

1 Q. Would you describe him as an aggressive defence lawyer?

2 A. I don't know about as a defence lawyer, but I found him
3 aggressive.

4 MR. MURRAY

5 Those will be my questions.

6 INQUIRY RECESSED.

7 2:00 p.m.

8 COMMISSIONER POITRAS

9 Our ranks have been somewhat depleted. The Chairman has
10 a prior commitment that he didn't want to miss notwithstanding,
11 or in view of the coming weather problems so that he will not be
12 with us this afternoon. Chief Justice Evans and I will continue in
13 his absence. And so will you, therefore. We hope.

14 EXAMINATION BY MR. SAUNDERS

15 Q. Superintendent Scott, witnesses in previous days including
16 Staff Wheaton, have described the structure of the RCM Police
17 as a para-military one. Would you agree with that
18 description, sir?

19 A. Yes, I would.

20 Q. In terms of reporting and responsibility, it's a well-recognized
21 tiered approach with junior officers reporting to senior
22 officers within the organization?

23 A. Yes.

24 Q. And you, as a career police officer, I suggest, are well used to
25 that approach to things. That is to say, you filing reports with

1 senior officers of you and receiving reports from junior
2 officers to you.

3 A. Yes.

4 Q. And would you agree with me, Superintendent Scott, that you
5 would expect of people submitting reports to you to be clear
6 in the language they used in their reports?

7 A. Yes.

8 Q. And you would expect of them that they should be
9 informative in the reports filed with you?

10 A. Yes.

11 Q. And that they ought to be unambiguous in the reports filed?

12 A. As clear as possible.

13 Q. Yes. And did you understand, as did Staff Sergeant Wheaton,
14 that the information filed by the RCMP, in their reports would
15 eventually come to the attention of people within the
16 Attorney General's Department?

17 A. Yes, on important cases.

18 Q. And was it also your understanding that the reports that you
19 filed and that were prepared and filed by Staff Wheaton
20 would be drawn to the attention of the CIB Officer in Halifax,
21 "H" Division?

22 A. Yes.

23 Q. And the senior officer to whom you were reporting, sir, was
24 Superintendent Christen?

25 A. Yes.

1 Q. And am I correct in thinking that Superintendent Christen
2 had no hands-on involvement in either the Marshall case or
3 the investigation into the Ebsary matters?

4 A. As far as I know, yes.

5 Q. You know of no instance where he traveled to Sydney, for
6 example, to sit in on interviews or listen to your reports
7 firsthand.

8 A. Not in Sydney, no.

9 Q. And so whatever information Superintendent Christen was
10 getting from you and your investigators was coming to him
11 by way of written reports that you filed, the so-called C237s
12 and your footnotes at the end of them, correct?

13 A. Also by telephone.

14 Q. By telephone call.

15 A. And I have no idea whether he and Staff Wheaton may have
16 met on a trip to Halifax.

17 Q. I understand, sir. It was also your evidence this morning that
18 you had no communication with anyone within the Attorney
19 General's Department in Halifax about this case.

20 A. No.

21 Q. So whatever information was gleaned by people in the
22 Attorney General's Department in Halifax, was gleaned from
23 written reports filed by the RCM Police, correct?

24 A. And conversation with the CIB Officer.

25 Q. Thank you. Were you present during the evidence given by

1 Staff Wheaton last week that to his knowledge there was no
2 written record anywhere in RCM Police documentation about
3 Chief MacIntyre deliberately concealing the June 17 Patricia
4 Harriss statement from the investigators?

5 A. I believe he was asked that question, yes.

6 Q. And do you accept, sir, that there is no written documentation
7 in RCM Police reports referring to deliberate concealment by
8 Chief MacIntyre of the June 17th Patricia Harriss statement?

9 A. As far as I know, yes.

10 Q. All right. Now were you here to listen to the evidence of Staff
11 Sergeant Wheaton that to him that deliberate concealment of
12 the June 17th statement was the first physical or overt act on
13 the part of Chief MacIntyre in his judgment?

14 A. I don't remember hearing that. He may have said it.

15 Q. Might he have said that to you in various times that he met
16 with you about that, sir?

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

18 Q. You don't recall him telling you that?

19 A. No.

20 Q. All right. The written reports that you filed with the
21 Attorney General's Department following the eight or nine
22 C237s filed by Staff Wheaton are contained in Book 20, and
23 do you have red book 20 before you, sir?

24 A. Yes, I do.

25 Q. Yes. And first of all, if I could refer you to page 21, and this

1 is a report to the Officer Commanding, 1983. That was still
2 you, was it, sir?

3 A. Yes, it was.

4 Q. Yes. You were the Officer Commanding, Sydney Subdivision,
5 and this is a report to you from the Plainclothes Coordinator,
6 Staff Sergeant Barlow.

7 A. That is correct.

8 Q. And am I correct that there is nothing in this written
9 communication from Barlow to yourself referring to
10 deliberate concealment on the part of Chief MacIntyre of the
11 June 17th statement.

12 A. No.

13 Q. If I can get you to turn to page 23 of this document, sir. This
14 is your report to the CIB Officer. This would be Christen,
15 would it be, in Halifax?

16 A. That is correct.

17 Q. Yes. And neither is there anything in this written document
18 from yourself to Superintendent Christen identifying any
19 deliberate concealment by Chief MacIntyre of the Patricia
20 Harriss June 17 statement.

21 A. I don't believe there is. I...

22 Q. Thank you. But, in fact, on page 24 of the book before you
23 you do spend some time commenting upon that June 17th
24 statement of Harriss, do you not?

25 A. Yes.

1 Q. Turning to page 27 of Exhibit 20, sir. This is a written report
2 from your immediate superior, Superintendent Christen, to
3 Mr. Gordon Gale, at the Attorney General's office.

4 A. Yes.

5 Q. Dated 83/6/24. And can I have it from you that there's
6 nothing in this written report from your supervisor to Mr.
7 Gale talking about any deliberate concealment by Chief
8 MacIntyre of that June 17th statement?

9 A. I don't see anything just glancing over it.

10 Q. All right. Now could I get you to turn to page 11 of Book 20,
11 please.

12 A. Yes.

13 Q. And towards the bottom of page 11, sir, you see under clause
14 14 and the heading "Patricia Harriss", this is the description
15 given by Staff Wheaton of what he has to say about Patricia
16 Harriss, correct?

17 A. Yes.

18 Q. And the fourth to last sentence of paragraph 14 which reads,
19

20 In reviewing the Sydney City Police file
21 after the order had been made by the
22 Attorney General that they turn over all
23 documentation, I found a partially
24 completed statement dated 17 June 1971,
25 8:15 p.m.

24 Do you see that, sir?

25 A. Yes, I do.

1 Q. And can you suggest to this Commission how anyone reading
2 that sentence in that paragraph, sir, could conclude that Chief
3 MacIntyre had deliberately concealed that statement in
4 disobedience of an order of the Attorney General?

5 A. No, you could not.

6 Q. Can I have it from you, sir, that the only reasonable
7 interpretation that one can put to that sentence is that the
8 Patricia Harriss statement of June 17 was in the file when the
9 reader read through the file?

10 A. I would have to, you're saying from the last sentence?

11 Q. No, the sentence, "In reviewing the Sydney City Police file..."
12 the one that I just quoted to you, and do you agree that the
13 only reasonable interpretation to place on that sentence is
14 that the reader came across the Patricia Harriss statement
15 while reviewing or reading that file?

16 A. Okay, I'm sorry, I can't find where you're reading from there.
17 Oh, I see it here now.

18 Q. It starts with, "In reviewing the Sydney City..."

19 A. Right.

20 Q. Yes. And that's the one that I read to you just a moment ago?

21 A. Right. Okay.

22 Q. Have you read that, sir?

23 A. Yes, I did.

24 Q. And do you agree with me that the only reasonable
25 interpretation to place on that sentence, and that report, is

1 that the Patricia Harriss statement was found when the writer
2 of the report read it in the file?

3 A. I would say so.

4 Q. Thank you. You spoke last day, Superintendent Scott, about
5 the reference to the phrase "hold in abeyance" and I certainly
6 don't intend to belabour that, but I just have a couple of
7 questions for you about it. You said last day that you well
8 understood the reasons why inquiries or investigations or
9 questioning of Messrs. Urquhart and MacIntyre ought to be
10 postponed for some time pending determination or conclusion
11 of the Marshall and Ebsary cases, correct?

12 A. Yes.

13 Q. And you said that those reasons made sense to you.

14 A. Yes.

15 Q. And I also heard you say that you chastised your
16 investigators, that is your own RCM Police investigators, for
17 not leaking information to the press if it were so.

