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

**Volume 66**

Held: May 19, 1988, in the World Trade and Convention  
Center, Halifax, Nova Scotia

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

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

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

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

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1 MR. CHAIRMAN

2 Good Morning. Mr. MacDonald.

3 MR. MACDONALD

4 Thank you, My Lords.

5  
6 FRANK EDWARDS, still sworn, testified as follows:

7  
8 EXAMINATION BY MR. MACDONALD

9  
10 Q. Mr. Edwards, you indicated to me you wanted to refer back to  
11 a part of the evidence yesterday.

12 A. Yes. I recall when you were questioning me yesterday, you  
13 made reference to the evidence of Patricia Harriss at the  
14 preliminary inquiry and, as I recall, suggested to me that  
15 there was an indication in the preliminary inquiry that  
16 Patricia Harriss had given more than one statement to police.  
17 I reviewed the preliminary inquiry last night and from what  
18 I got out of it, there's an indication that Patricia Harriss spoke  
19 to police on more than one occasion, but my reading of it is  
20 that she indicated she gave but one written statement.

21 Q. If I indicated that to you, and I'll certainly go with your  
22 recollection, my intention was to say that she had given a  
23 written statement.

24 A. I see.  
25

1 Q. Your, and it was in your reference to your note on February  
2 25 where you had indicated that it was your opinion that the  
3 Crown had never disclosed the existence of written  
4 statements to the defence, or never disclosed the first  
5 statements to the defence.

6 A. The first state...

7 Q. Yeah.

8 A. The first statements, yes.

9 Q. Thank you for pointing that out.

10 A. And I believe Harriss' evidence is clear on that point, that the  
11 defence were not cued by that evidence...

12 Q. No, my...

13 A. To the existence of Patricia Harriss' first written statement.

14 Q. No, and if I had suggested that, I didn't mean to.

15 A. I may have misinterpreted what you meant.

16 Q. Would you agree that from that evidence it's clear that the  
17 defence would know that there was a signed statement from  
18 Patricia Harriss?

19 A. Oh, yes, it is clear that they were aware that she gave a  
20 written statement during the second interview, and that  
21 would be the, what, the June 4th statement. But I'm just  
22 referring to page 24, where Mr. Rosenblum on cross said,  
23 "Were you asked to give a written statement before that?"  
24 And she answered, "I don't think so." And it wasn't pursued  
25 again.



1 Q. Okay. Very good, thank you.

2 MR. PUGSLEY

3 Mr. MacDonald, the witness said "June 4th statement." I  
4 don't think he meant June 4th.

5 MR. EDWARDS

6 Not June 4th, June 18th, sorry.

7 MR. MACDONALD

8 Q. Okay, thank you, Mr. Edwards. So let's go back to your notes  
9 then...

10 A. Thank you, Mr. Pugsley.

11 Q. We had finished with February 25th and I'd like to go to  
12 February 26th.

13 A. Mr. MacDonald, there is one other loose end.

14 Q. You worked last night, too, didn't you?

15 A. If you bear with me. No, when you were questioning me  
16 yesterday, I think we may have left one item up in the air  
17 and I'd just like to go back on that and that was dealing with  
18 the February 21st, in my note of Sunday, February 21st. You  
19 recall asking me about my conversation with Chief MacIntyre  
20 saying that I told him that I wished it to be an independent  
21 investigation.

22 Q. Yes.

23 A. And that I'd like to be able to say at the end of the day he  
24 had no influence on it. I believe there's some confusion in my  
25 evidence at that point because I thought at that time that I

1 was giving him that admonition because of the Chant  
2 statement, which, of course, I didn't know about at that time.  
3 And, of course, then on February 23rd after I had learned  
4 about Chant, that's when I called Harry Wheaton and stated  
5 that, to him quite emphatically that Chief MacIntyre should  
6 be questioned and not be privy to the conduct of the  
7 investigation. I think the point that may have been left  
8 hanging a bit was the rationale for telling the Chief prior, i.e.  
9 on Sunday the 21st why the investigation should be an  
10 independent one. And you know, my best reconstruction of  
11 the rationale for that would have been that, well, you know,  
12 what was the point in having the R.C.M.P. do an investigation?  
13 I mean the whole idea, as I would understand it, though it  
14 was unspoken in our February 3rd meeting, the whole idea of  
15 having the R.C.M.P. do the investigation was to remove any  
16 suggestion of bias or precondition by the Chief. And,  
17 therefore, it would be on that basis that, you know, as of the  
18 21st, well, as of February 3rd, it was strictly within the realm  
19 of the R.C.M.P.

20 Q. Okay, thank you.

21 A. I don't know if that clarifies or not.

22 Q. Let me take you then to February 26th. The typewritten part  
23 are on page four, but you have your note. You spoke with Mr.  
24 Wheaton early in the morning to tell him that, or he agreed  
25 with your opinion that the defence did not know of the

1 previous inconsistent statements of Chant and Pratico?

2 A. Yes.

3 Q. And then you note that you phoned Herschorn and told him  
4 of this. Were you reporting on a regular basis to Herschorn or  
5 anyone else in the Attorney General's Department?

6 A. I'd have to say yes and it wasn't as the result of being  
7 instructed to, but as I indicated yesterday, I felt that this  
8 case, obviously, was going to require some involvement by  
9 the department and maybe even involvement at the federal  
10 level. So I took the initiative to keep them abreast of what I  
11 was finding out.

12 Q. Okay, and then you note that you were getting the  
13 preliminary inquiry transcript and Volume 2 of the trial. So  
14 by this time you have all of the evidence in the Junior  
15 Marshall trial and the factums that were filed in the appeal.

16 A. Yes.

17 Q. Plus the decision.

18 A. Yes.

19 Q. Then it's noted that Sergeant Wheaton confirmed a meeting  
20 with Chief MacIntyre was to take place that afternoon.

21 A. Yes.

22 Q. Now the next part we have is notes on March the 1st.

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

1 Q. And the first note notes that Harry Wheaton called you to say  
2 that the meeting with Chief MacIntyre had taken place on  
3 Friday afternoon, but just Inspector Scott attended because  
4 Wheaton was involved in a surveillance exercise. And you  
5 note to yourself that you wondered why Wheaton had not  
6 thought this investigation was more important than the  
7 surveillance exercise, but you did not communicate this to  
8 him.

9 A. Yes.

10 Q. Now did you make those notes on March 1st?

11 A. Yes, 4 p.m. that day, I have a notation right at the top of the  
12 page there, "Notes begin 4 p.m."

13 Q. Do you, today, have recollection of that conversation?

14 A. Yes.

15 Q. Let me read to you from the evidence of Sergeant Wheaton on  
16 that point. He was referred to that part of your notes.

17 A. Yes.

18 Q. This is on page 7595 of the transcript. And he said:

19 A. That is not correct about the surveillance  
20 exercise.

21 Q. So you recall attending this meeting, then,  
22 with Chief MacIntyre.

23 A. Oh, yes. And I recall a surveillance exercise  
24 as well. As I say, my drug section was  
25 doing Privacy Act thing and there was a  
surveillance exercise. I think Mr. Edwards  
just got the two of them mixed up.

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What do you say about that?

A. Well, I disagree with Sergeant Wheaton's recollection on that. I mean if you read the rest of the paragraph there, not only did he tell me that he had attended a surveillance exercise but he mentioned the Chief having raised Patricia Harriss during the meeting with Don Scott and that Scott, not being the investigator, didn't have sufficient details to pin MacIntyre down. So the whole context of the thing would clearly suggest that Wheaton didn't go to that meeting and, as I say, I do have some independent recall of that conversation.

Q. You, in fact, were surprised that he didn't go. That he didn't treat this as something of real importance.

A. Oh, yes. I did not communicate to him, my surprise, because, well, I was walking a fine line there between my role as Crown and getting too involved in the investigation. So that's why I didn't communicate any surprise to him.

Q. Let me refer to some of the other notes on that day. He said, Wheaton said, "MacIntyre had dismissed the whole thing out of hand and Scott did not have sufficient details to pin him down." What was he dismissing out of hand? That is, what was Chief MacIntyre dismissing out of hand?

A. Well, I took that to be, you know, their conclusion that there was something to this, that Marshall was innocent as far as they were concerned at that time and I can't recall the

1           specifics but I would assume that it was, you know, the  
2           evidence of Chant and the conversation with Donald Marshall  
3           on February 18th.

4           Q. Pratico had also been met at that time.

5           A. Yes.

6           Q. Wheaton says, "Chief pinned his argument on the fact that  
7           Marshall had met Harriss and Gushue in the park and they  
8           said there was only one other person."

9           A. Yes.

10          Q. Did the Chief mention any of that when he met with you and  
11          Scott on February 3rd?

12          A. No, I recall no conversation of Harriss on February 3rd. And I  
13          think that if it had been mentioned, I would have put it in my  
14          note. Notwithstanding the fact that the note of February 3rd  
15          was made a couple of weeks later.

16          Q. Now by this time you had read the trial evidence, you had  
17          read the preliminary evidence.

18          A. Yes.

19          Q. You had read the charge, or the address to the jury by the  
20          two counsel and the charge by the judge.

21          A. Yes.

22          Q. You were aware that, in particular, the Crown Prosecutor  
23          placed great emphasis on the evidence of Patricia Harriss.

24          A. Yes.

25          Q. So this wouldn't come as a surprise to you that the evidence

1 of Harriss was important at the trial.

2 A. No.

3 Q. But she had not been interviewed up to this date; that is, up  
4 to March 1st, 1982.

5 A. I believe that's correct, yes.

6 Q. Okay, you have another note at 1:30. What is that about?

7 A. Well, Harry Wheaton had called and said that he had  
8 interviewed Patricia Harriss and had, in fact, taken a  
9 statement from her. He read the statement to me. I believe  
10 she said in the statement that she had been pressured by the  
11 police. I don't recall right now. I'd have to see the statement,  
12 but I believe the statement makes that suggestion.

13 Q. It's on page... It's in Volume 34 at page 54.

14 A. Yeah, definitely.

15 Q. And that is a statement that was read to you.

16 A. Yes.

17 Q. By Wheaton on March the 1st?

18 A. Yes.

19 Q. In particular, in the third paragraph of that statement,  
20 Patricia Harriss says, "I don't feel their actions were proper,"  
21 "their" being the police.

22 A. Yes.

23 Q.

24 I recall them banging their fists on the desk.  
25 The police had me so scared throughout this  
affair that I felt pressured and agreed with

things I shouldn't have agreed.

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A. Yes.

Q. Do you recall that?

A. Oh, yes.

Q. Was there any mention of what police were involved?

A. As I recall, she couldn't identify them. I believe she remembered Urquhart, but I don't think she ever identified John MacIntyre.

Q. You were asked to conduct an interview of Patricia Harriss yourself on that day, is that correct?

A. Yes.

Q. Did you?

A. Yes.

Q. Do you remember that interview?

A. Yes.

Q. What do you remember about it?

A. I remember her coming to the office with Wheaton and Carroll and, basically, I can't add much to what's in my note there. But I do remember, I do remember it just as it is indicated there in my recorded recollection.

Q. What do you mean then when the note that says, "Said she was aware of what his defence would be prior to giving evidence at preliminary on July 5, 1971?"

A. I'm just looking for that reference in my note.

Q. You first said...



1 A. Yes, I...

2 Q. Said she was not convinced at the time that Marshall was  
3 guilty.

4 A. Yes.

5 Q. "She was aware what his defence would be prior to giving  
6 evidence at preliminary."

7 A. Uh-huh.

8 Q. What does that mean?

9 A. I believe she was referring to the fact that she knew that  
10 Marshall was contending that there were two others who  
11 were present and one of whom had stabbed Seale.

12 Q. Did she indicate how she knew that before the preliminary?

13 A. I don't specifically recall. She may have told me that she had  
14 spoken to Donald Marshall. I'm sorry, I don't remember.

15 Q. You also note that it was your impression that she was a  
16 truthful person doing her best to recall, though having  
17 difficulty because of the passage of eleven years.

18 A. That was my impression of her and remains my impression of  
19 her.

20 Q. Remains your impression of her?

21 A. Yes.

22 Q. Have you ever, other than this time on March 1, 1982, did  
23 you ever again interview Patricia Harriss?

24 A. No.

25 Q. What was your, what were your thoughts, then, after having

1 met Harriss?

2 A. Again, I can't specifically recall my thought processes except  
3 to say that I would have felt that this was a very significant  
4 piece of information and I guess I would have to say that that  
5 information against the background of what I knew to that  
6 point caused me some concern about how this investigation  
7 had been conducted.

8 Q. The initial investigation you're talking about?

9 A. The initial investigation, yes.

10 Q. At this stage you have three people who were saying that the  
11 evidence they gave at trial was not correct?

12 A. Yes.

13 Q. Not the truth?

14 A. Yes.

15 Q. And was there a common thread running through it why they  
16 had not told the truth at trial?

17 A. Well, the common thread, although Patricia Harriss hadn't  
18 mentioned MacIntyre, I don't believe, I mean I assumed that  
19 it was John that had been doing the questioning, that he was  
20 the common thread.

21 Q. Had you ever had an experience with Chief MacIntyre  
22 banging his fists on the desk?

23 A. I've seen him do that on two occasions.

24 9:55 a.m.

25 Q. With you?

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 A. Once with me and once in my presence.

2 Q. And in the times he has done it was in an anger, like an  
3 action done in anger?

4 A. Yes.

5 Q. Was...how would you describe the sight or the impact of him  
6 doing that?

7 A. I think intimidating would not be an unfair description  
8 given his size and demeanour.

9 Q. At that stage you now, as Crown Prosecutor for the County  
10 of Cape Breton, have indications that three people had  
11 committed perjury, is that correct? Or at least had lied at  
12 trial?

13 A. Yes, yes, because...

14 Q. Perjury requires intent.

15 A. Intent to mislead.

16 Q. Yes.

17 A. Yes.

18 Q. At least you had knowledge, at least indication, that three  
19 people at the trial of Junior Marshall had told...had made  
20 statements that were not true.

21 A. Yes.

22 Q. And you had the suspicion or the thought that that may  
23 have been caused because of pressure being applied by  
24 certain members of the Sydney Police?

25 A. That's fair, yes.

1 Q. Would that not raise in your mind the possibility that some  
2 criminal act may have taken place here?

3 A. I thought that was a possibility, but I don't think I thought  
4 of it as any stronger than that.

5 Q. Would it at least require an investigation to be carried out to  
6 determine if there was some criminal act had taken place?

7 A. Yes.

8 Q. Did you ask or suggest that such an investigation be carried  
9 out?

10 A. Yes.

11 Q. And who did you ask that of?

12 A. Well, going back I had suggested that to Sergeant Wheaton  
13 back on February 23rd. Yeah, when I called Wheaton at  
14 home at 11:00 p.m. on February 23rd and told him then that  
15 part of the investigation he was doing, in my opinion, would  
16 encompass the questioning of Chief MacIntyre.

17 Q. Do you equate then, or did you mean when you say he  
18 should be questioned, that there should be an investigation  
19 to determine whether Chief MacIntyre, in particular, had  
20 committed any criminal act?

21 A. The best way I can answer that, I suppose, is that they  
22 should question him and my thinking would have been that  
23 if that questioning did disclose something criminal, well,  
24 take it from there. But certainly what I was envisaging at  
25 that time was the questioning of Chief MacIntyre in the

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 same vein that they were questioning Chant and Harriss,  
2 that it should be that detailed and in the same vein.

3 Q. Okay, thank you. Sorry, My Lord, did you...

4 MR. CHAIRMAN

5 Well, maybe you're coming to that next, I may be  
6 anticipating your next question.

7 MR. MacDONALD

8 Go ahead.

9 MR. CHAIRMAN

10 I was going to ask did you report your views with respect to  
11 Chief MacIntyre to Mr. Herschorn during your frequent reporting  
12 to him of progress of this investigation?

13 MR. EDWARDS

14 I may have, not in the sense of a formal report. Again, as  
15 far as Halifax's involvement in this phase of it I regarded their  
16 involvement as being the recipients of information only. I didn't  
17 feel that I needed any direction from them on that aspect. That  
18 seems a straightforward matter to me at the time.

