

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

RG44
Vol. 255
#5

Volume 69

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

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1 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?

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

28 It was... if you will, the first physical overt
29 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

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...

CHAIRMAN

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

MR. PUGSLEY

6 Yes, he was. He had no explanation.

CHAIRMAN

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

MR. PUGSLEY

10 He was asked by me.

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...
25

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

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.

22 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

DISCUSSIONMR. BARRETT

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

COMMISSIONER EVANS

5 He certainly isn't expected.
6

MR. BARRETT

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

CHAIRMAN

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

MR. BARRETT

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

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.

MR. EDWARDS

2
3 Just before? So he hadn't testified at all at the time he
4 recanted. Okay. I just wanted ...

COMMISSIONER POITRAS

5 He hadn't testified.

MR. EDWARDS

6
7 Because I think that's very important. So what you have
8 then is the Crown knowing that Mr. Pratico has given two
9 inconsistent statements and now he's recanting again. I suggest
10 further that it wouldn't be unreasonable to infer that having
11 talked with Pratico the Crown would have some sort of impression
12 on, about the validity of the evidence that he could give. So I
13 guess the option at that point would be to go without him. Don't
14 put him on at all.

COMMISSIONER POITRAS

15
16 Would this be the Crown's option, is that what you're
17 saying?

MR. EDWARDS

18 Yes. Yes, well he's a Crown witness and...

COMMISSIONER EVANS

19
20 Well the Crown must have been very uncertain as to what
21 evidence he was going to give when he was called.

22
23
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.

1 Q Sir, in your discussions with Mr. Rosenblum did you ever ask
2 Mr. Rosenblum why he didn't cross-examine Pratico and
3 Chant at the preliminary?

4 A. No, I didn't because that's a frequent occurrence, almost a
5 matter of practice unfortunately.

6 Q Not to cross-examine eyewitnesses at a murder trial?

7 A. On a preliminary. I'm speaking trials generally.
8 Preliminaries in generally. Like my own view is that very
9 often defence really make a strategic error by not waiving the
10 preliminary because there's no better preparation for the
11 Crown's case and to plug some holes in it than a good run at
12 the preliminary so...

13 Q Well Mr. Khattar...

14 A. The defence counsel that does a lot of cross at a preliminary
15 does so with some risk. And sometimes, you know, it has to
16 be decided on an individual case basis, of course. Sometimes
17 you have to, sometimes you're better off signing the waiver.

18 Q You ever, agree or stated yesterday that based on the
19 evidence before the jury you could understand who Mr.
20 Marshall was found guilty at trial.

21 A. Sorry, give me that again, Mr. Barrett.

22 12:10 p.m.

23 Q I say you've testified based on the evidence before the jury
24 you could understand how Mr. Marshall was found guilty at
25 trial?

MR. EDWARDS, EXAM. BY MR. BARRETT

1 A. Yes.

2 MR. BARRETT

3 Those will be all my questions.

4 COMMISSIONER EVANS

5 Mr. Edwards, when you were discussing matters with Simon
6 Khattar some time later, did he ever indicate to you that he had
7 interviewed any witnesses other than Marshall?

8 MR. EDWARDS

9 No, he didn't.

10 COMMISSIONER EVANS

11 Because he seemed to feel that he was restricted in
12 discussing anything with Crown witnesses.

13 MR. EDWARDS

14 Yes.

15 COMMISSIONER EVANS

16 So he really was flying in court with Marshall as a witness
17 and he did not have the statements of what the Crown witnesses
18 were going to say.

19 MR. EDWARDS

20 That seems to his evidence, yes.

21 COMMISSIONER EVANS

22 Now as far as your predecessor and yourself is concerned, it
23 appears that those statements are available. But if a defence
24 counsel wants the statements, surely you're not expected to
25 prepare his defence. And if he wants them, he goes over to you

MR. EDWARDS, EXAM. BY MR. BARRETT

1 and gets them, or writes for them, isn't that what you do?

2 MR. EDWARDS

3 Yes, although my practice has been to, particularly in the
4 major cases, to mail them out, whether there's a request or not.
5 But certainly if the request comes before the statements are
6 mailed out, they're available. Now that's been the practice as long
7 as I've known the business.

8 COMMISSIONER EVANS

9 And then if something turns up later, you will send that on
10 as well.

11 MR. EDWARDS

12 Oh, yes, I think the Crown is obliged then.

13 COMMISSIONER EVANS

14 I always thought defence counsel was being paid and, in this
15 case, we were told that money was no object as far as the defence.

16 MR. EDWARDS

17 Yes.

18 COMMISSIONER EVANS

19 They'd be out moving around, interviewing witnesses as fast
20 as the police.

21 MR. EDWARDS

22 Yes. I think when we had the general discussion at the
23 beginning there, I think I emphasized that, you know, generous
24 disclosure practices by the Crown should never replace the need...

25

MR. EDWARDS, EXAM. BY MR. BARRETTCOMMISSIONER EVANS

Preparation.

MR. EDWARDS

For diligence by defence counsel.

COMMISSIONER EVANS

Thank you.

MR. BISSELL

My Lords, before I begin, I didn't wish to interrupt Mr. Barrett when he was cross-examining Mr. Edwards, but there was one point that I think I should clarify or put our position on the record. He suggested that Robert Anderson's testimony had been that Donald C. MacNeil called Mr. Anderson to advise him of the results of the polygraph examination and that was the telephone call that Inspector Marshall said he overheard being made at the hotel following the polygraph examination. Both Mr. Pringle's notes and my notes suggest that Mr. Anderson, or Judge Anderson rather, when he testified, has said that he received word from Sydney, either by the prosecutor or the R.C.M.P., and that's at page 9142 of the transcripts. Volume 50 of the transcripts as well. So I don't think it could be said with any conclusion, with all due respect, that that was necessarily the call that Al Marshall overheard being made at the hotel following the polygraph examination. I just wish to put our interpretation on the record so that silence is not deemed to be consent.

EXAMINATION BY MR. BISSELL

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Q. We're moving down the batting order, Mr. Edwards. I have just a few questions for you. In the first area, questions relate to questions which Mr. MacDonald put to you, what must seem like months ago, but it was last week, about disclosure in the 1971 R.C.M.P. police investigation.

A. Yes.

Q. And whether or not that ought to be disclosed. And I would suggest to you, sir, that there is a separate duty of disclosure that's totally independent of the 1971 R.C.M.P. investigation or the activities of Al Marshall. And that was a duty to disclose the evidence of Jimmy MacNeil that came forward to the Sydney Police Department and to Lou Matheson in November '71 following Mr. Marshall's conviction. There was a separate duty to disclose that, whether or not there was ever a 1971 reinvestigation, would you not agree with that?

A. Well, let's say it had stopped there.

Q. Yes.

A. That those statements were taken from Jimmy MacNeil and the Ebsarys and no more was done. Certainly there's a duty to disclose that, in my opinion. But the fact of the matter is it didn't stop there, of course.

Q. No.

A. And the reinvestigation took place and with those results.

Q. I'm not suggesting that there was no duty to disclose the '71

1 R.C.M.P. investigation.

2 A. Yes.

3 Q. I would just suggest that there is a duty as well to disclose the
4 evidence of Jimmy MacNeil.

5 A. All of it.

6 Q. All of it, yes.

7 A. All of it, yes.

8 Q. And so whether or not, and Judge Anderson, of course,
9 testified that he was aware of the results of the investigation,
10 but whether or not he was aware of the results, ever received
11 Al Marshall's report, there was the duty to disclose Jimmy
12 MacNeil's statement. Wouldn't you agree with that?

13 A. I would.

14 Q. I don't want to get into the, which version of the paper-
15 dropping episode is correct and when it occurred, but I would
16 simply ask you two questions on that. First of all, don't you
17 agree that the statement of Patricia Harriss is an important
18 statement, the first statement of Patricia Harris, No.1, that
19 that's an important document?

20 A. Yes.

21 Q. And wouldn't you also agree that taking your recollection of
22 events...

23 A. Yes.

24 Q. That that document was not forthcoming from John
25 MacIntyre at the very beginning.

1 A. Yes.

2 Q. That he had a number of opportunities to advise you and to
3 advise Inspector Scott and Staff Sergeant Wheaton of the
4 existence of Patricia Harriss No. 1, that statement.

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

6 Q. Now I detected some criticism in your evidence of the Royal
7 Canadian Mounted Police in that you felt the 1982
8 investigation, they were not vigorous in pursuit of their
9 investigation, particularly in regards to the Sydney Police
10 Department and Chief John MacIntyre. Is that correct?

11 A. Yes.

12 Q. That's despite my learned friend's suggestion that they had
13 tunnel vision and focused in...

14 A. That they were too vigorous, yes.

15 Q. Okay. Yet you didn't have to push Staff Sergeant Wheaton or
16 Corporal Carroll to go out and interview the various so-called
17 eyewitnesses, did you?

18 A. Oh, no. Insofar as the investigation went, it was done in what
19 I felt to be a competent manner. I'm aware of the criticisms
20 made through Mr. Pugsley and they're valid. But, generally
21 speaking, I was impressed with the investigation and it's
22 probably gratuitous for me to say it, in a sense, but I think it's
23 important to underline that had it not been for that
24 reinvestigation, Donald Marshall probably would still be in
25 Dorchester.

1 Q. In fact, you've described it in your own notes at the time, I
2 believe your note of April 16th, that it was a detailed
3 investigation.

4 A. Yes.

5 Q. In referring to it. Now just, your desire to have Staff
6 Sergeant Wheaton question John MacIntyre.

7 A. Yes.

8 Q. You would acknowledge, sir, that he did at least on two
9 occasions speak to John MacIntyre.

10 A. I acknowledge that he did?

11 Q. That he spoke to John MacIntyre on at least two occasions.

12 A. Yes.

13 Q. Whether or not he questioned him in the fashion that you
14 would have liked.

15 A. I can acknowledge that he spoke to him on two occasions,
16 right.

17 Q. And that John MacIntyre briefed you and he briefed
18 Inspector Scott as well.

19 A. Yes.

20 Q. So what was your purpose in wanting Staff Sergeant Wheaton
21 to question John MacIntyre to take a statement following... in
22 the form that you suggested that they had done with Patricia
23 Harriss and Maynard Chant?

24 A. Well, it seemed to me that to properly assess the credibility, I
25 suppose, of the recanting by those witnesses, one had to

1 explore and explore fully the reasons why they had lied in
2 the first place. And it seemed to me that you'd go to the
3 investigators.

4 Q. But you testified also that by April, at least, you were fully
5 satisfied that there was lots of evidence that Donald Marshall
6 was not guilty of the offence. You were content.

7 A. Oh, yes. I was content that there was sufficient evidence to
8 prove that he had not done the murder. But I was not
9 content with the fact that Chief MacIntyre and Bill Urquhart,
10 in particular, had not been questioned fully.

11 Q. Was that with respect to an inquiry into the means and
12 methods of the Sydney Police Department in conducting the
13 investigation, or solving the murder?

14 A. Well, it would be basically the means and methods that would
15 go to the heart of the credibility of Chant, Harriss, and Pratico.

16 Q. But an investigation of the means and method, you will agree,
17 is something that your department wished to have put in
18 abeyance, or at least that was your interpretation of the
19 instruction that you got from Mr. Gale.

20 A. That was something that, I think, that the proper
21 characterization of that would be that, in effect, our
22 Department acknowledged the reluctance of the R.C.M.P. to do
23 that investigation and said, "Well, we don't need that right
24 now. We'll get back to it."

25 Q. But was not your instruction to Staff Sergeant Wheaton that

- 1 he was to put that part of it in abeyance at the time?
- 2 A. Yes.
- 3 Q. I would ask you to refer, sir, to Volume 34, page 88. Do you
4 have it, sir?
- 5 A. Yes, I have it.
- 6 Q. Paragraph 4.
- 7 A. Yes.
- 8 Q. And that suggests that there were consultations with you
9 with respect to interviewing Chief MacIntyre and Inspector
10 Urquhart in regards to the allegations of Chant, Pratico, and
11 Harriss?
- 12 A. Yes.
- 13 Q. "Mr. Edwards has advised me that he further discussed the
14 matter with Mr. Gordon Gale of the Attorney General's
15 Department."
- 16 A. Yes.
- 17 Q. "And it was felt these interviews should be held in abeyance
18 for the present."
- 19 A. Yes.
- 20 Q. Does that suggest any reluctance on the part of Staff Sergeant
21 Wheaton to...
- 22 A. Well, he's writing that on May the 20th. So it's almost exactly
23 a month after the report, or after the instruction, and I'm a
24 little uncomfortable with that word.
- 25 Q. But it's not a confirmation of the R.C.M.P.'s reluctance to

1 interview Sergeant Mac... to question Sergeant MacIntyre and
2 Inspector Urquhart on their means and methods.

