

ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

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

1 MR. CHAIRMAN

2 Mr. Ross.

3 MR. ROSS

4 Thank-you, My Lord.

5 MR. FRANK EDWARDS, recalled and still sworn, testified as follows:

6 EXAMINATION BY MR. ROSS

7 Q Mr. Edwards, my name is Anthony Ross and I want to ask  
8 you one or two questions on behalf of Oscar Seale. Now, I  
9 take it, sir, that when you wrote your report of April, 1982,  
10 you had at that time received copies of all of the 1971  
11 statements, didn't you?

12 A. Yes.

13 Q. And I take it, sir, that it was in that report that you first  
14 communicated to the Department of the Attorney General  
15 the robbery theory, am I correct?

16 A. I believe so. Without looking at the report, I believe.

17 Q. Well, if you care to, I can tell you where you can find it.  
18 There's one in Volume 31 at page 22, and there is a more  
19 comprehensive report in Volume 31 at page...sorry page 29.  
20 There's the report of the 22nd of April, 1982.

21 A. Yes, I'm just looking for my original copy. You're referring  
22 to which report now, the April 5th one, Mr. Ross?

23 Q. No, April 22. It was commenced...

24 A. The one that began on April 22.

25 Q. Yes.

1 A. And finished May 3rd.

2 Q. Yes.

3 A. Yes.

4 Q. And, is it fair to say that that was the position that was  
5 presented for all intents and purposes to the Appeal Division  
6 on the reference?

7 A. Well, in that report I believe I was recommending acquittal  
8 on the basis of miscarriage at that time.

9 Q. Sure. Now...

10 A. Yes, but as far as the robbery theory is concerned, yes, I  
11 think that's a fair statement.

12 Q. Sure. Now, as far as Ebsary is concerned.

13 A. Yes.

14 Q. You knew, having had those reports, that as far back in  
15 1970 there was the report about the incident in which  
16 Ebsary was stopped a twelve-inch butcher knife when at  
17 [Gratnick?]

18 A. Yes.

19 Q. You have that information.

20 A. I believe I had it at that time.

21 Q. And I take it, sir, that you had Wheaton's first report in  
22 which he classified Ebsary as being bizarre.

23 A. I believe so, yes.

24 Q. And referred to him...referred to the fact that he had a  
25 fondness for knives.

1 A. Yes, I think that's correct.

2 Q. So, in April '82 you had all this information.

3 A. Yes.

4 Q. And I take it, sir, that you did not get involved in this  
5 matter until February of 1982.

6 A. That's correct.

7 Q. So, in two months all the information had been gathered  
8 necessary for all intents and purposes to point the finger at  
9 Ebsary.

10 A. Yes.

11 Q. Yes. Now as far as Sandy Seale is concerned, we received  
12 evidence, we received evidence before this inquiry to the  
13 effect that Sandy Seale was a young man of impeccable  
14 character, are you aware of that evidence?

15 A. I've never heard anything to the contrary.

16 Q. I see. And is it fair to say that in April of 1982 when you  
17 forwarded that report to the office of the Attorney General,  
18 you were aware that Sandy Seale was a young man of  
19 extremely good character?

20 A. Yes.

21 Q. Did you do anything to look into Sandy Seale's character?

22 A. No.

23 Q. Was there any reason for that?

24 A. Beyond...beyond what I knew about his good reputation at  
25 the time, there was nothing to make me question that.

- 1 Q. I see. But in spite of the good reputation for reasons that  
2 we'll get to at a...a little later.
- 3 A. Yes.
- 4 Q. You opted to accept Sandy Seale as a potential robber rather  
5 than Ebsary as a bizarre person going off half-cocked and  
6 perhaps stabbing Sandy Seale.
- 7 A. I suppose that's one way of putting it, yeah.
- 8 Q. Is there another way to put it?
- 9 A. Well, as I did put it.
- 10 Q. I see. If you have these statements from 1971 what, if any,  
11 credence did you give to the statement of Sandra Cotie to  
12 the effect that she attended the dance at St. Joseph's High  
13 School and that... Sorry, not Sandra Cotie. I'm sorry. What,  
14 if any, credence did you give to the statements of  
15 Noseworthy that he attended the dance and he left early  
16 leaving Sandy Seale there? Left around 11:30 leaving Sandy  
17 Seale there.
- 18 A. I'm sure I considered it at the time but I don't recall, I can't  
19 recall what significance I gave it at the time.
- 20 Q. What about the evidence of Alanna Dixon and Keith Beaver  
21 that they left around 11:40 and that Sandy was with them?
- 22 A. The same answer.
- 23 Q. I see. And the fact that Alanna Dixon and Keith Beaver  
24 could put Sandy Seale with them at the corner by Pollett's  
25 Drugstore around 11:45, did that matter?

1 A. Well, of course, it would matter but generally speaking it's  
2 been my experience that lay witnesses don't check precise  
3 times and that times that they do give have to be treated as  
4 rough approximations in most cases.

5 Q. I see. So, I take it then that as far as the evidence of Keith  
6 Beaver and Alanna Dixon is concerned, you treated it just as  
7 a rough estimation.

8 A. That may be so. As I say, I don't specifically recall my  
9 thought processes when considering those statements.

10 Q. Well...

11 A. I know I read them.

12 Q. Yes. Did you find anything to refute the statements of  
13 Alanna Dixon and Keith Beaver that Sandy Seale was with  
14 them at the corner of George and Argyle at or around 11:40  
15 p.m. that night?

16 A. No.

17 Q. Did you try to find anything to refute that?

18 A. Well, I considered all the evidence we had and, as I say, I  
19 just can't reconstruct that in detail for you. All I can tell you  
20 is that I came to the conclusion I did come to, right or  
21 wrong.

22 Q. I appreciate the conclusion that you came to, Mr. Edwards.  
23 What I'm trying to do is go through the process at arriving  
24 at that conclusion.

25 A. Yes, and, you know, we're talking over six years ago now

MR. EDWARDS, EXAM. BY MR. ROSS

1 and I just can't reconstruct that in detail for you.

2 Q I appreciate that, sir, but at that time you had the written  
3 reports from 1971.

4 A. Yes.

5 Q And I am telling you that as I read the reports from 1971 it  
6 seems as though the best evidence available is that Sandy  
7 Seale was at the corner of George and Argyle around 11:45  
8 p.m. Isn't that correct?

9 A. There was evidence to that effect.

10 Q And if you back up a bit even Constable Mallon who was at  
11 the dance.

12 A. Yes.

13 Q He indicates that, as I recall his evidence, that it was around  
14 11:40, which was the last time that he ejected Sandy Seale  
15 from the dance.

16 A. You could be correct on that.

17 Q Yes. And, then to get away from the lay witnesses for  
18 awhile. Did you read the statement of Marvel Mattson,  
19 which is found in Volume 16, page 59?

COMMISSIONER POITRAS

21 What was that page again, Mr. Ross?

MR. ROSS

22 Q Page 59, Volume 16.

23 A. I believe I read it, yes.

24 Q Yes. And as a matter of fact you would not classify Marvel  
25



1 Mattson as a lay witness, would you?

2 A. I'm just trying to find something in the statement that  
3 would indicate otherwise. Perhaps you might point it out to  
4 me.

5 Q. Well, as I recall he looked...his statement indicates that he  
6 had watched the news, he went upstairs to go to bed  
7 around...

8 A. Is he a former policeman is that...

9 Q. Yes.

10 A. ...what you're getting at?

11 Q. Yes. A former policeman and he had gone upstairs after  
12 watching the news.

13 A. Uh-hum.

14 Q. His evidence before this inquiry was that it was around ten  
15 minutes to twelve.

16 A. Right.

17 Q. Did you ever speak to Marvel Mattson?

18 A. No.

19 Q. But you had that statement?

20 A. I believe so.

21 Q. Did you suggest to Staff Sergeant Wheaton that he should  
22 speak to Marvel Mattson?

23 A. I don't recall.

24 Q. I see. Now you'd agree with me that Marvel Mattson would  
25 be a very credible and a serious...a witness that no one could

- 1 take anything other than seriously.
- 2 A. I mean I've never interviewed the man or seen him testify,  
3 so I don't know if I could agree with that. But on the other  
4 hand I can't disagree with you.
- 5 Q. Yes. But I mean let's just check his credentials. A RCMP  
6 officer.
- 7 A. Uh-hum.
- 8 Q. Retired.
- 9 A. Okay.
- 10 Q. Living in the general area.
- 11 A. Yes.
- 12 Q. He hears about somebody bleeding in the park.
- 13 A. Uh-hum.
- 14 Q. His indication is that he picks up the phone and he calls the  
15 police.
- 16 A. Yes.
- 17 Q. His further indication is that shortly after there is a car  
18 stopping outside of his place, two people getting into it and  
19 heading for the scene of the probable stabbing and he again  
20 calls the police.
- 21 A. Yes.
- 22 Q. Wouldn't you agree with me that that's a fairly important  
23 person as far as the timing of the incident is concerned?
- 24 A. Yes.
- 25 Q. Yes. And he gives his evidence before this inquiry that it

- 1 was around ten minutes to twelve.
- 2 A. All right.
- 3 Q. And then we've got Brian Doucette. Did you read the  
4 evidence of Brian Doucette? Volume 34, page 23.
- 5 A. It's on the next page, is it?
- 6 Q. It might very well be in 16 also.
- 7 A. Statement of Brian Doucette.
- 8 Q. Sure. And, for the record you're looking at Volume 16,  
9 page...
- 10 A. 60.
- 11 Q. Page 60. And you've got the evidence of Brian Doucette, and  
12 you had that statement, didn't you?
- 13 A. I believe so, yes.
- 14 Q. Yes. And Brian Doucette is saying that he had looked at...he  
15 was watching television around midnight when two young  
16 fellows came to the door.
- 17 A. Right.
- 18 Q. Yes. And, did you question Brian Doucette?
- 19 A. No.
- 20 Q. Did you suggest to Staff Sergeant Wheaton that he should  
21 question Brian Doucette?
- 22 A. I don't recall if I did or not.
- 23 Q. And he's indicating that this was around 12:00 p.m.
- 24 A. Yes.
- 25 Q. And I'm suggesting to you that if it's around 12:00 p.m., that

- 1 would lock in the time as given by Marvel Mattson.
- 2 A. Give us a good indication, yes.
- 3 Q. Yes. And, also you read the statement of Scott MacKay.
- 4 A. I think so.
- 5 Q. And Scott MacKay says that he left the dance with...
- 6 A. Where is that statement?
- 7 Q. I will find it for you right now, sir. Robert Scott MacKay,
- 8 Volume 16, page 31.
- 9 A. Yes, yes, I recall reading that.
- 10 Q. And, again, 11:45 is mentioned.
- 11 A. Yes.
- 12 Q. And these statements were taken back in June of 1971,
- 13 shortly after the incident.
- 14 A. Yes.
- 15 Q. And Scott MacKay is saying that he left the dance with
- 16 Debbie MacPherson around 11:45 and walked down to
- 17 Wentworth Park.
- 18 A. Yes.
- 19 Q. And he is further saying that after spending a couple of
- 20 minutes in the park he was getting Debbie on to catch her
- 21 bus for North Sydney.
- 22 A. All right.
- 23 Q. And then Debbie says, and Scott supports it, that when they
- 24 got up to Crescent Street they found Sandy Seale lying there
- 25 already stabbed.

