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#6

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

Volume 45

Held: January 26, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

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

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Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
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Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
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Mr. Guy LaFosse: Counsel for Sgt. H. Davies

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

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1 January 26, 1988 - 9:30 a.m.

2 MR. CHAIRMAN

3 Mr. Pugsley?

4 MR. PUGSLEY

5 Thank you, My Lord.

6
7 HAROLD FRANCIS WHEATON, still sworn, testified as follows:

8
9 EXAMINATION BY MR. PUGSLEY

10
11 Q. Staff Sergeant Wheaton, do I understand correctly that you
12 were part of the decision-making process in the spring of
13 1982 with Frank Edwards that John Pratico would not be
14 called at the reference because of his mental difficulties.

15 A. I would have, yes, had conversations with Frank Edwards in
16 that regard, sir?

17 Q. And you participated in that decision and it was your opinion
18 that Mr. Pratico should not be called.

19 A. You're talking the reference?

20 Q. I am.

21 A. In 1982?

22 Q. Yes

23 A. I would have been one part of the decision-making process.

24 Q. And it was, indeed, your opinion as well that he should not be
25 called to give evidence at the reference.

1 A. Yes, sir.

2 Q. Because of his physical problem...his mental problems.

3 A. Yes, sir.

4 Q. Yes, okay. In your report that is found in Volume 20 at page
5 63, the report that you were making for Superintendent
6 Vaughan, the report of July 14, 1986, at page 64, you deal
7 with John Pratico and you say, as we discovered yesterday,
8 "Will give evidence that he was 16 years old at the time of
9 the Seale murder and under psychiatric care." I take it that
10 you were of the impression that in 1986, John Pratico was
11 still under psychiatric care.

12 A. I hadn't checked on it per se. It would probably be my belief
13 that he would be under some, at what stage, I don't know.

14 Q. Yes, but under some care.

15 A. It would come up in an investigation if one had been started
16 in '86 and it would be determined at that time what
17 psychiatric care he was under, sir.

18 Q. To the best of your knowledge in '86, he was still under
19 psychiatric care, though.

20 A. To the best of my knowledge.

21 Q. Yeah, okay. "Will give evidence that he was 16 years old at
22 the time of the Seale murder and under psychiatric care."
23 Then in the second paragraph: "Between the preliminary and
24 Supreme Court, he had a nervous breakdown and was
25 admitted to the Nova Scotia Hospital." Now there's nothing in

1 that paragraph to indicate to Superintendent Vaughan that in
2 all probability Pratico was still under psychiatric care.

3 A. I really wouldn't have known in my own personal knowledge
4 if he was or wasn't. I think as can be seen from the report, I
5 do say what I knew of Pratico at the time.

6 Q. Yes. It would have been an easy matter for you to check.

7 A. I could have checked, yes, sir.

8 Q. You did not advise in this report in 1986 that the reason that
9 Pratico (a) did not given evidence at the reference; and, (b)
10 the reason he didn't give reference [sic] was because he was
11 not mentally competent to do so. You did not advise Vaughan
12 of that.

13 A. No, sir.

14 Q. And there was nothing to...What knowledge did you have of
15 this radio interview that Pratico gave in 1982? There's been
16 some discussion before the Inquiry, some evidence before the
17 Inquiry that, my recollection is, that shortly after he met with
18 Corporal Carroll, he gave a radio interview in which, in effect,
19 and I'm paraphrasing because I didn't hear it, denied
20 everything he said to Carroll and reaffirmed the evidence he
21 gave in 1971. Did you hear about that radio interview?

22 A. I heard about it, yes, sir.

23 Q. Did you hear the radio interview?

24 A. No, I did not, sir.

25 Q. You heard about it then.

1 A. Yes, sir.

2 Q. And you did not make any reference to that in your report to
3 Superintendent Vaughan.

4 A. Of 1986, no, sir.

5 Q. Yesterday, I brought to your attention some evidence given
6 by Maynard Chant in the reference that is found in Volume 3,
7 and I did not direct your attention to all the matters that I
8 wished to speak to about.

9 A. Volume 3, Mr. Pugsley?

10 Q. Yes, Volume 3, which is the evidence, among other things,
11 that Maynard Chant gave at the reference, and I think I
12 directed your attention to page 177. Let's take a look at that
13 for a moment. Again, this focuses on whether or not Wayne
14 Magee was present, which is an issue that I spoke to
15 yesterday about. And I think this, my recollection is this is
16 the page that I referred you to, about Line 24:

17 Q. Where was the first statement
18 you've referred to given?

19 A. In Sydney at the police station.

20 Q. And the second statement?

21 A. Louisbourg at the Town Hall.

22 Q. Do you recall who was present while
23 the second statement was being
24 given?

25 A. My probation officer.

Q. What was his name?

A. Larry Burke. My mother, Beulah
Chant; Chief of Police Wayne
Magee. That's it.

BY THE COURT

1 Q. That's of Louisbourg?

2 A. Yes.

3 Now in fairness to your position, I should address your
4 attention to page 185 when Mr. Chant says at around Line
5 25:

6 Q. Who were they referring to at that
7 point, do you know?

8 A. At that point I didn't know but
9 now I know.

10 Q. Would that have been John
11 Pratico?

12 A. Yes. Q. Okay. A. And that's when
13 they -- just after that, they put
14 my mother out of the room...

15 So that explains the comment he makes about his mother on
16 page 177. But the page that I neglected to bring to your
17 attention is the following one, page 186, and it's the question
18 about the middle of the page:

19 Q. So to summarize, your first
20 statement given on the night of the
21 stabbing, that statement -- the gist of
22 it is that you didn't see the stabbing.
23 Right? And the gist of the second
24 one is that you did see Donald
25 Marshall do the stabbing. Now this
conversation at the Louisbourg Town
Hall, you said that your mother was
there, your probation officer was
there, Wayne Magee was there. He
was then the Chief of Police of
Louisbourg. Is that correct?

A. Yes.

1 Do you recall hearing that evidence by Maynard Chant at the
2 reference?

3 A. I don't recall hearing it, sir, but I don't have no doubt that the
4 transcript is proper.

5 Q. Okay. Now you were asked last week about whether or not
6 Donald Marshall, Jr.'s credibility would have been enhanced if
7 he had told the truth about the robbery.

8 A. His credibility, I missed one word, sir. Would have been
9 what?

10 Q. Would have been enhanced, would have heightened, would
11 have been more....

12 A. Oh, I see, sir.

13 Q. If he had told the truth about the robbery that he states that
14 he and Sandy Seale were involved in, or the rolling or
15 whatever. And what is your response to that? What do you
16 say to that?

17 In your opinion, if you were the investigator, would Donald
18 Marshall, Jr.'s credibility have been enhanced if he had told
19 the truth about that attempted robbery at the initial outset?

20 A. Well, you're asking my opinion, personally?

21 Q. Yes, I am.

22 A. Yes, as a police officer.

23 Q. Yes.

24 A. I feel that it would have played a part because Donald
25

1 Marshall was known to be involved in the park and with sort
2 of a rough crowd. However, I would have gone and
3 investigated certainly his story about this short white-haired
4 man who stabbed Sandy Seale. That's where my
5 neighbourhood inquiries would have gone to. I would have,
6 an investigator runs a story down and he either proves or
7 disproves it. And that's what I would have done. The thrust
8 of my investigation, whether there was a robbery or not a
9 robbery would have been to check out Donald Marshall's
10 story.

11 Q. I understand. I understand that point that you're making and
12 that really is the second part; namely, that it may not have
13 affected what you did. My question really was directed to
14 whether or not it would have enhanced his credibility in your
15 eyes if he had told you about the robbery in the first instance.
16 That's my question. Not what you would have done.

17 A. There would have been some enhancing, yes, sir.

18 Q. And because when you gave evidence last week in Volume 43
19 at page 7880, Mr. Orsborn, at Line 19, Mr. Orsborn asked you:

20 Q. The Chief Justice asked you what
21 steps you would have followed
22 had you been confronted with that
23 situation that night. Would the
24 steps that you would have taken
25 been any different had you known
about the robbery?

A. Yes., I, to me, then, it would seem

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 more, I suppose, Marshall would
2 have been more credible to me.
3 His story would have been more
4 credible.

5 I contrast that with your comment that is found in the same
6 volume at page 7969, and just ask for your comment on this.
7 Actually go to page 7968 at the bottom:

8 With regard to the question of Marshall
9 admitting at the time of the investigation
10 that he got involved in rolling or robbing
11 someone, you suggested that the story
12 might have been made more credible by
13 the addition of that, is that correct?

14 A. I'm sorry, Mr. Pugsley, it's 7968?

15 Q. 7968, the last line on the page, on Line 25.

16 A. Beginning "With regard to the question..."

17 Q.

18 With regard to the question of Marshall
19 admitting at the time of the investigation
20 that he got involved in rolling or robbing
21 someone, you suggested that the story
22 might have been more credible by the
23 addition of that, is that correct?

24 And you responded:

25 There's a hypothesis that tends to think
that. I don't follow it myself.

A. Uh-huh.

Q. What did you mean by that?

A. Well, as I've just stated, that would tend to lend to his
credibility and there is a school of thought that had he

1 admitted to the robbery, then the whole outcome would have
2 been different. That is the hypothesis. I don't tend to think
3 that way myself. As I say, I believe here, and as I will state,
4 I feel that the thrust of the investigation should have been to
5 either prove or disprove Marshall's story that there were,
6 there was a tall young man present and that the person who
7 did the stabbing was a short white-haired man.

8 Q. Yes, okay. With respect to the John MacIntyre's technique of
9 investigation in 1971, I think you indicated that you would
10 have had Marshall in your mind right from the outset, right
11 from the beginning as being a possibility, a possible suspect.

12 A. Well, Donald Marshall was certainly there. I would certainly
13 look at what he did and in analyzing that, he came back to the
14 scene. He went for help. But yet one would keep in mind
15 that he was prone to hanging around the park. From what
16 the chief told me, that he was involved with, sometimes had
17 in his possession knives. So certainly you would keep that in
18 mind, sir, yes.

19 Q. So he would be in your mind right from the very beginning.

20 A. Oh, yes.

21 Q. Yes.

22 A. You would look at the scene. The scene is all important in the
23 beginning of a murder investigation.

24 Q. And then two years later, Chant was interviewed by John
25 MacIntyre on the 30th of May with the murder occurring on

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 the night of the 28th or 29th of May, and I think you've
2 indicated that that would have been good police practice for
3 him to do that.

4 A. Yes, sir.

5 Q. And at that interview, Maynard Chant says that he was an
6 eyewitness to the murder and signed a statement to that
7 effect.

8 A. Could I see the statement, sir?

9 Q. Of course. It's in Volume 16 and I'll get it for you. Page 18, I
10 think.

11 A. So what was your question in regards to this statement, sir?

12 Q. Maynard Chant said that he was an eyewitness to that
13 murder in his statement of May 30th and let's just take a
14 moment to read it in part from the top.

COMMISSIONER POITRAS

16 That's the statement of Maynard Chant?

MR. PUGSLEY

18 That's the one, My Lord.

BY MR. PUGSLEY

19 Q.

20 Friday night I was in town and I
21 left the Bus Terminal on Bentinck
22 St. about 11:40 p.m. I walked
23 down Bentinck St. I came over
24 Byng Ave. and started to cross the
25 tracks. I got half way across the
walking and 2 more were walking

1 kind of slow talking. The 2
2 fellows who stabbed Donald
3 Marshall and Sandy Seale - they
4 talked for a few minutes over on
5 Crescent St. One fellow hauled a
6 knife from his pocket and he
7 stabbed one of the fellow - so I
8 took off back across the tracks to
9 Byng Ave...

10 Well, I take it from that that he saw the stabbing.

11 A. Yes.

12 Q. He's an eyewitness.

13 A. Yes.

14 Q. And he also gets a statement from John Pratico on the same
15 day and which indicates that John Pratico was very near by,
16 because he heard a scream. His statement is found on page
17 22 of Volume 16. He says:

18 I was over by the Courthouse when I
19 heard a scream. I looked. I seen 2 fellows
20 running from the direction of the
21 screaming. They jumped into a white
22 volkswagon; blue lic. and white no. on it.

23 And he describes the fellows. So you've got these two chaps
24 saying on May 30th in the afternoon, one saying he was an
25 eyewitness and another fellow saying he heard the scream.
And then MacIntyre goes to the park at midnight on June
3rd on the Wednesday of that week, I guess. I think that's
June 3rd, and concludes from what he observed that at the

1 park that, quite rightly, that Chant and Practico could not
2 have seen the things they did and give the statements that
3 they did. And he goes to see them the next day, June the 4th,
4 and determined to get at the truth. And, indeed, in the
5 interview with Chant, according to his mother, and I'm
6 quoting from memory here, he says: "All I want is the truth,
7 Maynard. That's not too bad, is it?" Or "That's not too much
8 of a thing to ask for, is it?" Do you see anything wrong in that
9 sequence of events as I've related them to you, anything
10 improper that he did?

11 A. No, sir.

12 Q. Now you indicated that the approach that you take to
13 interviewing witnesses is to find out as much about their
14 background as you possibly can.

15 A. Yes, sir.

16 Q. And that assists you in...How does that assist you? I think I
17 understand why it does, but tell me, if you would.

18 A. That would assist my in my conversation with the individual
19 in knowing his background and being able to talk to him on a
20 one-to-one basis.

21 Q. And enables you, I suppose, to establish a rapport with the
22 individual because you know a little bit, something about him.

23 A. Yes, sir.

24 Q. And perhaps put him at his ease, perhaps, by small talk or
25 something of that nature.

1 A. Yes, sir.

2 Q. Yeah, okay. And that's good investigative technique, I would
3 suggest, and would you agree with that?

4 A. Yes, sir.

5 Q. Now you described Maynard Chant, and I'm paraphrasing
6 your words because I don't recall the exact phrase you used,
7 but I think you used something like "a small time drug
8 pusher." Do you recall?

