

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

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Held: May 26, 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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1 MAY 26, 1988 - 9:30 a.m.

2 MS. DERRICK

3 My Lords, with your indulgence I neglected to ask Mr.
4 Edwards three short questions yesterday that I would like to
5 pursue with him now.

6 MR. CHAIRMAN

7 Okay.

8 MS. DERRICK

9 And I know you're counting.

10 EXAMINATION BY MS. DERRICK [Cont'd.]

11 Q Mr. Edwards, yesterday we were discussing your concerns
12 about interference with respect to the Attorney General's
13 Department and I believe you told us about a case where
14 you were asked to withdraw charges and you said, I think
15 your words were, "The stated reason given by Mr. Coles was
16 humanitarian."

17 A. Yes, I checked a note on that, it was "charitable."

18 Q Charitable.

19 A. Yes.

20 Q Charitable reasons, that's what was said to you?

21 A. Yes.

22 Q What I wanted to ask you was from your knowledge of the
23 case and the individual involved, did you believe the
24 reasons that you were asked to withdraw the charges were
25 other than those given to you?

1 A. Well, you recall that you asked me was the person a friend
2 of the government and was I concerned about the reasons,
3 and I answered, no, to the first and, yes, to the second. And
4 my difficulty with it was how did a shoplifting case in
5 Sydney come to the attention of the Deputy Attorney
6 General in Halifax. And, I don't know to this day. I have my
7 suspicions which I'm not prepared to speculate on in the
8 public forum because they are no more than that and I don't
9 think it would be fair for me to say more.

10 Q. Do you have a belief as to what the real reasons were that
11 you were asked to withdraw the charges?

12 A. Well, like I say, I just have no more than a suspicion and I
13 don't think it would be appropriate for me to say more than
14 that about it. I think the question could more appropriately
15 be asked to Mr. Coles.

16 Q. Oh.

17 A. I never discussed it with him personally afterwards.

18 Q. But what you're telling us today is that, in fact, you believe
19 that there were other reasons other than...

20 A. I believe that there could have been.

21 Q. Other than the reasons that were ostensibly given to you.

22 A. I believe there could have been.

23 Q. But that was not communicated, those other reasons.

24 A. No.

25 Q. Were not communicated...

1 A. No.

2 Q. ...to you.

3 A. See I never spoke with Gordon Coles directly. The way it
4 was it was, it all happened on...the trial was scheduled for
5 the afternoon and the telephone call came in the morning
6 when I was in another court. So I get the telephone
7 message from my secretary saying that Mr. Gale had
8 advised that Mr. Coles wanted the charge dropped for that
9 afternoon. I asked my secretary to phone Mr. Gale back
10 again, because I was in another court, and find out whether
11 it was a request or an order, because if it was any less than
12 an order I was going to trial. And she did, and then advised
13 me that it was an order. And, you know, so I found that out
14 about five minutes before I went into Court. I had to make
15 the decision and I did as I said yesterday.

16 Q. So, given that you didn't have very much time, is that why
17 you didn't explore it further with Mr. Coles before making
18 your decision?

19 A. Probably had there been more time I would have explored
20 it with him, but then afterwards I discussed it at length with
21 Martin Herschorn, but not with Gordon Coles.

22 Q. And did you learn anything from Mr. Herschorn that...

23 A. He knew nothing about it.

24 Q. I see.

25 A. Yeah.

MR. EDWARDS, EXAM. BY MS. DERRICK

1 Q. Can you tell us the basis on which you have this belief or
2 these suspicions that there were other reasons?

3 A. Oh, well, the basis, as I mentioned, is that I don't know by
4 what...by what means the Attorney General was apprised of
5 this case, the Deputy Attorney General, did I say...

6 Q. No. You probably meant the Attorney General's Department.

7 A. No, specifically the Deputy Attorney General. I don't know
8 by what means he found out about that particular case and
9 what discussions he had about it and on what he based the
10 request to withdraw it, other than it was charitable reasons
11 and there was reference to the fact that the accused person
12 was moving out of the country anyway now, you know, how
13 did he know that? Like I...to be absolutely accurate,
14 perhaps I should read my note on it, but I'd rather not put it
15 in evidence because I don't want to disclose the identity of
16 the person involved.

MR. CHAIRMAN

17
18 Nor do we want to hear it.

MR. EDWARDS

19
20 A. Would that...

21 Q. Read your note relating to the actual case, is that...

22 A. To the telephone message, what I got, and then you'll know
23 what I know. Is that fair enough?

MR. CHAIRMAN

24
25 All right.

1 COMMISSIONER EVANS

2 It wasn't by a chance a seventy-five-year-old lady who was
3 ill and who was leaving the country, was it?

4 MR. EDWARDS

5 I don't know what age she was, My Lord. She was past
6 middle age, I know that. It could very well have been an
7 appropriate case for...for such a request, but I guess I was more
8 upset with the process than the decision.

9 COMMISSIONER EVANS

10 You were more concerned as to how he found out about it.

11 MR. EDWARDS

12 Yes.

13 COMMISSIONER EVANS

14 Because in your own practise without any interference or
15 contact with the AG's office, you would, I suggest, on occasions
16 have done that very thing.

17 MR. EDWARDS

18 Oh, yes, I mean I can recall one case in particular where it
19 was a breathalyzer case and it was to go to trial and I received a
20 visit from a surgeon who advised me that this accused person
21 only had about two weeks left to live and had terminal cancer and
22 that it would be a humanitarian thing just to drop it and it was
23 dropped.

24 COMMISSIONER EVANS

25 But you're allowed to use your common sense.

1 MR. EDWARDS

2 Yes. What I'm saying is that kind of decision should be
3 made...

4 COMMISSIONER EVANS

5 By you.

6 MR. EDWARDS

7 A. By the local prosecutor, yes. The date of the telephone
8 message is June 11th, 1981, and the first call came at 9:23.
9 Well, I would have already been over at the courthouse, and
10 it's in my secretary's handwriting. It was a phone call from
11 Gordon Gale. My secretary wrote, "Spoke with Gordon Gale,
12 and..." or sorry, Gordon Gale is reported here, "Spoke with
13 Gordon Coles and he told Mr. Gale 'He would like to see the
14 charges dropped since she is going back to the States. Feels
15 it would be the charitable thing to do.'" Then in my
16 handwriting in brackets, "Had Ann," that's my secretary,
17 "Return call to ask if that was order, reply was yes, told
18 Court I had been so instructed." That's the extent. We
19 didn't have files as such at the time so I don't have any
20 more than that. But the reason I don't want to put that in is
21 because there is a RE line on the telephone message which
22 would disclose the identity of the accused.

23 MS. DERRICK

24 Thank-you.

25 MR. CHAIRMAN

1 Mr. Pugsley

2 EXAMINATION BY MR. PUGSLEY

3 Q. Mr. Edwards, there were suggestions in the previous
4 questions addressed to you by my two friends that John
5 MacIntyre concluded without any foundation whatsoever
6 that Donald Marshall, Jr., was guilty of the offence and there
7 were further suggestions that he improperly pressured
8 Chant, Pratico and Harriss so that they made statements on
9 which he acted, but that MacIntyre knew their statements
10 to be false. I take it you reject both those suggestions?

11 A. Yes.

12 Q. You believe, as I understand your evidence, that he had
13 some foundation for his belief that Donald Marshall, Jr., was
14 guilty and further that he did, in fact, believe that what
15 Chant, Pratico and Harriss told him in their second
16 statements was true.

17 A. I'd agree without qualification to the last proposition.

18 Q. Yes.

19 A. And to the first I would agree with that, that he had some
20 foundation.

21 Q. Yes.

22 A. And, you know, confine it to that. But I feel it was a
23 legitimate starting point for an investigation given the
24 circumstances pertaining at the time.

25 Q. Yes. You offered some reasons yesterday and the day

1 before for your belief on both those points.

2 A. Yes.

3 Q. And I would like to draw your attention to other areas of
4 the evidence that I, in my submission, supports the belief
5 that you have advanced.

6 A. Yes.

7 Q. One point you did mention was that in his first statement
8 Maynard Chant lied.

9 A. Yes.

10 Q. And I'd like to direct your attention to that. It is found in
11 Volume 16 at page 18. At page 18, My Lords, and it's the
12 first full paragraph on that page that I wish to address your
13 attention to. He says:

14
15 I got halfway across the tracks. First I seen two
16 fellows walking and two more were walking
17 kind of slow talking. The two fellows who
18 stabbed Donald Marshall and Sandy Seale, they
19 talked for a few minutes over on Crescent Street.
20 One fellow hauled a knife from his pocket and he
21 stabbed one of the fellows.

22 Now, that was lies.

23 A. That was a lie.

24 Q. Yeah.

25 A. Yeah.

Q. And again, if you refer to page 22 of the same volume, that
is the first statement of John Pratico, he says and about four

1 lines down in the first large paragraph,

2
3 I was over by the courthouse when I heard a
4 scream. I looked. I seen two fellows running
5 from the direction of the screaming. They
6 jumped into a white Volkswagon. Blue license
7 and white number on it. One had a brown
8 corduroy jacket. Five foot five, dark complexion,
9 heavy set. The other grey suit, about six feet
10 tall, husky, red sweater like a pullover.

11 And that was a lie.

12 A. Yes.

13 Q. Yes. And John MacIntyre has testified that he concluded
14 that both these individuals, both these witnesses, were
15 lying.

16 A. Yes.

17 Q. And he did so certainly after he visited the park, I think, on
18 the Tuesday or the Wednesday evening following the
19 stabbing incident.

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

21 Q. Yes. His opinions with respect to the reliability of Patricia
22 Harriss' first statement on 8:15 on June the 17th may, and I
23 suggest the word "may", may have been affected by the
24 following points. I don't know whether you heard the
25 evidence of Terry Gushue or not.

A. I didn't.

Q. No.

A. No. Haven't read it.

1 Q. Mr. Gushue...

2 A. Afraid not.

3 Q. ...said that shortly after the incident occurred, he spoke with
4 Miss Harriss and told her that he was going to tell the police
5 that he saw nothing, and that he advised her to tell the
6 police the same thing, namely that she had seen nothing.
7 Your notes in Volume 17.

8 A. Right.

9 Q. At page 5, when you personally interviewed Patricia Harriss
10 provided about, a little more than halfway down the page,
11 when Wheaton and Carroll arrived at three and she arrived
12 a few minutes later. Your note says, "Says she was first
13 questioned a few days after the incident." And you recall
14 that...do you recall her making that statement?

15 A. Yes, yes.

16 Q. If that is true, and there's no reason to doubt that her
17 recollection is accurate here, if that were true, we're left to
18 speculate as to whether or not she followed Terry Gushue's
19 advice and when she was initially questioned by the police
20 had, in fact, told the police that she saw nothing.

21 A. Yes, as you say we're left to speculate.

22 Q. We're left to speculate on that. And you mentioned, there is
23 some reference, I believe, in your diary, that Mary O'Reilley
24 may have told John MacIntyre before he interviewed
25 Patricia Harriss on June 17th.

1 A. Yes, I speculated on that.

2 Q. That Mary O'Reilley told Patricia Harriss if she was
3 interviewed that she was to say that she saw two people in
4 the park who matched Ebsary's description.

5 A. Yeah.

6 Q. Or appearance.

7 A. Yes.

8 Q. So, that these two...these two reasons, namely that Terry
9 Gushue's manufactured story which he told Patricia to tell
10 the police which, in fact, may have been told to the police
11 and the fact that Mary O'Reilley may have been...may have
12 talked to MacIntyre or the police before the Patricia Harriss
13 interview on the 17th.

14 A. Uh-hum.

15 Q. Does suggest that John MacIntyre may have had some
16 suspicions about whether or not he was getting the straight
17 goods from Patricia Harriss that night.

18 A. Fair enough, yes.

19 Q. Yeah, okay. And finally, another reason for, I suggest to you
20 that one could consider relating to Donald Marshall's guilt or
21 innocence was the fact that Donald Marshall's story that he
22 told the police on the Sunday was incredible.

23 A. Yes, that's been...fairly basic position, I felt.

24 Q. Yes. Various witnesses in this inquiry have spoken of
25 tunnel vision, and I want to suggest to you that Staff

1 Sergeant Wheaton was guilty of tunnel vision in a number of
2 areas, and a significant number of areas that affected his
3 judgement. Firstly, that he formed the opinion very early in
4 the investigation that Donald Marshall, Jr., was innocent.
5 And I just want to address your attention to the point in
6 time when he came to this conclusion.

7 A. Okay.

8 Q. And what he had done and seen prior to coming to that
9 conclusion. Your notes, I believe, indicate that it was on or
10 about the 23rd of February when Wheaton first advised you
11 that he concluded that Marshall was innocent. And that's
12 found at page 3, I believe, of Volume 17.

13 A. Yes, I have it.

14 Q. Right. In fact, the evidence that Wheaton has given before
15 this Inquiry is that he came to the conclusion that Marshall
16 was innocent before he saw Marshall the first time, and the
17 first time was on February the 18th.

18 A. February 18th, yes.

19 Q. Right. In fact, the conclusion, according to Staff Wheaton's
20 recollection, and take it from me that I'm accurate in what I
21 tell you.

