

1 MR. LAFOSSE

2 My Lords, my name is Guy LaFosse and I'm representing
3 Sergeant Herb Davies, Mr. Ross has agreed that I would precede
4 him in these questionings.

5 MR. CHAIRMAN

6 In place of Mr. Ross.

7 MR. LAFOSSE

8 Pardon me.

9 MR. ROSS

10 No such luck, My Lord, I was pre-empted by Commission
11 counsel really.

12 MR. CHAIRMAN

13 All right, Mr. LaFosse.

14 MR. LAFOSSE

15 Thank-you, My Lord.

16 EXAMINATION BY MR. LAFOSSE

17 Q. Staff Sergeant Wheaton, when you were assigned to the
18 reinvestigation of the Marshall Inquiry was your main
19 assistant in Sydney at that time Corporal James Carroll?

20 A. Yes, sir.

21 Q. And at that stage Herb Davies was with the Customs and
22 Excise section, is that correct?

23 A. That is correct, sir.

24 Q. And throughout when you were taking statements, et cetera,
25 that the main individual that went with you was Corporal

1 James Carroll, is that correct?

2 A. Yes, sir.

3 Q. And so as I understand your evidence the only time that you
4 actually went with Herb Davies was when you met with Chief
5 MacIntyre in April of 1982, is that correct?

6 A. To the best of my recollection, yes, sir.

7 Q. Is there any particular reason why when you met with Chief
8 MacIntyre in April of 1982 that you didn't take Jim Carroll
9 with you?

10 A. I don't believe he was there that morning, sir.

11 Q. I see.

12 A. Or that afternoon rather.

13 Q. And, it's your recollection, is it not, that the reason you went
14 down that particular day, April 26, 1982, was that you had
15 received the letter from the Attorney General.

16 A. That's right. And an appointment had been made for me to
17 go at that time.

18 Q. And that letter is in as an exhibit and it's dated the 20th of
19 April, is that correct?

20 A. Yes, sir.

21 Q. Okay. Was there any particular reason why you took Corporal
22 Davies with you as opposed to any other member of the
23 RCMP?

24 A. Corporal Davies was in charge of my customs and excise
25 section. I would have been his immediate superior and I feel

1 him to be a very capable officer and I took him rather than
2 one of the constables.

3 Q. And what role did you envision that Corporal Davies would
4 have when he went down to meet with Chief MacIntyre and
5 yourself?

6 A. As an observer and a witness.

7 Q. Did you ask him at any time, prior to going down, to make
8 notes of the meeting that you had with Chief MacIntyre?

9 A. No, I did not, sir.

10 Q. After you had the meeting with Chief MacIntyre did you
11 request Corporal Davies to make any notations of what had
12 occurred at that meeting?

13 A. No, I did not, sir.

14 Q. And, at any point in time have you ever asked Mr. Davies to
15 supply any reports to the RCMP or to the Attorney General's
16 Department about the incident?

17 A. No, I have not, sir.

18 Q. Is there any particular reason why you didn't do that?

19 A. I wrote the reports while I was stationed in Sydney. I can't
20 recall just when, I know Sergeant Davies was transferred to
21 St. Peter's and I just...I don't know if it was at that time. He
22 may have left even. I don't know. He may have still been
23 there. But in any event, I did not ask Sergeant Davies to
24 write any notes or make any reports rather, excuse me.

25 Q. So, it's your clear recollection, though, that before you met

1 with Chief MacIntyre that you had reviewed the Attorney
2 General's letter of April 20th, 1982, with...

3 MR. PUGSLEY

4 I do object to my friend cross-examining this witness. I think
5 it's inappropriate for a person who is aligned very much with
6 Corporal or Staff Sergeant Wheaton for counsel to be cross-
7 examining, I think it would be appropriate only for him to adduce
8 evidence-in-chief if he wished to do so. In the same way when
9 Mr. Urquhart, or Detective Urquhart, gets on the stand I do not
10 propose cross-examining him. I don't think that would be...be
11 appropriate at all. So, I would request and, ah, Your Lordship's
12 guidance on whether or not it is appropriate for Mr. Davies'
13 counsel to cross-examine Staff Sergeant Wheaton.

14 MR. CHAIRMAN

15 It's appropriate as it relates to only...only to the activities of
16 his client with relation to this inquiry.

17 MR. PUGSLEY

18 It's not so much the topic. It's the manner in which the
19 questioning occurs, My Lord. I object to the cross-examination,
20 putting words in the witness' mouth.

21 MR. CHAIRMAN

22 The last question.

23 MR. PUGSLEY

24 Yes. It's distinct from examining in chief.
25

1 MR. LAFOSSE

2 Fine. My Lord, I will change the manner of the question but I
3 will certainly stick with the topic of that particular meeting.

4 MR. CHAIRMAN

5 As it relates to your client.

6 MR. LAFOSSE

7 That's correct, My Lord.

8 MR. CHAIRMAN

9 All right.

10 MR. LAFOSSE

11 Q. Now, Staff Sergeant, when you went down do you recall what
12 first occurred when you went into the Chief's office when...in
13 respect to Herb Davies?

14 A. I introduced Herb Davies to the Chief and I believe they
15 shook hands.

16 Q. Okay. Now, you've introduced an exhibit which showed the
17 seating arrangement in the Chief's office.

18 A. Yes.

19 Q. On the day in question, is that correct?

20 A. Yes, sir.

21 Q. Now, in terms of what Sergeant Davies was able to see, would
22 you agree with me that he would be the best person to be
23 able to say what he was able to observe as opposed to
24 yourself?

25 A. That's correct.

1 Q. Okay. And as I recall your evidence...

2 MR. PUGSLEY

3 That's awfully close...

4 MR. CHAIRMAN

5 That's not far removed from your last question.

6 MR. LAFOSSE

7 I agree.

8 MR. PUGSLEY

9 It's leading too, I would think, is it not?

10 MR. CHAIRMAN

11 It might be far more appropriate to...well, anyway the
12 damage is done. But the way you should have asked that...put
13 that question was...was Corporal Davies in a position where he
14 could see the...what, any activities going on in the room,
15 particularly as related to the...to Sergeant ...or MacIntyre.

16 MR. LAFOSSE

17 Thank-you, My Lord.

18 Q. You've indicated in the sketch that was supplied that Sergeant
19 Davies was seated to Chief MacIntyre's right, is that correct?

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

21 Q. And from where Sergeant Davies was located in the room
22 would he be able, from what you could observe of him, to
23 have a view of what Chief MacIntyre was doing?

24 A. Yes, sir.

25 Q. Okay. And what, in fact, did Sergeant Davies say to you as

1 you were leaving the room that day?

2 A. He said, "Staff, he slipped something on the floor," or, "He
3 slipped papers on the floor," words to that effect.

4 Q. I see. And after he said that what did you then next do?

5 A. I then turned and went back in the room and the Chief had
6 started to leave the room with us and was just a couple or
7 three steps behind me still in the office, and I said, "Chief," it
8 was then, "Corporal Davies says that you slipped something
9 on the floor."

10 Q. And the Chief's response to that was what?

11 A. Well, there was a period of staring at one another. His facial
12 expression changed, hardened, he became red in the face, he
13 turned back to the desk and said, "Well, you may as well have
14 it all." or something like that and as he said he started
15 walking toward the desk. The desk was enclosed in the in
16 front and the sides and I couldn't see if he...he went to, facing
17 the front of the desk, the left side where Corporal Davies had
18 been sitting, and went around behind it and leaned over and
19 picked up a piece of paper. He would have been maybe two
20 or three steps from the desk.

21 Q. Now, when you say he leaned over and picked something up,
22 did you actually observe him pick something up?

23 A. I was right behind him, sir, yes, and I saw it as it come up off
24 the floor in his hand.

25 Q. So, you're saying he took something off the floor.

1 A. Took a piece of paper off the floor.

2 Q. I see. Okay. Do you know of any reason why Herb Davies
3 would tell you that the Chief had slipped something on the
4 floor if that wasn't true?

5 MR. PUGSLEY

6 I object. Surely My Lord [inaudible] how would this witness
7 possibly know that.

8 MR. LAFOSSE

9 Fine. My Lord, I'm asking whether he would know...

10 MR. CHAIRMAN

11 I...

12 COMMISSIONER EVANS

13 Leave something for us to assess.

14 MR. CHAIRMAN

15 That's right.

16 MR. LAFOSSE

17 Okay.

18 MR. CHAIRMAN

19 I think that...

20 MR. LAFOSSE

21 I'll approach it from a different vein, My Lord.

22 MR. CHAIRMAN

23 No. I'm not sure you're going to approach it from any way.
24 I've suggested that that's not an appropriate question, because
25 that witness is not in a position to give that opinion. And my

1 understanding from the list of witnesses is that Corporal Davies
2 will be called.

3 MR. LAFOSSE

4 That's correct, My Lord.

5 MR. CHAIRMAN

6 And that's an appropriate question to put to him, or at least it
7 is something for us to decide.

8 MR. LAFOSSE

9 Okay.

10 Q. Staff Sergeant Davies or Wheaton, have you ever heard
11 Corporal Davies, now Sergeant Davies, criticizing the Sydney
12 Police Force at any time?

13 A. No, sir, I have not.

14 Q. At any time have you ever heard Sergeant Davies criticizing
15 John MacIntyre?

16 A. No, sir, I have not.

17 Q. Do you know from any discussions that you've had with
18 Sergeant Davies whether he has any axes to grind with Chief
19 MacIntyre?

20 MR. CHAIRMAN

21 That's the same sort of question again, whether he has any
22 axes to grind. How does he know? Probably doesn't even know if
23 he has an axe or a grindstone. Now, that's not an appropriate
24 question.

25

1 MR. LAFOSSE

2 My Lord, I think just from the point of view of conversations
3 that he would have had with Sergeant Davies as to whether or not
4 Sergeant Davies ever indicated any animosity towards the Chief.

5 MR. CHAIRMAN

6 That's...yes, and you've already put that question in another
7 way. You've asked him if "You've ever heard him say anything
8 critical of Sergeant Detective MacIntyre or Chief MacIntyre," and
9 the answer is "No."

10 MR. LAFOSSE

11 Okay. Fine.

12 MR. CHAIRMAN

13 His answer is "No".

14 MR. LAFOSSE

15 Q. Now, Staff, in terms of setting the date of when this matter
16 actually occurred you're saying that you had read the letter of
17 April 20th before going down with the Chief, is that correct?

18 A. Yes, sir.

19 Q. Okay. What other particulars do you have that establishes in
20 your mind that it was April 26th, 1982, as opposed to the
21 16th of April?

22 A. There is a report of mine, I believe that's dated the 4th of
23 May in which I state that I...in that report to my superiors
24 that the file was handed over to me by the Chief on the 26th
25 of April, 1982, in preparing for court. I've reviewed the file

STAFF SGT. WHEATON, EXAM. BY MR. LAFOSSE

1 held at our division on this matter. I find that the letters sent
2 to Chief MacIntyre and the Mayor of Sydney were dated the
3 20th. There was a covering letter from the Attorney
4 General's Department to our office in Halifax dated the 21st
5 actually and it is also stamped as being having mailed to
6 Sydney on the 23rd. Now, the time it was received, how I
7 received it, I don't know. But I know I had it and I had
8 it...and I showed it to Corporal Davies before going down there
9 and I feel in my mind that it was the 26th.

