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#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

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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  
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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47

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

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

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.

- 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

STAFF SGT. WHEATON, EXAM, BY MR. WILDSMITH

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...

8624 STAFF SGT. WHEATON, EXAM. BY MR. OUTHOUSE

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  
oath and that he could be convicted of  
perjury and sent to jail.

11 Do you see that?

12 A. Yes, sir.

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

19 A. Yes, sir.

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

24 A. I would say it would be highly unusual, sir.  
25

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

STAFF SGT. WHEATON, EXAM. BY MR. MacDONALD

1 Thank you. That's all I have, My Lord.

2 MR. CHAIRMAN

3 Thank you very much, Staff Sgt. Wheaton. You've been in the  
4 box for six and a half days, which is a record, and it's one that I  
5 hope will not be equaled during the remainder of this Inquiry.

6 Thank you very much.

7 STAFF SGT. WHEATON

8 Thank you, My Lord.

9  
10 THE WITNESS WITHDREW

11  
12 MR. MACDONALD

13 The next witness, My Lord, is Herb Davies.

14  
15 HERBERT LEONARD DAVIES, duly called and sworn, testified as  
16 follows:

17  
18 EXAMINATION BY MR. MACDONALD

19  
20 Q. Your name is Herb Davies?

21 A. Herbert Leonard Davies.

22 Q. You're a member of the RCMP?

23 A. Yes, I am.

24 Q. What's your current rank?

25 A. Sergeant.

1 Q. You're stationed at the present time where?

2 A. In St. Peters.

3 Q. That's in Cape Breton?

4 A. Cape Breton.

5 Q. How long have you been there?

6 A. I've been there, it was five years in October, sir.

7 Q. Just generally for us, Sergeant, and briefly, just trace your  
8 career, would you, in the RCMP?

9 A. Okay, I joined the RCMP on the 28th of April, 1964 at Sydney.  
10 And from there, I went to Depot Division in Regina for  
11 training. I graduated from our training depot in December of  
12 1964 and I was posted to Montreal for a short period of time.  
13 I left Montreal in April of 1965 and I was transferred to  
14 Cornerbrook, Newfoundland. I remained in Cornerbrook until  
15 the summer of 1966 at which time I was transferred to Bonne  
16 Bay and these various postings will be in Newfoundland.  
17 From Bonne Bay, I was transferred to Nain, Labrador in the  
18 last fall of '66 and I remained in Nain until July of 1967.  
19 When I come out of Nain, I was transferred to Cornerbrook  
20 Highway Patrol and I remained there for four years. Then I  
21 was transferred in charge of Stephenville Highway Patrol for  
22 a period, that was a two-man highway patrol. I was there for  
23 a period of three years and, if I recall correctly, it was on  
24 Mother's Day in 1971 that I was transferred to...Pardon me,  
25 Mother's day of 1974 that I was transferred to Burgeo. I

1 remained there until June of 1976 at which time I was  
2 transferred to Arichat, which is in the Province of Nova Scotia,  
3 Richmond County. I remained in Arichat for two years and I  
4 was transferred to the Customs and Excise Section in Sydney.  
5 I remained in charge of the Customs and Excise Section in  
6 Sydney from 1978 until October 6th, 1982, at which time I  
7 was transferred to St. Peters. Now, during my four years in  
8 Sydney, I spent the summers relieving, temporary in charge  
9 of Ingonish Beach Detachment and one summer, Inverness  
10 Detachment. During my stay in St. Peters, I spent the summer  
11 of '86 relieving as the NCO in charge of Port Hawkesbury  
12 Detachment. And I received word on the 7th of January of  
13 this year that I'm being transferred as the NCO in charge of  
14 the Antigonish Detachment at which time I will be promoted  
15 to the rank of Staff Sergeant the day I arrive there.

16 Q. Thank you.

17 A. Which I hope is in the near future.

18 Q. I'm always amazed at how you RCMP people can give the  
19 dates of when you went everywhere. I would hate to be put  
20 to that test. What's your practice with taking notes of what  
21 your activities are on a particular day?

22 A. If I am involved in an investigation, normally I would take  
23 notes, if it was an investigation of my own or if it was  
24 something that I felt I should document, I would.

25 Q. Do you retain your notes?

SGT. DAVIES, EXAM. BY MR. MacDONALD

1 A. Yes, I do.

2 Q. So you do have your notes from 1982?

3 A. I don't have any notes on this investigation whatsoever.

4 Q. I appreciate that. That would be my next question. But you  
5 do have in your possession your notebooks that would cover  
6 the period of time that you were involved in this matter.

7 A. If I felt there was a need to keep my notebook, I certainly  
8 would. I have some, not all of them.

9 Q. Have you made a search to determine if you had any notes of  
10 any kind with respect to your involvement in the Donald  
11 Marshall, Jr. matter?

12 A. Yes, sir, I did.

13 Q. Were you able to locate anything?

14 A. I don't have any. If I did have any, they would have been  
15 passed over to the Commission.

16 Q. During your time you were in Sydney, did you have any  
17 involvement with, other than the time we're going to talk  
18 about, any involvement with Chief MacIntyre?

19 A. No, I did not, sir.

20 Q. Did you know him?

21 A. I knew who he was, yes.

22 Q. But you did not know him personally.

23 A. No, I didn't.

24 Q. You did have some involvement in this reinvestigation carried  
25 out by Staff Sgt. Wheaton, is that correct?

SGT. DAVIES, EXAM, BY MR. MacDONALD

- 1 A. I had some involvement, sir, yes.
- 2 Q. And do you have personal knowledge of that involvement or  
3 personal recollection?
- 4 A. I do, yes.
- 5 Q. Did you have, or have you had discussions with anyone to  
6 refresh your memory as to what your involvement was?
- 7 A. Yes, I have.
- 8 Q. Who have you discussed the matter with?
- 9 A. Corporal Grant Shaw, Inspector Harry Murphy, and Staff Sgt.  
10 Harry Wheaton, and also, if I recall his name correctly, Gordon  
11 Proudfoot. He was a lawyer for the CBC when Chief  
12 MacIntyre launched a civil suit against the CBC.
- 13 Q. Tell me about the discussions you've had with these various  
14 people, when they occurred, the length of them, the nature of  
15 them?
- 16 A. Okay, with Inspector Murphy and Corporal Grant Shaw, they  
17 came to my detachment in St. Peters concerning this  
18 particular file. They wanted to know what part I played in  
19 the investigation and I told them what it was. Now...
- 20 Q. Is that the same with Mr. Proudfoot?
- 21 A. Same with Mr. Proudfoot. I met with Mr. Proudfoot on the  
22 22nd of May, 1986 at our headquarters in Sydney.
- 23 Q. How are you so certain of that date?
- 24 A. How am I so certain of that date? Well, I'll tell you. That  
25 particular day, I traveled from St. Peters to Sydney. I was

1 | gone for a considerable length of time from St. Peters and we  
2 | have an expense account. I claimed a lunch that particular  
3 | day. So I referred back to that particular file and it was  
4 | there.

5 | Q. What date did you accompany Staff Wheaton to Chief  
6 | MacIntyre's office to pick up files?

7 | A. Okay, as far as I recall, it would have to be the 26th of April,  
8 | 1982.

9 | Q. As far as you can recall, is there some expense report or  
10 | something you can look...

11 | A. Okay, I have no independent recollection of the exact date.  
12 | There are two things I can refer to.

13 | Q. And what are those?

14 | A. And I think both have been tendered before this Commission  
15 | as an exhibit.

16 | Q. Can you tell me what they are and I'll get them for you.

17 | A. Okay, Exhibit 88.

18 | Q. Yes.

19 | A. That pertains to...

20 | Q. That's a listing of materials.

21 | A. Of documents received from Chief MacIntyre. And that was  
22 | prepared by Chief MacIntyre and the date on it is, the 26th of  
23 | April, 1982.

24 | Q. And what other information?

25 | A. The other item would be, okay, there was a letter from

1 Attorney General Harry How at that particular time in 1982  
2 dated the 20th of April, and that letter was authorizing Staff  
3 Sgt. Harry Wheaton to go to the Chief's office and obtain the  
4 complete file concerning the Marshall case.

5 Q. Did you see that letter before you went to the Sydney Police  
6 Station?

7 A. Yes, sir, I did. Staff Sgt. Wheaton read that letter to me and  
8 then I also wanted to have a look at it myself. I read it  
9 before I left Sydney. Now that was dated April 20th. So it  
10 had to be after April 20th that I was there and that inventory  
11 prepared by Chief MacIntyre is dated April 26th. So that had  
12 to be the date. I don't...

13 Q. Was there an inventory present? Do you recall the inventory  
14 being present when you were there?

15 A. Yes, I do, sir. I don't recall...

16 Q. Could you give the witness Exhibit 88 and also Volume 16,  
17 please?

18 A. I have both, sir.

19 Q. In Volume 16, if you look at page 221. Is that a letter from  
20 the Attorney General?

21 A. Yes, it is, sir.

22 Q. And the contents of that letter, is that the information that  
23 you had read before you went to see Chief MacIntyre with  
24 Staff Wheaton?

25 A. Yes, sir. And the date on that letter is April 20th, 1982.

SGT. DAVIES, EXAM, BY MR. MacDONALD

1 Q. Have you ever seen such a thing before?

2 A. No, I haven't, sir.

3 Q. In your career.

4 A. No, I haven't sir.

5 Q. Have you ever seen a direction to a police station, police chief  
6 to turn over his files?

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

8 Q. It would be a fairly significant event, then, in your career, to  
9 be involved with something like this.

10 A. It would be, but I must say when I left Chief MacIntyre's  
11 office, I figured that was the end of it. Little did I expect that  
12 I would be here on this date.

13 Q. You made no note, though, of what took place that day.

14 A. No, I didn't, sir.

15 Q. Now the Exhibit 88 is the other exhibit which is the inventory  
16 that's been laid in front of you.

17 A. Yes, sir.

18 Q. And do I understand you to say that you recall having seen  
19 that?

20 A. Yes, sir.

21 Q. Document.

22 A. And also I was present on this particular date, it's marked  
23 April 26th, 1982, I was present when Chief MacIntyre had  
24 Staff Sgt. Harry Wheaton sign for the various documents.

25 Q. Were you only present with Staff Wheaton on one occasion in

1 the office of Chief MacIntyre?

2 A. That's all I can ever recall, sir. As a matter of fact, that  
3 particular morning, Staff Sgt. Wheaton introduced me to Chief  
4 MacIntyre and I shook hands with him.

5 Q. Do you have recollection today of what took place that day,  
6 whenever it was, in Chief MacIntyre's office?

7 A. Yes, I do, sir.

8 Q. I want to show you Exhibit 109, which is a sketch, I think  
9 prepared by Sergeant Wheaton, showing the outline of that  
10 office.

11 11:55 a.m.

12 Q. Do you have your copies of that, My Lords, it's the sketch that  
13 was prepared. What time of day were you there?

14 A. If I recall correctly it was in the afternoon of April 26th,  
15 1982.

16 Q. Who was present?

17 A. Chief MacIntyre, Staff Sergeant Wheaton and myself.

18 Q. Was there any discussion between you and Staff Wheaton as  
19 you headed to the Sydney Police as to what was going on and  
20 why it was necessary to obtain such a letter from the  
21 Attorney General?

22 A. I can't recall. There could have been.

23 Q. Exhibit 109, Sergeant, is the, as I've indicated, the sketch  
24 prepared by Staff Wheaton and I understand it's intended to  
25 show the outline of the office where you met with Chief

1 MacIntyre.

2 A. Yes.

3 Q. Can you confirm, and also intended to show, I believe, the  
4 location of chairs where you and Staff Wheaton were sitting  
5 and where Chief MacIntyre was sitting and also his desk.

6 A. Okay. There's one thing I don't recall here, the doorway. I'm  
7 not sure exactly where the doorway was positioned. It was in  
8 that area but it could have been a little over. I'm not too  
9 certain on the exact location of the doorway.

10 Q. What about the other...

11 A. Okay. The desk, you know, I will say this. That we went into  
12 the Chief's office, prior to sitting down Chief MacIntyre did  
13 offer Staff Sergeant Wheaton his chair because he was the  
14 man that was going to be doing the writing. Staff Wheaton  
15 refused and the Chief remained in his chair where he would  
16 normally sit at his desk. Staff Sergeant Wheaton was seated  
17 exactly was shown on Exhibit 109. Now myself, when I first  
18 went in, I think you, I feel quite certain that the chair was  
19 perhaps towards the end of the desk. And before I sat down  
20 I moved the chair up this way further so that when looking  
21 across I could observe Chief MacIntyre.

22 Q. Is the location shown on Exhibit 09 for Herb Davies' chair, is it  
23 accurate?

24 A. It's not accurate. I was up further.

25 Q. I'll ask you to mark in red, if you would, on that exhibit

1           where you would say you were located that day. And you've  
2           drawn a red square...

3           A. Right there, sir.

4           Q. On the exhibit?

5           A. Yes.

6           Q. What was your purpose in being there?

7           A. My purpose of being there, sir, was as an observer. To  
8           observe the transaction of a file being passed over from Chief  
9           MacIntyre to Staff Sergeant Harry Wheaton.

10          Q. Tell me what you observed.

11          A. Chief MacIntyre had the files there. It was quite obvious to  
12          me upon our arrival that he was expecting us. The meeting  
13          was pre-arranged, by whom, I don't know. But in any event,  
14          when I went there we took our seats as shown in Exhibit 109  
15          and Chief MacIntyre began to go through the files and passed  
16          the various documents across to Staff Sergeant Wheaton.  
17          There was only one time when I observed the Chief had a  
18          document in his hand that this document did not go to Staff  
19          Sergeant Wheaton.

20          Q. Where did it go?

21          A. The Chief took that document in his left hand and placed it  
22          down on the floor. Now, I will say I could not see the  
23          document when it hit the floor, but I could see Chief  
24          MacIntyre take it in his hand and drop it.

25          Q. Would you describe it as an accident or deliberate dropping?

1 A. In my opinion it was deliberate.

2 Q. He took it in his left hand. Did he drop it immediately down  
3 or did he throw it under? Describe in a little more detail.

4 A. Okay. This particular document came from a manila file  
5 folder that the Chief sort of had partially on the desk and  
6 partially on his lap. And he took the document from that and  
7 he might have leaned just a little bit and dropped it on the  
8 floor. I couldn't see when it hit the floor but I could see when  
9 it left his hand.

10 Q. Did you, did the Chief observe the document before he did  
11 this?

12 A. Yes, he did, sir. He read it before he threw it on the floor.

13 Q. What was the general practice being followed that day by the  
14 Chief as he was handing over documents? Would he read  
15 them first?

