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#7

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

Volume 46

Held: January 27, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

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

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
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Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre

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

Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for
Donald MacNeil estate

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
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Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
MacAlpine

Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
for Staff Sgt. Wheaton and Insp. Scott

Mr. Guy LaFosse: Counsel for Sgt. H. Davies

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

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

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black
United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 JANUARY 27, 1988 - 9:30 A.M.

2 MR. CHAIRMAN

3 Mr. Saunders?

4 MR. SAUNDERS

5 Thank you, My Lord.

6
7 HAROLD FRANCIS WHEATON, still sworn, testified as follows:

8
9 EXAMINATION BY MR. SAUNDERS

10
11 Q. Staff. Sgt. Wheaton, I'm Jamie Saunders and I'm appearing on
12 behalf of the Attorney General. I'd like to begin, Staff. Sgt.
13 Wheaton, with respect to the area of disclosure of information
14 by the RCM Police to people not connected with an
15 investigation. You said something last day which troubled me
16 and that was in answer to a question put to you by Chief
17 Justice Hickman. You said that it would not be appropriate
18 for you to seek out a member of the press in a case where
19 someone had been acquitted. But if a journalist approached
20 you in such a case, it would be okay for you to provide an
21 opinion to that journalist. Do you recall that evidence, sir?

22 A. Yes, sir.

23 Q. Having regard to the guidelines, Exhibit 111, that were
24 introduced yesterday.

25 A. Yes, sir.

- 1 Q. You will see on page one of that exhibit, sir, "F1A, No.2."
- 2 A. Yes, sir.
- 3 Q. And you'll see that by Item No. 2, "Where there is a need for
4 a public statement via the media, confine comments to who,
5 what, where, when, and why."
- 6 A. Yes, sir.
- 7 Q. So it's apparent from this directive from the RCM Police that
8 even in a need-to-know situation, a member of the RCMP is to
9 confine himself or herself to the facts, the five W's, correct?
- 10 A. If I may, sir, maybe I misunderstood your question from the
11 beginning. In this operational instruction, F1 is in relation to
12 the release of information to media.
- 13 Q. Yes.
- 14 A. F1A-2 deals with where there is a need for a public statement;
15 i.e., a need for a release to the media.
- 16 Q. Exactly right.
- 17 A. That would be dealing with a press release.
- 18 Q. Yes.
- 19 A. In the form of a written press release.
- 20 Q. What would an example of that be, Staff Sgt. Wheaton?
- 21 A. This would be in relation to perhaps, I'm just trying to think
22 of an example.
- 23 Q. Let me give you one.
- 24 A. Yes.
- 25 Q. And you tell me whether it might be an example. If a group

1 of young people and their counsellors went missing on a
2 weekend trip and there was an inquiry as to their
3 whereabouts and no one knew where they were. And
4 because of the obvious questioning among members of the
5 public, the police might very well issue a statement on the
6 facts of the disappearance. Would that be an example, sir?

7 A. Yeah, well, yes, that's very close to, say, for example, the
8 Warburton situation.

9 Q. Exactly.

10 A. Which I worked on.

11 Q. Yes. But I take it from this, sir, that it would be expected that
12 a police officer would not give an opinion as to the cause of
13 the disappearance, he would confine himself to the facts.
14 That is, the when and the why and who was missing and
15 those sorts of things, correct?

16 A. Well, to go back to your example, Mr. Saunders. In that case
17 of a missing child, it was expanded far beyond the five W's.
18 Opinions were given as to the possibility of why he was
19 missing or opinions as to where he could be or opinions...And
20 opinions are given to the press, sir.

21 Q. But it's clear from this directive, No. 2, that in a need for the
22 public statement via the media that the remarks ought to be
23 confined to the who, what, where, when, and why, correct?

24 A. Yes, sir, when making an official press release of information
25 to media.

1 Q. And do you recall your evidence last day that, and the Chief
2 Justice's observation, that a police officer ought not to make
3 off-the-record comments to members of the media.

4 A. That's right, sir.

5 Q. And, indeed, if we turn to page three of the exhibit, one sees
6 that Item #12, "That the force itself frowns on off-the-record
7 comments by members of the force," correct?

8 A. Yes, it says that they "do not provide immunity."

9 Q. Yes.

10 A. And really aren't off the record.

11 Q. Now if I could get you to turn to page four of the exhibit,
12 Staff, and under the heading, "Information to the News Media
13 General," and then Item No. 2, "Shall ensure insofar as
14 possible that any information released to the news media will
15 not..." and then four things are specified.

16 A. Yes, sir.

17 Q. "Shall not interfere with an investigation or arrest," and so
18 forth. I take it, sir, that that is really sound advice to any
19 investigating officer in imparting information to anyone
20 outside an investigation, let alone members of the press.

21 A. Yes, sir.

22 Q. Indeed, you would not want any officer of the RCM Police to
23 speak to anyone outside an investigation about things that
24 might interfere with an investigation or an arrest?

25 A. These are a wise man's guide, sir.

1 Q. Yes, sir, and as NCO at the Cole Harbour Detachment, I take it
2 that you would be giving such instructions to women and men
3 under your direction.

4 A. Basically, yes, sir.

5 Q. Tell me, Staff Sgt. Wheaton, how many times it was that you
6 met with Mr. Marshall's solicitor, Stephen Aronson?

7 A. I don't have any specific notes of it, sir, but I believe two or
8 three.

9 Q. Do you recall when those meetings took place?

10 A. I can't say absolutely for sure. Do I recall when they were?

11 Q. Yes.

12 A. There was one near the first of the investigation.

13 Q. Some time in February of 1982?

14 A. Yes, sir.

15 Q. Where was that meeting, sir?

16 A. That would have been at my office in Sydney.

17 Q. Yes?

18 A. I would recall a second meeting again with Mr. Aronson, again
19 in Sydney. It seems to me he was down in Whycomomagh
20 with Donald Marshall fishing or something because he was
21 wearing older clothes, later on in the investigation. And there
22 may have been a third, I just can't honestly recall.

23 Q. You attended at the reference, that is the argument and
24 evidence presented in December of 1982?

25 A. Yes, I did, sir.

1 Q. Were you stationed still in Sydney in December of 1982?

2 A. December?

3 Q. Yes.

4 A. Of 1982. December of 1982?

5 Q. Yes.

6 A. I would have been in Sydney in December, yes.

7 Q. Did you meet with Mr. Aronson around the time of the
8 reference, sir, in December of 1982?

9 A. I don't believe the reference was in '82. I may have my dates
10 wrong.

11 Q. Yes.

12 A. Was it?

13 Q. The argument before the Court of Appeal was in December of
14 1982. That is the evidence was presented on two days in
15 December, I believe December 1st and December 2nd.

16 A. I take your word for it, sir, yes. I don't have any independent
17 recall. Now your question is what, sir?

18 Q. You attended at the reference, sir?

19 A. Yes, I did.

20 Q. And you heard the evidence presented during two days
21 before the Nova Scotia Court of Appeal?

22 A. I did, sir.

23 Q. I take it you stayed in Halifax during the course of those two
24 days?

25 A. Yes, I remember doing that.

1 Q. Did you meet with Mr. Aronson at that time, sir?

2 A. I know I had conversation with Mr. Aronson probably at the
3 courthouse. I don't recall, like when you say "meet," do I
4 assume correctly like a formal meeting going to his office or
5 him coming to my room?

6 Q. Or any place where you would sit down and have a discussion
7 with Mr. Aronson.

8 A. I met with Mr. Aronson, sir, yes.

9 Q. Is it possible you met with Mr. Aronson at the time of the
10 reference hearing in December of 1982?

11 A. Yes, it is possible, sir.

12 Q. The affidavit that was prepared for submission to the Court of
13 Appeal; that is, your affidavit, who prepared that, sir?

14 A. I believe Mr. Edwards prepared that. I'm not sure, maybe
15 Mr. Aronson did. I recall the affidavit.

16 Q. Did you keep any notes, Staff, of your meetings that you had
17 with Stephen Aronson?

18 A. If it's in my notes, that would be the only notes I have. I
19 kept no other notes of meetings.

20 Q. I have not seen any reference in your notes to meetings with
21 Mr. Aronson.

22 A. I would have no reference then, sir.

23 Q. You had no compunction, according to your evidence, in
24 talking with Mr. Aronson and appraising him of our
25 investigation because you said he was the complainant,

1 correct?

2 A. That is correct, sir, yes.

3 Q. Did you talk to Mr. Aronson about your view that John F.
4 MacIntyre should be charged with counseling perjury?

5 A. I don't know if I had determined that view at that time when
6 I had my meetings with Mr. Aronson. I felt probably at that
7 time I was still in the investigation stage, that he had
8 ethically and morally probably done wrong but I don't know
9 if I firmed up a state of criminally [sic] at that point.

10 Q. Certainly after April 26th, 1962, by your evidence, you had
11 formed that view.

12 A. Yes, sir.

13 Q. And if you had discussions with Mr. Aronson after April 26th,
14 1982 is it likely you would have told him that?

15 A. Yes, I would have, yes.

16 Q. Did you also discuss with Mr. Aronson your view that John F.
17 MacIntyre should be charged with deliberately hiding the
18 Patricia Harriss June 17th statement from you and Corporal
19 Davies?

20 A. To be quite frank, sir, that never occurred to me until it was
21 just mentioned here before this Commission that it was
22 actually an offence under the Act.

23 Q. I see. It never occurred to you until this hearing.

24 A. No, I was thinking more that it, the fact that a person hides
25 something from you is not necessarily a criminal offence, but

1 it was apt...correctly pointed out.

2 Q. Did you review with Mr. Aronson the fact, according to your
3 evidence, that John F. MacIntyre deliberately and willfully, to
4 use your words, concealed that June 17th Patricia Harriss
5 statement from you?

6 A. I have no independent recall whether I did or didn't. I could
7 have, sir.

8 Q. And is it likely that you did?

9 A. I don't know.

10 Q. You certainly knew of that after April 26th, 1982 according to
11 your evidence.

12 A. I certainly did, sir, yes.

13 Q. Did you know, sir, that Mr. Marshall was commencing a
14 lawsuit against the City of Sydney and Messrs. MacIntyre and
15 Urquhart?

16 A. Yes, sir, I believe I read that in the paper.

17 Q. Did you discuss with Mr. Aronson the contents of the
18 statement of claim and originating notice filed on Mr.
19 Marshall's behalf?

20 A. No, sir, I don't believe Mr. Aronson discussed that with me.

21 Q. At any time, did you review with Mr. Aronson what it was
22 that he was putting in by way of allegations in the statement
23 of claim?

24 A. No, sir.

25 Q. Did you play any role in the preparation of that statement of

1 claim?

2 A. I played no role in the preparation of that statement of claim.

3 Q. Did you know that Mr. Marshall had filed an action against
4 the City of Sydney and Messrs. MacIntyre and Urquhart in
5 January of 1983, sir?

6 A. Again, I have no independent recollection of the date. I
7 believe I read it in the news or something, heard it in the
8 press.

9 Q. Would it be proper police procedure for a police officer to
10 meet with a defence lawyer during the course of a criminal
11 investigation and appraise him of evidence useful to a person
12 in a civil action against the authorities?

13 A. One would have to have a crystal ball to know that, I would
14 suggest to you, sir. I appraised the complainant of the action
15 taken on the investigation I did into his complaint. I did not
16 help Mr. Aronson in any way to the best of my knowledge in
17 any civil action against anyone or any criminal, subsequent
18 criminal action against anyone.

19 Q. And at no time, according to your evidence, did Mr. Aronson
20 review with you the contents of the statement of claim
21 prepared by him?

22 A. No, sir.

23 Q. All right. Is it the duty of a police officer, Staff Wheaton, to
24 investigate crime or suspected crime?

25 A. Yes, sir.

1 Q. And if a police officer is satisfied that he has reasonable and
2 probable grounds to charge, is it the officer's duty to charge?

3 A. Yes, sir.

4 Q. And a crown prosecutor may not agree with the decision
5 taken by a police officer and if that is the case, the crown
6 would withdraw the charge in court?

7 A. The crown, as I understand it, I've never had that happen, sir,
8 but the crown, as I understand it, would then not prosecute
9 the matter.

10 Q. Would not proceed with the prosecution.

11 A. Null the pros...

12 Q. It's never happened in your evidence...

13 A. No prosecution.

14 Q. In your experience, but that is your understanding?

15 A. That would be my understanding, Mr. Saunders, yes.

16 Q. You mentioned a few days ago in your evidence that in the
17 case of a police officer in the RCMP investigating a person of
18 some celebrity and deciding to charge that person, that the
19 officer is obliged to submit a telex to some superior officer
20 notifying him of that, is that correct?

21 A. That is correct. That's part of our instructions.

22 Q. And the officer in the field sends the telex to whom?

23 A. He would send a telex to his officer commanding.

24 Q. And the officer commanding to an officer in the field, what
25 does that mean, someone in "H" Division in Nova Scotia?

- 1 A. Yes, sir.
- 2 Q. All right.
- 3 A. Or it could mean to notify, if you were, say, in Sydney or
4 Yarmouth or Truro Subdivision, to notify your officer
5 commanding at that point, who in turn, we are a tiered type
6 of structure.
- 7 Q. I understand. So the officer who has decided to charge would
8 inform his superior at the local level and still be obliged to
9 send a telex to "H" Division in Halifax, correct?
- 10 A. That could done one of two ways, either the officer himself or
11 his officer commanding might choose to do it.
- 12 Q. The officer would have already decided to charge. He or she
13 is merely informing his superiors that that has been done so
14 that they can deal with any questions raised as a
15 consequence?
- 16 A. It would depend on the type of investigation. Every
17 investigation is different, sir.
- 18 Q. Yes. While you spoke of the investigation of a person of some
19 celebrity, and you mentioned that a telex would have to be
20 sent to superiors to notify them of that occurrence, correct?
- 21 A. Well, I don't think a celebrity, yes, a celebrity, perhaps. If it
22 were to appear in the morning paper, a commanding officer
23 might like to know about it, if it were a person of, you know,
24 of stature in the community.,
- 25 Q. So that questions could be fielded by someone in the know,

1 correct?

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

3 Q. But you would not telex "H" Division to seek authority to
4 charge in the first place. That would be the duty of the
5 investigating officer, correct?

6 A. Well, it would depend on the charge, sir.

7 Q. Why would it depend on the charge?

8 A. Well, if it were, say, an impaired driving or speeding offence,
9 which a prominent person, he would be treated like any other
10 person. He would be given a ticket and what not. And you
11 might advise your officer commanding, if you thought it
12 would catch the attention of the press. If it were, say, a
13 complicated ongoing investigation which required
14 instructions. As I say, we are a tiered layer authority
15 structure within the RCMP. Then you would not only send a
16 telex, you would follow it, you would put a note on it
17 probably "report to follow," and then you would go forward
18 with a report outlining all the circumstances of the case and
19 you may very well ask for instructions to come back to you.

