

RG44  
Vol 352  
#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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

**MEDIA POOL COPY**

PRESS

INDEX - VOLUME 45

Witness

Staff Sgt. H. Wheaton

|                                      |      |
|--------------------------------------|------|
| Examination by Mr. Pugsley 9:50..... | 8204 |
| 11:31.....                           | 8261 |
| 12:00.....                           | 8282 |
| 2:22.....                            | 8301 |
| 2:47.....                            | 8315 |
| 3:37.....                            | 8347 |
| 4:05.....                            | 8359 |
| 4:18.....                            | 8370 |

## EXHIBIT LIST

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

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

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,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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  
truth and that Mr...

4 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  
inconclusive and so on those grounds  
nothing was done.

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

9  
10  
11 Q. Did the RCMP officer imply to you that  
12 there were not taken properly, tests  
were not administered properly?

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

17 Did you tell that to Heather Matheson?

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

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

22 A. No, I would not, sir.

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

24 Q. Did he suggest that the results of the  
25 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 you 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 |  
6 | Yes, sir, the Donald Marshall case, if you will, was over. The  
7 | Supreme Court had been held and my conversation with her was  
8 | in reference to the Donald Marshall case.

MR. CHAIRMAN

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

STAFF SGT. WHEATON

13 |  
14 | Yes, My Lord.

MR. CHAIRMAN

15 |  
16 | Indeed, did you testify...

STAFF SGT. WHEATON

17 |  
18 | Yes, I did, My Lord.

MR. CHAIRMAN

19 |  
20 | Is there any, to your knowledge, is there any rule within the  
21 | RCMP that would preclude or recommend that evidence in the  
22 | hands of the RCMP not be made public, particularly when there's a  
23 | trial of an accused in progress and that to which the evidence  
24 | 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. \*MR. CHAIRMAN

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

MR. PUGSLEY

12 Yes.

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.

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?

MR. CHAIRMAN

23 Yes.

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.

25

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

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

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.

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.

MR. CHAIRMAN

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

EXHIBIT 111 - RCMP GUIDE FOR CONTACT WITH MEDIA.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.

MR. CHAIRMAN

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

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.

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.

1 MR. CHAIRMAN

2 Now, where were we?

3 MR. PUGSLEY

4 My Lord, I do not propose addressing any questions to this  
5 witness concerning the Douglas matter and I've advised my...

6 MR. CHAIRMAN

7 That's great. We concur. All right. Carry on.

8 MR. PUGSLEY

9 Thank-you. I have introduced as an exhibit the next  
10 exhibit, Exhibit 111, and I believe copies have been distributed to  
11 your Lordships and to the witness. The information that I have  
12 been given by counsel for the RCMP relating to the release of  
13 information to the media.

14 Q. Are you generally familiar with the provisions that are...or  
15 the pages that are set forth in Exhibit 111, Staff Sergeant  
16 Wheaton?

17 A. Yes, sir.

18 Q. I note that the dates at the bottom of the first three pages  
19 relate presumably to the year 1987 and the other pages deal  
20 with '83, '81, '81, '83, and '83, does that date refer to the year  
21 in which these pieces of paper came into the guideline  
22 manual?

23 A. Yes, sir. It would have been updated on those dates.

24 Q. Can you advise us as to whether or not there has been any  
25 change in substance in the guidelines since the year 1982?

1 A. The substance of it, I believe, to the best of my knowledge is  
2 approximately the same, Mr. Pugsley.

3 Q. I take it that there would be a manual on file at RCMP  
4 headquarters.

5 A. Yes, sir.

6 Q. Would there be more than one copy or just one?

7 A. Each unit, autonomous unit would have a copy of its own  
8 books for administrative and operational manuals.

9 Q. Yes. And as the manuals were updated would each member  
10 of the Force get a copy of the update?

11 A. No, he would not, sir.

12 Q. How would he be advised of a change in the manual?

13 A. He would have to go to the manual himself and look it up.

14 Q. I see.

15 A. There are...I don't know the accurate number, but there are  
16 many, maybe fifteen books, twenty books.

17 Q. Is this something you do regularly?

18 A. Usually one would have one stenographer update the  
19 manuals.

20 Q. Yes.

21 A. And, as the person in charge you would sometimes...you  
22 would read them...

23 Q. All right. The first page of Exhibit 111 and I'm instructed, My  
24 Lords, that the pages that have been given to you are not in  
25 order and so that 1, 2, 3, 4 are in order but the fifth page is,

1 in fact, the second-last page. That is page number 5 in the  
2 information that I'm instructed has been given to you .

3 MR. CHAIRMAN

4 The fifth page is the second-last page.

5 MR. PUGSLEY

6 Correct. Yes. Well, it was just given to us in this...

7 MR. CHAIRMAN

8 Why wouldn't the fifth page be the second-last page?

9 MR. PUGSLEY

10 Why wouldn't...quite right. If not, why not, I quite agree,  
11 My Lord. But that's the way it reads.

12 Q. Now, under "General" under point number one, "See operation  
13 manual 11J3 and 4, administration manual III 2(e) and 2."

14 The first three pages, I take it, are the operational manual,  
15 and the balance of the pages are the administration manual.

16 A. That is correct, sir, I believe, yes.

17 Q. Just dealing with item number 4 at the bottom of the page.  
18 "Information which is minor in nature may be released by..."  
19 and it indicates three different individuals. The information  
20 that you imparted to Heather Matheson and to Michael Harris,  
21 I take it, would not fall within the classification of minor in  
22 nature.

23 A. I wouldn't think so, sir.

24 Q. Does that information fall within item number 3 then, "Events  
25 which fall within the framework of administration manual

- 1 III, 2(e), 2(a), 5 1 and 2 will only released by the CIBO or his  
2 delegate." Is that the...
- 3 A. You're losing me a bit, sir.
- 4 Q. All right. I'm reading from point number 3 on the first page  
5 of this exhibit.
- 6 A. Oh, yes, yes.
- 7 Q. And I asked you whether or not the information that you  
8 released to Heather Matheson and to Michael Harris fall  
9 within that category number 3?
- 10 A. I don't know, sir.
- 11 Q. All right. Who is the CIBO?
- 12 A. Superintendent Vaughan is the present CIBO.
- 13 Q. You never held that position.
- 14 A. No, I did not, sir.
- 15 Q. Were you ever the delegate of that person to release  
16 information?
- 17 A. Ah.
- 18 Q. On the Marshall Inquiry to the press.
- 19 A. It could be construed that I would be in a way. I was in  
20 charge of the investigation.
- 21 Q. But were you delegated to release information to the press?
- 22 A. I was not specifically delegated by the CIBO as a press release  
23 officer, if you will.
- 24 Q. All right.
- 25 A. However, usually the chief investigator does have an

1 obligation to liaise with the press and keep good press  
2 relations.

3 Q Are there any...are there any limitations on that?

4 A. These instructions and....

5 Q These instructions. Okay.

6 A. His own common sense.

7 Q Yes. All right. Perhaps you'll turn then to the first page that  
8 has the heading "Administration" which I believe was page  
9 number 4 in the...in Exhibit 11 as it's stapled.

10 A. Yes, sir.

11 Q Under the heading in the middle of the page "Information to  
12 the news media, 2A General," and then sub 2.

13 A. Yes, sir.

14 Q "Ensure insofar as is possible that any information released to  
15 the news media will not interfere with an investigation or  
16 arrest."

17 A. Yes, sir.

18 Q "Result in embarrassment, injury or injustice to an innocent  
19 person or an accused person."

20 A. Yes, sir.

21 Q Now, the information that you released to Heather Matheson  
22 occurred, as your counsel has reminded us, apparently after  
23 the second Ebsary trial, after he was found guilty but before  
24 sentencing and before, I assume, presumably before the time  
25 for appeal had expired.d

1 A. Yes, sir.

2 Q. So, that at the time you spoke with Heather Matheson you  
3 were not aware as to whether or not Ebsary would be  
4 appealing that conviction.

5 A. No, sir.

6 Q. However, the information that you released to Michael Harris  
7 was released presumably at a time when you must have been  
8 aware of the fact that there was going to be a new trial, a  
9 third trial.

10 A. I don't have specific dates, sir.

11 Q. All right. Were you concerned at all about the information  
12 that you released to Michael Harris or to Heather Matheson  
13 resulting in any embarrassment or injury to Roy Ebsary?

14 A. Not really, sir.

15 Q. In particular, you'll recall the telephone call that Mr. Ebsary  
16 placed to the detachment after the lengthy interview that you  
17 and Corporal Carroll had.

18 A. Yes, sir.

19 Q. The one that started off "All our talking today was not in  
20 vain."

21 A. Yes, sir.

22 Q. Was that statement ever introduced at the first or second  
23 Ebsary trial?

24 A. No, sir.

25 Q. No. That apparently...that appears in Michael Harris' book at

1 page 329 and it appears, of course, in the materials that we  
2 have before us, but you will recall that he did say to you on  
3 the telephone, among other things, "All our talking today was  
4 not in vain, you know. Why is that? 'Well, I did it,' Ebsary  
5 said. 'Are you admitting to stabbing Seale,' Wheaton asked,  
6 his heart skipping a beat. A. Yes."

7 A. Uh-hum.

8 Q. Now, I take it you must have disclosed that information to  
9 Michael Harris.

10 A. Yes, sir.

11 Q. Yes. Well, if that statement had not been introduced in the  
12 first two trials were you not concerned that that...that the  
13 release of that information could substantially prejudice Mr.  
14 Ebsary?

15 A. Mr. Ebsary was convicted at that time, I believe, sir, and the  
16 statement was never admitted in the first two trials.

17 Q. Precisely my point. Since that statement had never been  
18 before the courts and my recollection is that Ebsary did not  
19 give evidence in the first two trials, did he?

20 A. I don't know, sir.

21 Q. Then surely the release of that kind of a statement to the  
22 press could cause an injustice to Mr. Ebsary.

23 A. Not really, sir.

24 Q. Okay. Now, if you would turn to the second-last page headed  
25 "Administration, (e) Release Procedures, B2A4." "Keep a

1 record of information given to the news media to protect  
2 against misquotation, exaggeration or sensationalism." I take  
3 it you did not do that in any of the instances with Michael  
4 Harris or with Heather Matheson.

5 A. The context which that is written in, sir, is releases, typed  
6 releases that would be going to the news media.

7 Q. I see.

8 A. And I was not making...I was not approaching the new media  
9 with a typed written release.

10 Q. I see. I refer to page number 5 in the exhibit and I may have  
11 to ask for your counsel to assist me in there. I assume that  
12 there is some words that we should read before we start the  
13 top of the...that page but I'm not sure I know what they are.  
14 Well, it may be in the second-last page where five starts,  
15 "Submit the following information by the quickest means  
16 consistent with the possible impact of the investigation or  
17 incident to the Commissioner." And then we go to page  
18 number 5. I guess that's...is that the way it reads? Staff  
19 Sergeant Wheaton, would you...

20 A. Trying to decipher it myself, Mr. Pugsley.

21 Q. Would you interpret it that way?

22 A. Yeah, the whole thing is...

23 MR. PRINGLE

24 We received it loose and I think Mr. Murray had it put  
25 together or someone did. Who put it together? We didn't

1 anyway.

2 MR. PUGSLEY

3 I took it upstairs to the Commission secretary for  
4 photostating. But I...

5 Q. Well, perhaps you can assist us, Staff. If we refer to the  
6 second-last page you see item 5 there on the short page.

7 A. Yes, sir. The two things seem to be referring to me to be of  
8 the same thing only one is an updating of the other one  
9 perhaps. One has got the date 81 04 29 on the bottom right-  
10 hand corner, and the other one is 83 08 29.

11 Q. Yes.

12 A. They both refer to 32E, 32E, 2A, no, one is five and one is  
13 four.

14 Q. I will assume that that is the...

15 A. They all deal, all three pages, all I can say, is they deal with  
16 release procedures.

17 Q. Yes. At the bottom of page number 5 it says "Release by  
18 division headquarters. In contract provinces..." Is Nova  
19 Scotia a contract province?

20 A. Yes, it is, sir.

21 Q. "The commanding officer will establish with the Attorney  
22 General the policy to be followed for the release of  
23 information on provincial statute or Criminal Code matters.  
24 Was that ever done, do you know, in Nova Scotia?

25 A. Ah...

1 Q. And was any policy adopted?

2 A. I...could I just read that again to see if I can figure it out, sir.

3 Q. Certainly.

4 A. I really don't know, sir.

5 Q. All right. It goes on to say, "When consistent with this policy  
6 the commanding officer may authorize release of information  
7 as follows:" and then we go to point number 4, "Joint  
8 investigations".

