

D. LEWIS MATHESON, by Commissioner Evans, by Mr. Ruby

1 | Q. Yes.

2 | A. I don't believe he was called in the trial, I believe he was
3 | at the Preliminary.

4 | Q. I see.

5 | A. And again that's from -- that's not from ^{my} total recall. That's
6 | from --

7 | Q. I lack that as well.

8 | A. --looking at the book.

9 | Q. But he was before the Grand Jury in any event?

10 | A. Yes.

11 | COMMISSIONER EVANS:

12 | Thank you.

13 | BY MR. RUBY:

14 | Q. Judge Matheson, I'd like to take you, if I may, to the incident
15 | that you've already talked about which was when Pratico attempted
16 | to change his evidence outside the court?

17 | A. Yes, sir.

18 | Q. First of all, with regard to the meeting that you had with
19 | what you described as officers of the Court, you said that
20 | Sergeant MacIntyre was there, but he's not an officer of
21 | the Court, is he?

22 | A. No, sir, but he -- he was the informant in the case who was
23 | there and Mr. MacNeil, I suppose, preferred the indictment,
24 | but I believe the original information was signed by
25 | Detective MacIntyre.

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- 1 Q. Yes.
- 2 A. But you're right, sir, he was not an officer of the Court.
- 3 Q. Do you remember what he said?
- 4 A. No, sir, I don't recall what any of them said.
- 5 Q. Okay. You do recall something about a reference to perjury?
- 6 A. Yes.
- 7 Q. Can you tell me what you meant when in response to that you
- 8 said or someone said to you, "It's up to you to make that
- 9 stick"? That would be a response to the comment, "You don't
- 10 have to worry about it", which Mr. MacNeil apparently said
- 11 to --
- 12 A. That was said to Mr. MacNeil out in the corridor after. I --
- 13 I don't know the exact words. I was pleased that Mr. MacNeil
- 14 had made the comment, but I -- you know, I -- I -- I wanted
- 15 to remind him, you know, maybe somebody else will say something
- 16 different, but in response to that (And I think I said it
- 17 in direct evidence.) MacNeil -- MacNeil wasn't concerned about
- 18 that at all.
- 19 Q. And it was MacNeil who said to Pratico, "You don't have to worry
- 20 about perjury", or words to that effect?
- 21 A. Words to that effect, yeh. The four of us, sir, were -- were
- 22 trying to get the young fellow to tell us the truth and to tell
- 23 the Court the truth.
- 24 Q. Did it occur to you at the time that it might be dangerous
- 25 to discuss perjury with this young witness because he might be
- very afraid of perjury?

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- 1 A. It occurred to me at that time and
2 that's why I was happy that Mr. MacNeil dispelled it. I
3 think it would have been -- it would have been neglectful of
4 us to -- not to have mentioned that prospect to that man in
5 that -- in those circumstances. I remember Mr. MacNeil
6 removing the threat, if indeed there was one. You're right
7 though, it -- it could -- it could have compelled him to make
8 the statement that he -- that he did. He may still have been
9 afraid of perjury, but as I recall it Mr. MacNeil had made that
10 statement to him.
- 11 Q. And then is the question of the suggestion you were asked about
12 this, that Donald Marshall, Sr., was responsible for Pratico's
13 change of story?
- 14 A. Yeh.
- 15 Q. And you, I think, would agree that it would be wrong to suggest
16 that Donald Marshall, Sr., was responsible for that in any
17 way?
- 18 A. Yes, sir, and I've read the transcript and it's -- somebody
19 reading it might say, boy, that MacNeil was a genius to -- to
20 do this. I believe what Mr. MacNeil was doing was trying to
21 bring out the whole story for the Court, but he -- he -- he
22 was prevented from doing so and that's a fact. And it is
23 a fact, sir, that Donald Marshall spoke to Pratico in the
24 hall, but --
- 25 Q. But there was no suggestion in the evidence --

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1 A. No.

2 Q. -- or to your knowledge that Donald Marshall, Sr., in any
3 way influenced him to speak through fear or otherwise, fair?

4 A. That thought never entered my mind then, it doesn't enter it
5 now, and I'm sure it didn't Mr. MacNeil's.

6 Q. And you're sure he didn't raise the matter because it would be
7 so utterly unfair to make the suggestion, correct?

8 A. Yes, it would -- the way that came out, it appears to be unfair,
9 and if it was intended by Mr. MacNeil I would say that that was
10 unfair.

11 Q. Okay. You tell me if you think this is unfair. I'm referring
12 to the jury address of Mr. MacNeil at volume two, page 56,
13 line 27. This is Mr. MacNeil speaking to the jury:

14 But gentlemen, my learned friend
15 Mr. Rosenblum forgot to mention
16 to you a little conference that
17 Pratico had with Donald Marshall, Sr.!
Now, what was that conference? What
was that conference?

18 And he goes on to say that Defence Counsel was called for and
19 so forth, and at the bottom of that page, page 56:

20 A man who is trying to match wits
21 with Mr. Rosenblum and Mr. Khattar
22 - remember his age when he said,
"I said that. I made that statement
or those statements I have made...

23 At the top of 57:

24 ...that are inconsistent with my
25 evidence." He didn't use these
words and I can't give you the

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1 words that he said but I can give you
2 his meaning.

3 A. You're reading a little fast, Mr. Ruby.

4 Q. Let me go back slower. I'm sorry. Have we got a copy of
5 volume two for the witness? Then you can follow with me and
6 I don't want to -- on page fifty-six, bottom. I started
7 at line 26:

8 But gentlemen, my learned
9 friend...

10 In the middle of that line. I'll get him to catch up. And I
11 followed down to the bottom of the page.

12 A. Yes, sir.

13 Q. And then turning the page:

14 "I made that statement or those statements
15 I have made that are inconsistent with my
16 evidence." He didn't use these words and
I can't give you the words that he said
but I...

17 I'm reading at line 3, the top of page 57. Go along with me if
18 you would:

19 He didn't use these words and I can't
20 give you the words that he said but I
21 can give you his meaning. "I made
22 those statements simply because I was
scared of my life!" "I was scared for
my life!"

23 Isn't that unfair?

24 A. Yes, it would be -- I feel that was unfair.

25 Q. Turn to page 60.

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1 A. Again -- And I want to make this comment, when Counsel address
2 the jury it's for the judge to -- if he feels that he's gone
3 too far on the evidence to make it in his comment, and I
4 want everybody to know that so far as I'm aware the judge in
5 the case did not know the detail of what took place in the hall.

6 Q. Right. And again it was quite wrong for the judge, was it not,
7 not to interrupt counsel and say, "You're giving evidence
8 of something that is not before this Court, stop it". You've
9 seen that happen, have you not? Judges do that?

10 A. Yes.

11 Q. It's wrong of him not to do it here, is it not?

12 A. Where he didn't do it, he'll have to answer for that himself.
13 I suppose there's certain things that happen in court that are
14 in the give and take, and I suppose not every year I was able
15 to deliver a perfect trial all the time. If you make the
16 comment -- If you make the comment, "Do I think it was fair?",
17 If I had been the judge I'd like to think that I would have
18 corrected the lawyer that said that.

19 Q. All right. Turn to the bottom of page 63, the same volume.
20 At the bottom of that page he's talking to the jury about witnesses
21 being nervous and particularly being of tender years, page 63,
22 and the last two words on that page, first of all:

23 They admit...

24 Are you with me?

25 They admit...

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1 | Turning to 64.

2 | ...that they are nervous, that they're
3 | frightened, that they were scared. And
4 | what would give Mr. Pratico the
5 | impression as he told you, the explanation
6 | for that remark yesterday, after
7 | consultation with Donald Marshall, Sr.,
8 | that he was scared for his life! That
9 | was his explanation.

7 | Is that too unfair?

8 | A. It would appear to be. I --

9 | Q. You were sitting next to this man?

10 | A. Yes, sir.

11 | Q. Granted you don't have control of the prosecution, did you
12 | speak to him about that and say, "Hey, that wasn't right".

13 | "You shouldn't have done that"?

14 | A. I don't recall that I did.

15 | Q. You said that Mr. MacNeil-- (And this is your evidence yesterday
16 | and I paraphrase it. Tell me if I paraphrase it incorrectly.)
17 | that Mr. MacNeil to your knowledge was brash and outgoing, but --
18 | and he wanted to win badly, but it would be an insult to think
19 | that he would circumvent the law deliberately?

20 | A. Yeh.

21 | Q. Correct?

22 | A. Yes, I think that's what I said.

23 | Q. Are you not aware that at one point Mr. MacNeil --

24 | AUDIENCE MEMBER (Number one):

25 | Excuse me, Your Honour, we can't hear a word Mr. Matheson is saying.

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1 | So I don't know if he can speak up or if there's something wrong
2 | with the mike or -- there's something wrong. We just can't hear
3 | down here.

4 | MR. CHAIRMAN:

5 | Well, we're doing our best to keep the -- to keep the audience
6 | abreast of what's going on and what's being said here, but
7 | unfortunately the recording equipment at times can only carry a
8 | witness's voice so far.

9 | AUDIENCE MEMBER (Number two):

10 | We can hear -- We can hear you speaking and we can hear the lawyer --

11 | MR. CHAIRMAN:

12 | Well, we'll do our best for you. We'll do our best for you, but
13 | if we can't get through there's not much we can do about it.

14 | AUDIENCE MEMBER (Number three):

15 | I can hear fine for some of it but I want to take the chairs and
16 | bring them nearer.

17 | MR. CHAIRMAN:

18 | There seems to be a difference of opinion amongst the viewing --
19 | the listening audience and I certainly can't straighten that
20 | out. I've got enough problems already.

21 | THE WITNESS:

22 | I'll try to speak louder, Mr Ruby, if --

23 | BY MR. RUBY:

24 | Q. You and I are both aware, Judge Matheson, that there are
25 | witnesses that are soft spoken and there's sometimes little you

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1 can do about it except cope with it and I appreciate that's
2 your style and I know you're doing your best. Now are you
3 aware that at one point Mr. MacNeil was sentenced to gaol
4 for Contempt of Court and actually served a period of
5 imprisonment in this community?

6 A. Yes, sir.

7 Q. And that was for removing assets in his own divorce case
8 contrary to a Court Order, was it not?

9 A. Yes, sir.

10 MR. ELMAN:

11 My Lords, on behalf of the estate of Donald C. MacNeil I have
12 to object to this particular line of questioning. It has nothing
13 whatever to do with the matter that's here before you and to be
14 adjudicated upon. This is a private matter between Mr. MacNeil -- It's
15 a matrimonial matter and I don't think it should be dealt with here.
16 Those kinds of cases were never open to the public and I don't
17 believe that any evidence relevant to that should be brought before
18 this Court.

19 MR. CHAIRMAN:

20 I would have no difficulty with the evidence that arose in -- and
21 a matrimonial dispute would certainly have nothing to do with the
22 capacity or the ethics of Mr. MacNeil in his prosecutorial role.
23 And I think it arose out of a comment by the -- this witness,
24 Judge Matheson, during his Evidence in Chief when he said that
25 Mr. -- the late Mr. MacNeil would never knowingly circumvent the

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1 law. Now my interpretation at that time was and still is that
2 Mr. Donald MacNeil would not knowingly circumvent the law according
3 to the evidence of Judge Matheson for the purpose of getting a
4 conviction. What he would do in a matrimonial dispute, I agree with
5 you, would not reflect upon -- should not reflect upon his ability
6 to prosecute and discharge his role as is required by the law.
7 So Mr. Ruby I would ask you -- I don't think there's any good
8 purpose served in pursuing that matrimonial dispute insofar as
9 this Hearing is concerned.

10 MR. RUBY:

11 No, I'm not concerned with the matrimonial dispute or any of the
12 evidence involved in that dispute, but if the late Donald C. MacNeil
13 deliberately flouted a direct order of a judge, clearly and
14 seriously enough that he was sentenced to imprisonment for,
15 I understand a period of substantial time, then I want to know if
16 this changes the witness's view of this man's willingness as he
17 put it, to avoid anything that would circumvent the law deliberately.
18 That's my point.

19 MR. CHAIRMAN:

20 I gather to the answer of the question that -- the answer to your
21 question by Mr. -- by Judge Matheson that he -- Well, or maybe
22 you didn't answer.

23 BY MR. CHAIRMAN:

24 Q. What's your answer?

25 A. I have an answer. I did answer. It's on the record. I said, "Yes

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1 | BY MR. RUBY:

2 | Q. You knew this?

3 | A. Yes, sir, I knew that.

4 | Q. Do you not agree with me that this is an example of the late
5 | Donald C. MacNeil acting deliberately and contrary to a
6 | Court Order, deliberately getting around the law, the order of
7 | the law, yes?

8 | A. Yes, sir. I -- This occurred later in Mr. MacNeil's life when
9 | he was under great stress and great concern about his
10 | matrimonial break-up. I'm well aware, sir, that -- and I didn't
11 | come here to say that that -- those things didn't happen.
12 | Everybody in this community knows that, but I gave my answer
13 | and I meant it that Mr. MacNeil in the discharge of his
14 | prosecutorial duties would not have deliberately circumvented
15 | the law. That's what I intended to say. This is probably out
16 | before the Court because I mis-spoke and if I didn't make myself
17 | clear yesterday I hope I am today.

18 | Q. You are restricting then your view of his character in that
19 | respect to his actions qua prosecutor. Is that correct?

20 | A. Yes.

21 | Q. Let me take you, if I can, to the 1971 post-trial arrival of
22 | Mr. MacNeil, the other MacNeil. The police's initial view
23 | you said was that Mr. MacNeil was unreliable. Do they give you
24 | any reasons for that other than what you've told us, namely,
25 | that he seemed emaciated and so forth?

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- 1 | A. Now are you asking me about the police in the police station
2 | the night I went down?
- 3 | Q. I didn't know there were any other conversations you had that
4 | night or around that time with them?
- 5 | A. No. Yeh, then I went to the police station. I read the
6 | statement. It looked good to me. The police encouraged me,
7 | "Go upstairs and look at this fellow". Now they -- the
8 | implication was -- I don't remember what the words were, you
9 | know. "Go see for yourself", this is what they were
10 | suggesting to me. I don't remember what they said.
- 11 | Q. And after you saw him you quite correctly took the position that
12 | look, this has to be investigated further. What was their
13 | position?
- 14 | A. I think I had made my mind up before I went upstairs to look,
15 | but yes --
- 16 | Q. I'm not surprised. I think any lawyer would do that.
- 17 | A. Yeh.
- 18 | Q. What was their position, do you remember?
- 19 | A. Whose position?
- 20 | Q. The police's position.
- 21 | A. The police's position was fully in agreement. If there was
22 | any hesitation at all, they were wondering whether -- whether
23 | they should do this or whether another police force should.
- 24 | Q. And your view on that issue was?
- 25 | A. Well, first of all I was an Assistant Prosecutor and I had no

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- 1 authority to call in another Police Department and quite
2 frankly, I didn't even know how to go about doing it then.
3 That was one of the reasons that I -- I called Halifax.
- 4 Q. Okay, and why did you not say, "Look, for the moment, whatever
5 you do, I don't want the original officers on this investigation,
6 I want somebody fresh"?
- 7 A. I don't recall saying that and probably because there were other
8 officers doing it. I don't remember MacIntyre and Urquhart being
9 the ones that questioned the Ebsary's, maybe they were. I --
10 To this day I don't know who did.
- 11 Q. I take it you knew that at this point that if this statement
12 was true --
- 13 A. Yes, sir.
- 14 Q. --if it was true, that someone had acted in a way that had
15 resulted in false evidence of guilt coming forward, correct?
- 16 A. Correct.
- 17 Q. So it would make sense, would it not, for anyone involved
18 including yourself, to say, "Hey, if that's the case, we
19 don't want anybody who was involved with that process carrying
20 on from here on in". That would be the rationale?
- 21 A. Yes, sir, it -- I'd like to say that yes, that occurred to me
22 and this is what I did. The fact that I don't recall
23 indicates to me that it didn't occur to me and it likely didn't
24 occur to me because MacIntyre and Urquhart weren't the ones.
25 Now I don't know who did.

