

1 MR. CHAIRMAN

2 Yes.

3 A.E. VAUGHAN, duly called and sworn, testified as follows:

4  
5 MR. ORSBORN

6 There were a couple of exhibits being circulated, My Lord.  
7 One was the Service History of Superintendent Vaughan, which I  
8 believe has been distributed to counsel, consisting of two pages,  
9 EXHIBIT 154. And there were also some comments of  
10 Superintendent Vaughan on a couple of matters which were being  
11 copied and, I hope, have been distributed to counsel.

12 CLERK

13 No, not yet.

14 MR. ORSBORN

15 They're in process. Mr... Superintendent Vaughan's counsel  
16 provided us with a number of copies. There were not enough to  
17 be distributed immediately and they were being copied.

18 MR. CHAIRMAN

19 It's going to be a terrible blow to the paper industry of Nova  
20 Scotia when this is over.

21 MR. ORSBORN

22 They are matters, I think, will be addressed in evidence,  
23 anyway.

24

25

EXHIBIT 154 - R.C.M.P. SERVICE HISTORY OF SUPERINTENDENTA.E. VAUGHAN.EXAMINATION BY MR. ORSBORN

1  
2  
3  
4  
5  
6 Q. In any event, Superintendent, we'll start. Your name is  
7 spelled V-A-U-G-H-A-N?

8 A. That's right, sir.

9 Q. You're currently resident of Halifax?

10 A. That's correct, sir.

11 Q. And you're superintendent in charge of Criminal Operations  
12 for the R.C.M.P.?

13 A. That's correct.

14 Q. Since 1985?

15 A. Since 1985, yes, sir.

16 Q. And you joined the force, I believe, in 1956?

17 A. 1956, yes.

18 Q. And the exhibit that we've marked as 154, which is your two-  
19 page service history, does that accurately reflect your  
20 experience with the R.C.M.P.?

21 A. Yes, it does, sir.

22 Q. Could you describe for us in general terms the responsibilities  
23 of an officer-in-charge of Criminal Operations?

24 A. Yes, indeed. My responsibilities, under the direction of the  
25 Commanding Officer, are to evaluate the level and quality of

1 police services in the contract area of our policing, the level  
2 and quality of the federal policing services in the division, to  
3 coordinate criminal operations that involve interdivisional  
4 criminal operations, to insure the efficient and effective  
5 deployment of resources in the investigation of crime, to  
6 bring to the attention of our auditors and quality review  
7 people any areas of concern that we wish to have reviewed  
8 when they're doing their reviews of detachments and various  
9 units, such as plainclothes sections. It is to formulate policies  
10 and recommend policies consistent with our police operations  
11 in the province. And to perform, and to keep the  
12 Commanding Officer, of course, appraised of any significant  
13 operations that are occurring within the Division.

14 Q. Does your role then cover R.C.M.P. operations both with  
15 respect to its operations as a contract force for the province  
16 and any federal work it may be doing in the province.

17 A. As well as federal policing, services, and protective policing  
18 services.

19 Q. And as criminal operations officer, to whom are you  
20 accountable?

21 A. I'm accountable to the commanding officer of the division.

22 Q. Are you, in any sense, accountable to the Department of  
23 Attorney General?

24 A. No, my accountability would be to the commanding officer.  
25 The commanding officer would have his accountability to the

SUPT. VAUGHAN, EXAM. BY MR. ORSBORN

1 Commissioner of the R.C.M.P. and to the Attorney Generals or  
2 the Government of Saskatchewan, under the contract.

MR. ORSBORN

3  
4 I believe the two sets of notes prepared by Superintendent  
5 Vaughan have been distributed now, My Lord. There's a one-page  
6 one which is headed up, "Role of Criminal Operations for Nova  
7 Scotia", which we've just discussed, 155. And then there's a six-  
8 page memorandum drawn up by Superintendent Vaughan...

EXHIBIT 155 - ROLE OF CRIMINAL OPERATIONS OFFICER FORNOVA SCOTIA - 1 pageEXHIBIT 156 - RELATIONSHIPS WITH RCMP PREPARED BYSUPERINTENDENT A. VAUGHAN - 6 pagesMR. BAILEY

13  
14 My Lords, I don't mean to interrupt, but I did want to  
15 introduce myself to...

MR. ORSBORN

16  
17 I'm sorry.

MR. BAILEY

18  
19 The Commission. My name is Brian Bailey and I represent  
20 Superintendent Vaughan. Thank you very much.

MR. ORSBORN

21  
22 Yes, these exhibits were provided by Mr. Bailey through  
23 Superintendent Vaughan and I'm really introducing them at his  
24 request. The six-page memorandum, headed up "Relationships  
25 with RCMP" will, I believe, be EXHIBIT 156.



1 MR. CHAIRMAN

2 I think these exhibits were prepared with a view to saving  
3 some time rather than have Inspector... Superintendent Vaughan  
4 go all the way through.

5 MR. ORSBORN

6 I would not propose going through these in any detail.

7 MR. CHAIRMAN

8 Good.

9 BY MR. ORSBORN

10 Q. Do I take it, Superintendent, that the memorandum, which is  
11 Exhibit 156, the six-page memorandum, "Relationships with  
12 the RCMP", accurately sets out the geographic organization of  
13 the force within the province, the checks and balances that  
14 exist within the operation of the force within the province  
15 and the type of liaison that you have with the Department of  
16 Attorney General, matters on which you would report to the  
17 Department of the Attorney General?

18 A. That's correct, sir.

19 Q. And that the memorandum is accurate, at least, to your  
20 knowledge.

21 A. Yes, it is, to my knowledge.

22 Q. In respect of your liaison with the Department of Attorney  
23 General, do I understand that you have regular meetings with  
24 representatives of that department?

25 A. Yes, I do, sir.

1 Q. And these would be with Mr. Gale and/or Mr. Herschorn?

2 A. Mr. Gale, generally; occasionally, Mr. Herschorn sits in on the  
3 meetings.

4 Q. Yes, and I understand that these are informal with no notes  
5 kept?

6 A. They have been, yes, sir.

7 Q. I see. Do I understand that your memorandum, Exhibit 156,  
8 sets out on pages 3 and 4, the bottom of page 3 and the top of  
9 page 4, the types of matters that would be discussed?

10 A. Yes, it does.

11 Q. When you speak of "problems with the prosecutorial service",  
12 what kind of things do you mean by that?

13 A. What I'm referring to there is we have had experience with  
14 prosecutors not attending to their responsibilities, for a  
15 variety of reasons, and when we do have these difficulties,  
16 then we raise that with Mr. Gale.

17 Q. What sort of responsibilities are you talking about?

18 A. It could range from nonattendance on a case, in which the  
19 case was poorly represented or not represented at all. And  
20 that would generally be the context of that issue.

21 Q. Do you discuss at these meetings the conduct of ongoing  
22 investigations?

23 A. Occasionally.

24 Q. For what purpose?

25 A. There may be cases, and if I may give you an example, of a

1 murder case in Canso which was a very serious case and the  
2 public was in a state of alarm. They had imposed a curfew.  
3 And in terms of assurance to the Department so that  
4 assurance could be made to the public that sufficient  
5 resources were being deployed to the investigation, then I  
6 would inform them that, in fact, adequate resources were  
7 being employed on the investigation and to alleviate those  
8 concerns of the public. Or I may also, for example, alert the  
9 Department to the proliferation of certain types of drug abuse  
10 in the province which has a direct impact on crime, in general.  
11 Whether it's theft or whatever, to keep them apprised.

12 12:10 p.m.

13 Q. Is it your view that the direction or consent of the  
14 Department of Attorney General is required for your force or  
15 members thereof to investigate any crime or suspected  
16 crime?

17 A. To investigate a crime?

18 Q. Yes.

19 A. No.

20 Q. If the crime involved a member of a police department or  
21 municipal police department itself, would you require the  
22 consent or authority of the Attorney General to commence an  
23 investigation?

24 A. Yes.

25 Q. Why?

1 A. The municipal police departments are set up by charter under  
2 the Police Act and they're instituted to enforce the laws  
3 within that municipality. We're hired under contract to do  
4 the policing service in all other areas of the province where a  
5 municipal police department does not exist. So, therefore, to  
6 undertake to investigate a crime within a municipal police  
7 department, unless it's a drug enforcement case... Now I'm  
8 speaking specifically of Criminal Code cases, that type of  
9 thing. They're incorporated to investigate that themselves.

10 Q. Yes, if I understand your testimony, your view is that if an  
11 offence is committed within the geographic jurisdiction of a  
12 municipal police department, then the investigation of that  
13 offence falls within the ambit of that municipal police  
14 department.

15 A. Yes, indeed, sir.

16 Q. Whether the suspect is a police officer or otherwise.

17 A. Or otherwise.

18 Q. Right.

19 A. That's right.

20 Q. But if there were, say, a Code offence falling within your  
21 federal policing, the geography of it doesn't matter to you.

22 A. No, we may very well liaise with the municipal police  
23 department, seek their cooperation, and work on a joint forces  
24 basis, if you will, to investigate those crimes within the city.  
25 And, as a matter of fact, in most cases, we encourage that

1 type of participation.

2 Q. What is your view, sir, with respect to the authority to  
3 actually lay a charge? I note that you have on page six of this  
4 exhibit:

5 The RCMP maintain the independence to lay  
6 what we consider are appropriate charges.  
7 However, members are encouraged and our  
8 policy suggests they are to consult with Crown  
Prosecutors.

9 Do I take it from that that your view is that the authority to  
10 lay a charge rests with the police?

11 A. Yes, that is my view, yes, sir.

12 Q. To your knowledge, is that view... Have you discussed that  
13 view with members of the Department of Attorney General?

14 A. Yes.

15 Q. Do they share that view?

16 A. Yes, they do, and... To my knowledge, they share that view.  
17 I've discussed that issue with Mr. Gale. I've discussed it with  
18 Mr. Herschorn. People that I interact with and there's an  
19 understanding that, of course, the Attorney General's  
20 Department, if they don't agree with the charges that are laid,  
21 they have the prerogative to either stay that or not offer any  
22 evidence or whatever the case may be. But we do reserve  
23 that...

24 Q. Yes, in your experience as Criminal Operations Officer, have  
25 you been in or are you aware of any situations where the

1 force was directed not to lay a charge or persuaded not to lay  
2 a charge?

3 A. No, I can't recall a case.

4 Q. Your memorandum, again, at page six talks about consultation  
5 with Crown counsel. Do I take it from that Crown counsel are  
6 made accessible or made available to the members of your  
7 force?

8 A. Yes, indeed. We certainly don't have the answer in all cases  
9 where there are sophisticated or legal implications where we  
10 would rely upon the advice of Crown counsel and our  
11 members are encouraged to seek their counsel or advice in  
12 those cases and be guided by it, if we are uncertain as to our  
13 grounds or the strength of the evidence.

14 Q. As a practical matter, how does a member go about accessing  
15 Crown counsel. Let's take the, say, the Sydney area as one  
16 example, and perhaps the Halifax area as another example.  
17 Would it be the case in Sydney that we simply call one of the  
18 local Crowns, anyone at all, and ask for their advice?

19 A. I assume that's what they're doing.

20 Q. What about in Halifax, where you've got perhaps a larger  
21 number of Crown counsel. Is there any particular avenue to  
22 be followed for a member to access Crown counsel?

23 A. Well, they would contact the Chief Crown Prosecutor in the  
24 Halifax area. I believe it's Mr. Thomas.

25 Q. Thomas, yes.

- 1 A. And ask for an appointment with one of his counsel.
- 2 Q. And, to your knowledge, is that the accepted way of doing  
3 things?
- 4 A. That's the accepted way of doing things.
- 5 Q. Are there any particular types of cases where that is not the  
6 avenue which is followed, to your knowledge, categories?
- 7 A. There may be instances where there are disagreements on  
8 the strength of the evidence between the Crown counsel and  
9 the member. And, in those instances, the members are  
10 encouraged to write to their O.C.'s, if they have reason to, to  
11 my headquarters and I may take the issue up with either Mr.  
12 Herschorn or Mr. Gale.
- 13 Q. That's if a difference of opinion exists.
- 14 A. Yes, sir.
- 15 Q. Are you aware of any types of cases where the R.C.M.P. is  
16 precluded from going, say, to Mr. Thomas and asking for  
17 advice?
- 18 A. No, I can't think of any. There are, of course, statute  
19 requirements where we have to go to the Department of the  
20 Attorney General. If it's an immunity case or involving  
21 foreign service personnel or those types of things where we  
22 would go directly to the Department.
- 23 Q. And do I understand you to be saying that if there is a  
24 difference of opinion on the strength of evidence or whatever  
25 at the Crown Prosecutor member level that you feel quite free

1 to take that higher?

2 A. Yes.

3 Q. And at the end of the day, if there's a difference of opinion  
4 between, say, yourself and members in the Department, do I  
5 take your evidence to be that you still feel that you are  
6 entitled to lay a charge against them?

7 A. Yes, indeed, and I'll qualify this to this extent. That if, in fact,  
8 there is a case where I am uncertain in my mind as to the  
9 interpretation of the evidence, the strength of the evidence  
10 and I seek the advice of the Attorney General's Department or  
11 their representatives, then I would be guided by their advice.  
12 If it's a case where quite clearly in my mind or in the minds  
13 of the investigators that the evidence is there to sustain the  
14 charge or the laying of a charge, then we would lay the  
15 charge.

16 Q. When you say you "will be guided by their advice", would you  
17 go back and get additional evidence, I guess, if you felt you  
18 could?

19 A. If we could. If, in fact, the decision was that there's  
20 insufficient evidence to sustain a charge, then the matter  
21 might necessarily not be dropped but we would go back and  
22 continue the investigation.

23 Q. And I take it that you would have to at least tacitly agree  
24 with the advice that you were getting if there were  
25 insufficient evidence. But if you felt strongly that there was



SUPT. VAUGHAN, EXAM. BY MR. ORSBORN

1 sufficient evidence, you would still lay the charge.

2 A. Oh, yes.

3 Q. I'd like to turn...

4 MR. CHAIRMAN

5 How do you prevent, Superintendent, charges being laid  
6 where, say, the law and maybe the evidence doesn't sustain it?  
7 You know, the disagreement that you refer to between an  
8 investigating officer and a lawyer with the Department of the  
9 Attorney General or a Crown Prosecutor, who must bring to bear  
10 his or her professional training...