9 A. Yes, sir.

10 Q. Have I quote you accurately?

11 A. Yes, if you want me to go back on it. When I was involved
12 with the drug section between '73 and '74, Maynard Chant
13 was a very young person, just out of childhood, if you will,
14 and he was known to hang around with drug, people who I
15 maybe had searched for drugs. He was not a pusher maybe,
16 but he was involved in that milieu, if you will, sir.

17 Q. Transporting drugs, you mean?

18 A. I never charged him, sir.

19 Q. No?

20 A. But I knew of him, shall we say.

21 Q. Yes.

22 A. Yes.

23 Q. And before you went to interview him, did you run a search
24 on him to see whether or not he had any convictions?

25 A. I believe I did. By and large I relied on Constable O'Hara, who

1 was on my plain clothes section at that time who grew up
2 with Maynard Chant and lived, came from Louisbourg.

3 Q. And were you advised that he had, in fact, been convicted or
4 had not been?

5 A. I can't recall at this time, sir.

6 Q. Okay. Maynard Chant in the course of the discovery evidence
7 that he gave in the libel action with CBC was asked about this
8 phase of his career by me and he, although the answer he
9 gives is a little obscure, I take it from what he says, and the
10 evidence is before the Commission in Volume 12, that he was
11 making about 15 or \$20,000 a year illegally with illegal drugs.
12 Is that a small-time kind of drug pusher, would you say, or is
13 that...

14 A. Well...

15 Q. Medium-sized, or is that...

16 A. That would be a substantial involvement in drugs, yes, sir.

17 Q. Yes. You were not aware if that, if I've summarized his
18 evidence correctly, you were not aware that he was in that
19 kind of league, I take it?

20 A. What year are we talking that he was doing that, sir?

21 Q. Well, let me direct your attention to it, if I can find it.

22 A. As my recollection goes in 1971, he was 14 or 15.

23 Q. It's found in Volume 12 of the evidence and let's just see if I
24 can put my hand on it. Around page 109 and 110.

25 MR. OUTHOUSE

1 I think the witness has been given the transcript of the evidence
2 here, Mr. Pugsley, and not Exhibit 12, what you're referring to.

3 BY MR. PUGSLEY

4 Q. I'm sorry, it's Volume 12.

5 A. Page, sir?

6 Q. Page 109, and just to put this in the proper light, the date of
7 this examination, yes, it's testimony of August, 1984 and I can
8 advise you that it occurred in the Courthouse in Sydney and
9 he was examined first by Mr. Murrant and then by me. And
10 he says at page 108:

11 How did you first get involved in
12 doing drugs? Well [he says] I
13 turned about 16 I guess and I
started to do drugs.

14 Q. Shortly after the Marshall trial?

A. Yes.

15 Q. How did you first get involved in
doing drugs?

16 A. Well, like at first, I got it at school,
17 got my first contact with it in
school.

18 Q. What did you do? You arranged to
buy?

19 A. No, at first, like anybody else, I was
20 going around doing drugs, buying
21 and using it, et cetera, et cetera, and
22 then after awhile, I began to come
and say, Hey, why should I pay for
23 my dope? And that is when I
began to buy and sell a little bit and
24 have a personal smoke and then
after opportunities came for me to
25 enter into that culture of

transporting?

1 Q. Yes, would you have done this
2 pretty well from '72 onwards, into
3 '79?

4 A. Pretty well off and on.

5 Q. Were you regularly employed at all
6 during that period of time?

7 A. I'd held down a couple of jobs
8 basically just to cover up the money
9 that I was taking in.

10 Q. I see. Were you living at home at
11 this time?

12 A. From time to time. I was moving
13 back and forth to Montreal, Ottawa,
14 Toronto, wherever I was.

15 Q. You started going to Montreal,
16 Toronto and Ottawa to arrange for
17 the purpose of the drop?

18 A. Well, the transporting of it.

19 Q. I see. Well, would you actually
20 bring it with you?

21 A. Oh, yes.

22 Q. Would you go by car?

23 A. I never had a license.

24 And so on, and Line 44:

25 Q. Would you be involved in the
purchase and sale once a month
during this period of time?

A. Oh, easy.

Q. What kind of money would make
out of these transactions?

A. Like I say, I made enough money
to feasibly keep myself and
whatever, you know, quantity of
clothes and whatever I wanted. I
could spend, you know, roughly 300
a day and just barhopping or
something trying to pick up where I

1 had taken a score because there
2 was always people being busted
3 and et cetera. So you would usually
4 try and hunt around picking new
5 contacts. The force of the law was
6 there continuously.

7 Q. Did you ever get picked up by the
8 police?

9 A. One time, yeah.

10 Q. Were you charged?

11 A. Well, I was charged here in
12 Sydney.

13 Q. Of what? Possession?

14 A. Possession, yes.

15 Q. Were you convicted?

16 A. With an intent to traffic. There
17 were two charges given and I
18 grabbed the two charges hoping
19 that I'd get off. Well, I got off with
20 possession. Anyway, I got a
21 hundred dollar fine and that's about
22 it.

23 And then Line 51 on page 110:

24 Q. What would you be making, about
25 20 or \$30,000 a year?

A. Well, I'd be carrying about maybe,
no, not at first, maybe the last
going off I might have been
handling maybe anywhere from
like in the circular pushing the
dope roughly maybe 15 to 20,000,
moving around all the time.

Were you aware of that kind of background?

- 1 9:50 a.m. *
- 2 A. When, sir?
- 3 Q. In '82.
- 4 A. In '82.
- 5 Q. Yes.
- 6 A. Yes. At some point in 1982 in one of my conversations with
7 Maynard Chant he had told me that he was involved in
8 transporting narcotics and so on.
- 9 Q. What about Patricia Harriss? Were you aware that she had
10 some offences of one kind or another?
- 11 A. I did a record check on Patricia Harriss and found that she
12 had offences, yes, sir.
- 13 Q. Yeah, okay. Now, you mentioned Michael Harris. When did
14 you first start meeting with Michael Harris?
- 15 A. I believe Mr. Harris may...I had a lot of phone calls during the
16 investigative portion of this.
- 17 Q. Yes.
- 18 A. He may have phoned me. He indicated to me he did. I met
19 him at the reference and at that time he reminded me that he
20 had spoke to me and I wouldn't tell him anything about the
21 investigation. And he said that after it was all over would I
22 mind talking to him as he wished to write a book.
- 23 Q. Yes. And did you talk to him?
- 24 A. Subsequently, yes, sir.
- 25 Q. On how many occasions?

1 A. I don't recall specifically. There would have been maybe...I
2 don't have a record of it but maybe eight occasions. I don't
3 know.

4 Q. Maybe eight. Okay. And where did these meetings take
5 place?

6 A. He came to my office, I believe, at Thornville Barracks. I
7 went to his home once while I was in Windsor, he lived in
8 Windsor, Nova Scotia. He would invite me out for lunch a few
9 times.

10 Q. Did he pay for it?

11 A. I paid for my own lunch.

12 Q. Yes, uh-hum. Did you discuss giving these interviews to
13 Michael Harris with your superiors?

14 A. I believe I may have mentioned it to my O.C. or, no. I would
15 have been working for Superintendent McCormack at that
16 time. I believe I mentioned it in passing. I certainly wouldn't
17 hide it.

18 Q. Mentioned it in passing to whom?

19 A. It would be to Superintendent McCormack I would be
20 working for at that time.

21 Q. And where is he now?

22 A. He's stationed in Ottawa to the best of my knowledge, sir.

23 Q. Yes. And what would you mention to him?

24 A. I don't have a specific recall of actually mentioning anything.
25 I think I may have, I said, mentioned it in passing and it

1 would be just that a chap was interviewing me who was going
2 to do a book on the Marshall case.

3 Q. I see. Did you tell him you had eight interviews with him or
4 you were going to have eight interviews with him or tell
5 him...

6 A. No, sir.

7 Q. Discuss what you were going to...did you tell the
8 Superintendent if you did have this passing talk with him the
9 nature of the discussions you planned to have with Michael
10 Harris?

11 A. It would be in no depth, sir, no.

12 Q. In no depth with the Superintendent.

13 A. No, sir.

14 Q. Yeah. Okay. Did you hold back anything from Michael
15 Harris? Were you perfectly candid and frank with him?

16 A. Yes, sir.

17 Q. Told him everything he asked you.

18 A. Basically, I endeavoured to assist him in the writing of his
19 book any way he wanted.

20 Q. Yes. Did he take notes during the interviews?

21 A. Amazingly no, he took very few notes.

22 Q. Did he have a tape recorder?

23 A. No, he didn't.

24 Q. So, he did not tape the interviews and he took very few...

25 A. Not to the best of my knowledge, no.

1 involvement in the Marshall affair. How did that come about?

2 A. He called and asked if I would ever be in Windsor and I said,
3 "Yes, " I had business down that way, and I did at that time
4 and he said, "When?" and as I recall, and we arranged a
5 mutually agreeable date.

6 Q. I see. And when he suggested that he tape the interview, did
7 you have any objection to that?

8 A. No, I did not, sir.

9 Q. Did he give you a copy of the tape?

10 A. No, he did not, sir.

11 Q. Did he review any of his final proof of the book with you
12 before it was put into the publishers?

13 A. Yes, he did, sir.

14 Q. I see. Did you read all the things in the book that he has
15 about you and about the 1971 investigation?

16 A. As I recall that he gave it...I know he gave it to me one day
17 and needed it back about the following day or two days later.
18 It was a rough draft type of thing. I read through very
19 hurriedly. I never did finish it and I gave it back to him on, I
20 believe, on Monday morning and he gave it to me on a
21 Friday afternoon. So I never really did have the opportunity
22 to thoroughly analyse the rough draft, but he did give me a
23 rough draft.

24 Q. Did you make any changes?

25 A. No.

1 Q. No. You were open and candid and frank with him, I take it.

2 A. Yes, sir.

3 Q. Yeah. Were you open and frank and candid with Heather
4 Matheson when she interviewed you?

5 A. It was...she wanted to take me for a radio show and I refused
6 and as I recall the...with the interview with Heather
7 Matheson, while I certainly did not in any way lie to her or
8 anything like that, I was not as open with her as I would have
9 been with Mr. Harris, no.

10 Q. Why was that?

11 A. I really don't know.

12 Q. I see. The...you mentioned the reference in Halifax where you
13 met Harris and I think you indicated you had not really had
14 any interviews with Harris before the reference. They all
15 occurred after the reference.

16 A. That's correct, sir.

17 Q. Did they all occur in the six months or eight months after the
18 reference?

19 A. I really don't have any dates recorded, sir.

20 Q. Or in the year after the reference, put it that way.

21 A. I would think that would be a better ballpark figure. Mr.
22 Harris, as I recall it, would go out, do legwork and sometimes
23 come back and ask me "Where does this person live? Where
24 does that person live?"

25 Q. I just wanted to get a copy of the book to see when it was

1 published if it's possible. Here it is. Well, it's copyright, 1986,
2 I guess we can ask Mr. Harris when these interviews took
3 place. The third Ebsary trial, I guess, was concluded in
4 January of 1985. Did it ever occur to you that it was
5 inappropriate for you to be giving this frank, candid, open
6 information to Michael Harris when Roy Ebsary had not yet
7 passed through the court system?

8 A. No, sir.

9 Q. What do you say about it now?

10 A. I have no problem with it now, sir.

11 Q. I see. Okay. [To clerk] Would you be good enough to give
12 Mr...Staff Sergeant Wheaton Volume 37, please, the discovery
13 examination of Heather Matheson.

14 MR. CHAIRMAN

15 Before we move on to that. Staff Sergeant Wheaton, in the
16 event that Michael Harris should be called to testify before this
17 Commission, do you release him of any commitment of
18 confidentiality he may have given you?

19 STAFF SGT. WHEATON

20 Yes, I do, My Lord.

21 MR. CHAIRMAN

22 Thank-you.

23 MR. PUGSLEY

24 I think, My Lord, I asked Staff Sergeant Wheaton yesterday
25 if he'd have a blanket release for all media he talked to and I

1 think he gave us that blanket release if I'm correct.

2 Q. In any event, I'll ask you now, in addition to Heather
3 Matheson, Alan Story, Michael Harris, do you give a blanket
4 release to all media who interviewed you at any time, from
5 '82 onwards, with respect to disclosing to this Commission any
6 information you gave to them?

7 A. Yes, I do, sir.

8 Q. Thank-you. Volume 37 is an examination on discovery
9 conducted on the 25th of June, 1984, of Heather Matheson.
10 And I think you indicated that Miss...you recall meeting with
11 Mrs. Matheson at Thornville Barracks. Just to give us some
12 idea as to when this occurred, Staff Sergeant Wheaton, at
13 page...page 12, and the only reference I want to pick up on
14 page 12 is to set the time when this meeting between you and
15 Ms. Matheson occurred. She says at line eight...at question 86.

16 A. Excuse me, Mr. Pugsley.

17 Q. Of course.

18 A. Volume 37, page 12.

19 Q. Page 12.

20 A. I have six thousand seven hundred and...

21 Q. I'm sorry. It's the red book. The red book, sir, I am...I should
22 be more careful about identifying the colour.

23 A. Oh, yeah, I have 37, page 12. Yes, sir, I have it.

24 Q. Have it, good. Thank-you. At page 12 then that's 12 in the
25 middle of the top of the page, not on the right-hand corner,

1 just to identify it around question 89,

2 Do you know when the story went to
3 air?

4 A. November 27, I believe.

5 Q. That's on Sunday morning, November
6 27th, 1983, and it would have been a
7 Tuesday before.

8 A. Prior to that.

9 Q. Five days prior to that you have
10 regularly a story meeting on a Tuesday.

11 And take it from me that over the next couple of pages the
12 interview that she had with you, I believe, was on the
13 Wednesday, four days before November 27th, I guess around
14 November 23rd, 1983. Just to set the context of when that
15 interview took place. Now, at the bottom of page 36, question
16 273, "Q. What are you waiting for?" and she...I am reading
17 from her diary which was an exhibit at the discovery.

