

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 learned friend, Mr. MacDonald, is now referring to what Staff
2 Sergeant Wheaton told Mr. Edwards. I don't recall the last
3 comment that Mr. MacDonald said either from Wheaton or from
4 Mr. Edwards.

5 MR. MacDONALD

6 Well, my friend...

7 MR OUTHOUSE

8 "Tell us what you want to hear, tell us what we want to
9 hear."

10 MR. MacDONALD

11 I probably took some liberty, My Lord, from ...I was trying
12 to quote, what my friend, what Mr. Edwards testified to last week,
13 not to what Wheaton or Carroll testified to, and perhaps when we
14 resume in the afternoon I'll have the actual quotation and can put
15 it to him.

16 LUNCH BREAK - 12:28 p.m.

17 2:03 p.m.

18 MR. MACDONALD

19 Q. Just before we broke for lunch, My Lords, we were referring
20 to this statement that was taken from Mr. Marshall in
21 Dorchester and I suggested a certain line of questioning that
22 was, or statement that was put to Mr. Marshall at the time he
23 gave the statement and I was trying as best I could to
24 paraphrase what Mr. Edwards has told me last week and my
25 friend, Mr. Outhouse objected. So I would like to read to you

1 what the evidence was last week from Mr. Edwards. It's at
2 page 11765. And we're talking about, Mr. Edwards thinks it
3 was the first statement of February 18th but it may have
4 been March the 9th, but this is what he said:

5
6 But I can recall Sergeant Wheaton, Staff Sergeant
7 Wheaton, telling me that he and Carroll had met
8 with Donald and, I may not have this word for
9 word, but this is pretty close. They said, 'Look
10 we're looking into this thing. Now you can tell us
11 anything you want and we'll sit here and listen
12 politely and then we'll leave and you'll never see
13 us again or you can tell us what really happened
14 and we'll do our best from there.'

15 Now if I overstated this morning, I apologize. That's the
16 evidence that was given last week. Do I understand, Mr.
17 Edwards, that if there was a voir dire held to determine the
18 voluntariness of the statement that you would have had
19 evidence from Sergeant Carroll and Staff Sergeant Wheaton to
20 talk about the circumstances under which it was taken?

21 A. Yes.

22 Q. Would you not agree with me that, as you recollect what
23 happened, in effect Donald Marshall has been told this. What
24 you told earlier, the evidence you gave and what you told the
25 police is going to keep you in prison. If you just tell us the
same thing, you're going to stay in prison. But if you tell us
what really happened, and we'll do our best to get you out of
here.

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1 A. That's a reasonable interpretation, I think.

2 Q. And wouldn't you agree with me that that is an inducement?

3 A. Yes.

4 Q. But you still think that you would get that, in a voir dire
5 you'd overcome that and have that statement introduced, on a
6 trial for robbery now.

7 A. Uh-huh. I think the admissibility of that statement would be
8 a very iffy proposition but, you know, given the intervening
9 time between February 18th and March the 9th and his
10 ability to consult with counsel during that time, it's, I don't
11 think I'd be ashamed to try to get that in.

12 Q. Okay.

13 A. Okay?

14 COMMISSIONER EVANS

15 You can make an effort.

16 MR. EDWARDS

17 Sure.

18 MR. MACDONALD

19 Q. Here's what Sergeant Carroll said. This is on page 8769 of the
20 transcript, My Lords. He again said I can't quote it word for
21 word but I would suggest this is what he was told, and he's
22 talking February 18th as well.

23 A. Yes.

24 Q.

25 We are reviewing the circumstances surrounding

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1 your conviction, your trial, and having talked
2 with some other witnesses prior to coming here
3 to see you we feel that there was something else
4 going on in the Park other than just a casual
5 walk through the Park to catch a bus.

6 And that's before Marshall started to talk at all.

7 A. Right.

8 Q. Inducement?

9 A. Possibly.

10 Q. What you've told to date is not the truth.

11 A. Uh-huh. I think it's legitimate for a police officer to put that
12 to a witness. You know, the inducement part gets, comes in,
13 like if it had been stated like you stated it and Mr. Outhouse
14 object. Like tell us what we want to hear or we're going...

15 Q. But at least tell us a different story.

16 A. Tell us...

17 Q. That's your words.

18 A. Tell us the truth.

19 Q. Tell us a different story than you told us before.

20 A. Tell us what really happened.

21 Q. So what...

22 A. The truth.

23 Q. What you told before didn't really happen.

24 A. Yeah.

25 Q. And if you stick with that, you're going to stay in jail.

A. That could be read into it.

Q. At the very least, would you agree with this, that the Appeal

1 Court perhaps should have been aware of the circumstances
2 under which that statement was taken and in told...and told
3 that Marshall gave that statement after being told by the
4 police.

5 A. Uh-huh.

6 Q. You can tell us whatever you like and you're going to, you'll
7 never see us again. Or you tell us the truth.

8 A. Uh-huh.

9 Q. And we'll do our best for you. Don't you think that, at least,
10 the Appeal Court should have known that?

11 A. Yes. But again, you know, to keep it in balance, I have to say
12 that Mr. Aronson was aware of those circumstances and that
13 statement at the time as well.

14 Q. Yes.

15 A. So... And I felt that I acknowledged up front. There was an
16 inducement argument here. Perhaps I should have proffered
17 it but I think I at least left the door open for Mr. Aronson to
18 get in.

19 Q. Well, in fairness to you, Mr. Edwards, on page 70 of Volume 3,
20 and that's page 65 of the transcript, the court is looking at
21 that question and...

22 A. Is that page 65 in my...

23 Q. Yes, in yours.

24 A. Okay.

25 Q. And at the bottom you say:

1 On that point, My Lord, if I may just be perfectly
2 honest with the court, in a trial situation, I would
3 agree that it is not completely straightforward
4 that we would get the statement in.

5 A. Right.

6 Q. But you seem to be arguing that it's different here. Marshall
7 is not on trial. This is an appeal and, therefore, the test of
8 voluntariness doesn't have to be met. Is that a fair summary
9 of what you had said to them?

10 A. Yes. I'm just looking for the reference.

11 Q. It starts a couple of pages earlier, actually.

12 A. Yeah.

13 Q. On page 63.

14 A. Where I mentioned that he wasn't in jeopardy. At the bottom
15 of page 64 in mine.

16 Q. "He's not being tried for robbery." That's what you mean, he's
17 not in jeopardy, isn't he?

18 A. Well, I, the direct quote:

19 There's no question he is not presently in
20 jeopardy in the sense that things could not get
21 any worse for him than they presently are. But
22 the fact of the matter is that that statement
23 could be used in evidence against him. It may
24 assist the court in some respects and,
25 hypothetically, it may assist the court in
resolving the matter then and there if the
statement is admitted.

Q. "Things can't get any worse" because he's already in jail, is

1 that what you mean?

2 A. Yes, and I believe what I was saying there, although it's
3 difficult, again, to recall thoughts let alone your words, was
4 that whatever he said there couldn't be used against him in a
5 subsequent proceeding, anyway, unless, you know, except for
6 perjury, of course, but that wasn't crossing my mind.

7 Q. You weren't aware... Well, we'll come later, I guess, to what
8 the Court finally said.

9 A. Yes.

10 Q. And how it may have been used against him. I still have
11 some difficulty, though, understanding why it is important on
12 the reference, given the narrow issue that the court has now
13 defined, why it's relevant at all whether Marsh... what
14 Marshall's intention was on the night in question.

15 A. Well, again, you know, coming out of the October 5th meeting,
16 I felt that the court had narrowly defined its terms of
17 reference, so to speak. But I still felt that given Gorecki,
18 Number 2, that, you know, that wasn't cast in stone and that
19 the proceedings could be opened up. And my feeling was that
20 the question of whether or not there had been a robbery was
21 relevant to the issue of whether or not there had been a
22 miscarriage.

23 Q. Whether there had been a miscarriage of justice.

24 A. Yes.

25 Q. Only to that point, isn't it?

1 A. Yes. Oh yes, it doesn't resolve the key issue on who did the
2 stabbing.

3 Q. And would you agree with me that before you can make a
4 final determination whether there's been a miscarriage of
5 justice...

6 A. Yes.

7 Q. That you have to hear all of the evidence, including the
8 evidence of the police.

9 A. Yes, and at that point, although I felt it was very unlikely that
10 the police would be called or I'd be permitted to call them,
11 that was still a possibility in my mind and something that I
12 thought I might push for. As it turned out, I didn't and, you
13 know, we'll get into that, no doubt.

14 Q. But for our benefit and so we'll understand each other as we
15 get into that topic, would you define for me your
16 understanding on miscarriage of justice, what you mean by
17 that?

18 A. I think Mr. Aronson sets it out pretty well in his brief. He
19 talks about two senses in which miscarriage of justice is
20 generally understood and, you know, for convenience, I'll
21 adopt what he said.

22 Q. Okay.

23 A. Originality isn't my strong suit. But, you know, what he says
24 is that a miscarriage of justice can refer to a procedural error
25 being so blatant, in effect, that the resulting trial is deemed a

1 miscarriage. Or a miscarriage of justice, and this is the sense
2 that's most relevant here, would encompass a situation where
3 an innocent man is convicted of a crime he didn't commit.

4 And that, of course, is the...

5 Q. And you would accept that as a definition of miscarriage of
6 justice as a good definition.

7 A. Yeah, I think so.

8 2:15 p.m.

