

I N D E X

VOLUME 15

JOHN F. MACINTYRE -----PAGES 1 - 296

DONNA EBSARY -----PAGES 297 - 362

**MEDIA POOL COPY**



JULY '71

- 65 -

RCMP 2 360  
DMPRE 17

Q. Was that the only piece of kleenex you could find after scouring the premises of this house?

A. It was the only piece of kleenex that interested me at that time.

Q. Was there other kleenex?

A. There was other debris, paper and kleenex also all over through the other side of the park, on the grounds and garbage boxes.

Q. Was this the only piece of kleenex on the lawn of the house, 130 Crescent Street?

A. It was.

Det. Sgt. MacIntyre, sworn

By Mr. MacNeil

Q. What is your full name?

A. John Fraser MacIntyre.

Q. What is your occupation?

A. Sergeant of Detectives, City of Sydney Police Department, Sydney, Nova Scotia.

Q. Were you acting as such during the month of May, 1971?

A. I was.

Q. Do you know the accused?

A. I do.

Q. Do you see him in Court today?

A. I do.

Q. Would you point him out to the Court?

A. Witness indicates the accused.

Q. Did you see him on the 28th day of May, 1971?

A. Not on the 28th.

Q. When did you see him?

A. I interviewed him on the 30th day of May, 1971.

Q. Where?

A. At my office.

Q. Where is your office?

A. On Bentinck Street in the City of Sydney,  
County of Cape Breton, Province of Nova Scotia.

Q. What did you say to the accused, first?

A. Well, I was talking with him on several occasions  
on that particular date and at this time which  
was close to 5 P.M., in the evening I took a  
statement from the accused.

Q. Did you reduce that statement to writing?

A. Yes.

Q. And was the accused under arrest at that time?

A. He was not.

Q. And how come you came to interview him?

A. Well, I wanted to get it down in as much detail  
as I could as to what he had to say.

Q. Did you threaten him in any way?

A. No.

Q. Did you hold out any promise or favor to him?

A. No I did not.

Statement marked for identification M/6

Q. I show you M/6, what is that?

A. That's a statement, dated May 30, 1971, time  
4:50 P.M., Donald John Marshall, age- seventeen  
years, residing at 38 MacMac Street.

Q. Does it bear any signature?

A. It bears the signature of Donald Marshall and witnessed  
by myself.

Q. Was there anyone else present at the time you  
took this statement?

A. No.



Q. How did it happen that Marshall got there Sergeant?

A. He had been around the station, Mr. Rosenblum pretty well all day.

Q. At your request?

A. I mean I was working on the case and I had him stay around.

Q. How was he brought to the station, did he come on his own?

A. He was asked to come.

Q. Did you send a police officer for him?

A. I believe if my memory serves me right he was in a car early that morning in the park area, which was Sunday morning. I couldn't say for sure if it was Saturday or Sunday but any how he was asked to stay at the station.

Q. By who?

A. By me.

Q. What time would that be?

A. It was pretty well all day, I believe he had dinner at the station.

Q. So when you say all day, it would be the early morning?

A. Well yes, from the time I out to work.

Q. Where was he at the station?

A. I believe he was just around the office.

Q. He could be at random as far as I was concerned.

Q. Was he guarded?

A. Oh no, he wasn't under arrest.

Q. No, no I didn't say under arrest, was there a police officer near by him all the time?

A. Oh, no.

- Q. He was free to come and go, is that what you are saying?
- A. Yes, just stay around in case that I needed him.
- Q. You told him that?
- A. Yes.
- Q. Was that the first time you saw the accused in connection with this case?
- A. At that time, yes. I believe I did talk to him on Saturday.
- Q. What day of the week was May 30th?
- A. This was Sunday, this happened Friday night.
- Q. And you saw him the day previous?
- A. I believe.
- Q. Where would that be?
- A. At the station.
- Q. How did he get there the day previous?
- A. Well I couldn't say, I likely sent for him.
- Q. How long did he stay at the police station on Saturday, the 29th?
- A. He could have been there considerable time, Mr. Rosenblum.
- Q. Such as?
- A. A matter of hours.
- Q. Can you recall?
- A. Well I mean there was... I have an explanation for it, I can't recall how long he was there, no. I know I was there quite long, myself.
- Q. Would you say he was there four or five hours on Saturday?
- A. He could have been.
- Q. Where was he?
- A. Just hanging around,

Q. And you told him to wait until you were ready to see him?

A. Yes, just stay around, yes.

Q. And so when you had a discussion with him on Saturday, was it just the two of you or was there others present? Other police officers?

A. Could have been.

Q. I am asking you?

A. Well I am not ... the only time I could say that I was alone..

Q. Was when you took the statement?

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

Q. But I am asking you about the 29th, officer, who would be present when you were talking to him on the 29th, can you recall?

A. I can't just recall.

Q. And there could have been other police officers talking to him?

A. Oh yes, there could have been.

Q. Likely there were?

A. Likely.

Q. You, yourself were talking to him on the 29th?

A. I talked to him on more than one occasion.

Q. For how long?

A. Well, it depended on what I wanted to know.

Q. How long did you talk to him on Saturday?

A. I couldn't tie that down for you, I couldn't Mr. Rosenblum could have been in the morning, could have been in the afternoon, could have been the evening.

Q. I know it could have been, but you don't remember?  
A. No.  
Q. You don't remember?  
A. No, to tie the amount of time, I spent considerable time with the accused.  
Q. On the 29th?  
A. And on the 30th talking to him.  
Q. Did you talk to him in the morning of the 29th?  
A. I can't recall too much about the 29th but the 30th, he was at the station all day.  
Q. I am not talking about the 30th, on the 29th, officer, you said he was around the station pretty well all day.  
A. He was around the station, I didn't say all day. I don't know what length of time.  
Q. Would you say he there pretty well all day on the 29th?  
A. No, on Sunday I think he was there pretty well all day.  
Q. How long was he there on Saturday the 29th?  
A. I can't say.  
Q. Was he there in the morning on the 29th?  
A. He was there on the 29th I just couldn't say what time.  
Q. Would you say it was in the morning?  
A. I couldn't say.  
Q. Was it in the afternoon?  
A. It could have been.  
Q. Was it in the evening?  
A. Might have been.

Q. It was one of the three, morning, afternoon or evening, it could have been any one, I would like to find out, could you tell me?

A. No.

Q. You couldn't tell me if it was at night, you couldn't tell me if it was afternoon and you can't tell me it was morning?

A. No, I couldn't.

Q. On the 30th we come to the day you feel you can remember, were you talking to him in the morning?

A. Yes.

Q. What time would that be in the morning, officer?

A. I would say in the vicinity of 10 O'clock.

Q. 10:00 O'clock in the morning?

A. Somewhere in that vicinity probably a little earlier than ten, somewhere between nine and ten.

Q. How long did you talk to him in the morning?

A. Well in fact I had a line-up at the police station that morning.

Q. Well just answer my question?

A. I was talking to several people.

Q. I don't care about other people, how long were you talking to him in the morning of the 30th?

A. Just a few minutes at any time, but several times Mr. Rosenblum.

Q. You say you spoke to him for just a few minutes?

A. Yes.

Q. How many times would you say you spoke to him in the morning?

A. Probably several.

Q. What do you mean by several?

A. Well, more than once, more than twice, probably four or five or six times, it depended on what I wanted to know.

Q. Do you know?

A. No.

Q. How many times did you talk to him in the afternoon?

A. I couldn't say.

Q. Could it be five; six, seven, eight...?

A. Oh no, it wouldn't be that long, I was out questioning a few people.

Q. How many times did you talk to him?

A. I said Mr. Rosenblum, I couldn't tell you how many times, several, that is all I can tell you.

Q. I know, your interpretation of several that you had on the 29th..?

A. Well I couldn't tell you, I don't know if it was twice or if it was three or four times but I did talk to him several times during the day.

Q. These several times you speak of that you were talking to him were on separate occasions, is that correct?

A. Yes.

Q. Not a continuous conversation?

A. No.

Q. You would talk to him, leave him and then come back to him?

A. That's right.

Q. Where did the conversation take place in the detectives office or in the back room?

A. That's right.

Q. You were alone with him in the room when you were taking the statement?

A. Yes.

Q. Who was in the other office, Sergeant?

A. There was nobody in the other office.

Q. Nobody?

A. No I was alone.

Q. Nobody in the other office?

A. No.

Q. Nobody in the other, outer office, you know what I mean? The motor vehicle office?

A. Yes, it is closed on Sunday.

Q. No other police officers there?

A. Not to my knowledge.

Q. How long did the questioning take place on Sunday afternoon when you took the statement?

A. Well, it started at 4:50, I have it here, 5:12 - twenty-two minutes.

Q. And the statement was written down by you?

A. That is right.

Q. And it was later typewritten?

A. Right.

Q. Did you know Marshall before the 29th of May, Officer?

A. I knew him, yes.

Q. You knew him to see him?

A. Yes.

By Mr. MacNeil  
I am not tendering the statement, and it is marked  
for identification purposes only.

IN THE SUPREME COURT OF NOVA SCOTIA  
(APPEAL DIVISION)

IN THE MATTER OF A REFERENCE PURSUANT TO SECTION 617 OF THE  
CRIMINAL CODE BY THE HONOURABLE JEAN CHRETIEN, MINISTER OF  
JUSTICE, TO THE APPEAL DIVISION OF THE SUPREME COURT OF  
NOVA SCOTIA UPON AN APPLICATION FOR THE MERCY OF THE CROWN  
ON BEHALF OF DONALD MARSHALL, JR.

AFFIDAVIT

I, JOHN FRASER MACINTYRE, MAKE OATH AND SAY AS  
FOLLOWS:

1. THAT I am presently the Chief of Police for the City of Sydney Police Department and have acted as such since
2. THAT in 1971, I was the Sergeant of Detectives for the City of Sydney Police Department and as such I personally headed the investigation into the death of one Alexander (Sandy) Seale who died in Sydney as a result of a stab wound to his abdomen on or about the 28th day of May, 1971.
3. THAT I have personal knowledge of the facts deposed to herein except where otherwise stated.
4. THAT on the 30th day of May, 1971, at the Sydney Police Station, I took a written statement, a typed copy of which is annexed hereto as Exhibit 'A', from one Maynard Vincent Chant, who at the time was 15 years of age.
5. THAT on the 4th day of June, 1971, I took a second written statement, a typed copy of which is annexed hereto as Exhibit 'B', from the aforementioned Maynard Vincent Chant.



6. THAT Exhibit 'B' was taken in the Council Chambers at Louisbourg, Nova Scotia, in the presence of Mrs. Beudah Chant, mother of Maynard Vincent Chant, Lawrence Burke, a probation officer, Wayne McGee, then Chief of Police in Louisbourg and presently Sheriff for the County of Cape Breton, William Urquhart, a Detective Sergeant with the City of Sydney Police, and myself.
7. THAT at no time did I or anyone in my presence or to the best of my knowledge threaten Chant or pressure him in any way to give either of the aforementioned statements or to alter his testimony in any of the subsequent proceedings.
8. THAT at the time Exhibit 'B' was taken I did not believe Chant had been truthful when he gave Exhibit 'A' and I told him in the presence of the above named witnesses that I wanted him to tell the truth whereupon he voluntarily recited the facts as set out in Exhibit 'B'.
9. THAT I do not recall having any discussions with Chant in the time which elapsed between the taking of Exhibits 'A' and 'B' and to the best of my recollection, I had none.
10. THAT on the 30th day of May, 1971, at Sydney, I took a written statement, a typed copy of which is annexed hereto as Exhibit 'C', from one John Louis Pratico who at the time was sixteen years of age.
11. THAT on the 4th day of June, 1971, at Sydney, I took a second written statement, a typed copy of which is annexed hereto as Exhibit 'D', from the aforementioned John Louis Pratico.
12. THAT at the time Exhibit 'D' was taken, I did not believe Pratico had been truthful when he gave Exhibit 'C' and I told him in the presence of Detective Sergeant William Urquhart that I wanted the truth whereupon he voluntarily recited the facts as set out in Exhibit 'D'.
13. THAT at no time did I or anyone in my presence or to the best of my knowledge threaten Pratico or pressure him in any way to give either of the aforementioned statements, or to alter his testimony in any of the subsequent proceedings.

14. THAT the reason I did not believe Chant had been truthful in Exhibit 'A' or Pratico in Exhibit 'C' was that I suspected that each had previously obtained their respective stories from the appellant Donald Marshall Jr., and their stories regarding their respective vantage points did not seem possible based upon my personal examination of the scene.
15. THAT on the 17th day of June, 1971, I am informed and do verily believe that one Patricia Harris, who at the time was 14 years of age, was interviewed by Detective Sergeant William Urquhart at the Sydney Police Station and that she did at 8:15 p.m., before my arrival, give to Sergeant Urquhart a written statement, a typed copy of which is annexed hereto as Exhibit 'E'.
16. THAT on the 18th day of June, 1971, at 1:20 a.m., the aforementioned Patricia Harris gave me a written statement, a typed copy of which is annexed hereto as Exhibit 'F'.
17. THAT on the 17th day of June, 1971, at approximately 11:40 p.m., that is, between the times when Exhibits 'E' and 'F' were taken, I took a written statement, a typed copy of which is annexed hereto as Exhibit 'G', from one Terrance Patrick Gushue, who at the time was 20 years of age.
18. THAT in Exhibit 'G', Gushue stated that he had been with Patricia Harris on the night of May 28, 1971, and that he had seen only one other person in the Park with the Appellant Marshall, and this contradicted what Harris had said in Exhibit 'E'.
19. THAT on the 18th day of June, 1971, at approximately 9:30 a.m., I took a written statement, which is annexed hereto as Exhibit 'H', from one Mary Patricia O'Reilley, aged 14 years, who stated that she had told Patricia Harris about the grey haired man mentioned by Harris in Exhibit 'E'.

20. THAT, although Exhibit 'H' was not taken until after Harris' second statement, Exhibit 'F', it is likely that I was aware of what O'Reilly was going to say before I took Exhibit 'F' from Harris. I have no independent recollection of this sequence of events.
21. THAT Patricia Harris remained at the Police Station between the taking of statements Exhibits 'E' and 'F' and, although I recall that there was someone at the Police Station with her, I do not recall who that person was nor whether that person was present during the actual statement taking.
22. THAT the questioning of Patricia Harris probably continued because I believed that she had not been truthful in her first statement, Exhibit 'E', although I have no independent recollection, my belief was probably based upon the facts deposed to in paragraphs 18-21 inclusive supra.
23. THAT I do not recall the parents of Patricia Harris being excluded from the interview with her and at no time did anyone in my presence or to my knowledge insist that she give a particular account of what had happened or in any way try to frighten her as I understand she now alleges.
24. THAT between the 28th day of May, 1971, and the conclusion of the trial on the 5th day of November, 1971, I did not know of anyone named Roy Newman Ebsary.
25. THAT I am aware of the statement, attached hereto as Exhibit 'I', of George MacNeil and Sandy MacNeil, wherein they describe two men whom I now know could have been the above named Ebsary and the MacNeil referred to in the next paragraph hereof, but which statement appeared at the time to have been superseded in importance by those subsequently taken from the aforementioned Chant, Pratico, and Harris.
26. THAT the above named Mr. Ebsary did not come to my attention until after the Appellant Marshall's conviction when on or about the 15th day of November, 1971, one James William MacNeil came forward and gave me a written statement, a typed copy of which is annexed hereto as Exhibit 'J', wherein he indicated that Mr. Ebsary had stabbed the victim Seale.

27. THAT as a result of the information in Exhibit 'J', I took statements, typed copies of which are attached hereto as Exhibits K, L, and M, from Mary Patricia Ebsary, Roy Ebsary and Greg Allen Ebsary.
28. THAT the investigation was turned over to the R.C.M.P. within days of the taking of the statements referred to in the preceding paragraph hereof.
29. THAT at the conclusion of the R.C.M.P. investigation referred to in the preceding paragraph hereof, I was informed and do verily believe that polygraph tests were administered to both MacNeil and Ebsary, the former showing inconclusive results, the latter
30. THAT I was informed and do verily believe that the R.C.M.P. concluded their 1971 investigation with no recommendation that the case should be reopened.
31. THAT, in May and June, 1971, despite an intensive search which included draining the creek in Wentworth Park, the murder weapon was not recovered.
32. THAT the Crown Prosecutor for the County of Cape Breton, Donald C. MacNeil, Q.C., now deceased, was fully aware of all statements taken by myself and other members of the Sydney Police Department during the investigation of this matter.

SWORN TO at Sydney  
in the County of Cape  
Breton, Province of  
Nova Scotia, on this  
day of  
1982, A.D.  
before me

  
JOHN FRASER MACINTYRE

IN THE SUPREME COURT OF NOVA SCOTIA  
(APPEAL DIVISION)

IN THE MATTER OF A REFERENCE PURSUANT TO SECTION 617 OF THE  
CRIMINAL CODE BY THE HONOURABLE JEAN CHRETIEN, MINISTER OF  
JUSTICE, TO THE APPEAL DIVISION OF THE SUPREME COURT OF  
NOVA SCOTIA UPON AN APPLICATION FOR THE MERCY OF THE CROWN  
ON BEHALF OF DONALD MARSHALL, JR.

A F F I D A V I T

I, JOHN FRASER MACINTYRE, MAKE OATH AND SAY AS FOLLOWS:

1. THAT on the 26th day of July, 1982, I swore an affidavit relative to the above matter.
2. THAT due to a photocopying error, paragraph 29 of the aforementioned affidavit is incomplete.
3. THAT I now wish to delete paragraph 29 from my affidavit.

SWORN TO at Sydney  
in the County of Cape  
Breton, Province of  
Nova Scotia, on this  
day of November,  
1982, A.D., before me

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JOHN FRASER MACINTYRE

09:30 Court opens.

By the Court: My Lord, just for the record, we are now in the absence of the jury purposely to have a voir dire respecting the admissibility of a statement given to now Chief John MacIntyre, on November fifteenth, nineteen seventy-one. So, my first witness on the voir dire will be Chief MacIntyre.

Chief John MacIntyre duly sworn and examined

Chief John MacIntyre, direct examination by Mr. Edwards (voir dire)

1. Q. Your name and occupation please?  
A. John MacIntyre, Chief of Police, the City of Sydney Police Department, Sydney, Nova Scotia.
2. Q. And you have been Chief of Police of the Sydney Department for how long?  
A. Since December -- eight years.
3. Q. And you have been a member of the Sydney Police Department how long all toll?  
A. I been with Department since May the eleventh, nineteen forty-two.
4. Q. And in nineteen seventy-one, you would have been a Detective Sergeant with that Department, is that correct?  
A. Correct.
5. Q. And as such you were in charge of the investigation of the stabbing death of Sandy Seale?  
A. I was.



Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

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6. Q. And you personally conducted or coordinated that investigation

A. I did.

7. Q. On November fifteenth, nineteen seventy-one, you took a statement from the accused, Roy Newman Ebsary, is that correct?

A. I did.

8. Q. And is the Roy Newman Ebsary from whom you took a statement at that time present in this courtroom today?

A. He is.

9. Q. Would you point him out please?

A. He's right over here in the front seat.

10. Q. Record shows he pointing to the accused My Lord.

By the Court: Alright.

11. Q. Now, I'll show you Exhibit "B-E-2" that is the statement you took from the accused, Roy Newman Ebsary, on November fifteenth, nineteen seventy-one?

A. It is.

12. Q. Prior to November fifteenth, nineteen seventy-one, had you had any contact with Mr. Ebsary in relation to this particular investigation?

A. Not to my knowledge, no.

13. Q. Would you tell us briefly why you took the statement on that particular day, what led to your taking the statment on that particular day from Mr. Ebsary?

A. On that particular date, November fifteenth, nineteen seventy-one, late in the day I had a visit from one James MacNeil

Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

13. A. and his brother who had just arrived home from Toronto the day before and as a result of a conversation I had with them and statements that I took from them, I seemed fit to take a statement from Mr. Roy Newman Ebsary.
14. Q. I see, and that statement is in your handwriting, is it Chief MacIntyre?
- A. It is, yes.
15. Q. Who was present when that statement was taken?
- A. Sergeant Mike MacDonald.
16. Q. And he is now the Deputy Chief of Police at the Sydney Police Department, is that correct?
- A. That's correct.
17. Q. Now, the statement notes on the top there, nine fifteen p.m. is that the beginning?
- A. That's when the statement started, yes.
18. Q. Where was the statement taken?
- A. It was taken in the Detective's office of the old City Hall, on Bentick Street, City of Sydney.
19. Q. Okay, and where in that building was it taken, do you recall?
- A. Well we had a Dective Office the last part of it out and the building attached to the main City Hall on the first floor leading in from the driveway on Bentick Street.
20. Q. Now, prior to the statement taking beginning were you and Deputy Chief MacIntyre the only two police officers who had had contact with Mr. Ebsary?
- A. Yes.



Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

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21. Q. And....
- A. Deputy Chief MacDonald.
22. Q. Deputy Chief MacDonald, sorry. Alright, the statement is three pages or two and a half pages in length, is that correct?
- A. That's correct, yes.
23. Q. And the signature of Roy Newman Ebsary was placed there by the accused in your presence?
- A. That's right.
24. Q. And the signature of the witness, Detective Sergeant M.J. MacDonald, that is the present Deputy Chief?
- A. That's correct.
25. Q. Now, prior to the commencement of the statement taking, was Mr. Ebsary given any type of warning?
- A. He was warned, yes.
26. Q. What was the warning that you gave him at that time?
- A. That you need not say anything, you have nothing hope from any promise or favour, nothing to fear from any threats, whether or not you say anything and if you may say then it can be used as evidence.
27. Q. I see. Do you recall whether or not Mr. Ebsary appeared to understand that warning?
- A. I would say he did.
28. Q. And when the statement was completed what, if any, opportunity would Mr. Ebsary be given to read the statement over to make any corrections in it that he wished?
- A. My practice over the years in taking statements at all times

Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

28. A. to ask if the party I'm taking it from do they want to read it or examine it and, of course, some do and some don't and it was signed by Mr. Roy Newman Ebsary in the presence of myself and M.J. MacDonald.
29. Q. So, it was always your practice then to be given such an opportunity?
- A. That's correct.
30. Q. What part did the Deputy Chief MacDonald play in the statement taking?
- A. He just witnessed the signatures and listened to the conversation.
31. Q. And how did that compare with the usual procedure you follow at that time when you were taking statements?
- A. That was my procedure, the man that was sitting in on the statement wasn't to do any talking and if there was any questions that he wanted to ask would have to be written down and passed to me and I wanted no talking while I was taking that statement.
32. Q. How long would Mr. Ebsary be in your presence prior to the commencement of the initial statement taking?
- A. Well he came to the station that night and I noticed my statement started nine fifteen -- it wouldn't be any length of time because there was other statements taken also. I believe I took a statement from his wife before that and I took a statement from his son before that. I would have to look at my statements to know that.

Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

33. Q.

My Lord I just asked the courtroom (inaudible) whose possession the original statements of Mary and Greg Ebsary are to retrieve those. I would like to show them to witness, he could use them as notes made at the time to refresh his memory on the time span between the taking of one statement and the taking of another. (inaudible) will show that Mr. Ebsary was in the Chief's presence for only minutes other than the times noted in the beginning and end of this statement.

While we are waiting for that Chief, is the, the conclusion, the time of the conclusion of this statement "B-E-2" noted on page three?

A. It is, at ten p.m.

34. Q.

And during that period of time between nine fifteen p.m. and ten ten p.m., did Mr. Ebsary have contact with any other police officers other than yourself?

A. No, he didn't.

35. Q.

During that period of time what, if anything, was said by you or by anyone in your presence by way of threats, promises or inducements to help Mr. Ebsary give his statement?

A. There was no inducements or promises.

Mr. Wintermans: Objection Your Honour, I would submit those are legal conclusions the witness is being asked to make. Questions of law for Your Lordship to determine whether something is a threat or an inducement within the meaning of the statements and the witnesses should be asked to indicate what was said without having the witness make the decision.

Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

for the court as to whether or not what was said amounts to a threat or an inducement.

By the Court: First time I heard an objection like that. Usually, it is a direct and sensible question to ask a witness as to whether a statement is voluntary or not. The Crown wished to elaborate how it came to those conclusions, but certainly it will be open to you in cross-examination to test him as to whether the word threat, inducements.

Mr. Wintermans: I would submit that if circling the role....

By the Court: Well I'll determine if he is circling or not, I don't think it is.

Mr. Edwards: It is the Crown's position that that is the question that is normally asked on voir dire and surely the answer he has given to us will be waived by the Court.

36. Q. My Lord, I'm going to show him Greory Allen Ebsary's statement, I submit there is no need I have it marked, I'm not intending to put it into evidence but as I say giving it to the witness as a note made at the time to refresh his memory.

By the Court: Do you have any concern about that Mr. Winterman

Mr. Wintermans: No answer.

37. Q. Chief MacIntyre, that statement just shows the statement of Greg Ebsary and it also appears to be in your handwriting, is that correct?

A. That's correct.

Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

38. Q. Do you recall taking that statement from Gregory Ebsary on the same night you took the statement from the accused Roy Ebsary?

A. Yes sir, I do.

39. Q. Did you note the times of the beginning and the end of Greg Ebsary's statement on there?

A. Yes, I notice this statement started at nine fifty-five p.m.

40. Q. Yes, and it was....

A. It was over ten twenty p.m. I also notice Corporal Gerald Taylor was present when this statement was taken.

41. Q. My Lord, we don't seem to have the original written statement of Mary Ebsary, I have a typed copy of it if my learned friend object to that being put in evidence. The typed copy was typed from the original.

By the Court: Well technically notes made at the time, a copy of them, I don't think I would ordinarily permit it unless Mn. Wintermans is prepared to let it go for that purpose.

Mr. Wintermans: I have no objection.

By the Court: Thank you very much Mr. Wintermans

42. Q. I'm showing you a typed copy of the statement of Mary Patricia Ebsary which my learned friend was agreeing was typed from the original copy. What is the time of commencement on that statement?

A. Time of commencement of this statement taken from Mary Patricia Ebsary on November fifteenth, seventy one is eight

Chief John MacIntyre, direct examination by Mr. Edwards  
(voir dire)

42. A. And that was eight forty-five p.m. and nine-o-seven p.m. The statement was taken by myself and was witnessed by Sergeant William Urquhart of the Sydney Police Department.

43. Q. Sergeant Urquhart had no contact with Mr. Ebsary that he be accused that night, did he?

A. Inaudible?

Mr. Wintermans: What's the answer to that question?

A. Not that I know of. Different parties were brought to the station at this time. I just don't recollect who brought them in, but they were ordered to the station by myself and statements were taken.

44. Q. No further questions.

Chief John MacIntyre, cross examination by Mr. Wintermans  
(voir dire)

1. Q. Who brought Mr. Roy Ebsary to the station?

A. I couldn't answer that at this time.

2. Q. What would be the practice -- you would send a police car?

A. In a case of this kind, there was three or four I think asked to come to the station and they were taken in and when that happens they are kept apart until they are interviewed by myself.

3. Q. But they would be taken by police car or police officers?

A. Either that or notified and drive down to the station. Both procedures are used at times.

Chief John MacIntyre, cross examination by Mr. Wintermans  
(voir dire)

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4. Q. Now, I noticed that you took both Roy Ebsary's statement and Greg Ebsary's statement, is that correct?

A. Yes, I took all the statements.

5. Q. Now, how could you take Roy Ebsary's statement between nine fifteen p.m. and ten ten p.m. and at the same time take Greg Ebsary's statement between nine fifty-five p.m. and ten twenty p.m. -- there is quite an overlap there.

A. That could be a slight mistake in time.

6. Q. Or I suggest to you that perhaps you were going from one room to the next?

A. No, we just had the one room for taking statements and interviews and that was done. Well, we did have two rooms, yes, in the detective's department but they were adjoining one another and I just had the one room for taking statements.

7. Q. You're saying you're not sure, but there must have been a mistake in the time?

A. There could be a mistake here in the time of what he got there, ten to fifteen minutes overlap there.

ii. On that particular evening, there was several statements taken as I said.

8. Q. The way you have it indicated here is that you started Greg Ebsary's statement fifteen minutes before you finished Roy Ebsary's statement and then so for the last fifteen minutes of Roy Ebsary's statement you had Greg Ebsary in and for the first fifteen minutes of Greg Ebsary's



Chief John MacIntyre, cross examination by Mr. Wintermans  
(voir dire)

8. Q. statement.

A. No, one was taken at a time. So, I wouldn't be in with the two at one time.

9. Q. I take it that your recollection is not to perfect as far as times and such.

A. We're going back quite a number of years, but I know I took those statements. I know nobody was present except the police officer and myself on each individual the statements were taken from.

10. Q. But you don't know who was in contact with Mr. Ebsary before he arrived at the police station?

A. Not at this time, no.

11. Q. And you don't know whether any threats or inducements may have been made before you saw him at the police station, correct?

A. No, that's correct, yes.

12. Q. Also, I suggest to you Chief there was some conversation between you and Roy Ebsary which is not indicated on the written statement. That there must have been some initial conversation between the two of you which would be prior to the first words on the statement?

A. No, I'm suggesting that there was nothing between the two of us. As you notice in this particular statement I warned the above-named on this statement and there was no conversation taken until he was given the warning and then as you will notice the statement is in question/answer form.



Chief John MacIntyre, corss examination by Mr. Wintermans  
(voir dire)

13. Q.

The point that bothers me though, Chief, the statement starts of, I remember one night myself and Jim MacNeil were at the State Tavern.

A.

Uh Hmmm.

14. Q.

Surely, there must have been something said to Mr. Ebsary to get him on that topic of conversation?

A.

Yes, after, after, after he was warned, yes.

You see I took a statement from Jim MacNeil before that making very serious accusations and thinking the above-named could be involved it was my duty to warn him and relate the new evidence -- what he was there for and the reason he was there on that particular night was that there was new evidence at that time came to my attention and I wanted to warn him to see what he had to say about it.

15. Q.

What exactly did you say to Mr. Ebsary?

A.

I can't just relate what I said to him, it was thirteen years ago; but I would, if you permit me, what I would say to him on that particular night, in my opinion, is that I had fresh evidence at this time in regard to the Seale murder in the vicinity of Wentworth Park and I wanted to know if he knew anything about it or and I also had evidence at that time that there was a disturbance in the Wentworth Park area between him and Jim MacNeil and two others and then, of course, he started to talk and then as you notice -- on the first part of it, "I remember one night myself and Jim MacNeil were at the State Tavern we were

Chief John MacIntyre, cross examination by Mr. Wintermans  
(voir dire)

15. A. going home down George Street....." so forth and then it was question/answer after that.

16. Q. I see, okay. Now, you indicate on the statement that he was warned; and, of course, the words of the warning aren't on the written statement but you have indicated in your evidence here what those words were?

A. That's right.

17. Q. You were asked whether, you thought that Mr. Ebsary understood the warning and I think you said something you would say that Ebsary understood and you then indicated the normal practice was to ask the person who you were taking a statement from if they wanted to read it, some do and some don't -- a couple of questions arising out of that. First of all, how do you know Mr. Ebsary understood the statement or the warning I should say, how do you understand the warning?

A. It's my usual question, do you understand that?

18. Q. We are more concerned about what happened in particular case?

A. Other than that I can't give you any -- that's my practice when taking a statement.

19. Q. I note that on the statement, as there is in some statements these days at least, a place where Mr. Ebsary would indicate whether or not he understood the warning and that's not on this particular statement?

A. No, at that time those are the type of statements that were used.

Chief John MacIntyre, cross examination by Mr. Wintermans  
(voir dire)

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20. Q. And you're not sure then whether Mr. Ebsary read the statement over or not?

A. No, I'm not sure, no.

21. Q. All you know is that it's in your handwriting and it was signed by Mr. Ebsary?

A. Correct.

22. Q. I take it that it's fair to say that you don't recall the exact words of the conversation that you had with Mr. Ebsary prior to the first sentence on the written statement that we have before us in court here?

A. No, not the exact words, but words to the effect I said.

23. Q. Thank you, no more questions.

Chief John MacIntyre, re-direct examination by Mr. Edwards  
(voir dire)

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1. Q. Chief MacIntyre my learned friend asked you whether or not you know the person--I'm para-phrasing--whether the person who brought Mr. Ebsary to the station, if in fact you sent somebody for him, would have made any threats or inducements as far as the statment is concerned. Arising out of that I want to ask you what -- if you did send somebody for him or at the time when you would send somebody to pick up somebody for questioning what, if any, instructions would you give that person?

Mr. Wintermans: Objection, speculation, he's already indicated he doesn't know who went. How can he say what he might have said and who cares what he might have said.

Chief John MacIntyre, re-direct examination by Mr. Edwards  
(voir dire)

By the Court: Well, he's been giving evidence about what his usual practice was because it's thirteen years ago and he can't remember everything that was said and what he's been telling you is what he's been telling Mr. Edwards is while he can't remember exactly what was said his ordinary practise is this and this and I would think that this questions falls into that same category. All it is, is it goes to weight, it's what weight the court wishes to attach to any answers given in respect to his memory as to what happened at that time. I think the question is appropriate in the context of which is asked.

2. Q. So, assuming somebody was sent to bring Mr. Ebsary to the police station -- putting it this way,-- what was your practice at that time if you would send somebody to bring another person in for questioning?

A. In my practice at that time was that they were to have no conversation with the party that I wanted to see them at the station, and I didn't want any conversation with the party. I have always tried to be very careful especially in a very serious matter of this type, to have as few people have anything to do with the prisoner until I interview him or the accused I should say until I interview him.

3. Q. Now, my learned friend also asked you how you do that the accused understood the warning that you gave him. Put it this way -- how many investigations would you have done in your career, would it be hundreds?

A. Up in the thousands.

Chief John MacIntyre, re-direct examination by Mr. Edwards  
(voir dire)

4. Q. Now, during that time of your questioning people if the person whom you warned indicated that he didn't understand the warning, what would you do?

A. I, to be honest with you, I don't ever remember running into a case where they didn't understand a warning that I've run into it after they were warned that they would either answer or reply they didn't want to say anything at that time and so forth and I would record that on the statement. In this case here after I gave the warning I took it that he did understand it and continued then to tell him why he was there.

5. Q. Okay, no further questions, thank you.

By the Court: Thank you very much Chief.

Constable Mroz cross examination by Mr. Wintermans.

9. Q.

Thank you.

Mr. Edwards: No re-direct My Lord.

Chief John MacIntyre duly sworn and examined.

Chief John MacIntyre direct examination by Mr. Edwards

1. Q. Sir, would you give your name and occupation please?  
A. John MacIntyre, Chief of Police, City of Sydney, Province of Nova Scotia.
2. Q. Chief MacIntyre how long have you been Chief of Police for the Sydney Department?  
A. About eight years now.
3. Q. And you have been a member of that Department for how long all toll?  
A. Since May the 11th, nineteen forty-two -- forty one years past.
4. Q. In nineteen seventy-one you were a sergeant of dectectives?  
A. I was.
5. Q. How long did you hold that position, Chief MacIntyre?  
A. I was in detective work for, I would say over twenty years.
6. Q. Over twenty years?  
A. Over twenty years in detective work.
7. Q. In nineteen seventy-one you were in charge of the investigation and the circumstances surrounding the death of Sandy Seale?  
—A. I was.

Chief John MacIntyre, direct examination, by Mr. Edwards

3. Q. And that investigation led to the charge and subsequent conviction of Donald Marshall?
- A. It did.
9. Q. Now, what if any efforts were made to find the murder weapon -- the knife?
- A. Well the area was searched at that time and I had the creeks drained to the best of our ability.
10. Q. You mean the creek in Wentworth Park?
- A. I mean, that would be one, two, three of the creeks were down.
11. Q. With what results Chief MacIntyre?
- A. With negative results.
12. Q. You never found the apparent murder weapon?
- A. No we didn't.
13. Q. When did you if, in fact, you did have contact with a person named James MacNeil, when did you first have contact with that person?
- A. November the fifteenth, nineteen seventy-one.
14. Q. That was following the conviction of Donald Marshall?
- A. That's correct.
15. Q. Prior to that would you have any contact with Mr. MacNeil with relation to this investigation?
- A. No.
16. Q. As a result of conversation you had with Mr. MacNeil on November fifteenth, nineteen seventy-one, did you subsequently take a statement from the accused, Roy Newman Ebsary?
- A. I did.

Chief John MacIntyre, direct examination, by Mr. Edwards

17. Q. Is that person in court today?

A. Yes, sitting over here with the blue coat.

18. Q. Record shows he points to the accused My Lord.  
You took a written statement from Mr. Ebsary?

A. I did.

19. Q. On the same day, November fifteenth, nineteen seventy-one.  
And you took statements from other persons also?

A. That's correct.

20. Q. Who were they?

A. James MacNeil and his brother were first and then Mrs. Roy Ebsary I believe was next.

21. Q. Yes.

A. Mr. Ebsary and then his son, Gregory.

22. Q. Following the taking of those statements what, if anything, did you do?

A. I consulted the Crown?

23. Q. Who was at the time who?

A. The late Don C. MacNeil and Mr. LeVatte.

24. Q. Yes.

A. And I requested at that time because of me handling the Marshall case and I thought another Department should look into this matter and the Crown to my knowledge had the R.C.M.P. look into it as of that date I had nothing more to do with it.

25. Q. So, all the statements you took on November fifteenth were turned over to the R.C.M.P. is that correct?

A. Well they were turned over to the Crown, I just don't.....



Chief John MacIntyre, direct examination, by Mr. Edwards

26. —Q. Chief MacIntyre, I'm now going to show you an exhibit which is marked Exhibit Number Two and that is a statement by Roy Newman Ebsary, is that correct?

A. That's correct.

27. Q. And that is the statement you took from Roy Newman Ebsary on November fifteenth, nineteen seventy-one?

A. Yes sir.

28. Q. And that statement is in your handwriting?

A. Yes sir.

29. Q. First of all, where was this statement taken?

A. It was taken in the Detective Office which is in the driveway into the old police station on Bentick Street at that time led to a building which is off the main building and in that building, of course, there were two offices used by the detectives.

20. Q. And who was present while that statement was taken?

A. Then Sergeant M.J. MacDonald.

21. Q. He is now the Deputy Chief?

A. Right.

22. Q. Prior to the taking of that statement what, if any, warning was given to Mr. Ebsary?

A. I warned Mr. Ebsary because of the seriousness of the allegation which I knew about at that time -- that he need not to answer, he have nothing to hope from any promise or favour, nothing to fear from any threat whether or not he said anything, anything you say may be used as evidence.

Chief John MacIntyre, direct examination, by Mr. Edwards

23. Q.

Yes, and can you recall whether or not he appeared to understand that?

A. I would say he did, yes.

24. Q.

At the time .....

A. That's usually my question of taking statements -- I have a procedure which I follow and I always ask if they understand the warning.

25. Q.

Had you had any doubt at the time about his understanding of the warning what would you have done?

A. I would have to hear what his answer was.

Mr. Wintermans: Objection, speculation, what he would have done "if".

Mr. Edwards: Well, perhaps I could rephrase it My Lord.

26. Q.

Did you have a practice at the time with respect to giving warnings?

A. Yes.

27. Q.

What was that practice?

A. My practice was when I was taking a statement I always had somebody present, especially a matter of this type. I've taken statements, of course, alone on other occasions but usually on this type of thing I would have somebody present and I would warn them, of course, before we take the statement--which would be a police officer--he wasn't to ask any questions or do any talking. If there was something he wanted to ask, a note would have to be written and passed to me as a note.

Chief John MacIntyre, direct examination, by Mr. Edwards

28. — Q. What about the warning that was given to the person giving the statement, did you have any practice in that regard?

A. Yes I always asked them if they understood it and I get an answer from them and I don't recall of any ever being answered in the negative.

29. Q. So, you then proceeded to take that statement in question and answer form, did you?

A. That's correct.

30. Q. Could you note when the statement taking began?

A. Yes, nine fifteen p.m.

31. Q. Well when did the statement taking conclude?

A. Well on this is says ten ten p.m.

32. Q. Is it noted on the third page?

A. Yes ten ten p.m.

33. Q. Would you read the statement to the jury.

A. November the fifteenth, nineteen seventy-one, nine fifteen p.m. Statement of Roy Ebsary age fifty-nine years, residing at one twenty-six, Rear Argyle Street, Sydney, warning.

"I remember one night myself and Jim MacNeil were at the State Tavern. We were going home down George Street across the bridge in Wentworth Park and up to Crescent Street?

Question: "What happened?"

Answer: "When we were about over to the corner of South Bentick Street near Robbie Robertson's on South Bentick Street, two chaps who were behind us came around the side of us and asked us if we had cigarettes and if we had any money. We told them we didn't. They asked us to turn

Chief John MacIntyre, direct examination, by Mr. Edwards

33. —A.

out our pockets, so we turned out our pockets. The short fella tried to take my ring off my finger while the tall fella had his arm around the other fella's throat, Jimmy's, and had him on the ground. When he tried to get my ring I was not well. I tried to wrestle him. He swung me onto the ground. I made a kick at him and he got up and ran off.

I went over to see how Jim was getting along with the other fella and he dropped Jim and ran off with the other fella.