22 A. Yes, I listened to all of his testimony so...

23 Q. Yes. My recollection is and I stand to be corrected, but my
24 recollection is that after he saw Maynard Chant, after the
25 aborted interview at the Chant household on February the

1 16th, he concluded that Donald Marshall, Jr., was innocent.
2 Now, at that point in time he had only interviewed and
3 taken statements from Jimmy MacNeil.

4 A. Right.

5 Q. Mitchell Sarson and Maynard Chant for a relatively short
6 period of time.

7 A. Yes.

8 Q. Did Wheaton ever discuss with you his initial reaction to
9 Jimmy MacNeil?

10 A. I believe, well, I know he did. I can't recall the specific
11 conversation.

12 Q. All right. We know that Al Marshall, Superintendent Al
13 Marshall, in the 1971 investigation, in November.

14 A. Yes, before...I should say that I do recall him saying he
15 found MacNeil believable.

16 Q. I see.

17 A. Yeah, that's all I can...

18 Q. That certainly was in sharp contrast to what Superintendent
19 Al Marshall found.

20 A. Yes.

21 Q. In September of...in November of 1971.

22 9:52 a.m.

23 A. Right.

24 Q. His comments were that he found MacNeil to be of
25 "subnormal intelligence, slightly mental, figment of his

1 imagination and I have no doubt in my mind he's not telling
2 the truth." Those were the, that's the findings that Al
3 Marshall has made.

4 A. Yes.

5 Q. It's my recollection that Wheaton told you that Mitchell
6 Sarson, the second person he found, was a little bit
7 suspicious...

8 A. Yes.

9 Q. And he didn't feel he was a reliable person. Is that accurate?

10 A. My note's, "Not impressed by him. Drug trafficker. And
11 friend of Marshall's."

12 Q. Yes. And I think your direct evidence to my friend, Mr.
13 MacDonald, was that, "Didn't feel he was a reliable person," I
14 believe those were the words you used.

15 A. Yes. That's close to it.

16 Q. So that all Wheaton had seen and interviewed was Jimmy
17 MacNeil, Mitchell Sarson, who he did not feel was a reliable
18 person and Maynard Chant for a short period of time at the
19 home because a wake was going on in the home at the same
20 time.

21 A. Yes.

22 Q. In fairness to him, he had seen Mary Ebsary and Mrs. Pratico
23 but had not taken statements from them at that time.

24 A. Right.

25 Q. I suggest to you that if it was a, it was too early for Staff

1 Wheaton to come to the conclusion, after simply taking
2 interviews and statements from three people, that Marshall
3 was innocent. That was an example of leaping to a conclusion
4 without proper foundation.

5 A. Yes. It would be a premature conclusion at that point. I can
6 agree with that.

7 Q. Once having made that premature conclusion, I suggest to you
8 that Wheaton had to find a reason why people lied at the
9 trial. He had to find a reason why Chant and Pratico and
10 Harriss lied at the trial.

11 A. Yes.

12 Q. And the easiest reason for him to come, to conclude that they
13 lied, was because that they were browbeaten by MacIntyre.
14 That was the easiest and the one escape route that he saw.
15 And once having made that quantum leap, I suggest to you
16 that he painted MacIntyre as the villain in the piece. And
17 that the course of his investigation from then on, and the
18 reports that he made, both verbal and written...

19 MR. OUTHOUSE

20 My Lords, I submit that Mr. Pugsley's asking a question
21 which can't possibly be answered at this stage. It's so convoluted.
22 What is the witness responding to? Is Mr. Pugsley making a
23 speech or asking him a question about Staff Sergeant Wheaton?

24 MR. PUGSLEY

25 I'm putting to him that Wheaton...

1 CHAIRMAN

2 I haven't had any difficulty following that question so far.

3 MR. OUTHOUSE

4 I did, My Lord. That's why I objected.

5 MR. PUGSLEY

6 Q. But having pictured MacIntyre as the villain, that from then
7 on his reports, both verbal and in writing, painted MacIntyre
8 in a bad light. Whether or not the facts supported that
9 conclusion. And whether or not he did so bona fide or mala
10 fides I'll leave for argument. But I want to explore with you
11 what Wheaton did do and what he didn't do and why I put
12 that proposition to you.

13 A. Okay.

14 Q. Firstly, what he didn't do. He refused to demand the file from
15 MacIntyre until he got the Attorney General's direction, the
16 letter of April 20th.

17 A. Yes.

18 Q. Despite a number of suggestions from you that he do so.

19 A. Yes.

20 Q. He refused to question John MacIntyre about his involvement
21 in the 1971 investigation despite your call to him at 11
22 o'clock at night on February the 23rd suggesting that he do so.

23 A. Yes. Although, again to be fair to him on it, there could well
24 have been problems between he and his superior...

25 Q. Quite so.

1 A. But, again, I've no direct knowledge of that.

2 Q. No. When Wheaton reported to you, after the first Chant
3 interview, and I may be wrong on this, but I believe that was
4 on the 23rd of February, was it? Was that the first time you
5 spoke to him after, and perhaps we can refer to this little
6 summary I gave to you yesterday which...

7 A. Yes.

8 Q. I'll ask to have marked as Exhibit 152.

9 EXHIBIT 152 - EDWARDS' NOTEBOOK - VOLUME 17 - SUMMARY OF
10 MEETING OF FRANK EDWARDS AND STAFF SERGEANT H.
11 WHEATON

12 Q. Have you had an opportunity of going through your notes, Mr.
13 Edwards, to ascertain whether or not this summary is
14 accurate?

15 A. Yes, I have.

16 Q. Are there omissions on it?

17 A. No, I followed along using the chronology in the your list and
18 I didn't see any errors.

19 Q. The only, it's been pointed out to me that on the July 12th
20 meeting, Bill Urquhart did attend that meeting sometime after
21 it commenced.

22 A. Yes.

23 Q. All right.

24 A. So you were asking me when was the first time he reported
25 the Chant interview.

- 1 Q. Yeah, but perhaps that was on the 21st.
- 2 A. Well, I think there was a reference, you know, that I took to
3 be to Chant where he said there had been new developments,
4 that's when I phoned him at 3:30 p.m. on February 21st.
- 5 Q. Right.
- 6 A. But the first specific report I got of the Chant interview would
7 have been Tuesday, February 23rd.
- 8 Q. And on that occasion did Staff Wheaton advise you that Chant
9 alleged that it was MacIntyre who had pressured him,
10 intimidated him?
- 11 A. As I indicated there's only a three-line note there for
12 February 23rd.
- 13 Q. Yes.
- 14 A. And I don't have a specific recollection of that. However, I'm,
15 well, I'm assuming he did tell me at that time because I know
16 he did tell me at some point that he felt that MacIntyre had
17 pressured Chant, yes.
- 18 Q. You did not interview Chant, I don't believe, did you?
- 19 A. No, I didn't.
- 20 Q. No. If one examines the first statement that was taken from
21 Chant by Wheaton and Carroll on the 16th of February...
- 22 A. Yes.
- 23 Q. And, indeed, the second statement that was taken by Carroll
24 alone that I believe was late March or early April...
- 25 A. Yes.

1 Q. There is no reference to John MacIntyre in either one of those
2 statements.

3 A. I think you're correct, yes.

4 Q. You reviewed, or you saw the initial report that Staff
5 Wheaton forwarded on to his headquarters?

6 A. Yes, I believe I recorded the date when I got it.

7 Q. That is found in Volume 34 at page 9, if I could direct your
8 attention to that for a moment.

9 A. Page 9?

10 Q. Page 9.

11 A. Yes.

12 Q. Although that report, you have a copy of that in front of you,
13 sir?

14 A. Yes.

15 Q. Although that report is dated 82/02/25...

16 A. Yes.

17 Q. In fact, we know that there are attachments that were dated,
18 I believe, as late as March the 9th.

19 A. Okay.

20 Q. I think if you refer to the statement of Donald Marshall, Jr., I
21 believe that was taken on the 9th of...

22 A. 9th of March.

23 Q. On the 9th of March.

24 A. As I recall that's the date of the statement.

25 Q. Yes. Right. Did you note that in the appendices that are,

1 accompany that report, that Staff Wheaton failed to include
2 the June 4th statement of Maynard Chant that implicated
3 Marshall? The June 4th statement of Pratico that implicated
4 Marshall? The only statement taken from Terrence Gushue of
5 June the 17th. The only statement taken from Mary O'Reilley
6 and the November 15th statement of Roy Ebsary. Did you...

7 A. Did I...

8 Q. Did you notice that?

9 A. No, I didn't.

10 Q. Did you notice further that he did not include the statement
11 taken from Wayne McGee of March the 2nd or even refer to it
12 in his report?

13 A. No. I think I got the report some time in April or, I'd have to
14 go back to the notes but I believe that's all.

15 Q. Did Staff Wheaton...

16 A. And I had those other statements so I wasn't doing a
17 checklist-type thing...

18 Q. Of course.

19 A. With his, yes.

20 Q. Of course. Did Staff Wheaton discuss with you his interview
21 with Wayne McGee on March the 2nd?

22 A. I believe he did, Mr. Pugsley, but I don't have any recollection
23 of what he said.

24 Q. Did he tell you that McGee advised him that MacIntyre did
25 not pressure Maynard Chant on the June 4th interview?

1 A. I believe he did, yes.

2 Q. Did he discuss with you any conclusion that he came to, any
3 conclusion that Wheaton came to, as to whether or not Wayne
4 McGee was present during the June 4th interview at
5 Louisbourg.

6 A. He may have, Mr. Pugsley, but I wouldn't be confident in
7 saying one way or the other.

8 Q. Did you discuss that with Wayne McGee? As to whether or
9 not he was present at any time. You say you ran into him in
10 the courthouse from time to time...

11 A. Oh, yeah. And I prepared his affidavit for him and...

12 Q. Yes.

13 A. Yes. And went through it with him then.

14 Q. And he advised you that he had, in fact, been present.

15 A. Yes.

16 Q. Yes. The incident of April 16th or April 26th as to when
17 Patricia Harriss 1...

18 A. Yes.

19 Q. Was given to Wheaton...

20 A. Yes.

21 Q. And as to whether or not it was Patricia Harriss 1 or the
22 Christmas transcript on the floor...

23 A. Yes.

24 Q. Is, of course, a very critical one for Chief MacIntyre.

25 A. Yes.

1 Q. If the truth is that Chief MacIntyre tried to conceal Patricia
2 Harriss 1 from Staff Wheaton after he was served with the
3 order of the Attorney General...

4 A. Yes.

5 Q. To hand over all the file material in his possession, then the
6 Chief is guilty of obstruction of justice, an offence under the
7 Police Act and an offence under the Criminal Code.

8 A. Even if he tried to conceal it before he got the order, in my
9 opinion...

10 Q. Quite so.

11 A. He'd still be guilty.

12 Q. And in view of his evidence before this Inquiry, in view of
13 the Chief's evidence before this Inquiry...

14 A. Yes.

15 Q. He'd be guilty of perjury as well.

16 A. Yes.

17 Q. Yes. I want to explore with you what Staff Wheaton has
18 testified to in this Inquiry...

19 A. Yes.

20 Q. Concerning this incident and I'll direct your attention to
21 Volume 44 of the evidence, of the transcript and page 8100.
22 And I don't purport to have gotten an exhaustive list of
23 references from Staff Wheaton's evidence but I've got the
24 ones that I saw on going through them.

25 A. Yes.

1 Q. At page 8100, in Volume 44 he says at line 10:

2 Well again, all I could say to you, sir, is I, insofar
3 as Patricia Harriss' statement, there is confusion
4 whether it was the 16th or 26th, I believe. And
5 I wished I could clarify it. I've tried with Mr.
6 Orsborn, I can try with you, but I can tell you I
7 do not, to the best of my own personal
8 recollection, I think it was the 26th and I base it
9 on a paper flow. And I base it on the fact that I
10 submitted a report stating that. However, I can't
11 be clear in my own mind, sir.

12 At page 8101, the following page, at the bottom of the page at
13 line 22. "I can see your hypothesis, sir..."

14 A. Excuse me, is it all right if I deface this a little bit? All right.

15 Okay, sorry, Mr. Pugsley.

16 Q. At the bottom of page 8101...

17 A. Yes. Q. At line 22.

18 I can see your hypothesis, sir, and based on Mr.
19 Edwards' notes I can see your reasoning, too.
20 But I know, in my own mind, sir, that there was
21 one meeting and that was the meeting with the
22 Chief when he turned these things over and
23 there are certain things occurred during that
24 meeting.

25 Q. Right. And you're convinced of that, are you?

A. I know, sir. And then at 8145 in the same volume at the top
of the page at line 1:

It was... if you will, the first physical overt
act that I saw the Chief do. I felt that he had

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 been misleading me all along, but here he was
2 actually hiding a piece of paper.

