

RG 44
601-253
H 7

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

Volume 54

Held: March 9, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

PRESS

INDEX - VOLUME 54

Witness

Mr. William Urquhart

Examination by Ms. Derrick	9818
10:10	9841
10:26	9854
Examination by Mr. Barrett	9857
Examination by Mr. Pink	9859
Examination by Mr. Pringle	9866
Examination by Mr. Ross	9870
Examination by Mr. Nicholas 11:20	9876
Examination by Mr. Murray	9885
11:47	9891
Re-Examination by Mr. Orsborn	9896

Mr. Douglas Christen

Examination by Mr. Spicer	9891
12:15	9908
Examination by Mr. Ruby	9937
Examination by Mr. Pugsley 3:14	9962
Examination by Mr. Saunders	9971
Examination by Mr. Ross	9976
Examination by Mr. Wildsmith	9980
Examination by Mr. Pringle	9999
Examination by Mr. Spicer	10002

EXHIBIT LIST

Exhibit	Description	Page	Volume
92	Four pages of Mr. Smith's handwritten	6833	37
93	Mr. Smith's record of polygraph examinations	6833	37
94	Copy of Donald L. Burgess' job description dated 1983	7134	38
95	A-5 with related notes and RCMP correspondence	7150	38
96	Copies of pages of Sgt. Cole's notebook	7225	39
97	Copy of Melinda MacLean's file	7243	39
98	Volume 29	7484	41
99	Volume 34	7484	41
90A	Photocopy of handwritten notes by Staff Sgt. Wheaton (typed version in Exhibit 90)	7490	41
90B	Original of Staff Sgt. Wheaton's notes (original in Exhibit 90)	7491	41
100	Statement of G.A. Ebsary dated April 19, 1982	7492	41
101	Statement of Donald Marshall, Jr. to Cpl. Carroll dated Feb. 18, 1982, taken at Dorchester Penitentiary	7493	41
102	Affidavit dated September 1982 of Staff Sgt. Wheaton	7495	41

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>	<u>Volume</u>
103	Statement of Roy Newman Ebsary February 23	7574	41
104	Cpl. Carroll's handwritten notes	7581	41
105	six excerpts from <u>Cape Breton Post</u> dated May 29, 31, and June 1, 2, 3, and 5, 1971	7656	42
106	Volume 37. Transcript of June, 1984 examination for discovery of Heather Matheson, <u>John F. MacIntyre v. Canadian Broadcasting Corporation.</u>	7656	42
100A	Original of Greg and Mary Ebsary's state- ment	8014	44
88A	Copy of Staff Sgt. Wheaton's written notes	8163	44
107	Calender for years 1800 to 2500	8229	45
108	Photocopy of Staff Sgt. Wheaton's notes	8230	45
109	Diagram drawn by Staff Sgt. Wheaton of John MacIntyre's office with seating plan of meeting of April 26, 1982	8231	45
110	Three pages from discovery evidence of Heather Matheson	8277	45
111	RCMP guide for contact with media	8280	45
112	Correctional Services records of Donald Marshall, Jr. (Volume 35)	8516	46
113	Stephen Aronson's correspondence re fees (Volume 27)	8530	46

			C
105A	Article from <u>Cape Breton Post</u> concerning Donald Marshall's remand	8587	47
114	Original of Donald Marshall, Jr.'s statement taken at Dorchester Penitentiary, March 9, 1982		50
115	Supt. Scott's notes, 1982	9251	50
116	<u>Cape Breton Post</u> issue, June 19, 1986 one page		50
117	R.C.M.P. Operational Manual, one page	9303	51
118	Letter January 8, 1980 from Inspector Scott to Chief A. Christmas	9453	51
119	Mr. Urquhart's resumé	9476	52
120	Criminal record and fingerprint records of Robert Patterson	9551	52
121	Mr. Roy Ebsary's fingerprint record from Sydney Police Department, April 9, 1970	9614	52
122	Copies of portions of Criminal Code of Canada	9651	53
123	Volume 30 of Marshall Inquiry docs.	9651	53
124	Volume 31 of Marshall Inquiry docs.	9651	53
125	Volume 32 of Marhsall Inquiry docs.	9651	53
126	Copy of letter dated May 10, 1983 from the Chief Justice of Nova Scotia to Minister of Justice	9651	53
127	Notes of Mr. Ron Fainstein	9693	53

128	Report of Federal-Provincial Task Force	9762	53
129	Brian Williston's telephone notes	9864	54
130	Collection of newspaper articles	9893	54
131	Volume 38 of Marshall Inquiry docs.	9899	54

MR. URQUHART, EXAM. BY MS. DERRICK

1 MARCH 9, 1988 - 9:40 a.m.

2 MR. CHAIRMAN

3 Good Morning. Ms. Derrick?

4 MS. DERRICK

5 Thank you, My Lord.

6 WILLIAM URQUHART, still sworn, testified as follows:

7 EXAMINATION BY MS. DERRICK

8 Q. Mr. Urquhart, my name is Anne Derrick and I represent
9 Donald Marshall, Jr. I want to take you back and discuss with
10 you your role in this investigation, the original investigation.

11 Would it be fair to say that you were really a central
12 character in the investigation? That there were really two
13 main investigators and you were obviously one of them?

14 A. I was one of them, yes.

15 Q. And you were the person that was most closely involved with
16 Sgt. MacIntyre in the investigation, isn't that right?

17 A. Not at the start. Det. M. R. MacDonald was.

18 Q. But once you came back to work, from then on you were the
19 person most closely involved.

20 A. Yes.

21 Q. And you didn't occupy the position of being a minion or a
22 jobboy. You were, in fact, Mr. MacIntyre's peer.

23 A. I worked very closely with him, yes.

24 Q. And on an equal footing, would that be fair to describe?

25 A. He was in charge of the investigation and I was helping.

1 Anything that he asked me to do, I did it to the best of my
2 ability.

3 Q. But he would have relied your ability and your experience.
4 He didn't treat you like a junior. He would have relied on you
5 more as a peer or an equal, would that be fair?

6 A. I suppose it would be fair, yes.

7 Q. And at that time, you were an experienced police officer.

8 A. Yes.

9 Q. So you had discussions with Sgt. MacIntyre about where the
10 investigations should go, is that correct, and who should be
11 interviewed?

12 A. He was in charge of the investigation, as I said at the outset. I
13 took my direction from him. If he come up with anything to
14 be done, statements to be taken, or anybody to be taken in or
15 try to be found, I helped to the best of my ability to do that.

16 Q. But there must have been a process of conferring with him
17 and he with you. You must have exchanged ideas. In fact, I
18 think you said that in your direct examination that you
19 discussed ideas and opinions.

20 A. Yes.

21 Q. So there was a give and take, a flow of communication
22 between...

23 A. Yeah, I would say there was, yes.

24 Q. It wasn't just that he had ideas and said to you, "Go do this,"
25 without there being any discussion about why you were going

1 to go and do that or what it was that he wanted out of that.

2 A. No, there would be a reason for everything that's done.

3 Q. And you would understand the direction that the
4 investigation was going in according to Mr. MacIntyre.

5 A. Yes.

6 Q. Is that fair? Did you discuss with him possible scenarios of
7 what happened that night?

8 A. When I was briefed, to the best of my knowledge, I had a
9 picture of what happened that night, yes.

10 Q. Do you recollect what that picture was?

11 A. That there was a stabbing in the park. Later the boy died,
12 Mr. Seale. And there was many people to interview and
13 witnesses to see.

14 Q. In that early briefing, was there any discussion that there
15 may have been some argument going on between the,
16 between Seale and Mr. Marshall?

17 A. I can't recall if there was.

18 Q. There may have been?

19 A. There may have been, but I can't recall at this time whether
20 there was or there wasn't.

21 Q. Mr. MacIntyre briefed you throughout the investigation, is
22 that correct?

23 A. Yes, we talked over the case, yes.

24 Q. So this process of conferring and discussing the case went on
25 throughout.

1 A. I would say it did, yes.

2 Q. And anything that you did, you kept Mr. MacIntyre informed.

3 A. Yes.

4 Q. So he informed you what was going on, you informed him.

5 A. Correct.

6 Q. Now you said in your direct examination, and I'm not going to
7 quote it. It's found in Volume 52 at page 9512. But you said
8 that you had no idea about particular leads or theories that
9 were being pursued in the course of the investigation. And
10 you also said that you had no recollection of the investigation
11 involving looking for two men, one gray-haired man. What
12 I'm going to suggest to you is that given your role in the
13 investigation, it's most likely that had there been an
14 investigation looking for a gray-haired man, had there been
15 particular theories being pursued, you would have known
16 about that?

17 A. I can't recall at this time.

18 Q. I know you can't recall...

19 A. It's a long time ago and I...

20 Q. I know that it is and I know that you can't recall it but what
21 I'm asking you to agree with is that given the role you've
22 described that you occupied in the investigation, had there
23 been a search for a gray-haired man and had there been
24 certain theories being pursued, given your central role, you
25 would have known about that?

1 A. I would say yes.

2 Q. Now this was one of your first murder investigations. Am I
3 correct in saying that?

4 A. No, I was on, it was an investigation that... but I was on two
5 others before that, prior to that.

6 Q. It must have been a very important case, though, at the time.

7 A. Any murder case is very important.

8 Q. That's what I was wondering. I would assume that although
9 you had other work ongoing at the time, that this must have
10 succeeded in importance any other work that you were
11 presently seized with.

12 A. Any case that police are involved in, in my opinion, is very,
13 very important. And murder, rape, arson, any of them are
14 very important.

15 Q. Murder cases were rare in Sydney, though, is that not
16 correct?

17 A. Yes.

18 Q. When you were first briefed by Mr. MacIntyre, do you have
19 any recollection whether he told you about the description of
20 the two men that is found in M. R. MacDonald's notes, one
21 being a gray-haired man?

22 A. I can't recall now if that discussion took place or not.

23 Q. Do you recollect whether he told you that Mr. Marshall had
24 been around the police station all week-end?

25 A. No, I don't know that.

1 Q. And I believe by the time you came to work on the Monday
2 morning, there had been about four statements taken by that
3 time. Mr. Marshall had given a statement. These are found in
4 Volume 16. Mr. Chant and Mr. Pratico had given their first
5 statements and a statement had been taken from Alanna
6 Dixon. Do you recollect whether you discussed those
7 statements with Mr. MacIntyre, whether you saw those
8 statements?

9 A. I don't recollect if I did or not.

10 Q. This would be the kind of thing you would have wanted to
11 know about or you would have wanted to be part of the
12 briefing though, is that correct?

13 A. Yes, you'd want to know as much about the case as you could.

14 Q. So you would want to know who was interviewed and what
15 they may have said?

16 A. I would say, yes.

17 Q. Now I believe you said that you had, you came out of that
18 briefing, or perhaps I'm making that assumption, that you
19 had on Monday a list of witnesses to contact and to take
20 statements from.

21 A. The list was introduced as evidence yesterday.

22 Q. I'm sorry?

23 A. The list of witnesses in my handwriting was produced
24 yesterday as evidence and I don't know what day that was
25 taken down, whether it was Monday, Tuesday, or what day it

1 was. There's no date on it to say which day that list was
2 given to me or I had copied that list down to take those
3 statements.

4 Q. Is it fair to say that given that Mr. MacIntyre was going to be
5 relying fairly heavily on you to be his right-hand support in
6 doing this investigation that he would have probably given
7 you direction and requested you to do things very early on, as
8 soon as you kind of came on the scene.

9 A. I didn't get involved, I don't believe, in the taking of
10 statements until Wednesday, and that was the first time my
11 name appears, I believe, on any of the statements.

12 Q. I think, yes, you took a statement on June 2nd from Frankie
13 French. I think that's the first statement you took. Yeah,
14 that's June 2nd.

