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

**Volume 67**

Held: May 24, 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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Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for  
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Mr. E. Anthony Ross: Counsel for Oscar N. Seale

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1 MAY 24, 1988 - 9:31 a.m.

2 MR. CHAIRMAN

3 Mr. MacDonald.

4 MR. MacDONALD

5 Thank-you, My Lords.

6 MR. FRANK EDWARDS, recall and still sworn, testified as follows:

7 EXAMINATION BY MR. MacDONALD [Cont'd.]

8 Q. Mr. Edwards, I believe you had a couple of directions or  
9 explanations, further explanations of matters you dealt with  
10 last week, is that correct?

11 A. Yes. I noted what appears to be a typographical error in the  
12 transcript, and maybe a significant one. Page 11779, line  
13 23, it's in part of your question, picking up "...you phoned  
14 Wheaton and he confirmed or he did know about these  
15 earlier statements." That should be "he did not know."

16 Q. Okay. Thank-you.

17 A. And the other point I just wanted to touch on because,  
18 again, my fault, I guess, I left it hanging. Page 11801, line  
19 16, this is where we were discussing the...what I've termed  
20 the "hold in abeyance issue".

21 Q. Yes.

22 A. And you ended your question there on line 16 by asking  
23 "Why do they have to wait around for four years?" referring  
24 to the Sydney Police to be questioned on that, and so then  
25 there was a little confusion after that, but I was interpreting

1           you as wanting to give me an opinion on why Mr. Gale felt  
2           that way, and, of course, that was a misinterpretation. But I  
3           just wanted to say on that that, of course, neither Gale nor I  
4           nor anyone involved had any idea at that time that this was  
5           going to take four years. That there was going to be three  
6           Ebsary trials or whatever. It was a much shorter period of  
7           time that we had in mind.

8       Q.    But surely it doesn't take, you don't have to wait around to  
9           do an investigation. You may argue that you shouldn't bring  
10          charges or perhaps shouldn't, but to do the investigation  
11          while the facts are still relatively fresh. Why would you  
12          wait around at all?

13   A.    No, well, that's...like I make that point later in the page that  
14          my own view was that there was no need to wait around.  
15          But I think it, you know, it's important to note that as of  
16          June the 9th when 617(c) was agreed to that that, in effect,  
17          opened the whole matter of the investigation up again, you  
18          know, by agreeing to an inquiry format Gale had agreed, I  
19          take it, to the investigation of the city police.

20   Q.    I see. Okay.

21   A.    Yeah.

22   Q.    The discussions you had with Mr. Gale at the time the  
23          decision was being made whether to do it subsection (c) or  
24          (b).

25   A.    Yes.

1 Q. At that time you were discussing that if you went under (c)  
2 it would be a wide open full scale inquiry, is that correct?

3 A. That's the...that's my recollection, yes.

4 Q. And Mr. Gale was certainly agreeable to that.

5 A. Yes.

6 Q. Okay.

7 A. Yes.

8 Q. Now, that certainly adds explanation. Do you want to get  
9 Volume 31, please?

10 A. I should...just referent to that June meeting with Mr.  
11 Rutherford, I outlined the reasons why (c) was preferred,  
12 you know, I gave two reasons. And, of course, and I believe  
13 Mr. Rutherford's evidence bears this out, one of our  
14 preoccupations at that meeting in considering whether to go  
15 (b) or (c), one of our preoccupations was that under (b)  
16 there was the possibility of a new trial being ordered and  
17 that...that was always at the back of my mind, I know at  
18 least, right through.

19 Q. The back of your mind as being an undesirable possibility.

20 A. A very undesirable possibility, yes.

21 Q. In volume thirty...I'm sorry, did you have any other...

22 A. No, that was it, thank-you.

23 Q. Volume 31, at page 52.

24 A. Yes.

25 Q. Those are notes of, I understand, prepared by Stephen

1 Aronson.

2 A. Yes.

3 Q. And they're dated May the 11th of 1982.

4 A. Yes.

5 Q. In those notes though there is a reference to you where he  
6 has spoken to you and then there is the suggestion of an  
7 appeal, Section 617, and that says, "Free and unconditional  
8 pardon." Were you...did you ever give any serious thought  
9 to the possibility of having a free and unconditional pardon?

10 A. Yes. I think either my April memo to Gordon Gale or the  
11 following one, May I believe, I think I dealt with that issue.  
12 I know I gave very serious consideration to recommending a  
13 pardon but, ah, for the reasons outlined in that memo I  
14 thought that it would be best, in everyone's interest, and  
15 especially the interest of Mr. Marshall, that the new  
16 evidence be aired publicly, whereas a pardon would have  
17 been an executive or political decision and I don't think it  
18 would have done that much for Mr. Marshall, of course.  
19 That's what I thought at that time. In view of what  
20 happened subsequently, you know, if I had to address that  
21 issue now I might take a different course. But at the time  
22 my rationale was that better to have the evidence tested  
23 and aired publicly.

24 Q. Let me take you back to page 26 on that same volume.

25 A. Yes.

1 Q. Now, 26 is just a covering letter from yourself to Mr. Gale  
2 and you're outlining...you're explaining the numbers.

3 A. Yes.

4 Q. That are contained in your letter which is found on page 29  
5 of the same volume.

6 A. Yes.

7 Q. Now, I take it you were asked either to update your earlier  
8 memo of April 22nd or you just elected to because some  
9 new evidence and developments had come to light, is that  
10 correct?

11 A. Yes. I don't recall whether I was asked or whether I just  
12 did that on my own initiative.

13 Q. Okay. If we can just flip through some of the items in your  
14 letter which is found on page 29.

15 A. Yes.

16 Q. In that letter, we won't take the time to go through it, but in  
17 that you do explain why you didn't think a pardon would be  
18 the appropriate way to proceed.

19 A. Right.

20 Q. That the evidence would be subject to scrutiny and so on.

21 A. Yes.

22 Q. Let me take you to paragraph numbered 8, that's on page  
23 30.

24 A. Yes.

25 Q. You say that "Judging by public reaction to date, the most

1 serious question remaining would relate to the apparently  
2 perjured testimony given in the November '71 trial."

3 A. Yes.

4 Q. That was a question, a real question in the community at  
5 that time, wasn't it?

6 A. Yes.

7 Q. And continued to be.

8 A. Yes.

9 Q. And at a later date you were asked to give your opinion to  
10 the...to your superiors whether perjury charges should, in  
11 fact, be laid.

12 A. That's correct.

13 Q. And we'll come to that, I guess, chronologically as we get to  
14 it. Number 10.

15 A. Yes.

16 Q. You say, "More significant than the inconsistencies in  
17 Pratico's stories is the fact that apparently he had a  
18 reputation at the time for being a liar. It is hard to believe  
19 the police did not know this by the time he was put forward  
20 as a credible witness." Now, where did you get the  
21 information that Pratico had a reputation as being a liar?

22 A. From Jim Carroll and Harry Wheaton.

23 Q. Your only sources of information, I take it, except for your  
24 interview with Patricia Harriss, was from the RCMP who  
25 were passing along information to you.

1 A. And my interview with Donna Ebsary.

2 Q. Oh, I'm sorry, yes, and Donna Ebsary. Okay. On paragraph  
3 11 or in paragraph 11 you refer to Patricia Harriss and note  
4 that on April 16th you obtained a copy of her first  
5 statement which we've been referring to.

6 A. Yes.

7 Q. That statement, I suggest to you, would lend even more  
8 weight to your earlier suggestion that the best and most  
9 desirable result of a reference to the Court would be an  
10 acquittal on the basis of a miscarriage of justice. Would you  
11 agree with that?

12 A. That's a fair statement, yes.

13 Q. Thank-you. On page 31 in paragraph 12.

14 A. Yes.

15 Q. You're referring to the O'Reilley statements again.

16 A. Yes.

17 Q. Did Sergeant Wheaton tell you that he had contacted the  
18 O'Reilley girl in Calgary?

19 A. That's my recollection, yes.

20 Q. Do you...

21 A. I understand from evidence that...I heard it somewhere that  
22 he had, in fact, talked to her father and the father was the  
23 intermediary.

24 Q. Yes. He, in fact, never was in contact with...

25 A. No.

1 Q. ...the O'Reilley girl.

2 A. No. But at the time it was my understanding, and again, you  
3 know, I don't want to say that Staff Sergeant Wheaton was  
4 misleading me, you know. I think he just said, "Well, look  
5 O'Reilley says this or that," you know.

6 Q. I'm not suggesting that he was misleading you at all.

7 A. No.

8 Q. I'm putting to you though that given the evidence or the  
9 potential evidence of the O'Reilley girl...

10 A. Yes.

11 Q. That a complete and a thorough investigation by Staff  
12 Wheaton would have included a discussion with that girl by  
13 him.

14 A. That's fair.

15 Q. In the final sentence in paragraph 12 you again speculate or  
16 tell your superiors.

17 A. Yes. That's what I expected.

18 Q. That you expect the city police would say. That is pure  
19 speculation on your part.

20 A. Yes, yes.

21 Q. Thank-you. Now, paragraph 13, you say, "From the  
22 foregoing it is clear that any consideration of perjury  
23 charges necessarily involves an examination of police  
24 conduct in the investigation before you could decide if  
25 these...the stories from these youngsters is correct, you

1 would have to carry out a complete investigation of the  
2 police."

3 A. That was my view, yes.

4 Q. But you consider, your next sentence, "That examination will  
5 likely make it equally clear that perjury charges are not  
6 appropriate."

7 A. Yes.

8 Q. Now, why did you include in advance or speculate that that  
9 would be the result of an investigation?

10 A. Just knowing what I knew at that point. You know, let's  
11 take them one at a time. Patricia Harriss. Given the manner  
12 in which her statement was obtained and given her age. By  
13 the manner, I mean the length of time and parent possibly  
14 not present during the questioning, I didn't feel that there  
15 would be any basis for suggesting there be an intent to  
16 mislead on her part...

17 Q. But let me...

18 A. ...because of that.

19 Q. Let me just take you to another point in time and get you  
20 comments.

21 A. Sure.

22 Q. I'm talking about the time they're on the witness stand.

23 A. Yes.

24 Q. And at the trial under oath.

25 A. Yes.

- 1 Q. My understanding of perjury and the definition of perjury.
- 2 A. Yes.
- 3 Q. Is someone who under oath lies or tells an untruth with the
- 4 intention of misleading...
- 5 A. Yes.
- 6 Q. ...the person who is hearing that statement. Is that a fair...
- 7 A. That's fair, right.
- 8 Q. Now, Patricia Harriss, take her on the witness stand.
- 9 A. Yes.
- 10 Q. Said that she saw Donald Marshall and one other person.
- 11 A. Uh-hum.
- 12 Q. Who...I don't know if she said it could be Seale or whatever.
- 13 She said it was one other person.
- 14 A. Yes.
- 15 Q. Now, that's not the truth according to her.
- 16 A. That's correct.
- 17 Q. And would you not say that she said that at trial with the
- 18 intention of misleading the jury?
- 19 A. I would have trouble impugning that intent to her and I...
- 20 Q. Why would she have said it?
- 21 A. Well, I think that is the relevance, ah, what I was starting to
- 22 answer by saying that the circumstances of the taking of her
- 23 statement, the one which was consistent with that
- 24 testimony. Once she had made that statement then she
- 25 would feel obliged, and again I may be speculating, but I

1 think it's common sense that in those circumstances that  
2 most witnesses and in particular a youthful witness would  
3 feel bound to stay with that statement, you know, and  
4 possibly there were discussions between her and the police  
5 or the prosecutor prior to that. Again, that's speculating.  
6 But she...

7 Q I...

8 A. ...didn't have a lot of choice, I suppose, but to testify as she  
9 did at the time. That was my feeling.

10 Q And let me accept that for the purposes of our discussion.

11 A. Yes.

12 Q But surely that doesn't get you around the fact that when  
13 she gave the evidence under oath.

14 A. Yes.

15 Q It was a lie.

16 A. Yes.

17 Q That she intended the jury to believe it.

18 A. Yes.

19 Q To believe her evidence.

20 A. Correct.

21 Q Now, how do you get around, at least, a prima facie finding  
22 of perjury?

23 A. I suppose, you know, if you wanted to be very technical  
24 about it and I feel that's what you'd have to be really to  
25 push perjury there. I...I acknowledge what you're saying is

1 technically correct, but I just couldn't see any Crown  
2 recommending perjury in those circumstances.