3 And then if you'll turn to the next volume, Volume 45, at page
4 8247.

5 A. Yes.

6 Q. At line 8.

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

11 And then finally, Volume 42 at page 7751.

12 A. What is the page?

13 Q. 7751 and 7752.

14 A. Okay.

15 Q. And I haven't got that in front of me, I've just got my
16 abbreviated notes on it but my recollection is he says:

17 A. I am suggesting, I am not suggesting, I am
18 stating the man perjured himself.

19 Q. Before this Commission?

20 A. Before this Commission.

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

23 A. That is correct, sir.

24 A. Yes.

25 Q. Now that statement, that final answer where he says that my
 client perjured himself is a long way from what he told me

1 initially. "I think it was on the 26th and I based it on a paper
2 flow."

3 A. Yes.

4 Q. And did you see the next two reports that he forwarded to his
5 superiors? And I direct your attention to Volume 20 at page
6 11. Volume 20 in the red volume.

7 A. You talk about a paper flow.

8 Q. Yes, indeed.

9 A. What was the page in Volume...

10 Q. At page 11. And I'll join you if I may, Mr. Edwards, because I
11 haven't got Volume 20 with me.

12 A. Certainly.

13 Q. I'll have to check that reference again, Mr. Edwards. I don't, I
14 can't seem to find that from my notes. Yes, I direct your
15 attention to paragraph number 3...

16 A. Yes.

17 Q. Where he writes on 82/05/04...

18 A. Yes.

19 Q. Which I believe is either the first or second report that he
20 forwarded to his superiors after the April 26th meeting.

21 A. Yes.

22 Q. Where he writes, "On 82/04/26 Chief MacIntyre handed over
23 to the writer the file in regard to this case as held by the
24 Sydney City Police as per instructions of the Department of
25 the Attorney General."

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 A. Yes.

2 Q. Had you ever seen that report before?

3 A. Yes.

4 COMMISSIONER EVANS

5 I'm still trying to find the what page and book we're in.

6 MR. PUGSLEY

7 We're in Volume 34 at page 76, is it?

8 MR. EDWARDS

9 Yes, it is.

10 MR. PUGSLEY

11 Page 76, My Lord, of Volume 34. In paragraph 3.

12 COMMISSIONER EVANS

13 Volume 34...

14 MR. PUGSLEY

15 Page 76 in paragraph 3.

16 CHAIRMAN

17 And what was the significance, Mr. Pugsley, of Volume 20?

18 MR. PUGSLEY

19 In Volume 20, my note is, "In reviewing the Sydney Police
20 file after the order had been made by the AG that they turn
21 over all documents I find."

22 CHAIRMAN

23 I see it, yes.

24 MR. PUGSLEY

25 Have you got it there, My Lord? I couldn't find it on the page

1 that I referred the witness to.

2 CHAIRMAN

3 It's at paragraph 14, the last two or three sentences.

4 MR. PUGSLEY

5 Thank you, My Lord.

6 COMMISSIONER EVANS

7 What page?

8 CHAIRMAN

9 On page 11.

10 MR. PUGSLEY

11 Page 11 of Volume 20.

12 Q The point being that in those first two reports that Staff
13 Wheaton forwarded to his superiors after April 26th, there is
14 no mention made whatsoever of any difficulty in getting the
15 AG's file.

16 A. Fair.

17 MR. PINK

18 Getting the Sydney Police file.

19 Q Getting the file from Chief MacIntyre of the Sydney City
20 Police. Thank you, Mr. Pink. I just want to review with you
21 the circumstances surrounding the giving of the Patricia
22 Harriss number 1 statement to you and my recollection is that
23 this scenario started...

24 A. Are we finished with these transcripts?

25 Q Yes, we are. If you can refer to Volume 17 which is your

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 diary...

2 CHAIRMAN

3 Go back to Volume 20...

4 MR. PUGSLEY

5 Yes, My Lord.

6 CHAIRMAN

7 Page 11, paragraph 14. Did Mr. Edwards say that, you recall
8 receiving that report?

9 MR. EDWARDS

10 He asked me if I had read it and I have read it and I believe
11 I've received it.

12 CHAIRMAN

13 See, it reads, "In reviewing the Sydney City Police file...."

14 MR. EDWARDS

15 Where are you referring to right now, My Lord?

16 CHAIRMAN

17 Page 11, paragraph 14. Toward the end of the page. This is
18 Staff Wheaton's report.

19 MR. EDWARDS

20 Yes, okay.

21 CHAIRMAN

22 It says, "In reviewing the Sydney City Police file after the
23 order had been made by the Attorney General that they turn
24 over all documentation, I found a partially completed
25 statement dated 17th of June, 8:15 p.m." That's... is that the

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 same statement that allegedly was pushed under the desk
2 by...

MR. PUGSLEY

4 According to Wheaton, that's what he says. But according to
5 this witness' evidence, that was not the 26th, it was the 16th
6 and, further, that wasn't the statement put under the desk, it
7 was the Kevin Christmas transcript.

CHAIRMAN

9 That's right. But there is no reference in this report to the
10 statement of Patricia Harriss having been...

MR. PUGSLEY

12 Being put under the desk. That's correct.

CHAIRMAN

14 The implication is that the statement was found in the...

MR. PUGSLEY

16 In the file.

CHAIRMAN

18 In the file.

MR. PUGSLEY

20 That's right, My Lord.

CHAIRMAN

22 That's not the implication, he says so.

MR. PUGSLEY

24 And in the other report that I addressed your attention to, he
25 says the Chief handed over the file to him in accordance with

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 the instructions of the AG. Again, no reference to there being
2 any...

3 CHAIRMAN

4 I can't recall. Was Staff Wheaton asked to explain that?

5 MR. PUGSLEY

6 Yes, he was. He had no explanation.

7 CHAIRMAN

8 I see. Well, we'll...

9 MR. PUGSLEY

10 He was asked by me.

11 MR. EDWARDS

12 I must say the, just the look and format of the report in
13 Volume 20, page 8. That one, I can't say with certainty that I had
14 that one like I can with the one in Volume 34, page 76. I mean, as
15 soon as I see that page I recognize that right away.

16 10:15 a.m.

17 Q. You may not have seen the one in Volume 20.

18 A. I may not.

19 Q. If I could direct your attention, sir, to your diary, Volume
20 17, your notebook.

21 A. Yes.

22 Q. And I want to explore with you the delivery of the Patricia
23 Harriss number 1 to you.

24 A. Yes.

25 Q. And as I understand your evidence, it came about as a

1 consequence of a telephone call you received from Gordon
2 Gale on the morning of Friday, April the 16th.

3 A. That's correct.

4 Q. In which Gale advised you of a visit that John MacIntyre
5 had to his office earlier in that week and he showed or
6 discussed with him statements taken by MacIntyre on
7 November 15th, 1971, or around November 15, early in
8 November, 1971.

9 A. Yes.

10 Q. From Ebsary's wife, son and Gordon Gale thought daughter
11 as well.

12 A. Yes.

13 Q. Which was obviously wrong.

14 A. Yes.

15 Q. But, in any event, Gale phoned you and says, "Look it, the
16 Chief was in my office and he's shown me statements of Mrs.
17 Ebsary and Greg Ebsary taken in November '71."

18 A. Right.

19 Q. And you expressed surprise because you had not seen those
20 before.

21 A. Exactly.

22 Q. You phoned Wheaton and said, "Look it, what about these
23 statements that Gale is telling me about?"

24 A. Right.

25 Q. Wheaton says, "I haven't seen those either."

1 A. Right.

2 Q You say to Wheaton, "Go down and get them," or, you know,
3 "Why don't you go down and get them," or something to that
4 effect.

5 A. Uh-hum.

6 Q And Wheaton did so and...

7 A. Just let me check that last point.

8 Q I'm sorry. There was a two o'clock meeting in your office on
9 that Friday the 16th between Scott and Wheaton and
10 yourself.

11 A. Yeah. Now, I'm just referring to my note...

12 Q Yeah.

13 A. ...of April 16th. "After call with Gale I phoned Wheaton and
14 confirmed they knew nothing about these statements."

15 MR. PINK

16 Page 8.

17 MR. PUGSLEY

18 Page 8, yes.

19 MR. EDWARDS

20 A. Yes, I'm sorry, I'm in my original note.

21 Q So you...

22 A. I don't think I suggested during that telephone call that he
23 should go down and get them.

24 Q Well, then Wheaton apparently comes to your office with
25 Scott at two o'clock that afternoon as appears near the

- 1 bottom of page 8.
- 2 A. Yes.
- 3 Q. Right. And at that time you suggest that they demand the
4 file and all information from the Chief and threaten the use
5 of a search warrant if necessary.
- 6 A. Yes.
- 7 Q. Now, all this has arisen as a consequence of your call with
8 Gale and Gale telling you about these Mary Ebsary and Greg
9 Ebsary statements of November '71.
- 10 A. That's right.
- 11 Q. So, Wheaton goes down to see the Chief later on that day
12 and advises you not until Saturday the 17th of April...
- 13 A. Yes.
- 14 Q. That not only does he get Greg and Mary Ebsary's
15 statements.
- 16 A. That's right.
- 17 Q. He gets Patricia Harriss number 1.
- 18 A. Yes.
- 19 Q. And he told you about that on Saturday the 17th of April.
- 20 A. No question about that.
- 21 Q. Okay.
- 22 A. As far as I'm concerned anyway.
- 23 Q. Well, that's right. Well...
- 24 A. Others may...
- 25 Q. And for obvious reasons I support your recollection. And I

1 support and I suggest to you that that is your independent
2 recollection, Mr. Edwards.

3 A. That's correct.

4 Q. And your notes confirm that and I'd like to address your
5 attention to the number of areas, places in your notes that
6 confirm the giving over or the fact that Wheaton got that
7 statement on the 16th of April.

8 A. Yes.

9 Q. And just bear with me for a moment while I find the
10 various places that you note that. Well, I guess on page 9
11 firstly. Near the top of the page, Saturday, April 17th, 18th,
12 in the second paragraph, "After being pressed, Chief turned
13 over previous written statement by Patricia Harriss in which
14 she described someone matching Ebsary."

15 A. Yes.

16 Q. And then on page 10 on Monday, April the 19th, you...or just
17 a little bit below the middle of the page, you phoned
18 Wheaton, "Told him I wanted copies of newly acquired
19 statements," and then at 1:30 p.m. on Monday, April 19th, or
20 one day before the AG signed his letter in Halifax.

21 A. Yes.

22 Q. "Wheaton arrived with statements of Ray, Greg and Mary
23 Ebsary dated November 15th, '71, Donna Ebsary, 17 April,
24 '82, Patricia Harriss, 17 June '71."

25 A. Yes.

1 Q. And just... Yeah. We all know that there are the two
2 statements of Patricia Harriss, one is dated the 18th, one
3 dated the 17th.

4 A. Yes.

5 Q. The uncompleted one dated the 17th, but for...to ensure that
6 coffin is nailed, your next note is "Note Patricia Harriss not
7 complete, i.e. may have been a page 2."

8 A. Yes.

9 Q. And that obviously refers to the uncompleted Patricia
10 Harriss statement of the 17th.

11 A. Yes.

12 Q. And then again the following paragraph at the bottom of the
13 page, "Note this statement was taken before Harriss's second
14 statement."

15 A. Yes.

16 Q. And the "second statement" obviously referred to the June
17 18th statement.

18 A. Yes.

19 Q. And then at the top of page 11, again, on Monday, April the
20 19th, "Inspector Scott called just as Wheaton was leaving,
21 said he was concerned about Harriss statement," and that
22 obviously was Patricia Harriss number 1.

23 A. Yes.

24 Q. Yes.

25 A. That's what I took him to be referring to for sure.

1 Q. Sure. I mean there is nothing, yeah, okay. The fact is that if
2 the Chief had slipped Patricia Harriss number 1 on the floor,
3 you would have charged him with obstruction of justice.

4 A. I would have made that recommendation.

5 Q. Yes. And, in particular, if he slipped Patricia Harriss
6 number 1 on the floor after he had a direction or an order
7 from the Attorney General to hand over his complete file, all
8 the more reason for you to have done so. You would have
9 done so in any event.

10 A. Yes. That would have been aggravating factor.

11 Q. That's a good way of putting it.

12 A. At sentencing time.

13 Q. Okay. Now, on page 8 of your notebook, Volume 17, you...

14 COMMISSIONER EVANS

15 Mr. Pugsley.

16 MR. PUGSLEY

17 Yes, My Lord.

18 COMMISSIONER EVANS

19 I hesitate to interrupt.

20 MR. PUGSLEY

21 Not at all.

22 COMMISSIONER EVANS

23 But there's a point that's been bothering me a bit, and that is
24 when Carroll, I believe, was the officer with Wheaton at the...

1 MR. PUGSLEY

2 Davies, I think it was Davies.

3 COMMISSIONER EVANS

4 Davies, I'm sorry, was at the office when this paper was
5 dropped on the floor.

6 MR. PUGSLEY

7 Yes.

8 COMMISSIONER EVANS

9 My recollection is that Davies did never see the material
10 that was on that statement.

11 MR. PUGSLEY

12 I think that's right, My Lord, although I think he said it was
13 discussed in the car going back to the station with him, I think he
14 said that.

15 COMMISSIONER EVANS

16 Is that...

17 MR. PUGSLEY

18 I think he said that.

19 COMMISSIONER EVANS

20 The file was taken by Carroll or the paper was taken by
21 Carroll and put in the file and then they had some discussion on
22 the way back in the car.