3 A. No, it's not an expression of reluctance but it's not exactly an
4 expression of "we want to go and do this but they won't let
5 us", either.

6 Q. No, I would suggest it's a simple statement of what happened.

7 A. Well, I put it to you... The advocate is coming out. The word
8 "discussions", I suggest, begs some questions about what
9 discussions. What was the nature of the discussions? It
10 hardly reveals the fact that when I used the verb "urge", I
11 don't think I'm overstating it, that I had been "urging" them
12 to go and question the investigators. So, yes, it's accurate as
13 far as it goes, but it doesn't say it all.

14 Q. Yes, and I guess that brings up my next point. You use the
15 word now "urged", earlier with my friend, Mr. MacDonald, you
16 used the word "emphatically".

17 A. Yes.

18 Q. In stating what you did. But I would suggest that your notes,
19 which were made at the time, or shortly thereafter.

20 A. Yes, right.

21 Q. Use somewhat softer terminology. Would you agree with me?
22 I'd refer you to..

23 A. Okay, let's have a look at them.

24 Q. Volume 17, page three.

25 A. Would you give me the date, Mr. Bissell?

- 1 Q. Yeah, that's...
- 2 A. February 23rd, the 11 p.m. phone call?
- 3 Q. 23rd, yes.
- 4 A. Yes.
- 5 Q. That's right.
- 6 A. So I called him at 11 o'clock in the night, suggested
7 investigation not complete until MacIntyre questioned,
8 though he should not be privy, et cetera.
- 9 Q. The verb there is "suggested". That's somewhat softer than...
- 10 A. That verb is softer than "urge" but...
- 11 Q. But it's a note you made at the time.
- 12 A. Yes.
- 13 Q. And at page 10 at Volume 17.
- 14 A. The date, again?
- 15 Q. April the 19th. Excuse me, April the 17th. There you, the
16 very last two sentences of the note. There you're saying that
17 you thought he should do something.
- 18 A. Sorry, maybe I'd better refer to the... What's the page
19 number in Volume 17?
- 20 Q. Page ten, Mr. Edwards.
- 21 A. Page ten and whereabouts?
- 22 Q. See the sentence: "Told Wheaton that I thought he should get
23 entire file." Note of Saturday, April 17th, the last entry of
24 that note.
- 25 A. Yes, okay. "Told Wheaton I thought he should get the entire

1 file. Said he would go down Monday and get it." Yes. Again...

2 Q. You told...

3 A. All right.

4 Q. But, again, that's not emphatically telling him to do something,
5 wouldn't you agree?

6 A. I guess it's a matter of argument.

7 Q. Well. But those were notes that you made at the time.

8 A. They were notes I made at the time and, "Look, Harry, I think
9 you'd better go down and get the entire file. Don't you think
10 it's time?" That was something like the discussion. I can't
11 recall it word for word but it wasn't, "Well, gee, Harry, maybe
12 you should do it."

13 Q. But on the issue of the search warrant, you felt that a search
14 warrant should be used to get the file, is that correct? Either
15 that or just ask them to give them, turn over the file?

16 A. Yeah, I think I said "to threaten the use" and then I told Mr.
17 MacDonald part of the conversation I required... I recalled
18 about putting it in your hip pocket and taking the soft
19 approach first.

20 Q. But have the search warrant there and use a search warrant
21 if necessary.

22 A. If necessary, yes.

23 12:30 p.m.

24 Q. And they'd already met him on a couple of occasions and
25 asked Chief MacIntyre if they had all the relevant material.

MR. EDWARDS, EXAM. BY MR. BISSELL

1 A. Yes.

2 Q. So the soft approach hadn't exactly been working, I take it.

3 A. The soft approach had been too soft.

4 Q. You wanted a harder soft approach.

5 A. That's right.

COMMISSIONER EVANS

7 Like a stick it in your back pocket.

MR. EDWARDS

9 That's right. The polite but firm request approach, I
10 suppose, is what I'm...

MR. BISSELL

12 Q. But you said the only reason that they gave you that they
13 didn't want to use a search warrant is because it was another
14 police force. That was the only reason ever proffered to you.

15 A. Yes, other than Inspector Scott says in the notes there, he
16 said, "Well, we couldn't be sure of getting it all that way.

17 Q. Yeah, exactly. That was my point. That your note suggested
18 there was more than one reason expressed to you as to why it
19 wouldn't be proper to, why they didn't wish to use a search
20 warrant.

21 A. Well, there was, all right, more than one stated reason but I
22 can't for the life of me understand the rationale for that
23 reason, "Couldn't be sure of getting it that way."

24 Q. Well, I don't want to get into an argument on whether or not
25 you agreed or disagreed.

1 A. No, okay.

2 Q. I think that's better left for another time.

3 A. Sure, of course.

4 Q. But what was the reason you wanted them to get the file?
5 Was it for the murder investigation or was it an investigation
6 into the practices and procedures of the Sydney Police
7 Department, particularly the investigators in the Marshall
8 case?

9 A. It was for the murder investigation.

10 Q. Well...

11 A. And...

12 Q. Sorry.

13 A. And my view is that you can't separate it off because the
14 main witnesses in the murder investigation, there was
15 reasonable and probable grounds to believe at that time there
16 may be evidence in that file relating to them, or maybe other
17 witnesses.

18 Q. Fine, and then I would suggest to you, Mr. Edwards, that the
19 proper course is to do exactly what the R.C.M.P. asked you to
20 do, and that was to get an order from the Attorney General of
21 Nova Scotia, under Section 31, Subsection 2 of the Police Act.
22 Isn't that what 31 Subsection 2 is designed for?

23 A. It's designed to, for that purpose. That can be a purpose but I
24 don't understand why resort would have to be made to the
25 Police Act in a murder investigation.

1 Q. But doesn't the Police Act, particularly Section 1, envision that
2 applying when another department is brought in to take over
3 an investigation from another department? I would suggest
4 to you that the proper way to get the police file from the
5 Sydney Police Department was this section, the legislative
6 scheme in place that covers that particular situation that you
7 were confronted with in 1982? Where another police
8 department is coming in investigating a file already
9 investigated by a police department?

10 A. Well, maybe that's arguable but it wasn't my opinion as to the
11 proper way.

12 Q. Well, wouldn't you agree, sir, that as a principle of law, that
13 where there exists an alternate method of obtaining
14 documents and material, alternate to the intrusive power of a
15 search warrant, that it's preferable that you use that power
16 first?

17 A. Again, in the circumstances that pertained at this time, all I
18 can say is, in my view, the search warrant was the preferred
19 way. But I think we have to put this in perspective. And I
20 didn't really believe, and it was my impression... Well, I can't
21 say what they believed, but I didn't really believe that there
22 would be any difficulty in getting the entire file, if only they
23 would go down and say, "Give us the entire file."

24 Q. But you were telling them to use the stick of the search
25 warrant...

MR. EDWARDS, EXAM. BY MR. BISSELL

1 A. If you have to. If you have to. That was the...

2 Q. But you say, sir, it depends on the circumstances and I
3 suggest to you that the circumstances in this particular case
4 are the circumstances envisioned by the Police Act, Section
5 31, Subsection 2.

6 A. Like I say, I recognize that that's an argument. I don't feel
7 that way.

8 Q. Pardon?

9 A. I don't feel that way.

10 Q. And you don't feel that as a matter of principle in terms of
11 getting a search warrant under the Criminal Code, that if an
12 alternate means exists to get the material you're seeking, an
13 alternate statutory scheme...

14 A. Yes.

15 Q. That you must use that statutory scheme before you use the
16 intrusive power of a search warrant?

17 A. I think generally speaking that's the rule, yes, generally
18 speaking.

19 COMMISSIONER EVANS

20 Mr. Bissell, under the Police Act, who applies?

21 MR. BISSELL

22 Who applies? No one needs to apply. The Attorney General
23 signs the direction, so I suppose the police force wishing.

24 COMMISSIONER EVANS

25 In this case, the R.C.M.P. wishing.

MR. EDWARDS, EXAM. BY MR. BISSELL

1 MR. BISSELL

2 Yes.

3 COMMISSIONER EVANS

4 Would have made an application to the Attorney General of
5 Nova Scotia.

6 MR. BISSELL

7 Yes, I don't think there's a formal application set out. In
8 fact, that's exactly what they did because Mr. Edwards' notes
9 indicate that they suggested to Mr. Edwards that an order be
10 obtained under the Police Act, or a direction.

11 COMMISSIONER EVANS

12 But as far as Mr. Edwards was concerned, that was kind of a
13 slow process in which they were white-gloving the Sydney Police
14 Department for some time and he wanted them to get the files
15 now and suggested to ask for it, make a demand for it and to back
16 that up, have a search warrant in his back pocket.

17 MR. BISSELL

18 Yes, I guess my answer to that, My Lord, would... I don't
19 really wish to argue right now, is that there was an alternate
20 method.

21 COMMISSIONER EVANS

22 Oh, yeah.

23 MR. BISSELL

24 That covers this situation and that's the... In fact, the case
25 law requires.

MR. EDWARDS, EXAM. BY MR. BISSELLMR. EDWARDS

1
2 A. And the other point, I guess, to try to get the picture complete
3 here, my note of April 19th says that Gordon Gale was going
4 to speak to the A. G. re direction under the Police Act. The
5 Police Act was never mentioned to me by the R.C.M.P. That
6 was the only mention I recall. I don't believe there's any
7 reference in my notes other than that to the Police Act.

8 Q. Where are you reading from, sir?

9 A. I'm reading from my note of Monday, April 19th. I'm looking
10 at the original note, so. The paragraph beginning, "This a.m.
11 phoned by Herschorn in an unrelated matter," the end of that
12 paragraph.

13 Q. If you refer at page eight of Volume 17, your note of Friday,
14 April the 16th.

MR. CHAIRMAN

16 What page?

COMMISSIONER EVANS

18 April 19th, page 10.

MR. BISSELL

20 But I'm asking the witness to refer to page eight.

MR. EDWARDS

22 A. Okay.

23 Q. The note of April the 16th.

24 A. Yes.

25 Q. The paragraph that starts with "And call with Wheaton..."

- 1 A. Yes. They wanted a direction from the A.G.
- 2 Q. To the Chief.
- 3 A. To the Chief, yes. But all I'm saying is that the Police Act
- 4 wasn't mentioned. Maybe that's what they intended, but it
- 5 wasn't mentioned to me.
- 6 Q. I see, but that's what, in effect, the Police Act does. It's a
- 7 direction to the, to proceed in a general...
- 8 A. That's, in effect, what the Police Act does, yes.
- 9 Q. So it was the police that suggested that procedure, that that's
- 10 what they wanted. Whether they identified it...
- 11 A. They wanted the order to come from Halifax, yes.
- 12 Q. And in terms of conducting an investigation into the practices
- 13 and procedures of the Sydney Police Department, well, that's
- 14 something that there would have to be a specific direction
- 15 from the Attorney General, as well, for them to do, would you
- 16 not agree?
- 17 A. No, definitely not.
- 18 Q. Where do they get their authority to go in to a municipality
- 19 policed by another police department to conduct that
- 20 investigation?
- 21 A. They were already over that hurdle when they were invited
- 22 in by John MacIntyre...
- 23 Q. To reinvestigate a murder.
- 24 A. To reinvestigate the murder case.
- 25 Q. But your own Department said they didn't want an

MR. EDWARDS, EXAM. BY MR. BISSELL

1 investigation of practices and procedures at this stage.

2 A. Well, you're jumping ahead to April 19th.

3 MR. CHAIRMAN

4 I take it you're going to be awhile, Mr. Bissell.

5 MR. BISSELL

6 About another five or ten minutes.

7 MR. CHAIRMAN

8 We'll adjourn until two o'clock.

9 12:39 p.m. INQUIRY RECESSED UNTIL 2:02 p.m.

10 MR. CHAIRMAN

11 Mr. Bissell?

12 MR. BISSELL

13 Thank you, My Lord.

14 Q. Just a few more questions, Mr. Edwards. I think when we
15 broke at noon, we were talking about the jurisdiction of the
16 R.C.M.P. to go into the City of Sydney's jurisdiction to conduct
17 an investigation of the, I suppose whether or not Chief
18 MacIntyre counselled perjury, which would be the end result
19 of an investigation into the practices and methods of the
20 Sydney Police Department, is that fair to say?

21 A. No, I wouldn't frame it that way, Mr. Bissell. What I was
22 talking about then was questioning the City Police as part of
23 an ongoing murder investigation. Now it may very well have
24 been that that investigation could have led in that direction,
25 hypothetically.

1 Q. I thought your instruction to hold that part of it in abeyance
2 was that it was felt by your departmental people that that
3 was really a second part. We have to determine who
4 committed the murder and whether or not it was Donald
5 Marshall. And then an investigation into what the Sydney
6 Police Department did was a second component.

