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

Volume 48

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

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SGT. CARROLL, EXAM. BY MR. MacDONALD

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

2 MR. CHAIRMAN

3 Mr. MacDonald?

4 MR. MACDONALD

5 Thank you, My Lord.

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

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

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

19 A. Yes, that's correct.

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

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

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

1 A. Yes, that's correct.

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

4 A. No, it does not.

5 Q. It does not?

6 A. No.

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

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

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

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

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

15 A. Yes.

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

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

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

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

25 Q. Why was that?

SGT. CARROLL, EXAM. BY MR. MacDONALD

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

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

4 A. Yes.

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

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

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

12 A. Chant could go.

13 Q. Yes?

14 A. And his expression...

15 COMMISSIONER EVANS

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

17 MR. MACDONALD

18 Okay, I'm sorry, My Lord.

19 BY MR. MACDONALD

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

22 MR. CHAIRMAN

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

25 SGT. CARROLL

1 Yes, he was, My Lord.

2 MR. CHAIRMAN

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

5 SGT. CARROLL

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

10 MR. CHAIRMAN

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

13 SGT. CARROLL

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

15 MR. CHAIRMAN

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

18 SGT. CARROLL

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

21 COMMISSIONER EVANS

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

23 SGT. CARROLL

24 No, sir.

25 COMMISSIONER EVANS

1 You were there.

2 BY MR. MACDONALD

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

5 A. Yes, it was.

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

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

10 Q. Pressured him to do what?

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

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

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

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

19 A. I would say so, yes.

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

22 A. Yes.

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

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

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 that MacIntyre put the words in his mouth?

2 A. Yes, more or less.

3 MR. PUGSLEY

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

5 MR. CHAIRMAN

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

7 MR. MACDONALD

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

10 MR. CHAIRMAN

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

17 MR. PUGSLEY

18 Thank you, My Lord.

19 MR. CHAIRMAN

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

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

3 SGT. CARROLL

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

5 BY MR. MACDONALD

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

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

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

12 A. No.

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

14 A. That's correct.

15 Q. There's no mention of Urquhart.

16 A. No.

17 Q. There's no mention of perjury.

18 A. No.

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

21 A. No, sir.

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

24 A. Yes.

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 not have taken them down.

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

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

6 A. No, sir.

7 COMMISSIONER EVANS

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

12 SGT. CARROLL

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

15 COMMISSIONER EVANS

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

18 SGT. CARROLL

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

22 COMMISSIONER EVANS

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 SGT. CARROLL

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

5 COMMISSIONER EVANS

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

10 SGT. CARROLL

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

14 BY MR. MACDONALD

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

20 A. That's correct, yes.

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

24 A. Yes.

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

1 A. Yes, it was

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

7 A. Yes, that would be expected.

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

11 A. Yes.

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

13 A. Yes.

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

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

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

20 MR. CHAIRMAN

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

1 MR. BRODERICK

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

10 MR. CHAIRMAN

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

13 MR. BRODERICK

14 They didn't come...

15 MR. CHAIRMAN

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

23 MR. BRODERICK

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

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

6 MR. CHAIRMAN

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

9 MR. MACDONALD.

10 Thank you, My Lord.

11 BY MR. MACDONALD.

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

19 A. Yes, I would say so.

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

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

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

1 A. Yes.

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

4 A. That's correct.

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

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

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

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

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

17 A. Yes.

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

20 A. Yes.

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

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

25 Q. Yes.

1 A. Yes.

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

4 A. Yes.

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

7 I was interviewed by two detectives

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

9 My mother was also there.

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

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

13 Q. What is wrong with that part?

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

15 Q. Is it accurate?

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

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

19 A. Yes.

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

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

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

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

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

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

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

16 Q. Yes.

17 A. Yes.

18 Q. "My mother was also there."

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

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

21 A. Yes, I believe so.

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

25 A. Yes.

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

5 A. Yes.

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

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

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

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

3 A. Are you asking me a question?

4 Q. Yes.

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

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

8 A. Yes.

9 Q. What part did you believe?

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

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

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

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

1 he lied. Yes?