1 A. All right.

2 Q. And also we know that Debbie's statement is she caught her  
3 bus which was around twelve o'clock.

4 A. Uh-hum.

5 Q. So, it helps further to lock in this time, doesn't it?

6 A. Seems to, yes.

7 Q. Yes. And, you never interviewed Scott MacKay at that time.

8 A. No.

9 Q. And you never interviewed Debbie Timmons [sic] ?

10 A. No.

11 Q. And you didn't ask Staff Sergeant Wheaton to interview  
12 Scott MacKay or Debbie Timmons.

13 A. No, I didn't, but although it may appear otherwise at times, I  
14 wasn't directing the investigation.

15 Q. I agree you were not directing the investigation, but Mr.  
16 Pugsley introduced an exhibit here, 152, which sets out a  
17 substantial amount of meetings between yourself and  
18 Wheaton and/or Carroll between the 16th of February and  
19 the 20th of April. I would suggest to you that you might not  
20 have been directing the investigation, but you were very,  
21 very close to the investigation.

22 A. No question, right.

23 Q. Yes. And, so Scott MacKay was not interviewed and neither  
24 was Debbie Timmons.

25 A. I can't say whether they were or they weren't.

- 1 Q. I see. But you've got no information to the effect that they  
2 were.
- 3 A. No.
- 4 Q. And you'd agree with me at this stage that these people are  
5 quite important in locking down the time of this incident.
- 6 A. Yes, they'd be important on time.
- 7 Q. Sure. What about George McNeil and Roderick McNeil?  
8 Their evidence is found in Volume 16, page 26.
- 9 A. Yes.
- 10 Q. They claim that they left the dance around 11:40 and Sandy  
11 was still there.
- 12 A. Yes.
- 13 Q. Is there any question in your mind at this time that Sandy  
14 would have been at the dance around 11:40 and at the  
15 corner of George and Argyle around 11:45?
- 16 A. Is there any question?
- 17 Q. Yes.
- 18 A. No, I, you know, I didn't lock in on times.
- 19 Q. I see. Recognizing now.
- 20 A. Yes.
- 21 Q. That the best evidence available puts Sandy Seale alive at  
22 the corner of George and Argyle at quarter to twelve and  
23 also the best evidence puts Sandy already stabbed by ten  
24 minutes to twelve, you'd agree with me that timing could be  
25 quite important.

1 A. That ten minute, ah...

2 Q. Five minute, five minute gap.

3 A. Five minute then.

4 Q. Yes.

5 A. Timing could be, yes.

6 Q. Yes. And then let's take it a step further. You'd agree with  
7 me that unless somebody is running or in quite a hurry it  
8 would take them at least perhaps forty-five seconds,  
9 perhaps a minute to get from the corner of George and  
10 Argyle around to the area where the stabbing occurred?

11 A. A minute or so, yes.

12 Q. Yes. Regardless to the route.

13 A. Yes.

14 Q. Yes. And I guess you'd also agree with me that it would  
15 take somebody a minimum of one minute to get from the  
16 scene of the stabbing over outside the residence of Marvel  
17 Mattson.

18 A. Yes.

19 Q. So, that three minutes or five minute we were working with  
20 his now been reduced to three, mathematically correct?

21 A. It's mathematically correct, but again, you know, my...I've  
22 seen that type of reconstruction tried hundreds of times  
23 and, frankly, I find it a very unreliable way because  
24 witnesses just don't have precise times.

25 Q. Well, then coming back on the timing. Did you read...

MR. EDWARDS, EXAM. BY MR. ROSS

1 A. It's good...it's good when you're getting the general frame of  
2 things but...

3 Q. Wouldn't that be a good idea to get the general frame and  
4 then tie it down?

5 A. It could be, yes.

6 Q. Yes. Did you read the evidence of Constable Mroz?  
7 Constable Mroz is saying...I will find the volume in a minute.  
8 In Volume 34 at page 98, he's reconstructing and he's saying  
9 that that night he was supposed to be working the late shift  
10 and he was supposed to be on the Charlotte Street beat.

11 A. Yes.

12 Q. And that it was when he was getting ready to leave the  
13 station that the call came in from Mattson about the stabbing.

14 A. OK.

15 Q. So here we have another, not a lay witness. So let's look at  
16 the witnesses who can tell us anything about timing before  
17 the stabbing.

18 A. But again, now, you are tying in a 1982 statement to a 1981  
19 statement.

20 Q. O.K. fine but let's look at what he had to say back in 1981.  
21 Volume 34, page 25 or if you've got Volume 16, it's in Page 2.

22 A. I have Volume 34.

23 Q. Page 25.

24 A. All right.

25 Q. And this is his 1971 statement.



MR. EDWARDS, EXAM. BY MR. ROSS

1 A. Yes.

2 Q. And he was saying at the station, when the call came in from  
3 Mattson, all right?

4 9:52 a.m.

5 A. Yes.

6 Q. Right? Now that helps us as far as timing is concerned and  
7 I've got no doubt that when he says that he was working the  
8 late shift, the back shift, the midnight to whatever shift...

9 A. Um-hmm.

10 Q. That helps us to understand that he would be at the station  
11 prior to midnight.

12 A. Okay.

13 Q. All right? So then here we've got one police officer who is  
14 Mroz, establishing the call coming in prior to midnight. We've  
15 got Mattson, and RCMP officer establishing that he made the  
16 call prior to midnight and as a matter of fact his evidence is  
17 around ten minutes to twelve.

18 A. All right.

19 Q. And so we know from these if, and which is also, and I must  
20 point out that the statement of Mroz is also signed by Dean,  
21 Walsh and MacDonald.

22 CHAIRMAN

23 Dean, do you recall...

24 MR. ROSS

25 Page...

MR. EDWARDS, EXAM. BY MR. ROSS

1 CHAIRMAN

2 Dean noted the time of the call, Mr. ...

3 MR. ROSS

4 Pardon me?

5 CHAIRMAN

6 Didn't Dean note the time of the call? Constable Howard  
7 Dean. If you look at page 4 of Volume 16 at the top, he shows the  
8 call at 12:10.

9 MR. ROSS

10 Yes, that is correct.

11 CHAIRMAN

12 He wrote it down.

13 MR. ROSS

14 Pardon me?

15 CHAIRMAN

16 Presumably he wrote it down at the time the call came in.

17 MR. ROSS

18 I think that's one. I think that timing is substantially in  
19 question and it has to be in question and I can establish the  
20 reasons why.

21 CHAIRMAN

22 Anyway, I was just, you know, and I'm listening carefully as  
23 to all this questioning about time to see where we're leading,  
24 going, but anyway, that's one more time amongst the times that  
25 have been given.

1 MR. ROSS

2 As a matter of fact I would, I might even suggest, My Lord,  
3 that there is no, I don't know that he is reporting the time of the  
4 call. As a matter of fact he's putting together his statement. It  
5 was dated May the 29th. The evidence confirms that it was really  
6 May the 30th. And it could probably very well be when he was  
7 making up this report. However, I would leave Dean alone.

8 Q. We've got Maloney, who was at the dance, and Maloney  
9 further says that it's when the dance was breaking up he  
10 heard about the stabbing. Volume 34, page 101. He had  
11 worked the dance with Fred LeMoine, he had ejected Sandy  
12 on three occasions from the dance. He heard about the  
13 stabbing as the dance was breaking up. I suggest to you that  
14 that would be 12 or thereabouts that he's hearing about the  
15 stabbing.

16 A. Twelve or thereabouts, yes.

17 Q. Yeah. Now, I take it that as early as April 1982 you  
18 recognized that Oscar Seale had serious concerns about the  
19 reputation of his son.

20 A. Of course.

21 Q. And he had come to see you.

22 A. Yes.

23 Q. As a matter of fact he had come to see you on more than one  
24 occasion.

25 A. Yes.

1 Q. And I take it that you instructed him to get legal counsel,  
2 independent legal counsel.

3 A. At one stage I did when it appeared that Mr. Seale and I were  
4 not able to carry on constructive conversation.

5 Q. Well what would legal counsel do for Mr. Seale in these  
6 circumstances?

7 A. Pardon me?

8 Q. What could legal counsel do for Mr. Seale in these  
9 circumstances? Wasn't it a matter of The Queen against  
10 somebody?

11 A. It was a matter of The Queen against somebody, yes.

12 Q. He couldn't intervene. There was no way he could interfere  
13 with your process could he.

14 A. No. No.

15 Q. So that...

16 A. But my thinking in referring him to legal counsel, and we'll  
17 step back a moment. As you know Mr. Seale and I had  
18 differing recollections about exactly what had been spoken  
19 about between us. The specifics of the conversation. And at  
20 the time when I suggested to him that any future  
21 communication should be via his legal representative it was  
22 specifically to avoid any further misunderstandings about  
23 what was being said.

24 Q. I see. My Lord, just for a little correction on the record. You  
25 indicated that Howard Dean had written this report and that

MR. EDWARDS, EXAM. BY MR. ROSS

1 he had given the time as 12:10. I would also like to point out  
2 that in Volume 16, page 4, and Volume 34, page 27, as I read  
3 it, it would appear that Howard Dean was at St. Joseph's  
4 parking lot with Corporal MacDonald when the call came in.  
5 He was not at the station. So as far as the recording is  
6 concerned it's just to indicate...

CHAIRMAN

7  
8 Look at the crime report on page 3 of the same, of Volume  
9 16. It may help us. The top left-hand corner. That's the report  
10 prepared, as I understand the evidence, at the station noting all  
11 calls that came in. This apparently is prepared by Sergeant  
12 MacGillivray. It shows 12:10.

MR. ROSS

13  
14 Yes. I appreciate that, My Lord, but that also appears to be  
15 in a bit of a conflict because the evidence of Doucette was that he  
16 was the one who called MacGillivray. The evidence of Brian...

CHAIRMAN

17  
18 Mr. Dean Matheson...

MR. ROSS

19  
20 No, Brian Doucette, which is in Volume 16, page 23.  
21 Anyway, I think that I, these things could be saved for argument  
22 really.

CHAIRMAN

23  
24 I would think so.

MR. ROSS

1 Yes. Thank you, thank you, My Lord.

2 Q. So coming back here for a minute, you suggested to Mr. Seale  
3 that he should get his own counsel.

4 A. Yes.

5 Q. Not let me ask you, sir, what did you expect counsel would  
6 have been able to do for Mr. Seale under these  
7 circumstances?

8 A. Consult with me. I would explain the matter to counsel as I  
9 had attempted to do to Mr. Seale and perhaps counsel would  
10 have more luck than I apparently had in making Mr. Seale  
11 understand exactly what was being done.

12 Q. I see. And I take it...

13 A. But at no time did I ever anticipate that there would be a role  
14 for Mr. Seale's counsel in the carriage of the matter.

15 Q. I see. It was just as a communication link.

16 A. Yes.

17 Q. I see. Now tell me...

18 A. From my point of view.

19 Q. Sure.

20 A. Mr. Seale could, of course, get any advice that occurred to  
21 him.

22 Q. Sure. Now as far as the reference is concerned..

23 A. Yes.

24 Q. In this reference I take it that you saw the robbery theory as  
25 being very important to the release of Junior Marshall or the

1 finding of not guilty of Junior Marshall?