11 SUPT. VAUGHAN

12 Yes, indeed.

13 MR. CHAIRMAN

14 On the facts before. How do you prevent a charge being laid  
15 that shouldn't be? One thing is to say, well, the Crown can stay  
16 the proceedings or not offer any evidence. But there's a danger,  
17 as I see it, that the damage would have been done then to some  
18 person who is not guilty at law.

19 12:20 p.m.

20 A. If, sir, there's a disagreement and it's referred to me for  
21 referral to the Attorney General's Department and I am not  
22 clear in my mind, and I go to the Attorney General's  
23 Department for advice on it and he comes back and says you  
24 don't have the evidence, then my instructions would be that  
25 the charge will not be laid until such time as a further

1 investigation is undertaken and more evidence is obtained  
2 that may sustain the charge.

3 COMMISSIONER EVANS

4 Q. Supposing the opposite situation arises and you're satisfied  
5 that you have a good basis even after you discuss it with a  
6 Crown attorney who holds a different view, what do you do  
7 then? You want to lay the charge and the Crown is doubtful.  
8 Do you go to your commanding officer and let them iron it out  
9 in Ottawa or do you proceed to lay the charge?

10 A. We have done that, sir.

11 Q. Which?

12 A. We have, in past, I'm aware of cases, not personally involved,  
13 where we have gone to Ottawa and taken that route. But if  
14 I'm convinced in my mind that a charge is warranted then  
15 it's, in my view, my right to lay the charge and I would take  
16 that route.

17 Q. Irrespective of the contrary view of the Crown.

18 A. Irrespective of the contrary view of the Crown.

19 Q. If he wants to withdraw it or nolle prosequi or stay it that's  
20 his worry.

21 A. That's right, sir.

22 Q. And you'd just probably sent your note on to headquarters is  
23 what happens.

24 A. That may very well be. My duties are carried out at the,  
25 subject to the orders of the Commissioner.

1 Q. Right.

2 MR. ORSBORN

3 Q. If you, in your own mind, feel that the evidence is there to  
4 sustain a charge, would you run it by a Crown Prosecutor at  
5 all?

6 A. If the evidence is there to sustain a charge? Oh, most  
7 assuredly. He's going to have to prosecute it.

8 Q. Yes. But before you lay the charge would you get the advice  
9 of the Crown? If you had already decided that the evidence  
10 was sufficient to lay the charge.

11 A. I believe there's a great deal of consultation before the  
12 charges are laid. As a normal rule there's a great deal of  
13 inner action, to my knowledge, and perhaps in some cases too  
14 much. And I'm thinking essentially of very straightforward  
15 cases of a lesser nature. But by all means, serious cases, these  
16 are generally discussed with Crown and gone over.

17 Q. You just indicated in one of your responses that if the advice  
18 came back that you don't have the evidence to lay the charge  
19 that your instructions would be that the charge would not be  
20 laid. That doesn't seem to admit if any, you know, any doubt  
21 in your mind at all. It suggests that you will accept the  
22 advice of the Attorney General. If there's not enough  
23 evidence there then you won't lay the charge.

24 A. I will, as I say if, in fact, I cannot make up my mind as to, and  
25 I'm not certain of the legal interpretation of the evidence.

1 Q. I see. Now you became a criminal operations officer in '85.

2 A. That's correct, sir.

3 Q. And so in the time period, '82, '83, '84 I believe you were up  
4 along in Ottawa somewhere.

5 A. I was up along in Ottawa with the Commissioner's Audit  
6 Branch, sir.

7 Q. That audit, I take it, has nothing to do with finances does it.

8 A. I wasn't in the financial auditing end of it, no, sir. Although  
9 there was a component that did that particular function.

10 Q. And would I understand that the first person involvement  
11 you had with anything arising out of the Marshall case did not  
12 come until 1986?

13 A. 1986 June, yes, sir.

14 Q. If I just back up one month before that. If I could ask you to  
15 turn to Volume 20. I'll just touch this one brief point before  
16 lunch. Page 55 of that Volume 20, Superintendent.

17 A. Yes, sir, I have that.

18 Q. The, a copy of a letter to your commanding officer from Mr.  
19 Gale confirming instructions to Superintendent Vaughan that  
20 you were to turn over the Sydney Police files to Mr. Pugsley,  
21 the solicitor for John MacIntyre, I believe. Do you recall  
22 receiving instructions to that effect from Mr. Gale?

23 A. Yes, I recall discussing that with Mr. Gale.

24 Q. And was there anything unusual in a request or an  
25 instruction to turn over documents in your possession to a

1 solicitor?

2 A. The particular, I would not undertake to do that on my own.  
3 Those were Sydney City Police files that were gathered, to my  
4 recollection, by the investigators in the 1982 re-investigation  
5 of the murder. They were obtained from the Sydney City  
6 Police. My view was that they really are the property of the  
7 Sydney City Police and were obtained on instructions of the  
8 Attorney General so we sought their advice to release them.

9 Q. And you were simply carrying out their instructions in so  
10 releasing them.

11 A. Yes, that's correct, sir.

12 12:26 - ADJOURNED TO 2 p.m.

13 2:08 p.m.

14 CHAIRMAN

15 Ten minutes late, sorry. Carry on.

16 MR. ORSBORN

17 We had almost started, My Lord.

18 MR. CHAIRMAN

19 Pardon?

20 MR. ORSBORN

21 We were about to start.

22 MR. CHAIRMAN

23 Well, why didn't you?  
24  
25

1 MR. ORSBORN

2 I'll take that as direction for the future.

3 MR. CHAIRMAN

4 If you would guarantee it we'd all stay home.

5 MR. ORSBORN

6 Q. Superintendent, when we left we were just, I think, about at  
7 June the 6th. And, I'd ask, if you would, to turn to Volume  
8 20 at page 57. I believe this to be a memo of Staff Sergeant  
9 Wheaton to yourself on the 5th of June, 1986, in which Staff  
10 Sergeant Wheaton seeks your comments with respect to his  
11 proposed discussions with the media concerning the  
12 Marshall case and he indicates in that memo that if he were  
13 to speak to the media he would undoubtedly cast the  
14 Attorney General's Department in a bad light and he would  
15 say that John MacIntyre was unscrupulous and that he  
16 should be charged with counseling perjury. How did this  
17 memo come to be written to you?

18 A. I assumed that it was as a consequence of Mr. Bill of the CBC  
19 contacting him.

20 Q. Contacting Staff Wheaton.

21 A. Staff Wheaton.

22 Q. Yes.

23 A. To appear on the show and thereafter I was, I believe, in  
24 the, and my recollection isn't clear on this, but I believe I  
25

1           was in the OC of Halifax Subdivision's office. He is Staff  
2           Sergeant Wheaton's immediate superior.

3       Q.    Superintendent Penny.

4       A.    Superintendent Penny, that's correct, sir, and the issue was  
5           raised at that time and I suggested to him that he submit a  
6           memorandum outlining his request.

7       Q.    Uh-hum. Were you concerned about Staff Wheaton's going  
8           and talking to the media?

9       A.    When I perused the file after receiving Staff Sergeant  
10          Wheaton's memorandum, yes, indeed I was. There was  
11          some suggestion that the matter was still before the courts  
12          and it was certainly a significant case and I, thereby,  
13          instructed him that he should not discuss it with the media  
14          in any form whatsoever.

15      Q.    Would it have been within the ambit of permissible policy  
16          and practise within your force for Staff Wheaton to, in fact,  
17          have spoken to the media?

18      A.    No, not under these circumstances.

19      Q.    It would not have been.

20      A.    It would not have been, no.

21      Q.    And would it be the normal practise that when he were  
22          requested to speak to the media that he would seek  
23          instructions and seek permission?

24      A.    Yes.

25      Q.    He would not have the authority to speak to the media on

1 his own behalf without getting instructions.

2 A. Not on a matter such as this, no, sir.

3 Q. And would Staff Wheaton be aware of that policy to your  
4 knowledge?

5 A. He should be aware of that policy.

6 Q. I see. Prior to your discussions with Staff Wheaton and  
7 Superintendent Penny had you had any knowledge of or  
8 involvement in the Marshall matter?

9 A. None whatsoever. I believe some years or over the years I  
10 may have heard of the Marshall case, but I had arrived in  
11 Nova Scotia, I believe, in the middle of September of 1985  
12 and I hadn't any connection with it at all.

13 Q. Okay. You got Staff Wheaton's memo then and he says  
14 some, I think you'd agree, some fairly serious things in  
15 there. What was your reaction to it?

16 A. Well, I was quite concerned with the context of the...of Staff  
17 Sergeant Wheaton's memorandum and certain allegations  
18 contained therein and I reviewed the file and I expressed  
19 my concerns by memorandum back to him asking him for  
20 some clarification.

21 Q. Why would you be handling this rather than, say,  
22 Superintendent Penny?

23 A. Superintendent Penny would have had absolutely no  
24 involvement in the Donald Marshall affair as the OC of  
25 Halifax subdivision. It had been handled from Sydney



1 subdivision and at the criminal operations officer's level in  
2 the past and, it quite appropriately was directed to my  
3 level.

4 Q. And when you say you reviewed the file, do you recall, you  
5 know, what the file consisted of?

6 A. At that time it was a cursory review. It was a fairly rapid  
7 review of the file. And I can't recall whether I reviewed  
8 both volumes at that time or whether it was the last volume  
9 containing the reports, the 1983 reports and the 1982  
10 reports. But certainly from my review of the reports that I  
11 had read I couldn't relate the allegations made by Staff  
12 Sergeant Wheaton to the content of the reports themselves.

13 Q. Yes. Did you ask anybody to assist you in reviewing the  
14 file?

15 A. Yes. I asked our reading staff, I believe through Staff  
16 Sergeant Burgess, who is the chief reader, analyst, if you  
17 will, to review the correspondence and give me an opinion  
18 on the content of Staff Sergeant Wheaton's memorandum  
19 and their views on whether there was any validity to that.

20 Q. Okay. I'll come to the reader's reply in a moment. Page 58  
21 in Volume 20 there is a memorandum from yourself, I  
22 guess, to Superintendent Penny with the intent that it will  
23 be forwarded to Staff Wheaton?

24 A. That's correct, sir.

25 2:15 p.m.

1 Q. And do I take it that in this memo, you were going back to  
2 Staff Sergeant Wheaton saying I'm concerned about these  
3 allegations that you raise. Give me some back-up for them.

4 A. That's correct, sir.

5 Q. Did you, after your own review of the division files and  
6 before you had any response from Staff Wheaton or from  
7 Sergeant Bentley, did you have any occasion to discuss the  
8 issue with Mr. Gale?

9 A. I did, indeed. The import of the allegation concerning casting  
10 the Attorney General's Department in a bad light, I had  
11 related that to a 1982 report in May, where Mr. Edwards had  
12 apparently phoned Mr. Gale and there was a suggestion, hold  
13 the matter in abeyance for the present. I went to Mr. Gale  
14 and I discussed the allegations with him and I received a  
15 response from his, which to me at the time seemed  
16 reasonable.

17 Q. What was that response?

18 A. The response was that, in fact, at the time there was a matter  
19 of pardon or a reference or some judicial matter dealing with  
20 the liberty of Mr. Marshall, charges relating to Mr. Ebsary, the  
21 matter of dropping or not proceeding with perjury charges  
22 against three self-confessed perjurers -- Chant, Pratico and  
23 Harriss. And there may or may not have been a discussion,  
24 and my recollection isn't precise on this, there may or may  
25 not have been a recollection of either not having receipt of a

1 report or inadequate information in reports, but I can't be  
2 definite on that point. But the others were basically the...

3 Q What did you understand had, in fact, been placed in  
4 abeyance? Was it a full-scale investigation of the Sydney  
5 Police Department? Was it simply a matter of interviewing  
6 Chief MacIntyre and Detective Urquhart or what?

7 A. The matter of interviewing Chief MacIntyre and Mr.  
8 Urquhart.

9 Q So as simple as that.

10 A. Yes, that's right.

11 Q You indicated that when you read the file, this comment  
12 about the investigation being placed in abeyance, you related  
13 that to Staff Wheaton's views about placing the Department in  
14 a bad light.

15 A. Yes.

16 Q So did Staff Wheaton tell you why he felt he would place the  
17 Department in a bad light, or was simply your own conclusion  
18 from looking at the file?

19 A. I received the impression... Now I had had a discussion with  
20 Staff Sergeant Wheaton. I had had a discussion with him  
21 around the 16th of May, I believe, when he received a copy of  
22 my request for additional information. I can recall discussing  
23 it briefly with him.

24 Q You said "the 16th of May", would that be the 16th of June?

25 A. Or the 16th of June, pardon me. Whether or not he was

1 aware that the matter had been concluded by Superintendent  
2 MacGibbon, who was the C.I.B. Officer in 1984, he had not... I  
3 was left with the impression, and I can't recall precisely, I  
4 was left with the impression and I still am of the impression  
5 that Staff Sergeant Wheaton felt that the investigation or the  
6 interview of Chief MacIntyre and Detective Urquhart had  
7 been stopped.

8 Q. So when you went back and looked at the file, you related  
9 this comment about in abeyance to what Staff Wheaton had  
10 told you. You linked the two together.

11 A. Yes.

12 Q. In your discussions with Staff Wheaton and, you know, before  
13 we get into any of the documentation, did he give you any  
14 reason why he considered Chief MacIntyre to be  
15 unscrupulous?

16 A. He mentioned that, as far as he was concerned, Donald  
17 Marshall was not the author of his own misfortune and that  
18 he was the victim of an unscrupulous police officer and I  
19 believe it was left at that.

20 Q. I appreciate that, that's what he said in his first memo to you.

21 A. Yeah.

22 Q. I'm just asking you if in any of our one-to-one discussions  
23 with Staff Wheaton you say well, you know, "What do you  
24 mean by this? What did MacIntyre do to make you say that  
25 he was unscrupulous?" Anything that he said that comes to

1 your mind?

2 A. No, only other than what is written on paper.

3 Q. I see. If I could ask you to turn to pages 61 and 62 of that  
4 same volume, Superintendent. This is in handwriting... Do I  
5 understand this to be a response by Sergeant Bentley to  
6 yourself as a result of your request to have the file reviewed?

