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#4

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

Volume 51

Held: February 4, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

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

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

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

Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for
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Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.
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Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
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Mr. Charles Broderick: Counsel for Sgt. J. Carroll

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

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

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

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1 FEBRUARY 4, 1988 - 9:30 a.m.

2 MR. CHAIRMAN

3 Mr. Spicer?

4 MR. SPICER

5 Thank you, My Lord.

6

7 SUPT. DONALD SCOTT, still sworn, testified as follows:

8

9 EXAMINATION BY MR. SPICER, Cont'd.

10

11 Q. Superintendent, when we finished up yesterday, I think we
12 were being held in abeyance more or less around May or so of
13 '82.

14 A. Yes.

15 Q. I just want to go back over a couple of things. You have
16 Volume 19 in front of you. If you could turn to page 99.
17 That's the letter from the Attorney General to Chief
18 MacIntyre.

19 A. Yes.

20 Q. Was it your understanding from that letter that what was
21 being asked for was more than just the file that the Chief
22 had? It seems to contemplate pretty well everything that
23 MacIntyre had.

24 A. No, well, everything he had to do with the, commencing with
25 the internal investigation, or the initial investigation in 1971.

1 Q. What do you take to be the meaning of "and other
2 information or records"? Is not possible to contemplate that
3 that would mean he should be talking to the RCMP?

4 A. Well, no, I would take that to, that they didn't know exactly
5 what was in the file and they were just including anything
6 else that might have been not covered by the main items,
7 such as warrants, papers, exhibits, photographs.

8 Q. So you would have thought that that meant other information
9 being other material, other written or documentary material.

10 A. Yes, because, for example, they don't say statements. So I
11 would think that they would just have an exclusive clause to...

12 Q. And it wasn't your understanding, I take it then from what
13 you say, that the Chief was being directed to speak to you.

14 A. No.

15 MR. CHAIRMAN

16 If you would turn to the next page.

17 SUPT. SCOTT

18 Yes.

19 MR. CHAIRMAN

20 Did you receive a copy of the Attorney General's letter to the
21 Mayor of Sydney.

22 SUPT. SCOTT

23 I believe we did, My Lord.

24 MR. CHAIRMAN

25 That seems to go a bit further, or does it? It says under

1 Section 31 of the Police Act:

2
3 I wish to advise you that I am removing
4 from the Sydney Police Department the
5 investigation of the Donald Marshall, Jr.
6 case and any matters arising therefrom,
and the RCM Police will assume all matters
connected with that investigation.

7 SUPT. SCOTT

8 Yes, well, if you'll notice in my forwarding minute of March
9 the 13th, I believe it is, where I said that if Ebsary is charged with
10 this offence, then perhaps it should be returned to the Sydney
11 City Police, who have jurisdiction in this matter. And I took that
12 to mean that we would follow up any charges against Ebsary and
13 that it wouldn't be given to the Sydney City Police to follow up on.

14 BY MR. SPICER

15 Q Page 122, there's a memo from Christen to Commissioner,
16 Ottawa. Last sentence of that memo says:

17 Our investigation is now complete and the
18 further direction of the Attorney General
19 of Nova Scotia is being awaited.

20 Do you have any knowledge as to what he meant by that?

21 A. I would say that he was awaiting direction on our
22 investigation, if there was to be one, on the conduct of the
23 Sydney City Police with regard to the Marshall investigation.

24 Q And at that point in time in June, would you agree, then, that
25 "Our investigation is now complete," that being the

1 investigation into the other matter.

2 A. Yes, as I say, at that time there may have been new
3 information coming forward that we were checking out but
4 the main investigation had been complete.

5 Q. And then on the next page on 123, Christen again is writing to
6 Gordon Gale, on the 3rd of June, he says in the second
7 paragraph:

8
9 Statements have now been obtained from
10 the Sydney City Police who were directly
or indirectly involved in this investigation.

11 A. Yes.

12 Q. What would be the meaning of that?

13 A. Well, between the one report and the second report, we had
14 to take statements from the other policemen who were on the
15 scene that night, such as Leo Mroz and Walsh and these
16 members. And that's what he meant. At least I presume
17 that's what he meant.

18 Q. Because there certainly were not statements taken from
19 MacIntyre or Urquhart at that stage of the game.

20 A. No.

21 Q. Although they were people directly, certainly directly
22 involved in the investigation.

23 A. Yes.

24 Q. At that point in June of 1982, did you conduct any further
25 inquiries or did you direct Wheaton to conduct any further

1 inquiries into the conduct of the Sydney City Police
2 Department at that point?

3 A. No, I did not.

4 Q. And that was because you just waiting on instructions?

5 A. That's right.

6 EXHIBIT 117 - PAGE FROM RCMP OPERATIONS MANUAL.

7 Q. While we're talking about that, let me just ask you about one
8 other thing. Exhibit 117, which I understand to be a page
9 from the RCMP Operations Manual.

10 A. Yes.

11 Q. And I just want to refer you to a couple of the clauses.

12
13 D1A - It is the responsibility of members
14 to investigate each offence expeditiously,
15 fairly, impartially, thoroughly examining
16 the evidence and in consort with his/her
colleagues reach a decision concerning
charges.

17 And then further down:

18
19 D1C - Lengthy and more complex
20 investigations often necessitate legal
21 interpretation and direction and members
22 should not hesitate to approach Crown
prosecutors for this purpose. However, the
decision to lay charges rests solely with the
police.

23 A. Yes.

24 Q. Would you consider that the requirement to get permission
25 from the Attorney General, and in this particular instance to

1 investigate Chief MacIntyre, is in contradiction in some way
2 with these pages of this particular page from the Operations
3 Manual of the RCMP?

4 A. No, I don't, because the Operational Manual is instructions
5 dealing with our responsibility under the contract in the
6 province and we did not have the responsibility for
7 investigations under the Criminal Code within the City of
8 Sydney unless we were directed or asked to do so by the
9 police department having jurisdiction.

10 Q. Okay. So in order to interpret DIC then within the context of
11 the RCMP's operation in Nova Scotia, you have to read it as
12 however, the decision to lay charges rests solely with the
13 police except in certain circumstances where the police don't
14 have authority over, et cetera, et cetera, what you've just
15 finished telling me. In other words, where you have to ask
16 permission.

17 A. No, to lay charges, that is up to the policemen as to whether
18 or not, he may seek direction, or not direction, but guidance
19 from the Crown prosecutor as to whether or not the
20 ingredients of the charge can be proven. And if he has any
21 doubt about that, he talks it over with his supervisor and if
22 there is no agreement or we feel that a charge should be laid,
23 then it's laid. If the Crown wants to stay it or withdraw it,
24 they offer no evidence, that's up to them.

25 Q. Are you aware whether or not there is anything in the RCMP

1 Operations Manual which refers to sorts of things we've been
2 talking about; that is, necessity to seek permission to conduct
3 investigations in certain circumstances?

4 A. No, I can't think about it. Although we're not getting paid to
5 do other police department's work and I think everybody
6 knows what our responsibilities are in the province.

7 Q. On page 124 of Volume 19, underneath the line that goes
8 across the page, there's a handwritten note that says:

9
10 "O/C also advised Chief John MacIntyre of
11 Sydney P.D. had just called stating
12 Inspector Richard Walsh and Ambrose
13 MacDonald now remember responding to a
14 call at Membertou Reserve when road-
15 blocks were being set up to prevent
16 trouble on the reserve prior to Marshall's
17 arrest, at which time Marshall was present
18 and was asked by MacDonald what he was
19 doing while Seale was being stabbed. He
20 replied that he had kicked the queer
21 behind the ear or in the head, words to
22 that effect. Chief MacIntyre wanted that
23 noted for the record.

19 Is the O/C that's referred to there you?

20 A. Yes, it is.

21 Q. And do you remember this telephone call, or was it a
22 telephone call?

23 A. I don't remember it by my own recall but I remember items
24 such as this that came from the Sydney City Police that
25

1 wanted us to check out information they had received or it
2 would come through Frank Edwards that they had told him of
3 information that they remembered. And to me, this was
4 another one and I passed it on to the investigators dealing
5 with the unrest that was happening during the time in the
6 city because of the murder.

7 Q. At this point in time that that note 16 6 02 is correct, that
8 would indicate that this would be the 16th of June that you
9 would have received that call.

10 A. Yes.

11 Q. By that point in time, I believe, Junior Marshall was in Carlton
12 House, he would have been out of Dorchester and in the
13 Carlton House and awaiting the process that eventually took
14 place. Would it be the case that in the summer of 1982, you
15 were still receiving calls from Chief MacIntyre with him
16 giving you further information and bits and pieces of things
17 that you ought to follow up?

18 A. It would appear from this that timeframe was correct. I
19 remember that calls were received from the Crown
20 prosecutor and also when I talked to Chief MacIntyre, if he
21 had remembered anything, he would pass it on.

22 Q. Were there occasions when you did talk to him during the
23 summer of '82?

24 A. I saw the Chief quite often at different functions and different
25 meetings that we had with the seven police departments in

1 the Cape Breton area.

2 Q. At any of those meetings, would he bring up the question of
3 the Marshall case?

4 A. I can't say from my own recall, but I'm sure we did talk about
5 it.

6 Q. Had you advised Chief MacIntyre by this point in time that
7 you considered that Junior Marshall was innocent?

8 A. Oh, yes, I believe so.

9 Q. And what was his reaction to that?

10 A. I don't think he agreed with that. I still think, probably to
11 this day, that he believes that Junior Marshall was guilty of
12 the offence.

13 Q. When is the last time you spoke to him about it?

14 A. I would imagine before I left Sydney. I left there in 1984. I
15 would imagine that we probably discussed it.

16 Q. And that would have been subsequent to the reference
17 decision.

18 A. Yes.

19 Q. Are you saying that at that point, after the reference decision,
20 it was your impression that MacIntyre still thought that
21 Junior Marshall was guilty?

22 A. Yes, I had that feeling.

23 Q. Did he indicate to you why?

24 A. Well, I still think that he felt that the witnesses, because they
25 were on the stand at that time in question by counsel and

1 when through the court proceedings, that the testimony they
2 gave then was more reliable than what they were giving now.

3 Q. There's also a reference at about this time. You don't need to
4 get the volume, but for counsels' benefit, it's in Volume 27 at
5 page 35 and it's just a note from Steve Aronson's legal
6 account or his bill in which he is reciting the various things
7 that he did and in June, this is on page 35, in June of 1982,
8 there's a reference in his account to telephone conversations
9 with, long distance telephone conversations with Inspector
10 Scott. Do you remember talking to Steve Aronson in June of
11 1982?

12 A. I have no recollection of that at all.

13 Q. Did you ever talk to Steve Aronson?

14 A. I don't remember talking to him, no.

15 Q. On page 126, I'm just going to try and get you to help me here
16 and you tell me who this is and...Cpl. Stutt?

17 A. Yes, he's a CIB reader, or would have been at that time.

18 Q. And who would the A/CIBO have been at that time?

19 A. That would be the Assistant Criminal Investigation Branch
20 Officer.

21 Q. This note looks like it's September or so of 1982. Who would
22 that have been? Who would have been the A/CIBO in the fall
23 of '82?

24 A. I'm going by memory but I believe that it would probably be
25 Inspector Zinck.

1 Q. Can you enlighten us at all as to what this note may refer to?
2 A. Well, it would appear that he was sitting in for the CIBO, who
3 wasn't there. Possibly on your Thursday a.m. meeting with
4 the A.G., you could determine the present standing, last
5 paragraph of our correspondence 82-06-03 refers. I would
6 imagine he's asking the Assistant CIB officer that when he's
7 meeting with the Director of Criminal that he question him on
8 the last paragraph of the correspondence from our force.

9 Q. On that date.

10 A. Yes.

11 Q. Which I take it would be the note I referred you to a couple
12 of minutes ago on page 122, which is dated the 3rd of June,
13 and probably the last sentence:

14
15 Our investigation is now complete and the
16 further direction of the Attorney General
of Nova Scotia is being awaited.

17 A. Yes, you mean 123?

18 Q. Well, one of the two, they're both dated the same date.

19 A. Yes, the last paragraph.

20 Q. That's right, and they both cover the same subject matter.

21 A. And I would think that that memo probably covered our
22 report that's previous to that on 120 and 121 where we're
23 asking for direction on the investigation.

24 Q. I'm wondering if you have any knowledge of the substance of
25 the last part of that note on 126, it seems to be 82-09-28.

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Spoke with A/CIBO. Our file to be concluded unless further investigation requested by Crown.

Do you recognize that writing?

A. I would imagine that it would be Cpl. Stutt again, who, it looks like Ray Zinck's initials on the item before that:

Will discuss with Mr. Gale and advise you on 82-09-24.

Q. Okay.

A. And then I would imagine it's the, it would be another reader who put in the comments of the A/CIBO.

Our file to be included unless further investigation requested by Crown.

I would say that that, I assume, anyway, that it would be on our investigation of the Sydney City Police Department they're talking about.

Q. And that would be consistent with your understanding in the fall of '82?

A. Yes.

Q. Between the summer of 1982 and the hearing of the reference in December of 1982, did you have any discussions with Frank Edwards concerning the position he was going to be taking at the reference as to what he thought the disposition ought to have been?

1 A. Yes, I can remember having conversations with him about
2 that. I don't know in what respect or what type of meeting it
3 was.

4 Q. Do you remember what he was saying as to the position he
5 thought he was going to be taking?

6 A. Well, he agreed with the results of our investigation that
7 Marshall did not commit the murder and that Ebsary did, and
8 he wanted to take that position. And I know that he was
9 getting pressure from his superiors within the A.G.'s
10 Department because he told me so at that meeting.

11 Q. What sort of pressure was he getting from his superiors in the
12 A.G.'s Department?

13 A. Well, it was to do with the adversary system, I guess, of
14 defence and Crown and they had problems with the Crown
15 taking the part of the, you know, of the defence, as I
16 remember it, that they thought there should be somebody on
17 each side taking each position and let the judges decide the
18 outcome rather than both the Crown and the defence taking
19 the same position and not giving the judges an option.

20 Q. Did you have more than one discussion with Mr. Edwards
21 about this?

22 A. I don't remember more than one but there could have been.

23 Q. Did you ever have any discussion with Mr. Edwards about the
24 position that he eventually took in the documents that he
25 filed with the Appeal Court in his factum?

1 A. I don't believe so.

2 Q. No?

3
4 Spoke with Insp. Scott and Cpl. Carroll re
Brooks MacGuire and Irving Cameron.

5 Can you tell us what that was about? "Scott couldn't recall
6 latter part, the only fact that he had been told of someone by
7 Chief MacIntyre."

8 A. I would say it's another one of these where somebody came
9 up with statements that they had heard or whatever and it
10 was a matter of checking them out and seeing if they were
11 accurate or whether there was any truth to them.

12 Q. Halfway through that note, it says:

13
14 Scott said he thought statement should be
15 taken from MacGuire just to confirm that
16 he had not actually seen anything. Told
him it would do no harm but I left it up to
him.

