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

**Volume 48**

Held: February 1, 1988, in the Imperial Room, Lord Nelson Hotel,  
Halifax, Nova Scotia

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

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

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:  
Counsel for Donald Marshall, Jr.

X Mr. Michael G. Whalley, Q.C.: Counsel for City of Sydney

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

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

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

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

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

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

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

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

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

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

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SGT. CARROLL, EXAM. BY MR. MacDONALD

1 FEBRUARY 1, 1988 - 9:30 a.m.

2 MR. CHAIRMAN

3 Mr. MacDonald?

4 MR. MACDONALD

5 Thank you, My Lord.

6  
7 JAMES CARROLL, still sworn, testified as follows:

8  
9 EXAMINATION BY MR. G. MACDONALD, Cont'd.

10  
11 Q. When we finished last week, Sergeant, we were talking, I  
12 think, about the first statement that was taken from Maynard  
13 Chant in Louisbourg on February the 16th of 1982. And  
14 that's referred to on page three of your diary. Would you  
15 turn to Volume 34, you have it there, on page 47. You told  
16 me last day that you remembered this interview, and  
17 particularly it was very startling the way it started out, is  
18 that correct?

19 A. Yes, that's correct.

20 Q. Do you remember who actually wrote the statement that was  
21 taken from Mr. Chant?

22 A. I'm quite sure it was Staff Sgt. Wheaton.

23 Q. If you look at page 48, the only name that appears is your  
24 own, and unfortunately, we've never seen the original. Your  
25 recollection is that Wheaton took the statement.

1 A. Yes, that's correct.

2 Q. Does it contain everything of substance that was said that  
3 night? Take a moment to look through it, if you want.

4 A. No, it does not.

5 Q. It does not?

6 A. No.

7 Q. Did you read it that night, or shortly thereafter, these  
8 statements?

9 A. Yes. If my name is there, it means I signed it as a witness.

10 Q. And in signing it, what would your intention be?

11 A. That I was present when the thing was recorded, the details  
12 were recorded.

13 Q. And would it not also be a statement, in effect, by you that it  
14 was an accurate statement?

15 A. Yes.

16 Q. Was it not the practice to try and take down everything of  
17 substance that was said?

18 A. Yes, that's true, but as I mentioned before, in this particular  
19 situation, the circumstances were quite trying for the taking  
20 of a statement as important as this was.

21 Q. I'm sorry, I missed that.

22 A. I said as I mentioned earlier, the circumstances surrounding  
23 the taking of this statement were such that it was not a good  
24 situation for taking a statement as important as this one was.

25 Q. Why was that?

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 A. Well, I mentioned the wake that was going on, the  
2 undertaking-parlour atmosphere.

3 Q. This was a very important statement to you.

4 A. Yes.

5 Q. What of substance was said that night that's not in the  
6 statement?

7 A. Detective MacIntyre was definitely identified by Chant in the  
8 first meeting. I recall very clearly him saying that it was  
9 mentioned, "you could go to penitentiary for perjury," if he  
10 didn't tell...

11 Q. Who? Chant could go to...

12 A. Chant could go.

13 Q. Yes?

14 A. And his expression...

15 COMMISSIONER EVANS

16 I'm having a little difficulty hearing this morning.

17 MR. MACDONALD

18 Okay, I'm sorry, My Lord.

19 BY MR. MACDONALD

20 Q. You speak quite softly, Sgt. Carroll, perhaps if you would try  
21 to make an effort to speak a little louder.

22 MR. CHAIRMAN

23 Did I understand you to say that Detective MacIntyre was  
24 identified by Chant during the first meeting?

25 SGT. CARROLL

1 Yes, he was, My Lord.

2 MR. CHAIRMAN

3 And then you mentioned the word "perjury." What did you  
4 say?

5 SGT. CARROLL

6 Chant mentioned that MacIntyre told him he could go to  
7 the penitentiary for perjury if he did not tell the truth and his  
8 further explanation was that he didn't even know what perjury  
9 meant at that time of his life.

10 MR. CHAIRMAN

11 Would you have considered that to be a fairly significant  
12 comment or comments?

13 SGT. CARROLL

14 To a youth his age, yes, My Lord.

15 MR. CHAIRMAN

16 Well, what's your explanation again for it not being included  
17 in the statement?

18 SGT. CARROLL

19 Again, I was not the author of the statement. I don't know  
20 why Staff Wheaton did not include it.

21 COMMISSIONER EVANS

22 Did you put it in a book, your notebook?

23 SGT. CARROLL

24 No, sir.

25 COMMISSIONER EVANS

1       You were there.

2       BY MR. MACDONALD

3       Q. That would be a very important statement that was made to  
4       you that night by Mr. Chant.

5       A. Yes, it was.

6       Q. And, in particular, his allegation that Detective MacIntyre had  
7       coerced him or threatened him. What did he say MacIntyre  
8       did?

9       A. Well, I think probably the word "pressure" was likely used.

10      Q. Pressured him to do what?

11      A. To present the story that he eventually gave.

12      Q. Was it suggested that MacIntyre told him what his evidence  
13      should be?

14      A. It was just a repeated series of interviews that resulted in  
15      Chant's eventual testimony.

16      Q. And we're talking, as I understand it, about the threat of  
17      perjury at the time he gave his statement on June 4th, 1971.  
18      Is that what we're talking about?

19      A. I would say so, yes.

20      Q. And he mentioned he was pressured at that time by Sgt.  
21      MacIntyre?

22      A. Yes.

23      Q. To do what? Pressured to do what?

24      A. To tell what MacIntyre felt he knew from other witnesses.

25      Q. Did you have the impression then that Chant was telling you

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 that MacIntyre put the words in his mouth?

2 A. Yes, more or less.

3 MR. PUGSLEY

4 Mr. MacDonald is putting words in the witness's mouth.

5 MR. CHAIRMAN

6 There's a bit of leading going on there.

7 MR. MACDONALD

8 There's no doubt it's leading, My Lord. I'm trying to get the  
9 story.

10 MR. CHAIRMAN

11 I realize that but that's, the Commission counsel are in a  
12 somewhat different position, Mr. Pugsley, than other counsel, in  
13 that they have to examine and cross-examine. Hopefully, if  
14 there's a thorough and complete coverage of all the evidence,  
15 there would be no cross-examination at all. But that utopian  
16 position has not yet been reached, but we're getting close to it.

17 MR. PUGSLEY

18 Thank you, My Lord.

19 MR. CHAIRMAN

20 I wanted, if you could go back again, if I may, you were  
21 looking at the statement, Sgt. Carroll, the very end, it says, "I  
22 cannot explain what made me lie about this other than I was  
23 young and scared at the time." That's the only reference in that  
24 statement that I can see, but I may be missing something, where  
25 there is any attempted explanation by Chant as to why he gave



1 Det. Sgt. MacIntyre a statement which he subsequently said was  
2 not correct. Is that so?

3 SGT. CARROLL

4 That's all that's in the statement, My Lord, yes.

5 BY MR. MACDONALD

6 Q. Just to highlight that, I'm sorry, there is absolutely no  
7 mention in the statement that we have of any police  
8 pressure, is there?

9 A. Other than the last line that he was young and scared at the  
10 time.

11 Q. Yeah, but there is no mention of police pressure per se.

12 A. No.

13 Q. There's no mention of MacIntyre at all.

14 A. That's correct.

15 Q. There's no mention of Urquhart.

16 A. No.

17 Q. There's no mention of perjury.

18 A. No.

19 Q. And there's no mention of banging on the table, intimidation  
20 of any kind.

21 A. No, sir.

22 Q. Now those would be significant allegations that Chant had  
23 made.

24 A. Yes.

25 Q. Can you give us any explanation then why Wheaton would

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 not have taken them down.

2 A. No, I can't. I would have included them if I had been taking  
3 the statement.

4 Q. Did you discuss it with Wheaton later and say, "Why didn't  
5 you put it down?"

6 A. No, sir.

7 COMMISSIONER EVANS

8 Do I understand that when somebody else is taking a  
9 statement and you're there as a witness to hear what is said, that  
10 you make no contribution? You don't add anything to it if you  
11 feel it's important?

12 SGT. CARROLL

13 Not in the written part, My Lord, no. It may be strictly  
14 verbal.

15 COMMISSIONER EVANS

16 Well, where do you put the verbal part that's important? You  
17 don't make any entry in your notebook.

18 SGT. CARROLL

19 If I raised an issue that was important, I would expect  
20 Wheaton to record the question and the subsequent answer from  
21 Chant.

22 COMMISSIONER EVANS

23 But I take it that when you sign as a witness that you are  
24 indicating that, or are you indicating that everything of  
25 importance that was said by the witness has been recorded?

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 SGT. CARROLL

2 Not necessarily, My Lord. It would indicate to me that I was  
3 signing for what was actually on paper, having read it and signed  
4 it.

5 COMMISSIONER EVANS

6 Well, a statement seems to have limited use then if you're not  
7 putting down what's important, and you're sitting there and not  
8 adding to that statement when it's presented to you. I don't see  
9 much point in having you there.

10 SGT. CARROLL

11 Well, we were working together as a team on the  
12 investigation and I actually had very little input in the  
13 interrogation of Chant. He did most of the talking himself.

14 BY MR. MACDONALD

15 Q I'll summarize, if I can, but my understanding of Staff Sgt.  
16 Wheaton's evidence, Sergeant, is that his practice is to sit  
17 down with a person to discuss the substance of what the  
18 person is going to say and then he says, "Now I'll take a  
19 statement."

20 A. That's correct, yes.

21 Q. And if in the taking of the statement there is something  
22 significant that is missed, he will then go into a question and  
23 answer mode.

24 A. Yes.

25 Q. Was that your understanding of the way he proceeded?

1 A. Yes, it was

2 Q. Well, wouldn't it just be natural then in this circumstance that  
3 at the conclusion of the narrative given here by Chant, there  
4 would be questions and answers, was there any mention of  
5 perjury, was there any police intimidation, was there any  
6 pounding on the table, something of that nature?

7 A. Yes, that would be expected.

8 Q. If what Chant was telling you that night is correct, in effect,  
9 you were hearing someone say that the police coerced them  
10 to give false testimony, isn't that correct?

11 A. Yes.

12 Q. And wouldn't that be a crime?

13 A. Yes.

14 Q. So what you're being told that night is evidence that would  
15 lead you and Staff Wheaton, two experienced investigators, to  
16 conclude there was a crime and it doesn't even get in the  
17 statement.

18 A. That's the statement he took. I can't explain it any further.

19 Q. Tell me...Sorry, My Lord, your turn.

20 MR. CHAIRMAN

21 I shouldn't interrupt, but it is, I think, worthy of some  
22 explanation as well as to why the only mention of any  
23 intimidation, if that's the word, is that Chant, according to this  
24 statement, said "I remember once the crown prosecutor really was  
25 mad at me." Now that, too...

1 MR. BRODERICK

2 My Lord, if I may, I would like, it is open to interpretation,  
3 but I would suggest those two statements that have already been  
4 looked at are not the only perhaps hint of intimidation. If you'll  
5 look on that statement, page 47, the second last paragraph, it says,  
6 "They told me that another guy had seen me in the park and I had  
7 to see it. So that's what I told them." I would suggest that it  
8 would take more than them saying you had to see a murder and  
9 perhaps that's a hint of things to come in that statement there.

10 MR. CHAIRMAN

11 Well, it may be a hint of things to come, but they didn't come.  
12 That's my concern.

13 MR. BRODERICK

14 They didn't come...

15 MR. CHAIRMAN

16 Yeah. That's open to all sorts of interpretation. That may be  
17 just very proper and appropriate questioning by a police officer  
18 who has reason to believe that a witness is not being forthright.  
19 And it can be open to any interpretation that you place on it,  
20 what you say is indeed of things to come. The things to come  
21 being the statements that are not there that this witness is telling  
22 us about.

23 MR. BRODERICK

24 I think when I said indicative of things to come there, My  
25 Lord, what I was referring to was that question may have been

1 indicative of or referring to the pounding of the desk and the  
2 threats that just weren't gotten into at that time. I'm not saying  
3 that that excuse is them not being in the statement. I'm just  
4 saying that that could form part of the framework and within  
5 that...

6 MR. CHAIRMAN

7 But then he goes on in the next sentence, "I really felt  
8 Marshall did it." All right, carry on, Mr. MacDonald.

9 MR. MACDONALD.

10 Thank you, My Lord.

11 BY MR. MACDONALD.

12 Q. I understand the statement here, Sgt. Wheaton...Or Sgt.  
13 Carroll, page 47, the third paragraph. They're talking, first of  
14 all, about the initial statement given by Mr. Chant, and you  
15 see where he says, "The police interviewed me that night and  
16 I repeated what Marshall had told me. I don't know why I  
17 had to say something..." And so on. Now is that an accurate  
18 reflection of what was said by Mr. Chant that night?

19 A. Yes, I would say so.

20 Q. There was no pressure by the police on Chant to give the first  
21 statement that he gave on May the 30th of 1971.

22 A. I think their interpretation of what he said when he said "I  
23 saw it all," was the beginning of getting off track.

24 Q. Yeah, but he says here that he told the police what Marshall  
25 told them.

1 A. Yes.

2 Q. And there is no reference in that statement either that any  
3 pressure of any kind was put on him by the Sydney police.