16 A. He would look at all documents first, sir, yes.

17 Q. Would he describe what was in them?

18 A. He would read off the names, et cetera, and say what it is.  
19 Statement of such-and-such, statement of such-and-such.  
20 And...

21 Q. And what would Wheaton do then? As it was handed to him.

22 A. Wheaton would take possession of them and, if I recall  
23 correctly, he would, I'm not certain exactly at what point he  
24 filled all of these, he initialed for all of the documents. But I  
25 do know that after receiving what Staff Wheaton felt was all

1 of the documents I know that Exhibit 88 was signed by Staff  
2 Wheaton, in my presence, in front of the Chief.

3 Q. And are you telling this Commission that you observed Chief  
4 MacIntyre take a document, read it and deliberately put it on  
5 the floor?

6 A. That's exactly what I'm telling this Commission, sir.

7 Q. Thank you. How long were you in the Chief's office?

8 A. Oh, it could have been an hour or so. It could have been a  
9 little better.

10 Q. And at what point in the visit did that event occur?

11 A. I feel it was close to the end but, I tell you, I didn't interrupt  
12 at that particular moment when he dropped it because my  
13 reason for that was the meeting between Chief MacIntyre and  
14 Harry Wheaton and myself was running so smooth. I said to  
15 myself, "I will let it continue this way and bring it to Staff  
16 Wheaton's attention as we are leaving." I didn't want to have  
17 any conflict between Chief MacIntyre and Harry Wheaton and  
18 myself if it was not necessary.

19 Q. What was the atmosphere like in the room? How would you  
20 describe it?

21 A. I would say there was a bit of tension there. I felt sort of  
22 relaxed but I think there might have been a bit of tension  
23 there between Staff Wheaton and Chief MacIntyre.

24 Q. Just continue then. Tell us what took place that day.

25 A. Okay. After Staff Wheaton received what he thought was

1 everything that pertained to the Marshall file he asked the  
2 Chief, I would say on at least two occasions, "Now, Chief, do  
3 we have it all? Do we have it all?"

4 Q. What was the answer?

5 A. "Yes." So Staff Wheaton thanked the Chief and I think I did  
6 also. I feel quite cer-, I'm sure I did. Thanked him. We just  
7 got outside of the Chief's door when I stopped Staff Wheaton,  
8 I said, "Staff, you didn't get the complete file. The Chief  
9 dropped a document on the floor."

10 Q. Now...

11 A. What that document was at that particular time, I didn't  
12 know.

13 Q. Did the Chief accompany you to the door?

14 A. The Chief was still in his office and we were just outside of  
15 the door. It didn't take me very long to advise Staff Wheaton  
16 of what took place. Then Staff Wheaton went right back into  
17 the Chief's office, ahead of me. I went in behind him. He  
18 advised the Chief as to what I told him concerning him  
19 dropping a document on the floor. The Chief went over  
20 behind his desk, picked up the document and made a remark  
21 to the effect, "I might just as well give you it all."

22 Q. Just before I get into that. When you left the first time, did  
23 the Chief come from behind his desk and walk with you to the  
24 door?

25 A. He was, he got up from his desk and came around, yes.

1 Q You heard...

2 A. But as I say, he never had a chance to get out of his office  
3 before we were back in.

4 Q He then went back behind the desk and picked up something  
5 from the floor?

6 A. A document from the floor, sir, yes. And passed it to Staff  
7 Wheaton...

8 Q And said something to the effect, "You might as well have it  
9 all?"

10 A. Yes, that's correct.

11 Q How would you describe the Chief's demeanour at that point?

12 A. Well, needless to say, in my opinion at this particular time the  
13 Chief was quite upset.

14 Q How did that manifest itself?

15 A. Well certainly being confronted by Staff Wheaton with what I  
16 told him, and we were there acting on directions from the  
17 Attorney General for the Province, it's only rightly so, I guess,  
18 that he was upset when confronted with it. But what...

19 Q What does that mean? People can be upset in various ways.  
20 How did it manifest itself with him?

21 A. He became quite flushed and maybe little bit nervous at that  
22 point.

23 Q What happened then?

24 A. Staff Wheaton took the document from the Chief...

25 Q Yes.

1 A. And we left. There was no further conversation, sir.

2 Q. Were you satisfied at that time that you had everything?

3 A. Yes, sir.

4 Q. Did you look under the desk?

5 A. No, I didn't. But I only saw him drop one document. I didn't  
6 know how many pages there were to it or anything at that  
7 particular time. One document.

8 Q. What happened after you left the office?

9 A. When we left the office after Staff Wheaton received that  
10 document, he didn't put it in any of the files nor in his  
11 briefcase, he kept it in his hand. I drove back to our  
12 headquarters on Alexandra Street and Staff Wheaton did read  
13 the statement to me while en route from the Chief's office to  
14 our office, but I will say the statement didn't mean anything  
15 to me. I wasn't involved in the investigation so I didn't know  
16 what it was all about.

17 Q. Was there any indication from Staff Wheaton that the  
18 document meant anything to him?

19 A. There was indication from Staff Wheaton it, and I know  
20 certainly it had to mean something to Staff Wheaton. He was  
21 the chief investigator. I was not investigating this particular  
22 file, I was assisting on this particular day.

23 Q. Did you take it that it was a significant document?

24 A. Yes, I did, sir.

25 Q. From Staff Wheaton's comment or actions or whatever?

1 A. Yes, I did.

2 Q. But you have no recollection today what the document,  
3 indeed, was.

4 A. Yes. He read it to me.

5 Q. Can you tell us what it said?

6 A. I can't tell you what it said but if I recall correctly it was a  
7 statement from Patricia Harriss.

8 Q. And do you actually remember that?

9 A. Yes.

10 Q. Do you know what Staff Wheaton's practice was with respect  
11 to keeping notes of what took place?

12 A. I can't comment on that, sir.

13 Q. Have you ever seen the notes that Staff Wheaton made about,  
14 in his diary, about that visit?

15 A. I would say that perhaps I might have had them in my  
16 possession last night and the reason I say that is I took all of  
17 the volumes that Mr. Guy LaFosse had so that I could turn  
18 them over to Mr. Bernie Boudreau, who is representing me  
19 here today. I didn't read them.

20 Q. Look at page, at, Volume 34 is probably on the table there.

21 A. Yes, sir, I have it.

22 Q. And turn to page 3, please.

23 A. Page?

24 Q. Three.

25 A. Yes, sir.

1 Q. There's a note there numbered 26, dated 16 April 1982.

2 Have you ever seen that before?

3 A. No, I can't say I have, sir. I don't recall it anyway.

4 Q. You did say...

5 A. In any event, I see the date there is the 16th of April 1982.

6 That's certainly not correct because the letter wasn't written  
7 by Attorney General Harry How until the 20th of April 1982.

8 Q. You did say that you have discussed this matter with  
9 Sergeant Wheaton since, or Staff Sergeant Wheaton since this  
10 Commission was set up?

11 A. Yes, sir.

12 Q. When was that?

13 A. I'll tell you when it was. It was when the Commission, the  
14 last week that the Commission was sitting in Sydney in  
15 December, the last week that they sat there in December.  
16 That's when it was. What day, I'm not exactly certain but I  
17 know it was during Chief MacIntyre's testimony.

18 Q. Were you present in Sydney during the evidence given by  
19 Chief MacIntyre?

20 A. I was for some of it, sir. Not all of it.

21 Q. Were you present on the afternoon in Sydney when I put to  
22 Chief MacIntyre my understanding of the evidence that you  
23 would give?

24 A. What day in Chief MacIntyre's evidence was that?

25 Q. Wednesday.

1 A. Yes, I would say I was there, yes.

2 Q. Let me read to you what I put to him that day and his  
3 response and get your reaction. This is found, My Lords, on  
4 page 6372 of the transcript. I think it's Volume 34. I'll just  
5 read it.

6 A. Yes, sir. Go ahead.

7 Q. I said:

8  
9 I want to put this to you, Chief, because my  
10 understanding is that Davies will testify as  
11 follows: (Davies, of course, being you.)  
12 Davies will testify to this Commission that  
13 he was present in your office with  
14 Sergeant Wheaton at which time they were  
15 getting materials from you, from your file,  
16 and that you took some documents and  
17 threw them on the floor. That Wheaton  
18 could not see this and that when they left,  
19 they were leaving the office, he told  
20 Wheaton (that's you), 'You didn't get  
21 everything.' Wheaton then went back to  
22 you and said, 'I want everything', at which  
23 you said (that's the Chief), 'Well I might as  
24 well give you everything.' You were very  
25 embarrassed and you picked up a  
document from the floor and gave it to  
Wheaton. (I said) 'Now that's what Davies  
would testify, I think.'

And the Chief said, and I might say my recollection is he said  
it in very vigorous tones: "Well I'm testifying now under oath  
here that I never done such a thing, sir." What do you say to  
that?

SGT. DAVIES, EXAM, BY MR. MacDONALD

1 A. What I'm saying to that, sir, is I just gave evidence before the  
2 Commission I'm telling the truth and what Chief MacIntyre is  
3 telling you there is not true.

4 Q. We've heard evidence from Staff Wheaton the last, it's been  
5 so long now, but some time ago, that he, following hearing  
6 that evidence, in fact, filed a report recommending that an  
7 investigation be carried out. Did you take any such action?

8 A. I discussed it with Staff Wheaton. The inquiry finished up in  
9 Sydney on Friday, I think, at 12:30...

10 Q. Yes.

11 A. On Monday morning Staff Sergeant Wheaton called me and  
12 we had discussions concerning the Chief denying what took  
13 place insofar as a document was being placed on the floor.  
14 We did have discussions and it was my feeling, and I  
15 expressed this to Staff Wheaton, that the Chief was saying  
16 that he and I were both lying, referring to Staff Wheaton and  
17 myself, were both lying, and the Chief felt he was telling the  
18 truth and that's not correct in my opinion. I felt that Staff  
19 Wheaton and myself are both truthful and no reason to hide  
20 anything, and Staff Wheaton advised me that he was going to  
21 report it to the Assistant Crown Prosecutor in Sydney.

22 Q. You, yourself, have not filed any report.

23 A. No, I haven't, sir.

24 MR. MacDONALD

25 Thank you, sir. That's all I have.

1 CHAIRMAN

2 We'll rise until...

3 MR. RUBY

4 You may rise if you wish...

5 CHAIRMAN

6 Yeah, well I mean, are you going to very long or...

7 MR. RUBY

8 No.

9 CHAIRMAN

10 Carry on.

11

12 \*12:15 p.m.

13

EXAMINATION BY MR. RUBY

14 Q. Sergeant Davies, I take it that you've been a police officer for  
15 quite some time now.

16 A. Yes, sir. For 23 years and nine months today.

17 Q. And you're aware that the public expects of police officers  
18 extremely high standards of probity and honesty and  
19 integrity.

20 A. Yes, sir, I am.

21 Q. And would it be fair to characterize by the standards  
22 expected of police, that concealing exculpatory evidence is a  
23 corrupt act?

24 A. Yes, sir.

25 Q. Is there any reason, and to be particular, do you have any

1 grudge against Chief MacIntyre?

2 A. I have nothing against Chief MacIntyre nor any member of  
3 Sydney City Police, sir.

4 Q. Had you ever met him before this occasion?

5 A. I knew who he was but I can't recall ever meeting him  
6 officially before.

7 Q. Did you have any hatred or ill will towards Chief MacIntyre  
8 then or now?

9 A. I certainly did not.

10 Q. Is there any motive or any reason why you would lie on a  
11 matter so important concerning him?

12 A. I certainly wouldn't lie, sir, before this Commission.

13 MR. RUBY

14 Thank you, sir.

15 12:17 - ADJOURN to 2 p.m.

16 INQUIRY RESUMES - 2:06 P.M. \*

17 MR. CHAIRMAN

18 Yes, Mr. Pugsley.

19 EXAMINATION BY MR. PUGSLEY [Cont'd.]

20 Q. Sergeant Davies, this is an incident that occurred almost six  
21 years ago.

22 A. Yes, sir.

23 Q. An incident in your life that lasted how long?

24 A. Pardon me.

25 Q. An incident in your life that consumed how much time?

- 1 A. Not very much time.
- 2 Q. Well, how much time?
- 3 A. You mean while the incident took place in Sydney or...
- 4 Q. No, from the beginning to the end. From the time that Staff  
5 Wheaton first spoke to you, and I assume that was at RCMP  
6 Headquarters in Sydney.
- 7 A. Yes.
- 8 Q. Until you got back to the station after this incident and left it  
9 behind. How long would that have taken from beginning to  
10 end?
- 11 A. From beginning to end when I went to the Chief's office, from  
12 the time I left our headquarters in Sydney.
- 13 Q. Yes.
- 14 A. Went to the Chief's office.
- 15 Q. Yes.
- 16 A. And got back.
- 17 Q. Yes.
- 18 A. Approximately an hour and a half, two hours, in that vicinity.  
19 I can't say for certain.
- 20 Q. And after...and you say this was in the afternoon.
- 21 A. If I recall correctly it was in the afternoon, yes.
- 22 Q. And after you finished with it on that day.
- 23 A. Yes, sir.
- 24 Q. When did it next cross your mind or come to your attention?
- 25 A. If I recall correctly it would be when I was approached by

1 Mr. Gordon Proudfoot.

2 Q. Yes.

3 A. A lawyer for the CBC.

4 Q. That was on May 22nd of 1986.

5 A. Yes, sir.

6 Q. So, almost four years had elapsed without you having thought  
7 about this or discussed this with anyone.

8 A. I won't say that. I perhaps thought about it maybe...yes, and  
9 perhaps discussed it.

10 Q. I see.

11 A. With other members.

12 Q. Discussed it with whom?

13 A. Well, I could have just in general discussion discussed it with  
14 other members. There is no doubt in my mind I perhaps did.

15 Q. Well, do you have any recollection of so doing?

16 A. I would say I have, yes. No doubt in my mind I have, yes.

17 Q. And who have you discussed it with and on what occasion?

18 A. Oh, I can't recall. I can't recall.

19 Q. I see.

20 A. There's no doubt in my mind that I have discussed it over the  
21 years, yes.

22 Q. You cannot recall having discussed it with any particular  
23 individual.

24 A. I know I did discuss it with, I feel quite certain, Inspector Ron  
25 Jessup.

1 Q. Ron Jessome.

2 A. Jessup. J-E-S-S-U-P.

3 Q. And who is he?

4 A. He used to be in charge of Glace Bay Detachment.

5 Q. Glace Bay Detachment.

6 A. He used to be in charge of Glace Bay Detachment. He was a  
7 sergeant at that time and he is presently an inspector  
8 stationed in Ottawa.