2 A. I felt that the robbery theory was a crucial matter that had to  
3 be addressed in order to try to find out exactly what went on  
4 there that night. Naturally, I would appreciate that it would  
5 some bearing on the ultimate outcome, or the rationale for  
6 that outcome. But my primary interest was to try to sort the  
7 matter out as best we could.

8 Q. I'm going to suggest to you, sir, that the robbery theory was  
9 easy for you to accept in your effort to make it palatable for  
10 the court to release Junior Marshall.

11 A. Well I suppose the best way I can answer that is that at this  
12 stage, I'm not trying to make the matter palatable to  
13 anybody, and I still personally accept the robbery theory.

14 Q. I see. And you accept it based on what?

15 A. Well my view of the evidence.

16 Q. I see. And then when you considered the background of  
17 Ebsary...

18 A. Yes.

19 Q. His passion for knives...

20 A. Yes.

21 Q. The way he admires violence...

22 A. Yes.

23 Q. And his reputation in the community...

24 A. Yes.

25 Q. As being one who sit around and talk about, or the acts of

1 heroism that he was involved in...

2 A. Yes.

3 Q. And you were also aware that he had been mugged once or  
4 twice in the Park...

5 A. Yes.

6 Q. And that he had said, prior to this, the next guy who tries to  
7 mug him he is going to gut him.

8 A. Yes.

9 Q. And he was out drinking for many hours that night...

10 A. Yes.

11 Q. And here is two people walking behind him...

12 A. Two people walking, you're referring to Marshall and Seale?

13 Q. Yes.

14 A. Walking behind him?

15 Q. Or coming toward him. There are two other people present.

16 A. Well they had their conversation and then...

17 Q. Oh, you accept the conversation theory.

18 A. Oh, yes.

19 Q. Yes. Okay, fine. As far as the conversation theory is  
20 concerned let's explore that for a minute. Do you also accept  
21 the evidence of Patricia Harriss that Marshall was in close  
22 proximity to Ebsary and MacNeil and there was either an  
23 exchange of a cigarette or a light.

24 A. I accept the evidence of Patricia Harriss. I don't recall the  
25 specifics on that. But the importance of her evidence, of



1 course, is to establish that there was more than one person  
2 present near the time...

3 Q. Did it matter...

4 A. Of the fatality.

5 Q. More than one person present. Did it matter how many  
6 people were there? Or just more than one is enough.

7 A. Well in the '71 trial, of course, her evidence was that there  
8 was only one person there. The fact that there was more than  
9 one person there...

10 Q. I see.

11 A. Erased that significance.

12 Q. And as far as Patricia Harriss is concerned I take it that until  
13 today you still accept her evidence.

14 A. Yes.

15 Q. And I take it that you will recall that during the reference she  
16 identified Sandy Seale as somebody she had been introduced  
17 to at the dance.

18 A. I don't recall that particular bit of testimony but if you say  
19 it's there I accept that.

20 Q. Okay. And as a matter of fact further she said that she met  
21 him at the dance and he was trying to get the star off her  
22 hand. Do you recall that?

23 A. I have a vague recall of that.

24 Q. Okay, fine. Do you also recognize that before this inquiry,  
25 when she was no longer a little girl, as she said in her

MR. EDWARDS, EXAM. BY MR. ROSS

1 statement, she is now a mature woman...

2 A. Yes.

3 Q. That's before the reference.

4 A. Yes.

5 Q. Yes, but when I asked her about Sandy Seale she admitted  
6 that she did not know Sandy Seale and that anything she had  
7 said about him up until her evidence before this inquiry was  
8 false and you still accept her statement.

9 A. Anything she had said about...

10 Q. Yes.

11 A. Getting this star off...

12 Q. Any-, no, anything about Sandy Seale. I can get you the  
13 reference if you need it.

14 A. Okay.

15 Q. Do you require it?

16 A. No.

17 Q. Okay. But she is saying this inquiry, that anything she said  
18 about Sandy Seale was wrong. She never knew him. Knew  
19 nothing about him.

20 CHAIRMAN

21 Could you refer us to the...

22 MR. ROSS

23 Sure.

24 CHAIRMAN

25 Testimony, Mr., so we can follow it with you.

1 MR. ROSS

2 Volume 16, page...

3 CHAIRMAN

4 No, no. The, her testimony.

5 MR. ROSS

6 That's what I'm trying to find. Volume 16, page 2941.

7 Q. Just down that page and up at the top of the other page  
8 where I ask her the very specific question and she answers  
9 that, "Sure, it was a false..."

10 A. All right, I've read it.

11 Q. I take it, sir, that that testimony is absolutely in conflict to  
12 what, with what you understood to be Patricia Harriss'  
13 version of the truth.

14 A. You know, that's an incidental meeting. When I say I believe  
15 Patricia Harriss I'm talking about what I consider to be the  
16 nub of her evidence about the encounter in the Park with  
17 Junior Marshall and the fact that there was more than one  
18 other person in the vicinity at the time.

19 Q. I see. But you didn't...

20 A. You know, I wouldn't look at that and say, well, her evidence  
21 should be rejected if that's what you're asking.

22 Q. But it demonstrates that she's very flexible when it comes to  
23 the truth, doesn't it.

24 A. No, I don't think it demonstrates that.

25 Q. I see. And then you spoke also about your review of the

1 cross-examination of Jimmy MacNeil by Marlys Edwardh.

2 A. Yes.

3 Q. Yes. Would you agree with me that it is consistent with the  
4 position advanced, or that was being advanced by Ms.  
5 Edwardh not to have MacNeil say anything other than the  
6 story about "Dig, man, dig," and that Roy stabbed Seale.

7 A. When I referred to that, what I was saying there was that at  
8 the end of the cross-examination there was still no doubt in  
9 Jimmy MacNeil's mind about the way that the stabbing had  
10 taken place.

11 Q. I see.

12 A. That it was Ebsary who had done the stabbing and I don't  
13 recall it specifically now but I believe he still maintained that  
14 he heard the words, "Dig, man, dig," just prior to the stabbing.

15 Q. Yes, and if you look at Volume 34, page 42 with respect to the  
16 words, "Dig, man, dig," do you recognize that what he's saying  
17 is that he heard one of them say, "Dig, man, dig."

18 A. You're referring to his 1982 statement, page 42?

19 Q. Yes.

20 A. Yes, okay. "The colored fellow or the Indian guy said, 'Dig,  
21 man, dig.'"

22 Q. Yes. Do you also recognize that in his examination by me the  
23 most he could say about the colored fellow is that he sounded  
24 colored? That's what he said.

25 A. No, I didn't read your cross of Jimmy MacNeil.

MR. EDWARDS, EXAM. BY MR. ROSS

1 Q. I don't blame you, it's long-winded and comes to no point.

2 However...

3 COMMISSIONER EVANS

4 Is that a voluntary confession on your part?

5 MR. ROSS

6 No, no, My Lord.

7 Q. But then what, if any, credit, did you give to the fact that

8 Sandy Seale's background was absolutely impeccable?

9 A. What credibility?

10 Q. Yes.

11 A. As I say, I believed it.

12 Q. Yeah, but Mr. Edwards I'm suggesting to you that it appears

13 to be that looking at Sandy Seale...

14 A. Yes.

15 Q. As he was known then...

16 A. Yes.

17 Q. And putting him in an environment of an attempted robber...

18 A. Yes.

19 Q. As opposed to looking at Ebsary as he was known then...

20 A. Well I considered Ebsary. I don't agree with your proposition

21 there as opposed to considering Ebsary. I considered Ebsary's

22 character and disposition when considering that theory.

23 Q. Yes. And in the final analysis you still found it, one could say,

24 convenient to accept the robbery theory?

25 A. No, not convenient. I don't accept that word at all.

1 Q. I see.

2 A. With Mr. Ebsary, as you yourself indicated there in a previous  
3 question, he said something to the effect, "And I swore by my  
4 Christ that the next man that tried it would die in his tracks..."  
5 or words to that effect...

6 Q. That's true.

7 A. The robbery provided just the spark to set Ebsary off.

8 Q. If the...

9 A. But, that was my analysis of the evidence whether right or  
10 wrong.

11 Q. And I guess you'd agree with me further that all that Ebsary  
12 had to have in his mind is that he believed there might be a  
13 robbery. Same thing, isn't it?

14 A. Yes, if Ebsary perceived that he was being robbed, that would  
15 be enough to set him off. I can acknowledge that without any  
16 difficulty.

17 Q. And in the absence of any direct, any hard evidence of a real,  
18 hard corroborated evidence of a real robbery, then you'd  
19 agree with me that the finding that Sandy Seale was involved  
20 in a robbery really walks around any presumption that Sandy  
21 Seale might have been innocent.

22 A. I'm sorry, I didn't follow you Mr. Ross.

23 10:15 a.m.

24 Q. Well, I'm suggesting to you that here you've got this  
25

1 situation with the probability of a perceived robbery and...

2 A. Yes.

3 Q. ...you've also got Sandy Seale as he was known, and I'm  
4 suggesting to you that the robbery theory jumps to a  
5 conclusion not based on the evidence.

6 A. The robbery theory is, in my view, a reasonable inference to  
7 be drawn from the proven facts. With greatest respect, I  
8 don't think that you can put a lot of emphasis, which you  
9 appear to be doing, on Sandy Seale's previous good  
10 character, because the fact of the matter is that quite  
11 regularly in courts you will have first-time offenders  
12 accused of quite serious crimes who come from loving and  
13 caring families. Now, they're not as frequent as those coming  
14 from more turbulent backgrounds, but it does happen.

15 Q. I see.

16 A. And I think it's a matter of common sense that seventeen-  
17 year-old teenagers are often quite impulsive. So, you can't  
18 rule out Mr. Seale's participation on the grounds that, well,  
19 he was a fellow of excellent character beforehand.

20 Q. Sure. What about the fact that there is no evidence yet to  
21 suggest that he and Marshall were running mates, had any  
22 real friendly relationship?

23 A. There is no evidence to say that they were friends, but I  
24 believe they were acquaintances.

25 Q. Sure. And even...

1 A. They were known to one another.

2 Q. Even acquaintances known to one another, Mr. Edwards, I'm  
3 just going to just wind up here with something, recognizing  
4 that the reason Sandy had given to Alanna Dixon and Karen  
5 MacDonald and Keith Beaver for leaving them was he was  
6 going to catch the bus.

7 A. Yes.

8 Q. Right.

9 A. Right.

10 Q. And further that when Sandy Seale arrived at the hospital  
11 there was money in pocket sufficient for the bus, did you  
12 know that?

13 A. Yes.

14 Q. And recognizing further that as far as our timing is  
15 concerned, the outside limits of time as given so far is a  
16 five-minute gap that's unaccountable for and if we assume  
17 that it's going to take time, if we recognize that it will take  
18 time to go from Pollett's...

19 A. Uh-hum.

20 Q. To the scene of the stabbing, and from the scene of the  
21 stabbing over to Mattson's place is down to three minutes.  
22 But I'm suggesting to you for your robbery theory to be  
23 sustained, in that three minutes Marshall has to meet Seale,  
24 agreed?

