

MR. CHRISTEN, EXAM. BY MR. SPICERMR. SPICER

1
2 The next witness is Doug Christen, My Lord. The Volume 38
3 that Mr. Murray was referring to I don't intend to refer to now,
4 but perhaps we could just have it entered as an exhibit. It's a
5 series of newspaper articles that we've accumulated concerning
6 this case from 1982 to 1986, also containing some Hansard reports
7 and that sort of thing. We would intend to use it for certain
8 limited purposes.

EXHIBIT 131 - VOLUME 38 OF MARSHALL INQUIRY DOCUMENTSMR. CHAIRMAN

11 That's Exhibit 131, Volume 38, thank-you.

12 MR. DOUGLAS FREDRICK CHRISTEN, duly called and sworn,
13 testified as follows:

EXAMINATION BY MR. SPICER

14
15 Q. For the record, sir, what's your full name?

16 A. Douglas Fredrick Christen.

17 Q. And you're a retired R.C.M.P. officer.

18 A. Yes.

19 Q. When did you retire from the R.C.M.P.?

20 A. In 1983, in June of 1983.

21 Q. And at the time you retired what position were you in?

22 A. Criminal Investigation Branch Officer for Nova Scotia.

23 Q. In what year did you join the R.C.M.P.?

24 A. 1949.

25 Q. Can you just take us quickly through your career with the

1 R.C.M.P.?

2 A. Joined and served or took my training in Regina, finished the
3 second part of training in Ottawa and was stationed in New
4 Brunswick for twenty years as a general detachment member,
5 was commissioned in 1970 and went to Newfoundland as a
6 staffing officer, and in '75 returned to Truro, Nova Scotia, as
7 the O.C., Truro, Nova Scotia, subdivision, and then in 1976 was
8 transferred into my position as C.I.B. officer.

9 Q. That would be in Halifax.

10 A. That would be in Halifax, yes.

11 Q. Can you describe for us generally your responsibilities as
12 C.I.B. Officer in Halifax?

13 A. Well, the C.I.B. Officer is indirectly responsible to the
14 commanding officer and is responsible for the criminal
15 operations in the province, supervision and direction. There
16 is three subordinate officers report to the C.I.B. Officer being
17 the Officer I.C. Commercial Crime and the Officer I.C. Contract
18 Policing and the Officer I.C. Federal Policing. And, in addition
19 there are five readers. These duties consisted of drafting
20 policy, reviewing contingency plans as they relate to hostage,
21 hijacking incidents, things of this nature, liaising with other
22 police departments, parole services, corrections, sitting on
23 promotion boards, grievance boards.

24 Q. Would you do any investigative work yourself in that
25 position?

1 A. No, not really.

2 Q. No. And did you occupy that position from 1976 until 1983
3 when you retired?

4 A. Yes.

5 Q. And to whom did you report during that period?

6 A. I would be responsible to the commanding officer.

7 Q. Who would it have been?

8 A. Cam Reid.

9 Q. Reid.

10 A. Yes.

11 Q. Throughout that entire period.

12 A. Yes.

13 Q. From '76 to '82.

14 A. Yes.

15 Q. Would you have any direct communications with Ottawa, the
16 senior R.C.M.P. officers in Ottawa?

17 A. Very seldom and if it was it would mostly be on the federal
18 side of the house, in large seizures, something of that nature
19 where you'd be reporting to them then.

20 Q. In your role as C.I.B. Officer in Halifax would you have been
21 one of the people who attended the Thursday meetings at the
22 Attorney General's Department?

23 A. Yes.

24 Q. And when would you have started attending those meetings?

25 A. Shortly after my arrival in Halifax I was introduced to the

director of criminal and thereafter we would meet normally on Thursday for an hour.

Q. What sorts of things would be discussed at those Thursday meetings?

A. It would vary depending on what was on the agenda. It could be serious crime, it could be...well, during the period that I was C.I.B. Officer there was several changes to the legislation such as the Young Offenders Act came into being, the Charter of Rights, fire arms legislation. It may deal with policy. It may deal with a particular case. There would also be a fair amount would be involving the administrative side of the house. There wasn't an administrative officer went down. And that would deal with probably complaints about policing in a give area, things of this nature.

Q. Would there ever be discussions of whether or not charges were to go ahead on any given matter?

A. No, not normally. That was handled pretty much at the field level, the detachments pretty well handled that.

Q. Would there ever have been any circumstances where you might have occasion to take documents over to that meeting, just pick them up and take them over without having any sort of a covering memo or transmittal slip with you?

A. No, I can't...oh, well, yeah. There could occasionally be a file go over but it would be very, very seldom. The event...what would happen there is prior to going over to meet with him, I

1 would go to the chief reader and say, "Is there anything for
2 the Attorney General's Department?" and he might say, "Yes,
3 we have a report here," and if it was already prepared and
4 signed I would take it over but normally they went over in
5 the mail.

6 Q. You wouldn't pick something up sort of by happenstance and
7 take it over?

8 A. No.

9 Q. Without there being some sort of record.

10 A. No, no.

11 Q. Prior to 1982 did you have any knowledge of the Donald
12 Marshall case?

13 A. No, I did not.

14 Q. None at all.

15 A. No.

16 Q. What was your first involvement?

17 A. I believe it was in late January or early February I received a
18 telephone call from John MacIntyre who was then chief of the
19 Sydney Police and he had advised me of receiving a letter
20 from a lawyer by the name of Aronson, who was indicating
21 that there was a witness had some evidence to the effect that
22 Donald Marshall was not responsible for the offence for which
23 he was serving time. He went into quite a bit of detail
24 describing it to me and ...

25 Q. Do you remember any of that detail?

- 1 A. Well, I think he described how...how it had been as a result
2 of a stabbing that had occurred in Sydney in 1971 and Donald
3 Marshall had been convicted for the offence. I think he went
4 on to mention that they had requested the services of the
5 R.C.M.P. to re-interview people to do an investigation into it,
6 and as I didn't really have any knowledge of it, I decided I
7 would direct him to the O.C. of the subdivision in Sydney at
8 that time who was Don Scott.
- 9 Q. Did you have any sense from your discussion with MacIntyre
10 at the time as to what his attitude was as to the possibility
11 that Marshall hadn't committed the offence?
- 12 A. No, I don't think he made any indication there. The only
13 thing that I do recall he said was to the effect that the reason
14 for his calling was he felt that where they had done the
15 original investigation that somebody from outside should look
16 at it.
- 17 Q. And, did you have to seek authority from any person higher
18 up than yourself in order for the R.C.M.P. to undertake that
19 role?
- 20 A. Normally you approached the Attorney General's Department
21 and ask them for permission to render assistance to the
22 municipal department.
- 23 Q. But would there have been anybody else in the R.C.M.P. that
24 you would have had to go to?
- 25 A. Oh, no, no. Once the Attorney General would have authorized

1 it.

2 Q. Does the witness have Volume 19? Going to need 19 and 20.
3 On page 2 of Volume 19.

4 A. Yes.

5 Q. Would that message have been sent by you?

6 A. It's signed by me but that was...

7 Q. Generated by you.

8 A. Yeah, it was generated by me. It was drafted, I think, by Don
9 Burgess.

10 Q. At the time that that message was sent, in making reference
11 to the polygraph and the 1971 reinvestigation, did you take
12 any further steps to see what the extent of that 1971
13 investigation had been by the R.C.M.P.?

14 A. In talking to Don Burgess, the chief reader, I had no
15 knowledge of it and he had indicated to me, I think if I recall
16 correctly, the chief had indicated to me the names of different
17 parties, like there was Ebsary, Marshall, Jimmy MacNeil, and
18 as a result of that I asked Don "Do we still have any files in
19 our records?" and he went to look under those four names
20 and he couldn't come up with anything. I think the other
21 thing too was that he was enquiring for the name of the
22 polygraphist and we thought at that particular time it was
23 Holmes or maybe that name was supplied by the chief. We
24 thought it was Holmes. So, that was why the telex was
25 directed to Holmes and Holmes come back and told us, no,

1 that it was Smith and...yeah, Gene Smith was the polygraphist.

2 Q. And at that time then you checked and discovered that there
3 were no files on the matter at least in Halifax.

4 A. No.

5 Q. Do you know whether Burgess would have checked anywhere
6 else, Sydney for instance?

7 A. I can't honestly say, no, that he would or wouldn't.

8 Q. Maybe if you want to...moving along in that volume to page
9 14. It's a letter from yourself to Deputy Attorney General,
10 then addressed to Gordon Gale, who would have been the
11 director of criminal at the time.

12 A. Yes, uh-hum.

13 Q. Who did you...did you expect the Deputy Attorney General,
14 Mr. Coles, to get this letter or to...was it to go to Mr. Gale?

15 A. No, we just addressed them to the Deputy Attorney General
16 out of courtesy and they always went to Mr. Gale.

17 Q. Mr. Gale. In the interim, and by this time it's the 25th of
18 February, in the interim Mr. or Don Scott has been involved
19 and there had been some meetings and has he kept you
20 advised as to what the progress in the matter has been to
21 date up to the 25th of February?

22 A. No, he hadn't. It was actually on the 23rd, I think, of
23 February that he called me on the phone to advise me what
24 they had done over that period of time and I took it down in
25 longhand as I recalled as...

1 Q. Right. And that's the next two pages, is it?

2 A. Yeah.

3 Q. Of that volume, is that correct?

4 A. And then had the secretary type it up, yes.

5 Q. Okay. Your letter says, "Further to our conversation of the
6 23rd of February." Would that conversation with Mr. Gale
7 would that have been in person or would that have been a
8 telephone call?

9 A. No, that would have been a telephone call.

10 Q. Would that have been your first discussion with Mr. Gale
11 about this particular matter?

12 A. I wouldn't be a bit surprised if it would be.

13 Q. Do you remember who initiated it?

14 A. Who initiated the call?

15 Q. Yeah.

16 A. It would have been myself because as a result of the call from
17 Don Scott.

18 Q. And Mr. Scott had been or Scott had been involved at this
19 point for about three weeks.

20 A. Yeah.

21 Q. And this would have been your first contact with the
22 Attorney General's Department.

23 A. Yes.

24 Q. You say in your handwritten...sorry, in your typed up notes
25 on page 15 and 16...I take it that the first paragraph is really

1 your information, you then say two-thirds of the way through
2 the first paragraph you're called by Scott, "Who basically
3 related the following information."

4 A. Yes.

5 Q. Okay. Is it fair to say that the rest of the note then is merely
6 your recitation of what you were told by Don Scott?

7 A. Yes.

8 12:15 p.m.

9 Q. Had you had any other discussion with Chief MacIntyre at
10 this point or had you only had the one?

11 A. No, I just had the one telephone call from him.

12 Q. Your note indicates in the last paragraph on page 15, there's
13 reference to the reinvestigation in 1971, in the fourth line,
14 third and fourth line:

15
16 Sydney City Police did not believe MacNeil
17 and called in our force to investigate and
18 review the evidence. This was done by Al
19 Marshall, et cetera.

20 And at this stage of the game, did you have any idea that
21 something was wrong? Had you formed any view?

22 A. No.

23 Q. No?

24 A. No, because...Let's just read here. Did he tell me there was
25 something...

MR. CHRISTEN, EXAM. BY MR. SPICERCOMMISSIONER POITRAS

1
2 What's the date of that resumé, do you know, Mr. Spicer?

MR. SPICER

3
4 The 23rd, My Lord. I only say that because it's referring to
5 the telephone call of the 23rd and it's sent along on the 23rd.

COMMISSIONER POITRAS

6
7 There appears to be a note at the bottom of page 15. I don't
8 know whether that will assist us.

MR. SPICER

9
10 23-02-82.

MR. CHRISTEN

11
12 A. Well, other than what appears here. That would be the only
13 knowledge I would have, yeah.

14 Q. Would you have been kept advised on a fairly regular basis
15 by Don Scott as to what the progress of this investigation was
16 as it went along?

17 A. Yeah, I would say reasonably, yeah.

18 Q. And would he have been reporting directly to you?

19 A. Yeah, it come, most of the calls would come directly from Don,
20 yes.

21 Q. Would you be considered to be his superior in the line of
22 things?

23 A. Well, actually he comes under the commanding officer. He
24 reports directly to the commanding officer, but in the chain of
25 things, yes, I would be his superior.

1 Q. And you would be a person who would be capable of giving
2 him orders and directing him.

3 A. Yes.

4 Q. Do you just want to flip over now to page 30 and 31 of this
5 volume?

6 A. Uh-huh.

7 Q. The forwarding minutes from Scott, these would have been
8 forwarding minutes to yourself?

9 A. Yes.

10 Q. And at this point in time, we're now up really to the 12th,
11 would that be correct, the 12th of February, which is
12 forwarded 82-03-12?

13 A. Yes.

14 Q. Of March. And you'll see that Scott is saying at this point
15 halfway through page 31: "After reviewing this case, I feel
16 that Marshall is innocent." Did you have enough information
17 yourself at that point in time to reach any conclusions one
18 way or the other about Junior Marshall's innocence?

19 A. Well, any conclusions that I would arrive at would be as a
20 result of Don's report. I had no other input other than what
21 Don had told me. And, yes, it certainly started to look that
22 way that...

23 Q. And you'll see in the paragraph before that, he's saying to
24 you:

25

MR. CHRISTEN, EXAM. BY MR. SPICER

1 It would appear from this investigation
2 that our two eyewitnesses to the murder
3 lied on the stand and that the other main
4 witness, Harriss, lied as well under
5 pressure from the Sydney City Police.

6 A. Uh-huh.

7 Q. Had you had discussions prior to receiving this minute from
8 Scott concerning any pressure that might have been allegedly
9 exerted by the Sydney Police on any of the witnesses?

10 A. No, I can't say that I remember having received a call from
11 them on that particular point.

12 Q. Do you remember receiving this particular minute?

13 A. This correspondence here?

14 Q. Yes.

15 A. Yeah. I feel I do, anyway, yes.

16 Q. Do you remember any reaction you might have had to the
17 suggestion that there had been pressure from this Sydney
18 City Police in connection with the original investigation?

19 A. Yes, it certainly stood out as being different, the pressure. I
20 didn't, I suppose, sit and analyze what the degree of pressure
21 was because in taking a statement, you sometimes attempt to
22 have the witness tell you what you want to hear and I didn't
23 really analyze what the degree of pressure was.

24 Q. Why would you ever want to get a witness to tell you what it
25 is that you want to hear?

A. That's a good question.

Q. I was going to leave it alone but I couldn't.

1 A. Sometimes, I suppose, if you have interviewed two or three
2 witnesses and you have certain information from those
3 witnesses and you think that you, the other party has that
4 type of information, then you would try to elicit that
5 information from them. That would be my only explanation.

6 Q. Did you get in touch with any of your superiors concerning
7 the allegations of pressure from the Sydney City Police?

8 A. No, not at that time, no. I made it known to the commanding
9 officer that we had an investigation under way and what the
10 general circumstances were and what it appeared that maybe
11 there was a person that had been incarcerated for eleven
12 years.