17 Did you eventually do that or direct that that be done?

18 A. I would imagine that I had Cpl. Carroll look into it, yes. As
19 you can see, Cpl. Carroll was at that meeting, but I would
20 imagine that would have been followed up and depending on
21 what the first person said, if they were together that night,
22 whether we would have went to the second person or
23 whatever, if we could find him.

24 Q. Was there anything of significance in respect of the
25

1 investigation that occurred between, let's say the summer of
2 1982 and this point, February of 1983, is there anything you
3 haven't told me that happened during that summer up until
4 this point in time?

5 A. I cannot think of anything, nothing comes to my mind.

6 Q. I ask that question because I wasn't able to ask you before
7 what happened in the summer and there's a gap in the
8 documents. But you don't think there was anything of any
9 significance that happened, then, during the summer and fall
10 and into December/January.

11 A. It's a busy time for police but it's also a time when a lot of
12 people take vacations and I would imagine that I was away
13 for at least a month of that and I can't think of anything that
14 was significant, unless there's something in the files that
15 would remind me.

16 Q. No, there doesn't seem to be much of anything in that period
17 of time. In May of 1983, and if you could turn to Volume 20
18 now.

19 A. I don't believe I have Volume 20. Yes.

20 9:53 a.m. *

21 Q. Page 1.

22 A. Yes.

23 Q. That's a letter from Gordon Gale to...it would have been
24 Christen, I suppose, at that point?

25 A. Well, it's addressed the Commanding Officer.

- 1 Q Oh, sorry, yeah.
- 2 A. Who would be Chief Superintendent Reid.
- 3 Q Were you aware of this direction from Mr. Gale?
- 4 A. Yes, I believe I had a copy of that sent to me along with a
5 covering memo from the CIB officer.
- 6 Q On page 3?
- 7 A. Yes.
- 8 Q The letter itself, would you understand the letter itself to be
9 directing the RCMP to investigate the activities of the Sydney
10 Police Department.
- 11 A. Could I take a minute and read it, please?
- 12 Q Yes, sure.
- 13 A. Could you ask me the question again, please?
- 14 Q The question was whether or not you would take from that
15 letter of Mr. Gale's that the direction to the RCMP was to go
16 and investigate the activities of the Sydney Police
17 Department?
- 18 A. No, I would not.
- 19 Q. And you say that why?
- 20 A. Well, from what I get from the letter he's asking questions,
21 trying to determine whether or not there should be an
22 enquiry or there should be any other actions taken as a result
23 of the circumstances that took place in that investigation.
- 24 Q. And was the direction that was given to the RCMP then
25 limited to the sentence,

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Accordingly, we request that you have your files reviewed to determine whether there are, in your opinion, any instances of improper police practices or procedures in regard to the investigation by the Sydney Police Department.

A. Yes. They're just asking us to go through our files and give our opinion.

Q. Was there ever a direction from the Attorney General's Department to investigate the activities of the Sydney Police Department?

A. Not that I'm aware of.

Q. And I just again want to refer you, then, to Exhibit 116, which is the Cape Breton Post article that I was referring to yesterday. The very beginning of it says, "The RCMP did investigate the Sydney Police Department's role in the wrongful conviction of Donald Marshall, Jr., Attorney General Ron Giffin said Wednesday." Is it your understanding that that would not be correct?

A. Not as far as I know.

Q. And then in the second column, about halfway down, and I mentioned part of this to you yesterday and I'll just read it again to put it in context, "Gordon sent a memo to the RCMP and said, 'Look, let's get this business of Marshall straightened out first,'" and you told us yesterday that there wasn't a memo.

1
2 'We will get the rehearing done and just
3 put those other enquiries...just hold them
4 in abeyance until we get them out of the
5 way first.' Giffin added, 'Those are the
6 words he used 'in abeyance,' and that is
7 exactly what he meant,' because after that,
8 after Marshall's conviction had been set
9 aside Gordon sent a memo to the RCMP
10 instructing them to investigate what had
11 happened in 1971.

12 A. I've never seen any such memo. I've never seen this article
13 before either. I wasn't in Sydney, if it's June 19th, 1986.

14 Q. 1986, yes.

15 A. I wasn't stationed there.

16 Q. No, my point...my point only in asking you the question is
17 whether or not you understood that there had ever been any
18 investigation ordered by the Attorney General's Department.

19 A. No, not that I'm aware of.

20 Q. Did you think there should have been one?

21 A. Yes.

22 Q. Why?

23 A. Because there was enough tell-tale questions left unanswered
24 from the witnesses as to what happened. These were young
25 people whose memory after so many years would have to be
tested. Some of it by other statements, by their mother or by
records indicated that some of what they remembered was
right and some that they remembered probably wasn't

1 correct. But I think that an investigation could have tried to
2 determine what was truthful and, also, that the people that
3 were being accused would give them the opportunity to give
4 their side of the story as to what happened.

5 Q. I take it by initiating an investigation you're not saying
6 "We've concluded you're wrong," you're merely saying,
7 "We've concluded that there are sufficient circumstances here
8 that we ought to take a look at it."

9 A. That's right.

10 Q. On page 3 of Volume 20 it's a memo you referred me to a
11 second ago, I believe it's a note to yourself.

12 A. Yes.

13 Q. From the CIB officer. What did you understand that he was
14 telling you to do in that note?

15 A. Well, I guess what he's telling us to do is to review our files,
16 to comment on the manner in which certain procedures was
17 done as compared to the manner or investigation procedures
18 he personally would have followed. "We do not expect any
19 investigation to be undertaken, but restrict our examination
20 to all material on hand." I think he was looking at, you know,
21 the interviewing of juveniles, should the person in authority
22 be present when you're doing this? Was there Crown briefs?
23 Why wasn't their Crown briefs? The autopsy wasn't done and
24 there was no inquiry into the death, magisterial inquiry or
25 whatever the term was at that time. And, I think that he was

1 implicitly being told not to interview MacIntyre and
2 Urquhart?

3 A. Yes, I guess so.

4 Q. Yes. Did you talk to Christen about that at the time as to what
5 it was that you were supposed to be doing?

6 A. I don't believe I did. I may have.

7 Q. As a police officer how can you properly answer the question
8 as to whether or not there should be any inquiry into the
9 handling of the original investigation if you don't do some
10 investigative work yourself in order to see whether or not
11 there are enough...there's enough there to go ahead with an
12 investigation? And how can you answer that question by just
13 looking at your files?

14 A. Well, I would say that the Attorney General's Department and
15 our own Force within the CIB readers had been following this
16 case very closely. They had had a chance to read all
17 statements and all the investigation that had been done. I
18 take it that they felt they had enough information to decide
19 whether or not an inquiry should be held. We don't come
20 under the Police Act of the Province and I don't know what
21 powers of inquiry are under that Act, but I knew that they
22 had had another inquiry in the Province into the action of a
23 police department. I didn't know whether that's what they
24 were looking at when they mentioned inquiry or...but if we
25 had done an investigation which was still on the burner, as

1 far as I was concerned on the back burner, waiting for
2 direction I didn't know whether this would help them in that
3 respect or not.

4 Q. Um.

5 A. But I had thought they were just looking for our opinion from
6 the files.

7 Q. I believe you had indicated to us yesterday, though, that one
8 gets the impression of a funnel getting smaller and smaller in
9 a sense that there was information that you had in 1982 that
10 was not put into writing, for instance the incident involving
11 the Patricia Harriss statement under the desk. You had that
12 information. That was never put in writing. You had your
13 own feelings about the way Chief MacIntyre handled the
14 investigation. Other people had their own feelings about that.
15 Much of that was never put into writing. And, now you're
16 being told by the Attorney General's Department "We do not
17 expect any investigation to be undertaken." But the question
18 that's being asked is should there be an investigation of the
19 Sydney Police Department, but just look at your files. How
20 can you possibly answer that question fully if you're not
21 going to be able to give them a lot of the information that you
22 have in your head, but that just doesn't happen to be in your
23 files?

24 A. I guess my only answer to that is that Staff Wheaton had
25 fully briefed the Crown Prosecutor who was an agent of the

1 Attorney General. I had fully briefed the CIB officer on what
2 was going on during the investigation. Both these people are
3 in direct contact with the Director of Criminal within the
4 A.G.'s Department on a regular basis and I had no doubt that
5 they knew our thoughts and feelings and what was also on
6 paper.

7 Q. Okay. You would agree with me, I take it though, that there
8 was a lot that wasn't on paper? A lot of information that
9 would be important to answering the question whether or
10 not there ought to be an investigation.

11 A. I can't speak for the investigators.

12 Q. Well, speak for yourself. What do you think about the
13 Patricia Harriss statement incident, wouldn't that be
14 important?

15 A. Well, in my forwarding minute I had said that she had a
16 pressure put on her by the Sydney City Police.

17 Q. I'm not talking about that. I'm talking about the incident in
18 1982 when Staff Wheaton went to get the statement.

19 A. Oh, I guess I have no answer for that. I know that the Crown
20 was aware of it and we were aware of it.

21 Q. All I'm asking is whether or not it was important in your
22 mind?

23 A. I think it was important to the truth of Patricia Harriss and
24 the fact that my investigators told me that it appeared that
25 Chief MacIntyre had tried to intentionally hide it on the floor

1 would certainly give you cause to wonder why he would do
2 that.

3 Q. That's the sort of guilty knowledge we were talking yesterday
4 to some extent.

5 A. Yes.

6 Q. Page 5, the same volume. That's a direction to who,
7 Superintendent Scott?

8 A. That at the time would have been Staff Sergeant Barlow. It's
9 a position that Staff Wheaton held prior to his departure to
10 Halifax.

11 Q. Okay. And you're asking him to conduct the necessary review
12 of his file.

13 A. Yes.

14 Q. And to get in touch with Wheaton and Carroll.

15 A. Yes.

16 Q. Then on the...on page 8 through to thirteen there is a response
17 from Staff Wheaton in which he goes through a number of
18 items which he considered to be questionable.

19 A. Yes.

20 Q. And then his conclusion on page 13,

21

22 I would submit for your consideration that
23 if a police officer, in his drive to solve a
24 crime, refuses to look at all sides of an
investigation and consider all ramifications
then he ultimately fails in his duty.

25 Would you agree with that?

1 A. Yes.

2 Q. Would you agree that that's what happened in this case?

3 A. Well, from the review of the material, and hindsight is a great
4 thing, but I would say that that statement is probably true to
5 what happened in this case.

6 Q. Then on page 23 of the same volume you respond.

7 A. Yes.

8 Q. I just want to go through your response with you.

9 A. Yes.

10 Q. I take it that your response is based also on a review of the
11 file material.

12 A. I would think that my response is probably more from
13 looking at Staff Wheaton's response, Staff Sergeant Barlow's,
14 Corporal Carroll's and my memory of what had occurred. I
15 may have looked at the file, I can't say whether I did or not.

16 Q. So, it's your own personal knowledge plus your look at the
17 review that had been conducted by the other people
18 involved?

19 A. Well, most of my knowledge is what I've been told.

20 Q. Right. You say in, and we'll come back to the balance of your
21 report, but you say on page 25 in the last sentence of the
22 second paragraph, "The investigator should be led by the
23 evidence presented to him and pick out those areas to be
24 followed up and review all aspects to see where the evidence
25 leads him."

1 A. Yes.

2 Q. Go back to the first page now.

3 A. Right.

4 Q. You say in the last paragraph,

5

6 Had Marshall not been a young person
7 with a record and had been suspected of
8 other types of offences that had occurred
9 in the Park, and at a nearby cemetery,
10 then I doubt if the police would have
11 pursued this individual with such tenacity.

12 What was your factual basis for making that comment?

13 A. Well, the original telex that came into headquarters
14 requesting assistance from the Maritime Crime Index Section
15 had Marshall as a suspect, I believe, in the following day of
16 the murder.

17 Q. Uh-hum.

18 A. At that time there was really no evidence to support such a
19 theory that I know of from reviewing the file. So, I took it
20 that it was because of his past record and knowledge of the
21 police that they must have come up with him as a suspect.

22 Q. But by not being able to interview the people who made the
23 decision that Marshall was a suspect, you really didn't know
24 why they had come up with that...that conclusion, did you?

25 A. No. But I reviewed the preliminary hearing and the Supreme
Court trial and the statements that were presented there to
obtain a conviction and those witnesses up until the 30th of

1 May there is no indication that any of these people told
2 anything but the truth.

3 Q. Right.

4 A. And so I don't see how you could deduce otherwise.

5 Q. My question though really is you don't really know unless
6 you ask the people involved and you weren't able to ask the
7 people involved.

8 A. That is correct, yes.

9 Q. Okay. Let's go on in that paragraph.

10
11 Marshall himself by lying certainly did not
12 help the situation and probably felt there
13 was no danger of him being convicted of a
14 crime he did not do. But if he had
15 admitted to the attempted robbery of
16 Ebsary and MacNeil then he probably
17 would have gone to jail. Had Marshall told
18 the truth the police would more than likely
19 have believed his story and pursued the
20 description of these two men who looked
21 like priests in more depth.

18 What...once again, what's your factual basis for suggesting
19 that...even assuming that there was an attempted robbery
20 that Marshall telling them would have made any difference at
21 all?

22 A. Well, you have to remember that Seale, at that time, had just
23 been stabbed, he was still alive. If somebody is willing to
24 face a charge of robbery in such an incident and admit that
25 they were a party to an offence, I would say that would go a

1 long way towards what they're saying is the truth, and me, as
2 a policeman, if somebody told me that, I would put a lot of
3 stock in what they were probably telling me and query it
4 even with more of a feeling than I would if that statement
5 had not been made.

6 Q. But there would not be any excuse for not following up the
7 information that was given to you by Marshall on that
8 evening.

9 A. Oh, definitely not.

10 Q. Robbery or no robbery.

11 A. No, I'm just saying taking into account that they thought he
12 was a suspect very early on that had this happened with
13 those investigators that probably they would have put more
14 stock into what he was saying.

15 Q. You then go on to say, "I feel sure this investigation would
16 have led them to Ebsary." Again, why do you feel sure that
17 the investigation would have led them to Ebsary?

18 A. Well, two things, Chief MacIntyre knew the City of Sydney
19 and the people in it like the back of his hand. I don't think I
20 was ever with him that he couldn't...if you pointed somebody
21 out he could tell you who they were and who their mother
22 and father were and how long they had lived there.

23 Q. Uh-hum.

24 A. I had only seen Roy Ebsary once, as I said the other day, in a
25 bank lineup and when this investigation had come forward I

1 certainly remembered the character. He had also been
2 charged not more than...within the year previous with
3 carrying a concealed weapon, and his wife had called the
4 police, I believe, to alert them to the fact that he was going
5 down to stab someone. He lived within a few blocks of that
6 area. We had evidence from two MacNeils from Coxheath
7 who gave a fairly good description of him, that was never
8 followed up to my knowledge, at least they don't appear
9 anywhere in the court transcripts. And, that also goes along
10 with Marshall's initial information and also goes along with
11 Patricia Harriss' initial information. So...

