

1 MR. PUGSLEY:

2 Fine. Whatever is convenient, My Lord.

3 MR. CHAIRMAN:

4 All right.

5 INQUIRY RECESSED AT: 11:20 a.m., AND RECONVENED AT: 11:41 a.m.

6 MR. CHAIRMAN:

7 Mr. Pugsley.

8 MR. PUGSLEY:

9 Thank you, My Lords.

10 The role of Commission Counsel has been set forth with
11 clarity by my friends on the first few pages of their memorandum
12 and that was referred to yesterday by my friend Mr. MacDonald.
13 And it speaks of a balanced view --

14 MR. CHAIRMAN:

15 I'm not sure you're coming through. I don't -- Can counsel --

16 COMMISSIONER EVANS:

17 It's the background music.

18 MR. CHAIRMAN:

19 All right. Now we're fine. Thank you.

20 MR. PUGSLEY:

21 I was saying, My Lords, that the role of Commission Counsel has
22 been set forth on the first few pages of the brief dealt with
23 yesterday by my friend, Mr. MacDonald. And there he advances the
24 thesis that it is up to commission counsel to present a balanced
25 view in an impartial fashion, that commission counsel have a

1 unique perspective in that they are carrying a brief for no
2 particular interest, that no counsel other than commission
3 counsel can reasonably be expected to review the totality of the
4 evidence objectively. In view of what was said yesterday by my
5 friend concerning John MacIntyre, I suppose I should be grateful
6 that counsel did not take an adversarial or partisan approach.

7 It's difficult to remain objective to present a balanced
8 view and not to become personally involved because this case
9 raises strong emotions and passions. It's evident in my
10 submission that commission counsel has identified personally with
11 the issues in this Inquiry, and in my submission, that was
12 evident from their submission yesterday and as well as a
13 consequence of examining their brief, words such as, "In our
14 opinion we consider it is inconceivable; if as we believe; we do
15 not consider that explanation to be believable; it is our view;
16 we're of the view; the only other possible explanation we can
17 suggest; we cannot forget; we cannot forget." I do not
18 criticise commission counsel for this personal involvement, but I
19 submit that it should be recognized when considering counsel's
20 submissions.

21 MacIntyre's involvement and actions in 1971 have to be
22 considered in light of the information he received at that time
23 and his demeanour on the stand in December, 1987, has to be
24 considered in the light of the circumstances that existed at that
25 time. Commission counsel took pains to ensure that the evidence

1 of many of the chief witnesses was elicited in a manner that was
2 designed to put the witness at his or her ease. Certainly with
3 respect to some witnesses who were labouring under difficulties,
4 this was appropriate and served the ends of justice. I don't
5 suggest that MacIntyre should have been treated with a
6 consideration for comfort with which Patricia Harriss was
7 treated or the gentleness with which her past criminal record was
8 extracted, but I do suggest that in considering the personal
9 beliefs of commission counsel, that MacIntyre was less than
10 prompt, that he couldn't sit still, that he fidgeted with papers,
11 that one should bear in mind the circumstances under which
12 MacIntyre testified. MacIntyre was the villain.

13 In the application for funding in May, 1987, I stressed that
14 he was the one who had the most to lose in this Inquiry. He was
15 the one that was going to be in the hot seat. He'd been vilified
16 by the Canadian Press for five years from coast to coast. He
17 was the best known policeman in Canada. He was the last witness
18 before the first substantial break in these hearings. And in
19 addition to being castigated by witnesses and counsel on national
20 television claiming he was corrupt, he was in for a long, hard
21 session. He was going to be cross-examined by at least seven
22 vigorous, capable counsel adverse in interest to him. He was
23 retired. He was sixty-eight years of age. And the next five
24 days were going to be the focus of all the stress that he and his
25 family had experienced since the first allegations were raised

1 against him in the spring of 1982. Don't misunderstand me. I'm
2 not looking for sympathy. I'll handle the points raised by my
3 friends by dealing with the evidence. What I am looking for and
4 did not find in the submissions of commission counsel was an
5 understanding of the circumstances in which he gave his evidence.

6 What kind of a man was John MacIntyre? Well, some guide--
7 some guide is found in the comments of fellow police officers and
8 lawyers with whom he dealt in Sydney for a period of thirty
9 years. And their comments are found at the end of our submission
10 at around page 333. And I'm not going to read those seriatim
11 but I'd like to highlight some of the comments that were made.

12 Norman MacAskill was his predecessor. Norman MacAskill's
13 evidence is precised -- his evidence on this point is precised at
14 page 335 and 336. Norman MacAskill was MacIntyre's predecessor
15 as Sergeant of Detectives, and he said in response to a question
16 at page 336:

17 Q. Would he in your experience set up
18 certain facts and ignore other facts?

19 A. Oh, no.

20 Staff Sergeant David Wood was stationed in Sydney from '64 to '72
21 and he had occasion to work with MacIntyre from time to time.
22 When asked of his opinion he said, "I'd say that Detective
23 Sergeant MacIntyre was conscientious." Joseph Ryan was Wood's
24 partner. He said as well, "I would say that he was
25 conscientious; and on the surface as I had known him, I would
also say that he was competent." Douglas James Wright at page

1 338 said:

2 And I think he fit that bill very,
3 very well to be quite frank with
4 you, but certainly a very, very
5 diligent investigator. Quite
6 frankly speaking, I never saw him
7 do anything in an interrogation
8 that would concern me in the area
9 exceeding his authorities or doing
10 anything that was unethical or
11 trying to fabricate anything or
12 anything of that nature. There was
13 nothing to concern me.

14 Simon Khattar who's practiced law in Cape Breton since 1936 at
15 page 340:

16 Both of them were -- I found
17 MacIntyre a tougher officer than
18 Urquhart. You could talk to -- you
19 could talk to both of them. I
20 found MacIntyre as I say as a very
21 tough officer but from my own
22 personal experience, an honest
23 officer.

24 and at page 341:

25 Both Mr. Rosenblum and I thought
that Detective Sergeant MacIntyre
was a good officer and a tough
prosecuting officer. That was my
feeling and I took that to be that
of Mr. Rosenblum. We both thought
he was an honest officer.

Provincial Judge Lewis Matheson who had worked as a Crown
Prosecutor between 1964 and 1980 had significant dealings with
MacIntyre and at 342, he said:

A. I'm satisfied that the statement John
MacIntyre was the one that he received
from those people.

Q. Of course, you say that, but what do you
base that on?

1 A. On -- on the -- on my dealings with John
2 MacIntyre at the time and throughout his
3 entire career, sir. Inasmuch as I was
4 aware. I've known him since 1957 to
5 today.

6 Q. And it is indeed unfortunate then that a
7 number of different people are now
8 saying that Sergeant MacIntyre inserted
9 these bits of evidence into their
10 statement?

11 A. Yes, it's - from my association with the
12 man, it's...unthinkable.

13 A. I considered John MacIntyre to be
14 honourable in every way. I considered
15 him a formidable officer to cross-
16 examine, not in the sense that he
17 wouldn't disclose but in the sense that
18 John MacIntyre -- Cross-examination
19 usually disclosed that John MacIntyre
20 had done his homework and my experience
21 as a defence was that you got yourself
22 into trouble when you looked -- looked
23 behind it. I considered at all times
24 that John MacIntyre was an honourable
25 police officer and I say so today.

16 Mr. Whalley's comments to the same effect, "a good police
17 officer.", never any suggestion that he abused prisoners, never
18 that any suggestion to the Police Commission that he was a
19 racist, never any improper conduct alleged against him. Then
20 finally Superintendent Vaughan at page 345, a most telling
21 comment in my submission, at the bottom of the page. He says:

22 On the basis of my review of the
23 file I did not see what is alleged
24 to be criminal activity on the part
25 of Mr. MacIntyre. I read over
zealousness. I read retaining or
detaining witnesses for a long
period of time. I read allegations
of desk pounding and using a loud

1 voice. But I didn't read anything
2 in there of...that would connote
criminal activity.

3 Q. And are you saying, in effect, that you
4 believe the witnesses lied because of an
error on their part?

5 A. I believe they incorrectly interpreted
6 Mr. MacIntyre's actions.

7 In my submission a telling response.

8 What happened here? Was this particular case an aberration?
9 Did MacIntyre lose his competence for this particular case or for
10 the time period this investigation was under way or did he, in
11 the words of commission counsel, conclude immediately upon
12 becoming involved in the case that Donald Marshall, Jr., had
13 stabbed Sandy Seale and Mr. MacIntyre was interested only in
14 finding evidence which would support his belief and that is
15 suggested on page 14 of commission counsel's brief. Interested
16 only in finding evidence which would support his belief. Did he
conclude to early?

17 Well, let's just take a look at the circumstances as they
18 existed in 1971 on the Saturday morning and the Sunday morning
19 when it is alleged that MacIntyre concluded as soon as he came on
20 duty at 8:30 in the morning on Saturday the 29th -- allegedly
21 concluded that Marshall had committed the crime. Superintendent
22 Vaughan testified MacIntyre and his investigators certainly had
23 grounds to suspect Marshall. Harry Wheaton said, "If I were
24 investigating the case, I would have Marshall in mind at the
25 beginning." Exhibit 40, which is the exhibit that was put in by

1 Constable Wood of the R.C.M.P. -- Exhibit 40 is pointed to as
2 being an example of a conclusion that MacIntyre had reached
3 concerning Marshall's guilt between the hours of nine-thirty and
4 eleven o'clock on Saturday, May 29th. Wood could not assist in
5 any personal recollection. All he could do was read his notes.
6 He had no personal recollection of the meeting at all and the
7 critical comment: "conversation with Edward MacNeil and
8 Detective MacIntyre. Feeling at the time Marshall was
9 responsible. Feeling at the time Marshall was responsible, and
10 happened as a result of a argument between both Seale and
11 Marshall." Wood says that he's -- believes that he saw them
12 together but he's not even sure of that. He's not sure who made
13 this comment. I draw to your attention a subsequent comment that
14 appears in Wood's handwriting in the same exhibit, exhibit 40, on
15 the last page and it says, "Marshall as suspect. Marshall as
16 suspect.", a comment that appeared on June the 3rd in Woods
17 writing, not on Saturday, May 29th, but on June 3rd. So at that
18 time Marshall was only and I -- the word "only" is mine--
19 Marshall only a suspect.

20 The City Sydney Police -- Sydney City Police as well as the
21 R.C.M.P. were on the lookout for a white volkswagen as early as
22 Sunday the 30th and Monday the 31st. Constable Wood was looking
23 for the white Volkswagen on the 31st and he said he had no idea
24 where the request came from except that a request to be on the
25 lookout for such a Volkswagen had come from the Sydney City

1 Police. The white Volkswagen first appears in comments addressed
2 to Oscar Seale in a telephone conversation at 7:30 on the
3 Saturday morning by Donald Marshall. You will recall that Seale
4 gave evidence and said he phone Marshall's house to find out what
5 had happened to his son and the white Volkswagen first appears,
6 if my recollection serves me correctly, in that conversation.

