

R644
Vol 22
#8

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

Volume 47

Held: January 28, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

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

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
Orsborn: Commission counsel

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:
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Mr. Michael G. Whalley, Q.C.: Counsel for City of Sydney

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

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

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

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada

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

Mr. Charles Broderick: Counsel for 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. WILDSMITH

1 JANUARY 28, 1988 - 9:30 a.m.

2 MR. CHAIRMAN

3 Mr. Wildsmith?

4 MR. WILDSMITH

5 Thank you, My Lord.

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

8
9 EXAMINATION BY MR. WILDSMITH

10
11 Q. Staff Wheaton, my name is Bruce Wildsmith and I'm here for
12 the Union of Nova Scotia Indians. I'd like to begin by asking
13 you a few questions in relation to your need to obtain your
14 instructions before looking at the Sydney Police Department
15 or Chief John MacIntyre. And you indicated to us yesterday
16 that you felt the need to take a pregnant pause to obtain
17 instructions from your superiors before continuing.

18 A. Yes, sir.

19 Q. This is correct. And you've indicated to us that you have to
20 make that judgement or evaluation on a case-by-case basis.

21 A. Yes, sir.

22 Q. And that amongst the factors that you would take into
23 account in making judgement would be whether you were
24 investigating a fellow police officer, a judge, a Commission
25 lawyer, I think you mentioned at one point, and I guess it's

1 fair to say more generally, elected officials, prominent
2 citizens.

3 A. That is one consideration, sir, and the other one would be the
4 seriousness of the offence.

5 Q. Yes.

6 A. If it was an immediate thing such as an impaired driving or a
7 speeding ticket, you would proceed with it forthwith.

8 Q. Yes, and you gave as your own example, the Minister of
9 Highways receiving kickbacks on the sale of fence posts.

10 A. Yes, sir.

11 Q. Erected for railings along the highway. Can you tell me
12 whether there is a policy with respect to obtaining
13 instructions from superiors as opposed to a practice within
14 the RCMP?

15 A. There is written policy as well as practice, sir.

16 Q. Okay, well, we've had tendered as an exhibit the policy in
17 relation to media contact. Are you saying now that there is a
18 similar kind of documentation related to obtaining
19 instructions before proceeding with certain kinds of
20 investigations?

21 A. Yes, there is, sir.

22 MR. WILDSMITH

23 I wonder, My Lords, whether it might be appropriate if we
24 had in front of the Commission those documents as well.

25

1 MR. BISSELL

2 My Lord, I don't see what possible relevance such a document
3 would be. It would seem to me the evidence is getting into the
4 area of practice and procedures and management of the federal
5 courts and I don't see how it ties in to my friend's client.

6 MR. CHAIRMAN

7 Well, if it follows the written policy there is any specific
8 instructions as it relates to minority groups.

9 MR. WILDSMITH

10 Yes, that might be part of it, My Lord. The reference to
11 minority groups, though, if I make this point more generally, can
12 really be only understood in relation to the general practice with
13 respect to other citizens and the way that minorities are treated is
14 an aspect of the the question of whether there is a kind of two-
15 tiered or multi-tiered system of justice in operation. So that the
16 way that police forces, the system of justice, in general, operates
17 in relation to prominent citizens or elected officials or other police
18 forces, it appears to me is relevant to my client because of how
19 they may be treated differently in similar circumstances and it
20 appears to be within the purview of the Commission as well the
21 interest of my client. Indeed, I would say that if there was
22 anybody, any other group with standing in front of this
23 Commission that would be interested in this issue, we would make
24 the case stronger than anyone else.

25

1 MR. CHAIRMAN

2 Well, there may be some merit in that. There may be, even if
3 it isn't, I suppose, involving minority groups generally, there may
4 be people within the various groups who have different rankings.
5 What you're asking is that counsel for the RCMP ascertain whether
6 there is such a policy guideline, written policy, and if there is,
7 produce it to the Commission.

8 MR. WILDSMITH

9 Yes, that's right, My Lord.

10 MR. CHAIRMAN

11 Well, will you first, Mr...

12 MR. WILDSMITH

13 And if I might address one other point about this, my learned
14 friend talks about the RCMP as a federal police force but I would
15 remind Your Lordships that under contract, they are also a
16 provincial police commission, or police force.

17 MR. CHAIRMAN

18 I've not heard that position raised as yet by the RCMP.

19 MR. WILDSMITH

20 I'm sorry, I must have understood my friend. I thought he
21 just said that.

22 MR. CHAIRMAN

23 I think it's been raised by the correction, counsel for the
24 Correctional Services, but I've not heard any argument that the
25 RCMP when they're serving in a province are under a contract.

1 MR. BISSELL

2 How would it be if I left it this way, let me first find out
3 whether or not there is such a policy.

4 MR. CHAIRMAN

5 That's right.

6 MR. BISSELL

7 And then determine what to do with it from there.

8 MR. CHAIRMAN

9 Fine.

10 MR. WILDSMITH

11 Thank you.

12 BY MR. WILDSMITH

13 Q In any event, this witness's evidence, Staff Wheaton, is that,
14 to your understanding, there is such a policy.

15 A. A policy for...Would you just repeat what policy you're asking
16 to me again, so I'll be perfectly clear.

17 Q A written policy dealing with the question of obtaining
18 instructions from superiors before engaging in certain kinds
19 of investigations or laying certain kinds of charges against
20 certain kinds of people.

21 A. There is written policy in the RCMP as to what offences are
22 reportable to Halifax on Form C2-37 and what offences are
23 not reportable to Halifax, or to our headquarters. And it's
24 outlined in our instructions as to what we report on and what
25 we don't report on.

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

1 Q. Okay, my question went, I think, a little beyond that, beyond
2 the mere fact of reporting and attempted to ask whether you
3 were directed in the policy to await instructions before
4 proceeding with laying certain changes in certain
5 circumstances or investigations. Not simply reporting the fact
6 to what you were doing.

MR. BISSELL

8 I must say now I'm totally confused because now we're
9 talking about offences and before we were talking about the
10 identity. I'm confused.

MR. CHAIRMAN

12 The second answer to that question was considerably less
13 than what had been, than the implications in the first. And this is
14 what's concerning about some of this testimony. Implications left
15 dangling. I was left with the clear impression in answer to your
16 first question when you listed certain groups who may in the eyes
17 of some be in a different category. That there was a policy of the
18 Royal Canadian Mounted Police, you said before you lay charges or
19 continue with your investigation of an individual into any of these
20 categories, you must get instructions from us and there's a written
21 manual. When the question was put the second time, the
22 explanation is, no, that's not so, what I meant was that we have to,
23 in certain kinds of offences, presumably serious offences, we have
24 to send our report to Halifax for further instructions re the
25 investigation and nature of the charges. One is not even remotely

1 related to the other, but the implication is there and it should be
2 cleared up.

3 MR. WILDSMITH

4 Thank you, My Lord. That was my intention was to clarify
5 whether instructions were needed to proceed with the laying of
6 the charge and continue with the investigations.

7 BY MR. WILDSMITH

8 Q. Do you understand what His Lordship said?

9 A. Yes, I did, and I didn't mean to confuse this Commission. I
10 never have. Could you just tell me now what you want to
11 know and I will try to answer it, sir.

12 Q. What I want to know is whether, to your knowledge, there
13 exists a written policy of the RCMP directing people in the
14 field like yourself to obtain instructions from superiors as
15 opposed to merely reporting, to obtain instructions from
16 superiors before proceedings with certain kinds of
17 investigations or the laying of charges in certain
18 circumstances?

19 A. I cannot honestly answer that question, sir.

20 Q. Okay.

21 A. Because the policy is voluminous and when you get down to
22 the specifics of it, I know, I just cannot answer your question.
23 I know there is policy in regards to reportability.

24 MR. WILDSMITH

25 I understand, My Lord, that my friend with the RCMP will

1 check on that particular question.

2 MR. CHAIRMAN

3 I'm not sure there is need to check any more, if it's arising out
4 of the testimony of this witness. He doesn't know.

5 MR. WILDSMITH

6 If that's Your Lordship's direction, I'll certainly abide by it.

7 BY MR. WILDSMITH

8 Q. In this case, you did await instructions before proceeding
9 with the investigation in relation to John MacIntyre and the
10 Sydney Police Department. That's correct.

11 A. That is correct, sir.

12 Q. At the very least, I guess we can say that that was consistent
13 with your understanding of appropriate practice within the
14 RCMP.

15 A. That is correct, sir.

16 Q. Can you help me out with this question then? Why is it that
17 you consider that appropriate practice? What is the rationale
18 for awaiting those instructions?

19 A. This is because this is what has happened to me in the past,
20 that I have received instructions in relation to investigations
21 of town police or city police forces. This is what happened in
22 the occasion of Al Marshall going to Sydney to investigate it.
23 Instructions were issued to him. I have personally always
24 received instructions from my officer commanding or my CIB
25 officer as to what to do. And my third reply to that would be,

1 sir, that we are a upwardly reportable layered structured
2 force paramilitary in nature and you report to your
3 immediate officer commanding and this would be the type of
4 offence that I would report to my immediate officer
5 commanding and expect instructions back as to what action I
6 would take.

7 Q. Okay, fair enough. What you've really done, correct me if you
8 think I'm wrong, is describe your understanding of what the
9 practice is and are simply saying you're following your
10 understanding of the practice.

11 A. That's correct, Mr. Wildsmith.

12 Q. And what I've really asked you for is whether you can give
13 us any good reasons from a police perspective as to why you
14 would do that.

15 A. It's my duty to do that, sir.

16 Q. Okay. Well, for example, one thing that was running through
17 my mind is that if you continue with an investigation, as I
18 say, in the Minister of Highways fence post thing that you
19 raised, other people may find out about your suspicions and
20 it may adversely reflect upon an innocent person.

21 A. That's a possibility, yes, sir.

22 Q. Now when Commission counsel were examining you in
23 relation to this kind of issue, at the end of their examination,
24 Mr. Orsborn asked you about reforms in the system of justice
25 and one thing that you referred us to was the creation of a

1 solicitor general's department and the initiative that has
2 apparently been taken in Nova Scotia. Is it your
3 understanding that the creation of such a department assists
4 with the problem of police officers obtaining instructions to
5 continue with an investigation? Are the two related in any
6 way?

7 A. If I could preface that, sir. Mr. Orsborn asked me for my own
8 personal opinion, not the RCMP opinion.

9 Q. Yes.

10 A. And I tried to answer it as best I could. Now your question
11 was what, sir?

12 Q. Whether the creation of a Solicitor General's Department, to
13 your understanding, assists with this problem of obtaining
14 timely instructions to continue with an investigation?