9 Q. Yes. And...

10 A. And I would have discussed it with other members, yes,  
11 Corporal Grant Shaw and Inspector Harry Murphy.

12 Q. I'm talking now between April, 1982, and May of 1986. Did  
13 you discuss it with anyone?

14 A. I can't recall of anyone else, sir, offhand. I could have though.  
15 I could have, yes, I could very well have.

16 Q. Was the discussion with Inspector Ron Jessup between April,  
17 1982, and May of 1986?

18 A. Yes, it was.

19 Q. And why was that? Why did you happen to discuss it with  
20 him?

21 A. He is a member of the Force.

22 Q. Yes.

23 A. And it was just in general conversation that's all.

24 Q. I see. Do you recall any, and Corporal Bradshaw, when would  
25 you have discussed it with him?

1 A. Corporal who?

2 Q. Did you say Corporal Bradshaw or Grant Shaw?

3 A. No, Corporal Grant Shaw.

4 Q. Yeah. When did you discuss it with him?

5 A. On the 1st of December, 1986, sir.

6 Q. On December 1st, 1986.

7 A. Yes, if I recall correctly.

8 Q. And on what was...what prompted that?

9 A. Well, Inspector Harry Murphy, as you are aware, is  
10 coordinator for the RCMP...

11 Q. Yes.

12 A. Insofar as this Inquiry is concerned and he was accompanied  
13 by Corporal Grant Shaw.

14 Q. Do you mean December 1st, 1987, or 1986?

15 A. '86.

16 Q. 1986.

17 A. '86 if I recall correctly.

18 Q. You mean about thirteen months ago.

19 A. Yes, sir.

20 Q. Yes. Okay.

21 A. I could be wrong. I think that was the date.

22 Q. Yes, and is that first time you had any detailed conversation  
23 with anyone concerning this incident on December 1st, 1986,  
24 apart from your meeting with Mr. Proudfoot?

25 A. As far as I can recall, sir, yes.

1 Q. How long would your meeting with Mr. Proudfoot have  
2 lasted?

3 A. Maybe an hour. Maybe, I'm not certain.

4 Q. And how long was your meeting with Inspector Murphy and  
5 Corporal Grant Shaw?

6 A. Then, again, I can't exactly recall how long it was because we  
7 weren't just discussing this case. Inspector Murphy used to  
8 be the officer commanding in Sydney.

9 Q. Yes.

10 A. And we talked about things in general. He could have been  
11 there an hour and a half or so. I don't quite recall.

12 Q. Did you discuss this incident with Staff Sergeant Harry  
13 Wheaton on any occasion after the afternoon on which it  
14 occurred in April of 1982 prior to December of 1987 in  
15 Sydney?

16 A. I could have. I don't ...I could have. It's quite possible.  
17 Perhaps I did.

18 Q. You were stationed at Sydney in April 1982.

19 A. Yes, sir.

20 Q. And you remained there for what period of time?

21 A. I left in...on October 6th, 1982.

22 Q. And where did you go on that occasion?

23 A. St. Peters.

24 Q. Yes. What days have you attended this Commission...this  
25 Commission's hearings?

- 1 A. What days?
- 2 Q. What days?
- 3 A. I think it was two and a half days in Sydney.
- 4 Q. Yes.
- 5 A. And I was here for last week and all of this week.
- 6 Q. You've been here for all of Staff Sergeant Wheaton's evidence.
- 7 A. Yes, I have, sir.
- 8 Q. Yes. Have you discussed this matter with Staff Sergeant
- 9 Wheaton since January 1st of this year?
- 10 A. Since January 1st of this year. Not that I can recall, no.
- 11 Q. What instructions are you given in your training as an RCMP
- 12 constable or recruit with respect to note taking?
- 13 A. We are required to keep a notebook.
- 14 Q. Yes. And what are you required to put in it?
- 15 A. Well, anything that...it depends upon each individual member
- 16 I suppose as to what he would mark down in his notebook.
- 17 Q. What instruction do you receive about note taking?
- 18 A. I have no comment on that.
- 19 Q. Well, do you...have...did you receive any instruction at all
- 20 when you took your training about the things you should put
- 21 down in a notebook?
- 22 A. Yes, things that are important you will put in your notebook.
- 23 Q. All right. And did you follow that instruction throughout
- 24 your career?
- 25 A. On occasions I would say that perhaps I didn't.

1 Q. I see. Did you keep a notebook in April, 1982?

2 A. Yes, sir, I did.

3 Q. And were you used to putting daily entries in it?

4 A. No, sir.

5 Q. How often did you put entries in it?

6 A. I can't recall.

7 Q. Well, did you put any entries in for the month of April, 1982,  
8 at all?

9 A. I can't recall, sir.

10 Q. You said you made an examination or a search for your notes  
11 for the year 1982.

12 A. Yes.

13 Q. And when did you make that search?

14 A. When did I make that search? I can't be sure as to when.

15 Q. Well, within the last five months or...

16 A. I know it was...I don't know which come up first, what I was  
17 notified of first that this Commission would be sitting or the  
18 civil suit against the CBC by Chief MacIntyre.

19 Q. I see.

20 A. I know I looked for it prior to whichever came first or long  
21 before that even and...

22 Q. All right. And did you find your notebook for the year 1982?

23 A. I don't recall if I had any or not for that year, sir.

24 Q. I see. Would you have thrown them out?

25 A. I would have if there was nothing of any importance in them.

1 Q. Can you tell us whether or not you found your notebook for  
2 1982 when you made your search for it?

3 A. No, sir, I didn't.

4 Q. You did not find it.

5 A. I did not find a notebook. If I did it would be before this  
6 Commission today, sir.

7 Q. No, I'm not suggesting that there was a notebook that had  
8 relevant details concerning your April, 1982, meeting. I'm  
9 simply wondering whether or not you found a notebook for  
10 the ...for April 1982 at all.

11 A. No, I didn't.

12 Q. No.

13 A. No.

14 Q. But is it your recollection that you, in fact, made no notes of  
15 this meeting?

16 A. I know I made no notes, sir.

17 Q. All right.

18 A. Yes. I'm positive of that. I certainly didn't.

19 Q. Were you at the station when you were requested by Staff  
20 Sergeant Wheaton to accompany him to the Chief's office?

21 A. Yes, I was, sir.

22 Q. Had you ever accompanied Staff Sergeant Wheaton on any  
23 other meeting or investigation of any kind at any time?

24 A. Yes.

25 Q. On how many occasions?

1 A. I don't know. I don't recall, sir.

2 Q. I assume it would be somewhat unusual for you to  
3 accompany him on an investigation since you weren't in the  
4 same department.

5 A. That's correct, sir.

6 Q. Did he tell you that it was an important matter that he was  
7 going on?

8 A. He discussed with me...he read to me that letter from  
9 Attorney General Harry How.

10 Q. Yes.

11 A. And then I read it myself.

12 Q. You said you had never seen a letter like this before.

13 A. No, I haven't, sir.

14 Q. Did you ask him why such a letter had been issued?

15 A. No, I didn't.

16 Q. You didn't discuss this at all as being a bit unusual.

17 A. We could have but I certainly don't recall.

18 Q. I see.

19 A. You see I wasn't involved in this particular investigation very,  
20 very little.

21 Q. I appreciate that. Well, at all. Were you involved at all?

22 A. There was one other date that I went to Ebsary's house.

23 Q. When was that?

24 A. That would have been on, if I recall correctly, the 31st of  
25 March, 1982.

- 1 Q. And who did you go with?
- 2 A. Constables MacQueen and Hyde.
- 3 Q. And what involvement did they have in this investigation?
- 4 A. They were going there to look for items of clothing, I think, if
- 5 I recall correctly.
- 6 Q. Did you meet anyone there or have any discussion with
- 7 anyone?
- 8 A. I can't recall, sir. I know that I certainly didn't seize anything
- 9 at all and...
- 10 Q. Did you meet Mr. Ebsary there?
- 11 A. I can't recall, sir.
- 12 Q. Did you meet anyone there?
- 13 A. There was perhaps someone there but who it was I certainly
- 14 can't recall.
- 15 Q. Well, did you have to forcibly go into the house? Did you
- 16 break open a lock?
- 17 A. I can't recall, sir. That's why I'm saying there could have
- 18 been someone there but...I feel quite certain there was
- 19 someone in the house upon our arrival but I don't know...
- 20 Q. Did they resist your entrance at all?
- 21 A. I can't recall, sir.
- 22 Q. Was that person...
- 23 A. I don't say they did, certainly.
- 24 Q. Was that person warned, given a warning?
- 25 A. Not by me, sir.

1 Q. You went into the house, did you?

2 A. Yes. I went into the house and...

3 Q. You made a search of the house.

4 A. I accompanied the other two members.

5 Q. What were you looking for?

6 A. As I stated, I think it was...if I recall correctly, clothing.

7 Q. What kind of clothing?

8 A. Clothing that Ebsary might have worn when this incident took  
9 place.

10 Q. And what kind of clothing was that? Did you have a  
11 description of it?

12 A. I can just vaguely recall. I think it might have been a blue  
13 Burberry of some sort.

14 Q. Did you find it?

15 A. I didn't. But...

16 Q. Did anyone...

17 A. I think one of the other members did.

18 Q. I see.

19 A. Yes.

20 Q. You can't recall if Roy Ebsary was there or not.

21 A. I don't think he was there, sir. I feel quite certain he wasn't.

22 Q. Was this a house or an apartment or a flat or what?

23 A. I think it might have been an apartment.

24 Q. You're not sure.

25 A. There might have been two or three apartments in the same

1 house.

2 Q. I see.

3 A. I'm not certain.

4 Q. Did you make any notes of this visit?

5 A. No, I didn't, sir, because I didn't seize anything there...I didn't  
6 do anything.

7 MR. CHAIRMAN

8 Why were you there, Sergeant?

9 SGT. DAVIES

10 I feel, My Lord, I think it was the articles of clothing we were  
11 looking for but I know I didn't find anything.

12 MR. CHAIRMAN

13 No. But you were not attached to the Sydney detachment,  
14 were you.

15 SGT. DAVIES

16 No, My Lord, I was just asked to assist. Yes.

17 MR. PUGSLEY

18 Q. This was on March the 31st.

19 A. If I recall correctly, yes.

20 Q. How would you recall that date?

21 A. I have no personal recollection of that particular date other  
22 than looking at the...it was pointed out to me by Corporal  
23 Grant Shaw when he was at our detachment in St. Peters.

24 Q. When was that?

25 A. That would have been when he and Inspector Murphy came

1 to our office just on that one occasion.

2 Q In December of 1986.

3 A. Yes. Yes, sir.

4 Q And what did he use to refresh his memory or your memory  
5 that it was March 31st, '82?

6 A. I think perhaps he would have had an exhibit report.

7 Q I see.

8 A. Yes, an exhibit report, yes.

9 Q If he had not shown you that exhibit report would you have  
10 recalled that you had been there at all?

11 A. Oh, yes, I would recall...yes, that I was there, yes, no doubt in  
12 my mind.

13 Q Why were you requested to go on this occasion? There were  
14 already two constables going. Why was a third necessary?

15 A. It's nice to have three members at times.

16 Q I see. Well, when Staff Sergeant Wheaton showed you this  
17 letter from Attorney General How did you not have any  
18 discussion that you recall with him as to why it was necessary  
19 for such a document to be issued or alternatively, "Staff, why  
20 didn't you ask the Chief for the papers?" Didn't it prompt any  
21 kind of inquiry on your part at all, or can you recall?

22 A. No doubt we had some discussion, but I can't recall what it  
23 was and...

24 Q All right.

25 A. I just happened to be in the office at that particular time and

SGT. DAVIES, EXAM. BY MR. PUGSLEY

1 I guess that's the reason I was requested by Staff Sergeant  
2 Wheaton to accompany him.

3 Q. Yes. And what was the...why did he ask you to accompany  
4 him? What was the reason for you to be there?

5 A. As an observer.

6 Q. Are those the words he used?

7 A. Yes, sir. Requested that I accompany him as an observer.

8 Q. What he concerned that he was not going to get all the  
9 documents that he was instructed to get pursuant to the  
10 Attorney General's letter?

MR. RUBY

12 You might make enquiries of what was told to this witness  
13 but I don't think he knows what's in Sergeant Wheaton's mind by  
14 osmosis.

MR. PUGSLEY

16 Q. Did he express any concern to you at all about not getting all  
17 the documents?

18 A. You mean prior to April 26th?

19 Q. No, on the day you went.

20 A. I don't recall if he did or not, sir.

21 Q. I see. At this point in time on April 26th or the day you  
22 went down.

23 A. Yes.

24 Q. Were you familiar with any of the names of the people  
25 involved in the original 1971 incident apart from Ebsary?

1 A. Yes, I was, sir.

2 Q. What names were you familiar with?

3 A. Donald Marshall.

4 Q. Yes.

5 A. Sandy Seale.

6 Q. Yes.

7 A. Ebsary.

8 Q. Yes.

9 A. Roy Newman Ebsary, I think it is.

10 Q. Yes. Did you know any of these people?

11 A. No, sir. I knew Ebsary to see him but didn't know who he  
12 was.

13 Q. Any other names that you were familiar with prior to going  
14 down to Chief MacIntyre's office?

15 A. It's quite possible there were more but I just can't recall right  
16 now. It's quite possible.

17 Q. Okay. But you had no involvement in the investigation prior  
18 to that time.

19 A. No, sir, well...

20 Q. You hadn't read any of Staff Sergeant Wheaton's reports or  
21 any ...hadn't seen any statements that he had taken or  
22 Corporal Carroll had taken.

23 A. No, sir.

24 Q. And you weren't in the habit of discussing the case with him?

25 A. No, sir.

1 Q. You went down to the Chief's office and you drove the car, did  
2 you?

3 A. Yes, sir, I did.

4 Q. How far is the journey from your headquarters to Chief  
5 MacIntyre's office?

6 A. Maybe a mile or so.

7 Q. Uh-hum. And you say that when you arrived there the Chief  
8 obviously anticipated your arrival.

9 A. Yes, sir.

10 Q. And indeed, he had something prepared. He had a  
11 typewritten document consisting of a number of sheets of  
12 paper.

13 A. Yes, sir.

14 Q. Prepared.

15 A. Yes, sir.

16 Q. And when Staff Wheaton came in did he give a copy of this  
17 document to him?

18 A. I know he gave up...he had him sign for it and at what point  
19 he actually gave it to him I don't know, sir, I don't recall.