10 Q. And the list of documents that the Chief gave you in the office
11 that day that is dated what?

12 A. That is dated the 26th, sir, of April, 1982.

13 Q. And I believe Exhibit 88A that you gave to Corporal, now
14 Sergeant Carroll, that was given to him on what date?

15 A. The 27th, the following day, sir, and it is dated and signed by
16 myself and dated and signed by...initialed by Corporal Carroll.

17 MR. LAFOSSE

18 Those are all the questions I have, thank-you.

19 MR. CHAIRMAN

20 Mr. Ross.

21 EXAMINATION BY MR. ROSS

22 Q. Staff Sergeant Wheaton, my name is Anthony Ross and I'm
23 going to be asking you some questions on behalf of Oscar
24 Seale, and I will also be asking you some questions on behalf
25 of the Black United Front. I take it, sir, that you got involved

1 in this matter formally in February of 1982.

2 A. Yes, sir.

3 Q. And prior to that time did you have any understanding with
4 respect to the circumstances of the death of Sandy Seale?

5 A. No, sir.

6 Q. To address something quite general, in your testimony here
7 before this Inquiry you advanced the proposition that certain
8 people...that Sergeant MacIntyre should be charged with
9 perjury. Am I correct with that?

10 A. Yes, sir.

11 Q. Is it your policy, or your proposition, that everybody who lies
12 to this Inquiry should be charged with perjury?

13 A. It's...if a person lies on the stand and it can be proven, yes, he
14 could be charged with perjury, sir.

15 Q. And the same thing if the person lied before the Supreme
16 Court or any other court, lied under oath.

17 A. Yes, sir, yes, sir.

18 Q. Yeah. I see.

19 A. If there is sufficient evidence to establish it.

20 Q. Now, one other matter which is quite general before I get to
21 the specifics with respect to Sandy Seale. Is it fair to say that
22 you became quite incensed as a result of your investigation of
23 the apparent injustices resulting from the activities or the
24 incident of May, 1971, and by that I mean the stabbing of
25 Sandy Seale and what transpired thereafter?

1 A. Incensed.

2 Q. Yes.

3 A. It was another difficult...or a case that I was investigating and
4 I approached it in as a professional manner as I could. I don't
5 think incensed would be the right word for it.

6 Q. I see. But you had some concerns.

7 A. Oh, yes, sir.

8 Q. And did these concerns go as far as whether or not this
9 matter would be just shunted aside as a result of stonewalling
10 or something within the bureaucracy?

11 A. You mean as I went...progressed through the investigation.

12 Q. Yes.

13 A. I became frustrated, I must admit, toward the end of it, yes,
14 sir.

15 Q. Could you tell me whether or not this had anything at all to
16 do with your granting interviews to people from the press?

17 A. It would be a factor, I would suppose, yes, sir.

18 Q. Sure. Okay. Now, let's get back to Sandy Seale for a minute.
19 You had an opportunity to review the investigation which was
20 directed by John MacIntyre.

21 A. Yes, sir.

22 Q. And you had an opportunity to read the statements that were
23 collected by him.

24 A. Yes, sir.

25 Q. And I take it from your testimony that you put these really in

1 two categories, a category which you classified as being quite
2 relevant and other ones which was peripherally relevant.

3 A. Yes, sir.

4 Q. Now, there was a statement of Keith Beaver and the same
5 applied to Alanna Dixon and Karen MacDonald.

6 A. Yes, sir.

7 Q. Were these in the relevant or the peripherally relevant
8 categories according to your terms of reference?

9 A. There are three different people, sir. I gave them what
10 importance I felt that I should place on them. I don't know if
11 I can categorize relevant, irrelevant, peripheral, they all
12 meshed into a jigsaw puzzle, if you will.

13 Q. Sure. Well, perhaps I will deal with them one by one. Did
14 you speak to Keith Beaver personally in your investigation in
15 1982?

16 A. My investigation in 1982 I don't believe I did, sir.

17 Q. Do you know whether or not anybody under your direction
18 spoke to Keith Beaver in your reinvestigation of 1982?

19 A. I believe Keith Beaver is...I know he's a member of the Royal
20 Canadian Mounted Police and he prepared his own statement
21 and sent it to me. I believe I talked to him on the phone, sir.

22 Q. What about Alanna Dixon? Did anybody try to speak to her?

23 A. I don't know, sir. You'd have to refresh my memory with her
24 '82 statement if there one. I can't recall.

25 Q. No, my understanding is that there was not an '82 statement.

1 | There was a statement back in 1971.

2 | A. Yes, sir.

3 | Q. And you did not speak to Alanna Dixon.

4 | A. I have no independent recollection of it, sir.

5 | Q. And Karen MacDonald. I'm going to suggest that you did not
6 | speak to her either.

7 | A. If it's not here, sir, I did not speak to her then.

8 | Q. But you would agree that from the statements that they gave
9 | to Sergeant MacIntyre back in 1971 these would have been
10 | the last three people not involved in any way in this incident
11 | who saw Sandy Seale alive? Sorry, prior to being stabbed.

12 | A. That could be, sir, I don't know.

13 | Q. As a matter of fact there is the evidence of Keith Beaver. Did
14 | you attend his testimony in Sydney?

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

16 | Q. Well, his evidence is that he left the dance and Sandy Seale
17 | was with him and they parted company just outside Pollett's
18 | Drug Store on the corner of Argyle and George.

19 | A. Yes, sir.

20 | Q. Is...was this your understanding...

21 | A. I have, yes, sir.

22 | Q. Yeah. And did you speak to Marvel Mattson?

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

24 | Q. Did you review Marvel Mattson's statement?

25 | A. Yes, I did, sir.

1 Q. Did you know who took Marvel Mattson's statement?

2 A. It was taken by the Sydney City Police in 1971. I don't recall.

3 Q. Perhaps you should stop and think about it before you
4 answer. If you don't know, just say you don't know.

5 A. No, I don't have...it's five, six years ago. I don't have any
6 independent recall of talking to Marvel Mattson myself, sir. I
7 may have phoned him. I don't recall interviewing himself.

8 Q. But his evidence was to the effect that he prepared his own
9 statement...

10 A. He may very well have.

11 Q. ...and sent it into the Sydney Police.

12 A. Yes, sir.

13 Q. Did you review that statement?

14 A. I probably did at the time, yes.

15 Q. I see. Well, if you did the statement discloses that
16 Mr.Mattson was on his way up to bed, having looked at
17 television, and it was ten minutes to twelve when outside of
18 his window he heard discussion about a stabbing. Did you
19 read that?

20 A. Yes, sir.

21 Q. So, then his further evidence would lead one to conclude that
22 the discussion was between Marshall and Maynard Chant.

23 A. Yes, sir.

24 Q. Did you understand that to be the circumstances?

25 A. Yes, sir.

1 Q. Yes. Then I would take it then that you would agree that it
2 would take some time for Marshall and Chant to get to be in a
3 position outside the window of Mattson's.

4 A. Yes, sir.

5 Q. But if we even forget about the time, we've got a maximum of
6 five minutes for Mr. Seale to leave Keith Beaver and Alanna
7 Dixon and Karen MacDonald.

8 A. Yes, sir.

9 Q. And to meet Marshall.

10 A. Yes, sir.

11 Q. And to be seen by Harriss.

12 A. Yes, sir.

13 Q. And to get stabbed.

14 A. Yes, sir.

15 Q. And all of this is...the stabbing is outside of the view of
16 Harriss. She would have had an opportunity to leave the
17 area.

18 A. Yes, sir.

19 Q. And for Marshall to leave the general area and to meet with
20 Chant.

21 A. Yes, sir.

22 Q. And then to go and be outside Mattson's house.

23 A. Yes, sir.

24 Q. All of that in five minutes. Doesn't that seem like a lot to
25 happen in five minutes?

1 A. Well, it's been my experience, sir, that people don't look at
2 their watches. I do agree with you, though, it would have all
3 happened within a short sequence of time.

4 Q. And would you agree with me further that the Sydney Police
5 should have looked closely at what happened in that five
6 minutes in an attempt to determine properly what happened
7 to Sandy Seale?

8 A. Yes, sir.

9 Q. As a matter of fact, after the stabbing, which was around
10 midnight on the Friday night.

11 A. Yes, sir.

12 Q. Up to the following evening.

13 A. Yes.

14 Q. All that one had onhand was a stabbing, wasn't it?

15 A. Yes, sir.

16 Q. And I take it that you would agree with me that if it did not
17 result in a homicide, if the person survived, he would be able
18 to give the best evidence of who handled the knife.

19 A. Oh, definitely, sir, yes.

20 Q. Yes. And do you think it would have been appropriate police
21 procedure for somebody to visit with the doctor and try to
22 determine what were the guy's chances of pulling through?

23 A. Yes, sir.

24 Q. And with that they would have some idea of the scope of the
25 investigation to be concluded.

1 2:27 p.m.

2 A. All right.

3 Q. Can you agree with me that as far as the investigation in
4 1971, and I mean the June 1971 investigation is concerned,
5 would you agree with me that it could be classified as being
6 totally bungled by many people without any common-sense
7 of direction stumbling over each other?

8 A. It was not handled well, sir. I hate to use strong terminology
9 like "totally bungled" but it was not handled properly and I
10 think the facts speak for themselves, sir.

11 Q. Now would you agree with me, sir, that if it was that the
12 Sydney Police in 1971 in June could properly trace the steps
13 of Sandy Seale and the steps of Junior Marshall...

14 A. Yes, sir.

15 Q. That there would have been some definite knowledge of the
16 circumstances of the death of Sandy Seale?

17 A. Tracing the steps was important. That would be an important
18 part of the investigation.

19 Q. And from your review, are you satisfied that that was not
20 done in June of 1971?

21 A. Well there were a goodly number of statements taken. They
22 were taken a few days afterwards but there was steps taken,
23 it was proven who was, there was quite a number of people
24 interviewed. It was established that a white-haired man
25 wearing a Burberry and what have you, was in the Park.

1 There was a MacDonald chap and his girlfriend, I believe.

2 There was a number of people interviewed by the Chief and it
3 was not done immediately after but there was, it wasn't as if
4 he didn't do anything, sir. And I don't know if that's what
5 you're trying to imply or...

6 Q. I am suggesting to you, sir, that enough was not done to
7 properly establish the circumstances which surrounded the
8 death of Sandy Seale. That's what I'm suggesting, do you
9 subscribe to that?

10 A. Yes. Yes, sir, I do.

11 Q. And that was the condition which existed and continued
12 through 1971 in spite of an RCMP review in November.

13 A. Yes, sir.

14 Q. So that up to November, up to the time of sentencing of
15 Donald Marshall first time around, there was no
16 understanding of what really led to the death of Sandy Seale.
17 There were conclusions jumped to which were not supported.

18 A. Well not now. At that time they were and there were two
19 eyewitnesses and so on and...

20 Q. Sure. I'm going to get to those.

21 A. Yes, sir.

22 Q. But with the benefit of hindsight it appeared as though Sandy
23 Seale just got stabbed and as a result of that he died.

24 A. He was coming from a dance and got stabbed and died. Yes,
25 sir.

1 Q. And I take it that when Al Marshall went in and took a
2 second look he did nothing at all to, again, trace the steps of
3 Sandy Seale to find out happened and why he was stabbed.