15 A. I have no knowledge of the guidelines of this new Solicitor
16 General's Department whatsoever, sir.

17 Q. All right. What would happen if you went ahead and
18 conducted an investigation into the Sydney Police Department
19 or John MacIntyre without those instructions that you
20 awaited?

21 A. I would be disciplined by my force, I would suspect.

22 Q. Okay. I have the understanding that in some other
23 jurisdictions, and indeed it may be the case in Nova Scotia,
24 that in some other jurisdictions, at least, practice in England,
25 practice in Ontario; indeed, the practice in Newfoundland, is

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 that police officers don't await such instructions, that they
2 continue with an investigation, initiate an investigation and
3 lay their charges. Is that consistent with your understanding
4 of the way other police forces operate in other jurisdictions?

5 A. I have no personal knowledge of that, sir.

6 Q. Do you as a police officer feel that it would be appropriate for
7 police officers to investigate where they have reasonable and
8 probable belief that a crime has been committed and to lay
9 charges?

10 A. I feel that a police officer should investigate, sir, but prior to
11 laying charges, he should consult with his appointed counsel,
12 whether it be an independent counsel or, he should consult
13 with counsel prior to laying to charges.

14 Q. I'm going to suggest to you that it would be more advisable
15 for the police officer to lay charges with or without
16 consultation on his own initiative to make up the decision
17 whether to charge or not himself or herself rather than to
18 rely upon the crown to make up, to make that decision.

19 Would you suggest that that might be useful?

20 MR. CHAIRMAN

21 If you did that, we wouldn't need law schools any more. We'd
22 be out of a job.

23 STAFF SGT. WHEATON

24 A. No, I feel that police officers should consult with counsel prior
25 to laying the charge.

1 Q. No, my point is not whether they consult or not but who
2 makes the decision?

3 A. The decision-making process.

4 Q. Why I put it to you, as an experienced police officer, that it
5 would be beneficial to the conduct of policing activities for the
6 decision as to whether to investigate and lay the charge be a
7 police decision rather than an Attorney General Department
8 decision.

9 A. Under the present structure?

10 Q. No, just from your experience as a police officer or that as a
11 more desirable way to structure the system of justice?

12 A. Yes, sir, I would say it is.

13 Q. And I suggest to you that it's more appropriate for, at least
14 one reason that it asserts the independence and impartiality
15 of the police force.

16 A. Yes, sir.

17 Q. And I suggest to you another reason is that it puts the police
18 view forward as a matter of public record.

19 A. Yes, sir.

20 Q. Thank you.

21 MR. CHAIRMAN

22 Who is going to report to Parliament? Who is going to be
23 responsible for the actions of law enforcement if you...Are you
24 going to turn that over to the police?

25 MR. WILDSMITH

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

1 Well, that's one thing that you have the Solicitor General for.

2 MR. CHAIRMAN

3 Well, then you're back to the crown. In any event, the line of
4 questioning is causing some problems, Mr. Wildsmith.

5 MR. WILDSMITH

6 Well, I'm leaving that line now, My Lord.

7 MR. CHAIRMAN

8 I don't see how it's related to your client and, secondly, the
9 positions you're putting are surely ones for argument after we've
10 heard all of the evidence and after we've completed our own
11 studies.

12 MR. WILDSMITH

13 Thank you, My Lord.

14 BY MR. WILDSMITH

15 Q Now in relation to this question about releasing information
16 in this particular case, you've indicated discussions with the
17 crown prosecutor, Frank Edwards.

18 A. Yes, sir.

19 Q You've indicated receiving back information from Mr.
20 Edwards relaying instructions from Gordon Gale that the
21 investigation, the interviews of John MacIntyre and Bill
22 Urquhart were to be held in abeyance.

23 A. That's correct, sir.

24 Q All of this has been verbal communication, is that correct?

25 A. That's correct.

STAFF, SGT. WHEATON, EXAM. BY MR. WILD SMITH

- 1 Q. And to the best of your knowledge, there is no documentation
2 from the Attorney General's Department with these
3 instructions, "Hold in abeyance."
- 4 A. Not to me or to my office in Sydney. I believe the word is
5 used in correspondence between our headquarters and I
6 believe there is reference to, in one of my reports, to the fact
7 that I had the conversation with Mr. Edwards and that I had
8 been advised that.
- 9 Q. Okay, what I'd like to do is take you to that report, which is in
10 Volume 34, page 88. And I direct your attention to the
11 bottom of that page, page 88, bottom of that page in
12 Paragraph 4.
- 13 A. Page eight, sir?
- 14 Q. 88.
- 15 A. 88. Paragraph 4, sir?
- 16 Q. Yes.
- 17 A. Yes.
- 18 Q. In this paragraph, you're indicating that the Ebsary and
19 Marshall portions of this investigation, "all avenues of
20 investigation known to date have been completed."
- 21 A. That is correct, sir, yes.
- 22 Q. And you move on to the question of, the question of being,
23 "Chant, Pratico, and Harriss being induced to fabricate
24 evidence."
- 25 A. Yes, sir.

1 Q. Completely different topic in your report than the Ebsary and
2 Marshall investigations.

3 A. That is correct, sir.

4 Q. And you relate the conversation with Mr. Edwards and you
5 indicate in your report your understanding of instructions
6 from Gordon Gale that the interviews were to be held in
7 abeyance.

8 A. That is correct, sir, yes.

9 9:53 a.m. *

10 Q. This is on one of these C-237 forms?

11 A. That is correct, sir, yes.

12 Q. And if I understood your evidence yesterday to my friend
13 Mr. Saunders you indicated that these 237 forms were
14 intended to go up the line of command?

15 A. That is correct, sir.

16 Q. And to the best of your understanding, and I think in light of
17 his questions to continue through the RCMP into the Attorney
18 General's Department.

19 A. I cannot state to my knowledge that this ever went to the
20 Attorney General's Department...

21 Q. Yes.

22 A. ...or not.

23 Q. Okay. Let me draw your attention to the notation at the
24 bottom of that page, with Inspector Scott's signature.

25 A. Yes, sir.

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 Q That indicates going to officer in charge of CIB in Halifax.

2 A. That is correct, sir.

3 Q And is that Superintendent Christen?

4 A. That would be who it is, sir, yes.

5 Q Did you of your knowledge see any other documentation in
6 relation to the transmittal of this report? Do you have any
7 other know...any knowledge yourself as opposed to what Scott
8 or Christen might be telling us?

9 A. No, I do not, sir.

10 Q Okay. What about a flow of documentation the other way,
11 back down from them to you about holding the investigation
12 in abeyance?

13 A. All I can recall at this time was in Superintendent Christen's
14 memorandum, a copy of which went to Sydney and a copy to
15 myself, asking are the actions proper or improper, he said,
16 "There will be no further investigation."

17 Q Okay.

18 A. That's...

19 Q Well, prior to that...

20 A. ...off the top of my head the only thing I can think of.

21 Q Prior to that, and I direct your attention to Volume 20, page
22 1, Volume 20, page. You see a letter from Gordon Gale to H
23 Division in Halifax.

24 A. Yes, sir.

25 Q Is this a letter that would have come to your attention?

1 A. No, it would not, sir.

2 Q. Okay. Is it fair to say that then from your perspective what
3 you did in the report in Volume 34 page 88 and 89 is put
4 your understanding on record?

5 A. That is correct, sir.

6 Q. Of the fact that you were not going to be conducting further
7 interviews, further investigation into John MacIntyre and the
8 Sydney Police until you received instructions from superiors.

9 A. That is correct, the last sentence says, "This file will be held
10 open," that means it will be held pending further instructions.

11 Q. Okay.

12 A. That means awaiting further instructions as well as new areas
13 of investigation which might come to light.

14 Q. And you've seen the letter from Superintendent Vaughan to
15 Gordon Gale suggesting that you misinterpreted that phrase.

16 A. Yes, I did, sir.

17 Q. And, am I correct in understanding your evidence today is
18 that you did not misinterpret that phrase?

19 A. To the best of my knowledge I did not misinterpret that
20 phrase.

21 Q. If that phrase was in fact misinterpreted, in some people's
22 view it may be because it was ambiguous, correct?

23 A. That could be a school of thought, yes, sir.

24 Q. Are there other examples to your knowledge of instructions
25 you've received from either superiors or the Attorney

1 General's Department which have been ambiguous?

2 MR. SAUNDERS

3 My Lord, before the witness answers the question I must say
4 I take some umbrage with my friend's use of the word
5 "instructions". I think if you have a look at page 89 of the exhibit
6 to which Mr. Wildsmith has first made reference you'll see that
7 Mr. Wheaton has called it a sentiment, said, "And it was felt that
8 these interviews should be held in abeyance for the present."
9 Again if you look at the letter from Superintendent Vaughan, page
10 93 of Exhibit 20 you'll see that in Superintendent's Vaughan's
11 terminology he refers to it as a suggestion on the part of Mr. Gale.
12 And, I take exception to my friend's continuous reference to the
13 word "instructions," which to me connote some kind of direction
14 or order. Now, when clearly that's not the phrasing used by either
15 writer.

16 MR. CHAIRMAN

17 This witness has said what his interpretation of "held in
18 abeyance" insofar as the Sydney Police Department is concerned.
19 Whether that held in abeyance would extend to a failure to
20 interview Chief MacIntyre and Urquhart with respect to state...the
21 manner of taking statements that resulted in a charge being laid
22 against Donald Marshall, Jr., is another issue which again I don't
23 think we can resolve through this witness. And, the other thing
24 that's concerning me is that so far I've not heard one question
25 from you, Mr. Wildsmith, that's even remotely related to your

STAFF SGT. WHEATON, EXAM, BY MR. WILDSMITH

1 client, the Union of Nova Scotia Indians, and the
2 suggestion...because their application for standing was on the
3 grounds that there may be some evidence of discrimination
4 against natives in this Province in the administration of justice.

5 MR. WILDSMITH

6 That's right, My Lord, and I would like to re-emphasize the
7 point I made at the outset which is that if you're going to look at a
8 concept like discrimination or a concept of inequality you have to
9 do it on a comparative basis.

10 MR. CHAIRMAN

11 And this is why you've had far more latitude, I suggest, than
12 any other counsel on cross-examination here. But the
13 interpretation of the word, the meaning of the word "abeyance," I
14 would suggest, goes far beyond the rules of relevance as it relates
15 to the interest of your client.

16 MR. WILDSMITH

17 I'll accept your Lordship's direction.

18 Q. You indicate at one point in your testimony that you had
19 some problems or that there were problems in convincing
20 Gordon Gale or Gordon Coles that Marshall was innocent.

