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June 16, 1982

The Honourable Ian M. MacKeigan
Chief Justice of Nova Scotia
Supreme Court of Nova Scotia
The Law Courts
Halifax, Nova Scotia
B3J 1S7

My Dear Chief Justice:

Donald Marshall, Jr. was convicted on a charge of murder following a trial at Sydney, Nova Scotia in December, 1971. His subsequent appeal to the Appeal Division of the Supreme Court of Nova Scotia was rejected.

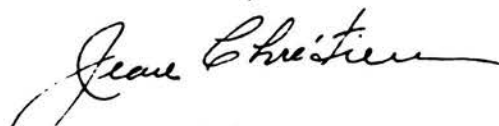
Based largely on information which has recently emerged, he has made an application to me pursuant to section 617 of the Criminal Code for the Mercy of the Crown. In my opinion, the material presented to me warrants the conviction being referred to the Appeal Division for further hearing and determination.

Accordingly, I am pleased to enclose a Reference which I have signed, for the purpose of initiating such a review. I have transmitted copies of the Reference to the Honourable Harry How, Q.C., Attorney General of Nova Scotia and to Stephen J. Aronson, Esq., counsel for Donald Marshall, Jr.

John M. Bentley, Q.C., General Counsel and Director of our Atlantic Regional Office in Halifax is knowledgeable concerning the circumstances of this case and will be available to assist the Court as required.

I trust that this Reference will facilitate this exceptional procedure and may I express my appreciation for the assistance of the Court in this matter.

Yours sincerely,


Jean Chrétien

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.

WHEREAS Donald Marshall, Jr. was convicted on 5 November, 1971 by a court composed of Mr. Justice J. L. Dubinski and a jury that he, on or about 29 May, 1971 at Sydney, in the County of Cape Breton, Province of Nova Scotia, murdered Sandford William (Sandy) Seale and was on the same date sentenced to a term of life imprisonment.

AND WHEREAS an appeal from that conviction to this Honourable Court was dismissed on 8 September, 1972.

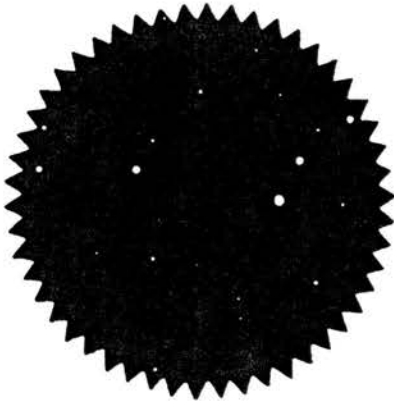
AND WHEREAS evidence was subsequently gathered and placed before the undersigned which appears to be relevant to the issue whether Donald Marshall, Jr. is guilty of the crime of which he stands convicted.

AND WHEREAS application for the mercy of the Crown has been made on behalf of Donald Marshall, Jr., pursuant to section 617 of the Criminal Code.

AND WHEREAS the Attorney General of Nova Scotia and counsel acting on behalf of Donald Marshall, Jr. agree with the undersigned that this new evidence is of sufficient importance to be considered by this Honourable Court.

NOW THEREFORE, the undersigned pursuant to paragraph 617(b) of the Criminal Code, hereby refers the said conviction to this Honourable Court for hearing and determination in the light of the existing judicial record and any other evidence which the Court, in its discretion, receives and considers, as if it were an appeal by Donald Marshall, Jr.

DATED at Ottawa this 16th day of June, 1982.



Jean Chrétien
Minister of Justice

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.

The Honourable Jean Chretien
Minister of Justice
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8



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SUPREME COURT OF NOVA SCOTIA
MR. JUSTICE HART
APPEAL DIVISION

THE LAW COURTS
PO BOX 2314
HALIFAX, NOVA SCOTIA
B3J 3C8

June 17, 1982

The Honourable Jean Chrétien,
Minister of Justice,
Ottawa, Canada
K1A 0H8

Dear Mr. Minister:

Re: Reference upon application for
the Mercy of the Crown on behalf
of Donald Marshall, Jr.

I acknowledge your letter of June 16, 1982 in
this matter.

In the absence of Chief Justice MacKeigan
I wish to acknowledge receipt of this Reference by the
Court. It was delivered this day on your behalf by
Mr. John M. Bentley, Q.C.

I have suggested to Mr. Bentley that he advise
counsel representing the parties to the Reference to
apply to the Court for directions concerning the conduct
of the Reference.

Yours sincerely,

Gordon L. S. Hart
Justice

MEMORANDUM

TO: Daniel B. Morrison, Q.C.
Registrar of Appeal Court

FROM: Mr. Justice Hart
Appeal Division

Re: Reference upon application for
the Mercy of the Crown on behalf
of Donald Marshall, Jr.

I enclose the original reference signed by the Minister of Justice in this matter, which was delivered to the Court on Thursday, June 17, 1982 at 1.45 p.m. Kindly open an appropriate Criminal Appeal file.

Halifax, N. S.
June 18, 1982.

C.C. NO. 00580

DONALD MARSHALL JR.

HMT QUEEN

Appellant

Respondent

PROPER TITLE

7

NATURE OF CHARGE

APPEAL FROM CONVICTION [], ACQUITTAL [] or ORDER [] DATED SENTENCE [] DATED SENTENCE IMPOSED

TRIAL JUDGE

COURT

SOLICITORS

MR. S. J. ARONSON
MR. F. C. EDWARDS

Appellant

Respondent

INMATE APPEAL [] Address for service

DOCUMENTS	Dated	Filed	Served	To Be Filed By	Mailed	Returned
Notice of Appeal	July 23	July 27				
App. for Stated Case						
Stated Case						
Letter to Reporter						
Report of Judge						
Appeal Book				ALL BRIEFS, APPEAL BOOKS & FACTUMS TO BE FILED BY SEPTEMBER 14, 1982		
Appellant's Factum						
Respondent's Factum						
Notice of Intention						
Notice of Cross-Appeal						
Notice to Dismiss						
Set Down for Hearing	Tuesday October 5, 1982		at 10:00 A.M.	WEDNESDAY & THURSDAY (TWO DAYS)	DECEMBER 1 and 2, 1982	(TWO DAYS) (10:00 A.M.)
Notice to Solicitors	July 29	& October	18, 1982			

INTERLOCUTORY MOTIONS

Nature

Date

Disposition

BAIL APPLICATION JULY 29 1982 - GRANTED

REMARKS

(as per order of S.C. of N.S. - dated October 5, 1982)

J. Saul

1982

S.C.C. No. 00580

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.

NOTICE OF APPLICATION FOR RELEASE
 PENDING APPEAL

TAKE NOTICE that an application will be made on behalf of Donald Marshall, Jr., the Appellant herein, before a Judge of the Appeal Division, sitting at The Law Courts, 1815 Upper Water Street, Halifax, on Thursday, the 29th day of July, 1982, at the hour of twelve o'clock in the afternoon or so soon thereafter as the application can be made for an order releasing the Appellant pending the determination of his appeal.

AND TAKE NOTICE that in support of the application will be read the affidavits of the Appellant, Donald Marshall, Jr. and those of Stephen J. Aronson, the Solicitor for the Appellant herein, and Jack Stewart, Director of the Carleton Centre, true copies of which are hereto attached.

DATED at Dartmouth, Nova Scotia, this 23rd day of July, 1982.


 Stephen J. Aronson of
 277 Pleasant Street
 Dartmouth, Nova Scotia
 Solicitor for the Appellant.

TO: Frank C. Edwards of
 77 Kings Road
 Sydney, Nova Scotia
 Department of The
 Attorney - General.

IN THE APPEAL DIVISION OF THE
SUPREME COURT OF NOVA SCOTIA

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.

NOTICE OF APPLICATION FOR RELEASE
PENDING APPEAL

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers and Solicitors
277 Pleasant Street, Suite 305
Dartmouth, Nova Scotia B2Y 4B7

1982

S.C.C. No. 00580

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, Donald Marshall, Junior, of Halifax, in the County of Halifax and Province of Nova Scotia, make oath and say as follows:

1. THAT I am the applicant herein and as such have personal knowledge of the matters herein deposed to except where otherwise stated.

2. THAT on the 5th day of November, 1971, at Sydney, in the County of Cape Breton, Province of Nova Scotia, I was convicted by a court composed of Mr. Justice J. L. Dubinski and a jury of the murder of Sanford William Seale, contrary to Section 218 (2) of the Criminal Code of Canada, and was on the same date sentenced to a term of life imprisonment.

3. THAT upon an application for the Mercy of the Crown on behalf of myself, a Reference pursuant to Section 617 of the Criminal Code by the Honourable Jean Chretien, Minister of Justice, has been directed to the Appeal Division of the Supreme Court of Nova Scotia.

4. THAT I am presently 28 years of age and unmarried.

5. THAT I am now residing in the Carleton Centre in the City of Halifax, a federal penitentiary as defined by the PENITENTIARY ACT, RSC. 1970, C. P-6 since my release from Dorchester Penitentiary on the 29th day of March, 1982.

6. THAT I propose to continue to reside in Halifax

if released from custody pending the determination of my Appeal, and will surrender myself into custody in accordance with the terms of the ORDER.

7. THAT I have secured employment with a Department of the Government and expect to continue to be employed by said Employer if released.

SWORN TO at Halifax)
in the County of Halifax)
this 2nd day of July, 1982,)
before me,)
[Signature])
A Barrister of The)
Supreme Court of Nova)
Scotia.)

[Signature]
DONALD MARSHALL, JR.

1982

S.C.C. No. 00580

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, Stephen J. Aronson, of Dartmouth in the County of Halifax and Province of Nova Scotia, Barrister, make oath and say as follows:

1. THAT I am the Solicitor for the Appellant herein and as such have personal knowledge of the matters herein deposed to, except where otherwise stated.

2. THAT evidence subsequent to the conviction of the said Appellant has arisen which is relevant to the issue whether the Appellant is guilty of the crime of which he stands convicted.

3. THAT due to the importance of this issue, a Reference pursuant to section 617 of the Criminal Code has been directed to this Honourable Court by the Honourable Minister of Justice, Jean Chretien, to be conducted as if it were an appeal by the appellant herein and that such appeal is not frivolous.

4. THAT the detention of the said Appellant is not necessary in the public interest in that such interest may best be served by the release of the Appellant pending the determination of the issue whether he is guilty of the crime of which he stands convicted.

SWORN TO at _____, in the)
 County of Halifax, this _____ day)
 of July, 1982, before me,)
 _____)

 A Barrister of the Supreme)
 Court of Nova Scotia.)

 STEPHEN J. ARONSON

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
CRETIAN, 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, Jack Stewart, Superintendent of the Carlton Centre, of
Halifax, in the County of Halifax and Province of Nova Scotia,
make oath and say as follows:

1. That I am the Superintendent of the Carlton Centre, a
Penitentiary defined by Section 2 (1) of the Penitentiary Act,
R.S.C., 1970, chapter P-6.
2. The Carlton Centre is a pre-release centre, providing
transitional support services to inmates who are serving a sentence
at a federal penitentiary.
3. That on March 29, 1982, Donald Marshall, Jr. was released
from Dorchester Penitentiary, in Sackville, New Brunswick, by the
National Parole Board, as a day parolee at the Carlton Centre and
that at present he is ⁱⁿ custody and is required: to live at the
Carlton Centre for seven nights of each week; to obtain written
authority to leave the Halifax/Dartmouth metropolitan area; to
adhere to curfews and all other regulations in force at the Carlton
Centre.
4. I have been responsible for the supervision of Donald
Marshall, Jr., since his release on March 29, 1982, and believe he
will continue to need occasional support from the counselling staff
at the Carlton Centre.
5. That in the event that this Honourable Court grants an
Order releasing Donald Marshall, Jr. from custody, the Carlton

FILED
JUL 29 1982
ENTERED

15

1982

S.C.C. No. 00580

IN THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

BEFORE THE HONOURABLE MR. CHIEF JUSTICE MacKEIGAN IN CHAMBERS:

ORDER

UPON APPLICATION made on behalf of Donald Marshall, Jr., the Appellant, for an order providing for his release pending determination of the appeal;

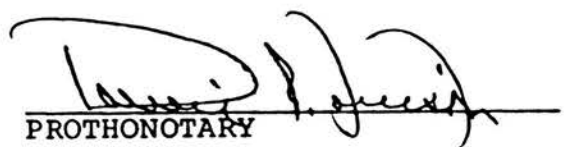
AND UPON reading the Affidavits of the Appellant, and those of Mr. Stephen J. Aronson and Mr. Jack Stewart, and upon hearing counsel for the Appellant, and counsel for the Crown;

NOW UPON MOTION of Stephen J. Aronson, solicitor for the Appellant herein;

IT IS ORDERED that Donald Marshall, Jr., the Appellant, be released with the condition that the Appellant shall surrender into custody on the day fixed for the hearing of the appeal and shall abide by the Judgment of the Court.