7 It next appears on the Sunday morning, on the 30th, when
8 John Pratico was sitting on his steps on Bentinck Street with
9 several of his friends including Rudy Poirier, and Marshall came
10 along and according to Poirier, and his statement is found in
11 exhibit 16, Marshall described a white Volkswagen. That
12 information appears in the statement of Pratico given to
13 MacIntyre that afternoon, the Sunday afternoon. Pratico, in his
14 evidence, states that he doesn't know where he got it from. In
15 fact, he even goes so far as to suggest that the police -- that
16 MacIntyre suggested to him the appearance of the white
17 Volkswagen which in my submission is nonsensical. The
18 information and the germ in Pratico's mind was planted by
19 Marshall when he saw -- when Marshall saw Pratico on the Pratico
20 steps on the Sunday morning.

21 The significance of the white Volkswagen is that MacIntyre
22 gave this information to Sydney Police and to the R.C.M.P. to be
23 on the lookout for the white Volkswagen. It does not indicate a
24 closed mind on Sunday or Monday when directions were given to an
25 allied police force to be on the lookout for that kind of a car.

1 Indeed there was another trip by the R.C.M.P. as late as
2 June the 3rd, the Thursday before the statements were given on
3 Friday, June the 4th, the critical statements. On June the 3rd
4 between eight o'clock in the evening and 12:30 a.m. in the
5 morning, MacIntyre went with Constable Ryan, Wood's partner, down
6 to Louisbourg to determine if there was anyone in the area -- I'm
7 sorry. New Waterford -- who may be able to give him information
8 as to the identity of persons in the park that evening. Ryan was
9 not of the view that MacIntyre was working on the investigation
10 with a closed mind at that time on Thursday, June the 3rd.

11 The M.C.I.S. telex is pointed to by counsel to show that
12 MacIntyre had a closed mind. This was the telex that occurred in
13 the early hours of Sunday morning; yet my suggestion and my
14 submission is that a fair reading of that telex is not that it
15 shows that MacIntyre had a closed mind but that MacIntyre, if
16 indeed MacIntyre was the author of that telex, had an open mind.
17 It says and I believe it's found at page 115 -- Page 90? I'm
18 sorry, it's found in volume 16 at page 90 but I believe it's also
19 found in our brief at 115 -- a reference is found at 115. In any
20 event it says, in part, --

21 MR. CHAIRMAN:

22 Which page of your factum?

23 MR. PUGSLEY:

24 It's found at page 90 of volume 16, and in my memorandum there is
25 a reference to it at page 115.

1 MR. CHAIRMAN:

2 Thank you.

3 MR. PUGSLEY:

4 At 3:11 a.m. a telex was sent to
5 the Maritime Crime Index Section
6 at "H" division in Halifax from the
7 Sydney Detachment of the R.C.M.P.
8 The telex indicates one time of
9 3:11 a.m. on Sunday, May 30, '71
10 and a handwritten notation on the
11 document indicates that it could
12 have been handled by the C.I.B.
13 the next morning, May 31. The
14 telex does identify Donald
15 Marshall, Jr. as "possibly the
16 person responsible"...

17 Not as the person responsible but as "possibly the person
18 responsible".

19 ...the telex recounts the version
20 of events which is attributed to
21 Donald Marshall...

22 Marshall states he and deceased
23 were assaulted by an unknown male
24 approx. 5'8 to 6' tall, grey haired
25 approx. 50 yrs. who stated he did
not like Indians or Negroes and
assaulted both persons with a large
knife.

The telex goes on to say may records be checked

...for a persons(s) in Sydney met
area (metropolitan area) using
similar type MO with photos etc....

So that the telex is not something that should be considered as
showing MacIntyre had a closed mind, but rather MacIntyre had a
open mind. He was asking for assistance. If I say if it was
him, certainly the Sydney Police were asking for assistance to

1 identify people in accordance with the description Marshall had
2 given.

3 The story related by Marshall was somewhat bazaar. Priests
4 from Manitoba stabbing Sandy Seale because he was Black after a
5 friendly conversation about cigarettes, women, and bootleggers.
6 The kind of impression that Marshall created on friends and those
7 who knew him is set forth at pages 187 of our brief. Bernard
8 Francis, who sat in on Donald Marshall's first interview with his
9 lawyers, said that Marshall acted typically for a Native person
10 by saying nothing more than was absolutely necessary and the
11 responses which were given were not even satisfying to Francis.

12 Could it have been any different for MacIntyre on May 30th?
13 Francis also advised this Commission in relation to a comment
14 attributed to him in a later Parole Report that although he had
15 never called Donald Marshall, Jr. "an excellent liar", he
16 testified:

17 I thought that in this particular
18 case, he wasn't telling the whole
19 truth. I felt that way, in all
honesty, -... that he wasn't
telling the full truth.

20 Roy Gould said, (This is at the bottom of page 187.)

21 I could put it to you this way, he
22 was never that honest with me about
everything.

23 Simon Khattar said

24 Q. Did you believe him?

25 His answer was

1 I had my doubts. I didn't say, "I
2 don't believe you". I had my
doubts.

3 And Harry Wheaton gave contradictory evidence about the robbery
4 theory. He first responded to a question from Mr. Orsborn (This
5 is found at page 189 of our brief.)

6 The Chief Justice asked you what
7 steps you would have followed had
8 you been confronted with that
9 situation that night. Would the
steps that you would have taken
been any different had you know
about the robbery?

10 And Wheaton answered,

11 Yes, I, to me, then, it would seem
12 more, I suppose, Marshall would
13 have been more credible to me. His
story would have been more
credible.

14 Wheaton changed his mind later on and gave different as has been
15 pointed out by my friend, Mr. Ruby. Eunice Harriss, Patricia
16 Harriss' mother said, "It sounded like Halloween to me, this
17 story."

18 There's an interesting exchange in the evidence of Debbie
19 MacPherson and this is found at page 183 of our brief in
20 paragraph 253. Debbie MacPherson was interviewed on June the
21 3rd, on Thursday, the day before June 4th, in the presence of
22 her brother and uncle and found that MacIntyre was suggestive.
23 MacIntyre interviewed her for an hour or an hour and a half. The
24 points about which MacIntyre was being suggestive were "things
25 that I didn't see that maybe I should have seen or something."

1 Well, for instance a man in a
2 trench coat which I had no
3 recollection of at all but it was
suggested more or less that I did
see him, but I didn't...

4 And the "trench coat", I suggest, is consistent with the
5 explanation Marshall gave of who encountered him in the park and
6 who was responsible for the criminal activity. So this was as
7 late as June 3rd where a witness is suggesting that MacIntyre was
8 being suggestive about her seeing someone in the park, which to
9 some extent fitted a description that Marshall had given.

10 A small point, Donald Marshall was not warned by MacIntyre
11 when he took the statement on Sunday, May 30th.

12 MacIntyre warned Roy Ebsary when he took his statement in
13 November of 1971 because he felt that he could possibly have been
14 implicated.

15 The indication from some of the other police officers,
16 Ambrose MacDonald, Walsh, and Young, evidence they gave (And this
17 is referred to on page 172 to 174 of our brief.) suggests that
18 there is no rumour that they heard around the police station that
19 Marshall was the prime suspect. There is evidence given by other
20 police officers to the opposite effect, particularly Butterworth
21 who came on duty later on that week, around the 3rd or 4th.

22 The circumstances surrounding the cut on the arm have been
23 referred to by my friends, commission counsel, as being an
24 example of MacIntyre trying to build something out of nothing,
25 but the fact is that Maynard Chant said, "There was no blood on

1 the arm when I first saw him." Merle Davis who was the nurse who
2 examined Marshall and treated Marshall in the hospital said,
3 "There was no bleeding. It was not severe. It was not very
4 deep." And Doctor Virick confirms that there was no bleeding.

5 If MacIntyre had his mind made up on the Saturday or the
6 Sunday, why did he not exert pressure on Maynard Chant who he
7 interview alone without anyone else being present on Sunday
8 afternoon, May 30th, to implicate Marshall? Why didn't he do it
9 then? Why wait five days until June 4th when he's got a room
10 full of people at Louisbourg and allegedly try to pressure Chant?
11 Why not take the opportunity of -- when he had him alone on the
12 Sunday of trying to pressure him then? But Chant says, and
13 Chant's evidence is categorical on this point, he was not
14 pressured on Sunday, June -- on Sunday, May 30th at all.

15 So that this point being one of the four points raised by my
16 friend, Mr. MacDonald, in his submission yesterday to have you
17 view MacIntyre's evidence with a jaundiced eye. One of four
18 points on the plank that leads to the possibility of MacIntyre
19 being charged with obstruction of justice. I suggest it's simply
20 not born out by the evidence, that MacIntyre did not make his
21 mind up on the Saturday or the Sunday. He had an open mind on
22 both these days and the evidence indicates that he did.

23 A second point that my friend relied upon as being
24 significant was MacIntyre's statement in evidence as to where
25 Pratico was supposed to be in the park when they went to the

1 park. And I think a fair and thorough reading of the evidence
2 given by MacIntyre is important and it's found in volume 33 at
3 pages 6120 to 6122. The thrust of my friends argument was that
4 MacIntyre didn't tell you that he had taken Pratico to the park
5 sometime between the 30th and June 4th and had gone over the
6 terrain with him. Didn't tell you that. And that he should have
7 but if you -- and that MacIntyre made a mistake, a slip of the
8 tongue, when he talked about Pratico supposed to have been in a
9 certain location in the park. But if you read MacIntyre's
10 evidence, it's evident that MacIntyre just had no recollection of
11 going to the park with Pratico. He says at the top of page 6120,

12 A. Well, I have no recollection of -- of
13 picking him up but I would say that
14 that must have -- that he must have
15 showed me where he was standing and I
16 must have been in the car. I don't
17 know.

18 A few lines later:

19 Q. Did you pick him up?

20 A. I've -- I've no recollection of it at
21 this time.

22 Page 621

23 A. I would say that I was over at -- must
24 have been over at the Park with him;
25 although I got no recollection of it.

A few lines later:

A. I would say I must have been.

Q. And you and Pratico were together in the
Park before he gave you this second
statement, isn't that correct?

1 A. I would say by this statement that I
2 must have been. Although I have no
3 recollection of it now. That's what I
4 said.

5 Page 6122:

6 Q. ..."supposed" to be. How did you know
7 where he was supposed to be?

8 A. I'm saying I have no recollection of it
9 now; but he must have taken me over
10 there. That's as far as I can go on
11 that, Mr. MacDonald.