19 MR. CHAIRMAN

20 Well, I appreciate that, but you had indicated earlier that  
21 because of what was unfolding...

22 MR. EDWARDS

23 Yes.

24 MR. CHAIRMAN

25 At least I'm interpreting this was what you were saying.

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 MR. EDWARDS

2 Yes.

3 MR. CHAIRMAN

4 That you felt it appropriate to keep Mr. Herschorn advised.

5 MR. EDWARDS

6 Yes.

7 MR. CHAIRMAN

8 And my question is as part of that process did you express  
9 to him any views with respect to Chief John MacIntyre or the  
10 Sydney Police, they should be investigated or should be given an  
11 opportunity to answer the allegations now coming forth from  
12 Chant, Pratico and Patricia Harriss.

13 MR. EDWARDS

14 I probably did, My Lord. I don't have any specific  
15 recollection of that but, I thought, yeah, I would say I did.

16 MR. CHAIRMAN

17 Thank you.

18 MR. MacDONALD

19 Q The next notes we have, Mr. Edwards, are on March the 5th.

20 A. Yes.

21 Q And that is the advice from Sergeant Wheaton that he was  
22 going to Dorchester on March the 8th to interview Donald  
23 Marshall. Were you aware that an earlier interview had  
24 taken place or partial interview of Mr. Marshall had taken  
25 place?

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 A. Yes. Yes, I was.

2 Q. Were you given a copy of the partial statement that was  
3 taken?

4 A. No. I was aware of the initial interview. My understanding  
5 was that they had started to take a statement but before  
6 they got into it, and this apparently was a misinterpretation  
7 by me, that before they had actually gotten into the  
8 statement that events at the institution had cut the meeting  
9 off.

10 Q. Okay.

11 A. I now know, of course, that there was a partial statement  
12 taken, written statement.

13 Q. After Sergeant Wheaton met with Marshall at the  
14 penitentiary on March the 8th were you advised of the  
15 results of that interview?

16 A. Yes.

17 Q. When would that have been? At least I don't have any  
18 indication in your notes of having been advised at that time.

19 A. Uh-hum.

20 Q. Would it have been...

21 A. I would say shortly after they got back, you know, on March  
22 10th, 11th or 12th, somewhere around there.

23 Q. And was there any...

24 A. I know I became aware of Marshall's written statement  
25 very shortly after.

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 Q. Did you have any discussions with Sergeant Wheaton  
2 concerning the circumstances under which that statement  
3 was taken?

4 A. Yes.

5 Q. What were those?

6 A. The only specific recollection I can recall, and I believe this  
7 is more referent to February 18th than...

8 Q. That's the first statement.

9 A. Yes.

10 Q. Yes.

11 A. But it may have been March the 9th. But I can recall  
12 Sergeant Wheaton, Staff Sergeant Wheaton, telling me that  
13 he and Carroll had met with Donald and, I may not have this  
14 word for word, but this is pretty close. They said, "Look,  
15 we're looking into this thing. Now you can tell us anything  
16 you want and we'll sit here and listen politely and then we'll  
17 leave and you'll never see us again or you can tell us what  
18 really happened and we'll do our best from there."

19 Q. Now, you knew at that time that Sarson had already told  
20 Marshall about the Ebsary story about the robbery and so  
21 on.

22 A. Yes.

23 Q. We'll come to that statement later.

24 A. No doubt.

25 Q. When did you learn that Donald Marshall had told Wheaton



MR. EDWARDS, EXAM. BY MR. MacDONALD

1 and Carroll that a robbery attempt or a rolling or whatever  
2 had been underway at the time of the Seale killing?

3 A. I...the reason for my hesitation is that I don't know...I can't  
4 say with certainty whether they told me that after they  
5 came back from Dorchester, after February 18th or after the  
6 March 9th. It seems to me that it was after their first  
7 meeting, and, you know, if...there is so much material, I've  
8 read it, but I can't recall that partial statement of February  
9 18th, whether that mentions the robbery or not.

10 Q. I can show it to you. It's been introduced here.

11 A. Yes.

12 Q. We hadn't seen it until it was introduced ourselves I don't  
13 think, at least we didn't see the original. I'll get that turned  
14 up for you and we'll have a look at it.

15 A. Okay.

16 Q. It's the partial statement of Donald Marshall, February 18th,  
17 1982.

18 A. The only relevance of it, I suppose, is that if they were told  
19 on February 18th about the robbery then I think it's a  
20 pretty safe assumption that I was told.

21 Q. Okay. So at least then by the second interview on March the  
22 8th, shortly thereafter, you would have been aware of the  
23 fact that Marshall had given a statement indicating he had  
24 been involved in a robbery attempt.

25 A. That would be the latest, yes.

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 Q. Thank you. Now, I have notes of March the 22nd of 1982.

2 A. Yes.

3 Q. And there is a reference there to Ian MacNeil calling. Now,  
4 Mr. MacNeil is the publisher of the Cape Breton Post, is he?  
5 The editor or one of those people.

6 A. He was the editor, I believe.

7 Q. Okay.

8 A. He had a senior position at the Post, just what it was...

9 Q. Now you noted that Mr. MacNeil was aware of three options.

10 A. Yes.

11 Q. Parole, a new trial and pardon.

12 A. Yes.

13 Q. Did you tell him of those options?

14 A. No.

15 Q. Did he indicate to you where he had learned of those  
16 options?

17 A. No.

18 Q. Had you told...discuss with anyone else the options that were  
19 available?

20 A. I may have discussed it with my Department superiors. I  
21 certainly discussed it with Staff Sergeant Wheaton. Other  
22 than those two sources I...or other than those two areas I  
23 didn't discuss it with anyone.

24 Q. Okay. And I'll just show you Exhibit 101, which is the  
25 February 18th partial statement of Donald Marshall.

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 A. Yes, he does...he says on February 18th,

2  
3 I decided to take some money from three  
4 fellows. One of them asked me for a cigarette or  
5 a light. We thought it would be a good chance to  
6 get closer to them. We walked over to them and  
7 had a short conversation about liquor, women  
8 and everything. They started to walk away from  
9 us. I called them back.

10 So the, based on that, although I haven't got an independent  
11 recall, I think it's a safe inference that I was told prior to the  
12 second visit to Dorchester about the robbery.

13 Q. All right. Thank you. You have notes made on Sunday,  
14 March the 28th. That they are referring to events that took  
15 place on March the 24th. Is that correct? At least in part.

16 A. Yes.

17 Q. You note that you "First learned that the story broke while  
18 on route to Halifax, Wednesday, March 24, '82." What story  
19 are you talking about?

20 A. Oh, the...the Marshall investigation and the fact that there  
21 was a good chance he was now innocent.

22 Q. Did you provide any of the details in that story to anyone in  
23 the media?

24 A. No.

25 Q. You also say that on March the 21st that Pratico had been  
interviewed on the radio and had denied changing his story.  
Have you ever had the opportunity to hear a tape or any...

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 A. Where is that reference?

2 Q. March the 25th. It's the note you made on March 28th.

3 A. Yes.

4 Q. Thursday...

5 A. Oh, yes, okay, I have it.

6 Q. Did you ever hear the interview with Pratico where he  
7 denied changing his story?

8 A. No.

9 Q. You were just recording there what had been told to you by  
10 someone in your office.

11 A. Yes, my secretary. When the story had broke I phoned the  
12 office, I was very curious to hear just what was being said.  
13 So I'm reporting there what my secretary told me.

14 Q. All right. You then say, "12:30 p.m. today" is that referring  
15 to Sunday, March the 28th?

16 A. Yes.

17 Q. You were called by Ian MacNeil at home.

18 A. Yes.

19 Q. Who is now aware of Ebsary, and that there was enough  
20 evidence to charge Ebsary.

21 A. Yes.

22 Q. Do you know where Mr. MacNeil was getting that  
23 information?

24 A. No.

25 Q. Were you giving it to him?

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 A. No.

2 Q. You then called Staff Wheaton and told him about MacNeil  
3 and he said he would bring, or he was going to bring you a  
4 copy of the report tomorrow. What report are you talking  
5 about?

6 A. Staff Wheaton's police report.

7 Q. You had not seen that before.

8 A. No.

9 Q. Let me ask you to turn to Volume 34 at page 9.

10 A. Yes.

11 Q. And that's a...at least is a report written and signed by Staff  
12 Wheaton and also by Inspector Scott. Is this a report you've  
13 seen?

14 A. Yes.

15 Q. Is this a report that you refer to in your notes?

16 A. Yes.

17 Q. And that was brought to you, was it, on, I believe, March  
18 29th, would it, the Monday following your notes?

19 A. Yes, well, my note of the 28th says, "He will bring me a copy  
20 tomorrow," which would have been the 29th and I can't  
21 remember if he came the next day with it, but I think he  
22 did.

23 Q. Before we go to that report, there were other things in your  
24 notes of March 28th, a group of names. Where do they come  
25 from and what's the significance? Gary Green, Billy

1 Urquhart, Barbara Floyd and so on.

2 A. The best I can do on that is say that I believe Wheaton gave  
3 me those names during our telephone conversation, and I  
4 remember at one point him recounting the Gary Green,  
5 Donna Ebsary, David Ratchford sequence to me and I assume  
6 that that's when it was.

7 10:15 a.m.

8 Q. Now, were you asked by the Attorney General's Department  
9 at about this time to provide your recommendations what  
10 course of action should be followed?

11 A. I guess the short answer is yes.

12 Q. Okay.

13 A. But how that came about I believe was in a telephone  
14 conversation between Gordon Gale and I may have said,  
15 "Well, look maybe I should do a report and send it in too."  
16 So, I don't know if I took the initiative or he did, but ...

17 Q. It was involving Mr. Gale though, was it?

18 A. Yes.

19 Q. He was aware of what was going on.

20 A. Yes.

21 Q. Pull up Volume 31, would you, please, page 22. Do you have  
22 that, Mr. Edwards?

23 A. I do, yes.

24 Q. That is a report dated April 5, 1982, written by you.

25 A. Yes.

1 Q. To Mr. Gale.

2 A. Yes.

3 Q. With what intention? To set out your thoughts at that time  
4 and your recommendation.

5 A. Yes.

6 Q. You note on page 22 in the first paragraph that you have  
7 been kept fully briefed on the progress of the investigation  
8 by Staff Sergeant Wheaton and you have reviewed his  
9 report with the enclosures.

10 A. Yes.

11 Q. At that stage then you had the copies of all the interviews  
12 that had been taken by Wheaton which included the  
13 interview of Donald Marshall, Chant and these people.

14 A. Yes.

15 Q. Thank-you. Let me take you to page 2. Many of the things  
16 in the first part of this we've already dealt with, but on page  
17 2 in paragraph numbered 2, on the top of the page you talk  
18 about the existence of the first statements from Chant and  
19 Pratico and you say, "Both statements are consistent with  
20 the theory advanced by the defence, that is, the theory that  
21 two other people were involved here." Is that correct?

22 A. Yes.

23 Q. "And it is inconceivable that they would not have been used  
24 had their existence been known. Today April 5, 1982, I  
25 personally questioned C.M. Rosenblum, Q.C., in this regard."

1 A. Yes.

2 Q. "He stated that he and Khattar were definitely not aware of  
3 these statements, these May 30 statements of Chant and  
4 Pratico."

5 A. Yes.

6 Q. You had the opportunity to question Mr. Rosenblum about  
7 that yourself.

8 A. Yes.

9 Q. All right. You go down to paragraph 4, you start noting "New  
10 evidence," the fact that Donald Marshall's admission that he  
11 and Seale were attempting to roll the strangers. And you  
12 say that "Obviously the truth is more plausible than the lie  
13 he told at trial."

14 A. Yes.

15 Q. And that was your belief on...

16 A. April 5th.

17 Q. ...April 5th.

18 A. Yes.

19 Q. Thank-you. You go on to talk about various other things,  
20 and then on the top of page 24 you start to set out your  
21 conclusions. Now, your first conclusion is that "A submission  
22 that there is now no doubt that Donald Marshall did not  
23 murder Sandy Seale." You were convinced of that on April  
24 5th, 1982.

25 A. Probably earlier but certainly by that date, yes.



1 Q. Okay. Now, the recommendations are what I'd like to spend  
2 a little time with. "Re: Donald Marshall, Jr.," You submit,  
3 "That the Attorney General should advise the Minister of  
4 Justice that his preference is to have the case referred to our  
5 Appeal Division for hearing and determination by that Court  
6 as if it were an appeal by Marshall," and you refer to a  
7 particular section of the Criminal Code. Was this your first  
8 sort of crack at the option that should be followed and it  
9 should be under 617 (b), an appeal?

10 A. When you say the first crack, you mean was that the first  
11 time I set it...

12 Q. First time you...

13 A. ...set it down in writing?

14 Q. Yes.

15 A. Yes.

16 Q. Did you give any thought to whether it should be a pardon,  
17 for example, as opposed to an appeal?

18 A. Yes.

19 Q. And whether or not it should be a Section 617 (c), asking the  
20 Court to answer questions as opposed to treating it as an  
21 appeal?

22 A. I gave a great deal of thought to the 617(c) option. The  
23 recommendation 617(b), while no question it's unqualified,  
24 in my own mind I wasn't as definitive on that. I had  
25 debated for some time prior to putting this down whether to

1 go 617(b) or 617(c). For the life of me I can't...I can't put  
2 my finger on what ultimately made me decide 617 (b), but  
3 as you'll see when we get on by June I had changed back to  
4 (c).

5 Q. Yes, okay. We'll come to that. Then you go on to say, "If the  
6 Minister of Justice agrees, then I submit that the most  
7 desirable result of the reference would be a direction by the  
8 Appeal Division that a verdict of acquittal be entered on the  
9 basis that there had been a miscarriage of justice." On April  
10 5th, 1982, you considered that that was the most desirable  
11 result that could be achieved.

12 A. Yes.

13 Q. And we've already gone over the information that you had  
14 at that time. You were fully aware of this supposed robbery  
15 attempt and other things that were going on.

16 A. Oh, yes.

17 Q. Okay, I think the rest of that report will...we don't have to  
18 deal with the rest of that. Did you have any...did you  
19 yourself before writing that report interview Chant?

20 A. No.

21 Q. Did you interview Pratico?

22 A. No.

23 Q. You had interviewed Harriss?

24 A. Yes.

25 Q. Donald Marshall.

1 A. No. I believe Donald...he may have been in the halfway  
2 house by that point. I don't think he was in the Sydney area  
3 at that time.

4 Q. All right, now let's go back to your notes, and those...I would  
5 like to talk to the notes on April the 19th.

6 A. Yes.

7 Q. Those were made on April the 19th but they're referring to  
8 something that took place on April the 16th, is that correct?

9 A. That's correct, through to the 19th.

10 Q. Okay.

11 A. Yes.

12 Q. The first topic you're referring to is a discussion you had  
13 with Gale after Chief MacIntyre had visited him. Do you  
14 recall that discussion?

15 A. Yes.

16 Q. What was Mr. Gale saying to you?

17 A. Well, what had inspired the call is I note there was advice I  
18 had gotten from Staff Wheaton that he heard that John  
19 MacIntyre had been to the Attorney General's Department.  
20 So, I was concerned about that. So I called Gordon Gale to  
21 find out if, in fact, there had been such a visit and, if there  
22 was, what had been discussed. And Mr. Gale did confirm  
23 that Chief MacIntyre had been there and as the notes  
24 outline, the information that Gordon Gale reported to me had  
25 been spoken about by Chief MacIntyre. If you wish, I'll go

1 through it in detail that perhaps to say... you know, it's safe  
2 to say that there were some misconceptions about what had  
3 gone on. I believe Mr. Gale had mistaken what had been  
4 told him by the Chief because some of the items were  
5 clearly in error.

6 Q The items that Gale was relaying to you?

7 A. Yes.

8 Q But he was saying to you his understanding of what the  
9 Chief had told him.

10 A. Yes, that's...

11 Q Did he say why the Chief was there?

12 A. I can't recall if we zeroed in on that point or not. I can't  
13 recall him telling me a specific concern the Chief had raised.

14 Q By this time Gale had your recommendations that we've just  
15 referred to on one of April 5th.

16 A. I assume so. His copy shown the date received, I guess,  
17 would resolve that.

18 Q You made a note that you told Gale you were concerned  
19 about the fact that Chief MacIntyre was producing  
20 statements now which neither you nor the RCMP had known  
21 about before.

22 A. Yes.

23 Q What statements were you referring to?

24 A. The ones referred to in the preceding paragraph. The  
25 statements from...that he told me Ebsary's wife, son and

1 daughter, well, I think it's an established fact that there was  
2 no statement from the daughter, Donna, at that stage. So,  
3 that was in error. But, in any event, he said that the Chief  
4 had produced those statements which were opposed to what  
5 they were saying now.