IT IS FURTHER ORDERED that Donald Marshall, Jr., enter into a recognizance in form satisfactory to the Court.

DATED at Halifax, Nova Scotia, this 29th day of July, A.D. 1982.


PROTHONOTARY

Consented to:

Frank C. Edwards,
Department of the Attorney
General

Handwritten notes:
Mullins
C. J. A. S.

1982

S.C.C. No. 00580

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 Cretian, 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.

O R D E R

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers & Solicitors
277 Pleasant St., Suite 305
Dartmouth, N.S. B2Y 4B7

RECOGNIZANCE

CANADA
PROVINCE OF NOVA SCOTIA

BE IT REMEMBERED that on this day the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely,

NAME	ADDRESS	OCCUPATION	AMOUNT
<u>Donald Marshall Jr.</u>	<u>Ogilvie Towers, Apt. 113</u>	<u>Government Employee</u>	-----
-----	-----	-----	-----
-----	-----	-----	-----

Handwritten initials

to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of Her Majesty the Queen, if ----- fails in any of the conditions hereunder written.

TAKEN and acknowledged before me on the 29th day of July, 19 82, at Halifax, in the County of Halifax and Province of Nova Scotia.

Handwritten signature

Judge, Clerk of the Court, Magistrate or Justice

WHEREAS the said Donald Marshall, Jr. hereinafter called the accused, has been charged that he, at or near Sydney, in the County of Cape Breton, Nova Scotia, on or about the 28th day of May, 19 71, ~~XXXXXX~~

did unlawfully murder Sandford William (Sandy) Seale, contrary to S. 206(2) of the Criminal Code of Canada.

NOW, THEREFORE, the condition of this recognizance is that if the accused attend Court on Tuesday, the 5th day of October, 1982, at 10:00 o'clock in the forenoon and attends thereafter as required by the Court in order to be dealt with according to law OR (where date and place of appearance before Court are not known and not filled in above at the time recognizance is entered into) if the accused attends at the time and place fixed by the Court and attends thereafter as required by the Court in order to be dealt with according to law.

AND FURTHER, if the accused (insert conditions that are directed):

the said recognizance is void, otherwise it stands in full force and effect.

SIGNED IN THE PRESENCE OF)
Handwritten signature)
-----)

Donald Marshall Jr.

N O T E The provisions of sections 697 and subsections (1), (2) and (3) of section 698 of the Criminal Code endorsed on the reverse side hereof form a part of this recognizance.

THE FOLLOWING PROVISIONS ARE FROM THE CRIMINAL CODE OF CANADA

697. Where a person is bound by recognizance to appear before a Court, justice or magistrate for any purpose and the session or sittings of that Court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held.

698. (1) Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any for his appearance until he is discharged or sentenced, as the case may be.

(2) Notwithstanding subsection (1), the Court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be.

(3) The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2).

Dated: July 29, A.D. 1982

XXXXXXXXXXXXXXXXXXXX

XXXXXX

XXXXXXXXXXXXXXXXXXXX
RECOGNIZANCE

UNDERTAKING GIVEN TO A JUSTICE OR A JUDGE

(FORM 9)
(Secs. 457, 457.5, 457.7, 458, 459, 608 and 608.1)

CANADA
PROVINCE OF NOVA SCOTIA

I, DONALD MARSHALL, JR.,

of Halifax, in the County of Halifax, Province of Nova Scotia understand that I have been charged that (set out substance of offence) I committed murder contrary to Section 218(2) of the Criminal Code of Canada, and have been sentenced to a term of life imprisonment on the 5th day of November, 1971, by the Nova Scotia Supreme Court, Trial Division.

Handwritten initials: DM, JA, S

In order that I may be released from custody, I undertake /to attend Court on Tues day, the 5th day of October, 1982, and to attend thereafter as required by the Court in order to be dealt with according to law or (where date and place of appearance before Court are not known at the time undertaking is given) to attend at the time and place fixed by the Court and thereafter as required by the Court in order to be dealt with according to law. (and where applicable)

I also undertake to (insert any conditions that are directed):

- (a) report at _____ to _____,
- (b) remain within (territorial jurisdiction) _____,
- (c) notify _____ of any change in my address, employment or occupation,
- (d) abstain from communication with _____ except in accordance with the following conditions: _____
- (e) deposit my passport _____, and
- (1) That I shall surrender myself into custody on the day fixed for the hearing of the Appeal and shall abide by the Judgment of the Court.
(any other reasonable conditions)

I understand that failure without lawful excuse to attend Court in accordance with this undertaking is an offence under subsection 133(2) of the Criminal Code. Subsections 133(2) and (3) of the Criminal Code state as follows:

- "(2) Every one who, being at large on his undertaking or recognizance given to or entered into before a justice or a judge, fails, without lawful excuse, the proof of which lies upon him, to attend Court in accordance therewith or to surrender himself in accordance with an order of the judge, as the case may be, is guilty of
 - (a) an indictable offence and is liable to imprisonment for two years, or (b) an offence punishable on summary conviction.
- (3) Every one who, being at large on his undertaking or recognizance given to or entered into before a justice or a judge and being bound to comply with a condition of that undertaking or recognizance directed by a justice or a judge, fails, without lawful excuse, the proof of which lies upon him, to comply with that condition, is guilty of
 - (a) an indictable offence and is liable to imprisonment for two years, or (b) an offence punishable on summary conviction."

DATED this 29th day of)
July, 1982)
at the City of)
Halifax)
in the County of Halifax,)
Province of Nova Scotia)

D Marshall Jr.
(Signature of Accused)
[Signature]
Magistrate (or) Justice of the Peace
in and for the
(Judicial District or Province)

UNDERTAKING GIVEN TO A JUSTICE
OR A JUDGE

DONALD MARSHALL, JR.
(Accused)

Dated 29th day of JULY, 1982

1982

S.C.C. No.00580

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.

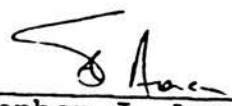
NOTICE

TAKE NOTICE that an application will be made on behalf of Donald Marshall, Jr., the Appellant herein, before a Judge of the Appeal Division, sitting at The Law Courts, 1815 Upper Water Street, Halifax, on Thursday the 29th day of July, 1982, at the hour of twelve o'clock in the afternoon or so soon thereafter as the application can be made for setting down a date for a hearing at which leave to adduce fresh evidence will be determined.

AND TAKE NOTICE that in support of the application will be read the affidavit of Stephen J. Aronson, Solicitor for the Appellant, and such other material as counsel may advise, true copies of which are hereto attached.

DATED at Dartmouth, Nova Scotia, this 23rd day of July, 1982.

TO: Frank C. Edwards
 77 Kings Road
 Sydney, Nova Scotia
 Department of The
 Attorney-General.



 Stephen J. Aronson
 277 Pleasant Street
 Dartmouth, Nova Scotia
 Solicitor for the
 Appellant.

IN THE APPEAL DIVISION OF THE
SUPREME COURT OF NOVA SCOTIA

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.

N O T I C E

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers and Solicitors
277 Pleasant Street, Suite 305
Dartmouth, Nova Scotia B2Y 4B7

1982

S.C.C. No. 005

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, Stephen J. Aronson, of Dartmouth in the County of Halifax and Province of Nova Scotia, Barrister, make oath and say as follows:

1. THAT I am the Solicitor for the Appellant herein and as such have personal knowledge of the matters herein disposed to, except where otherwise stated.

2. THAT in addition to the affidavits filed herewith, it is intended to provide affidavits of the following persons prior to the date of hearing of the application to adduce fresh evidence:

- (a) Keith Beaver can provide evidence of the movements of the late Sandford (Sandy) Seale between the time they left the dance at St. Joseph's Hall and their arrival at Wentworth Park, all on the night of May 28, 1971.
- (b) George W. MacNeil can provide evidence of seeing two men in Wentworth Park in the night of May 28, 1971, at 11:40 p.m., whose descriptions closely match the descriptions of the men who were described by Donald Marshall, Jr. in his testimony. Mr. MacNeil provided a statement to the Sydney City Police reflecting this description on May 31, 1971.
- (c) Donna Ebsary can provide evidence of the actions of Roy N. Ebsary and James W. MacNeil at approximately 12:00 midnight on May 28, 1971, and in particular the possession of a knife by the said Roy N. Ebsary on that night.
- (d) A. J. Evers is an expert in the science of hair and fibre analysis, employed by the RCMP, who testified at the 1971 trial of Donald Marshall, Jr. He can provide evidence of a recent examination of certain

knives, the fibres found thereon and their relationship to the fibres composing certain clothing worn by the late Sandford (Sandy) Seale and Donald Marshall, Jr., on the night of May 28, 1971.

- (e) Simon J. Khattar, Q.C. and C. M. Rosenblum, Q.C., acted as counsel for the Appellant, Donald Marshall, Jr., at his trial for the non-capital murder of Sandford (Sandy) Seale in November of 1971. They are able to provide evidence that every possible effort was made at the said trial to obtain the truth from the witnesses, Maynard V. Chant, John Louis Pratico and Patricia Ann Harriss, but that they were unwilling to change their statements.
- (f) Donald Marshall, Jr. will provide evidence that confirms his original testimony at his 1971 trial for the murder of Sandford (Sandy) Seale and will provide additional factual material relating to the events of the night of May 28, 1971, not heretofore made known by the Appellant.

3. THAT I became aware of the existence of the information referred to in the affidavits filed herewith, and the proposed affidavits to be filed, referred to in paragraph 2 herein, as a result of a re-investigation into the murder of Sandford (Sandy) Seale conducted by the Sydney Division of the RCMP between February and May of 1982, approximately.

4. THAT if the evidence of the contents of the affidavits already on file herein, or the affidavits to be filed herewith, had been adduced at the 1971 trial, then the jury might have reasonably been induced to change its view regarding the guilt of Donald Marshall, Jr.

SWORN TO at Dartmouth,)
 in the County of Halifax)
 this 23rd day of July, 1982,)
 before me,)

Leo I. MacDonald)
 A Barrister of The)
 Supreme Court of Nova)
 Scotia.)

Stephen J. Aronson)
 STEPHEN J. ARONSON)

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, M. A. Mian, Medical Doctor, of Sydney, in the County of Cape Breton, Province of Nova Scotia, make oath and say as follows:

1. THAT I am a Psychiatrist and presently the Medical Director of the Cape Breton Hospital, an institution for the treatment of the mentally ill.
2. THAT I know John Louis Pratico, who testified at the Preliminary Hearing in July 1971, and Trial of Donald Marshall, Jr., who was subsequently convicted of the murder of Sandy Seale.
3. THAT the said John L. Pratico has been a psychiatric patient of mine from August 1970, to date.
4. THAT my medical diagnosis of the said John L. Pratico since August 1970, is that he suffers from a schizophreniform illness manifested in his case by liability to fantasize and thereby distortion of reality and rather childish desire to be in the lime-light or center of attraction.
5. THAT in order to function outside of a psychiatric institution, the said John L. Pratico has, since August 1970, to date, been on continual medication under my direction.
6. THAT on August 31, 1971, the said John L. Pratico was admitted to the Nova Scotia Hospital, in Dartmouth, Nova Scotia, for psychiatric treatment.

7. THAT it is my medical opinion that the said John L. Pratico was, in 1971, and has been continuously to date, a wholly unreliable informant and witness with regard to any subject or event, but more particularly in the Sandy Seale murder case in 1971.

SWORN TO at Sydney, in the County)
of Cape Breton, Province of Nova)
Scotia, this 19th day of July,)
A.D., 1982, before me:)


A BARRISTER OF THE SUPREME COURT)
OF NOVA SCOTIA)

m a mian

M. A. MIAN, M.D.

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 GHÉTIEN, 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

J. L. R.

I, John Louis ~~Prattico~~, of ~~331~~ ^{324 Arthur} Mackay Street, New Waterford, in the County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I was born on December 31, 1954 and on the date of the murder of Alexander (Sandy) Seale, May 28, 1971, I was sixteen (16) years of age.
2. That I have been continuously treated by a psychiatrist, Dr. M.A. Mian of Sydney, since August of 1970 to date.
3. That on the evening of May 28, 1971, I attended a dance at St. Joseph's Hall in the City of Sydney, and during the course of that evening from 7:00 or 8:00 P.M. I drank a quantity of wine, approximately six quarts and three pints of beer together with, I believe, some rum or gin and that I was intoxicated.
4. That on February 25, 1982, I was interviewed by R.C.M.P. Cpl. J.E. Carroll, and gave a free and voluntary statement to the said Cpl. Carroll, a copy of which is produced herewith and marked Exhibit 'A', concerning my knowledge of the events surrounding the murder of Alexander (Sandy) Seale on the night of May 28, 1971 and that the facts referred to in that statement are true to the best of my knowledge and belief.
5. That on May 30, 1971, I was interviewed by then Det. Sgt. J.F. MacIntyre of the Sydney City Police and gave a

written statement to the said MacIntyre, a copy of which is produced herewith and marked Exhibit 'B', concerning my knowledge of the circumstances surrounding the murder of Sandy Seale.

