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

Volume 43

Held: January 20, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

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

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

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

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Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.
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Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
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Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
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Mr. Guy LaFosse: Counsel for Sgt. H. Davies

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

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

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United Front

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Staff Sgt. H. Wheaton

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JANUARY 20, 1988 - 9:30 a.m.MR. CHAIRMAN

Mr. Orsborn?

MR. ORSBORN

Thank you, My Lord.

HAROLD FRANCIS WHEATON, still sworn, continued testimony as follows:EXAMINATION BY MR. ORSBORN, Cont'd.

Q. Staff Wheaton, I'd like to continue our look of your report of May 1983 found in Volume 20, looking towards the conclusion of the report at page 12. And directing your attention, Staff Wheaton, to Paragraph 17 where you make some comments about your overall views of the investigation. You state in Paragraph 17 that you feel that Chief MacIntyre is under a great deal of pressure to solve this murder and you say:

Firstly, he was under pressure from his chief of the day as he refused to attend the scene on that night and morning of the murder.

What was the basis of that information?

A. Conversations I had with former Sydney City Policeman Red Mike MacDonald.

Q. And that information will be reflected in the statement, I

believe, that Mike MacDonald gave to you in 1982?

1 A. In the statement and in narrative conversation he had with
2 me, yes, sir.

3 Q. The statement, I believe, is quite short. It simply says that
4 MacIntyre refused to come that night. Was there anything in
5 the narrative with Detective MacDonald that would indicate
6 that Mr. MacIntyre was under pressure from his chief of the
7 day?

8 A. Yes, sir. Former deputy chief, I believe, and upon retirement
9 Mike MacDonald, Red Mike, told me that on the way over in
10 the car the morning, that morning the chief was extremely
11 upset with John MacIntyre...

12 Q. I'm sorry, "on the way over in the car," what morning are we
13 talking about?

14 A. We would be talking, I believe, sir, the morning after Seale
15 was stabbed because he was stabbed about midnight. Later
16 on in that morning, say, eight o'clock, I took it, there was a
17 trip where Red Mike picked up the chief and went to...

18 Q. Picked up the chief, which...

19 A. The former chief of police, Gordon MacLeod, and went to the
20 MacIntyre residence and wrote, he was quite upset with John
21 MacIntyre for not coming out and indicated to, told him that
22 he was even thinking of firing him if he didn't do his job more
23 thoroughly. So that is, that together with what was in the
24 statement.

25

Q. Let me make sure I understand. Your evidence then, Staff
1 Wheaton, is that Red Mike MacDonald related to you a
2 situation on the morning following the stabbing in which Red
3 Mike MacDonald and Chief MacLeod?

4 A. Yes.

5 Q. Were going to John MacIntyre's house?

6 A. That is correct.

7 Q. Do you have any notes of that conversation with you?

8 A. No, sir, and Red Mike MacDonald did not wish that included in
9 the statement.

10 Q. Did you ask him that he put it in the statement?

11 A. Yes, but it was his statement and he said, "No, I do not wish
12 that in the statement."

13 Q. Did he say why?

14 A. I think, as he described it to me, he was a staff sergeant then
15 in the Sydney City Police. He was going toward pension. He
16 feared from pressure from Chief MacIntyre of the day.

17 Q. Did he tell you this?

18 A. Yes.

19 COMMISSIONER EVANS

20 Staff Sergeant , at the time that you had this conversation, was
21 there any indication as to whether the deputy chief or the chief of
22 police had been contacted that night and whether they came out
23 or refused to come out. What would it take to get them out? Was
24 there any talk about that?
25

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 STAFF SGT. WHEATON

2 There was no indication that the chief had been called, to my
3 recollection, My Lord.

4 COMMISSIONER EVANS

5 Or the deputy, there was the deputy chief at that time?

6 STAFF SGT. WHEATON

7 There was a deputy, I would assume. There was no indication of
8 that either, My Lord.

9 MR. ORSBORN

10 I believe the evidence from Red Mike MacDonald, My Lord, is that
11 the chief of police was, in fact, telephoned by the desk sergeant,
12 Len MacGillivray, and Mr. MacDonald was asked to visit the chief
13 that night and his evidence is that he did visit the chief that
14 night, explained to him the circumstances of the stabbing and, if I
15 recall correctly, when the question was put to him, "Did you raise
16 with the chief the matter of Sgt. MacIntyre's not coming out?" his
17 answer was "no."

18 COMMISSIONER EVANS

19 I was just wondering whether it would take an insurrection or
20 what would it take to get the chief or the deputy chief to come
21 out?

22 MR. ORSBORN

23 Again, My Lord, I think that was raised, perhaps obliquely, with
24 Mr. MacDonald in his evidence. If I recall it correctly, was that
25 there was a stabbing that we were dealing at that point, it was not

1 a murder. Something along those lines. I stand to be corrected.

2 COMMISSIONER EVANS

3 That was the same information that was given to Deputy Chief
4 MacIntyre or Detective MacIntyre at that time? In other words,
5 the same information that was given to MacIntyre was given to
6 the chief as to the seriousness of the injury suffered by the
7 victim?

8 MR. ORSBORN

9 As far as we know, My Lord, as far as we know.

10 BY MR. ORSBORN

11 Q. Did Red Mike MacDonald say why he was in a car with the
12 chief of police on a Saturday morning going over to see
13 Detective MacIntyre?

14 A. I took it that the chief had instructed him to come to his
15 house and pick him up and drive him over there.

16 Q. I see. Mr. MacDonald did not, Detective MacDonald did not
17 give the Commission any indication of that trip when he
18 testified before, as to the best of my recollection. This may be
19 an inappropriate question, but from your discussions with Mr.
20 MacDonald, are you able to suggest any reason why he would
21 not indicate that to us?

22 A. No, I'm not, sir.

23 Q. The second point that you mention, or the third point, really,
24 Staff Wheaton, about "the pressure which Chief MacIntyre
25 was under, you say a previous murder had been unsolved

1 creating public controversy. " Would you care to expand on
2 that for us, please?

3 A. The reason I said that, sir, there had been a previous murder
4 investigated by Chief MacIntyre. It was the Seto murder in
5 which a Chinese gentleman died as a result, I believe, of
6 blows to the head in the basement of his restaurant and it
7 had not been solved. Murders were not that common at that
8 time and from speaking with citizens in Sydney, particularly
9 the editor of the Cape Breton Post, Mr. Ian MacNeil, I
10 understood there was some public controversy about that and
11 the way the investigation was conducted.

12 Q. How long ago was this, the Seto murder?

13 A. It would be, the Seale murder was '71. I don't have the date
14 off the top of the head. It would have been a year, maybe
15 two years, I really don't know, maybe six months. I don't
16 know.

17 Q. But the basis of your information here then is discussions
18 with Ian MacNeil.

19 A. No, no, I talked to members of the Mounted Police. The chief
20 often brought it up, Chief MacIntyre often brought the Seto
21 murder up himself in conversation.

22 Q. In what context?

23 A. Well, it hadn't been solved and I think it always bothered him
24 that it wasn't solved.

25 Q. When you say "public controversy," are you speaking of

1 public controversy at the time of the Seto murder or public
2 controversy at the time of the Seale murder?

3 A. At the Seto murder.

4 Q. At the Seto murder. Do you have any knowledge if the fact
5 the Seto murder was unsolved created any controversy or
6 pressure at the time of the Seale murder?

7 A. That's what I was driving at, yes, I would think if a police
8 officer has one murder he doesn't solve, he would certainly
9 want to solve the next one.

10 Q. I can appreciate that.

11 A. And that's what I was driving at.

12 Q. Was that then simply your opinion as a professional police
13 officer as the way you would feel or did you have some other
14 evidence to...

15 A. That would be the way I would feel, sir, yes.

16 Q. Okay. You then say, sir, "Everyone felt certain that Marshall
17 had committed this crime and cut himself up to cover up his
18 crime." What I'd like to ask you for is, No. 1, who you mean by
19 "everyone" and, No. 2, perhaps detail for us what these people
20 told you to support the statement here?

21 A. Well, I would base that on the investigation I did in 1982. In
22 talking to people that were present during the 1971 murder,
23 the subsequent trials, and insofar as the cut is concerned, I
24 would base that on the conversation I had with John
25 MacIntyre. It seems to me I talked to one of the jailers who

1 had been out at the jail at that time, too, during that time and
2 he felt that it was a bit of a cover-up. I just can't recall his
3 name. I felt that, in my opinion, that was the mood of the
4 time.

5 Q. Well...

6 A. That Maynard Chant, for instance, in my talking with him, he
7 felt certain and when I questioned him as to why he felt
8 certain that Marshall had committed the crime, he said that a
9 chum of his had been in jail with Marshall and that there was
10 some indication that Marshall bragged something about
11 "killing seals." There was evidence of it at that time to make
12 me come up with this item and that's why I included it in the
13 report. It was not just based on my own hypotheses out of
14 my imagination.

15 Q. I appreciate that. Do you know if that feeling was shared by
16 Detective Urquhart? Do you know of your own knowledge if
17 that was shared by Detective Urquhart?

18 A. Yes, it was. Detective Urquhart and I talked about this
19 investigation several times. I can't recall the exact date but
20 there was a period, I'm sure it could be checked, where
21 Detective Urquhart and I flew into Halifax together and
22 attended some meetings in relation to another province-wide
23 roundup, if you will, and we talked at that time and we
24 stayed together and flew back the following day. I had
25 discussions with Detective Urquhart, yes.

1 Q. Was this at the time of your reinvestigation?

2 A. I can't recall the exact date of it but I know during the period,
3 yes, sir.

4 Q. Did he express to you the view that he felt that Marshall was
5 guilty in 1971?

6 A. Yes.

7 Q. Did he offer any explanation for why witnesses were now
8 recanting?

9 A. No, sir, no.

10 Q. Going back to the view expressed in Paragraph 17, do you
11 know if that view was shared by Detective Red Mike
12 MacDonald?

13 A. Yes.

14 Q. And, again...

15 A. Again, it would come from my interview with Red Mike
16 MacDonald.

17 Q. Do you know if it was shared by Lou Matheson?

18 A. I can't say with any certainty, sir. I don't believe I asked
19 Judge Matheson.

20 Q. Do you know if it was shared by Mr. Rosenblum?

21 A. Yes, it was.

22 Q. Mr. Khattar?

23 A. I did not speak to Mr. Khattar.

24 Q. Do you have any knowledge of Mr. Donald C. MacNeil's view?

25 A. As I say, I have a vague recollection of one afternoon being at

1 his cottage with Constable Don Ray and Constable Blair Taker ,
2 who were working for me in the Drug Section at the time and
3 that came up, but I can't recall his, you know, I know he
4 mentioned something about the Seale murder.

5 Q. The next point you mention is you say:

6
7 Fifthly, a great cry from the press and
8 media in regards to problems in the park
with racial overtones.

9 Could you elaborate on that point for us, please?

10 A. That would have come from Ian MacNeil, the editor of the
11 Cape Breton Post.

12 Q. Is the suggestion in your statement that there was a great cry
13 from the press at the time of the stabbing about racial
14 problems in the park?

15 A. That is correct, sir.

16 Q. Did you yourself look at any press reports that indicated this?

17 A. No, I did not. I did have occasion to discuss it with the editor
18 of the Cape Breton Post, who I knew rather well.

19 Q. I see. We have introduced as an exhibit, I believe, 105,
20 Excerpts from the Cape Breton Post at around the time of the
21 incident. Now, in fairness, these are not the complete
22 newspapers and there may be other articles in the
23 newspapers dealing with racial problems in general. But in
24 my reading, none of the excerpts from the Post in the four or
25 five articles that we have and relating directly to the Seale

1 A. No, I did not, sir, I meant to say "Chant, Pratico, and Harriss."

2 Q. You then go on to your conclusion, it appears to be a
3 conclusion and you say on page 13, bottom of Paragraph 18,
4 you say:

5
6 I found Chief MacIntyre to be adamant
7 that Marshall is and was guilty and still
8 refuses to look on the matter in balance. I
9 would submit for your consideration that if
10 a police officer in his drive to solve a crime
11 refuses to look at all sides of the
12 investigation and consider all ramifications,
13 then he ultimately fails in his duty.

14 A. That's correct, sir.

15 Q. Prior to your making this report, Staff Wheaton, in '83, May of
16 '83, when was the last time you had spoken to Chief
17 MacIntyre about this matter?

18 A. To the best of my independent recollection it would probably
19 have been the meeting in July of '82, the first part of July '82
20 in Mr. Edwards' office.

21 Q. That meeting was, I would think, after the reference process
22 had been started?

23 A. I believe so, sir. I just forget off the top of my head the date
24 of the reference.

25 Q. And Frank Edwards' notes review the details of what these
various witnesses were saying.

A. Yes, sir.

Q. Do you know if at that meeting Chief MacIntyre expressed his

1 views on Marshall's guilt?

2 A. I don't honestly recall. I don't know.

3 Q. Do you have any independent recollection now at any time of
4 Chief MacIntyre adamantly saying to you that Marshall was
5 and is guilty?

6 A. Oh, yes, he said that several times throughout the
7 investigation. At that time where it came after the reference,
8 I cannot recall if he did or didn't.

9 Q. At any time in your discussions with Chief MacIntyre, did he
10 ever hint or make a suggestion that "we might have made a
11 mistake here."