7 A. That's correct, sir.

8 Q. And Sergeant Bentley is one of your readers?

9 A. He is, yes, sir.

10 Q. And in reading this, I particularly direct your attention to  
11 Lines 4 and 5, do I understand that it was Sergeant Bentley's  
12 conclusion, at least in this memo, that prosecution, at this  
13 stage, was not warranted?

14 A. That's correct, sir.

15 Q. Did you discuss the matter with Sergeant Bentley?

16 A. I had a meeting with both Sergeant Bentley and Staff  
17 Sergeant Burgess. I don't believe it was after the receipt of  
18 this memorandum, but after, later on after I had written  
19 another report or prior to writing my final report, and I  
20 believe Sergeant Bentley had drafted another memorandum.

21 Q. Yes, we'll come to that.

22 A. And I had called both he and Burgess in and discussed their  
23 findings, as well as my findings and how I felt about it.

24 Q. Okay, good. At least in Sergeant Bentley's first report to you  
25 in capsule form, he looked at the file and said prosecution is

1 not warranted.

2 A. That's correct, sir.

3 Q. Turning to page 63, do I understand this to be the response  
4 from Staff Wheaton to his Officer Commanding and  
5 subsequently forwarded to you?

6 A. That's right, sir.

7 Q. And that generally the substance of this memo relates to  
8 what evidence there may be to support a charge of some  
9 description against Chief MacIntyre?

10 A. That's the substance of it, yes.

11 Q. Yes, and did you review that memorandum?

12 A. Yes, I read it.

13 Q. Could I ask if you reviewed it in sufficient detail to determine  
14 whether or not there were any factual or other errors in it?  
15 Did you review that, Superintendent, in detail such as you  
16 could isolate any possible factual or other errors in it?

17 A. Yes, I read that memorandum over, but I made no decisions  
18 on the basis of that. I went back and reviewed the volumes  
19 of files and it was on the basis of statements, et cetera, that  
20 were contained there and the reports from '82 and '83 that  
21 my particular decisions were made.

22 Q. Yes.

23 A. In terms of a comparison between this memorandum and the  
24 file itself, I didn't do an analysis...

25 Q. That was my question.

1 A. And compare it back.

2 Q. For example, if you look at the bottom of page 63, four lines  
3 from the bottom:

4  
5 Staff Wheaton stated that on 71-05-30, Chant  
6 will state he was interviewed by MacIntyre. In  
7 this statement, he will give evidence that he said  
8 what MacIntyre told him to say.

9 I think the evidence has been that that is incorrect.

10 A. Yes.

11 Q. That that has nothing to do with Mr. Chant's first statement  
12 on the 30th of May. My question is whether or not you were  
13 able to, from your knowledge of the file, to query Staff  
14 Wheaton about any difficulty such as that in his report?

15 A. I didn't query Staff Wheaton on this at all. I made my  
16 decisions, as I say, on the basis of the correspondence that  
17 had been submitted from the time of the investigation and I  
18 took into account, of course, initially Staff Sergeant Wheaton's  
19 concerns and then reviewed the existing investigative  
20 material to determine whether or not there was a sufficient  
21 basis to proceed as he had suggested.

22 Q. Okay. Now Staff Wheaton ends up in this memorandum at  
23 least recommending not that charges be laid but that further  
24 investigation be undertaken.

25 A. Well, charges and/or investigation.

Q. Yes.

- 1 A. That's in the second portion, I believe.
- 2 Q. Yes, he says at the last paragraph, page 65. He says, the third  
3 page, which has not been completed, as the investigation of  
4 former Chief MacIntyre, and he goes on to say, "We  
5 respectfully submit that if an offence has been committed, it  
6 bears further investigation."
- 7 A. Yes.
- 8 Q. So he, at least, is recommending further investigation.
- 9 A. That's correct, yes, sir.
- 10 Q. Now am I correct in saying that you had asked Staff Wheaton  
11 not only to back up his allegation that charges should be laid  
12 but also his allegation about the Department of Attorney  
13 General and his allegation about John MacIntyre being  
14 unscrupulous?
- 15 A. This is what I was interested in. The allegations to support or  
16 evidence to support and references to support the allegations  
17 that were made in the...
- 18 Q. Yes.
- 19 A. In there.
- 20 A. This memo, at least, appears to address itself to allegations  
21 about counselling perjury. Did Staff Wheaton respond to you  
22 about his allegations about the Department of Attorney  
23 General and his further allegations that John MacIntyre was  
24 unscrupulous?
- 25 A. No, he did not. He responded with respect to evidence to



1 support his contention that Mr. MacIntyre had counselled  
2 perjury.

3 Q. Did you go back to him and say your, "This is incomplete.  
4 You've made a couple of other charges here. Get me some  
5 information."?

6 A. It was apparent to me that, first of all, Staff Sergeant  
7 Wheaton would not have the necessary information regarding  
8 holding the file in abeyance because he had gone to Mr.  
9 Edwards to seek that permission and Mr. Edwards had  
10 phoned Mr. Gale and that's why I went to Mr. Gale because he  
11 would be the man who could answer that question, as  
12 opposed to Mr. Wheaton.

13 Q. Are you suggesting, then, that Staff Wheaton had indicated to  
14 you that he might cast the Department of Attorney General in  
15 a bad light when he was not in possession of sufficient  
16 information to do so?

17 A. I'm suggesting that Staff Sergeant Wheaton, in my impression,  
18 or in my view, felt that because of that direction, hold in  
19 abeyance, felt that the investigation had been stopped and  
20 nothing had happened in the ensuing few years. So,  
21 therefore, he felt that that would cast the Attorney General's  
22 Department in a bad light.

23 Q. And what about his allegation that John MacIntyre was  
24 unscrupulous? Did you ask him to back that up?

25 A. That, I believe, is obvious in the investigative reports that

Bess-1

# Margaret E. Graham Discovery Service

298 PORTLAND STREET, DARTMOUTH, N.S. B2Y 1K4

PHONE: 469-5734

To: All Solicitors

From: Margaret E. Graham

Date: June 6, 1988

Re: Daily Transcripts.

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## Errata

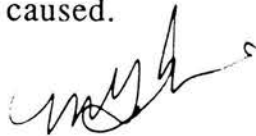
Volume 72, Page 12882, Line 25 should have added:

"was submitted, that were submitted by Staff Sergeant Wheaton and, in particular, his 1983 summation." Insert corrected page as attached.

Volume 73, Pages 12966 to 12978 should have:

SUPT. VAUGHAN, EXAM. BY MR. PUGSLEY as a header, instead of exam. by Ms. Derrick.

I apologize for any inconvenience this may have caused.



M. Graham

SUPT. VAUGHAN. EXAM. BY MR. ORSBORN

1 support his contention that Mr. MacIntyre had counselled  
2 perjury.

3 Q. Did you go back to him and say your, "This is incomplete.  
4 You've made a couple of other charges here. Get me some  
5 information."?

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7 Wheaton would not have the necessary information regarding  
8 holding the file in abeyance because he had gone to Mr.  
9 Edwards to seek that permission and Mr. Edwards had  
10 phoned Mr. Gale and that's why I went to Mr. Gale because he  
11 would be the man who could answer that question, as  
12 opposed to Mr. Wheaton.

13 Q. Are you suggesting, then, that Staff Wheaton had indicated to  
14 you that he might cast the Department of Attorney General in  
15 a bad light when he was not in possession of sufficient  
16 information to do so?

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18 or in my view, felt that because of that direction, hold in  
19 abeyance, felt that the investigation had been stopped and  
20 nothing had happened in the ensuing few years. So,  
21 therefore, he felt that that would cast the Attorney General's  
22 Department in a bad light.

23 Q. And what about his allegation that John MacIntyre was  
24 unscrupulous? Did you ask him to back that up?

25 A. That, I believe, is obvious in the investigative reports that  
was submitted, that were submitted by Staff Sergeant  
Wheaton and, in particular, his 1983 summation.

1 Q. Do you have any knowledge, obviously indirect, but any  
2 knowledge of how Patricia Harriss' first statement, her  
3 incomplete statement came into possession of the R.C.M.P?

4 2:30 p.m.

5 A. How her first statement?

6 Q. Her first statement was, I think, on June 17th, '71, and it  
7 was partially completed and then she gave a completed  
8 statement later on that...later on that night. I'm wondering  
9 if you have any second-hand knowledge, if you will, any  
10 stories related to you of how that statement came into the  
11 possession of the RCMP?

12 A. Well, I'd have to be clear on the first statement. Is this the  
13 statement that was alleged to have been placed under the  
14 table?

15 Q. That's the one.

16 A. I have no personal knowledge of that at all, other than what  
17 I've read.

18 Q. I appreciate that. You say "alleged to have been placed  
19 under the table". When did you first learn that it was  
20 alleged to have been placed under the table?

21 A. When it was raised at this Commission.

22 Q. I see. Did Staff Wheaton ever tell you?

23 A. No, he did not.

24 Q. In your review of the RCMP reports did you see anything in  
25 writing alluding to that statement being placed under any

1 table?

2 A. No, I did not.

3 Q. If, in fact, Chief MacIntyre had placed the statement under a  
4 table when the file was being turned over, is that something  
5 which the RCMP officer or officers present should, in your  
6 view, have written and noted?

7 A. If they considered it pertinent.

8 Q. Would you have considered it pertinent?

9 A. I don't know the circumstances of the investigation. It  
10 would be...if, in fact, I had a perception that there was some  
11 criminality on the part of Chief MacIntyre, then most  
12 assuredly it would become quite pertinent.

13 Q. We've had some evidence from the Crown Prosecutor of the  
14 day that if he had known about it he might have considered  
15 charges of obstructing justice. Would...that would suggest  
16 that it's a pertinent action at least. And I guess my question  
17 is given that and given the importance that Staff Wheaton  
18 appears to have placed on it in his testimony before the  
19 Commission, would you not have expected that it be written  
20 down somewhere?

21 A. Well, as I said before, I can offer you an opinion on what  
22 happened. Staff Sergeant Wheaton would...if he didn't  
23 consider it pertinent at all, then it wouldn't necessarily be  
24 recorded on his notebook or in a report. I, and you are  
25 asking my opinion.

1 Q. Well, let me just follow that up then. Do you take from the  
2 fact that it was not recorded in a notebook or report, do you  
3 take from that fact that Staff Wheaton did not consider it  
4 pertinent?

5 A. That would be my view.

6 Q. And, do I take it that in your discussions with Staff Wheaton  
7 after these allegations were raised about Mr. MacIntyre  
8 being unscrupulous, that Staff Wheaton would have had  
9 opportunity, either verbal or in writing, to say to you "This  
10 is one reason why I think Mr. MacIntyre is unscrupulous."?

11 A. Yes. He had the opportunity if, in fact, he thought of it at  
12 the time.

13 Q. And am I correct in saying that he did not take advantage of  
14 that opportunity?

15 A. That's correct, sir.

16 Q. And, would it follow from that that Staff Wheaton did not  
17 consider it sufficiently pertinent, at least insofar as it related  
18 to his characterization of John MacIntyre being  
19 unscrupulous?

20 A. He didn't obviously consider it, in my view, that way in  
21 1982.

22 MR. CHAIRMAN

23 Let me put it to you, Staff Sergeant Wheaton, as I recall it,  
24 testified that he and another member of your force went to Chief  
25 MacIntyre's office acting on an order from the Attorney General of

SUPT. VAUGHAN, EXAM. BY MR. ORSBORN

1 Nova Scotia directing Chief MacIntyre to turn over to the RCMP  
2 investigating officer, who was Staff Sergeant Wheaton, all  
3 documents in his possession relating to the Marshall case.

4 SUPT. VAUGHAN

5 Yes, sir.

6 MR. CHAIRMAN

7 And the testimony, I'm summarizing it now, is that these  
8 documents were handed over one by one and noted because they  
9 had been listed. After they had gotten outside the, had left with  
10 what...the office with what they perceived, understood to be all  
11 the documents, Corporal Davies drew to Staff Sergeant Wheaton's  
12 attention the fact that during that process Chief MacIntyre had  
13 slipped one document under the desk, and they went back, faced  
14 him with this and he then produced it, which turned out to be a  
15 rather important document. Could you conceive of Staff Sergeant  
16 Wheaton not regarding that as an important and significant act in  
17 his investigation?

18 SUPT. VAUGHAN

19 My Lord, I believe that in 1982 when Staff Sergeant, and  
20 this is my opinion, when Staff Sergeant Wheaton was investigating  
21 this matter under the supervision of Inspector, then Inspector  
22 Scott, he was not, and was not at the time, considering criminality  
23 on the part of Mr. MacIntyre. And, while he may have considered  
24 that there was some manipulation going on, that it didn't involve  
25 criminality at the time. I believe that Staff Sergeant Wheaton is an

SUPT. VAUGHAN, EXAM. BY MR. ORSBORN

1 experienced police officer and I believe that if he felt that there  
2 was criminality involved, he most assuredly would have reported  
3 it. I don't know whether that information reached the hands of  
4 Inspector Scott at the time, but had it reached the hands of  
5 Inspector Scott, then most assuredly it should have been treated  
6 much more seriously. But I believe that's probably the reason  
7 why that wasn't reported, because they didn't view it any more  
8 than stubbornness or manipulation. That's an opinion from my  
9 reading of the file.

MR. CHAIRMAN

11 Well, forget for a moment the question of criminality. If  
12 what Staff Sergeant Wheaton has testified occurred is correct,  
13 then there would have been...that would constitute a failure on  
14 the part of Chief MacIntyre to comply with an order of the  
15 Attorney General of the Province.

SUPT. VAUGHAN

17 Yes, My Lord, it would indeed. And...

MR. CHAIRMAN

19 Would that strike you as being significant?

SUPT. VAUGHAN

21 It strikes me as being significant, yes, it does.

MR. CHAIRMAN

23 And significant enough to report at the time?

SUPT. VAUGHAN

25 It strikes me that way, sir.



SUPT. VAUGHAN, EXAM. BY MR. ORSBORN

1 COMMISSIONER EVANS

2 If you had been there instead of Wheaton knowing the  
3 rhubarb that had gone on before about this statement, and the  
4 same thing that Wheaton alleges has happened, would you have  
5 noted it in your notebook and in your report?