12 Q. They should have found Ebsary anyway, shouldn't they?

13 A. I would have thought they...initially, yes, you would have
14 been putting up roadblocks looking for two priests from New
15 Brunswick. But as you...after those roadblocks didn't turn
16 anything up then you would concentrate on your knowledge
17 of the area and the people in it and your house-to-house
18 enquiries.

19 Q. I take it from what you said, Superintendent, though, that you
20 say "I feel sure this investigation would have led them to
21 Ebsary," because you, in turn, assume that Chief MacIntyre
22 and Urquhart knew who Roy Ebsary was?

23 A. Not just those two people.

24 Q. Well, them...let's just take them to start with.

25 A. Yes.

1 Q. That they would have known who he was or it would have
2 been common knowledge within the Sydney Police
3 Department as to who this guy was.

4 A. I would think so, if he was walking back and forth from his
5 employment at the hotel.

6 Q. Right. You would assume so.

7 A. Yes.

8 Q. Right. Okay. My question to you is if your assumption is
9 wrong.

10 A. Uh-hum.

11 Q. And you weren't able to check your assumption because you
12 weren't able to conduct interviews.

13 A. Right.

14 Q. Then does not some of the basis for your statement "I feel
15 sure this investigation would have led them to Ebsary," fall
16 out from underneath? If the assumption is wrong surely the
17 sureness of your conclusion is gone, as well, isn't it?

18 10: 16 a.m.

19 A. I'm talking about the investigation. I'm not talking about
20 Chief MacIntyre and Urquhart.

21 Q. All right, well, let's talk about the Sydney Police Department.

22 A. Well, the record speaks for itself, they knew who he was. He
23 had been charged by them. I know what you're getting at but
24 I can't really help you.

25 Q. No, I'm not trying to make you agree with me. I'm just trying

1 to suggest to you that if the...You were precluded from that,
2 from giving, from taking interviews.

3 A. Yes.

4 Q. So that when you say in here "I feel sure," that's based on a
5 perfectly reasonable assumption.

6 A. That's right.

7 Q. And if the assumption turns out to be wrong, then perhaps
8 the conclusion is questionable.

9 A. You also have to understand that the people in receipt of this
10 correspondence know my position and that I am not the
11 investigator.

12 Q. Sure.

13 A. And that I'm going by what I've been told or what I've read.

14 Q. On page 25 of the volume, the first full paragraph:

15

16 From all accounts, tremendous pressure
17 was being placed on the police and on the
18 Crown to bring this investigation to a
19 successful conclusion.

18

19 Again, the same question, what's the factual basis for that
20 statement?

20

21 A. This would be from talking to my investigators, the Chief of
22 Police, probably Ian MacNeil, the editor of the Cape Breton
23 Post, and other people that would probably have, I had talked
24 to in the community that I knew. I had been living there five
25 years at that time and I probably would have heard

25

1 statements to that effect.

2 Q. What discussion if any did you have with the Chief in which
3 he indicated to you that pressure was being placed on the
4 police to bring the investigation to a conclusion?

5 A. Oh, I can't recall any definite conversation with the Chief in
6 that regard.

7 Q. And you go on to say:

8
9 At times the Negro community was going
10 to take out their vengeance on the Indians
11 and the Indians were going to take out
12 their vengeance on the whites who were
13 lying against Marshall.

14 Again, where did you get that information from?

15 A. Well, here again, through talking to these people, I think that
16 what you had me read this morning about the Indians putting
17 up the road blocks on the entrance to the reserve is one
18 definite indication. The fact, I think there were some Indian
19 boys charged with intimidating Pratico some time during this
20 investigation or the trials. And from talking to people at the
21 time that in a small community like that, such a murder
22 would certainly stir up the whole feelings amongst the
23 people.

24 Q. Halfway through or two-thirds of the way through that
25 paragraph, you say:

1 I think this is a good example of a pitfall
2 that is open to all policemen during
3 investigations where the investigator
4 identifies a person he thinks is responsible
5 for the offence and then sets out to prove
6 his theory and gain evidence against that
7 person.

8 Now we've reference to that being called "tunnel vision" here
9 over the last few months. Do you think that's what happened
10 in this particular case?

11 A. I personally felt that that's what occurred.

12 Q. And if that assumption, that particular assumption is correct,
13 if Chief MacIntyre had made up his mind that Junior Marshall
14 was responsible, then the question of the robbery really
15 doesn't make any difference, does it, to that?

16 A. Well, it depends on when the statement of the robbery would
17 have been made. If it had been made initially and, because
18 Chief MacIntyre didn't come into the investigation until the
19 following morning, consequently if he had heard that was the
20 initial statement, I feel that he probably would have taken a
21 wider scope in his investigation.

22 Q. But once again, you can't be sure because you didn't have an
23 opportunity to question it.

24 A. No, nor can I be sure of this, other than from what I've read
25 and heard.

Q. Okay. Page 26, and this is a letter from Christen to Gale
enclosing your reports and the other reports that were

1 completed in response to the original request from Gale. Did
2 you talk to Christen about his letter?

3 A. Not that I recall.

4 Q. Did you see it at the time?

5 A. No, I wouldn't have.

6 Q. Would you have any understanding or any knowledge as to
7 why he would say in the third paragraph, about halfway
8 down:

9
10 While great pains were taken to question
11 MacNeil and Ebsary and have them submit
to a polygraph test...

12 Do you know what he would have been talking about there?

13 "While great pains were taken..."

14 A. No, I guess he'll have to answer that one.

15 Q. Yes. And, similarly, in the last paragraph on page two of his
16 letter, on page 27, halfway through, he says:

17
18 No doubt the investigators at the time
19 truly believe Marshall to be responsible
20 and in their zealously to gather all the
evidence available placed too much
reliance...

21 Did you have any discussions with him about that conclusion?

22 A. No, but probably on an ongoing basis, he may have drawn
23 that from reading our reports and conversations we had on an
24 ongoing basis.

25 Q. Did you yourself ever have any discussions with anybody in

1 the Attorney General's Department other than the Crown
2 Prosecutor, Frank Edwards, about the information that you
3 did have that wasn't in writing concerning the activities of the
4 Sydney Police Department?

5 A. No, I did not.

6 Q. So when you said to me a few minutes ago that you were
7 certain that people in the Attorney General's Department
8 would have known about that, other than your direct
9 conversations with Edwards, that's just an assumption on
10 your part.

11 A. And my conversations with Supt. Christen.

12 Q. Sure.

13 A. From the other side, yes.

14 Q. And was he indicating to you that he had been telling the
15 people in the Attorney General's Department these things?

16 A. Not those particularly but from what we were doing and
17 what we had come across in our investigation.

18 Q. I just want to draw your attention to page 49 of Volume 20.
19 There's a, it seems to be a note from MacGibbon to the
20 Commissioner in Ottawa in September...Sorry, in October of
21 1984 when he's referring to the matters that we've just been
22 talking about six or seven lines down, it says:

23
24 Last paragraph of the report deals with the
25 decision to delay interviews of members of
the Sydney Police Department.

1 And that's the "hold in abeyance" note.

2 A. Yes.

3 Q. And then it says:

4
5 This matter was resolved by further
6 investigation into the procedures and
7 practices of the Sydney Police Department
8 and reported in May, 1983.

9 Here's MacGibbon advising the Commissioner in Ottawa that
10 there had been further investigation. There was no further
11 investigation.

12 A. No, that's incorrect.

13 Q. On page 40 of that same volume, there's a note from yourself
14 of November 15, 1983.

15 In view of the recent developments in this
16 case, I intend on sending an investigator to
17 obtain statements.

18 Can you tell us what those "recent developments" were?

19 A. After our April 16th meeting with Frank Edwards and Harry
20 Wheaton in 1982, where we had wondered whether we had
21 been set up by Chief MacIntyre in the way he presented the
22 facts to us, I wished at that time to...had interviewed Supt.
23 Marshall and ex-Corporal Smith about what they were asked
24 to do, about what the conversation was with the Chief and the
25 Crown Prosecutor at that time to see whether or not they had
been given the same kind of an introduction that we had

1 been. Supt. Christen at the time said, "No, I don't think we
2 should bother with that at this time."

3 Q. Did he say why?

4 A. I would imagine it was just the same reason that the A.G.'s
5 Department didn't want us to pursue the other. There was
6 just so much going on that "hold it in abeyance, one thing at
7 at time." And so at this time, everything else was fairly well
8 cleared up and it was still bothering me about this aspect and
9 so we had a new CIB Officer at that time, I believe,
10 MacGibbon, and I wrote in and said we were going to do it
11 unless otherwise instructed because I thought that it should
12 be done.

13 Q. Was the recent development the fact that Ebsary had just
14 been convicted?

15 A. It may have been. I don't recall what the recent development
16 was.

17 Q. What was it that was still bothering you in November of
18 1983?

19 A. Well, to me, if they had been charged with the responsibility
20 of reinvestigating the Marshall case, that's Supt. Marshall, I
21 didn't feel from his report that he had done so and I couldn't
22 understand it. But there was no direction on the file other
23 than his report. So I wanted to clear that up and because of
24 the fact that Frank Edwards and I had that uneasy feeling
25 about our meeting with the Chief that day, I thought, well,

1 perhaps Supt. Marshall had ran into the same thing and had
2 been sort of reassured that there was nothing to it, you know,
3 there's no sense in looking at this. We don't feel that there's
4 anything to it and this MacNeil is not of a high IQ and we had
5 the right fellow in jail and he knew both these individuals,
6 the Crown Prosecutor and Chief MacIntyre, and I just
7 wondered whether or not that's what really occurred.

8 Q. Did you ever get a report or did you ever get any information
9 back which would either confirm or invalidate that concern
10 that you had that Marshall, Al Marshall had also been set up?

11 A. Well, we did go and talk to Smith and, of course, he just did
12 the polygraph, I believe there's statements of these people in
13 some of the volumes.

14 Q. Then there's a report on page 44 dealing with a visit to see Al
15 Marshall.

16 A. Yes, he did not wish to give a statement and so, consequently,
17 I requested Cpl. Carroll to, from his interview, to put together
18 a resumé of what he felt from his notes that Marshall felt,
19 which I reported here. I would have to read it again to see,
20 you know, exactly what is said.

21 Q. Well, just take a second and read it because I just want to ask
22 you whether or not you did, in fact, receive any information
23 as to whether or not Marshall, Al Marshall, thought that he
24 had been.

25 A. Okay. I had a feeling in refreshing my memory from these

1 notes that he certainly felt comfortable with what he had
2 been told by the Crown Prosecutor and Chief MacIntyre and
3 if he had had a gut feeling something was wrong with the
4 trial or the investigation, he would have gone further. So I
5 felt that he must have felt reassured by the polygraph test
6 and his conversation with those two individuals.

7 Q. Did that satisfy you, because didn't you feel relatively
8 satisfied yourself on February 3rd when you had your first
9 meeting with Chief MacIntyre?

10 A. Oh, yes. Yes, I sure did.

11 Q. And then seeing the note here that gives you the impression
12 that Al Marshall also felt fairly comfortable.

13 A. Uh-huh.

14 Q. Did it not occur to you that perhaps you ought to check
15 further and see whether, in fact, it was?

16 A. Well, I had feelings on it, certainly. I didn't know why Supt.
17 Marshall wouldn't give us a statement at the time and we
18 sent it forward and we got a memo back from the CIBO to not
19 inquire further into that part of the investigation.

20 Q. Page 48.

21 A. Yes.

22 Q.

23 No further action should be taken and you
24 should consider the matter closed at this
25 time.

When he says "the matter," that would be the...What would

1 that be?

2 A. That would be the matter of this looking into Marshall and
3 Smith and whether or not, you know, what their feelings
4 were on talking to MacIntyre and the direction they had.

5 Q. What did you feel about that, that no further action was going
6 to be taken at that time?

7 A. Well, I guess in light of the facts that we already had the two
8 statements, if that was his opinion, and he was the Director of
9 Criminal for our force in the division, if he felt that way... In
10 fact, I believe he also talked to me on the phone about it,
11 about the gratuitous remarks that the investigator had put in,
12 that we should go by the facts and not be giving our opinion
13 on things so much.

14 Q. If you don't give your opinions on things and you go only by
15 the facts, how are you ever in a position to make
16 recommendations when matters seem to be a little
17 questionable?

18 A. Well, I agree with you, that you have to give opinions at
19 certain stages and it was my opinion that this investigation
20 should be done and we did that stage of it and we were told
21 not to go any further, and we didn't.

22 Q. Subsequent to this note, Superintendent, in January of '84, did
23 you have any further involvement yourself in the Donald
24 Marshall matter?

25 A. No, I never went to any of the trials or the appeal or

1 anything.

2 Q. Did you have any further involvement with respect to Al
3 Marshall?

4 A. No, I never spoke to Superintendent Marshall at all.

5 Q. Did you attend any regimental dinners?

6 A. Do I?

7 Q. Did you attend a particular regimental dinner at which
8 Attorney General Giffin was present?

9 A. No, I did not. I was not stationed in Halifax Subdivision.

10 Q. You indicated to us at the beginning of your testimony that
11 you had some involvement with MCIS.

12 A. Oh, yes.

13 Q. What was that?

14 A. I initially started that section. I was sent from Ottawa to start
15 it and it was a national police service which means that it was
16 not only for the Mounted Police, but it was also for any other
17 law enforcement agency that wished to use its services.

18 Q. Now that I found out that you were involved in that, I just
19 want to ask you one question. I'm going to show you a telex
20 which has been oftentimes referred to in the course of these
21 proceedings, which is the May 30th telex, that I believe you
22 indicated a little while ago that you would have known about.
23 I'm going to have to lean over you a little bit here.

24 A. Okay.

25 Q. Which sometimes in these proceedings is dangerous, but...

1 Would you have expected this document to have been
2 responded to?

3 A. Yes, I believe at that time we had 24-hour service and I
4 expect that it would have been responded to immediately by
5 the Crime Index Section.

6 Q. Are you able to tell us who at that time would have been the
7 recipient of this sort of information at the Crime Index
8 System in Halifax?

9 A. It would have been one of our civilian members or one of our
10 regular members that worked. This message would have
11 come into the Message Centre upstairs. Because it came from
12 one of our detachments, the copy you're seeing now would
13 have went into the CIB readers and would have been placed
14 on a file there. The other copy would have been sent down to
15 the Crime Index Section for immediate response and they
16 would have communicated direct with either the Sydney City
17 Police, Sydney Detachment, either by phone and by
18 correspondence.

19 Q. Looking at the information that's provided here on page 90:
20 "He and deceased were assaulted by an unknown male, 5'8
21 tall, gray-haired..." Et cetera, et cetera. What facility would
22 there have been in MCIS to be able to track down that
23 description?

24 A. We have a modus operandi unit for murders, rapes, robberies
25 that was set up by age and height as the two main criterias.

1 And what we would do, we were like a criminal repository, a
2 criminal information for the four Atlantic provinces, and we
3 would correlate and disseminate that and we would use the
4 information obtained from the police department in crime
5 reports on the back of fingerprint forms, photographs, and
6 we would add people to this modus operandi unit as the
7 information came in. So if somebody had an unsolved crime,
8 we could go there and come up with a suspect.