4 A. That's correct, sir.

5 Q. And, further, this matter was looked at by the RCMP again
6 through the eyes of Gary Green sometime in 1974 and, again,
7 nobody worried about trying to determine what happened to
8 Sandy Seale. What were his movements and how and why he
9 got stabbed. Is that correct?

10 A. By Gary Green, no, sir. That's correct.

11 Q. And I guess it's fair to say also that as far as Eugene Cole is
12 concerned, it was the fourth look at this same file with
13 nobody looking at what happened to Sandy Seale.

14 A. I believe you're correct. I wasn't here for his evidence and I
15 never, didn't really know about Gene Cole until recently.

16 Q. I see. So then, is it fair to say that after the investigation of
17 1971, the summer of 1971 just as it was, when this matter
18 was then readied to go to court that based on the information
19 that was put before the court, all intents and purposes, the
20 decision that was arrived at was to a large degree consistent
21 with the information that was before the court rather than
22 consistent with truth.

23 A. It would be consistent with the information as the jury heard
24 from the witnesses, sir.

25 Q. In your view as an investigator how important is it to attempt

1 to tie down specific timing as much as possible?

2 A. One endeavours to do that as much as possible, yes, sir.

3 Q. I think it would be quite important, wouldn't it.

4 A. Yes it is, sir.

5 Q. Especially in a situation where you've got a stabbing that
6 turns into murder.

7 A. Yes, sir.

8 Q. So that when the Sydney Police had information that Sandy
9 Seale was with friends at quarter to twelve and from the time
10 that we're given, that he's already stabbed, by ten minutes to
11 twelve ...

12 A. Yes.

13 Q. Some effort should have been made to tie down those times.

14 A. That's correct, sir. Now in all fairness, I don't think I have a
15 privy to everything that was done by the Sydney City Police
16 either. They may have done as I did. Go to the bus station
17 and made no note of it. I don't know on doing things like
18 that. I just don't know.

19 Q. Yes, sir. I appreciate you don't know. But isn't it a part of ...

20 A. But I agree with you, yes.

21 Q. Isn't it part of a good investigation to know?

22 A. Yes.

23 Q. So there's really no excuse that nobody...

24 A. No.

25 Q. That somebody is going to say he doesn't know.

1 A. That's right. Yes, sir.

2 Q. Surprise me. And then as far as the November investigation
3 is concerned, this was the first time that there was any
4 suggestion of a robbery theory, is that your recollection?

5 A. It, you're referring to my 1982 investigation, sir?

6 Q. Yes. I understand that you reviewed what happened....

7 A. Yes.

8 Q. In 1971. Am I correct...

9 A. I just thought you said November is all. I'm sorry. It was
10 February when I started and, yes, that was, I believe, the first
11 suggestion of a robbery.

12 Q. That was in 1971 as a result of the MacNeil statement.

13 A. Oh! I'm sorry...

14 Q. The Jimmy MacNeil statement.

15 A. I was, yeah, I'm sorry, sir. Now you're talking when Mr.
16 MacNeil came forward to the City police.

17 Q. Sydney Police, yes.

18 A. Yes, sir.

19 Q. And at that time the Sydney Police rejected his information
20 just about out of hand, sorry. At that time the Sydney Police
21 turned him out...

22 MR. PUGSLEY

23 That's not the evidence before...

24 CHAIRMAN

25 No, the evidence you'll recall is that the Sydney Police

1 consulted Mr. Matheson...

2 MR. ROSS

3 That's exactly why there was this...

4 CHAIRMAN

5 And Mr. Matheson, and on their advice, Mr. Matheson asked
6 that another force was sent in.

7 MR. ROSS

8 That's very correct and that's what I was just about to say.

9 That's why I said sorry, it was turned over to the RCMP.

10 CHAIRMAN

11 Okay.

12 MR. ROSS

13 Q. And information of MacNeil was turned over to the RCMP.

14 A. That's correct, sir.

15 Q. And the RCMP, for all intents and purposes, rejected all that
16 he had to say but hung on to this robbery theory.

17 A. The RCMP, as I understand it, had Mr. MacNeil polygraphed
18 and Mr. Ebsary polygraphed and Inspector Marshall then
19 wrote a report and concluded the matter.

20 Q. Did you review that report?

21 A. Yes, I did, sir.

22 Q. Did you find any reasonable basis to adopt the robbery theory
23 from a review of that report?

24 A. No, I did not, sir.

25 Q. For all intents and purposes it appeared to be speculative?

1 Suspect?

2 A. Those, yes, those terms can be applied.

3 Q. Now when you became involved what, if anything, did you do
4 to try to really trace the steps of Sandy Seale in May of 1971?

5 A. I followed the lead of the Sydney City Police in that there was
6 documentation from them indicating that John Mallowney, a
7 Sydney City policeman, had been at the dance that night
8 acting in a capacity at the door and I believe an officer by the
9 name of LeMoine, I did not speak to LeMoine, I don't believe,
10 but Mallowney, and determined that Sandy Seale was there
11 and what had taken place at that dance. That he had tried to
12 get in one time through a window, another time by falsifying
13 the stamp on the back of his hand, and on the third occasion
14 Mr. Mallowney indicated, or Constable, member of the Sydney
15 City Police, indicated to me that he told him that if he tried
16 any more he was going to arrest him for being drunk in a
17 public place, sir. I then believe Constable Beaver either called
18 me or I, it came to my attention, and advised me of his
19 involvement in it and he prepared a statement for me and
20 sent it forth in which he was able to trace the steps of Sandy
21 Seale to a certain extent. There were, the girls you mentioned
22 I did not interview. I did some checking at the bus station. I
23 found it cost 50 cents at that time to go from Sydney over to
24 the area of his home. I was interested in that. I think that
25 would be about roughly it, sir.

- 1 Q. Well while you're speaking about this question of money,
2 wasn't it also, did you also check and find that there was
3 money enough to cover his bus fare in his pockets when his
4 body arrived at the, when he arrived at the hospital?
- 5 A. Yes, sir. And I also spoke to his parents about how much he
6 had when he left home, yes, sir.
- 7 Q. So then as far as the checking, tracing of the steps of Sandy
8 Seale is concerned, you traced it as far as was given to you by
9 Keith Beaver.
- 10 A. Yes, sir.
- 11 Q. And that would put him around Pollett's Drug Store around
12 quarter to twelve.
- 13 A. That is correct, sir.
- 14 Q. Did you do any checking thereafter?
- 15 A. Well, then of course, we had Mr. Marshall saying he met him
16 in the Park after that and I think that would be about it, sir.
- 17 Q. Did you do a background check on Sandy Seale?
- 18 A. Yes, I did, sir.
- 19 Q. And what did you find?
- 20 A. I found that he was a very good athlete. He was very well
21 respected and a fine young man.
- 22 Q. Anything at all, anything at all touching criminal activity?
- 23 A. No, sir.
- 24 Q. Nothing. Public mischief, nothing at all.
- 25 A. No, sir.

1 Q. Would you then agree that for him to have been involved in
2 this robbery would be highly unusual and substantially out of
3 character?

4 A. I would, sir.

5 Q. The kind of thing which requires, which would lead to further
6 investigation.

7 A. I beg your pardon, sir?

8 Q. The kind of information which would lead to further
9 investigation...

10 A. Certainly.

11 Q. Of a robbery charge.

12 A. Yes, sir.

13 Q. And what did you do about that?

14 A. I looked into it. I talked to the witnesses, Mr. Donald
15 Marshall, Jr., the other persons at the scene, Mr. MacNeil, Mr.
16 Ebsary. Tried to determine what, if any robbery existed here,
17 sir. And would you like me to go on and, you know, analyze it
18 the way I think?

19 Q. Please feel free.

20 A. Because of the way I looked it, what would I do if I went to a
21 Crown. I said to myself, "Was there a gun present?" "Was
22 there a knife present on Seale or Marshall?" "Were they
23 hiding in the bushes jumping on anyone?" "Did they have
24 masks?" I could not answer that they did any of these things.
25 "Was there any pre-determined plan?" In the background

1 investigation I did on Donald Marshall and Sandy Seale, there
2 did not seem to be a strong connection between the two of
3 them. They were not great buddies. They had met when Mr.
4 Marshall, Sr. had been working over at the Seale home. But
5 they weren't, say, in a teenage gang together or anything like
6 that. There didn't seem to be a strong connection. So I
7 analyzed the robbery, sir, yes, aspect of it.

8 Q. So you didn't find it a strong connection. Perhaps specifically
9 can you tell me the extent of the connection that you did find,
10 if any?

11 A. I found that, like I say, there was when Mr. Marshall, Sr. was
12 working in the Seale home. I believe it was drywalling, I'm
13 not positive.

14 Q. Around September of 1970?

15 A. Yes, it was something about a year prior to and I believe it
16 was Mr. Seale who told me they may have played hockey,
17 street hockey in the backyard or something like that. From
18 speaking to Donald Marshall, Jr., he said he knew Sandy Seale
19 but they weren't great friends they got that they had any
20 animosity or anything but they just, they knew of one and
21 other and that was about it as boys would.

22 Q. Just young people growing up in the same town knowing of
23 each other.

24 A. In the same small city, yes, sir.

25 Q. Did you read the decision of the Supreme Court, Appeal

- 1 Division on the reference?
- 2 A. Yes, sir, I did.
- 3 Q. Did you note that there was something...
- 4 A. I believe I did.
- 5 Q. In...
- 6 A. I was present. Sorry.
- 7 Q. Did you notice...
- 8 A. I can't be sure I read the reference. I was present when...
- 9 Q. Sure. You were present during the taking of evidence.
- 10 A. Yes, I was.
- 11 Q. But you do not recall whether or not you read the decision.
- 12 A. I can't honestly recall, no.
- 13 Q. As I recall in the decision of the Supreme Court, Appeal
- 14 Division on the reference matter, the court found based on the
- 15 evidence put before them that Marshall and Seale were
- 16 friends for three years, and as I recall, played hockey
- 17 together. Did you recall anything like that?
- 18 A. Friends for three years?
- 19 Q. Yes.
- 20 A. Close friends?
- 21 Q. Yes. Friends, I think. That is in the decision.
- 22 A. I don't recall that evidence being given at the reference.
- 23 Q. So then if, in fact, it appears in the decision it is something
- 24 that's not found on the evidence according to your
- 25 recollection.

STAFF SGT. WHEATON, EXAM. BY MR. ROSS

1 A. Nor, no, sir. Not according to my recollection of the
2 investigation I conducted at that time.

3 Q. Would it surprise you that that same type of evidence was
4 given by Donald Marshall...well in that evidence that same
5 statement was given to Donald Marshall. If you'd look in
6 Volume 35, page 81, paragraph three it reads: "The victim of
7 the crime was a black man who Donald Marshall knew."
8 Perhaps I could just read it for you. It's a short statement.

9 A. Yes, that would be fine, Mr. Ross.

10 Q.
11 The victim of the crime was a black man
12 and Donald Marshall knew the man quite
13 well for over two years prior to the
14 offence. They had played hockey together
15 on the same team.