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- 1 Q. You would not have wanted MacIntyre and Urquhart to carry out
2 any aspect of this investigation I think?
- 3 A. No, I don't think they would have wanted to themselves. I don't
4 know whether they did, but --
- 5 Q. Because of the obvious appearance of partiality and --
- 6 A. Well --
- 7 Q. -- uncomfortable situation?
- 8 A. Yeh. I don't know, sir, what happened. I'm telling you what--
9 what I say -- what I recall.
- 10 Q. Right. But the reason why you assume they wouldn't want to
11 be involved was because of the appearance of partiality that
12 would flow from it, fair enough?
- 13 A. Well, it's just that -- somebody to take a fresh look at the
14 whole thing or --
- 15 Q. It would be much better to have someone take a fresh look at the
16 whole thing?
- 17 A. Yes, sir.
- 18 Q. Indeed, that's the only proper way to proceed, agreed?
- 19 A. Well, in hindsight -- in hindsight you can say that and
20 maybe you're right, but I don't recall giving instructions
21 other than what I've enumerated. I don't recall saying
22 any more.
- 23 Q. Did you suggest to the police that you were talking to either
24 then or when they came back that one method of investigating
25 this suggestion by MacNeil that Marshall was innocent -- Ebsary

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1 had -- he had been there, would have been to put photos of
2 Ebsary and MacNeil to Marshall or the other witnesses in
3 a photo line-up together with other persons and see if they
4 identified anyone and what they said, if anything?

5 A. No, sir, I -- I certainly didn't make any such suggestion.
6 I didn't -- I didn't feel, you know -- It wasn't my place to
7 tell them how to investigate it. There were a lot of things
8 that occurred to me. Urgent among them was that the hour was
9 getting late and I had to make a long distance phone call to
10 a superior officer in Halifax who might have retired, you know.
11 I wanted to get done what we had -- what I saw that we had
12 to do here in Sydney and then communicate with Halifax. Now
13 I -- I wasn't down there quarter-backing the police force.

14 Q. But they were looking to you for advice?

15 A. Yes, sir, they were. And maybe they got bad advice but I've
16 told you what I've said to them.

17 Q. How much later was it, do you remember, when they came back,
18 Detective Sergeant Smith and Inspector Marshall?

19 A. I'm sorry, I --

20
21
22
23 jmr
24
25

D. LEWIS MATHESON, by Mr. Ruby

- 1 Q. How long afterwards would Detective Sergeant Smith and Inspector
2 Marshall come back to you with the information that MacNeil
3 was unreliable?
- 4 A. Oh, it'd be about a week or ten days. I'm not sure of the
5 exact date.
- 6 Q. And where did the meeting take place?
- 7 A. In the Prosecutor's Office.
- 8 Q. Okay. And -- Your office or Mr. Macneil's office or both?
- 9 A. No, Mr. MacNeil and I both shared an office.
- 10 Q. All right. And was Mr. MacNeil present at that time?
- 11 A. Yes, sir.
- 12 Q. All right. And did you understand that the investigation was
13 concluded at that point?
- 14 A. Inspector Marshall didn't say. He said he would be making a
15 report to Halifax. That's what I recall.
- 16 Q. Making a report to Halifax?
- 17 A. Making a report to Halifax, and I don't recall who in Halifax
18 he was going to report to. He -- What I recall him saying at
19 the time: that we had the report of what the polygraph result
20 was, and I don't recall him saying that he had any opinion that
21 was inconsistent with what the results of the polygraph, as I
22 explained them to you, were and I don't really know --
- 23 Q. Did you ask him what investigation he'd done other than the
24 polygraph?
- 25 A. No, sir, I didn't. I -- As a matter of fact, I didn't directly

1 question either of the people. I was there with Mr. MacNeil.
2 I was interested in what they were saying, but I wasn't saying,
3 "Now, let me see. You fellows do this right," or -- I don't
4 remember any more than that.

5 Q. Did Mr. MacNeil inquire as to the scope and breadth of their
6 investigation?

7 A. He may have, but I don't recall it.

8 Q. All right. You thought polygraph was a good idea, I gather
9 when it was first proposed?

10 A. Yes, sir. I'd never rely on one again, but --

11 Q. All right.

12 A. -- at the time, it -- I thought it -- As I said, along with
13 other evidence, that it might've been in -- a good investigative
14 tool.

15 Q. What experience had you had at that point with polygraph?

16 A. That was the first time I'd ever had any experience with the
17 polygraph.

18 Q. Had you ever read anything about a polygraph?

19 A. Not that I recall.

20 Q. So your knowledge would've come from movies and T.V. shows
21 like the rest of us at that point?

22 A. Yes, and what I read in law school about polygraph evidence
23 not being receivable in court as proof of anything.

24 Q. That was finally decided just a few days ago.

25 A. Yes, but the --

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- 1 Q. I agree. The lower courts of that time were of the same
2 view.
- 3 A. Yes. Lawyers generally -- The opinion of all lawyers, I think
4 at the time, was that you wouldn't rely on them.
- 5 Q. The appeal then proceeds apace. Someone files a Notice of
6 Appeal, and you are aware of that?
- 7 A. Yes, sir.
- 8 Q. And you were living in what town?
- 9 A. I lived in Sydney at the time.
- 10 Q. And Mr. Khattar and Mr. Rosenblum also lived in Sydney?
- 11 A. Yes, sir.
- 12 Q. And you were a prosecuting counsel; they were defence counsel?
- 13 A. Yes, sir.
- 14 Q. So you'd see them once or twice or three times a week at the
15 ver least?
- 16 A. Yes, I saw them frequently.
- 17 Q. And you never saw fit to tell them that this witness had come
18 forward exculpating their client on a murder charge?
- 19 A. Well, I presumed that any time relevant to the event -- I
20 presumed that they had been told by somebody else. I certainly
21 would not have gone to Mr. Khattar or to anyone else to make
22 any disclosure about that witness coming forward unless
23 Mr. MacNeil or some officerr of the department was present.
24 It was not my case, and I didn't feel that I should discuss
25 it with Mr. Rosenblum or Mr. Khattar.

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1 Q. Were you concerned enough about it to follow up on your one
2 phone call to Mr. Anderson and find out what in fact was being
3 done to see that justice was done and that this information
4 was passed on to the defence counsel in the appeal?

5 A. Well, I had discussions with Mr. MacNeil, but when Mr. Anderson
6 told me or -- Then again, I don't -- When I was -- When I
7 became aware that Marshall; that is, Inspector Marshall and
8 Sergeant Smith were coming to Sydney, and I was told that they
9 they were coming, and I think it was the following week, I
10 reported that to Mr. MacNeil when he arrived back in Sydney.
11 And from then on it was -- I considered that Mr. MacNeil would
12 handle the matter.

13 Q. But as an officer of the court, and as a Crown counsel, don't
14 you equally have a responsibility to see that the information
15 gets passed on?

16 A. I suppose I did, but again, I never said to Mr. MacNeil or
17 anybody, " I think we should have a talk to Mr. Khattar." The
18 report, sir -- The final report was made in Halifax and --

19 Q. But --

20 A. Yeh. I would've done a lot of things differently than I did.
21 All I can tell you is why I did, what I did, and I presumed
22 that the final report was in Halifax, and it would be communi-
23 cated to the defence at that time, and it was not my place,
24 notwithstanding my knowledge, to make the disclosure.

25 Q. Will you agree with me that whether the report concluded that

1 MacNeil's story was true or whether it concluded that his story
2 was false, the information in fairness still had to be communi-
3 cated by somebody to the defence?

4 A. I would've expected it to be done.

5 Q. All right. And not to do so is unfair. Correct? Wrong and
6 unfair.

7 A. Well, sir, I didn't do it. I had the knowledge. I'm telling
8 you why I didn't do it, and I would've in other circumstances --
9 in -- had I known the actual circumstances. I'm telling you
10 I didn't, and that's why I didn't, and it's for somebody else
11 to answer why they did or didn't.

12 Q. After the appeal is heard you're still seeing Mr. Khattar and
13 Mr. Rosenblum on a regular basis. They're colleagues.

14 A. Yes, sir.

15 Q. Why didn't you say to them some time in the intervening years,
16 "Hey, why didn't you guys ever raise that fresh evidence from
17 MacNeil on appeal? What's the matter with you?"?

18 A. The -- I remember when the -- The only I can tell you about
19 that at all is when the decision of the Court of Appeal was
20 handed down, decisions of the Court of Appeal are circulated
21 to the prosecutors as a matter of course, and in going through
22 the decisions, I came across a report of the Marshall appeal.
23 I read it, and I was surprised that the Appeal Court hadn't
24 dealt with the fact that MacNeil had come forward. That
25 evening, I was in conference with Mr. MacNeil, and I said to

1 Mr. MacNeil, "Did you read the Marshall appeal?" He indicated
2 that he had, and I said, "Isn't it remarkable that the Appeal
3 Court didn't deal with this?" and he said, "Perhaps they didn't
4 think it was significant enough," and I said, "I can't imagine
5 that they wouldn't," and he then said, "Perhaps the Crown
6 and the defence didn't consider it -- were satisfied enough
7 with the thing that they didn't put it before the Appeal Court."
8 It never occurred to me, you know, and it never occurred to
9 Mr. MacNeil that Halifax -- that the defence didn't know the
10 results of the investigation.

11 Q. Did you ever call anyone in Halifax to find out why it was that
12 the defence didn't raise the issue?

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

14 Q. And I guess you have no answer as to the question of why you
15 never asked Mr. Khattar or Mr. Rosenblum why they made that
16 decision and hadn't raised it?

17 A. No, sir, I -- It wasn't a conscious effort to avoid it. It
18 never came up by chance, and it's a matter of fate so far as
19 I know.

20 Q. Thank you. At some point following the conviction, you met
21 with Mrs. Marshall. Do you remember that?

22 A. Mrs. Marshall?

23 Q. Right. Mrs. Marshall. Mrs. Marshall, she came to your office
24 concerned about the conviction of her son. Do you remember
25 this at all?

D. LEWIS MATHESON, by Mr. Ruby

1 A. No, I'm not saying it didn't happen, but I don't remember, sir.

2 Q. It's a long time. You mentioned in your evidence yesterday
3 that Mr. MacNeil wanted to win. Can you tell me some more
4 about this. I don't know Mr. MacNeil, and I want to know in
5 what way he wanted to win. How much did he want to win? What
6 do you mean by that?

7 A. Well, I always wanted to have a successful result in cases that
8 I participated in, and I'm sure you do too, Mr. Ruby. In the
9 sense that you and I both want to have successful conclusions
10 to our cases, yes, Donald MacNeil wanted to win.

11 Q. Do you mean it in the sense in which you're saying of yourself,
12 "I too wanted to win these cases -- win cases I was prosecuting,"
13 or did he want to win more than you?

14 A. No, I don't think he wanted to win more than I did. No, I --

15 Q. During the trial, Mr. Oscar Seale was called as a witness. Do
16 you know why that was done?

17 A. Well, I -- If you had asked me before I read the transcript, I
18 wouldn't have recalled that he was -- gave evidence at all.
19 From the transcript, it appears that he was called to prove
20 the linkage -- What's the word that we use?

21 COMMISSIONER EVANS:

22 Continuity?

23 BY THE WITNESS:

24 A. Continuity, yeh. To prove the continuity of the exhibits.
25 Beyond that, sir, I know no other reason why he was called.

1 Q. You didn't really have to prove the continuity of those exhibits,
2 did you?

3 A. It turned out that way. It turned out in the end that Seale
4 could've been left off; that is, Oscar Seale, and I believe
5 his wife was called too because they both handled the exhibits,
6 but at that point of -- It became apparent to the Crown that
7 the officer, who we believed had the continuity link up to that
8 time, had in fact received them from the Seales, and I think
9 Mr. MacNeil indicated to the court that he was calling Oscar
10 and Mrs. Seale for the purpose of proving continuity, which
11 turned out to be not necessary, but it's -- I don't know what
12 more to say about that.

13 Q. Would you agree with my --

14 A. Mr. Seale and Mrs. Seale -- I've read the transcript. They
15 were not asked anything that did not relate directly to con-
16 tinuity that I recall.

17 Q. Would you agree with my suggestion that one of the purposes in
18 your mind and Mr. MacNeil's mind was that it would be nice to
19 have the parents of the poor dead boy there in front of the
20 jury to elicit sympathy for the prosecution?

21 A. No, sir, we -- You suggest that. I don't believe that's why
22 it was done. I believe the record shows why it was done. The
23 community -- Oscar Seale is a man well known in the community,
24 and Mr. Seale was around the court as well I expect I would if
25 the circumstances were reversed. Oscar Seale took an interest

1 in the trial and attended regularly. We wouldn't have had to
2 call him to the stand to draw attention to the fact that he
3 was there.

4 Q. Okay. In that same vein, do you recall Mr. MacNeil calling
5 as a witness, a nurse who was specifically asked what the
6 tattoo was on Donald Marshall and specifically told the jury
7 the tattoo read; "I hate cops."? What was the purpose of
8 calling that evidence?

9 A. I don't recall. I never interviewed that witness before
10 trial. Mr. MacNeil called it, and he came in. I read it.
11 In retrospect, I thought that perhaps that's not even admis-
12 sable. But it was done. I did notice in reading the trans-
13 cript, in the question that was put to Mrs. Davis, that
14 Mr. MacNeil said something about Marshall's arm having been
15 shown to the jury, and it was patently obvious that the jury
16 had seen that for themselves had they observed it.

17 Q. And was the tatto large enough that they'd be able to read it
18 from the jury box?

19 A. I don't recall the tattoo at all, sir. I don't know how big
20 it was or how small.

21 Q. You agree then it's not likely that all the jurors would read
22 that --

23 A. I agree that it's not likely that if I had a tattoo on my arm
24 that twelve people sitting near me could all read it. On the
25 other hand, it is on the record that his arm was shown to the

D. LEWIS MATHESON, by Mr. Ruby

1 jury, and --

2 Q. That's correct.

3 A. -- Mr. Ruby, I don't recall that, but if he walked in front of
4 every juror and showed his arm, and the record, to my knowledge,
5 doesn't indicate it. I don't know.

6 MR. RUBY:

7 I'd indicate to your Lordships that the record, Volume 1, page 134,
8 contains that passage. It's now 12:30, and I'm at a point where
9 I can conveniently break if you wish.

10 MR. CHAIRMAN:

11 All right. Rise until two.

12

13 INQUIRY ADJOURNED: 12:28 p.m.

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D. LEWIS MATHESON, by Mr. Ruby

1 INQUIRY RECONVENED: 2:05 p.m.

2 MR. CHAIRMAN:

3 Mr. Orsborn.

4 MR. ORSBORN:

5 My Lords, just two very brief points before Mr. Ruby continues.
6 Be advised of the witnesses that we anticipate calling on
7 Monday. Number one would be Judge John F. MacDonald assuming
8 that his testimony is not completed today. Mr. Roy Gould will
9 be re-called for the completion of his examination. Mr. David
10 MacNeil and Mr. Douglas Wright. And secondly in order to
11 accomodate travel arrangements, Mr. Ross has asked if he could
12 examine -- cross-examine Judge Matheson following Mr. Ruby and
13 I understand that that has been agreed among all counsel and
14 is acceptable.