9 Q. If there's a mistake in one of those two key identifying
10 factors, height...What was the other one? Age?

11 A. Age.

12 Q. Would that thrown the whole system askew?

13 A. No.

14 Q. No?

15 A. The reason was that most witnesses are off in their
16 descriptions and we would normally search, we wouldn't have
17 that many cards, by the way, at that, maybe five to six inches,
18 and what they would do is they would search maybe four or
19 five inches each way in the height and also five to ten years
20 each way...

21 Q. On the age?

22 A. On the age.

23 Q. And the information you had at this point in time in '71,
24 would that have been in order for you to have any
25 information about, as it turned out, Roy Ebsary, would that

1 have had to have been fed into you from the local police
2 department?

3 A. Yes, it would have had to have been. If we had got
4 fingerprints, if it had been an indictable offence and he had
5 been fingerprinted, then we would have, if they had put the
6 modus operandi on the back of the fingerprint form, we
7 would have had it, or if they had sent in a report, we would
8 have had it.

9 Q. So if they had sent in a report indicating that he, Ebsary had
10 been convicted in April of 1970 of an offence involving
11 possession of a concealed weapon, indeed a 12-inch butcher
12 knife, that would have turned up if it had been fed into the
13 MCIS system.

14 A. It would probably have been in under a violent criminal type
15 capable of murder.

16 Q. Did you read the reference decision after it was rendered by
17 the Appeal Court?

18 A. No, I did not.

19 MR. SPICER

20 Thank you very much.

21
22 EXAMINATION BY MR. RUBY

23
24 Q. The last thing you said virtually was that one of the
25 categories of the record system was violent person capable

1 of murder.

2 A. Yes.

3 Q. It is, I take it, the common police experience that, to the
4 extent that you've got a history for a violent crime, you're
5 amongst the first category to look to as being likely to have
6 committed a crime like murder?

7 A. Yes.

8 Q. Robbery is a violent crime.

9 A. Yes.

10 Q. So it makes sense then that if the investigators had known
11 that Junior Marshall had committed a robbery that night, he
12 would have been considered more likely, not less likely, to
13 have committed a murder.

14 A. I suppose you could look at that theory.

15 Q. I'm taking your statements and they seem to lead to that
16 conclusion, do you agree?

17 A. Well, not if you take it into the context that I had set out, that
18 had he stated that he was in the act of robbing somebody for a
19 few dollars and that that person had stabbed his friend and
20 wounded himself, I felt that the police would at that stage
21 had put more confidence in his statement, because he was
22 actually admitting to a very serious offence, which he could
23 go to jail for. And, at that time, Seale had been assaulted with
24 a knife. He was still alive.

25 Q. But the issue then becomes who did the assaulting? This

1 fellow who is now saying, yes, I'm a robber, who could well
2 be covering up for his own murder.

3 A. Right.

4 Q. Since he's at the scene. There's no evidence anyone else was
5 at the scene. Or the nameless person he now says, this
6 robber, was there. Isn't it less credible?

7 A. Well, all robberies are not violent, of course.

8 Q. Quite.

9 A. And I would suppose my feelings were that with the
10 circumstances I knew that and the investigators and their
11 knowledge of Junior at the time where he had been charged
12 seven times in the preceding year, that they would have put
13 more stock in his story. That was my feeling when I said
14 that.

15 Q. You'll agree with me that that's speculative.

16 A. Yes.

17 Q. And that it goes against the ordinary police assumption that
18 one who has committed a violent crime is more likely, not less
19 likely, to commit a further violent crime.

20 A. Not under the circumstances we're looking, I wouldn't agree
21 with that.

22 Q. You think that these investigators, in particular, would have
23 accepted the account of the two men and what happened
24 more readily if they had known there was a robbery going on.

25 A. It certainly would have fit in better with the November 15th

1 revelation where Ebsary admitted that he was confronted by
2 two people in the park that night who were trying to roll him
3 and rob him. That would have put a lot more credence at that
4 time into what Marshall had said.

5 Q. That's after the fact, isn't it?

6 A. It's after the fact, but it supports my theory.

7 Q. Well, isn't it the only part that has support that once Ebsary
8 says there was a robbery, then the fact that Marshall says it's
9 a robbery becomes more credible in terms of the rest of what
10 he would say.

11 A. Yes.

12 Q. But it doesn't follow, without Ebsary's story, of his initial
13 account where there is no suggestion of any robbery, that that
14 is more... less credible.

15 A. No, because we have a youth here who is saying, admitting to
16 an offence in his first story. It's very believable to me,
17 admitting that he was committing a criminal act. He didn't
18 have to tell me that. If he does, I feel that goes a long ways
19 to his credibility.

20 Q. Why would you tend to believe a man who had committed a
21 serious crime less, in his account of what happened, than a
22 man who had? Isn't that the common experience reversed?

23 A. I didn't say I would consider it less. I said it would make it
24 more credible. I would certainly take what he had said and
25 investigated it fully. It would just...

1 Q. I understand that.

2 A. It would just add to his credibility to me.

3 Q. You know the common experience of the law as such that we
4 don't allow a jury to find out about a criminal record of an
5 accused person as part of the Crown's case because of the
6 overwhelming prejudice the experience of the law indicates
7 that an ordinary jury would attach to that. You're aware of
8 that practice?

9 A. Yes, although similar fact evidence is sometimes given.

10 Q. With exceptions, occasionally.

11 A. Yes.

12 Q. But the general rule is we don't allow it because of the
13 overwhelming prejudice, correct?

14 A. Right. That's correct.

15 Q. And yet you think that this particular police officer would
16 have had the reverse reaction.

17 A. That was my opinion, sir, that's all I can give.

18 Q. Is there anything in particular about Sgt. MacIntyre that
19 leads you to that conclusion, that he would have this reaction?

20 A. No, just his knowledge of Junior Marshall and the offences
21 that he had been charged with and the fact that he was a
22 suspect with no tangible evidence that I could see until the
23 30th and yet he was a suspect for the offence right away.

24 Q. Doesn't that really argue in favour of the position I'm putting
25 to you that if there was no evidence against him and still they

1 leapt to the conclusion that he was guilty of murder, wouldn't
2 it have been worse for him if they had said, "Ah-ha, and he
3 was robbing someone that night," doesn't that follow?

4 A. Not under the circumstances, no, I can't agree with you.

5 Q. Can you explain what's peculiar about these circumstances so
6 that what would I take it you agree would obtain in most
7 circumstances doesn't obtain here?

8 A. Well, because we had a story that, of two fictitious men, as far
9 as the police were concerned, that didn't exist.

10 Q. Right.

11 A. And the...

12 Q. Just pause for a moment there, I'll take them one at a time
13 with you. Why do the men become less fictitious because the
14 robber is telling the story?

15 A. Well, because of the act that they were in at the time. They
16 were talking to two men, was his story, in the park and that
17 one of them stabbed his cohort and also wounded him. What
18 I'm saying is that if he had told the story that they were in
19 the process of rolling these two individuals that it may have
20 been more believable to the investigators who knew Junior
21 Marshall at that time.

22 10:46 a.m. *

23 A. Because apparently from suspecting him of murder it would
24 have been more credible to them of what he was up and
25 doing that night in the park, rather than just up talking to two

1 people that looked like priests.

2 Q. You mentioned a criminal record on behalf of Junior Marshall,
3 are you familiar with his record? You'll see it at Volume 16,
4 page 106. I'd suggest you take a look at it. This is not the
5 record of someone whom you would, as of that date, have
6 taken of somebody that was likely to commit a murder.

7 A. No, not on the strength of that record, no.

8 Q. The Liquor Control Act for the most part, correct?

9 A. Right, yes.

10 Q. So, the record isn't an important factor.

11 A. No, just the knowledge of the police to the individual that's
12 all.

13 Q. And that knowledge would not include any serious allegations
14 of wrongdoing.

15 A. No.

16 Q. And yet, you still say that when you take this individual
17 about who nothing serious is known in terms of wrongdoing
18 and you turn him into a robber, it becomes more credible not
19 less credible, a criminal.

20 A. That's my feeling, yes.

21 Q. A serious criminal.

22 A. Yes.

23 Q. Do you usually believe serious criminals more readily than
24 you do people who don't have criminal records of serious
25 crime?

- 1 A. No.
- 2 Q. Didn't think so.
- 3 A. Not necessarily.
- 4 Q. But you do in this circumstance?
- 5 A. Yes, under the circumstances I set out, yes.
- 6 Q. Can I suggest that what's happening here is that you're taking
7 the hindsight information, the later Ebsary information,
8 MacNeil information, and you're saying, "Ah ha, it jives with
9 that and therefore it makes sense," and that's really all you're
10 saying?
- 11 A. As I say hindsight is a great thing, and I...I've sat back and
12 listened to the stories, read the statements, listened to the
13 transcript and came to that conclusion.
- 14 Q. My question is would you agree with me that what's really
15 happening in your evidence here is that you cannot get it out
16 of your mind for the moment the fact that the later
17 information jived with the robbery theory and so you now
18 think it would be better if he had said it in the beginning
19 because it jived with what came later, and that's really all
20 that you're saying and all that's going on.
- 21 A. No.
- 22 Q. No. I tried. Time to sit down now. Do you know of any other
23 cases involving public officials, or friends of public officials, or
24 people who are well known where the Attorney General's
25 office stopped an investigation or prevented the prosecution

1 from going ahead?

2 MR. SAUNDERS

3 My Lord, I object to the question. I would anticipate that
4 Commission counsel would be objecting as well. I don't think it's
5 proper for this witness at this time, before this hearing, presently
6 constituted, to be asked that question. He's here to speak to his
7 knowledge about the Donald Marshall case. I say with respect
8 that he's not here to talk about knowledge that he may or may not
9 have about other cases which may involved people who are not
10 before this Commission and who may be interested and who may
11 be applying for standing if named.

12 MR. SPICER

13 We would agree with that position, My Lord. If it turns out
14 that Superintendent Scott has knowledge of other cases then that
15 will be dealt with at another time. But we would agree with the
16 position of the A.G.'s Department, it's not to be dealt with now.

17 MR. RUBY

18 If I might just state my position.

19 MR. CHAIRMAN

20 If the answer to the question put to...

21 MR. RUBY

22 That's my position, you've got it.

23 MR. CHAIRMAN

24 ...this witness is no, then that's the end of it.

25

1 MR. RUBY

2 Then there's no reason to bring him back later on.

3 MR. CHAIRMAN

4 If the answer is "yes".

5 MR. RUBY

6 Then there is reason to bring him in later.

7 MR. CHAIRMAN

8 Then there would be no further questions allowed at this
9 time.

10 MR. RUBY

11 On that subject matter.

12 MR. CHAIRMAN

13 On that subject matter.

14 MR. RUBY

15 I had only asked the one question. My friend is a little
16 premature.

17 MR. SAUNDERS

18 Well, I don't think it's premature. I'd rather state the
19 objection before the answer is given, My Lord, otherwise we run
20 the difficulty we did two weeks ago. My friend wasn't here for
21 that.

22 MR. RUBY

23 No, I thought...I thought this question was an exception. I
24 want to find out if he has any such information and that's all I
25 want to find out at the moment.

1 MR. CHAIRMAN

2 Yes, that question is proper.

3 MR. RUBY

4 All right.

5 Q. Let me ask this question, do you want me to repeat it?

6 A. Yes, please.

7 Q. Sure. Do you know of any other cases involving public
8 officials or friends of public officials or well-known people
9 where the Attorney General's office stopped an investigation
10 or prevented a prosecution?

11 A. No, I do not.

12 Q. Thank-you. The document you've been referred to, Exhibit
13 116, have you got that in front of you?

14 A. Yes.

15 Q. If you look at the left-hand column of that, halfway down,
16 you'll see a quote from the then Attorney General in a
17 paragraph starting, "The RCMP are always at liberty as an
18 investigative force to pursue any matter they feel appropriate
19 to investigate."

20 A. Yes.

21 Q. Now, I take it that's not so because your jurisdiction was
22 territorially limited?

23 A. Yes.

24 Q. Then he goes on, "Reopening the file, " and the file, I take it,
25 from the first paragraph is the investigation into the Sydney

1 Police Department role in the wrongful conviction of Donald
2 Marshall. "Reopening the file would require new evidence, he
3 added." I suggest to you that it wasn't new evidence that was
4 required, but a reversal of the Attorney General's position
5 that the file be held in abeyance, is that correct?

6 A. That's what we were waiting for, that direction, yes.

7 Q. It's not true that you required any new evidence.

8 A. No.

9 Q. The only thing stopping you was the Attorney General's
10 Department.

11 A. Yes.

12 Q. At page 126.

13 A. Which volume?

14 Q. I'll check that in just a moment. It's Volume 19, page 126.
15 The last entry on that page, if I read it correctly, you've been
16 referred to this document earlier. Have you got it there now?

17 A. Yes, I have.

18 Q. Thank-you, sir. "Spoke with A/CIBO, our file to be concluded
19 unless further investigation requested by Crown." Which file
20 was that?

21 A. I would take it that the file into the Donald Marshall case and
22 you have to read the whole thing in context, I think, on that
23 page. It was a direction we were asking for to look into the
24 conduct of the Sydney City Police Department. So, I would
25 say it was a file that hadn't been opened really.

1 Q. And, if the original comment about it...the file being held in
2 abeyance was open to more than one construction or to
3 confusion, does not this make it abundantly clear what the
4 Attorney General's wishes were?

5 A. Yes, although I was never made aware of this piece of
6 correspondence. I had never saw it until I was looking
7 through these particular documents.

8 Q. And the language used, would you agree with me, "our file to
9 be concluded unless further investigation requested by
10 Crown" does not indicate that the abeyance is to be
11 temporary, but rather it's to be permanent?

12 A. Well, until they decided otherwise.

13 Q. That's right. The suggestion has been made, and I think you
14 accepted it, that it made some sense not to investigate the
15 Sydney Police Department when you wanted to because,
16 among other things, as I recollect, the Marshall appeal was
17 still on, is that correct?

18 A. Yes, and the Ebsary cases were still before the courts or going
19 to the courts.

20 Q. At that point, if I'm correct, Ebsary had not yet been charged.

21 A. You're probably correct.

22 Q. The Marshall reference didn't require any great amount of
23 police work, I take it, the evidence being concluded.

24 A. Right.

25 Q. Gathered.

1 A. Right.

2 Q. I suppose you'd need somebody to liaise with the Crown
3 attorney in presenting that evidence.

4 A. Uh-hum.

5 Q. Yes.

6 A. Yes.

7 Q. And yet it seems that you say it made sense not to go ahead
8 at that time with the Sydney Police investigation. Was there
9 a shortage of manpower in Halifax and Nova Scotia?