18 Q. What are you waiting for? 'Flight 8:30
19 p.m. to Sydney, Glen what time sentencing.'
20 All right. Let's just go back to what you
21 did in Halifax. You've told him that you
22 met a person at RCMP headquarters and
23 talked to them for about forty minutes.

24 Have you got any comment about that forty minutes?

25 A. No, I don't. If you're alluding to me being the person.

Q. I am.

A. I could have been, sir, I don't know.

Q. Okay.

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 A. I note she uses the word "RCMP headquarters" her meeting
2 with me was at Thornville Barracks down on the Northwest
3 Arm.

4 Q. I'm sorry. I used the word. It's my question, RCMP
5 Headquarters.

6 A. Oh, I see. I'm sorry.

7 Q. Let's just see if she defines that.

8 A. Oh, that's you saying that the meeting was forty minutes.

9 Q. Yes, that is me. And I guess I must have got that from a
10 response from her...

11 COMMISSIONER POITRAS

12 Page 37.

13 MR. PUGSLEY

14 Page 37.

15 COMMISSIONER POITRAS

16 Question 273.

17 MR. PUGSLEY

18 Yes. I guess that's my question, My Lord, but Staff Sergeant
19 Wheaton points out that's my question, how did I know forty
20 minutes or why did I suggest to her forty minutes and I can only
21 say that it must have come as a consequence of something she had
22 answered a little earlier. And I'll try and find that for Staff
23 Sergeant Wheaton.

24 Q. I'll try and find that for you later Staff Sergeant.

25 A. Thank-you.

1 Q. Then at 276, "Q. Tell me what did he tell you? And you're now
2 referring to page? A. Page 12. This is page 12 of the
3 discovery...of her note pad.

4 A. 276 you're referring to, sir, line.

5 Q. Question 276 on page 37.

6 A. Yes, sir.

7 Q. A question,

8
9 Q. Tell me what did he tell you. And you're
now referring to page.

10 A. Page 12.

11 Q. Page 12 of Exhibit 1. All right. You go
ahead. Just tell me what he told you
rather than me reading your notes.

12 A. He told me that he first became
13 involved in the case in February of
14 1982.

15 That was certainly true as far as your first involvement was
16 concerned, wasn't it?

17 A. Yes, sir.

18 Q. Yes. Was there any other RCMP involved in February of 1972
19 apart from yourself in Halifax in November of 1983?

20 A. No, sir.

21 Q. Okay.

22 He gave me some of the details that
23 were set forward for him in a letter by
24 Aronson who was Marshall's first
lawyer, I believe.

25 Q. Did you see the letter?

1 A. I did not. He showed me no documents.

2 Q. Were you alone at the time, Miss
3 Matheson?

4 A. Yes, we were. He gave me information.
5 He spoke fairly openly but making sure
6 that he wouldn't be named in this.

7 Did you say that to her?

8 A. I don't recall me asking her not to name me, no. I'm not
9 quibbling with it at all.

10 Q. What motive...

11 A. I have no recollection of ever saying that.

12 Q. What motive...

13 A. I do recall that I spoke fairly openly.

14 Q. What motive would you have for telling her that you didn't
15 want to be named? If in fact you told her that, what would
16 be the motive?

17 A. I really can't answer that, sir. I don't know.

18 Q. No proper motive.

19 A. I don't know is it proper or improper.

20 Q. Well, it's...I'd suggest to you, sir, that it's improper for a
21 member of the RCMP to give information to the media and
22 say "Look it, don't name me." Doesn't that strike you as being
23 information that really should not be given at all, and that's
24 why you wouldn't want to be named. You wouldn't want to
25 be associated with that leak. Is that not a fair assumption?

A. That could be an assumption, sir, yes.

Q. Okay. Question to her,

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Q. What did he say in that regard?

A. He said he'd rather not be named, and as you can see at the bottom of page 12 I made a note too if I used any of the information that he gave me to refer to him only as a source close to the investigation.

Did she tell you that she would only identify you in that manner?

A. She could have, sir, I don't have any independent recollection of it.

Q. 281,

Did you in fact use any information he gave you?

A. Not on, no, not in the broadcast at all, no, I didn't quote him at all.

Q. What did he say? Tell me about what he said to you?

A. I asked him about the polygraph test and he said that the RCMP was guilty of putting too much confidence in the polygraph test that was given to both Mr. MacNeil and Mr. Ebsary.

Did you tell her that?

A. I could have, sir.

Q. Yeah.

Q. This was a polygraph test given in 1971, I believe, was it not?

A. Yes.

Q. Did you know what the results of that

polygraph test were?

1 A. He told me that the results of the
2 polygraph test given to Mr. Ebsary
3 showed that Mr. Ebsary was telling the
4 truth and that Mr...

Q. Sorry, telling the truth when he said
what?

5 A. That he was not involved in the murder
6 that evening and that the results given
7 to...the test given to Mr. MacNeil were
8 inconclusive and so on those grounds
9 nothing was done.

Then at question 288, at the bottom of page 39.

10
11 Q. Did the RCMP officer imply to you that
12 there were not taken properly, tests
13 were not administered properly?

14 A. No, he didn't. He indicated to me that
15 simply that there was too much
16 confidence put in those tests, that
17 possibly the people who gave them
18 were new but that there should have
19 been something else done.

Did you tell that to Heather Matheson?

20 A. I don't have any independent recollection of telling her that,
21 but it would be consistent with my thoughts, sir.

22 Q. Would you have criticized through the media the tests carried
23 out by a a member of the RCM Police, was that your...

24 A. No, I would not, sir.

25 Q. No. At the top of page 40,

Q. Did he suggest that the results of the
polygraph test were indeterminate or

1 inconclusive or did he attack the use of
2 polygraphs and the results achieved
3 from them generally?

4 A. I think his was a more general criticism.

5 Q. About polygraphs in general?

6 A. Quite possibly, yes. I didn't read it as a
7 specific complaint.

8 Then at question 294,

9 Q. What other things did he say to you?

10 A. We talked about the statements.

11 Q. What statements?

12 A. The statements of Maynard Chant and of
13 Pratico and Harriss.

14 Did you discuss those with Miss Matheson?

15 A. Where were you reading from there, sir?

16 Q. At the bottom of page 40.

17 A. Yes, sir.

18 Q. Question 295. Did you discuss with Miss Matheson the
19 statements of Maynard Chant and Pratico and Harriss?

20 A. I could have. I don't have any independent recollection of it.

21 Q. And then at the top of page 41 she...I asked her a question,

22 Q. The notes that we see in Exhibit 1 were
23 made at the time of your interview with
24 the RCMP officer?

25 A. Yes, they were.

And then at the bottom of page 41,

Q. Then Pratico, I'm sorry to interrupt you,
but just dealing with your notes, Exhibit 1,
page 12, we see that at the bottom

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 Chant...we see at the bottom 'Chant - said
2 pressured, [new line] 'MacIntyre denied it'

3 Then it says, "Biggest travesty of justice ever." Did you say
4 Miss Matheson that this was the biggest travesty of justice
5 ever?

6 A. I could have. It would be consistent with my thoughts, sir.

7 Q. Yes. And then at page 42, question 305,

8 And then maybe a little above on that on
9 page 12 we see the word, 'source close to
10 the investigation.' Is that how you
11 identified the person?

12 A. Yes, that's how he asked to be identified.

13 Did you ask Heather Matheson to identify you only as a
14 source close to the investigation?

MR OUTHOUSE

15 My Lord, I hesitate to rise and interrupt my learned friend's
16 cross-examination but he went through all this, not yesterday but
17 the day before, the very same questions as I recall.

MR. CHAIRMAN

18 The questions, as I recall them, were somewhat more
19 general.

MR OUTHOUSE

20 No, he quoted these specific portions, the last two portions,
21 "biggest travesty of justice ever".

MR. CHAIRMAN

22 Yes, I recall.
23
24
25

1 MR OUTHOUSE

2 And asked to be source close to the investigation...he asked
3 to be identified that way. I recall, I'm not saying my memory is
4 perfect on this, but those two questions specifically were read to
5 the witness and he was asked to comment on them.

6 MR. CHAIRMAN

7 Well, I'm assuming that the...this line of questioning is
8 leading somewhere.

9 MR. PUGSLEY

10 Only, My Lord, to...certainly it's in relation to credibility.
11 Certainly I do acknowledge that I asked the question yesterday
12 about the travesty of justice. I do not recall that I put to this
13 witness these questions in this kind of detail yesterday and that
14 certainly there was a denial on the stand this morning wherein, if
15 I recall correct, Staff Sergeant Wheaton said he did not ask to be
16 identified as a source close to the investigation. But apparently
17 that's how...that's what...that's how Heather Matheson has testified
18 that he did ask to be identified and that did not get up yesterday,
19 I don't think.

20 MR OUTHOUSE

21 I thought it did and if it didn't you've already said it came
22 out this morning. I'm just wondering how many times the same
23 question is going to be asked.

24 MR. CHAIRMAN

25 Not too many I assure you. Lots of freedom, a great deal of

1 freedom on cross-examination, though needless repetition doesn't do
2 anyone any good. It certainly doesn't help the Commission...but I...so far
3 I've been treating this as a more detailed examination arising out of some
4 general...more general statements made by this witness.

5 COMMISSIONER EVANS We only listen to it once any way.

6 MR. PUGSLEY I'll bear those interjections in mind, My Lord, thank-you.

7 Q. May I direct your attention to page 51, Staff Sergeant Wheaton.

8 Question 371:

9 From page 15 of Exhibit 1 perhaps the easiest thing
10 to do would be if you would read each one of the
11 words that are there and then give me why you put
12 them down. A. 'Lawyers didn't follow up leads',
'MacNeil manipulated'.

13 Q. What do those mean?

14 A. Well, there's a dash and then it says, 'Pratico broke
15 down in the hall and said he hadn't seen Marshall,
16 Rosenblum and Simon Khattar.

17 Q. Yes. Now, what do all those things mean?

18 A. The RCMP officer told me that he felt that there was
19 a lead that the lawyers did not follow up and that
20 was that Pratico had broken down, said that he had
21 not actually seen Donald Marshall and...but it was
22 taken by Mr. MacNeil and told to go back and
23 testify.

24 Did you tell Heather Matheson that?

25 A. That wouldn't be consistent completely with my recollection of what
happened, sir, no.

Q. And at the bottom of page 52, question 378,

Q. What does all that mean?

A. Well, from 'MacIntyre',
to 'trumped up.' Is the RCMP

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 officer telling you that Marshall had
2 been brought up on a previous charge in
3 Sydney. He said that it was trumped
4 up.

5 Q. Meaning.

6 A. That it was not a legitimate charge.

7 Q. And what he advised you was that John
8 MacIntyre had trumped up a charge
9 against Donald Marshall.

10 A. That's what he insinuated.

11 Did you tell that to her?

12 A. That would be consistent with my thoughts, sir.

13 Q.

14 Q. The next answer, Oh, "Sydney", he
15 called it a red neck town.

16 Did you call Sydney a red neck town to Heather Matheson?

17 A. That would be consistent with my thoughts.

18 Q. Yes. And then did you discuss Ian MacNeil, the Editor of the
19 Cape Breton Post as part of the mafia?

20 MR. ROSS

21 Would you repeat the question?

22 BY MR. PUGSLEY

23 Q. Certainly. Did you describe Ian MacNeil as being part of the
24 mafia?

25 A. No, that would not be consistent with my thoughts, sir.

COMMISSIONER EVANS

I assume you're not talking about the international one.

MR. PUGSLEY

Yes, I'm sure a local one. I'm sure we're not talking about an

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 international one here.

2 BY MR. PUGSLEY

3 Q. And then I said:

4 Q. 383. I said what does that mean.

5 A. I assume what he meant was the group
6 of people who lived in the area for
7 awhile and who were sort of all new to
8 the case were all part of it. I don't
9 know whether he meant it in a
10 derogatory sense. I really don't think
11 so.

12 Q. Did he use the word "mafia"?

13 A. Yes, he did.

14 Well, you say you didn't?

15 A. I don't recall.

16 Q.

17 He'll blame it on Donnie MacNeil,
18 overlook a sensual travesty of justice.

19 Q. Sorry, he'll blame is on Donnie MacNeil.
20 Who is he?

21 A. Ian MacNeil. I see.

22 Q. Ian MacNeil will blame it on Donnie
23 MacNeil. Is that what that means?

24 Do you recall any discussion to that effect?

25 A. Not really. It's sort of mixed up.

Q. Okay. Now I want to deal with that meeting of April 26th.

A. Yes.

MR. CHAIRMAN

Before we leave this area, there is one thing of clarification. I

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 understood you to say, Staff Sergeant Wheaton, that you had no
2 problem with disclosing this kind of information to Miss Matheson
3 or any reporter when, even though the Ebsary case was still
4 working its way through the courts.

STAFF SGT. WHEATON

5 Yes, sir, the Donald Marshall case, if you will, was over. The
6 Supreme Court had been held and my conversation with her was
7 in reference to the Donald Marshall case.

MR. CHAIRMAN

8 But it surely would impinge upon Ebsary's trial, wouldn't it? I
9 mean some of the evidence that was brought to light as a result of
10 your investigation was used in the Ebsary trial.

STAFF SGT. WHEATON

11 Yes, My Lord.

MR. CHAIRMAN

12 Indeed, did you testify...

STAFF SGT. WHEATON

13 Yes, I did, My Lord.

MR. CHAIRMAN

14 Is there any, to your knowledge, is there any rule within the
15 RCMP that would preclude or recommend that evidence in the
16 hands of the RCMP not be made public, particularly when there's a
17 trial of an accused in progress and that to which the evidence
18 relates?