Question: "Did you stab the man you were wrestling with?"

Answer: "Hell, no, why would I stab him."

Question: "How old were these fellas?"

Answer: "Young men. One fella was tall, I had to look up at him."

Question: "What were they wearing?"

Answer: "I would not be able to tell you."

Question: "What nationality were they?"

Answer: "I believe Canadian. I asked them where they were from and they asked -- when they asked us for the money and they said Truro."

Question: "Were they white or coloured?"

Answer: "The fella I seen, I thought his face was white."

Question: "What about the short fella?"

Answer: "I would say he was white to."

Question: "Where did you go then?"

Answer: "I went home."

Chief John MacIntyre, direct examination, by Mr. Edwards

Question: "Where did Jimmy go?"

Answer: "He went to my place for a few minutes then he went home to Hardwood Hill."

Question: "When did you see Jimmy again?"

Answer: "The next day him and his father."

Question: "For what reason?"

Answer: "They just dropped in, it was actually the first time I met his father. No, it was not the first time."

Question: "Were you in bed that day?"

Answer: "Yes, I believe I was."

Question: "What was Jimmy talking about?"

Answer: "They asked me to have a drink of wine him and his father."

Question: "Did he tell you the Seale boy had died?"

Answer: "No, I can't recall?"

Question: "Do you carry a knife?"

Answer: "No."

Question: "Does Jimmy still come to your house?"

Answer: "No, I have not seen him for a long time, he was not a regular caller at my house."

Question: "Have you been to his house?"

Answer: "Once."

Question: "Can you tell me when this disturbance took place on Crescent Street?"

Answer: "After eleven p.m."

Chief John MacIntyre, direct examination, Mr. Edwards

Question: "What month?"

Answer: "In May, the same night this boy was stabbed?"

Question: "What were you wearing?"

Answer: "A reversible top coat, blue."

Signed Roy Newman Ebsary, witnessed by myself and Detective Sergeant M.J. MacDonald.

34. Q. Thank you Chief MacIntyre, my learned friend may have some questions.

Chief John MacIntyre, cross-examination, by Mr. Winterman's

1. Q. Is that the first contact you had with Roy Ebsary on November the fifteenth, nineteen seventy-one, as far as you are aware?
- A. As far as I'm aware, yes.
2. Q. How did Mr. Ebsary and you get together that night?
- A. Well, he was (inaudible) it would be my instructions.
3. Q. So, you instructed what, a police officer?
- A. That's right.
4. Q. To go in a car and pick him up?
- A. To contact him. I couldn't say whether it was by phone or by car, but he was brought to the station at my request.
5. Q. Do you know that police officer or those police officers were?
- A. Not at this time, no.
6. Q. So, you don't know what type of conversation may have taken place between Mr. Ebsary and those police officers if you don't know who the police officers were, is that correct?
- A. Well, I give instructions when I'm bringing somebody in for questioning to the police, that is my usual manner of

Chief John MacIntyre, cross examination, by Mr. Wintermans

6. A. doing things that they are not to have dealings with the party they are bringing to the station and I take it from there. That's my usual practice.
7. Q. And when you arrived in the or when he arrived in the police station, do you recall that -- when Mr. Ebsary arrived at the police station?
- A. Yes, I was there when he came there.
8. Q. Other members of Mr. Ebsary's family were also at the police station at that time, is that correct?
- A. They were, yes.
9. Q. Who were they?
- A. Mrs. Ebsary, she was -- I believe I took a statement from her before that?
10. Q. Mary Ebsary?
- A. Mary. Her son was at the station that evening.
11. Q. I see.
- A. And I took a statement from him, Gregory I believe was his first name, and I have another practice that when that takes place to keep people apart so that until I interview them.
12. Q. I see. Do you recall the times that between which Greg Ebsary's statement was taken?
- A. I haven't got it here sir.
13. Q. You did take a statement from Greg Ebsary that night?
- A. I did, yes I did.

Chief John MacIntyre, cross examination, by Mr. Wintermans

14. Q. You wrote it in your own handwriting?

A. That's right, yes.

15. Q. Would you like to have notes to refresh your memory?

. I won't put this in evidence, it's just for questioning.  
Is it your practice to indicate the times when a statement commences and the time when the statement finishes?

A. Yes.

16. Q. Have you done that on that statement?

A. Yes.

17. Q. Could you indicate what those times are?

A. On this statement it shows nine fifty-five beginning and it finished at ten twenty.

18. Q. I see.

. And the statement of Roy Ebsary, who was present when that statement was being taken?

. A. The Sergeant M.J. MacDonald at that time who is now the Deputy Chief.

19. Q. And nobody else?

A. Nobody else, no.

20. Q. Where would Greg Ebsary be while that was taking place while Mr. Roy Ebsary was being questioned?

A. Well he would either be on his way down or in the building.

21. Q. Would you leave the room during the time the statement would be taken?

A. No, I wouldn't.



Chief John MacIntyre, cross examination, by Mr. Wintermans

22. Q. So, you would continuously be with Roy Ebsary during the statement of Roy Ebsary?
- A. That's correct.
23. Q. And continually with Greg Ebsary during the statement of Greg Ebsary?
- A. That's correct.
24. Q. Then why is it that Roy Ebsary's statement was taken at nine fifteen p.m. until ten ten p.m. and Greg Ebsary's statement was taken from nine fifty-five p.m. until ten twenty p.m. There appears to be a fifteen minute overlap there that for the last fifteen minutes of Roy Ebsary's statement you were talking to Greg Ebsary or for the first fifteen minutes of Greg Ebsary's statement you were talking to Roy Ebsary?
- A. I admit that would be a mistake on the timing there on the bottom of the statement. The time on the top would be correct and as you noticed this statement is taken in question/answer form and I didn't get into the next statement until this statement was finished.
25. Q. I see. Now, do you have an independent recollection of times when those statements were taken or are you pretty much relying on your notes?
- A. I'm relying on my notes, but I never take two statements at the one time or get involved in the second one when I take the first one.

Chief John MacIntyre, cross-examination, by Mr. Wintermans

26. Q.

Was Mr. Roy Ebsary aware of the presence of other members of his family at the police station while this statement was taking place.

A. I couldn't answer that.

27. Q.

Do you recall any conversation to that affect?

A. Because I think his wife was at the station. A statement was taken from her before this one. I wouldn't be able to answer that of what knowledge he had.

28. Q.

When you say that the statement of Mary Ebsary was taken before Roy Ebsary's statement, how long before?

A. Just a little while.

29. Q.

Couple of minutes before?

A. I wouldn't say, I don't know, I'd have to look at the statement.

30. Q.

You took the statement from Mary Ebsary yourself, did you?

A. That's correct.

31. Q.

In your own handwriting?

A. That's correct.

32. Q.

Would you like to look at that statement just for the purposes of seeing if you indicated the times on that?

A. I will sir.

33. Q.

What does it say?

A. It says statement of Mary Patricia Ebsary at eight forty-five.

34. Q.

That's on November the fifteenth?

A. That's correct.

Chief John MacIntyre, cross-examination, by Mr. Wintermans

35. Q. Eight forty-five p.m.

A. Yeah. It finished at nine o seven p.m.

35. Q. Now, I note that this statement you indicated begins:

"I remember one night myself and Jim MacNeil were at the State Tavern, etc." I suggest that there must have been some conversation between yourself and Mr. Ebsary before that first sentence by Mr. Ebsary and before the warning that you gave to him. You must have said something to him to get him on the topic at least.

A. Yes, I did.

Well, in those words I suppose I took a statement before that from James MacNeil where accusations were made and because of that that's why I had Mr. Ebsary taken to the station and I would inform him at that time, I can't think of my exact words, that's thirteen years ago; but I would inform him that there was new evidence that cropped up in this Seale case and that he was taken down here for questioning and at this time I must warn you and then Mr. Ebsary started to talk on that first sentence there and he said I remember one night myself and Jim MacNeil were at the State Tavern we were going home down George Street, across the bridge in Wentworth Park, up to Crescent Street, and then of course the question/answer started out.

37. Q. Now, is it possible you may have told Mr. Ebsary some of what Mr. MacNeil--Mr. James MacNeil had indicated in his statement. In other words, did you tell Mr. Ebsary any of the content of Mr. MacNeil's statement?

Chief John MacIntyre, cross examination, by Mr. Wintermans

37. A.

No, no.

38. Q.

You didn't say anything about someone else saying that he might have been involved or anything like that?

A.

No, I was checking on the authenticity of the other statements at that time when I was asking him the questions.

39. Q.

I see. You have indicated that you can't recall what you said to Mr. Ebsary right before this statement was given, is that correct?

A.

I can recall, I can recall that I did tell him why he was there and I had a statement in my presence at that time which I had just taken which was making a very serious complaint and I was investigating it further at the time. He was knowledgeable of that what I had told him when he started talking about what he remembered.

40. Q.

Now, you say you were the officer in charge of the investigation into Donald Marshall, Junior?

A.

Yes.

41. Q.

Was it you who decided that there was sufficient case, in your opinion, to lay a charge against Donald Marshall, Junior?

A.

On the advice of the Crown, sir, at that time.

42. Q.

Who was the Crown at that time?

A.

The Crown Prosecutor was the late Donald C. MacNeil.

43. Q.

He's since deceased?

A.

That's correct.

Chief John MacIntyre, cross examination, by Mr. Wintermans

44. Q. Yes.

A. And since then was Lou Matheson.

45. Q. I see. As the officer in charge of the investigation, you would be aware of what evidence there was in respect to against Donald Marshall?

A. Yes.

46. Q. And given what you heard here over the last few days  
By the Court: I don't think he's been here, but...

47. Q. Okay. Given that there is now a charge against Roy Ebsary in relation to the matter, why was Donald Marshall charged? What kind of evidence was there against Donald Marshall back in nineteen seventy-one?

A. Well there was eye witnesses to the murder at that time?

48. Q. Eye witnesses?

A. Eye witnesses, yes.

49. Q. What were those eye witnesses supposedly seeing?

Mr. Edwards: Objection, we are getting a little far field now because the realm of hearsay. My learned friend is aware of the witnesses who were called on the original trial. If he is interested in getting before the jury what those eye witnesses saw then let him call them, but it is improper, I submit, for him to bring out that evidence through this witness. Call them and subject them to cross examination.

Chief John MacIntyre, cross examination, by Mr. Wintermans

By the Court: I think that's so. If there are eye witnesses that you wish to know about or wish to know what they said or saw then they are the ones that should be approached, not this witness who is speaking from hearsay. You know, I'm not (inaudible) to the particular charge.

Mr. Wintermans: My point is that perhaps the jury maybe curious to know how Donald Marshall was ever convicted in the first place.

By the Court: Well, they might be curious about it, but this is the trial of Roy Ebsary. That's no way to conduct a trial.

50. Q. What were the names of those eye witnesses that were involved in the Marshall case then?

A. Maynard Chang and John

51. Q. Okay. Do you recall what you were wearing when you took the statement from Mr. Ebsary? Were you wearing your uniform or were you wearing civilian clothes?

A. No, civilian clothes.

52. Q. Plain clothes. What about the Deputy Chief MacDonald who was present when the statement was made?

A. He was wearing plain clothes too.

53. Q. And that statement was taken after the conclusion and sentencing of the Donald Marshall trial?

A. Yes.

54. Q. So, it was like new evidence coming forward after the trial was already finished.

A. That's right.

Chief John MacIntyre, cross examination, by Mr. Wintermans

55. Q. What exactly did you do with this new evidence?

A. I had a session with the Crown at the time and suggested to them that another police department take over this case because I had already handled the Marshall case and I thought there could be a conflict there and I wanted to to--and, ah, my request was granted because after November the fifteenth, nineteen seventy-one, I had nothing further to do with this case.

56. Q. Nothing at all?

A. No.

57. Q. You weren't involved in an advisory capacity or anything like that?

A. No.

58. Q. Do you know who in the R.C.M.P. took over the investigation at that time?

A. Yes, I know who took it over.

59. Q. Who?

A. Well it was two officers from Halifax and I think one was a Staff Sergeant Allan Marshall and the other chap was Sergeant Smith.

By the Court: What was the first person's name?

Chief MacIntyre: Al Marshall, I believe he was a staff sergeant My Lord.

60. Q. Were you at the scene that night in nineteen seventy-one down at the park?

—A. No, I wasn't.

Chief John MacIntyre, cross examination, by Mr. Wintermans

61. Q. Thank you, that's all.

Chief John MacIntyre, re-direct examination, by Mr. Edwards

1. Q. My learned friend brought up the names Maynard Chant and John (inaudible) do you know if both of those gentlemen are still alive and residing in the area?

A. Yes they are.

2. Q. And what Al Smith and Sergeant Smith are both those gentlemen still living?

A. They're both living, yes.

By the Court: Thank you very much Chief.

Corporal James Carroll duly sworn and examined

Corporal James Carroll, direct examination, by Mr. Edwards

1. Q. You're Corporal James Carroll and you are a member of the Royal Canadian Mounted Police stationed at the Sydney Detachment, is that correct?

A. Sydney sub-division, yes.

2. Q. And you are attached to the general investigation section of that force?

A. I am.

3. Q. How long have you been a member of the Royal Canadian Mounted Police?

A. Twenty-three years completed in January, next year.



JULY '84  
CBC8

141.

Mr. Pugsley: Excuse me, would you like to take five minutes?

Mr. Murrant: Yes, that's a good idea.

Short Break.

571. Q. Mr. Donham, I have no further questions.
- A. Mr. Pugsley, if I could just before we left on that break, you had asked me whether I have ever heard anything good about your client and I just want to qualify my answer by saying that it's possible that I have, it not that--I just didn't want to leave the answer quite as dark as I did.

571. Q. Thank-you.

Mr. John MacIntyre sworn by Mr. Pugsley, examined by Mr. Murrant.

1. Q. May I begin sir by giving your full name?  
A. John F. MacIntyre.
2. Q. And your address?  
A. 36 Churchill Drive, Sydney.
3. Q. And your present occupation, sir?  
A. I am on retirement right now, sir.
4. Q. What is your age?  
A. Sixty-five.
5. Q. And how long have you lived at your present address?  
A. About I would say, twelve years.

Mr. Pugsley: Excuse me for interrupting, I would appreciate it if Mr. Donham was not present when you examine Mr. MacIntyre. I don't think he has a right to be present, he is not a member of the C.B.C. and I think that is the only person that has a right to be present at this.

Mr. Murrant: I would like to have him present.

Mr. Pugsley: I would object to his presence.

Mr. Murrant: May we take a minute to discuss that?

Mr. Pugsley: Certainly.

Mr. Murrant: I just want to state my position concerning Mr. Donham remaining and our considered response is that I would like him to remain here. We are prepared to, he is prepared, I can't do it for him, he is prepared to undertake not to publish any of the evidence given in this discovery until such time as it being completed in one way or another in the event that that maybe your concern, but I would like him to remain in the sense that he is a witness and I would like his presence and guidance in conducting this portion of the and perhaps other portions of the discovery.

Mr. Pugsley: I'd object to his presence and I understand the rules, in most of these at all circumstances you are entitled to have a representative of the party present, I take it that Mr. Donham is not a representative of the C.B.C. and the discovery examination is a private examination and I object to his presence.

Mr. Murrant: Well all I can say on the matter is the that the (inaudible) of what has occurred to date in this action has spoke to a long portion of the script which includes Mr. Donham and the evidence that he has given for the past several hours has been essentially in many parts expert evidence in the field of journalism and basically on the basis of his expertise in that field that I would like to have his guidance and I think that is the necessary thing.

143.

Mr. Pugsley: I guess I would have two comments on that, I am not sure that you are entitled to have an expert to assist you present at a discovery examination. I don't think that by itself would upset, but I think in terms to the chief it was our contention as is obvious by the pleadings that the chief is being defamed very badly by Mr. Donham and I just think it is inappropriate for Mr. Donham to remain in the room while the Chief is being examined on discovery.

Mr. Murrant: Well, it is only an item of the media. I could give him a transcript next/<sup>week</sup>and say; "here are the contents of and. . ."

Mr. Pugsley: I realize that. . .

Mr. Murrant: What we are saying is that we are not intending and undertaking not to publish or utualize the evidence in this proceeding and I am simply asking that subject to that and covering of that proceed people and I am simply asking subject to that and covering that you proceed people if any that he remain in order to assist me in this matter.

Mr. Pugsley: Well, it is the presence of Mr. Donham that I object to simply because he is essentially the author of the defamation that has occurred and I just think it is inappropriate for him to be present while the chief is being examined.

Mr. Murrant: My analogy is that--I can't think if we had to exclude people because we don't appreciate their presence. I may never get to a case in my life if that

144.

Mr. Pugsley: Well it is not because I personally object to Mr. Donham it is simply because he is the author of what we consider to be a very serious defamation on the plaintiff and he is not a party to the action and I object to his presence.

Mr. Murrant: (inaudible)

Mr. Pugsley: I think. . .

Mr. Murrant: I feel firmly that I would like to have him here for the purpose of guiding and assisting me in this.

Mr. Pugsley: I think -- subject to your concurrence we should adjourn until we have a judge rule on the matter.

Mr. Murrant: I don't wish to delay the proceeding, if there is any possible way of doing that.

Mr. Pugsley: I don't see how we can get a judge this afternoon and indeed I don't see how we can get a judge other than in Halifax.

Mr. Murrant: Well I appreciate that, time is not in essence to me I am not really available again until September.

Mr. Pugsley: Well, that's fine

Mr. Murrant: I might be available to get a ruling, but I don't wish to suggest that I am trying to delay.

Mr. Pugsley: I wasn't suggesting that. I think with your concurrence perhaps you should see if you can find a day in August that we are both free and we'll attempt for a Judge to see if we can get determination for September.

Mr. Murrant: Unless I can think of some other solution in the next fifteen minutes. You're not leaving town?

Mr. Pugsley: Not until you tell me I can go.

Mr. Murrant: It is not that, if there is a solution to keep the case in motion, I am in favor of it.

Mr. Pugsley: Sure.

Mr. Murrant: But if we can't. . .

Mr. Pugsley: I don't feel that it is appropriate for Mr. Donham to be present during the examination of the Chief, it is essentially his presence that I object to, it is not in any way to interfere with your conduct of the discovery, but I feel strongly.

Mr. Murrant: Well, we can consider that and if there any change I will let you know earlier this evening.

Mr. Pugsley: When, early this evening?

Mr. Murrant: Are you staying, where at the Holiday Inn?

Mr. Pugsley: My only thought is if you are not prepared to change and we are going to chambers, would you let me know so we can get the late plane?

Mr. Murrant: Sure.

Mr. Pugsley: Yes, I am at the Holiday Inn.

Mr. Murrant: I would like to get the work done while we are here.

Mr. Pugsley: Yes.

Mr. Murrant: Well, there is no more we can do here.

Mr. Pugsley: All right we'll adjourn today.

CANADA  
PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

1984 S.S.N. No. 03224

CBC 9

IN THE SUPREME COURT OF NOVA SCOTIA  
TRIAL DIVISION

BETWEEN:

JOHN F. MACINTYRE

PLAINTIFF

- and -

CANADIAN BROADCASTING CORPORATION,  
a body corporate

DEFENDANT

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This is the evidence taken by way of Discovery with the consent of all parties, held at Halifax in the County of Halifax, Province of Nova Scotia on the 4th day of September, 1984 of JOHN F. MacINTYRE.

---

R.N. Pugsley, Q.C., Solicitor for the Plaintiff

R. Murrant Esq., Solicitor for the Defendant

PERIOD  
214 Albro  
P.O. Box 1108  
E2Y 4E6

SEPTEMBER 4, 1984

9:30 a.m.

2.

IT IS AGREED that this Discovery Examination is held without order by the consent of the solicitors herein with the intention that it have the same force and effect as if all formalities had been complied with;

and

IT IS AGREED that the Discovery Transcript may be used at trial or subsequent proceedings in accordance with the Rules pertaining to Discovery Examination and Rules of Evidence without the necessity of calling the Reporter in formal proof of the Discovery Examination.

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JOHN F. MacINTYRE, duly called and having previously been sworn, testified as follows:

EXAMINATION BY MR. MURRANT:

1. Q. When we broke, Mr. MacIntyre, I was asking you how long you had lived at your address in Sydney.  
A. Well at the present address?
2. Q. Yes.  
A. I think 11, 12 years.
3. Q. And have you always lived in the City of Sydney or the area?  
A. Well I was born in Sydney and I left the city for a period of probably six years and lived on the outskirts during my married life.
4. Q. And what's your career been since you've started working?  
A. My career?
5. Q. Meaning have you always worked as a police officer?  
A. Well I was in the car - car salesman for three or four years before that.
6. Q. What period would that be?  
A. That would be '39, '40, '41.