20 Q. Did he give it to him upon his arrival at the office?

21 A. I don't exactly recall at what point he gave him that Exhibit  
22 88.

23 Q. Well, the purpose was...the purpose of the visit was to get  
24 documents from the Chief.

25 A. Yes, sir.

- 1 Q. Yes. May I suggest to you that he gave him Exhibit 88 upon  
2 arrival.
- 3 A. He could very well have right upon our arrival, he could have,  
4 sir.
- 5 Q. Did you get a copy of Exhibit 88?
- 6 A. I have a copy here, sir.
- 7 Q. No. Did you get a copy upon your arrival in the Chief's office,  
8 as well?
- 9 A. Not me, no, sir.
- 10 Q. Or did you have a copy at any time?
- 11 A. I looked at a copy of it here...
- 12 Q. I'm sorry. I meant at any time during the course of the  
13 interview in the Chief's office did you get a copy.
- 14 A. No, sir, I didn't. No.
- 15 Q. Was there more than one copy? Was there one copy for the  
16 Chief and one copy for Staff Wheaton?
- 17 A. I can't recall.
- 18 Q. You say that when the Chief...when you arrived the Chief got  
19 up, was introduced to you by Staff Wheaton, you shook hands.
- 20 A. Yes, sir.
- 21 Q. And the Chief offered Staff Wheaton his chair.
- 22 A. Yes, sir, he did.
- 23 Q. His chair being the chair behind the desk.
- 24 A. That's correct, sir, where he would normally sit in his office.
- 25 Q. Yes.

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

2 Q. And what was the positioning of the other chairs in the room?  
3 Were they around the table or were they moved by either  
4 you or Staff Wheaton, and I have in mind Exhibit 109 where  
5 you have marked with the red square the location of the chair  
6 that you took. Firstly, was that chair in that location when  
7 you arrived there?

8 A. It would have been close to here.

9 Q. When you say "close to here" I think perhaps we better mark  
10 that. Thank-you. Perhaps you'd put a circle with the...a circle  
11 with the location of the chair when you first arrived.

12 A. It would be somewhere in this vicinity where...

13 Q. Thank-you. And would you put...and you've coloured in the  
14 circle so it's now a black dot. And would you put an arrow to  
15 the red square where it was moved by you?

16 A. Yes.

17 Q. Yes.

18 A. Not a great distance but moved.

19 Q. All right. By you.

20 A. Yes, sir.

21 Q. And deliberately so.

22 A. Yes, sir.

23 Q. So, you could see.

24 A. That's correct, sir.

25 Q. All right. Now, you see the position I am standing with

1           respect to where you are.

2       A.   Yes, sir.

3       Q.   Is this approximately where you located your chair?

4       A.   It could have been up that way just a little bit more and back  
5           a bit further.

6       Q.   All right. How's that?

7       A.   About there I would say, sir.

8       Q.   About there. Now, I'm about two feet from the desk. I'm  
9           about in the middle of the desk and, in any event, were you  
10          in a position so that when seated you could clearly see the  
11          Chief's hands?

12      A.   Yes, sir.

13      Q.   Yeah.

14      A.   I could.

15      Q.   You could.

16      A.   Yes, yes.

17      Q.   And see his waist and presumably see his knees as well.

18      A.   Ah.

19      Q.   Or the upper part of his legs.

20      A.   Yes, I could see right here on his lap and his two hands.

21      Q.   Okay.

22      A.   Yes.

23      Q.   Now, the files that were produced by him were they on the  
24          desk when you arrived or did he take them from a filing  
25          cabinet or from the desk?

- 1 A. I can't recall, sir. I can't recall.
- 2 Q. And do you recall whether the files were loose files in manila  
3 folders or whether they were bound up in something else?
- 4 A. Okay, I think they were, if I recall correctly, accordion-type  
5 files.
- 6 Q. Yes.
- 7 A. And I'm not certain if...I think in that were some manila file  
8 folders, okay.
- 9 Q. Okay.
- 10 A. And I can't quite recall if there were any manila file folders  
11 loose, and I did see some envelopes. But maybe the Chief  
12 might have taken these out of the accordion-type files, sir.
- 13 Q. Can you tell us how many accordion-type files there were?
- 14 A. I think there was two.
- 15 Q. Right. That's...I think Staff Sergeant Wheaton's recollection as  
16 I recall his evidence. And were the accordion files bound up,  
17 that is to say, was a string or the elastic around the accordion  
18 file?
- 19 A. I don't recall, sir.
- 20 Q. Okay. At any time while you were there...
- 21 A. Yes.
- 22 Q. ...was there any more typing done?
- 23 A. If I recall correctly there was.
- 24 Q. Uh-hum. Now, Staff Sergeant Wheaton has testified that  
25 there was, at least that's my recollection.

1 A. Yes.

2 Q. Forgetting about his recollection.

3 A. That's exactly what I'm trying to do.

4 Q. And forgetting about his evidence.

5 A. Yes.

6 Q. If he had not raised that what would have been your  
7 response to my question?

8 A. I think there was.

9 Q. You think there was.

10 A. Yes.

11 Q. Do you have any idea at what point in time it was done and  
12 for what reason?

13 A. I think it would...I think it was close to the end of our  
14 meeting.

15 Q. Uh-hum. And what occurred? And what was the reason for  
16 it?

17 A. I don't know, sir.

18 Q. Okay. Do you recall whether or not a secretary came into the  
19 room or whether or not the Chief left the room and came back  
20 and subsequently appeared with a typewritten piece of  
21 paper?

22 A. I do recall that there was another piece of paper that...I don't  
23 recall if the Chief took it out or if his secretary right...right to  
24 the door or what. I don't recall. But I know there was, as you  
25 say, another piece of paper, yes.

1 Q. Yes.

2 A. What was on it I can't exactly tell you.

3 Q. Tell me what you recall about the discussion in the room,  
4 after the introduction, after you shook hands.

5 A. Yes.

6 Q. Staff Sergeant Wheaton sat where? Where did he sit?

7 A. Staff Sergeant Wheaton would have sat right over here.

8 Q. When you say "right over there" that is towards the end of  
9 the desk, that would be on the Chief's side towards the left-  
10 hand end of the desk and right about the end, would it?

11 A. Not quite over to the end I wouldn't say, no.

12 Q. All right.

13 A. Over a bit from the end and perhaps, I don't know how close  
14 he was to the desk, but certainly when he was signing for the  
15 documents, okay, he would sign on the...

16 Q. On the desk.

17 A. ...Chief's desk.

18 Q. On the Chief's desk. Yes.

19 A. Yes.

20 Q. Can you give us any estimate of how long the desk was?

21 A. I would say, sir, that desk was similar in size to mine and  
22 mine was thirty-six by sixty-six.

23 Q. Uh-hum. A little less than six feet long then I guess, eh.

24 A. Yes, sir.

25 Q. Yeah, okay. And thirty-six, so about three feet wide and

1 about five and a half feet long.

2 A. Yes, sir.

3 Q. Yeah. Do you have any recollection of what it was like at the  
4 front and at the sides? I don't mean the kind of wood but  
5 whether it was open or closed?

6 A. I think it was closed. I feel quite certain it was.

7 Q. But there was no hesitation in the Chief and... if the files were  
8 not on the desk when you arrived there is no hesitation about  
9 him bringing the files out?

10 A. Oh, no. No hesitation at all. If they weren't on the desk he  
11 might have taken them out of a drawer or picked them off  
12 the floor, the files. As I say the Chief was expecting us, no  
13 doubt in my mind.

14 Q. Quite. Right. And, indeed...I take it...are you sure of one thing  
15 that he didn't start dictating four pages from the beginning  
16 after you arrived. He already had typewriting done, in part,  
17 Exhibit 88 done before you arrived. That was there. That  
18 wasn't dictated by him during the course of the interview.

19 A. Exhibit 88.

20 Q. Yes.

21 A. No, it wasn't.

22 Q. No. That was something...

23 A. That was all prepared upon our arrival.

24 Q. All prepared.

25 A. That's why I say no doubt in my mind he was expecting us.

- 1 Q. So, there's no question that the Chief had presumably gone  
2 through the file and made a list of the contents and had the  
3 list of the contents available for Sergeant Wheaton when he  
4 arrived.
- 5 A. That's correct, sir.
- 6 Q. No question that the Chief knew of the direction of the  
7 Attorney General.
- 8 A. Yes, sir.
- 9 Q. Your answer is there is no doubt that he did know.
- 10 A. No doubt he knew.
- 11 Q. Sure.
- 12 A. Yes.
- 13 Q. Did Staff Sergeant Wheaton say anything to him about why he  
14 was there or did he read out the letter from the AG or  
15 anything like that?
- 16 A. I can't quite recall but I...he might have said, "You know why  
17 we're here or something."
- 18 Q. Yeah.
- 19 A. You know, the meeting was prearranged.
- 20 Q. Sure. Okay.
- 21 A. Yes.
- 22 Q. Tell me what you recall about the items that were discussed  
23 during the course of the meeting? Firstly, before we get to  
24 the documents themselves, do you recall any discussion on  
25 any other topics?

1 A. I don't recall, sir, no.

2 Q. On any other topics at all. I mean involving Marshall.

3 A. I don't recall.

4 Q. You have reviewed Staff Sergeant Wheaton's notes of this  
5 interview I believe, or have you not?

6 A. No.

7 Q. You have not. You've never seen them.

8 A. I haven't read any of them, no.

9 Q. No. You're not...

10 A. No, sir.

11 Q. ...aware that he, in fact, did make notes at some time after  
12 this interview took place?

13 A. Yes, I'm aware of that that he made notes...

14 Q. Yeah.

15 A. Afterwards, yes.

16 Q. My question is have you ever seen those notes.

17 A. No, sir.

18 Q. Okay. Well, let's just take a look at them. It's Volume 34, I  
19 think, the first.

20 A. Right here, sir.

21 Q. Yeah. If you take a look at Volume 34, Sergeant Davies.

22 MR. PUGSLEY

23 May I have Staff Sergeant Wheaton's handwritten notes, please?

24 Thank you. This is Exhibit 90B?

25

1 REGISTRAR:

2 Yes, it is.

3 MR. PUGSLEY:

4 Thank you.

5 Q. I'm going to give you staff Sergeant Wheaton's actual notes  
6 because they're a little bit different as far as spelling, periods  
7 and paragraphs are concerned than the notes that we have in  
8 Exhibit 34. Is it a problem for you, Sergeant Davies, if I bend  
9 over your shoulder and look at them with you?

10 A. No problem, sir.

11 Q. He writes "16th April, '82." Have you had any discussion at all  
12 with Sergeant Wheaton concerning that date?

13 A. I would say I could have in Sydney, sir, yes.

14 Q. In December of this year you mean, of last year?

15 A. Yes.

16 Q. What was the nature of the discussion?

17 A. Well, he and I were discussing our evidence in Sydney, which  
18 is not unusual. Members going to court, to refresh your  
19 memory.

20 Q. And what discussion did you have about the 16th of April?

21 A. That I can't recall ever going down there on the 16th of April,  
22 1982.

23 Q. Sorry, he said that or you said that?

24 A. No, I said that.

25 Q. But you don't have an independent recollection of that day.

1           It's only because you've looked at documents and come to the  
2           conclusion that it could not be that day?

3       A. Well, I read the letter, sir, written by Attorney General Harry  
4           How dated April 20 and...

5       Q. You're sure you read that before you went down?

6       A. I'm positive, sir, no doubt in my mind. Staff Wheaton read it  
7           to me first and then I read it to myself.

8       Q. That was in your office?

9       A. Yes.

10      Q. And that's how you're able to pinpoint in time the fact that it  
11         must have been after April 20?

12      A. That's correct, sir, that along with Exhibit 88. I mean that was  
13         prepared by Chief MacIntyre. He was expecting us. Quite  
14         obvious, as I told you earlier. And that Exhibit 88 is dated  
15         April 26, 1982.

16      Q. Yes, so those are those two facts.

17      A. These two facts, sir, so...

18      Q. Is there any way that you could have seen a draft of the  
19         letter from the Attorney General that was undated?

20      A. No, sir.

21      Q. Why do you say that?

22      A. Well, I know April 20, 1982 was on it.

23      Q. How can you possibly recall that?

24      A. Well, I read the letter, you see.

25      Q. Oh, sure, but I mean, how can you now recall today that April

1 20, 1982 was the date of the letter you saw six years ago?

2 A. I have since seen that letter.

3 Q. Oh, quite so, you've seen the letter since then with the date  
4 April 20, '82 on it.

5 A. Yes, that's correct.

6 Q. But you have no independent recollection today that that  
7 letter said April 20?

8 A. Well, it's marked on it April 20, 1982.

9 Q. The one you've seen. O.K.

10 A. And I read it before I went to the Chief's office.

11 Q. It says "Interview: 3:45 p.m." Does that sound roughly  
12 accurate as far as you're concerned?

13 A. As I said, I couldn't quite recall the time. I think it was in the  
14 afternoon.

15 Q. Yes, you said that.

16 Chief MacIntyre, Corporal Davies and  
17 myself. Chief produced brown accordion  
18 file folder.

19 That's singular. Do you have any comment on that? That the  
20 note there is...would appear to indicate...it does not say "one,"  
21 but it would appear to indicate one brown accordion file  
22 folder.

23 A. That's what it would say there, sir. I can't comment on Staff  
24 Sergeant Wheaton's notes.

25 Q. Well, can you comment as to whether or not they're accurate?

A. No, I can't sir.

1 Q. Containing approximately....

2 A. The only thing I'm saying is that when I went to Chief  
3 MacIntyre's office is that it was after April 20.

4 Q. Quite so, but I was questioning you about the number of  
5 folders there were and can you comment as to whether or not  
6 there was one or more than one?

7 A. On the 26th of April?

8 Q. Yes.

9 A. I think there was two if I recall correctly.

10 Q. You have no explanation as to why Staff Wheaton would have  
11 written...produced a brown accordian file folder?

12 A. Sir, I can't explain Staff Sergeant Harry Wheaton's notes.

13 Q. No.

14 A. They're his notes, not mine.

15 Q. Quite so.

16 Containing approximately four  
17 manila file folders as well as a number of  
18 envelopes.

19 Would that be consistent with your recollection, "about four  
20 manila file folders"?

21 A. I can't recall how many. I can't recall, sir, how many manila  
22 file folders. And I know there were envelopes. I do recall  
23 that.

24 Q. The Chief was asked four or five times for  
25 any other statements from Patricia Hariss.

Do you recall that?

1 A. No, I can't recall that. I can recall our meeting on the 26th of  
2 April, 1982, Staff Wheaton asking that she, at least on two  
3 occasions "Now is there anything else, Chief? Do we have it  
4 all, Chief?"