9 Q. Thank you. Let me go back to your notes now, if we could,
10 Mr. Edwards. And I'm...

11 A. But they are...

12 Q. ...referring to your notes of December the 6th.

13 A. If I could just add one rider on that definition. Where an
14 innocent man is convicted of a crime he didn't commit I
15 would put the rider on that the question of fault or
16 responsibility, as far as he's concerned, is relevant.

17 Q. Is relevant to whether there was a miscarriage?

18 A. To whether there is a miscarriage, miscarriage of justice, too,
19 can be a question of degree, you know, I suppose, and so the
20 question of fault, I think, that it has some relevance, you
21 know. Maybe the legal scholars would disagree with that.
22 But that's my own gut feeling on it.

23 Q. When you left the Court after December the 2nd, did you
24 have any feel of how the Court was looking at this thing,
25 what was likely to happen?

1 A. To say I was alarmed would be overstating it, and I want to
2 be accurate as I possibly can. But I felt very, very
3 uncomfortable after the hearing and the old haunting fear
4 going through my mind, which I had had to some extent
5 right from the very outset, that there was a danger of a new
6 trial being ordered was more real than ever. That was
7 about as accurately as I can recall my feeling at that time.

8 Q. And that would be a scenario that you would think would be
9 bad.

10 A. Yes. And, you know, in the weeks following December 2nd,
11 and prior to my drafting my factum, I did a lot of agonizing,
12 I suppose, about the implications of the ordering him a new
13 trial.

14 Q. On December 6th you had a discussion with Mr. Herschorn,
15 and you have your notes on that.

16 A. Yes.

17 Q. Were you in contact with Mr. Herschorn or others in the
18 Attorney General's Department throughout this reference?

19 A. You mean on December 1st and 2nd.

20 Q. No. In the sense of keeping them up to date on what was
21 going on.

22 A. I think so, like to understand that, I guess, you would have
23 to appreciate that Martin Herschorn and I relate as friends
24 as much as, you know, boss/employee-type of thing, and
25 conversation between us is very easy. So in a

- 1 conversational way I would be keeping him up to date.
- 2 Q. Was there any sort of supervision being exercised over you?
- 3 A. No.
- 4 Q. Okay. Now in your note of December 6th you make the
5 point, first of all, Mr. Herschorn inquired as to reasons why
6 you had decided not to call the police officers.
- 7 A. Right.
- 8 Q. And you told him the Court had signalled that they did not
9 want to get into that.
- 10 A. Right.
- 11 Q.
- 12
- 13 When I was asking for leave to cross on
14 O'Reilley's statement Chief Justice had made the
15 point that witnesses now admit they had lied, no
16 point in getting into why they had lied. Recalled
17 that he made at least three references in that
18 vein.
- 19 A. Yes.
- 20 Q. Were these notes made on December 6th?
- 21 A. Yes, I think they were.
- 22 Q. Yes, okay, I see it.
- 23 A. And the phone call had taken place at eleven, that's right.
- 24 Q. If you're not interested in why witnesses had lied, knowing
25 that the evidence of those witnesses had resulted in the
conviction of Marshall.
- A. Yes.

1 Q. And if you're not interested in knowing why they had lied.

2 A. Yes.

3 Q. Can you explain how you could then deal at all with whether
4 or not there had been a miscarriage of justice?

5 A. No.

6 Q. You couldn't deal with it, could you, realistically you
7 couldn't?

8 A. Not in an appropriate manner.

9 Q. Thank you. You go on to say that you would confer with
10 Mike Whalley during the noon adjournment and at that time
11 Whalley agreed there was no much point calling the police
12 because he felt it was obvious that all witnesses were lying
13 anyway.

14 A. Right.

15 Q. And you weren't asking for, I take it, you weren't asking for
16 Mr. Whalley's consent as to how you were conducting this
17 reference, were you?

18 A. No. What I was doing was being a little political about it
19 because...well, I knew that Whalley had been to see the
20 Deputy Attorney General in July and so by having that
21 conference with him he couldn't very well complain that I
22 then hadn't called the police.

23 Q. You go on...

24 A. That's political with a small "p".

25 Q. Yes, I understand. You go on to comment, as well, that "The

1 city police had fared far worse in the court...in the press
2 than they had in court," and you say, "The bottom line was
3 the police had come through in the best possible light and
4 calling them would not have improved their position."

5 A. That's right.

6 Q. Was that of concern to the Attorney General's Department,
7 that the police come through in the best possible light?

8 A. Well again, perhaps someone else can answer that. If it was
9 a concern it wasn't communicated to me other than
10 indirectly, I suppose, through the phone conversation I had
11 had with Mr. Coles in July. You see, as I say, and as I said
12 in the brief and it was the position I was in. I was kind of
13 on a tightrope. I was adversary in some senses, in the sense
14 that I was to cross-examine a witness, and on side with
15 Marshall in another sense, I suppose. But my basic strategy
16 going in there, as far as Chant and Harriss were concerned,
17 was to probe them to discover whether there may have
18 been reasons other than police pressure. I mean, I was
19 taking the adversarial position there and seeing if I could
20 discover whether there were reasons other than police
21 pressure why they might have told the stories they did.

22 Q. Was it part of your objective to protect the police as part of
23 the justice system?

24 A. I never thought of it in those terms. I suppose I thought of
25 it more in terms that, well, for purposes of Chant and Harriss

1 the lines are pretty well drawn. Mr. Aronson is going to
2 look after one side of the issue and I'm going to look after
3 the other side, and hopefully the truth would emerge.

4 Q. Okay. And you go on to note that you and Martin Herschorn
5 were having a discussion whether you would take a position
6 on the actual...on the argument, a position for acquittal.

7 A. Yes.

8 Q. In your experience, is it not the usual practise for the Crown
9 to take a position on an appeal?

10 A. Well, again, recognizing that I'm not an appeal lawyer, but
11 having read a lot of appeal decisions it seems to me, well, I
12 can't think of another case right off where the Crown has
13 gone in and not taken a position.

14 Q. And there have been appeals taken from some of your
15 cases, not by you but by others.

16 A. Oh, yes.

17 Q. And do you see the factums in those cases?

18 A. I usually don't see the factums, but I usually, as mentioned
19 when we were beginning the examination, I usually have
20 discussions with the solicitor who is handling the appeal and
21 I know basically what his arguments are going to be.

22 Q. And he always takes a position.

23 A. In every case I can think of.

24 Q. Thank you. The next notes I have are Monday, January the
25 17th.

1 A. Right.

2 Q. And that is a...the notes of a visit to your office by Chief
3 MacIntyre.

4 A. Yes. And just...I want to go back because there is another
5 point that perhaps should be made. Not only does the
6 Crown always take a position, but sometimes a lawyer who
7 is handling the appeal of one of my cases, and I just thought
8 of one that I had, takes a position which is inconsistent with
9 the conviction.

10 Q. Uh-hum.

11 A. I know I had a conspiracy trial where there was a
12 jurisdictional argument and Mr. Fiske, who handled the
13 appeal of that, raised before the Court of Appeal the
14 jurisdictional problem that, you know, at trial I had taken
15 the position that there was no problem, as did defence
16 counsel. So defence counsel were precluded without looking
17 pretty red in the face from raising the issue. And Mr. Fiske
18 looked at it and he said, "There's a problem here," and the
19 trial was overturned on that basis. So...

20 MR. CHAIRMAN

21 Had the...in that case had counsel for the accused raised the
22 issue as a grounds for appeal?

23 MR. EDWARDS

24 No, because the...see there were...it was conspiracy, there
25 were three counsel for the accused and myself, and the four of us

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1 had agreed on trial by Judge alone rather than Judge and Jury
2 without getting into the particulars. There's a new section 507, I
3 think. And so I tendered a letter of agreement as an exhibit in
4 that case and they all agreed on the record that there was no
5 problem with jurisdiction. So, you know, they couldn't very well
6 then go to the Court of Appeal and say, "Well, that's not right. "
7 Although one of the accused did change counsel, but the issue was
8 raised by Mr. Fiske, Crown counsel.

9 2:29 p.m.

COMMISSIONER EVANS

10 Why couldn't the defence have changed positions? The
11 Crown could. Why couldn't the defence?

MR. EDWARDS

12 I suppose they could have, but I believe one of the defence
13 counsel, when the issue was raised in the Court of Appeal, he said,
14 when he was asked to give submissions, he said, "You know, My
15 Lord, this is very embarrassing for us because we had agreed to it
16 but Mr. Fiske is right -- cake and eat it, too.

MR. CHAIRMAN

17 You would agree that's an appropriate position for...

MR. EDWARDS

18 Oh, no question about it. And I raise it because, you know,
19 some might question whether or not it is appropriate and I don't
20 think there's any question but that there is. And sometimes the
21 Crown will take a position which is inconsistent with the
22
23
24
25

1 conviction.

2 MR. CHAIRMAN

3 Do you know any instance where an Appeal Court has, say,
4 overturned a conviction on a ground that it was not argued before
5 it or raised as a ground for appeal?

6 MR. EDWARDS

7 Yes, I know that has happened a couple of times. I can't, not
8 on my cases but I know it, I've heard of it happening. And by
9 the way, the ironic thing, just getting back to this conspiracy thing,
10 when the Appeal Court decision came out, credit was given to the
11 new defence counsel in the decision. But there's no question that
12 the issue was raised. Mr. Fiske was a little bit exorcised by that.