16 Did Donald Marshall tell you that?

17 CHAIRMAN

18 What report are you reading from, Mr. Ross?

19 MR. ROSS

20 Volume 35, page 81, a report headed "Springhill Institution -
21 Case Conference on 1997 Marshall, Donald."

22 CHAIRMAN

23 Thank you.

24 MR. ROSS

25 Q. So this appears to be a statement of Donald Marshall. Is that
consistent with what he told you?

A. It was, you've lost me a little bit, sir. You say this was given

1 at the reference?

2 Q. No. I'm saying that this is a statement given by Donald
3 Marshall and the sense of this also appears in the decision at
4 the reference. It had to come from some place.

5 A. Yeah, I just don't know where it came from, sir.

6 Q. As far the background check on Donald Marshall is concerned
7 how extensive a check did you make?

8 A. Again, spoke to his parents, spoke to people in the community
9 a bit. I spoke to authorities at Dorchester Penitentiary of his
10 conduct in there for the 11 years that he was there. And that,
11 did a records check. That sort of thing, sir.

12 Q. I see. The statement that I just read to you was made in
13 1975, August 1975.

14 A. To whom, sir?

15 Q. The statement that I just read to you about Donald Marshall
16 and Sandy Seale being friends and playing on the same
17 hockey team.

18 A. Oh, I see.

19 2:47 p.m. *

20 Q. The statement that I just read to you was made in 1975,
21 August, 1975.

22 A. To whom, sir?

23 Q. The statement that I just read to you about Donald Marshall
24 and Sandy Seale being friends and playing on the same
25 hockey team.

1 A. Oh, I see.

2 Q. And that's not what Donald Marshall told you.

3 A. No, I can't recall him...as I recall he knew of him but not...they
4 weren't playing on the same hockey team.

5 Q. Also, as I look in the same volume, page 170, I read, and this
6 is the writing of T. Robichaud, M.A. Psychologist, and at page
7 170 this is what is reported, and speaking of Donald Marshall,

8
9 He continues to maintain his innocence. He
10 added that he had received information
11 three months ago which he referred to as a
12 leak in the bucket which will continue to
13 grow and will eventually exonerate him
14 from guilt. This information came about in
15 the following manner. His sister's
16 boyfriend was drinking with a black
17 individual in Halifax. As they were
18 drinking the black individual told his
19 sister's boyfriend of an incident in which
20 he, himself...an incident which he had
21 himself stabbed an individual some ten
22 years ago and another individual, an
23 Indian, had finished him off. He says that
24 the fact that there were two wounds in this
25 individual's story will exonerate him since
the pathology report indicated only one
stab wound.

21 Did Donald Marshall tell you about that story?

22 A. No, sir.

23 Q. I see. In Mr. Edward's notes there is reference to a guy by
24 the name of Brooks McGuire. Do you recall that name?

25 A. I recall that name coming up somewhere along the line.

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1 Q. Did you ever speak to Brooks McGuire?

2 A. No, sir.

3 Q. Mr. Edwards' note is Volume 17 and page 19 there's a note
4 February 3, 1983.

5 COMMISSIONER EVANS

6 What page?

7 MR. ROSS

8 Page 19.

9 COMMISSIONER EVANS

10 Thank-you.

11 MR. ROSS

12 Q. And it reads,

13
14 Brooks McGuire, Campbell Street, Age 28 -
15 17 years old in 1971. Was at dance (St.
16 Joe's) Common knowledge that M & S were
17 fighting that night though he did not see it.
Common knowledge that the two of them
hated each other, not best of friends.

18 Did you read that?

19 A. Yes, sir.

20 Q. Now, I'm going to refer you to another report and it's case
21 reference dated August, 1975. It appears in Volume 35 at
22 page 84.

23 MR. ORSBORN

24 I believe, My Lord, that's been distributed to counsel in
25 anticipation of the people from the correctional services providing

STAFF SGT. WHEATON, EXAM. BY MR. ROSS

1 their testimony. It was distributed to counsel for their
2 preparation, assuming that my friend is going to use it in his
3 examination of Staff Wheaton, it might be appropriate for to enter
4 it as an exhibit.

5 MR. CHAIRMAN

6 All right. That's exhibit what?

7 REGISTRAR

8 Will be Exhibit 112.

9 MR. CHAIRMAN

10 Thank-you. Exhibit 112, Volume 35.

11 * EXHIBIT 112 - CORRECTIONAL SERVICES RECORD ON DONALD
12 MARSHALL, JR., (Volume 35)

13 Q Page 85. Now, what I would ask you to note is that this
14 statement was given in 1975 according to Volume 35, page
15 84, and Brooks McGuire, the notes are made by Mr. Edwards
16 in February of 1983. And the emphasis is, and what I'm
17 going to try to establish, sir, is that what Brooks McGuire
18 appears to have been telling somebody as recorded by Mr.
19 Edwards' notes.

20 A. Yes, sir.

21 Q Is quite consistent to what Mr. Marshall was saying in 1975
22 and I just find...would like to find out whether or not you
23 knew of this and what you did about it, and here I go.

24 A. Well, I just...before...if that's what you're driving at. I was
25 not...I was not in Sydney in 1983, sir. I left in the later part

1 of June, first of July, 1982. I don't...

2 Q. I see. But at the same time you did a full and complete
3 investigation and I take it you would have had access to the
4 records from Correction Services.

5 A. I don't recall reading this. I read some case history, not these
6 conferences. No, I don't believe I've ever read these, sir.

7 Q. Is it fair to say that, well, perhaps I'll rephrase it. You never
8 had access to this material?

9 A. I don't recall reading this material, no, sir.

10 Q. So, I take it that you will find all of these statements quite
11 surprising and absolutely inconsistent with what you were
12 told by Mr. Marshall.

13 A. No, I don't find it...I have heard of the name Brooks McGuire
14 and it's my understanding that Corporal Carroll can speak to
15 it.

16 Q. Yes. But the statements that are made, do you find those
17 statements inconsistent with the information given to you by
18 Junior Marshall?

19 A. Yes, I do, sir.

20 Q. And as a matter of fact you attended...you attended the
21 Ebsary third trial?

22 A. Yes, I did. Am I finished with this, sir?

23 Q. No, just save it, we've got some more that I think we'll look at.

24 A. Yeah.

25 Q. You attended Ebsary last...the third trial.

1 A. Yes, sir.

2 Q. Perhaps you would look at Volume 9. Volume 9.

3 A. Page.

4 Q. As I look at pages 81 through 89 I will tell you what I gather
5 and if it's inconsistent with your recollection we can go
6 through the details. I take it that you were in court for
7 Donald Marshall's testimony.

8 A. On the third trial, yes, sir.

9 Q. Yes. You were there for his cross-examination by Mr.
10 Wintermans.

11 A. I believe I was, sir, yes.

12 Q. Did you hear him recant the statement that he gave to you in
13 Dorchester and said that he'd have to say anything to get out?

14 A. He may have said that, sir, I...could you refresh my memory
15 as...

16 Q. That would be quite sign...you don't recall at all, sir?

17 A. I don't recall any great recanting statement, no.

18 Q. I see. Perhaps then we can just go through page 81, down
19 around line 18 there's a quote that Mr. Wintermans refers
20 Donald Marshall to. It says, then further along in the
21 statement, quoting from the statement, and here's the quote,

22

23 I asked Sandy if he wanted to make some
24 money. He asked, 'How?' and explained to
25 him that we would roll someone. I had
done this before myself a few times. I
don't know if Sandy had ever rolled

STAFF SGT. WHEATON, EXAM. BY MR. ROSS

1 anyone before. We agreed to roll someone
2 and we started looking for someone to roll.
3 The first time I saw the two fellows we
4 later decided to rob was on the George
5 Street side of the park. The short old guy I
6 now know is Ebsary.

7 And his answer was, "That is not true." It was posed a
8 question, "That is not true," his answer was, "No". Then we go
9 over and Mr. Wintermans reads to him another section. At
10 page 85, line 4, Mr. Wintermans says,

11 I am going to read to you a couple of other
12 parts of your statement before I go any
13 further. Your testimony of last time, and I
14 ask you to comment on them. Further in
15 the RCMP statement you indicated, you
16 gave to the RCMP at Dorchester
17 Penitentiary the statement, the two guys
18 started to walk away from us and I called
19 them back. They then knew we meant
20 business about robbing them. I got in a
21 shoving match with the tall guy. Sandy
22 took the short guy. I don't remember
23 exactly what I said but I definitely
24 remember Ebsary, 'I've got something for
25 you,' and then the stabbing Sandy.

Mr. Wintermans then said,

Do you recall, you read that. I'd like you to
comment on whether or not it's true,

And he said "True or False" and the answer was, "It's not
true," did you read that?

A. Yes, I do, sir.

- 1 Q. That is a recanting of the statement given to you, isn't it?
- 2 A. Yes, sir.
- 3 Q. And you were in court for that.
- 4 A. I don't...it's new to me, sir, so I don't recall being present in
5 court. I think I would have remembered that.
- 6 Q. I see.
- 7 A. But I do remember meeting Mr. Marshall and his lawyer, Mr.
8 Cacchione there, and I do recall being there for some portion
9 of the trial giving evidence myself. But I really don't
10 remember that. But I...no doubt it's there.
- 11 Q. But it recants...
- 12 A. Definitely does, sir.
- 13 Q. ...the statement given to you.
- 14 A. Yes, sir.
- 15 Q. And if you did not have that statement that was given to you
16 in 1982, is it fair to say that unless for some reason there was
17 a similar statement that Mr. Marshall would still be in jail?
- 18 A. No, sir, that's... I don't believe fair to say.
- 19 Q. All right, then, okay. Then tell me about Patricia Harriss?
20 Would you agree that her testimony at the reference was
21 quite important to Mr. Marshall?
- 22 A. I believe it was, yes, sir.
- 23 Q. Were you at this Inquiry when Patricia Harriss gave
24 testimony?
- 25 A. Yes, sir, I believe I was.

8521 STAFF SGT. WHEATON, EXAM. BY MR. ROSS

1 Q. Did you read her testimony?

2 A. No, I did not. I listened to it.

3 Q. I see. Were you there when...

4 A. I don't recall reading it.

5 MR OUTHOUSE

6 My Lord, I just want to rise for a minute. I think the witness
7 has missed something. Mr. Ross' question was was the witness at
8 this Inquiry, not a the reference, but at this Inquiry.

9 STAFF SGT. WHEATON

10 Oh, I'm sorry.

11 MR OUTHOUSE

12 When Patricia Harriss gave evidence.

13 STAFF SGT. WHEATON

14 I thought...yes, I...

15 MR OUTHOUSE

16 I don't think he understood the question.

17 STAFF SGT. WHEATON

18 I misunderstood you, sir.

19 MR OUTHOUSE

20 He was not at this Inquiry.

21 STAFF SGT. WHEATON

22 I thought you were speaking of the reference.

23 A. No, I wasn't at this Inquiry, sir, when Patricia Harriss gave
24 evidence.

25 Q. Did you have a chance to read her testimony?

1 A. No, I have not, sir.

2 Q. Well, as I recall in her...after...as I recall in my cross-
3 examination of her I asked her plain and simply if she ever
4 knew Sandy Seale and she said, "No". I further asked her
5 "Isn't it true that everything you said about Sandy Seale now
6 or before is lies," you know what she said, "Yes". Lies. Would
7 that surprise you?

8 A. Well, no, if the woman said that she said it, sir.

9 Q. I see. And, if in fact she said it, then there is no real
10 importance to either of her statements given back in 1971,
11 were there?

