

SUPT. SCOTT, EXAM. BY MR. SPICER

1 11:31 a.m. \*

2 SUPT. DONALD BRUCE SCOTT, duly called and sworn, testified as  
3 follows:

4  
5 EXAMINATION BY MR. SPICER

6  
7 Q. Your full name, sir?

8 A. Donald Bruce Scott.

9 Q. You're presently employed by the RCMP?

10 A. Yes, I am.

11 Q. In what capacity, sir?

12 A. I am a Staffing and Personnel Officer for Officers at  
13 Headquarters, Ottawa.

14 Q. And like Staff Sgt. Wheaton and David Orsborn, you and I  
15 have not had an opportunity to speak before.

16 A. No.

17 Q. Because on the advice of your counsel, you haven't spoken to  
18 us. So you'll forgive me if I seem to be on a bit of a fishing  
19 expedition sometimes, because I will be.

20 A. Certainly.

21 Q. Could you outline for us your career with the RCMP briefly?

22 A. I joined the RCMP in September, 1957. Following training, I  
23 was stationed in Ottawa for a short time. I came to Nova  
24 Scotia in January, 1959 where I served at various  
25 detachments in the province until 1964. I went back to

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1           Headquarters Ottawa and after a two-year period there, I  
2           returned to Halifax and set up what was called the "Maritime  
3           Crime Index Section." I left there in 1974, went to Yarmouth  
4           in charge of the detachment there. Was commissioned in  
5           1975, transferred to Ottawa for approximately a year and a  
6           half. Went to Sydney as O/C Sydney Subdivision in the  
7           summer of 1977. Was there until 1984. Came to Ottawa as  
8           Officer in Charge of our audit and then in 1986, transferred to  
9           Staffing and Personnel Officer for Nova Scotia and P.E.I.

MR. CHAIRMAN

11           You were stationed at Sydney, Inspector, from 1977 until?

SUPT. SCOTT

13           1984, My Lord.

MR. SPICER

15           Q. During your tenure with the RCMP, have you been involved in  
16           the investigation of another police force?

17           A. No.

18           Q. You indicated to us that you went to Sydney in 1977. In what  
19           capacity?

20           A. As officer commanding, Sydney Subdivision.

21           Q. Now is that "GIS" or the detachment?

22           A. No, I was responsible for policing Cape Breton Island and that  
23           part of the mainland that took in Mulgrave and went up  
24           towards Antigonish to Havre Boucher, I believe.

25           Q. Would you then be the senior RCMP officer in Sydney from

1 1977 to 1984?

2 A. Yes, I would be.

3 Q. And did Staff Sgt. Wheaton report to you?

4 A. Yes, he did.

5 Q. Can you describe to us the Sydney office in terms of  
6 personnel in 1982, the RCMP?

7 A. Under my command, there was approximately 130 to 140  
8 people, ten detachments, as well as some highway patrols and  
9 the plain clothes, GIS, the drug section, migratory birds, dog,  
10 Ident, Customs and Excise, drugs.

11 Q. Did GIS report to you?

12 A. Yes.

13 Q. And would their offices physically be in the same place as  
14 yours in Sydney?

15 A. Same floor, to my left down the hall.

16 Q. What about the filing system, would they maintain separate  
17 files from the files that you would keep?

18 A. Yes, they would.

19 Q. Would they? But would they be housed physically in the  
20 same building?

21 A. Same building, yes.

22 Q. In your capacity as O/C in Sydney, would you over the years  
23 have had contact with Chief MacIntyre?

24 A. Yes.

25 Q. What was your impression of him as a police officer?

1 A. Experienced, known to be by his men as a tough boss. He and  
2 I mixed socially as well as professionally and we discussed  
3 certain things to do with both our jobs different times.

4 Q. Did you have any observation to observe, any opportunity  
5 rather to observe Chief MacIntyre's attitude towards natives  
6 in Sydney?

7 A. I can't say as I did towards natives. I know with blacks in  
8 the Pier during Armistice Day ceremonies and afterwards, we  
9 used to go to the Legions as invited guests and quite often we  
10 ran into blacks at the Legion that all knew Chief MacIntyre  
11 and they used to come up and talk to him about the old days.

12 Q. Would you have any reason, again from your observations  
13 over the years in Sydney, would you be able to say whether  
14 or not you thought Chief MacIntyre treated Indians and  
15 blacks and whites any differently from each other?

16 A. Not in my association.

17 Q. And Sgt. Urquhart, did you have an opportunity to work with  
18 him at all?

19 A. Not to, as great. I did meet with him on occasion. He'd be  
20 with Chief MacIntyre or be up in our office talking to our GIS  
21 squad and I would see him in the hall and speak to him.

22 Q. And, again, did you have any opportunity to form any opinion  
23 as to whether or not he treated Indians, blacks, or whites any  
24 differently as from each other?

25 A. No, I didn't.



1 Q. Did you know Roy Ebsary in the early years when you were  
2 in Sydney, say, '77, '78?

3 A. I saw Roy Ebsary, who I now know to be Roy Ebsary, in a  
4 line-up at the Royal Bank one day when I was in the same  
5 line-up.

6 Q. Not a police line-up.

7 A. No, and he had his captain's hat on and a cigarette in a  
8 cigarette holder and had a dog on a leash.

9 Q. Was he wearing his medals?

10 A. No, he had an ascot and he was quite, he'd stood out in a  
11 crowd.

12 Q. Would you describe him as a bit of a character?

13 A. Yes, just from the way he behaved in the line-up, yes.

14 Q. Did you understand him to be well known to, say, to the RCMP  
15 in Sydney?

16 A. Not that I know of.

17 Q. What about the Sydney Police Department, did you have any  
18 discussions with them?

19 A. No, not that I know of.

20 Q. What sorts of situations would you liaise with the Sydney  
21 Police Department? What sorts of cases would there be when  
22 they would ask you for assistance?

23 A. If they wanted to use our dog master. If they were short-  
24 handed in their identification, they may wish to make use of  
25 our identification people. If there was cause for them to get

1 an authorization for some important investigation, they may  
2 come to us for assistance and I would pass it on to my  
3 headquarters in Halifax on their behalf. GIS and drug cases,  
4 we used to assist. I remember one case was an armed  
5 robbery of a store in Sydney where there was a combined  
6 effort between our force and theirs.

7 Q. Would you expect in cases of serious crime for the Sydney  
8 Police Department to request the services of the Ident.  
9 section of the RCMP?

10 A. They had their own but it was only when they were, maybe  
11 the fellow was away on a course or on holidays, they would  
12 ask us if we would back them up.

13 Q. As O/C in Sydney, who did, to whom were you reporting?

14 A. I reported to the Commanding Officer in Halifax.

15 Q. Who would that have been in 1982?

16 A. I believe it was still Chief Fagan.

17 Q. We'll see when we get into the correspondence here that  
18 there's a fair amount of backing and forthing between  
19 yourself and Christen.

20 A. Yes.

21 Q. In what sense would you be dealing with them?

22 A. He was the officer in charge of criminal for the division and  
23 any type of criminal matters, I would deal with him. If there  
24 was administrative, I would deal with the A&P officer.

25 Q. And who is that?

- 1 A. At that time, I believe it was Superintendent Brooks.
- 2 Q. So I understand correctly, there are three people. There's  
3 Christen, Fagan, and Brooks to whom you were reporting in  
4 Halifax?
- 5 A. Yes, but my line of reporting would be directly to the C/O but  
6 for operational and administrative purposes, I'd report direct  
7 to either the criminal or the A&P officer.
- 8 Q. All right, with respect to Christen, in the correspondence that  
9 we see, would he be a person in Halifax who would be capable  
10 of giving you orders to do this, do that?
- 11 A. Oh, yes.
- 12 Q. The same with Fagan.
- 13 A. Yes.
- 14 Q. And Brooks, what's his role in this?
- 15 A. He's be administrative to do with contracts or discipline, this  
16 type of thing.
- 17 Q. And for the most part, I think, throughout these materials,  
18 there's, there doesn't seem to be any correspondence or  
19 indications of communication between yourself and Fagan.  
20 It's all between yourself and Christen.
- 21 A. Yes.
- 22 Q. Would that be what one should expect?
- 23 A. Yes.
- 24 Q. And that would be why? Because it's a criminal  
25 investigation?

1 A. That's right.

2 Q. I see. For the most part of your report to Christen, would  
3 you be discussing things on the telephone?

4 A. Yes, as well as by correspondence.

5 Q. Would you expect important matters to be reduced to writing  
6 and for a memo to go back and forth?

7 A. Usually, but not necessarily.

8 Q. Was it one of your responsibilities as O/C in Sydney to review  
9 the investigative reports of the people that were working for  
10 you?

11 A. Yes, but not on a daily basis always. The investigative  
12 reports on routine thefts, break and enters, motor vehicle  
13 would be held at the detachment on detachment files. Only  
14 serious criminal reports would be forwarded to our  
15 headquarters in Halifax. They would normally be sent direct  
16 to the CIB officer with a copy to myself.

17 Q. They wouldn't go through you first to see whether they were  
18 okay?

19 A. No. In this particular case, you will note that I requested that  
20 they come to me first during the early going and later on,  
21 you'll notice that they went direct and just a copy to myself.

22 Q. And in respect then of this case, was your review of the  
23 reports that were being, that were coming into you from Staff  
24 Sgt. Wheaton, would they be as to the content or merely as  
25 just to review it so you would know what was going on?

1 A. Both. I would look at the content as well as to keep up to  
2 date on what was going on.

3 Q. Would you consider then in that review, would you consider  
4 it to be one of your responsibilities if you saw something in a  
5 report that didn't seem to be backed up by a statement that  
6 was attached, for instance, would you have brought that to  
7 Staff Sgt. Wheaton's attention?

8 A. Yes, probably I would.

9 Q. What's the basis for this allegation of this statement?

10 A. Sure, yes.

11 Q. Would you expect for the most part that important matters  
12 that come to the attention of your investigating officers would  
13 be reduced to statements or some form of document that  
14 could serve as a basis for a statement in a report by that  
15 officer?

16 A. If I get your question correctly...

17 Q. Let's say he's talking to a witness and the person says  
18 something which he considers to be of importance but he  
19 doesn't put it in the statement. He then takes a statement  
20 from the witness but doesn't put it in.

21 A. Right.

22 Q. Would you expect that that sort of important matter would be  
23 put in the statement?

24 A. It would all depend on what it dealt with, what he was  
25 investigating, and whether or not he felt it relevant or the

1 witness felt it relevant when they were giving the statement  
2 to him.

3 Q. So there would be some circumstances then where  
4 notwithstanding the fact that something may be considered  
5 later to be a matter of importance, it wouldn't alarm you that  
6 it didn't show up in a statement at the time.

7 A. Not necessarily, no.

8 Q. It would just depend on circumstances.

9 A. Yes.

10 Q. For how many years did Staff Sgt. Wheaton work for you?

11 A. I don't know exactly. I know at least a year because it  
12 seemed to me that he subletted a home in Sydney. The home  
13 belonged to a school teacher who was on a year's sabbatical.  
14 Now whether he had it for longer than that, I don't know.

15 Q. Prior to him coming to work for you in Sydney, did you know  
16 him?

17 A. I had met him.

18 Q. Had you ever worked with him?

19 A. I never worked with him or he never worked for me.

20 Q. Did you have any idea as to his competence as an investigator  
21 at the time that he was assigned to deal with the Marshall  
22 matter?

23 A. Yes, I was assured when he came as the NCO in charge of the  
24 plain clothes squad that he had a background in that area and  
25 was a competent investigator.

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1 Q. By whom would you have been assured?

2 A. By the staffing people who would have transferred him there.

3 Q. Would you have any role in saying whether or not somebody  
4 could be transferred? In other words, if you thought this  
5 wasn't a particularly good person, could you say, "I don't want  
6 him here."

7 A. I have done that, not always with success, but...I had no  
8 misgivings about the individual from what I heard about him.

9 Q. Did you have any involvement in the assignment of Corporal  
10 Carroll to work on this particular file?

11 A. No, that would be Staff Wheaton's decision.

12 Q. Did you consider other people for the job?

13 COMMISSIONER EVANS

14 I understand his evidence was that he assigned Wheaton.

15 SUPT. SCOTT

16 Yes.

17 COMMISSIONER EVANS

18 And that Wheaton picked him.

19 MR. SPICER

20 That's correct.

21 SUPT. SCOTT

22 That's right.

23 MR. CHAIRMAN

24 I missed something and I'm sure it's my fault. Who directed  
25 you to carry, Inspector, to carry out this reinvestigation?

1 MR. SPICER

2 We haven't come to that.

3 MR. CHAIRMAN

4 Oh, we haven't got to that.

5 MR. SPICER

6 Q. From the time that you went to Sydney in 1977 until this  
7 Marshall thing came up in '82, did you have any knowledge at  
8 all of the Donald Marshall case?

9 A. No, I did not.

10 Q. Had you ever heard the name?

11 A. No.

12 Q. Were you aware of whether or not Sydney GIS had a file  
13 concerning Donald Marshall?

14 A. No.

15 Q. What then was our first knowledge of the Donald Marshall  
16 case?

17 A. I received a phone call from Chief MacIntyre and he asked  
18 me if I would meet him at the Crown Prosecutor's office. I  
19 don't know exactly what the time was. And as a result of  
20 that, I had a meeting with Chief MacIntyre and Mr. Edwards,  
21 who was the Crown Prosecutor. Do you wish me to go on?

22 Q. Yeah, I'm going to help you a little bit with the notes. Volume  
23 19, if you would turn to page five of that.

24 A. Yes.

25 Q. That seems to be an RCMP report of three or four pages and



1           refers to your attendance at a meeting on the 3rd of  
2           February, 1982.

3           A. That's correct.

4           Q. And would that be the meeting that you just mentioned to me  
5           just a minute ago?

6           A. Yes, it would be.

7           Q. And you had received a call from Chief MacIntyre?

8           A. Yes.

9           Q. Do you remember what it was that he said to you in that  
10          conversation?

11          A. I don't remember him saying anything other than he would  
12          like to meet with me at the Crown Prosecutor's office at two  
13          o'clock, if I could, and I said that I would. I don't think we  
14          even discussed what he wanted to see me about.

15          Q. Who attended at the meeting?

16          A. Myself, Chief MacIntyre, and Mr. Edwards.

17          Q. What's your recollection of what occurred at that meeting?

18          A. Mr. Edwards sat behind his desk and Chief MacIntyre and I  
19          were on chairs almost side by side. He had some envelopes  
20          with him and he told us that he had got a letter from a lawyer  
21          in Dartmouth.

22          Q. Steve Aronson?

23          A. Yes, outlining that he had new evidence from an individual by  
24          the name of Sarson who said that he had evidence that  
25          someone else was responsible for a murder that Donald

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1 Marshall had been convicted of back in 1971. He, I knew  
2 nothing about the case and I don't think Mr. Edwards did. He  
3 proceeded to tell us generally about the case in 1971.

4 Q. Can you remember what it was that he told you about the  
5 case?

6 A. No, other than just the witnesses and as he would tell us  
7 about it, he would bring out statements. Now I can't  
8 remember whether he had a package for each one of us in a  
9 separate envelope, or whether he passed us statements  
10 individually as he came to a witness. But he sort of went over  
11 it and gave us copies of witness's statements.

COMMISSIONER POITRAS

12  
13 Who is "he"?

SUPT. SCOTT

14  
15 Chief MacIntyre.

BY MR. SPICER

16  
17 Q. And these statements, I take it, then were being passed to  
18 you as the chronology of his recollection of the case  
19 progressed?