13 MR. MACDONALD

14 Q. Monday, January 17th, 1983, were those notes made on that
15 day?

16 A. Which was that? Monday, January 17th?

17 Q. 17th?

18 A. Yes.

19 Q. A visit with Chief MacIntyre.

20 A. Right.

21 Q. And at that time, you spoke about what happened in the
22 reference and then you go on to note that the Chief began to
23 rehash the facts of the case. "Told me he would go to his
24 grave believing that Marshall had inflicted the wound to his
25 left arm himself."

1 A. Yes.

2 Q. Also says, "The reason Marshall removed stitches was so no
3 blood sample could be taken." And you refer Marshall going
4 back to the scene. In your view, was Chief MacIntyre, at that
5 stage, telling you, in his view, Marshall was guilty?

6 A. That was the implication I took from that. Otherwise, you
7 know, really why stress the self-inflicted wound?

8 Q. And that is the stage when the full knowledge of this
9 purported robbery is well known.

10 A. Yes.

11 Q. Even Marshall's own statement is now out in the public,
12 having been introduced in the Appeal Court.

13 A. Yes.

14 Q. And even then, you had the impression that Chief MacIntyre
15 believed that Marshall was guilty.

16 A. Even then and even when he gave evidence before this
17 Inquiry last December. I recall he had very great difficulty,
18 in my view, admitting that Marshall had not stabbed Seale.
19 And I don't know if at the end of the day he really did admit
20 that.

21 Q. You're not alone. Then you say towards the end of the
22 conversation:

23
24 The Chief told me that he had a meeting with the
25 Deputy Attorney General and that at the end of
that meeting, the Deputy had walked around the

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1 table, placed his hand on the Chief's shoulder
2 and said, 'As far as I'm concerned, that fellow
3 was the author of his own misfortune.'

4 A. Right.

5 Q. The Chief told you that, did he, on January the 17th?

6 A. Yes, he did.

7 Q. Did he give you any indication to you when the meeting with
8 the Deputy had taken place?

9 A. No, and, you know, that was an opportunity lost, I suppose. I
10 don't know why I didn't press him on that because, as far as I
11 know, Chief MacIntyre has never met personally with the
12 Deputy Attorney General. As far as I know, he's only met
13 with Gordon Gale. The difficulty I have with this is that
14 walking around the desk and putting the hand on the
15 shoulder, that is more consistent with the personality of
16 Gordon Coles than Gordon Gale. I can't imagine Gordon Gale
17 doing that. And I see there's a few chuckling around here
18 who know Gordon Gale and know that to be true.

19 Q. But it was not the suggestion, at the time, I take it, at the time
20 you made this note, it wasn't suggested that that particular
21 incident had taken place within the short period of when it
22 was told to you, was it?

23 A. No, there was no reference to when it had taken place.

24 Q. Now let me get you to go to Volume 31 at page 126.

25 A. Right.

Q. That is a letter that you wrote to Mr. Herschorn on January 18

1 of 1983 and were you writing that to him at his request?

2 A. No.

3 Q. Did you consider you needed the...

4 A. I say, I say "No". I should say I don't think so and I think I
5 would have recalled had I been asked to write that particular
6 letter.

7 Q. Did you consider you needed the approval of the Attorney
8 General's office to the argument you intended to advance to
9 the Appeal Division?

10 A. At that point, yes. And if you just refer to... Well, perhaps it's
11 not necessary to refer, but the note on December 6th when I
12 spoke to Martin, and he told me to hold off taking a position
13 as long as I could because of the concern of the Deputy
14 Attorney General. So I held off as long as I could and January
15 18th was as long as I could. Because I had to write the
16 factum.

17 Q. Now I put it to you that what you were advocating in this
18 letter on January 18, 1983 is virtually a complete reversal
19 from what you had advocated in April of 1982.

20 A. That's fair.

21 Q. In '82, you had said the most desirable result would be an
22 acquittal on the basis that there had been a miscarriage of
23 justice.

24 A. Right.

25 Q. And, in effect, what you are saying on January 18, 1983 is

1 that there wasn't any miscarriage of justice.

2 A. Fair enough.

3 Q. Now I also put it to you that there has been no facts come to
4 your attention.

5 A. Uh-huh.

6 Q. Between those two dates that would lead you to change your
7 mind.

8 A. No concrete evidence.

9 Q. No concrete evidence, okay.

10 A. No, right.

11 Q. Can you tell us, then, what happened? Why a man who was
12 going to argue this in the Appeal Division came around 180
13 degrees?

14 A. The short answer is that having been in the court, the Appeal
15 Court, it was my view that this was the only argument that
16 was going to fly.

17 Q. "This" being the argument...

18 A. The argument in the January 18th...

19 Q. In January.

20 A. That's right.

21 Q. Now why did you have that feeling, "It's the only argument
22 that's going to fly?"

23 A. Well, as I stated before, when I left the court on December
24 2nd, I was greatly concerned about what was going to happen
25 from that point. And, quite frankly, I felt that the overriding

1 likelihood at that point was that the court was going to order
2 a new trial. I thought that that would be wrong and I'm
3 understating my feeling now. I felt that if I took this position,
4 that the court with the Crown on side with the defence
5 recommending an acquittal, wouldn't have a lot of room to
6 manoeuvre. It would have been a very drastic step for the
7 court, I think, in view of a joint submission by Crown and
8 defence, that there should be an acquittal, I think it would
9 have been a very drastic move for them and one that I was
10 gambling they wouldn't be prepared to take to order a new
11 trial. At the same time, I felt that by putting the
12 responsibility on Marshall, that that would make the ordering
13 of an acquittal a palatable proposition for the court.

14 Q. On January 18th of 1983, did you still believe that there had
15 been a miscarriage of justice here?

16 A. That was my personal belief. I have never personally
17 believed anything else. I thought that this was an argument
18 that I could make and lawyers, I suppose, find themselves in
19 positions from time to time arguing a point of view which
20 may not be in accord with their personal beliefs and I guess it
21 came down to my convincing myself that the end; ie., the
22 acquittal, justified the means.

23 COMMISSIONER POITRAS

24 Mr. Edwards, just to understand that properly. You say that
25 you put the responsibility on Mr. Marshall for what reason again?

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 MR. EDWARDS

2 The author of his own misfortune.

3 COMMISSIONER POITRAS

4 What was the purpose of that? What was the purpose of
5 placing the responsibility on Marshall's shoulder?

6 MR. EDWARDS

7 That, in my perception, bore directly on whether or not
8 there had been a miscarriage of justice or, more specifically,
9 whether or not the court would order.

10 COMMISSIONER POITRAS

11 But do I understand that you are trying to place the
12 responsibility on Marshall's shoulder with a view to avoiding a
13 second hearing, another hearing?

14 MR. EDWARDS

15 With a view to avoiding a retrial.

16 COMMISSIONER POITRAS

17 A retrial, okay.

18 MR. EDWARDS

19 My... You know, it's very difficult to give a succinct answer
20 on this because I had literally stewed on it for a number of weeks
21 by the time that letter was written and my feeling, I guess my
22 overriding rationale was this. That the court that had ratified
23 Marshall's original conviction should be the one to say that now
24 he's acquitted. I felt that matters would proceed from there to
25 the Ebsary trial. That Ebsary, in my view, would likely be

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 convicted, at least of manslaughter. We started out with murder
2 but I recognized that it might come down to manslaughter, which
3 it did. And I don't think I'm attributing any great powers of
4 foresight to myself because I don't really, I don't want to give the
5 impression that I could foresee the future that well, but it
6 occurred to me at the time that there would be so many
7 unresolved questions by this, even after the acquittal and the
8 Ebsary, that this type of proceeding might come about.

COMMISSIONER POITRAS

10 But it boils down to the responsibility being placed on
11 Marshall's shoulders with a view to ordering, to avoid the
12 ordering of a new trial.

MR. EDWARDS

14 Yes.

MR. CHAIRMAN

16 What causes me some difficulty, Mr. Edwards, is if both the
17 Crown and counsel for Donald Marshall had urged upon the court
18 to acquit, it seems to me the court would be hard put then to
19 reach any other conclusion, wouldn't they? Despite what
20 comments that you'd heard and feelings that you pick up during
21 any trial.

MR. EDWARDS

23 That wasn't my view prior to the argument in February and
24 it's difficult because, and I guess anybody who has done a lot of
25 trial work would know that you're almost going on a gut reaction.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 You know, I can't point to anything specific in the remarks of any
2 of the judges prior to February, which would give that indication.

MR. CHAIRMAN

4 Let me take it one step further. Supposing that both you
5 and Mr. Aronson had urged among the court that there be an
6 acquittal and despite such urging the Appeal Court had ordered a
7 new trial, it certainly would make it then much easier, would it
8 not, for the Crown not to proceed with a new trial?