6. That on June 4, 1971, I was again interviewed by the said John F. MacIntyre and then Det. Sgt. William Urquhart, both of the Sydney City Police, and gave a written statement to the said MacIntyre and Urquhart, a copy of which is produced herewith and marked Exhibit 'C', concerning my knowledge of the events relating to the Sandy Seale murder.

7. That my statement, referred to herein as Exhibit 'C', is not entirely true, and, in particular, the facts contained therein with reference to my having seen the murder of Sandy Seale are not true, as I did not personally witness the said murder, nor was I present at the scene of the murder at the time it occurred.

8. That prior to May 28, 1971, I was acquainted with Donald Marshall, Jr., and that on the morning of May 29, 1981, I met Donald Marshall, Jr. briefly and we spoke about the Seale murder.

9. That I stated I had witnessed the murder of Sandy Seale, as referred to in Exhibit 'C' herein, as a result of the said John F. MacIntyre accusing me of having been a witness to the murder and threatening to jail me unless I stated I did witness the murder and I was further informed by the said MacIntyre and Urquhart as to what I had purportedly witnessed of the murder and agreed, out of fear, with them.

10. That I testified at a Preliminary Hearing and subsequent trial of Donald Marshall, Jr., who was convicted of the murder of Sandy Seale on November 5, 1971.

11. That my testimony at the trial of Donald Marshall, Jr. relating to the murder of Sandy Seale, at Pages 118-175 of the Transcript of the said trial, is not true insofar as I stated I had witnessed the murder of Sandy Seale; the truth being that I was not a witness to the said murder.


12. That on August 31, 1971, between the Preliminary Hearing in this matter, held in July of 1971, and the Trial in this matter, held in November of 1971, I was admitted as a patient to the Nova Scotia Hospital in Dartmouth, Nova

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Scotia for treatment of my mental condition.

13. That I did not know Maynard V. Chant on or before May 28, 1971 and did not see the said Maynard V. Chant on the night of May 28, 1971 or at any time thereafter until the time of the Preliminary Hearing in July, 1971.

SWORN TO at)
 in the County of Cape Breton,)
 Province of Nova Scotia, this)
 15th day of July, A.D. 1982,)
 before me,)


 A Barrister of the Supreme
 Court of Nova Scotia


 JOHN LOUIS PRACTICO

DOUGLAS R CROWE
 A COMMISSIONER FOR THE SUPREME
 COURT OF NOVA SCOTIA

In 1971, May, I was questioned by John MacINTYRE and I believe Michael R. MacDONALD about the SEALE stabbing in Wentworth. There was a dance on a Friday night at St. Joseph's Hall and I had been there. I was drinking some beer outside the hall and down in the park. I remember SEALE and MARSHALL being there for about a half hour. They were not fighting or arguing, I don't know if they were drinking or not, I didn't treat them. Around 11:30 P.M. or 11:45 P.M. I was down in the park having a few beer, I saw SEALE and MARSHALL come down into the park by the foot-bridge, I was hiding behind the bushes with my beer in case the cops saw me. They were talking fairly loud but it was muffled, I couldn't hear what it was about. I left before they did and took my beer with me. When I left MARSHALL and SEALE were still there, I saw others in the park walking around and some on park benches but no one near SEALE and MARSHALL. A couple of days later the police came, I wasn't home, my mother took me to the Sydney Police Station, around one or two o'clock I think. I talked to MacINTYRE alone at first, MacDONALD came in a few minutes later. I sent my mother home to look after my sister. MacINTYRE asked me what happened in the park that night, I said I didn't know, I had heard of the stabbing at this time but not who did it or who had died. MacINTYRE said I did know and if I didn't tell I would be put in goal. MacDONALD wasn't saying anything. I was scared, he said he knew what happened, for me to tell them. They told me about MARSHALL and SEALE, that MARSHALL stabbed SEALE, they put words in my mouth so I just agreed with what they were saying. I told them I saw MARSHALL stab SEALE from the bushes where I was drinking, they took a statement from me and I signed it. I guess I knew MARSHALL would be in trouble for what I said but I was being badgered by the police and scared what they would do to me, my nerves were really bad then. They got me to show them where I had been in the park that night and where MARSHALL and SEALE were. They said that was O.K. and drove me home. Sometime in the next month they came for me and I went to the Court house for the hearing MARSHALL. I gave my evidence and

Statement of: John Louis PRACTICO (ED: 54-12-31)

cont'd

the lawyers gave me a hard time. I saw CHANT there but I wasn't all to talk to him, I haven't seen him since. I went home and didn't talk to the police until the Supreme Court trial, they came to my home, I was two regular policemen, we didn't talk about the case. There were a few Indians from Memberton I saw on the street near my home at times I felt afraid of them but they never said anything, they gave me a few pushes but I wasn't hurt. I told the police to keep an eye open in my part of the street. In the Supreme Court trial I gave my evidence the lawyers gave me a hard time, CHANT was there but I couldn't talk to him. I told the same thing, but it wasn't true because I was badgered, I hope there was no grudges held. I heard on the radio MARSHALL was found guilty, no one has bothered me since. I feel bad about this now, terrible. That's about all.

John PRACTICO

Witness: Cpl. J.E. CARROLL 12:35 P.M.

This is the paper writing marked #14 referred to in the affidavit of John Practico Sworn before me this 14th day of July A.D. 1982

Douglas R Crowe
A Commissioner of the Supreme Court of Nova Scotia.

DOUGLAS R CROWE
A COMMISSIONER FOR THE SUPREME COURT OF NOVA SCOTIA

32

SUBJECT

CASE No.

C O P Y

May 30, 1971

Statement of John Pratico, age 16 yrs., residing at 201 Bentinck St., Sydney

Friday night I was at St. Joseph's Dance. I left there around 12 P.M. I seen Junior Marshall and Sandy Seale between the store and dance hall. I was talking to them. They wanted me to walk through with them. I said no. I went down Argyle St. and went over Crescent St. I was over by the Court house when I heard a scream. I looked. I seen 2 fellows running from the direction of the screaming. They jumped into a white volkswagon; blue lic. and white no. on it. One had a brown cordroy jacket - 5'5 dark complexion; heavy set. The other grey suit about 6 ft. tall; husky; red sweater -like a pullover. I started to run home.

Q. Did you see the Volkswagon since

A. No. I saw the 2 fellows twice last night walking near the park.

Q. Did you see them at the dance

A. Yes. I seen them walking around. Bobbie Robert Patterson said they are from Toronto Saints Choice ~~XXX~~ Bike Gang.

Signed: John Pratico

May 30th - 6 P.M.
Sergt.Det. J.F.MacIntyre

This is the paper writing marked "B"
referred to in the affidavit of John Pratico
Sworn before me this 30th day of July
A.D. 1971
Douglas R Crowe
A Commissioner of the Supreme Court of
Nova Scotia.
DOUGLAS R CROWE
A COMMISSIONER FOR THE SUPREME
COURT OF NOVA SCOTIA

CONTINUATION REPORT

C

SUBJECT

CASE No.

C O P Y

June 4, 1971
10:45 A.M.

This is the paper writing marked C
referred to in the affidavit of John Pratico
Sworn before me this 5 day of July
A.D. 1971
Douglas R. Crowe
A Commissioner of the Supreme Court of
Nova Scotia.

DOUGLAS R CROWE
COMMISSIONER FOR THE SUPREME
COURT OF NOVA SCOTIA

Statement of John Louis Pratico, age 16 yrs., residing at
201 Bentinck St., Sydney.

Last Friday night I went to the dance at St. Joseph's Hall,
George St., Sydney. I went with Bobbie Christmas; Donald
Gordon and I met Bob Janes from Alexander St. there. He gave
me money to get in. This was about 9:30 P.M. I was at the
dance till about 10 or 5 to 12. Then I walked out by myself.

I met Donald Marshall and Sandy Seale. We walked to the
corner of Argyle St. Donald said John come down to the Park
in a rough voice. I said No. I went down Argyle St. and over
Crescent St. I was walking on the park side. I seen Sandy and
Donald on the other side of the bridge stopped. I did not pay
much attention to them. I kept walking for the tracks. On
the tracks, I stopped where I showed you. Then Donald Marshall
and Sandy Seale were up where the incident happened. I heard
Sandy say to Junior, you crazy Indian and then Junior called
him a black bastard. They were standing at this time where the
incident happened. They were still arguing. They were talking
low. I could not make out what they were saying.

Q. Which way was Sandy Seale facing

A. Facing the tracks

Q. Which way was Donald Marshall facing

A. The street

Q. ~~XXXXXX~~ How close were they

A. Arms length

Q. What did you see or hear next

A. I did not hear. I just seen Doald Marshall's hand going
towards the left hand side of Seale's stomach. He drove his
hend in -turned it and pulled it back.

Q. what happened then

A. I seen Sandy fall to the ground and Donald Marshall running
up crescent St. towards Argyle St.

SUBJECT

CASE No.

C O P Y

---continued - page 2

Q. What did you do

A. I run home up Bentinck St.

Q. Were you standing on the track at the time Sandy Seale fell to the ground

A. Yes. I was.

Q. Why were you standing there

A. I was drinking a pt. of beer

Q. Was there anybody else around the scene

A. Nobody - not a soul

Q. Did Seale scream when Donald Marshall struck him in the stomach

A. He screamed - aah

Q. How long did you know Sandy Seale

A. 4 or 5 years

Q. How long did you know Donald Jr. Marshall

A. Since last summer

Q. Did you ever quarrell with either boy

A. No

Q. Were you talking to Sandy Seale at the dance

A. Yes outside about 10:30 P.M.

Q. How far away would you be from Sandy Seale and Donald Marshall when they were on Crescent St.

A. 30 to 40 ft.

Q. How long were they standing there

A. About 10 minutes. They were arguing over something

Q. How is it you did not come down where they were at

A. I was scared

Q. Did they notice you on the tracks

A. I don't know

Q. Would ~~there~~ there be any obstruction between you and Sandy Seale and Donald Marshall when you were on the tracks from them seeing you

A. Bushes between them and me - blocking the view on them. It was easier for me to see them.

Q. Did you see Donald Marshall since

A. Yes, Saturday or Sunday.

Signed: John Pratico.

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

This is Exhibit X
 the Affidavit of M. Reardon
 sworn before me this 10th
 day of August 1982
 [Signature]
 A Commissioner of the Supreme Court of
 Nova Scotia

I, Maynard V. Chant, of Main Street, in the Town of Louisbourg, County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I was born on October 14, 1956 and on the date of the murder of Alexander (Sandy) Seale, May 28, 1971, I was fourteen (14) years of age and in Grade 6 at school.
2. That I was a witness at the Preliminary Hearing and subsequent Trial of Donald Marshall, Jr., who was convicted of the murder of Alexander (Sandy) Seale on November 5, 1971.
3. That on February 16, 1982, I was interviewed by R.C.M.P. Cpl. J.E. Carroll, and gave a free and voluntary written statement to the said Cpl. Carroll, a copy of which is produced herewith and marked Exhibit 'A', directly relating to my knowledge of events surrounding the murder of Alexander (Sandy) Seale on the night of May 28, 1971.
4. That on May 30, 1971, I was interviewed by then Det. Sgt. J.F. MacIntyre of the Sydney City Police and gave a written statement to the said MacIntyre, a copy of which is produced herewith and marked Exhibit 'B', concerning my knowledge of the circumstances relating to the murder of the said Sandy Seale.
5. That my statement, referred to herein as Exhibit 'B', is not entirely true and that the facts contained herein with reference to my having seen the murder of Sandy Seale are not

true, as I did not personally witness the said murder, nor was I present at the place and time of the murder.

6. That the facts relating to having seen the Seale murder as referred to in Exhibit 'B' herein were told to me by the Appellant, Donald Marshall, Jr. immediately after the murder occurred when I met the said Appellant running towards me, as I was approaching Wentworth Park in the City of Sydney, all of which occurred on May 28, 1971.