5 Q. But you do not recall Patricia Hariss' name being mentioned?

6 A. I don't recall.

7 Q. "Last statement given," I don't quite understand the purport  
8 of that note. Can you give us any assistance on that, after the  
9 word "Patricia Hariss" it says "last statement given." Can  
10 you...

11 A. I can't comment on that, sir.

12 Q. All right.

13 Handwritten statements of Bill  
14 Urquhart on Hariss shown.

15 Do you recall that?

16 A. I don't recall, sir, no.

17 Q. You just don't remember?

18 A. I just don't, no, I don't remember.

19 Q.  
20 Numerous, only one red. Corporal  
Davies see them placed on floor.

21 Can you tell us what you saw placed on the floor? How many  
22 pieces of paper?

23 A. I can only recall one document being dropped on the floor.

24 Q. And what do you mean by "one document"?

25 A. O.K. I didn't know how many pages there were to that

1 document at that particular time when it was dropped on the  
2 floor. I didn't know. There could have been one page. There  
3 might have been two. There might have been four if they  
4 were stapled together.

5 Q. Did you subsequently find out how many pages there were?

6 A. Yes, sir, I feel quite certain it was one.

7 Q. One page?

8 A. Yes.

9 Q. As a consequence of something you saw later?

10 A. Pardon me? Yes, when the Chief retrieved that document  
11 from the floor and passed it to Staff Wheaton, Staff Wheaton  
12 kept that particular document in his hand. And did all the  
13 way to the office. As a matter of fact, he read it to me, but it  
14 didn't mean anything to me as to what was in it or even who  
15 it was from, you know.

16 Q. He read it to you in the car?

17 A. Yes, sir, he did.

18 Q. Did he show it to you? Did you see it? Did you read it  
19 yourself?

20 A. I can't recall reading it myself, no. I know he read it, yes.

21 Q. So what you're saying is that one sheet of paper was then  
22 placed on the floor?

23 A. That's what I'm saying, sir, yes.

24 Q. You have no explanation as to why Staff Wheaton would have  
25 written "See them placed on floor"?

1 A. No, sir.

2 Q

3 Asked numerous times by Pratico, no  
4 explanation.

5 Do you have any recollection of that?

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

7 Q What that's talking about or...

8 A. No, I don't.

9 Q Or the word "Pratico"?

10 A. No, I don't, sir. I've heard the name "Pratico," certainly.

11 Q So many times since then, of course.

12 A. Yes.

13 Q But did you know...

14 A. It didn't ring a bell with me as to who he was at that  
15 particular time.

16 Q Nor did Patricia Hariss' name ring a bell, I assume?

17 A. No, it didn't, sir.

18 Q

19 No comment on line-up.

20 Does that ring any bells in your mind as to what that  
21 reference was about?

22 A. No, sir.

23 Q

24 No comment on Pratico re witness.

25 Again you can't...

A. I can't recall, sir.

1 Q.

2 Definitely did not interview Ebsary, wife or  
3 son after murder on 15th.

4 Do you recall any discussion of that?

5 A. No, I don't.

6 Q. Do you recall any discussion at all about statements of Mary  
7 Ebsary or Greg Ebsary given to Inspector Marshall in  
8 November of 1971?

9 A. No, I don't, sir. I'll tell you, I wasn't paying too much  
10 attention to the conversation. These people that the Chief and  
11 Staff Wheaton were talking about, I didn't know them. It  
12 didn't mean anything to me. I wasn't the man doing the  
13 investigation and you know, the names didn't mean anything  
14 to me.

15 Q. Of course not, o.k. Now as the Chief took pieces of paper out  
16 of the file folder, would he pass them over to Staff Wheaton?

17 A. He would read them first.

18 Q. Read them aloud?

19 A. Sometimes he might have.

20 Q. For example...

21 A. "Statement of such and such."

22 Q. Yeah, he would read, the person who had made the statement,  
23 would he then read the statement through?

24 A. No. He perhaps would maybe read it through but...

25 Q. To himself?

1 A. To himself, yes.

2 Q. Yes, so he would simply identify the statement and pass it  
3 across the table to Staff Wheaton?

4 A. That's correct, sir.

5 Q. Did Staff Wheaton then take the statement and mark off on  
6 Exhibit 88, tick, "I've got the statement of X, Y, Z." Is that how  
7 it was done?

8 A. I'm not quite certain how or at what point Exhibit 88 was  
9 initialed by Staff Wheaton, whether it was prior to...as to  
10 whether or not it was when he received everything and then  
11 he went through it item by item or if he signed for it, initialed  
12 for it item by item as he received it from the Chief. I'm not  
13 too certain. I can't quite recall.

14 Q. Staff Wheaton, I take it, was Staff Wheaton upset as a  
15 consequence of the Chief producing this document, Exhibit 88,  
16 to him and wanting him to sign it? Was he a little taken  
17 aback by this, do you recall?

18 A. I don't recall. I can't see why he would be.

19 Q. It was the Chief, however, who requested Staff Wheaton to  
20 sign this document?

21 A. I feel quite certain it was, yes.

22 Q. And did Staff Wheaton take a copy away with him of the  
23 document that was signed and leave a copy with the Chief?

24 A. I think perhaps Staff Wheaton took a copy with him. I'm not  
25 sure who kept the original or who kept...

1 Q Presumably the Chief would have kept a copy?

2 A. Yes, I would think he would.

3 Q One would assume so since he's the one who prepared it and  
4 requested it and wanted Staff Sergeant Wheaton to sign it.

5 A. Yes, sir.

6 Q And you think that Staff Sergeant Wheaton would have taken  
7 a copy away with him?

8 A. I feel quite certain he would have, yes. I can't quite recall,  
9 but I...

10 Q And do you recall him making additions to Exhibit 88? Do  
11 you recognize the writing "Noseworthy, two and one, original,"  
12 that kind of thing written on it?

13 A. No, I didn't take any notation of this, sir. And I wasn't  
14 involved in the investigation and these names and everything  
15 and statements that he was receiving from the Chief didn't  
16 mean anything to me.

17 Q And I take it that you were not...you're not saying anything  
18 during the course of this hour interview?

19 A. I didn't carry on any conversation whatsoever.

20 Q You were simply there as a silent witness?

21 A. That's right.

22 Q If the Chief wanted to deliberately keep something from Staff  
23 Wheaton with respect to the papers that he was going to hand  
24 over, it would have been a very easy matter for him to have  
25 taken it out of the file before Staff Wheaton and you arrived?

SGT. DAVIES, EXAM. BY MR. PUGSLEY

1 A. If it didn't slip his mind, yes.

2 Q. If it didn't slip his mind, but on the other hand, he had  
3 prepared a typewritten list of all the documents that were in  
4 the file, so he must have gone through the file before you  
5 arrived.

6 MR. RUBY

7 There's a typewritten list of most of the documents in the file and  
8 it omits this one.

9 MR. PUGSLEY

10 Well, it's good of Mr. Ruby to give us his assistance. I pointed out  
11 earlier that there are, I guess, six counsel here for the RCMP, at  
12 least six and it's kind of him to afford this assistance, but if he  
13 could perhaps confine his remarks during the course of my cross-  
14 examination to proper interruptions...

15 Q. I suggest to you that the Chief....

16 MR. RUBY

17 Let me just deal with that. I thought it was correct and when  
18 counsel puts a factual statement to the witness that I would be of  
19 assistance to counsel in correcting him factually.

20 COMMISSIONER EVANS

21 I guess counsel doesn't feel he needs any assistance, Mr. Ruby.

22 MR. RUBY

23 It's the first time I've been accused of being close to the RCMP.

24 I'm not sure I like it.

25

1 MR. PUGSLEY

2 Q. I'm sorry, would you just give me your response again?

3 A. What's the question again, sir?

4 Q. The question is, the list was prepared before you arrived by  
5 the Chief. The list was prepared. The typewritten list was  
6 prepared.

7 A. Yes, but have a look at Exhibit...what would this be, 88A?

8 Q. Yes, and what is that?

9 A. Well, I take it this is an exhibit that had to be typed or was  
10 typed that particular day after we arrived?

11 Q. Do you recall that?

12 A. As I say, I recall something having to be typed and I'm  
13 assuming it's this.

14 Q. Do you know what the writing is, the handwriting is on this  
15 exhibit? Do you know whose handwriting it is?

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

17 Q. You don't know whether it's Staff Wheaton's or Chief  
18 MacIntyre's or whose it is?

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

20 Q. But in any event, do you recognize Staff Wheaton's initials?

21 A. Yes, right here.

22 Q. And there's a list of sixteen statements and he has  
23 signed...and he has witnessed presumably the receipt of those  
24 or can you even say that?

25 A. Yes, I would expect that's what he was signing for.

1 Q. Can you give us any assistance with respect to the final page  
2 entitled "Original statements" as to whether or not that in fact  
3 was the page that was typed later or not?

4 A. I can't help you there, sir.

5 Q. All you can say is that you believe that at one point in time  
6 an additional typewritten page was brought in?

7 A. Yes, sir.

8 Q. But how that occurred or why it occurred, you can't really  
9 say?

10 A. I can't quite recall, no.

11 Q. And you can't give us any assistance with respect to the,  
12 under the original statement, the typewritten page, "P.A.  
13 Hariss, one statement given to S.S. Wheaton already."

14 A. I can't explain any of this to you, sir. You know, I had nothing  
15 to do with this. I can't explain it to you.

16 Q. You can't explain why that was there or whether or not how  
17 many original P.A. Hariss' statements were signed for by Staff  
18 Wheaton?

19 A. I have no idea, sir, no.

20 Q. Now you say that it's your recollection that the name  
21 mentioned to you by Staff Wheaton was Patricia Hariss.

22 A. Yes, sir.

23 Q. How do you happen to recall that name six years later when  
24 the name meant nothing to you during the course of the  
25 interview, you weren't familiar with that person, indeed you

1 weren't familiar with any of the witnesses' names except for  
2 Ebsary and a few others that you mentioned.  
3

4 2:52 p.m.

5 A. That's correct. That was a name that was mentioned to you  
6 me and I have heard it here certainly during the past couple  
7 of weeks.

8 Q. Oh, I have no doubt you that you've heard it here. It's been a  
9 name that's mentioned very often here. But the question is,  
10 how do you happen and do you have any independent  
11 recollection of that name being mentioned to you by Staff  
12 Wheaton in the car going back that day.

13 A. I feel quite certain there's no doubt in my mind, sir, it was  
14 the name Patricia Harriss, but who she is I don't know. Or  
15 what the statement contained I can't tell you now. It was of  
16 no interest to me. I was not the investigator.

17 Q. But how do you happen today to have an independent  
18 recollection that six years ago in a car going back to your  
19 Headquarters, Staff Wheaton mentioned Patricia Harriss, a  
20 name that meant nothing to you?

21 A. Sir, because that was the document that was retrieved from  
22 the floor by the Chief, handed to Staff Wheaton and it was  
23 that particular document that he kept in his hand all the way  
24 back to our Subdivision Headquarters. And he read it to me.

25 Q. I'm not, he read, he read what to you?

1 A. He read the statement to me.

2 Q. And what did it say?

3 A. I can't recall what it said. As I stated, it didn't mean anything  
4 to me and that's why...

5 Q. And the name would mean nothing to you.

6 A. The name still means nothing to me, sir.

7 Q. But the name would mean nothing to you then...

8 A. That's correct.

9 Q. But how, my question is how do you happen to recall six  
10 years later...

11 A. Yes.

12 Q. How do you happen to have an independent recollection that  
13 the name Patricia Harriss was mentioned to you?

14 A. Because that's the particular document, sir, that was dropped  
15 on the floor and retrieved by the Chief and passed to Staff  
16 Wheaton.

17 Q. But I don't understand how, I understand your evidence that  
18 you say a document was on the floor, it was retrieved by the  
19 Chief, was given to Wheaton and Wheaton takes a piece of  
20 paper back to him, to the office. But my question is, how do  
21 you recall today independently that that was the document  
22 that was given to the Chief or given to Wheaton.

23 MR. BOUDREAU

24 My Lord, if I may interject at that point. By my count I think  
25

1 that's the third or fourth time that question has been directed to  
2 the witness. He's answered it, I think, on the three previous  
3 occasions. I would ask for your direction on the matter. There's  
4 some limit as to how many times it should be asked.

5 CHAIRMAN

6 There's a limit, there most definitely is a limit as to the  
7 number of times the same question can be put and I have to  
8 confess I haven't been keeping count as to the number but so far,  
9 as I understand it, it's not the first. The question has been put  
10 and the witness is trying to explain why he remembers the name  
11 Patricia Harriss. And I guess Mr. Pugsley's entitled to be sure, to  
12 make certain, bearing in mind the accusations were made against  
13 his client, that the reason for the positive identification is  
14 substantial, substantiated. So try one more time.

15 MR. PUGSLEY

16 That was the question I was trying to put to the witness,  
17 perhaps not very well.

18 CHAIRMAN

19 Well I thought you put it to him. And I thought he had  
20 explained it, at least I understood what he was saying, but if you  
21 want him to say it once more then I suppose we'll hear from  
22 another counsel. The only counsel that I keep looking for and  
23 guidance from is counsel for the witness.  
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VOICE

Well I think the witness answered.

MR. PUGSLEY

All right.

CHAIRMAN

Could you, well let's get, in fairness. You've ...

MR. PUGSLEY

Q My question is, Sergeant Davies, do you have an independent recollection today that the name Patricia Harriss was mentioned by Staff Sergeant Wheaton in the car going back, or is it something that, because Staff Sergeant Wheaton has said, testified and has told you that that's the document he got, is that the reason why you're able to identify it as being Patricia Harriss?

A. There is no doubt in my mind, sir, that it was the, a statement of Patricia Harriss.

Q . I see. Can you give the Commission any assistance why Frank Edwards' notes advise that the Patricia Harriss statement was given to Staff Sergeant Wheaton on Friday, April 16th?

A. No, I can't, sir.

Q Did you have a discussion with Staff Sergeant Wheaton going back to the station concerning the incident that you've just talked about? The incident of the paper on the floor.

A. We could have.

1 Q. Did you have a discussion when you went back to the station?  
2

3 A. Maybe we did, I can't recall.

4 Q. All right. Did you ever discuss the matter with Inspector  
5 Scott?

6 A. No, sir.

7 Q. Or any ...

8 A. Not that I can recall.

9 Q. Or any of your superiors.

10 A. Not that I can recall, sir.

11 Q. There's an affirmative obligation placed on a peace officer to  
12 lay an information if he has reasonable and probable grounds  
13 to believe an offence has been committed, is that not so?

14 A. It depends upon the circumstances, sir.

15 Q. Okay. Was an offence committed by the Chief in your opinion  
16 on this occasion?

17 A. It didn't cross my mind that, in fact, the Chief had committed  
18 a particular offence. I heard you read the other day a certain  
19 section under the Police Act ...