MR. EDWARDS

10 And I thought of that, My Lord. I tried to weigh every
11 possible scenario and, given my own limitations, I probably didn't
12 touch on them all, but I thought of that. And I can tell you in all
13 candor that I looked at it from Donald Marshall's point of view
14 and thought, well, how satisfactory would that be, really, if a new
15 trial were ordered and the Attorney General simply put a stay of
16 proceedings on it or offered no evidence and he was found not
17 guilty? From Marshall's point of view, you'd still be left with the
18 highest court in this province saying "You must go back to trial." I
19 mean that statement would be on the record. From the public's
20 point of view, I'm not sure about the effect and, again, you know,
21 my work is with juries, so I try to go on my sense of what a jury
22 would think. I'm not sure about the effect that would have had
23 on a jury hearing Ebsary. Although, you know, subject to getting a
24 jury screened and that type of thing.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 MR. CHAIRMAN

2 And in fairness to you, as I recall it, when you were
3 advocating that the review be under 617(c)...

4 MR. EDWARDS

5 Yes.

6 MR. CHAIRMAN

7 You were hoping that this would afford Marshall an
8 opportunity to bring before the public all of the evidence.

9 MR. EDWARDS

10 Yes.

11 MR. CHAIRMAN

12 Rather than just a simple acquittal.

13 MR. EDWARDS

14 That's right. That's right.

15 COMMISSIONER EVANS

16 Mr. Edwards, you were of the view that it was a miscarriage
17 of justice?

18 MR. EDWARDS

19 No question about it.

20 COMMISSIONER EVANS

21 Aronson was of the view it was a miscarriage of justice.

22 MR. EDWARDS

23 That's correct.

24 COMMISSIONER EVANS

25 If both of you had made a joint representation to the court,

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 wouldn't they have been hard put to come to any other
2 conclusion?

MR. EDWARDS

4 They may have been hard put but I think they would have
5 come to another conclusion and I'm relying... Before February,
6 before the argument in February, I was relying on gut feeling
7 only. After February and the exchange between Mr. Justice Pace
8 and I, and maybe it's a misinterpretation by me, but there's no
9 question in my mind that the view on miscarriage would have
10 been rejected, notwithstanding joint submission by the Crown and
11 defence.

COMMISSIONER POITRAS

13 Have we heard anything about this discussion yet?

MR. MACDONALD

15 We're only in January, My Lord.

COMMISSIONER POITRAS

17 Sorry.

MR. MACDONALD

19 We're coming there.

MR. EDWARDS

21 That's why it's difficult to discuss them in isolation because
22 any doubts I may have had were erased in February.

MR. MACDONALD

24 Q. Just so we can start out on the same ground, the Appeal
25 Division, as I understand it, had three options available to it.

1 First of all, they could...That's if they are going to allow the
2 appeal. They could obviously dismiss an appeal.

3 A. Right.

4 Q. But if they were going to allow the appeal, they could allow it
5 on the basis that the verdict is unreasonable or cannot be
6 supported by the evidence. That's one option.

7 A. Right.

8 Q. And having made the decision, they could say that the appeal
9 is allowed. They don't have to say anything else.

10 A. Right.

11 Q. Correct? They could have also allowed it on the basis that the
12 judgement of the trial court should be set aside on the ground
13 of a wrong decision on a question of law. That's got nothing to
14 do with our case but that's an option.

15 A. Right.

16 Q. And the third, they could allow the appeal if it's of the
17 opinion that on any ground there was a miscarriage of justice.

18 A. Yes.

19 Q. Those are the options available to it. Now do I understand
20 from what you've said that you do not believe, based on your
21 sense and your feel for the way the court conducted itself on
22 December 1 and 2...

23 A. And not only...

24 Q. And perhaps even before that.

25 A. Okay, all right.

1 Q. In July and October, that you do not believe that court would
2 have allowed the appeal on the ground there was a
3 miscarriage of justice.

4 A. That's right.

5 Q. But they may have allowed the appeal on the ground that the
6 verdict could not be supported by the evidence.

7 A. Right.

8 Q. There's another step, though, isn't there? Having allowed the
9 appeal, they must decide whether to order a new trial or
10 enter an acquittal.

11 A. Exactly.

12 Q. And that's a second step altogether.

13 A. Right.

14 Q. Let me go back to your letter, which is on page 126 of Volume
15 31. You are setting out on page one the points that you say
16 should be emphasized before the court.

17 A. Yes.

18 Q. And (A) and (B), those are points to be emphasized only
19 relative, only in relation to the question whether or not there
20 has been a miscarriage of justice, isn't it?

21 A. Right.

22 Q. Could you or did you give thought to this scenario, of just
23 dealing strictly with whether or not the evidence would
24 support a decision or a conviction at this date, leaving
25 miscarriage of justice aside altogether. Don't even talk about

it.

1 2:52 p.m.

2 A. What, writing my factum and just ending it there?

3 Q. Just saying that in your view and in the view of the Crown,
4 an acquittal should be entered because the decision cannot
5 now be supported on the evidence, and that's the end of it.
6 There's no need of dealing with miscarriage of justice, is
7 there?

8 A. Well, I think the Court in the next stage of its deliberations
9 has to decide on what basis it's going to order the acquittal.

10 Q. Well, first of all, it has to decide whether to allow the appeal.

11 A. Yes, right.

12 Q. And it can allow the appeal on the ground that the evidence
13 now available could not support a conviction.

14 A. Yes.

15 Q. And having reached that decision they then go on to decide
16 whether to order an acquittal or to order a new trial, is...am
17 I correct?

18 A. Yes.

19 Q. And having found that the evidence could not support a
20 conviction, how could they then order a new trial? They're,
21 in effect, saying there is no evidence, no evidence to support
22 a conviction.

23 A. Right.

24 Q. Why do we have to deal with a miscarriage of justice at all?
25

1 That's where I'm having my difficulty.

2 A. Uh-hum. You know, that could very well be the case but
3 rightly or wrongly my impression was that I didn't think the
4 Court would simply leave it at that.

5 Q. So, the argument that you are putting forth to your
6 superiors in January and subsequently in your factum...

7 A. Yes.

8 Q. ...are to achieve an end--the end being an acquittal of Donald
9 Marshall.

10 A. Yes. And consequently, I mean, I know...I knew that that
11 view would accord with the view of the Deputy Attorney
12 General, but I have to say in fairness that even if I didn't
13 know how Gordon Coles felt about it, I would have argued
14 the same way.

15 Q. Now...

16 A. I felt a very strong argument had to be made in order to see
17 an acquittal come out of the other end of the process. Now,
18 that might be a wrong judgement on my part, but that's how
19 I felt.

20 Q. I'm intrigued by your statement though that you said you
21 knew that that view would accord with the view of the
22 Deputy Attorney General.

23 A. Yes.

24 Q. What view?

25 A. The view that Marshall must bear considerable

1 responsibility.

2 Q. Ah-ha. Okay.

3 A. Yeah.

4 Q. So, you knew that that was the view at the top of the
5 Attorney General's Department that Marshall should bear a
6 large responsibility for this himself.

7 A. I felt that that was the view at the deputy ministerial level,
8 yes.

9 Q. Okay. Thank-you. Now, had you discussions with Coles other
10 than the one we had...you had one we looked at, I think,
11 December 6th or so.

12 A. No. I had one telephone call with Coles back in July, was it
13 July 12th?

14 Q. That was after Whalley was up to see him.

15 A. Yes.

16 Q. Okay. I see.

17 A. And then I had had the conversation with John MacIntyre
18 where he talked about Coles, although I had doubts about
19 whether it was Coles because I didn't know about such a
20 meeting.

21 Q. Yes.

22 A. And, how I picked it up, whether it was in conversation with
23 Martin or Gordon Gale, but it was my sense, again, that the
24 deputy was of that view.

25 Q. Okay. So, do I understand we...we're in sort of a two-stage

1 process. What you're doing in January is letting the
2 department know, okay, I'm going to quote...I'm going to
3 spew out the department view in the Court and then in your
4 factum you're telling the Court what you think they want to
5 hear, all with the view of getting Donald Marshall acquitted?

6 A. Well, it was primarily telling the Court, you put it that way,
7 what I thought they wanted to hear. Coincidentally it
8 happened to accord with what I thought to be the deputy's
9 position.

10 Q. Okay. Now, let me just go to those two points then in your
11 letter and see what you believe.

12 A. Yes.

13 Q. And what you believed then.

14 A. Right.

15 Q. You say "The appellant must bear considerable
16 responsibility for the predicament in which he finds
17 himself." Was that your belief at that time?

18 A. At that time I suppose if you substituted the word "some"
19 for "considerable," that would be closer to my feeling at that
20 time and my feeling today.

21 Q. And those are two words that could be interpreted all kinds
22 of ways, if we say on a scale of one to ten "considerable" is
23 eight, where do you put "some"?

24 A. I'm not comfortable quantifying it like that. At the risk of
25 being convoluted, can I try another way to answer?

- 1 Q. Certainly.
- 2 A. My feeling is that had Donald Marshall been straightforward
3 or told about the robbery in 1971 that he may have been
4 able to save himself, because there were three possibilities
5 there. Number one, having received a plausible story rather
6 than the story, I respectfully submit, the police would have
7 found almost bizarre, you know, about encountering two
8 guys dressed like priests from Manitoba who for no reason,
9 no apparent reason, did the stabbing. Had the police heard
10 that then their investigation may have taken a different
11 direction. That was the first possibility.
- 12 Q. Now, if I can just interrupt as you go.
- 13 A. Okay.
- 14 Q. That's notwithstanding the fact that in July of 1982 when all
15 the facts were known...
- 16 A. Yes.
- 17 Q. ...and you were being told what the police...that they don't
18 accept that, and you were told as late as December of '82 by
19 John MacIntyre.
- 20 A. Yes.
- 21 Q. That he stills believes Marshall...
- 22 A. That's right.
- 23 Q. ...was the murderer.
- 24 A. Yes.
- 25 Q. Knowing all of those facts.