13 Q. Had there been any suggestion at this point to you that an
14 investigation that, that the investigation that you were doing
15 or that Scott was doing ought to include some investigation of
16 the practices of the Sydney City Police and John MacIntyre
17 and William Urquhart in connection with the original
18 investigation?

19 A. I don't think so, not at this early stage.

20 Q. If you could turn over now to page 35. There's a memo from
21 yourself directed to "Commissioner Ottawa, Attention DCI"
22 What does that mean?

23 A. Director of Criminal Investigations.

24 Q. What would it have been that would have generated that
25 memo?

- 1 A. In our policy, it comes under Media Policy, anything that is
2 likely to attract attention from the media, generate a question
3 from the floor of the House of Commons, or something of that
4 nature that they should be in a position to respond to. And it
5 would only apply to a very, very serious crime.
- 6 Q. And that would have been the reason for...
- 7 A. That's the reason for sending it, yes.
- 8 Q. And you focus on the original reinvestigation that was done
9 by the R.C.M.P. by Al Marshall.
- 10 A. Yes.
- 11 Q. At that point in time, were you starting to have any questions
12 about the adequacy of Marshall's investigation in
13 November/December of '71?
- 14 A. I don't know whether I had actually read, whether Al
15 Marshall's report had come in or we had located it or not by
16 that time.
- 17 Q. Well, I think if I could help you on that...
- 18 A. Pardon?
- 19 Q. You're forwarding it at that time.
- 20 A. Yeah. Okay, then at that particular time, I would have to say
21 that, yes, we did, or I feel in my own mind that there was a
22 question of how we missed it when we sent two people down
23 there to do the reinvestigation. Of course, I didn't know at
24 that particular time what his mindset or what his directions
25 had been to go down. But knowing the rest, and I'm not sure

1 whether I'm in content here or not, whether Jimmie MacNeil
2 had come forward by this time or not.

3 Q. Had you initiated any investigation yourself of Al Marshall's
4 original report at this point in time?

5 A. No.

6 Q. You were thinking about it but...

7 A. No, I don't even know if I was thinking about Al Marshall's,
8 initiating any inquiry on Al Marshall's report at that
9 particular time. I think the concern or the major thrust was
10 to get the information concerning Donald Marshall and, as a
11 result, we were getting then verbal admissions from Mr.
12 Ebsary to the effect that he was responsible.

13 Q. At this point in time, 26th or so of February, had you had any
14 discussions with Gordon Gale or anybody in the Attorney
15 General's Department concerning these suggestions that there
16 had been pressure from the Sydney City Police Department in
17 connection with the original investigation?

18 A. I feel I must have because I probably would be over there
19 with them and discussed it and I have tried to rack my brain
20 as to what the conversation would be over that period of time
21 over our meetings on this and I can't recall. I do feel that any
22 conversations we had, it was more or less an understanding
23 that we would deal with Marshall and Ebsary and the other
24 matters would be set off to the side for the time being until
25 we got those concluded.

MR. CHRISTEN, EXAM. BY MR. SPICER

1 Q. And are you relating to me your sense of discussions you
2 would have had with Gordon Gale specifically?

3 A. Yes.

4 Q. Did you have any discussions with anybody else in the
5 Attorney General's Department on a regular basis?

6 A. No. No, I wouldn't be. On this particular case, do you mean,
7 or at any time?

8 Q. On this particular case, no, on this particular case.

9 A. No, this was being dealt with strictly with Gordon.

10 Q. And in connection with Gordon Gale, did you have any sense
11 as to what his attitude was towards the allegations of
12 pressure from the Sydney City Police?

13 A. No, I don't think he gave any indication one way or the other.

14 INQUIRY ADJOURNS UNTIL 2:00 p.m.

15

16

17

18

19

20

21

22

23

24

25

1 2:04 p.m. INQUIRY RESUMES.

2 Q If you just turn to page 42, please, sir, of that volume 19.

3 That's a note from yourself to Scott, I guess it would be at the
4 time.

5 A. Uh-huh.

6 Q And you're saying in the second paragraph: "The material
7 submitted," and that's in reference presumably to the
8 material that had been submitted by Scott to you some time
9 ago, including Harry Wheaton's first report.

10 A. Yes.

11
12 In order to make all material in our
13 possession available to the Attorney
14 General's Department, I would request the
15 second statements.

16 Do I take it from that second paragraph that you reviewed
17 the material that you had received from Scott in the sense
18 that you've picked out the fact that the second statements of
19 Chant and Pratico were not included in the original
20 documents?

21 A. Yes, I gather that, yes.

22 Q And by this point in time by the 16th of March, had you had
23 any further discussions with anybody in the Attorney
24 General's Department concerning the attitude or the actions of
25 the Sydney Police Department during the first investigation?

A. In all honesty, I'm sure we must have discussed it but I can't

1 pick out any specific sort of conversation that we had. It was
2 an ongoing conversation. I felt comfortable with the way the
3 investigation was going. I know that any time we did talk
4 about the investigation or an investigation into the City Police,
5 it was always with a view to the fact that, well, let us get rid
6 of Marshall and make certain that we have a case or sufficient
7 evidence to present to the Courts. And also the fall-out being
8 from that, that to insure that Mr. Marshall was, his evidence
9 was presented properly that we would be turning our
10 attention to Mr. Ebsary.

11 Q. On page 43, you refer, you're writing a letter to Gordon Gale,
12 sending along some material and you say halfway through the
13 first paragraph:

14
15 The fact the stabbing resulted from
16 resistance offered at a robbery attempt
17 appears to be more plausible than the
18 suggestion an argument ensued between
19 Marshall and Seale which resulted in the
20 stabbing.

21 Why would you have thought that that would be more
22 plausible?

23 A. That seemed like just a personal observation that I made, that
24 it would be more apt to, the stabbing would aptly result from
25 a robbery attempt because I think there was sort of
conflicting evidence in there, if I recall, that there was
evidence from some of the witnesses to the fact that there

1 had been loud talk in the park, but at the same time, if I
2 remember correctly, there was also evidence to the fact that
3 these two boys were friends. And it sounded more plausible
4 to me that that would be the...But that was just my own
5 opinion, of course.

6 Q. You go on to say:

7
8 The contradictory statements taken in the
9 initial instance and the most recent
10 statements raise a question as to Marshall's
11 innocence.

12 If you had reviewed Wheaton's report and the other material,
13 by that point in time would you not have known that not only
14 were these statements contradictory, but the witnesses were
15 saying that they were pressured into giving those statements
16 in the original instance?

17 A. Yes.

18 Q. I'm just wondering why you don't draw the attention of the
19 Attorney General's Department to that fact?

20 A. Well, the statements were being forwarded over, I guess. It's
21 just something that I didn't do. I think at that particular time
22 Patricia Harriss had also been taken to the Crown Prosecutor
23 in Sydney and I think in my next paragraph, I suggest that
24 maybe all witnesses be taken there to be interviewed.

25 Q. Was it your view at this time in the middle of March, though,
that the Attorney General's Department certainly was well

1 aware of the circumstances in which it was alleged some of
2 these statements were given?

3 A. Yes, I would have to think so.

4 Q. And that would have been because you would have told
5 them.

6 A. Yes.

7 Q. Then on page, we'll just move ahead to page 80, and it's
8 another one of these similar forwarding minutes earlier on
9 but I'll just go ahead to this one. You're sending again
10 material to the Commissioner in Ottawa, page 80.

11 A. Uh-huh.

12 Q. And, again, would that have been solely because of the
13 situation you mentioned to us this morning that you wanted
14 to keep them advised because of the possibility that there
15 would be press interest in the case.

16 A. Yes, that would be basically it, just to keep them updated.

17 Q. Other than that, Ottawa had no interest in the case as far as
18 you knew?

19 A. No, they provided no direction. They had no interest or
20 anything came back from them, to my knowledge.

21 Q. Were you aware around the middle of April of Chief
22 MacIntyre's visit to the Attorney General's office? Were you
23 made aware of that?

24 A. Yes, and I have a slight recollection of it but it, in reading one
25 of the transcripts of the evidence there, I gather Don Scott

1 testified to the fact that I had received a call from Mr. Gale
2 that the Chief was in the office there with statements at that
3 particular time. And I undoubtedly called Don Scott to
4 determine if he had any knowledge of it, which he did not,
5 and in turn, my recollection is not that clear, but I must have
6 gone back to the Attorney General and we discussed the
7 manner in which this could best be resolved and it was
8 determined that a letter from the Attorney General directing
9 that the complete file or all the papers in Mr. MacIntyre's
10 possession be turned over to the investigators. And that was
11 followed up with a letter on the 20th or the 21st, I believe.

12 Q. Could I ask you why you thought that that was necessary at
13 that point in time? What was it about the visit by Chief
14 MacIntyre that made that action necessary?

15 A. Well, I think it was the fact that the investigators felt that
16 they were in possession of the complete file.

17 Q. And it was clear that they weren't.

18 A. Well, apparently not, yes.

19 Q. Do you remember discussing the sending of the letter, which I
20 think is on page 101 of that volume, 102, and the letter to
21 Chief MacIntyre is on 103. Did you discuss this with Gordon
22 Gale himself?

23 A. We discussed it, I'm sure, the matter how to resolve it and
24 insofar as the three letters going out, I'm not, I mean I
25 couldn't swear for certain but he probably did say, well, I'll

1 send out the necessary letters to make certain that they
2 understand where the file is to be turned over to.

3 Q. Prior to this letter being sent out, were you involved in any
4 discussions as to whether or not a subpoena should simply be
5 issued to the Sydney Police Department to give up their file?

6 A. A search warrant?

7 Q. Yes, a search warrant.

8 A. I'm aware that Don Scott discussed it with the Crown
9 Prosecutor down there. I'm not aware of whether I was
10 actually, whether it was discussed with me or not.

11 Q. You don't any recollection of having said "yea" or "nay" with
12 respect to this issuance of a search warrant.

13 A. No, not truly.

14 Q. Again, on 104, there's another forwarding note to the
15 Commissioner in Ottawa, and again, is that still only in
16 relation to the possible publicity aspect of the case?

17 A. That's just, once you start that file to the Commissioner, they
18 expect the follow-up to come, yes. That would just be strictly
19 follow-up information for their file to kept it up to date.

20 Q. And is the long and short of it that at no time was your
21 communication with Ottawa other than in respect of just
22 following up and keeping material sent up to them?

23 A. I had no conversation with anyone in Ottawa, no.

24 Q. On page 111, and it's a memo to yourself from Scott,
25 attaching the Harry Wheaton booklet.

1 A. Uh-huh.

2 Q. And then in the last full paragraph of...No, sorry, the last
3 paragraph on 111 referring to certain of the inadequacies of
4 the original investigation. And, in particular, I'm making
5 reference to the fact that on the top of 112, "But nobody can
6 tell us how he, being Pratico, was discovered to be a witness
7 to this murder."

8 A. Yes.

9 Q. There is no reference in this note nor in the Harry Wheaton
10 book to such matters as the Wheaton's visit to Chief
11 MacIntyre and his suggestion that the Chief put a piece of
12 paper under the desk and he had to go back and get it. Were
13 you aware of that incident?

14 A. No, I looked through the transcript of the evidence of the
15 people that had testified before and I noticed that. And, to
16 my knowledge, I never was advised of the fact that that had
17 slipped, or slipped or been placed or whatever. I must
18 confess in looking at Frank Edwards' notes that on the 16th, I
19 think it was the 16th, this would be the 15th that I took it to
20 be that the Chief was in...

21 Q. The Attorney General's?

22 A. Yeah, in the Attorney General's Department, and then on the
23 16th, Harry Wheaton and Sgt. Davies visited the Chief,
24 according to the notes, and after a long discussion received a
25 file.

MR. CHRISTEN, EXAM. BY MR. SPICER

1 Q. It's fair to say, before you go too far with that, that there's
2 been a lot of questions as to whether or not that meeting took
3 place on the 16th, as is evidenced from Frank's notes, or
4 whether it took place some time later.

5 A. Yeah, well, I knew the one that the Attorney General had sent
6 down was executed on the 27th. So the only thing that was
7 rather confusing was the fact that Frank Edwards' notes
8 indicated the piece of paper was Christmas threatening
9 Pratico or something like that.

10 Q. From your own knowledge, though, you were never told at
11 the time in 1982 about this visit of Wheaton's to MacIntyre.

12 A. No, not that I can recall, anyway.

13 2:21p.m.

14 Q. Do you think you should have been told, do you think that
15 that was something that would have been important to you?

16 A. The concealing of the file or the dropping of the file.

17 Q. The concealing of the statement.

18 A. If it...if they didn't feel it important enough to call me I think
19 that certainly should have been put in the report at some
20 stage of the game and it...from my reading of the report I
21 can't find any evidence that it did appear in the report.

22 Q. And why would it have been important for it to have been in
23 a report?

24 A. Well, I think it would have...to my own thinking it would have
25 suggested one of two things, either it was accidental or it was

1 deliberate and it would be something that when we came
2 down to the end result we have a number of things that are
3 gathering up as you go along through the file.

4 Q. Uh-hum.

5 A. That I assumed were eventually going to be looked at. But
6 you can't look at something if it's not in the report. And had
7 it been in the report, and I'm looking down the road now,
8 because of the distinct impression that I've...that I have that
9 this is going to be looked at later on and the fact that we want
10 to get Ebsary and Marshall cleared up first, that I think if it
11 were in the report it would certainly be picked up at that
12 particular time.

13 Q. And what...would it have made sense to you that it would
14 have been in a report which was not concerned per se with
15 investigating the activities of the Sydney Police Department at
16 that time?

17 A. I don't think we were investigating the Sydney Police at that
18 particular time.

19 Q. Right. And that's why I'm asking the question whether or not
20 you would still would have expected to see something in a
21 report dealing with an issue which probably would go to
22 whether or not the...

23 A. Yes.

24 Q. ...did go the activities of the Sydney Police Department.

25 A. Yes, yes.

1 Q. And your answer is yes.

2 A. Yes.

3 Q. And would you also have expected to see something in the
4 reports that you were receiving from...through Scott from
5 Wheaton as to the nature of any conversations that he had
6 with any of the witnesses concerning the pressure that was
7 being exerted?

8 A. I'm...yes, the one thing that I noticed in reviewing the notes
9 were that, I think, both and with due respect to them, Don
10 Scott and Staff Wheaton both indicated that at times they felt
11 I didn't want any further investigation, however, they had
12 certain things in their mind.

13 Q. Um.

14 A. I would think that if they interpreted that they didn't want
15 any further investigation into the aspect of the Sydney City
16 Police, if they had these things in their mind they should have
17 been included in the report because they didn't have to do
18 any...any further investigation to actually acquire this
19 information. They apparently already had the information.
20 It was just a matter of putting it down on paper.

21 Q. And by looking at the documents what seems to happen is,
22 for whatever reason, you're not told certain things so that in
23 turn you're not able to turn that information, then, over to the
24 Attorney General's Department. If you look at page 115 of
25 that volume.