STAFF SGT. WHEATON

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 I don't specifically know the rules myself, My Lord, but it would
2 be my interpretation of them and my overall feeling that if the
3 Donald Marshall case was still going, I would not speak of the
4 Donald Marshall case. The Roy Ebsary case was going. I did speak
5 to Heather Matheson. I did speak candidly to Heather Matheson, I
6 believe. I don't believe I spoke as thoroughly to her as I did to
7 Michael Harris. However, I know of no way that it impinged upon
8 the Ebsary trial.

9 MR. CHAIRMAN

10 But ordinarily, I gather...

11 STAFF SGT. WHEATON

12 The general rule of thumb, yes, My Lord, is you do not speak of a
13 case while it is before the courts, and I have always tried to
14 adhere to that.

15 BY MR. PUGSLEY

16 Q. It's my recollection that the first Ebsary trial was in
17 September of 1983. The second Ebsary trial was in November
18 of 1983, roughly about the time you had this interview with
19 Heather Matheson. And the third trial was in January of
20 1985. That's my recollection. And as the Chief Justice has
21 mentioned to you, you were certainly a possible witness at
22 the, certainly possible that you would be called in view of
23 your investigation in 1982. You did not consider it
24 inappropriate to have a frank, candid discussion with Michael
25 Harris over eight interviews and with Heather Matheson

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 concerning your involvement. And I'm sure you must have
2 touched on with Michael Harris your interviews with Roy
3 Ebsary.

4 A. Yes, I did, sir.

5 Q. You must have.

6 A. Yes.

7 Q. You did not consider it inappropriate for you, and we'll find
8 out these dates from Michael Harris, but if your interviews
9 with him were shortly after the reference, the reference
10 evidence was heard in December of 1982, if you had any
11 interviews with Michael Harris before the first Ebsary trial in
12 September of 1983, do you not consider it very inappropriate
13 for you to have engaged in a frank discussion with him
14 concerning information, opinions you had about Roy Ebsary?

15 A. It was my understanding in my conversations with Mr. Harris
16 that he was gathering material for a book and that prior to
17 the publishing of this book, I would have the opportunity of
18 reviewing it, which he did give me, and if at any time I
19 wanted to veto anything in that book, I had that opportunity.
20 When the date of the publication of that book, to the best of
21 my knowledge, was done, the Ebsary trials were over.

22 Q. Yes, but you...

23 A. I did not think it inappropriate to discuss it with him, no, sir.

24 Q. But did you say to Michael Harris, "Look it, I don't want you
25 to mention what I'm telling you to anyone else until you book

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

- 1 comes out and until I've had a chance to approve it in a
2 couple of years down the road." Did you say that to him?
- 3 A. I respected Michael Harris, as I got to know him as an author
4 and as a newspaper man...
- 5 Q. That wasn't my question.
- 6 A. And he advised me that he would not publish anything
7 without my first seeing it, and he kept his word.
- 8 Q. I may be wrong on this but it's my recollection that Michael
9 Harris wrote a series of articles for newspapers long before
10 this book was published.
- 11 A. He wrote articles for newspapers, yes, sir.
- 12 Q. And they would have been published in the newspaper
13 certainly before January '85 when the third Ebsary trial was
14 concluded.
- 15 A. I believe so, yes, sir.
- 16 Q. Did any of those newspaper articles divulge information that
17 you gave to him?
- 18 A. I don't know, sir.
- 19 Q. Well, I take it you did not get from him an undertaking that
20 he would not disseminate what you told him to any third
21 person. You did not get such an undertaking.
- 22 A. No, I did not, sir.
- 23 Q. And you still do not consider that this was a...
- 24 A. I don't, no, sir.
- 25 Q. A very inappropriate and, indeed, wrong thing for you to

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 have done.

2 A. No, I don't think it is, sir, no.

3 Q. All right. Have you been disciplined by the force as a
4 consequence of your leaks to the media during the course of
5 this investigation or since?

6 A. I don't consider I made leaks to the mass media during the
7 course of this investigation, sir, and I have not been
8 disciplined.

9 Q. I didn't say "to the mass media", I said "leaks to the media."
10 Have you been disciplined or have you been subject to any
11 criticism by any members of the force for the way in which
12 you have given interviews to the media since this
13 investigation started in '82?

14 A. No, sir.

15 Q. Now on April 26th, 1982, you've testified that you went to
16 John Marshall's...John MacIntyre's office.

17 A. Yes, sir.

18 Q. In response to a telephone call, I believe, from him saying
19 that he had received the letter from Attorney General How
20 and that he had the papers for you, is that, paraphrasing, but
21 essentially is that the story?

22 A. I don't know if Inspector Scott called him or he called
23 Inspector Scott. If he says he did, I wouldn't quibble with it
24 and I did go there on April 26th.

25 Q. I'm going to have marked as an exhibit a calendar for the

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 years 1800 to 2050. I don't know how these work except
2 that someone tells me that No 6 is the one to read. I'll give
3 you a copy, Staff Sgt. Wheaton, and perhaps we can get that
4 marked as the next exhibit. This may be of some assistance
5 because the dates as this time are rather critical.

EXHIBIT 107 - CALENDAR FOR YEARS 1800 TO 2050. *

8
9 MR. CHAIRMAN

10 Before you get into it, I suspect this is going to take a little while.

11 MR. PUGSLEY

12 Yes.

13 MR. CHAIRMAN

14 Before you start or continue your cross-examination and before
15 we take a short recess, I would ask Staff Sgt. Wheaton if he would
16 explain to me once again, because I missed some if it before, how
17 you were all seated during your interview on the 26th in
18 MacIntyre's office.

19 STAFF SGT. WHEATON

20 Yes, My Lord. If this were Mr. MacIntyre's desk, would you like
21 me to do it that way, My Lord?

22 MR. CHAIRMAN

23 Yes.

24 STAFF SGT. WHEATON

25 He was seated behind the desk. There was a doorway to the right

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 | which we come in, only one doorway in the office. Corporal Davies
2 | was seated there...

3 | MR. PUGSLEY

4 | May I make a suggestion, My Lord, before the witness continues
5 | and that is to ask him to draw it on a piece of paper during the
6 | break and I'll get it photostated and then we'll show it to all of
7 | us.

8 | MR. CHAIRMAN

9 | All right, good idea.

10 | STAFF SGT. WHEATON.

11 | Fine, Mr. Pugsley.

12 | INQUIRY BREAKS.

13 |
14 | MR. PUGSLEY

15 | We're just getting the photostats distributed, My Lord.

16 | MR. CHAIRMAN

17 | All right.

18 | MR. OUTHOUSE

19 | There are two exhibits. One is the diagram drawn by Staff Sgt.
20 | Wheaton. The other are the notes that were referred to yesterday
21 | that he took during the Supreme Court reference.

22 | MR. CHAIRMAN

23 | Fine, thank you.

24 |

25 | EXHIBIT 108 - PHOTOCOPY OF STAFF SGT. WHEATON'S NOTES

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 TAKEN DURING THE REFERENCE BEFORE THE COURT OF APPEAL OF
2 NOVA SCOTIA IN DECEMBER, 1982.

3
4 EXHIBIT 109 - DIAGRAM DRAWN BY STAFF SGT. WHEATON OF
5 JOHN MACINTYR'S OFFICE WITH SEATING PLAN OF MEETING OF
6 APRIL 26, 1982.

7
8 BY MR. PUGSLEY

9 Q Before I get to April 26th, Staff Sgt. Wheaton, I've asked you
10 about Heather Matheson and Michael Harris. Did you have
11 any interviews with Alan Story at any time?

12 A. Not interviews, no. He would call or drop in to our office. I
13 did not do any indepth interviews with him at all.

14 Q. Comparable to, I mean, the Heather Matheson interview.

15 A. No, sir.

16 Q. Or anyone else, any other media.

17 A. No, sir, not that I can recall.

18 Q. Why don't we just deal with Exhibit 108 while it's in front of
19 us?

20 MR. OUTHOUSE

21 Perhaps just before we go on to that, because there's been a lot of
22 questions put to this witness about the timing of his evidence. It's
23 come to my attention during the break, and it's a matter of record,
24 I believe, that at the time Staff Sgt. Wheaton was interviewed by
25 Ms. Matheson was at the conclusion, just after the second Ebsary

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 trial which had resulted in a guilty verdict and the sentencing had
2 taken place. I don't believe any appeal had been launched at that
3 time but the appeal period was open. So that's the chronology,
4 that's the time context in which that interview was given.

5 MR. CHAIRMAN

6 The second conviction...

7 MR. OUTHOUSE

8 My understanding is the first trial resulted in a hung jury.

9 MR. CHAIRMAN

10 Right. The second was the conviction appealed.

11 MR. OUTHOUSE

12 That's right, and the time of that interview was just following that
13 second conviction and sentencing.

14 MR. CHAIRMAN

15 Yes, indeed, there's some reference to, in the transcript that you
16 were reading from the discovery examination of Heather
17 Matheson to her coming back to Sydney or to Halifax the day after
18 the sentencing, which I believe may have been a day or two
19 before...

20 MR. PUGSLEY

21 I think that's accurate, My Lord. As I understand it, the interview
22 with Sgt. Wheaton was on the Wednesday. The sentencing, I
23 think, was on the Thursday or the Friday in Sydney.

24 BY MR. PUGSLEY

25 Q Exhibit 108 is a photostatic copy of handwritten notes that

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 you made while you were in attendance at the reference in
2 December of 1982. The notes are 108 and the drawing is 109,
3 is that correct?

4 MR. CHAIRMAN

5 Yes.

6 BY MR. PUGSLEY

7 Q This is a photostat of notes made by you, sir, in December,
8 1982?

9 A. At the time of the reference, sir, yes.

10 Q Were there any other notes you made?

11 A. There may have been, I don't have them in my possession,
12 sir.

13 Q And perhaps you'd just read to us what you have written
14 here and if there's any questions that occur to me, I'll ask you
15 about them as we go along.

16 A. Supreme Court Ref., Full Bench, Patricia
17 Harriss, good witness, shaken a bit. Greg
18 Ebsary, okay, obviously hates father.
19 Donna Ebsary, okay, describes father
20 killing her bird. Donald Marshall, poor
21 witness, wouldn't speak up. Robbery
22 versus rolling.

21 Q What did that mean? What did you mean by that comment?

22 A. To the best of my recollection, there was some questioning by
23 the judges at that time, "Were you trying to rob someone?"
24 And Donald Marshall wouldn't admit to robbing to anyone
25

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 and he said that he was trying to roll someone or get money
2 or something of that nature, sir.

3 Q. Had he told you, had Donald Marshall, Jr. told you that he was
4 robbing, in the course of robbing someone at the time this
5 incident occurred?

6 A. He had told me both versions, sir.

7 Q. I see. That is to say he had told you that he was in the
8 process of robbing someone when this incident occurred and
9 he's also told you that he was, on occasion, that he was in the
10 process of rolling someone at the time the incident occurred?

11 A. Yes, sir.

12 Q. You had two interviews with him, as I recall.

13 A. That's right.

14 Q. The aborted interview in February the 18th, and the
15 completed interview on March 8th, something like that.

16 A. Yes, sir.

17 Q. That's the only two occasions?

18 A. That I took statements from him, yes, sir.

19 Q. And then the next note?

20 A.
21 Adversarial system. Frank and Stephen
agreeing too much according to judge.

22 Q. "Frank" being Frank Edwards and "Stephen" being Stephen
23 Aronson.

24 A. That is correct, sir. "Why police matter in '82 then '71."
25

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 Q. Who...

2 A. I believe that was a comment of Judge Pace.

3 Q. Now Exhibit 109, Question 109, can you give me an idea of the
4 dimensions of the room?

5 A. I don't have accurate dimensions, sir. It's not a really large
6 office. I know these things don't come out very well in a
7 transcript but it would be maybe the width of three tables
8 and the length, if you were to take three tables, which would
9 be roughly maybe 12 feet by, or 15 feet by 12 feet or
10 something like that. And that's not accurate.

11 Q. It's my instructions it's about 10 by 16, actually.

12 A. That would be within the realm, sir, yes.

13 Q. Are you left-handed or right-handed, Staff Sgt. Wheaton?

14 A. I am right-handed, sir,

15 Q. And you write with your right hand.

16 A. Yes, I do, sir.

17 Q. And one enters the, and the opening we see is the doorway. I
18 take it that...And was there a coat rack in the room, do you
19 recall?

20 A. There could have been, sir, I don't recall it.

21 Q. Or were there any filing cabinets in the room?

22 A. I believe there was a filing cabinet somewhere but I have no
23 independent recollection and I have some, like a clothes tree
24 type of thing in there somewhere as well.

25 Q. And what about chairs, any recollection of the number of

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 chairs in the office?

2 A. No, sir.

3 Q. Can you give us a description about the desk? Roughly, what
4 would be the size of it?

5 A. It was a large desk, somewhat the size of this table with
6 drawers to the left and drawers to the right and a large
7 swivel chair behind it.

8 Q. When you went in, do you recall the chief saying to you,
9 "Look it, you're doing the writing," because he had the
10 typewritten list, Exhibit 88, available for you. Do you recall...

11 A. That I'm going to do the writing?

12 Q. I'm sorry, let me just return for a moment, let me just
13 rephrase that. Do you recall that when you came in that the
14 chief had a typewritten copy of Exhibit 88 ready for you?

15 A. Yes, that's right, sir.

16 Q. And did you say, "What's that?" Or, "What is this for?" I
17 mean did you expect him to give you an inventory and have
18 you sign for it?