20 Q. But I take it, Staff Wheaton, that one wouldn't need that kind
21 of instruction from a superior to continue the investigation.

22 A. Yeah, you're taking all charges with a broad brush treatment,
23 sir.

24 Q. Yes.

25 A. And I'm saying you cannot take all charges with a broad

1 brush treatment.

2 Q. Well, let's just deal with the case that may have some
3 celebrity to it.

4 A. Yes, sir.

5 Q. I take it you're not suggesting that a police officer who is
6 suspicious and has reasonable and probable grounds that a
7 crime is being committed, that officer does not have to check
8 with headquarters for permission to continue the
9 investigation.

10 A. That's exactly my point, sir. It would depend on the
11 circumstances of the investigation, the type of charge to be
12 laid.

13 Q. Are you saying that an officer in the field who has those
14 suspicions and thinks there are reasonable and probable
15 grounds to investigate has to wait for some higher authority
16 to tell him that he could do it?

17 A. It would depend on the charge and circumstances, sir, yes.

18 Q. Well, can you give me an example of a charge where an
19 officer in the field would have to sit and wait for that kind of
20 instruction?

21 A. Yes, sir. Say, for instance, you had a situation where you had
22 information to the effect that an ongoing fraud was going on
23 with, say, the minister of highways getting a kickback on all
24 the guard rails sold in the province of Nova Scotia. And you
25 had information come in to that effect. This would be a

1 highly sensitive matter. You would then submit a report
2 outlining all the information you had. You would send it to
3 Halifax and you would ask for instructions. You would
4 continue, you wouldn't stop but you would advise. Probably
5 it would be even done via phone.

6 Q. So that no time is wasted.

7 A. It could be done that way, yes, sir.

8 Q. One would not, who is a police officer, one would not risk the
9 chance that evidence would be lost...

10 A. That's exactly, yes.

11 Q. Or that people would get away, correct?

12 A. That is correct, yes.

13 Q. So you would expect the officer who is doing the investigating
14 to continue the investigation, but at the same time, keep his
15 superiors advised.

16 A. Well, let's say there would be a pregnant pause until your
17 boss told you to go ahead.

18 Q. Which may only be the time to make a phone call.

19 A. Exactly, sir.

20 Q. All right. Am I clear, Staff Wheaton, that you never told
21 Frank Edwards that John F. MacIntyre should be charged?

22 A. No, you're not, sir.

23 Q. I'm not clear on that.

24 A. No, you're not.

25 Q. I thought you had said a few days ago that you never

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 indicated to Mr. Frank Edwards that John F. MacIntyre should
2 be charged with any offence.

3 A. I really, you know, don't quibble with what you're saying
4 maybe in the transcript, but if I could, I'd give you my
5 recollection of the conversations between Mr. Edwards and
6 myself and Mr. Edwards will, of course, take the stand. Mr.
7 Edwards and I discussed what action John MacIntyre had
8 done here. Had he committed a criminal offence? We
9 discussed the evidence. Where did the evidence fit? Is this
10 an obstruction? Is it a misuse of public office? Is it
11 counseling perjury? Frank Edwards and I had discussions of
12 this nature.

13 Q. Did you ever, Staff Wheaton, tell Frank Edwards that in your
14 view John MacIntyre should be charged with a criminal
15 offence?

16 9:55 a.m. *

17 Q. Any criminal offence.

18 A. Yes, sir.

19 Q. When did you tell him that and...

20 A. I felt that John MacIntyre had committed a criminal offence
21 and I was discussing it with my Crown, who is a lawyer, and
22 who is a representative of the Attorney General's Department,
23 of course, who has the expertise in that area.

24 Q. Yeah. Expertise to advise. And I wish to know from you,
25 Staff Wheaton, when you told Mr. Edwards that John

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 MacIntyre should be charged with any offence?

2 A. I really don't have a note on it. You can refer to Mr. Edwards'
3 notes. I think you can see where we had conversations in
4 that area or conversations, I note somewhere he said "set up",
5 you know, sort of thing.

6 Q. There is much in Mr. Edwards' notes about conversations that
7 you and he had, sir.

8 A. Yes, sir.

9 Q. My question is the specific one, when did you tell Mr.
10 Edwards...

11 A. Oh, I can't...

12 Q. ...that John MacIntyre should be charged with a criminal
13 offence?

14 A. I have no independent recollection of the date, sir.

15 Q. Do you have any independent recollection of, in fact, telling
16 him such a thing?

17 A. Yes, sir.

18 Q. You do.

19 A. Yes, sir.

20 MR. CHAIRMAN

21 You say you discussed with Mr. Edwards the question of
22 evidence that might indicate obstruction.

23 STAFF SGT. WHEATON

24 Yes, My Lord.

25

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 MR. CHAIRMAN

2 What was the obstruction?

3 STAFF SGT. WHEATON

4 The obstruction would be misleading a peace officer in the
5 execution of his duty, My Lord.

6 MR. CHAIRMAN

7 In what regard, in what area?

8 STAFF SGT. WHEATON

9 In that he told me, for instance, in the...on the 4th of February
10 meeting that Pratico and Chant were fine unshakable witnesses.
11 Later on I found that they were witnesses who had to
12 be....declared Chant hostile, and in Pratico's case there was some
13 mental problems. I feel he mislead me in that regard, My Lord,
14 just as one area. Whether it would substantiate a charge or not, to
15 me the most solid area was the counseling perjury. But Mr.
16 Edwards and I discussed that as to where would one go with this.

17 MR. SAUNDERS

18 Q. After the April 26th visit that you and Corporal Davies say
19 you made on that date to John F. MacIntyre's office did you
20 tell Mr. Edwards that in your view Mr. MacIntyre ought to be
21 charged with an offence?

22 A. I don't have a specific recall of the date we discussed what
23 offence.

24 MR. CHAIRMAN

25 You're not answering the question.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 STAFF SGT. WHEATON

2 I'm sorry, My Lord, what...

3 MR. SAUNDERS

4 Q. Did you discuss and did you tell Mr. Edwards after April 26th,
5 1982, that Mr. MacIntyre should be charged with a criminal
6 offence?

7 A. I may well have. I can't...I have no independent recall of it,
8 sir.

9 Q. I take it you're not sure whether you did or not?

10 A. I'm not sure of the date, sir.

11 Q. My question, sir, is did you tell Mr. Edwards after April 26,
12 1982, that John MacIntyre should be charged with an
13 offence?

14 A. I don't know.

15 Q. You don't know. All right.

16 MR. OUTHOUSE

17 My Lord, in fairness to the witness I don't know whether Mr.
18 Saunders is saying at any time after April the 26th or is he saying
19 immediately on April 26th or thereabouts, maybe...

20 MR. CHAIRMAN

21 My interpretation is that he was saying any time.

22 MR. SAUNDERS

23 Any time.

24 MR. OUTHOUSE

25 Any time after April 26th, okay.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERSSTAFF SGT. WHEATON

1
2 A. I'm sure that there were conversations to that effect. I can't
3 give you the date of them though. There must have been...I
4 know there were conversations after...it was certainly an
5 important thing to me and there were conversations and
6 there were conversations relative to charges.

7 Q. Yes.

8 A. I can't give you a date, Mr. Saunders.

9 Q. I...Staff Wheaton, I'm not talking about conversations you
10 may have had with Crown Prosecutor Edwards...

11 A. Relative to charges.

12 Q. ...about varying matters.

13 A. No, I'm...you're referring to relative to charges.

14 Q. Specifically.

15 A. Yes, sir.

16 Q. Whether or not you told Mr. Edwards after April 26th, 1982,
17 that John F. MacIntyre should be charged with a criminal
18 offence.

19 A. No, sir. I cannot say that I told the Crown Prosecutor what to
20 do.

21 Q. Thank-you. Now, you mentioned, sir, that in another
22 investigation involving a police department in which you
23 were involved you sat down with members of the Attorney
24 General's Department and prepared a search warrant to look
25 into the files and affairs of the particular police department.

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1 A. Yes, sir.

2 Q. Yes. And you said that that was your basis for saying that
3 you expected to get some instruction from the Attorney
4 General's Department before you investigated the Sydney
5 Police Department, correct?

6 A. Yes, sir.

7 Q. Yeah. I suggest to you Staff Wheaton that the example you
8 gave of that other police force is a little different and
9 different in this way. You were involved in a murder
10 investigation in 1982, correct?

11 A. Yes, sir.

12 Q. And during the course of that murder investigation you had
13 reasonable and probable grounds to believe that the Sydney
14 Police Department had information material to that
15 investigation, correct?

16 A. Could you just repeat that so I have it straight.

17 Q. Yes. During the course of this murder investigation which you
18 were conducting in 1982 you had reasonable and probable
19 grounds to believe that the Sydney Police Department had
20 information useful to the case, material to the case.

21 A. That is correct, sir, yes.

22 Q. Yes. And was it not your duty as an investigating officer to go
23 and find out whether the Sydney Police Department had
24 information material to the case?

25 A. It was my duty as an investigating officer to do exactly what

1 I did.

2 Q. Yes.

3 A. Report it to my superiors and go up the line of authority to
4 either get a search warrant.

5 Q. Yes.

6 A. As was done in the previously mentioned case. Or in this case
7 we received an order from the Attorney General.

8 Q. Indeed, to use your phrase "search warrant", Staff Wheaton,
9 Mr. Edwards urged that you get a search warrant, did he not?

10 A. Mr. Edwards recommended that, yes, sir.

11 Q. Yes, and I say...suggest to you he recommended it strongly.

12 A. Yes, that's correct, sir.

13 Q. Yes. He asked you on a number of occasions to go and get the
14 file.

15 A. It was mentioned, sir, I don't know how many times.

16 Q. Well, Mr. Edwards' notes...

17 A. But it was mentioned.

18 Q. ...reflect...

19 A. Yes.

20 Q. ...that he told you...

21 A. Yes, sir.

22 Q. ...several times...

23 A. Yes.

24 Q. ...to go and get the file.

25 A. I don't recall Mr. Edwards ordering either myself or Inspector

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1 Scott around as such.

2 Q. Oh, quite so. But he urged and strongly recommended that
3 you go get a warrant.

4 A. He recommended that we go get a warrant.

5 Q. Inspector Scott had some difficulty with that.

6 A. That's right, sir.

7 Q. And you say that you were caught between the two.

8 A. Yes, sir.

9 Q. All right. You mentioned an analogy a few days ago, sir, of
10 investigating and the proper method of investigating a crime
11 where you think you know who may be the author of that
12 particular crime, signature crime.

13 A. Yes, sir.

14 Q. You used the example of a safe cracker.

15 A. Yes, sir.

16 Q. Yeah. Now, if I could just suggest to you if you were
17 investigating a safe cracking case, Staff Wheaton, and you
18 found the person that you believed to have been the author
19 of that crime.

20 A. Yes, sir.

21 Q. And during the course of your discussions with that
22 individual he indicated to you that the things taken during
23 that safe cracking were on the premises of some fence,
24 somebody that he had sold the items to.

25 A. You're saying that the alleged culprit confessed to me and told

1 me that the safe packing or the stuff out of the safe was at his
2 friend's home, is that...

3 Q. Exactly.

4 A. Yes.

5 Q. Yes. I suggest to you, Staff, that you would continue your
6 investigation, get a search warrant and attend on the
7 premises to see if what was said were true.

8 A. That is correct, sir.

9 Q. And to see if another crime had been committed, that is,
10 possession of stolen property.

11 A. That is correct, sir, yes.

12 Q. You would not wait for permission or blessing of the Crown
13 before continuing you investigation and getting a warrant.

14 A. No, sir.

15 Q. All right. Now, did you ever suggest on any occasion, Staff
16 Wheaton, that you required the direction of the Attorney
17 General's Department simply because John MacIntyre was the
18 Chief of Police?

19 A. Could you...I just want to get it framed right again, sir.

20 Q. Yes. Did you ever on any occasion tell Mr. Edwards that you
21 required a direction from the Attorney General's Department
22 simply because MacIntyre was the Chief of Police?

23 A. Not simply because. I...yes, yes. My answer to you question
24 would be yes, sir.

25 Q. And was your reason for saying that just because John

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1 MacIntyre was the Chief of the Sydney Police?

2 A. The reason for my saying that, sir, was because and we're
3 referring here to a search warrant now, is it?

4 Q. Yes.

5 A. Because I felt authorization should come down from the top.
6 I was advised that way by my officer commanding and I have
7 to follow the instructions of my officer commanding.

8 Q. Do I take from that you weren't prepared to rely upon Mr.
9 Edwards' strong recommendation and urging that you get a
10 warrant?

11 A. No, sir, because there seemed to be a conflict throughout.
12 There seemed to be a conflict between Mr. Edwards and the
13 Attorney General's Department in Halifax on the conduct of
14 the...where we should go.

15 Q. We'll get to that. My question of you at this time is whether
16 you ever said to Mr. Edwards, "Look, I need something more
17 than just your telling me to go get a warrant."

18 A. Words to that effect, yes, sir.

19 Q. Do you know when you said those things to Mr. Edwards, sir?

20 A. I don't have it recorded in a notebook, no, sir.

21 Q. Fine. Did you know, Staff Wheaton, during the course of your
22 investigation in 1982 that Mr. Gordon Gale was anxious to
23 receive the final report from Sydney Police on your
24 enquiries?

25 A. From Sydney Police.

1 Q. Yes. No, from...

2 A. Sydney City Police.

3 Q. From Sydney Detachment of the RCMP.

4 A. I don't know, sir.

5 Q. Yeah. Did you know that Gordon Gale of the Attorney
6 General's Department was anxious to receive from the Sydney
7 Detachment of the RCMP the results of your investigation?

8 A. Mr. Gale never spoke to me and I never spoke to Mr. Gale. So,
9 I...

10 Q. I heard you say that. But did you understand that he was
11 anxious to receive from the Sydney Detachment a report on
12 your investigation?

13 A. At what stage are we referring to? At the end of the
14 investigation, sir.

15 Q. Spring and summer of 1982.

16 A. I don't know, sir. There were...there were memos that came
17 down from Superintendent Christen asking me this or that.

18 Q. Yes.

19 A. And I answered those memos. As to what was in Mr. Gale's
20 mind it was never discussed with me by my superiors, vis-a-
21 vis the Force side.

22 Q. Yes.

23 A. And I couldn't answer.

24 Q. Did you know from press releases, and you spoke of this a
25 couple of days ago, that there was considerable question as to

1 what to do with the Marshall case? Obviously get him out of
2 the penitentiary and into a halfway house and then how to go
3 about dealing with the situation in court was in the press, was
4 it not? Whether or not a full pardon would be the
5 appropriate route, or whether a reference or an appeal. You
6 read of those things.

7 A. Yes, sir.

8 Q. All right. And you knew that those considerations were being
9 taken by members in government.

10 A. Yes, sir.

11 Q. All right. And did you understand, sir, from what you read in
12 the press that the decision would be made by the Minister of
13 Justice in Ottawa and that they were waiting for a report from
14 the Attorney General's Department in Halifax?