12 A. At no time did he ever hint he ever made a mistake.

13 Q. At any time in your discussions with Detective Urquhart, was
14 there any hint or suggestion that he might have made a
15 mistake here?

16 A. No, sir, not to my recollection.

17 Q. What about Detective MacDonald?

18 A. Yes. Yes, there was with Detective MacDonald.

19 Q. When was that?

20 A. During my interview with him. There was a good deal of that
21 interview, as a matter of fact from the beginning, he did not
22 want to put anything on paper. He made that clear to me.
23 Then we had quite a lengthy talk and then at the end of that,
24 he agreed to give me a written statement and in that talk, he
25 described to me John MacIntyre's technique of investigating

1 and as he described it to me, that was that he would go out and
2 often as a passenger in the car in which Detective MacDonald at
3 that time would have been the driver and he would look around
4 and see how the crime was committed and so on and then he
5 would decide, "Joe Blow did that." And then he would go to that
6 individual and begin working on him.

7 9:58 a.m.*

8 Q. This comment on Chief MacIntyre's investigation did I
9 understand you to say this was a...

10 A. Then...

11 Q. ...comment about his investigation technique generally.

12 A. That was his general technique and then Red Mike said in this
13 instance he was wrong, you know, he was obviously wrong.
14 He felt Marshall did it and he was wrong, Marshall didn't do
15 it, and Red Mike was willing to accept that and did accept it.

16 Q. Do you remember any other information given to you by Red
17 Mike that he did not want included on this statement?

18 A. Yes, sir, he was not a great fan of the Chief's, I gather. As a
19 matter of fact, he was...he was very upset about the Marshall
20 case and said that after that he asked to be taken off the
21 detective division and he went on the desk and he stayed
22 there and was on the desk when I interviewed him
23 some...1982.

24 Q. This was in 1971 you're saying...

25 A. After the Marshall investigation he asked to be taken off the

1 detective division and was placed...to be placed in an
2 administrative position.

3 Q. Because of the Marshall investigation.

4 A. Yes. He was very upset with it. That's what he told me. The
5 way he was treated by John MacIntyre. He felt that John held
6 it against him that he went to the Chief and that during their
7 time in...when John did come out, he would not speak to him
8 in the car, just "Go here, go there, do this, do that." He felt his
9 treatment by John MacIntyre was very shoddy and he wished
10 not to be in the detective division and where he was in
11 charge, and asked to go into an administrative position in the
12 Sydney City Police. I did not check on it but he told me that
13 after that he was placed in an administrative position and he
14 stayed there and was there at the time I interviewed him in
15 1982.

16 Q. Apart from his suggestions of the way the Chief treated him,
17 did Mr. MacDonald have any concerns, to your knowledge,
18 about the way the investigation was conducted?

19 A. Yes, sir. At the time I interviewed him the evidence of Chant,
20 Pratico and I believe, Harriss, was out and we would discuss
21 that. And as I say, he indicated or he told me that it was
22 typical of John to make his mind up as to who did a crime and
23 then go out and put the pieces together on it, and in this
24 instance he made a mistake. Marshall did not do it.

25 Q. Did he indicate to you that in this investigation Chief

1 MacIntyre made up his mind that Marshall did it and then set
2 out to prove it? Did he indicate that specifically to you?

3 A. He didn't indicate, he told me that that was his technique.

4 Q. Yes.

5 A. And he felt that that was what probably happened. He said
6 he was very uncommunicative, he didn't talk to him during
7 that period. He was mad at him for having gone to the Chief
8 and caused him problems, and that he basically drove, he and
9 the Chief, to Sackville to the lab, and as I recall it very, he
10 said there was very few words, if any, exchanged between
11 the two of them all the way up or back. It was a period of
12 some turbulence and some concern to him, so much so that he
13 just did not wish to be a detective.

14 Q. I'll just point out, Staff Wheaton, the reason I'm trying to be
15 as specific as we can on this information is that it may be
16 necessary for us to put this to...

17 A. Yes, to recall.

18 Q. ...Detective MacDonald.

19 A. Yes.

20 Q. Did he or did he not say that this technique of Chief
21 MacIntyre's, alleged technique of Chief MacIntyre's of picking
22 out a person and then going out to prove it, did he or did he
23 not say that that technique was applied to Donald Marshall?

24 A. It was my impression on leaving that it was.

25 Q. Did he say that...did he raise any concerns during the course

1 of the investigation?

2 A. You'd have to ask him, sir, I can't recall.

3 Q. Uh-hum. While we're speaking about Red Mike MacDonald,
4 you...and I'll ask you to repeat, if you don't mind, your
5 recollection of this conversation concerning the drive in the
6 car with the Chief of Police the next morning. As best you can
7 and in all the detail that you can.

8 A. Now, I say the next morning, I believe it was the next
9 morning. It may have been the next afternoon. I
10 don't...didn't...I can't pin the exact time, but I know the drive
11 took place. He picked the Chief up, from what he told me, and
12 he drove over to John MacIntyre's home and in route the
13 Chief expressed his displeasure and said that...

14 Q. Expressed his displeasure at what?

15 A. At John not coming out.

16 Q. Yes.

17 A. And that if this continued he might even consider firing him.

18 Q. If what continued?

19 A. His not adhering to duty.

20 Q. Uh-hum.

21 A. And, that the Chief got out of the car. I asked him, "Did you
22 go out and go in too and did you hear the conversation that
23 took place between John MacIntyre and the Chief?" and he
24 said no, he didn't, that the Chief got out and talked to him and
25 then got back in the car and continued on and then some time

1 later John MacIntyre come out and took over the
2 investigation.

3 Q. Did he indicate if the Chief said anything when he returned to
4 the car?

5 A. No, sir.

6 Q. Did he indicate if the matter was ever raised between he, Red
7 Mike MacDonald, and Chief MacIntyre?

8 A. No. He indicated to me that the Chief was...John MacIntyre
9 was mad at him and did not speak to him, in fact. That he
10 drove him about, went where he said to go and this type of
11 thing, and then later sometime, some few days later they
12 drove to Sackville, New Brunswick, to the Crime Lab and very
13 little conversation exchanged in between, very cold drive as I
14 took it from his interview, or what he told me, and then back
15 again.

16 Q. The matter of a Chief threatening to fire a detective because
17 he didn't appear to be performing his duty, would you
18 consider that a serious matter in a police force?

19 A. Yes, sir.

20 Q. Why would you not make reference to that in your report of
21 May of '83?

22 A. I was not investigating the Sydney City Police in May of 1983.

23 Q. I appreciate that.

24 A. And I did not make...therefore, did not make mention of it.

25 Q. You make mention of the fact that the...Chief MacIntyre was

1 under pressure.

2 A. Yes, sir.

3 Q. But you didn't go the next step and say, indeed, the Chief
4 threatened to fire him.

5 A. No, sir.

6 Q. Did you...

7 A. There were a great many other things in that conversation
8 with him too. I got the distinct impression that Red Mike
9 MacDonald was, like I say, not a great fan of John MacIntyre's,
10 at least at the time of my interview with him in 1982.

11 Q. Well, tell us about these great many other things that you can
12 remember.

13 A. I say a great many, maybe...there was a number of other
14 things. He indicated to me that he had two or three months
15 longer to go in the Sydney City Police than John MacIntyre
16 and that it would be a happy day for him to see John
17 MacIntyre walk out the back door of the building and he
18 would still be a serving member. He indicated a number of
19 little things that...things that led me to believe....I can't recall
20 them all, sir, what he said. But the consensus of it was that he
21 did not like John MacIntyre and a good deal of it went right
22 back to the 1971 investigation of the death of Sandy Seale
23 and the investigation of that.

24 Q. Was this information give to you in any kind of confidence
25 between you and Red Mike MacDonald?

1 A. Yes, sir.

2 Q. And I appreciate now you're testifying oath and...

3 A. And I have to break that confidence, yes, sir.

4 Q. Have to answer your questions. Was that information related
5 in any form to your superiors?

6 A. Yes, sir, I believe I verbally related that to Inspector Scott
7 and also, in my general discussions, with Mr. Edwards.

8 Q. This is a ballpark question, Staff Wheaton, but in your
9 discussions with other members of the Sydney Police force or
10 other people that...any other person that you interviewed in
11 your investigation, was there information which will be
12 relevant and pertinent to this Commission that was not
13 alluded to in your reports and which you haven't told us
14 about because I haven't known to ask you?

15 A. I'm not hiding anything, sir.

16 Q. No, I'm not saying you are.

17 A. And I...if there is I would be only too glad to give it to the
18 Commission. I honestly don't know. I...

19 Q. But were there other Red Mike MacDonalds that you spoke
20 to?

21 A. Were there other Red Mike MacDonalds and by asking that
22 question are you asking...what are you asking me specifically?

23 Q. I'm asking you was there information given to you that you
24 did not feel could or should be reflected in a statement and
25 hasn't come out simply because I haven't asked you the right

1 question?

2 A. Not that I can think of off of the top of my head. If a further
3 question...I just don't know. It's such a general question.

4 Q. I appreciate that.

5 A. But I assure you I'm trying to give my evidence as best I can
6 and advise you of everything I know.

7 Q. Okay. Well, you say you spoke, for example, to Detective
8 Urquhart.

9 A. Yes.

10 Q. On the airplane. What was your relationship with Detective
11 Urquhart like?

12 A. I considered Detective Urquhart and myself to be good
13 friends and I thought, you know, he was a good police officer.
14 He was old fashioned in his methodology. As a matter of fact
15 we got into quite a...quite a discussion about that during our
16 trip to Halifax and back. And he pointed out to me that he
17 had been hired as a by-law enforcement officer and then
18 went on and became a detective and had not a great deal of
19 education, and very little training. And, he worried about
20 passing exams now that the Police Commission was in. We
21 talked about statement taking, and I told him my approach to
22 statement taking, vis-a-vis he had a different approach to it.

23 Q. Did he say what his approach was?

24 A. Yes, his approach was an aggressive approach, to pick an
25 individual up and to aggressively approach them with no

1 background, sort of thing, and to get the statement as quickly
2 as possible so that it would be admitted in evidence.

3 Q. How does that contrast with your approach?

4 A. It is my approach that prior to interviewing a person I will
5 spend a good deal of time looking into their background,
6 finding out what motivates them, perhaps speaking to
7 neighbours, to parents if it's a juvenile, the parents would
8 certainly be there, speaking to their school teachers, perhaps
9 to their clergyman, anyone who I felt knew them and gaining
10 in my own mind a profile of that individual before I went in,
11 so that I would know. People, and it's been experience, do not
12 just...unless it's sometimes a crime of passion, readily confess
13 if you will. So, that if you know the background and
14 the...what motivates individuals, it would help you as an
15 investigator to go in and then interview the individual.

16 Q. Are you speaking generally now of all interviews or with the
17 potential accused?

18 A. Both. An accused person I would certainly spend more time
19 researching than a witness unless it was a key and crucial
20 witness and in that case I would spend some time looking into
21 his background and what motivated him and why he
22 did...what he...or what he may have saw or didn't see or what
23 type of individual he was.

24 Q. The fact that Detective Urquhart's manner of taking
25 statements may differ from yours and may be aggressive are

1 | you suggesting to the Commission his approach may be
2 | improper?

3 | A. No, no.

4 | Q. Or not proper police practise.

5 | A. Again, I suppose the proof is in the...you know, is left up to
6 | the Courts. If the Court holds a voir dire and a statement goes
7 | in then it has stood the test. In the case of witnesses, of
8 | course, there are no voir dires and I felt that more latitude
9 | was being taken by Bill. His methodology and approach was
10 | different than mine.

11 | Q. Did Detective Urquhart in his discussions with you give you
12 | any information that would either support or not support the
13 | comments of Red Mike MacDonald, vis-a-vis Chief MacIntyre's
14 | method of investigating?

15 | A. No, sir. It was different in that Billy Urquhart very much
16 | admired John MacIntyre, I felt, and felt he was a very good
17 | police officer and respected him.

18 | Q. In your discussions with the other police officers, and we
19 | have copies of their statements, did you obtain any
20 | information which is not reflected in the statements which
21 | would either support or not support the views of Red Mike
22 | MacDonald?

23 | A. As a general statement I would say John MacIntyre was not
24 | particularly well liked by his police force.

25 | Q. What is the basis of that statement?

1 A. From my interviews with the police officers and my
2 associations with them.

3 Q. There can be many reasons why a person is not liked.

4 A. Exactly.

5 Q. Yeah.

6 A. Yes.

7 Q. And did you ascertain why he was not liked?

8 A. I felt that...I got the opinion that he was a very hard task
9 master, which may be rightly so. That there was no gray
10 areas, it was black and it was white, and there was very little
11 flexibility and there was one way to do it and that was John
12 MacIntyre's way, and that was the opinion that I got from the
13 men. Also that he had a clique, if you will, of police officers
14 around him who did his bidding, the foremost of which was
15 Billy Urquhart and some of the other men resented that in
16 that they didn't think he was fair.

17 Q. Where did that information come from?

18 A. That would come from various police officers that I talked to
19 and so on.

20 Q. Other than Detective Urquhart were there other names
21 mentioned as being in this clique, as you put it?

22 A. Yes, sir. Ambrose MacDonald, Boots Walsh, Billy Urquhart and
23 John MacIntyre.

24 Q. The approach that Red Mike MacDonald indicated that Chief
25 MacIntyre took with investigations, picking out a person and

1 you...there is some merit in that technique and it's not
2 unknown in police practise to know that a certain individual
3 has a certain modus operandi, if you want to say.