6 Q. Do you know if Gale and Chief MacIntyre discussed your  
7 recommendations that Donald Marshall or that the Minister  
8 of Justice should be asked to refer this conviction to the  
9 Appeal Division and hopefully acquit Marshall on the basis  
10 there had been a miscarriage of justice?

11 A. As far as I know he didn't, no. Now, he may have found out  
12 from some other source, but...

13 Q. You say that statements that you...neither you nor the RCMP  
14 had known about it before but you would confirm this with  
15 the RCMP and get back to him.

16 A. Right.

17 Q. And you subsequently did, didn't you?

18 A. Yes.

19 Q. Was it your understanding at that time that the RCMP would  
20 have the complete file of the Sydney Police?

21 A. I don't know if I had cause to urge them prior to that date, I  
22 know that the reference...

23 Q. I don't think, not in your notes.

24 A. No. So, you know, there may have been discussions about  
25 getting the complete file prior to that date, but I don't know.

1 I can't say one way or the other.

2 Q. You told Gale you were concerned that the Chief was now  
3 pro...Chief MacIntyre was now producing statements which  
4 the RCMP or you did not have.

5 A. Yes.

6 Q. Did you expect that you would have had all the statements  
7 that were relevant?

8 A. Yes.

9 Q. Or that the RCMP would have had.

10 A. Yes.

11 Q. You also made a note that it was significant that Chief  
12 MacIntyre left nothing with Gale, collected all his papers  
13 before leaving. Why is that significant?

14 A. By that time the suspicion was beginning to gel in my mind  
15 that Chief MacIntyre may have been trying to steer the  
16 investigation to some extent and the significance of him  
17 keeping the file, given that suspicion, would be that as long  
18 as he kept the file, he could have some link to the  
19 investigation that was going on.

20 Q. Let me continue with your notes on April the 16th, and  
21 these are on page 8 of the typewritten copy. You note that  
22 after your call with Gale you phoned Wheaton and he  
23 confirmed or he did know about these earlier statements.

24 A. Right.

25 Q. He said that on...

# Margaret E. Graham Discovery Service

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

PHONE: 469-5734

To: All Solicitors

From: Margaret E. Graham

Date: May 24, 1988

Re: Daily Transcripts.

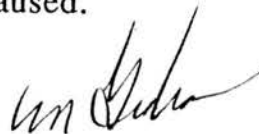
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## Errata

Volume 66, Page 11779, Line 23 should read:

"confirmed or he did not know about these earlier statements."

I apologize for any inconvenience this may have caused.



M. Graham

1 A. And I recall that conversation.

2 Q. He said that "On the two occasions when they had briefed  
3 MacIntyre they had asked him whether he had anything  
4 further which might help the investigation and he said 'No.'  
5 Wheaton was reporting that to you.

6 A. Yes.

7 Q. And this is your note. "It is now clear that MacIntyre has  
8 been less than forthright throughout and I believe that from  
9 the beginning he has set out to have the investigation reach  
10 a pre-determined goal. At best he has been manipulative."

11 A. Yes.

12 Q. That was your comment made to yourself on April the 16th,  
13 1982.

14 A. Yes.

15 Q. Was there any particular thing that had happened that  
16 was...up to that time that led you to make that statement?

17 A. Well, the meeting with Gale and the production of  
18 statements which were obviously, to my mind, were  
19 obviously relevant to the on-going investigation. In face of  
20 what Staff Wheaton was telling me that, "Look we had asked  
21 this fellow several times if he had anything else and nothing  
22 was forthcoming." That's what precipitated that comment  
23 and the comments that follow.

24 Q. You go on to say that "It now seems clear that he...", and  
25 you're referring to Chief MacIntyre, "...used the February 3,



1 1982, meeting to set up both Scott and myself and produced  
2 only those parts of the file for which he had an explanation,  
3 that is, statements from each of Chant and Pratico, results of  
4 the 1971 RCMP investigation, his theory re Mitchell Sarson."

5 A. Yes.

6 Q. "He probably felt the RCMP would merely go and check  
7 Sarson. That would lead them back to Ebsary who had  
8 already passed the polygraph. Doubtful that he figured on  
9 the detailed investigation which ensued. Feelings shared by  
10 Scott at our April 16th, p.m., meeting described below." You  
11 put your theory to Scott that you had been set up by Chief  
12 MacIntyre and he agreed.

13 A. Yes.

14 Q. That from the beginning there was an attempt to steer an  
15 investigation to a pre-determined goal.

16 A. Yes.

17 Q. Staff Wheaton gave evidence before the Commission and  
18 this is on page 7698, and he was referred to this set-up  
19 comment.

20 A. Yes.

21 Q. He was asked, "Did you share the opinion that you had been  
22 misled and used?" and his answer was, "I felt definitely  
23 that I had been misled by Chief MacIntyre, yes, sir." And he  
24 said, "I was knowingly misled." Do you feel that you were  
25 knowingly misled by Chief MacIntyre in this investigation?

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. I agree with the first part that we were misled. The  
2 "knowingly" misleading connotes to me that there's a  
3 suspicion that MacIntyre knew that Marshall was innocent  
4 but still wanted him found guilty. And if that connotation is  
5 correct, then I don't accept that, no.

6 Q. Do you still believe that from the beginning Chief MacIntyre  
7 attempted to feed just the information necessary to lead to a  
8 pre-determined result?

9 A. Yes, I felt that and feel that John MacIntyre felt that there  
10 was really much to-do here about something that had been  
11 decided in Court and that there was only one result a proper  
12 investigation could reach.

13 10:37 a.m.

14 And I think his mind-set, and perhaps I'm speculating now,  
15 but I believe his mind-set was such that, you know, he  
16 couldn't see it any other way.

17 Q. But the predetermined goal.

18 A. Yes.

19 Q. Is to determine or for the new investigation to conclude that  
20 Donald Marshall is guilty.

21 A. Is guilty, right.

22 Q. Now if he set out, if you believe...

23 A. Yes.

24 Q. That he set out and only gave the information that would lead  
25 to that result, do you not believe that that is knowingly

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 misleading you?

2 A. It's knowingly misleading in the sense that he's putting the  
3 thing on course. The difficulty I'm having with knowingly  
4 misleading is I would take it that somebody is knowingly... is  
5 misleading you if he is trying to get you to reach a conclusion  
6 that he knows is wrong. And that's the nub of it. I feel, and  
7 felt, well I feel now. How I felt at the time, I don't know, but  
8 I feel that John MacIntyre believed that Donald Marshall was  
9 guilty and that was his honest belief and perhaps he thought  
10 he was being helpful showing them what the answer should  
11 be. I don't know.

12 Q. Is that, the fact that he believes it. Let's accept that.

13 A. Yes.

14 Q. Does that excuse being manipulative and not disclosing all of  
15 the information to you and to the R.C.M.P.?

16 A. No. No, it doesn't. On the other hand, you know, to keep this  
17 in perspective, at no time up to that point, at least, had the  
18 R.C.M.P., to my knowledge, gone in and said, "Give us the  
19 whole file and everything you've got in relation to this  
20 investigation."

21 Q. So do you conclude from that that the R.C.M.P. were willing to  
22 be led to a predetermined goal?

23 A. Oh, no, no.

24 Q. Now let's go with your notes then of the 16th of April. You  
25 again note that it was significant that Chief MacIntyre has

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 always retained the full file in his possession and only turned  
2 over what was specifically asked for, and then you give  
3 certain examples of things that were not turned over.

4 A. Yes.

5 Q. That was significant to your conclusion that the Chief had  
6 been embarking on a particular course of action.

7 A. Yes.

8 Q. And you go on to note other examples of that. And then you  
9 go on to say that Wheaton suggested that you, Scott, and he  
10 meet, and you did at 2 p.m. Do you remember that meeting?

11 A. Yes. Not all of it but I can remember the meeting.

12 Q. This is the first indication I have, I think, Mr. Edwards, in  
13 your note.

14 A. Yes.

15 Q. Where you say you suggested that they, the R.C.M.P., should  
16 demand the file and all information from Chief MacIntyre and  
17 threaten use of a search warrant, if necessary.

18 A. Yes.

19 Q. That was the first time that you had raised that.

20 A. I can't say that categorically. I may have mentioned that to  
21 Staff Wheaton before. I know that I had several discussions  
22 with Staff Wheaton. Again, appreciating that, you know, I, in  
23 effect, was almost getting into what should be an  
24 investigator's decision. But I know that I pressed him several  
25 times.

MR. EDWARDS, EXAM. BY MR. MACDONALD

- 1 Q. You thought it was important...
- 2 A. To go get that file.
- 3 Q. And you thought it was important that they get the file.
- 4 A. Yes.
- 5 Q. And the R.C.M.P. were reluctant to do that.
- 6 A. Yes.
- 7 Q. Do you think they would have been reluctant to go to get the  
8 file from anybody else?
- 9 A. No.
- 10 Q. The fact that it was another police force is the only thing that  
11 caused him to be reluctant, isn't that your opinion?
- 12 A. Yes.
- 13 Q. Did they express why the police should be treated differently  
14 than any other person?
- 15 A. I know that there was a reference made by Staff Wheaton, or  
16 references whenever the issue was discussed that the rapport  
17 between the two police forces was an important factor and I  
18 think I'm safe in saying that that was the view he expressed  
19 and the view he expressed on behalf of Inspector Scott.
- 20 Q. Well, Scott was there.
- 21 A. Yes, in this particular meeting.
- 22 Q. At least this one.
- 23 A. Yes.
- 24 Q. At this meeting, you were urging them to demand the file  
25 and, in fact, to use search warrants, if available, and if

1 necessary.

2 A. Yes.

3 Q. At this time, you were of the view, is it not correct, that Chief  
4 MacIntyre was doing something wrong in withholding the file,  
5 or at least in leaking out pieces of information as they became  
6 useful.

7 A. Oh, yeah, he was doing something wrong, yes.

8 Q. At this stage, were you concerned that what Chief MacIntyre  
9 was doing may be... amounts, for example, to obstruction of  
10 justice?

11 A. No. As long as the R.C.M.P. were refusing to go down and  
12 demand the file, I didn't see how there could be any  
13 attribution of criminal intent to John MacIntyre.

14 Q. Okay, thank you. Now it's recorded in your notes that Scott  
15 and Wheaton wanted a direction to the Chief, Chief MacIntyre  
16 from the Attorney General to turn over the information.

17 A. Yes.

18 Q. Was that just a way to get the heat off their back, is to put it  
19 somewhere else?

20 A. That is my view.

21 Q. And they had a meet... They said they were having a meeting  
22 in Halifax with the brass.

23 A. Yes.

24 Q. Was that a meeting that was going to happen or that they had  
25 already had?

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. That was going to happen.

2 Q. And they were going to try on Christen. Try what on him?

3 A. They were going to suggest to Christen that it would be nice if  
4 all the players in this sat around a table in Halifax and  
5 thrashed it out to see what was going to happen.

6 Q. To see how they were going to get, obtain the file from Chief  
7 MacIntyre?

8 A. No, I... My recollection of the discussions on that meeting, and  
9 I think there's another reference to this meeting with the  
10 brass, but it is that that was to be sort of an overview type of  
11 meeting, not to, not specifically on this question of, you know,  
12 investigating the Chief or demanding the file.

13 Q. How was...

14 A. You see, you know, if you look... I don't know how it is in the  
15 typed note, but if you look at the original note, you'll see that  
16 there is a dash. There's the sentence: "They wanted a  
17 direction from the Chief to... from A. G. to turn over info."  
18 And I put a dash...

19 Q. Yeah, but that's also in the typed.

20 A. Yeah. We also discussed, it says, "Also discussed having a  
21 meeting in Halifax with the brass." And I agreed and they  
22 were going to try it on Christen.

23 Q. Well, how was it left, then, about obtaining the file?

24 Who was going to go to the Attorney General and ask for him  
25 to intervene? You are, at that stage, the representative of the

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 Attorney General.

2 A. That's correct.

3 Q. And you are telling the R.C.M.P. to go get the file.

4 A. Yes.

5 Q. They're not prepared to accept that as a direction.

6 A. That's right.

7 Q. They want the Attorney General office or the Attorney  
8 General himself.

9 A. Yes.

10 Q. To order the Chief of Police of Sydney to turn over the file.

11 A. Yes.

12 Q. Who was going to go to the Attorney General and ask him to  
13 do that?

14 A. Well, I guess that was left to me.

15 Q. And did you?

16 A. Realizing that there was no way they were going to do it on  
17 their own, yes, I did. You know, as far as that search warrant  
18 business is concerned there where I said they "should  
19 demand the file and threaten the use of a search warrant if  
20 necessary," I can recall that conversation fairly specifically  
21 and I said, "Look, why don't you go get the search warrant  
22 and just put it in your hip pocket? Go down and see the Chief,  
23 demand the file, ask for it, and if he doesn't give it, demand it.  
24 And if you still don't get it, then reach in your pocket and slap  
25 the search warrant on his desk."



MR. EDWARDS, EXAM. BY MR. MACDONALD

1 Q. How would you get a search warrant issued? I mean what  
2 would you have to do to get that?

3 A. That, to me, was... I mean we didn't get into a debate of  
4 whether or not a search warrant could be issued, but my  
5 feeling on it is that they were conducting a murder  
6 investigation. All they had to do was swear an information  
7 for a search warrant under Section 443.

8 Q. Would that be that in their belief, someone has information...

9 A. That John MacIntyre has evidence relating to the murder  
10 they were investigating. If I'm not mistaken, in the  
11 information for a search warrant, you don't even have to  
12 allege who it is you suspect has caused the murder.

13 Q. So you wouldn't think that would be any obstacle to  
14 overcome.

15 A. You know, there's no question. They could have gotten a  
16 search warrant at that time. Now whether at some point after  
17 that, you know, at subsequent proceedings that search  
18 warrant could have been quashed, I suppose there may be  
19 someone who will debate that. But the point is, they could  
20 have... They could have achieved their purpose at that point.

MR. MACDONALD

22 My Lords, I'm going into another, it may be a brief note, but  
23 it's going to take a little time to deal with, if this is an appropriate  
24 time to break.

25 10:50 a.m. INQUIRY RECESSED

11:23 A.M.1  
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Q. Mr. Edwards, I want to refer to your notes of Saturday, April 17th, 1982.

A. Yes.

Q. Those notes, as well, were made on the 19th of April, is that correct?

A. That is correct.

Q. This is a discussion held between you and Mr. Wheaton on the phone on the Saturday and you note that while on the phone, told me, Wheaton told you that he and Herb Davies had gone down to see Chief MacIntyre late Friday p.m. That would be the 16th of April.

A. Yes.

Q. And had spent a couple of hours with him. After being pressed, Chief turned over previous written statement by Patricia Harriss in which she described someone matching Ebsary. Wheaton said Chief went scarlet when pressed about this statement.

A. Yes.

Q. Do you have any recollection today of that discussion with Sergeant Wheaton on the Saturday of April 11th...April 17th, 1982?

A. Yes. My recollection coincides with what's in the notes here.

Q. There has been a lot of testimony before the Inquiry, and I think you may have heard some of it, concerning the date

1 when Chief MacIntyre turned over that April...Or the June 17,  
2 198... Or 1971 statement.

3 A. That's correct.

4 Q. From Patricia Harriss. How confident are you that your date  
5 of April 16th is correct? April 16th is when the... was turned  
6 over, according to Mr. Edwards' notes.

7 A. I'm definite on that.

8 Q. Let me refer you to one particular portion of the evidence of  
9 Staff Wheaton and I need your comment on this.

10 A. Yes.

11 Q. It starts on page 7710. He was asked:

12  
13 Q. Can you offer any explanation as why Mr.  
14 Edwards would have a detailed chronology going  
15 through April 16th, April 17th...and April 19th  
16 which would be at variance with that?

17 And he said, Staff Wheaton said this:

18 A. The only reason that I could think of, Mr.  
19 Edwards was not there when this meeting was  
20 held with the Chief, Corporal Davies, and myself,  
21 and Mr. Edwards and I may very well have met  
22 at the end of the week or some period of time  
23 down the road and I probably incorrectly was  
24 reading from my notebook and gave him the  
25 wrong date and he may have been playing  
catch-up ball in writing his notes, I don't know.  
But he could very well have gotten that wrong  
date from me because I certainly have it wrong.  
I put a "1" down instead of a "2".