15 A. I can answer that neither yes or no. I know there was
16 considerations at the time, but I wasn't privy to them close
17 enough to say.

18 Q. All right. Did you know that the Attorney General's
19 Department did not want the RCMP to hold up its final report
20 pending these enquiries of the investigating Sydney Police
21 officers?

22 A. To hold them up...

23 Q. Yes.

24 A. ...for what, sir?

25 Q. To hold up the final report submitted to Halifax pending

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1 enquiries of the officers of the Sydney Police Department by
2 the RCMP.

3 A. I would have no knowledge at my level of that, sir.

4 Q. All right. If I could get you to turn to Exhibit Volume 19,
5 Staff Wheaton, please, page 112. It's the conclusion of a
6 report by Inspector Scott dated May 5, 1982, and at page 112
7 you see the final paragraph of Inspector Scott's letter.

8 A. Yes, sir.

9 Q. And do you see his statement "There are still avenues of
10 investigation we are exploring, however, none of them are
11 critical to the decision-making process as to Marshall's guilt or
12 innocence in this case."?

13 A. Yes, sir.

14 Q. Yes. And the avenues that were being explored, these
15 avenues of investigation were enquiries of the Sydney Police
16 officers who were involved in the 1971 investigation and an
17 interview with Dr. Naqvi with respect to an autopsy. Do you
18 recall that, sir?

19 A. This is Inspector's Scott forwarding minute, sir, and I'm just
20 trying to get myself chronologically together here.

21 Q. Sure.

22 A. This is in answer to a memorandum from Superintendent
23 Vaughan, I take it, and a request for a booklet containing a
24 summary of events.

25 Q. That's right. The full report.

1 A. Um.

2 Q. And did you know that according to Inspector Scott that there
3 were still avenues of investigation that were still being
4 explored?

5 A. Yes, sir.

6 Q. Yes. And those avenues, I suggest to you, were enquiries of
7 the investigating police in Sydney in 1971 and an interview
8 with Dr. Naqvi, correct?

9 A. And probably in May we were preparing the Ebsary file for
10 court as well.

11 Q. Yes. Now, if I could get you to turn to page 115 you'll see
12 Christen's letter to Gordon Gale in which he identifies what
13 those avenues of investigation are. And I direct your
14 attention to the last paragraph of the letter, the mid-portion
15 of the paragraph.

16
17 As indicated by Inspector Scott there are
18 minor avenues of investigation to be
19 explored, such as interviewing members of
20 the Sydney City Police who were involved
21 in the original investigation, and also to
22 interview Dr. F. M. Naqvi.

23 A. Yes, sir.

24 Q. Yes. And Mr. Christen says that those are minor avenues of
25 investigation, correct?

A. Yes, sir.

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1 Q All right. Now, at page 123 we'll see Christen's letter to Mr.
2 Gale dated June 3, 1982, and you'll see that Superintendent
3 Christen closes with the words, "As this completes our
4 investigation into this matter, your further direction will be
5 awaited." So, according to Superintendent Christen the
6 investigation was now complete, correct?

7 A. Yes, sir, and he was awaiting the direction of the Attorney
8 General's Department.

9 Q Yes. And you were directed earlier in your evidence to the
10 comment made to you by prosecutor Edwards that there
11 should be certain matters held in abeyance for that time
12 being pending submission of the final report to the Attorney
13 General's Department. Do you recall that evidence, sir?

14 A. Yes, sir. We're into the 3rd of June area now.

15 Q Yes.

16 A. Yes.

17 Q You'll recall Mr. Edwards telling you that he was told by Mr.
18 Gale that the inquiries of the Sydney police officers ought to
19 be held in abeyance for the time being and the final report
20 not held up pending those enquiries, correct?

21 A. No, sir.

22 Q You were told that.

23 A. I wasn't told that.

24 Q I see. I thought you said the last day in your evidence in
25 question...

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1 A. That is one portion of it.

2 Q. Yes.

3 A. But the following portion of it is that our investigation into
4 the Sydney City Police would be held in abeyance, i.e....

5 Q. Yes.

6 A. ...as I've said before there was the Marshall portion, the
7 Ebsary portion and the third portion never touched, the
8 MacIntyre investigation.

9 Q. Yes. And it was the view expressed to you of Mr. Edwards
10 that they didn't want the report on Marshall held up pending
11 the enquiries about the Sydney Police Department.

12 A. That is correct, sir.

13 Q. Yeah. You understood that from Mr. Edwards.

14 A. Maybe I misunderstood your question.

15 Q. You understood that from Mr. Edwards.

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

17 Q. All right. And you understood that he was imparting to you a
18 view expressed by Mr. Gale, correct?

19 A. That is correct, sir.

20 Q. Yeah. And you knew that the Attorney General's Department
21 was waiting for the final report of the RCMP on the Marshall
22 matter.

23 A. Yes, sir.

24 Q. All right. And you took nothing sinister from the fact that
25 they wanted the report without hanging on or waiting for the

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1 enquiries into the Sydney police.

2 A. That is correct, sir, yes.

3 Q. Thank-you. Now, I'd like to review with you next, Staff
4 Wheaton, the meeting of April 16th or 26th.

5 A. Yes, sir.

6 Q. Okay. When was it that you first received the Frank Edwards'
7 notes, that is the typed notes that are compiled in Exhibit
8 number 17.

9 A. These were provided to me by my solicitor maybe three
10 weeks, a month ago, something like that.

11 Q. Yes. And you went through the notes, of course.

12 A. I went through them at the time I received them. I haven't
13 really, other than at this Commission Inquiry various excerpts
14 of them have been brought to my attention, haven't read
15 them of late.

16 Q. But you read them when you received them from counsel.

17 A. Yes, I did, sir.

18 Q. Yeah. And would you agree, Staff Wheaton, that Mr. Edwards'
19 notes are very detailed?

20 A. Yes, sir.

21 Q. And, have his notes assisted you in refreshing your own
22 memory as to what happened six years ago?

23 A. The thing that struck me about Mr. Edwards' notes, as I read
24 them when I first received them, was I recall they were...just
25 about everything he had in here...

1 Q. Yeah.

2 A. ...was happening then.

3 Q. So, it brought it back for you.

4 A. Yes, it did, sir.

5 Q. So, and Mr. Edwards' notes then assisted in refreshing your
6 memory as to what happened six years ago?

7 A. Yes, sir.

8 Q. Now, I'll get you to turn to page 9 of Exhibit 17, please. Are
9 you with me?

10 A. Yes, sir.

11 Q. Yes. And the point you dispute in Mr. Edwards' notes is the
12 comment on page 9, Exhibit 17, where he begins to describe
13 at paragraph, "While on the phone told me he and Herb
14 Davies had gone down to see Chief MacIntyre late Friday
15 p.m." Are you with me?

16 A. I've got the wrong...

17 Q. No. You're in the...

18 A. Yes.

19 Q. You need Exhibit 17, red book.

20 A. Sorry, about that.

21 Q. No, it's all right.

22 A. Page 9.

23 Q. Page 9.

24 A. Yes, sir, which....

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10:15 a.m.*

Q. Page nine, and you see the sentence six lines from the top,
"While on the phone told me he and Herb Davies had..."

A. Yes.

Q. And in the next four or five paragraphs of Mr. Edwards' notes,
down to and including "...left with only statement and a few
other papers, still did not demand full file and all information
from Chief."

A. Yes, sir.

Q. That is Mr. Edwards' description of what he says you told him
on Saturday, April 17, 1982.

A. That's correct, sir, yes.

Q. And according to Mr. Edwards' notes, he said you told him
that this transpired the day before; in other words, on Friday,
April 16th, 1982.

A. That's correct, sir.

Q. And that's the part of Mr. Edwards' notes that you dispute.
It's your evidence that he erred by describing that as April
16th and ought to instead have said it was April 26th.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now if we look at page nine, Staff Wheaton, it's a fact, is it not,
that you and Donna Ebsary attended at Mr. Edwards' office on

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Saturday, April 17, 1982?

A. That is correct, sir, yes.

Q. And it's a fact that the appointment that you had with Mr. Edwards and Miss Ebsary started at 2:30 Saturday afternoon, April 17th?

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

Q. You'll see that at the beginning of his notes at the top of page nine, Mr. Edwards says that you called him at his house at 1:45 Saturday afternoon to say that you were almost finished taking the statement from Donna.

A. Yes, sir.

Q. And that you agreed to meet at 2:30, correct?

A. Yes, sir, that's correct, sir, yes.

Q. And the statement, in fact, that you obtained from Donna Ebsary, which is in Exhibit 34.

A. Yes, sir.

Q. Is dated Saturday, April 17, 1982.

A. Yes, sir.

Q. And, for the record, that's Volume 34, Exhibit 98, page 78.

A. Yes, sir.

Q. And I take it, sir, that you had taken the statement from Donna Ebsary before attending with her at Mr. Edward's office.

A. Yes, sir.

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2 Q. And if you follow with me towards the bottom of page nine,
3 you'll see Mr. Edwards' comment at the bottom paragraph,
4 "Gave written statement to Wheaton," that would be Donna
5 Ebsary gave written statement to you, "which I read as I
6 interviewed her." So I take it that you attended with Miss
7 Ebsary, provided Mr. Edwards with the statement that you
8 had previously obtained that same day from Donna Ebsary.
9 Mr. Edwards proceeded to read it and then proceeded to
10 interview himself Donna Ebsary. Correct?

11 A. That is correct, sir, yes.

12 Q. So the description given by Mr. Edwards on page nine at the
13 top of the page and the bottom of the page with respect to the
14 meeting you had with Miss Ebsary in his office is correct.

15 A. Yes, sir.

16 Q. I'll get you to turn page 11 of the same exhibit booklet,
17 please, Staff, and you'll see this note made by Mr. Edwards,
18 Monday, April 19, 1982, begins:

19 Inspector Scott called just as Wheaton was
20 leaving and said he was concerned about
21 Harriss statement and fact that MacIntyre
had been holding back.

22 Are you with me?

23 A. Yes, I am, sir.

24 Q. The first two lines.

25 A. Yes.

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1
2 Q. So it's apparent from Mr. Edwards' notes that Inspector Scott
3 told Edwards that he, Scott, was concerned about Patricia
4 Harriss' statement and the fact that MacIntyre had been
5 holding back.

6 A. Yes, sir.

7 Q. And it was your evidence that as soon as you and Corporal
8 Davies left Chief MacIntyre's office, you drove to the
9 detachment and briefed Inspector Scott, correct?

10 A. That's my recollection, sir, yes.

11 Q. And you would have briefed Inspector Scott on the June 17
12 Patricia Harriss, which you say you only got from Chief
13 MacIntyre at that time.

14 A. Yes, sir.

15 Q. I suggest it's true, is it not, Staff Wheaton, that Inspector Scott
16 could only have developed an anxiety and concern after you
17 briefed him on the meeting that you and Davies and
18 MacIntyre had had about the paper on the floor, correct?

19 A. It would be a reasonable conclusion.

20 Q. Yes, he could not be concerned on the 19th of April about
21 something that you say only occurred on the 26th.

22 A. That's right, sir.

23 Q. Having regard to the accuracy of Mr. Edwards' notes on page
24 nine, which begin the top of the page and end the page, and
25 having regard to his comments describing what he was told

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1 by Inspector Scott on Monday, April 19th, do any of those
2 facts which I have directed your attention to, sir, cause you to
3 doubt the strength of your assertions regarding the date?
4

5 A. Again, sir, as I have stated previously in this Inquiry, I would
6 like to be able to clarify it for the Commission. I can't. I can
7 remember what I did when I went to the Chief's office and I
8 know I had a copy of the letter from the Attorney General.

9 Q. Has anything this morning I have suggested to you caused
10 you to doubt the strength of the assertions that you've made
11 to this Commission?

12 A. On the date?

13 Q. Yes.

14 A. Like I say, I can only recall the specifics of what I did. There
15 is a doubt about the date, yes, sir.

16 Q. Turning now, Staff Wheaton, to the suggestion made by many
17 that Junior Marshall was, to some extent at least, the author
18 of his own misfortune.

19 A. We're finished with this, are we, sir?

20 Q. Finished for now with Exhibit 17.

21 A. Yes, sir.

22 Q. You attended at the reference in December of 1982 and
23 observed the various witnesses give their testimony.

24 A. Yes, sir.

25 Q. And included among those witnesses was Junior Marshall.

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A. Yes, sir.

Q. You introduced an exhibit yesterday which were handwritten notes you took during your sitting there watching the evidence unfold.

A. Yes, I either did it at the time or back at my motel room afterwards, I can't...

Q. Yes, sir.

A. Yes.

Q. And you made a specific note on Exhibit 108.

A. Yes, sir, I have it.

Q. About three-quarters of the way down the page, Staff Wheaton, Exhibit 108, you made the note:

Donald Marshall poor witness. Wouldn't speak up. Robbery versus rolling.

A. Rolling, yes, sir.

Q. And so it was clear to you, observing Junior Marshall, that he just didn't make a good witness.

A. It's just the nature of the man, sir.

Q. His demeanour was poor.

A. Yes.

Q. And you read the transcripts of evidence given during the November 1971 trial, sir?

A. Yes, I had.

Q. Was it apparent easily to you in the reading of the transcript

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that he did not make a good witness at that trial either?

A. That is correct, yes.

Q. And he was admonished on countless occasions by his own counsel and the crown and the trial judge to speak up, as you have noted here.

A. Yes, sir.

Q. In your experience as a police officer, sir, do you agree that demeanour of a witness, particularly accused, is a very important factor in the ultimate disposition of a trial?

A. Yes, it is, sir.

Q. So my question of you, Staff Wheaton, about Mr. Marshall admitting to being intent on robbing in the park in 1971, is not directed to whether it would have made a difference to the investigating police office but rather it would have made a difference to the lawyers who were looking after Mr. Marshall's defence.

A. What is your question, sir?

Q. I'm just directing you to my point, and I'll ask the question. Did you ever consider, Staff Wheaton, whether it would have made a difference in the conduct of Mr. Marshall's defence whether his lawyers were informed of the whole story by Mr. Marshall?

A. It may have, sir, yes.

Q. And would it concern you as the investigating officer that Mr.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

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Marshall had held back information from his own lawyers who were charged with his defence?

2

3

A. You mean an investigating officer in 1971 or...

4

Q. No, you investigating the case in 1982.

5

A. Me investigating it in 1982?

6

Q. Yes.

7

A. Now at what point would it concern me?

8

Q. I'm asking you whether you gave any thought in your investigation in 1982 to the fact that Mr. Marshall's lawyers were unaware that Mr. Marshall was robbing or intent on robbing someone in the park? Did you give that any thought?