4 10:17 a.m.*

5 Q. Assume that the stabbing, which we're looking... the one we're
6 looking at is not one of a number of similar crimes.

7 A. Uh-hum.

8 Q. In that kind of a case would the approach outlined by Red
9 Mike MacDonald be, in your opinion, a proper approach to a
10 police investigation?

11 A. Again, you're referring to the Marshall case now.

12 Q. Yes.

13 A. Yes. I...if I were investigating the case, I would have Marshall
14 in my mind at the beginning. But then I would look at what
15 he did and so on and listen to his story. Donald Marshall at
16 that time, from my investigation, was known to hang around
17 the park. He was known to travel with a bit of a rough crowd.
18 He had been before the Courts several times. You would have
19 to take him into consideration. But you would most certainly
20 do numerous other things and I would think he would be
21 eliminated.

22 Q. And your conclusions, again this all started back on paragraph
23 18 of page 6. You say, "I would submit for your consideration
24 if a police officer in his drive to solve a crime refuses to look
25 at all sides of an investigation and consider all ramifications,

1 then he ultimately fails in his duty." Was that conclusion with
2 respect to Chief MacIntyre?

3 A. Yes, sir.

4 Q. Did you reach a conclusion with respect to any other of the
5 investigating officers in the case?

6 A. Would...

7 Q. Had they failed...have you reached any kind of a conclusion
8 with respect to the efforts of Detective Urquhart or Red Mike
9 MacDonald?

10 A. From my reinvestigation of this matter, from what I knew of
11 it, it was pretty much a one-man show. Red Mike MacDonald
12 basically ran a few errands, did some driving and so on, was
13 present, et cetera. Billy Urquhart did the first part of the
14 Harriss interview and did some interviews under the
15 direction of John MacIntyre. But my overall concept of it and
16 as described by Red Mike MacDonald was that it was John
17 MacIntyre's show.

18 Q. Was it your opinion that, in any respect, that Detective
19 Urquhart failed in his duty?

20 A. Yes, sir.

21 Q. In what respect?

22 A. In regards to the Patricia Harriss statement. I do not think I
23 was asked for proper police procedure...I do not think it
24 proper to bring a girl in at seven something, leave her mother
25 outside, fourteen, fifteen years old, something like that, and

1 interview her for that lengthy period of time and be
2 crumpling up statements, throwing them on the floor, having
3 her crying, et cetera, et cetera.

4 Q. Did you form any opinion as to whether or not Red Mike
5 MacDonald failed in his duty in any respect?

6 A. I think Red Mike MacDonald could have pressed it harder
7 and, also, as a detective.

8 Q. Sorry, pressed what harder?

9 A. Pressed with the Chief, perhaps, as My Lord said, for him to to
10 come out to the scene and to get some help. The man had
11 worked all day, just gotten home and was back on duty again.
12 He was alone. In those days, as I understand it, the
13 detectives...the patrol officers did very little detective work
14 and, again, to say that it was just another stabbing. In the
15 City of Sydney there weren't that many murders, there
16 weren't that many serious stabbings of this nature and this
17 was a very, from my reinvestigation of it, a very serious
18 stabbing. The stomach was coming out on the man and what
19 have you. There was very little of the basics done. Even if he
20 had chalk marked the...where the body was lying, you know,
21 the basics were not there. Then they were not followed up
22 on.

23 Q. Tell...

24 A. So, in that way I think he could have done a better job, sir,
25 yes.

1 Q. Let's talk about the basics for a moment. We've had evidence
2 from other members of your force that there should have
3 been something done to secure the scene. Would you agree
4 with that?

5 A. Yes, sir.

6 Q. That there should have been use of the ident. services which
7 were offered, would you agree with that?

8 A. Yes.

9 Q. Basics.

10 A. Yes, sir.

11 Q. And that there should have been a systematic canvass of the
12 neighbourhood, talking to people in the houses around.

13 A. One of the first things you do.

14 Q. Yes. And there should have at least been consideration of an
15 autopsy.

16 A. Yes, sir. There should have been autopsy.

17 Q. Would these be examples of failure to follow basic
18 procedures?

19 A. Yes, sir.

20 Q. Why would they not be mentioned in your report?

21 A. I have no answer for that. I answered the memorandum
22 from Superintendent Christen as best I could and that's what
23 I put in the report.

24 Q. Uh-hum.

25

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORNMR. CHAIRMAN

1
2 Before we leave that area of Staff Sergeant's Wheaton's
3 testimony, would you give us your views on the steps that you
4 would have taken or you feel should have been taken given the
5 description that Donald Marshall, Jr., furnished the police of the
6 assailant.

STAFF SGT. WHEATON

7
8 Yes, My Lord. One of the first things I would do is I would
9 break...I would try to get sufficient manpower to break into teams
10 of two detectives to a team. I would block the area off. I would
11 then begin systematically going through the homes in that area,
12 interviewing the residents, and I would be asking them, do you
13 know of man or priest that walks around this area with a blue
14 Burberry over his shoulders and a small white-haired individual
15 who might be travelling with a taller younger individual. I would
16 be discussing with them the descriptions that Marshall had given.
17 I would also be looking for any individual who is known to carry a
18 knife in that area. I would also probably try to obtain the
19 services of a police service dog, which was stationed in Sydney to
20 see if he could get a pathway from the murder scene to wherever
21 these people had went. According to Donald Marshall they left the
22 area on foot. These are all basic items that I feel should be done
23 in a...in that instance at that night, My Lord.

MR. CHAIRMAN

24
25 Would you have been able to ascertain whether anyone

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 fitting that description in the Sydney area had a criminal record
2 or...

STAFF SGT. WHEATON

4 Yes, sir. That's another thing I would have done is contacted
5 Maritime Crime Index Section to get a profile of anyone with
6 criminal record or a record of carrying concealed weapons, et
7 cetera. Those are very basic to start off with.

MR. CHAIRMAN

9 That record is easily accessible.

STAFF SGT. WHEATON

11 Yes, My Lord, yes.

MR. CHAIRMAN

13 Thank-you.

MR. ORSBORN

15 Q. When reviewing the reports, Staff Wheaton, looking at it on
16 an overall basis, I don't see a suggestion or inference on your
17 part that a criminal offence was committed by Chief
18 MacIntyre. When you compiled this report were you of the
19 view that a criminal offence may or may not have been
20 committed?

21 A. Yes, sir, I was, but again I was answering the memo of
22 Superintendent Christen, and in the memo it...he does not
23 want any further investigation in it.

24 Q. Uh-hum.

25 A. It was my feeling he really was not wishing, in my opinion, on

1 that, in that regard. He was asking me in specific guidelines
2 of what he wanted.

3 Q. I appreciate that. Other than the memo that was provided to
4 you from Superintendent Christen, was there anything else
5 that would lead you to believe that he did not want your
6 opinion on possible charges?

7 A. Well, I can't be sure if the memo of Gordon Gale was attached
8 to it. It's indicated it was.

9 Q. Yes.

10 A. I don't...to me it looked unfamiliar yesterday, but it may have
11 been there. Then I go back to the previous year in 1982
12 when I was stationed in Sydney and how I left the
13 investigation and it was my impression then, and perhaps for
14 good reasons I stated yesterday, with the matter before the
15 courts, then there was other things too that one had to take
16 into consideration, about when do you start this investigation.
17 The last I had was that it was being held in abeyance and
18 you'll notice I say in my report that, you know, further
19 investigation pending or words to that effect. There was a
20 lawsuit, for instance, which was instituted by Mr. Marshall's
21 solicitor against the City of Sydney and John MacIntyre.
22 There was various press things coming out that I would read
23 in the morning paper from the Attorney General, that the
24 matter will be considered, this will be considered after the
25 civil suit and there was a matter of any remuneration that

1 should go to Mr. Marshall for the years that he spent in jail
2 and so on and so forth. So, it was out of my hands and all I
3 could do is sit and wait and see what happened, and when
4 asked, offer my opinion within the guidelines that I'm asked.

5 Q. At the time you compiled this report in 1983, did you have an
6 opinion on whether or not charges should be laid?

7 A. I felt, and I've always felt and still feel, that there should be a
8 thorough investigation, and this Commission is a thorough
9 investigation. I'm very pleased to see it.

10 Q. That's my point.

11 A. And, in my...I'm a small toad in a big puddle, but in my
12 opinion, yes, I feel the man counseled perjury. But it's a
13 complicated issue and during 1982 the Crown and I discussed
14 it and you have counseling perjury, you have obstruction of
15 justice and misleading, you have fabrication of evidence,
16 which there's a section of the Code. There's another section of
17 the Code, I think, around 110, of a misuse of public office, in
18 that area. To say what charge, when, is...definitively... but to
19 me the most serious thing, and the one that I outlined in my
20 reports were the matter of Chant, Pratico and Harriss. And to
21 me those are clear-cut things.

22 Q. Okay. To me there is a difference between recommending an
23 investigation.

24 A. Yes, sir.

25 Q. Or recommending that charges be laid. Am I correct?

1 A. Oh, yes, yes.

2 Q. And is it your evidence in 1983 that you were...you would
3 recommend an investigation or that you would recommend
4 that charges be laid?

5 A. I was not asked in this report.

6 Q. No, I understand.

7 A. I believe at some point I was asked...

8 Q. I understand that.

9 A. ...and I think the way I put it was "charge/investigation" or
10 investigation, rather, /charge. It was my feeling on leaving
11 Sydney general investigation section that the new NCO who
12 was coming in, who was eminently capable, in my opinion,
13 investigator who had nothing to do with the Sydney of City,
14 he came from...City of Sydney, he came from Yarmouth,
15 should take a fresh look at it and investigate the matter.

16 Q. Yes. Now, if my memory serves me correctly, you told us
17 yesterday that at the time you left Sydney in 1982 when you
18 filed your report of May 20th that you were of the view
19 simply that an investigation should be conducted, not...

20 A. Uh-hum.

21 Q. You had not reached the point where you thought charges
22 should be laid.

23 A. In my own personal view I felt that would be the end result
24 of the investigation, but I asked for an investigation and I still
25 felt that it was...

1 MR. CHAIRMAN

2 Staff Sergeant, is it the practise for the...for a police
3 investigating officer to recommend that charges be laid or is it the
4 responsibility of a police officer to gather together all relevant
5 evidence, all evidence that he considered relevant, available
6 evidence, and then look to the Crown Prosecutor to decide what
7 charge, if any, should be laid?

8 STAFF SGT. WHEATON

9 The latter, My Lord. Should gather all evidence and submit
10 it to the Crown Prosecutor and take his recommendations. If you
11 were at variance with the Crown Prosecutor you could submit a
12 report on it to your superiors who might refer it to the Attorney
13 General. But it's always been my practise to gather the
14 information and take it to the Crown Prosecutor and discuss
15 charges.

16 MR. CHAIRMAN

17 And he or she, i.e. the Crown Prosecutor, will then have to
18 make that...

19 STAFF SGT. WHEATON

20 Will then have to make that decision.

21 MR. CHAIRMAN

22 ...professional decision.

23 STAFF SGT. WHEATON

24 Yes, My Lord.

25

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 MR. CHAIRMAN

2 What charge, if any, should be laid based on the evidence
3 that has been uncovered.

4 STAFF SGT. WHEATON

5 That's correct, My Lord. Now, in this Province, My Lord, if I
6 might just continue on that, one can generalize, and I mean there
7 would be nothing to prevent a police officer going laying a charge.
8 Any person off the street can go lay a charge. But the prosecutor
9 wouldn't prosecute it unless he felt that... you know, so.

10 MR. CHAIRMAN

11 I presume offences such as impaired driving, et cetera, you
12 don't have to go...

13 STAFF SGT. WHEATON

14 The routine ones, yes, My Lord.

15 MR. CHAIRMAN

16 ...and ask for the approval of the Crown Prosecutor before
17 charging.

18 MR. ORSBORN

19 Q Do you know, Staff Wheaton, if your force has a policy with
20 respect to the decision...

21 MR. CHAIRMAN

22 Before you start, Mr. Orsborn, is it the usual practise when
23 you are...when you present to a Crown Prosecutor your file's
24 evidence that you have gathered or facts, that may or may not be
25 introducible as evidence, to indicate to the Crown Prosecutor your

STAFF SGT. WHEATON, EXAM, BY MR. ORSBORN

1 views as to what charge, if any, should be laid?

2 STAFF SGT. WHEATON

3 Yes, My Lord.

4 MR. CHAIRMAN

5 Is it...does it often occur in your experience that a Crown
6 Prosecutor will say to an investigating police officer, your
7 investigation is not complete, go back and re-interview witnesses
8 or bring them to see me before I can make a decision as to
9 whether your advice to me that a charge be laid should be
10 followed?

11 STAFF SGT. WHEATON

12 That can happen, yes, My Lord, and I would do it.

13 MR. CHAIRMAN

14 Does it happen fairly frequently?

15 STAFF SGT. WHEATON

16 It depends on how thorough you are, I suppose. But it does
17 happen, My Lord, and I have had Crown Prosecutors ask me to go
18 out and do this or that or bring the witness in and let them
19 interview them. But I must say that doesn't...I've never had that
20 happen all that frequently that I've...