21 MR. SAUNDERS

22 Well, that's not the evidence. He said he never met with
23 those gentlemen.

24 MR. CHAIRMAN

25 I've not heard that evidence either. He's told us time and

STAFF SGT. WHEATON, EXAM, BY MR. WILDSMITH

1 time again that he hasn't met with either of these gentlemen. He's
2 had no communication from them. How can you now interpret his
3 evidence as...

4 MR. WILDSMITH

5 I certainly am not attempting to misinterpret his evidence. I
6 thought that he did say that at one point in his evidence. Perhaps
7 he could enlighten me as to whether or not I misstated...

8 STAFF SGT. WHEATON

9 Should I go ahead, My Lord?

10 MR. CHAIRMAN

11 Yes.

12 STAFF SGT. WHEATON

13 A. I have never met with neither Mr. Gordon Cole [sic] or Mr.
14 Gordon Gale. I cannot enlighten you, sir, in regards to any
15 decision-making process in vis-a-vis the RCMP headquarters
16 and the Attorney General's Department.

17 Q. Okay. Well, let me rephrase the question and delete their
18 names. Was it your feeling that there was any difficulty in
19 under...in convincing superiors of any sort that Marshall was
20 innocent?

21 A. That Marshall was innocent.

22 Q. Yes.

23 A. Not really, sir, no. There was...there was a period of report
24 writing back and forth and clarification and so on. But the
25 investigation started on the 3rd of February and I think Mr.

1 Marshall left jail on the 29th of March. It's not, you know, it
2 was not in my opinion an undue time considering everything
3 that had to be accomplished.

4 Q. Let me shift the ground here to something more directly of
5 interest to my client. You lived and worked in Sydney long
6 enough to be familiar with Sydney and with the Membertou
7 Indian Reserve.

8 A. Yes, sir.

9 Q. Would you agree with me that if you identified somebody as
10 being from Membertou that you're, in fact, identifying them
11 as being an Indian?

12 A. Yes, sir.

13 Q. Commission counsel drew your attention to Exhibit 105, which
14 I believe you have in front of you which is a series of
15 newspaper clippings from the Cape Breton Post. I'd like you
16 to take a look at the first page in this sequence and the
17 caption "Two Men Injured" and if you look at the third
18 paragraph that identifies one of the victims of the stabbing,
19 one of the people injured as Donald Marshall, Jr..

20 A. Yes, sir.

21 Q. And you'll see that there's no reference there to whether he's
22 an Indian or where he's from.

23 A. That's correct, sir.

24 Q. Turn to the next page, page 2, and if you look in the small
25 print, the second paragraph at the end there is reference to

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 Donald Marshall, Jr., and it says "of Membertou".

2 A. Yes, sir.

3 Q. And that now is, in fact, identifying him as being an Indian.

4 A. I would take it, yes, sir.

5 Q. Yes.

6 MR. CHAIRMAN

7 I missed you on that, that was identifying as being an Indian.

8 MR. WILDSMITH

9 On the second page in the fine print, My Lord, at the end of
10 the second paragraph there's a reference to the second person
11 stabbed Donald Marshall, Jr., and it says "of Membertou".

12 COMMISSIONER EVANS

13 Seale is identified as from Westmount.

14 MR. CHAIRMAN

15 From Westmount.

16 MR. WILDSMITH

17 Yes.

18 Q. Was there any...can you...from your knowledge of Sydney
19 advise the Commission whether identifying somebody as
20 being "of Westmount" says anything about whether they're
21 black, white or Indian?

22 A. Not to the best of my knowledge, sir.

23 Q. Thank-you. Now, if you turn to page 3 in the fourth
24 paragraph you see a reference again to Donald Marshall, Jr.,
25 and you see that it says "of Membertou" again.

1 A. Page 3,sir.

2 Q. Yes.

3 A. How far down?

4 Q. In the fourth...fourth of the...fourth paragraph.

5 A. Yes, sir.

6 Q. And if you go back a paragraph you see a reference to Sandy
7 Seale.

8 A. Yes, sir.

9 Q. And you see that there's a civic address there?

10 A. Yes, sir.

11 Q. Do you know whether, in fact, there are civic addresses on the
12 Membertou Indian Reserve?

13 A. I don't know, sir. I can't recall.

14 Q. Okay. Now, if you will flip over a couple of more pages to the
15 one that's number 6, the last page in the sequence you'll see
16 that it says "Donald Marshall" (this is relation to the charges
17 being laid now), "of Membertou Reservation". Do you see that
18 in the first paragraph?

19 A. Oh, yes, yes, sir.

20 Q. And if there was any doubt before as to whether Mr. Marshall
21 was an Indian it seems to be abundantly clear by referring to
22 it as Membertou Reservation.

23 A. Yes, sir.

24 Q. And I'd like to add to this exhibit one more page.

25 *EXHIBIT 105A - ARTICLE FROM CAPE BRETON POST CONCERNING

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITHDONALD MARSHALL'S REMAND

1
2 Q. It's been circulated to counsel, now being called Exhibit
3 105A, again from the Cape Breton Post dealing with
4 Marshall's remand and you'll see in the very first paragraph
5 again, it says "Donald Marshall, Jr., of Membertou
6 Reservation".

7 A. Yes, sir.

8 Q. And you'll agree with me that that is a pretty clear reference
9 to Donald Marshall being an Indian.

10 A. Yes, sir.

11 Q. Can you indicate whether any purpose is served from your
12 experience as police officer in calling attention to the race of a
13 criminal or an alleged criminal?

COMMISSIONER POITRAS

14
15 Mr. Wildsmith, I think you're drawing a conclusion here. In
16 reference to Mr. Seale his address is given and the same is made
17 with reference to Mr. Marshall.

MR. WILDSMITH

18
19 Yes.

COMMISSIONER POITRAS

20
21 And you're drawing the conclusion because the residence of
22 Mr. Marshall is indicated that you're necessarily drawing
23 attention to his race.

MR. WILDSMITH

24
25 Yes, I'm saying that in the context of Sydney. And, I'm saying

STAFF SGT. WHEATON, EXAM, BY MR. WILDSMITH

1 that if that wasn't clear enough by referring to Membertou, it's
2 abundantly clear by referring to the Reservation.

COMMISSIONER POITRAS

4 Well, is it not good news reporting to indicate where a person
5 is from? Whether he is from Montreal, Sydney, Membertou or
6 Westmount.

MR. WILDSMITH

8 Yes, yes, I would agree with that. And Membertou is within
9 the confines of the City of Sydney.

COMMISSIONER POITRAS

11 Yes.

MR. WILDSMITH

13 Westmount is not. There are civic addresses on the
14 Membertou Indian Reserve and what I'm suggesting is that the
15 end result of this is to call attention to the race of the person who
16 is alleged to have committed this offence.

COMMISSIONER POITRAS

18 I submit...I submit to you that it's very far fetched. All that
19 we're doing here is reading newspaper articles that give you an
20 idea as to the residence of the people involved. Reference is made
21 to Mr. and Mrs. Oscar Seale of 985 Westmount Road. That is good
22 newspaper reporting.

MR. WILDSMITH

24 Thank-you, My Lord.

25 Q. Move on to a different question. You indicated that during

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 the course of your investigation you received a number of
2 telephone calls, unsolicited calls from citizens of Sydney.

3 A. Yes, sir.

4 Q. And these calls, some of them at least, were about John
5 MacIntyre.

6 A. Yes, sir.

7 Q. Were any of the complaints received dealing with racial
8 questions?

9 MR. CHAIRMAN

10 Are these anonymous calls?

11 STAFF SGT. WHEATON

12 Some were, My Lord, and some people would tell me their
13 names.

14 A. I cannot honestly recall at this time if they dealt with racial
15 questions, no, sir.

16 Q. Okay. You have indicated to us that there existed in Sydney
17 in 1971 a red-neck atmosphere.

18 A. That was my opinion from the research I did on the matter,
19 yes, sir.

20 Q. And that this may have been a factor in the miscarriage of
21 justice in the Marshall case.

22 A. There's a possibility of it, yes, sir.

23 Q. Yeah. If I understood you yesterday you also indicated that
24 you felt personally in addition to what Stephen Aronson drew
25 to your attention that the racial issue should be looked at. Did

1 I misunderstand that as well?

2 A. No, sir. I'm just trying to get the framework of your question.

3 Q. Well, Mr. Aronson drew it to your attention.

4 A. Yes, sir.

5 Q. If I understood you correctly yesterday I thought that you
6 thought of this of your own initiative, as well as by virtue of
7 the fact that it was drawn to your attention.

8 A. Yes, sir. If I'm understanding now correctly, Mr. Aronson
9 brought it to my attention so I did not agree with him really
10 or to my knowledge having been stationed there before, so I
11 went out and looked into it in 1982.

12 Q. Okay. Let me stop you at this point. The only reason you did
13 it then is that ...is this your evidence, is because Mr. Aronson
14 drew it to your attention.

15 A. For that reason, sir, and also that it played a part or it had the
16 potential of playing a part in the murder itself, because it
17 took place in the park and the park was the central area it
18 seemed for gathering of young peoples and racial tensions.
19 So, I looked into it in both ways, sir. Yes.

20 Q. So, are you...are you suggesting you may have looked at
21 regardless of Mr. Aronson's suggestion?

22 A. Yes, sir.

23 Q. Okay. And you've indicated to us some of the things that you
24 did to come to that conclusion. Is it fair for me to conclude
25 that somebody with your background as an investigator

1 would not have come to that conclusion lightly?

2 A. No, I don't believe I did, sir. I looked into it.

3 Q. You were satisfied that you had made sufficient inquiries of a
4 sufficient range of people to back up the conclusion of a red-
5 necked atmosphere?

6 A. Yes, sir.

7 Q. Would you agree with me that racial attitudes are often not
8 easy to ascertain?

9 A. I would agree with that, yes, sir.

10 Q. And would you agree with me that if you can see or find
11 anything to support a conclusion of racial bias or prejudice,
12 that it's probably just the tip of the iceberg.

13 A. It's a very difficult question to answer, sir. You know, I don't
14 know the depth of it.

15 Q. Okay, we'll approach it in a little bit of a different way.
16 Would you agree with me that, and I'm asking you now as an
17 investigator, an experienced investigator, that unless
18 somebody is very much a real bigot, that you will only get at
19 their racial attitudes in subtle ways and at unguarded
20 moments?

21 A. Yes, there's a possibility of that, sir, I suppose.

22 Q. Well, I'm suggesting to you that it's more than just a
23 possibility, that this is an issue that's very difficult to come to
24 grips with.