18 A. Yes.

19 Q. And you gave them clear instructions that you didn't want
20 them to speak to the press and you said to one of my friends
21 this morning that your reason for that was you didn't want
22 any parallel investigation going on by the press while you, the
23 RCM Police were conducting your own, correct?

24 A. That's right.

25 Q. I take it from your answer, sir, that you didn't want any

1 information disclosed which might jeopardize the sanctity of
2 either the Marshall case or the Ebsary trials, correct?

3 A. Yes. And also that the Attorney General would read our
4 report before he read it in the newspaper.

5 Q. Exactly. Before he would hear it from you.

6 A. That's right.

7 Q. Yes. Might it also have been a concern that one wouldn't
8 want any facts to be released during inquiries or
9 investigations of Messrs. Urquhart and MacIntyre during the
10 course of the Marshall trial and the Ebsary trials?

11 A. At the time I said that I don't think I was that far ahead in
12 my thinking.

13 Q. Yes. But might that also have been a concern, sir, recognizing
14 that the Ebsary trials went from January 1983 through
15 September of 1986?

16 A. At the time that I made the statement I can't say that. I
17 suppose in hindsight I could say it now...

18 Q. Yes.

19 A. That it make sense.

20 Q. All right.

21 A. But not at the time.

22 Q. All right. But today it makes some sense to you, sir?

23 A. Yes.

24 Q. All right. And you took nothing sinister from the suggestion
25 or sentiment expressed that those inquiries of Messrs.

1 Urquhart and MacIntyre be put off for the time being?

2 A. No. None whatsoever.

3 Q. Thank you kindly. Finally, Superintendent Scott, I refer you
4 to the meeting you had on Friday, April 16, 1982, with Frank
5 Edwards, the Crown, and Staff Wheaton. And as I heard your
6 evidence this morning you remember what happened during
7 the discussions but you don't actually remember the physical
8 meeting. Do I have it right, sir?

9 A. That's right.

10 Q. Now, your notes, that is to say, Exhibit 115, contain nothing
11 about any meetings that you had with Frank Edwards,
12 correct?

13 A. No.

14 Q. What they are are notes that you made from time to time
15 during your review of various transcripts and exhibits?

16 A. Well, I made a lot of notes during meetings and other things
17 but as those were done I didn't keep them. The reason I kept
18 these particular notes was, one, that I didn't want to go back
19 and read the transcript again to find out what I had read the
20 first time and the second reason was because of the phone
21 call, I thought it was important and I put it in my file. But I
22 thought at the other times that the notes, once it was
23 accomplished or I had passed it on to the person responsible,
24 I didn't keep my notes.

25 Q. In any event, these are the only notes you have today.

1 A. Yes.

2 Q. Bearing any relation to the Marshall case or the Ebsary case.

3 A. That's correct.

4 Q. All right. And do I have it correctly, sir, that the notes in
5 Exhibit 115, that with the exception of the one page dealing
6 with the telephone conference you had with Superintendent
7 Christen all other pages relate to notes you made while
8 reviewing documents and transcripts.

9 A. That's correct.

10 Q. All right. And you have no notes, sir, with which to challenge
11 the accuracy or completeness of Mr. Edwards' notes?

12 A. No.

13 Q. And did you review Mr. Edwards' notes in preparing to testify
14 at this Commission?

15 A. Yes. I read them over.

16 Q. Yes. And did you find Mr. Edwards' notes helpful to you in
17 refreshing your own memory, sir?

18 A. It did on some incidents. It brought back recollections, yes.

19 Q. Yes. The phone call you had with Superintendent Christen,
20 your immediate superior, was on Friday, April 16, 1982?

21 A. I believe it to be that date.

22 Q. That's the note that you made in the top right-hand corner.

23 A. Yes.

24 Q. Of the notes that relate to the telephone call, correct?

25 A. Yes.

1 Q. And did I hear you say yesterday that it was clear to you
2 from the tone of Superintendent Christen that he wasn't
3 pleased when he called?

4 A. That's correct.

5 Q. And you detected some, what, would anger be a fair word?

6 A. You'd have to know Superintendent Christen.

7 Q. I don't.

8 A. He, I wouldn't call it anger.

9 Q. Exasperation?

10 A. It's, no, it's a reaction to something that didn't go the way he
11 thought it should.

12 Q. Okay.

13 COMMISSIONER EVANS

14 (Does he have a?) supervisor?

15 A. No. He was free.

16 MR. SAUNDERS

17 Q. You understood the reason for his perplexity, if that's a fair
18 word, was that he had been told by Mr. Gale that Chief
19 MacIntyre had been to Mr. Gale's office and produced a
20 couple of Ebsary statements that Mr. Gale and Mr. Christen
21 knew nothing about.

22 A. That's correct.

23 Q. And Gale reported that to Christen and Christen got on the
24 phone with you to find out what was going on in Sydney.

25 A. Right. And I didn't know anything about the case.

1 Q. And he asked you what's going on in Sydney.

2 A. That's right.

3 Q. And you weren't able to help him because you didn't know
4 about these two Ebsary statements either, correct?

5 A. I think there was three.

6 Q. Three?

7 A. Yes.

8 Q. Mary Ebsary, Greg Ebsary and what would the third be?

9 A. Donna, I think, is her name, is it? It's a daughter, I believe.

10 Q. Yes, Donna is the daughter.

11 A. I thought there was three. I could be wrong.

12 Q. All right. I'm not aware of any statement ever taken from
13 Donna Ebsary, the daughter, in November of 1971. I think
14 the evidence is that she was there but never interviewed.

15 A. Okay. I had a recollection there was three of them.

16 Q. In any event the focus of Superintendent Christen's call was,
17 "Look, Mr. Gale has told me about these two or three Ebsary
18 statements. I don't know what he's talking about. I want you
19 to find out what he's talking about and get back to me." Is
20 that a fair summary?

21 A. Yeah, he also mentioned about some handwritten material.

22 Q. Yes.

23 A. And I remember telling him at that time we had no
24 handwritten material from the Sydney City Police. All we had
25 was the copies.

1 Q. Yes. Thank you. And was it your understanding that Mr.,
2 Superintendent Christen was going to wait for you to get back
3 to him with respect to the existence of these Ebsary
4 statements?

5 A. I know that I was going to get back to him after I talked to
6 the investigators to find out about the statements and the file.

7 Q. And did you ask Wheaton whether he knew anything about
8 them?

9 A. I imagine I did. I don't really remember what the
10 conversation was.

11 Q. You must have asked somebody.

12 A. Oh, certainly.

13 Q. And no one could explain the existence of these Ebsary
14 statements to you?

15 A. No. We knew we didn't have them.

16 Q. You knew you didn't have them.

17 A. Yes.

18 Q. All right. And the discussion that you had that day with Mr.
19 Edwards, Mr. Edwards as I recall the evidence, wanted you to
20 go get the file.

21 A. Yes.

22 Q. Find out what was in the file.

23 A. Yes.

24 Q. And he wanted you, the RCM Police, to get a search warrant to
25 get the file.

1 A. That's right.

2 Q. But that was not your position. Your preference was to have
3 the Attorney General make an order under the Police Act.

4 A. That's right.

5 Q. And your evidence yesterday was that you weren't certain
6 whether a search warrant would get you all of the file and
7 you were happier to go the route of an order from the
8 Attorney General, correct?

9 A. That is correct.

10 Q. And that would be the basis of the discussions you had that
11 day, that Friday, April 16, with Mr. Edwards?

12 A. Yes. And the, I guess there was sort of a wonderment as to
13 why Chief MacIntyre went to the Director of Criminal rather
14 than coming to us with new information, if he had new
15 information.

16 Q. Indeed. Now, if I could get you to turn to red book 17, Exhibit
17 17. And turn to page 7, please, Superintendent?

18 A. Yes.

19 Q. About halfway down the page do you see this sentence under
20 date, Friday, April 16, 1982, and this is Edwards' notes.

21
22 Told him I was concerned about fact that
23 Chief was producing statements now which
24 neither I nor the RCMP had known about
before. Told him I would confirm this with
RCMP and get back to him.

25 A. Yes, I see that.

1 Q This is obviously Mr. Edwards' notes referring to the
2 telephone call he had with Gordon Gale, correct?

3 A. Yes.

4 Q And it's clear from these notes that Mr. Edwards was going to
5 check with Staff Wheaton to see if he knew anything about it.

6 A. Certainly.

7 Q So he, essentially, was doing the very same thing that you
8 were embarking on for Christen. Correct?

9 A. This happened quite often.

10 Q Yes.

11 A. Coming from both directions.

12 Q And then at the top of page 8 you'll see Edwards' note, first
13 sentence. Friday, April 16, '82.

14

15 After call with Gale phoned Wheaton who
16 confirmed that they had known nothing
17 about earlier statements by Ebsary's wife
and family.