10 A. No, but you have to realize that it wasn't necessarily going to
11 be our Force doing the investigation.

12 Q. Who would do it?

13 A. It could have been the Police Commission investigators.

14 Q. Who had suggested that?

15 A. Well, this is...this is what I assumed.

16 Q. Do you even know if the Sydney Police Commission has
17 investigated it?

18 A. Sure. The Sydney Police Commission, did you say?

19 Q. Yeah.

20 A. No, I said the Nova Scotia Police Commission.

21 Q. Was there a Nova Scotia Police Commission at that time?

22 A. I believe there was.

23 Q. They might have done it.

24 A. Well, I believe they did another case at Kentville.

25 Q. Uh-hum. I interrupted you, go ahead.

1 A. Well, there was...there was that option. There was an option
2 where he could have an inquiry under the Nova Scotia Police
3 Act and look into it. He could direct, if he so wished, I would
4 imagine have another municipal police department
5 investigate it, other than our Force, if he so desired, or he
6 could come to our Force and have some independent
7 investigator from our headquarters do the investigation
8 rather than our subdivision.

9 Q. Isn't the latter the only reasonable alternative for a criminal
10 investigation is what you were proposing?

11 A. Well, for a criminal investigation, yes, but I don't think that
12 had to be the only ...only way of getting at the details. This
13 Inquiry I think speaks to that.

14 Q. Quite agree. So, you're saying it would have made sense if
15 instead of having you do a criminal investigation he had
16 called a Royal Commission or asked the Nova Scotia Police
17 Commission to do it, right?

18 A. Right.

19 Q. But he didn't do any of those things, did he?

20 A. No, because...but...the reason that I was saying that because
21 this other still had to come before the courts and he may not
22 have wanted to do it at that time when there was still these
23 same witnesses were going to appear before the Courts on
24 these trials and the reference.

25 Q. Wasn't the principal interviewing to be that of MacIntyre and

1 Urquhart?

2 A. Oh, yes, but a lot more in my judgment, the witnesses would
3 have to be questioned on particular aspects, not on the '71
4 testimony so much, but what occurred to make them change
5 their mind and delve into that which is a lot different than
6 the statements that were taken.

7 Q. And you had the manpower to do that.

8 A. Oh, yes.

9 Q. And it certainly made sense that someone should do that job.

10 A. I believe so.

11 Q. And not to be held in abeyance forever as it turned out.

12 A. No.

13 MR. SAUNDERS

14 I object to that, My Lords, not to be held in abeyance forever.
15 The record is clear and Officer Wheaton testified last day that he
16 expected the Ebsary trials to run their course, as well, and they
17 did run their course and leave to appeal at the Supreme Court of
18 Canada was declined, and that's on the record, in September of
19 '86. This Commission of Inquiry was struck in October, 1986, and
20 that was the evidence of Staff Sergeant Wheaton and I understand
21 it to be the evidence of this witness as well. For my friend to say
22 that it was "called off forever" is not correct.

23 MR. CHAIRMAN

24 Well, we're here. I think that speaks for itself. There are
25 days when I'm not sure, but I'm sure today.

1 MR. RUBY

2 Q. It was held in abeyance day after day, yes.

3 A. Yes.

4 Q. Week after week.

5 A. Yes.

6 Q. Month after month.

7 A. Yes.

8 Q. Year after year.

9 A. Well, for a number of years, yes.

10 Q. A number of years now, and it could be resurrected
11 tomorrow, right?

12 A. Yes.

13 Q. If only the Attorney General would say, "Go, do an
14 investigation."

15 A. Yes.

16 Q. Has he said that?

17 A. I wouldn't know because I'm not stationed there anymore.

18 Q. All right. MacIntyre. The last area I want to ask you about.

19 A. Yes.

20 Q. You were, I thought, very charitable to him, you said he
21 didn't, in my view, deliberately set out to flame...frame
22 anyone, and then your language was peculiar, and I'll put it
23 back to you and you tell me if I've got it correct. "He got out
24 of the statements what he wanted." That's what you said, I
25 think.

1 A. If I said that it certainly isn't what I feel. He more or less got
2 in his statements what he wanted.

3 Q. He got them to say what he wanted them to say, isn't that it?

4 A. He believed that they were lying when they told their first
5 stories and he eventually got the evidence he needed and that
6 it went along with his theory, yes.

7 Q. He got them to say what he wanted them to say, isn't that
8 right?

9 A. Well, he kept taking statements until the statements ended
10 up that supported his theory, yes.

11 Q. Which is what he wanted them to say, correct?

12 A. I think I'd be going a little far to make that statement.

13 Q. Well, you're willing to tell me quite assertively about his state
14 of mind when you say he didn't deliberately intend to frame
15 someone.

16 A. Uh-hum.

17 Q. So, you must have some real insight into his state of mind.
18 Why all of a sudden when it comes to whether he wanted
19 those statements to read that way you get shy and nervous
20 about telling me what's in his state of mind?

21 A. Well, it's not so much his state of mind as those of the
22 witnesses that gave the statement, what they felt as to why
23 they give the statements they did. I have no idea whether
24 they were coached, whether they were intimidated or
25 whether they just listened and they wanted to cooperate with

1 him.

2 Q. He wanted them to agree with his theory of the case, fair
3 enough?

4 A. I believe so.

5 Q. And from what you've read of the files, he kept on
6 questioning them until they did, fair enough?

7 A. Yes.

8 Q. Now, at what point in time, in your experience as a police
9 officer, do you know that you're fabricating a case, that this is
10 just not real?

11 11:02 a.m. *

12 A. Well, I would hope that if the policeman doesn't recognize it
13 that the Crown Prosecutor would when you sit down and
14 discuss it with him. I believe that a policeman could probably
15 get so involved in his own theories and his own investigation
16 and as people cooperated with him and told him what he
17 wanted to hear that he could start believing it and it would,
18 hopefully, through the Crown going over the witnesses'
19 testimony and the statements taken and during the trial that
20 the defence and the Judge that these safeguards would show
21 up these inconsistencies or whatever.

22 Q. Would it not take an alarmingly high degree of distraction or
23 singlemindedness, as the case may be, not to notice by the
24 time you got to the third witness who was changing their
25 story, this is fabrication, this is not gathering evidence? Given

1 years of experience as a police officer, not a novice, not a
2 rookie.

3 A. I would hope that people would. I can't say for sure that
4 everybody would.

5 Q. It's likely that anybody would by the third time, isn't it?

6 A. I would hope they would, yes.

7 Q. You would expect they would.

8 A. I...I don't think I can answer that.

9 Q. You're just unwilling to believe that a police officer would
10 deliberately fabricate a case, aren't you?

11 A. No, I believe that that has probably occurred.

12 MR. RUBY

13 Thank-you.

14 MR. CHAIRMAN

15 I take it you're not going to finish in five minutes, Mr.
16 Pugsley.

17 MR. PUGSLEY

18 No, I'll be a little longer than that, My Lord, thank-you.

19 MR. CHAIRMAN

20 So, we'll take a short break.

21 BREAK - 11:05 a.m.

22 INQUIRY RESUMES - 11:24 a.m.*

23 MR. CHAIRMAN

24 Mr. Pugsley.

25

1 MR. PUGSLEY

2 Thank-you, My Lord.

3 EXAMINATION BY MR. PUGSLEY

4 Q. Superintendent Carroll, would you agree that the most
5 significant point in the reinvestigation, the turning point of
6 the reinvestigation, was the taking of the first statement from
7 Maynard Chant on February 16th?

8 A. Yes, that's correct. It's Superintendent Scott, sir.

9 Q. I'm sorry, did I say Superintendent Carroll?

10 A. Yes.

11 Q. I beg your pardon, I'm sorry. And from that point the
12 investigation...the investigators looked at the matter in a new
13 light.

14 A. Yes.

15 Q. Now, at that point in time my recollection is that there had
16 only been three interviews conducted by both Wheaton and
17 Carroll collectively. Sarson in Pictou on or about February 8th,
18 I think. Jimmy MacNeil shortly thereafter. Mitchell Bayne
19 Sarson was on the 9th, sorry. Jimmy MacNeil was on the 8th
20 and then Maynard Chant on the 16th.

21 A. I believe they spoke to the Sergeant at Pictou Detachment as
22 well.

23 Q. I'm sorry. When I say interviews I mean statements taken.
24 There was only...I think there were other interviews that
25 Staff Sergeant Wheaton spoke about but there were only

1 three statements taken, Sarson, Jimmy MacNeil and Maynard
2 Chant.

3 A. You could be right, yes.

4 Q. I believe that I'm accurate in that regard. Now, as far as
5 Jimmy MacNeil was concerned Al Marshall had seen him in
6 1971 and had comments to make such as , and this is found at
7 Volume 18, page 8, "We interviewed MacNeil and it was
8 obvious by his demeanour and speech that he has subnormal
9 intelligence and is slightly mental." And then on page 10 in
10 his conclusions, in paragraph 8, "Post examination questioning
11 leaves no doubt in my mind MacNeil is not telling the truth
12 when he said Ebsary stabbed Seale." So we have that
13 background from an experienced investigator on your Force.

14 A. Um.

15 Q. We have the conclusion reached by both Staff Sergeant
16 Wheaton and Carroll that Sarson was not a strong witness,
17 and indeed there was something else that they said in a later
18 report about reliability of Sarson. So, we really come down to
19 one critical person, and that was Maynard Chant himself.
20 And, that was very, very early in this reinvestigation. And,
21 the statement of Maynard Chant, I suggest, was significant
22 because he said two things. He said he lied. He lied in his
23 statements and he lied when he gave evidence in 1971. That
24 was obviously significant. And, although it's not well set out
25 in the first statement taken from Maynard Chant on the 16th,

1 there's certainly a suggestion pervading Wheaton and
2 Carroll's evidence that he lied because of pressure from the
3 Sydney City Police, and in particular MacIntyre. Am I correct
4 in...so far?

5 A. I believe so.

6 Q. Yes. Now, although there is...you will recall and I'm sure you
7 do, that there were two statements taken from Chant.

8 A. Yes.

9 Q. One on the 30th of May, the Sunday afternoon, and the other
10 one June 4 at Louisbourg.

11 A. Right.

12 Q. And although there is a little difficulty in some of the
13 evidence about whether or not there was any police pressure
14 on the first statement it's my reading and my listening to the
15 evidence that by in large everyone agrees that if there was
16 police...much...if there was police pressure on the first
17 occasion, there wasn't much, and that the real pressure came
18 on the Louisbourg statement. That was when the heat was
19 turned on.

20 A. I can't really say that because we don't know what happened
21 when he was in control of the police from the time he left his
22 home in Louisbourg until he come back some five, six hours
23 later.

24 Q. Yes.

25 A. So, I don't know what kind of pressure or that because that

1 was never looked into. But his mother said that the police
2 when they came to pick him up that day said that he had lied.
3 I could not find any evidence that he lied up until that time.

4 Q. Up until what time?

5 A. The 30th of February.

6 Q. Of...

7 A. Or excuse me.

8 Q. The 30th of May.

9 A. The 30th of May, yes.

10 Q. But he did, in fact...it's clear that he did lie in the statement
11 that he gave to the police on May 30th.

12 A. Some five hours later, yes, after...

13 Q. Yes.

14 A. ...the police telling his mother that he was lying. Yes.

15 Q. But there's no...there's no doubt at all if one examines the
16 statement of Maynard Chant that he gave on May 30th that
17 he was lying.

18 A. Yes, uh-hum.

19 Q. I am correct in that assumption.

20 A. You are.

21 Q. Yes. Well if you look at Volume 34, page 81, which is the
22 second statement taken from Chant on the 20th of April.

23 A. Yes.

24 Q. He doesn't really differentiate between the two statements
25 but if you look at the paragraph two-thirds of the way down

1 the page, he says,

2
3 Two policemen came to my home on
4 Sunday. I gave a statement to them in
5 their car, basically what Marshall had told
6 me that night in the park and in the car
7 going to see Seale. There was no pressure
8 from the police at that time. I did not tell
9 them my information came from Marshall.

10 And then he goes on to say, "About a week later I went to
11 Louisbourg," and so I take it from that comment by Chant in
12 that statement that there was not...really not much evidence
13 of police pressure on the first occasion.

14 A. Well, I think he has his facts mixed up because I don't think
15 the statement was taken in the police car.

16 Q. No.

17 A. Because of the time factors between the statements on the
18 30th. We only have two minutes or three minutes between
19 the end of Marshall's statement and the start of Chant's.

20 Q. Yes.

21 A. Unless they had Marshall and Chant in the police car together.
22 I would imagine, from what I can tell of reading it and
23 looking over the evidence and that, it occurred at the police
24 station.

25 Q. Yes, I think it's clear that it was taken there. But I suggest to
you that the critical occasion would appear to have been the
Louisbourg Town Hall statement where pressure was exerted.

1 A. I believe he felt more pressure. Yes.

2 Q. Yes. And is that not the impression you received from
3 Wheaton and Carroll as well as a consequence of their
4 interviews with him.

5 A. Yes.

6 Q. Okay. So, that what occurred at the second statement taking
7 at Louisbourg is, I suggest, very critical because if there was
8 no pressure from MacIntyre at Louisbourg on that second
9 occasion, then it cast doubt on Chant's reliability and it also
10 puts a different light on MacIntyre's participation in any
11 wrongdoing. Would you agree with that?

12 11:30 a.m. *

13 A. Well, we're getting into the mind of Chant now and I don't
14 think I can do that.

15 Q. All right. But in the event that there was no pressure on
16 Chant on that second statement taking then it does cast doubt
17 on the reliability of Chant as to what he has said.

18 A. Yes, if that could be proved, yes.

19 Q. Yes. And it also cast doubt overall on the wrongdoing, if you
20 like, of MacIntyre as far as statement taking is concerned, if
21 there was no pressure on Chant.

22 A. Yes, I believe so.

23 Q. Yes. Okay. Now, when, if at all, were you advised that there
24 was a person at Louisbourg on that second occasion who told
25 Wheaton that there was no intimidation or duress exercised

1 by MacIntyre on Chant at Louisbourg? Were you ever told
2 that?

3 A. I...that a person had told our investigators this that there was
4 no... It does ring a bell that I may have heard that, that one
5 of the witnesses whose name was on the statement said that
6 as far as he was concerned that there was no pressure put on
7 Chant.

8 Q. Yes.

9 A. To give a statement.

10 Q. When do you believe that you were told that?

11 A. I'm not really sure. It would have been, I suppose, in
12 reviewing the witnesses that were present to see whether
13 they were actually there and what they observed and so on.

14 Q. That would...it would be significant, would it not, if Wheaton
15 was told by a person who says he was there that there was no
16 pressure or intimidation from MacIntyre. That would be
17 significant.

18 A. Oh, yes.

19 Q. Yes.

20 A. Yes, it would.

21 Q. That is the kind of thing that Staff Sergeant Wheaton should
22 have recorded in any statement he took from that witness,
23 would it not be?