19 A. No, I did not, sir.

20 Q. Okay. You recall that he asked you to sign for the things and
21 as a consequence, do you recall that?

22 A. Yes, sir.

23 Q. And as a consequence of that, do you recall him suggesting to
24 you that "You sit behind the desk."

25 A. He may have suggested it, sir, but I did not sit behind that

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 desk.

2 Q. Are you sure of that?

3 A. Definitely did not sit behind that desk.

4 Q. All right. Where was the chief when you came into the room?

5 A. The chief was seated, to the best of my recollection, behind
6 his desk.

7 Q. Did he get up?

8 A. Yes, I believe he did because I introduced Corporal Davies to
9 him and I believe they shook hands, and I may have shaken
10 hands with him. I don't recall.

11 Q. He came out to greet you, did he, he came out from behind his
12 desk?

13 A. No, he stayed behind the desk, to the best of my recollection.

14 Q. You say he stayed behind the desk?

15 A. Yes.

16 MR. PUGSLEY TO MR. CHAIRMAN

17 Now, My Lord, it's something that I probably should have asked a
18 couple of days ago, but Corporal Davies, I believe, is present in the
19 courtroom, in this hearing room now. I would prefer, subject to
20 your direction, that he be excused from the room while I
21 cross-examine this witness on what occurred in this room. I
22 probably should have done it several days ago when the topic
23 first arose, but it didn't occur to me. But I want him, I would
24 prefer that no communication be given to him at all as to what
25 Staff Sgt. Wheaton is going to say on this point.

1 MR. CHAIRMAN

2 Well, if Corporal Davies hasn't read it all in the press by now.

3 MR. PUGSLEY

4 I suppose. I suppose. All right, I'll withdraw the request.

5 BY MR. PUGSLEY

6 Q. Now did you bring, you said you brought with you the
7 Attorney General's letter of September 20...of April 20th.

8 A. Yes, sir.

9 Q. Did you have a briefcase with you?

10 A. Yes, sir.

11 Q. What kind of a briefcase was it? Was it just a soft one that
12 you carry under your arm or was it one with a handle on it
13 that you hold?

14 A. One with a handle on it that you hold, sir.

15 Q. Was the letter from Mr. How in that briefcase?

16 A. Yes, sir.

17 Q. Did you have anything else in the briefcase?

18 A. No, sir.

19 Q. Did Corporal Davies have any briefcase?

20 A. Yes, sir.

21 Q. What was in his briefcase?

22 A. Nothing, sir.

23 Q. Okay. And did he...

24 A. To the best of my knowledge.

25 Q. Did he have a similar type of briefcase?

1 A. Yes, sir.

2 Q. Was there anything on the Chief's desk?

3 A. When we went in?

4 Q. Yes.

5 A. I believe there were some papers on the Chief's desk when
6 we went in.

7 Q. Some papers.

8 A. Yes, sir.

9 Q. I see. Can you describe how many there would be? Would
10 there be two or three or...

11 A. Not a great deal, sir.

12 Q. Not a great deal. Did they have anything to do with, as it
13 turned out, the matter that you were there to...

14 A. No, I believe they were things he was working on, sir.

15 Q. I see. Did he leave them on the desk?

16 A. I believe he did, sir, yes. He may have put them in a file
17 basket or...

18 Q. Was there...

19 A. I can't be sure.

20 Q. Was there a file basket on the desk?

21 A. I believe there was because I can recall when I come up to
22 the edge of the desk with the index to sign for the things
23 handed to me I had to move some papers back.

24 Q. I see. And would there have been...would this be a wooden
25 kind or a wire kind?

1 A. I don't know.

2 Q. Would there be one or two?

3 A. I don't know.

4 Q. So, on the desk there would be some papers.

5 A. Yes, sir.

6 Q. And there would be a...I'm sorry, what did you call it? A file
7 folder or no, what...

8 A. I believe there was sort of an in and out basket.

9 Q. An in and out basket, right.

10 A. I really can't specifically say that it was there. A thing was on
11 the desk.

12 Q. Okay. And, you say the Chief resumed his seat behind the
13 desk.

14 A. That is correct, sir.

15 Q. And was there...were there chairs arranged around the desk
16 for you and Corporal Davies or did you have to bring them to
17 the desk?

18 A. No, the chairs were there in the office and I pulled my chair
19 up close to the desk so I could write on the front of the desk.

20 Q. All right. What happened next?

21 A. The Chief then produced out of the lower left-hand drawer of
22 the desk two brown accordion-type file holders.

23 Q. Were they closed?

24 A. They were closed, sir.

25 Q. And roughly the dimension or the width of those would be

1 what?

2 A. They would be fifteen inches perhaps.

3 Q. Uh-hum.

4 A. They would hold a manilla file folder.

5 Q. Yes.

6 A. And they would expand to about three and a half inches, I
7 suppose, something of that area.

8 Q. So, he produced two of them.

9 A. That is right, sir.

10 Q. Dropped them out of the left-hand desk and put those two
11 folders on the desk in front of him.

12 A. That is correct, sir.

13 Q. And they were closed, and are they the kind that has a piece
14 of string or something that you wrap around?

15 A. That is right, sir, yes.

16 Q. So, he would...he undid the string, did he?

17 A. Yes, sir.

18 Q. And did...what did he do with the contents of the two folders?

19 A. Then began taking them out. Some pieces of paper he would
20 take out one at a time, others would come out in a separate
21 brown manilla file folder and it would contain a number of
22 pieces of paper. He would then extract them, set them on the
23 desk and I had the index and I was pulled up to the front of
24 his desk. He would then read it and he would say, "Statement
25 of Maynard Chant, I remember taking that, and, yes, that was

1 the one on the 30th of May, now here look at that." And I
2 would take it and I would look at it and then I would find the
3 place on the index.

4 Q. Sorry, I don't want to interrupt you. But you were sitting
5 within what, I mean within a hand distance from him, are
6 you?

7 A. He could hand them to me, yes, sir.

8 Q. Yeah. So, that you were a foot away from him and...

9 A. I would be more than a foot but within arm's reach the two
10 of us. The desk was reasonably normal office type of desk,
11 about three and a half feet wide, sir, something like that.

12 Q. So, he brings out the two accordion files. Did he open them
13 both at the same time or did he open one and go through the
14 contents of one and then open the other and go through the
15 contents of the other?

16 A. As I recall it he opened one and went through the contents of
17 it and then opened the second one.

18 Q. And you say that in that first accordion file folder that he
19 opened there were some manilla folders as well in which
20 there were pieces of paper, but there were also pieces of
21 paper loose.

22 A. That's right, sir, yes.

23 Q. Did he dump all the contents of the accordion folder onto the
24 desk or did he...

25 A. Well, he took them out...

1 Q. One by one.

2 A. One by one, or a file folder which would contain a number of
3 them.

4 Q. And he would take a look at the piece of paper that he took
5 out of the file folder and make a...identify it as being
6 statement...

7 A. Yes, sir.

8 Q. ...of so and so, perhaps make a comment about it and hand it
9 to you.

10 A. Yes, sir, that is correct, sir.

11 Q. Now, you were seated, as you've indicated in Exhibit 109, and
12 you had Exhibit 88 in front of you, so you were there to tick
13 off or in addition to tick off to sign your initials.

14 A. My initials.

15 Q. Upon delivery of the document to you.

16 A. That is correct, sir.

17 Q. Whereupon you would take the document and what, put it in
18 your briefcase?

19 A. I would set it over, yes, well, no, on a chair, as I recall. I had
20 a chair pulled up beside me and I would set it on a chair.

21 Q. I see.

22 A. So, I had it over there.

23 Q. And you went through first one accordion file folder in this
24 manner.

25 A. Yes, sir.

1 Q. With you initialing each one of the pieces of paper that were
2 passed to you.

3 A. Yes, sir.

4 Q. And then the second one was went through and the same
5 procedure followed.

6 A. Yes, sir.

7 Q. Was there any document given to you relating to charges laid
8 against a Mr. Christmas for harassing or threatening
9 witnesses?

10 A. There was a document there in reference to Mr.Christmas. I
11 don't specifically recall what it was. But I do recall...the Chief
12 and I would have some conversation as we went through this
13 as well.

14 Q. Yes. Do you recall whether the document with respect to
15 Christmas related to witness...Christmas harassing or
16 threatening witnesses?

17 A. I believe it did, sir, yes.

18 Q. Okay. And that was passed to you and you noted it. But did
19 you sign for it?

20 A. I don't know if it's on the list or not. If it's...if it...

21 Q. Let's take a look and see if we can find that on the list. That's
22 Exhibit 88, or is it 88A? I'm not sure if it's 88A or 88. 88A.

23 A. Yes, sir.

24 Q. I want you to take a look at Exhibit 88A, Staff Sergeant
25 Wheaton, and see if there is any reference to that document

1 which related to Christmas? This was a threat against Pratico,
2 was it?

3 A. There was conversation...I don't have any great recall but I do
4 recall talking about that with the Chief.

5 Q. Talking about that document.

6 A. Talking about a document that related to Christmas.

7 Q. Yes. I don't see it on Exhibit 88A, but I...I certainly don't
8 pretend to have read it exhaustively to determine if it's there,
9 but I don't see it.

10 A. I could too, sir, be in the...there was like loose...one document
11 containing a lot of notes.

12 Q. Yes.

13 A. Which...like the police officers in Sydney would write in an
14 occurrence report in hand. It could be amongst those
15 documents.

16 Q. Well, most of the things have been identified pretty carefully,
17 I suggest.

18 A. Like the two pages of handwritten notes noted on the last
19 page, I don't say it's there. I don't know, Mr. Pugsley.

20 Q. I suggest to you that that document was, in fact, given to you,
21 that as a document relating to a threat by Mr. Christmas
22 against John Pratico and it probably related to a transcript of
23 evidence, but that it was given to you along with the June
24 17th Patricia Harriss statement...

25 A. No, sir.

1 Q. Just let me finish my question. And the Donna Ebsary, I'm
2 sorry, and the Mrs. Ebsary and the Greg Ebsary statement,
3 that those documents were all given to you at one time.

4 A. No, sir.

5 Q. And on the 16th of April and not the 26th.

6 A. No, sir.

7 Q. And in support of that suggestion to you I refer to Mr.
8 Edwards' notes in Volume 17, page 9, if you will just turn to
9 that for a moment.

10 A. Page 9, sir.

11 Q. Page 9.

12 A. Yes, sir.

13 Q. That's volume 17, the red volume, that's correct. In which he
14 writes about six lines from the top,

15
16 After being pressed Chief turned over
17 previous witness statement by Patricia
18 Harriss in which she described someone
19 matching Ebsary. (Wheaton said Chief
20 went scarlet when pressed about this
21 statement.) Also turned over November
22 '71 statements of Mary and Greg Ebsary.

23 And a few lines down.

24 Also told me that Herb Davies had noticed
25 Chief slip some of the information on the
floor behind desk, believes it was some
information with transcript attached
relating to threat by Christmas against
Pratico.

1 Now, I suggest to you that those are the documents that you
2 got, those three documents, and you got them on the 16th of
3 April.

4 A. No, sir.

5 Q. In accordance with Frank Edwards' notes. You say that's not
6 to your recollection, or you say that that's not the way it
7 happened?

8 A. I got the Patricia Harriss statement from the Chief on our
9 26th of April, 1982 meeting and he picked it up off the floor
10 and gave it to me, sir.

11 Q. Okay. Can you offer any assistance as to why the document
12 relating to Christmas is not referred to in Exhibit 88A?

13 A. No, I cannot, sir.

14 Q. Because you have added, made notes of additional things that
15 you received, haven't you?

16 A. Yes, sir. That's the only explanation I could offer at this time,
17 that it might have been included in those typed...two pages of
18 handwritten notes.

19 Q. Yes. And you had a discussion, as you indicated, on a number
20 of matters, the line up, the...Pratico as a witness, why Pratico
21 was seen by the Chief. At what point in time did these
22 interjections take place?

23 A. I beg your pardon, sir.

24 Q. At what point in time during the course of this...and how long
25 did this interview last on the 26th?

- 1 A. I don't have the times recorded, sir. I would say an hour,
2 hour and a half.
- 3 Q. And at what point in time was it brought up about the line up
4 or about why the Chief went to Pratico initially? At
5 what...when were those brought up?
- 6 A. I think these were questions put to the Chief at the
7 termination...near the termination of the interview.
- 8 Q. And put by you.
- 9 A. Yes, sir.
- 10 Q. Were they after you had received, checked and gone through
11 all the notes and...
- 12 A. I beg your pardon, sir.
- 13 Q. Was it after you has signed for all the documents on the first
14 three pages of 88?
- 15 A. Ah.
- 16 Q. That you brought up these different topics.
- 17 A. It could have been, sir.
- 18 Q. And whose idea was it that you sign for the original
19 handwritten statements that...and whose idea was it that
20 prompted your handwriting of this document we received
21 yesterday?
- 22 A. To the best of my recollection these were original
23 handwritten statements, not included in the first three pages.
24 I wrote them out as I received them and I signed for them. I
25 believe that...

1 Q. I see. So, as these original handwritten statements came
2 across the desk to you you would write down on this piece of
3 paper, the fourth page of Exhibit 88A, and then after
4 you...after the entire examination of these two accordion file
5 folders was complete then, am I correct in my suggestion that
6 the Chief's secretary was called in to type up the final page?

7 A. That is correct, sir.

8 Q. And when she brought in the final page did you compare it
9 with your handwritten notes and point to anyone that there
10 was a difference between the two?

11 A. As I look at it and reflect on it, it's some years ago, but I
12 believe that what happened there is I signed for them as I
13 received them. Then the Chief's sister was called in. Some
14 conversation took place between the Chief and his sister and
15 myself in reference to typing these. And she left, took the
16 statements, typed them, made this list, returned with them
17 and I again checked them and signed for them.

