

SGT. CARROLL, EXAM. BY MR. G. MACDONALD

discuss the matter with them for awhile and then begin to take a statement?

A. Yes, very briefly.

Q. Well, what I'd like you to do, if we can, if Your Lordships agree, is read those two statements over lunch and I'll be asking you if there's anything that's not in those that should be there, when we start after lunch.

12:20 p.m. INQUIRY RECESSED UNTIL 2:00 p.m. INQUIRY RESUMES

- 2:04 p.m. \*

SGT. CARROLL, recalled and still sworn, testified as follows.

EXAMINATION BY MR. G. MacDONALD [Cont'd.]

Q. Sergeant Carroll, have you had the opportunity to look at the statements of Mrs. Chant and Maynard Chant?

A. Yes, I did.

Q. Found on page 84 and 81 of Volume 34. Let's go to Mrs. Chant first. Everything that she said of significance to you is contained in that statement.

A. I believe so.

Q. In the last page of that statement she says about having..."Maynard having told his father and Reverend William Legge about the incident." Was any attempt made to contact the Reverend Legge?

A. Not by myself.

Q. Do you know if any attempt was made by anyone?

A. I don't believe so.

1 Q. Just let me take you page 86 quickly, as well, that's a  
2 statement from Lawrence Burke that was also taken on April  
3 21st by you, page 86.

4 A. No, the first one was taken on the 20th.

5 Q. Okay, I'm sorry. All right. We'll come to Burke in a minute  
6 then. The statement of Maynard Chart does it contain  
7 everything that was said to you that night?

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

9 Q. Now, in particular there is no reference in that statement as  
10 well to John MacIntyre.

11 A. That's correct.

12 Q. Was there any reference by Maynard Chant to John  
13 MacIntyre?

14 A. I would say there was from the beginning, in the first  
15 interview as well as this one.

16 Q. Are you able to tell us then why there would not be any  
17 reference in your statement to the name John MacIntyre?

18 A. No, I can't, but it was a name that was mentioned to Constable  
19 Hyde and myself when he was referring to the police. I guess  
20 it was more than an assumption that he was talking about  
21 Detective MacIntyre, but his name is not there.

22 Q. Well, that's twice now that Chant has told you, at least in your  
23 presence, that he was pressured by John MacIntyre but  
24 neither time is that written in the statement.

25 A. That's correct.

- 1 Q. Can you give me any explanation for that?
- 2 A. No, I can't really other than saying that MacIntyre was known  
3 to be the detective investigating that case, the main detective,  
4 and after he identified him in the first meeting, Chant I mean,  
5 it may have just been an assumption that MacIntyre was who  
6 he was referring to when he said "The police" or "They came  
7 out and they interviewed me." That's not...
- 8 Q. I want to be clear now. Did Chant mention John MacIntyre or  
9 did you just assume that's who he was referring to?
- 10 A. He was mentioning MacIntyre by name.
- 11 Q. So, the name was mentioned.
- 12 A. Yes.
- 13 Q. The reason you don't put it in your statement is that because  
14 you assume people reading the statement will know it refers  
15 to MacIntyre.
- 16 A. Not necessarily people reading the statement, but in this case  
17 it was my statement and that's just the format it took.
- 18 Q. At least in this statement there is reference to the perjury  
19 reference. That's at the bottom of page 81.
- 20 A. Yes.
- 21 Q. And is that accurately reflecting what was said to you that  
22 night by Chant?
- 23 A. Yes, it is.
- 24 Q. Now, Chant also, on the top of page 82, talks about his mother  
25 being outside the room. Do you see that?

- 1 A. Yes.
- 2 Q. And is that what you were told by him?
- 3 A. That's correct.
- 4 Q. And Mrs. Chant had told you the same thing.
- 5 A. Yes.
- 6 Q. That they wanted to talk to Maynard alone.
- 7 A. That's true.
- 8 Q. And you also knew that Lawrence Burke and Wayne Magee  
9 were supposed to...at least suggested that they were present  
10 at that same meeting, you knew that?
- 11 A. Yes.
- 12 Q. And you visited Burke on the 21st of April, that's on page 86.
- 13 A. On the 21st, yes.
- 14 Q. And Burke told you that he was not...he had no recollection of  
15 being present on that day.
- 16 A. That's true.
- 17 Q. Did you see Magee's statement? That's found on page 87 and  
18 it looks like it was taken on the 2nd of March of 1982.
- 19 A. I've seen it over the years. I don't know at what stage I did  
20 see it first.
- 21 Q. Do you know Magee?
- 22 A. Yes.
- 23 Q. Worked with him over the years.
- 24 A. No.
- 25 Q. Never worked with him at all.

1 A. I can recall meeting him once when he came to our office in  
2 Sydney. That was before he became Sheriff of Sydney and he  
3 was the Chief of Police in Louisbourg I believe, at least he was  
4 on that department, and shortly after that he became Sheriff,  
5 as I understand, of Cape Breton County. I see him quite often.  
6 I know him personally but I've never worked with him on  
7 any case.

8 Q. You've seen his statement in any event over the years.

9 A. yes.

10 Q. Now, there's not...I put it to you that Magee is quite explicit in  
11 his statement that there was no pressure applied to Chant,  
12 you're aware of that.

13 A. Yes, he also...he's also quite certain he was there as certain as  
14 Burke was that he was not there.

15 Q. He is as certain he was there as Burke was that he wasn't  
16 there.

17 A. Yes.

18 Q. Now, what does that mean?

19 A. Burke is saying he wasn't there.

20 Q. Saying who wasn't there?

21 A. That he himself was not present when the...he said, " I don't  
22 recall being present when Chant was interviewed by the  
23 police. I don't recall signing his statement as a witness. I  
24 don't recall...I don't remember seeing Mrs. Chant on that day."  
25 That's Burke's statement.

1 Q. Okay.

2 A. Magee said he was there.

3 Q. Magee says he was there and he also says that he doesn't  
4 recall any hesitation on Chant's part admitting seeing the  
5 stabbing and he doesn't recall...at least there's no reference of  
6 any pressure being applied.

7 A. That's what he states.

8 Q. Did you just discard that statement as not being correct?

9 A. I don't think it was for me to decided whether Sheriff Magee  
10 was mistaken totally or slightly mistaken. It's a statement  
11 that was taken in the course of this investigation by Staff  
12 Sergeant Wheaton and I personally thought he was...that he  
13 was mistaken.

14 Q. Did you...were you ever told by Wheaton that he didn't  
15 believe Wayne Magee?

16 A. Not in those exact words, no.

17 Q. Did you ever discuss with Staff Sergeant Wheaton the  
18 statement that had been obtained from Magee?

19 A. Yes.

20 Q. And what did you understand Wheaton's position was on it?

21 A. I believe he felt the same that I did that Magee was mistaken.

22 Q. Mistaken. Did you ever put that to Magee?

23 A. Not me, no.

24 Q. Do you know if Wheaton ever did?

25 A. I don't believe so.

- 1 Q You took over, I guess, from Wheaton this investigation in  
2 April of 1982, did you not, April or May?
- 3 A. On his transfer I took control of the file, yes.
- 4 Q So, from then on it would be your file. You'd be the senior  
5 man.
- 6 A. Not senior man, but Wheaton was replaced by a Staff  
7 Sergeant Tom Barlow but the reporting of the file it was  
8 probably dropped in my...on my desk to report it from then  
9 on.
- 10 Q Do you recall any discussions with Sergeant Wheaton about a  
11 visit he had to Chief MacIntyre's office to obtain files in April  
12 of 1982?
- 13 A. If this was the date with Sergeant Davies, yes.
- 14 Q Yes.
- 15 A. Yes.
- 16 Q That he attended with Davies.
- 17 A. Yes.
- 18 Q Did you have discussion with Wheaton and Davies about that?
- 19 A. More so Wheaton than Davies. Davies was not stationed at  
20 Sydney at that time, I don't believe.
- 21 Q What do you recall being told by Wheaton?
- 22 A. That documents, a document or documents had been dropped  
23 on the floor and in an effort to be concealed under the desk of  
24 Chief MacIntyre when they went down to take possession of  
25 the city police file. That Sergeant Davies, then Corporal

1 Davies, he had witnessed that manoeuvre and they had gone  
2 back in the office and asked for everything that he had at  
3 which time Chief MacIntyre produced the document from the  
4 floor.

5 Q. Was it your understanding from what you were being told  
6 that the document had deliberately been placed on the floor  
7 to hide it?

8 A. That was the opinion that I drew from the...from the facts as  
9 related by Staff Wheaton.

10 Q. There is some confusion over the date when that may have  
11 taken place. Are you able to give any assistance with that  
12 date?

13 A. I can't really...my initials appear on a list of documents that  
14 Staff Wheaton received from the city police. I'm not sure of  
15 that date. I have a notation on the actual document.

16 Q. Could I have Exhibit 88, please?

17 REGISTRAR

18 I'm giving him 88 and 88A.

19 MR. MacDONALD

20 Thank-you.

21 Q. 88 is a listing of materials turned over to Staff Sergeant  
22 Wheaton by the city police and your initials appear on that  
23 document, as well, I think, is that correct?

24 A. Yes, more or less to the centre of the page, my initials, "J.E.C.,  
25 Corporal, 11:31, 27 April '82."



SGT. CARROLL, EXAM. BY MR. G. MACDONALD

1 Q. Why would you be signing that document?

2 A. To the best of my memory that I was receiving this document  
3 from Staff Sergeant Wheaton possibly on the eve of his  
4 transfer or in preparation for his transfer.

5 Q. The discussion you had with Wheaton about the visit to the  
6 Chief's office and documents on the floor, are you able to tell  
7 us when that occurred?

8 A. No, I'm not, sorry, I can't.

9 Q. And that document ~~is~~ doesn't refresh your memory in any  
10 way?

11 A. It just means to me that I signed it on that time at that time  
12 and date to show that I had possession of it.

13 MR. MacDONALD

14 Some problem, My Lord.

15 COMMISSIONER EVANS

16 I'm just wondering why, I think you did ask the question of  
17 why were these turned over to...were the documents turned over  
18 to this witness.

19 MR. MacDONALD

20 Were the documents actually turned over to you?

21 SGT. CARROLL

22 I can't say. I only know that I initialed it and put the time  
23 and date on it when I did see this and I can suggest that it was at  
24 the point in time where Staff Wheaton was being transferred and  
25 the file was going to be further reported on by myself.

COMMISSIONER EVANS

1 And when was he transferred?  
2

SGT. CARROLL

3 I'm sorry, My Lord, I don't have that date.  
4

MR. MacDONALD

5 In the transcript at Volume 7...or page 7706, My Lord, Staff  
6 Sergeant Wheaton testified that he was turning them over to  
7 Corporal Carroll in...as he was being transferred to Halifax and it  
8 was for continuity of the exhibit. The exhibits were actually  
9 turned over to Corporal Carroll according to Wheaton.  
10

11 Q. When Wheaton was transferred you took over the file, didn't  
12 you?

13 A. Yes.

14 Q. And from them on, as you've told us earlier, you would be the  
15 reporting officer on it.

16 A. Yes.

17 Q. But did you consider it was your file from the point of view of  
18 doing further work, deciding what further work had to be  
19 done, this sort of thing?