4 A. That's correct.

5 Q. Is that accurate? Is there anything missing there?

6 A. Well, again, this is the second half of the interview when  
7 Wheaton started to write the statement. It is accounting for  
8 some of the narrative before this written part.

9 Q. Well, what does not mean? Is this an accurate reflection of  
10 what Chant said or meant that night as you understood it, that  
11 in the first statement, he merely told, for whatever reason, he  
12 told the police what Marshall told him.

13 A. I think I misunderstand you. You're saying that this only  
14 accounts for what Marshall told him on the night in question?

15 Q. I'm sorry, on May the 30th of '71 when Chant gave his first  
16 statement, he lied to the police. That's correct, isn't it?

17 A. Yes.

18 Q. And didn't he tell you that all he did that time was tell the  
19 police what Marshall had told him.

20 A. Yes.

21 Q. He didn't say that the police pressured him in any way.  
22 There was no mention of perjury. There was no pounding on  
23 the table, nothing of that sort.

24 A. That's on the 30th of May?

25 Q. Yes.

1 A. Yes.

2 Q. So he lied to the police, for whatever reason, and told them  
3 what Marshall told them. Yes?

4 A. Yes.

5 Q. And then on June the 4th, 1971, he gave another statement  
6 which says in here, again on page 47 of Volume 34:

7 I was interviewed by two detectives

8 [That's in the fourth paragraph, Sergeant].

9 My mother was also there.

10 Is that an accurate statement of what was told to you that  
11 night?

12 A. No, I wouldn't say so.

13 Q. What is wrong with that part?

14 A. Are you saying it's inaccurate or accurate?

15 Q. Is it accurate?

16 A. I would say that he mentioned that, yes.

17 Q. That he was interviewed by two detectives and his mother  
18 was there.

19 A. Yes.

20 Q. In the second statement, "I told the detec..."

21 A. Perhaps I could just interrupt for a moment. In Chant's  
22 recollection, his reference to being interviewed and with  
23 speaking with Mrs. Chant, when the Sydney Police arrived at  
24 the family home in Louisbourg, the parents of Chant were  
25



1 very trusting people. The detectives, whoever they might be,  
2 would come to the door and ask for the son and they would  
3 say, "Yes, certainly, you can talk to him here or wherever you  
4 want," and they would leave with him. They wouldn't insist  
5 on being present. They were very pro police and very  
6 trusting people.

7 Q. Fine. Were you under the impression that on June the 4th,  
8 1971 the City Police, Sydney City Police had come to Chant's  
9 home to take him away somewhere?

10 A. I know there was discussion about them taking him away  
11 alone on one occasion, at least.

12 Q. But at least in the statement that we have here, it's indicated  
13 that when the statement was given by Chant on June the 4th,  
14 1972, the second statement...

15 A. Is that the one at the Louisbourg Town Hall?

16 Q. Yes.

17 A. Yes.

18 Q. "My mother was also there."

19 A. She went with him to the town hall.

20 Q. And that's what you were told on February 16th, 1982.

21 A. Yes, I believe so.

22 Q. All right. "In the second statement, I told the police I saw  
23 the murder. They told me that another guy had seen me in  
24 the park and I had to see it. So that's what I told them."

25 A. Yes.

1 Q. And the last paragraph of the statement on page 48 is, as the  
2 Chief Justice has pointed out, he also says, "I cannot explain  
3 what made me lie about this other than I was young and  
4 scared at the time." And did he say that?

5 A. Yes.

6 Q. Now I put it to you, and I'm having a little difficulty  
7 understanding how he could say that, that he doesn't, can't  
8 give any explanation of what made him lie, and at the same  
9 time have told you that he lied because he was under  
10 pressure from the Sydney Police. They threatened him with  
11 perjury and they intimidated him. Those two things I have  
12 difficulty living with. Can you offer any explanation for this?

13 A. The only thing I can say about the nonexistence of the  
14 question and answers, which should normally follow that  
15 written part there, would be that Wheaton and I were  
16 anxious to get out of there and discussed where we were  
17 going from that point on and that further, certainly further  
18 interviews could be arranged without any problem. There's  
19 obviously details missing there that should be in. Again, I'm  
20 not the author of the statement, so I can't make excuses for  
21 someone else.

22 Q. But would you accept this? That even if the statement  
23 contained the parts that you say are missing, that is, that he  
24 lied because of police pressure. He lied because of a threat of  
25 perjury, that that would be inconsistent with the final

1 paragraph that says, "I can't explain why I lied." So at the  
2 very most, all you can do is make this statement ambiguous.

3 A. Are you asking me a question?

4 Q. Yes.

5 A. Again, all I can say is that the details that I would have  
6 included are not there.

7 Q. When you left there that night, did you believe Chant?

8 A. Yes.

9 Q. What part did you believe?

10 A. That he had been told repeatedly by the investigating police  
11 force that he must have seen the incident happen because  
12 someone else had told him, that being John Pratico, I don't  
13 think he was named at the time, and that the eventual  
14 evidence he gave in the trial was as a result of being told  
15 repeatedly that he had to have seen the murder take place.

16 Q. And why would you believe that part and not the part that  
17 says, "I can't explain what made me lie." What's the  
18 difference?

19 A. There was conversation in which Chant said that MacIntyre  
20 told him he could go to jail, he could do time for perjury if he  
21 didn't tell the truth. And as Chant says, "I didn't even know  
22 what perjury was at that age," and he was 14 or 15, whatever  
23 he was then.

24 Q. At this stage then, as I understand it now, sticking only with  
25 Chant, you have his statement on May the 30th, 1971 where

1 he lied. Yes?

2 A. Yes.

3 Q. You have his statement of June the 4th, 1971, where he lied.  
4 Yes?

5 A. That's the Louisbourg Town Hall statement?

6 Q. Yes.

7 A. Yes.

8 Q. And you have the evidence he gave at the preliminary  
9 hearing where he lied.

10 A. Yes.

11 Q. And you have the evidence at the trial where he lied. Yes?

12 A. Yes.

13 Q. And you even have this statement that he gave you that night  
14 that says, "I can't explain what made me lie," and you don't  
15 accept that. Why do you leave there believing this man is  
16 telling you the truth?

17 A. As I recall, we had already spoken to Sarson in Pictou.

18 Q. Yes, you had, that's correct.

19 A. The allegations made by him and the information given to us  
20 seemed consistent with what Chant had been telling us.

21 9:56 a.m. \*

22 Q. Do you recall going back to Sydney that night from  
23 Louisbourg?

24 A. Yes.

25 Q. And you and Wheaton obviously must have had a discussion

1 about what had just taken place?

2 A. That's correct, yes.

3 Q. Tell me what you recall about that?

4 A. I couldn't give it to you word for word but I would say that it  
5 would be something to the effect that much more  
6 investigation would be necessary and that certainly Pratico  
7 would be the next person to be interviewed, and the other  
8 crucial witnesses to see if they supported Chant's comments.

9 Q. Did you...were you under the impression that Staff Wheaton  
10 also believed Chant?

11 A. Yes.

12 Q. And am I correct in saying that what you believed is that  
13 Chant lied when he gave his second statement and he lied at  
14 trial because of pressure applied to him by the Sydney  
15 Police?

16 A. Yes, that's correct.

17 Q. If we go back to your notebook, Sergeant, that's Exhibit 104,  
18 My Lord. On the 17th of February you patrolled to Moncton, I  
19 take it you were just traveling to Moncton to get ready to go  
20 and visit Mr. Marshall, is that...

21 MR. CHAIRMAN

22 Are you through with the Chant statement now? Are you  
23 moving on?

24 MR. MacDONALD

25 Just one question I wanted to put to Sergeant Carroll before I

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 forget. If you look at paragraph 3 of that statement, Sergeant, it  
2 says, the fourth line, this is as I interpret it Chant referring to the  
3 first time he met Marshall on the night of the murder. He said, "I  
4 thought his actions were quite suspicious at the time." Which  
5 would indicate to me that he must have had a suspicion that  
6 Marshall had committed the murder the first time he met him. Is  
7 that...did he convey that impression to you? Did he say it during  
8 the...

SGT. CARROLL

10 Not exactly, My Lord. As I recall it his description was of  
11 Marshall as being very excited and I think he exposed his left  
12 wrist and showed the wound that he had, the superficial wound  
13 on his forearm and Chant was just overly suspicious or naturally  
14 suspicious of those circumstances. But beyond that he didn't say  
15 that he was convinced Marshall had actually stabbed Seale, no, no.

MR. CHAIRMAN

17 But who was he suspicious of?

SGT. CARROLL

19 Marshall.

MR. CHAIRMAN

21 Marshall. All right. Okay. Thank-you.

MR. MacDONALD

23 Q. The reference in your notebook to February the 18th of 1982  
24 is...my copy is a little black. I take it it's highlighted in your  
25 original notebook, is that correct?

1 A. Yes, it is.

2 Q. Would you read that into the record so we'll all see what it  
3 says?

4 A. Okay. The date starts at the top of the page "82-02-18" and  
5 the shift worked that day was 8:30 a.m. to 7:00 p.m. and,  
6 again, as I mentioned the police car number is 308, it's in the  
7 right-hand margin.

8  
9 To Dorchester pen, 10:18 a.m., interview  
10 with Donald Marshall, Jr., 11:30 am, the  
11 name Mike Gamiel, driver of vehicle from  
12 near shipyard, took Marshall in car after  
13 assault, statement commenced, not  
14 finished.

15 The name, "Dale Cross," I believe he's with the warden's office  
16 there, "returned to Sydney 7:00 p.m.".

17 Q. Do you remember that visit?

18 A. Yes, I do. It was my first visit to Dorchester.

19 Q. Had you ever met Donald Marshall, Jr., prior to this visit?

20 A. Never.

21 Q. What did you and Sergeant Wheaton do in preparation for  
22 this interview to determine the nature of the person you're  
23 going to interview and so on?

24 A. I did basically nothing. I was continuing other investigations.  
25 Any background work would have been done by Staff  
Wheaton at that stage.

Q. Did he tell you what he did, and it's a long drive to Moncton,

1           what seven hours or something, seven hours?

2       A. We discussed the evidence that we had reviewed so far and  
3       the interview with Chant and Sarson, Marshall's background  
4       and obviously parts of the transcript from the trial.

5       Q. You tell us as best you can what you were expecting when  
6       you got there? What type of a person?

7       A. That's a difficult question. I guess we expected someone that  
8       would be trying to convince us of their innocence and in an  
9       effort to be released. I can't say much more than that.

10      Q. If your suspicions were correct, or your belief at that time,  
11      and you were going to be meeting someone who had been in  
12      jail for eleven years for a crime he didn't commit.

13      A. Probably anger, I anticipated some anger from him.

14      Q. Did you suspect it would a person who would tell you  
15      virtually anything to get out there?

16      A. I think we were aware that we might not be getting a full,  
17      truthful details.

18      Q. Do you recall arriving at the prison?

19      A. Yes, I do. It's was quite a colourful incident.

20      Q. Tell us as best you can recall then, Sergeant, what happened  
21      when you went there?

22      A. We arrived at the front door or the entrance to the  
23      penitentiary and rang the bell. We were expecting some of  
24      the prison staff to come and let us in. Instead the door  
25      opened and about twelve or fifteen young teenagers came out



1 in leg irons and handcuffs and they were in the process of  
2 being transferred to Springhill, the minimum security  
3 institution because they had been in the Dorchester  
4 Penitentiary during the night and a rumble or an outbreak of  
5 violence had occurred there and they had been a witness, as  
6 many others had been, to this particular incident. And they  
7 looked like just young teenagers scared to death. They were  
8 were visibly shaken from what they had seen through the  
9 night. So that was our first greeting. So, they rode on a bus  
10 and we were allowed to go in after they all came out. We  
11 were checked through security and met with, I believe that's  
12 the name, Dale Cross, that is mentioned there. I think he was  
13 the person we met in the prison, institution office to arrange  
14 the interview with Marshall in some private part of the  
15 building. We were taken to the small room about eight by  
16 eight with a table and one or two chairs. The guard brought  
17 Mr. Marshall to our room for the first time and I don't recall  
18 that he sat down. He more or less paced the room a bit. He  
19 was...it was rather an emotional-type scene because I think  
20 he was close to tears at times.

21 Q. Did you tell him why you were there?

22 A. Yes.

23 Q. Who did the...

24 A. Staff Wheaton did most of the speaking.

25 Q. What did he...was Marshall expecting you?

1 A. He said, I recall him saying he was surprised to see us there.

2 Q. What was he told as to why you were there?

3 A. It would have to be with reference to his lawyer's letter, Mr.  
4 Aronson's letter.

5 Q. Do you recall what he was told? Do you remember that?

6 A. No, I can't.

7 Q. Was he not told that you were there that you were looking  
8 into his conviction?

9 A. Oh, yes, looking into the overall case and his lawyer's letter  
10 asking for a reinvestigation or a re-examination of the  
11 situation that put him there.

12 Q. Did he have a copy of the letter, do you know?

13 A. Not to my knowledge, but I would assume that he did.

14 Q. Do you recall if he was shown a copy that day?

15 A. I don't recall.

16 Q. Was the normal Wheaton technique followed? There was a  
17 discussion, a narrative and then start to write a statement.