15 MR. CHAIRMAN:

16 Fine, thank you. And if we can speak up. We're doing our best
17 to have our voice -- our proceedings heard by those in the back
18 of the hall which we can -- all we can do is try and articulate
19 clearly, loudly and leave the rest in the hands of the electronic
20 fixtures. Mr. Ruby.

21 MR. RUBY:

22 Thank you.

23 BY MR. RUBY:

24 Q. Judge -- Judge Matheson I want to take you mind if you could
25 to the -- the comment that you were questioned about regarding

D. LEWIS MATHESON, by Mr. Ruby

1 | Eskasoni and fencing it in and staying in Eskasoni and not
2 | making difficulties, you've indicated to us that you had
3 | some difficulties with Bernie Francis, is that correct?

4 | A. Yeh, I wouldn't have called them difficulties. I -- I
5 | indicated for the reason why I did not work closely with Mr.
6 | Francis. I didn't consider that a difficulty other than
7 | that I've stated.

8 | Q. There was another Native court worker through those years
9 | 1973, I think, to six, roughly --

10 | A. Yes.

11 | Q. -- name -- Eva Bernard, did you ever work with her?

12 | A. Yes, I -- well, she was an Indian court worker at the court
13 | while I was there, yes.

14 | Q. And did you get along with her in a way that was similar to
15 | or different from that of Mr. -- Mr. Francis?

16 | A. Well, I don't -- I don't recall that -- that I did one way
17 | or the other. I -- I -- as I said before, I found it
18 | awkward to discuss cases and perhaps for them to discuss
19 | cases after they had talked to Indian people about their
20 | case. That would be the individual person, an accused. And
21 | I felt that they didn't understand that perhaps they were
22 | saying somethings to me that I thought they ought not to.
23 | And I tried to make that clear to them by directing them to
24 | defense counsel and that wasn't successful. The result was
25 | that I didn't -- I -- I'll go farther, I went out of my way

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1 to -- not to -- not to have contact with them.

2 Q. Did it occur to you and was it the case that --

3 A. Unless they -- it was appropriate that -- that they would be
4 there.

5 Q. Except for special circumstances?

6 A. Pardon me.

7 Q. Except for special circumstances?

8 A. Yes.

9 Q. Okay. Did it occur to you that the Native people whom they
10 were dealing with would -- would really in large part trust
11 no one but another Native person and if that was --

12 A. Yeh, well, that's fair enough, but I wasn't -- you know, if
13 -- if Mr. Francis or Miss Bernard or anybody was told
14 something by an accused in confidence and I expect it was
15 because they were the court worker, not that I was under
16 -- I knew he was not bound by any confidence but it was
17 dangerous for me to -- to discuss cases with the Indian
18 workers or any other court workers. We had other court
19 workers who attended court who came with ladies who were
20 charged. And I didn't make it -- I made it a practice to
21 avoid those people.

22 Q. All right. I want to put to you a slight variation on what
23 you've already had put to you. Which is whether or not you
24 said in court the language that was put to you. And I don't
25 want to repeat it. Is it possible that and this is the

D. LEWIS MATHESON, by Mr. Ruby

1 | recollection of somebody else who I've talked to?

2 | A. Yes.

3 | Q. That rather than you saying it, it was the Judge saying it and
4 | you agreeing with it. I know that when I'm in court sometimes
5 | judges say stupid things and I wind up agreeing with them for
6 | one reason or another. Is that possible?

7 | A. No, I don't -- I have no recollection of that being said
8 | by anybody in -- anybody in a courtroom.

9 | Q. Okay.

10 | A. And it seems to me if that had been said the press would have
11 | been there and picked it up. I don't remember saying it.

12 | Q. All right.

13 | A. And I don't remember Judge MacDonald saying anything similar.

14 | Q. And you did say that you -- you might have said it
15 | in court in jest. I'm suggesting to you that you might
16 | have said it out of court as well if you were frustrated or
17 | angry or having a bad day as the kind of thing one might say?

18 | A. It might come out, yes. But I don't think -- I don't think
19 | I said in court.

20 | Q. Right, I have that. But if it did come out
21 | frustrated and angry and that circumstance, then it would be
22 | for that moment, at least, your true feelings, correct?

23 | A. Well, what's reported to -- what I'm reported to have said
24 | to build a fence around the Indian Reserve, I have no true
25 | feelings that anybody's going to do the like of that and it

D. LEWIS MATHESON, by Mr. Ruby

1 was a -- I made -- if I made it all and I don't believe I did,
2 then it -- it was a meaningless -- would have been a stupid
3 statement.

4 Q. Because no one is going to do it quite --

5 A. That's right.

6 Q. All right. The next item I want to deal with, if I can, is
7 one of the things you said this morning, I think. You said
8 you understood why there was no cross-examination on previous
9 statements of witnesses because it made sense as a defense
10 tactic, because then the witnesses would be asked by the
11 Crown why they had made those statements and that could
12 rebound against the defense, if I have it correctly? Certainly
13 in the case of Chant, though. There's no risk at all in
14 bringing out the previous inconsistent statement is there?

15 A. In the case of Chant, sir?

16 Q. Chant?

17 A. Well, my view was that -- that if -- if we were -- going to
18 start going behind inconsistent statement of witnesses, once
19 that issue -- that those collateral issues were opened up,
20 that there was potential for the Crown to lead -- for
21 instance, if it was to the effect and it could very well have
22 been and we had reason to believe that Donald Marshall was
23 a party to -- to the threats. Then I think and I may be
24 wrong and if I am, it's on the record and I -- I think if
25 those collateral issues were opened up in as much as Donald

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1 Marshall may have been party to the threats, it would -- it
2 would have been admissible.

3 Q. But there was no evidence that Donald Marshall was a party
4 to any threat, is that not true?

5 A. Not to threats, sir, but according to the evidence of --

6 Q. O'Reilley?

7 A. -- O'Reilley, that he -- he --

8 Q. That he had spoken to her?

9 A. -- he was interferring with witnesses.

10 Q. But not a threat, correct?

11 A. No, sir, but I don't know whether a court once having embarked
12 on that road, would draw the line that you're drawing now.

13 Q. Okay, do you agree with me that if Chant is asked "Why did
14 you give a previous inconsistent statement that exculpated
15 Mr. Marshall?", he can't rely upon his explanation --

16 A. I'm sorry, sir --

17 Q. If Chant is asked under oath, "Why did you give a previous
18 inconsistent statement that exculpated Mr. Marshall?",

19 A. That exculpated --

20 Q. Exculpated Mr. Marshall?

21 A. Yes.

22 Q. He cannot rely as part of his answer on what happened to
23 somebody else unbeknownst to him can he? He couldn't give
24 that as part of his answer?

25 A. No.

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1 Q. So on Chant, at least, there's no tactical advantage at all
2 in not raising it, correct?

3 A. Well, sir, I've -- I've done some reading relative to what
4 some people thought about the trial and you're probably
5 correct. I've already stated what --

6 MR. CHAIRMAN:

7 Is that -- were talking about defense tactics?

8 MR. RUBY:

9 That's right. His suggestion was that this morning that --

10 MR. CHAIRMAN:

11 A hypothetical question was put to -- to him.

12 MR. RUBY:

13 This morning he said that he thought he understand why that the
14 previous statements weren't put by the defense and that was because
15 of the defense tactics.

16 MR. CHAIRMAN:

17 Right.

18 MR. RUBY:

19 To avoid having come out the explanations as to why these are
20 your statements and in a way which would be harmful to the defense.

21 MR. CHAIRMAN:

22 Yes.

23 BY MR. RUBY:

24 Q. And I'm simply taking the point and I think that you agree with
25 me, that in regards to Chant, at least, there wasn't such

D. LEWIS MATHESON, by Mr. Ruby

1 explanation forth-coming from him?

2 A. Except to say as I've already said that -- that if -- if it
3 became an issue whether Donald Marshall, the accused, had
4 been party to threats or the influencing of witnesses, I
5 believe then that it could have come up.

6 Q. Why did you never decide -- decide not to call the attempt-
7 to-influence witnesses, like Miss Harriss through O'Reilleys' state-
8 ment and Roy's evidence? It seems like cogent evidence. It's
9 in your file. Why didn't you call it?

10 A. Yes, I don't know why we didn't, sir. The presumption or
11 the suggestion is that we were grossly unfair that we didn't.
12 I suggest to you if -- if I came to the -- to the Judge with
13 that kind of -- he probably would have admitted it but with
14 great reluctance. It didn't -- didn't bear directly on the
15 event itself. It was what Marshall may have done to the
16 witness.

17 Q. Consciousness-of-guilt evidence?

18 A. And it's difficult, sir, to -- to answer questions in the time
19 frame and with the knowledge we had then. And you've got to
20 understand my answer in terms of what we understood at the
21 time and furthermore, notwithstanding Mr. Khattar's evidence,
22 and I'm not disputing it. Mr. Khattar says he didn't know.
23 Sitting across from him, I presumed he did.

24 Q. I've got it. At the time you didn't know what we've been
25 told, which was that according to Miss O'Reilley that

D. LEWIS MATHESON, by Mr. Ruby

1 statement -- that part of her statement is an utter
2 fabrication?

3 A. I'm sorry, sir.

4 Q. You didn't know then what we've been told now, I take it,
5 namely, that according Miss O'Reilley that part of her
6 statement, we're talking about Donald Marshall telling her
7 to tell things, is an utter fabrication?

8 A. Yes, I understand --

9 Q. And Miss Harriss also says that just never happened, it's
10 fabrication?

11 A. I understand that. I understand that they now say what they
12 told John MacIntyre at the time and what was taken down in
13 writing and I don't know whether it was signed or not; but
14 they're now saying that they never told that to John MacIntyre
15 at all.

16 Q. And Miss Harriss --

17 A. If you'll -- if you'll let me go further and permit an
18 opinion to my -- to this day --

19 Q. Sure.

20 A. -- I'm satisfied that the statement John MacIntyre gave was
21 one that he received from those people.

22 Q. Of course, you say that, but what do you base that on?

23 A. On -- on the -- on my dealings with John MacIntyre at the
24 time and throughout his entire career, sir. In as much
25 as I was aware. I've known him since 1957 to today.

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1 Q. And it is indeed unfortunate then that a number of different
2 people are now saying that Sergeant MacIntyre inserted these
3 bits of evidence into their statement?

4 A. Yes, it's -- from my association with the man, it's -- it's
5 unthinkable.

6 Q. Miss O'Reilley, for example, testified under oath that that
7 information could come from no one other than Sergeant
8 MacIntyre. That's what she said.

9 MR. PUGSLEY:

10 I think that what my friend suggests is true, my Lord, and I
11 think trying to quote from what Miss O'Reilley says, perhaps gets
12 us into dangerous waters.

13 MR. RUBY:

14 I'm not sure why. And my friend does it all the time. But I
15 thought he should at least know if he -- the present stay of
16 knowledge is and it was in response to questions by my colleague
17 in cross-examination.

18 BY MR. RUBY:

19 Q. That would -- in any event, you have no -- you didn't know
20 that at the time?

21 A. What I knew at the time was that there existed a statement
22 which -- which -- my recollection of, I gave earlier today.

23 Q. All right.

24 A. And I had confidence in it and in the officer that took it.

25 Q. But no one talked to Miss O'Reilley, for example, and was

D. LEWIS MATHESON, by Mr. Ruby

- 1 told by her then, "Look this isn't true and that's why you
2 can't call me as a witness. I'm not going to say it"?
- 3 A. Pardon.
- 4 Q. No one spoke to Miss O'Reilley then and said -- found out from
5 her?
- 6 A. I didn't.
- 7 Q. That this wasn't true and therefore that's why she couldn't
8 be called as a witness?
- 9 A. I didn't and I don't know and I'm sure Mr. MacNeil wouldn't.
10 If Mr. MacNeil had reason to think that police officers were
11 giving him statements that weren't true, I don't know what
12 he would have done. I can anticipate there would have been
13 an awful furor about it.
- 14 Q. You do agree that consciousness-of-guilt evidence is
15 admitted as a matter of routine?
- 16 A. I'm sorry.
- 17 Q. You do agree -- you do admit, I take it, that consciousness-
18 of-guilt evidence such as this, --
- 19 A. Oh, yes.
- 20 Q. -- is routinely admitted in our courts?
- 21 A. Yes, I'm not saying that it was not admissible. It -- the
22 evidence that we had was what we put forward. I don't know
23 why we didn't use the O'Reilley statement to be honest.
- 24 Q. It's hard to understand isn't it?
- 25 A. Yes, I have to say that -- I think the Judge in giving his

D. LEWIS MATHESON, by Mr. Ruby

1 | rulings -- I haven't read the full transcript, but the
2 | Judge certainly which -- and the Judge's rulings had nothing
3 | to do at least -- O'Reilley wasn't on the indictment, so we
4 | didn't intend to call her. But I don't think -- I don't
5 | think she was. But the Judge was concerned about getting
6 | into collateral issues and in my view, presuming that the
7 | defense knew what I knew, I thought that they were not
8 | pushing harder to get it in because of the consequences it
9 | would have for their client.

10 | Q. Okay. The next item I want to ask you about is this, you've
11 | indicated that you knew that Pratico had suffered from a
12 | mental illness?

13 | A. I knew that he was treated at the Nova Scotia Hospital. I
14 | didn't know the nature of the illness. I -- I presumed that
15 | -- that he was suffering anxiety because of his apprehension
16 | about giving testimony and -- and the fear that -- that some
17 | harm to him might come because he was going to say what he
18 | was going to say.

19 | Q. You knew he had a history of mental problems?

20 | A. No, I didn't know that.

21 | Q. You knew the Nova Scotia Hospital deals with psychiatric
22 | problems?

23 | A. Yes, sir.

24 | Q. That was known to you?

25 | A. Oh, yes. Don't -- when I said the Nova Scotia Hospital,

D. LEWIS MATHESON, by Mr. Ruby

1 implied in that, yes, I know it's a mental institution and
2 I presumed everybody in the room did.

3 Q. And as I understand it then, neither you or Mr. MacNeil made
4 any inquiries as to what nature of mental illness he was
5 suffering from?

6 A. I didn't. I don't know whether Mr. MacNeil did or not.

7 Q. You had then no training in psychiatry yourself?

8 A. No, sir.

9 Q. So you had no way of evaluating what affect whatever mental
10 disability he might be suffering from around the time of
11 the trial, might have on his evidence?

12 A. No, sir.

13 Q. Correct?

14 A. No. I might add also, I can speculate about that, I didn't
15 know the nature of -- of the witness's difficulties. The fact
16 that the witness was being treated in the Nova Scotia Hospital
17 was, I'm sure, well, I shouldn't say I'm sure, I thought that
18 the defense would be aware of that also. And if -- if it was
19 a problem that they would inquire into it.

20 Q. How would the defense know this? How's it to come to them
21 if you don't tell them?

22 A. Well, they -- they knew that -- they knew that Pratico was
23 -- Pratico was a witness and I thought -- I presumed they'd
24 be interested in -- in -- in him and I -- I again, I -- I
25 thought they'd know that.