9 A. Where are you reading from now, sir. Sorry.

10 Q. Point number 4 is the third last page from the...in Exhibit 11.

11 A. Oh, yes.

12 Q. Around the middle of the page. "When an investigation  
13 involves another police department or enforcement agency, if  
14 it is not in conflict with their policy, the names of the other  
15 enforcement officers involved and the nature of their  
16 assistance." Do you know whether or not such a  
17 determination was made at all in this case by the RCM Police?

18 A. I would not call this a joint investigation for...to begin with,  
19 Mr. Pugsley.

20 Q. Okay. I guess what I would ask, My Lord, is that someone  
21 who has knowledge of these guidelines and can speak to them  
22 on behalf of the Royal Canadian Mounted Police be called to  
23 give evidence to advise as to whether or not Staff Sergeant  
24 Wheaton has complied with the guidelines in the release of  
25 the information he gave. I would make that request of

1 Commission counsel.

2 MR. CHAIRMAN

3 I have no difficulty in getting the intent of the guidelines.  
4 We have Staff Sergeant Wheaton's testimony that he didn't get...he  
5 didn't receive authorization from anyone to disclose the  
6 information that allegedly was disclosed by him to Michael Harris  
7 and others.

8 MR. PUGSLEY

9 All right, My Lord.

10 MR. CHAIRMAN

11 I don't see any point in calling...

12 MR. PUGSLEY

13 All right. Fine. I'll...

14 MR. CHAIRMAN

15 To explain to us.

16 MR. PUGSLEY

17 If the Commission is satisfied on that point I'd  
18 certainly...then I don't wish to press it. Thank-you. That's all the  
19 questions I have.

20 MR. CHAIRMAN

21 Mr. Murray.

22 COMMISSIONER EVANS

23 Staff Sergeant Wheaton, there was one question I wanted to  
24 ask with respect to the desk in MacIntyre's office. Was it a table  
25 or did it have a solid front or what was it?

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEY

1 STAFF SGT. WHEATON

2 It had a solid front, My Lord. It was the normal type office  
3 desk with two drawers down on one side and two drawers down  
4 the other side and you sit in the middle with a solid top.

5 COMMISSIONER EVANS

6 But it was solid across the front.

7 STAFF SGT. WHEATON

8 And sides.

9 COMMISSIONER EVANS

10 And the sides.

11 STAFF SGT. WHEATON

12 Yes, My Lord.

13 COMMISSIONER EVANS

14 ...then were solid as well.

15 STAFF SGT. WHEATON

16 Yes. It was not an open table. No, My Lord.

17 COMMISSIONER EVANS

18 So from where you were seated you couldn't tell what was  
19 under that desk.

20 STAFF SGT. WHEATON

21 No, My Lord.

22 COMMISSIONER EVANS

23 And you didn't...you never went around to look.

24 STAFF SGT. WHEATON

25 Not until it was brought to my attention.

STAFF SGT. WHEATON, EXAM. BY MR. PUGSLEYCOMMISSIONER EVANS

Not until it was brought to your attention.

STAFF SGT. WHEATON

By Corporal Davies.

COMMISSIONER EVANS

Yes. But you didn't go around to look under the desk.

MacIntyre...

STAFF SGT. WHEATON

No, MacIntyre went ahead of me, sir.

COMMISSIONER EVANS

And picked it up.

STAFF SGT. WHEATON

That is correct, My Lord, yes.

COMMISSIONER EVANS

Yes. And Davies, he couldn't see what was under the desk.

STAFF SGT. WHEATON

No, because he would be blocked. He would see it going in that direction I would believe, My Lord.

COMMISSIONER EVANS

That's all, thank-you.

EXAMINATION BY MR. MURRAY

Q. Mr. Wheaton, my name is Donald Murray. I'm here on behalf of William Urquhart.

A. Yes, sir.

Q. Whom I understand you know quite well.

1 A. Yes, sir.

2 Q. I take it from your remarks to the Commission counsel and  
3 throughout that your approach to an investigation, a careful  
4 investigation, is to be accurate, thorough, and pay close  
5 attention to detail.

6 A. That is correct, sir.

7 Q. And you did that on this investigation.

8 A. To the best of my ability, sir.

9 Q. Uh-hum. And included in that, as you did on a number of  
10 occasions in your reports, it includes comments on the  
11 reliability and believability of certain witnesses.

12 A. Yes, sir.

13 Q. Example. Jimmy MacNeil, February the 8th. I understand  
14 that's when you interviewed him.

15 A. February the 8th, sir, yes, sir.

16 Q. Yes. If you'd take Volume 34, which is Exhibit 98, page 8.

17 A. Page 8, sir.

18 Q. 34. Volume 34, page 8.

19 A. Yes, sir. Yes, sir.

20 Q. You indicate there in the first paragraph on that page that  
21 MacNeil struck you as giving what he had to say in a  
22 forthright and honest manner. Correct?

23 A. If I may read it, sir.

24 Q. Uh-hum.

25 A. Yes, sir. In the first paragraph you're referring to.

- 1 Q. Yes.
- 2 A. Yes.
- 3 Q. Now, the statement itself appears at page 42 of that same  
4 volume.
- 5 A. Yes, sir.
- 6 Q. And you took care in your evidence before the Commission, I  
7 suggest, to note that at the time Mr. MacNeil was on  
8 medications and he had been drinking but wasn't drunk.
- 9 A. Mr. MacNeil.
- 10 Q. Mr. MacNeil.
- 11 A. When I interviewed him on the 8th.
- 12 Q. Yes.
- 13 A. Was not drinking.
- 14 Q. You're sure he was not drinking.
- 15 A. No.
- 16 Q. Was he on medication, sir?
- 17 A. He advised me he was taking some medication for his  
18 hypertension, yes, sir.
- 19 Q. Uh-hum. Did you make a note of what that medication was?
- 20 A. No, I did not, sir.
- 21 Q. No. So, today you can't tell us what the medication was?
- 22 A. No, sir.
- 23 Q. Mitchell Sarson, I believe you saw him the next day on  
24 February the 9th.
- 25 A. Yes, sir.

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 Q. Did you call him in advance to tell him you were coming to  
2 Pictou?

3 A. I don't recall if I did or not. I think I may have, but I can't  
4 specifically recall.

5 Q. Uh-hum. On page 8 of that same volume you indicate that  
6 one of your concerns with Sarson is the possibility of collusion  
7 with Donald Marshall, Jr.

8 2:22 p.m.

9 A. Yes, sir.

10 Q. And, in fact, on page eight, you say: "He's undoubtedly  
11 discussed the case with Marshall many times at great length,"  
12 I believe are you exact words.

13 A. Yes, sir.

14 Q. And that was based as a result of the conversation you had  
15 had with Sarson?

16 A. That is right, sir.

17 Q. So collusion was something that should have been pursued.

18 A. It was something that I was trying to keep a balance in this  
19 investigation, yes, sir.

20 Q. Indeed, when you completed this report that starts Volume  
21 34 in March, I believe it was, you were still saying that you  
22 couldn't preclude collusion.

23 A. That's probably right. I don't have the report in front of me.

24 Q. Well, I believe it begins at page nine. Your reference to  
25 Sarson is on page 13.

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 A. Page 13, paragraph?

2 Q. 16, bottom of the page, middle of the paragraph. "The  
3 possibility of collusion between Marshall and Sarson cannot  
4 be precluded."

5 A. Page 13, Paragraph 15.

6 Q. 16.

7 A. Bottom of that paragraph.

8 Q. Middle of that paragraph.

9 A. Middle. I'm looking at the wrong thing, I'm afraid, sir.  
10 Paragraph 16, yes, yeah. "The possibility of..." yes, sir.

11 Q. And that was your state of mind in March when you  
12 completed the report?

13 A. At the point I wrote that paragraph, yes, sir.

14 Q. You had already done a records check on Sarson at that time?

15 A. Yes, sir.

16 Q. And confirmed he had a record.

17 A. Yes, sir.

18 Q. Like other visitors to Dorchester, you went to Dorchester in  
19 the middle of February, and like other visitors to Dorchester,  
20 do you sign in when you go?

21 A. Yes, sir.

22 Q. And do you say who you are going to visit?

23 A. Yes, sir.

24 Q. Did you check any of those records to see if Sarson had signed  
25 in to visit Marshall?

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 A. I don't believe I did. I had conversation with one of the  
2 administrative staff in that regard. I don't know as I actually  
3 looked at books.

4 Q That's something you could have done?

5 A. Yes, sir.

6 Q And that was certainly relevant to the reliability of Sarson  
7 and Marshall?

8 A. It would be another avenue of investigation, sir, yes.

9 Q Indeed, relevant to the reliability of Ebsary, would it not,  
10 because Sarson had contacted both individuals.

11 A. Could you explain that to me?

12 Q Is there anything to explain?

13 A. Well...

14 Q Sarson had contact with Ebsary and he had contact with  
15 Marshall, right?

16 A. That's right. Now you're referring to the sign-in book in  
17 Dorchester?

18 Q That is correct.

19 A. Now what has that got to do with...

20 Q It's something that could have been relevant to the credibility  
21 of Ebsary as to the contact that there was between Sarson and  
22 Marshall. Because Marshall and Ebsary were in contact with  
23 each other.

24 A. I'm sorry, I can't answer your question. I can't follow your  
25 logic.

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 Q. Fine. Let's go to page 73 of that same volume. This is a  
2 report dated the 19th of April 1982.

3 A. Yes, sir.

4 Q. Now I understand from the evidence that's been given that  
5 this report was prepared in response to a request from the  
6 deputy attorney general. And I believe there's a reference  
7 at Volume 19, page 107 that might assist you on that.

8 A. Page 107?

9 Q. Page 107 in Volume 19.

10 A. Yes, sir, I have it.

11 Q.  
12 This correspondence outlines background  
13 information on Mitchell Sarson, who will be  
14 a crucial witness in any future charges  
15 against Ebsary. Apparently Chief  
16 MacIntyre when in earlier conversation  
17 with you [that's to Gordon Gale].

18 A. Yes, sir.

19 Q. Questioned the reliability of Sarson as a witness. And my  
20 understanding from your evidence is that that letter refers to  
21 your report of April 19th.

22 A. Well, I notice this report is dated the 26th.

23 Q. Of April?

24 A. In the upper left-hand corner. That would be after, it would  
25 be sent out, you couldn't send a request for a report before  
the report was written.

Q. This is the letter back from...

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

- 1 A. Oh, this is the letter back, I see.
- 2 Q. From the RCMP to the Deputy Attorney General.
- 3 A. Yeah, it could very well be, sir, yes.
- 4 Q. Now in that report of the 19th of April 1982, you quote  
5 Paragraph 16, which we looked at a moment ago from your  
6 earlier report and then you state:
- 7
- 8           Since the interview of Mitchell Bayne  
9           Sarson and submission of previous report,  
10           considerable amount of investigation has  
11           been completed.
- 12           And then you list several reasons why Sarson had come  
13           forward, why you believe Sarson had come forward.
- 14 A. Yes, I have that now, sir, yes.
- 15 Q. In that, you don't make any comment other than quoting  
16 Paragraph 16 of the possibility of collusion.
- 17 A. I beg your pardon?
- 18 Q. You put the quote from Paragraph 16 about collusion but then  
19 you say nothing about it in your further six.
- 20 A. I say nothing about it...
- 21 Q. Four paragraphs.
- 22 A. In this report of the 19th.
- 23 Q. That's right.
- 24 A. I had already said it in the earlier report.
- 25 Q. I see.
- 26 A. And I'm assuming, I haven't had time to read all of this, but I

1 believe what you say, sir.

2 Q. Take your time.

3 A. No. No, that's fine.

4 Q. My difficulty when I read that report, sir, was that it  
5 appeared to me that, yes, on the 22nd of March, "I wrote a  
6 paragraph that suggested the possibility of collusion between  
7 Marshall and Sarson cannot be precluded." And then, "Since  
8 the interview of Mitchell Sarson and submission of previous  
9 report, there had been a considerable amount of  
10 investigation."

11 A. Yes, sir.

12 Q. And then you go through and list four factors for Sarson  
13 coming forward and make no further mention of the collusion  
14 issue. And my concern in reading that, sir, was that you were  
15 giving the impression that collusion is no longer a concern. Or  
16 is that a mistaken conclusion?