Q. Are you suggesting that on occasion Mr.

1 Edwards made catch-up notes on the strength of  
2 your own notes?

3 A. You'd have to ask Mr. Edwards, I don't know.

4 Q. Did you ever see Mr. Edwards making notes  
5 when you were yourself referring to your  
6 notebook?

7 A. I know I read to Mr. Edwards out of my  
8 notebook at various times throughout this  
9 investigation, yes, sir.

10 Q. And did you see him making notes at those  
11 times?

12 A. Yes, I've seen Mr. Edwards making notes, yes,  
13 sir. Now whether it was notes for these notes or  
14 notes on a legal pad or, he kept records, yes, sir.

15  
16 Now did you ever make the notes that we've been referring  
17 to here based on information given to you by Wheaton out of  
18 his own notebook?

19 A. No.

20 Q. Did you ever play, what he's referred to as, what, "catch-up"  
21 from time to time using Sergeant Wheaton's notes?

22 A. No.

23 Q. In the notes of April the 17th, which again you said were  
24 made on the 19th.

25 A. Yes.

Q. You say:

Also told me that Herb Davies had noticed Chief  
slip some of the information on the floor behind  
the desk. Believes it was some information with  
transcripts attached relating to threat by  
Christmas against Pratico. Believes there was a  
charge against Christmas at the time.

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Do you have recollection of being told that by Staff Wheaton?

A. Yes, I do.

Q. In what sort of way was it given to you? As something...

A. It was casual, "oh, by the way," sort of, Herb noticed the Chief slip some information on the floor, et cetera. And when I said, "Well, what was that about?" And he said, "Oh, it was just something related to Thomas Christmas or transcripts that he..." There was no particular concern about it. It was something that I, when he mentioned it to me, I picked him up and said, "What was it about?" But any concern that I experienced was allayed by his response.

Q. At any time did Staff Wheaton tell you or did Herb Davies tell you that Chief MacIntyre slipped on the floor, put under his desk, the June 17th statement from Patricia Harriss, that incomplete statement?

A. No.

Q. Again, I want to read to you from the evidence of Staff Wheaton on page 7731.

A. Okay.

Q. He was asked: "When did you get that statement?" And this is referring to the June 17, 1971 statement from Patricia Harriss. He said:

A. I did not get the 17th of June statement, the partially completed statement of Patricia

Harriss until the search was, or the letter of the Attorney General was executed at Chief MacIntyre's office.

Q. Are you saying, then, sir, that Mr. Edwards' notes with respect to the 19th at 1:30 p.m. is incorrect insofar as it refers to the statement of Patricia Harriss?

A. Yes, sir. To the best of my recollection.

Now let's go to that note, the 19th at 1:30. Jump ahead there.

A. I have it.

Q. Your note is that, "Wheaton arrived with statements of Ray, Greg, and Mary Ebsary."

A. That should be "Roy".

Q. Should be "Roy", dated November 15, 1971.

A. Yes.

Q. Donna, 17 April 1982.

A. Yes.

Q. Patricia Harriss, 17 June 1971.

A. Yes.

Q. "Also was going to provide me with Chant and Pratico's second statement."

A. Yes.

Q. Do you recall that attendance at your offices on April the 19th, 1982?

A. Yes.

Q. Do you recall being given, in particular, the 17th of June 1971 statement of Patricia Harriss?

1 A. Yes.

2 Q. On that date.

3 A. Yes.

4 Q. In that statement, Patricia Harriss describes a person similar  
5 to Ebsary, would you accept that?

6 A. That's correct, yes.

7 Q. If you had been told that Chief MacIntyre had deliberately  
8 tried to conceal from the R.C.M.P. that statement of Patricia  
9 Harriss, are you able to speculate what you would have done?

10 A. You're saying before the Attorney General's order under the  
11 Police Act, or do you wish me to...

12 Q. In being asked by Wheaton, in pressing, being pressed for  
13 previous written statements by Patricia Harriss, if he had  
14 been in the circumstance of being pressed and had  
15 deliberately attempted to hide such a statement to conceal it,  
16 in those circumstances, can you speculate what you might  
17 have done?

18 A. I would have recommended that the Chief be charged with  
19 obstruction of justice.

20 Q. And you're confident in saying today that that was never told  
21 to you by either Staff Wheaton or Herb Davies.

22 A. I'm positive it wasn't.

23 Q. Thank you. On Saturday, April the 17th, again in your notes,  
24 you have the statement that, "Left with only statement and a  
25 few other papers. Still did not demand the full file and all

1 information from the Chief." Do you see that note?

2 MR. CHAIRMAN

3 Where is that?

4 MR. MACDONALD

5 That's on page nine, My Lord, about halfway down.

6 MR. MACDONALD

7 Q. Can you find that in your written notes...

8 A. I'm just trying to find it. I know it's here because that's, that  
9 rings a bell. That's in my note of the 19th?

10 Q. No, the 17th.

11 A. Yes. Yes, I have it.

12 Q. Now that's after the reference to the previous written  
13 statement by Patricia Harriss and the fact that Chief  
14 MacIntyre went scarlet.

15 A. Yes.

16 Q. When pressed about the statement.

17 A. Yes.

18 Q. So according to your notes, after Staff Wheaton had the  
19 Patricia Harriss statement, he left Chief MacIntyre's office still  
20 not having demanded the full file.

21 A. Yes.

22 Q. Your last note on Saturday, April the 17th. You had met with  
23 Donna Ebsary. You met with her yourself.

24 A. Yes.

25 Q. Your last note is that you told Wheaton, "I thought he should



1 get the entire file from the City Police. Said he would go  
2 down Monday and get it."

3 A. Yes, I recall telling him that.

4 Q. Do you know if he actually went down to get that on the  
5 Monday?

6 A. No, he didn't.

7 11:37 a.m.

8 Q. Let me then take you to your notes of April the 19th. You  
9 were talking to Mr. Herschorn and he and Mr. Gale got back  
10 to you on conference phone.

11 A. Yes.

12 Q. And your note is that you "Briefed them thoroughly on the  
13 above."

14 A. Yes.

15 Q. And that has to do with your notes of the 16th and the 17th.

16 A. Yes.

17 Q. You suggested that the investigation should now focus on  
18 the City police.

19 A. Yes.

20 Q. Now, what were you meaning by that?

21 A. Well, two things. Number one, that the file should be  
22 obtained, but more particularly that in my view the time  
23 had long since passed when John MacIntyre and Bill  
24 Urquhart should have been taken in individually and  
25 questioned thoroughly on their involvement in that '71

1 investigation by Wheaton and Carroll.

2 Q. What was the response from Mr. Gale and Herschorn?

3 A. Mr. Gale was of the view that that matter could wait, that  
4 the...that it was something that could be put off. That the  
5 main goal now was to get Marshall before the Court in order  
6 to secure his release, and that the problem with the file  
7 could be expeditiously dealt with because that would be  
8 necessary for the immediate purpose by a direction under  
9 the Police Act.

10 Q. So...

11 A. But I mean I didn't argue further with him on that.

12 Q. Did you agree?

13 A. No, I didn't agree. I stated what I thought should happen.  
14 He said, "No," he was my superior. I wasn't going to say,  
15 well, you know, well, "I'm going to order them to go  
16 anyway." I didn't have the authority to do that.

17 Q. What else would have to be done at this stage by the RCMP  
18 in order to facilitate dealing with the Marshall end of things,  
19 getting Marshall out of jail?

20 A. Not much that we knew of, but there was still a mystery or  
21 possible mystery about was there any other information  
22 there that might have a bearing.

23 Q. Uh-hum.

24 A. On Marshall's guilt or innocence. And the only way of  
25 getting any assurance on that would be to seize the entire

1 file and go through it.

2 Q. How long was it to be delayed? What was your  
3 understanding from Mr..Gale? How long were you to wait  
4 before the RCMP could be turned loose on the Sydney  
5 Police?

6 A. At that point in time I think all of us were swimming in  
7 unchartered water, so to speak, so there was no, to answer  
8 your question, there was no specific timeframe mentioned.  
9 As far as my understanding is concerned it would be until  
10 we had got Marshall before the Court, presumably acquitted,  
11 and then had the Ebsary matter dealt with.

12 MR. CHAIRMAN

13 Mr. Edwards, would you go to...would you anticipate going  
14 before the Court of Appeal to apply for the release of Donald  
15 Marshall or the acquittal of Donald Marshall based on the new  
16 statements that had been now obtained from Pratico, Chant,  
17 Patricia Harriss, without also having available for presentation to  
18 the Court statements of Chief MacIntyre and Urquhart in response  
19 to this?

20 MR. EDWARDS

21 I wouldn't, no.

22 MR. CHAIRMAN

23 I should think that the...that any Court would ask to have  
24 the whole picture before them at that time, wouldn't you?

25 MR. EDWARDS

1 That was the premise I was operating on at the time but as  
2 events proved, that was not the attitude of the Court.

3 MR. CHAIRMAN

4 So are we entitled to assume that you treated the taking of  
5 statements, interviewing and taking of statements from Chief  
6 MacIntyre and Detective Urquhart as part and parcel of the  
7 investigation and preparation of material necessary to sustain an  
8 application to the Court of Appeal of Nova Scotia to ask for the  
9 release of the Donald Marshall or the acquittal of Donald Marshall.

10 MR. EDWARDS

11 That was my personal position, yes.

12 MR. CHAIRMAN

13 Regardless of the City of Sydney Police Force.

14 MR. EDWARDS

15 Yes.

16 MR. MacDONALD

17 Q. Let me take you back to your previous answer to me. As I  
18 understood it you were saying that Mr. Gale's position was  
19 that an investigation of the Sydney Police.

20 A. Yes.

21 Q. Should not take place until after Marshall was acquitted if  
22 that, in fact, was to come to pass.

23 A. Yes.

24 Q. And after Ebsary was charged and convicted.

25 A. That was my understanding. I don't think he...I don't think

1 he mentioned the Ebsary conviction. I don't think he went  
2 beyond saying, "Look, we've got this Marshall matter going  
3 now, let's stay with that and not go off on any side roads  
4 and get that matter taken care of." That was the gist of  
5 what he was saying.

6 Q. I have some difficulty understanding that and not  
7 understanding what you're telling me, but...

8 A. Yes.

9 Q. ...understanding the reasoning for that. It doesn't seem to  
10 make a lot of sense. How are they connected? If you  
11 believe that there are some grounds exist.

12 A. Yes.

13 Q. To suggest that the Sydney Police may have been involved  
14 in some wrong activity or criminal activity, don't they at  
15 least deserve that someone would investigate it and see if it  
16 is the case? Why do they have to wait around for four  
17 years?

18 A. You're asking me what I think.

19 Q. Yes.

20 A. I mean, I've no explanation about that.

21 Q. Okay.

22 A. I mean, my view, as recorded in the notes, was that it  
23 should happen then.

24 Q. And can I suggest that there was...there is no real  
25 impediment to it happening then either. The RCMP and

1 these particular investigators would have the time to do it.

2 A. Oh, that again is my view, but you know if...I thought you  
3 might be asking me there, well, why did Gordon Gale take  
4 the opposite view and...

5 Q. I'll ask Gordon Gale that.

6 A. Ask him, yes.

7 Q. Your next note on Monday, April the 19th said, you "Phoned  
8 Wheaton, told him I wanted copies of newly acquired  
9 statements. He also advised that Scott told him they now  
10 had enough to investigate and not to go to MacIntyre for the  
11 rest of the file." What did you understand they were  
12 investigating that would prevent them from going down and  
13 asking MacIntyre for his file?

14 A. I mean, I think it's evident from my notes that I was  
15 pushing pretty hard at that time because, you know, if...to  
16 be very candid, I was quite annoyed by what had transpired  
17 since Friday the 16th in particular. And I could see no  
18 logical reason why the matter couldn't proceed from that  
19 point, and my perception and, in fact, what was related to  
20 me by Wheaton, and I believe Scott at one point, was that it  
21 was the...there was the rapport between the two police  
22 departments which was the primary concern and that to me  
23 was the only reason, and my recall is that that is the only  
24 reason that was ever advanced by the police for not going  
25 forward other than this...I mean this, they now had enough

MR. EDWARDS, EXAM. BY MR. MacDONALD

1 to investigate. I...that didn't make sense to me to be quite  
2 frank with you.

3 Q. Okay. You...I've already referred you to your note of 1:30 on  
4 that date where, "Wheaton arrived with certain statements  
5 including the Patricia Harriss June 17, 1971 statement," and  
6 you made a note about that.

7 A. Yes.

8 Q. "It isn't complete. There may have been a page 2."

9 A. Yes.

10 Q. Now, you now know that, in fact, there isn't any page 2.

11 A. Oh, yes, of course.

COMMISSIONER POITRAS

13 Sorry, Mr. MacDonald, but do I understand that at no time  
14 had Staff Wheaton asked for, or demanded rather, the entire file  
15 and there doesn't seem to be a reference to that anywhere in  
16 these notes, I don't think.

MR. EDWARDS

18 No.

MR. MacDONALD

20 No, there is no reference to it, My Lord, and I believe the  
21 evidence of Staff Wheaton is that he didn't.

MR. EDWARDS

23 No, not until after the 20th, after they got the Attorney  
24 General's order. That was the only time the file was ever  
25 demanded.

1 COMMISSIONER POITRAS

2 Do we have a reference to that in your notes here?

3 MR. EDWARDS

4 No, I don't think so.

5 COMMISSIONER POITRAS

6 I don't think so.

7 MR. EDWARDS

8 No, no.

9 COMMISSIONER POITRAS

10 Okay.

11 MR. MacDONALD

12 I believe the evidence of Staff Wheaton, My Lord, was that  
13 he kept asking for everything that was relevant but at no time did  
14 he ask for the complete file until he had the letter from the  
15 Attorney General's, directed to Chief MacIntyre.

16 COMMISSIONER POITRAS

17 But I thought that when he had attended with Davies at that  
18 time he had demanded the entire file, am I wrong there?

19 MR. MacDONALD

20 Well, the evidence of Wheaton, My Lord, I believe, is that  
21 when he attended with Davies it was with the Attorney General's  
22 letter in hand asking for the complete file, and in fact was turned  
23 over to him chron...with a listing of what was in it.

24 COMMISSIONER POITRAS

25 And had he not demanded the entire file at that time?



11805 MR. EDWARDS, EXAM. BY MR. MacDONALD

1 MR. MacDONALD

2 Well, it's not a demand, at that time you have a direction  
3 from the Attorney General to turn it over.

4 COMMISSIONER POITRAS

5 Yes.

6 MR. MacDONALD

7 His evidence and Davies evidence is it was at that meeting  
8 that there was a paper slipped under the desk which both of them  
9 had said was the Patricia Harris June 17th statement. That's why  
10 I'm dealing with that particular topic.

11 COMMISSIONER POITRAS

12 Which is at variance with what we have here, yes.

13 MR. MacDONALD

14 Yes, My Lord.

15 MR. EDWARDS

16 They say that that meeting...that that demand was made on  
17 the 26th. And I say that it took place on the 16th, the alleged  
18 paper-slipping incident.

19 MR. CHAIRMAN

20 Yeah, in any event, you have the Patricia Harris statement.

21 MR. EDWARDS

22 Yes.

23 MR. CHAIRMAN

24 You're satisfied on April the 19th.

25

1 MR. EDWARDS

2 There is no question in my mind on that, My Lord.

3 MR. MacDONALD

4 Q. Your November, I'm sorry, your April 19th, '82 notes were  
5 made on April the 19th, weren't they?

6 A. That's right. And in that 1:30 p.m. note, let's see, that was  
7 made contemporaneously with the event. I mean I listed the  
8 statements there while Wheaton was in the office I believe,  
9 if not shortly after he left.

10 Q. Okay. Now you go on on April the 19th to record that you  
11 were also shown statements of the O'Reilley girls, "At least  
12 one of whom said she had told Harriss to say she saw the old  
13 man with the white hair and long coat."

14 11:50 a.m.

15 A. Yes.

16 Q. And then you go on to say, "Note this statement was taken  
17 before Harriss' second statement."

18 A. That should be "after."

19 Q. Yes.

20 A. Yeah.

21 Q. I just wanted to point that out to you. It is after.

22 A. Yes.

23 Q. "Though police could have previously been aware of what  
24 O'Reilly was going to say, thus affording them an excuse for  
25

1 not believing Harriss' first statement." Where did you get the  
2 basis for that speculation?

