have any recollection of relating that to Mr. Edwards?

20 A. No, I don't, sir.

21 Q. Are you saying that Mr. Edwards' note is incorrect?

22 A. Yes, sir.

23 INQUIRY RECESSED UNTIL 2:00 p.m.

24

25