20 A. That's right. When he came to this new evidence that the  
21 lawyer had brought to his attention, he said that he had made  
22 some inquiries on his own. He had been in contact, or tried to  
23 get in contact with the person who had done a polygraph test  
24 in the fall of '71 because the same person that was being  
25 suggested for the murder now had been suggested in

1 November of '71 and had been given a polygraph  
2 examination. And he was trying to get either notes or copies  
3 of that polygraph examination. He told us that he had  
4 contacted Pictou detachment and talked to the NCO there and  
5 had sort of had a rundown on Mr. Sarson. That he was  
6 involved with drugs. He knew Donald Marshall from visiting  
7 the pen and I can't remember why this individual was  
8 visiting the pen at that time. But also that Donald Marshall  
9 had stayed with his sister one time when he was at large  
10 from Springhill. And by the end of going around on these  
11 facts, it was my impression that this would just be a matter of  
12 checking this out and putting it to rest.

13 Q. What was it that gave you that impression from going around  
14 the facts?

15 A. Well, from what he told me about this new evidence and the  
16 fact that it led back to the same individual that had been  
17 looked at before in November '81 and that that evidence had  
18 been ruled out at that time. He requested that I do the  
19 investigation or our force do the investigation, as he had done  
20 the original one, and Mr. Edwards agreed that that would  
21 probably be a good idea.

22 Q. When you advised that a polygraph had been taken in  
23 November of '71, did you then know at that point that the  
24 RCMP had had some involvement in the matter previously?

25 A. Chief MacIntyre had told me that at that time but he didn't

1 have a copy of our report, as I remember, but he  
2 remembered that our members had been there to conduct the  
3 polygraph.

4 Q. Do you remember how long the meeting took?

5 A. I can't recollect the time but the amount of material we  
6 covered, I would say it would be at least an hour.

7 Q. Chief MacIntyre's recollection was two to two and a half  
8 hours.

9 A. Yeah, it could very well have been.

10 Q. Did you have the impression at that point in time Chief  
11 MacIntyre thought that he got the right person in 1971?

12 A. Well, I didn't have much of a feeling that we would come up  
13 with any different conclusion when I left the office. When I  
14 went back and turned it over to Staff Wheaton, it was my  
15 opinion to him that he would go check out this story and that  
16 would be the end of it.

17 Q. Can you tell us what documents you took away from that  
18 meeting that day?

19 A. No, I cannot, other than I know it was some statements that  
20 Chief MacIntyre had given us.

21 Q. Did you think at the time you left that meeting that you had  
22 all the statements?

23 A. No. I knew that I had the statements of what he had  
24 discussed with the main witnesses because he handed them  
25 to us as we talked about them.

1 Q. Do you remember today who those people were?

2 A. Not from recall of the... no.

3 Q. So you're not able to tell us which statements then you would  
4 have taken away?

5 A. No.

6 Q. From that meeting. You indicated that you thought you had  
7 the statements of, I guess, the chief witnesses.

8 A. Yes.

9 Q. Are you able to tell us whether or not you had the impression  
10 that you had everything? In other words, that you had all  
11 the statements or that you just had statements from the  
12 people that the chief considered to be the major witnesses?

13 A. All I knew is that I had enough to do the inquiries that, to  
14 check out Mr. Aronson's new allegations.

15 Q. Did you at that meeting ask for the entire file?

16 A. No, no.

17 Q. Do you know whether at that time you would have been  
18 given any of the statements that were taken in November of  
19 1971 involving Roy Ebsary?

20 A. No, I couldn't say.

21 Q. Upon leaving that meeting, did you fairly shortly after that  
22 take any steps to find out what the force's involvement had  
23 been in 1971 by way of getting Inspector Marshall's report?

24 A. Yes, I, after I gave Staff Wheaton the job of investigating it, I  
25 can't remember the sequence of this, and I don't want to get

1 ahead of myself. It may not have been at that time that I  
2 went looking for that file.

3 Q. At some point or another, it was you though that got it, was  
4 it?

5 A. Yes.

6 Q. When did you turn the matter over to Staff Wheaton?

7 A. As I remember, when I got back to the office, I either called  
8 him into my office or I went into his and said that Chief  
9 MacIntyre had requested us to look into these allegations of  
10 Mr. Aronson concerning a 1971 murder and basically told him  
11 what I could recall of my conversation that day with Chief  
12 MacIntyre and requested that he look into these allegations,  
13 but prior to doing so, to go down and meet with Chief  
14 MacIntyre to make sure that he had the full story from Chief  
15 MacIntyre before he went out and did it.

16 Q. And that conversation with Staff Wheaton then would have  
17 taken place on February the 3rd, the same day that you had  
18 your meeting with the chief.

19 A. I believe so, or it could have been the next morning, but I  
20 believe it was the same day.

21 Q. And at that time, did you then turn over everything you had  
22 to Staff Wheaton?

23 A. Yes, I gave him the envelope I had received from the Chief  
24 with everything in it.

25 Q. Was a file generated at that point in your office?

- 1 A. Not in my office, no.
- 2 Q. No? Where would you expect a file then to be started?
- 3 A. In the GIS office.
- 4 Q. GIS? Do you know whether, in fact, that was done within the  
5 next couple of days?
- 6 A. No, it wouldn't be something I would check on.
- 7 Q. Did you read the material that you were given by Chief  
8 MacIntyre yourself, did you read the statements?
- 9 A. Just as he went through them there in front of us. I didn't  
10 read them when I got back to the office.
- 11 Q. Once you had instructed Staff Wheaton to look into this  
12 matter, were you advised on a fairly regular basis by Staff  
13 Wheaton as to the developments as they occurred?
- 14 A. Yes, I was
- 15 Q. Would that be to the point that you would review his reports  
16 with him and the statements that he had taken and make  
17 sure that things were going along all right?
- 18 A. Not at that stage of that investigation.
- 19 Q. Not in February.
- 20 A. Because I had no idea that it was going to result in what it  
21 did. It was just another request or another case that we  
22 would be handling and I really didn't attach that much  
23 importance to it at that time.
- 24 Q. At that time in early February, did you in turn report to  
25 anybody in Halifax that you had instructed Staff Wheaton to

1 look into this matter?

2 A. I probably would have, the CIB officer. It would be normal to  
3 do that by telephone.

4 Q. And that would be Christen at the time?

5 A. Yes.

6 Q. 1982.

7 A. Uh-huh.

8 MR. CHAIRMAN

9 Do you know whether your headquarters in Halifax, anyone in  
10 there was aware of the fact that you had been requested by Chief  
11 MacIntyre to reinvestigate the Marshall case?

12 SUPT. SCOTT

13 I wasn't requested to reinvestigate the Marshall case, My  
14 Lord. I was requested to look into the new allegations that Mr.  
15 Aronson had brought forward at that time. And so, therefore,  
16 I would have called the CIB officer and said that we had had this  
17 request and that we were looking into it.

18 MR. CHAIRMAN

19 Would you need the approval or authorization of the, of  
20 Superintendent Fagan to proceed with that piece of work?

21 SUPT. SCOTT

22 No, as I understand the RCMP contract with the province at  
23 that time, that we were responsible as a provincial police force  
24 for policing the Province of Nova Scotia in all areas that were in  
25 the county or those municipalities under 1500 population or



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1 other areas that the Attorney General so directed.

2 And any police departments that had their own police force  
3 were responsible for doing their own investigations, except  
4 murder and attempted murder, rape and attempted rape, and we  
5 did those in all municipalities that had police forces with the  
6 exception of Halifax and Dartmouth and the City of Sydney. We  
7 could do an investigation in those areas when we were requested  
8 directly by the police force who had jurisdiction or when directed  
9 by the Attorney General's Department to go and do an  
10 investigation in that area.

11 We also did investigations in areas of  
12 federal statutes like drugs and bankruptcies and so on.

13 MR. CHAIRMAN

14 So upon receiving this request from Chief MacIntyre, you...

15 SUPT. SCOTT

16 That's all I needed.

17 MR. CHAIRMAN

18 That's all you needed.

19 SUPT. SCOTT

20 Yes.

21 MR. SPICER

22 Q On February the 18th, the evidence is that Staff Wheaton took  
23 a statement from Marshall and basically either at that time or  
24 maybe even before, formed the view that Junior Marshall was  
25 innocent. Staff Wheaton indicated to the Inquiry that he

1 reported to you on that meeting with Junior Marshall. Do you  
2 have any recollection of that?

3 A. Yes, I remember having a meeting with him on that point.

4 Q. Do you remember what it was that Staff Wheaton told you  
5 about the circumstances of taking a statement from Junior  
6 Marshall?

7 A. No, not my own recall. I remember basically that he had told  
8 the story to them and professed his innocence and I don't  
9 know if we had had the statement at that time from Chant  
10 and Pratico but it sort of fell in line with what we were  
11 thinking at that time, I believe.

12 12:02 p.m.

13 Q. Fell in line with what you were thinking at that time. Or,  
14 your recollection is around that time in February the 18th.

15 A. Well, I remember that when we, as we were doing the  
16 investigation of looking into Aronson's allegations, that as we  
17 were going along we were finding more or less what Chief  
18 MacIntyre had told me we would find as to the character of  
19 witnesses and so on. And there was somewhere along the  
20 line, and I don't know whether it was before or after the first  
21 encounter with Marshall, that a decision was made at one our  
22 meetings that we should go to the eyewitnesses because there  
23 was enough suspicion there on our part that this was the  
24 second time this man's name had come up. Why was it  
25 coming up? I think the Chief had told us that he had received

1 letters from Marshall during his time in penitentiary  
2 professing his innocence and the other point that I can't  
3 remember the timeframe was that at his parole board hearing  
4 I knew that I had been told somewhere in this early part of  
5 the investigation, that he did not admit to his guilt at that  
6 parole board hearing and that it seemed strange that he  
7 wouldn't because his parole was denied. And as I understood  
8 it it was on the strength, or partly on the strength of him  
9 denying his guilt at that time.

10 Q. This parole board to which you refer, would that have taken  
11 place subsequent to your retention, to your direction or other  
12 of Wheaton to re-investigate?

13 A. I had taken it to, that it would have occurred before.

14 Q. And you heard about it later?

15 A. But I heard about it after we had got into the investigation.

16 Q. And by, for what reason would you hear about that?

17 A. I would say that once we got into the investigation that other  
18 members of the Force would hear that we were looking at it  
19 or just general talk. Maybe it was from Parole people, I don't  
20 really know.

21 Q. Is it fair to say from the comment you made a couple of  
22 minutes ago that you hadn't intended initially to go interview  
23 the eyewitnesses. That was something that came along a little  
24 bit later?

25 A. Yes.

1 Q. And why was that?

2 A. Well, because of the fact that we really weren't satisfied even  
3 though when we looked into what Mr. Aronson was saying  
4 and everything checked out according to what Chief  
5 MacIntyre had told us, there was this doubt in Wheaton's  
6 mind, and in our discussions we said, "Well, look, it keeps  
7 coming up. It keeps coming up. We have two eyewitnesses.  
8 Let's go talk to them and see what they say."

9 Q. From a layman's point of view why would you not go and  
10 speak to the eyewitnesses first?

11 A. Well we weren't specifically asked to do that.

12 Q. Weren't you asked, though, to find out what the truth was,  
13 essentially?

14 A. Yes, of these new allegations to see if there was any substance  
15 to them.

16 Q. And the allegation was that somebody other than Junior  
17 Marshall had committed the murder.

18 A. That's right.

19 Q. And so I come back to my question, then, if that was the job  
20 that you were retained to do, why would you wait to go and  
21 see the eyewitnesses?

22 A. Well we followed up the rest first, which was the normal, I  
23 would say would be normal investigational procedures.

24 Q. That would normally be the way that one would expect to do  
25 that?

1 A. This was a new information, so go check it out and see if  
2 there's any truth to it.

3 Q. There's a note in Frank Edwards' notes in, you don't need to  
4 look it up for the moment, but for counsel it's in Volume 17 at  
5 page 3, where Edwards suggests that yourself and he, I'll just  
6 read you his reference on February 23rd.

7  
8 He was called (that is, Edwards was called)  
9 by Harry Wheaton. Harry said that there  
10 had been new developments and that he  
11 and Scott had decided that there would be  
12 no further communication until report for  
13 Attorney General was ready.

14 Do you have any knowledge as to what that refers to? What  
15 the new developments were at that point, by February 23rd?

16 A. Okay. The Attorney General's Department expressed an  
17 interest in this. I would imagine the CIB Officer and as well  
18 as the Crown Prosecutor told them that we had been looking  
19 into this as we got different statements, and I believe we  
20 probably had Chant's at that time, and maybe also Pratico's.  
21 And as a result of that, they wanted to get some details in  
22 there as soon as possible and I believe we sent them in a  
23 summary. I don't know what volume it's in but it was a  
24 request from our CIB Officer to get in a summary...

25 Q. I can perhaps help you with that. Maybe you're referring to  
page 14 of that volume you have, 19.

A. Yes. Okay...

1 Q. Yeah, the letter's on page 14, from Christen to Gale.

2 A. Right. This was, at that time we had some investigating  
3 newspaper people that had got wind of our investigation, that  
4 we were looking into the Donald Marshall case, and there was  
5 leaks coming from somewhere.

6 Q. This is as early as the time when this letter on page 14 was  
7 written, that's the 25th of February.

8 A. Well, around the 23rd. What you're referring to...

9 Q. Yes.

10 A. With Mr. Edwards. And I was quite concerned that all this  
11 information was getting to people in the press. Now, all we  
12 could do is advise witnesses not to speak to the press but we  
13 had no control over these people and they had gone and got  
14 the transcript of the evidence, newspaper accounts and they  
15 were looking into. And I'm not sure on the time but I know it  
16 was around that time. My concern was that the Attorney  
17 General's Department, or the Attorney General, in particular,  
18 didn't read of our investigation in the press.

19 Q. Before he heard about it from you.

20 A. That's right.

21 Q. Right.

22 A. And I told our members that if they were talking to the press  
23 to cease, and for that matter, not to tell Mr. Edwards any  
24 more than he needed to know. Because there was some  
25 indication that there could be, I got the feeling that some of

1 the press people were talking to him and then calling our  
2 people and say that, "Well..."

3 Q. Talking to "him" being to Frank Edwards, you mean.

4 A. Yes. And that as a result they would call us and say, "Well,  
5 Mr. Edwards said such and such" and not that he was giving  
6 them any confidential information but confirming the  
7 investigation and so on, rather than a "no comment."

8 Q. Now when you say that he, somebody would call us and say  
9 Mr. Edwards is saying this, that and the other thing, did that  
10 happen to you? Did somebody, did you receive calls from the  
11 press saying, "Frank Edwards has been talking to me?"

12 A. No, this was coming from my investigators.

13 Q. From Staff Wheaton?

14 A. Yes. The only, if I talked to anyone during that time it would  
15 probably be with Ian MacNeil who, quite often, called up and,  
16 "What's new? What's going on?" Maybe he'd drop a little  
17 something to you and wondered what your response was.

18 Q. He's a newspaper man?

19 A. Yes. He was the editor of the Cape Breton Post at the time.  
20 Normally I would refer him to the investigator if it was  
21 something I had thought the investigators speak about,  
22 otherwise I'd say no.

23 Q. What sorts of things at that point in time, given what it was  
24 that you were doing, would you think it would be appropriate  
25 for your investigators to talk to the press about?

1 A. Well, I suppose at that time to confirm that we were doing an  
2 investigation. Other than that, I wouldn't want them saying  
3 anything, very much about anything.