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- 1 Q. My question again is, how were they to know it if you didn't
2 tell them?
- 3 A. Sir, you're question implies that -- that -- that the Crown
4 are expected to -- to examine everything in a detailed way
5 that I frankly say it was not done. And I suggest it is not
6 done. I'm not saying that maybe -- maybe we should have.
7 Maybe Mr. MacNeil did. I don't know. I didn't. Right or
8 wrong, I didn't.
- 9 Q. All right. The nature of the mental illness or mental
10 disability might well have been something that would tend
11 to totally discredit his evidence in the eyes of the jury if
12 the jury knew about it, do you agree with that?
- 13 A. I suppose there are mental illnesses that would have affect
14 one's credibility that -- yes.
- 15 Q. And from what you've heard since, I take it you agree that
16 Pratico's evidence -- Pratico's disability was of that type?
17 Schizophrenic? Unable to cope with certain reality much of
18 the time, correct?
- 19 A. I haven't read the -- I didn't read his psychiatric report
20 on him then, I haven't since, sir. You've heard the evidence
21 that the doctor --
- 22 Q. I'm roughly describing it but only roughly. But in any event,
23 it is serious enough that in much of the time he was not in
24 contact with reality in the view of the doctors?
- 25 A. Again, sir, not to throw responsibility or blame anywhere

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1 else but, and I realize that confidentiality is important with
2 doctors as it is with lawyers. But if a doctor knowing a
3 fellow was going to be a witness in a murder trial, interviewed
4 him and found out that he was totally unreliable, then --
5 then maybe somebody should have known about it in some way.
6 I don't know how it would work.

7 Q. Do you agree that mental disability was a matter that tended
8 towards innocence?

9 A. I'm sorry.

10 Q. Mental disability was a matter that tended towards innocence
11 regarding Donald Marshall, correct?

12 MR. PUGSLEY:

13 I don't understand the question.

14 MR. RUBY:

15 Sorry.

16 BY MR. RUBY:

17 Q. The mental dis -- the fact that a mental disability that
18 Pratico -- on Pratico's part --

19 A. Yes.

20 Q. -- was a matter that tended towards innocence on the part
21 of Marshall wasn't brought out, correct?

22 A. I -- you read the report, I didn't. I don't know what the
23 report said about Pratico's abilities. If the report said
24 that he -- that he was totally unreliable and -- and we knew
25 that or the defense knew that, yes, it would completely remove

D. LEWIS MATHESON, by Mr. Ruby

1 Pratico as a witness anyway reliable to prove the guilt of
2 Donald Marshall.

3 Q. Okay, and therefore, we are now attending towards innocence,
4 correct?

5 A. Yes, sir.

6 Q. And it wouldn't have to completely knock him out. If it was
7 a substantial disability, you'd want the jury to know that,
8 would you not?

9 A. Yeh, oh, yes, sir.

10 Q. If you were a judge, you'd expect the parties --

11 A. Yes.

12 Q. -- to bring that out?

13 A. Yes, sir. Yes, sir.

14 Q. And the alcohol, you knew that he was drinking at the time?

15 A. Yes, sir.

16 Q. But it didn't come out in chief. It only came out in
17 cross-examination. Why didn't you take care to see that it
18 was brought out in chief so that the judge and the jury
19 knew the disabilities he was under from a testimonial point of view?

20 A. Well, if it wasn't brought out in chief. I was there. I
21 should have --

22 MR. SAUNDERS:

23 I'm not sure my friend is right in that, my Lords. I think the
24 evidence of Pratico on direct was that he had been doing some
25 drinking behind a tree or a bush. It may have been expanded upon on

D. LEWIS MATHESON, by Mr. Ruby

1 cross, in any event, I'm sure it's in the record.

2 BY THE WITNESS:

3 A. Let me say this, Mr. --

4 MR. RUBY:

5 My friends, correct. Thank you very much.

6 BY THE WITNESS:

7 A. And I want to say this also. I don't -- I read the -- I read
8 the transcript. I never realized until Pratico gave the
9 evidence at the trial that he did in cross-examination, that
10 his degree of impairment was anywhere near -- that he was
11 drinking, I knew. The quantity of liquor, I didn't know.

12 BY MR. RUBY:

13 Q. Why did the Crown in chief not bring out the quantity?
14 Wouldn't that have been a factor that should warrant the
15 jury in all fairness to know about so that they could evaluate
16 whether or not they should believe Pratico?

17 A. I don't think we knew.

18 Q. Why didn't you ask?

19 A. Sir, in the case of John Pratico, we may have asked and got
20 an answer that -- that was far different from what he
21 testified to at the trial or even here in this inquiry.

22 MR. CHAIRMAN:

23 So we don't lose sight of what this line of questioning is all
24 about. Would someone -- Mr. Saunders you indicated this page
25 where the --

D. LEWIS MATHESON, by Mr. Ruby

1 | MR. RUBY:

2 | Page 158, line 22, it came out:

3 | What were you doing behind the
4 | bush?

5 | Drinking.

6 | And then he goes on to other subject matter.

7 | MR. CHAIRMAN:

8 | Volume?

9 | MR. RUBY:

10 | One.

11 | MR. CHAIRMAN:

12 | We're in 1 on page?

13 | MR. RUBY:

14 | One five eight, line 27.

15 | MR. SAUNDERS:

16 | And that wasn't the only reference I was thinking about, My Lords.

17 | I'm sure that at the Preliminary Inquiry, it's by recollection; but

18 | I believe, Mr. Pratico said on direct examination that he "was

19 | squatting down behind a bush having a beer".

20 | MR. PINK:

21 | Page 44.

22 | MR. SAUNDERS:

23 | Page 44, my friend says. Bottom of the page, line 25, My Lords:

24 | ...and I walked up the railway
25 | tracks, I went down and went
 into the bush and started to
 drink a pint of beer.

D. LEWIS MATHESON, by Mr. Ruby

1 That's at the Preliminary Hearing.

2 MR. CHAIRMAN:

3 All right.

4 MR. SAUNDERS:

5 It's on -- it's on -- under direct examination. Direct by Crown
6 Prosecutor MacNeil begins at the foot of page 42.

7 BY THE WITNESS:

8 A. And you're putting these questions to me, Mr. Ruby, I'm sure
9 you'll appreciate that my responses are not from memory. It's
10 a long time ago, sir.

11 BY MR. RUBY:

12 Q. Was there any discussion between yourself and Mr. MacNeil
13 about getting a report from the Nova Scotia Hospital?
14 Making inquiries to find out what his mental status was?

15 A. No, I didn't discuss that with Mr. MacNeil that I recall.
16 Mr. Pratico went to the Nova Scotia Hospital. I knew
17 that. He came back. I didn't ask to see the report on him.
18 I don't know -- I don't know what was available to the
19 Crown in that regard. I just don't know.

20 Q. And Sergeant --

21 A. No, sir, I didn't ask for a report and didn't receive one in
22 any way directly or indirectly.

23 Q. And Sergeant MacIntrye never indicated to you that Mr.
24 Pratico had a serious history of mental illness?

25 A. No, I don't recall.

D. LEWIS MATHESON, by Mr. Ruby, by Mr. Ross

1 Q. Nothing like that?

2 A. I'm not saying that -- that he didn't. I don't recall.

3 Q. You accept, I take it, that as Crown Counsel you have an
4 obligation to bring out every matter of substance tending
5 towards innocence as well as guilt?

6 A. Yes, sir.

7 Q. And yet at the end of the day, this jury was left without
8 the knowledge -- tell me if I'm correct. First of all, that
9 there had been earlier inconsistent statements? Yes?

10 A. Yes.

11 Q. That those inconsistent statements that were made earlier
12 exculpated Donald Marshall? Yes?

13 A. Yes.

14 Q. That Mr. Pratico suffered from a mental illness?

15 A. Yes.

16 Q. Thank you.

17 MR. CHAIRMAN:

18 Mr. Ross.

19 MR. ROSS:

20 Thank you, My Lord.

21 BY MR. ROSS:

22 Q. My name, Judge Matheson, is Anthony Ross, and there are just
23 one or two questions I would like -- like to ask you. Now
24 is it fair to say that at the completion of the trial in
25 November of 1971, the position of the Crown was that a

D. LEWIS MATHESON, by Mr. Ross

1 satisfactory job had been done?

2 A. That was my view. I don't know -- I don't know what everybody
3 else's view was. I was satisfied that the case had been
4 handled as well as we could do it.

5 Q. Sure, and I guess that would have -- that position would have
6 been maintained up until Jim MacNeil coming forward? Am I
7 correct?

8 A. Yes.

9 Q. Yes, and Jim MacNeil having come forward, I take it, you just
10 spent that one evening with Jim MacNeil and the police officers?

11 A. Yes, sir.

12 Q. Did you speak to Jim MacNeil subsequent to that evening?

13 A. No, sir, I don't know that I ever saw him since. I saw his
14 picture on television when he testified here. No, I didn't
15 go back to Jim MacNeil and talk with him.

16 Q. Never spoke with him again. What about the police officers
17 who were involved in the interview with Jim MacNeil, did you
18 speak with them?

19 A. Oh, I'm sure, yes.

20 Q. Do you recall specifically having spoken to them or is this just a
21 general recollection?

22 A. No, it's a general recollection.

23 Q. I see.

24 A. The opinion of the police officers expressed to me before I
25 ever saw MacNeil was that they were dubious about what he

D. LEWIS MATHESON, by Mr. Ross

1 was saying. I have told you what I observed. I've told you
2 the conclusions I reached following my interview with him.
3 I've told you what I did about them. I'm sure that I had
4 conversations with the police about the event later but I
5 -- I can't recall them as being significant --

6 Q. But nothing that you can recall?

7 A. -- or inconsistent with what I've told you.

8 Q. That's fine. Then you indicate that you contacted Robert
9 Anderson that very evening?

10 A. Yes, sir.

11 Q. Now you did not indicate whether or not Anderson ever got
12 back to you. Do you recall him ever getting back to you on
13 this matter?

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D. LEWIS MATHESON, by Mr. Ross

1 A. I received a call the following morning from somebody. I
2 don't recall whether it was Mr. Anderson but I do recall
3 being seized of the knowledge the following day that
4 Inspector Marshall and a polygraph operator were going to
5 look in to the matter.

6 Q. Yes, I recall that in your evidence but I want to know
7 about the relationship with you and Robert Anderson.
8 Did you write to him about this matter?

9 A. No, I never followed it with a letter.

10 Q. I see. So it was just this sort of introductory type
11 conversation which you had with him and everything
12 died thereafter.

13 A. No, sir. It didn't die thereafter and I don't consider
14 the conversation I had with Mr. Anderson an introductory
15 one. Mr. Anderson and I spoke for twenty minutes to
16 a half an hour on the telephone. I was satisfied at the
17 end of that time that -- that I had told him all that
18 I knew and as a result of that call, I believe, an R.C.M.P.
19 Inspector and a polygraph appeared and --

20 Q. I -- I appreciate that, Judge, and I'm just trying to narrow
21 down because I propose to ask Judge Anderson some questions
22 about this and I'm just laying some foundation. What I
23 want to find out from you specifically (If the answer is
24 no, it's a short answer.) is after this evening, what was the
25 discussion, what was the relationship between you and Judge

D. LEWIS MATHESON, by Mr. Ross

1 Anderson as a result of your call?

2 A. As a result of my call --

3 Q. Yes.

4 A. -- to Judge Anderson. I don't think that I discussed this.
5 I don't remember having any discussions with Judge Anderson
6 about that telephone call to this day.

7 Q. I see. And I take it that when the re-investigation was
8 started in the late -- in the early 1980's you did not
9 contact Judge Anderson again?

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

11 Q. I see.

12 A. I will say this, that you'll recall I said that Inspector
13 Wheaton -- not -- Sergeant Wheaton had spoken to me in the
14 motel in Port Hawkesbury.

15 Q. Port Hawkesbury, yes.

16 A. And our interview --Sergeant Wheaton perhaps recalls better
17 than I and maybe he has notes. It was a very brief interview.
18 I presumed -- I didn't -- I wasn't particularly forthcoming
19 at that time. The -- I expected that he would ask me what
20 he wanted to know and I presumed that he knew everything
21 that I knew. Now, sir, subsequent to that, one night
22 I received a phone call from the C.B.C. and the caller indicated
23 to me that he was aware that I had interviewed MacNeil after
24 the trial and I saw nothing wrong with that. I said, "Yes
25 I did." And he said, "What did you do?" And, not in the

D. LEWIS MATHESON, by Mr. Ross

1 detail that I've told you, I told him I called Bob Anderson.
2 The next day I was in Halifax and I saw my picture on television
3 saying that 'Matheson Dumps Marshall Affair in Halifax' and
4 immediately I called the Attorney General's Department.
5 I spoke to Mr. Gordon Gale and I said, "Gordon, I'm not
6 trying to dump anything anywhere." "I thought the guy
7 knew and apparantly it was a fresh disclosure to him." And
8 I said, "Gordon, until I'm subpoenaed I'm not going to
9 say anymore to anybody about it."

10 Q. I see.

11 A. Now, because I felt -- I felt abused and I'm sure the Department
12 felt abused that I was "dumping" anything on anybody other than
13 myself.

14 Q. I see, but in spite of all this I take it and that the fact
15 is that after this conversation you had with Judge Anderson
16 you had no further involvement with the Marshall matter
17 and the evidence which was advanced by Jimmy MacNeil?

18 A. No, sir. With Mr. Anderson?

19 Q. Yes.

20 A. Absolutely none -- None that I recall.

21 Q. Did you ever have an opportunity to review the report of
22 the R.C.M.P. subsequent to their taking polygraph tests --
23 doing polygraph analysis on MacNeil and Ebsary?

24 A. I never saw a report to this day, sir.

25 Q. To this day you haven't seen it?

D. LEWIS MATHESON, by Mr. Ross, by Mr. Pugsley

1 A. No.

2 Q. I see. Thank you very much.

3 MR. ROSS:

4 Those are my questions.

5 BY MR. PUGSLEY:

6 Q. Judge Matheson, I want to get an understanding of how
7 crown counsel would have prepared a case for trial in 1971,
8 a case of this magnitude. Prior to the time the preliminary
9 was held in June, Mr. MacNeil would have been given copies
10 of all of the statements taken by the Detective Division
11 headed by John MacIntyre?

12 A. I would expect so, yes.

13 Q. Would it have been customary at that time to have interviewed
14 those people who had given statements who Mr. MacNeil planned
15 to call at the preliminary?

16 A. He wouldn't necessarily have personally interviewed every
17 one of them but, yes, I expect that he would have interviewed
18 them.

19 Q. Would that be true particularly with respect to those witnesses
20 who had given conflicting statements such as Chant, Harriss
21 and Pratico?

22 A. Yes.

23 Q. They were key witnesses --

24 A. Yes.

25 Q. -- and they had given conflicting statements? . .

D. LEWIS MATHESON, by Mr. Pugsley

1 A. Yes.

2 Q. And I would have thought, and I submit to you, that a
3 careful counsel which I assume Mr. MacNeil was would have
4 likely interviewed those witnesses prior to the time they
5 were called at the preliminary?

6 A. Yes, sir.

7 Q. And after the preliminary was held, would it be customary for
8 the crown prosecutor's office to get a transcript of the
9 evidence?

10 A. Yes, sir.

11 Q. And you'd have that before the trial and you would review
12 that, I take it? You reviewed it?

13 A. Yes.

14 Q. Yes.

15 A. It was in front of me in the courtroom during the trial.
16 And it wasn't the first time I had looked at it either.

17 Q. Of course. And, in fact, you had sat in for part of the
18 preliminary yourself?

19 A. I may have been there the whole time, sir. I don't recall.

20 Q. Although it's my recollection that you did not examine any
21 or -- examine or cross-examine any witnesses at the preliminary
22 or at trial?

23 A. I did not examine any witnesses at any time, no.

24 Q. Mr. MacNeil did all the examination?

25 A. Yes, he did.

D. LEWIS MATHESON, by Mr. Pugsley

1 Q. And all the cross-examination? And would it have been
2 customary for Mr. MacNeil between the preliminary and the
3 time of trial to have interviewed those witnesses or at
4 least the key witnesses that he was proposing to call at
5 trial?

6 A. Yes.

7 Q. And would it have been customary for him to have had a copy
8 of the transcript of evidence given at the preliminary to
9 go over the evidence of the key witnesses with each of them
10 individually prior to the time they gave evidence at trial?