20 A. No, for the most part it was more or less a waiting process  
21 until the courts had decided to release Marshall and the  
22 hearings that subsequently followed and the eventual charge  
23 against Ebsary and the trials that followed that.

24 Q. If Staff Wheaton's recollection is correct, he and Davies, that  
25 the incident with Chief MacIntyre with the material under

1 desk took place on April 26th, that's what they have testified,  
2 if that is correct then when this material was turned over to  
3 you, you would have been aware that this had occurred just a  
4 day or so before.

5 A. A day or so, yes, I would agree to that.

6 Q. And did you...were you aware also that there had been an  
7 order from the Attorney General to the Chief to turn over all  
8 of the files?

9 A. I don't believe I was aware of it at the actual day. I would  
10 normally have gone with Wheaton that particular day to...but  
11 for some reason or other I was not...on the 26th I was in court  
12 in Sydney Mines on an attempted murder case, that's why I  
13 wasn't available to go with him on that date, and as far as the  
14 order from the A.G.'s Department, I would have knowledge of  
15 it on the day it was executed or the day they went down  
16 there or shortly thereafter.

17 Q. Was there any discussion at that time that there should be  
18 investigation carried out of the Sydney Police or charges laid  
19 against the Sydney Police for interfering with your  
20 investigation?

21 A. Not my investigation, but Staff Wheaton, I'm quite confident,  
22 would have been discussing that on a fairly regular basis, that  
23 this was obstruction and...

24 Q. But if he left Sydney about that time, or shortly thereafter,  
25 would it not have rested with you to carry that on?

SGT. CARROLL, EXAM. BY MR. G. MACDONALD

1 A. I don't really feel that is the case. I think that in his reports  
2 he had forwarded this to Halifax, although I know what  
3 you're saying on the...he failed to report the incident there  
4 with Chief MacIntyre and the documents on the floor. But at  
5 the same time I'm aware of the fact that our officer  
6 commanding, Inspector Scott, and other people in Halifax  
7 were aware of that incident.

COMMISSIONER EVANS

8  
9 Sergeant, did you get the paper that was on the floor?

SGT. CARROLL

10  
11 I've seen it, My Lord. I don't know at what stage I was...it's  
12 not on this list here I don't believe. I don't think it's shown on 88.

COMMISSIONER EVANS

13  
14 No, that's what is bothering me a bit. On the 27th which was  
15 the day following this you got this and I'm wondering where did  
16 that piece of paper go that was picked off the floor on the 26th if  
17 everything else was turned over to you.

SGT. CARROLL

18  
19 I saw it in due course but I cannot say what channels it went  
20 through before that.

MR. MACDONALD

21  
22 What document was it?

23 A. I believe it was the Patricia Harriss statement, one of the two  
24 that she gave.

25 Q. Was it the completed one or the uncompleted one?

1 A. I'd be guessing. I think it was the uncompleted one.

2 Q. And are you saying that when Wheaton handed over all of  
3 the files to you and had you initialled Exhibit 88 that you  
4 didn't have that document?

5 A. No, I can't say that. This here, Exhibit 88, the only thing I can  
6 tell you about it is that I put my initials on it and the time  
7 and date as indicated that I took this in my possession or that  
8 I saw it for the first time and it became part of the file.

9 Q. That's the listing there.

10 A. Yes.

11 Q. Now, what about the documents that are listed on it?

12 A. Well, they would have to be attached to it because the first  
13 part is only the...more or less the index of what is...what is  
14 attached.

15 Q. When you talked to Wheaton about the incident in the Chief's  
16 office, in MacIntyre's office did he tell you what document  
17 had been on the floor?

18 2:23 p.m.

19 A. I can't really say. I believe he did but it's six years ago.

20 Q. So you can't tell us...

21 A. No, I cannot...

22 Q. First, if he did tell you or what the document was.

23 A. The incident I knew about, what the document was I feel that  
24 I knew about at the same time but today I can't tell you any  
25 more detail than that.

1 Q. And there's no reference in your notebook about the incident  
2 or having been told about the incident.

3 A. No, sir.

4 COMMISSIONER EVANS

5 May I just ask you then. At the top of that 88A, there is the,  
6 I take it the initials of Wheaton on the 27th 11:31, and then there  
7 is your initials, too, is that correct? On the upper right-hand  
8 corner.

9 A. Yes, My Lord.

10 COMMISSIONER EVANS

11 And what was the significance of you signing? That you got  
12 these four sheets of paper or that you got the documents that  
13 were listed?

14 A. The attachments.

15 COMMISSIONER EVANS

16 Pardon?

17 A. The attached statements that would be listed here.

18 COMMISSIONER EVANS

19 All those. But it did not include this statement of Patricia  
20 Harriss and I just find it a little unusual that you would get all the  
21 statements on the 26th except the one that was alleged to be  
22 found under the desk.

23 A. Well from what I can gather, with reference to Patricia Anne  
24 Harriss it's noted here, "Statements", plural, of Patricia Anne  
25 Harriss. But this list was compiled before the incident where

1 the paper dropped on the floor and, to me, that should be  
2 statement, singular, instead of plural.

3 COMMISSIONER EVANS

4 Well, of course, it says June the 18th, indicating only one  
5 apparently. But what I'm trying to get at and I, maybe it's my  
6 fault, I'm not explaining it properly, but the file was turned over  
7 to you when Wheaton left, is that right?

8 A. Yes, My Lord.

9 COMMISSIONER EVANS

10 And it was turned over to you, then, on the 27th?

11 A. At least these documents were.

12 COMMISSIONER EVANS

13 Yes. But was the file itself turned over to you?

14 A. On Wheaton's departure. He may, I don't know exactly what  
15 day he last worked in Sydney.

16 COMMISSIONER EVANS

17 But he didn't, I take it, then, he didn't leave on the 27th or  
18 28th.

19 A. Oh no, I don't believe so. And, again, this index was typed  
20 probably, it had to be typed on the 26th at the latest because  
21 the incident occurred on the 26th, as I understand...

22 COMMISSIONER EVANS

23 Yes, that's right.

24 A. And I saw it for the first time on the 27th. So the two  
25 statements of Patricia Harriss would not be attached here

1 even though it says "Statements" plural. There's only one  
2 date given there for that.

3 COMMISSIONER EVANS

4 Yeah, okay. Thank you.

5 MR. MacDONALD

6 Q. On the 27th, as well, Sergeant, you interviewed Margaret  
7 Pratico and her statement is contained in your diary.

8 A. I'm sorry, the date again of that?

9 Q. 27th of April.

10 A. That statement was taken in my notebook by Staff Sergeant  
11 Wheaton because he didn't have his with him.

12 Q. That's his handwriting, is it?

13 A. It's his handwriting, yes.

14 Q. Were you with him?

15 A. Yes, I was.

16 Q. No formal statement was taken from Mrs. Pratico, was there?

17 A. No, it was a very brief encounter.

18 Q. I want to take you to May 11th, that's in your diary. And you  
19 can also look at page 95 of Exhibit 34. Now your diary says  
20 on May 11th that you were at Sydney Police Department.  
21 Interviewed Chief MacIntyre.

22 A. Yes.

23 Q. Now was there an actual interview carried out with him?

24 A. No, sir. It would be very briefly to tell him that we were  
25 there to interview some him of his men. I think he already



1 knew that was going to happen. Staff Sergeant Wheaton and  
2 myself went down to the Sydney Police station and from my  
3 notes here I, personally, took a statement from Sergeant  
4 Michael Bernard MacDonald at 11:10.

5 Q. And that's the statement on page 95 of Exhibit 34?

6 A. Yes.

7 Q. Was Wheaton with you?

8 A. I think we were in separate rooms doing separate people at  
9 that time.

10 Q. So you did MacDonald.

11 A. Yes. I then took a statement from Gerald Arthur Taylor.  
12 Another one from Corporal Jack Johnson. Another from  
13 Corporal Fred LeMoine. And finally a statement from  
14 Inspector Richard Walsh who is now the present chief.

15 Q. Okay. I want to talk about the one with Michael Bernard  
16 MacDonald on page 95. And, in particular, fourth paragraph.  
17 He said, "I phoned John MacIntyre..." that's the night of the  
18 stabbing...

19 A. Yes.

20 Q. "Who was Sergeant of Detectives and told him what was  
21 happening. That I thought we had a murder on our hands."  
22 First of all, of course, Seale was not dead at that time, was he.

23 A. Very seriously injured but not dead.

24 Q. "I asked him if he would come out and he refused. I reported  
25 this to the Chief of Police, Gordon MacLeod. I had to go to his

1 house and see him." Whose house was that, MacLeod's?

2 A. I assume. That was MacLeod he's referring to.

3 Q. Now I understood Staff Wheaton to be giving evidence here  
4 last week saying that Chief MacLeod was so mad at Sergeant  
5 MacIntyre that he threatened to fire him and that Michael  
6 MacDonald had told this to the RCMP but didn't want it in his  
7 statement. Do you have any recollection of that?

8 A. I heard Wheaton testify to that.

9 Q. You took the statement from Michael MacDonald...

10 A. My name is not on the page 2 of this, of that document. I  
11 assume if it was on the handwritten copy it would have been  
12 typed in.

13 Q. Your notebook indicates that you took the statement from  
14 Michael MacDonald.

15 A. Yes. I would say I did take it, yes.

16 Q. Would the RCMP have the original of that statement?

17 MR. PRINGLE

18 We'll make inquiries.

19 MR. MacDONALD

20 Thank you.

21 Q. In any event, do you recall Michael MacDonald confiding, if  
22 you will, in you and/or Wheaton but saying, "I don't want  
23 that in the statement?"

24 A. If I took that statement, and I believe I did, there was no  
25 expression of confidence expressed from myself to this man

1 that I would not include it because I think the handwritten  
2 copy should show that he read it and signed it. So if I took it,  
3 and I believe I did, it was straightforward.

4 Q. And your understanding is that you were in one room,  
5 Sergeant Wheaton, that Staff Sergeant Wheaton was in  
6 another and you were interviewing independently members  
7 of the Sydney Police.

8 A. That's what I recall. This was taking place, for the most part,  
9 in the detectives' Office, where Detective Urquhart would  
10 normally have his desk. We were using that...

11 Q. Thank you. There's the original statement of Mr. MacDonald,  
12 is that your handwriting?

13 A. No, it is not.

14 Q. Do you know whose handwriting it is?

15 A. Well, I would guess it's Wheaton's. I would say it's Wheaton's  
16 although I haven't seen his writing for some time. I would  
17 say it's his.

18 Q. Exhibit 103, we know the first bit of that is Wheaton's  
19 handwriting.

20 A. Well there are only three lines on this and three or four lines  
21 with, I would say it is, it's probably Wheaton's.

22 Q. Why would your notebook have indicated that the interview  
23 of MacDonald took place and the time is given, but you  
24 wouldn't have done it or even have been present?