21 MR. CHAIRMAN

22 I take it a good police officer would not resent being sent
23 back by...

24 STAFF SGT. WHEATON

25 Oh, no.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 MR. CHAIRMAN

2 ...a Crown Prosecutor for further investigation.

3 STAFF SGT. WHEATON

4 No, My Lord, he should not.

5 MR. CHAIRMAN

6 Thank-you.

7 MR. ORSBORN

8 Q. Do you know, Staff Wheaton, if your force has a policy or
9 practise with respect to where the decision rests to lay a
10 charge? Not to prosecute it but to lay a charge.

11 A. Again, it would depend on the case. If it's a routine thing, like
12 an impaired driver, the police officer would lay the charge
13 and in the morning before Court or two mornings before or
14 three, take a Crown brief down and give it to the Crown
15 Prosecutor and discuss it. It would be a routine matter. If it
16 were a more complicated matter of fraud or something of this
17 nature you would...he would probably contact the prosecutor
18 at various levels along the investigation and the prosecutor
19 might, again it says, as has been previously said, "I'd like you
20 to put more emphasis into this witness or interview these
21 people for me or check on this fellow" and you would go and
22 you would do that and then at the conclusion of it all you
23 would wrap the thing into a package, do a Crown brief and
24 take it to the prosecutor. I don't know if I've answered your
25 question.

1 Q. Not really.

2 A. Could you pose it to me?

3 Q. You've done all this, you've presented your Crown brief, you
4 think it's a hundred percent clear, you believe charge X
5 should be laid.

6 A. Uh-hum.

7 Q. The prosecutor says, no, I do not think that charge should be
8 laid. Are you able then to go and lay the charge?

9 A. You could go lay the charge technically, yes, and then it would
10 be the prerogative of the prosecutor not to prosecute it.

11 Q. Have you ever done that?

12 A. No, sir.

13 Q. Did you discuss the actual laying of charges with the Crown
14 before you left Sydney?

15 A. Mr. Edwards and I did discuss, as I previously said, offences
16 and what offences had been committed and so on and it was
17 felt to be a complicated thing. I believe Mr. Edwards did
18 some research into some case law on the matter and there
19 was a discussion, yes, sir.

20 Q. Did you ever make a straight recommendation to him that
21 charges should be laid now?

22 A. No, sir. It was my feeling an investigation should be done
23 first and then that would ultimately end up in charges.

24 Q. In response to Mr. Gale's letter asking for comments on the
25 practises and procedures, I believe both Corporal Carroll and

1 is it Staff Sergeant Barlow?

2 A. Yes, it is.

3 Q. Replied, along with Inspector Scott. We have Corporal
4 Carroll's report there on page 14 of this same volume. He is
5 somewhat more economical with words than you are I think.

6 A. Yes.

7 Q. Did you see this report either before or after it was
8 submitted?

9 A. No, sir, I did not.

10 Q. I see. Just direct your attention to the paragraph concerning
11 John Pratico. "Pratico when interviewed by myself on several
12 occasions was and is an extremely nervous individual who is
13 easily confused and he should never have been considered for
14 court purposes."

15 A. Which?

16 Q. I'm sorry. Page 14 in the third paragraph.

17 A. Oh, yes, I'm sorry. Yes, sir.

18 Q. Do you have any basis for agreeing or disagreeing with that
19 comment about John Pratico?

20 A. I...if I were asked I would concur with Sergeant Carroll.

21 Q. How would you feel in 1982 using John Pratico to...

22 A. Based on my interviews with Dr. Mian and people at the
23 health unit in the Cape Breton Hospital who knew John
24 Pratico, I felt Corporal Carroll's assessment was quite
25 accurate.

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Q. Yeah. Perhaps I phrased the question poorly. How would you
2 feel, how would you have felt about using John Pratico for a
3 witness in 1982?

4 A. It was my recommendation, again based on psychiatric
5 evidence, or as I had been told, that John Pratico should not
6 be used. He was not a reliable witness.

7 Q. Turn to page 21. This is Staff Sergeant Barlow's report. Just a
8 couple of points. Did you see this report either before it was
9 submitted or at the time it was submitted?

10 A. No, sir. Today is the first day I've ever seen this report.

11 Q. You've never seen it, okay. One small point then, in the first
12 paragraph on page...the second page of that report, page 22,
13 the third sentence reads, "In August of 1971 Detective
14 Urquhart received information Ebsary was responsible for the
15 murder." To your knowledge is that correct?

16 A. I don't know the basis of it, why August of '71 Detective
17 Urquhart would have received information.

18 Q. I believe...

19 A. Oh, ah, unless it was in August of '71 Jimmy MacNeil came
20 forward, no.

21 Q. To go back to Exhibit 88, and I want to ask you to turn to it,
22 this is the listing of the stuff that you got from Chief
23 MacIntyre.

24 A. Yes.

25 Q. There's a reference there to, ah, on the third page of that

1 which says, "Inspector William Urquhart produced a
2 document dated August 26, 1981, which was given to him on
3 that date by Mr. Dan Paul in regard to one Roy Ebsary."

4 A. That must have been what Staff Barlow was referring to.

5 Q. I'm just interested in the last comment on that page. "No less
6 a consideration in these factors is the many years of loyal and
7 dedicated service of Chief MacIntyre to his community." In
8 your opinion when you're asked to comment on improper
9 practises or procedure, is that an appropriate consideration?

10 A. Practises. I think what Staff Barlow was doing talking about
11 his previous practises or practises after and, you know, I'd
12 have no quarrel with that comment. We're talking
13 methodology of a policeman, I suppose, and I...like I say, I
14 would have no quarrel with that comment at all.

15 Q. Turning now to Inspector Scott's report. It's on page 23 and
16 following. Now, right at the bottom of page 23, or let me ask
17 you this first. Did you see this report at any time to your
18 knowledge?

19 A. I don't recall it, sir.

20 Q. Okay. Now, he says right at the bottom of page 23 "Had
21 Marshall told the truth in the initial instance the police would
22 more than likely have believed his story and pursued the
23 description of these two men." Now, do I take it that he's
24 referring to the fact that Mr. Marshall has on occasion
25 indicated that there was a robbery in progress, that this was

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

- 1 not made known in 1971? Is that what he's referring to?
- 2 A. I would assume that, yes, sir.
- 3 Q. Did you have any discussion with Inspector Scott on this point
- 4 before he compiled his report?
- 5 A. No, I did not. I was stationed in Halifax and he was in
- 6 Sydney, sir. I would have had discussion back in 1982.
- 7 Q. About this point.
- 8 A. About the fact that Marshall was rolling or robbing someone.
- 9 Q. Yes.
- 10 A. In the park. Yes, I advised him after my return from
- 11 Dorchester and he read the statements of Mr. Marshall.
- 12 Q. Now he's suggesting that if the police had known about this
- 13 robbery in June or May or June of 1971 that the investigation
- 14 may have taken a different course. Now, you've been as close
- 15 or closer to this investigation or reinvestigation as anyone, do
- 16 you share that opinion or do you disagree with it?
- 17 A. I would disagree with it, sir.
- 18 Q. On what basis, Staff Wheaton?
- 19 A. On the basis that I think the Chief had his mind made up
- 20 shortly after beginning this investigation that Marshall did it
- 21 and set out to prove it. If he had just done neighbourhood
- 22 enquiries, Ebsary would have surfaced and answered the
- 23 description that Marshall gave. In 1982 it came to my
- 24 attention that a neighbour of Ebsary's who lived near in '71,
- 25 he had been over looking at a knife in his garage and the next

1 day the garage was broken into and that knife was stolen.

2 Obvious...

3 Q Run that by me again.

4 A. In 19...as late as 1982, some eleven years later, I was doing
5 neighbourhood enquiries and I found an old next-door
6 neighbour who...

7 Q An old next-door neighbour of who?

8 A. Of Mr. Ebsary's who told me a story of how Ebsary was over
9 in his garage one afternoon looking at a knife and then that
10 night the garage was broken into and the knife was missing.
11 So, certainly, you know, the inference being that probably
12 Ebsary stole the knife. He had a penchant for knives and so
13 on.

14 Q This was in Mr. Ebsary's neighbourhood.

15 A. Yes, on rear Argyle.

16 Q Not in the neighbourhood of Crescent Street.

17 A. Well, the two of them are not all that far removed.

18 Q Okay. Well, let me just ask you this. I want to come back to
19 this point about the robbery. When you say you would
20 conduct neighbourhood enquiries in response to a question
21 from the Chief Justice, how big is the neighbourhood?

22 A. Neighbourhood enquiries would have taken in his area, rear
23 Argyle, I would think.

24 Q How many houses would that be? It doesn't even show up on
25 that map. It is shown, but there's a break in the map.

1 You've got Argyle Street, Richardson Street, Rear Argyle
2 Street, Crescent Street, Bentinck Street, Byng Avenue, George
3 Street. I have no idea but I suspect it could be a hundred or
4 two hundred houses.

5 A. [Witness turning and pointing on large map.] Well, I don't
6 know what the scale of this map is, sir, but the murder took
7 place approximately in this area and Roy Newman Ebsary's
8 house was over there, and I would count one, two, three...one,
9 two, three, four, five, five houses on that street and I can only
10 generalize that maybe another five, ten houses up here. I
11 would...if I were doing it...there is no houses over here in the
12 park. I would interview people that I...in the park, but I
13 would certainly include this entire area and block it off, break
14 my men into teams of two and they would start doing those
15 houses.

16 Q. How many men do you think you would have assigned to this
17 case had you been in charge of it?

18 A. As many as I could.

19 Q. How many would you like to have?

20 A. I would have liked to have had between six and ten men.
21 Five groups of two would be convenient.

22 Q. Now, on the matter of the robbery and whether or not it
23 would have made any difference. Did you ever discuss with
24 Chief MacIntyre or raise with him the fact that Mr. Marshall
25 had indicated that there was a robbery in progress?

1 A. Yes.

2 Q. On what occasion or occasions?

3 A. This would have been...the first occasion would have been
4 after coming back from Dorchester and taking a statement
5 from Mr. Marshall when he told us that. I don't know if that
6 was the 26th of February meeting or the March meeting,
7 whichever. He was kept abreast of the investigation at each
8 stage.

9 Q. Yes. Uh-hum. And do you recall telling Chief MacIntyre that
10 Mr. Marshall had made reference to a robbery?

11 A. Yes, sir.

12 Q. What was his response, if any?

13 A. I don't really recall his response. There was nothing
14 significant in it.

15 Q. Did the...Chief MacIntyre say to you on any occasion "If I had
16 only known about the robbery, I would have done this or this
17 or this"?

18 A. I can't recall him ever saying that, no.

19 Q. The Chief Justice asked you what steps you would have
20 followed had you been confronted with that situation that
21 night. Would the steps that you would have taken been any
22 different had you known about the robbery?

23 10:47 a.m.

24 A. Yes, I, to me, then, it would seem more, I suppose, Marshall
25 would have been more credible to me. His story would have

1 been more credible.

2 Q. But it's your evidence that you do not you believe Chief
3 MacIntyre would have done anything any differently.

4 A. Well Chief MacIntyre did not know it, sir...

5 Q. No, I understand that.

6 A. You're hypothesizing that if had he known it would he have
7 done anything differently?

8 Q. Yes.

9 A. He may have, you know, I feel that he made his mind up
10 early in this investigation. If he'd known about the robbery
11 he may have. He may have.

12 Q. Again, on Inspector Scott's report...

13 CHAIRMAN

14 How does that, in your view, lend more credibility to the
15 story? If Donald Marshall, Jr. had said right from the very
16 beginning, "I was there for the purpose of committing a robbery",
17 how would that, in your view, lend more credibility to his story?

18 A. Well, if he, based on what the Chief knew, from what the
19 Chief told me in 1982, he considered Donald Marshall to be a
20 rough sort of young man who had knives and was in the park
21 and so on, and if he told him that he was there trying to "roll"
22 someone or rob someone, I think he would believe that
23 consistent with his character, My Lord.

24 CHAIRMAN

25 All right. Let's accept that. Where does that lead you, then,

1 with respect to the, to finding the person who committed the
2 murder. Is there a chance that instead of giving credibility it
3 might point the finger of suspicion even stronger in the direction
4 of Donald Marshall, Jr.?

5 A. It could have, it could have the effect, My Lord, yes.

6 CHAIRMAN

7 I mean I don't know. I, several times you've referred to this
8 idea that if the facts had been known and I see it now in this
9 report of Inspector Scott, then, initially, right from the very
10 beginning, that Marshall's story would have been more credible
11 and I'm having trouble pinpointing the area of credibility.

12 A. I could only say that as I've said, it would, in the Chief's
13 viewpoint Donald Marshall was a bit of a rough character, et
14 cetera, who might try to commit robbery so, therefore, he
15 would believe that, it would make it more believable that he
16 was trying to rob someone and in that robbery someone
17 pulled a knife and stabbed his associate, Mr. Seale.

18 MR. ORSBORN

19 Q. While we're on that, are you able to indicate what steps, if
20 any, you would take in your investigation if you were aware
21 of an attempted robbery? You gave the Chief Justice an
22 outline of the specific steps that you would take, are there
23 specific other steps that you would take had you known of
24 the robbery?

25 A. Well, the first thing I would have done would be take a

1 warned statement from Donald Marshall to the effect that he
2 was committing a robbery. Then I would follow up on his
3 story that there was a little white-haired man and a taller
4 man who they were trying to rob and I would try to find
5 these individuals.