4 Q. Would you consider it to be inappropriate for them to say,  
5 "Yes, we've interviewed this person. We've interviewed that  
6 person."

7 A. I didn't even want them to say that, no.

8 Q. Did you ask Staff Wheaton or Corporal Carroll whether or not  
9 they had, in fact, talked to the press by this point in time in  
10 February?

11 A. I knew they had had calls from the press. But at that point in  
12 time I told them I didn't want them talking to the press until  
13 our report got to the Attorney General's Department.

14 Q. All right. To go back to the note, Frank Edwards' note, the  
15 new developments to which he's referring in his note, would  
16 it be your understanding, then, that that was the concern  
17 about the press knowing too much about this and you  
18 wanting to put a lid on it?

19 A. That's right.

20 Q. I see. At that point in time, around the 23rd or so of  
21 February, what was your understanding of communications  
22 that had taken place between the RCMP and the AG's  
23 Department, other than with Frank Edwards?

24 A. The only thing I can say is that I knew that the Attorney  
25 General's Department was aware of it. That the purpose of



1 sending the summary in ahead of time was for their  
2 information, as well as our Headquarter's information. And  
3 that they were anxious to get our report in as soon as possible  
4 so that they could field any questions that might be coming  
5 their way.

6 Q. Would you have had any direct contact yourself with  
7 anybody in the Attorney General's Department?

8 A. No, I would not.

9 Q. And your understanding, then, comes through Christen, does  
10 it?

11 A. That's right.

12 Q. The summary that's enclosed with Christen's letter of the  
13 25th to Gale, if you could just look on page 15 of Volume 19,  
14 to the summary itself. About two-thirds of the way through  
15 the first paragraph it says,

16  
17 On 82/02/23 Inspector Scott called and  
18 basically related the following information.

19 Do I then take it that the summary would, in large part, be  
20 the information that you had conveyed to Christen which he  
21 then, in turn, conveyed to Gale?

22 A. Yes.

23 Q. Now you say in the third paragraph, where Christen says in  
24 the third paragraph of that summary,

25 Don Marshall was interviewed..(and there's

1 a handwritten looks like 'and') for the first  
2 time has apparently told his side of the  
3 story. He claims he and Seale were going  
4 to roll... et cetera, et cetera

5 Is that information that you, in turn, had received from Staff  
6 Wheaton?

7 A. Yes. It would be, pass it up the line, so that he would be  
8 informed of the latest. I believe I would have had to go to  
9 him to send policemen out of the province at that time. So he  
10 would be aware of the interview at Dorchester Pen. by our  
11 investigators.

12 Q. Sorry, you would have had to go to Christen to get permission  
13 to do that.

14 A. Yes.

15 Q. Then in the fourth paragraph you refer to the involvement of  
16 the RCMP in 1971 with respect to MacNeil and you say,

17 Sydney City Police did not believe MacNeil  
18 and it called on our force to investigate and  
19 review the evidence. This was done by  
20 now-Superintendent Al Marshall and  
21 retired...(et cetera) polygraph.

22 By that point in time had you received Al Marshall's report?

23 A. I've lost you on that.

24 Q. You've lost me? I'm in the fourth paragraph on page 15  
25 where there's reference to the involvement of Al Marshall  
and Smith in November 1971. And I was just asking you  
whether at this point in time, by the 25th of February,

1 whether you would have had Al Marshall's report.

2 A. I believe that it was shortly after we had the first statement  
3 from Chant where he indicated he had lied on the stand that I  
4 said we better get ahold of that file, if we can find it, and I  
5 called Halifax, to the Records Management, and they said they  
6 had no record of the file. And when I give them the date  
7 they said, "Well, the ten years are up. It would have been  
8 destroyed." Having worked in Maritime Crime Index Section I  
9 contacted the NCO in charge of that section and said, "Did you  
10 get this file prior to destruction from Records Management to  
11 take out any information you wanted off it prior to it being  
12 destroyed?" And he checked his records and come back and  
13 said, "No", they had no information on it in their files but he  
14 would check around and he eventually found it in a box with  
15 some other files that were either for destruction or for  
16 sending to Headquarters, Ottawa to be microfilmed to go into  
17 archives. And I'm not sure to this day which it was. But  
18 anyways, he found it in a box because it was past our normal  
19 destruction period and should have been destroyed or put in  
20 archives.

21 Q. And eventually you got it.

22 A. Yes.

23 Q. At this point, by the 23rd of February, what was your sense  
24 of where things were? Did you share Staff Wheaton's feeling  
25 by this time that Junior Marshall was, in fact, innocent?

1 A. I was beginning to feel that way. When we got the statement  
2 from Chant, which was a real surprise, and then when we,  
3 even as unreliable as the investigators felt Pratico was, they  
4 felt that he was being honest. And this tied into what Donald  
5 Marshall was now saying about the rolling and, of course, that  
6 had to be looked at suspect at the time, whether he was  
7 telling us that for his own benefit or was now telling the  
8 truth. Things were starting to look like what he'd been saying  
9 all along, might be true.

10 Q. Do you remember when, the first time that there was any  
11 suggestion, say, from Staff Wheaton as to any improper  
12 conduct on the part of the Sydney Police Department?

13 A. I can't, of my own recall. I have some recall from reading our  
14 reports over but I don't have datewise, no.

15 Q. That suggestion was eventually made, though, by Staff  
16 Wheaton.

17 A. Oh, yes.

18 Q. Was it made by Carroll as well?

19 A. I don't remember Carroll individually telling me that, no.

20 Q. If you just turn your attention to page 30 of that same  
21 volume. And there's a forwarding memo of yours ...

22 A. Yes.

23 Q. And I want to direct your attention for the moment to the  
24 meeting of February 26th which is referred to at the bottom  
25 of that page.

1 A. Yes.

2 Q. You say,

3  
4 On 82/2/26 Chief John MacIntyre came to  
5 my office at which time I allowed him to  
6 read the statements of Chant and Pratico in  
7 which they state they'd lied at the trial of  
8 Marshall in 1971.

9 By this point in time, and by looking at these couple of pages,  
10 are you able to tell us whether or not there was any  
11 suggestion of impropriety on the part of Chief MacIntyre?

12 A. I think there was suggestions of impropriety. I don't think  
13 from witnesses but I don't think anything had been  
14 established.

15 Q. How would one establish that?

16 A. Well, by investigating it. The allegation.

17 Q. And in order to investigate those allegations what would you  
18 have to do?

19 A. Well to, it was my understanding that we would have to get  
20 authority to look into that. That would be a separate  
21 investigation. And that we would have to get direction on  
22 that from the Attorney General's Department.

23 Q. All right. We're getting ahead of ourselves a bit. But you're  
24 suggesting, then, in order to do that you would need  
25 permission from the AG's Department?

A. Yes.

Q. Is "permission" the right word?

1 A. Well...

2 Q. In your view?

3 A. It's not in our jurisdiction to do it and, consequently, it's  
4 criminal and we would, if we were going to go in and do an  
5 investigation into the Sydney City Police, I would have to  
6 have some direction because the Attorney General has several  
7 options and so does our Force. In that he could do it under  
8 the Police Act. Our Force could send out an investigator from  
9 Halifax to Sydney like they did the last time with Inspector  
10 Marshall, and it just wasn't at my idea that I would go out  
11 and do something like that.

12 Q. Okay. We'll get back to that a little bit later.

13 A. Yes.

14 Q. Are you able to tell us what the Chief's reaction was at that  
15 meeting to the statements that he read of Chant and Pratico?

16 A. His reaction was that they were lying and I said, "Well why,  
17 you know, why do you feel they're lying now?" And his reply  
18 was, "Well, at the trial they give their statements before, they  
19 went through a preliminary hearing, they went through a  
20 Supreme Court trial with counsel. They were questioned as to  
21 their statements at that time." And he felt their statements,  
22 given at that time, were accurate and these new statements  
23 that we had were not.

24 Q. Your note on page 31 says,  
25

1 Chief MacIntyre brought up several points  
2 that we both thought should be clarified to  
3 determine the accuracy of this  
4 investigation.

5 What sorts of things are you referring to there?

6 A. Well he brought up about the Harriss girl's testimony. That  
7 what Chant was now saying and what Pratico was now saying  
8 could not be correct because the Harriss girl described how  
9 many people were in the Park at that time. And that...

10 Q. Are you able to tell us whether at that point in time whether  
11 you had any statements from Patricia Harriss, from 1971?

12 A. I could not say.

13 Q. It wouldn't be something that you would have custody of, I  
14 take it, in any event.

15 A. No. No. He also made some reference to where the body was  
16 located which I wasn't familiar with, I couldn't, and those  
17 were two items that I remember, the Patricia Harriss  
18 statement and that witness in particular, and also about other  
19 matters from the cut on the arm of Marshall to the position of  
20 Seale on the roadway, that it couldn't be the way, they  
21 couldn't have known that in their previous statements  
22 without being there sort of thing.

23 Q. Staff Wheaton was present at that meeting?

24 A. I don't remember him there. I remember the Chief in my  
25 office.

Q. And you don't, if Staff Wheaton said he was there would you

1 have any reason to disbelieve him?

2 A. No. I remember a meeting with the Chief and Staff Wheaton  
3 but I don't think it was on that occasion, although I'm not  
4 saying it didn't occur, it may have occurred in the conference  
5 room prior to coming to my office. But I just remember the  
6 Chief coming to my office on that occasion and I allowed him  
7 to read the statement of Chant and Pratico at that time.

8 Q. There is some reference in Frank Edwards' notes concerning  
9 this meeting, in Volume 17, pages 4 and 5, where his  
10 recollection seems to be that,

11  
12 Harry Wheaton called to say that meeting  
13 with Chief MacIntyre had gone down on  
14 Friday p.m. (That would have been the  
15 26th.) Just Inspector Scott attended as  
16 Wheaton was involved in a surveillance  
17 exercise.

18 Now Staff Wheaton has said to us here that he, in fact, was at  
19 that meeting.

20 A. Right. I've no recollection other than what I remember of the  
21 Chief sitting in my office on the chair and us discussing it.  
22 And the other meeting we had with Staff Wheaton there, my  
23 recollection is that it occurred later, I believe on the 5th of  
24 April but I can't discount it either.

25 Q. Frank Edwards' notes again, in Volume 17 at page 5. I'd just  
like to ask you whether or not you would agree with his  
characterization of what happened at the meeting. Mr.



1 Edwards is referring to the call from Harry Wheaton and in  
2 the first full, second full paragraph there it says,

3 Said MacIntyre had dismissed whole thing  
4 out of hand and Scott did not have  
5 sufficient details to pin him down.

6 A. Well I certainly couldn't debate the case with Chief  
7 MacIntyre. He knew it inside out and all I knew was what I'd  
8 been told by our investigators. Up until that point I couldn't  
9 even talk about the references on Crescent Street that he was  
10 because I had no idea where they were.

11 Q. Is it fair to say that at point in time you weren't even trying  
12 to pin the Chief down?

13 A. No.

14 Q. Indeed the Chief, if I understand you correctly, the Chief was  
15 in your office in a sense to assist you in continuing this  
16 investigation at that point.

17 A. At that time I was bringing him up-to-date on the  
18 investigation we were doing on his behalf and letting him  
19 read the new evidence that he wasn't aware of which was  
20 these two statements of witnesses.

21 Q. And he certainly wasn't an object of the investigation himself.

22 A. Not to my knowledge at that time, no.

23 CHAIRMAN

24 This may be an appropriate time to adjourn until 2.

25 12:28 - ADJOURN TO 2 p.m.

EXAMINATION BY MR. SPICER [CONTD.]

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Q. When we broke at lunchtime we were discussing the meeting of February 26, and there's a comment in Michael Harris' book concerning that meeting, and I just want to put that couple of sentences to you and ask you whether or not you agree with that. The comment, it's a recollection of Staff Wheaton's about that meeting. Page 33. Wheaton recalled that MacIntyre, "Became very bombastic, starting throwing papers around. He still had a file with him. He threw down the Patricia Harriss statement said, 'How can that be?' and pounded the desk on February 27th." Do you have any recollection of any of that happening?

A. No, I don't.

Q. Do you think if it had you would have remembered it?

A. If it happened in my presence, yes.

Q. Yeah. If I could just turn your attention back to page 31, again, if you've still got Volume 19.

A. Yes.

Q. You indicate in the third paragraph, "It would appear from this investigation that our two eyewitnesses to the murder lied on the stand and the other main witness, Harriss, lied as well under pressure from the Sydney City Police." And then in the next paragraph, "After reviewing this case I feel that Marshall is innocent." At that point in time was...had there been any or was there some consideration given to obtaining

1 a search warrant to get the file from the Sydney Police  
2 Department?

3 A. No, there was not at that time.

4 MR. CHAIRMAN

5 What was the answer to that question?

6 MR. SPICER

7 It was not at that time.

8 Q. Were you satisfied at the end of that meeting on the 26th that  
9 you then had, or Staff Wheaton then had Chief MacIntyre's  
10 entire file?

11 A. No. I realize you don't have...or you hadn't interviewed me  
12 before, but at the end of that meeting I told Chief MacIntyre  
13 that I would have to come down to his office and get the rest  
14 of the statements and other material that he may have that  
15 would let us continue on with this investigation, because of  
16 the two statements from Chant and Pratico, we would now  
17 have to interview all witnesses who gave statements at that  
18 time.

19 Q. Uh-hum What was his reaction to that?

20 A. Yes, he would...he would do that.

21 Q. Did you ask at the meeting at all for the balance of the file?

22 A. No.

23 Q. No. I believe that there was an indication from Staff Wheaton  
24 at page 7599 he has some recollection that you did ask for it  
25 at the meeting. Was he wrong on that?

1 A. Well, I didn't ask for the file. What I asked for was the rest  
2 of the statements that he had of people that gave evidence or  
3 gave him statements at that time.

4 Q. Did he not have his file with him at the meeting?

5 A. He may have, I don't remember.

6 Q. Why would you suggest that you were going to come down to  
7 his office to get the rest of the material rather than just  
8 saying "Give us what you've got?"

9 A. Well, what I was looking for was photographs. I was looking  
10 for an autopsy report. I was looking for a line-up. We had  
11 looked at the newspaper and there was some report of a line-  
12 up being held. I was looking for any material on the...on the  
13 line-up and looking for the statements of the rest of the  
14 witnesses that appeared at the trial so that we could re-  
15 interview all the witnesses that had given evidence and the  
16 policemen that had taken part in the investigation.

17 Q. Was it your understanding at that meeting on February 26th  
18 that there were photos available?

19 A. I didn't know whether there was or not.

20 Q. The same with the autopsy, you didn't know whether there...

21 A. No, no.

22 Q. So, the only thing you knew for sure was that you had heard  
23 that there had been a line-up through the newspaper.

24 A. Yes, uh-hum.

25 Q. Can you tell us whether or not you were given any statements

1 at that meeting by Chief MacIntyre?

2 A. Not that I remember.

3 Q. And did you then, in fact, go to the Chief's office and get more  
4 material?

5 A. Yes. I believe that was on a Friday and it was the first of the  
6 next week that I went to his office.

7 Q. You...

8 A. I believe it was on the Monday, March 1st, but I can't be  
9 certain of that date.

10 Q. Did you go to the Chief's office by yourself?

11 A. Yes.

12 Q. Was there anybody else there?

13 A. Inspector Urquhart come in while I was there.

14 Q. Okay. And tell us what happened at that meeting?

15 A. At the meeting the Chief went through his envelopes and files  
16 and that that he had and as he went through them he would  
17 put one there, that would be for me, he would put another  
18 one over here, that he later retained, and I imagine when he  
19 was doing it that he was keeping the original for himself or  
20 copies and which I would do myself if I was giving somebody  
21 my...