23 MR. PUGSLEY

24 I believe that to be so, My Lord, but I haven't reviewed that
25 evidence with that in mind. There...

1 COMMISSIONER EVANS

2 Well, the paper did not go from the floor to Marshall or to
3 MacIntyre to Davies.

4 MR. PUGSLEY

5 No. No, it didn't go to Davies at all. Davies did not get it.
6 The piece of paper that was allegedly on the floor was given, so
7 they say, by MacIntyre to Wheaton.

8 COMMISSIONER EVANS

9 Who put it in his file.

10 MR. PUGSLEY

11 I think that's correct.

12 MR OUTHOUSE

13 My Lords, I had to interrupt, but my recollection of that
14 evidence is that Wheaton and Davies both said that he carried it in
15 his hand to the car, that he had already had the rest of the stuff
16 packaged up, as I recall it. He took that statement to the car and
17 read it in the car in Davies' presence, and I believe both witnesses
18 said that.

19 COMMISSIONER EVANS

20 Well, I am concerned with did he put it in the file?

21 MR OUTHOUSE

22 My, again, my understanding of the evidence is that they
23 said, "No," that the rest of the materials were packaged up.

24 COMMISSIONER EVANS

25 So, we have him driving his car and reading the paper.

1 MR OUTHOUSE

2 No, he wasn't driving. Davies was driving.

3 MR. PUGSLEY

4 Q Now, you were concerned that because the Chief had gone to
5 Gordon Gale and had referred him to these November 15th,
6 '71, statements of Greg Ebsary and Mary Ebsary, I believe
7 that's her name.

8 A. Yes.

9 Q That the Chief was holding back.

10 A. Yes.

11 Q That the Chief was trying to set you up and trying to set
12 Scott up and being manipulative at the best, I think are the
13 words that you used.

14 A. Yes, yes.

15 Q I'd like to suggest to you that the statements of Greg Ebsary
16 and Mary Ebsary of November 15th, 1971, are not
17 consistent with Donald Marshall's innocence and that,
18 therefore, they are not in any way consistent with the Chief
19 holding back goodies that would be consistent with
20 Marshall's innocence.

21 A. Uh-hum. I'd have to re-read them.

22 Q I think we should do that.

23 A. Yes.

24 Q Because it's an important point.

25 A. Okay.

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 Q. And we will find them at...I'm just trying to think where we
2 will find them. In 16.

3 A. Volume 16.

4 Q. Volume 16. And I guess it must, probably near the end of
5 the volume, page 191.

6 A. I don't think I have 16. [Locating Volume 16.]

7 Q. Page 181 is Mary Ebsary and 191...

8 A. Okay.

9 Q. ...is Greg. 181 then for Mary Ebsary.

COMMISSIONER EVANS

11 What was your suggestion that...

MR. PUGSLEY

13 My suggestion is that these statements were not consistent
14 with Marshall's innocence. They were consistent with Roy
15 Ebsary's innocence and hence if the Chief was trying to set people
16 up, there was no sense in holding back statements that were
17 consistent with Roy Ebsary's innocence. Presumably if he was
18 trying to set them up and trying to direct the investigation into
19 one channel, namely that Marshall was guilty, then these were not
20 the kind of statements he would hold back. These are the kind of
21 statements he would produce rather than hold back.

22 Q. And with respect to Mary Ebsary's statement I direct your
23 attention to page 182 and the last part,

24 My husband had not been drinking and Jimmy
25

1 came to the house on Sunday. I was getting
2 ready to go out and he told my husband he
3 would return on the weekend and I did not want
4 my husband on the booze again. I sent for him
5 and told him to stay away from my house. It
6 was at this time the conversation about the Seale
7 boy came up. I don't think Jim or my husband
8 would have anything to do with that. Roy
9 weighs only about 115 pounds.

10 Now, that's certainly consistent with Roy's non-involvement.

11 A. Uh-hum.

12 Q. And I suggest to you that there would be...if MacIntyre was
13 trying to set a pre-determined course for you and Scott and
14 Wheaton and everyone else to go to.

15 A. Yes.

16 Q. That it didn't make sense for him to hold this one back.

17 A. Well, I guess my primary concern was that, you know, he
18 here was producing statements, whether they were for or
19 against Donald Marshall.

20 Q. Uh-hum.

21 A. Wouldn't be the primary worry. The primary concern
22 would be that here he was producing statements which by
23 producing them he must have felt were relevant to the
24 investigation, and on the other side I'm being told by
25 Wheaton that he had asked the Chief on several occasions if
he had anything else that might be relevant. So that was
the germ of my concern.

Q. I see. Okay. All right. And I...

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 A. And just the fact that he went to Halifax apparently, I mean,
2 what it looked like to me was that he was outflanking the
3 investigation. That was my impression.

4 Q. He may have been upset at what he perceived to be an
5 animosity that Staff Wheaton had towards him.

6 A. Very...he may very well have been, yes.

7 Q. Yes. Okay. Thought that he was being set up.

8 A. Yes, and I believe his evidence was that he was upset about
9 press reports, and that's why he went...

10 Q. About.

11 A. Didn't he give in his evidence that he was upset about press
12 reports?

13 Q. Yes.

14 A. And that's why he went to Halifax.

15 Q. He did.

16 A. Yes.

17 Q. He did.

18 COMMISSIONER EVANS

19 Mr. Edwards, this raises a point that's always bothering me.

20 MR. EDWARDS

21 Yes.

22 COMMISSIONER EVANS

23 Somebody in the police department takes a look at these
24 statements and they subjectively say, well, these are not
25 important.

1 MR. EDWARDS

2 Yes.

3 COMMISSIONER EVANS

4 Is that frequent in your experience that the police hold back
5 reports?

6 MR. EDWARDS

7 I wouldn't say "frequent" but it has happened and the
8 example I used yesterday is the classic dramatic example, where
9 the police, in fact, had had a statement from one of these ladies
10 who had seen the victim the day after she was supposed to be
11 dead but had dismissed it as irrelevant. And the only reference
12 that had been made to me prior to the trial was in an afternoon
13 interview I had with them pre-trial and one of the investigators
14 had said, "Gee, the rumours going around about this," he said,
15 "There's even people saying, you know, she was alive a day or so
16 later." And I said, "Well, did you check them out?" and he said,
17 "Yes," and that was the end of it.

18 COMMISSIONER EVANS

19 Well, it's not unusual for the police instead of staying in
20 their investigative area to want to pop over into your area which
21 is the prosecution area, and they hold back things, and of course
22 the defence suffers from that situation.

23 MR. EDWARDS

24 Yes. That's a real problem because it's all right for me to
25 say I'm going to give full disclosure, but how do I know that I've

1 got it.

2 COMMISSIONER EVANS

3 That you're getting it.

4 MR. EDWARDS

5 Yes. And 99% of the time you can rely on the investigator,
6 particularly in serious cases, but sometimes through
7 inadvertence...

8 COMMISSIONER EVANS

9 Inadvertence.

10 MR. EDWARDS

11 Well, I prefer to think it's inadvertence.

12 COMMISSIONER EVANS

13 Inadvertence I can accept, but every once in awhile there is
14 one who wants to have a little trial by ambush and the police pull
15 something out of his back pocket.

16 MR. EDWARDS

17 Yeah.

18 COMMISSIONER EVANS

19 At the middle of a trial, and what I was hoping and not
20 today, but at some time during this thing, you might be able to
21 give some recommendation as to how this practise, and it is more
22 widespread than you have suggested.

23 MR. EDWARDS

24 Yes.

25

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 COMMISSIONER EVANS

2 Is more widespread in other areas, in any event. How that
3 can be corrected. You can write all the directives in the police
4 department and from the AG's office, but unless there is some
5 penalty imposed or some restriction, whether it should be by the
6 police maybe if they fail to do it.

7 MR. EDWARDS

8 Yes.

9 COMMISSIONER EVANS

10 Maybe some internal investigation take place and some
11 penalty imposed upon them. And the same thing could happen
12 with the Attorney General, Crown attorneys who have the habit of
13 hiding something until the last minute.

14 MR. EDWARDS

15 Uh-hum.

16 COMMISSIONER EVANS

17 And I think along...the day is long gone when we have trial
18 by ambush. It's a little too serious.

19 MR. EDWARDS

20 No question about it.

21 COMMISSIONER EVANS

22 And probably you can think up something in the short time.

23 MR. EDWARDS

24 Okay. Yes, that's something that I'd rather...

MR. EDWARDS, EXAM. BY MR. PUGSLEYCOMMISSIONER EVANS

Your recommendations.

MR. EDWARDS

...contemplate.

COMMISSIONER EVANS

I'm sorry for the interruption, but it seemed...

MR. PUGSLEY

Not at all, My Lord.

COMMISSIONER EVANS

...like a good time before I forget it. I've suffered from that and I'd like to correct it.

MR. EDWARDS

You know, when it happens as it did to me it's not very pleasant for the Crown either.

COMMISSIONER EVANS

Oh, it's impossible.

MR. EDWARDS

Because here you have defence counsel on the other side and say, "Look boys, I've opened the books to you," and then they look at you and say, "Well, did you know..."

COMMISSIONER EVANS

That's right.

MR. EDWARDS

And in that particular instance I think they were satisfied that I didn't.

1 COMMISSIONER EVANS

2 Well, I think it becomes more important when we are trying
3 to move into a free and open disclosure and when we have pre-
4 trials and people sit down and lay it on top of the table and
5 discuss what the Crown has and what the defence has. And the
6 defence can't or Crown can't know if the police don't tell them, and
7 they are a bunch of old-time police officers that want everything
8 kept under their hat until they're called as witnesses.

9 MR. EDWARDS

10 Yes.

11 COMMISSIONER EVANS

12 And it is difficult for you and...

13 MR. EDWARDS

14 Yes.

15 COMMISSIONER EVANS

16 So, that's a little off line, Mr. Pugsley, but...

17 MR. PUGSLEY

18 Not at all, My Lord.

19 COMMISSIONER EVANS

20 But I thought when I have this very excellent Crown
21 attorney that he might be able to give some assistance which
22 would be of benefit, not only in Nova Scotia but in any other
23 jurisdiction.

24 MR. PUGSLEY

25 Quite so.

COMMISSIONER EVANS

Suffer with the same non-disclosure problems.

MR. PUGSLEY

Thank-you, My Lord.

Q. In fairness to John MacIntyre as to whether or not he was trying to set anyone up or being manipulative at all, I suggest to you that it is significant that he did give to Scott Chant number 1, Chant number 1.

A. Oh, yes.

Q. Pratico number 1.

A. Yes.

Q. Jimmy MacNeil.

A. Yes.

Q. John and David MacNeil. George and Sandy McNeil and Robert MacKay and those are...and that's clear if one takes a look at Volume 34, page 20, which is the appendices to Wheaton's first report.

10:37 a.m.

A. Yes, you're right on that. I recall that.

Q. And George and Sandy MacNeil, in particular, is a statement that identified or certainly comes close to identifying people who resemble Jimmy MacNeil and Roy Ebsary.

A. That's correct.

Q. And those were handed over by MacIntyre willingly at the outset.

1 A. Yes.

2 Q. Yes. Okay. You said that during the course of your evidence
3 that you heard on the radio, I think when you were in Halifax,
4 that the news had broken. The story had broken in Sydney...

5 A. That's right.

6 Q. And you did not leak the story to the media, that's for sure.

7 A. Definitely not.

8 Q. Who else was in a position to leak the story to the media?
9 Who could have had the information?

10 A. Well I guess the investigators had it and I suppose a lot of the
11 press had gone around and done their parallel investigation
12 so I don't know. Maybe they hit among enough witnesses
13 that had been interviewed by the RCMP. Because, you know,
14 word travels pretty fast in a community so, and again I'm
15 speculating, but the RCMP interview Witness A and then
16 Witness A tells his family and friends and everything and it
17 doesn't take long.

18 Q. You spoke of the interview of July 12th were Michael Whalley
19 was present.

20 A. Yes.

21 Q. With the Chief and William, subsequently William Urquhart.

22 A. Yes.

23 Q. And you talked about a comment that Whalley made to the
24 effect, "Take that to court and you'll be laughed out of the
25 courtroom."

1 A. Yes.

2 Q. Or words to that effect.

3 A. Yes.

4 Q. May I suggest to you that that comment by Mr. Whalley came
5 about as a consequence of a discussion of the evidence of
6 Evers and the knives and the hairs and that kind of thing. Is
7 it, Evers, is he the RCMP...

8 A. Yes, he was the hair and fibre expert, yes.

9 Q. Yes. Right. May I suggest to you that Whalley's comment
10 about "You'll be laughed out of court," was as a consequence
11 of a discussion focussing on that particular aspect of the
12 evidence, namely Evers' evidence? Not with respect to...

13 A. It was after Evers' evidence was discussed but I took it to be,
14 and maybe it was a mistaken impression, I grant you that, a
15 general comment but I, there's no way of my nailing that
16 down.