6 Q. But you would have done that anyway you told us.

7 A. Yes.

8 Q. I'm trying to understand what specific differences there
9 would be in your investigation, if any, if you had simply been
10 made aware of the robbery as an additional piece of
11 information.

12 A. Well the object of the exercise still would have been to find
13 the white-haired man wearing the cape or jacket over his
14 shoulders. Yes, sir. If you believed there was a robbery or if
15 you didn't believe there was a robbery. If you believed
16 Donald Marshall.

17 Q. When ...

18 A. And I see that, what My Lord was driving at there and it's
19 just a hypothesis....

20 Q. When, in your opinion, should statements have been taken
21 from Mr. Marshall and Mr. Chant?

22 A. I would say that night.

23 Q. The 29th.

24 A. Yes, sir.

25 Q. If we just complete Inspector Scott's report here, page 25 of

1 the volume, third page of this report. In the middle
2 paragraph of that page which he talks about the pressure on
3 the police and on the Crown and he says,

4 At the time the Negro community was
5 going to take out their vengeance on the
6 Indians and the Indians were going to take
7 out their vengeance on the whites who
8 were lying against Marshall.

9 Do you have any knowledge of those kinds of threats of
10 vengeance?

11 A. This is what former Chief MacIntyre told Inspector Scott and
12 myself. From my investigation of it I don't believe that to be
13 correct at all. I don't believe that there was a vengeance
14 going to be taken out by the black community vis- à-vis the
15 Indian community.

16 Q. Is this an aspect of the "redneck" atmosphere you were
17 talking about yesterday?

18 A. There was, yeah. There were problems but I would say the
19 problems in Sydney, based again on what I was told, was
20 more between white and black and Indian, not between
21 Indian and black.

22 Q. Do you recall on what occasion or occasions this was raised by
23 Chief MacIntyre?

24 A. It was one of his theories that he would bring up. I can't give
25 you an accurate answer to the number of times. Oftentimes
when the Chief was pressed on, or why, "Where did Pratico

1 come from?" or "Why is Chant now saying you pressured
2 him?" He would then go off on something to do with Indians
3 or blacks or the park or the wound or something of that
4 nature.

5 Q. Did you find any support for this view in any of your
6 discussions with Detective Urquhart?

7 A. Not really, no.

8 Q. Discussion with M.R. MacDonald?

9 A. Not really, no.

10 Q. Discussion with any other police officer?

11 A. It seems to me that James Carroll once told me that, had that
12 opinion, or something to do with Indians.

13 Q. It's a good thing we have relaxed rules of admissibility.

14 A. Yes, very relaxed.

15 Q. Anything of that nature from your discussions with Ian
16 MacNeil?

17 A. Mr. MacNeil told me there were problems in the community
18 at that time, considerable problems with natives in the park.
19 There was also problems between the black community and
20 the white community.

21 Q. I'm thinking specifically of the Negro community taking
22 vengeance on the Indians and vice versa.

23 A. No.

24 Q. Any hint of that at all from Mr. MacNeil?

25 A. No.

1 11:00 a.m. - 11:18 a.m. - BREAK

2 Q. Staff Wheaton, I'd like to move to the report, or letter of
3 Superintendent Christen found in page, Volume 20, page 26.

4 A. Yes, sir.

5 Q. A letter which he forwards to the Deputy Attorney General,
6 24th of June 1983, and he encloses your report with
7 Inspector Scott's report, I believe. And I just ask your
8 comment on the second page of that letter, Superintendent
9 Christen writes,

10
11 No doubt the investigators at the time
12 truly believed Marshall to be responsible
13 and in their zealously to gather all the
14 evidence available placed too much
15 reliance on the evidence of certain
witnesses together with the fact the
wrongful conclusions were drawn by the
investigating team.

16 Do you share that conclusion of Superintendent Christen?

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

18 Q. In what respect?

19 A. I could break it down by parts. No doubt the investigators at
20 that time truly believed Marshall to be responsible. I believe
21 that Chief MacIntyre truly believed that Marshall was
22 responsible, in point of fact, probably still believes that
23 Marshall was responsible. "In their zealously to gather all
24 the evidence available placed too much reliance on the
25 evidence of certain witnesses." I assume that he is referring

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 to Patricia Harriss, Maynard Chant and John Pratico. It is my
2 belief that these three people were, through the workings of
3 John MacIntyre, induced to give statements which they knew
4 were not correct and then followed these statements up with
5 perjured evidence. I do not, I believe it is an over-
6 simplification and not, in fact, correct that just zealousness
7 was involved here. I believe John MacIntyre made his mind
8 up that Junior Marshall committed this murder and then set
9 out with a plan on the 4th of June to create the evidence to
10 prove it. Together with the fact that wrongful conclusions
11 were drawn by the investigating team.

COMMISSIONER POITRAS

12
13 Mr. Orsborn, I note that there is a second paragraph to that
14 letter on page 26 that may be along the same lines.

MR. ORSBORN

15
16 Yes, My Lord.

17 Q. Perhaps before we go back to the first page, Staff Wheaton,
18 you were just looking at the final phrase on page 2 about the
19 wrongful conclusions being drawn by the investigating team.
20 Do you share that opinion?

21 A. I think the, well as far as, if it means that the conclusions of
22 the investigating team, and by team I would assume perhaps
23 he means MacIntyre and Urquhart, in my opinion MacIntyre
24 knew what he, it would not be a wrongful conclusion, he
25 knew what he was doing and he has known all along.

1 Urquhart, as far as Patricia Harriss, he certainly knew what
2 happened there.

3 Q. Looking back at the first page, then, of that letter, in the
4 second paragraph, the first sentence there reads,

5
6 It is apparent all the warning signals were
7 ignored by the investigators and Crown
8 counsel in carrying out this investigation.

9 Do you share that opinion? He's referring to...

10 A. I don't know what warning signals he's talking about.

11 Q. Well, in your opinion were there any warning signals?

12 *11:23 a.m.

13 Q. Well, in your opinion, were there warning signals?

14 A. Not in their minds. If he's referring to, he's referring to the
15 investigators in their minds, particularly, and like I say, I feel
16 that it was principally a one-man show. In John MacIntyre's
17 mind, he felt Donald Marshall was guilty and he set out to
18 prove it. The warning signals, he ignored, well, he ignored
19 looking for Roy Ebsary. He ignored the basics of police work.
20 He ignored the help offered by the RCMP or made no request
21 for it. In that way, he ignored things, yes. But I think he was
22 a man with a purpose and he set out and fulfilled his purpose.

23 Q. That same paragraph, the last statement reads:

24 Of course, Marshall did nothing to help the
25 investigators or himself by his failure to
tell the true story.

1 We touched on that early this morning, but again, do you
2 share that conclusion?

3 A. I don't completely share it, no, I don't share that because
4 Marshall told them about Ebsary and MacNeil. He explained
5 it. He did not get into the rolling or the robbing aspect of it
6 but he told them what happened. He told them and described
7 the assailants and I believe if you look at the '71
8 investigation, there was a number of people in the park that
9 night who saw these same people and, " a little white-haired
10 man with a cloak" or "wearing a jacket over his shoulders," et
11 cetera. So Marshall did help the investigators. He told
12 basically the truth. He just didn't include that they were after
13 some money.

14 Q. Did you have any occasion to discuss what was to be told to
15 the Attorney General with Superintendent Christen?

16 A. No, I did not, sir.

17 MR. CHAIRMAN

18 The reports that were included with Superintendent Christen's
19 submission Mr. Gale, I would like to have Staff Sergeant
20 Wheaton's view on the second last paragraph found on page 25 of
21 Inspector Scott's report. Do you concur with the observations of
22 Inspector Scott in that paragraph, Staff Sgt. Wheaton?

23 STAFF SGT. WHEATON

24 To a degree, yes, My Lord, I think he's correct that hindsight is
25 20/20. However, it is my view that the information was available

1 in 1971, had it been pursued to successfully locate Mr. Ebsary.

2 MR. ORSBORN

3 Q. That paragraph mentions "numerous flaws and variances
4 from standard practices and procedures on the part of the
5 Crown prosecutor." Do you share Inspector Scott's opinion
6 with respect to the Crown prosecutor?

7 A. That's very difficult to say that the crown prosecutor varied
8 from practices and procedures because Mr. MacNeil was
9 never here to be interviewed to see his side of the story, if
10 you will. But there, again, no, I can find no evidence that a
11 Crown sheet was ever prepared in this case. A Crown sheet
12 would normally be prepared in a murder case.

13 Q. By whom?

14 A. It should be prepared by the police and held by the Crown
15 prosecutor. That would be the fault of the Crown prosecutor.
16 The Crown prosecutor would normally ask for one, although,
17 as I have said, Mr. MacNeil was a very intuitive individual, a
18 quick study, he may not have asked for one. I don't know.
19 Like I say, it's very difficult to speculate on Mr. MacNeil.
20 When one reads the transcript of evidence, he certainly very
21 aggressively prosecuted the matter. Is it wrong for him to
22 take Pratico in the office when he says that he's lying in the
23 middle of a Supreme Court trial? I don't find anything wrong
24 with that other than the fact that I think the defence should
25 have been allowed to come in, not he and the chief

1 necessarily.

2 COMMISSIONER EVANS

3 They were there, weren't they?

4 MR. CHAIRMAN

5 Any comment to the fact that he took MacIntyre in with him?

6 STAFF SGT. WHEATON

7 That's what I just said, My Lord. I said it would be my opinion
8 that he should take the defence in with him rather than he and
9 the chief taking Pratico off into the room, sir.

10 COMMISSIONER EVANS

11 Was the defence, one counsel not in there?

12 MR. ORSBORN

13 Our evidence is that there was defence counsel there, My Lord.

14 A. Oh, was there? I'm in error.

15 COMMISSIONER EVANS

16 At least one and probably both.

17 STAFF SGT. WHEATON

18 I apologize to the Board. It was my understanding that they were
19 not present. And if they were, well, then I see nothing wrong
20 with that.

21 BY MR. ORSBORN

22 Q. Inspector Scott makes the same comment with "respect to
23 flaws and variances from standard practice on the part of the
24 defence." Do you share that opinion?

25 A. Again, in looking at the transcript, one can be very critical of

1 the defence, but that's easy to say when one hasn't been there
2 and it was not the normal practice, and Mr. MacNeil
3 prosecuted a number of cases for me and I never knew of
4 him, never a murder case, now mind you, to give defence
5 copies of a Crown brief, for instance, or copies of witnesses
6 statements. And that, back in the seventies and '73, I was in
7 Truro prior to that and Mr. Archibald was a prosecutor there.
8 The defence were more or less on their own to look up and
9 prepare their clients at that time. Nowadays, we have
10 disclosure. But in those days, the disclosure was not as free
11 and open as it is today.

12 Q. When you say it was in your knowledge that Mr. MacNeil did
13 to provide defence with copies of briefs or statements, are
14 you saying that he did not volunteer that or when asked, you
15 would refuse?

16 A. Oh, I think if asked, he would not refuse Mr. Rosenblum,
17 particularly in a murder case. I think he would give the
18 defence. I would be very shocked to think he wouldn't. I
19 don't know.

20 Q. From your experience, are you aware of circumstances where
21 Mr. MacNeil made disclosures to defence counsel when asked?

22 A. I cannot honestly recall a case but the type of cases that he
23 would have been prosecuting for me were Criminal Code cases
24 coming, arising out of drugs, drug investigations such as
25 assaulting a peace officer, this type of thing principally, and I

1 can't recall him doing that, no. And, in fact, as I've said
2 earlier, he wasn't particularly interested in getting a Crown
3 brief. He prepared his notes. He interviewed you and
4 prepared his notes and then went to court.

5 Q. Inspector Scott makes the same comment with respect to the
6 court. Was that usual for the police to be commenting on the
7 flaws and variances from standard practices of the court?

8 A. Well, I think he's taking a very broad brush approach of his
9 answering the memorandum of Superintendent Christen. To
10 my recollection, it was proper and improper police
11 procedures. Inspector Scott is a ranking officer himself and
12 within the framework of the force, I think he probably felt it
13 his duty to do that and did do that. You asked me is it
14 proper procedure to take...

15 Q. I asked if that was usual?

16 A. Usual. In a way it's usual. If one were submitting a report on
17 an appeal of the case, for instance, one would say the judge
18 of the provincial magistrate's court erred in this and that and
19 appeals were always sent in to the Attorney General's
20 Department for some decision on them. It could happen and
21 he did it.

22 MR. ORSBORN

23 I'm not sure if that line of questioning, My Lord, completes your
24 inquiry with respect to that paragraph.

25

1 MR. CHAIRMAN

2 Yes.

3 BY MR. ORSBORN

4 Q. Following submission of your report in 1983, Staff Wheaton,
5 do you have any memory of any other involvement in the
6 Marshall matter in 1983?

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

8 Q. What about 1984?

9 A. Not an independent recollection, unless there's something
10 here to refresh my memory.

11 Q. I just direct your attention to page 49 of this volume. I
12 believe it is a report submitted by Superintendent MacGibbon
13 from Halifax to the RCMP Commissioner in Ottawa dated the
14 19th of October 1984 and I can advise you that this followed
15 the release of one or more of your reports to the media in
16 October of 1984 by, I believe, a Kirby Grant in the course of
17 an election. Do you remember the time around the release of
18 that report?