1 A. Yeah, but, you know, let's be careful on that, because by the
2 time John MacIntyre told me that he'd go to his grave
3 believing Marshall had inflicted the wound and he may as
4 well have said to me, "I'll go to my grave believing Marshall
5 did it," he had lived with this thing for what, eleven, twelve
6 years. And I'm no psychologist but I think that most people
7 in MacIntyre's position would have great difficulty
8 admitting the possibility, particularly after that amount of
9 time, knowing that Marshall had spent eleven years in jail,
10 would have great difficulty in admitting that he had been
11 wrong. His mind set at that time is far, far different than,
12 and again maybe I'm speculating, than when he is into this
13 investigation initially back in '71. At that time, if I can put
14 it this way, John MacIntyre or any investigator would have
15 been more open to the suggestion that there is another
16 possibility here than he is twelve years later after he, in
17 order to admit that, would have to admit, well, "I'm the guy
18 who is responsible for him being in jail."

19 Q. Okay. That's fair. Now, you said there were three.

20 A. Okay.

21 Q. That's one.

22 A. So, yeah, my first one then was that had Marshall told about
23 the robbery, the police investigation could very well have
24 taken a different direction. Number two, had he told about
25 the robbery in '71 to his lawyers then they, I think, would

1 have taken steps to check out the validity of his story.

2 Q. What steps do you think they would have taken?

3 A. I think that they could have done some legwork. Sydney is
4 not a very big place. You wouldn't have to ask around very
5 much I don't think to find out about Ebsary. He was fairly
6 notorious at the time.

7 Q. We had his description.

8 A. Pardon me?

9 Q. We had his description.

10 A. They had his description, but...and here Simon Khattar's
11 evidence is very telling, and as I recall, I don't know if he
12 said it directly, but I think the effect of Simon Khattar's
13 evidence was that he didn't believe his client. They didn't
14 believe the story Marshall told them, and, you know, I
15 haven't read his evidence lately, but I believe Simon stated
16 that had Marshall told about the robbery, they might have
17 done something different.

18 Q. Okay.

19 A. So, that was the third possibility or second possibility. And
20 the third one, and probably the most significant, is the
21 impact that Marshall's testimony had on the jury. If he had
22 come clean with the jury, and again I mean my pre-
23 conditioning maybe is showing now, and said what he was
24 actually doing in the park that night, it may well have raised
25 a reasonable doubt in his favour. Again, that's all

1 speculation. But I...the key word is plausible. The story he
2 gave in 1971 is, with greatest respect, not a plausible story.

3 Q. Okay. And you say the last, notwithstanding, I assume, that
4 there are two witnesses before the jury who have given
5 evidence that they actually saw Marshall stab Seale.

6 A. Yes.

7 Q. Notwithstanding that.

8 A. Uh-hum.

9 Q. If Seale[sic] had said he was in the course of a robbery.

10 A. Uh-hum.

11 Q. That the jury may have had a reasonable doubt.

12 A. I said he may have been able to save himself, and you
13 know when one considers those three points, police, lawyers,
14 jury, then surely there is a probability that one of those
15 three aspects would have kicked in in his favour. But
16 having said that, that's as far as I can go. I mean if he was
17 in the park to commit a robbery that night, then the second
18 level of responsibility or the second way responsibility to
19 him kicks in is that he thereby precipitated the situation
20 which resulted in Seale's death.

21 Q. Okay.

22 A. And his wrongful incarceration.

23 Q. All right. Now, we'll...let me move on to your second point in
24 your letter.

25 COMMISSIONER POITRAS

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 Would you just...I just have a small problem, Mr. MacDonald.
2 Mr. Edwards, you say that these three reasons would sort of
3 constitute speculation.

4 MR. EDWARDS

5 Yes.

6 COMMISSIONER POITRAS

7 And yet in your letter of January 18th, 1983, if I read the
8 second sentence, you're not dealing with speculation here as much
9 as a virtual conclusion. In other words, there is no doubt in your
10 mind, as I read the letter that Marshall should bear responsibility
11 for the predicament in which he found himself. This is not
12 speculative, it's conclusive.

13 MR. EDWARDS

14 Perhaps if I...my adoption of the word "speculative" was
15 premature or inappropriate. I think that that's as strong as a fair
16 inference that can be drawn from the circumstantial evidence
17 which is available. So, if I may, I'll take back my adoption of
18 speculative and...

19 COMMISSIONER POITRAS

20 Would you espouse today the point that you took on January
21 18th, 1983, or are you of a different opinion today?

22 MR. EDWARDS

23 Well, as I stated to Mr. MacDonald, I'd take away
24 "considerable" and put "some," some responsibility there. You
25 know, perhaps, I don't want to jump the gun, but having said that

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 that he must bear some responsibility, I'm of the view that even
2 though he didn't tell anyone about the robbery, he shouldn't have
3 been convicted. There are other mechanisms which failed which
4 should have kicked in to prevent this conviction.

COMMISSIONER POITRAS

6 Okay.

MR. MacDONALD

8 Q The second point that you've told Mr. Herschorn is that, and
9 this is a point you want to emphasize.

10 A. Yes.

11 Q "The police investigators in 1971 bona fide believed they
12 had the guilty party in the person of Donald Marshall, Jr.
13 They certainly were not motivated by malice toward either
14 the accused or has been suggested in some press reports
15 prejudice toward his race."

16 A. Yes.

17 Q What were you relying on to make that statement?

18 A. Well, by that time I had had an opportunity, of course, to
19 assess all the available evidence and had an opportunity to
20 assess John MacIntyre and, that latter point in particular. I
21 just couldn't see any suggestion anywhere that John
22 MacIntyre had ever believed anything other than that he
23 had the right guy, that he had the guilty party. And I
24 haven't seen anything since either, including before this
25 Commission, I might say.

1 Q But you've also told this Commission that you interviewed
2 Patricia Harriss.

3 A Yes.

4 Q And found her to be truthful.

5 A Yes.

6 Q Do you still think her to be a truthful person?

7 A Yes.

8 Q And, I believe you said that you understood from Patricia
9 Harriss that she was pressured to say something by John
10 MacIntyre.

11 A Yes.

12 Q Do you think that's acting bona fide?

13 A It's being overzealous.

14 Q Did you accept that?

15 A I mean it's bona fide in the sense that he thinks that what
16 he's pressuring out of her is the truth.

17 Q Is that...

18 A It's...I mean it's reprehensible police tactics but it's not mala
19 fides in the sense that, you know, he's pressuring her to do
20 other...something other than what he believes to be to give a
21 truthful version.

22 Q Okay. Let me move on to January the 25th. I take it you
23 were...

24 COMMISSIONER EVANS

25 Before you leave there, when you wrote that letter on

1 January the 18th you found yourself, what one might describe, as
2 between a rock and a hard place.

3 A. For sure.

4 COMMISSIONER EVANS

5 You believed Marshall was innocent and that there was a
6 miscarriage of justice.

7 A. Yes.

8 COMMISSIONER EVANS

9 Now, after December the 6th, after that hearing in the Court
10 of Appeal you had the feeling from what had gone on there that
11 they were likely to direct a new trial.

12 A. Yes.

13 COMMISSIONER EVANS

14 That was not a result that you would be happy with.

15 A. That...

16 COMMISSIONER EVANS

17 You'd have to accept it, but I mean that didn't coincide with
18 your view.

19 A. That's right. That was an impossible situation for everyone
20 concerned.

21 COMMISSIONER EVANS

22 That was the last result that you wanted.

23 A. Yes.

24 COMMISSIONER EVANS

25 Okay. But you also knew the feeling from the Department of

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 the Attorney General, you felt that they did not feel there was a
2 miscarriage of justice.

3 A. That was my sense from Gordon...of Gordon Coles opinion,
4 yes.

COMMISSIONER EVANS

6 So, that was the rock and the hard place then that you were
7 in between, and did you try to straddle that in the letter of the
8 18th?

9 A. Again, not referent to Gordon Coles so much. The rock and
10 the hard place was that I believed, and believed strongly,
11 that Marshall should be acquitted, and I couldn't see how I
12 could see the Court get to that result if I were to also argue
13 that there had been a miscarriage. I think that if I had said
14 that that I wouldn't have been listened to at all. But by
15 arguing as I did, I felt that the Court then had little choice.

COMMISSIONER EVANS

17 So, that you adopted a route that, in effect, arrived at the
18 conclusion, the acquittal that you wanted.

19 A. Yes.

MR. CHAIRMAN

21 Well, can we conclude from that, Mr. Edwards, that at the
22 end of the hearing in December.

23 A. Yes.

MR. CHAIRMAN

24 You felt that the Court of Appeal of Nova Scotia were of the
25

1 opinion that there had not been a miscarriage of justice.

2 A. That was...that was my sense of it. Like the most common
3 result in an appeal, at least from my perception is that a new
4 trial is ordered and it's only exceptional circumstances where
5 they're going to direct an acquittal, that's number one.
6 Number two, the evidence, and some would say, well,
7 partially because of my cross-examination, I suppose, but I
8 don't apologize for that, had not gone well. For example, the
9 evidence of Evers I thought was very, very compelling
10 evidence when I first heard it back in March or April, I forget
11 which, but as you see from my factum, that was not my
12 impression after having heard it before the Court of Appeal. I
13 don't know why but that evidence sitting there in the room
14 and hearing it, it just didn't sound very convincing. I used it
15 again in Ebsary three. I didn't use it in the first two trials.
16 And, of course, the reference decision, I know I'm jumping
17 ahead now, stated that very point that Evers' evidence, among
18 others, was at best speculative. So, you know, my sense on
19 that was correct. The evidence of Chant and Harriss, Chant in
20 particular, had turned the court off, in my view.