3 Q. And I'm not being critical of you at all, Mr. Edwards, and we  
4 come to your...we'll come to your opinion later on, perhaps  
5 we can deal with it in more detail. What I'm interested in is  
6 taking the next step.

7 A. Yes.

8 Q. And asking if you ever gave consideration to charges of  
9 counseling perjury? Before you can do that, I suppose, you  
10 must have had the perjury committed.

11 A. Yes.

12 Q. Okay. We'll come to that later.

13 A. My "yes" was not...

14 Q. I understand.

15 A. ..."yes" that I considered counseling perjury.

16 Q. No, I understand that. On page 33, paragraph 21, were you  
17 at this stage, this is in May, I believe we have most, if not  
18 all, of the evidence that is going to be acquired by Staff  
19 Wheaton and Jim Carroll.

20 A. Yes.

21 Q. And at this stage you make the point "And in this unusual  
22 case, perhaps more than in any other, it is vitally important  
23 that justice be seen to be done," and that was a real  
24 consideration to you at that time.

25

1 9:52 a.m.

2 A. That was, yeah, a basic premise on which I was proceeding.

3 Q. And you were still of the view when you wrote this letter, I  
4 assume, since there's no reference to your earlier one on this  
5 point...

6 A. Yes.

7 Q. That the best result to be obtained from the Appeal Court  
8 would be an acquittal on the basis that there had been a  
9 miscarriage of justice.

10 A. Yes.

11 Q. Thank you. Now let's go to page 63, please. That is a letter  
12 from the Honourable Jean Chrétien to the Attorney General  
13 which is enclosing the original reference. You received a copy  
14 of this letter, didn't you?

15 A. I did, yes.

16 Q. At this stage it's known that the reference is, in fact, going  
17 under sub-section (b) of Section 617.

18 A. Correct.

19 Q. And you would know at that time that the carriage of the  
20 matter has now shifted and Donald Marshall's lawyer has to  
21 present the evidence himself.

22 A. That is correct, yes.

23 Q. And in those circumstances following your practice...

24 A. Yes.

25 Q. It would be your intention that Steve Aronson should have

1 access and been provided copies with of all the  
2 documentation that you had.

3 A. Right.

4 Q And that is the same intention, is it not, that is expressed by  
5 Mr. Chrétien in the final paragraph of his letter.

6 A. It appears to be, yes.

7 Q You, in fact, did that. You turned over to Mr. Aronson all of  
8 the documents you had.

9 A. Yes.

10 Q And he would need those in order to properly present the  
11 evidence to the Appeal Court on behalf of his client, is that  
12 not so?

13 A. I suppose the argument could be made that he wouldn't  
14 require Staff Wheaton's report, you know, that all he would  
15 require would be the statements. But I took the view that,  
16 you know, having been in his position just a couple of weeks  
17 before that I'd sure want to have it.

18 Q Sure. Okay.

19 A. And so I gave it to him and I was also concerned with Mr.  
20 Aronson and Mr. Marshall having some assurance that we  
21 were being straight with them and that they were getting  
22 everything that we had.

23 Q In any event, you felt perfectly correct and proper in giving  
24 all of the information to Mr. Aronson.

25 A. That's correct.

1 Q. Did you put any...

2 A. And, you know, as far as this letter is concerned I don't know  
3 if I even took cognizance of that last paragraph because, as  
4 you know, a couple of years later when this flared up and I  
5 was justifying my turning over the report, I made no  
6 reference to this letter. I wish I had thought of it at the time.

7 Q. Did you put any restrictions on Aronson as to the use he could  
8 make of the documents turned over to him?

9 A. The only restriction I put on him, and I didn't have a clear  
10 recollection of this in '84 when I was accounting, but the only,  
11 the only recollection I had was that I had asked him not to  
12 make it public because it was rather sensitive in nature.  
13 Beyond that, I made no restriction and I believe Mr. Aronson,  
14 in his evidence, confirmed that there was that kind of a  
15 restriction put on.

16 Q. By not making it public you mean don't circulate...

17 A. Don't circulate the...

18 Q. In general.

19 A. The report to the press.

20 Q. I'm going to...

21 A. Or the political candidates.

22 Q. On page 68, and this is, again, taken from Mr. Aronson's  
23 records, that he was meeting with you in June. What was the  
24 role played by each of you after the reference came down?  
25 Who was to do what?

1 A. You're referring to the contents of page 68?

2 Q. I'm just pointing out 68 that you met with Mr. Aronson...

3 A. Yes.

4 Q. On June 23rd to discuss the case.

5 A. Yes.

6 Q. What I'm trying to ascertain is what role each of you played  
7 once the reference was actually forwarded.

8 A. After the reference was ordered under 617(b) I had to shift  
9 gears completely, I guess it's fair to say, and recognize that  
10 the carriage of the thing was with Mr. Aronson. And I can  
11 recall a bit of a discussion we had on that matter around that  
12 time. And I want to preface this by saying that Steve and I  
13 got along very well and relations were always cordial. But in  
14 one of our initial discussions, if not the first one, I suppose I  
15 was making suggestions about, you know, what he might do.  
16 And I don't recall exactly what I was saying but I do recall  
17 him telling me in a polite way that he would decide how the  
18 thing was going to be handled from here. And I said, "Okay,  
19 fair enough." So I hope that's focussing on your question  
20 because from that point I was more or less in the role of a  
21 respondent and I was more in a reactive role than active.

22 Q. Were you going to be an adversary?

23 A. As you probably read in my brief on fresh evidence, I felt  
24 that I was really on the tightrope on that one. I was, it's not  
25 often that I wish I was representing the other side but that's

1 where I was on that one but I recognized or I felt that there  
2 was a role for me to play in, I suppose in an adversarial  
3 sense, in that I thought that there should be some cross-  
4 examination of the witnesses who might be called. But I  
5 never, at any time, ever felt that the end result should be any  
6 different that the ordering of an acquittal.

7 Q. Look at page 69, it's a letter of July 2nd from Mr. Aronson to  
8 yourself. He's referring to the fact that he has now reviewed  
9 the materials you forwarded to him and he's looking for  
10 additional information. Some of the initial statements  
11 apparently were not given to him.

12 A. Yes.

13 Q. That's, I assume, because you didn't have them, is that  
14 correct? You didn't withhold anything from him intentionally,  
15 did you?

16 A. Oh I certainly didn't withhold it intentionally. Now I may  
17 have had those statements and, I don't know whether they  
18 didn't get photocopied but certainly, or maybe I didn't have  
19 them at all, I don't recall.

20 Q. Anything he did request...

21 A. But anything he wanted at any time through this, and I think  
22 he'd verify that, he got it without hesitation.

23 Q. Look at page 70.

24 A. Yes.

25 Q. He asks a couple of questions and I'd like to know if you can

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 give us the answers. The first is, "Another point comes to  
2 mind is whether or not George MacNeil and Sandy MacNeil  
3 have been located." Do you know if, in fact, they were ever  
4 located and interviewed?

5 A. I don't recall, Mr. MacDonald.

6 Q. And he also says, "Finally, has Pratico ever been asked how  
7 he became involved with the Sydney City Police in the first  
8 place? Was he picked and, if so, why?" Do you know if that  
9 was ever determined?

10 A. I can recall some conversation by Staff Wheaton, I believe  
11 regarding a Poirier chap, as having been the link between  
12 John MacIntyre and John Pratico. I'm pretty vague on that.

13 Q. Did you, yourself, ever talk with Pratico?

14 A. No.

15 Q. Have you ever talked with Dr. Mian?

16 A. No.

17 Q. Now your first court appearance, I think, was on July the 9th  
18 of 1972 or '82. That's on page 77 of that document. There  
19 are some notes. And also if you want to turn up Volume 29  
20 at page 35 there are further notes.

MR. PUGSLEY

22 Volume 29, what page?

MR. MacDONALD

24 35.

25 A. Yes, the...

1 Q. My understanding is the notes that are on page, in Volume 31  
2 at page 77 I believe were made by Mr. Herschorn. And I  
3 think the ones on page 35, Volume 29, those are yours, is that  
4 correct?

5 A. Yes. I have the original of those in Volume 29 here.

6 Q. Now do you recall that appearance?

7 A. The three appearances, there was two in July and one in  
8 October, they, I suppose because of the passage of time, have  
9 become kind of blurred together. And I can remember some  
10 parts of them but it's more of an impression that stays with  
11 me on those appearances.

12 Q. Were the two appearances in July before Chief Justice  
13 MacKeigan?

14 A. Yes.

15 Q. And what was the purpose of those appearances?

16 A. Well as the note, you're saying July 9th, I have July 8th.  
17 Perhaps I wrote down the wrong date.

18 Q. Okay, yeah. Your notes say July 8th, I guess...

19 A. Yes.

20 Q. Mr. Herschorn's are 9th. So it may be just you spoke to him  
21 the day after that's all.

22 A. Yes.

23 Q. July 8th was the actual appearance.

24 A. If July 8th was a Thursday then I guess that would resolve it.  
25 But the reason for that initial court appearance, I guess, was

1 just to get, as I indicate in my first note there, direction on  
2 how to proceed to get the fresh evidence before the Court.  
3 And there was some discussion about whether the formal  
4 reference document would serve as a notice of appeal and I  
5 believe it was decided it would.

6 Q. Mr. Herschorn's notes start out by saying, "Let down.  
7 MacKeigan cautious in his approach."

8 A. Yes.

9 Q. Was there any feeling by you, or were you disappointed what  
10 took place on the 8th?

11 A. I'd say yes, and that's why I preface the, my remarks by  
12 saying like those three appearances left me with the  
13 impression, or even the letdown is not unfair, that in my view  
14 the Court was taking a very restrictive view of the proceeding  
15 before it and it was becoming apparent, if it, you know, I can't  
16 say that the feeling gelled on July the 8th but certainly by the  
17 time the October hearing was over it was apparent to me that  
18 there was no way the scope of evidence that I had anticipated  
19 was going to go before the Court.

20 Q. What was your sense of what the Court, how the Court was  
21 viewing this whole thing?

22 A. Again this, I find this difficult because I don't recall the  
23 specific conversations but my sense was, and I can say  
24 without hesitation, was that the Court seemed to be viewing  
25 this more as an ordinary appeal than as what I considered to

1 be a very unusual situation. And, see, the wording of the  
2 reference under 617(b) on the face of it, you know, as if it  
3 were an appeal by Donald Marshall, Jr. seems to justify that.  
4 That narrow approach. And I use narrow, not in pejorative  
5 way, but descriptive, whereas my understanding of the  
6 (Gorecki?) case, and that was the one that I was using, you  
7 know, to sort of frame my thoughts but I believe Gorecki,  
8 Number 2 states quite clearly that the Court has quite a bit of  
9 discretion in, as I read Gorecki, Number 2, can open it up if it  
10 wishes. That it's not bound to consider a reference under  
11 617(b) in the very restrictive confines of an ordinary appeal.

12 Q. Let me just refer again to Mr. Herschorn's note. It says, you  
13 are to return July 29th, for you and Mr. Aronson, to file  
14 affidavits from proposed witnesses as to what their evidence  
15 would be. And that was the procedure that Mr. Justice  
16 MacKeigan, or Chief Justice MacKeigan wanted to hear, first of  
17 all, what the evidence would be in order to decide whether to  
18 let those people give evidence, is that correct?

19 A. Right.

20 Q. Then, "M.K." I don't know who M.K. means. Oh, MacKeigan.

21 A. "Surprised..."

22 Q. "Surprised re your suggesting..."

23 A. Yes.

24 Q. "That police witnesses be called to put the whole thing in  
25 perspective."

1 A. Yes.

2 Q. You were suggesting, I take it, that the evidence from the  
3 police has to be called and you found the Chief Justice was  
4 surprised at that.