11 A. Yes, sir.

12 Q. And my recollection of your evidence yesterday after reading
13 it, because I wasn't here, my recollection is that you did
14 not -- you were not present at any of those interviews.
15 You just happened to come at the end of one of them?

16 A. That's correct, yes.

17 Q. Now, would it have been customary practise for defense
18 counsel, after the preliminary, to get a copy of the
19 transcript of the preliminary?

20 A. Yes, sir. It would be essential for them to have it, I would
21 think.

22 Q. Yes, to be properly prepared --

23 A. Yes.

24 Q. -- for the evidence to be given by those witnesses at trial
25 that were called again.

D. LEWIS MATHESON, by Mr. Pugsley

1 A. Yes.

2 Q. And, indeed, if they had not made adequate notes, to ensure
3 that they would have the names of the individuals who
4 were called at the preliminary --

5 A. Yes, sir.

6 Q. -- so that they could be interviewed if they so desired --

7 A. Yes.

8 Q. -- before trial?

9 A. Yes, sir.

10 Q. And in addition to having that assistance as to who the
11 Crown was going to call to give evidence at trial, defense
12 counsel would also have access to the statement of facts
13 that was on file at the Prothonotary's office that would
14 give the list of witnesses the Crown proposed to call at
15 trial?

16 A. Yes, sir. It was a public record. We didn't mail it to them
17 but I expect they would be interested in it and knew where it
18 was.

19 Q. It would be -- It would a reasonable and proper practice for
20 counsel who wish to be prepared who were conducting a defense
21 to get that document and read it.

22 A. Yes, sir.

23 Q. Because that would give you not only the names of the witnesses,
24 it would give you an insight into the Crown's strategy?

25 A. Yes, sir, yes.

D. LEWIS MATHESON, by Mr. Pugsley

1 Q. And in addition to that practising on the civil side, I know
2 that in a civil case one always examines the Prothonotary's
3 file to determine who the other side has subpoenaed so that
4 you can be prepared for their presence at trial. And are
5 subpoena's available as well for a defense to examine in the
6 Prothonotary's file in a criminal proceeding as well?

7 A. I believe so.

8 Q. You were satisfied on those occasions that you worked
9 with John MacIntyre, that full disclosure of all materials
10 taken by him was given to the Crown during the course
11 of his investigation?

12 A. Yes, sir, yes.

13 Q. Would your -- When would your association with John MacIntyre
14 have begun in the professional sense? In --

15 A. Well, I came to Sydney as an article clerk in 1957, in the
16 summer of 1957. Mr. MacNeil -- I was article to Mr. MacNeil.
17 We had a -- He had an active criminal practise and in the
18 course of pursuing that I met and became acquainted with
19 John MacIntyre.

20 Q. And would you have -- Would that acquaintance have continued
21 throughout those years up until 1971, both from the point
22 of view of your acting as an assistant crown prosecutor and
23 as a defense counsel?

24 A. Yes, sir.

25 Q. So you'd have an opportunity of seeing John MacIntyre from

D. LEWIS MATHESON, by Mr. Pugsley

1 two sides of the coin, the defense side --

2 A. That's correct.

3 Q. -- and the prosecution side. And as far as being honorable
4 in the conduct of an investigation, can you give any
5 assistance to the Commission as to any opinion you've
6 formed that regard of his character?

7 A. I considered John MacIntyre to be honorable in every way.
8 I considered him a formidable officer to cross-examine, not
9 in the sense that he wouldn't disclose but in the sense
10 that John MacIntyre -- Cross-examination usually disclosed
11 that John MacIntyre had done his homework and my experience
12 as a defense was that you got yourself into trouble when
13 you looked -- looked behind it. I considered at all times
14 that John MacIntyre was an honorable police officer and
15 I say so today.

16 Q. I read your evidence yesterday with respect to the practise
17 of crown counsel revealing statements to defense counsel and
18 it's only because I wasn't quite sure of what the final
19 result of it was but I take it that if asked --

20 A. I'm sorry, Mr. Pugsley. There was -- A car passed or something.
21 I missed that.

22 Q. Certainly. I read your evidence yesterday with respect to the
23 disclosure by the Crown to defense lawyers of these -- of the
24 statements that the Crown had and I just want to make sure
25 I understand it properly. If the defense counsel did not

D. LEWIS MATHESON, by Mr. Pugsley

1 request copies of statements taken by the investigating officers,
2 would the Crown take the initiative and give the statements
3 to them?

4 A. No. I'm glad you asked that question. If that impression --
5 If anybody expected that or -- I don't think it would be
6 proper. If they wanted to know what we had, and most
7 times they were, they would ask us. Sometimes the exchange
8 of information would involve an oral recitation of what
9 we expected our witnesses to say. Sometimes they would be
10 more interested and want to look at the statements itself
11 and if they were really interested in it and wanted to
12 work on it further a copy could be obtained for them and
13 was as long as it was in the perimeter that I indicated
14 yesterday, that it wasn't going to put a crown witness
15 in jeopardy or it wasn't going to disclose something that
16 was totally against the public interest.

17 Q. Did you consider that any of the statements that you had
18 in the Marshall case fell in to those later two categories
19 and should not have been revealed to Mr. Rosenblum and
20 Mr. Khattar if they had asked for them?

21 A. Well, certainly in the case of Pratico. There was the
22 knowledge that we had at that time that he was being harrassed.
23 And I don't specifically recall but I think that we considered
24 that we had been put on the alert that -- from what Pratico
25 told us. From the statement of Miss. O'Reilley, we believed

D. LEWIS MATHESON, by Mr. Pugsley

1 that somebody was trying to get to the Crown witnesses or --
2 They weren't even crown witnesses at that time. People that
3 might be investigated. And that may have been the reason
4 for a reluctance on our part to disclose if we had been
5 asked.

6 Q. Can you assist us as to whether or not you were asked here?

7 A. Mr. Khattar says, "No." I don't recall -- Nobody asked me.
8 If they were going to make a request at all they would have
9 made the request of Mr. MacNeil who was in charge of the
10 file.

11 Q. Yes. And Mr. Khattar has testified, as I understand it
12 because I was not here, that he did not make that request.

13 A. Yes, I was here and heard him say that.

14 Q. Yes. Was it unusual for defense counsel not to make that
15 request?

16 A. Oh, --

17 Q. In a case of this kind?

18 A. In a case of this kind. Yes, I'm surprised that Mr. Khattar
19 didn't inquire, if he didn't.

20 Q. And with respect to the appeal, do you recall how quickly
21 the Notice of Appeal was filed after the decision of the
22 jury?

23 A. The Notice of Appeal?

24 Q. Yes.

25 A. No. It wouldn't -- I'd only be guessing.

D. LEWIS MATHESON, by Mr. Pugsley

1 Q. What is the time limit that the accused must file? I don't
2 know.

3 A. Is it 30 days?

4 Q. 30 days?

5 A. I think so.

6 Q. All right. So one can presume that it would have been
7 filed within 30 days then of November the 8th or when the
8 decision of the jury was rendered.

9 A. Yes.

10 Q. Was it clear to you and clear to Mr. MacNeil that you --
11 neither one of you would be acting on the appeal if, in fact,
12 an appeal were filed?

13 A. Yes, sir.

14 Q. Because the practise always was for the A.G.'s office
15 in Halifax to handle those appeals?

16 A. Yes.

17 Q. Was it customary for the lawyer acting on the appeal for
18 the Crown to get in touch with the lawyer conducting the
19 case for the Crown at trial to discuss the points that
20 were going to be raised by the accused on the appeal just
21 to get a handle from the trial -- the trial lawyers point of
22 view?

23 A. I wouldn't say it was the custom. I -- There were cases
24 that I handled that went on appeal and were decided wherein
25 I had no contact with Halifax. On the other hand there were

D. LEWIS MATHESON, by Mr. Pugsley

1 times when the lawyer handling the appeal would have a
2 question of me and he would do it by of letter or by phone.

3 Q. I see. I would have thought, without knowing, that it would
4 -- Normally it would be sensible and prudent for the
5 lawyer conducting the appeal to get in touch with the
6 lawyer who was at the trial to discuss matters generally
7 with him particularly the points that were going to be
8 raised before the Appeal Division.

9 A. Well, I won't say that they didn't but it wasn't the general--
10 there were all kinds -- As I said, more often than not, I
11 think I was not consulted other than -- Let me finish this
12 now. If it was a case that I had dealt with, when the
13 matter went on appeal, that it would be a request from
14 Halifax for all information relating to the file. If it was
15 my case I would be responsible to assemble that information
16 and I would enclose it with a cover letter. If I had
17 something that I felt was pertinent to the appeal or had
18 an opinion, I would put that in a letter to the person who
19 requested the file, and usually that would be from the
20 Director, I think. I don't recall that I actually dealt
21 with -- but we'd send -- If we had any suggestions we'd put
22 it in the letter that was a cover letter. Now, if -- After
23 that was done, if the lawyer on appeal wanted to check some
24 matter with us, I think usually it was done by phone and
25 I was on occasion called but I wouldn't say it was the general rule

D. LEWIS MATHESON, by Mr. Pugsley

1 Q. Can we assume reasonably safely here that Mr. MacNeil would
2 have forwarded his file material on to Mr. Venoit or to
3 Mr. Anderson in Halifax in connection with the Marshall trial?

4 A. Yes, he'd have forwarded it on to Halifax.

5 Q. Is it a safe assumption that Mr. MacNeil, in addition to
6 forwarding his file material, would have forwarded a copy
7 of the statement taken from James MacNeil? And, indeed, do --

8 A. If it hadn't been already sent, I don't know. Yes, it would
9 be a fair assumption, Mr. Pugsley, that he would.

10 MR. PUGSLEY:

11 I don't -- I ask a question from Commission Counsel. Is there
12 any -- are there any communications in writing from Mr. MacNeil's
13 office to Halifax to the Attorney General's Department with --
14 forwarding material?

15 MR. ORSBORN:

16 Not to our knowledge.

17 MR. PUGSLEY:

18 No. I see.

19 BY MR. PUGSLEY:

20 Q. Just so that I understand your answer correctly, sir, --

21 A. I just wonder if all communication during our time are on record
22 in Halifax. I don't know. I just make that observation.

23 Q. But do you say that it is a safe assumption that Mr. MacNeil
24 would have forwarded to Halifax --

25 A. Yes, sir.

D. LEWIS MATHESON, by Mr. Pugsley

1 Q. -- a copy of the statement taken from James MacNeil on
2 November 15th, 1971?

3 A. Yes, and when you put that question to me originally -- If
4 the file had not already been sent on and then I would have
5 assumed that a report coming from Halifax resulting in the
6 investigation, if they didn't have that -- MacNeil's statement
7 that there would have been a query from Halifax about it.
8 I don't -- I'm -- We never got one to my knowledge.

9 Q. The --

10 MR. ORSBORN:

11 Just to point out, in fairness, in response to Mr. Pugsley's
12 question of us that -- I did not mean to imply that such communication
13 never existed or never took place. Our investigation has
14 revealed that the file -- whatever file was in fact maintained
15 by the Department of Attorney General was destroyed in normal
16 course of events in Halifax. I can't quote the actual date but
17 we have seen the minute indicating destruction of that file.

18 MR. PUGSLEY:

19 Thank you very much, Mr. Orsborn. That's helpful.

20 BY MR. PUGSLEY:

21 Q. The notice of appeal is dated the 16th day of November, 1971.
22 That's found at page 115 in volume two. And the statement,
23 as I recall it, of James MacNeil and the Ebsarys were taken
24 on November the 15th -- on the evening of November 15th, '71.

25 A. Yes, I would expect that that file then -- that there had been --

D. LEWIS MATHESON, by Mr. Pugsley

1 I would expect that -- that we had not received any request
2 from Halifax at that point to forward the material on.

3 Q. Because the Notice of Appeal hadn't been filed.

4 A. Because the Notice of Appeal hadn't been filed.

5 And I'm also sure that we had a subsequent request and

6 I would have expected that all statements would have gone
7 to Halifax including those of James MacNeil.

8 BY MR. CHAIRMAN:

9 Q. When Inspector Marshall appeared on the scene was he given
10 a copy of James MacNeil's statement?

11 A. I never had any discussion with Inspector Marshall up until
12 the one I related this morning, sir. I presume that's what
13 he came down for.

14 Q. One would think, yes.

15 A. He would have had it. Yes, sir.

16 Q. And presumably when he submitted his report to the Attorney
17 General's Department in Halifax --

18 A. Yes.

19 Q. -- one would expect that the original statement would form
20 part of that report?

21 A. I would expect that, sir, but as I said earlier this morning
22 or today, I never saw the final written report.

23 MR. CHAIRMAN:

24 Mr. Pugsley.

25

D. LEWIS MATHESON, by Mr. Pugsley

1 BY MR. PUGSLEY:

2 Q. My friend, Mr. Ruby, suggested to you that, Judge, that
3 it might have been appropriate for some other police
4 body to have taken the original statement from James MacNeil
5 on the night of November 15th and from the Ebsary's because
6 of the police involvement with the Marshall trial and inferring
7 I took it from his question, that there might have been
8 a tendency for a coverup on the part of the police to take
9 statements that were consistent with the evidence given
10 at trial and not consistent with Marshall's innocence.

11 I direct your attention to volume 16, page 176 which is
12 the statement taken by John MacIntyre of James MacNeil on
13 -- It's November the 14th. I'm sorry. I thought it was
14 the 15th. On November -- Well, no. It says November 14th
15 on the second page and November 15th on the first page. I
16 think November the 15th is my recollection.

17 A. I'm looking at page 176, sir. On my copy -- It's a typewritten
18 copy of the statement of James MacNeil and it says November
19 15th.

20 Q. Yes. And I guess what confused me. I was looking at the
21 second page and at the end of the statement it says November
22 14th.

23 A. I see.

24 Q. But I believe that November 15th is the day that these statements
25 were taken. I think the other statements --

D. LEWIS MATHESON, by Mr. Pugsley

1 MR. D. PINK:

2 The handwritten.

3 MR. PUGSLEY:

4 The handwritten ones were the 15th? Thank you.

5 BY MR. PUGSLEY:

6 Q. Taking a look at that statement, there is no suggestion --

7 May I suggest to you -- May I submit to you that there

8 is no suggestion of any coverup on the part of John MacIntyre

9 to the effect that anyone other than Roy Ebsary was involved?

10 A. I'm sorry. I don't understand.

11 Q. My friend, Mr. Ruby, was suggesting to you that the MacIntyre

12 and/or the Sydney City Police were not appropriate people

13 to take statements from MacNeil --

14 A. Yes.

15 Q. -- because of their previous involvement?

16 A. Yes.

17 Q. Because there might be a tendency for a coverup and I suggest

18 to you that on a fair reading of that statement of James

19 MacNeil there is no suggestion that one can infer that

20 MacIntyre was trying to do a coverup consistent with Marshall's

21 guilt.

22 A. Well, you've drawn my attention to the statement. I haven't

23 read it. I'll take time to read it if you wish.

24 Q. Yes, if you would. Yes, if you would because I want to ask

25 you some questions about it anyways.

D. LEWIS MATHESON, by Mr. Pugsley

1 A. Yes, sir, I think I'm reasonably --

2 Q. Would you agree that -- Well, let me put it this way. You
3 interviewed James MacNeil after you saw this statement?

4 You personally interviewed James MacNeil?

5 A. That's correct.

6 Q. Yes. And was the statement, the verbal statement that he
7 gave you, consistent with what John MacIntyre wrote down
8 on pages 176 and 177?

9 A. Yes, sir. I had the original of this in my hand as I talked
10 to Mr. MacNeil and as he recounted it to me he faithfully
11 -- Well, it was pretty close to letter-perfect.