7. That on June 4, 1971, I was questioned in Louisbourg by Det. Sgt. J.F. MacIntyre and then Sgt. William Urquhart of the Sydney City Police and gave a second written statement to the said MacIntyre and Urquhart, a copy of which is produced herewith and marked Exhibit 'C', again relating to the events surrounding the murder of Sandy Seale and my knowledge thereof.

8. That my statement, referred to herein as Exhibit 'C', is not entirely true and that the facts contained therein with reference to my having seen the murder of Sandy Seale are not true, as I did not personally witness the said murder, nor was I present at the place and time of the murder.

9. That I gave the statement referred to in Exhibit 'C' herein, to the said MacIntyre and Urquhart, knowing its contents were not true, because of pressure from the said MacIntyre and Urquhart who insisted I had witnessed the Seale murder, although I had not in fact witnessed same.

10. That my testimony at the Trial of Donald Marshall, Jr. relating to the murder of Sandy Seale, at Pages 86-117 of the Transcript of the said Trial, is not true insofar as I stated I had witnessed the murder of Sandy Seale; the truth being that I was not a witness to the said murder.

11. That the reason for giving the testimony referred to in Paragraph 10 herein, was because I was afraid and because MacIntyre and Urquhart of the Sydney City Police told me that I had witnessed the murder and was seen by another witness, who I believe was John Practico.

12. That subsequent to the Preliminary Hearing in this matter in July, 1971, I spoke with the Crown Prosecutor, the late Donald C. MacNeil, Q.C., who informed me that if I changed my statement that I had seen Donald Marshall, Jr. stab Sandy Seale, that I would be charged with perjury.

13. That I did not know the said John Practico prior to the said murder and did not in fact see the said John Practico at any time on the night of May 28, 1971 contrary to my testimony at Page 89 of the Transcript of the said Trial of November, 1971.

14. That approximately two years ago, I informed my mother that I had lied at the Trial of Donald Marshall, Jr., as I had not in fact seen Donald Marshall and Sandy Seale together nor had I seen the actual stabbing of Sandy Seale.

SWORN TO at)
 in the County of Cape Breton,)
 Province of Nova Scotia,)
 this 14th day of July, A.D.)
 1982, before me,)

Elaine N'Pherson)
Elaine N'Pherson)
 A Barrister of the Supreme)
 Court of Nova Scotia)

Maynard V. Chant
 MAYNARD V. CHANT

A Commissioner of the Supreme Court
 for the Province of Nova Scotia

In 1971 I would have been 14 years old. I went to Sydney with my parents to church. I skipped out of church and went to the Pier. From the Pier I went to the bus station and the bus had left to Louisbourg; I walked down Bentick to the Park.

I was going to take a short cut across the Park to George Street and hitch hike home. I had not quite made it to the Park and a guy in a yellow jacket came running up to me. He showed me his arm where it was cut and told me his friend was stabbed over in the Park. We met some other people and he told them the same thing. We flagged down a car a brown Nova and went over to Crescent Street where the other guy was.

This was Sandy SEALE and he had been stabbed in the stomach. The fellow that I later learned was Donald MARSHALL did not go near the body. There was no blood from the cut on his arm and he showed several people. I thought his actions were quite suspicious at the time. SEALE was still alive and I put my shirt on the wound. 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 told the Police I saw everything referring to the cut. I definitely did not see the murder. Everything was over by the time I got over where SEALE was.

Sometime later I was taken to the Park and they asked me where I was standing. I more or less showed them what they wanted to get it over with. I wasn't in the park around the murder. I was interviewed by 2 Detectives, my mother was also there. 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.

I really felt MARSHALL did it. During the time MARSHALL was in jail a friend told me that MARSHALL was gloating about killing SEALE. I also felt that the Indians were all out to get me. During the time I was giving evidence in Court, they kept going over and over it, the evidence. I remember once the Crown Prosecutor really

was mad at me.

I can not explain what made me lie about this other than I was young and scared at the time.

Maynard CHANT

Louisbourg, Main St. at 6:16 P.M.

Witnesses: Cpl. J.E. CARROLL

This is the paper writing marked "A"
referred to in the affidavit of Maynard Chant
Sworn before me this 14 day of July
A.D. 1982
Elaine MacPherson
A Commissioner of the Supreme Court of
New Scotia

CONTINUATION REPORT

ATTACHMENT # 10

SUBJECT

40

CASE No.

This is the paper writing referred to in the affidavit of Maynard Chant sworn before me this 14th day of July

C O P Y

A.D. 1982
Flaine
Flaine
Flaine
A Commissioner of the Supreme Court of

May 30, 1971 - 5:15 P.M.

Statement of Maynard Vincent Chant - age 15 yrs., residing at Main St. Louisburg, C.B.

Friday night I was in town and I left the Bus Terminal on Bentinck St. about 11:40 P.M. I walked down Bentinck St. I came over Byng Ave. and started to cross the tracks. I got half way across the tracks - first I seen 2 fellows walking and 2 more were walking kind of slow talking. The 2 fellows who stabbed Donald Marshall and Sandy Seale - they talked for a few minutes over on Crescent St. One fellow hauled a knife from his pocket and he stabbed one of the fellow - so I took off back across the tracks to Byng Ave. and started to walk towards the bus terminal. Then I seen Donald Marshall coming down. I turned around and started to walk the other way. Donald caught up to me and said look what they did to me. He showed me a long cut on his left arm. Then he said help me - my Buddy is over on the other side of the park with a knife in his stomach. Then we started to look for more help. We met some boys and girls - one of the girls gave Donald a handkerchief - we got a car to take us over to where Sandy was lying on the pavement. I took my shirt and put it around his waist and Donald went to a grey house and asked the man if he would call an ambulance.

About ten minutes later, I went up and asked the man in the house to call again and I knelt down beside Sandy Seale and he said it was hot. I unbuttoned his jacket. I then discovered his stomach was cut. I took my shirt and put it where the cut was and made him comfortable. Then the police arrived. They called for the ambulance. He was taken to the hospital.

Q. Did you know those other 2 men

A. No

Q. Did you know Donald Marshall

A. I knew him to see him

Q. Did you know Sandy Seale

A. no

Q. Could you give me a description of these other men

A. one man about 6'2 - light brown hair; dark pants; suit coat - over 200 lbs. the other fellow 6' tall - dark pants; dark hair 165 lbs.

Q. Did you see their faces

A. No

Q. Would they be young or old

CONTINUATION REPORT

SUBJECT

41

CASE No.

page 2 - continued - statement of Maynard Vincent Chant -----

Q. Was there just 4 men there

A. Yes

Q. Did you see any knife

A. Yes it was a figure of a knife

Q. How far away would you be

A. 45 ft. or more down the tracks

Q. Could you tell if Marshall was drinking

A. I would not say he was

Signed: Maynard Chant

time 5:35 P.M.

Sergt. Det. J.F. MacIntyre

SUBJECT

42

CASE No.

this is the paper which was referred to in the affidavit of Maynard Chant sworn before me this 14 day of July

COPY

June 4, 1971 - 2:55 P.M.

A.D. 1982
Elaine N. Pherson
 A Commissioner of the Supreme Court of
 New South

Statement of Maynard Vincent Chant, age 14 yrs., residing at Main St., Louisburg, C.B.

Last Friday night after 11:30 P.M., I left the Acadian Lines on Bentinck St. and walked down Bentinck St. to the tracks. Then I started down the tracks towards George St. I noticed a dark haired fellow sort of hiding in the bushes about opp. the second house on Crescent St.

Q. Did you know him.

A. No. I did not know his name but I seen him before out at the dances in Louisburg

Q. Did you see him since

A. Sunday afternoon at the Police Office in Sydney. I walked by this fellow on the track. I looked back to see what he was looking at. Then I saw 2 fellows standing about 1 1/2 ft from each other on Crescent St. near the house with the railing up the middle of the steps. The same house which I called the police from. An old man with grey hair & glasses answered the door

Q. Were they the same size

A. One was taller than the other

Q. Which one was facing you

A. Short dark fellow was facing the tracks

Q. The taller man was facing the houses

Q. At this pt. did you recognize either of these men

A. The only man I recognized was Marshall

Q. What was he wearing

A. Dark pants and I think a yellow shirt with the sleeves up to the elbows. I wish to say that when he was arguing I mean Donald Marshall with the other men his sleeves were down to his wrist at that time.

continued - page 2-----

Q. How long were you on the tracks watching them

A. About 5 minutes

Q. Could you hear what they were talking about

A. No. I just heard a mumbling of swearing. I think Marshall was the one who was doing most of the swearing. Then I seen Marshall haul a knife from his pocket and jab the other fellow with it in the side of the stomach.

Q. What side

A The right side - I seen him jab it in and slit it down

Q. How could you tell it was a knife

A. By the figure of it - it was shiny and long

Q. What happened then.

A. When Marshall drove the knife in, Seale, he bent over. Then I ran toward George St. down the ~~xx~~ tracks. I went into the Park, through the Park; then up to George St.; crossed the tracks and then on to Byng Ave.-about 3 houses over I met Donald Marshall and he said look at my arm. It was his left arm; his sleeve was up. The cut was on the inside of his arm - it was not a deep cut and it was not bleeding at that time-until we caught up to 2 boys & 2 girls who were walking. Donald said could you help us. One of the fellows said what is wrong. Then he said look what they done to me.

Then the other guy said "Who" and Donald Marshall said the 2 fellows. He said my buddy is on the other side of the Park with a knife in his stomach. They ~~they~~ said they would try and help us. At the time a car came along and Donald stopped it and we asked for help. They picked us up and drove to the other side of the Park and we stopped about 6 ft. away from Seale. At this time, Seale was lying on the opp. side of the street. Donald Marshall got out; came over near the body of Seale and stood there. There was another man came along and knelt by Seale and then went over to a house and called an ambulance. Then he came back and knelt along side of me about 5 minutes. I asked this dark haired fellow to look

SUBJECT

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CASE No.

continued - page 3-----

after Seale while I went up and called again. I forgot to state that the minute I got to Seale, I put my white shirt on his stomach. I said hold it and he mumbled. Police and ambulance arrived and he was taken to hospital.

Q. Did Donald Marshall call the police or ambulance at any time

A. No

Q. Did you

A. Yes, first at the house with the railing coming down the center of the steps

Q. Who was with you

A. Marshall stayed on the sidewalk

Q. Was there any other conversation between you and Marshall at that time

A. He said--there were 2 men -tall one had brown hair done the stabbing.

Q. This of course is not true

A. No

Q. Did he know you were over the tracks

A. No - he did not.

Signed: Maynard Chant

3:45 P.M.

By: Sergt. Det. John McIntyre

Sergt. Det. Wm. Urquhart.

SUBJECT

45

CASE No.

Mrs. Beulah Chant - mother

Lawrence Burke - Probation Officer
Juvenile Court

Chief Wayne K. McGee

Urquhart and myself.

IN THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

.....79SC An
 This is Exhibit Z
 the Affidavit of C. R. [unclear]
 sworn before me this [unclear]
 day of August [unclear]
 A Commissioner of the Supreme
 Nova Scotia

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, Patricia Ann Harriss, 5885 Spring Garden Road,
 in the City of Halifax County of Halifax and Province of
 Nova Scotia, make oath and say as follows:

1. That I was born on November 15, 1956, and attended a dance at St. Joseph's Hall in the City of Sydney, aforesaid, on Friday evening, May 28, 1971.
2. That I believe I left the said dance at approximately 11:45 p.m. in the company of Terrance Patrick Gushue and Robert Patterson and the three of us proceeded to Wentworth Park in Sydney, approximately one and a half blocks from the said St. Joseph's Hall, situated on George Street, Sydney.
3. That upon arriving at the said Wentworth Park, we sat on a bench near the Bandshell for a few minutes and then I left with Terrance Gushue and we two proceeded along Crescent Street until we reached a green building on Crescent Street which I believe is known as Crescent Apartments.
4. That upon reaching the said Crescent Apartments we saw and spoke with Donald Marshall, Jr. who was in the company of two other men, neither of whom was Sandford (Sandy) Seale.
5. That on June 17, 1971, at about 8:15 p.m. I was interviewed by the Det. Sgt. John F. MacIntyre and Sgt. W. Urquhart of the Sydney City Police and gave a written unsigned statement

to the said MacIntyre and Urquhart, a copy of which is produced herewith and marked Exhibit "A", concerning my knowledge of the circumstances surrounding the murder of Sandford (Sandy) Seale on May 28, 1971, and that to the best of my knowledge and belief the facts contained therein are true.