18 A. Yes.

19 Q And then towards the bottom of the page, Superintendent, the
20 second to last paragraph, do you see in Edwards' notes,

21 In call with Wheaton he suggested that he,
22 Scott and I meet...

23 A. Yes.

24 Q
25 I agreed (meaning Edwards). He phoned
back to say that meeting was on for 2 p.m.

1 A. Yes.

2 Q. Does that help you in refreshing your memory as to the time
3 and place of the meeting, sir?

4 A. No, it didn't. When I read it the first time it didn't help me.

5 Q. In any event, Mr. Edwards' subsequent phrase,

6
7 Had meeting. I suggested that they should
8 demand file and all information from Chief
9 and threaten use of search warrant if
10 necessary. They wanted a direction to
11 Chief from AG to turn over the information.

12 That coincides with your recollection of the conference on
13 Friday afternoon?

14 A. That's correct.

15 Q. Thank you. And so it was the opinion that you expressed,
16 Superintendent Scott, on Friday, April the 16th, 1982, that an
17 order emanate from the Attorney General compelling
18 production of the file by Chief MacIntyre?

19 A. As I remember it that's the way the discussion went, yes.

20 Q. And the record shows that that order was signed by the
21 Attorney General for Nova Scotia on Monday, the 20th?

22 A. Yes.

23 Q. Did you have the opinion, then, sir, that that was swift action
24 by the Attorney General's Department?

25 A. Yes.

MR. SAUNDERS

Thank you. Those are my questions.

1 COMMISSIONER POITRAS

2 Mr. Pringle or Mr. Ross?

3 MR. PRINGLE

4 I think, perhaps, we go next to last, again, if we have
5 anything, My Lord.

6 COMMISSIONER POITRAS

7 Thank you. Mr. Ross.

8 2:20 p.m.

9 EXAMINATION BY MR. ROSS

10
11 Q. Thank you, My Lord. Inspector Scott, my name is Anthony
12 Ross and I will be asking you some questions with respect to
13 Sandy Seale and a couple with respect to the Black United
14 Front.

15 A. Yes.

16 Q. In your testimony yesterday Mr. Spicer asked you whether or
17 not you observed, you had an opportunity to observe Chief
18 MacIntyre's attitude towards natives in Sydney.

19 A. Yes.

20 Q. And your response was that, "I can't say I did towards
21 natives..." and you went on to say,

22
23 I know with blacks in the period during
24 Armistice Day ceremonies and afterwards,
25 we used to go to the legion as invited
guests, and quite often we ran into blacks
at the legion that all knew Chief MacIntyre

and they would come up and talk to him about the old days.

A. Yes.

Q. And then later on Mr Spicer asked you,

Would you have any reason, again from your observation over the years, would you be able to say whether or not you thought Chief MacIntyre treated Indians and blacks and whites differently from each other.

Do you recall that?

A. I don't recall that tail-end of it but I...

Q. Well perhaps I could draw your attention to it. It will be found in yesterday's volume, Volume 50, page 9194 and I'm addressing lines 4 to 16.

A. And the line again, was line?

Q. If you look at Line 12.

A. 12, yes.

2:22 p.m. *

Q. And that's where it's written,

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

A. Not in my association.

1 A. Yes.

2 Q. But that was a very quick...that was just a very quick
3 response that just came to your mind, wasn't it?

4 A. Yes.

5 Q. Because earlier you said that you didn't know of any
6 involvement of the Chief with the natives.

7 A. No, I didn't. It was just...I thought I was asked my opinion
8 or...and I said, or if I knew of anything and I said, "No."

9 Q. Okay. And as far as this different treatment is concerned,
10 what did you understand by that?

11 A. I thought he was saying did I know that Chief MacIntyre had
12 treated Indians and blacks and whites any different from
13 each other.

14 Q. Yes.

15 A. And I said, "No," that I didn't know him to do that.

16 Q. But what kind of treatment would you be expecting, I mean
17 what was in your mind? Did you really think about it?

18 A. In his capacity as a police officer.

19 Q. And did you really think about that before you answered?

20 A. Yes, because I had not observed him treating anybody else
21 different.

22 Q. Yes. I appreciate that. And tell me, did you hear the
23 evidence of Staff Sergeant Wheaton?

24 A. I heard some of it, yes.

25 Q. When asked about bigotry, racism in Sydney.

1 A. Um.

2 Q. Staff Sergeant Wheaton indicated that his preliminary opinion
3 was that there was none, and after he was following up on a
4 statement made by Aronson that he detected some racism.
5 Do you recall that?

6 A. No, I don't.

7 Q. I see. Did you ever take a good look at Sydney to ...with
8 emphasis on whether or not there appeared to be an under-
9 current of racism in the community itself? Did you ever look
10 at it specifically for that purpose?

11 A. No, I did not.

12 Q. I see. So, the answer that you're giving, I take it, would be
13 that in your experience there is nothing that made you
14 specifically conscious, but you never really looked.

15 COMMISSIONER POITRAS

16 Conscious of what, Mr. Ross?

17 MR. ROSS

18 Of racism.

19 COMMISSIONER POITRAS

20 On the part of Mr. MacIntyre.

21 MR. ROSS

22 Well, no, with respect to...with respect to the police
23 department, sorry. That was too broad a question.

24 A. No, I can't think of any incident that would bring that to light.

25 Q. I see. Now, in your report which appears in Volume 20, at

1 page 25, there is a paragraph, the middle paragraph, and I'm
2 interested in this where you say,

3
4 At times the Negro community was going
5 to take out their vengeance on the Indians
6 and the Indians were going to take out
7 their vengeance on the whites who were
8 aligned against Marshall.

9 A. Yes.

10 Q. You wrote that.

11 A. Pardon?

12 Q. That's your statement.

13 A. That's my statement.

14 Q. What was the basis of making that statement?

15 A. That was on the basis of what I had been told.

16 Q. By whom?

17 A. I think I said this morning from Chief MacIntyre, maybe
18 some from Ian MacNeil, and from the investigators, that...and
19 other people that I knew in the community, that this situation
20 where it was reported or suspected that an Indian had
21 stabbed a Negro youth in the Park and killed him, that there
22 was a tension in the City and if you remember them referring
23 me to a note that Chief MacIntyre called me about, where the
24 Indians had put up roadblocks on the entrance to the Reserve
25 prior to Marshall being arrested, and I took it that there was
an undercurrent there, and then the Indian youths going
down to Pratico and threatening him with giving testimony

1 against Marshall, and that apparently one of the youths was
2 charged with that offence.

3 Q. Was this situation taken seriously by the RCMP, this apparent
4 threat of vengeance and so on?

5 A. I don't know whether they would or not. They know that,
6 from me writing this, that I'm talking about things I've been
7 told.

8 Q. I see.

9 A. I wasn't there in '71.

10 Q. Okay.

11 A. So, what I'm trying to do is sum up for the reader my
12 impression of what was going on at that time.

13 Q. I see. But it was never ever checked out to find out whether
14 or not there was any basis to it. It was something that was
15 given to you and you passed it on the same way it was given
16 to you.

17 A. That's right.

18 Q. Yeah. Tell me, sir, as far as your terms of reference is
19 concerned, is it fair to say that it was not included in your
20 reference at any time to look specifically into the
21 circumstances of the death of Sandy Seale?

22 A. When you say "into the death"...

23 Q. Yes.

24 A. ...of Sandy Seale.

25 Q. Yes.

1 A. We were charged with looking into the investigation of the
2 Marshall case.

3 Q. Yeah. But my understanding from your evidence is that you
4 were supposed to check out the truthfulness, check the
5 credibility of the allegations given in the Aronson letter.
6 That's the way it started.

7 A. Yes.

8 Q. And from there when...after the RCMP had spoken to Chant it
9 took a new light. It was then to check into the conviction of
10 Junior Marshall.

11 A. Yes, that led us to wonder whether the other witnesses were
12 truthful and whether the right person was convicted.

13 Q. Yes.

14 A. Yes.

15 Q. Check...to check...and to check to see if the right person was
16 convicted.

17 A. Yes.

18 Q. And in so checking you came up with this robbery theory.

19 A. Oh, I...

20 Q. That is, you learned about the robbery theory.

21 A. Yes.

22 Q. Yeah. Did you accept the robbery theory?

23 A. I thought it was probable, yes. Not so much robbery, as I felt
24 it was more "rolling" type of...whatever you would call it, of
25 youth...