17 Q. Did Mr. Whalley stress the importance of the evidence of
18 Wayne McGee at the meeting with respect to the...

19 A. I believe he did, yes.

20 Q. Yes. Did he refer to Terry Gushue's statement, as well? The
21 statement that he gave to the police.

22 A. Mr. Whalley?

23 Q. Yes. And the importance of Terry Gushue's evidence
24 concerning who was in the Park that night.

25 A. He may have made reference to it. My recollection was that

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 Mr. Whalley didn't take a very active part in the meeting but
2 he may have made that mention. If he says he did I couldn't
3 contradict him, put it that way.

4 Q. Did Mr. Whalley say to Staff Wheaton after he had listened to
5 comments from Staff Wheaton that, "Look it, you've cooked
6 up a conspiracy theory here involving MacIntyre and
7 Urquhart and Donnie MacNeil, who got Chant, Pratico and
8 Harriss all to lie."

9 A. You're paraphrasing Whalley?

10 Q. I'm paraphrasing Whalley...

11 A. Yes.

12 Q. To Wheaton. You cooked up a conspiracy theory involving
13 MacIntyre, Urquhart and Donnie MacNeil and their activities
14 concerning Chant, Pratico and Harriss and getting them to lie.
15 And Wheaton's response, "If that's the way the ball bounces,
16 that's it." Do you recall that exchange at all?

17 A. No, not that specific exchange. I know Mr. Whalley...my best
18 recollection is that Mr. Whalley was concerned that the
19 Sydney Police weren't being treated fairly but I don't recall
20 the specific exchange.

21 Q. Okay.

MR. PUGSLEY

23 Those are my questions, My Lord. Mr., sorry, my compatriot,
24 my associate, is in another court this morning and he expects
25 to be here in about 15 minutes and he wonders if his cross-

MR. EDWARDS, EXAM. BY MR. PUGSLEY

1 examination could be adjourned until after one of my friends
2 goes ahead. He expects that he'll only be five or ten minutes.

CHAIRMAN

3
4 All right. No problem. Maybe before we, Mr. Barrett starts,
5 unless you're going to be five minutes...

MR. BARRETT

6
7 No, I don't. I anticipate being longer than that.

CHAIRMAN

8
9 Well, all right. Seeing you're going to be ten, we'll adjourn for
10 ten minutes.

10:41 - BREAKCHAIRMAN

11
12
13 Is this the gentleman you were telling me about?

MR. PUGSLEY

14
15 Yes, it is, My Lord. Mr. Murray.

EXAMINATION BY MR. MURRAY

16
17 Q. Mr. Edwards, my name is Donald Murray, I am representing
18 William Urquhart in these proceedings.

19 A. I think we've met.

20 Q. Yes, I believe we have. And you know Mr. Urquhart.

21 A. Yes.

22 Q. Back in early 1982, between February and May, I understood
23 from your comment the other day that your interest in this
24 case was continually piqued by new revelations and that you
25 were very interested to hear the next piece of information

1 from the RCMP.

2 A. Yes. It was a very interesting sequence.

3 Q. And during that same period there was also information
4 appearing in the press on a fairly regular basis about what
5 was going on with respect to the investigation, is that so?

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

7 Q. We have them in evidence in Volume, Exhibit 130 and
8 Volume 38, but I won't refer them to you.

9 A. Sure.

10 Q. There's a number of portions of your notes in Exhibit 17 that
11 refer to contacts with Bill Urquhart and Bill Urquhart would
12 be phoning to see if he could obtain information or advising
13 you of certain media interest in the case.

14 A. Yes.

15 Q. I take it those references in your notes that you were making
16 specifically with respect to this case aren't meant to be a basis
17 for any inference of improper involvement on the part of Mr.
18 Urquhart in this.

19 A. No. No, they were merely a report, reportorial in nature.

20 Q. Having read the media reports at the time you were able to
21 conclude in December 1982, after hearing the evidence at the
22 reference, that in fact, Bill Urquhart and the Sydney Police
23 had fared much better in court than they had in the press
24 earlier in the year.

25 A. That was my assessment, yes.

MR. EDWARDS, EXAM. BY MR. MURRAY

- 1 Q. So far as you were aware...
- 2 A. But...
- 3 Q. Yes.
- 4 A. If I may, I think that specific reference, though, and to be as
5 accurate as I can on it, was that they had fared much better
6 in court than the press reported the court hearing.
- 7 Q. I see. But your views are the broader ones?
- 8 A. Yes.
- 9 Q. Mr. Urquhart's only ability to respond to any of the
10 allegations I take it came with the affidavit that he prepared
11 with your assistance on July 12th.
- 12 A. That's fair, yes.
- 13 Q. And by that point in time the Sydney City Police file had been
14 in the possession of the RCMP for some three months? Since
15 April.
- 16 A. Yes.
- 17 Q. Did you have any copies of the original handwritten
18 statements when you were meeting with Bill Urquhart and
19 John MacIntyre that day?
- 20 A. I think I did.
- 21 Q. You can't give us a positive recollection on that.
- 22 A. No, I can't be positive.
- 23 Q. Can you say which statements you showed Mr. Urquhart at
24 that July 12th meeting?
- 25 A. No, my specific recollections don't travel too much beyond

1 what are in the notes and what I've said already.

2 Q. I see. When you sent the affidavit, the drafted affidavit down
3 to Mike Whalley for Bill Urquhart to review...

4 A. Yes.

5 Q. Attached to that was only the exhibits, I take it. Or did he not
6 even attach the exhibits?

7 A. I think the exhibits were attached.

8 Q. I see. Why did you not include Red Mike MacDonald in that
9 July 12th meeting?

10 A. I don't know. I didn't occur to me.

11 Q. I see. You were aware from reading the preliminary inquiry
12 transcript that Patricia Harriss had talked about contact with
13 Red Mike MacDonald.

14 A. Yes, I would have been aware of that if that's what the
15 transcript says then I'd take your word for it it does.

16 Q. That would be at Volume 1, page 26.

17 A. Yes.

18 Q. Would it not be important for the Court of Appeal, as with a
19 voluntary statement, to make sure that all police officers who
20 had contact with a particular individual were brought before
21 the court for purposes of giving evidence and possible cross-
22 examination?

23 A. It could be, yes.

24 Q. With respect to your March 1st, 1982, interview with Patricia
25 Harriss...

- 1 A. Yes.
- 2 Q. Do you have a fairly good recollection of that interview?
3 Independent of the notes.
- 4 A. Well, with the aid of the notes. I can recall the interview
5 without even looking at the notes but to be certain on the
6 specifics I need the notes.
- 7 Q. Did you, do you have any recollection of discussing with her
8 at all why she remembered Urquhart but not any other
9 names? Was there some previous contact with Detective...
- 10 A. No, I didn't explore that with her. I think I can say that fairly
11 definitely.
- 12 Q. If you would turn to your notes of that meeting on March the
13 1st and it's on page 5 of Exhibit 17...
- 14 A. Yes.
- 15 Q. And my question is for clarification purposes...
- 16 A. Yes.
- 17 Q. And the way you wrote the note...
- 18 A. Okay.
- 19 Q. At the bottom of the paragraph that begins "3 p.m. ..."
- 20 A. Yes.
- 21 Q. You have the comment, "Says she can only recall Urquhart's
22 name though others (plural) were present." And I would
23 suggest to you...
- 24 A. Oh yes, okay.
- 25 Q. The reason you wrote that note in that way where she could

MR. EDWARDS, EXAM. BY MR. MURRAY

1 recall his name...

2 A. Yes.

3 Q. But not necessarily that that was the person that was sitting
4 with her at the giving of the statement. She knew there was
5 an Urquhart from the 1971 era but she couldn't associate it
6 with this particular statement taking.

7 A. I think that's fair, yes.

8 Q. Still dealing with Patricia Harriss, on May 19th you made the
9 comment in direct examination to Mr. MacDonald that you
10 were commenting on your note about the first Patricia Harriss
11 statement...

12 A. Did you say on May 19th?

13 Q. On May 19th here when you testified. You were referred to a
14 note in your notes that, on page 10, that there might be a
15 page two to the Patricia Harriss statement.

16 A. Yes.

17 Q. And Mr. MacDonald put to you,

18 Yes.

19
20 Q. It isn't complete. There may have
21 been a page two.

22 A. Yes.

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

25 A. Oh yes, of course.

MR. EDWARDS, EXAM. BY MR. MURRAY

- 1 A. Right.
- 2 Q. Do I take it from your answer that all you mean to say by
3 that is that so far as you've seen in any of the evidence...
- 4 A. Yes.
- 5 Q. There hasn't been a page two...
- 6 A. Oh, yes.
- 7 Q. But as to whether there was originally a page two, you don't
8 know.
- 9 A. Fair. Right.
- 10 Q. Did you ever interview David Ratchford or read a statement
11 given by David Ratchford to the RCMP?
- 12 A. The answer to the first question is no, definitely not. I may
13 have read his statement but I don't recall.
- 14 Q. I take it that any comments in your notes about David
15 Ratchford, then, would have come from discussions with
16 Harry Wheaton, more probably than reading a statement.
- 17 A. Yes. Although to be definite on that, if you could refer me to
18 the specific note you're referring to...
- 19 Q. Certainly. Pages 6 and 7.
- 20 A. I'm using my original so if you'd just give me the date of the
21 note.
- 22 Q. It's April, March 28th.
- 23 A. March 20th?
- 24 Q. 28th. 2-8. And at the end of that day just before the notes...
- 25 A. Ah, yes.

MR. EDWARDS, EXAM. BY MR. MURRAY

1 Q. Made April 19th there's a reference to Ratchford - Donna
2 Ebsary.

3 A. Yes, yes, that would have come from Mr. Wheaton, I believe.

MR. MURRAY

5 I have no further questions.

CHAIRMAN

7 Mr. Barrett?

EXAMINATION BY MR. BARRETT

9 Q. Mr. Edwards, my name is David Barrett and I represent the
10 late Donald C. MacNeil. And Mr. Edwards I have three areas I
11 intend to cover with you. The first area is the 1971 Crown
12 disclosure of statements, the second area is Mr. MacNeil's
13 involvement in the 1971 re-investigation and disclosure of
14 material of that investigation and the third area is some
15 comments that you made in respect to Mr. MacNeil's conduct
16 of the 1971 trial.

17 The first area, Mr. Edwards, you've testified you became
18 Crown Prosecutor for Cape Breton County in late 1978?

19 A. December 11, '78.

20 Q. And you've testified you did not have first-hand knowledge
21 of the Crown practises in 1971.

22 A. correct.

23 Q. And, in fact, you've appeared in a court in which Donald C.
24 MacNeil was prosecuting?

25 A. Correct.

- 1 Q. The evidence before this Commission by experienced
2 members of the Cape Breton Bar has been that Mr. MacNeil's
3 reputation was as a "tough, competent and fair prosecutor."
- 4 A. Yes.
- 5 Q. And the testimony has been that Mr. MacNeil was
6 approachable and willing to disclose the Crown's case upon
7 request.
- 8 A. Well, that was the evidence. I don't know.
- 9 Q. I'm suggesting that's the evidence that has been given before
10 this Commission.
- 11 A. Yes.
- 12 Q. Mr. Edwards, I believe you heard the testimony of Staff
13 Sergeant Wheaton before this Commission?
- 14 A. I did, yes.
- 15 Q. And you're aware that Wheaton testified from his personal
16 experience with Mr. MacNeil he would be very shocked if Mr.
17 MacNeil had refused to give statements to Mr. Rosenblum
18 upon request.
- 19 A. Yes.
- 20 Q. Do you recall that?
- 21 A. Yes, I recall that.
- 22 Q. Sir, your notes indicate that on the 25th of February 1982
23 you formed the opinion that the defence were unaware of the
24 first statements of Pratico and Chant. That's found at page 4,
25 Volume 17. The first paragraph...

1 A. "Just occurred to me..." is that the...

2 Q. "Told him..." yes, it would be the first paragraph. "9 p.m. -
3 Told him that it's now my opinion that the Crown never
4 disclosed first statements to defence."

5 A. Yes.

6 Q. And you've testified you formed this opinion having read the
7 trial transcript?

8 A. Yes. The note there says reading the transcripts of evidence
9 of Chant and Pratico.

10 Q. Okay. And you felt certain enough of this opinion that on the
11 26th of February 1982 you phoned your superiors in Halifax
12 to inform them and that's a note here, "Phoned Herschorn,
13 told him of above."

14 A. Yes.

15 Q. You, however, at this point had not read the preliminary
16 transcript or Volume 2 of the trial transcript.

17 A. Possibly not, yes.

18 Q. I refer you to your note of the 26th of February. "11:35 a.m.
19 (after the phone call was made you say) Harry Wheaton
20 dropped off preliminary inquiry transcript."

21 A. Yes. Right. You're right.

22 Q. Prior to concluding this you or Wheaton had not interviewed
23 Judge Matheson, Simon Khattar or Moe Rosenblum?

24 A. I believe that's right, yes.

25 Q. And in your note of the 25th of February 1982 you indicate

1 that Rosenblum and Khattar should specifically be asked
2 whether they were aware of the existence of the first
3 statements.

4 A. Yes.

5 Q. I suggest you recognized early the importance of establishing
6 this information.

7 A. Yes.

8 Q. And, sir, you know Judge Lou Matheson.

9 A. I do.

10 Q. And, in fact, he was a prosecutor when you were appointed
11 Crown Prosecutor in 1978?

12 A. That's correct.

13 Q. And I suggest Judge Matheson, as the Assistant Prosecutor in
14 the Marshall trial, should have been asked about these
15 statements at a very early stage.