6. That I recall the night of June 17, 1971, vividly and that the said MacIntyre and Urquhart continuously went over my knowledge of the events of the evening of May 28, 1971, and repeatedly told me what I should have seen on that evening in Wentworth Park.

7. That again on the night of June 17-18, 1971, I was interviewed by the said MacIntyre and Urquhart and gave to them a signed written statement at 1:20 a.m. on June 18, 1971, after having been with them continuously for over five hours, and that a copy of the said statement is produced herewith and marked Exhibit "B".

8. That I testified at the Preliminary Hearing and subsequent Trial of Donald Marshall, Jr. who was convicted of the murder of Sandy Seale on November 5, 1971, and that my testimony at the said Trial appears at pages 74-81 of the transcript thereof.

9. That on March 1, 1982, I was interviewed by RCMP S/Sgt. Harry Wheaton and freely gave to the said S/Sgt. Wheaton a written signed statement, a copy of which is produced herewith and 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.

10. That I did not see Sandford (Sandy) Seale, who I knew, on the night of May 28, 1971, in Wentworth Park ~~or elsewhere~~, and that any statement by me to the contrary is not true. *28*

11. That as referred to in my statement marked Exhibit "A" hereto, I did, on the night of May 28, 1971, at or near Wentworth Park, see Donald Marshall, Jr. and two other men - one of whom

was gray or white-haired, short and wearing a long coat.

SWORN TO at Halifax)
in the County of Halifax,)
Province of Nova Scotia,)
this 22nd day of July, 1982.)



A Barrister of the)
Supreme Court of)
Nova Scotia.)



PATRICIA ANN HARRISS

49

CASE No.

C O P Y

June 18th - 1:20 A.M.

Statement of Patricia Ann Harris, age 14 yrs., residing at
5 Kings Road, Sydney

On May 28th, 1971, I went to St. Joseph's Dance Hall. I met Terry Gushue there. We danced for awhile and then a fight started. Terry got mixed up in it and he was asked to leave. So I went with him. I got mad at him for drinking & fighting. We went to the Park and sat on a bench and started arguing. Robert Patterson came to the Park with us. After a while, we crossed the park back of the bandshell. Then we went up to Crescent St. and by the green apt. building, we met Jr. Marshall. Terry got a match of him.

Q. Was there anybody with Jr. Marshall

A. Yes

Q. Who was it

A. He had a dark jacket on

Q. Was it Sandy Seale. Do you know him

A. Yes, I know Sandy and it looked like him

Q. Did he speak to you

A. No

Q. Did Jr. Marshall say anything else

A. He was drinking

Q. How was he dressed

A. He had a light jacket on

Q. Were they standing or walking when you met them

A. Standing facing one another but when we came closer, they sort of parted and Sandy Seale moved back. We talked to Jr. got a match and left for home.

Q. Did you see anybody else in the area

A. No. Not on Crescent St.

Q. Did you notice anybody on the railroad tracks

A. No

Q. Where did you learn about the stabbing

A. My mother told me

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CASE No.

SUBJECT

C O P Y

continued - page 2 - Patricia Harris

Q. Did you see any weapons on either Jr. Marshall or Sandy Seale

A. No

Q. How were they facing

A. Sandy was facing the houses and Jr. Marshall was facing the Park

Q. What time would this be

A. I would say about 12 P.M. ~~xx~~ We left the dance about 11:30P

Signed: Patricia Harris

June 18th - 12:25 A.M.

Sergt. Det. J.F. MacIntyre

Sergt. W. Urquhart.

.....19.....SC No.....
 This is Exhibit 'B' referred to in
 the Affidavit of Patricia A. Harris
 sworn before me this 22nd
 day of July A.D. 1962.

 A Commissioner of the Supreme Court of
 Nova Scotia

TAKEN: 1 MAR 82 @ Sydney, N.S. 51

Statement # 22

In 1971 I would have been 14 years of age and I recall the Seale murder case. That evening I was at a dance at St. Joseph's Hall and left with Terry Gushue. We went down George St. to Wentworth Park. We sat on a park bench in the area of the band shell. My home was at five Kings Road so I feel that Terry and I would have walked up to Crescent St., more toward the South Bentinck end than the Argyll St. end. We walked a ways down Crescent St. before noticing anybody. I remember meeting Junior Marshall and there were other people on the street in this area. Who they were I don't know. I recall in my first statement to the Police there were two people. The police took at least three statements from me.

I don't recall exactly how many times I was taken to the police station. 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. This 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 fist on the desk. I definitely did not see Sandy Seale in the Park that night. I don't recall if I said that in Court or not. The police had me so scared through out this affair that I felt pressured and agreed with things I shouldn't have agreed. Now that I am a mature adult I feel this was most improper and I have thought of this through the years often questioned this whole thing in general

I am sure that I saw Junior Marshall in the area of the Green Apartment building on Crescent Street. There were other men on Crescent Street in this area two or three. I did not say this in Court but I did say this at the Police Station. I felt that I was obligated to stick with the statement the Police were happy with. Terry Gushue was also brow beaten at this time when they took the statement from him.

.....19.....SC No..... Patricia Harriss
is Exhibit referred to in
E.F. WHEATON, S/Sgt. Affidavit of Patricia A. Harriss
Sworn before me this 22nd
of July A. D. 1982
Arens

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, Terrance Patrick Gushue, of 630 George Street, Apartment 5, in the City of Sydney, County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I was born on May 8, 1951, and attended a dance at St. Joseph's Hall, in the City of Sydney, aforesaid, on Friday evening, May 28, 1971.
2. That I believe I left the said dance between 11:30 p.m. and 12:00 p.m. in the company of Patricia Harris and Robert Patterson and proceeded to Wentworth Park in the said City of Sydney.
3. That after having arrived at Wentworth Park and I believe at about 11:45 p.m., we met Donald Marshall, Jr. ~~at or near Crescent Street and across from a green building known as Crescent Apartments,~~ and I asked the said Donald Marshall, Jr. for a light for a cigarette. CAG
11.6
4. That there were other people in the said Wentworth Park aside from those referred to herein, although I do not know who they were.
5. That I was intoxicated on the night of May 28, 1971, and my recollection of the events of that night are true to the best of my knowledge and belief.
6. That I was a witness at the trial of Donald Marshall, Jr., in November, 1971, who was subsequently convicted of the murder of Sandy Seale and my testimony appears at pages 82-85 of the Transcript of the said trial.

7. That on June 17, 1971, I was interviewed by Det. Sgt. J.F. MacIntyre of the Sydney City Police, and gave 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 28, 1971, and that to the best of my knowledge and belief the facts contained in that statement are true.

8. That on March 2, 1982, I was interviewed by R.C.M.P. S/Sgt. H.F. Wheaton, and gave a free and voluntary written statement to the said S/Sgt. Wheaton, a copy of which is produced herewith and marked Exhibit "B", directly relating to my knowledge of the events surrounding the murder of Alexander (Sandy) Seale on the night of May 28, 1971, and that to the best of my knowledge and belief the facts contained in that statement are true.

SWORN TO at *Sydney*)
 in the County of Cape Breton,)
 Province of Nova Scotia, this)
 15th day of July, A.D.)
 1982, before me,)

[Signature]

A Barrister of the Supreme
 Court of Nova Scotia

Terrance P. Gushue

TERRANCE PATRICK GUSHUE

COPY

June 17, 1971 - 11:40 P.M.

Statement of Terrance Patrick Gushue, age 20 yrs., residing at 2 Tulip Terrace St., Sydney:

On May 28th, I went to the dance at St. Joseph's Hall, George St., Sydney

Q. Who did you go with

A. With Eddie Dicks

Q. How long did you stay there

A. Well I seen a fight starting about 10:30 P.M. 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 Harris 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 a while - we were talking to Robert Petterson. He came down from the dance with us. We walked behind the bandsnell and started to walk up to Crescent St. I remember seeing Donald, Jr. Marshall on Crescent St. with another man.

Q. Did you speak to Jr. Marshall

A. Yes, I asked him for a match

Q. Did you receive it

A. Yes

Q. Did you have any other conversation with him

A. No

Q. Did you know the other man

A. No

Q. Did you know Sandy Seale, the deceased

A. No

Q. How long have you known Jr. Marshall

A. 1 yr. or so

Q. Which way were you walking on Crescent St.

A. Towards Kings Rd.

Q. What time was this

A. Between 11:30 P.M. and 12 P.M.

CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

SUBJECT

55

CASE No.

continued - page 2---Terrence Patrick Gushue

- Q. What was the weather like.
A. It was nice out
Q. when you met Jr. Marshall, ~~XXXXXXXXXX~~ and the other man,
were they standing or walking
Q. Standing
Q. On the Street or sidewalk
A. On the left hand side of street going towards Kings Rd.
Q. Were you drinking that night
A. 2 qts. of beer & some wine.

Signed: Terry Gushue

Sr. Sgt. Det. J.F. MacIntyre
June 17th - 12:03 A.M.

Signed: Det. W. Urouhart

This is the paper writing marked "A"
referred to in the affidavit of Terrence Gushue
Sworn before me this 15 day of July
A.D. 1982 [Signature]
A Commissioner of the Supreme Court of
Nova Scotia.

Statement of: Terrance Patrick GUSHUE (E: 51-05-08)
630 George St., Apt. 5, Sydney.

Taken: 82-03-02 at Sydney, N.S.

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Statement # 2:

At the time of the Seale murder I went to a dance at St. Josephs with Patricia Harris. On our way home we went through Wentworth Park. I recall sitting on a Park bench and going up toward Crescent St. 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.

Terrance P. Gushue

S/Sgt. H.F. WHEATON

This is the paper writing marked "B" referred to in the affidavit of Terrance Gushue
Sworn before me this 15th day of July
A.D. 1982 [Signature]
A Commissioner of the Supreme Court of
Nova Scotia.

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, Barbara Mary Floyd, of 12 Inglis Street, Sydney, in the County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I was born on May 22, 1955 and attended a dance at St. Joseph's Hall, in the City of Sydney on Friday evening, May 28, 1971.
2. That the said dance ended between 11:30 and 11:45 P.M., and I left the said Hall in the company of two friends, Sandra McNeil (now Sandra Cotie) and Joan Clements.
3. That as we walked down George Street, in Sydney, I saw John Practico arguing with Rickey Risk, a short distance from the said Hall, and that Practico followed along behind us along George Street, until we turned onto Argyle Street, Sydney.
4. That prior to having seen the said John Practico, as referred to in Paragraph 3, we had been advised of a stabbing in Wentworth Park, Sydney, and to avoid the said Park.
5. That at no time on the night of May 28, 1971, or thereafter, did the said John Practico mention to me that a stabbing had occurred in the said Wentworth Park or that he had witnessed the stabbing.
6. That I was interviewed on March 29, 1982 by R.C.M.P S/Sgt. H.F. Wheaton and gave to the said S/Sgt. Wheaton a free and voluntary statement, a copy of which is produced herewith

and marked Exhibit 'A' and that to the best of my knowledge and belief the facts contained in that statement are true.

SWORN TO at Sydney)
in the County of Cape Breton,)
Province of Nova Scotia,)
this 15th day of July, A.D.)
1982, before me,)

[Signature])
A Barrister of the Supreme)
Court of Nova Scotia)

Barbara Floyd
BARBARA MARY FLOYD

29 March 82
121 Inglis St
Sydney, N.S.

This is the paper writing marked
referred to in the affidavit of Barbara FLOYD
Sworn before me this 15 day of July

A.D. 1982

A Commissioner of the Supreme Court
Nova Scotia.

STATEMENT OF: BARBARA MARY FLOYD
B: 22 May 55, 121 Inglis St.
Sydney, N.S.

In the Spring of 1971, I attended a dance at St. Joseph's Hall, in Sydney. When the dance ended, I left with Sandra McNEIL and Joan CLEMENTS. We walked down the sidewalk on George Street. A short distance from the Hall, near the parking lot, I saw John PRACTICO arguing with Rickey RISK. A few minutes before I saw PRACTICO, someone had come along and told us not to go down to the Park because a guy had been stabbed down there.

We continued down George and went a short distance up Argyle taking Joan home. Sandra and I then walked to our homes on Townsend and Inglis Streets. The next day John McINTYRE and a uniformed policeman came to my home. They questioned me about where I was and who I had seen at the dance. I told them what I had done and I don't believe I told them I saw John PRACTICO up by the dance, as it didn't mean anything.