12 Q. Yes.

13 A. It's -- You know, I was quite satisfied that he was consistent in
14 what he told me and he's alleged to have told Sergeant
15 MacIntyre.

16 Q. Yes. I guess I'm just turning the question around a little
17 bit.

18 A. Yes.

19 Q. And I think it comes to the same result but were you satisfied
20 that John MacIntyre had taken an accurate statement?

21 A. Yes, and I hope I haven't said anything to indicate --

22 Q. No, you have not. No, you have not.

23 In the report that is prepared by Corporal Smith, and I don't
24 believe you've read this either. You'll find this at page
25 202 of the same volume that you're in. Volume 16. 202 and 203.

D. LEWIS MATHESON, by Mr. Pugsley

1 Am I correct, sir, that you've never seen this report?

2 A. Yes, I saw -- and I'm not sure if this is the report. I
3 saw a copy of this in the City Police Station after the
4 whole -- It was -- When did the investigation begin? 19?

5 Q. '82?

6 A. '82, yes.

7 Q. You mean --

8 A. I happened to be in the police station on other business
9 one day and John MacIntyre called me over. He said, "I didn't
10 remember," he said, "that you were the Crown Prosecutor on
11 that night?" And I said, "Yes, I was in fact." He said,
12 "What do you remember about it?" And I recounted it. And
13 I got to the stage where I was telling him the results of
14 the Smith report and he hadn't said anything up to that
15 point and then he said, "No, you're wrong about that."
16 And I said, "No, John. I'm right." And he said, "Look,
17 I have a copy of Smith's report. He gave it to me." And
18 I think that this report, if I read it now, is going to
19 tell me that the polygraph test on Ebsary was true and
20 that the test on MacNeil was unreliable. My recollection of
21 it was different in that I told him that MacNeil was unreliable.

22 Q. Quite so. I noted you said that in your evidence this morning.

23 A. Yes.

24 Q. And --

25 A. So in answer to the question, I did see this report before and

D. LEWIS MATHESON, by Mr. Pugsley

1 that's where I saw it.

2 Q. In 1982?

3 A. In 1982. Yes, sir.

4 Q. I direct your attention to the second page. To page 203 and
5 Corporal Smith's remarks. He says:

6 It will be noted that I gave an indefinite
7 opinion as to MacNeil's polygraph examination;
8 however the following should be added:
9 This subject was interviewed after the
10 examination and on a number of occasions
11 was quite ready to admit that he was lying
12 and that he was only joking when he said
13 that Ebsary had stabbed Seale.

14 Did MacNeil ever say that to you on the night of November
15 the 15th, 1971, that he was joking?

16 A. James MacNeil?

17 Q. Yes, James MacNeil.

18 A. No, No. And my -- the last thing that I expected to come
19 from MacNeil, as I viewed him that night, was anything that
20 was joking. He seemed to me sincere enough but totally
21 unreliable as I said. I think he -- What ever he was
22 doing he was trying and not being frivolous about it.

23 Q. And your discussion with Smith and Inspector Marshall
24 occurred in Donnie MacNeil's office sometime around the
25 22nd of November of 1971?

A. It would have been -- I'm not clear on the dates. It would
have been about a week -- a week to ten days after James
MacNeil's coming forward.

D. LEWIS MATHESON, by Mr. Pugsley

1 Q. This report is dated November 30th, 1971. This report
2 found at page 202 and it's datelined Regina, Saskatchewan,
3 presumably written after Smith returned to the west.

4 A. Yes. I said earlier this morning that I believed there
5 was a polygraph is Halifax and maybe I was even wrong on it.

6 Perhaps he had to bring him from the west to do it.

7 I just make that observation.
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1 Q. When you had this discussion with Marshall and Smith and MacNeil,
2 there was just the four of you present?

3 A. Yes, sir.

4 Q. In MacNeil's office?

5 A. Yes, sir.

6 Q. And your recollection is that Smith said that in effect Ebsary
7 was believable but that James MacNeil was unreliable.

8 A. That's what I recall, yes.

9 Q. Yes. But there -- I take it from what you say, that there was
10 no suggestion similar to the suggestion that appears in the 2nd-
11 last ~~statement~~ of page 203 of Smith's report where he writes:

12 Under the circumstances, I do not
13 feel that he is mentally capable of
responding to a polygraph examination.

14 You do not have any recollection of Smith advising you of that?

15 A. I don't recall that specific statement. We did generally dis-
16 cuss our -- They had done their work, and I was talking with
17 them; so I talked freely, and if he had reservations about
18 Mr. MacNeil's mental ability, I certainly agreed with him.
19 I don't recall though having that discussion at that time.

20 Q. Judge Matheson, you saw Patricia Harriss give evidence at the
21 Preliminary and at trial, and you saw Maynard Chant give evidence
22 at the Preliminary and at trial, and you saw John Pratico give
23 evidence at the Preliminary and at trial. From what you
24 observed, were they credible witnesses on those occasions?

25 A. Yes, subject to the questions put to them by the defence and so

1 on. I certainly felt that the jury could believe them, and
2 I put my confidence in the jury. I didn't think that twelve
3 men were going to be persuaded one way or another. I thought
4 they were credible. They were far from perfect. The jury
5 believed them, and at the end of the trial, I thought we had
6 done the best we could, and I thought that it was a good job.

7 Q. The Pratico incident at the trial when he approached Simon
8 Khattar, and you went into the Barrister's Room, and you
9 indicated there were a number of people present but you
10 recall specifically Simon Khattar, yourself, Donald MacNeil,
11 John MacIntyre, and Pratico.

12 A. Yes.

13 Q. And there may have been others.

14 A. Yes.

15 Q. This was the Barrister's Room that is part of the Barrister's
16 Library in the Sydney Court House?

17 A. Yes.

18 Q. I take it that John MacIntyre would not have gone into that
19 room if he had not been invited to go in by Donny MacNeil?

20 A. Or one of us.

21 Q. Or one of you.

22 A. Yes.

23 Q. Normally --

24 A. And I'm sure he wouldn't have.

25 Q. No.

D. LEWIS MATHESON, by Mr. Pugsley

- 1 A. And if we thought it inappropriate for him to be there, we --
2 maybe we should have. Maybe we should to MacIntyre, "Get out
3 here.". We didn't.
- 4 Q. No.
- 5 A. And MacIntyre was not -- There was nobody objecting to
6 MacIntyre's presence at that time.
- 7 Q. Including Simon Khattar. He did not object?
- 8 A. No, sir.
- 9 Q. No.
- 10 A. Or Mr. Rosenblum, if he was there. I'm sure he was, but I
11 can't remember seeing him.
- 12 Q. The night that -- of November 15th when the statements were taken
13 from the Ebsarys and from James MacNeil, you advised the police
14 to keep quiet about that investigation -- keep quiet about
15 those statements?
- 16 A. Yes, until the matter was complete -- The only concern I had
17 about them keeping quiet was I didn't want any information to
18 get to the Ebsarys, and by that I mean the entire family, until
19 they were examined by the police.
- 20 Q. At Volume 16 again at page 218, there's a report or a letter of
21 February 2nd, 1982 from the same Eugene Smith to John MacIntyre.
22 You may not have read this letter, Judge. Have you seen that
23 before?
- 24 A. No, sir, I don't recall seeing this.
- 25 Q. Just take a moment then and read it and --

1 A. All right. Yes, sir.

2 Q. Thank you. The -- That's a lengthy letter. I want to address
3 your attention to the third-last paragraph on the second page
4 where Corporal Smith writes:

5 The results of Ebsary's polygraph
6 examination were given to Mr. Donald
7 MacNeil and it is my understanding
8 that he so advised Donald Marshall's
9 lawyer and gave him the opportunity
to submit his client to the examina-
tion. It is also my understanding
that Marshall, through his lawyer,
declined the examination.

10 Do you have any knowledge of the allegations made there?

11 A. No, I've never discussed this matter with Sergeant Smith. I
12 don't recall Mr. MacNeil saying that he had contact Mr. Rosenbum
13 or Mr. Khattar. It's very interesting to read that, Mr. Pugsley,
14 but it's not -- I don't remember.

15 Q. Thank you. My friend, Mr. Ruby, asked you about the use of
16 these statements and why there would be any reluctance on the
17 part of the defence in putting conflicting statements to Maynard
18 Chant in particular. They felt --

19 A. Yeh.

20 Q. -- that there was no down side from Marshall's point of view
21 of putting conflicting statements -- the earlier inconsistent
22 statement to Maynard Chant. I would like to address your
23 attention, sir, to Volume 3, page 185, and I'll -- I'm not
24 sure that you have it here; so I'll give it to you now. It's
25 the evidence of Maynard Chant -- his examination by Mr. Edwards,

D. LEWIS MATHESON, by Mr. Pugsley

1 I believe, before the Appeal Division at -- If you could just
2 read the first twelve lines of that page. Volume 3, 185.

3 A. Line 3 of 185, yes.

4 Q. I'm sorry, Volume 3, page 185, just the first ten or eleven
5 lines.

6 A. Oh, yeh. Beginning with:

7 The reason for this...

8 A. Yeh, just the -- just reading down the first ten or eleven
9 lines. If I can particularly address your attention to -- at
10 page -- at line 10:

11 Just as I had arrived...

12 This the evidence of Maynard Chant.

13 Just as I had arrived, Donald was
14 coming out of the questioning room...

15 And you can take it from me that he means Donald Marshall.

16 A. Yes.

17 Q. ...coming out of the questioning
18 room, came over towards me and
19 stated, "There was two of them,
wasn't there?" I was very afraid
and I said yes.

20 Now, in view of that evidence, is it a fair assumption that
21 it could very well have been a reason why the defence didn't
22 want to put --

23 A. Yeh. I thank you for bringing that to my attention. I hadn't
24 recalled that. I never read what Chant said in the Appeal Court,
25 and, yes, there was reason for us to be concerned about the

D. LEWIS MATHESON, by Mr. Pugsley

1 safety of Chant also.

2 Q. Yes. And reason for the defence to be concerned about putting
3 a conflicting statement down that --

4 A. And worried, yes.

5 Q. -- it might backfire.

6 A. That's correct.

7 COMMISSIONER EVANS:

8 Would the defence have been aware of this at that time.

9 MR. PUGSLEY:

10 This is --

11 COMMISSIONER EVANS:

12 This is something given by Mr. Chant at the --

13 MR. PUGSLEY:

14 Oh, that's in 1982. There's no question of that.

15 COMMISSIONER EVANS:

16 -- Reference. Well, we're talking now about 1971 when the trial
17 was conducted. Would the defence counsel have been aware of that?

18 MR. PUGSLEY:

19 Well, they -- I suppose if they had interviewed their client, and
20 their client had advised them that he'd spoken to Chant at the
21 police station and leaned over him and said that; "There was two
22 of them, wasn't there?", they might've been.

23 COMMISSIONER EVANS:

24 They might've been aware of it too if they'd consulted Chant.

25

D. LEWIS MATHESON, by Mr. Pugsley

1 MR. PUGSLEY:

2 Well, of course.

3 COMMISSIONER EVANS:

4 Of course.

5 BY COMMISSIONER EVANS:

6 Q. I'd like to ask you one other question. When the -- Dealing
7 with the Pratico affair in the corridor when you went into
8 the hall -- out in the hall into the chambers of Mr. MacNeil,
9 I understood Mr. Rosenblum was also in that room, was he not?

10 A. At the time that the group of us --

11 Q. Yes.

12 A. -- spoke to Mr. Pratico, I don't, sir -- So help me, I can't
13 remember seeing Mr. Rosenblum, but if Mr. Rosenblum wasn't
14 there, I don't why he wasn't. I don't remember him speaking.

15 Q. I see, because Mr. Khattar, as I recall his evidence, said
16 that he had come out. He got -- brought him out -- Mr. Rosenblum
17 out into the corridor.

18 A. Yes, sir, Mr. --

19 Q. I would think that he would have had --

20 A. My recollection is that Mr. Rosenblum was present with us in
21 the hall --

22 Q. Yeh.

23 A. -- when we discussed what we were going to do. Mr. Rosenblum
24 was present, and I've already indicated that we -- that was the
25 way we were going to deal with it. Right or wrong; that's what
we did.

D. LEWIS MATHESON, by Mr. Pugsley

1 BY MR. PUGSLEY:

2 Q. Just a small point in fact. It was not Mr. MacNeil's office;
3 it was the Barrister's Room -- the Barrister's Gowning Room?

4 A. Yes.

5 Q. On the second floor directly opposite the courtroom --

6 A. That's correct.

7 Q. -- where the trial was --

8 A. Directly across the hall from where the trial was held.

9 Q. Yes, I shouldn't --

10 A. Not directly across the hall.

11 Q. Kitty-corner.

12 A. Diagonally.

13 Q. Yes.

14 A. Yeh.

15 MR. CHAIRMAN:

16 That's -- The Court House is standing? Is it --

17 MR. PUGSLEY:

18 Yes, it is.

19 MR. CHAIRMAN:

20 Is it?

21 MR. PUGSLEY:

22 Same one, My Lord, and the Barrister's Room is in the same place
23 if I recall correctly.

24 THE WITNESS:

25 Yes. The room looks almost exactly as it did at that time except

D. LEWIS MATHESON, by Mr. Pugsley, by Mr. Murray

1 there's some shelving in there for books that I don't recall
2 was there then.

3 MR. PUGSLEY:

4 Yes. If I may, My Lords, just address a question to my friend,
5 Mr. Orsborn. Judge Matheson had raised the question as to whether
6 or not Sergeant Wheaton took any notes of the luncheon meeting
7 at the Port Hawkesbury Motel. Have any such notes been discovered?

8 MR. ORSBORN:

9 Sergeant Wheaton has not yet spoken to us and is not likely to.
10 So the answer is, I don't know.

11 MR. PUGSLEY:

12 Sorry. I'd forgotten that. Thank you. Thank you, that's all
13 the questions I have, My Lords.

14 BY MR. MURRAY:

15 Q. Your Honour, my name is Donald Murray. I represent William
16 Urquhart at these hearings. When was it that you first met
17 Mr. Urquhart?

18 A. 1957 when I came here to article. Circumstances as with
19 MacIntyre.

20 Q. I see. Did you have him as an adversary when you were defend-
21 ing clients and as a witness when you were prosecuting cases?

22 A. Yes, sir.

23 Q. And how did you find his work?

24 A. I found it to be good and that he was a thorough policeman and
25 that he was a -- in my opinion an honest man. Nobody -- I

D. LEWIS MATHESON, by Mr. Murray, by Mr. Elman

1 never heard anybody ever say that he wasn't. In my opinion,
2 he certainly was. I --

3 Q. Are you aware that -- Were you involved in any of the prosecu-
4 tions rather where Mr. Urquhart was involved in murder prosecu-
5 tions after 1971?