2 A. Yes.

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

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

6 Q Yes.

7 A. Yes.

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

10 A. Yes.

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

12 A. Yes.

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

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

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

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

21 9:56 a.m. *

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

24 A. Yes.

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

1 about what had just taken place?

2 A. That's correct, yes.

3 Q. Tell me what you recall about that?

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

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

11 A. Yes.

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

16 A. Yes, that's correct.

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

21 MR. CHAIRMAN

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

24 MR. MacDONALD

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

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

SGT. CARROLL

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

MR. CHAIRMAN

17 But who was he suspicious of?

SGT. CARROLL

19 Marshall.

MR. CHAIRMAN

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

MR. MacDONALD

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

1 A. Yes, it is.

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

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

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

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

17 Q. Do you remember that visit?

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

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

20 A. Never.

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

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

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

1 what seven hours or something, seven hours?

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

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

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

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

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

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

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

18 Q. Do you recall arriving at the prison?

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

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

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

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

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

22 A. Yes.

23 Q. Who did the...

24 A. Staff Wheaton did most of the speaking.

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

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

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

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

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

6 A. No, I can't.

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

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

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

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

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

15 A. I don't recall.

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

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

20 Q. Exhibit 101.

21 A. Yes.

22 Q. There...

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

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

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

7 A. That's true.

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

9 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 A. I don't believe so.

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

7 A. Was it my understanding, yes?

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

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

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

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

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

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 SGT. CARROLL

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

4 COMMISSIONER EVANS

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

7 SGT. CARROLL

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

10 COMMISSIONER EVANS

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

13 SGT. CARROLL

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

20 MR. MacDONALD

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

24 A. Yes, that's correct.

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

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

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

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

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 Q You knew that Sarson had relayed the story to Junior
2 Marshall, the Ebsary story.

3 A. Yes.

4 Q So he knew when you saw him, when you saw Junior
5 Marshall in February of 1986, Sarson had already told him
6 what Ebsary's story was.

7 A. Yes.

8 Q About an attempted robbery.

9 A. Yes.

10 Q And Wheaton was suggesting to him that something more
11 than a casual stroll through the park had taken place that
12 night.

13 A. Well, those are my words.

14 Q Yes, I appreciate that, but something to that effect.

15 A. Yes.

16 Q And it was after that that Junior Marshall told you and
17 Wheaton about the attempted robbery.

18 A. Yes. It was very difficult for Marshall to come out with that
19 at that time and later court appearances. He had great
20 difficulty in actually describing...

21 Q He had great difficulty coming out with the story.

22 A. Yes.

23 Q It wasn't easy for him to tell you what had taken place that
24 night in the park, was it?

25 A. No.

SGT. CARROLL, EXAM. BY MR. MacDONALD

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

5 A. Yes.

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

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

11 Q. He had.

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

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

15 A. Yes, and the stabbing of Seale.

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

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

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

23 A. Oh, yes, undoubtedly.

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

- 1 Marshall was innocent of the murder of Sandy Seale?
- 2 A. I think that would be a fair statement, yes.
- 3 Q. And that he was in prison because Mr. Chant had lied for the
4 reasons we've already discussed.
- 5 A. And Pratico.
- 6 Q. And Pratico.
- 7 A. Yes.
- 8 Q. Let's go back to your notebook then, Sergeant. There's notes
9 of 82-02-19, February the 19th. What are they saying?
- 10 A. "Office," this would be the beginning of the shift, "BCA," which
11 represents a fraud case I was working on. "Documents to Art
12 Mullen," who was the lawyer representing the accused in that
13 case, a lawyer in Sydney. "Inquiries re Marshall file at
14 Membertou," Membertou Reserve in Sydney, "Re Gordon Joe."
- 15 Q. Did that have anything to do with the Donald Marshall case?
- 16 A. Yes.
- 17 Q. Who is Gordon Joe?
- 18 A. I believe Gordon Joe was a cousin of Donald Marshall's. This
19 is clarified later on in another page, four or five pages down.
- 20 Q. We'll come to it then. The note that you made during your
21 visit to prison about Mike Gamiel?
- 22 A. Yes.
- 23 Q. That was the supposed driver of the car that picked Junior
24 Marshall and Chant up, is it, and took them back to the
25 scene?