9

10

11

12

A. It cro...Yes, sir, yes.

13

Q. Did it cross your mind when you heard Mr. Marshall give his evidence at the reference?

14

15

A. Yes. Well, if I could, and I'm sure the transcripts of the references are available. To my memory, and as I wrote it down here, in the reference, Mr. Marshall would not say he was robbing anyone. He was saying he wanted to get some money or rolling someone and I think that's why I wrote it is that...

16

17

18

19

20

21

Q. And, in fact, he had told you both stories...

22

A. Yes.

23

Q. In the statements that you obtained from him, correct?

24

A. All the way, yes.

25

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1 Q. On one occasion he said that he was robbing someone.

2 A. Yes, sir.

3 Q. And on another occasion, he said that he was rolling
4 someone.

5 A. Yes, or wanted to get some money.

6 Q. And at the reference in December of 1982, I take it, and the
7 transcript will verify this, that you heard Mr. Marshall say he
8 wasn't robbing someone but was rolling someone.

9 A. That's right, and it became quite a heated point at the
10 reference.

11 Q. Are you aware, sir, that Mr. Marshall's lawyers had no
12 knowledge that Mr. Marshall was either robbing or rolling
13 someone in the park that night?

14 A. You mean going back now, not Mr. Aronson, but Mr. Khattar
15 and Rosenblum?

16 Q. Correct, Messrs. Khattar and Rosenblum.

17 A. That is correct, yes, sir.

18 Q. You know that?

19 A. Well, I was advised that by Mr. Marshall, and yes, sir.

20 Q. That he had withheld that information from his counsel.

21 A. Yes, sir.

22 Q. And did you ever think, sir, that that withholding of
23 information may well have affected the way in which his
24 defence lawyers conducted the defence in 1971?

25

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1 A. Yes, sir.

2 Q. Did you ever see fit to question Mr. Simon Khattar or Mr. Moe
3 Rosenblum about their knowledge of Mr. Marshall and what
4 he was doing that night in the park?

5 A. I spoke to Mr. Rosenblum but it wasn't an in-depth type of
6 interview and I never spoke to Mr. Khattar, no, sir.

7 Q. And never asked them whether the handling of his defence
8 would have been any different had they had that information
9 disclosed to them by their client.

10 A. I can't recall specifically asking Mr. Rosenblum that, sir.

11 Q. I suppose Mr. Khattar would be the best person to say
12 whether it would have made a difference.

13 A. Most definitely, yes.

14 Q. To their defence of Mr. Marshall.

15 A. Yes, sir.

16 Q. You hold the view that it's wrong to suggest that Mr. Marshall
17 is, to some extent, the author of his own misfortune.

18 A. I do, sir.

19 Q. But I suggest to you, sir, that your superiors hold a contrary
20 view, don't they?

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

22 Q. Indeed, if we look at the remarks of Superintendent Christen
23 in Volume 19, page 43, you'll see in the first paragraph of this
24 letter from Mr. Christen to Mr. Gale, written in 1982,
25

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 Superintendent Christen says:

2
3 The fact the stabbing resulted from
4 resistance offered at a robbery attempt
5 appears to be much more plausible than
6 the suggestion an argument ensued
7 between Marshall and Seale which resulted
8 in the stabbing.

9 A. Yes, sir.

10 Q. So obviously from Mr. Christen's standpoint, Superintendent
11 Christen's standpoint, it did make a difference.

12 A. Yes, sir.

13 Q. Correct? I'll get you to turn to Volume 20, at page 23. Do
14 you have page 23?

15 A. Yes, sir.

16 Q. And you'll see towards the bottom of the page, Staff Wheaton,
17 this comment, and this is from Inspector Scott and it's written
18 in 1983:

19 Marshall himself by lying certainly did not
20 help his situation.

21 A. Yes, sir.

22 Q. Do you see that, sir? That was the view held by Inspector
23 Scott in 1983, correct?

24 A. Yes, around the middle of the paragraph.

25 Q. Yes.

A. Yes.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

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Q. Now I'll get you to turn to page 67 of the same volume.

A. Yes, sir.

Q. Volume 20, page 67. Do you have that before you, Staff Wheaton?

A. Yes, I do, sir.

Q. Third paragraph, you'll see Superintendent Vaughan state:

I also do not totally agree that Donald Marshall was not the author of his own misfortune. It is mentioned numerous times throughout the file that Marshall refused to admit he was planning to commit a robbery at the time of death. If he had told the truth from the beginning, the case may have been handled completely different.

That was the view expressed by Superintendent Vaughan in 1986, correct?

A. Yes, sir.

Q. Just before we leave that page, Staff Wheaton, this memorandum resulted from your inquiry with respect to being interviewed by a Mr. Bill, correct?

A. Yes, sir.

Q. And was Superintendent Vaughan your officer commanding in 1986?

A. No, he wasn't, sir.

Q. Was he a senior officer to you?

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 A. Yes, he was, sir.

2 Q. Was he in a position to direct and give orders to you, sir?

3 A. Yes, he was, sir.

4 Q. It's clear from the final paragraph of Superintendent
5 Vaughan's memorandum that he did not want you anywhere
6 near journalists discussing any aspect of the case because the
7 matter was still before the courts, correct?

8 A. That is correct, sir.

9 Q. And did you take that to be an order from Superintendent
10 Vaughan?

11 A. Yes, sir.

12 Q. And the matter under appeal and it should not be discussed
13 was obviously the matter of the Ebsary appeal and seeking
14 leave to appeal to the Supreme Court of Canada, correct?

15 A. Yes, sir.

16 Q. Did you know that leave to appeal to the Supreme Court of
17 Canada was denied in September of 1986, Staff Wheaton?

18 A. I knew it was denied. I don't have a recollection of the date,
19 sir.

20 Q. And did you know that the Order-in-Council establishing this
21 Royal Commission was prepared and granted in October of
22 1986?

23 A. Again, I don't know the date, I know it would be in that time
24 frame, sir.
25

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 Q Did you know, Staff Wheaton, that the advice and decision
2 taken by Superintendent Vaughan, which I've just put to you,
3 was reviewed and confirmed by Chief Superintendent Reid
4 and Deputy Commissioner Schram of the RCM Police?
5

6 A. No, sir.

7 Q Have you reviewed the final report from Superintendent
8 Vaughan to Mr. Gordon Gale which appears at page 93 of
9 Volume 20?

10 A. Yes, sir, I have that.

11 Q You're read that?

12 A. Yes, sir.

13 Q Prior to giving evidence at this hearing?

14 A. Yes, sir.

15 Q And the penultimate paragraph of Superintendent Vaughan's
16 writing at page 96 says that it's his view that no useful
17 purpose would be served in initiating a further investigation
18 into the allegations of counseling perjury?

19 A. Yes, sir.

20 Q Did you know that that expression of Superintendent
21 Vaughan's was sent to Ottawa and reviewed and confirmed
22 by his superiors?

23 A. I would not be privy to that, sir.

24 Q All right. I'd like to take you now, Staff Wheaton, to your
25 evidence given a few days ago with respect...

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

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A. Are you finished?

Q. Yes, we're finished with that volume. With respect to a fire in 1982 in Port Hawkesbury.

A. Yes, sir.

Q. And you recall my objection taken when you started to mention names.

A. That's correct, sir.

Q. And you'll recall the direction given by Their Lordships to protect the innocent?

A. That's correct, sir.

Q. And that we want to insure that no further injustice is done and the one we're all here investigating.

A. That is correct, sir.

Q. Bearing in mind my objection and the decision taken by Their Lordships, I'd like you to be as careful and deliberate in the answers you give to my questions as I will try to be in the way that I frame the questions to you, all right?

A. Yes, sir.

Q. You said that you were called in to investigate in March of 1982?

A. Yes, sir.

Q. It was not a March loss, was it, Staff Wheaton?

A. I beg your pardon?

Q. It was not a loss that occurred in March.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 A. I don't know, sir.

2 MR. OUTHOUSE

3 My Lord, if I can, I'm not quite sure where the examination is
4 going, but it's not just a question of names, as I understand it. If
5 we're going to get into the details of this investigation, then that's
6 got to be a matter that's open, the details of it as opposed to
7 names, as I understand it.

8 MR. CHAIRMAN

9 [Commissioners conferring] Yes, Mr. Outhouse?

10 MR. OUTHOUSE

11 My concern is, and I don't know where Mr. Saunders is going and
12 he can enlighten us on this, but my only concern is that if he
13 examines Staff Sgt. Wheaton on the details of the investigation,
14 what statements he took, what things he did, and he, from his
15 questioning wants to imply criticism of that, then it's surely open
16 to us to bring before the Commission all the facts relevant to that
17 investigation, so that the Commission can judge whether the
18 criticism is fair or not. And that's what I'm concerned about, how
19 far we're going to get into those details.

20 MR. CHAIRMAN

21 Your comment is an appropriate one, that there should be an
22 indication by Mr. Saunders as to where this is going.

23 MR. SAUNDERS

24 Yes, My Lord.
25

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

1
2 The nature of the question, the purpose of it, because we don't
3 want witnesses, this witness answering a question before the
4 question is completed.

MR. SAUNDERS

5
6 Exactly right, My Lord. My purpose is confined to this. Staff
7 Wheaton made some very serious allegations last week with
8 respect to the Attorney General's Department in this case and I
9 wish to find out from Staff Wheaton the basis of those allegations.
10 I wish to test his memory on the things he did, not with respect to
11 identifying individuals. I certainly intend to steer clear of that.
12 But rather the process; that is, what he did, when he did it, with
13 whom he spoke within his own RCM Police. I intend to confine it
14 to that and not pursue any of those avenues in any detail but I
15 wish to cross-examine this witness on his role and his basis for
16 making the assertions he made last week with respect to my
17 client department.

COMMISSIONER POITRAS

18
19 But, Mr. Saunders, how can he do that and not be subjected to
20 further cross-examination or re-examination with respect to
21 persons involved? My fear is that by delving into it at this stage,
22 it may pave the way for further questions, and some of those
23 questions may go to the very details of the case.

MR. SAUNDERS

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 My difficulty as well, My Lord, and I cannot forestall and certainly
2 would never intend to forestall re-examination or re-direct
3 examination by counsel ahead of me or behind me. By the same
4 token, I think it's unfair to leave the aspersions cast last week
5 unchallenged, and I will try to be very careful and deliberate in
6 the questions that I ask. And I know that counsel with me will do
7 the same. And I think we almost have to take it on a question by
8 question basis.

MR. CHAIRMAN

10 That's fair, but the aspersion that you're referring to, as I recall it,
11 was a statement by this witness that a suspected crime that he
12 was committing, that he was investigating, that the report of the
13 RCMP had been given to the suspect.

MR. SAUNDERS

15 Exactly right.

MR. CHAIRMAN

17 Now I don't see, and you have every right to test his memory on
18 that accusation.

MR. SAUNDERS

20 Yes.

MR. CHAIRMAN

22 And to see how that can be, you know, if it is correct or not. But it
23 seems to me that that doesn't require going into the details of the
24 investigation.
25

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 MR. SAUNDERS

2 Oh, I don't intend to get into the details of the investigation, My
3 Lord, except in the testing of his memory as to what his role was.
4 I don't profess to be asking the Staff Sgt. Wheaton questions about
5 things said to him by people who may have been interviewed,
6 what was contained in statements, anything of that kind.

7 MR. CHAIRMAN

8 Or what he found.

9 MR. SAUNDERS

10 Or what he found.

11 MR. CHAIRMAN

12 As a result of the investigation

13 MR. SAUNDERS

14 I want to know the basis for his assertions made Wednesday last.

15 MR. MACDONALD

16 There's one other point, My Lord. This witness has testified for
17 the Commission that in an investigation that he carried out, a
18 particular person was placed at a particular spot at a particular
19 time. That's a statement that this man has made and I think it
20 would be perfectly appropriate to test him on that particular
21 statement. If that statement is not correct, then it goes to the
22 witness's credibility.

23 MR. CHAIRMAN

24 I don't quarrel, again, we have no problem with that, but I don't
25

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 want nor should we, because it's not relevant to this Inquiry for
2 this witness to start telling us about his investigation, generally.

3 Yes, Mr. Outhouse?

MR. OUTHOUSE

4 Well, My Lord, I'm as confused as ever as to where we stop.

MR. CHAIRMAN

5 Oh, we'll stop you when we...

MR. OUTHOUSE

6 If Mr. Saunders is saying that I want to test this witness's
7 knowledge of his assertion that this report was leaked to someone,
8 to the accused, which is the accusation that may be relevant, is
9 relevant to Mr. Saunders' client, I have no difficulty with that. I
10 thought the witness said it last week what his basis of knowledge,
11 or lack of personal knowledge was. But I have no difficulty with
12 him testing that. As soon as we got to the details of the
13 investigation, then it seems to be where do we stop?

COMMISSIONER EVANS

14 You stop when we tell you.

MR. OUTHOUSE

15 I appreciate that, My Lord.

COMMISSIONER EVANS

16 I think you have to deal with it, really, on a question by question
17 as it comes up. We're not interested in the whole exposé of this
18 matter but there may be questions dealing with the credibility of
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STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 this witness and properly be explored. But we'll have to take it
2 on, I think, on a question by question. All I would ask is that
3 Sergeant Wheaton, before he answers, hears the question and sees
4 whether there is an objection being raised to the objection. And
5 not fire off and answer before counsel have a chance to get on
6 their feet and object and before we can rule on it.
7

MR. OUTHOUSE

8 I think Staff Sgt. Wheaton has been listening and we'll await, we'll
9 caution him to take the "pregnant pause" he was talking about
10 earlier.
11

MR. CHAIRMAN

12 As long as it doesn't result in a miscarriage.
13

MR. SAUNDERS

14 Thank you, My Lords.
15

BY MR. SAUNDERS

16 Q. You'll try, as I've suggested, to be as deliberate and cautious
17 in your answers as I will be in my questions, sir?
18

19 A. You have my complete assurance, Mr. Saunders.
20

21 Q. Thank you. I take it you were brought in in March of 1982
22 with respect to the case.
23

24 A. Yes, sir.
25

Q. Do you know when the loss occurred?

A. No, sir.

Q. Did you know that the loss was two and a half months old,

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

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that is the loss occurred two and a half months before you were called in to investigate?

A. I knew it was a period of time prior to when I had been called in.

Q. Did you know it was several weeks, sir?

A. I have no independent recollection if it was one week, two weeks, or a month, two months. I knew it was a period of time before that I was called in.

Q. You took a statement from someone whom you considered to be a suspect?

A. Yes, sir.

Q. You were not the investigating officer in the case.

A. Not the principal investigating officer in the case.

Q. You identified last day in your evidence that the investigating officer was Constable Gaudet?

A. Constable Joseph Gaudet, yes, sir.

Q. The officer commanding the detachment was Staff Sgt. Dole?

A. That is correct, sir, yes.

Q. You identified him in your evidence last day.

A. That is correct, sir.

Q. Is he a senior officer to you?

A. No, sir, we're of equal rank.

Q. Were you aware that there were numerous other investigators looking into the loss apart from the RCM Police?

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS1
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A. Apart from the RCM Police?

