

1 2:01 p.m.

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

3 Q. Staff Wheaton, just before we broke for lunch we were  
4 speaking of the meeting in Chief MacIntyre's office on April  
5 26th, and you indicated that you got this statement of Patricia  
6 Harriss, the first statement. What significance, if any, did you  
7 attach to that statement?

8 A. In that statement Patricia Harriss stated that she saw four  
9 people on Crescent Street on the evening of the murder, one  
10 being a little white-haired man and a taller younger man, to  
11 the best of my recollection of that statement.

12 Q. Yes. Did you...

13 A. As well as Seale and Marshall.

14 Q. Did you attach any significance to that information?

15 A. Yes, sir, I did. And, the significance being that in her  
16 statement of the 18th she saw only two people on the street,  
17 Marshall and Seale. And in the 17th when she was...earlier in  
18 the evening she saw four people on the street.

19 Q. Did you query Chief MacIntyre when the statement was  
20 provided to you as to why it had not been provided  
21 previously?

22 A. No, after he picked it up off the floor and gave it to me and  
23 said, "Here you may as well have it all." I never spoke to him.

24 Q. You didn't see him, I take it, place the statement on the floor  
25 yourself.

1 A. No, I did not.

2 Q. You're relying on Corporal Davies.

3 A. That is correct, sir.

4 Q. Is it possible it might have dropped on the floor?

5 A. I beg your pardon?

6 Q. Is it possible it might have dropped on the floor?

7 A. Based on what Corporal Davies told me, he picked it up with  
8 his left hand, passed it across his body, placed it down on the  
9 right-hand floor under his...the desk.

10 Q. Again, testifying this morning, sir, you made a rather serious  
11 charge when you indicated your belief that Chief MacIntyre  
12 had perjured himself before this Commission.

13 A. That is correct, sir, yes.

14 Q. It would be a serious charge.

15 A. That is right, sir.

16 Q. Would I be correct in saying that if that is true that is a  
17 criminal offence?

18 A. That is a criminal offence, yes, sir.

19 Q. When did you first form that opinion?

20 A. In Sydney after hearing Chief MacIntyre's evidence on the  
21 last morning of the Inquiry and earlier the day before, I  
22 believe it was, he gave it in evidence. It come out again in  
23 his evidence on Friday, the last day of the Inquiry in Sydney.

24 Q. Yes. Did you discuss your opinion with Corporal Davies?

25 A. Yes, I did, as well as Corporal Davies' lawyer, Mr. Boudreau,

1 and asked them if, on behalf of his client, if he would have  
2 any problems with me pursuing the matter with the Crown  
3 Prosecutor in Sydney and he advised me that he would not,  
4 and it was his legal opinion that perjury had been committed.

5 Q. I see. And was it your opinion as a police officer that a  
6 charge should be laid?

7 A. Yes, sir.

8 Q. Did you lay a charge?

9 A. Not to date, however, I have had some consultation with the  
10 Crown Prosecutor in Sydney and I have submitted a report to  
11 my superiors.

12 MR. SAUNDERS

13 My Lord, if I could rise at this point. I must say and put on  
14 the record I don't think it's appropriate for this police officer to be  
15 giving evidence before this hearing as to what steps he has or  
16 hasn't taken with respect to evidence given before this  
17 Commission in December and what conclusions this officer may  
18 have reached with respect to whether it's a criminal charge or not.  
19 I saw... with the greatest of deference to my friend and the  
20 witness that it seems to me those questions are for Your  
21 Lordships, after considering the evidence that is put before this  
22 Commission. And I take strong exception to a witness giving  
23 evidence about what may be going on or what discussions he may  
24 have had with Crown officers or superiors within his own RCMP  
25 force. I don't think it's appropriate and I certainly don't think it's

1 fair to either the people involved or who may be involved in an  
2 investigation or fair to the person being accused by this witness.

3 MR. CHAIRMAN

4 The question of whether an offence has been committed  
5 before this Commission may not necessarily be for the Commission  
6 to decide. But it is for the Commission to decide on the  
7 truthfulness of the testimony of any witness.

8 MR. SAUNDERS

9 Quite so.

10 MR. CHAIRMAN

11 And, as we have not heard all of the evidence to come  
12 before the Commission then it would be certainly premature on  
13 the part of this Commission to make any finding as to whether  
14 there...anyone has committed perjury or has told an untruth  
15 under oath before the Commission.

16 MR. SAUNDERS

17 That's my point, My Lord.

18 MR. CHAIRMAN

19 What the authorities may do with respect to any testimony  
20 after this Commission has filed its report would certainly not be a  
21 matter for this Commission, but it is premature at this time. I  
22 have some concern, as well, in hearing evidence as to advice being  
23 given by other solicitors, again, at this time.

24 MR. SAUNDERS

25 Yes.



1 MR. CHAIRMAN

2 We have no idea upon what they are basing their  
3 conclusions, nor do we have any...nor are we called upon at this  
4 time, at least, to reach any conclusion as to whether their opinions  
5 are sound.

6 MR SAUNDERS

7 Thank-you, My Lord.

8 MR. RUBY

9 The question that is turning up is how the Attorney  
10 General's office has dealt with this matter. It seems to me that is  
11 a relevant issue because we're interested in how the Attorney  
12 General's office does deal with this case and those actions arising  
13 out of it, whether charges get laid, what investigations go on or  
14 whether they're stopped. So, surely we want to hear from this  
15 witness how far he has gone and what he's done without in any  
16 way attempting to prejudice the findings of credibility you may  
17 make or the decision the Attorney General will ultimately make  
18 on the finding of laying a charge.

19 MR. CHAIRMAN

20 The witness...is anyone else to be heard?

21 MR. BISSELL

22 The only comment that I would make on the question is  
23 that it should be viewed as something that is an on-going  
24 criminal investigation and not be appropriate to...appropriately  
25 the subject of evidence at this stage.

1 MR. ORSBORN

2 The only reason for pursuing it, My Lord, was that it arose  
3 out of a factual situation which is certainly before the Commission,  
4 the meeting between Staff Sergeant Wheaton and Chief MacIntyre  
5 and Corporal Davies in April of 1982, and insofar as Staff Wheaton  
6 did or did not take certain actions which flowed from that meeting  
7 and the recounting of that meeting, I would suggest they do  
8 have...they're of relevance and interest to the Commission, and I'm  
9 simply interested in knowing what Staff Sergeant Wheaton has  
10 done to date.

11 MR. CHAIRMAN

12 Do you wish to be heard? Go ahead.

13 MR. PUGSLEY

14 I have no representations, My Lord. I assumed that  
15 anything this witness said would not unduly influence the  
16 Commission with respect witnesses and findings of credibility and  
17 I felt there was no reason for me to rise.

18 MR. CHAIRMAN

19 No. The concern that I have is that no Canadian should be  
20 placed in a position where he or she is prejudiced by the  
21 premature disclosure of matters that may be subject to police  
22 investigation. That is so fundamental that it doesn't need to be  
23 stated. I'm assuming that the, up to this point at least, that the  
24 purpose of that...of this line of questioning was that this morning  
25 this witness made a very serious charge with respect to the

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1 testimony of another witness before this Commission, and that the  
2 purpose of the questioning was to ensure that this was...that as a  
3 police officer he just simply didn't make the statement this  
4 morning, but that he had proceeded further with it. The opinions  
5 of counsel to this witness, in my view, are clearly not  
6 appropriately brought forth at this time.

MR. ORSBORN

8 It would be my intention simply, My Lord, to pursue what  
9 Staff Wheaton did as a police officer following his formation of the  
10 opinion and that same issue will arise in later examination this  
11 afternoon based on his whole review in this matter and certain  
12 conclusions that he does reach in the documentation. So, with  
13 your Lordship's permission I would pursue with Staff Wheaton  
14 simply his actions in response to forming that opinion.

MR. CHAIRMAN

16 His actions, but I'm not going to admit legal opinions that  
17 may have been given to this witness.

MR. ORSBORN

19 Uh-hum. I understand.

MR. CHAIRMAN

21 As a result of the testimony that has been given before the  
22 Commission.

MR. ORSBORN

24 Q. Bearing in mind the words of His Lordship, Staff Wheaton,  
25 and leaving aside then the...any discussions you had with any

1 counsel, what, if anything did you do in your role as a police  
2 officer after you formed the opinion that Chief MacIntyre had  
3 committed perjury before this Commission?

4 A. Further to what I've already stated, sir.

5 Q. Yes.

6 A. And I want to be perfectly clear because I don't want to say  
7 anything improper. Your question is then what did I do  
8 within the RCMP.

9 Q. In...

10 A. As a police officer.

11 Q. As a police officer.

12 A. I submitted a report to my superior, Superintendent  
13 Vaughan, the criminal operations officer, outlining the  
14 circumstances of this what I believe to be an offence, and that  
15 I have received a verbal reply from his assistant, Inspector  
16 Murphy, in regards to that report.

17 Q. In your capacity in Cole Harbour.

18 A. Yes, sir.

19 Q. This alleged offence would not come within your normal  
20 jurisdiction, I take it, to follow it up.

21 A. No, sir, well, police...a mounted policeman has jurisdiction  
22 anywhere in the Province.

23 Q. I understand that.

24 A. But, no, I'm in charge in Cole Harbour Detachment and  
25 another policeman would investigate it in Sydney.

1 Q. The investigation then would not fall to you.

2 A. No, sir.

3 Q. Going back to your note, sir, Volume 34, page 3, there are  
4 references in there to "Pratico, no explanation, no comment on  
5 line up, no comment on Pratico re witness." Are you able to  
6 tell us whether those are notes referable to your 26th of April  
7 meeting with Chief MacIntyre or do they relate some sort of  
8 earlier discussions?

9 A. No. These notes, "Pratico, no explanation, no comment on line  
10 up, no comment on Pratico re witness," came from our  
11 meeting on the 26th of April, 1982. These were specific  
12 points I put to the Chief.

13 Q. Then at "Pratico no explanation" what does that mean?

14 A. Pratico, where did Pratico come from, why did Pratico surface  
15 in the first place. Barbara Floyd says that...

16 Q. What was the Chief's response?

17 A. No explanation.

18 Q. But did he say, "I have no explanation for that"?

19 A. No.

20 Q. Or, "I don't recall," or...

21 A. He just didn't say anything.

22 Q. Nothing. I see. "No comment on line up." Could you expand  
23 on that, please?

24 A. Well, in the transcript of the original trial there's mention of a  
25 line up. I have never been able to this date to get to the

1 bottom of why a line up was held. I asked the Chief, you  
2 know, just as I just said from the transcript, "There appears to  
3 have been a...that you held a line up and it was viewed by  
4 Donald Marshall. Can you tell me why?" And there was no  
5 comment.

6 Q. Again, so when you say "no comment" did the Chief just say  
7 nothing at all?

8 A. I beg your pardon.

9 Q. Did he not respond at all?

10 A. Again, no. He said nothing at all or he may have changed the  
11 subject. I can't recall.

12 Q. I see.

13 A. But there was no comment of it, no.

14 Q. And again "No comment on Pratico re witness."

15 A. Yes. By that I meant Pratico as a witness in the original trial,  
16 coming out into the hallway, saying that he wasn't telling the  
17 truth on the stand, being taken into a room with Donald C.  
18 MacNeil and the Chief. What could he tell me about that?  
19 And again, he didn't even...either didn't answer me or else  
20 again changed the subject. But there was nothing of note.  
21 Those were three things that were in my mind that I would  
22 like some clarification on and I never have had any.

23 Q. Why would you bring these sorts of matters up, sir, when  
24 you're in this formal meeting with papers being passed over  
25 and initials made on a receipt form?

1 A. We were getting, more or less, down to the nub of the third  
2 stage, the investigation of the Chief, if you will, and these  
3 were things that came to my mind that should be commented  
4 on.