John MacIntyre

3.

7. Q. And did you join the police force in about '41?

A. I joined the police force, sir, in '42, May of '42, May the 11th, 1942.

8. Q. And was that as a constable I take it?

A. That's correct. They called for applications on that - there were three applicants going to be hired and there was 50 to 60 applicants I think applied at the time. There was three of us appointed the same night, Peter Morrison, Bingo Morrison and myself.

9. Q. And from '42 when you joined as a constable until your recent retirement you've always been with the City of Sydney police I take it?

A. That's correct, yeah, in different positions and different titles.

10. Q. Now we'll go through that but I'm wondering in '42, at the time you joined - did you have any particular qualifications for police work?

A. No, not at that time.

11. Q. What was your educational background when you became a police officer?

A. High school.

12. Q. Now through the period can you tell me what positions and ranks you held with the force?

A. May I look to get dates?

13. Q. Sure.



13. A. May the 7th, 1942 I was taken on strength in the Sydney Police Department. In 1950 I was assigned to the investigation branch. In 1955 I was appointed detective sergeant in the detective department. In June 1966 I was appointed sergeant of detectives. On October the 1st, 1973 I was appointed to the rank of deputy chief of police with the Sydney Police Department. On December the 1st, 1976 I was appointed chief of police of the Sydney Police Department.
14. Q. And you served as chief, you retired when?
- A. I retired May the 30th, or the 31st, last day of May.
15. Q. This year?
- A. This year sir, yes.
16. Q. Now as you progressed through that career path you've indicated to me did you, on occasions, take training for courses or things to upgrade yourself in police work?
- A. Yeah. I took a course in Halifax here at the Maritime Police School early in my career.
17. Q. What would that consist of in general terms?
- A. Covering all parts of police work. It would cover crime scenes and thefts and frauds and break and enters and what have you, scenes of crime, what to do, and films and what have you.
18. Q. Was that back in the Forties, so I can follow this?
- A. Back in the Forties?
19. Q. When you took your course.

19. A. '42, it would be probably closer to the Fifties when I took the course.
20. Q. Subsequent to that did you take any -
- A. On-the-job training of course.
21. Q. For that job, and after that did you take any particular courses, like a course in hair and fibres or a course in this, that or the other thing?
- A. That wasn't part of my work. It was part of my job to examine, look for exhibits but that was left to ident, and at that time, and long after that time, the Sydney police, along with a lot of other towns, didn't have their own ident service and didn't have their own photographic service. They had to rely on the Royal Canadian Mounted Police as a backup, and that backup, of course, was there providing that they didn't have pressing work of their own, which is understandable.
22. Q. Now this period of time you've always lived in or near Sydney. Do you belong to any clubs or associations in that area?
- A. Clubs and associations, no.
23. Q. I mean socially.
- A. No.
24. Q. Are you a member of a church? I'm trying to -
- A. No.
25. Q. to determine your community status -

25. A. Well my community status - at church, when they built the new Saint Anthony Daniel Church back a few years ago there was a team came in from Toronto to put on a financial campaign and when they left I was picked in the parish as campaign chairman and held that job for three years and then plus another three renewing pledges, so I was six years on that job. The credit committee, the credit union I was several years on the credit committee and on the board there, I think a total of 12, probably 14 years.
26. Q. Which credit union is this now?
- A. That's the Sydney Credit Union.
27. Q. And during that period you were with the police department, or after your retirement, did you have any other occupations or means of income or anything else that you did other than police work?
- A. Yes, I did. Yes, I've put up some - I had some buildings taken down and reconstructed and rented them as warehousing facilities, the space. Nothing to do with running the business. I own the buildings.
28. Q. Sort of an investment in property?
- A. What's that?
29. Q. An investment in real estate is it?
- A. Did I?
30. Q. No, I'm wondering if that's what we characterize it. You say you -

30. Q. Well no, I -well I own, yes, I own the property, I still have them, still have them.
31. Q. Right.
- A. And I've had - I moved some houses also and then resold and bought -
32. Q. You mean bought and sold?
- A. Well after they were moved and put in first class condition. Some I kept for awhile.
33. Q. The present day you still have these warehouses you say?
- A. That's correct, yeah.
34. Q. And do you have any housing or other -
- A. No, nothing like that, just my own home.
35. Q. Where are the warehouses?
- A. They're on York Street, City of Sydney.
36. Q. And I understand, sir, you're a family man?
- A. I am sir.
37. Q. You're married I take it?
- A. Married, yes, I have five children.
38. Q. And presume - don't get me wrong if I'm wrong - you've been married for a number of years?
- A. Yes sir.
39. Q. How long is that now?
- A. 40 some odd.
40. Q. And five children you have?
- A. That's right, yeah, one dead.

41. Q. Could you tell me who and where they are at the present date?
- A. One dead and four living. The youngest passed away when she was a baby. The oldest girl was a teacher and is married now and living at Howie Centre, married to a chap, Walter MacPhail who works on construction.
42. Q. Right, and Howie Centre -
- A. He, you know, he looks after jobs on construction.
43. Q. Howie Centre, is that in Sydney?
- A. That's out about seven or eight miles from Sydney.
44. Q. Okay fine.
- A. Then I have a daughter who is a nurse and she married a young man a few years ago who graduated from McGill as a medical practitioner and they're living in Toronto. I have another daughter who graduated in teaching and she went to Calgary, Alberta where she took up her profession there and married a chap there from, by the name of Roderick Berry, from England who was going to the University of Calgary and also is a teacher. They were married there. I have a son living in Dartmouth, a graduate of St. FX and Dalhousie, and he is a practicing lawyer in the City of Dartmouth and married there with a family.
45. Q. Now, if I may at this stage, I'd like to go to the script of this broadcast, and I forget for the moment what exhibit number we have attached to it.

MR. PUGSLEY: It's number 2.

45. Q. (cont'd) Mr. MacIntyre you're familiar with the script tht we have here as Exhibit Number 2?
- A. Oh yes, yeah.
46. Q. May I begin by asking you whether or not you heard this broadcast the day it was on the radio?
- A. Yes, I did.
47. Q. And can you tell me under what circumstances you heard it and what you heard of it?
- A. Well I was a little late getting up that morning and I enjoyed my breakfast and then decided I would turn the radio on, and when I did turn the radio on, I usually listen to this program every Sunday morning when I can, providing that I don't go to church service and what have you, or something else to do, but I turned the radio on that particular Sunday morning and this program was just after coming on.
48. Q. So it seemed that this - what's in the script had started?
- A. It had started but not - it wasn't on very long. They were talking about Ebsary and Marshall and it caught my ear and I sat there and listened.
49. Q. Was anybody with you?
- A. My wife was in the house, yes.
50. Q. Was she listening to it as well?
- A. I brought it to her attention, yes.
51. Q. And does that mean you both listened to perhaps the end of it?
- A. Well I -

52. Q. Did you say, listen to this?
- A. Yeah. Yes, and I did discuss it with her, you know.
53. Q. Do you know from the script or from memory what portion you did hear?
- A. I think I heard, I would say, pretty well all of it.
54. Q. What was your reaction at the time you heard this? You say you discussed it with your wife.
- A. Well my reaction was - to be honest with you I thought it was terrible what I heard on the radio that Sunday morning. My reaction was that I was going to seek legal advice on it. That's my reaction sir, which I did.
55. Q. Exactly. You say you normally listen to the program.
- A. Yes.
56. Q. See if I can get around this question without being difficult for both of us, but in other items that you hear on Sunday morning and other mornings concerning Canadian International events, or whatever it might be, do you consider that to be an authoritative program? Let's forget this ever was on the air.
- A. Yeah. I consider that program very interesting on Sunday mornings when I have time to listen to it, and I enjoyed it in the past, yes.
57. Q. Now let's take the script, which is Exhibit 2, and it may take some time, Mr. MacIntyre, to grind through this, so let us both take our time so that we're on the same footing. It

57. Q. (cont'd) begins by saying on Thursday - you leave out the part on your copy that says Hello Halifax et cetera, which is a transmission. It begins by saying "On Thursday in Sydney, Nova Scotia Roy Newman Ebsary was sentenced to five years in prison for the 1971 murder of Sandy Seale". And I take it that did occur and you were the chief of police at the time? There was a Roy Newman Ebsary who was sentenced to five years for the '71 murder of Sandy Seale?
- A. Yes.
58. Q. What I'm trying to do is see what is accurate and see what isn't.
- A. Yeah.
59. Q. I don't want to play tricks with you, okay?
- A. M-hm.
60. Q. And then it says "a murder for which an innocent man had already spent 11 years in prison". Do I take that as accurate as well, that much of it?
- A. That is what - in 1971 I didn't consider him an innocent man.
61. Q. Right. But if we say that innocent in the eyes of the Court, all we're really saying -
- A. The Court has made a decision and I respect that decision.
62. Q. "That man was Donald Marshall, Junior, and his case is unprecedented in Canadian legal history". Can you comment on that?



62. A. No, I can't comment on that. I believe I did - I think I did see in the papers, if my memory serves me right, that there was one or two other cases. I think there were journalists and reporters were juggling that around, but I haven't any direct proof on that.
63. Q. You'd almost have to know all the cases and compare them.  
A. Yeah, that's right, and that's not my - but yeah.
64. Q. Okay. If we go to the next sentence, "It is a first time a murder conviction has been overturned after an innocent man has spent so long in prison". I take it your previous answer would apply to that as well?  
A. The first time a murder conviction has been overturned. I wouldn't be able to -
65. Q. In terms of it being a first-time unprecedented type of thing.  
A. Well this I wouldn't know if there was other cases or not.
66. Q. Now if I can stop at that point in the script, I take it that the comments to that point were accurate in things that have been said, nothing that would disturb, nothing that you're complaining about, down to there?  
A. No, I don't think there's too much there.
67. Q. Next is "Donald Marshall is free today but his case has sparked demands in Nova Scotia for a full public inquiry". I take it you're familiar with the fact that there were demands made by various people for a full public inquiry?  
A. By some of the press, yes.

68. Q. And I note, from looking at old newspaper articles - maybe we'll dig them out later - that certain politicians, such as Alexa McDonough, the Leader of the NDP, were rising in the House of Assembly to ask for a public inquiry.

A. She had some comments on the Marshall case.

69. Q. And again that sentence, because I want to see what we agree or disagree on here, that would not be a sentence that particularly troubles you in this broadcast?

A. Well that is - he's free today, that is a judgement of the Appeal Court of Nova Scotia.

70. Q. And there were demands for a -

A. And I respect the Court's decision.

71. Q. And the remark about demands for a public inquiry, I take it, doesn't -

A. Well those remarks were made.

72. Q. Okay, but is that one of your complaints concerning this broadcast?

A. Well to that point I - for a full public inquiry, that didn't seem to bother me at that time if there was an inquiry.

73. Q. Now we go to Heather Matheson, she said "This is Heather Matheson at Wentworth Park in Sydney, Nova Scotia". And Wentworth Park is indeed the scene of the murder in 1971.

A. Well I get a kick out of everybody using the word Wentworth Park. You see when this, in my opinion, was supposed to take place on a street, a city street, a city sidewalk in the City

73. A. (cont'd) of Sydney, near the park area, very near the park area. In fact there's just a street and sidewalk difference, and everybody's talked about down in Wentworth Park you see, but it happened on a street in the City of Sydney to my recollection.
74. Q. So that the mention - all the references in the media of Wentworth Park are a little bit off geographically I take it?
- A. Oh they would be, yes.
75. Q. And it says "It was here on the night of May 28th, 1971 that Sandy Seale was stabbed to death". And I take it that fact is accurate?
- A. Well Sandy Seale was stabbed on that particular night, but it was the next day some time that he died in the hospital, so he didn't die at that point.
76. Q. She says "At the time of the murder" - let me stop for a moment, Mr. MacIntyre, so we can all understand each other. In broadcasts like this, when you wrap the whole thing together, and we've heard the tape, we were here before, you can have certain impressions of the overall thing, the way it's knitted together, okay. Mr. Pugsley questioned Miss Matheson about that. And again, so that we understand each other as we go through this, I'm not trying to fence you in, I realize that you would have a certain opinion on the overall broadcast, okay, but I'm using the script here to go

76. Q. (cont'd) through the facts specifically. Are you with me on that?

A. Yeah, m-hm.

77. Q. Then it says "At the time of the murder there were three or four people in the park". She accurately -

A. Excuse me, three or four people in the park according to - I don't know where she got that.

78. Q. How does that compare with your -

A. Well I mean I imagine there'd be several people passing through the park on that particular night, but to say that - to name them, we didn't have any names at that time, and we're going back 13, 14 years now. You know, Ebsary and MacNeil was down in Wentworth Park at the time, including Donald Marshall and the Seale boy. I didn't have any names like that in '71 at that time.

79. Q. Okay. But you subsequently learned that those four people were in the park?

A. She did.

80. Q. Pardon?

A. She did.

81. Q. Yes, but so did you didn't you?

A. I learned that they were on Crescent Street at a later date.

82. Q. Right, near the park.

A. Yeah, but not in Wentworth Park. I believe they travelled through there at one period, through the park, which many

82. A. (cont'd) others did of course. It's a shortcut and anybody going to the shipyard area from George Street and coming from dentists and other places, people use that quite often as a walkway through there. There's ponds of water there and there's bridges there and band shell and it's lit up and it's very nice.
83. Q. Then it says "Donald Marshall, a 17 year old Micmac Indian from a nearby reserve". Let's take Marshall, he was a Micmac Indian from a nearby reserve and you're familiar with Donald Marshall?
- A. That's correct, yeah.
84. Q. "Roy Newman Ebsary, a short, older man with white hair and a long cape". Does that describe Ebsary?
- A. Yes. He's very short, I don't know about this cape business. That's what they're saying here. That was not what Marshall told me. Marshall described the two men as - I think you'd have to go to his statement and see how he described them and what they were wearing. I think they were wearing, both wearing blue burberries and he thought they were priests. I don't think there's anything about capes or anything in my statement taken from him at the time.
85. Q. No, I seem to recall that interview.
- A. Okay?
86. Q. Yeah.
- A. And I think they were both tall at the time also.

87. Q. And then it says "James MacNeil, his companion and subsequent facts that determine that James MacNeil was present as somewhat of a companion with Ebsary", and that much is accurate. Then it goes on to say "and the victim, Sandy Seale".

A. James MacNeil - wait now, where are you at there? Are you on - you're still with Heather Matheson there eh?

88. Q. Yes, yeah.

A. "James MacNeil, his companion, and the victim - Donald Marshall remembers - Ebsary and MacNeil were on Crescent Street on that particular night as evidence received at a later date, six months later.

89. Q. And of course Sandy Seale would have been present.

A. Sandy Seale would have been in the vicinity there, yes.

90. Q. And of course at that time he was black and he was a teenager?

A. He was more of the mulatto type, he was very light for a black person.

91. Q. Now if we go, it says "Donald Marshall remembers that night", which doesn't mean anything to anybody. Marshall says "I wasn't -

A. No, just a minute now. Donald Marshall, "I was going down to the park to rob somebody, I was going down" - I know nothing about that, he didn't tell me that, nothing about this, that story.

92. Q. Okay let's -
- A. In my questioning of him.
93. Q. Right. He said "I wasn't going down to the park to rob nobody", let's just take that. And what you're telling me is that this business of rob or no rob was -
- A. It was about robbing. He gave me a different version in '71 of the attack and mentioned nothing about this.
94. Q. Okay. He says "I was going down there to look for Indian guys. That's where we hung out and that's what I was doing, going down there and looking around, right, to see if I could find my buddies and I happened to bump into Sandy Seale". Let's take it down to going down there to look for his buddies. Was that what he relayed to you that night?
- A. No, no, no. He didn't - I think - and again I have to go back to the statement, and you'll realize that this was a few years back, but I think in the statement that I took from him he said that him and Sandy Seale went down into the park and they stopped on the park bridge and two men dressed with blue burberries hauled them up to Crescent Street. Now where the park bench is - and I don't know if you know the location or not. Were you down there?
95. Q. I think I do, yes.
- A. All right. Now if you went up to Crescent Street at that point you'd be over quite far on Crescent Street towards Argyle. In fact you'd be, I think, just about one house on

95. A. (cont'd) Crescent Street there, which is a large one, towards Argyle, that would be the vicinity that I would take that he could hear people calling. But where this took place, supposed to have taken place, this stabbing, was over a few houses from that in the direction of Bentinck Street. Now nobody, in my opinion, could call him up from the park bench, from the park bridge over in front of the green apartments on Crescent Street.
96. Q. All right, okay, I'm with you. And he mentioned in another part of that sentence "I happened to bump into Sandy Seale". I take it he initially - we can get that statement out. I don't mind to pin you down without the statement, but he did mention the presence of Sandy Seale.
- A. Where at? In the park?
97. Q. When these guys called him back.
- A. Oh yeah, Sandy Seale was, yeah, he was down on the park bridge with, you know - wait now, when who called him back?
98. Q. Well when these two guys purportedly looking like priests called him back, when he's relating back to you, it was always mentioned that Sandy Seale and he were together that night.
- A. They were together but they were called up to Crescent Street and it was very short and sweet what he told me on that particular night. He told me how they were dressed, and I believe something about their height and that, and they were



98. A. (cont'd) asked if there was any women or liquor down in the park area, in the park. And when he gave them an answer one fellow said I don't like niggers and he stabbed Seale and then he said I don't like Indians either and he stabbed him. That's how quick that everything happened and that was supposed to be the picture painted to me on that particular time that I questioned him. Now we're not talking about over in front of the green apartments on Crescent Street, which is a distance away, and I can pretty well pinpoint it for you, the distance it would be. You have 40 or 50 foot properties, and from that bridge over there you have one, two, you have two or three houses there and then you have a large apartment house which would take up probably 75, 100 foot lot, because it's very huge, four or five apartments in it, and then that's where they were supposed to be standing, so it's a distance of a few hundred feet from where this bridge is they're talking about in the park.
99. Q. Okay, I'm with you. And then he says, in the last part of that "I tell him why don't you make some money with me". And again this business of money or robbery or rolling wasn't mentioned to you?
- A. No, no. It didn't enter the picture at all in '71, at that time.
100. Q. Then it goes back to Heather Matheson. "At midnight Marshall and Seale met up with Ebsary and MacNeil", and I take it that

100. Q. (cont'd) facts that have come forward subsequently and have been accepted by the Court show that the four of them met that night, these four people?
- A. Yeah.
101. Q. "Words are exchanged, within moments Seale lay dying on the pavement". And again I take it that subsequent facts show that to be right?
- A. Well words were exchanged and within moments -
102. Q. If you're not -
- A. If you go by Marshall's statement in the Appeal Court I think he said that they talked and chatted for about 20 minutes, am I correct?
103. Q. Right.
- A. So when she says moments, does she mean that 20 minutes is moments you see? Then MacNeil, James MacNeil said I think that, well it wasn't 20 minutes, we didn't have very much of a conversation when he was grabbed, you know, or called back, and the thing was over in jig time. Am I right on that? I think that's what I've got -
104. Q. Yeah. This sentence probably more accurately expresses MacNeil's version doesn't it?
- A. Yeah, but she's saying to the public that words were exchanged, within moments Seale lay dying on the pavement you see. And it probably is going along with what MacNeil said.
105. Q. Closer to MacNeil than anybody, is that fair?