Q. Yes.

A. Yes, sir.

Q. You're aware that insurance adjusters were investigating the loss.

A. I had never met with insurance...

Q. You were aware that insurance adjusters were investigating the loss?

A. Yes, sir.

Q. Were you aware that the fire marshall's office was investigating the cause of the loss?

A. Yes, sir.

Q. Were you aware that investigators from the Insurance Crime Prevention Bureau were investigating the loss?

A. Yes, sir.

Q. Were you aware that a considerable number of people were interviewed and statements obtained?

A. At the time I was called in?

Q. Yes, sir.

A. Yes, sir.

Q. Do you agree that it's not uncommon for word to get around a community that police have been around seeking information and statements?

A. Yes, sir.

1 Q. Do you agree that it's not uncommon for consulting
2 investigators on a loss to share information between and
3 among themselves?

4 A. Yes, sir.

5 Q. If, Staff Wheaton, in a hypothetical criminal investigation, a
6 suspect says something about his whereabouts at a material
7 time and investigators are informed that someone else will
8 say the suspect was elsewhere at that stated time, is it not
9 prudent and proper police practice to secure a statement from
10 the second individual in order to impugn and discredit the
11 first?

12 10:45 a.m.*

13 A. That would be a good avenue of police investigation.

14 Q. Yes. Can you confirm, Staff Wheaton, that the RCM Police and
15 the Crown concurred that there was no prima facie case and
16 the file was closed?

17 A. I was not present at the termination of this file, sir. I was
18 present in one meeting with a Crown attorney in Sydney on
19 this file.

20 Q. Are you aware that the RCM Police and the Crown concurred
21 that there was not a prima facie case and the file be closed?

22 A. I have not read this file in completion...

23 MR. CHAIRMAN

24 That's a simple question.

25

1 STAFF SGT. WHEATON

2 Could I have it again then so I could answer it simply?

3 MR. SAUNDERS

4 Q. Yes. Are you aware that the RCM Police and the Crown
5 concurred that there was no prima facie case and the file be
6 closed?

7 A. Yes, sir.

8 Q. Do you confirm that no information was ever laid?

9 A. Not to my knowledge.

10 Q. No prosecution was ever instituted.

11 A. That's correct, sir.

12 Q. The claim under the various insurance policies were honoured
13 and paid out.

14 A. I knew of that via the press just recently.

15 Q. Is that so?

16 A. That's correct.

17 Q. You didn't know that the insurance policy claims were paid
18 out?

19 A. No, sir.

20 Q. Back in 1982.

21 A. No, sir.

22 Q. Now, last Wednesday, Staff Wheaton, you boldly asserted that
23 you had personal and direct knowledge of a release of a RCM
24 Police report by the Attorney General's Department to the
25 person suspected.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERSMR OUTHOUSE

1 Well, My Lord, I think that the question is unfair. That is not
2 what the witness stated, as I recall. My recollection is his answer
3 was where did he find that out from and he said, "From Staff
4 Sergeant Dole."
5

MR. SAUNDERS

6 Well, we'll get to that, My Lord. That's not what the witness
7 said initially.
8

COMMISSIONER EVANS

9 One at a time.
10

MR OUTHOUSE

11 That's certainly my recollection of the evidence. When he
12 was asked the basis of his knowledge he said Staff Sergeant Dole
13 and it seems to me that it's perfectly proper for Mr. Saunders to
14 put to him what knowledge did he have, is that all he had. I have
15 no problem with that.
16

COMMISSIONER EVANS

17 Do we have the evidence?
18

MR. SAUNDERS

19 Yes, I have the transcript, My Lord, and I'm going to put it to
20 the witness, Volume 43.
21

22 Q. I suggest to you, Staff Wheaton, that when you first raised
23 this matter Wednesday last with Commission counsel.

24 A. Yes, sir.

25 Q. You first asserted that you had personal and direct knowledge

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 of a release of an RCM Police report by my client department
2 to the person suspected. I direct your attention to page 7952,
3 Volume 43 of the daily transcript.

4 COMMISSIONER EVANS

5 I do not have that.

6 MR. SAUNDERS

7 The page reference, My Lord.

8 COMMISSIONER EVANS

9 No, no, I have.

10 MR. SAUNDERS

11 Yes.

12 COMMISSIONER EVANS

13 The evidence.

14 MR. SAUNDERS

15 Yes, I'm going to put...

16 COMMISSIONER EVANS

17 ...get it down exactly.

18 MR. SAUNDERS

19 Yes. Page 7952.

20 Q. Are you with me there, Staff Wheaton?

21 A. Yes, I have it here.

22 Q. Yes. And this records what you said as Mr. Orsborn, my
23 friend ahead, was about to sit down.

24 A. That's correct, sir.

25 Q. Yes. And you begin by saying,

1 My Lord, if I might come back to Mr.
2 Orsborn for one minute. He's asked me a
3 number of times throughout the day do I
4 have any independent recollection of
5 anything new between here and here and
6 here. You asked me this morning, and I've
7 been thinking it over at the lunch period
8 of...do I know of any instances where files,
9 Mounted Police files, were brought forth
10 that went to the Attorney General's
11 Department.

12 And so on,

13 MR. ORSBORN

14 Uh-hum.

15 STAFF SGT. WHEATON

16 You have not come back to other cases and
17 I would feel it remiss if some other lawyer
18 should pick up this item later and you
19 think that I was hiding things from this
20 Commission, which I assure you, My Lords,
21 I'm not doing. So, that's why I take this
22 opportunity to go back to that question if I
23 may.

24 MR. ORSBORN

25 Q. Do you know of any such releases of
reports?

A. The only one that I can speak to on my
own personal knowledge was again in
1982.

Did you say that last Wednesday, sir?

A. Yes, as...I would think that an accurate...

1 Q. Yes. Page 7953. The next page, between line 7 and 10.

2 A. Yes, sir.

3 Q. "In this investigation we were able to place Mr. MacLean at
4 the front door of the restaurant in a blinding snow storm at
5 approximately four to five o'clock in the morning."

6 A. Yes, sir.

7 Q. Did you say that Wednesday last?

8 A. Yes, sir.

9 Q. Yes.

10 A. I don't quibble with the transcript, but...

11 Q. Now, I'm going to get you...sorry, I didn't mean to cut you off.

12 A. No. The only thing that I see there that I don't agree with is I
13 wasn't...I did say four or five o'clock in the morning but to my
14 own recollection I don't know what time it was.

15 Q. Well, why did you say last Wednesday that it was between
16 four and five o'clock in the morning?

17 A. I don't believe, that's why I brought it up. I don't believe I
18 was that definite on that, but if I was...I don't have the time
19 and I haven't refreshed my memory from the file.

20 Q. You're not suggesting that you were anything less than
21 definite Wednesday last, are you, Staff Wheaton, about what
22 you said with respect to this suspect?

23 A. No, sir. I stick with what I said last Wednesday.

24 Q. Yes. You said, according to this transcript, and I'm sure
25 everyone who was here at the time will recall it, the sentence

1 that I've just referred you to.

2 A. Yes, sir.

3 Q. And you're telling the Commission now that you don't recall
4 being so definite last Wednesday.

5 A. No, I'm not saying that at all. All I'm saying now is that there
6 was a blinding snow storm and I'm not sure of the time.

7 Q. How did you ever come up with the time that you said under
8 oath last week?

9 A. To me it was early in the morning.

10 Q. Early in the morning indeed.

11 A. Yes.

12 Q. You said last week approximately four to five o'clock in the
13 morning, didn't you?

14 A. Yes, sir.

15 Q. Yes. Specific reference to the time and the weather conditions
16 and the suspect.

17 A. Yes, sir.

18 Q. And today what are you telling this commission?

19 A. Today I'm telling this commission that I agree with what I
20 said here and I'm not...I can't be specific about what time it
21 was.

22 Q. Do you know what time of day at all it was?

23 A. I know it was early in the morning to my recollection.

24 Q. Might it have been ten o'clock, sir.

25 A. I don't know, sir.

1 Q. Could it have been ten o'clock?

2 A. Could have, yes.

3 Q. Yes. Page 7956.

4 A. 7956.

5 Q. Yes. Line 7, question by Mr. Orsborn,

6

7 Q. The question, Staff Sergeant, is to your
8 knowledge and related to this comment
9 in the report here are there any releases
of reports, RCMP reports, to your
knowledge, number one by the RCMP..."

10 et cetera, et cetera. It's clear from the way Mr. Orsborn
11 phrased the question, is it not, that he was referring to your
12 personal knowledge?

13 A. Well, to me it meant, is there anything I know about to my
14 knowledge.

15 Q. His question is "to your knowledge".

16 A. Yes, sir.

17 Q. Did you say last Wednesday that you had personal and direct
18 knowledge of a release of an RCM Police report by my client
19 department to a person suspected?

20 A. Could you give me a reference, sir?

21 Q. I've already given you two.

22 A. Where it says that I had personal and direct knowledge.

23 Q. Your answer at the bottom of page 7952 was that you had
24 personal knowledge. We've already talked about that one.
25 And the question on page 7956 directed by my friend

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 Mr.Orsborn speaks of "your knowledge," does it not?

2 A. Speaks of my knowledge, yes, sir.

3 Q Yes. And were you trying to leave the impression with this
4 Commission last Wednesday that you had personal knowledge
5 that the Attorney General's Department released an RCM
6 Police report to a suspect in this case?

7 A. I would...

8 MR. CHAIRMAN

9 Go ahead. Yes, that's an appropriate question.

10 STAFF SGT. WHEATON

11 A. I was...my...what I said last Wednesday to the best of my
12 recollection and what I will say again now is as a result of
13 conversation with Staff Sergeant Cecil Dole I was left with the
14 impression that a report had been released by the Attorney
15 General to a person...

16 Q Do you have any personal knowledge, Staff Wheaton?

17 A. But I do not...I do not know myself, it would be hearsay.

18 Q You have no personal knowledge...

19 A. ...from another person.

20 Q You have no personal knowledge. Oh, I'm sorry.

21 MR. BISSELL

22 My Lord, I think in fairness to the witness he should be
23 referred to page 7957.

24 MR. SAUNDERS

25 I intend to take the witness to the next page, My Lord. But

1 my question now is...

2 COMMISSIONER EVANS

3 I think one of the problems...

4 MR. SAUNDERS

5 Sorry.

6 COMMISSIONER EVANS

7 You're a little fast on...I'm sure you're not doing it
8 intentionally but the witness seems to get...he takes a little...he
9 takes advantage of the pregnant pause that we talked about, but
10 you don't seem to. You're right back at him again. And, I would
11 be particularly interested in something I asked before. I think it
12 was at the bottom of 7952, what exactly was the quote. "I can
13 only speak of my own personal and direct knowledge," is that
14 what it says?

15 MR. SAUNDERS

16 I'm sorry. Where are you, My Lord.

17 COMMISSIONER EVANS

18 Oh, I thought it was at the bottom of 7952, let's see.

19 MR. SAUNDERS

20 Yes. Line 23. You have it now, My Lord.

21 MR. CHAIRMAN

22 Yes,

23 The only one that I can speak to on my
24 own personal knowledge was again in
25 1982, in March of 1982, and I was
requested to assist our Port Hawkesbury
detachment in the investigation of a

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

suspicious fire at the Voyageur Motel...

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COMMISSIONER EVANS

He says there it was of his own personal knowledge.

MR. SAUNDERS

Yes, clearly.

COMMISSIONER EVANS

All right.

MR. SAUNDERS

Thank-you.

MR. CHAIRMAN

That question is in order. I'm waiting for the answer.

STAFF SGT. WHEATON

A. By my own personal knowledge I meant and I mean that I was advised...

Q. No, Staff Sergeant Wheaton, that's not my question on what you mean. My question is and was do you have personal knowledge of a release of a RCM Police report by the Department of the Attorney General to the person suspected in this case?

A. I was not present when a report was...

Q. Do you have personal knowledge of that, sir?

A. It would depend on the semantics of the question or the interpretation of it, in my interpretation of it if another person tells me something I have knowledge of what that

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 person tells me. Now, I have personal knowledge of that. I
2 do not have personal knowledge nor was I ever present when
3 any report was released by the Attorney General's
4 Department.

5 Q. Staff Wheaton, you're a trained RCM Police investigator with
6 some twenty-eight years experience.

7 A. Twenty-six years, seven months, sir.

8 Q. You know what personal knowledge is, do you not?

9 A. As I say it would...if it means that I was present, no, I was
10 not. If it means that I heard it from someone else, I did, and
11 I'm advising that to the Commission and they can judge from
12 there.

13 Q. You, sir, have no personal knowledge yourself of such a thing.

14 A. If you interpret personal knowledge as being there and
15 seeing it done, I have none, sir.

COMMISSIONER EVANS

17 What you're saying is that as a result of hearsay.

STAFF SGT. WHEATON

19 That is correct, My Lord. I was told by another person which
20 would be hearsay.

MR. SAUNDERS

22 Q. You said, Staff Wheaton, in answer to my friend Mr. Orsborn's
23 question when he asked you whether it might have come
24 from the RCM Police, you said, "No," not to the best of your
25 knowledge. Do you remember that answer?

- 1 A. Yes, sir.
- 2 Q. For the record it's line 17, page 7956. What does, "No, not to
3 the best of my knowledge," mean, Staff Wheaton?
- 4 A. I want to phrase my answer carefully in that I don't want to
5 overstep any boundaries here. But after I would...I was told
6 of this incident by Staff Dole I questioned Staff Dole. "Are you
7 sure?" and he told me that the person was able to repeat
8 portions of the report to him.
- 9 Q. Did you check to see whether if there was a release that it
10 may well have been released by someone connected with the
11 RCM Police?
- 12 A. I believe I made a call to the reader's section at that time,
13 who would be responsible for releases and so on. I'm not
14 sure if I talked to Staff Burgess or Sergeant Bentley. But I
15 believe I did...I made an enquiry, yes, sir.
- 16 Q. Did you enquire at the detachment level?
- 17 A. I was talking to the detachment level. I was talking to the
18 NCO, Staff Dole was in charge of the detachment.
- 19 Q. Did you make enquiries, sir, of stenographers working at the
20 detachment?
- 21 A. No, I did not.
- 22 Q. Did you make enquiries of other RCM Police officers working
23 at that detachment?
- 24 A. No, I did not, sir.
- 25 Q. Was your statement in answer to Mr. Orsborn's question, "Not

1 by the Mounted Police to the best of my knowledge" anything
2 more than wishful thinking on your part?

3 A. It was to the best of my knowledge, sir. That's not to say it
4 couldn't be.

5 Q. Pardon me.

6 A. That's not to say, I suppose, it couldn't be released from the
7 RCMP.

8 Q. Thank-you. You say that you were told this by Staff Sergeant
9 Dole.

10 A. That's correct, sir.

11 Q. I take it he told you that when you were there in March,
12 1982.

13 A. It was shortly after I finished my portion of this
14 investigation.

15 Q. Yes. In March of 1982.

16 A. Yes, sir.

17 Q. So, then obviously any suspected release of RCM Police
18 reports had to have occurred prior to your discussion with
19 Staff Sergeant Dole in March of 1982. Correct?