15 A. What day would that be?

16 Q. That would be Wednesday.

17 A. Wednesday.

18 Q. When you did start to try and locate people and obtain
19 statements from them, I take it that given your central role in
20 the investigation, you must have known what you wanted out
21 of those witnesses? Would that be fair to say that you must
22 have had some discussion with Mr. MacIntyre what it was
23 you were looking for from these people?

24 A. Yes, to gather all the evidence that you could to conclude the
25 case, if possible.

MR. URQUHART, EXAM. BY MS. DERRICK

1 Q. Do you have any recollection at all what were the central
2 concerns that you were pursuing in the getting of this
3 information from people?

4 A. Your concern would be to get all the evidence that you could.

5 Q. Do you have any recollection of what that evidence would
6 have been, what theory may have been being pursued?

7 A. Who was in the park? What role did they play? Who did
8 they see? And all those questions would have to be answered
9 if possible by the witnesses that you were interviewing.

10 Q. Do you remember if you were trying to find out any more
11 about a gray-haired man?

12 A. Certainly anything that would come up. Any question that
13 would come up and anybody that would tell you there were
14 certain people in the park, you would ask them to describe
15 them to the best of their knowledge and you would take it
16 down in writing.

17 Q. So given that it's likely that when you came in on Monday
18 you knew that Mr. Marshall had given a statement in which
19 he describes a gray-haired man, is it then to fair...

20 MR. CHAIRMAN

21 Ms. Derrick, this witness has told us about five times already
22 this morning. He didn't, he wasn't told about any statements, so
23 how can he remember it?

24 MS. DERRICK

25 I think he said that he doesn't recollect, but if that's what he

1 would...

2 MR. CHAIRMAN

3 I change recollect, he doesn't recollect but he may remember,
4 is that what you're saying?

5 MS. DERRICK

6 All I'm saying and I think the evidence we have from this
7 witness is that he doesn't have an actual recollection.

8 MR. CHAIRMAN

9 That's right.

10 MS. DERRICK

11 But that that is very likely what he would have known about.
12 He would have known about those statements and he would have
13 known about the gray-haired man.

14 MR. CHAIRMAN

15 That's right. That's as far as he can go.

16 MS. DERRICK

17 That's right.

18 MR. CHAIRMAN

19 So what's the point of pursuing it again?

20 MS. DERRICK

21 I appreciate that, My Lord. I'm interested in getting from this
22 witness the kinds of things that in all likelihood he would have
23 been pursuing.

24 MR. CHAIRMAN

25 I don't mind you trying to get any new information from any

1 witness, but repetition has got to come to an end.

2 MS. DERRICK

3 I appreciate that, My Lord, and I know that was your
4 message yesterday. So I will try and keep that to a minimum.

5 BY MS. DERRICK

6 Q You don't recollect there being any particular theory being
7 pursued, I think you say about the case, is that correct now?

8 A. What do you mean by "theory"?

9 Q An idea of what happened in the park and who may have
10 committed this murder. Was it a gray-haired man? Was it
11 Junior Marshall? Those would be different theories that could
12 have been being put forward. And I think your evidence has
13 been that you don't recollect now what the theory may have
14 been.

15 A. No.

16 Q Was it like Mr. MacIntyre not to have a theory about a case?
17 When you worked with him, was it your experience that he
18 did develop a theory or try to develop a theory fairly early
19 on?

20 A. I can't speak for Mr. MacIntyre's thoughts at that time. All I
21 can go by is what, the work that he give me to do and, as I
22 said before, I did it to the best of my ability and I got the
23 witnesses, took statements, tried to get as much information
24 from each of the witnesses that I could.

25 Q In your experience with working with Mr. MacIntyre,

1 though, because this was obviously not the only case you
2 worked on with him, was it your experience that he would try
3 and develop a theory about the case fairly early on, that he
4 might discuss it with someone like you and see if he could
5 come up with some scenarios or some ideas to pursue about
6 who may have been responsible for the particular offence
7 that you were investigating?

8 A. If you're suggesting that he picked out any particular name
9 and said to me, "This is the person that we'll have to pursue,"
10 no.

11 Q. That wasn't...

12 A. No.

13 Q. His style.

14 A. No.

15 Q. Is that your answer? Do you recollect whether you made any
16 suggestions to Mr. MacIntyre early on in that early briefing
17 such as, "Well, maybe we should do a canvass of the
18 neighbourhood."

19 A. It's quite possible but I...

20 Q. Now I believe you have said that Mr. MacIntyre was
21 suspicious about Mr. Marshall's wound on his arm, that he
22 had concerns about that. That is one of your recollections, is
23 that correct?

24 A. Yes.

25 Q. And I think you've said as far as, to your knowledge, there

1 was no hard and fast suspect by June the 3rd, which was the
2 Thursday of that week.

3 A. No.

4 Q. Mr. MacIntyre, when he testified, said that when he got hold
5 of Mr. Marshall's jacket on June the 2nd, that at that point in
6 his mind Mr. Marshall became a suspect. Does that help your
7 recollection as to whether you learned any earlier that Mr.
8 Marshall may have been a suspect?

9 A. No.

10 Q. I mean there is evidence as well to suggest that Mr. Marshall
11 was a suspect much earlier than that in Mr. MacIntyre's mind,
12 but I'm referring to Mr. MacIntyre's evidence itself. The
13 jacket did have cuts on it. I don't remember your evidence.
14 You don't recollect whether you ever saw the jacket, is that...

15 A. No, I don't recollect if I ever saw the jacket.

16 Q. Now your notes which are found in Volume 16 at page 137
17 show that you...There are notes here with respect to Dr. Virick
18 and also Nurse Davis, and both of them refer to, in Virick's
19 case, "Did not cut jacket sleeve," and in the nurse's case, "She
20 did not cut the jacket sleeve." So obviously you and... That's
21 what they say. You can take my word for it. You and Mr.
22 MacIntyre obviously were interested in the cuts on Mr.
23 Marshall's jacket.

24 A. Yes, you'd be interested in any evidence that you could gather
25 to help your case.

1 Q. Do you have any explanation today why you didn't ask Mr.
2 Marshall how those cuts got there?

3 A. No recollection, no.

4 Q. I think the evidence was you don't remember having done
5 much on that Monday with respect to this case. We see in the
6 evidence that Mr. MacIntyre appears to have taken a
7 statement from a George and Sandy MacNeil. That was taken
8 on the Monday, May 31st. It's found in Volume 16 at page
9 26. In it, the Mr. MacNeils describe "two men, one with gray
10 hair." And that's a very similar description to a description in
11 Mr. Marshall's statement which had been taken earlier. Do
12 you have any explanation as to why more effort wasn't made
13 to look for a gray-haired man?

14 A. No, I have no idea.

15 Q. I think you testified that you remember discussions with Mr.
16 MacIntyre about Mr. Marshall's wound being self-inflicted,
17 the wound on his arm. Do you have any recollection of those
18 discussions?

19 A. As I stated yesterday, if you're protecting yourself, I would
20 think that the wound would be on the outer arm instead of on
21 the inner arm.

22 Q. So part of the concern then was the location of the wound.

23 A. Right.

24 Q. I just want to go back to the issue of the gray-haired man for
25 a moment. We have an Exhibit 121, which is this

1 fingerprinting sheet. I think you've seen it before, Mr.
2 Urquhart, showing that in April, 1970 you took Mr. Ebsary's
3 fingerprints and that the sheet seems to indicate that Mr.
4 Ebsary had been remanded on a weapons charge involving a
5 knife. Now if I understand how the Sydney Police
6 Department worked at that time, am I correct in saying that
7 you would have taken this case over from one of the
8 constables, you as an investigating detective would have been
9 responsible for further investigation of this charge against Mr.
10 Ebsary?

11 A. I wouldn't say that I was. I would say that whoever... I just
12 did the fingerprinting.

13 Q. So the fact that you did the fingerprinting doesn't necessarily
14 indicate that you were in charge of the investigation relating
15 to Mr. Ebsary?

16 A. No, it doesn't.

17 Q. Investigations were the territory of the detectives though, is
18 that correct, not foot patrolmen?

19 A. Whoever was assigned to the case, yes, in the Detective
20 Department. But I'd have to see documentation on that case
21 to answer that question thoroughly.

22 Q. The question being whether you were the one investigating
23 this.

24 A. I'm quite sure that I wasn't.

25 Q. I understand your evidence.

MR. URQUHART, EXAM. BY MS. DERRICK

1 MR. MURRAY

2 With respect, My Lord, in fairness to the witness, I don't think
3 it's fair to suggest that there was anything turned over to any
4 investigator in this case. I believe Mr. Ebsary was apprehended
5 on April 8th, had his fingerprints taken, pleaded guilty on April
6 the 9th, and there was no further investigation.

7 MS. DERRICK

8 That may well be.

9 MR. CHAIRMAN

10 If you're done with that point, can we move on to something
11 else?

12 MS. DERRICK

13 I'm doing my best, My Lord.

14 BY MS. DERRICK

15 Q. Now I expect that in the course of this Inquiry, you've heard

16 Mr. Ebsary described as "a colourful character", is that fair?

17 A. When I saw him on the stand before the Inquiry, I thought
18 that, yes.

19 Q. Would you agree that he's a memorable character?

20 A. To remember him?

21 MR. CHAIRMAN

22 We're not going to forget him.

23 MS. DERRICK

24 I'm just wondering if Mr. Urquhart would forget him.

25 BY MS. DERRICK

1 Q. And I guess where I'm getting to here, Mr. Urquhart, is Mr.
2 Ebsary is, I think all would agree a colourful character. You
3 were involved in taking his fingerprints and we do have your
4 evidence that you took fingerprints of a lot of people. But a
5 year after you have a description for a short gray-haired man
6 in the course of a murder investigation involving a knife, Mr.
7 Ebsary never came to your mind, even though you would
8 have had contact with a short gray-haired man who was
9 remanded on a weapons charge just a year before?

10 A. No, I wouldn't have no knowledge of Mr. Ebsary because, at
11 that time, I did a lot of fingerprinting for the department and
12 I just simply fingerprint them, take them out, turn them over
13 to the stenographer and she'd fill in the colour of the eyes,
14 weight, height, residence, and on the bottom of the sheet what
15 was the disposition of the case.

16 Q. And you don't think that it's unusual that you wouldn't
17 recollect this person a year later when you're dealing with a
18 description very similar in all its material elements?

19 A. I cannot answer that at this time, no.

20 Q. Now there was also a Robert Patterson that was discussed and
21 we know about Robert Patterson, in part, because of Mr.
22 Pratico's first statement which is found in Volume 16 at page
23 22. This is Mr. Pratico's May 30th statement when he
24 describes two fellows running from the direction of the
25 screaming, I'm paraphrasing it, and jumping into a white

1 Volkswagen. And then he goes on to say: "I saw the fellows
2 twice last night walking near the park." He goes on to say, "I
3 seen them walking around. Bobbie, Robert Patterson said
4 they are from Toronto Satan's Choice," sorry, "Saint's Choice
5 bike gang." Do you see that at the end of Mr. Pratico's
6 statement there?

7 A. Yes.

8 Q. What I want to ask you is before June 4th when you get the
9 two eyewitnesses, Chant and Pratico, who identify Mr.
10 Marshall, before that, Mr. Patterson was the only key person
11 in this investigation to the identify of the killer or killers in
12 this instance, is that correct? We have a statement where he
13 says that he's seen them and that, Pratico says he seen them
14 and Patterson can identify them as being members of a bike
15 gang.

16 A. That's what he told to Patterson...or to Pratico.

17 Q. That's right, yes. And in the alternative, you also say that
18 anybody who was in the park should be regarded, was
19 regarded as a suspect. So either way you look at it, Mr.
20 Patterson is a pretty important person to find, is that fair to
21 say?

22 A. Yes, I would say, and we did the best we could to find him
23 and we didn't find him.

24 Q. Well, that's what I'm wondering. You say you did your best
25 to find him. You knew his mother and you knew where he

1 lived. Did you ask her where he was, if you want to his house
2 and he wasn't there?