105. A. Yeah, that's fair.
106. Q. "When the first police car arrived Donald Marshall was leaning against a tree with a gash in his forearm". Can you recall who was in the first police car that got there?
- A. I believe it could have been Walsh and - Constables Walsh and I believe Mroz, Leo Mroz and Richard Walsh. I believe those would be the two.
107. Q. Do you know what night of the week was this, was it Friday?
- A. Friday night, yes.
108. Q. You wouldn't be on duty on Friday night?
- A. I wasn't on duty at the time, no.
109. Q. How did it come to your attention?
- A. I was called that night about this, had a call about it.
110. Q. How far along were the officers in their investigation when they called you?
- A. Well this chap was at the hospital and I understood from the conversation that the doctors were working on him and that the police cars were looking for leads in the area and there was - I had a detective on duty that night. I always tell them, my words to them if I don't go out, is that if there's anything to add or any more information that they can call. I always had it that they could call me any hour of the night, which they did.
111. Q. You didn't actually go to the scene that night?
- A. No, no, no, there was nothing at the scene at that time, you

111. A. (cont'd) you see, that the police wouldn't look after.  
That's why we have a detective on duty at night.
112. Q. Now it mentions Marshall leaning against a tree. It doesn't matter where he's leaning I guess, but it says he has a gash in his forearm.
- A. Yes.
113. Q. That must have been an important piece of fact to you, that he had a gash in his forearm?
- A. I was interested in that, yes, I was.
114. Q. Can you tell me what kind of a gash it was.
- A. It was a very slight gash along the arm here and -
115. Q. You're indicating the inner part of your forearm.
- A. In here, yes. Now if you remember in Marshall's statement he said that when Ebsary came forward to him, I think at a later date, he said he put his arm across his stomach now see, to save his stomach. Now don't forget the gash here was the inside. I examined the jacket.
116. Q. Let's take the gash if I may. You said it was a slight, you know, would you say superficial is another description?
- A. Yeah.
117. Q. Slight or superficial?
- A. Yeah, I would say, yes. In fact I went to see the doctor that done the stitching, and I asked him about this wound to get a medical opinion on it. Something was bothering me on it in regard to this type of wound. I suggested at that time

117. A. (cont'd) to the doctor what was bothering me was this, that if you were stabbed, in my opinion, that at the point of entry with the force behind the stabbing, that the weapon used would, if it was sharpened, which I expect it would be, would go in deeply and come out, at point A and come out to almost nothing at point B at a further spot. He kind of agreed with that. And I said now this wound here was very superficial on the arm here. There was arteries and what have you running here, and it wasn't any deeper at one end or in the middle than in the other. And I said could that be self-inflicted and he said could be. I said why did you put 10 stitches in that type of wound? He said, well he said just to - shrugged his shoulders and he said just to stop any infection.
118. Q. Is that to suggest, Mr. MacIntyre, that he possibly didn't require stitches?
- A. Well the wound had me puzzled with the stabbing, to be honest with you, you know. Because if you stab somebody, I think we would all agree pretty well I think on it that it's going to go in deep at the point of entry and come out somewhere else. It wouldn't be just a superficial as far as I'm concerned, the investigations that I've had during my police career I thought that it didn't - it had me puzzled and I did confer with the doctor. Then of course I examined the jacket and I found that the jacket had several fresh cuts into her. Now

118. A. (cont'd) to do this here, and the jacket had fresh cuts up here and the wrist of the jacket was cut and quite a bit of damage done on it, and where the wound was here and very little blood, if any, in that area of the jacket, and if you recall when he was over on Byng Avenue, which is around the block from where this happened, he'd have to come over Crescent down Bendix and over Byng Avenue, that arm wasn't bleeding at that time, which would indicate to me that it had plenty of time to bleed and bleed furiously if there was any type of cut there, and it wasn't bleeding at all according to Chant. The jacket would have showed considerable blood on that arm if it was bleeding, but Chant says I believe, in his statement at one point there, that when he got over to him his sleeve was up, his sleeve was up.
119. Q. If we take that wound, you've got a wound, as an investigator, you've got a wound that's consistent with someone swinging a knife at Marshall. It's also consistent with - now I'm trying to go back in your mind way back when - consistent with a self-inflicted wound that really maybe didn't require stitches, and something that, as an investigator, would put a doubt in your mind about this wound being inflicted by another person?
- A. Well I was looking at that theory, yes, because of what I just told you. You know if I take this and it's sharpened, you know, and I drive it into your arm, you know, I don't expect it to - I expect it to penetrate.

120. Q. Yes, exactly.

A. You know, and I expect it, as you pull away from me, to come out, whether it's an inch or whether it's two inches or ten inches. It depends what rip I get or what I do there, and I come -

121. Q. Yeah. Then you talked to the doctor.

A. I talked to the doctor, yes.

122. Q. And you got this theory in mind.

A. Yeah.

123. Q. And is it fair to say the result of your discussion with him was that, yes, it could be self-inflicted?

A. Well that's the answer he gave me when I asked him the question.

124. Q. So it added to -

A. Wait now, there's more than that to it though. Wait now, that's only part of it. Then you have the jacket to consider, you have the jacket to consider. How did those fresh marks, cuts get in that jacket in other positions besides the position on the arm here? And this here - I took the jacket away - I'm not a fiber expert. But I took that jacket to Sackville and had the fiber experts - I told them what I wanted and why I wanted it examined and their report on it. I am not - I haven't got the files from the '71 case on me but there was a fiber expert - I think it was a lady in Mr. Edwards' office that was called to give evidence I



124. A. (cont'd) believe in that trial, correct me if I'm wrong - and I think that was discussed at some issue about the fresh tears and cuts and the damage to the jacket. It was also pointed out at that time that there wasn't sufficient blood on that jacket to get a blood sample, but there was sufficient blood on Seale's jacket to get a blood sample. And I was after a blood sample of Marshall, and Marshall, I told his doctor about it and the doctor said well when he comes in, he said, next Tuesday to get the stitches out, and at that time he had arrived at the County jail, he was incarcerated there, but he was to go up there I think on the following Tuesday to get the stitches out, and he said I will try and get you a blood sample at that time. And when Tuesday came Mr. Marshall didn't show up at the hospital and when he called, my understanding was when Doctor Verrick - Doctor Verrick was the doctor - when he called the jail to see if the client was coming down, the patient, he was told no and he asked why, and he was told by somebody at the jail that Mr. Marshall had removed the 10 or 12 stitches from his arm with a pocket knife and that there was no sign of the bandage, and - himself.

125. Q. So this -

A. I ask you is that the, you know, is that the actions of an innocent person?

126. Q. Well you do acknowledge, sir, that throughout this the -



126. A. You know, so there was several, you know, there was more than just the cut on the arm to look into, and of course there was other things also to look into.
127. Q. Is it fair to say that this slash in the arm, the cuts in the jacket, were consistent with a self-inflicted wound in your theory of the investigation, but they were also consistent with a wound inflicted by a third party?
- A. I wouldn't go along with you from the third party, because of the type of wound and the condition of the jacket and the little damage done to the arm, if it was a stabbing from somebody else.
128. Q. Is it fair to say then that as the investigation progressed - as your investigation progressed you discounted this theory of a wound inflicted by somebody else? You began to think, in your own theory, that this was self-inflicted?
- A. As the investigation continued, I was looking into all avenues, put it that way. I wasn't taking anything solid, I was looking over avenues, but that did occur to me at one point and I wanted medical evidence, I wanted evidence from the fiber expert at the lab in Sackville, New Brunswick, which I wasn't qualified to do, as to the condition of the jacket, the tears in the jacket, the fresh cuts and what have you, and their opinion on it.
129. Q. Did anything really turn on the findings of the fiber expert?
- A. Yeah, the fiber experts did say that there was cuts, fresh

129. A. (cont'd) cuts, not cut, fresh cuts on the jacket. I think one was, and I haven't got the evidence before me, one was over an inch long in this area, there was another one eight inches, six to eight inches long, and that the cuff was not only cut, freshly cut, but torn, the cuff of this nylon jacket.
130. Q. Right. Now -
- A. You'd have to, you know, read the evidence over again. After all it's a long time since I recall it.
131. Q. Okay. If we stick to our script here it goes on to say, after the gash in the forearm, "Ebsary and MacNeil had fled" and subsequent facts show that to be the case.
- A. Well you're using the word Ebsary and MacNeil, you know, that wasn't known to me in '71 eh. Marshall said there was two men there. They looked like priests and they had blue burberries on them, you know.
132. Q. But it was later determined that in fact they were there and in fact they had fled. You're not disputing that now?
- A. I'm saying at this time that I have knowledge that six months later, after I investigated this, that knowledge came to me that Ebsary and MacNeil did have a confrontation with two people on Crescent Street near Robbie Robertson's house, which is at the corner of Crescent and Bendix Street, and they weren't named to me at that time.
133. Q. Now it says "Five months later Donald Marshall was sentenced

133. Q. (cont'd) to life in prison for the first degree murder of his friend, Sandy Seale" and that in fact happened?
- A. Where are we at now, on the first page, still on the -
134. Q. No, I think if you go to the second, it's under the heading of Heather Matheson.
- A. Yeah, "Five months later Donald Marshall was sentenced to life imprisonment for the first degree murder of his friend, Sandy Seale". Yeah, was that first degree or was it second degree murder?
135. Q. I can't recall.
- A. I think it was - I believe it was second, I'm not sure. I wouldn't go along with the first degree murder.
136. Q. And five months later, that strikes me as a rather quick period of time in which to bring this to trial.
- A. Again sir that's the Courts, I have nothing to do - I wouldn't have any say on that. No, it wouldn't be. That would be up to the Court system, sir, I would have nothing to do with that.
137. Q. You had nothing to do with the timing of the trial?
- A. Oh no, no, definitely not.
138. Q. Did you have anything to do with perhaps suggesting to the Crown or anybody that there was more investigation you wanted to do prior to the trial, or other things you wanted -
- A. No. As everything progressed I brought this information to the Crown and the Crown proceeded. The Crown ordered the

138. A. (cont'd) charge laid and what have you. Any time I do any of this I - any work along those lines I keep the Crown fully informed.
139. Q. It says "Parker Barss Dunham, who was a Cape Breton journalist", we know he's that I take it?
- A. Well he's working as a journalist, yeah.
140. Q. "He's been following the Marshall case ever since". I take it you would say well he was not in Cape Breton ever since Marshall was sentenced to his sentence?
- A. I haven't followed Parker Barss Dunham.
141. Q. You don't really know the man at all or have seen him on in some -
- A. No, I think I've seen him once or twice but I haven't had any dealings with him.
142. Q. He says the evidence against Marshall was flimsy.
- A. I don't agree with that. I would say the evidence against Marshall was strong at the time. There was two eyewitnesses to the murder in '71, you know.
143. Q. Let's jump down to what Parker Dunham says here. "Marshall was a young Indian with a reputation as a tough kid". Was he known to the police as a tough kid?
- A. He was known to the police.
144. Q. Did he have a previous record?
- A. He had a record as a - there was some Informations laid in the Juvenile Court. There was, I think - there was one laid in the adult court for various reasons.

145. Q. Did you, as a police officer, have prior involvement with Donald Marshall?

A. Did I?

146. Q. In the laying of Informations, investigations of other matters, did you ever meet with him, speak to him?

A. I don't think I did of a serious nature now. He might have been for intoxication or something like that, I don't recall, but nothing of a serious nature, although there were serious things happened with him and that other police in the department had dealings with.

147. Q. What would they consist of?

A. Damage to property and other matters. I mean I'm not free, I don't think, to discuss any court records here. I'll put it this way, he had several encounters with the police on different -

148. Q. Okay. Let's leave that part for the moment. In those encounters with the police did you have any real dealings with the man?

A. No, nothing of a serious nature. You know, I know he's been in for intoxication and that nature, but -

149. Q. Was he one time the subject of a rape charge?

A. Of a rape charge?

150. Q. Yes.

A. There was a charge laid in the, I think, and before the Juvenile Court, in regard to a young girl who he'd met

150. A. (cont'd) somewhere and had taken home, and he took her into the house and kept her there for the night and got her out of the house early in the morning before dad woke up. And when she got home I think her parents, she was under age, and her parents found about it, or she had a conversation with them, I don't know how it came about, but as a result of whatever happened after she got home the parents went to the Court and there was an Information laid. But I don't think there was a conviction on it because I think the judge at the time said that if she was scared and worried about what was taking place in the Marshall home that if she had have screamed that other members of the Marshall family were available and would have got up and seen that she'd be rescued and sent on her way, and this wasn't done. I think there was, you know, I don't think there was too much come out of it. I think that's probably what you're talking about, is it, I don't know.
151. Q. Yes, yeah.
- A. But I did - and it was detective M.J. MacDonald was on that case.
152. Q. Did you have anything to do with that case?
- A. No.
153. Q. At the time this murder happened is it fair that if you saw Marshall in the street of Sydney you'd know him?
- A. That I would know him, yes, know him to see him.

154. Q. And know him, in your capacity as a police officer you'd know that he was a person, I think the phrase is used, known to the police?

A. He was known to the police, yeah.

155. Q. And then Dunham says here "And really when he showed up as a suspect I think the police's problems were over". Was that your feeling? When you got through the business of the arm wound, the fiber tears and other things, when you began to think that Marshall really was a suspect in this did you feel that the investigative problem was over?

A. I think when I got through with the eyewitnesses to the murder, and I brought it to the Crown Prosecutor's attention of what I had and I was ordered at that time to lay a charge.

156. Q. Is this at the same time when he - I'm wondering what comes when - but once the eyewitnesses identify Marshall, once you evaluate this wound and other considerations, he then becomes a suspect and you, as a problem solver, begin to feel that your problem is solved?

A. No, I wouldn't say that. Even after a man is charged it's up to the Court to make that decision, not a police officer. We're just a small part of the criminal justice system.

157. Q. Yes, but let's -

A. My job is to gather evidence and then bring it to the Crown who is the representative of the Attorney General's Department in the province and take whatever action he sees fit.



157. A. (cont'd) If he says there's no charge at this time or you need this or you need that, he talks it over with me, or if he tells me to charge a party at that time under section so and so of the Code, whatever the case may be, that is what I do, 'cause he's the man that carries the ball into Court.

158. Q. Well let's look at it from the police point of view. Once you evaluated things and you had statements from others making him a suspect, and he was taking into custody and charged, and you related this to the Crown Prosecutor, did you not feel at that time that you had solved the problem, solved the crime, completed your investigation?

A. I don't think that I can say that to you, that I completed my investigation, because I think if you look at some of the statements that were taken, they were taken long after Marshall was charged.

159. Q. Now this -

A. Any time that anything comes to your attention in regard to that particular case you should look into it, which I did, and I think the night I was dealing with the Harriss girl I think it was what, 1:20 in the morning I was out there after working all day and into the night. You know, when anything comes to our attention we have to look into it.

160. Q. Sticking with those words here "when he showed up as a suspect I think the police's problems were over".

A. He would give the impression there I think that well, we had



160. A. (cont'd) somebody to nail for it and Marshall was a tough kid so, you know, you're -

161. Q. He was a handy fellow to charge?

A. Yeah, yeah, that's the impression that I would take from that. There's more to that than, when you're on that type of investigation, than thinking that way. You have to have evidence, you have to have facts for the Court.

162. Q. Now this sentence also suggests that the police had some problems. Was there public pressure to solve this crime?

A. Public pressure, no, I would say that the - our job is to solve the crime. We don't ever worry too much about public pressure. We worry about whether we're doing our job and doing it properly, that's my worries when I was a detective, and going as far as I could with things, and if I needed any assistance or if I thought there was something else that I could have done that I didn't do I was never too big to go up and chat with other people on it, which I've done on a few occasions on situations.

63. Q. This particular investigation, was there some public pressure to solve it, not whether it had an affect on you. You're telling me you're going to do your job anyway.

A. That's right.

64. Q. But apart from that was there any public pressure to get this thing solved?

A. I think there was a letter came in from the Black United

164. A. (cont'd) Front in Halifax stating, and I don't even remember the exact words, but in regard to the Seale boy and his death, that they hoped that we would do as much on that case and work as hard on it, along those lines, as we would for -
165. Q. Any other person?
- A. Well any other - I think the word white man could have been mentioned, you know, but anyways yeah, but that didn't fuzz me whether they were black, white or what they were. There was a crime committed and it was up to me to see what I could do with it. We don't solve all the crimes either, you know, and - but when you get to eyewitnesses and other witnesses who were very valuable at the time to the investigation that said that they seen it, then Marshall was charged at that time, and unless you have facts you just can't charge people on what you think or your opinions.
166. Q. Was anybody - other than the Black United Front did anyone else speak to you about solving this, perhaps the mayor or a politician or the Crown say look, you got to get -
- A. No, I don't recall any interference.
167. Q. I think what you're telling me is if there were you would have gone about your work the same anyway.
- A. Oh of course, yes, which I think I've done down through the years. I've had a very good record in the crime end of it.
168. Q. Would it have made a difference here - it says that Marshall was a young Indian with a reputation as a tough kid, would

168. Q. (cont'd) it have made a difference in your investigation if it wasn't Donald Marshall, if it was, let's say John MacLeod who was a young fellow from a good family in Coxheath?
- A. No.
169. Q. Didn't have a reputation as a tough kid.
- A. It wouldn't have made any difference. John MacLeod would give me his story and it was up to me to see what I thought of it and then what else I could gather.
170. Q. Now it goes down here and says in the next sentence, "Since then you've had three witnesses come forward whose testimony was crucial in convicting Donald Marshall. Two of them actually testified that they watched him do the crime". Now to your recollection were there three witnesses whose testimony was crucial in convicting Donald Marshall?
- A. Well there was two actually seen the crime committed. The third party played a very important part in their evidence.
171. Q. Let's take the two that saw it, who would they be, Harriss?
- A. That was Pratico - no - Pratico and Chant.
172. Q. And the third?
- A. The third that I was interested in was Mr. Gushue and Patricia Harriss.
173. Q. Then it says "Two of them actually testified that they watched him do the crime".
- A. Yes.
174. Q. I'm wondering about - is it accurate to say that Pratico and

174. Q. (cont'd) Chant testified that they saw Marshall do the crime?

A. Yes, I would take it that's true.

175. Q. And then it goes on "And those three witnesses now all say they were bullied or coerced by the police into changing their story". And I'm sure that's a part of the script that you'd answered complaints about.

A. That's correct.

176. Q. All three of those individuals gave different statements at different times.

A. That's right.

177. Q. And changed them.

A. That's right.

178. Q. And all three of them, in subsequent proceedings, filed Affidavits to the effect that they were - I don't want to use the words bullied or coerced - but induced by the police to change their stories. They've all made that public complaint.

A. I don't know but you've read them, I haven't. Let me see - the only two you have is Chant and - no, you have one from Pratico too eh?

179. Q. Right.

A. Pratico and Chant and the Harriss girl. You could be right there, yeah.

180. Q. Essentially, without getting to the fine words of it, all

180. Q. (cont'd) three have come forward publicly and said well, you know, gave the explanation for changing their story. Now they've sort of blamed it on the police wouldn't you say? Not whether it's right or wrong at this stage, okay, but they've all publicly said well, you know, we wouldn't have said this if it weren't for what the police wanted us to say. They've all made that public complaint in explaining it.

A. Well they've changed their stories at this time to what they gave us, yeah.

181. Q. But the way they justify doing that is to say well it was the police who got us to -

A. Police pressure and, yeah.

182. Q. But I mean apart from this broadcast that complaint had been publicly made.

A. I don't know to what extent, but there was - they did change their stories, yeah.

183. Q. And blamed it on the police.

A. Well I'd have to go over the Appeal Court thing to -

184. Q. But you must have been aware sir, before you heard this on the radio, that these people were making those kinds of allegations?

A. Yes, they changed their stories and the word was around that they were pressured by the police, yes.

185. Q. Then it's - and I'll come back - Patricia Harriss' statement is here and we'll come back to more detail on that. It goes

185. Q. (cont'd) on to say "We know also that another individual came forward 10 days after Marshall's conviction and fingered the real killer, fingered Roy Newman Ebsary. He said he was with Ebsary that night at the park and told what is now accepted as the real version of the story". Now that's obviously James MacNeil he's talking about. Did he come forward 10 days later?

A. 10 days after Marshall was convicted, and that was six months after the - approximately six months after the stabbing.

186. Q. So I can follow this, and we'll check records, if your memory is not good on this we'll check records, but Marshall was tried before a judge and jury at the Cape Breton County Court House in Sydney before Justice Dubinsky?

A. That's right, yes.

187. Q. Was convicted?

A. Yes.

188. Q. Is it 10 days after the end of that trial?

A. After his conviction.

189. Q. Yeah.

A. Yeah. He was in the County jail I believe. I'm not sure of that but I believe he was, and there was an Appeal in progress.

190. Q. And it's during this time that MacNeil shows up. Did he come to you or -

A. Yes.

191. Q. He came to see you?

A. He came to see me, yeah.

192. Q. Did he know you or you him?

A. Oh yes, I knew him too, yeah, knew of him.

193. Q. Did you know enough of him that you could judge his character or credibility as he came to you with this information?

A. Well I knew him as a young man with a - there was two of them that came to see me, him and his brother. And his brother opened the conversation up and then led it to him, and at that point I took a statement.

194. Q. I suppose what I'm wondering is if somebody came in the room here today, that we all knew was a liar and a nut, and told you and I and Mr. Pugsley and everyone something we wouldn't place much stock in it, but I'm wondering about this MacNeil fellow. Did you - were you in any position to judge him as he approached you?

A. Well he had a story to tell, put it that way, and until that was checked out to some degree I would have to look at it.

195. Q. Yeah, but you had no reason not to disbelieve him as he came there?

A. Well I was astonished with the story he gave me, you know, but I carried on further on that same evening, as you know, with other statements.

196. Q. MacNeil's story, it said he came and fingered the real

196. Q. (cont'd) killer, Roy Newman Ebsary. Now we know from what has happened since 1971 that according to the judicial system Roy Newman Ebsary was the real killer, and then this fellow MacNeil came to you 10 days after the trial and told you this. Was that ever related to either Donald Marshall or his lawyers?