5 Q. When you say the "nub of the investigation of the Chief" can  
6 you explain that, please?

7 A. Well, again, as I've said, the first thing was the letter from  
8 Aronson.

9 Q. Uh-hum.

10 A. Marshall coming out of jail, then Ebsary.

11 Q. Uh-hum.

12 A. And now we're down where the Attorney General has given  
13 an order that we go down and seize the file, the  
14 documentation on it. So, at that time I felt that I should try to  
15 see if he would care to offer an explanation as to why these  
16 things were done.

17 Q. Were you then of the view that you were, in fact, at that date  
18 investigating the Chief?

19 A. Not really, sir. In a way I was, and in a way I wasn't. I had  
20 no mandate to investigate the Chief, but we were getting close  
21 and I, for instance, did not warn the Chief or I did not ask him  
22 if he wished to make a statement about anything. But we  
23 were getting very close to that point.

24 Q. You used the phrase, "We're in the nub of the investigation of  
25 the Chief," that means to me that you're right in the middle of

1 it. Was that what you intended to say?

2 A. No. I meant we were...the nub, I meant the end. We were  
3 getting at the end of one phase and we're almost starting  
4 another phase here.

5 Q. Did you construe the letter from the Attorney General with  
6 respect to the files, as a mandate to investigate the Chief?

7 A. No, I did not, sir, no.

8 Q. Two other concluding comments on the...on your note there,  
9 Staff Wheaton, "Definitely did not interview Ebsary's wife or  
10 son after murder on 15th." Would you explain that, please?

11 A. I asked the Chief if he had interviewed Mary Ebsary or  
12 Gregory Ebsary after the murder on the...and he said, "No." I  
13 gather that those interviews were on the 15th. I don't know  
14 at this time.

15 Q. Was your question "Did the Chief interview them himself," or  
16 were they...

17 A. Yes.

18 Q. ...interviewed by the Sydney Police?

19 A. I asked him if he did and he said he definitely did not.

20 Q. Did you have in your possession at that time the Ebsary  
21 statements?

22 A. Yes, sir.

23 Q. And, in any event, you would have had them on the, at least  
24 as far as Greg and Mary are concerned, on the 19th, when  
25 you...



1 A. Yes, there is every indication.

2 Q. When you saw them. Would you not then have been in a  
3 position to say to the Chief, "I'm sorry, but your signature  
4 appears on the statements of Mary and Greg and Roy Ebsary  
5 dated November 15th, '71." ?

6 A. I could have, I didn't, but I could have I suppose.

7 Q. I see.

8 A. I didn't challenge the Chief at all about that. I asked him. He  
9 said he didn't interview them. As I recall it this came from  
10 this business of going into the Attorney General. There  
11 seemed to be something new about these interviews and then  
12 the call to Superintendent Christen and his call to Inspector  
13 Scott, and then he got ahold of me. The Chief thought this was  
14 very significant apparently in Halifax. So, I spoke to him and  
15 asked him if he did interview Greg and Mary Ebsary and he  
16 said he definitely did not.

17 Q. I see. The last sentence, "Total correspondence, 31 pieces."

18 A. Yes, sir.

19 Q. What does that refer to?

20 A. Well, to the best of my knowledge in counting the...I believe  
21 it's the number of original statements I got. If you count the  
22 number on the face of the page together and add Constables  
23 Walsh, Mroz, Dean, Ambrose MacDonald, disregard the  
24 information from Beaver, Cote and Noseworthy, then add in  
25 the statements of MacNeil, Ebsary, MacNeil, MacNeil, Roy

1 Ebsary and Mary Patricia...Mary Patricia Ebsary. The second  
2 part is a copy of that first part and the two statements of  
3 George Wallace and Roderick Alexander, I believe...and the  
4 last three, you get 31 pieces. And I feel that's what I was  
5 talking about, that I had actually gotten 31 statements from  
6 the Chief.

7 Q When did you count them?

8 A. Just over the weekend. I was trying to figure it out myself.

9 Q Over the weekend.

10 A. Oh, this, this. No, I counted them originally I would assume in  
11 Sydney when I got them, and I wondered why I had written  
12 that and in looking at this I see there is 31 there, so.

13 Q I see. If I might turn to Exhibit 88, which is the receipt form  
14 you've just been referring us to. Looking at the list of the  
15 typewritten copies of the statements. I notice that there is no  
16 reference to the typewritten copies of the statements of Mary  
17 O'Reilley, Catherine O'Reilley and Rudy Poirier. You certainly  
18 do have the original statements on the next page. But we  
19 have in our volumes, in our volume 16, typewritten copies of  
20 those statements.

21 A. Yes, sir.

22 Q Can you offer any explanation why they would not appear on  
23 this schedule of typewritten copies?

24 A. The only thing I could suggest to you, sir, is that perhaps they  
25 had already been given to us by Chief and he did not at that

1 time have copies of those to give me.

2 Q. Thank-you. On the second page, towards the bottom of the  
3 second page where the statement of Mary O'Reilley, Catherine  
4 O'Reilley and Rudy Poirier are mentioned, the word "original"  
5 is written in there. Is that in your handwriting?

6 A. Yes, it is, sir.

7 Q. So, we can take from that that those statements are not the  
8 typewritten ones.

9 A. No, they were originals.

10 Q. They're original handwritten.

11 A. Yes, sir.

12 Q. On the back page where the original statements are referred  
13 to, "The May 29th statement of Chant missing," and then you  
14 have your writing, is it, "Original of Chant, 4 June '71."

15 A. Yes, sir.

16 Q. What does that line mean?

17 A. That...this as the thing would, the list would indicate, sir,  
18 would be original statements and it is indicated that the May  
19 29th statement of Chant was missing in typewritten but the  
20 original statement was there so I wrote in "Original of Chant,  
21 4th June, '72, HFW."

22 Q. Chant did not, in fact, did not give a statement on May 29th,  
23 did he?

24 A. No, sir. I believe the first statement from Chant was the 30th  
25 as far as I know.

- 1 Q. But you have receipted a copy of Maynard Chant, typewritten  
2 copy of May 29th.
- 3 A. Oh, yes, but I have "Original of Chant 4th of June, '71."
- 4 Q. Uh-hum. Back on the first page though you acknowledge  
5 receipt of a statement of Maynard Chant, May 29th.
- 6 A. Yes, I see that, sir.
- 7 Q. And your initials would indicate receipt of that statement?
- 8 A. Yes, sir.
- 9 Q. And does any such statement exist?
- 10 A. Not to the...it could, I don't know. I don't recall seeing it.
- 11 Q. Okay. Again, on the last page, on the original statements, the  
12 note there "P.A. Harriss, one statement given to Staff Sergeant  
13 Wheaton already." And you have initialed that. What...what  
14 should we take from that?
- 15 A. You're referring to the last page, sir.
- 16 Q. Yes, sir.
- 17 A. P.A. Harriss.
- 18 Q. Yes. The reference there...
- 19 A. Oh, yes.
- 20 Q. Yes.
- 21 A. I would...that would be a statement that the Chief gave me on  
22 the 26th of February. He had already given me one  
23 statement of the 18th of June, statement of Patricia Harriss  
24 and he gave me an original statement of Patricia Harriss, and  
25 for some reason in the typing of this they made of that, a

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1 separate note of that.

2 Q. The fact that the wording is "One statement given to Staff  
3 Wheaton already," would that not lead you to the conclusion  
4 that there was more than one of them around?

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6 A. It could lead one to believe that, yes.

7 Q. And if one were led to believe that that's not consistent with  
8 the Chief poking this other one under the table, is it? This  
9 doesn't appear to be hiding anything. That's what I'm getting  
10 at.

11 A. It could mean numerous things, I would think. One, that he  
12 had already given me a copy of a statement and was giving  
13 me now the original of that statement. Two, that he knew  
14 that the second statement did exist. I don't know.

15 Q. What does your initial indicate?

16 A. It indicated that I received that.

17 Q. That you received an original statement.

18 A. Original statement of P.A. Harriss.

19 Q. Sometime prior to...

20 A. I beg your pardon, sir?

21 Q. Sometime prior to the 26th?

22 A. No. On that date.

23 Q. So you received an original statement of Miss Harriss on that  
24 date. What does the word then "already" refer to?

25 A. I would assume that he had already given me one on the 26th

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1 of February. I don't assume it. I know. I...

2 Q. An original?

3 A. I really don't know. I don't think it was an original. As I  
4 remember it it was a typed copy. I don't know why that's  
5 there, but it is there and it is different. I agree with you 100  
6 percent.

7 Q. I agree that it's different, I'm simply trying to understand  
8 what the affixing of your initial means because you're the  
9 only one that can tell us that.

10 A. It would mean that I received an original statement of P.A.  
11 Harriss.

12 Q. On?

13 A. On the 26th of April 1982.

14 Q. How many original statements of Patricia Harriss exist, to  
15 your knowledge?

16 A. There should be two.

17 Q. If I may just, again, refer you to page 1 of this exhibit. Under  
18 the listing of "Typewritten Copies of Statements", the fourth  
19 one down is, reads "Statements of Terrance Gushue", and then  
20 the sixth one down reads, "Statements of Patricia Harriss",  
21 June 18, 1971 and your initials appear. Is there any  
22 significance to the fact that appear in plural?

23 A. As you pointed out, sir, there's a number of, there's another  
24 one down there, "Marvel Mattson Statements".

25 Q. Yes.

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1 A. It means, I would take it, then, I know that there were some,  
2 some of them I got, received two and three copies of.

3 Q. This refers...

4 A. For some reason there was two or three copies and other ones  
5 there was just a single copy.

6 Q. What did you do following receipt of this information?

7 A. Following receipt of this I returned to my office at the Sydney  
8 Subdivision headquarters and I had conversation with  
9 Inspector Scott relative to the slipping of the statement on the  
10 floor principally. And I made notes about it that we have  
11 here.

12 Q. This is the note you referred to? Is there any reason why Cpl.  
13 Davies' initials or signature would not appear on that exhibit?

14 A. It was turned over to me and was kept in my possession until  
15 the 27th when I turned it over to Cpl. Carroll.

16 Q. Even though you...

17 A. There'd be no reason for Cpl. Davies...

18 Q. You had specifically asked for an observer to be present.

19 A. Yes, I did, sir.

20 Q. Did you review the documentation that you had obtained?

21 A. Yes, I did, sir.

22 Q. And we've heard about the statement of Patricia Harriss,  
23 other than that statement. Were there any surprises in it?

24 A. There were a number of things. There was handwritten  
25 documentation which had been written by Crown Prosecutor

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1 MacNeil during the original trial making observations. I don't  
2 know as that was a surprise but I was surprised to find that.  
3 The Crown's handwritten notes in the possession of the Chief  
4 of Police, that he would have made during trial. This was the  
5 most significant thing and nothing else comes to mind, sir.

6 Q. Did you review all of the handwritten notes that were in the  
7 file?

8 A. Yes, sir, to the best of my ability.

9 Q. On page 76, or Volume 34...

10 CHAIRMAN

11 Before we leave this document, Exhibit 88, on the first page,  
12 Staff Sergeant, it says, "Working papers of the late D.C. MacNeil,  
13 Q.C., Prosecuting Counsel, given to Sergeant MacIntyre, November  
14 1971, to be put in my file." What's that? In whose file are we  
15 talking about there?

16 A. That would be the Chief talking about his own file that he was  
17 keeping back at the Sydney City Police office. I found it odd  
18 that the Crown Prosecutor would give the Chief, then  
19 Sergeant, MacIntyre, copies of his working papers. Other than  
20 that it tied in with this idea of him keeping sort of aide-  
21 memoirs to his cases or something after the conclusion of the  
22 case. I don't really have an explanation other than that, My  
23 Lord.