3 A. I would imagine I went to the house but I can't tell you at
4 this date, this day whether I went to the residence of
5 Pattersons or not. I would say yes that I went there, or
6 somebody went, and that we looked around. He might have
7 been away. He might have left town for a few days. I have
8 no idea.

9 Q. And you don't recollect what efforts you made to try and find
10 him by asking what people you asked, where you went to
11 look for him, what members of the police department you
12 may have...

13 A. No, because I have no notes to say that I did or I didn't.

14 Q. Now judging from Mr. Patterson's record, which we've already
15 seen as well, it appears he had had a number of contacts with
16 the Sydney Police. It's very likely he was picked up by the
17 Sydney Police before this particular matter, so that the
18 Sydney Police would have had to look for him on other
19 occasions.

20 A. I'd have to see documentations before I could say anybody
21 was picked up. It wouldn't be fair to him or to anybody else
22 to say that I had picked him up without documentation to say
23 that.

24 Q. No, I don't mean you but I mean members of the Sydney
25 Police Department.

MR. URQUHART, EXAM. BY MS. DERRICK

1 A. That, again, I would have to have documentation for because
2 it wouldn't be fair to say that somebody picked up Bobbie
3 Patterson, or whoever it might be, without knowing for sure.

COMMISSIONER POITRAS

4
5 Do we not have that...

MS. DERRICK

6
7 We do.

COMMISSIONER POITRAS

8
9 Information here? Why don't we refer the witness to it,
10 then?

MS. DERRICK

11
12 Q. I think it's Exhibit 120.

13 A. What page?

14 Q. It's an exhibit. It's just a few sheets of paper. It's just
15 perhaps the front page there, Mr. Urquhart.

16 A. Yes.

17 Q. Where you see "Criminal convictions and related information.
18 1970, Break and enter and theft; 1971, Theft over; 1971, B&E
19 and Theft..." So you can see from that that there were a
20 number of occasions when Mr. Patterson was charged...

21 A. Yes.

22 Q. With offences.

23 A. Correct.

24 Q. So looking at that, wouldn't you agree that Mr. Patterson must
25 have been picked up in Sydney by the police on other

1 occasions?

2 A. Yes, I would say he was.

3 Q. And would it be fair to say, and I think the record shows this,
4 too, that in September of 1971, Mr. Patterson was in jail for
5 an offence but by September, 1971, although you would have
6 known where to find Mr. Patterson because he was in jail, he
7 just wasn't of much interest any more because the case had
8 been solved by that point?

9 A. I wouldn't say that he was of no interest. I think that's
10 unfair. I would say that he would be of interest but why we
11 didn't get him, I have no answer for.

12 Q. There's no evidence that you can give us that Mr. Patterson
13 was looked for...

14 A. No.

15 Q. Any further. Now June 4th was the really significant day in
16 this investigation, isn't that correct, Mr. Urquhart? That's
17 when you got the two eyewitnesses.

18 A. Yes.

19 Q. Mr. Pratico in his June 4th statement says, and Mr. MacIntyre
20 took this statement, but he says in his statement, "I stopped
21 where I showed you." This is on page 41 of Volume 16 in
22 about the middle of the page, "I stopped where I showed
23 you."

24 A. Yeah.

25 Q. It's likely, isn't it, that you would have been interested in

1 hearing that. Do you recollect whether you asked Mr.
2 MacIntyre about that? Whether you inquired as to whether
3 they had been in the park together?

4 A. [No audible response.]

5 Q. Now you must have known that this new statement by Mr.
6 Pratico, his second statement, was now in conflict with Mr.
7 Chant's earlier statement, because in Mr. Chant's earlier
8 statement, he describes a different set of events than Mr.
9 Pratico is now describing on June 4th.

10 A. Correct.

11 Q. I can refer you to both statements if you want, but is that...

12 A. The other statement is?

13 Q. The other statement is Mr. Chant's May 30th statement, which
14 is found on page 18 of Volume 16, and he describes a
15 different set of events than Mr. Pratico described as an
16 alleged eyewitness on the 4th of June. So my question is,
17 being a central figure in this investigation, you would have
18 known on June 4th that you had conflicting statements
19 between Mr. Pratico and Mr. Chant.

20 A. Yes, I would imagine that that was the reason that we went to
21 Louisbourg to take the second statement.

22 Q. Now you say as well that on June 4th when Mr. Pratico gave
23 you this statement that you were satisfied that he was now
24 telling the truth. Would that be because it fitted with the
25 theory that Mr. Marshall had committed the offence?

1 A. Would you mind repeating that, please?

2 Q. You've said in your evidence earlier that on June 4th when
3 you got the statement from Mr. Pratico, you were satisfied
4 that that was the truth. And is that because it fitted with
5 your theory that it was Mr. Marshall that committed the
6 offence?

7 A. No, because at that time, I personally didn't believe that Mr.
8 Marshall had committed the offence until we had all the
9 evidence in.

10 Q. So at that point, although you say you have no reason to
11 disbelieve Mr. Pratico, there were some reasons to disbelieve
12 Mr. Pratico. The reason to disbelieve Mr. Pratico was that
13 there was Junior Marshall's statement itself. There was a
14 different statement from Mr. Chant that doesn't identify Mr.
15 Marshall. There were statements identifying a gray-haired
16 man. So those would be reasons to disbelieve Mr. Pratico, but
17 you didn't disbelieve him.

18 A. I would say no, when we took the second statement, I didn't
19 disbelieve him.

20 Q. I just want to ask you a bit about your experience in taking
21 statements, Mr. Urquhart. Over your years of being a police
22 officer, you've witnessed and taken many statements.

23 A. Yes, I have.

24 Q. And surely it's fair to say that there's always discussion with
25 the person beforehand, before the actual question and answer

1 portion of the statement. An explanation of why they're
2 there. Maybe they ask some questions. Perhaps they, the
3 witness, are nervous. Is that not fair to say?

4 A. No, any statement that I've ever taken, I've taken them into
5 the office or they've come in. I haven't gone into their family
6 background, if that's what you mean, or into anything else. I
7 tell them that I'm taking the statement concerning a certain
8 matter. I start it out, like all my statements, time, date, their
9 name, date of birth, and I tell them I'm investigating a certain
10 matter and what, if anything, can they tell me about it. And I
11 don't go into any preamble of other than that.

12 Q. But there is some introduction, there is some discussion at the
13 beginning of the statement.

14 A. That's, the only introduction would be I'd introduce myself
15 and tell them who I was, if they didn't know me personally.

16 Q. But what if, I mean have you had the experience that
17 witnesses are nervous and what is this going to mean? Am I
18 going to have to testify in court? What effect is this going to
19 have on my job? Have you had that experience where
20 witnesses have asked those kinds of questions?

21 A. Yes, I've had experiences that people would say to me, "Have
22 you got a cigarette?" That's one of the questions. And then,
23 "If I give a statement, will this hurt my chances of getting in
24 the R.C.M.P.?" I've had all those questions asked of me.

25 Q. And when you have that kind of exchange with a witness,

1 that doesn't always get written down on the statement, does
2 it?

3 A. Asking for a cigarette?

4 Q. Asking whether it's going to hurt their chances to get to the
5 R.C.M.P. and your response to that.

6 A. I suppose I had put it in statements, yes, but I can't recall
7 today whether I have or I haven't. But I've never gone into
8 any long preamble on taking the statement.

9 10:10 a.m. *

10 Q. Then would you agree, as well, there may be discussion
11 throughout the statement, that there may be discussion at the
12 end of the statement, as well, and that all of this doesn't
13 necessarily religiously get taken down?

14 A. After the statement is taken and signed by whoever gives the
15 statement if they wish to sign, and signed by the witness, if
16 there's one there, and myself then if they want to discuss it
17 certainly, they're free to do so.

18 Q. And that isn't necessarily recorded.

19 A. No, because the statement is over then. Your statement is
20 free and voluntary.

21 Q. Now, what can you tell us about statement-taking techniques,
22 for example I've heard of a technique called the sort of good
23 guy/bad guy, the good cop/bad cop technique, and I'm
24 curious about this because it's sort of the sort of thing that
25 Scott MacKay, Robert MacKay described in his evidence before

1 the Inquiry which is in volume...transcript Volume 4 at page
2 667. And, in that Mr. MacKay says, "I found Detective
3 Urquhart quite helpful and friendly. I found Detective
4 MacIntyre overbearing and bullish." Now, I'm not asking you
5 to comment on the accuracy of that. I understand from your
6 evidence you don't recollect that statement. What is the
7 purpose of such a technique if it's utilized that there's kind of
8 a friendly cop and there's an unfriendly cop?

9 A. I didn't know there was such a...such a...I didn't know such a
10 thing...

11 Q. You've never heard of that as a...

12 A. I...

13 Q. ...police technique for getting statements out of people.

14 A. No. And I have never used it.

15 Q. Have you heard yourself described as "father confessor"?

16 A. That is very difficult to answer, I've been called many things
17 I suppose in my career as a policeman.

18 Q. But particularly the phrase "father confessor", does that...

19 A. I was always, I'd say, a kind person and I didn't like to abuse
20 anybody and I never have abused anybody, and if I was kind
21 to people and they wanted to call me nice names or say nice
22 things about me I...

23 Q. You didn't object to that.

24 A. No, I did not object to that.

25 Q. I'm referring actually to Volume 11 in the transcripts at page

1 1992. This is evidence of John Butterworth, a police officer,
2 and it's in fact in response to questions by your counsel. Mr.
3 Murray says, "Would I be correct, sir, that Mr. Urquhart had a
4 reputation around the station that developed into a nickname
5 as the "father confessor"?" Mr. Butterworth says, "Yes, I
6 believe there was something." And Mr. Murray says, "And
7 the reason for that nickname was because people wanted to
8 talk to him, they seemed to open up to him, is that correct?"
9 Does that refresh your memory? Did you...do you recall
10 people calling you "father confessor" or referring to you that
11 way?

12 A. They might have called me that when I wasn't around but...

13 Q. You don't remember.

14 A. Nobody has every come up and said, "How are you this
15 morning, father," or anything like that.

16 Q. Uh-hum. Now, that means to me if people regarded you that
17 way, if you were regarded that way as...and describing you as
18 someone people wanted to open up to, people wanted to
19 confess to or talk to you, that you got what you wanted when
20 you took statements, would that be accurate?

21 A. I was successful taking statements, yes, I would say.

22 Q. And that would be a valuable asset, would it not, to be able to
23 get people to open up if you're trying to take a statement?

24 A. You didn't force anybody to open up. You asked them...

25 Q. No, but if you have that ability, that facility with people, that

- 1 would be very helpful as a police officer.
- 2 A. Yes, I would say it would be.
- 3 Q. I want to ask you about Mr. Chant's Louisbourg statement
4 that was June the 4th. Why were there so many people
5 present at his statement? You've already said in your direct
6 evidence that you feel that if there are more than two people
7 present in the taking of a statement that there's a possible
8 risk of intimidation of that witness. So, why was that
9 permitted to happen in Louisbourg?
- 10 A. He was well known, the people that were involved were well
11 known. There was his mother. There was the Chief of Police
12 who he knew very well, and Lawrence Burke or Larry Burke,
13 his probation officer.
- 14 Q. Even if we assume that he would have been comfortable with
15 his mother there, which I don't doubt, did it cause you no
16 concern that there would be another police chief there in
17 addition to you and Mr. MacIntyre, and his probation officer,
18 who was obviously his probation officer with respect to
19 another offence that he had committed?
- 20 A. No, it never crossed my mind that it would be an intimidation
21 to him, no.
- 22 Q. Do you have any thoughts about that now looking back on it
23 that that was...
- 24 A. No.
- 25 Q. ...undesirable to have all those people there?

1 A. I wouldn't say it was undesirable, no, but...I really... I don't
2 think it would hurt the boy in one way or the other.