22 Q. Is that an assumption on your part?

23 A. That's an assumption on my part. But he kept material and  
24 gave me copies and as he went through, ah, there was quite a  
25 bit of envelopes and file folders as I remember it.

1 Q. Uh-hum.

2 A. And while he was doing this we were talking about the case  
3 because I wasn't that familiar with it in some respects and I  
4 was talking about the cut on Donald Marshall's arm, because  
5 there was something to do with hesitation marks, that the cut  
6 on his arm couldn't be made by the cut that was on his jacket  
7 because it wasn't one long cut.

8 Q. According...is this according to the Chief?

9 A. Yes.

10 Q. Uh-hum.

11 A. And I was trying to show to him with a letter opener that if  
12 you had your shirt bunched or your jacket bunched and the  
13 knife came in like that across the ripples that once you  
14 straightened it out it would be all short cuts rather than a  
15 long one.

16 Q. Right. How did he take that news?

17 A. Well, he said, no, and he...there was no blood on the inside of  
18 the jacket sleeve, and that he didn't think it happened that  
19 way. He went on to say that he had wanted to get a...the  
20 dressing off the wound to try to get the blood type and that I  
21 think he tried to get it through Dr. Virick but that he...when  
22 Marshall was in the Correctional Centre he had taken the  
23 stitches out himself and that he had thrown away the stitches  
24 and the dressing and he wasn't able to get it. I think at that  
25 time he also questioned whether or not Doctor Virick had put

1 the stitches in to make it look good. There was a question. It  
2 wasn't a conclusion on his part.

3 Q. In what context did he bring that up?

4 A. Well, he said that Dr. Virick was the doctor for Membertou  
5 Reserve and that he thought that he might be trying to  
6 protect Marshall to make the wound look like it was more  
7 severe than it was.

8 Q. Did he give you any suggestion other...as to why that would  
9 be other than the fact that he was a doctor for the  
10 reservation?

11 A. No, no. He didn't...well, it seems that he...he didn't feel that Dr.  
12 Virick went out of his way to help him get this blood sample  
13 from Marshall or the dressing.

14 Q. Did you enquire of him whether or not he'd asked Donald  
15 Marshall's lawyers as to whether or not he would give a blood  
16 sample?

17 A. No, I don't remember that.

18 Q. What was it that you understood you came away from with  
19 that...sorry, from that meeting? What material did you think  
20 you had?

21 A. Well, I knew I didn't have an autopsy report. I didn't have  
22 any photographs.

23 Q. Had you been advised that there had been no autopsy?

24 A. Yes.

25 Q. Yes. And with respect to the photos were you advised that

1 | there were no photos?

2 | A. No photos.

3 | Q. And with respect to the line-up what were you told?

4 | A. The line-up, the Chief couldn't remember that a line-up was  
5 | taken and I said well, at that time I didn't know it was in the  
6 | preliminary hearing where he had given evidence to that  
7 | effect. At that time all he knew was that it was in a Cape  
8 | Breton Post article and that the investigators had told me  
9 | that.

10 | Q. With respect to statements in the possession of the Chief.

11 | A. Uh-hum.

12 | Q. What did you think you came away with from that meeting?

13 | A. I thought I came away with copies, typewritten copies of all  
14 | the statements that he had taken during that initial  
15 | investigation.

16 | Q. So, were you...did you ask him that question at that meeting?

17 | A. No.

18 | Q. Did he in...did he say anything to you that would indicate that  
19 | he was giving you his entire file?

20 | A. No, no.

21 | Q. So, you were then just assuming that what you had was  
22 | everything.

23 | A. I was assuming that what I had was all the statements that  
24 | were taken in the '71 initial investigation.

25 | Q. So, if I understand correctly then you had been given some



1 statements back on February the 3rd.

2 A Yes.

3 Q And you had been given...your recollection I think is that you  
4 didn't get any on the 26th, that you...

5 A. No.

6 Q ...were going to go down and get some stuff.

7 A. Yes.

8 Q And you were given more material on...within the next couple  
9 of days.

10 A. Yes.

11 Q Were you...you were present during Staff Wheaton's  
12 testimony for the...at the Inquiry.

13 A. For some of it, yes.

14 Q Were you present during the discussion of the meeting of  
15 April 16th or April 26th when the question of the Patricia  
16 Harriss first statement came up? The fact that the evidence  
17 was it had been put under the...allegedly put under the desk.

18 A. Yes, I remember hearing that type of thing.

19 Q Are you able to tell us whether you have any recollection of  
20 whether you had that first statement when you came away  
21 from your meeting with the Chief on the 27th or, sorry, the  
22 days following the 26th?

23 A. No. That statement didn't come to my attention until later.

24 Q Are you confident of that?

25 A. Well, if it was in that group of statements I didn't see it until

1 later.

2 Q. Okay. That group of statements, when you came away from  
3 the Chief's office did you make any notes of what you had  
4 gotten?

5 A. No, I did not.

6 Q. You did not. What did you do with the material that you  
7 received?

8 A. I give them to Staff Wheaton.

9 Q. And did you give it to Staff Wheaton that day?

10 A. If I didn't give it to him that day it was either the next day or  
11 I left it on his desk. We were meeting quite often at that  
12 time.

13 Q. Do you know whether or not you gave it to him prior to Staff  
14 Wheaton taking the statement of March 1st from Patricia  
15 Harriss?

16 A. I couldn't say whether he had it before or not.

17 Q. How long did your meeting take with Chief MacIntyre?

18 A. I would guess again approximately an hour. It was sort of a  
19 relaxed conversation.

20 Q. At this point in time, having indicated a few days earlier, or  
21 at least having concluded a couple of days earlier, a day or so  
22 earlier, that Marshall was innocent and that witnesses had  
23 lied under pressure from the Sydney City Police did you, in  
24 your own mind at that time, consider in any way that you  
25 were investigating Chief MacIntyre?

1 A. No, but I didn't reach that conclusion until after that meeting.

2 I think it was my forwarding minutes dated the 12th of

3 March. I believe it was after we had the Patricia Harriss...

4 Q. I see, okay.

5 A. ...statement and so on that...

6 Q. Did the Chief give you any further explanation as to his

7 theory of the case in that meeting that you had with him

8 when he was taking you through the statements?

9 A. I believe he did.

10 Q. Can you tell us what it was?

11 A. I don't remember. I remember he and Inspector Urquhart

12 were telling me about their investigation and about the

13 statements and so on of that day.

14 Q. Did Inspector Urquhart participate in the discussion?

15 A. I believe he did, but not to any great extent.

16 Q. For the most part it was Chief MacIntyre.

17 A. Yes.

18 Q. Volume 34, page 54, statement of Patricia Harriss taken

19 March 1st. Are you familiar with that statement?

20 A. Yes, I remember reading it, yes.

21 Q. Do you remember reading it shortly after it was taken?

22 A. I believe this was brought to my attention shortly after it was  
23 taken, yes.

24 Q. In the statement itself there is no reference to the names of  
25 the police officers that were involved if you look in the

1 second paragraph and the second sentence it says, "I found  
2 they were needlessly harping at me." The following sentence,  
3 "They took statements from me and changed them."

4 A. Uh-hum.

5 Q. Would you have considered it to be important at that time for  
6 the names of the police officers involved to be identified in  
7 the statement?

8 A. If we had...if the girl, Patricia Harriss could have remembered  
9 at that time, yes.

10 Q. And what was your understanding as to whether or not  
11 Patricia Harriss could remember the names of them?

12 A. I have no recollection whether or not she could or could not  
13 have at that statement.

14 Q. Did you query Staff Wheaton about that?

15 A. I don't remember specifically but it would seem reasonable  
16 that I would ask him.

17 Q. It's a fair...a fairly important allegation, isn't it, in the  
18 statement...

19 A. Yes.

20 Q. ...that she was being...statements were being taken from her  
21 and changed.

22 A. Uh-hum.

23 Q. If Staff Wheaton did know who the police officers were who  
24 were involved would you have expected that information to  
25 have been contained in the statement?

1 A. Yes. Yes, either in the question and answer portion or if the  
2 person giving the statement didn't put it in the original  
3 statement.

4 Q. Uh-hum. And do you...did you take it from looking at this  
5 statement at the time that Patricia Harriss couldn't identify  
6 who these people were?

7 A. I would have taken it that she couldn't remember their  
8 names.

9 Q. Couldn't remember the names.

10 A. Or else she probably would have said it so at the time.

11 Q. Did you know yourself which Sydney Police Department  
12 officers were involved in the taking of Patricia Harriss'  
13 statement at this time, at the beginning of March?

14 A. No.

15 Q. In your forwarding memo of March 12 you indicate "That  
16 after reviewing the case I feel Marshall is innocent." By that  
17 point in time, by March the 12th, had any consideration been  
18 given to getting a search warrant to make sure you had  
19 everything from the Sydney Police Department files?

20 A. No, not at that point in time.

21 Q. Had there been any discussion between yourself and Staff  
22 Wheaton about getting a search warrant at that point in time?

23 A. No, because I felt at that time that we had everything we  
24 needed to do our investigation.

25 Q. The report to which your forwarding memo is appended, the

1 report of Staff Wheaton, was that checked by yourself?

2 A. I would imagine that I would have gone over it and read it to  
3 make sure it was complete as I knew the facts at that time.  
4 However, I know that I was trying to get as much into that  
5 report as possible for the benefit of the CIB officer, the  
6 Attorney General and our Director of Criminal in Ottawa.

7 Q. Uh-hum.

8 A. So, that you can see it was started on the 25th of February,  
9 didn't leave my office until March the 12th. So...but as soon  
10 as we had the facts it was sent as soon as possible away. So,  
11 other than unless there is something drastic in it I wouldn't  
12 have held it back to change anything.

13 MR. CHAIRMAN

14 Inspector, why would the report go to your Director of  
15 Criminal in Ottawa?

16 SUPT. SCOTT

17 Any important case would probably be forwarded there by  
18 the CIB officer for his information. In the event it got in the  
19 newspapers they would be asking about it anyways because it  
20 was the Royal Canadian Mounted Police that was doing the  
21 investigation and we come under their authority across Canada.  
22 He is like...

23 MR. CHAIRMAN

24 Even when you're performing duties under your provincial  
25 contract.

1 SUPT. SCOTT

2 Yes. We're still members of the RCMP and he is still the  
3 Director of Criminal for the Force.

4 MR. CHAIRMAN

5 So you had concluded by March the 12th that this was an  
6 important investigation?

7 SUPT. SCOTT

8 Yes.

9 MR. SPICER

10 Q. Did you have any knowledge on March the 12th as to whether  
11 or not superiors in the RCMP in Ottawa had already been  
12 advised?

13 A. No personal knowledge, no.

14 Q. I think you'll see if you flip ahead that at page 35 of that  
15 same Volume 18, you'll see a memo from Christen to  
16 Commissioner, Ottawa attention DCI dated 26th of February.  
17 You didn't have any knowledge of that at the time, I take it.

18 A. I doubt very much whether the CIB officer would have told  
19 me that.

20 Q. Okay. What's DCI?

21 A. Director Criminal Intelligence.

22 Q. And who would that have been at the time, do you know?

23 A. I have no idea.

24 Q. If I could just draw your attention to that note on page 35 for  
25 a moment. You'll see that it's preoccupied with, to some

1 extent, the polygraph report and the report of Inspector  
2 Marshall. By this point in time, by the end of February, had  
3 you done any analysis at all of the Al Marshall report, other  
4 than just to have a look at it to see what he had done?

5 A. I looked at it, yes.

6 Q. Did you...did you get in touch with him?

7 A. No.

8 Q. Did you do anything other than just to look at it?

9 A. I read it at that time and looked at what had been done in  
10 that investigation, but...

11 Q. What did you think of it?

12 A. Well, at the time it didn't bother me. It didn't look like a full  
13 investigation to me.

14 Q. Uh-hum.

15 A. But it didn't really bother me because I didn't know under  
16 what circumstances he was sent down under, because there  
17 was nothing on the file to indicate what his directions were.

18 2:35 p.m.

19 Q. Staff Wheaton had indicated in his testimony that you and he  
20 had agreed that someone should check on the extent of  
21 Marshall's investigation. Somebody should look into it and  
22 see what he, in fact, did.

23 A. I believe that was later on after April 16th as I remember the  
24 chronological order of events.

25 Q. Is that, in fact, the case though? Both of you did agree that



1 something further ought to have been done?

2 A. Yes.

3 CHAIRMAN

4 Before we leave there. The last sentence in that letter  
5 Superintendent Christen says,

6  
7 You may also wish to advise  
8 Superintendent E.A. Marshall of the recent  
9 disclosures which had been made in this  
10 case.

11 Is that normal practice?

12 A. I have no idea why, other than to advise him that it looked  
13 like an investigation he was involved in. That there was new  
14 information that might have showed otherwise.

15 CHAIRMAN

16 Up to that point in your investigation you had not reached  
17 any conclusion concerning Superintendent Marshall's  
18 investigation? To the adequacy of it?

19 A. No.

20 CHAIRMAN

21 Had you heard any criticism of it up to that point in time?

22 A. No, no criticism up until that point.

23 MR. SPICER

24 Q. On page 42, Volume 19, there's a memo from Christen, I  
25 believe, to yourself, dated March 16. And just before we deal  
with that, are you able to tell us in the interim between the

1 beginning of March, as the time that you met with the Chief  
2 again and this date of the 16th of March, did you have any  
3 further meetings with Chief MacIntyre?

4 A. No, not at that time.

5 Q. Did anything of significance occur in your involvement in the  
6 investigation between the beginning of March and the 16th?

7 A. Not that I recall.

8 Q. Were you being advised, still on a fairly regular basis, from  
9 Staff Wheaton as to how things were going?

10 A. Yes.

11 Q. And would you, yourself, have been in communication back  
12 and forth with Christen during this period?

13 A. Yes, I would have.

14 Q. Would that be on a fairly regular basis?

15 A. Yes.

16 Q. Almost daily?

17 A. Well, no, because I would be out of town to sit on boards, to  
18 do managerial reviews at detachments in other locations. To  
19 visit County council meetings. So I would not be there all the  
20 time.

21 Q. And in response to the note from Christen on the 16th, you  
22 forwarded along some material to him, I take it. The material  
23 that apparently had been neglected, having been not been  
24 appended to the earlier report from Staff Wheaton?

25 A. Yes.

1 Q. Did you think it was peculiar that those statements had not  
2 been attached in the first instance?

3 A. Well they should have been attached, yes, but I don't know  
4 why they weren't. Whether it was an oversight or what.

5 Q. Did you ask Staff Wheaton?

6 A. I may have at the time.

7 Q. You don't remember today.

8 A. No.

9 Q. Let me just take you now over to page 89 of this volume.  
10 Again, this would seem to be a forwarding memo from  
11 yourself.

12 A. Yes.

13 Q. And it refers to a meeting of the 5th of April with Chief  
14 MacIntyre.

15 A. Yes.

16 Q. And you say on this date,

17

18 Chief MacIntyre was requested to come to  
19 the Subdivision building to be brought up-  
to-date concerning this investigation.

20 A. Yes.

21 Q. Why at that point in April would you be calling him in to  
22 bring him up-to-date on what was going on?

23 A. At that point in time I believe that we had most of the  
24 statements and the interviews done. In the, that we had  
25 copies of it. We had re-interviewed most of the people. Some

1 of the questions Chief MacIntyre had raised in our earlier  
2 meetings had been answered, that we could answer to him  
3 like the Patricia Harriss case.