19 A. Yes, I do.

20 Q. Were you asked by Superintendent MacGibbon about your
21 report?

22 A. I was verbally asked by Superintendent MacGibbon.

23 Q. What were you asked?

24 A. If I released a report to Kirby Grant, or words to that effect.

25 Q. Yes.

1 A. And I did not.

2 Q. Were you asked about the decision to hold the interviews
3 with Chief MacIntyre and Detective Urquhart in advance?

4 A. I was not, no.

5 Q. That report, sir, at page 49, reading from about the centre of
6 the page:

7
8 The report relied upon was written
9 82/05/20 by Staff Sgt. Wheaton. The last
10 paragraph of the report deals with the
11 decision to delay interviews of members
12 of Sydney Police Department. This matter
13 was resolved by further investigation into
14 the procedures and practices of the Sydney
15 Police Department and reported in May
16 1983.

17 Did you do further investigation into the practices and
18 procedures and in May of 1983?

19 A. No, sir, I did not and if I recall correctly, the specific
20 instructions of Superintendent Christen in his memorandum
21 outlining the mandate was not to do further investigation.

22 Q. To your knowledge, had any other member of the force done
23 such an investigation or further investigation in May of 1983?

24 A. No, sir.

25 Q. Superintendent MacGibbon writes that this matter,
presumably the decision or the interviewing of members of
the police department, this matter was resolved in May of
1983. Do you share that opinion?

1 A. No, I do not, sir.

2 Q Other than the discussion between you and Superintendent
3 MacGibbon relating to the actual release of the report, did you
4 have any discussion with the superintendent concerning
5 what, in fact, you did do in May of 1983?

6 A. No, I did not, sir.

7 Q The final line in that first full paragraph, final full line, says
8 "Grant," this is the lady I believe who had the report, "Grant
9 and media are now suggesting that there was interference in
10 the investigation." I believe the newspaper reports at the
11 time make that kind of a statement and I can advise you that
12 it would suggest that the interference came from holding
13 these interviews in abeyance. When you and Mr. Edwards
14 discussed the matter of not interviewing Mr. Urquhart and
15 Mr. MacIntyre when he advised you that this was the
16 instruction or suggestion from Gordon Gale, was it your
17 opinion that that amounted to interference in your
18 investigation by the Department of Attorney General?

19 A. It was my opinion that the Attorney General's Department
20 would pick it up at a later date, or I sincerely hoped that
21 they would. The Attorney General is a chief law enforcement
22 officer for the province and if he gives instructions, it is my
23 duty to follow those instructions.

24 Q I understand that and you've consistently indicated yesterday
25 and the day before, I think, that if you were to investigate a

1 police force, you would require instructions from the
2 Department of Attorney General.

3 A. That is correct.

4 Q. I'm simply asking you whether or not you regarded the
5 delaying of these interviews or lack of instructions to proceed
6 with them, did you regard that as interference?

7 A. You're asking my opinion personally, Harry Wheaton?

8 Q. Yes.

9 A. Yes, I did.

10 Q. Why is that?

11 A. Because I thought, and I expressed it to Mr. Edwards, that the
12 matter should get on the road. There was a new NCO coming.
13 He would be a fresh look at the matter and that it would be a
14 timely point for him to carry on an investigation into this
15 matter. It was fresh, if you will, and an investigation always
16 is better when they are fresh. Gosh knows this one was long
17 enough. And that was my opinion. Now this is myself
18 speaking, not the RCMP or anything else. You've asked how I
19 feel and that's how I felt.

20 Q. I appreciate that.

21 A. I would have liked to have seen it get off the tracks right
22 then and there, by a new investigator.

23 Q. Okay. When I see the phrase "interference in an
24 investigation," that suggests to me that there is an ongoing
25 investigation and somebody has instructed that this or that

1 not be done in the investigation. What I hear you saying is
2 that your concern was over the fact that an investigation was
3 not authorized to be started.

4 A. That's right.

5 Q. It is the latter?

6 A. Yes, that's right, sir. It's not that they interfered in the
7 investigation because there was never an investigation
8 started. That's correct, sir.

9 Q. So when you are saying that, in your opinion, there was
10 interference.

11 A. My opinion would reflect the starting of the investigation.

12 Q. That the lack of instructions to start an investigation.

13 A. Exactly, yes, sir, and I was fully cognizant that there were
14 litigating factors that the Attorney General had to consider
15 too, as I've said earlier.

16 Q. I understand.

17 A. The remuneration of Marshall, et cetera.

18 Q. I'm curious about Item #6 on page 50 of this report. It says:

19
20 Inquiries in "H" division reveal that there
21 are other known releases of reports, et
22 cetera other than normal communications
23 to and from deputy attorney general. We,
24 "H" division, are satisfied that this is the
25 case.

24 Do you have any knowledge of releases of reports other than
25 normal communications to and from deputy attorney general?

1 A. You mean in regards to the Marshall case or in regards to any
2 case, sir?

3 Q. Let's start with the Marshall case.

4 A. Yes, sir, in the Marshall case I believe reports were released
5 by the Deputy Attorney General to Mr. Aronson. I was led to
6 believe by Mr. Aronson and Mr. Cacchione that they had
7 reviewed our reports and had conversations with the deputy
8 attorney general or Mr. Gordon Gale, I'm not just sure which,
9 if it was Mr. Cole[sic] or Mr. Gale. In the Marshall case, I
10 know of no other, to my knowledge, cases of reports other
11 than my own report being on television by, held up on
12 television by Kirby Grant that were released by the Attorney
13 General's Department.

14 Q. Are the members of your force authorized to release reports
15 and/or verbal communication to other than your superiors or
16 people in the Department of Attorney General?

17 A. Reports, no, we are not authorized to release reports during
18 an ongoing investigation to anyone other than we submit
19 them through the proper channels to our superiors and our
20 superiors, even to the Attorney General's Department. They
21 are the ones that would give them to them. I would never
22 give them to...I would not have conversation with Mr. Gale,
23 for instance, and take the report. It would normally go
24 through channels. Verbal media releases can be done by our
25 members. There are guidelines in our instructions as to what

1 types of items and records are kept at the unit level of all
2 media releases. They are reviewed by the office
3 commanding, by the section NCO, by our audit teams.

4 Basically anything of a sensitive or political nature, we have
5 to have preauthorized. We send our release in and we get it
6 back.

7 Q. You said you were not authorized to release reports during an
8 ongoing investigation. Does that mean that following an
9 investigation, you're authorized to release reports?

10 A. No, it does not, sir, no.

11 Q. Mr. Harris in his book quotes from your report of May of
12 1983, the report to the Attorney General on the practices and
13 procedures. Do you have any knowledge of how he came into
14 possession of that?

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

16 MR. CHAIRMAN

17 What was that question? I missed that question.

18 MR. ORSBORN

19 The question was the fact that Staff Sgt. Wheaton's report of May
20 30th, 1983 when he responds to the question from the Attorney
21 General that practices and procedures is quoted verbatim, sections
22 of it, in Mr. Harris' book. I'm just inquiring if Staff Sgt. had any
23 knowledge about how he came into possession of that report, and
24 his answer is, no, he does not.

25 COMMISSIONER EVANS

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 That he did not give it to him.

2 MR. ORSBORN

3 Well, his answer would...

4 COMMISSIONER EVANS

5 I thought that's what he said. Do you have any knowledge as to
6 how that was obtained by the writer?

7 STAFF SGT. WHEATON

8 I do not, My Lord, no.

9 MR. ORSBORN

10 That was my question and I would assume that if he gave it to
11 them he would then have knowledge of it.

12 MR. RUBY

13 I draw your attention to the fact that Mr. Aronson had a copy of
14 the report, we know that. Mr. Aronson, I will tell you, did work
15 with Mr. Harris on the book.

16 BY MR. ORSBORN

17 Q Do you recall any involvement in the Marshall matter, Staff
18 Wheaton for the balance of '84 and through 1985?

19 A. I beg your pardon?

20 Q Do you recall any involvement in the Marshall matter for the
21 balance of '84 and in through 1985, with the exception of
22 your testifying at the Ebsary trial, one of the Ebsary trials, I
23 mean?

24 A. I cannot independently recall any. I may have had
25 conversations with Mr. Edwards. I know during the Ebsary

1 trials I did, and Corporal Carroll. In preparation for the
2 Ebsary trial

3 Q. Yes.

4 A. Yes.

5 Q. I direct your attention to page 57 of this volume. This is a
6 memo, I believe, written by yourself in June of 1986. Again,
7 prior to that time, had the Marshall case resurfaced such that
8 you had any involvement in it?

9 A. Yes, sir. Prior, just prior to this submission of this, a week,
10 two weeks prior, I don't have an exact date. I recall it was on
11 a Friday. I was contacted by Mr. Pugsley and requested to do
12 an interview with him. He asked me if I would see him. He
13 wanted to talk to me in reference to a civil case that he was
14 handling for John MacIntyre in which he was suing the CBC. I
15 agreed and we met and I reviewed the file with Mr. Pugsley
16 and his associate on a Sunday afternoon, I believe, in our
17 headquarters in Halifax.

18 Q. Would you be authorized to meet with Mr. Pugsley like that?

19 A. I believe I discussed it with my officer commanding at the
20 time. It was a sort of a quick thing because the case was
21 going to court on Monday morning and I made the decision on
22 the phone with Mr. Pugsley and, ironically, a short time later,
23 I got a call from Mr. Murrant, who also wanted to see me
24 before going to court on Monday morning. So I made my
25 decision that I would speak to these gentlemen because, after

1 all, they could, had they done it earlier, could have had me in
2 for an examination for discovery. And I, as I recall after
3 agreeing to it, I did go up and mention to my officer
4 commanding that I would be doing that and he saw no
5 problem in it.

6 Q. And that matter did not proceed?

7 A. That matter did not proceed, sir.

8 Q. Was there anything then between that time and prior to your
9 telephone call from Mr. Bill on the 4th of June that you recall?

10 A. No, sir.

11 Q. Your memo refers to a telephone conversation with Mr. Bill,
12 the CBC producer. Do you have any recollection of that now?

13 A. The call from Mr. Bill was, as I stated, he requested I do a live
14 interview with Mr. Ian MacIntyre from the CBC current
15 affairs program and I indicated to him that before doing
16 anything such as this one, I would have to know what he was
17 going to ask me and, two, I would have to have the
18 concurrence of my superiors because based on what he was
19 going to ask me, it looked like a pretty, a type of interview
20 that one would get one's superiors to approve before doing.

21 Q. Do I gather that the second full paragraph here was your
22 understanding of the areas that Mr. Bill wished to pursue?

23 A. That is correct, sir.

24 Q. And do I further gather...

25 A. That's a rough summary of what he told me on the phone.

1 Q. I understand.

2 A. He didn't give me a written one.

3 Q. Do I gather that your potential answers are included in the
4 last paragraph there or the effect of your answers?

5 A. Yes, sir, yes.

6 Q. I want to leave those just for a moment and move ahead in
7 time slightly. We will come back to those. Did you then
8 discuss his request with your officer commanding?

9 A. I forwarded this memo directly up to Superintendent
10 Vaughan.

11 Q. Who was your immediate superior?

12 A. Superintendent Penney, and I believe that's his initials that
13 you see on the lower right-hand corner. So I took the memo
14 in and discussed it briefly with him.

15 Q. There is a reference at the bottom of the page as having
16 discussed it with your officer commanding.

17 A. Oh, yes.

18 Q. Do you recall having a discussion with Superintendent
19 Penney?

20 A. Yes, I discussed it with him and he's initialed to confirm that.
21 Superintendent Penney was not, I don't believe in the
22 province in '82. I'm not sure if he was. He was not acting in
23 any capacity where he would be connected with the Marshall
24 case. He knew nothing of the facts of it. I explained it sort of
25 overall to him and he felt that it was a proper matter to refer

1 to the CIB officer.

2 Q Did you do that?

3 A. And it was referred to Superintendent Vaughan.

4 Q How did you do that?

5 A. I believe it was mailed, went into our mail slot which is
6 carried up to the fourth floor of the building where
7 Superintendent Vaughan has his office.

8 Q Did you discuss the matter with Superintendent Vaughan?

9 A. Superintendent Vaughan later, within the next few days,
10 came down and I happened to be in the officer commanding's
11 office discussing another matter and he come in and we had a
12 discussion on the Marshall case. He wasn't familiar with it,
13 really, at that time. I gave him my opinions as to what these
14 questions were up to, or what they meant and what Mr. Bill
15 was driving at and what my answers would be and it was my
16 understanding that he was then going to go back and review
17 the Marshall file himself. It was not a long meeting. It was
18 just a matter of maybe five minutes.

19 Q Did you later receive any instructions or authorizations to do
20 the interview or not do the interview?

21 A. Yes, I did, sir.

22 Q When was that?

23 A. I beg your pardon, sir?

24 Q When was that?

25 A. There's a memo dated the 12th of June 1986 and I believe

1 that would be it. Then I believe...No, that memorandum...

2 Yeah, that memorandum in the final paragraph says:

3 I would strongly advise Staff Sgt. Wheaton
4 not to discuss this case at all with the
5 media or other unauthorized persons in
6 any detail whatever. The matter is under
7 appeal to the Supreme Court of Canada and
therefore should not be discussed.