The next thing I can recall is that the trial was on and PRACTICO was a key witness. I found this unbelievable as PRACTICO was up around the dance and never mentioned a stabbing. I saw PRACTICO around and always felt that he was rather strange. I discussed this with my girl friends and we thought it should be reported. I called one of the lawyers and told him that I couldn't see why PRACTICO was a main witness, as we had seen him in the parking lot at the dance. He just said, you're too late, and that was the end of the conversation.

WITNESS:

(Sgd) Barbara FLOYD

H. F. WHEATON, S/Sgt.
Sydney S/Div. P.C. Co-Ordinator

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, Sandra V. Cotie, formerly Sandra McNeil, of
47 Rotary Drive, Sydney, in the County of Cape Breton and
Province of Nova Scotia, make oath and say as follows:

1. That I was born on January 7, 1955 and attended a
dance at St. Joseph's Hall, in the City of Sydney on Friday
evening, May 28, 1971.
2. That the said dance ended between 11:30 P.M. and
11:45 P.M. and I left the said Hall in the company of two
friends, Barbara Mary Floyd and Joan Clements.
3. That as we left the said Hall, we were informed
that there had been a stabbing in Wentworth Park in Sydney.
4. That as we walked along George Street, Sydney, John
Practico came along and followed us towards the said Wentworth
Park, until we turned onto Argyle Street, Sydney, when John
Practico left us.
5. That at no time on the night of May 28, 1971, or
thereafter, did the said John Practico mention to me that
a stabbing had occurred in the said Wentworth Park, or that
he had witnessed the stabbing.
6. That I was interviewed on March 29, 1982 by R.C.M.P.
S/Sgt. H.F. Wheaton and gave to the said S/Sgt. Wheaton a
free and voluntary statement, a copy of which is produced

herewith and marked Exhibit 'A' and that to the best of my knowledge and belief the facts contained in that statement are true.

SWORN TO at Sydney)
 in the County of Cape Breton,)
 Province of Nova Scotia,)
 this 15th day of July,)
 A.D. 1982, before me,)

S. A. [Signature])
 A Barrister of the Supreme)
 Court of Nova Scotia)

Sandra V. Cotie)
 SANDRA V. COTIE)

STATEMENT OF SANDRA V. COTIE, (B: 7 Jan 1955)
47 Rotary Drive, Sydney, N.S.

In the Spring of 1971, I attended a dance at St. Joseph's Hall with Barb FLOYD and Joan CLEMENTS. When the dance got over, we three girls left.

I recall someone, I don't know who, telling us there had been a stabbing in the Park. We started walking down George Street. I remember John PRACTICO coming along and having something smart to say, and following us down towards the Park.

I don't know which way John PRACTICO went, but we went up Argyle. This was at the time the dance got over and there were a lot of kids on the road.

(Sgd) Sandra V. COTIE

WITNESS:

H.F. WHEATON; S/Sgt.
Sydney S/Div. P.C. Co-Ordinator

This is the paper writing marked "A"
referred to in the affidavit of Sandra V. Cotic
Sworn before me this 15 day of July
A.D. 1982 [Signature]
A Commissioner of the Supreme Court of
Nova Scotia.

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, James William MacNeil of 222 Mt. Pleasant Street, in the City of Sydney, County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That on Friday night, May 28, 1971, I was in the company of Roy Newman Ebsary at the State Tavern on George Street, Sydney where we had been drinking beer.
2. That we left the said Tavern together and proceeded along George Street to Wentworth Park in Sydney, at which time we walked through the Park to Crescent Street.
3. That at about 11:50 P.M. on May 28, 1971 as the said Roy Newman Ebsary and I walked along Crescent Street, we met two individuals, one black youth and one Indian youth, who, by word and action attempted to rob us.
4. That Roy Newman Ebsary was facing the black youth, at the time referred to in Paragraph 3 herein, and putting his right hand into his right coat pocket removed a knife, which without warning, he thrust into the left side of the black youth, at which time the black youth attempted to run away, but collapsed to the ground.
5. That the said Roy Newman Ebsary then attempted to stab the Indian youth, but was not able to prevent the said youth from leaving which he did immediately.
6. That I believe the person, referred to as a black

CONTINUATION REPORT

SUBJECT

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CASE No.

C O P Y

Nov. 15th, 1971 - 7:25 P.M.

Statement of James William McNeil, age 25 yrs., residing at 1007 Rear George St., Sydney:

Myself and Roy Ebsary were at the State Tavern, George St., Sydney, late in the evening in May of this year. We were there about an hr. or so. We left. We walked down George St. and took the short cut through the Park (Wentworth). We came up to Crescent St. and while walking along Crescent St. we were approached by an Indian & a colored fellow from behind. The Indian put my right hand up behind my back. The colored fellow said dig man dig. 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

Q. What side

A. The left hand side of the colored fellow. I seen Roy's hand & knife full of blood

Q. Did you see the Indian being stabbed

A. No. I did not

Q. What happened then

A. Roy went home and I was with him. He washed the knife under the tap and washed his hands off. Then he told me not to say anything about it.

Q. Did you ask him why he done it

A. Yes, he said it was self defence

Q. What time did you get home that night

A. About 12 P.M.

Q. How long were you at Roy's house that night

A. About 1 hr. after that

Q. When did you see Roy again

A. The next day I went to his house. He was laying in bed. I told him that fellow died

Q. What did he say

A. He said it was self-defence. I told him he did not have to kill him. He told me he had 2 children - a girl and boy and not to say anything to the police. I left then.

Q. Who seen you at the house besides Roy

A. His wife, daughter & son.

Q. Did they say anything to you then

continued - page 2---

CONTINUATION REPORT

SUBJECT

66

CASE No.

continued - page 2-----

A. No. Not that day. About 2 days after than his son, about 18 or 19 yrs old came to my house with his car. He drove me out to the Wandlyn Motel - He went in the motel and his mother came out to the car. She got in the back seat. He got in and she said don't go to their house any more because of what Roy done. The young fellow told me if I mentioned what happened to the police all your family will be in trouble. They will have to go to Court

Q. Was his mother present when he said that
A. No

Q. What were you wearing that night
A. I was wearing a college coat - blue with 2 white marks on the sleeve

Q. What was Roy wearing
A. A black shawl over his shoulders - something like a priest wears over his shoulders

Q. When did you tell somebody about this
A. The first one I told was my mother. She noticed I was not sleeping and walking around since the trial. She asked me and I told her about the stabbing and Indian man was in jail for something he did not do. It isn't fair. Then I told my brother Johnnie last night. He told me to go to the police

Q. Did you know Marshall or Seale that night
A. No.

Signed: James MacNeil

Witness: Cpl. G.A. Taylor

Nov. 14th - 8 P.M.

By: Sergt. Det. J.F. MacIntyre

This is the paper writing marked "A" referred to in the affidavit of James MacNeil sworn before me this 15th day of July

A.D. 19

82

J. Mac
A Commissioner of the Supreme Court of Nova Scotia.

SI-08/11

Statement of: James William MacNEIL
222 Mt. Pleasant St., Sydney
B: 25 Jun. 46 67

"ATTACHMENT # 14c"

Taken: 82-02-08

I remember the SEALE murder. That night Roy EBSARY and I were at the State Tavern on George St., Sydney. We left and cut through the Park to go to Argyle St., to Roy's house.

On Crescent St., two fellows came up on us from behind. They asked us for money. I heard one fellow the colored fellow or the Indian guy say dig man dig.

All I remember is that the colored fellow sort of ran and then flopped on the road. I think the colored fellow was in front of Roy. We walked kind of fast away to Roy's. We went in the house I'm pretty sure I saw him wash the knife off in the sink. I can't remember if he had any blood. I told this to the Sydney City Police and R.C.M.P. I was nervous and shook up about this. Roy stabbed the negro and sort of come at the Indian.

James MacNEIL

R.D. MacQUEEN, Cst.
H.F. WHEATON, S/Sgt.

This is the paper writing marked "B"
referred to in the affidavit of James MacNeil
Sworn before me this 15 day of July
A.D. 1962
[Signature]
A Commissioner of the Supreme Court of
Nova Scotia.

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, Gregory Allan Ebsary, of 46 Mechanic Street, in the City of Sydney, County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I am the son of Mary P. Ebsary and Roy Newman Ebsary, and on Friday, May 28, 1971 resided with my parents and sister, Donna Elaine Ebsary, at 126 Rear Argyle Street, in Sydney.
2. That I am aware of the fact that Donald Marshall, Jr. was convicted in November of 1971, of the murder of Alexander (Sandy) Seale, the said murder having taken place on Friday night, May 28, 1971.
3. That my father, Roy Newman Ebsary, was in the habit of carrying a knife on his person during the time period that included May 28, 1971, and, indeed, the said Roy Newman Ebsary maintained a collection of knives, some of which were made by him.
4. That I and my mother, Mary P. Ebsary, were interviewed by R.C.M.P. S/Sgt. H.F. Wheaton on March 4, 1982, and gave to the said Wheaton a free and voluntary written statement, a copy of which is produced herewith and marked Exhibit 'A', concerning my knowledge of the matters referred to therein, and that to the best of my knowledge and belief the facts contained therein are true.
5. That on March 4, 1982, I and my mother, Mary P.

Ebsary, gave to the said S/Sgt. Wheaton ten (10) knives which had been in the possession and control of the said Roy Newman Ebsary during the time period which included May 28, 1971, and that produced herewith and marked Exhibit 'B' is a photograph of the said knives.

6. That I would be surprised if the said Roy Newman Ebsary were not carrying one of the knives depicted in Exhibit 'B' herein on the night of May 28, 1971, and note ~~that the knife marked with an 'X' on Exhibit 'B' herein, was a particular favorite of the said Roy Newman Ebsary.~~ CA G.E.

7. That I do not know now, nor have I ever known Donald Marshall, Jr., nor to the best of my knowledge has the said Donald Marshall, Jr. ever been in any residence in which I and my family have resided.

8. That the knives depicted by the photograph marked Exhibit 'B' were left untouched by the said Roy Newman Ebsary subsequent to November, 1971, and kept in a drawer in our home and when our family moved to 46 Mechanic Street, Sydney, the said knives were placed in a cardboard basket which I put on a beam in the cellar of our residence at 46 Mechanic Street, Sydney.

9. That the cardboard basket referred to in Paragraph 8 herein was given by me to S/Sgt. H.W. Wheaton.

10. That on November 15, 1971, I was interviewed by then Det. Sgt. John F. MacIntyre of the Sydney City Police, and gave to the said MacIntyre a written statement, a copy of which is produced herewith and marked Exhibit 'C' and that to the best of my knowledge and belief the facts contained therein are true.

11. That I was interviewed by R.C.M.P. S/Sgt. H.W. Wheaton again, on April 19, 1982, and gave to the said Wheaton a free and voluntary written statement, a copy of which is produced herewith and marked Exhibit 'D', concerning my knowledge of the matters referred to therein, and that to the best of my knowledge and belief the facts contained therein are true.

SWORN TO at Sydney)
in the County of Cape Breton,)
Province of Nova Scotia,)
this 15th day of July, A.D.)
1982, before me,)
)
A Barrister of the Supreme)
Court of Nova Scotia)

Greg A Ebsary
GREGORY ALLAN EBSARY

CITY OF SYDNEY POLICE DEPARTMENT

CONTINUATION REPORT

SUBJECT

70

CASE No.

C O P Y

Nov. 15, 1971 - 9:55 P.M.

Q. Statement of Greg Allan Ebsary, age 17 yrs.
residing at 126 Rear Argyle St., Sydney - Warned:

Q. Do you know James McNeil

A. Yes.

Q. Where does he live

A. Off Hardwood Hill near the cemetery

Q. Were you ever at his house

A. Yes, once

Q. What for

A. I had to go up and get him for my mother

Q. Where did you take him

A. To the Wandlyn Motel

Q. What took place there

A. My mother and him talked. She told him not to come
back any more. He does a bit of drinking

Q. He goes to your house quite often

A. He has not been there for a long while

Q. When did you pick him up at his house

A. About 2 months ago. I am not definite

Q. What was the conversation about in the car

A. She just said it would be better if Jim did not come
back any more

Q. Was there any conversation about a disturbance at the Park

A. No

Q. Did you tell Jimmie McNeil if he told the police what
happened he would have to go to Court

A. I can't remember saying that

Q. Was there any talk in the car what Roy done

A. I said there would be trouble (Court). I meant if he,
Jimmie would go back to our house anymore

Q. Did you see Jimmie when he came to your house the following
day after the Seale stabbing

A. Yes.

continued - page 2-----

CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

SUBJECT

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CASE No.

page 2 - continued -----

Q. Did he talk to your father

A. Yes

Q. Did he tell him Seale was dead

A. I don't know what they talked about

A. I don't know what they talked about

Q. Did you know your father and Jimmie were attacked that night on Crescent St. - the same night as the Seale stabbing

A. I found out about a week after

Q. Who told you

A. My mother said they were attacked.

Q. By whom

A. 2 fellow were going to beat them up for cigarettes or something

Q. Did you ask your father

A. No I never said anything about it.

Signed: Greg A. Ebsary

Witness: Cpl. G.A. Taylor

Nov. 15th - 10:20 P.M.