17 A. Well, as one goes forward in an investigation as a result of  
18 various interviews and so on, your opinions continually  
19 change. You develop, you either prove a person innocent or  
20 guilty or is collusion, isn't collusion. I'm trying to outline to  
21 my superiors and answer their questions, sir.

22 Q. I see. What further investigation had you done about the  
23 Sarson/Marshall relationship between your March report and  
24 this report in April?

25 A. I just don't have the dates in front of me. There was, I

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

- 1 believe, another... Had I done the interviews with Marshall?
- 2 Q. You would have done both of the interviews with Marshall.
- 3 A. Both of the interviews with Marshall. I would have spoke to  
4 two prison officials--Mr. Dale Cross, I believe his name was. I  
5 would have spoke to Sergeant Eugene Cole. I would have  
6 been looking into the matter in Sydney and I would have  
7 done further investigation. As to the specifics and what days,  
8 I cannot recall at this juncture, sir.
- 9 Q. And no notes about what you were told.
- 10 A. Well, I have notes.
- 11 Q. But no notes about what you were told about the  
12 Marshall/Sarson relationship.
- 13 A. I don't believe so, sir.
- 14 Q. With respect to Maynard Chant, Mr. Pugsley dealt at some  
15 length with Mr. Chant and I don't propose to repeat that.  
16 However, I just wanted to confirm, did you know or did you  
17 not know that Mr. Chant had been a heavy drug user in  
18 between '71 and '82?
- 19 A. Only when Mr. Chant brought it to my attention himself.
- 20 Q. And he brought it to your attention in 1982?
- 21 A. Well, I wouldn't say he brought it to my attention that he was  
22 a heavy drug user. As I recall it, he was a transporter of  
23 drugs, the way he explained it to me, and was making money  
24 at it. As to his own indulgence, I don't know.
- 25 Q. His own indulgence would have had some relevance to his

- 1 believability, would it not?
- 2 A. In 1982?
- 3 Q. Yes?
- 4 A. The way he explained it to me, he hadn't been involved in  
5 drugs for some time in 1982 and, in fact, had become a Born-  
6 Again Christian and was very penitent about his previous  
7 actions.
- 8 Q. Were you concerned at all about the ten years that Mr. Chant  
9 had had to come into contact with other witnesses from  
10 1971?
- 11 A. Yes, of course, one has to be cognizant of that because you  
12 often say, "Is the witness telling me what he actually knows  
13 or what someone told him or what he heard?" So this is why  
14 you try to get as many cross checks between witnesses as you  
15 possibly can.
- 16 Q. Had Mr. Chant, in fact, come in contact with any witnesses?
- 17 A. In relation to what, sir?
- 18 Q. In relation, from the 1971 trial, had he come into contact with  
19 anyone?
- 20 A. Not that I know of, no. He, I think, stayed pretty well clear of,  
21 to my knowledge, of Pratico, Patricia Harriss, or any of the  
22 key witnesses.
- 23 Q. You also discussed with Mr. Chant the time that you went to  
24 see him, why he had lied and it's been given in evidence that,  
25 in fact, in the statement itself, he doesn't say anything about

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

- 1 | police pressure but rather says that he was young and scared.  
2 | Whether he was scared of what is left open, is that correct?  
3 | That's at page 48 of that volume, if you would like to refer to  
4 | the statement.
- 5 | A. You're referring to the statement taken by Corporal Carroll at  
6 | 47, 48?
- 7 | Q. I'm referring to the statement taken on the 16th of February,  
8 | witnesses by Corporal Carroll.
- 9 | A. Yes, sir. Now, in that, what questions...
- 10 | Q. Well, he indicates that he was young and scared and I believe  
11 | your evidence yesterday was that the writing itself doesn't  
12 | say "pressured by the police."
- 13 | A. Yes, sir.
- 14 | Q. And, in fact, since you've had a chance to look at it, he doesn't  
15 | indicate anything about any pressure from William Urquhart  
16 | specifically.
- 17 | A. No, he does not, sir.
- 18 | Q. Did he during the interview at all?
- 19 | A. No, I don't know, sir.
- 20 | Q. So he didn't make any complaint about Mr. Urquhart's  
21 | conduct in this.
- 22 | A. As I recall, he didn't know the name of the other person with  
23 | John MacIntyre.
- 24 | Q. Was it that occasion that Corporal Carroll interviewed Mrs.  
25 | Chant?

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

- 1 A. No, it was in the, I wasn't present when this was taken.  
2 Because in the previous interview, the one in which I wrote...
- 3 Q. This is the previous interview, sir, as I understand it.
- 4 A. I beg your pardon, sir?
- 5 Q. I believe page 47, 48 is the statement that you took.
- 6 A. Oh, is it?
- 7 Q. I believe the record will show Corporal Carroll took a  
8 statement in April.
- 9 A. Oh, yes, yeah.. Yes, sir, you're right. Now what was your, I'm  
10 sorry.
- 11 Q. So my question was, did Corporal Carroll speak with Mrs.  
12 Chant on the 16th of February?
- 13 A. Yes, sir.
- 14 Q. No statement taken at that time.
- 15 A. No, sir.
- 16 Q. Why not?
- 17 A. You'll have to ask Corporal Carroll, sir.
- 18 Q. I see. You were there, superior to him.
- 19 A. I was present in the room with Mrs. Chant and Corporal  
20 Carroll's conversation took place with her, I believe, in a  
21 hallway outside that room.
- 22 Q. You could have directed Corporal Carroll to take a statement  
23 from...
- 24 A. Oh, yes.
- 25 Q. Mrs. Chant.

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 A. Yes.

2 Q. Go back a few days, February the 8th. I understand from  
3 documentation that will be coming before the Commission  
4 that you spoke on the telephone with Mr. Aronson on  
5 February the 8th or thereabouts.

6 A. Early in the investigation, I recall speaking to Mr. Aronson,  
7 yes, sir.

8 Q. Did you call him or did he call you?

9 A. I don't know...Well, he would have called me, sir.

10 Q. Okay. Now the 8th of...

11 A. I recall it as him coming to my office. He may have called  
12 prior to coming and arranged...

13 Q. I understand there was a phone call and then a visit.

14 A. Yes.

15 Q. But by the 8th of February, you had interviewed, as I gather,  
16 and correct me if I'm wrong, Jimmy MacNeil.

17 A. Yes, sir.

18 Q. Mary Ebsary.

19 A. Yes, sir.

20 Q. Greg Ebsary, and perhaps Mrs. Pratico.

21 A. I believe so, yes, sir, and various other people living in the  
22 area of the Ebsary, Roy Ebsary's home. And various Sydney  
23 City Police officers, Horace Woodburn, John MacIntyre. And  
24 that's about all I can recall at this time.

25 Q. But I take it that your impression at that time and on

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 February 11th when I understand you met with Mr. Aronson,  
2 that you really didn't feel that you had anything of substance  
3 to go on.

4 A. I think that's an accurate statement, sir. I can't recall  
5 specifics.

6 Q. Well, I believe you testified the other day that the sum of  
7 what you said to Aronson was, "I'll go down and I'll speak to  
8 Chant, but probably wrap it up after I take a statement from  
9 Chant." Is that fair?

10 A. I don't recall telling Mr. Aronson that, no.

11 Q. Perhaps we'll refer to Volume 41, page 7557. Perhaps you'd  
12 start on 7556.

13 A. What page, sir?

14 Q. Perhaps if you'd start on 7556. And there you're talking  
15 about you recall the circumstances of that interview with Mr.  
16 Chant which would have been on the 16th of February, and  
17 your answer is:

18  
19 On the afternoon of the 16th, Corporal  
20 Carroll and myself went to Sydney and Mr.  
21 Chant was employed at a fish plant as a  
22 fish cutter.

23 I take it you mean Louisbourg there.

24 A. Yes, sir.

25 Q.  
We spoke to the foreman who told us he  
was on an assembly line type of operation.

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 We went to the line where he was working  
2 and I asked him if he could just come over  
3 in a corner for a minute, that I'd like to  
4 have a brief talk with him and his facial  
5 expression changed. He said that he would  
6 like to talk to us at home. He didn't want  
7 to talk to us there. I just felt there was  
8 something funny about it after we left. It  
9 was originally my intention to have, to  
10 take Mr. Chant aside and ask him if what  
11 he had told Chief MacIntyre and what he  
12 had given in evidence was the truth. And  
13 if he said it was, then I would continue on  
14 my way and continue the investigation into  
15 Mr. Aronson's letter and probably conclude  
16 it.

17 A. That's right. I didn't tell that to Mr. Aronson.

18 Q. You didn't tell him.

19 A. But that's what was in my mind when I went out to  
20 Louisbourg.

21 Q. I see. But it's fair to say that you didn't give Mr. Aronson  
22 much encouragement, would that be fair?

23 A. I don't have a date when I had my first conversation with Mr.  
24 Aronson.

25 Q. My understanding is the evidence will be on the 11th of  
February, you had a meeting with Mr. Aronson.

A. I see, sir, yeah.

Q. And by then, you had spoken to Jimmy MacNeil, Mrs. Pratico,  
and Mrs. Ebsary, as well as some neighbourhood inquiries and  
Horace Woodburn.

A. My recollection of my first conversation with Mr. Aronson

STAFF SGT. WHEATON, EXAM. BY MR. MURRAY

1 was that I brought him up to date with whatever I had  
2 learned at that juncture. Now whether I gave him hope or  
3 not hope, I don't know.

4 Q. Would it be fair then, and we'll take this back another level,  
5 that if Mr. Chant said that what he had told MacIntyre in '71  
6 was the truth and you concluded the investigation, it would  
7 be fair to say you didn't believe Jimmy MacNeil in 1982.

8 A. Would you give me that again, sir?

9 Q. Certainly. If Mr. Chant had told you that what he had told  
10 MacIntyre in '71 was the truth, you would have wrapped up  
11 the investigation at that time.

12 A. I would not have believed Jimmy MacNeil. If the  
13 eyewitnesses were held true and there was a possibility of  
14 some collusion between, because there was meetings in  
15 Dorchester between Sarson and Marshall and there would  
16 have been, yes.

17 Q. Let's assume you did meet with...

18 A. I probably would have also have interviewed Pratico, though.

19 Q. Let's assume...

20 A. Again, cross check.

21 Q. That you did meet with Mr. Aronson on the 11th of February.  
22 That would have been before your first trip to Dorchester.  
23 Did you assure him that you would go speak to Donald  
24 Marshall, Jr.?

25 A. I can't recall if I did or did not, sir. I may have.

1 2:47 p.m.

2 Q. You met with Roy Ebsary, as I understand it, a week after  
3 that. The 22nd of February.

4 A. Yes, sir.

5 Q. He wasn't a particularly reliable character from first  
6 appearances, was he.

7 A. No, sir.

8 CHAIRMAN

9 What do you mean by that? The way he was dressed or  
10 what do you...

11 A. I beg your pardon?

12 MR. MURRAY

13 Q. Why do you say...

14 A. Why didn't I think...

15 Q. Why didn't you think he was a reliable kind of looking  
16 person?

17 A. Because he told me he had sunk the Bismarck and such  
18 comments, My Lord.

19 Q. He lived in a a fantasy world.

20 A. I beg you pardon?

21 Q. He lived in a fantasy world according to your information?

22 A. He seemed to, yes.

23 Q. Told you he'd had two previous nervous breakdowns?

24 A. I can't recall that, sir.

25 Q. He heard voices.

1 CHAIRMAN

2 He heard what?

3 A. I can't recall that.

4 Q. Voices.

5 CHAIRMAN

6 Oh, he heard voices.

7 MR. MURRAY

8 Q. Heard voices. Perhaps you would take Volume 19, sir.

9 A. Yes, sir.

10 Q. Turn to page 24.

11 A. Yes, sir.

12 Q. Paragraph 13 which, as I take it, is the first paragraph which  
13 actually deals with what you were doing in 1982. Describes  
14 your contact with Mr. Woodburn and you attribute to  
15 Detective Corporal Woodburn the comment that Ebsary was  
16 "an eccentric wino who lives in a fantasy world" and that  
17 would be one of your concerns with Mr. Ebsary's reliability?

18 A. Yes, sir.

19 Q. And that's prior to meeting Mr. Ebsary?

20 A. Yes.

21 Q. The statement you that you took from Mr. Ebsary, the  
22 handwritten statement, that was...

23 COMMISSIONER EVANS

24 Mr. Murray, I dislike interrupting you but where is this  
25 taking us with respect to your client, Urquhart?

1 MR. MURRAY

2 I suggest that this man's approach to investigations and the  
3 way he treats an investigation is extremely relevant as to how he  
4 treated my client, Mr. Urquhart.