4 Q. Let's just stop there for a moment. What were the questions  
5 that had been asked by the Chief that were answered?

6 A. Well Patricia Harriss' statement that there was only one  
7 person in the Park with Marshall at that time. We now knew  
8 that Patricia Harriss said in her statement to us that there  
9 was more people in the Park night.

10 Q. What was the Chief's reaction to finding that out? Being told  
11 that by you?

12 A. Well he had no, as I said in my forwarding minute, when  
13 everything was explained to him I asked him, you know, "Do  
14 you have anything of a rebuttal nature now to what has come  
15 out?" And he had none. And I said, "Is there any other  
16 avenues that we should explore, that we haven't done  
17 already?" 'Cause we made known to him what we'd done up  
18 until that point. And he didn't seem to have any.

19 Q. You mentioned that one of the questions that was answered  
20 was in respect to Patricia Harriss. Were there others that  
21 were answered?

22 A. I remember about the position of the body. I don't know  
23 what the answer to that was but I remember that that was  
24 one of the questions.

25 Q. Right.

1 A. And the independent witnesses were the two, Chant and  
2 Pratico, had been independent witnesses supporting each  
3 other's claim, or putting the other person there. Things like  
4 that that we discussed and went over and at that...

5 Q. What did he, what would he have said to that? The fact that  
6 Chant and Pratico were, and had been said to be, independent  
7 witnesses and didn't know each other?

8 A. Well, he put a lot of faith in that during his first investigation  
9 and it contributed a lot to the conviction of Marshall.

10 Q. What did he say about it at this point in time?

11 A. He didn't have very much to say, as I remember, as we went  
12 over each statement.

13 Q. Did you inquire of him if he had a view as to how it could be  
14 that if they were, in fact, independent witnesses and they  
15 were now telling the truth that they'd lied in 1971, how they  
16 could have come up with the same story?

17 A. I did ask him that question. I said, "Look, Chief, they're the  
18 same witnesses that you used to convict Marshall, why don't  
19 you think they're telling the truth now?" And at that time he  
20 told me, well, Chant was a born-again Christian and you  
21 couldn't really believe them. That Pratico was not that  
22 mentally fit and that you couldn't put a lot of stock in what he  
23 was telling us now. And that Patricia Harriss, something to do  
24 with her background. I can't remember the exact words but  
25 it had something to do with her being born out of wedlock or

1           whatever.

2           Q. That seemed to be of some significance.

3           A. It seemed to be, yes.

4           Q. Had the Chief early on in the investigation, before you took  
5           the statement from Patricia Harriss, relied on Patricia Harriss'  
6           recollections from 1971?

7           A. Yes, he had.

8           Q. And he's now changed his ground in respect to her?

9           A. Yes.

10          Q. I see. Was Staff Wheaton at this meeting?

11          A. I believe he was for the first part where we were in the  
12          conference room and then I think what I have just told you I  
13          believe he said to me in our office after we had the initial  
14          meeting with the investigators.

15          Q. How much of what you've just told me?

16          A. Well the part about Chant and Harriss and Pratico.

17          Q. Well during the meeting that, at which Staff Wheaton was  
18          present, what sorts of things were discussed during that  
19          portion?

20          A. About our investigation to that point and whether he had any  
21          rebuttal or any new avenues we should explore.

22          Q. I see. Well why would it be that there would be a split in the  
23          meeting in a sense that you would have a subsequent ...

24          A. It wasn't really a split. Chief MacIntyre and I were more or  
25          less on the same level of policing in the area and that, as a

1 matter of courtesy, I invited him into my office and we sat  
2 down and discussed it further before he left.

3 Q. Staff Wheaton indicated that it was his impression at that  
4 meeting that Chief MacIntyre still believed that Marshall was  
5 guilty.

6 A. Yes.

7 Q. Do you agree with that?

8 A. Yes.

9 Q. During either of these two meetings on that day was there  
10 any suggestion by yourself that you were, in any way,  
11 questioning Chief MacIntyre's conduct of the original  
12 investigation?

13 A. No.

14 Q. Was it starting to occur to you that maybe there was  
15 something to be looked at with respect to the original conduct  
16 in the investigation?

17 A. There certainly was. There was accusations made by  
18 witnesses about the conduct of the Sydney City Police.

19 Q. And were those put to Chief MacIntyre?

20 A. Not other than the statements that we had that he had an  
21 opportunity to read.

22 Q. Was he specifically asked about the allegations of pressuring  
23 the witnesses?

24 A. I don't think he was particularly asked but he probably  
25 answered that it wasn't right.

1 Q. Staff Wheaton had indicated in his testimony that at about  
2 this time he was awaiting, by presumably from yourself,  
3 instructions in connection with MacIntyre and the possibility  
4 of some investigation of MacIntyre himself or the actions of  
5 the Sydney Police Department.

6 A. He had brought up, and I'm not sure on the timeframe, that  
7 he felt that this should be investigated and I concurred with  
8 him that I thought it should be investigated. However, and I,  
9 as I say, I'm not sure on the timeframe but that we would  
10 have to get direction on that regard to do that investigation.

11 Q. Did you make any recommendation at that time to your  
12 superiors that such an investigation ought to be initiated?

13 A. I can't remember whether I did or not. It would seem logical  
14 that I would mention something like that to the CIB Officer in  
15 talking to him, yes.

16 Q. And is it your, do you have any recollection as to whether or  
17 not you, in fact, did that?

18 A. No.

19 Q. Did you think at this point in time, on April the 5th, that you  
20 had everything that Chief MacIntyre had in terms of the  
21 statements?

22 A. Yes.

23 Q. Did you ask whether or not you now had everything?

24 A. I don't believe so.

25 Q. Do you know whether or not Staff Wheaton asked?



1 A. I don't recall him asking.

2 Q. If you had, if you were forming some notion that perhaps the  
3 activities of the Sydney Police Department ought to be looked  
4 at, why wouldn't you want to ensure that point in time that  
5 you, in fact, did have everything?

6 A. Well you must remember we were doing this investigation on  
7 the request of Chief MacIntyre at this point.

8 Q. Well...

9 A. And...

10 Q. That seems like a bit of a Catch-22, though, doesn't it? I  
11 mean if you're doing it on the request of the person and the  
12 person himself you're starting wonder about...

13 A. Yes.

14 Q. Why would you not, at that point in time, say, "Okay, now we  
15 want to be sure that we, in fact, do have everything."

16 A. Well, what we would do is, of course, report it in a report and  
17 ask for direction if we were going to take that avenue.

18 Q. Okay. And at that point in time you would go back...

19 A. Yes.

20 Q. If that was, that's, okay. On April the 16th, and I believe  
21 your notes which have been introduced as Exhibit 115, have  
22 you got, I guess you'd do better with the original here.

23 A. Okay. Thank you.

24 EXHIBIT 115 - NOTES OF SUPERINTENDENT SCOTT

25 Q. There's reference to a meeting, and I believe on the original

1 we can see some things and the xeroxing has gone a bit askew  
2 here but on the original on the fourth page, I think it's the  
3 fourth page...

4 A. Yes.

5 Q. At the top right-hand corner, just so counsel will know, on the  
6 original it's 82/04/16...

7 A. Yes.

8 Q. And that's in red.

9 A. Right.

10 Q. And then down at the bottom of the page of the material it  
11 says, "Quotes of Chief MacIntyre re Meeting", that's also in  
12 red.

13 A. Right.

14 Q. And then there's some tick marks and quotation marks which  
15 are also in red.

16 A. Yes.

17 Q. There's a tick beside the word "Seale" at the top and then  
18 "First Case". Is that "Second?"

19 A. "Second Case."

20 Q. "Second Case", there's quotes around that that are both in red,  
21 similarly with the last two quotations on that page. Were  
22 those notes all made at the same time?

23 A. All the writing and...

24 Q. In red?

25 A. In the black would be made while I was talking to

1 Superintendent Christen on the phone. And the red marks  
2 would have been made shortly after I was off the phone, I  
3 believe that day or the next. I believe it was the same day  
4 but I can't be certain.

5 Q. You were advised, I take it, that on or about that day, April  
6 16th, Chief MacIntyre had gone to the Attorney General's  
7 office.

8 A. Yes.

9 Q. And you had a meeting with Staff Wheaton and Frank  
10 Edwards.

11 A. I can't remember the meeting. I remember a conversation.  
12 2:52 p.m. \*

13 A. I can't remember the meeting. I remember a conversation.

14 Q. Okay. Just, I just refer you to Volume 17 at page 8,

15 A. Yes.

16 Q. There's reference towards the...towards the bottom of the  
17 page, sir, it says, "In call with Wheaton he suggested that he,  
18 Scott and I meet, I" being Frank Edwards, "...agreed, he  
19 phoned back to say meeting was on for two. Had meeting. I  
20 suggested that they should demand file and all information  
21 from Chief and threaten use of search warrant if necessary."

22 A. Yes.

23 Q. Does that refresh your memory at all?

24 A. It does and I still can't remember the meeting. I remember  
25 speaking to Frank Edwards on those points and with Staff

1           Wheaton but I can't remember whether that meeting took  
2 place in our office or whether it took place in his office or  
3 where it took place.

4           Q. Okay. Let's just go back for a second. How were you advised  
5 of the fact that the Chief...that Chief MacIntyre had gone to  
6 the Attorney General's office on that date?

7           A. I got a call from Superintendent Christen, the CIBO, he wasn't  
8 too pleased when he called me. He had got a call from Gordon  
9 Gale and Gordon Gale was telling him that Chief MacIntyre  
10 had been in to see him, had showed him statements taken  
11 and...

12          Q. Statements taken by who?

13          A. By the Sydney City Police.

14          Q. Do you remember who the persons were, whose statements  
15 had been taken?

16          A. I know from refreshing my memory in the file, but I don't of  
17 my own recall, but it was the Ebsary family, other than Roy.

18          Q. Why was Christen upset?

19          A. Well, he said, "What are you doing down there? Where...why  
20 I haven't got these statements? Why weren't they attached  
21 to your report?" And, I said, "Well, I've never seen them."

22          Q. Um.

23          A. "We haven't got them."

24          Q. What was his response to that?

25          A. Well, "Why haven't you?" and I said, well.

1 Q. Sounds like a sensible response.

2 A. I said, "I guess they weren't given to us," and he said, well,  
3 "Chief MacIntyre was in and made a quite a bit to do about  
4 these statements and...with Gordon Gale that sort of tore your  
5 investigation apart and what's going on?" I said, "Well, I have  
6 no idea." I said...and I referred him to our meeting with Chief  
7 MacIntyre on the 4th or 5th of April where we asked him if  
8 there was anything in addition we should look at and this was  
9 only, you know, ten days or twelve days before that, and I  
10 said, "I have no idea why he's in there doing this." He had no  
11 direction we should take after our meeting, no new  
12 investigation to look at and I said, "I don't know what kind of  
13 games he's playing." And, we discussed it and he said, "Well,  
14 I want to see copies of those statements because Gordon Gale  
15 wants them." I said, "Didn't he keep copies of them?" and he  
16 said, "No." So, as a result of that I think this is where  
17 this...when I got off the phone I talked to Wheaton, "Did he  
18 ever see these statements?" and then I don't know whether  
19 Gale had called Mr. Edwards in the meantime but it seemed  
20 that everything sort of meshed, and this meeting you're  
21 talking about took place.

22 Q. What was...what was your feeling at this time?

23 A. Well, I was at a bit of a loss because up until that time I had  
24 no doubt that Chief MacIntyre was being upfront with me and  
25 was giving me everything that we needed. Mr. Edwards was

1 making accusations and, "You should go and get a search  
2 warrant." I said, "Just hold on now, if Chief MacIntyre was  
3 trying to hide something why would he take it in and show it  
4 to the Director of Criminal in the Attorney General's  
5 Department."

6 Q. Um.

7 A. It doesn't sound like a man who was trying to hide something.

8 Q. Are you now referring to...you're now talking about the  
9 substance of your meeting on the 16th?

10 A. Yes.

11 Q. Okay. Fine.

12 A. He said, "Well, I think you should go down and demand the  
13 file."

14 Q. This is Frank Edwards.

15 A. Yes. And get a search warrant, and I said, "Well, I don't agree  
16 with it." I said, "Up until now as far as I'm concerned we've  
17 been doing this investigation on behalf of Chief MacIntyre at  
18 his request, and that I think that if you want to take the  
19 whole investigation away from him and everything to do with  
20 it we should have direction from the Attorney General's  
21 Department to Chief MacIntyre telling him to turn it over."  
22 He said...

23 Q. Did...sorry, go ahead.

24 A. He made, "Well, you've got to go down and get that file, you  
25 have to get the file," and I said, "Well, to my recollection there

1 is no file per se. There is envelopes, there is file folders. I  
2 don't know where this kept. The only time I had seen the  
3 copies of this is when he had it at the Crown Prosecutor's  
4 office and again at his office." I didn't know whether that file,  
5 if they had a destruction period like we did and that file was  
6 supposed to be destroyed and the Chief was hanging on to it.  
7 I had no idea why.

8 Q. But you weren't about to find out if you didn't go look.

9 A. Okay. That's a fair question. But at the same time when  
10 would I know what I had? I mean I could demand that he  
11 give me the file and he could give me one piece of paper and  
12 the statements he showed Gordon Gale, and I'd have no way  
13 of knowing whether I had it all or not. I could effect a search  
14 warrant and search the whole police station, his home, Billy  
15 Urquhart's home, their cottages or cars or whatever and I still  
16 wouldn't know whether I had it all because I didn't know  
17 what he had to give. And, so my reasoning was that the  
18 Attorney General direct Chief MacIntyre to turn everything  
19 over to us and after that if he didn't turn everything over to  
20 us or we had suspicions or he produced things after that date  
21 that then we could effect a search warrant and we could go  
22 down and do it. The repercussions of effecting a search  
23 warrant in a City like Sydney at the city police station to get  
24 material that we didn't know whether we'd get anyways, and  
25 that we could get through a letter from the Attorney General's

1 Department didn't make much sense to myself.

2 Q. Was your reluctance, in any way, based on the fact that you  
3 would be going in and effecting a search warrant on another  
4 police department?

5 A. Up to a certain extent, mainly because we have to work with  
6 police departments long after this investigation is gone and  
7 Chief MacIntyre and I had gone from Sydney. We would still  
8 have to have a good rapport with that station and the  
9 members in it. If it had been a case that that was the only  
10 recourse I'd have no hesitation at all to go down and do it, but  
11 it wasn't.

12 Q. So, it not being the only recourse at that point in time you  
13 decided that you'd hold off.

14 A. Yes. We also discussed the fact that I could call Chief  
15 MacIntyre and ask him for the material that he showed  
16 Gordon Gale, and we could get it right away and we wouldn't  
17 have to wait for the letter because he would know what  
18 he...the Ebsary statement that he had shown to Gordon Gale  
19 and we could get that right away by just sending somebody  
20 down and getting it.

21 Q. And, I take it then that you did not think that a search  
22 warrant at that point in time is going to be any more effective  
23 than a direction from the Attorney General?

24 A. Not a bit.

25 Q. But that certainly a direction from the Attorney General



1 should be as effective as a search warrant.