By: Sergt. Det. J.F. MacIntyre.

This is the paper writing marked "C"
referred to in the affidavit of Gregory Ebsary
Sworn before me this 15 day of July
A.D. 1982 [Signature]

A Commissioner of the Supreme Court of
Nova Scotia.


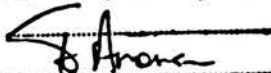
Tonight Harry WHEATON of the R.C.M.P. has shown me a statement which I gave to the Sydney City Police back in November 1971. I remember being down at the Police Station, and it looks reasonably accurate as far as it goes.

I was at the Sydney City Police that night for approximately three hours. I talked with John MacINTYRE a great deal more than what is in the statement. One thing being what happened that night in the Park. He accused me of this, and I denied it as I had not. I was truthful and honest and told him of my father's violence, carrying knives and manner of dress. I do remember that I was very frightened, and it seemed to me that he was trying to intimidate me.

I do remember Jimmie McNEIL being at the house the day after the murder. During the period of the murder, Roy always carried knives. We moved from Rear Argyle Street about two years after the murder. I collected up Roy's knives and moved them to 46 Mechanic Street. The knives sat for approximately nine years in a drawer and then was placed by me in a basket which I put in the cellar. I turned the knives over to Harry WHEATON. To further clarify moving the knives, Roy packed them and I moved them to our present home.

H.F. WHEATON

Greg EBSARY


This is the paper writing marked "D" referred to in the affidavit of Gregory Ebsary sworn before me this 15 day of July A.D. 1982 
A Commissioner of the Supreme Court of Nova Scotia.

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, Mary P. Ebsary, of 46 Mechanic Street, in the City of Sydney, County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I was the common-law wife of Roy Newman Ebsary for a period of 29 years and that two children were born to our marriage, namely, Gregory Allan Ebsary, born December 16, 1953, and Donna Elaine Ebsary, born June 16, 1957.
2. That I am aware of the fact that Donald Marshall, Jr. was convicted in November of 1971, of the murder of Alexander (Sandy) Seale, the said murder having taken place on Friday night, May 28, 1971.
3. That on May 28, 1971, my family - Gregory, Donna and Roy, resided together in Sydney at 126 Rear Argyle Street in Sydney.
4. That on the night of May 28, 1971, my husband Roy Newman Ebsary was in the company of James William MacNeil.
5. That on the night of May 28, 1971, I was at home watching television and at or about 12:00 midnight Roy Newman Ebsary and James William MacNeil came home together and had a conversation concerning a recent event, portions of which conversation I recall.
6. That my husband, Roy Newman Ebsary, was in the habit of carrying a knife on his person during the time

period that included May 28, 1971, and, indeed, the said Roy Newman Ebsary maintained a collection of knives, some of which were made by him.

7. That I and my son, Gregory, were interviewed by R.C.M.P. S/Sgt. H.F. Wheaton on March 4, 1982 and gave to the said Wheaton a free and voluntary written statement, a copy of which is produced herewith and marked Exhibit 'A', concerning my knowledge of the matters referred to therein, and that to the best of my knowledge and belief the facts contained therein are true.

8. That on March 4, 1982, my son, Gregory and I gave to the said S/Sgt. Wheaton ten (10) knives which had been in the possession and control of the said Roy Newman Ebsary during the time period which included May 28, 1971, and that produced herewith and marked Exhibit 'B' is a photograph of the said knives.

9. That I would be surprised if the said Roy Newman Ebsary were not carrying one of the knives depicted in Exhibit 'B' herein on the night of May 28, 1971, and note that the knife marked with an 'X' on Exhibit 'B' herein, was a particular favorite of the said Roy Newman Ebsary .

10. That I was interviewed by then Det. Sgt. John F. MacIntyre of the Sydney City Police on November 15, 1971 and gave to the said MacIntyre a written statement, a copy of which is produced herewith and marked Exhibit 'C' and that to the best of my knowledge and belief the facts contained therein are true.

11. That I was interviewed by R.C.M.P. S/Sgt. H.W. Wheaton again, on April 19, 1982, and gave to the said Wheaton a free and voluntary written statement, a copy of which is produced herewith and marked Exhibit 'D', concerning my knowledge of the matters referred to therein, and that to the best of my knowledge and belief the facts contained therein are true.

12. That I do not know now, nor have I ever known Donald Marshall, Jr., nor to the best of my knowledge has the said Donald Marshall, Jr. ever been in any residence in which I and my family have resided.

13. That Roy Newman Ebsary and I have not resided

together since 1979.

SWORN TO at *Sydney*)
 in the County of Cape Breton,)
 Province of Nova Scotia,)
 this 15th day of July, A.D.)
 1982, before me,)

S. Aronson)
 _____)
 A Barrister of the Supreme)
 Court of Nova Scotia)

Mary P. Ebsary)
 _____)
 MARY P. EBSARY)

1982

S.C.C. No.00580

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.



NOTICE

TAKE NOTICE that an application will be made on behalf of Her Majesty the Queen as represented by the Attorney General for the Province of Nova Scotia, before a Judge of the Appeal Division, sitting at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia, on Thursday, the 29th day of July, 1982, at the hour of 12 o'clock in the afternoon, or so soon thereafter as the application can be made for setting down a date for a hearing, at which leave will be sought to adduce evidence in response to the fresh evidence sought to be introduced by the appellant, Donald Marshall, Jr.

AND TAKE NOTICE that in support of the application will be read the affidavits of John F. MacIntyre, Chief of Police for the City of Sydney; William Urquhart, an inspector with the City of Sydney Police Department; and Wayne R. Magee, Sheriff for the County of Cape Breton; true copies of which are attached hereto; and such other material as counsel may advise.

DATED at Sydney, Nova Scotia, this 26th day of July, 1982.

Frank C. Edwards
 77 Kings Road
 Sydney, Nova Scotia
 Solicitor for the
 Attorney-General of
 the Province of
 Nova Scotia

TO: Stephen J. Aronson
 277 Pleasant Street
 Dartmouth, Nova Scotia
 Solicitor for the
 Appellant.

1982

S.C.C. No. 00580

IN THE APPEAL DIVISION OF THE
SUPREME COURT OF NOVA SCOTIA

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.

N O T I C E

Frank C. Edwards
77 Kings Road
Sydney, Nova Scotia
Solicitor for the Attorney-General of
the Province of
Nova Scotia

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 December 1, 1976.
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 superceded 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
26th day of July
1982, A.D.
before me


DOROTHY L. BEZANSON
A Commissioner of the Supreme
Court of Nova Scotia


JOHN FRASER MACINTYRE

CONTINUATION REPORT

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CASE No.

C O P Y

EXHIBIT 'G'

June 17, 1971 - 11:40 P.M.

Statement of Terrance Patrick Gushue, age 20 yrs., residing at 2 Tulip Terrace St., Sydney:

On May 28th, I went to the dance at St. Joseph's Hall, George St., Sydney

Q. Who did you go with

A. with Eddie Dicks

Q. How long did you stay there

A. well I seen a fight starting about 10:30 P.M. 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 Harris 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 a while - we were talking to Robert Petterson. He came down from the dance with us. We walked behind the bandshell and started to walk up to Crescent St. I remember seeing Donald, Jr. Marshall on Crescent St. with another man.

Q. Did you speak to Jr. Marshall

A. Yes, I asked him for a match

Q. Did you receive it

A. Yes

Q. Did you have any other conversation with him

A. No

Q. Did you know the other man

A. No

Q. Did you know Sandy Seale, the deceased

A. No

Q. How long have you known Jr. Marshall

A. 1 yr. or so

Q. Which way were you walking on Crescent St.

A. towards Kings Rd.

Q. What time was this

A. Between 11:30 P.M. and 12 P.M.

CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

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CASE No.

Continued - page 2---Terrance Patrick Cudrue

- Q. What was the weather like
- A. It was nice out
- Q. When you met Jr. Marshall, ~~xxxxxxx~~ and the other men, were they standing or walking
- A. Standing
- Q. On the Street or sidewalk
- A. On the left hand side of street going towards Kings Id.
- Q. Were you drinking that night
- A. 2 qts. of beer & some wine.

Signed: Terry Cudrue

Sergt. Det. J.F. MacIntyre
June 17th - 12:03 A.M.

Signed: Det. W. Brouhart

19 _____ Court
This is the paper with initials "G" referred to in the affidavit of John Fraser sworn to on this 26th day of June 1985.
Dorothy L. Bezanon
A Commissioner of the Supreme Court of Nova Scotia.
DOROTHY L. BEZANSON
A Commissioner of the Supreme Court of Nova Scotia

C O P Y

EXHIBIT 'H'

June 18, 1971 - 9:30 A.M.

Statement of Mary Patricia O'Reilley, age 14, residing at 23 Cross St., Sydney:

On May 28th, 1971, I was at St. Joseph's Dance Hall, George St., Sydney. I was with Theresa McNeil; 43 Cross St., Sydney. I left there about 11:45 P.M. with Steve Chernick, Mira Rd. We went to the Park. We came back around 11:55 P.M. to the dance. We were just outside talking - Frank French and Moose Tobin about 12:25 A.M. we seen the ambulance go bye. We got a drive home.

Q. Did you know the late Sandy Seale

A. No

Q. Do you know Donald, Jr. Marshall

A. Yes

Q. How long

A. 1 yr.

Q. Did you see him that evening

A. No

Q. when did you see him

A. He called Saturday morning. He was looking for Kate, my sister. He talked to me & her.

Q. What was the conversation

A. About what happened down at the Park - the stabbing

Q. What did he say

A. He said there was a grey haired man down there. He said men. One man asked him for a cigarette. Then Sandy Seale Didn't have a cigarette. when Jr. said that, one fellow said O.K. Blackie and he stabbed him

Q. Did you ask him what they looked like

A. One had grey hair. He said he was 30 to 40 yrs. old and when it happened he said he tried to call from a woman's house and he said he called

Q. Did Jr. know those fellows

A. He said they were pretty nice first

Q. Did he call any more

CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

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SUBJECT

CASE No.

cont. from page 2---Mary O'Reilley

- Q. He called again - my sister Kate
A. How did he get your phone no. It is unlisted
Q. When I was going with Pius Marshall, Jr.'s brother,
I gave it to Pius
Q. Did you discuss this matter with Patricia Harriss
A. Yes
Q. Did you tell her about the grey haired man
A. I told her there was supposed to be a grey haired
man there. I told her if she was questioned by the
police, she should tell about the grey haired man
that Jr. told me about

Q. Did he - Jr. - say anything about his own injury
A. He said the guy with the grey hair stabbed him in
the arm.

Signed: Mary O'Reilley

June 18th - 9:50 A.M.

Sergt. Det. J.F. MacIntyre

Witness: Det. W. Urquhart

19 _____
This is the proper reading of the "H"
in the affidavit of JOHN FRASER
Sworn to and filed this 26th day of July 1963
Dorothy L. Bezanon
DOROTHY L. BEZANSON
A Commissioner of the Supreme
Court of Nova Scotia

C O P Y

1971
May 31st, 6:30 P.M.

Statement of George Wallace McNeill, 18 yrs., 91 Bangalore Road and Roderick Alexander McNeill, 17 yrs., 84 Bangalore Road, Coxsath.

We left the dance at St. Joseph's Hall, Friday night, 11:40 P.M. We walked through the park and seen 2 men hanging around. Description as follows:

1 man - gray haired; gray or white top coat - 5-9 - W. 180 lbs. hair flat on his head no wave - straight back - round fat face trampish looking - late 50's

2nd man - tall 6 ft. or better of thin average size - dark hair - late 30 in early 40 yrs - thin face. brown jacket - short.

They spoke to a fellow and girl sitting on a bench closest to the railroad tracks as you came over the hill. They asked them for a cigarette. The gray haired fellow said he had just a dollar. We kept on home. We called at Patricia at a school dance on the way home.

Left

Q. Did you know Sandy Seale
A. Yes, to see him

Q. You seen him at the dance hall that night
A. yes

Q. He was there when you left
A. Yes. He was outside of the hall - all the tickets were sold early.

Q. Would you know them again
A. We don't know.

Signed: George McNeill
Sandy McNeill

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Subscribed and sworn to before me on this 26th day of May 1971

Blowth H. D. Dezanon

DOROTHY L. BEZANSON
A Commissioner of the Superior Court of Cook County

C O P Y

Nov. 15th, 1971 - 7:25 P.M.