25 A. Sure.



- 1 Q They've got to discuss a robbery, agreed?
- 2 A Discuss can be a matter of a sentence or two.
- 3 Q Precisely.
- 4 A If you accept that what we may have here is an impulsive  
5 act.
- 6 Q Okay. Fine. And then take it further, the persons...they've  
7 got to find victims, correct?
- 8 A Sure.
- 9 Q And here is the Patricia statements we come...Patricia  
10 Harriss's statement becomes important. The victims are the  
11 very people that Patricia Harriss is going to put with  
12 Marshall prior to the stabbing, correct?
- 13 A Okay.
- 14 Q And there is an exchange of either a cigarette or a light.  
15 There is some personal communication.
- 16 A Uh-hum.
- 17 Q Correct?
- 18 A Yes.
- 19 Q Yes. And with all of these to happen in three minutes,  
20 you're still of the view that the robbery theory is sustained.
- 21 A Well, the three minutes I think perhaps your engineering  
22 background maybe putting too arithmetical an  
23 interpretation on it. What I'm saying is that I don't accept  
24 that you can narrow it down like that.
- 25 Q I see.

1 A. But having said that, of course, it all happened in a very  
2 quick period of...short period of time and not a lot of time  
3 was required.

4 Q. Yeah. And recognizing that you went as far as to look into  
5 the background of Ebsary to establish that he was a violent  
6 person.

7 A. Right.

8 Q. Classified as bizarre.

9 A. Right.

10 Q. Somebody that really ought to be taken out of circulation, a  
11 danger to the public.

12 A. Oh, he was.

13 Q. Yes.

14 A. There's no question.

15 Q. Yes. And recognizing you did all of that to go back into the  
16 background of Ebsary, why didn't you try to find out some  
17 more about Sandy Seale, any reason?

18 A. Well, I took it as a given that Sandy Seale was a person of  
19 previous good character and I worked on that assumption.  
20 You know, the...perhaps the point I could make is that if you  
21 accept that all they were doing was going to bum some  
22 money that night the...my recollection is that Donald  
23 Marshall didn't even mention that to anyone in 1971, the  
24 bumming didn't come forward until 1982.

25 Q. Precisely.

1 A. So, even if you were to accept that.

2 Q. Yes.

3 A. That much.

4 Q. But as far...yes. And going on as far as this bumming is  
5 concerned Marshall himself in his other statements and his  
6 evidence, you recall Ebsary three.

7 A. Yes.

8 Q. You recall Marshall saying in Ebsary three that all this thing  
9 about the robbery, it never happened.

10 A. I believe he said that in each of the Ebsary trials. He's never  
11 adopted the robbery theory.

12 Q. Yes.

13 A. To my knowledge except in direct on the reference. If you  
14 looked at his direct testimony on the reference, he says at  
15 one point that they were going to bum some money, maybe  
16 break and enter a place or take it from somebody.

17 Q. I hear that.

18 A. Okay. So, there in his direct, let alone cross, before that  
19 infamous statement comes out, there is some evidence of a  
20 robbery.

21 Q. Do you accept his explanation in Ebsary three where he  
22 saying, where he is explaining it away as that being the  
23 story on the outside and by adopting it he could get out of  
24 jail? You were there.

25 A. Yes, I don't accept that there was no attempted robbery

1 taking place there that night.

2 Q I see.

3 A. I didn't during Ebsary three, I didn't during the reference  
4 nor did I at any time in between.

5 Q And is that any...and for that reason it was included in your  
6 factum as something that the Court should consider.

7 A. Yes. And that would have been the case even had I been  
8 recommending acquittal on the basis of miscarriage, because  
9 in my personal view the fact that there was a robbery or  
10 attempted robbery does not erase the fact that there was a  
11 miscarriage.

12 Q And, I take it then, Mr. Edwards, would it be fair to say that  
13 as far as the reference is concerned, for whatever reason,  
14 you were suspicious that the Appeal Division would not  
15 acquit Marshall unless they had something to hold onto?

16 A. Yes, that's fair.

17 Q In an attempt to make it, as you said, palatable.

18 A. Yes.

19 Q The robbery theory was adopted and put before them.

20 A. Maybe we're getting circular now, but I can only say that  
21 even if I were recommending acquittal on basis of  
22 miscarriage, I still would have put the robbery before them.

23 Q Sure, I hear that. I hear that...

24 A. Yes.

25 Q I heard that before, but it doesn't answer my specific

1 question.

2 A. Oh, I'm sorry. I'm trying to zero in.

3 Q. Yes. So, it was necessary that the robbery theory be put  
4 before the Court.

5 A. In any event, yes, it...

6 Q. Wouldn't it be necessary to prove the robbery theory, to  
7 bring all the evidence for and against, to have the judges  
8 recognize the short amount of time that we're talking about?

9 A. That could have been a tack that was taken, but it wasn't  
10 and maybe there is an argument that it should have been,  
11 but it wasn't.

12 Q. And also I take it that you read the evidence of Staff  
13 Sergeant Wheaton.

14 A. No, I didn't.

15 Q. Before this inquiry.

16 A. I didn't read his evidence, I sat...

17 Q. Oh, you sat in on it.

18 A. Sat through it, yes.

19 Q. Yeah. While you were sitting in you'll recall that when I  
20 questioned Staff Sergeant Wheaton, he indicated that it was  
21 not part of the terms of reference, not part of the mandate  
22 to look into anything about Seale? Do you recall that?

23 A. Yeah, I believe.

24 Q. Yes.

25 A. I believe I recall it.

1 Q. As a matter of fact, I took him through that he started with  
2 a letter from Aronson.

3 A. Yes.

4 Q. And after speaking to Chant he recognized Chant probably  
5 lied.

6 A. Yes.

7 Q. And after speaking to Marshall he concluded Marshall was  
8 innocent?

9 A. Yes.

10 Q. And having concluded Marshall was innocent therefore  
11 somebody else had to do the stabbing?

12 A. Right.

13 Q. And, I asked him that the opening of the door on Marshall  
14 meant the closing of the door on Ebsary, and he agreed. Do  
15 you support that theory also? That to free Marshall, it was  
16 necessary to be able to charge or convict Ebsary?

17 A. I don't know if I'd frame it that way, but as this evidence  
18 unfolded, that's the way it went, yes.

19 Q. Sure. And also when I examined Steve Aronson, he agreed  
20 that looking after the interests of Sandy Seale was not really  
21 part of his mandate. He was looking after Marshall.

22 A. Yes. I didn't read that part of Steve Aronson's testimony,  
23 but that's a fair comment by him, I think.

24 Q. Sure. So, we have the investigator.

25 A. Yes.

- 1 Q Looking after the...looking...setting out to establish to prove  
2 Marshall's innocence.
- 3 A. I don't think he set out to do that.
- 4 Q He adopted it along the way.
- 5 A. He adopted it along the way.
- 6 Q To prove his innocence, yes, and Marshall having his own  
7 lawyer, who we can hardly expect is going to try to prove  
8 his guilt.
- 9 A. Right.
- 10 Q Okay. And there we've got the prosecutor.
- 11 A. Yes.
- 12 Q Also satisfied of the innocence.
- 13 A. That, at some stage, yes.
- 14 Q And I'm suggesting to you that in order to support these  
15 propositions, you discounted the reputation of Sandy Seale.
- 16 A. Well, I...no, I didn't discount the reputation of Sandy Seale.
- 17 Q Well, you discounted the importance of the reputation of  
18 Sandy Seale to his parents and to his community.
- 19 A. No, and I wouldn't agree that I even did that. I made what I  
20 felt was a fair assessment of the evidence taking into  
21 account the fact that Sandy Seale was a person of good  
22 character.
- 23 Q A judgement call on your part.
- 24 A. That's what we're called upon to do from time to time, I  
25 suppose.

1 Q. Short answer yes.

2 A. Short answer yes.

3 Q. Yes. And this judgement call...

4 A. Not strictly a judgement call. I mean I'm exercising my  
5 judgement, my professional judgement, in assessing the  
6 evidence. So, a judgement call in that sense, I suppose.

7 Q. Yes. And as far as the evidence is concerned I take it...

8 A. I didn't consider myself sitting in judgement on Sandy Seale.

9 Q. I see. Is it fair to say, Mr. Edwards, that because of the  
10 complex nature of this matter that the reputation, the  
11 importance that Sandy Seale for all intents and purposes  
12 was to a large degree overlooked? The emphasis being on  
13 Marshall or Ebsary.

14 A. No.

15 Q. Are you satisfied then that we took as close a look at Sandy  
16 Seale as we should have? There is nothing else to find.

17 A. I think the questioning in that regard since has borne that  
18 out. Now with the benefit of hindsight, what more could I  
19 have discovered about Sandy Seale had we...had we pursued  
20 it?

21 Q. I'm suggesting...

22 A. At the end of the day I would have been left with the same  
23 conclusion I had then, that he was a person of good  
24 character, from a loving family, fine athlete, I knew all that.

25 Q. And I would suggest to you, sir, that if you had all that, it



1           might not have been necessary, it would not have been  
2           necessary to stress the robbery theory and further that...

3       A.     But I had all that.

4       Q.     I see. But you did...but it wasn't brought before the Court for  
5           whatever reason.

6       A.     It wasn't brought before the Court.

7       Q.     I see.

8       A.     Neither was his character assailed in any way other than, I  
9           suppose you could argue, well, arguing that he was  
10          participating in an attempted robbery, but that, in my view,  
11          was unavoidable.

12      Q.     Did you recognize that throughout these...the 1971, all the  
13          different reviews we had situations where even the friends  
14          of Junior Marshall were questioned by the police? Arty  
15          Paul, Roy Gould and so on.

16      A.     Yes, right.

17      Q.     Do you recognize here that we had Sandy Seale going to the  
18          dance with Blair Noseworthy, Guy Dixon, Colin Campbell, and  
19          these people were never questioned at that time or later?

20      A.     Did I realize that or...

21      Q.     Yeah. You had those statements, Volume 13.

22      A.     Yes.

23      Q.     Page 62.

24      A.     Right.

25      Q.     And I'm suggesting to you that somebody had to pre-judge

1 Sandy Seale and say, although we know all these things  
2 about him which are positive...

3 A. Uh-hum.

4 Q We will not rule out that he'd be in an attempted robbery  
5 and we're going to accept it.

6 A. Well, an assessment of the evidence had to be made and  
7 that's the way it went. I mean I was...I was conscious of  
8 that and I believe you realize that in either my April or May  
9 report I dealt with the fact there that this was going to be  
10 very traumatic for the Seale family and that some  
11 consideration should be given to preparing them for what  
12 was to come. And that...it was that suggestion which  
13 eventually caused me to get agreement from Gordon Coles,  
14 as it was, to have Mr. Seale in and allow him to read the  
15 statement that had been given by Donald Marshall in  
16 Dorchester Penitentiary. So, that the first time he didn't  
17 hear that or so that the first time he heard it would be there  
18 rather than in the news media. So, I mean we were not, I  
19 submit, insensitive to that problem. But for the life of me I  
20 don't know how the impact of that type of revelation could  
21 have been...could have been lessened by anybody.

22 Q Are you suggesting to me, Mr. Edwards, that if it was a  
23 young well brought up young fellow, for instance, Scott  
24 MacKay, have you seen Scott MacKay, do you know him?

25 A. No.

1 Q. You never saw him. Okay. And I take it that was the extent  
2 of the consideration for the Seale family. You call in Oscar  
3 Seale and allow him to read the Marshall statement.