3 A. Well, obviously at the time I was more than a little suspicious  
4 about what was going on here and I was anticipating what  
5 answer could be given in the face of the O'Reilly statement.

6 Q. Answer could be given by whom?

7 A. By Chief MacIntyre.

8 Q. Did you at any time ever speak with any of the O'Reilly twins,  
9 either of the O'Reilly twins?

10 A. No, I didn't. Conversation with them by Wheaton was relayed  
11 to me, but I didn't actually speak to them personally.

12 Q. Did you ever speak with Patricia Harriss about the statement  
13 in one of the O'Reilly twins' statements?

14 A. I tried to in the Court of Appeal.

15 Q. But you didn't meet with her to give her the opportunity to  
16 explain or to deny.

17 A. No, and the reason was, as again we'll get into, that after the  
18 ordering of the reference, all of what before, you know, could  
19 be regarded as Crown witnesses, I suppose, became Aronson's  
20 witnesses. And although there's no property in witnesses, as  
21 such, he was the one who was going to be producing those  
22 witnesses before the Court of Appeal.

23 Q. You said your impression of Patricia Harriss was that she was  
24 truthful.

25 A. Yes.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 Q. And you still are of that opinion?

2 A. Yes.

3 Q. Thank you. Now on page, also on Monday, the 19th of April,  
4 you refer to a conversation or a telephone call from Inspector  
5 Scott.

6 A. Yes.

7 Q. Where he is concerned about the Harriss statement and the  
8 fact that MacIntyre was holding back.

9 A. Yes.

10 Q. I take it, then, that your note would indicate that Inspector  
11 Scott on Monday, April 19th also had a copy of that  
12 incomplete statement from Patricia Harriss.

13 A. Yes.

14 COMMISSIONER POITRAS

15 What does that mean, though? "MacIntyre had been holding  
16 back," that he had been holding back the Harriss statement?

17 MR. EDWARDS

18 I think the way I took it, My Lord, is that the holding back  
19 of the Harriss statement was illustrative of the general holding  
20 back. That's the sense in which I understood Scott.

21 COMMISSIONER POITRAS

22 Yet by then you had a copy of the Harriss statement, the  
23 unsigned statement.

24 MR. EDWARDS

25 As reported to me, it had only been obtained after some

1 pressing by Wheaton for it.

2 COMMISSIONER POITRAS

3 I see. Thank you.

4 BY MR. MACDONALD

5 Q. You then said you told him you were disappointed that they  
6 still didn't have all of the file from the Chief.

7 A. Yes.

8 Q. He said, Inspector Scott, "They couldn't be sure of getting it all  
9 that way." What does that mean?

10 A. That...

11 Q. Getting it all what way?

12 A. That, you know, you would have to ask Inspector Scott, if you  
13 haven't already. I can remember when I got off the phone  
14 that day and just pondering that, what did he mean by that?  
15 I don't know. Again, you know, my feeling was that what I  
16 was getting was a statement by the, by Inspector Scott which  
17 was really just a verbalized excuse, if I can put it that way,  
18 that my feeling throughout was that because it was another  
19 police department involved, this matter was being handled  
20 with kid gloves.

21 Q. All right. Then you talk about the requirement or the  
22 advisability of Wheaton questioning Rosenblum. Did you, or  
23 do you know if, in fact, Wheaton ever did meet with  
24 Rosenblum?

25 A. Do I know that he didn't?

- 1 Q. Do you know whether he did?
- 2 A. I thought he had. I could be mistaken on that.
- 3 Q. You yourself spoke with Mr. Rosenblum, as you noted earlier.
- 4 A. Yes.
- 5 Q. About the first statements from Harriss and... I'm sorry,
- 6 Chant and Pratico.
- 7 A. Yes.
- 8 Q. Did you ever speak to him about the first Harriss statement?
- 9 A. I believe I did. I had a conversation with Mr. Rosenblum last
- 10 spring just before he took his stroke, which ultimately
- 11 resulted in his decease, and by that time, he was pretty
- 12 familiar with the whole reinvestigation and, in fact, I know
- 13 that he had read Harris' book by that point. And so I said,
- 14 "Well, what about those first statements?" And I felt that he
- 15 understood me to mean the first three statements of Chant,
- 16 Pratico, and Harriss, and I said, you know, "Is there any
- 17 possibility that you could have had those?" I immediately
- 18 regretted asking the question because Mr. Rosenblum became
- 19 very indignant and he said, "Frank, do you think for even half
- 20 a second that if I had had those statement that I wouldn't
- 21 have used them?" I said, "No, I guess not." And the
- 22 conversation ended.
- 23 Q. So you were certainly satisfied he didn't have them.
- 24 A. Yes.
- 25 Q. The last note on April 19th is a visit you had from Mr. Story

1 from the Globe and Mail.

2 A. Yes.

3 Q. Did you ever give any information to Mr. Story about the  
4 investigation as it was going along?

5 A. I don't believe I ever gave him any information that wasn't  
6 already in the public domain. If I did, it was inadvertently,  
7 but I can't recall any.

8 Q. On the typewritten pages of your notes, down at the bottom  
9 of page 11, we come to Friday, March the 5th, which  
10 obviously is out of sequence. Do you have separate pages of  
11 notes...

12 A. Yes.

13 Q. For the 5th of March?

14 A. Yes, there is, you'll see in the original notes, there's this little  
15 note pad and then there are, there's another legal-sized piece  
16 of paper with notes of March the 5th on them.

17 Q. But they have nothing, there's no suggestion that they were  
18 made after April 20th, is there?

19 A. No, no. No, they were made contemporaneously.

20 Q. How were the typewritten documents prepared? Were they  
21 done under your supervision or someone else?

22 A. Really, when the Inquiry, when this Inquiry was called, the  
23 notes were on the file and I anticipated that perhaps  
24 Commission counsel would be interested in them. So I just  
25 took the whole sheath of notes and gave them to my

1 secretary and said, "Here, type these up." You know, I haven't  
2 even proofread them. I believe two of my secretaries did,  
3 you know, by reading them back and forth, but I didn't  
4 personally. And that's why I'm a little more comfortable with  
5 the originals.

6 Q. Well, let's deal with those particular notes on March the 5th.  
7 The one I'm interested in is on the typewritten page 12 at the  
8 top of the page. And it starts like this, "After Wheaton leaves,  
9 return call to Inspector Urquhart."

10 A. Yes.

11 Q. Can you find that in your hand...

12 A. Yes, I have that. That's on the small page here.

13 Q. Yeah. "When we finish, Chief comes on line. Asked me for  
14 news on Marshall case."

15 A. Yes.

16 Q. "Says they're not going to put me in jail, are they?"

17 A. Yes.

18 Q. Do you remember that comment from Chief MacIntyre?

19 A. Yes.

20 Q. Was it made in a joking fashion?

21 A. It was, yes.

22 Q. There's a reference in that same notation that you "Returned  
23 a call to Inspector Urquhart re Patterson." Does that have  
24 anything at all to do with Robert Patterson?

25 A. No. No, no.



1 Q. Thank you. There's a period of time then when we don't have  
2 notes between April 20th and June the 12th. Is there any  
3 particular reason that note-taking stopped for that period of  
4 time?

5 MR. CHAIRMAN

6 July 12th.

7 MR. MACDONALD

8 Oh, I'm sorry. Did I say "June", My Lord? July. And it's not  
9 March the 5th, My Lord. I've just explained that that's out of  
10 sequence. April 20th.

11 MR. EDWARDS

12 A. There is the note that I made on July the 8th. Do you not  
13 have that?

14 Q. On July the 8th?

15 A. July the 8th when we appeared in the Appeal Division  
16 Chambers.

17 Q. Yes, I'll be coming to that. I was talking about the...

18 A. The sequence.

19 Q. In our sequence of notes.

20 A. Yeah.

21 Q. We'll be coming to that.

22 A. All I can say is that between those two dates, not much of  
23 significance happened except the meeting with Douglas  
24 Rutherford on June the 4th and I can't explain why I didn't  
25 make notes of that. I'm certainly remiss in not having notes

- 1 of that meeting because...
- 2 Q. That is notes of your meeting with Mr. Rutherford?
- 3 A. With Mr. Rutherford.
- 4 Q. Just before we get to that...
- 5 A. And I think, and then the other point I wanted to make is
- 6 that there is, I believe, some correspondence by me to the
- 7 department, you know, which...
- 8 Q. I'll be referring you to those.
- 9 A. Yes.
- 10 Q. First of all, look at Volume 34 at page 88.
- 11 A. Yes, I have it.
- 12 Q. That is a copy of a report by Staff Wheaton dated May 20th,
- 13 1982.
- 14 A. Yes.
- 15 Q. Have you seen a copy of that before?
- 16 A. Yes.
- 17 Q. And did you see it at the time?
- 18 A. Yes, I believe I did. Now I can't tell you when I first saw it.
- 19 Q. I want to refer you to the page one.
- 20 A. Yes.
- 21 Q. Where he says: "In regards to the Ebsary and Marshall
- 22 portions of this file, all avenues of investigation known to
- 23 date have been completed."
- 24 A. Yes.
- 25 Q. "Discussions were held with yourself in regards to

1 interviewing Chief MacIntyre and Inspector Urquhart."

2 A. Yes.

3 Q.

4 In regard to the allegations of Chant, Pratico, and  
5 Harriss that they were induced to fabricate  
6 evidence in the original trial in this matter. Mr.  
7 Edwards has advised me that he further  
8 discussed this matter with Mr. Gordon Gale of  
9 the Attorney General's Department and it was  
felt that these interviews should be held in  
abeyance for the present. This file will be held  
open pending further instruction as well as new  
areas of investigation which may come to light.

10 Do you recall the conversation with Wheaton where he was  
11 told to hold interviews of Chief MacIntyre and Urquhart in  
12 abeyance?

13 A. Yes, I remember communicating that to him.

14 Q. Do you know when that took place?

15 A. This report is dated...

16 Q. May the 20th.

17 A. May the 20th. That conversation I had with Gordon Gale is the  
18 April 19th conversation.

19 Q. And had you told...

20 A. And I...

21 Q. Wheaton then?

22 A. I told Wheaton right after that. Wheaton would have known  
23 in late April.

24 Q. Well, did you intend on passing on that remark to Wheaton  
25

1 that he was to hold those interviews in abeyance even though  
2 all avenues of investigation known to date were completed?

3 A. May the 20th, they may have been, but when I told him, I'm  
4 confident in saying that I would have said that to him prior to  
5 their going for the file on April 26th, all avenues of  
6 investigations hadn't ended.

7 Q. When you told Sergeant Wheaton to hold the interviews in  
8 abeyance, was it because there was still investigation to be  
9 done on the Marshall and Ebsary matters? That you didn't  
10 want to sidetrack them?

11 A. It was as a result of my conversation with Gordon Gale on  
12 April 19th.

13 Q. If I can again go back to what I understood you to tell me  
14 earlier.

15 A. Yes.

16 Q. It was your understanding following your discussion with  
17 Gale that there should be no investigation of the Sydney  
18 Police until after Marshall had been through the Appeal  
19 process and perhaps after Ebsary had been tried.

20 A. That was my understanding but, you know, Gordon Gale may  
21 have said no more than, you know, "Let's deal with Marshall  
22 first." And then I read into that, well, after we get...

23 Q. Is that what you intended to convey to Wheaton?

24 A. Yes. If I may, much has been made of this and the  
25 impression has been left that, you know, the R.C.M.P. were

1           literally straining at the bit wanting to go after MacIntyre and  
2           Urquhart. That is not my recollection.

3           Q. That's not your recollection?

4           A. That is not my recollection, and, you know, there was no  
5           consternation expressed to me when I advised Wheaton that  
6           the matters were to be held in abeyance for the time being.

7           Q. All right, you talked about a meeting you had with Doug  
8           Rutherford in June?

9           A. Yes.

10          Q. Why were you meeting with Mr. Rutherford?

11          A. I had had some discussions with Gordon Gale and it was as a  
12          result of those discussions I learned that there was to be a  
13          meeting between Gale and Rutherford and Mr. Gale asked me  
14          if I would attend the meeting and I said sure.

15          12:10 p.m.

16          Q. What was the purpose of the meeting?

17          A. It was to decide just exactly how the matter was to proceed  
18          from that point.

19          Q. That is how the matter is to get from the Minister of Justice...

20          A. Yes.

21          Q. ...office to the appropriate level in Nova Scotia.

22          A. Yes.

23          Q. Now at that time was there discussion between  
24          yourselves...yourself, Mr. Gale and Rutherford as to what was  
25          the preferred method of proceeding?

1 A. Yes.

2 Q. And do you recall what the conclusion was?

3 A. Yes.

4 Q. And what was that?

5 A. 617(c).

6 Q. Now that was different than your initial recommendation that  
7 we looked at this morning.

8 A. Yes.

9 Q. That it should be 617 (b).

10 A. Yes.

11 Q. Why was it to be (c)? Why was that the preferred option by  
12 the Department of Justice and your Department of the  
13 Attorney General?

14 A. There were two basic reasons. The first was that the 617(c)  
15 option was more of an inquiry-type mode than (b) which  
16 would be, well, an appeal, adversarial mode. And (c), we all  
17 agreed at that point, would enable us to get the most evidence  
18 before the Court and have this matter most thoroughly aired.  
19 That was the first. And the second, and I believe all three of  
20 us agreed on this, was that under the 617(c) the Crown would  
21 carry the ball on behalf of Donald Marshall, whereas (b), of  
22 course, the carriage of the thing would be up to him and his  
23 counsel.

24 Q. And the determination was made, or at least the consensus...

25 A. Yes.

1 Q. By your group was that (c) was the best way to go.

2 A. Yes.

3 Q. And if the Crown were carrying the ball on behalf of  
4 Marshall...

5 A. Yes.

6 Q. You were the guy who was going to carry it.

7 A. Yes.

8 Q. What was your intention? What sort of inquiry process did  
9 you see happening? What sort of questions would be looked  
10 at?

11 A. I can best answer that, I guess, by telling you that when that  
12 meeting was over and I went back to Sydney I felt, I don't  
13 want to overstate it, but delighted, I suppose, for want of a  
14 better word, to have the thing. And it was my intention to  
15 lay it all out and let the chips fall. Police evidence, the  
16 witnesses that were heard, the whole thing. And...

17 Q. And to lay that out before the Appeal Division.

18 A. Yes.

19 Q. Of our court.

20 A. Yes. I remember that after I did get back, and of course the  
21 intention then was that Mr. Chrétien was going to make it  
22 public, so I was waiting for the newscast and on the day of  
23 the announcement I can recall seeing Mr. Chrétien on TV, I  
24 believe in the House. My wife and I were watching the  
25 television and Mr. Chrétien gave the preamble and it ended

1 with, "And I'm very pleased to advise that the matter has  
2 now been referred to the Nova Scotia Court of Appeal  
3 pursuant to 617 (b) of the Criminal Code." I remember  
4 remarking to my wife, "He got the section wrong."

5 Q. Uh-hum.

6 A. You know, it's (c). So I asked if she had heard (b) and then I  
7 thought, well, you know, maybe I heard (b) and he said (c).  
8 So I listened to the later newscast that night and sure enough,  
9 (b). I was perplexed by that, so the next day, I forget if it  
10 was a Friday or what day of the week it was. But I remember  
11 as soon as I went to work I phoned Gordon Gale and I said,  
12 "What happened here, you know, we had agreed to (c)?" And  
13 it was at that time Mr. Gale advised me that the Chief Justice  
14 had been consulted by the Feds and he had indicated to them  
15 that he wanted it under (b) and they agreed.

16 Q. Were you told why the Chief Justice wanted to proceed in that  
17 way?

18 A. Yes.

19 Q. What was the reason expressed to you?

20 A. Because that was my next question, "Why on earth would the  
21 Court want it under (b)? " And Mr. Gale said, "Well all I  
22 know is that he had expressed some reservation about  
23 whether or not they'd be able to hear the fresh evidence  
24 under (c)."

25 Q. Did you have any concern about that?



MR. EDWARDS, EXAM. BY MR. MacDONALD

1 A. I didn't understand that because, of course, in the months  
2 prior when I had been reviewing the thing I had done some  
3 reading on it, I'm not the greatest researcher but I had read  
4 (Gorecki?) which was a reference under 617(c).