25 A. It is, I agree, it is an issue that's very difficult to come to grips

1 with and this is why I'll just definitively say that, you know, I
2 looked at it in a cross-sectional way and took a cross-section
3 of opinions and to help me form my opinion.

4 Q. Okay. And another point that I'm trying to make to you is
5 that if somebody does disclose to you their racial attitudes,
6 negative racial attitudes, that it is, unless they're very much a
7 real bigot, to be at unguarded moments.

8 A. In an unguarded moment?

9 Q. Yes.

10 A. That's quite true, sir.

11 Q. And people don't come out and volunteer that information.

12 A. I wouldn't normally think so, sir, no.

13 Q. And that, and I think this point was brought out by Mr. Ross
14 yesterday, that they're most unlikely to do it if members of
15 the other race are present.

16 A. That is correct.

17 Q. If you will, that it's more likely to happen when the in group
18 is assembled rather than a mixture of the "in group," if I can
19 use that expression, to describe those that are holding the
20 bias and those who are on the receiving end.

21 A. I'm losing you a little bit, sir, in that I don't know what an "in
22 group" is.

23 Q. Well, if I can describe the, say, the group of white persons as
24 the in group, that those people are more likely to talk about
25 their racial feelings towards other minorities, other racial

1 groups, when they're assembled as a group.

2 A. And if there are no nonwhites present.

3 Q. Yes, that's right.

4 A. Yes, sir.

5 Q. And, for example, when you visited Donald C. MacNeil at his
6 cottage.

7 A. Yes, sir.

8 Q. That would be an unguarded moment?

9 A. Yes, sir.

10 Q. And there were no Indians or blacks present.

11 A. No, sir.

12 Q. And I take it something did happen at his cottage to lead you
13 to the conclusion that he didn't like Indians?

14 A. Yes, sir. Well, I had many discussions with Donald C. MacNeil,
15 not just at his cottage, and in off guarded moments, I suppose,
16 but I wasn't analyzing him one way or the other. As I have
17 tried to answer the question is that I was left with that
18 feeling from Donald C. MacNeil.

19 Q. Yes.

20 A. That he didn't particularly care for Indians.

21 Q. Okay, we'll come back to that in a moment. You took
22 statements from various people such as Jimmy MacNeil.

23 A. Yes, sir.

24 Q. And such as Mrs. Ebsary and such as a friend of Donna
25 Ebsary's, Couture, I believe her name was.

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 A. Yes.

2 Q. Would you, in your previous testimony, you indicated that
3 you allowed witnesses giving statements to use their own
4 words and their own terminology.

5 A. Yes, sir.

6 Q. And without going through the statements that were given by
7 these people, is it fair to conclude that if words appear in
8 those statement referring to coloured people or referring to
9 Indians, not referring to people by their real names; that is,
10 Seale and Marshall, or in the case of some of the statements
11 attributed to Jimmy MacNeil, that refer to Mr. Seale as a
12 "nigger," that those were words that were used by those
13 individuals?

14 A. That is correct, sir, yes.

15 Q. And would you agree with me that using terminology like
16 that reflects the red-necked atmosphere that you're speaking
17 about?

18 A. Yes, sir.

19 Q. And would you also agree with me that if people exhibiting
20 that kind of red-necked attitude were on the jury, that would
21 be a cause of real concern?

22 A. Yes, sir.

23 Q. At one point in your report of May 30, 1983, I won't take the
24 time for you to look it up unless you care to, you make the
25 statement that the decision of the jury was understandable,

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 based on, and you indicate the evidence presented, and then
2 you go on to say, "And the mood of the City of Sydney at the
3 time."

4 A. Yes, sir.

5 Q. I take that as a reference to the jury being caught up in the
6 mood of Sydney at that time.

7 A. That's how I meant it, sir.

8 Q. And part of the mood at the City of Sydney at that time was
9 this red-necked atmosphere.

10 A. There was racial tension in the city, yes, sir, from what I was
11 able to ascertain.

12 Q. So your...

13 MR. CHAIRMAN

14 Racial tension between whom?

15 STAFF SGT. WHEATON

16 Between whites and blacks, particularly, My Lord. To my
17 knowledge, between Indians and blacks.

18 BY MR. WILDSMITH

19 Q. Not Indians and blacks.

20 A. Not to my knowledge.

21 Q. But Indians and whites.

22 A. Indians and whites, yes, sir.

23 Q. And here you had an Indian who is the accused.

24 A. Yes, sir.

25 Q. And I'm reading your professional opinion as being that the

STAFF SGT. WHEATON, EXAM. BY MR. WILD SMITH

1 fact that Marshall was an Indian and that these racial
2 tensions existed was a factor that may have played on the
3 jury's mind.

4 A. It may have played, may have played on the jury's mind.

5 Q. Yes.

6 COMMISSIONER EVANS

7 His professional opinion as an expert in what field?

8 MR. WILD SMITH

9 Well, i would take it as an expert in assessing witnesses,
10 assessing evidence, assessing a situation such as is presented in
11 the courtroom.

12 COMMISSIONER EVANS

13 Where would he get that training?

14 MR. WILD SMITH

15 Well, I'm not an expert on policing but it would be my
16 assumption that it's all part and parcel of being an experienced
17 police investigator. Perhaps not as skilful as a trial judge.

18 MR. WILD SMITH

19 Q. Let me turn now to some point in relation to John MacIntyre.
20 I'd like to draw your attention, first of all, to Dr. Virick. I
21 understand your evidence to be that John MacIntyre told you
22 that Marshall pulled his stitches out and flushed them down
23 the toilet or something so as to prevent a blood sample from
24 being taken.

25 A. That's correct, sir.

1 Q. And did he tell you that, and you inquired of him about
2 getting a blood sample.

3 A. Yes.

4 Q. In addition to that?

5 A. Yes, sir, after he told me this I said...

6 Q. Yes, and his answer was, Dr. Virick, was "Basically those
7 brown-skinned fellows stick together."

8 A. Yes, sir.

9 Q. And, therefore, he did not ask Dr. Virick to get this blood
10 sample, is that correct?

11 A. That's correct, sir.

12 Q. But it's your understanding, is it, that John MacIntyre was
13 telling you that he asked Dr. Virick to get those stitches?

14 A. Stitches or bandages, sir, yes.

15 Q. Yes, okay. Did you ask the question of Dr. Virick as to
16 whether John MacIntyre had, in fact, asked him to do that?

17 A. I don't recall, sir.

18 Q. Let me direct your attention to the statement actually taken
19 by Carroll rather than yourself, at Volume 34, page 75.

20 A. Yes, sir.

21 Q. Now I'm reading partway down here after the name Marshall
22 appears the second time in bold print, about halfway down, it
23 says: "Marshall removed the stitches himself. That is not
24 uncommon." And then the next sentence, "I did not talk to
25 the City Police before or after my testimony." Now that may

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 be somewhat ambiguous but what I get from the statement is
2 that he didn't talk to the City Police...

MR. PUGSLEY

3
4 The suggestion my friend gets is really neither here nor there.
5 This man can't attribute what a witness says taken by Corporal
6 Carroll, I suggest. He didn't take this statement himself. He can't...

BY MR. WILDSMITH

7
8 Q. My friend is certainly correct and my only point to you, Staff
9 Wheaton, is do you have any knowledge that could assist me
10 in understanding whether Dr. Virick says he did or did not
11 talk to MacIntyre on this?

12 A. No, I do not, sir.

13 Q. Thank you. I believe also in relation to Marshall being at
14 large while on an outdoor program in September of 1979, you
15 indicated that John MacIntyre said that he canoed from
16 Dorchester to Pictou?

17 A. That's correct, sir.

18 Q. What do you suppose he meant by that?

19 A. That he canoed from Dorchester to Pictou, I would assume.

20 Q. You mean physically used a canoe for that purpose?

21 A. I took it he meant that.

COMMISSIONER EVANS

22
23 Is there a river running from Dorchester to Pictou? A lot of
24 pretty dry canoeing, I would think.

25

STAFF SGT. WHEATON, EXAM. BY MR. WILD SMITH

1 MR. WILD SMITH

2 I would have thought so, too, My Lord.

3 STAFF SGT. WHEATON

4 A. I agree with the comments previously made. I found it,
5 having grown up in southern New Brunswick, not an accurate
6 statement.

7 Q. Would it be a little far fetched on my part to wonder if there
8 was something racial in the connection between canoes and
9 Indians and canoeing from Dorchester to Pictou?

10 A. I didn't take it that way, sir.

11 Q. Okay. In any event, you've indicated to us that John
12 MacIntyre didn't care for Indians?

13 A. That was my impression, sir, yes.

14 Q. I'd like to put it to you that John MacIntyre's feelings went a
15 little deeper than just not caring for Indians and that, in fact,
16 he used Indians as a kind of foil to blame for various
17 problems associated with this investigation. Would that be a
18 fair comment?

19 A. Well, could you specifically...

20 Q. Sure. Well, the fact that he didn't have a blood typing on
21 Marshall, that that was, he blamed that on Marshall himself
22 even though Dr. Virick's statement seems to say that stitches
23 coming out are not uncommon.

24 A. From his conversation to me, he left me with the impression
25 that Marshall was destroying, getting rid of them so no one

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 could get a blood typing, yes.

2 Q. Marshall's fault, not MacIntyre's.

3 A. Yes, sir.

4 Q. That he didn't get a real blood sample because of Dr. Virick.

5 A. Yes, sir.

6 Q. Brown-skinned fellows stick together.

7 A. Yes, sir.

8 Q. In relation to Chant's first statement and Chant's reluctance to
9 finger Marshall at the trial, that he said it was because of the
10 Indians and that Chant was afraid of Indians.

11 A. Yes, sir.

12 Q. And yet I put it to you that there was no evidence of Indians
13 threatening Chant or coming into contact with Chant.

14 MR. PUGSLEY

15 He had the evidence of Donald Marshall leaning over him
16 saying there was two, wasn't there? There was that threat and
17 surely my friend...

18 MR. RUBY

19 ...serious threat...

20 MR. PUGSLEY

21 Excuse me, I'm not through yet. You can have your turn.
22 Surely this is a matter of argument that my friend is putting to
23 this witness.

24 MR. CHAIRMAN

25 As I recall Chant's evidence as well, he mentioned this, but

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 I'm still...What is it you're leading to?

2 MR. WILDSMITH

3 I'm attempting to suggest to this witness and wonder if his
4 observations will agree with it that John MacIntyre's feelings
5 toward Indians did come out continually in this man's dealings
6 with John MacIntyre, by virtue of the fact that MacIntyre seemed
7 to bring Indians into the conversation all the time and blame
8 them for various problems in the investigation.