2 A. Oh, yes.

3 Q. On...in Volume 17 on page 8 there is a paragraph that begins,  
4 "Chief MacIntyre," now I'm just going to want you...I want to  
5 refer you to that because you'll see at the end of that  
6 paragraph it says, "Feelings shared by Scott at our April 16  
7 meeting." I just want to review that paragraph and ask you  
8 whether or not you, in fact, did share those feelings. It says,

9  
10 Now seems clear that he, (being Chief  
11 MacIntyre), used the February 3rd  
12 meeting to set up both Scott and myself,  
13 and i.e. produced only those parts of the  
14 file for which he had an explanation, e.g.  
15 both statements from each of Chant and  
16 Pratico, results of November 1971 RCMP  
17 investigation, his theory re Mitchell Sarson.  
18 He probably thought the RCMP would  
19 merely go and check Sarson. That would  
20 lead them back to Ebsary who had already  
21 passed the polygraph. Doubtful that he  
22 figured on a detailed investigation which  
23 ensued.

19 My question is whether or not Mr. Edwards' comment there is  
20 correct, that you shared those feelings?

21 A. Yes, I did, at that time. I certainly questioned the motivation  
22 of how we were led through it and, in fact, at that time I also  
23 wondered whether Superintendent Marshall was led the same  
24 way during his November investigation into the truthfulness  
25 of Ebsary and MacNeil.

1 Q. What gave you cause to think that?

2 A. Well, when I recalled the way it was done I thought, well,  
3 maybe the same thing was done to Superintendent Marshall,  
4 and in fact as a result of that I called the CIB officer, and I  
5 don't know whether it was that day or the next day, and  
6 suggested that maybe we should take statements from  
7 Superintendent Marshall and Smith to see exactly what  
8 occurred to them, and what direction they received, to see if  
9 it was the same as what Frank Edwards and I had received  
10 that day.

11 Q. There's also reference towards the bottom of page 8, sentence  
12 begins, "They wanted a direction to Chief from AG to turn  
13 over information." "They" presumably being yourself and  
14 Staff Wheaton.

15 A. Yes.

16 Q. "Also discussed having a meeting in Halifax with brass. I  
17 agreed and they were going to try it on Christen. They, as  
18 stated, denied knowing of previously existing Ebsary  
19 statements." Did you set up a meeting with Christen?

20 A. I think it was suggested that he and I and the investigators,  
21 Crown Prosecutor Edwards and Gordon Gale and whoever else  
22 he wanted from his department should probably have a  
23 meeting to talk about what happened, the recent  
24 developments of Chief MacIntyre being in there, and where  
25 we should go from here because we were talking about

1 direction on an investigation into the Sydney Police  
2 Department.

3 Q. This is becoming a very peculiar investigation at the moment.

4 A. It certainly is. And, also to get the complete file turned over  
5 to us and just to clear the air as to...so rather than by  
6 correspondence or telephone calls, let's sit down and discuss  
7 it and come to a conclusion.

8 Q. Was that, in fact, done?

9 A. No, it was not.

10 Q. What was done? Was there telephone conversations back and  
11 forth or...

12 A. Telephone conversation that the Attorney General's  
13 Department had agreed that a letter would be sent.

14 Q. Were you involved in that conversation?

15 A. I got that from the CIB officer.

16 Q. I see.

17 A. Superintendent Christen. The letter would be sent as  
18 suggested and that there would be no need for a meeting.

19 Q. And the files indicate that that letter was, indeed, sent on  
20 April the 20th.

21 A. Yes.

22 Q. And did you think at that point in time with that letter  
23 having been sent that you would now be fairly certain that  
24 you, in fact, were going to get everything?

25 A. Well, I thought at that point in time that if we didn't get it all

1 that if

2 we had to take further action to search or whatever that at  
3 least we would have some backing to do that.

4 Q. Okay. Backing from the Attorney...you mean from the people  
5 in the Attorney General's Department.

6 A. Yes, and by law, because I believe they were going to write  
7 under the Police Act.

8 Q. Can you tell us whether or not...or whether prior to that  
9 direction from the Attorney General's office being sent, that is  
10 April 20th, whether or not Staff Wheaton and Corporal Davies  
11 had had their meeting with Chief MacIntyre?

12 A. I can't help you. As much as I've searched my brain in trying  
13 to come up with an answer I can't. There's...it's just...in  
14 reviewing the file and reviewing Mr. Edwards' notes and  
15 reviewing the transcript or not the transcript, but my own  
16 recollection of discussing the fact of sending someone down to  
17 Chief MacIntyre's office to get the Gushue statements, I can't  
18 come to a conclusion whether that was done or not.

19 Q. Staff Wheaton says that he reported back to you when he got  
20 back from this meeting. Do you have any recollection of him  
21 talking to you when he got back from the meeting with Davies  
22 that he took Davies along with...to see MacIntyre?

23 A. I remember Wheaton telling me or showing me the Harriss  
24 statement, the partially completed statement.

25 Q. Are you able to tell us whether or not that took place prior to

1 the April 20th letter of the Attorney General's Department or  
2 subsequently?

3 A. I can't tell you. I know that it was a very significant piece of  
4 material, at least I felt it was, in Patricia Harriss' favour to  
5 make her...what she had told us very believable.

6 Q. What did Staff Wheaton say when he came back to report to  
7 you and brought this partially completed Harriss statement?  
8 What did he say to you had happened at the meeting?

9 A. I can't remember when that occurred.

10 Q. Uh-hum.

11 A. I remember the statement. I remember the story about  
12 hiding it under the desk.

13 Q. Did Staff Wheaton specifically identify the fact that it was the  
14 Harriss statement that was hid under the desk?

15 A. I believe that's what I was told when I was told that story.

16 Q. Okay. Do you have any other...any further recollection of  
17 what he told you of what had occurred?

18 A. No, no personal recollection.

19 Q. Once you had received this information and, I take it, Staff  
20 Wheaton would have indicated to you that, oh, can you tell us  
21 whether he did or not that the statement had been purposely  
22 put under the desk? Did he indicate that to you?

23 A. As I remember it it had been dropped on the floor.

24 Q. Did he indicate to you whether or not that was accidental or  
25 was done on purpose?

- 1 A. He thought it had been done on purpose.
- 2 Q. Did you talk to Corporal Davies about this?
- 3 A. I don't believe I had any conversation with Corporal Davies  
4 on that.
- 5 Q. All right. Now, once you get this piece of information what's  
6 your attitude then about whether or not you ought to get a  
7 search warrant?
- 8 A. Well, you're assuming, I guess, that this happened prior to  
9 them going down with the letter.
- 10 Q. Well, that's part of the reason I'm asking the question.
- 11 A. I cannot...
- 12 Q. Trying to jog your memory there.
- 13 A. I cannot give you a date on that. I don't know whether that  
14 occurred when they went down with the letter or not. I  
15 wasn't involved in the investigation part and everything I got  
16 was secondhand. I remember it happening, but I cannot put  
17 a date on it.
- 18 Q. After you received the information that it had occurred, did  
19 you form at that point any view as to whether or not some  
20 investigation of the Sydney Police Department itself ought to  
21 have been initiated?
- 22 A. Yes. It reinforced again the tactics, I guess, that was used on  
23 this young witness to get a statement from her. That there  
24 had been quite a bit of pressure over a long period of time.
- 25 Q. Uh-hum.

1 A. And there was other things that I had read in the transcript  
2 of the preliminary hearing and the Supreme Court trial and  
3 also from other witness's statements that caused me concern  
4 as to that investigation.

5 Q. Now, are those, Inspector, things that you made notes of?

6 A. Yes.

7 Q. Okay. Perhaps you could just...you could refer to your notes  
8 and tell us, starting on the first page, and just go through  
9 them and indicate to us if these were made, or were these  
10 made in the context that you just advised us, that is  
11 of...thinking of an investigation of the Sydney Police  
12 Department?

13 A. These were made, I believe, on ...when I was reviewing  
14 statements and also reviewing a transcript of the trial. You'll  
15 see I've got the page of the transcript written down beside  
16 some of the articles.

17 Q. And I think both your original and the copies that we're  
18 operating from are the first two pages that are in reverse  
19 order, are they not? You said page 2 at the top of your first  
20 page.

21 A. Yes, and the...also the pages of the transcript would be the  
22 same way. Where would you like me to start, on...

23 Q. Well, let's start...start on the real page 1.

24 A. All right then.

25 Q. That should be the page that...

1 A. Page 2.

2 Q. Page 2, and it's 91-28 at the top of the page.

3 A. Right. It's page 91, line 28, "He showed his arm and it was  
4 bleeding." This was Chant's testimony on trial and the Crown  
5 Prosecutor in his summary said that it wasn't bleeding at all  
6 as the witnesses had said, and that was significant to me.

7 Q. And what was the significance of that vis-à-vis the Sydney  
8 Police Department, that is that Chant had showed his arm and  
9 it was bleeding?

10 A. Well, the idea was, as I remember it from the City Police  
11 recollection, that because it didn't bleed he had cut himself so  
12 carefully that he hadn't...hadn't caused it to bleed. And that  
13 was...getting back to that that was another point I brought up  
14 in my meeting with the Chief down in his office on...around  
15 March the 1st. That was another that I talked to him about  
16 because as a public school person I had had a friend who had  
17 cut the muscle on their leg riding a bicycle without a pedal on  
18 it and it cut a big gash in the calf and it never bled. I couldn't  
19 get over it. It was four or five inches long and three-quarters  
20 of an inch deep and it never...a drop of blood never come out  
21 of it. It was sort of just a watery fluid. And, I said, "I've seen  
22 that happen so I could see where somebody had been cut and  
23 it never hit a main artery and that could happen."

24 Q. What was the Chief's reaction to that?

25 A. No real reaction, but I remember it was important to me



1 because I was...the blood on the front of the coat, that I think  
2 there was some indication that the... Marshall was wearing,  
3 that the supposition was that that belonged to Seale, because  
4 his cut didn't bleed, when, in fact, this...where Chant said it  
5 was bleeding when he saw it, that that could have been  
6 Marshall's own blood on the front of his coat.

7 Q. Right.

8 A. 101, 1 to 10 should not have been permitted, and I'd have to  
9 go to the transcript to tell you what I was talking about.

10 Q. [To Registrar] Volume 1. No, no, Volume...transcript of the  
11 trial, it's Volume 1 of the red volumes. I'm going to need  
12 Volume 2, as well.

13 3:15 p.m.

14 Q. That would be 102 of the trial.

15 A. Right.

16 Q. Now can you tell us when these notes would have been made,  
17 Inspector Scott?

18 A. They would have been made sometime in 1982 after I got the  
19 transcript and was trying to go through and see in my own  
20 mind what had occurred. In comparison to the statements we  
21 had what evidence was produced if, because some of the  
22 statements were saying that, you know, that wasn't the  
23 accused talking, this was key Crown witnesses that were  
24 being declared hostile, that was telling a defence lawyer that  
25 they were lying on the stand. Patricia Harriss never did say

1 what she said in her statement sort of thing. They couldn't  
2 really get it out of her. I was wondering how would they  
3 ever get a conviction with this type of evidence and that's  
4 why I was looking at it.

5 Q. And at the point in time that you're looking at it, is this at a  
6 point in time when you're considering whether or not there  
7 ought to be an investigation of the Sydney Police Department?

8 A. I can't say that, whether it was just a policeman's curiosity or  
9 whether it was an official type of thing I was doing.

10 Q. Okay. And what your notes reflect are just matters that seem  
11 to be of significance to you in going through the trial  
12 transcript.

13 A. I'm not legally trained. I'm not a lawyer. It was just my own  
14 opinion from my experience as a policeman.

15 Q. Okay.

16 A. Do you want me to read what it says there from one to ten  
17 or...

18 Q. "Should not have been permitted", what is that referring to?

19 A.  
20 Whereby with all deference, My Lord, and  
21 as respectfully as I can say it, you yourself  
22 have interrogated the witness, my learned  
23 friend has interrogated and cross-  
24 examined the witness. My learned friend  
25 has read out loud, in the presence of the  
witness, the testimony in the court below  
and I say, My Lord, that my learned  
friend's conduct, at any rate, is now

1 attempting to condition the witness for his  
2 testimony when the jury is brought back  
3 into this room. That's the position I want  
4 to have on the record.

5 And my own thoughts was that...

6 CHAIRMAN

7 What page are we on?

8 MR. SPICER

9 102 of the transcript, My Lord, which would be Volume 1,  
10 page 139.

11 CHAIRMAN

12 All right. I have it.

13 MR. SPICER

14 Q. What was the significance of that to you?

15 A. Well to me I agreed with the Defence that that type of...

16 Q. It's a police officer agreeing with a Defence.

17 A. Well, I didn't think it was proper that that type of  
18 interrogation of the witness should have been allowed.

19 Q. Okay. Your next reference is 114. Is that 39?

20 A. Yes, line 39, I believe, or 29. My writing could be...

21 Q. Okay, perhaps you could just flip over to that and tell us what  
22 the significance of that was to you.

23 A. Yes, it's the last line on the page.

24 Q. It's Maynard Chant's....

25 A. Maynard Chant's ...

Q. Cross examination.

1 A. Right.

2 Q.

3 See, I told them a story that wasn't true.  
4 (And that's when he's being questioned  
5 as to the police didn't tell me Donald  
6 Marshall did it at all.)

7  
8 No, you didn't tell the police that he did  
9 it.

10 No. Not until after.

11 Oh, I see.

12 See, I told them a story that wasn't true.

13 And I thought was significant that he was, now I don't know  
14 whether he was talking about his first statement or his  
15 second statement in there but at the time it was something I  
16 didn't want to have to read the whole transcript again, I could  
17 go back and refer to those things if it was necessary.

18 Q. Did you bring these items to the attention of your superiors  
19 after you'd reviewed the transcript?

20 A. No. Other than if it was in general conversation. I never put it  
21 in a report.

22 Q. Did you discuss them with Staff Wheaton?

23 A. Probably in our meetings.

24 Q. And then 115. "Took him to Sydney on Sunday. Questioned  
25 for two hours."

A. Yes. Again, we're talking about a juvenile and I believe my  
concern there was that if you read Chant's mother's statement

1 they came at, when Chant was at church, which I took to be  
2 before 12 o'clock noon, talked to him in the house, talked to  
3 him in the car, took him to Sydney and if you go by the time  
4 on the statement taken by Chant, he probably wouldn't have  
5 been returned to Louisbourg until after 6 o'clock that night.

6 Q. What did you think of that?

7 A. Well taken into context what Patricia Harriss, and the length  
8 of time she was interrogated as a juvenile, I didn't think too  
9 much of it.

10 Q. You then have a heading "Patricia Harriss" in your notes.  
11 "Patricia Harriss..." and I can't read that.

12 A. "Has Seale and Marshall turned around on June 18th as  
13 compared to Pratico and Chant." I think she, it was, it had to  
14 do with whether Marshall was, had his back towards the road  
15 or whether he was facing the road. I think it was just a  
16 difference in testimony.

17 Q. Okay. And then, "Donald Marshall - May 30, 5' 9, 190."

18 A. That was in a statement that Donald Marshall gave of Ebsary,  
19 the description of him or the person that we now know as  
20 Ebsary. 5 9, 190 pounds. I was wondering whether Ebsary  
21 ever weighed 190 pounds, you know, is this corrected or  
22 original. Was that the, and I wrote it down.

23 Q. Okay. And then below that you say, who's that? Somebody...

24 A. "Doctor would not let Detective MacDonald in room with Seale  
25 at hospital." I guess my only thought there was that if he was

1 conscious and could talk that, if I had been with somebody I  
2 knew and they had stabbed me I was thinking that if  
3 somebody asked me what happened to you, I would have  
4 said, "Scott stabbed me", rather than "I've been stabbed."