A. Oh I wouldn't know that.

197. Q. Would it be related to the Crown?

A. Yes, definitely so sir. That's what I wanted to tell you, that I took more statements than his on that particular evening when that came to my attention. Did you know that?

198. Q. Well let's just get to that. I'll -

A. Well all right. Then I took - because of other statements that I did take from other people that I thought should know something about this, and the party that he named.

199. Q. Is it fair to say that -

A. I got in touch with the Crown.

200. Q. Any information you gathered from MacNeil, or as a result of MacNeil, you would have related to the Crown?

A. That's correct.

201. Q. Now whether or not he passed that along to the accused or his counsel would I take it, in your view, be up to the Crown?

A. Up to the Crown, sir, and I passed it on to the Crown with a recommendation at the time.

202. Q. Now you say you took other steps. MacNeil comes in, he explains this - he gives you this story.



202. A. M-hm.

203. Q. You then set out to evaluate it I take it?

A. To check on other people.

204. Q. What steps did you take?

A. I had them taken to the station and I had statements taken from them.

205. Q. This is - well first of all you took one from MacNeil I gather?

A. The two MacNeils were together, him and his brother. His brother just come from Toronto you see, I think the day before, and he told him that story and he asked him if he told anybody. He said, I think he said the only person he told was his mother, and then he talked to his mother on it, the boy that come home from Toronto. Did you go to the police, no, well you better go, so he took him down to the station.

206. Q. So you would have taken a statement from James MacNeil?

A. James MacNeil and I listened to what his brother had to say also.

207. Q. Then you took a statement from -

A. Then I took one from this Ebsary that he named, and I took one from Mrs. Ebsary and I took one from Greg Ebsary.

208. Q. Now Roy Ebsary, was he known to the police?

A. I had no dealings with him. He was known to probably - he was known to some members of the police department because I

208. A. (cont'd) think on one occasion he was picked up with some type of a hunting knife or some type of knife on him and he was charged.
209. Q. That would be a charge like possession of a weapon or something?
- A. That's correct. Probably carrying a concealed weapon, which is a - we have several charges during the year.
210. Q. Now Mrs. Ebsary and Greg Ebsary, did they add anything to your inquiries?
- A. They didn't help me one bit. I think - I don't know if you have copies of their statements have you?
211. Q. They may be here somewhere.
- A. They knew nothing about the situation that I was interested in, and I still thought that there might be something here and that John MacIntyre, after handling the first case, should not handle case number two, because there could be a conflict of interest. If there was nothing there people would say that I swept it under the rug, and that was my thoughts, and I thought another police department should handle it and do that case number two. I got in touch with the Crown on that particular night. I think they got in touch with Halifax, Attorney General's Department. As a result the RCMP were sent in, I don't know where they held their hearings. I know that there was a polygraph test done, and where they done their work, whether it was at a motel or

211. A. (cont'd) their station or where, and they were - would be conferring with the Crown Prosecutor. At that stage I bailed out.
212. Q. At that stage you said that you related this to the Crown and that you had included a recommendation.
- A. That another police department take it over and that I thought they should because, you know, it was startling evidence to receive, and I got to the Crown right away. In fact I think it was the same night I got to the Crown that I got it, because I wanted to - for them to know about it.
213. Q. There were also previous statements such as Patricia Harriss who, in her first statement, said that she had seen two men in the park. I mean there was other evidence that there were two men in the park.
- A. Are we talking about the park or Crescent Street?
214. Q. Well let's say at the scene of the incident.
- A. Well that's Crescent Street in my opinion.
215. Q. I mean this was -
- A. And that's what I was interested in her, was on Crescent Street, not down in Wentworth Park, on Crescent Street.
216. Q. And at the time MacNeil comes by, comes to the station and makes this revelation, you're aware of other facts consistent with what MacNeil's telling you, such as Patricia Harriss saying in her first statement there were two men there.
- A. In her first statement.

217. Q. Yes.

A. But then she changed that.

218. Q. I appreciate she changed it.

A. And the man that was with her didn't say that in his statement, and that's why she had to be examined again. You realize that do you, or did you see that statement?

219. Q. Yes, Gushue.

A. Who was 20 years old at that time.

220. Q. But I'm just wondering - I'm at a loss to understand why, when this thing developed, it was not related to Marshall or his counsel. I mean there he is with an Appeal pending and this is a dramatic -

A. My job in the criminal justice system is to relate what I know to the Crown Prosecutor who represents the Attorney General of this province, and I think I done it in a quick fashion.

221. Q. I appreciate what your responsibility in the system is. Let's go past that a little bit. Your knowledge - Donald MacNeil was the Crown Prosecutor?

A. Donald MacNeil and Lou Matheson was the Assistant Crown Prosecutor, and I understand it was Lou that we done business with that night.

222. Q. On that occasion?

A. Yeah, and he's a Provincial Magistrate at this point.

223. Q. To your knowledge did he ever relate this information to Mr. Marshall?

223. A. Oh I wouldn't have any knowledge of that sir, you know. You know, I don't go back and ask the Crown did you do this or did you do that, you know what I mean, I'm not - I want to be - not being smart about it.
224. Q. Oh no, it's not for you to stand over them.  
A. Not being smart about it.
225. Q. No, no.  
A. No, no. See once I gave it over it was the same thing in this occasion here. I figured I'd stay clear, I gave them what I had and anything that I did have they had access to through the Crown. And as far as the other case is concerned the Crown handled that case, the Marshall case.
226. Q. But as you sit as an individual, I mean here is this young fellow sitting in the Correctional Center on remand pending Appeal for murder.  
A. M-hm, yes.
227. Q. And you don't know whether or not these facts are being related to him. I mean did that -  
A. He came in and told his story, came in and told a story, and there was a statement taken, and then there was a statement taken from other people because of the story that he told. And they weren't helping the situation any. Well at that point, and that same night, I took what we had to the attention of the Crown.
228. Q. Would you be concerned as an individual whether or not this got related to Marshall?

228. A. That's why I gave the case over to another department.
229. Q. But we know now that they didn't pass this information along.
- A. I don't know. I couldn't tell you sir what they done. I couldn't tell you what their discussions were with the Crown.
230. Q. Assuming it never got to Marshall, I mean wouldn't that, as a career police officer, concern you?
- A. Again that wouldn't be my job. I leave that to the Crown.
231. Q. And it says here again in the script "The finger, the real killer fingered Roy Newman Ebsary, said he was with Ebsary that night at the park and told what is now accepted as the real version of the story". Apart from the park, okay, is it fair to say that MacNeil told you, on that occasion, what is now accepted as the real version of the story?
- A. Told me on that night?
232. Q. Yeah.
- A. MacNeil didn't tell me everything on that night either. MacNeil, I think if you had the original statement of this MacNeil on that particular night of November the 15th, 1971, I asked him point blank in question form did Roy Ebsary stab Marshall, and his answer was, I believe his answer was no. I said what happened to Marshall? He said he ran away, I don't know where he went. Now if Ebsary stabbed Marshall on that particular night don't you think that MacNeil would be better

232. A. (cont'd) qualified to answer that question on November 15th, 1971 than he was in '82.

233. Q. M-hm.

A. Have you seen the statement of MacNeil sir?

234. Q. I've seen his '82, I don't know if I've ever had access to his '81.

A. '71 statement. That's what he said to me on that - and it was question and answer form. I was curious about Marshall and if Ebsary did stab him, and I think if you recall, my recollection is that MacNeil says that Marshall had him from the back, from the back side with his hand around his throat. Now he says he let him go and took off, he doesn't know where he went, but I asked him the question did Roy Ebsary stab Marshall? Have you got the '71 statement, sir there? Do you have it there?

MR. MURRANT: I don't seem to recall having received that.

MR. PUGSLEY: Yes, I think it's attached to the Affidavit of James MacNeil, sworn the 15th of July '82.

MR. MacINTYRE: Is that right?

MR. PUGSLEY: Yes.

A. (cont'd) The question there, yes. Question, Did you see the Indian being stabbed? Answer, No, I did not. And what happened then? Roy went home and I was with him. I believe - did I ask another question where Marshall went. The left hand side of the colored - what's - oh that's about

234. A. (cont'd) the colored fellow. Yeah. Now on that particular night with him coming to the police and wanting to tell them the story, wasn't that - I took that that was a very important question I asked him and he said no.
235. Q. Well he says here in part "The Indian put my right hand up behind my back. The colored fellow said dig man, dig".
- A. Yeah.
236. Q. "Then Roy Ebsary said I got something for you. He put his hand in his right pocket and took out a knife and drove it into the colored fellow's side". Right?
- A. Yeah.
237. Q. And you say what side, and he responds. You say "Did you see the Indian being stabbed? No, I did not".
- A. No.
238. Q. Meaning that he didn't see the Indian.
- A. But don't forget now, the Indian is the chap that had ahold of him. Now if somebody is coming at the Indian with a knife and this Indian's got ahold of him and he's there, looking at proceedings, don't you think he would see it?
239. Q. Well he does - he talks in pretty straight language about seeing the colored fellow being stabbed.
- A. Yeah, but he's not - and then when he's asked about the other guy - oh no, I agree with that that he said that. But then I'm asking now about Ebsary stabbing Marshall, and he says no, I did not. And then you get back to the wound on



239. A. (cont'd) Marshall and the jacket and what have and here's the fellow that was standing there that night and he didn't see this take place, see. Then you get Mrs. Ebsary down and she knows - and she has no knowledge of any of this taking place. The son, I think who was 19 or 20, he's got no knowledge that it happened. I didn't get any of this scuttlebutt about how terrible Ebsary was with knives and his violence and the policemen called to his home and all that you see and this scuttlebutt now, I didn't get any of that stuff. They were very subdued the night they were in talking to me as to any questions I asked and I didn't get anything that would give me any food as to what MacNeil said, except that MacNeil was a friend of theirs and that he went to the house with Ebsary and travelled with Ebsary and that she had a conversation with MacNeil. I remember all that you see.

240. Q. Did you interview Ebsary or did the RCMP?

A. I did.

241. Q. You did?

A. First, first, yes.

242. Q. And I take it he denied it?

A. Oh flatly. He said that he had an argument with two fellows that night, that he was robbed and I got back - I think you have a statement there on it, it was the same night of that stabbing - that he wasn't feeling well and he let, I think he said he let go a kick or something, and I asked him did you

242. A. (cont'd) stab this chap. He didn't mention any names, right, and he didn't know them, and I asked for a description of them. He said, no, he said hell no, he said I wouldn't stab anybody. That was his answer to me, and there was no violence pointed out to me by his wife or by his son when they were questioned. But in case, and it was startling to get this statement from MacNeil, I turned that over to the Crown that night and asked for another police department to take it over.

243. Q. That would be the end of your involvement with this?

A. That's correct, that's correct, you see.

244. Q. But you would agree with me, sir, that in your experience in the criminal courts this information would be tremendous food for defence counsel wouldn't it?

A. If the information was right. We've had, on more than one occasion, people who weren't, intellectually weren't very high on the totem pole, come in and tell you stories and you have to check them out at times you see, and weigh the type of person that you're dealing with and see what else you can get to go with that before you go making a statement yourself. And on that particular night I wasn't taking any chances whether this was right or wrong, and the statements I took, the Crown knew about it and that particular night made the call to Halifax, and within a matter of three, four, five days they had investigators in here on it.

245. Q. Let's just jump back a bit. You must have gone - you must have attended the trial of Donald Marshall when it was on?
- A. Yes, I would have attended the trial, yes. Yes, I would have attended the trial, yes.
246. Q. And Harriss and Chant and Pratico had all given two different statements.
- A. Yes.
247. Q. Their first statements weren't in the hands of defence counsel either were they?
- A. Their first statements?
248. Q. Right.
- A. I don't imagine.
249. Q. They weren't raised in court?
- A. No, I don't think they were, no. You see it's not - two statements is often taken in cases, in many cases in the police end of it, and especially if you think that somebody is not coming across and telling you the truth or all the truth, you go back after them. That's your job as an investigator after you get further information that would lead you to believe this.
250. Q. Well let's look at the practice in the Criminal Courts. I mean your function is to perform your investigation, give the results of that to the Crown.
- A. Correct.
251. Q. And I appreciate that that's your job and that's where it stops?

251. A. That's right. Well I mean that's - as far as I'm concerned I'm not to run the court, I'm not to run the witnesses. The Crown decides what witnesses they're going to call and when it goes to court, when it's going to be tried and so forth, I back out at that moment.
252. Q. But in Sydney in 1971 wouldn't it have been the practice of the Crown, and known to the police, to provide the defence with a copy of the Crown sheet, to provide the defence with copies of statements?
- A. No, I wouldn't say. I would say that many a time defence lawyers and Crown will discuss certain things, but again I don't want to get into that. That's none of my affairs what they do.
253. Q. Well I appreciate -
- A. It's not under my control.
254. Q. No, it's not under your control.
- A. No, it's not under my control. And you know what goes on there or what - the man that did handle this case, Donald C. MacNeil, Q.C., was a very clever and smart individual and as a lawyer I took - I appreciated his efforts in the Court, and always put the best foot forward, and I turned everything over to him and in his hands, sir, and Mr. Matheson of course was aware of this case from the start but as such -
255. Q. Coming back to the practice in Sydney in '71. If in 1971 a Mr. Smith was charged with a breathalyzer by the Sydney police there'd be a Crown sheet prepared I presume?

255. A. No, there wouldn't be at that time now. You know, this is something that other prosecutors didn't look for too much. What they - all they looked for in the past was a police report and the information from the parties concerned beforehand and go over the thing with them and go into court. We have a Prosecutor there now, Mr. Lou Edwards - not Lou Edwards but Frank Edwards, Lou is the Juvenile Judge - Frank Edwards, who wants a Crown sheet and I prepared our records room to make those up and they are presented now with each case, and we are more sophisticated today in our line of police work than we were in '71. We have a proper records room and procedures and what have you and we have an ident section today and we have a photograph section and we don't have to depend on other police departments for very little.
256. Q. But even in '71 - even if we go back to '71, a situation, somebody's charged with a breathalyzer, whatever police report was there, whatever information was given to the Crown, I would assume generally that Defence Counsel go by the Prosecutor's office and obtain it, have a look at it?
- A. Oh I don't doubt you that, as I said before sir, that they chatted about cases, but again I would prefer you to get that from one of them, not from me, because I'm not going to -
257. Q. Oh no, if you can't give evidence -
- A. No. I would say that that would probably happen in some instances, but what happened here, you know, I don't know. I wouldn't be -

258. Q. If we can go back to the script here, "It says the Crown's case against Donald Marshall rested on the testimony of three witnesses, Patricia Harriss, Maynard Chant and John Pratico. I take it that's essentially right?

A. Yeah, that -

MR. PUGSLEY: I guess - I don't mean to interject - but I guess that really calls for a conclusion almost for a professional lawyer to give I suppose.

MR. MURRANT: I think subject to that, you know - I appreciate that but if, you know, I'd just like to get Mr. MacIntyre's view on it subject to this.

A. (cont'd) I would say that Chant and Pratico were eye-witnesses at that time to this stabbing, and Patricia Harriss' testimony played an important part in the case.

259. Q. And then it says an RCMP investigation last year revealed that all three had been questioned at least twice. Is it fair to say that all three were questioned at least twice?

A. Yes.

260. Q. The RCMP investigation in the record in this Proceeding, would that document have come to your attention?

MR. PUGSLEY: Sorry, can you identify that Mr. Murrant? That would be Exhibit 1, would it, that came from you? That consists of, let's see, about 39 pages, I'm sorry, and your question, Mr. Murrant, was whether or not -

MR. MURRANT: Whether or not this document would come to Mr. MacIntyre's attention.

MR. PUGSLEY: These 39 pages.

260. A. Yes.

261. Q. Prior to this particular matter, would you have received a copy of it?

A. You mean prior to when this Action started, is that what you're asking me?

262. Q. Yeah, right, yeah.

A. No.

263. Q. The first time you would have seen it was when it was produced in this Proceeding?

MR. PUGSLEY: I think, in fairness, and I'm not trying to interrupt, but I think in fairness to the witness some of these consist of a - well let's just see what they consist of. Perhaps Mr. MacIntyre better just take a moment to see.

MR. MURRANT: Have a look at it.

MR. PUGSLEY: Well I don't know, perhaps you want to deal with it page by page and ask him whether or not he's seen this. It starts here, Chief, and it goes for the next 39 pages and the pages are numbered up here in the upper right hand corner. This is just a book of documents that I've put together, which you - don't pay any attention to the book. I think Mr. Murrant is directing you about the pages themselves.

263. Q. (cont'd) See I believe it begins with the Statement of Patricia Harriss born November 15th, 1956.
- A. Yeah.
264. Q. And it goes for 39 pages after that and it's been referred to.
- A. Those are statements that the Mounted Police took in 1982 that you're taking about?
265. Q. Right.
- A. No, I had some conversation on some of those individuals with the investigating officer but not showing me a statement, but telling me what certain individuals said and asked me what I had to say about it. I think that's about what I would say about that.
266. Q. These 39 pages have been referred to as an RCMP report but that's not - those are things that you would not have received?
- A. On this - no -
267. Q. Take your time and have a look because there are 39 pages and I'm just assuming that, although they may have consulted you during the investigation, they wouldn't have given you a copy of this.
- A. Any of those statements reported to from the accused, I don't recall seeing any of that stuff. I see he's got in his statement here, Donald Marshall Junior, noncapital murder, Section 206(2) of the Criminal Code of Canada. That's right up here.



MR. PUGSLEY: To identify that that's page 14 I think.

MR. MacINTYRE: Yeah, page 5.

MR. PUGSLEY: No, it's not on page 5.

MR. MacINTYRE: Page 5.

MR. PUGSLEY: Yeah. I see that I've numbered them incorrectly.

MR. MacINTYRE: Is that right?

MR. PUGSLEY: Yeah.

MR. MacINTYRE: But you see it's on that one too eh.

MR. PUGSLEY: Between 13 and 15 in my numbering but it may not be - between 13 and 14 in my numbering, but it's page 5 in the upper right-hand corner.

MR. MacINTYRE: And wrong here too, 13 here.

MR. PUGSLEY: Perhaps there's 40 pages in this, I've said 39, but I see that I missed that page. Sorry, go ahead Chief continue.

268. Q. What I think we were trying to establish is the Chief wouldn't have received this, or didn't receive this report.

A. Where did this report come from?

MR. PUGSLEY: It came from Mr. Murrant, he gave it to me.

A. (cont'd) Well I think that's the first time I got that.

There was discussion now on people that they questioned. I had Staff Sergeant Wheaton come and see me on more than one occasion, early in the investigation, to tell me what so and so had said and what did I have to say about it, you know, along them lines.

269. Q. We were just establishing that these 39 pages weren't given to you until this Proceeding.

MR. MacINTYRE: Good question, this is the book - I got this from you?

MR. PUGSLEY: Yes, you got this from me Chief.

MR. MacINTYRE: When did I get that?

MR. PUGSLEY: You got this from me after I got it from Mr. Murrant.

MR. MacINTYRE: Well that's the first time I seen it.

MR. PUGSLEY: Just in fairness to the witness, and I'm not trying to improve upon his evidence, I see on my page 23 there's a letter dated January 26, 1982 from Steven Aronson to the Chief of Sydney City Police.

A. (cont'd) Yeah, that's right. I did get that from Aronson but I handed that over as an exhibit to the RCMP when they started their investigation. You're talking about - yeah, -

270. Q. I forgot about that one, I'm sorry.

A. Yeah, I did get that and done some homework on it right away and then called - do you want to know about that?

271. Q. Yeah.

A. I called, I think it was the day I got that letter and I read it, I called the RCMP in Halifax, Superintendent Christian - I think he's retired now - and I told him I had a letter in regard to this from this solicitor in Dartmouth, Mr. Aronson, and that he was interested in the Marshall case and I wanted

271. A. (cont'd) to know from him just who was down in Sydney in 1971, and I understood that the lie detector machine was used, and he said it could be one of two men. One fellow, if it was him, he would be in Europe now, out of the country altogether. The other chap had his own business and was out of the RCMP and would be up in, I think it was Rothesay, New Brunswick, running his own security service, and gave me his name and address and that Al Marshall, Sergeant or Staff Sergeant at the time, was the investigator that came in here with one of those two men from Halifax. I called New Brunswick and got in touch with Smith and told him who was speaking, and he knew me, and I asked him was he one of the RCMP men that were down on that case in 1971 regard to this investigation into the Ebsary/Marshall incident and he said yes, I was. I asked him what happened, and he said, well he said I ran the machine and the conclusions he came to that Ebsary was clean, that they couldn't get a reading on MacNeil. He shook the machine, he didn't think too much of his intelligence and what have you, and he couldn't get a reading on him. Anyhow I asked would he send me a letter to what they done in '71 and he said he would, be out in that afternoon's mail, and he also told me that - at that point that he had his notebook out and kept notes on it. He did send the letter, a day or two later I received that. When I received that I called the Crown Prosecutor's office and told

271. A. (cont'd) him that I had a case to go over with him. I said it's not a matter of seeing you for 10 or 15 minutes when you do set it down, it's going to take probably an hour or two, and whatever day is convenient for you I would like to have a date set that you and I can get together so that I can go over the thing with you. I also called the - when he gave me the time, I think it was a day or two later 2 o'clock in the afternoon - I also told him that I would like to have the inspector of the RCMP present at that meeting and, I'm not sure if I told him that but anyhow I did have him there, and Don Scott came along. I went over the Marshall case first and then I went over the Ebsary case and what I'd done in '71, and I showed them that letter that I had and the correspondence I had from Aronson and I asked them to take it over again. That's how quick that was done, and that's why that case landed back in the RCMP hands, because they handled it in '71 and I wanted them to.