12 A. I think it's rather important that she more people on Crescent
13 Street that night than just Sandy Seale or two...Donald
14 Marshall and another person. I think the crucial thing is she
15 saw a short white-haired man on that street roughly
16 answering the description of Mr. Ebsary.

17 Q. And I take it that that would go to the investigation of the
18 circumstances of the death of Sandy Seale?

19 A. That's right, sir, the actual person who did do it.

20 Q. Yes. And you will agree with me that their were quite a few
21 witnesses who gave statements who referred to this white-
22 haired man.

23 A. Yes, sir.

24 Q. So, the police had the information about the white-haired
25 man.

1 A. Yes, sir, in 1971.

2 Q. Therefore, they weren't getting anything new from Patricia
3 Harriss.

4 A. I beg your pardon?

5 Q. They were therefore not getting anything new from Patricia
6 Harriss.

7 A. Well, in a way, yes, sir, they were because she was talking to
8 Donald Marshall. I think as you pointed out earlier the timing
9 of it is very important and she was talking to Donald Marshall
10 just prior to and then he went back to the...this group of men,
11 one of whom was a little white-haired man. I think...my
12 memory may not serve me correctly, sir, but I don't believe
13 she identified Sandy Seale there that night in her statement
14 given to me or...one of those early statements.

15 Q. I see. Perhaps we'll look at that statement.

16 A. I think maybe the statement of the 17th.

17 Q. As I recall, Staff Sergeant Wheaton, in the first statement that
18 was given by Patricia Harriss, I think it was the 16th of June,
19 '71, '71, there was reference to four people.

20 A. Do you have the reference for that, sir?

21 Q. No, I'm speaking about that...I'll tell you which statement I'm
22 trying to talk about, the one which I understand was taken
23 from the floor.

24 A. The 17th, sir, yes.

25 Q. Yes.

1 A. Of June.

2 Q. Yes. The one that was not completed.

3 A. Yes, sir.

4 Q. There was reference to four people in that statement, am I
5 correct, is this your recollection?

6 A. Yes, I believe so, sir, but I...

7 MR OUTHOUSE

8 Perhaps, My Lord, if there's going to be any detailed
9 questioning on it it's only fair to the witness to show him the
10 statement.

11 3.02 p.m. *

12 MR. ROSS

13 Perhaps you'll be good enough to help me find it.

14 MR OUTHOUSE

15 Oh, I'm sorry, it's Volume 21 at page 129 is the first Patricia
16 Harriss statement.

17 MR. ROSS

18 60 and 63.

19 MR OUTHOUSE

20 Volume 21, I'm sorry.

21 COMMISSIONER POITRAS

22 Also, Volume 16 at page 63.

23 MR OUTHOUSE

24 Oh, I see, okay.

25

1 MR. ROSS

2 Q. Is it fair to say, sir, that as far as that statement is concerned,
3 the one that appears in Volume 16, page 63, the most that
4 Patricia Harriss could do is put Marshall at the scene with two
5 men matching descriptions of Ebsary and MacNeil?

6 A. That's correct, sir.

7 Q. And as a matter of fact it also puts Terry Gushue in the same
8 area giving a light to one of these men.

9 A. That's right, sir.

10 Q. And if, in fact, Patricia Harriss had been with Terry Gushue in
11 the presence of Junior Marshall and these two men, and that's
12 the extent of the population at that time, that would very...it
13 would border on the ridiculous for Junior Marshall and
14 anybody else to try to rob these same men, recognizing two
15 independent witnesses can put them together?

16 A. Could you give me that hypothesis again, sir, so I understand
17 it?

18 Q. I'm saying to you, sir, that if Patricia Harriss...

19 A. Yes, sir.

20 Q. ...could put Junior Marshall together with two people
21 matching the descriptions of Ebsary and MacNeil...

22 A. Yes, sir.

23 Q. That it would be bordering on the ridiculous for the same
24 Junior Marshall with or without company to even attempt to
25 rob these same people recognizing there are two eyewitnesses

1 who can put them together?

2 A. Yes, they would be in the general area.

3 Q. But that would be strange, wouldn't it?

4 A. It would be a poor time to be robbing someone when two
5 people were walking away from them.

6 Q. Precisely. Yes. So, we've got that strange situation and we've
7 got this problem with timing, we've got the squeaky clean
8 background of Sandy Seale as far as we can find, and yet
9 nobody really looked to see what happened. To trace what
10 really happened to Sandy Seale. It's easy just to accept that
11 he was involved in a robbery and got stabbed.

12 A. What's your question, sir?

13 Q. Was is that easy for you to just accept that Sandy Seale was
14 involved in a robbery and just got stabbed?

15 A. No, sir. I looked at all the...all the areas you are mentioning,
16 I...

17 Q. And is it fair to say that you never...sorry. And prior to 1982
18 this robbery theory which was lodged in the records of the
19 Sydney Police and the RCMP records was never made public?

20 A. You mean in the press sort of thing, sir?

21 Q. Well, it just remained as something in a file put away.

22 A. Between 1971 and 1982.

23 Q. Yes.

24 A. As far as I know, sir, yes.

25 Q. As a matter of fact there is no evidence at all and my

1 instructions are that Mr. Seale and his wife never heard about
2 this.

3 A. That could very well be, sir.

4 Q. And would you agree with me that had they known about
5 this in 1971, November, if they disagreed with it they could
6 have retained independent investigators to attempt to
7 ascertain the circumstances of the death of their son?

8 A. Yes, they could have, sir.

9 Q. And would you agree with me that the ten year lapse, the
10 eleven year lapse between 1971 and 1982 made it so much
11 more difficult to address the circumstances of the death of
12 Sandy Seale?

13 A. Yes, sir.

14 Q. And unfortunately, officer, your terms of reference, as I
15 understand it was to investigate the imprisoning of Donald
16 Marshall, number one; number two, Roy Ebsary; and number
17 three, John MacIntyre.

18 A. That's correct, sir.

19 Q. As a matter of fact, your superiors never specifically asked
20 you to go back and look and see what really set this in
21 motion. It started with the death and let's go from there.

22 A. Well, one would look into the background as you were saying.
23 You would trace the person's step. That would...my superiors
24 would expect me to do that and I try to endeavour to do that.
25 Unless maybe I'm missing the point of your question, sir.

1 Q. I'm suggesting to you, sir that your emphasis was on the
2 imprisonment of Donald Marshall rather than the death of
3 Sandy Seale. Am I correct with that?

4 A. Well, the two are sort of synonymous, sir, because Mr.
5 Marshall was in prison for the death of Sandy Seale.

6 Q. Yes, sir. But would you also agree with me that if you found
7 that if two eyewitnesses who had put Mr. Marshall behind
8 bars had lied, the most it could do is say there was not
9 sufficient evidence to convict.

10 A. Donald Marshall.

11 Q. That's true.

12 A. That's correct.

13 Q. That in itself is not proof of innocence.

14 A. Well, then one would go on and, as I did, and...

15 Q. And look further.

16 A. And look further and gather the evidence on the guilt of Roy
17 Newman Ebsary.

18 Q. Thank-you for answering that so quickly. I through the
19 corner of my eye saw the Chief Justice getting ready. So, I'll
20 just leave that area.

21 MR. CHAIRMAN

22 If it works as easy as that I'll try it again.

23 MR. ROSS

24 Q. So, as I was saying, there's another thing that I've got a little
25 bit of concern with, officer. Am I to understand that in 1982

1 after you met with Chief MacIntyre on the 4th of February
2 and MacNeil on the 6th and Sarson on the 9th and Aronson on
3 the 11th and Chant on the 16th, based on your discussions
4 with these people you were satisfied that Donald Marshall
5 was innocent.

6 A. I was not completely satisfied, but I was satisfied, yes, but I
7 wanted to pursue my investigation as well.

8 Q. I see.

9 A. This was a very unusual investigation and I tried to be
10 thorough.

11 Q. Were you keeping Mr. Marshall appraised of what you were
12 doing from time to time?

13 A. Donald Marshall.

14 Q. Sorry, Mr. Aronson.

15 A. Mr. Aronson, yes. As he contacted me I...

16 Q. Sure. You kept...you didn't withhold anything from him?

17 A. No, sir.

18 Q. And also you kept Mr. Edwards appraised.

19 A. Yes, I did, sir.

20 Q. So, then is it fair to say, and as far as Mr. Edwards was
21 concerned from his notes would it be fair to say that Mr.
22 Edwards was just as convinced as you that Marshall should
23 not be in jail?

24 A. I felt so, yes, sir.

25 Q. And recognizing that Mr. Aronson was Mr. Marshall's lawyer,

1 would it be fair then to say that you, together with Mr.
2 Aronson and Mr. Edwards, were of the one mind that
3 Marshall should not be in jail?

4 A. I would think that would be a fair statement.

5 Q. And I guess you recognize that with his obligation, the
6 lawyer/client obligation, that any information from you
7 would go through Mr. Aronson to Mr. Marshall.

8 A. It would, yes.

9 Q. So, you didn't speak to Mr. Marshall directly but you spoke to
10 Mr. Aronson.

11 A. Yes, sir.

12 Q. Recognizing that the information would get to Mr. Marshall.

13 A. It could, yes, sir.

14 Q. Oh, just one thing to clear up something here that was asked
15 to you by my friend here Mr. Saunders. Perhaps you could
16 take a quick look at Volume 27, and I'm going to quickly run
17 through pages, yes, red book 27. Taking a quick look through
18 here, or perhaps I can...

19 3:12 p.m.*

20 *EXHIBIT 113 - STEPHEN ARONSON'S CORRESPONDENCE WITH
21 RESPECT TO FEES (Volume 27)

22 Q. As I quickly run through pages 32 to 40 .

23 A. Yes, sir.

24 Q. I note on page 33 that between the 8th and 11th there is a
25 long distance telephone conference between yourself and Mr.

1 Aronson and later on there was a conference with Staff
2 Sergeant Wheaton and Corporal Carroll in Sydney, he met you,
3 did he?

4 A. Yes, sir.

5 Q. And between the 11th and the 31st there is further reference
6 to communication with him.

7 A. Yes, sir.

8 Q. And over on page 34 there is again a long distance conference
9 with you which shows up at the top of the page and a further
10 telephone conference with you and as we move over to what
11 I really want to get to, page 37, I see a note "To drafting
12 affidavit of Staff Sergeant H. Wheaton and Donald Marshall,
13 Jr.." It appears as though Mr. Aronson was doing those two
14 things just about within a very short time frame.

15 A. Page 37.

16 Q. Page 37, four lines, five lines down.

17 A. Yes, sir.

18 Q. And then he sent a letter to you with the enclosure which was
19 the...I take it would be the affidavit.

20 A. Oh, yes, yes, sir.

21 Q. Do you recall receiving that letter?

22 A. Not really. I do recall an affidavit.

23 Q. I see. And I guess you wouldn't be able to tell us where that
24 letter is?

25 A. No, sir.

STAFF SGT. WHEATON, EXAM. BY MR. ROSS

1 Q. Perhaps your counsel could tell us whether or not he's got
2 that letter.

3 MR OUTHOUSE

4 I'm sorry, Mr. Ross. I'm still two or three steps behind you. I
5 haven't found the reference yet. I'm sure I don't have the letter
6 but it...