20 A. Yes, sir. I'm not positive on dates, sir, because I haven't
21 looked at that file since I was there.

22 Q. Yeah.

23 A. Some five or six years ago.

24 Q. Well, you say you spoke to Staff Sergeant Dole in March when
25 you were there.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 A. Sometime later after I had gone back to Sydney I had
2 conversation with Staff Sergeant Dole and he told me this.

3 Q. Was it in March, 1982, sir, when you were there?

4 A. I...I...when I was there?

5 Q. Yes.

6 A. Yes, sir, as best to my recollection.

7 Q. Thank-you. So, it had to have been if there were ever any
8 release, it had to have occurred before the discussion you had
9 with Staff Sergeant Dole in March of 1982, correct?

10 MR. OUTHOUSE

11 My Lord, he's...several different times he's asked the question.
12 The witness has said, "I don't know when I talked to Staff
13 Sergeant Dole. It was shortly after I was there." My learned
14 friend keeps insisting it had to be in March. And I don't...I don't
15 see why he's entitled to do that on the evidence.

16 MR. CHAIRMAN

17 If it's shortly after he was there then...

18 MR. SAUNDERS

19 I'm prepared to...

20 MR. CHAIRMAN

21 ...I can see the implication that it was in March, 1982, that would
22 seem to me to be the answer to the...the first answer to that
23 question. Now, Staff Wheaton says he's not quite sure how long
24 after it was. I assume what Mr. Saunders is trying to do is to see
25 how specific he can be in fixing the time.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 MR. SAUNDERS

2 Exactly, My Lord.

3 Q. My question of you, Staff Wheaton, is was it in March 1982
4 when you were there that Staff Sergeant Dole told you what
5 you say he did?

6 A. It could have been in March, it could have been in April, sir.
7 I don't know.

8 Q. No later than April of 1982.

9 A. Not to the best of my recollection.

10 Q. My instructions, Staff Wheaton, are that no RCM Police reports
11 were received by the Attorney General's Department until
12 December of 1982 when furnished by RCMP Inspector Zinck.
13 Do you know anything about that, sir?

14 A. I don't know anything about that, sir.

15 Q. If that were true would that cause you to question the merits
16 of your accusation?

17 A. It certainly would, sir.

18 COMMISSIONER EVANS

19 Mr...

20 MR. SAUNDERS

21 Yes, My Lord.

22 COMMISSIONER EVANS

23 I assume there's going to be evidence...

24 MR. SAUNDERS

25 That's certainly my expectation, My Lord, certainly my

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 expectation that evidence will be called some time subsequent to
2 this witness on that very point.

3 COMMISSIONER EVANS

4 That's all I wanted to ask.

5 MR. CHAIRMAN

6 Are you moving to another area?

7 MR. SAUNDERS

8 Yes, I am, My Lord.

9 INQUIRY ADJOURNED - 11:04 a.m. *

10 11:25 a.m.

11 CHAIRMAN

12 Mr. Saunders.

13 MR. SAUNDERS

14 Q. Staff Wheaton before we leave the subject of the 1982 Port
15 Hawkesbury investigation, in fairness to you I point out page
16 7957 of the transcript, Volume 43, that transcript, where you
17 said at the conclusion of your evidence on the matter, at line
18 9, that it was your understanding that had come to your
19 attention from your discussions with Staff Sergeant Bill.

20 A. Yes, sir.

21 Q. Now Staff Wheaton, you said before we broke that you may
22 well have been mistaken when you said Wednesday last that
23 you could place the suspect at the premises between 4 and 5
24 o'clock in the morning in the midst of a raging snowstorm.

25 A. Insofar as times, I don't know. Dates, I don't know. I have

1 not seen the file to refresh my memory, sir.

2 Q. Do you have any explanation as to why you would have said
3 "4 and 5 in the morning", Wednesday last?

4 A. I know it was early in the morning. I know there was a
5 blinding snowstorm. In that area of the country the wind
6 blows very hard down the Strait there and often traffic is
7 stopped in this type of thing and I think that occurred at that
8 time and it sticks in my mind that it was more early morning
9 and there was a blinding snowstorm.

10 Q. Is the time of 4 or 5 o'clock in the morning more suspicious
11 than a time closer to 10 o'clock in the morning?

12 A. I would think so, yes, sir.

13 Q. I'm advised, Staff Wheaton, that there's not the slightest
14 reference or evidence anywhere of the suspect being seen
15 between 4 and 5 o'clock in the morning at the premises. I ask
16 you whether you wish today to retract your statement made
17 Wednesday last about the time.

18 A. About the time?

19 Q. Yes.

20 A. As I've already told you, yes, I don't know specific times.

21 Q. You wish to retract what you said last day with respect to the
22 times? That that was...

23 A. Yes, sir, I guess so.

24 Q. Inaccurate and incorrect?

25 A. Yes, sir.

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 Q As a matter of housekeeping, Staff Wheaton, I asked you who
2 prepared the affidavit of yours filed before the Court of
3 Appeal, your affidavit being Exhibit 102, and if you look at
4 Exhibit 99, which is red volume 29...

5 REGISTRAR

6 98.

7 Q Red volume number 29.

8 REGISTRAR

9 98.

10 Q Oh, it's 98, is it?

11 A. 98.

12 COMMISSIONER POITRAS

13 They have two appellations.

14 MR. SAUNDERS

15 Thank you, My Lord.

16 A. I'm finished with this one now, am I, Mr. Saunders?

17 Q Yes, we are. Do you have the red volume that...

18 A. 98?

19 Q That's at least numbered Volume 29?

20 A. Yes, sir.

21 Q Yes.

22 A. Typed.

23 Q Thank you.

24 A. Page?

25 Q Page 30. And you see the notes of Mr. Aronson with respect

STAFF SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 to affidavits to be obtained, affidavits to be given, re
2 evidence to be given. Do you see that?

3 A. On that page 30 I see A.J. Evers, Hair and Fibre, on top of
4 page.

5 Q. Yes. And then about two inches down, Stephen J. Aronson,
6 affidavits to be obtained, affidavits re evidence to be given.

7 A. Yes, sir.

8 Q. And then your name and Corporal Carroll's name listed.

9 A. Yes, sir.

10 Q. Does that help in refreshing your memory that it was Mr.
11 Aronson who prepared your affidavit, sir?

12 A. Yes, sir. Yes, I would believe it to be Mr. Aronson.

13 Q. Thank you.

14 COMMISSIONER EVANS

15 Can you tell me what that reads?

16 MR. SAUNDERS

17 That is the wording on page 30, My Lord?

18 COMMISSIONER EVANS

19 Yeah, after Stephen J. Aronson.

20 MR. SAUNDERS

21 I read it as "Stephen J. Aronson. Other affidavits to be
22 obtained. Aff. re evidence to be given."

23 COMMISSIONER EVANS

24 To be obtained but not necessarily prepared, is that...

25 MR. SAUNDERS

1 No, it says obtained.

2 COMMISSIONER EVANS

3 The question you put to the witness was, "Who prepared it?"

4 MR. SAUNDERS

5 There's another reference that might be helpful, page 27, My
6 Lord, about eight lines down, appears to be a checklist and on the
7 left-hand margin you have the word, which I take to be "Need"
8 and then "Wheaton" and beside the word "Wheaton", "Drafted" Do
9 you see that, My Lord?

10 COMMISSIONER EVANS

11 Yes, I do.

12 MR. SAUNDERS

13 Yes.

14 Q. And that leads me to conclude, Staff Wheaton, and you can
15 agree with me if you like, that it was Steve Aronson who
16 prepared your affidavit.

17 A. I have no independent recollection, Mr. Saunders, but it
18 would appear from this checklist that it would appear that
19 way, yes.

20 Q. Thank you. The only other person I guess, Staff Wheaton,
21 who would have prepared an affidavit for you, if it wasn't Mr.
22 Aronson, would be Mr. Edwards.

23 A. That's, to the best of my knowledge, sir.

24 Q. I'd like to turn finally, Staff Wheaton, to the various reports
25 that you filed to your superiors in the RCM Police with respect

1 to your investigation commencing February of 1982. And
2 most of these reports are found in red volume number 34,
3 Exhibit 98.

4 A. 99?

5 Q. That's 99, is it?

6 A. Page?

7 Q. It's like inflation. Exhibit 99 and beginning at page 5. This is
8 an occurrence report dated February 3, 1982, and I take it
9 this is the first report prepared by the RCMP in Sydney with
10 respect to the investigation commenced that month, sir,
11 correct?

12 A. Yes, sir. This is an in-house report, sort of a running
13 chronology...

14 Q. Indeed. And you identified it, that is to say the reports that
15 you as an officer filed with your superiors up the ladder, as
16 being a Form C-237?

17 A. Yes.

18 Q. That's the standard form?

19 A. It's a more formal...

20 Q. More formal?

21 A. Yes.

22 Q. And if we turn to page 9 of this exhibit book we see the first
23 of your C-237s?

24 A. Yes, that, to the best of my knowledge.

25 Q. Yes. And that's dated February 25, 1982, correct?

- 1 A. Yes, sir.
- 2 Q. Yes. And you described the RCM Police as a military or para-
3 military organization in a sense that officers reported up the
4 line or up the ladder to superior officers as to what they were
5 doing in an investigation.
- 6 A. That is correct, sir, yes.
- 7 Q. And the C-237s were the reports that you were preparing as
8 the chief investigator and filing for review by your superiors,
9 sir?
- 10 A. That is correct, sir, yes.
- 11 Q. And it was your expectation that your reports would be
12 passed up the line and reviewed by your superiors.
- 13 A. If at any level my reports were not satisfactory they would
14 come back to me and then I would amend them or any
15 inquiries I would expand on them.
- 16 Q. Yes. And would it also be your expectation that if the
17 Attorney General's Department was anticipating information
18 from the force as to the investigation, that they would be
19 reviewing the reports that you prepared and submitted.
- 20 A. Yes, sir.
- 21 Q. Pardon me?
- 22 A. Yes, sir.
- 23 Q. Yes. And has it been your evidence that you have never once
24 met with Gordon Gale about this case?
- 25 A. Not to my knowledge, no, sir.

1 Q. And is it also your evidence that you have never met with
2 Gordon Coles about this case?

3 A. Yes, sir.

4 Q. So whatever those gentlemen knew about your reports would
5 have to come from those reports themselves?

6 A. Yes, sir.

7 Q. Yes. Now let me take you through these various C-237s. The
8 next one is at page 58 of the same exhibit.

9 A. Yes, sir.

10 Q. Dated 82/3/22, March 22, 1982?

11 A. Yes, sir.

12 Q. And was it standard procedure that you, as the investigator,
13 would prepare such a report and then it would be passed to
14 your officer commanding for his review and annotations or
15 whatever he wished to add to it?

16 A. Yes, sir.

17 Q. And, indeed, on this one we see that Inspector Scott has
18 added a few paragraphs of his own.

19 A. Yes, sir.

20 Q. At the bottom of page 58 and the top of page 59, correct?

21 A. That is correct, sir.

22 Q. And it would be your understanding that such a report as this
23 would be continued up the line to Halifax and reviewed by
24 superiors to Inspector Scott, is that right?

25 A. That is correct.

- 1 Q The next C-237 is at page 64 of this exhibit book, sir.
- 2 A Yes, sir.
- 3 Q And this one happens to be dated the 6th of April 1982?
- 4 A Yes, sir.
- 5 Q Thank you. And once again we see that at page 67 it's been
6 reviewed by Inspector Scott and he has added some
7 comments of his own.
- 8 A Yes, sir.
- 9 Q The next C-237, sir, is at page 72 of this book.
- 10 A Yes, sir.
- 11 Q And that is dated 82/4/7.
- 12 A Yes.
- 13 Q I'll get you to turn the page and this is a subsequent C-237 of
14 yours that is filed April 19th, or at least is dated April 19th,
15 1982.
- 16 A Yes, sir.
- 17 Q And I'll take you now to page 88 of the same exhibit book
18 which is your next one, and that is dated the 20th day of May
19 1982.
- 20 A Yes, sir.
- 21 Q And I suggest to you, Staff Wheaton, that nowhere in any of
22 these 237 reports that I have referred you to is it ever said
23 that John MacIntyre deliberately dropped paper behind the
24 desk and concealed paper, whatever was on the paper, from
25 you and Corporal Davies, is that not so?

1 A. That's been brought to my attention, yes, sir.

2 Q. Yes. Now, you said to my friend, I think Mr. Pugsley, that you
3 had your suspicions of Mr. MacIntyre up till the meeting in
4 his office with Corporal Davies, but the first physical overt act,
5 if I've quoted you properly, was this dropping of paper
6 behind the table which you took to be a deliberate action on
7 his part to conceal that information from you. Correct?

8 A. Yes, sir.

9 Q. And do you not think, Staff Wheaton, that that physical overt
10 kind of act is something important to put into a written
11 report?

12 A. Yes, sir.

13 Q. And would you agree that it was one of the most significant
14 things in your investigation of the case?

15 A. Yes, sir.

16 Q. Because by your...

17 A. Insofar as Chief MacIntyre is concerned.

18 Q. Yes.

19 A. Yes, sir.

20 Q. Because by your evidence it was only then that you knew of
21 the existence of a June 17th Patricia Harriss statement.

22 A. That is correct, sir.

23 Q. And by your evidence that concealment was in the face of a
24 direct order from the Attorney General of Nova Scotia.

25 A. That is right, sir.

1 Q. And did you not think that complete and full details of that
2 concealment ought to go forward to the Department of the
3 Attorney General?

4 A. Yes, I did, sir.

5 Q. And would you agree with me, Staff Wheaton, that silence on
6 your part in respect to that caused Superintendent Vaughan
7 some difficulty in 1986?

8 A. I was not silent. I verbally advised my officer commanding
9 immediately upon returning from the Sydney City Police. I
10 later had conversations with Frank Edwards sometime
11 relative to it. As I've said, it's not here in a written report.
12 The paper correspondence on this file is really quite large and
13 I find it...

14 Q. Would you agree with me, Staff Wheaton, that the fact you
15 never indicated that at any time, in any written report,
16 caused Superintendent Vaughan some difficulty in 1986?

17 A. Oh, yes. Yes.

18 Q. Correct?

19 A. Yes, sir. I would, correct, yes, sir.

20 Q. Yes. And I'll get you to turn to Book 20. Do you have Book
21 20, page 80?

22 A. Yes, I do, sir. Page 80?

23 Q. Page 80. Do you have that before you, Staff Wheaton?

24 A. Yes, I do, sir.

25 Q. And this is the memorandum from Superintendent Vaughan

1 dated, that would be June 12th, 1986?