1 A. Yes.

2 Q. You were forwarding material on to Gordon Gale.

3 A. Yes.

4 Q. And you say "The statements made by witnesses to the
5 police at the beginning of this investigation and the
6 information contained in more recent statements taken from
7 these, as well as additional witnesses, are quite explicit."
8 Then you go on to say that, "There are still minor avenues of
9 investigation to be explored such as interviewing members of
10 the Sydney City Police who were involved in the original
11 investigation." And there's nothing in your note concerning
12 what seems to have been from what we've heard from
13 Wheaton and Scott their suspicions as to the manner in which
14 the Sydney Police Department carry on their activities. You
15 don't say anything in your letter about that.

16 A. Was that...did they set that out in one of the reports
17 somewhere.

18 Q. Well, if you look at Harry Wheaton's report, for instance,
19 which is Volume 21, and indeed in the statements of these
20 witnesses themselves, but it's summarized in Wheaton's
21 report which the reporter will get for you, which you are
22 forwarding to Gale at this point in time. If you'd just turn to
23 page 6 you'll see with respect to Harriss,

24 Harriss says she was pressured by Sydney
25 Police Department, relates a new story.

MR. CHRISTEN, EXAM. BY MR. SPICER

1 States she did not tell the complete truth
2 on the stand. Chant," the last two lines,
3 "...was pressured by the Sydney Police
4 Department. Pratico, lied on the stand and
5 didn't see anything.

6 A. Oh, are you suggesting that I should have highlighted these in
7 the report?

8 Q. Yeah, I'm just wondering why you didn't.

9 A. I have no particular answer for that. Most of the time I knew
10 what was in the correspondence going over and I just sort of
11 summarized. I think on the...particularly on the Harriss one I
12 think that was already mentioned in about the first or second
13 report that came in.

14 Q. Uh-hum. Page 122, again you've sort of gotten the other
15 volume... Again, you're forwarding material to the
16 (attention?)...

17 A. To the [inaudible]...

18 Q. ... of the Commissioner.

19 A. Uh-hum.

20 Q. But there's something else contained, a couple of things
21 contained in this I wanted to ask you about. You say in the
22 second paragraph,

23 I gather from talking to Mr. Gordon Gale
24 the Attorney General of Nova Scotia, in
25 referring this matter to the Minister of
Justice, did not recommend any particular
course of action to the Minister of Justice
with respect to the granting of the pardon.

1 Did you have such a conversation with Gordon Gale?

2 A. Yeah, that was, I recall, one of our Thursday morning
3 meetings and I guess it was more out of curiosity on my part
4 as to what was going to happen as to whether a parole or
5 back for a trial or what, and he just more or less indicated
6 that at that particular time a decision hadn't been made.

7 Q. And you say at the end of that note on 122, "Our
8 investigation is now complete," and in order to paint that
9 picture for you flip back to 122 there's a note from Wheaton
10 which had been forwarded on to you which contains the
11 reference to the interviews, certain interviews being held in
12 abeyance. That is interviews of MacIntyre and Urquhart.

13 A. Conver-, yes.

14 Q. What was your attitude towards the suggestion that the
15 interviews be held in abeyance at that time now?

16 A. Well, I could appreciate, I think, the understanding of the
17 Attorney General's Department at that particular time in that
18 they had these other things that were on their plate that they
19 wanted to get clear of and it wasn't as though he had told us
20 to discontinue the investigation or stop the investigation, but
21 rather just to...I don't know as he ever used the word
22 abeyance with me. I think he maybe said, "Just put these
23 things on hold for the time being and we'll get to them
24 eventually."

25 Q. And during the time that you were with the R.C.M.P. were you

1 ever directed to get to them?

2 A. No.

3 Q. So, when you say in your note on 122, "Our investigation is
4 now complete."

5 A. What I was referring to there was we started out with a
6 mandate, in my mind, to investigate the wrongful
7 incarceration of Mr. Marshall as a result of the letter from Mr.
8 Aronson, and that became, in my mind, the investigation that
9 we had been authorized and directed to do by him giving the
10 bodies to do it with from the provincial positions. So, what I
11 was in essence saying to him as far as I'm concerned I
12 think...no, Mr. Marshall still was not out of...out of...hadn't
13 been acquitted at that particular date, had he, or had he?

14 Q. No, hadn't been acquitted at that point.

15 A. No.

16 Q. But he would have been out of the penitentiary.

17 A. Yeah, there was nothing else we could do in that particular
18 stage and the Ebsary file was complete, it was just a matter
19 now of waiting for to get him. He was either in the Nova
20 Scotia Hospital or some place and getting him ready for trial.

21 Q. Did you ever have any sense from Gordon Gale and anybody
22 else in the Attorney General's Department that they were
23 truly just holding the matter in abeyance and they really did
24 intend to get to it at some point in the future?

25 A. I had no...yeah, I certainly wasn't suspect of anything. I just

1 assumed that this was the natural process they were going
2 through.

3 Q. There's a note on 127. No, sorry, that's not the one I want to
4 ask about. If I could just ask you to pick up Volume 20.
5 There's some documents at the beginning of that volume, on
6 page 1, page 1. It's a letter from Gordon Gale.

7 A. Oh, yeah.

8 Q. The R.C.M.P. are being asked to review the files.

9 A. Uh-hum.

10 Q. And as a result of that on page 3 you, in turn, ask Don Scott to
11 initiate that procedure, to...

12 A. Uh-hum.

13 Q. Did you have any discussion prior to doing that with Gordon
14 Gale as to whether or not he wanted any real investigation to
15 be done at this point?

16 A. No. My interpretation of the memo was, the first paragraph is
17 quite explicit.

18 Q. Uh-hum.

19 A. And the second paragraph "We request that Mr. Edwards
20 review the evidence and advise us as to what evidence exists
21 in regard to charges against Mr. Marshall and any others." I
22 assumed he was looking at, and maybe wrongfully so, looking
23 at the police, everybody that was involved in it . And, then
24 we came down to the third part, no, I didn't question him
25 there. And, my reason for writing out in the manner I did

1 was that while he hadn't asked specifically for an
2 investigation and merely indicated for us to review our files...

3 Q. Uh-hum.

4 A. I toyed with the idea that if you write out to a policeman and
5 you say, you know, do this, do that, and in sort of an
6 investigative way you may come back with a conglomerate of
7 various police practises and procedures, such as if you're
8 questioning an individual how long do you question him
9 before you actually release him or charge him. Some say four
10 hours, some say six hours and some say until he confesses
11 sort of business. So, I didn't want that to particularly come
12 back where we had to make multi choices. They already
13 knew what had been done by the Sydney City Police as far as
14 I was concerned.

15 Q. They already knew in what sense? They knew...

16 A. Well, they knew that the statements had been taken...I'm
17 sorry, that the statements had been taken from juveniles, that
18 there had been a pressure put on certain people according to
19 the reports that had come in, that the length of the
20 interviews, et cetera, et cetera. So, what I wanted them to do
21 was to take those practises and compare them with what
22 their training and practise had taught them to do.

23 Q. And that's why your note on page 3 says, "We do not expect
24 any investigation to be undertaken but restrict our
25 examination to all material on hand."

1 A. Yes, yes.

2 Q. And there was a reference to which I drew Don Scott's
3 attention the last time that in a press clipping, which is
4 Exhibit 116, which I don't need to bother you with, the then
5 Attorney General, Ron Giffin, had indicated that Gordon Gale
6 had, indeed, directed that an investigation be done of the
7 activities of the Sydney Police Department. And I take it that
8 as far as you were concerned that certainly wasn't being done
9 by this note on page 1.

10 A. That memo there didn't certainly tell me to go and do an
11 investigation, no.

12 Q. Is it fair to say that after you received this note on page 1
13 that you still thought that that other part of the job was yet to
14 come, yet to be done?

15 A. Yes.

16 Q. Did you have any further discussions with Gordon Gale after
17 the generation of...after his letter of May 13th as to when that
18 other part of the job was, in fact, going to be done?

19 A. Well, I'm not sure that he knew, because I think his last
20 sentence he said, "The purpose of this is to use it as
21 background material to enable us to advise the Attorney
22 General and to come to a conclusion as to whether or not the
23 matter warrants any type of inquiry." So, I don't think they
24 had decided.

25 Q. And had you sent a report to him.

1 A. Yeah.

2 Q. On page...

3 A. On 27.

4 Q. Page 26 of this volume, on June 24th enclosing the various
5 reports which you, in turn, had asked to be done by Scott and
6 Wheaton and Carroll. Did you have any discussions with Gale
7 after this material had been forwarded as to whether or not
8 they were going to go ahead?

9 A. I very much doubt because that was three days before I left
10 the force, and I don't know whether we met. I left on a
11 Friday and I don't know whether we met on a Thursday or
12 not of that week.

13 Q. I'd just like to ask you a couple of questions about that letter
14 of yours on page 26. Now, you say in the second paragraph,
15 "It is apparent that all the warning signals were ignored by
16 the investigators," and that being the original investigators in
17 1971...

18 A. Uh-hum.

19 Q. What were those warning signals in your mind?

20 A. I viewed the statement by Donald Marshall that he was not
21 guilty, the two witnesses who had testified, Chant and Pratico,
22 one who was declared a hostile witness, and one who I gather
23 recanted his testimony, the fact that Jimmy MacNeil had come
24 into the office a short time later. Those were the things that I
25 was thinking of.

1 Q. And you say in the...in that same paragraph, "Of course
2 Marshall did nothing to help the investigators or himself by
3 his failure to tell the true story."

4 A. Once again speculating that had Donald Marshall possibly at
5 the particular time, now he's not a suspect when he's in the
6 Park, had he indicated his purpose for being there, even
7 though the investigation did get off track and he was
8 eventually convicted, he had described two people being in
9 the Park, et cetera, et cetera, and he said...had indicated...if he
10 had indicated his purpose for being there I wonder what
11 would have happened when Jimmy MacNeil came into the
12 office and at this particular time states, "We were being
13 robbed by the two people."

14 Q. Uh-hum.

15 A. Would the investigator have then said, "My God, there is some
16 truth to that story that young fellow was telling me in the
17 first instance that he wasn't guilty."

18 Q. In the next paragraph you make reference to Jimmy MacNeil
19 and you say five or six lines down,

20
21 While great pains were taken to question
22 MacNeil and Ebsary and have them submit
23 to polygraph, I can find nothing to indicate
24 Mrs. Ebsary, her daughter, Donna, or her
25 son were subjected to any lengthy
interview.

But isn't it the case that at that time when those things should

1 have been being done, that is speaking to Donna Ebsary or
2 Mrs., that the matter at that point in time was in the hands of
3 Al Marshall, R.C.M.P. officer?

4 A. Yes, it would be, yeah.

5 Q. Yeah. So at that point in time the failure to interview those
6 people, if it's to be laid at anybody's doorstep, would be at the
7 doorstep of Al Marshall and the R.C.M.P..

8 A. That's right, yeah, and I think probably the use of the word
9 "pain" I...once again it seemed unusual that you'd bring a
10 polygraphist, once again you're talking in hindsight and it's
11 very easy you to be judgemental then, would bring a
12 polygraphist down from Regina and not question the
13 witnesses, but rather just question the two people that had
14 been brought or that had come forward.

15 Q. Uh-hum.

16 A. The policy for the use of the polygraph and I don't know what
17 it is or was back in 1971, but at the current time it is used as
18 a last resort after you've interviewed everybody else and
19 you're satisfied you've done everything you can, you then go
20 ahead and use the polygraph. But once again I say I don't
21 know what Al was sent down to do.

22 Q. And when you're giving the Attorney General's Department
23 this report and saying to them, to go back, "Marshall did
24 nothing to help the investigation himself by failing to tell the
25 true story," you did also know, as you've just told us, that

1 Donald Marshall did give a description of two people in the
2 park.

3 A. Yes.

4 Q. And that in various other statements there is references to
5 people who could be described as MacNeil and Ebsary.

6 A. Uh-hum.

7 Q. And once again, you don't...you don't raise that in the report
8 in your note at all. I'm just wondering why?

9 A. There is no particular reason other than this has all gone over
10 to the Attorney General, the same report, he's getting the
11 same correspondence as I am.

12 Q. Uh-hum.

13 A. And reading, I assume, and interpreting, making his
14 interpretation of the material that's being sent over to him.

15 Q. But are you not the senior police officer that he's receiving his
16 information from?

17 A. Oh, yes.

18 Q. So, when you say on the next page of your letter, in the last
19 paragraph, "No doubt the investigators at the time truly
20 believed Marshall to be responsible," how would you know
21 that?

22 2:40 p.m.

23 A. Well, that was a conclusion, I suppose, I came to from the
24 information that was on the file and the fact that they had
25 come forward in 1971 and said, "Here," you know, "take a

MR. CHRISTEN, EXAM. BY MR. SPICER

1 look at our file." They came forward again in 1982 and they
2 said, "Here, take a look at our file." It was just a feeling I had.

3 Q. Is it fair, then, to conclude that you summarize your feelings
4 as to the activities or the attitudes of the Sydney Police
5 Department and you assume that the people in the Attorney
6 General's Department are thoroughly reading all the other
7 material that's been given to them and analyzing it
8 themselves.

9 A. Well, I would assume so, yes.

10 Q. Did you have any further involvement with this matter at all
11 subsequent to leaving the force at the end of June of '83?

12 A. No.

13 Q. Have you attended any regimental dinners at which Attorney
14 General Giffin had spoken?

15 A. No, I did not.

MR. SPICER

17 Thank you.
18

EXAMINATION BY MR. RUBY

19
20
21 Q. If you'd turn with me to Volume 19, page 31. You've been
22 asked already on that page in the third paragraph, third line,
23 the description that Harriss lied as well under pressure from
24 the Sydney City Police. I'm concerned to understand if you
25 can assist me why that phrase "under pressure from the

1 Sydney City Police" would not have been a red flag for you, as
2 the senior police officer at the time in Nova Scotia, and why
3 you would not have said, "I want to know immediately what
4 is meant by that."

5 A. Well, I think the only answer I can give you, Mr. Ruby, is that
6 at that particular point in time we were going along with the
7 understanding that these matters were going to be
8 investigated or looked into at a later date. And, you know, to
9 start off on various tangents just wasn't in the game plan at
10 that particular time. It was recorded, it was on paper. We
11 knew it was there.

12 Q. And it wasn't going to ultimately just fade away.

13 A. No, it shouldn't have.

14 Q. Do you know why it did?

15 A. Well, when I left I fully assumed that there would be some
16 sort of investigation or inquiry as a result of the decision that
17 was to be made by the Attorney General's Department as a
18 result of that last letter. But that's what they were looking at.

19 Q. But you were alive when you read that and I take it
20 subsequently, to the fact that there was a real question mark
21 about whether this investigation was, first of all, honest;
22 second of all, competent. Correct?

23 A. It gave that appearance, yes.

24 Q. And those matters, you, as far as you were concerned had to
25 be looked at and inquired into.

1 A. Yes.

2 Q. Then I don't understand how, in Volume 20, in the passage
3 you've been referred at page 27, with that in your mind you
4 could have closed the letter saying no doubt the investigators
5 at the time truly believed Marshall to be responsible and so
6 forth and placed too much reliance on the evidence of certain
7 witnesses, together with the fact that wrongful conclusions
8 were drawn by the investigating team. Isn't that precisely
9 the matter that you say needed investigation, needed inquiry,
10 hadn't had it, and you were confident that it would come.