5 COMMISSIONER EVANS

6 Hasn't that all been done by your co-worker?

7 MR. MURRAY

8 Fine. I'll turn to the more direct issues, My Lord.

9 COMMISSIONER EVANS

10 All right.

11 Q. Up until the end of February, 1982, had anyone made any  
12 complaint about William Urquhart and his conduct during the  
13 investigation in 1971?

14 A. No, sir.

15 Q. In February, Mr. Carroll got a statement from John Pratico,  
16 February 25th, I believe.

17 A. Yes, sir.

18 Q. And that statement did not refer to William Urquhart.

19 A. Do you have the citation?

20 Q. I refer you to page 50.

21 A. Volume?

22 Q. Volume 34.

23 A. Just quickly scanning through it, sir, I don't see the name  
24 Urquhart jump out at me. I take your word for it.

25

1 Q. No, indeed. He says he was interviewed by John MacIntyre  
2 and Michael R. MacDonald, doesn't he.

3 A. That's right, sir.

4 Q. And perhaps you could take a closer look at that statement.  
5 Mr. Pratico appears to be inaccurate about a number of  
6 details. For example, there's only mention of one statement to  
7 the police.

8 A. Yes, sir. I don't see it but I wouldn't quarrel with you.

9 Q. By this point, 25th, 26th of February, had you had a chance to  
10 review the preliminary hearing transcript?

11 A. I believe I had, sir, yes.

12 Q. Of course you had John Pratico's June 4th statement by that  
13 time as well.

14 A. I believe so, yes, sir.

15 Q. So you suspected, I would take it, that Mr. Pratico was entirely  
16 wrong about Michael R. MacDonald and that it, in fact, had  
17 been William Urquhart that interviewed him at some point.

18 A. I had reason to believe that, yes, sir.

19 Q. You interviewed Patricia Harriss on March the 1st.

20 A. Yes, sir, I believe, without looking at it.

21 Q. And she advised you during the general discussion that you  
22 had that she had discussed the events of 1971 with her  
23 parents on numerous occasions since that time?

24 A. Yes, sir.

25

1 Q. What other background did you have on Patricia Harriss in  
2 the interview?

3 A. I believe I had done a records check on her, sir.

4 Q. And what did that show?

5 A. That she had some previous convictions.

6 Q. Do you mention that in any report, sir?

7 A. I don't believe I did. I don't know. I have no fresh  
8 recollection of it.

9 Q. I see.

10 A. If you say I didn't I wouldn't quibble.

11 Q. I haven't seen it, however, you, it, you may well have put it  
12 in. I certainly have not seen it in the documentation. Why  
13 would you refer to Mr. Sarson's criminal activity, Mr. Chant's  
14 criminal activity but not Patricia Harriss?

15 A. Patricia Harriss' record, as I recall it, was one of shoplifting  
16 and one was impaired driving, I believe. I don't know if  
17 there was a possession of a narcotic or not. I don't know for  
18 sure, just as a recall many years later. And I believe that I  
19 mentioned it to Mr. Edwards and I can't offer any explanation.  
20 If it isn't in a report, it's not there, sir. I..

21 Q. What else did you know about Patricia Harriss?

22 A. Very little. I had done some checking.

23 Q. With whom?

24 A. I believe with the Sydney City Police. I can't remember if it  
25 was Horace Woodburn again or David Wilson or which one of

1       them it was. But one of the chaps that I knew quite well, just  
2       on a rundown on the girl. Also, the Chief had made sort of  
3       aspersions about her mother to me and so I sort of asked  
4       about that. "What was the story?" She was a single mother.  
5       I generally did my usual sort of review of the individual  
6       before she came in.

7       Q. Any neighbourhood inquiry?

8       A. I believe I did, yes.

9       Q. Do you remember with who?

10      A. They lived in a corner house it seems to me. A big yellow  
11      house and I forget, I believe I went across the street where I  
12      may have known some, I think I was across the street on that  
13      one. I can't be absolutely certain, sir.

14      Q. It appears that you first got Patricia Harriss' June 18th  
15      statement on the 26th of February, which would have been a  
16      Friday, and the 27th was Saturday, 28th was Sunday, and you  
17      interviewed Patricia Harriss on the Monday. And I believe  
18      your evidence to be fair on, from Commission counsel, was  
19      that you had, perhaps, called Patricia Harriss the day before.

20      A. I believe I did, yes, sir.

21      Q. Not a great deal of time to do background work on Patricia  
22      Harriss.

23      A. I had been, Patricia Harriss had first surfaced to me by the  
24      Chief on the 26th of February, sir.

25

1 Q. Yes. That leaves you Saturday and Sunday and then you  
2 interview her Monday.

3 A. Yes.

4 CHAIRMAN

5 Mr. Murray, again, the point of this questioning is escaping  
6 me. Why would, why are you so concerned as to what  
7 background check was done on Patricia Harriss before taking a  
8 statement from her?

9 MR. MURRAY

10 Because of the great deal of weight that this witness placed  
11 in that statement to make allegations about my client.

12 CHAIRMAN

13 We've seen, we've had Patricia Harriss as a witness. We've  
14 had an opportunity to assess her as a witness and the fact that she  
15 may have had some relatively minor difficulties from the year  
16 before, I don't think impinges at all upon the credibility or, of that  
17 statement or certainly didn't upon the evidence that she gave  
18 before us. And it seems to me you're flogging an issue that's not  
19 too relevant.

20 MR. MURRAY

21 Fine, Your Honour.

22 Q. In Patricia Harriss' statement which is in Volume 34 at page  
23 54, she refers throughout to the police as "they", but your  
24 evidence to this Commission is that during the preceding  
25

1 conversation she had specifically mentioned William  
2 Urquhart.

3 A. That's correct, sir, yes.

4 Q. Did you recall her evidence from the preliminary inquiry in  
5 1971 when she said on the stand under oath that she was  
6 interviewed by Michael MacDonald and Sergeant MacIntyre?

7 A. I wasn't there in 1971, sir. I may have seen it in the  
8 transcript. I don't recall it, no.

9 Q. And it wasn't a factor in your mind at the time when you  
10 were listening to her give a statement.

11 A. No, sir.

12 Q. If you had been aware of that that might have been the  
13 subject of a question at the end of a statement.

14 A. It could have, sir.

15 Q. I'm wondering if your recall of this meeting with Patricia  
16 Harriss and the discussion that went on beforehand, whether  
17 it's clear enough to say whether it was you that first raised  
18 the name of Urquhart or her.

19 A. She raised the name of Urquhart.

20 Q. She raised the name. Did you raise Michael MacDonald's  
21 name at that time?

22 A. No, sir.

23 Q. Now in your report that follows Patricia Harriss' statement  
24 and this is, my reference at the moment is Volume 19, page  
25

1 28, you suggest that Patricia Harriss' story completely  
2 supports Marshall's.

3 A. That's at Volume 19?

4 Q. Volume 19, page 28. I believe that it's also in Volume 34 but  
5 I don't have the reference for that volume.

6 A. Yes, sir. Now what's your question?

7 Q. Middle to the bottom of paragraph 25 on page 28...

8 A. Yes, sir. Yes.

9 Q. "Miss Harriss' recollection supports Marshall's story  
10 completely in regards to the number of people present on  
11 Crescent Street."

12 A. At that time, yes, sir.

13 Q. If we go to her statement...

14 A. This is the 17th of June statement?

15 Q. This is the 1st of March, '82 statement...

16 A. Oh, I see, yes. Which is...

17 CHAIRMAN

18 Which statement?

19 MR. MURRAY

20 On page 54 in Volume 34.

21 A. Oh, yes. Yes.

22 Q. She states in the first paragraph to that statement that in her  
23 first statement to the police, presumably in 1971, "there  
24 were two people" and then in the last paragraph of that  
25

1 statement she states there were "other men on Crescent  
2 Street in this area, two or three."

3 A. Yes, sir.

4 Q. Now she had also told you that in 1971 she told you that  
5 there were two people that she remembered and that was the  
6 crucial bit of evidence that hadn't come out according to your  
7 view of the case.

8 A. According to what, sir?

9 Q. Your view of the case, the crucial bit of Patricia Harriss'  
10 evidence that hadn't come out in '71 was that there was two  
11 people with Donald Marshall.

12 A. I see. I think your point is that she doesn't say four, she says  
13 two or three.

14 Q. That's right.

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

16 Q. And, in fact, if you'll now refer to the Donald Marshall  
17 statement that's 52 and 53, and at the top of page 53, "Sandy  
18 went over and talked to Ebsary and the other guy. The three  
19 of them would be maybe 20 yards from Patricia, Terry and I."

20 A. That's right, sir.

21 Q. And that is consistent, I suppose, with the last paragraph in  
22 her statement of the 1st of March 1982.

23 A. Yes, sir.

24 Q. If you go to Volume 16 now, sir...

25 A. The citation, sir?

1 Q. Yeah. Page 63.

2 A. Yes, sir.

3 Q. Would you agree with me that that statement taken at 8:15  
4 on June 17th, if we accept her 1st of March statement, would  
5 be her best recollection.

6 A. One would normally think that when it's fresh in the mind, a  
7 person's mind, it be your best recollection, sir, yes.

8 Q. She says, "With Marshall", in the Volume 16, page 63  
9 statement, the 8:15, "With Marshall was two other men..."  
10 and then there is a description of two other men. Question  
11 about seeing Sandy Seale in the Park. "No." "Was there  
12 anyone else in the Park?" "Yes" and she mentions two other  
13 individuals.

14 A. Yes, sir.

15 Q. And, so that would be the best way to represent her evidence.  
16 That that is, in fact, what she's saying now to you 1982, is  
17 that she saw those two men.

18 MR. OUTHOUSE

19 Well, My Lord, he's cross-examining him about a statement,  
20 as I understood it, opinion expressed in the report paragraph 25,  
21 made back in March based on her March 1st statement. He didn't  
22 have the document to which Mr. Murray has just referred.

23 MR. MURRAY

24 Oh, I appreciate that.

25

1 MR. OUTHOUSE

2 The partial statement. And I thought that he was cross-  
3 examining him about his statement that it supported Marshall.  
4 That's why I rise. It seems to me that page 63 of Exhibit 16 is  
5 irrelevant to the line of questioning that was being pursued. It  
6 confused me if it wasn't going to confuse the witness anyway.

7 CHAIRMAN

8 I doubt if it'll confuse the witness but it certainly confused  
9 me.

10 MR. MURRAY

11 It's a matter that this witness has, the view that he takes of  
12 her evidence that persists through many later reports that, in fact,  
13 Harriss supports Marshall completely. And even when he is in  
14 possession of the June 17th statement, whenever he got that, he  
15 persists by saying that she supports Marshall completely when, in  
16 fact, there's discrepancy between the two.

17 CHAIRMAN

18 I suppose, I guess we have to decide how, number one, if  
19 they were, indeed, major discrepancies and, secondly, whether  
20 they go to the issues that we have to resolve.

21 MR. MURRAY

22 Q. Perhaps, Mr. Wheaton, you'd refer to the transcript of  
23 evidence, Volume 42, pages 7754.

24 A. 7764, sir?

25 Q. 54.

1 A. 54. Yes, sir.

2 Q Even before this Commission you testified under examination  
3 by Mr. Orsborn, and this is at line 14, as to the significance of  
4 the 17th statement.

5  
6 Q Did you attach any significance  
to that information?

7 A. Yes, sir, I did. And the  
8 significance being that in her  
9 statement of the 18th she saw  
10 only two people on the street,  
11 Marshall and Seale. And on the  
17th when she was, earlier in  
the evening, she saw four people  
on the street.

12 A. Yes, sir.

13 Q Now if we refer back to Volume 16 at page 63, in the June  
14 17th statement at 8:15 p.m.

15 A. Page what, sir?

16 Q 63.

17 A. Yes, sir.

18 Q She doesn't put four people on the street in that statement.

19 A. I think the significance of the June 17th statement, she  
20 describes a short man with a long coat, gray or white hair,  
21 with a long coat. That is a relative description of Roy Ebsary,  
22 or would be to me as a police officer...

23 Q I appreciate that. But you went on claiming that another  
24 significant point was, in the 17th statement, she put four  
25

1 people on the street which has to be. Because there's got to  
2 be Marshall, Seale, Ebsary and MacNeil for the theory to hold.