272. Q. Okay. It says, just going back and forth to the script here, "RCMP investigation last year revealed that all three witnesses had been questioned at least twice", and I think you said that was the case.

A. Yeah. Well the statements would tell them that.

273. Q. "Each time under pressure to stick to the story that the police wanted to hear", and it says "It was their revised incriminating statements that put Donald Marshall behind

273. Q. (cont'd) bars". Then it goes on with Patricia Harriss. Now what I want to do is go back to the RCMP report that we're referring to as Exhibit 1, and it begins as you see with the statement of Patricia Harriss.

MR. PUGSLEY: Is it Exhibit 3 Bob? You said -

MR. MURRANT: I thought it was 1.

MR. PUGSLEY: No, Exhibit 1 is Heather Matheson's notebook. Exhibit 2 is the transcript of the typed - I think this is Exhibit 3.

MR. MURRANT: In any event you know what it is.

MR. PUGSLEY: And you're referring to Patricia Harriss' statement?

MR. MURRANT: Well the document in general.

Q. (cont'd) This is a report of the Royal Canadian Mounted Police, which is our national police force which you asked to reinvestigate this matter on two occasions?

A. M-hm.

274. Q. And I take it you put great stock in the work that they do?

A. Yes, I have confidence in them.

275. Q. And in your view sir, if the RCMP had investigated or assisted in an investigation you would have confidence in acting on the result of what they determined would you not?

A. I would go into the matter, look it over. I was a person that always made my own decisions on things, and if I didn't see eye to eye with you I would discuss the matter with you and the pro and con.

John MacIntyre

65.

276. Q. But you place a high professional respect in the RCMP I presume?

A. I always did, yes.

277. Q. Now in this document there are statements, and I mentioned Patricia Harriss, but the - if I go to page 4, at the base here's a paragraph number 4.

A. Yes.

278. Q. And it says "In regards to the Ebsary and Marshall portions of this file all avenues of investigation known to date have been completed. Discussions were held with Crown Prosecutor, Frank C. Edwards in regards to interviewing Chief MacIntyre and Inspector Urquhart in regards to the allegations of Chant, Pratico and Harriss that they were induced to fabricate evidence in the original trial on this matter. Mr. Edwards has advised me that he further discussed the matter with Gordon Gale of the Attorney General's Department and has felt these interviews should be held in abeyance for the present", and then it's cut off there, looks like "a file will be held open pending further instructions, as areas of investigation which may come to light". There is Canada's national police force suggesting that they continue to pursue an investigation of the conduct of yourself and inspector Urquhart. Were you aware of that?

MR. PUGSLEY: Well I'm not - I must take issue with what you say. I think what that reads is that discussions were held with Crown

MR. PUGSLEY: (cont'd) Prosecutor Frank Edwards in regards to interviewing Chief MacIntyre. It doesn't say there was an investigation of Chief MacIntyre. It just says talking about interviewing him.

MR. MURRANT: I see that. I'm interpreting that to mean that they wanted to pursue an additional investigation into the police conduct.

MR. PUGSLEY: Well I think it's - I'm not - with respect I don't think it says that. I just think it says talking about interviewing the chief.

MR. MURRANT: Well let me change my -

278. A. It says in regards to the allegations.

MR. PUGSLEY: Right.

279. Q. (cont'd) I take it at least that the RCMP must have been seriously concerned if they wanted to conduct interviews concerning those allegations?

MR. PUGSLEY: Well you wish him to speculate on that? I mean -

MR. MURRANT: Well maybe it speaks for itself, maybe we can ask the writer.

Q. (cont'd) Did you know that they were considering interviewing you concerning those allegations?

A. No. I was questioned on some allegations of statements that they had made and I gave an answer to. Again, about them contacting the Attorney General's Department and having sessions with the Crown Prosecutor in regard to the case, I



279. A. (cont'd) wouldn't be in on that, and I wouldn't want to be in on it. I mean the case was handed over to them, and it looks to me that they're looking for direction there also, doing what I would do when I had something that I wanted an opinion on.
280. Q. Go over to page 15, paragraph 18 on page 15, noted that Chant states he did not witness the murder.
- A. All right, go ahead.
281. Q. Yeah, but there's a part that has been underlined. "On the 4th of June when interviewed by the police he was told he was seen in the park, so he agreed to it, and from there on he was afraid not to agree. He emphasized that he was 14 turning 15 years of age at the time and felt pressured into helping the police and the Prosecutor. He advised that the Prosecutor threatened him with charge of perjury if he changed his story after the lower Court Hearing". Do you know anything about that?
- A. Well on the 4th of June I proceeded to the Town of Louisbourg where Chant was living at the time, Maynard Chant with his parents, and I didn't go to his home, I went to the police station on that particular date. I shouldn't say the police station, it looked like it was part of the city hall that I went to, but the police station is down underneath. I went in there and I met the chief of police of Louisbourg by the name of Wayne McGee, young man, and I told him that I was out



281. A. (cont'd) here, myself and Sergeant Urquhart was with me, to interview this Maynard Chant in regard to this stabbing we had in Sydney. Now I told the chief at the time that he was only 14 years of age and that I wanted either his mother or his father to be present when I questioned him, and would he see that that was done and to try and - if he was home to have one of them come with him, words to that effect. He wasn't away too long when he arrived back and Maynard Chant was with him, his mother was with him, there was a probation officer from the Juvenile Court with him by the name of Burke and Chief McGee. We went into a room and the table in there was twice as long as this one, which would be -
282. Q. Why would a probation officer be there?
- A. Well now we'll get to that in a -
283. Q. Okay.
- A. I told them they could sit in. The table was much longer than this one, I'd say probably 12, 14 feet long. Mrs. Chant, the probation officer and the chief of police sat up on that side on the right hand side of the table, Maynard Chant sat over on the left hand side at the far end of the table and Urquhart and I were down at this end. I identified myself to Mrs. Chant, my title, who I was and where I was from, and Sergeant Urquhart. I told her that I was out here today in regard to a very serious matter, looking into a charge of murder, that this Seale boy had passed away, that I

283. A. (cont'd) interviewed her boy already, Maynard, and I figured I wasn't getting the truth. I'm out here to get the truth today and is that too much to ask for Mrs. Chant, looking at her? And she said it's not sergeant, and at that moment she put her hand across the table pointing at Maynard Chant and said Maynard, if you know anything about that murder you tell the sergeant. And that statement was taken and it's in question and answer form, if you have it there, and nobody else asked any questions in the room, nobody left the room until it was over. It took 50 minutes, and in that statement he wasn't told, the questions and answers there, he wasn't told, he was asked for the truth, and if you look at my statement there you'll see the questions and you'll see the answers, and it was at that time that he told me he did witness the murder.
284. Q. In here it says that the Prosecutor threatened him with charge of perjury if he changed his story. Do you know anything about that?
- A. No, I can't recall that but, you know, I don't know whether that happened or not, I can't recall that.
285. Q. Not a proper thing for a prosecutor to do is it?
- A. Well I wouldn't say. I wouldn't say. I can't speak for somebody else.
286. Q. I'm just looking at the statements that Chant has given. May the 30th, '71 he gave you one - he gave a first statement and then he gave a second.

286. A. Yeah.

287. Q. You weren't satisfied with his first?

A. It was a few days later he gave the second, eh, on June the 4th, yeah.

288. Q. Now on June the 4th you made it a point of going to Louisbourg to take the time to sit down with Chant and hopefully get -

A. The true picture of what happened.

289. Q. Out of this young man.

A. Now you ask why - and before we go any further also - you asked why that probation officer was there.

290. Q. M-hm.

A. Well I didn't know at the time but through Wheaton's investigation of Burke being there it was learned and the Judge, Judge Lou Edwards of the Juvenile Court, that he had held Juvenile Court in Louisbourg on that particular day, so he would have had a probation officer with him. That's probably why he was present at the time.

291. Q. At that point in time, it says in the RCMP report and other references, that Chant was told that someone saw him there so he had to see something. Did you ever tell Chant he had to -

A. No. No, I wasn't satisfied with the story that he gave me and I wanted to get the truth from him, and what I asked him, and what I said is down there as questions with three people, his mother, probation officer and the chief of police of

291. A. (cont'd) Louisbourg sitting up there. I'd write the question and ask him the answer, and they're marked there.
292. Q. And you're saying that the entire interview with Chant that evening, that day -
- A. That day, yes.
293. Q. consisted of questions and answers?
- A. It's right there sir, yeah, and nobody else asked anything. That is my method of taking statements. I have a system that I usually stick to, and it's a question and answer form, and if anybody's present I don't want them asking questions or saying anything. If they want to ask something that I should have asked but I didn't I've always told my men I'd prefer you to write it down and pass it to me, but I don't want any discussions, because I found out early in life that taking statements was a very - was a thing that you had to watch very close and be prepared to answer for later on as to their being voluntary or not.
294. Q. So your evidence, as I understand it, is that whatever discussions took place with Maynard Chant on June the 4th, 1971 are as contained in his statement and there were no other discussions.
- A. Except what I said to the mother beforehand.
295. Q. And you related that to us today.
- A. Yeah. And they -
296. Q. I see one document here that appears to be a handwritten

296. Q. (cont'd) statement taken that day. Perhaps you can take a look at a copy of it, but it's four pages in length.

A. Taken from what day?

297. Q. Well it's a copy, it's headed June the 4th, 1971, 2:55 p.m.

A. That's my writing.

MR. PUGSLEY: I don't think I've seen that document before Bob. Is that - no, that's a handwritten -

MR. MURRANT: Yeah, this is it here.

MR. PUGSLEY: I appreciate that but I have not seen the handwritten version before.

MR. MURRANT: I see here's a number on it, 28.

A. (cont'd) Those numbers at the top here, is it?

298. Q. Well that obviously wouldn't be there when you were involved?

A. No, no, that's their pages.

299. Q. May have been the Court of Appeal records.

A. What? That's the same statement as we got here.

MR. PUGSLEY: That's the same is it?

MR. MacINTYRE: Well I don't know.

MR. MURRANT: But One isotyped.

MR. PUGSLEY: Yeah, but it's the same thing.

MR. MacINTYRE: Yeah, the same statement, yeah. Last Friday night about 11:30 p.m., yeah, that's the same statement.

MR. NAPIER: It should be in that further List of Documents there, which we provided to you.

MR. PUGSLEY: Okay. Maybe it is and I just forgot. Well we'll straighten that out later.

MR. NAPIER: That's on page 24 of the further List of Documents.

MR. PUGSLEY: When did we get the further list, is that just recently or is that -

MR. MURRANT: Maybe it may not be what it says it is.

299. A. (cont'd) There's a page missing on this sir.

300. Q. There's another page here.

A. Very important page.

301. Q. No, I have it here, just a moment, I'm trying -

A. Oh you have it.

302. Q. I think we can identify this.

A. But you have this, that there is missing though.

303. Q. No, I have that here, I have that here.

A. Oh you have that, all right, all right.

304. Q. That appears to be the statement that you took from Maynard Chant in your writing.

A. That's my writing, yeah.

305. Q. Questions and answers.

A. Yeah.

306. Q. There's another page - and that's not the best xeroxed copy I'm afraid - but again that seems to be your writing. That seems to -

A. Yeah, that's it. Well that's what this here is.

307. Q. And that is a notation of who -

A. Who was present when the statement was taken, and there's an Affidavit - it was a sworn Affidavit taken from the Chief of

307. A. (cont'd) Police, you know, when they were lining up evidence for the Appeal Court, and he wasn't called.
308. Q. But this other page - we'll mark this as a separate exhibit, I don't know what number we're on, so we'll know what we're talking about. S-1 is the document we've been talking about and we mentioned a missing page and we found that on the back.
- A. Yeah, yeah, good.
309. Q. Now that doesn't purport to be the signatures of those people?
- A. It is not, no. That's my writing.
310. Q. Of who was there?
- A. That's correct, yeah.
311. Q. So Mrs. Chant would have been there throughout.
- A. Yes.
312. Q. Chief Wayne McGee.
- A. And Burke was a probation officer.
313. Q. Burke, and it says Urquhart and myself.
- A. Well Urquhart and myself were the two investigating officers and our names are on the middle of the statement here, yeah.
314. Q. Now this young man, Chant, also gave you a statement on May 30th, 1971.
- A. Yes.
315. Q. Which you really didn't accept as being the whole truth concerning the matter?

315. A. That's correct, yeah.

316. Q. I'm just trying to go forward to the next statement from Maynard Chant, which comes years later.

MR. PUGSLEY: That would be the on 82-2-16?

MR. MacINTYRE: No, no, he's looking for the statement of Chant in the Appeals Court, is that what you're looking for?

MR. MURRANT: 82 -

MR. PUGSLEY: Yeah, I think it's the same.

MR. MacINTYRE: That's it, yeah.

MR. PUGSLEY: 82-2-16.

Q. (cont'd) Okay, in reference to that in the script, if we go to the third page where Maynard Chant's statement is quoted, his last statement. I think, if you're with me, "He said I did not quite make the park and a guy in a yellow jacket came running up to me. He showed me his arm where it had been cut and told me his friend was stabbed over in the park. The police interviewed me that night and I repeated what Marshall had told me. I don't know why, I had to say something. I definitely did not see the murder. Everything was over by the time I got over where Seale was. In the second statement I told the detectives I saw the murder. They told me that another guy had seen me in the park and I had to see it, so that's what I told them." Was he ever told that someone had seen him in the park and that he had to have seen it?

A. No, no. What I asked is in that statement.



317. Q. And that's it?

A. And that's it. And he wasn't in the park at any time, Chant. Chant crossed over from Byng Avenue, if you recall, in all of his statements, and he was up on the railroad track when he was supposed to have seen something.

318. Q. Now this man Chant in '71 was on probation for another offence?

A. You know I got to answer that in, I did hear that, you know, as far as my recollection of it goes, that there was something in regard to milk money that he was up for, but I didn't know what happened. You know you don't get the records of the Juvenile Court and I didn't inquire. Many young people are up for an offence of that kind, might be taking 30, 50 cents or a dollar out of a milk bottle, so I didn't pay too much attention to that. I took him to be a clean-cut young chap at that time and I didn't seem to have any problem with him, with his mother present and the others present and ourselves, and I told his mother what I wanted and she advised him, if you know anything about that murder, she said, you tell the sergeant. That was her words to him.

319. Q. Was anything said to Chant about being on probation and getting time for breaching his probation by being in Sydney that night?

A. By who?

320. Q. By you or Urquhart or the probation officer or McGee?

320. A. No, no, nothing said sir, whatsoever, no, not in my presence, not in that room where I took the statement.
321. Q. Well I'm wondering what, you know, I think what you're telling me is that the entire conversation, except your remarks to the mother, are in the statement which is Exhibit S-1 here this morning.
- A. That's correct, that's what I'm telling you, yes.
322. Q. Now you say well not in the room and I'm trying to find out what happened.
- A. No, but you're telling me that - what I'm saying to you is that, if you recall what I did say already, that Chief McGee was sent for this boy, requesting that the mother or father be present because of his age, and he came back with those people. Well I wasn't with him from point A to point B, but in that room where that statement was taken it was only me that done the talking.
323. Q. Okay. This man Chant was on probation, he -
- A. As I told you again, I didn't know that.
324. Q. He may have violated his probation simply by going to Sydney.
- A. I wouldn't know anything about that. No, there was no discussion about that at any time when I questioned him.
325. Q. And you would deny saying anything to Maynard Chant with respect to (a) another guy seeing him so he had to have seen it (b) on a charge of perjury or (c) his probation?

325. A. I had nothing to do with anything like that, no. I didn't even know he was on probation sir. I never knew the boy until I, you know, interviewed him the first time, and he was a clean-cut young chap and he didn't know Pratico and Pratico didn't know him and they weren't together in the same place. They lived 31 miles apart, and what I'd like to ask is how they could pinpoint Marshall and this other chap on Crescent Street at that time of night on that particular date in the same spot along with Harriss and Gushue and not be there. I know I couldn't do it.
326. Q. Well had Pratico been interviewed before you interviewed Chant?
- A. Yes.
327. Q. So you had from Pratico the last statement he gave?
- A. That's right.
328. Q. Then you went to see Chant?
- A. Yes, in the afternoon.
329. Q. And did Pratico place Chant at the scene of this incident?
- A. Pratico didn't know Chant, and Pratico - and did you, were you over the area where this -
330. Q. M-hm.
- A. Do you recall the railroad track?
331. Q. Right.
- A. And do you recall the trestle that runs between one brook and the other, just for your own information?

332. Q. Right, yeah.

A. Okay? Well Chant would have to come off Byng Avenue and come around over that first layer of grass, up onto the track by the trestle, come this way from the trestle and he would be then able to see the scene across the street. Pratico was up at the other end of the track near Bentnick Street, which would put them several hundred feet apart and, as they say in their evidence, one didn't know the other and I think one fellow said he seen somebody there, if I recall proper, and wondered what he was looking at and he took a look and seen them over there and then stopped and watched.

333. Q. But you didn't accept Chant's first statement did you?

A. No. After I took those statements and I visited the scene, I visited the scene after midnight, around midnight to observe the lighting and the general surroundings of where this took place, by myself in my own car, and went over the scene, and decided that I would have to go back and take further statements.

334. Q. When you interviewed Chant the second time, as you say, he was 14 going on 15, or 14 or 15.

A. Yeah.

335. Q. He's in a room with the chief of police of the Town of Louisbourg.

A. Yes.

336. Q. Yourself as a sergeant, Inspector Urquhart.

336. A. Yes.

337. Q. His probation officer and his mother.

A. Well there was a probation officer there. I didn't know what the story was at that time.

338. Q. A probation officer.

A. Yeah, I don't know what, you know, I didn't know the story.

339. Q. Did you find or feel or fear that this would be highly intimidating to a 14 or 15 year old young man?

A. No, not with his mother there. I figured that I was secure in what I was doing and that his mother was present there to see that everything was proper, because of his age, and I was there to get the truth on that particular day.

340. Q. How long was your questioning? Does it show that in the statement?

A. It's 50 minutes there that the statement took.

341. Q. 50 minutes.

A. I think so. I think that his statement, somewhere here, he said it took several hours for him to tell them what we wanted him to say. Isn't that in this?

342. Q. I have it here, the '82 statement. He's basically saying there that someone else had seen it, what that was related to.

A. Oh yeah, -

343. Q. So the net result is a young man apparently who gave a statement to you saying he saw a murder that he didn't see.

343. A. He's saying that at this time.

344. Q. And any of the complaints that Chant has with respect to the police tactics or technique, you say, are simply not true. Whatever occurred is documented in this statement?

A. That's right.

345. Q. Let's turn for a moment, if we could, to Patricia Harriss. You see here on the script of the broadcast, page 2 I guess it should be, Patricia Harriss. "I don't recall exactly how many times I was taken to the police station and I found they were needlessly harping at me going over and over telling me what they thought I should see. They took statements from me and changed them. They took hours and hours and my parents were not allowed in. They came to the police station and they let me out once to see them but that was it. I don't feel their actions were proper. I recall them banging their fists on the desk, I definitely did not see Sandy Seale in the park that night". That is the broadcast. Of course that is from the statement that she gave in 1982. You took a first statement from her which you did not totally accept and you proceeded to take a second one, is that right?

A. I don't - I'll have a look at that.

346. Q. I have here a copy of the first statement taken from her on June 17th, 1971.

MR. PUGSLEY: Could you give us a copy of that Mr. Murrant? I don't think I've got a copy of that. I don't think we do. I've got copies of June 18th and I don't have them of June 17th.

MR. MURRANT: Well let's look - there's three - that seems to be a typed copy, June 17, and that seems to be the written copy.