7 A. Well, you'd have to ask the departmental people about that
8 but my view was that that was part of an ongoing murder
9 investigation. For example, if I may illustrate.

10 Q. Sure.

11 A. Let's say that when Harry Wheaton was talking to Chant,
12 Chant had said, "Well, I testified the way I did because John Q.
13 Public, who lives down on Townsend Street in Sydney, told
14 me if I didn't, I'd be in trouble." Now surely no one would
15 suggest that Harry Wheaton wouldn't swoop right in on John
16 Q. Public and ask him the "why for." My difficulty is that John
17 MacIntyre was in no different position than the John Q. Public
18 that I just used in the illustration.

19 Q. Well, I guess I would take exception that nobody would
20 challenge whether Harry Wheaton would swoop in and take a
21 statement from...

22 A. I'm sorry?

23 Q. John Q. Public. I'm not sure it can be said that Harry Wheaton
24 would swoop in and take a statement from John Q. Public in
25 that particular situation. Surely that's a separate...

MR. EDWARDS, EXAM. BY MR. BISSELL

1 A. Well...

2 Q. Is that a question or is that an argument?

3 MR. CHAIRMAN

4 Well, I don't know if it's a question or an argument. But it
5 seems to be a very logical answer to the question.

6 MR. BISSELL

7 Q. The point, you would acknowledge, though, would you not,
8 Mr. Edwards, that the R.C.M.P. don't have primary jurisdiction
9 in a municipality of less than 17... of more than 1700 people.

10 A. I acknowledge that but, again, I take the view, and I may be
11 wrong, of course, that that hurdle was overcome on February
12 3rd. John MacIntyre gave them the murder investigation to
13 do. They needed no more than that.

14 Q. Okay, but John MacIntyre, I would suggest to you, didn't give
15 them the mandate to go in and investigate the Sydney Police
16 Department.

17 A. He gave them the mandate to do whatever was necessary to
18 investigate that murder.

19 Q. The ultimate mandate must come from the Attorney General's
20 office, though, is that not correct?

21 A. That's not correct.

22 Q. The mandate to go in...

23 A. In my view.

24 Q. You disagree that the Police Act, or the police contract for the
25 Province of Nova Scotia, I would suggest to you, requires the

MR. EDWARDS, EXAM. BY MR. BISSELL

1 mandate to come from the Attorney General's Department.

2 A. Perhaps that was Mr. MacIntyre's rationale in having me
3 there. I was the agent of the Attorney General and I
4 concurred that the R.C.M.P. should do the investigation.

COMMISSIONER EVANS

6 Mr. Bissell, are you drawing a distinction between coming in
7 to examine or to reinvestigate a police department and, on the
8 other hand, coming in to reinvestigate a murder in which the
9 police department may be involved?

MR. BISSELL

11 Yes, I think there's a difference between the two. Their
12 mandate was to investigate a murder.

COMMISSIONER EVANS

14 And that murder involved the conduct of the Sydney Police.

MR. BISSELL

16 Peripherally, yes, but I don't think it... But if the purpose of
17 your investigation of the activities of the police department are to
18 determine whether or not further charges are warranted, then
19 that's a separate investigation, I would submit, and re...

COMMISSIONER EVANS

21 But, generally, if the R.C.M.P. are instructed to go in and
22 investigate a police department, it's usually because of some
23 police corruption or things of that kind, isn't it?

MR. BISSELL

25 Or allegations of some wrong...

DISCUSSION

1 COMMISSIONER EVANS

2 An official allegation...

3 MR. BISSELL

4 Or allegation of some wrongdoing.

5 COMMISSIONER EVANS

6 Yes.

7 MR. BISSELL

8 I'm not sure that it would be restricted necessarily to
9 corruption.

10 COMMISSIONER EVANS

11 Well, that was kind of a loose term that I was...

12 MR. BISSELL

13 But improper police methods might be construed as
14 something of wrongdoing.

15 COMMISSIONER EVANS

16 Yes, but you say it's different if they're brought in to
17 investigate...invited in to investigate a murder and then they
18 restrict themselves strictly to that murder.

19 MR. BISSELL

20 Yes, well, they're doing it at, technically, at the request of
21 the Attorney General.

22 COMMISSIONER EVANS

23 Right.

24 MR. BISSELL

25 It's their mandate and if the Attorney General instructs

DISCUSSION

1 them to hold it in abeyance or stop, their authority is derived
2 from the Attorney General, if the Attorney General considers an
3 investigation of the police department as separate and distinct
4 from the murder, which I would submit Mr. Gale must have when
5 he issued that instruction, then that is the limit upon the authority
6 of the R.C.M.P. in the situation.

COMMISSIONER EVANS

7
8 When they're ordered to investigate and they're told to halt,
9 they halt.

MR. BISSELL

10
11 No, they're ordered to investigate a murder, which they did
12 investigate, and brought to a successful conclusion, able to get a
13 conviction of the individual who committed the murder and were
14 awaiting further instructions to proceed, if the Attorney General
15 so wished, on to the methods and practices of the Sydney Police
16 Department. But I would suggest that the Attorney General had
17 other options. Rather than having the R.C.M.P. do that, the
18 Attorney General may have preferred that that be done through
19 the Police Commission, for example, under the Police Act. That's
20 the point that I'm trying to make.

MR. CHAIRMAN

21
22 That's not the point that's before us. That's not the point
23 Mr. Edwards is making. The R.C.M.P. are called in to reinvestigate
24 the conviction of Donald Marshall, Jr. of the offence of murder.
25

DISCUSSION

1 MR. BISSELL

2 Correct.

3 MR. CHAIRMAN

4 Flowing from that as a result of their investigation, someone
5 else was charged but they didn't know that when they started out.

6 MR. BISSELL

7 No.

8 MR. CHAIRMAN

9 And as part of the investigation, they naturally go to the
10 three principal witnesses at the original murder trial and these
11 principal witnesses now say we gave evidence that was not
12 correct because we were scared of the police or they, at least they
13 raised the suspicion that there may have been police pressure in
14 the taking of these statements. Are you suggesting that the
15 R.C.M.P. should not then go and interview the police who took
16 these statements?

17 MR. BISSELL

18 Well, they did speak to the police who took the statements.

19 MR. CHAIRMAN

20 Go and take statements.

21 MR. BISSELL

22 I suppose how they do is up, I mean there certainly is ample
23 evidence that they spoke to the principals involved. Admittedly,
24 they didn't take statements but they sought instruction as to
25 whether or not there was to be an investigation or the taking of

DISCUSSION

1 statements from these people as part of the practices of the
2 Sydney Police Department and the instruction that came from the
3 Attorney General to Mr. Edwards via Gordon Gale, I would
4 submit...

5 MR. CHAIRMAN

6 Was to hold it in abeyance.

7 MR. BISSELL

8 Hold that part of it in abeyance.

9 MR. CHAIRMAN

10 But that was long after. When I say "long", you know, days
11 after. As I understand Mr. Edwards' evidence, he had been urging
12 the R.C.M.P. to take a statement from MacIntyre and Urquhart.
13 Subsequently, instructions come from Mr. Gale, who had
14 concluded that the evidence had gone far enough to enable them
15 to, to enable an application to be made to the Court of Appeal for a
16 review and to introduce whatever fresh evidence might be
17 required. That was later. Anyway, that's more argument than...

18 MR. BISSELL

19 Yes, I agree, My Lord.

20 MR. EDWARDS

21 A. I guess if I could just, to make my answer complete, if that
22 was the concern of the R.C.M.P. that they didn't have
23 jurisdiction to go in, I can tell you that that concern was never
24 addressed to me. They never said to me, "Look, we don't
25 have jurisdiction to go in and question MacIntyre and

1 Urquhart." "We don't have jurisdiction to go in and get the
2 file. We need an order under the Police Act." That wasn't...
3 It may have been a concern but it wasn't communicated to
4 me.

5 Q. It may not have been put to you, I would suggest, in terms of
6 jurisdiction but what then was the purpose for you going to
7 Mr. Gale and getting some instructions on it with respect to
8 the interrogation of John MacIntyre?

9 A. Because by that point, it was obvious to me that the R.C.M.P.
10 weren't going to go in on their own accord and I felt it
11 important in order for them to do a complete investigation,
12 that those questions be undertaken.

13 Q. And the response that you got from Mr. Gale, or as you
14 interpreted, was to hold that part of it in abeyance, is that not
15 correct?

16 A. That is correct. Although I don't recall the specific
17 conversation with Gordon Gale, I am sure that I let him know
18 that what I had urged the police and that the police were
19 reluctant to go on my urging.

20 Q. One other area that I want to go into just for a few moments,
21 sir, is the decision to go under 617(b) or (c). Now you
22 indicated, I believe, that you met in June with Mr. Gale and
23 Mr. Rutherford.

24 2:17 p.m.

25 A. That's correct, yes.

1 Q. It was clear, was it not, at that meeting that the ultimate
2 decision whether the reference would be under paragraph
3 (b) or (c) was the decision of the Minister of Justice.

4 A. No question.

5 Q. Not of any of the participants.

6 A. That's right.

7 Q. And your intention to hold an inquiry such as this would
8 have come to naught had the Court of Appeal decided that
9 under (c) you didn't have the power to ask questions.

10 A. No question.

11 Q. Yeah.

12 A. They had the discretion, the ultimate discretion to say what
13 they were going to hear.

14 Q. Also your ability to conduct an inquiry, such as you testified
15 that was your intention, would also depend upon the
16 instructions that you received from the Attorney General's
17 office, is that not correct?

18 A. The reason for my pause is that, of course, you're correct
19 that the Attorney General's Department would have ultimate
20 control there, but I had conducted several inquiries, you
21 know, that obviously haven't had the high profile of this
22 one, and hundreds of trials and I have never had any
23 direction as to who I should call or...

24 Q. Those are magisterial-type of inquiries.

25 A. That's correct, yes.

1 Q. And surely...and surely there is quite a distinction between
2 that though and...

3 A. Oh, yes, this...this in those ways is the unique situation, but
4 I never had any indication from anyone that I was going to
5 receive a list of witnesses if you want.

6 Q. Fine.

7 A. I mean there was a general discussion on June 9th between
8 or among Gale, Rutherford and myself and I believe both
9 of...both of them would agree with my recollection that I
10 was the one who was going to be making those decisions.

11 Q. But would your plans not have been frustrated by what
12 later became the policy of your Department that there
13 would be no such inquiry until the Ebsary matter
14 were...Ebsary trials were disposed of?

15 A. Well, that's...that again, I guess, is hypothetical, but yes.

16 Q. But that became...that became the policy of the Department.

17 A. That became a policy, and a valid one.

18 Q. Yeah.

19 A. But that still would not have hampered the scope of the
20 inquiry. I think that would have been, as far as I know, left
21 to me and to make a submission to the Court and then
22 what...whether they accepted it or not that was something
23 else.

24 Q. Unless your superiors took a different view as to how that
25 inquiry should be handled.

MR. EDWARDS, EXAM. BY MR. BISSELL

1 A. That's always a possibility, but again that's speculative.
2 And, since you raised that policy, Mr. Bissell, that...I think
3 that there is a parallel situation and I had never heard it
4 been articulated in public before. There was, of course, a lot
5 of criticism about the inquiry being held until after the
6 Ebsary matter was concluded. And I just want to point out
7 that there's a parallel under the Fatality Inquiries Act which
8 you're probably aware of, that when there is a criminal
9 matter arising out of the same circumstances as the matter
10 you're holding the inquiry on the inquiry...the inquiry shall
11 be adjourned until that matter is complete, so...

12 Q. Yeah. Now I wasn't...

MR. CHAIRMAN

13
14 I think we're getting at cross purposes here somewhat too.
15 Your question started out with 617(c). If it had gone under 617(c)
16 my recollection is Mr. Rutherford told us that the first...the minute
17 of counsel that had been drafted was to proceed under 6...the
18 Minister of Justice would proceed under 617(c) and then there
19 was a courtesy call to advise the Chief Justice of the intention of
20 the Minister, and there was a subsequent change. But if you had
21 gone at that time...

MR. EDWARDS

22
23 That's right.

MR. CHAIRMAN

24
25 There would have been no worry about prejudicing the

1 rights of Mr. Ebsary.

2 MR. EDWARDS

3 Because the Ebsary charge hadn't been laid.

4 MR. CHAIRMAN

5 There was no charges laid or any indication that charges
6 might be laid.

7 MR. EDWARDS

8 Excellent point, right.

9 MR. BISSELL

10 Oh, I think that's a matter, I acknowledge that the charges
11 hadn't been laid but you would be trying the matter through an
12 inquiry process when there was an intention, I would submit, was
13 there not, to charge Mr. Ebsary as soon as Mr. Marshall was
14 acquitted. Is that not the...

15 MR. EDWARDS

16 That was the game plan, if you want, but sequentially the
17 matter of Donald Marshall's guilt or innocence had to be resolved
18 first in our view. There is some debate on...