25 A. I can only say these were the people interviewed that day by

1       Wheaton and myself. Does times show, the time started  
2       there, 11, 10 a.m., finished 12:40?

3       Q. No, at least I don't see it.

4       A. No, I can only say that I was at the station when that  
5       statement was taken because I wouldn't have the times  
6       recorded in my notebook otherwise. And the statements  
7       were being taken in the back room of the Detective Office  
8       where Sergeant of Detectives, or Inspector Urquhart held his  
9       office.

10      Q. Let me put the direct question to you, again. Do you recall  
11      Michael MacDonald saying that the Chief of Police of Sydney  
12      was so mad with Sergeant MacIntyre for not having  
13      responded to the call that night, that he threatened him with  
14      being fired?

15      A. I can't honestly say I heard it on that day. I've heard it since  
16      and I've heard it discussed with Wheaton. I've heard it in his  
17      testimony...

18      Q. But you didn't hear...

19      A. But I cannot recall...

20      Q. You didn't hear it said by Michael MacDonald.

21      A. I cannot recall him saying that.

22      Q. Thank you. You also went to Newfoundland on May the 12th,  
23      I think, to take a statement from Robert McLean.

24      A. Yes.

25      Q. And Mr. McLean, I believe, is a relative of Ebsary's?

1 A. Yes, he is.

2 Q. You and Wheaton both went to visit Mr. McLean.

3 A. That's correct.

4 Q. Now was Wheaton still in Sydney at this time? Still stationed  
5 in Sydney?

6 A. Yes, he was.

7 Q. So he hasn't left as of May the 12th anyway.

8 A. No. I think I recall him saying in his evidence that he left in  
9 June, early part of June.

10 Q. Did you? Okay. Thank you. Let me take you to page 88 of  
11 Volume 34. That is another report prepared by Staff  
12 Wheaton for his superior. And did you see this report before  
13 it was sent?

14 A. I've seen it over the years. Before it was sent?

15 Q. Yes.

16 A. I would say no.

17 Q. Starting at page, or paragraph 4 on page 88, he says,

18

19 In regards to the Ebsary and Marshall  
20 portions of this file all avenues of  
21 investigation known to date have been  
22 completed. Discussions were held with  
23 Crown Prosecutor, Frank Edwards, in  
24 regards to interviewing Chief MacIntyre  
25 and Inspector Urquhart in regards to the  
allegations of Chant, Pratico and Harriss,  
that they were induced to fabricate  
evidence in the original trial of this matter.  
Mr. Edwards has advised me that he

1 further discussed the matter with Mr.  
2 Gordon Gale of the Attorney General's  
3 Department, and it was felt that these  
interviews should be held in abeyance for  
the present.

4 Were you aware of that?

5 A. Indirectly, yes. When the, when I saw the report.

6 Q. Did Wheaton ever tell you that he had been told that by  
7 Edwards, that the interviews of MacIntyre and Urquhart were  
8 to be held in abeyance?

9 A. Yes.

10 Q. And was that accepted that no interviews, or what did you  
11 understand that to mean?

12 A. More or less that we were not to proceed further until  
13 directed otherwise.

14 Q. By whom?

15 A. Our superiors.

16 Q. Is there any, you told me this morning that you won't, your  
17 understanding is you couldn't conduct an investigation of  
18 another police force unless you received instructions from  
19 your superiors. Is there any other...

20 A. No, I don't think that's quite true. On investigation, yes, but  
21 to a certain point. Up to a certain point. I think you were  
22 relating to the actual interview of Chief MacIntyre and  
23 Inspector Urquhart by myself and Wheaton...

24 Q. At what point...

25 A. And I thought it would be a very uncomfortable situation for

1 myself with the rank of corporal to be talking to a senior rank  
2 in that department.

3 Q. At what point, then, in an investigation of another police  
4 force, do you say you require instructions from your superior  
5 before you can go further?

6 A. Well, again, it would depend on the nature of the offence, the  
7 alleged offence. We would rely on some direction from our  
8 people after, say, the investigation had pretty much come to a  
9 head and we were looking for a direction as to prosecution or  
10 just further direction generally.

11 Q. Well were you at that stage in this investigation?

12 A. Those are Wheaton's words that the investigation has been  
13 completed and he feels that certain things should be done and  
14 we were advised that they were not to be done.

15 Q. You weren't to go any further.

16 A. The files, or the interviews of these two principal people  
17 should be kept in abeyance for the present time.

18 Q. Until you got instructions from your superior.

19 A. Yes.

20 Q. Yes. Wheaton was of the opinion that there was allegation  
21 that these two people had induced witnesses to fabricate  
22 evidence.

23 A. I'm sorry, I was interrupted there.

24 Q. Wheaton was of the opinion that there were allegations that  
25 Urquhart and MacIntyre had induced people to fabricate

1 evidence.

2 A. Yes.

3 Q. You shared that belief.

4 A. Yes.

5 Q. Did you also share the belief that there should be an  
6 investigation carried out with respect to laying charges  
7 against Chief MacIntyre and Inspector Urquhart?

8 A. Yes, I did.

9 Q. Now, and what I'm trying to determine then is what you  
10 would need to get you to carry this investigation out.

11 A. Well Staff Wheaton had been replaced by Staff Sergeant  
12 Barlow who is in a new position there. It would be my  
13 opinion that at that stage the communication between our  
14 levels had been completed in that Inspector Scott had been  
15 briefed by Staff Sergeant Wheaton and also in further  
16 communication with our office in Halifax and the return  
17 message from that to Mr. Edwards stated in Staff Wheaton's  
18 report, on the bottom paragraph,

19  
20 Mr Edwards has advised me that he  
21 further discussed the matter with Mr.  
22 Gordon Gale of the Attorney General's  
23 Department, and it was felt that these  
interviews should be held in abeyance for  
the present.

24 Q. Is there any other class of people, other than fellow  
25 policemen that you, now you as an RCMP officer, feel you



1 can't investigate until you get instructions from your  
2 superiors?

3 A. I can't think of any. I was going to suggest lawyers or  
4 something like that or, no, I can't think of any other...

5 Q. What's so special about fellow policemen?

6 A. It's just not a matter of fellow policemen. It's the matter of  
7 the main man or the main, head of that Department...

8 Q. Urquhart wasn't the head of the Department?

9 A. No.

10 Q. And it was also suggested...

11 A. MacIntyre...

12 Q. That you carry out an inspection interview of MacIntyre and  
13 Urquhart.

14 A. Yes.

15 Q. So if we put the Chief at the head of the Department, what  
16 would, what's special about Urquhart that you wouldn't carry  
17 out an investigation of him?

18 A. I would assume that it would be done jointly and preferably  
19 by new investigators.

20 Q. Preferably by a new investigator.

21 A. Yes.

22 Q. That is, other than yourself or Wheaton?

23 A. Well Wheaton was being transferred and I was remaining  
24 behind.

25 Q. Well when you say by another investigator, you mean other

1 |       than yourself?

2 | A. I think I probably would have wished someone else to do it.

3 | Q. Why?

4 | A. Well it's, I think it has something to do with rank structure.

5 |       My rank was corporal at the time and I think it would have

6 |       been difficult for me to, not impossible, but difficult and

7 |       maybe, possibly uncomfortable, to be interrogating a Chief of

8 |       Police.

9 | Q. Would you have any difficulty, or would you feel the same

10 |       degree of uncomfortableness, say, with the Mayor of Sydney?

11 | A. Possibly. It would depend, again, it would have to depend on

12 |       the nature of the offence. If you're talking...

13 | Q. We're talking about the offence of counseling perjury, I

14 |       understand. Obstructing justice, I understand.

15 | A. Yes.

16 | Q. Those type of offence.

17 | A. There would be a certain amount of uncomfortable tension in

18 |       the air if it was somebody that, either one of those two

19 |       brackets you mentioned.

20 | Q. Crown attorney, Frank Edwards?

21 | A. That would be difficult, yes.

22 | Q. But would you do it? Would you have to get...

23 | A. If I was directed to, yes.

24 | Q. Only if you were directed?

25 | A. Again, this report brings it up to a head where Wheaton has

1 received word from Edwards as to where we're going from  
2 here, which is obviously nowhere. And...

3 Q. Let me put it, I hope simply, the question anyway. Is it your  
4 understanding that the police, and specifically the RCMP, in  
5 deciding whether to conclude an investigation and  
6 recommend charges should be laid, that they take instruction  
7 from the Attorney General's Department?

8 A. Are you saying it's my, is it my conclusion or my opinion?

9 Q. Your opinion.

10 A. In more serious offences, yes. Minor summary conviction  
11 things, minor indictable offences, no. Routine things, no.

12 Q. And if I understand what you're saying, if you found, let's  
13 stick with Chief MacIntyre, if you found him driving a car  
14 while under the influence you would charge him.

15 A. Certainly.

16 Q. But if you suspect he has committed a serious crime, you  
17 won't.

18 A. No, that's, it can't be taken in that sequence at all. What we're  
19 talking about today in this particular file, the Marshall  
20 inquiry, deals with something he did as a policeman in his  
21 line of duties, whereas impaired driving very likely would be  
22 off duty, very likely outside his own jurisdiction, outside the  
23 city limits, a different story.

24 Q. If Staff Sergeant Wheaton is correct, he and Davies, that  
25 Detective MacIntyre, or Chief MacIntyre was throwing

1 Q. documents under the desk to hide, if you would just exhume  
2 that for a minute, surely that's not doing something in the line  
3 of duty.

4 A. Well it is certainly obstruction in his line of duty. He's sitting  
5 there in uniform, I assumed he was that day. He's certainly  
6 sitting there in plainclothes or uniform as the Chief of Police  
7 of that department.

8 2:45 p.m.

9 Q. Okay. I take it there never was any instructions received that  
10 the interviews which were held in abeyance should not now  
11 proceed?

12 A. Not to my knowledge.

13 Q. Did you discuss with Staff Wheaton his view of that  
14 instruction?

15 A. I'm sure it was discussed. He was not happy about it.

16 Q. Did you ever discuss it with Inspector Scott?

17 A. Did I?

18 Q. Yes.

19 A. Not that I can recall.

20 Q. On...in your diary on page...or on June the 14th there's a  
21 reference. Can you tell me what that refers to?

22 A. Yes. I was advised by Chief Crowe of New Waterford Town  
23 Police regarding a complaint from the Seale family, that being  
24 Oscar Seale and his family, and this had to do with a visit to, I  
25 believe it's Mr. Seale's mother, I'm not sure. Her name was

1 Giddens and she was living in New Waterford at the time.  
2 There were two people came to her home one day, a male and  
3 female, reporters supposedly, to talk to her about her  
4 grandson, or nephew, I believe it was Sandy Seale's  
5 grandmother. At any rate at some point in time, either the  
6 first visit or a second visit, and I believe there was only one  
7 visit, there was a fairly large photograph in colour of Sandy  
8 Seale on the piano or organ or some mantelpiece in the house  
9 and one of these individuals took the photograph from that  
10 position and put it in the hand or in the lap of Mrs. Giddens.  
11 She was emotionally upset at the time and was crying and at  
12 that time they chose to take a photograph of her holding this  
13 picture. Oscar Seale, Sandy's father, was very, very upset  
14 about the situation and I started some enquiries to try and  
15 find out who had taken the photograph and in order...in an  
16 effort to retrieve it for the family, which I eventually did. So,  
17 that was the notation there of the complaint made by the  
18 Seale family about this incident.