5 Q. This is really just a comment as a police officer saying it  
6 would be nice if we could have got in that room.

7 A. That's right. If, yes, if we could have asked him the question.

8 Q. Is that "John..."

9 A.

10 John Pratico's statement states that he,  
11 John Pratico, and Glen Sampson were  
12 sitting on steps at John Pratico's house  
13 Sunday. Marshall had came along, said he  
14 was nervous. Asked him why and he  
15 related the story of Seale murder including  
16 Volkswagen.

17 It bothered me how Pratico ever found out the story because  
18 his mother had said that he didn't know what happened. He  
19 asked her what happened.

20 Q. Yes. Did you ever ask Chief MacIntyre how it was that John  
21 Pratico had found out the story?

22 A. I don't believe he was asked how he found out the story. I  
23 think he was asked how come he came to his attention as a  
24 witness. And I don't think that we ever got an answer from  
25 him that he could recall how he became a witness. But I  
think we have a statement on file where somebody said they  
told Chief MacIntyre that Pratico had information on the

1 murder.

2 Q. Do you remember querying Chief MacIntyre about that  
3 directly?

4 A. I don't directly, but it may have been something that I talked  
5 to him about.

6 Q. And the last, what is that one?

7 A. It was just a page of eyewitnesses, how old they were at the  
8 time. I guess the other age must be what they are now.

9 "Chant lied on the stand." "Pratico," I have since 12 in  
10 brackets and I would take that to mean that he had had some  
11 reputation of telling stories or being known as unreliable or  
12 whatever, since the age of 12. "Mental at time, was known."

13 Q. Where would you get that information from?

14 A. Either from the investigators or Frank Edwards or so on.

15 Q. Okay. So this is really, I don't want to take you through all  
16 this necessarily. This is just a list that you were making of  
17 the key people involved in the story.

18 A. That's right. That's right. Right.

19 Q. Now there's one other page of your notes that I neglected to  
20 ask you about a couple of minutes ago and that's the page  
21 that has the reference to, it's this one here with the red on it,  
22 the one with 82/04/16.

23 A. Oh, yes.

24 Q. Can you just tell us, then, what that is?

25 A. Okay, as he was, as Superintendent Christen was talking to me

1 on the phone, "Autopsy report on Seale." I don't know what  
2 that really means. Whether I was writing it down to question  
3 Christen when it became my turn to talk. "Whether or not  
4 Gordon Gale had been shown an autopsy report." I don't  
5 know the significance of that ...

6 Q. But these were notes made during your conversation with  
7 Christen on the 16th of April?

8 A. Yes. Any statement, or any other material, again, this could  
9 have been my question that I had asked the Chief when he  
10 was at our meeting some 12 days earlier. If he had any other  
11 material or any rebuttal evidence or any other avenue and he  
12 didn't give us any at that time. "First Case", "Second Case" can  
13 only mean was he talking about our investigation or was he  
14 talking about Marshall, Superintendent Marshall's  
15 investigation.

16 Q. This is, was Christen talking about ...

17 A. Yes. Or was, this is what Chief MacIntyre was talking to Gale  
18 about.

19 Q. I see.

20 A. "First Case", "Second Case". And then the reply. "Nothing to  
21 do with your investigation, only first part." And I would take  
22 that had to do with Superintendent Marshall's investigation.  
23 "Best of cooperation between two departments." I don't know  
24 if that was a question of mine to Christen. Was he  
25 complaining about our Force and what we were doing and, no,



1 he told Gale that there was the best of cooperation between  
2 the two departments.

3 Q. This is what MacIntyre said to, told Gale.

4 A. Yes. Right. And then I've got "Statements" and then "What I  
5 done in 1971 Marshall set the scene." These were quotes that  
6 I got from Christen that he got from Gale that supposedly  
7 came from Chief MacIntyre.

8 Q. A long way.

9 A. Yes.

10 Q. Do you have any idea what the significance of the...

11 A. Well it was, the only thing that was significant to me is that,  
12 and it could have had to do with the story Marshall told to the  
13 police.

14 Q. In 1971.

15 A. In 1971. That's the only thing I, but that it was Marshall's  
16 own doing that had caused this. That was the gist of it.

17 Q. What do you mean by that? That it was Marshall's own doing  
18 that it...

19 A. Well that Marshall, "What I done in 1971 Marshall set the  
20 scene." In other words, he wasn't up front with me at the  
21 time. The Chief would have been aware at that time of  
22 Marshall's statement that he was in the process of "rolling" or  
23 robbing Ebsary and MacNeil at the time. And this part about  
24 the Volkswagen car, I don't know where that, I believe that  
25 that came from Marshall as well. That it wasn't true.

1 CHAIRMAN

2 We'll take a short recess.

3 3:28

4 Q. There's just one other page of your notes that I neglected to  
5 bring to your attention because it was the first page which  
6 was in back of the second page.

7 A. Oh, yes.

8 Q. The one entitled "Page 2." Can you tell us what the  
9 significance of the information contained on that page is?

10 A. Pratico's first statements says he saw same two fellows night  
11 29th, around the park, one night after the murder. This come  
12 out in evidence, I believe. 134 testimony, Line 25, Sergeant  
13 MacIntyre sent for me. Again Pratico's statement. Gordie  
14 Lynch, married Theresa Paul, Thomas Christmas, Donald Joe  
15 drinking together the night of the 28th. 148 Used his right  
16 hand. Marshall left-handed. And Artie Paul...I don't know  
17 what the significance of that is. It must have been mentioned  
18 at that time. 174 no, to whether to Junior Marshall  
19 threatened him. This was Pratico. Chant summary a after  
20 midnight 28th May, '71. Should it be 28th, 29th? I guess that  
21 just means that he said after midnight of the 28th and I said  
22 "28th, 29th" because I believe it started before midnight.  
23 M.R. MacDonald questioned Chant originally at hospital re  
24 Johnson and MacKenzie statement. That had to do with Chant  
25 saying that he had seen it all. Johnson and MacKenzie took

1 him to see Detective MacDonald who was in charge of the  
2 investigation at that point who questioned him about the  
3 statement, couldn't recall what he told him but was satisfied  
4 that it had nothing to do with seeing the murder. And I  
5 believe if you look at Johnson and MacKenzie's statement,  
6 now Chief Walsh also put a note on there that as it refers to  
7 Chant, it took his white shirt and put it on Seale's wound at  
8 the scene. Marshall 4:50 to 5:12 on the 30th. Chant's  
9 statement May 30 ends at 5:35. Pratico at 6 p.m. same date.

10 Q. What's the significant of the times there?

11 A. I was very concerned because if you read everything, you  
12 have Marshall being at the station all day according to himself  
13 and also Chief MacIntyre's testimony in the preliminary  
14 hearing. You have Chant being picked up at his house in  
15 Louisbourg after church, which I took to be around noon,  
16 questioned in the house and the car and then brought to the  
17 station. You have Pratico in his statement where he said the  
18 Chief had sent for him and his mother drove him down and  
19 that was about one or two on the same date. And if you read  
20 Chief MacIntyre's testimony in the preliminary, when he was  
21 cross-examined by Mr. Rosenblum, he says that there was  
22 nobody else at the police station that day when he took  
23 Marshall's statement. He could be referring to other police  
24 officers, I don't know, but he said there was no one there. If  
25 you look at the times and the dates on Marshall's, Chant's and

1 Pratico's statements, they were taken bang, bang, bang,  
2 starting at 4:50, finishing Marshall's at 5:12, starting Chant's  
3 at 5:15 concluding at 5:35 and then Pratico's ends at 6 p.m.  
4 but it doesn't have a start time, but it's about the same length,  
5 so you'd figure thirty minutes, something along that. So what  
6 was going on before this, before these statements were  
7 taken? What was the purpose of having them all there  
8 together? That was questions that were in my mind that  
9 would have to be looked into should we conduct an  
10 investigation into the Sydney City Police.

11 Q. Are you able to tell us whether or not at the time you made  
12 the notes on this page, whether you were, in your own mind  
13 at least, giving consideration to the investigation of the  
14 Sydney City Police and that's why we have this page?

15 A. Well, certainly it was being discussed, yes. And the other  
16 remarks under that, June 4, Pratico, 10:45 a.m. to 11:30 a.m.  
17 and then Chant 2:55, that was the June 4 statements where it  
18 appeared they went to Pratico and then they immediately  
19 after getting his statement, went to Chant and had the  
20 meeting at the courthouse and my only concern about that  
21 was that up until that point Chant had talked to the police on  
22 something like one, two, three different occasions. There was  
23 never any witnesses for his statements. And then on the day  
24 that he gives a revealing statement, we have all kinds of  
25 witnesses present. And I questioned in my own mind what

1 the purpose of having all those witnesses there were. Yellow  
2 shirt, short sleeves up to the elbow. This had to do with, I  
3 believe, in Chant's statement that he said that when he saw  
4 Marshall, the sleeves were up to the elbow. And then almost  
5 like in the statement, he says no, no, when he got stabbed,  
6 they were down to his wrist. And I questioned that as to  
7 whether or not that was some kind of coaching to fit in with  
8 the theory of the knife. Because if they were up to the elbow  
9 when he was stabbed, then he could have been cut in the arm  
10 without it going through the jacket. So I wrote that down at  
11 the time because it was something else that I would have  
12 been interested in.

13 Q. Were you eventually able to query Chief MacIntyre about  
14 these concerns that you just referred to?

15 A. No, I never did.

16 Q. Why not?

17 A. Because we never did an investigation into the Sydney City  
18 Police Department or the investigators.

19 Q. By the time that you made these notes, were you of the view  
20 that one should have been done?

21 A. Yes, and I think that had been relayed to the Crown  
22 Prosecutor by Staff Wheaton and they sought direction from  
23 Mr. Gale and he said "Not now, " or "Hold it in abeyance."

24 Q. We'll get into that.

25 A. We also put it in a report to our headquarters about looking

1 into it and what Mr. Gale had said and I expected that sooner  
2 or later when everything else had been cleared up, all the  
3 different trials that were going on and maybe even this  
4 inquiry, that an investigation would be done.

5 Q. In the chronology of things, we'll come back to those points. I  
6 was going to ask you about them a little bit later. On Page  
7 111 of Volume 19.

8 A. Page 11?

9 Q. Page 111.

10 A. Yes.

11 Q. It's a memo of May 5, '82 and that would be from yourself to  
12 Christen?

13 MR. CHAIRMAN

14 Is that, before we leave, the notes of Inspector D. Scott, I take it  
15 that's to be entered as an exhibit?

16 MR. SPICER

17 It has been actually earlier in the day, Exhibit 115.

18 COMMISSIONER EVANS

19 Is it marked?

20 MR. SPICER

21 Yes.

22 COMMISSIONER EVANS

23 Back now, where are we at?

24 MR. SPICER

25 Q. Page 111 in Volume 19, a memo of May 5, '82 to Christen

1 from the witness.

2 A. Yes.

3 Q. In the fourth paragraph of that memo, you make reference to,  
4 "I believe we have followed all avenues with respect to  
5 whether or not Marshall is guilty of this offence. This was  
6 hampered to some extent..." And then you enumerate a  
7 number of items. No police report, no Crown brief, no  
8 autopsy.

9 Q. Are those the sorts of things that you would have normally  
10 expected there to be in a murder investigation?

11 A. Yes.

12 Q. And were you surprised that there weren't?

13 A. Yes.

14 Q. Did you express any concern about that to Chief MacIntyre at  
15 any time?

16 A. No, other than asking him if they were there. I didn't.

17 Q. You also say, in the last couple of lines, "No one can tell us  
18 who was in the line-up or who viewed it. Pratico, who was a  
19 key witness, comes to light two days after the murder. No  
20 one can tell us how he was discovered to be a witness to this  
21 murder." Noticeably absent, at least to the first block, is any  
22 reference at all to any impropriety or any improper  
23 investigative behaviour on the part of Chief MacIntyre or  
24 anybody else in the Sydney Police Department. Why would  
25 that be?

1 A. The only explanation that I could give is that I believe at this  
2 point that both my superior and the A.G.'s Department knew  
3 of the allegations that were being made.

4 Q. How did they know?

5 A. Both from Mr. Edwards and through my conversations with  
6 the CIB officer, if you'll notice in Paragraph 3 of that same  
7 memo, I wrote "The purpose of putting this book together is  
8 so you can follow the sequence of events for each witness and  
9 allow the reader to judge for himself why the witnesses lied  
10 in their statements to the police and during the trial of  
11 Marshall." My purpose of that, I wasn't trying to influence  
12 anybody with my feelings, but I thought that the booklet  
13 gave a reader that was familiar with what we were doing, a  
14 better understanding of the sequence of statements, what was  
15 going on and they could draw their own conclusions. If they  
16 had any doubt that an investigation should take place, that  
17 they would be able to read that and form their own judgment.  
18 If I said "I believe this happened, this happened and this  
19 happened and I think we should do this," then that would be  
20 my opinion. I was trying to, if you'll note, there's no new  
21 evidence in this. I wasn't trying to give them any new  
22 evidence. I was trying to give them a sequence of events that  
23 they could deal with and judge for themselves.

24 Q. And the booklet to which you refer is Volume 21?  
25



1 Q. And that's the one with the flow charts and...

2 A. Yes.

3 Q. Would that be the booklet to which you referred and which  
4 you were forwarding by this memo to Christen?

5 A. Yes, this is the booklet that I referred to.

6 Q. At this point in time then on the 5th of May, you have  
7 information concerning the incident involving the Harriss  
8 statement under the desk?

9 A. Yes.

10 Q. There's no reference to that material or that information in  
11 this report, nor do I believe is there any reference to it in  
12 Staff Wheaton's report contained in Volume 21. Again, why  
13 not?

14 A. I cannot say why not. As I say, the purpose of this particular  
15 memo was to go along with the book. It was something that  
16 we had been a long time putting it together. People were  
17 having problems following the statements and sequences of  
18 events and in one of our meetings, I directed that a book be  
19 put together and in fact the first time it was made up, it was  
20 made up different than what I asked them to do and I had to  
21 send it back and have the secretary put it in the sequence of  
22 events it's in now.

23 Q. But if you're asking or if you're saying in the third paragraph:  
24 "Allowing the reader to judge for himself why the witnesses  
25 lied in their statements to the police and during the trial..." is

1 it not the case that subsequent events of people, for instance,  
2 if somebody committed a murder and then got in a car and  
3 drove across the country. The fact that they got in the car  
4 and drove across the country may go to what their state of  
5 mind was if you're trying to figure out is that a person who  
6 committed murder.

7 A. Right.

8 Q. That's events subsequent. Guilty knowledge, guilty  
9 behaviour. Is not the sort of behaviour, as you understood it  
10 at the time, of the Sydney Police Department in putting  
11 statements under the desk or perhaps of pressuring  
12 witnesses, is that not the same sort of information which  
13 could lead a person reading Staff Wheaton's booklet, it would  
14 assist that person in coming to a conclusion as to why those  
15 witnesses lied?

16 A. It might. I wasn't trying to unduly influence him. I was not  
17 the investigator. I was getting most of this secondhand. It  
18 was the opinion of the investigator that he was trying to hide  
19 it. I wasn't there. I didn't see it.

20 Q. But it's not going in writing anywhere, is it? It's not being put  
21 in writing and sent either to your superiors or to the Attorney  
22 General's Department, to your knowledge?

23 A. Right. The only thing I could base that on, I suppose, is my  
24 own feeling that, you know, Chief MacIntyre's investigation,  
25 that I think to this day that Chief MacIntyre feels that what

1 he did was right. And I don't for one minute think that Chief  
2 MacIntyre set out to fabricate evidence to convict Marshall.  
3 My feeling was that he thought Marshall was the one  
4 responsible. And through his investigation and through his  
5 interviewing of witnesses and so on that he got out of those  
6 statements what he wanted to prove his theory. And from  
7 knowing MacIntyre for the seven years....well, not seven  
8 years at that time but at least five years, I just couldn't  
9 imagine him doing such a thing.