1 Q. I see..

2 A. ...with a couple of fellows that had drank too much that
3 maybe they could get a few bucks out of them.

4 Q. Sure. And I take it that this was consistent, as far as you
5 were concerned, with the background and the reputation of
6 Junior Marshall?

7 A. He had no record for that type of...

8 Q. But a reputation.

9 A. ...of an offence, but I believe that the investigators felt that he
10 was capable, yes.

11 Q. Yes. And what about Sandy Seale? Did anybody check to see
12 if Sandy Seale was capable or was it easy to accept that he
13 should be capable?

14 A. No. I don't think...I think if you read Junior Marshall's
15 statement he stated that he had asked Seale if he would help
16 him on this venture, "Let's have some fun, " sort of thing and
17 that he felt some remorse over the fact that Seale lost his life
18 over him requesting him to go along with him on this foray.

19 Q. Did you read Junior Marshall's testimony during the last of
20 the Ebsary trials?

21 A. No, I did not.

22 Q. You didn't?

23 A. No.

24 Q. Would it surprise you that Junior Marshall totally retracted
25 that robbery theory, specifically said there was no robbery,

1 specifically said that his statement to the RCMP was incorrect
2 and also indicated that he repeated, for all intents and
3 purposes, a statement that was given to him about the
4 robbery? Do you recognize that?

5 A. How was that again? That this statement was given to him.

6 Q. Yes. That it was information that was passed to him.

7 A. By who?

8 Q. Well, he didn't state. But I was just going to ask you whether
9 or not this is consistent with your understanding of the facts
10 of the...with respect to the robbery theory? I'm referring to
11 Volume 9, and I'll pick up at page 114.

12 A. I haven't got Volume 9. Which page?

13 Q. Page 114. And before you get it, I'll tell you that without
14 going through the details I will tell you that Marshall was
15 examined on direct by Mr. Edwards.

16 A. Yes.

17 Q. And he did not again deliver the robbery theory.

18 A. Right.

19 Q. He was cross-examined by Mr. Wintermans.

20 A. Right.

21 Q. And he denied the robbery theory.

22 A. Right.

23 Q. And again Mr. Edwards is getting a second shot at the robbery
24 theory and here he's saying at line 8, he said,
25

1 Mr. Marshall, during your cross-
2 examination on Friday in response to my
3 learned friend you said 'I was not going
4 to rob them. I was almost forced to say
5 that. That is what it boils down to.'

6 The prosecutor continues,

7 Mr. Marshall, what were you referring to
8 when you said that?

9 A. Would you ask that again?

10 Q. Sure. The statement that you made 'I
11 was not going to rob them. I was almost
12 forced to say that. That's what it boils
13 down to.' What were you referring to?

14 A. I was referring to the reason I said that
15 and other things, I was told one time.

16 Q. Well, can you tell us what you were told...

17 Sorry.

18 Q. Well, you can't tell us what you were told
19 but you can tell us...put it this way, let me
20 ask you, what did you mean when you
21 said 'I was not going to rob them. I was
22 almost forced to say that.'? What did you
23 mean by that?

24 A. I meant that I knew beforehand what the
25 accused told people and other
information I got, that's the side of his
story, and I said the only way I'm going
to have to challenge him is to agree with
what he says.

Q. That there was a robbery.

A. Yes. That's what he said, and that's why I
said it.

Is that consistent or inconsistent with your understanding of
the statement given to, given by Junior Marshall about the
robbery theory?

1 A. It's inconsistent with what I was told by the investigators.

2 Q. Precisely. Now, let me pose to you...how long have you been a
3 RCMP officer?

4 A. Just a little over thirty years.

5 Q. Yes. And I take you'd have had a substantial time in
6 investigations yourself.

7 A. Not a substantial time, but quite a long time.

8 Q. Quite awhile. Over the years with Junior Marshall being in
9 jail from 1971 would you find it surprising that it's going to
10 be in 1982 that he's going to first raise the robbery theory?

11 A. I don't know if I would be surprised.

12 Q. What did he have to lose? He was already inside doing life.

13 A. I don't know. Why didn't he tell people that he committed
14 the murder if he thought he'd serve ten years and he could
15 get out. I don't know what was going through his mind.

16 Q. No, I'm dealing with the robbery theory. I might get to the
17 murder.

18 A. Yes, right.

19 Q. But as far as the robbery theory is concerned, did you find it
20 surprising that he stayed in there in excess of ten years
21 before first raising the robbery theory?

22 A. Well, I don't know if that's the first time he raised it or not.

23 Q. Well, I'm suggesting...I see. You never checked to see
24 whether or not the statement was given to anybody before?

25 A. Oh, I didn't, I don't remember whether or not it was checked

1 by the investigators.

2 Q. I see.

3 A. But I never checked it, no.

4 Q. Did you hear the evidence of Staff Sergeant Wheaton to the
5 effect that he kept Stephen Aronson fairly well informed as to
6 how his investigation was progressing?

7 A. Yes, I heard him say that.

8 Q. Did you hear him indicate that he kept Frank Edwards fairly
9 well informed as to how the investigation was progressing?

10 A. Yes.

11 Q. And, it was...you were the person who put the freeze on
12 further information to Edwards and to MacIntyre.

13 A. Right.

14 Q. Yes. Well, I noted when you gave that evidence that you
15 didn't indicate that you told Wheaton not to talk to Aronson.
16 Did you recall speaking to Wheaton and telling him
17 specifically "Don't give information to Aronson?"

18 A. No, I did not say that.

19 Q. But you remember it about Edwards and you remember it
20 with respect to MacIntyre.

21 A. Well, not so much MacIntyre, I don't think we were giving
22 him any information.

23 Q. Sure. But you remember it specifically with respect to
24 Edwards.

25 A. Edwards, yes.

1 Q. Now, as an officer, as an investigator, as a police officer.

2 A. Um.

3 Q. You realized that there was a special relationship between
4 Aronson, as the lawyer, and Marshall, as a client.

5 A. Oh, yes.

6 Q. And, did you also realize that any information given to
7 Aronson was, in effect, giving it to Marshall?

8 A. Oh, I wouldn't know that as a fact, but I certainly know that
9 he was the complainant who requested the investigation and
10 we were doing it.

11 Q. And who was the complainant?

12 A. Mr. Aronson.

13 Q. He was the complainant.

14 A. Yes. He was the one that brought it to the police attention
15 and that requested it be looked into.

16 Q. And for that reason the information was...Aronson was kept
17 updated.

18 A. That's right.

19 Q. I see.

20 A. It's normal procedure.

21 Q. I see. Recognizing a lawyer-client relationship between
22 Aronson and Marshall.

23 A. Well, as I say, I don't know what Staff Wheaton passed on to
24 Mr. Aronson, how detailed of information he gave him, but
25 you'd normally let the complainant know that you had

1 interviewed people, and how far you were along with the
2 investigation.

3 Q. Wasn't the complainant this...oh, I see, and you just accepted
4 that the complainant was Aronson.

5 A. Yes.

6 Q. Yes. Did you ever have reason to look into the background of
7 somebody by the name of Mickey Flynn? Did his...

8 A. Not that I...

9 Q. ...name ever come up as far as this matter is concerned?

10 A. It may have. I don't remember the name at all.

11 Q. I see. Would you find it surprising that in February of 1980,
12 February 17th, 1980, as appears in Volume 25, Mr.
13 Marshall...the blue volume. Exhibit, it's Exhibit 63. And that
14 will be page 34.

15 A. Yes.

16 Q. That Mr. Marshall is here and he's writing to his friend Roy
17 Gould and he is indicating that somebody was telling him that
18 "Mick F." and we understood that, from Roy Gould, was
19 Mickey Flynn, was at that time residing in Ontario. And
20 according to Mr. Gould this was one of the names that have
21 been given by Marshall as the person who did the stabbing.
22 Wouldn't you agree that Marshall himself being present
23 would know who did the stabbing?

24 A. Yes, I would think so.

25 Q. And, there shouldn't be any mistake about the identity of this

1 person.

2 A. Who this Mickey...

3 Q. To Marshall.

4 A. No.

5 Q. And if there was any such question about identity when
6 Wheaton and Carroll were taking those statements they ought
7 to have looked into that, wouldn't they?

8 A. No, I don't know if they knew about it.

9 Q. I see. And, does it surprise you that in July of 1978 as
10 appeared in Volume 16, and I will just read this to you, that
11 subsequent to an interview with Marshall by Philip MacNeil
12 [sic], who was working with Marshall's lawyer at that time,
13 Miss MacLean.