8 Q. That memo is found on page 58?

9 A. Yes, sir.

10 Q. From Superintendent Vaughan. And am I correct that in that
11 memo, he raises some questions about what you have said in
12 your memo of the 5th of June and he asks you for, in
13 Paragraph 2, a summation of concrete evidence in support of
14 his view with report reference?

15 A. Yes, sir.

16 Q. Now before you replied, there is what appears to be a
17 handwritten report from a Sergeant Bentley, is it?

18 A. What page, sir?

19 Q. Found at page 61.

20 A. Yes, sir.

21 Q. Who is Sergeant Bentley?

22 A. Sergeant Bentley would be, the chief reader is Staff Staff
23 Burgess and then directly under him would come Sergeant
24 Bentley and he would be the chief criminal reader for the
25 RCMP for the Province of Nova Scotia and he would be a very

1 senior police officer who would be more or less like a
2 sounding board, if you will, for the criminal operations officer
3 and who would give him his appraisal of a situation the way
4 he viewed it and would also often write memorandums for
5 the CIB officer or write a memorandum on a specific case and
6 take it in and see if the CIB officer agreed with it. If he did,
7 he would sign it and it would then go to the detachment or
8 unit directing them to do A, B, C, or D, this type of thing, or
9 comply with our policy.

10 Q. Did you discuss the matter with Sergeant Bentley before he
11 made his report?

12 A. No, I did not, sir.

13 Q. Would I be correct then that he would have only available to
14 him just the division file?

15 A. That is correct, to the best of my knowledge.

16 Q. He would not have access to a lot of the details in your head
17 which you have.

18 A. No, he would not, sir.

19 Q. He concludes in his memo, at least, that, at the beginning of
20 page 61, about the fourth or fifth lines, he says:

21
22 I do not believe that prosecution at this
stage is warranted.

23 That was his conclusion?

24 A. Yes, sir.

25

1 Q. If you turn to page 63, a memorandum dated the 14th of
2 July, is this your response to Superintendent Vaughan's
3 request for concrete evidence?

4 A. Yes, it is, sir.

5 Q. There are some points in here, Staff Wheaton, I'd like to check
6 with you. The first page, a rather small point, under the
7 Paragraph entitled "Maynard Chant." About six or seven lines
8 from the bottom of that paragraph, you say:

9
10 He was subsequently checked by
11 Constables Johnson and MacKenzie who
12 had a perimeter checkpoint set up.

13 What is "a perimeter checkpoint"?

14 A. A perimeter checkpoint would be, on either side of the
15 murder scene where the roadways ran in, you would set up a
16 checkpoint of vehicles coming and going.

17 Q. Was there such a checkpoint set up?

18 A. There was a checkpoint. It wasn't at the end of Crescent
19 Street but it was my understanding it was further up on
20 George Street, the corner of Argyle and George, I believe, in
21 that area.

22 Q. Who advised you that there was a checkpoint set up?

23 A. I can't honestly recall which member indicated that. It would
24 probably be Johnson or MacKenzie.

25 Q. At least their statements and police reports don't indicate the
use of the words "checkpoints" as such. They indicate that

1 they simply picked up Chant as he was walking along the
2 street.

3 A. It was my, it's my impression that they were there parked
4 and looking to see who was coming and going.

5 Q. At the bottom of that page, sir, you refer to the first
6 statement of Maynard Chant, his statement on the 30th of
7 May, and you say:

8
9 He will give evidence that he said what
10 MacIntyre told him to say, basically that
11 he saw Donald Marshall, Sandy Seale, and
12 two other men on Crescent Street. This
13 was totally untrue, however. He advised
14 us he was afraid of MacIntyre, who
15 threatened him by banging the table and
16 talking loudly.

17 And then you go on to discuss the...

18 A. I have the wrong date there, sir.

19 Q. The Louisbourg statement.

20 A. That would be the 4th of June. It wouldn't be the 30th of
21 May statement in which that was sent.

22 Q. So insofar as this report relates to the statement of the 30th
23 of May, it is not correct?

24 A. As I recall the 30th of May statement, he doesn't say that.

25 Q. No.

A. He says it in the 4th of June statement.

Q. Your report then goes on clearly, though, to identify the 4th of
June statement. You say "the next statement."

1 A. Oh, yes.

2 Q. You clearly separate the two statements.

3 A. Uh-huh. I'm in error on that.

4 Q. Okay, thank you, sir. I am correct that there is no evidence
5 that we are aware of of pressure from Chief MacIntyre on the
6 30th of May. Is there any that you're aware of?

7 A. No.

8 Q. Page 64, Staff Wheaton, towards the end of the first large
9 paragraph there, again referring to Maynard Chant, you say:

10
11 During a 1982 investigation, various side
12 issues of the people present during the
13 June 4th statement, court transcripts, et
 cetera were checked. In all instances,
 Chant's recall has been extremely accurate.

14 When you say "various side issues were checked," what do
15 you mean?

16 A. I would assume I mean that the people like Larry Burke,
17 Lawrence Burke, his mother were not present during the
18 taking of the statement.

19 Q. With Mr. Burke, did he say that he wasn't there or just
20 couldn't remember if he was there or not?

21 11:58 *

22 A. I'd have to read the statement. I can't recall. If you... As I
23 recall it he's either uncertain or else he says he wasn't there
24 based on refreshing his memory from Judge Edwards or
25 something like that.

1 Q. Well, who ...who agreed with Mr. Chant's version in a positive
2 sense?

3 A. His mother. There was some indication that, I believe, if not I
4 take it from what you're telling me that Mr. Burke didn't say
5 that he wasn't there. He was uncertain. Is...

6 Q. Well, we can go back and look at his statement.

7 A. Yeah, but, no, I'd believe you if you said that.

8 Q. Did Chief MacIntyre agree with Mr. Chant?

9 A. No, he didn't, no.

10 Q. Did Mr. Urquhart agree with Mr. Chant?

11 A. No, he didn't.

12 Q. Did Mr. Magee agree with Mr. Chant?

13 A. No, he didn't.

14 Q. You then say, "When giving evidence since 1982 Chant has
15 been a very believable witness." To your knowledge, sir,
16 when had Mr. Chant given evidence since 1982?

17 A. He had given evidence at the reference, excuse me, reference,
18 and he had given evidence at the Ebsary trials.

19 Q. All of the Ebsary trials?

20 A. I wasn't present at all the Ebsary trials, sir, so I can't say. I
21 was...

22 Q. He certainly gave evidence at the third one.

23 A. Yes.

24 Q. Now, when you say he was a very believable witness,
25 believable to whom?

1 A. To the Judges, to the juries, in my opinion.

2 Q. Have you read the report of the reference, Staff Wheaton?

3 A. Some five years ago, yes.

4 Q. Just reading from Volume 4, page 129, the report of the
5 reference. This is the Nova Scotia Court of Appeal. "Mr. Chant
6 has by now changes his story so many times that, in our
7 opinion, no weight can be placed upon his evidence either at
8 the trial or now."

9 A. Uh-hum.

10 Q. Does that conclusion of the Court support your conclusion that
11 he is a very believable witness?

12 A. No, sir.

13 Q. And did you have that reference available to you when you
14 compiled this report?

15 A. No, sir. I didn't...I could have gone. I didn't have it with me.
16 It would have been available if I went hunting.

17 Q. You then go to the evidence of Mr. Pratico, sir, and you say
18 "During the trial," the bottom paragraph on page 64, about the
19 middle of that paragraph, "He was then taken to the Crown
20 Prosecutor's office and again threatened with perjury by the
21 Crown and former Chief MacIntyre." What is the basis, sir, for
22 that conclusion?

23 A. We're talking John Pratico, eh.

24 Q. Yes, sir.

25 A. I believe the basis of it was from conversations with Corporal

1 Carroll who had been talking to Mr. Pratico.

2 Q. Uh-hum.

3 A. I really...

4 Q. Well, I can advise you that there is nothing in the statement
5 that Corporal Carroll took from John Pratico to support that,
6 on my reading of it.

7 A. Yes.

8 Q. So, are you telling us then that this would be information
9 relayed by Corporal Carroll to yourself?

10 A. I believe that Corporal Carroll dealt with Mr. Pratico.

11 Q. You never talked to...

12 A. I've talked to Mr. Pratico, but I didn't talk in any depth
13 whatsoever other than in courtroom hallways, sir.

14 Q. Now, you've...this whole paragraph is directed to Mr. Pratico's
15 evidence. You start at the beginning, "Mr. Pratico will give
16 evidence." Did you consider him capable of giving evidence in
17 1986?

18 A. No, I did not really, sir.

19 Q. Did you put anything in your report here that one should be
20 careful about using his evidence?

21 A. No, I did not.

22 Q. May I ask why?

23 A. I have no explanation.

24 Q. But by suggesting that Mr. Pratico could give this evidence in
25 the report that you're making, is that not close to the same

1 thing that Chief MacIntyre did when he put Pratico forward
2 as a witness?

3 A. I wasn't really putting Pratico forward as a witness. I was
4 answering a memorandum to the criminal operations officers,
5 Superintendent Vaughan, outlining my reason for answering
6 questions on an open-line CBC show.

7 Q. Uh-hum.

8 A. And it's not a matter of going to court. When I used the word
9 "will give evidence" I am in error. It's a terminology I would
10 ...I sometimes use, I suppose. I had no intention, nor...of
11 having Mr. Pratico give evidence and it wasn't a matter of
12 court procedure. It was a matter of answering a memo.

13 Q. At page 65, sir, you speak of Patricia Harriss and, again, about
14 in the middle of that paragraph you say "She was turned over
15 to MacIntyre who kept badgering her for hours and hours
16 until she eventually told him what she saw."

17 A. Yes, sir.

18 Q. Again, sir, might I ask you the basis for that conclusion of
19 yours or statement?

20 A. That was based on my interview with Patricia Harriss. She
21 said she was picked up prior to the first show. I...at eight
22 something, on the 17th. There's a partially completed
23 statement taken by Billy Urquhart. Some hour or so after
24 that or some period of time after that John MacIntyre joined
25 and then it continued on until one twenty or one twenty-five.

1 If one just takes between eight, the time of the first
2 statement and the time of the second one, I think it's five
3 hours or something like that. That was the basis of me saying
4 that, sir.

5 Q. Now, the conclusion that you come to then in the next
6 paragraph is that "These people will all say that they were
7 counseled to commit perjury by former Chief John MacIntyre.
8 " That was your conclusion.

9 A. Yes, sir.

10 Q. That to me sounds somewhat stronger than "We should have
11 an investigation." You're saying there that an offence has
12 been committed. I'm trying to understand why you appear to
13 feel somewhat stronger about this in '86 than back in '83.

14 A. My feeling really didn't change between '82 and '86. The
15 memorandums, the wording of them may have changed if I
16 was asked different things. But it's my feeling, it was in '82,
17 and it was in '86 and it is now in '88 that, you know, that
18 there should have been an investigation and I felt a proper
19 investigation quite probably would have developed a charge
20 of counseling perjury.

21 Q. Okay.

22 A. As these three people had the same basic story. It can be
23 picked apart a little, but it's the same basic story.

24 Q. In fairness, Staff Wheaton, I should point out that you do say
25 in the final paragraph of your memo in the fourth sentence,

1 "The third phase, which has not been completed, is the
2 investigation of former Chief MacIntyre."

3 A. Yes, sir.

4 Q. Again, do I understand that you are not recommending that
5 charges be laid, but your position is still that an investigation
6 should proceed?

7 A. That is correct, sir.

8 Q. And it was your belief that an investigation would, in all
9 likelihood, lead to charges being laid.

10 A. In my opinion.

11 Q. I understand. Did you discuss your thoughts about this
12 investigation or possible investigation with your officer
13 commanding?

14 A. Briefly. I didn't get into any in-depth discussions with it
15 other than the overview for him so he would have some
16 understanding of what was going on. Principally he did not
17 really get involved with it. It was between the CIB officer
18 and myself, Superintendent Vaughan.

19 Q. There is nothing in that report, as far as I can see, Staff
20 Wheaton, about anything that would cast the Attorney
21 General in a bad light. This goes back to the memorandum on
22 page 57 that started all this, and I appreciate that
23 Superintendent's Vaughan's request to you did not direct you
24 through the Department of Attorney General because you
25 were asked to focus on the criminal aspect of the...

1 A. Uh-hum.

2 Q. ...matter. What led you to say in your memo of 86 06 05 "If I
3 were to answer these questions honestly, which I would do, it
4 would undoubtedly cast the Department of Attorney General
5 in a bad light," and I'll relate that back to the first para...the
6 second paragraph on that memo. The question which you're
7 looking at is the actions of the Attorney General's Department
8 during the investigation of the Donald Marshall case and
9 subsequent investigations. And you say, "If I were to answer
10 these questions honestly, it would undoubtedly cast the
11 Department of the Attorney General in a bad light." Would
12 you explain that, please?

13 A. We would have to go back to the beginning of this
14 investigation.

15 Q. Which investigation, Staff Wheaton, I'm sorry?

16 A. My 1982 investigation. During the investigation of the Donald
17 Marshall case and subsequent investigations. I would be
18 referring to the fact that...I took it from Mr. Bill that he was
19 going to be enquiring into my opinions, and in my opinion
20 there was waffling by the Department of the Attorney
21 General in regards to, not waffling, we did not get a clear
22 mandate to investigate the matter.