12 So instead of this point as being a second plank in the platform
13 to hang MacIntyre, I suggest, that a fair reading of the evidence
14 indicates that MacIntyre just does not recall this incident at
15 all and that he was being forthright in his response.

16 The third plank was the inconsistency as to whether M. R.
17 MacDonald, the detective who was on duty the night of the
18 stabbing, came out on the Saturday, on the day after. M. R. says
19 that he did come out. He came out. He was up till four in the
20 morning with the Chief and that he then came at around 7:30 or
21 eight o'clock in the morning to the police station and that
22 MacIntyre arrived about 8:30 and that he spent the day with
23 MacIntyre going over his notes and doing certain things in
24 connection with the investigation, that they went to the Park on
25 at least four occasions and carried out some investigation there.
MacIntyre says he doesn't recall M. R. MacDonald being out on the
Saturday at all and my friend points to this as being say, this
is -- this is a throw-away point for MacIntyre. This is pure--
this is inconsequential. It's not important whether or not M. R.

1 was out or not but what my friend suggests is that is important
2 is that MacIntyre didn't tell the truth on this occasion. You
3 know, if he was going to lie in little matters, then he'd lie in
4 the big ones and in effect that was the thrust of the argument.

5 With respect there is another explanation and the other
6 explanation is that MacIntyre simply does not recall M. R. being
7 there at all and the M. R. was not there. I mean, that is the
8 other explanation. Why would MacIntyre not tell the truth about
9 M. R. being out on Saturday? It would be far better for
10 MacIntyre to say that, "Oh, yeh, first thing in the morning I saw
11 M. R., went over the night's that he made -- the notes that he
12 made the night before, got fully briefed in the investigation."
13 That's what one would normally think a person in charge of an
14 investigation would do. What percentage is there for MacIntyre
15 not to tell the truth about that? The easy line, the good line,
16 is to adopt what M. R. said because M. R. testified first, of
17 course, some months prior to MacIntyre.

18 There are two bits though, two bits that support MacIntyre's
19 position. One is the statement that M. R. MacDonald gave Harry
20 Wheaton during the reinvestigation and that is found in volume
21 37 -- 34 which is exhibit 98, I believe, and the statement of
22 M. R. is found at page 95 and it's a statement, a little over a
23 page. I won't read the whole thing but he says in the course of
24 reciting the events that occurred during that night:

25 I phoned John MacIntyre who was the
Sergeant of Detectives and told him

1 what was happening, that I thought
2 we had a murder on our hands. I
3 asked him if he would come out and
4 he refused. I reported this to the
5 Chief of Police, Gordon MacLeod. I
6 had to go to his house and see him.
7 My next shift, as I can recall, was
8 Sunday, the 30th of May, 1971. I
9 worked that shift with John
10 MacIntyre, nine to five.

11 Right. MacIntyre says he did. MacIntyre says he went and got
12 him and took him to Louisbourg to see Chant.

13 We checked around the Park and
14 after dinner we went to
15 Louisbourg. We went to Chant's home
16 in Louisbourg and they told us
17 their son, Maynard, was in Catalone
18 and described the house.

19 But there's nothing there in M. R.'s statement that he went out
20 on the Saturday. Nothing at all. Nothing that he met with
21 MacIntyre on the Saturday and briefed him as to what notes he
22 took the night before. One might characterize then the evidence
23 that MacIntyre gave that he did not recall M. R. being out at all
24 on the Saturday as being an honest recollection, not a plank in a
25 platform leading to this conclusion that MacIntyre should be
26 charged criminally.

27 The three key witnesses, Pratico, Chant and Harriss, my
28 friends acknowledge that John Pratico clearly invented a story
29 on May 30th. And there's some suggestion in the evidence that
30 they say that Donald Marshall gave the information to him. And
31 I've talked about the meeting that occurred on the morning of
32 Sunday, May 30th, at Pratico's porch steps. The one comment--

1 There's two comments actually. There's the white Volkswagen, but
2 there's another interesting comment in the first statement of
3 John Pratico which is found in Volume 16 at page 22.

4 I seen two fellows running from the
5 direction of the screaming. They
6 jumped into a white Volkswagen,
7 blue license and white number on
8 it. One had a brown corduroy
9 jacket.

10 "One had a brown corduroy jacket." Donald Marshall said the same
11 thing. Donald Marshall in his statement to MacIntyre on the
12 same afternoon said "the other fellow, brown corduroy short
13 coat." My recollection is that's the first time that
14 description appears, brown corduroy jacket.

15 Commission council says they are not able to assist you why
16 John Pratico gave the evidence he did. But in my submission, you
17 can't stop there. You can't say we're not able to assist you and
18 then blame MacIntyre for pressuring Pratico into everything he
19 said in the second statement. You've got to give some thought as
20 to why Pratico told the lies that he did. And in viewing his
21 evidence and his statement on May 30th, it's helpful to review
22 the exchange that Pratico had with Butterworth (And that's found
23 in Volume 12 at page 2082.) and also the exchange he had with
24 Leotha and Oscar Seale in 1982.

25 The Butterworth incident was, of course, in 1971 and it
probably occurred in the week after Marshall was charged.
Butterworth was not on duty the week of the incident. He came on
duty the following week and there's a little confusion as to

1 about when this exchange between Pratico and Butterworth took
2 place but it would appear that it was the week after Marshall
3 was charged. And Butterworth's evidence says that -- Sorry.
4 Pratico acknowledges that -- The reference I gave, Volume 12,
5 page 2082 is in fact the evidence of John Pratico. And Pratico
6 gave evidence immediately after Butterworth, and he acknowledges
7 that he did have a discussion with Butterworth that occurred,
8 according to Butterworth's recollection, in a restaurant.

9 Butterworth's evidence is found in Volume 11, and it's my
10 recollection that it was at our request that commission council
11 interviewed Mr. Butterworth and then called him. At page 1971 of
12 Volume 11, Butterworth testifies:

13 I was with Constable Arthur
14 Woodburn; we were working together
15 and Mr. Pratico appeared just as we
16 were walking along our beat, he
17 appeared. A short while later we
18 went into the Maple Leaf
19 Restaurant which is on Charlotte
20 Street and we had a cup of coffee.
21 Constable Woodburn, I can remember
22 that night, -- if I can recall, was
23 to my left and John Pratico
24 followed us in. We didn't ask him
25 in -- it was Constable Woodburn and
I don't recall him doing -- and he
saying to my right -- Constable
Woodburn and I were talking then
out of the blue -- well I was
getting -- I can remember getting
up to leave, like we were through
and as we were getting up, he was
facing me and he mentioned that
he'd never forget what he had seen
in the Park and he described the
stabbing.

Q. And do you -- do you have an independent

1 recollection of that night and this
2 conversation with Mr. Pratico, do you
 recall that now?

3 A. What's that --

4 Q. Do you recall now the actual
 conversation you had with Pratico?

5 A. Not the actual word for word. I can
6 remember, you know, what I'm saying now
7 to you, you know. That's about all I
8 can remember. The rest of the short
9 time he was with us was probably just
10 small talk, you know, and it was--
11 that's the only time he mentioned
12 anything about this incident, and he
13 described the stabbing and first he
14 said he wouldn't want to see it again.
15 He'd never forget what he saw. And with
16 that point, we were walking on the way
17 out the door. And I can remember -- I
18 can remember standing there and he was
19 looking at me and I can remember I had a
20 raincoat on that night. Whether it was
21 raining or not, I don't know, but it was
22 a traffic coat. We used to wear them
23 sometimes in place of an overcoat or a
24 Burberry, you know. And he mentioned
25 that he didn't mind talking to the
 fellows who didn't wear the uniforms.
 They were pretty good, and he said,
 "especially the big fellow". And I can
 remember that, and just out of the blue
 I said, " John MacIntyre", and he said,
 "Yes, he's a good fellow".

20 Q. He remember -- He said," I don't mind
 speaking to the fellows...?"

21 A. "That didn't wear the uniforms."

22 Q. That didn't wear the uniform.

23 A. Yeh.

24 Q. And you took that to mean?

25 A. The detectives.

1 Q. And he said, "They are good fellows,
2 especially the big fellow"?

3 A. Especially the big fellow.

4 Q. And you said, "Do you mean MacIntyre"?

5 A. I just automatically said, "John
6 MacIntyre". He said, "Yeh, he's a good
7 fellow"....

8 And then he was asked,

9 Before we leave that night, John,
10 you said that he described the
11 stabbing to you?

12 A. Yes, sir.

13 Q. Could you tell us how he described the
14 stabbing?

15 A. He mentioned about a knife going in
16 bringing her down, twisting her and
17 across. I took it to mean like an "L"
18 shape.

19 Q. A knife going in and coming down--

20 A. Coming down and twisting, and --

21 Q. -- and twisting and across?

22 A. -- going across. I can remember that
23 like yesterday and I'm not off the side.
24 If you're sitting with somebody and
25 they say something like that --

Q. And just again, it starts from the top
and it's like making an "L"?

A. Yeh. It's just like he went down, like,
and he "twisted her" and he said, "he
brought her across". I can remember
that. As a matter of fact, it was with
his right hand. He was -- because I was
looking right at him.

There's the further discussion with Leotha and Oscar Seale.

1 This was at Mrs. Seale's mother's where John Pratico was a guest
2 in 1982, at a home, I believe in Louisbourg. And Leotha says
3 that this conversation took place around Christmas time which
4 would have made it before the reinvestigation, before Carroll--
5 Constable Carroll saw Pratico. He says he talked to her about
6 the stabbing and described to her what he had seen. And said
7 that, "I'd never like to see anything like that again." He also
8 described -- had a conversation with Oscar Seale. Oscar Seale
9 puts that at around Easter time or some time after Pratico had
10 met with Constable Carroll. And again, Pratico described how
11 Donald Marshall had stabbed Sandy Seale. Now in my submission,
12 that's important, if that occurred after he talked to Carroll,
13 that's important. Because Pratico suggests that there was sort
14 of an absolution when he talked to Carroll. That was the time
15 when he made his peace. It's also of some significance that
16 Pratico went on the radio after he talked to Carroll and said
17 that what he had told Carroll wasn't true and reaffirmed the fact
18 that Marshall had stabbed Sandy Seale in 1971. We don't have
19 any -- we don't have the tape, of course, but I think the sense
20 of that disavowment is contained in the evidence.