19 Q. Would you turn to page 110 of Volume 34, there is a  
20 continuation report form completed by you, and I think it  
21 deals with that incident, page 110.

22 A. Yes, I have that.

23 Q. On page 111, down at the bottom of the page there's a note,  
24 "4:30 p.m., a telephone call from Chief MacIntyre." Is that a  
25 call that you received?

1 A. Not that I received directly, but through the communication  
2 or conversation with the officer commanding, which I believe  
3 was still Inspector Scott at the time, I'm quite sure it was, it  
4 would have been as a result of conversation. It starts off as  
5 "OC" which is officer commanding, "Also advised Chief John  
6 MacIntyre of Sydney P.D. had just called."

7 Q. So, that's not a call you received, someone else received it.

8 A. Not directly, no.

9 Q. Thank-you. Okay. When is your next involvement, Sergeant?  
10 Look at June the 21st.

11 A. Yes, I have that.

12 Q. What is that reference?

13 A. On the 21st of June, '82, had a call from Crown Prosecutor  
14 Edwards, the Marshall report was taken to his office on that  
15 date. That would very likely be in the morning because I  
16 went to an arson scene in Arichat in the afternoon.

17 Q. What is the Marshall report?

18 A. The Marshall report is the file as it was at that time.

19 Q. Would that include the various reports that Staff Wheaton  
20 had given to Inspector Scott?

21 A. Yes, the entire file.

22 Q. The entire file. And look at July the 2nd.

23 A. Yes.

24 Q. Does that say you are picking up the Marshall transcript from  
25 Prosecutor Edwards' office?

1 A. The word "transcript" appears there. I don't really know  
2 what it pertains to. We had obviously seen the transcript of  
3 the original trial much earlier than that.

4 Q. You don't know what that refers to?

5 A. No, I'm sorry. I can't enlighten you there.

6 Q. July 14th.

7 A. It mentions a meeting with Aronson regarding Chant and  
8 Pratico, and a patrol I made to New Waterford to locate  
9 Pratico.

10 Q. And "Louisbourg re Chant".

11 A. "Louisbourg re Chant".

12 Q. Do you know why you're doing that?

13 A. I think it probably can be confirmed by examining these  
14 documents but I think this was at the stage where Aronson  
15 was compiling affidavits and I believe that I, possibly  
16 Constable Hyde drove him to those areas to locate these  
17 people. He had the documents drafted. If those date coincide  
18 then that's exactly what it is.

19 Q. It's around that time anyway.

20 A. Yes. He had documents drafted. I recall going to Louisbourg  
21 and taking Chant before a local Justice of the Peace, a lady at  
22 her home there, going at lunch hour or something to have him  
23 swear to this document. Pratico, I believe that Pratico was  
24 taken before Chief Crowe with Aronson and he swore to this  
25 document at the police station. I think the Chief was a

1 Commissioner of Oaths. That's the best I can recall. I'm  
2 not...the date.

3 Q Okay. Let's jump forward into October. October, I think the  
4 27th

5 A. The 27th.

6 Q Yes.

7 A. Yes.

8 Q That is a call you...a contact you had from Mr. Ebsary.

9 A. That's correct.

10 Q And it had to do with...

11 A. Mr. Doyle.

12 Q Who was also...he was in prison somewhere, wasn't he, or  
13 under charge?

14 A. Mr. Doyle had been a house guest at the Ebsary residence for  
15 some time and he had gotten himself into some problems in  
16 the Arichat, St. Peter's area. I'm just trying to remember  
17 what...\$800, BC, I can't recall as to what... At any rate, as I  
18 recall Ebsary was very concerned that Doyle had been  
19 arrested in the Arichat area and was making an appearance  
20 in court on or about that same date and he wanted me to find  
21 out if there was anything that could be done for him because  
22 he felt Doyle needed some mental help rather than going to  
23 jail. I don't recall what the offences were, I think they were  
24 fraud-related cheques or whatever He asked me to try and  
25 find out what could be done for his friend Doyle.



1 Q. And as a result of your attempts Ebsary agreed to meet with  
2 you and give you a statement as to what he knew of the Seale  
3 killing, isn't that correct?

4 A. Ebsary was in tears at that particular time. He was very  
5 upset over what had happened to Doyle. I told him that there  
6 was very little I could do other than find out what had  
7 happened in court that day, and I made a phone call, almost  
8 immediately. I found that Doyle had been before the  
9 Provincial Court in either Arichat or St. Peter's that same  
10 morning and had been remanded to the Nova Scotia Hospital  
11 in Dartmouth and, in fact, was on his way. So nothing could  
12 be done at all. I called back Ebsary and told him that. He was  
13 in full tears at this time. He was crying outwardly, and he  
14 made some mention that he was a man of his word and that  
15 he would talk to me when I came down.

16 Q. And you went to visit him on the 29th of October.

17 A. Yes.

18 Q. And took a tape-recording or tape recorder with you.

19 A. Yes.

20 Q. And were able to tape an interview with Mr. Ebsary on that  
21 date.

22 A. I did.

23 Q. And it was during that interview that Ebsary admitted to you  
24 his involvement in the Seale stabbing.

25 A. Yes, he did.

1 Q. I'm not going to refer to it, My Lords, but that...the transcript  
2 of that tape-recording is found in Volume 19, page 138 and  
3 following. In that statement he told you that he had buried  
4 the knife or the blade somewhere and you went with, was it,  
5 with him that you went to try and find that knife?

6 A. He stated he had broke the knife in two, threw the blade in  
7 one direction and the handle in another. We asked if he...I  
8 asked him if he would come with my partner and I, partner  
9 and I, at a convenient time and date to have a look for  
10 this...these two items, and he said he would. So, Constable  
11 Hyde and myself, I believe it was the following day...no, on  
12 the 2nd of November, Constable Hyde and...he was Corporal  
13 Hyde then, he had been promoted, picked up Ebsary on the  
14 2nd of November at 9:30 a.m. and he directed us to his  
15 former address at 126 Rear Argyle Street and we commenced  
16 to dig up a garden plot there approximately...roughly four by  
17 six. He was quite direct as to where the spot would be, so we  
18 didn't have to dig up the whole backyard. But it was in an  
19 area close to the house where people would normally have  
20 flowers growing. So, we dug down approximately six or eight  
21 inches for an area of about four by six feet in dimension.  
22 And, we found nothing other than spikes and broken glass,  
23 nails and nothing in the way of a knife handle or blade.

24 Q. Okay. Let me just take you to a couple of notes in your diary  
25 and get you to comment on them quickly and then we'll be

1 through with them. On the 11th of November.

2 A. Yes.

3 Q. There's reference in there to a "Call from," what is it, "Corporal  
4 Ettinger re Seale. Returned to Sydney. Called Seale, Donovan  
5 and Greg Ebsary." Do you know what that refers to?

6 A. I don't see it on the 11th.

7 Q. The 7th, I'm sorry.

8 A. 7th okay. Yes. That would be with reference to the  
9 photographs taken of Mrs. Giddens at New Waterford  
10 concerning the...her holding the picture of the deceased.

11 Q. Okay. And down at the bottom of that page, I don't know  
12 what date it is, it's the 8th, I think, where you saw, "Two  
13 slides of Giddens to Oscar Seale." So you were able to get the  
14 slides and return them, were you?

15 A. Yes, I retrieved them from a home in Sydney and they were  
16 in slide form. They weren't negatives as such. They  
17 were...had been reduced to two slides and I returned them to  
18 Oscar Seale with Staff Sergeant Barlow on that date.

19 Q. And then you attended the reference hearing in the Appeal  
20 Division, didn't you?

21 A. Part of it, yes.

22 MR. CHAIRMAN

23 Before we leave the notes, Sergeant, 82 11 08, there's  
24 reference to Ebsary concealed weapon.

25

1 SGT. CARROLL

2 My Lord, that would be, to the best of my knowledge, the  
3 sentence imposed on an incident where Roy Ebsary went to his  
4 son's home, Greg Ebsary, with a kitchen knife which he had  
5 dropped in an outside mailbox and Greg Ebsary would not allow  
6 him to enter, but instead called the city police. When they arrived  
7 they found the knife in the mailbox and arrested Ebsary. He went  
8 to court and pleaded guilty and was given six months. That  
9 reflects the sentence as imposed by Judge O'Connell in the  
10 Provincial Court in Sydney.

11 MR. MACDONALD

12 Q. Go to Volume 34 at page 114. I think is your first, your first  
13 report, the one that you signed.

14 A. Yes, it is.

15 Q. And that's because Wheaton is gone, is it?

16 A. Yes.

17 Q. You were...were you given the responsibility of tracking the  
18 reference and then tracking the various Ebsary trials, sitting  
19 in and filing reports on them?

20 A. Yes.

21 Q. Who gave you that responsibility?

22 A. It just fell in my lap.

23 Q. No one told you to do it.

24 A. Well, not really, no.

25 Q. Is that a normal thing for the RCMP to be involved in?

1 A. I think it was probably because Wheaton and I were the two  
2 people involved in investigation, and in his absence it would  
3 normally fall back on myself.

4 Q. Okay. On page 115 I want to refer you to the last paragraph,  
5 number 8. You're talking about Roy Ebsary.

6 A. Is that 115 or 150?

7 Q. 115, 1-1-5.

8 A. Right.

9 Q. You're talking about him and you say,

10

11 When not in custody he entertains a local  
12 crowd of drunks, drug users, fellow  
13 inmates released as well as the homosexual  
14 youths. It is not uncommon for him to go  
15 without food for two weeks, drinking  
16 heavily every day, he is normally drunk  
17 by noon.

15

16 Now, that was your opinion of him and you wrote this report  
17 in January 21st, 1983.

17

18 A. That's from personal observations, yes.

18

19 Q. The statement that you took from him, the tape-recording,  
20 started at 11:50 a.m. in the morning.

20

21 A. Yes.

21

22 Q. Was that not...was he not being normal that day? Was he not  
23 drunk by noon?

23

24 A. He was not drunk. He was...he had been drinking and he  
25 started to drink while I was there. I asked him not to and I

25

1 don't recall that he did drink any more while I was doing the  
2 taping. He was certainly in control of his faculties at that  
3 time.

4 Q. If you go to page 116, this is an addendum to you report, I  
5 think prepared by Inspector Scott.

6 A. Yes.

7 Q. And it says, the second paragraph, "With reference to  
8 paragraph 6 of your report," that's where you talk about  
9 taking a statement from Ebsary.

10  
11 It should be noted that Ebsary had just  
12 come off a ten-day drinking bout and  
13 while listening to this tape-recording you  
14 can see that he is telling you what he  
15 wants to tell you and is not being  
16 completely honest in all details.

17 Would you agree with that assessment of the tape?

18 A. No, sir, I didn't agree with it. I still don't agree with it. It's  
19 probably interesting to note that the tape was felt to be of  
20 very little value to this investigation in the earlier stages by  
21 everyone concerned with the exception of myself. I thought  
22 that under the circumstances it was the best that could be  
23 had.