21 3:15 p.m.

22 He came on pretty strong with his Born Again Christian and I
23 felt, just watching the body language there, that that was a
24 turn off and that was my own reaction to it. Harriss hadn't
25 been that convincing. Donald Marshall, of course, was not a

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 good witness and, again, he had had that statement thrown in
2 his face by me and, you know, I felt, and I still feel, that it
3 was legitimate to put that statement to him. So there was
4 that sense that, gee, this evidence is not coming out as
5 overwhelmingly convincing as I had thought it would be.
6 And then, thirdly, just watching the judges and listening to
7 the tone and, by and large, they were fairly inscrutable but I
8 just had the feeling that this thing was not selling that day.

COMMISSIONER EVANS

9
10 So you took the point that you felt would sell.

MR. EDWARDS

11 Exactly.

12
13 3:16 - 3:39 p.m. - BREAK

MR. MACDONALD

14
15 Q. Let me take you to your notes of January the 24th and 25th,
16 Mr. Edwards.

17 A. Mr. MacDonald, just before we do that, I just wanted to make
18 one additional point on this January 18th letter.

19 Q. Yes.

20 A. You asked me earlier did I feel I had to get the position
21 approved?

22 Q. Yes.

23 A. And I referred to the December 6th conversation with Martin
24 Herschorn. And I guess the effect of my evidence is, and
25 what I want to say is, that I certainly felt that it was expected

1 that I would run by the position I was going to take with the,
2 or run that position by the Department. But I have to say I
3 also felt that I felt it was important, both in principle and to
4 me personally, that the Department support the moving of the
5 acquittal. And I say "in principle" because, of course, we, the
6 Attorney General's Department, had done the initial
7 prosecution and "personally" because I, and nobody ever
8 suggested this to me, but the thought occurred to me that I
9 didn't want it to ever be suggested that I was off on a frolic of
10 my own when I recommended the acquittal.

11 Q. So you, in fact, were called to Halifax to talk about it.

12 A. Yes, I was.

13 Q. That's what happened on June the 24... January the 24th of
14 1983.

15 A. Yes.

16 Q. And there are notes of January the 25th, '83, in your diary.
17 But, first of all, on January the 24th.

18 A. Yes.

19 Q. You had a discussion with Gordon Gale.

20 A. Yes.

21 Q. On the telephone.

22 A. Yes.

23 Q. And your note there, at least in brackets in our copy, "Had
24 initially told me that he, Martin and Coles had discussed my
25 letter." And I assume that's your letter of January 18th.

1 A. Yes.

2 Q. "Not sure that he and Martin agree with me."

3 A. Yes.

4 Q. "Feels that a reasonable compromise position could be taken."

5 A. Yes.

6 Q. That's what they wanted to talk to you about in Halifax,
7 wasn't it?

8 A. Yes.

9 Q. See if they could persuade you to take some other position?
10 Is that...

11 A. Yes.

12 Q. What you expected on your way going up there that you were
13 going to be asked to take a different position?

14 A. To take no position.

15 Q. To take no position.

16 A. That's what I was anticipating, yeah.

17 Q. Did you anticipate you were going to be asked not to tell the
18 court that Marshall was considerably responsible for his
19 own...

20 A. Oh, no.

21 Q. Incarceration?

22 A. No.

23 Q. They weren't going to ask you to abandon that.

24 A. No.

25 Q. And they weren't going to ask you to abandon your position

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 that the police acted bona fide throughout?

2 A. No.

3 Q. They didn't want you to even ask for an acquittal.

4 A. Well, that was that main focus of the January 25th meeting.

5 Q. Okay.

6 A. That not... I think there was some misconception, I believe, in
7 the press that the January 25th meeting was about
8 abandoning the miscarriage argument, but it wasn't. The
9 whole focus of the January 25th meeting was on whether to
10 recommend an acquittal or not to recommend an acquittal.

11 MR. CHAIRMAN

12 They apparently were not in agreement with the second last
13 paragraph of your letter of January 18th.

14 MR. EDWARDS

15 The second paragraph, My Lord?

16 MR. CHAIRMAN

17 The second last.

18 MR. MACDONALD

19 Second last.

20 MR. EDWARDS

21 Apparently, right.

22 MR. CHAIRMAN

23 Because you had made it very clear in that letter that you
24 would not be prepared to...

25

1 MR. EDWARDS

2 Argue anything other than an acquittal.

3 MR. CHAIRMAN

4 Argue anything else than an acquittal.

5 MR. EDWARDS

6 That's right.

7 MR. MACDONALD

8 Q. Now from your notes, I'm taking it that you made certain
9 notes on the plane of points that you wanted to make sure
10 were discussed, is that correct?

11 A. Yes.

12 Q. In preparation for the meeting?

13 A. Yes.

14 Q. You wanted to know if earlier in your memos, the early
15 memos to the Department, did you make it clear eventually
16 you'd have to support an acquittal. In fact, your earlier
17 memos were saying the best possible result...

18 3:45 p.m.

19 A. Yes.

20 Q. Would be acquittal on the basis of miscarriage of justice.

21 A. Yes.

22 Q. "Is suggested compromise a compromise of my professional
23 integrity?" That was something that you were concerned
24 about. No one was going to ask you to compromise your
25 integrity. Did they?

- 1 A. Well, by suggesting that I took no position. I mean I'm
2 uncomfortable with talk like that, but by suggesting I take no
3 position if, in fact, that was to be their position... I mean I
4 just couldn't see, in view of the knowledge that I had, how I
5 could in conscious go into the court and say anything other
6 than, you know, "Let this fellow go."
- 7 Q. But that's what you were being urged to do by your seniors in
8 the Department.
- 9 A. By Mr. Coles, yes.
- 10 Q. What position was being taken by Gale?
- 11 A. Mr. Gale just sort of sat in as an observer on the meeting. I
12 don't recall Gordon taking any active part.
- 13 Q. You also say in your notes in preparing for the meeting:
14 "They are trying to shift the onus of the decision onto the
15 court and escape complicity in or responsibility for that
16 position."
- 17 A. Yes.
- 18 Q. Was that a view that you held at that time?
- 19 A. Yes.
- 20 Q. "The whole problem would not have arisen save for Wally's
21 visit." That's the visit that took place in July of 1983... '82, I
22 guess, is it?
- 23 A. Yes. Now that, I have to say that that was a deliberately
24 designed barb. You know, I think Coles, Mr. Coles' position
25 was, went deeper than that. But I was prepared to use that in

1 the discussion that I knew was coming.

2 Q. Were these notes you prepared something of an agenda,
3 various points that you wanted to make certain were
4 discussed?

5 A. Quite frankly, that was my strategy going into that meeting.

6 Q. Do you remember that meeting?

7 A. Yes.

8 Q. Lasted a long time?

9 A. Two and a half hours. I guess I shouldn't smile about it, but...
10 No, I remember the meeting and I can't recall too much of the
11 specific conversation beyond what's in the notes but I do
12 recall pretty well everything that is said in the notes.

13 Q. How would you describe the mood of that meeting?

14 A. Well, it wasn't boring. The meeting started off cordial enough
15 and we had a fairly thorough discussion on it. But the mood
16 changed fairly significantly when I told Mr. Coles, it would be
17 about halfway through the meeting. I said, "Well, look, if I'm
18 in that courtroom, I'm recommending his acquittal, period."
19 And Mr. Coles got upset about that and shifted in his chair
20 said fairly emphatically, "Well, that's a decision I'm going to
21 have to make, whether or not you're going to be in that
22 courtroom." And I said, "Well, you're the Deputy Attorney
23 General and I'd rather for you to take me off the case than
24 order me to go in there and take no position." I said, "in
25 which case I would advise the Court that I had been ordered

1 by the Deputy Attorney General Gordon Coles to take no
2 position."

3 Q. Was Mr...

4 A. And that upset him also.

5 Q. Was Mr. Coles telling you why he was asking you to take no
6 position?

7 A. Basically, the meeting got quite repetitive after awhile.
8 Basically, he kept alluding to the fact that the Crown was not
9 cast in its usual role in this case and when I'd explore that
10 with him, he... I'm trying to be accurate and not unkind, but
11 he sort of got circular in his arguments, you know. "The
12 Crown is cast in a different role because this is a different
13 case."

14 Q. Try and educate me. What different role was the Crown in?

15 A. Well, there again, I couldn't see it. And Mr. Coles, when he's
16 sitting here, you'll have to ask him because... He offered at
17 one point, he said, "Well, this is a case on its facts, not law.
18 And, therefore, the Crown shouldn't take a position."

19 Q. You've had a lot of cases dealing with facts, cases on their
20 facts other than law?

21 A. Yes, admittedly, most wouldn't get to the Court of Appeal
22 unless there was some question of law. But it seems to me
23 there's... Well, I didn't accept the validity of that distinction.
24 I couldn't see where that was relevant.