21 And in the Discovery in the CBC case, (And this is found at
22 Volume 12 at page 2187.) he acknowledges -- Pratico acknowledged
23 on the discovery, which of course took place before this hearing,
24 that he recalled the words, "Black bastard" and "crazy Indian"
25 which were contained in the statement that he gave MacIntyre on

1 June 4th.

2 So there's a number of occasions when Pratico has invented
3 things. And the question is why did he do it? And I guess
4 there's, perhaps, no answer to that except that he wanted to be
5 liked by people and he wanted to be respected by people. His
6 evidence is full of suggestions to that effect, that people did
7 not believe him, they did not accept him, and that he wanted
8 people to accept him and believe him and so that is the reason
9 that he offers for saying the things that he did. So it wasn't
10 only to MacIntyre that he told things that were untruthful. And
11 there's not really much suggestion that MacIntyre was difficult
12 with him on the first statement on May 30th. He says that he
13 was a little rough, but that there was not much to suggest that
14 MacIntyre unduly pressured him to say the things that he did.
15 And the things that he did, I suggest, came from Donald Marshall.
16 And that's a point that -- that's a thread that goes through the
17 whole investigation, as to MacIntyre's concern about what part
18 Marshall was playing in controlling, or Marshall's friends were
19 playing in the controlling of information given to him during
20 the course of his investigation. And I'll talk about the
21 Patricia Harriss and Mary O'Reilley statements later on because
22 that again is another example of MacIntyre, I suggest,
23 MacIntyre's concern that people were not telling him the truth.
24 And certainly John Pratico didn't tell him the truth on the 30th.
25 And certainly Maynard Chant didn't tell him the truth on the

1 30th. Maynard Chant says he saw -- he saw the stabbing in the
2 first statement he gave, and Maynard Chant says there was no
3 pressure on him from MacIntyre to give that story on the 30th of
4 May. Why then did Chant give the statement that he did, a false
5 statement? I said that Pratico wanted to be liked, Pratico
6 wanted to be accepted; and in view of his difficulties, that's
7 perfectly understandable. Why did Chant give false and
8 misleading statements on the 30th? The only answer, I think, is
9 a statement that Chant himself gave when he says he didn't like
10 pressure. He didn't like pressure. When pressure was on him, he
11 would say things to relieve that pressure from him. What
12 pressure was he under? He was under the pressure from Donald
13 Marshall on the 30th. He was under the pressure of having told
14 to the police the night of the incident, "I saw everything." Do
15 you remember Chant was picked up on his way home back to
16 Louisbourg, and picked up by police officers after the incident.
17 And during the course of that trip, he said, "I saw everything."
18 And that was put down on a note and put on the police file and
19 that's eventually how MacIntyre got to see Chant, because of this
20 note on the police file that Chant had seen everything. Chant
21 dug himself a hole by saying, "I saw everything", and he never
22 got out of that hole. He just kept digging himself deeper and
23 deeper. And the hole in which he dug himself was made deeper by
24 Marshall, by Marshall leaning over him at the Police station
25 before he gave his statement to MacIntyre and said,

1 Remember there were two of them,
weren't there?

2 And he said,

3 He was in a rage and his eyes were
4 on fire and he leaned over me and I
was frightened.

5 He was under pressure. Chant was under pressure. And that's
6 the explanation Chant gives for lying.

7 Yes, I seen it all. Marshall
8 coming over to me and leaning over
me and saying there was two of
9 them, wasn't there? And I said,
yeh, there were two of them.

10 Chant said, "Yeh, there were two of them." Chant didn't see
11 them.

12 He seemed to be very raged, very
13 aggressive with a strong voice.
There was two of them, wasn't
14 there? I was recounting on what
Mr. Marshall had told me.

15 Chant says.

16 I'd basically just given them
17 (That's MacIntyre.) the
information he (i.e. Marshall) had
18 passed on to me. I put myself in a
spot.

19 Were you afraid of him?

20 Yes. Rough looking character. He
21 basically gave me some indication
of what they were. I remember him
22 telling me the story of what had
happened and by looking at the
23 statement here in front of me, it
seems to be in reference to that.
24 I was trying to help the Police and
maybe I was trying to help Mr.
25 Marshall, I guess, too.

1 Up until that time you gave the
2 statement, had anything given you
the impression that Marshall was a
suspect?

3 No. This statement is a hearsay or
4 something, that I conjured up
because I got myself into a fix.
5 In reference to what had happened,
according to what he had told me on
6 the night of the incident.
Pressure. Because of his
7 appearance, anything that would
cause me to feel pressure would
8 probably cause me to lie.

9 Then on June 4th.

10 MacIntyre knew that I had not told
11 the truth in this statement on May
30th. I don't feel I was being
12 actually told what to do or to--
or where to stand or anything like
13 that. They never -- they never
specifically said, "Listen,
14 Marshall is guilty and we want
him."

15 He introduced material, such as knowing the dark haired fellow
16 from dances in Louisbourg, to make the story believable. That is
17 to say, Chant introduced material, such as knowing the dark
18 haired fellow from dances or Louisbourg, to make the story
19 believable. (These quotations are all found in Volumes 5 and
20 Volumes 6. That last one is found at page 817 -- 878.) To make
21 the story believable. Chant was a -- a bit of a past master in
22 making the story believable. At no time did the Police ever tell
23 Chant that the person who stabbed Sandy Seale was Donald
24 Marshall. (That's found at Volume 6, page 934.) Chant perhaps
25 justified it because he thought that Marshall's actions were

1 suspicious. There was no blood on the cut.

2 I thought his actions were quite
3 suspicious at the time. I don't
4 know why, I had to say something.
5 I can't explain.

6 Now those statements that I've just read were given in the first
7 statement to the R.C.M.P. in the reinvestigation in 1982 and
8 they're found at Volume 47 -- sorry, Volume 34 at page 47.

9 I don't know why I had to say
10 something. I told the Police I
11 saw everything.

12 referring to the cut.

13 CHAIRMAN HICKMAN:

14 Would this be an appropriate time to --

15 MR. PUGSLEY:

16 Thank you. Yes it would.

17 CHAIRMAN HICKMAN:

18 Till two o'clock.

19 MR. PUGSLEY:

20 Thank you.

21 INQUIRY RECESSED AT: 12:32 p.m.; AND RECONVENED AT: 2:04 p.m.

22 MR. CHAIRMAN:

23 Mr. Pugsley.

24 MR. PUGSLEY:

25 Thank you, My Lords.

Commission counsel dealt with the evidence of Wayne Magee
and felt that the admissions obtained from him assisted the
position that MacIntyre had unduly influenced Maynard Chant with

1 respect to the second statement given on June 4th. I think it's
2 important to read all of Wayne Magee's evidence and at page 3634
3 which is found in Volume 20. Commission Counsel cited the
4 following comment as indicative of perhaps an inappropriate
5 discussions with Chant.

6 Detective MacIntyre conveyed to
7 Maynard that certain information in
8 a prior statement did not
9 correspond with other information
10 that they had obtained afterwards
11 and that they wanted more or less
12 some clarification pertaining to
13 the first -- first statement. And
14 he then put questions to Maynard
15 and wrote the answers down.

16 It's our respectful submission that nothing inappropriate for
17 MacIntyre to do that at all. He had a statement from Chant that
18 contained lies, wherein Chant identified other people as
19 stabbing Seale and that certainly constituted misleading a police
20 officer at a very critical part in the investigation. So there's
21 no reason for MacIntyre to be other than frank and reasonably
22 tough with Chant at that second interview. Although at the
23 bottom of page 3635 Wayne Magee says:

24 ...I do not recall, in fact, I
25 thought you know, that it was done
 in a very cordial, easy going
 manner.

And Mr. Magee is referred to evidence he gave on Discovery in
1984, question and answer. This is found at page 3636:

A. Question and answer. It was a
written statement as I recall.
Detective MacIntyre was doing the
writing and Detective Urquhart as I

1 know policy, was merely a witness
2 to the taking of the statement, and
3 I don't recall anything that he
4 said at that particular session.
5 And questions were asked of Maynard
6 in a very low, mild mannered way.
7 No raising of voices. He was
8 merely asked questions and the
9 answers were written down.

6 And he is asked:

7 Is that today your evidence of how
8 that statement was taken?

8 And he responded to Mr. Orsborn at the top of 3637:

9 That's correct.

10 And then further down on 3637:

11 Nothing sticks out in my mind.
12 Maynard was very cooperative, as
13 he...

13 ...always was...

14 And he -- questions were put to him
15 and he answered them.

16 I don't recall him being nervous.
17 He again -- questions were asked,
18 he answered them. What was going
19 through his mind, of course, I
20 don't know; but there's nothing
21 unusual that I can state that I--
22 that I observed.

20 And then at 3651:

21 I certainly didn't have any reasons
22 to believe that he told -- or
23 mislead the police officers.

23 And there's a further quotation. I have noted page 3687, but I
24 don't believe it's on that page, but the quotation is:

25 Nothing sticks out in my mind that
would lead me to believe that he

1 was, in fact, lying that day.

2 There were two points in addition that my friend raised,
3 among others, two points that my friend raised with respect to
4 the information given by Chant on the second occasion. One was
5 the gun, pulling the gun out of the pocket. And you will recall
6 that in the second statement which is found in Exhibit 16 -- I
7 beg your pardon. Knife. Knife, not gun. If I can find Exhibit
8 16, the statement of Maynard Chant on June 4th, which is found at
9 page 46 and 47. At page 47:

10 No, I just head a mumbling of
11 swearing. I think Marshall was the
12 one who was doing most of the
swearing, then I seen Marshall haul
a knife from his pocket.

13 And my friend said,

14 Where did Maynard Chant get that,
15 haul a knife from his pocket.

16 And the inference being, I take it, that he must have got it as a
17 consequence of a suggestion from MacIntyre; but the fact is,
18 that's the very phrase that Maynard Chant used in his statement
19 of May 30th when he said,

20 The two fellows who stabbed Donald
21 Marshall and Sandy Seale, they
22 talked for a few minutes over on
Crescent Street. One fellow hauled
a knife from his pocket.

23 Now that's a direct lift out of his May 30th statement. And in
24 our submission, that's where Maynard Chant got the germ of the
25 idea for his statement of June the 4th. And then there's the
discussion -- another point raised by my friend was the dark

1 haired boy -- the dark haired fellow, where did Maynard get that?

2 And at page -- Volume 5, page 878, in response to a question from
3 my friend, Mr. Orsborn:

4 Q. I guess the difficulty that I have,
5 Mr. Chant and perhaps the
6 Commissioners, as well, is we -- we
7 here have a statement which you now
8 say is -- is untrue, that you did
9 not start down the tracks and you
10 did not see the dark haired
11 fellow...it just didn't exist. But
12 then we have leaping out of thin
13 air -- "Oh, I saw him before at the
14 dances in Louisbourg". Can you
15 give us any help at all as to where
16 that came from?

17 A. The only thing that I can say is that I
18 was trying to make the story believable
19 I guess. I don't know where -- to be
20 honest with you -- I don't know where
21 all the information -- I know where
22 some of it -- I know that where I was
23 going down the tracks and stuff like
24 that, but when -- everything had left
25 there if you want to say that I
conjured it up out of my mind, well,
that's --

Q. That's not what I want to say at all.

A. I know.

Q. What I want to here is --

A. What I want to say is that I really
don't know. I really don't -- I really
can't remember to the effect of how the
-- how the statements really came forth.
Possibly I could have sought some help
on it. Possibly I could have dreamed it
up.