24 Q. Well, it was considered to be very valuable in the prosecution  
25 of Roy Ebsary.

A. That's true.

Q. And it was referred to to show that he had the intent to make

1 harm, isn't that correct?

2 A. Indeed it did. The tape also showed the lack of remorse and  
3 the, you know, in his description of how he did this thing, he  
4 was almost bragging about it in a sense and it played an  
5 part...played an important part at a later date.

6 Q. All right. Can I get you to go forward now to page 123. You  
7 were assigned the task of conducting interviews of Eugene  
8 Smith and retired Inspector Marshall.

9 A. Yes.

10 Q. And you conducted those interviews in...at December of...I  
11 guess, December of 1983, isn't that correct?

12 A. That's correct, yes.

13 Q. We don't have your diaries for those dates then.

14 A. No, I'm sorry. I don't have my '83 book with me.

15 Q. Have you reviewed them...your books to see of what notations  
16 might be in them?

17 A. No, I haven't, but I recall quite clearly the interview in Saint  
18 John, New Brunswick, with Eugene Smith. I knew him before  
19 he left the RCMP and went to work with the Irving Company,  
20 K.C. Irving. The interview took place at the motel where I  
21 was staying, the Colonial Inn in Saint John, took place in the  
22 morning. I had also made plans to cross the ferry to Digby to  
23 interview the other person, Superintendent Marshall, retired,  
24 the same date. Mr. Smith was quite open about the case, the  
25 details that he did remember. A statement was taken in my

1 writing, of course, and I recall the...more or less the  
2 summation of the thing, something to the effect that the basis  
3 of the polygraph, it probably has been given in Mr. Smith's  
4 evidence, that the polygraph operates on a person's state of  
5 conscience or state of morals and basically if a person who is  
6 being questioned has no regrets or remorse or conscience  
7 about something he's done he very likely will pass the test.

8 Q. Inspector Marshall or Superintendent Marshall refused to  
9 give you a statement, sign a statement, is that correct?

10 A. He...when I first interviewed him at his home in, near  
11 Bridgetown, Nova Scotia, he promptly stated he had no  
12 intention of giving a statement. However, he did speak quite  
13 freely and I told him that I was going to take some notes and  
14 he said, "Go ahead." So, I did make a fairly lengthy record of  
15 things we discussed there. I assume it's before the court.

16 Q. On page 123 you note the resumé of notes you made during  
17 your discussion with Marshall and I wanted to refer you to a  
18 couple of things in there.

19 A. I should point out probably that this is likely a resumé of the  
20 notes made, not the actual notes.

21 Q. Yes.

22 A. From looking at it I would say that it is.

23 Q. That's what you say, "The following is a resumé of notes."

24 A. But what you're looking at there in the second part of  
25 paragraph 2 is not the actual notes I don't believe.



1 Q. Okay. You say there toward the end that "Donnie MacNeil,  
2 that evening, he came to Wandlyn Motel, discussed results of  
3 the test, MacNeil called someone in A.G.'s office, possibly  
4 Leonard Pace."

5 A. Yes.

6 Q. And that's what you were told by Superintendent Marshall.

7 A. Yes.

8 Q. Did you ever follow that up with Mr. Pace to determine if, in  
9 fact, he had been called?

10 A. No, sir, I did not.

11 Q. Go over to the next page, and this is your conclusion, I take it,

12

13 As a result of interviewing both Smith and  
14 Marshall there can be no doubt they came  
15 to Sydney for the sole purpose of  
16 interviewing and polygraphing Ebsary and  
17 MacNeil. No request for interrogation of  
18 other witnesses was made or anticipated  
19 and the Force's involvement terminated at  
20 the conclusion of the test.

21 What were you relying on to make that statement?

22 A. On my own conclusions.

23 Q. You had read, had you not, the report filed by Inspector  
24 Marshall?

25 A. I'm not certain that I ever saw that report. I believe I did  
but I...if I could see it now I could refresh my memory but I...

Q. Yes. I'll certainly refer you to it. It's on page, do you have  
Volume 19 there, or 18, one of those?

1 A. No, I have not.

2 Q. Either one will do. [To Registrar] Which one are you giving  
3 him?

4 REGISTRAR

5 19.

6 MR. MACDONALD

7 I'm sorry. It is 18. He needs 18.

8 Q. On page 7 of Volume 18, had you seen that report before?

9 A. It doesn't look familiar. If I've seen it it's some considerable  
10 time back. I...I can't recall seeing that before.

11 Q. Look at...keep that open but also look at Volume 34 at page 6.  
12 That is an oc...the occurrence report that was in the file in  
13 Sydney GIS that you were...that you took over charge of in the  
14 summer of 1982.

15 A. Yes.

16 Q. And on the bottom of page 6 of Volume 34 it talks about,

17

18 The original investigation was conducted  
19 into these new facts by Chief MacIntyre  
20 and he requested the assistance of this  
21 Force to further look into the matter. To  
22 this end then Sub-Inspector Marshall and  
23 Polygraph Operator Smith conducted  
24 interviews of both MacNeil and Ebsary...

22

23 And so on and so on. How could you know that information if  
24 you didn't have the report?

24

25 A. This is not my report, sir.

25

1 Q No, but I'm saying it's in your file.

2 A. It's in the file. I'm just looking through this report  
3 on...Volume 18 submitted by Sub-Inspector Marshall and I  
4 don't see anything here that jogs my memory that I saw it  
5 before. I just can't place any...place this in any part of the  
6 investigation where I did see it before.

7 Q Were you present here during the evidence of Inspector  
8 Wardrop?

9 A. No, sir.

10 Q He was Marshall's boss at the time and this is what he  
11 testified, and it's found in Volume 38 at page 6745, he was  
12 asked,

13  
14 Are you able to tell us today what you said  
15 to Marshall, what in your mind you would  
16 have expected him to do?

17 And he said,

18 I would have expected him to do as I had  
19 done when I was an investigator for many  
20 years in Moncton, a basic routine thing to  
21 go into the whole thing and talk to  
22 everyone that was involved.

23 A. I didn't hear his evidence. I didn't read his evidence or I  
24 didn't...

25 Q Well, if you just accept that that was his evidence, it just  
doesn't seem...I'm having difficulty understanding how you  
concluded that Smith and Marshall's only job and sole

1 purpose was to go interview Ebsary and MacNeil and take  
2 polygraph.

3 A. That would have been as a result of speaking with Eugene  
4 MacNeil in Saint John and the statement that I obtained from  
5 him.

6 Q. Eugene MacNeil, did you say?

7 A. Eugene Smith, pardon me. From his comments as brief as  
8 they were, and with Marshall at Bridgetown, Nova Scotia. He  
9 didn't give a statement but there had been notes that I  
10 recorded. I don't think that they reveal anything different  
11 than that. That they were to give a very brief resumé and  
12 brief examination of the Sydney Police investigation.

13 Q. That's the impression they left you with.

14 A. Yes.

15 Q. All we had to do was go down and conduct a couple of  
16 polygraphs.

17 A. That's correct.

18 Q. Okay. Look at Volume 34, page 125. This is Inspector...or  
19 Superintendent MacGibbon's comments on your...

20 A. Yes, I recall that.

21 Q. Have you seen that before?

22 A. Yes, I have. He was not happy with my comments.

23 Q. Wasn't happy with your comments about what? Smith...

24 A. About the...yes.

25 Q. ...and Marshall were to do.

1 A. About their, as I understood their duties.

2 3:15 p.m.

3 Q. And this was brought to your attention, was it?

4 A. In that form, yes, by a memo.

5 Q. Okay.

6 A. He thought I was being too kind to them.

7 Q. Pardon?

8 A. He thought I was being too kind to them.

9 Q. To Marshall and Smith.

10 A. Yes.

11 Q. And don't you agree that you were?

12 A. Well having heard your account of Wardrop's evidence  
13 apparently so, yes.

14 Q. And where Marshall himself says, "We conducted a thorough  
15 review of the case."

16 A. Yes. I believe Marshall gave his evidence in Sydney and I am  
17 familiar with that.

18 Q. Yes.

19 A. I was quite surprised to hear that, indeed.

20 Q. All right. Do you have Volume 20, Sergeant?

21 A. Yes, I have.

22 Q. On page 4 of Volume 20 there's a copy of a letter from Gordon  
23 Gale to the Chief Officer of "H" Division asking for certain  
24 information. Just take a moment to look at that letter and tell  
25 me if you've seen it before.

1 A. Yes, I've seen that before.

2 Q. This is a request from Mr. Gale for comments whether there  
3 was anything in the original investigation and the prosecution  
4 of it that should give rise to an inquiry.

5 A. Yes. That's a request by the, by Mr. Gale to the Commanding  
6 Officer here in Halifax, Commanding Officer of "H" Division.

7 Q. And you were asked to give your comments, isn't that so?

8 A. I'm not sure whether I put that in writing or not.

9 Q. Yes, you did. If you look at page 14 of Volume 20, you see it  
10 sets out, it says, "In reference to the correspondence from  
11 Sergeant Wheaton..." and Sergeant Wheaton's correspondence  
12 starts on, actually I don't know if this is the one or not. I  
13 assumed it was the one that started on page 8 but I'm not  
14 sure. Did you see Sergeant Wheaton's comments on the  
15 original investigation?

16 A. I suspect, okay, this came from Staff Sergeant Wheaton's  
17 office in Halifax when he was NCO I/C, Complaints and  
18 Internal Investigation Section. So he would have answered  
19 that memo to the Commanding Officer from here in Halifax.  
20 From his officer, same building where the CO's office.

21 Q. But did you see his comment in response to Gale's request and  
22 then add your own?

23 A. I feel that Wheaton probably sent me a copy of his, of this  
24 here, for me to make further notes on or to further comment  
25 on. It would be natural for me to assume that he did send

1 this to me. Or that someone would send it to me. Maybe the  
2 Commanding Officer's office or it would have come through  
3 the office in Sydney. But I do feel that I probably seen this.

4 Q. Let me direct you to some of the comments in Sergeant  
5 Wheaton's report then and see if you agree. Starting on page  
6 8? Down at the bottom of that page it says,

7  
8 While there is no doubt in my mind that  
9 Mrs. Chant would readily give the police  
10 permission to interview her son, it would  
11 not be our policy, nor good police practice  
12 to interview a juvenile alone, who was a  
13 possible key witness to this crime.

14 Do you agree with that?

15 A. Yes, I do.

16 Q. On page 10, paragraph number 10, the second last sentence  
17 in that paragraph, he says, "Chant, for his part, feels that he  
18 was set up and orchestrated into being an eyewitness by  
19 Chief MacIntyre." Do you agree with that comment?

20 A. Yes, that's the way Chant related it to us. Not in those words,  
21 mind you, but those are Wheaton's words.

22 Q. But generally that summarizes what the view of Chant was.

23 A. Chant would not be using words "orchestrated" and...

24 Q. Yeah. Page 11, paragraph 13, last sentence,

25  
26 In conclusion, and addressing the question  
27 of proper police practices, I do not think it  
28 proper to have used a mentally unbalanced

1 witness who had to be taken to a mental  
2 institution between preliminary and  
3 Supreme, and who at Supreme Court  
4 approached the defence and told them he  
5 was lying as a Crown witness.