24 CHAIRMAN

25 While you're still looking at that same exhibit, 88, where



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1 have you listed the statement that you say was retrieved from the  
2 floor?

3 A. I did not list it on this. This was prepared by Chief MacIntyre  
4 and it's not listed on this form, My Lord.

COMMISSIONER EVANS

6 If you were preparing a list, a summary of the papers that  
7 you got from Chief MacIntyre, you were preparing a list of all the  
8 papers that you picked up there that day, were you not?

9 A. No, the Chief had prepared...

COMMISSIONER EVANS

11 I realize that.

12 A. I did not prepare an independent one. I looked at his list and  
13 I was satisfied it was correct.

COMMISSIONER EVANS

15 You added one of Noseworthy on page 2.

16 A. Yes, yes, My Lord.

COMMISSIONER EVANS

18 That's yours. So you were giving it to the Chief, and you  
19 wanted him to sign it and he did sign it...

20 A. Yes.

COMMISSIONER EVANS

22 So why wouldn't you take the one that was on the floor and  
23 look at it and say, "Well, I'll add this to the list and, Chief, you sign  
24 this as well?"

25 A. This was at, at the termination of this interview, My Lord, the

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1 Chief was in a rather upset frame of mind and I must quite  
2 frankly say, so was I. And I terminated the interview at that  
3 point rather than get into any conflict with him. It could have  
4 been done, I agree.

COMMISSIONER EVANS

6 But then you had, the explanation or requested explanation,  
7 was that after you had received all this list of documents...

8 A. The requested explanation...

COMMISSIONER EVANS

10 Yes. Where you say that...

11 A. This was, after I had received this and signed for it but before  
12 the termination of my interview in getting up, shaking hands  
13 with the Chief to leave. I asked him various points, My Lord,  
14 yes.

COMMISSIONER EVANS

16 And that's the, on your page 3, the Item 20-...

17 A. Yes.

COMMISSIONER EVANS

19 Item 26. And then it's after that the page of paper was  
20 brought to your attention.

21 A. Yes, My Lord.

COMMISSIONER EVANS

23 And you say MacIntrye picked it up off the floor and gave it  
24 to you saying you may as well have it all. But you didn't really  
25 make any note at that time any place?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. I returned to my office and as soon as conveniently possible...

2 COMMISSIONER EVANS

3 Well, no, you got in the car and you went some distance with  
4 the other officer as I understood your evidence.

5 A. That's correct, My Lord.

6 COMMISSIONER EVANS

7 And I take it that as a police officer you would have your  
8 police notebook with you?

9 A. Yes, sir.

10 COMMISSIONER EVANS

11 And you had this particular list of documents?

12 A. Yes, My Lord.

13 COMMISSIONER EVANS

14 And you did not either put it in your book or you did not  
15 add it to this list, is that right?

16 A. I did it as soon as conveniently possible back at our office, not  
17 while driving up in the car.

18 COMMISSIONER EVANS

19 And you made that note where?

20 A. I made this note in...

21 COMMISSIONER EVANS

22 In your book.

23 A. In my book, yes, My Lord.

24 MR. ORSBORN

25 Q. Staff Wheaton on page 76, Volume 34, looking at paragraph 4.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 That starts off,

2  
3 In analyzing the various correspondence  
4 turned over Chief MacIntyre, a statement  
5 was noted taken from Mary Patricia  
6 O'Reilley.

7 You told us a few moments ago that it's likely that you had  
8 the statement from Mary O'Reilley before because the, her  
9 name does not appear in the list of typed statements.

10 A. The Mary Patricia O'Reilley statement does not appear on  
11 here, sir?

12 Q. On the typed, on the listing of typed statements. And you  
13 agreed a few minutes ago that that may well be because you  
14 were provided with a copy of the typed statement before.

15 A. I see an original statement of Mary Patricia O'Reilley on page  
16 3.

17 Q. Yes.

18 A. And I say in my report,

19 In analyzing various correspondence  
20 turned over by Chief MacIntyre a  
21 statement...

22 "A statement," I don't differentiate whether it was an original  
23 or a copy, sir.

24 Q. I understand that but the...

25 A. And I say further that,

It was noted taken from Mary Patricia

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 O'Reilley, aged 14, of 23 Cross Street,  
2 Sydney, N.S. On page 2 of this statement  
3 Miss O'Reilley states that she told Patricia  
4 Harriss there was supposed to have been a  
5 gray-haired man there...

6 et cetera.

7 Q. My point is that that statement is also in typed form and I'm  
8 trying to ascertain whether or not you had a typed version of  
9 that statement before your 26th of April interview. This  
10 suggests that you did not have it. Is that not true?

11 A. I, well no, I would have go back over my reports to see if I  
12 did or didn't have it...

13 Q. This is the [first reference?]...

14 A. I would think that probably I did. As I recall, the  
15 investigation I spoke to Frank O'Reilley, their parents,  
16 sometime prior to that. But I really don't know what your  
17 point is, sir.

18 Q. The discussion in Mary O'Reilley' s statement refers to having  
19 told Patricia Harriss to tell the "two-man story". You're  
20 familiar with that.

21 A. Yes, sir.

22 Q. What, if anything, did you do with respect to questioning  
23 Mary O'Reilley and her story?

24 A. I spoke to their father in Sydney. He advised me that both  
25 daughters, as a matter of fact I think there was three  
daughters, who were all living in Calgary, I believe. He  
requested that I not contact them direct. That he be allowed

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 to call them and see if they wanted to see me. He did, and got  
2 back to me. And said that they were now married and  
3 wished to put all of the business in Sydney behind them. But  
4 if I had any questions to give them to him and he would ask  
5 them and he seemed to be an honorable gentleman and I did  
6 that and I respected their wishes.

7 Q. What questions did you want answered by Mary O'Reilley?

8 A. I wanted to know from the O'Reilley girls whether or not  
9 there was any efforts made by Donald Marshall to have them  
10 tell Patricia Harriss to cook up a story, if you will, about the  
11 gray-haired man on the road. And the answer I got back  
12 from Frank O'Reilley, their father, was that, "No, they hadn't.  
13 " And they just knew Patricia Harriss casually. And they  
14 hadn't made any overtures to her on behalf of Donald  
15 Marshall. And he questioned both girls for me and I left it at  
16 that.

17 Q. Did you question Patricia Harriss with respect to Mary  
18 O'Reilley's statement?

19 A. Her recall was the same, sir.

20 Q. Did you make any notes of that discussion with Patricia  
21 Harriss?

22 A. No, sir.

23 Q. Were you able to reach any conclusions as to how that  
24 information then appeared in Mary O'Reilley's statement?

25 A. Only other than again the Chief was the common thread. The

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Chief had told me this as well. That Donald Marshall was  
2 going around getting people to cook up stories for him and  
3 mentioned the O'Reilley girls sometime during one of my  
4 interviews with him.

5 Q. Did you think that this was a serious matter? This connection,  
6 or alleged connection between the Harrisses and the  
7 O'Reilleys?

8 A. It was a matter that I should look into I felt and I did look  
9 into it. I didn't really feel that it was serious to Ebsary's guilt  
10 or Marshall's getting out of prison.

11 Q. If I could direct you attention, sir, to Volume 16 at page 129  
12 which is, we understand, a handwritten note in Chief  
13 MacIntyre's handwriting. Page 129. This was a note, we  
14 believe, in the Sydney Police Department files. Have you ever  
15 seen that note before, sir?

16 A. I believe this was a handwritten note found in the file.  
17 Judging by the writing I would say quite probably by Chief  
18 MacIntyre...

19 Q. Yes.

20 A. But I can't swear to it.

21 Q. No, I understand that. Accept that is it the Chief's writing.

22 A. It looks similar to me but...

23 Q. Well, accept that. Did you question either Mary O'Reilley or  
24 Patricia Harriss on the content of that note?

25 A. No, I did not, no.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Q. Volume 34, sir, at page 2. And Item number 22 on that page,  
2 appears to refer to the, the content of this note the word  
3 "Pallets" may perhaps, should be "Polletts" perhaps. Bottom  
4 of page 2, Item number 22.

5 A. Yes, sir.

6 Q. Do you have any recollection of making that note?

7 A. If I looked at the original. This is from my notebook.

8 Q. Yes, sir.

9 A. I don't really have any great independent recollection about  
10 the significance of that note, sir, no.

11 Q. The Harriss statement that you refer to on page 76 of Volume  
12 34. You say,

13  
14 The Harriss statement in which she says  
15 she only saw Marshall and Seale was taken  
16 at 1:20 a.m. on the 18th of June.

17 The typed version of that statement, sir, is in Volume 16 at  
18 page 65. Page 65, Volume 16. The typed version of that  
19 statement.

20 A. Yes, sir.

21 Q. What time does that statement end?

22 A. It's noted June 18th, 1:20 a.m.

23 Q. What time does it end?

24 A. I beg your pardon?

25 Q. What time does it end?

A. End? June 18th, 12:25 a.m.



STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Q. Would that give you any concern about the starting time?

2 A. I beg your pardon?

3 Q. Would that give you any concern about the starting time?

4 A. It would indicate to me that the times were probably not  
5 correct.

6 Q. And if you just flip over, sir, to page 67.

7 A. 67?

8 Q. Which, I believe, is the handwritten copy of that. The same  
9 volume. What time is that indicated to start?

10 A. I believe 1:20 a.m.

11 Q. Could it be 12:07?

12 A. I beg your pardon, sir?

13 Q. Could it be 12:07?

14 A. Yes, it could be 12:07 a.m.

15 Q. If it were that, would change your assessment of the time  
16 that Patricia Harriss was in the police station.

17 A. Yes. The time of, for the taking of this statement, yes, sir.

18 Q. Okay. Now your report...

19 A. Not the time she was in the police station.

20 Q. I appreciate that. Your report on page 76 of Volume 34 was  
21 submitted. There's no reference in that report to Miss  
22 Harriss' first statement. There is, a copy of that statement is  
23 not forwarded. There are no references in that statement to  
24 any difficulties that you encountered with the Chief. Could  
25 you explain why those matters would not be included in your

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 report?

2 A. It was a matter, it was a separate issue discussed with the  
3 Crown Prosecutor as a separate issue and reported to  
4 Inspector Scott and I felt it should be dealt with probably as a  
5 separate issue.

6 Q. Did you ever submit a report in which...

7 CHAIRMAN

8 Before you leave that, what issue are we speaking of now?

9 A. We're speaking, My Lord, I understand, the way I took it, the  
10 slipping of the statement down on the floor.

11 CHAIRMAN

12 You discussed that, you say, with Inspector Scott...

13 A. And the Crown Prosecutor, My Lord.

14 CHAIRMAN

15 Mr. Edwards.

16 A. Edwards, yes.

17 CHAIRMAN

18 But did you submit any report on it?

19 A. I cannot honestly recall if I did or not. I know it was  
20 discussed with my superiors and I cannot honestly say if I  
21 did or not at this point.

22 CHAIRMAN

23 The report we're looking at on page 76, 85-05-04, was I  
24 presume your official report to your superior officer following  
25 your acquiring from Chief MacIntyre the statements and other

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 | documentation that you've listed.

2 | A. That is correct, My Lord.

3 | CHAIRMAN

4 | I would, are we entitled to assume that the behaviour of  
5 | then Sergeant, or Chief MacIntyre, rather, in taking a statement  
6 | and putting it on the floor would have been considered by you as  
7 | a very significant act that would be somewhat detrimental to your  
8 | work and your investigation?

9 | A. Yes, My Lord.

10 | CHAIRMAN

11 | Other than, such being the case, can you explain again to us  
12 | why this very significant act that you've outlined would not have  
13 | been included in your official report to your superior officer?