25 Q. This court was...

- 1 A. To whether we should take a position or not.
- 2 Q. This court was being asked to make findings of fact, were
3 they not? Whether or not Donald Marshall stabbed Sandy
4 Seale?
- 5 A. Yes.
- 6 Q. There's nothing law about that, is there?
- 7 A. No. No, well, that's what he was saying. This is a question of
8 fact in this case, not law.
- 9 Q. In that sense, it's the same as any case you take to a trier of
10 fact, isn't it? You're asking them to make findings of fact.
- 11 A. Oh, yes. Well, in this case, the Appeal Court, I suppose, you
12 could be, you could say that they were in the unusual position
13 of being finders of fact, which Appeal Courts generally aren't.
14 But, still, recognizing that and I'm sure we touched on that,
15 what difference does that make? That's what I would say to
16 Mr. Coles.
- 17 Q. Every time you go to a jury, you're acting on behalf of the
18 Crown asking the jury to find certain facts, aren't you?
- 19 A. Yes.
- 20 Q. You obviously advocate a position.
- 21 A. Yes. Usually. Sometimes I don't but most times, if I don't
22 come right out and say at the end... Well, I would rarely say:
23 "And I urge you to find the accused guilty." But I would say
24 that the jury is in little doubt at the end of a jury address
25 about what direction I'm pushing in.

1 Q. Did you review with Mr. Coles, Gale, and Herschorn at that
2 meeting your letter of January 18th, 1983? Was it referred
3 to?

4 A. Yes, I assume so. I don't have a specific recollection.

5 Q. Did anyone at that meeting take issue with the suggestion
6 that you should emphasize to the court the fact that the
7 appellant should bear considerable responsibility for the
8 predicament in which he found himself?

9 A. No.

10 Q. And did they take any issue with your intention to emphasize
11 that the police had not done anything wrong?

12 A. No. No, the only issue was whether or not I should
13 recommend an acquittal.

14 Q. Did they take any issue with your statement that there
15 doesn't now exist a single scrap of evidence which points
16 towards Marshall?

17 A. No. I think Mr. Coles said at one point, "Well, it's not for you
18 to assess the evidence." But nobody, and as a matter of fact,
19 I know I... By that stage, the meeting was heated and I
20 challenged him to point to one piece of evidence that points to
21 Marshall. Just show me one scrap.

22 Q. And could he?

23 A. No.

24 Q. Can we take it from that that he was accepting your view that
25 there isn't one scrap of evidence to point toward Marshall?

- 1 A. No, he never accepted that. As I recall, he would then shift
2 ground and go back to, "Well, you should take no position," or
3 "This is an unusual case," something like that.
- 4 Q. But you challenged him to point to any scrap of evidence.
- 5 A. Yes.
- 6 Q. He couldn't do that.
- 7 A. Well, he didn't try either, in fairness. You know, it was...
- 8 Q. But notwith...
- 9 A. Like he was the one who was addressing me.
- 10 Q. Was there any...
- 11 A. It wasn't for him to answer my questions.
- 12 Q. Was there any input by Gale or Herschorn? Or was this just a
13 dialogue between you and Gordon Coles?
- 14 A. It was primarily a dialogue between Gordon Coles and I, but
15 Martin did, in response to a question from Coles, or Mr. Coles
16 said, "And you agree with that, Martin, don't you?" And
17 Martin said, "Yes," in other words agreed with Mr. Coles'
18 position.
- 19 Q. With Mr. Coles' position.
- 20 A. Yes.
- 21 Q. Any indication whether Mr. Gale agreed with Mr. Coles'
22 position?
- 23 A. I don't recall Gordon taking a view, I don't think he did.
- 24 Q. And the position, just so I understand it, being advocated by
25 Mr. Coles, is that in this case you should tell the court and

1 emphasize to the court that Marshall should bear considerable
2 responsibility for the predicament in which he finds himself
3 and you should emphasize to the court that the police acted
4 bona fide throughout and you should not ask the court for an
5 acquittal.

6 A. It wasn't stated just like that. I mean he, I think to be as
7 accurate as I can on it, I would have to say that he took no
8 issue with the A and B propositions in the letter. His basic
9 position was that I should leave it, let the court decide. And I
10 refer there in the notes, he would say, "Well, you can tell the
11 court if they believe A, B, and C, they can rule one way." But
12 if they don't, they can rule another way. And it would flow
13 from that that I would say, "Well, come on, tell me what the
14 court could take into account to support the finding of a new
15 trial, for example?"

16 4:00 p.m.

17 Q. What was the reasonable compromise position put to you?

18 A. Well, again that particular phrase never came up again, but
19 as I understood the reasonable compromise was to take no
20 position.

21 Q. The reasonable compromise is to do what you're told.

22 A. Right.

23 Q. How was it left?

24 A. Well, at the end of two and a half hours I think I had
25 convinced Mr. Coles that if I was still on the case I was

1 recommending an acquittal.

2 Q. You did not, let me put it this way, do you think you
3 convinced Mr. Coles that the position you wanted to adopt
4 was...should be adopted?

5 A. No.

6 Q. At the end of the day it was agreed that you would argue
7 the case for the Crown.

8 A. Yes. Yeah, just to tie that in, my reason for saying that, is
9 that after I mailed in the factum with a copy to Gordon Coles
10 I was speaking with Martin Herschorn and he told me that
11 the deputy was very upset with the...with my factum. Now,
12 we didn't go beyond that. I assumed from that he was upset
13 that I hadn't changed my mind about recommending an
14 acquittal.

15 Q. The last entry you have in your notes for that day says, "In
16 the end Coles said, 'We're in your hands, try not to create
17 more problems for me than I already have.'"

18 A. Yes.

19 Q. Was there any indication what type of problems he was
20 talking about?

21 A. Well, to understand that comment, like the meeting started
22 out on a cordial matter, it became quite heated in the middle
23 until the end. When that comment was made, Mr. Coles'
24 mood, well, he had calmed down a bit, well, he had calmed
25 down, period, and that was said in almost an off-handed

1 manner. I mean he had...he had, in my perception, taken
2 his... or he had attempted to change my mind and he hadn't
3 and was prepared to leave it at that, and he said, you know,
4 "We're in your hands, try not to create any more problems
5 for me than I already have," and I left. That was it.

6 Q. Okay. Now, look at Volume 29. There's a note of yours of
7 February 3rd, '83, you may have it...you probably have the
8 original. It's on page 47 of Volume 29. It's a phone
9 conversation you had with William Urquhart.

10 A. Volume 29, do I have it? Oh, this, I'm sorry. Thanks. What
11 was that page again?

12 Q. Page 47.

13 A. Yes.

14 Q. It's the last portion of that note that I'm interested in.

15 A. Yes.

16 Q. And you were talking about the position to be adopted
17 before the court.

18 A. Yes.

19 Q. Does this...does that say, "Told him I didn't want to go into
20 detail, but that I was going to put major responsibility on
21 Marshall"?

22 A. Yes.

23 Q. "What happened not the fault of the police or courts or jury
24 or anyone in the criminal justice system."

25 A. Right.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 Q. Was Mr. Urquhart attempting to find out from you the
2 position to be adopted by the Crown?

3 A. Yes. He appeared to be.

4 Q. Did he seem to be satisfied or pleased with your advice of
5 the position that would be adopted?

6 A. Yes. And again, I have to fess up there, I didn't want him
7 going back and going to Mike Whalley and Mike Whalley
8 flying to Halifax and having more problems.

9 Q. Okay. Let's go to your factum then, Mr. Edwards, please.
10 It's in Volume 4 at page 1. Do your Lordships have Volume
11 4?

12 MR. CHAIRMAN

13 No, we don't.

14 MR. MacDONALD

15 Q. I just want to highlight a few points in the factum as we go
16 through, Mr. Edwards, so we'll have some idea of things that
17 the Court may have known other than what was in the
18 evidence. On page 15 of your factum, it's actually, yes, page
19 15 of Volume 4.

20 A. Yes.

21 Q. At the top of that page you note "That although it did not
22 come out clearly in evidence before this Honourable Court,
23 the Crown acknowledges that MacNeil did tell the Sydney
24 Police that Roy Ebsary had stabbed Seale and gave a written
25 statement to that effect on November 15, 1971."

1 A. Yes.

2 Q. The Court was aware that ten days after Marshall was
3 convicted the Sydney Police had obtained a written
4 statement identifying the person who actually did the
5 stabbing.

6 A. Yes. And, I'm sorry, what was your preface before that so
7 that...so that we'd understand what was before the Court.

8 Q. Yes, because your point there, as you start out the sentence,
9 "Although it did not come out clearly in evidence."

10 A. Yes, yes, okay.

11 Q. The Crown acknowledges that.

12 A. Right. And that made it an agreed fact.

13 Q. Yes.

14 A. So that became evidence and Mr. Aronson assented to that.

15 Q. Yes, that's my point.

16 A. Yes.

17 Q. And then on page 18 at the bottom of that page "The Crown
18 is prepared to acknowledge the fact that Ratchford did, as
19 Donna says, bring the matter to the attention of the police."

20 A. Yes.

21 Q. Then on page 19 you make the point with respect to Donna
22 Ebsary, "Second, her story so precisely complements that of
23 James MacNeil and if it is not true the Court has fallen prey
24 to an elaborate conspiracy." And I take it by that you're
25 saying that MacNeil and Donna must be telling the truth

1 otherwise they would have had to conspire with each other
2 to come up with this story.

3 A. Right, right.

4 Q. And the fact is that Donna and MacNeil didn't know each
5 other.

6 A. Yes.

7 Q. Did you give any thought to the fact that Harriss, Pratico and
8 Chant also were telling the same story, that they had all
9 been pressured by the Sydney Police, to come up, to tell a
10 lie?