6 Do you agree with that statement?

7 A. Yes.

8 Q. And on page 12, with respect to Miss Harriss, that at the top  
9 of that page, the last sentence in that paragraph,

10 Again in regards to proper police practice,  
11 I feel the police felt they had a rather  
12 mature 15-year old on their hands.  
13 However, be that as it may, if Miss Harriss'  
14 story is accepted and there is  
15 documentation in the form of two  
16 statements as well my interview with her  
17 mother, then this is certainly not proper  
18 police practice and using her as a witness  
19 is unethical.

20 Do you agree with that?

21 A. Yes, I would.

22 Q. And the last page, page 13. The last two sentences.

23 I found Chief MacIntyre to be adamant  
24 that Marshall is and was guilty and still  
25 refuses to look on the matter in balance. I  
26 would submit for your consideration that if  
27 a police officer in his drive to solve a crime  
28 refuses to look at all sides of an  
29 investigation and considers all  
30 ramifications then he ultimately fails in his  
31 duty.

32 Do you agree with that?



1 A. Yes.

2 Q. Now you then added your own comments and they're found  
3 on page 14. Do you recall writing that document?

4 A. Yes, I do.

5 Q. Okay, the second paragraph says,

6  
7 Chant stated when first interviewed by  
8 Wheaton and myself at Louisbourg that he  
9 was threatened by MacIntyre and  
10 Urquhart with perjury if he didn't tell  
11 them what they wanted and the penalty  
12 would be Dorchester Penitentiary.

11 A. That's true.

12 Q. Now we've seen this morning that there's certainly no  
13 reference in the actual statement to that.

14 A. There is in reference to the perjury and he's saying he doesn't  
15 know what perjury, he didn't know what perjury was at the  
16 time.

17 Q. Not in the first statement.

18 A. First statement, no. But I'm saying that perjury was, the  
19 same thing was mentioned in the first meeting.

20 Q. This is the first time I've heard any reference to Urquhart  
21 having said that. Even today you said it was MacIntyre, no  
22 mention of Urquhart, I don't think. Did Chant ever say that  
23 Urquhart threatened him with perjury?

24 A. That Urquhart? No. I think you're reading that two  
25 sentences as one and it is not meant to be that way.

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Chant said at age 14 he didn't know what perjury meant and was very much afraid of the future. This procedure, as well as his interview with Urquhart, MacIntyre, Magee and Burke, would appear to leave them open to further criticism.

Q Well I'm talking about the first sentence, Sergeant.

A. The first sentence?

Q Yes. Which is, "Chant stated when first interviewed by Wheaton and myself at Louisbourg that he was threatened by MacIntyre and Urquhart with perjury."

A. Yes.

Q That's what I was referring to. And I understand your evidence to be Chant had never told you that Urquhart threatened him with anything, did he?

A. Not Urquhart, no.

Q You go on to say,

Pratico was interviewed by myself on several occasions, was and is an extremely nervous individual who is easily confused. He should never have been considered for court purposes.

That's your belief, isn't it.

A. Yes.

Q And you go on to say,

It's difficult to understand why more attention wasn't given to Ebsary and

MacNeil.

1 Why didn't you, in your, either in your own letter or in  
2 response to Wheaton, tell the Attorney General, or the  
3 Attorney General's Department that you considered  
4 MacIntyre's activities were wrong and, in fact, should be  
5 investigated and, in fact, charges should be laid.

6 A. I think those were clearly stated in Wheaton's report.

7 Q. Do you think?

8 A. I thought so. I didn't, I skimmed it over very lightly here but  
9 even before Wheaton's transfer I'm quite sure that the  
10 powers that be were well aware of Wheaton's wishes as to  
11 prosecution of any members of City Police Department in  
12 Sydney.

13 Q. Is that why you didn't state it 'cause you thought it was  
14 stated in the...

15 A. I, certainly.

16 Q. In the Wheaton, otherwise you would have?

17 A. Yes. But again, considering the rank, speaking about my  
18 rank, and believing that Wheaton had said it in as, probably  
19 as best terms possible, what he thought should be done, and  
20 knowing what the reply way, I didn't really feel it was up to  
21 me to take on the Attorney General's office and tell them that  
22 I disagreed or that I felt as strongly as Wheaton did.

23 Q. But you were being asked by the Attorney General's office in  
24 May of 1983 to comment on the practices that were  
25

1 followed...

2 A. When I drafted the reply, as we just referred to, I saw no  
3 reason to repeat Staff Wheaton's comments.

4 Q. Okay.

5 A. Although I certainly agreed with them.

6 Q. Page 23 of Volume 20. Have you seen that document before?

7 A. I feel that I have but it doesn't seem that familiar to me.

8 MR. MacDONALD

9 My Lords, I'm probably going to take another 15 or 20  
10 minutes with the witness. Mr. Ruby has asked if he, with  
11 your permission, could examine the witness for about ten  
12 minutes. He apparently has to catch a plane. I have no  
13 problem with that if Your Lordships are prepared to agree.

14 BREAK

15 3:30 p.m.

16 EXAMINATION BY MR. RUBY

17  
18 Q. If you can just shift gears from the chronology. I wanted to  
19 ask you about a few narrow areas. First, the thing that I want  
20 to ask about that troubles me is the Chant statement, the first  
21 one. Because it's the one, as you recall, that doesn't name  
22 Chief MacIntyre or detail the source of the pressure that is  
23 threats of perjury and the like. I'm correct, am I, that at that  
24 point in time you had a young man before you who admitted  
25 having done something very wrong, namely commit perjury.

1 A. Yes, sir.

2 Q. And he was blaming the Chief of Police of Sydney.

3 A. Yes.

4 Q. The Chief of Police of Sydney, so far as you knew then, was a  
5 respected and highly-regarded figure, correct?

6 A. I had only the best of communication with the Chief at that  
7 time. On the very few occasions that I had met him, excellent  
8 cooperation.

9 Q. And it's rare for a person of that stature to be accused of  
10 something so terribly wrong as this.

11 A. Yes.

12 Q. Correct? Very unusual in your experience.

13 A. Most.

14 Q. At the same time, as a police officer of how many years?

15 A. Myself? Twenty years at that time.

16 Q. You recognized that it's very easy for someone who's done a  
17 very bad thing to blame the police officers for it, shift the  
18 blame from themselves, correct?

19 A. Yes.

20 Q. That's easy always. Correct?

21 A. Easy to shift blame? Yes.

22 Q. Yeah. And I suggest to you that what was really happening  
23 was that you were not going to put the chief's name and the  
24 details in that paper until you'd been satisfied by some other  
25 evidence, given those circumstances.

1 A. Exactly.

2 Q. That was really a true allegation?

3 A. Yes.

4 Q. So the keeping of it out of that statement then would be an  
5 instinctive reaction on the part of a police officer faced with  
6 that kind of allegation in this kind of circumstance. Fair?

7 A. It could be fair, but in this case, I don't think it was the  
8 circumstance. The first statement taken by Staff Sergeant  
9 Wheaton, there's no doubt in my mind and I'm sure in Staff  
10 Wheaton's mind, whether he said it or not, I don't recall, that  
11 there was considerable discussion before the handwriting  
12 started of the first statement. MacIntyre's name was most  
13 definitely mentioned. The reference to "I was told that if I  
14 didn't tell the truth, I'd be charged with perjury and go to the  
15 penitentiary and I didn't, at fourteen years of age, didn't even  
16 know what perjury was." That very definitely happened on  
17 the first interview. It may not be recorded. It is not  
18 recorded, but it happened.

19 Q. Just to understand the way I'm questioning you from, the  
20 perspective you have, I'm not suggesting that didn't happen,  
21 but I'm trying to understand why it's not in your notes or in  
22 the paper and I think what you're saying is the instinctive  
23 reaction of the police officer is unless there's some support for  
24 that allegation, which at that point you hadn't got, you hadn't  
25 interviewed Pratico or the others. You don't put that down,

1 fair enough?

2 A. No, I can't agree. I feel strongly that the reference to  
3 MacIntyre was not omitted in any effort to cover or protect  
4 Chief MacIntyre.

5 Q. You would, I suggest, feel very reluctant to take a statement  
6 which accused a police chief highly regarded by you, as  
7 you've indicated of such a serious wrongdoing without  
8 support. Is that fair?

9 A. No, I would not hesitate to take the statement. As I  
10 mentioned, the follow-up part of the investigation dealing  
11 with the actual interrogation would be more difficult for me  
12 to pursue under those circumstances.

13 Q. Is there any other explanation other than what I've referred  
14 to and I can characterize it as a tenderness towards other  
15 police officers, born of your experience as a police officer, for  
16 the fact that it's not in your notes or the statement. I can't  
17 think of any other. Can you give me another explanation?

18 A. No, I cannot. I would not use the word "tenderness." Respect  
19 for fellow police officers, I would consider that, but at the  
20 same time, that to me is not the reason the reference to  
21 MacIntyre is omitted from Statement 1.

22 Q. Can you give me any explanation why it is omitted from  
23 Statement 1 other than the one I've suggested?

24 A. No, sir.

25 Q. And to follow up on that, what I hear you say with regard to

1 Sheriff Magee and his account of the Louisbourg meeting as  
2 Sergeant Wheaton did that he's mistaken, you say it the same  
3 way Wheaton does. You're sort of stiff and your body goes a  
4 little funny. Do you recognize you're doing that?

5 A. I wasn't aware...

6 Q. And I get the sense that you're giving him the benefit of the  
7 doubt where you wouldn't give it to somebody who wasn't a  
8 police officer. Is that fair?

9 A. No, possibly I'm trying to be kind to Sheriff Magee.

10 Q. That's what I see. You're trying to be kind to him. But you  
11 don't really believe...

12 A. I think he made an honest mistake. I think that he may have  
13 been...for instance, I know that he was the Sheriff for the  
14 village of Louisbourg or the police chief at the time and I  
15 honestly believe that he was asked by Chief MacIntyre to  
16 help him round up, transport Mr. Chant to the Louisbourg  
17 town hall office for interrogation purposes.

18 Q. But on the way the interview is conducted, am I fair in saying  
19 to you that you'd like to believe Sheriff Magee but you don't  
20 really believe him?

21 A. I'm sorry to say I don't believe he was there.

22 Q. All right. And is that one example of going the extra mile for  
23 a police officer the same way as the first one that I suggested  
24 was, giving him just a little bit extra benefit because of your  
25 own history as a police officer?



SGT. CARROLL, EXAM. BY MR. RUBY

1 A. No, if I'd been asked the question "Do you believe Sheriff  
2 Magee was...Police Chief Magee was present at the meeting?"  
3 I would have answered counsel, no, I don't believe he was.

4 Q. But you said that you believe he's mistaken?

5 A. Yes.

6 Q. Whereas I'm suggesting that were he not a police officer, you  
7 might well say "I think he's lying" or "I can't tell whether he's  
8 lying or mistaken."