14 | A. Yes, My Lord. To the best of my recollection, this matter  
15 | became a separate issue as far as I was concerned. I reported  
16 | it to my superior officer, Inspector Scott, the Officer  
17 | Commanding of the Subdivision, immediately. I had  
18 | conversations and reported it and went down and discussed it  
19 | with the Crown Prosecutor and it tied in with the furtherance  
20 | of the investigation insofar as I was concerned with the third  
21 | part of the investigation, and that was the investigation of  
22 | John MacIntyre of Sydney City Police. And I felt we should  
23 | have a clear mandate whether or not we begin that  
24 | investigation. And I was advised that Mr. Edwards had  
25 | talked to Mr. Gale in this regard and that we were to hold the

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1 matter in abeyance. However, I did not, I do not believe that  
2 I did submit, and I can find no record that I submitted a  
3 memorandum to the, to Superintendent Christen, for instance.  
4 I reported it to my superiors and I have every reason to  
5 believe that they, Inspector Scott reported it to  
6 Superintendent Christen.

CHAIRMAN

8 When you're speaking of reporting...

9 A. I mean verbally, My Lord.

CHAIRMAN

11 Verbal reporting. If that event occurred, that to me would  
12 be an extremely serious act on the part of the Chief of Police of  
13 Sydney. Is it, are we entitled, therefore, to assume that when  
14 you, as a police officer, become aware of what certainly has  
15 potentially serious overtones that the, that there would be no  
16 written report made, that you would rely totally on an oral report  
17 to your superior officer?

18 A. I would report it to my superior officer and I would follow  
19 the instructions that I received from him, sir. Now I've never  
20 received instructions, if I might add to that, not to submit a  
21 report. By the same token, I never received instructions to  
22 submit a report.

CHAIRMAN

24 You've told us that as a result of hearing the testimony of  
25 Mr. MacIntyre before this Commission, you have submitted a

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 report?

2 A. That is correct, My Lord.

3 CHAIRMAN

4 Would you not consider this action in that same category of  
5 seriousness?

6 A. As times progresses one learns is all I can say, My Lord.

7 That's why I've submitted the report in this instance.

8 CHAIRMAN

9 Is it your testimony that following your reporting of this  
10 incident to Inspector Scott that a request was made of Mr. Gordon  
11 Gale, the, a senior prosecutor with the Department of the Attorney  
12 General to start an investigation of Chief of Police MacIntyre?

13 A. It is my testimony that as a result of my conversation with  
14 Mr. Edwards, reporting this fact to him that this had  
15 happened, that he subsequently was in touch with Mr. Gale  
16 and he reported back to me that it was Mr. Gale's feelings that  
17 we should hold any investigation of Chief MacIntyre in  
18 abeyance.

19 CHAIRMAN

20 Did you say to Frank Edwards, I would like now to receive  
21 instructions to commence an investigation of John MacIntyre?

22 A. Yes, I did, sir.

23 CHAIRMAN

24 And Frank Edwards then communicated, as far you know,  
25 your request to Gordon Gale.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. That is correct, My Lord.

2 CHAIRMAN

3 And you were subsequently advised by Frank Edwards that  
4 Gordon Gale had instructed him that this would not be an  
5 appropriate time to start an investi-, the third, or an investigation  
6 of John MacIntyre.

7 A. That is correct, My Lord. It is my evidence.

8 CHAIRMAN

9 And just, and, now was Inspector Scott involved in any of  
10 this? Was he in on the discussions between you and Frank  
11 Edwards?

12 A. Yes, he was, sir.

13 CHAIRMAN

14 And was he present when Frank Edwards communicated to  
15 you Gordon Gale's instructions to him not to proceed with a  
16 further investigation of John MacIntyre?

17 A. I can't recall it, My Lord. He may have been. I don't recall if  
18 that, I don't believe he was.

19 CHAIRMAN

20 If he wasn't present, are we entitled to assume that because  
21 he, as your superior officer had been present at the time the  
22 request was made by you to Edwards, that Edwards would also  
23 have reported it to him?

24 A. Yes, I would expect that, sir.

25 CHAIRMAN

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1           So presumably, Inspector Scott is being called, isn't he?

2           MR. ORSBORN

3           Yes, My Lord.

4           CHAIRMAN

5           We'll be able to find out from him.

6           A. Yes, My Lord.

7           CHAIRMAN

8           Okay. Thank you.

9           Q. Let's backtrack just a little bit. Corporal Carroll's notes at  
10           page 14 indicates that on the 11th of May a number of  
11           interviews were conducted at the Sydney Police Department  
12           and a number of statements resulted.

13          A. Page 14?

14          Q. Page 14 of his notes, yes, sir. Were you at the Sydney Police  
15          Department on that day accompanying Corporal Carroll?

16          CHAIRMAN

17          What exhibit?

18          MR. ORSBORN

19          Sorry, My Lord, that's Exhibit 104.

20          CHAIRMAN

21          We're getting overwhelmed with exhibits today.

22          COMMISSIONER POITRAS

23          What page was that?

24          MR. ORSBORN

25          The 14th page, My Lord.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

- 1 A. I was at the Sydney Police Department conducting interviews  
2 with various members. I don't recall if I was there at that  
3 specific date or not. If we were there together or not.
- 4 Q. There are a number of...
- 5 A. There should be some statements.
- 6 Q. There are a number of statements that appear at page 92 and  
7 following which were taken on that day, some of which have  
8 your signa-, or your name on it, some don't. Corporal Carroll's  
9 notes indicate at the beginning, "Interviewed Chief  
10 MacIntyre." Did you, or to your knowledge, did Corporal  
11 Carroll interview Chief MacIntyre of the 11th of May?
- 12 A. Corporal Carroll may have talked to Chief MacIntyre on the  
13 11th of May.
- 14 Q. Did you talk to him?
- 15 A. I don't recall talking to him, no.
- 16 Q. Why, at this time, were you interviewing the members of the  
17 Sydney Police Department?
- 18 A. I believe, I can't recall if it was as a result of some  
19 instructions that we received or a follow-up clarifying memo  
20 from Superintendent Christen to do this or if we felt that it  
21 would be good for the, good investigational practice with the  
22 charging of Ebsary. I just can't recall. But, in any event, we  
23 did interview the Sydney City policemen who were present at  
24 the scene or who had knowledge in and around 1971.  
25



- 1 Q. Did you ask those policemen if they had any notes?
- 2 A. I may have, sir.
- 3 Q. Did you receive any?
- 4 A. I don't recall receiving any personally, no.
- 5 Q. Did you interview Chief MacIntyre and Detective Urquhart?
- 6 A. I don't recall talking to the Chief on that day. I talked to
- 7 Detective Urquhart several times. I may have talked to him
- 8 on that date.
- 9 Q. You didn't take a statement from him?
- 10 A. Not that I can recall unless there's one there.
- 11 Q. Were you looking at Detective Urquhart and Chief MacIntyre
- 12 in a different light than the other policemen from whom we
- 13 have statements? They seemed to be treated differently.
- 14 Were you treating them differently?
- 15 A. They were the principal investigators. The other police
- 16 officers were peripheral investigators, I felt, or policemen
- 17 who were on duty at the time in the area who did various
- 18 things. Red Mike was certainly a principal investigator as
- 19 well.
- 20 Q. And you took a statement from him?
- 21 A. Yes, sir, I did.
- 22 Q. Why did you not take a statement from Chief MacIntyre and
- 23 Detective Urquhart?
- 24 A. Well, we were having conversations with him all the time. I
- 25 just didn't take a statement from him, sir.

1 Q. Were you ever instructed not to?

2 A. No, sir.

3 Q. Turning to your next report which is shown at Page 88 of the  
4 same volume, at Paragraph 3 and you state:

5  
6 Members of the Sydney City Police who  
7 were originally involved in this  
8 investigation have been interviewed with  
9 regards to continuity of possession...

10 et cetera, et cetera. That would, I take it, be the members of  
11 the Sydney City Police other than Detective Urquhart and  
12 Chief MacIntyre?

13 A. It would appear that way, yes, sir.

14 Q. And you say then in Paragraph 4, in regards to the Ebsary  
15 and Marshall portions of this file, all avenues of investigation  
16 known to date have been completed. Was that so?

17 A. Yes, sir.

18 Q. Would you not have regarded the interviewing of Detective  
19 Urquhart and Chief MacIntyre as part of the Ebsary/Marshall  
20 portion of the file?

21 A. I think if you read the next sentence, you can see that I  
22 pursue that.

23 Q. Yes, with respect to an investigation into their activities, but...

24 A. That's right.

25 Q. In terms of the Ebsary/Marshall portions of the file, would  
they still not be appropriate people to interview?

1 A. William Urquhart could really not give any evidence in  
2 relation to Roy Ebsary's guilt or innocence to the best of my  
3 knowledge. John MacIntyre did have some evidence, I  
4 believe, a small amount which we were aware of and I  
5 believe he was called as a witness at one of the Ebsary trials.

6 Q. Now you speak here of the allegations of Chant, Pratico, and  
7 Hariss, that they were induced to fabricate evidence. Is that  
8 another way of saying "counselling perjury"?

9 A. That is correct, sir.

10 Q. And do I understand that to be an offence?

11 A. I beg your pardon, sir?

12 Q. Do I understand that that is an offence under the Code?

13 A. Yes, sir.

14 Q. Now you indicated to the Chief that you requested that Mr.  
15 Edwards obtain permission for you to do an investigation. Did  
16 I hear you correctly?

17 A. I beg your pardon, sir? I was just reading that next sentence  
18 which...

19 Q. Yeah, you asked Mr. Edwards if you could do an  
20 investigation? You asked him for permission to proceed?

21 A. Yes, sir, I did.

22 Q. Do you know when you asked him?

23 A. Again, I don't know where I...when...the specific date. I don't  
24 believe I have a note of it. I know that Mr. Edwards and I  
25 discussed this and Mr. Edwards and I and Inspector Scott had

1 a meeting on it. We talked about getting search warrants and  
2 so on and investigating them. And I don't have the exact  
3 date. But I do know, as I just told My Lord, Mr. Edwards  
4 advised me that he further discussed the matter with Mr.  
5 Gordon Gale of the Attorney General's Department and it was  
6 felt that these interviews should be held in abeyance for the  
7 present. And it's part of my report which can be seen.

8 MR. CHAIRMAN

9 From reading what you have there, that doesn't make reference to  
10 the alleged hiding of a statement by Chief MacIntyre under a  
11 desk.

12 A. No, that is not mentioned.

13 MR. CHAIRMAN

14 That is with regards to whether you should interview Chief  
15 MacIntyre according to your report and Inspector Urquhart  
16 concerning allegations of Chant, Pratico and Hariss that they'd  
17 been induced to fabricate evidence at the trial. Then you say "Mr.  
18 Edwards has advised that he further discussed the matter. "  
19 (obviously the matter being Chant, Pratico and Hariss' testimony)  
20 with Mr. Gordon Gale and it was felt that these interviews should  
21 be held in abeyance for the present. These were interviews with  
22 respect to Chant, Pratico and Hariss.

23 A. That is correct, My Lord.

24 MR. CHAIRMAN

25 So this report has nothing to do with...

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1 A. The slipping of the thing, the statement under the desk is not  
2 mentioned in the report but certainly was discussed with Mr.  
3 Edwards and discussed with Inspector Scott at that time. It  
4 was not included here. Why, I don't know, My Lord, other  
5 than the fact that it's not an offence, I suppose.

MR. CHAIRMAN

6  
7 That's not my point. What I'm trying to get cleared up here is  
8 whether...it occurred at least to me from reading Paragraph 4 of  
9 your report that you had discussed with the crown prosecutor  
10 Frank C. Edwards the desirability of interviewing Chief MacIntyre  
11 and Inspector Urquhart with respect to the testimony of Chant,  
12 Pratico and Hariss.