24 A. I would think so.

25 Q. I'd like to direct your attention to the statement he took from

1 Wayne Magee, which is dated the 2nd of March, 1982, and is
2 found in Volume 34 at page, just one second until I find it,
3 87. Thank-you, My Lord. Now, this statement was taken by
4 Staff Wheaton and there is no reference at all in this
5 statement to the fact that he was told by Magee that
6 MacIntyre did not exert pressure or duress on MacIntyre, on
7 Chant. This statement was dated March the 2nd, 1982. The
8 first report that Staff Wheaton forwarded on this
9 investigation which is found in this same volume at pages 9 to
10 18 inclusive does not contain any reference to this statement
11 at all, except that it does mention Magee's name as being a
12 person, in paragraph 10, on page 11, who apparently was
13 there. In about the middle of the paragraph Staff Wheaton
14 writes, "It will be noted that the second statement is signed
15 by Detective Sergeant John MacIntyre, Detective William
16 Urquhart, Mrs. Beulah [sic] Chant, mother, Chief Wayne Magee
17 and Chant's probation officer. Now, there is no reference to
18 the best of my knowledge to Wayne Magee at any other place
19 in this report, nor is Wayne Magee's statement attached to the
20 report as an appendix that was forwarded on. I suggest to
21 you that's a significant omission.

22 A. No, it isn't, because that report of Wheaton's was started on
23 the 25th of February.

24 Q. Yes.

25 A. And I can't tell you when it was concluded by him, but I

1 forwarded it on the 12th of March.

2 Q. Yes.

3 A. The statement was taken on the 2nd of March.

4 Q. That's right. But if you'll notice the report itself, sir, he refers
5 to his attendance at Dorchester Penitentiary.

6 A. Uh-hum.

7 Q. Which I believe was on the 8th or 9th of March. So, he
8 certainly referred to events which took place...

9 A. Yes.

10 Q. Long after March 2nd.

11 A. Yes.

12 Q. So, he must have had the statement at that time.

13 A. He possibly did, yes.

14 Q. Well, I suggest to you there's no question about it. The
15 statement is dated March 2nd. And, if you'll take a look
16 at...he refers to...go to the first, the 5th of March court
17 appearance. He refers to the statement of Donald Marshall, as
18 well, and I think that occurred, yes, if you'd take a look at
19 page 16, paragraph 24, "Written statement obtained from
20 Donald Marshall on 82 03 09," which is March 9th. Do you see
21 that reference at the bottom of page...paragraph...

22 A. Yes.

23 Q. ...24? So, that he certainly had Wayne Magee's statement.

24 A. Yes.

25 Q. I suggest to you that's a significant omission from the report,

1 (A) a failure to talk about the statement that was obtained,
2 and (B) a failure to include it as an appendix.

3 A. The only thing I can think of is that he may have been
4 waiting until he got statements from everybody who were
5 witnesses at that time to see if those facts were right in the
6 memory of each individual as to what took place prior to
7 commenting on it and sending it forward.

8 Q. Yes.

9 A. That's the only thing I can think of.

10 Q. All right. Okay. The statement was taken on March 2nd. The
11 first time that that statement is forwarded to headquarters is
12 on May the 4th of 1982 and that is in a report that is found,
13 I'm sorry, I don't have the reference, in Volume 34. The
14 reference I have is in Volume 19 at paged 108. That is the
15 first time, I believe, that that statement was forwarded by
16 Staff Wheaton to headquarters. Where he says in paragraph
17 3, "Please find attached statements from aforementioned,"
18 that's Maynard Chant, "As well as probation officer Larry
19 Burke and Sheriff Wayne Magee."

20 A. Yes.

21 Q. "Who according to Chief MacIntyre were present when the
22 statement was obtained." Again, no reference at all in that
23 report to the fact that there was no duress or intimidation
24 exercised by MacIntyre.

25 A. Well, I think this would show that he was trying to see all

1 witnesses who were there.

2 Q. Yes.

3 A. At the time and our concern was that normally if you have
4 witnesses at a statement taking you get them to sign the
5 original of the statement, and we didn't know whether or
6 not...at that time what we were trying to determine if they
7 were really there because Chant's mother had said that she
8 wasn't there during the whole statement taking.

9 Q. But she certainly did indicate that Wayne Magee was there.
10 She has indicated that in the statements.

11 A. Oh, yes.

12 Q. Yes.

13 A. In the building.

14 Q. Yes.

15 A. I don't know if she indicated he was there in the...at the
16 statement taking.

17 Q. Well, she says at page 84 of Volume 34, "I believe Wayne
18 Magee was present at that time and a Burke fellow. I think I
19 went outside and waited." There is certainly no indication
20 that he was not, by her.

21 A. Okay.

22 Q. I guess the...the second point I'm making is that there is a
23 failure by Wheaton not only to include this comment by
24 Magee in the statement that he took from Magee, which I
25 suggest is significant, and there's a failure to advise anyone at

1 all that there was no intimidation by MacIntyre of Chant
2 until, strangely enough, May of 1983, some fourteen months
3 after he took the statement. And it's my recollection from an
4 examination of these documents, that the first time that he
5 ever said what Wayne Magee told him on March 2nd is in his
6 report that appears in Volume 20 at page 9, a report dated 83
7 05 30, where on the second page he talks about the conflict
8 and the interview that was conducted and he says at line 6,
9 "Chief Magee is now Sheriff in Sydney and feels the interview
10 happened this way with no intimidation or duress used by
11 Chief MacIntyre." Is that not a significant omission, do you
12 think, sir?

13 A. Well, you know, I wasn't there but...

14 Q. Of course not.

15 A. But I would say that it's Magee statement and if Wheaton
16 took it down incorrectly, he's asked to read it over before he
17 signs it, if he felt...if he hadn't covered it in his statement or if
18 he had covered it and Wheaton didn't write it down, well,
19 then I think he would have said something about it.

20 Q. Well, except that it's Wheaton himself and Wheaton's report
21 who says, in May of 1983, some fourteen months after he
22 saw...

23 A. Right.

24 Q. ...this man "Chief Magee said that he feels the interview
25 happened this way with no intimidation or duress."

1 A. Yeah, I don't...

2 Q. Yeah.

3 A. As I say, I can't speak for Staff Wheaton. I don't know why
4 he did it that way.

5 Q. Okay. To present a balanced view of events on the first
6 report that was forwarded by Staff Wheaton that occurred in
7 1971, would it not have been proper to include with his
8 report Maynard Chant's second statement of June the 4th?
9 You'll see that he...if you look at page 20 of Volume 34 he
10 included Maynard Chant's first statement of May 30th which,
11 of course, everyone knew at that point in time meant nothing,
12 it was a tissue of lies. But he included that for the reader, but
13 he didn't include the June 4th statement.

14 A. I have no reason...or knowledge of why that wasn't done. I
15 believe we got a memo back from the CIB officer asking
16 where it was.

17 Q. Saying where is it. Right. Yeah.

18 A. Yeah.

19 Q. And also, the statement of John Pratico, June 4th, was not
20 included as well.

21 A. Yes.

22 Q. He included the first statement, talking about the
23 Volkswagon, which was something that Marshall told him...

24 A. Right.

25 Q. ...to say.

1 A. Uh-hum.

2 Q. The statement of Terry Gushue, the only statement of
3 June...the only statement of Terry Gushue, the June 17th
4 statement, was not included with this report either.

5 A. Right.

6 Q. And finally the statement of Roy Ebsary on November 15th,
7 '71, was not included as well. All these...all these consistent
8 with Marshall's involvement and Ebsary's non-involvement.
9 And I suggest to you that as a consequence of having made
10 up his mind on February the 16th, after he listened to Chant,
11 and before he saw Marshall on February 18th, Wheaton was
12 really only looking at one side of the story. He was not only
13 looking at one side of the story, he was not prepared to
14 acknowledge that there was another side and, indeed, not
15 prepare...and I don't say this in any improper sense, but he
16 was not prepared to let documents go forward to
17 headquarters which indicated the other side of the coin.

18 A. I can't agree with you, but you may be able to make a case
19 for that just like you have, but in my discussions with
20 Wheaton I did not get that impression that he was trying to
21 do any such thing.

22 Q. No. And I'm not imputing bad motives to him, I'm not...don't
23 misunderstand me. I'm just saying that, you know, he had
24 come to a conclusion on the 18th of February that Marshall
25 was innocent and that, therefore, he was just pursuing a line

1 that was following that theory that he developed, because
2 the...certainly the..none of the statements favourable to
3 Donald Marshall are left out. They're all included in the
4 appendix. But only those adverse to his position are left out,
5 and I find that surprising and ask you if you have any
6 comment on that?

7 A. No. I would think that he should have included everything
8 we had at that point.

9 Q. Precisely.

10 A. If it made sense with what he was reporting.

11 Q. Yes.

12 A. I know that the...that first report that we were getting a lot of
13 pressure to get it in because they were quite concerned of
14 what was...the release of Donald Marshall. And, so it would
15 naturally be on his mind that "I have to get those reporting
16 statements in this report and get it in as soon as possible." So
17 that may have been the reason. I don't know.

18 Q. My friend, Mr. Spicer, asked you about the failure to include
19 Chief MacIntyre's name by Wheaton in the Patricia Harriss
20 statement.

21 A. Yes.

22 Q. And that is found at page 54 of Exhibit 34, of Volume 34, and
23 there's reference to the police there. But there is no reference
24 to John MacIntyre by name, and I think you indicated that if
25 Patricia Harriss had named John MacIntyre by name then you

1 would have expected that to be included in the report.

2 A. Yes.

3 Q. Yes. Okay. I guess it's obvious, but would you not expect, as
4 well, that if Maynard Chant had named John MacIntyre in
5 either of the two statements that he gave to Carroll and
6 Wheaton on the first occasion, and Carroll on the second
7 occasion, that John MacIntyre's name should have been
8 included in those reports?

9 A. Well, if you're saying should he have got Chant to put that in
10 the statement...

11 Q. No.

12 A. ...I would say no.

13 Q. No, I'm saying that if Chant had mentioned those names, if he
14 mentioned MacIntyre's name, you would expect that name to
15 be included in the reports.

16 A. If he had mentioned it when he was giving his statement, yes.

17 Q. Yes. Did you...have you ever..has it ever been brought to your
18 attention that MacIntyre's name was not named in either of
19 the Chant statements either?

20 A. I couldn't tell you. I haven't...

21 Q. No, you haven't focussed on that.

22 A. No.

23 Q. No, okay. In the initial interview you had at the Crown
24 Prosecutor's office on February 3rd.

25 A. Yes.

1 Q. You indicated that MacIntyre brought a file with him or a
2 number of files or file folders or...

3 A. I can remember envelopes.

4 Q. You can remember envelopes.

5 A. At that particular time, and I don't know if they came out of a
6 briefcase or whether he had them.

7 Q. But were they...were they put on the table in front of you or
8 what?

9 A. No, he had them beside him or on his knees...

10 Q. Yes.

11 A. ...as I remember it, and Mr. Edwards sat at his desk over here
12 and I was on this side of him.

13 Q. And you were given...you were given papers out of the
14 envelopes, were you?

15 A. I believe so. I thought...I had two things in my mind that I
16 was either getting statements as he was describing it, or else
17 I...there was a package for each one of us that included all
18 this. I can't really say which it was.

19 Q. Are you able to say whether or not you got all the pieces of
20 paper that he had with him?

21 A. I believe we did.

22 Q. Yes.

23 A. I don't think he held anything back from us at that time.

24 Q. And then there was a second occasion when you got papers,
25 as well, and I believe that was March the 1st.

1 A. Yes.

2 Q. And it's my recollection from the evidence that has been
3 given that you were not given any statements at all by
4 Patricia Harriss or Terry Gushue on February 3rd, am I
5 correct in that, any statements of any kind?

6 A. I don't know what I was given on either occasion...

7 Q. You don't.

8 A. ...because I did not make a list.

9 Q. Okay. All right. Do you know whether, and I guess in
10 response to that you're not able to tell us whether you got the
11 statement of Mary O'Reilley on either of those two occasions
12 either.

13 A. No, I cannot.

14 Q. But there is no question, I suggest to you, that you did get
15 statements that were consistent with Donald Marshall's story
16 on either one of those two occasions, such as the statement of
17 George and Sandy McNeil, that was given to you very
18 obviously because it's an appendix to Staff Wheaton's report.

19 A. Yes. If they're on the report, I was certainly given them at
20 that time.

21 Q. You certainly got them, yeah.

22 A. Yes.

23 Q. And you were given Chant's first statement and you were
24 given Pratico's first statement.

25 A. I believe so, yes.

- 1 Q. Yeah. And you were also given Jimmy MacNeil's first
2 statement of November, 1971, which was consistent with
3 Marshall's innocence.
- 4 A. Is that listed on the appendix as well?
- 5 Q. Yes, it is.
- 6 A. Yes. I've lost that page. Could you refresh my memory?
- 7 Q. Of course, it's page 20.
- 8 A. Yes, I see where James MacNeil's...
- 9 Q. Yes.
- 10 A. Number 12.
- 11 Q. Right. And that...if you take a look at, just to make...that is the
12 November 15th '71 statement but not the one that was taken
13 by the investigators on February 8th. If you look at
14 attachment number 12 it is clear that that is November 15,
15 '71.
- 16 A. Right.
- 17 Q. And if you take a look at attachment 13, that is the statement
18 of George McNeil and Sandy McNeil and that refers to a
19 general description of a man that could match Ebsary.
- 20 A. Yes.
- 21 Q. Yes. So certainly if you were being set up in any sense, as
22 Frank Edwards suggests, you certainly were given the other
23 side of the coin, you certainly were given statements that
24 were consistent with Marshall's non-involvement.
- 25 A. I don't know at which meeting I got that at.

1 Q. No.

2 A. Whether it was the meeting at Frank Edwards...what I
3 remember of the statement at the meeting at Frank Edwards
4 would have been probably to do with the Chant and Pratico...

5 Q. Yes.

6 A. And the Jimmy MacNeil statement...

7 Q. November, '71.

8 A. From November '71.

9 Q. Yes.

10 A. This is what I remember mainly about us going through.

11 Q. Yes.

12 A. But I couldn't say for sure how you would split them up, but
13 it...it...I remember getting a lot more statements on the second
14 meeting than what I got on the first meeting.

15 Q. All right. It's Staff Wheaton's recollection that at the meeting
16 of February 26.

17 A. Yes.

18 Q. At that meeting that he says he was at or...that the statement
19 of Patricia Harriss of June 18th.

20 A. Right.

21 Q. And the statement of Terry Gushue of June 17th were handed
22 over, but I take it that is not your evidence. You say that
23 those statements were not given until March 1 along with
24 other statements.

25 A. No, I'm not saying that.

1 Q. Oh, I see.

2 A. I'm saying that I had no knowledge of the Chief turning those
3 over on that date, because...

4 Q. I see.

5 A. ...I don't remember him doing so.

6 Q. Okay. And I take it that it was at that meeting that the Chief
7 brought up Patricia Harriss' name and...

8 A. Yes.

9 Q. ...and Terry Gushue's name in support of his position that
10 Marshall was guilty.

11 A. That's right.

12 Q. Yeah. Now, at that point in time you were interviewing
13 people at that...

14 A. I wasn't...

15 Q. Sorry.

16 A. But, yes.

17 Q. The investigators were...

18 A. The investigators.

19 Q. ...interviewing people directly.

20 A. Yes.

21 Q. And the Chief knew that because you had shown him the
22 statements taken from Pratico and Chant on February 26th.

23 A. That's correct.

24 Q. And it would be natural, I take it, for him to assume that you
25 would be going ahead to interview these key people, such as

1 Gushue and Harriss.

2 A. I would think so.

3 Q. Yeah. Indeed, I suggest to you that his introduction of the
4 name of the Patricia Harriss to you at that time is consistent
5 with a submission on his behalf that he did not think there
6 was anything wrong with his taking of the statement of
7 Patricia Harriss in '71 otherwise he would not have directed
8 you to her.