5 Q. Which court, Ontario Court of Appeal?

6 A. Ontario Court of Appeal.

7 Q. Did they hear evidence?

8 A. And they heard evidence. And that was a reference under  
9 (c). So I believe Mr. Justice Evans was on that. So I, as I say,  
10 I was perplexed by it but the die was cast then.

11 MR. MacDONALD

12 My Lord, you indicated you wanted to rise a few minutes  
13 early.

14 MR. CHAIRMAN

15 I guess if it had gone under 617(c) we wouldn't be here  
16 today.

17 MR. EDWARDS

18 That's a fair comment, My Lord.

19 MR. MacDONALD

20 Q. You intended an inquiry similar...a broad-ranging inquiry  
21 similar to the one we're undergoing...

22 A. Yes.

23 Q. That's being undergone here.

24 A. Yes. You know, I don't think that it's possible to over-  
25 emphasize the significance of that change, particularly with

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the benefit of what we've seen did happen.

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Q Thank you.

MR. CHAIRMAN

We'll rise until two. And Mr. Edwards, we won't require you this afternoon. We have to hear argument on another matter, and we won't require you until Tuesday.

MR. EDWARDS

Fine, My Lord.

MR. CHAIRMAN

Thank you very much.

ADJOURN FOR LUNCH - 12:20 p.m.

MR. PUGSLEY - SUBMISSION

2:02 p.m.

MR. CHAIRMAN

Now this is your application, Mr. Pugsley, isn't it?

MR. PUGSLEY

It's my application. My Lords, I've sent a copy of my memorandum that I've just filed with this morning to my friend, Bruce Outhouse, who appeared on behalf of Staff Sgt. Wheaton at the time that his evidence in January. Mr. Outhouse is not here and I understand from one of my friends, Mr. Pringle, that he is aware of the application but, presumably, is contented to let others make their submissions known to the Commission. But I did want to let you know that I had advised Mr. Outhouse.

My Lords, the application is made in support of a request on behalf of John MacIntyre for the Commission to hear evidence of two witnesses, originally three, in the request that I had forwarded to Mr. MacDonald. But as a consequence of information I received from Alan Story's solicitor, I am not proceeding with the request with respect to Mr. Story, just with respect to Michael Harris and Heather Matheson. And I'm very much aware that it's not open to me to make an application to request witnesses to be called simply because they may cast doubt on the evidence of others. Otherwise, the obligation, the duty of the Commissioners would be endless and there would be no end of who would be called. But Staff Sgt. Wheaton occupies a very peculiar and a very unusual position in the evidence that... as a consequence of the

MR. PUGSLEY - SUBMISSION

1 evidence that he has given. And I refer, in particular, to the  
2 excerpts that are contained on pages two and three of my  
3 memorandum where he was not content just to give evidence  
4 concerning his recollections of meetings with my client, but  
5 continued on to advise the Commission of his conclusions with  
6 respect to Mr. MacIntyre's credibility, a very unusual thing for an  
7 experienced staff sergeant in the R.C.M.P. to do. And his evidence  
8 is worth focusing on. The question, "Are you suggesting that his  
9 testimony is incorrect?" "I'm suggesting, I'm not suggesting, I'm  
10 stating," Staff Sgt. Wheaton said, "The man perjured himself."

11 Q. Before this Commission?

12 A. Before this Commission.

13 Q. In respect to the taking of the statement of  
14 Patricia Harriss and putting it on the floor?

15 A. That is correct, sir.

16 In my memorandum, I go on to say:

17  
18 It's difficult to envisage any proper motive on  
19 behalf of Staff Sgt. Wheaton for the following  
20 outburst.

21 Questioned by my friend, Mr. Orsborn:

22 Q. Did you discuss your opinion with Corporal  
23 Davies?

24 A. Yes, I did, as well as Corporal Davies, Mr.  
25 Boudreau, and asked them if on behalf of his

MR. PUGSLEY - SUBMISSION

1 client if he would have any problems with me  
2 pursuing this matter with the Crown  
3 Prosecutor in Sydney and he advised me that  
4 he would not and it was his legal opinion that  
5 perjury had been committed.

6 And then the next question was: "I see." And then the part  
7 in parentheses, My Lords, I was reviewing this last night and had  
8 deleted that before this was finally typed and forwarded to you.  
9 Unfortunately, this deletion was not included by my secretary this  
10 morning, and apologize for it being there at all and I apologize  
11 further for spelling Mr. Orsborn's name incorrectly.

12 Q. I see. (Mr. Orsborn said) And was it your  
13 opinion as a police officer that a charge should  
14 be laid?

15 A. Yes, sir.

16 Q. Did you lay a charge?

17 A. Not to date. However, I've had some  
18 consultation with a Crown Prosecutor in  
19 Sydney and I've submitted a report to my  
20 superiors.

21 I indicated a year ago when I appeared before you in  
22 connection with the application on status, My Lords, that John  
23 MacIntyre, I felt, was the person who stood in most jeopardy as  
24 far as any person whose name would be brought before these  
25 hearings was concerned, in view of what I anticipated would be  
some of the evidence. I didn't know the extent of the evidence  
and I certainly did not know that Staff Wheaton would be going

MR. PUGSLEY - SUBMISSION

1 this far. But in view of the evidence that he has given before this  
2 Inquiry, then certainly there appears to be a certain amount of  
3 premonition or impressions on my mind, in my mind as to what  
4 the future held.

5 And, as I see my task, it is one to attack Staff Sgt. Wheaton's  
6 credibility in any legitimate way that I can, and one legitimate  
7 way is to call his evidence into disrepute by bringing forth the  
8 evidence of other individuals. Unfortunately, the two individuals  
9 in question are not in this jurisdiction, so it's not possible for me  
10 to subpoena them. But that power, of course, does lie with the  
11 Commission.

12 Staff Sgt. Wheaton has acknowledged that his purpose was  
13 to assist Michael Harris in the writing of his book and, again,  
14 there's another typo. "Any way he wanted" that appears at the  
15 bottom of page three, My Lord, is not the sequel to Justice Denied.  
16 It's not a book and those are the words of Staff Sgt. Wheaton, that  
17 he would assist Michael Harris "any way he wanted". The way it  
18 reads in my memorandum indicates that Michael Harris is writing  
19 a second book called Any Way He Wanted. Maybe he is, I don't  
20 know. But, in any event, that was the comment that Staff Sgt.  
21 Wheaton said that he would assist Michael Harris "any way he  
22 wanted" and the fact that he met with him on seven or eight  
23 occasions and had lunch with him, would certainly indicate that he  
24 carried out that to the fullest extent. Indeed, in the  
25 acknowledgement to the book, Mr. Harris writes:

MR. PUGSLEY - SUBMISSION

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It's impossible to name all of the people who contributed to this book, but it would be graceless not to cite those who were especially helpful.

And Staff Wheaton's name appears directly behind Stephen Aronson and Judge Cacchione. "All of them gave freely of their time" Mr. Harris advises us "and recollections to help unearth a long buried story and to explain contemporary events that were at times equally impenetrable."

And so there's eight interviews of varying length. One we know lasted two or three hours, in which Staff Wheaton had a great deal to say to Mr. Harris to assist him in the writing of the book. That, by itself, the fact that they discussed this matter for that period of time, would, in my submission, would lend support to my request to have Mr. Harris called before this Commission.

But there are, in addition, some particular areas that I wish to address to Mr. Harris where there appears to be conflict between what he has said and what Staff Wheaton has testified to under oath. And if you review to the supplemental memorandum I placed before you this morning entitled "Appendix E" under the heading of "Michael Harris," notwithstanding his comments, Staff Sgt. Wheaton's comments, on the confidentiality of the 1982 R.C.M.P. investigation in April, 1982, when he said it was still a confidential police file and nothing could be divulged until the Attorney General made a decision on the matter, certainly Staff

MR. PUGSLEY - SUBMISSION

1 Sgt. Wheaton divulged "anything he, Michael Harris wanted" to  
2 Mr. Harris. When those meetings took place, we're not sure. My  
3 recollection is that Staff Wheaton was not able to advise us with  
4 any particularity when in point of time those occurred. Except  
5 that we do know they occurred before the last Ebsary trial was  
6 concluded. That is clearly in the evidence.

7 There are a number of areas where they disagree. Mr.  
8 Harris suggested that James Carroll was present for the initial  
9 Patricia Harriss interview, the first Patricia Harriss interview that  
10 Mr. Edwards spoke about this morning that occurred in Staff  
11 Wheaton's office, and then apparently he was taken down to Mr.  
12 Edwards... Or she was taken down to Mr. Edwards' office for a  
13 further meeting. It is Michael Harris' writings that Carroll was  
14 present as well, a matter that is denied by Wheaton.

15 Perhaps more important is the second point that is referred  
16 to on page two.

17  
18 Harry Wheaton says that Michael Harris was  
19 wrong in quoting Wheaton as saying that "I saw  
20 no Jimmy MacNeil statement. All I saw was the  
21 eyewitness's statements and some of the  
22 peripheral statements like the police officers  
23 who were first on the scene."

22 And that is in a direct quote in many of the passages or in  
23 several of the passages in Justice Denied, Mr. Harris purports to  
24 quote Wheaton exactly.

25 There are several other points that are referred to in



MR. PUGSLEY - SUBMISSION

1 Appendix E that is before you. There is another bit of a mild  
2 dispute between Mr. Harris and Staff Wheaton at page 8008. In  
3 the transcript, Staff Wheaton suggests that Michael Harris is  
4 overstating it somewhat when he says that he went to see Mrs.  
5 Mary Ebsary every afternoon to have tea with her and discuss the  
6 nature of the investigation. "I think it's overstating the situation,  
7 sir," was his response at page 8008.

8 But, essentially, these are minor areas. Who knows what the  
9 information that Michael Harris has to say will be? I can't  
10 categorically tell you that it's going to cast Wheaton in a bad light.  
11 I do know that there are a number of areas where there is some  
12 disagreement and I'm hopeful to develop other areas in the event  
13 he is called.

14 With respect to Heather Matheson, there apparently was  
15 only one interview with Ms. Matheson and I should say Your  
16 Lordships may not be aware that I did examine Michael Harris on  
17 discovery in the civil litigation brought by MacIntyre against the  
18 C.B.C. It was a relatively short discovery. My recollection is that  
19 he was not subpoenaed to attend and that Mr. Murrant may  
20 correct me on that, because my recollection is not too accurate, but  
21 I don't believe that he was subpoenaed. But, in any event, the  
22 book was not written at the time he was examined and the book  
23 was still in the course of being prepared and the involvement of  
24 Harry Wheaton, I'm really not certain that I knew that Harry  
25 Wheaton had any conversations with Michael Harris at the time I

MR. PUGSLEY - SUBMISSION

1 examined Harris on discovery. In any event, the discovery  
2 doesn't go into that relationship. Heather Matheson was examined  
3 on discovery. She apparently only had one interview with Staff  
4 Wheaton. But there are a number of areas that I want to discuss  
5 with her, to broach with Ms. Matheson, and they are contained in  
6 Appendix D.

7 Staff Wheaton, who replied in response to a question at page  
8 7997.

9  
10 A. It was six years ago and I know we had  
11 discussions [I believe the plural is used,  
12 discussions] and I can tell you my general  
13 impression of it. But the specifics, you'll have  
14 to ask Ms. Matheson.

15 Was what Staff Wheaton responded to me in the course of  
16 my cross-examination before the Commission in the month of  
17 January.

18 2:15 p.m.

19 So that this a man who, as I say, has made very, very serious and  
20 quite an inappropriate and improper allegations before this  
21 Commission as to that should be done. What should be meted out  
22 to my client with respect to an alleged slipping of a statement  
23 from Patricia Harriss on the floor. We have heard this morning  
24 direct evidence to the contrary. That this was not what Staff  
25 Wheaton told Frank Edwards. He said this morning that, Frank  
Edwards said this morning, that what Wheaton told him was that

MR. PUGSLEY - SUBMISSION

1 it was not in response to a directive from the Attorney General  
2 that he was there or Sergeant Davies, it was before that occurred.  
3 And, indeed, it was not the Patricia Harriss statement that was  
4 slipped on the floor at all, it was an inconsequential, a casual  
5 thing, as Frank Edwards said this morning. It was an  
6 inconsequential document relating to prosecutions at Christmas  
7 for harassing witnesses. Not the significant, the very significant  
8 item that Staff Wheaton tried to make it appear. And it was on  
9 that point that Staff Wheaton suggested that charges of perjury  
10 should be laid against Mr. MacIntyre.

11 Well these are very, very serious allegations that he has  
12 made against my client and, as I say, I wish to attack them in any  
13 appropriate and legitimate way that I can.

14 With respect to the journalistic privilege and I'm perhaps  
15 anticipating my friend's argument a bit, I will of course argue that  
16 there's no journalistic privilege at all. The law does not recognize  
17 such a privilege, and indeed, the Coates case before the Appeal  
18 Division of this province, our Appeal Division, emphatically  
19 affirmed that there is no such privilege, as indeed there is, the  
20 only privilege the law recognizes is that between solicitor and  
21 client.

22 However, all together apart from that, the evidence that  
23 Staff Wheaton gave in response to my questioning at page 7986 in  
24 Volume 44 that appears on page 8 of my memorandum is, I think,  
25 pertinent.

1 I asked him:

2  
3 Q. In the event that Miss Matheson is of the  
4 opinion that she undertook not to reveal you  
5 as the person she interviewed, will you now  
6 advise her through this Commission, that you  
7 do so release her from any such undertaking.

8  
9 A. Yes. I would advise Miss or Mrs., whichever  
10 it is, Matheson, that she is certainly at liberty  
11 to give evidence if I am her source. I don't  
12 know.

13  
14 Q. She's at liberty and free as far as you are  
15 concerned to discuss any aspect of that  
16 interview that she had with you?

17  
18 A. Yes, sir. That is correct.

19  
20 Q. And would you give that undertaking? And  
21 would you give that release to any other  
22 media persons that you may have talked to  
23 from '82 onwards?

24  
25 A. Yes, sir.

And then he goes on in that statement, or in that, in  
response to that to talk about an approach that Mr. Story made to  
him at Sydney but that does not affect his response to my  
question.

The area into which it is appropriate for an inquiry of this  
kind to be concerned are set out in the Bortolotti case where Mr.  
Justice Howland delivered the judgement of the Court of Appeal  
including Mr. Justice Estey and Mr. Justice Holden. And Your

MR. PUGSLEY - SUBMISSION

1 Lordships are well familiar with that case and also the approach.

2 And quoting the comments at the bottom of page 5 of my  
3 memorandum Mr. Justice Howland stated,

4 The approach to the Commission should not be a  
5 technical or unduly legalistic one. A full and fair  
6 inquiry in the public interest is what is sought in  
7 order to elicit all relevant information pertaining  
8 to the subject matter of the inquiry.

9 "A full and fair inquiry." And, indeed, that is the way this  
10 inquiry has been conducted to date.

11 The evidence of Mr. Patterson, of Robert Patterson from  
12 Ontario, Your Lordships will recall his evidence, was called, and I  
13 made no objection to that evidence being called, but essentially,  
14 he was there to cast aspersions on the interview that he alleges  
15 took place between MacIntyre, and to a lesser extent Urquhart  
16 and himself, in Sydney, during the 1971 investigation. That was  
17 essentially the reason Mr. Patterson was called. And he was  
18 called, therefore, to cast doubt upon MacIntyre's recollection and  
19 MacIntyre's credibility. Wheaton, in my submission, played just  
20 as prominent a part in this Commission's findings as does  
21 MacIntyre.

22 And when a man gets on the stand, an experienced RCMP  
23 constable, and says that another person should be charged with  
24 perjury, then, in my respectful submission, it's open season. He  
25 set himself up for that and he's going to have to bear the heat in  
the kitchen if he takes that posture.

MR. PUGSLEY - SUBMISSION

1           Those are the submissions, My Lords, on behalf of Mr.  
2 MacIntyre.

3 MR. CHAIRMAN

4           Mr. Murrant?

5 MR. MURRANT

6           Thank you, My Lord, I appear this afternoon with Miss  
7 Susan Allen, and our appearance is on behalf of Heather  
8 Matheson, Michael Harris, the Canadian Broadcasting Corporation  
9 and Canadian Newspapers, publishers of the Globe and Mail.

10          To begin, My Lords, I was presented with Mr. Pugsley's  
11 submission as I entered the room and I note there are appendices  
12 (d) and (e) relating to Miss Matheson and Staff Sergeant, or Mr.  
13 Harris.