11 A. Yes. I was confident it would come.

12 Q. Aren't you closing it off, you were writing here to the Deputy
13 Attorney General. Aren't you, in effect, saying to him, "You
14 don't need to do this investigation, I've made up my mind. No
15 doubt."

16 A. Well, no, the questions were still there. That was only my
17 personal view. It was certainly the evidence of the
18 attachments by Wheaton and by Scott that indicated a
19 number of, what shall we say, questions as to the manner in
20 which the statements had been taken, et cetera, et cetera. I
21 think you had the question still to be addressed that a man
22 had served 11 years for a crime he didn't commit. There
23 were other questions such as people having come forward at
24 various times with information that didn't appear to result in
25 any action being taken. I think you had to take a overall look

1 at the whole report rather than just specifically one sentence.

2 Q. All right. You were not, by any chance, merely
3 accommodating Mr. Gale in giving him in that language an
4 easy way to forego any investigation of the...

5 A. No...

6 Q. Police Department in Sydney.

7 A. Certainly not. No. During my time as CIB Officer we had
8 occasion to investigate a number of our members, which we
9 charged, and I certainly wouldn't stand in the way of any
10 investigation into the Sydney City Police or any of their
11 officers.

12 Q. The second area I want to touch on is this business about my
13 understanding which I think you accepted which, if I'm
14 correct, came from Mr. Gale. You tell me if I'm wrong on this.
15 That the investigation into MacIntyre and the Sydney Police
16 should be put off to one side or on hold.

17 A. Um-hmm.

18 Q. It came from him and you accepted it, is that correct?

19 A. No. It went from him to Mr. Edwards to Mr. Wheaton and in a
20 report.

21 Q. And you accepted that notion.

22 A. Yes.

23 Q. I have some difficulty understanding that and I want you to
24 help me if you can. The other matters were the Marshall
25 reference...

1 A. Yes.

2 Q. And the Ebsary trial or trials, as they turned out to be.

3 A. Yes. None of which had taken place at that particular time.

4 Q. Right. Now you're trained as a police officer. Yes?

5 A. Yes.

6 Q. And you know that the longer you wait the more likely it is
7 that evidence will go stale. Correct?

8 A. Yes.

9 Q. So you knew that as long as this investigation into MacIntyre
10 and the Sydney Police Department was put on hold the
11 evidence was getting worse, not better.

12 A. Well, I'm not saying I thought that at that particular time.

13 Q. But you knew that.

14 A. But at the same time when Mr. Gale indicated to us that he
15 wanted this put on, in abeyance, we were also there at his
16 direction and using provincial positions to perform those
17 duties. And if you put something in abeyance like that that
18 was indicating to me that he no longer wanted us to use those
19 positions in the City of Sydney and they would go back to
20 their regular place which was Sydney GIS and do their
21 regular duties, their regular provincial duties.

22 Q. But you also knew that the Sydney regular police couldn't
23 investigate MacIntyre and Urquhart in their own force.

24 A. No.

25 Q. So it had to be you or some other force.

MR. CHRISTEN, EXAM. BY MR. RUBY

1 A. Well, either that or he could have used the Nova Scotia Police
2 Commission or, an investigator from their, or the Police
3 Commission Inquiry itself.

4 Q. But didn't you say to him, "Look, Deputy, as a trained police
5 officer I have a duty to tell you, you may not appreciate this,
6 but putting this investigation on hold indefinitely may make
7 it impossible to ever bring any culprits to justice. People may
8 die. Witnesses' memories will fade. That's my experience as
9 a police officer."

MR. PRINGLE

11 With respect, there's no evidence that there was, anyone said
12 to put anything on hold indefinitely. In fact, the evidence is quite
13 the contrary.

CHAIRMAN

15 The evidence so far is, so far, that Mr. Gale, as I recall it, Mr.
16 Gale, allegedly decided to put all this in abeyance. I guess there's
17 a subtle distinction between that and putting it on hold.

MR. RUBY

19 But the witness had used...

CHAIRMAN

21 Abeyance denotes that, its connotation is that it will be
22 revised.

MR. RUBY

24 Gale's words were in the letter are "in abeyance", this witness
25 has used the phrase "on hold"...

MR. CHRISTEN, EXAM. BY MR. RUBY

1 CHAIRMAN

2 Yes.

3 MR. RUBY

4 And he's used the phrase "off to one side."

5 CHAIRMAN

6 All right.

7 MR. RUBY

8 And I've asked him if those two latter phrases were the same
9 and he said, yes...

10 MR. PRINGLE

11 He did not use the phrase "indefinitely."

12 MR. RUBY

13 No, he didn't.

14 Q. I take it there was no time period within which this holding
15 in abeyance was going to end, am I, is that correct? No fixed
16 time.

17 A. Yeah, well, I didn't anticipate it to be whatever it was, three
18 years, or whatever.

19 Q. That's not my question. Was there any fixed time...

20 A. No, there was no...

21 Q. Which was to end...

22 A. No.

23 Q. Would you agree with me that the proper way to describe
24 that is indefinite as opposed to definite? Do you understand
25 language that way?

1 A. Yes, I understand what you're saying.

2 Q. Good. And let's go back to my question. Did you, as a trained
3 police officer, feel an obligation when he said to you, I'm
4 putting this on hold for an indefinite period, that's not his
5 language that's...

6 A. No.

7 Q. Mine. You know what I'm talking about.

8 A. Yes.

9 Q. Did you not say to him,

10 I've got a duty, Mr. Deputy, to explain to
11 you that if we do that people's memories
12 will get stale, the witnesses will fade,
13 people may die, it may never be possible
to bring any wrongdoer to justice.

14 A. No, I did not say that to him.

15 Q. Why not?

16 A. I have no explanation.

17 Q. You understood that what he was saying to you was, at least
18 for the time being, there's to be no police investigation into
19 this subject matter.

20 A. That's right.

21 Q. Correct?

22 A. I had also written to him and indicated that our investigation
23 was now finished and requested his instructions.

24 Q. So you understood that you would get instructions from him
25 telling you to recommence the investigation at some point in

1 time. Yes?

2 A. Yes.

3 Q. Would you turn to Volume 20, page 72, which is another
4 letter written by you, or when you were there as I
5 understand it, but it's from Superintendent Vaughan...

6 A. I'm sorry, I've got the volume now, 20.

7 Q. Page 72.

8 A. 72.

9 Q. To Mr. Gordon Gale, dated August 1st, '86. In the second
10 paragraph, I'd like to draw your attention to it and get your
11 comments on it.

12 I have now completed my review of the
13 entire matter. To begin with, I should like
14 to clarify the import of paragraph one of
15 the memorandum of 86/6/12. Regrettably
16 in your suggestion of 82/5/20, to hold the
17 matter in abeyance, was unintentionally
18 misinterpreted to mean that the
19 investigation from a police perspective
20 should be stopped. For your information,
21 and record purposes, I have found no
22 evidence whatsoever to support such an
23 interpretation. I fully appreciate that the
24 suggestion you made to hold the matter in
25 abeyance was related to events occurring
at the time, for example, consideration of
an inquiry, et cetera. It should not have
been construed, in any way, as precluding
a police investigation at a later date if such
was deemed necessary and warranted.

That's the passage I want to draw to your attention. First of

1 all, is there any comment you want to make on that that you
2 can assist us with?

3 A. Well, who's he making that, who's he making that comment
4 of?

5 Q. He's making it to Gordon Gale..

6 A. Yes, I realize he's making it to Gordon Gale but he said "the
7 matter in abeyance was unintentionally misinterpreted...." to
8 mean, who misinterpreted it?

9 Q. I'm not certain. It wasn't you, I take it.

10 A. No, I was followed by MacGibbon.

11 Q. You gave no orders that the investigation should be stopped.

12 A. No. And when I departed Superintendent MacGibbon
13 replaced me so there's a period in there between MacGibbon
14 and Superintendent Vaughan. So I would have to assume he's
15 talking, well, I'm assuming, that he must be talking re
16 Superintendent MacGibbon.

17 Q. If I can paraphrase him, he seems to be saying here
18 somebody misinterpreted your letter to mean that the
19 investigation should be stopped, that is, to preclude us from
20 starting it up again when he wanted to on our own initiative.
21 And you're saying, if I understand it, that's not so. The clear
22 import of what he told me was, "When we want you to start
23 again we'll tell you and don't start sooner."

24 A. That's right.

25 Q. So that the author of this letter is regrettably misinformed as

MR. CHRISTEN, EXAM. BY MR. RUBY

1 to the understanding.

2 A. Well, I don't know what conversation he had with MacGibbon.

3 Q. Well he says, "There is no evidence to support his
4 interpretation that the investigation from a police
5 perspective...", and I take it by that he means, given the last
6 line, on a police initiative, should be stopped. Whereas you've
7 told us that the letter clearly says, and your understanding
8 clearly was, that it was to be stopped pending further
9 instructions from the Attorney General and not started again
10 until they came. Correct?

MR. PRINGLE

12 With respect, there's no evidence about stopping, it just never
13 got started.

MR. SAUNDERS

15 There's no letter from Mr. Gale suggesting any stopping or
16 any holding in abeyance. No letter on this record suggesting any
17 such thing. My friend keeps saying that.

CHAIRMAN

19 The instructions came from Mr. Gale...

MR. SAUNDERS

21 As to what was to be done, My Lords.

CHAIRMAN

23 All right. To the O. C. at Sydney.

MR. SAUNDERS

25 That's correct.

MR. CHRISTEN, EXAM. BY MR. RUBYMR. RUBY

1 Q Well I recall it "being held in abeyance" as being the language.

2 Do you recall that as being the language?

3
4 A. That was the language that was in the report but I don't know
5 what language Mr. Gale used to Mr. Edwards...

6 Q That's right.

7 A. But Wheaton reported as abeyance.

8 Q Yeah. Let's use the language that Harry Wheaton swore to
9 under oath rather than the language my friend in objection
10 wants me to use. Let's use "hold in abeyance", okay?

11 A. Um-hmm.

12 Q You and I will stick to the evidence.

CHAIRMAN

13
14 That's not the objection. There's some reference to the fact
15 that there'd been a letter from Mr. Gale saying hold this in
16 abeyance. And the objection taken by Mr. Saunders is a proper
17 one. That as of now there's been no evidence to indicate any
18 letter of instructions to anyone to hold this matter in abeyance.

MR. RUBY

19
20 Let me speak of, then, of the verbal language "hold in
21 abeyance".

CHAIRMAN

22
23 But there's a report coming through...

MR. RUBY

24
25 Quite.

MR. CHRISTEN, EXAM. BY MR. RUBYCHAIRMAN

1
2 From Sydney indicating that one of, I guess it was Mr.
3 Edwards, that said, "Hold it in abeyance."

MR. RUBY

4
5 Q. The verbal report, "hold in abeyance", that's what I want to
6 talk to you about. You understood that to mean, if I'm
7 correct, that the investigation should not take place or should
8 be stopped?

9 A. It was set aside for the time being.

10 Q. Set aside for the time being.

11 A. Yes.

12 Q. And does that mean should not take place or should be
13 stopped, in your view? As you understood it at the time.

14 A. Neither, it's just being set aside for the time being.

15 Q. All right. If it was started it was to be stopped, if it was not
16 started it should not commence. Correct?

MR. SAUNDERS

17
18 My Lord, I've listened to this argument now, the witness has
19 said twice what he heard to have been said...

CHAIRMAN

20
21 Interpreted what is meant by putting something in abeyance
22 for the time being.

MR. SAUNDERS

23
24 Thank you, My Lord.
25

MR. CHRISTEN, EXAM. BY MR. RUBY

1 CHAIRMAN

2 Mr. Ruby, could you help me a bit? Reference is made in that
3 letter to instructions coming on from Mr. Gale, that is on page 72
4 of Volume 20. "It is regrettable your suggestion of 82/05/20, to
5 hold the matter in abeyance, was unintentionally misinterpreted."
6 Where is that referred to in our various documents?

7 MR. RUBY

8 That's the one I had in mind but I....I don't know where that
9 is.

10 CHAIRMAN

11 Isn't it in one of the reports from...

12 MR. WILDSMITH

13 My Lord, I can assist the, that is in reference to the report
14 that Harry Wheaton filed in Volume 19 at 120, 121.

15 MR. RUBY

16 19?

17 MR. WILDSMITH

18 Yes.

19 CHAIRMAN

20 120, 121.

21 MR. CHRISTEN

22 That would be the right date anyhow, yes.

23 MR. RUBY

24 Thank you very much.

25 Q. Let's go back to this paragraph if we can.

MR. CHRISTEN, EXAM. BY MR. RUBY

1 A. Is this still paragraph 2, Mr. Ruby?

2 Q. Yes, if you would. On page 72. You would agree with me that
3 the phrase "hold in abeyance", in Harry Wheaton's report,
4 clearly does mean that and is some evidence of that, correct?

MR. SAUNDERS

5
6 Excuse me, what...

7 A. Yeah, I haven't got your question yet.

8 Q. That the investigation, from a police perspective, should be
9 stopped and that it should not be started up again without
10 approval from the Attorney General's office.

11 A. No.

12 Q. It's not.

13 A. It's not my interpretation of holding in abeyance.

14 Q. What is your interpretation?

15 A. That he was setting it aside for the time being until such time
16 as the reference, Ebsary, Ebsary was in the, either in the Nova
17 Scotia Hospital at that particular time, or he was up, if I recall
18 correctly, on another knife charge and hadn't been released,
19 was serving time on that. He was waiting to clear those
20 matters is my interpretation.

21 Q. Was it your understanding of those words that as soon as the
22 Marshall matter was concluded with a reference, and the
23 Ebsary trials had been concluded, that the police force, the
24 RCMP was supposed to start again, on its own initiative at that
25 point in time, in the investigation of MacIntyre and the

1 Sydney Police?

2 A. No, it wouldn't be my interpretation that we were to start on
3 our own initiative.

4 Q. That's what I thought you were saying and that's why I put it
5 back to you. Let me just make sure we're clear now because
6 there's been some confusion about it. Your understanding is,
7 you were not to start again on your own.

8 A. Yes.

9 Q. You were to wait instructions from the Attorney General's
10 Department.

11 A. We would get direction, yes.

12 Q. Yes.

13 A. Yes.

14 Q. And that's what the words "in abeyance" meant to you in that
15 discussion.

16 A. Yes, it would be held off until such time as he wanted us to go
17 ahead with it, yes, but we wouldn't start it up on our own,
18 yes.

19 Q. All right. So that when Officer Vaughan, in that second
20 paragraph says, "There's no evidence of that", he's just plain
21 wrong, isn't he.

22 A. Well, maybe I'm reading this wrong but he says,

23 Regrettably, your suggestion to hold the
24 matter in abeyance, was unintentionally
25 misinterpreted to mean that the
investigation from a police perspective

MR. CHRISTEN, EXAM. BY MR. RUBY

1 should be stopped. For your information
2 and record purposes I have found no such
evidence.