18 Q. There are some very strange matters raised in her
19 typewritten list. For example, "Marshall?" and you
20 apparently have written down, "Not present". Meaning, I take
21 it, that the original statement of Donald Marshall was not
22 there. I assume that's what that means because we don't see
23 that in the list that you made in handwriting.

24 MR OUTHUSE

25 My Lord, this was something that was discussed yesterday,

1 and I...more by way of clarification or assistance. It seems if you
2 compare the last page of Exhibit 88A with the first page, that
3 what the typist was doing was going through the list of copies on
4 page 1 and saying, "Here is the original of that typed copy." And
5 that's why, for example, you see on Maynard Chant, "May 29th,
6 statement of Chant missing," and no reference to the 30th or June
7 4th. And then the list proceeds in the same fashion as the typed
8 copies on page 1.

9 MR. CHAIRMAN

10 That may be an explanation.

11 MR. PUGSLEY

12 It's an explanation I think that was advanced by my friend
13 Mr. Barrett I'm not...I don't believe it was advanced by this
14 witness.

15 MR. OUTHOUSE

16 No, that's correct. But it seems to me that if...that in terms of
17 what that typed page is and the order of it it's certainly...it's
18 certainly at total variance with the handwritten one, and it seems
19 to correspond, at least in order, I'm not saying where the content
20 comes from, but the order corresponds with the typewritten
21 copies on page 1.

22 MR. CHAIRMAN

23 What are you suggesting, Mr. Outhouse, that the...that it was
24 the first page that was given to the secretary to type.

MR OUTHOUSE

1 Well, she would have had the whole document when she did
2 it. It appears that she was going through and checking them and
3 she was at least making her list correspond in order so that
4 someone could take the last page that she typed and the first page
5 and go down the copies and see what of the originals were there.
6 That seems to be what happened.
7

MR. CHAIRMAN

8 Well, maybe.
9

MR. PUGSLEY

10 Q Well, in the typewritten "P.A. Harriss, one statement given to
11 S.S.Wheaton already." Now, that refers to an original
12 statement that was given to you. Did you receive an original
13 statement of Patricia Harriss on the 26th of April?
14

15 A. On the 26th of April.

16 Q. Yes.

17 A. I concluded that I did, sir, dated the 18th of June, '71.

18 Q. Well, if you received an original statement of Patricia Harriss
19 on the 26th of April then you must have received another
20 original statement of Patricia Harriss before the 26th of April
21 and hence you must have received both original statements of
22 Patricia Harriss.

23 A. No, sir, I received a copy of the statement from Patricia...of
24 Patricia Harriss from Chief MacIntyre on the 26th of February
25 when he attended our office on Alexander Street.

- 1 Q. Well, you say that you did receive an original of a Patricia
2 Harriss statement on the 26th of April?
- 3 A. Of April.
- 4 Q. Yes.
- 5 A. My...this in my hand here it says "original statements of the
6 following" and then it says, "Patricia Harriss, 18th of June '71,"
7 and my initials behind it. So, I would assume that I received
8 an original statement of Patricia Harriss dated 18th of June
9 '71 on the 26th of April, 1982.
- 10 Q. Yes.
- 11 A. There had been a previous meeting on the 26th of February.
- 12 Q. Yes.
- 13 A. Between Inspector Scott, the Chief and myself.
- 14 Q. Yes.
- 15 A. Held at our building.
- 16 Q. Yes.
- 17 A. And at that time he gave a statement, a copy of a statement
18 of...a typewritten statement of Patricia Harriss.
- 19 Q. But this doesn't make any sense at all. Take a look at the first
20 page of Exhibit 88A. You've already signed for "copies of..."
- 21 A. Uh-hum.
- 22 Q. "...statements of Patricia Ann Harriss, June 18, '71."
- 23 A. Yes, sir.
- 24 Q. You received...
- 25 A. Those are copies.

1 Q. Copies, sure. And you say you received a copy on February
2 26th.

3 A. Yes, sir.

4 Q. Why would the stenographer, you know, recall two months
5 ago that you had a copy of a statement of the same statement,
6 the original of which you were given on April 26th and copies
7 of which you were given earlier on April 26th. I mean that
8 doesn't make any sense to me at all.

9 A. Well, you'd have to ask the secretary, sir.

10 Q. Well, I mean the obvious inference is, I suggest, that what
11 you were given was an earlier copy of a June 17th statement.

12 A. No, sir.

13 Q. And that what you were given on this day was the June 18th
14 statement?

15 A. No, sir.

16 Q. That's the obvious inference, I suggest, and...

17 A. I don't agree with that.

18 Q. I understand you don't. And you have no explanation as to
19 why she put in "one statement given to S.S.Wheaton already"
20 being a copy under the original statement line referring two
21 months ago to February 26th, why she did that with Patricia
22 Harriss and why she didn't do it with Terry Gushue, because
23 you got a copy of Terry Gushue's statement...

24 A. Yes, sir.

25 Q. ...on the 26th as well

- 1 A. Yes, I did.
- 2 Q. You have no explanation for that.
- 3 A. No, sir.
- 4 Q. Okay. Now, you related the incident and just so that I have
5 some idea, I want to have some idea how close you were to
6 the Chief. He had...are you and I in about the same distance?
7 [Mr. Pugsley standing about one foot from witness.]
- 8 A. I would be a little further, if you being me.
- 9 Q. Yeah.
- 10 A. Sort of thing. And I'm being the Chief. I would be a little bit
11 further back there. That's about right, sir.
- 12 Q. Yeah. Three feet, something like that.
- 13 A. Something like that, yes.
- 14 Q. Yeah. And you got an elbow on a table and you're writing.
- 15 A. Yes, sir. This would be the index.
- 16 Q. Yeah. And the Chief is sitting there and he's got two
17 accordion files on his desk.
- 18 A. That's right, sir, yes.
- 19 Q. And he takes documents out of the accordion files and you
20 say that...you say you believe he slipped something on the
21 floor but you didn't see it.
- 22 A. I did not see it, no, sir.
- 23 Q. Okay. And you're sitting this close to him.
- 24 A. That's right, sir, yes.
- 25 Q. And you also said, I think, that you did not bother reading

1 that piece of paper that the Chief allegedly retrieved from the
2 floor until you got back to the police station.

3 A. No.

4 Q. To your police station.

5 A. No, I read it on the way to the police station.

6 Q. Did you? I see.

7 A. Yes, sir.

8 Q. In the car.

9 A. Yes, sir.

10 Q. Why didn't you look at it immediately in the room after the
11 Chief picked it up from the floor?

12 A. The relations at that point were a little strained, were
13 strained. The Chief was upset visibly. I was somewhat upset
14 myself. I decided it would be a good opportunity to leave.

15 Q. And was the...was it typed or in handwriting?

16 A. I beg your pardon, sir?

17 Q. Was the piece of paper typewritten or in handwriting?

18 A. It was in handwriting, sir.

19 Q. And it was one piece of paper.

20 A. Yes, sir.

21 MR. ROSS

22 My Lord, I was just trying to find something in the
23 transcript just to draw to the attention of the Commission and Mr.
24 Pugsley. I thought that yesterday the witness indicated that with
25 respect to that Exhibit 88A that it was originally, I think, three

1 typewritten pages, he hand wrote one page and gave it to the
2 secretary and she typed it up and came back with the final page
3 and that can be found in the transcript, page 8106, which is
4 inconsistent with the explanation as given by Mr. Outhouse.

5 MR. PUGSLEY

6 Thank-you, Mr. Ross.

7 MR OUTHOUSE

8 It may be inconsistent. I expect I'm still right. But I'll leave
9 that to the Commissioners to judge.

10 MR. CHAIRMAN

11 End to this testimony by counsel, unless they want to be
12 sworn.

13 MR. PUGSLEY

14 Q. Do you recall an investigation you carried out about ten years
15 ago relating to a man by the name of Douglas?

16 MR. CHAIRMAN

17 Mr. Pugsley, what sort of a trap are you leading me into now?

18 MR. PUGSLEY

19 I wish to advise the Commission that Robert Douglas was a
20 former RCMP constable who was charged with, I think, fraud,
21 among other things. He was sent to trial where he was acquitted
22 by a jury. I have met with him. My associate Mr. Murray has
23 met with him. We have received full authorization from Mr.
24 Douglas to bring this matter before this Commission.

25 MR. CHAIRMAN

1 But what's the relevancy of it?

2 MR. PUGSLEY

3 The relevancy of it is...the relevance of it is my instructions
4 are that a statement was taken from Mr. Douglas by Sergeant
5 Wheaton, that during the course of the preliminary the statement
6 was divided into two parts by Inspector Wheaton and he only
7 referred to one part. He gave evidence at Supreme Court before
8 Mr. Justice Hart and a jury wherein he advised the court that he
9 was only referring to one part of the statement because the
10 second part had nothing to do with the first part.

11 MR OUTHOUSE

12 Perhaps before Mr. Pugsley gives the whole story he could
13 explain the relevance of what he's doing to the Commission, which
14 I thought was His Lordship's question.

15 MR. PUGSLEY

16 Oh, certainly. The relevance of it is that...

17 MR. CHAIRMAN

18 I think...

19 COMMISSIONER EVANS

20 It's pretty apparent I think of what he's headed for.

21 MR. CHAIRMAN

22 Yeah, I can see the relevance now.

23 MR. PUGSLEY

24 And I'll go on to say what ruling Mr. Justice Hart made when
25 he examined both parts of the statement and what comments he

1 made concerning Mr. Wheaton's appearance and evidence on the
2 stand. Now, these are the instructions I have received. I do not
3 have a transcript of the Supreme Court trial or have a transcript
4 of the preliminary. And as I say I have full consent from Mr.
5 Douglas to reveal these matters.

6 MR. CHAIRMAN

7 Do you wish to be heard, Mr. Outhouse, because I have no
8 difficulty with...all right, well, go ahead.

9 MR OUTHOUSE

10 As I understand my learned friend he's saying that he
11 wishes to bring this matter before the Commission as going to the
12 witnesses credibility. I didn't hear him use those words, but
13 that's what I understand him to say. And, my position is that I
14 don't know anything about the Douglas case. I've never heard of
15 it. I don't know what the substance of it is but if this Commission
16 is going to entertain previous investigations by this witness,
17 presumably he's done hundreds or thousands, where are we going
18 to stop? What are the limits of that inquiry? Are we going to re-
19 try the Douglas matter?

20 MR. CHAIRMAN

21 No, we're not going to...certainly not going to re-try the
22 matter. But I...from what I've heard from Mr. Pugsley would
23 conclude that the purpose of his cross-examining this witness on
24 the Douglas investigation is to indicate or attempt to indicate to
25 this Commission that in at least one other investigation the Staff

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 Sergeant Wheaton has not brought forth the entire statement that
2 he's taken from a witness. And that certainly goes to the root of
3 the testimony...of his testimony now, because we...today and ever
4 since he's been in the witness box as to... He's raised the idea that
5 or he's made the allegations that certain statements were not
6 forthcoming.

MR OUTHOUSE

8 Well, is that your...that's the Commission's ruling that we're
9 talking about a statement and if that's part...if that's the scope of
10 the inquiry, but it's not clear to me from what Mr. Pugsley said
11 that that is the scope of the inquiry. And if this Commission is
12 going to take...

MR. CHAIRMAN

14 We have no intention of inquiring into the state of this
15 gentleman Douglas, whoever he may be. But we do...it is open to
16 any counsel to cross-examine this witness to ask questions on
17 cross-examination which may indicate that there is a...that a
18 method of investigation by Staff Sergeant Wheaton that is
19 somewhat inconsistent with what he's saying now. And that goes
20 to the question of credibility.

MR OUTHOUSE

22 Yes.

MR. CHAIRMAN

24 No, no, we certainly can't try other cases. We've got enough
25 on our plate as it is.

MR OUTHOUSE

1
2 Well, for the record then, My Lord, my submission is it's an
3 entirely collateral matter which opens up a whole Pandora's box
4 and I've stated that to the Commission, and I abide by the
5 Commission's ruling.

MR. BRODERICK

7 My Lord, if I may, and I will explain my reason for rising.
8 I'm representing Sergeant Carroll and in light that something like
9 this may come up I think it proper that I address it here rather
10 than wait until you make a ruling, and then be bound by that
11 ruling. I would suggest that you said that you don't want to get
12 into the Douglas affair, but we can't be limited by what Mr.
13 Pugsley says in his cross-examination. We may want to know
14 why Staff Wheaton did these things. What were the events?
15 What happened? It would be similar, I would suggest, to let this
16 in to Sergeant Wheaton testifying in two years time and
17 somebody saying "Tell me what you did at the Marshall Inquiry?"
18 something that can't be answered in two words or ten minutes. I
19 would suggest that you can't partially open it. That it would take
20 a lot of explanation, I'm sure, it was a Supreme Court ruling, the
21 Judge made comments. Staff Wheaton has the right to fully
22 answer these things. We would have the right to cross-
23 examination. And, I wonder where it would end. You said you do
24 not want to re-try.

25

1 MR. CHAIRMAN

2 We're not going to re-try. But that doesn't...that doesn't
3 preclude this witness if he's asked a question going to his
4 credibility that he feels that he has an explanation for to give the
5 explanation. But we have no intention at the end of this inquiry
6 to make any comment or reference as to the outcome of the
7 Douglas case that we're now hearing about for the first time. That
8 would be totally beyond our mandate and totally inappropriate.
9 But I don't quarrel with your suggestion that when this witness is
10 explaining questions put to him on cross-examination that he is
11 entitled to latitude in giving a full explanation.