20 Q. Yes.

21 A. And it didn't cross my mind, even after I left the Chief's  
22 office, or, and there was no thought in my mind that I would  
23 be suggesting a charge because after the Chief was confronted  
24 by Staff Wheaton with what I told him, he gave us a  
25 document.

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Q. I see.

A. So ...

Q. You did not consider that an offence of any kind had been committed by the Chief, then.

A. Perhaps there was one committed but it didn't cross my mind.

Q. No, you did not consider that one had been committed...

A. No, sir.

Q. Either under the Police Act or the Criminal Code.

A. That's correct, sir.

Q. Staff Wheaton kept the piece of paper in his hand after he left the office, carried it in his hand while in the police car and did you say that he gave it to you and you read it. I wasn't sure of your evidence on that point.

A. No, I didn't say that, sir. I said he read it to me.

Q. I see. Did you see it? Did you see the piece of paper?

A. I perhaps glanced over while I was driving, yes. Saw the piece of paper, yes.,

Q. Was it an original or was it a copy?

A. I can't quite recall.

Q. Okay. I take it that there was nothing, and at this point in time Staff Sergeant Wheaton had bundled up the documents that he had received from the Chief, together with his copy of Exhibit 88, put them, what, in a briefcase?

A. I'm not too certain, sir. I don't quite recall.

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Q. In any event, after the Chief delivered the piece of paper to Staff Wheaton, there is no further typing and no further acknowledgement of any additional document on Exhibit 88.

A. You're talking about that last piece of paper that was retrieved from the floor and given to Staff Wheaton?

Q. Yes.

A. No, there was no further conversation let alone any more typing at that point.

Q. No further conversation. No further typing and no further acknowledgement by Staff Wheaton of having got whatever he got.

A. No, sir.

Q. In writing.

A. No. Staff Wheaton took that document and we left.

Q. Yeah.

MR. PUGSLEY

Thank you. I have no further questions.

MR. MURRAY

No questions, My Lord.

COMMISSIONER EVANS

Before we leave that at risking people thinking I've been asleep up here, did anybody ever ask what the 31 pieces of correspondence was?

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MR. PUGSLEY

No. I'll be glad to address that to the witness, My Lord.

Q. You'll note on Exhibit 38...

COMMISSIONER EVANS

I don't know whether he would know.

CHAIRMAN

He probably can't...

COMMISSIONER EVANS

I wouldn't expect him to answer. I'm just curious as to whether that has been asked and I don't have a note of it.

MR. OUTHOUSE

My recollection, My Lord, is that it was asked, yes, by Mr. Orsborn and the explanation, and I don't have the volume right at...

COMMISSIONER EVANS

As long as it's been asked...

MR. OUTHOUSE

It has been asked.

COMMISSIONER EVANS

I'll find it. Thank you.

MR. PUGSLEY

Q. You cannot assist us on that, I take it, Sergeant Davies? At the bottom of page 38 there's 31 pieces of correspondence or something mentioned...

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A. Bottom of page?

Q. Sorry, Exhibit 88, I'm sorry...

MR. OUTHOUSE

No, it's not.

CHAIRMAN

It's in the ....notes.

MR. OUTHOUSE

The handwritten notes.

MR. PUGSLEY

That's right. It's in...

CHAIRMAN

Handwritten notes of Wheaton.

MR. PUGSLEY

In Staff Wheaton's notes in...

CHAIRMAN

The total correspondence, 31 pieces.

MR. PUGSLEY

Q. Yeah, can you assist us on that at all?

A. No, I can't, sir.

MR. PUGSLEY

Thank you.

CHAIRMAN

Mr. Saunders?

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MR. SAUNDERS

We have no questions for the Sergeant, My Lord.

CHAIRMAN

Now how are we going again? I can't sort out the...

MR. OUTHOUSE

We have no questions, My Lord.

MR. PRINGLE

I'd just ask one question to perhaps clear up some matter and I think it is minor.

3:02 p.m.

EXAMINATION BY MR. PRINGLE

Q. You were asked about a search that took place with yourself and Constables Hyde and MacQueen, I believe?

A. Yes, sir.

Q. Was there a search warrant at that time?

A. There would have been a search warrant at that time, yes.

Q. I refer you to Volume 34, exhibit volume 34...

A. I have it.

Q. Exhibit number 98. At page 133. Page 133, My Lord, Volume 34.

A. Page 133?

Q. Yes. Do you have Volume 34, Sergeant...

A. I have Vol-...

Q. Exhibit 98?

SGT. DAVIES, EXAM. BY MR. PRINGLE

1 A. Volume 34.

2 Q. Yes. Page 133. About three pages from the back, that'll save  
3 us a little time. Now that appears to be a listing of some  
4 items seized, an old navy blue topcoat and so on, and  
5 Constable Hyde's name is at the bottom. Is that correct?

6 A. Yes, sir.

7 Q. Does that help you in any way with respect to the search of  
8 the premises that you referred to earlier?

9 A. Yes. It would have been Constable Hyde that took possession  
10 of the exhibit.

11 Q. And that refers to what? One navy blue topcoat. One white  
12 shirt and two gold wrap belts.

13 A. Two gold wrap-around belts.

14 Q. Thank you. I think, My Lord, generally, the next following  
15 pages refer to those exhibits as well. 134, 135.

16 MR. PRINGLE

17 Thank you.

18 CHAIRMAN

19 Mr. Ross?

20 3:04 p.m.

21 EXAMINATION BY MR. ROSS

22 Q. Just one short question. Perhaps I could ask it from here.  
23 You made reference to Sandy Seale, do you recall?

24 A. Yes, sir.  
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Q. Did you ever do a background check on Sandy Seale?

A. Did I ever...

Q. Do a background check on Sandy Seale?

A. Not me, sir.

Q. Did you ever, do you know of any checks which were done on Sandy Seale?

A. I don't know, sir.

Q. I take it you had no involvement whatever with Sandy Seale or any of the Seale family?

A. No, I didn't, sir.

Q. Thank you. Just before I sit down, one thing. These postings that you got to these strange places Newfoundland, did you consider them as cruel and unusual punishment?

A. No, sir.

MR. ROSS

Thank you very much, no more questions.

CHAIRMAN

Well, I must remind Mr. Ross that we do have the power of contempt.

MR. WILDSMITH

Nothing, My Lord.

CHAIRMAN

Now that leaves Mr. Broderick.

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MR. BRODERICK

No, no, My Lord.

VOICE

Mr. Boudreau, I believe.

MR. BOUDREAU

If everyone has passed, no questions, My Lord.

MR. BRODERICK

I understand the confusion, My Lord, I'm representing  
Sergeant Carroll and not...

CHAIRMAN

All right. Fine. Mr. MacDonald?

MR. MacDONALD

No, no further questions.

WITNESS WITHDREW

3:06 p.m.

JAMES CARROLL, duly called and sworn, testified as follows:

EXAMINATION BY MR. MacDONALD

Q. Your name, sir, is James Carroll?

A. That's correct.

Q. And you're a member of the RCMP?

A. Yes.

Q. Present time your rank is sergeant, is it?

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A. That's correct.

Q. And your present posting?

A. Sydney detachment, Sydney, Cape Breton, Nova Scotia.

Q. And you're in charge of that detachment?

A. No, I'm second in charge.

Q. Just briefly if you would for us, Sergeant, tell us what your career has been in the Force.

A. I joined the Royal Canadian Mounted Police 26 years ago, on the 26th of this month actually, here in Halifax. I was posted to Ottawa for training. My first posting was Fredericton, New Brunswick and after a short time I was transferred to Minto, New Brunswick for four and a half years. Returned to Fredericton for four years and then on to Newcastle, New Brunswick for three years and back to Fredericton for three more years and I came to Sydney in 1975, pardon me, '79.

Q. And have been there since?

A. Yes. Oh, one further posting to Baddeck since that time and I returned to Sydney on the 1st of April of this year, of...

Q. And you're in the detachment as opposed to the GIS Division?

A. That was the 1st of April of '87.

Q. You're in Detachment as opposed to...

A. Yes, I am.

Q. GIS?

1 A. Yes, I am.

2 Q. You took your training in Ottawa?

3 A. That's correct.

4 Q. What was your training or, with respect to keeping notebooks  
5 and notes of what you do?

6 A. That was part of our initial training to record important  
7 details in your notebook on a daily basis or as soon as  
8 practical.

9 Q. And to retain those notebooks?

10 A. Yes.

11 Q. Have you followed that practice?

12 A. I have. I lost many of my notebooks in 1972 in a home fire  
13 which destroyed all my belongings but since that time I have  
14 retained everything.

15 Q. You have produced to us, Sergeant Carroll, copies of your  
16 notebook and it's Exhibit 104. You have the original  
17 document with you, I believe?

18 A. Yes, I have.

19 Q. I'll just have the registrar show you Exhibit 104 and you can  
20 just confirm that that is a copy of notes taken from your  
21 notebook, is that correct?

22 A. Yes, it is.

23 Q. You may be more comfortable referring to your original one.

24 A. Yes.

25 Q. Just some more general questions, if I can. What is

1 your...what practice do you follow in taking statements from  
2 individuals in an investigation?

3 A. It depends on a lot of circumstances, mainly how much time  
4 you have to prepare for that interview. You may have  
5 someone that you has, that you have no time to do any  
6 background on at all and you're faced with a different set of  
7 circumstances. The ideal situation is to be able to do some  
8 background and to know the person you're dealing with.  
9 Certainly it's an advantage to be able to do that.

10 Q. With respect to the actual interview, is it your practice to take  
11 down verbatim everything that is said?

12 A. Yes, after the narrative, after the initial interview of the  
13 person.

14 Q. What does the initial interview consist of?

15 A. Well, again you'd have to break that down into a witness or  
16 suspect. If it was a suspect, I would keep very careful notes  
17 of the first words said, the circumstances surrounding the  
18 interview, where it took place, times, witnesses present.

19 Q. And if it's a witness, what difference is it?

20 A. If it was a witness, I would probably spend considerable time  
21 finding out what he actually knew before I would reduce it to  
22 writing.

23 Q. You've been present during the evidence given by Staff  
24 Sergeant Wheaton?

25 A. Yes, I have.

1 Q. And you've heard his explanation of his practice? I  
2 understood, to sit down with the witness, to have a discussion  
3 and then say "We're now going to start the statement and  
4 take everything down."

5 A. Yes, I heard that.

6 Q. Is that consistent with your experience with him?

7 A. Yes, at times when I was with him when we did interviews, I  
8 sometimes took notes, depending on the circumstances. There  
9 were many interviews where I was not present.

10 Q. During the time you were, was that the practice followed?

11 A. Yes.

12 Q. Discussion and then "Let's go with the statement"?

13 A. Yes, that's correct.

14 Q. Did you ever have the experience before in investigating the  
15 work carried out by another police force?

16 A. Never. No, I'm sorry. On one occasion in New Brunswick. It  
17 was a murder case and instead of investigating the  
18 department we were assisting them. It happened as a  
19 murder in their own cell-block area.

20 Q. But to be called in after the event to look at what was done.  
21 Have you ever had to do that before?

22 A. No.

23 Q. Have you had any discussions in the past, and since this  
24 Commission was constituted, with Sergeant Wheaton?

25 A. Yes, many.

1 Q. And have you discussed the events of what you did in 1982  
2 with him?

3 A. Yes.

4 Q. And you say "many", Sergeant, can you give me a better feel  
5 for that?

6 A. Well, before you said concerning this Inquiry, we've had  
7 many discussions since '82 and we've had many discussions  
8 recently on many different topics, but, yes, we have discussed  
9 this case at length.

10 Q. And when is the most recent time you've done that with him?

11 A. I would believe Sunday before he gave his evidence, the first  
12 Sunday that we came here.

13 Q. And did you discuss it at length at that time?

14 A. No, no, it was very brief because his wife was with him and it  
15 was very...was a very short conversation in my hotel room in  
16 this building with my solicitor, Mr. Broderick, and  
17 Mr. Wheaton, Staff Wheaton, very brief.

18 Q. When did you discuss it with him at length?

19 A. When?

20 Q. Yes.

21 A. In the last year, various times.

22 Q. And what sort of topics would you be discussing with him?  
23 What was the nature of your discussion?

24 A. Basically the interviews that we conducted together and  
25 evidence that was done mutually.

1 Q. Was it for the purpose of refreshing your memory or getting  
2 your stories together or what was it?

3 A. It was refreshing memory plus the fact it was a...a most  
4 unusual case.

5 Q. When did you first have contact with this case, and refer to  
6 your diary if you like to assist you if you need to.

7 A. On the 4th day of February, 1982.

8 Q. Do you recall what you were being asked to do?

9 A. Yes. I met with Staff Sergeant Wheaton in our office in  
10 Sydney. I was working in plainclothes at that time and so  
11 was he. I was advised by him that we were going to review  
12 the transcript of evidence from the Marshall case and we did  
13 that. That was the first effort.

14 Q. Reviewed the transcript of evidence.

15 A. Transcript of the trial.

16 Q. Of the trial. So, that...you had that, did you?

17 A. That was the first thing that I recall we did was to review the  
18 court proceedings and I suppose that would also include the  
19 preliminary hearing.

20 Q. Do you have any recollection today, Sergeant, of what you  
21 actually did look at?

22 A. I recall reading the transcript of the evidence at great length,  
23 yes.

24 Q. Would that be trial and...

25 A. I think it would probably start out with the preliminary

1 hearing and then go into a trial and also the appeal process if  
2 that was made available to us, and I think it was.

3 Q. What would be made available for the appeal process, other  
4 than perhaps the decision?

5 A. The decision mainly I guess.

6 Q. In your note which is in Exhibit 104... By the way have you  
7 ever made available copies of these notes to Sergeant  
8 Wheaton?

9 A. Sergeant Wheaton. In Sydney on one occasion, I think it was  
10 the first week or the week of Chief MacIntyre's evidence. He  
11 examined this book and made some notations from it.

12 Q. You mean in December of 1987 and Chief MacIntyre's  
13 evidence before this Commission?

14 A. Yes, the last week in Sydney.

15 Q. Yes. And at that time Staff Sergeant Wheaton took your  
16 diary...

17 A. No, no...he...we went into the back room and we checked the  
18 various dates. He made notations from my book. That's all.

19 Q. But you kept it in your...

20 A. Yes.

21 Q. He didn't take it away with him.

22 A. No.

23 Q. How long would that have taken him? How long were you  
24 meeting there to do that?

25 A. Ten minutes.

1 Q. I see. Okay. Your note for February the 4th in Exhibit 104,  
2 there are notes throughout your diary that you've made  
3 available to us that refer to cases other than the Marshall  
4 case, isn't that correct?