5 A. Yes. I mean my view was that if, really how could you assess  
6 the evidence of Chant and Harriss, in particular, without  
7 getting into the police evidence. Rightly or wrongly that was  
8 the view I took and the Chief Justice, I don't recall that  
9 particular occasion, but I can recall him, it would have been in  
10 October when we were before the full Bench when the issue  
11 was raised again. I can recall the Chief Justice saying to one  
12 of his colleagues, I believe it was Mr. Justice Hart, on his right,  
13 you know, "That's a can of worms, we don't have to get into  
14 that." A remark like that in response and it was after that, of  
15 course, that they reserved on the filing of the affidavits or  
16 calling further evidence.

17 Q. Your opinion from the beginning was that the police evidence  
18 had to be called, you had to hear the police as well as Chant  
19 and Harriss in order to determine where the truth lie, is that  
20 correct?

21 A. Yes.

22 Q. It goes on to say that you're going to meet with MacIntyre,  
23 Monday, July the 12th to indicate he is to complete some  
24 affidavits.

25 A. Yes.

1 Q. In your notes, Mr. Edwards, you say that you undertook to  
2 insure that witnesses were advised of Section 5 of the  
3 Evidence Act.

4 A. Yes.

5 Q. Which witnesses are you referring to there? All witnesses?

6 A. All witnesses, yes.

7 Q. And Section 5 is the section that provides what?

8 A. Well the guard against self-incrimination, I suppose, is the  
9 best way to put it. That was at the suggestion of the Chief  
10 Justice and I believe that was straightened out when we got  
11 to actually hear the evidence in December because, of course,  
12 the Charter of Rights automatically provides that protection so  
13 Section 5 is really redundant.

14 Q. The way it was left on July 8th, then, was "Get some affidavits  
15 and come back later in July."

16 A. Yes.

17 Q. And at that time some direction will be given to you.

18 A. Right.

19 Q. Okay. Let me take you back to your handwritten notes then  
20 of your diary, so-called, in Volume 17, My Lords, at page 12.

21 A. Which notes are these?

22 Q. These are your notes of July the 12th, a meeting at your  
23 office?

24 A. Yes, okay.

25 Q. How did that, you told Mr. Herschorn you were going to be

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 meeting with Chief MacIntyre, that you'd compare affidavits  
2 and you, in fact, met with MacIntyre, Whalley, Wheaton and  
3 Mr. Urquhart...

4 A. Mr. Urquhart came in late that's why he's not mentioned in  
5 the list at the top there.

6 Q. But he was there at some time.

7 A. Oh, yes.

8 Q. What was the purpose of that meeting?

9 A. Again, you know, I don't have any notes of the call that I  
10 would have made, I assume to John MacIntyre to set the  
11 meeting up. But my best recollection is that the purpose was  
12 to advise him of what had transpired or advise the police of  
13 what had transpired in Court on July the 8th.

14 I believe that I was aware prior to that court appearance  
15 that affidavits were a likelihood. Now, that was probably  
16 just speculation on my part on where this thing was to go.  
17 So, one of the primary motives for the meeting would have  
18 been to take information for the affidavits.

19 10:15 a.m.

20 Q. Why was...

21 A. And...but I guess the unspoken reason for the meeting was  
22 that I really wanted to probe John MacIntyre and Bill  
23 Urquhart on just what had taken place in 1971.

24 Q. Why was Staff Wheaton there?

25 A. Well, Staff Wheaton and Scott had had discussions with John

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 MacIntyre, and you recall the earlier reference to the  
2 meeting between Scott and MacIntyre, where Wheaton had  
3 said that Scott hadn't had sufficient details to pin him down.

4 Q. Yes.

5 A. I didn't want to be in the same position so that, you know,  
6 like I was anticipating quite an intense meeting, and so that  
7 I wanted Wheaton there because, although he had briefed  
8 me in detail, you know, some points that I hadn't anticipated  
9 might come up and I'd like to have him there for  
10 informational purposes.

11 Q. Why was Mr. Whalley there?

12 A. Now, that you would have to ask John MacIntyre. It was  
13 John...it was John MacIntyre who invited Whalley.

14 Q. Okay.

15 A. I don't believe I did.

16 Q. When were your notes made of this meeting?

17 A. The notes were made during and immediately after the  
18 meeting. You know, if you read them, they are very  
19 disjointed, and the reason being is that I was trying to  
20 conduct this meeting and make notes at the same time and  
21 it wasn't a very useful exercise as far as note taking is  
22 concerned.

23 Q. How long was the meeting?

24 A. I have no specific recollection. I mean it was long. It was  
25 two or three hours I would say, maybe longer.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 Q. Can you comment on the mood of the meeting, the attitude  
2 of the various people?

3 A. When the meeting began, I suppose that everybody was a  
4 little tentative and guarded, but as the meeting went on and  
5 I don't recall at specifically which point, but I recall that I  
6 was pressing Chief MacIntyre on either the Chant or the  
7 Harriss statements I think, and he got upset, and you asked  
8 me earlier had I ever seen him bang his fist on the table,  
9 well, that was one of the two occasions when he banged his  
10 fist on the table and said, "What's going on here? What is  
11 this?" which was obviously a reaction to being, I'd have to  
12 admit, interrogated, because I was pushing him pretty hard.

13 Q. What were you pressing him about?

14 A. There again, now, I know I pressed him on the Chant one,  
15 but I believe where the upset took place was on the Harriss  
16 because I was pressing him on the propriety of keeping a  
17 witness of that age at the police station until twenty after  
18 one in the morning from eight o'clock in the evening.

19 Q. What was his response?

20 A. Well, he said that he wasn't there the whole time, he  
21 didn't...he didn't know how long she had been there and I'm  
22 a little vague on the specific reaction, but that was the gist  
23 of it, and that her mother...I think he said her mother was  
24 there part of the time at least. That there was no banging  
25 on the desk as far as he was concerned.

MR. EDWARDS, EXAM. BY MR. MACDONALD

- 1 Q. Was Staff Wheaton present through the entire meeting?
- 2 A. I think he was.
- 3 Q. At any time were you threatened by Chief MacIntyre?
- 4 A. I heard Staff Wheaton's evidence on that point. No, that's
- 5 not my recollection. It was an intense meeting but Mr.
- 6 Whalley and Mr. MacIntyre didn't get me up against a wall
- 7 and stand over me, I believe that was the gist of it.
- 8 Q. Would you say that the Chief or Mr. Whalley or both became
- 9 aggressive towards you?
- 10 A. Well, Mr. Whalley definitely not. Mr. MacIntyre, I suppose,
- 11 you know, the slamming the fist and the raised tone could
- 12 be interpreted as aggressive, but no more than that.
- 13 Q. Let me read you what Staff Wheaton said at page 7806 of
- 14 the transcript and ask for your comment. He had said or
- 15 testified that the meeting was both morning and afternoon.
- 16 A. He may be right on that, I couldn't say.
- 17 Q. He was asked, "Were you present for the entire sessions
- 18 both morning and afternoon?" and here's his answer,
- 19
- 20 A. I left toward the end of the afternoon sessions to
- 21 go the washroom and when I came back Mr.
- 22 Whalley and the Chief were standing over Mr.
- 23 Edwards and there was finger pointing going on
- 24 and so on, and this was right at the end of the
- 25 meeting.
- Q. Standing over Mr. Edwards. Was Mr. Edwards seated?

1 A. He was seated, yes, sir.

2 Q. I see, any shouting?

3 A. Voices were loud. I wouldn't say shouting but  
4 aggressive.

5  
6 Did that scene occur?

7 A. No. No.

8 Q. At any time were you seated with Mr. MacIntyre and Mr.  
9 Whalley standing over you in an aggressive manner?

10 A. No.

11 Q. Thank-you. We go back to your notes taken on that day  
12 then and ask you various questions. Under the...you have  
13 "Re Chant," do you have that? It's about...close to the  
14 beginning.

15 A. Yes, I have it. And then it begins, "Says he did not."

16 Q. Yes.

17 A. Yes. Okay.

18 Q. Now, your second notation under that title is "No threats or  
19 questions by anyone to Chant during the meeting." I assume  
20 you mean...

21 A. No, sorry.

22 Q. ...other than somebody. Somebody must have been  
23 questioning him.

24 A. Yes.

25 Q. Were you...

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. That's what I say. The...this note taking was a, you know, a  
2 lot of it was done during the meeting and I was trying to  
3 keep a handle on questioning those present and getting the  
4 notes, so.

5 Q. Were you told who did the questioning?

6 A. Yes, John MacIntyre did the questioning.

7 Q. You go on to say, "Says he didn't mention Pratico's earlier  
8 statement on June the 4th." What does that refer to?

9 A. Well, as I recall the statement from Pratico had been taken  
10 or Pratico's second statement had been taken earlier that  
11 day.

12 Q. That's correct.

13 A. Which was a Sunday, I believe. And, so I asked John  
14 MacIntyre whether he had said to Chant, "Look, I've got a  
15 statement from this other fellow," whether it was Pratico or  
16 an unnamed person, and "He says he saw it and, therefore,  
17 you must have seen it." And John said that he hadn't  
18 mentioned Pratico's statement, earlier statement to Chant.

19 Q. Did he deny making any reference to the fact that he...they  
20 had this statement from another eyewitness who had seen  
21 the murder?

22 A. That is my understanding, yes.

23 Q. Thank-you. Your next point is "Between May 30th and June  
24 4th absolutely no conversation between the Chief and  
25 Chant."

- 1 A. Right.
- 2 Q. And did you consider that to be important? Was that...who  
3 was raising that, you or...
- 4 A. I raised that, yes, because...I mean I was trying to zero in on  
5 what caused Chant to change from his first statement to his  
6 second statement. So, I think, you know, it would be  
7 reasonable to assume that if there was conversations in that  
8 period of time, they may have had some bearing on the  
9 change.
- 10 Q. Did the same thing apply to Pratico?
- 11 A. The same would apply, yes, I don't know if I asked that  
12 same question, but if I didn't I should have, I guess.
- 13 Q. You then note, "When did he take Chant down to tracks?  
14 Can't recall exactly when that was." Did you have  
15 information that..."he" is referring to Chief MacIntyre, is it?
- 16 A. Yes.
- 17 Q. Did you have information that Chief MacIntyre had taken  
18 Chant down to the tracks?
- 19 A. Yes, I believe I had gotten that from Staff Wheaton  
20 somewhere along the line.
- 21 Q. Okay. Over on, at least on our next page, but this is under  
22 the title "J.F. MacIntyre," to assists you in finding it. It's  
23 Patricia Harriss.
- 24 A. Oh, yes, okay. Yes. Yeah, on the original note there is a  
25 paragraph there and then a bracket "with J.F. MacIntyre" out

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 in the margin.

2 Q. Okay. You, under the note for J.F.MacIntyre it says, "Can't  
3 recall whether he spoke to O'Reilley previously."

4 MR. PUGSLEY

5 Harriss., Patricia Harriss?

6 MR. MacDONALD

7 No, it says, "Can't recall whether he spoke to O'Reilley  
8 previously."

9 MR. PUGSLEY

10 I beg your pardon, sorry.

11 MR. EDWARDS

12 A. Yes. Yes, and...

13 Q. Previously to what?

14 A. Previous to taking the statement from Harriss on June 18th.  
15 And, that's where I have difficulty with some of these notes  
16 because that is not the sense I was left with at the end of  
17 the meeting, because I believe in the affidavit I made a  
18 reference contrary to that. So, I can't...I can't really explain  
19 that.

20 Q. All right. Now, under the...under "Mr. Urquhart," and I take  
21 it these are notes of comments from him, are they?

22 A. Yes.

23 Q. He doesn't recall the interview with Harriss.

24 A. Right.

25 Q. "Nor did he recall O'Reilley."

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. Right.

2 Q. "But he says there is no banging desk and hollering." Now, if  
3 he didn't recall it how could he say there was none of that  
4 occurred?

5 A. I don't know.

6 Q. Okay. Under "Pratico," "Wouldn't say he was totally reliable  
7 but placed credence where his story was corroborated by  
8 other witnesses, Chant and Harriss."

9 A. Yes.

10 Q. Whose comment was that?

11 A. John MacIntyre. That may not be a word-for-word  
12 comment. That may be my impression of the sense of what  
13 he said.

14 Q. But you couldn't go with Pratico alone, you'd have to have  
15 corroboration.

16 A. Yes, that's fair.

17 Q. Now, Mr. Urquhart with respect to just below that point is  
18 saying "He has no independent recollection of interview."  
19 That's the interview with Pratico. Correct?