18 A. It was started. I believe that statement was in my hand that  
19 day.

20 Q. Exhibit 101.

21 A. Yes.

22 Q. There...

23 A. It was started... We weren't very well into the discussion  
24 when we were interrupted by a guard who came to the door  
25 and said that we were jeopardizing Mr. Marshall's safety in

1 the prison population by talking to him so soon after the  
2 rumble. That they would figure he was finking on the rest of  
3 the inmates. So, we chose to terminate the thing.

4 Q. Okay. Well, let me go back to my question. Was the normal  
5 Wheaton technique followed in that there was a discussion  
6 first, nothing being written down at all, and then...

7 A. That's true.

8 Q. ..."we're now going to take the statement."

9 A. Yes.

10 Q. Now, in the discussion what would have been discussed?

11 A. I believe Wheaton asked him about the circumstances in  
12 which he and Seale were in the park that night. I don't think  
13 that he mentioned the robbery attempt at that time. He may  
14 have, but I don't believe he did. Marshall eventually came  
15 out with something that resembled that, that there had been  
16 something more than just a casual walk through the park.

17 Q. Is it possible that Wheaton had said that to him first, made  
18 some reference about a robbery attempt having been in  
19 place?

20 A. I don't think he did. I think that he...he got around it to the  
21 point where he was waiting for Marshall to admit to it.

22 Q. How did he get that stage? That's important to what's going  
23 on here. So, I'd like you to tell us in as much detail as you  
24 can what was said by Wheaton or you before you took pen to  
25 paper.

1 A. At this late date I certainly couldn't quote it word for word,  
2 but I would suggest that it was something to the effect that

3  
4 We are reviewing the circumstances  
5 surrounding your conviction, your trial,  
6 and having talked with some other  
7 witnesses prior to coming here to see you  
8 we feel that there was something else  
9 going on in the park other than just a  
10 casual walk through the park to catch a  
11 bus.

12 But I feel quite sure in my mind that the robbery or words  
13 outlining that incident came from Marshall originally.

14 Q. Okay. But the suggestion that there was something other than  
15 a casual walk through the park may well have come from the  
16 RCMP as a result of saying, "This is what we're told by people  
17 we've seen already."

18 A. Not, I don't think we're on the same wavelength. What I'm  
19 saying is that if Wheaton suggested anything other than that,  
20 it would be to the effect that... not what he had heard from  
21 Jimmy MacNeil or anything else. It would be "Let's hear the  
22 facts of what happened on the night in question when you  
23 were in the park with Seale coming home from the dance."

24 Q. Now, what you told me a moment ago though is, and I wrote  
25 it down, that "Wheaton said something to the effect as a result  
of what we've done to date we feel that something else was  
going on in the park other than a casual walk."

A. That's correct, but nothing more than that.

1 Q. Something more than a casual walk. Was a warning given to  
2 Mr. Marshall?

3 A. I don't believe so.

4 Q. Was it your understanding at that time that Mr. Marshall and  
5 Seale may well have been involved in a robbery attempt at  
6 the park that night?

7 A. Was it my understanding, yes?

8 Q. And was it your hope to get him to tell you that that in fact  
9 was the case?

10 A. Yes, I would dare say that we anticipated he would tell us  
11 that.

12 Q. Why wouldn't you give him a warning then?

13 A. I didn't feel that the chances of prosecution after eleven years  
14 were too likely. I was more interested in hearing the truth  
15 from him than trying to obtain enough evidence to charge  
16 him again.

17 Q. Okay. Mr. Wheaton or Staff Sergeant Wheaton said that he  
18 believed a warning had been given.

19 A. The reason I say I don't believe it was is because the  
20 statement was taken in my hand and my practise is to write  
21 the warning at the top of the statement, not just...or in some  
22 cases when I read the warning from the police card I will  
23 state that police warning read from card and the time and the  
24 word "Understood" under that to indicate that I asked the  
25 accused or suspect if he understood the warning and print his

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 SGT. CARROLL

2 But there was considerable time with Mr. Cross in the  
3 warden's office before the interview started.

4 COMMISSIONER EVANS

5 What's the 11:30 refer to there? I can't read it on this black  
6 paper.

7 SGT. CARROLL

8 Q That would be the actual time he came in the office to my  
9 recollection to start the interview.

10 COMMISSIONER EVANS

11 Q To start the interview, and then you started the statement at  
12 11:34.

13 SGT. CARROLL

14 Q I can recall at least a half an hour with Mr. Cross in the  
15 Warden's office and then we were taken downstairs to a private  
16 office where the interview with Marshall took place. In my  
17 handwritten statement it starts at 11:34 but I would say  
18 approximately twenty minutes, ten to twenty minutes interview  
19 before this commenced, the handwritten statement.

20 MR. MacDONALD

21 Q And that was the normal practise of Wheaton was to talk  
22 about the thing with the witness before he actually started  
23 writing down what the statement was.

24 A. Yes, that's correct.

25 Q. Did Marshall give you any indication whether he had ever

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 mentioned to anyone else the fact that he and Seale may have  
2 been involved in something more than a casual stroll through  
3 the park?

4 A. I don't believe so. In fact, I would say no. I recall asking Mr.  
5 Marshall at some stage, either that day or possibly the second  
6 time we interviewed him as to why he had not told his  
7 lawyers or anyone about the attempted robbery and I recall  
8 his reply being something to the effect "I was in enough  
9 trouble as it was, I didn't...I didn't want to make it look any  
10 blacker."

11 Q. Had you had the impression from Donald Marshall that day  
12 that he knew about Roy Ebsary and he knew about Roy  
13 Ebsary's story that Marshall and Seale had attacked he and  
14 MacNeil?

15 A. I know that Marshall was receiving the Sydney newspapers  
16 on a weekly basis and knew about the Mugridge stabbing  
17 which Ebsary was, I believe, at that time still before the court  
18 on, still awaiting trial or sentence or something. In his  
19 statement here to me, or to Wheaton and myself, on the 18th  
20 of February '82, he refers down the lower part of the  
21 statement, "I now know as Roy Ebsary that the other fellow  
22 was taller. I don't know his name." I guess the answer to  
23 your question is "yes", he did have Ebsary identified in his  
24 mind then, from newspapers or from, maybe from Sarson's  
25 sister.

SGT. CARROLL, EXAM. BY MR. MacDONALD

- 1 Q You knew that Sarson had relayed the story to Junior  
2 Marshall, the Ebsary story.
- 3 A. Yes.
- 4 Q So he knew when you saw him, when you saw Junior  
5 Marshall in February of 1986, Sarson had already told him  
6 what Ebsary's story was.
- 7 A. Yes.
- 8 Q About an attempted robbery.
- 9 A. Yes.
- 10 Q And Wheaton was suggesting to him that something more  
11 than a casual stroll through the park had taken place that  
12 night.
- 13 A. Well, those are my words.
- 14 Q Yes, I appreciate that, but something to that effect.
- 15 A. Yes.
- 16 Q And it was after that that Junior Marshall told you and  
17 Wheaton about the attempted robbery.
- 18 A. Yes. It was very difficult for Marshall to come out with that  
19 at that time and later court appearances. He had great  
20 difficulty in actually describing...
- 21 Q He had great difficulty coming out with the story.
- 22 A. Yes.
- 23 Q It wasn't easy for him to tell you what had taken place that  
24 night in the park, was it?
- 25 A. No.



SGT. CARROLL, EXAM. BY MR. MacDONALD

1 Q. But this statement was not completed, the one you started on  
2 February the 18th in prison. And that was because, I think  
3 you said a guard came and said, "You'd better get Marshall  
4 back to his cell."

5 A. Yes.

6 Q. Did you believe Marshall was telling you the truth when you  
7 left there?

8 A. Putting the facts or details together from Chant and Sarson,  
9 and I don't know we had interviewed Jimmy MacNeil at that  
10 stage or not, I hadn't but Staff Wheaton may have.

11 Q. He had.

12 A. He had. Yes, I think we both believed Marshall at that point,  
13 that he had been involved in the alleged robbery attempt.

14 Q. And you believed he was innocent of the murder of Seale.

15 A. Yes, and the stabbing of Seale.

16 Q. Of the stabbing of Seale. Did Junior Marshall start to cry that  
17 time you were in prison?

18 A. As I say, he was quite emotional. I would say he was close to  
19 tears. I don't recall seeing any tears running down his cheeks  
20 but I would say he was close to it.

21 Q. Did you and Staff Wheaton discuss this evidence on your trip  
22 back to Sydney?

23 A. Oh, yes, undoubtedly.

24 Q. And at that stage, from February the 18th of '82, is it fair to  
25 say that both you and he were of the impression that Junior

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 Marshall was innocent of the murder of Sandy Seale?

2 A. I think that would be a fair statement, yes.

3 Q. And that he was in prison because Mr. Chant had lied for the  
4 reasons we've already discussed.

5 A. And Pratico.

6 Q. And Pratico.

7 A. Yes.

8 Q. Let's go back to your notebook then, Sergeant. There's notes  
9 of 82-02-19, February the 19th. What are they saying?

10 A. "Office," this would be the beginning of the shift, "BCA," which  
11 represents a fraud case I was working on. "Documents to Art  
12 Mullen," who was the lawyer representing the accused in that  
13 case, a lawyer in Sydney. "Inquiries re Marshall file at  
14 Membertou," Membertou Reserve in Sydney, "Re Gordon Joe."

15 Q. Did that have anything to do with the Donald Marshall case?

16 A. Yes.

17 Q. Who is Gordon Joe?

18 A. I believe Gordon Joe was a cousin of Donald Marshall's. This  
19 is clarified later on in another page, four or five pages down.

20 Q. We'll come to it then. The note that you made during your  
21 visit to prison about Mike Gamiel?

22 A. Yes.

23 Q. That was the supposed driver of the car that picked Junior  
24 Marshall and Chant up, is it, and took them back to the  
25 scene?

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 A. I believe so.

2 Q. What attempts did you make to find him?

3 A. I personally made no attempt. Staff Wheaton was aware of  
4 that detail and I did nothing on it.

5 Q. On the 19th as well, of February, Staff Wheaton visited the  
6 Cape Breton Hospital. The notes of that are found in Volume  
7 34 at page 49. Were you aware that Staff Wheaton was going  
8 to visit the psychiatrist who had looked after John Pratico?

9 A. Yes. I also believe I was present when that was taken,  
10 although my name does not appear on the typewritten... I  
11 recall going there on one occasion with Staff Wheaton and  
12 meeting with Ann MacLeod, who is in charge of records, and I  
13 met Dr. Mian. I'm not saying this was the interview but I was  
14 there on one occasion with him.

15 Q. As a result of this visit, was it your impression or either  
16 having been there or learned about it from Staff Wheaton,  
17 was it your impression that John Pratico would not be a  
18 reliable witness?

19 A. Yes.

20 Q. The next note in your diary, is it February the 22nd?

21 A. Yes, it is.

22 Q. That is the office interview with Mr. Ebsary?

23 A. Yes.

24 Q. Do you recall that?

25 A. Yes, very vividly.

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 Q Tell us then what you recall about it, please?

2 A. Mr. Ebsary came to our office. I don't know by what means.  
3 He may have been picked up by one of our members or he  
4 may have come up by taxi, I'm not sure. Our office is located  
5 on the second storey, second level of our building, and a  
6 reasonably steep staircase. He came there with a cane and  
7 was very short of breath when he arrived on the second  
8 floor. Wheaton and myself escorted him into my office, which  
9 is a very small office about eight by ten, and we were all  
10 seated, Ebsary sitting next to the door, and I was at a desk  
11 making notes. I took no part in the interview at all that I can  
12 recall. Wheaton and Ebsary began the discussion, which was  
13 quite colourful and touched on many subjects--religion,  
14 Ebsary's naval career, his religious background, his title as  
15 Reverend, of Reverend. They eventually touched on the  
16 accusation of the stabbing, which he denied. And towards the  
17 end of the interview, I can't give you exact times on that, I  
18 don't believe. Perhaps it is here in my book. Yes,  
19 approximately 1:41 p.m., he was driven home. But just prior  
20 to that time, he said that he wasn't feeling well and was  
21 taking a fair amount of medication for various ailments and  
22 wanted to leave. So it terminated the interview.

23 Q. Is this the first time you had met him?

24 A. Yes.

25 Q. Had you done any background work to determine the

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 character that you were going to see here?

2 A. Not me, personally, but I was aware of Staff Wheaton's  
3 inquiries.

4 Q. At that time, had he been, had the Mugridge matter been  
5 dealt with, the Mugridge stabbing?

6 A. I think that comes up in another page, but just from memory,  
7 I believe Ebsary had been charged and found guilty and  
8 awaiting sentence. I know there was later a retrial or an  
9 appeal and the case was dismissed. But at this stage, I think  
10 he was, I think he was charged and awaiting trial or awaiting  
11 sentence.

12 Q. By this time, the press were onto the story, weren't they?  
13 That you and Wheaton were doing a reinvestigation?

14 A. I'm not really sure at what date the press started calling  
15 looking for details. Ian MacNeil of the Cape Breton Post, now  
16 retired, he was most anxious to get some details from Frank  
17 Edwards. There was some street talk, of course.

18 Q. On page one of Volume 17, there's a notation of February 21,  
19 1982. 17 are the notes of Frank Edwards, My Lord, page one.  
20 Do you see that note, Sgt. Carroll?