19 MR. CHAIRMAN

20 This is all very illuminating, but I'm at a loss to see what
21 concern that is to the RCMP.

22 MR. BISSELL

23 Well, it's a concern not solely to the RCMP but to the
24 Department of Justice, the suggested reason for the change. I just
25 wish to point out that Mr. Rutherford testified that the reason for

MR. EDWARDS, EXAM. BY MR. BISSELL

1 the change was concerns expressed about whether or not evidence
2 could be called under 617(c).

3 MR. CHAIRMAN

4 But that was not his concern. He told us that he was
5 satisfied under the Ontario decision that there was no doubt that
6 under 617(c) there could be very wide-ranging inquiry.

7 MR. BISSELL

8 That it had happened under...it had happened in the
9 [Gourecki?] case.

10 MR. CHAIRMAN

11 We sometimes follow the law of Ontario with reluctance.

12 MR. BISSELL

13 Occasionally.

14 COMMISSIONER EVANS

15 Depends on who's presiding.

16 MR. BISSELL

17 Those are the questions I have. Thank you, Mr. Edwards.

18 MR. CHAIRMAN

19 Mr. ...lost me, now which way to we go?

20 COMMISSIONER EVANS

21 Outhouse.

22 MR OUTHOUSE

23 It's my understanding, My Lords, is that I would be...

24 MR. CHAIRMAN

25 All right. We only see you on rare occasions, Mr. Outhouse.

MR OUTHOUSE

That's correct.

EXAMINATION BY MR. OUTHOUSE

Q. All right, Mr. Edwards. You'll forgive me for shouting at you from the bleachers back here.

A. Okay, sir.

Q. The record indicates, I believe, that Staff Wheaton was stationed in Sydney as the plainclothes coordinator from 1980 until '82, is that correct?

A. That's correct, yes.

Q. And that you were the Crown Prosecutor, I guess, for the County of Cape Breton since 1978.

A. That's right.

Q. Now, I take it that over that period of time your overlapping period with Staff Sergeant Wheaton in Sydney that you would have had a number of dealings with him in your professional capacity.

A. I did, but my recollection of them is overshadowed by this, of course.

Q. All right. I'm certainly not going to ask you to recall them, but other than to confirm that you were involved in a number of other cases with him.

A. Yes.

Q. Now, as a result of your dealings with him back then did you form the opinion that Staff Sergeant Wheaton was a highly

1 competent investigator?

2 A. Yes.

3 Q. And as a result of those dealings did you form the opinion
4 that he was a reliable police officer?

5 A. Yes.

6 Q. Would you take Volume 17, please, page 3.

7 A. Yes.

8 Q. And I want to refer you to your note there in the middle of
9 the page, the February 23rd note.

10 A. Yes.

11 Q. Do you have that? Now, when my learned friend, Mr.
12 MacDonald, asked you about that note, page 3 of Volume 17.
13 When Mr. MacDonald asked you about that note you said,
14 and this is at Volume 65 of the transcript, page 11734, that
15 the reference in your note to the Department having had,
16 and I quote, "The opportunity to decide on it, " wasn't a
17 reference to the RCMP questioning MacIntyre.

18 A. Yes.

19 Q. Now you're not suggesting though, I take it, that you
20 instructed Staff Sergeant Wheaton on February the 23rd,
21 '82, to go and interrogate or investigate Chief MacIntyre?

22 A. I'm sorry. Could you run that by me again?

23 Q. I say you're not suggesting that you were instructing Staff
24 Sergeant Wheaton on February 23rd, '82, to go and
25 interrogate or investigate Chief MacIntyre.

1 A. That's what...

2 Q. What?

3 A. That's what I am...

4 Q. Doesn't it say that you're not...you're suggesting an
5 investigation won't be complete until that is done?

6 A. Yes, that's what it says, right.

7 Q. Is that correct?

8 A. Yes.

9 Q. Now, I suggest to you...

10 A. Okay. Maybe I missed the point of your question. No, I'm
11 not saying that he has to do it right then.

12 Q. Sure.

13 A. Is that what you mean?

14 Q. Sure. That's going to be part of the investigation.

15 A. That's going to be part of the investigation that he should do
16 before he calls his investigation complete.

17 Q. And as I go through your notes that subject is next again
18 discussed on or about April the 19th. I don't find any other
19 reference.

20 A. There's no other reference in the notes, but...and I have no
21 specific recollections, but I know that there were...there
22 were several times that we discussed it in that vein.

23 2:30 p.m.

24 Q. But April 19th came, the murder investigation was just
25 about complete, all important statements were had, all

1 important witnesses interviewed virtually at that stage.

2 A. Yes.

3 Q. And the crunch point was obviously coming that the
4 investigation wasn't going to be complete until MacIntyre
5 was investigated, but that point was obviously now at hand,
6 correct?

7 A. Yes, precipitated by the events of the Friday before.

8 Q. And when that very question was then put, and I'm not
9 going to get into why it was put, you clearly had discussions
10 about this with Staff Sergeant Wheaton and perhaps
11 Inspector Scott as well, and you then went to Gordon Gale,
12 correct?

13 A. Wait now, on April...

14 Q. 19th as I understand your...

15 A. 19th, yes.

16 Q. And what Mr....those were the very instructions that came
17 back, that is, hold that part of the investigation in abeyance.

18 A. Yes.

19 Q. And that's what you communicated to Staff Sergeant
20 Wheaton.

21 A. Yes.

22 Q. And at no time did you tell Staff Sergeant Wheaton after
23 April the 19th that he should now go ahead with that,
24 correct?

25 A. After April 19th, no.

- 1 Q. And at no time after April 19th did you tell then
2 Superintendent Scott to go ahead with it, correct?
- 3 A. After April 19th that's correct.
- 4 Q. Okay. Now, just to change gears to another topic. Mr. Evers.
5 You indicated in your evidence and this is found in Volume
6 67 at page 11988.
- 7 A. Yes.
- 8 Q. That Mr. Evers' evidence didn't play very well in the Appeal
9 Division, correct?
- 10 A. That was my feeling, yes.
- 11 Q. And you had originally thought that his evidence would be
12 quite potent.
- 13 A. Yes.
- 14 Q. And I just want to clear up any possible misunderstanding
15 about that. You're not in any way suggesting that it was
16 Staff Sergeant Wheaton or Inspector Scott who had misled
17 you into thinking that his evidence was...
- 18 A. Absolutely not, no.
- 19 Q. No.
- 20 A. No.
- 21 Q. And, in fact, you yourself had questioned Evers on April the
22 8th, '82.
- 23 A. Yes, yes.
- 24 Q. You...
- 25 A. No, there is no criticism, direct or indirect, intended there.

1 Q. All right. You questioned Mr. Evers and you were satisfied
2 yourself that his evidence would be, I believe your words
3 were "extremely compelling".

4 A. I can remember being asked by Mr. Justice MacDonald just
5 before Evers got on the stand, he said, and I don't think the
6 transcript picked it up, but it was kind of an aside, "Is this
7 compelling evidence?" That was the...and I nodded "yes".

8 Q. Now, I can't find any note anywhere of your conversation
9 with Evers on April the 8th. Is there one?

10 A. No, if it's not here I don't have one.

11 Q. Well, perhaps Mr. Pink or Mr. Saunders can point it out to
12 me.

13 A. I don't think there is.

14 Q. So when you were writing your report to the Department, to
15 your superiors in Halifax, sometime between April 22nd and
16 May the 3rd of '82 you were recapping your conversation
17 with Mr. Evers based on your memory alone. You had no
18 notes from which you were working.

19 A. I think that's fair. I believe I interviewed Mr. Evers by
20 phone at that time. I think I called him in New Brunswick,
21 he was in Sackville, New Brunswick.

22 Q. I think that's right.

23 A. Yes.

24 Q. I think that's right. All right. I want to go to the July 12th
25 meeting.

1 A. Okay.

2 Q. And your evidence concerning this starts in Volume 67 at
3 page 11885. Now, I wasn't here for Mr. Whalley's
4 testimony, so you'll forgive me if I get it a bit wrong.

5 A. Well, we're even, neither was I.

6 Q. I've read the transcript and as I read it he certainly
7 conveyed the impression, in the written word at least, that
8 Staff Sergeant Wheaton played a rather major role in that
9 July 12th meeting. Now, you were there and I think that
10 you'll agree with me that, in fact, Staff Sergeant Wheaton
11 played a rather minor role in that meeting.

12 A. I'd agree with that, yes.

13 Q. Now at the bottom of page 11885 in your evidence you were
14 asked how long the meeting was and you said you had no
15 specific recollection.

16 A. That's right.

17 Q. It was long, could have been two or three hours, maybe
18 longer.

19 A. Yes.

20 Q. And then over on page 11887 you were asked about the
21 evidence of Staff Sergeant Wheaton to the effect that the
22 meeting was both morning and afternoon, do you recall
23 that?

24 A. Yes.

25 Q. Mr....Staff Sergeant Wheaton had testified that it went in the

1 morning.

2 A. Yes.

3 Q. Then it broke for lunch, came back.

4 A. Uh-hum.

5 Q. And your recollection was that he could be right, you
6 couldn't say.

7 A. That's right.

8 Q. Now I put it to you, though, that having had a chance to
9 reflect on it that that meeting, in fact, was both morning and
10 afternoon, in fact it was all day, am I correct?

11 A. I'm in no better position than I was before. I, of course, had
12 heard Staff Sergeant Wheaton give evidence that it was both
13 morning and afternoon, so I've had lots of time to try to...

14 Q. All right. Do you have your Daytimer there?

15 A. Yes.

16 Q. Perhaps you'd just dig it out for that day.

17 A. No, I don't.

18 Q. Perhaps you...

19 A. Wait now, yeah.

20 Q. If you turn to that day.

21 A. July 12th.

22 Q. July 12th. You'll see in handwritten...your own handwriting.

23 A. Yes. "Spent all day with Chief MacIntyre, Mike Whalley,
24 Harry Wheaton and Bill Urquhart re Marshall."

25 Q. So you agree with me now?

1 A. Yeah. The only problem, I see there's an appointment
2 already noted there at 2:00 p.m., "Inspector Urquhart, re..."
3 re a case that we were working on at the time.

4 Q. Is it likely that Inspector Urquhart joined you in the
5 afternoon at two o'clock?

6 A. It's not likely. I think he was there for part of the morning.
7 But I can't speak with certainty.

8 Q. Sure.

9 A. Either way.

10 Q. But your note, you'll agree with me, is written in the past
11 tense. It's not "planning to spend" its says that you "spent
12 the entire day".

13 A. Agreed, yes.

14 Q. And you wouldn't be going back months later and writing
15 that in. That would have been something that was written
16 in your Daytimer fairly close to the event.

17 A. Probably sometime that week, yes.

18 Q. Sure. So, to that extent, at least, you'll agree with me that
19 Staff Sergeant Wheaton's recollection of July...of that July
20 12th meeting is a little crisper than yours?

21 A. Yes.

22 Q. Now...

23 A. Probably.

24 Q. Now, in answer to a question put to you yesterday by my
25 learned friend, Ms. Derrick, you indicated that at no time

1 were Whalley or MacIntyre standing up during that meeting
2 and pointing out things, I think was the way she put it.

3 A. Yes.

4 Q. Now I want to suggest to you that in a day-long meeting...

5 A. Yes.

6 Q. That it's very unlikely that at some stage during that
7 meeting they weren't up, walking around pointing out
8 things, talking, making their points, and that you weren't,
9 and that perhaps someone else wasn't, do you agree with me
10 or disagree?

11 A. I might have got up to go to the washroom or something like
12 that, but my office with a desk and a conference table in it
13 and the number of individuals who was in it, there wasn't
14 too much room to walk around I can assure you.

15 Q. Now, I'm not going to ask you to check these references, but
16 I'll give you the page numbers so that they're on the record.

17 A. Yes.

18 Q. On page 11885 you describe that meeting as being intense.

19 A. Yes.

20 Q. And on page 11886 you say that the Chief banged his fist on
21 the table and demanded to know what's going on, "What is
22 this?"

23 A. That's right.

24 Q. And on page 11893 you acknowledge that the meeting...in
25 the meeting with Whalley and Urquhart there it was

1 virtually impossible for you to effectively question the Chief
2 about these matters.

3 A. That's right.

4 Q. You also said at another point in your testimony, and this is
5 on page 11900 that you really didn't have the opportunity
6 on July the 12th in the meeting with the Chief and Urquhart
7 to press them as to how Pratico and Chant came up with the
8 same stories because, and I'm quoting, "It was hard to keep
9 that meeting on track."

10 A. That's right.

11 Q. And you've testified that Mr. Whalley's parting shot at that
12 meeting was that "If you take this case to court," by you he
13 meant you.