20 A. Yes.

21 Q. Did you question him on that or press him why he could  
22 remember an interview with Pratico, I'm sorry with Chant,  
23 but he couldn't remember an interview with Pratico the  
24 same day?

25 A. No. You know, I just want to make an interjection at this

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 point. This was less than an ideal situation to do any cross-  
2 examination, you know, if you can recall John MacIntyre's  
3 testimony before this inquiry, I think it's fair to say that he  
4 was a very difficult witness to cross-examine here, under  
5 oath, and you know, before the inquiry. In that meeting  
6 with Urquhart and Whalley present there...it was not, well, I  
7 shouldn't say it was not possible, but I didn't feel that I was  
8 able to do an effective cross, and really that wasn't, I  
9 suppose, my primary objective, although I was trying to do  
10 as much of one as I could.

11 Q. Your primary objective was to get information for affidavits.

12 A. Yes.

13 Q. At this stage, recognizing now that Aronson has conduct of  
14 the appeal or of the reference.

15 A. Yes.

16 Q. Had you been told by Aronson that he had no intention of  
17 calling evidence from the police?

18 A. I may have been, Mr. MacDonald, that was certainly my  
19 understanding. Now whether I was told that by Aronson or  
20 if I just assumed that he wasn't going to, I can't say.

21 Q. You did after this meeting with the...with Urquhart and  
22 MacIntyre, did prepare affidavits for their review.

23 A. I did, yes.

24 Q. And the understanding was you would draft them, they  
25 would be reviewed by MacIntyre and Urquhart with their

- 1           solicitor.
- 2    A.    Yes.
- 3    Q.    Any changes they wanted would be made by you.
- 4    A.    Yes.
- 5    Q.    Did you receive any instructions for preparation of those  
6        affidavits other than during the meeting of July 12th?
- 7    A.    There may have been a telephone conversation with John  
8        MacIntyre. I don't...I don't think so. I believe I prepared  
9        the affidavits based on what I had learned in the meeting.
- 10   Q.    All right. Now, the next notes I have, Mr. Edwards, are July  
11        21st.
- 12   A.    Yes.
- 13   Q.    And they record a conversation you had with Gordon Coles  
14        who had told you he was getting feedback from somebody.
- 15   A.    Right.
- 16   Q.    That the Crown was being less...that the Crown was not  
17        being impartial.
- 18   A.    Right.
- 19   Q.    And you learned that that was Mr. Whalley.
- 20   A.    Yes.
- 21   Q.    Do you recall that conversation with Gale?
- 22   A.    Coles.
- 23   Q.    Coles, sorry.
- 24   A.    Yes. Yes.
- 25   Q.    What was being said? What...were you being chastised in

1           some way?

2       A.   Beyond what's said in the notes there I have no specific  
3           recollection, although I do recall that information.  The tone  
4           of the meeting, he was quite cordial, I mean, he didn't really  
5           come on heavy at that meeting.  But I suppose, you know, it  
6           might be interpreted as a gentle chastisement.

7       Q.   Did you consider you were being...

8       A.   That...sorry.

9       Q.   Did you consider you were displaying a lack of impartiality  
10           in this matter?

11      A.   No, although I have to acknowledge that I had very definite  
12           opinions about the matter at that time and I...I guess I was  
13           just not able to understand at that point, given the  
14           knowledge we had at that time, that anyone could seriously  
15           believe that Donald Marshall had committed the murder

16      Q.   Had you been meeting people who you thought did seriously  
17           believe that?

18      A.   Well, that was the sense I took from this July 21st phone  
19           call, you know, and when they said I wasn't being impartial  
20           and that I had pre-judged the situation.  That's what I took  
21           him to mean that, you know, I shouldn't...or to take the  
22           position that Donald Marshall was innocent at this stage was  
23           premature.

24      Q.   During your meeting on July the 12th with those various  
25           people, were there any comments made to you which would

MR. EDWARDS, EXAM. BY MR. MACDONALD

1           indicate anyone present at that meeting believed still that  
2           Donald Marshall had killed Sandy Seale?

3       A. That was the general sense that I had from John MacIntyre,  
4           and again I don't know if there is any specific reference in the  
5           notes, but that was my impression of him. With Mr. Whalley I  
6           remember quite specifically because, well, quite frankly, I  
7           was astounded when at the end of the meeting, having gone  
8           through this in some detail, as he was leaving he looked at me  
9           and he kind of chuckled and he said, "Take that to court and  
10          you'll be laughed right out of the courtroom."

11       10:37 a.m.

12       Q. Take what to court?

13       A. The Marshall case and the position that he was innocent.

14       Q. Back in your notes of July 21st...

15       A. Yes.

16       Q. You note that, "Coles says, 'They were concerned you were not  
17          calling enough witnesses. McGee was one of the names  
18          mentioned.'"

19       A. Yes.

20       Q. "You told him you had prepared affidavits for Urquhart,  
21          MacIntyre and McGee." When did you meet McGee to get  
22          instructions from him?

23       A. I don't believe I had a specific meeting with him. Mr. McGee  
24          is a fellow who is very well-known to me and who I would  
25          run into two or three times a week in the courthouse and

MR. EDWARDS, EXAM. BY MR. MACDONALD

1           although I can't specifically recall, I believe that, you know,  
2           when I was over in court and met Mr. McGee I had a quick  
3           conversation with him in the corridor asking him his  
4           recollection and would he be prepared to give an affidavit.

5       Q.   It was your intention at all times to have an affidavit from  
6           him for submission to the Court.

7       A.   Oh, I think I had already prepared it by the time I got this  
8           call on July 21st.

9       Q.   How was it left between you and Mr. Coles?

10      A.   I don't recall the specific parting shot but, that's, I'm sorry,  
11           that's a poor choice of words...

COMMISSIONER EVANS

12           It may be accurate.

13      A.   No, not on this occasion at all. It was, you know, that whole  
14           conversation was very calm and just left that we'll try to keep  
15           some balance in this whole thing.  
16

CHAIRMAN

17           Mr. Edwards, did you propose calling witnesses bearing in  
18           mind that Aronson had the carriage of the case?  
19

20      A.   Yes, I was intending to call the police witnesses in response to  
21           what I anticipated the, Chant and Harriss in particular, were  
22           going to say.

CHAIRMAN

23           This is part of the adversarial process for testing the  
24           strength of the evidence of the various witnesses, I presume.  
25

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. Yes.

2 MR. MacDONALD

3 Q. Your next notes are July the 22nd at which time Whalley,  
4 MacIntyre and Urquhart came to your office with the  
5 affidavits you had drafted and there were suggested changes  
6 to be made?

7 A. Yes.

8 Q. Do you recall what the initial paragraph referring to John  
9 Pratico and the lack of knowledge of the police concerning  
10 him would have said?

11 A. Yes. I think I can remember pretty accurately, unfortunately  
12 I didn't keep the draft. But it was a paragraph to the effect  
13 that John MacIntyre, and I believe in Urquhart's also, had no  
14 knowledge at the time of the trial and preliminary that John  
15 Pratico had any type of mental problem.

16 Q. And they wished to have that paragraph deleted?

17 A. Yes.

18 Q. And on the basis as you've recorded that possibly Pratico's  
19 mother would have told Chief MacIntyre that her son was on  
20 pills.

21 A. Yes, I can recall Chief MacIntyre making that statement.

22 Q. Was that the only reason that perhaps they knew he was  
23 taking pills but didn't know he had spent time in the Nova  
24 Scotia Hospital? "I didn't know he had mental problems."

25 A. Yes. I think on the, at the July 12th meeting he had said

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 specifically that he didn't know that Pratico was in the Nova  
2 Scotia Hospital.

3 Q. Now would, the changes that you were asked to make, were  
4 you satisfied that you had prepared affidavits based on  
5 instructions received from MacIntyre and Urquhart that  
6 accurately and truthfully reflected their knowledge?

7 A. Yes. I was satisfied that their affidavits accurately gave the  
8 account that they had given me. You know, in fairness, I  
9 would have to say that I was a little uneasy, particularly with  
10 that bit about Pratico. But they were saying that this was the  
11 truth of the matter and I felt that they were entitled to put  
12 that position forward. I mean I contrast that, it would be  
13 improper and I wouldn't put something in an affidavit that I  
14 knew to be a lie. I certainly didn't do that. I don't think I  
15 did.

16 Q. Were you satisfied that Sergeant, that Chief MacIntyre and  
17 Urquhart had full opportunity to make any changes they  
18 wanted in those affidavits before they were sworn?

19 A. Oh there's absolutely no question because they had the  
20 affidavits for a few days. And read them over with Mr.  
21 Whalley.

22 Q. Okay, you then go on to note on that same date that you left  
23 them alone in your office to read Aronson's affidavit.

24 A. Yes.

25 Q. Aronson's affidavits. I assume those are the affidavits...

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. Yes.

2 Q. That Aronson had, was proposing to introduce.

3 A. Yes.

4 Q. And then you make comment about the, when you returned  
5 the Chief was reading the RCMP report that was in your office.

6 A. Yes.

7 Q. Is that something that would have just been open and  
8 available for someone to read if they wanted to?

9 A. Possibly it was because I think I had a lot of the material  
10 spread out on the conference table I mentioned the other day.

11 Q. And then you say you assured them you would do everything  
12 possible to have their side of the story presented.

13 A. Yes.

14 Q. And their side of the story, I take it, was what was in the  
15 affidavit?

16 A. What was in the affidavit, yes.

17 Q. At any time did you discuss with Chief MacIntyre or Sergeant  
18 Urquhart how Chant and Pratico, these two people that were  
19 unconnected, unrelated, didn't know each other, how they  
20 ever both came up with the same lie?

21 A. I don't think I ever had the opportunity to press him on that,  
22 you know, unless I said, "Well you had the opportunity during  
23 the July 12th meeting," but it was hard to keep that meeting  
24 on track.

25 Q. So at no time have you actually discussed that particular

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 point with them.

2 A. I don't believe so, no.

3 Q. I want to take you to the affidavits of Mr. MacIntyre and  
4 Urquhart.

5 A. Yes.

6 Q. They're found in Volume 39. And on page 79...

7 A. Yes.

8 Q. In paragraphs 10, 11, 12 and 13, they're going on talking  
9 about John Pratico. Would you have wanted to know and  
10 been interested to know that prior to taking the second  
11 statement from John Pratico Chief MacIntyre had actually  
12 taken him down to the Park and they were together in the  
13 Park?

14 A. Yes, that would have been useful information to have.

15 Q. Would you consider that to be important information?

16 A. Yes.

17 Q. That was never told to you?

18 A. I don't recall it being told, but in fairness I have to say that  
19 my notes of the July 12th meeting may not have picked that  
20 up. It may have been mentioned to me, I don't think it was,  
21 but it may have been. I can't rule it out.

22 Q. On page 80, paragraph 14, it's a statement by Chief MacIntyre  
23 that he believed, or suspected that both Chant and Pratico had  
24 previously obtained their first statements from Donald  
25 Marshall. Was that told to you as well during the July 12th

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 meeting?

2 A. I believe so. I seem to recall Chief MacIntyre saying, "Well  
3 you know they both talked to Marshall before they gave  
4 those first statements."

5 Q. Why was it not proposed by you that Gushue would be called  
6 at the reference?

7 A. Why was it not proposed by me?

8 Q. Yes. That you were proposing to call Harriss but not Gushue.

9 A. It was Mr. Aronson who was proposing to call Harriss.

10 Q. From your point of view, from a rebuttal, if you will...

11 A. Yes.

12 Q. Why would you not propose calling Gushue?

13 A. Again, it's a little difficult to remember some of these specific  
14 points six years after the event but I recall that Gushue was  
15 both hostile and had a vague recollection and may have had a  
16 bit of a drinking problem.

17 Q. Did you meet with him?

18 A. No. That was information that I would have gotten from Staff  
19 Wheaton.

20 Q. Let me take you to Mr. Urquhart's affidavit which is on page  
21 96 of that volume. I want to refer to page 97.

22 A. Right.

23 Q. Paragraph 7. This is a statement in the affidavit. And these  
24 affidavits, I take it, are intended to be put before the Court...