7 MR. ROSS

8 The story of your life, behind me.

9 MR OUTHOUSE

10 Where is it?

11 COMMISSIONER EVANS

12 You'll get a chance later.

13 MR OUTHOUSE

14 I'm sure I will.

15 MR. ROSS

16 Page 37.

17 MR OUTHOUSE

18 I have that.

19 MR. ROSS

20 Five lines down. It is "Drafting affidavit of Staff Sergeant H.
21 Wheaton and D. Marshall, Jr., " then it goes on to say, "Letter to
22 Staff Sergeant H. Wheaton with enclosure."

23 MR OUTHOUSE

24 I can advise Mr. Ross and the Commission that I have never
25 seen the letter and don't have it.

1 MR. ROSS

2 I see. So, I take it...

3 MR. ORSBORN

4 If Mr. Ross wishes, My Lord, we have a number of more or
5 less form letters from Mr. Aronson simply forwarding affidavits to
6 various people that were not included in these books because I
7 didn't see their relevance. If he wishes us to search for it and
8 simply produce it to indicate that Mr. Aronson wrote to Staff
9 Sergeant Wheaton we can probably dig it up.

10 MR. ROSS

11 No, I wouldn't make that request at this time.

12 Q. Just to confirm then, do you recall then that it was Mr.
13 Aronson who drafted your affidavit as opposed to Mr.
14 Edwards?

15 A. Yes, this helps refresh my memory, sir.

16 Q. And you recall that now.

17 A. Well, I don't recall the letter, sir, but I don't have any doubt
18 that it was probably sent to me.

19 Q. I see. When you were speaking to Mr. Murray it was with
20 respect to Maynard Chant and one of the things you indicated
21 is that as far as the investigations and statements are
22 concerned that you tried to get as many cross checks as you
23 can. Do you recall indicating that to Mr. Murray?

24 A. Yes, sir.

25 Q. Is there any reason...is there a reason why with respect to the

1 statements of people like Mattson, Dixon, Scott MacKay, Keith
2 Beaver, the people who could speak about Sandy Seale just
3 prior to the knifing incident that these weren't followed up
4 and these weren't properly cross checked?

5 A. Well, I felt that Keith Beaver being a member of the Royal
6 Canadian Mounted Police and being very familiar with it, I
7 relied on his memory and I felt that his memory of the events
8 of that night and the trip down as far as Pollett's Drug Store
9 would be a good strong memory of it. He seemed to recall it
10 quite well, sir.

11 Q. Sure. What about Scott MacKay? Did you speak to him?

12 A. I can't recall, sir.

13 Q. Do you remember who Scott MacKay is?

14 A. At this juncture you'd have to refresh my memory.

15 Q. Scott MacKay was the young fellow who was coming home
16 from the dance with Debbie MacPherson, now Debbie
17 Timmins, and as he walked across the street they saw a body.
18 They saw a body and came over and identified to be Sandy
19 Seale.

20 A. Yes. I believe he was interviewed but she wasn't, as I recall
21 it.

22 Q. I see. Was there any effort made to pin down the times from
23 him?

24 A. I believe there was. I'm not sure.

25 Q. But it doesn't appear in any of the records any where.

1 A. I don't know.

2 Q. As a matter of fact what appears in your report, which is
3 found in volume 34, which is Exhibit 98, as your report of the
4 25th of February, 1982, at page...what a minute, at page 10 in
5 paragraph 6.

6 A. I thought I had that one. What page, sir?

7 Q. Page 10.

8 A. Yes, sir, I have it, paragraph...

9 Q. Seventh line of paragraph 6.

10 A. Yes, sir.

11 Q. It reads, as a matter of fact I will back up a bit. This is where
12 you were referring to your attempts to trace the steps of
13 Sandy Seale in the first two sentences.

14 A. Yes, sir, I see that.

15 Q. I'm concerned with this sentence, which as I say appears six
16 lines down, "It is interesting to note that conversation took
17 place with the deceased and he did not talk to anyone else
18 between the dance and entering the park." I suggest to you
19 that there is nothing to support that statement whatsoever.

20 A. Well, I see in the next line a interview with Keith Beaver
21 "confirms this story but states that Seale walked down George
22 Street with them but did not enter park, statement number 6
23 attached."

24 Q. Yes. But what about this question about conversation. I'm
25 going to suggest to you that somebody reading this could get

1 the impression that Sandy Seale was lagging behind or...for
2 some improper reason in the context of the entire paragraph.

3 A. I see. I really have no other explanation other than what's on
4 the paper.

5 Q. Was it your view when you wrote this report that, in fact,
6 Sandy Seale was going to meet Junior Marshall for the
7 purpose of setting in motion a robbery?

8 A. No, sir. I never held that view, I never held that view.

9 Q. Finally, and just to wrap up on this question on Sandy Seale,
10 would you agree with me that more work should have been
11 done specifically addressing the circumstances of the stabbing
12 of Sandy Seale rather than starting with the stabbing and
13 going forward to try to find a perpetrator and moving
14 forward?

15 A. In my...in the '71 investigation.

16 Q. In '71.

17 A. Or...

18 Q. In '71.

19 A. '71.

20 Q. Yes.

21 A. Yes, sir.

22 Q. Thank-you. Now, would you agree with me that it was not in
23 your terms of reference in 1982 and to a degree is still left a
24 bit open ended?

25 A. You know, there could be still witnesses out there for all I

1 know, Mr. Ross, that could give us information. I did what I
2 could at the time, sir.

3 Q. I see. Just to clear up one thing which I left open ended
4 myself. Perhaps you could look at Volume 4.

5 A. Volume 4.

6 Q. Yes. Exhibit 4, exhibit book number 4, sorry.

7 A. Number.

8 Q. You've got the...

9 A. Page.

10 Q. Page 132.

11 A. Yes, sir.

12 Q. Now, it says here, 'The appellant testified that he had known
13 Sandy Seale for approximately three years.' Now, that is the
14 finding of the Appeal Division on the reference.

15 A. This is the reference in Halifax.

16 Q. Yes.

17 A. Yes, sir, I read that.

18 Q. I take it that this is...that would be inconsistent with your
19 understanding of the facts or any relationship between
20 Marshall and Seale.

21 A. That would be inconsistent, sir.

22 Q. And inconsistent with any information that Donald Marshall
23 had given you on that point?

24 A. That's correct, sir.

25 Q. Yes. Now, as part of your investigation, did you try to get

1 hold of the correspondence from Donald Marshall to his
2 lawyers, to his friends or anybody between 1971 when he
3 was imprisoned and 1982 when you were doing your
4 investigation?

5 A. We had some correspondence between he and Roy Ebsary
6 that we came...came into our possession.

7 Q. Sure.

8 A. I can't really recall any other correspondence, sir, unless you
9 can refresh my memory.

10 Q. No, I'm asking whether or not you...

11 A. No, I have no independent recollection of...

12 Q. No. Do you recall whether you tried to speak to his lawyers to
13 find out whether or not there was any correspondence which
14 you could look at?

15 A. I spoke to Mr. Aronson and we had very frank discussions. I
16 don't specifically have a mental note of that in my mind.

17 Q. I see. One thing I'm now remembering. Before you went to
18 Pictou to see this Mr. Sarson, did you do a background check
19 on him?

20 A. Yes, sir.

21 Q. Did you know of a relationship between his sister and Donald
22 Marshall?

23 A. As I recall, I can't recall if that surfaced prior to my interview
24 with him or shortly after my interview. I know I went to the
25 Pictou detachment of the RCMP and I talked to Sergeant

1 Eugene Cole and I believe I talked to another member, I can't
2 remember his name, who was there when Donald Marshall
3 was arrested, as I recall it, and told me the story as he knew
4 it at that time and there was a relationship between, I believe
5 it was Shelly Sarson.

6 Q. I see. So, I take it that you would have known that when you
7 spoke to Sarson on the 9th of February, 1982.

8 A. I believe I would have, sir. I...

9 Q. Well, if you didn't know it before you started the
10 conversation you would have known it before you left Pictou.

11 A. Oh, yes, sir.

12 Q. So, you knew it on the 9th.

13 A. Yes, sir.

14 Q. Did you ask Sarson anything about that relationship?

15 A. It seems to me we did discuss it and, ah, during our talk.

16 Q. And to your understanding how long had Shelly Sarson
17 known Donald Marshall?

18 A. My memory of it is that they met while she was visiting
19 Dorchester Penitentiary and her brother was doing time and
20 they met up in Dorchester and had conversations and
21 correspondence, et cetera, between the two of them probably,
22 to the best of my recollection, sir.

23 Q. And do you...as far as the duration of this relationship was
24 concerned, I think that was the question, if you knew how
25 long this relationship had lasted.

1 A. Oh, how long.

2 Q. Yes.

3 A. I wouldn't know, sir, at this juncture.

4 Q. Would it have mattered?

5 A. I beg your pardon.

6 Q. Would it have mattered to you?

7 A. Yes, it would have.

8 Q. Yeah. Did you know that she had a brother by the name of
9 John Sarson who was doing time with Junior Marshall?

10 A. Yes, sir.

11 Q. You knew that.

12 A. Yes, sir.

13 Q. Did you speak to him?

14 A. No, sir.

15 Q. But you suspected that there might have been collusion
16 between Sarson and Marshall.

17 A. Yes, sir.

18 Q. But you didn't check with John.

19 A. I didn't speak to John, no, sir.

20 Q. Did you ask Marshall about your relationship with Shelly
21 Sarson?

22 A. Yes, I did, sir.

23 Q. And what did he tell you?

24 A. He told me that they had met in jail while she was up there
25 visiting her brother and got to know one another reasonably

1 well and that when he escaped he went to the home and was
2 with Shelly Sarson I believe for a day, two days, something
3 like that order, before he was picked up again.

4 Q. Why didn't you put that in your report some place? I'm
5 sorry, why isn't it in the statement from Donald Marshall?

6 A. It...I don't know, sir, it's not in the statement I don't believe.

7 Q. Another thing is if you would look again at Volume 35. Have
8 you got Volume 35?

9 A. Yes, I have it, Mr.Ross.

10 Q. Yes, page 92.

11 A. What am I reading here, sir?

12 Q. I'll be with you shortly. Around eight lines down in the first
13 complete paragraph, the reference, it says, "According to
14 Marshall he has known Miss Sarson for approximately six
15 months." Now, this report was written in May 1977, which
16 would have taken it back to around November of 1976. Were
17 you aware of that?

18 A. Yes, sir. I beg your pardon.

19 Q. You knew that Donald Marshall was having a relationship
20 with Miss Sarson since 1976.

21 A. I didn't...I don't believe I knew dates or how long they had
22 known one another, but I knew ...did know that there was a
23 relationship as I've described and I knew that when he
24 escaped jail he went with Shelly Sarson, sir.

25 Q. You see I find it a little surprising that if you are suspicious of

1 collusion that the only people you're going to ask about it is
2 the two parties that you suspect of collusion, Sarson and
3 Marshall.

4 A. And the brother.

5 Q. Which brother?

6 A. Mitchell Bayne Sarson.

7 Q. That's true. Perhaps I should restate the question. I think
8 you missed it. I'm saying that from my understanding it was
9 your view going in that Mitchell Sarson and Donald Marshall
10 were getting their heads together to come up with the story,
11 am I correct?