3 Q. I believe you agree with Mr. Magee that there was no
4 pressure put on Mr. Chant and that there was no...there was
5 no suggestions, sorry, there was no pressure put on Mr. Chant
6 and there was no duress or no influence applied to him, is
7 that correct?

8 A. That's correct.

9 Q. What you don't agree with, am I right, is that you don't agree
10 with Mr. Magee saying that there was certain suggestions put
11 to Mr. Chant?

12 A. No, I can't remember of any suggestions put to Mr. Chant to
13 give that statement.

14 Q. And is it your evidence that Mr. Magee must be mistaken in
15 saying that there were suggestions put to Mr. Chant?

16 A. He could very well be, yes.

17 Q. Can you give any explanation as to why Mr. Magee's
18 recollection would only be partially correct?

19 A. I can't answer that. I have no idea what Mr. Magee was
20 thinking.

21 Q. If there were suggestions made, if Mr. Magee was correct, if
22 we accept that for the moment, then any of these suggestions
23 or any of this assistance is certainly not reflected in Mr.
24 Chant's June 4th statement, is it?

25 A. No.

MR. URQUHART, EXAM. BY MS. DERRICK

1 MR. CHAIRMAN

2 ... a response, it's a...

3 MS. DERRICK

4 Well, he can certainly refer to the statement on page 46.

5 MR. URQUHART

6 A. Would you mind repeating that question?

7 Q. Certainly. I think the point is probably made, but I'm simply
8 saying that if Mr. Magee was correct that suggestions were
9 made to help Mr. Chant with his statement that any of these
10 suggestions are not reflected in the statement that was
11 recorded, which is the statement shown on page 46 of Volume
12 16. Certainly we don't see any statements in there saying,
13 "We have another witness that saw you there."

14 A. No.

15 Q. I think it's your evidence you can't account for how Mr. Chant
16 and Mr. Pratico came up with the same story, is that...

17 A. No, I can't account for it, no.

18 Q. Do you agree that what you're saying is that quite by accident
19 on June 4th you got two remarkably similar stories from what
20 you believe to be disinterested witnesses which we now know
21 are false?

22 MR. MURRAY

23 Well, with respect, whether it was by accident or not, he said
24 he doesn't have any idea as to how...

25 MS. DERRICK

1 That's why I'm asking whether that's the effect of his
2 evidence.

3 A. No, I have no idea.

4 Q. You have no idea of how you got those statements. I'd like to
5 ask you about Patricia Harriss' statement. I believe in your
6 evidence you were asked why her June 17th statement,
7 which is at page 63 of Volume 16, why it wasn't signed and
8 you said you don't recall, that maybe she asked to go to the
9 bathroom and maybe she asked to see her mother. If that
10 was the case, wouldn't it have been a normal procedure to
11 have waited until she got back and then resumed the
12 statement?

13 A. Well, I've been before the Commission, I've been asked this
14 question before, and if I had an answer and I'm not trying to
15 be...

16 Q. I...

17 A. I would only be too glad to clear that point up, but I just don't
18 know.

19 Q. No, and...I was just referring you to your evidence so that, you
20 know, you would be able to remember it because I realize
21 there's been an intervening day since you testified. But the
22 question I am asking you is that if there had been some
23 interruption such as Patricia Harriss going out to speak to her
24 mother for a minute or going to the bathroom, wouldn't a
25 normal procedure have been to have resumed a statement

1 once she returned?

2 A. Yes.

3 Q. To have continued the statement at that point.

4 A. Yes.

5 Q. Now, in your direct evidence you said that your signature on
6 a statement as a witness indicated that the question and
7 answers in the statement were true to the best of your
8 knowledge. The question I want to ask you is that if in the
9 taking of a statement you believed that a witness was lying,
10 would you then sign that statement as a witness?

11 A. It was the story that he was telling and if it was proved or
12 evidence, you know, I can't quite follow your question.

13 Q. Well, it may be that...

14 COMMISSIONER EVANS

15 Just a moment. What you're asking, as I understand his
16 evidence was, he is saying that what was said was actually
17 recorded. He doesn't say that what is...that the statement is true
18 that is, in the sense of whatever the witness says is true. I...

19 MS. DERRICK

20 I'm certainly happy for this witness to clear up what he
21 meant, but in fact what he said at page 9486 is that, the question
22 is, "If you signed as a witness to a statement, what does that
23 signature indicate?" and the answer is, "It indicates that
24 everything that was asked and the answers given in that
25 statement were true to the best of your knowledge." Now...

1 COMMISSIONER EVANS

2 To the best of whose knowledge?

3 MS. DERRICK

4 At the best of Mr. Urquhart's knowledge.

5 COMMISSIONER EVANS

6 How would he know?

7 MS. DERRICK

8 Well, that's my question and that's why...

9 COMMISSIONER EVANS

10 Well, I think...

11 MS. DERRICK

12 ...I want to clarify if that's, in fact, what he meant.

13 COMMISSIONER EVANS

14 I think the reasonable interpretation is that what was written
15 down was actually said.

16 MS. DERRICK

17 I think that is a reasonable interpretation, that's why I
18 wanted Mr. Urquhart to be able to explain whether that is, in fact,
19 the explanation or...

20 COMMISSIONER EVANS

21 Miss Derrick, how can this witness say that because he was
22 present and a statement was given that what the person giving
23 the statement said was true? How does he know that?

24 MS. DERRICK

25 No, I...My Lord, I quite agree. I don't see how he could say

1 that.

2 COMMISSIONER EVANS

3 Well, isn't the other interpretation the only sensible or
4 reasonable one?

5 MS. DERRICK

6 That's what I was putting to the witness so, that if, in fact,
7 that is his explanation he can give that to us, because I think that
8 does leave, although maybe an unreasonable explanation, it does
9 leave an explanation that could be interpreted either way.

10 Q. So, in fact, what you mean when you say that by signing as a
11 witness you are, in fact, saying that what is in this statement
12 represents what was discussed between the person taking the
13 statement and the person that gave the statement, is that
14 correct?

15 A. Yes.

16 Q. Okay. Thank-you. Now, setting aside for a moment these
17 allegations that you crumpled up Patricia Harriss' first
18 statements and threw them on the floor or threw them away,
19 if, in fact, in the taking of a statement that was done, that
20 would indicate, would it not, that that statement was not
21 acceptable?

22 A. I have never crumpled up statements and thrown them on
23 the floor.

24 Q. You were present at Mr. Marshall's arrest.

25 A. Yes.

1 Q. Can you tell us what the seating arrangement was in the car
2 leaving Whycomomagh and going back to Baddeck? Where
3 was everybody seated?

4 A. I was in the back seat, I believe.

5 Q. With Mr. Marshall.

6 A. With Mr. Marshall. And the R.C.M.P. officer and Sergeant
7 MacIntyre were in the front seat of the vehicle.

8 Q. Would you agree that as a police officer you have an
9 obligation to record an accused person's utterances?

10 A. Yes.

11 Q. And is it your evidence that you don't recollect Mr. Marshall
12 saying, "I didn't do it."?

13 A. That's correct.

14 Q. You...there is evidence that in November of 1971 you drove
15 Mr. Pratico to the Nova Scotia Hospital, and I know that your
16 evidence is you don't recollect having done that. You did say
17 in your evidence that if you had done it you would have done
18 it in a private car. Does that mean you would have driven
19 your own car?

20 A. Yes. As I explained yesterday, there was no...I don't know
21 about ambulance service at that time, but the police were on
22 escort duty, they'd take people from the Nova Scotia or the
23 Cape Breton Hospital to the Nova Scotia Hospital. They would
24 call in the evening or something during the day and one of
25 the off-duty policemen would take their private car and go to

1 the Nova Scotia Hospital to deposit the prisoner or the...not
2 the prisoner, the person involved and the envelope containing
3 the medical records which would be sealed and you'd turn it
4 over to the people at the Nova Scotia Hospital.

5 Q. Now, I believe your evidence was that you had no concerns
6 about Mr. Pratico's reliability as a witness because you said
7 that people were sent to the Nova Scotia Hospital for
8 treatment because there was no detox in Sydney and they
9 were sent there to dry out. Now, in fact, in I think it's Exhibit
10 47, and I'll read it as best I can, the reason for Mr. Pratico's
11 admission was the readmission, and I'm reading from the
12 exhibit, "The readmission certificate notes he," meaning Mr.
13 Pratico, "...is incoherent, feels people are after him, curses and
14 swears continually." What I'm going to suggest to you that if
15 he...

16 COMMISSIONER EVANS

17 Is that report from somebody?

18 MS. DERRICK

19 This is the admission form, My Lord.

20 COMMISSIONER EVANS

21 Well, does this witness...was he aware of that? I think he said
22 the report came in an envelope.

23 MS. DERRICK

24 I don't doubt that he wasn't aware and that he wouldn't have
25 seen this because I think that, in fact, this would not have been a

MR. URQUHART, EXAM. BY MS. DERRICK

1 report in a sealed envelope from Sydney, but rather the report
2 that would have been put out by the admitting physician in...at
3 the Nova Scotia Hospital.

COMMISSIONER EVANS

5 All right.

MS. DERRICK

7 And the note...it appears that they note that they were
8 certifying Mr. Pratico, I assume, committing him as an involuntary
9 patient. So, I'm not suggesting that Mr. Urquhart would have seen
10 this report, I'm merely reading what the doctor wrote down once
11 you handed Mr. Pratico over to the Nova Scotia Hospital.

12 Q I mention it to you...I use, you know, I refer to him having
13 been incoherent and cursing and swearing continually and
14 obviously being paranoid, feeling people were after him, to
15 see whether that refreshes your memory at all because this
16 would have been a five-hour ride with a person in that
17 condition. It must have been an unforgettable experience I
18 would have thought, but you don't...you don't recall having
19 taken him down.

20 A. No.

21 Q I just want to take you now, Mr. Urquhart, to 1982 and this is
22 around the time when this whole matter was beginning to be
23 reinvestigated by the R.C.M.P.. Mr. Frank Edwards, the
24 prosecutor notes in his notes, this is Volume 17 at page 2, and
25 it's at the bottom, it's in the section that says, "Re: Chief

1 MacIntyre". Mr. Edwards notes that he had some discussions
2 with Chief MacIntyre around February 19th, 1982, where the
3 Chief questioned the fact that he had heard that some
4 witnesses were being...some of the, I guess, the old witnesses
5 were being questioned, and Mr. MacIntyre was quite upset
6 about the whole matter. I just want to ask you do you
7 recollect around this time whether Mr. MacIntyre discussed
8 his feelings with you about this reinvestigation and, if so,
9 what did he say to you?

10 10:26 a.m. *

11 A. After the...this was on the 21st of February.

12 Q Around that time, that's right.

13 A. Yeah. No, I can't...

14 Q Or any time in February, March, April, May.

15 A. I was involved in another murder case at that time and I was
16 in contact with Mr. Edwards. I'm not sure of the date of that
17 murder. And, no doubt I was back and forth talking to Mr.
18 Edwards, possibly he was down to the police office too.

19 Q Do you have any recollection of Mr. MacIntyre, thought,
20 discussing the re-opening of the case with you and expressing
21 being upset as is...

22 A. No, I can't recall that.

23 Q There's also a reference, and this is on page 12 of these same
24 notes, recorded by Mr. Edwards, where he has a telephone
25 conversation with Mr. MacIntyre in which Mr. MacIntyre

1 says, "They are not going to put me in jail, are they?" In fact,
2 "Have I been talking to them? They're not going to put me in
3 jail, are they?" is what the conversation was with Mr.
4 Edwards. Did you have any concerns at that time about
5 criminal charges with respect to this matter?