11 A. Did I give any thought to that?

12 Q. Wouldn't that also...

13 A. Yeah.

14 Q. ...if it's not true have to indicate that there had been some
15 conspiracy among the three of them?

16 A. Yes. You know, that point wasn't made, it was not made
17 through inadvertence. I mean, I didn't deliberately leave it
18 out.

19 Q. Oh, I'm not suggesting you did, but...we'll leave that. On
20 page 25 and over onto 26. The very bottom of page 25.
21 You're talking here about Chant.

22 A. 25.

23 Q. 25.

24 A. Oh, I'm ...I see, I was looking...

25 Q. 25 of the volume.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. Yes. Okay.

2 Q. Okay. You're talking there about Chant.

3 A. Yes.

4 Q. And you say at the very bottom, "It is more likely the police
5 had merely told him about John Pratico's evidence because
6 during the trial Pratico did not say that he had seen Chant."
7 Now, we referred earlier today to the conversation you had
8 with Chief MacIntyre in July where he said he never told
9 Pratico...he never told Chant anything about Pratico's
10 statement.

11 A. Uh-hum.

12 Q. Did you get some additional or more information between
13 that time in February of 1983 to enable you to make that
14 suggestion to the Court?

15 A. I can't say whether I did or didn't. I have just no
16 recollection on it. It may be simply that my mind or the
17 statement at the July 12th meeting didn't come to mind
18 when I was admittedly speculating there.

19 Q. Okay. Let me just go then to some of your submissions,
20 starting on page 39. You first of all make the submission
21 that this appeal should be allowed on the basis that the
22 conviction cannot be supported by the evidence, and you
23 make that clear submission as you told Mr. Coles you would.

24 A. Yes.

25 Q. I want to go on to the next part.

1
2 The respondent disagrees with counsel for the
3 appellant who argues that the aforementioned
4 order could issue on the basis that there has
5 been a miscarriage of justice. It is submitted
6 that the latter phrase connotes some fault in the
7 criminal justice system or some wrongdoing on
8 the part of some person or institution involved
9 in that system.

10 And that is a position you had advocated to the Court.

11 A. Yes.

12 Q. And is that a fair summary of your view of what a
13 miscarriage of justice does connote?

14 A. The question of fault.

15 Q. That it connotes some fault in the criminal justice system or
16 some wrongdoing on the part of some person or institution
17 involved in that system.

18 A. Yes. Yes, because the general definition I gave before, an
19 innocent man being convicted for something he didn't do,
20 that begs the next question, well, how could it happen?
21 Whose fault is it? That's what I mean there. Or more
22 directly connotes that the system...there was a systemic
23 failure.

24 Q. You go on on page 40 to say, "Notwithstanding the fact that
25 both counsel agree with the ultimate disposition of this
matter, upon what the ultimate disposition of this matter
should be, it goes without saying that the Court retains the

1 exclusive authority and responsibility to dispose of the case
2 as it sees fit." And then...

3 A. Yes.

4 Q. ... in the next paragraph you say, "It is the respondent's
5 respectful submission that the role of the Court goes much
6 further in this particular situation."

7 A. Yes.

8 Q. Now, I take that as being...advocating and urging the Court
9 to take the next step, don't only find that there's no
10 evidence here to support a conviction, but go the next step.

11 A. Yes.

12 Q. And say there hasn't been any miscarriage of justice here.

13 A. Yes.

14 Q. That's the way you were advocating to the Court.

15 A. Yes. That in my view gave the Court the out to...

16 4:15 p.m.

17 Q. Down at the bottom of that page, you say:

18
19 For the above reasons, it is respectfully
20 submitted that the Court should make it clear
21 that what happened in this case was not the
22 fault of the criminal justice system or anyone in
it, including the police, the lawyers, a member of
the jury, or the Court itself.

23 A. Yes.

24 Q. Now when you made that submission to the Court, did you
25 believe that?

1 A. No.

2 Q. Do you believe it today?

3 A. No.

4 Q. Is this a fair summary of your evidence with respect to the
5 appeal?

6 A. I don't... I shouldn't leave that answer like that. I mean I
7 believed that that was an argument that could be made.
8 When I decided to write this and to take that position, I
9 decided that I would make as forceful an argument as I could
10 and the force of that argument is a measure of, I suppose, my
11 belief in the probability of a new trial being ordered if
12 anything less was argued.

13 Q. Now saying that "what happened here is not the fault of the
14 system or anyone in it including the police" is a little
15 different, I suggest, than saying that the police acted in a
16 bona fide belief that they had the guilty party.

17 A. Yeah, that's fair.

18 Q. You did have evidence that three witnesses said they had
19 been coerced by the police to tell a certain story.

20 A. Yes, and the Court had that evidence.

21 Q. You yourself had urged an investigation be carried out of the
22 police activity to determine if there had been any fault.

23 A. Yes.

24 Q. You knew that such an investigation had never been carried
25 out.

1 A. Right.

2 Q. And yet you urged the Court to find that what happened here
3 was not the fault of anyone including the police.

4 A. Right.

5 Q. In fact, is this a fair summary of what you've told us this
6 afternoon, and this is your reading of the Court.

7 A. Yes.

8 Q. That both parties were urging that the appeal be allowed and,
9 therefore, the appeal likely would be allowed.

10 A. Yes.

11 Q. But if the appeal was allowed and the Court was allowed or
12 permitted or urged to blame Marshall...

13 A. Yes.

14 Q. That there would be an acquittal.

15 A. Yes.

16 Q. But if they weren't allowed or urged to blame Marshall, that
17 there would be a new trial.

18 A. That was my conception, yes.

19 Q. So the only way to get the acquittal, in your view, was to lay
20 the blame on Marshall.

21 A. Yes.

22 Q. Tell me about the actual argument. The day you're there
23 doing the argument.

24 A. Yes.

25 Q. You indicated earlier that if you had any doubts when you

1 walked in there, you didn't have any when you left.

2 A. Right.

3 Q. What do you recall about that day?

4 A. Perhaps just to put this in context, really the basis of where I
5 see you coming from is, and no disrespect, I assure you, is
6 that I was being too adversarial and I overstated the
7 argument. I think that's the drift and that's a fair one. I
8 agree with it. When I got to the Court of Appeal to argue the
9 case that day, I was chastised like I have never been in a
10 Court before for not being adversarial enough. Mr. Justice
11 Pace let me know on no uncertain terms that he was not too
12 impressed with my conduct of the reference. And I mean I
13 don't recall all of that argument but I'll never forget that
14 exchange because just after I started making my submission
15 to the Court, Mr. Justice Pace interrupted me and he said, "Mr.
16 Edwards, have you ever heard of the adversarial system?"
17 And I said, "Yes, My Lord." And he said, "Well, one would
18 never think it. I don't see anything very adversarial about
19 you." He said, "Perhaps you should learn something about the
20 adversarial system." And I started to reply that, to the effect
21 that surely the adversarial system has some limitation. That
22 in this case where there is sufficient evidence to charge and
23 probably convict someone else. I don't think I said "probably
24 convict" because I didn't want to say anything to prejudice
25 Mr. Ebsary. He interrupted me there and I think it's a fair

1 description for me to tell you that he was quite emphatic,
2 upset probably wouldn't be overstating it, and he said, "You
3 just tell me one, just one of those witnesses that we heard
4 that we could believe." And he emphasized it. Well, I was a
5 bit nonplused but I did say, "Jimmy MacNeil." And I went
6 from there. I said, "Look at Jimmy MacNeil's evidence. He
7 has never been contradicted. Jimmy MacNeil came forward
8 back in '71 and he told basically the same story he told you
9 people." So I said, "If there's one witness that is still on his
10 feet, it's Jimmy MacNeil." And one of the other justices cut in
11 at that point and we went off on something else, but that
12 exchange made me feel, when I reflected on it afterwards,
13 that it's a good thing that I did put the argument as strongly
14 as I did. And, you know, I appreciate that that sounds self
15 serving but I really felt that Mr. Justice Pace was not inclined
16 to acquit Mr. Marshall. And that's just a sense. I'm not
17 impugning anything improper to him, but that was his
18 reaction to the evidence and it was a very strong reaction.

19 Q. Let me put this to you. You believe that there was a
20 miscarriage of justice here.

21 A. Yes.

22 Q. And Steve Aronson believed there was a miscarriage of
23 justice.

24 A. Yes.

25 Q. And yet you were of the view that if both of you advocated to

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 that Court that Marshall should be acquitted on the basis that
2 there had been a miscarriage of justice, that they would not
3 have gone along with your submissions, is that correct?

4 A. That was my feeling at the time and after the exchange with
5 Mr. Justice Pace, I just couldn't imagine what I would have
6 heard had I said, "Not only should he be acquitted but you
7 should find that there was a miscarriage of justice here. The
8 system failed." I don't think that the Crown pushing for an
9 acquittal in that case would have mattered too much to the
10 Court. I think they just would have ignored me.

11 Q. That Court would not have found that there was a miscarriage
12 of justice on the facts of this case, is that what you're telling
13 us?

14 A. And, again, that's...

15 Q. That's your impression.

16 A. That was my impression at the time and I still feel that way.

MR. MACDONALD

18 My Lords, if that's a convenient place to stop, I'm moving on
19 to another point.

20 4:25 p.m. INQUIRY ADJOURNED UNTIL 9:30 a.m. MAY 25TH.

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23
24
25

REPORTER'S CERTIFICATE

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



Margaret E. Graham

DATED THIS 24 day of May, 1988 at Dartmouth, Nova Scotia