25 A. Yes.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 Q. With the intention of the Court knowing what the evidence of  
2 these witnesses would be.

3 A. Yes.

4 Q. Paragraph 7, "That at no time did anyone in my presence, or  
5 to the best of my knowledge, make any threats or promises or  
6 offer any inducements to Mr. Pratico." Now Mr. Urquhart had  
7 told you he had no independent recollection of that meeting  
8 at all.

9 A. Right.

10 Q. Wouldn't you agree with me that the essence of what  
11 paragraph 7 is saying would lead one to conclude that he does  
12 recall what happened. And that there were no threats made.

13 A. Yes. That's fair.

14 Q. But that's not a fair representation of what Mr. Urquhart had  
15 told you.

16 A. Well perhaps not, but at the same time he had told me he had  
17 no recollection but he was also, I believe, suggesting, and I  
18 think I'm correct on this, that if it had happened he'd  
19 remember. And that he had accompanied John MacIntyre on  
20 many occasions and never saw the type of conduct that  
21 MacIntyre was being accused of. Now perhaps I overstated  
22 his position there and that's a fair criticism.

23 Q. But he swore the affidavit.

24 A. Yes. I mean I was going on, not only the written notes but  
25 my impression and doing my best to reflect the positions that

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 they had given me in the affidavits. And recognizing that it  
2 was going to be reviewed them and by Mr. Whalley. So if  
3 there were any misconceptions that they'd be thereby  
4 removed.

5 Q. Now look at paragraph 9, that is a statement by Mr. Urquhart  
6 that he was present and took a second written statement  
7 from Patricia Harriss on June the 18th.

8 A. Yes.

9 Q. Let me show you the original of that statement. That's Exhibit  
10 56.

11 A. Apparently taken by Sergeant MacIntyre.

12 Q. If you look at page 106 of Volume 39 you will see the, 105-  
13 106 it's the typewritten part.

14 A. Yes.

15 Q. And let me read you from the evidence of Mr. Urquhart at  
16 page 9597 and 9598. You said this is the, the question, "This  
17 is the later statement of Patricia Harriss and do you see your  
18 name on page 66?" And he says, "Yes, it's typed in the right-  
19 hand corner." And that would be similar to that page I've  
20 showed you, 106.

21 A. Yes.

22 Q. Question, "Yes, and again, correct me if I'm wrong, but you've  
23 already told us that you weren't there." Answer is, "That's  
24 right." And he confirmed on the same page that he wasn't  
25 even there when that second statement was taken.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. Um-hmm.

2 Q. From Patricia Harriss.

3 A. Yes.

4 Q. You were never told that.

5 A. That he wasn't there?

6 Q. Yeah. In fact, you were told that he was there. And Mr.  
7 Urquhart...

8 A. Yes.

9 Q. Swore an affidavit saying that he was there.

10 A. That's my recollection, yes. And that's obviously what the  
11 affidavit says.

12 Q. Where would the original of these police files have been, do  
13 you know?

14 A. I guess by that time the RCMP had them.

15 Q. I take it then, paragraph 11 of that affidavit, on page 97  
16 obviously can't be correct either. Where he says that, "No one  
17 made any threats or promises to Patricia Harriss."

18 A. If we now accept that he wasn't there.

19 Q. Well, if we accept his own evidence...

20 A. Yes.

21 Q. When he says he wasn't there.

22 A. Right. On that basis, paragraph 11 can't be right.

23 Q. Now did you consider this evidence to be of importance to  
24 present the police side of things that you wanted to do? That,  
25 look, there wasn't any inducements, there was no threats...

1 A. Yes.

2 Q. And we have two of these policemen saying that.

3 A. Right.

4 Q. One of whom says he has no independent recollection. He told  
5 you, no independent recollection of the Pratico statement  
6 taking at all...

7 A. Right.

8 Q. And he wasn't even there at the Harriss.

9 A. Right.

10 Q. Let's go to the October court appearance and I think, do you  
11 have Exhibit 17 there, Mr. Edwards?

12 A. I have the original. Yes, I do.

13 Q. No, 17. You may. You've probably got the original. I just, for  
14 the benefit of their Lordships, on page 74 of Volume 17.

15 10:56 a.m. - BREAK

11:23 a.m.

16 Q. I just want to go back on a couple of points, Mr. Edwards,  
17 before we press on. In Volume 31 at page 29, that's your  
18 letter of the...started April 22nd, finished May 3rd.

19 A. What was that page reference?

20 Q. 29.

21 A. Yes.

22 Q. Is there any way...

23 COMMISSIONER EVANS

24 What volume are we in?  
25

1 MR. MacDONALD

2 That's 31, My Lord. Page 29.

3 Q. It notes that you started that letter on April the 22nd and  
4 concluded it on May the 3rd. Is there any way that you  
5 could tell me what parts may have been written on various  
6 dates?

7 A. I'm sorry, Mr. MacDonald, I don't think I can.

8 Q. Particularly could you...any way of telling when paragraph  
9 11 was written?

10 A. May I just take a moment to read it?

11 Q. Yes.

12 A. Perhaps that will make the painting dry. What you want to  
13 know, of course, are, I assume, is whether I can say whether  
14 that was written before or after April 26th.

15 Q. That's what I'd like to know, if you can...if you could tell us.

16 A. I couldn't say, quite possibly before, but...

17 Q. But you can't.

18 A. I can't say definitively, no.

19 Q. That's fine. And one other point, when you met on July 12th  
20 at your offices with MacIntyre and Urquhart, Whalley and  
21 Wheaton...

22 A. Yes.

23 Q. You told us that you had the sense from Chief MacIntyre  
24 that he was still of the view that Marshall had committed  
25 the murder and, in fact, Mr. Whalley was telling you you'd

1           be laughed out of court if you went with the evidence you  
2           had.

3       A.    Yes.

4       Q.    At that time would they have been aware of the statement  
5           that Donald Marshall had given in Dorchester about the  
6           rolling or the robbing having been in progress?

7       A.    I don't believe there is a reference to it in the July 12th  
8           notes.

9       Q.    There isn't. But you were aware of it.

10      A.    I was aware of it, and...

11      Q.    Were you telling them everything that you knew?

12      A.    That was my intention and I'd be surprised if I didn't  
13           mention it to them at that time, but I, again...

14      Q.    In fact, your notes do say the Chief read the RCMP report on  
15           that day.

16      A.    No, that was the next day, wasn't it?

17      Q.    Oh, was it, okay, I'm sorry.

18      A.    Yeah.

19      Q.    It was the (21st?). You're right. At any time did Chief  
20           MacIntyre say to you or anybody else say to you, "If we'd  
21           had only known that there was a robbery attempt going on  
22           in May of 1971 we'd have approached this thing entirely  
23           different."

24      A.    No.

25      Q.    Now we need your help to try and get some dates. On

1           Volume 29, these are your handwritten...some of your  
2           handwritten notes. It's a thinner volume.

3           A.    What volume?

4           Q.    29.

5           A.    Oh, yes.

6           Q.    And you have your original notes there so you may be able  
7           to help us better.

8           A.    Okay.

9           Q.    But you'll need 29 to look at.

10          A.    Yes.

11          Q.    Starting on page 35.

12          A.    Yes.

13          Q.    In fact, before we do that, why don't you turn to page 34  
14          and that answers a question I had posed to you earlier. It's  
15          a telephone message from Mr. Wheaton to yourself.

16          A.    Oh yes, right.

17          Q.    In response to the question how did Pratico come to the  
18          attention of the police.

19          A.    Yes.

20          Q.    And the reference is to Raymond Poirier.

21          A.    Yes. I knew Poirier rang a bell, but I had forgotten about  
22          that telephone message.

23          Q.    Now starting on 35, that's no problem. That's dated July 8.

24          A.    Yes.

25          Q.    The next on page 36 is dated July the 22nd.

1 A. Yes.

2 Q. After that though, the next few pages, can you assist me and  
3 tell me when they may have been prepared? From there up  
4 until October the 5th.

5 A. They, I believe, and I can't...I can't be definite on it, but I  
6 believe they were written prior to the October 5th  
7 appearance, like those, 1, 2, 3 under "Preliminary remarks."

8 Q. Yes.

9 A. They...

10 Q. That's on page 37, My Lords.

11 A. Those comments reflect pretty well the position set out in  
12 my brief on fresh evidence, which was forwarded to the  
13 Court prior to October 5th. So I think I was just making  
14 handwritten cues on that. But it's possible that they may  
15 have been made when I was preparing the brief on fresh  
16 evidence. I can't say. I stuck them in there because they  
17 seemed to pertain to the October 5th... They weren't with  
18 the rest of the notes when I gathered up the file.

19 Q. Could they be notes that you made for yourself to use when  
20 you were addressing the Court in October?

21 A. Could have been, yes.

22 Q. You don't have any notes of your July 29th appearance  
23 before the Court. Was there anything that you can recall of  
24 significance that occurred at that time?

25 A. No, as I say, the three appearances, but in particular the two

- 1 July appearances are blurred together in my memory.
- 2 Q. Okay. Take those notes then, the preliminary remarks.
- 3 A. Right.
- 4 Q. Which are...our copy is contained on page 37.
- 5 A. Yes.
- 6 Q. Of that Volume 29.
- 7 A. Yes.
- 8 Q. The first one says, "There is a substantial argument..."
- 9 A. Agreement.
- 10 Q. Agreement, okay. Okay. Now, the second, "The Crown's
- 11 basic position is that if Chant, Pratico and Harriss are heard
- 12 then police should also be heard."
- 13 A. Right.
- 14 Q. And you continued to adopt that position throughout.
- 15 A. Oh, yes.
- 16 Q. Third, "That Court will get a distorted view unless the
- 17 appellant is submitted to cross-examination on his affidavit
- 18 or unless the Crown is permitted..." now what's after that?
- 19 A. There's nothing after that in that sentence, you know, it's
- 20 the Crown's view of...the Crown's view that certain actions of
- 21 "A" which has been...doesn't follow. But I can tell you with
- 22 some certainty that the sense I was trying to convey there,
- 23 "Submitted to cross-exam. on his affidavit or unless the
- 24 Crown is permitted," I believe what goes in there, "to
- 25 introduce the statement taken at Dorchester on March the

1 9th, '82."

2 Q And then your next point, "The Crown's view..." You read  
3 that first, will you?

4 A. Okay. "The Crown's view that certain actions of 'A' not only  
5 precipitated events of May 28, but also the course of the  
6 subsequent investigation in defence (refer to MacNeil's  
7 affidavit.)"

8 Q Now, at this stage were you still of the view that the Court  
9 was going to be looking at this very broadly or were you  
10 now of the view that the Court was taking a very narrow  
11 look at this and treating it just like an appeal from a  
12 conviction?

13 A. The most accurate description of my thinking on it at the  
14 time was that the flag went up in July that the Court was  
15 going to be taking a narrow view of it, but that I felt the  
16 broad view was still alive in October and so I guess the  
17 answer is, yes, I thought that though there might be some  
18 resistance that there was still a shot at opening the thing up  
19 a bit in October.

20 COMMISSIONER POITRAS

21 What does the "A" stand for again, please?

22 MR. MacDONALD

23 Appellant, I would think, My Lord.

24 MR. EDWARDS

25 Yes.

COMMISSIONER POITRAS

1  
2 Thank you.

MR. MacDONALD

3  
4 Q. Now, the next page we have is also entitled "Preliminary  
5 remarks," is that...

6 A. I don't have that one or at least I don't have it in sequence  
7 here, but if I can just...

8 Q. Can you read the bottom line there?

9 A. ...take a second.

10 Q. The bottom, under, opposite "Police Evidence" what that  
11 says?

12 A. "Police evidence respecting knowledge of Pratico's mental  
13 state." Very clear, isn't it?

14 11:36 a.m.

15 Q. I guess the "respecting" gave me problems. Look at the next  
16 page, 39, Mr. Edwards.

17 A. Yes.

18 Q. That is, comments I take it, on the brief of the appellant.

19 A. Yes.

20 Q. But at the bottom it says, "He does not mention whether or  
21 not he will seek leave to call the appellant."

22 A. Right.

23 Q. Were you of the view that Aronson was going to call Marshall  
24 as a witness?

25 A. I was until I got his brief which was, if I remember it

1           correctly, silent on the point. And so I was, I noted my  
2           concern there.