14 MISS DERRICK

15 Lawrence.

16 MR. ROSS

17 Q. Lawrence MacNeil, sorry. He states, and this is...he states that
18 "This person is presently an inmate in Dorchester Penitentiary
19 and believes that his life would be in great jeopardy should
20 this information be made known before his release." Before
21 his release. This would suggest that Marshall had the idea
22 that somebody other than Ebsary did the stabbing. Do you
23 find this surprising?

24 A. Well, I'm...quite frankly I don't know what you're talking
25 about. You're telling me that people are saying things in his

1 letters...

2 Q Yes. And I'm asking you if you find it surprising recognizing
3 what you know now about the Marshall case?

4 A. No, I don't find it surprising. If it's true it could be surprising,
5 yes.

6 Q And do you find it in conflict with the statement that was
7 given to Wheaton and Carroll?

8 A. Well, it's...certainly what they told Wheaton and Carroll isn't
9 the same as what you're reading to me here.

10 Q And also what he told Wheaton and Carroll was later
11 retracted in Court.

12 A. Well, you showed me that, yes.

13 MR. RUBY

14 Perhaps I would ask that Mr. Ross makes it clear to the
15 witness that while Mr. Marshall is naming persons there's no
16 suggestion he knew Mr. Ebsary's name, and no suggestion that
17 anybody, other than the physical person of Mr. Ebsary, was ever
18 identified by him as being the person who did it. He just doesn't
19 know the names, knows what people look like.

20 COMMISSIONER POITRAS

21 Mr. Ross.

22 MR. ROSS

23 I note Mr. Ruby's objection, My Lord.

24 COMMISSIONER POITRAS

25 All right. It's noted.

1 MR. ROSS

2 Q. I take it, sir, that you would have looked through Volume 21,
3 which is the material, as I understand it, the booklet prepared
4 by Staff Sergeant Wheaton.

5 A. Yes.

6 Q. You'd have looked at this in fair detail.

7 A. I certainly read through it, yes.

8 Q. I see. And I take it that you had a close look at these flow
9 diagrams.

10 A. The flow charts.

11 Q. The flow charts, yes.

12 A. Yes.

13 Q. Which start at page 5.

14 A. Yes.

15 Q. And go through to page 13.

16 A. Yes.

17 Q. Did you analyze these?

18 A. I don't know if I analyzed them. I certainly would have read
19 them through when I was reading the book.

20 Q. You would have checked them for correctness, wouldn't you?

21 A. Well, to a certain extent, yes.

22 Q. And over on page 147 where they were tracing the
23 movements of Donald Marshall you'd have crosschecked that
24 yourself?

25 A. From my knowledge, yes.

1 Q. And the same would have applied with Sandy Seale, which
2 appears at 189.

3 A. Yes.

4 Q. And did you do any checking into the background of Sandy
5 Seale to whether or not he could be in any way connected to
6 robberies or anything of that nature?

7 A. I didn't do anything. I certainly remember them saying that
8 as far as they were aware he had no record, that he was very
9 involved in sports and that night he had tried to get into the
10 dance three times by trying to get a stamp off somebody
11 else's wrist to allow him in, and he was thrown out by the
12 same policeman three times.

13 Q. Was that enough to...was that enough on which to base...to
14 come to a conclusion that he had been involved in a robbery
15 or an attempted robbery?

16 A. No.

17 Q. Would that...was that enough to rule out the requirement for
18 further investigation into the background of Sandy Seale?

19 A. As far...

20 COMMISSIONER EVANS

21 The reputation of Sandy Seale was what one might say was
22 impeccable. I thought that's been bandied around now for several
23 weeks.

24 MR. ROSS

25 Oh, that is...

1 COMMISSIONER EVANS

2 There was nothing wrong with Sandy Seale as far as...

3 MR. ROSS

4 Yes, that is true, My Lord, and perhaps that's why I am
5 beginning to wonder why is it so easy to accept that somebody
6 which such an impeccable background, it's so very easy to accept
7 that he'd be involved in an attempted robbery. That's the link I'm
8 trying to see if there is any basis to establish. But I won't be
9 much longer. I understand what's happening, My Lord.

10 Q. So, is it fair to say then, officer, that one of the reasons for not
11 really looking into the background of Sandy Seale is that it
12 was not part of your job on this assignment?

13 A. Oh, that was...I'm sure that it was looked into as far as...as
14 what type of a youth he was, and he was found to be a very
15 good youth.

16 Q. I see. Is that reported anywhere in the documents to the best
17 of your recollection?

18 A. No, because I...as far as I know that wasn't reported, no.

19 Q. If you look toward the back of Volume 21, at page 192 there
20 is a statement of Keith Beaver.

21 A. 192.

22 Q. Yes, page 192.

23 A. I must have the wrong...

24 COMMISSIONER EVANS

25 190 I think.

1 MR. ROSS

2 Volume 21.

3 A. Volume 21, oh, I'm on...excuse me, I'm on Volume 2.

4 Q. It's the one after 191 anyway.

5 A. Oh, okay, I've got it now. I'm just...

6 Q. 192.

7 A. Keith Beaver, yes, right at the bottom of the page.

8 Q. Yes. There's a page 192 and page 194. Now without going
9 through the details, it appears as though between Donald
10 Noseworthy and Gay Dixon and Keith Beaver and Alanna
11 Dixon they can put Sandy Seale on the...at the intersection of
12 George Street and Argyle Street around 11:45.

13 A. Yes.

14 Q. Was that consistent with what you understood the facts to
15 be?

16 A. Well, the time of the actual stabbing varied with each witness
17 as to anywheres from ten o'clock until after midnight.

18 Q. And did you ever narrow it down?

19 A. Narrow it down.

20 Q. Yes. What did you do to narrow it down?

21 A. Well, I think we came to the conclusion that it was just before
22 midnight sometime.

23 Q. Yes. And what...on what was that based?

24 A. The different witnesses.

25 Q. Just the different stories, what, you just accepted some over

1 others, is that fair?

2 A. Well, we had nothing else to try to pin it down to.

3 Q. I see. Did you look at the statement of Marvel Mattson?

4 2:47 p.m.

5 A. I remember reading his statement where he lived on the
6 other side of the Park and heard the noise and called the
7 police because they were making so much...

8 Q. Sure. No, he heard people outside of his window...

9 A. Yes.

10 Q. Around ten minutes to twelve when he was leaving
11 downstairs going up to bed. Did you know Mr. Mattson
12 personally?

13 A. No, I did not.

14 Q. You didn't know him.

15 A. No.

16 Q. I see. Do you know whether or not his story was ever
17 checked out?

18 A. I'm sure it was, yes.

19 Q. You're saying you're sure it was. What makes you so sure?

20 A. Well, we checked out all the statements of the witnesses. The
21 investigators checked them out, yes.

22 Q. I see. You mentioned that one of your concerns is that there
23 was no magisterial inquiry into the death of Sandy Seale.

24 A. Yes.

25 Q. Why would that have been important to you?

1 A. Well I would have thought that it would have brought out the
2 cause of death, all the witnesses that were known would have
3 given evidence, the doctors and so on, and it would have
4 followed along that an autopsy probably would have been
5 done with a magisterial inquiry, or before a magisterial
6 inquiry.

7 Q. Well, it appears to me that what the RCMP was doing in 1982
8 was really starting with the death of Sandy Seale and moving
9 forward.

10 A. Yes.

11 Q. Rather than stepping back and looking at the full
12 circumstances and specifically trying to pin down the timing
13 and circumstances of the death of Sandy Seale. And as I
14 understand from both Wheaton and Carroll, this was really
15 not part of their terms of reference. Do you subscribe to that?

16 A. No, because what I'm saying is we look at the, from the time
17 of the death but we also checked out numerous witnesses.
18 Everyone we could find that was at the dance that night, that
19 their name came up, we tried. "Was Seale there?" "Was
20 Pratico there?" "Was Marshall there?" "What time did they
21 leave?" "When did you leave?" And tried to determine, as
22 best we could, from those different witnesses that saw people
23 at different times what happened and where did it happen
24 and could that person have been there or did somebody else's
25 memory, was it bad. Because we were dealing with

1 teenagers, for the most part, going back ...

2 Q. Ten years, twelve years.

3 A. Ten, eleven years and it was very difficult to get accurate
4 information.

5 Q. Were these written statements they were taking?

6 A. Not in all cases. It depended what kind of information that
7 they gave.

8 Q. So some statements were taken down in writing and others,
9 you made the judgement call, or the RCMP made the
10 judgement call, that don't bother to reduce it to writing.

11 A. Well, somebody might have said, "I saw Joe Blow at the dance
12 that night." And you go and see Joe Blow and he says, "I can't
13 remember being there that night."