3 A. In the 17th, do you want to take the total number of people  
4 on the street on the 17th?

5 Q. Um-hmm.

6 A. Well there would be Terry Gushue, Patricia Harriss, she  
7 describes Junior Marshall, three, and a man who was short  
8 with a long coat, gray or what hair, with a long coat.

9 Q. Um-hmm.

10 A. So that would be four people in that statement of the 17th.

11 Q. Well let's count them again, sir. There's Patricia Harriss,  
12 Terry Gushue...

13 A. Yes, sir.

14 Q. Junior Marshall...

15 A. Yes, sir.

16 Q. With Marshall was two other men, that's five...

17 A. Oh, yes, I see what you mean. Yes. Yeah.

18 Q. Now you take Gushue and Harriss out of the equation you're  
19 still short a man.

20 A. Yes, sir.

21 Q. So, in fact, if Marshall talks about four people, MacNeil,  
22 Ebsary, Seale and himself up on Crescent Street, that 8:15  
23 statement doesn't help.

24 A. Well I think we would have six people counting Patricia  
25 Harriss and Terrance Gushue.

1 Q We should.

2 A. Yes, if you took the total number.

3 Q Let's move on to Mr. Ratchford. He initiated contact with you  
4 in late March of 1982.

5 A. I don't recall the specific date, sir, but yes, he was in contact  
6 with me.

7 Q And his statement is at page 68

8 A. Of Volume?

9 Q 34.

10 A. Yes, sir.

11 Q Third paragraph, or I guess it's the fourth paragraph...

12 A. Yes, sir.

13 Q "I felt that this should be reported to the police immediately.  
14 I phoned the City police and talked to Bill Urquhart, I  
15 believe."

16 A. Page 68?

17 Q Page 68.

18 A. Of Volume 34.

19 Q Um-hmm.

20 A. One, two, three, I see, four paragraphs, I see. I understood,  
21 in my copy here. "Donna hated her father."

22 Q That's a single sentence.

23 A. Oh, yes. I see. Okay. Yes, I have that.

24 Q "Talked to Bill Urquhart, I believe." He was not certain at that  
25 time that it was Bill Urquhart he had spoken to?

1 A. What was your question now, sir?

2 Q. Was he certain that it had been Bill Urquhart that he had  
3 spoken to?

4 A. That's what he told me, sir.

5 Q. But if that's what he was certain about he wouldn't have  
6 needed to add the words, "I believe". Do you agree with that?

7 A. He added the words "I believe", sir.

8 Q. Pardon?

9 A. Yes, sir. He added the words "I believe".

10 Q. Did you take that as an indication of some uncertainty?

11 A. I don't know as it triggered any great suspicion in my mind. I  
12 believe I checked into it and phoned Corporal Green after  
13 talking to Mr. Ratchford.

14 Q. I appreciate that. But with respect to whether Mr Ratchford  
15 was certain or not, you can't say.

16 A. No, sir.

17 Q. By the way, when you took that statement from Mr.  
18 Ratchford, did he have a chance to read it over?

19 A. That would be my normal procedure, sir.

20 Q. Do you have any independent recollection?

21 A. No, sir.

22 Q. Were you under any rush when you took that statement?

23 A. Was I under any what?

24 Q. Any rush when you took that statement?

25 A. Rush?

1 Q. Rush.

2 A. Not that I can recall, sir.

3 Q. No. So it's likely something you would have done. Given him  
4 the opportunity to read it over.

5 A. That would be my normal procedure, yes, sir.

6 Q. You contacted Gary Green and he told you he'd been in  
7 contact with Mr. Urquhart about Donna Ebsary.

8 A. I believe so, yes, sir.

9 Q. And you told this Commission some days ago that Mr.  
10 Urquhart as much as told Mr. Green it was none of his  
11 business and Mr. Green left.

12 A. Yes, sir.

13 Q. Did Mr. Green advise you, as he advised this Commission, that  
14 Mr. Urquhart offered him the file?

15 A. I don't recall that. He may have.

16 Q. And Mr. Green declined the opportunity to look at the file?

17 A. I don't know, sir.

18 Q. Did he not advise you of that or...

19 A. He may have, I don't recall and I have no independent  
20 recollection.

21 Q. That's inconsistent with saying "It's none of your business"  
22 and then to offer the file.

23 A. I don't know, sir.

24

25

1 Q. You don't know. Now the same day you met Ratchford, a  
2 Debbie Couture came up. She's on the next page of Volume  
3 34. Page 69 of Volume 34.

4 A. Yes, sir.

5 Q. And among other things in that statement, the second  
6 paragraph, she says that, "Donna Ebsary and Greg Ebsary  
7 went to see William Urquhart the day after the stabbing."

8 A. I see, sir.

9 Q. Now you had a rapport with Mary and Greg Ebsary developed  
10 over a number of months.

11 A. Yes, sir.

12 Q. Did you ever confirm that with Greg Ebsary?

13 A. I believe I did ask and he had no knowledge of going to see  
14 Bill Urquhart.

15 Q. No. Did you come across any evidence at all to suggest that  
16 Donna Ebsary went down the day after the stabbing and  
17 spoke to Bill Urquhart about it?

18 A. Not that I can recall unless you can refresh my memory. I...

19 Q. I'm certainly not aware of any. Let's go to page 88 of Volume  
20 34.

21 A. Yes, sir.

22 Q. Paragraph 4 you say,

23

24

25

Discussions were held with Crown  
Prosecutor Frank Edwards in regards to  
interviewing Chief MacIntyre and

Inspector Urquhart in regards to the allegations of Chant, Pratico and Harriss, that they were induced to fabricate evidence in the original trial in this matter.

A. Yes, sir.

Q. What are you pointing to when you say that Urquhart participated, or may have participated in "inducing the fabrication of evidence" with respect to Chant?

A. Inspector Urquhart's name on the original statement appears at the bottom of each page. He signed the last statement of the 4th of June.

Q. Is that it?

A. And I felt that he should have the opportunity to speak to it, yes.

Q. Um-hmm. What evidence of any acts or words or gestures on the part of William Urquhart do you have now to support that he participated in the fabrication of evidence with Chant?

A. Chant? I think the thing about Inspector Urquhart was that he was present there.

Q. That's it?

A. Yes, sir.

Q. With respect to Pratico, same questions.

A. I didn't interview Pratico so I, Corporal Carroll could speak to that better than I.

Q. You had no independent knowledge of any facts, any words, any gestures....

1 A. No, sir, I don't.

2 Q. On the part of Urquhart?

3 A. No, sir.

4 Q. Simply presence again?

5 A. Yes, sir.

6 Q. We'll deal with Miss Harriss in a moment. Now in that same  
7 report, in paragraph 3, you make the comment,

8 It would appear at this juncture that all  
9 interviewing, compiling of the case and  
10 interviews with Crown Prosecutor, Donald  
11 C. MacNeil, were handled by Chief  
12 MacIntyre and Detective Inspector William  
13 Urquhart.

14 Now this is a report you're making on the 20th of May, 1982,  
15 and that was your view at that time?

16 A. Yes, sir.

17 Q. Now you knew when you wrote that that Michael R.  
18 MacDonald had had responsibility for continuity. Is that  
19 correct?

20 A. Responsibilities for what, sir?

21 Q. Continuity of exhibits?

22 A. Well he was with Chief MacIntyre when they went together  
23 to Sackville, New Brunswick.

24 Q. And, in fact, Mr. MacDonald refers to that in his statement,  
25 page 96, of the same volume. "The only other thing I did was  
drive a box of exhibits up to Sackville with John."

1 A. That's right.

2 Q. And, in fact, he gave evidence at trial, you recall, with respect  
3 to continuity?

4 A. Vaguely. I don't have an independent recollection of it.

5 Q. But you would have read the transcript, had you not?

6 A. Yes, I did, sir.

7 Q. You were aware that Red Mike, as he's called, had done some  
8 interviewing of witnesses by that point? 20th of May, 1982.

9 A. As Red Mike says here, the only thing that he did was drive a  
10 box of exhibits up to Sackville. Now I knew that he was at  
11 the scene that night. I knew that he had spoken to Maynard  
12 Chant that night. But he hadn't taken a statement from  
13 Maynard Chant and unless you can refresh my memory to  
14 something I didn't see any statements.

15 Q. If you'd check the statement of Barbara Vigneau which  
16 appears at page 82 of Volume 16.

17 A. Yes, sir.

18 Q. He was involved in the taking of that statement it appears.

19 A. Page 80-, oh, of Volume 16.

20 Q. Yes.

21 A. Page 82 of Volume 16. Yes, it's witnessed, taken by Sergeant  
22 William Urquhart and witnesses by M.R. MacDonald.

23 Q. And on page 83 you can see that he, indeed, signed that as a  
24 witness?

25 A. Yes, sir.

1 Q. Now I'd like you to refer to Volume 1 at page 26.

2 A. Volume 1?

3 Q. Volume 1. 26.

4 A. Yes, sir.

5 Q. You testified to us a moment ago that you, in fact, had looked  
6 at the preliminary inquiry in this matter.

7 A. Yes, sir.

8 Q. And if you had recalled that at the time of your May 20th  
9 report I take it you would have advised in that report that  
10 MacDonald was perhaps involved in interviews with Patricia  
11 Harriss. And I say that because on page 26 is an extract from  
12 Patricia Harriss' evidence, she states at line 10,

13  
14 Q. He wasn't the first. Was it Sergeant  
MacDonald sitting in the corner.

15 A. Yes.

16 Q. He was the first one you told it to.

17 A. Yes.

18 And later on he is identified as Sergeant Michael R.  
19 MacDonald.

20 A. Yes, sir.

21 Q. So by saying on page 88 that all interviewing, compiling of  
22 the case and interviews were done by MacIntyre and  
Urquhart isn't entirely correct.

23 A. Well if Patricia Harriss was correct in her evidence here that  
24 she did talk to Michael R. MacDonald...

25 Q. Um-hmm. Then that comment in yours would not be correct.

1 A. Yes, sir.

2 Q. Now what information do you have that I don't have again  
3 that Mr. Urquhart ever met with Donald C. MacNeil except on  
4 the afternoon that the charge was laid?

5 A. I have no information you don't have, sir.

6 Q. I see. So with respect to that comment, "Interviews with  
7 Crown Prosecutor, Donald C. MacNeil", you're not including Mr.  
8 Urquhart in that.

9 A. Which volume are we back to now?

10 Q. 88, Volume 34.

11 A. Page 88, Volume 34?

12 Q. Paragraph three.

13 A. Paragraph three, yes sir.

14 Q. And that sentence that we were just discussing. It would  
15 appear at this juncture that all interviewing, compiling of the  
16 case and interviews with Crown Prosecutor, Donald C. MacNeil,  
17 were handled by Chief MacIntyre and Detective Inspector  
18 William Urquhart. With respect to the interviewing with  
19 Donald C. MacNeil, you would eliminate William Urquhart  
20 from that?

21 A. Can I just have a moment to read that complete paragraph to  
22 see where I'm at?

23 Q. Certainly.

24 A. I think I've, this is the 20th of May, by this time I would have  
25 had the notes of Donald MacNeil. I really, and various pieces

1 of paper from the Court. I don't know if they'd support or  
2 negate whether or not William Urquhart was preset. I can't  
3 really speak to it.

4 Q. I see. Well will you release him from that part of your  
5 remark...

6 A. I can't be definite one way or the other.

7 Q. You made the comment the other day that the July 12th 1982  
8 meeting in Frank Edwards' office that Mr. Urquhart was not  
9 there.

10 A. That's correct, sir.

11 Q. In Volume 20, at page 10, you make the comment and I  
12 presume it's directed at my client...

13 A. Yes, sir...

14 Q. In actually page 11.

15 A. Page 11?

16 Q. Mmm. Ah, page 12. The end of the first paragraph you  
17 comment that the use of the police of Patricia Harriss as a  
18 witness was unethical and you'd include Mr. Urquhart in that.

19 A. You're referring to paragraph 17, page 12...

20 Q. Paragraph 15. Top of the page. The top of page 12.

21 A. Ah, yes. Oh, this was in answer to Superintendent Christen's  
22 memo to me reference proper and improper police  
23 procedures.

24 Q. That is correct.

25 A. Yes. Now what was your question?

1 Q. You're including, or blaming Mr. Urquhart for being unethical  
2 with respect to Patricia Harriss.

3 A. Yes, sir.

4 Q. And you're including in that allegation because it was he who  
5 interviewed Patricia Harriss continuously for five hours.