9 A. No, I would have used the same word.

10 Q. "Mistaken"?

11 A. If I knew intentionally that he was lying, someone trying to  
12 fabricate a story for some other purpose, I would say  
13 definitely say lying, but in this case, I think...well, I used that  
14 word first. I now say I don't believe he was there.

15 Q. Do you recall...I'm changing the subject now to the prison, on  
16 your prison visit to Dorchester. Do you recall who it was who  
17 indicated as I have in my notes, if I quote you correctly, that  
18 Mr. Marshall would have been eligible for parole if he'd  
19 admitted his guilt in the murder.

20 A. The name Dale Cross, C R O S S, comes to my mind as the  
21 person we spoke to when we first went to the penitentiary  
22 and I feel that discussion would have been with him.

23 Q. You have...have I indicated that you believe that Wheaton's  
24 superiors and your own superiors knew that he felt strongly  
25 that this charge against MacIntyre that he recommended

1       should go ahead.

2   A.   Yes.

3   Q.   Do you have any understanding of why it was that it didn't go  
4       ahead?

5   A.   Why it did not go ahead? No, I could suggest possibly  
6       because of Ebsary's upcoming trials, if that would have  
7       anything to do it and I'm not so sure it would, the talk of an  
8       inquiry from earlier stages of years gone by. Other than that,  
9       I can't say.

10  Q.   None of those reasons made sense to you?

11  A.   I felt, as Wheaton did, that something further should be  
12       looked into by other investigators. I was transferred to  
13       Baddeck not in that year but in '85. Wheaton was transferred  
14       out of the city and new investigators within the general  
15       investigation office, a new staff sergeant, a competent  
16       investigator himself....

17  Q.   Let me ask you that question again. None of those reasons  
18       you've mentioned made any sense to you?

19  A.   No, not really.

20  Q.   He was asked during his cross-examination of Staff Sergeant  
21       Wheaton at Page 8030 of Volume 44, you don't have it but I'll  
22       just read you a passage. I want to see if you agree with this  
23       or what you have to say about it. He's asking Sergeant  
24       Wheaton why did Carroll, that's you, go and interview Chant  
25       again. This is the second interview, and at Line 12:

1 Q And was one of the things that you  
2 discussed with Carroll, "Look it, Jim, he  
3 didn't pin down MacIntyre in the first  
4 statement, so let's get him to pin down  
MacIntyre in the second statement.

5 A. Not at all, sir.

6 Q Was that discussed?

7 A. No, sir.

8  
9 First of all, was that discussed?

10 A. I don't recall any conversation of that subject at all, not to go  
11 out and get him to pin down the...the return trip to Chant's  
12 home to interview him was to fill in some obviously missing  
13 details about the Louisbourg courtroom interview or  
14 Louisbourg town hall interview. And some more background.

15 Q The next question is, Line 19:

16  
17 Q And when Carroll came back to you after  
18 the second statement, did he not say:  
19 "Look it, I couldn't get him to identify  
MacIntyre"?

20 A. Absolutely not, sir.

21 Did that take place in a conversation like that?

22 A. No, definitely not, definitely not.

23 Q Let me put it more largely. Did you at any time intend to get  
24 MacIntyre out of this?  
25

1 A. No, sir.

2 Q. Did you have any malice against him?

3 A. I related to Marshall's time in the penitentiary and that  
4 something desperately went wrong with the system. I don't  
5 know if it's my place to judge Chief MacIntyre or Urquhart.

6 Q. Well, I'm asking for your views.

7 A. My views?

8 Q. Your feelings about it.

9 A. I can only say that in the meetings with Chief MacIntyre on  
10 the few occasions that I had with him, probably as little as  
11 three or four on totally unrelated matters until this situation  
12 arose of being interviewed along with his detectives and his  
13 men, I had very little, practically next to nothing for  
14 communication with Chief MacIntyre. Any time I was in his  
15 building, I received the utmost in cooperation. If he saw me  
16 he'd come out of his office and shake hands and pass the time  
17 of day, sort of thing. I basically had very little opinions about  
18 him until this investigation. I know he's a family man. He's  
19 an older gentleman now and retired. He's a businessman in  
20 the city of Sydney, but really I had very little opinions about  
21 the man at that stage.

22 Q. Would you take part in a campaign of investigation to  
23 discredit him in any way?

24 A. Would I?

25 Q. Would you?

SGT. CARROLL, EXAM. BY MR. RUBY

1 A. Then or now?

2 Q. Then or now.

3 A. If I was directed by my superiors to reinvestigate, I certainly  
4 would, yes.

5 Q. Would you do it with any sense of trying to hurt him  
6 personally as opposed to find the facts?

7 A. No, certainly not, to bring out all the facts and let someone  
8 else judge them.

9 Q. Thank you, sir. I'm very indebted to counsel for the  
10 Commission.

11 MR. CHAIRMAN

12 We'll rise for ten minutes.

13 BREAK 3:42 p.m.\*

14 EXAMINATION BY MR. MacDONALD

15 MR. MacDONALD

16 Just to clear up one point, My Lord, we have found that original  
17 statement of Mr. Marshall at the penitentiary on the second visit,  
18 March 9.

19 Q. Sergeant Carroll, that's in the handwriting of Wheaton, is it?

20 A. Yes, it is, signed by you as a witness, that's correct.

21 Q. And I just want to direct your attention to one part and that's  
22 on Page 1, you see up in the left-hand corner, it says  
23 "Warned"?

24 A. Yes, I see that.

25 Q. And I understood you to say that if in fact that was on the

1 original statement, then a warning would have indeed been  
2 given?

3 A. There's no doubt in my mind. If I was doing it, I would either  
4 write the warning, you know, word for word, or if I was  
5 reading it from a card, the police card, it was a typed version,  
6 I would just say "Warning read from the card." He chose to  
7 do it that way.

8 Q I understood from what you said this morning if you were  
9 doing it, you wouldn't have warned him at all.

10 A. No, I didn't really see any point in it.

11 Q You had met with Steve Aronson on the 14th of July, '82, I  
12 think it was in your notes. Had you ever met him before  
13 that?

14 A. If that was at our office in Sydney, it was the first time. The  
15 14th of July?

16 Q I think that's what it was. No, actually I think there might  
17 have been another one.

18 A. No, that was the...

19 Q You actually met with him on February 11?

20 A. I believe that was the first meeting.

21 Q Why were you driving Aronson to Chant and Pratico?

22 A. I think it was practical...not Pratico but practical that he  
23 probably was in town without wheels or without a vehicle.  
24 I'm not so sure about that but at any rate, we knew where  
25 these people lived and it would certainly speed up the

1 procedure. It was convenient for him to have us drive him.  
2 And also know where we could reach a justice of the peace.  
3 The documents, as I recall were all typed, pre-typed and it  
4 was just a matter of locating individuals and taking them with  
5 Aronson to a J.P. for the oath.

6 Q. O.K. In Volume 20, I think you had that just as we rose. On  
7 Page 61, that is a memo from Sergeant Bentley to the CIBO. I  
8 just want to refer you to the last paragraph that's on Page 62.  
9 You've been in Sydney for how long, Sergeant Carroll?

10 A. I was there from '79 until '85 and I returned in April of last  
11 year to the present time.

12 Q. I want to just read this paragraph and then ask you if you  
13 have any knowledge of this. This is Bentley saying

14 Perhaps I might suggest that the  
15 department of Attorney General be  
16 approached with the idea that all murder  
17 investigations in the City of Sydney be  
18 handled by this force, not the City Police. I  
19 believe we, meaning our force, had to take  
20 over another murder investigation since  
21 the Marshall case simply because the  
22 Sydney Police did a lousy job.

23 Are you aware of any occurrence where the RCMP had to take  
24 over a murder investigation in Sydney after the Marshall  
25 case?

4:00 p.m.

A. I'm aware of a case that happened in Sydney. I can't recall

1 the name of the victim or the accused, the name Weatherbee  
2 seems to come to mind, but I could be wrong, as possibly the  
3 name of the accused. I could be totally wrong there. I'm not  
4 saying our Force took it over. I'm saying that we assisted the  
5 Sydney Police Force after some effort had been made by them  
6 and we pursued the thing further. I wasn't involved myself  
7 so can't say what the input was from the RCMP in Sydney.

8 Q. Any idea of the date?

9 A. I would say approximately three years, and I could be off by  
10 a year or more.

11 Q. Thank-you. On page 63 of Volume 20 is a confidential memo  
12 from Staff Sergeant Wheaton to the officer in charge of  
13 Halifax Subdivision. And I want to direct you to the last  
14 paragraph of that report, which is on page 65. Do you have  
15 that page 65?

16 A. Yes, I have.

17 Q. The last paragraph.

18 A. Yes.

19 Q. He talks, as he did here, about three phases of the  
20 investigation. One being Marshall, the second being Ebsary.  
21 And he says this,

22

23

24

25

The third phase, which has not been  
completed is the investigation of former  
Chief MacIntyre. I would respectfully



1 submit that an offence has been committed  
2 by the former Chief and it bears further  
3 investigation to ascertain if it will stand  
4 the test of the courts. Certainly there is a  
5 prima facie case here.

6 Now, that's a statement made in July 14th of 1986 by Staff  
7 Sergeant Wheaton. Do you concur on that?

8 A. Yes, I do.

9 Q. Thank-you. Who is Bentley, by the way? What role does he  
10 play?

11 A. To the best of my knowledge he is one of the readers in the  
12 Criminal Investigation Branch, Readers Department. They  
13 peruse incoming police reports from the RCMP across Nova  
14 Scotia looking for details, unexplained details or criticism.

15 Q. Were you aware, then, in 1986 there was some discussion  
16 going on...discussion going on within the Force as to whether  
17 or not there should be an investigation of Sergeant MacIntyre  
18 and whether charges should, in fact, be laid?

19 A. At what date, sir?

20 Q. In 1986, in July.

21 A. 1986 I was in Baddeck.

22 Q. Were you questioned at all in '86 by your superiors?

23 A. No, sir, not that I can recall. I'm quite sure I was not.

24 Q. Okay. On page 72 of Volume 20 is a copy of a letter from  
25 Superintendent Vaughan to the Deputy Attorney General,  
confidential letter, and I don't want to take your time with it.  
But I wanted to direct you to page 74. One of the reasons

1 being advanced by Superintendent Vaughan as to why there  
2 should not be a further investigation was the fact that on the  
3 top of that page that Donnie MacNeil was dead and also that  
4 "A Sydney policeman, one Mroz, who also may have some  
5 knowledge of the matter is deceased." As far as I can  
6 determine you were the only person who interviewed Mroz.  
7 Do you remember interviewing him?

8 A. I recall taking a statement at his home in Sydney, yes.

9 Q. And, do you recall that he had any information of any kind  
10 that would be relevant to a consideration whether charges  
11 should be taken against Chief MacIntyre?

12 A. I'm not sure of what details in the statement. I know from  
13 memory that he and Chief MacIntyre were not close friends  
14 at all. There was...there were many situations where they  
15 had words. I'm not sure, but I believe, that Mroz was  
16 connected with the Police Association or union and was often  
17 in conflict with the Chief on various things about shift work  
18 and so on, and I recall he once told me that he thought the  
19 Chief was going to try and fire him or give him some  
20 problems, serious problems.