6 SUPT. VAUGHAN

7 I would only hope that I would have. It's 1982, but I would  
8 hope that I would most assuredly under those circumstances.

9 COMMISSIONER EVANS

10 Well, particularly when you were noting everything else  
11 that was received, checking them all off and then there's another  
12 paper alleged to have popped up from under the desk, would it  
13 not seem sensible to have added that to the list or noted it?

14 SUPT. VAUGHAN

15 Yes, sir, it most assuredly would.

16 COMMISSIONER EVANS

17 And to make a note of the peculiar circumstances under  
18 which it was received?

19 SUPT. VAUGHAN

20 Yes, it's pertinent. I'm not denying that. I was simply  
21 offering what I felt was the reason why it wasn't noted, and I do  
22 believe that they did not consider all of the factors involved at the  
23 time, the consequences of that.

24 COMMISSIONER EVANS

25 I understand that Wheaton had been in Halifax, I'm sorry, in

SUPT. VAUGHAN, EXAM. BY MR. ORSBORN

1 Sydney some years prior to this, had he not? Are you aware of  
2 that?

SUPT. VAUGHAN

4 I'm not aware of his service history, sir.

MR. ORSBORN

6 Q. Leaving aside the question, Superintendent, of criminality, I  
7 take it an allegation that a police officer is unscrupulous is  
8 not the same as saying that he is a criminal?

9 A. That's the way I would take it, sir.

10 Q. And is it your evidence that even when the allegation was  
11 made that John MacIntyre was unscrupulous, when that  
12 allegation was made by Staff Wheaton and that you  
13 specifically asked him to back up that allegation, that you  
14 were not advised of this alleged incident about the  
15 statement under the table?

16 A. No, but in fairness to Staff Sergeant Wheaton, the reports  
17 themselves outline his concerns in that area.

18 Q. But the reports mention nothing of that slipping the  
19 statement under the table.

20 A. Well, they do deal with harassing tactics.

21 Q. I see.

22 A. And I inferred from the reports that that was his...

23 Q. Did you get any answer from...

COMMISSIONER EVANS

24  
25 The harassing tactics are a mile away from the file and the

1 slip of paper under the desk.

2 SUPT. VAUGHAN

3 Oh, yes, indeed, sir. I'm ...I wasn't relating the slipping the  
4 paper under the desk to this unscrupulous police officer comment.

5 MR. ORSBORN

6 Q. Your evidence is then that the allegation that Chief  
7 MacIntyre was unscrupulous was, in your view, backed up  
8 by the references in the file to harassing witnesses and what  
9 have you?

10 A. That's correct, sir.

11 Q. And that you would not necessarily have to add this  
12 business about the statement in order to substantiate the  
13 allegation about being unscrupulous?

14 A. No.

15 Q. Did Staff Wheaton give you any explanation of why he had  
16 not recommended this investigation back in, either 1982 or  
17 1983, he waited until 1986?

18 A. No, Staff Sergeant Wheaton did not give me any explanation  
19 for that.

20 Q. Am I correct in my understanding that in 1982 Staff  
21 Wheaton or the RCMP was reinvestigating a murder  
22 conviction within the Town of Sydney?

23 A. That's correct, sir.

24 Q. Now, if arising out of that investigation, and as part of that  
25 investigation, the investigating RCMP officer had felt it

1           necessary to pursue this avenue of counselling perjury could  
2           he have done that without authorization from the Attorney  
3           General?

4           A.    Yes, he most assuredly could.  That would touch upon the, in  
5           my view, touch upon the guilt or innocence of Donald  
6           Marshall and Ebsary and be a very pertinent issue.

7           Q.    And although this was an offence within the geography...the  
8           geographic jurisdiction of Sydney, I take, it because the  
9           force had been invited or requested to go in by the Attorney  
10          General, that it would be your position the force could  
11          investigate whatever was necessary arising out of that.

12          A.    Most assuredly.  That would not, in my view, include an  
13          investigation of the Sydney City Police themselves.

14          Q.    In terms of their policies and practises.

15          A.    That's correct.

16          Q.    I understand that.  But in terms of possible criminal  
17          activity?

18          A.    Most assuredly, touching upon the Donald Marshall affair,  
19          yes.

20          Q.    So, in your view, as criminal operations officer, was there  
21          anything stopping Staff Wheaton from interviewing Chief  
22          MacIntyre and Detective Urquhart in 1982?

23          A.    Not if, in fact, they had some belief that the actions of Chief  
24          MacIntyre and Detective Urquhart contributed to the  
25          conviction of Donald Marshall.

1 Q. Yes.

2 A. No, there was not.

3 Q. He certainly held that belief in 1986?

4 A. Yes.

5 Q. And assuming that he held that belief in 1982, I take it,  
6 there was nothing stopping him from pursuing that  
7 investigation?

8 A. No, and there should not have been necessarily a reference  
9 to Mr. Edwards or to the Attorney General's Department to  
10 do that.

11 Q. Page 70 of that volume, Superintendent, is a further  
12 memorandum from, I presume, Sergeant Bentley, it appears  
13 to be similar handwriting to the previous one.

14 A. Yes, sir.

15 Q. Why did you ask for a further review? Or, I'm sorry, did  
16 you ask him to do it again?

17 A. I didn't ask for a further review.

18 Q. I see.

19 A. I asked the reading staff to do a review and...

20 Q. You got one before that said no prosecution was warranted.

21 A. Yes.

22 Q. And here you get another one.

23 A. Then there was another. I don't recall asking for another at  
24 least. But it was after this second...

25 Q. He appears to change his mind in this memo and suggests

1           that, you know, MacIntyre and Urquhart should be...should  
2           be interviewed and some investigation should be done.

3           A.    Yes.

4           Q.    Do you have any knowledge of why the apparent shift in  
5           thinking from one memo to the other?

6           A.    No, unless Sergeant Bentley went back, reviewed the files  
7           again and come to a different conclusion after his second  
8           review.

9           Q.    Okay. Just one point in the second paragraph on page 70.  
10          And he writes, "I believe that based what is contained in  
11          Staff Sergeant's reports dated..." et cetera, "...sufficient  
12          suspicion has been raised to warrant further investigation  
13          for the offence of counselling to commit perjury, following  
14          which a determination by the Department of Attorney  
15          General should be forthcoming concerning charges." I'm  
16          interested in the reference to "a determination by the  
17          Department of Attorney General," respecting charges. Is  
18          that consistent with your view of where the authority lies to  
19          lay a charge?

20          A.    Only if we can't decide ourselves on the strength of the  
21          evidence. If there is some question there, then I wouldn't  
22          have any hesitation if I couldn't make up my mind.

23          Q.    But it is your evidence that the determination of whether or  
24          not to charge is laid...is not left with the Attorney General?

25          A.    No, no.

- 1 Q. Now, at this stage Staff Sergeant Wheaton and, I guess,  
2 Sergeant Bentley have both recommended a further  
3 investigation should take place. Did you agree with that?
- 4 A. No, I did not.
- 5 Q. And for the reasons you set out in your...  
6 A. For the reasons...  
7 Q. ...letter.  
8 A. ...I set out in my report, that's right.
- 9 Q. Now, once you came to that conclusion yourself, did that not  
10 finish the matter internally within the RCMP?
- 11 A. Not necessarily. And, this...what you're leading into, if I may  
12 ask you, is my reports to Headquarters Ottawa.
- 13 Q. Yeah, we'll get there.  
14 A. Okay.
- 15 Q. But what I was interested...what I was leading up to is you  
16 ended up writing Mr. Gale about the matter.
- 17 A. Ultimately.
- 18 Q. Ultimately. And I'm wondering once you had reached the  
19 determination that there was no investigation necessary,  
20 why bother involving the Crown and the Department at all?  
21 Why even communicate with them?
- 22 A. For various reasons. First of all the Department of the  
23 Attorney General had been involved in this matter for...on a  
24 continuing basis over the years. They had received all the  
25 police reports. I had discussed with Mr. Gale the allegations

1 set out by Staff Sergeant Wheaton and in addition to that I  
2 had taken a particular position and on the basis of my  
3 analysis and I would appreciate any advice that may be  
4 offered by the Department in terms of legal interpretation of  
5 my positions and the evidence.

6 Q. Did Mr. Gale ask you to write with your conclusions and  
7 opinions?

8 A. No. I may have mentioned to Mr. Gale initially that when I  
9 had discussed this at the outset that I would be doing an  
10 analysis. I don't recall whether I...he certainly didn't ask me  
11 for a report, but I sent one up and asked his opinion.

12 Q. Were you yourself getting any calls from the media at the  
13 time?

14 A. Yes. I received Mr. Story, somewhere in the back of this  
15 room, appeared in my office and he had called me a couple  
16 of times and appeared in my office one day and asked for an  
17 appointment and he brought with him the 1982 report, 20th  
18 of May, 1982, report and laid it on my desk and asked me  
19 "What about this holding in abeyance issue..."

20 Q. Uh-hum.

21 A. ...by the Attorney General's Department" and made certain  
22 inferences that the Attorney General's Department had  
23 stopped the investigation and I told them that that would  
24 not be the way I would interpret it.

25 Q. Did Mr. Story bring this to your attention after you had



1 spoken to Mr. Gale?

2 A. It could have been. I don't recall precisely. It was within a  
3 very short period of time. We're talking fifteen days and I  
4 can't recall. But I believe I talked to Mr. Gale prior to Mr.  
5 Story's appearance. And, at the same time I was receiving  
6 calls from the media in Toronto and various other media  
7 locally on the issue.

8 Q. I guess I'm still wondering why you felt it necessary to go  
9 back to Mr. Gale and say there was nothing wrong with the  
10 thing being held in abeyance because this is what you told  
11 me. It seems to be a bit circular. You had gone to Mr. Gale...

12 A. Would you run that by me?

13 Q. I'm just wondering why you felt it necessary to write Mr.  
14 Gale this letter about the matter being held in abeyance  
15 given that you were relying for your information in the first  
16 place on Mr. Gale. You went to Mr. Gale and say, "What  
17 happened? Tell me what happened?" and Mr. Gale tells you  
18 what happened and you write him back saying everything is  
19 okay.

20 A. Oh, no, there is a great deal more to the memorandum than  
21 that.

22 Q. I appreciate that, but in respect to this particular issue.

23 A. I, well, simply because of this, I regard the RCMP force as a  
24 professional police force and I'm not naive enough to  
25 suggest that one way or the other the Attorney General's

1 Department may not come into possession of police reports.  
2 We have a Commission here and so on. That's one example.  
3 And any statements that are made, such as casting the  
4 Attorney General's Department in a bad light, if it's not  
5 based in fact, then it would be gratuitous and it does reflect  
6 upon the professionalism of our department. And that's the  
7 reason I made the comments in the first paragraph.

8 Q. Were you then of the view that Staff Sergeant Wheaton's  
9 comments about casting the Department of Attorney General  
10 in a bad light were gratuitous and not well founded?

11 A. I believe they were not based in fact.

12 Q. Did you have occasion to reprimand him or discipline him  
13 for making such comments?

14 A. No, I did not do that.

15 Q. Why not?

16 A. Because first of all Staff Sergeant Wheaton, I believe,  
17 expressed his opinion as he felt honestly, honestly expressed  
18 his opinion. I don't believe he was in any way, shape or  
19 form attempting to mislead consciously in any way, shape or  
20 form.

21 Q. The letter that you ended up writing to Mr. Gale was the  
22 subject of a number of drafts and transfers back and forth  
23 between yourself and, I think, Assistant Commissioner  
24 Schram.

25 A. That's correct.

1 Q. In Ottawa. And the drafts are there in the materials, I don't  
2 need to refer them...refer you to them. Why would you go  
3 to the trouble of getting this reviewed by your superiors in  
4 Ottawa?

5 A. Well, let me go back to the media inquiries made of me. It  
6 may not have been referred to Mr. Schram except that when  
7 the media become involved, then we have policy  
8 instructions suggesting that anything of a significant nature,  
9 which is likely to arouse national interest or involve a  
10 member of our organization, should be reported forthwith  
11 to the RCM Police headquarters. So, therefore, I phoned  
12 Assistant Commissioner Schram and advised him, first of all,  
13 of the allegations of Staff Sergeant Wheaton and secondly of  
14 the media interest in it. As a consequence of those  
15 allegations, I was ceased with a certain responsibility to  
16 determine whether or not there was any basis to Staff  
17 Sergeant Wheaton's allegations and that I would be  
18 reviewing the file and he requested that under those  
19 circumstances "You keep me advised." And, under those  
20 circumstances I kept him advised. And, he was also  
21 interested in the draft of the report and viewing it, which, in  
22 fact, is his prerogative and his right to do that.

23 2:52 p.m.

24 Q. Were you seeking the agreement of Assistant Superintendent  
25 Schram with respect to your decision not to investigate any

1 further?

2 A. If, in fact, he had any advice to offer me, I'd welcome it. But  
3 it was my decision and it was clearly understood that it  
4 would be my decision. But he wanted to review it and I  
5 believe in Assistant Commissioner Schram's words, "To insure  
6 there was conformity with national policies and practices," as  
7 well as the fact it obviously is a case of national interest.

8 Q. I think it's perhaps fair to say on a reading of the draft in the  
9 final version that the changes were perhaps more in style  
10 than in substance?

11 A. They are, sir, yes. There was an agreement with Mr. Schram  
12 that there would be no change in the substance to my  
13 memorandum.

14 Q. If I could just ask you to look at page 86 through 88, the  
15 changes that are made in printing on those pages. Are they  
16 your changes, Superintendent?

17 A. Yes, they are, sir.

18 Q. You seem to be suggesting on the second paragraph on page  
19 86, and you're adding in words like "regrettably" and  
20 "unintentionally misinterpreted." It seems to be softening the  
21 tone of that paragraph somewhat. You start off by saying,  
22 "Staff Wheaton misinterpreted it," and then you end up  
23 saying, "Regrettably, it was unintentionally misinterpreted."  
24 Is there any intention of yours to soften it when writing to  
25 the Department of Attorney General?