13 A. That is correct, My Lord.

MR. CHAIRMAN

14  
15 And that Mr. Edwards, presumably at your behest, discussed with  
16 Gordon Gale the desirability of interviewing these two gentlemen  
17 with relation to these three witnesses.

18 A. That is correct, My Lord.

MR. CHAIRMAN

19  
20 And the instructions were to hold these interviews relating to  
21 these three witnesses in abeyance for the present.

22 A. That is correct, My Lord.

MR. CHAIRMAN

23  
24 So we're clear on that. Now, was there a separate discussion and a  
25 separate request for...by Frank Edwards to Gordon Gale for

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 | instructions to continue or to commence an investigation of Chief  
2 | MacIntyre with respect to the paper under the desk?

3 | A. I don't believe so, My Lord. It was included probably in that  
4 | conversation. I wasn't there. Mr. Edwards can speak to it. I  
5 | know he was certainly aware of it at the time he had the  
6 | conversation with Mr. Gordon Gale. It is not part of my report  
7 | as you point out and...

COMMISSIONER POITRAS

8 |  
9 | This is a different report from the one that we...or is it? Yeah, it's  
10 | a later report.

MR. CHAIRMAN

11 |  
12 | The only reason I'm interrupting is I don't want to have to spend  
13 | hours going back over it trying to get this in proper context.

MR. ORSBORN

14 |  
15 | Q. The phrase that is used in the report is "held in abeyance for  
16 | the present." Is that your phrase or is that Mr. Edwards'  
17 | phrase through you?

18 | A. It would be my phrase, sir, I believe, or I could have used the  
19 | exact phraseology that Mr. Edwards had given me.

20 | Q. Was this communicated by Mr. Edwards to you or by Mr.  
21 | Edwards to Inspector Scott and then to you or to both of you?

22 | A. As I recall it, Mr. Edwards to me, sir.

MR. CHAIRMAN

23 |  
24 | Would you explain that last sentence in that report?

25 | A. This file will be held open pending further instructions as

1 well as new areas of investigation which may come to light.  
2 In other words, I was holding the file open. I wasn't  
3 concluding anything and I was waiting for new instructions  
4 and the new instructions that I felt, My Lord, that would be  
5 coming would be coming to investigate Sydney City Police.  
6 "...as well as new areas of investigation which come to light,"  
7 by that I mean if there were any new areas that should come  
8 to light in regards to the Ebsary case. I state at the beginning  
9 of the paragraph that, you know, we had done  
10 everything...had been completed to date as far as we knew,  
11 but one never knows in one of those files. And if anything  
12 else came up, it would be subject to further investigation.

13 MR. ORSBORN

14 Q. Did Mr. Edwards offer you any reasons why you should not  
15 proceed with the interviews of Chief MacIntyre and Detective  
16 Urquhart?

17 A. No, sir.

18 Q. Did you ask him?

19 A. We discussed it, why Mr. Gale had made that decision.

20 Q. And did you come to any conclusions?

21 A. Well, yes, there was a number of possibilities, one of which  
22 was...

23 Q. Just so we're clear, are these possibilities your own  
24 assumptions or did they arise out of discussions with yourself  
25 and Mr. Edwards?

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. They arose out of discussions between myself and Mr.  
2 Edwards.

3 Q. Go ahead.

4 A. The reference had not been held in this case at this time. The  
5 matter was still in a way before the courts insofar as the  
6 reference was concerned as well as so far as Mr. Ebsary.  
7 There's a possibility that after that was concluded that we  
8 would go ahead with the investigation. Another investigator  
9 besides myself, it was my recommendation and Mr. Edwards',  
10 should do it. Bring in someone fresh. That was, I think, the  
11 principal thing, wait and see what they wanted to do.

12 MR. CHAIRMAN

13 When was the request made for a reference or a decision made?

14 MR. ORSBORN

15 Off the top of my head, I can't tell you when the request was  
16 made, My Lord. The decision did not come down until, I think,  
17 June 14.

18 MR. CHAIRMAN

19 When was the reference heard?

20 MR. ORSBORN

21 The reference was not heard until...there was ongoing applications,  
22 I think, in September and evidence in December and argument in  
23 January and February of '83, '82, '83. But the reference was not  
24 forwarded by Mr. Chretien until some time in June.

25 MR. CHAIRMAN



1 Of '82?

2 MR. ORSBORN

3 Of '82.

4 MR. CHAIRMAN

5 So that would be subsequent. It wasn't known then in May that  
6 there was going to be a reference. Did you know in May that  
7 there was going to be a reference?

8 A. I felt I did, yes, My Lord. I can recall some discussion with  
9 Frank Edwards.

10 MR. ORSBORN

11 Q Did you then agree with the position that Mr. Edwards was  
12 putting to you that "we should put these on the back burner"?

13 A. Not really, sir, no. My position, I felt, I just follow orders, but  
14 I felt another investigator should have been appointed. I was  
15 due to be transferred at this time. As a matter of fact I was  
16 transferred in June. There was a new N.C.O. coming in to take  
17 my place and it was my feeling that he would be fresh and  
18 should take a fresh look at it.

19 Q Did you complain to your superior?

20 A. I didn't complain but I discussed it with Inspector Scott, yes.

21 Q And what was the position that he relayed to you?

22 A. He listened to what I said and...you're asking what Inspector  
23 Scott's position was?

24 Q Yes, what did he relay to you?

25 A. He thought that would be a good idea and that we would wait

1 and see.

2 Q. Our understanding is is that Mr. Gale will testify that this was  
3 simply a matter of "don't worry about the individual right  
4 now. We're just concerned about getting these reports in."  
5 Would that be similar to the understanding that was  
6 conveyed to you by Mr. Edwards?

7 A. Similar, yes, sir.

8 Q. Thank you. Should I read something sinister then into the  
9 fact that these interviews were held in abeyance or was it  
10 just in the normal course of events?

11 A. I don't think there's anything sinister in it, no, sir.

12 Q. Now again, sir, in this report of the 20th of May and then  
13 going back to the earlier report of the 4th of May, there's no  
14 reference to the difficulties with Chief MacIntyre and I think  
15 you've addressed that issue. Neither is there attached the  
16 statements, the statement that you took from Mary Ebsary on  
17 April 19 nor the statement from Greg Ebsary on April 19. I  
18 believe also the earlier statement on February 23 is not  
19 attached anywhere. Can you suggest any reason why these  
20 statements, particularly Mary and Greg's statements would  
21 not have been attached for forwarding to your superiors?

22 A. No, I cannot, sir.

23 Q. At this time, did you hold any opinion as to whether charges  
24 should be laid against Mr. Chant?

25 A. Mr. Chant was told from the outset as well as Patricia Hariss

1       who I interviewed and from my conversation with Corporal  
2       Carroll, I believe he told Mr. Pratico the same thing, that  
3       there's a possibility that they could be charged with perjury,  
4       yes.

5       Q. Did you hold any opinion as to whether they should...Mr.  
6       Chant should be charged?

7       A. No, I did not feel he should be charged.

8       Q. You did not feel he should be charged?

9       A. No.

10      Q. Did you hold any opinion with respect to Mr. Pratico?

11      A. Same position.

12      Q. Miss Hariss?

13      A. Same position, sir.

14      Q. Did you hold any opinion with respect to whether or not Chief  
15      MacIntyre should be charged with respect to any offence?

16      A. It was my opinion that Chief MacIntyre should be  
17      investigated as I felt that he had...there was...it was very close  
18      to a prima facie case of counselling perjury.

19      Q. Do I understand you to be saying then that you had not  
20      formulated your opinion to the extent that you felt a charge  
21      should be laid?

22      A. No, sir. I felt he should be investigated. The possibility of a  
23      charge.

24      Q. It might be an appropriate spot to take a break.

25      3:19 p.m. BREAK

INQUIRY RESUMES - 3:36 p.m.\*

1  
2 Q. Staff Wheaton, following the submission of that report on the  
3 20th of May, '82, did you play any further role in this matter  
4 while you were still stationed in Sydney?

5 A. Not that I know of unless you have something to refresh my  
6 memory, sir.

7 Q. When did you leave Sydney?

8 A. In June of 1982.

9 Q. June of '82. Did you hand the file over to anybody at that  
10 time?

11 A. Corporal Jim Carroll.

12 Q. Not O'Carroll.

13 A. Not O'Carroll.

14 Q. And did you give him any briefing on the file as it stood at  
15 that time?

16 A. Yes. Corporal Carroll had worked with me throughout off and  
17 on as duties permitted and was fairly familiar. We went over  
18 the file before I turned it over to him.

19 Q. Did you give him any instructions as to what should be done?

20 A. Not specific instructions, no. Inspector Scott was still there as  
21 the officer commanding, and I didn't...I cannot recall any  
22 specific instructions.

23 Q. And where did you go from Sydney?

24 A. I went to Halifax and went in charge of the internal  
25 investigation section of the RCMP.

- 1 Q. Did you discuss the file either formally or informally with any  
2 of superiors in Halifax when you arrived in Halifax?
- 3 A. Not that I can recall, sir, no.
- 4 Q. Uh-hum. Referring to Mr. Edwards' notes, Volume 17 at page  
5 12. Volume 17, page 12, there is reference to a meeting on  
6 July 12th, 1982, I would assume in Sydney. It refers to "my  
7 office" meaning Mr. Edwards' office. "Present: John  
8 MacIntyre, Mike Whalley, H. Wheaton," and I guess Mr.  
9 Edwards.
- 10 A. The date of that meeting was what, sir?
- 11 Q. July 12th of '82.
- 12 A. Oh, yes, yeah. I attended that meeting, sir, yes.
- 13 Q. Did you return to Sydney for that meeting?
- 14 A. I believe so. I may still have been there at that time. I think  
15 I was still there. I didn't leave Sydney actually until the  
16 children were out of school, so it would have been the end of  
17 June, first part of July. So, I was still there when that meeting  
18 took place.
- 19 Q. And what is your understanding of the purpose of that  
20 meeting?
- 21 A. The purpose of that meeting there was a lot of unanswered  
22 questions. We were still waiting for something from the  
23 Attorney General's Department. I was leaving...
- 24 Q. Sorry. Still waiting for something from the Attorney General's  
25 Department with respect to what?

1 A. Whether we were going to do an investigation into the  
2 Sydney City Police.

3 Q. Uh-hum.

4 A. Mr. Edwards and I had discussed the matter on several  
5 occasions and we felt it only fair to the Chief that he be  
6 afforded the opportunity to speak to various accusations that  
7 had been made by Mr. Chant, Mr. Pratico, Patricia Harriss, to  
8 explain the various items that I previously noted, the line up,  
9 and various items in the investigation. Mr. Edwards called me  
10 and advised that he had arranged a meeting, this meeting,  
11 and asked me if I would be present, and...

12 Q. Did Mr. Edwards indicate to you the purpose of the meeting?

13 A. That was the purpose of the meeting, to afford the Chief the  
14 opportunity to speak to these various accusations and what  
15 have you.

16 Q. And would you then regard that as part of an investigation of  
17 Chief MacIntyre?

18 A. No, sir. This was...we dealt basically with the accusations of  
19 Chant, Pratico and Harriss and some other items which Mr.  
20 Edwards might be able to recall. I can't recall. I know those  
21 specific ones.

22 Q. There's reference in the early part of the note that says "It  
23 began with summary of chambers and a-p-p-r," perhaps it  
24 should be a-p-p-l. Do you recall any court documentation  
25 being discussed at that time in connection with the reference?