6 A. Myself personally.

7 Q. Yourself.

8 A. No, because I didn't have any concerns about it at that time.

9 Q. Were you aware of Mr. MacIntyre's concerns in this regard?

10 A. No, if he had concerns he never relayed them to me.

11 Q. He never discussed them with you. Can you recall when you
12 last discussed this case with Mr. MacIntyre?

13 A. No, I cannot.

14 Q. Mr. Urquhart, you made reference very early in your direct
15 evidence that you had had a series of tapes that from the
16 sounds of things were reminiscences of your experiences as a
17 police officer, would that be...

18 A. Yes, I had tapes and I had...I had some tapes. I had scraps of
19 paper.

20 Q. And did these deal with your experiences as a police officer?

21 A. They dealt with some of the cases possibly, some funny things
22 that happened, some expressions, names that were on it that
23 had no connection with any criminal charges, once you'd
24 interview or talk to the people.

25 Q. I see. Just people you had come in contact with then.

1 A. Right.

2 Q. Do you recollect over what period of time these tapes
3 spanned, what years of experience?

4 A. I suppose...I can't really tell you what dates.

5 Q. And were you just trying to preserve some of these
6 reminiscences, these experiences?

7 A. No, I had a file in my office and it was a folder and I used
8 to...I'd come up with something and I'd put it in that, nobody
9 else could get to it because I had the only key to the office.

10 Q. This was just for your own personal enjoyment...

11 A. That's right.

12 Q. ...or information.

13 A. And when I retired in 1983, June 30th, I gathered it all up
14 and I cleaned out my office and turned it over to my
15 successor, who was Roy Young, I took it home, I went through
16 some of it and I said, "What am I keeping it for?" and I
17 destroyed it. But there was nothing concerning the Donald
18 Marshall, Jr., case on all of those pieces of paper.

19 Q. I see. So, no portions of those tapes dealt with the Donald
20 Marshall, Jr., case at all.

21 A. No, none whatsoever.

22 Q. And you're sure of that.

23 A. I'm positive.

24 Q. Mr. Urquhart, would it be fair to characterize your evidence
25 or the effect of your evidence as being that, with the

MR. URQUHART, EXAM. BY MS. DERRICK

1 exception of the June 4th Louisbourg statement involving Mr.
2 Chant, that you really don't recollect very much about this
3 investigation or the details involved in it?

MR. MURRAY

4 Well, I suppose, My Lords, that that's a decision for
5 yourselves to make as opposed to Mr. Urquhart to characterize his
6 own evidence.
7

MR. CHAIRMAN

8 Good copy, but it is for us to decide.
9

MS. DERRICK

10 I'm certainly not asking for the purpose of being good copy,
11 I'm just asking whether or not he disagrees or agrees with that
12 statement of his recollection of the investigation, the 1971
13 investigation.
14

MR. URQUHART

15 A. All I can say is that I was on the investigation, I did
16 everything I could to the best of my ability.
17

MS. DERRICK

18 Those are my questions, thank-you.
19

MR. PUGSLEY

20 I have no questions, My Lord, thank-you.
21

MR. BARRETT

22 I have just several questions.
23

EXAMINATION BY MR. BARRETT

24 Q. Mr. Urquhart, my name is David Barrett. I represent the
25

1 estate of Donald C. MacNeil. You've testified you were
2 employed thirty-four years with the Sydney Police
3 Department.

4 A. Correct.

5 Q. And I assume during this period you had an opportunity to
6 observe the late Donald C. MacNeil act as both prosecutor and
7 defence counsel.

8 A. Yes, sir, I did.

9 Q. And during your service with the Sydney Police Department
10 did you observe Mr. MacNeil to prosecute cases involving
11 whites, Indians and blacks?

12 A. Yes.

13 Q. And did you feel he prosecuted these cases any differently?

14 A. No, I would say not. He prosecuted them as the evidence was
15 given to him by the police or whoever was in charge of the
16 investigation.

17 Q. Would you describe Mr. MacNeil as being an experienced
18 prosecutor?

19 A. Yes.

20 Q. Competent.

21 A. Very competent, I would say.

22 Q. Did you feel he was fair in his dealings with people?

23 A. He was fair, yes, as far as I was concerned.

24 Q. Did he have a good rapport with police officers in your
25 opinion?

MR. URQUHART, EXAM. BY MR. BARRETT

1 A. Yes.

2 Q. And did he respect your opinion as a police officer?

3 A. Yes, and he respected police.

4 Q. Did he ever direct you how to conduct an investigation?

5 A. Did he become involved and tell you what to do or anything?

6 Not to my knowledge. He'd suggest possibly, "This other
7 witness should be investigated or interviewed or you'll have
8 to get...see if you can get more on this case or on that."

9 Q. And did he...did you ever feel he pressured you during the
10 course of your investigation?

11 A. No. He was the type of man that you could go to, you could
12 call him at his home at night and you could ask for advice and
13 he'd give it to you freely.

14 Q. Did you ever have any reason to complain to your superiors
15 or to the Attorney General's Department about Mr. MacNeil's
16 manner of prosecuting?

17 A. No, sir, I didn't.

18 MR. BARRETT

19 Those are all my questions. Thank-you.

20 MR. CHAIRMAN

21 Mr. Pink.

22 EXAMINATION BY MR. PINK

23 Q. Mr. Urquhart, there are just two areas that I'd like to address
24 with you. The first relates to the preparation of your
25 affidavit that was used in the reference.

1 A. Yes.

2 Q. You recall that you met with Mr. Edwards in July, 1982, for
3 preparation of that affidavit.

4 A. I'm not...I can't recall now, but I believe the affidavit was
5 made up when I got up there. I'm not absolutely sure on it
6 though.

7 Q. Do you have Volume 17 in front of you?

8 A. Volume 17. Yes, I have it.

9 Q. Could you look at page 12?

10 A. 12, that's right. .

11 Q. Those are Mr. Edwards' notes and they're dated the 12th of
12 July.

13 A. Page 12.

14 Q. Yes.

15 A. Yes.

16 Q. And you see that on...just below the date it says, "My office,
17 present John MacIntyre, Mike Whalley, Harry Wheaton, began
18 with summary of Chambers' appearance," a-p-p-r. Do you see
19 that?

20 A. No. Is this Wednesday, July 12th?

21 Q. Wednesday, July 12th, '82. "My office, present..."

22 A. Oh, yes, I'm sorry.

23 Q. I understand that you attended at that meeting but arrived
24 after the meeting began.

25 A. I'm not...I might have been in court in that morning and I

1 believe I was, and I come over to Mr. Edwards' office after I
2 was through in court.

3 Q. Yes. And the notes on the page on page 13 have a number of
4 specific references to you, at the top of page 13, about a third
5 of the way down and again about two-thirds of the way
6 down.

7 A. Where I don't recall the interview with Harriss.

8 Q. Yes.

9 A. Yeah.

10 Q. And I believe you told Mr. Orsborn the other day that that
11 was your recollection, in fact, I believe it continues to be your
12 recollection today the information that's recorded there by
13 Mr. Edwards.

14 A. Right.

15 Q. And that was the information that made it into the affidavit
16 that Mr. Edwards prepared for you.

17 A. Right.

18 Q. The affidavit itself, it's my understanding was prepared
19 shortly after this and delivered to you and you had an
20 opportunity to review it and make whatever changes you
21 wanted.

22 A. Correct.

23 Q. And you reviewed the affidavit with Mr. Whalley who was
24 the solicitor for the City of Sydney and for the Sydney Police
25 Commission.

1 A. Yes.

2 Q And you took the opportunity to make some changes as you
3 felt they were appropriate.

4 A. Yes.

5 Q You testified the other day regarding a meeting in 1971 with
6 a Mr. Dan Paul, 1981, pardon me, with Mr. Dan Paul.

7 A. Yes.

8 Q And just...so that you have the document in front of you, it's
9 at page 16, at page 215, Volume 16, at page 215.

10 A. Page 215.

11 Q Page 215, yes. And, that's a note that you made as a result of
12 the meeting with Mr. Paul.

13 A. Yes.

14 Q When did you make that note?

15 A. August 26th, 1981.

16 Q Did you make it contemporaneously with the meeting, after
17 the meeting, some time later in the day, the next day?

18 A. No, I would say it would be immediately after Mr. Paul left
19 the office or possibly when he was in the office.

20 Q And...

21 A. So, that I would make sure that I had the right name.

22 Q And do you have an independent recollection of that
23 meeting?

24 A. I remember Mr. Paul and before on one of the occasions, I
25 believe it was on the discovery, I couldn't remember the

MR. UROUHART, EXAM. BY MR. PINK

1 name of the man that turned this information over to me.

2 Q. Sure. But today do you have an independent recollection of
3 his coming to your office and your meeting with him?

4 A. Yes, because I have the document here.

5 Q. Okay. But...beside...

6 A. And I remember him coming to the office.

7 Q. You do, and do you remember your call to Mr. Williston?

8 A. I remember I...after I got it and asked Mr. Paul to see if he
9 could get any more information for me on it that I went to the
10 Deputy Chief of Police, M. J. MacDonald. Chief MacIntyre was
11 on vacation at the time, and Mike MacDonald was acting chief.
12 And, I took it to him and then I turned it over or called up
13 Brian Williston and spoke to him about it.

14 Q. Did you call Mr. Williston the afternoon that Mr. Paul came to
15 see you?

16 A. Yes, I did.

17 Q. Shortly after that.

18 A. Shortly after, yes.

19 Q. And you appraised him of what had taken place in the
20 meeting and you told him what you were going to do?

21 A. Yes.

22 Q. I have a note that Mr. Williston made as a result of your
23 telephone call, Mr. Urquhart, and I'll just read a portion of it
24 to you.

25 MR. MURRAY

MR. URQUHART, EXAM. BY MR. PINK

1 Is this an Exhibit?

2 MR. PINK

3 No, it's not, and I'll show it to you, Mr. Murray. I just...

4 MR. WILDSMITH

5 Perhaps, My Lord, I don't know what's going on here, but this
6 document should be an exhibit.

7 MR. CHAIRMAN

8 We don't know what's going on either.

9 MR. WILDSMITH

10 But apparently the witness is going to be referred to...

11 MR. CHAIRMAN

12 We don't even know that yet. We wait in breathless
13 anticipation.

14 MR. PINK

15 Q Perhaps I could just read this note to you, Mr. Urquhart, and
16 you can confirm or deny if...

17 MR. CHAIRMAN

18 Well, if you're going to read it, I take it you're going to put it
19 in.

20 MR. PINK

21 I have no difficulty with putting it in. I only have one copy at
22 present, My Lord, and I'll arrange for copies to be made at the
23 break. It's a note that Mr. Williston made. It's dated the 26th of
24 August at 4:50 p.m.

25 EXHIBIT 129 - BRIAN WILLISTON'S NOTES ON TELEPHONE

CONVERSATION WITH WILLIAM UROUHART, AUGUST 26, 1981

1
2 Q I note from your record that your meeting with Mr. Paul was
3 at 4:30 p.m.. 1981. It says,

4
5 Urquhart indicated that Ebsary had been
6 checked out previously with negative
7 results, but he would interview Dan Paul
8 for further details and information
9 supporting this allegation. He stated that
10 he would get back to Frank Edwards
11 regarding the results of his inquiry, but for
12 now just wanted to state that Dan Paul was
13 in.

14 Does that accurately reflect what you told Mr. Williston on
15 that day?

16 A. I don't know if I told him that I'd be in contact with Mr.
17 Edwards or not. I'm not clear on that. And, I have nothing
18 documented to state that I did.

19 Q You indicated that you were awaiting Mr. Paul's return to
20 you...in your direct examination...

21 A. I told...and it's in on the notes that I have written here, I
22 believe, that I told Paul that it was not enough information
23 and "He is going to try and get the name of the person who
24 gave him the name of Ebsary and get back to me."

25 Q Was it your intention, Mr. Urquhart, to do anything further?

A. I thought at that time, and I did do something about it, I took
it to my superior, the Deputy Chief of Police, and I took it to
the Crown Prosecutor, Brian Williston.