3       Q. If the issue, if the issue is whether, who, whether Marshall  
4           killed Seale...

5       A. Yes.

6       Q. Or stabbed Seale, if that's the only issue and you have the  
7           evidence of Chant and Pratico and Harriss and so on, why  
8           would you ever call Marshall?

9       A. Well there again, if you're taking the, well no, I was going to  
10           say even, if you're taking the narrow view of the reference,  
11           that it is an appeal and nothing more, then you're correct.  
12           There'd be no point in calling him or hearing from him. But  
13           even if it is a narrow appeal, the disposition or, you know,  
14           maybe I'm mistaken on this, the disposition, ie. whether he  
15           be acquitted on the basis of a miscarriage or on the basis that  
16           the conviction is no longer supported by the evidence seems  
17           to me that whether or not a robbery was taking place bears  
18           directly on which of those two options should be taken by the  
19           Court. That was my feeling on it.

20      Q. Okay.

21      A. The narrow issue or the main issue of deciding whether or not  
22           he, in fact, inflicted the fatal stab wound, of course, could be  
23           determined without his evidence.

24      Q. Let's jump ahead to page 42 which are your notes, I believe,  
25           taken on October 5th when you were actually before the

1 Appeal Division.

2 A. Yes.

3 Q. And this is the application for leave to call new evidence, isn't  
4 that correct?

5 A. Yes.

6 Q. You told us earlier today that in your recollection the two  
7 Julys and the October hearing sort of blended together now  
8 and you just have a sense of what was going on.

9 A. Um-hmm.

10 Q. What was the sense that you had after that October meeting?

11 A. Well I guess the bottom line for me there was that the  
12 prospects of my ever getting the police evidence before the  
13 Court were remote. That was my feeling after October 5th.  
14 That I think I referred to it earlier this morning that I recall  
15 Mr. Justice MacKeigan making the aside on the Bench that,  
16 you know, there was no point in opening that up and I  
17 believe you have Martin Herschorn's note where I reported to  
18 him that at one point and I forget which hearing, the Chief  
19 Justice had indicated surprise that I even wanted to get into  
20 that.

21 Q. That was in July.

22 A. Yeah.

23 Q. Now if you don't have the police evidence being called...

24 A. Right.

25 Q. Wouldn't that indicate to you that there is going to be a very

1 narrow look at this issue?

2 A. Yes.

3 Q. And the only look at it is who stabbed Seale, or did Marshall  
4 stab Seale.

5 A. Yes.

6 Q. And is that the sense you had when you left the court in  
7 October?

8 A. Yes.

9 Q. Your first notation on October 5th says, "Made clear that  
10 affidavits were not evidence." What does that mean?

11 A. That's referring to a comment by the Chief Justice near the  
12 beginning of the hearing. I believe Mr. Aronson was making  
13 his submission at the time and part of that was implying, if  
14 not stating directly, I don't remember the exact words, that  
15 the affidavits were evidence and the Chief Justice sort of  
16 stopped him and said, "No, the affidavits are not evidence."

17 Q. What do you take that to mean?

18 COMMISSIONER EVANS

19 What affidavits are you referring to?

20 A. Mr. Aronson had submitted a bound volume of affidavits in a  
21 booklet like this, the gray cover, and it included all the  
22 affidavits of Chant, Pratico, Harriss...

23 COMMISSIONER EVANS

24 But not the police...

25 A. Khattar. No. Although I took that to mean, I had submitted

1 the police affidavits and I took that admonition to mean not  
2 only his affidavits but mine, too.

3 COMMISSIONER EVANS

4 No affidavits.

5 A. That's right. No affidavits at all.

6 MR. MacDONALD

7 Q. My Lord, Volume 39 contains all of the affidavits that were  
8 filed with the Court on the hearing of the application for fresh  
9 evidence. And they do include, we have compiled that  
10 document. It does include the police affidavits and the other  
11 affidavits prepared by Mr. Edwards, but also all of the  
12 evidence prepared by Mr. Aronson.

13 What do you take that to mean or what did you take it to  
14 mean? "These affidavits are not evidence."

15 A. That they had no independent standing of their own in the  
16 absence of viva voce evidence.

17 Q. And I take it from that or can I take it from that that the  
18 Court then would not be referring at any time to those  
19 affidavits as evidence in support of any finding they wanted  
20 to make in the ultimate reference.

21 A. Yes, except, of course, insofar as the affidavits are adopted by  
22 the witnesses testifying...

23 Q. During the course of...

24 A. During the course of the fresh evidence.

25 Q. Very good. Thank you.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 COMMISSIONER POITRAS

2 But would they be admissible in the court reference as being  
3 part of a court records?

4 A. Insofar as they'd be adopted, that's my understanding. For  
5 example, when we got to the reference on December 1st and  
6 2nd, I believe Patricia Harriss was cross-examined on parts of  
7 her affidavit and I believe she adopted parts of the affidavit.  
8 Well those parts that she would adopt would be evidence.  
9 That's my impression, My Lord.

10 COMMISSIONER EVANS

11 The entire affidavit would not be evidence then.

12 A. No, no. Unless she adopted the whole thing and I don't  
13 believe she did. I think she adopted a few parts of it.

14 MR. MacDONALD

15 My Lord, that would be similar, of course, to any  
16 interlocutory application leading to a trial. The trial judge would  
17 not be referring to those affidavits as part of the record of the  
18 trial. At least I would hope he wouldn't.

19 COMMISSIONER POITRAS

20 No, but what I understand here is that though they would  
21 not necessarily be, though they would not be admissible, and  
22 nonetheless parts of them would be subject to confirmation. And  
23 in that event those parts would then be admissible.

24 COMMISSIONER EVANS

25 Sure.

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 MR. MacDONALD

2 And I believe that's what Mr. Edwards has said.

3 MR. EDWARDS

4 Yes.

5 COMMISSIONER POITRAS

6 So, what then, is the virtue of having an affidavit in the first  
7 place?

8 MR. MacDONALD

9 Well if you go back, Mr. Edwards, perhaps I shouldn't be  
10 doing this, but My Lord for convenience, if you go back to July 9th  
11 or 8th notes, the request from the Chief Justice was to file  
12 affidavits of what evidence would be called by the various  
13 witnesses.

14 CHAIRMAN

15 Would be called.

16 MR. EDWARDS

17 Yes.

18 MR. MacDONALD

19 And that was my understanding of what Mr. Edwards told  
20 us.

21 MR. EDWARDS

22 Yes.

23 CHAIRMAN

24 This was simply for the purpose of giving the Court of  
25 Appeal an indication of what the deponents in these affidavits

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 would say, or were likely to say in the event they were called to  
2 testify at the rehearing, is that right?

MR. EDWARDS

3  
4 Yes. And perhaps the best way to sum it up is that my  
5 understanding was that the affidavits, except insofar as they were  
6 subsequently adopted, would be restricted to this hearing, ie.  
7 restricted to use in deciding what fresh evidence would be called.  
8 But beyond that, they had no independent standing.

CHAIRMAN

9  
10 And if it was subsequently decided that, by the Court of  
11 Appeal, that they did not want to hear from John Jones, then, and  
12 he wasn't called, then the affidavit did not form part of the record  
13 from the point of view of the final determination of the reference,  
14 is that correct?

MR. EDWARDS

15  
16 Right.

CHAIRMAN

17  
18 And there were situations such as that? There were  
19 affidavits filed on the July application...

MR. EDWARDS

20  
21 Yes.

CHAIRMAN

22  
23 By deponents who were not subsequently called.

MR. EDWARDS

24  
25 The police witnesses...

1 CHAIRMAN

2 The police witnesses, in particular.

3 MR. EDWARDS

4 Being a case in point.

5 MR. MacDONALD

6 Q. Look again, at page 42, or your notes of the October 5, '82.

7 There is a listing there of the various witnesses Aronson  
8 would like to have called at the reference.

9 A. Yes.

10 Q. And on the next page, My Lords, are the list of the witnesses  
11 that the Appeal Division said could be called at the reference.

12 COMMISSIONER EVANS

13 Before you leave, page 42. I don't have the benefit of that  
14 Cape Breton shorthand but under "Aronson - Began..."

15 MR. EDWARDS

16 "Began by listing affidavits filed. Moved that all evidence  
17 put in as evidence...." That should have been, "That all affidavits  
18 put in as evidence..." It seems to be out of sequence with the  
19 Chief Justice's comment.

20 MR. MacDONALD

21 Q. And down at the bottom of that page as well, Mr. Edwards, it  
22 says, does it not, "Moving for receipt of affidavits in this  
23 application."

24 A. Yes.

25 Q. And if you go to the second page on that as well, you'll see the

1 last line on page 43, My Lord, "Reserved on application to receive  
2 affidavits."

3 A. Right.

4 Q. Also, "Reserved on application to hear evidence of other  
5 witnesses."

6 A. Right.

7 Q. Is that correct, Mr. Edwards?

8 A. Yes.

9 Q. There was an oral decision from the Court saying which  
10 witnesses they were prepared to hear? Is that correct?

11 A. Yes. Which I believe was subsequently incorporated in an  
12 Order.

13 Q. Yes. And, in fact, there's a written decision from the, a  
14 written Order, you're right.

15 A. Yes.

16 Q. To your knowledge, has the Court ever handed down a  
17 decision on those reserved points?

18 11:50 p.m.

19 A. Well, the matter came up again at the end of the reference or  
20 the end of the hearing on December 2nd and there, as I recall,  
21 at that stage, I said, and I'm paraphrasing, that in my view  
22 there was no point in calling the police at that stage. I believe  
23 Mr. Aronson agreed with that. I asked that the affidavits of  
24 Chief MacIntyre and Bill Urquhart be admitted, or those  
25 portions of those affidavits which had any bearing on the

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 evidence of Chant and Harriss be admitted. Aronson quite  
2 properly, of course, said, "Well, no, that's not going to happen  
3 unless I have the opportunity to cross-examine." And so I  
4 think there was a ruling then that, in that case, none of it was  
5 coming in. The transcript may...

6 Q. The transcript...

7 A. May differ, but I think that's the gist of it.

MR. MACDONALD

9 In Volume 3, My Lords, is the transcript of the reference  
10 evidence. And on page 233, the court denied the application or  
11 the request by Mr. Edwards to file the affidavits of MacIntyre,  
12 Urquhart and Magee. Mr. Aronson took objection to their being  
13 filed and the court said, "We shall not admit the affidavit."

BY MR. MACDONALD

14 Q. There was no reference, I don't think, to the affidavits of, for  
15 example, Mary Ebsary and some of the others that...

16 A. No, I don't believe Mr. Aronson ever brought that back to the  
17 fore again. I think the only additional reference then was to  
18 Pratico. He mentioned calling Pratico, but then he said, but  
19 if..." I think he said if I agreed, that as a fact that Pratico,  
20 because of his delicate mental condition, was not capable of  
21 testifying in '71, that he file, now I'd have to read the  
22 transcript, but I believe he was going to file Pratico's affidavit  
23 and Dr. Mian's by agreement. No doubt that the transcript  
24 would sort that out.  
25

1 Q. When you left the court then on October 5th, what was your  
2 view as to whether or not you'd be able to call the police  
3 evidence?

4 A. Just before I get to that, yeah, that reference about John  
5 Pratico, that's between Line 20 and Line 30 on page 231.

6 Q. Of Volume 3.

7 A. Yeah. He said:

8  
9 I should still like to have some clarification on  
10 the evidence relating to John Pratico, My Lord.  
11 If it's taken, I'm quite prepared with my friend  
12 to agree that he's not a credible witness, if that's  
13 acceptable to the court. If it's not, I would  
14 suggest that something be done either by way of  
15 admitting certain of the affidavits which support  
16 the opinion with respect to his credibility or that  
17 he himself be called as a witness if that's not  
18 sufficient.

19 And I think from there, we agreed that we could do it by  
20 agreement rather than calling.

21 Q. Okay. When you left the court on October 5th, what was your  
22 view as to whether you'd be able to call the police evidence?

23 A. My feeling was that the possibility that I would be able to call  
24 the police evidence after October 5th was remote and would  
25 hinge in great measure on the way the evidence came out at  
the hearing on December 1st and 2nd. But I didn't think the  
prospects of getting that evidence before the court was very  
good or were very good.