14 Q. I see. So then...

15 A. So rather than write it down we'd just say it was a dead lead
16 and that would be it.

17 Q. That's what I think I asked you. If you just made a
18 judgement call to reduce some to writing and others not to
19 writing.

20 A. Yes.

21 Q. And all of those that were reduced to writing, are they all
22 included in these volumes or are there some which were left
23 out?

24 A. No, I would imagine that they're there.

25 Q. That they would all be there.

1 A. Yes.

2 Q. I see. So a full review of the volumes should give us as much
3 information as you had to arrive at your conclusions.

4 A. Yes.

5 MR. ROSS

6 Thank you very much, all questions.

7 COMMISSIONER POITRAS

8 Thank you, Mr. Ross. Mr. Wildsmith?

9 EXAMINATION BY MR. WILDSMITH

10

11 Q. Superintendent Scott, my name is Bruce Wildsmith and I'm
12 here for the Union of Nova Scotia Indians.

13 A. Yes.

14 Q. Would it be fair of me to think that during the time that you
15 were stationed in Sydney, between '77 and '84, that you had
16 pretty good relations with the MicMacs on the Membertou
17 Reserve?

18 A. Yes. Well, when I say I had a good relation, I had meetings
19 and discussions with the president of the Union of Nova Scotia
20 Indians on several occasions and we had an Indian who was
21 murdered and found in our jurisdiction. We did an
22 investigation and two whites were charged that were living in
23 Toronto. And I remember at that trial that we had a lot of
24 contact with the Membertou Reserve and they were quite
25 impressed that we would go to such extremes, such as having

1 authorization and a Special O on that to trail these people
2 around Toronto in our investigation and it was successfully
3 concluded with a conviction of the two people.

4 Q. Yes.

5 A. So I did know a lot of people from there.

6 Q. Okay. Just to build on that and you've touched on the issue
7 that I'm interested in. At that time, and during that
8 particular investigation, there was a Band Constable, was
9 there not, employed on the Membertou Reserve?

10 A. I didn't know of a Band Constable on Membertou. It was
11 policed by the City of Sydney and not by the RCMP. So my
12 dealings with them was just on, because the office of the
13 Union of Nova Scotia Indians was at that reserve. I'd go up
14 and meet with them and they'd come down to my office and
15 people I met through my children going to school and so on.

16 Q. Well, perhaps one of the two of us are mistaken on this point.
17 I'm looking at a letter which I had not intended to introduce
18 as an exhibit but which refers to a Constable Dan Paul on the
19 Membertou Reserve. Does that name ring a bell?

20 A. No, it doesn't.

21 Q. Well perhaps I should show you the letter then.

22 COMMISSIONER POITRAS

23 What's the date?

24 MR. WILD SMITH

25 This is 1980.

1 EXHIBIT 118 - LETTER - 8 JANUARY 1980 - FROM INSPECTOR

2 SCOTT TO CHIEF A. CHRISTMAS

3 Q. Is that there your signature at the bottom?

4 A. Yes, it does.

5 Q. You've now had an opportunity to look at it. Does it refresh
6 your memory at all?

7 A. Yes, but it doesn't change what I've said. The body was found
8 in our jurisdiction out in the County of Cape Breton. Because
9 he was from Membertou we did not know where the murder
10 had occurred so we solicited the assistance of Corporal, at that
11 time, Walsh, who is now the Chief of Police, to work with us in
12 the investigation. In the event that the details showed that
13 the murder had, in fact, happened in the City of Sydney, and
14 they could take over the investigation. They worked with
15 this person and he was, I guess, like a native constable, for
16 that reserve. He may have worked with the City of Sydney.
17 He never worked with us other than to assist us in locating
18 people on the reserve every time we wanted to know
19 something, we went to him, in this investigation. At the
20 conclusion of the investigation I wrote to him, the Chief of
21 Police of Sydney and thanked all those that had helped us in
22 the investigation. I never met him.

23 Q. In this letter you express your appreciation for the excellent
24 assistance rendered by Constable Dan Paul of Membertou
25 Reserve.

1 A. As the O/C of the Subdivision my investigators would come to
2 me and say, "Would you please send out a letter of thanks to
3 these people that have helped us in the investigation?" And
4 because I was the Officer Commanding, they felt the letter
5 would mean more than coming from them as a constable or
6 corporal or whatever.

7 Q. The tenor of this letter is to suggest that the assistance
8 rendered by Constable Paul was an integral part of that team
9 effort?

10 A. It was.

11 Q. Okay.

12 A. It was. Because he knew all the people and could save us
13 hours of searching for people.

14 Q. Good. And just to follow that up, then, my point to you is that
15 would you agree that having a constable on the reserve who
16 is an Indian is of assistance in the policing of that reserve.

17 A. Certainly. I had special constables or supernumerary special
18 constables at all the reserves we policed in Cape Breton
19 except for Chapel Island, that, the individual that was the
20 native there got into a drinking problem and the chief and I
21 decided that he should be relieved of his responsibility and
22 they didn't want him replaced.

23 Q. From your perspective as a policeman then, the idea of
24 Indians policing Indians is a good idea.

25 A. Excellent.

1 Q. Okay.

2 A. No...

3 Q. Now you mentioned something about the RCMP contract with
4 the Province of Nova Scotia for policing.

5 A. Yes.

6 Q. And I take it that's something you have some knowledge of.

7 A. Yes.

8 Q. Okay. You mentioned that there was a policy manual, as I
9 took it, developed from that contract dealing with RCMP
10 policing in Nova Scotia.

11 A. A policy manual?

12 Q. Well, the impression I had from your testimony is that there
13 was a document prepared of which Exhibit 117 is an
14 example...

15 A. Oh...

16 Q. Which just applies in Nova Scotia.

17 A. Yes. We have, there's three types of directives. There is the
18 one that comes from Ottawa to the RCMP generally. There is
19 Division instructions and then, in some cases, there's
20 Subdivision instructions and post instruction.

21 Q. Okay. Well the point I want to get at is are there such
22 documents that relate to policing on reserves?

23 A. Oh, I would imagine there probably is. I can't think of any in
24 particular.

25 Q. Okay. Can you tell me whether or not in that RCMP contract

1 for policing on Nova Scotia there is a reference to policing on
2 Indian reserves?

3 A. I would think so. I can't tell you right now but I would
4 imagine in the operational manual that there would be.

5 Q. So your understanding is that policing of reserves is included
6 in the policing contract for the province.

7 A. Yes. Because we, part of my instructions, I know, is to meet
8 with the chiefs of the reserves and to see what the policing
9 was. I was to meet with the Band Manager at the reserves.

10 Q. Let me stop you for a moment to make it clear what I'm
11 driving at. The RCMP is also a Federal police force...

12 A. That's right.

13 Q. And the policing of reserves might be an RCMP responsibility
14 as a result of being a Federal police force as opposed to being
15 under contract with the province.

16 A. Well the, I suppose you could look at it, we wear two hats.
17 Under the Indian Act you'd be dealing as a Federal constable
18 but under the Criminal Code and motor vehicle statutes and
19 provincial statutes, Liquor Control Act, would all be under
20 contract.

21 Q. Thank you then, I think you've made my point. Let me move
22 on to something different. You indicated as part of your
23 testimony that Chief John MacIntyre appeared to know a lot
24 of people around Sydney.

25 A. He sure did.

1 Q. And that he also appeared to know not only who they were
2 but who their mother and father was, who their parents was.

3 A. Yes. A lot of Cape Bretoners know that.

4 Q. Where they lived? Where they were from?

5 A. Yes.

6 Q. Was this the kind of information that seemed to be important
7 to Chief MacIntyre?

8 A. I don't know if it was important. It was just that I was new
9 in the community and I was trying my best to know as many
10 people as I could and whenever I was with him and there
11 was someone there at a gathering that I didn't know I would
12 just say, "Who's that" and he would tell me who they were
13 and he could go on with their life history in some cases.

14 Q. And I guess amongst the people that he knew something
15 about was Dr. Virick.

16 A. Yes, I guess so.

17 Q. You know who Dr. Virick is.

18 A. Yes. He was, I give testimony, I believe, yesterday that he
19 was the, that Chief MacIntyre had told me that he was the
20 doctor for the Membertou Reserve.

21 Q. Do you also know him to be a brown-skinned individual from
22 India?

23 A. I've never met the man.

24 Q. Okay. In your conversation with John MacIntyre, did you
25 hear him refer to Dr. Virick in the same way that Staff

1 Sergeant Wheaton testified?

2 A. No, I did not.

3 Q. Okay. Yet in the conversation with John MacIntyre, I take it
4 from your testimony yesterday that he was suspicious of Dr.
5 Virick.