14 A. Yes, no question.

15 Q. "You'll be laughed out of the courtroom."

16 A. That's right.

17 Q. And I suggest to you he said that in a contemptuous,
18 disdainful fashion.

19 A. Yes, it was not received as a compliment, that's for sure.

20 Q. That's for sure. Now, then after the meeting, well,
21 immediately following that meeting, despite the fact that
22 Mr. Whalley has testified before this Commission that he
23 had no problem with your conduct at the meeting, only Staff
24 Sergeant Wheaton's, he promptly went to the Attorney
25 General or the Deputy Attorney General, I should say, and

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 complained that you weren't impartial. Isn't that correct?

2 A. That's right.

3 Q. But despite all of those things that I've just gone through.

4 A. Yes.

5 MR. CHAIRMAN

6 Mr. Outhouse, we're getting back...you're following right in
7 the footsteps of Mr. Barrett. You're making great speeches, but
8 we don't seem to get...

9 MR OUTHOUSE

10 Well, My Lord, just let me ask one more question and I'm
11 finished on this topic.

12 MR. CHAIRMAN

13 All right.

14 MR OUTHOUSE

15 Q. But despite all that.

16 A. Yes.

17 Q. You say that the Chief and Whalley weren't aggressive with
18 you during that meeting.

19 A. I said the Chief and Whalley didn't stand over me pointing
20 their fingers and...

21 Q. I see.

22 A. Yeah.

23 Q. Would you say that Staff Sergeant Wheaton's impression
24 that they were aggressive towards you, at least to that
25 extent, was right?

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 A. Well, aggressive, I mean, John MacIntyre and I exchanged
2 some pretty, what, direct remarks to one another. But the
3 impression didn't go beyond that.

4 Q. That's good.

5 A. Okay.

6 Q. All right. In the spring of 1982 I just want to confirm what
7 other things you had on your plate to set your notes in
8 context, and that's the last area I want to question you
9 about.

10 A. In when of '82?

11 Q. Yeah, in the spring of '82.

12 A. Spring of '82.

13 Q. Starting through February really, and I'm not going to ask
14 you to look at the details of your Daytimer, but first of all I
15 understand you had another murder that occurred in
16 February.

17 A. Yes.

18 Q. That was the Weatherbee case.

19 A. Yes.

20 Q. And there's frequent reference to that throughout your
21 notes.

22 A. Yes.

23 Q. It was in connection with that case, I believe, that the
24 second fist pounding that you witnessed by the Chief
25 occurred, am I correct?

1 A. That's correct.

2 Q. Yeah. I'm...I won't go into that, but that was something
3 that...that name Weatherbee appears frequently in your
4 diary throughout that time.

5 A. Yes, that was a first degree murder.

6 Q. And in addition to that you had the Ebsary matter, and by
7 that I mean the stabbing matter.

8 A. Yes.

9 Q. And that appears very frequently.

10 A. Yes.

11 Q. And you were receiving information about Mr. Ebsary from
12 Detective Woodburn, I believe it was.

13 A. That's correct.

14 Q. And again, just generally reviewing your Daytimer
15 throughout that spring, it appears as though you were
16 carrying a fairly heavy load of trials and preliminaries
17 throughout that time.

18 A. Yes.

19 Q. Now let's go to the notes. You told my learned friend, Mr.
20 MacDonald, that you normally take notes, "normally" was
21 your word, although you stopped short of saying you were
22 compulsive about it. Is that a fair characterization of your
23 evidence?

24 A. That's fair, although I think I did acknowledge, and if I
25 didn't I should have, that the number of notes in this case

- 1 would be more copious than...
- 2 Q You did say that.
- 3 A Yeah.
- 4 Q You did say that. But you do agree with me that for the
5 most part the notes that we have here in Volume 17 aren't
6 contemporaneous notes, and by that I mean they're not
7 notes that you made while you were talking to people,
8 either on the phone or in person.
- 9 A No, I, you know, I think a lot of the notes are
10 contemporaneous.
- 11 Q Most...
- 12 A Well, we could go through them bit by bit I suppose and...
- 13 Q Yes, well, unfortunately we...
- 14 A ...I think it's identified.
- 15 Q ...to a degree. Unfortunately I have to to a degree and...
- 16 A Sure.
- 17 Q ...we'll get to that. I suggest to you, though, that for the most
18 part they are recapitulations after you finished either the
19 meeting or the conversation and you are then summing it
20 up.
- 21 A Yes.
- 22 Q Either shortly after the meeting or in some cases not so
23 shortly after the meeting.
- 24 A Okay.
- 25 Q That's fair enough.

- 1 A. Yeah, that's fair.
- 2 Q. Now, and I gather as well, that you didn't keep scraps of
3 paper, and you'll often hear witnesses who seem to have
4 very fine notes say, "Well, I kept notes as I went along and
5 then I made these better set of notes and threw the scraps
6 of paper away."
- 7 A. No, you see like the notes of December 6th...
- 8 Q. Yeah.
- 9 A. ...for example.
- 10 Q. Sure.
- 11 A. The scraps of paper are right here.
- 12 Q. So you were, when you were doing them after the meetings
13 you were reconstructing them from memory not scraps of
14 paper is my point.
- 15 A. That's right.
- 16 Q. Now look at what I take to be a contemporaneous note. If
17 have Volume 29, page 33. Do you have that, Mr. Edwards?
- 18 A. Yes. Yes.
- 19 Q. Now it says it's your note and the only reason I know is
20 because I'm looking at the tab. Do you agree with me it's
21 your note?
- 22 A. It's my writing, yes.
- 23 Q. Okay. And it has a date, March the 17th, '82.
- 24 A. Yes.
- 25 Q. And I want you to look at that note and tell me what it is.

1 A. That may be a note I took when I was talking to Evers,
2 although I...

3 Q Well the record shows you spoke to Mr. Evers on April the
4 8th.

5 A. Um. But the content there, oh, maybe I got that from Harry
6 Wheaton.

7 Q Staff Sergeant Wheaton when he heard from Evers...

8 A. Yes.

9 Q The record will show, and I'm not going into the documents,
10 but...

11 A. Yes.

12 Q MacAlpine who originally got the documents to test for
13 blood, deliver...the exhibits, turned them over to Evers on
14 the 17th of March. Evers returned them to...immediately
15 did his analysis, returned them to MacAlpine on the 18th.

16 A. Yes.

17 Q The evidence is that before a formal report ever came in...

18 A. Yes.

19 Q Evers called Wheaton.

20 A. Yes.

21 Q Wheaton, in turn, called you. Now...

22 A. So that's likely the call.

23 Q That's likely the call. Certainly when you look at the note it
24 talks about a single fibre...

25 A. "Used stereomicroscope."

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

- 1 Q. "Fibres consistent," do you see that?
- 2 A. Yes.
- 3 Q. All those things.
- 4 A. Yes.
- 5 Q. Okay. So this is what I mean by a contemporaneous note.
- 6 You would have...
- 7 A. Yes, that I'm writing that down...that information as...
- 8 Q. Sure, as you're talking with Staff Sergeant Wheaton.
- 9 A. That's right.
- 10 Q. It's disjointed and it's sketchy.
- 11 A. Yes.
- 12 Q. But you're marking down the information that he's giving
- 13 you.
- 14 A. Yes.
- 15 Q. Okay. Now, we'll come back to that in a little while, but for
- 16 now I just wanted to make the point that that's what I mean
- 17 by contemporaneous and most of these notes aren't of that
- 18 sort.
- 19 A. Okay.
- 20 Q. Now apart from not being contemporaneous in the sense
- 21 which I've just described, they don't...the notes aren't
- 22 exhaustive either are they? They don't represent all of your
- 23 contacts with Staff Sergeant Wheaton or Corporal Carroll for
- 24 that matter.
- 25 A. That's right, yes.

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 Q For example, you indicated in your testimony at page...at
2 Volume 65, page 11729 that you were told by Wheaton
3 and/or Carroll on or about February 22nd that Ebsary had
4 virtually admitted to the crime in a telephone conversation
5 and yet that doesn't appear anywhere in your notes.

6 A. Right.

7 Q And you had been told by them about their first visit to
8 Dorchester and that's not mentioned in your notes.

9 A. Right.

10 Q And your conversation with Evers of April 8th isn't
11 mentioned in your notes.

12 A. No.

13 Q Or your conversation with Mr. Rosenblum on the 3rd of
14 April isn't in your notes.

15 A. Right.

16 Q So, and I could go on but the only point I wish to make...

17 A. Yes.

18 Q Is that you agree with me that these notes don't purport to
19 be comprehensive and aren't comprehensive.

20 A. No, and if any other meaning was conveyed by me it was
21 unintentional.

22 Q I'm not saying that you were attempting to convey that, Mr.
23 Edwards. Now, while I'm hesitant to embark on the task
24 which you spoke about earlier going through these notes, I
25 feel compelled to do it and unfortunately for that purpose I

1 think it's necessary to look at the handwritten notes rather
2 than the typed ones. And in Volume 17 those handwritten
3 notes start at page 21. You have your originals there and...

4 A. I do.

5 Q. And perhaps it might be just as easy if you perhaps kept the
6 book open but used your originals.

7 A. Okay. You're starting at what page now?

8 Q. Page 21 in Volume 17. These are the handwritten versions.

9 A. Okay.

10 Q. Okay. Now as I understand it from your evidence you made
11 the first notes on February the 21st.

12 A. Yes.

13 Q. And the note for February 3rd, for example, that we see at
14 the top was something that you made on the 21st of
15 November.

16 A. Yes.

17 Q. There is no indication there that that's so, but you know that
18 it's a fact.

19 A. That's right.

20 Q. Is there any reason why it doesn't indicate when you've
21 made the note?

22 A. Well, the only reason would be that I started writing on
23 February 21st and didn't put the date at the top of the page.

24 Q. All right. And your...what you're doing...

25 A. In other words, no reason.

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 Q. Okay. What you're doing is going back and recapping from
2 your memory the events that had unfolded from February
3 the 3rd to the 21st, correct?

4 A. That's right.

5 Q. Now, the original page, and while it doesn't show here, the
6 original page that you have is a legal foolscap size, if I can
7 put it that way.

8 A. Yes.

9 Q. It's been reduced for photocopying purposes.

10 A. Right.

11 Q. And at the first page of your notes, you can tell from the
12 original, is all in the same pen, correct?

13 A. That's right.

14 Q. And it was probably made all at one sitting on the 21st.

15 A. Yes.

16 Q. Correct.

17 A. Right.

18 Q. Now when you turned to page 22 in Volume 17 it says,
19 "Notes continued", do you see that? And your notes starts at
20 the top, "Notes continued, February 21st, '82."

21 A. Yes.

22 Q. You'll agree with me that you've changed pens.

23 MR. CHAIRMAN

24 Changed what, pens?
25

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 MR. EDWARDS

2 Changed pens.

3 MR OUTHOUSE

4 Q. Yes.

5 A. Possibly, I can't tell.

6 Q. Well, all right. I suggest to you that the notes that you made
7 on what we call in our exhibit book page 21, and what
8 appears in the exhibit book as 22, weren't made at the same
9 time. That is something interrupted you, you went away for
10 however long and came back to it.

11 COMMISSIONER EVANS

12 Or else your pen ran out of ink and you picked up another
13 one.

14 MR OUTHOUSE

15 Well, My Lord, the original is there and I don't think that
16 hypothesis washes with the quality of the ink at the bottom of
17 page 1.

18 MR. EDWARDS

19 A. I don't know.

20 Q. All right.

21 A. I can't tell from that.

22 Q. In your original, the notes that you have there, I believe
23 there is a telephone message from Mr. Donovan attached to
24 it. Is that correct?

25 A. Yes.

- 1 Q That's not in the book, but that is there.
- 2 A Yes.
- 3 Q Now, 23, 24, appear to be written all at the same time as
4 page 22, is that correct?
- 5 A Yes.
- 6 Q Now, when we go over to page 25 this is the one we were
7 dealing with earlier.
- 8 A Yes.
- 9 Q This is where you have the note about the 11:00 p.m. call
10 with Staff Sergeant Wheaton.
- 11 A Yes.
- 12 Q And you agree with me that that page from February 23rd,
13 '82, down to and including the last entry on that page, is all
14 written in the same pen.
15 2:52 p.m.
- 16 A It appears to be.
- 17 Q Looking at it, does it not leave you with the impression that it
18 was all written at the same time?
- 19 A That it was all written at the same time?
- 20 Q Yes.
- 21 A I don't think it was.
- 22 Q Well, let me ask you this. Would you have taken this legal
23 pad home with you on the night of February the 23rd?
- 24 A I may have.
- 25 Q I appreciate you may have, Mr. Edwards, and I'm just trying...