1 Q. Next I have notes of yours of October 21st, 1982 and those  
2 are on page 44 of Exhibit 29. Do you have those?

3 A. Yes, or I have the copy. I can't put my fingers on the  
4 originals but...

5 Q. That's your writing, though, is it?

6 A. Oh, yes.

7 Q. You called Gene Coles in Pictou?

8 A. I don't recall ever talking to Gene Coles on that. I believe that  
9 that is a note of intention to call.

10 Q. But you don't believe you ever did.

11 A. I don't think I ever did.

12 Q. Who had told you that he had been involved in 1974 or  
13 thereabouts in looking at this file?

14 A. I can't recall. It might have been John MacIntyre. It might  
15 have been Jim Carroll.

16 Q. Then you make note...

17 A. It may have been Harry Wheaton. I really don't know.

18 Q. And you make notes about Patricia Harriss and Maynard  
19 Chant. You're going to look for their criminal record.

20 A. Yes.

21 Q. And then you say, "Did Dave Ratchford give a statement?  
22 What about Gary Green?"

23 A. Yes.

24 Q. Where were you getting the information about Ratchford and  
25 Green?

1 A. Again, I can't identify the source. In that whole sequence  
2 about Harriss, Chant, and Ratchford, the only thing I can say is  
3 that I know that it was John MacIntyre that brought to my  
4 attention that Patricia Harriss had a prior record.

5 Q. Why were you interested in October in Coles and Ratchford?  
6 Now the evidence we've heard is that those were two, or  
7 possibly two separate incidents.

8 A. Yes.

9 Q. Were you interested at that time in the fact that there may  
10 have been other opportunities for an investigation of the  
11 Marshall case to have been carried out?

12 A. I was interested, of course, but I don't... I don't even recall  
13 making those notes.

14 Q. Okay.

15 A. But it is my handwriting.

16 Q. Let's go ahead then to the reference itself, the reference  
17 hearing. That was on December 6th, was it?

18 A. December 1st and 2nd.

19 Q. December 1st and 2nd, sorry. What was your reaction to the  
20 panel that was convened for that hearing?

21 A. I had no reaction at the time. Justice Morrison was no longer  
22 there. He was having health problems at the time and Justice  
23 Pace was now in his stead.

24 Q. Were you aware that Justice Pace had been Attorney General  
25 of Nova Scotia in November of 1971?

1 A. No. No.

2 Q. In December of 1971?

3 A. I had been aware that Justice Pace had been an Attorney  
4 General and I believe that he served as Attorney General two  
5 different times. But the short answer is it never occurred to  
6 me that he might have been the Attorney General in office at  
7 the time of the original Marshall prosecution. You know, I  
8 think I should tell you that when I had my stint teaching in  
9 Newfoundland, I referred to before, that was during the  
10 1970-71 term. So I didn't even, I wasn't a resident of Cape  
11 Breton at the time so I knew nothing about the Marshall case  
12 until February 3rd, '82.

13 Q. If you had been aware of the fact that Mr. Justice Pace had  
14 been Attorney General of this province in November and  
15 December, 1971 at the time of the trial and at the time of the  
16 reinvestigation by the R.C.M.P.

17 A. Yes.

18 Q. In December.

19 A. Right.

20 Q. Would you have taken any issue with his sitting on that  
21 panel?

22 A. Yes.

23 Q. Why would you do that?

24 A. I would have argued that there was a perceived bias or the  
25 possibility of a perceived bias by Mr. Justice Pace and that it

1 would not be appropriate for him to sit on that panel. You  
2 know, even if, and I think the likelihood is that he knew  
3 nothing about the case. The fact of the matter is that he, as  
4 Attorney General at the time, was responsible for the original  
5 prosecution of Donald Marshall. So...

6 Q. And notwithstanding that he may not have had any  
7 knowledge, you still would have objected.

8 A. That's right. You know, assuming, even assuming he didn't  
9 have any knowledge, I don't think he should have been there.

10 Q. Was there any member of the court more active in the  
11 interplay as this reference went on than others?

12 A. The hearing per se was conducted by the chief justice. So he  
13 was the one who was making the rulings and generally being  
14 the chairman, if I can put it that way. So he was the one who  
15 was most active. There wasn't any appreciable activity by  
16 any of the others during December 1st and 2nd. Now, of  
17 course, that, you know, I expect you'll ask me the same thing  
18 when we get to the argument in February and it was a  
19 different situation then.

20 Q. Okay. Prior to the hearing, what did you see your role to be?  
21 You're there on behalf of the Crown. At this stage, are you  
22 into an adversarial position?

23 A. Prior to the hearing?

24 Q. Just before you go in there.

25 A. Yes, okay. I see myself in an adversarial position but, again,

1 it was in a limited way and it was to subject, to try to test the  
2 evidence of the witnesses who were going to be called. To  
3 that extent, at that stage, well, at any stage right up to the  
4 present, there was never any intention on my part to be  
5 adversarial to the extent of pushing for a new trial or pushing  
6 for the affirmation of the original conviction.

7 Q. Prior to the reference, did you speak with any of the  
8 witnesses? Patricia Harriss?

9 A. Other than...

10 Q. Other than the statement you had taken, or the interview you  
11 had with her in your office back in April or wherever it was?

12 A. No.

13 Q. Jimmy MacNeil?

14 A. No. None of them.

15 Q. Chant?

16 A. None of them.

17 Q. Donald Marshall?

18 A. [No audible response.]

19 Q. Now isn't that a bit of a departure from what you said you  
20 would normally do? That even as defence counsel, if you put  
21 yourself in that position here...

22 A. Yes.

23 Q. That you would go and interview the witnesses?

24 A. No, what I was meaning to convey there is that I would be  
25 interviewing the witnesses that I intended to present. You

1 know, as a Crown, I guess it's split 50/50 about, you know,  
2 when I interview defence witnesses. Some of the so-called  
3 defence witness will have been interviewed by the police  
4 beforehand, some not. For example, alibi witnesses, in the  
5 come lately alibi situation; i.e., one that's not disclosed right at  
6 first. Rarely will I interview those.

7 Q. Now we have a situation here where you have several people  
8 taking the witness stand and admitting that they had lied at  
9 the trial of Donald Marshall.

10 A. Right.

11 Q. You had Chant, you had Harriss, and you had Marshall  
12 himself.

13 A. Yes.

14 Q. Was the court interested in why they had lied?

15 A. Oh, no, quite the contrary. I think the... Well, probably the  
16 cross-examination of Patricia Harriss is most illustrative of  
17 the point that... I don't have the page reference at my  
18 fingertips, but when I was attempting to cross-examine her, I  
19 believe on the O'Reilly statement, the Chief Justice said  
20 something like, "Look, she told one story then. She's telling  
21 another one now. She's admitting she lied. We don't have to  
22 go beyond that."

23 Q. And was that the sense you had as well with the other  
24 witnesses that the court wasn't concerned why they lied at  
25 the earlier trial?

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 A. That was my impression, although I can't provide specific  
2 references like I could with Patricia Harriss. I think that  
3 reference is somewhere around 166 of the transcript. And  
4 you see at page 166 at about Line 12, the Chief Justice says:

5  
6 You now propose to go far afield which would  
7 involve opening these proceedings on matters  
8 that are not before us. So I don't know how you  
9 can be permitted to carry on this.

10 You know, there are a couple of other references, I think, like  
11 that in there.

MR. MACDONALD

12 Reference to page 166, My Lords, for the record, would be  
13 found at page 169 in Volume 3. 166 is the transcript page  
14 number.

BY MR. MACDONALD

15 Q. Let's get to Donald Marshall and his evidence at the reference.

16 A. Right.

17 Q. How would you describe his demeanour on the witness stand?

18 A. Subdued in parts and defiant in other parts.

19 Q. We see reference throughout the transcript of "Speak up, Mr.  
20 Marshall," and...

21 A. Yes, that would be the subdued. Not, he's not a witness who  
22 speaks as loudly and clearly as you'd wish, if you were  
23 scripting it.

24 Q. Have you had experience in your time in the courts dealing  
25

1 with other natives?

2 A. Yes.

3 Q. Other than Mr. Marshall?

4 A. Yes.

5 Q. And would you say that, normally, they are witnesses who  
6 are very quite and subdued on the witness stand?

7 A. Yes, I believe Judge Matheson used the word "reticent" when  
8 he was asked a similar question and I think that's pretty  
9 accurate.

10 Q. That's been your experience as well?

11 A. In most cases. Now there have been some native witnesses  
12 who are extremely articulate, but most that I've dealt with  
13 have been reticent, subdued.

14 Q. And you talked about him being... What was the other word  
15 you said at times he was?

16 A. Defiant.

17 Q. Defiant?

18 A. Yes. They had to be ordered...

19 Q. Let me take you to a place where he was defiant...

20 A. Yes.

21 Q. In the transcript. And that's in Volume 3 at page 64. Perhaps  
22 if Their Lordships could have that volume, it would be useful.  
23 It would be page 59 of the transcript, Mr. Edwards.

24 A. 59?

25 Q. Yes. I guess starting at the bottom of page 58. Yeah, starting

1 at the bottom of page 63 of the transcript... Or the exhibit.

2 A. Right.

3 Q. And you're talking to Mr. Marshall to get him to define what  
4 "to roll somebody" means and then you asked him this  
5 question: "Right. Now, had you ever rolled anyone prior to  
6 that night?" and he says, "I can't answer that." And that  
7 goes on...

8 A. Yes.

9 12:10 p.m

10 Q. Pretty well for a page or so.

11 A. Yes, I remember that exchange.

12 Q. Until the Court required Mr. Marshall to answer that  
13 question. Now, you've had a lot of experience prosecuting  
14 people. Isn't that an improper question, to ask someone  
15 have they ever committed a crime?

16 A. Yes. Generally speaking that would be improper and maybe  
17 even always. All I can tell you is, if you wish, I can explain  
18 my rationale at that time.

19 Q. Okay. I'll certainly...

20 A. Yeah.

21 Q. ...allow you to do that. You go ahead, and but I'll come back  
22 to the question itself.

23 A. No, it...

24 Q. Yeah. I suggest to you that it's always improper, it's totally  
25 wrong to ask someone and you're not permitted to ask

1 someone if they have committed a crime. And you're  
2 permitted to ask them have they ever been convicted, and  
3 that's because of the provisions of the Evidence Act.

4 A. Yes, you'd put the specific conviction and date and  
5 disposition to them.

6 Q. Yes. And that's strictly to test credibility.

7 A. That's right.

8 Q. But if you ask somebody, "Have you ever committed a  
9 murder?" they don't have to answer that question, do they?

10 A. No.

11 Q. And if you ask someone, "Have you ever rolled anyone?"  
12 surely they don't have to answer that question.

13 A. Okay.

14 Q. No objection from Mr. Aronson's counsel.

15 A. From Mr. Marshall's counsel.

16 Q. Sorry, Mr. Marshall's counsel.

17 COMMISSIONER POITRAS

18 Yes, there is. Page 63.

19 MR. EDWARDS

20 Yes, he objected.

21 Q. I'm sorry.

22 A. Yes, I think we had a little discussion on that.

23 COMMISSIONER POITRAS

24 Line 18, page 63.

25

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 MR. EDWARDS

2 I'm sorry, what was the page?

3 MR. MacDONALD

4 Yeah, well, he's even asked there, My Lord, if he's familiar  
5 with what the term means. The question has not been  
6 asked yet, has it?

7 COMMISSIONER POITRAS

8 Yes.

9 MR. MacDONALD

10 Q. Okay, then I'm sorry. Yes, you're quite correct, on page...line  
11 about 12. Yes. I'm sorry. I apologize to Mr. Aronson. He  
12 did, in fact, object.