16 A. Fair enough. Right.

17 Q. And your notes do not indicate that you ever spoke with
18 Judge Matheson or Simon Khattar.

19 A. That's right.

20 Q. In your memorandum of the 5th of April 1982 to Gordon
21 Gale, that's found in Volume 31...

22 A. Page?

23 Q. Page 23. It would be the second paragraph, and in that
24 second paragraph you write that on the 5th of April 1982 you
25 personally questioned Mr. Rosenblum and he informed you

1 that the defence were unaware of the statements of the 30th
2 of May 1971.

3 A. Yes.

4 Q. Where did that meeting take place?

5 A. I believe it was at the courthouse.

6 Q. And how long did the meeting last?

7 A. Ten minutes I suppose.

8 Q. Did you advance your theory to Mr. Rosenblum that the
9 defence did not have those statements?

10 A. No.

11 Q. The innocence of Mr. Marshall was public knowledge at this
12 time. The story had broken.

13 A. The story had broken, yes.

14 Q. You were satisfied, I take it, from that conversation with Mr.
15 Rosenblum that he did not have the first statements.

16 A. Yes.

17 Q. Sir, I refer you to your note of the 19th of April 1982. That's
18 found at page 11, Volume 17.

19 A. What was the date again?

20 Q. The date would be the 19th of April, 1982, page 11, Volume
21 17.

22 A. Yes.

23 Q. And in that you, in that note it commences, "In meeting with
24 Wheaton discussed advisability of interviewing Rosenblum."
25 And my question, sir, is why the concern in interviewing Mr.

1 Rosenblum two weeks after you had reported to Halifax he
2 did not have the first statements.

3 A. To get it confirmed in statement form, I believe, was my
4 rationale at the time.

5 Q. Mr. Edwards, you've had personal experience dealing with
6 Mr. Rosenblum as defence counsel?

7 A. I have, yes.

8 Q. And would you not agree Mr. Rosenblum was a competent,
9 experienced defence lawyer and former prosecutor?

10 A. Yes.

11 Q. A lawyer who would know the the importance of determining
12 all aspects of the Crown's case?

13 A. Certainly he would know that importance, yes.

14 Q. Would you not agree he would be remiss in not asking the
15 Crown for particulars, including any statements?

16 A. Yes.

17 Q. Mr. Edwards, I presume you've had, you've seen and
18 reviewed the statement of facts for the Marshall case
19 prepared by Mr. MacNeil on the 12th of October 1971?

20 A. I have, yes.

21 Q. And I'd like you to refer to that. That's found at Volume 1...

22 A. Page?

23 Q. Page 78. Have you found that, sir?

24 A. Yes.

25 Q. In that statement of facts at page 80...

1 A. Yes.

2 Q. The second full paragraph, second last line reads, "Mr. Chant
3 at first related to the police the story the accused gave him
4 but later advised that he related the untrue story because of
5 fear of the accused."

6 A. Yes.

7 Q. Judge Matheson testified before this Commission the practice
8 in Sydney at the time of the Marshall trial was for a copy of
9 the indictment and statement of facts to be left in the
10 Prothonotary's office to be picked up there by defence
11 counsel.

12 A. Right.

13 Q. Would you not agree that Mr. Rosenblum, or Khattar, as senior
14 lawyers, would have been familiar with the practices in the
15 Sydney courthouse?

16 A. Oh, I would agree with that, sure.

17 Q. If other lawyers were getting disclosure from Crown and
18 statement of facts, did it surprise you that Mr. Rosenblum
19 would not be aware of these practices as both former Crown
20 and senior defence lawyer?

21 A. Are you suggesting to me that there is evidence that he did
22 not know?

23 Q. The question asked...

24 A. It would surprise if he didn't.

25 Q. Would it surprise you that a senior lawyer in Sydney.

- 1 A. Yes.
- 2 Q. Or senior defence lawyer.
- 3 A. Yes.
- 4 Q. He wouldn't be aware of those practises in the courthouse of
5 disclosure.
- 6 A. Okay. That would surprise me, right.
- 7 Q. Mr. Edwards, I would ask that you refer to the trial
8 transcript, page 151, that's found in Volume 1. You have it
9 in front of you, Volume 1.
- 10 A. Okay. What page?
- 11 Q. Page 151, sir. Sir, this is a cross-examination of Mr. Chant
12 by Mr. Rosenblum.
- 13 A. Yes.
- 14 Q. At the bottom of page 151 in the cross-examination Mr.
15 Chant says he didn't tell the police Marshall did the stabbing
16 until later. Chant states, "See, I told them a story that wasn't
17 true."
- 18 A. Yes.
- 19 Q. Mr. Rosenblum answers, "Oh, I'm coming to that," and
20 further questions him on the time and place of that
21 statement or the time and place that he had...was involved
22 with the police.
- 23 A. Yes.
- 24 Q. Mr. MacNeil on re-direct at page 153, line 20. Do you have
25 that, sir?

1 A. Yes, I do.

2 Q. Asked Mr. Chant why he gave an untrue story and he
3 replies, "Because I was scared."

4 A. Yes.

5 Q. Mr. Rosenblum objects stating, "We are not to go into the
6 recesses of a man's mind." And my question is, sir, did it
7 occur to you in reading the transcript that Mr. Rosenblum
8 was not caught off guard by the revelation that Chant had
9 given an earlier untrue statement to the police?

10 A. I disagree with the premise of your suggestion. I don't
11 believe that those references disclose the existence of the
12 first written statement. They, at best...

13 Q. Perk your curiosity.

14 A. No, at best, what I was going to say, was they disclose that
15 he had talked to the police before and told them to a lie...and
16 told them a lie, but it is not a disclosure that a prior written
17 inconsistent statement was given by Chant to the police.

18 Q. Well, sir, perhaps I can ask you a couple of other questions
19 on this point.

20 A. Sure.

21 Q. I suggest to you that the transcript might indicate Mr.
22 Rosenblum was aware of an earlier statement, whether he
23 had it or not.

24 A. He...there is enough there, you know, to pique the curiosity
25 and one...

- 1 Q Sir, I'll also indicate to you that Mr. Khattar testified.
- 2 A. Yes.
- 3 Q He knew it was John MacIntyre's practise to routinely take
4 statements.
- 5 A. Yes, I recall Simon saying that.
- 6 Q And he testified he expected there to be statements in the
7 Marshall case.
- 8 A. Yes.
- 9 Q Mr. MacNeil in the reference to saying "Because I was
10 scared" attempted to adduce what Mr. Chant's fears were.
11 Did it occur to you that Mr. Rosenblum knew what Mr.
12 Chant's answer would be?
- 13 A. That was a possibility, but...and it's difficult for me at this
14 time to separate it, and I can't tell you at what meeting but I
15 remember Moe Rosenblum telling me specifically after he
16 apparently had read the transcript and he said, "Frank, I
17 came that close to getting the..."
- 18 Q All right.
- 19 A. "...to getting at Chant's..."
- 20 Q Let me ask you a couple of other questions then.
- 21 A. Yes.
- 22 Q Do you agree that had Mr. Chant indicated his fear was of
23 the police it would have been beneficial to Mr. Marshall's
24 defence?
25

1 MR. PINK

2 Could you repeat that?

3 MR. BARRETT

4 Certainly I could.

5 Q. Do you agree that had Mr. Chant indicated his fear was of
6 the police, it would have been beneficial to Mr. Marshall's
7 defence?

8 A. Probably.

9 Q. In fact, in Rosenblum's cross-examination of other witnesses,
10 he at times was asking them whether they had been
11 pressured by the police. And at one point, I believe it was
12 with Patricia Harriss, he said to her, "Don't look at John
13 MacIntyre, look at me," after he was questioning...

14 A. Yes, I recall that reference.

15 Q. So, in fact, he...one of his lines of defence was obviously that
16 there was police pressure in cross-examination.

17 A. Well...

18 MR. CHAIRMAN

19 That's...where are we, because a moment before you were
20 taking the position that Mr. Rosenblum objected to...

21 MR. BARRETT

22 No, no, what I'm stating, My Lord, is that at that point when
23 Mr. Chant said "I was afraid."

24 MR. CHAIRMAN

25 Yeah.

MR. EDWARDS, EXAM. BY MR. BARRETTMR. BARRETT

1
2 The questioning, the line of questioning that was being
3 pursued by Mr. Rosenblum was how long the meeting was with
4 the police and things of that nature. When Mr. MacNeil attempted
5 to find out why he gave an untrue statement and he said, "I was
6 afraid," Mr. Rosenblum was quick on his feet to say, "You cannot
7 go into the recesses of a man's mind." I'm suggesting to Mr...I'm
8 asking Mr. Khattar or Mr. Edwards here whether, in fact, it
9 occurred to him that if Mr. ...if Mr. Rosenblum did not know the
10 answer to that question, which was never permitted to...the
11 answer to be given, if the answer had of been, "I was afraid of the
12 police," that may well have been beneficial to Mr. Marshall's
13 defence.

MR. CHAIRMAN

14
15 Well...

MR. BARRETT

- 16
17 Q. Sir, all I'm suggesting is that there...he had to have some
18 information to know what Maynard Chant was afraid of.
19 The evidence is they did not have the statement of facts and
20 Mr. Khattar's evidence was that at no time did he have the
21 statement of facts and he was also uncertain whether Judge
22 Dubinsky in addressing the Grand Jury was...had read that
23 portion of the statement of facts out.
- 24 A. Just on the last part I...if it's of any assistance, I practised for
25 a few years while the Grand Jury was still in existence and I

1 can say that in practise between '78 and '82 or '83, I
2 suppose, when it was abolished, it may have been '84, was
3 for the judges to read the entire statement of facts.

4 Q. Verbatim.

5 A. Verbatim. Subject to if there was an improper reference.

6 Q. Sir, perhaps I could move into another area.

7 A. Yeah.

8 Q. Sir, I wish you to refer to your notes, Volume 17.

9 A. Perhaps...and to keep it in perspective also, before you leave
10 that, I acknowledge and I've heard suggestions in
11 questioning to other witnesses that there is an argument to
12 be made that the defence was in possession of the
13 statements but kept them back for strategic purposes.

14 Q. Sir, perhaps...

15 A. I'm aware of that.

16 Q. Perhaps I'll come to that in my cross-examination.

17 A. Okay, I'm sorry.

18 Q. Sir, I wish to refer you to your notes of Volume 17, page 11.
19 The date of that would be the 19th of April, 1982.

20 A. Maybe I'll start using Volume 17. Oh, yes, here it is. Sorry,
21 what was the page again?

22 Q. That would...the date, Mr. Edwards, 19th of April, 1982.

23 A. Page 11.

24 Q. Page 11. And I referred you earlier to the notes that
25 commenced "In meeting with Wheaton discussed

1 advisability of questioning Rosenblum." That note goes on to
2 say, "Extremely material to the admissibility of present
3 testimony of Chant and Harriss to show that defence did not
4 know of this evidence at the time, i.e., must be able to show
5 that this evidence was left out by defence for tactical
6 reasons." And, sir, my question is what evidence was left
7 out for tactical reasons?

8 A. That should be, I think, "Must be able to show that this
9 evidence was not left out by defence for tactical reasons."

10 Q. What evidence would that be, sir?

11 A. That would be the first statements of Chant, Pratico and
12 Harriss.

13 Q. But sir...

14 A. Because if...I'm sorry.

15 Q. No, I'm just saying, but, sir, at this point you've determined
16 that Rosenblum and Khattar did not have those statements.

17 A. That's right, that's right.

18 Q. So, why would your concern at this date be that that they
19 were left out for tactical reasons?

20 A. Because I was anticipating a fresh evidence application. It's
21 one thing for me to conclude but another for me prepare the
22 application on the admissibility of fresh evidence. So...

23 Q. So, your evidence now is that you weren't certain on the
24 25th of February.

25 A. Oh, I was satisfied in my own mind, yes, but one of the

1 requirements respecting the admissibility of fresh evidence
2 is to show that the defence were not aware of the existence
3 of the evidence, that it couldn't be discovered by due
4 diligence and...

5 Q. And you had a concern that it may have been left out for
6 tactical reasons.

7 A. No, I just wanted to rule that out. I never had that concern,
8 Mr. Barrett.

9 Q. You're aware, sir, that Judge Matheson testified before this
10 Commission that he felt Rosenblum and Khattar had the
11 earlier statements.

12 A. Yes, I don't think he stated categorically that they did. My
13 recall and I may be wrong, he said he thought they did.

14 Q. Sir, when asked by Commission counsel why there was no
15 cross-examination on the earlier statements.

16 A. Yes.

17 Q. Mr. Matheson testified at Volume 27, that would be the
18 transcript, I'm sorry, Mr. Edwards.

19 A. Okay. Do I need to refer to it or?

20 Q. I'll read you his evidence on this point.

21 A. Yeah, sure. I was there and I heard it, but...

22 Q. Okay, and as I've indicated in reply to the question why he
23 thought there was no cross-examination of Harriss, Chant
24 and Pratico on the earlier statements he said,

25

MR. EDWARDS, EXAM. BY MR. BARRETT

1 Yes, but I thought that was a matter of tactic. If
2 they went after those people about the
3 statements that they had made previously, the
4 evidence was going to come out as to why they
5 had made the previous inconsistent statements
6 and then they were going to be left with the
7 bogey man, that ...that they'd have to explain
8 that certain Indian people were threatening.
9 There may have been some suggestion of that
10 and there was at trial, but I'm sure Mr. Khattar
11 and Mr. Rosenblum wanted to keep that, not to
12 make that an issue in the trial.