9 MR. CHAIRMAN

10 You're saying that if Chant said to MacIntyre during the
11 investigation, "I am afraid of Indians," that that would indicate
12 that MacIntyre has some animosity towards Indians. Is that the
13 question?

14 MR. WILDSMITH

15 No, I'm suggesting that if there wasn't evidence to support
16 that and he continually turned the conversation to Indians and
17 fear of Indians, that that would be improper.

18 MR. CHAIRMAN

19 We have to determine, after we've heard all of the evidence,
20 whether there was any foundation for such an assumption on the
21 part of Mr. Chant.

22 MR. WILDSMITH

23 Yes.

24 MR. CHAIRMAN

25 But that's not germane to this issue.

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 MR. WILDSMITH

2 Okay, let me approach it in a slightly different way.

3 BY MR. WILDSMITH

4 Q. You indicated, Staff Wheaton, my words to a certain extent,
5 that whenever your questioning of John MacIntyre got him
6 into a tough spot, he would shift the ground and start talking
7 about Indians and blacks and other things associated with the
8 investigation.

9 COMMISSIONER EVANS

10 I don't recall...

11 MR. WILDSMITH

12 Well, I direct your attention to Volume 43 then.

13 MR. CHAIRMAN

14 He talks about other things, including, there may be a dozen
15 things included in his other things but...

16 MR. WILDSMITH

17 Okay.

18 BY MR. WILDSMITH

19 Q. At the bottom of page 7884 in the transcript, Volume 43.

20 A. Page number, again, sir?

21 Q. 7884. About halfway down on Line 15, we'll start with the
22 question:

23
24 Q. Is this an aspect of the "redneck"
25 atmosphere you were talking about
yesterday.

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 A. There was, yeah. There were problems
2 but I would say the problems in Sydney,
3 based again on what I was told, was more
4 between white and black and Indian, not
5 between Indian and black.

6 Q. Do you recall on what occasion or
7 occasions that was raised by Chief
8 MacIntyre?

9 A. It was one of his theories that he would
10 bring up. I can't give you an accurate
11 answer to the number of times.
12 Oftentimes [you said] when the Chief was
13 pressed on, or why, "Where did Pratico
14 come from?" or "why is Chant now
15 saying you pressured him?" He would
16 then go off on something to do with
17 Indians or blacks or the park or the
18 wound or something of that nature.

19 A. Yes, sir.

20 Q. What I'm suggesting to you is that what, in fact, happened is
21 that when you pressured John MacIntyre about problems in
22 the investigation, problems with Chant, problems with Pratico,
23 he would talk about Indians.

24 A. That was one of the things he would come up with, yes, sir.

25 Q. Thank you. And one of the other things that he continually
talked about was Indians taking out vengeance against whites
for lying against Marshall.

A. Yes, sir.

Q. Now we've heard some evidence of some Sydney police
officers referring to Indians as "wagon burners" and "broken
arrows." Did John MacIntyre use these terms to refer to any

25

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 Indians?

2 A. I do not recall John MacIntyre using those terms, no sir.

3 Q. Did he use any other or any derogatory terms in referring to
4 Indians?

5 A. "Brown-skinned fellows." He generally referred to them as
6 Indians, sir.

7 Q. Okay. Now you've indicated that John MacIntyre was bigoted
8 in his attitudes?

9 A. That was the impression that I was left with that he did not
10 like Indians and his attitudes were somewhat bigoted.

11 Q. And I think you indicated that he was bigoted towards more
12 people than just Indians.

13 A. That's correct, sir.

14 COMMISSIONER EVANS

15 He never used the word "bigoted"...

16 STAFF SGT. WHEATON

17 I beg your pardon? I never used the word "bigoted," no, sir,
18 I'm answering his question, My Lord.

19 COMMISSIONER EVANS

20 I understood him to say that he disliked everybody who
21 disagreed with him whether they were Indian, black, or white.

22 MR. WILDSMITH

23 I believe at page 76...

24 COMMISSIONER EVANS

25 He didn't draw any colour line. If people disagreed with him,

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 he just didn't...

2 MR. WILDSMITH

3 Well, the transcript will speak for itself, but I think if we
4 looked at page 7688, which I'm not suggesting we do, he uses
5 the word "bigot."

6 BY MR. WILDSMITH

7 Q. Would it be fair to say in your view that John MacIntyre was
8 class conscious?

9 A. Class conscious?

10 Q. Yes.

11 A. Yes, sir.

12 Q. What segment or strata of society you came from?

13 A. In my view?

14 Q. Yes.

15 A. Yes, sir.

16 Q. And would it be fair to say that the poor did not figure too
17 well or did not count too much with this man?

18 A. I don't know as that's a fair statement, sir.

19 Q. Okay. I'd like to direct your attention to Steve Aronson's note
20 that appears in Volume 29 at the top of page two. Page two?

21 A. Yes, sir.

22 Q. At the top and Commission counsel took you through the first
23 page of this that refers to a conversation that he had, Steve
24 Aronson had with you, and we note at the first part of that
25 he said "a rednecked atmosphere in Sydney." Can you

STAFF SGT. WHEATON, EXAM. BY MR. WILD SMITH

- 1 indicate what the rest of that sentence says? "Pressure,
2 tension, racial, 1971."
- 3 A. Yes, sir, and then it looks like a semicolon, "Blamed by
4 MacNeil's post."
- 5 Q. Or could it be "past"?
- 6 A. Past, it could be, yes, sir.
- 7 Q. I appreciate this is somebody else's notes but would it be fair
8 to say that in your conversation with him, this is a reference
9 to Donald C. MacNeil's past and his reprimand by the Human
10 Rights Commission?
- 11 A. It could be. Mr. Aronson would be better.
- 12 Q. You were part of the conversation.
- 13 A. I don't recall having conversation with Mr. Aronson.
- 14 Q. But you knew about that particular reprimand, did you?
- 15 A. I became aware of it toward the latter part of this
16 investigation in 1982.
- 17 Q. And the fact that you're saying that Donald MacNeil didn't
18 like Indians, I take it that's just not based on the reprimand
19 by the Human Rights Commission?
- 20 A. Not just, no, sir.
- 21 Q. No, that it's based on other social contacts you had with him?
- 22 A. Yes, sir.
- 23 Q. You indicated to my learned friend, Mr. Barrett, that you saw
24 Donald C. MacNeil prosecute Indians, blacks, whites and that it
25 didn't make any difference, as far as you could observe.

STAFF SGT. WHEATON, EXAM. BY MR. WILDSMITH

1 A. No, sir, not to the best of my recall. He prosecuted the same.

2 Q. And would you agree that he was a very aggressive fellow?

3 A. Yes, he was, sir.

4 Q. Donald C. MacNeil.

5 A. Yes.

6 Q. And that he made no bones out of the fact that he liked to
7 win his cases?

8 A. No, he liked to win.

9 Q. Would you agree that there are many things that go into the
10 prosecution of a case that you would have no knowledge of as
11 a police officer?

12 A. There could be, yes, sir.

13 Q. Okay. And so the fact that you didn't make any particular
14 observations may not mean that other things went on.

15 A. That's correct, sir.

16 Q. You indicated that while you concluded this "rednecked"
17 atmosphere existed in 1971, you weren't aware of it when
18 you were stationed there in '73 to '75.

19 A. That's right, sir. I didn't look into it specifically or think of it.

20 Q. Not to be facetious, but would you agree with me that one
21 reason that you may not have seen it in '73 or '75 was
22 because you weren't looking for it.

23 A. Very well could be, sir, yes.

24 Q. That you didn't go to the right places, ask the right people.

25 A. I didn't specifically draw my attention to it, no, sir.

1 Q. And, indeed, would it be fair to say that you weren't sensitive
2 to that issue in '73 to '75?

3 A. I never really thought of it, sir.

4 Q. And nothing in your training in the RCMP to direct you to
5 these questions of cross-cultural understanding and racial
6 attitudes?

7 A. I have taken courses in reference to cross-cultural and this
8 type of thing in Ottawa. I...

9 Q. When was that, sir?

10 A. I don't have a specific date. I can recall courses I've taken
11 and we've had speakers from, native speakers and so on.

12 Q. Would that be in more recent times?

13 A. No, I think it probably would have been back in, when I was
14 doing my drug work because I attended several courses in
15 Ottawa which were three-week courses and they were in
16 some depth, because we were dealing with the younger
17 people and so on.

18 Q. Three weeks on cross-cultural understanding?

19 A. No, that would be, I can't recall the syllabus but we would
20 have speakers come in and sociologists and so on and so forth.

21 Q. It is more reasonable, though, I think you would agree that
22 the racism that you concluded existed in '71 continued to
23 exist in '73 to '75?

24 A. It could very well have been there, yes, sir.

25 Q. Now in the course of your career as a police officer, I take it

1 you had occasion to occasionally view Indians in court?

2 A. Yes, sir.

3 Q. What observations can you make about Indians as accused or
4 defendants, or as witnesses?

5 A. Well, probably the native person I saw most would be Donald
6 Marshall, Jr., and he does not, in my opinion, make a good
7 witness. He speaks low, he holds his head down, he doesn't
8 portray a very good image on the stand.

9 Q. And I suggest to you that that was typical, that is typical of
10 many Indian witnesses.

11 A. To my knowledge, it is, sir, yes.

12 Q. And is it also the case that, in your observation, Indians tend
13 to be more passive in court?

14 A. Yes, sir.

15 Q. More likely to plead guilty and not fight?

16 A. Prior to Legal Aid coming in, that went on, I think. After the
17 Legal Aid system was adopted in the province, I saw a
18 gradual change in that. But it is a factor, yes, sir.

19 Q. And that by and large Indians like to get that court
20 experience over with.

21 A. That's right, sir.

22 Q. And perhaps would be willing to sacrifice any rights that they
23 may have had in the process of doing that.

24 A. There...This could happen. That's a possibility.

25

STAFF SGT. WHEATON, EXAM. BY COMMISSIONER EVANS

1 MR. WILDSMITH

2 Thank you, those are all the questions I have, Staff Wheaton.
3 Thank you for your patience for the last six days.

4 STAFF SGT. WHEATON

5 Thank you, sir.

6 EXAMINATION BY COMMISSIONER EVANS

7 COMMISSIONER EVANS

8 Staff Sgt. Wheaton, I just want to clear up a couple of points
9 for my own satisfaction. As I understood your evidence, in the
10 case of the prosecutor, Donnie MacNeil, while you have indicated
11 that he had certain biases, in the discharge of his professional
12 responsibilities as a prosecutor, I understood you to say that he
13 showed no bias.