SGT. CARROLL, EXAM. BY MR. MacDONALD

1 A. I believe so.

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

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

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

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

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

19 A. Yes.

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

21 A. Yes, it is.

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

23 A. Yes.

24 Q. Do you recall that?

25 A. Yes, very vividly.

SGT. CARROLL, EXAM. BY MR. MacDONALD

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

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

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

24 A. Yes.

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

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1 character that you were going to see here?

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

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

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

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

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

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

21 A. Yes, I do.

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

25 A. Yes.

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

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

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

12 A. Oh, yes, very much so.

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

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

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

16 A. No.

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

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

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

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

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

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1 we've interviewed Chant, and so on.

2 A. No, sir.

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

6 A. Yes.

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

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

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

12 A. Yes, I was.

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

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

15 Q. Oh, you were there.

16 A. Yes.

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

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

20 Q. Oh, I see.

21 A. One-sided conversation.

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

25 A. Yes.

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

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

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

6 A. That's correct.

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

8 A. Obviously.

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

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

11 Q. Tell us about that.

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

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

2 A. Okay.

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

9 Q. Meaning you.

10 A. Yes.

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

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

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

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1 A. Yes, I did.

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

4 A. Yes.

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

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

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

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

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

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

9 A. Staff Wheaton's handwriting, yes.

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

11 A. That's correct.

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

14 A. No, sir.

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

16 A. It definitely was, yes.

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

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

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

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

5 A. Yes.

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

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

11 Q. How did you defend yourself?

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

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

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

20 A. Yes, the last question.

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

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

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

A. Yes.

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

3 A. Yes.

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

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

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

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

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

13 A. I did, yes.

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

15 A. Yes.

16 Q. Did anything come of that meeting?

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

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

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

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

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

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

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

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

18 A. Yes, it was

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

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

SGT. CARROLL, EXAM. BY MR. MacDONALD

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

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

7 A. Yes.

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

10 A. Yes.

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

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

19 Did Wheaton advise you of that contact?

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

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

1 10:45 a.m. *

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

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

9 A. Why wouldn't I?

10 Q Yeah.

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

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

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

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

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

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

25 A. Yes.

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

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

4 Q. Yes. Had you met Pratico before?

5 A. No, sir.

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

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

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

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

5 Q. I'm sorry.

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

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

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

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

15 MR. CHAIRMAN

16 All right.

17 BREAK - 10:51 *

18 INQUIRY RESUMES - 11:09 a.m.

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

22 A. Yes. I'm Carroll.

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

25 A. Yes, it does.

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

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

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

8 A. Yes.

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

11 A. Yes.

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

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

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

16 A. Yes.

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

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

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

24 A. I believe so.

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

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

3 A. Yes.

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

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

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

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

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

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

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

19 A. Yes.

20 Q. Okay.

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

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

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

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

5 Q. Yes, please do.

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

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

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

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

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

1 Edwards and Wheaton.

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

6 A. Yes.

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

9 A. Yes.

10 Q. What do you remember about it?

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

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

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

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

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

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

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

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

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

12 A. No, I have not, no.

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

16 A. Yes.

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

19 A. No.

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

24 A. Yes.

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

1 A. No.

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

3 A. That's what his notes indicate.

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

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

9 Q. You have no recollection of that.

10 A. No, I don't .

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

14 A. No, I can't say.

15 Q. Have you ever seen that statement?

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

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

21 A. I'm sorry.

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

23 A. Not myself.

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

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

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

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

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

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

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

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

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

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

21 A. No. No. Definitely not.

22 Q. Would you have seen this statement though?

23 A. Over the years, yes.

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

1 from time to time?