6 A. Yes, he was.

7 Q. He was suspicious that he sewed up Junior Marshall's wound
8 as an attempt to cover up.

9 A. Yes, he thought that the wound was a very superficial one,
10 that he puts ten stitches in it and that it may not have been
11 required.

12 Q. So he was suspicious that Dr. Virick was assisting Junior in
13 some way in covering up by stitching unnecessarily.

14 A. I believe that was his suspicion.

15 Q. Yes. And was there also the discussion about Junior Marshall
16 taking these stitches out prematurely?

17 A. Yes.

18 Q. And flushing them down the toilet, disposing of the
19 bandages?

20 A. Yes.

21 Q. And was there also some suggestion that Dr. Virick may not
22 have done all that John MacIntyre wanted him to do to get at
23 those stitches?

24 A. I believe he was late going out to the Correctional Centre to
25 take the stitches out or something and that he felt that he

1 wasn't really trying to help him that much in getting the
2 bandage with the blood on.

3 Q. Now your impression from John MacIntyre is that he
4 expected Dr. Virick to assist him in securing those stitches.

5 A. Yes, I think he did, that he was investigating a murder at this
6 point and that the doctor should assist him as he could.

7 Q. Did you ever attempt to verify from Dr. Virick's perspective
8 whether he was working in concert in any way with John
9 MacIntyre about the stitches?

10 A. No, I did not. I don't know if Staff Wheaton did or not.

11 Q. Okay. So you have no knowledge from Dr. Virick's standpoint,
12 only what John MacIntyre told you.

13 A. That's correct.

14 Q. And did he also say anything about getting a blood sample in
15 addition or in some other way than through his stitches?

16 A. No.

17 Q. Would you agree with me that John MacIntyre was not
18 treating Dr. Virick as much of a medical professional.

19 A. I can't really say that. I know that he had a suspicion of him.
20 I guess...

21 Q. Suspicious in at least two respects.

22 A. Yes.

23 Q. Unnecessary stitches and being late or tardy in getting the
24 stitches out.

25 A. Yes.

1 Q. Did you do anything to see whether these aspersions being
2 cast on Dr. Virick were verified or warranted in any way?

3 A. No. I didn't because I didn't really agree with Chief
4 MacIntyre on the way the cut was and the reason that it
5 wasn't bleeding and his theory and my theory didn't really
6 mix.

7 Q. So is it fair to say, then, you didn't put much credence in John
8 MacIntyre's theory.

9 A. Not what he said, no.

10 Q. Mr. Ross a few moments ago directed your attention to the
11 passage that appears in Volume 20 at page 25 about Indians
12 taking out vengeance against whites.

13 A. Yes.

14 Q. For lying against Junior Marshall.

15 A. Yes.

16 Q. And he asked you from where you received that information.
17 The first name you mentioned was John MacIntyre. Is it fair
18 for me to think that most of the information you received on
19 that point came from John MacIntyre?

20 A. I don't think so.

21 Q. Okay.

22 A. I think there was, I know that we talked about the situation
23 at the time of the investigation and I know that I had
24 conversation with Ian MacNeil about it and also with the
25 investigators. And over the period of time between our

1 investigation and when I left in '84 I'm sure that other
2 people, once they heard about the investigation would say
3 things to you that, about what it was like during the...

4 Q. Yes. I'm not talking about the racial tensions in general but
5 simply about the idea that Indians would take out vengeance
6 on whites.

7 A. Well that was in the transcript, too, I think, when they were
8 trying to justify why Pratico changed his mind, that he was
9 being threatened by the Indians and that, and that he had
10 talked to Chief Marshall before, or to Mr. Marshall prior to
11 going to the defence lawyer and so on, or the sheriff.

12 Q. Yes. That's only in relation to John MacIntyre. I'm sorry,
13 that's only in relation to John Pratico.

14 A. There was also some testimony, or in the statement of Chant
15 that he was also afraid of the Indians.

16 Q. Yes. Does that suggest anything more to you than that there
17 may have been a fear, justified or unjustified, in his mind, but
18 not of anybody actually threatening him?

19 A. No. It was just another example. I was summing up what I
20 had read and heard in my statement. You're talking about
21 my statement, I presume.

22 Q. Yes. So your idea of Indians taking out vengeance against
23 whites come in relation to Chant from one sentence that
24 appears in the first statement that Chant gave to Staff
25 Sergeant Wheaton.

1 A. No, I didn't say that. I said the combination of everything I
2 knew and that was part of it.

3 Q. Well let's just take Chant for a moment. The information you
4 had was one sentence in Chant's statement in relation to why
5 he thought Junior Marshall was guilty and what you learned
6 from John MacIntyre.

7 A. And reading the transcript about Pratico and talking to Ian
8 MacNeil...

9 Q. That's Pratico now, I'm talking Chant.

10 A. Oh, well, yes, I guess.

11 Q. Okay. And in relation to Pratico, did anybody draw to your
12 attention the fact that somebody was charged and that no
13 evidence was offered against that person and they had been
14 acquitted, charge dismissed?

15 A. I believe that I knew that, yes.

16 Q. And you don't take that into account.

17 A. Well, yes, I took it into account but I also took into account
18 Pratico said that they were coming down on his street and
19 looking at his house and that he felt they were trying to
20 intimidate him. And consequently, he felt uneasy about it
21 and I guess if I was lying I'd feel uneasy about it, too.
22 Because apparently they knew he was lying.

23 Q. And, indeed, the evidence in front of this Commission is that
24 they simply were trying to encourage him to tell the truth.

25 A. Yes.

1 Q. Now, in your report in Volume 19 at page 30 and 31...Volume
2 19, page 30. You append your note about when Chief
3 MacIntyre came to visit you at your office in relation to the
4 statement from Chant and Pratico.

5 A. Yes.

6 Q. As I look through this discussion between you and Chief
7 MacIntyre, I see that one of the things that there was no
8 mention of is a request by Chief MacIntyre that you look into
9 the question of whether Pratico and Chant's new statements
10 were influenced by pressure from Indians.

11 A. I don't follow you at all on that.

12 Q. Well, at the top of Page 31, you say: "Chief MacIntyre
13 brought up several points that should be clarified to
14 determine the accuracy of this investigation."

15 A. That's right.

16 Q. Meaning the change of stories by Chant and Pratico?

17 A. Yes.

18 Q. And I'm saying to you, one of the things that's not in there is
19 any reference to checking on whether they changed their
20 stories because of threats from Indians.

21 A. No, that wasn't the picture I was getting at all, that that's the
22 reason that...

23 Q. That had nothing to do with them changing?

24 A. No.

25 Q. O.K. Now you indicated to us that at some time you developed

1 a concern about whether John MacIntyre and/or other people
2 at the Sydney Police Department were involved in fabricating
3 evidence back in 1971.

4 A. I never said "fabricating evidence."

5 Q. You were concerned about the statement then that was put
6 underneath the desk?

7 A. No, I was concerned about the reason for the witnesses lying
8 and the changes of their statements along that line, and what
9 type of an investigation was done.

10 Q. So what you were concerned about was pressure being placed
11 on those witnesses back in 1971 to give what turned out to be
12 false testimony?

13 A. Yes.

14 Q. And is it fair to think that back in 1982, when this
15 investigation was taking place that you wanted something to
16 be done by way of looking into the allegations of improper
17 pressure?

18 A. Yes.

19 Q. And in the end result, nothing was really done on that
20 question?

21 A. So far.

22 Q. So far. And if indeed improper pressure was placed on
23 witnesses in 1971, the same individuals who were involved in
24 that process continued to be working with the Sydney Police
25 Department?

1 A. Well, if you identify who they were, then you can say
2 whether they are...

3 Q. Well, certainly the name "MacIntyre" has been one that's
4 been mentioned?

5 A. Yes.

6 Q. And since 1971 he was promoted to the position of Chief?

7 A. Yes.

8 Q. Yes. And a number of other people, to your knowledge, who
9 were involved in the '71 investigation continued to work with
10 the Sydney Police Department during the time you were
11 there?

12 A. Yes, they did.

13 Q. And so during all of this time period, if something improper
14 was done in 1971, the Sydney Police Department, nevertheless,
15 acted as if business were as usual?

16 A. I guess you could say that.

17 Q. Now you indicated that you hoped that something would be
18 done about it by way of looking into the allegations to see if
19 they were substantiated?

20 A. Yes.

21 Q. Is it fair for us to think that there was some resistance by
22 those above you in the chain of command, all the way up,
23 maybe into the Attorney General's Department?