At page 830 they're talking about the first statement. He says:

This statement is a hearsay or
something that I conjured up

1 because I got myself into a fix.

2 And at page 900 with respect to June 4:

3 I don't (think) that I was being
4 actually told what to do or where
 to stand or anything like that...

5 John Pratico. There was reference yesterday to Pratico
6 talking about being on Crescent Street behind a bush. And I may
7 have misunderstood the point that my friend was advancing, but my
8 recollection is, you know, how did -- how did Pratico get this
9 information because he was down on the tracks or something of
10 that nature. As I say, I may not be putting my friend's point
11 fairly and one will have to check the transcript to ascertain the
12 exact point he was making, but I did note that when I was going
13 through Pratico's evidence in Volume seven at page 2030, he was
14 asked when he

15 ... got onto Crescent Street, where
 did you go.

16 A. I go toward the bushes.

17 And he was fairly close to South Bentinck Street and he was asked
18 to identify where he was and he identified as being opposite 106
19 and 108. The numbers were pointed out to him. The houses were
20 shown to him on the plan. And 106 nd 108 Crescent Street and he
21 indicated that he was in bushes on Crescent Street just opposite
22 those houses. So that there is reference in Pratico's evidence
23 about being in the bushes and that as being the location where he
24 was. And at page 2174 he states:

25 A. I gave a statement saying that I was in

1 the bushes.

2 I can't be in two places at once.
3 I know I was at those bushes.

4 I mentioned this morning the information that we allege was given
5 to Pratico by Marshall on the Sunday morning about the white
6 Volkswagen. Pratico does not acknowledge that that information
7 was given to him by Marshall, although I've traced the germ of
8 the idea, firstly, Marshall advising Oscar Seale on Saturday
9 morning at seven-thirty about this and the telephone call, and it
10 again appearing in Marshall's statement on Sunday afternoon, and
11 there not being any other place where it would have appeared to
12 have come from. Pratico says when he was questioned about this,
13 he acknowledges that he was sitting on the steps of his mother's
14 house with Rudy Poirier and Glen Lawson. And he says Marshall
15 came along and said to them, "Something terrible happened last
16 night." These were Pratico's words. Something terrible
17 happened last night is what Marshall told Pratico and the others.
18 But he goes on to say that no one asked Marshall what happened.
19 They were sitting there but there was no further follow-up to the
20 conversation which one finds odd. One would have thought that a
21 teenager, 17, coming along and saying, "Something terrible
22 happened last night.", and no one else asking him what indeed did
23 happen strikes me as being odd.

24 As a matter of interest Pratico says between the first and
25 second statement he was asked if he saw MacIntyre. That, of
course, would refer in particular to whether or not they went to

1 the park together. And Pratico's response at page 2060 was:

2 I'm not sure if I did or not, sir.

3 When Pratico was asked what he told to Mrs. Seale in 1982, he
4 said at page 2062:

5 I saw him strike. I saw him...

6 Meaning Marshall.

7 ...strike.

8 And Mrs. Seale says that:

9 He added to that words to the
10 effect that Seale said to Marshall,
11 I wasn't going to do your dirty
12 work. I wasn't going to do your
13 dirty work.

14 And Oscar Seale recalls discussing the matter with Pratico. And
15 again Pratico said to him that his son told Marshall that he was
16 not going to do "none of his dirty work".

17 In summary, with respect to these two witnesses, Chant did
18 not like pressure. He dug himself a hole when he told the police
19 on the night of the incident that he saw everything, and he spent
20 the rest of that week and the following weeks and indeed the rest
21 of his life trying to dig himself out of that hole. He had
22 pressure exerted on him by Donald Marshall on the Sunday
23 afternoon and this lead him to give the fictitious statement that
24 he gave to MacIntyre on Sunday afternoon on May 30th.

25 Pratico wanted to be liked, wanted to be accepted. And in
view of the problems that he had, certainly this is
understandable. There is no else -- no other way to explain the

1 story that he concocted and volunteered to Butterworth. This was
2 not a conversation that Butterworth had engaged with Pratico.
3 Pratico came up to him and told him about the knife going in and
4 being twisted and going down. And also there's no better
5 explanation for in 1982 as Oscar Seale relates it, that he told
6 him after Carroll had interviewed him, after the reinvestigations
7 started, again that it was Marshall who stabbed his son.

8 The third member -- the third person on whom counsel rely
9 very heavily in their condemnation of MacIntyre is Patricia
10 Harriss. And there's no question that she endured a lengthy
11 interrogation. But again it must be viewed in the light of the
12 information that MacIntyre had at that time. He had a statement.
13 The statement was on June 17th. He had an original statement
14 from Chant that he knew was lies. That had been recounted on the
15 fourth. He had an original statement from Chant that he knew was
16 lies, that had been recanted on the 4th. He had an original
17 statement from Pratico that he knew was lies that had been
18 recanted and another statement had been given on the 4th of
19 June. And he knew that there was a trace, a thread between the
20 statement given by Pratico about the white Volkswagen, and the
21 statement that Marshall gave on the Sunday afternoon as well. So
22 there was a thread there of concern about others trying to
23 manipulate the information given to the police.

24 He interviewed Terrance Gushue and Gushue whose evidence is
25 found in Volume 15, had in our submission some very critical

1 evidence to give to this Commission. Gushue says that he was
2 concerned about getting involved. And he was concerned about
3 Patricia getting involved, about being in the park that night.
4 So he said to Patricia, "Look it, I'm going to tell the police
5 if I'm interviewed that I wasn't there and you do the same
6 thing." And at 20 -- at page 2756 he says:

7 You told her that it was all right
8 to tell the police that you left
9 the dance together and that you
 walked to her home but that you
 didn't go through the park?

10 The question went on.

11 And, as far as you know, (did she)
12 go along with that and (is that)
 the story that she did tell the
 police?

13 Yes, I believe so.

14 Says Gushue.

15 And that's the story that you told
16 the police?

17 Yes, that's the story I told them.

18 So this story was given to the police some time before June 17th.
19 Gushue tells a story that he wasn't in the park at all. He then
20 tells an entirely different story on the night of the 17th, that
21 he was in the park.

22 Patricia Harriss denies -- has no recollection of telling
23 the police earlier that she was not in the park, but Gushue
24 believes that she did tell the police that, and certainly they
25 did discuss it. And certainly Gushue, her boyfriend, told her

1 that this was the party line to adhere to because that's party
2 line he was telling. So no wonder MacIntyre had some concern
3 about what he was being told by Patricia Harriss.

4 And indeed there's another concern that he had and that is
5 the Mary O'Reilley incident. In Volume 16 at page 129 (My
6 friend, Mr. Ruby referred to this this morning.) there's a note
7 that is in MacIntyre's handwriting. We're not really sure when
8 this note was prepared, although in our submission it was
9 prepared on the 17th of June, perhaps during the time that
10 Patricia Harris was being interviewed by Urquhart. In any event,
11 there's a suggestion there in the handwriting, and it's quite
12 difficult to decipher, but there's a suggestion that at school
13 that Patricia -- it was suggested to Patricia Harriss to -- that
14 if she was asked by the police to describe the grey-haired man.
15 And as I say Mr. Ruby referred to that this morning. MacIntyre
16 did not take the opportunity of pressing that view with the
17 Commission. He said he really couldn't recall. He couldn't
18 recall why he wrote this note. It would have been very helpful
19 if one wants to -- if MacIntyre was in the habit of fabricating
20 evidence, to say that "I got the note and I got the note as a
21 consequence of information given to us by Patricia Harriss".
22 That would have been helpful in a sense, but it would have been
23 wrong to do so. And MacIntyre did not take that oar that was
24 offered to him. He just said he couldn't assist the Commission
25 as to why that note came into effect. But if you examine the

1 statement given by Mary Patricia O'Reilley that is found in the
2 same volume, in Volume 16 at pages 74 and 75:

3 Did you discuss this matter with
4 Patricia Harris?

5 A. Yes.

6 Q. Did you tell her about the grey-
7 haired man?

8 A. I told her there was supposed to be
9 a grey-haired man there. I told
10 her if she was questioned by the
11 police she should tell about the
12 grey-haired man that Junior had
13 told me about.

14 Now that's what appears in the statement. And counsel have made
15 submissions that MacIntyre just fabricated this completely, just
16 pulled it out of the air and put it in the statement and somehow
17 got Mary O'Reilley to sign it. Mary O'Reilley's evidence on this
18 point is interesting and it's found in Volume 18 at page 3308.

19 And she says:

20 Somebody must have put it there
21 because I didn't.

22 Q. Why do you say that?

23 A. Because I don't recall saying that
24 at all.

25 Now that's the reason why she said it, "because I don't recall
saying that at all.

If I did, I did, but --

And the -- there's no more answer. "Because I don't recall
saying that at all". And that's the reason she offers for saying
that -- why she denied that this was part of her statement. "If

1 I did, I did, but --". Then there's dot, dot, dot.

2 Our submission is that this concern was circulating in
3 MacIntyre's mind at the time he interviewed Patricia Harriss.
4 This concern that a story was being fed that either came from
5 Marshall directly or came from his friends about other people, a
6 story that he was suspicious of. And in light of the information
7 before him at that time, it was appropriate for him to be
8 suspicious. Confirmed by Terrance Gushue giving a statement
9 earlier to the police that he wasn't in the park at all. And
10 perhaps Patricia Harriss making the same assertion. MacIntyre
11 accepted Terry Gushue's statement as being an accurate one that
12 night. He did not accept Patricia Harriss' first statement as
13 being an accurate one. Mistake in judgment? Was he wrong?
14 Well, there's arguments both ways. There was certainly
15 indication that in the youth community at that time a story was
16 being fed to the investigators that MacIntyre did not feel was
17 accurate. There was reason, therefore, for him to be forceful in
18 his interrogation of Patricia Harriss.

19 Patricia Harriss' recollection concerning who interrogated
20 her changes from time to time. The first example we have of it
21 is in the Preliminary Inquiry which is found in Volume 1 at page
22 26. And she was asked during cross-examination by Mr. Rosenblum
23 at page 26:

24 To whom did you first tell the
25 evidence about having met Donald,
Jr., Marshall?

1 A. I don't know his name.

2 Q. Was it a police officer?

3 A. Detective.

4 Q. Sergeant MacIntyre here sitting
beside Donald Marshall?

5 A. He wasn't the first.

6 Q. He wasn't the first. Was it
7 Sergeant MacDonald sitting in the
corner?

8 A. Yes.

9 Q. He was the first one you told it to?

10 A. Yes.

11 Not just Sergeant MacDonald, but Sergeant MacDonald sitting in
12 the corner.

13 A. Yes.

14 Q. He was the first one you told it
to?

15 A. Yes.

16 Q. How many times did you talk to him,
17 Sergeant Michael E. MacDonald?

18 A. About two times.

19 Q. Who was the next person you spoke to,
20 Sergeant MacIntyre?

21 A. Yes.

22 Q. How many times have you spoken to him
about this evidence you're giving today?

23 A. Twice.

24 And then on page 27:

25 ...the second interview with
Sergeant MacIntyre, you gave a

1 written statement?