2 A. Yes, sir.

3 Q. And this is in response to your memorandum seeking his
4 advice, or at least the advice of a superior, as to whether you
5 had their authority to consult with a journalist.

6 A. Yes, sir.

7 Q. And you'll see that Superintendent Vaughan expresses his
8 concern with the contents of paragraph number 4 of your
9 memo...

10 A. Yes, sir.

11 Q. And he says that he wonders why,

12
13 He (being you) would now make a
14 recommendation that Chief MacIntyre
15 should be charged criminally with
16 counselling perjury as over three years
17 have elapsed and any prosecution action
18 could fail due to the Charter of Rights.

17 A. Yes, sir.

18 Q. And he asks this question. "Why, if he felt prosecution
19 should be entered, did he not make the recommendation in
20 his report dated April 3, 5:30."

21 A. Yes, sir.

22 Q. And he asks for a reply from you and he asks for your
23 reference to materials in support of that submission on your
24 part, as well as any other new or concrete evidence in support
25 of the view you held. Correct?

1 A. Yes, sir.

2 Q. Essentially, I take it, from Superintendent Vaughan's memo
3 that he just couldn't tell what you were talking about in your
4 earlier submission, is that right?

5 A. Yes, sir.

6 Q. And he asks for your explanation and references.

7 A. That's correct, sir.

8 Q. And your response as at page 76 of the same booklet, is it?
9 And this is a 3-page memorandum from pages 76 through 78
10 inclusive in response to Superintendent Vaughan's request,
11 correct?

12 A. Yes, sir.

13 Q. And that's how you begin. You acknowledge receipt of his
14 memorandum. And was it your intent to answer
15 Superintendent Vaughan's questions?

16 A. Yes, sir.

17 Q. Specifically, one of the things he asked in his memorandum
18 was, "Just why Staff Sergeant Wheaton feels he would cast the
19 Attorney General's Department in a bad light."

20 A. Yes, sir.

21 Q. And I see nothing in your response, in those three pages, Staff
22 Wheaton, answering that question posed by Superintendent
23 Vaughan.

24 A. I agree with you, sir, taking a quick look at it.

25 Q. You have not answered his question, correct?

1 MR. OUTHOUSE

2 Perhaps, My Lords, in fairness to the witness. the first
3 paragraph of that reply should be pointed out to him where he
4 says what he's undertaking to do further to conversations with
5 the CIBO, as I understand it.

6 MR. SAUNDERS

7 What page were you on, Mr. Outhouse?

8 MR. OUTHOUSE

9 Page 76.

10 MR. SAUNDERS

11 Yes.

12 MR. OUTHOUSE

13
14 I will deal with paragraph 4 of my
15 memorandum as per conversation with
16 yourself and the CIBO, the main point at
17 issue being what evidence is there to
18 support a charge and/or further
19 investigation of former Chief of Police for
20 the City of Sydney, John MacIntyre.

21 So clearly there is telephone communication between Staff
22 Sergeant Wheaton and others, including the CIBO, prior to drafting
23 this, and the main issue he's addressing, as he says, is what
24 evidence is there, pardon me, what evidence is there to support a
25 further charge or a charge or an investigation against Chief
MacIntyre. Nothing to do with the Attorney General's
Department.

1 MR. SAUNDERS

2 Q. Yes. So my question of you, Staff Wheaton, is there's nothing
3 in your written reply which answers the question posed of
4 you by Superintendent Vaughan.

5 A. No, sir. Further to our conversation I dealt with, as I say, the
6 evidence.

7 Q. Yes. And I take it from the answers that you gave last day
8 that what it was that you were prepared to say to the
9 reporter with respect to something embarrassing about the
10 Department was delay on the Department's part in proceeding
11 with the investigation of the Sydney Police Department.

12 A. That is correct, sir.

13 Q. And were you aware of press releases throughout 1982,
14 1983, 1984, 1985, 1986, that nothing would be done with
15 respect to any investigation of the police department in
16 Sydney until all of the Ebsary matters had been concluded.

17 A. Yes, sir. There were...

18 Q. You knew that to be so.

19 A. There were numerous press releases, yes.

20 Q. Yes. And can you confirm, sir, that the Ebsary trials and
21 appeals and leaves to appeal ran from September 1983
22 through September 1986?

23 A. I don't have the dates in my mind, sir, but it was, there was
24 three Supreme Court trials in the matter and it was rather
25 lengthy, yes.

1 Q. Yes. My information is that the first trial resulted in a hung
2 jury before Mr. Justice Clarke, as he then was, in September
3 1983.

4 A. Yes, sir.

5 Q. That there was a second trial in November of 1983.

6 A. Yes, sir.

7 Q. That there were, or was an appeal in September of 1984
8 following the second trial.

9 A. Yes, sir.

10 Q. That a third trial was held in Sydney before Mr. Justice Nunn
11 in January of 1985.

12 A. Yes, sir.

13 Q. That there was an appeal heard in May of 1986 in Halifax
14 with respect to that third trial.

15 A. Yes, sir.

16 Q. And that leave to appeal to the Supreme Court of Canada was
17 made in September of 1986 and refused on October 9, 1986.

18 A. Yes, sir.

19 Q. All right. Still in Volume 20, Staff Wheaton, page 21. This is
20 a memorandum prepared by T.E. Barlow who, I guess, was
21 your replacement, perhaps I'm not right in that. You had
22 been Plainclothes Coordinator in Sydney and Barlow came and
23 later occupied that position in Sydney, correct?

24 A. He replaced me, yes, sir.

25 Q. Yes. And this is a memorandum prepared in 1983 by Staff

Sergeant Barlow to his superiors, is it not?

A. Yes, sir. It's to the OC, Sydney Subdivision.

Q. Yes. And there's nothing in that report referring to any willful concealment of paper by John F. MacIntyre.

A. I haven't read that report, sir, but if you say that, I would agree with you.

Q. Thank you. The same volume, page 23. This happens to be a report from Inspector Scott, 1983, to his superior officer, and once again, this written report is silent with respect to any willful concealment of documentation by Mr. MacIntyre, correct?

A. Yes, sir. I haven't, again, read it, but if you say so, I would not argue.

Q. Thank you. And in 1986, if you turn to page 26 of the same volume, we have Superintendent Christen's report, I'm sorry, not 1986, 1983, to Gordon Gale and there's nothing contained in that report in writing from Superintendent Christen to Mr. Gale about any willful concealment of information, correct?

A. Again, I would take, give you the same undertaking.

11:50 a.m.

Q. Yes. I'm just going to take a moment, Staff Wheaton, and find a particular note. Pardon me, My Lord, for a moment. I just wish to find a note to specifically question Staff Wheaton on it. Perhaps Commission counsel can assist me. I'm looking for your...one of your latest written reports to your superiors,

STAFF. SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 Staff Wheaton, where you describe your review of the
2 Patricia Harriss June 17, 1971, statement.

3 MR. ORSBORN

4 1986 review.

5 MR. SAUNDERS

6 Pardon me.

7 MR. ORSBORN

8 The 1986 review.

9 MR. SAUNDERS

10 Yeah, yeah, I think so.

11 MR. ORSBORN

12 Perhaps page 65 of Volume 20.

13 MR. SAUNDERS

14 Okay. No. Excuse me, My Lord. I have suggestions from all
15 quarters, My Lord. I've got pages 11 and...

16 Q Yeah. Volume 20, page 11, Staff Wheaton, and this is a report
17 that you submitted in 1983 to the officer in charge, CIB. And
18 three-quarters of the way down the page 11, you begin,

19
20 In reviewing the Sydney City Police file
21 after the order had been made by the
22 Attorney General that they turn over all
23 documentation, I found a partially
24 completed statement dated 17 June '71,
25 8:15 p.m..

Do you see that, sir?

A. Yes, I do.

1 Q. Yes. Were you being circumspect, Staff Wheaton, in the way
2 you wrote that?

3 A. I don't believe I was.

4 Q. Was there any reason why you did not state in the writing of
5 that report that in your view MacIntyre deliberately
6 concealed that statement from you and Davies when you were
7 in his office?

8 A. Superintendent Christen would have known that.

9 Q. How would anyone above Superintendent Christen have
10 known that?

11 A. It really didn't occur to me as I wrote that report, sir.

12 Q. It did not.

13 A. No, sir.

14 Q. How would you expect someone sitting in an office in Halifax
15 who might be reviewing your report to deduce from that
16 statement on your part that MacIntyre had willfully
17 concealed paper from you and Davies on April 26, 1982?

18 A. I was writing to Superintendent Christen in that report, sir,
19 and he was aware of it.

20 Q. Reports may have gone elsewhere, sir, I suggest.

21 A. Well, I would assume if I erred normally Superintendent
22 Christen would write back to me and ask me for a further
23 report or some clarification, another memo.

24 Q. And that's your reason for...

25 A. Or he could have in his letter to whoever he was sending the

STAFF. SGT. WHEATON, EXAM. BY MR. SAUNDERS

1 report to if he felt there was an omission he would clarify it
2 himself.

3 Q. If you really wanted action to be taken and a charge to be
4 laid against John F. MacIntyre with respect to obstruction of a
5 police officer or disobedience or disobeying an order of the
6 Attorney General, why didn't you say that in that report?

7 A. In that report I was asked to comment by...as I recall it, Mr.
8 Saunders, to comment on the proper and improper police
9 practises and that no investigation was to be continued or
10 started by the Superintendent Vaughan. And, I may have my
11 reports mixed up here, and I answered that.

12 Q. Well, surely you would say that wilful concealment of
13 important and material information is improper police
14 practise.

15 A. Yes, sir.

16 Q. And that's what you were commenting on.

17 A. Yes, sir.

18 COMMISSIONER EVANS

19 What it says is that in reviewing the Sydney City Police file
20 after the order had been made by the AG the turnover...

21 MR. SAUNDERS

22 Yes.

23 COMMISSIONER EVANS

24 "I found a partially completed statement."

25 MR. SAUNDERS

1 Exactly right.

2 COMMISSIONER EVANS

3 If I were reading that, I'd think he found it in the file.

4 MR. SAUNDERS

5 Well, that's my reading of it as well.

6 Q. And, I'm asking Staff Sergeant Wheaton why he didn't say in
7 the report that you found it on the floor?

8 A. I did not say it in the report. I cannot go any further, sir.

9 Q. Well, did you not think it was misleading to anyone who may
10 have cause to read this report to say that you found it after
11 reviewing the file?

12 A. Not at the time I wrote it, sir.

13 Q. Do you agree that it's a reasonable impression to take from
14 the way you wrote it that the statement was contained in the
15 police file after you got the file?

16 A. That could be one interpretation, yes, sir.

17 Q. Okay. Those are my questions, Staff Wheaton. Thank you.

18 MR. CHAIRMAN

19 Now, we've got... I presume that as Mr. Outhouse is appearing
20 as counsel for the...for this witness that he will make his cross-
21 examination at the end.

22 MR. BISSELL

23 ...just before Mr. Outhouse.

24 MR. CHAIRMAN

25 I see. So, counsel has prudently worked out between them

1 the grouping of... Who goes...whose to go next?

2 MR. ROSS

3 I guess it might be me.

4 MR. CHAIRMAN

5 Mr. Ross.

6 MR. ROSS

7 I've been overruled.

8 MR. CHAIRMAN

9 Mr. Broderick, you appear on behalf of...

10 MR. BRODERICK

11 On behalf of Sergeant Wheaton, My Lord, Sergeant Carroll.

12 Sorry. Not representing the RCMP, just Sergeant Carroll.

13 MR. CHAIRMAN

14 Oh, I just want to be sure because the questions put to this
15 witness have to relate to your client.

16 MR. BRODERICK

17 Well, My Lord, since my client was involved in the
18 investigation with Sergeant Wheaton there's a very good chance of
19 a tie that binds.

20 MR. CHAIRMAN

21 I realize that, yes.

22 EXAMINATION BY MR. BRODERICK

23 Q. Staff Wheaton, just to clarify things, you are aware that I
24 represent Sergeant Carroll.

25 A. Yes, sir.

1 Q. That I do not represent the RCMP.

2 A. That's correct, sir.

3 Q. During your direct and cross-examination you've testified that
4 you like to do research, if possible, find out what a witness is
5 like, what they may say, whether it be an accused or whether
6 it just be a witness to an offence.

7 A. Yes, sir.

8 Q. Now, do you find that that gives you a particular control of
9 the situation when you do go to interview the person?

10 A. Yes, sir.

11 Q. Now, with that in mind, I direct your attention to the first
12 statement that was taken of Maynard Chant.

13 A. Yes, sir.

14 Q. You don't have to look at the statement, we won't be getting
15 into the actual facts of the statement, but rather the
16 circumstances.

17 A. Yes, sir.

18 Q. I believe that you testified that with Chant your expectation
19 was you would go there, show him your statement or the
20 statement that he had first given to Chief MacIntyre and that
21 he would confirm that that was in fact what had happened.

22 A. In our original meeting at the fish plant, yes, sir.

23 Q. Would you say that you were slightly surprised at the
24 statement that he did give at that time?

25 A. Yes, I was, sir.

- 1 Q. There was also evidence that that statement was given in the
2 home of the Chant's parents, is that correct?
- 3 A. That is correct, sir, yes.
- 4 Q. Do you recall what, if any, other purpose that home may have
5 been used for at that particular time?
- 6 A. The front of the home was a funeral parlour, sir.
- 7 Q. Do you recall whether or not at that particular time it was
8 actually being used for that particular purpose?
- 9 A. Yes, sir. When we entered the home there were a group of
10 people in the kitchen. We were taken to a parlour and I
11 believe that there was a wake beginning or going to begin for
12 a person who had passed away.
- 13 Q. Preferably for one who had passed away. Do you recall the
14 proximity between the parties that you were dealing with
15 and the people who were involved in the wake?
- 16 A. As I recall the home there was a hallway and the front half,
17 that was the funeral home and then there was a wall, sort of,
18 and then a living room or a parlour.
- 19 Q. So, would it be safe to assume that this was not, based upon
20 your desired scenario for interviewing, would you suggest
21 that this was not the most desired time or sequence of events
22 to take a statement from a person?
- 23 A. Well, there was...as we got into it after the narrative there
24 were people arriving and it did become...yes.
- 25 Q. Would not then the circumstances at that time not only make

1 it necessary, but imperative that another statement be taken
2 under different circumstances from Mr. Chant?

3 A. Yes, sir.

4 Q. Would you say that that...that the circumstances rather than
5 the content of Mr. Chant's first statement would lead to the
6 second statement?

7 A. There was more clarification needed and we didn't have time
8 to do it in the first instance.

9 Q. Do you recall...now, in light of the circumstances of the taking
10 of that statement, is it not possible that some of the more
11 salient comments made in the narrative prior to reducing it to
12 writing may not have been put down or checked as closely as
13 it should have been?

14 A. Yes, sir.

15 Q. You have testified, I believe, that Chief MacIntyre's name was
16 mentioned on that evening in question of the taking of the
17 first statement.