MR. URQUHART, EXAM. BY MR. PINK

1 Q. But besides that, was it your intention to make contact again
2 with Mr. Paul to find out if he had any additional
3 information?

4 A. I was waiting for him to get back to me.

5 Q. And you felt that was sufficient.

6 A. I did at that time, yes, sir.

MR. PINK

8 That's all I have, thank-you.

EXAMINATION BY MR. PRINGLE

9
10 Q. Just two minor areas, I'll probably use this mike here. Mr.
11 Urquhart, my name is Al Pringle, I'm counsel...one of the
12 counsel for the R.C.M. Police. In your discovery which you
13 gave in...discovery evidence in 1986 I believe you stated in
14 your direct that you didn't have much chance to prepare for
15 that, you got a subpoena and you attended.

16 A. That's correct.

17 Q. However, I'd like to refer you to several portions of that
18 discovery evidence and just have your comment on whether
19 that evidence is accurate or not. That's Volume 14 of the
20 exhibits, the fairly large red book, Volume 14. You don't have
21 that?

22 A. No.

23 Q. Perhaps we could have that given to you. And the pages I'll
24 be referring are 131, 135 and 156. And these questions, that
25 evidence all relates to the first statements that were given

MR. UROUHART, EXAM. BY MR. PRINGLE

1 Mr. Chant, Mr. Pratico and the one and only statement given
2 by Mr. Marshall. And, I can refer you to those pages, but the
3 evidence that you gave in 1986 at discovery was that, in fact,
4 you were not aware of the existence of those statements until
5 that discovery in 1986. Do you recall that?

6 A. Of which statements, sir?

7 Q. The first statement of Mr. Chant, the first statement of Mr.
8 Pratico and the only statement of Mr. Marshall. Perhaps we
9 could start with page 131. And, that is in reference to Mr.
10 Chant, do you have that page, Mr. Urquhart?

11 A: Yes, I have.

12 Q. All right. Specifically you were asked at that time, and the
13 question was Q. 367,

14
15 Q. Were you aware on June the 4th when
16 that statement was taken from Maynard
17 Chant that a previous statement had been
18 taken, so you went into Louisbourg
19 Town?

20 A. No, I didn't.

21 Q. You didn't know about a previous
22 statement?

23 A. No, I didn't know there was a previous
24 statement taken of him, and later.

25 Q. And you can tell by reading it, is that the
first time you've ever seen that
statement?

1 A. As far as I know it is.

2 I just want to ask you, sir, is that your recollection that the
3 first time you knew about those statements was in the
4 discovery in 1986?

5 A. To the best of my knowledge, yes.

6 Q. Okay. One other minor little area I want to ask you about, the
7 fingerprinting that you did in 1970 with respect to Mr.
8 Ebsary, how long would that process normally take when you
9 took someone in and you were the detective or the officer
10 taking the prints?

11 A. Not very long.

12 Q. Not very long.

13 A. No.

14 MR. CHAIRMAN

15 Mr. Pringle, could you indicate the relationship with this line
16 of questioning to your client's interest?

17 MR. PRINGLE

18 I anticipated I might get asked that and I thought that...I had
19 screened out many questions and left these two little areas. I
20 think in a very general way our clients, of course, in 1982 were
21 involved in the primary investigation and they've been subject to
22 a lot of cross-examination with respect to what took place
23 and 1971 statements relating to...I think it relates...

24

25

MR. URQUHART, EXAM. BY MR. PRINGLE

1 MR. CHAIRMAN

2 The fact that you're here appearing as counsel representing
3 someone of interest doesn't give you the right to cross-examine on
4 all issues. Your...

5 MR. PRINGLE

6 I appreciate that, My Lord, that's why...

7 MR. CHAIRMAN

8 It would not be related to your clients and...

9 MR. PRINGLE

10 That's why I took it down from nine to two and I hoped those
11 two related in some way, and perhaps they do and perhaps they
12 don't.

13 MR. CHAIRMAN

14 I don't think they do.

15 MR. PRINGLE

16 I would like to ask that question with respect to what...what a
17 detective, an officer, taking fingerprints would normally do, would
18 he normally find out what the offence related to that he was
19 taking the prints for and would he normally make some kind of a
20 note, mental or otherwise, about the description of...

21 MR. CHAIRMAN

22 I think he's answered that. I thought that...

23 MR. PRINGLE

24 Okay. Thank-you, My Lord.

25

MR. URQUHART, EXAM. BY MR. PRINGLE

1 MR. CHAIRMAN

2 Now...

3 MR. MURRAY

4 Not wanting to cast any aspersion on Mr. Ross, but perhaps it
5 would be a good time to break before commencing cross-
6 examination.

7 MR. CHAIRMAN

8 Well, let me...you have no...go ahead, Mr. Ross.

9 MR. ROSS

10 A minimum.

11 MR. CHAIRMAN

12 I'm prompted in my commitment, I don't want to tire this
13 witness, so if...go ahead, if it's just a short...

14 EXAMINATION BY MR. ROSS

15 Q. Mr. Urquhart, I would like to ask you just a couple of
16 questions with respect to the investigation of the death of
17 Sandy Seale and then one or two with respect to matters that
18 might relate to the Black United Front. Now, the evidence of
19 Debbie MacPherson was that when she came over to Sandy
20 Seale he mentioned the word "No cops." Do you recall that
21 evidence?

22 A. I recall that evidence, yes, sir.

23 Q. As far as you're concerned when was the first time you heard
24 any indication that there was such a statement made?

25 A. When the Inquiry took place in Sydney, sir.

- 1 Q. You never heard it before then.
- 2 A. Not before that, to my knowledge.
- 3 Q. Thank-you. And tell me further, as far as this robbery theory
- 4 was concerned, when was the first time you became aware
- 5 that there might have been a robbery theory?
- 6 A. I don't know when I...I believe, and I'm not sure on it, but I
- 7 think it was during the appeal or I read it in the paper. I
- 8 never heard it from anybody around the police department if
- 9 that's the...
- 10 Q. That would have been around 1982.
- 11 A. Yes, sir, I would say it is.
- 12 Q. Yes. I see. Now, as far as the investigations in 1982 which
- 13 were carried on by the R.C.M.P. is concerned, were you in any
- 14 way troubled by the results of that investigation as compared
- 15 to what you had been involved in back in 1970?
- 16 A. What do you mean by "troubled"?
- 17 Q. Well, you were involved in the investigation in 1970,
- 18 investigation of the death of Sandy Seale.
- 19 A. In '71.
- 20 Q. In '71, yes.
- 21 A. Right.
- 22 Q. Yes. And in 1982 it appeared as though the investigation was
- 23 taking a completely new...a completely new turn. Did you
- 24 find that in any way troubling when you reflect on the work
- 25 that you had done in 1971?

1 A. It would trouble me, yes, that somebody was in jail for
2 something they didn't do, that would bother me. As far as the
3 investigation, I asked Mr. Edwards how the investigation was
4 coming and he didn't chose to enlighten me in any way, shape
5 or form on how it was progressing. The only way I'd know
6 about it was through the press and radio.

7 Q. I see. You weren't keep abreast of what was happening.

8 A. No, sir, I was not.

9 Q. Okay, fine, thank-you very much. That's all I'm going to ask
10 you with respect to Sandy Seale. Now, perhaps you'd be good
11 enough, sir, to turn Volume 35. And at page 102 just about in
12 the centre of the page when they were speaking about leave
13 for Junior Marshall from Dorchester, from the penitentiary, it
14 reads,

15
16 Sydney Police would be opposed to
17 subjects going to the area on a TA. They
18 feel there might be reprisals from the
19 black community and the subject's entire
20 family had to move to Whycomagh
21 reserve after the offence.

22 As a police officer in the Sydney area, is it your view that
23 there would be any basis for that form of concern with
24 respect to the black community?

25 A. I worked in the black community on the police department
for roughly twelve years and I never heard any remarks
about Indians or whites or blacks.

1 Q. A statement of a similar...a similar statement appears on
2 page 147 where it reads, "The Chief of Police in Sydney stated
3 in C.A. dated June, 1978, he's against a three-day...against any
4 three-day passes Marshall might get as he feels there still
5 might be reprisals from the black community." Were you
6 aware of whether or not the Chief, in fact, made such
7 statements?

8 A. No.

9 Q. And if, in fact, these statements were made, is it your
10 evidence that you'd find difficulty finding a basis for such a
11 statement?

12 A. I wouldn't know what statements would be made to the
13 Parole Board officers that would come in, no, by Chief
14 MacIntyre or anybody else really other than ones I would
15 make myself to them when they'd come to visit me, and the
16 policy I had was that if somebody was involved in a case
17 other than myself and the parole people come in to see them
18 I'd kind of...I'd try to refer them to the officer that was in
19 charge of the case so they could give them the full disclosure
20 of what was going on.

21 Q. Sure, I appreciate that, sir, but I'm asking if from your own
22 experience whether in your view there would be any basis to
23 make such a statement?

24 A. No, I don't believe there would be.

25 Q. Thank-you. Then I ask you to look at page 151 where there

1 is reference to you.

2 A. I see that here, sir.

3 Q. Yes. It reads:

4

5 Inspector William Urquhart of the Sydney
6 Police Department was contacted in order
7 to elicit his reaction to the subject's request
8 for a three-day temporary absence to
9 return to the Membertou Reserve with
10 hopes of gaining support for his appeal.

11 It goes on to say,

12

13 As expected, the police reaction in this case
14 is quite negative and they are very
15 concerned about the risk of subject,

16

17 Sorry,

18

19 ...the risk the subject presents should he
20 return to the area. Inspector Urquhart
21 feels that the subject is a high risk for re-
22 offending and should not be given the
23 opportunity to do so. As stated earlier the
24 reaction of the Sydney Police to the
25 subject's return to the Membertou Reserve
is negative.

Now, number one, I'll ask you first whether or not that
statement properly reflects your sentiments current at that
time?

26

27 A. I can't see how that would reflect what I was thinking at that
28 time.

29

30 Q. Thank-you. Therefore I can't ask any more on that. In your

31

MR. URQUHART, EXAM. BY MR. ROSS

1 experience, sir, was there a section of Sydney which was
2 classified as the Negro community?

3 A. There was...when I went first on the police department there
4 was black people living at the Pier area, wards five and six,
5 mostly in ward five, but I never heard it referred to as a
6 Negro area.

7 Q. So, if, sir, you heard a statement made about the Negro area
8 of Sydney, would any particular area come to mind?

9 A. No, because most of the...the people have...there was people at
10 that time living on Townsend Street that were black. I
11 believe they were living in other parts of the City too, so I
12 don't think it would be a fair statement to make that there
13 was a Negro community wrapped up into one package and
14 left in one ward.

15 Q. Uh-hum. Well, then in your experience...did you have any
16 knowledge of a case which was heard before Judge MacDonald
17 in which Judge MacDonald said it was dangerous for young
18 people to be in that neighbourhood at night, referring to a
19 black community area?

20 A. I never heard Judge MacDonald or any of the other Judges
21 making that statement to my knowledge, sir.

22 MR. ROSS

23 Thank-you, very much. No more questions of this witness.

24 MR. CHAIRMAN

25 All right. Can you give an indication of how long you will be,

MR. URQUHART, EXAM. BY MR. NICHOLAS

1 Mr. ...

2 MR. NICHOLAS

3 Well, I have about hopefully ten relevant questions here, My
4 Lord, so it may take fifteen minutes.

5 MR. CHAIRMAN

6 Seeing we have ten relevant questions one can hardly resist
7 rising for ten minutes.

8 BREAK

9 11:20 a.m.

10 MR. CHAIRMAN

11 Mr. Nicholas?

12 MR. NICHOLAS

13 Thank you, My Lords. I wasn't sure if I could limit myself
14 to ten questions or not, but with your indulgence.

15

16 EXAMINATION BY MR. NICHOLAS

17 Q Well, my first question to Mr. Urquhart, I guess, Mr. Urquhart,
18 you know I'm representing the interests of the Union of Nova
19 Scotia Indians in these proceedings.