3 Q. Right.

4 A. So I'm suggesting that, and I'm suggesting that maybe there's
5 a missing link in there. I don't know what, maybe
6 Superintendent MacGibbon made that decision...

7 Q. Oh, I see.

8 A. That the investigation was closed.

9 Q. But if there was we know that Superintendent Vaughan found
10 no evidence of that.

11 A. No.

12 Q. He doesn't know about it and he's presumably made inquiries.

13 A. He's assuming what?

14 Q. That's an assumption. He doesn't know about that's what
15 happened.

16 A. Well he followed MacGibbon in...

17 Q. Right.

18 A. And Wheaton must have come to Vaughan, I would assume.

19 Q. When you left, though, the first, that line, "Regrettably..." and
20 so forth, that was, in fact, the way it was left. When you left
21 your job.

MR. PRINGLE

22 I'd just like to register a mild objection that perhaps we've
23 gone as far as we can with this witness with a report that's dated
24 five, three years after the time that he retired from the RCM
25

MR. CHRISTEN, EXAM. BY MR. RUBY

1 | Police. And another witness authored the letter or report.

CHAIRMAN

3 | That's fair.

MR. RUBY

5 | Okay, it is fair. I think the witness has been clear on what
6 | he's left and I'll move on.

7 | Q. Would you agree with me that if Superintendent Vaughan is
8 | incorrect in that interpretation, that what appears to be
9 | happening is that he's telling the Deputy Attorney General
10 | what he wants to hear. Namely, that it's our fault in the
11 | Mounties, not your fault.

MR. SAUNDERS

13 | Well My Lords, how can this witness say whatever was in the
14 | minds of the writer of that letter?

CHAIRMAN

16 | That's for us to decide. My understanding is that as soon as
17 | the, my recollection is, the Supreme Court of Canada dismissed the
18 | Ebsary appeal the wheels were set in motion to appoint us. I
19 | don't know if you call that an investigation or not, but whatever
20 | we were doing with, there was certainly an investigative arm to it.
21 | But what Superintendent A.E. Vaughan is trying to tell Gordon
22 | Gale is surely our, for our interpretation and this witness can't
23 | possibly be expected to interpret it.

MR. RUBY

25 | Well, it may well be that there's a practice in the RCMP of

MR. CHRISTEN, EXAM. BY MR. RUBY

1 | telling Attorneys General's offices what they want to hear to get
2 | them off the hook.

MR. PRINGLE

4 | Objection! There's no evidence...

MR. RUBY

6 | And it may well be...

CHAIRMAN

8 | That's a very valid objection. Very valid objection! There's
9 | no evidence before it and I'm not going to allow this Commission
10 | to be turned into...

MR. RUBY

12 | There's no evidence for it but if you let me ask the question...

CHAIRMAN

14 | To be turned into this, that kind of a charade.

MR. RUBY

16 | Well if I can ask the question, we'll find out whether it's true
17 | or not.

CHAIRMAN

19 | You can ask the questions that are relevant this Inquiry. And
20 | I'm saying that that last question that you put is not a relevant
21 | question and I'm not going to allow it.

MR. RUBY

23 | All right. Let me just make it clear so that we'll know what it
24 | is that I'm not being allowed to put. My submission is that I
25 | ought to be allowed to inquire whether or not his relations with

DISCUSSION

1 the Attorney General's Department involved a manner behaving
2 such that the RCMP takes the blame and responsibility for things...

CHAIRMAN

4 That's not a proper...

MR. RUBY

6 In order to get the Attorney General's Office off the hook and
7 that's what I want to inquire into.

MR. PRINGLE

9 It's a neat way of getting some editorial comment on the
10 record by responding to the objection and I suggest it's not the
11 proper way to respond to the objection.

MR. RUBY

13 It is, with the greatest respect, a perfectly legitimate question
14 because it was raised...

CHAIRMAN

16 That was not even the question you put. The question you
17 put to this witness was whether or not, in his opinion, Vaughan, in
18 paragraph two of his letter, was trying to say to Gordon Gale what
19 he thought Gordon Gale wanted to hear. That was your question.

MR. RUBY

21 On the assumption that Vaughan was incorrect.

CHAIRMAN

23 There was no assumption.

MR. RUBY

25 That's the way I put it was on the assumption that...

DISCUSSION

1 CHAIRMAN

2 That wasn't the question you put.

3 MR. RUBY

4 No, I put an assumption.

5 CHAIRMAN

6 Well, all right, on assumption. That's a question. That had
7 nothing to do with these responses to the objection from the, from
8 counsel for the RCMP and that's what we're not going to have in
9 this Commission. We've got enough problems now to deal with
10 the matters before us based on facts. And facts is what we're
11 after.

12 MR. RUBY

13 Okay. Well the fact is, that that paragraph...

14 CHAIRMAN

15 We, that paragraph is for the Commission to interpret. It may
16 be when Mr. Gale, if he's, I presume he's a witness to be called, is
17 in the witness box, he can be asked about it. And if Mr. Vaughan,
18 Inspector Vaughan is called, or Superintendent Vaughan, if what
19 he is saying there is not clear upon reading, and there's an
20 interpretation these, surely, are the only two people who can
21 interpret it. But not this witness.

22 MR. RUBY

23 I have your ruling, thank you.

24 Q. The holding in abeyance, was it ever suggested that one of the
25 reasons was because there was not enough manpower to do

MR. CHRISTEN, EXAM. BY MR. RUBY

1 all three things at once in the Attorney General's Office?

2 A. No.

3 Q. You agree with me, based on your knowledge of that office,
4 they could have handled all three cases at once?

5 A. Well, I don't know really what their staff, I couldn't answer
6 that. I don't know what their staff complement is or
7 workload or what.

8 COMMISSIONER EVANS

9 Is that a fair question, Mr. Ruby, to put to this witness as to
10 what complement that AG's office might have to pursue...

11 MR. RUBY

12 I'd assume, My Lord, that as someone who met very
13 frequently with the Deputy Attorney General and discussed
14 pending cases, at least from his force with him, he'd have some
15 idea of the capacity of that office to handle cases.

16 COMMISSIONER EVANS

17 That's very questionable in my view.

18 MR. RUBY

19 Thank you, My Lord.

20 Q. You suggested in the letter, at page 43, in Volume 19, and
21 you've been asked about this as well. That the robbery
22 theory is more plausible...

23 A. I'm sorry, I missed the page, Mr. Ruby.

24 Q. Page 43 in Volume 19.

25 A. Okay.

MR. CHRISTEN, EXAM. BY MR. RUBY

1 Q. About the sixth line. And you've been asked some questions
2 about it already. And in response you mentioned two things.
3 You said it became more plausible in light of the loud talk in
4 the park. And the fact of friendship between Mr. Seale and
5 Mr. Marshall. Those are the two factors you mentioned,
6 correct?

7 A. Yes.

8 Q. Let's take them one at a time. Loud talk in the park. Do you
9 know who was the source of the loud talk in the park report?

10 A. Who were the two people talking where?

11 Q. Who was it who said there'd been loud talk in the park?

12 A. One of the witnesses, either Pratico or Chant, I believe.

13 Q. Right. And Pratico, at the time you write this, to your
14 knowledge, has said that was perjured testimony. So I put it
15 to you that you really oughtn't to be relying upon the loud
16 talk in the park since Pratico admits that he didn't hear any
17 loud talk in the park. Fair enough?

18 A. Well, you may be right, yes.

19 Q. Okay. Secondly, the fact of friendship between the two. How
20 does that rationally relate to whether or not there was a
21 robbery going on as opposed to two strangers, one of whom
22 kills? How does a friendship bear on that?

23 A. Well, I think what I intended to imply was that it had been
24 indicated that there was loud talk between Donald Marshall
25 and Sandy Seale, and as a result of that the stabbing occurred.

MR. CHRISTEN, EXAM. BY MR. RUBY

1 The other remark I made was that they were supposedly
2 friends. I couldn't see two friends stabbing each other.

3 Q. So you agree with me that on the face of it, if Mr. Marshall
4 had said he was a robber, to the ordinary mind and to the
5 police mind, which I assume you're familiar with, that would
6 not enhance his credibility as opposed to making it more
7 likely that he, in fact, was involved in some wrongdoing.

8 A. I think it would have enhanced his credibility, particularly
9 when he wasn't a suspect. At that particular point, if he
10 walked up to me as a policeman and said, "My God, this has
11 happened. We were in the process of a robbery here." Even
12 if that, at that particular point in time I did my investigation
13 and eventually ended up putting him in Dorchester
14 Penitentiary, when Jimmy MacNeil walked back in, and I'm
15 going back again to say that when Donald Marshall told that,
16 if he had of told that story, he also described who the other
17 two parties were. How they were dressed and everything of
18 that nature. When Jimmy MacNeil walked in a few months
19 later and said, "This fellow, Ebsary, is the actual one who did
20 it, and he did it while we were being robbed." I'd say, "My
21 God, this guy is telling the truth." Maybe nothing would have
22 happened, but I would have liked to have thought that at that
23 particular time I would have placed a great deal more
24 credence in the story and maybe taken a second look at it.
25 But it's all in hindsight.

MR. CHRISTEN, EXAM. BY MR. RUBY

1 Q. And I think you were fair enough to concede that it was
2 speculative.

3 A. Yes.

4 Q. I want to push just a little bit farther on it because it's
5 something that troubles me, if you don't mind. And that's
6 this, that when MacNeil does walk in and he gives the
7 description which matches the description Marshall gave, no
8 one does anything. Despite the fact that in one of the written
9 statements one of the witnesses gives a similar description of
10 Ebsary, still no one acts. Why would the addition of a robbery
11 have made any difference?

12 A. I don't know. That was my feeling.

13 Q. Police keep records of crime, correct?

14 A. Yes.

15 Q. And I take it the reason for that is because you assume if
16 you're looking for someone who's committed, for example, a
17 violent crime like murder, all other things being equal, the
18 first place you look is other people who've committed violent
19 crimes before.

20 A. Um-hmm.

21 Q. Correct?

22 A. Um-hmm.

23 Q. It makes it more likely, not less likely, correct?

24 A. Repeat that one more time?

25 Q. Sure. If you're looking for someone who's committed a

MR. CHRISTEN, EXAM. BY MR. PUGSLEY

1 violent crime like murder, all other things being equal, you're
2 going to look for a perpetrator amongst those who have
3 previously committed a violent crime, correct?

4 A. I suppose.

5 Q. That's why you keep records of crime.

6 A. Yes.

7 Q. And you have reference to them in the course of your
8 investigations.

9 Yes?

10 A. Yes.

11 Q. And that's the normal police approach to criminal records and
12 allegations of involvement with crime, yes?

13 A. Yes.

MR. RUBY

14 Thank you very much, sir.

CHAIRMAN

16 Mr. Pugsley?

17 3:14 p.m. *

EXAMINATION BY MR. PUGSLEY

19 Q. Superintendent Christen, my name is Ronald Pugsley, I'm
20 acting for John MacIntyre. I think you indicated to my friend,
21 Mr. Spicer, that you had some involvement in the decision as
22 to the manner in which the file from the Sydney Police
23 Department would be obtained, search warrants were
24 discussed and finally the letter from the Attorney General
25

1 was discussed.

2 A. Yes.

3 Q. Did you discuss that with Inspector Scott, was he aware that
4 you were involved in this decision making?

5 A. In all fairness, Mr. Pugsley, I'm not sure now if it was the
6 result of reading Mr. Edwards' notes where I know that he
7 directed the members to get a search warrant and Don's reply
8 that he would sooner have a directive because he wasn't too
9 sure a search warrant...he would be able to successfully find
10 the files not knowing where they were stored in a big
11 building, et cetera, I can't honestly answer because I'm not
12 sure whether I'm confusing the two now.

13 Q. My question was, perhaps I wasn't clear, did you discuss with
14 Inspector Scott the fact that you were involved in the decision
15 making about the process...

16 A. Oh, yes.

17 Q. Yes, you did.

18 A. Yes, I got back to him and told him, yes, he could...

19 Q. Sure.

20 A. ...expect the correspondence, yes.

21 Q. And so he was aware that you had a part to play in that
22 decision.

23 A. Yes, yes.

24 Q. And as a consequence of that if the file material had not been
25 handed over to the R.C.M.P. in response to the direction

1 contained in Mr. How's letter I take it you would have been
2 expected to have been advised of that...

3 A. Most certainly.

4 Q. ...by Inspector Scott and/or Inspector...Staff Sergeant
5 Wheaton.

6 A. Yes.

7 Q. Yes. And indeed, the letter from Staff Sergeant Wheaton, the
8 first directive, the first memorandum in writing that was
9 received and seen by you after the Attorney General's letter
10 of April 20th, I believe, was the memorandum of May 4th,
11 1982, which is found in Volume 19 at page 108. Do you have
12 Volume 19, sir, with you?

13 A. Yes.

14 Q. Right.

15 A. A particular paragraph or...

16 Q. Yeah, I will refer you to a paragraph. The page before, 107,
17 indicates that you forwarded on this memorandum from
18 Wheaton to Mr. Gale. Would your letter of...found on page
19 107 make...I'm sorry, that would be April, no, I guess that's
20 April 26th, isn't it? Yes, I'm sorry, that obviously is not the
21 right one. But in any event, would you have received
22 Wheaton's memorandum found on page 108 and 109 of
23 Volume 19?

24 A. I assume I did.

25 Q. Yes.

1 A. Yeah.

2 Q. And I direct your attention to paragraph 3 about a third of
3 the way down, "On 82-04-26 Chief MacIntyre handed over to
4 the writer the file in regards to this case as held by the
5 Sydney City Police as per instructions of the Department of
6 the Attorney General." When you read that, did you not
7 assume that the handing over of the file was perfectly in
8 accordance with the direction of the Attorney General?

9 A. Yes, yes.

10 Q. When referring to Inspector Al Marshall's review or
11 reinvestigation in November, 1971, you mentioned the fact
12 that a polygraph expert was brought all the way from Regina
13 to Sydney, Nova Scotia, and that you would have expected in
14 view of that considerable step being taken that Inspector
15 Marshall would have interviewed participants and taken
16 statements from them. Did I understand you evidence
17 correctly?

18 A. Yes.

19 Q. Yes. All the moreso would you have expected him to take
20 statements from the two participants themselves, namely Roy
21 Ebsary and James MacNeil, the very people who were having
22 the polygraph examination?

23 A. I think they did question them. I don't think they took a
24 written statement.

25 Q. They did not take written statements.

MR. CHRISTEN, EXAM. BY MR. PUGSLEY

1 A. No.

2 Q Would you not have expected that that would have been a
3 normal course of investigation to take written statements
4 from the two individuals who were polygraphed?

5 A. I think that I would have done it myself, yes.

6 Q Yes. You referred in response to a question from Mr. Spicer
7 concerning the publicity aspects of the case, and you directed
8 memorandums to Ottawa on that regard.