MR. PUGSLEY: All right. If I could borrow those and I'll just get those photostated and return them.

346. Q. (cont'd) Mr. MacIntyre we're dealing with Patricia Harriss and there are four items that we've copied. If I can identify them, the first item that I have is June 17, 1971, 8:15 p.m.

A. Yeah.

347. Q. Statement of Patricia Harriss, 5 Kings Road, her date of birth. The second item is dated the same date, it's written in handwriting and appears to be the same statement as the first, only the written version of it.

A. Yeah.

348. Q. The second one, that second one, is that in your handwriting?

A. That's in my handwriting sir, yeah. I'm not that good a writer as you can see, but we usually get through it somehow.

349. Q. The third item is June 18th, 1:20 a.m., statement of Patricia Ann Harriss, age 14 years, residing at 5 Kings Road, Sydney, and that's a two page item.

A. You're talking about three items?

350. Q. Yes.

A. And I've only got two here. I've got this one here, at 6:15, I have that one, and I got this one at 1:20, now where's the third one?

MR. NAPIER: I've stapled them together.

A. (cont'd) No, those are the same two, that's a copy, that's the same thing.

MR. PUGSLEY: Mr. Murrant referred to those as 1 and 2.

MR. MURRANT: Right.

MR. MACINTYRE: Would this be 3 and 4?

351. Q. Right, four pages.

A. All right, yeah.

352. Q. The first item is June 17th, '71, statement taken from Patricia Harriss. Now did you take that statement from her?

A. Who me?

353. Q. Yeah.

A. No, this statement here is taken by Sergeant Urquhart.

354. Q. Sergeant Urquhart, okay. Is that his writing?

A. Yes.

MR. MURRANT: I'm going to mark this as Exhibit S-2 in a few minutes, so we'll refer to that -

MR. PUGSLEY: Certainly.

355. Q. Page 2 of Exhibit S-2, which is Sergeant Urquhart's writing, and page 1, which is the typed version of it I take it, of Sergeant Urquhart's writing. And obviously this would have been presented to you prior to your interview with Patricia Harriss on June the 18th, the next day.

A. That's the same night, only 1:20 in the morning I guess.

355. Q. Okay.



356. A. Okay?

357. Q. Now had you interviewed her previously?

A. No, not that I recall. See this here was taken by Sergeant Urquhart and I always - and I don't know why he didn't sign that, but I always sign any statements that I take.

358. Q. Okay. This girl was born here November 15th, '57, I guess she would have been about 14 at the time?

A. She would have been closer to 15.

359. Q. And how did she present herself?

A. Well I think she was - I think there would be a lot of stories going around at that time and they were all, they all knew Marshall well, a lot of those girls were at the dances and what have you, and I think there was a statement taken from another girl who Marshall was talking to and said that if anybody asks if the police contact you, you talk about a grey haired man around there. He was very busy getting in touch with people. As you know he was at Pratico's house the next day - he was getting around. She gave a statement to him and then, if you recall, on that same night she says that we held her for hours, that same night. There was a statement taken from one Harriss that was with her. Have you got the Harriss statement there? And that statement was taken at 11 something that night and he told a different story to her and the two of them were travelling together on Crescent Street at around midnight that night, and when two

359. A. (cont'd) people tell you two different stories then you have to check back and see what's what.

360. Q. Well let's take the first one here. It looks like 8:15 that night.

A. Yeah.

361. Q. Inspector Urquhart was taking a statement from Harriss and you probably weren't there if I follow this correctly?

A. No, not to my knowledge. If I was I'd - why that wasn't signed I don't know.

362. Q. But it says here "We sat on the bench, Robert Patterson was on the grass sick, throwing up. We smoked a cigarette. Terry and I left, walked back to the band shell onto Crescent Street in front of the big green building. We saw and talked to Junior Marshall. With Marshall was two other men.

Question: Describe the other men to me. Answer: One man was short with a long coat, grey or white hair, with a long coat. I was talking to Junior. Terry got a match from Junior and Junior said they are crazy, they're asking him, Junior, for a cigarette. Did you see Sandy Seale in the park? Answer no. Was there anyone else in the park? Yes, boys and girls walking through the park, Gussie Dobbin and Kenny Barrow. They left while we were still on the bench".

Now there is a statement in which he identifies a figure consistent with the descriptions of Ebsary, and Inspector Urquhart obviously began to take a statement from her and

362. Q. (cont'd) didn't complete it at 8:15 p.m. on June 17th, so that's all that can tell me, is that right?

A. That's all it can tell you sir, yeah.

363. Q. You must have entered the room after this happened?

A. No, I wouldn't say I did. I would say that later on that evening there was another statement taken from one Gushue, and may I go to Gushue's statement, okay, if I have it. I think I have it.

364. Q. You mean after 8:15 there was a statement taken?

A. Yes sir. In his Affidavit, this is Terrance P. Gushue, and I'll just tell you what he said. He says that "On June the 17th, 1971, I was interviewed by Detective Sergeant John F. MacIntyre of the Sydney City force and give a free and voluntary written statement to the said MacIntyre, a copy of which is produced herewith and marked Exhibit A, directly relating to my knowledge of the events surrounding the murder of Alexander (Sandy) Seale, on the night of May the 28th, 1971, and that to the best of my knowledge and belief, the facts contained in that statement are true". Now his statement, sir, is the statement of June the 17th, 1971 at 11:40 p.m. Now this other statement that I took from her was taken after this one on July the 18th at 1:20, it's on that I think. Okay? Now 11:40 p.m., a statement of Terrance Patrick Gushue, age 20 years residing at 2 Tulip Terrace Street, Sydney. "On May the 28th I went to the dance at

364. A. (cont'd) Saint Joseph's Hall, George Street, Sydney. Who did you go with? With Eddie Dicks. How long did you stay there? Well I seen a fight starting about 10:30 p.m. and I was trying to break it up and as a result I was asked to leave by the police, which I did. When I was getting my jacket I seen Patricia Harriss there. I said they kicked me out and asked her to come along with me. She did. We went to the store and from there to the park. We stopped there for awhile. We were talking to Robert Patterson, he came down from the dance with us. We walked behind the band shell and started to walk up to Crescent Street. I remember seeing Donald Junior Marshall on Crescent Street with another man. Did you speak to Junior Marshall? Yes, I asked him for a match. Did you receive it? Yes. Did you have any other conversation with him? No. Did you know the other man? No. Did you know Sandy Seale, the deceased? No. Question: How long have you known Junior Marshall? A year or so. Which way were you walking on Crescent Street? Answer: Towards Kings Road. What time was this? Between 11:30 and 12 p.m. What was the weather like? It was nice out. When you met Junior Marshall and the other men were they standing or walking? They were standing. Question: On the street or sidewalk? Answer: On the left hand side of street going towards Kings Road." And the sidewalk is only on one side of that street, you have the track on the other side. "Were you

364. A. (cont'd) drinking that night? Two quarts of beer and some wine." Signed, Terry Gushue and signed by me. That statement was finished at 12:03 a.m. and Urquhart witnessed it and it started at 11:40, so that's 23 minutes.

365. Q. Did you take that statement from Gushue?

A. I took that statement from Gushue, yes.

366. Q. Okay, all right.

A. Oh yeah. Now that's taken after that, okay. Now that is why I wanted to go after the Harriss girl in regard to this other man was supposed to be there when they met Marshall on the thing, and I let her out during that interrogation there and I think Gushue and her mother, or there was somebody out there, outside there, and when she came back in that's the statement she gave me. Now further to that the investigating officer, Staff Sergeant Wheaton, asked me into the office and wanted to see me and asked me if I knew that after I took that statement from the Harriss girl that she went to see a solicitor, her and her mother, about a week later. I said no, why did she go and see the solicitor? Well she claimed that you were kind of hard on her taking that statement. I said who was the solicitor? He said A.O. Gunn, he's a Q.C., and I said no, Mr. Gunn never contacted me, I had no correspondence from him, or I never heard a thing about it, but I said, you know, what's good about that, after her seeing a solicitor and the story that she gave me the second

366. A. (cont'd) time, she stuck to that story in the Preliminary Hearing and before the Grand Jury and before a Judge and Petit Jury, she told the same story after seeing a solicitor, so I said words to the effect the solicitor must have told her to tell the truth. I never heard anymore. Now she was called before the Appeal Court and, as you know, Gushue wasn't called, and Gushue says that the statement was free and voluntary. Now I noticed in her statement she said that we harassed and what have you, what was the word she used, and Gushue too. Gushue doesn't say that in his statement, and then there was an Affidavit to that effect, and that is the statement that I did take from Gushue that night, and that is why I went back after the Harriss girl that night.

367. Q. Well if I look at the statements in what we call S-2 here she begins the evening at 8:15 by saying that there was another man there with a long coat, grey or white hair.

A. Yeah.

368. Q. That she'd seen a figure consistent with Roy Ebsary.

A. No, you can't - I don't think you can - at that time that wouldn't indicate Roy Ebsary. There was no name given and there's a lot of people with grey hair around isn't there. You know, I'm just - just to be proper about the thing I don't think that that did. I'll tell you one thing, there was calls made, been made by Donald Marshall to some of those people and telling them if they were questioned by the police

368. A. (cont'd) to say they seen a grey haired man around. That's just what she done on that night.

369. Q. Maybe Marshall was afraid of spending 11 years in jail.

A. Well I don't know what he was afraid of but that's what she done that night and her boyfriend didn't do that, who Donald Marshall wouldn't know I don't imagine, and she was a friend of Marshall's. He held her hand while this match was given. I think it's in the statement there.

370. Q. Well correct me if I'm wrong, but she talks about two other men, describes one with grey or white hair. She's starting to give a statement at 8:15, she's 15 years old, she's starting to give a statement at 8:15 in the evening, it never gets finished, it never gets signed.

A. Well it's not signed but probably that's all she wanted to say at that time. I can't answer, sir, for somebody else, you know.

371. Q. Okay. And then what happens is - and of course her statement, to the best of your knowledge, or if you don't know tell me, would never have been given to defence counsel or Marshall though.

A. Again, you know I can't answer that.

372. Q. And then at -

A. I want to say something else about that. The importance of getting the truth from those two individuals with this, that Marshall - Chant is here and Pratico is here and Junior



372. A. (cont'd) Marshall and what's, and the late Seale was supposed to be over here. Now when they come up out of the park over here Chant identifies where they were in front of the green apartment house on Crescent Street. Pratico says they were in front of the green apartment house on Crescent Street on the sidewalk facing one another. When Gushue and his girlfriend came over Crescent Street, and they'd have to come over here and then go down Bendix Street and over Byng Avenue, she was home then, she'd be home -

373. Q. That's Kings Road?

A. the Kings Road. They place Marshall - Gushue says Marshall and another man whom he didn't know - right there on that sidewalk by the green apartment house. He places two there. In her first statement she says a man, grey or white haired, and another man. She places three there. Now those two people that were together on that particular night. They stopped, they had a conversation over a match or a cigarette, and when those two people gave two different statements I had to find out which one was covering up, and that's why I went back after her. I think if you're an investigator you'd probably do the same thing, because I wanted to know which one and what was what. And after she did go out, and I think Gushue was still at the station when she was brought in. I think we might have held on to him in case we had to go back after him. But by letting her out for awhile, and she wasn't



373. A. (cont'd) under arrest, she was just a witness as to this particular thing here. We knew she didn't see the murder but we wanted to establish who was there at that time because we had statements from those people before that, and here is Gushue coming along and saying that this is where they were at and they were standing there also, so that's six people that say they were standing in that one spot within then probably a 10 minute period of the stabbing, and the body was across the road here when it was found there.

374. Q. But you've got -

A. So that's why it was so important for me to find out from her what she seen on that particular evening and what Gushue seen and if their story was the same.

375. Q. But she says in her final statement, if I can call it that, at 1:20 a.m., "Did you see anyone else in the area? No, not on Crescent Street. Did you notice anyone on the railroad tracks? No". But she has the effect, does she not, of taking this other Ebsary or MacNeil out of the picture?

A. Repeat that again sir?

376. Q. Well her statement - I mean here you've got a 15 year old who comes to a police station early in the evening, 8:15, gives what is now the true version of what happened.

MR. PUGSLEY: Well I guess one might take issue with that.

Q. (cont'd) Accepted by the courts as that. At one -

MR. PUGSLEY: Again one might take issue with that, as to what she says, but go ahead anyway.

376. Q. (cont'd) 1:20 a.m. she gives a statement which has the effect of negating Marshall's defence that there was another man that did it. Was that the object of questioning her or was it to get the truth?
- A. The object of questioning her was to find out whether she was telling the truth or not, and the two statements weren't jiving of two people that were together on that particular night at a particular time at that particular spot.
377. Q. All right. But you knew sir -
- A. I couldn't have two different statements and be satisfied with it.
378. Q. Well Gushue, to your knowledge of course, was totally and utterly drunk was he not?
- A. No, I wouldn't say that.
379. Q. At least consuming that -
- A. I wouldn't say that sir. In his statement to me he asked what he had to drink that night, and I was very careful as you notice, I asked the question were you drinking that night. Answer, two quarts of beer and some wine. Now would that make him totally drunk sir? Not in my opinion. Here's the statement he gave the RCMP. Did you see that one?
380. Q. Perhaps you can refer me to it.
- A. Well you listen to it. "At the time of the Seale murder I went to a dance at Saint Joseph's with Patricia Harriss. On our way home we went through Wentworth Park. I recall

380. A. (cont'd) sitting on a park bench and going up to Crescent Street. In this general area I bummed a match from Junior. I really don't remember who was there, I just know I definitely saw Junior. There were all kinds of people around." Around where? And that's the end of that statement taken by Wheaton. Now, you know, if I was a police officer and I was equipped with those other two statements I think I'd want to know more than that from him, but anyhow that's the statement that he gave in '82, 13 years later. But he gave this other one on June the 17th, which was less than a month after the thing happened.
381. Q. Let's look at what Harriss says in the broadcast, which is a portion of her statement. "I don't recall exactly how many times I was taken to the police station". Was she taken to the police station on more than one occasion?
- A. Was she taken to the police station - well she'd be there twice, she'd be there on - I couldn't answer that. The only thing is I know that according to that statement she was there at 8:15 and I also know that she was there when I took a statement from her. I think that I seen it somewhere where her mother, police were looking for her and her mother went and found her and took her down there.
382. Q. She said "I found they were needlessly harping at me".
- A. Yeah, yeah.
383. Q. "Going over and telling me what they thought I should see".

383. A. Yeah.

384. Q. Is that -

A. I can't - where they're telling me what they thought I should see, I think you'll see that in other statements along with hers, Chants and Praticos, what we wanted them to say and what we thought they should see. We wanted to know the truth of what they did see and not what we wanted them to say. I never carried on that code of conduct when taking a statement from anybody. It's not what I want in a statement it's what they know, and if I don't think they're telling the truth then I go after them to see if I can get the truth.

385. Q. Well it says - then it goes on to say "They took statements from me and changed them".

A. Yeah. I never changed any statements sir.

386. Q. Well let's take the they. I've got here, and I see one statement.

A. Well yes, you have two statements.

387. Q. That was taken from her.

A. Yeah.

388. Q. And another one that was taken from her and they're not the same.

A. They're not the same.

389. Q. I'm wondering how close to accurate you consider that sentence of the script? I mean they took - there's two different statements taken from this young lady by members of

389. Q. (cont'd) the police force, one of which was yourself, one of which wasn't, and they are changed, they are different, materially different.

A. Well I would expect them to be if she changed her story, but if you're saying, or if you're suggesting, and I think that's what this is doing, they took statements from me and changed them. They changed them. Who's they, Sergeant Urquhart and myself? If it is we didn't change anything, you know, and that's what that infers to me that the police changed the statement. Correct me if I'm wrong, that's the interpretation I get from that. They took statements from me and changed them. As you'll notice, in 1982 we still have our files and our statements that we took from people to produce and for people to look at, we have all those statements. There's nothing destroyed, everything is here.

390. Q. Oh I'm not suggesting that at all.

A. No, no, but for a person to say that we took statements and changed them. Not in my department they don't change statements. We take a statement and we find out later on that there's something wrong here, we go back to see you. That would be common.

391. Q. Okay. She said "This took hours and hours and my parents were not allowed in".

A. Yeah, m-hm.

392. Q. Were they allowed in?

392. A. The mother or guardian was there with her and if she wasn't in the room at that time all I can tell you she must have wanted to stay out, because I never objected to anybody. I usually like to have somebody in a room when a person is a juvenile, but I can't just recall everything that - I know that I let her out for awhile and I think her mother, or her guardian, and I think Gushue was there. It was after she came back in that she told me this other story.
393. Q. It says "They came to the police station", I guess that means her parents, "and they let me out once to see them but that was it".
- A. That could be so. But when she says they held her for hours I don't know whether she was at the station all evening after he got through with her at 8:15. I would say that she'd be wanted after we got this statement from Gushue to verify it or disqualify it. That would be my thinking on it.
394. Q. Well she goes on to say "I don't feel their actions were proper and I recall them banging their fists on the desk".
- A. Yeah.
395. Q. Did anybody bang their fist on the desk?
- A. Not that I recall, banging their fists on the desk, with a 14 year old girl, that's not my motto in taking statements, banging my fists on the desk.
396. Q. Looking at the Affidavit, and I'll read the portion, I'll have to dig it out. "I recall the night", this is the

396. Q. (cont'd) Affidavit she submitted to the Court of Appeal "I recall the night of June 17th, 1971 vividly, that the said MacIntyre and Urquhart continuously went over my knowledge of the events of the evening of May 28th, 1971 and repeatedly told me what I should have seen on that evening in Wentworth Park". Again I take it you're denying that allegation?

A. We told her what she should have seen?

397. Q. Yeah. "Repeatedly told me what I should have seen on that evening".

A. She's saying here in number 6 that I was present when that statement was taken. I know nothing about that, only what I see there. If I witness a statement or I take a statement I sign it.

398. Q. Well if you look at the Affidavit that's filed in the Court of Appeal, and as you know Court records are public records.

A. Yeah.

399. Q. She has put in there as Exhibit A, paragraph 5 of her Affidavit, her statement, which is in part what the CBC broadcast was, her statement.

MR. PUGSLEY: I don't think it's Exhibit A Bob. I think Exhibit A is the statement of 1971. I think there is a statement that she gave in '82, that's the one you mean, that's annexed to the Affidavit I think?

MR. MURRANT: It's paragraph 9.

MR. PUGSLEY: Paragraph 9, yes, a copy, and marked Exhibit C, yes, we have that.



399. Q. (cont'd) But in any event you'll see from Exhibit A, which is - let's take it down to paragraph 9. "On March 1, '82 I was interviewed by RCMP Staff Sergeant Harry Wheaton and freely gave to the said Staff Sergeant Wheaton a written statement, a copy of which is produced herewith marked Exhibit C concerning my knowledge of the circumstances surrounding the murder of Sandford (Sandy) Seale and subsequent events and that the facts contained therein are true to the best of my knowledge and belief". Then we go back to paragraph 6 where they say that you were telling - or she alleges that she was told what she should have seen that evening, et cetera. I suppose the point I'm coming to, Mr. MacIntyre, is that whatever the complaints of Patricia Harriss are they were filed as a public record in the Courts of Nova Scotia prior to this broadcast were they not?

A. I wouldn't know anything about that would I?

400. Q. What I'm trying to gauge here is the impact of this broadcast on you when prior to this broadcast, months prior to this broadcast, these statements and these allegations by Harriss and others, had been entered as public records in the Courts of the province. Would that not begin to have an impact on you as police chief?

A. I wouldn't know anything about when that was done or I had nothing to do with any of that, this investigation as you know. I was asked, as I told you already, about two or three



400. A. (cont'd) instances, one with Harriss on the statements, just on the statement I think it was, and one about Chant. His mother had made the statements that she left when the statement was half over. I told Staff Sergeant Wheaton that she was there during the whole statement and never left at any time. He told me that Burke didn't remember being there and he said I went then to see the Juvenile Court Judge and the Judge wondered what he'd be doing there, and when he looked up his book he found out that he was holding court in Louisbourg on that day and then he said, oh he said that changes the thing, he said, he could have been out there with me that day when they came after the young fellow. Things like that you see.
401. Q. Well this girl Harriss is 15. Would you say -
- A. She was a big girl for 15. I think she looked more like 17 or 18. She was a big girl and, as you'll see, she was travelling around with this boy, this young man who was 20 years of age, six years her senior, and he didn't just walk her home I don't think on that particular night, I think he was keeping company with her for awhile.
402. Q. But wouldn't she be intimidated during your discussions with her? Is that not a situation where -
- A. No, I wouldn't say intimidated. I would say that we were trying to tie down the scene on Crescent Street that night when she met Junior Marshall, and we were trying to get the