21 A. Yes, I do.

22 Q. And it's noted on the very bottom of page one that you were  
23 present, although you didn't take part in the meeting, that  
24 you were updating your notebook only. Do you see that note?

25 A. Yes.

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1 Q. But do you recall being in Frank Edwards' office and  
2 discussing the fact that the press, and particularly Parker  
3 Donham, was digging into this case?

4 A. I would have to challenge that because according to my  
5 notebook, the 20th and 21st of February were days of "RTO,"  
6 regular time off, which indicates to be Saturday and Sunday.  
7 And he has on the 21st of February, "Discussed facts..." Well,  
8 the notation at the bottom of the page. I'd have to challenge  
9 that date.

10 Q. Do you recall being aware of the press interest in the fact that  
11 a reinvestigation was being carried out?

12 A. Oh, yes, very much so.

13 Q. Did you have any discussions with any members of the press?

14 A. No, I was not in charge of the investigation.

15 Q. And you did not discuss it with Parker Donham...

16 A. No.

17 Q. Or Ian MacNeil or any of those people.

18 A. Well, I have to change that in that I did interview Ian  
19 MacNeil as a result of something that happened in the Sydney  
20 courthouse building concerning Ebsary. Perhaps you're aware  
21 of that and maybe not.

22 Q. Yes, and we'll come to that. That's in your notes.

23 A. But as relating anything to Ian MacNeil for a press release, no.

24 Q. There was no discussions with you with members of the press  
25 saying this is what's happening, we've interviewed Marshall,

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1 we've interviewed Chant, and so on.

2 A. No, sir.

3 Q. Okay, back to your notes of February the 22nd. After Ebsary  
4 left at 1:41, you patrolled to Membertou to located Donald  
5 Gordon Joe. That's the fellow you were looking for before.

6 A. Yes.

7 Q. There's no indication whether you found him or not.

8 A. No, I did not. Again, it comes up on a third page, probably a  
9 couple of weeks down the road.

10 Q. Okay, we'll come to that then. Then at 4:45, you were called  
11 to go down to Ebsary's home.

12 A. Yes, I was.

13 Q. Did Wheaton tell you of the call he had received from...

14 A. I was there when the call came in.

15 Q. Oh, you were there.

16 A. Yes.

17 Q. And did Staff Wheaton, were you in the room when the call  
18 was being taken?

19 A. I was close enough to hear the conversation.

20 Q. Oh, I see.

21 A. One-sided conversation.

22 Q. Okay. Look at page one of Volume 34. These are typewritten  
23 extracts of Staff Wheaton's notes, and do you see the  
24 February 22nd note at the bottom?

25 A. Yes.

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1 Q. And then there is a recording of what apparently was said on  
2 the telephone. Have you seen that before?

3 A. I believe I saw it in the police report to Halifax.

4 Q. And as a result of that call, I understand Ebsary said he  
5 wanted to see you.

6 A. That's correct.

7 Q. He liked you better than Wheaton, did he?

8 A. Obviously.

9 Q. Do you recall that visit down to his house?

10 A. Yes, again, it was quite a colourful situation.

11 Q. Tell us about that.

12 A. I arrived there with notebook in hand and pen in the other  
13 and found Ebsary was entertaining a drunk in the kitchen. So  
14 I, the house was very small, a downstairs apartment with a  
15 livingroom, bathroom off the kitchen and a cot in the kitchen  
16 and that was it. The livingroom had a T.V. and a typewriter  
17 with many, many pages of a diary that he used to keep, a  
18 daily diary. He was pretty well under the weather when I  
19 arrived and the fellow in the kitchen was worse. So I tried to  
20 get him off in a separate room where I could see what he had  
21 in mind, of what he might say, but it was a lost cause. He was  
22 shouting back and forth to the drunk in the kitchen and it  
23 was hard to get him to concentrate. So I did make some notes  
24 on what he said, which are indicated in my, or recorded in my  
25 book.



SGT. CARROLL, EXAM. BY MR. MacDONALD

1 Q. What do they, help us and read those into the record.

2 A. Okay.

3 Call from Ebsary at 4:45 p.m. to Staff Sgt.  
4 Wheaton. Patrolled to 68 Falmouth Street.  
5 Interviewed Roy Ebsary. Laughing,  
6 smiling, shouted to drunk in kitchen. Said  
7 it was self defense. Small penknife was  
8 used. He said he doesn't have it now. He  
9 said the victim ran, took his money.  
10 Marshall was fighting with MacNeil. And  
11 then he said, "What is your sign?" Meaning  
12 Scop...horoscope sign.

9 Q. Meaning you.

10 A. Yes.

11  
12 When is your birthday? So I said it's the  
13 6th of November, 1940 and that I was a  
14 Scorpio. He said the only break I ever got  
15 was from a Scorpio. He did not want to  
16 give a statement then. He said to "get a  
17 new trial for Marshall and I'll give you  
18 evidence." And then he said he wanted to  
19 meet Mrs. Marshall to see her eyes. [He  
20 wanted to assess her by looking at her, as  
21 well as the father.] He wanted to see Mrs.  
22 Marshall to see her eyes and give her his  
23 dog. He said he was tired of living a Skid  
24 Row life and wanted to get it over with and  
25 to set up a meeting with Mrs. Marshall, he  
and his dog .

22 I left at 5:15 without taking any more notes. There was no  
23 chance of taking a sensible statement or any statement of  
24 value at that point. So I left.

25 Q. Did you report back to Staff Wheaton what had taken place?

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1 A. Yes, I did.

2 Q. And then you saw him again the next day on the 23rd of  
3 February?

4 A. Yes.

5 Q. And at that time, a statement was taken and that's Exhibit  
6 103.

7 A. Staff Wheaton and I went to the Ebsary residence on the  
8 morning of the 23rd at, I believe, it's 10:59 in my notebook.

9 Q. Why were you, why did you go there? Were you invited to  
10 go?

11 A. Well, it was hopefully a follow-up to what had been started  
12 the day before. We arrived there and Ebsary had been  
13 drinking but certainly not as bad as the day before in the last  
14 afternoon. Staff Wheaton started to take a statement from  
15 him. Warning was given by Wheaton at 11:00, just very  
16 shortly after we arrived at the house. In fact, it was  
17 immediate and he asked Ebsary if he understood the warning  
18 and he said "yes," and then he started talking about his  
19 captain's papers. I don't know who raised that subject,  
20 whether it was Wheaton or Ebsary. But it was a very delicate  
21 thing with Captain Ebsary and he's very touchy about it. He  
22 did not, he resented anybody questioning his naval career or  
23 his appointment as a minister. John O'Day, his name appears  
24 on that page, he was, I believe, a person living upstairs and  
25 the caretaker of the house. He was present. He left. The

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1 statement commenced at 11:03 a.m., according to my notes.  
2 It didn't last very long. As I recall, Wheaton and Ebsary got  
3 into kind of a heated discussion and Wheaton left. But I  
4 remained behind and took the statement as shown in Exhibit  
5 103.

6 Q. Now 103, the statement, the first two questions and the first  
7 answer are written in Sergeant Wheaton's hand, is that  
8 correct?

9 A. Staff Wheaton's handwriting, yes.

10 Q. And the balance of the statement is in your handwriting?

11 A. That's correct.

12 Q. Now there's no reference on the statement to any warning  
13 having been given.

14 A. No, sir.

15 Q. But your notes indicate that, in fact, there was.

16 A. It definitely was, yes.

17 Q. Again, was the normal Wheaton technique followed? You'd  
18 sit there and talk for awhile and then you would start to take  
19 a statement.

20 A. No, not in this case. There was a very short discussion before  
21 the subject was diverted, either by Ebsary or by Wheaton,  
22 into religion and I think Wheaton called him, something  
23 related to being a homosexual or "flaming faggot" or  
24 something about that stage, and he left. I think he was  
25 probably expecting that I would stay and see whether Ebsary

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1           calmed down or not. I don't know. We had not discussed that  
2           in advance.

3       Q. And the first question would have been asked very shortly  
4           after you arrived at the house.

5       A. Yes.

6           Q. What can you tell me about the Seale  
7           murder?

8           A. As far as I was concerned, it was an  
9           ordinary night. We were robbed and had  
10          to defend ourselves.

11          Q. How did you defend yourself?

12                   And at that stage, Ebsary went off on his...

13       A. I think, if memory serves me, Ebsary went back to the  
14           previous day's interview and he said, "Do you recall yesterday  
15           you called me a homosexual or you accused me of being a  
16           homosexual." And that just flared up from there and  
17           Wheaton left.

18       Q. And then your handwriting takes over. Did you repeat the  
19           question? "How did you defend yourself?"

20       A. Yes, the last question.

21       Q. And this would be in question to that question?

22       A. The last question was repeated and his reply. Do you wish  
23           me to read it aloud?

24       Q. No, I think we can all read it. And it indicates on the last  
25           page that that statement ended at 12:16.

          A. Yes.

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 Q. You were there with him taking a statement for about 45  
2 minutes.

3 A. Yes.

4 Q. And would the statement have recorded everything that was  
5 said during that time?

6 A. From the time I started talking to him?

7 Q. From the time you started. You started at 11:30.

8 A. I would say so, yes. It seems brief but it was very difficult to  
9 talk to Mr. Ebsary without rambling. He gets off the point at  
10 times and you just have to wait for him to finish until he gets  
11 back on the original topic.

12 Q. Did you arrange for him to meet with Mrs. and Mr. Marshall?

13 A. I did, yes.

14 Q. And that was the same day, was it?

15 A. Yes.

16 Q. Did anything come of that meeting?

17 A. I was quite disappointed to see Ebsary under the influence  
18 again, as he promised he would not be drinking when he met  
19 with Marshalls. He was by no means drunk. You could smell  
20 liquor off him. His speech was basically the same as it is  
21 when he's normal. But the smell of wine or something similar  
22 was there. He became quite irritated at me because the,  
23 either I misunderstood him or he misunderstood me when he  
24 asked for this meeting to be set up. He wanted to go out to  
25 the Marshall home and see what kind of a home they had

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1 and go in the home and meet with them there, which I had no  
2 plans to accommodate him on. So the meeting had been  
3 arranged for my office, at least on that level of our building,  
4 where the Marshalls would be and would be more or less  
5 programmed, for lack of a better term, by myself to  
6 remember anything that he might say that would be  
7 important to the case. And, so, anyway, we brought him to  
8 the office and he came in and sat down in the room. I  
9 introduced him to the Marshall people, Junior Marshall's  
10 father and mother, and I had told him that I would leave the  
11 room shortly after Ebsary left but I would just be at the door  
12 in case anything happened. Mrs. Marshall was afraid of him  
13 and I told her that I would be just at the door and listening, if  
14 possible, and I introduced them and left the room. I could  
15 hear bits and pieces of the conversation but not that much. I  
16 had instructed Mr. Marshall to try and, if Ebsary started to  
17 ramble to try and get him to say something relating to the  
18 case and his son's conviction, to bring him back on line more  
19 or less. So after I would say roughly five or ten minutes, I  
20 knocked on the door and entered and I asked the Marshalls in  
21 Ebsary's presence if he had said anything important and they  
22 said, well, just that he, more or less that he had evidence that  
23 could help their son in due course but he wasn't prepared to  
24 say anything just then. And that makes me more certain that  
25 he was still waiting sentence for the Mugridge thing and that

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1 he was saying something to the effect, "I'll not say any more  
2 until I see where my future lies after Mugridge is dealt with."

3 Q. Okay, the next note in your diary is for February the 24th,  
4 where you note that you interviewed Andrew Arsenault at  
5 the Cape Breton Hospital re John Pratico? Who is Mr.  
6 Arsenault?

7 A. He's a social worker there and also a neighbour of mine where  
8 I lived in Howie Centre. He lives about four houses from my  
9 residence. He was also John Pratico's worker at that time.

10 Q. Pratico was under active care at that time, was he?

11 A. Pratico was attending a clinic, I found out later, in the New  
12 Waterford area, on a weekly basis or every two weeks or  
13 once a month sort of thing. I believe it was on a weekly basis.  
14 Where he would be getting a little bit of counseling and  
15 possibly some medication, review of his case.

16 Q. Was this part of your background work prior to interviewing  
17 Pratico?

18 A. Yes, it was

19 Q. Did he, did Arsenault confirm the belief of Dr. Mian and Ann  
20 MacLeod that Pratico really would be totally unreliable?

21 A. Not exactly. He told me that Pratico was a very troubled  
22 young man and he became very protective of him. I'm sure  
23 he felt I was trying to implicate the youth in something that  
24 he was not involved in or frame him or do something that  
25 wasn't just right because he was not, it was quite difficult to

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1 locate Pratico with little cooperation from Mr. Arsenault. In  
2 fact, he tried to hire him a lawyer to protect him from  
3 myself.

4 Q. Before we go to Pratico, let me take you again to Frank  
5 Edwards' notes, Volume 17, page 3. Do you see that note for  
6 February 23, 1982?

7 A. Yes.

8 Q. "Met at office with Wheaton and Carroll. Updated the  
9 investigation. Now believe Marshall could be innocent."

10 A. Yes.

11 Q. And then there's a note of a call that night from Mr. Edwards  
12 to Staff Wheaton.

13  
14 "Suggested investigation not complete  
15 until Chief MacIntyre questioned, though  
16 he should not be privy to conduct of  
17 investigation until department has had an  
18 opportunity to decide upon it.