5 A. Yes, many, many different cases.

6 Q. So, I'll have to rely on you somewhat to tell us what is what.  
7 But it seems to start out February the 4th "9 to 5".

8 A. That's my daily shift, yes.

9 Q. And your first entry is, "Office, Seale murder file, review with  
10 Staff Sergeant Wheaton."

11 A. That's correct.

12 Q. Do I take it that would have been the first thing you would  
13 have done that day?

14 A. Yes. But it wasn't...

15 Q. "Seale murder file", would there have been a file in the RCMP  
16 detachment at that time?

17 A. Not as such, no. A transcript is what I'm referring to there.

18 Q. The same reference is made later on that day, "Review  
19 Marshall file". What you're talking about is the transcript of  
20 evidence.

21 A. Yes, one in the same.

22 Q. Did you have a discussion with Staff Sergeant Wheaton before  
23 you started reading the transcript?

24 A. I don't recall the content but I'm sure we did, yes.

25 Q. You wouldn't just start reading it for...

1 A. This would have been following...this would have been  
2 following the meeting between Inspector Scott, Staff Wheaton  
3 and I believe Chief MacIntyre.

4 Q. And were you told what you were expected to do?

5 A. I believe that...I believe that was the previous day.

6 Q. Yes. Were you told what was being expected of you?

7 A. Not in so many words other than to review the thing and see  
8 if everything looked proper and...

9 Q. To review the transcript and see if everything was proper.

10 A. Well, the general procedure that was carried out and the  
11 evidence that was given.

12 Q. Were you given anything other than the transcript that you  
13 can recall?

14 A. The statements came indirectly but at what stage I can't say.

15 Q. Came indirectly.

16 A. The statements came to us in due course.

17 Q. My understanding of the evidence of Staff Sergeant Wheaton  
18 is that he was given statements by Scott. Scott was given  
19 statements the day before and everything was passed along  
20 to Wheaton. Your recollection is it was a transcript only.

21 A. No, I'm not saying that. I'm saying the transcript sticks out in  
22 my mind more so than any other attachments.

23 Q. Okay. The notes for February the 5th in your notebook, again  
24 "9 to 5" and then there's a number "308" that goes throughout  
25 your notes. What does that mean?

1 A. 308 is the number of the police car that I often drove and I  
2 found it necessary and valuable to record that information  
3 because of...for various reasons. If I had the car that day then  
4 I wanted to have a record of it, so that's the police car I drove  
5 on those particular days.

6 Q. Was there any file in the RCMP office in Sydney that you  
7 recall dealing with either Donald Marshall or Roy Ebsary  
8 when you took on this assignment?

9 A. No. I'm not aware of any.

10 Q. Were you at that time with the detachment or were you with  
11 the GIS section?

12 A. The GIS.

13 Q. And would you have reviewed the files at GIS to see if there  
14 were such documents?

15 A. Not myself, no.

16 Q. Tell me again what you understood the assignment was?

17 A. To review the transcript of the evidence and the statements  
18 as they became available to us, basically to just see what the  
19 evidence was against Marshall in 1971.

20 Q. Were you aware of the letter from Steve Aronson?

21 A. Yes.

22 Q. And that the suggestion was being made that Roy Ebsary had,  
23 in fact, committed this murder.

24 A. I was aware of Aronson's letter. I'm not sure of what the  
25 contents are now.

1 Q. Look at Volume 34. I think that's on the desk there with you.  
2 I think it's in here. Yes, it's on page 22.

3 A. Yes, I can recall seeing that before.

4 Q. And would you have seen that at the time you were drawn  
5 into this investigation?

6 A. I feel quite likely I did.

7 Q. Did you have any discussions...or who was giving you your  
8 instructions?

9 A. Staff Wheaton.

10 Q. Did you have any discussion with Inspector Scott?

11 A. On the first day, no. I can't recall any discussion with  
12 Inspector Scott in the first instance at all.

13 Q. How long did it take you to review the documentation that  
14 was given to you?

15 A. As my notebook indicates other things were going on and  
16 other investigations by myself from the 4th, I spent part of  
17 that day with Staff Wheaton reviewing the file or I mean  
18 transcript. I also worked on another case that day which was  
19 a fraud. And, on the following day I was working on the  
20 same fraud. The next two days were the weekend "RTO" is  
21 regular time off as indicated on the...in the notes. On the 8th  
22 of February I was still working on another case, a missing girl  
23 in Moncton which was believed to be a murder victim. It  
24 wasn't until the 9th that I got back on the Marshall inquiry  
25 with Staff Wheaton when we departed for Pictou to interview

1 Mitchell Bayne Sarson.

2 Q. Did Staff Wheaton tell you about the discussion he had with  
3 Chief MacIntyre?

4 A. In what regard, sir?

5 Q. Did he tell you that he had met with Chief MacIntyre?

6 A. I was aware that there was a meeting between Inspector  
7 Scott and Chief MacIntyre and Staff Wheaton. I believe that  
8 to be the date...the date prior to our first review of the file  
9 which would be on the 3rd of February.

10 Q. Were you told by Wheaton anything that had taken place  
11 during that meeting?

12 A. Generally that there was going to be a handing over of the file  
13 to our office.

14 Q. That there was going to be a handing over. Did you  
15 understand that documents had been, in fact, handed over?

16 A. Some, yes.

17 Q. Did you understand then that there was still more documents  
18 to come?

19 A. I believe so, yes.

20 Q. And when did you believe they were coming?

21 A. In the near future. I couldn't really say exactly when.

22 Q. Were you...why did you understand only part of the  
23 documents were handed over?

24 A. At this date I can't say, but in the beginning I felt sure there  
25 were more, there was more material to come to us.

1 Q. Now, you had the...you were under the distinct impression  
2 that other documents would be coming.

3 A. That's correct, yes.

4 Q. Now, the procedure to be followed, would you have created  
5 a...some sort of a central file at this time to deal with this case  
6 in your GIS section?

7 A. This would have caused the file to be created at our office, a  
8 file folder and given a number and a caption and a  
9 subsequent report to Halifax through our channels, through  
10 Inspector Scott's office.

11 Q. And what would be kept in the file?

12 A. Basically a copy of everything we had. We'd have the  
13 transcript, statements.

14 Q. Would there be a listing of all the documents in the file?

15 A. Not necessarily, no.

16 Q. Would that be normally done?

17 A. Not really. When the first report would be drafted for  
18 Halifax, those statements would be attached, those that were  
19 pertinent, others that were immaterial would not be sent  
20 forward.

21 Q. This file that's created, as you go out then and gather more  
22 information it's put in that central file, is it?

23 A. Yes.

24 Q. Similarly any other member of the force that gets information  
25 would go in that central file?

1 A. The same file?

2 Q. Yeah.

3 A. Not really. The main investigator would be made aware of it  
4 and if it was information or statements of any value, certainly  
5 they would go in the file.

6 Q. If you went out and interviewed somebody on this case,  
7 Wheaton isn't with you, would the original statement you  
8 take go into the file?

9 A. Yes.

10 Q. And if Staff Wheaton is interviewing someone, the same  
11 procedure?

12 A. Yes.

13 Q. Would you review that file from time to time?

14 A. Yes, I would, but he was the senior man and he was the  
15 author of the reports that were going to Halifax from our  
16 office so I'm sure I was kept up on the file as it proceeded  
17 although I was doing other investigations at the same time.

18 Q. Did you meet from time to time with Wheaton to discuss what  
19 was happening on this case?

20 A. Almost on a daily basis, we shared the same office floor and  
21 his office was only about ten feet from mine, so it would be  
22 almost a daily discussion.

23 Q. Was there a discussion with Wheaton early on as to the  
24 procedure you were going to follow, what you were going to  
25 do?

1 A. Yes, our main plan was to review the evidence as per the  
2 transcript and then we would start to interview some  
3 witnesses.

4 Q. With what aim in mind? What were you trying to do?

5 A. I believe we were trying to determine whether any improper  
6 procedures or anything improper, period, came to the surface  
7 as a result of interviewing the witnesses and...

8 Q. Was it the intention from the beginning then to interview  
9 witnesses?

10 A. No, that was just a...I guess, we assumed that would be the  
11 second part of the...the second stage of the investigation.

12 Q. I don't understand what you would expect to get from  
13 reading the transcript other than to perhaps become familiar  
14 with the evidence.

15 A. That's correct. I had no knowledge of the case whatsoever at  
16 that time and I don't believe Staff Wheaton did either, so we  
17 wanted to know what the evidence was in 1971 that convicted  
18 Marshall, so we read that.

19 Q. And having read the evidence, were you surprised that he  
20 was convicted?

21 A. Not really.

22 Q. There was two witnesses who said they had seen Marshall  
23 stab Seale?

24 A. That's correct.

25 Q. So there was no surprise that a jury convicted?

1 A. No, and as mentioned earlier by Staff Wheaton, Marshall's, for  
2 lack of a better term, "performance" on the witness stand,  
3 being very low spoken and being constantly reminded by the  
4 trial judge to remove his hand from his mouth and speak up  
5 and he seemed...on paper, he seemed to be a very poor  
6 witness on his own behalf.

7 Q. Having read the evidence then, not being surprised by the  
8 verdict, what were you planning to do then?

9 A. Interview some witnesses.

10 Q. What witnesses in particular were you planning to interview?

11 A. Well, the first one that we decided on was Sarson in Pictou.  
12 And Chant was, I believe, the second one. Hariss came into  
13 the picture after that and then Pratico.

14 Q. That was the game plan, if you will, "We'll see Sarson..." and  
15 then these eyewitnesses?

16 A. Yes.

17 Q. Turn to Document 34, please, on Page 5. That's a form, I take  
18 it, Document...what is that? It's an occurrence report.

19 A. This would be the first page, normally, of any occurrence that  
20 is reported to our office. The form has changed a little bit  
21 since 1982 but it 's basically the same layout as the present  
22 one we use. It shows the complainant or the person who was  
23 making a call to our office complaining about some offence.  
24 In this case it's the officer commanding the Sydney  
25 Subdivision and it actually is the first document open in this

1 file in which he mentions having attended a meeting with  
2 Chief MacIntyre and the Crown Prosecutor Frank Edwards  
3 and the letter from Aronson being discussed at that point.

4 Q. Is that...

5 A. That's dated on the 3rd of February, 1982.

6 Q. Is that document prepared on the date that would be shown  
7 on the left-hand column?

8 A. Normally it is, yes.

9 Q. What is it done, on a daily basis, Sergeant, do you dictate to a  
10 secretary or someone saying "This is what's happened"?

11 A. These are often written in longhand, sometimes even printed.  
12 The date that's shown there is supposed to indicate the date  
13 the call came in and the time, as a matter of fact. Of course,  
14 the person's name, address, phone number.

15 Q. Does it tell us, can we take from anything on here when the  
16 document was actually prepared? Would it have been  
17 prepared...I take it Staff Sergeant Wheaton prepared this, did  
18 he? That's his initials down at the bottom?

19 A. Yes, he may have typed it himself or he might have given it  
20 in longhand to the secretary to prepare.

21 Q. And would it have been prepared on or about the 3rd of  
22 February?

23 A. I would say so.

24 Q. And would it be kept in this central file we've talked about?

25 A. Yes, it would actually be page 1 probably.

1 Q So it would be available to you to read?

2 A Yes.

3 Q And had you in fact read this document?

4 A Well, having read the file many times, I'm sure I did, yes.

5 Q Everything that's recorded under the date February 3, can I  
6 assume that that's information that was available at least in  
7 the Central file on or about the 3rd of February?

8 A I believe so.

9 Q There's a reference on Page 2 of that report which is Page 6 of  
10 Volume 34, about halfway down, it starts "On reviewing this  
11 file, it was found that on the night of 28, 29 May, 1971, Roy  
12 Ebsary was in Wentworth Park." Do you see that?

13 A Yes, I do.

14 Q

Roy Ebsary was in Wentworth Park  
accompanied by one James MacNeil.  
MacNeil and Ebsary were apparently  
approached by Seale and Marshall and an  
attempt was made to rob them.

18 You wouldn't get that out of the transcript of the trial?

19 A No.

20 Q You can only get that out of statements of some kind?

21 A Possibly Aronson's letter, is that not...

22 Q Well, that was on Page 22.

23 A The matter of Ebsary telling Mr. Sarson in Pictou that he had  
24 in fact stabbed Seale and Marshall is mentioned in Aronson's  
25 letter.

1 Q. There's no reference in that letter, Sergeant, to any attempt  
2 by Seale and Marshall to rob someone and I don't believe  
3 there's any reference to James MacNeil in that letter from  
4 Sarson. I suggest that information can only come from the  
5 statements of James MacNeil and Ebsary that were taken in  
6 November of '71.

7 A. Yes, quite likely.

8 Q. You must have had that information?

9 A. I daresay, yes.

10 Q. And then down at the bottom of that Page 6, it says

11 The original investigation was conducted  
12 into these new facts by Chief MacIntyre  
13 and he requested the assistance of this  
14 force to further look into the matter. To  
15 this end, Subinspector E.A. Marshall and  
16 polygraph operator E.C. Smith conducted  
17 interviews of both MacNeil and Ebsary.  
18 The results of this interview was that  
19 Ebsary came out as truthful and not  
20 involved in the murder and MacNeil came  
21 out as uncertain due to his low mental  
22 capabilities.

23 I take it from that that you must have had available to you  
24 the report of Inspector Marshall that was done in 1971 and  
25 that you had that available on February 3, 1982.

26 A. Well, either the report was present or the contents made  
27 known to us.

28 Q. Did you know of Roy Ebsary?

29 A. No.

1 Q. At that time?

2 A. No, definitely not.

3 Q. Do you recall being told in early February, '82 that Ebsary  
4 was a very violent individual, capable of stabbing a person?  
5 That's in that report on Page 7, about halfway through the  
6 page.

7 A. I think that that's also linked with the case before the courts  
8 where Ebsary was charged with a stabbing incident in the city  
9 of Sydney at that time. So those facts were being reported  
10 daily by the local news media.

11 Q. You see the reference though, I'm sorry, it says that "Ebsary's  
12 wife, Mrs. Mary Ebsary, was interviewed." Have you got  
13 that?

14 A. Yes, I have.

15 Q. Were you advised by Staff Wheaton that he interviewed  
16 Mary Ebsary in early February?

17 A. Yes, I would have knowledge of that.

18 Q. And what were you advised about that?

19 A. Oh, just basically what he states there, that she considered  
20 her former common-law husband to be of a violent nature.