2 A. Yes.

3 Q. Were you asked to give a written
4 statement before that?

5 A. I don't think so.

6 Q. Were you interviewed in the company of
7 Terry Gushue or separate from him?

8 A. Separate.

9 Q. On all occasions?

10 A. No, the second time we were
11 together.

12 Q. The second time you were together
13 in the presence of Sergeant
14 MacDonald or Sergeant MacIntyre?

15 A. Both.

16 Q. They were both present on the
17 second time?

18 A. Yes.

19 So no evidence about William Urquhart. You know, this was two
20 weeks after the statement was taken. No evidence of William
21 Urquhart being the individual who interrogated her originally.

22 When she came to give her statement to Sergeant Carroll in
23 1982, (That is found in Volume 34 at page 55.) she says -- I was
24 under the impression that she had identified someone there, but I
25 guess perhaps she has not. I guess there's no identification of
either MacIntyre or Urquhart in that statement. After that
statement was taken on March the 1st, she went with Wheaton and
Carroll down to Frank Edwards office and in Volume 17 at page

1 five, Frank Edwards notes:

2 Wheaton and Carroll arrived.
3 Patricia Harriss arrives a few
4 minutes later. I question her in
 their presence. Says she can only
 recall Urquhart's name although
 others were present.

5 No identification of MacIntyre there at all. I'm not suggesting
6 that MacIntyre wasn't there. I'm -- This is -- The point -- This
7 is raised in connection with her own recollection.

8 At the Examination on Discovery that took place in 1984 she
9 was not able to identify MacIntyre at all. And she was examined
10 by my friend Mr. MacDonald in Volume 16 at page 2830. And her
11 evidence upon Discovery was related to her.

12 A. Well, I just remember that I was there.
13 There was a lot of going on. Two police
 sergeants...

14 etcetera. And the question at the bottom of the page 2831:

15 Q. And who was trying to do this?

16 A. I remember Urquhart vividly and another
17 man. I couldn't -- I don't know him
 yet. I wouldn't know him to see him.

18 Now the striking thing about that response is that that
19 Discovery took place in Sydney in 1984 in October at which Robert
20 Murrant, who has appeared before this Commission, was present on
21 behalf of the C.B.C. asking questions and I was there asking
22 questions on behalf of MacIntyre and MacIntyre was sitting beside
23 me at the time she gave this response. And this appears in my
24 cross-examination of Patricia Harriss. She says:

25 I don't know him yet. I wouldn't

1 know him to see him.

2 And he was, you know, like a foot and a half away from her or two
3 feet across the table from her, so she was not --

4 Q. You can't identify him as being John
MacIntyre?

5 A. I couldn't identify him now.

6 At page 2832. So there is a problem concerning identification on
7 her part.

8 She volunteered to Sergeant Carroll that Terry Gushue was
9 also brow-beaten at the time the statements were taken in 1971,
10 and yet Terry Gushue never told her that. This was something
11 again that she theorized she -- she thought might have happened
12 but she was never advised by Terry Gushue that he was brow-
13 beaten. And there are other points in her recollection that one
14 is surprised at. She doesn't recall her mother being there at
15 all. Her mother says she was there for an hour and a half in
16 the room with her. And other problems with her recollection are
17 found in the brief -- in our brief between pages 214 and 226.

18 The only other direct comment I want to bring to your
19 attention concerning her evidence was that relating to her
20 previous record and again I suppose this is the kind of minor
21 point that my friend alluded to yesterday. It's not a
22 significant point in itself but it does show the unwillingness of
23 a witness to be frank. Mr. MacDonald at about ten to ten in the
24 morning after we sat at -- opened at nine-thirty in the morning.
25 Twenty minutes later he says:

1 Have you ever had an occasion to be
2 in difficulty with the police?

3 And I'm now reading from page 221 of our memorandum:

4 Q. Have you ever had an occasion to be in
5 difficulty with the police?

6 A. No, nothing of any importance or
7 anything.

8 Q. Have you ever been charged
9 yourself?

10 A. Again years ago for a small shoplifting
11 charge.

12 Q. By years ago, can you help me on that?
13 What does that mean?

14 A. Oh, dear, I don't know how many years
15 ago. It's awhile back.

16 And then my friend Mr. MacDonald:

17 My Lord, we might as well take just
18 about a five minute break to check
19 some background information.

20 Now this is at ten to ten in the morning when Patricia Harriss
21 had been on the stand for twenty minutes and I don't think it's
22 an unfair assumption on my part to suggest that perhaps in part
23 that break was given to assist the witness in recalling her own
24 record. But at page 222, Mr. MacDonald obviously was not going
25 to let Patricia prevaricate on this so he just lead her through
her various offenses. He put them all to her, one, two, three,
four, five, and obviously had and indeed did have papers in his
hand when he was reading off this. So she was able to respond,
yes, yes, yes, yes, yes. And even that, there was a further
page of offenses after an R.C.M.P. search was done which she did

1 not refer to and that was brought to her attention on pages 224
2 and 225 of our brief. Again not a significant point but I point
3 this out to show in some ways she was an unsatisfactory witness
4 and not as forthcoming as perhaps has been suggested.

5 My friend referred to -- in his brief to the law with
6 respect to the necessity to show mens rea on the part of the
7 accused in a charge of this kind and I'll just try and obtain
8 the page. I think it's on page 64 and 65. Yes, 64 and 64 where
9 my friend has referred to. Regina v Walker, a 1972 decision of a
10 Provincial Court Judge in Ontario, and Regina v Silverman, a 1908
11 decision. I'm not going to get into a contrary submission
12 concerning the obligation to prove mens rea, but I do suggest
13 that there certainly is other authority that is more persuasive
14 than the Provincial Court Judges decision in 1972, and this is
15 Regina v Savinkoff, a decision of the British Columbia Court of
16 Appeal, 1962 -- 1963, Volume 3, Canadian Criminal Cases at page
17 163. This is a two-one decision, Mr. Justice Sheppard dissented,
18 Mr. Justices Tysoe and Wilson delivered the majority judgment and
19 as I read their decision, mens rea is a necessary ingredient.
20 That is in the context of what we're dealing with here.
21 MacIntyre would have had to know that and not only was he
22 pressuring these people to say things, but that he knew that what
23 they were saying was wrong and not in accordance with the facts.
24 So -- and also, a New Brunswick Court of Appeal decision, Regina
25 v Belliveau, 1978, 42 C.C.C.(2d), at page 243, where this is a

1 three man court, the Appeal Division of the New Brunswick
2 Supreme Court. Mr. Justice Ryan gave the unanimous decision of
3 the Court, Mr. Justices Limerick and Bugold sided with him. And
4 again, from my reading of that case, mens rea is a necessary
5 ingredient. So there is a difference between the law as my
6 friend and I see it.

7 In submission with respect to the Patricia Harriss
8 interrogation and statement, if MacIntyre did lean on her, if she
9 was kept too long, in my submission there was adequate reason for
10 so doing. Adequate reason because of the mis-truths that had
11 been given to him in the past by Chant, Pratico, Gushue, perhaps
12 Patricia Harriss. The information they communicated in this note
13 about Mary O'Reilley.

14 The next and final point that I wish to deal with is Harry
15 Wheaton and the incident that in our submission occurred on April
16 16th and that has been maintained by Wheaton that occurred on
17 April the 26th. This is found in our brief at pages 274 to 315.
18 Wheaton's categorical statement, I'm suggesting -- I'm not
19 suggesting, I'm stating the man perjured himself, was given in
20 January before this Commission. The excerpt is found at page
21 274. And he was given an opportunity after the lunch break to
22 amend his evidence in any way and he was not prepared to do so,
23 he knew that it was a very serious charge and he said that his
24 opinion was backed up by a Mr. Boudreau, a solicitor in Sydney,
25 who appeared before this Commission as well. It is our position

1 that there was a meeting between Wheaton and MacIntyre on Friday,
2 April 16th at which time the Patricia Harriss statement was given
3 to Wheaton. So that there's no confusion about the matter, it is
4 also our position that there was also a meeting on April the 26th
5 at which time Wheaton appeared in response to the direction from
6 the Attorney General, which was signed on April 20th. Now
7 there's a great deal of difference between the positions
8 presented by the two opposite parties. If MacIntyre gave the
9 Patricia Harriss statement on April the 16th, he was not
10 attempting to act in defiance of an order from the Attorney
11 General. But if he gave it on the 26th, and if he threw it on
12 the floor and did not give it to Wheaton when Wheaton originally
13 appeared in his office, but threw it on the floor and tried to
14 conceal it, that was a criminal offense. That was a very, very
15 serious matter and one for which there would appear to be no
16 excuse.

17 But, in our submission it didn't happen that way at all.
18 And it didn't happen that way when one analyzes exhibit 88 to 90,
19 and it didn't happen that way when you read the evidence of Frank
20 Edwards. And when you follow the paper trail of what in fact
21 occurred on Friday April 16th and what was given to Wheaton at
22 that time and indeed there's not only support from Frank Edwards,
23 there's support from Steven Aronson, Marshall's lawyer. Because
24 he talked about this with Harry Wheaton and his evidence if found
25 in Volume 55 at page 10150 and 10151.

1 Q. My recollection is that, just to put
2 this in context, I'd say that Staff
3 Wheaton and I were perhaps in
4 conversation with one another two to
5 three times a week throughout this.
6 So, I'd be a little weary of trying to
7 pin it down as to when it exactly had
8 transpired, but it occurred shortly
9 after Staff Wheaton and another R.C.M.P.
10 officer, who I believe may have been
11 either Scott or Christian, the head of
12 the detachment of Cape Breton. In any
13 event, Wheaton and another R.C.M.P.
14 officer attended to Chief MacIntyre's
15 office, were in conversation with him
16 about whether they had received all of
17 the statements that had been made by the
18 witnesses in 1971. That they were told,
19 yes, that they were starting to turn
20 around to say "Goodbye" and they noticed
21 something slip either from MacIntyre's
22 hand to the floor or from his desk to
23 the floor.

13 "Slip" -- there. There's nothing about conceal there, "slip."

14 They left his office. They spoke
15 to one another briefly indicating
16 that, "Maybe we should go back and
17 see what it is that fell on the
18 floor." They went back into his
19 office, asked him what it was that
20 fell on the floor. Wheaton advised
21 that MacIntyre was somewhat
22 embarrassed by it and gave them--
23 picked (them) up and gave them the
24 statement. And, subsequent to that
25 they felt that at point, he had not
26 been altogether cooperative and
27 that they were somewhat uncertain
28 now, because of the document
29 falling off the desk; did they
30 really have all the statements
31 given by all the witnesses and as
32 a result...