19 Did Wheaton advise you of that contact?

20 A. I would say that I heard about that probably the following  
21 day. My notation here is "Meeting at the crown prosecutor's  
22 office on the 23rd at 3:25 p.m." Again I was working on that  
23 BCA file, so I would have heard about the late night call no  
24 doubt on the 24th, the following day.

25 Q. Did you and Staff Wheaton discuss whether, indeed, it would  
be necessary to interview or question Chief MacIntyre?



1 10:45 a.m. \*

2 A. Yes, in certain terms. I believe the conversation would have  
3 been Wheaton telling me that he felt or did not feel that  
4 MacIntyre should be questioned at that time. The order  
5 would not be...but I feel he discussed the late-night call with  
6 me on the following day.

7 Q Why wouldn't you want to interview or question Chief  
8 MacIntyre at this time given what Chant told you?

9 A. Why wouldn't I?

10 Q Yeah.

11 A. I felt an interview of Chief MacIntyre would not be done at  
12 my level anyway, so it was entirely, maybe not entirely, but  
13 it would be more Wheaton's decision and Frank Edwards than  
14 anything I had to do with it.

15 Q Well, we see Frank Edwards saying that the investigation  
16 would not be complete until Chief MacIntyre was questioned.  
17 Did Wheaton agree with that?

18 A. I feel he likely did as his feelings were quite strong about  
19 questioning Chief MacIntyre for some time.

20 Q At any time was Chief MacIntyre questioned by you and  
21 Wheaton?

22 A. No, not by myself and Wheaton, no.

23 Q Okay. We'll come back to that as to why. You went and  
24 interviewed John Pratico on February the 25th.

25 A. Yes.

1 Q. And the notes of the interview are contained on page 50 and  
2 51 of Volume 34.

3 A. Yes, that's the statement I took from him at that time.

4 Q. Yes. Had you met Pratico before?

5 A. No, sir.

6 Q. Was it...what was your impression of him?

7 A. When I arrived at the clinic in New Waterford, Pratico was  
8 already there and I noticed this young man pacing the room  
9 and chain smoking and I had no way of knowing it was  
10 Pratico. I didn't know what he looked like and, in fact, I  
11 wasn't sure he'd even show up for the meeting. But  
12 apparently he recognized me or knew who I was when I came  
13 or assumed that I was the policeman. So, he was staring at  
14 me through...a few minutes before the interview took place.  
15 Arsenault came in and introduced Pratico to me and we went  
16 to a back room. And Arsenault was going to sit in through the  
17 entire interview but after two or three minutes of speaking  
18 with Pratico he told Arsenault to leave, that he felt quite  
19 comfortable and we could continue the discussion from then  
20 on without Arsenault being present. I found him a very  
21 nervous type of individual, almost hyper I guess, very  
22 untrustful, suspicious.

23 Q. And did you have any reason to doubt the opinion of Dr. Mian  
24 that Pratico tends to fantasize and should be considered a  
25 very unreliable witness?

1 A. Dr. Mian was speaking of, I guess, 1971, 72, at that stage of  
2 Pratico's life. I don't know that he was still seeing him in  
3 1982 or not. No, I was certainly aware of Dr. Mian's  
4 assessment of Pratico.

5 Q. I'm sorry.

6 A. I was aware of Dr. Mian's assessment of Pratico.

7 Q. Did you believe what Pratico was telling you on February the  
8 25th?

9 A. I felt he was being quite honest and up front.

10 Q. Did you take down in that...in his statement everything that  
11 was said? Is there anything missing out of this statement?  
12 This may be a convenient place to take a break, My Lord,  
13 then the witness will have a chance to read the statement in  
14 detail?

15 MR. CHAIRMAN

16 All right.

17 BREAK - 10:51 \*

18 INQUIRY RESUMES - 11:09 a.m.

19 Q. Now, then, Sergeant Wheaton, you've have an opportunity,  
20 have you, to review the transcript or typewritten copy of the  
21 statement you took from John Pratico on February 25th?

22 A. Yes. I'm Carroll.

23 Q. I'm sorry, Carroll. And it...does it accurately reflect  
24 everything that was said?

25 A. Yes, it does.

1 Q. Now, in reading that statement I have the impression that  
2 Pratico is only talking about one statement having been given  
3 to the Sydney police, is that correct?

4 A. I just skimmed through it on the recess. I think you're right,  
5 yes.

6 Q. And you knew when you went to see him that he, in fact, had  
7 given two statements?

8 A. Yes.

9 Q. And I take it you would have reviewed his previous  
10 statements before you saw him?

11 A. Yes.

12 Q. Is that fair? And neither of his statements are witnessed by  
13 Michael MacDonald, neither of his previous two statements.

14 A. I can't recall. I'd have to see them again.

15 Q. Well, just accept it if you will then.

16 A. Yes.

17 Q. They are not. You also would have had statements, I take it  
18 you would have had the opportunity to review the statements  
19 given by Alanna Dixon and Keith Beaver and some of the  
20 other people who were in the park that night.

21 A. I can recall seeing them over the years, yes.

22 Q. All of which, I think, place Sandy Seale just going into the  
23 park shortly before midnight.

24 A. I believe so.

25 Q. Which, again, is inconsistent with what Pratico is saying about

1           having seen Marshall and Seale in the park around 11:30 or  
2           11:45.

3           A. Yes.

4           Q. By this time had you interviewed Barbara Floyd or do you  
5           recall? Did you interview Barbara Floyd?

6           A. I don't think so. I know the name but I don't believe I had  
7           any part in that.

8           Q. What was your impression when you left Pratico? Did you  
9           believe what he was telling you?

10          A. Yes, for the most part. I had no trouble getting along with  
11          Pratico. He was...I thought he was quite relaxed after the first  
12          five or ten minutes and I just let him speak.

13          Q. And you were prepared then to believe what he was saying  
14          about the pressure being put on him by MacIntyre to tell him  
15          what he had seen?

16          A. I would say so, along with the other evidence that we had at  
17          that time.

18          Q. The other evidence being the evidence from Chant.

19          A. Yes.

20          Q. Okay.

21          A. And possibly Harriss, if she had been interviewed. I don't  
22          know if she had been interviewed.

23          Q. No, Harriss had not been interviewed by that time, not until  
24          March for Harriss. Let me take you back to Volume 17 then,  
25          and the Frank Edwards' notes of February the 26th, where it

1       refers to the fact that "Harry Wheaton and Scott were going to  
2       see Chief MacIntyre." Were you aware that Wheaton and  
3       Scott did see MacIntyre on February the 26th?

4       A. If I could refer to my notebook I might be able to...

5       Q. Yes, please do.

6       A. ...elaborate on that. If I knew about it it's not recorded in  
7       my book. I obviously didn't take any part in it. I would  
8       know from Wheaton, I guess, that it was going to take place  
9       and I would know after the meeting what took place.

10      Q. All right. Your next note then is March the 1st. What is  
11      on...what is that saying?

12      A. "Office, BCA file," that's the fraud file, "Crown prosecutor's  
13      office re Marshall," and some other inquiries I made on that  
14      same BCA file.

15      Q. On page 54, Sergeant, of Volume 34 there is a statement from  
16      Patricia Harriss. You're not noted to be present. Were you  
17      present when that statement was taken?

18      A. I believe I was there. I recall meeting Mrs. Harriss for the  
19      first time early in the investigation. I believe the meeting  
20      took place at the Crown Prosecutor's office, that would be  
21      Frank Edwards' office. I had no part in the interview. This  
22      statement indicates to me it was taken by Staff Sergeant  
23      Wheaton and my name is not there as a witness. I can only  
24      say I recall being at the Crown Prosecutor's office on one  
25      occasion when Patricia Harriss was there to meet with

1 Edwards and Wheaton.

2 Q. Yes. And if you'd again keep Volume 17 available, on page, at  
3 three o'clock in the afternoon of March 1st, this notes that  
4 "Wheaton and Carroll arrived, and P. Harriss arrived a few  
5 minutes later."

6 A. Yes.

7 Q. And at that time she says she gave more than one statement.  
8 Do you remember that meeting?

9 A. Yes.

10 Q. What do you remember about it?

11 A. Not much more than what I've already said, that I was there.  
12 I took no part in it and it was the first time I met Miss  
13 Harriss. I really don't have much more memory of the  
14 meeting than that. She discussed the interview with  
15 Detective MacIntyre, statements taken, that he didn't believe  
16 her, that her mother came to the office to speak to her but  
17 there was some difficulties there and she was not allowed in  
18 to the room where she was being questioned.

19 Q. Why would there not be a statement taken from her at that  
20 time when the Crown Prosecutor is there and you and  
21 Wheaton?

22 A. Well, this statement was taken on the 1st of March by  
23 Wheaton according to the top caption.

24 Q. Yes. There was one taken in...on March the 1st. If you go  
25 back to note...Edwards' notes at 130 you see that "Wheaton

1 called, said he had interviewed Patricia Harriss who had given  
2 statement, he read it to me, said she had been pressured by  
3 police." I take it that's the statement on page 4.

4 A. Yes, I believe that would be the statement.

5 Q. There was no second statement taken from her at the Crown  
6 Prosecutor's office.

7 A. I can't recall. I think the purpose of that meeting was for  
8 Frank Edwards to see what kind of a witness she would take  
9 or basically to interview her in his own manner.

10 Q. Have you read that statement recently, the one Patricia  
11 Harriss gave Wheaton?

12 A. No, I have not, no.

13 Q. Do you just want to take a quick look at it? I appreciate you  
14 weren't there but you would have seen it, you would have  
15 seen this statement sometime, wouldn't you?

16 A. Yes.

17 Q. There's no mention in that statement, I don't believe, about  
18 Sergeant MacIntyre.

19 A. No.

20 Q. And the notes of Frank Edwards that we were looking at at  
21 3:00 p.m., see she...she says that she can only recall  
22 "Urquhart's name though others were present". Do you see  
23 that?

24 A. Yes.

25 Q. No mention of Sergeant MacIntyre at that time either.



1 A. No.

2 Q. In fact could not recall anyone other than Urquhart.

3 A. That's what his notes indicate.

4 Q. Yes. Several lines below that there's a reference that says,  
5 "She was aware of what his defence would be prior to giving  
6 evidence at preliminary on July 5, '71." Do you know what  
7 that means?

8 A. No, I don't really know what he's...

9 Q. You have no recollection of that.

10 A. No, I don't .

11 Q. At the time Patricia Harriss was interviewed do you know if  
12 the RCMP had in their possession the statements given by the  
13 O...Mary O'Reilley?

14 A. No, I can't say.

15 Q. Have you ever seen that statement?

16 A. I have reviewed the file on several occasions over the years  
17 when the trials were going on with Ebsary. I think it's fair to  
18 say I've seen just about everything in the file at one time or  
19 another, but...including the O'Reilley statement or statements.

20 Q. Have you ever put it to Patricia Harriss?

21 A. I'm sorry.

22 Q. Have you ever put that statement to Patricia Harriss?

23 A. Not myself.

24 Q. Did you believe Patricia Harriss on March the 1st, 1982?

25 A. From what I saw of her at Frank Edwards' office she seemed

- 1 to be quite straightforward and quite reasonable.
- 2 Q. At this time then you had three witnesses saying that Sydney
- 3 Police had pressured them into giving false testimony.
- 4 A. That's correct.
- 5 Q. That would be a very serious charge, would it not?
- 6 A. It certainly was building up to one, yes.
- 7 Q. What were you going to do to try and determine if, in fact,
- 8 there was evidence to support those charges and to lay
- 9 charges against members of the Sydney Police?
- 10 A. I personally was going to do nothing. Staff...
- 11 Q. Why...
- 12 A. ...Staff Sergeant Wheaton was in charge of the file and I was
- 13 more or less taking directions from him as to who he wanted
- 14 interviewed and what other foot work, ground work was to
- 15 be done. He was writing the reports from my office to...or
- 16 from his office to Halifax and reporting to Inspector Scott and
- 17 the superiors in Halifax.
- 18 Q. Do I take it then that you were taking instructions from
- 19 Wheaton and, in effect, doing what Wheaton told you to do?
- 20 He was in charge of the investigation?
- 21 A. Yes.
- 22 Q. Thank-you. Were you present when Terry Gushue was
- 23 interviewed?
- 24 A. I don't believe so. I can't recall meeting him at all.
- 25 Q. Let's go back to your notes on...it think the next one is March

1 the 3rd. Does it say "Inquiries Campbell Road re Marshall  
2 murder."?

3 A. Yes, it does. I have no idea what those inquiries were at this  
4 date. I would suggest that it was probably some rumour or  
5 information that came in that had to do with something on  
6 the Campbell Road that petered out into nothing. It was  
7 either unfounded, anonymous call, it could have been  
8 anything. But it was worthy of no further comment than that,  
9 I guess.

10 Q. Were you present at any time during interviews taken of  
11 Mary Ebsary and Greg Ebsary?

12 A. Are you saying statements from them or interviews? Are  
13 you saying statements?

14 Q. First of all, were you present during interviews?

15 A. I have met both people on numerous occasions since 1982. I  
16 don't recall ever being present when a statement was taken  
17 from either. I may have been, but I would say no.