1 I'm not trying to be devious, I just want...

2 A. And I'm not trying to be evasive, believe me.

3 Q. As much information before the Commission as I can about
4 these points.

5 A. Yeah. No, I mean...

6 Q. No times appear.

7 A. At that time, you see, I may have taken material home. I
8 can't recall, six years ago.

9 Q. But you'll see the "11 p.m." by Mr., by the call to Staff
10 Sergeant Wheaton, correct?

11 A. Yes.

12 Q. But there's no note before that about the time you met Staff
13 Sergeant Wheaton and then you were off work for personal
14 reasons.

15 A. Yes.

16 Q. There's no, February 5th there's no, or the first entries on
17 February the 25th, there's no times. But when we get down
18 to 2:45 p.m. in the afternoon, there's a time, correct?

19 A. Yes.

20 Q. And then when we go over to the next page, the continuation
21 of February the 25th, which is again, certainly appears to be
22 in the same pen, there's another time "3:40 p.m.", correct?

23 A. Yes, there's a time there but you say "the same pen"...

24 Q. I'm not saying you couldn't have had the same pen and kept
25 it for weeks and weeks.

1 A. Yeah, it's all...

2 Q. But you write...

3 A. Government-issued pens.

4 Q. Sure. You were writing on the same page, correct?

5 A. Essentially all the same.

6 Q. You were writing these things on the same page?

7 A. Yes.

8 Q. And I suggest to you, Mr. Edwards, and I want you to think as
9 hard as you can about it, that that page, that entire page that
10 we see there, 25 and 26, was written all on or about February
11 the 25th?

12 A. I don't think so, Mr. Outhouse. I believe I put those entries in
13 separately, but I can't rule it out definitely.

14 Q. Okay. Now just while we're on that page, in the copy that we
15 have on page 25, "11 o'clock" appears very distinct, "11 p.m.".

16 A. Yes.

17 Q. But on the originals, it's not. There's a penciled over and I
18 can't tell whether it's "one o'clock" or "11 o'clock".

19 A. There is a pencil mark there, all right, no question.

20 Q. In fact, this penciling appears throughout the notes in places.
21 There's underlinings in pencil and I'm just wondering when
22 they got on there.

23 A. Oh, I can't tell you specifically.

24 Q. It was before...

25 A. It was at least a year or two later.

1 Q. Okay, it was before these notes went, were produced for the
2 purpose of this Commission, though, because the underlinings
3 appear in these handwritten notes that the Commission had,
4 correct?

5 A. Yes.

6 Q. Do you recall putting them there?

7 A. I recall highlighting them, underlining, yes.

8 Q. And, obviously, given the note at, that we look at underlined
9 on page 25, that wasn't a note that had anything to do with
10 the Marshall case or the Ebsary case. That had to do with
11 your dealings with the R.C.M.P. and perhaps your dealings
12 with your superiors. That particular one with the R.C.M.P.,
13 you were highlighting that.

14 A. Wait now, I've lost you.

15 Q. Well...

16 A. Are you referring to the "11 p.m." paragraph?

17 Q. Yes.

18 A. And your question, that had to do with my dealing with
19 Harry Wheaton?

20 Q. Yes, at the point in time when you were highlighting that, you
21 were focusing on your relationship with the investigation and
22 Harry Wheaton and not on whether Donald Marshall was
23 guilty or innocent or on whether Mr. Ebsary should be
24 convicted. You weren't grappling with those problems.

25 A. I can't tell you what I was grappling with at that time.

- 1 Q. All right, fair enough.
- 2 A. I think I may have been simply reviewing my notes.
- 3 Q. Go to page 27.
- 4 A. Yes. Now that's a different pen. It's a different colour.
- 5 Q. Sure. And that's a note that you likely made at home, is that
6 correct?
- 7 A. Yes.
- 8 Q. And it's a note that you made of a call that you had that
9 evening with Harry Wheaton.
- 10 A. Yes.
- 11 Q. And so you wrote and you made a separate page of it and
12 that's, you would say, a contemporaneous note or fairly close
13 in time. It was recorded...
- 14 A. I would say that that would have been made immediately
15 after the phone call.
- 16 Q. Okay, fair enough. Now when we go to page 28, do you have
17 that?
- 18 A. Yes.
- 19 Q. You have specific times there—9:05 and 11:35.
- 20 A. Yes.
- 21 Q. Do you agree with me that that's a contemporaneous note or
22 at least made very shortly after the meetings referred to in
23 the notes?
- 24 A. Yes.
- 25 Q. Now at 11:35 a.m., Staff Sergeant Wheaton was in your office.

1 A. Yes.

2 Q. And at that time, he confirmed to you that the meeting with
3 Chief MacIntyre was on for that afternoon?

4 A. Yes.

5 Q. And certainly left you with the impression at that time, if he
6 didn't expressly say so, that he was still planning on
7 attending.

8 A. Yes.

9 Q. Now when you go over to page 29, that's the following
10 Monday, I believe.

11 A. I'll take your word for it.

12 Q. Well, March 1st is, as I understand it, the Monday that Staff
13 Sergeant Wheaton called you and told you that he was at the
14 meeting.

15 A. Yes.

16 Q. You started, as I understand from the top of the page, you
17 started making those notes at 4 p.m.?

18 A. Yes.

19 Q. That afternoon, and Staff Sergeant Wheaton had been there in
20 the morning.

21 A. Yeah, well, he had called in the morning.

22 Q. Called in the morning, I'm sorry.

23 A. Yes.

24 Q. And, in fact, he had...

25 A. Then he came at 1:30.

1 Q. Yes, and he brought Patricia Harriss in, correct? He and
2 Carroll were both there?

3 A. Yes.

4 Q. Harriss was there.

5 A. Yes. He brought Patricia Harriss in at 3 p.m.

6 Q. Yes, that's right.

7 A. At 1:30 p.m., I'm sorry, he had left a message.

8 Q. Yes.

9 A. And at 3 p.m., he and Carroll arrived with Patricia Harriss.

10 Q. All of these notes, you agree with me, were made after
11 Harriss was in and gone.

12 A. Yes.

13 Q. And I can find no note of actual discussions with Harriss. It's
14 your summary that we see here.

15 A. That's right.

16 Q. Now when you were recapping at four o'clock in the afternoon
17 what had happened in the morning, the note that you have is
18 that Wheaton told you that he hadn't been at the meeting
19 with MacIntyre on Friday, the 26th, that just Scott had been
20 there, correct?

21 A. Yes.

22 Q. You didn't understand or recall that he was only for part of
23 the meeting, that he stayed for part of the meeting and then
24 left. That wasn't your understanding.

25 A. No.

1 Q. And, if I read your note correctly, you say you remember
2 wondering why Wheaton had not thought this investigation
3 more important than surveillance exercise but I did not
4 communicate this to him.

5 A. Right.

6 Q. So you thought of it when you spoke to him in the morning
7 and didn't raise it with him.

8 A. Right.

9 Q. It was certainly in your mind when you went to write these
10 notes at four o'clock in the afternoon, correct?

11 A. Yes.

12 Q. But you didn't communicate it to him.

13 A. Right.

14 Q. You had seen him once in the meantime and spoken to him
15 once in the meantime.

16 A. Yes.

17 Q. Didn't communicate it to him, correct?

18 A. I...

19 Q. Correct?

20 A. Right.

21 Q. You're used to this.

22 A. From your angle.

23 Q. Sure. Now isn't it entirely possible that this was simply just a
24 misunderstanding between you and Staff Sergeant Wheaton,
25 that he was there for part of the meeting but missed the tail

1 end of it. You never questioned him about it and so it never
2 came up between you.

3 A. That's a possibility, yes.

4 Q. Sure. Now go to page 31 and look at the entry there for
5 March the 5th.

6 A. Okay, now that's on two different pieces of paper.

7 Q. Leave aside the small piece for the second, and go to the big
8 piece.

9 A. "Met at office"?

10 Q. Yes.

11 A. Yes, okay.

12 Q. Now just, do you see those first two paragraphs that are
13 there?

14 A. Yes.

15 Q. Now, first of all, let me ask you whether or not those notes
16 that we see there on Friday, March the 5th, were made on
17 March the 5th or on some other day?

18 A. I believe they were made on March the 5th.

19 Q. But you have no recollection of that actually being so.

20 A. Oh, certainly not.

21 Q. And, in fact, when you look at the page that you have in your
22 original notes there.

23 A. Yes.

24 Q. The small page, which is found in our exhibit book on page
25 43, it's gotten separated in the reproduction process. When

- 1 you look at that tear-out from a notebook.
- 2 A. Yes.
- 3 Q. That covers that same day, doesn't it, March the 5th?
- 4 A. Yes.
- 5 Q. And it covers the same events, too.
- 6 A. Yes, the meeting at the office with Harry Wheaton.
- 7 Q. Also the discussion with Urquhart.
- 8 A. Yes.
- 9 Q. And it covers them in more detail.
- 10 A. Yes.
- 11 Q. And it has precise times.
- 12 A. It has one precise time, 3:30 p.m.
- 13 Q. Oh, yes, that's right. The first one just says "a.m." You're
- 14 quite correct.
- 15 A. Yes.
- 16 Q. Now I suggest to you that the note that we see on page 43 of
- 17 Volume 17 was made on or about March the 5th, but that the
- 18 one that we see on page 31 wasn't.
- 19 A. I can't...
- 20 Q. Okay, let's go down...
- 21 A. I can't help you one way or the other.
- 22 Q. Perhaps I can help you if we go to the next item.
- 23 A. Sure.
- 24 Q. The next one says: "Monday or Tuesday, March 8th or 9th."
- 25 A. Yes.

- 1 Q. "Urquhart comes to office. Tries to find out about
2 investigation. Tell him I'm not at liberty to discuss."
- 3 A. Yes.
- 4 Q. Next line says: "Had meeting with Wheaton. Didn't record
5 date."
- 6 A. Yes.
- 7 Q. Do you see that?
- 8 A. Yes, I see that.
- 9 Q. Clearly that note couldn't have been made on March the 8th
10 or the 9th, if you couldn't remember when you had the
11 meeting with Wheaton.
- 12 A. The note could have been made on March 8th or the 9th, but
13 the meeting didn't take place or didn't necessarily take place...
14 Well, it wouldn't have taken place on the 8th or the 9th or I
15 would have remembered the date.
- 16 Q. Look at the next one, Wednesday, March 17th.
- 17 A. Yes.
- 18 Q. "Met at noon with Wheaton."
- 19 A. Yes.
- 20 Q. "Says he has talked to Lou Matheson."
- 21 A. Yes.
- 22 Q. Now, again, it's a very brief note. Are you saying that that's
23 something you made after the meeting with Mr. Wheaton was
24 over and you wanted to record the substance of it?
- 25 A. No, I can't say when it was made.

- 1 Q. No. When we go down, though, to Monday, March the 22nd.
- 2 A. Yes.
- 3 Q. You see "3:10 p.m." and then sort of a detailed note of what
- 4 happened there.
- 5 A. Yes.
- 6 Q. And then "3:50 p.m."
- 7 A. Yes.
- 8 Q. When we turn over the next page, we have "4:00 p.m."
- 9 A. Yes.
- 10 Q. And "4:20 p.m."
- 11 A. Yes.
- 12 Q. And I suggest to you, you have the original of your notes
- 13 there in front of you.
- 14 A. Yes.
- 15 Q. When you read the contents of those two pages that we see
- 16 here at pages 31 and 32, you look at the pen again and you
- 17 look at your more detailed note for March 5th, which we find
- 18 on page 43.
- 19 A. Yes.
- 20 Q. The most reasonable conclusion that you can draw is that
- 21 pages 31 and 32 were all written on March the 22nd.
- 22 A. Yes, I'd agree with that.
- 23 Q. So you were going back and recapping events from March 5th
- 24 through to the 22nd.
- 25 A. Apparently so, yes.

- 1 Q. Now while we're on the 22nd, I want to draw your attention
2 to the note at the top of page 32. Do you have that?
- 3 A. Yes.
- 4 Q. It says: "4:00 p.m. Spoke with Wheaton. Said he had been
5 contacted by Dolph Evers who confirms that fibres on knives
6 taken from Ebsary's wife's basements came from Marshall's
7 jacket."
- 8 A. Yes.
- 9 Q. "He had saved original exhibits."
- 10 A. Yes.
- 11 Q. "Wheaton asked me to check at courthouse for Seale's jacket.
12 I returned call. Not there."
- 13 A. Yes.
- 14 Q. "I did and returned call. Not there." Do you see that?
- 15 A. Yes.
- 16 Q. Now the difficulty that I have with that is that your
17 contemporaneous note of your conversation with Wheaton is
18 dated March the 17th.
- 19 A. Uh-huh.
- 20 Q. That's found...
- 21 A. Yes, I see your difficulty.
- 22 Q. It's found in Volume 29, page 33. It appears to be
23 inconsistent.
- 24 A. It does, yes.
- 25 Q. And it would appear, if I take your contemporaneous note as

1 being correct, that while this note shows you had a
2 conversation with Wheaton at 4:00 p.m. on March the 22nd
3 and he informed you about these fibres, that that, in fact,
4 happened on the 17th.