14          Looking at that quickly I would point out, My Lords, that it  
15 is as was anticipated when our memorandum was composed. If  
16 we turned to the Appendix (d) concerning Heather Matheson, it  
17 refers to, in Question 1, RCMP source. Two, "What do you mean  
18 by source?" And five, the ultimate fishing trip, "Did you receive  
19 any documents from Staff Sergeant Harry Wheaton directly or did  
20 he direct you to any other source to obtain documents?" Fifteen,  
21 "Did you meet with Staff Sergeant Wheaton on another occasion  
22 other than Thornville Barracks in Halifax?" And then in sixteen,  
23 in the case of Ms. Matheson, "If Staff Sergeant Harry Wheaton was  
24 your RCMP source, how did he become available?"

25          Invitations, My Lords, to invite Ms. Matheson to betray

MR. MURRANT - SUBMISSION

1 | confidentialities. And in the case of Mr. Harris, the anticipated  
2 | line...

3 | MR. CHAIRMAN

4 | Confidentiality in the Harris book?

5 | MR. MURRANT

6 | Well Staff Sergeant Wheaton, apparently in the record of  
7 | this Inquiry has said that he releases any confidentiality as  
8 | between himself and Ms. Matheson.

9 | MR. CHAIRMAN

10 | Yes.

11 | MR. MURRANT

12 | But it is naive to think that Ms. Matheson and Mr. Harris  
13 | spoke only with one person.

14 | And as this question says, if you didn't get documents here,  
15 | where did you get them? "If you approached him, who directed  
16 | you to Staff Sergeant Wheaton?" It violates, My Lord, and it goes  
17 | into other confidentialities.

18 | MR. CHAIRMAN

19 | Oh, I doubt that.

20 | COMMISSIONER EVANS

21 | It doesn't enthuse me very much.

22 | MR. MURRANT

23 | If we take, for example, Mr. Justice Hickman's question in  
24 | item 16 in Schedule (d) as to how Staff Sergeant Wheaton became  
25 | available for an interview. That was one of my examples of

MR. MURRANT - SUBMISSION

1 inviting another breach of confidentiality. In terms of asking Ms.  
2 Matheson how did she get in touch with this officer and  
3 discussions and relationships.

COMMISSIONER EVANS

5 Well if she says he phoned her or she phoned him, what  
6 breaches are there that hasn't been waived?

MR. MURRANT

8 Well exactly. But if the answer differs, you see the problem,  
9 Mr. Pugsley says two things and one is that he doesn't know what  
10 the evidence will be and then he says it's open season. And in our  
11 submission you can't have speculative evidence and open season  
12 against the reporters in this situation.

COMMISSIONER EVANS

14 That may be his views not necessarily our view as to  
15 whether it's open season, but I don't quite understand your  
16 complaint with respect to 16. If your client says she phoned Staff  
17 Sergeant Wheaton, isn't that a proper question in view of the  
18 waiver? And your concerned as to whether she had a contact  
19 through B or, A, B or C, is that your problem?

MR. MURRANT

21 Exactly, exactly, My Lord.

COMMISSIONER EVANS

23 That can be restricted when she answers. She can be told  
24 not to answer.

MR. MURRANT



MR. MURRANT - SUBMISSION

1 Well perhaps, My Lord, to continue with my submission...

2 COMMISSIONER EVANS

3 Oh yeah, I don't wish to interrupt you.

4 MR. MURRANT

5 Not at all, but I did wish to respond to your question.

6 I just turn now to Mr. Harris in Appendix (E) and he says in his  
7 book, "It was still a confidential police file." This is at page 1 of  
8 Exhibit E. And with respect to that, the tense of that is not there.  
9 The book was written after the fact. And one would have to  
10 speculate as to the meaning of that. And then there are a couple  
11 of instances in which Mr. Pugsley has set out that Mr. Harris' book  
12 was wrong. Surely it's not the function of this Inquiry to put Mr.  
13 Harris' book on trial as to its accuracy. If Mr. Pugsley wants to  
14 take the position on the evidence that it's wrong, so be it.

15 And then with respect to the matter raised concerning...

16 MR. CHAIRMAN

17 The Harris book was used with considerable abandon and  
18 has been during the entire hearing by various counsel in cross-  
19 examining witnesses. So whether the book is accurate or not, it  
20 has certainly been used as an aid in eliciting, soliciting the  
21 accuracy, or testing the accuracy of several witnesses before this  
22 Commission. And I think if you looked at the books around on the  
23 counsel table, they all seem to be hidden this afternoon, you'll see  
24 it's a well-worn, well-thumbed book.

25 MR. MURRANT

MR. MURRANT - SUBMISSION

1           Indeed, My Lord, and it's a fortunate convenience for  
2 counsel, but Mr. Harris in writing his book was to bring matters  
3 forward for the interests of Canadians and using sources and other  
4 information he could collect and if by happenstance is for  
5 convenience here, it doesn't change the function or perception of  
6 his role as journalist.

COMMISSIONER EVANS

8           Yes, well the book's appearance before the Commission  
9 certainly increased its circulation, I would think. I mean I don't  
10 think he'd complain about that.

MR. MURRANT

12           To continue, My Lord, you have before you, I expect, the  
13 affidavit of Mr. Martin who's the Atlantic Bureau Chief of the  
14 Globe and Mail.

15           Referring only briefly to that at page 2, paragraph 8. "The  
16 unnecessary requirement of giving evidence of reporters would  
17 have an adverse effect on sources coming forward." And I go to  
18 that only to point out that using these reporters to impeach this  
19 witness would convey a certain public impression. And what Mr.  
20 Martin is pointing out is that it would have an adverse effect on  
21 the interest of the media.

22           And he goes on in paragraph 9, "I verily believe calling a  
23 newspaper reporter to impeach the credibility or accuracy of a  
24 source would, again, have an adverse effect on reporters' access to  
25 information."

MR. MURRANT - SUBMISSION

1           And in ten he says that, "Oft times when people come, the  
2 information is incomplete and is not in the nature of information  
3 that would be admissible in evidence."

4           What's dealt with there, My Lords, in my submission is the  
5 impression it would create in the public, if the media, as is  
6 obvious from our authorities, deals with confidential information  
7 and sources to advance the public interest.

8           And if this Inquiry is seen to put them on trial and explore  
9 everything they do, and their sources and the difficulties and  
10 problems that are there, it would erode the ability of the media to  
11 carry on its job.

12           Similarly, we see the same situation on page 2 of the  
13 affidavit of Claude Vickery who's a respected reporter from the  
14 Canadian Broadcasting Corporation. And at page 6 he says,  
15 "...especially where there may be future occasions to approach  
16 such an individual for information." It's not correct to assume, as  
17 I think the applicant has done, that the Globe and Mail and the  
18 Canadian Broadcasting Corporation have closed their file and will  
19 never publish another matter on this affair.

20           So that there aren't closed files. And to get into the nitty-  
21 gritty of Ms. Matheson and her sources and the confidences in her  
22 and her employer, and the same with Mr. Harris and his former  
23 employer, may well have a chilling affect on what they may be  
24 able to do in the future and who may or may not approach them  
25 with information on this or any other story.

Now, My Lords, I turn to the...

COMMISSIONER POITRAS

Mr. Murrant, just before you turn to the next chapter. Isn't the most argument that you have set out in allegation 6 of the affidavit of Mr. Martin, and allegation 5 of the affidavit of Mr. Vickery? In other words, the protection of the source of the information.

MR. MURRANT

Yes.

COMMISSIONER POITRAS

And if that is the case, if the source were to release the journalist from apprising the Commission, from testifying before the Commission, wouldn't that be the end to the argument?

2:31 p.m.

MR. MURRANT

Two answers to that my, My Lord. Yes, that is one of our more important submissions and, secondly, if it were that simple, that would be right.

CHAIRMAN

But it is that simple.

MR. MURRANT

No, because...

COMMISSIONER POITRAS

Well on the basis of Wheaton I think we're in agreement that that is, it is as simple as that. But if we address ourselves to

SUBMISSION - MR. MURRANT

1 our witnesses there may be problems. In others words, I think  
2 we have a release, unless I've misread it, from Mr. Wheaton with  
3 respect to these two journalists. That would seem to, the release  
4 that was obtained from Mr. Wheaton would cover both the  
5 journalists. And your problem, I think, would relate to other  
6 people who had not yet submitted a release with respect both  
7 journalists.

MR. MURRANT

9 That's right, My Lord. And in the, as I began with Appendix,  
10 the appendix in Mr. Pugsley's submission, one the questions is,  
11 "Did Staff Sergeant Wheaton give you any documents?" And  
12 basically if the answer is "no," well then who did.

COMMISSIONER POITRAS

13  
14 So the first question would be possible but the second  
15 question may not.

MR. MURRANT

16  
17 It's the scope of what's being advanced here in the Inquiry  
18 if Mr. Harris were to testify and questions were permitted with  
19 respect to Staff Sergeant Wheaton only and no cross-examination  
20 by any party interested, but that's not what's being advanced  
21 here. My friend says open season and...

COMMISSIONER EVANS

22  
23 It's subject to what the Court...

CHAIRMAN

24  
25 That's right. It's subject to what we decide and I didn't,

1 maybe I misinterpreted what Mr. Pugsley said. He suggested that  
2 Staff Sergeant Wheaton had declared open season on his client  
3 and if you do that then you have to be prepared for any question,  
4 relevant questions that may arise from such an approach. We're  
5 dealing here with an application as it relates to Sergeant Wheaton  
6 and Heather Matheson and Michael Harris only. If, to take your  
7 question...

8 MR. MURRANT

9 Yes.

10 CHAIRMAN

11 That if Heather Matheson is asked, "Did and was and were  
12 any documents furnished you by Staff Sergeant Wheaton?" And if  
13 the answer is "no" that's the end of that line of questioning unless  
14 the person cross-examining has reason to believe that this is an  
15 incorrect answer. But certainly I would have some difficulty in  
16 allowing the next question, "Well if not you, do you know who  
17 did?" That would...

18 (COMMISSIONER EVANS?)

19 Unless there was a release...

20 CHAIRMAN

21 And assuming that person hasn't been released by Staff  
22 Sergeant Wheaton. But surely the confidentiality is for the  
23 purpose of protecting the informant, not the journalist. And the  
24 informant has said, "I don't need protection. I don't want  
25 protection" vis-à-vis he says anyone in the media to whom

1 I've been speaking. So if doesn't want protection, doesn't need it  
2 and is quite happy to waive it, how does that impinge upon your  
3 concerns of the, that the confidentiality of the press or sources  
4 being invaded or impinged upon?

5 MR. MURRANT

6 Well, My Lord, were I in a position to guide the Inquiry in  
7 that sense I wouldn't have the least concern because if, for  
8 example, the question is, "Did Ms. Matheson receive documents  
9 from Staff Sergeant Wheaton?" and the answer is "no" and that  
10 were the end of it, that's not troubling. That's not what's set out  
11 here.

12 COMMISSIONER EVANS

13 The question is...

14 MR. MURRANT

15 Then what happens...

16 CHAIRMAN

17 If you get into that line of questioning.

18 MR. MURRANT

19 That's right. But then what happens if the Attorney General  
20 of Nova Scotia says, "Well, wait a minute, if that wasn't it, who was  
21 it?" And then where to we go?

22 COMMISSIONER EVANS

23 She doesn't answer.

24 CHAIRMAN

25 She doesn't answer.

1 COMMISSIONER POITRAS

2 But it's not can't answer.

3 CHAIRMAN

4 I'm sure that you would, if Ms. Matheson was here to give  
5 evidence, here giving evidence today, as her solicitor you would  
6 be granted the right to appear. You have, on earlier occasion, here  
7 for another client of yours. It was not a personal standing. And I  
8 would be, feel reasonably certain that if this Commission weren't  
9 as alert as we should be, that you would be the first to object and  
10 bring it to our attention and demand that we disallow the  
11 question.

12 COMMISSIONER EVANS

13 Right.

14 MR. MURRANT

15 Well if I may, My Lord, to continue and complete my  
16 submission. I'd just turn to the memorandum that we have filed  
17 and I've raised certain points there. I did point out, beginning at  
18 page 1, of course, that Ms. Matheson resides in Vancouver and Mr.  
19 Harris in St. John's. And I'd point out as well that for considered  
20 professional reasons they did not wish to voluntarily testify at the  
21 Inquiry. And then at page 2 and onward, I pointed out and I  
22 submit and I won't take much time with it, My Lords, it is not as  
23 simple as the applicant would suggest to say that there is no  
24 privilege in a journalist. We're not saying that there's any  
25 absolute privilege in a journalist. We're not that naive in our



1 submission but we are saying that in the evolution of decisions  
2 beginning with the (McCord?) decision and Watergate in the  
3 United States, through Pacific Press on the West Coast and  
4 (DesCouteau?) in the Supreme Court of Canada, Mr. Justice Lamer,  
5 and in the post-Charter decisions we've set out, that in effect,  
6 there is a balancing procedure captured best, in our submission,  
7 My Lords, when you get to the end of the memorandum and the  
8 reference to Justice Tidman in terms of applying a balance.  
9 Now that balance doesn't give the press a privilege or an absolute  
10 immunity but it gives a careful respect for the work and that's all  
11 we suggest.

12 At page 3, at the base of the page, there is the reference to  
13 "the right of the press to gather and publish..." and it is here that  
14 the concern is with respect to their gathering ability. It would  
15 make no sense to have a free press in this nation if the reporters  
16 couldn't gather, freely gather the information.

17 And then towards the end of our memorandum in terms of  
18 the balance or the approach here, we've set out a number of  
19 factors that we would ask the Inquiry to consider the issues of  
20 fact-finding relevance. Third, the issue of impeachment because  
21 these reporters are not intended to add any relevant evidence to  
22 the fact-finding mandate of the Inquiry. They're being used, in  
23 my submission, My Lords, as pawns of impeachment.

24 Now they were out there doing their job as reporters.  
25

1 CHAIRMAN

2           What's that "impeachment" word? You must be borrowing  
3 that from south of the border. This is not a question of  
4 impeaching anyone. It is the responsibility, surely, of the  
5 Commission, as well as of counsel, to examine very carefully all of  
6 the evidence as is presented before it. All of the relevant  
7 evidence. And then reach conclusions as to the credibility of such  
8 relevant evidence.

9 MR. MURRANT

10           Indeed.

11 CHAIRMAN

12           And as part of the determination of the accuracy and  
13 sometimes the interpretation, the diverse interpretation by  
14 various witnesses, particularly before a commission where the  
15 Rules of Evidence, as we find in the courts, are not applied with  
16 the same stringency. That the, this is only part of the process.  
17 But try and find a better word than "impeachment."

18 MR. MURRANT

19           Sorry, My Lord.

20           The other considerations we've set out there are the  
21 Collateral Fact Rule which we're not suggesting is binding, in terms  
22 of Rule of Evidence, but we had gone back in the Common Law  
23 and found the common-sense and the reference to living 60 or 70  
24 years.

25           If we get into, in my submission, an examination of Mr.

1 Harris and his book, it could be, as we point out a very protracted  
2 and difficult matter. And we urge that on the Commission to take  
3 into consideration that we get into collateral facts that aren't the  
4 relevant facts in issue and we point out at page 9 that, "Staff  
5 Sergeant Wheaton has been cross-examined." I assume that  
6 Officer Carroll has testified here. The applicants had the benefit of  
7 that process. That he has not denied talking to the reporters.

8 Now it may be different had Staff Sergeant Wheaton denied  
9 talking to the reporters. But he has said, "I have done that."

10 The, as I point out at the end of our memorandum, the issue  
11 of credibility with respect to Staff Sergeant Wheaton would be in  
12 rather immaterial detail. Because he has said, "Yes, I talked to  
13 Miss Matheson and I talked to Mr Harris." And Mr. Pugsley would  
14 like to say, "Well how often and how long did you talk?" "Did he,  
15 during this period mention the piece of paper going on the floor?"  
16 "Did he this, did he that?" He spoke to Ms. Matheson, according to  
17 the record, so, for 40 minutes. This Inquiry may consume 40  
18 weeks. Obviously he didn't tell Ms. Matheson everything so it's  
19 rather immaterial detail of their discussion that could be brought  
20 out. And Witness Wheaton has said, "Yes, I have met with her."