6 A. No, he was the first person as I recall it, from Patricia Harriss  
7 told me, to have interviewed her and was taking these partial  
8 statements, crumpling them up, throwing them on the floor  
9 and putting some pressures on her causing her to be nervous  
10 and cry, et cetera.

11 Q. I see. The other day you mentioned that he was alone with  
12 her for about an hour or so before Mr. MacIntyre became  
13 involved.

14 A. I don't have any specific times of how long...

15 Q. So if you made that comment in evidence, Volume 43, page  
16 7914, we shouldn't rely on that as based on any information  
17 received?

18 A. I believe I received that information from Patricia Harriss.

19 Q. I see, bear with me for a moment. If you are wrong about  
20 Mr. Urquhart having involvement with Patricia Harriss after  
21 that 8...8:15 statement but before the final statement, then  
22 any criticism you have about Mr. Urquhart would disappear,  
23 would it not?

24 A. No, sir.

25 Q. Well, assume with me this, Mr. Urquhart takes the 8:15

1 statement.

2 A. Yes, sir.

3 Q. It continues to exist until this very day.

4 A. This is the 17th statement, yes, sir.

5 Q. It wasn't torn up, it wasn't crumpled up.

6 A. No, sir.

7 Q. Mr. Urquhart receives information and goes out of the  
8 presence of Patricia Harriss while Mr. MacDonald remains,  
9 Michael MacDonald.

10 A. Michael MacDonald.

11 Q. Yes. Red Mike.

12 A. I don't follow that scenario, sir.

13 Q. Assume that.

14 A. Oh, assuming that.

15 Q. Assume that. Mr. Urquhart does not see Patricia Harriss again  
16 until she gives her final statement 12:07.

17 A. Yes, sir.

18 Q. If those facts exist, is there any reason to criticize Mr.  
19 Urquhart?

20 A. If Michael R. MacDonald was in the middle there somewhere I  
21 would still think...

22 Q. That is correct.

23 A. ...based on Patricia Harriss' comments to me and I don't know  
24 what her evidence was to this Commission, that William  
25 Urquhart was the first officer she met with and who wanted

1 her to say that there was only two people on that street,  
2 which she eventually did say so.

3 Q. Uh-hum. Your complaints about Mr. Urquhart then hang  
4 entirely on the word of Patricia Harriss.

5 A. Patricia Harriss and Maynard Chant basically.

6 Q. Well, what's Maynard Chant got to do with the taking of  
7 Patricia Harriss' statement?

8 A. Well, you say my complaints. My complaints would also  
9 include the manner in which the Maynard Chant statement  
10 was taken and it was signed on each page by William  
11 Urquhart and the back page was signed by him and I would  
12 think he was present at that time too.

13 Q. Well, let's not get ahead of ourselves. As I understood your  
14 evidence some moments ago, you know of no word or act or  
15 gesture on the part of Mr. Urquhart which would justify a  
16 complaint in relation to the Chant statement, just that he was  
17 present.

18 A. He was present, yes, sir.

19 Q. If we don't even have him being present with Patricia Harriss,  
20 is there any basis on which to complain about Mr. Urquhart's  
21 conduct?

22 A. You're assuming that Patricia Harriss is entirely wrong about  
23 the 17th/18th.

24 Q. Uh-hum.

25 A. No, sir.

1 Q. Are you aware of any evidence of any kind that Mr. Urquhart  
2 withheld anything from Donald MacNeil?

3 A. No, sir.

4 Q. I'd like you to turn page 22 in Volume 20 for a moment. Do  
5 you have page 22?

6 A. Yes, sir.

7 Q. That's a letter from T. E. Barlow who was the coordinator for  
8 Sydney Subdivision and I believe it was your evidence that  
9 he would not really have had much involvement in your  
10 reinvestigation.

11 A. Not back in 1982. He replaced me in Sydney.

12 Q. Uh-hum.

13 A. When I left.

14 Q. Given the investigation that you carried out, there is a  
15 comment in the first paragraph on page 22 that states, "In  
16 August 1971 Detective Urquhart received information Ebsary  
17 was responsible for the murder."

18 A. Which page are you at now, sir?

19 Q. 22.

20 A. 22, third paragraph.

21 Q. First paragraph.

22 A. First paragraph. I'm sorry.

23 MR OUTHOUSE

24 My Lord, it's a matter of record. The witness has already  
25 said that he has no knowledge whatever about a statement like

1 that. As far as he's concerned it would have no foundation. It  
2 would seem to me the question has already been answered.

3 MR. MURRAY

4 I'd be happy to have him say that.

5 STAFF SGT. WHEATON

6 What is your question again, sir?

7 MR. CHAIRMAN

8 Well, he already answered it, but I suppose prudence and  
9 patience dictates that we make absolutely certain. Would you  
10 answer the question.

11 MR. MURRAY

12 Q. Do you have any evidence of any kind, did you come across  
13 any evidence of any kind that there's any substance of truth  
14 to that remark in that letter?

15 A. "In August of 1971 Detective Urquhart received information  
16 Ebsary was responsible for the murder." No, not that I can  
17 think of unless my memory could be refreshed.

18 Q. Have you ever recommended that charges be laid against  
19 William Urquhart?

20 A. I don't think the case against William Urquhart is as strong as  
21 the case against John MacIntyre.

22 Q. Uh-hum. You've made a comment from time to time that you  
23 had a prima facie case against one or another individual.

24 What about William Urquhart?

25 A. Well, my comments have always been, sir, that there should

1 be an investigation into the matter and when my personal  
2 opinion was asked I felt that charges would be there and  
3 there is probably a prima facie case. It would be a matter of  
4 investigation and taking it to the Crown and deciding that.

5 Q. You mentioned that during the course of your investigation  
6 you specifically approached Mr. Urquhart on more than one  
7 occasion, for example, talked about the Green matter.

8 A. Yes, sir.

9 Q. And to ask him other questions, no doubt Patricia Harriss and  
10 others, as that information came to you.

11 A. I talked to William Urquhart. I don't have a record of the  
12 dates I talked to him.

13 Q. Uh-hum. I believe your evidence indicated that it would  
14 have been the time probably that you interviewed the other  
15 police officers.

16 A. I believe so, sir.

17 Q. And as I understand that that's May 11th, May 19th and May  
18 20th, 1982.

19 A. Yes. I may have talked to him prior to that. I do recall talking  
20 to Billy a couple of times.

21 Q. Wouldn't it have been fairer, given that you suspected Mr.  
22 Urquhart of being involved in counseling perjury, to have  
23 made notes of what his replies were?

24 A. It would be nice to have notes of it, sir.

25 Q. Nice for you and nice for Mr. Urquhart.

- 1 A. Yes, sir.
- 2 Q. One final area. You advised the Commission the other day  
3 that Mr. Urquhart had an aggressive approach to  
4 sentence...statement taking.
- 5 A. Yes, sir.
- 6 Q. And, did you ever witness a statement taken by Mr.  
7 Urquhart?
- 8 A. No, I did not, sir.
- 9 Q. And did you mean to suggest that he was aggressive in the  
10 sense that you were aggressive with Roy Ebsary?
- 11 A. No, I ...
- 12 Q. Calling the witness names.
- 13 A. No, I could tell you what I based that on, if you wish.
- 14 Q. What do you base that on, sir?
- 15 A. I base it on, as I believe it was in response to a question by  
16 Mr. Orsborn, I'm not sure, William Urquhart and I had  
17 occasion to go to Halifax and come back and we had occasion  
18 to talk from time to time and he was a gentleman who was  
19 very interested in police work and so on, and we talked about  
20 statement taking. I told him of my approach to it, of doing  
21 background, et cetera, et cetera, and if you will more flies are  
22 obtained by honey than vinegar. Shortly after this  
23 conversation, which lasted for some time and William  
24 Urquhart seemed quite interested in it, I recall there was a  
25 murder in Sydney. I believe the name of it was the

1 Weatherbee case.

2 Q. Uh-hum.

3 A. And after that the following day or two days later I recall  
4 having a conversation with William Urquhart, and he said,  
5 "Boy, I got that statement in fifteen minutes," or eighteen  
6 minutes or something of that nature. I can't remember the  
7 exact time. It was relatively short. It struck me that he  
8 didn't pay much attention to what I was saying, Billy.

9 Q. Uh-hum.

10 COMMISSIONER EVANS

11 In other words he didn't take the honey with him, is that it?

12 STAFF SGT. WHEATON

13 That's right.

14 MR. MURRAY

15 Q. It was speed rather than honey that interested Mr. Urquhart.

16 A. That's right.

17 Q. But there was nothing improper about that.

18 A. No. The man may have confessed quite properly.

19 Q. Uh-hum. Now, if Mr. Urquhart is the kind to act quickly on  
20 information, would you agree with that?

21 A. Mr. Urquhart from my experience with him is a intuitive  
22 type. He is a hard worker and would follow up leads and be a  
23 type to...he's a very good worker.

24 Q. Uh-hum. Now, if on the 17th of June he had suddenly been  
25 confronted with information after speaking with Patricia



1 Q. During that period, did you observe Mr. MacNeil to prosecute  
2 cases involving whites?

3 A. Yes, sir.

4 Q. Indians?

5 A. Yes, sir.

6 Q. Were there any black cases?

7 A. Yes, I believe there was one.

8 Q. Okay. Did you feel he prosecuted these cases any differently?

9 A. No, sir.

10 Q. And you've described Donald C. MacNeil as being a gregarious  
11 person.

12 A. Very outward person, yes.

13 Q. And you've also described him as an aggressive prosecutor.

14 A. Yes, sir.

15 Q. And I'm wondering, would you also describe him as being an  
16 experienced prosecutor?

17 A. Yes, sir.

18 Q. Competent?

19 A. Yes, sir.

20 Q. Fair?

21 A. Yes, sir.

22 Q. Interested in his work?

23 A. Very interested in his work, sir.

24 Q. Was he concerned about putting the crown's case forward?

25 A. Yes, sir.

1 Q. Would you describe him as having a good rapport with police  
2 officers?

3 A. Excellent, sir.

4 Q. And you've indicated he liked to talk man to man with  
5 policemen?

6 A. Yes, sir.

7 Q. Did he respect your opinion as a police officer?

8 A. Yes, he did.

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

10 A. He would tell you, I think we should do, take a statement  
11 from this one or go see that one or, he was a very  
12 experienced man and I know I listened to his directions.

13 Q. Did he ever pressure you during an investigation?

14 A. No, sir.

15 Q. Do you feel in 1971 that John MacIntyre was a respected  
16 member of the Sydney Police Force?

17 A. Yes, sir.

18 Q. Did you ever have reason to complain to your superiors in the  
19 RCMP or to the Attorney General's Department about the  
20 manner in which Donald C. MacNeil prosecuted a case?

21 A. No, sir.

22 Q. And you've testified that your procedure was to bring the  
23 crown sheet and statements to Donnie MacNeil on the day of  
24 the preliminary or the trial?

25 A. Quite often we'd do that, yes, sir.

1 Q. And you stated he would meet with you and prepare from  
2 your account, presumably asking you questions.

3 A. Yes, sir.

4 Q. Have you ever provided the crown with statements, including  
5 a crown sheet, after laying information and before the trial or  
6 prelim?

7 A. It's very hard, so many years later, but I think probably I  
8 could have, yes, on a routine matter.

9 Q. And has this practice changed in the last 26 years or 26 years  
10 that you've been with the RCMP?

11 A. To lay a charge and then go to your prosecutor?

12 Q. What I'm suggesting is that you would provide the crown  
13 with a crown sheet and statements prior to the day of the  
14 trial.

15 A. Yes, sir. That's always been the way of it.

16 Q. And you've indicated in your testimony that you were  
17 uncertain as to Mr. MacNeil's practices in disclosing  
18 statements?

19 A. Yes, sir.

20 Q. Would you expect Mr. MacNeil or any other prosecutor to  
21 consult with you prior to discussing the case with the  
22 crown...with the defence or disclosing statements?

23 A. Not really, no. He would do that. He might tell me prior to  
24 but he would not be under any obligation to discuss it with  
25

1 me. He probably would bring me up to date on what had  
2 happened prior to going to court.

3 Q. Okay, and I presume that if he discussed the case with  
4 defence counsel, you would not be present.

5 A. Probably not.

6 Q. You've indicated in your testimony, and I can refer you  
7 specifically to it, but you indicated that if asked, Mr. MacNeil  
8 would not refuse to give Mr. Rosenblum statements,  
9 particularly in a murder case, and you also indicated that  
10 you'd be very shocked to think he wouldn't, if Mr. Rosenblum  
11 had asked him.