9 A. Yes.

10 Q Staff Sergeant Wheaton has testified that while Mr. Ebsary
11 was still before the courts and before his fate had been finally
12 determined by leave to appeal, I believe, to the Supreme of
13 Canada in September of 1986, that he, Staff Sergeant
14 Wheaton, had, I believe, as many as eight interviews with
15 Michael Harris who wrote the book Justice Denied. In fact he
16 went down to Windsor one day and had lunch with him and
17 spent four hours with him. What comment, if any, do you
18 have to make, sir, about that being an appropriate manner for
19 a member of the R.C.M. Police to conduct himself?

20 MR. PRINGLE

21 I have another mild objection. I wonder how this will assist
22 the Commission in light of the fact that that witness gave that
23 evidence and was cross-examined by my learned friend on those
24 very points, and where do we go any further by getting this
25 particular witness to comment on it.

MR. CHRISTEN, EXAM. BY MR. PUGSLEYMR. PUGSLEY

1
2 Well, I think this man was in charge of criminal investigations
3 for the Province of Nova Scotia. Wheaton obviously considered it
4 to be an appropriate thing to do otherwise I assume he would not
5 have done it. I would like to have the view of this superior officer
6 with respect to that kind of practise.

MR. PRINGLE

7
8 I think Inspector Scott was asked the same questions with
9 respect to it. I don't know how many tears we have to go. Your
10 Lordships have heard the answers.

MR. CHAIRMAN

11
12 Well, the fact that Inspector Scott, a senior police officer, has
13 been asked to give his opinion on...as to whether or not that
14 behaviour is in accordance with R.C.M. Police practise.

MR. PUGSLEY

15
16 Yes.

MR. CHAIRMAN

17
18 Surely doesn't preclude some other senior officer from being
19 asked the same question.

MR. PRINGLE

20
21 Perhaps not, My Lord, but in light of Your Lordship's direction
22 or ruling this morning that we didn't want to have unnecessary
23 repetition I thought perhaps this was unnecessary repetition.

MR. CHAIRMAN

24
25 We don't. We're not going to have unnecessary repetition.

1 But this is not part of it.

2 MR. PRINGLE

3 All right. Thank-you, My Lord.

4 MR. PUGSLEY

5 Thank-you, My Lord.

6 Q. Do you recall the question?

7 A. No, would you mind repeating it, Mr. Pugsley.

8 Q. Yes. In view of the fact that Mr. Ebsary's final application for
9 leave to appeal had not been completed until September of
10 1986, what comment, if any, do you have to make about the
11 fact that Sergeant Wheaton had as many as eight interviews
12 with Michael Harris during the course of a writing of a book
13 on the Marshall affair, including travel to Windsor and having
14 a four-hour lunch with Harris and discussing virtually every
15 aspect of the case with him?

16 A. As you're aware I wasn't a member of the force at that
17 particular time. I don't know, did...whether Inspector...Staff
18 Wheaton approached anyone about the interview or whether
19 he did this on his own. Did he do it on his own?

20 Q. Well, there is...my recollection is that he did not get direct
21 approval, although there may have been a passing remark to
22 someone at headquarters. In any event, if he had come to
23 you and you were still there, what would you have said?

24 A. And the conversation was going to be in relation to what, the
25 Ebsary trial or the whole thing?

1 Q. All aspects of the Marshall reinvestigation.

2 A. Yeah, I think I would have suggested to him that he better
3 wait until the matter was finished before the courts just in
4 the off chance he made some comment that could be
5 misinterpreted.

6 Q. Yes. I'd like to direct your attention to a volume of the
7 evidence, Volume 43, it's the white volume, at page 7953.
8 Have you read Staff Sergeant Wheaton's evidence, Mr.
9 Christen?

10 A. Just in parts.

11 Q. Right. I direct your attention to page 7953, line 5.

12 A. 953.

13 Q. And during the course of Staff Sergeant Wheaton's
14 examination by Mr. Orsborn, after Mr. Orsborn had completed
15 his examination of him, Staff Sergeant Wheaton said that he
16 wanted to come back to Mr. Orsborn for a moment and said at
17 line 6,

18
19 I went to Port Hawkesbury and I assisted
20 Constable Joseph Gaudet in the
21 investigation of this fire. In this
22 investigation we were able to place Mr.
23 MacLean at the front door of the
24 restaurant in a blinding snow storm at
25 approximately four to five o'clock in the
morning.

24
25 Now, my question to you, sir, is that if the investigation did

MR. CHRISTEN, EXAM. BY MR. PUGSLEY

1 not reveal that fact at all, if there was no evidence in the file
2 material or in the material adduced by Wheaton or Gaudet to
3 that effect at all, what comment, if any, do you have to make
4 about the propriety of a member of the R.C.M.P. giving
5 evidence of that kind before this Commission?

MR. PRINGLE

7 I rise to object. Again I don't understand what relevance this
8 has to my learned friend's client.

MR. CHAIRMAN

10 That seems to be a matter for us, Mr. Pugsley, really, to
11 decide.

MR. PUGSLEY

13 All right, My Lord. Thank-you, that's all the questions I have.

MR. CHAIRMAN

15 Mr. Saunders.

EXAMINATION BY MR. SAUNDERS

17 Q. Mr. Christen, Jamie Saunders on behalf of the Attorney
18 General's Department.

19 A. Yes, Mr. Saunders.

20 Q. In preparing, Mr. Christen, for your evidence given before
21 this Royal Commission, have you reviewed some of the
22 transcripts of the daily testimony given?

23 A. Yes.

24 Q. And I take it that you reviewed Mr. Edwards' notes.

25 A. Yes.

1 Q And, included in your review did you study the testimony
2 given by Inspector Donald Scott?

3 A. I only took select pages where my name happened to be
4 mentioned.

5 Q Yes. There has been evidence, Mr. Christen, about the
6 conversation between yourself and Inspector Scott after
7 MacIntyre visited the Attorney General's Department in
8 Halifax with his file. Do you recall that evidence, sir?

9 A. Yes.

10 Q Yes. Having made the review that you did before testifying
11 today, do you recollect your call to Inspector Scott in Sydney
12 about that?

13 A. I have to assume that I made a call because he quoted what I
14 said to him.

15 Q Yes. And having read what he said about that call...

16 A. Yes.

17 Q ...did it bring it back to you?

18 A. Yes.

19 Q All right. So, you have independent recollection of the
20 conversation with Inspector Scott.

21 A. Well, no, I'm sorry, not really, other than what I got out of the
22 notes there, that's what brought it back to me.

23 Q You were able to refresh your memory.

24 A. Pretty well, yeah, I'm pretty well relying on what he said.

25 Q Yes. And did you express to Inspector Scott your

1 consternation that Mr. MacIntyre had material that your
2 officers did not?

3 A. If he said that I ...I accept his word, yes.

4 Q. There is reference, sir, in Mr. Edwards' notes and I don't need
5 to point you to the page, , but there is reference in Mr.
6 Edwards' notes to the idea that there be a meeting in Halifax
7 among brass.

8 A. Uh-hum

9 Q. To discuss this issue.

10 A. Um.

11 Q. Did you do anything about that?

12 A. I thought that that was at about the same time as the search
13 warrant issue, and I thought in my mind, and I stand to be
14 corrected, I thought I discussed it with Mr. Gale and I thought
15 Mr. Gale's remark or opinion or agreement between the two
16 of us was that there really wasn't a need for a meeting
17 because we could resolve the issue by the issuance of the
18 directive to the Chief of Police to turn over the file.

19 Q. That being the letter from the then Attorney General.

20 A. Yes.

21 Q. Yeah. Did you take any steps to arrange a meeting between
22 yourself and Mr. Gale and Mr. Edwards and Inspector Scott
23 and Staff Wheaton to discuss their investigation up to that
24 point?

25 A. No.

1 Q All right. You said in answer to a question put to you by my
2 friend Mr. Ruby that you didn't expect the investigation to
3 take three years from the date of your retirement in 1983.
4 That is to say you didn't expect it to be three years before it
5 got under way.

6 A. I probably said that. I probably was referring or thinking of
7 the Ebsary trial.

8 Q Yeah.

9 A. I didn't expect it to run three years.

10 Q Didn't expect it to run the course of three trials.

11 A. No.

12 Q Two appeals.

13 A. That's right.

14 Q And an application of the Supreme Court of Canada.

15 A. Yeah. Right.

16 Q You said that you reviewed the record before testifying and I
17 take it that that would include all of the reports that were
18 sent to you by Inspector Scott and Staff Sergeant Wheaton
19 describing Wheaton and Carroll's investigation.

20 A. I think I...I think in most cases, yes, I can say that I reviewed
21 most of them.

22 Q Yes. Because you, I guess, Mr. Christen, wished to determine
23 whether there was any record in writing from Wheaton or
24 Scott suggesting that charges be brought against MacIntyre
25 for either counselling perjury or obstructing justice?

1 A. Yes.

2 Q. And can I have it from you, sir, that there is no written
3 record anywhere of such suggestions by Scott or Wheaton?

4 A. That's true.

5 Q. Indeed, I take it the officer who replaced you as C.I.B. Officer
6 in Halifax, Superintendent Vaughan, who came after
7 MacGibbon, had the question when he went through the
8 record as to why Wheaton never put in writing his views that
9 MacIntyre be so charged, correct?

10 A. Yes.

11 Q. And, did you also have that inquiry in your own mind, sir?
12 That is to say...

13 A. Yes.

14 Q. ...why Wheaton never put it in writing.

15 A. Yeah, I agree, it should have been in writing.

16 Q. And you said in answer to questions put by my friend Mr.
17 Ruby that you didn't intend to leave the impression with Mr.
18 Gale that a further review or investigation be shut off because
19 after all the Attorney General's Department had the
20 attachments of Wheaton and Scott to review. And you said
21 that you would have expected people within the Department
22 to be carefully reviewing the reports that came from the
23 R.C.M. Police.

24 A. Uh-hum.

25 Q. It is a fact, sir, that there is no mention in any of those

1 R.C.M. Police reports to the department suggesting that such
2 charges be brought against MacIntyre?

3 A. No, that's true.

4 Q. And, can I have it from you, sir, when it was that you first
5 heard that Staff Sergeant Wheaton was going to give evidence
6 that MacIntyre had deliberately concealed a piece of paper
7 behind his desk when he and Sergeant Davies visited his
8 office?

9 A. I don't know. Was it here before the Inquiry when I first
10 heard it?

11 Q. That's my question to you, sir.

12 A. I think it may have been.

13 Q. At any time prior to Staff Wheaton giving testimony before
14 this Commission, had you ever heard from him or any other
15 police office that evidence?

16 A. No.

17 Q. Had you known in 1982 that Sergeant or that Chief MacIntyre
18 had deliberately concealed a paper from his file from
19 Sergeant Davies and Staff Wheaton, had you known that, sir,
20 would you have passed that information on to the Attorney
21 General's Department?

22 A. Yes, I would have passed it on to the Attorney General's
23 Department.

24 Q. Okay. Thank-you.

25

1 MR. CHAIRMAN

2 Mr. Ross?

3 3:30 p.m.

4 EXAMINATION BY MR. ROSS

5 Q. I'd just like to explore one area with you. You, in response to
6 a question from Mr. Ruby, indicated that had Donald Marshall
7 in 1971, in May of 1971, indicated that there was a robbery,
8 that it would have increased his credibility?

9 A. Yes, I think it would. It would to me. Now I'm not saying to
10 everybody. I'm only saying what my perception would have
11 been.

12 Q. Sure, sure, how would that happen?

13 A. Well, you have a person standing at a scene who is not
14 suspect of anybody and he is telling a story to the effect that
15 these two chaps come up and, out of the clear blue, stabbed
16 them. I think to have somebody come up to me, as I say, out
17 of the clear blue, not being a suspect in the case and stating
18 "The incident happened as a result of us going to rob these
19 two and the guy stabbed my buddy." Then if I turned around
20 and I say got him locked up by mistake, the second time I
21 heard it, it would certainly to me, tie in. Because there would
22 be confirmation of the fact that they would be the only two
23 that would know about it.

24 Q. Yeah, but wouldn't it be sort of farfetched that he'd still be
25 locked up because remember, if this happened in May of

1 1971, the statement would have been in conflict with Pratico,
2 an eyewitness supposedly and with Chant, another
3 eyewitness and it would have required further that the police
4 must ignore it and do not look at the robbery aspect in order
5 for MacNeil's revelation in November to be in any way
6 surprising, wouldn't it?

7 A. Well, I don't know whether I understand you or not, but...

8 Q. Well, perhaps I can clarify it. I'm suggesting to you that if in
9 May of 1971, Donald Marshall has said, "I was involved in a
10 robbery," it would have definitely put his story at odds with
11 Pratico...

12 A. That's right.

13 Q. Who said "I saw him."

14 A. Yeah.

15 Q. It would have put his story at odds with Chant who said "I
16 saw him." It would have left two people, yet to be identified
17 for the purpose of addressing the robbery.

18 A. Uh-huh.

19 Q. Correct?

20 A. Right.

21 Q. And it would have come out at trial, correct? Most probably.

22 A. The trial being Donald Marshall still be the accused?

23 Q. Yes.

24 A. Yes.

25 Q. So that when MacNeil walked in, all he would say is what you

1 have already heard in a trial anyway.

2 A. No, for the simple reason that then you'd have confirmation
3 from Jimmy MacNeil that a robbery was taking place.

4 Q. I see. O.K. I just wanted to clarify that one. In your
5 experience, have you been involved in investigations which
6 touch on people who were, at the time of the investigation,
7 incarcerated?

8 A. I'm sorry, would you mind repeating the question?

9 Q. Have you been involved in any investigation, you're
10 investigating somebody who is at that time in a jail?

11 A. Oh, yes, yes.

12 Q. And did you from time to time ask for the prison records of
13 this individual?

14 A. Oh, yes.

15 Q. Is there any reason why you didn't try to get the prison
16 records on Donald Marshall back in 1982?

17 A. Why we didn't or the investigators didn't?

18 Q. Yes, it was under your command, wasn't it?

19 A. Well, I wasn't one of the investigators, but it didn't occur to
20 me. I fail to see the point, but why we would want his record.

21 Q. Well, I'm just asking that question of you. Why wouldn't you
22 want his record?

23 A. I don't know. Why would we want his record?

24 Q. Well, perhaps I can tell you. Were you aware that in July of
25 1972, Mr. Marshall, according to Volume 35, Page 2, was

1 indicating that he should be in there for manslaughter and
2 not murder? Were you aware of that?

3 A. No, I wasn't.

4 Q. Were you aware that he had, in 1975 indicated, yes, that he
5 had stabbed Seale, but it was in self defence. Were you
6 aware of that?

7 A. No.

8 Q. And I take it that if you were aware of all these records, you
9 would have looked at them before making your
10 recommendations and they would have been included in your
11 report to some degree?

12 A. By looking at those, are you suggesting that we would have
13 done any less to get him out of jail?

14 Q. I'm not suggesting that at all. I'm saying that is something
15 that you didn't look at and I'm just trying out that there was
16 a reason behind it.

17 A. No, there was no reason behind it.

18 Q. Just that you didn't think of it?

19 A. No, no.

20 Q. I see, thank you very much.

21 MR. PRINGLE

22 I believe there's some evidence from Staff Sergeant Wheaton or
23 Sergeant Carroll that they had at least spoken with someone from
24 the prison administration. I just wanted to make sure that that's
25 not unnoticed.