21 Now what falls from that in final argument is for the  
22 applicant. But to get into immaterial detail of what may or may  
23 not have been discussed in 40 minutes, we submit, doesn't  
24 advance the Inquiry that much.

25 The last item, My Lord, we point out is that the difficulties

1 here, and that is that neither Ms. Matheson or Mr. Harris reside in  
2 the province and they cannot be compelled by a subpoena to  
3 attend. This province doesn't have the benefit of an  
4 interprovincial Subpoenas Act, there was, the uniform statute.  
5 And one is resident in Newfoundland and one in British Columbia.  
6 So that to follow Mr. Pugsley wishes one would have to proceed  
7 by letter rogatory to those provinces, again to get evidence which  
8 we submit is a material contradiction of Staff Sergeant Wheaton.

9 And at the end, My Lord, we pointed that out at page 10 of  
10 memorandum but we do say that, "The current state of the law in  
11 this province as we have set it out, from a legal point of view, one  
12 would have to approach the question in the sense of a balance."  
13 And that the law doesn't permit one to ignore the balance or the  
14 rights of the press and go with strict compellability, but the  
15 balance must be addressed in the appropriate factors and that in  
16 doing that you have to conclude that the evidence is relevant and  
17 that it's necessary and vital and that it has to be a clear tilt in that  
18 way before the reporters can be compelled to testify.

19 Those are my submissions, My Lord, thank you.

20 COMMISSIONER EVANS

21 I'd like to ask you one question, Mr. Murrant. In any of the  
22 cases cited by you was there any waiver by the source?

23 MR. MURRANT

24 No, My Lord, and I'm not familiar with a case of that nature  
25 probably because the answer is obvious.

1 COMMISSIONER POITRAS

2 Mr. Murrant, could I sort of box you into a corner here a bit?  
3 And that is that you would have no objection to the journalists  
4 testifying with respect to information gathered by them from Mr.  
5 Wheaton.

6 MR. MURRANT

7 We would, yes, we would.

8 COMMISSIONER POITRAS

9 You would.

10 MR. MURRANT

11 We would.

12 COMMISSIONER POITRAS

13 Despite the releases obtained from Mr. Wheaton.

14 MR. MURRANT

15 Yes. And...

16 COMMISSIONER POITRAS

17 What would be the basis of it? Or your objection.

18 MR. MURRANT

19 That may, they would vary with respect to the two. In the  
20 case of Mr. Harris, it would be a protracted examination, a review  
21 of his book and his work. In the case of Ms. Matheson, and in the  
22 case of both on the second ground, they would consider it an  
23 abuse of their function as journalists. They are there to gather  
24 news and deal with important public events. And they don't  
25 consider it a philosophical principal right that they be used after

1 the fact to impeach sources. That it doesn't have the sense of  
2 fairness or ethics to them to do that. So the answer would still be  
3 that, My Lord.

4 COMMISSIONER POITRAS

5 If they have a privilege, does not that privilege, is not that  
6 privilege designed to protect the source and not themselves?

7 MR. MURRANT

8 Yes.

9 COMMISSIONER POITRAS

10 Well then, if the source releases them from that protection  
11 then they should not have any reason, surely, to object to  
12 testifying. I'm just trying to be logical, nothing else.

13 MR. MURRANT

14 If that's standing alone, that's right.

15 COMMISSIONER POITRAS

16 So let's go back again to the initial example I gave you a few  
17 seconds ago. That is if there is no objection to the journalists  
18 testifying with respect to information gathered by them from Mr.  
19 Wheaton, how then could they object to testifying? They could  
20 not use Mr. Wheaton as a reason for objecting to testifying.

21 MR. MURRANT

22 That's right. But they would still object, My Lord, for the  
23 other reasons.

24 COMMISSIONER EVANS

25 Would you articulate that again? The other reasons.

SUBMISSION - MR. MURRANTCOMMISSIONER POITRAS

The other reasons, yes.

MR. MURRANT

The other reasons would basically be, and especially in the case of Mr. Harris, that these people are journalists. They collect information, they have their sources now and in the future. They have both done, as is apparent to this Inquiry, significant work with respect to this affair. And in their view, this may be an instance as we point out, where the first three estates of government didn't possibly perform adequately, but that the media did an important job to the Canadian public in bringing forth the story. And well it may be that there's an inquiry and is it the function then to go back to the journalists and bring them forward and to deal with their work. And they say, in principle, "We shouldn't be used. We are separate from this. We are simply messengers and we shouldn't be used in this process in this fashion."

COMMISSIONER POITRAS

But you see what are their legal grounds for objecting if Wheaton releases them in respect of Wheaton?

MR. MURRANT

In legal grounds, the legal grounds of that alone, My Lord, yes, I agree.

COMMISSIONER POITRAS

I think so.

11851 SUBMISSION - MR. MURRANT

1 MR. MURRANT

2 And I think you've said you boxed me into that answer and  
3 then asked me for the next and I think I've given it or tried to.

4 COMMISSIONER POITRAS

5 Because, you see, I would extend that now to others. For  
6 instance, if releases were obtained from Mr. Carroll or Mr.  
7 Edwards with respect to either of these two journalists, then I  
8 would suggest to you that the two journalists, again, would not be  
9 in a position to object to testifying with respect to information  
10 gathered from these other two persons as well.

11 MR. MURRANT

12 Not on a legal basis, no. Would they volunteer to come  
13 across the nation and do so...

14 COMMISSIONER POITRAS

15 Well, that's something else.

16 MR. MURRANT

17 Is another matter. And I don't mean that to be facetious,  
18 My Lord, I just point that out.

19 COMMISSIONER POITRAS

20 Thank you, Mr. Murrant.

21 COMMISSIONER EVANS

22 How is going to restrict their future activities? That's what I  
23 judge you are referring to that other people may be afraid to  
24 come forward and discuss anything with a journalist. That doesn't  
25 stop them from talking to people.



1 MR. MURRANT

2 No, in the event it's, in the event we're dealing with, Staff  
3 Sergeant Wheaton only...

4 COMMISSIONER EVANS

5 We are.

6 MR. MURRANT

7 In confined questioning, which isn't what was advanced by  
8 Mr. Pugsley in his schedules...

9 COMMISSIONER EVANS

10 Well I think Mr. Pugsley was covering the waterfront. I  
11 don't think that either you, as counsel for the two, or the  
12 Commission would permit the wide ranging cross-examination  
13 that you anticipate. But if these journalists speak to other people  
14 at some future time, quite apart from this Commission, there's no  
15 fear on the part of the sources, that they can be compelled, unless  
16 you get into the balancing act...

17 MR. MURRANT

18 Right.

19 COMMISSIONER EVANS

20 Unless there's a waiver. And all the other people have to do,  
21 as I say, anybody else says, "I'm not going to waive that alleged  
22 privilege."

23 MR. MURRANT

24 And then that would become an issue. But if we confine it  
25 to that alone, My Lord, that alone, again, it's not the difficulty.

1 And other than perhaps the abuse of the reporter's function, but if  
2 we get into a broader examination then certainly it becomes a  
3 difficulty. And my fear or anticipation is that with the number of  
4 parties and interests having standing here, one can't help but  
5 have that. Now maybe I'm wrong but...

6 COMMISSIONER EVANS

7 Do you think we're, that we couldn't stifle any excessive  
8 enthusiasm on the part of counsel to get beyond the bounds of  
9 relevancy?

10 MR. MURRANT

11 I daren't to answer that, My Lord.

12 Unless there are other questions, thank you, My Lord.

13 CHAIRMAN

14 Thank you.

15 Mr. MacDonald?

16 MR. MacDONALD

17 My Lord, as my friend, Mr. Pugsley, has pointed out, a  
18 request was made of Commission counsel to attempt to secure the  
19 attendance of Miss Matheson and Mr. Harris. At that time we  
20 looked at the question of whether, in our view, either of those  
21 individuals could give evidence which would be of assistance to  
22 Your Lordships in answering the questions that are before you.  
23 We don't doubt for a moment that the evidence of these  
24 individuals may well be relevant to the position of Chief John  
25 MacIntyre. But in our view, Chief MacIntyre's not on trial here

1 and he is not the central figure of this thing.

2 We did not advance any evidence before Your Lordships yet,  
3 at least I don't believe we did, from any witness who was talking  
4 to, other than factual matters, with the possible exception, and  
5 with the exception, I suppose, of Bruce Archibald who gave an  
6 opinion on the evidence, on the handling of the trial.

7 I do take some exception to Mr. Pugsley's suggestion that  
8 Robert Patterson was called for the strict, and only purpose, of  
9 attempting to discredit Mr. MacIntyre.

10 Mr. MacIntyre had said he didn't know Patterson. That he  
11 never spoke to him. And if we were only calling Patterson for  
12 that purpose, "Did you know him?" "Did you ever speak to him?",  
13 I would perhaps agree with my friend. But Mr. Patterson was  
14 called because of his evidence which Your Lordships will have to  
15 judge. That he had been brought in to the police station, he was  
16 interviewed, and he was abused and he was asked to sign a  
17 statement that he'd never seen saying that he had seen Marshall  
18 stab Seale. That was the import of his evidence. And Your  
19 Lordships will have to judge it. But it's factual.

20 Now the evidence that is being suggested to be called here is  
21 completely collateral and is only for the purpose of testing the  
22 credibility of Staff Sergeant Wheaton. It's no other purpose. We  
23 have spoken with Mr. Harris some time ago and formed our  
24 judgement that he had no firsthand evidence that he could  
25 present to this Commission. All of his evidence is secondhand.

SUBMISSION - COUNSEL

1 Having, in the form of interviews and so on. We prefer to call the  
2 firsthand evidence. The individuals to whom he spoke and so on.

3 We were aware of the fact that these two individuals were  
4 outside the province and there's no practical, no easy way of  
5 compelling their attendance, there are ways, but it's not a simple  
6 consideration. And given the very nebulous relevance of the  
7 evidence, weighing it against the difficulty of securing their  
8 attendance, we made the decision that we would not call these  
9 individuals, or try to call the individuals.

10 Without for a moment suggesting that from Mr. Pugsley's  
11 client's point of view, I can see that he's interested in getting the  
12 evidence. But from our perspective, from the broad issues that  
13 Your Lordships have to look at, we did not consider it, other than  
14 very marginal, and in the circumstances were not prepared to call  
15 that evidence.

CHAIRMAN

17 I gather Nova Scotia does not have an interprovincial  
18 enforcement of subpoena?

MR. MacDONALD

20 No, My Lord. The only way, we would have to get, request  
21 the Superior Court in the other province to issue the compulsory  
22 documents to secure the attendance. And that, as I understand it,  
23 can only be done to secure their attendance to give evidence in  
24 their own province.

25

1 CHAIRMAN

2 One might be easier than the other.

3 MR. MacDONALD

4 It may well, My Lord, it may very well. But the best we  
5 could do would be compel, for example, Mike Harris to give  
6 evidence in St. John's and Miss Matheson to give evidence in  
7 Vancouver, provided the superior courts of those provinces were  
8 prepared to accede a request that would have to come from Your  
9 Lordships.

10 For all, for those reasons we said no. Now I don't take any  
11 position on Mr. Pugsley's application I just wanted you to know  
12 what our thinking was.

13 CHAIRMAN

14 Anything you wish to say in response? In reply?

15 MR. PUGSLEY

16 I don't know whether anyone else wishes to make their  
17 representations.

18 CHAIRMAN

19 I can't see why anyone else would have an interest in this?

20 Ms. Derrick, have you...

21 MS. DERRICK

22 Yes, I do, My Lord.

23 Very briefly I just want to say that on behalf of Mr.  
24 Marshall we support the view that Michael Harris and Heather  
25 Matheson should not be subpoenaed to testify before the

1 Commission. And it's our view that the task of the Commission  
2 will not be assisted by the evidence of either of these people. We  
3 take the position that Staff Wheaton's credibility can be assessed  
4 by this Commission, I submit, on the basis of the evidence which  
5 is currently before the Commission. And you also have the  
6 benefit of the discovery evidence of Heather Matheson which was  
7 tendered as an exhibit.

8 The position we take is that this evidence is not relevant  
9 and the fact of Staff Wheaton having effectively waived any  
10 confidentiality or released Mr. Harris and Ms. Matheson from any  
11 confidentiality does not decide the issue of relevancy and, of  
12 course, Your Lordships would have to decide that regardless of  
13 whether or not Mr. Wheaton would be satisfied to have them talk  
14 about contacts they had with him.

15 A final point I wish to make which is an articulated position  
16 by Mr. Marshall is that he takes particular exception to any  
17 attempt that might be made to put Mr. Harris' book on trial and  
18 we submit that the Commission would have to consider the  
19 evidence before it and whether or not the book is accurate is just  
20 not an issue before Your Lordships. Thank you.

21 CHAIRMAN

22 Anyone else wish to be heard?

23 MR. BISSELL

24 Just briefly My Lords. I would indicate that on behalf of  
25 the Royal Canadian Mounted Police, after all, Staff Sergeant

1 Wheaton is a member of the Royal Canadian Mounted Police, and  
2 it is his credibility which my friend, Mr. Pugsley, seeks to  
3 question. I would indicate that we share the view, as expressed  
4 by Commission counsel, Mr. MacDonald, on the matter. And  
5 basically our view is that to the extent that Staff Sergeant  
6 Wheaton's credibility is relevant to this Inquiry and I would  
7 concede that, to a certain extent it is relevant to the Inquiry, that  
8 Your Lordships are in a position to assess that credibility from his  
9 six and a half days of testimony before Your Lordships, as well as  
10 the other witnesses who have testified and will testify that dealt  
11 with Staff Sergeant Wheaton during the course of his  
12 investigation.

13 I would like to point out, as well, that what I feel to be an  
14 error in the submission Mr. Pugsley makes where he suggests in  
15 the first page of his submission that he spoke to witnesses, or to  
16 media during the course of his investigation.

17 Now I'm sure Mr. Pugsley will correct me if I'm wrong, but I  
18 don't think that there was any suggestion that he spoke to people  
19 from the media while he was investigating this matter. I think  
20 that it was at some time subsequent to that.

21 But finally I would say that if we go beyond what I see as  
22 the issue of both relevance and collateral issue, that we run the  
23 risk of opening up this Inquiry to a floodgate of other witnesses.  
24 For example, something that I feel is much more relevant to this  
25 Inquiry than the credibility of Harry Wheaton is the witness-

SUBMISSION - COUNSEL

1 taking procedures in terms of teenagers of John MacIntyre. And  
2 it certainly would be open, I would suggest, to counsel to call any  
3 person who, at the time of having statement taken by John  
4 MacIntyre, was a teenager. And that we can go well beyond what  
5 is really the proper scope of the Inquiry.

6 Those are my respectful submissions.

CHAIRMAN

8 Do you wish to be heard, Mr. Pink?

MR. PINK

10 My Lord, we take no position on the application.

CHAIRMAN

12 Mr. Pugsley.

MR. PUGSLEY

14 Just two points in response, My Lord. I may have  
15 misunderstood my friend, Mr. Murrant's, opening remarks about  
16 when he received advice, or a copy of my memorandum and when  
17 he received the information with respect to the questions I wish  
18 to address to Heather Matheson. The memorandum was sent to  
19 him this morning at 9 o'clock. I met with Mr. Murrant last week  
20 to discuss the nature of the questions I wanted to put to Heather  
21 Matheson and sent a copy of the questions that are before you to  
22 my friend, Mr. Murrant, I think last Friday or certainly Monday of  
23 this week. So he's had those for a period of time.

24 With respect to my friend, Mr. Bissell's comments. My  
25 recollection is, and I stand to be corrected, that Staff Wheaton did



1 indicate that he had talked to Michael Harris before the reference  
2 was heard. I think that may have been the one communication he  
3 had with the press before the reference was heard but certainly  
4 he did talk to Michael Harris on many occasions before the third  
5 Ebsary trial was concluded.

6 CHAIRMAN

7 I thank counsel for their submissions and we'll deal with it  
8 in due course without undue delay sometime between now, I  
9 suppose this Commission will go on for a lifetime or more. No,  
10 next week, we will, probably Thursday afternoon depending on  
11 how well-behaved counsel are during the proceedings earlier in  
12 the week.

13 2:57 - ADJOURNED TO 24 May 1988 - 9:30 a.m.

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REPORTER'S CERTIFICATE

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



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Margaret E. Graham

DATED THIS 19 day of May, 1988 at Dartmouth, Nova Scotia