13 A. Yes.

14 Q. Do you recall that testimony?

15 A. I recall that testimony, yes.

16 Q. Sir, I'm going to suggest to you that Rosenblum could very
17 well have had those statements and avoided their use for
18 tactical reasons. And would you agree that had Mr. Chant
19 stated before the Marshall jury he lied because of fear of the
20 accused, it would not have benefited Mr. Marshall's defence?

21 A. Are there two questions there? Can we take...

22 Q. I'll break...

23 A. ...the first...

24 Q. I'll break them down if you would like.

25 A. Yes.

Q. Would you not agree...

A. Yes.

Q. Or would you agree that had Mr. Chant stated before the
Marshall jury he lied because of fear of the accused, it would

1 not have benefited Mr. Marshall's defence. In other words,
2 if he had been asked on a previous inconsistent statement...

3 A. Uh-hum.

4 Q. On the 30th of May, 1980...1971.

5 A. Right.

6 Q. Why he gave that statement. In fact, he testified before this
7 Commission that on the 30th of May, 1971, he had been
8 approached by Mr. Marshall at the police station.

9 A. Yes.

10 Q. After Mr. Marshall had given his statement to the police on
11 that date.

12 A. Yes.

13 Q. And he said Marshall walked up to him and said, "You saw
14 those two men, didn't you?" and he also said that Mr.
15 Marshall "Had fire in his eyes".

16 A. Yes.

17 Q. And, in fact, you reported that at one point to Halifax.

18 A. Yes, I recall that. Yes.

19 Q. That that statement was given under pressure.

20 A. Yes.

21 Q. I also suggest to you that had Patricia Harriss or John Pratico
22 stated that they had been threatened or intimidated by
23 Marshall or his friends, it would seriously have hampered
24 his defence.

25 A. Wait now, I don't think I've answered your first...

1 Q. Oh, I'm sorry.

2 A. Okay. Your first...your first question was whether or not I
3 thought that the admission by Chant that he had lied
4 because of pressure from Indian friends of Marshall might
5 adversely affect Marshall's defence.

6 Q. That's correct.

7 A. And, yes, I'd have to acknowledge it might, yes. Wasn't
8 there a question before that...

9 Q. No, actually I just had stated to you...

10 A. I thought you gave me the last part first when you put that
11 bit about Chant to me.

12 Q. Sir, I suggest to you that Rosenblum could very well have
13 had those statements and avoided their use for tactical
14 reasons.

15 A. Yes, okay. And again, that is...that I acknowledge as an
16 argument and a possibility but weighing the other side, my
17 opinion is that he did not.

18 Q. Sir, the second statement that I made to you is that I
19 suggest to you that had Patricia Harriss or John Pratico
20 stated they had been threatened or intimidated by Marshall
21 or friends it, as well, could have seriously hampered his
22 defence.

23 A. It could have, yes. However, however, I don't think you can
24 just take the three in isolation and say that. Even given the
25 motives, the adverse motives that would have come out,

1 that would have been the two eye witnesses and the main
2 support witness proven liars, for whatever reason. What is
3 left of the Crown's case after they're gone?

4 Q. Well, I realize that, sir, but...

5 A. Yeah.

6 Q. I also...

7 A. That's my difficulty with it.

8 Q. That's your difficulty with it.

9 A. Yes.

10 Q. Do you agree in hindsight it would have been beneficial for
11 the police, not the Crown, to separately and thoroughly have
12 interviewed Judge Matheson.

13 A. Yes.

14 Q. Mr. Rosenblum.

15 A. Yes.

16 Q. And Mr. Khattar before Mr. Marshall's innocence became
17 public knowledge.

18 A. It would have been better.

19 Q. And Staff Wheaton testified he didn't thoroughly
20 investigated MacNeil's role as prosecutor because he did not
21 feel it was part of his mandate. In fact, he testified that he
22 never spoke with Mr. Khattar, he briefly spoke with Judge
23 Matheson and Mr. Rosenblum, testifying that both of those
24 encounters were brief and chance encounters.

25 A. Uh-hum.

1 Q. They were not interviews of any duration.

2 A. Okay. And the question?

3 Q. Well, I'm simply indicating to you and you've already
4 answered the question.

5 A. Yes, okay.

6 Q. I'm saying that Staff Wheaton, the main investigator in the...

7 A. Yes.

8 Q. ...Marshall case, did not go out with the express purpose of
9 interviewing those witnesses to determine this critical point.

10 A. That's his evidence.

11 Q. Mr. Edwards, you testified in the spring of 1987, you asked
12 Mr. Rosenblum, "Well, what about those first statements?"

13 A. Yes.

14 Q. And you stated "Mr. Rosenblum became indignant."

15 A. Yes.

16 Q. Might I suggest offensive.

17 A. That's a possible interpretation. That's not how I took it,
18 but...

19 Q. Sir, why five years after forming the opinion the defence
20 never had the first statements would you even ask?

21 A. I always recognize the possibility I could be wrong.

22 Q. Or I suggest you may have had a doubt.

23 A. I can't...I wish I could go that far with you, but I can't. I...a
24 doubt never really gelled in my mind on the issue.

25 Q. Fine, sir. The second area I wish to pursue with you is the

1 '71 reinvestigation disclosure. Sir, you've...

2 A. Yes.

3 Q. ...indicated through testimony the need for any
4 reinvestigation to be impartial.

5 A. Oh, yes, yes.

6 Q. And you've testified in the Marshall investigation prior to
7 the 25th of February, 1982, you did not expect to be directly
8 involved.

9 A. Prior to the...

10 Q. 25th of February when you've indicated your curiosity...

11 A. Yes, all right.

12 Q. ...was perked.

13 A. Yes. My evidence was that we had the meeting on February
14 3rd; they'd do the investigation and report back to me when
15 it was over. That was my expectation.

16 Q. So, I assume you expected a report to be prepared by
17 Sydney and forwarded to Halifax.

18 A. A report prepared by Sydney and brought to me in the first
19 instance, I believe, would be closer to my expectation at the
20 time.

21 Q. And this 1982 reinvestigation was initiated in Sydney and
22 not Halifax, is that correct?

23 A. That's right.

24 Q. Sir, you're aware that the 1971 reinvestigation was
25 requested by the Attorney General's Department directly to

- 1 the RCMP superintendent Wardrop.
- 2 A. The 1972 reinvestigation.
- 3 Q. No, no, 1971, November 1971.
- 4 A. Yes.
- 5 Q. Reinvestigation.
- 6 A. Yes.
- 7 Q. The Attorney General's Department in Halifax contacted the
8 RCMP in Halifax and asked them to send an investigator out
9 to investigate the allegation of Jimmy MacNeil and Roy
10 Ebsary.
- 11 A. That's ultimately what happened, but the...
- 12 Q. I realize...
- 13 A. ...sequence began in Sydney and...
- 14 Q. Yes.
- 15 A. ...came up through...
- 16 Q. But the actual request to the RCMP was made by the
17 Attorney General's Department in Halifax.
- 18 A. Okay.
- 19 Q. Sir, you're also aware prior to the request being acted on, an
20 appeal was filed in the Marshall case by Mr. Rosenblum?
- 21 A. Well, I'm aware the appeal was under way sometime
22 between the November conviction and the February hearing.
- 23 Q. Yes, that's correct.
- 24 A. Yes.
- 25 Q. I believe November 16th was the date that...

- 1 A. Yes, I don't recall the date of the Notice of Appeal.
- 2 Q. You've testified the handling of the case, including the
3 preparation of the respondent's factum was prepared in
4 Halifax.
- 5 A. Yes.
- 6 Q. And you've testified your file and notes are sent to Halifax?
- 7 A. I wouldn't say the notes. Usually it would be the file.
- 8 Q. Sir, may I assume...
- 9 A. Without the notes, you know, the copies of statements,
10 crown sheet, that type of thing.
- 11 Q. Sir, may I assume since the appeal preparation is handled in
12 Halifax, it's their responsibility to contact Sydney if they
13 require further information?
- 14 A. If the the lawyer handling the appeal requires further
15 information, yes, okay. Yes, I'd agree with that.
- 16 Q. And you've testified often you never receive a copy of
17 either factum.
- 18 A. That's correct.
- 19 Q. And you've testified the primary responsibility for
20 disclosing this new information, November 1971, rested
21 with Donald C. MacNeil.
- 22 A. Yes.
- 23 Q. Sir, I believe you also agreed with Mr. Justice Evans that
24 there was a joint responsibility to disclose?
- 25 A. Yes.

1 Q. And in your review and personal knowledge of the Marshall
2 case, who did you understand the RCMP in November, 1971,
3 were to report to, the Attorney General's Department in
4 Halifax or the Crown office in Sydney?

5 11:50 a.m.

6 A. I don't believe I ever honed it any sharper than that both
7 were going to be aware.

8 Q. Well, Mr. Edwards, Superintendent Wardrop testified he felt
9 Marshall's, that would be Inspector Marshall's talking to
10 MacNeil was irregular and he was critical of Marshall having
11 spoken to MacNeil in Sydney.

12 A. Um-hmm.

13 Q. Al Marshall testified he was not reporting to MacNeil, he was
14 a personal friend of MacNeil's. And, sir, Superintendent
15 Wardrop testified through normal channels four copies of that
16 report were to be prepared and sent out. And he testified the
17 Sydney Crown office was not on that list. Sydney Sub-
18 division was, not but a copy to Sydney Crown.

19 A. My opinion was based on the assumption that Donald C.
20 MacNeil knew the result of the re-investigation.

21 Q. And, in fact, the evidence of Judge Anderson, there was some
22 confusion here yesterday, but I believe Judge Anderson
23 testified he received a telephone call from Donald C. MacNeil
24 advising him of the results of the polygraph test.

25 A. Yes.

1 Q That was, in fact, the phone call that Al Marshall recalled
2 being made to the Attorney General's Department. And I
3 suggest to you that Mr. MacNeil would have expected the
4 official report to be received by the Attorney General's office
5 in Halifax since they had requested the report.

6 A. The official report.

7 Q The official report.

8 A. Yes.

9 Q And Mr. Edwards, have you had an opportunity to review the
10 testimony of Inspector Marshall and Eugene Smith?

11 A. No. I've had the opportunity but I haven't.

12 Q Eugene Smith testified that Mr. MacNeil readily agreed to
13 contact Mr. Rosenblum on the 24th of November 1971 to
14 determine whether Donald Marshall wished to take the
15 polygraph test.

16 A. Okay.

17 Q Are you aware of that fact?

18 A. I believe I had read that in the press, yes.

19 Q Inspector Marshall's memories of this are not as clear but...

20 A. No.

21 Q Eugene Smith testified they drove next day to Mr. MacNeil's
22 office downtown to determine the results of Mr. MacNeil's
23 request. And Eugene Smith testified Inspector Marshall told
24 him MacNeil had informed him Junior Marshall would not be
25 taking the polygraph test. He concluded that MacNeil had

1 spoken to Marshall's lawyers although he couldn't say Al
2 Marshall said that.

3 A. Um-hmm.

4 Q. Sir, you've testified you heard the evidence of Mr. Simon
5 Khattar.

6 A. Yes.

7 Q. And Mr. Khattar was not retained to act on the Marshall
8 appeal.

9 A. That's right, yes.

10 Q. Sir...

11 A. That last sequence about Al Marshall and the others, was
12 there a question there?

13 Q. No, no, I'm just informing you of, I'm just simply informing
14 you of what the testimony of...

15 A. All right.

16 Q. Eugene Smith was on this point.

17 A. No, I didn't mean to be flip, I just don't want to miss, go
18 ahead.

19 Q. And you indicate you knew that Khattar wasn't involved in
20 the Marshall appeal.

21 A. Yes.

22 Q. But you heard the testimony of Simon Khattar here before
23 this Commission.

24 A. I did, yes.

25 Q. And Mr. Khattar was asked the hypothetical question whether

1 he would have placed Mr. Marshall on the polygraph prior to
2 the appeal and he replied, no, he would not have put Marshall
3 on the appeal, on the polygraph in 1971. Do you recall that?

4 A. Yes, I recall...

5 Q. And when asked if Mr. Rosenblum shared a similar
6 apprehension of the polygraph he was unable to answer.

7 A. Yes.

8 Q. Sir, did you, in any conversation with Mr. Rosenblum, ever
9 ask him his opinion of the polygraph?

10 A. No.

11 Q. Did Mr. Rosenblum ever express to you his opinion of the guilt
12 or innocence of Mr. Marshall following his 1971 conviction?

13 A. I don't think he did.

14 Q. Milton Veniot, who conducted the 1971 appeal, testified he
15 felt Mr. Rosenblum did not have much confidence in Mr.
16 Marshall's chances of success on appeal. Are you aware of
17 that?