20 A. Yes, sir.

21 Q And yesterday...No, I'm sorry, on Monday you indicated in
22 your training you had approximately two-week refresher
23 courses or some elementary training in police work and I'm
24 wondering in your years as a police officer, any of the courses
25 you took, were any of those touching on Micmac Indians or on

1 | their social conditions?

2 | A. No, sir.

3 | Q. None on race relations between peace officers and Indians
4 | then.

5 | A. I imagine it was, I would say if it was on the refresher course
6 | that it would be touched upon but as a course, no. You mean
7 | a two-week course or a three-week course?

8 | Q. Well, I know in your testimony you had referred to a two-
9 | week refresher course.

10 | A. Right.

11 | Q. That you took in Halifax.

12 | A. But nothing specific on any race.

13 | Q. Okay. So what is the extent then of the relationship that you
14 | as a peace officer had with the Micmac or the Membertou
15 | Reserve?

16 | A. I worked with Indians and I was in the army with them, in
17 | the legion with them, and I had never any problem with
18 | Micmac or any other race.

19 | Q. But to be a bit more specific in your relationship with the
20 | Micmac Indians living in Membertou within the City of
21 | Sydney, did you have any meaningful relationship with them
22 | or any significant relationship with them?

23 | A. No, I knew some of them, but I never had any courses in that
24 | type of question that you're asking me, sir.

25 | Q. So in carrying out your police work, did you ever think of

1 using an interpreters in questioning the Micmac people?

2 A. No, sir, I didn't because any that I did talk to, they would
3 speak English.

4 Q. So you took it from that that they fully understood the
5 English language.

6 A. Yes, sir, I did.

7 Q. I was going to also refer you to a particular volume, Volume
8 35, I believe, at page 151, which I think was referred to as
9 Exhibit 112. And you've already had a few questions on this
10 matter this morning. When it came to Indian offenders being
11 assessed for the possibility of probation or parole, how much
12 were you involved in the actual assessment with the Reserve,
13 with the individual, and the community?

14 A. It would be the National Parole people that would come in
15 and interview us. Sometimes Bernie Francis would come in.
16 He'd be wanting some information, Roy Gould. But outside of
17 that, that would be the extent of it, sir.

18 Q. But in your involvement in these assessments, did you
19 yourself take any initiative to approach the Reserve itself and
20 either contact the Chief or other people in authority for their
21 particular evaluation?

22 A. No, sir, I didn't.

23 Q. Not up even to the time when you retired in 1983?

24 A. Pardon?

25 Q. Not even up to the time when you retired in 1983?

1 A. No, sir.

2 Q. When you were Inspector of Criminal Investigation?

3 A. Did I contact anybody at the reservation?

4 Q. Yes.

5 A. I would have contact but not on a parole basis, not to my
6 knowledge, no.

7 Q. Now I want to go back to the particular Exhibit 119, which
8 outlines your, in a one-page summary, I guess, your C.V. or
9 curriculum vitae, if I can refer to that, and in particular, I
10 wanted to find out about your experience in the police college.
11 This is a police academy in Charlottetown?

12 A. Charlottetown, yes.

13 Q. And during your term on the Board of Directors between
14 1978...1972 and '78, were there any discussions that dealt
15 with Indian policing or Indian offenders or any particular
16 difficulties that enforcement agencies were having with
17 Micmacs?

18 A. On any of the Board meetings that I attended at the Atlantic
19 Police College in Charlottetown, there was never, to my
20 knowledge, there was never anything to come up about any
21 of the different races about whether they should be on police
22 departments or whether they shouldn't be on them. It was,
23 to my knowledge, that question was never raised.

24 Q. So did you yourself initiate any of these particular areas to be
25 taken into consideration as part of the training of a peace

1 officer?

2 A. No, because at that time, and I still don't believe that there
3 was any problem with any of the different races in any of the
4 police departments. Our department was small compared to
5 some of the other ones and, to my knowledge, there was
6 never any discussion on it.

7 Q. Were you familiar then with their curriculum at the
8 Academy, were there any particular courses that touched on
9 race relations?

10 A. After I left the college, I can't speak for what happened on
11 the curriculum then, sir. I don't know whether it's the same
12 curriculum they have now as when I was involved or not, sir.

13 Q. Now if I can refer you, Mr. MacIntyre, to Volume 31....I'm
14 sorry, Mr. Urquhart, excuse me, on page 71.

15 A. Page 71?

16 Q. Well, it begins on page 71, yes, Volume 31. And, in particular,
17 pages 73. On page 71, it refers to an anonymous letter that
18 was sent to Mr. Chrétien, the Minister of Justice at the time,
19 and I'm wondering... First of all, I don't imagine you've ever
20 seen this particular document?

21 A. No, I can't say that I have, sir.

22 Q. On page 73.

23 A. Yes.

24 Q. I should maybe just have you glance at that last paragraph.
25 And the particular line I'm concerned with here, if I may just

1 read it to you and follow along, it says:

2
3 Anyone in Sydney can tell you that Donald
4 MacNeil was a racist, he made racist
5 remarks about Indians.

6 Now that particular reference in an anonymous letter, were
7 you ever, did anyone ever tell you about racist remarks that
8 were harboured by Crown Prosecutors or other officers of the
9 Court?

10 A. No, I never heard Donnie MacNeil, and he's named here, make
11 any racist remarks.

12 Q. And no racist remarks, I think you've already indicated, were
13 ever said to you, in your presence at least, by the peace
14 officers within the department.

15 A. No, I never heard anything stating that, of any ethnic group in
16 any way, shape, or form to me.

17 Q. And perhaps in my last area then, Mr. Urquhart, it's in the
18 area of what you testified on Monday, again regarding this
19 particular incident with Dan Paul, an employee of the Union of
20 Nova Scotia Indians about the recent complaint that was
21 raised to you.

22 A. Yes.

23 Q. And on page... First of all, maybe just as a clarification, in
24 your... I'm not sure if you've had the opportunity to review
25 your testimony of Monday and, in particular, I'm thinking of
page 9631 of the transcript, of Monday's transcript. In

1 particular in response to a question on Line 10 and your
2 response on Line 12.

3 A. 9631?

4 Q. Yes.

5 A. Yes.

6 Q. We have also, of course, seen the memo that Mr. Williston
7 wrote but did you give the impression to Mr. Paul on August
8 26th, 1981 that the Attorney General's Department is
9 involved in this particular instant?

10 A. Did I give Mr. Paul that?

11 Q. Yes.

12 A. Not to my knowledge I didn't. Anything that I had said
13 concerning that visit by Mr. Paul to my office was on the
14 paper that I had written.

15 Q. Yes.

16 A. And I can't remember making that statement to Mr. Paul.

17 Q. So your response then on Lines 12 thereon, where you say
18 that you didn't know where Mr. Paul got this information
19 from, even though he told you this came from Mr. Marshall, is
20 that what you meant in this response, or who Mr. Marshall
21 got it from?

22 A. I believe, if I can refresh my memory, that I asked him to get
23 more information and to get me the name of the person
24 where he got his information from.

25 Q. Do you mean that Mr. Marshall, or do you mean whom Mr.

1 Marshall got it from? I'm sort of a bit confused.

2 A. Who Mr. Paul got it from, I would say.

3 Q. Well, if I recall in your note, which was read into the record
4 on page 9629, if you want to refer to that page.

5 A. Yes.

6 Q. And on that note that you made to the particular file, you
7 indicated that it came from Mr. Marshall.

8 A. Can we go back to the original note?

9 Q. Yes, the original note is located in Volume 16, page 215.

10 A. Yes, I have it here, sir.

11 Q. I believe you were going to read it or compare it to your
12 response?

13 A. Yes.

14 Q. Now in response then that you gave on 9631, were you
15 expecting a representative of the Union of Nova Scotia Indians
16 to do some investigative work?

17 A. I was expecting Dan Paul if he got any more information to
18 come back to see me. That's what I was expecting.

19 Q. And even though this was a very serious matter that a
20 representative brought to your attention.

21 A. A very serious matter, yes.

22 Q. And did you at any time after that contact the Union of Nova
23 Scotia Indians to try to establish more contact with Mr. Paul?

24 A. No, sir, I didn't.

25 Q. May I ask you why?

1 A. I have no answer for that. I don't know.

2 Q. And with regard to this information, if I understand, you
3 contacted the Deputy Police Chief but I'm wondering why you
4 contacted Mr. Williston, the Crown Prosecutor?

5 A. To see if he had any further advice to give me.

6 Q. Have you seen Mr. Williston's memo, Mr. Urquhart, that's
7 found in Volume 17 on page 35? Now, in particular, in the
8 last few lines of 35 where Mr. Williston indicates that at some
9 later you, in fact, contacted him again, do you have any
10 recollection as to when you contacted Mr. Williston that you
11 were not successful in contacting Mr. Paul or that he didn't
12 come forward?

13 A. No, at this time, I can't recall when I recontacted Mr.
14 Williston, as he states here.

15 Q. So in the second paragraph then where...Is this a clear
16 reflection then where you might have indicated to Mr.
17 Williston that it was your intention to reinterview Dan Paul?

18 A. To re?

19 Q. Interview Dan Paul?

20 A. I believe I left it with Dan Paul to get back to me and that's
21 the indication I have from the note that I wrote at that time.

22 Q. So the words "to reinterview" do not come to your mind?

23 A. Pardon?

24 Q. The words that Mr. Williston uses in his memorandum, "His
25 intention to reinterview Dan Paul", this is not a reflection of

MR. URQUHART, EXAM. BY MR. NICHOLAS

1 what your intentions were.

2 A. Not to my knowledge, no.

3 Q. Did you think of yourself approaching Junior Marshall to ask
4 him of this information?

5 A. No, I didn't, sir. I didn't approach him.

6 Q. So in your meeting then with Mr. Paul on August 26th, the
7 impression you didn't leave with him was that this is all done
8 and over with and you have nothing to do about it any more.

9 A. No, I wouldn't say that we'd have nothing to do with it. I
10 don't think that that's fair to say that I would say that or
11 think that. As far as I was concerned, any information we got
12 I would keep a copy of it or take a copy of it and consult my
13 immediate bosses and the crown.

14 MR. NICHOLAS

15 I see. I have no further questions, My Lords.

16

17

EXAMINATION BY MR. MURRAY

18 Q. Mr. Urquhart, my name is Donald Murray. You know me.

19 A. Yes, sir.

20 Q. With respect to one factual matter. On June 4th, you went to
21 Baddeck to arrest Donald Marshall, Jr. Can you explain to the
22 Commission why you went to Baddeck?

23 A. As a result of statements we had taken that day and being in
24 contact with the Crown Prosecutor, Mr. Donald C. MacNeil.

25 Q. How did you know to go to Baddeck?

1 A. We first went to the Membertou Reservation and I believe it
2 was Donald Marshall, Jr.'s brother we met and he told us that
3 they were at Baddeck.

4 Q. You've been asked a number of questions about the taking of
5 statements and when you sign statements and I don't believe
6 you have been asked, but when you were in the position of
7 witnessing a statement rather than writing it out yourself,
8 would you do anything before signing that document?

9 A. Read it over.

10 Q. Was that an invariable practice?

11 A. Yes, it was a practice that I always did. And it was given to
12 the accused to read. And if they didn't want to read it or
13 couldn't read it and they asked for one of us to read it, the
14 witness to the taking of the statement would read it over.

15 Q. My friend, Mr. Nicholas, referred you to Exhibit 19, which is
16 your resumé and there's a reference under "Community
17 Involvement" to Board of Directors of Howard House. Could
18 you explain to the Commission what "Howard House" is, sir?