1 A. No, I don't believe that would be true. I think it is regrettable  
2 and I believe it is unintentional.

3 Q. The question of the matter being held in abeyance, did you  
4 discuss that with anybody other than Staff Wheaton and Mr.  
5 Gale?

6 A. Hold in abeyance, ummm...

7 Q. For example, did you discuss it with Frank Edwards?

8 A. No, I've never discussed this, anything with Mr. Frank  
9 Edwards. I don't know the man.

10 Q. And is it fair to say, then that your conclusions contained in  
11 this paragraph... I'm looking now at page 72, that your  
12 conclusions that this...

13 A. 72?

14 Q. Yeah. That your conclusions about misinterpretation and so  
15 forth were based primarily on your discussions with Mr.  
16 Gale?

17 A. Yes, and my belief that Staff Sergeant Wheaton had  
18 interpreted that...

19 Q. Yes.

20 A. To mean that the investigation had been stopped.

21 Q. So you took Mr. Gale's interpretation to you as the correct one.

22 A. The reasons for it.

23 Q. Yes.

24 A. Yes, I did.

25 Q. Now if we can turn to page 73. You start off the top of the

1 page indicating it's your decision that further investigation  
2 was not warranted and this was notwithstanding the fact that  
3 both Sergeant Bentley and Sergeant Wheaton felt to the  
4 contrary.

5 A. That's correct, sir.

6 Q. And then you give the reason for that.

7 A. Yes, sir.

8 Q. In the first paragraph, Sub. (i) there on page 73, you relate,  
9 you refer to the memoranda that were prepared by members  
10 of the force in 1983. And you say in the third paragraph  
11 there of Sub.(i):

12  
13 In the correspondence referred to, the police  
14 managers; i.e., the members of our force,  
15 involved in the review of this matter made no  
16 suggestion whatever that MacIntyre or Urquhart  
17 may have counselled perjury.

18 Do I take it then you were taking some comfort from the fact  
19 that, in this review conducted in 1983, there was no  
20 suggestion of criminality by your reviewers?

21 A. Well, I wasn't necessarily taking comfort from it. What I was  
22 doing was objectively looking at it to see if there was any  
23 suggestion by these people who were very close to the  
24 investigation, whether or not counselling perjury or any  
25 criminality had been entertained by them.

Q. Did you appreciate, Superintendent, that the purpose of that  
review was simply to comment for the advice of the Attorney

1 General on whether or not there were improper practices and  
2 procedures and to recommend what should have been the  
3 proper practices and procedures?

4 A. Well, most assuredly. However, it's also a medium. Practices  
5 and procedures also includes illegal practices and procedures  
6 and that would be the medium to report, I believe, and plus  
7 the previous reports, I believe a criminal offence has been  
8 committed.

9 Q. We did hear yesterday, for example, from Staff Sergeant  
10 Barlow, who indicated to us that he did not feel that that type  
11 of review was the appropriate place to be indicating that  
12 criminal activity had taken place, and that if he had believed  
13 that a criminal act had taken place, he would not have had  
14 included it in his report.

15 A. Well, I do not agree with that at all. A police report is the  
16 medium for decision-making purposes. The criminality  
17 aspect could have been reported in 1982, or it could have  
18 been reported in 1983 when Mr. Gale, in fact, wrote his  
19 request for an overview of improper practices or procedures.  
20 I couldn't agree with that proposition at all.

21 Q. Okay. In Sub. (ii) on that same page, you say there was no  
22 corroborative evidence available of the three self-confessed  
23 perjurers. Can you give us some suggestion of what kind of  
24 evidence you might be looking for?

25 A. Well, some proof of facts that would objectively lead to the

1 inference that Mr. MacIntyre had wilfully counselled these  
2 witnesses to lie. Some overt act which would be of some  
3 probative value or tip the scales in favour of an investigation.  
4 But I didn't see any of that in the report that I reviewed, in  
5 any event.

6 Q. Did you review closely the statements of those witnesses that  
7 were, particularly Mr. Pratico and Mr. Chant, that were taken  
8 on June the 4th, '71?

9 A. Well, to the best of my ability.

10 Q. Did you notice in those statements some degree of consistency  
11 in the details which were provided by those two witnesses?

12 A. Yes.

13 Q. Did you address your mind as to how those details may have  
14 been, found their way to the statements?

15 A. I've certainly thought about it, obviously. I think that Mr.  
16 MacIntyre, first of all, discovered people who were not  
17 adverse to telling untruths. I believe that Mr. Chant was  
18 caught up in a series of lies when he saw it all, and then  
19 related what Mr. Marshall had told him, I believe it was on  
20 the morning of May the 20th to Mr. MacIntyre that he had  
21 seen two people. I believe that John Pratico and Mr. Chant  
22 were interviewed at the police office one after the other,  
23 Chant after Pratico, and Chant had claimed he was in the  
24 bushes and had seen the stabbing, Mr. Marshall stab Mr.  
25 Seale, and since Chant had obviously claimed to have been in



1 or around the tracks, then obviously he's pretty much going  
2 to have to see the same thing and there may have been the  
3 power of suggestion used by the police that, in fact, you're  
4 lying, in an attempt to elicit what they believed to be the  
5 truth.

6 Q. Did you dismiss as simple coincidence then the fact that there  
7 are some similarities in the details of those two statements of  
8 Mr. Pratico and Mr. Chant?

9 A. Coincidence? I think that scenario that I related to you would  
10 take the area of coincidence, to a large extent, out of that.

11 Q. For example, in Mr. Chant's statement, if my recollection  
12 serves me correctly, he describes a man, I'm not sure if he  
13 names him, but he describes a fellow with a beard there as  
14 having dark hair and being in the bushes. Did you address  
15 your mind as to how Mr. Chant could have provided that kind  
16 of detail if he weren't there? And the point of my question...

17 A. Well, I'm just trying to rationalize. Is this the description of  
18 Chant that you're talking about?

19 Q. No, it's the description that Mr. Chant gave of whoever else  
20 was there, presumably, Mr. Pratico. But my question is, if you  
21 have these kinds of details that crop up, are these the kind of  
22 things that you would consider corroborative evidence?

23 A. No, I wouldn't... I didn't consider that corroborative evidence  
24 at all. Mr. Chant and Mr. Pratico and Miss Harriss are, have  
25 obviously lied. They lied to the police in the first instance

1 and I wouldn't consider that as being corroborative to their  
2 testimony at all.

3 Q. Can you suggest any reason then...

4 A. It would have to be something independent of their  
5 testimony.

6 Q. Can you suggest any reason how Mr. Chant would come to say  
7 that he saw a dark-haired man in the bushes?

8 A. Well, I'm going to have to ask you again. Is this the  
9 description of Mr. Pratico? The reason I ask that is they were  
10 both in the police station being interrogated at virtually the  
11 same time. He could see him.

12 Q. Well, I think in this particular statement, Mr. Chant was in  
13 Louisbourg and Mr. Pratico was back in Sydney.

14 A. Then I'm misreading the files because I understood...

15 Q. I'm thinking of the statements on June the 4th where Mr.  
16 Chant says he sees a dark-haired man in the bushes, which, in  
17 fact, Mr. Pratico has dark hair.

18 A. Yeah, well...

19 Q. I'm asking you whether or not you can explain how that kind  
20 of detail would get into the statement?

21 A. No, I can't explain that.

22 Q. On page 74, you give as another reason for not investigation  
23 further the fact that Mr. MacNeil and Constable Mroz are  
24 deceased.

25 A. Yes.

1 Q. What, in your mind, was the relevance of Mr. MacNeil to the  
2 manner in which, to a possible charge of counselling perjury  
3 or possible investigation of counselling perjury?

4 A. Well, it's very difficult to speculate when Mr. MacNeil is  
5 deceased, but it may very well be that the police relied to an  
6 extent on the advice of the Crown Prosecutor for direction. I  
7 don't know. That's where I'm coming from there. I know  
8 that, at least from the files, Mr. MacNeil interviewed both  
9 Chant and Pratico at length, apparently, if the statements are  
10 to be believed, over and over the same stories.

11 Q. What about Constable Mroz?

12 A. And Constable Mroz was, and again I don't know, he's  
13 deceased. I don't know what he would have to offer, but he  
14 was on site that night, allegedly checking out various business  
15 premises for two unidentified individuals.

16 Q. Were there not a number of other police officers around that  
17 night as well?

18 A. Oh, yes, indeed.

19 Q. Why would you seize on Mroz as one and say, Well, he's dead.  
20 We can't go any further"? Use him as a reason?

21 A. Let's not take this in isolation, but he's a witness that is  
22 deceased and he may or may not have anything to offer the  
23 investigation.

24 Q. You conclude, at least a conclusion in the paragraph on 74,  
25 close to the top of the page:

1 I share the view that this is a classic case of  
2 policemen focusing their efforts on one suspect  
3 to the exclusion of all other possibilities. This, I  
4 submit, reflects poor judgement rather than  
conduct involving criminal acts.

5 A. Yes.

6 Q. In what respect is it poor judgement to focus on one suspect?

7 A. If, in fact, there's some suggestion, as there was that two  
8 others may have been around and you don't expend every  
9 effort to pursue that theory, then you're not doing a complete  
10 investigation, in my view.

11 Q. To your knowledge, at what time was the focus placed on Mr.  
12 Marshall?

13 A. To my knowledge, it was very early in the investigation,  
14 within two or three days. I believe there are telexes that  
15 were sent in suggesting Mr. Marshall as a strong suspect in  
16 the case.

17 Q. Yes, the telex you refer to is the very early morning telex on  
18 May the 30th. Are you also... Or were you aware at this time  
19 of the notes taken by Sergeant Murray Wood of the R.C.M.P.  
20 which suggested that the Sydney Police believe Mr. Marshall  
21 was responsible on the next morning, the 29th?

22 A. I'm not sure I was aware of Murray Wood's notes at that  
23 time.

24 Q. Is it not a fact then that the focus was placed on Mr. Marshall  
25 before even the first statement was taken from a witness?

1 A. That may very well be, but that may not also at the same  
2 time be unusual to focus on a suspect that early.

3 Q. One would presumably need some evidence before focusing  
4 on a suspect.

5 A. Yes.

6 Q. And if there were no such evidence, would that change your  
7 conclusion that it was only a matter of poor judgement?

8 A. If there was absolutely no reason to select this man out of a  
9 group of people and...

10 Q. Other than the fact that he was, of course, there?

11 A. Well, they would have no basis to do that. I'd say it's  
12 extremely poor judgement to do that.

13 Q. What follows from focusing on one suspect? You then sort of  
14 only look for evidence that implicates him? Is that what  
15 follows?

16 A. Well, you may have a strong suspect but you may have other  
17 information... In other words, you can't overlook other  
18 possibilities. If, in fact, somebody says there's two other  
19 people there, then you should expend effort to find out what  
20 that dimension is about. But, at the same time, focus on your  
21 primary suspect.

22 Q. Did you form any opinion to the effect that once focusing on  
23 the suspect, the evidence was tailored to fit that suspicion?

24 A. No, I don't believe the evidence was tailored. As I said  
25 before, I believe that the police discovered three people who

1 were willing to give false evidence and then the focus became  
2 very intense upon that particular individual.

3 Q. You suggest some other factors on page 74.

4 A. Yes, sir.

5 Q. That support your conclusion. You say in Sub. (a):

6  
7 MacIntyre and his investigators certainly had  
8 grounds to suspect Marshall in that during the  
9 previous year, he had been picked up on seven  
different occasions in the park area where Seale  
was murdered.

10 Is that correct?

11 A. Yes, sir. Yes, there's more to that than what's included in that.

12 That comes from Superintendent Scott's report, but there's  
13 also the statement of Mr. Marshall himself given to Staff  
14 Sergeant Wheaton where he considers himself, I guess, a bad  
15 young man in 1971. He had been in the park robbing people  
16 in past and he had been involved in offences in the cemetery  
17 and something about dynamite caps. And, of course, Chief  
18 MacIntyre would certainly be aware of those.

19 Q. I'd ask you to turn back to page 23 in that volume.

20 A. 23, yes, sir.

21 Q. This is Superintendent Scott's report that you referred to and  
22 in the bottom paragraph on page 23:

23  
24 Had Marshall not been a young person with a  
25 record, charged seven times by the Sydney  
Police between '70 and '71 and had been

suspected of other types of offences that had  
occurred in the park at a nearby cemetery...

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A. Yes, sir.

Q. I'm not sure that that supports your conclusion that he had  
been picked up on seven occasions in the park area.

A. The "charged seven times by the Sydney City Police", and  
what did I say?

Q. You said "he had been picked up on seven occasions in the  
park".

A. Yeah, that would indicate then probably he's been picked up  
more than seven times.

Q. Not necessarily in the park.

A. Not necessarily in the park.

Q. In Sub. (b) there, you say:

It was not until the Ebsary trial in 1980 that  
Marshall finally disclosed the full circumstances.

Do I take it by that that you're referring to the so-called  
robbery theory?

A. Yes, sir.

Q. And you say:

This nondisclosure at the time of the  
investigation no doubt influenced MacIntyre's  
belief that Marshall was in some way involved in  
the crime.

I have some difficulty with a nondisclosure being something  
you don't know influencing your belief.

1 A. I guess what I'm referring to there is that Mr. MacIntyre  
2 would be familiar with Marshall's antisocial behaviour. The  
3 fact that he had been in the park, around the park, in the  
4 cemetery, that type of thing. And coming across two people  
5 who, for all intents and purposes, are priests or dressed like  
6 priests from Manitoba and a stabbing results, wouldn't be  
7 consistent with the individual that he was used to picking  
8 up and talking to.

9 3:15 p.m.

10 Q Do you have any evidence, other than your own supposition  
11 that this "nondisclosure" influenced Chief MacIntyre?

12 A. Pardon me, sir?

13 Q Do you have anything other than your own opinion that...

14 A. No, this is...these are simply opinions that have been drawn  
15 from reading the files. I guess I should have clarified that  
16 at the outset.

17 Q You say in that paragraph that this nondisclosure "No doubt  
18 influenced MacIntyre's belief." I want to ask you to turn  
19 back on page 58 when you were asking for Staff Wheaton's  
20 comments. You talk about Donald Marshall's, the alleged  
21 robbery, and you say, "If he had told the truth from the  
22 beginning, the case may have been handled completely  
23 different."