12 A. There's a possibility that they could have been coming up
13 with this Roy Ebsary story, yes.

14 Q. Sure, yeah. And to check that story, the people you asked
15 about it were the same Sarson and the same Marshall.

16 A. And Mrs. Mary Ebsary and did background into Roy Ebsary
17 and progressed with the investigation, sir.

18 Q. But you didn't speak to Shelley Sarson?

19 A. I did not speak to Shelley Sarson.

20 Q. You didn't speak to John Sarson?

21 A. No, sir, I did not.

22 Q. You didn't speak to anybody up at Springhill?

23 A. No.

24 Q. I see. You didn't know that Mr. Marshall had indicated back
25 in May of 1977 that he had known Miss Sarson for six

1 months?

2 A. No, I don't have any recollection.

3 Q. And you did not know that when Miss Sarson was
4 interviewed in June of 1977 that she indicated that she had
5 known Mr. Marshall for one year. You didn't know that?

6 A. No, I did not have this report, sir.

7 Q. Did Mr. Marshall tell you at any time that back in 1972 he
8 indicated that he was prepared to enter a plea of guilty to
9 manslaughter as opposed to murder?

10 A. No, sir.

11 Q. For your reference it appears in Volume 35 at Page 3.
12 Did Mr. Marshall at any time tell you that Sandy Seale
13 attempted to stab him?

14 A. No, sir.

15 Q. I'm going to read something here to you from Volume 35,
16 again page 84, paragraph 3. It reads

17
18 On the day of the murder, subject (who is
19 Marshall) claims to have spent the day in
20 Bedford at the meeting. On the way back
21 to Sydney he had a few drinks. He and
22 two friends later that evening proceeded to
23 local tavern for a short while. Subject
24 alone then decided to go to the dance. On
25 the way, he states he stopped in the
community park to see what was going on
when two guys jumped from behind
bushes in front of him and the victim, (who
is Seale), came along behind. The victim
would have stabbed subject in the left arm

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and dropped the knife after being kicked.
Subject then picked the knife off the
ground and stabbed the victim.

Did Marshall tell you that story?

A. No, sir.

Q. You find it absolutely inconsistent to the information given to
you?

A. Yes, sir.

Q. Which you presented to the court by way of affidavit?

A. Yes, sir.

Q. And is inconsistent really to the evidence later given by
Marshall?

A. Yes, sir.

Q. Did you discuss with Mr. Marshall when you were in jail the
reason why he broke out?

A. I beg your pardon, sir?

Q. Did you discuss with Junior Marshall the reason why he was
unlawfully at large back in 1979?

A. Yes, sir.

Q. What did he tell you?

A. He told me that he was out on a woods experience.

Q. Yeah, but why he didn't go back. I understand why...yes, why
he didn't go back.

A. Why he didn't go back?

Q. Why he ran off. Did he tell you why he ran off?

A. He wanted to escape custody. He knew Shelley Sarson and it

1 was a place for him to seek refuge in the Pictou area and he
2 did escape custody and did seek refuge there.

3 Q. But did he tell you why he escaped custody? Was there a
4 reason?

5 A. I cannot recall, Mr. Ross, at this time, sir.

6 Q. There's one other area that I must touch on and this has
7 nothing to do specifically with Sandy Seale now, some of your
8 testimony with respect to some statements that were made.

9 MR. CHAIRMAN

10 Would this be a good time to rise...

11 3:36 p.m. BREAK

12 MR. ROSS

13 Q. Staff Sergeant Wheaton, to continue, I must now make
14 reference to some of the testimony which you gave to this
15 inquiry and I'm going to refer you, sir, to transcript Volume
16 41.

17 A. Yes, sir.

18 Q. Page 7518. And it is with reference to the remarks exhibited
19 to Chief MacIntyre about those "brownskinned fellows all
20 want to stick together."

21 A. Yes, sir.

22 Q. Bottom of the page.

23 A. Yes, sir.

24 Q. You specifically recall that incident, do you?

25 A. Yes, sir.

1 Q. And what did you understand him to mean?

2 A. This...at that time the Chief was explaining to me that Mr.
3 Marshall had taken the stitches out of his wound in his arm
4 and I had asked him or suggested to him "Why not get a
5 blood sample?" He had mentioned Dr. Virick and that was his
6 retort, why he did not get a...go to the doctor to get a blood
7 sample.

8 Q. I see. It appeared to us that you understood then that the
9 Chief did not expect Dr. Virick to be honest because he was an
10 Indian, an East Indian dealing with a North American Indian?

11 A. That's correct, sir.

12 Q. That's how you read it. Now further you spoke...you advised
13 the Commission of another situation in which an RCMP officer
14 that was referring to the Marshall inquiry as the
15 longest...these are not the exact words, but I think the sense is
16 the same, "the longest saga since Bonanza" or something like
17 that. Do you recall that?

18 A. That was not an RCMP officer, sir. That was the Attorney
19 General referring to what one of his aides in his office had
20 mentioned as a joke.

21 Q. Yeah, better yet. Did he...any idea who this aide was?

22 A. No, I do not have any recollection, sir.

23 Q. Did you find it offensive?

24 A. I did, yes, sir.

25 Q. Did you find it irregular?

1 A. Irregular?

2 Q. Yes.

3 A. Well, he was telling a series of jokes about the Marshall-Seale
4 case, what have you, and it fit into the pattern of his speech,
5 in that he was talking in that way. If you mean "irregular..."
6 no, it fit within the context of his vocabulary at that time or
7 what he was saying.

8 Q. I see, and that was around the same time when he was
9 speaking about being able to speak among friends?

10 A. That's right.

11 Q. And I take it that there weren't any black people present in
12 that meeting?

13 A. I can't recall any, sir.

14 Q. And there were no Indians?

15 A. No, no.

16 Q. There were just, for want of better terminology, white and
17 bright, were they?

18 A. They would be all white, to the best of my knowledge.

19 Q. And I take it that the good Minister was expecting some level
20 of fellowship, paternity and camaraderie from that group.

21 MR. SAUNDERS

22 Well, My Lord, I'm not sure that this witness...

23 MR. ROSS

24 Oh, I apologize, My Lord, he cannot answer that, that's true, that's
25 true.

- 1 Q. But the facts are that they were just a white group?
- 2 A. To the best of my recollection. I cannot recall any black
3 members of the Mounted Police being there.
- 4 Q. I see. And when Chief MacIntyre made the statement about
5 the brownskinned people wanting to stick together, it was
6 just you and him also?
- 7 A. Yes, sir.
- 8 Q. Now from your experience, are these isolated incidents or
9 have you been aware of any other circumstances in which
10 people involved in the administration of justice have
11 demonstrated overt racial biases?
- 12 A. That is the only incident that comes to my mind, sir, at this
13 time.
- 14 Q. I don't mean specifically with respect to this investigation,
15 but generally as far as the administration of justice and police
16 work, dealing with Crown prosecutors and members perhaps
17 from the Attorney General's office and so on.
- 18 A. Unless you can refresh my memory with something, I
19 personally....
- 20 Q. No, I'm asking the question. It's an open question.
- 21 A. No, I have no knowledge, sir, of bias by the members of the...I
22 believe it was the court system and lawyers.
- 23 Q. And I take it that you didn't appreciate that kind of
24 discussion?
- 25 A. I was very close to this case, sir, and I personally did not

1 appreciate it.

2 Q. And can I perhaps ask, did you discuss these comments,
3 MacIntyre's comments to the extent that the brownskinned
4 boys stick together and the Attorney General, with respect to
5 this matter going on since...and what he had to say, did you
6 discuss those with anybody with any authority?

7 4:00 p.m.

8 A. No, sir.

9 Q. Is it fair to say that you didn't do that because, in your view,
10 it would be of no use?

11 A. Basically that's correct, sir, yes.

12 Q. And one of the things, sir, that is in your evidence...in, I think
13 it's in Volume 43. Mr. Orsborn asked you specifically
14 whether, in your opinion, what happened in the Marshall case
15 could happen again. Do you recall that?

16 A. Yes, sir.

17 Q. And your response was in the affirmative that, in your view,
18 it could happen again.

19 A. Yes, sir.

20 Q. Can I take it a little further? Would you agree with me that
21 it's very unlikely that it could happen if the victim was the
22 son of somebody with any real power?

23 A. There is a school of thought and there's some merit to what
24 you say, sir.

25 Q. For instance, if there was a black lawyer whose son had been

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1 stabbed like that, who could afford to spend how much ever
2 money it requires to have the circumstances properly
3 investigated, would you agree with me that as a victim his
4 son's circumstances would be properly reviewed?

5 A. If he had the funds to properly investigate it, hired
6 investigators in 1971, I think he would have discovered ...

7 Q. The full truth.

8 A. In my opinion. Now that's just my opinion, Mr. Ross.

9 Q. Yeah. Absolutely. I understand that, Officer. And also, as far
10 as an accused if, in these circumstances, the accused, if they
11 had the capacity to hire full-time investigators to properly
12 look at the circumstances, look at the problems which
13 developed in May 1971, don't you agree that the truth would
14 also have been, would also have surfaced?

COMMISSIONER EVANS

15 Was not the evidence that they had unlimited resources?

MR. ROSS

16 I don't know that that was the evidence, My Lord. As I recall,
17 it is said that as far as the defence was concerned that the, as I
18 recall it, it was that the Union of Nova Scotia Indians was paying...

COMMISSIONER EVANS

19 Two paid.

MR. ROSS

20 Pardon me?

COMMISSIONER EVANS

1 There was two sources of payment and I understood one to
2 say that money was no problem.

3 MR. ROSS

4 I see. Thank you, My Lord.

5 Q. As far as the general policing is concerned, Staff Sergeant
6 Wheaton, is it your experience that members of minority
7 groups do not get the same level of policing services as
8 members of the majority groups?

9 A. I want to answer that question very fairly to you. Could you
10 put it to me again so I, it's been a long day.

11 Q. Perhaps I could suggest to you, then, that when the police are
12 dealing with members of minority groups they do not
13 demonstrate the same level of enthusiasm as when they're
14 dealing with members of the majority groups.

15 A. I could not agree with that, sir. And you're speaking police, in
16 general, so I will answer you police in general, not Mounted
17 Police, Sydney City Police, but police in general. It's been my
18 experience, endeavour to do their job to the best of their
19 ability. Now ability can be commensurate with many things.
20 And you gave me a hypothesis of a person who could hire all
21 the investigators and had unlimited resources. Well, I
22 answered that that way because based on my '92, '82
23 investigation I did not find Chant and Pratico and Harriss to
24 be at all reluctant witnesses. It wasn't any feat of
25 legerdemain on my part. They came forward very freely. I

1 put that to them. Maynard Chant and Patricia Harriss,
2 particularly. They felt they would have said that back in '71
3 had the circumstances been different and John MacIntyre
4 hadn't been there.

5 Q. And so as we don't take this to the ridiculous, isn't it fair to
6 say that one doesn't have to go as far as unlimited resources
7 in order to get a proper investigation?

8 A. I feel police officers do the best they can, sir. And all of us
9 are different in this world and police officers are all certainly
10 different.

11 Q. I see. Now tell me, you indicated that when you spoke with
12 Aronson at some time he classified Sydney as a "redneck
13 town".