18 Q. Let me direct you to page 41 of 34, it's a statement from the  
19 Ebsarys, March the 4th. You aren't shown as being present.  
20 Do you have any recollection of that?

21 A. No. No. Definitely not.

22 Q. Would you have seen this statement though?

23 A. Over the years, yes.

24 Q. Would you have seen it after it was taken? Was it not the  
25 practise for you to keep this central file and to go through it

1 from time to time?

2 A. Not exactly. As I say, Staff Wheaton was writing the reports  
3 and he was making me aware of, I would say, most things of  
4 any importance that were coming in my absence from the  
5 office. I would have seen that statement at some stage prior  
6 to any of the trials commencing, yes.

7 Q. Okay. You went back to Dorchester on the 8th of March, is  
8 that correct?

9 A. On the 8th, yes.

10 Q. And the actual meeting with Donald Marshall took place on  
11 the 9th.

12 A. That's correct.

13 Q. Do you remember that meeting?

14 A. Yes, that meeting took place in a fairly large meeting room at  
15 the rear of the penitentiary off the exercise yard, and it was  
16 between Wheaton, myself and Marshall. He was...seemed to  
17 be more relaxed at this particular time than the previous  
18 incident. A statement was taken from him at that time, I  
19 believe in Wheaton's handwriting this time.

20 Q. Tell me what you remember about that meeting?

21 A. I can't tell you very much about it other than the fact that he  
22 was more relaxed. He and Wheaton did almost all the talking.  
23 I think Wheaton probably would have told him that the  
24 investigation was continuing and that various people had  
25 been interviewed. I don't think he named those people but a

1 statement...

2 Q. Did he tell him...did he tell Marshall any of the information  
3 that was being obtained from witnesses?

4 A. I don't feel that he did, because the statement from the first  
5 visit was so incomplete that I don't feel that any more  
6 information was let out to him.

7 Q. Any more information but what?

8 A. Concerning our suspicions of the attempted robbery and so  
9 on.

10 We wanted it to come from him.

11 Q. Was the normal Wheaton practise followed, that there was a  
12 discussion before anything was written down?

13 A. I would say it was, but probably in more of a abbreviated  
14 version of it because we had already discussed the  
15 preliminary of the thing in the first meeting.

16 Q. Was a warning given to Marshall this time?

17 A. I don't have a notation of a warning being given. I would say  
18 probably not.

19 Q. Look at Volume 34, page 2, which are the notes of Staff  
20 Sergeant Wheaton taken from his diary, item number 11.

21 A. Yes, it refers to warned statement.

22 Q. It talks about a warned statement. Can we take it from that  
23 that Marshall, in fact, was warned?

24 A. If the warning is on the statement or some mention of it I  
25 would say yes, but I don't have a notation of it in my book.

1 Q. The fact that Wheaton has a notation in his diary would you  
2 not attach some significance to that?

3 A. Yes, if he put it in, if the statement has a warning on it, of  
4 course, it speaks for itself.

5 Q. The typewritten copy of the statement is on page 52 of  
6 Volume 34. There is no mention of the handwritten in the  
7 typewritten copy of a warning having been given.

8 A. No, there isn't.

9 Q. I don't know if the original has been filed or if we have the  
10 original. [To Mr. Pringle] Do you have the original statement  
11 or could you check? Thank-you. Your note in your diary,  
12 what time does it say the meeting with Marshall took place?

13 A. 11:20 a.m. to 12:53 p.m. and then it is followed by the fact  
14 that he read the statement and signed it at 12:39 p.m..

15 Q. Sergeant Wheaton's notes indicate the statement was taken at  
16 12:03. Yours is 11:20, is it?

17 A. Okay. My notes indicate that the starting of the interview  
18 that that would be not necessarily when he takes pen and  
19 paper.

20 Q. But if your notes are accurate and if Wheaton's notes are  
21 accurate there would have been a forty-three minute  
22 discussion before anything would start...would start to be  
23 written down.

24 A. That seems like a long time, you know, thinking back on it  
25 now, it's possible. But my notes here stating that he read the

1 statement and signed it at 12:39 p.m. mean to me exactly  
2 that, and they would have been made at the time, not that  
3 evening or the next day.

4 Q. When you...when they started or when Wheaton started to  
5 write down what was being said, was there any sort of  
6 prompting to start at a particular spot or, how does it work?  
7 Do you know say "I'm want to take a statement, tell me what  
8 you want me to write down."

9 A. You have to review the conversation on the previous visit and  
10 where it was broken off by the guard and at what point we  
11 were discussing the case then and more or less continue from  
12 there. In fact the previous statement may have been read to  
13 him or he might have been allowed to see it.

14 Q. He may have been allowed to see it.

15 A. The first statement that I took. I say he may.

16 Q. This statement, the second one, starts out with the discussion  
17 or reference to the fact that he was a fellow who had been in  
18 some trouble and in particular, "That he and John MacIntyre  
19 had some run ins." Would he have raised that or is that  
20 something that came out of the narrative that...a discussion,  
21 "How did you and MacIntyre get along," something like that?

22 A. That would have been a response by Wheaton to...it would  
23 have been a response as a result of a question by Wheaton as  
24 to, "How did you get along with Chief MacIntyre in 1971?" or  
25 something to that effect. Marshall didn't just start out by

1 saying, "In 1971 I was convicted of murder."

2 Q. Or he didn't start out by saying "MacIntyre didn't like me as I  
3 wouldn't talk or confess to other crimes."

4 A. No, I don't disagree with that. I'm just saying that in the first  
5 line Marshall would not have started off, it had to be some of  
6 Wheaton's input to say well, "In 1971 what kind of a  
7 character were you or was your...what were your teenage  
8 years like?"

9 Q. Did you have the impression or what was your impression of  
10 Donald Marshall, Jr., on that second visit?

11 A. Other than saying that he was more relaxed than the first  
12 time I met him I don't really think I can expand on that too  
13 much more. He was a young man that had been in prison for  
14 a considerable time and had maintained his innocence  
15 throughout those years. He has some problems inside the pen  
16 with the system and I would say possibly if anything critical  
17 he may have had still a chip on his shoulder sort of thing  
18 against the system.

19 Q. I suppose you couldn't blame him for that.

20 A. No.

21 Q. By this time the fact of the reinvestigation has hit the press,  
22 wasn't it, it was being reported?

23 A. I would have to see some notes on that. I'm not really sure  
24 when they got the first of the story.

25 Q. I can only refer you to Frank Edwards' notes, and I already



1 have, February 21 about the concern that the press were  
2 digging into the case.

3 A. Yes.

4 MR. PRINGLE

5 Mr. MacDonald, perhaps we should just give you the reference  
6 to that statement you asked about.

7 MR. MacDONALD

8 Yes.

9 MR. PRINGLE

10 The first statement has already been given to Commission  
11 counsel, the first Marshall statement. The second one, the only  
12 reference we can find is in Volume 4 at page 7 of the exhibits, the  
13 fact that Mr. Edwards in his factum in 1982 refers to the March 9,  
14 1982, statement being put to Marshall on cross-examination at the  
15 reference.

16 MR. MacDONALD

17 Thank-you. We'll try and locate that. I think it's actually  
18 part of the exhibit at one of the Ebsary trials.

19 MR. PRINGLE

20 1982 at the reference.

21 MR. MacDONALD

22 Okay. Anyway we'll try and locate the original.

23 Q. I guess that it would be a matter of record, in any event,  
24 Sergeant Carroll whether press were reporting the fact that  
25 an investigation was underway and that Ebsary may have

1 done, committed the murder and so on. Did you have the  
2 impression from Junior Marshall that he was aware, on this  
3 second statement, that indeed, Ebsary was supposed to have  
4 committed the murder and that it was supposed to have  
5 taken place during a robbery attempt?

6 A. Well I was aware of the fact, as I mentioned earlier, that  
7 Marshall was being sent Sydney newspapers, daily paper on a  
8 regular basis by his family or friends and was certainly well  
9 aware of the Mugridge case which also involved Ebsary. I  
10 can't say at what stage Marshall may have been aware of  
11 articles in the commentary or the gossip column, more or less,  
12 of the Cape Breton Post that Ian MacNeil was the editor of  
13 that column and from time to time there were little one-liners  
14 about reopening of the Marshall case and that sort of thing.  
15 So he would see that from time to time in the newspaper.

16 Q. There's reference in that second statement of Marshall's to  
17 Bobbie Patterson, having met him in the Park that night. He  
18 and Seale having met Patterson and Patterson recognized him.  
19 Was any attempt made to find Patterson?

20 A. Not by myself. I don't recall that name surfacing later on.  
21 Perhaps Staff Wheaton did, but I'm not aware of it.

22 Q. What attempt, if any, was made to verify or to show to be  
23 incorrect, any of the statements in Marshall's statement? Was  
24 it all accepted as being accurate?

25 A. No, that's not true. For instance, for the first name I see here

1 is Roy Gould. He was the editor of the MicMac News on the  
2 Membertou reserve, and still is as far as I know. Staff  
3 Wheaton and I interviewed him. And that would have to do  
4 with the jacket that Marshall was wearing on the night in  
5 question, the night of the stabbing. I believe that jacket  
6 belonged to Gould. Other people were interviewed, including  
7 the Seale family, the Marshall family.

8 Q. At this stage had you and Wheaton made up your minds, in  
9 any event, that Junior Marshall was innocent of the stabbing  
10 of Sandy Seale before you even saw him on March the 9th?  
11 You'd made up your mind.

12 A. We were quite confident, yes.

13 CHAIRMAN

14 When you saw Donald Marshall, Jr. at Dorchester Penitentiary  
15 on your second visit, did you have any discussions with the  
16 warden of the penitentiary or any officials at Dorchester?

17 A. I feel we probably did, My Lord, possibly to see if there were  
18 any repercussions from our last visit with Marshall. Whether  
19 he had been punished by the population, prison population, or  
20 any repercussions, in general, from our visit there. And I  
21 believe that we were of the opinion that there were none.

22 CHAIRMAN

23 Were you aware that Donald Marshall, Jr. had been  
24 consistently advising the authorities at the penitentiary that he  
25 was innocent of the murder of Sandy Seale?

1 A. That was general knowledge, yes.

2 CHAIRMAN

3 Well did you share with anyone in the penitentiary your  
4 conclusions that you had arrived at, you say by March 9th, that  
5 Junior Marshall was innocent?

6 A. I can't recall any conversation with Staff Wheaton and myself  
7 and prison officials as to the present standing of the case or  
8 our intentions. It may have happened but I don't recall it  
9 happening. I think there was, we wouldn't have just entered  
10 the prison and gone directly to Marshall's room and started  
11 the interview. There had to be some liaison with the prison  
12 officials to, although they knew we were coming, that had to  
13 be arranged in advance. But I don't think there would have  
14 been very much of an update to them for our purpose there.

15 CHAIRMAN

16 Did they know the purpose of your visit?

17 A. Oh, yes.

18 CHAIRMAN

19 Why you wanted to take statements.

20 A. Yes, My Lord.

21 CHAIRMAN

22 They knew you were re-investigating this case.

23 A. Yes, My Lord. They also informed us that he had maintained  
24 his innocence for years and could have been eligible for  
25 parole if he admitted to it prior to this date.

1 MR. MacDONALD

2 Q. Go back to page 53, if you would, Sergeant, of that statement  
3 of Marshall. The first full paragraph where it says, "I then  
4 walked down Crescent Street to Sandy and the two guys. We  
5 talked about everything."

6 A. Yes.

7 Q. Now Jimmy MacNeil had given you a statement, or given the  
8 RCMP, and also in '71 had given a statement, which indicated  
9 that he had been attacked from behind.

10 A. Yes.

11 Q. There was no talking going on of any kind. Having been told  
12 by Junior Marshall they talked about everything, did you go  
13 back to MacNeil and check that out?

14 A. MacNeil was interviewed on several occasions and, as I say, I  
15 men-, I have met MacNeil and the Ebsarys many times  
16 through court appearances and I don't recall it I was ever  
17 present when the statements were taken from MacNeil, but I  
18 have talked to him on many occasions at the courthouse  
19 before trials, after trials. I've transported him from his home  
20 to the courthouse on several occasions when didn't have a  
21 vehicle of his own. I know him quite well.

22 Q. What I'm trying to find out is after you took this statement  
23 from Marshall to test the statement, did you go back at that  
24 time, having been told by Marshall, "We talked about  
25 everything. Women, booze. We hinted about money. The

1 |       guy started to walk away, I called him back." That, I suggest,  
2 |       is completely inconsistent with what Jimmy MacNeil had told  
3 |       you. What Jimmy MacNeil had told the police and the RCMP.  
4 |       Was any attempt made to test the story of Junior Marshall?

5 | A. Not by myself.

6 | Q. In the second paragraph Junior Marshall is recorded to have  
7 |       said, "The knife sort of caught in my jacket and I pulled free  
8 |       and ran and felt blood running from the cut." That is  
9 |       inconsistent with the evidence of Chant, with the evidence of  
10 |       Doucet...

11 | A. I don't think it was...

12 | Q. That there was no blood from the cut.

13 | A. The stabbing on the, I believe the left arm, I think that's  
14 |       corroborated by Chant. Now the presence of blood, I think  
15 |       that is not consistent with Chant's evidence.