10 Q. Let me just push it a little farther on that for a second. If at  
11 this point in time in May you know about the Harriss  
12 business.

13 A. Uh-huh.

14 Q. You have statements from Chant and Pratico which indicate  
15 that they lied, two people who didn't know each other. You  
16 must have been asking yourself "How did they come up with  
17 that story?"

18 A. Exactly.

19 Q. And you're telling me that in your own mind at that point in  
20 time you did not have any view at all that the Chief had  
21 fabricated anything?

22 A. Not intentionally.

23 Q. How do you unintentionally fabricate something?

24 A. Well, I think in my last memorandum that I sent when the  
25 Attorney General's Department wanted to know without an

1 investigation as to why...

2 Q. 1983.

3 A. Why this took place, you know, police practices and  
4 procedures and so on. I think I gave my explanation there as  
5 to what I thought occurred. I thought then and I still do that  
6 a proper investigation with the witnesses would reveal  
7 exactly what happened. And I'm not saying this inquiry  
8 won't because I haven't heard the testimony of what other  
9 people have given except for the last couple of weeks here.  
10 But some of the things that I pointed out to you, I think they  
11 should be asked. And at that time, we would certainly know  
12 why they lied. I was always a believer that if somebody was  
13 accusing somebody of doing something, they should have the  
14 right to be able to answer that if they so wished. And Chief  
15 MacIntyre was never given that opportunity in an  
16 investigation.

17 Q. Because there were no investigation?

18 A. Right.

19 Q. On Page 113 of the same volume, 19, there's a memo from  
20 Superintendent Christen to, again, Commissioner D.C.I. in  
21 Ottawa indicating "As you will note, with the exception of  
22 some minor inquiries, the investigation is almost complete" as  
23 of the 10th of May.

24 A. Right.

25 Q. Are you able to tell us at about that time what other things

1 needed to be tied up?

2 A. Well, from on a day-to-day basis, we were given names of  
3 people that may have been at the dance hall that night, that  
4 may have witnessed something. We were chasing down  
5 rumours for months after this and they were coming from all  
6 different directions. They were coming from the police, from  
7 the Crown Prosecutor, from the news people and we were  
8 chasing these things down and most of them, when you talked  
9 to the person, they didn't have any information of value. But  
10 it was still things we had to do. And so consequently, most of  
11 the things, as you say, were done, the things we felt were  
12 important and that these minor inquiries almost complete.

13 Q. I'm just going to take you now to Page 120 and 121 of  
14 Volume 19. In particular, the end of Page 120 and over to  
15 121. I'm reading from Paragraph 4:

16  
17 In regards to the Ebsary/Marshall  
18 portions of this file, all avenues of  
19 investigation known to date have been  
20 completed. Discussions were held with  
21 Crown Prosecutor Frank Edwards in  
22 regards to interviewing Chief MacIntyre  
23 and Inspector Urquhart in regards to the  
24 allegations of Chant, Pratico and Harriss  
25 that they were induced to fabricate  
evidence in the original trial on this  
matter. Mr. Edwards has advised me that  
he further discussed the matter with Mr.  
Gordon Gale of the Attorney General's  
Department and it was felt that these

SUPT. SCOTT, EXAM. BY MR. SPICER

1 interviews should be held in abeyance for  
2 the present. This file will be held open  
3 pending further instructions as well as new  
4 areas of investigations may come to light.

5 And then you forwarded that on the 26th of May to Christen?

6 A. Right.

7 Q. What was your understanding of the instruction that the  
8 interviews with MacIntyre and Urquhart should be held in  
9 abeyance?

10 A. My only feeling at the time was that it was to be held in  
11 abeyance until we were told otherwise. We had made a  
12 request to do it and at that time we were told "Not now." It  
13 made sense to me at the time because I believe the Marshall  
14 appeal was going on. We still had the Ebsary trial to go  
15 through, if he was charged. We...there could have been all  
16 kinds of reasons why at that time that the Attorney General  
17 didn't want us to proceed with it. But to me it made quite a  
18 bit of sense at that time to not start another independent  
19 investigation with all these other things in the process. Let's  
20 clean up one or two first.

21 Q. I'm just going to refer you now just for a second to Exhibit  
22 116 which is a news clipping of June 19, 1986 from the Cape  
23 Breton Post which contains an interview of comments of the  
24 then Attorney General Ron Giffin. And in the second column,  
25 second and third paragraph:

SUPT. SCOTT, EXAM. BY MR. SPICER

1                   When the RCMP expressed interest in  
2                   pursing Sydney Police involvement in the  
3                   case, the Department thought the Mounties  
4                   had their priorities wrong. Gordon Gale,  
5                   director of criminal matters for the  
6                   Department, responded with a note.

7                   And this is what I want to ask you about.

8                   Giffin said 'Gordon sent a memo to the  
9                   RCMP and he said 'Look, let's get this  
10                  business of Marshall straightened out first.  
11                  We'll get the rehearing done and just put  
12                  those other inquiries, just hold them in  
13                  abeyance until we get them out of the way  
14                  first.'

15                  Are you aware of any memo that was sent by Gordon Gale in  
16                  respect of holding this matter in abeyance?

17                  A. No, I'm not.

18                  Q. And the very last paragraph of this news clipping, "he" being  
19                  Giffin:

20                  ...added that if the RCMP uncovered new  
21                  evidence and reopened the investigation,  
22                  they might tell us they were doing it, but  
23                  they wouldn't ask our permission.

24                  Now is it your understanding that at the time you required  
25                  the permission of the Attorney General's Department to  
26                  continue or to commence an investigation of Chief MacIntyre?

27                  A. Yes, I was of that opinion.

28                  Q. And from where did you get that opinion?

29                  A. From policing here in Nova Scotia since 1959 except for the

1 odd stint in Ottawa and from memorandums in one case  
2 where the Glace Bay Police Department, as I remember it,  
3 were a little slow turning over some rape and attempted rape  
4 cases to us and sometimes they were a couple of days old  
5 before they came and told us about them. And we had a  
6 memorandum sent from the Attorney General's Department  
7 to the Chief saying, reinforcing this fact that the Mounted  
8 Police were to investigate murder and attempted murder and  
9 rape and attempted rape within their jurisdiction. And that's  
10 the way it was. We wouldn't go into their jurisdiction and in  
11 fact their officers used to get upset that maybe they'd have it  
12 solved in five minutes and have to turn it over to the RCMP.  
13 It was kind of embarrassing to their department and to the  
14 investigators and they didn't like it.

15 Q. Let me if I can for a moment just explore the parameters of  
16 this requirement of permission. When you say that it was  
17 your understanding that you would have required permission  
18 from the Attorney General's Department, would that be to  
19 investigate the Sydney Police Department's activities as a  
20 police department? The distinction I'm trying to make is this:  
21 Let's say that you found out for some reason that a member  
22 of the Sydney Police Department was selling marijuana to  
23 kids.

24 A. Right.

25 Q. Would you consider that in that circumstance, because a



1 member of the Sydney Police Department or any other police  
2 department was involved, that you'd require somebody's  
3 permission to investigate that?

4 A. I would certainly go to my CIB officer and tell him the  
5 allegations that had been made and tell him that we were  
6 going to commence an investigation. If we thought it was  
7 something that could be turned over to the Chief of Police to  
8 investigate himself...

9 Q. Change the hypothetical then. The hypothetical now is if you  
10 find out that it's the Chief who's doing it.

11 A. Right.

12 Q. You have information that the Chief of Police is distributing  
13 drugs to kids. Would you consider in that circumstance, that  
14 in order to investigate that matter, you would need to get  
15 permission from the Attorney General's Department?

16 A. I would report it through the CIBO and tell him that we have  
17 this information and we're going to commence an  
18 investigation or ask him if we should or whether he wanted  
19 to send somebody from Halifax out to do it.

20 Q. Let me ask the question again. Would it be your  
21 understanding from what you knew that in the scenario that  
22 I've just given to you you would require the permission of the  
23 Attorney General's Department?

24 A. Yes, if I observed the Chief distributing drugs, I would seize  
25 him and charge him without any permission, but I would not

1 launch an investigation without permission.

2 Q. And if you'd...just to paint the comparison here for a second  
3 now, we're now talking about...we're talking about a police  
4 chief not acting in his job as a police chief but engaged in  
5 presumably illegal activities or the suspicion is and you're  
6 telling us that in order to investigate, you would have to get  
7 the permission of the Attorney General's Department?

8 A. Yes.

9 Q. Whereas if it were Mr. Ruby presumably, for instance, you  
10 wouldn't need to get the permission for anybody to go and  
11 investigate him?

12 A. Well, when we were doing the drug investigations in the  
13 police jurisdictions that didn't have drug sections, we used to  
14 do them without prior approval. It was...we did that. It was  
15 a federal statute and to that point we used to do it.

16 Then the police departments started getting their own  
17 drug sections and were doing their own investigation. We  
18 had JFOs what we call Joint Force Operations with those police  
19 departments and we would do some jointly and they would  
20 do theirs.

21 We're provincial constables and peace officers that can  
22 investigate anywhere, whereas some of the municipal  
23 policemen are not. They can only act as policemen within  
24 their own municipalities.

25 But it was my understanding and still is, that to launch

1 an investigation of that nature that we would certainly need  
2 the permission of the Attorney General's Department to do so.

3 4:15 p.m.

4 Q. And Mr. Giffin will be able to answer this question himself.  
5 If, when he says that in respect of this particular matter,

6  
7 If the RCMP uncovered new evidence and  
8 reopened the investigation they might tell  
9 us they were doing it but they wouldn't  
10 ask our permission.

11 That wouldn't have been your understanding.

12 A. No. If such was the case why would we have stopped when  
13 Gordon Gale said not to investigate.

14 Q. Well, that was my next question. Was why pay any attention  
15 to that?

16 A. When it went to my CIB Officer, this memorandum we're  
17 referring to, why wouldn't he have come back and said, "What  
18 are you asking that for? Go out and do it." So, as far as I'm  
19 concerned I'm correct and that's the policy we were working  
20 under.

21 Q. That was your understanding of it any-, sure.

22 A. That's right.

23 CHAIRMAN

24 While we're still on that then would you, on the first column  
25 in Exhibit 116, there's a quotation attributable to then  
Attorney General Giffin. It says,

1 'The RCMP are always at liberty, as an  
2 investigative police force, to pursue any  
3 matter they feel appropriate to  
4 investigate,' said Giffin. 'Reopening the file  
would require new evidence,' he added.

5 I take it you don't agree with that.

6 A. I agree with that in our jurisdiction. If it's in our jurisdiction  
7 that I would start an investigation without, I don't think I'd  
8 need his permission, or the CIB Officer's permission to launch  
9 an investigation within my area of authority which would be  
10 in the County and those municipalities we were policing and  
11 that if I wanted to lay a charge, I would lay a charge. And  
12 that's a policeman's right. But I was not policing the City of  
13 Sydney.

14 COMMISSIONER EVANS

15 Had your department not been invited in to look into this  
16 Marshall and anything surrounding it?

17 A. Well, I didn't say anything surrounding it, My Lord.

18 COMMISSIONER EVANS

19 I was just asking you if that was the situation.

20 A. No. The situation was to look into the new allegations made  
21 by the solicitor from Dartmouth, Aronson, and as a result I  
22 was looking into those allegations. We went to the witnesses,  
23 and as a result of the witnesses, and then the file was directly  
24 turned over to us on the memo from the Attorney General's  
25 Department, the complete file. And so that we could continue

1 with that '71 investigation and that's what we did.

2 COMMISSIONER EVANS

3 But in the course of that investigation it led you to a certain  
4 distance, didn't it, and then you stopped?

5 A. Yes. And we went to the Director of Criminal and we also  
6 went to my own CIB Officer and we were told to hold it in  
7 abeyance.

8 COMMISSIONER EVANS

9 Hold it in abeyance. Thank you.

10 EXAMINATION BY CHAIRMAN

11  
12 Q. Well just before we leave that now. It's my understanding  
13 from your testimony that as a result of meetings or  
14 conversations between you and the Crown Prosecutor, Frank  
15 Edwards, that you asked and that there be issued, and there  
16 was subsequently issued under the provisions of the Police  
17 Act of Nova Scotia a directive from the Attorney General of  
18 Nova Scotia directing the Chief of Police of Sydney to turn  
19 over all documents with respect to your investigation. That's  
20 correct, is it?

21 A. It didn't go through Frank Edwards, it went through my CIB  
22 Officer to Gordon Gale.

23 Q. All right. Through your CIB Officer.

24 A. Yes.

25 Q. And that order is issued.

1 A. Yes.

2 Q. And the reason why you asked for that order was because  
3 you were concerned over the method of interrogation of these  
4 key witnesses by Chief MacIntyre.

5 A. No.

6 Q. It wasn't.

7 A. It was to get all the material. And the reason...

8 Q. You weren't, at that time, concerned about the statements  
9 that had been taken from these key witnesses? The manner  
10 in which they'd been taken?

11 A. Yes. I was concerned.

12 Q. I see.

13 A. About it. There was allegations that had been made at that  
14 time but we were still concentrating, at that time, on getting  
15 the Marshall file out of the way and getting him out of jail  
16 and get it to the appellate division.

17 Q. I'm not quarreling with you on that. That's commendable.  
18 Your first priority is to get the Marshall question of guilt or  
19 innocence out of the way and whatever machinery should be  
20 started in motion.

21 A. Yes.

22 Q. And I would take it the next step, I suppose, you also had  
23 some responsibility with respect to any charges against Roy  
24 Newman Ebsary.

25 A. Yes.

1 Q. Bearing in mind the instructions or the order that came from  
2 the Attorney General, I, you feel that the suggestion of the  
3 Criminal Director, the proposed interviews with MacIntyre  
4 and Urquhart be held in abeyance was, in effect, an order to  
5 you not to proceed further with that investigation?

6 A. Well, we had never been ordered to proceed and we had  
7 asked to, Staff Wheaton in his conversation with Mr. Edwards  
8 had brought up the subject and Mr. Edwards and contacted  
9 the Director, Mr Gale, and Mr. Gale said to hold it in abeyance.  
10 So we had never been given permission. The letter to the  
11 Chief of Police and the Mayor of Sydney was at my request to  
12 get the file without using a search warrant so that we would  
13 get all documentation.

14 Q. I just want to be clear that I fully understand your position.  
15 And I don't want you to interpret what I'm saying as that I  
16 formed any conclusion. But would you interpret that  
17 directive, or observation or whatever from Mr. Gale, as simply  
18 confirming what you've said earlier. You wanted to get the  
19 Marshall issue out of the way first.

20 A. Um-hmm. Yes.

21 Q. Ebsary out of the way.

22 A. Right.

23 Q. Get the evidence completed that was necessary to get these  
24 two in motion.

25 A. I had no problem with it at all and we reported it through in

SUPT. SCOTT, EXAM. BY CHAIRMAN

1           our report and I felt we would get instructions later on to  
2           commence.

3       Q.   You felt that further instructions were necessary before you  
4           could continue or start that third phase of your investigation.

5       A.   That's right.

6       CHAIRMAN

7           Okay. Thank you.

8       MR. SPICER

9           It might be as good a point as any to stop for the day, My  
10          Lord.

11       4:25 p.m. - ADJOURNED TO 4 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 3rd day of February, 19<sup>88</sup>, at Dartmouth,  
Nova Scotia