14 STAFF SGT. WHEATON

15 No, sir.

16 COMMISSIONER EVANS

17 He just wanted to win all the time.

18 STAFF SGT. WHEATON

19 That's correct, My Lord, yes.

20 COMMISSIONER EVANS

21 I'm not saying whether that's the right attitude for a
22 prosecutor, but that is so. The other question I wanted to ask you
23 is the division of responsibility, as you see it, between the police
24 officer and the crown attorney, is it not the function of the police
25 officer to investigate and the function of the crown attorney to

STAFF SGT. WHEATON, EXAM. BY COMMISSIONER EVANS

1 attend to the prosecution?

2 STAFF SGT. WHEATON

3 It certainly is, yes, My Lord.

4 COMMISSIONER EVANS

5 And that those are two separate and distinct areas. I don't
6 say that you don't consult but they are, the decision as to
7 prosecute is the decision of the prosecutor.

8 STAFF SGT. WHEATON

9 That is correct, My Lord, yes.

10 COMMISSIONER EVANS

11 And the other one I was curious about is, do you think there
12 was any obligation on the part of Mr. Marshall to give a blood
13 sample?

14 STAFF SGT. WHEATON

15 No, there would be no obligation on his part, My Lord.

16 COMMISSIONER EVANS

17 And do you think there was that the doctor was entitled to
18 take a blood sample if Marshall didn't wish to give one?

19 STAFF SGT. WHEATON

20 It would be my practice, if I were doing the investigation, to
21 ask the doctor if he would get me a blood sample. And if Marshall
22 said no, I would say fine.

23 COMMISSIONER EVANS

24 Are you of the view that the doctor could take it, despite the
25 views of the accused person?

STAFF SGT. WHEATON, EXAM. BY COMMISSIONER EVANS

1 STAFF SGT. WHEATON

2 No, I don't.

3 COMMISSIONER EVANS

4 Or the person from whom the sample is being taken?

5 STAFF SGT. WHEATON

6 No, I don't believe the doctor would.

7 COMMISSIONER EVANS

8 And would there be any point, as far as you're concerned in
9 obtaining a bandage some days, five or six days later in the hope
10 that you're going to find any useful information as to blood?

11 STAFF SGT. WHEATON

12 No, I would do that, if I were gathering evidence.

13 COMMISSIONER EVANS

14 Even though it was five days later.

15 STAFF SGT. WHEATON

16 Well, if it were sitting on a floor or something, My Lord, for
17 five days, I doubt if it would test, but I would try it, yes, sir, My
18 Lord, I would send it to serology.

19 COMMISSIONER EVANS

20 Thank you. Oh, the other question I wanted you to ask you,
21 too, was in 1973 and 1975, you were involved in policing in
22 Sydney.

23 STAFF SGT. WHEATON

24 Yes, My Lord.

25

STAFF SGT. WHEATON, EXAM. BY COMMISSIONER EVANS

1 COMMISSIONER EVANS

2 And during the process of that, you would be involved in the
3 community.

4 STAFF SGT. WHEATON

5 Yes, My Lord.

6 COMMISSIONER EVANS

7 And speaking to many, many people.

8 STAFF SGT. WHEATON

9 Yes.

10 COMMISSIONER EVANS

11 And you say that as far as you were concerned, you
12 ascertained no redneck attitude in 1973 to 1975?

13 STAFF SGT. WHEATON

14 I saw none, My Lord, in the people that I spoke to.

15 COMMISSIONER EVANS

16 And yet you're prepared to adopt the opinion of Mr. Aronson
17 that it existed in 1971?

18 STAFF SGT. WHEATON

19 Yes, My Lord, and I direct it particularly to the scene of this
20 crime and the park.

21 COMMISSIONER EVANS

22 Of the Marshall.

23 STAFF SGT. WHEATON

24 Yes, My Lord.

25

STAFF SGT. WHEATON, EXAM. BY COMMISSIONER EVANS

1 COMMISSIONER EVANS

2 That's not general then. You're saying that refers only to the
3 Marshall matter?

4 STAFF SGT. WHEATON

5 It would be a general statement as well, My Lord, based on
6 the people that I talked to.

7 COMMISSIONER EVANS

8 You talked to them in 1982.

9 STAFF SGT. WHEATON

10 Yes, My Lord.

11 COMMISSIONER EVANS

12 To get their opinion as to what the situation was in 1971.

13 STAFF SGT. WHEATON

14 That's right, My Lord.

15 COMMISSIONER EVANS

16 Thank you.

17 MR. CHAIRMAN

18 [To Mr. Bissell] You'll probably be a little while?

19 MR. BISSELL

20 I expect ten to fifteen minutes, My Lord.

21 10:47 a.m. INQUIRY RECESSES.

22

23

24

25

EXAMINATION BY MR. BISSELL

1
2 Q. Thank-you, My Lord. Staff Sergeant Wheaton, you've been on
3 the stand for a long time now so I'll try to be mercifully brief
4 for you. I gather from the evidence that you have given that
5 like Al Marshall in 1971 your first step in commencing this
6 investigation was to go and meet with Chief John MacIntyre,
7 who back in '71 was the principal investigator...

8 A. That's correct.

9 Q. Of this crime, is that...that's correct? And I also gather from
10 reading the report that you prepared that appears in Volume
11 19 at page 21 of the book that you felt at the time that you
12 met in early February of '82 with Chief MacIntyre that he had
13 given to you a full and frank disclosure of the evidence that
14 was gathered.

15 A. That is correct, sir, yes.

16 Q. And is it fair to say that as time passed you began to doubt
17 whether, indeed, he had given you...

18 MR. PUGSLEY

19 Excuse me, just for a moment, My Lord. I rise to the same
20 point that I rose yesterday. Again, this is another counsel for the
21 RCMP who is directing leading questions, cross-examination of this
22 witness and I object to that. I consider it inappropriate for
23 witnesses who...counsel who have an alignment of interest to do
24 other than examine-in-chief. And I...

25

1 MR. CHAIRMAN

2 And that position was sustained by us yesterday, you'll recall,
3 Mr. Bissell.

4 MR. BISSELL

5 Yes, My Lord. I don't intend that it be overly leading but
6 I...when I drive home the point I'll try not to be leading the
7 witness. I was trying to move quickly over an area that isn't, in
8 terms of...

9 MR. CHAIRMAN

10 Don't let me discourage anyone from moving quickly, but that
11 doesn't...

12 MR. RUBY

13 Let him have his way. It will be two days again, as he was, in
14 non-leading questions covering the material.

15 OFF RECORD COMMENTS

16 COMMISSIONER EVANS

17 I take it that you understand the situation, Mr. Bissell.

18 MR. BISSELL

19 Yes, My Lord.

20 COMMISSIONER EVANS

21 You were leading in area that you obviously felt was not
22 material, that was not the view of our colleagues, and Mr. Pugsley.

23 MR. BISSELL

24 I didn't think that Mr. Pugsley would have objected to my
25 suggestion that his client had been full and frank at this point.

1 COMMISSIONER EVANS

2 Well, maybe he's particularly sensitive this morning.

3 MR. BISSELL

4 Thank-you, My Lord.

5 Q. Did you change your assessment at some subsequent time,
6 your original assessment that the Chief had been full and
7 frank with you?

8 A. That's correct, sir, I did.

9 Q. Did John MacIntyre tell you at the time of the meeting in
10 February, the first meeting that you had with him, of Jimmy
11 MacNeil coming forward and giving the statement that he did
12 following Mr. Marshall's conviction?

13 A. Yes, sir.

14 Q. And did he also tell you at that time of a subsequent RCMP
15 investigation into that...

16 A. Yes, sir.

17 Q. By Al Marshall. Did Chief MacIntyre, when you interviewed
18 him, seem at all swayed or concerned about the strength of
19 the case by the evidence of Mitchell Sarson?

20 A. At all swayed by what, sir, I'm sorry. I couldn't hear you.

21 Q. Did he...did Chief MacIntyre in February of '82 seem at all
22 concerned about the strength of his...the case that he thought
23 he had against Mr. Marshall in light of the new evidence of
24 Mitchell Sarson?

25 A. No, sir.

1 Q. When Chief MacIntyre was describing the case to you how did
2 he present the case?

3 A. As an open and shut case. He had two fine eyewitnesses to it
4 and it was tried and so on, and ably defended and it was a
5 straightforward matter.

6 Q. And did he go into some detail with you pointing out to you
7 areas that he felt made that case a strong case?

8 A. Yes, sir, he did, and...

9 Q. Did he...I'm sorry, I didn't mean to interrupt you if you
10 weren't finished.

11 A. I was just going to say the two prime areas being that he had
12 two eyewitnesses to...

13 Q. Yeah. Did he likewise point out to you material in the file that
14 suggested that Roy Ebsary was in the area of the Park on the
15 night of the murder, or the night of the stabbing?

16 A. He dealt with that with me and said that Al Marshall had
17 thoroughly reviewed it and ran a polygraph and was satisfied
18 with it that there was nothing to that allegation by Jimmy
19 MacNeil.

20 Q. Did he point out to you at that time the statements of George
21 and Sandy MacNeil? Did he draw your attention to those
22 statements?

23 A. I don't recall those statements, sir, no.

24 Q. Did you draw a conclusion as a result of this initial meeting
25 with Chief John MacIntyre whether or not it would be

1 necessary for you to interview the two chief eyewitnesses,
2 Mr. Chant and Mr. Pratico?

3 A. Well, at that time I was looking into the complaint of Stephen
4 Aronson and based on what the Chief had told me and my
5 knowledge of Mr. Rosenblum and so on and so forth I really
6 didn't feel any great need right as I left that office that day.

7 Q. Uh-hum. Does that appear to be the same conclusion that Al
8 Marshall drew in 1971?

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

10 Q. Now, in late 1971 Roy Ebsary was, at the time you became
11 involved, before the courts on a charge, is that not correct?

12 A. That's correct, sir.

13 Q. And did that charge appear to you at all to be material?

14 A. Yes, sir, it was a stabbing charge, use of a knife, almost
15 resulting in death. The knife went in under the heart. And
16 his actions after the stabbing seemed very bizarre in going to
17 the hospital and so on.

18 Q. Uh-hum. And did you check Mr. Ebsary's record at that time
19 and determine that he had another record involving a knife?

20 A. Yes, I did, sir.

21 Q. So I gather then that unlike Al Marshall's enquiry what you
22 discovered caused you to go further and finally interview the
23 eyewitnesses, is that correct?

24 A. That is correct, sir, yes.

25 Q. When you spoke to Mr. Chant to the best of your knowledge

1 was that the first times that he had told his story, the truth,
2 to a police officer?