6 A. A murder prosecution after 1971 that involved Urquhart. Yes,
7 there were. I don't know whether I was directly involved in
8 the prosecution of the cases, but yes, I remember a man by
9 the name of MacDonald who lived on Argyle Street was murdered
10 and --

11 Q. And Mr. Urquhart was the main investigator on that case?

12 A. I think he was he was the Sergeant of Detectives at the time.

13 Q. Yes. And you found his work on that case thorough?

14 A. His work was thorough and -- The prosecution of a case was
15 successful, and I was very satisfied with him.

16 MR. MURRAY:

17 Thank you. No further questions.

18 BY MR. ELMAN:

19 Q. Judge Matheson, you know who I am. I'm Frank Elman, I represent
20 the estate of Donald C. MacNeil, and we are very well acquainted
21 and I'll -- Just want a direct a few questions to you, Judge.
22 Isn't it so that the practice of the prosecutors was to use
23 the statements of witnesses as a guide to be relied upon and
24 that once the sworn testimony was obtained from the Preliminary,
25 that was what was being used by the prosecutors in the Supreme

- 1 Court?
- 2 A. That's -- I think that's probably correct. Yes.
- 3 Q. And in this case -- in the Marshall case --
- 4 A. If I said anything different than that, I --
- 5 Q. No, I don't --
- 6 A. -- said so meaning that we had the statements of -- if they
7 weren't in the courtroom with us -- I imagine they would've
8 been, but we would've been watching, yes, the sworn testimony
9 of the witness.
- 10 Q. And in your position alongside of Mr. MacNeil at the time of
11 the Marshall trial -- Maybe we'll start first with the
12 Preliminary. You had the statements with you, and you watched
13 to see that the evidence that was adduced in the statement did
14 in fact come out in sworn testimony at the Preliminary.
- 15 A. Yeh. That's correct, Mr. Elman, and if there was a variance
16 between the sworn testimony and the statement, I would bring
17 the difference to the attention of Mr. MacNeil in this particular
18 case, and Mr. MacNeil would then have to decide whether the
19 variance was a material point and significant enough to request
20 premission to cross-examine the witness under Section 9.
- 21 Q. Now, when you got to the Supreme Court trial, did you have with
22 you all of those statements or just mainly the evidence from
23 the Preliminary; that is, the sworn testimony from the
24 Preliminary?
- 25 A. I don't recall. I presume we'd have the whole file.

1 Q. Were you following the evidence from the Preliminary or the
2 evidence or -- that is, the statements that were given to you
3 by the police?

4 A. I don't recall, but I would certainly be watching the sworn
5 testimony.

6 Q. Now, turning to another point, my learned friend, Mr. Pugsley,
7 was asking you about the files. What happened to the Marshall
8 file that Mr. MacNeil had?

9 A. It was sent to Halifax when the appeal occurred.

10 Q. All right. Were there any --

11 A. There was another file in the office. I don't know what was
12 in it. All I know is: "Donald Marshall case". It may have been
13 just a notepad and everything was taken off it, but for a
14 long time after, it was kicking around the office. We kept
15 our files on the large oak table in the far corner of the room,
16 and the reason that we kept any of the files was for purposes
17 of having a ready precedent at hand when another case came
18 along. I remember there was a file relating to the Marshall
19 case around the office for some time. Eventually, when that
20 table was filled up, the files that were on the table would
21 be taken and thrown out. I'm quite satisfied that everything
22 pertinent to the trial was forwarded to Halifax at the time
23 of the appeal.

24 Q. All right. Now, you mention the appeal, and I note from
25 Volume 2, page 113 -- You should have it there.

D. LEWIS MATHESON, by Mr. Elman

1 A. Yes, sir.

2 COMMISSIONER EVANS:

3 112?

4 MR. ELMAN:

5 113, My Lords. I'm sorry. 113. 113. Volume 2, 113.

6 BY MR. ELMAN:

7 Q. That's the Notice of Appeal?

8 A. Yes, sir.

9 Q. Let's turn to page 115, the very last sentence. It's dated
10 at Sydney on the 16th day of November, 1971. That's the date
11 that this Notice of Appeal was at least prepared.

12 A. Yes.

13 Q. Would you have received that Notice of Appeal on that date?

14 A. Not necessarily. I have no recollection at all, Mr. Elman.
15 That's the date that appears on it. When Donald Marshall, Jr.,
16 signed it and it was taken to the -- I guess they mailed it.
17 The appeal, I think, would've had to been filed in Halifax. I
18 don't remember when we received actual notice of the appeal.

19 BY THE CHAIRMAN:

20 Q. Would you have received it all?

21 A. Maybe not at all.

22 Q. Because I notice that it's directed to the Attorney General
23 of Nova Scotia of Halifax --

24 A. Yes.

25 Q. -- and to the Registrar --

D. LEWIS MATHESON, by Mr. Elman

1 A. Yes.

2 Q. -- in Halifax.

3 A. I don't remember seeing this before. I think His Lordship is
4 not suprisingly correct. That would've been sent to Halifax,
5 and as I said earlier, we would be notified from Halifax of
6 the appeal, and we would send the file forward.

7 BY MR. ELMAN:

8 Q. Do you recall taking any part in the sending of the file to
9 Halifax for the Marshall case?

10 A. No.

11 Q. No. Now, --

12 BY COMMISSIONER EVANS:

13 Q. Before you proceed with that, Mr. Elman, would you get a copy
14 of a Notice of Appeal back from Halifax? Was that customary?

15 A. I wouldn't say it was customary. We may have, and I don't
16 remember in this particular case whether we did or not.

17 Q. In other words, you wouldn't be asked to make any comments
18 then on the Notice of Appeal?

19 A. If -- I really don't recall. If we had any comment to make,
20 don't misunderstand me, Halifax wanted to know, and we were
21 anxious to give it, and we'd communicate either by mail or
22 telephone.

23 Q. Thank you.

24 BY MR. ELMAN:

25 Q. Moving to another point, Judge. You heard, of course, Mr. Ruby

D. LEWIS MATHESON, by Mr. Elman

1 ask some questions with reference to the tattoo that was found
2 on Donald Marshall's arm.

3 A. Yes.

4 Q. I want you to turn, if you will, to Volume 1, page 117. This
5 is the cross-examination of Doctor Virick, page 117. If we
6 look at line -- about 8 or 9.

7 Q. Now Doctor, I would ask you to
8 examine the left arm of the
accused. Pull up your sleeve.

9 I assume that Mr. Rosenblum who was asking the question was
10 referring to Donald Marshall and asking him to pull up his
11 sleeve. Is that correct? Do you recall that? And he says:

12 Just walk over near the Doctor
13 and turn around so the jury can
see you.

14 A. Yes.

15 Q. Do you recall that taking place at the trial, Mr. Rosenblum
16 asking Mr. Marshall, the accused, to stand up, show everyone
17 his sleeve, and the left arm?

18 A. I don't remember this. It's there on the record, Mr. Elman.
19 Obviously, it happened.

20 Q. All right.

21 A. I am happy that you pointed it out. I didn't think that we
22 introduced the tattoo on our own. If that's the first reference
23 to it, I'm happy to hear that.

24 Q. All right. Let's turn then to page 134, please, in the same book,
25 which is the evidence of Nurse Davis. About line 13. This is

1 a direct examination of -- by Mr. MacNeil. Page 134, line
2 about 13.

3 A. Yes.

4 Q. This is in questioning.

5 Q. Did you also have occasion to see
6 Mr. Marshall's arm here today in
7 court when he displayed it to the
8 jury?

8 I assume that Mr. MacNeil is referring to the time that Doctor
9 Virick examined the arm then that was shown to the jury?

10 A. Yes. I had read the reference that you're now directing my
11 attention to, and I have no explanation for that when I was
12 examined directly and --

13 Q. The answer is --

14 A. Obviously it was -- It got in -- Go ahead, ask me.

15 Q. The answer was yes, and then the question:

16 Q. Did you notice anything else?

17 And Miss -- Nurse Davis says:

18 A. I noticed a tattoo today on his
19 arm.

20 A. Yes. Yes. So that that witness noticed that herself on the
21 stand, and thank you, Mr. Elman. We never tried to put that
22 in evidence at all.

23 Q. So it came as a result of the cross-examination of Doctor Virick
24 by Mr. Rosenblum, who made the accused display his arm to the
25 jury and therefore the tattoo?

D. LEWIS MATHESON, by Mr. Elman

1 A. That's correct, yeh.

2 COMMISSIONER EVANS:

3 Who commented about it to the jury?

4 MR. ELMAN:

5 Yes.

6 COMMISSIONER EVANS:

7 I didn't get an answer to this.

8 MR. ELMAN:

9 Mr. MacNeil then, My Lord. Mr. MacNeil -- If something was on
10 the record and he had an opportunity to use it -- obviously, he did.
11 I'm sure the jury knew about it anyway, but perhaps it would've
12 been better if Mr. MacNeil had not made reference.

13 BY MR. ELMAN:

14 Q. Now, Mr. Matheson, in this case, do you remember how Donald C.
15 MacNeil prepared his Address to the jury?

16 A. No, I wondered about that. The notes that were presented to
17 me, I was surprised that among them was not a handwritten
18 Address to the jury in Mr. MacNeil's writing. That was his
19 style to do. I meant to look further to find out if between
20 the close of the taking of evidence and the commencement of
21 addresses whether he had overnight to spend. I don't know
22 whether he did or not.

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1 Q. Maybe you might turn then to volume 16. Do you have that there,
2 Mr. Matheson, volume 16?

3 A. Volume 16, yes.

4 Q. Judge, I'm sorry. Page 145 on volume 16. That's -- These are
5 notes in Donald C. MacNeil's handwriting?

6 A. Yes.

7 Q. And it says on the top --

8 A. Those I did see, but that -- his custom was to literally write
9 the whole thing out if he had time to do it I think he would
10 have.

11 Q. In this case Mr. MacNeil gave his address to the jury following
12 that address that was given by Mr. Rosenblum, isn't that
13 correct?

14 A. If that's what the record discloses.

15 Q. Yeh, and that was because the Defence called evidence.

16 A. The Defence had testified, yeh.

17 Q. All right. Now I see there it says, three point two seven
18 being a time.

19 A. It looks like a time notation all right.

20 Q. Do you recall if Mr. MacNeil addressed the jury in the
21 afternoon and then the Judge addressed the jury the next
22 morning? Was that the sequence?

23 A. I don't recall. I -- I -- Where Mr. MacNeil's address is
24 not written out at length, I suspect he addressed during the
25 day after the close of evidence and didn't have overnight

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1 to write it out.

2 Q. All right. Would it be fair to say, Judge Matheson, that
3 these notes that he made on page 145 and 146 of that volume
4 would have been notes that he made in order to act as a guide
5 in his address to the jury or that he gave that address off the
6 cuff so to speak?

7 A. Yes, I'm -- I'm very -- Yes, there's no doubt that that's
8 what happened, yeh.

9 Q. Now let's go to the actual trial transcript itself and at the
10 end of the trial, that is, of the evidence and the addresses,
11 and if we look at volume two, page 107 you'll see at line ten:

12 12:40 P.M. JURY WITHDREW

13 A. Yes.

14 Q. I assume that that was at the conclusion of the Judge's
15 address to that jury?

16 A. I don't know just where we are in the transcript. If that's
17 what the transcript discloses, yes, that the time was noted.

18 Q. If we just go back then for the last couple of pages you'll
19 see that --

20 A. Yes, I think --

21 Q. That would be the Judge's address to the jury?

22 A. Yes. Yes. And it was twelve-forty when the Judge concluded
23 addressing the jury. I wouldn't remember that otherwise
24 because --

25 Q. Then, Judge Matheson, we'll just look at the next thing that

D. LEWIS MATHESON, by Mr. Elman

1 happened. The Court says:

2 Mr. Rosenblum, Mr. Khattar, is
3 there anything that I have omitted
4 that you wish me to give to the
5 jury?

6 Was that customary for the Judge following the discharge of the
7 jury to their chambers to deliberate to then ask Counsel if
8 there was anything that may -- they may have said, that is,
9 that the Judge may have said or may have omitted to say,
10 and hear it out in the Court without the presence of the jury
11 and then make a decision as to whether or not the jury should
12 be called back to be so advised?

13 A. Yeh. I -- Yes. The answer to that is yes. Whether it happened
14 every time, I don't know, but obviously it happened here and
15 that's what the Judge was after.

16 Q. In this case both Mr. Rosenblum and Mr. Khattar were specifically
17 afforded the opportunity of making some suggestions to the Judge
18 to which they responded:

19 No, My Lord, I have no suggestions.

20 By Mr. Rosenblum. That's on line, about fifteen.

21 A. No, I don't see any reference to any comment made by Mr. Rosenblum
22 or Mr. Khattar.

23 Q. In fact, Mr. MacNeil did make some comment to His Lordship at
24 that time?

25 A. Yes, he did.

MR. CHAIRMAN:

I think Mr. Elman, if you turn to page 70 (I don't know how relevant

D. LEWIS MATHESON, by Mr. Elman

1 | this is.) you'll find that the Trial Judge did indeed address the
2 | jury the following morning. It says that -- Toward the bottom of
3 | the page he indicated to the jury that it was past five and that
4 | he would come back the next day.

5 | MR. ELMAN:

6 | Oh, right, sir, that -- that bears out the point then that, in fact,
7 | Mr. MacNeil did address the jury in the late afternoon and that the
8 | Judge did so the next day. All right. Thank you, My Lord.

9 | COMMISSIONER EVANS:

10 | I judge from that that it took -- it was a two hour and forty minute
11 | address to the jury?

12 | MR. ELMAN:

13 | That's the way it appears, My Lord.

14 | BY MR. ELMAN:

15 | Q. Would that be correct, Mr. Matheson, about two hours and
16 | forty minutes?

17 | A. I have no specific recollection. The record of the Judge's
18 | Address is here and I don't -- I don't recall.

19 | MR. ELMAN:

20 | I do believe, My Lord, that there was a break in it that is, if
21 | my memory serves me correct, that there was a break in the
22 | address, and that after the Judge had given the Preliminary
23 | remarks to the jury, I believe he then broke for a short recess
24 | and then came back to conclude.

25 | COMMISSIONER EVANS:

And there were no objections with the Charge as you have indicated.

D. LEWIS MATHESON, by Mr. Elman

1 THE WITNESS:

2 I don't recall --

3 MR. ELMAN:

4 My Lord, it's just been pointed out to me on page 37 of that
5 volume two, there's a time there:

6 3:30 P.M. JURY POLLED, ALL PRESENT

7 Then Mr. Rosenblum began his address to the jury at three-thirty
8 in the afternoon. He gave his. The remarks -- The notes of
9 Mr. MacNeil are at 327, so it's within the -- the minutes. Those
10 were notes obviously taken as a result of the address being
11 made to the jury by Mr. Rosenblum. So it all coincides to the
12 same time.

13 COMMISSIONER EVANS:

14 Look at 109 and it gives you the time of the jury "COURT RECESSED",
15 and then at four thirty-five the jury's polled and they're all
16 present at four thirty-five so I take it that was at the end of
17 the Crown's address to the jury.

18 THE WITNESS:

19 I'm sorry, My Lord, I can't confirm any of this record. You'll
20 have to --

21 COMMISSIONER EVANS:

22 Then they came back, I guess, with their verdict.

23 MR. CHAIRMAN:

24 That's the following day. Anyway --

25 MR. ELMAN:

I think you'll find it's somewheres around four o'clock that

D. LEWIS MATHESON, by Mr. Elman

1 Mr. MacNeil addressed the jury after Mr. Rosenblum had concluded and
2 then he finished around five o'clock in the evening. I believe
3 you'll find that --

4 COMMISSIONER EVANS:

5 The jury were in at four thirty-five with the verdict.

6 MR. CHAIRMAN:

7 It was the next day.

8 MR. ELMAN:

9 No, next day, My Lord. It was the next day. Yeh. Is there anything
10 further on that point, My Lords, or --

11 MR. CHAIRMAN:

12 No, nothing further on any point that I can think of.

13 BY MR. ELMAN:

14 Q. Mr. -- or Judge Matheson, I want to draw your attention to
15 volume 18. Do you have that one in front of you? Maybe --

16 A. No, Mr. Elman I don't.

17 Q. Could the Clerk please show him volume 18.

18 A. Thank you.

19 Q. Page 25, Judge Matheson. Page 25, volume 18. This is referring
20 to after the polygraph was taken and the events as we've heard
21 you disclose that took place when James MacNeil came to the
22 police station. And I want to refer you to paragraph two and
23 the indented part. Well, I suppose we should read the whole
24 thing because you probably have never seen that document
25 before. It's dated the 29th day of December, 1983. Did you

D. LEWIS MATHESON, by Mr. Elman

1 | ever see that document before?