18 A. No, I didn't hear Mr. Veniot's testimony...

19 Q. Sir...

20 A. But I don't doubt that that's accurate.

21 Q. Sir, you're aware of the statement of Barbara Floyd dated the
22 29th of March 1982?

23 A. I'm aware that she gave a statement. I can't recall the
24 contents right offhand.

25 Q. Well, let me indicate that she testified she had contacted Mr.

MR. EDWARDS, EXAM. BY MR. BARRETT

1 Rosenblum's office to inform them John Pratico...

2 A. Oh, yes.

3 Q. Was not to be believed before the verdict was rendered.

4 A. Yes.

5 Q. She testified a man she believed to be Mr. Rosenblum said it
6 was too late. Do you recall that?

7 A. Yes.

8 Q. Did you believe Barbara Floyd? Or do you believe Barbara
9 Floyd?

10 A. Oh gee, without having sat in on her...

11 CHAIRMAN

12 Well that's not a, that's a question, that's a decision we will
13 have to conclude.

14 MR. BARRETT

15 Q. Well perhaps, then, I'll just ask the following question. Did
16 you ever question Mr. Rosenblum on this information?

17 CHAIRMAN

18 He was dead then, wasn't he?

19 MR. BARRETT

20 No.

21 MR. EDWARDS

22 No, he just died last year.

23 CHAIRMAN

24 But are you speaking of Barbara Floyd's evidence before this
25 Commission?

MR. EDWARDS, EXAM. BY MR. BARRETT

1 MR. BARRETT

2 I'm speaking of her statement in which she said she
3 contacted one of Marshall's lawyers and I'm just asking him in his
4 conversation...

5 COMMISSIONER EVANS

6 She didn't know which one or to whom she spoke.

7 CHAIRMAN

8 That's right.

9 MR. BARRETT

10 That's correct. Although she did indicate in her testimony
11 that it was Mr. Rosenblum's office that she phoned.

12 MR. EDWARD

13 In any event, the answer is no I've never spoke to Barbara
14 Floyd or to Mr. Rosenblum about Barbara Floyd for any purpose.

15 MR. BARRETT

16 Q. Did you ever instruct Staff Wheaton to investigate this
17 allegation with Mr. Rosenblum?

18 A. This allegation between referent to...

19 Q. Barbara Floyd.

20 A. No.

21 Q. Did you ever ask Staff Wheaton to thoroughly investigate Mr.
22 Rosenblum's, if Mr. Roseblum was aware of the 1971 re-
23 investigation?

24 A. No.

25 Q. Sir, Mr. Rosenblum swore an affidavit for the 1982 hearing.

MR. EDWARDS, EXAM. BY MR. BARRETT

1 A. Yes.

2 Q. And that's found at Volume 39...

3 A. Page?

4 Q. Page 131.

5 A. Yes.

6 Q. And since no statements were obtained by the RCMP from Mr.
7 Rosenblum this is the only documented evidence by Mr.
8 Rosenblum.

9 A. Yes.

10 Q. Mr. Khattar testified that prior to swearing these affidavits
11 which were prepared by Mr. Aronson, he and Rosenblum
12 reviewed them.

13 COMMISSIONER EVANS

14 He and Rosenblum.

15 MR. BARRETT

16 Khattar. Khattar and Rosenblum reviewed them and didn't
17 have Aronson take, they reviewed them together, agreed that
18 they were satisfied with them, but they didn't sign them the first
19 instance they got together to review the affidavits.

20 Q. So I can advise you that that affidavit does not contain any
21 reference to Mr. Rosenblum being unaware of the 1971 re-
22 investigation and the existence of Jimmy MacNeil and Roy
23 Ebsary.

24 A. Right.

25 Q. Would you agree his lack of knowledge of MacNeil and Ebsary

MR. EDWARDS, EXAM. BY MR. BARRETT

1 was critical to Marshall's application?

2 A. I'm sorry, I, would I agree that his...

3 Q. Would you agree his lack of knowledge of MacNeil and Ebsary
4 in 1971...

5 A. Yes.

6 Q. Was critical to Mr. Marshall's application.

7 A. Application?

8 Q. Before the Court on the ref-, on the fresh evidence.

9 A. Oh, on the fresh evidence. Yes, it should have been put
10 forward, yes.

11 COMMISSIONER EVANS

12 But it was more important to his trial, wasn't it, in the first
13 instance?

14 MR. EDWARDS

15 Yes.

16 MR. BARRETT

17 Q. Yes, but for the past two days, sir, you've indicated that there
18 were two critical reasons why Mr. Marshall spent 11 years in
19 jail and you indicated those reasons as being the failure to
20 disclose statements...

21 A. Yes.

22 Q. At the trial and you indicated the failure of Mr. Rosenblum to
23 know of the existence of MacNeil and Ebsary in 1971.

24 A. Yes.

25 Q. And I'm just merely pointing out to you that the only

1 documented piece of evidence we have here before sworn by
2 Mr. Rosenblum does not contain any reference to his not
3 knowing of the 1971 re-investigation.

4 A. Yes, and as I indicated my, the basis for my opinion is
5 referent to the appeal and that there's no mention of fresh
6 evidence in the appeal.

7 Q. Sir, I have, those are all the questions in that area and I have
8 one other area to cover with you which is rather brief. You've
9 testified that Mr. MacNeil should have had a mistrial declared
10 after Pratico recanted in the hallway.

11 A. No, I think I raised that as a possibility by way of example or
12 analogy. That was one possibility.

13 Q. And, sir, the evidence is clear that following a conference in
14 the hallway amongst counsel with Mr. Pratico that Pratico was
15 told, "Son, all we want is the truth when you take the stand."

16 A. Yes.

17 Q. Mr. Matheson and Pratico testified MacNeil said this and Mr.
18 Khattar testified that it was he who told Pratico that. But the
19 point is clear that he was told, "Son, take the stand..."

20 A. Um-hmm.

21 Q. "...and tell the truth." Pratico also testified that he felt the
22 Crown Prosecutor only wanted the truth from him. And the
23 trial record, and Mr. Khattar himself testified Mr. MacNeil
24 attempted to advise Judge Dubinsky of what had occurred in
25 the hallway...

DISCUSSION

1 CHAIRMAN

2 Mr. Barrett, what's your question?

3 MR. BARRETT

4 Well I'm just asking if, the question would be, since he's
5 raised the point of that recanting and what MacNeil should have
6 done, I'm pointing out what MacNeil did.

7 COMMISSIONER POITRAS

8 Yeah, but that's argument. That is argument.

9 MR. BARRETT

10 Q. Well sir, perhaps I could ask you the question...

11 CHAIRMAN

12 Why don't you put it to Mr. Edwards as to what would he
13 have done under precisely the same circumstances?

14 MR. BARRETT

15 Well I thought yesterday he testified, or perhaps you can
16 tell us what you would do under those circumstances.

17 CHAIRMAN

18 Well I know...

19 COMMISSIONER POITRAS

20 He's opening up a can of worms.

21 CHAIRMAN

22 I'm just trying to get a question. What are you leading into?
23 You know, I don't want Mr. Edwards to go all over something that
24 he...

25

DISCUSSION

1 MR. BARRETT

2 Well, I don't either My Lords, and with all respect, my client
3 will not be testifying before this Commission, that's a given, and
4 I'm merely pointing out that...

5 COMMISSIONER EVANS

6 He certainly isn't expected.

7 MR. BARRETT

8 I'm merely suggesting that I be allowed some latitude with
9 this client and that he can, or this witness, and that he can...

10 CHAIRMAN

11 Latitude? You're given all the latitude you wish to put
12 questions to the witness but you're making statements all the
13 time. Statements that would be, I would suggest, more properly
14 made to the Commission after we've heard all of the evidence and
15 let us have the benefit of your interpretation of evidence that's
16 been led that relates to your client's prosecution of this case.

17 MR. BARRETT

18 Q. Perhaps I can ask this question then. Sir, do you feel it was
19 an option for Mr. Rosenblum or Khattar to request an
20 adjournment at the time of the Pratico recanting?

21 A. Just refresh my memory on a couple of points here. The
22 Pratico recanting, at what stage did that take place? Was that
23 between his direct and cross or during an adjournment during
24 his direct?

25

MR. EDWARDS, EXAM. BY COMMISSIONERSCOMMISSIONER POITRAS

1 Just before his evidence.
2

MR. EDWARDS

3 Just before? So he hadn't testified at all at the time he
4 recanted. Okay. I just wanted ...
5

COMMISSIONER POITRAS

6 He hadn't testified.
7

MR. EDWARDS

8 Because I think that's very important. So what you have
9 then is the Crown knowing that Mr. Pratico has given two
10 inconsistent statements and now he's recanting again. I suggest
11 further that it wouldn't be unreasonable to infer that having
12 talked with Pratico the Crown would have some sort of impression
13 on, about the validity of the evidence that he could give. So I
14 guess the option at that point would be to go without him. Don't
15 put him on at all.
16

COMMISSIONER POITRAS

17 Would this be the Crown's option, is that what you're
18 saying?
19

MR. EDWARDS

20 Yes. Yes, well he's a Crown witness and...
21

COMMISSIONER EVANS

22 Well the Crown must have been very uncertain as to what
23 evidence he was going to give when he was called.
24
25

MR. EDWARDS, EXAM. BY COMMISSIONERS

1 MR. EDWARDS

2 Yes.

3 COMMISSIONER EVANS

4 And I suggest to you he's faced with two alternatives.

5 Either not to put him on...

6 MR. EDWARDS

7 Yes.

8 COMMISSIONER EVANS

9 Or else ask for a mistrial.

10 MR. EDWARDS

11 That's, I think that's fair. At that stage where he hasn't
12 been on at all, go without him. But then you're into then what are
13 you left with should you go at all?

14 COMMISSIONER EVANS

15 That's right.

16 MR. EDWARDS

17 If one of your main eyewitnesses is gone and you're left
18 with Chant who you also know is shaky. It's a rock and a hard
19 place. I think you'd probably go without him.

20 MR. BARRETT

21 Q. That's your opinion.

22 A. And let the chips fall. That's my opinion and recognizing it's
23 very difficult for me to say what should have been done. For
24 anybody, I suppose, who wasn't there. And I feel
25 uncomfortable, I must tell you, giving those criticisms of Mr.

MR. EDWARDS, EXAM. BY COMMISSIONERS

1 MacNeil. I'd be a lot more comfortable if he were alive and
2 could answer them but notwithstanding that I feel that it was
3 important to call it as I saw it.

COMMISSIONER EVANS

4
5 But being aware of the ruckus that took place out in the
6 corridor...

MR. EDWARDS

7
8 Yes.

COMMISSIONER EVANS

9
10 And then the witness has said something that, "I lied on
11 previous statements" then he's taken away into a Crown
12 attorney's office and with MacIntyre...

MR. EDWARDS

13
14 Yes.

COMMISSIONER EVANS

15
16 And I believe Simon Khattar...

MR. EDWARDS

17
18 Yes.

COMMISSIONER EVANS

19
20 Ultimately went in there...

MR. BARRETT

21
22 I believe Lou Matheson was there as well.

COMMISSIONER EVANS

23
24 Could be.
25

MR. EDWARDS, EXAM. BY COMMISSIONERS

1 MR. EDWARDS

2 I'd be very alarmed about putting him before a jury.

3 COMMISSIONER EVANS

4 When he's 14.

5 MR. EDWARDS

6 And he's 14 or 16, whatever. He's young.

7 COMMISSIONER EVANS

8 If you didn't call him wouldn't you run the risk of somebody
9 talking, the defence talking to him later on to find out just what
10 was it all about and have your case blow up in your face by
11 having him called as a defence witness?

12 MR. EDWARDS

13 By having him called as a defence witness?

14 COMMISSIONER EVANS

15 Yes. You don't have any property of the witness. If you
16 don't call him he's available. The defence can call him.

17 MR. EDWARDS

18 Sure.

19 COMMISSIONER EVANS

20 And he'd already talked to somebody and said, "The
21 damaging evidence I gave against Marshall was a lie."

22 MR. EDWARDS

23 Um-hmm.

24 COMMISSIONER EVANS

25 So I'd be pretty interested if I were a defence counsel in

MR. EDWARDS, EXAM. BY COMMISSIONERS

1 getting that guy back on the stand to help me out, help my client
2 out.

3 MR. EDWARDS

4 Well again, you know, the defence would have to be pretty
5 concerned about what could be bled out of him in cross-
6 examination and, by the Crown.

7 COMMISSIONER EVANS

8 It wouldn't be a happy situation, it would not be a happy
9 situation.

10 MR. EDWARDS

11 It's tough call but...

12 MR. BARRETT

13 Made easier...

14 Mr. EDWARDS

15 Made easier with hindsight.

16 MR. BARRETT

17 With 20/20 hindsight.

18 MR. EDWARDS

19 Of course. But the preferred option would be to go without
20 him, I guess.

21 MR. BARRETT

22 Q. And Mr. MacNeil's option was to tell him, "Son, take the stand
23 and tell the truth. That's all we want from you."

24 A. Well that's what Mr. MacNeil did, there's no question about
25 that.