24 A. May have been, yes.

25 Q I take it it's not your evidence that this was a controlling



1 factor in the case?

2 A. Well, that's correct. I don't know whether it would have or  
3 not.

4 Q Are you also aware, sir, that the matter of this alleged  
5 robbery was contained in the RCMP review of 1971?

6 A. Yes. The James MacNeil statement.

7 Q Yes.

8 A. Yes, sir.

9 Q The James MacNeil statement and also the conclusion of Al  
10 Marshall that the consensus of the opinion was that a  
11 robbery had taken place?

12 A. Yes.

13 Q So, insofar as this suggests that the matter of the robbery  
14 wasn't disclosed until the 1980's.

15 A. Well, that, yeah, that would be...that would be in error.

16 Q Sorry, it was...it's not until the 1980s that Mr. Marshall  
17 discussed it but it was acknowledged back in '71.

18 A. It was...it was discussed in '71, that's right, or raised in '71.

19 Q And you mention in paragraph "C" the polygraph  
20 examination of Ebsary in '71. Now, these polygraphs did not  
21 take place until after Mr. Marshall's conviction.

22 A. That's correct.

23 Q I'd suggest there's no way they could influence MacIntyre's  
24 belief in the investigation.

25 A. You're quite right. That particular number "C" is out of

1 context and what I was alluding to there was that any  
2 investigative action after the conviction of Donald Marshall,  
3 the polygraph examination may have played a role in  
4 influencing opinions.

5 Q You then go on to set out your view of what MacIntyre's  
6 defence would be.

7 A. Uh-hum.

8 Q And simply say his methods were intended to elicit truthful  
9 statements. Aren't those comments really stretching it  
10 when you're setting forth what you believe the defence of a  
11 fellow police officer would be?

12 A. I don't think so, I don't believe so. First of all, to interrogate  
13 Mr. MacIntyre and Mr. Urquhart who are long-serving  
14 policemen for an alleged criminal offence you're, at the very  
15 least, going to have to warn them and I've had a  
16 considerable amount of experience with policemen and I  
17 think that that would be a best case scenario if, in fact, they  
18 would even talk to you and that's why I make that comment  
19 in that subparagraph.

20 Q Just run that by me again?

21 A. What I was saying was that Mr. MacIntyre and Mr.  
22 Urquhart are experienced policemen for many years or they  
23 had been policemen for many years, and to undertake to  
24 interrogate or interview or obtain a statement from them in  
25 the knowledge of that it's for the purpose of investigating a

1 criminal offence and it...you're going to have to at the very  
2 least warn them, in 1982 warn them, and it would be my  
3 experience with policemen that this would be a best case  
4 scenario that I outline here. You may not...in all probability  
5 even get a statement from them.

6 Q. So, it was your view that no investigation was warranted  
7 influenced by the fact that they were long-standing  
8 policemen?

9 A. That, excuse me.

10 Q. Was your view that no investigation was warranted  
11 influenced by the fact that they were policemen of long-  
12 standing experience?

13 A. No, my reasons for not continuing with the investigation are  
14 set out on pages 1, 2, 3 down to 3 at the top of the page, and  
15 these are additional considerations below.

16 Q. Okay. So, your conclusion, the best case, you put it, that the  
17 methods are somewhat irregular or forceful, that is your  
18 view?

19 A. Yes.

20 Q. And I take it then that you disagree with Harry Wheaton  
21 almost on everything, that no investigation was warranted,  
22 certainly no charges should be laid, the Attorney General  
23 should not be cast in a bad light and Chief MacIntyre was  
24 not unscrupulous. Is that a fair reading of it?

25 A. I don't think that's a fair reading of it at all. First of all, I

1           didn't...I didn't close the door to an investigation. What I  
2           said, in fact, was that if evidence was surfaced at this  
3           Inquiry which would be of some probative value, something  
4           more to lend weight to the statements of the three self-  
5           confessed perjurers, then we would be in a position to have  
6           a look at it. Now, the other points...

7       Q.     But at this point in '86 when you were writing, you  
8           disagreed with Staff Wheaton on all points.

9       A.     Well, I disagreed that there was sufficient evidence to  
10           launch an investigation, as he's suggesting, into that criminal  
11           offence. I did not believe that the grounds were there.

12      Q.     Yes. And you also disagreed with him that Chief MacIntyre  
13           was unscrupulous and you also disagreed with him about  
14           the Department of Attorney General being placed in a bad  
15           light?

16      A.     That's correct.

17      Q.     Okay.

18      A.     And depending...

19      Q.     And again, did you have occasion to discuss this  
20           disagreement with Staff Wheaton after you spoke to Mr.  
21           Gale?

22      A.     No. I don't believe I had any lengthy discussion with Staff  
23           Wheaton at all, if any.

24      Q.     Did you have any concern as to why he would be wrong on  
25           all counts?

1 A. Depending on your interpretation of unscrupulous. First of  
2 all, I'd like to clarify that.

3 Q. Go ahead.

4 A. You said I disagreed with him on all points. I don't  
5 necessarily personally adhere to or am a proponent of  
6 certain types of tactics that are alleged.

7 Q. Yes.

8 A. Because that could very well be, in my view, unscrupulous  
9 behaviour. I certainly disagree with the points on casting  
10 the Attorney General's Department in a bad light. And I  
11 certainly disagreed that there were grounds to charge  
12 and/or investigate at that point in time. I didn't discuss it  
13 with Mr. Wheaton after that. I have no accountability really  
14 to him for that.

15 Q. Your letter, I'm looking at page 100 of this volume, your  
16 letter was replied to by Mr. Coles rather than Mr. Gale.

17 A. Yes, sir.

18 Q. Last page in the volume. Were you surprised to receive a  
19 reply from Mr. Coles?

20 A. I'm not in a position to comment on that, quite frankly.

21 Q. Your dealings with the matter had been with Mr. Gale  
22 throughout?

23 A. My dealings had been with Mr. Gale but I can't look into his  
24 mind and tell you why he didn't respond.

25 Q. As a result of your overall review of the file and the work

SUPT. VAUGHAN, EXAM. BY MR. ORSBORN

1 that the force did in 1982 and subsequent, Superintendent,  
2 are you satisfied that Staff Wheaton took a properly  
3 professional approach to his reinvestigation and his  
4 subsequent reports?

5 A. There were certain issues that we've already discussed that  
6 were not included in the reports. But I do feel that Staff  
7 Sergeant Wheaton did a commendable job under very  
8 difficult circumstances in the total picture.

9 Q Thank-you.

COMMISSIONER EVANS

11 Before you leave that or other counsel take over, a  
12 commendable job. We've been told earlier that one of the  
13 problems of police is a development of tunnel vision.

SUPT. VAUGHAN

15 Yes, sir.

COMMISSIONER EVANS

17 And Chief Constable MacIntyre was accused of that...

SUPT. VAUGHAN

19 Yes, sir.

COMMISSIONER EVANS

21 ...in his case. And I had suggested to Wheaton that possibly he  
22 developed that same problem because he arrived at a conclusion  
23 that Marshall was innocent before he ever interviewed Marshall.  
24 And my recollection is that he had interviewed MacNeil, who had  
25 flunked the polygraph test. He had interviewed Sarson who

SUPT. VAUGHAN, EXAM. BY COMMISSIONER EVANS.

1 Marshall and Wheaton both decided was an unreliable witness.

2 He had a short interview with Chant in the funeral parlour.

3 SUPT. VAUGHAN

4 Yes, sir.

5 COMMISSIONER EVANS

6 And Chant was a perjurer and had become a born-again  
7 Christian, but this was some seven or eight years, so he was no  
8 longer a fourteen-year-old and he had previously told his pastor,  
9 I believe, about his lies. Then we had Pratico, who was certainly  
10 a...had some psychological problems. I think he interviewed him.  
11 And then I also believe he interviewed Patricia Harriss.

12 SUPT. VAUGHAN

13 Yes, sir.

14 COMMISSIONER EVANS

15 I'm not sure that he had interviewed Patricia Harriss before  
16 he went to Dorchester. So, on the basis of that he arrived at a  
17 conclusion that Marshall was innocent. None of these witnesses, I  
18 suggest to you, were very credible witnesses in looking at the  
19 whole picture.

20 SUPT. VAUGHAN

21 I agree with that, yes, sir. Are you asking me whether Staff  
22 Sergeant Wheaton suffered tunnel vision also, sir, is that the  
23 question?

24 COMMISSIONER EVANS

25 At that stage, at that stage, having arrived at the conclusion

SUPT. VAUGHAN, EXAM. BY COMMISSIONER EVANS.

1 that Marshall was innocent.

2 SUPT. VAUGHAN

3 I...it would be my position that, no, he didn't suffer tunnel  
4 vision and the reason I say that is that while he arrived very  
5 early, which may not be unusual for a policeman, to arrive at a  
6 suspect very early in the game, but I don't believe, at least from  
7 my readings of the file, that he overlooked the possibility, for  
8 example, of collusion of Sarson and Marshall while he was in the  
9 penitentiary and he did set about to interview these other  
10 witnesses. So, while he felt that Mr. Marshall was innocent on the  
11 basis of those very, very preliminary inquiries, he hadn't  
12 overlooked interviewing these people and determining that it  
13 wasn't collusion. If it had been... there may have been some  
14 problems that developed later, in my view, as to perception of  
15 actions of policemen or criminality, that type of thing, but I don't  
16 believe in the Marshall investigation. My opinion.

17 COMMISSIONER EVANS

18 It's not uncommon, as you stated, for a police officer to  
19 suspect somebody reasonably soon after the incident.

20 SUPT. VAUGHAN

21 No, it isn't, sir.

22 COMMISSIONER EVANS

23 Just because of their proximity.

24 SUPT. VAUGHAN

25 That's correct, sir.



SUPT. VAUGHAN, EXAM. BY COMMISSIONER EVANS.

1 COMMISSIONER EVANS

2 And then that doesn't mean you stay inflexible, but you  
3 have to battle your original impression.

4 SUPT. VAUGHAN

5 That's correct, sir.

6 COMMISSIONER EVANS

7 And I was just of the view that he hadn't done much  
8 different than MacIntyre.

9 SUPT. VAUGHAN

10 Well, he had arrived at that conclusion very early in the  
11 investigation but I don't think that that is unusual in, at least in  
12 the investigative circles, but the other dimensions of the case  
13 should not be overlooked at the same time, and I don't believe he  
14 did overlook those from my reading of the reports.

15 COMMISSIONER EVANS

16 Would you say that MacIntyre's approach and Wheaton's  
17 approach and the initial approaches were about the same?

18 SUPT. VAUGHAN

19 Initially.

20 COMMISSIONER EVANS

21 Yes.

22 SUPT. VAUGHAN

23 That's correct, sir. The follow up may have been somewhat  
24 different, but...

25

1 COMMISSIONER EVANS

2 Thank-you.

3 MR. CHAIRMAN

4 The definition of tunnel vision is not arriving at a...or  
5 identifying a suspect early in an investigation which I would  
6 imagine most competent police officers like to do, but rather  
7 having arrived at that to exclude all other avenues of  
8 investigation.

9 SUPT. VAUGHAN

10 Yes, sir.

11 MR. CHAIRMAN

12 Well, on that piece of wisdom, we'll rise for ten minutes.

13 BREAK - 3:30 p.m.

14 3:53 p.m.

15 CHAIRMAN

16 What's this now, we're switching players.

17 MS. DERRICK

18 That's why there's two of us, My Lord.

19 CHAIRMAN

20 In hockey they call it a draft or something, I think. Anyway,  
21 Ms. Derrick.

22 EXAMINATION BY MS. DERRICK

23 Q. Thank you, My Lord. Superintendent Vaughan, my name is  
24 Anne Derrick and I represent Donald Marshall, Jr. Picking up  
25 on the question that you were being asked, or the issue that

1       you were being asked to address just before the break, and  
2       that is this issue of television, I suggest to you that there are  
3       some material differences between the way Staff Sergeant  
4       Wheaton approached his investigation in 1982 and the way  
5       that Sergeant MacIntyre approached his in 1971. It may be  
6       that they both developed a tentative conclusion at the onset  
7       of their investigation in Mr. Wheaton's case that Mr. Marshall  
8       might well be innocent and in Sergeant MacIntyre's case, that  
9       he was guilty. But the difference then developed at that  
10      point, I suggest to you. Would you not agree that in Staff  
11      Sergeant Wheaton's case he then methodically pursued all  
12      avenues. He did an extensive number of interviews of  
13      various people.

14    A. Yes, we did.

15    Q. And you took statements. And there's nothing to indicate to  
16      you that he didn't do anything other than use well-accepted  
17      police practices in taking those statements. Is that not  
18      correct?

19    A. From what I can read in the file, that's correct.

20    Q. And, in fact, there, I suggest to you, that there is disclosed in  
21      the file the fact that certain information was not pursued by  
22      Sergeant MacIntyre. For instance, the description of the two  
23      men. Is that not accurate?

24    A. The file itself doesn't indicate that. At least the files that I  
25      read.

1 Q Doesn't indicate that there was an extensive...

2 A. Any extensive follow-up on...

3 Q Of the described two men.

4 A. Other individuals.

5 Q And you would agree with me that it's not acceptable for a  
6 police officer to use forceful methods to extract a  
7 predetermined result.

8 A. Not acceptable. It's, I'd suggest to you that in 1971 it was  
9 probably a widespread practice to use certain types of tactics  
10 that were used by Detective MacIntyre.

11 Q What types of tactics are you thinking of?

12 A. "You're lying, tell the truth." Continually question them for  
13 long periods of time. It's not unique to Mr. MacIntyre.

14 Q What about the examination, the taking of statements from  
15 juveniles.

16 A. Well, the circumstances in the file would indicate that the  
17 statements were not taken in the presence of an adult which,  
18 to my knowledge, at least in our organization in 1971, there  
19 would have been a responsible adult present and they  
20 wouldn't have been detained for lengthy periods of  
21 interrogation.

22 Q So on the basis of your understanding of approved and proper  
23 police techniques, these kinds of techniques are improper and  
24 were improper in 1971.

25 A. In my view.

1 Q. And are you aware that Sergeant MacIntyre denies having  
2 used improper techniques, such as you have described were  
3 widespread.