16 | Q. Or the evidence of Doucet whose statement you had. Who  
17 |       said, it's on page 23 of that volume. Statement Doucet gave in  
18 |       1971 and I'll just, it says that he was showed a cut on the left  
19 |       arm from which there was no blood.

20 | A. That's correct.

21 | Q. Also in Junior Marshall's statement he says...

22 | MR. RUBY

23 |       Excuse me a minute. It's my understanding that there was a  
24 |       girl who gave him a tissue and the tissue was, in fact, found.

25 |       There was blood on that tissue, I don't think it was ever analyzed

1 by anyone during the initial investigation.

2 MR. MacDONALD

3 I don't know, My Lord, if anyone has ever suggested that that  
4 is the same tissue. It may be, I don't know. But in Sydney, in  
5 Wentworth Park, on a Friday night there may be a lot of people,  
6 bleeding nose or something, throwing a tissue away. We don't  
7 even know what Junior Marshall's blood type is, I don't think.  
8 How we would ever know that, I don't know.

9 MR. RUBY

10 I agree. That's consistent with Junior's evidence from the  
11 point, and of course the time is later so that there's ample time for  
12 [inaudible]...

13 MR. MacDONALD

14 Q. All I'm suggesting, Sergeant, see if you'll agree with this that  
15 by March the 9th Wheaton and you, as his assistant, had  
16 made up your minds that Marshall was innocent and were not  
17 going to take the time to delve, in detail, into any  
18 inconsistencies that may arise.

19 A. No, I disagree.

20 Q. You disagree. You wouldn't agree that Wheaton and perhaps  
21 you, to some extent, suffered from the same problem that it's  
22 alleged the Sydney Police suffered from and that is tunnel  
23 vision, having made up your mind and you're looking for  
24 evidence to support it and no other evidence?

25 A. I would hope that we're not guilty of that.

1 Q. Okay. Junior Marshall offered to take a polygraph. Do you  
2 see that in his statement? Last paragraph on page 53. "I am  
3 willing to take a polygraph test to prove I am innocent."  
4 That's the second person that offered to take one, so did  
5 Sarson. Was any, did you take him up on that offer?

6 A. No.

7 Q. Let me take you back on page, Volume 34 to page 9. That's a  
8 start of a report that Staff Wheaton filed with his superiors.  
9 It started on the 25th of February but finished, I think,  
10 sometime in March. Did you see that report before it was  
11 filed?

12 A. Probably not before it was filed.

13 Q. You would have seen it afterward?

14 A. Yes.

15 Q. Wheaton, then, didn't ask for your assistance in preparing it?

16 A. In what regard, sir?

17 Q. Well, in any regard. Did he ask you to assist him in preparing  
18 the report?

19 A. No. Because any statements that I had taken on my own  
20 were certainly included in the file and given to him or they'd  
21 be typed by the secretary probably the day after I took them,  
22 so he would have those at his disposal and to include or not  
23 include in his first report to the Halifax office.

24 Q. And you weren't asked by him to vet the report to make sure  
25 that it was accurate before it was sent.



1 A. Not that I can recall. It wouldn't be uncommon, if he did ask  
2 me to read over something he was about to submit, I don't  
3 remember reading this. I have read it since, probably several  
4 times. Again, I say he was the author of the reports at that  
5 stage.

6 Q. When you did see the report, did you ever point out to Staff  
7 Wheaton that there were statements in there you didn't agree  
8 with or couldn't accept?

9 A. No.

10 Q. On page 12, paragraph number 12, down toward the bottom  
11 of that. You see it says, "In reviewing the statements  
12 originally taken in this case the only reference to Ebsary and  
13 MacNeil, I can find, is a statement from George MacNeil and  
14 Sandy MacNeil." Do you see that statement?

15 A. Yes, I do.

16 Q. Junior Marshall had a description in his first statement of two  
17 people that, his description corresponds relatively well with  
18 those people, does it not?

19 MR. BRODERICK

20 If I may, My Lord, first, to clarify what he's asking the  
21 witness. Whether he's asking him to justify why that's not put in  
22 by Staff Wheaton. To justify or to explain whether Staff Wheaton  
23 explained it to him. We must remember this is not Sergeant  
24 Carroll's words.

25

1 MR. MacDONALD

2 I understood the witness to say that he reviewed the report  
3 and took no issue with anything in it.

4 CHAIRMAN

5 Yes. That's what he said a few minutes ago.

6 MR. BRODERICK

7 No, I believe what he said was he reviewed the report and  
8 took no issue with Staff Wheaton about what was in it, not  
9 whether or not he took issue himself.

10 MR. MacDONALD

11 Okay. I'm sorry then, Sergeant Carroll, I'll clear that up.

12 Q. Do you take issue yourself, then, with what's in the report?

13 A. I'd like to point out that I may not have seen this report  
14 before it was drafted and actually sent out by mail. I did not  
15 take issue with Staff Sergeant Wheaton when I saw it at  
16 whatever stage I saw it as to its content. It was his report,  
17 his opinions and not mine.

18 Q. All right. Perhaps it's my questions to you, then. That  
19 statement I just read to you, do you agree with that  
20 statement?

21 A. I turned my page here. Could I have that notation again,  
22 please?

23 Q. It's in Volume, page 12, paragraph 12, where it says, "The  
24 only reference to Ebsary and MacNeil is found in the  
25 statements of George and Sandy MacNeil." Of course they

1 don't identify Ebsary and MacNeil, they just describe a couple  
2 of people.

3 A. I would suggest to this Commission that at the time this  
4 report was typed, in the early part of the investigation, that  
5 Wheaton may have been referring to the stage of  
6 investigation at that time. It may have been in his thoughts  
7 prior to interviewing Marshall at Dorchester where Ebsary  
8 and MacNeil were mentioned. That's the only comment I can  
9 make on that. That it may, when his notes were written for  
10 the report, which would be in longhand, starting the first  
11 report, which I believe this is...

12 Q. It's the first report, yes.

13 A. Yes.

14 Q. Look at page 34 of Volume 34. That's a statement taken from  
15 Junior Marshall on May the 30th...

16 A. Yes, you're right.

17 Q. Of 1971.

18 A. Yes.

19 Q. And down at the bottom of that page he described two  
20 fellows as "The small fellow was 5 9 or 10, 190 pounds. Hair,  
21 gray. Combed back. Wore glasses..." and so on. "The other  
22 fellow, brown corduroy coat, 5 11, 150..." and so on.

23 A. Yes.

24 Q. Now if you compare that with the statement from George  
25 MacNeil and Sandy MacNeil which is on page 40...

1 A. Yes, you're right. There was mention of that in Marshall's  
2 statement.

3 Q. Did either you or Staff Wheaton ever interview Detective M.R.  
4 MacDonald?

5 A. I interviewed a number of the detectives and the uniformed  
6 people at the City Police and that's accounted for on one of my  
7 photostat copies from my notebook. I believe I did but, there  
8 are two or three MacDonalds on the force there. I would have  
9 to go to that page...

10 Q. I think he's called Red Mike.

11 A. There was a Black Mike and a Red Mike and I'm not sure  
12 which one, but it is shown, the name, full name is on the  
13 statement that I took from whichever MacDonald I  
14 interviewed.

15 Q. Let me just read to you from Exhibit 34, 38. It's been filed in  
16 this Commission. These are the notes of Sergeant M.R.  
17 MacDonald taken the night of the stabbing. And these are the  
18 descriptions that were given to him that night. "Heavy set.  
19 Short. Dark blue coat to the knees Hair gray. Black-laced  
20 shoes. Wearing glasses with dark rim." That's one guy. And  
21 the other was, "Tall, 5'1[sic], black hair, clean shaven.  
22 Corduroy coat, three-quarter length, brown in color." Ever  
23 heard those descriptions before?

24 A. Those were on the Marshall statement.

25 Q. It's on the Marshall statement but they were in the

1 possession of the Sydney Police on the night of the stabbing.

2 Have you ever seen those before?

3 A. I can't say that I have. I recall seeing Donald Marshall's  
4 statement, of course, over the years. If I did take a statement  
5 from that particular MacDonald I feel that's probably in that  
6 statement. It may not be...

7 Q. Let me take you to page 13 of Volume 34, Sergeant Wheaton's  
8 report. Top of the page, the sentence that, he's talking about  
9 Ebsary. It says, "His day-to-day life consists of brief sober  
10 periods with various degrees of intoxication the remainder of  
11 the time." Would you agree with that description of Ebsary  
12 and that is in February/March of 1982?

13 A. I think that's quite accurate, yes.

14 Q. Did you ever interview Mrs. Chant?

15 A. Yes.

16 Q. Did Sergeant Wheaton?

17 A. Did he?

18 Q. Yes.

19 A. He may have. I think my notes coming up here indicate a trip  
20 to Louisbourg with Constable Hyde. A statement was taken  
21 from her. I think I only interviewed her once. Twice at the  
22 most. Only once that I can recall.

23 Q. Did you ever interview Mr. Chant's minister?

24 A. No, sir.

25 Q. On page 14, paragraph 18, that's talking about Mr. Chant?

1 A. Yes.

2 Q. Down at, about halfway down or two-thirds, it says, "He  
3 advised that the Prosecutor threatened him with a charge of  
4 perjury if he changed his story after the lower court hearing."  
5 Do you see that?

6 A. Yes.

7 Q. Do you agree with that?

8 A. I recall Chant telling us about a visit by the Prosecutor, Mr.  
9 MacNeil, to his home and they went for a drive. The  
10 conversation was pertaining to his evidence and upcoming  
11 trial and what he expected from him. Beyond that I can't  
12 elaborate.

13 Q. Did Chant ever tell you or ever say in your presence that he  
14 felt browbeaten by the Crown Prosecutor?

15 A. No, not those exact words or...

16 Q. Words to that effect?

17 A. I would lean towards pressure maybe.

18 Q. From the Crown Prosecutor.

19 A. Yes.

20 Q. To do what?

21 A. To support the City Police story or theory.

22 Q. When was that said?

23 A. Prior to the trial of Marshall, the first trial.

24 Q. When did Chant say that to you, or in your presence, that he  
25 was pressured by the Crown Prosecutor?

1 A. It would be somewhere in the range of the first week or ten  
2 days that we first met Chant.

3 Q. Did you have access to the Cape Breton Hospital records on  
4 Pratico and the Nova Scotia Hospital records?

5 A. I don't quite understand what you mean. You mean to  
6 actually retrieve the records or know what they contain or...

7 Q. Did you have access to them? Did you read what was in  
8 them?

9 A. No, sir. But we did have access to the doctor who treated, Dr.  
10 Mian...

11 Q. Yes.

12 A. The doctor who treated Pratico.

13 Q. Go to page 16, if you would. Paragraph 24. The part that  
14 says, and he's talking about Junior Marshall.

15  
16 The fact that he maintained his innocence  
17 is rather rare as it would be definitely to  
18 his advantage to admit his guilt because he  
19 would then be eligible for more  
20 consideration from the Parole Board. Mr.  
21 Cross feels that with his present record  
22 there is a good possibility he would be out  
23 now if he admitted guilt.

24 Do you agree with that statement as being accurate of what  
25 took place?

26 A. Well from what I know of the present system had he  
27 admitted guilt in the first four or five years of his sentence, or  
28 the term in Dorchester, he likely would have been out after

1 serving one-third of his time. Approximately eight years or  
2 thereabouts.

3 Q. Who is Mr. Cross?

4 A. Bill Cross, as I recall, was the man in the warden's office,  
5 either, I don't know what his official title would be, but he  
6 was the person I feel quite sure we talked to on our first visit  
7 there and possibly the second visit, as well.

8 Q. And do you recall him saying words to the effect that if Junior  
9 Marshall had admitted he was guilty there was a good  
10 possibility he would have been out of jail by that time?

11 A. I don't recall him saying that but it was more or less common  
12 knowledge to both Wheaton and I that your average case  
13 where someone, unless a jury does not recommend that they  
14 be considered for parole, certainly in 1971 he likely would  
15 have served in the vicinity of five to eight, nine years on the  
16 average.

17 12:00 p.m.\*

18 Q. Okay, let me take you back to your notes, Sergeant. I believe  
19 the next note is March the 18th. Okay, we've finally got  
20 Donald Gordon Joe. Where did you get his name, anyway?

21 A. I can't really say where his name surfaced. It would have  
22 been, it leaned towards the idea that it was from the  
23 constable on the reserve at Membertou at the time who I had  
24 communication with, Constable Dan Paul. That job has since  
25 been eliminated. But I'm only guessing but it seems to me



1 that was the connection that he suggested I should interview  
2 Donald Gordon Paul, or Donald Gordon Joe, to see what  
3 information he might have concerning this case. And I did  
4 eventually locate him on that date, the 18th of March '82. He  
5 was interviewed at Membertou in the police car. I believe  
6 that I picked him up on the street.

7 Q. Now your notes on March the 18th indicate that you  
8 interviewed Donald Gordon Joe?

9 A. Yes.

10 Q. And that he had indicated to you that he had seen Marshall  
11 that p.m. You mean the night of the stabbing?

12 A. Yes. First of all, that's preceded with the fact that he said he,  
13 Joe, was drunk on vanilla.

14 Q. Would that be the same night?

15 A. Yes.

16 Q. So he was drunk that night himself.

17 A. That's correct.

18 Q. He says, your note indicates:

19 Seale obviously associated with Indians.  
20 Marshall is cousin. Talked to him at  
21 correctional centre, figured he was guilty.  
Probably fought or argued with Seale.