21 Q. But there was no...no information that you had that Mroz  
22 could shed as to whether any offence had been committed by  
23 Chief MacIntyre in investigating the Marshall matter?

24 A. I'd have to go back to Mroz's statement.

25 Q. It's on page 98 of Volume 34.

1 A. I don't see any mention of Chief MacIntyre's name there or  
2 any criticism. I've skimmed through it briefly, but...

3 Q. Do you have Volume 18 up there as well?

4 A. Yes, I have.

5 Q. Look at page 58 on that, please, and that's a report from  
6 yourself to your superiors.

7 A. Yes. I see the secretary has mistakenly typed in "I.C. of  
8 Sydney Drug Section," which is not true.

9 Q. But it is your report.

10 A. Yes, it is.

11 Q. I'm looking at paragraph 5,

12

13 Mroz of Sydney City Police stated he  
14 attended the scene on the night of Seale's  
15 stabbing, recognized him, escorted the  
16 ambulance to city hospital, described the  
17 wound. During a pre-trial interview Mroz  
18 informed Edwards and myself that he  
19 observed three or more stab wounds in  
20 Seale's abdomen. Since there were no  
21 photographs taken in 1971 and no autopsy,  
22 it was not possible to find other records of  
23 these details.

24 Do you recall being told that by Mroz?

25 A. Not at the time of this statement.

Q. At any time?

A. No, I can't. Now, I shouldn't say no. If I included it in my  
report I certainly was aware of it. But at the time of taking  
this statement on the 19th of May '82 I was not aware of that.

1 Q Mroz made no mention in the statement he gave you in May  
2 of '82 about three stab wounds.

3 A. No, he did not.

4 Q I'm just going to read to you from Volume 16 at page 3, and  
5 you don't...do you have that there, okay?

6 A. Yes, I have.

7 Q On page 3. Now I don't know if this Mroz's handwriting or  
8 not, Sergeant, but on the right-hand side, see it says,

9  
10 On arrival noticed Sandy Seale of  
11 Westmount on the ground after being  
12 felled by three stab wounds inflicted  
13 apparently from a person or persons who  
14 had fled the scene.

15 A. I see that, yes.

16 Q And that's signed by, among others, Mroz, also Dean, Walsh  
17 and a MacDonald. Had you seen that before?

18 A. No, I haven't seen this document before.

19 Q Mroz told you in...sometime in July '83 or thereabouts the  
20 same thing that there had been three stab wounds or more.

21 A. I don't have a date for that according to my report. During a  
22 pre-trial interview Mroz informed Edwards and myself he  
23 observed three or more stab wounds in Seale's abdomen.

24 Q Wouldn't that be a pre-trial interview before the Ebsary trial?  
25 Mroz gave evidence at the Ebsary trial.

A. Twice, yes.

Q. Yes.

1 A. I don't know when the first trial started. Well, I guess it was  
2 the 4th of August '83.

3 Q. Do you know if any attempt was made to determine whether  
4 he was correct in that statement to you?

5 A. As I recall, in Dr. Naqvi's evidence, the surgeon, I'm quite  
6 certain in my mind that he referred to only one wound.

7 Q. Yes, you're correct on that. And was that the end of it? You  
8 relied on what Dr. Naqvi said.

9 A. There was no other way of determining the evidence.

10 Q. Thank-you. But there's nothing, in any event, in Mroz's  
11 statement or in various documents I've seen from you to  
12 indicate that Mroz has any, or had any evidence which would  
13 tend to either assist or hurt Chief MacIntyre concerning the  
14 investigation carried out in 1971.

15 A. No, there were personal differences there, which I've already  
16 mentioned.

17 Q. Yes.

18 A. But no further criticism of the Chief.

19 Q. Okay. During your time in Sydney have you had any  
20 experience with the investigation or charging of members of  
21 the minority races?

22 A. I'm just trying to think of...the black population I've had no  
23 dealings whatsoever with them in the way of prosecutions,  
24 and with the Indians of Eskasoni or Membertou...did you refer  
25 just strictly to Sydney or...

1 Q. Anywhere, you can tell us your experiences.

2 A. I investigated a murder at Eskasoni involving two Indian  
3 youths, one of which was convicted of murder and I assisted  
4 in the investigation of that. Otherwise it's been lesser  
5 offences, under the Liquor Act and minor thefts and that sort  
6 of thing.

7 Q. Have you been present in court while members of...while  
8 Indians have been prosecuted?

9 A. Rarely, very rarely.

10 Q. Do I take it from that that your involvement generally has not  
11 been extensive with members of the Indian race?

12 A. Well, the nature of my duties avoided that to some extent.  
13 The...when I was working in plainclothes I was working on  
14 more serious offences of...not mainly, but many arsons, from  
15 my notebook attempted murders all across Cape Breton  
16 Island, but jurisdiction was Cape Breton sub...or Sydney Sub  
17 Division which was all of Cape Breton Island, and many fires  
18 in the Ingonish area, armed robberies, major thefts, that sort  
19 of thing. So, I was not getting involved with domestic  
20 disputes on the reserves or off the reserves, Liquor Act  
21 offences, that sort of thing. I was...the more serious things.

22 4:15 p.m.

23 Q. Do you feel you can comment whether, in your, the  
24 experience you've had, members of the Indian race have been  
25 treated any differently by prosecutors, by the courts?

1 A. I think I could offer an opinion there. I have spent a year  
2 and a half in Baddeck which includes two Indian reserves in  
3 that area under the RCMP jurisdiction and having been the  
4 Court member on many occasions there, I've seen many of the  
5 native people dealt with in the Baddeck courtroom. I've also  
6 seen a fair number in the Sydney courtroom. I think, overall,  
7 it's my opinion that they were generally, and I'm excluding  
8 the murder case, generally dealt with more leniently than  
9 the white population.

10 Q. In what way?

11 A. I'm talking about sentencing...

12 Q. From a sentence point of view?

13 A. Sentence.

14 Q. Any difference in the way they were treated by the Court just  
15 generally?

16 A. Well with Legal Aid things have changed over the years. I've  
17 been present in, on many occasions where a native person  
18 charged with a reasonably serious offence that through for  
19 various reasons did not have a lawyer and possibly didn't  
20 intend to get one and was encouraged to get one by the  
21 presiding judge, and that was the case that was followed.

22 Q. Were they treated any more or less respectfully by the courts  
23 than white people?

24 A. No difference in regards to respect. Possibly the judges that I  
25 was dealing with, or appearing before were more lenient in,

1 or more tolerant. For instance, a native person, and of course  
2 in the cases there were whites that showed up in the same  
3 condition you might have a native person come in under the  
4 influence of alcohol and there be a certain amount of humor  
5 tolerated and some of the expressions from the accused might  
6 be rather humorous and the judge who might have the option  
7 of being critical would take a light-hearted attitude about it.  
8 I don't think I could ad lib any more than that.

9 Q. Just two other points. In Volume, I guess it's Volume 18, on  
10 page 79, Staff Sergeant Barlow, in the final paragraph of that  
11 document recommends that serious consideration be given to  
12 recommending a commendation for both you and Staff  
13 Sergeant Wheaton concerning your re-investigation of the  
14 Marshall matter. And then on page 83 the response to that...

15 COMMISSIONER EVANS

16 What page?

17 Q. 83. The response says, "I agree with your suggestion that a  
18 letter of commendation is due suggests, however, that the  
19 matter wait until everything is finally disposed of in the  
20 court." Has such a letter of recommen-, commendation been  
21 given to you?

22 A. No, sir.

23 Q. Did you meet with Michael Harris?

24 A. Yes.

25 Q. On how many occasions would you have met with him?



1 A. Two that I can recall. One for certain, quite likely two.

2 Q. How long would those meetings have taken?

3 A. The first one I can recall was at his hotel room in Sydney, at  
4 the Holiday Inn, approximately one hour or less.

5 Q. And the second?

6 A. The second, very likely; to the best of my recollection would  
7 have been maybe a courtroom corridor at one of Ebsary's  
8 trials in Sydney. I don't recall seeing him here in Halifax at  
9 the hearing to release Marshall or the decision.

10 Q. What things were discussed with him?

11 A. He was asking basically for opinions of various witnesses. For  
12 instance, Pratico. How did I relate to him when I interviewed  
13 him? And, of course, Ebsary being the colorful figure that he  
14 is. And Chant. More or less gut feelings of how you dealt  
15 with these people when you first met with them. And I think  
16 he was probably looking for something with a little humor or  
17 color to add to his article.

18 Q. Did you seek any permission from your superiors before you  
19 met with Mr. Harris?

20 A. No, sir.

21 Q. I just want to read you a quote from page 403 of the book  
22 Justice Denied. It's attributed to you. And it says,

23

24

25

There was a weakness in the system there  
somewhere along the line. This should  
never have happened....I would like to

1 think that what happened in '71 wouldn't  
2 happen now or couldn't happen. But  
3 overall, my outlook on life and human  
4 nature doesn't change that much. Nothing  
5 amazes me anymore.

6 Did you make that statement to him?

7 A. That's fairly accurate, yes.

8 Q. Is that what you think happened here? That there was some  
9 weakness in the system that led to this whole thing.

10 A. That system could also include personalities and working  
11 tactics, procedures, whatever.

12 Q. And so when you say a weakness in the system it includes...

13 A. The, well also including the reporting system and the  
14 reporting of crimes, for instance, by smaller police forces that  
15 don't have a reporting obligation, that I'm aware of.

16 Q. Reporting to who?

17 A. Reporting to the Attorney General's office or, I don't know  
18 that the, even today if the City Police in Sydney are obligated  
19 to report any serious crimes beyond their own level.

20 Q. Do you think that an obligation to report serious crimes could  
21 somehow avoid the type of problem that arose here?

22 A. It may not prevent it but it would certainly bring it to the  
23 attention of people outside their own department at a much  
24 faster rate and possibly in time to prevent an injustice.

25 Q. What do you think of Bentley's suggestion that the RCMP  
should be the force to investigate all murders that occur in  
Sydney?

1 A. That attitude has been held with the Glace Bay Town Police as  
2 well and they decided to do their own, a couple, three years  
3 ago. I don't know if that policy has changed or not. Overall,  
4 that type of directive would cause considerable tension  
5 between the police forces, our own and whichever  
6 department we were trying to assist. It would be difficult to  
7 make it work. I'm not saying it wouldn't work, but it would  
8 be difficult. There would be resentment, for instance, the  
9 other force would, no doubt, take the attitude that if we,  
10 "Why aren't we capable of investigating our own crime?"  
11 "Why do we need outsiders to come in?"

12 MR. MacDONALD

13 That's all I have for this witness, My Lord.

14 CHAIRMAN

15 Fine. We'll adjourn until 9:30.

16 4:23 p.m. - ADJOURNED TO 2 February 1988 - 9:30 a.m.

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REPORTER'S CERTIFICATE

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

  
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Margaret E. Graham

DATED THIS 1st day of February, 19<sup>88</sup> at Dartmouth,  
Nova Scotia