24 As a result...

25 ...they made a request to the
Attorney General's Department or

1 reported it to the Attorney
2 General's Department and as a
3 result this letter was issued.

4 Question. (Mr. Orsborn).

5 Q. So, is it your evidence that Staff
6 Wheaton advised you that the letter of
7 demand was written at least partly
8 because of this incident of the
9 statement falling on the floor?

10 A. That's my understanding, yes.

11 Q. Do you have a recollection now of Staff
12 Wheaton telling you that?

13 A. The time when Staff Wheaton told me
14 that, he did not mention any letter. He
15 just indicated, I believe that there
16 was... that they had indicated their
17 request, and I'm not sure whether it
18 was Wheaton or Frank Edwards that
19 formally told me that there was an
20 actual letter written and when I
21 received a copy. So...

22 Q. Staff Wheaton, I'm sorry.

23 A. I'd be somewhat uncertain. I think it
24 was Frank Edwards, but as I say, my
25 recollection is that it was at least in
part because of the incident that they
made the request to the Attorney
General's Department. In other words,
that the letter came subsequent to the
incident that I've spoken of concerning
Chief MacIntyre.

Now that's what Aronson said.

You'll recall the evidence of Michael Harris. Michael

Harris said:

It's equivocal. I mean, equivocal
to the extent that I didn't even
bother talking to Herb Davies about
it, it was that wishy-washy.

1 Reference is made to Harris's evidence, in our brief and I'll
2 just find the appropriate pages. On page 295. About three
3 quarters of the way down the page.

4 Apparently the way Wheaton left it
5 with Michael Harris was that the
6 incident could have involved an
7 accidental dropping or an attempted
8 concealment. Wheaton did not see
9 it as an attempt at obstruction.
10 The matter was so "interpretive"
11 that Harris did not even feel it
12 worth while to bother trying to
13 interview Herb Davies about it.

14 The evidence of Edwards is in our submission critical and
15 his evidence is found at page 293. Wheaton reported -- testified
16 that, "I knew I reported it to Frank." So there's no -- there's
17 no dispute about the fact that Wheaton and Edwards had a chat
18 about this. And Edwards' notes, and it's not just Edwards' notes
19 that he relies on, Edwards says that, you know, "I recall this."
20 He was definite about it and his notes are a matter of support.
21 But it's not as if he just relied upon his notes for what, in
22 fact, happened. He had a distinct recollection about this. And
23 unfortunately, one has to, sort of, go through the scenario as to
24 what happened on the 16th before you get to the point. Indeed,
25 you have to go back earlier in the week. If your Lordships could
26 turn to Volume 17, Frank Edwards' notes, at page 7. I think it
27 would be helpful to follow my argument if you could have this in
28 front of you.

29 COMMISSIONER EVANS:

30 The volume?

1 MR. PUGSLEY:

2 Volume 17, Frank Edwards' notes.

3 COMMISSIONER EVANS:

4 Right.

5
6 MR. PUGSLEY:

7 At page 7. 17. At page 7. The notes were made on Monday, April
8 the 19th as are indicated in the left hand column, beginning at
9 nine a.m., and they refer to Friday, April 16th, '82.

10 Called (Gordon) Gale in the a.m. to
11 ask him about Chief MacIntyre's
visit.

12 MacIntyre had been to see Gordon Gale probably on the Wednesday,
13 probably on the 17th.

14 I had been advised the day before
15 by Wheaton that MacIntyre had been
16 to the Department. Gale advised,
17 Chief had been there with Marshall
18 file. Two points struck Gale.

19 The first one about Mitchell Sarson; the second point is
20 important.

21 The Chief had produced statements
22 from Ebsary's wife, son and
23 daughter...

24 The reference to daughter is obviously wrong. He did not have a
25 statement from the Donna Ebsary, the daughter. These were
statements taken on November 15th, 1971 by MacIntyre when Ebsary
and Mrs. Ebsary and Greg came to the Police station after Jimmy
MacNeil showed up.

The Chief had produced statements
from Ebsary's wife, son and

1 daughter...

2 That's the November '71 statements.

3 ... which were opposed to what they
4 were saying now.

5 "Saying now", being the statements that Wheaton had taken within
6 the last month.

7 I said that if such was the case
8 the probable explanation was that
9 they were living in fear of Ebsary
10 at the time. Told him I was
concerned about the fact that Chief
was producing statements now which
neither I nor the R.C.M.P. had know
about before.

11 Interesting that the Chief had not delivered the November '71
12 statements of Mary Ebsary and Roy Ebsary to Wheaton or Scott.
13 They didn't have them up to this time. Reinvestigation did not
14 have those November '71 statements. It's interesting for a
15 couple of reasons. It's interesting because it just shows that
16 MacIntyre did not give everything over, because he was never
17 asked. And it's also interesting because those statements help
18 demonstrate Roy Ebsary's innocence and hence Marshall's guilt.
19 So if MacIntyre was "dealing a deck" to Wheaton that was one-
20 sided, namely consistent with Marshall's guilt, MacIntyre didn't
21 put everything in the deck that he could have or should have if
22 he was just trying to deal this party line. Because Mary
23 Ebsary's statement in November '71 in effect says: "I don't think
24 my husband could have done this. I don't think Roy could have
25 done this." So this evidence was consistent therefore with Roy

1 Ebsary's innocence that MacIntyre had not given it over to
2 Wheaton.

3 So, I make the point that MacIntyre did not just give stuff
4 to Wheaton that he thought was consistent with MacIntyre's
5 theory of Marshall's guilt. However, the further point is that
6 the investigation didn't have those statements at that time. And
7 then near the bottom of the page:

8 Significant that Chief left nothing
9 with Gale.

10 So, the Chief did not leave the Mary Ebsary and the Roy Ebsary
11 statements with Gale, he took them with him. So, if you turn to
12 the next page, page 8, Edwards says:

13 After call with Gale, phoned
14 Wheaton who confirmed that they had
15 known nothing about earlier
16 statements by Ebsary's wife and
17 family.

18 Wheaton says, "I don't know anything about those."

19 Said that on the two occasions when
20 they briefed MacIntyre they had
21 asked him whether he had anything
22 further which might help the
23 investigation, he said no.

24 So he phoned Wheaton and says, "We don't have these statements."

25 Well, what happened was that Wheaton went that afternoon, the
afternoon of Friday, April 16th, to MacIntyre and among other
things, he got copies of the Greg and Mary Ebsary and Roy Ebsary
statements. And that is evident when one turns to page 9. At
the top of page 9 in the -- about five lines from the top: While
on the phone ...

1 That's Wheaton...

2 ...told me that he and Herb Davies
3 had gone down to see Chief
4 MacIntyre late Friday p.m. and had
5 spent a couple of hours with him.
6 After being pressed, Chief turned
7 over previous written statement by
8 Patricia Harriss in which she
9 described someone matching Ebsary
10 (Wheaton said Chief went scarlet
11 when pressed about this statement)
12 - also turned over November '71
13 statements of Mary and Greg Ebsary.

14 So the scenario is this then: that Frank Edwards phones Gordon
15 Gale on Friday morning and Gale says, "MacIntyre was down to see
16 me a couple of days ago and he started giving me information I
17 didn't know anything about. I didn't know about the Greg and the
18 Mary Ebsary statements." And Edwards says, "Gee, I didn't know
19 anything about them either." Edwards gets on the phone, phones
20 Wheaton and says "Harry, MacIntyre is now producing statements
21 that I haven't seen before." Wheaton says, "I haven't seen those
22 statements either." That afternoon, Friday afternoon, Harry
23 Wheaton goes down -- goes down to MacIntyre to get the statements
24 and gets them, on the Friday afternoon. Not only does he get
25 them, he gets Patricia Harriss, number one, on Friday, April
16th. Four days before the order of the A. G.. It's evident,
and I'm not going to bore you with it, but in our brief it's
evident that this was the first time that Wheaton had the Greg
and Mary Ebsary statements because he went to see them on Monday,
April 19th. Wheaton went to see Greg and Mary Ebsary on Monday,
April 19th, in the evening. If you examine the statements he

1 took at that time, they refer to the November, 15th '71
2 statements because that was the first opportunity Wheaton had to
3 present those statements to him -- to them. Because they only
4 got them on Friday afternoon from the Chief, he saw them Monday
5 night and in the statements taken Monday night he refers to the
6 statements in November '71 because he had just got them. He just
7 got them on the Friday.

8 So the note of Edwards, not only did Wheaton get -- it is
9 the reason for the meeting on Friday afternoon, April 16th. The
10 reason for the meeting was not to get Patricia Harriss, number
11 one, the reason for the meeting was to get Greg and Mary Ebsary.
12 In addition to that, he got Patricia Harriss, number one.

13 Also...

14 A third of the way down the page.

15 ...also told me that Herb Davies
16 had noticed Chief slip some of the
information on floor behind desk.

17 Slipped. Slipped some of the information.

18 Believes it was some information
19 with transcript attached relating
the threats by Christmas against
Pratico.

20 I mean, inconsequential stuff.

21 Believes (that) there was a charge
22 against Christmas at the time.

23 So the documents slipped on the floor, according to Frank Edwards
24 as to what he was told by Harry Wheaton, was not Patricia
25 Harriss, number one, it was inconsequential stuff. It was Thomas

1 Christmas and threats against Pratico. Nothing of critical
2 significance to the reinvestigation at all.

3 Now, that evidence in our submission is -- it's critical.
4 It's critical for several reasons. It's critical because it
5 shows that there's no substance to Wheaton's charge that
6 MacIntyre should be charged with perjury. It's critical because
7 it shows Wheaton's antipathy to MacIntyre and I'll develop that
8 further.

9 There's another reference in the statement as well, in the
10 diary of Frank Edwards where he talks with Scott, I believe.
11 Yes, on Monday, April 19th, on page 10, at the bottom of the
12 page -- again one thirty p.m.

13 Wheaton arrived with statements of
14 Ray, Greg and Mary Ebsary.

15 Now this is the first time that Frank Edwards saw them, because
16 Wheaton just got them Friday afternoon. So, on Monday, April
17 19th:

18 Wheaton arrives with statements of
19 Ray, Greg and Mary Ebsary dated
20 November 15th, '71; Donna Ebsary,
21 17th April, '82; Patricia Harris,
22 17 June, '71. Note: Patricia
23 Harriss not complete -- i.e. may
24 have been a (page two).

25 No question what statement that was. It was Patricia Harriss,
number one. It was the unsigned statement, it's not complete.
Three lines later.

Note: This statement was taken
before Harriss' second statement...