1 MR. CHAIRMAN

2 Mr. Wildsmith?

3 EXAMINATION BY MR. WILDSMITH

4 Q Mr. Christen, my name is Bruce Wildsmith and I'm here on
5 behalf of the Union of Nova Scotia Indians. I was interested
6 in your comment that under you there were three different
7 divisions, one division that dealt with commercial crime, one
8 that dealt with contract policing and one with federal
9 policing?

10 A. Officers, yes.

11 Q And I take it by contract policing, you're referring to the
12 policing contract that the RCMP has with the province of Nova
13 Scotia?

14 A. Yes.

15 Q Is it fair for me to think that with respect to that policing
16 contract, that you take directions from the Attorney General
17 of Nova Scotia?

18 A. I think there's a little bit of confusion as to...he is the officer
19 in charge of contract policing and as a result of that, it merely
20 means that all provincial statutes, traffic, all that sort of come
21 under his bailiwick. He wouldn't take directions from the
22 Attorney General any more than anyone else.

23 Q So are you saying that it only relates to provincial statutes
24 and not to the general administration of justice in the
25 province?

1 A. I'm just not sure we're on the same wavelength now.

2 Q. Well, my real question to you is this, that with respect to the
3 role of the RCMP in carrying out a policing function in the
4 Province of Nova Scotia, do you take directions from the
5 Attorney General?

6 A. No.

7 Q. Do you operate independently then?

8 A. I would say that...I'm just putting a guess on this, but I would
9 say 75% of the investigations in cases or maybe even higher
10 that we initiate and take to court, the Attorney General of the
11 province doesn't even see other than if he reads it in the
12 newspaper.

13 Q. But what I'm really wondering is why with respect to this
14 matter so much of the correspondence from you to Gordon
15 Gale finished with words like "We await your further
16 directions."

17 A. Well, because in that particular case, as I say, we were
18 dealing with the one aspect of the investigation. We had the
19 mandate or I felt we had the mandate to do the
20 Aronson/Marshall inquiry. And when we finished up with
21 that, I specifically recall putting at the bottom of that report
22 "Our investigation is now complete. We'd seek your further
23 directions" And as I've explained, that has to do with
24 positions.

25 Q. Has to do with which?

1 A. Positions, bodies, members.

2 Q. At one point you mentioned about getting authorization from
3 the Attorney General to look into matters that concern a
4 municipal police force. That's correct, is it?

5 A. Not getting authorization to look into matters concerning a
6 municipal police force, but rather, getting authorization to
7 conduct an investigation at their request.

8 Q. Yes, and what about the question of looking into the conduct
9 of the police force itself?

10 A. Well, there would have been no problem with that if he had
11 told us to go ahead and do it. He just said "Hold it in abeyance
12 for the time being."

13 Q. Ah, but that's my point. Would you investigate of your own
14 initiative or would you require directions from the Attorney
15 General's Department before you would investigate a
16 municipal police force?

17 A. You're talking about this specific instance or any instance?

18 Q. I imagine it's the same in all cases, but...

19 A. Well, if you're talking about information coming to our
20 attention that there's corruption with a municipal police force,
21 we would go to the Attorney General's Department and advise
22 them and say "This is happening. Do you wish us to go in and
23 investigate in the municipality or do you want to..." Maybe
24 the deputy...the force couldn't possibly...I suppose it could
25 be...but not probably corrupt from top to bottom. And he may

1 say "No, that's their problem, let the sergeant look after it" or
2 something like that. But if we were going to go in and
3 investigate it, yes, we would go and ask and he would say
4 "Yes, go in and investigate that force." Or of course, he could
5 use the Nova Scotia Police Commission to go in and hold an
6 inquiry. That's been set up for that purpose too.

7 Q And now with respect to this particular police department
8 and the particular allegations that are contained in some of
9 Sergeant Wheaton's reports, would it be your position that
10 you require directions from the Attorney General's
11 Department to conduct that investigation?

12 A. Yes.

13 Q And is it fair to say that that investigation never started?

14 A. No, we didn't get any direction prior to the time I left.

15 Q It had not started?

16 A. No.

17 Q Your attention has not yet been directed to the bottom of
18 Page 120 in Volume 19, in Paragraph 4 at the bottom of Page
19 120. Your attention was previously directed to passages that
20 suggest pressure being placed on witnesses and you've given
21 some explanation. At the bottom of Page 120, the suggestion
22 in Staff Sergeant Wheaton's report is that Chant, Pratico and
23 Harriss might have in fact been induced to fabricate evidence.

24 A. Yes.

25 Q Would you not regard that as an extremely serious matter?

1 A. Yes, and it had been put to the Attorney General by Frank
2 Edwards and Mr. Gale had said "Hold it in abeyance for the
3 time being," the next paragraph.

4 Q. And indeed that comment relates to interviews of Chief
5 MacIntyre and Inspector Urquhart?

6 A. Yeah.

7 Q. And to the best of our knowledge, those interviews were
8 never conducted?

9 A. No.

10 Q. If Chant, Pratico or Harriss had been induced to fabricate
11 evidence, you've acknowledged that it's a very serious matter.
12 Would it also be your position based on what you've told me
13 so far that you would not look into that allegation without
14 instructions from the Attorney General's office?

15 A. No, because he's given us a directive. He's told us "Hold that
16 in abeyance."

17 Q. Well, in fact, I mean, even without the directive, what would
18 your position have been?

19 A. Without the directive?

20 Q. Yes.

21 A. Well, I suppose if Staff Wheaton hadn't have approached
22 Frank Edwards and had gone and done the interview...

23 Q. Well, I'm not talking about whether the interview was in fact
24 done by Sergeant Wheaton or not. I'm talking about the
25 report coming to your attention.

1 A. Yes.

2 Q. Without any indication that Gordon Gale had made a
3 pronouncement about it. What would your position be about
4 whether you could conduct an investigation or authorize
5 Wheaton to carry out the interviews with MacIntyre and
6 Urquhart?

7 A. Oh, you're posing a hypothetical question then. If the report
8 had come out...

9 Q. Well, I assume you, as the most senior man in the province on
10 the criminal investigation side, would have a practice or
11 policy as to whether you could look at this independently or
12 whether you required directions. I want to know which it is.

13 A. Oh, no, if that had come in without that, without him actually
14 saying "hold in abeyance," yes, I could have made the decision
15 to go back and say "interview him."

16 Q. Oh, I see, so when you saw this memo and saw this reference
17 to Gordon Gale's comments, you felt nothing further was
18 required from you?

19 A. Well, no, because he'd given a directive to hold it in abeyance.
20 He didn't want anything further done at this particular time
21 and I can appreciate why he didn't want anything done
22 further at this particular time.

23 Q. O.K. I'll come back to that in a moment. This report then
24 comes from Wheaton to Scott, Scott to you and you to Gordon
25 Gale?

1 A. Right.

2 Q. And so it would be fair to think that your understanding of
3 whether Staff Sergeant Wheaton should conduct these
4 interviews, that in fact he shouldn't, was the same
5 understanding that Gordon Gale would have?

6 A. Well, no, because as I say it was Mr. Gale's opinion that he
7 didn't want anything further done at the present time.

8 Q. And all I'm saying is the fact that this report went from you
9 to Gordon Gale confirms the understanding that the RCMP had
10 that they weren't to do anything?

11 A. Yeah.

12 Q. Now a moment ago you said you could understand why they
13 didn't want anything to be done at this particular juncture.
14 I'm going to put it to you that if evidence had been fabricated,
15 as was suggested by Staff Sergeant Wheaton, that it was an
16 equally serious matter for that police department, for those
17 individuals, to continue on what I would call business-as-
18 usual while the Ebsary matter proceeded through trial.

19 A. It sounds like a reasonable question. I would have to suggest
20 that that would be something that the Attorney General
21 would have to determine.

22 Q. But you would at least agree that the possibility of corruption
23 and possibly the fact of corruption in a police department is
24 more serious than any single investigation into an isolated
25 crime?

1 A. You're...just repeat that one more time for me until I get it.

2 Q. Yes. I want to put it to you that it's correct to think that
3 corruption within a police department is more important than
4 the investigation of one particular crime.

5 A. Yeah, we don't have any other evidence of corruption or
6 anything other than this one incident.

7 Q. No, we don't know whether it's true or not.

8 A. ...this one incident, yes.

9 Q. But it's alleged?

10 A. Yes.

11 Q. And it goes uninvestigated?

12 A. Yes.

13 Q. And that's serious?

14 COMMISSIONER EVANS

15 I thought that was one of the things that we were doing, taking a
16 look at that situation, that allegation.

17 MR. WILDSMITH

18 Quite a number of years later.

19 COMMISSIONER EVANS

20 As I understand the reason for that is that there were other
21 matters before the court and they were waiting for those to be
22 determined. Isn't that the evidence of this witness?

23 MR. WILDSMITH

24 Yes, I think it is, My Lord, and I guess the point I'm putting to the
25 witness and perhaps it's better put in argument....

1 COMMISSIONER EVANS

2 I think it is too. I get the point that you're at, that there...

3 MR. CHAIRMAN

4 I didn't want to interrupt you, Mr. Wildsmith, but the problem I'm
5 having...and rather than run the risk of saying "I don't understand
6 what it is you're looking for," would you indicate to me, so that I
7 won't misunderstand, what your line of questioning has to do with
8 your client, the Union of Indians who were...and it is in that
9 context that you were granted standing.

10 MR. WILDSMITH

11 Certainly, and I think the short and simple answer is that there's
12 an Indian reserve within the City of Sydney being policed by this
13 police department, indeed, by contract, on the reserve.

14 MR. CHAIRMAN

15 Anyway, I understand it. I'm not interrupting you. I understand
16 it. But the line of reasoning is awfully thin.

17 MR. RUBY

18 May I just rise because one of those comments made by Your
19 Lordship arguendo, and that is the notion that "We are
20 investigating this so it's all o.k.

21 MR. CHAIRMAN

22 No, no, who said that?

23 MR. RUBY

24 Mr. Justice Evans did. I did add that it's all o.k. but surely one of
25 the things that we're interested in looking at as a commission here

1 | is whether or not it was appropriate for the Attorney General to
2 | take the direction of a criminal investigation into a police force
3 | under the jurisdiction of the government of Nova Scotia. So that's
4 | one issue that's important.

5 | Secondly was there a confusion in the RCMP as the document
6 | I referred to in cross-examination indicates as to whether or not
7 | they should have reinstated when they felt they wanted to at
8 | the end of matters or should have done nothing, as apparently
9 | they did. And the fact that this commission comes along and gets
10 | appointed is no substitute for normal a criminal investigation and
11 | charges being laid.

12 | Now with the greatest respect, we should be looking precisely
13 | at these issues.

14 | MR. CHAIRMAN

15 | We are.

16 | MR. RUBY

17 | Well, then the fact that...

18 | MR. CHAIRMAN

19 | And we've had all sorts of evidence led. And when the evidence
20 | is in front of it, then we have to interpret it. And we have it,
21 | loads of it, 7,900 pages or more so far.

22 | MR. RUBY

23 | One would have liked to think that the police department would
24 | have gone about laying charges or not laying charges in the
25 | ordinary way, rather than leaving it to a Royal Commission to

1 decide.

2 MR. CHAIRMAN

3 That will be something for us to comment on if and when all the
4 evidence is in and we deem it appropriate, and I'm sure we will.

5 Now Mr. Wildsmith.

6 MR. WILDSMITH

7 I think I'm almost finished.

8 MR. CHAIRMAN

9 You still haven't asked any questions. I'm still waiting for some
10 questions from you related to the Union of Indians. But carry on.

11 MR. WILDSMITH

12 Well, perhaps I can make a second point, if that's your concern.

13 MR. CHAIRMAN

14 I shouldn't have asked. I don't need the explanation. Go ahead
15 with your questions.

16 MR. WILDSMITH

17 Thank you.

18 Q. Now We've already looked at a document which was
19 authored, a minute...that was authored by Inspector Scott
20 saying that...or suggesting that Marshall was innocent. Did
21 you accept and agree with that statement? I can refer you to
22 it if you'd like to see it.

23 A. Yeah, if you wouldn't mind.

24 Q. It's Volume 19 at Page 31.

25 A. Volume 19?

1 Q. Yes.

2 A. Page 31.

3 Q. About halfway down it says "After reviewing this case, I feel
4 that Marshall is innocent of the offence."

5 A. Yes.

6 Q. And I'm wondering if at that point you accepted and agreed
7 with that statement on the part of Inspector Scott?

8 A. Yes.

9 Q. I'd like you to turn now to Page 43 in that volume. Shortly
10 after then, Inspector Scott making the statement and you
11 agreeing with it, in this letter to Gordon Gale, you say at the
12 end of the first paragraph, "The contradictory statements
13 taken..." et cetera, et cetera, "certainly raise a question as to
14 Marshall's innocence." Is that the same thing as accepting...

15 A. I accept it. I was just being probably a little more cautious.

16 3:52 p.m.

17 Q. I would like you to turn now to page 43 in that volume.

18 Shortly after then Inspector Scott making the statement and
19 you agreeing with it, in this letter to Gordon Gale, you say at
20 the end of the first paragraph, "The contradictory statements
21 taken..." et cetera, et cetera, "certainly raise a question as to
22 Marshall's innocence." Is that the same thing as accepting...

23 A. I accept it. I was just being probably a little more cautious.

24 Q. Yes. So you passed that on to Gordon Gale. Can you indicate
25 whether there was any reaction by Gordon Gale? For

1 example, was he ever more cautious than you?

2 MR. SAUNDERS

3 Well, I've said this before, My Lord. I don't know how this
4 witness can say what was going on in Mr. Gale's mind.

5 MR. WILDSMITH

6 Just by communication that might have emanated, since they
7 meet on Thursday mornings and discuss this matter and receive
8 correspondence.

9 CHAIRMAN

10 I was...

11 MR. WILDSMITH

12 I'm just wondering if there was any difficulty on the part of
13 Gordon Gale, as far as this witness could tell, in accepting Mr.
14 Marshall's innocence. And whether, perhaps, Mr. Gale was even
15 more cautious...

16 CHAIRMAN

17 Well, I think the question would have to be put the other
18 way. During that period, did Mr. Gordon Gale ever say anything to
19 you which would indicate, to you, that he had any reservations
20 about the innocence of Donald Marshall, Jr.?

21 MR. WILDSMITH

22 Fair enough.

23 Q. Can you answer His Lordship's question?

24 A. No, he didn't but I think from looking at the date on here
25 probably the reason that my caution was , if I recall correctly,

1 somewhere along the line there was a suggestion that maybe
2 Mr. Sarson and Mr. Marshall had got together to concoct a
3 story.

4 Q. Yes.

5 A. Now, I don't know whether that had any play on why I was
6 thinking that but I can say that there wasn't too much doubt,
7 there wasn't any doubt in my mind that Mr. Marshall was
8 innocent.