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

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

9 A. On the 8th, yes.

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

12 A. That's correct.

13 Q. Do you remember that meeting?

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

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

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

1 statement...

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

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

7 Q. Any more information but what?

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

10 We wanted it to come from him.

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

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

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

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

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

21 A. Yes, it refers to warned statement.

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

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

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

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

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

8 A. No, there isn't.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 A. No.

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

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

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

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

3 A. Yes.

4 MR. PRINGLE

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

7 MR. MacDONALD

8 Yes.

9 MR. PRINGLE

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

16 MR. MacDONALD

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

19 MR. PRINGLE

20 1982 at the reference.

21 MR. MacDONALD

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

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

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

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

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

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

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

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

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

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

12 A. We were quite confident, yes.

13 CHAIRMAN

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

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

22 CHAIRMAN

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

1 A. That was general knowledge, yes.

2 CHAIRMAN

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

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

15 CHAIRMAN

16 Did they know the purpose of your visit?

17 A. Oh, yes.

18 CHAIRMAN

19 Why you wanted to take statements.

20 A. Yes, My Lord.

21 CHAIRMAN

22 They knew you were re-investigating this case.

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

1 MR. MacDONALD

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

6 A. Yes.

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

10 A. Yes.

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

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

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

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

5 | A. Not by myself.

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

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

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

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

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

20 | A. That's correct.

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

22 | MR. RUBY

23 | Excuse me a minute. It's my understanding that there was a
24 | girl who gave him a tissue and the tissue was, in fact, found.
25 | There was blood on that tissue, I don't think it was ever analyzed

1 by anyone during the initial investigation.

2 MR. MacDONALD

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

9 MR. RUBY

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

13 MR. MacDONALD

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

19 A. No, I disagree.

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

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

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

6 A. No.

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

12 A. Probably not before it was filed.

13 Q. You would have seen it afterward?

14 A. Yes.

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

16 A. In what regard, sir?

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

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

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

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

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

9 A. No.

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

15 A. Yes, I do.

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

19 MR. BRODERICK

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

25

1 MR. MacDONALD

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

4 CHAIRMAN

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

6 MR. BRODERICK

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

10 MR. MacDONALD

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

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

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

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

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

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

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

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

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

13 A. Yes.

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

16 A. Yes, you're right.

17 Q. Of 1971.

18 A. Yes.

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

23 A. Yes.

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

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

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

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

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

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

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

24 A. Those were on the Marshall statement.

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

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

2 Have you ever seen those before?

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

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

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

14 Q. Did you ever interview Mrs. Chant?

15 A. Yes.

16 Q. Did Sergeant Wheaton?

17 A. Did he?

18 Q. Yes.

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

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

24 A. No, sir.

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

1 A. Yes.

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

6 A. Yes.

7 Q. Do you agree with that?

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

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

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

16 Q. Words to that effect?

17 A. I would lean towards pressure maybe.

18 Q. From the Crown Prosecutor.

19 A. Yes.

20 Q. To do what?

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

22 Q. When was that said?

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

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

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

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

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

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

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

11 Q. Yes.

12 A. The doctor who treated Pratico.

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

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

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

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

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

3 Q. Who is Mr. Cross?

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

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

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

17 12:00 p.m.*

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

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

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

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

9 A. Yes.

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

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

14 Q. Would that be the same night?

15 A. Yes.

16 Q. So he was drunk that night himself.

17 A. That's correct.

18 Q. He says, your note indicates:

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

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

24 A. That's correct.

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

1 that Junior Marshall was guilty?

2 A. Yes.

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

4 A. That's correct.

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

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

12 Q. But what did you do?

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

15 Q. On the day you interviewed him.

16 A. Yes, I believe.

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

18 A. No.

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

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

1 information at the time.