13 A. Yes.

14 MR. CHAIRMAN

15 And the Court ruled that it was a relevant question.

16 MR. MacDONALD

17 And the Court directed that it be answered. On page 65.

18 A. Uh-hum.

19 COMMISSIONER POITRAS

20 And page 63, line 24 or so.

21 Q. Now let me get back to your role in there, Mr. Edwards.

22 A. Yes.

23 Q. Your role is to, is what, to...

24 A. Test the evidence.

25 Q. To test the evidence of each of the witnesses.

1 A. Right.

2 Q. I don't mean this in any unfair sense, but did you see it in  
3 your role to be fair to Mr. Marshall?

4 A. Yes.

5 Q. And would you think you're being fair to him by putting  
6 that line of questions?

7 A. In retrospect I can say, no, I wasn't being fair to him, but I  
8 wasn't intentionally unfair, put it that way.

9 Q. You wanted to explain the reason for asking the question  
10 and I said I'd give you the opportunity to answer that.

11 A. Uh-hum.

12 Q. Please do.

13 A. No, what I was doing there was laying the groundwork for  
14 my application to cross-examine him on the statement. And,  
15 of course, he had said in the March 9th statement that he  
16 had rolled people in the Park before. And so the whole  
17 rationale for cross-examining a witness on a prior written  
18 statement, as I understand it, is to test credibility. So I was  
19 asking him questions that I knew were covered in the  
20 written statement. Now, I accept the criticism that I went  
21 too far with it in that regard, and had I to do it over I  
22 wouldn't but...

23 Q. Wasn't the purpose, the real purpose, of trying to get that  
24 statement in, that's Marshall statement given to Wheaton  
25 and Carroll at the penitentiary...

1 A. Yes.

2 Q. Was to try and prove that Donald Marshall on the night of  
3 May 28th, 1971, was embarking on a criminal act? He was  
4 trying to commit a robbery.

5 A. Uh-hum. The primary reason for introducing the statement  
6 was to find out or to help find out exactly what had gone on  
7 there that night. I took the position that this...this is an  
8 important point. If you don't mind I'd like to try to explain  
9 it as fully as I can. But just going back before...before the  
10 hearing, where there was...there had been an indication by  
11 Mr. Aronson that he might not call Donald Marshall or his  
12 brief had been silent on the point. My brief respecting fresh  
13 evidence was that if he were called I should be permitted to  
14 cross-examine him on that statement. If he were not called  
15 I should be given the opportunity to introduce the  
16 statement the same way as I'd be looking for leave to  
17 introduce the police evidence. My rationale for that was  
18 that here we had a very unequivocal statement by the  
19 witness which, to me, made the events of the fateful night  
20 more plausible. That statement was believed by Staff  
21 Wheaton and I believed it when I read it, notwithstanding  
22 the possible inducement that can be argued was present.  
23 My feeling was that the statement is there, it has to be dealt  
24 with, you can't...it should not be ignored. Now, I would have  
25 thought that when I made the application to cross on that

1 statement that the very forceful, or the most compelling  
2 argument against it, and look I, you know, I don't mean to  
3 be critical of Steve Aronson because I have the highest  
4 respect for him. But I would have thought that he would  
5 have argued vigorously that look, at that point Marshall  
6 would have said anything to get out of jail and that that  
7 would be the inducement argument, and you know, when  
8 the thing came up I did acknowledge that there was an  
9 inducement argument. But that argument wasn't proper.  
10 Mr. Aronson did make a submission against it. I forget the  
11 gist of it. But it wasn't done an inducement argument, it  
12 was just...the reference to an inducement was just tacked on  
13 the last sentence of his submission.

14 Q. Let me put...

15 A. So, you know, I guess the bottom line of what I'm saying  
16 there is that I felt that it would be wrong just to pretend  
17 that that statement did not exist. It had to be dealt with.

18 Q. Let me put this to you, Mr. Edwards, again as an experienced  
19 prosecutor.

20 A. Right.

21 Q. If Donald Marshall were charged with robbery...

22 A. Yes.

23 Q. At that time. And you were attempting to have that  
24 statement introduced....

25 A. Yes.

1 Q. Knowing, and I could quote you from your evidence the  
2 other day...

3 A. Yes.

4 Q. ...about...

5 A. I remember it.

6 Q. Would you agree with me you never would have got that  
7 statement before the court?

8 A. No, I don't think anyone can be that categorical on it  
9 because as I understand the law on confessions, not only  
10 must there be an inducement, but it must be proven that  
11 the statement was given as a result of the inducement, and  
12 here we had like two meetings, like Donald Marshall had  
13 February 18th and then March 9th to consider that, to  
14 consult with counsel. It was an established fact that he had  
15 counsel at the time. But yet he gave the statement on March  
16 the 9th. So although the prospects of getting that statement  
17 on a trial would be iffy, it wouldn't be a dead issue. I think  
18 that possibly it could have been argued, but that's...that  
19 wasn't the tack I took at the time, but to answer your  
20 question, no.

21 Q. All right. Would you not, though, think at least it important  
22 for the members of the Court looking at that statement to be  
23 aware of the circumstances under which it was taken?

24 A. Yes.

25 Q. That there may well have been inducement.

1 A. Yes.

2 Q. That Marshall had been told by Sarson about Ebsary's story  
3 about the robbery.

4 A. Yes.

5 Q. Prior to meeting with these fellows.

6 A. Right.

7 Q. Don't you think all of that would have been important  
8 information for the Court to know?

9 A. Yes.

10 Q. Rather than just have the statement itself.

11 A. Right. And...

12 Q. And you...some of it was brought out, I...the transcript  
13 speaks for itself. There was circumstances under which it  
14 was given was brought out in the examination of Mr....

15 A. It was brought out...

16 Q. ...Marshall.

17 A. ...then, you know, I think perhaps it could have...we could  
18 have had a voir dire on the admissibility of the thing.  
19 Unfortunately, and I accept responsibility for this, I guess I  
20 was still partially in the inquiry mode rather than the  
21 appeal mode and I argued that, look, he's not in jeopardy  
22 here. This thing was...this reference was precipitated by his  
23 action and, in effect, he's coming here now and he just wants  
24 to tell part of the story. Let's put it all on the table.

25 Q. I guess that's what's...

1 COMMISSIONER EVANS

2           Would you have been as forceful if the Court hadn't agreed  
3 with you?

4 MR. EDWARDS

5           I'm sorry, at the time I made the argument I...like I  
6 wouldn't have known that the Court was going to allow me to do  
7 the...

8 COMMISSIONER EVANS

9           Well, I thought...

10 MR. EDWARDS

11           Maybe I misunderstood you.

12 COMMISSIONER EVANS

13           In the middle of page 64.

14 MR. EDWARDS

15           Okay.

16 COMMISSIONER EVANS

17           There had been...on 63 there was the objection by Aronson  
18 and then there was the...

19 MR. MacDONALD

20           For your benefit that's page 58 of your...we've got about a  
21 four or five page difference in the two things.

22 MR. EDWARDS

23           Oh, I see, okay. Right.

24 COMMISSIONER EVANS

25           Then you went after him again and said...

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 MR. EDWARDS

2 Yes.

3 COMMISSIONER EVANS

4 Had you ever rolled anyone prior to that night?  
5 (and he said) I can't answer it, (and then I take  
6 it that is the Court,) You were asked a question  
7 by, (I take it that should be) By Mr. Edwards,  
8 You haven't answered it. I did, I have no  
9 answer. (and then) Mr. Marshall, (that's the  
10 Court).

9 MR. EDWARDS

10 Yes.

11 COMMISSIONER EVANS

12 "And I don't think, I don't know how to answer it."

13 MR. EDWARDS

14 Right.

15 COMMISSIONER EVANS

16 And then you came into the picture again. Would it not  
17 have been necessary before you introduced or attempted to  
18 introduce that statement to establish whether it was voluntary or  
19 not?

20 MR. EDWARDS

21 Certainly on a trial, a trial situation, and that's...that's what I  
22 say. I was probably guilty there of still regarding this thing as an  
23 appeal but also an inquiry and because, no doubt, you've read my  
24 argument there that he's not in jeopardy here and anything he  
25

1 says is protected anyway. So...

2 COMMISSIONER EVANS

3 He wasn't going to be hurt.

4 MR. EDWARDS

5 Pardon me?

6 COMMISSIONER EVANS

7 Your view was he was not going to be hurt by the answers  
8 that he gave.

9 MR. EDWARDS

10 In the crim...in the sense of criminal liability. Obviously, you  
11 know, it was potentially very damaging to him unless he could  
12 give a good explanation as to why that statement had been made.

13 COMMISSIONER EVANS

14 But then again down at the bottom of page 64, "Prior to the  
15 night of May 28th had you ever rolled anyone before?" and then  
16 he again says, "It's nobody's business," so it wasn't just that night  
17 you were asking him about. You were also asking him about any  
18 prior occurrences in the Park.

19 MR. EDWARDS

20 Yes, and as I say, I...

21 COMMISSIONER EVANS

22 Again, was...

23 MR. EDWARDS

24 Well, I was...I was laying the groundwork for the cross on  
25 the statement and those references had been contained in the

MR. EDWARDS, EXAM. BY MR. MACDONALD

1 statement. Now, the criticism, I think, is valid, that I went too far.

2 COMMISSIONER EVANS

3 Then on 65, The Court, "You have been asked now, Mr.  
4 Marshall, you have been asked a question now, you must answer  
5 it." And then, "I might have, I might...I may have not."

6 MR. EDWARDS

7 Yes.

8 COMMISSIONER EVANS

9 So it was the Court pushing a bit for the answer, as well.

10 MR. EDWARDS

11 Yes, although...

12 COMMISSIONER EVANS

13 They wouldn't know what your motive was. Your motive  
14 was, you say, to lay the groundwork for the cross-examination.

15 MR. EDWARDS

16 For the cross, yeah.

17 COMMISSIONER EVANS

18 Unless, the Court wouldn't be anticipating that, which is  
19 quite a jump for them to make.

20 MR. EDWARDS

21 Well, I...

22 COMMISSIONER EVANS

23 You, at least, knew where you were going.

24 MR. EDWARDS

25 Now, again I don't want to duck responsibility for it. I

1 mean, I...

2 COMMISSIONER EVANS

3 No, I appreciate that.

4 MR. EDWARDS

5 I pushed it.

6 COMMISSIONER EVANS

7 So did they.

8 MR. MacDONALD

9 Q And, I invite you, I'm sure you've read this recently, Mr.  
10 Edwards, and you're fairly familiar with the transcript, this  
11 Court wasn't told that before Marshall made that statement  
12 he was...he had two RCMP officers tell him, "Now look, you  
13 can tell us whatever you like and you may never see us  
14 again."

15 A. No.

16 Q Some...similar with... I'm trying to remember what you told  
17 us the last day.

18 A. Yeah. Yeah, that's the drift.

19 Q "But if you tell us what we want to hear we'll get you out of  
20 here."

21 A. Yeah.

22 Q They were never told that.

23 A. Well, no...

24 MR OUTHOUSE

25 Well, My Lords, as I recall, it's been some time ago, my

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.

MR. MacDONALD

6 Well, my friend...

MR OUTHOUSE

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

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.

LUNCH BREAK - 12:28 p.m.

2:03 p.m.

MR. MACDONALD

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

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.

MR. EDWARDS, EXAM. BY MR. MACDONALD

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?

COMMISSIONER EVANS

15 You can make an effort.

MR. EDWARDS

17 Sure.

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

MR. EDWARDS, EXAM. BY MR. MACDONALD

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.

MR. EDWARDS, EXAM. BY MR. MACDONALD

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...

MR. CHAIRMAN

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

MR. EDWARDS

23  
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

MR. EDWARDS, EXAM. BY MR. MACDONALD

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.  
17

MR. CHAIRMAN

18 You would agree that's an appropriate position for...  
19

MR. EDWARDS

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

MR. EDWARDS, EXAM. BY MR. MACDONALD

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

9  
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

13  
14 Yes.

MR. CHAIRMAN

15  
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

22  
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

3  
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

12  
13 Have we heard anything about this discussion yet?

MR. MACDONALD

14  
15 We're only in January, My Lord.

COMMISSIONER POITRAS

16  
17 Sorry.

MR. MACDONALD

18  
19 We're coming there.

MR. EDWARDS

20  
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

23  
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

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

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.

5 COMMISSIONER POITRAS

6 Okay.

7 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  
11 And that is a position you had advocated to the Court.

12 A. Yes.

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

15 A. The question of fault.

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

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

25 Q. You go on on page 40 to say, "Notwithstanding the fact that  
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.

21  
22  
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