14 A. That's correct, sir.

15 Q. And as a result of your efforts to determine some truth you
16 had discussions with some people...

17 A. Yes, sir. I didn't agree with Mr. Aronson when he said that
18 and so, therefore...

19 Q. Sure.

20 A. It piqued my interest and, and as plus that I felt in the
21 Marshall investigation and the death of Sandy Seale that it
22 should be looked into.

23 Q. Sure. And you investigated this allegation of Mr. Aronson?

24 A. Yes, I did, sir.

25 Q. And at the end you were satisfied that it was deserving of

1 some merit.

2 A. Yes, I did, sir.

3 Q. And in this investigation you indicated that you spoke to
4 some educators.

5 A. Yes, sir.

6 Q. Were any of these educators black?

7 A. No, sir.

8 Q. Any of them Indian?

9 A. I spoke to Indian people. I don't believe I spoke to an Indian
10 educator...

11 Q. Educator.

12 A. No, sir.

13 Q. I see. And these were, and you spoke to lawyers.

14 A. Yes, sir.

15 Q. Any black?

16 A. No, sir.

17 Q. Any Indian?

18 A. No, sir.

19 Q. You spoke to doctors.

20 A. Yes, sir.

21 Q. Any black?

22 A. No, sir.

23 Q. Any Indian?

24 A. No, sir.

25 Q. You spoke to merchants?

1 A. Yes, sir.

2 Q. Any black?

3 A. No, sir.

4 Q. Any Indian?

5 A. No, sir.

6 Q. I see. And as far as, sorry, Mr. Orsborn asked you for your
7 understanding of the meaning of the term "redneck".

8 A. Yes, sir.

9 Q. And you likened it to the southern United States.

10 A. Yes, sir. Of your, yes.

11 Q. Was that an intent to exclude good old Canada?

12 A. No, sir. It was just my response that was in my mind and I
13 tried to answer honestly.

14 Q. Now you indicated that between 1973 and 1975 you did not
15 observe an atmosphere of racial intolerance in Sydney, am I
16 correct?

17 A. I didn't see it, no, sir.

18 Q. But as a result of your investigation you learned that such an
19 atmosphere very probably existed around 1971.

20 A. Yes, sir.

21 Q. Would you agree with me that it would be...

22 A. And I was focussing in on the scene of this murder, the Park
23 area.

24 Q. Absolutely. Absolutely. And so I would like to focus on that
25 also. I do not want to make it a total broad sociological study.

1 A. No.

2 Q. Would you agree with me that two years between 1971 and
3 1973 would be a very short time for these old habits to
4 change and the old attitudes to change?

5 A. Yes, sir.

6 Q. And further, would you agree with me that your review in
7 1982, which was prompted by the statement by Aronson,
8 addressed the 1971 times?

9 A. Yes, sir.

10 Q. And it came up with responses consistent with the view of
11 Mr. Aronson?

12 A. Basically, yes.

13 Q. Can I then conclude, no, and hold the conclusion. Mr. Orsborn
14 spoke to you about the abrupt change between 1971 and
15 1973. And he further asked you whether or not in your view
16 Mr. Marshall, and I will read it, and this is a question on page
17 7685 of Volume 42. It's line 24, it reads:

18
19 In the course of your looking into Mr.
20 Marshall's case did you form any opinions
21 as to whether or not Mr. Marshall's race or
22 Mr. Seale's color or race played any part in
the way the investigation or prosecution
was conducted or the conviction entered.

23 And after some explanation it was your view that it did. Now
24 that was a very broad scope which was approached. It
25 addressed the investigation, the prosecution and the

1 conviction entered. As far as the investigation is concerned
2 would the same hold true that it was your view having the
3 benefit of hindsight that race played a part?

4 A. I would have to say that in my view John MacIntyre, being
5 the chief investigator, it would be my opinion that he was not,
6 did not have a good opinion of Indian peoples.

7 Q. And is it your view that this was part of the tunnel vision
8 which was developed as with respect to this investigation?

9 A. I beg your pardon, sir?

10 Q. Did you, is it your view that this contributed to the tunnel
11 vision...

12 A. Yes, sir.

13 Q. And I take you'd agree with me that this race consciousness
14 would not just exist in a vacuum. That if MacIntyre was the
15 only person who was that racially conscious there are other
16 people around who had to support him also.

17 A. I can't comment on that, sir, because I didn't, I wasn't there in
18 '71 and I didn't talk to all police officers.

19 Q. Was it your view that when MacIntyre was speaking to you
20 about the brownskin boys sticking together that it was
21 supposed to be some form of discussion between like and
22 like?

23 A. You mean that I would accept that as being...

24 Q. For instance, would you have expected MacIntyre to make
25 such a statement when you went in to speak with him if an

1 Indian person was with you?

2 A. No, I would not, sir.

3 Q. As a matter of fact, you would not expect the Attorney
4 General to make the statements that he did make if Indians
5 and blacks were present.

6 MR. SAUNDERS

7 Excuse me, My Lord, I think the evidence of this witness was that
8 he was repeating what an aide had indicated during the context of
9 this regimental dinner.

10 MR. ROSS

11 Well, as I recall, he was speaking about his being present at the
12 dinner, the slapstick humor, the fact that he found it offensive and
13 that he left. And it's Mr...

14 MR. CHAIRMAN

15 And that he what?

16 MR. ROSS

17 And that he left, he left the dinner. Oh, yes, just one minute,
18 please, no problem, just give me a minute.

19 MR. CHAIRMAN

20 That the witness left the dinner, is that what you're saying?

21 MR. ROSS

22 Yes, that Wheaton left, yes.

23 MR. CHAIRMAN

24 No, but your question is, the question that you put to this witness
25 was whether in his opinion the Attorney General would have

1 | made the comments that he's alleged to have made if there had
2 | been present at that dinner...

3 | MR. ROSS

4 | Blacks and Indians.

5 | MR. CHAIRMAN

6 | Blacks and Indians. How can he answer that? I mean, you know...

7 | MR. ROSS

8 | He can answer that simply, My Lord...

9 | MR. CHAIRMAN

10 | That's speculative. He doesn't know, surely, what the Attorney
11 | General is going to do.

12 | MR. ROSS

13 | That might be true. That might be true. And perhaps the
14 | Attorney General might be the best person to ask that, but what
15 | I'm saying here, My Lord, is that I do not believe, I think it defies
16 | common sense to suspect that if one is going to make racist type
17 | remarks, that he's not going to be selective of his audience.

18 | MR. CHAIRMAN

19 | Probably, I'm not quarreling with that.

20 | MR. ROSS

21 | O.K. and I will go further. I'll say that he would have anticipated a
22 | receptive audience and I'm asking this witness whether or not in
23 | his opinion...

24 | MR. CHAIRMAN

25 | I think if you'll recall this witness' evidence, he said that there

1 was...that the Attorney General's comments were treated with
2 polite response or...I certainly wasn't left with the impression that
3 he received an enthusiastic response to this. But maybe I'm
4 misinterpreting what he said before.

5 A. No, you're quite correct, My Lord.

6 MR. CHAIRMAN

7 But I do recall the words "polite attention, " I think.

8 MR. ROSS

9 Polite attention.

10 Q. There's something perhaps you can assist me in covering. You
11 indicated and I think it was when Mr. Orsborn was asking you
12 of situations in which special authorization will be sought
13 before certain types of individuals will be charged. Do you
14 recall that?

15 A. Yes, sir.

16 Q. Now you spoke about a situation where you were
17 investigating the Antigonish Town Police?

18 A. Yes, sir.

19 Q. And the Attorney General appointed two lawyers to help
20 drafting search warrants and the like.

21 A. Yes.

22 Q. That prompted this question, sir. Have you in your
23 experience as a member of the RCMP had opportunity from
24 time to time to meet with members in the Attorney General's
25 Department?

1 A. Very, very rarely, sir. I can...

2 Q. And during those meetings were you aware of any special
3 files, I think Mr. Veniot identified them as sensitive files and
4 he identified them as having a green stripe on them. Were
5 you aware of any such files existing?

6 MR. SAUNDERS

7 Well, I hesitate to rise in my friend's cross-examination. But I'd
8 really like to know what relevance this has to Mr. Ross' clients.

9 MR. ROSS

10 Perhaps I will tell him.

11 MR. CHAIRMAN

12 Well, tell me.

13 MR. ROSS

14 If my learned friend would look at Section 27 of the Charter, he
15 would realize that we're in a multicultural society and my people
16 are just as likely to be interested in special files kept by the RCMP
17 as the Attorney General's Department.

18 MR. CHAIRMAN

19 Well, the evidence that you refer to...this witness says that he's
20 attended very few meetings at the Attorney General's
21 Department.

22 MR. ROSS

23 That is true, My Lord.

24 MR. CHAIRMAN

25 Now I can't conceive how he could possibly be expected to know

1 | what the filing arrangements were in the Attorney General's
2 | Department.

3 | MR. ROSS

4 | That's very true too, My Lord, and I guess the simple answer then
5 | is for him to tell me no. I recognize that it was a slight shot, but I
6 | just wanted to know. He made mention of Mr. Veniot and that's
7 | why I am asking about it.

8 | MR. CHAIRMAN

9 | Well, you heard the question. Are you aware of any special files
10 | in the Attorney General's Department?

11 | A. I have never looked at the filing system of the Attorney
12 | General's Department, but I have done many investigations
13 | for the Attorney General's Department, My Lord, and I know
14 | that...I believe it's secret files of our own...are on the corner of
15 | the border of the page is colored green. More than that, I
16 | cannot say.

17 | COMMISSIONER EVANS

18 | Secret files in what sense? That they're RCMP files?

19 | A. Yes, it would be an investigation and it would be...

20 | COMMISSIONER EVANS

21 | That's just to distinguish them from other files, is it?

22 | A. Yes, My Lord, and it's a classification, that's all.

23 | MR. ROSS

24 | Thank you, My Lord, that's really what I was getting at, this whole
25 | idea of these files with the green stripe.

1 COMMISSIONER EVANS

2 I thought they represented the Irish myself.

3 MR. ROSS

4 The Irish?

5 Q My Lord, there's just one other thing, Staff Sergeant Wheaton.
6 In some of the reports, there's a reference to reprisals from
7 the black community. I could refer you to Volume 35. Here
8 we've got at Page 102, there's a reference that the Sydney
9 Police would oppose the subject, that's Donald Marshall, going
10 to the area on a temporary leave of absence. They feel there
11 might be reprisals from the black community and subject's
12 entire family had to move to Whycocomagh Reserve after the
13 offence. Your experience in Sydney with the black
14 community, did they appear to be a lawless group of people
15 who would seek reprisals?

16 A. No, sir.

17 Q From your experience, would it be your view that this is a
18 substantially overstated position?

19 A. Yes, sir.

20 MR. CHAIRMAN

21 I take it you need more than six minutes, Mr. Wildsmith?

22 MR. WILDSMITH

23 I certainly will, My Lord.

24 MR. CHAIRMAN

25 I thought maybe Mr. Ross had covered your area.

STAFF SGT. WHEATON, EXAM. BY MR. ROSS

1 MR. WILDSMITH

2 He did an admirable job, but there's still a few items left.

3 MR. CHAIRMAN

4 Well, we'll adjourn until tomorrow at 9:30. ADJ. TO JAN. 28/88

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REPORTER'S CERTIFICATE

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



Margaret E. Graham

DATED THIS 27th day of January , 19_88 at Dartmouth,
Nova Scotia