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

5 A. I did not.

6 Q. Do you know if anyone did?

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

8 Q. You believe he did?

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

12 Q. And discounted by you, or discarded.

13 A. In due course, yes.

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

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

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

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

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

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

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

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

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

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

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

15 Q. March 31st.

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

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

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

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

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

2 Q. Were you aware of Donna Ebsary?

3 A. Yes, very much.

4 Q. How did you become aware of her?

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

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

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

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

18

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

21

Is that your recollection as well?

22

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

24

25 Q. He goes on to say that,

25

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

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

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

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

15 A. No, sir.

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

19 A. Yes, I do.

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

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

1 that communication was beyond my level.

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

4 A. Not that I can recall.

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

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

11 Q. Yes.

12 A. Yes.

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

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

16 Q. Wheaton believed they should be investigated?

17 A. Yes.

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

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

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

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

25 Q. In abeyance?

1 A. Yes. And, again, that's not in my communication. That was, it
2 wasn't given directly to me. It would be handed back to
3 Wheaton through the channels.

4 Q. Was that your understanding from what Wheaton told you
5 that were to hold it in abeyance, not investigate the Sydney
6 Police?

7 A. That was the bottom line, yes. Whether it was in writing, I'm
8 sure it's in the report somewhere. I recall seeing that
9 terminology.

10 Q. Did you ever discuss it with him, though, the fact that this
11 policeman wanted to investigate the Sydney Police and was
12 not going to do so?

13 A. Yes, I'm sure it was discussed. I could picture in my mind
14 the, for lack of a better term, the tension in the air that would
15 exist if we did go down to question MacIntyre or Urquhart, or
16 have them come to our office for interrogation.

17 Q. There would be tension? You can picture that?

18 A. I could picture it at the time, that situation arising.

19 Q. Why would that be?

20 A. Well, I had never investigated another police department
21 before, let alone another policeman, for any type of offence
22 that I can recall, certainly not any department. At the rank of
23 corporal, which I was then, it would have been a very
24 uncomfortable situation to, and I felt in all probability I
25 would not be the one who would be questioning the chief of

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

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

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

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

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

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

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

23 Q. Neither would a staff sergeant?

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

- 1 Q Let me take you now to February...I guess April the 20th in
2 your notebook. This is a second statement of Maynard Chant.
3 It's taken by you, I believe?
- 4 A. Yes.
- 5 Q And Constable Hyde was with you?
- 6 A. If I could see that statement, I'm quite sure...
- 7 Q Yes, it's on page 81, I'm sorry, of Volume 34.
- 8 A. Yes, that's correct.
- 9 Q Why would you and Hyde go back to talk to Maynard Chant?
- 10 A. It would be for the purpose of clarification, more details.
- 11 Q Actually, you took a statement first from Mrs. Chant, and
12 that's on page 84. Perhaps we'll look at that one first.
- 13 A. Yes.
- 14 Q Have you had the opportunity to review those statements in
15 preparation for giving evidence here?
- 16 A. No, not in a number of years.
- 17 Q Do you recall the statements being taken from Mrs. Chant
18 and Maynard Chant?
- 19 A. Oh, yes, I do.
- 20 Q Were you instructed by Wheaton to go and get those
21 statements?
- 22 A. Yes.
- 23 Q The one from Mrs. Chant, was it taken at her home?
- 24 A. Yes, it was.
- 25 Q Did you follow the same practice that Wheaton would, that is,

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.

1 COMMISSIONER EVANS

2 And when was he transferred?

3 SGT. CARROLL

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

5 MR. MacDONALD

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

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
24 interviews should be held in abeyance for
25 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.

13 A. That's true.

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

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

19 Q. Not in the first statement.

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

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

A. That Urquhart? No. I think you're reading that two
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.



Margaret E. Graham

DATED THIS 1st day of February, 19⁸⁸ at Dartmouth,
Nova Scotia