9 Q. So you were just a little more cautious in your wording in this
10 letter.

11 A. Yes, I guess so.

12 Q. Fair enough. In the next paragraph you make the suggestion
13 that because there are these contradictory statements that it
14 may be a good idea to have the Crown Prosecutor personally
15 interview these witnesses.

16 A. Um-hmm.

17 Q. Is this part of a policing function or why would you suggest
18 the Prosecutor become engaged in interviewing?

19 A. Well, he was going to have to use those witnesses, I felt, in
20 the Ebsary trial. And I wanted to sort of have his first hands-
21 on impression as to how reliable they were going to be.

22 Q. All right. Was that ever done?

23 A. Yeah, I think in Frank Edwards' notes, I think you'll find
24 somewhere there that he did interview them.

25 Q. If he did, it wasn't at your direction. It would have come

1 from...

2 A. It must have come from, no, because mine was going to Gale.

3 My letter was going to Gale. I was suggesting to him. So if it

4 did end up it must have gone from Gale to Edwards.

5 Q. Now, I'd like to turn your attention to Volume 20, page 1.

6 This is the letter that Gordon Gale sent to your superior about

7 looking into police and prosecution practices.

8 A. Um-hmm.

9 CHAIRMAN

10 There's a clearer copy of it on page 4, I think.

11 Q. Clearer copy on page 4. Yes. Now, the third paragraph in that

12 letter starts, "There remains the question as to whether there

13 should be an inquiry into the handling of the original

14 investigation and the prosecution of it." You received this

15 letter and made a direction in response to it. Is it fair for me

16 to think that when Mr. Gale talks about "there remains the

17 question..." that this is a reference back to the report that we

18 just looked at a moment ago where it was suggested that the

19 interviews of MacIntyre and Urquhart be held in abeyance?

20 A. I don't know whether that would be, relate specifically to that

21 particular report or to the whole investigation that's gone on

22 over the six months.

23 Q. Okay. Okay, well let me put it to you this way. That when

24 Staff Sergeant Wheaton wrote those comments about the

25 possibility that evidence was fabricated and that MacIntyre

MR. CHRISTEN, EXAM. BY MR. WILDSMITH

1 and Urquhart should be interviewed, if that was what Gordon
2 Gale is referring to it, in fact, is not responsive to Sergeant
3 Wheaton's concern because no inves-, no further investigation
4 was requested. In other words, this was not a request to do
5 those interviews of MacIntyre or Urquhart.

MR. SAUNDERS

7 Well, My Lord, with respect I think my friend omits the end
8 of the third paragraph of that letter from Mr. Gale when he speaks
9 of, as this witness has said earlier, "Whether or not the matter
10 warrants any type of inquiry into the actions of..." So I think an
11 equally fair interpretation is that that's exactly what Mr. Gale had
12 in mind.

CHAIRMAN

14 Presumably, it would be the decision of the Attorney General
15 in the final analysis.

MR. WILDSMITH

17 Certainly.

18 Q I guess the point that I'm driving at is you didn't interpret
19 this letter as any kind of request to interview MacIntyre and
20 Urquhart.

21 A. No.

22 Q And, therefore, no actual further investigation was done
23 pursuant to this letter or, indeed, ever.

24 A. That's right.

25 Q Except for this Inquiry.

1 A. That's right.

2 Q. Now, I have a note to myself and I don't have the volume
3 here that when Staff Sergeant Wheaton testified at page
4 7923, for the record, he indicated that he verbally
5 communicated to you, in 1983, the view that MacIntyre
6 should be investigated and charged. Do you have any
7 recollection of a discussion with Staff Sergeant Wheaton on
8 that?

9 A. No. In all due respect to Staff Sergeant Wheaton, I'm aware
10 of that transcript of evidence you've got there. If he had I
11 would like to think that I would have said, "If you have all
12 these charges, please sit down and type out the evidence as it
13 relates to the individual or particular charge" and I would
14 have sent it down to Don Scott and asked Don Scott to
15 comment and get the Crown Prosecutor's opinion.

16 Q. So what you're saying is that if it had been communicated to
17 you verbally you would have insisted on it being put in
18 writing.

19 A. I would like to think that I would have, yes.

20 Q. But you have no recollection.

21 A. I have no recollection of him ever approaching me, no.

22 Q. Okay.

23 CHAIRMAN

24 If he had approached you, do you think you would have
25 remembered it?

1 A. Well, from what I heard of his evidence here it certainly
2 sounded very strong. I think I would have. The number of
3 charges he had and four or five different charges and things
4 like that. I certainly think I would remember.

5 Q. So you would have remembered if it had been communicated
6 to you, you think.

7 A. Yeah.

8 Q. I take it that Staff Sergeant Wheaton was a well-regarded
9 investigator within the RCMP at that time.

10 A. Yes.

11 Q. And he worked under you.

12 A. No, he never worked for me.

13 Q. But he was in charge of Internal Investigations.

14 A. Yes.

15 Q. That's a senior investigative position.

16 A. Yes.

17 Q. Let me direct your attention to Volume 18, page 23.

18 A. I don't think I have Volume 18. Page?

19 Q. Page 23. I've been curious as to who was the author of this
20 page and my understanding from Sergeant Burgess was that
21 he thought you might be the author. Page 23. It's also
22 Exhibit 93.

23 MR. PRINGLE

24 I'm sorry, My Lords. Here I am again for just a moment.
25 Mindful of the fact that we're approaching 4 o'clock and my

MR. CHRISTEN, EXAM. BY MR. WILDSMITH

1 friend's questioning appears not to relate to his client's direct
2 interest and it's been gone over before and I may have one or two
3 or three questions on rebuttal, not many, but I'd like to get them
4 in. I wonder how far...

CHAIRMAN

6 Well, I'd like to finish with Mr. Wildsmith, first and, you
7 know, I agree with you. That Mr. Wildsmith's evidence is not
8 related to the interests of his client and you can't use that broad
9 net of saying, "Well, I have clients who reside in Sydney." You
10 know, that's, but...We've granted standing to other people who
11 have direct interests and these areas were covered by them. Mr.
12 Ruby, Mr. Pugsley, counsel for the Attorney General.

MR. WILDSMITH

14 Well, I'll make one more point and then I'll sit down, which is
15 that the Union of Nova Scotia Indians is concerned about justice on
16 a comparative basis.

CHAIRMAN

18 We all are.

MR. WILDSMITH

20 And, of course, you can't just look at one situation...

CHAIRMAN

22 Well, in that case we could have granted standing to
23 everybody in Nova Scotia. I'm assuming that every Nova Scotian
24 is interested in justice, and they should be. Now, let's go back to
25 page 23, that was your question.

1 MR. WILDSMITH

2 Q. I just wondered if this witness was the author of that page
3 but since there's no reference on there to anything that's of
4 interest to my client, I withdraw the question.

5 CHAIRMAN

6 I'd like to know that. Is that your handwriting?

7 A. No, it's not, sir.

8 CHAIRMAN

9 Not yours.

10
11 EXAMINATION BY MR. PRINGLE

12 Q. I'm going to be as brief as I can be. I think there's one area,
13 though, that there may be some confusion amongst some of
14 the counsel at least, with respect to the use of the Royal
15 Canadian Mounted Police in municipal areas for policing and I
16 would put some questions in that regard if it might assist.
17 Mr. Christen, would you explain to the Commission, please, the
18 use of the Royal Canadian Mounted Police in this province, on
19 a contract basis, for investigation or assistance of crime in
20 municipal jurisdictions.

21 MR. RUBY

22 Well, I'm going to make a mild objection, to use my friend's
23 phrase. Other witnesses have testified on this and I think it really
24 is crystal clear.
25

MR. CHRISTEN, EXAM. BY MR. PRINGLE

1 MR. PRINGLE

2 Is it crystal clear?

3 MR. RUBY

4 It's certainly clear in my mind.

5 MR. PRINGLE

6 In your mind.

7 MR. RUBY

8 Absolutely clear.

9 MR. PRINGLE

10 I thought there might be...

11 CHAIRMAN

12 It's certainly clear in my mind but that's not...

13 MR. PRINGLE

14 Well, that's all I worry about. If it's crystal clear in Your
15 Lordship's mind I won't put the question.

16 CHAIRMAN

17 Don't...

18 COMMISSIONER EVANS

19 I don't think we have any trouble with that.

20 MR. PRINGLE

21 Fine, My Lords.

22 Q. Mr. Christen were you aware that Frank Edwards, the Crown
23 Prosecutor in Sydney, was involved in this matter from early
24 February 1982?

25 A. Yes.

MR. CHRISTEN, EXAM. BY MR. PRINGLE

1 Q. Okay. You were referred to, generally, but I don't think you
2 were shown the document, your letter of June 3rd, 1982, to
3 Mr. Gale. And I refer you to Volume 19 at page 123.

4 A. Yes.

5 Q. Have you got that?

6 A. Um-hmm.

7 Q. And that's a letter of June 3rd, 1982, to the Deputy Attorney
8 General, attention Mr. Gale.

9 A. Yes.

10 Q. From yourself?

11 A. Um-hmm.

12 Q. What does that last paragraph say?

13 A. "As this completes our investigation into this matter your
14 further direction will be awaited."

15 Q. I refer you to page 126 of that same volume. There's a
16 handwritten memorandum, or what is commonly referred to
17 as an A-5, I believe, to the ACIBO from Corporal Stutt. Now
18 who was the ACIBO in 1982, in September?

19 A. Ray Zinck. Inspector Ray Zinck.

20 Q. Have you seen that document before, the one on page 126 of
21 Volume 19?

22 A. No.

23 Q. You have not seen that before.

24 A. No, I've seen it since. Well, I've seen it since it was put in the
25 book and that, yes.

MR. CHRISTEN, EXAM. BY MR. PRINGLE

1 Q. In reviewing for these matters.

2 A. Yes. Right.

3 Q. But you weren't aware of it in 1982.

4 A. No, it was probably, I must have been away because it
5 appears that Ray Zinck visited Mr. Gale.

6 Q. I see.

7 A. On that particular date.

8 4:05 p.m.

9 Q. And Corporal Stutt, was he a reader?

10 A. Yes.

11 MR. PRINGLE

12 Thank you very much.

13 MR. CHAIRMAN

14 Mr. Spicer.

15 EXAMINATION BY MR. SPICER

16 Q. I take it from everything that you've said that the...that you
17 thought that the notion that this investigation should be held
18 in abeyance was reasonable?

19 A. Yes.

20 Q. Was a reasonable idea. If you hadn't thought that it was
21 reasonable, if you thought it was just wrong would you, given
22 your understanding of the situation of your role in the
23 province, have had the authority to say, "Sorry, we're going
24 ahead with this."

25 A. If I had of thought it was wrong I would have discussed it

MR. CHRISTEN, EXAM. BY MR. SPICER

1 with Mr. Gale, first of all, and got all his reasoning and
2 everything like that, and if we were adamant that we didn't
3 feel his reasoning was correct then I would have gone to my
4 commanding officer and said, "Here's the problem," and then
5 he would have gone to the Attorney General and whatever
6 came out of that, if you felt strongly enough then I suppose
7 you go to the Solicitor General.

8 Q. Had you been given any understanding, yourself, as a police
9 officer in Nova Scotia as to whether or not in that situation
10 the R.C.M.P. would have had the authority to go ahead in the
11 face of opposition from the Attorney General's Department?

12 A. If it were out in the county I wouldn't have any problem with
13 it. In the municipality it...we'd be flying in the face of a
14 direction from him not to investigate or to hold it in abeyance.

15 Q. And wouldn't have been able to do it.

16 A. Well, I would say no.

COMMISSIONER EVANS

17
18 I thought I should ask you a question, it's been bothering me
19 a bit and I may not have the factual situation correct and, if so, I
20 would expect someone to tell me. It seems that one of the
21 occupational hazards of a police officer is what is sometimes
22 referred to as tunnel vision. I take it you may have heard that
23 phrase.

MR. CHRISTEN

24
25 Yes.

COMMISSIONER EVANS

1
2 And Sergeant Wheaton, in the course of his evidence, I
3 believe he stated that in his view Chief MacIntyre suffered from
4 that disability in concluding that Marshall was guilty after getting
5 statements from Pratico, Chant and Harriss. But as I recall the
6 evidence of Wheaton, and possibly and I think of Scott, was to the
7 effect that Wheaton decided Marshall was innocent after
8 interviewing Sarson who had some connection with...association
9 with Marshall, and a very abbreviated interview with Chant at the
10 funeral home, and prior to interviewing Marshall in Dorchester.
11 Would that indicate to you that possibly Wheaton suffered from
12 that occupational hazard?

MR. PRINGLE

13
14 My Lord, I believe also there was one other, Jimmy MacNeil, I
15 think, was interviewed prior to the interview in Dorchester.

COMMISSIONER EVANS

16
17 Could be. I'm not sure of that.

MR. PRINGLE

18
19 I believe he was, My Lord.

COMMISSIONER EVANS

20
21 Yes, well, that would be an extra one, then. Yes. And on the
22 basis of that, assuming...and accepting that Jimmy MacNeil was
23 there, the reason that I point it out to you, I think Sarson, his
24 credibility was rather suspect at that time. Chant, the interview
25 was very meagre because of a funeral in process or people visiting

1 the funeral home, and that was it.

2 MR. CHRISTEN

3 There's no doubt that was a quick decision, but I think, My
4 Lord, there is somewhere in there that in one of the reports
5 that...one of the initial reports, in fairness to Staff Wheaton, he
6 projects the thinking that this possibly could be a scheme between
7 Sarson and Marshall to get out of jail.

8 COMMISSIONER EVANS

9 Right.

10 MR. CHRISTEN

11 He says that in one of the very early reports.

12 COMMISSIONER EVANS

13 Yes, that's why I say that his credibility was suspect.

14 MR. CHRISTEN

15 Yeah.

16 COMMISSIONER EVANS

17 So that you were left, then, with Chant and MacNeil.

18 MR. CHRISTEN

19 Uh-hum.

20 COMMISSIONER EVANS

21 All I'm asking you would that indicate that possibly he was
22 suffering from tunnel vision.

23 MR. CHRISTEN

24 Either that or the people that he was talking to were very
25 convincing.

10006 MR. CHRISTEN, EXAM. BY MR. SPICER

1 COMMISSIONER EVANS

2 Thank you.

3 MR. RUBY

4 I have something arising out of that. When you're wrong we
5 call it tunnel vision, when you're right we call it rare insight.

6 CHAIRMAN

7 Well, my rare insight leads me to believe that you have no
8 other witnesses for today.

9 MR. SPICER

10 Or tomorrow.

11 MR. CHAIRMAN

12 Or tomorrow. Such being the case we will adjourn until
13 Monday next at 9:30.

14 INQUIRY ADJOURNED TO 14 MARCH 1988 - 9:30 a.m.

15

16

17

18

19

20

21

22

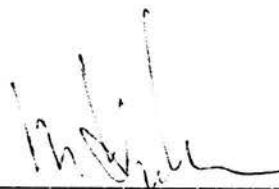
23

24

25

REPORTER'S CERTIFICATE

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 9 day of March 1988 at Dartmouth, Nova Scotia