- 1 A. You're reading from where, sir?
- 2 Q. Mr. Edwards' notes, line 5 of the notes starting "July 12".
- 3 A. Line 5.
- 4 Q. Yes. There's 1- Chant, 2- Pratico, 3- Harriss, and then "my  
5 office" and then "began with summary".
- 6 A. "Doesn't recall who was with her, there was someone." Is that  
7 what you're referring to, Mr. Orsborn, under "J.F.MacIntyre,  
8 March..." No.
- 9 Q. No. Do you have page 12 there, sir?
- 10 A. Oh, I'm on the wrong page, I'm sorry, sir.
- 11 Q. At page 12 and it says "Wednesday, July 12, '82."
- 12 A. Yes, sir.
- 13 Q. And you have the numbers 1, 2, 3.
- 14 A. Yes, sir.
- 15 Q. And the second line underneath that, "Began with summary  
16 of Chambers," I would think application. Do you recall any  
17 discussion of the...of court documentation at that meeting?
- 18 A. "Began with summary of Chambers a-p-p-r." There could  
19 very well have been, sir. I don't recall specifically.
- 20 Q. In that "Chief MacIntyre was now being given an opportunity  
21 to answer accusations of Chant and others." Did you regard  
22 this as an important meeting?
- 23 A. Yes, I thought it was significant.
- 24 Q. Did you take any notes?
- 25 A. No, I did not, sir.

1 Q. "With respect to the allegations then of Chant." What did you  
2 understand the allegations of Chant to be?

3 A. That Chief MacIntyre had put words in his mouth in the 4th  
4 of June statement particularly and that he did not see the  
5 murder and the reason he said he did see the murder was  
6 due to pressure and threats by Chief MacIntyre. He then  
7 gave Chief MacIntyre a statement and was told he should  
8 stick to it or he would be charged with perjury and things of  
9 this nature.

10 Q. Now, in the meeting, who put these allegations to Chief  
11 MacIntyre? Was it Mr. Edwards or yourself?

12 A. Mr. Edwards.

13 Q. Did Chief MacIntyre respond with respect to Chant?

14 A. The...yes, he did. The meeting...the meeting was held, if you  
15 will, in two parts, as I recall it. It was convened about  
16 approximately eleven o'clock, ran until lunch time. We broke,  
17 went to lunch, then came back after lunch. Now, I don't have  
18 the times recorded but that's the way I recall the meeting. In  
19 the morning part of it, if you will, the Chief basically couldn't  
20 remember, couldn't say, you know, if two... Chant's two  
21 statements, why take two statements, this sort of thing and so  
22 on. The same with Pratico, same with Harriss, as I recall the  
23 meeting without having read this. But that's how I recall it.  
24 Then after lunch both he and Mr. Whalley became much more  
25 aggressive toward Mr. Edwards and...



1 Q. Aggressive in what sense?

2 A. Well, the meeting was polite and cordial, if you will, in the  
3 morning and in the afternoon it became heated. The Chief  
4 adopted an attitude of "How dare you heap scorn on this fine  
5 gray-haired man," sort of thing.

6 Q. What...

7 A. Mr. Edwards, you know, or Frank. And, it became aggressive  
8 to the point where there was no point pursuing the meeting  
9 and the meeting was terminated. In the afternoon portion of  
10 it though when asked specific pointed questions in regards to  
11 Chant, Pratico and Harriss, the Chief then said that Donald C.  
12 MacNeil had been told everything, Donald C. MacNeil had been  
13 made aware of this and that, the next thing, and that is my  
14 impression of the meeting, sir.

15 Q. Uh-hum. Were you present for the entire sessions, both  
16 morning and afternoon?

17 A. I left toward the end of the afternoon session to go the  
18 washroom and when I come back Mr. Whalley and the Chief  
19 were standing over Mr. Edwards and there was finger  
20 pointing going on and so on. And this was right at the end of  
21 the meeting.

22 Q. Standing over Mr. Edwards. Was Mr. Edwards seated?

23 A. He was seated, yes, sir.

24 Q. I see. Any shouting?

25 A. Voices were loud. I wouldn't say shouting, but aggressive.

1 Q. Was there anybody else present other than Chief MacIntyre,  
2 Mr. Whalley, yourself and Mr. Edwards?

3 3:46 \*

4 A. No, sir, four people present.

5 Q. There is reference on page 13 of Mr. Edwards' notes in a  
6 couple of places, the word "Urquhart" the name "Urquhart"  
7 appears and then "Doesn't recall." Do you know if Mr.  
8 Urquhart was there for all or any part of the meeting?

9 A. I don't recall Urquhart being there.

10 Q. After the meeting, and in light of what you had heard  
11 throughout the day, did you get an answer to the allegations  
12 of Chant, Harriss and Pratico?

13 A. No, I did not, sir.

14 Q. Did you attend the reference in the Nova Scotia Court of  
15 Appeal?

16 A. Yes, I did, sir.

17 Q. You listened to the evidence.

18 A. Yes, sir.

19 Q. And your posting in Halifax until the time you were asked to  
20 review the...review the files, did you have any other  
21 connection with the Marshall matter?

22 A. I recall at one point Superintendent Christen send me a  
23 memorandum, a forwarding minute actually of a  
24 memorandum forwarded to Sydney and a copy sent to  
25 myself, requesting our views, my view as to whether or not

1 the investigation of the Sydney City Police, as I recall it, I  
2 haven't got it in front of me, was a proper or improper police  
3 investigation.

4 Q. I'm sorry. Prior to your receipt of that had you had any other  
5 involvement with any aspect of the investigation?

6 A. I attended the reference. I can't recall unless you can refresh  
7 my memory with something, sir. I can't recall of anything  
8 else.

9 Q. Do you know if you discussed with any of your superiors in  
10 Halifax your thoughts on conducting and investigation into the  
11 Sydney Police?

12 A. I did not discuss it with Superintendent Christen who would  
13 be the person who I would normally discuss that with.

14 Q. In your position would you have any direct communication  
15 with representatives of the Department of Attorney General?

16 A. No, sir. You asked would I have any communication.

17 Q. Direct communication.

18 A. Direct communication. Not direct communication, but I would  
19 receive complaints about members of the RCMP that had been  
20 sent to the Attorney General and would have nothing to do  
21 with this case.

22 Q. I see.

23 A. And I would investigate.

24 Q. Did you have...I take it then you had no occasion to discuss  
25 the Marshall matter directly with representatives of the

1 Department of Attorney General?

2 A. No, sir.

3 Q. Other than Mr. Edwards. I refer you then to Volume 20, a  
4 number of copies of Mr. Gale's letter. We can perhaps look at  
5 page 4.

6 A. Yes, sir.

7 Q. Do you recall receiving a copy of this letter? The forwarding  
8 minute from Superintendent Christen is on page 6.

9 A. Quite frankly I don't remember reading that.

10 Q. Well, look at page 6 then. Do you recall getting the direction  
11 from Superintendent Christen?

12 A. This I recall receiving, yes, sir.

13 Q. Looking at the instruction from Superintendent Christen on  
14 that minute:

15  
16 May certainly be difficult to define what is  
17 improper police procedure, therefore, the  
18 reviewer may wish to comment on the  
19 manner in which a certain procedure was  
20 done as compared to the manner or  
21 investigative procedure he personally  
22 would have followed. We do not expect  
23 any investigation to be undertaken, but  
24 restrict our examination to all material at  
25 hand.

22 A. Yes, sir.

23 Q. What is your understanding of that, particularly the first  
24 sentence, the long sentence? What were you asked to do?  
25

1 A. It may certainly have been...I was asked, as far as I was  
2 concerned, the first sentence would be directed, the memo  
3 was directed to two areas. One was to the officer  
4 commanding Sydney Subdivision, who I still believe was  
5 Inspector Scott, and the other memo was directed to myself.  
6 And in that regard I took it that he was defining guidelines  
7 for me as to what I should review and not review.

8  
9 It may certainly be difficult to define what  
10 is improper police procedure, therefore the  
11 reviewer may wish to comment on the  
12 manner in which a certain procedure was  
13 done, as compared to the manner or  
14 investigation procedure he personally  
15 would have followed.

16 That was the guidelines as set out by Superintendent Christen  
17 and then the second part of it would be an instruction I would  
18 take it to Inspector Scott, that he did not expect any  
19 investigation to be undertaken into the Sydney City Police but  
20 restrict our examination to all material on hand.

21 Q. Did you understand those guidelines?

22 A. I beg your pardon, sir.

23 Q. Did you understand those guidelines?

24 A. Yes, sir.

25 Q. Did you discuss them with Superintendent Christen?

A. No, I did not, sir.

Q. By "investigation" do I take that to mean interviews with

1 witnesses, taking of new statements?

2 A. That's right, sir, I would assume that.

3 Q. Now, what information did you have available to you to  
4 conduct your review?

5 A. Basically I made some phone calls to Sydney and spoke to  
6 Staff Sergeant Barlow, I believe, to clarify a couple of things  
7 that were on file and whatnot, and the rest of it came from  
8 my mind.

9 Q. Did you have a file to review?

10 A. No, I did not, sir. There was a division file. I may have gone  
11 and looked at the division file, as well. I did not personally  
12 have a file. But there is a copy of my original file kept, what  
13 was an on-going file being pursued by Sydney general  
14 investigation section, and then there is a division file which  
15 would be here kept at our headquarters. I believe I probably  
16 drew that division file and looked at it too.

17 Q. That division file would include the various reports that you  
18 had compiled in Sydney and forwarded to H Division.

19 A. That's right.

20 Q. Were the statements attached to them?

21 A. Yes, sir.

22 Q. Whatever you had attached.

23 A. Yes.

24 Q. And would it include that booklet that you compiled? There  
25 was a red booklet with a bunch of flow charts and statements

1 and everything.

2 A. I can't recall if that was in the division file or not. It probably  
3 was an appendices to it.

4 Q. You remember the booklet.

5 A. Yes, oh, yes, yes.

6 Q. A fairly well organized booklet with all little circles and lines  
7 and whatnot.

8 A. I even did a slide presentation at one time.

9 Q. Did you? Who did you do that for?

10 A. There would seem to be great conflict there or great concern  
11 between the Attorney General's Department and the Solicitor  
12 General's Department, this would be back in the period when  
13 Donald Marshall was coming out of jail, in the halfway house.  
14 I think you'll see in Frank Edwards' notes here somewhere  
15 where we were pushing to come into Halifax and have an  
16 interview to talk to the Attorney General's Department. That  
17 wasn't forthcoming. It was a very complicated case. I  
18 prepared the booklet with link analysis, charts and what have  
19 you and sent that in. I felt that probably if they didn't want  
20 us to come in perhaps we could...I prepared an actual slide  
21 presentation and did a cassette to accompany it, and I felt  
22 that maybe some day that could be forwarded to Ottawa to  
23 expedite the matter and explain this very complicated case  
24 with so many witnesses and what have you. It was never  
25 forwarded anywhere.

1 Q. Did you actually do a slide presentation to an audience?

2 A. I never did a slide presentation to an audience. It sat in my  
3 desk drawer for a year or so and then I threw it away.

4 Q. Okay. So, when you say you "did a slide presentation" you  
5 simply mean you had one prepared.

6 A. I prepared it, yes, sir.

7 Q. I'm sorry. Okay. The report that appears commencing at  
8 page 8 of this same volume, dated May 30th, 1983, is this the  
9 report, sir, that you prepared in response to that direction  
10 from Gordon Gale?

11 A. Yes, sir.

12 Q. There's some matters in there that I would like to ask you  
13 about. On the second page of that report, page 9 of the  
14 volume, paragraph 8.

15 A. Page 9, paragraph 8, sir, yes.

16 Q. Paragraph 8. Right in the centre of paragraph 8 and you're  
17 speaking of the Louisbourg interview with Mr. Chant and you  
18 say "Judge Edwards, who was sitting in the same building,  
19 recalled the incident the same as Mr. Burke." Do you know  
20 where that information came from?