12 11:31 a.m.*

13 MR. BRODERICK

14 And then which would lead to full questioning of that explanation
15 by all counsel involved.

16 MR. CHAIRMAN

17 Well, it depends on how relevant it is to their client's standing
18 here.

19 MR. BRODERICK

20 My Lord, perhaps just one last comment on it and that is that if, in
21 fact, a statement was made or evidence was given at some time in
22 this man's career and that evidence may or may not have been
23 accepted by the trier of fact at that time or doubt cast upon the
24 exact or the full release of information by the witness. I don't
25 know really what relevance that would have with this Commission

1 because, obviously, it would be a question at that time as to
2 whether that particular judge felt that it was relevant. Now you
3 have the information before you that comes before this hearing
4 that lets you decide whether or not this man is a credible witness.
5 And I would suggest that a decision by another trier of fact really
6 isn't all that relevant because we will not get the full
7 circumstances of what happened at that time.

8 MR. CHAIRMAN

9 So far, Mr. Broderick, we have not heard what the questions are
10 and from the point of view of relevancy at this stage, I have ruled
11 that the line of questioning upon which Mr. Pugsley is about to
12 embark is relevant. This doesn't give him a carte blanche to
13 wander all over the shop and decide to bring before us a
14 multitude of cases. What we must assiduously avoid in any
15 inquiry is to make sure that no innocent person is placed in any
16 position where he or she may find themselves embarrassed or
17 liable or whatever during this inquiry. And that's why I wanted
18 to find out where Mr. Pugsley was going before we got into a
19 lengthy dissertation on the case involving a gentleman named
20 "Douglas." Now that I've had the explanation, so far it would
21 appear that it's going only to a question of credibility and has
22 nothing to do with the guilt, innocence or anything else of the
23 gentleman named "Douglas."

24 MR. PRINGLE

25 My Lord, if I could just comment for a moment. I assume my

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 friend is going to follow the normal practice in civil cases in this
2 regard and put the question to the witness without leading
3 extrinsic evidence in that regard first. It is a collateral matter, I
4 suggest.

5 MR. CHAIRMAN

6 Well, the only reason that, if it is extrinsic evidence...

7 MR. PRINGLE

8 I'm assuming he may.

9 MR. CHAIRMAN

10 It's because I invited it to find out what he was doing, where he
11 was going.

12 MR. PRINGLE

13 Yes, My Lord, but my concern was that perhaps in the question
14 we're going to have some extrinsic evidence put in.

15 MR. CHAIRMAN

16 Well, listen very carefully and you, as representing the RCMP
17 have the right to object and we'll rule on it.

18 MR. PRINGLE

19 Thank you, My Lord.

20 COMMISSIONER EVANS

21 Mr. Wheaton doesn't have to answer in a hurry. He can wait.

22 MR. CHAIRMAN

23 Well, there's been no great rush of, so far of answering questions.

24 Carry on.

25

1 MR. PUGSLEY

2 Thank you, My Lord. I may say just what I've done to develop
3 this information, as a consequence of information I received, Mr.
4 Douglas' counsel ten years ago in the trial, files were turned over
5 to a member of our bar and sealed with the prothonotary as a
6 consequence of some difficulties that the counsel had. I obtained
7 an order, I believe yesterday afternoon, from the Supreme Court
8 judge in Chambers in Halifax to obtain access to that file. That
9 file, material revealed certain information, not the particular
10 information I looked for. I made a request of my friends last
11 evening at the adjournment for a copy of any file material they
12 had with respect to this matter to determine whether or not the
13 document I was looking for, namely, the statement that was taken
14 by Sgt. Wheaton was in the file that was with the RCM Police. My
15 friends take the position that they're not going to hand this file
16 over to me and I'm not getting into that argument. But that just
17 lays some of the background.

18 BY MR. PUGSLEY

19 Q. Sergeant Wheaton, do you recall the Douglas matter?

20 A. Yes, I do, sir.

21 Q. He was a former RCMP officer?

22 A. Yes, he was, sir.

23 Q. What was he charged with?

24 A. As I recall, it was a conspiracy to commit fraud case involving
25 credit cards.

1 Q. Right, and was there one matter dealing with guns and one
2 matter dealing with credit cards?

3 A. Yes, again, it's 12 or 13 years ago.

4 Q. I appreciate that.

5 A. But there was a matter dealing with a gun that he had turned
6 over to another member of the RCMP some time prior to the
7 actual offence or the alleged offence of conspiring to commit
8 fraud.

9 Q. And did you take a statement from him?

10 A. I recall taking a statement from him, yes, sir.

11 Q. Did the statement deal both with guns and credit cards?

12 A. It's too long ago for me to specifically recall, sir.

13 Q. It's my instruction from what has been relayed to me as a
14 consequence of an interview with Mr. Douglas, and I'll put
15 this to you and you can comment on it, that one statement
16 was taken by you. It related to guns and to credit cards both.
17 That an attempt was made to introduce the statement at the
18 preliminary and that you divided the statement into two
19 parts and said that one part dealt with guns and one part
20 dealt with credit cards. That at the trial before Mr. Justice
21 Hart and the jury, you attempted to make the same
22 distinction.

23 MR. CHAIRMAN

24 Before...Let's hear from Staff Sgt. Wheaton...

25

1 MR. PUGSLEY

2 All right.

3 MR. CHAIRMAN

4 In response to what I assume is a question as to whether at the
5 preliminary inquiry he attempted to divide the statement into
6 two parts.

7 COMMISSIONER EVANS

8 Before we get into that, I'd like to know what charge was being
9 proceeded with.

10 MR. PUGSLEY

11 Against Mr. Douglas?

12 COMMISSIONER EVANS

13 Yes.

14 MR. PUGSLEY

15 I'll find that out, My Lord. Section 423(D) of the Code.

16 COMMISSIONER EVANS

17 I may have forgotten that one.

18 MR. PUGSLEY

19 Well, to have in their possession credit cards, knowing that they
20 were obtained by the commission in Canada of an offence
21 punishable by indictment.

22 COMMISSIONER EVANS

23 So that was the...

24 MR. PUGSLEY

25 423(D).

1 COMMISSIONER EVANS

2 That was the charge?

3 MR. PUGSLEY

4 That was the charge, yes.

5 COMMISSIONER EVANS

6 Credit card fraud?

7 MR. PUGSLEY

8 Credit card fraud, yeah. I guess there were three gentlemen
9 involved. I won't name them.

10 COMMISSIONER EVANS

11 Not yet. But then you say there was another charge involved with
12 guns or something. What he was facing here was the credit card
13 fraud.

14 MR. PUGSLEY

15 Yes, that's my understanding, My Lord.

16 COMMISSIONER EVANS

17 Was the breakdown of the statement because one referred to
18 credit cards and one referred to guns?

19 MR. PUGSLEY

20 That's what I understand that to be the situation.

21 COMMISSIONER EVANS

22 Why would you introduce or why would you be permitted to
23 introduce a statement having to do with a gun problem on a credit
24 card fraud?

25

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 MR. PUGSLEY

2 I can't answer that question, My Lord. I do not know that. All I
3 know is that, all I'm instructed is that an attempt was made by
4 defence counsel to have Sergeant Wheaton produce the entire
5 statement. He allegedly divided the statement in two and said
6 that one part dealt with guns and the second part dealt with
7 credit cards. That the trial judge examined the two statements
8 and concluded that that was not an accurate comment, that they
9 both dealt with credit cards and that it was inappropriate to have
10 the two statements severed. And I'm further instructed that
11 Sergeant Wheaton was admonished for that attempt.

12 MR. PRINGLE

13 My Lord, I wonder how much of this argument we're going to be
14 allowed to hear from my friend.

15 MR. PUGSLEY

16 Well, I'm...

17 MR. PRINGLE

18 He's not asking a question. He's giving a summation of the jury.

19 MR. PUGSLEY

20 I'm trying to respond to a question and I don't, as far as this
21 witness is concerned, that's the story that has been related to me.

22 MR. CHAIRMAN

23 What you're saying is that let's assume for a moment that during
24 the preliminary inquiry, Staff Sergeant Wheaton as one who had
25 taken the statement took the position that as this charge was one

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 for fraudulent use of credit cards that evidence that he had taken
2 or had in his possession dealing with what may be another offence
3 should not be introduced in the preliminary inquiry.

4 MR. PUGSLEY

5 I don't know. I can't really answer that. I don't have enough
6 facts on that.

7 MR. CHAIRMAN

8 That wouldn't go to credibility. Yes, Mr. Outhouse?

9 MR. OUTHOUSE

10 I wonder, My Lord, if Mr. Pugsley is prepared to indicate that the
11 crown was represented by counsel at this proceeding?

12 MR. PUGSLEY

13 Well, this was a trial.

14 MR. OUTHOUSE

15 So I presume that there was a lawyer for the crown who was
16 handling this case.

17 MR. PUGSLEY

18 Quite so. That is correct.

19 MR. CHAIRMAN

20 And at the preliminary.

21 MR. PUGSLEY

22 That's my understanding.

23 COMMISSIONER EVANS

24 Is the statement around?

25

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 MR. PUGSLEY

2 Yeah, Mr. Wade was the Crown Prosecutor. W-A-D-E.

3 COMMISSIONER EVANS

4 Is that statement that we're batting around...

5 MR. PUGSLEY

6 They can't find the statement. That's what we're trying to get. I
7 have not been able to put my hands on the statement and that's
8 why I've requested my friends who represent the RCMP to make
9 their file available to use and I understand...

10 MR. BISSELL

11 I wonder if I may speak to that. First of all, the original statement
12 is not in the RCMP file that we've been able to locate so far. There
13 is a copy of statements in there, not photocopies of the signed one,
14 like some of the other ones that we see here where the signatures
15 are typed in. They're typed in that fashion. I would like to state
16 for the record, though, that it seems to me that when RCMP
17 officers come here and give testimony, especially someone in the
18 position of Staff Sgt. Wheaton, that normally credibility is
19 assessed based upon their record that before, in a court before the
20 court. It seems to me to be very unfair Staff Sgt. Wheaton or any
21 other RCMP officer who testifies that of the hundreds and
22 thousands of cases that they, or hundreds and sometimes
23 thousands of cases that they may be, they may deal with during
24 their career, can be paraded out and dealt with, particularly when
25 there is nothing to indicate that any action, if Staff Sgt. Wheaton

1 did anything improper in this particular case, no charges were laid
2 against him. There was no recommendation that charges be laid
3 against him. It seems to me to be very unfair and border on
4 harassing a witness, particularly in this case where it seems to me
5 that the normal rules would exclude this type of evidence being
6 raised at this juncture and in the fashion that it's being done. My
7 reading of the authorities in cross-examining a witness, including
8 a witness as to his credibility, that the line of questions that my
9 friend now seeks to ask go beyond what is normally permissible.
10 And I think it puts Staff Sgt. Wheaton and other people appearing
11 before the Inquiry...

12 MR. CHAIRMAN

13 So far I haven't heard anything on this, from this line of
14 questioning, as of now that damages the credibility of this witness.
15 If there was one charge and he is a witness for the crown and
16 there is a crown prosecutor that and, presumably, the crown
17 prosecutor says that we don't want to prejudice any other trial in
18 the attempt to divide the statement into two parts. That would
19 certainly not go to credibility, in my view. Now if Mr. Pugsley has
20 some reason to believe that there's more to it than that, and the
21 fact that it may be overruled by a superior court, that happens to
22 us everyday. That doesn't mean we're wrong all the time. So
23 your question, I take it, Mr. Pugsley, to Staff Sgt. Wheaton can be
24 paraphrased as follows. Is it a fact that at a preliminary inquiry
25 into a charge involving the fraudulent use of credit cards that you,

1 as a witness for the crown with the crown being represented by a
2 crown prosecutor, took the position that some of the, one part of
3 that statement should not be introduced in evidence because it
4 was not relevant to the charge. Is that your question?

5 MR. PUGSLEY

6 My position is, My Lord, that Staff Sgt. Wheaton attempted to
7 introduce half of a statement. The defence requested that the
8 balance of the statement be introduced in fairness to the accused.
9 Staff Sgt. Wheaton's response was that the second statement did
10 not deal with the matters in the first statement. Thereupon the
11 trial judge examined the balance of the statement and concluded
12 that there was a half a dozen references in the balance of the
13 statement to the matters alleged in the first part and that what
14 Sgt. Wheaton was advising the court was simply not so.

15 MR. CHAIRMAN

16 But surely that's, isn't that the responsibility of the crown
17 attorney? The crown prosecutor would, in the discharge of his
18 responsibility to, No. 1, bring all relevant evidence before the
19 preliminary inquiry; and, No. 2, not to introduce evidence that
20 may be prejudicial to someone else or even to the same accused
21 on a different charge.

22 MR. PUGSLEY

23 Well, I guess there's two...

24 MR. CHAIRMAN

25 You know, I'm having some difficulty in how all this goes...So far it

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 hasn't gone to the credibility of this witness.

2 MR. PUGSLEY

3 Well, only that this witness apparently, so I'm instructed, testified
4 under oath that there was no reference in the second part of the
5 statement to the matters in the first part. And when the trial
6 judge examined the second part of the statement, he came to the
7 conclusion that that was not so, that there were indeed references.
8 That he had not been told about that as witness.

9 MR. CHAIRMAN

10 That may or may not be a matter of interpretation but it seems to
11 me that unless there's a very different practice in Nova Scotia
12 than one finds elsewhere, that the crown prosecutor has control of
13 the evidence to be presented at the preliminary inquiry and I
14 would assume, without having the record, that when this came up,
15 he would have argued in support of whatever position the crown
16 witness has taken. Yes?