4 A. I mean that consideration put out in the few sentences that  
5 I articulated here. It doesn't say it all. I...quite frankly I  
6 was genuinely concerned about it and, as I say, I couldn't  
7 think of any way to lessen the impact other than what I did.  
8 But, no, I was very concerned about that and, you know,  
9 I...despite the problems Mr. Seale and I have had since,  
10 disagreements and reports to the Barrister's Society, I bear  
11 him no ill will because I think I have an appreciation of the  
12 fact that he's gone through what can be understated to be a  
13 very, very traumatic experience. No one, not being in his  
14 position, could have an appreciation of the actual impact. I  
15 don't know if that answers your question, Mr. Ross, but I can  
16 assure you that that...the effect on Mr. Seale and his family  
17 was not something that was treated lightly by me or by any  
18 of the superiors in my department that I dealt with.

19 Q. Did you know he had come to Halifax to see the Attorney  
20 General?

21 A. Yes, I learned about it afterwards.

22 Q. Did you know he also spent some time with a, was it Gordon  
23 Gale discussing this matter?

24 A. Yes.

25 Q. Yes.

MR. EDWARDS, EXAM. BY MR. ROSS

1 A. Yes.

2 Q. And what reports did you get back from these people as far  
3 as Seale was concerned?

4 A. Well, I know at one point, and I think you have my note on  
5 it, I got a telephone call from Gordon Gale asking me to get  
6 in touch with Mr. Seale and discuss the matter with him.

7 Q. But by that time, Gordon Gale, did he know that you were  
8 having difficulty communicating with Mr. Seale at that time?

9 A. Oh, I would have told him, yes.

10 Q. So, he knew you had difficulty communicating with Mr.  
11 Seale but he suggested back to your court, you deal with it,  
12 correct?

13 A. Well, he suggested that I deal with it. I don't know how  
14 much time he spent with Mr. Seale. I had the impression  
15 that he had spent quite a bit of time with him as had the  
16 Minister.

17 MR. ROSS

18 Mr. Edwards, I thank-you kindly for your evidence. Those  
19 are my questions.

20 MR. CHAIRMAN

21 Mr. Wildsmith.

22 EXAMINATION BY MR. WILDSMITH

23 Q. Mr. Edwards, my name is Bruce Wildsmith and I'm here for  
24 the Union of Nova Scotia Indians. I think you know that.  
25 I've got four or five areas I want to explore with you a little

MR. EDWARDS, EXAM. BY MR. WILD SMITH

1 bit. The first one concerns Donald MacNeil. I didn't  
2 understand fully your response to Mr. MacDonald's question,  
3 it appears in the transcript at 11688, I don't think you need  
4 to turn to it, but I'll just read it to you.

5 10:36 a.m.

6 A. Sure.

7 Q. He asked you if you succeeded Mr. MacNeil as Crown  
8 Prosecutor...

9 A. Yes.

10 Q. And your answer was, "My immediate predecessor was  
11 Stanley Campbell now a judge of the Provincial Court."

12 A. Yes.

13 Q. "However, on the afternoon of his decease, Mr. MacNeil was  
14 appointed." Is that the afternoon of Mr. MacNeil's decease  
15 you're referring to?

16 A. Yes.

17 Q. So you're saying...

18 A. The judge, Judge Stanley Campbell had been appointed to the  
19 Provincial Court...

20 Q. Yes.

21 A. And then the, thus making the Chief Prosecutor's job open.  
22 And Mr. MacNeil was actually appointed to that job  
23 coincidentally the same day he died.

24 Q. Very good.

25 A. So that's why I had a little difficulty with that because

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1           although he had been appointed between Stanley Campbell  
2           and I the previous officer holder was, in fact, Stanley  
3           Campbell. The last one who really...

4           Q. Well my question to you is this, was Mr. MacNeil a Crown  
5           Prosecutor then at that time?

6           A. No. No.

7           Q. There was only one position and that was the position that  
8           Mr. Campbell held?

9           A. Yes. See he had been prosecutor, of course, back in the '70s...

10          Q. Yes.

11          A. And then he left the job and Stanley Campbell was appointed  
12          and Stanley Campbell had the job for two or three years and  
13          then he went to the Provincial Court and then Donald MacNeil  
14          was reappointed.

15          Q. I see. Okay.

16          A. I think in November of '78.

17          Q. So in 1971 Mr. MacNeil held the position of Crown Prosecutor  
18          for the County of Cape Breton.

19          A. Yes.

20          Q. And that was a full-time civil service position?

21          A. As far as I know. Civil service, I think he was Order-in-  
22          Council appointee but...

23          Q. Do you know the circumstances under which Mr. MacNeil  
24          ceased to be Crown Prosecutor?

25

MR. EDWARDS, EXAM. BY MR. WILDSMITHMR. BARRETT

1  
2 I'll object to that question on the grounds that Mr. Edwards  
3 has already testified that he didn't know Mr. MacNeil personally  
4 and didn't know, had no experience with him in court. And I  
5 believe this question could better be directed, perhaps, to Mr.  
6 Gale, but it's not in the realm of Mr. Edwards' personal knowledge.

7 A. I have no direct knowledge of that.

CHAIRMAN

8  
9 Well the question is answered now.

MR. WILDSMITH

10  
11 Q. In part. I take it that you were called to the Bar around  
12 1975?

13 A. May '75.

14 Q. And you practised in Sydney for a period of three years?

15 A. Glace Bay. There's a big difference.

16 Q. There's a big difference. It's still in Cape Breton County.

17 A. Yes, they share that in common.

18 Q. Well your time at the Bar overlapped with Mr. MacNeil for  
19 some three years, did it?

20 A. Yes.

21 Q. There's a statement which appears in an anonymous letter  
22 found at Volume 31, page 73, which says, "Anyone in Sydney  
23 can tell you Donald MacNeil was a racist. He made many  
24 racist remarks about Indians." Is that anything, you don't  
25 need to turn it up I don't think...

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 A. No.

2 Q. Is that anything that you can comment on?

3 A. I have no direct or indirect knowledge of that, to tell you the  
4 truth.

5 Q. Okay. Can you tell us anything about Mr. MacNeil's reputation  
6 in the legal community?

7 A. Just generally speaking he was regarded as quite a fierce  
8 cross-examiner, maybe fierce is too strong a word. Very,  
9 very able cross-examiner. Very aggressive in his demeanour,  
10 in his courtroom demeanour.

11 Q. Can you tell us anything else about his reputation in the legal  
12 community?

13 A. Gee, beyond that I really can't, Mr. Wildsmith.

14 Q. Okay...

15 A. I barely knew the man.

16 Q. There's a reference at page, at Volume 17, page 12, I think  
17 you should look at this, which reference to the July 12th  
18 meeting in your office.

19 A. Yes.

20 Q. And down towards, maybe three-quarters of the way down to  
21 the bottom of the page, it's talking about Chant and then it  
22 goes on with various notations and it says, "Warrant issued.  
23 When, probably the same day." Is that reference to a warrant  
24 for the arrest of Donald Marshall?

25 A. Yes.



MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 Q And then the next line says, "Says he discussed with Donnie  
2 and Donnie ordered charge."

3 A. Yes.

4 Q Is that a reference to Donald C. MacNeil?

5 A. Yes.

6 Q And what, if anything, can you add to your notes on the  
7 expression, "Donnie ordered charge."

8 A. Well Donnie is how John MacIntyre and Billy Urquhart  
9 referred to Donald C. MacNeil. And...

10 Q When it says, "...ordered charge."

11 A. Yes.

12 Q That seems to suggest that it was at his direction that the,  
13 that Donald Marshall was arrested.

14 A. Yes. And that is, or at least was, not an uncommon  
15 misconception among a lot of police. That they get their  
16 orders from the Crown.

17 Q I see. This is certainly inconsistent with the distinction that  
18 you have drawn earlier in your testimony...

19 A. Yes.

20 Q Between laying the charge and prosecuting it.

21 A. That's right.

22 Q But I take it you were being told by John MacIntyre or Bill  
23 Urquhart that Donnie MacNeil actually ordered them to lay  
24 the charge.

25 A. Yes, that would have been the word from either one or both

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 of them, yes.

2 Q. Well was the suggestion that they had reviewed the evidence  
3 with him, with Donald MacNeil, and it was MacNeil's  
4 conclusion that they should go with it, lay the charge?

5 A. Well the conclusion would be that they'd review the evidence  
6 and he'd advise them to lay the charge. Although they took it  
7 to be an order.

8 Q. Their characterization was much stronger than that.

9 A. Oh, yes. Yes, no question.

MR. BARRETT

11 Perhaps if I could raise just to refer the, Mr. Wildsmith to  
12 refer to Mr. Edwards to page 13, top of the page. Third statement  
13 down...

MR. EDWARDS

15 Authorized, Urquhart says, "Sergeant MacIntyre authorized  
16 to lay the charge." Is that the...

MR. WILDSMITH

18 Q. What does that refer to? Who authorized MacIntyre to lay  
19 the charge?

20 A. Donald MacNeil.

21 Q. That's really corroboration of the same point, isn't it?

22 A. Yes. I think maybe part of the problem is that a lot of police  
23 regard it as a nicety or a semantic problem which it shouldn't  
24 be, of course. Whether you're ordered to lay the charge or  
25 advised that there are, is evidence to support a charge.

MR. EDWARDS, EXAM. BY MR. WILDSMITH

- 1 Q. Okay. Move on to a different area. I think you indicated that  
2 most of your practice was at the Supreme Court level and that  
3 you do most of the jury trials in Cape Breton County.
- 4 A. That's been the practice for the last five or six years, yes.
- 5 Q. So for five or six years you've done all of the jury trials in  
6 Cape Breton County?
- 7 A. I'd say...
- 8 Q. Pretty much.
- 9 A. I did 80 percent of them.
- 10 Q. Okay. And how many jury trials would that amount to? I  
11 know we can't be precise...are we talking hundreds...
- 12 A. No, I wouldn't say I've done hundreds. You know, I suppose  
13 I've done 7500 jury trials.
- 14 Q. And the juries in this case, they would be drawn from all of  
15 Cape Breton County, would they? It would be on a county  
16 basis?
- 17 A. Yes.
- 18 Q. Could you tell us how many Indians you observed on a jury in  
19 that time?
- 20 A. Okay, well I think that there has to be an appreciation of the  
21 fact that the method...
- 22 Q. Yes, I was going to come around to that...
- 23 A. Yeah.
- 24 Q. But what's your answer?
- 25 A. The, I've seen several, I would say maybe two or three, I

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1           doubt if there were as many as a half dozen native people on  
2           the jury panel...

3           Q.    Yes.

4           A.    I don't recall one ever having sat on the petty jury which was  
5           ultimately selected. I don't think one ever has. And I can  
6           recall, I believe it was two of the three I mentioned applied  
7           for exemption and were given exemption from jury duty.

8           Q.    Okay. How many names would be on these lists over that  
9           length of time that...

10          A.    It varied on the length of the particular docket at the time. It  
11          would normally run between 50 and 75.

12          Q.    So over the course of the time you're speaking about there'd  
13          be thousands of names on, would come up in that way?

14          A.    Yes.

15          Q.    Okay. Now the method of selecting juries has changed in the  
16          last few years?

17          A.    Last two or three years, yes.

18          Q.    Has that made a difference in the number of Indians that  
19          have appeared on the panel?

20          A.    I believe so, because prior to the change the names on the  
21          jury panel would have been taken from the assessment roll...

22          Q.    Yes.

23          A.    Property owners.

24          Q.    So the two or three you're speaking about came in the last  
25          couple of years since the change?