9 A. I suppose you can draw that conclusion. He didn't know what
10 she was going to say and I didn't know what she was going to
11 say when we did interview her.

12 Q. Of course not.

13 A. And she certainly supported his theory at that time, yes.

14 Q. Yes. But, of course, if he had brow beaten her and
15 intimidated her and et cetera, et cetera, et cetera, one would
16 have thought, if he had a guilty mind, that that's the last
17 person in the world he would have directed you to.

18 A. Yes.

19 Q. I want to deal for a moment with the Ebsary statements, and
20 I think it's best if we take a look at Frank Edwards' notes in
21 Volume 17 to get a handle on that, at page 7.

22 A. Yes.

23 Q. Now, notes made Monday, April 19th, but they relate
24 apparently to Friday, April the 16th, and Edwards writes,
25 "Call Gordon Gale in the a.m. to ask him about Chief

1 MacIntyre's visit. I'd been advised day before by Wheaton
2 that MacIntyre had been to the Department." That's a little
3 ambiguous as to when MacIntyre was at the Department, but
4 I assume it was a day or so before Friday, April 16th.

5 A. Yeah, I would presume that, but...

6 Q. Yeah. I don't know the answer to that and we'll have to get
7 that from Gordon Gale. But in any event, Gale brought up the
8 two points, Mitchell Sarson and secondly the fact that the
9 Chief had produced statements from Ebsary's wife, son and
10 daughter which were opposed to what they were saying now.
11 And, Frank Edwards goes on to write, "I told him I was
12 concerned about the fact that the Chief was producing
13 statements now which neither I nor the RCMP had known
14 about before. Told him I would confirm this with the RCMP
15 and get back to him." And then a few lines later, "Significant
16 that Chief left nothing with Gale, collected all papers before
17 leaving." And, on the next page on page 8, "Chief MacIntyre..."
18 about eight lines down, "...now seems clear that he used the
19 February 3rd meeting to set up both Scott and myself." I
20 want to address your attention to those statements now.
21 These are statements of the Ebsary family given in November,
22 1971.

23 A. Yes.

24 Q. Now, these statements were not consistent at all with any
25 theory that the Chief was advancing. They were not...and

1 perhaps we should just take a look at those statements, and
2 they would be found at Volume 18. I guess Volume 16
3 perhaps is the easiest place to find it. Volume 16, My Lord,
4 yes. And, we're talking about the statements of the Ebsarys,
5 and at page 181, and this is the statement of Mary Ebsary.
6 Have you seen that before, sir?

7 A. Yes.

8 Q. I don't think there is anything of any particular significance
9 on the first page, but there's a comment on the second page
10 that I wish to address your attention to, in the long answer,
11 in the second-last line. "I sent for him and told him to stay
12 away from my house and it was at this time the conversation
13 about the Seale boy came up. I don't think Jim or my
14 husband would have anything to do with that." Now, that's
15 certainly different from what Mary Ebsary said in 1982 but...

16 A. Yes.

17 Q. ...the point that I wish to stress with you is that it makes no
18 sense for Chief MacIntyre to hide that kind of a statement
19 from anyone. I mean that's not consistent with Marshall's
20 innocence.

21 A. Well, it made no sense to me either.

22 Q. Correct.

23 A. If he was trying to hide it that he'd show it to the Director of
24 Criminal at the Attorney General's Department.

25 Q. I beg your pardon.

1 A. It didn't make any sense to me either that if he was trying to
2 hide it that he would take it in to the Attorney General's
3 Department and show it to him.

4 Q. You made that point as well. I agree.

5 A. Yes.

6 Q. But it's not a statement that's inconsistent with the Chief's
7 theory about Marshall being the guilty person.

8 A. Right.

9 Q. No. Okay. Now, you recall this conversation with Frank
10 Edwards, I take it, and I believe you said that there was a
11 meeting, I believe you said there was a meeting with
12 Wheaton and Frank Edwards and yourself on or about the
13 Friday after you got this call.

14 A. I couldn't recall it. I remember the conversation, but I don't
15 remember the meeting.

16 Q. All right. In any event, as a consequence of this discussion
17 with Edwards, did you ask Wheaton to go down and get these
18 statements of Mary Ebsary?

19 A. I can't remember. I think in my previous testimony I said I
20 can recall discussing that, that I would have no problem with
21 calling the Chief and...because I was questioned by the CIB
22 officer about these statements, to call him and say "Look,
23 those statements you showed to Gordon Gale we need them,
24 they want them in Halifax, could you give them to one of our
25 investigators," and we could get them right away.

1 Q. Sure. And, so some arrangement was made to get those
2 statements from the Chief.

3 A. I don't remember that. I wish I could. I really...

4 Q. I see.

5 A. ...searched my brain trying to recall that and I can't get past
6 the discussion point.

7 Q. It has some significance because of the April 16th, April 26th
8 meeting of course.

9 A. I realize that.

10 Q. And, there's a suggestion in Frank Edwards' notes that
11 Wheaton went down on the 16th.

12 A. Right.

13 Q. Apparently after this discussion you had with Edwards, and
14 got not only the Ebsary statements.

15 A. Uh-hum.

16 Q. But Patricia Harriss, June 17 unsigned statement on the 16th.
17 You're aware of that.

18 A. Yes.

19 Q. In Edwards' notes.

20 A. I wish I could help you, but I can't.

21 Q. Right. And I guess the only thing we do know is that
22 Wheaton did have the Ebsary statements on the 19th of April
23 when he went back to see Mary Ebsary again because her
24 statement taken on the 19th, the first line starts off, "I've
25 been showed my previous statements."

- 1 A. Yeah, it would indicate that.
- 2 Q. Yeah. And you did not have those Ebsary statements before
3 you had the telephone call with Frank Edwards.
- 4 A. No.
- 5 Q. Okay. All right. After the 26th of April when Wheaton came
6 back to the headquarters he says that he turned the file
7 material and Exhibit 88A over to Sergeant Carroll.
- 8 A. Yes.
- 9 Q. Were you involved in that decision at all, were you aware
10 that that was done?
- 11 A. No, I...in fact, I was trying to trace down my own movements
12 on that day, because, ah, of whether or not I was even there,
13 because I can't...I can't recall those sequence of events on that
14 date. I remember being told about them but it wasn't
15 significant to me that I was told on that particular day. And,
16 I thought maybe I was somewhere else at the time, but I
17 couldn't track it down.
- 18 Q. I wasn't so much thinking of the visit that Wheaton and
19 Davies had.
- 20 A. Yeah.
- 21 Q. So much as the transferring of possession of the file material
22 from Wheaton to Carroll, and which apparently took place the
23 following day on April the 27th. Were you aware that the file
24 was going to be transferred?
- 25

1 12:00 p.m. *

2 A. Right now I can't say from my own recall, no.

3 Q. Do you have any comment at all about a file being transferred
4 on April 27th when, in fact, Wheaton was hanging around
5 until some time after school in June?

6 MR. OUTHOUSE

7 Perhaps, that's my recollection of the evidence and Mr.
8 Pugsley would put it in terms of the exhibits, which is what I
9 understand the evidence to be, there's a transfer of exhibits, not
10 any file, as I recall.

11 MR. PUGSLEY

12 I beg your pardon. You're quite right. I meant to say the
13 material listed in Exhibit 88A. If you would please be good
14 enough to give Superintendent that exhibit. Yes, you're quite
15 right.

16 MR. PUGSLEY

17 Q. Anything unusual at all about a file being transferred, the
18 exhibits being transferred so much in advance of his leave-
19 taking?

20 A. No, because quite often you'll appoint one person to be the
21 exhibit person in an investigation. They'll look after all the
22 exhibits. Or if his transfer was made aware at that time, he
23 may have done it in advance. I wouldn't see anything strange
24 in it.

25 Q. No, I don't read anything sinister into it, but I was just

1 interested in why it occurred at that time. I take it that the
2 RCMP members are instructed that when they take possession
3 of exhibits of this kind which contain original statements, that
4 they are to check and make sure that the list that they're
5 getting of the material is accurate and complete.

6 A. I would hope so.

7 Q. And, indeed, Sgt. Carroll has testified that he did exactly that
8 and, of course, the question was raised to him, again trying to
9 shed some light on when this Patricia Harriss June 17th
10 statement actually was given to Wheaton, the question was
11 put to Carroll that in the event that June 17th statement was
12 there in the material that he got on April 27th, that he would
13 have had added it to the list because it is not included in the
14 list and he said, "That's right." And by his omission to do so,
15 he concludes that that June 17th statement was not there at
16 all.

17 A. That could be true.

18 Q. Does that sound sensible to you?

19 A. Well, I would think if he was initialing for everything he was
20 getting and he had an extra piece of paper, he would certainly
21 include it.

22 Q. Right. And that evidence of Sgt. Carroll, just for the record, is
23 found at Volume 49 at pages 8959 and 8960. Did Staff Sgt.
24 Wheaton ever request your permission to speak to the media
25 during the course of this investigation, reinvestigation?

1 A. I don't remember him asking my permission to speak to the
2 media. I know that I told him at one point in the
3 investigation, I think that I've already said, that I didn't want
4 them talking to anybody about the case.

5 Q. Yes, I believe the words you used yesterday were, "If they
6 were talking to the press, cease."

7 A. Yes.

8 Q. Did you have a suspicion that they were, in fact, talking to the
9 press?

10 A. I didn't know. I didn't like what was coming out. These little
11 hints of, in the press, and rumours from the press people that
12 we had an active parallel investigation going on by the press
13 to what we were trying to do. And I warned them that if
14 they were, in fact, talking to the press or giving out
15 information on the side, that it was to cease. And that the
16 same thing with the Crown Prosecutor, that if he didn't have
17 to know, then he wasn't to be told anything until we get that
18 first report to the A.G.'s Department, because I didn't want
19 him to read it in the newspaper.

20 Q. Quite so. Do you have any, is it the practice of the force to
21 conduct interviews with the press, such as Staff Sgt. Wheaton
22 had, with Michael Harris on seven or eight occasions,
23 including travel to Windsor and a four-hour lunch at Michael
24 Harris' house in Windsor, to assist him in the preparation of a
25 book when Ebsary's trials had not yet been concluded? Is

1 that consistent with force policy?

2 A. Well, I can't, I know it's not consistent with my policy. I can't
3 speak for others. I would think that our guidelines are in the
4 book that people should follow and what individuals do, they
5 have to be responsible for. I certainly wouldn't do it myself.

6 Q. No. To the best of your knowledge, has Staff Sgt. Wheaton
7 ever been criticized in the past as a consequence of leaks he
8 has made to the media during the course of an investigation,
9 either this or others?

10 A. Not to my personal knowledge.

11 Q. You mentioned yesterday that, I'm not sure the words you
12 used were suspicious, but your interest was aroused as a
13 consequence of a number of people that purportedly were
14 there as witnesses in Louisbourg on the second taking of the
15 statement from Chant.

16 A. Yes.

17 Q. May I put to you the following that if Chief MacIntyre had
18 come to the conclusion that Pratico and Chant had both lied on
19 the first statement that they gave on May 30th, and that
20 when he went back to see Pratico when he thought that he
21 had some objective facts because of a view to the scene to
22 conclude that Pratico was not telling the truth and then got a
23 statement from Pratico that indicated that he had seen the
24 murder, would it not be perfectly appropriate when you're
25 interviewing the second person who had given you what you

1 considered to a false story, to insure that there were enough
2 people there that he was comfortable with to verify the
3 manner in which the statement was taken?

4 A. I've never seen it done before to that extreme, in my
5 experience.

6 Q. Would you turn to page 108 in Volume 19?

7 A. Yes.

8 Q. That is a memorandum of Staff Sgt. Wheaton's on the 82-05-
9 04.

10 A. Yes, it is.

11 Q. And if you look at Paragraph 3, it reads, on 82-0...in the
12 middle of the paragraph, about five lines down:

13
14 On 82-04-26, Chief MacIntyre handed over
15 to the writer the file in regards to this
16 case as held by the Sydney City Police as
per instructions of the Department of
Attorney General.

17 A. Yes.

18 Q. Did you read that particular sentence before that report was
19 sent out?

20 A. I would imagine, if I put a forwarding note on it that I read it,
21 yes.

22 Q. And does that not suggest to you that the handing over of the
23 file by Chief MacIntyre to the investigator was entirely in
24 accordance with...

25

1 MR. OUTHOUSE

2 Perhaps it should be pointed out to the witness. He hasn't
3 been given an opportunity to read it. He said that if he put a
4 forwarding note on it, that he would have read it. I don't think
5 there's a forwarding note on it.

6 MR. PUGSLEY

7 All right.

8 MR. CHAIRMAN

9 I thought the question was, had he read...

10 MR. OUTHOUSE

11 Before it went out? And he said, "If it's got a forwarding
12 note on it, I would have." As I see it, there's no forwarding
13 note.

14 MR. PUGSLEY

15 There's no forwarding note, okay.

16 MR. CHAIRMAN

17 Can we assume then that you didn't see it?

18 SUPT. SCOTT

19 I wouldn't say that either, My Lord.

20 BY MR. PUGSLEY

21 Q. Just take a moment then, Superintendent, and see if it brings
22 back any memories?

23 A. I would imagine that I would have read that.

24 Q. Yes, and does not the sentence that appears in the middle of
25 Paragraph 3:

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On 82-04-26 Chief MacIntyre handed over to the writer the file in regards to this case as held by the Sydney City Police as per instructions of the Department of the Attorney General.

Suggests that that handing over of file went entirely in accordance with the instructions of the A.G.

A. I would say it does.

MR. PUGSLEY

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

MR. CHAIRMAN

Mr. Murray?

EXAMINATION BY MR. MURRAY

Q. Supt. Scott, my name is Donald Murray and I am here on behalf of William Urquhart.

A. Yes.

Q. The investigation that was carried out by Wheaton and Carroll resulted in a number of witnesses raising questions about the conduct of the police in 1971 in your mind.

A. Yes, they did.

Q. And William Urquhart was one of those police officers that had been involved?

A. His name appeared on the statements of these witnesses along with Chief MacIntyre.

Q. You've told us that on February 26th, you had a meeting with

1 John MacIntyre and allowed him to read the statement of
2 Chant and the statement of Pratico in which they made their
3 allegations?

4 A. Yes.

5 Q. And I believe you were referred to a document yesterday in
6 which Supt. Christen suggested to his superior that maybe E.
7 A. Marshall ought to be advised because an investigation of
8 his was being called into question.

9 A. Yes.

10 Q. Did you take any steps to insure that William Urquhart was
11 ever informed about what allegations were being made about
12 his conduct?