18 A. Yes, sir.

19 Q. That did not appear in the written version of the statement.

20 A. No, sir.

21 Q. Now, I want to move away from that for a moment. We've
22 covered those circumstances. I would like to move to Chief
23 MacIntyre's testimony. First, were you present in Sydney
24 when Chief MacIntyre testified?

25 A. Yes, I was, sir.

1 Q. Do you recall him stating in answer to the questions regarding
2 banging on the desk or thumping the desk, that he said that
3 this was not his style?

4 A. I recall words to that effect.

5 Q. Well, if you cannot remember the words, did you form an
6 impression from his testimony that this was not the type of
7 behaviour that he exhibited?

8 A. Yes, sir.

9 Q. Okay. Now, you've testified that there was a meeting
10 between yourself, Frank Edwards, Mike Whalley, who was the
11 City Solicitor at that time for the City of Sydney and Chief
12 MacIntyre.

13 A. Yes, sir.

14 Q. You also recall that at one point that the Chief seemed to
15 become visibly upset.

16 A. Toward the end of the meeting, yes, sir.

17 Q. And you stated, as well, I believe that during this period he
18 did, in fact, bang the desk that was in front of him at that
19 time.

20 A. Yes, sir.

21 Q. Now, is this one of the only times, if not the only time during
22 the course of your investigation that you had an opportunity
23 to observe the Chief when he would be, to use the term,
24 aggressive?

25 A. He was upset after the finding of the statement on the floor

1 incident. Other times he was not upset to my knowledge. He
2 didn't appear to be.

3 Q. So, other than the finding of the statement on the floor, this
4 was perhaps the only time you had seen him visibly upset.

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

6 Q. When he was questioned about the statement on the floor,
7 was he sitting behind a desk at that time or was he standing?

8 A. No, he was standing, sir.

9 Q. All right. So, the only time that you saw him visibly upset in
10 the...and in the proximity of a desk, he did proceed to bang on
11 the desk.

12 A. Yes, sir.

13 Q. Now, you say that Frank Edwards was there at that time.

14 A. Yes, sir.

15 Q. Well, perhaps Mr. Edwards would be questioned on that later
16 on I'm sure. Now, some of my learned friends were
17 concerned about the matter of collusion between Sarson and
18 Marshall, is that correct? You were questioned on that.

19 A. Yes, sir.

20 Q. It seems to me that you took a statement, two statements
21 from Chant.

22 A. Yes, sir.

23 Q. And then shortly afterwards a statement from Pratico.

24 A. Sergeant Carroll took the second statement from Chant and
25 also the statement from Pratico.

1 Q. You were aware of the contents of those statements.

2 A. Yes, sir.

3 Q. Would not the contents of those statements make any
4 question of whether there had been collusion between Sarson
5 and Marshall irrelevant by that point?

6 A. By that point, yes.

7 Q. All right. So, I believe the statement from Pratico was, I
8 could be wrong, do you recall the date of the statement from
9 Pratico?

10 A. No, I don't. It was after the visit to Pictou.

11 Q. Okay. So, from that point on then collusion was not a relevant
12 consideration.

13 A. It was put on a back burner in my mind I suppose.

14 Q. Now, the last item that I'd like to discuss with you and rather
15 than do it the way I have here, perhaps I'll refer you to my
16 learned friend Mr. Saunders' questioning. And, when he was
17 talking this morning he asked you whether or not you
18 recalled that the direction from, I believe it was, Mr. Gale, was
19 that the file be put in abeyance and the two of you, I believe,
20 established that the reason for that was so as not to delay the
21 Marshall investigation, is that correct?

22 A. That's what the direction or thrust as I took it of Mr. Saunders
23 questioning.

24 Q. Would you form an opinion from that that neither my learned
25 friend or yourself is doubting that there was input,

1 interference, suggestion, direction from the Attorney General
2 but rather the motive is what they found to be important
3 today, and what you discussed was the motive?

4 MR. SAUNDERS

5 My Lord, I'm sorry, I don't understand the question.

6 MR. CHAIRMAN

7 I don't either. Would you try that all over, again? Yeah, see
8 if you can break it up in...

9 MR. BRODERICK

10 Q. Mr. Saunders asked you whether or not you were aware of
11 the reason why Mr. Gale suggested that the Chief MacIntyre
12 aspect of the investigation of the Sydney Police be put in
13 abeyance. Now, are we okay to that point?

14 COMMISSIONER EVANS

15 I'm okay.

16 MR. CHAIRMAN

17 I'm okay. I'm not sure that's what Mr. Saunders said.

18 MR. BRODERICK

19 Q. Okay. All right. You then you said, yes, you did know that
20 there was a suggestion through Mr. Edwards that...

21 A. To hold the matter in abeyance, yes, sir.

22 Q. Pardon me?

23 A. To hold the matter in abeyance.

24 Q. Right. Mr. Saunders then said to you was not the reason for
25 that that they didn't want to delay the Marshall Inquiry

1 aspect. Do you remember him saying that? They wanted that
2 investigation completed.

3 A. Yes, words to that effect, sir, yes.

4 Q. Well, the point I'm trying to make or trying to convey is that
5 there is an acknowledgement that there was input from Mr.
6 Gale.

7 A. Yes, sir.

8 Q. And that didn't seem to be the issue of this morning's
9 questioning, but rather the issue was the motive, the fact that
10 it was not for any hidden reason other than to hurry up the
11 Marshall Inquiry, the Marshall investigation. Is that correct?

12 A. I...I...

13 MR. SAUNDERS

14 My Lord, I'm not sure whether my friend behind me is
15 questioning my motive in asking the witness the question or
16 whether he is getting at or trying to get at the witness'
17 understanding if he has any about the basis for the department
18 taking that view. I just remind my learned friend that it was
19 learned counsel for the Commission, Mr. Orsborn, who first raised
20 it, that is that nothing sinister be taken of the holding in abeyance
21 phrase, and the witness confirmed last week some day and also
22 today that that was the explanation he got and that's the one he
23 took from it. But I must say I don't know where...what my friend
24 is trying to import by the question he's asked.

25

1 MR. CHAIRMAN

2 The questions that were put by Mr. Saunders this morning
3 seem to be aimed at indicating that what the official concerned in
4 the Department of the Attorney General was insisting on is that as
5 soon as there was sufficient evidence to enable the Attorney
6 General to make a meaningful recommendation, I guess, to the
7 Minister of Justice in Ottawa concerning Marshall's conviction and
8 imprisonment, that that come forward.

9 MR. BRODERICK

10 Yes.

11 MR. CHAIRMAN

12 That's slightly different from holding further investigation in
13 abeyance. I would interpret that as meaning "Send us what you
14 have but that doesn't preclude you from continuing with your
15 investigation." Now, I...I don't know if my interpretation of what
16 has transpired earlier this morning is correct or not. But I...
17 That's what I gleaned from the line of questioning earlier. But
18 what's the point of your question?

19 12:11 p.m.

20 MR. BRODERICK

21 To get to the point, I think it's important to ask what the
22 witness thought the effect of putting an abeyance was at that
23 time, which would lead to the next question about his testimony
24 as to military command and chain of command, like in the
25 military, the RCMP is, which would then again...

STAFF SGT. WHEATON, EXAM. BY MR. BRODERICK

1 MR. CHAIRMAN

2 The question that you're putting to Staff Sgt. Wheaton is,
3 given his earlier answers particular this morning, that he
4 understood the anxiety of the Attorney General's Department to
5 get, that the investigation of the Marshall case not be held up
6 while they were going into some other areas.

7 MR. BRODERICK

8 Yes.

9 MR. CHAIRMAN

10 Whether he interpreted that as meaning that they were not to
11 proceed, an abeyance means don't.. you're not to proceed any
12 further with any other investigation without further instruction, is
13 that what you're saying?

14 MR. BRODERICK

15 Yes, My Lord.

16 MR. CHAIRMAN

17 Is that your understanding?

18 STAFF SGT. WHEATON

19 That would have been my interpretation, My Lord, that I was
20 not to proceed in regards to an investigation into Mr. MacIntyre at
21 that time.

22 MR. CHAIRMAN

23 Or the Sydney Police Department.

24

25 STAFF SGT. WHEATON

STAFF SGT. WHEATON, EXAM. BY MR. BRODERICK

1 Or the Sydney City Police Department.

2 MR. CHAIRMAN

3 Or any any other suspected irregularities that you came upon
4 during your investigation of Mr. Marshall.

5 STAFF SGT. WHEATON

6 That is correct.

7 MR. CHAIRMAN

8 Or to the Marshall case, rather.

9 STAFF SGT. WHEATON

10 To put it in abeyance, possibly to be opened at a later date.

11 MR. BRODERICK

12 I don't know, My Lord. I was with you until that last
13 comment and I don't know if the witness heard it. I believe his
14 testimony was anything to do with the Sydney Police or Chief
15 MacIntyre. If we directed him specifically to the last comment
16 you made "Or any other irregularities in the Marshall case," I don't
17 know if that would be...

18 MR. CHAIRMAN

19 Any other irregularities.

20 STAFF SGT. WHEATON

21 Or other irregularities in the Marshall case, My Lord?

22 MR. CHAIRMAN

23 Not in the Mars...arising out of your investigation.

24 STAFF SGT. WHEATON

25 Arising out of, yes, that would be an encompassing thing, I

1 would think.

2 MR. CHAIRMAN

3 Carry on.

4 MR. BRODERICK

5 Thank you, My Lord.

6 BY MR. BRODERICK

7 Q. Now you testified that the RCMP is a military-type
8 organization.

9 A. That's correct.

10 Q. In that they are chains of command.

11 A. That's correct, sir.

12 Q. And I believe you said "very strict chains of command."

13 A. That's correct, sir.

14 Q. Like it would not be the place of a constable to jump over the
15 head of his corporal and go to the staff sergeant with a
16 particular complaint or a problem, is that right?

17 A. It would not be his place.

18 Q. Staff, you testified that if there were people of, let's say, a
19 high public profile and in the course of investigation of a
20 serious matter, not of your speeding or your breathalyser,
21 which you discounted as being serious, but of a serious nature
22 that prior to laying of a charge, you would discuss the
23 contents of your file with an immediate senior officer, is that
24 correct?

25 A. That is correct, sir.

1 Q. Now if you had the reasonable and probable grounds to lay a
2 charge, one of a person whether it be a politician, a senior
3 man in your outfit, a judge of Upper Canada origin
4 perhaps...No, further than that, maybe perhaps, My Lord. But
5 would you not, if you were advised that that matter is to be
6 put in abeyance or, "Conclude your file, Staff," bearing in mind
7 the chain of command and your position, what would happen
8 at that point?

9 A. Advised by whom? My officer commanding?

10 Q. Your officer commanding.

11 A. It is my duty to follow the wishes of my officer commanding.

12 Q. If you went to the crown prosecutor's office and you were
13 advised through him that a person from the Attorney
14 General's department advised you to put a file in abeyance or
15 to conclude that particular aspect of your investigation, what
16 would you do?

17 A. I would submit a report through my officer commanding. I'd
18 first discuss it with my officer commanding and with his
19 agreement, I would submit a report to Halifax to the Criminal
20 Operations Officer.

21 Q. If the...Did you submit a report that your file was to be put in
22 abeyance on the further investigation of the Sydney Police or
23 of Chief MacIntyre?

24 A. Yes, I did, sir.

25 Q. All your reports after that point were very controlled or

1 framed with the thought in mind that there is to be no
2 further investigation at this particular time of John MacIntyre
3 or the Sydney Police.

4 A. That was my feeling, sir.

5 Q. If you had included in those reports statements saying, or
6 insinuating, inferring, pointing to a possible offence by the
7 Sydney Police or by Chief MacIntyre, would that or could that
8 be conceived as disobeying or flaunting an order not to get
9 involved any further in an investigation of the chief or the
10 City Police?

11 A. It could be, sir.

12 Q. Is it safe to assume, Staff, that there is a very close liaison
13 between the Attorney General's Department and the RCMP
14 who are your superiors?

15 A. I am not at that level, sir. All I can comment on is the fact
16 that I have submitted hundreds of reports probably over my
17 day and received copies of correspondence back from the
18 Attorney General's Department. So I would assume they're in
19 liaison.

20 Q. I see. Staff, I would ask you to bear with me for the next
21 couple of minutes. It won't take any longer. But it's things
22 that have arisen from what my learned friend has said.

23 Regarding this fire that took place in the Port Hawkesbury
24 area.

25 MR. CHAIRMAN

1 What does that have to do with your client?

2 MR. BRODERICK

3 Well, nothing other than the fact that...Well, absolutely
4 nothing except it may give the Commission a bit of information
5 that may help them. It's not relevant to...

6 MR. CHAIRMAN

7 You have to restrict your questions, Mr. Broderick, to matters
8 that relate to your client, Corporal Carroll. And if you can show
9 me how that in any way, even your last line of questioning was
10 getting somewhat removed from the involvement or interest of
11 your client.

12 MR. BRODERICK

13 Perhaps, My Lord, other than the fact that what constraints
14 are put on this witness in his past dealings would also be put on
15 my client as well as being his immediate junior officer.

16 MR. CHAIRMAN

17 Well, you can't anticipate that. We will deal with Corporal
18 Carroll's evidence when and as it evolves.

19 MR. BRODERICK

20 Quite often, My Lord, it may be safer to elicit certain
21 information from...

22 MR. CHAIRMAN

23 But it's got to be relevant and I gather, well, you've told me
24 that the questions you're about to put now with respect to Port
25 Hawkesbury are not relevant to Corporal Carroll.

STAFF SGT. WHEATON, EXAM. BY MR. BRODERICK

1 MR. BRODERICK

2 No, no direct contact with Corporal Carroll at all.

3 MR. CHAIRMAN

4 Well, then don't put them.

5 MR. BRODERICK

6 Okay. Thank you, My Lord. Just one moment, My Lord, and I
7 think then that will be all the questions I have, but I want to
8 check my notes if I may. No, My Lord, those are the questions
9 except thank you for your patience, Staff Wheaton, and, My Lord,
10 that's all that I have.

11 MR. CHAIRMAN

12 I take it you're next, Mr. Ross.

13 MR. ROSS

14 Yes, My Lord.

15 MR. CHAIRMAN

16 Are you likely to conclude in five minutes?

17 MR. ROSS

18 Very unlikely.

19 MR. CHAIRMAN

20 All right, we'll adjourn until two.

21
22 12:22 INQUIRY ADJOURNED UNTIL 2:00 p.m.
23
24
25

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.

14 Did Donald Marshall tell you that?

15 CHAIRMAN

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

17 MR. ROSS

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

20 CHAIRMAN

21 Thank you.

22 MR. ROSS

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

25 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.

STAFF SGT. WHEATON, EXAM. BY MR. ROSS

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.

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.

STAFF SGT. WHEATON, EXAM. BY MR. ROSS

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