23 Q. Investigate which matter?

24 A. The Sydney City Police. The third phase, as I would refer to
25 it, and I felt that that should go on. I felt that through my...in

1 my 1982 investigation that the Attorney General's
2 Department was operating in a vacuum or with an ostrich-like
3 attitude in that we pressed, Mr. Edwards and I, to go into
4 Halifax. We had a meeting with Inspector Scott. All of us go
5 into Halifax, sit down around a table and discuss this matter.
6 Now, there are rules and pecking order to go through and I
7 would appreciate that the Attorney General's Department
8 would not in every and each and every instance you cannot
9 go running in there and sitting down around a table with Mr.
10 Gordon Gale and Mr. Gordon Cole [sic].

11 Q. When you say Department of Attorney General, what do you
12 mean?

13 A. I mean principally with, you know, with Mr. Gale, Mr. Cole.

14 Q. Do you mean Mr. Edwards?

15 A. Mr. Edwards, no, not so much Mr. Edwards. Mr. Edwards and
16 I, in my opinion, were in agreement throughout this
17 investigation. I never saw us too far off one way or the other.
18 There may have been some little things, but basically Mr.
19 Edwards and I were in agreement throughout this
20 investigation.

21 Q. What knowledge do you have of Mr. Gale's involvement?

22 A. I have no direct...I never have spoken to Mr. Gale.

23 Q. What knowledge do you have of Mr. Coles' involvement?

24 A. I've never spoken to Mr. Coles in my life.

25 Q. Okay. Again, I'm just trying to understand what the...the

1 background behind this comment. What you've told us so far
2 is that you felt there was waffling on whether there should or
3 should not be an investigation of the Sydney Police
4 Department.

5 A. Uh-hum.

6 Q. Is there anything else that you would have said that you felt
7 would cast the Department of Attorney General in a bad light?

8 A. The only other...the only other question Mr. Bill put to me in
9 that conversation was that he was going to bring up did I
10 think it proper that Supreme Court Justice Leonard Pace sit in
11 the reference when he was Attorney General during the time
12 of the Marshall appeals and so on. Quite frankly I didn't
13 know if...and I still don't know for sure, whether he was
14 Attorney General. I know he was an Attorney General of this
15 Province. If he was and had personal knowledge of it and it
16 influenced him in any way I would not think it proper, but
17 I'm sure Mr. Pace was cognizant of that and I have the
18 greatest respect for the man. That would have been my
19 answer to Mr. Bill. But ...

20 Q. That matter was not...

21 A. I never had that question put to me and I didn't know if that
22 would cast or, you know, there were a number of...that is an
23 area that he indicated he wanted to bring up.

24 Q. That wouldn't be an issue that you would address in your
25 normal course of employment as a peace officer, would it?

1 A. No, no, sir.

2 Q. Anything else that you might have said to support that
3 statement?

4 A. No, sir.

5 Q. You say also in that memo of the 5th of June, "I do not feel
6 Donald Marshall is the author of his misfortune. He is the
7 victim of an unscrupulous police officer, John MacIntyre." Is
8 that your opinion?

9 A. That come out in the reference, and Mr. Bill, I think, brought
10 that up, that Donald Marshall was the author of his own
11 misfortune. I do not feel that way. I feel, as I said in the
12 memorandum, that he's the victim of an unscrupulous police
13 officer, I believe.

14 Q. For the reason...

15 A. Are the words I used, I don't...

16 Q. Those are the words you used, yes, sir. But for the reasons
17 you've outlined over the last couple of days.

18 A. Yes.

19 MR. CHAIRMAN

20 Before we leave there, Staff Sergeant Wheaton, in that same
21 paragraph referring to what your answers would be if you were
22 interviewed by Mr. Bill. You said "It would also bring forth the
23 fact that I feel Chief John MacIntyre should be charged criminally
24 with counseling perjury." You see that there. That's on page 57.

25

1 STAFF SGT. WHEATON

2 Yes, I see that, My Lord.

3 MR. CHAIRMAN

4 I got the impression from your earlier answer that what you
5 really wanted was an investigation continued into the conduct of
6 ...by Chief MacIntyre of this case and that you felt reasonably
7 certain that at the conclusion of that investigation there would
8 grounds to lay a charge.

9 STAFF SGT. WHEATON

10 That is correct, My Lord.

11 MR. CHAIRMAN

12 And you ...and you seem to indicate that on page 65 in your
13 response to the memorandum of Superintendent Vaughan when
14 you say "I would respectfully submit that an offence has been
15 committed by the former Chief and it bears further investigation."

16 STAFF SGT. WHEATON

17 That is correct.

18 MR. CHAIRMAN

19 "Notwithstanding if it will stand the test of the courts."

20 STAFF SGT. WHEATON

21 That is correct, My Lord, yes.

22 MR. CHAIRMAN

23 Now, in reading that report I don't see, I get from your
24 testimony today and from reading the report that in going into
25 some detail the evidence and your opinion with respect to the

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 evidence and statements of Pratico, Chant and Patricia Harriss,
2 that you're responding to Superintendent Vaughan's query when
3 he says "I would also be interested in any new evidence which
4 may have come to light as well as a summation of concrete
5 evidence in support of his view with report to reference, please."

STAFF SGT. WHEATON

7 Yes, sir, My Lord. Where is that?

MR. CHAIRMAN

9 You'll find that on page 58. I'm referring again to
10 Superintendent Vaughan's memorandum.

STAFF SGT. WHEATON

12 Oh, yes, I see it now, yes.

MR. CHAIRMAN

14 And my understanding is that a copy of that memorandum
15 reached your hands.

STAFF SGT. WHEATON

17 Yes, My Lord.

MR. CHAIRMAN

19 And that your memorandum of 86 07 14 is in response.

STAFF SGT. WHEATON

21 That's correct, My Lord, yes.

MR. CHAIRMAN

23 Now, the one thing I don't see you dealing with here is the
24 first comment of Superintendent Vaughan in paragraph 2 where
25 he says,

1 I also wonder why he would now make a
2 recommendation that Chief MacIntyre
3 should be charged criminally with
4 counseling perjury as over three years
5 have elapsed and any prosecution action
6 could fail due to the Charter of Rights.
7 Why if he felt prosecution should be
8 entered did he not make the
9 recommendation in his report dated 83 05
10 30?

11 Now, I can't find, but I may have missed it, in your report, your
12 response report of 86 07 14, I wish they'd use months. But
13 anyway, I suppose, that would be too... Any response to that
14 query of Superintendent Vaughan's. As to why earlier you hadn't
15 made that recommendation to your superior officers.

16 STAFF SGT. WHEATON

17 Why I hadn't earlier made it?

18 MR. CHAIRMAN

19 Yes.

20 STAFF SGT. WHEATON

21 Well, I think the problem Superintendent Vaughan had in
22 that and I perhaps should have, undoubtedly I should have
23 addressed it. I agree with you that is based on what I see here
24 today does not appear to be addressed, is that I had made my
25 recommendations back earlier to his...to Superintendent Christen,
26 who was the CIB officer during...

27 MR. CHAIRMAN

28 These were verbal recommendations.

1 STAFF SGT. WHEATON

2 Yes, My Lord, Yes.

3 MR. CHAIRMAN

4 I would have thought then that you...the very simple answer
5 to that would have been, to Superintendent Vaughan, I did indeed
6 recommend that criminal charges be laid in 1983 to your
7 predecessor Superintendent Christen.

8 STAFF SGT. WHEATON

9 That's correct, My Lord. Yes, I should have included a
10 sentence to that effect. I did not. And, I did not deal with the
11 Charter of Rights aspect of it...

12 MR. CHAIRMAN

13 Oh, yeah, well, the Charter of Rights, yes. I don't think that's
14 in our terms of reference.

15 STAFF SGT. WHEATON

16 But I see your point and I concur.

17 MR. CHAIRMAN

18 We're doing our bit to keep the legal profession going, we
19 don't want to add the Charter of Rights to it. Carry on, Mr...

20 MR. ORSBORN

21 Thank-you, My Lord.

22 Q. Did you have occasion to discuss your opinions with
23 Superintendent Vaughan after you submitted your report?

24 A. Sometime after I submitted this report Superintendent
25 Vaughan called me up to his office and said that he had been

1 in correspondence with the Attorney General's Department
2 and that there would be no further investigation and this was
3 based on a decision between he and Mr. Gordon Gale.

4 Q. That, I believe, was conveyed perhaps to Mr. Gale in a letter
5 by Superintendent Vaughan found at page 72 of this volume,
6 and I appreciate it's not your letter. I will simply ask you to
7 indicate whether or not you share some of the opinions in
8 that...in that letter. Page 72, the second paragraph says,

9
10 Regrettable your suggestion of 82 05 20 to
11 hold the matter in abeyance was
12 unintentionally misinterpreted to mean
13 that the investigation from a police
14 perspective should be stopped. For your
15 information and record purposes I have
16 found no evidence whatever to support
17 such an interpretation. I fully appreciate
18 that the suggestion you made to hold the
19 matter in abeyance was related to events
20 occurring at the time, back in 1982,
21 consideration of an inquiry, et cetera. It
22 should not have been construed in any
23 way as precluding a police investigation at
24 a later date if such was deemed necessary
25 and warranted.

20 Was that your understanding of the reasons why you did not
21 interview Detective Urquhart and Chief MacIntyre in 1982?

22 A. No, it was not, sir.

23 Q. Do you have any idea where Superintendent Vaughan may
24 have attained this information?

25 A. The only place I could think of would be from Mr. Gordon

1 Gale.

2 Q. A small point on page 74, Staff Wheaton, in paragraph A of
3 that page. It says, "MacIntyre and his investigators certainly
4 had grounds to suspect Marshall in that during the previous
5 year he had been picked up on seven different occasions in
6 the park area where Seale was murdered." Is that accurate?

7 A. Not to the best of my knowledge.

8 Q. It may be helpful to refer back to page 23 of this volume,
9 which would be Inspector Scott's report of June, 1983. At the
10 bottom of that page Inspector Scott writes, "Had Marshall not
11 been a young person with a record charged seven times by
12 the Sydney City Police between June 12, '70, and May, 1971,
13 and had been suspected of other types of offences that had
14 occurred in the park and at a nearby cemetery..." That is not
15 quite the same as saying that Marshall had been picked up on
16 seven different occasions in the park area, is it?

17 A. That is correct, and furthermore, the charges that were laid
18 against Marshall by and large were dismissed.

19 MR. CHAIRMAN

20 Page 73, Mr. Orsborn, the last sentence in one, (i).

21 MR. ORSBORN

22 Yes, My Lord.

23 MR. CHAIRMAN

24 I'd like to hear whether Sergeant, Staff Sergeant Wheaton
25 agrees with that comment by Superintendent Vaughan.

1 MR. ORSBORN

2 The last five lines.

3 STAFF SGT. WHEATON

4 On page 73.

5 MR. ORSBORN

6 Q. Page 73.

7 A. Starting "In essence".

8 Q. Paragraph (i).

9 A. Paragraph (i).

10 Q. And the third paragraph of that starting "In the
11 correspondence referred to." And this is correspondence
12 presumably around 1983 when you were asked to look at the
13 improper police practises or procedures. "Police managers
14 involved in the review of this matter make no suggestion
15 whatever that MacIntyre or Urquhart may have counseled
16 perjury." Is that so?

17 A. Well, I think if you read the fine line of that he may be right.
18 I don't know without taking and comparing two. But one...all
19 I can say is if that is correct one would have to look at the
20 guidelines we were given to speak of proper police
21 procedures, improper police procedures, not counseling
22 perjury.

23 MR. CHAIRMAN

24 Could you satisfy my curiosity, Staff Sergeant Wheaton, as to
25 what is meant by "police managers"? That phrase seems to be

1 new.

2 STAFF SGT. WHEATON

3 Police managers, My Lord, would be, in my interpretation
4 would be an officer or NCO in charge of a unit. He would then be a
5 manager of his unit. And in RCMP terminology would be called a
6 police manager.

7 MR. CHAIRMAN

8 Not a police officer charged with the management of a
9 particular investigation.

10 STAFF SGT. WHEATON

11 No, sir, that's just the way the Mounted Police is. It would
12 generally be a person in charge of a unit.

13 MR ORSBORN

14 Q. And while you did not make that suggestion in so many
15 words in 1983, I would be correct that in the document, the
16 1986 documentation we have just looked at, that suggestion
17 was certainly made by yourself.

18 A. Yes, sir. And in the short interview we had with the officer
19 commanding when this whole thing first come up, I expressed
20 that view to Superintendent Vaughan.

21 Q. Okay. Thank-you.

22 A. And I certainly expressed it in our interview in his office
23 after he told me that there was...would be nothing done on
24 this matter.

25 Q. On page 74 the paragraph following iii, towards the top of the

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 page, Superintendent Vaughan states, "I share the view that
2 this is a classic case of policemen focusing their efforts on one
3 suspect to the exclusion of all other possibilities. This I
4 submit reflects poor judgement rather than conduct involving
5 criminal acts. Do you share that opinion?

6 A. No, I do not.

MR. ORSBORN

8 My Lord, it's twelve-thirty. My estimates of the time to
9 complete Staff Sergeant's testimony continually expand. I'll
10 probably be another fifteen minutes to thirty minutes so it may
11 be an appropriate time to quit.

MR. CHAIRMAN

13 For the benefit of counsel we adjourn this afternoon at 3:30
14 sharp.

15 LUNCH BREAK - 12:28 p.m.

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