5 A. Unless I had two conversations.

6 Q. There's no note certainly...

7 A. No.

8 Q. On the 17th.

9 A. No.

10 Q. About that, is there?

11 A. No.

12 Q. No notes in the ones that we find here.

13 A. Uh-huh. Maybe if I can just take a moment to read them, Mr.
14 Outhouse.

15 Q. Certainly, Mr. Edwards.

16 A. You know, unless there were two telephone calls.

17 Q. And if there were, you didn't make a note of the other one, at
18 least, a note that was recorded along with...

19 A. That's possible.

20 Q. This chronology from March 5th through to the 22nd.

21 A. Right.

22 Q. All right, now there are no notes that I can find from March
23 the 28th through to April the 19th. Is there any reason for
24 that that you can think of?

25 A. Not that I can think of, no.

- 1 Q. So there's no notes during that period and then when we go to
2 page 34... I might say, My Lords, that in the book, Volume 17,
3 the notes start on page 34 and then there's page 35 and 36
4 which is a typed memorandum to Mr. Edwards from Mr.
5 Williston. That appears, to me, to just be put in there out of
6 sequence and certainly Mr. Edwards' original notes don't have
7 that. Correct, Mr. Edwards?
- 8 A. You're referring to what now?
- 9 Q. Now if you look at page 35 and 36.
- 10 A. Of Volume 29?
- 11 Q. I'm sorry, Volume 17, Mr. Edwards, I apologize, your notes.
- 12 A. 35 and 36.
- 13 Q. Yes.
- 14 A. Yes, that's Mr. Williston's memo.
- 15 Q. And they're sandwiched into your April 16th/19th notes, but
16 they're not in your original...
- 17 A. They're not my originals, no.
- 18 Q. That's just a glitch in the xeroxing process, correct?
- 19 A. A glitch.
- 20 Q. All right. Now the note at the top of page 34 where these
21 begin, notes made April 19th '82, beginning at 9:00 a.m.,
22 correct?
- 23 A. Right.
- 24 Q. Now do you agree with me, first of all, that that note at the
25 top is in a different pen?

1 A. It appears to be, I agree with that, yeah.

2 Q. Do you know when it was put there and why?

3 A. No, I mean there's no way I can remember putting that there.
4 The why part of it would be so that I would know when
5 exactly those notes were made because, obviously, they were
6 a significant set of notes.

7 Q. It's your handwriting.

8 A. Oh, no question.

9 Q. Okay. Now I only have one more question in terms of these,
10 the writings, and we'll go back to the typed copies. There are
11 a couple of questions on substance.

12 A. Yes.

13 Q. But if you would just flip over in your originals to the meeting
14 with Donna Ebsary on April the 17th, and in Volume 17, it's
15 found on page 39, My Lords.

16 A. Yes.

17 Q. Do you have that? You agree with me that it appears that you
18 completed your notes down to the meeting with Donna Ebsary
19 and then there was a break and you came back and you
20 started again.

21 A. Yes.

22 Q. With a different pen and continued on?

23 A. That appears right, yeah.

24 Q. Do you have any knowledge of why the interruption or how
25 long it lasted?

1 A. No.

2 Q. None, okay. All right, now if you would stay with your
3 original handwritten notes, Mr. Edwards, I think that would
4 be all right. But for everyone else, if anyone cares to follow at
5 this stage, we can go back to page eight of the typed versions.
6 Now I'm referring to notes that you made of April the 16th
7 and probably in your handwritten copies, you're down at
8 about page two and it's the part about your meeting with
9 Superintendent Scott and Staff Sergeant Wheaton, the
10 discussion about the Attorney General's Department, do you
11 have that? It appears at the bottom of page eight in the
12 typed version.

13 A. Yes, the paragraph beginning "In call with Wheaton"?

14 Q. Yes, that's correct.

15 A. "Suggest that he..." .Yes.

16 Q. Now you wanted them, and this we've heard a thousand times
17 over, to demand the file and use a search warrant if
18 necessary.

19 A. Yes.

20 Q. And they wanted, their position was they wanted direction
21 from the A.G.

22 3:14 p.m.

23 A. Yes.

24 Q. And I suggest to you that it was really Inspector Scott as the
25 commanding officer who was the one taking that position.

- 1 A. Yes, that's fair.
- 2 Q. And that's the way that meeting was left. That is, when that
3 meeting was over there was no doubt in your mind that to
4 get the RCMP to go in and do what you wanted them to do
5 that you were going to have to get a direction from the AG.
- 6 A. That's right.
- 7 Q. And you say that in Volume 66 of the transcript at page
8 11788. There's no need for you to refer to it. Those were
9 your words. Now, having left the meeting that way...
- 10 A. Yes.
- 11 Q. And by the way, with no indication whatever there that
12 Harry Wheaton was going to leave that meeting and go
13 down and get things from the Chief, which is something my
14 learned friend Mr. Pugsley suggested to you this morning.
15 There was no suggestion of that at the meeting, was there?
- 16 A. That he was going to do it after that meeting.
- 17 Q. Yeah. He was going down that afternoon and get things
18 from MacIntyre.
- 19 A. No, there's another...there's another note on that, I believe.
- 20 Q. Not on this day.
- 21 A. No.
- 22 Q. But certainly there is no note here.
- 23 A. That's right.
- 24 Q. At two o'clock you meet. There's no suggestion at that
25 meeting that Wheaton is then going down and get things

1 from the Chief that afternoon.

2 A. No.

3 Q. And, in fact, as you say, that meeting was left on the basis
4 you were going to get a direction from the AG and they
5 weren't going to go without it, correct?

6 A. Right.

7 Q. Yet, when you go to the next day, page 10 in our version,
8 that's on Exhibit 7 of the exhibit book, Volume 17, and it
9 appears just before Monday, April 19th, '82, in the originals.
10 The quote is, "Told Wheaton that I thought he should get the
11 entire file from city police. Said he would go down Monday
12 and get it." Do you see that?

13 A. Yes.

14 Q. Now you leave a meeting the previous day.

15 A. Yes.

16 Q. Where it's clear to you that they're not going to go get it
17 without a direction from the Attorney General.

18 A. Yes.

19 Q. Superintendent Scott, who is the officer in charge, takes
20 that position. Yet if this note is correct.

21 A. Yes.

22 Q. The very next day, before you've ever gotten a direction
23 from the AG.

24 A. Yes.

25 Q. You say to Harry Wheaton, "You go down to the police

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 station and get that file," and Harry Wheaton says, "Yes, I'll
2 do it on Monday."

3 A. Yes. That's what the notes says.

4 Q. You recognize that Superintendent Scott was the
5 commanding officer.

6 A. I did, yes.

7 Q. I suggest to you that it would be almost unthinkable that
8 the very day after the meeting you've described.

9 A. Yes.

10 Q. You would be suggesting to Wheaton that he go down and
11 get the file. You already determined they weren't going.
12 Scott had taken that position and you were going to get a
13 direction from the Attorney General.

14 MR. PINK

15 But my friend leaves out what's on page 9.

16 MR OUTHOUSE

17 What?

18 MR. PINK

19 The conversation earlier in the day with Mr.Wheaton.

20 MR OUTHOUSE

21 Q. I'm not leaving it out. I'm sure Mr. Edwards is well aware of
22 what's in his notes. I'm just suggesting that after this
23 discussion about the file and the RCMP not going down and
24 demanding the file you're now suggesting it to Staff
25 Sergeant Wheaton again on Saturday.

1 A. Mr. Pink has piqued my curiosity now. Where is the...

2 Q. Well, he's referring, I presume, well, I don't think he's
3 sworn, but he'd like to give evidence I'm sure, I'm sure he's
4 referring to the fact that your notes show that Mr. Wheaton
5 had, in fact, gone despite previous indications, to the police
6 station and gotten statements. And I guess maybe the
7 inference that Mr. Pink would like you to draw in your
8 answer is that having gotten some of it he can go down now
9 and get the rest and demand the entire file.

10 A. Uh-hum.

11 COMMISSIONER EVANS

12 It's pretty obvious.

13 MR OUTHOUSE

14 Q. Is that your rationalization?

15 A. My rationalization.

16 Q. I shouldn't say that to you. I should have said it to Mr. Pink.

17 A. No, I'm looking for that reference.

18 Q. Perhaps, Mr. Edwards, I'll spare you the trouble and we'll
19 leave it to be argued about. I...the record is there, and it
20 speaks for itself.

21 A. You know, the only thing I can suggest is that he said they
22 wanted a direction to the Chief from the AG to turn over the
23 info on the 16th, and then me telling him that I thought he
24 should get the entire file from the city police. Maybe Scott
25 wasn't as definitive. Maybe he was indicating that was a

1 preferred option the day before. I can't help you.

2 Q. Well, all right, be careful. Because you've already gone on
3 record, as I pointed out, as saying in Volume 66 page 11788
4 it was clear to you that they weren't going to get that file.

5 A. Yes.

6 Q. Unless they had the direction from the AG.

7 A. Yes. There was no doubt that that was my ...that was my
8 feeling by the time I called Gordon Gale on Monday.

9 Q. Anyway, when you were writing these notes up on Monday
10 that was something that you recall two days earlier having
11 told Wheaton.

12 A. Yes.

13 Q. And that was what you recalled two days earlier he
14 responded.

15 A. Yes.

16 Q. I'd...I suggest to you that if the date is wrong...let me
17 rephrase it. I suggest to you that his ready answer would
18 have made a lot more sense on Saturday, April the 24th
19 because, in fact, he did go down on Monday, April the 26th
20 and get the entire file. That's what the record shows.

21 A. I lost you, I'm sorry, Mr....

22 Q. Well, what I'm saying to you is if you're wrong about the
23 date as you...it appears you were about the conversation
24 with Wheaton in terms of the knives and Evers. If the date
25 is wrong, the date is off, in fact, Staff Sergeant Wheaton did

1 go down on the 26th of April and pick up the entire file and
2 was planning to do that as of Saturday, April the 24th. So if
3 you said to him on Friday that he better go...or Saturday,
4 April the 24th go get that file he would have said, "Yes, I'm
5 going on Monday," and that's what he did. I'm just
6 questioning the date.

7 A. Yes. But that doesn't jive with my recall at all.

8 Q. All right. Go to page 11. This is...this is something that Mr.
9 Barrett, my friend, has already touched on.

10 A. Right.

11 Q. In the middle of page 11 it says, "In meeting with Wheaton
12 also discussed advisability of questioning Rosenblum." I'm
13 not going to go on...

14 A. Which date is this?

15 Q. This is April 19th now.

16 A. Okay.

17 Q. And this is a meeting that presumably took place on the
18 19th. Okay.

19 A. Yes. Yes. Okay. I have it.

20 Q. All right. Now, that note was made of a meeting on the
21 19th and it was made, according to your recollection, on the
22 19th. You made the note on the 19th, the meeting was the
23 19th.

24 A. Yes.

25 Q. And that note, I take it, is as likely to be accurate as any of

1 the other notes I find here.

2 A. Yes.

3 Q. I always hate that question. I was going to ask you whether
4 you're as sure of that as you are of everything else in your
5 notes, but I won't. I'll spare you that. I suggest to you, Mr.
6 Edwards, that that note is inaccurate. You would never have
7 said, what this note says to Staff Sergeant Wheaton because
8 you had already, yourself, questioned Mr. Rosenblum.

9 A. Oh, no, I mean, I had had the conversation with Mr.
10 Rosenblum, questioned him, but I didn't feel that that
11 conversation formed part of the police investigation and that
12 he should be...he should be questioned by Staff Sergeant
13 Wheaton independently and probably in more detail that I
14 did.

15 Q. Did you ever follow up on that request?

16 A. I don't think so, no.

17 Q. And were you questioning in any way that Mr. Rosenblum
18 would change his answer or that you couldn't prepare an
19 affidavit for Mr. Rosenblum to sign based on your
20 conversation with him?

21 A. No, but I didn't have a written statement from him so I
22 assume that that was my rationale.

23 Q. Well, I know that that's what you're assuming and I'm not
24 imputing anything wrong in motive or otherwise. I'm just
25 suggesting to you that the note is inaccurate and it's an

1 inaccurate reflection of what happened at that meeting.

2 A. Well, I disagree.

3 Q. All right. In your original notes that you have in front of
4 you you'll notice that someone has underlined the word
5 "Rosenblum" in that line, correct?

6 A. Yes.

7 Q. And you'll notice that they have then put an "X" after the
8 line.

9 A. Yes, someone did, yes.

10 Q. And for some reason that doesn't appear in the copies that
11 we have, the "X" doesn't, the underlining does. Why is that?
12 Do you have any explanation?