13 A. No, I can't say that I did.

14 Q. Do you know if anyone else did?

15 A. No, I can't speak to that.

16 Q. My main concern with your involvement, which I suggest
17 flows from Wheaton and Carroll's investigation.

18 A. Yes.

19 Q. Is the preparation of this red book, which is Volume 21, and I
20 believe you have that.

21 A. Yes.

22 Q. If you would first, though, go to Volume 19, and your
23 covering letter for that report which is at page 111.

24 A. Yes.

25 Q. You describe what you're sending and you refer in that in the

1 third paragraph:

2 The purpose of putting this book together
3 is so you can follow the sequence of events
4 for each witness and allow the reader to
5 judge for himself why the witness is lying.

6 A. That's right.

7 Q. So I suggest that you wanted to insure there was no
8 prejudgement in the red book, that they would simply be
9 provided with facts, of transcripts, statements, and the
10 readers could decide for themselves.

11 A. That was my idea, yes.

12 Q. And, in fact, as I understood your evidence, they put one red
13 book together and you sent it back for changes.

14 A. The sequence was, I think in the original, it was by the 1971
15 investigation by the Sydney City Police, then Supt. Marshall's
16 and the polygraph, and then they had what was happening
17 today.

18 Q. A chronological approach.

19 A. Right, and I said we've already more or less done that in our
20 reports. I wanted to show each statement and the evidence
21 of each witness so they could follow it that way. And I took it
22 back in and asked the girl, Donna Botte, who worked in the
23 GIS section, to take the book apart and put it back together
24 the way I had asked for it to be done in the first place.

25 Q. So there was nothing in the original book put together that's

1 not in this red book.

2 A. No.

3 Q. All right.

4 A. Unless she left something out of it that I don't know about.

5 Q. In your letter of May 5th, 1982, you refer in that to the
6 preliminary inquiry.

7 A. Yes.

8 Q. And had you read the preliminary inquiry at that time?

9 A. I cannot say whether...We had problems getting the transcript
10 or one or the other and I don't know at what point I read it
11 but I know that I read both eventually.

12 Q. I see. Turning to the red book, I'd like you to turn to, this is
13 Volume 21, page 128.

14 A. Yes.

15 Q. And this deals particularly with Patricia Harriss.

16 A. Yes.

17 Q. There's a mention of the preliminary inquiry in that in
18 Subsection C.

19 A. Right.

20 Q. Evidence given by Patricia Harriss at both preliminary and
21 Supreme Courts.

22 A. Yes.

23 Q. And it relates what she had to say at that time. And I've
24 looked through that and it goes 128 to 138, I believe, 139.
25 And the preliminary inquiry evidence isn't included with

1 that.

2 A. It certainly should have been.

3 Q. Was it your understanding that the preliminary was going to
4 be included?

5 A. Yes.

6 Q. I asked through your counsel that you review Patricia Harriss'
7 preliminary testimony last night.

8 A. Yes.

9 Q. Did you have an opportunity to do that?

10 A. Yes, I did.

11 Q. Did you note in the middle of her testimony, approximately
12 pages 26 and 27 of Volume 1 for the Commission purposes,
13 that she refers to how the statements were taken and which
14 particular officers were involved.

15 A. Yes, she had said there were three City detectives and in our
16 cross-examination, she names two of them.

17 Q. Correct. That would be important and relevant information to
18 have in this red book, would it not?

19 A. Yes.

20 Q. My understanding is that Mr. Wheaton and Mr. Carroll had
21 the preliminary inquiry in February and returned it to Mr.
22 Edwards on the 26th of February, 1982.

23 A. I don't know if that's right or not.

24 Q. I'd like you to turn to Volume 16, page 74.

25 A. Yes.

1 Q. This is a statement of a Mary Patricia O'Reilly and, like you, I
2 don't know precisely when this may have been turned over to
3 the RCMP, but it was certainly by April 26th, 1982 and would
4 have been in your possession on May 5th when putting
5 together the red book.

6 A. Right.

7 Q. I'd ask you to turn to page 75. And there's a series of
8 questions and answers dealing with discussions with Patricia
9 Harriss.

10 A. Yes, I see that.

11 Q. Whether or not that was true, would that be relevant to be
12 included in the Patricia Harriss section of the red book?

13 A. I would think it should be, yes.

14 Q. And my understanding from page 128 of Volume 21 is that
15 it's not referred to. Who did you rely on to select the
16 materials for the book?

17 A. It was compiled by Staff Wheaton. I don't know if he had
18 anyone to help him or not.

19 Q. Could I ask you to turn to page 129 in Volume 21.

20 A. Yes.

21 Q. Where the questions and answers begin, just the previous
22 sentence:

23

With Marshall was two other men.

24

Q. Describe the other men to me?

25

1 And then Patricia Harriss goes into her answer and describes
2 this Ebsary-sounding-like person. Correct?

3 A. Yes.

4 Q. Then she apparently changes the subject.

5
6 I was talking to Junior. Terry got a match
7 from Junior and Junior said they are crazy.
8 They were asking him, Junior, for a
9 cigarette.

10 And then further questions appear. And there's no comment
11 about the second man.

12 A. That's right.

13 Q. There's a summary at the beginning of the red book on page
14 three in Volume 21 and the second full paragraph on the
15 page, and if you'd like an opportunity to read that.

16 A. The second paragraph?

17 Q. Second full paragraph on page three.

18 A. Right. Yes.

19 Q. The paragraph concludes: "The inspector did not want to hear
20 this," presumably about the man answering Ebsary's
21 description.

22 A. Yes.

23 Q. However, the person who took that statement at page 129
24 copied that description down.

25 A. Yes.

1 Q. Didn't cut off the statement before the description was taken
2 down.

3 A. No.

4 Q. And I suggest to you that without knowing why the
5 statement was stopped, it's not fair to say that the inspector
6 did not want to hear about the gray-haired man that he had
7 written about in the statement.

8 A. Well, you have to realize we had the other statements from
9 Patricia Harriss at this time.

10 Q. Yes.

11 A. And what she said that I kept telling them and, as I
12 remember it from Staff Wheaton, that she said that he would
13 stop and say "no" and crumple it up and throw it on the floor.
14 And so I would think that conclusion here was drawn from
15 what she had told us.

16 Q. But the difficulty with that, Officer, is that we don't know that
17 that was the inspector who refers back to Inspector William
18 Urquhart, do we?

19 A. No, I guess that was drawn from the fact that it was in his
20 handwriting, that partial statement that was filed.

21 Q. Oh, certainly, certainly. But as to Mr. Urquhart's involvement
22 after that first statement, there is nothing in the evidence to
23 show that he was involved except the typewritten June 18th
24 statement.

25 A. Yes, he was there at the end when the final statement was

1 taken.

2 Q. Yes.

3 A. Yes.

4 Q. We'll get to that in a moment.

5 MR. RUBY

6 I wonder if I might just...There's been a series of questions
7 from the previous counsel, from this counsel, which after it's been
8 brought out that this report was prepared hurriedly and under
9 time pressures because an innocent man was in jail, and no, it was
10 not perfect, he was doing it in a hurry for that reason, for a very
11 important reason, this document wasn't in, that document wasn't
12 in, this statement is not as fulsome as it might be, this was not as
13 clear as it might be. Are we really gaining anything by going
14 over this kind of detail, given the answer that's already been
15 elicited? That's my question.

16 MR. CHAIRMAN

17 We're not gaining very much, but I hate, because of the
18 involvement of Mr. Murray's client, to put any unreasonable
19 restriction on his cross-examination because it does relate to
20 his client. He hasn't strayed from any evidence as yet that is
21 not related to his client. And I've asked counsel time after time
22 to try and cut out the repetition, but maybe I've given up, because
23 nobody seems to listen.

24 MR. RUBY

25 Last chance at this. Take this example, the inspector,

1 | if the inspector should have been more clearly put as Inspector
2 | Urquhart or shouldn't have been, do we really care about that?
3 | I mean how can it affect the decisions you're going to make here
4 | one way or the other?

5 | COMMISSIONER EVANS

6 | There's been a comments made that are not going to be
7 | helpful in the determination of this matter..

8 | MR. RUBY

9 | I'm not sure I accept the answer.

10 | COMMISSIONER EVANS

11 | I didn't refer specifically to you. There are others who I tar
12 | with that brush.

13 | MR. MURRAY

14 | My concern in taking time with this paragraph, My Lord, is
15 | that in all of Volume 21, this is the only comment that I can find
16 | made by one of the officers involved that takes a position with
17 | respect to the Sydney City Police officer. The rest of it is...

18 | MR. CHAIRMAN

19 | You mean the comment on page three.

20 | MR. MURRAY

21 | The comment on page three. All the rest is a matter of
22 | record. This summary is the first and only comment that makes
23 | a comment about how a particular officer acted. And I suggest
24 | that that's not in the context of what the officers were trying to
25 | do and why is it in here.

1 MR. CHAIRMAN

2 We would have had the question answered by now. And
3 that's a fair comment. The, at page three, your client, Inspector
4 W. A. Urquhart is identified.

5 MR. MURRAY

6 That is correct.

7 MR. CHAIRMAN

8 And I take it what you're inquiring of this witness is if he can
9 give this Commission any explanation as to why through all of
10 this, albeit hurriedly prepared, the statement is contained
11 therein.

12 BY MR. MURRAY

13 Q. Well, perhaps we'll deal with that question first. On May 5th
14 when this report was prepared, was it hurriedly prepared?

15 MR. CHAIRMAN

16 He told us that already.

17 SUPT. SCOTT

18 A. Well, it was prepared by the investigators. I know we
19 wanted to get it put together so that, because the people that
20 were reading our crime reports were having trouble with the
21 sequence of events because of the different time frames and
22 so many statements from the same witnesses and we were
23 trying to get something to them that was reasonable that they
24 could follow a lot more clearly. So there was that type of
25 pressure to get it in.

1 Q. Perhaps my error. I had understood from your earlier
2 evidence that it was the first report.

3 A. That, too.

4 Q. The February 25th that was prepared hurriedly.

5 A. Both.

6 Q. Both.

7 A. Yes.

8 Q. All right. Perhaps then we could go to that question. Why, if
9 you're preparing an impartial report in this red book, do you
10 come out and make one comment about one particular police
11 officer on page three?

12 A. I didn't make it and I don't know why the investigator did.

13 Q. Would it be fair to say that conclusions "should not have been
14 in there?

15 A. Well, if it's not made with on anybody else in the book, I
16 would say yes, because that wasn't the purpose of the book,
17 to give conclusions.

18 Q. Finally, I would like to refer you to Volume 16, page 67 and
19 68. And, again, this is a statement you would have had by
20 May 5th, 1982. And the corresponding typewritten
21 statement appears at page 130 of Volume 21. As you can see
22 and as you mentioned earlier, William Urquhart appears in
23 the typed version as a witness.

24 A. Yes.

25 Q. On the handwritten version, his name does not appear.

1 A. Yes, I see that.

2 Q. Given what you've said previously about it's important to and
3 relevant to have information about the identification of the
4 officer.

5 A. Right.

6 Q. Would it not be fair that the handwritten version should have
7 been in the red book, perhaps in conjunction with the
8 typewritten?

9 A. I don't know if we did that with other people. It was not the
10 habit of the Sydney City Police to always witness the
11 statement, as we can see in Chant's statement where they had
12 five witnesses. Whoever took the statement wrote it down in
13 his own handwriting who the witnesses were. It wasn't
14 signed either.

15 Q. However, the two Sydney City Police officers signed every
16 page on that one.

17 A. It said, "Billy and I," or "Urquhart and I were there."

18 Q. Well, the record will show.

19 A. Yes, but I, as I say, I'm not saying, I don't think there was any
20 intent on not forwarding that in, no.

21 Q. Certainly I can see why you wouldn't merely put in a
22 duplicate handwritten, if there was no difference between the
23 typewritten and the handwritten. But where there is a
24 difference such as that, it could be important to put it in.

25 A. I don't even remember noticing that until you just brought it

1 up.

2 Q. That was never brought to your attention?

3 A. No.

4 MR. MURRAY

5 I have no further questions.

6

7

EXAMINATION BY MR. BARRETT

8 Q. Supt. Scott, my name is David Barrett and I represent the
9 Estate of Donald C. MacNeil, and I just would like to clarify
10 one point with you. Yesterday, Commission counsel asked
11 you, when you were referring to your notes, what it meant in
12 your notes about "Pratico two hours," or "Chant two hours,"
13 and my question is, you didn't finish that comment. Your
14 concern after reading the trial transcript and some of the
15 statements 1982 was that you had the opinion that Chant
16 may have been up to six hours with the police on that
17 Sunday afternoon, May 30th?

18 A. Yes.

19 Q. And your concern was Pratico in his statement said he'd been
20 there until, picked up by the police at one or two o'clock in
21 the afternoon?

22 A. His mother drove him to the police station between one and
23 two, yes.

24 Q. And your evidence, I believe, as well was that Marshall could
25 have been there all afternoon.

1 A. The evidence is that he was there all day.

2 Q. And I'm wondering, you also commented that MacIntyre in
3 the prelim. had indicated that he spoke with Marshall alone
4 and there was no one else at the police station.

5 A. Yes.

6 Q. And my question then would be, did you instruct Wheaton or
7 Carroll to investigate the possibility that Chant, Pratico, and
8 Marshall may have been together for a considerable length of
9 time that Sunday afternoon?

10 A. No, I did not.

11 Q. My question would then be, in the statements of Marshall,
12 Chant and Pratico that were taken by Carroll and Wheaton,
13 without referring to those, the only really significant
14 comment in that is one of Chant in which he says, "I was in
15 the waiting room for awhile," when he's referring to the 30th
16 of May. And I'm wondering what your concern would have
17 been that those three witnesses were together, as an
18 experienced police officer, what was your concern in reading
19 the transcript?

20 A. Well, I was concerned because at that point we had no
21 evidence of Pratico's involvement at all. We had no evidence
22 of Chant lying to anybody and the mother was told that he
23 was lying by the police. When the two policemen came to the
24 house, she refers to one as being MacIntyre and she didn't
25 know the name of the other one. And Marshall being there

1 and then all of a sudden, there's statements taken one right
2 after the other and they tell the story that half truths and
3 some giving part of what Marshall had told them and I was
4 just wondering what the purpose, why were they all there
5 together? Why did they all suddenly give statements at that
6 time? And why did it say in the transcript nobody else was
7 in the police station if they had been around.

8 Q. And I take it you didn't satisfy yourself that those questions
9 were ever answered?

10 A. No, that was going to be done in the investigation into the
11 conduct of the policemen.

12 Q. And my final question, if it did occur that the three of them
13 were together for any considerable length of time, as an
14 experienced police officer, would you comment on the
15 possibility that that might explain how similar details appear
16 in Chant and Pratico's statement of the 4th of June, 1971?

17 A. It could certainly help explain it, yes.

18 Q. And I take it you arrived in Sydney in 1977 and had no
19 dealings with Donald C. MacNeil as Crown.

20 A. No, not as Crown.

21 Q. And at the time that you arrived in Sydney, Donald C. MacNeil
22 would have been defence counsel at that time?

23 A. Yes.

24 Q. Did you have any dealings with Donald C. MacNeil?

25 A. I met him twice.