22 Is that Gordon Joe telling you that he spoke with Marshall  
23 while they were both in the correctional centre?

24 A. That's correct.

25 Q. And that Marshall, as a result of that discussion, he figured

1           that Junior Marshall was guilty?

2       A.   Yes.

3       Q.   And also told that Seale obviously associated with Indians.

4       A.   That's correct.

5       Q.   What did you do to follow up on all of that information being  
6           given to you by Mr. Joe?

7       A.   I reported it back to Staff Sgt. Wheaton. I don't know  
8           whether there was a statement taken, I suspect because it's  
9           so brief, that I may not have taken a statement. On the other  
10          hand, I may have. I would say probably not because there is  
11          no mention of a statement there.

12      Q.   But what did you do?

13      A.   I think Mr. Joe was drinking at the time I interviewed him on  
14          that day, so.

15      Q.   On the day you interviewed him.

16      A.   Yes, I believe.

17      Q.   Did you go back to get him again?

18      A.   No.

19      Q.   Did you consider the information you were being given at that  
20          time of significance?

21      A.   I think some of that was information we already had. There  
22          was some indication along the line that Marshall while  
23          awaiting trial or sentence and incarcerated at the correctional  
24          centre in Sydney bragged or jokingly said something about  
25          the fact he had stabbed Seale. I think we were aware of that

1 information at the time.

2 Q. Did you try and locate anyone else who was in the prison  
3 system with him at that time to see if they were verify that  
4 statement?

5 A. I did not.

6 Q. Do you know if anyone did?

7 A. I believe that Staff Wheaton did. I can't really say for certain.

8 Q. You believe he did?

9 A. I believe he did. But I also say that information where  
10 Marshall had allegedly bragged or said that he had stabbed  
11 Seale while in the correctional centre was known to us.

12 Q. And discounted by you, or discarded.

13 A. In due course, yes.

14 Q. As a result of investigation or just having been told what  
15 we've already heard from other witnesses?

16 A. Well, the way it appeared to Wheaton and myself was that  
17 Marshall, in the correctional centre crowd of other inmates,  
18 after having been accused of the incident so many times that  
19 he, for whatever reason of his own, decided he would just go  
20 along with it and say, "yes, I did it." I think that was the way  
21 of thinking.

22 Q. Was that as a result of your discussions with the other  
23 prisoners who were in the correctional centre at the same  
24 time?

25 A. No, I can't say that. I did not pursue that on my own.

1 Q. Okay. March 23rd is your next note, I think. And there's a,  
2 you indicate having returned to Ebsary's home, searched the  
3 residence, and seized certain information.

4 A. I prepared a search warrant for his home, went to the house  
5 at 11:10 that morning, he was not at home. For some reason  
6 or other on another related case, unrelated case, I went to the  
7 local probation service and found Mr. Ebsary there speaking  
8 with Calvin Boutilier, or Boutilier's assistant. But, at any rate,  
9 he was in the hallway or in the office at the time and we  
10 wanted Mr. Ebsary to be present when the search warrant  
11 was executed. So we transported him back to his house in the  
12 police car and did, in fact, execute the search warrant. And I  
13 seized some cassette tapes, his diary, the diary I refer to as  
14 many loose pages of typewritten notes. The diary as kept by  
15 Mr. Ebsary was rather unique in that he referred to many  
16 nautical terms. He reverted to his naval days and he'd make  
17 an entry when he first got up in the morning, he'd type in,  
18 "0600 on deck," give the weather, the weather conditions, in  
19 general, and he would relate to any letters or whatever came  
20 in in the daily mail as a signal or something like that. I forget  
21 the terminology he used, but received a signal from so-and-so  
22 in Australia. But I was interested in seizing the diary to see  
23 how far it went back, especially to 1971, because his daily  
24 account of people coming and going in the house was quite  
25 accurate, quite detailed, I should say, as to who came and

1           what they talked about and what they did. But it didn't go  
2           back that far.

3       Q. Did you get any useful information out of what you seized  
4           that day?

5       A. To a certain extent, yes. There was one taperecording in  
6           which a cane with, a hollow cane with a knife in it was  
7           exposed to some people who were visiting him and some  
8           comments made. Nothing pertaining to what this Inquiry is  
9           concerned with but it did have to do with a concealed  
10          weapon.

11      Q. All right, on March the 31st, you traveled to Westmount to  
12          interview Mr. Seale and his wife, I believe. What was the  
13          purpose of that visit?

14      A. I'm sorry, what was the date again?

15      Q. March 31st.

16      A. This would be in response to calls from the Seale family to  
17          our office asking for some update or some information as to  
18          what the investigation was producing, as I recall.

19      Q. Just to keep them advised of what was happening?

20      A. Well, if this was the first date that we met the Seale family, I  
21          believe it was. Wheaton and I went there and it was to try  
22          and answer some questions for the family to set them straight  
23          from some of the rumours that were going and the newspaper  
24          articles. At the same time, we were not at liberty to discuss a  
25          great deal of detail, which exasperated the family immensely.

- 1 Q. Did you meet David Ratchford?
- 2 A. Never.
- 3 Q. Never met him?
- 4 A. No.
- 5 Q. And were you aware of the statement taken from him by  
6 Staff Wheaton?
- 7 A. I heard it mentioned in Staff Wheaton's evidence. I was  
8 aware of it from the file.
- 9 Q. But you yourself never met him?
- 10 A. Not to my knowledge have I ever seen him.
- 11 Q. I believe he testified here that he was approached at the  
12 Sydney Academy by you and Wheaton. If he did testify to  
13 that effect, that's not your recollection?
- 14 A. If I had a date, I could go to my notebook. I'm 99% certain I  
15 never met the man. I didn't see him testify in Sydney and I  
16 saw him on television, but that was it.
- 17 Q. No, I don't think I can help you. I don't think there's any  
18 reference in your diary to that. What about Barbara Floyd,  
19 did you ever meet her in the course of this investigation?
- 20 A. Could you assist me in what her position was? She's the  
21 nurse?
- 22 Q. On page...No, she's a hairdresser. It's on page 70 of Volume  
23 34.
- 24 A. No, I don't think I ever met the lady at all. Staff Wheaton  
25 and Constable MacQueen were the two that took that

1 statement and I can't recall ever meeting her.

2 Q. Were you aware of Donna Ebsary?

3 A. Yes, very much.

4 Q. How did you become aware of her?

5 A. Through the statement of Ratchford and the associated  
6 statements of Constable Gary Green and, of course, the first  
7 interview with Donna Ebsary. I recall seeing the sketch that  
8 she prepared. I saw the original of that. Staff Wheaton  
9 described that in his testimony.

10 Q. We'll come to her in a moment then. Volume 17, page 7. On  
11 April the 16th, there's reference to a discussion between Mr.  
12 Edwards and Mr. Gale. If you would just quickly go through  
13 those and I'll take you to the next page.

14 A. Do you wish me to read the second page?

15 Q. I'm going to refer you to something on the top of the second  
16 page. I just wanted you to get the background. Do you see  
17 where he says,

18

19 "After the call with Gale, I phoned  
20 Wheaton who confirmed they knew  
21 nothing about earlier statements by  
Ebsary's wife and family."

21

Is that your recollection as well?

22

23 A. I can't say at what stage we saw the Ebsary family  
24 statements.

24

25 Q. He goes on to say that,

25

1                   Wheaton is reported to have said that on  
2                   two occasions when they had briefed  
3                   MacIntyre, they had asked him whether he  
4                   had anything further which might help the  
5                   investigation and he said 'no.'

6                   Were you ever present when Sergeant Wheaton met with  
7                   Chief MacIntyre to brief him on the investigation?

8                   A. No, I don't recall meeting with Wheaton and MacIntyre, other  
9                   than on one occasion when the statements were taken by us  
10                  from the members of his department, which comes up in the  
11                  notes later on, in my notes.

12                 Q. Were you ever present when Wheaton asked Chief MacIntyre  
13                  if he had any documentation which might assist further and  
14                  the answer was given in the negative?

15                 A. No, sir.

16                 Q. Down at the bottom of that page eight, the second last  
17                  paragraph beginning with "Call with Wheaton. He suggested  
18                  that he, Scott and I meet." Do you see that one?

19                 A. Yes, I do.

20                 Q. Edwards is reported to say that he suggested the RCMP should  
21                  demand the file and all information from Chief and use a  
22                  search warrant if necessary. Was that reported to you by  
23                  Staff Wheaton?

24                 A. No, not that I can recall. I know that we, Staff Wheaton and I,  
25                  were anxious to see the entire file held by the city police but



1 that communication was beyond my level.

2 Q. Was Wheaton expressing to you any concern over the fact  
3 that he may not have had the entire file?

4 A. Not that I can recall.

5 Q. So you don't recall...Let me put it this way. Do you recall any  
6 mention by Wheaton the fact that Frank Edwards kept  
7 suggesting that the Sydney Police should be investigated as a  
8 result of their activities in the Donald Marshall, Jr. case?

9 A. Do I recall Wheaton telling me that the City Police should be  
10 investigated?

11 Q. Yes.

12 A. Yes.

13 Q. Did he tell you that Frank Edwards agreed with that?

14 A. I can't really say that he did, although I wouldn't argue with  
15 him on that point.

16 Q. Wheaton believed they should be investigated?

17 A. Yes.

18 Q. Are you able to tell us why they weren't?

19 A. It was not at my level, again.

20 Q. Did Wheaton ever tell you why he didn't carry out an  
21 investigation of the Sydney Police?

22 A. I can only say that at some point along the investigation the  
23 file was to be kept in a, I forget the terminology used, in  
24 abeyance or something.

25 Q. In abeyance?

- 1 A. Yes. And, again, that's not in my communication. That was, it  
2 wasn't given directly to me. It would be handed back to  
3 Wheaton through the channels.
- 4 Q. Was that your understanding from what Wheaton told you  
5 that were to hold it in abeyance, not investigate the Sydney  
6 Police?
- 7 A. That was the bottom line, yes. Whether it was in writing, I'm  
8 sure it's in the report somewhere. I recall seeing that  
9 terminology.
- 10 Q. Did you ever discuss it with him, though, the fact that this  
11 policeman wanted to investigate the Sydney Police and was  
12 not going to do so?
- 13 A. Yes, I'm sure it was discussed. I could picture in my mind  
14 the, for lack of a better term, the tension in the air that would  
15 exist if we did go down to question MacIntyre or Urquhart, or  
16 have them come to our office for interrogation.
- 17 Q. There would be tension? You can picture that?
- 18 A. I could picture it at the time, that situation arising.
- 19 Q. Why would that be?
- 20 A. Well, I had never investigated another police department  
21 before, let alone another policeman, for any type of offence  
22 that I can recall, certainly not any department. At the rank of  
23 corporal, which I was then, it would have been a very  
24 uncomfortable situation to, and I felt in all probability I  
25 would not be the one who would be questioning the chief of

1 police, or the deputy. I think Urquhart was Detective  
2 Inspector then. But I didn't feel it would be done at my level,  
3 anyway, if it did happen.

4 Q. Was Wheaton upset, frustrated, over the fact that he couldn't  
5 proceed with his investigation?

6 A. I would say he was probably frustrated, yes. He wanted to  
7 proceed further with it.

8 Q. Are you aware of any policies or instructions that exist that  
9 direct the RCMP how to proceed if they are going to carry out  
10 an investigation of another police force?

11 A. You would have to be in direct communication with your  
12 superiors, starting at our level which would be Inspector  
13 Scott, and he would get further direction from Halifax from  
14 his superiors. Being kept posted and up to date totally on any  
15 new developments in the case and what your intentions were  
16 before you would make that crucial move to actually go  
17 down and start to interrogate the chief of police and his  
18 inspector.

19 Q. So that's not something that's done without instructions from  
20 your superiors.

21 A. Not in my opinion, you would not, a corporal wouldn't go do  
22 that.

23 Q. Neither would a staff sergeant?

24 A. Highly unlikely. Not on his own. You would have to have  
25 some direction from above.

1 Q Let me take you now to February...I guess April the 20th in  
2 your notebook. This is a second statement of Maynard Chant.

3 It's taken by you, I believe?

4 A. Yes.

5 Q And Constable Hyde was with you?

6 A. If I could see that statement, I'm quite sure...

7 Q Yes, it's on page 81, I'm sorry, of Volume 34.

8 A. Yes, that's correct.

9 Q Why would you and Hyde go back to talk to Maynard Chant?

10 A. It would be for the purpose of clarification, more details.

11 Q Actually, you took a statement first from Mrs. Chant, and  
12 that's on page 84. Perhaps we'll look at that one first.

13 A. Yes.

14 Q Have you had the opportunity to review those statements in  
15 preparation for giving evidence here?

16 A. No, not in a number of years.

17 Q Do you recall the statements being taken from Mrs. Chant  
18 and Maynard Chant?

19 A. Oh, yes, I do.

20 Q Were you instructed by Wheaton to go and get those  
21 statements?

22 A. Yes.

23 Q The one from Mrs. Chant, was it taken at her home?

24 A. Yes, it was.

25 Q Did you follow the same practice that Wheaton would, that is,