21 A. I believe it came from Corporal Carroll, sir.

22 Q. I see. Did you ever see a statement from Judge Edwards?

23 A. No.

24 Q. Did you talk to Judge Edwards?

25 A. No.



1 Q. So, would I understand that you got this information from  
2 Corporal Carroll as you were compiling this report or was this  
3 already in your mind?

4 A. It was way back at the time that he interviewed, as I recall,  
5 Lawrence Burke, and he brought it to his attention at that  
6 time.

7 Q. Now, in that same paragraph, sir, you say that "Maynard  
8 Chant" and this is about five lines from the bottom, you say,  
9 "He threatened him with revocation of his probation for theft  
10 of milk bottle money."

11 A. Yes, sir.

12 Q. That I do not find in those terms in either of the statements  
13 that were taken from Mr. Chant by your force. Take it from  
14 me it's not there.

15 A. I will, sir.

16 Q. In those words. Given that, what would be the basis of that  
17 statement?

18 A. Mr. Chant would have told me that, sir.

19 Q. And this would have been in your mind then.

20 A. Yes, sir.

21 Q. You go on to say that "Mr. Chant was entirely alone," what did  
22 you mean by that?

23 A. Is that just below the milk money?

24 Q. Yes.

25 A. That would mean he was alone in the room with the Chief,

- 1       John MacIntyre, and Billy Urquhart.
- 2       Q. Was Mr. Burke there?
- 3       A. Mr. Burke said he wasn't there.
- 4       Q. Was Mr. Magee there?
- 5       A. Mr. Magee said he wasn't. I...
- 6       Q. Mr. Magee said what?
- 7       A. Mr. Magee said he was there.
- 8       Q. Yes.
- 9       A. But in my own mind I don't believe he was.
- 10      Q. So, you do not believe Mr. Magee?
- 11      A. I believe Mr. Magee told me to the best of his recollection
- 12             what he thought was correct, but I think in the ensuing
- 13             eleven years his recollection probably wasn't as accurate as it
- 14             could have been.
- 15      Q. You also state at the end of that paragraph that "Mr. Chant
- 16             answered the questions with the answers as given to him by
- 17             Chief MacIntyre."
- 18      A. That's right, sir.
- 19      Q. Again, sir, would the statements that we have in Volume 34,
- 20             my recollection is that both of those statements, in both of
- 21             those statements the names of police are not mentioned, I
- 22             believe.
- 23      A. You mean the statements aren't signed by the police, sir.
- 24      Q. Oh, no, I'm sorry. In the body of the statements, this is the
- 25             statement taken by Corporal Carroll, at page 81, Volume 34,

1 and...

2 A. Volume 34.

3 Q. And a earlier statement taken by yourself on page 47.A.

4 Oh, I think I see. You're saying that Maynard Chant didn't  
5 say that in his statements to us.

6 Q. In neither one of those statements does a name of the  
7 policeman, he talks of two policemen, two detectives, one  
8 policeman, the policeman. In neither one of the statements  
9 that you had there's a number mentioned. But you now that  
10 the answers were given by Chief MacIntyre.

11 A. Yes, sir.

12 Q. Where did that information come from?

13 A. From Maynard Chant.

14 Q. Would that not be the kind of specific information one would  
15 expect to see in one of those earlier statements?

16 A. It would have been nice to pursue that in detail, perhaps, and  
17 have it included in the statement.

18 Q. Paragraph 9, sir, going over to page 10, top of. Paragraph 9.  
19 And I think, perhaps, you have addressed this. You say, it's  
20 about the fourth line down. "It's highly suspect that all these  
21 persons were present." Does that follow, then, from your  
22 evidence that you believe that Chief McGee's recollection may  
23 be faulty?

24 A. That's correct, yes.

25 Q. In Paragraph 10, you comment in the middle of that

1 paragraph about the Chief and the Crown Prosecutor and then  
2 you say, "They had to know that the creditability of this  
3 witness were shaky in the extreme during the trial in 1971 in  
4 view of the three conflicting statements. Were there three  
5 conflicting statements given by Mr. Chant?

6 A. My mind goes back to that earlier thing of one on the 29th.

7 Q. Well, I may be able to help you a bit.

8 A. Was there notes taken on the night of the 29th that might be  
9 construed as a statement?

10 Q. If you look at Volume 16, at page 6. Could that be possibly  
11 what you're referring to?

12 A. This is probably what I'm referring to sir, yes.

13 Q. Is that a statement of Maynard Chant?

14 A. This, I think, probably, is what I'm referring to.

15 Q. Is that a statement of Maynard Chant?

16 A. It's a verbal statement. He was interviewed by police officers  
17 and he gave them certain answers. They asked him what was  
18 wrong, et cetera.

19 Q. You then say in that same paragraph 10, "Chant, for his part,  
20 feels that he was set up and orchestrated into being an eye  
21 witness by Chief MacIntyre." That's very strong language. Is  
22 that your language, sir, or Mr. Chant's?

23 A. That's my language, sir.

24 Q. And what is that language based on?

25 A. Based on what, my conversations with Mr. Chant.

1 Q. Not necessarily on what appears in his statements.

2 A. No, sir. That would be part of it but...

3 Q. Page 10, sir, at paragraph 12, bottom of that page, you speak  
4 of your conversation with Dr. Mian and in the middle of that  
5 paragraph you say, "I asked Dr. Mian if Pratico could, himself,  
6 be manipulated into saying he saw a murder he did not see."  
7 How many occasions did you speak to Dr. Mian?

8 A. Once, sir.

9 Q. Reading his statement which appears at page 49 of Volume  
10 34, and his statement says, "He...(meaning Pratico) tends to  
11 manipulate and fantasize, distort according to his needs and  
12 wishes..." that to me, is not the same thing as saying that  
13 Pratico can be manipulated. It says he manipulates and  
14 fantasizes. This turns it around the other way. That he can,  
15 himself, be manipulated and I see no reference in this  
16 particular statement of Dr. Mian's to the fact that Mr. Pratico  
17 can be manipulated. Do you recall asking Dr. Mian if Mr.  
18 Pratico not only could manipulate but could be manipulated?

19 A. Yes, sir.

20 Q. And does this reflect his response?

21 A. That's right.

22 Q. Why would that not appear in his statement?

23 A. I have no explanation, sir. What did you say the statement  
24 said, again?

25 Q. The statement reading at page 49 of Volume 34. It says, "He

1 (meaning Pratico) tends to manipulate and fantasize, distort  
2 according to his needs and wishes."

3 A. Yes.

4 Q. And in paragraph 13, speaking of Mr. Pratico, you say in  
5 about line 8 or 9, paragraph 13, "The three girls he followed  
6 to the area of the park have been interviewed and confirm  
7 this."

8 A. That's an error. There were two girls interviewed, not three.  
9 I was wrong there.

10 Q. I see. There is reference to three girls and...

11 A. There was a third girl, a Clements girl, I think, who is in BC.

12 Q. Right. Did you ever speak to her?

13 A. I can't remember but I know I phoned a girl either in British  
14 Columbia or one of the O'Reilley girls in Calgary and I  
15 honestly can't recall which ones it were.

16 Q. The reference is there to Mr. Pratico and Mr. Poirier. We  
17 have your own note in Volume 34 of a statement from Mr.  
18 Poirier. It appears at page 4. Do you know when that  
19 statement was taken?

20 A. Page 4, sir?

21 Q. Yeah, page 4. And it would also be towards the end of your  
22 handwritten notes, I believe. Yes, it's the last page of your  
23 handwritten notes also.

24 A. This was taken, I cannot give you a date, it was taken toward  
25 the latter part of the investigation. It would be taken prior to

1 going to the Chief's office to get the file.

2 Q. Okay.

3 A. But it was toward the latter part of the investigation.

4 Q. You say at paragraph 13, "I feel there was a very good  
5 possibility that the reason Pratico was interviewed and re-  
6 interviewed was as a result of information from Poirier."

7 You're suggesting that the second interview with Mr. Pratico  
8 was precipitated by information from Poirier?

9 A. Yes, sir. Now you're saying the second...

10 Q. The second, yes, 'cause you do say, "...there's a good possibility  
11 the reason Pratico was interviewed..."

12 A. I think the first interview, that's where Pratico came from, I  
13 felt.

14 Q. I understand that. I'm just querying the use of your phrase  
15 here "interviewed and re-interviewed is as a result of  
16 information from Poirier."

17 A. That's correct. I feel that Poirier advised the Chief that, "Hey,  
18 Pratico knows what's going on in regards to this." And that  
19 that is what led the Chief to pick up Pratico in the first  
20 instance.

21 Q. And also what led him to pick him up in the second instance?

22 A. Well then the second instance was a result of his trip to the  
23 park on the night of the 3rd of June and deciding that Pratico  
24 wasn't telling the truth.

25 Q. Now you, the last part of this paragraph 13 you talk about the

1        mental instability of Mr. Pratico and you speak about his use  
2        at trial. How does that fit in with an examination of police  
3        practices?

4        A. He was used at trial in the original investigation in 1971 and  
5        he was unstable then. He was taken to the Nova Scotia  
6        Mental Institution between the preliminary and Supreme and  
7        I guess I say it here, and I would not think that proper police  
8        practice. We did not use him in our trial.

9        Q. Not to put him on the stand. Why would you look at that as a  
10       matter of police practice rather than practice of counsel?

11       A. Well, the conduct of the trial is, while it's done by the Crown  
12       Prosecutor, it's done in collaboration, if you wish, with the  
13       police, the policemen doing it. The policeman has input into  
14       the Crown witnesses. Who you're going to call and...  
15       Take the incident that happened in the middle the trial when  
16       Mr. Pratico recanted and we believe that Chief MacIntyre  
17       was aware of that incident.

18       Q. What would you see as the proper role of the police officer in  
19       that incident?

20       A. I don't think it was the proper role of a police officer to go in  
21       that room with Pratico. I can see the Crown speaking to him  
22       but the Crown should speak to him with the Defence present.

23       Q. So your complaint is that the policeman was just involved...

24       A. Yes.

25       Q. In that incident.



1 A. That's right.

2 Q. Not the fact that he was subsequently put back on the stand.

3 A. I beg your pardon, sir?

4 Q. Not the fact that Mr. Pratico was subsequently put back on  
5 the stand.

6 A. No. Oh, no.

7 Q. 'Cause that would not be Chief MacIntyre's decision.

8 A. No, that would be the Crown's decision, sir.

9 Q. I take your point in general to be that you would not consider  
10 it appropriate police practice to offer a witness who was  
11 mentally unbalanced.

12 A. That is correct.

13 Q. Now in paragraph 14, sir, same page, speaking of Patricia  
14 Harriss, you say the third line, "On the 17th of June she was  
15 interviewed by Chief MacIntyre and Detective Urquhart."  
16 What is the basis for that statement, sir? And I'm thinking  
17 particularly of the involvement of the reference to Chief  
18 MacIntyre.

19 A. The interview, as I understood it, began from Patricia was  
20 that it was started by Detective Urquhart and then Chief  
21 MacIntyre had come in toward the end of it.

22 Q. Is there any reference in her statement to Chief MacIntyre  
23 coming in towards the end of it?

24 A. I don't know, sir, I'd have to read the statement.

25 Q. Again, take it from me that her statement, which appears,

1           that's her statement to you...

2       A. Yes.

3       Q. Volume 34, page 54 contains no reference to the name of  
4           either Chief MacIntyre or Detective Urquhart.

5       A. Fine, sir.

6       Q. So can I ask you again, where would the reference to Chief  
7           MacIntyre come from with respect to statement number one?

8       A. From Patricia Harriss.

9       Q. You then say, sir, in this paragraph,

10

11                   To set the scene for this interview one  
12                   must remember that Marshall had been  
13                   charged and the evidence against him  
14                   would be the evidence of Pratico and  
15                   Chant. There was no physical evidence, no  
16                   confession or walk through, no  
17                   corroboration, other than Pratico and  
18                   Chant to one another and this must have  
19                   been considered tenuous.