12 A. That's correct, sir.

13 Q. Now you've testified in March of 1982 that you spoke with  
14 Judge Matheson, and I believe this was in Port Hawkesbury?

15 A. Yes, sir.

16 Q. Did you ask him if the defence were provided with copies of  
17 the Pratico and Chant statements?

18 A. I believe I did. We talked about that and either I asked him  
19 or he told me. I left with the impression and I hold the  
20 impression now that they were given to the defence.

21 Q. They were given to the defence?

22 A. That's my impression.

23 Q. And I take it that this was not a planned meeting with Judge  
24 Matheson?

25 A. No, it wasn't.

- 1 Q. And how long would that meeting have been in its entirety?
- 2 A. Not a long meeting, maybe 10 minutes, 15 minutes.
- 3 Q. And you indicated, I believe, that you didn't take a statement
- 4 nor you have no notes of that meeting.
- 5 A. No, sir.
- 6 Q. And your evidence was he was going to, "He wasn't going to
- 7 run away, he would always be there for me to interview at a
- 8 later date should the need arise."
- 9 A. That is correct, sir, yes.
- 10 Q. And I take it you've indicated you never reinterviewed Judge
- 11 Matheson, so I take it from that you felt that the need never
- 12 arose.
- 13 A. No, sir.
- 14 Q. Did you ever hear Donald C. MacNeil make any racial
- 15 remarks?
- 16 A. In casual conversation with Donald C. MacNeil, I got the
- 17 impression, and I can't give you specific remarks, that he did
- 18 not like Indians.
- 19 Q. You have no specifics of that.
- 20 A. No, sir.
- 21 Q. So I take it you're un...Are you certain as to whether he was
- 22 serious of these remarks or whether, you know, you've
- 23 indicated that he was a gregarious character with a sense of
- 24 humour.
- 25 A. Yes, he was, sir.

1 Q. Did you ever have reason to complain to your superiors of  
2 this?

3 A. No, sir.

4 Q. Did you ever complain to the Attorney General's Department?

5 A. No, sir.

6 Q. Now I'm wondering if, you've indicated that with these racial  
7 remarks, did you ever hear him make comments about Cape  
8 Bretoners?

9 A. Yes.

10 Q. And Newfoundlanders?

11 A. I don't know, sir.

12 Q. Well, I'm just wondering if these jokes of Cape Bretoners and  
13 such would be taken in the same tone as...

14 A. No, I felt his remarks in regards to native Indian people to be  
15 different than if he was telling me a Newfoundland joke.

16 Q. I'm wondering if you know a Staff Sgt. Murray Wood?

17 A. Yes, I do, sir.

18 Q. I understand he was stationed in Sydney from 1964 to 1972?

19 A. That is correct, sir.

20 Q. Are you aware that...

21 A. I don't know the exact dates but it would be in that time.

22 Q. And you're aware he's testified that he prosecuted or Donald  
23 C. MacNeil prosecuted cases in which he was involved  
24 between 1968 and '72?

25

- 1 A. I was not aware of his specific testimony but I wouldn't  
2 doubt that at all.
- 3 Q. Would you suggest that if he was there during that period of  
4 time that he might have a better working knowledge of  
5 Donald C. MacNeil?
- 6 A. Yes, I would think that he might know him better than I  
7 because he would be involved strictly in criminal work where  
8 I was involved in drug work and some criminal work. I was  
9 also only there three years. I believe your time span is  
10 longer there.
- 11 Q. He gave evidence before this Commission describing MacNeil  
12 and in his description, one of the comments was that he was  
13 one of the better prosecutors that he had come across. He  
14 described him as being fair and extremely competent and he  
15 made no mention of racism. His only comment on MacNeil in  
16 that regard was that he felt that MacNeil liked to win his  
17 cases.
- 18 A. Yes, I agree with what Murray Wood says in regards to his  
19 competency, et cetera. But in regards to... As I say, I can't  
20 give you comments that he made to me or anything. It's just  
21 an impression. Perhaps I have the wrong impression.
- 22 Q. During the course of your 1982 reinvestigation, did you feel it  
23 was part of your instructions from Inspector Scott to  
24 investigate the manner in which the prosecution of the case  
25 was handled by Donald C. MacNeil?

- 1 A. No, sir.
- 2 Q. And I presume that this is why you never reinterviewed  
3 Judge Matheson.
- 4 A. That's right, sir.
- 5 Q. And you've indicated that you had a discussion with Mr.  
6 Rosenblum and I believe you ended that or your testimony  
7 was that you always you would have liked to have gone back  
8 but didn't go back.
- 9 A. That's right, sir.
- 10 Q. And I suggest that's because you didn't feel you were  
11 investigating Donald C. MacNeil.
- 12 A. That's right, sir.
- 13 Q. I wonder if I could refer you, Staff, to Volume 34. I'm  
14 referring there to page 14 and Paragraph 18. This was your  
15 first report dated the 25th of February, 1982. And in that,  
16 about the middle of the paragraph and referring to Chant, the  
17 line reads: "He advised," he being Chant, "that the prosecutor  
18 threatened him with a charge of perjury if he changed his  
19 story after the lower court hearing."
- 20 A. Yes, sir.
- 21 Q. I would suggest that that's a serious allegation against Donald  
22 C. MacNeil?
- 23 A. Yes, sir.
- 24 Q. Where did that information come from?
- 25 A. Mr. Chant.

1 Q. And I can refer you to the statement of Mr. Chant, and that's  
2 at page 47.

3 A. Yes, sir.

4 Q. And there's no reference in there to a threat of perjury.

5 A. I would take your word for it, sir, yes.

6 Q. Did you inquire about this allegation when you met with Mr.  
7 Matheson in March?

8 A. Our conversation was not a long one, sir. I have no  
9 independent recollection if I did or did not. I may have, I  
10 don't know.

11 Q. But as an investigator, did you not think it appropriate to  
12 attempt to substantiate this allegation by Mr. Chant?

13 A. Basically, sort of the main thrust of that, and it's not a long  
14 conversation, was to find out what Judge Matheson knew  
15 about as acting as assistant crown prosecutor, what he knew  
16 about the case, what happened, what statements were turned  
17 over, who said what, you know. Did he knew about Pratico  
18 recanting in the hallway, things of that nature. And I say that  
19 in a general sense because I cannot, didn't make specific notes  
20 and I don't know exactly what I did put to him. But that  
21 would be the thrust of my conversation with him, sir.

22 Q. But I presume, though, that you could have asked him that  
23 question.

24 A. I could have, sir.

25

1 Q. In the likelihood that Matheson may have been present  
2 when....

3 A. Yes.

4 Q. Donald C. MacNeil interviewed Chant.

5 A. That's right, sir.

6 Q. And I presume you knew that that report of the 25th of  
7 February 1982 would be forwarded to your superiors in  
8 Halifax.

9 A. Yes, sir.

10 Q. And presumably that report as well would go to the AG's  
11 Department?

12 A. Yes, sir.

13 Q. Did you review the evidence that Chant gave or have you had  
14 an opportunity to review the evidence that Mr. Chant gave  
15 before this Commission?

16 A. No, I have not, sir.

17 Q. And are you aware that he testified, and that's at Volume 5,  
18 but I can tell you that he testified that he was never  
19 threatened by perjury by Mr. MacNeil, though he had, in fact,  
20 sworn evidence before this Commission that he wasn't  
21 threatened.

22 A. That's his sworn evidence, yes.

23 Q. And you've testified that you've received a copy of a letter  
24 from Mr. Gordon Gale, dated the 13th of May 1983 and at  
25 Volume 20....Do you have Volume 20 in front of you, Staff?

1 A. Yes, I do, sir.

2 Q. That letter dated the 13th of May...

3 A. What page?

4 Q. 1983, can be found at page 4 of Volume 20. And I believed  
5 you've testified that this, you received this letter as it was  
6 attached to a memorandum which was dated the 19th of May  
7 1983 from Superintendent Christen, and that letter can be  
8 found at page 6 of the same volume in front of you there.  
9 And the bottom of it says: "NCO IC Internal Investigation  
10 Section." That's where you were.

11 A. Yes, that's what I was doing. I recall the memo. Like I say, I  
12 vaguely, I may have received this, whether it says it was  
13 attached. It looked new to me when it was first shown to me  
14 by Mr. Orsborn, but I probably did. I don't know.

15 Q. Reviewing that letter then from Gordon Gale, did you now feel  
16 that part of your mandate was for you to comment on the  
17 crown prosecutor's handling of the case, and I refer you  
18 specifically to Paragraph 3 and in that letter, the third  
19 paragraph:

20  
21 There remains the question as to whether  
22 there should be an inquiry into the  
23 handling of the original investigation and  
24 the prosecution of it.

25 And the last line of that paragraph reads:

STAFF SGT. WHEATON, EXAM. BY MR. BARRETT

1 The purpose of this is to use as a  
2 background material to enable us to  
3 provide the Attorney General and come to  
4 a conclusion as to whether or not the  
5 matter warrants any type of inquiry into  
6 the actions of the Sydney Police  
7 Department in regard to the case or in  
8 regard to the actions of the prosecutor.

9 4:05 a.m. \*

10 Q. Did you then feel that the comments that you were to make  
11 your next report, you felt that an investigation of the  
12 prosecutor was warranted?

13 A. I'm just missing that part, sir, where you say the prosecutor.  
14 I see...

15 Q. That would be the last word, but it's the total last sentence in  
16 that letter in its entirety.

17 A. Oh, down below. Yes, that's...I see what you mean.

18 Q. The reason I point that out is that in Superintendent  
19 Christen's letter that would be found at page 6.

20 A. Yes, sir.

21 Q. He says, "We do not expect any investigation to be  
22 undertaken but restrict our examination to all materials on  
23 hand."

24 A. Uh-hum.

25 Q. And I take it you were the principal investigator of this  
investigation.

A. That's correct.

Q. Although you were stationed in Halifax at that time. You

1        were the principal investigator.

2        A. Yes, sir.

3        Q. Did you at this time indicate to Superintendent Christen,  
4        Inspector Scott or Staff Barlow that you had not completed  
5        your investigation in respect to Donnie MacNeil? Specifically  
6        that...

7        A. Well, I never started an investigation.

8        Q. No. I realize that. But I'm wondering at that point whether  
9        you approached any of those individuals and said, "I haven't  
10       looked at Donald C. MacNeil."

11       A. No, not really, sir.

12       Q. So, you wouldn't have advised them that you hadn't  
13       interviewed...you never interviewed Simon Khattar.

14       A. No, sir.

15       Q. And as indicated, you hadn't reinterviewed Matheson or  
16       Rosenblum.

17       A. No, sir.

18       Q. But you submitted your report on the 30th of May, 1983, and  
19       that report was forwarded to Superintendent Christen and  
20       that report can be found at page 8 of the volume in front of  
21       you.

22       A. Yes, sir.

23       Q. Now, paragraph 1 of that report, in fairness to you, would  
24       lead me to believe that you weren't interviewing...

25       A. No.

- 1 Q. ...or you weren't making any suggestions as to Donald C.  
2 MacNeil's handling of the prosecution and in that you say, the  
3 second line of that is "To review this investigation in relation  
4 to any instances of improper police practises or procedures."  
5 A. I would be following the instructions there of the CIB officer.  
6 Q. And not the instructions of Gordon Gale.  
7 A. I don't believe so, sir.  
8 Q. Okay. I just want to point out that paragraph 18 of that  
9 may...it appears you must have...it must have come to your  
10 attention as to what was being required or asked of you  
11 because you state there "in regards to the ethics of the  
12 prosecutor..."  
13 A. Oh, yes.  
14 Q. "...one cannot comment." That's found on page 13. "One  
15 cannot comment on same as Crown Prosecutor, Donald C.  
16 MacNeil is deceased and it is impossible to say how many of  
17 the various statements and backgrounds of the witnesses  
18 were made known to him."  
19 A. Yes, sir.  
20 Q. All right. One other area I'm interested in, though, is  
21 paragraph 17 of that same report. You indicate some of the  
22 pressures that were placed on MacIntyre and you say  
23 "Sixthly, the Crown Prosecutor Donald C. MacNeil was pressing  
24 for a successful conclusion." And I'm wondering upon what  
25 you base that information.