17 MR. ORSBORN

18 Yes, My Lord, if I may, not wanting to interrupt my friend,
19 but I think the discussion that has taken place between my friend
20 and Your Lordships and the submissions raised by some other
21 counsel indicate the difficulties that we are perhaps having in
22 grappling with this issue and it's an issue which I think is not a
23 simple one and goes not only to the rights of Staff Sgt. Wheaton as
24 a witness nor to Mr. Douglas, who I understand has waived any
25 rights he may have. But as my friend, Mr. Bissell, indicates, it

1 goes to the rights of other witnesses and I believe other counsel
2 might agree it would go to the rights of their own clients and
3 other witnesses, not necessarily RCMP officers, but other
4 witnesses that may appear before this Commission and relates to
5 the issue to the extent to which all of us, I guess, as counsel might
6 go to, in raising collateral matters which affect the credibility of
7 the witness that are not directly related to the matters before the
8 Inquiry. Recognizing that it would be to all of our disadvantage
9 not having any of the documentation to which Mr. Pugsley refers,
10 and I just would offer as a suggestion that, in that the matter
11 may occur again with other witnesses, perhaps it may be
12 advisable if all counsel were given the opportunity to consider the
13 matter carefully, and if they so wished, make argument to the
14 Commission on the issues so that Your Lordships may have the
15 benefit of a considered argument from all counsel on this
16 particular issue because I suspect it may come up again.

17 MR. CHAIRMAN

18 I have no objection to that except, you know, I take it that
19 somewhere down the road, we're going to finish the evidence of
20 this witness. I don't want to be sitting forever on this.

21 MR. PUGSLEY

22 What I'll do, I think the suggestion of my friend is a good one. I
23 can continue my cross-examination on other points.

24 MR. CHAIRMAN

25 Why don't you continue your cross-examination of this witness.

1 We'll reserve on that point and after lunch, we will hear any
2 further submission that counsel wish to make.

3 MR. PUGSLEY

4 My Lord, during the course of my examination of Staff Sgt.
5 Wheaton this morning, I referred to the 40 minutes that Heather
6 Matheson allegedly said the interview lasted. And he asked me
7 where I found that and pointed out, quite properly, that it was a
8 question from me and not an answer from her. My friend and I
9 made a quick look and couldn't find any reference to it in the
10 discovery evidence until my friend, Mr. Orsborn, very kindly
11 brought to my attention that there were three pages missing from
12 Heather Matheson's evidence in the discovery. Perhaps my friend
13 wants to make a word about that.

14 MR. ORSBORN

15 I was planning to leave it like that. This discovery evidence was
16 obtained from the Canadian Broadcasting Corporation. The matter
17 did not proceed to trial. The documentation was obtained from
18 counsel for CBC in the midst of litigation between the Commission
19 and CBC and that litigation did not proceed. We accepted the
20 documentation, the discovery documentation from CBC. We were
21 advised by the solicitor for the Canadian Broadcasting Corporation
22 that the three pages not included in the discovery transcript,
23 advised in writing and accepted his personal assurance that they
24 contained matters of no interest or relevance whatsoever to the
25 Commission but were on a matter of journalistic privilege. That

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 was the condition under which we accepted that. I understand
2 that Mr. Pugsley, who was also involved in that litigation, is quite
3 happy to waive any privileges or whatever that are attached to
4 that documentation and can introduce it.

MR. PUGSLEY

6 I must admit I don't know what the rules are. I only know that
7 I've got a copy of the discovery evidence, the complete transcript,
8 in my office and I have the three missing pages and I want to
9 introduce them because they refer to the 40 minutes and it's an
10 answer from Heather Matheson. It wasn't a suggestion from me.
11 And I think it's important that that be on the record. I must
12 admit, I did not notice when the discovery evidence was put in
13 that there was three pages missing until my friend, Mr. Orsborn,
14 brought it to my attention. But the three pages clearly indicate
15 that...

MR. CHAIRMAN

17 But I gather that the evidence, the transcript was provided by the
18 CBC to Commission counsel short of three pages and with the, and
19 the position contained in these three pages, the evidence
20 contained in these three pages constituted journalistic privilege.

MR. ORSBORN

22 That's correct, My Lord.

COMMISSIONER EVANS

24 That doesn't really concern you.

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 MR. ORSBORN

2 No, it doesn't concern...

3 MR. PUGSLEY

4 This is my discovery evidence. I examined this witness and these
5 are her answers.

6 MR. CHAIRMAN

7 It doesn't concern us but it's up to counsel for the, if counsel for
8 CBC wanted to take that position, they could. I take it we treat it
9 more as an explanation as to why it was left out and that there is
10 no sinister plot to hide anything from us. We're all getting trigger
11 happy with sinister plots coming from under the table. One has to
12 be careful of these, you know.

13 MR. PUGSLEY

14 I would like to introduce this then as the next exhibit, 110.

15 EXHIBIT 110 - THREE PAGES FROM DISCOVERY EVIDENCE OF

16 HEATHER MATHESON.

17
18 BY MR. PUGSLEY

19 Q. I'll just read this with you, Staff Sgt. Wheaton. Page 27,
20 Question, well, let's see, I guess 172.

21 Q. Where did you speak to that person?

22 A. I spoke to him at the RCMP office.

23 Q. Where?

24 A. I don't recall the name of the street.

25 Q. In Halifax?

A. Yes.

Q. Is it near this building? [That was in

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

our office.]

1 A. No, it's in a house somewhere.

2 Is that correct?

3 A. I would assume probably she is referring to Thornville
4 Barracks.

5 Q. Yeah, that's a house, is it?

6 A. That is a house, sir, yes.

7 Q.

8 Q. For what period of time did you speak
to that person?

9 A. Approximately 40 minutes.

10 A. Yes.

11 COMMISSIONER EVANS

12 What is the consequence of that?

13 MR. PUGSLEY

14 The 40 minutes. Well, why did Mr. Murrant or the CBC solicitor
15 not want it introduced?

16 COMMISSIONER EVANS

17 No, no, I was wondering how...

18 MR. PUGSLEY

19 I don't know.

20 COMMISSIONER EVANS

21 How long it took, whether it was 20 minutes or 30 minutes or 40
22 minutes.

23 MR. PUGSLEY

24 Oh, why did I introduce it, My Lord?

25

1 COMMISSIONER EVANS

2 Yes.

3 MR. PUGSLEY

4 Well, because this witness said he thought it was five or ten
5 minutes. That's why I put it in.

6 COMMISSIONER EVANS

7 ...young lady, I guess.

8 MR. PUGSLEY

9 When you see her, My Lord, you'll echo that comment.

10 MR. PUGSLEY

11 I made a request yesterday about some additional
12 documentation. One was the CBC media guidelines and I guess the
13 other was the record of Staff Sgt. Wheaton, his employment record
14 with the RCMP. Perhaps my friend would like to respond to that
15 and just advise us where we are on that?

16 MR. CHAIRMAN

17 Are you speaking on the RCMP guidelines or...

18 MR. PUGSLEY

19 I'm sorry, RCMP guidelines, yeah, media guidelines.

20 MR. BISSELL

21 Yes, I have a copy here of the RCMP media guidelines. I had
22 indicated to my friend that I would appreciate his putting on the
23 record the purpose for his requesting that these guidelines be
24 tendered as an exhibit. The main reason for that is that I don't
25 wish my friend to be getting into the, I don't think it's proper for

1 my friend to get into the area of whether these are good
2 guidelines or bad guidelines. But beyond that, we wish to
3 cooperate with the Commission and make them available, so long
4 as my friend is using them for a valid purpose.

5 MR. PUGSLEY

6 I certainly have no intention to arguing whether they're good or
7 bad. The purpose is to determine whether or not Sgt. Wheaton
8 followed the guidelines when he talked to Heather Matheson and
9 Michael Harris and whoever. That's the reason. Thank you.

10 MR. CHAIRMAN

11 So we are admitting the RCMP guidelines as Exhibit 111.

12 EXHIBIT 111 - RCMP GUIDE FOR CONTACT WITH MEDIA.

13 MR. BISSELL

14 I would point out as well that the copy that we have, some of it is
15 policy as of March 3rd, 1987.

16 MR. CHAIRMAN

17 It may be different today, is that what you're saying?

18 MR. BISSELL

19 Well, this is as it is today. Some of the pages, I notice are dated
20 March 3rd, 1987 and some are as they were in August of 1983.
21 So one would have to have reference and bear in mind the dates
22 that appear on the pages when the particular policy was
23 applicable.

24 MR. CHAIRMAN

25 All right.

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 MR. PUGSLEY

2 My Lord, I haven't had an opportunity of reading these. Perhaps
3 it would be proper for me to have them photostated and
4 distributed to the Commission as well as to all counsel and if I
5 may, would it be appropriate to take the noontime adjournment
6 now to assist me in that regard?

7 MR. CHAIRMAN

8 What else have we got coming now before we...

9 MR. PUGSLEY

10 Oh, yes, I guess the other response was directed towards Staff Sgt.
11 Wheaton's file, personnel file with the RCMP.

12 MR. BISSELL

13 Sir, again, I think this is very similar to the same issue that we're
14 dealing with with these questions regarding the file or a
15 prosecution that Staff Sgt. Wheaton was involved with. The
16 service file is a confidential file. Well, obviously, we take the
17 position that Staff Sgt. Wheaton's permission would be required
18 before it could be released to anybody. It also is an RCMP file and
19 it seems to me to be highly irregular that whenever a witness
20 goes on the stand, that whatever may be his employment,
21 whether it's as an RCMP officer, as a lawyer, or whatever, that the
22 personnel file that the employer maintains on the individual
23 should be something that is introduced as an exhibit for the
24 purposes of attacking the witness's credibility. It smacks of a
25 fishing expedition. It seems to me, secondly, to be most unfair to

1 the witness. And, thirdly, while credibility obviously of this
2 witness is relevant, it's certainly not the prime, the central
3 function of the Inquiry. So for those reasons, My Lords, I would
4 respectfully submit that it is not a proper request and certainly
5 there's been no groundwork prepared to justify such a request to
6 show how it would be relevant.12:00 p.m.*

7 MR. BISSELL

8 If I may reply to that. I couldn't disagree more with my
9 learned friends submissions. There is adequate material on
10 record pertaining to the investigation of the Donald Marshall case
11 for this Inquiry, I would submit, to determine whether there is
12 any merit in the allegations that Staff Wheaton has made against
13 John MacIntyre which relates to his investigation of this particular
14 matter. And it doesn't help the Inquiry's task in that regard, I
15 submit, to start suggesting that there may be some demerit by
16 Staff Sergeant Wheaton in some other investigation totally
17 unrelated to the Marshall file. And, I would again submit that
18 that is an improper use of an RCMP file.

19 MR. CHAIRMAN

20 Mr. Outhouse.

21 MR OUTHOUSE

22 My Lord, it seems to me that, (A) it is a fishing expedition,
23 but (B) that the witness has already been asked whether he's
24 been disciplined in relation to these matters, as I understand it, or
25 in relation to any other matter and he said, "No". Now, if you

1 haven't been disciplined for something by your Force, what then
2 are you searching for in an employment file. Someone's
3 unsubstantiated ruminations? his medical file? what's being
4 sought? It's my understanding that Staff Sergeant Wheaton has
5 very limited access personally to that file. That is, he is only
6 entitled to see certain parts of that file. Other parts he might be
7 able to get, and I stress might under the Freedom of Information
8 Act. I'm not saying he's done that. I haven't had an opportunity
9 to speak with him since this matter arose. But I submit that he's
10 answered the ques...the only questions which can be relevant. He
11 hasn't been disciplined. Surely it's not relevant if he hasn't been
12 disciplined or reprimanded, and by disciplined I'm including that.
13 I thought that question had been asked. To go pouring through
14 his personnel file, parts of which he himself is not entitled to see
15 as a matter of course, seems to me to be just going too far and
16 shouldn't be permitted.

17 MR. PUGSLEY

18 If I may respond to that, My Lord. If I may respond to that.
19 My recollection is that the only question I asked him is whether
20 or not he had been disciplined for giving any leaks to the media.
21 That was the only question, I believe, I asked him about discipline
22 and he responded "No" to that. I did not ask him about any other
23 questions concerning discipline relating to the Marshall
24 investigation. Even if I had and even if he had said none, so
25 what? I mean this man's credibility is under attack here. I want

1 to test his credibility and I want to see the documents to see
2 whether or not his response is accurate or not.

3 COMMISSIONER EVANS

4 Well, there are different ways of getting at that than the one
5 you propose. You can ask him, I suggest, whether he has been
6 disciplined by any...by the Force because of the Marshall file, his
7 conduct, and if you're not happy with that response I suppose you
8 could call the commanding officer to find out whether that
9 response is right or not.

10 MR. PUGSLEY

11 Yes, I certainly could do that.

12 COMMISSIONER EVANS

13 On the Marshall file.

14 MR. PUGSLEY

15 Yes. I would have thought that...

16 COMMISSIONER EVANS

17 The other that you're suggesting frankly is a witch hunt, or
18 maybe a little better than that term.

19 MR. PUGSLEY

20 All right.

21 COMMISSIONER EVANS

22 I don't think that would be proper at all.

23 MR. PUGSLEY

24 All right, My Lord. I'll certainly...in view of that comment.

25 COMMISSIONER EVANS

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 I don't know what my fellow commissioners' view...

2 MR. CHAIRMAN

3 Well, I've consulted with Chief Justice Poitras and we concur
4 that that...that your request to admit the service record file of
5 Staff Sergeant Wheaton cannot be achieved.

6 MR. PUGSLEY

7 All right, My Lord.

8 COMMISSIONER EVANS

9 That doesn't foreclose you from asking the question whether
10 he had been disciplined with respect to the Marshall.

11 MR. PUGSLEY

12 Yes.

13 MR. CHAIRMAN

14 Right.

15 MR. PUGSLEY

16 I'll address that question to him if I may then.

17 Q. Staff Sergeant Wheaton have any disciplinary actions of any
18 kind been taken or any criticism been expressed by any
19 member...by any senior member of the force, superior to you,
20 in connection with your involvement with the Donald
21 Marshall matter?

22 A. No, sir, nor in any other matter on my service file and I'm
23 very proud of it.

24 INQUIRY ADJOURNED - 12:04 a.m.*

25 INQUIRY RESUMES - 2:05 p.m.