3 A. Yes, sir.

4 Q. To a person in authority. When did he tell you was the first
5 time that he had told anyone the truth about the events of
6 May '71?

7 A. In that first statement taken from Mr. Chant in the parlour in
8 Louisbourg, that I believe was either the opening line or the
9 second line that he come out with. It was...

10 Q. Did he indicate to you whether or not he had told any of his
11 family members?

12 A. Yes, he did, sir.

13 Q. Okay. Did he tell you when he first told his family? It was
14 his mother, I believe.

15 A. His mother a couple of years before this.

16 Q. So, it would be about 1980, is that correct?

17 A. In that area, yes, sir.

18 Q. Uh-hum. Did he tell anyone else?

19 A. He advised me he had told his minister.

20 Q. And when did he do that?

21 A. Approximately the same time, as I recall.

22 Q. So, as near as you could tell, then, did he tell anyone between
23 '71 and 1980 the truth?

24 A. Not from what he told me, sir.

25 Q. Mr. Orsborn, when he was asking you a series of questions

1 regarding the...your C237's, the forms that you prepared to
2 pass on to your superiors, pointed out a number of cases
3 where items that you discussed in those reports did not
4 match or were not contained in the witness statements that
5 you took. Do you recall...recall that?

6 A. Yes, sir.

7 Q. Did you prepare those C237's while the information was still
8 fresh in your memory?

9 A. Yes, I did basically. Yes.

10 Q. Another matter that was discussed with Mr. Orsborn related
11 to how you packaged and sent the knives to Richard
12 MacAlpine, I believe it was, for analysis.

13 A. Yes, sir.

14 Q. Are you at all concerned that the method in which you
15 packaged the knives, and packaged them together, in any way
16 affected their integrity as an exhibit?

17 A. Yes, sir, in retrospect. I should have packaged them
18 individually.

19 Q. How had they been stored over the number of years, though,
20 prior to that?

21 A. They had been stored collectively, so...

22 Q. So, would separating them...

23 A. Really, at that point, yes.

24 Q. One other area that I wish to briefly touch on, sir. We heard
25 from Sergeant Burgess, one of the readers about supervision

1 carried out by way of audits on various detachments to make
2 sure that officers in the detachment are following Force policy
3 and conducting investigations in an appropriate fashion.

4 A. Yes, sir.

5 Q. Do you, in your function as a Staff Sergeant in charge of a
6 detachment, also fulfil a supervisory function?

7 A. Yes, I do, sir.

8 Q. Could you just explain that a little bit, please, sir?

9 A. Well, as the...as the files come in and the complaints they are
10 reviewed first by the Corporal Supervisor of the shift. They
11 are then reviewed by the Operational Sergeant in my unit and
12 then any files of any major importance are reviewed by
13 myself. Subsequent to that they are reviewed by a section
14 NCO a minimum of two times per year on a cross-sectional
15 basis and by the officer commanding on the subdivision on a
16 cross-sectional basis once per year.

17 Q. Thank-you, sir. And there's just one other area I wish to
18 cover and that very briefly, and that's concerning your...your
19 evidence that in your presence, and in the presence of
20 Sergeant Herb Davies, that Chief MacIntyre slipped a paper or
21 papers to the floor. And I would just ask you this, that if you
22 will assume for a moment that you might be wrong on the
23 date, does that cause you any doubt at all about being in the
24 office and where people were sitting in the office and that
25 you were told by Corporal Davies upon leaving that a paper or

1 papers had been dropped to the floor?

2 A. It causes me no doubt whatsoever, sir.

3 Q. And did you bring that fact to the attention of Inspector Scott
4 and Frank Edwards?

5 A. Yes, sir, I did, sir.

6 MR. BISSELL

7 Fine. Those are all the questions that I have, sir, thank-you
8 very much.

9 MR. CHAIRMAN

10 Mr. Outhouse.

11 MR OUTHOUSE

12 Thank-you, My Lord. My Lords, I only have a few matters I
13 wish to cover and most of them are of a housekeeping nature.

14 EXAMINATION BY MR. OUTHOUSE

15 Q. Staff Sergeant Wheaton, when my learned friend Mr. Orsborn
16 was questioning you, I believe the second day of your
17 testimony, he asked you why you hadn't included the
18 statement of Roy Ebsary which is dated February 23rd, '82,
19 and the subsequent statements from Greg and Mary Ebsary
20 which are dated April 19th, '82, in your reports which you
21 were filing with head office. I'd just like you to take Exhibit
22 21 or Exhibit Book 21, if you would please.

23 COMMISSIONER POITRAS

24 Mr. Outhouse, you'd be drawing our attention to what books
25 of...

1 MR OUTHOUSE

2 Yes, perhaps, 21.

3 COMMISSIONER POITRAS

4 Yes.

5 MR OUTHOUSE

6 19, Exhibit 88A, Volume 20, and Volume 1 and 2, in that
7 order.

8 COMMISSIONER POITRAS

9 Thank-you. So, 19, 20...19, 20, 21, 1 and 2 and 88A as an
10 exhibit.

11 MR OUTHOUSE

12 Yes.

13 COMMISSIONER POITRAS

14 Thank-you.

15 STAFF SGT. WHEATON

16 A. 21 I have, sir, yes.

17 Q. You have Volume 21. Would you turn to page 198?

18 A. Yes, sir, I have it.

19 Q. That's the statement of Roy Newman Ebsary dated February
20 23rd, '82.

21 A. Yes, sir.

22 Q. And if you turn to pages 203 and 204.

23 A. Yes, sir.

24 Q. On 203 we have the statement of Greg Ebsary.

25 A. Yes, sir.

1 Q And on 204 the statement of Mary Ebsary.

2 A. Yes, sir.

3 Q And these three statements are all included in this so-called
4 red book.

5 A. Yes, sir.

6 Q If you look at the cover pages.

7 A. Yes.

8 Q This is the red book which you and your staff prepared and
9 forwarded to Halifax.

10 A. Oh, yes, yes, sir, okay.

11 Q And if you look at Volume 19.

12 A. Yes, sir, what page?

13 Q Okay. You take page 111.

14 A. Yes, sir.

15 Q Do you have it?

16 A. I have 111, sir, yes.

17 Q That's the covering letter that went with the red booklet, isn't
18 it?

19 A. Yes, sir.

20 Q And that's dated the 5th of May, '82.

21 A. Yes, sir.

22 Q So, am I correct in assuming, therefore, that the statements of
23 Roy Ebsary, Mary Ebsary and Greg Ebsary were forwarded to
24 your superiors in the red book on May the 5th, '82?

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

1 Q. And if we look further, page 115 of Volume 19, do you have
2 that?

3 A. Yes, sir.

4 Q. It's clear that that red booklet was forwarded to the Deputy
5 Attorney General on the 10th of May, top left-hand corner.

6 A. Yes, it would appear that way, yes, sir.

7 MR. SAUNDERS

8 Attention: Gordon Gale.

9 MR OUTHOUSE

10 Attention: Gordon Gale, I'm sorry, yes.

11 Q. Now, while we're on this subject if you'd turn back to 111 and
12 without leading on a material point, My Lords, it's clear I
13 suggest from Inspector Scott's memo of May 5th that
14 investigation of the Marshall case was virtually complete at
15 that time and he refers to only minor avenues of investigation
16 being left open. And you'll see that reference on page 112,

17
18 That I believe that the facts we have
19 submitted show that Donald Marshall was
20 not responsible for this murder in 1971
21 and that sufficient evidence is available to
22 prove that Roy Ebsary is the person
23 responsible for the murder of Seale.

24 Do you see that, Staff Sergeant Wheaton?

25 A. Yes, I see that, sir.

Q. All right. And then he refers to "minor areas of investigation"

1 saying that they're not critical to the decision-making process
2 as to Marshall's guilt or innocence.

3 A. Yes, sir.

4 Q. Now, if you go forward in that volume to page 120 it will
5 show that you carried out other minor avenues of
6 investigation and submitted a subsequent report dated May
7 the 20th.

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

9 Q. This was your investigation subsequent to the preparation of
10 the red book.

11 A. That's correct, sir.

12 Q. Having pursued those minor areas of investigation, in
13 paragraph 4 you say that you've "Completed all known areas
14 of investigation with respect to the Marshall-Ebsary
15 investigation."

16 A. Yes, sir.

17 Q. And then you go on to say that you've had discussions with
18 Frank Edwards, the Crown Prosecutor, with respect to
19 interviewing Chief MacIntyre and Inspector Urquhart in
20 regards to the allegations of Chant, Pratico and Harriss that
21 they were induced to fabricate evidence in the original trial.
22 Do you see that?

23 A. Yes, sir.

24 Q. Then you go on to say that you're holding the file in abeyance.

25 A. That's correct, sir.

1 Q. And you're awaiting further instruction.

2 A. Yes, sir.

3 Q. Now, without getting into what exchanged between the
4 Attorney General's Department and your head office, did you
5 ever receive instructions to go forward with that
6 investigation?

7 A. I did not, sir, no.

8 Q. And did you do any further investigation on the Marshall case
9 after this report of May 20th?

10 A. Not that I can recall, sir, no.

11 Q. So, as of May 20th the Attorney General's Department wasn't
12 awaiting anything further from you by way of a report.

13 A. No, sir.

14 Q. Nor your superiors.

15 A. No, sir.

16 Q. Take a look at Exhibit 88 or 88A, it doesn't really matter
17 which, whichever you've been given. Do you have that, Staff
18 Sergeant Wheaton?

19 A. Yes, I have that, sir.

20 Q. You were questioned about, on the first page under...you'll see
21 the heading, "Typewritten copies of statements".

22 A. Yes, sir.

23 Q. Down five or six lines you'll see "Statements of Patricia
24 Harriss" in the plural.

25 A. Yes, sir.

1 Q. You were questioned about why that was pluralized.

2 A. Yes, sir.

3 Q. Now, when you received...I don't, not going to get into the
4 mechanics by which you received it or the date on which you
5 received it, that's been covered already. But when you got
6 that statement, the first Patricia Harriss statement of April 17
7 was it handwritten or typed?

8 A. It was handwritten, sir.

9 Q. And did you ever obtain a typed version of that statement at
10 any time from the Sydney City Police?

11 A. No, I did not, sir.

12 Q. So, when it says "typewritten copies of statements of Patricia
13 Harriss" to your knowledge there never was in the Sydney
14 City Police files anywhere, at any time, a typed written
15 statement of the 17th.