1 A. I really have no independent recollection, sir.

2 Q. You didn't...

3 A. Other than I know that Donnie MacNeil was an aggressive  
4 prosecutor who liked to win.

5 Q. But you've indicated that...

6 A. But I have no independent recollection.

7 Q. He didn't pressure you in the course of any...

8 A. No, sir.

9 Q. ...investigation...

10 A. No.

11 Q. ...you had at that time. And, you didn't ask Judge Matheson if  
12 MacNeil was pressuring MacIntyre.

13 A. No.

14 Q. And, I can indicate to you that there is no evidence from Chief  
15 MacIntyre that he was pressured by Donald C. MacNeil.

16 A. Fine, sir.

17 Q. To your knowledge did Inspector Scott conduct any further  
18 investigation as a result of the receipt of the letter of Gordon  
19 Gale of the 13th of May?

20 A. I was stationed in Halifax then and I really wouldn't know.

21 Q. Did Inspector Scott discuss the file with you?

22 A. No, sir.

23 Q. There seems to be some indication in some of those memos,  
24 and the one particular to Inspector Scott, where he indicates  
25 that he thinks it might be appropriate if it's discussed

1 between you and Inspector Scott and possibly Barlow before  
2 each one of them submit a report. I'm wondering did that  
3 discussion take place?

4 A. It never took place, sir. Other than I phoned Barlow, I think,  
5 once.

6 Q. Do you know if Inspector Scott received a copy of your report  
7 prior to filing of his report?

8 A. I don't know, sir.

9 Q. The reason I say that is his report is dated the 17th of June,  
10 1983, and that's found at page 23, Volume 20. At page 20...at  
11 page 25, the second full paragraph, he says, "From all  
12 accounts tremendous amount of pressure was being placed on  
13 the police and the Crown to bring this matter to a successful  
14 conclusion." And I'm wondering if you had any input into  
15 that statement that he would have made?

16 A. No, sir, not to the best of my knowledge and I find it strange  
17 that he would receive a copy of my report. I did not receive a  
18 copy of his for instance.

19 Q. Well, your report would have been prepared three weeks or  
20 two or three weeks prior to that and I'm wondering...

21 A. Oh, I see.

22 Q. ...he may have read your report then.

23 A. I don't honestly know.

24 Q. Now, your final report was written on the 14th of July, 1986,  
25 and that report is found at page 63 of Volume 20.

1 A. Yes, sir.

2 Q. And that report you've testified this was in response to a  
3 letter you received from a Mr. Bill of the CBC requesting an  
4 interview.

5 A. Yes, sir.

6 Q. And in your report page 64 you write in regard to John  
7 Pratico that "He was taken to Crown Prosecutor's office and  
8 again threatened with perjury by the Crown and former Chief  
9 MacIntyre."

10 A. Yes, sir.

11 Q. Now, you would...I would suggest to you that that's a serious  
12 allegation.

13 A. Yes, sir.

14 Q. Particularly against Donald C. MacNeil.

15 A. Yes, sir.

16 Q. And although not written in response to the letter from the  
17 A.G.'s Department, and I'm referring to that, Gordon Gale's  
18 letter, you're aware from that earlier letter of Mr. Gale that  
19 the A.G.'s Department was interested in the role of the  
20 prosecutor.

21 A. Yes, sir.

22 Q. And whether...that letter indicates that the actions of the  
23 prosecutor warrant any type of inquiry.

24 A. Yes, sir.

25 Q. From that letter. And you're aware your report, that being

1 your final report, was forwarded to Mr. Gordon Gale and I'll  
2 refer you to page 82 of that same volume.

3 A. Yes, sir.

4 Q. And in that letter it indicates it is to Gordon Gale from  
5 Superintendent Vaughan, I believe. And in there he  
6 indicates that your reports of...this last report you wrote was  
7 attached.

8 A. This report.

9 Q. This report.

10 A. Yes, sir.

11 Q. And I believe when...you testified that when you wrote that  
12 report you had access to the Division file.

13 A. Yes, sir.

14 Q. And in that file would have been contained all the statements.

15 A. I believe so.

16 Q. All right. And in your testimony before this Commission  
17 you've indicated on several occasions that...about this  
18 comment about Donald C. MacNeil and Chief MacIntyre taking  
19 Pratico into a room alone.

20 A. Yes, sir.

21 Q. And you've indicated from your notes that you inquired of  
22 the Chief as to exactly ...wanted the Chief to clarify this point  
23 with you and you've indicated there was no comment on the  
24 part of the Chief or he wasn't willing to clarify that matter  
25 with you.

1 A. I believe so, sir, yes.

2 Q. And you've testified that this information was given to you  
3 by Corporal Carroll, since you never interviewed Pratico.

4 A. That's right, sir.

5 Q. And I can refer you to the Pratico statement that's found in  
6 Vol...at page 50 of Volume 34, but that statement contains no  
7 reference to a threat of perjury by Donald C. MacNeil.

8 A. Fine, sir.

9 Q. Pratico. And you've indicated you held the opinion that  
10 Pratico was not reliable due to his mental condition.

11 A. That's right, sir.

12 Q. And you've testified Rosenblum, Moe Rosenblum...

13 A. Reliable as a witness in court.

14 Q. That's correct. You've testified that Rose...Moe Rosenblum  
15 advised you that Mr. Khattar told him that MacNeil and  
16 MacIntyre had taken Pratico into a room alone. That's the  
17 testimony you gave here earlier in the week.

18 A. Fine, sir.

19 Q. I can refer you to it.

20 A. No, no, that's fine, sir.

21 Q. So what I'm suggesting to you is that did you not feel it was  
22 good police practise considering that the unreliability of  
23 Pratico and that Rosenblum was giving you that information  
24 secondhand some eleven years after the fact, did you not feel  
25 that it was appropriate to perhaps confirm with Simon

1 Khattar or Judge Matheson as to what occurred on that date?

2 A. Yeah. I think if I had been given a mandate to investigate it  
3 back in '82 I would have done a number of things. One of  
4 them would have been to interview Simon Khattar, which I  
5 never did. I was in Halifax in '83 when I was writing these  
6 memorandums. Tom Bar...Staff Sergeant Barlow would be the  
7 one who would investigate at that time.

8 Q. I understand that but...

9 A. I was writing a memorandum based on what I knew at that  
10 time.

11 Q. I understand that, but you've still indicated that you knew  
12 that Mr. Gale would receive a copy of this report.

13 A. Yes, sir.

14 Q. And that he had earlier indicated to you that he was  
15 interested in any improprieties or possible improprieties in  
16 the prosecution by Donald C. MacNeil.

17 A. Yeah.

18 Q. And I'm just suggesting to you at that point you've still  
19 included this comment based on the unreliable witness  
20 Pratico.

21 A. Uh-hum.

22 Q. And second-hand information which you received from Moe  
23 Rosenblum.

24 A. Yeah.

25 Q. And I believe it's now been pointed out to you that Mr.

1 Khattar was present at the time of the meeting.

2 A. Yes, it has been pointed out to me, yes, sir.

3 Q. And he testified that there was no threat of perjury from  
4 either MacNeil or MacIntyre.

5 A. That's correct.

6 Q. And that Judge Matheson, as well, testified that he was there  
7 and Pratico was told by Mr. MacNeil he was to take the stand  
8 and tell the truth and not to worry about earlier testimony.

9 A. Fine.

10 Q. There was no suggestion of perjury or threat of perjury.

11 A. I would have been incorrect then, sir.

12 Q. In fact, Pratico has testified here himself and he stated that  
13 he was not threatened but told by Donald C. MacNeil to tell  
14 the truth.

15 A. Yes, sir.

16 Q. And you testified in your...earlier here that you had  
17 numerous discussions with Mr. Michael Harris and you've  
18 described those discussions that you had with him as being  
19 frank and open.

20 A. Yes, sir.

21 Q. And similarly you've testified about discussions you had with  
22 Miss Matheson and Mr. Pugsley, I believe, referred you to  
23 comments that were made during that interview about  
24 Donald C. MacNeil.

25 A. Miss Matheson or...

1 Q. Yes. In the testimony...now, I could be corrected on this, and  
2 I don't have it in front of me. But I understood that Mr.  
3 Pugsley put to you some comments that...in the discovery that  
4 he conducted of Miss Matheson that she had made mention of  
5 Donald C. MacNeil in discussions she had had with you at that  
6 interview that she conducted here in Halifax.

7 A. Could you refresh me with what they were? I don't...

8 Q. Well, I'm just wondering if in your frank and open discussions  
9 with either Michael Harris or with Heather Matheson whether  
10 you discussed Donald C. MacNeil's role as a prosecutor.

11 A. I don't recall with Heather Matheson so much. I may have,  
12 sir. I'm not saying I didn't. Michael Harris I did discuss  
13 Donald C. MacNeil and my discussions with him was along the  
14 lines that you just reviewed with myself, and with Murray  
15 Wood's comments. They would fall more in line of that type  
16 of viewpoint of Donald C. MacNeil as being a good, aggressive  
17 prosecutor and outgoing man.

18 Q. But you held the view at that time, or if not later, that Donald  
19 C. MacNeil, his actions weren't appropriate by taking Pratico  
20 into a room and threatened with perjury.

21 A. That's right. Based on what I had been told.

22 Q. Did you discuss that? Did you discuss that with Michael  
23 Harris?

24 A. I can't recall, sir.

25 Q. But you very well could have discussed it with him.

1 A. I could have. That would be consistent with my thoughts.

2 Q. And you could have discussed with him as well the fact that  
3 Maynard Chant had advised you or you believed that he had  
4 been threatened with a charge of perjury by Donald C.  
5 MacNeil?

6 A. Yes, sir.

7 Q. Did you, at any time, advise either of these parties of the  
8 media that you hadn't completely investigated these  
9 allegations against Donald C. MacNeil?

10 4:18 p.m. \*

11 A. I don't know about Miss Matheson. Like I say, I don't recall it  
12 as being a long interview. With Michael Harris? He certainly,  
13 I believe that I would have told him that I had not received a  
14 mandate to conduct an investigation, and I had not  
15 investigated Donald C. MacNeil.

16 Q. No, I understand that fully but you're writing reports about  
17 Donald C. MacNeil.

18 A. Yes, sir.

19 Q. And it's a small point but I think it's an important point, I'm  
20 just wondering whether you would have told those people in  
21 your discussions with them that you hadn't gone back and  
22 interviewed Moe Rosenblum...

23 A. Simon Khattar.

24 Q. Well, you never interviewed Simon Khattar.

25 A. No.

- 1 Q. And that you hadn't gone back and discussed it in more detail  
2 with Lou Matheson.
- 3 A. I believe I would have, yes, sir. I haven't an independent  
4 recollection but I believe I would have. That was the fact of  
5 the matter and...
- 6 Q. So you feel now you would have told them frankly that,  
7 "Look, I've made these allegations in these reports but I  
8 really haven't interviewed the parties that can substantiate  
9 them."
- 10 A. I can't say that I did or didn't, sir, at this juncture.
- 11 Q. But I'm going to suggest to you that bearing in mind that  
12 Donald C. MacNeil is deceased and couldn't answer any of  
13 these allegations that, if you were to make those comments  
14 without proper investigations, that it's most inappropriate.
- 15 A. That's right, and that's why I put that into my memorandum  
16 that Mr. MacNeil was no longer with us and couldn't answer  
17 to them.
- 18 Q. I'm suggesting to you that these allegations that you did  
19 contain in your reports have proved to be totally false.
- 20 A. It would appear, based on what you tell me and the evidence  
21 that's gone before this Commission that perjury was not  
22 mentioned by Chant or Pratico.
- 23 Q. That's right, and my suggestion to you, I guess, would be that  
24 they weren't properly investigated by you.
- 25 A. In what way, sir?

STAFF SGT. WHEATON, EXAM. BY MR. BARRETT

1 Q. Well, in the fact that you didn't go to Simon Khattar and say,  
2 "What happened? Were you in that room?"

3 A. No, I did not.

4 Q. Simon Khattar could have told you who was in that room.

5 A. No, I could have done that and I did not.

6 MR. BARRETT

7 Those will be all my questions.

8 MR. CHAIRMAN

9 Am I entitled to assume that you can conclude in five  
10 minutes, Mr. Saunders?

11 MR. SAUNDERS

12 No, My Lord, I can't give you that assurance at all.

13 MR. CHAIRMAN

14 In that case, we'll adjourn until 9:30 tomorrow.

15 4:22 p.m. INQUIRY ADJOURNED UNTIL JANUARY 27, 1988.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, Margaret E. Graham Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



---

Margaret E. Graham

DATED THIS 26th day of January , 1988, at Dartmouth,  
Nova Scotia