13 A. No idea.

14 Q. Does it appear to you in looking at it that somebody has
15 looked at it and said that you're wrong?

16 A. No.

17 COMMISSIONER EVANS

18 Did you put the "X" there?

19 MR. EDWARDS

20 A. I don't think so. I may have but if I did perhaps it was just
21 to note that passage, but that doesn't say to me that
22 somebody marked that wrong.

23 Q. Well, and I'm only interested if you marked it wrong.

24 A. Well, I know I never marked it wrong. I can guarantee you
25 of that.

1 Q. But you agree with me that there are very...there are,
2 throughout your notes, your originals, there are penciled
3 underlinings.

4 A. Yes.

5 Q. Now, it's not your recollection that you made them, or you
6 don't know one way or the other.

7 A. That's right. I don't know one way or the other.

8 Q. All right.

9 A. But I can tell...

10 MR. CHAIRMAN

11 Before all of these notes came into the possession of
12 Commission counsel, did anyone else have access to them other
13 than you?

14 MR. EDWARDS

15 After they came into the...

16 MR. CHAIRMAN

17 No before. After you made them, between the time you
18 made the notes and the time that...

19 MR. EDWARDS

20 They were turned over to Commission counsel.

21 MR. CHAIRMAN

22 Yes.

23 MR. EDWARDS

24 No, no, I don't think so. Not that I can recall.
25

1 MR. CHAIRMAN

2 So...

3 COMMISSIONER EVANS

4 Your secretary transcribed them.

5 MR. EDWARDS

6 Secretary transcribed them, but other than that.

7 MR. MacDONALD

8 We've never had the original notes. Commission counsel has
9 never had the original notes.

10 MR. CHAIRMAN

11 All right. You still have them.

12 MR. EDWARDS

13 Yes.

14 MR. CHAIRMAN

15 But have they...all right, then read...try it the other way.
16 Have these notes been in the hands, to your knowledge, other
17 than from...for the purpose of your secretary transcribing them
18 been in the hands of any person other than yourself?

19 MR. EDWARDS

20 Well, after the...after Mr. Pink and Mr. Saunders were
21 appointed counsel they had them in their possession for awhile.

22 MR OUTHOUSE

23 I perhaps should say for the completion of the record, My
24 Lord, that obviously I've had them as well to look at.

25

1 MR. PINK

2 And other parties have had access to the original notes.

3 MR. EDWARDS

4 Yes.

5 COMMISSIONER EVANS

6 Who's fond of making x's?

7 MR. CHAIRMAN

8 I hope this...

9 MR OUTHOUSE

10 I can only assure the Commission that I haven't.

11 MR. EDWARDS

12 Will the X-maker please stand up?

13 MR OUTHOUSE

14 Q. Mr. Edwards.

15 A. Yes.

16 Q. You do not claim authorship of those x's or the penciled
17 underlinings.

18 A. Or deny it.

19 Q. Yeah.

20 A. I don't think I made the "X". I may have. But I can tell you
21 if I did it was just to note that place not to say, gee, that's
22 wrong.

23 Q. You go on in that note to say "It would be extremely
24 material to the admissibility of the present testimony to
25 show that the defence did not know of this evidence at the

1 time."

2 A. Yes.

3 Q. "Must be able to show that the evidence," and you agree that
4 there is a typo there, it should say, "Was not left out by the
5 defence."

6 A. That's right.

7 Q. "For tactical reasons."

8 A. Right.

9 Q. It doesn't say told Staff Sergeant Wheaton that I had
10 already questioned Rosenblum about this and I want him to
11 take statements to confirm it. Nothing of that sort.

12 A. It doesn't say that but I believe I did tell Mr. Wheaton that I
13 had spoken with him.

14 Q. I see. Do you honestly recall that now, Mr. Edwards, or are
15 you just speculating?

16 A. I'm saying I'm pretty sure, but I may not have, it's...

17 COMMISSIONER EVANS

18 He starts off by saying "In the meeting with Wheaton also
19 discussed advisability of questioning Rosenblum," and then he
20 keeps right on. "I told him," who's he telling that to?

21 MR OUTHOUSE

22 Telling Wheaton.

23 COMMISSIONER EVANS

24 "That it would be extremely material to the admissibility of
25 the present testimony of Chant and Harriss to show the defence

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 did not know of this evidence at the trial."

MR OUTHOUSE

2
3 My point, My Lord, is that Mr. Edwards' own evidence is
4 that he had already questioned Mr. Rosenblum on that very point
5 and satisfied himself that they didn't know.

COMMISSIONER EVANS

6
7 All right. So, he's passing it on to Wheaton.

MR OUTHOUSE

8
9 That certainly isn't what he's saying. He's not saying they
10 didn't know. He's saying it's important to find out, to determine.

COMMISSIONER EVANS

11
12 Well, he's probably explaining to Wheaton, who is a police
13 officer, how important it would be for the counsel to know about
14 it.

MR. CHAIRMAN

15
16 That's right. He should have...

MR OUTHOUSE

17
18 Yes, but my point, My Lord, and ...

COMMISSIONER EVANS

19
20 Maybe I'm...

MR OUTHOUSE

21
22 God knows I'm not here to answer questions, but if Mr....if
23 someone in Mr. Edwards' position speaks to a defence counsel of
24 Mr. Rosenblum's repute and gets certain assurances from him, he
25 is then not going to sic a police officer on that defence counsel

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 without telling the police officer of his previous conversation and
2 the content of it and why he is sending him.

COMMISSIONER EVANS

4 Well, it's so Wheaton can satisfy himself.

MR. CHAIRMAN

6 Well, I would think it's equally as logical when you read that
7 first part, "In meeting with Wheaton also discussed advisability
8 of questioning Rosenblum." I find it would be almost
9 inconceivable for Mr. Edwards to have this discussion without not
10 mentioning it, but I can't see any reason why he would note it.

MR. OUTHOUSE

12 Neither can I.

MR. CHAIRMAN

14 You know, this makes logic...you know, I have no difficulty
15 accepting the logic of the reasoning that's been articulated by Mr.
16 Edwards with respect to that paragraph, that note, and certainly
17 whatever he may know, any...I would think any prudent Crown
18 Prosecutor would suggest to the investigating officer that, if for no
19 other reason, for completeness of the record, that he go and
20 interview Mr. Rosenblum and get a statement from him.

MR OUTHOUSE

22 Well, My Lord, as I said, I'm not here to argue with you. I
23 have...with respect, I have the greatest difficulty understanding
24 the way that note is put in the context that this witness, Mr.
25 Edwards, had already spoken to Mr. Rosenblum and gotten the

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 very information which he's asking Staff Sergeant Wheaton to get.
2 But I don't propose to argue with you.

COMMISSIONER EVANS

4 There may be a little difficulty here in that we seem to be
5 casting, and some certain counsel are casting Mr. Edwards in the
6 role of an investigator rather than the role of a prosecutor. And
7 that isn't his function. He got some information and he passes it
8 on to the investigator.

MR. EDWARDS

10 That's the very point I'm just here waiting to make. That,
11 you know, and I think I've made the point before, that I felt that
12 here my involvement in the investigation was very close to the
13 fine line past which I shouldn't go. And, you know, I...I felt it was
14 part of the police investigation to speak to Mr. Rosenblum.

MR OUTHOUSE

16 Q. Mr. Edwards, I just have a couple of more questions. Can
17 you tell the Commission why you made no notes from April
18 the 20th to July the 12th?

19 A. I think I...

20 Q. To July the 12th.

21 A. Yes, well, July the 8th there is a few that were made at the...

22 Q. Oh, I'm sorry.

23 A. ...Chambers application.

24 Q. I didn't...

25 A. But other than that, yes, you're right, and I believe I gave

1 that in my direct and I can't answer it. There is some
2 correspondence in there which would fill in some of the
3 blanks. There's May correspondence and there's also... Well,
4 there was the meeting with Rutherford and I've
5 acknowledged that I was remiss there.

6 3:31 p.m.

7 Q. There was also meetings...

8 A. I will always regret not having notes of that meeting.

9 Q. But there were also meetings with Wheaton and Carroll
10 during that period and you kept no notes of those.

11 A. There could have been.

12 Q. In fact, your Daytimer discloses, for example, a meeting with
13 Carroll and a meeting with Wheaton?

14 A. Yes.

15 Q. After that, separate meetings with them, isn't that correct?

16 A. Well, if you say they're there, I'd have to look to check.

17 Q. And, in fact, I...

18 A. Assuming you're correct.

19 Q. And I don't want there to be any misunderstanding about the
20 document that Mr. Pugsley circulated this morning. I don't
21 know whether it's been marked as an exhibit.

22 A. Yes, it has.

23 Q. If it has, it should be clarified that it's simply a recap of
24 contacts that appears in you notes.

25 A. Yes, that's the way I took it.

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 Q And it is not an exhaustive summary of your contacts with
2 Wheaton and Carroll.

3 A. That's right.

MR. CHAIRMAN

4
5 Were you involved in prosecuting the other murder trial in
6 that period?

MR. EDWARDS

8 The Weatherbee?

MR. CHAIRMAN

10 Yeah.

MR. EDWARDS

11
12 As it turned out, that became a guilty plea. But after
13 considerable legwork had been done to get it ready.

BY MR. OUTHOUSE

14
15 Q Mr. Edwards, one final question. There are no entries in your
16 Daytimer for meetings with anyone concerning the Marshall
17 case, including Staff Sergeant Wheaton and Superintendent
18 Scott on either April the 16th or April the 19th. Isn't that
19 correct? You can confirm it if you wish, but I'm sure that's
20 what you'll find.

21 A. No, not on April 16th nor the 19th.

22 Q Nor the 17th.

23 A. Pardon me?

24 Q Nor the 17th?

25 A. Nor the 17th. Nor...

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 Q. Those are all my questions, Mr. Edwards.

2 A. Well, I was going to say the following Monday, Tuesday, and
3 Friday, there's no notes of meetings there either.

4 Q. There is a meeting, I believe, on the 26th concerning Oscar
5 Seale?

6 A. In my Daytimer?

7 Q. Yes.

8 A. In August?

9 Q. If I said "August," I'm mistaken.

10 A. April.

11 Q. April.

12 A. Okay, your question was April 19th?

13 Q. Yes.

14 A. There's no note.

15 Q. April 16th?

16 A. Friday, April 16th, there's no note there at all. April 17th,
17 which, of course, is a Saturday, no note. And April 19th, and
18 then the following Friday, the 23rd and Saturday, the 24th, no
19 note. And Monday, the 26th, no note. But on the 26th, 10:45,
20 Oscar Seale. I believe I met with Oscar Seale that day.

21 COMMISSIONER EVANS

22 Do you make a note when you go fishing?

23 MR. EDWARDS

24 Maybe that was off for personal reasons.

25

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 MR. OUTHOUSE

2 Those are all my questions.

3 MR. CHAIRMAN

4 Now it's twenty to four and it pains me to suggest, Mr.
5 Edwards, that you... You've been extremely patient and that
6 you're going to have to come back next week. We still have one,
7 two, three... Well, I assume that Mr. Wildsmith and Mr. Ross and
8 Mr. Saunders wish to cross-examine this witness.

9 MR. SAUNDERS

10 I have very few questions, My Lord, of Mr. Edwards, at this
11 stage.

12 MR. CHAIRMAN

13 Can I get some indication?

14 MR. ROSS

15 I think I'm going to require a minimum of 20 minutes, My
16 Lord.

17 MR. CHAIRMAN

18 Mr. Wildsmith?

19 MR. WILDSMITH

20 Probably a little bit longer, maybe half hour.

21 MR. CHAIRMAN

22 We'll adjourn until Monday at 9:30. And I have to remind
23 counsel again before we leave that the responsibility of
24 Commission counsel is to canvass all areas and, as the Rules of
25 Evidence do not apply with the same rigidity, Commission counsel,

MR. EDWARDS, EXAM. BY MR. OUTHOUSE

1 in effect, do a lot of cross-examination during examination-in-
2 Chief. And if an area has been thoroughly canvassed by
3 Commission counsel, endless repetition certainly doesn't help the
4 Commission and doesn't convince us of anything. But that doesn't
5 mean that some cross-examination isn't necessary or warranted.
6 But I'm detecting repetition, matters that have been so thoroughly
7 canvassed by Mr. MacDonald in his examination, which is his duty.
8 If we had Utopia, we'd be striving for that sometime between now
9 and, I don't know when, there would be no need for any questions
10 after Commission counsel completed. With these words of
11 wisdom, I trust you'll have a good weekend. Enjoy your
12 cucumbers!

13 3:36 p.m. INQUIRY ADJOURNED UNTIL 9:30 a.m. MAY 30th.

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REPORTER'S CERTIFICATE

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



Margaret E. Graham

DATED THIS 26 day of May, 1988 at Dartmouth, Nova Scotia