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 A. I believe so, Mr. Wildsmith, yes.

2 Q. Okay. And that is supposed to be based on the voter's list?

3 A. That's on the voter's list.

4 Q. Is it the case that there is a jury selection committee of some  
5 kind which goes through the voter's list to derive the names  
6 from there to the panel?

7 A. Yes.

8 Q. And that is a process that is supposed to be random?

9 A. Yes.

10 Q. And is that committee made up of municipal councillors?

11 A. Gee, I haven't checked to be able to precisely give you the  
12 exact composition but I believe there are municipal  
13 councillors on it, yes.

14 Q. Is it the case that the jury committee would normally, in the  
15 normal course of things, add local knowledge to the  
16 randomness in the process, if I can put it that way?

17 A. See, I've never been privy to that...

18 Q. Part of it.

19 A. Committee's deliberations so...

20 Q. Okay. But there is a jury committee that ends up with the  
21 panel that you end up seeing.

22 A. Yes.

23 Q. And do you know anything about who makes up the jury  
24 committee or how it's selected?

25 A. I did, but I'd have to refresh my memory.

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 Q. Okay.

2 A. I know I gave a little talk a few years ago on the CBC about  
3 that.

4 Q. I believe you indicated, although I don't have the citation for  
5 it in your testimony, that when you were speaking about the  
6 Appeal Division you said that the way that the community  
7 reacts to a particular situation may be some indication of how  
8 judges will react to it?

9 A. Yes. What I was referring to is that judges, being members of  
10 the community...

11 Q. Yes.

12 A. Are subject to the, in my view, to the same attitudes that the  
13 rest of us are.

14 Q. All right. And I guess the same thing could be said about  
15 juries.

16 A. Yes.

17 Q. Perhaps ever moreso about juries.

18 A. Yes, I suspect that's right.

19 Q. Okay, so the, I think the sum of what you're saying is that if  
20 there is a particular attitude or view in the community that  
21 jury members and judges could well hold the same attitudes  
22 or views.

23 A. Yes.

24 Q. And I would take it that racial bias might be one of the  
25 attitudes or views in the community that might show up on a

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 jury.

2 A. Oh sure, it may.

3 Q. And could conceivably show up with respect to a judge as  
4 well.

5 A. It could.

6 Q. You were asked by Ms. Derrick about a comment that appears  
7 in the transcript at page 12175 concerning an article that was  
8 in the Toronto Star and just to read to you the appropriate  
9 portion the person was asked about, this was a jury member,  
10 was asked about, well, was interviewed is the way it was put,

11  
12 One jury member interviewed by the Star after  
13 Marshall's innocence was proved, the juror  
14 denied any discrimination was at work on the  
15 case, but he then added, 'With one redskin and  
16 one negro involved, it was like two dogs in a  
field. You knew one of them was going to kill  
the other. I would expect more from a white  
person who are more civilized.'

17 And I gather that would be an example, if true, of racial bias  
18 on the part of one member of the community that would have  
19 found its way onto the jury.

20 A. If true.

21 Q. If true. And, indeed, the Chairman says I guess at that point,  
22 "I will not rely on that." Not very accurate or, I assume that's  
23 what he's saying. My question to you really is this. If we  
24 found out who that person was, that member of the jury, and  
25 we subpoenaed that person simply to verify before the

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 Commission that comment, would it be your view as Chief  
2 Crown Prosecutor in Cape Breton County that the Criminal  
3 Code would, in some way, be violated?

4 A. I suspect so although to answer that off the cuff like this...

5 Q. Well there are prohibitions in the Criminal Code with respect  
6 to...

7 A. To discussing the deliberations....

8 Q. Yes.

9 A. Yes. Does that comment violate that I guess is the question.

10 Q. Yes. That's really my question.

11 A. Yes.

12 Q. It doesn't sound to me like he's talking about deliberations  
13 he's just expressing a view...

14 A. His view, yes.

15 Q. His view.

16 A. He's not saying that other members shared it or that they  
17 discussed it, that it formed part of the deliberations but he's  
18 just simply saying that was his view.

19 Q. Yes.

20 A. Could a fair case be made for their not being a violation of the  
21 Criminal Code?

22 MR. PINK

23 My Lord, I have to object to that question. I don't think Mr.  
24 Edwards should be in a position now of having to confirm an  
25 opinion or to state an opinion as to what might happen if such and



MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 such occurs on a possible prosecution or breach of the Code.

2 MR. WILDSMITH

3 Certainly. I...

4 COMMISSIONER EVANS

5 The Code was amended anyway.

6 CHAIRMAN

7 Do you recall when the Code was amended to include the  
8 prohibitions, whatever the prohibitions are?

9 MR. EDWARDS

10 No, I don't, My Lord.

11 CHAIRMAN

12 But doesn't it prohibit, as well, anyone questioning a juror as  
13 to...

14 MR. EDWARDS

15 I believe so, yes.

16 MR. WILDSMITH

17 Q. I take it that's not a question that you've examined before in  
18 other contexts.

19 A. No. I mean you hear it every time you have a jury trial. The  
20 trial judge will give the jury the standard admonition that  
21 there is a section of the Criminal Code which prohibits you, et  
22 cetera.

23 Q. Well part of the reason I guess I'm curious is that it indicates  
24 in your notes in Volume 17 at page 6 that the jury foreman in  
25 the Marshall trial appeared on radio.

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 A. Yes. I got that second-hand from my secretary...

2 Q. Yes.

3 A. Right.

4 Q. And I take it you don't know anything about what the jury  
5 foreman said on the radio.

6 A. No.

7 Q. And you did not look into the question of whether the jury  
8 foreman had, in some way, violated the Criminal Code?

9 A. No.

10 Q. Okay. With respect to the Appeal Division's decision on the  
11 reference, I believe it's your evidence that Marshall, when he  
12 appeared on the hearing in December of 1982, made a poor  
13 witness on his own behalf.

14 A. Yes.

15 Q. The Appeal Division, in its decision, page 63 in its decision  
16 found in various places in our material, just for the record it's  
17 at, one place is at Volume 32, page 199, described Mr.  
18 Marshall's evidence as containing, "evasions, prevarications  
19 and outright lies," and stated that his evidence, "old and new,  
20 if it stood alone would hardly be capable of belief." Was it  
21 your view that his evidence was as bad as those quotes would  
22 suggest?

23 A. No, when I was giving the opinion I was judging more by  
24 demeanour and the impression that he was giving. Like he  
25 was kind of giving the impression that this didn't matter that

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 much to him. Like that tone was set when he came late,  
2 having taken his driver's test, and then just his demeanour on  
3 the stand...

4 Q. Yes.

5 A. Seemed to convey that impression.

6 Q. Fair to think, though, that somebody who had spent, well had  
7 been convicted 11 years earlier...

8 A. Yes.

9 Q. And had maintained his innocence throughout that time  
10 period and had been looking for this opportunity to establish  
11 his innocence...

12 A. Um-hmm.

13 Q. And to have an acquittal entered doesn't make too much  
14 sense that he would have come in and deliberately blown the  
15 one chance that was being given to him.

MR. PINK

17 How can Mr. Edwards say what Donald Marshall would have  
18 done?

MR. WILDSMITH

20 Q. Okay, well let me put it to you a different way.

CHAIRMAN

22 He didn't blow it, he succeeded...

MR. WILDSMITH

24 Yes.

25

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 CHAIRMAN

2 At least in the acquittal.

3 MR. WILDSMITH

4 Although what he succeeded in doing is convincing the  
5 Appeal Court that he was engaged in outright lying...

6 CHAIRMAN

7 Oh, I appreciate that too.

8 MR. WILDSMITH

9 Q. And I guess the point that I wanted to make with you, Mr.  
10 Edwards, is it conceivable that the Appeal Court misread his  
11 demeanour, his personal traits, his Indian-ness and that, in  
12 fact, his evidence was not that bad, bad enough to suggest  
13 outright lying.

14 COMMISSIONER EVANS

15 That's, how can this witness judge the decision, or at least  
16 the thinking of five judges on the Court of Appeal?

17 MR. WILDSMITH

18 Well I guess that's a fair comment. What I really wanted to  
19 reflect on was his observations of Donald Marshall's demeanour  
20 and whether or not it was such that somebody could be misled  
21 into thinking that he was lying to them.

22 COMMISSIONER EVANS

23 Well they saw it one way, I guess this witness may have  
24 seen it another way.

25

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 MR. WILDSMITH

2 Yes. And I simply wanted the confirmation of the way that  
3 he saw it.

4 COMMISSIONER EVANS

5 So your question is, I take it, then, was his demeanour as, in  
6 your view, as bad as the Court of Appeal's view, as it was in the  
7 view of the Court of Appeal.

8 MR. EDWARDS

9 I don't think I can go beyond saying that his, the impression  
10 he gave as a witness wasn't good. And yes, it's conceivable that  
11 because of the factors you outlined that he could have been  
12 misread.

13 MR. WILDSMITH

14 Q. Thank you. Moving on to a different area, there is some  
15 suggestion, although I don't know how it came out  
16 conclusively that Chief MacIntyre knew something of John  
17 Pratico's mental condition. And there's some evidence about  
18 him taking that paragraph out of...

19 A. Yes.

20 Q. His affidavit.

21 A. Right.

22 Q. My question to you is this. If, in fact, John MacIntyre knew  
23 something about John Pratico's mental condition, was he, in  
24 your view, under an obligation to communicate that  
25 information to someone such as the Crown Prosecutor? I

1 don't necessarily mean a legal obligation but should he, as part of  
2 the way of the system operates?

3 A. All I can do is just try to put myself in that situation and an  
4 investigator come in and give me a statement of Pratico and  
5 give me no indication that there might be some problem with  
6 his mental condition. I think I'd be quite annoyed with that  
7 investigator when I did make that assessment.

8 Q. Okay. So to put it a different way, in your view, the better  
9 practice would be for that information to be communicated  
10 from the police to the Crown counsel.

11 A. Yes. Just by way of parallel. Like when they told me that  
12 their interview with Sarson, Harry Wheaton and Jim Carroll...

13 Q. Yes.  
14 10:59 a.m.

15 Q. Yes.

16 A. Told me that, they say, well, "Yes, he's confirming the story  
17 but you got to see that against the background, this guy is  
18 into drugs and Gene Cole says he's not that reliable a guy,"  
19 you know, so I was given the background there and that's  
20 the type of background that I would expect from the  
21 investigator telling me about John Pratico.

22 Q. And if you didn't get it in a particular case and found out  
23 about it afterwards, you would indicate to the police officers  
24 you regularly deal with that you wanted this kind of  
25 information?

1 A. Yes.

2 Q. Okay.

3 A. Of course, I mean there would be an opportunity, of course,  
4 and I'd be quite remiss if I put a witness like John Pratico  
5 on in a murder trial without having interviewed him myself.

6 Q. Okay.

7 A. You know, one of your eye witnesses.

8 Q. Okay. Well, let's assume that you had this information  
9 yourself then as Crown counsel, either because the police  
10 told you or because you interviewed.

11 A. Uh-hum.

12 Q. Are you under any obligation as part of your general  
13 obligation to disclose to indicate to defence counsel the  
14 nature of the witness?

15 A. I think so.

16 Q. So, just to summarize that, what you're saying is that as part  
17 of the obligation of the Crown to disclose its case, part of  
18 that obligation includes an obligation to advise defence  
19 counsel of the mental condition of witnesses like John  
20 Pratico?