4 A. I have heard that, yes.

5 Q. Is it your belief that Sergeant MacIntyre's methods were  
6 improper? You, in your letter, refer, and the version I'm  
7 looking at which is where my notes are, on page, or Volume  
8 20 at page 74, you talk about his methods of interrogation  
9 may have been somewhat irregular or forceful.

10 A. Yes.

11 Q. So what are you referring to there?

12 A. I, now I'm, if, in fact, the statements that were obtained from  
13 the three individuals, and in particular Patricia Harriss, if in  
14 fact those statements are correct, there is allegations of very  
15 lengthy interrogation of the girl lasting, to my recollection,  
16 from 8 o'clock, somewhere around 8 o'clock at night until 1:30  
17 in the morning, and she's a very young person and by herself.  
18 That, in itself, would be intimidating and that would be  
19 irregular, in my view.

20 Q. And that's an, is that an example of an improper police  
21 practice?

22 A. In my view.

23 Q. Is it not also accurate to say that that kind of technique does  
24 not produce reliable evidence?

25 A. It's a poor police technique and it's particularly poor when it's

1 used on extremely young people because they're very  
2 suggestive to, because of their tender age, to the power of  
3 suggestion. And they would be threatened by that type of  
4 technique.

5 Q. And for a very good reason, it may also be subject to not  
6 being admissible in a court of law.

7 A. Oh, in the court of law...

8 Q. Failure of being voluntary.

9 A. Indeed. I would agree with you.

10 Q. Can you tell us in terms of this issue of taking statements,  
11 who, and from your view of the file, who did Staff Sergeant  
12 Wheaton fail to take a statement from in the course of his  
13 1982 investigation, if anyone, that you feel he should have?

14 A. Well, we've given this in my direct examination. If, in fact,  
15 Inspector Scott and Staff Sergeant Wheaton felt there was any  
16 criminality on the part of Mr. MacIntyre or Mr. Urquhart,  
17 then they were, they had a responsibility to interview those  
18 two. I can't recall any others that they may not. There may  
19 have been but I don't recall any others that they may not  
20 have interviewed.

21 Q. And in the portion of the investigation that dealt with Mr.  
22 Marshall's innocence which Staff Sergeant Wheaton has  
23 described as the first stage, were there any witnesses that he  
24 should have spoken with that he didn't? That he shouldn't  
25 taken statements from that he didn't?

1 A. As I recall the correspondence that went to, through our  
2 headquarters to the CIB officer to the Attorney General's  
3 Department the investigation was segregated into phases, I'm  
4 not necessarily sure you can do that in a criminal  
5 investigation. But they said the investigation was complete  
6 and I assume that all of the witnesses who should have been  
7 interviewed were interviewed under those circumstances.

8 Q. And you didn't see anything that suggested anything  
9 differently to you.

10 A. No, I didn't see anything.

11 Q. Now what gave rise to your particular involvement here as I  
12 understand it was a memo or a report from Staff Sergeant  
13 Wheaton which is found in Volume 20 at page 59. And one of  
14 the things he says in it is that if he were to answer the  
15 questions that Mr. Bill was seeking to pose to him that would  
16 undoubtedly cast the Department of the Attorney General in  
17 bad light. And I believe it was your evidence that you didn't  
18 find anything to substantiate that assertion?

19 A. No.

20 Q. I would just ask you to think about the review of the file that  
21 you made and ask you whether from this review could Staff  
22 Sergeant Wheaton have been referring, in fact, to the  
23 prosecutorial conduct of the original case?

24 A. Not in my view. My impression, as I said before I don't have  
25 a precise recall of my conversation with Staff Sergeant

1       Wheaton, but my impression was then and my impression  
2       still is today that Staff Sergeant Wheaton was referring to the  
3       hold in abeyance statement which was interpreted to mean  
4       that the investigation had been stopped from a police  
5       perspective and that is the reason why I approached Mr. Gale  
6       to get his explanation or discuss the issue with him. I didn't  
7       go to Mr. Gale and interrogate him. I discussed the matter  
8       with him. He's an honorable gentleman.

9       Q. And from your discussion with Mr. Gale you developed the  
10       impression that it was a regrettable but unintentional  
11       misinterpretation that...

12       A. Not with Mr. Gale. Mr. Gale advised me of the telephone call  
13       and some of the reasons for, if not all of the reasons for the  
14       statement. The fact that, in my view was that since the  
15       investigation had been complete, according to the police  
16       reports in terms of Donald Marshall, then Donald Marshall's  
17       pardon or reference or whatever wouldn't be prejudiced by  
18       this. There was additional issues to be considered. That's the  
19       reason for the statement and that satisfied me.

20       Q. But am I not correct in understanding that you felt it was,  
21       that there had been a misinterpretation...

22       A. Yes.

23       Q. From that...

24       A. Yes.

25       Q. To mean that the investigation should be stopped.



1 A. That's correct.

2 Q. I would suggest to you that that wasn't unreasonable  
3 interpretation and I say that in light of the fact that I take it  
4 over this period of time that there ongoing meetings with the  
5 Attorney General's Department as part of the regular  
6 relationship between the RCMP and the Attorney General.

7 A. Well I disagree with you totally on that point in this respect.  
8 I know what you're alluding to but I do consider the RCM  
9 Police to be a professional police force and if we are going to  
10 make comments and reports that are subject to review then  
11 we should be making them based on some fact and not some  
12 perception or some notion that comes into your mind because  
13 a certain period of time has elapsed.

14 Q. Well let me ask you about a fact, then. It is a fact that the  
15 Attorney General's Department didn't inquire about or discuss  
16 the status of this investigation from 1982, from that point to...

17 A. I believe in 1983 was the request from Mr. Gale for an  
18 overview of the proper, of practices and procedures of the  
19 Sydney City Police force. And looking at the correspondence  
20 there's nothing to indicate to him that a criminal offence has  
21 been committed but he did ask for a report with the view to  
22 "Do we go farther this?" So there was some suggestion since  
23 1982.

24 Q. There was that inquiry but there was no investigation  
25 commenced.

1 A. There was no direction to commence an investigation into Mr.  
2 Urquhart or Mr. MacIntyre. There was a request for a review  
3 of the practices and procedures, yes.

4 Q. Now as far as Staff Sergeant Wheaton not mentioning it in a  
5 report about the papers being slipped under the desk incident  
6 which you've heard discussed, I suggest to you that, as I think  
7 I've already said, that Staff Sergeant Wheaton broke the  
8 investigation down into three parts. And in 1982 he was, am  
9 I not correct in saying, investigating the innocence of Donald  
10 Marshall.

11 A. Yes.

12 Q. Is that correct? And so he wasn't, at that point engaged in...

13 A. Well excuse me, just a moment. He was investigating, in my  
14 view, the Seale murder or reinvestigating it. And not  
15 necessarily the innocence of Donald Marshall. There's the  
16 matter of Mr. Ebsary and the murder to be considered there.

17 Q. Although he, in his response to you found in Volume 20 at  
18 page 65, he does indicate that he felt this investigation had  
19 various stages and the first stage proved Marshall's innocence  
20 and that was the stage that was being completed in  
21 approximately April of 1982.

22 4:08 p.m.

23 A. Yes, that's what he wrote.

24 Q. And so he gave you no indication that he was actively  
25 involved in an investigation of Sergeant MacIntyre.

1 A. No.

2 Q. I want to refer you, Superintendent Vaughan, to page 68 of  
3 Volume 20. And this is a memo from Sergeant Bentley.

4 A. Yes.

5 Q. It's a handwritten memo. In the middle of the page Sergeant  
6 Bentley says, "MacIntyre," I think those words are "et al",

7  
8 Tactics have been common knowledge for a few  
9 years now and I would certainly think that  
10 Frank Edwards, Q.C., Crown Prosecutor, as well as  
11 the Department of the Attorney General were  
12 well aware of any wrongdoings by these men  
13 and undoubtedly discussed where the charges  
14 were warranted.

15 My question is that in light of that, why weren't you  
16 interested in looking into that further. That suggests similar  
17 conduct to what Staff Sergeant Wheaton was alleging. That  
18 there'd been a pattern of conduct.

19 A. Why I would not go back and look into these previous  
20 incidents?

21 Q. Yes, why didn't that flag you to look into it?

22 A. Quite frankly, I didn't consider going back and looking into  
23 previous tactics by the Sydney City Police because, first of all,  
24 I did not consider the tactics that John MacIntyre or Mr.  
25 Urquhart used as being illegal. If he's talking about  
aggressive tactics, that's one thing. Mr. Gale will ultimately  
down the road ask for, in 1983, an overview of the practices

1 and procedures of the City Police and that was addressed by  
2 Mr. Wheaton, Mr. Scott and Mr. Christen.

3 Q This memo refers to wrongdoings and I suggest to you you  
4 basically just dismissed that. You never spoke to Frank  
5 Edwards about it.

6 A. I had never spoken with Mr. Edwards about it or anybody  
7 else, no.

8 Q So you read that and it caused you no concern.

9 A. Not at that particular time, no.

10 Q On page 69 Sergeant Bentley says, and this is the last  
11 sentence in his memo: "I believe we," meaning our force, "had  
12 to take over another murder investigation since the Marshall  
13 case simply because the Sydney Police did a lousy job." And  
14 prior to that, he says:

15  
16 Perhaps I might suggest that the Department of  
17 the Attorney General be approached with the  
18 idea that all murder investigations in the City of  
19 Sydney be handled by this force, not the City  
20 Police.

19 A. Yeah.

20 Q Why wasn't that sufficient for you to look into these  
21 assertions further?

22 A. To look into the Donald Marshall matter further you're  
23 saying?

24 Q Well, to look into these concerns by Sergeant Bentley that  
25 murder investigations be removed from the City of Sydney

SUPT. VAUGHAN, EXAM. BY MS. DERRICK

1 Police and handled by the R.C.M.P. because of incompetence?

2 A. That's not the responsibility of the R.C.M.P. to ask the  
3 Attorney General to remove that type of thing from an  
4 incorporated city police force. The Police Act covers that. If  
5 the Attorney General feels on the basis of issues like this that  
6 more training is needed or training needs upgrading or  
7 whatever, then I'm sure that they will take the appropriate  
8 action. But it's not up to the R.C.M.P. to do that. Furthermore,  
9 I'd suggest to you that if, in fact, these wrongdoings that are  
10 alluded to in this report, had not been brought to the  
11 attention of the Attorney General's Department in the past,  
12 then perhaps they should have been. But I'm not aware of  
13 any, other than Sergeant Bentley, again, writing certain things  
14 down there that really don't mean a great deal to me.

15 Q. Don't mean a great deal to you because you didn't pursue it  
16 further, I suggest to you.

COMMISSIONER EVANS

18 Who is Sergeant Bentley?

SUPT. VAUGHAN

20 Sergeant Bentley is a reader in our Reader Analyst Shop, My  
21 Lord. Reports will come through that particular office and they  
22 will review them and break them down for the attention of the  
23 officers to whom they are reporting, either myself or Inspector  
24 Murphy or one of the other officers in that department.

25

SUPT. VAUGHAN, EXAM. BY COMMISSIONERS

1 COMMISSIONER EVANS

2 Then does he write and give his opinion on things?

3 SUPT. VAUGHAN

4 If I ask for an opinion, and I did ask him to review the  
5 Donald Marshall matter and give me an opinion on the allegations  
6 made by Staff Sergeant Wheaton, then this, of course, is the issue  
7 I was...

8 COMMISSIONER EVANS

9 As to the question about tactics used.

10 SUPT. VAUGHAN

11 Pardon me, sir?

12 COMMISSIONER EVANS

13 As to the question about tactics used by the police, Sydney  
14 Police?

15 SUPT. VAUGHAN

16 Yes.

17 COMMISSIONER EVANS

18 And then he went on to say, "Well, as far as he was  
19 concerned, they shouldn't have any murder investigations  
20 conducted by them."

21 SUPT. VAUGHAN

22 That's correct, sir.

23 MR. CHAIRMAN

24 To follow that for a moment. Supposing that some member  
25 of your force this year decides that the Halifax Police force are not

SUPT. VAUGHAN, EXAM. BY COMMISSIONERS

1 being as assiduous as they should be in investigating serious  
2 crime, would you have the right to go to the Attorney General and  
3 say, "We should take it over."?

SUPT. VAUGHAN

4  
5 I think if there were a blatant example of justice not being  
6 properly attended to or cases of a serious nature not being  
7 attended to, which were offensive and certainly not being  
8 reported by the public, then we may draw to the attention of the  
9 Attorney General. But I don't believe that we would approach  
10 them and say that they shouldn't be handling serious  
11 investigations, we should. You go into the City of Halifax to do it.  
12 They have.... First, it's my view that city police forces are  
13 incorporated under the Police Act by a particular city. They're  
14 accountable to a police commission, which must be set up in  
15 accordance with the Police Act, and there's a city council. And  
16 certainly the level and quality of policing within a town should be  
17 of concern to the elected officials as well as the police commission.  
18 And not necessarily everything falling in the laps of the R.C.M.P. to  
19 be the cure-all to everything. We have certain responsibilities to  
20 safeguard society from abuse and so on. But so are city police  
21 forces incorporated to do that and they do have elected officials  
22 also.

MR. CHAIRMAN

23  
24 You have a contractual relationship with the Province of  
25 Nova Scotia to police certain areas.

1 SUPT. VAUGHAN

2 Yes, we do, sir.

3 MR. CHAIRMAN

4 Whatever policing you do, I take it, is governed by that  
5 contract.

6 SUPT. VAUGHAN

7 It is, sir.

8 MR. CHAIRMAN

9 Unless there was, I suppose, a state of apprehended  
10 insurrection throughout the nation, you might have to be brought  
11 in.

12 SUPT. VAUGHAN

13 That's correct.

14 MR. CHAIRMAN

15 I have a recollection of a case in the fifties where there was  
16 some doubt as to whether the R.C.M.P. at law could come in and  
17 take over certain duties of another police force, even when there  
18 was close to that state of national concern. But these are matters  
19 that are... I'm sure you know the case I'm talking about.

20 SUPT. VAUGHAN

21 Yes, sir.

22 MR. CHAIRMAN

23 In the fifties. In any event, I take it that the governing  
24 relation... Your relationship with the Attorney General of any  
25 province is governed by the policing contract between the



1 province and the Government of Canada.