21 Q. There was no statement taken from her though, certainly not  
22 at this time?

23 A. Not in my presence, no.

24 Q. Did you interview Mrs. Ebsary at any time?

25 A. Yes.

1 Q. That's later...

2 A. I don't know whether I'd confuse that with interview or just a  
3 statement or interview or just a casual meeting. There had  
4 been several over the years.

5 Q. Did you have occasion in 1982 in the early part of the year to  
6 meet with Mrs. Ebsary just to discuss matters but not to take  
7 statements from her?

8 A. It's possible. I don't recall any particular meeting, but I  
9 know the Ebsarys quite well since this case has happened.

10 Q. Did you used to join her for tea?

11 A. No.

12 Q. Your first note is that you went to Pictou on the 9th of  
13 February, is that correct?

14 A. That's correct, yes.

15 Q. Tell me what you recall about them.

16 A. The meeting took place at the RCMP detachment in Pictou.  
17 Staff Wheaton and myself, Mitchell Bayne Sarson came to the  
18 office. I don't know by what means, possibly he walked, I'm  
19 not sure. The interview started at 2:22 p.m. in the afternoon  
20 and most of the conversation was between Staff Wheaton and  
21 Mr. Sarson. A statement was taken in Staff Wheaton's  
22 handwriting. It was completed and signed at 3:23 p.m. At  
23 that time he agreed to a polygraph test, if it was felt  
24 necessary in the future. And my notes indicate that he made  
25 a motion to his left thigh regarding a knife and a right wrist

1 regarding a knife wound to Marshall as described to him by  
2 Ebsary when he was living with the Ebsarys in Sydney. He  
3 was uncertain which arm had been described by Ebsary as  
4 being wounded as relating to Marshall. The statement was  
5 read to Sarson at 3:23 and we departed for Sydney.

6 Q. What does that mean that "he made motion to his left thigh"?

7 A. He was describing, trying to describe what Ebsary told him in  
8 this interview on one particular date in Sydney, making a  
9 motion to his thigh and speaking about a knife at the time.  
10 He also made mention of a knife wound to the arm. He didn't  
11 know which arm it was. This was relating to Ebsary's  
12 comments to him concerning a meeting in the park on one  
13 night where he defended himself.

14 Q. A motion to the thigh, to the thigh? Heading toward the  
15 thigh?

16 A. The way my notes indicate, he made motion to his left thigh.  
17 In my presence, he made a motion with his hand toward his  
18 left thigh.

19 Q. To get a knife?

20 A. I would say so.

21 Q. What was your impression of Sarson?

22 A. He related to us some problems he had with the law  
23 concerning drug involvement and I wasn't impressed that he  
24 would make a strong witness.

25 Q. Do you think he was believable?

1 A. Yes, I put considerable stock in his comments.

2 Q. That he had been told this by Ebsary?

3 A. Yes.

4 Q. He indicated agreement or willingness to undergo a polygraph  
5 test?

6 A. That's right.

7 Q. Was any consideration given to having such a test  
8 administered?

9 A. I don't believe so. As the investigation proceeded, I think  
10 that we cast that by the wayside.

11 Q. You only saw Sarson once, isn't that correct?

12 A. Yes, I believe so.

13 Q. Prior to going to Pictou, Staff Wheaton had interviewed James  
14 MacNeil. Were you aware of that?

15 A. I believe so, yes.

16 Q. If you look at Page 42 of that Volume 34, had you seen that  
17 statement before you went to Pictou?

18 A. I would say yes, I probably did.

19 Q. And you were aware at this time that MacNeil was of limited  
20 mental capability, to quote from at least low mental  
21 capability?

22 A. I knew he had some problems.

23 Q. Did you know him?

24 A. No.

25 Q. Was it ever suggested that maybe a further polygraph should

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 be conducted of Mr. MacNeil?

2 A. I can't recall that being discussed.

3 MR. MacDONALD

4 My Lord, did you indicate you wanted to leave at 3:45?

5 MR. CHAIRMAN

6 4:00 o'clock.

7 MR. MacDONALD

8 Oh, you're going to four o'clock, thank you.

9 3:44 p.m. \*

10 Q. When you left Pictou then on the 9th of February or the 10th,  
11 whatever it was, what was your opinion then?

12 A. Well, we certainly were more enthused about interviewing  
13 further witnesses, trial witnesses.

14 Q. You then thought that there was...there may be some truth in  
15 what is being said here.

16 A. Exactly.

17 Q. Even though a polygraph examination had been conducted of  
18 Ebsary by the RCMP in 1971 and he had passed.

19 A. Yes.

20 Q. Did you have any experience yourself with the use of the  
21 polygraphs?

22 A. Yes, I have.

23 Q. Would you consider them to be a useful tool?

24 A. Yes, when used properly and with a good operator, somebody  
25 who puts some effort into the facts surrounding the case, the

1 background and I've had some good experiences with them,  
2 some which I was possibly a little dubious about the results  
3 or I thought there might have been room for error, but I took  
4 the decision of the operator as being the final line.

5 Q. Okay. Did you ever use it as an exclusive tool?

6 A. Yes.

7 Q. That it's the only thing you used.

8 A. Sorry.

9 Q. Exclusively. It's the...you rely on it to the exclusion of  
10 everything else, do nothing else.

11 A. If I...perhaps I'm misunderstanding you, but I have used it  
12 where a suspect was eliminated if that's what you're getting  
13 at. I've also had people confess to the crime following their  
14 failure to pass the test on several occasions.

15 Q. Okay. Let me take you now to your notes on February the  
16 11th, I think it's the 11th. You'll note that there's an  
17 interview with Aronson.

18 A. Yes.

19 Q. Why would you be meeting with Mr. Aronson?

20 A. That was the first meeting with Aronson that I can recall, as I  
21 remember he came to the office and met with us briefly, "us"  
22 being Staff Wheaton and myself.

23 Q. For what purpose? Why would you meet with him?

24 A. We had already conducted this interview with Sarson in  
25 Pictou. I don't recall the contents of the meeting, but I feel

1       certain we would have likely updated him as to our interview  
2       with Sarson and our impressions of him.

3       Q. Is that normal practise, Sergeant, to reveal that type of  
4       information to...

5       A. I think under the circumstances it was proper.

6       Q. Okay. So, you would have had no hesitation to keep Mr.  
7       Aronson updated on what was going on?

8       A. Within reason, yes.

9       Q. What's that mean, "within reason"?

10      A. Well, I don't really know anything that we would keep from  
11      him as the investigation proceeded since he was representing  
12      Marshall and things were starting to indicate that Marshall  
13      may have been wrongly imprisoned.

14      Q. So, your understanding is that he would be entitled to be kept  
15      aware of what was happening, what evidence was being  
16      ascertained?

17      A. Yes, I don't know of anything that we would have held back  
18      from him at that stage.

19      Q. Would you follow the same practise with other people  
20      involved, or potentially involved in this investigation, for  
21      example, Chief MacIntyre?

22      A. No, I wouldn't say so. I would...first of all, I was the junior  
23      man on the two-man team. What Staff Wheaton would have  
24      chosen to give to Inspector Scott to be relayed back to Chief  
25      MacIntyre was beyond my control and sometimes without my

1 knowledge possibly.

2 Q. It's also noted on that day that there was a "patrol to  
3 Louisbourg to interview Chant, accompanied Staff Sergeant  
4 Wheaton". That's on the 11th.

5 A. Yes.

6 Q. Do you recall that patrol?

7 A. I recall the first meeting of Maynard Chant with Staff  
8 Wheaton at the fish plant where he was employed, and he  
9 was on an assembly line, he was a cutter, I guess you would  
10 call him.

11 Q. What time of day would that be?

12 A. It was mid-afternoon and he would...as I say he was on  
13 assembly line, the fish were coming out of the ship and  
14 coming on his belt and he had to make certain slashes with  
15 his knife and pass it on to someone else and we got him off  
16 the line for just a couple of minutes and the foreman...it was  
17 obvious that we were holding up the procedure so we agreed  
18 to meet him at his home that evening.

19 Q. That evening.

20 A. I'm quite sure that was the case.

21 Q. And is it your recollection that you met him the same evening  
22 that you had seen him in the afternoon on the line?

23 A. I believe so. The statement that was taken that evening in  
24 Staff Wheaton's handwriting should show the same date. I  
25 believe it will. I haven't seen it for some time.

1 Q. Well, if you go to your own notes on the 15th, 16th, I'm sorry.  
2 You see at that day "12:30 to 8:30" and that is a day that you  
3 are patrolling to Louisbourg to interview Chant.

4 A. Yes. Okay. I'm not saying that we did take the statement on  
5 the 11th. The statement should speak for itself. The only  
6 thing I could offer on the 11th it's possible we may have gone  
7 out there to make some preliminary inquiries to find out  
8 where he worked and where he lived and that sort of thing. I  
9 recall we worked in the evening of the night that we took the  
10 statement at his home and that would be on the 16th. I have  
11 an entry I worked from 12:30 noontime until 8:30 p.m. that  
12 night and we did go to Louisbourg to interview Chant.

13 Q. Do you have Volume 17 up there in the group?

14 A. Yes, I have.

15 Q. Page 1 of that document, Sergeant. These are...these have  
16 been identified as typewritten copies of notes prepared by  
17 Frank Edwards. On your diary for the 16th it does say, I  
18 think, "Crown prosecutor re Marshall", do you see that note?

19 A. Yes.

20 Q. Do I take it from that you did, indeed, meet with Mr. Edwards  
21 on that day?

22 A. I have the time 3:10 p.m. noted there, I would say that it's  
23 either a phone call or a visit to his office, it's one or the other.

24 Q. But if you look at Mr. Edwards' typewritten copies, he's just  
25 saying that he met at his office with you, February 16th,

1 1982, you and Harry Wheaton.

2 A. Yes.

3 Q. "Were advised the following: Mitchell Bayne Sarson not  
4 impressed by him. Drug trafficker and friend of Marshall."  
5 Would that be an accurate reflection of what you would have  
6 told Edwards at that time?

7 A. I would daresay, yes.

8 Q. Do I take it from what you said earlier that you were  
9 believing what Sarson told you in Pictou but you still have, I  
10 take it from this, some reservations about him, you're not  
11 impressed by him.

12 A. Well, again, these are Frank Edwards' notes, not my own. His  
13 interpretation of what Wheaton and I told him. I was not  
14 impressed by Sarson's drug involvement, however, I did put  
15 some considerable belief in what he was saying about Ebsary.

16 Q. You also indicate there...it's indicated that "Ebsary's wife had  
17 been interviewed, that you learned that Pratico had severe  
18 psychological problems. " I think the record would show  
19 Pratico had not been interviewed as yet. How would you  
20 have learned that he had severe psychological problems?

21 A. If it was not in the transcript, it obviously came from the  
22 Cape Breton Hospital records.

23 Q. Would you have had access to those records?

24 A. At some time through the investigation, yes.

25 Q. Okay.

SGT. CARROLL, EXAM. BY MR. MacDONALD

- 1 A. The fact that he had been a patient there and the nature of  
2 his...I'm not sure when Pratico became a patient there, but I  
3 would say Staff Wheaton had made those inquiries.
- 4 Q Did you know Pratico?
- 5 A. No, sir.
- 6 Q And then it says finally you're going to interview Chant that  
7 evening. And that, indeed, is what happened, isn't it?
- 8 A. I believe so, yes. The earlier trip was no doubt to try and  
9 pinpoint where he worked and where he lives.
- 10 Q That interview with Chant, the typewritten copy of it is  
11 contained on page 47 of Volume 34, Sergeant. Do you  
12 remember that...
- 13 A. I'm sorry, I have Volume 17. What was that volume...
- 14 Q 34, page 47. Do you remember that meeting?
- 15 A. Yes, I do, very well.
- 16 Q You don't need any notes to...you at least recall some of that  
17 do you?
- 18 A. Yes, it was quite a surprise to hear his opening comments.
- 19 Q What was his opening comment to you?
- 20 A. He said he was "Glad to see us" and that he had been holding  
21 a burden in his heart or his mind for some time and he was  
22 glad to have this opportunity to get it off his...of his mind.
- 23 Q Who was present?
- 24 A. Staff Wheaton, myself, Chant, his father and mother from  
25 time to time, and I believe his wife with a new...I think a

1 small child.

2 Q. Where was the meeting held?

3 A. Held in the front room of their...what I would call a living  
4 room, front room of their home, small country home, which is  
5 also an undertaking parlour in the community of Louisbourg.

6 Q. That's the father's home then.

7 A. Yes. As described by Staff Wheaton, I believe, yesterday,  
8 there was a wake going on in an adjoining room, not in sight,  
9 but you could hear voices very clearly. It was very poor  
10 surroundings for the taking of a statement of that nature.

11 Q. Was Chant's mother present all the time?

12 A. I don't believe so. I think people were coming and going and  
13 sometimes they'd come to the back door by mistake and  
14 they'd have to be led in through the hallway to the other  
15 room where the wake was in progress.

16 Q. What investigation of Chant did you do before you went out  
17 to take this statement?

18 A. I'm not aware of any by myself.

19 Q. Do you know if Wheaton took any?

20 A. I feel he probably did, but I don't know that.

21 Q. Did you review or had you reviewed by this time the  
22 statements that Chant had given to the Sydney Police in  
23 1971?

24 A. Either the statements, if he had given them...given them at  
25 that time we would have reviewed them. We certainly would

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1 have been aware of his evidence at the trial.

2 Q. So, did he start out that night by saying "I'm so glad to see  
3 you I've got something to tell you."?

4 A. Yes, almost in those words. He mentioned he was a born-  
5 again Christian and that he had mentioned this to his pastor,  
6 he referred to him as his pastor, some time ago and I believe  
7 approximately two years prior to this conversation on this  
8 night. I think he also mentioned he had discussed it with his  
9 mother. I believe the conversation went as I have just  
10 quoted, that he was glad that we were there. We fully  
11 expected that he was going to say that the evidence he gave  
12 in 1971 at the trial was still the same and he had nothing to  
13 change or nothing more to say, but that wasn't the case.

14 Q. Was the practise followed, that we've already described, there  
15 was a discussion with him, a narrative, and then the taking of  
16 a statement?

17 A. It was, but it was extremely brief. For instance, it would be  
18 something along the line, "Mr. Chant or Maynard, we're here  
19 tonight to discuss with you an old case in 1971 the Marshall  
20 murder trial and to see what you might have to say about  
21 that." And that's as far as we got, he came out with this  
22 outburst of details.

23 MR. CHAIRMAN

24 This would be an appropriate time to adjourn.

25 INQUIRY ADJOURNED - 3:58 p.m. TO FEB. 1, 1988

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.

  
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Margaret E. Graham

DATED THIS 28th day of January , 1988, at Dartmouth,  
Nova Scotia