21 A. Yeah, I, you know, perhaps in that situation I might...I think  
22 I probably would discuss that with defence counsel or I  
23 might say to the defence counsel you should interview this  
24 fellow yourself.

25 Q. In some which way you're indicating giving a warning or a...

1 A. Yeah.

2 Q. ...clue to defence counsel.

3 A. Yes.

4 Q. You don't just keep the information to yourself.

5 A. No.

6 Q. Okay.

7 A. And I'm not speaking "I," I think Crown generally...

8 Q. Yes.

9 A. Would behave in that manner.

10 Q. Okay. You gave considerable evidence about whether the  
11 actions of John MacIntyre amounted to counseling perjury.

12 A. Yes.

13 Q. I don't believe you indicated whether obstructing justice  
14 might be a charge that could be made out with respect to  
15 failing to disclose statements.

16 A. I believe I did or...

17 Q. I'm sorry, what...

18 A. You could take that from my answer when I was asked,  
19 well, if it had been the Harriss statement which was slipped  
20 on the floor.

21 Q. Okay.

22 A. I said I would have recommended that he be charged with  
23 obstruction of justice, well, I think the implication is clear, if  
24 not, I'll state it, that, you know, without that, no, I don't  
25 believe there is an obstruction of justice case there.



- 1 Q. So, if the Harriss statement on the floor was true, that  
2 would, in your view, be a criminal offence.
- 3 A. Probably, yes.
- 4 Q. Okay. Moving on to a different area then. Mr. Ross dealt  
5 with you to a great extent with respect to Roy Ebsary and  
6 his personality traits, the fact that he was bizarre, eccentric,  
7 had a fascination with knives and a penchant for violence,  
8 and I think you agreed with all of those things.
- 9 A. Yes.
- 10 Q. One area he didn't cover with you is the racial views of Mr.  
11 Ebsary. Is it fair to say that Roy Ebsary didn't like blacks or  
12 Indians and was quite capable of...or was quite capable of  
13 not liking blacks or Indians?
- 14 A. Well, there is the comment Donald Marshall attributed to  
15 him.
- 16 Q. Yes. Do you have any other knowledge or information, for  
17 example, that he...
- 18 A. Not that I can think of offhand.
- 19 Q. ...regularly referred to blacks as niggers in casual  
20 conversation.
- 21 A. I didn't have that many casual conversations with Roy.
- 22 Q. All right. But through witness statements, statements that  
23 were given by others reporting on Ebsary's conversations.
- 24 A. Gee, I don't recall...
- 25 Q. No knowledge.

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 A. ...right offhand.

2 Q. Okay. You gave some evidence about the shoplifting charge  
3 that was dropped on humanitarian or charitable grounds.

4 A. Charitable, right.

5 Q. At the recommendation of the Deputy Attorney General.  
6 The accused in that case, I take it, was not an Indian.

7 A. I don't want to say too much about the identity, but I think  
8 I should make clear, she was not Indian, she was not black.

9 Q. Okay. I take it she was white then, not a member of any  
10 other minority.

11 A. Yes. That's...she was white.

12 Q. Okay. Do you know whether or not this person was  
13 connected in any way to a political party?

14 A. I have no knowledge of it.

15 Q. No knowledge of whether the person is more prominent  
16 than simply a voter.

17 MR. CHAIRMAN

18 I'm having some trouble with that question, Mr. Wildsmith,  
19 is as it relates to your clients.

20 MR. WILDSMITH

21 Well, I think it's all part and parcel of the question of  
22 whether Indians like Mr. Marshall are treated one way but this  
23 other lady with a shoplifting charge was treated in a different  
24 way.

25

MR. EDWARDS, EXAM. BY MR. WILDSMITHMR. CHAIRMAN

Well, Mr. Marshall, now, it's pretty thin, but go ahead.

MR. WILDSMITH

Q. I want to be sure when you leave the stand that we know as much as you know.

A. About that incident?

Q. Yes. Short of the identity of the person.

MR. CHAIRMAN

But we...now, we're...no, no, no. Whoever the person is, the identity is not relevant at this inquiry.

MR. WILDSMITH

No, short of the identity.

Q. Is there any other distinguishing feature that you can help us out with? For example, why a charitable ground might have existed?

A. I am trying to formulate in my mind, don't misread my pause. But I'm trying to formulate in my mind a complete answer without prejudicing the right of the party involved. All I can add to what I've already told you is that the matter was set for trial. There had been some pressure brought to bear in the community to have the charge dropped and I had refused. The owner of the store involved had phoned me and he wanted the charge dropped because he had had conversations with people who he didn't identify. And I told him that it was out of his hands, the Crown was

1 conducting the case and it was going ahead. The defence  
2 lawyer wanted the matter to go ahead because the defence  
3 lawyer felt there was a defence. I don't think the defence  
4 lawyer was particularly...

5 Q. Did the store keeper offer a reason?

6 A. Just that he had been approached. And again, I can't recall  
7 specifically whether he named who he was approached by.  
8 I don't think he did. And, the security guard who had made  
9 the apprehension had indicated to me in the pre-trial  
10 briefing that she had been told by the complainant's wife, or  
11 the accused's husband rather that this matter would never  
12 get to Court. I think that's about all I can tell you. I told  
13 you the other day that I have suspicions, but I don't think  
14 it's appropriate for me to discuss those and any more  
15 information that I've given you would prejudice the right of  
16 the accused person to have her identify protected.

17 Q. Okay. Let me move on to a different area. Turn to your  
18 letter in Volume 31 at page 126.

19 A. Yes.

20 Q. Paragraph B contains the comment, I think you've already  
21 been referred to it, concerning the police investigators that  
22 they were not motivated by either malice towards the  
23 accused or, as has been suggested in some press reports,  
24 prejudice towards his race.

25 A. Right.

1 Q. I looked at your factum and I didn't see any reference to  
2 this question of prejudice towards Mr. Marshall's race on the  
3 part of the police investigators.

4 A. No, that's right.

5 Q. Did it come out in any way in terms of arguments or  
6 discussions with the Court?

7 A. I don't believe it did.

8 Q. So, despite this letter, you did not make this representation  
9 to the Appeal Division?

10 A. As it turned out I didn't have to.

11 Q. Didn't have to in what sense?

12 A. Well, had the argument been raised that they had been  
13 motivated by...

14 Q. You mean if Mr. Aronson had brought it up?

15 A. Yes.

16 Q. I see.

17 A. Then I would have argued that there was no evidence of  
18 that.

19 Q. Of course, as I read the tenor of this letter, you are saying  
20 these are points that you thought should be emphasized to  
21 the Court.

22 A. Yes.

23 Q. And you're qualifying that now by saying only if it had been  
24 brought up by Mr. Aronson would you emphasize it.

25 A. Yes. And obviously the fact that it wasn't brought up, that's

1 the only reason, rationale, for it that I can give you.

2 Q. Okay. Did you have any discussions with anyone about this  
3 issue?

4 A. No.

5 Q. Is it fair then to say that you had no basis to know whether  
6 this is true or not?

7 A. Well, by that time, January of '83, I had had the case for  
8 about a year. I had spoken to the principals in it, including  
9 John MacIntyre, and nothing that I saw or heard would  
10 support an allegation that Donald Marshall got shafted  
11 because he was an Indian, to put it bluntly.

12 Q. Right. But I take it from what you've told me already that  
13 you had no discussions about this issue with anyone and  
14 that this is not a matter that had been investigated.

15 A. No, that's correct. And that was my impressions, you know,  
16 if there had been anything that did arise in any of our  
17 discussions, if John MacIntyre had made any racist remarks  
18 in my presence, I would have thought differently, but he  
19 never did.

20 Q. Okay. But is it then fair to say that since you didn't discuss  
21 it specifically with anyone, you didn't investigate or no one  
22 investigated it?

23 A. It's arguable that that's a premature conclusion.

24 Q. Yes.

25 A. Yeah.

MR. EDWARDS, EXAM. BY MR. WILDSMITH

1 Q. And no real basis for saying that it was correct?

2 A. No real basis for arguing one way or the other I guess would  
3 be the best way to put it.

4 Q. And, except as a rhetorical statement, no basis for making a  
5 representation on the issue to the Appeal Division.

6 A. Yeah. I mean it was an issue.

7 Q. That's...

8 A. ...I think that had been referred to in the press.

9 Q. Yes.

10 A. That that may be what triggered the comment, I don't know.

11 Q. Well, what I'm putting to you is that there would be no  
12 reason to say this to the Appeal Court.

13 A. No.

14 Q. And, if you did do what the letter has suggested, brought it  
15 out as a point of emphasis to the Appeal Division without  
16 any investigation, discussion or evidence, it would have  
17 been improper?

18 A. It would have been improper, I suppose, to bring it out, but  
19 I think it would have been a fair rebuttal if the suggestion  
20 had been made by the other party.

21 Q. Yes.

22 A. Yes.

23 Q. Fair enough.

24 MR. WILDSMITH

25 Thank-you, those are my questions.

1 MR. CHAIRMAN

2 Thank-you.

3 MR. PINK

4 I have very few questions.

5 MR. CHAIRMAN

6 All right, Mr. Pink.

7 EXAMINATION BY MR. PINK

8 Q. Mr. Edwards, throughout your involvement in the Marshall  
9 aspect of this case, from January or February '82 until the  
10 decision of the Appeal Court, did you ever discuss the  
11 matter with the then Attorney General?

12 A. Never.

13 Q. You've commented on the witnesses at the appeal hearing,  
14 at the reference hearing, and your indication that Mr. Evers  
15 didn't appear to be a very good witness. You spoke earlier  
16 about Mr. Marshall.

17 A. Yes.

18 Q. What can you comment about the other witnesses and how  
19 they appeared and how that affected your considerations in  
20 preparing your factum?

21 A. Well, I thought I had made some reference to Mr. Chant. It  
22 was my view that the Court may have turned off to Mr.  
23 Chant because he...he was really pushing his born-again  
24 status and just the way he was saying that, it just didn't ring  
25 as being credible. And put that against the background that



1 he was admitting to having lied at a Supreme Court trial.  
2 Patricia Harriss's evidence was good evidence, I thought, her  
3 demeanour and everything was fine, but there was also the  
4 fact that she was there admitting she had lied. Greg  
5 Ebsary's evidence, it really was peripheral in importance.  
6 Donna Ebsary's evidence was good and it was credible  
7 except that she was obviously a very embittered young lady  
8 and had a real ax to grind against her Dad. Have I hit them  
9 all?

10 Q. I think you have. And, I take it those are the factors when  
11 you were alluding in your direct examination to the  
12 witnesses and how they appeared.

13 A. Yes.

14 Q. They contributed to your changing your view and the  
15 approach you took in your factum?

16 A. Yes, yes.

17 Q. After the reference you wrote an opinion for the  
18 Department in which you made reference to an inquiry and  
19 you felt there was a need for an inquiry to look into all the  
20 circumstances.

21 A. Yes.

22 Q. Did you address your mind to whether or what effect an  
23 inquiry would have upon the Ebsary trials?

24 A. I don't know if I specifically addressed that at the time, so  
25 much as I would just take it as a given that we'd do Ebsary

1 first.