20           Why did you write that, sir?

21       A. Because I feel it's true.

22       Q. That suggests that, and correct me if I'm reading it too  
23           strongly, suggests that the evidence of Patricia Harriss was  
24           actively sought to support a tenuous story already from Chant  
25           or Pratico. Was that the implication that you were trying to  
          convey there?

          A. Yes, sir.

          Q. You say in the next sentence, "She recalls being picked up

1 prior to the first movie..." would place the interview sometime  
2 prior to 7 p.m. I think we've already discussed that perhaps  
3 yesterday but, again, that is not referred to in her statement.  
4 Do I take it that is from your memory?

5 A. That is correct, sir.

6 Q. And the next statement talks about when you found that  
7 documentation and I think we've already discussed that.  
8 Your position is that you did not find her first statement  
9 taken by Detective Urquhart until after the order was given  
10 to turn over the file.

11 A. That is correct, sir.

12 CHAIRMAN

13 Where did you find it?

14 A. The statement of the 17th was the one that was slipped on  
15 the floor, sir, or My Lord.

16 CHAIRMAN

17 This is the one you're referring to here in paragraph 14.

18 A. Yes, My Lord.

19 CHAIRMAN

20 Now let me just read that to you.

21  
22 In reviewing the Sydney City Police file  
23 after the order had been made by the  
24 Attorney General that they turn over all  
25 documentation I found a partially  
completed statement dated the 17th of  
June 1971, 8:15 p.m.

1 I would have difficulty interpreting that in meaning that  
2 you, this was the statement that was slipped under the desk.

3 A. It was, My Lord.

4 CHAIRMAN

5 Then why did you say, "In reviewing the Sydney Police file  
6 after the order had been made by the Attorney General that they  
7 turn over all the documentation..." Is that just a...

8 A. I beg your pardon, My Lord?

9 CHAIRMAN

10 That sentence there is causing me some, and I want to be  
11 sure that I understand what you're saying. That's the purpose of  
12 it. That you found a partially completed statement, you're  
13 reviewing, you say you're reviewing the file. Now I would  
14 interpret that as meaning that in that file you found a partially  
15 completed statement dated the 17th of June 1971, 8:15 p.m., or at  
16 least that is an interpretation.

17 A. That, that's correct, My Lord. I can see your point very  
18 clearly. I didn't expand on that statement to say this was the  
19 statement that was slipped under the desk.

20 CHAIRMAN

21 What's causing me, and I want to give you every  
22 opportunity, Staff Sergeant, to explain this so that, you know, you  
23 can't come back later on and say, "If I'd only had this put to me."  
24 You've told me that you consider the action of Chief MacIntyre in  
25 slipping under the desk this partially completed statement of

1 Patricia Harriss to be both most improper and very significant.

2 A. Improper, significant, but not a criminal offence, My Lord.

3 CHAIRMAN

4 I won't quarrel with you on that point.

5 A. No.

6 CHAIRMAN

7 Yet, in your report where you have been specifically asked  
8 to comment upon police practice you simply refer to the  
9 statement as one that you found in the file.

10 A. That's right, My Lord.

11 CHAIRMAN

12 Can you give me any explanation as to why, this is your  
13 third opportunity now. You filed two reports already...

14 A. That's right.

15 CHAIRMAN

16 And here, in response to an invitation, you didn't go into  
17 some detail as to how you acquired that statement and what your  
18 views were on the police practice of Chief MacIntyre in keeping  
19 that from you, or attempting to keep it from you.

20 A. I haven't included it there, My Lord. I don't know why I  
21 haven't included it there. I can assure you that it did happen.  
22 I can only say that, that's the way I wrote it and if I'm remiss,  
23 I'm remiss in not including it. I have no explanation other  
24 than that, My Lord.

25 MR. RUBY

1           If I might assist Your Lordship, you may find some  
2 assistance in looking at page 4, the original letter of May 13, 1983,  
3 from Gordon Gale.

4 CHAIRMAN

5           Page 4 of what?

6 MR. RUBY

7           Page 4 of this volume. Volume 20. Page 4, volume 20.  
8 You'll find that Mr. Gale defined the terms of reference for this  
9 officer in a way that excludes the 1982 incident. The last  
10 paragraph,

11                           There remains the question as to whether  
12 there should be an inquiry into the  
13 handling of the original investigation and  
14 the prosecution of it. Accordingly, I  
15 request that you have your files reviewed  
16 and determine whether there are, in your  
17 opinion, any instances of improper police  
18 practices or procedures in regard to the  
19 investigation by the Sydney Police  
20 Department.

18           It doesn't, in its terms, at all cover the 1982 investigation,  
19 not by Sydney Police, but by the RCMP. He wasn't asked to deal  
20 with it.

21 VOICE

22           Something is missing.

23 CHAIRMAN

24           Yeah. And that's not the answer I'm getting from this  
25

1 witness either.

2 MR. RUBY

3 No, [inaudible] from this witness. I'm trying to assist you in  
4 understanding why the report focuses only upon the Sydney  
5 Police investigation by pointing out that that's what he was asked  
6 to do in the original letter from Mr. Gale.

7 CHAIRMAN

8 So then he exceeded his mandate by referring to, "In  
9 reviewing the Sydney Police file after the order had been made  
10 by the Attorney General to turn it over...".

11 MR. RUBY

12 No, I think in that it's saying why it is it came to his  
13 attention. How it came to his attention.

14 MR. ROSS

15 Maybe we should swear Mr. Ruby if he's going to give  
16 evidence.

17 CHAIRMAN

18 Pardon?

19 MR. ROSS

20 Don't you think we should swear Mr. Ruby if he's going to  
21 give the evidence.

22 MR. RUBY

23 Well I'm not giving it, I was referring to it.

24 CHAIRMAN

25 No.

1 MR. RUBY

2 But I'm pointing out that what he's doing in paragraph 14...

3 CHAIRMAN

4 Well, I simply want Mr. Ruby to get an explanation from this  
5 witness to afford him every opportunity to explain to us,  
6 particularly on this occasion, and to others, where he sent three  
7 reports in, and there's no reference made to this.

8 MR. RUBY

9 Quite. And in answer to the last question Your Lordship put  
10 to me with regard to paragraph 14 on page 11, I must point out to  
11 you that he has, in the latter part of that paragraph, explaining  
12 that he found the statement and then he goes on to say what it  
13 says because, of course, it's a relevant point with respect to the  
14 question he was originally asked. To investigate the Sydney  
15 Police Department investigation.

16 A. I was writing to, My Lord, if I may. I was writing to  
17 Superintendent Christen. He was well aware, I felt, of the  
18 slipping of the document on the floor.

19 CHAIRMAN

20 Who was well aware?

21 A. Superintendent Christen, who was the one who asked me to  
22 write this report. And...

23 CHAIRMAN

24 Well presumably he asked you to write this report for  
25 transmittal to Gordon Gale.



1 A. Yes.

2 CHAIRMAN

3 And was Gordon Gale aware of this as well?

4 A. Yes, sir.

5 CHAIRMAN

6 How do you know he...

7 A. Mr. Edwards had told him.

8 CHAIRMAN

9 That's right. So he did. I think.

10 A. And my guidelines, as, pointed out in the thing and they were  
11 narrow as far as I was concerned. I probably did take a little  
12 liberty in going as far as I did. It was my feeling, My Lord,  
13 that they did not want to do an investigation into it.

14 CHAIRMAN

15 Well your answer now is that you felt it was beyond your  
16 guidelines to include in that sentence in paragraph 14 the method  
17 by which you acquired the partially completed statement. Is that  
18 your answer?

19 A. That's my answer, My Lord, and I don't wish to beg the issue.  
20 I could have put it in there but Superintendent Christen and  
21 Gordon Gale were already aware of it.

22 COMMISSIONER EVANS

23 You could have put it in three other reports, too.

24 A. Yes, My Lord.

25

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORNCOMMISSIONER EVANS

Or two others at least.

CHAIRMAN

Anyway that's your answer. Carry on, Mr. Orsborn.

MR. ORSBORN

Q. Thank you, My Lord. Coming back to the small points on page 12, Staff Wheaton, this would be paragraph 15 carried over from page 12. You say on line 3 that with respect to Patricia Harriss when she began crying you let her speak to her, her mother, and gave her coffee. Again, I don't see a reference to that in any statement. Where did that come from?

A. You're ahead of me, I'm sorry, Mr. Orsborn. Page 12...

Q. Yes. About the third line.

A. Third line?

Q. Second and third lines. When she began crying they let her speak to her and gave her coffee. Speaking about Patricia Harriss and her mother.

A. Now that does not, if you say, I don't believe it is in the statement.

Q. Okay. In the third last line of that same paragraph you refer to documentation in the form of two statements as well as my interview with her mother. What two statements are you referring to there, sir?

Q. On the third last line of that same paragraph you refer to "documentation in the form of two statements as well as my

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 interview with her mother". What two statements are you  
2 referring to there, sir?

3 A. Just...the two statements would be the one of the 17th and  
4 18th.

5 Q. That's the two Sydney Police statements.

6 A. Yes, yes, sir.

7 Q. And then you say, "As well as my interview with her mother."

8 A. Yes, sir.

9 Q. Did you, in fact, interview her mother?

10 A. Yes, I did, sir.

11 Q. Did you take a statement from her mother?

12 A. No, I did not, sir.

13 Q. Did you make any notes of that conversation with her  
14 mother?

15 A. I didn't make any notes in my notebook, sir, no, I don't  
16 believe I made any notes of that.

17 MR. ORSBORN

18 It may take longer than until 4:30 to conclude on this report,  
19 My Lord. I don't know if you want to stop now or want to  
20 continue.

21 MR. CHAIRMAN

22 All right.

23 MR. PUGSLEY

24 My Lord, before we adjourn, I would ask that you instruct  
25 the witness not to discuss his evidence with anyone until he

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 resumes the stand, and when I say that I don't wish to impugn  
2 anything with respect to his counsel, whom I hold in the highest  
3 regard.

MR. CHAIRMAN

5 Well, that order was given at the very commencement, as I  
6 recall, of our hearings. Albeit, Staff Sergeant Wheaton may not  
7 have been present when we opened in Sydney many long months  
8 ago. But, anyway, you know your instructions from this  
9 Commission.

STAFF SGT. WHEATON

11 Yes, My Lord.

MR. CHAIRMAN

13 And I'm sure you will assiduously follow them.

MR. OUTHOUSE

15 My Lord, if I may, I had consultation with one my colleagues  
16 here today representing another party, and in speaking to  
17 Commission counsel I had sought and obtained their permission to  
18 put certain questions that the other counsel wanted me to put to  
19 Mr. Wheaton, get his answers and convey them back, which is an  
20 offer that we've made to everyone throughout this proceeding and  
21 before it started. If Your Lordship's disposition is...or Mr.  
22 Pugsley's request is granted, I presume that I wouldn't be allowed  
23 to do that. I don't have any objection but...

MR. CHAIRMAN

25 No, I would prefer... Bearing in mind that for reasons that

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 this Commission are not...probably not entitled to know, it's purely  
2 a matter of solicitor-client relationships that Mr. Wheaton was not  
3 available to Commission counsel prior to this hearing, I think it's  
4 appropriate to follow without variation the direction I've given.

MR. OUTHOUSE

6 I have no difficulty with that.

7 INQUIRY ADJOURNED - 4:25 p.m.

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REPORTER'S CERTIFICATE

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

  
\_\_\_\_\_  
Margaret E. Graham

DATED THIS 19th day of January , 1988, at Dartmouth,  
Nova Scotia