19 A. At that time, there was a house set up in Sydney, it was on
20 Bentinck Street, where people on parole would be housed. It
21 was a joint, I think it was between the Federal and Provincial
22 Government. It was under, at one time, under the John
23 Howard Society, but I believe that was later changed and I
24 believe it still goes by the name of the "Howard House" on
25 Bentinck Street. Marjorie Peck, she's in charge of the House.

1 There's, I forget how many beds there now, possibly 10 or 12,
2 and they come there. The boys that's in there, and girls now,
3 I believe, they go out in the community and they look for
4 work. There's counseling there. The National Parole people
5 are back and forth. Rob MacDougall sat on that same Board
6 with me, that's a parole officer, and there was meals supplied
7 to them, beds, and they seemed to get along in the community
8 very good. I was appointed from the Sydney Police
9 Department and when I retired, I wanted to resign off the
10 Board, but Father John Graham, who is in charge, who was
11 Chairman of the Board at that time, asked me if I would stay
12 on for another while and I did until I moved out of Sydney in
13 1985 or so.

14 Q. I would like to spend a few brief moments with you going
15 through some documents where allegations have been made
16 about you, sir, that haven't been dealt with specifically by
17 other counsel. Justice Denied, have you read this book by
18 Michael Harris?

19 A. By who?

20 Q. Michael Harris?

21 A. I might have glanced through it, I'm not....

22 Q. On page 89 of Justice Denied, Michael Harris states:

23
24 When Patricia Harriss was taken to the
25 Sydney Police Station on the evening of
 June 17th, she wondered if the police

MR. UROUHART, EXAM. BY MR. MURRAY

1 would ever leave her alone. The 14-year-
2 old had already talked to Det. Michael
3 MacDonald on two occasions, both times
4 telling him the same story.

5 And then over on page 90, Michael Harris states:

6 Now at 8:15 she began for the third time to
7 tell police what she knew of events on
8 Friday, May 28th only this time in
9 statement form.

COMMISSIONER POITRAS

10 Mr. Murray, do we have that as evidence before us and is that
11 really germane to this Inquiry?

MR. MURRAY

12 I suggest that it is...

COMMISSIONER POITRAS

13 Unless the book has been filed, and I don't think it has.

MR. MURRAY

14 Even if it wasn't, a number of witnesses have been examined
15 about portions of this book, My Lord.

COMMISSIONER EVANS

16 Having to do with quotes, having to do with quotations, I
17 believe.

MR. MURRAY

18 Certainly.

COMMISSIONER EVANS

19 We're not interested in Michael Harris' observations or his
20 opinions.
21
22
23
24
25

MR. URQUHART, EXAM. BY MR. MURRAY

1 A. No, sir, I cannot.

2 Q. Turning now to red Volume 31, and I'm not aware of what
3 exhibit number this is. 124? Actually, pages 130 and 131,
4 and I merely refer to it to show the basis of my questions, Mr.
5 Urquhart. This is a statement of claim which I understand
6 was never served on you in an action by Donald Marshall
7 against the City of Sydney, John MacIntyre and yourself. And
8 to summarize I think fairly what is contained in it, it suggests
9 that you, in particular, were negligent in the performance of
10 your duties in 1971 and that you were instrumental in the
11 fabrication of false and misleading evidence against Donald
12 Marshall and I'd like to give you the opportunity to respond,
13 if you wish, to those complaints.

14 11:47 a.m.

15 A. I never fabricated any evidence, and the investigation was
16 done to the best of my ability.

17 Q. I'd like you to turn to red Volume 27, and again I don't know
18 what exhibit number this is. Page 2 of that volume, this is a
19 letter from Mr. Stephen Aronson, who was Donald Marshall's
20 counsel at one point, to the Attorney General of Nova Scotia in
21 April of 1982 and in the second paragraph on page 2 Mr.
22 Aronson states,

23
24 It would be most appreciated if you might
25 keep me advised as to your department's
position. In particular, I have expressed

MR. URQUHART, EXAM. BY MR. MURRAY

1 and continue to express my concern over
2 the leaks to the press of information
3 relating to the Marshall investigation. I do
4 not believe that such leaks serve the
5 interests of justice. This is particularly
6 true as the source of the leaks appear to
7 come from the Sydney City Police and
8 officers of your own department, including
9 the Attorney General himself.

10 What can you tell this Commission, sir, about anything you
11 did that might constitute a leak?

12 A. I would have no way of getting any information, as the
13 evidence points out I asked Mr. Edwards and I didn't get any
14 answers. It was under investigation. Therefore, I would not
15 know anything about the case to leak to the press or radio.

16 Q. What can you tell the Commission about your contact with the
17 media in 1982 and '83?

18 A. They were looking for information. It was...they harassed,
19 and that's the only word I can use, my daughter at home. I
20 was on vacation at the time when the case broke, I guess, and
21 she called up crying at my home at Glace Bay and telling me
22 that some of the mean things that was said to her and I told
23 her to ignore it and not pay any attention to it.

MR. MURRAY

24 My Lords, I have a book of newspaper articles which refer to
25 allegations that have been made, some go much farther than what
has been raised by the evidence here. I distributed that to
counsel yesterday and as I understand there is no objection to

1 MR. UROUHART

2 A. Yes, I see it now.

3 Q. In the paragraph immediately following that

4
5 One witness, John Pratico, recently told a
6 Sydney reporter the police were out to get
7 Marshall, another witness has alleged he
8 was pressured by the Sydney and
9 Louisbourg police to concoct this story. A
10 Sydney man who has known the suspect
11 for eight years says he went to the Sydney
12 Police Department and the R.C.M.P. in 1974,
13 gave them the suspect's name and
14 evidence allegedly linking him with Sandy
15 Seale's murder but they had already had
16 their man behind bars, the local resident,
17 who did not want to be identified, said in
18 an interview on Friday. The Union of Nova
19 Scotia Indians also gave the suspect's name
20 to police in 1981 but the police again
21 refused to reopen the case then. It was
22 reopened after December, 1981.

23
24 With respect to those allegations contained in those
25 paragraphs as they relate to you, do you have anything to
say, sir?

19 A. No, sir.

20 Q. On page 2, and this is an article from the Mic Mac News, if
21 you'd keep the page turned straight up with 2 at the top, that
22 one column that is in the right direction,

23
24 Meanwhile it was learned the Donald
25 Marshall, Jr., case is nothing new to Sydney
City Police who have tried unsuccessfully

MR. URQUHART, EXAM. BY MR. MURRAY

to cover up the whole affair.

1
2 And then paragraph below,

3 The Union of Nova Scotia Indians also gave
4 the suspect's name to police in May, 1981,
5 but then police...but the police again
6 refused to reopen the case then.

7 That, I suggest, sir, refers to your contact with Dan Paul.

8 What can you say about any alleged cover up?

9 A. There was no cover up by me personally, sir, in any of that.

10 Q. Now, referring you to page 8. Page 8. This is an article from
11 the Toronto Star dated October 6th, 1982. At the bottom of
12 the first column,

13 One of them, but one of them told Sydney
14 Police in November, 1971, ten days after
15 Marshall was convicted, that he saw
16 someone else murder Seale. Sydney Police
17 did not reveal this information until the
18 Royal Canadian Mounted Police took
19 another look at the case this year.

20 What do you have to say about that, sir?

21 A. It was turned over from the...when Jim MacNeil came in and
22 gave the statement to the Sydney Police the R.C.M.P., I
23 believe, were contacted at that time and there was a
24 polygraph test done on Roy Newman Ebsary and on MacNeil.

25 Q. Do I gather from the evidence that you've given, and I don't
want to suggest an answer to you, sir, what was your main
source of information about the R.C.M.P. reinvestigation in

MR. URQUHART, EXAM. BY MR. MURRAY

1 1982?

2 A. What I would read in the press.

3 Q. I'd like you to go to the last page in this document, page 14.

4 Have you had an opportunity to read that, sir?

5 A. Yes.

6 Q. It concludes with, "The strain has been heavy on both Police
7 Chief John MacIntyre and Inspector Bill Urquhart that they
8 have had to suffer in silence. It's not fair." What can you tell
9 this Commission as to your personal feelings since 1982 and
10 your involvement in this matter?

11 A. Well, I've been...was a police officer for a number of years.
12 As far as I was concerned my record was good, and as far as
13 I'm concerned it's still good. And, anything that's written
14 about me I can't...I can't do anything about what people think,
15 say or do and if that's what they want to write to slant the
16 truth I...let them go ahead. It's them that's got to answer for
17 it some day, not me.

18 MR. MURRAY

19 I have no further questions, My Lord.

20 MR. ORSBORN

21 I'll be brief on the re-direct, My Lord.

22 RE-EXAMINATION BY MR. ORSBORN

23 Q. Mr. Urquhart, I believe you told my friend, Mr. Ross, that you
24 were first aware of the robbery theory sometime around
25 1982, either from the appeal or from the newspaper.

1 A. Yes, I'm not quite sure, as I've said, when that theory come
2 up.

3 Q. When you did learn of the robbery theory, did you form any
4 opinion of the effect on your 1971 investigation of not having
5 had that information?

6 A. No, that information never came forward to us.

7 Q. I appreciate that, but did you say, well, if we had had that
8 information it would have made all the difference?

9 A. I don't really know whether it would have or not because I
10 can't go back and say, you know, that part of the evidence if
11 we had it it might have made a difference and it might not.

12 Q. Were you not aware though on November, 1971, when you
13 interviewed John MacNeil that the Indian fellow had Jimmy
14 MacNeil's arm behind his back?

15 A. I don't know if that's in the...

16 Q. Yeah, it is, take my word for it.

17 A. Yeah.

18 Q. And would that suggest to you some kind of altercation or
19 dispute?

20 A. Well, unless he was trying to protect himself and the other
21 fellow grabbed him, I don't really know.

22 Q. You said this morning that with respect to suggestions being
23 made to Maynard Chant at Louisbourg that you can't
24 remember and that Mr. Magee could be mistaken. When I
25 asked you similar questions on Monday, Mr. Urquhart, about

1 advice or assistance being given to Mr. Chant you said, no,
2 that did not happen, and could you just clarify whether or not
3 you simply don't remember whether Mr. Chant was given any
4 assistance or whether he was not given assistance?

5 A. No, I would say he wasn't given any assistance to answer the
6 questions that John MacIntyre put to him.

7 Q. Okay. One final question, you discussed the similarities
8 between Mr. Pratico's and Mr. Chant's statement. I'd just like
9 to settle in my mind your evidence about a dissimilarity in
10 those statements of June 4th, the two June 4th statements. In
11 the second statement or I'm sorry, the statement from the
12 second eyewitness, Mr. Chant, Mr. Chant places himself on the
13 tracks and describes a fellow similar to John Pratico, who you
14 had previously interviewed. He said there was a dark-haired
15 fellow on the tracks. Previous to that, a couple of hours
16 before that you interviewed Mr. Pratico and he said there
17 wasn't a soul around. Can you suggest any reason for that
18 dissimilarity in those statements?

19 A. No, I can't, sir.

20 MR. ORSBORN

21 Those are my questions, thank-you, My Lord.

22 MR. CHAIRMAN

23 Thank-you very much, Mr. Urquhart. That's all, thank-you.

24 WITNESS WITHDRAWS

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

MR. SPICER

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

COMMISSIONER POITRAS

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

MR. SPICER

6 23-02-82.

MR. CHRISTEN

7 A. Well, other than what appears here. That would be the only
8 knowledge I would have, yeah.

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

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

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

14 A. Yeah, it come, most of the calls would come directly from Don,
15 yes.

16 Q. Would you be considered to be his superior in the line of
17 things?

18 A. Well, actually he comes under the commanding officer. He
19 reports directly to the commanding officer, but in the chain of
20 things, yes, I would be his superior.
21
22
23
24
25

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

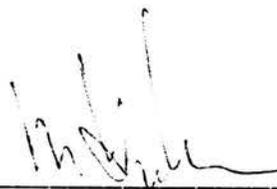
23

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