2 Q And that an inquiry would not take place until Ebsary was  
3 completed.

4 A. That's right.

5 Q And finally, Mr. Edwards, Mr. Cacchione, as he then was, in  
6 the memo that Mr. MacDonald referred you to in Volume 32,  
7 could I just take you back to that for a second?

8 A. Sure.

9 Q 32 at page 212. It starts at 210 but I want to direct your  
10 attention to 212.

11 A. Yes.

12 Q There was some discussion about calling Staff Sergeant  
13 Wheaton.

14 A. Yes.

15 Q And the voir dire. Could you just explain to the  
16 Commissioners how the taped statement was used in the  
17 Ebsary trials? I'm now talking about the taped statement of  
18 Mr. Ebsary.

19 A. How it was used?

20 Q. Yes. And what arrangement was made with defence  
21 counsel?

22 A. Oh, during Ebsary two, well, perhaps... With Ebsary one, I  
23 made no effort to try to introduce the tape. In Ebsary two,  
24 Mr. Wintermans and I had had discussions about my using  
25 the tape and he indicated to me that he was prepared to

1 waive the voir dire, in other words, acknowledge that the  
2 statement had been voluntarily made. So, once there is a  
3 waiver of the voir dire then, of course, the peripheral  
4 witnesses on the voir dire are not required on the trial  
5 proper. All you need then on the trial proper is the person  
6 who actually took the statement and that was Jim Carroll.  
7 Staff Sergeant Wheaton would have no relevant evidence to  
8 give where there had been a waiver of the voir dire on the  
9 admissibility of that statement.

10 Q. And that was the only evidence vis-a-vis Ebsary that Staff  
11 Sergeant Wheaton had to give.

12 A. That's right. There was really no other evidence, I don't  
13 believe I was calling Evers at Ebsary two. The only time I  
14 called him was Ebsary three for the reason that I stated  
15 before, and so that is the only other evidence or the only  
16 other area in which Staff Sergeant Wheaton would have any  
17 admissible evidence to give, i.e., with the collection of the  
18 knives and the...

19 Q. The continuity of it.

20 A. The continuity, yes.

21 Q. And what happened on Ebsary three with regard to the  
22 taped statement.

23 A. Well, on Ebsary three, Mr. Wintermans indicated that there  
24 would be no waiver of the voir dire and that we would have  
25 to prove the statement voluntary, and so we had a full voir

MR. EDWARDS, EXAM. BY MR. PINK

1           dire and Staff Sergeant Wheaton was called.

2       Q.    Going back to Ebsary two, the waiver of the voir dire,  
3           anything unusual or untoward about that?

4       A.    No, that's normal, normal practise, and the cases are very  
5           clear that such a waiver is acceptable and it often happens.  
6           Not as often as I like, but it often happens.

7       Q.    If I could direct you to page 214.

8       A.    Yes.

9       Q.    About a third of the way down the page Mr. Cacchione  
10           makes reference to Mr. Seale and some criticism of your  
11           handling of the reference.

12      A.    Yes.

13      Q.    Did you have any discussions with Mr. Seale after the  
14           reference and, if so, what was the nature of those  
15           discussions?

16      A.    I think there is a reference in my note of my December 6th,  
17           1982 conversation with Martin Herschorn, to the fact that  
18           between the 2nd and the 6th, Oscar Seale had phoned the  
19           office. I wasn't in at the time but my secretary advised me  
20           that he had been complimentary of my handling of the  
21           reference.

22      MR. PINK

23           Thank-you. Those are all my questions.

24                           EXAMINATION BY MR. ORSBORN

25      Q.    Mr. Edwards, I believe you told my friend Miss Derrick that

1 in your view the non-disclosure of the first statements of  
2 Harriss, Chant and Pratico and the nondisclosure of the '71  
3 reinvestigation were, I think in your words, the rock on  
4 which the foundation of the wrongful conviction and  
5 unsuccessful appeal was built.

6 A. Yes.

7 Q. And, I think you also my friend Mr. Ross this morning that  
8 you would have put forward the robbery theory in the  
9 reference hearing even if you were arguing for a  
10 miscarriage?

11 A. Yes.

12 Q. I think you may have addressed this, but can you tell us  
13 why you would put forward the robbery theory to the  
14 exclusion of the non-disclosure of the statements in the  
15 reinvestigation?

16 A. I put forward the robbery theory but I wouldn't exclude the  
17 nondisclosure.

18 Q. Did...

19 A. What I was saying was that even though, in my view, an  
20 attempted robbery was going down that evening, there was  
21 still, in my view, a miscarriage.

22 Q. Yes.

23 A. Because of the nondisclosure.

24 Q. Yes.

25 A. So, I'm not...

1 Q. Your testimony to Miss Derrick was that notwithstanding the  
2 actions of Mr. Marshall and notwithstanding the actions of  
3 the police, the foundation of the wrongful conviction was the  
4 nondisclosure of the statements I believe was your  
5 testimony.

6 A. Nondisclosure of statements and, in particular, the  
7 nondisclosure of the '71 reinvestigation.

8 11:23 a.m.

9 Q. Yes, but at the reference your factum urged upon the Court  
10 the matter of the robbery and Mr. Marshall's involvement to  
11 the exclusion of any reference to nondisclosure.

12 A. That's right, yes.

13 Q. Is it fair to say, then, that you were urging upon the Court a  
14 position that was directly contrary to what you believed to be  
15 the truth?

16 A. It was directly contrary to my personal feelings but I felt that  
17 it was an arguable position to take.

18 Q. You discussed with Mr. Ross this morning robbery and  
19 bumming. Do you draw a distinction in those terms?

20 A. Well, yes, yes and no. Like if the bumming doesn't get  
21 beyond asking then there is definitely a distinction. If the  
22 bumming is accompanied by a threat of any type...

23 Q. Well if you just take the words, "Dig, man, dig," is that an  
24 attempt at bumming of itself?

25 A. "Dig, man, dig," while at the same time the person with you is

MR. EDWARDS, EXAM. BY MR. ORSBORN

1 immobilizing Jimmy MacNeil, in this case, that, I take, to be an  
2 assault accompanied by a threat. That's more than bumming.  
3 That is an attempted robbery.

4 Q. The words, "Dig, man, dig," of themselves, leaving aside any  
5 other actions that might be going on, would you constitute  
6 that simply as a request in the nature of bumming?

7 A. Oh, if there was nothing else going on that would be a request  
8 in the nature of bumming, yes.

9 Q. But based on your view and knowledge of the evidence, do  
10 you rule out the possibility that the stabbing occurred in the  
11 absence of a robbery?

12 A. Yes, I do.

13 Q. It would follow that you would rule out the possibility that it  
14 could also happen in the absence of any bumming. That  
15 would have to follow because presumably one would include  
16 the other.

17 A. Yeah, I mean I'm, I think that there was the robbery taking  
18 place.

19 Q. And you would rule out the stabbing, other than in the  
20 context of a robbery.

21 A. Yes.

MR. ORSBORN

22 Thank you, My Lord.

EXAMINATION BY COMMISSIONER EVANS

23  
24  
25 Q. Is the position of Crown counsel a civil service position today?

1 A. For some people it is but in my own case I'm an Order-in-  
2 Council appointee.

3 Q. And termination and so forth is at the will of the Legislature,  
4 I suppose, is it?

5 A. We didn't want to make that public. Yes.

6 Q. Well do you have any association of Crown attorneys?

7 A. There's, no, there is none. There is none. There's a move  
8 afoot to start an association of Government lawyers but that  
9 would include the civil side as well as the Crown's.

10 Q. Well, is there any consistent policy with respect to disclosure?

11 I know that the AG's office will send out a directive...

12 A. Yes.

13 Q. But if the directive isn't complied with what do, how do you  
14 meet with other Crown attorneys to discuss the policy that  
15 you're going to follow? Or do you just accept that  
16 everybody's going to follow what they get from Halifax.

17 A. I guess I can only speak for what happens in my own county.  
18 We have, usually, an annual meeting but I don't recall that  
19 particular issue being on the agenda.

20 Q. Do you have sometimes difficulty in obtaining the full  
21 information from police officers in order that you may make a  
22 proper disclosure to defence?

23 A. From time to time the police will send, say, a Crown sheet and  
24 just some of the statements. They won't all be there. And so  
25 we'll have to go back and ask them for everything. And,



1 again, referring to the example I gave before, sure, there are  
2 times when we don't have it all and just referring to your  
3 question the other day, I'm at a loss as to how to, who or what  
4 mechanism to suggest to get around that. I think most cases  
5 we get it all, but every once a in while a statement will  
appear that I know nothing about.

6 Q. Yes. And, therefore, you couldn't disclose to defence counsel,  
7 and I was curious as to...

8 A. That's right.

9 Q. What steps could be taken...

10 A. Yes.

11 Q. Or what suggestions might you have to correct that situation  
12 because there's still some police officers who believe in trial  
13 by ambush apparently...

14 A. Yes.

15 Q. Is that an internal matter you would, when that happens in  
16 your situation, to whom do you refer it? If it's the RCMP, do  
17 you refer to their superior officers, and if it's a local police  
18 force do you go to the Police Commission, or how do you  
19 handle it?

20 A. If it happened with the RCMP I'd refer it to the superior  
21 officer. Probably the staff sergeant of the detachment  
22 involved and I would expect that it would be rectified. And  
23 in the case of municipal police I'd go to the chief if I thought  
24 that it wasn't an innocent and inadvertent mistake that  
25

MR. EDWARDS, EXAM. BY COMM. EVANS

1 caused no problem. In the case of the example that I did give  
2 that, a murder case, what I did there was ask for the RCMP to  
3 take over the investigation and re-investigate it and then  
4 after the matter had cleared the court, after the second trial,  
5 Martin Herschorn and I met in Sydney with the chief of police  
6 and his senior inspectors and we went, did quite an extensive  
7 debriefing and they showed us what steps they had taken to  
8 ensure that it wouldn't happen again.

COMMISSIONER EVANS

9 Thank you.

EXAMINATION BY CHAIRMANCHAIRMAN

12 One question, Mr. Edwards, with respect to your appointment  
13 is what you refer to as an Order-in Council appointment.

14 A. Yes.

15 Q. That's not a legislative appointment but a...

16 A. Cabinet.

17 Q. Cabinet appointment.

18 A. Yes.

19 Q. Do you, during your period as Crown Prosecutor, do you have  
20 all the benefits of a public servant?

21 A. Yes.

22 Q. A non-Order-in-Council.

23 A. Yes.

24 Q. You're presumably, hopefully, building up pension benefits, et  
25

MR. EDWARDS, EXAM. BY CHAIRMAN

cetera.

1 A. Oh yes, yes. They're deducting it anyway. It better be there.

2 Q. In Nova Scotia, I may have asked you this before, are there  
3 any practicing lawyers retained by the Province to do  
4 prosecutions?

5 A. Yes, there are three or four in Cape Breton County who I  
6 would call, like if I have a fellow off sick who regularly does a  
7 particular Magistrates Court, Provincial Court, and the rest of  
8 us are tied up in other courts, then there are people I can call  
9 on from the private Bar. And I try to avoid doing that  
10 because...

11 Q. And you work full-time as a prosecutor.

12 A. Yes.

13 CHAIRMAN

14 Thank you very much, you've been a very patient and  
15 obviously very knowledgeable, highly professional witness.

16 WITNESS WITHDREW

17 11:31 - BREAK

18  
19  
20  
21  
22  
23  
24  
25