16 A. No, sir.

17 Q. Now, when my learned friend Mr. Pugsley was questioning
18 you he indicated that when you were writing to
19 Superintendent Vaughan some four years later, July 14th,
20 1986, that you were communicating with someone who had
21 little knowledge of the case, little or no knowledge of the case
22 as I understood him. I just want you to look at page 58 of
23 Volume 20. Do you have Volume 20 there?

24 A. Yes, sir.

25 Q. Now, if my understanding is correct that's the letter you were

1 responding to when you were writing to Superintendent
2 Vaughan, your memo which is found on page 63, your memo
3 of July 14th.

4 A. Yes, sir.

5 Q. Correct?

6 A. Yes.

7 Q. Now, I just want you to look at the first paragraph on page
8 58, first paragraph of Superintendent Vaughan's letter and
9 tell me whether or not that indicates he already perused the
10 file when he wrote that letter?

11 A. You want me to look at the first paragraph, page 58, sir.

12 Q. Yes. And tell me whether or not it indicates he has already
13 perused that file.

14 A. Yes, sir, he says he did in the second sentence, sir.

15 Q. And he would have available to him, would he not, in that file
16 all of your reports?

17 A. Yes, sir.

18 Q. All of the material that had been submitted from Sydney to
19 Halifax on the Marshall investigation.

20 A. Yes, sir.

21 Q. Staff Sergeant Wheaton, when my learned friend Mr.
22 Saunders was questioning you at the opening of yesterday's
23 testimony he asked you at one point whether you were still in
24 Sydney, stationed in Sydney as I understood his question, in
25 December of 1982. And while there seemed to be some

1 confusion on your part you agreed with him that you were.

2 A. No.

3 Q. And perhaps you could clear that up for the record.

4 A. That's not correct. I was transferred from Sydney the latter
5 part of June, the first part of July I actually left in 1982.

6 Q. So, at the time of the Supreme Court reference, the Appeal
7 Division reference in December of '82 you were by then
8 stationed in Halifax.

9 A. I was stationed in Halifax, yes, sir.

10 Q. There's just one more area, Staff Sergeant Wheaton, that I
11 want to cover. In the time that you've been a police officer
12 twenty-six odd years have you had many occasions to
13 observe young witnesses testifying in court?

14 A. Yes, I have, sir.

15 Q. And have you had occasion to observe them being questioned
16 by the Judge before they give their testimony as to the
17 meaning of the oath?

18 A. Yes, I have, sir.

19 Q. Now, there have been a lot of questions put to you since
20 you've been on the stand about whether Chant and Pratico
21 and possibly Harriss were threatened with perjury charges by
22 either the police or the Crown. You've heard those questions.

23 A. Yes, sir.

24 Q. I want you to turn to Volume 1 of the exhibits, page 19. Do
25 you have that?

1 A. Yes, I have that, sir.

2 Q. And if you look you'll see that it's the evidence of Patricia
3 Harriss and this is at the preliminary inquiry, My Lord. Page
4 19 of Volume 1. And you'll see that she's in grade eight and
5 she's fourteen years of age. Go down to line 22. It says,

6
7 Q. Do you know what it means to take an
oath on the Bible?

8 A. Yes.

9 Q. What?

10 A. To tell the truth.

11 Q. What happens to people who don't tell
the truth?

12 A. Perjury.

13 Do you see that?

14 A. Yes, sir.

15 Q. Now, go over to page 35. This is Maynard Chant. He's being
16 questioned by the Judge as to his understanding of the oath.
17 He indicates that he's fourteen, the Judge asks him at the top
18 of page 35,

19 Q. Do you know what it is to take an oath on
20 the Bible?

21 A. Yes.

22 Q. What does it mean?

23 A. To tell the truth.

24 Q. What happens to people who don't tell
the truth?

25 A. They commit perjury.

Then he goes on to say what can happen to them, they can be

1 sent to jail. Now, I'm not going to refer you to it, but if My
2 Lords are interested at page 42 and 43 of the preliminary
3 John Pratico's evidence starts, and he was not questioned as
4 to the meaning of the oath at the preliminary. He was sworn
5 in the usual way. If one goes to the trial transcript, and I'm
6 not asking you to refer to this now, Staff Wheaton, at page
7 138, My Lords, of the trial. Patricia Harriss is again
8 questioned as to the meaning of the oath and it's recorded
9 and again she says that it's perjury to lie. If one goes to page
10 86 of the trial Chant is questioned by the Judge, Mr. Justice
11 Dubinsky, that's at page 86, sorry, that's got to be of Volume
12 2. I better be sure on that. That page reference, My Lord,
13 can't be correct. I will find that, My Lords, but the bottom
14 line is that Mr. Chant was examined by the Judge but it is not
15 recorded it just says, he's questioned by the Judge and the
16 Judge then says, "I'm satisfied that he can take the oath," and
17 gives him the oath. The same thing happens with Mr. Pratico
18 at page 155 of the transcript. He's questioned by the Judge
19 but it's not recorded. However, if one turns to Volume 2. Do
20 you have Volume 2, Staff Wheaton?

21 A. Yes, I do, sir.

22 Q. At page 57, do you have that?

23 A. Yes, sir.

24 Q. Now, these are the summations of counsel, this is specifically
25 the summation of Crown Prosecutor Don MacNeil and he is

1 putting his case to the jury with respect to why Pratico told
2 one story out in the hallway and another story in the court.
3 And if you go down to lines 14 to 20 approximately he says
4 that he was not under oath when he made those statements.
5 He's referring to Pratico's statements out in the hallway.

6
7 He says, He came in here after a very close
8 examination by His Lordship that he knew
9 what an oath was and the consequence of
10 taking an oath, the penalty for lying under
11 oath and that he could be convicted of
12 perjury and sent to jail.

13 Do you see that?

14 A. Yes, sir.

15 Q. So, it's clear from the record, Staff Sergeant Wheaton, and I'm
16 just putting this to you for a question that I have, that all
17 three of these key witnesses, Harriss, Chant, Pratico when
18 first questioned about the meaning of the oath all answered
19 by reference to the fact that they could be charged with
20 perjury if they lied.

21 A. Yes, sir.

22 Q. That's a given. Now, what I want to ask you is that in your
23 experience in the courts watching young people testify is it...is
24 that a normal response from three independent witnesses,
25 two of whom are fourteen years of age and one sixteen?

A. I would say it would be highly unusual, sir.

1 MR. OUTHOUSE

2 Thank-you, Staff.

3 MR. CHAIRMAN

4 Mr. MacDonald

5 11:35 * EXAMINATION BY MR. MACDONALD

6
7 Q. Just a couple of points, Staff Sgt. Wheaton. Yesterday
8 afternoon in response to a question from Mr. Ross as to the
9 presence of money on Sandy Seale, you were asked did you
10 check to find out if there was enough money in his pocket to
11 cover his bus fare when the body arrived at the hospital and
12 you said "yes." Who did you check with?

13 A. I checked with, in conversation with Mr. and Mrs. Seale at
14 their home, they indicated to me, I can't recall the quantity of
15 money that he had, sir, but that he would have had money
16 and I checked at the bus terminal and I found it was fifty
17 cents for the trip.

18 Q. But there was nothing in the Sydney City Hospital records to
19 show that.

20 A. No, sir.

21 Q. There's just one other point. I was left a little confused as a
22 result of the questioning by Mr. Saunders about the
23 investigation that you were involved in in Port Hawkesbury
24 in 1982 and I would ask you to follow the same cautions that
25 we put yesterday.

1 A. Oh, yes, sir.

2 Q. If you would.

3 A. Yes.

4 Q. Do you have Volume 43 there, Staff?

5 A. Yes, I do, sir.

6 Q. At page 7953.

7 A. Yes, sir.

8 Q. Around Line 7 where you said:

9

10 In this investigation we were able to place
11 Mr. MacLean at the front door of the
12 restaurant in a blinding snowstorm at
approximately four to five o'clock in the
morning.

13 A. Yes, sir.

14 Q. I understood from your evidence yesterday to Mr. Saunders,
15 and I can show you if you like, to say that you're not sure
16 whether it was four or five o'clock in the morning, it could
17 have been as late as ten.

18 A. That's right. That's why I said "approximately," sir.

19 Q. But you also said you were definite that it was during a
20 blinding snowstorm.

21 A. Yes, sir.

22 Q. And you are definite of that?

23 A. I am positive of that, yes, sir.

24 Q. When you say, when you said, "In the investigation, we were
25 able to place...", was it as a result of statements you took from

1 witnesses that you were able to place Mr. MacLean at the
2 front door of the restaurant in a blinding snowstorm at some
3 time?

4 A. That was Constable Gaudet, to the best of my recollection, that
5 did that, sir.

6 Q. So you, yourself, did not place any, interview anyone to place
7 MacLean at that location.

8 A. No, it would be Constable Gaudet, sir.

9 Q. So it's as a result of reviewing statements taken by Gaudet or
10 something he told you?

11 A. Well, when I use the plural "we," Constable Gaudet and I were
12 working on the file together and he told me and I reviewed
13 his statement, I believe.

14 Q. Is it a result of something he told you or statements that he
15 took?

16 A. I can't recall. It would be, I know it was something he told
17 me. Insofar as my reviewing the statements, I can't recall for
18 sure if I did or did not read the statements or if he took or
19 did not take statements at this juncture.

20 Q. You, yourself, did take a statement from Mr. MacLean.

21 A. Yes, I did, sir.

22 Q. And he admitted being at the restaurant around 10:15 in the
23 morning to you.

24 A. I don't recall the time, again, I'm sorry, but I know he did
25 admit being at the door of the restaurant in a snowstorm.

1 Q. Now it's my understanding that the witnesses who said they
2 saw Mr. MacLean at the front door of the restaurant around
3 10, 10:30 in the morning, then left and drove to Antigonish on
4 perfectly clear roads and no snowstorm at all. If that's
5 correct, that would be at odds with what you were told by
6 Constable Gaudet, is it?

7 A. That would be at odds with what my recollection is now and I
8 haven't reviewed the file but I have a clear recollection of
9 that, that Mr. MacLean was at the front door of his restaurant
10 in a blinding snowstorm.

11 Q. And you have a clear recollection from what?

12 A. From Constable Gaudet's conversation with me back at that
13 time and the two of us working on the file.

14 Q. So based on your recollection today, it's based on what you
15 were told by Gaudet.

16 A. Yes, sir.

17 Q. And one final question, and if I can, I'd like to ask you if you
18 can answer this yes or no, please do so. I'm not interested in
19 any facts.

20 A. Fine, sir.

21 Q. Have you ever been criticized by your superiors for improper
22 leaks to the media during the course of an investigation
23 carried out by you, either before 1982 or after?

24 A. No, sir.

25 MR. MACDONALD