Statement of James William McNeil, age 25 yrs., residing at 1007
Rear George St., Sydney:

Myself and Roy Ebsary were at the State Tavern, George St., Sydney late in the evening in May of this year. We were there about 1 hr. or so. We left. We walked down George St. and took the cut through the Park (Wentworth). We came up to Crescent St. while walking along Crescent St. we were approached by an Indian and a colored fellow from behind. The Indian put my right hand up behind my back. The colored fellow said dig man dig. Then Roy Ebsary said I got something for you. He put his hand in his right pocket and out a knife and drove it into the colored fellow's side

Q. What side

A. The left hand side of the colored fellow. I seen Roy's hand & knife full of blood

Q. Did you see the Indian being stabbed

A. No. I did not

Q. What happened then

A. Roy went home and I was with him. He washed the knife under the tap and washed his hands off. Then he told me not to say anything about it.

Q. Did you ask him why he done it

A. Yes, he said it was self defence

Q. What time did you get home that night

A. About 12 P.M.

Q. How long were you at Roy's house that night

A. About 1 hr. after that

Q. When did you see Roy again

A. The next day I went to his house. He was laying in bed & I seen him that fellow died

Q. What did he say

A. He said it was self-defence. I told him he did not have to say anything. He told me he had 2 children - a girl and boy and not to say anything to the police. I left then.

Q. Who seen you at the house besides Roy

A. His wife, daughter & son.

Q. Did they say anything to you then

continued - page

A. No. Not that day. About 2 days after than his son, about 18 or 19 yrs old came to my house with his car. He drove me out to Wandlyn Motel - He went in the motel and his mother came out to car. She got in the back seat. He got in and she said don't their house any more because of what Row done. The young fell me if I mentioned what happened to the police all your family be in trouble. They will have to go to Court

Q. Was his mother present when he said that
A. No

Q. What were you wearing that night
A. I was wearing a college coat - blue with 2 white marks on the

Q. What was Row wearing
A. A black shawl over his shoulders - something like a priest wear his shoulders

Q. When did you tell somebody about this
A. The first one I told was my mother. She noticed I was not and walking around since the trial. She asked me and I told about the stabbing and Indian man was in jail for something but not do. It isn't fair. Then I told my brother Johnnie last He told me to go to the police

Q. Did you know Marshall or Seale that night
A. No.

Signed: James MacNeil

Witness: Cpl. G.A. Taylor

Nov. 14th - 8 P.M.

By: Sergt. Det. J.F. MacIntyre

_____ Court
19 _____ No. _____

This is the paper writing marked "J" referred to in the affidavit of James MacNeil Sworn before me this 26 day of July 1962 A.D. 1962
Alonzo H. Deagan
A Commissioner of the Supreme Court of Nova Scotia.

DOROTHY L. BEZANSON
A Commissioner of the Supreme Court of Nova Scotia

CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

Exh. "K"

SUBJECT

90

CASE No.

C O P Y

Nov. 15th, 1971 - 8:45 P.M.

Statement of Mrs. Mary Patricia Ebsary residing at 125 Rear Argyle St.
Sydney - Warned:

Q. Did you have a conversation with anybody in regard to the Sandv
Seale case

A. Yes I did

Q. With whom

A. A boy called Jim. I don't know his second name

Q. Where does he live

A. He lives off George near the cemetery down over the hill

Q. Where did this conversation take place

A. It took place in my car on Kings Rd

Q. Where on Kings Rd.

A. At the front of the Wandlun Motel

Q. When was this

A. On or about 6 weeks ago

Q. What talk took place in the car

A. The conversation was about this boy Jim and my husband being
attacked that night coming home by the park. Jim thought that
it may be the same two. The Marshall boy and the Seale boy.
I told him making statements like that - I would prefer be stay
away from my house after that

Q. Was anybody else present

A. Yes

Q. Who

A. My son.

Q. Did you see Jimmie before that night

A. Quite frequently

Q. Where

A. at my house

Q. What was he doing there

A. Drinking with my husband

Q. Do you remember the night that Seale was stabbed

A. Not particularly. I remember reading of it in the Paper.

continued - page 2----

CITY OF SYDNEY POLICE DEPARTMENT
CONTINUATION REPORT

SUBJECT

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CASE No.

Continued - page 2-----

Q. Was Jimmie back and forth to your house at that time
A. Not after. He came about 15 times over a period of a couple of months.

Q. How did Jimmie happen to meet you near the Wandlun Motel
A. I sent for him

Q. Why
A. My husband had not been drinking and Jimmie came to my house on Sunday. I was getting ready to go out and he told my husband he would return on the weekend and I did not want my husband on the booze again. I sent for him and told him to stay away from my house and it was at this time the conversation about the Seale boy came up. I don't think Jim or my husband would have anything to do with that. Roy only weighs about 115 lbs.

Q. Was there an- discussion about this affair be Jimmie or your husband
A. No

Q. When Jimmie came with your son to the Motel were you working
A. I was

What time of the day was this
About 6:30 P.M.

Signed: Mary P. Ebsary

Witness: Sergt. Wm. Urquhart

Nov. 15th - 9:07 P.M.

By: Sergt. Det. J.F. MacIntyre.

This is the true and correct copy of the original referred to in the affidavit of John Kissler sworn before me on the 26th day of November 1952.
A.D. 1952
Dorothy E. Bezman
Commissioner of the Superior Court of the State of California
DOROTHY E. BEZMAN
Commissioner of the Superior Court of the State of California

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Nov. 15th, 1971 - 9:15 P.M.

92

Statement of Roy Ebsary, age 59 yrs., residing at 126 Rear Argyle St.
 Sdney - Warned:

I remember one night myself and Jimmie McNeill were at the State Tavern. We were going home down George St. across the bridge in Wentworth Park up to Crescent St.

Q. What happened
 we

A. When we were almost over to the corner of South Bentinck St. 2 chaps who were behind us came around the sides 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 out our pockets so we turned out our pockets. The short fellow tried to take my ring off my finger while the tall fellow had his arm around the other fellows throat (Jimmies) and had him on the ground. When he tried to get my ring I was not well. I tried to wrestle him. He slung 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 fellow and he dropped Jim and ran off with the other fellow.

Q. Did you stab the man you were wrestling with

A. Hell no. Why would I stab him

Q. How old were these fellows

A. Young men - one fellow was tall. I had to look up at him

Q. What were they wearing

A. I would not be able to tell you

Q. What nationality were they

A. I believe Canadian. I asked them where they were from when they asked us for the money and they said Truro

Q. Were they white or colored

A. Well the tall fellow I seen his face - I thought he was white

Q. What about the short fellow

A. I would say he was white too

Q. Where did you go then

A. I went home

Q. Where did Jimmie go

A. He went to my place for a few minutes and then he went home to Hardwood Hill

Q. When did you see Jimmie again

A. The next day - him and his father

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SUBJECT

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CASE No.

Continued - page 2---

Did he tell you the Seale Boy had died
No. I can't recall

Do you carry a knife
No

Does Jimmy still come to your house
No. I have not seen him for a long time. He was not a regular
caller at my house

Have you being to his house
Once

Can you tell me when this disturbance took place on Crescent St.
After 11 P.M.

What month
In May, the same night this boy was stabbed

What were you wearing that night
A reversible top coat - blue.

Signed: Roy N. Ebsary

Address: Det. Sgt. M.J. McDonald

Nov. 15th - 10:10 P.M.

: Sergt. Det. John F. MacIntyre.

..... Court
19 No.

This is the paper writing marked "L"
referred to in the affidavit of John F. MacIntyre
Sworn before me this 16th day of July 1982
A.D. 1982
Mawthly L. Deegan
A Commissioner of the Supreme Court of
Nova Scotia.

DOROTHY L. BELANDER
A Commissioner of the Supreme
Court of Nova Scotia

Exh. "M"

Nov. 15, 1971 - 9:55 P.M.

Statement of Greg Allan Ebsary, age 17 yrs.
residing at 126 Rear Argyle St., Sydney - Married:

Q. Do you know James McNeil
A. Yes

Q. Where does he live
A. Off Hardwood Hill near the cemetery

Q. Were you ever at his house
A. Yes, once

Q. What for
A. I had to go up and get him for my mother

Q. Where did you take him
A. To the Wandlorn Motel

Q. What took place there
A. My mother and him talked. She told him not to come
back any more. He does a bit of drinking

Q. He goes to your house quite often
A. He has not been there for a long while

Q. When did you pick him up at his house
A. About 2 months ago. I am not definite

Q. What was the conversation about in the car
A. She just said it would be better if Jim did not come
back any more

Q. Was there any conversation about a (blank) at the Park
A. No

Q. Did you tell Jim McNeil if he told the police what
happened he would have to go to Court?

A. I could remember at the time
Q. Was there any conversation about the following
A. I am not sure, would have to go to Court, if he,
Jim would go to Court, I am not sure.

Q. Did you see Jim McNeil at the time of the following
deposition the 15th of Nov. 1971?
A. Yes.

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CITY OF SYDNEY POLICE DEPARTMENT

CONTINUATION REPORT

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CASE No.

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Q. Did he talk to your father

A. Yes

Q. Did he tell him Seale was dead

A. I don't know what they talked about

A. I don't know what they talked about

Q. Did you know your father and Jimmie were attacked that night on Crescent St. - the same night as the Seale stabbing

A. I found out about a week after

Q. Who told you

A. My mother said they were attacked

Q. By whom

A. 2 fellow were going to beat them up for cigarettes or something

Q. Did you ask your father

A. No I never said anything about it.

Signed: Greg A. Ebsary

Witness: Cpl. G.A. Taylor

Nov. 15th - 10:20 P.M.

By: Sargt. Det. J.F. MacIntyre.

..... Court
19 No.....

This is the paper writing marked "M" referred to in the affidavit of Walter Fraser Mac Intyre sworn before me this 26 day of July A.D., 1982
Blair H. L. DeGross
A Commissioner of the Supreme Court of Nova Scotia.

JOHN H. L. DEGROSS
A Commissioner of the Supreme Court of Nova Scotia

SEARCHED
INDEXED

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, WILLIAM URQUHART, MAKE OATH AND SAY AS
FOLLOWS:

1. THAT I am presently the Inspector in charge of the Detective Section of the City of Sydney Police Department.
2. THAT in 1971, I was a Sergeant of Detectives with the City of Sydney Police Department.
3. THAT on the 4th day of June, 1971, I witnessed the taking of a statement, a typed copy of which is annexed hereto as Exhibit 'A', at Louisbourg from one Maynard Vincent Chant.
4. THAT when Exhibit 'A' was taken, all persons whose names appear on the last page thereof were present for the entire interview.
5. THAT at no time did anyone in my presence or to the best of my knowledge make any threats or promises or offer any inducements to Mr. Chant to have him give Exhibit 'A' or to testify in a particular manner in any of the subsequent proceedings.
6. THAT on the 4th day of June, 1971, I witnessed the taking of a statement, a typed copy of which is attached hereto as Exhibit 'B', from one John Louis Pratico.

7. THAT at no time did anyone in my presence or to the best of my knowledge make any threats or promises or offer any inducements to Mr. Pratico to have him give Exhibit 'B' or to testify in a particular manner in any of the subsequent proceedings.
8. THAT on the 17th day of June, 1971, at approximately 8:15 p.m., I took a statement, a typed copy of which is attached hereto as Exhibit 'C', from one Patricia Harris.
9. THAT on the 18th day of June, 1971, at approximately 1:20 a.m. I took a second written statement, a copy of which is annexed hereto as Exhibit 'D', from the aforementioned Patricia Harris in the presence of Detective Sergeant John F. MacIntyre as he then was.
10. THAT I do not recall whether anyone accompanied Patricia Harris to the police station nor whether any of her relatives were present during the times when Exhibits 'C' and 'D' were taken.
11. THAT at no time did anyone in my presence or to the best of my knowledge make any threats or promises or offer any inducements to Patricia Harris to have her give either Exhibit 'C' or 'D' or to testify as she did in any subsequent proceedings.
12. THAT in 1971, I had no knowledge of a person named Roy Newman Ebsary, until on or about the 15th day of November, one James William MacNeil reported that he had seen Ebsary stab the victim Seale.

SWORN TO at Sydney
in the County of Cape
Breton, Province of
Nova Scotia, this 56th
day of July 1982, A.D.
before me

William Urquhart

William Urquhart

WILLIAM URQUHART