2 | A. No, sir.

3 | Q. All right. Maybe you might read paragraph two.

4 | A. Do you want me to read it aloud or --

5 | Q. No, you review it and then I'll ask you a question or two on
6 | it.

7 | A. I'm sorry, I had to go back and re-read the top paragraph
8 | to get oriented. I thought I was reading the man's own
9 | words. Yes, I've read it.

10 | Q. Judge Matheson, I will ask you, it's referred to the Wandlyn
11 | Motel there as being the location where a meeting took place.
12 | Do you recall that?

13 | A. My recollection -- If I had to name the motel that I recall
14 | being at would have been the Isle Royale Motel. It's not
15 | called that any more, but the building that was once known as
16 | the Isle Royale Motel.

17 | Q. You had given evidence here this morning and maybe later on
18 | this afternoon or early this afternoon that the meeting took
19 | place in Donald C. MacNeil's office. You and -- because you
20 | were invited to go to the meeting with Donald C. MacNeil --

21 | A. Yes.

22 | Q. --and Inspector Marshall from the R.C.M.P.?

23 | A. Yes.

24 | Q. And here they make reference to a meeting the same day at the
25 | Wandlyn Motel or any motel. Did you go to any motel or do you

D. LEWIS MATHESON, by Mr. Elman

1 know if Mr. MacNeil went to any motel?

2 A. Oh, it may -- it may have been that Mr. MacNeil was at the
3 Wandlyn Motel and I wasn't there at all.

4 Q. I see.

5 A. Now -- Now I do recall after our meeting in the Prosecutor's
6 Office, that is among the four of us, Inspector Marshall,
7 Sergeant Smith, Donald MacNeil, and myself, following that the
8 four of us did go to a motel and my recollection, and I
9 may be wrong, I'm quite sure it was the Isle Royale Motel.

10 Q. All right, and was there --

11 A. It's quite possible that Inspector Marshall is talking about
12 another meeting other than the one I'm referring to.

13 Q. Do you recall Mr. MacNeil calling someone in the Attorney
14 General's Office?

15 A. Not when I was present. I don't recall.

16 MR. ELMAN:

17 All right. That's all the questions I have, Judge. Thank you very
18 much.

19 MR. CHAIRMAN:

20 Mr. Saunders.

21 MR. SAUNDERS:

22 Mr. Pink will be examining Judge Matheson, My Lord.

23 MR. PINK:

24 But we are last.

25 MR. SAUNDERS:

We get to go last. There's one more counsel before we go, My Lords.

D. LEWIS MATHESON, by Mr. Bissell

1 | MR. CHAIRMAN:

2 | Two more. Sorry.

3 | BY MR. BISSELL:

4 | Q. Yes, Your Honour, I have a few questions to ask you on behalf
5 | of the Royal Canadian Mounted Police. I gather from the
6 | evidence that you've given that you're impression of James
7 | MacNeil on the 15th of November was that he was an unreliable
8 | witness. Is that correct?

9 | A. Yes, sir.

10 | Q. And that I gather is -- is an opinion that was shared by the
11 | members of the Sydney Police Department as well that had spoke
12 | with Mr. MacNeil before you spoke with him. Is that correct?

13 | A. Yes. Yes.

14 | Q. Is it also fair to say that in the back of your mind at that
15 | time you had some concern that there was possible witness
16 | intimidation involved that resulted in Mr. MacNeil being there?

17 | A. Yes, sir.

18 | Q. Now it had occurred or you believed that it had occurred earlier
19 | with respect to certain other witnesses that could be testifying
20 | for the Crown?

21 | A. Yes, and the thought actually crossed my mind when I was talking
22 | to MacNeil.

23 | Q. Yes. Because of his demeanour and --

24 | A. Well, yes, as -- I think I used the word he was nervous and
25 | he -- he appeared to totally lack confidence. I didn't know

D. LEWIS MATHESON, by Mr. Bissell

1 | what was wrong with him, but you -- you could have described
2 | it as scared and nervous.

3 | Q. And you had in your mind later that night that -- or at least
4 | what you thought, all of the Ebsarys had been interviewed
5 | and came out with statements that contradicted that given by
6 | Mr. MacNeil. Is that correct?

7 | A. Yes, sir.

8 | Q. So as of that night you really knew of no other evidence other
9 | than perhaps what Donald Marshall himself might say --

10 | A. That's correct.

11 | Q. --that supported what Mr. MacNeil was saying?

12 | A. That's correct.

13 | Q. I gather that the subject of a polygraph first came up as
14 | a result of the --

15 | A. And I want to add to that, I don't recall what the initial
16 | inconsistent statements said, but there may have been something
17 | in that too that -- that would be not simply -- that would have
18 | added to Marshall's contention if you understand my answer.

19 | Q. Yeh. I gather that the subject of the polygraph first came
20 | up as a result of an interview between a member of the Sydney
21 | Police Department and Roy Ebsary. Is that your understanding?

22 | A. It's quite possible.

23 | Q. I take it also on the -- the night of the 15th of November that
24 | you had no reason to question the partiality or the confidence
25 | of Sergeant MacIntyre or Inspector Urquhart?

D. LEWIS MATHESON, by Mr. Bissell

1 | A. No, I had no reason except that it crossed my mind that -- that
2 | maybe it would be better if another force did it. I mentioned
3 | that to Mr. Anderson in passing.

4 | Q. But you didn't doubt their partiality or impartiality?

5 | A. No, no, no.

6 | Q. And you didn't doubt that they would be interested in getting to
7 | the bottom of -- and determining who, in fact, was the real
8 | offender in this particular case?

9 | A. Yes, sir.

10 | Q. And you spoke with Mr. Anderson that night about the polygraph?

11 | A. Yes, I mentioned that both MacNeil and Ebsary were willing to
12 | take the polygraph and it might be useful.

13 | Q. And Mr. Anderson agreed?

14 | A. I don't remember what Mr. Anderson said, but the next day I knew
15 | a polygraph was coming so I presume he agreed.

16 | Q. You were not a party to any of the arrangements that were made
17 | between the Attorney General's Office and the Royal Canadian
18 | Mounted Police?

19 | A. No, sir.

20 | Q. You didn't see any letter that went to the Royal Canadian
21 | Mounted Police from the Attorney General that set out the
22 | mandate or the responsibilities of the Royal Canadian
23 | Mounted Police in this particular matter?

24 | A. No, sir.

25 | Q. Would you agree with me, sir, that for the Royal Canadian Mounted

D. LEWIS MATHESON, by Mr. Bissell

1 Police to go into the jurisdiction of another police force,
2 it would require some fairly specific instruction from the
3 Attorney General's Office?

4 A. It would have -- I don't know that it necessarily came from
5 the Attorney General's Office. I believe I set in direct
6 evidence that if any other police force was coming in, quite
7 frankly I didn't know how to do it and I was calling Halifax
8 to -- to see what they thought of the idea and to make the
9 arrangements.

10 Q. But if that was to be done it would require some fairly
11 specific instruction, would you -- from the Attorney General
12 to the R.C.M.P., would you agree with that?

13 A. I presume so, yes.

14 MR. D. PINK:

15 Objection, My Lord. If he says he's never done it, how can he say
16 what would be expected.

17 MR. BISSELL:

18 Well, you -- would you -- I think it's fair -- safe to say or
19 he could say that -- what he assumed. The mere fact that he
20 went to the Attorney General I -- the Attorney General's Office is
21 some indication of what he assumed.

22 MR. CHAIRMAN:

23 I feel reasonably certain that it didn't happen of it's own
24 volition. Judge Matheson has told us that he was not aware of
25 the procedure to be followed, but I think one can reasonably assume

D. LEWIS MATHESON, by Mr. Bissell

1 | that following the conversation between Judge Matheson and
2 | Robert Anderson as he then was, with the appearance of Inspector
3 | Marshall on the scene and a couple of days later, Sergeant Smith,
4 | could only have resulted from the instructions having been given
5 | by the Department of the Attorney General.

6 | COMMISSIONER EVANS:

7 | I think he wants to know whether the instruction had been given by
8 | the A.G. to the R.C.M.P.

9 | MR. CHAIRMAN:

10 | Yeh.

11 | MR. BISSELL:

12 | Yes. I would like -- that's correct. What I'm trying to get at
13 | is if he knew how specific the instructions were --

14 | MR. CHAIRMAN:

15 | He says he doesn't.

16 | MR. BISSELL:

17 | -- and what the instructions would be.

18 | BY THE WITNESS:

19 | A. No, sir, I never saw the instructions. I'd like to be helpful
20 | but I think I've testified several times already that I don't
21 | know. I just don't know.

22 | BY MR. BISSELL:

23 | Q. Would you agree that it -- Was it your assumption that it would
24 | take some instruction before the R.C.M.P. could become involved?

25 | A. Mr. Marshall or Inspector Marshall and Smith didn't come down.

D. LEWIS MATHESON, by Mr. Bissell

1 They weren't clairvoyant, somebody gave them instructions,
2 yes.

3 Q. And they would have to be given some instruction on what they
4 were to do and how they were to do it?

5 A. Yes, sir.

6 Q. With the scope of what they were to do?

7 A. I presume so. I presume so.

8 Q. Now you attended at a meeting you said some time later with
9 Mr. MacNeil, Corporal Smith, and Inspector Marshall, I
10 gathered from the evidence that you gave that when you went
11 there that night you were expecting to hear the results of
12 a polygraph examination. Is that what you understood the purpose
13 of that meeting to be?

14 A. Among other things. I knew that -- I knew that Smith came
15 and Marshall came.

16 Q. Yeh.

17 A. I expected that Smith would tell us about the polygraph
18 results.

19 Q. Yes.

20 A. And I presumed again from Marshall's presence that, you know,
21 Smith could have come and give the test on his own I imagine.

22 Q. You're --

23 A. I've told you what I recall and the only thing I recall
24 Inspector Marshall being specific about was that he was
25 reporting to Halifax as I recall.

D. LEWIS MATHESON, by Mr. Bissell

1 Q. Well, you recall learning of the polygraph results that night.

2 Is that correct?

3 A. Yes, sir.

4 Q. And you recall learning that Inspector --

5 A. Perhaps incorrectly, but as I account --

6 Q. Yeh.

7 A. Yeh, okay.

8 Q. And you also recall that Inspector Marshall was going to make
9 his report to Halifax?

10 A. That's what -- That was my understanding, yes.

11 Q. Do you recall learning of anything else that was done or learning
12 anything else that night at that meeting?

13 A. No, I'm not saying that it wasn't discussed but I don't recall
14 it.

15 Q. Yeh. Did you ask or do you recall whether or not you asked either
16 Inspector Marshall or Corporal Smith if they carried out any other
17 investigation besides the conducting of our polygraph examination?

18 A. I don't recall asking the question nor I do -- nor do I recall
19 the question being asked. Again I'd say I was there in the
20 company of Mr. MacNeil. I was quite prepared for him to take
21 the initiative, and he did. He did. They had a -- It wasn't
22 any just a couple of minutes, we were there for a long time.
23 I don't remember any more than I have recounted.

24 Q. Or do you recall going away from that meeting with some
25 concern that something more should be done?

D. LEWIS MATHESON, by Mr. Bissell

1 A. I didn't have a feeling. No, I didn't.

2 Q. If you had had that feeling I take it your relationship with
3 D. C. MacNeil was such that you would have felt quite comfortable
4 to make some suggestions or offer your opinion to D. C. MacNeil.
5 Is that correct?

6 A. Yes, sir.

7 Q. And that your relationship -- both your relationship and the
8 relationship of Mr. MacNeil with police officers was such that
9 in particular with respect to major investigations you would
10 feel quite comfortable with making suggestions if you felt
11 suggestions were in order?

12 A. Yes, I would make suggestions, yes.

13 Q. At the time of this meeting with Corporal Smith and Inspector
14 Marshall, were you still under the impression that Donna Ebsary
15 had been interviewed?

16 A. I've testified already that I understood that all the Ebsarys
17 had been interviewed until I met with the Commission Counsel.

18 MR. BISSELL:

19 Okay. That's fine. Those are all the questions that I have, sir.
20 Thank you.

21 MR. CHAIRMAN:

22 Mr. Nicholas.

23 MR. NICHOLAS:

24 Is Mr. Pink not first?

25 MR. CHAIRMAN:

No, no. Ordinarily -- Mr. Nicholas, you may not have been here when

D. LEWIS MATHESON, by Mr. Bissell, by Mr. Nicholas

1 | the -- when the order of cross-examination was established opening
2 | day. Where the witness is represented by Counsel, his Counsel will
3 | cross-examine last.

4 | MR. NICHOLAS:

5 | Okay. Thank you very much, My Lord.

6 | MR. CHAIRMAN:

7 | Whilst Judge Matheson is not an Attorney General employee or has
8 | nothing to do with the Attorney General today, he's being examined
9 | on matters that occurred when he was a Crown Prosecutor. So --

10 | MR. NICHOLAS:

11 | Thank you.

12 | BY MR. NICHOLAS:

13 | Q. Now, Judge Matheson, if I perhaps could --

14 | MR. CHAIRMAN:

15 | I had indicated earlier that we were going to rise at four o'clock.
16 | I now find that somewhat on the horns of a dilemma. I'm sure that
17 | it is desirable that we finish Judge Matheson's evidence this
18 | afternoon. Mr. Pink is shaking his head. You don't think that's
19 | possible.

20 | MR. D. PINK:

21 | Considering that many Counsel have a five o'clock flight, My Lord,
22 | I don't think it's really conceivable. I mean I don't expect that
23 | I'll be long that I would expect I'll be fifteen or twenty minutes.

24 | MR. CHAIRMAN:

25 | Well, I was going to suggest that those who have a five o'clock flight

D. LEWIS MATHESON, by Mr. Nicholas

1 | may want to leave, but I didn't realize you were in that
2 | category.

3 | MR. D. PINK:

4 | If Your Lordship wants me to stay, I certainly shall.

5 | MR. CHAIRMAN:

6 | Mr. Nicholas, do you have a five o'clock flight as well?

7 | MR. NICHOLAS:

8 | I'm on standby.

9 | MR. CHAIRMAN:

10 | Well, the sooner you get there the better. I take it you won't
11 | be very long in your cross-examination.

12 | MR. NICHOLAS:

13 | Well, I would have preferred more time, My Lord, for sure. I mean
14 | it's -- There's a lot of questions here I have and so that we would
15 | not want to rush --

16 | MR. CHAIRMAN:

17 | No, and I don't want to rush you. I guess we had better rise and
18 | come back next Monday at nine-thirty. I guess Judge Matheson, your
19 | Court will have to wait for a short while on Monday.

20 | THE WITNESS:

21 | Well, I'll inform the Chief Judge, My Lord, and I'll have a good
22 | excuse anyway. I wonder -- I had intended -- We're not sitting
23 | here on Thursday. I had intended to have my regular Court held
24 | and in view of the fact that I'm sworn and so on, there's no
25 | objection on -- as far as you are concerned?

D. LEWIS MATHESON, by Mr. Nicholas

1 | MR. CHAIRMAN:

2 | No.

3 | THE WITNESS:

4 | All right. Thank you.

5 |

6 |

7 |

8 | INQUIRY ADJOURNED AT 3:58 o'clock in the afternoon on the 10th
9 | day of November, A.D., 1987.

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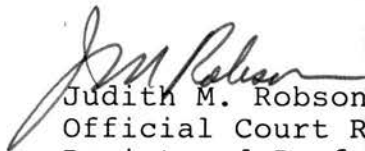
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I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 10th day of November, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to type-written copy.



Judith M. Robson
Official Court Reporter
Registered Professional Reporter