2 SUPT. VAUGHAN

3 It is, sir, and there's one provision within the Police Act of  
4 Nova Scotia whereby they may direct that we take over a specific  
5 investigation. But that is also contained within the contract that is  
6 signed between the federal government and the Attorney General  
7 or the province in which we're contracted.

8 MR. CHAIRMAN

9 If, and I think this has happened in some provinces in  
10 Canada, the Attorney General decides, after consultation with the  
11 municipality, that it might be in the best interest of law  
12 enforcement if a municipal force did not continue, that you take  
13 over the policing, would that require an amendment then to your  
14 contract?

15 SUPT. VAUGHAN

16 Well, first of all, I think that would be an issue that would  
17 be negotiated between the government and the Government of  
18 Nova Scotia and our force, our headquarters would become  
19 involved in taking over municipal policing.

20 MR. CHAIRMAN

21 That's a separate contract, isn't it?

22 SUPT. VAUGHAN

23 A separate contract, that's right.

24 MR. CHAIRMAN

25 If a municipality in Nova Scotia tomorrow decided they

SUPT. VAUGHAN, EXAM. BY COMMISSIONERS

1 wanted the R.C.M.P. to assume responsibility for policing, subject  
2 to the approval of the two Attorneys General...

3 SUPT. VAUGHAN

4 Yes, sir.

5 MR. CHAIRMAN

6 There would be then a separate contract.

7 SUPT. VAUGHAN

8 Yes.

9 MR. CHAIRMAN

10 And my recollection is at a higher cost.

11 SUPT. VAUGHAN

12 At a higher cost, yes.

13 MR. CHAIRMAN

14 To the municipality than the cost is found in the provincial  
15 contract.

16 SUPT. VAUGHAN

17 That's correct, Chairman.

18 BY MS. DERRICK

19 Q. Superintendent, is it accurate that if there are serious  
20 allegations against a municipal police force that warrant  
21 investigation, yours is the appropriate force to do that  
22 investigation?

23 A. Well, we're not going to take over an investigation in any, of  
24 any police department when there's an incorporated police  
25 department to enforce the law in that community, unless we

1 get a specific direction from the Attorney General to do so.

2 And, moreover, some investigations, city police forces will ask  
3 us for our assistance and, providing we have the resources  
4 and it's an appropriate case, then we may very well assist  
5 them to do that.

6 Q. And so the R.C.M.P. act in a very independent fashion except...  
7 with respect to criminal investigation, except in an instance  
8 such as you have described?

9 A. I'm... You're going to have rephrase that for me because I  
10 don't know precisely what you're driving at.

11 Q. With respect to other types of criminal investigations, you  
12 would simply go ahead and investigate and determine  
13 whether or not charges should be laid?

14 A. Within our juris... the areas that we police, yes.

15 Q. So where it is different is if it involves a municipal police  
16 force.

17 A. If there's a municipal... A crime within a municipal police  
18 force, they have an incorporated police department to look  
19 after crime in their community and so we wouldn't  
20 automatically become involved in investigations within that  
21 community.

22 Q. And what if in the event that you determined there should be  
23 an investigation of that municipal police force, that you didn't  
24 receive that direction from the Attorney General, would you  
25 go ahead and do that investigation anyway?

SUPT. VAUGHAN, EXAM. BY MS. DERRICK

1 A. Of the... There should be an investigation...

2 Q. Yes.

3 A. Of a municipal police department?

4 Q. Yes.

5 A. Well, bearing in mind the structure that's set up to  
6 incorporate police departments in the accountability process,  
7 we wouldn't automatically go in and investigate a municipal  
8 police department without consultation with the Attorney  
9 General's department because they contract for our resources  
10 and they're paying for them, number one.

11 Q. So the final decision in that respect would be left with them.

12 A. Of course, yes.

13 Q. And you would abide with them.

14 A. Yes.

15 MR. CHAIRMAN

16 I get a feeling we're getting off track here and at least  
17 you're losing me, but that may be my fault.

18 MS. DERRICK

19 It's probably my fault.

20 MR. CHAIRMAN

21 This case here, the case that we're talking about. The  
22 R.C.M.P. were asked by the Sydney Police Force to come in and  
23 reinvestigate...

24 SUPT. VAUGHAN

25 Yes, sir.

1 MR. CHAIRMAN

2 The conviction of Donald Marshall, Jr. and the murder of  
3 Sanford Seale. That's correct.

4 SUPT. VAUGHAN

5 Yes, that's correct, sir.

6 MR. CHAIRMAN

7 So you didn't have to wait for anyone to tell you to go in,  
8 you're there.

9 4:22 p.m.

10 SUPT. VAUGHAN

11 No, we went in and assisted.

12 MR. CHAIRMAN

13 So the issue, I think, that counsel have been addressing, and  
14 the relevant issue, is that if in the process of carrying out that  
15 investigation, your investigating officer came upon evidence  
16 which could reasonably suggest to him that a police officer may  
17 have committed a breach of the Criminal Code, is it your evidence  
18 that he can go and should go and question that police officer  
19 without any request from the Attorney General or instructions  
20 from anyone?

21 SUPT. VAUGHAN

22 It's my view, My Lord, that in this particular case, we  
23 accepted the invitation to investigate or reinvestigate the Seale  
24 murder and if there's any criminality associated with that murder  
25 by a police officer, then that's part of the mandate, we have the

1 perfect right to continue on and investigate the commission of that  
2 offence by that police officer. And I consider that part of the  
3 mandate. I was...

4 MR. CHAIRMAN

5 I don't want us to get off track on this business of going in  
6 and taking over the policing of the City of Sydney. Okay.

7 MS. DERRICK

8 Thank you, My Lord.

9 BY MS. DERRICK

10 Q. Superintendent Vaughan, where there are serious allegations,  
11 such as we see here from Sergeant Bentley, concerning those  
12 issues of competency, wrongdoing, certain types of police  
13 tactics, is it not fair to say that you can't know whether those  
14 amount to criminal conduct unless there is an investigation?

15 A. Are we talking about the Donald Marshall, or any number of  
16 cases?

17 Q. We're talking about the Donald Marshall case, although it may  
18 be generally applicable.

19 A. I asked, just to clarify this a little bit, I asked Sergeant  
20 Bentley to review the file and give me his opinion and I read  
21 his opinion insofar as the Donald Marshall matter is concerned  
22 and I reviewed the matter myself and I come to a different  
23 conclusion than Sergeant Bentley. Ultimately, the  
24 responsibility rests with me for that decision. I made it and  
25 that's the end of it. I'm not accountable to Sergeant Bentley

1 for his opinion. I did take it into account, though, and I did  
2 meet with him.

3 Q. No, I'm not suggesting that you're accountable to him. I'm  
4 simply saying that you can't know whether what is contained  
5 and what he's written here might amount to, or might have  
6 amounted to criminal conduct unless there's an investigation  
7 of it.

8 A. It might have, but I'm not running all over the country  
9 investigating people for criminal offences, it's a commitments  
10 of resources, unless there's some basis to do it. And, in  
11 reviewing the Donald Marshall file, as it related to Mr.  
12 MacIntyre's interrogation techniques, I did not find the basis  
13 to launch that criminal investigation that was requested.

14 Q. As part of that review, did you see, I believe, it's Staff  
15 Sergeant... I'm afraid I get these titles mixed up. Barlow's  
16 report?

17 A. Yes.

18 Q. It's found in Volume 20 at page 21. Now we also have in  
19 evidence before us now as Exhibit 153, the draft of that  
20 report.

21 A. Yes.

22 Q. Which I think from Staff Sergeant Barlow's evidence, you  
23 would never have seen.

24 A. No, I haven't read that, no.

25 Q. May I ask you of whether you took from his report on page

1 21 that he was being critical of the police?

2 A. Page 21?

3 Q. 21.

4 A. This Volume 20?

5 Q. Yes, Volume 20, page 21.

6 A. Yes.

7 Q. I can tell you, in fact, that the draft you haven't seen is highly  
8 critical of the police and it was Staff Sergeant Barlow's  
9 evidence that that is the impression that he expected a fellow  
10 police officer to be left with in reading his final report.

11 A. Yes.

12 Q. And that is an impression that was created, is that correct?

13 A. Well, that may very well be.

14 Q. Were you left with the...

15 A. He was critical, yes.

16 Q. That he was being critical.

17 A. Yes.

18 Q. And that was one of the factors that you also took into  
19 account.

20 A. Yes, I read his report.

21 Q. In your review of the file. I'd like to just refer you to the  
22 letter that you did send to Mr. Gale, which is found in various  
23 places towards the end of Volume 20, page 101, for example.  
24 I'd just like to ask you some things about this letter. You're  
25 quite specific in this letter, are you not? For instance, on page



1 73, when you say about the...

2 COMMISSIONER EVANS

3 Which page are you at?

4 BY MS. DERRICK

5 Q. I'm sorry, I'm on page 73 of Volume 20.

6 A. Page 73. Okay.

7 Q. When you talk about not supporting a further investigation of  
8 Mr. MacIntyre and Mr. Urquhart, you say "at this time". So  
9 you're speaking about a further investigation in August of  
10 1986, or at that point, is that correct?

11 A. I'm talking about August, yes.

12 Q. And was it effectively your conclusion that the, that there  
13 should be a public inquiry and that what evidence...what  
14 evidence came out of that should be examined and then a  
15 determination should be made whether or not a further  
16 investigation be pursued.

17 A. Yeah, I think, I believe I said in here somewhere that I was  
18 aware that an inquiry would be conducted...

19 MR. CHAIRMAN

20 Page 75.

21 BY MS. DERRICK

22 Q. Yes, page 75, you say: "It is my understanding that some  
23 form of public inquiry will be held..."

24 A. Yes.

25 Q. "Following a decision of the Supreme Court of Canada on the

1 Ebsary case."

2 A. And I did, in fact, say that if some evidence of a material  
3 nature or probative value happened to come out which would  
4 tend swing the balance in favour of an investigation, we  
5 would look at it.

6 Q. So if I can just refer you for a moment to page 99 of the same  
7 volume, and you're writing to Commissioner Schram?

8 A. Uh-huh.

9 Q. You say:

10 The Department of Attorney General has agreed  
11 that further investigation against the former  
12 Chief of Police John MacIntyre is unwarranted.

13 A. Yes.

14 Q. It was your opinion, though, was it not, that it was  
15 unwarranted at that time but not that it might never be  
16 warranted, is that accurate?

17 A. That's right.

18 Q. Now just to ask you about your letter, I'm again back on page  
19 73. In that first paragraph, you talk about the actions of the,  
20 being the opinion, of the O.C. of the Sydney Subdivision that  
21 the actions of the Sydney police investigators was one of  
22 overzealousness.

23 A. Yes.

24 Q. As an experienced police officer, is it not plausible that  
25

1 overzealousness could lead to wrongful or criminal conduct?

2 A. I didn't see it in this case, but I suppose anything is possible.

3 Q. That's possible. And in the third paragraph down, you say:

4  
5 In the correspondence referred to, the police  
6 managers involved in the review of this matter  
7 made no suggestion whatever that  
8 MacIntyre/Urquhart may have counselled  
9 perjury.

10 When you're referring to "police managers", who do you  
11 mean?

12 A. I'm talking in terms of the O.C. of Sydney Subdivision, the  
13 Officer Commanding of the Sydney Subdivision and the two  
14 previous Criminal Operations officers, Christen and  
15 MacGibbon.

16 Q. Did Staff Sergeant Wheaton not tell you at some point orally  
17 that he was of the opinion that Sergeant MacIntyre and  
18 Sergeant Urquhart had committed the offence of counselling  
19 perjury?

20 A. He put it in writing.

21 Q. And that was in response to your asking for more details?

22 A. The initial report of his outlined very clearly that he felt Mr.  
23 MacIntyre should be charged with counselling perjury.

24 Q. Now on page 74, here you're speaking about MacIntyre  
25 having grounds to suspect Marshall in 1970 and '71.

A. Yes.

1 Q. Now I think Mr. Orsborn has asked you about the basis for  
2 saying that Mr. Marshall was picked up on seven different  
3 occasions.

4 A. Yes.

5 Q. Did you review Mr. Marshall's criminal record in the  
6 preparation of this report?

7 A. No, I don't believe I had. I don't believe I had Mr. Marshall's  
8 record at that particular point in time. I have since had a  
9 look at it.

10 Q. So you're familiar with the fact that it discloses few and very  
11 minor offences; in fact, a number of Liquor Control Act  
12 offences, and no violent offences at all other than the  
13 conviction for, the wrongful conviction...

14 A. Yes.

15 Q. For Mr. Seale's murder.

16 A. However, his statement and other material would indicate  
17 that he had a definite antisocial behaviour extending to 16 or  
18 \$19,000 in damage to tombstones, dynamite caps, robbing  
19 people in the park.

20 Q. What statement is this that discloses all of this?

21 A. The statement that he gave to Staff Sergeant Wheaton alluded  
22 to damage to, I believe, offences in the cemetery. It alludes  
23 to not being unfamiliar with or participating in robberies in  
24 the park area.

25 Q. This is the statement given at Dorchester in 1982...

1 A. Ah, yes.

2 Q. That you're referring to.

3 A. Yes, I believe so.

4 Q. And it does refer to an attempted robbery on the, or rolling  
5 on the night of the murder.

6 A. Oh, yes, it does. Yes, but...

7 Q. But you also believe that it discloses information about...

8 A. I believe so. I believe that it says something like, "I was a  
9 bad young guy and I was involved in robbery in the park," or  
10 something of that nature.

11 Q. Perhaps you could be referred to...

12 MR. BAILEY

13 Perhaps, My Lord, my client might be permitted to see the  
14 document being referred to, if he's being asked to comment on it.

15 MS. DERRICK

16 Volume 34 at page 52.

17 MR. CHAIRMAN

18 I'm afraid he's going to have to be referred to it tomorrow  
19 morning. We'll adjourn until 9:30.

20 4:34 INQUIRY ADJOURNED UNTIL 9:30 A.M. JUNE 2nd.

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.



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Margaret E. Graham

DATED THIS 1st day of June 19<sup>88</sup> at Dartmouth, Nova Scotia