24 A. I never heard of any.

25 Q. Then why wasn't anything done?

1 A. Well, we have an inquiry now.

2 Q. Yeah, but why wasn't anything done until the inquiry was
3 commissioned? Was it simply because of the Ebsary trial?

4 A. I think that we discussed that. It was the trials and getting
5 Junior Marshall out of jail and having the reference. All those
6 things were going on.

7 Q. Well, I would put it to you that if something improper had
8 taken place in 1971, allowing that to continue uninvestigated
9 through all of these years while the Ebsary trials were going
10 on is a much more serious matter.

11 A. I wouldn't like to comment on it one way or the other.

12 Q. Is it also fair to think that by the time the Ebsary trials took
13 place and people were directing their attention to this issue
14 that one of the concerns as to why people like Superintendent
15 Vaughan decided nothing ought to be done at that point by
16 way of reinvestigation was because of the passage of time?

17 A. I don't know. You'd have to ask him.

18 Q. O.K. Going back to this question of the events in 1971 and
19 looking at the conduct of the Sydney police at that time,
20 would it be fair to think that one of the things that you would
21 have looked at would be the motives for individual police
22 officers acting the way they did?

23 A. Yes, if there was motives, yes.

24 Q. And one of the factors that ought to have been looked at is
25 whether any of those actions were racially motivated?

1 A. I suppose because of the victims involved that you'd have to
2 look at that, yes.

3 Q. And the attitude of people like John MacIntyre towards racial
4 minorities. That would have been part of what you might
5 have looked at back in 1982?

6 A. Yes, I would imagine that if we had received that scope to
7 investigate it, we probably would have looked at that.

8 Q. And to the best of your knowledge, except for the inquiries
9 that were made by Staff Sergeant Wheaton, no one did look at
10 that question?

11 A. I couldn't comment on that because I don't know what other
12 people did.

13 Q. Well, you don't know and you were the officer in charge in
14 Sydney.

15 A. Yeah, I didn't and I don't know that my investigators did, no.

16 Q. We did hear some testimony from Staff Sergeant Wheaton,
17 but my point to you is, in addition to what he did, nobody, to
18 your knowledge, did anything further?

19 A. Not to my knowledge.

20 Q. To look at that question?

21 A. No.

22 Q. Just one other little detail. In Volume 18 at Page 23.

23 A. Yes.

24 Q. I can't find my own copy of it. Can you...oh, here it is. Can
25 you assist me as to who wrote this? Those initials at the

1 bottom?

2 A. That's a p.a. initial.

3 Q. What does that stand for?

4 A. It's an authorization to file it away, put it away on that date.
5 Could I just read it for a minute to see...

6 Q. Certainly.

7 A. I can't see what's down on the bottom of that page in the
8 lower right-hand corner. I don't know if it's any better on
9 your copy.

10 Q. I think we have it as an exhibit 95.

11 A. It looks like it's addressed to Staff Sergeant Burgess at the
12 top.

13 Q. And was he one of the readers?

14 A. And it almost looks like Burgess' p.a. initial down in the
15 bottom, but I can't be certain of that.

16 COMMISSIONER POITRAS

17 Superintendent Scott, if you were to take a look at Page 24, which
18 is the next page on Volume 18, you have a signature up on top
19 there and at the bottom you also have an initial, the bottom right
20 and that looks very much like the initial on...

21 A. Yes, that's Staff Burgess. He's writing to file. In other words,
22 just a note to file to...

23 COMMISSIONER POITRAS

24 Would that be the same initial?

25 A. Yes, I believe it is but the thing that confuses me, it looks like

SUPT. SCOTT, EXAM. BY MR. WILDSMITH

1 it's written to Staff Sergeant Burgess at the top upper left.

2 MR. WILDSMITH

3 To an untrained eye, it looks like different handwriting as well.

4 A. It could be. I don't know who it was.

5 Q. So it wasn't you then and you don't know who?

6 A. No, no, but it looks like he spoke with the Deputy
7 Commissioner of Operations in Ottawa and I would say that
8 that's...I can't...although Staff Burgess may have.

9 Q. Would you expect it to be somebody from Halifax then rather
10 than from Sydney?

11 A. I would think so.

12 Q. O.K. Thank you.

13 MR. SPICER

14 Perhaps you weren't here, but it seems to me we did have some
15 testimony about those documents a while ago. It might have been
16 on one of the days when you weren't here.

17 MR. WILDSMITH

18 Yeah, I didn't catch it...

19 MR. SPICER

20 They were identified, I think, through Burgess at the time he gave
21 his testimony. I don't exactly recollect what it was, but I know
22 that those documents were spoken to at the time.

23

24 COMMISSIONER POITRAS

25 Thank you, Mr. Wildsmith. Mr. Pringle?

SUPT. SCOTT, EXAM. BY MR. OUTHOUSE

1 MR. PRINGLE

2 No questions, My Lord.

3 COMMISSIONER POITRAS

4 Mr. Outhouse?

5 EXAMINATION BY MR. OUTHOUSE

6 Q. I just have three questions, Superintendent Scott. First of all,
7 my learned friend Mr. Saunders, when he was questioning
8 you at one time, as I heard him, said that you chastised your
9 officers, your investigators, and I presume he meant Staff
10 Sergeant Wheaton and Staff Sergeant Carroll about leaks to
11 the press, and he used the word "chastised," and I hadn't
12 heard you use that. Did you chastise them or just tell them
13 that there was to be no talking to anyone, including Frank
14 Edwards?

15 A. Yes, I just told them, but it was more of a command than a...

16 Q. Quite so.

17 A. ...suggestion.

18 Q. O.K. Did you ever consider that you had a mandate to
19 investigate the Sydney City Police or any of its officers at any
20 time?

21 A. No, I did not.

22 Q. Did your investigators, as far as you were aware, and by that
23 I mean Staff Sergeant Wheaton and Carroll, did they...were
24 they ever under the impression that they were investigating
25 the Sydney City Police or any of its officers?

SUPT. SCOTT, EXAM. BY MR. OUTHOUSE

1 A. No, to the contrary.

2 MR. OUTHOUSE

3 Those are all my questions--three.

4 COMMISSIONER POITRAS

5 Mr. Spicer?

6 MR. SPICER

7 One thing arising and I can do it from this mic.

8 Q. Just arising out of your testimony yesterday and it's my fault,
9 I asked you a question with a double negative in it and you
10 got caught in it. On Page 9227, I think you've got the volume
11 there. I just want to clear it up because it may be some time
12 from now when we look at these pages again. No, the
13 transcript from yesterday, Volume 50 in front of you.

14 A. 9227?

15 Q. 9227. I'm confident that you gave exactly the opposite
16 answer from what you intended to say, I think. Halfway
17 down the page:

18
19 Q. Is it fair to say that at that point in time
20 you weren't even trying to pin the Chief
21 down?

22 And you said "no." I take it you weren't trying to pin the
23 Chief down at that point in time?

24 A. No, I wasn't, no.

25 Q. Because the way it reads, it looks like it's the opposite of that.

SUPT. SCOTT, EXAM. BY MR. OUTHOUSE

1 A. No, I probably said no, but no, I wasn't trying to pin him
2 down.

3 Q. You weren't trying to say "no." I see, that's all.

4 COMMISSIONER EVANS

5 In the cross-examination by Mr. Pugsley having to do with the
6 transportation of Pratico to the institution, I think you said that
7 there was no police officer accompanying Pratico to the hospital?

8 MR. PUSLEY

9 That was my recollection in August.

10 COMMISSIONER EVANS

11 I think the evidence of some time ago will indicate that one of the
12 MacDonalds, Michael R. MacDonald or Red MacDonald, whichever
13 one it was, was with him when they went to the hospital.

14 MR. PUGSLEY

15 Thank you, My Lord. That was in August, was it, and not in
16 November? I know that there was some reference to the police
17 taking him in November.

18 COMMISSIONER EVANS

19 I think it had to do between the two...

20 MR. SPICER

21 I think that was cleared up by Mr. Broderick later on in the day.
22 There is, in fact a fair amount of testimony that M.R. MacDonald...

23 COMMISSIONER EVANS

24 I just wanted to make sure there was some police officer at some
25 time.

SUPT. SCOTT, EXAM. BY MR. OUTHOUSE

1 MR. PUGSLEY

2 Thank you.

3 COMMISSIONER POITRAS

4 Well, with almost 10,000 pages of testimony, we adjourn to March
5 7, 1988 at 9:30 a.m. Thank you.

6

7 ADJOURNED TO MARCH 7, 1988 at 9:30 a.m.

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REPORTER'S CERTIFICATE

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



Margaret E. Graham

DATED THIS 4th day of February, 1988, at Dartmouth,
Nova Scotia