1 So there's no question what statement what we're talking about
2 on the 19th. And this note was made on Monday, April 19th and
3 Frank Edwards says he was given Patricia Harriss, number one, the
4 incomplete, unsigned statement on Monday, April 19th, one day
5 before the Attorney General's order was issued. Six days before
6 Harry Wheaton says he got it when it was slipped on the floor.
7 Page 11, the next page. Again, Monday, April 19th.

8 Inspector Scott called just as
9 Wheaton was leaving. Said he was
concerned about Harriss statement.

10 Scott called him. Scott knew about the Harriss statement on
11 Monday, April 19th.

12 Said he was concerned about Harriss
13 statement.

14 That can only be the first, unsigned, incomplete statement of
15 Patricia Harriss.

16 You will recall Wheaton's reports. Wheaton wrote reports in
17 the month of May, I believe two, and perhaps June of 1982 and
18 not in any of those reports does Wheaton refer to this incident.
19 He's asked to comment on MacIntyre -- well, what he says was: He
20 attended at MacIntyre's office and "as per instructions", he
21 received the file material from MacIntyre. That is, "per
22 instructions" of the A.G., in the letter of April 20th and
23 that's contained in our brief. But there's not a tittle about a
24 comment in Harry Wheaton's reports at any time, in any year, '82,
25 '83 or '86 about MacIntyre hiding things on the floor. He's

1 asked to comment on MacIntyre's activities as a Police officer,
2 etcetera, etcetera, and not once does he mention this. I invite
3 you to examine his responses to the questions: Why didn't he?
4 And in our submission, they're simply not acceptable at all.
5 Wheaton at one point said:

6 ...all I can say to you, sir, is I,
7 in so far as Patricia Harriss'
8 statement, there is confusion
9 whether it was the 16th or the
10 26th, I believed. And I wished I
11 could clarify it.

12 I wished I could clarify it.

13 I've tried with Mr. Orsborn, I can
14 try with you. But I can tell you I
15 do not to the best of my own
16 personal recollection, I think it
17 was the 26th and I base it on a
18 paper (trail). And I base it on
19 the fact that I submitted a report
20 stating that.

21 There's no report that I'm aware of that Harry Wheaton says he
22 got the Patricia Harriss statement on the 26th.

23 However, I can't be clear in my own
24 mind, sir.

25 Now that comment is found on page 310 of our brief and I contrast
that equivocal response to the very fierce allegation.

 I'm not suggesting, I'm stating
this man perjured himself.

 It would be easy to dismiss
Wheaton's outburst on the ground
that he craved public recognition .

And that on the ground that he was a glory seeker because there's
all kinds of evidence to indicate that he was.

1 He was familiar with the R.C.M.P.
2 written guidelines concerning
3 dealings with the media, yet he
4 granted interviews with the press
5 while Ebsary was still before the
6 Courts. He confirms that he had no
7 permission from any superior to
8 speak with Heather Matheson, yet
9 advises that: "I do recall I spoke
10 fairly openly. I quite properly
11 answered her to the best of my
12 knowledge."

13 And I'm reading from page 311 of our brief.

14 He testified that he spoke with
15 Michael Harris on about eight
16 occasions, had lunch a few times
17 with him, drove down to Windsor to
18 spend three or four hours with him
19 over lunch with Harris.
20 "Basically, I endeavoured to
21 assist him in the writing of his
22 book any way he wanted."

23 And you'll recall, that Harry Wheaton is one of the persons in
24 the frontispiece who is thanked by Michael Harris for his
25 cooperation, etcetera.

One contrasts these (communications
with the press) with a statement
(to this Commission): "The general
rule of thumb, yes, My Lord, is
you do not speak of a case while it
is before the Courts and I've
always tried to adhere to that."

His calculated comment...

And I say calculated.

We were able to place Mr. MacLean
at the front door of the restaurant
in a blinding snow storm at
approximately four to five o'clock
in the morning when he knew the
charges...

1 When Harry Wheaton knew the charges...

2 ... had not been laid against
3 MacLean. That the insurers had
4 paid up and indeed that it was not
5 four to five in the morning...

6 It was ten o'clock that he later acknowledged in cross
7 examination. There, and as I say there, it's easy to explain and
8 that's the explanation that jumps off the page when you look at
9 Wheaton's evidence, as to why he said and why he did what he did.
10 But I think there was a more fundamental and important
11 explanation for Wheaton's evidence. And it is that Wheaton
12 required a villain and -- he required a villain, he needed to put
13 the blame on someone and MacIntyre was the easiest target. And
14 this Commission has respectfully submitted, must not be seduced by
15 the same siren call that Harry Wheaton was seduced by. It's
16 human nature to wish to resolve problems, to try to find
17 solutions, to package things neatly. And that's the human
18 condition. We all try and find solutions. As lawyers we're
19 trained to find solutions. But our position is, and our
20 submission to this Commission is, that there are no villains in
21 this tragedy, but rather a number of completely unrelated events
22 that happened to coalesce at a point in time and combine to send
23 Donald Marshall to prison and keep him there. There's no
24 villain. There's no villain in here. You can search for it but
25 there's no villain. There's a number of incredible events that
coalesced at one point in time and it's tragic. And I agree with
my friend, Mr. Ruby, it is a tragedy of very significant

1 proportions. And I agree with my friend, Mr. MacDonald, but
2 there is no villain here. But that's what Wheaton tried to find.
3 He tried to find a villain.

4 And support for Wheaton's prejudice against MacIntyre is
5 found when one considers the points that I've raised on pages 312
6 to 315 of the brief. When asked why Maynard Chant gave his first
7 incorrect statement of May 30th to MacIntyre, Wheaton said "He
8 was pressured by the Sydney City Police.", but that's not so. I
9 mean, no one said that. Wheaton was just ready to say, you know,
10 why did Chant give a wrong statement. Pressure. Pressured by
11 the Sydney City Police. Not true. Chant says he wasn't
12 pressured by MacIntyre at all on May 30th. The pressure, if any,
13 he felt was because of Donald Marshall, but not because of John
14 MacIntyre but Wheaton -- Wheaton was never told that by Maynard
15 Chant but that's what he was prepared to tell his superiors in
16 his first report. He mentioned the Sydney City Police should
17 have known Pratico was a patient at the Nova Scotia Hospital and
18 should have communicated that information to the Crown but
19 Wheaton acknowledged on cross-examination that if Pratico's
20 physicians knew he was going to be a key witness at a murder
21 trial, that that would have been a very relevant factor.

22 The third point is Patricia Harriss and her allegation that
23 Terry Gushue was browbeaten. In reviewing the statement from
24 Gushue by the police, there is no support for this allegation.
25 Yet Wheaton doesn't pursue that.

1 Wayne Magee advised Wheaton that MacIntyre did not exercise
2 any undue pressure on chant in taking the statement of May 30th.
3 Now this was a very, very key statement supporting MacIntyre,
4 that MacIntyre did not exercise any pressure on Chant but it's
5 not in the statement. I mean it's not -- Magee told Wheaton this
6 but Wheaton didn't put it down in Magee's statement which is an
7 extraordinary omission, I suggest, because it was a very
8 important statement by Wayne Magee.

9 And then perhaps the most bazaar of all where Wheaton
10 maintains that Wayne Magee was not present at the taking of the
11 second Chant statement in Louisbourg on June 4th. Wheaton states
12 that it was very important who was there. Of course it was
13 important. It was important to insure that there was no improper
14 pressure by MacIntyre but Wayne Magee was present and everyone
15 who was present at that taking says that Wayne Magee was present.
16 John MacIntyre says he was present. Urquhart, I think, impliedly
17 says that Wayne Magee was present. Wayne Magee says he was
18 present. More important Beudah Chant says that he was present
19 and the icing on the cake, Maynard Chant said that Wayne Magee
20 was present. So that everyone said that Wayne Magee was present
21 who was at the meeting except Harry Wheaton who wasn't at the
22 meeting but Harry Wheaton affirmed that he did not believe that
23 Wayne Magee was present. Why? Why in view of this evidence did
24 Wheaton maintain that? Why would he not put down in Wayne
25 Magee's statement that MacIntyre didn't pressure Chant? The

1 conclusion that Marshall was innocent that Wayne -- that Wheaton
2 arrived at on February 17th before he interviewed Marshall in
3 Dorchester, I suggest, is a -- is an example of tunnel vision.
4 Wheaton, too quickly, without sufficient evidence, without
5 sufficient investigation concluded that Marshall was innocent
6 because he'd only taken three statements at that time. He'd
7 interviewed a couple of others but he'd only taken three
8 statements. James MacNeil was one statement. Byron Sarson was
9 another, and Maynard Chant was the third. This was before he
10 interviewed Marshall. He concluded Marshall was innocent. He'd
11 taken three statements. James MacNeil, who Al Marshall, the
12 R.C.M.P re-investigator of 1971, described as "subnormal
13 intelligence, slightly mental; I have no doubt my mind he's not
14 telling the truth." and didn't even bother taking a statement
15 from him. Secondly, Byron Sarson, with whom Wheaton himself was
16 not impressed, -- Wheaton says he wasn't impressed with this
17 fellow. and thirdly Maynard Chant. That's all he had. Yet he
18 concluded that Marshall was innocent and I submit that that was
19 tunnel vision. That was -- He was guilty of the same thing that
20 he alleges MacIntyre was guilty of.

21 And there are other examples as set forth on page 314 and
22 315 containing instances and reports of Wheaton or evidence he
23 gave that not borne out by the facts all matters that cast
24 MacIntyre in a bad light. It's a one-sided assessment. If there
25 were two opportunities to conclude what was accurate and one of

1 them cast blame on MacIntyre, that's what Wheaton took because
2 and I'm not -- and I don't -- I'm not suggesting at all that
3 Wheaton was bad or evil or was corrupt or anything of those
4 things. I'm not. He was a diligent investigator and he worked
5 hard but he came to conclusions that were not supported by the
6 evidence; and like many people, he fell in to the trap of having
7 to try and find a solution. Perhaps this stuff went to his head.
8 It was heady wine he was drinking of. He was being courted by
9 the media across Canada. He was going to be quoted in books. He
10 was giving interviews to a guy who was writing a book on this
11 matter. Perhaps it was he was unused to that kind of limelight.
12 Whatever the reason, it doesn't really matter but he had to find
13 a solution and the solution was MacIntyre, the villain.

14 My Lords, if I could have five minutes I could finish very
15 quickly.

16 MR. CHAIRMAN:

17 Five minutes?

18 MR. PUGSLEY:

19 Please, a five minute break and I could finish very quickly.

20 INQUIRY RECESSED AT 3:10 p.m., AND RECONVENED AT: 3:32 p.m.

21 MR. CHAIRMAN:

22 Mr. Pugsley.

23 MR. PUGSLEY:

24 One final comment, My Lord. That is to thank the three of you
25 for the opportunity of appearing before you and for the manner in