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#12

SDS Case Number 87-312

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

VOLUME I

MEDIA POOL COPY

Held: September 9, 1987

At: St. Andrew's Church Hall
Bentinck Street
Sydney, Nova Scotia

Before: Chief Justice R. A. Hickman, Chairman
Assoc. Chief Justice L. A. Poitras, Commissioner
Hon. G. T. Evans, Commissioner

Counsel: George MacDonald, Q.C., Wylie Spicer, & David Orsborn:
Commission Counsel
Clayton Ruby, Ms. Marlys Edwardh, & Ms. Anne S. Derrick:
Counsel for Donald Marshall, Jr.
Michael G. Whalley, Q.C.: Counsel for City of Sydney
Ronald N. Pugsley, Q.C.: Counsel for John F. Urquhart
Donald C. Murray: Counsel for William Urquhart
Frank L. Elman, Q.C., & David G. Barrett:
Counsel for the Donald MacNeil estate
Jamie W. S. Saunders, & Darrel I. Pink:
Counsel for Attorney General
James D. Bissell: Counsel for the R.C.M.P.
Al Pringle: Counsel for Correctional Services Canada
William L. Ryan: Counsel for Evers, Green and McAlpine
Charles Broderick: Counsel for Carroll
S. Bruce Outhouse: Counsel for Wheaton & Scott
Guy LaFosse: Counsel for Davies
Bruce H. Wildsmith: Counsel for Union of N. S. Indians
Assisted by Daniel Christmas
E. Anthony Ross, & Kevin Drolet: Counsel for Oscar N. Seale
E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

Court Reporters: J. Graham Robson, & Judith M. Robson, OCR, RPR

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COURT REPORTER'S CERTIFICATE AA

1
INQUIRY OPENED AT 10:03 o'clock in the forenoon on
Wednesday, the 9th day of September, A.D., 1987 at
Sydney, County of Cape Breton, Province of Nova Scotia

1 THE CLERK:

2 Mr. Chairman, Commissioners, Counsel, Ladies and Gentlemen,
3 the following is the Notice of Inquiry:

4 The Royal Commission on the Donald Marshall, Junior, Prosecution
5 will commence public hearings at ten o'clock a.m. on Wednesday,
6 September the 9th, 1987, in the lower hall, St. Andrew's Church
7 Hall, on Bentinck Street, in the City of Sydney, in the Province
8 of Nova Scotia. This Notice of Inquiry is issued pursuant to
9 the Rules of Practices and Procedures adopted by the Royal
10 Commission on the Donald Marshall, Junior, Prosecution.

11 MR. CHAIRMAN:

12 Good morning ladies and gentlemen. I welcome you to the first
13 day of the public Hearings of the Royal Commission on the Donald
14 Marshall, Junior, Prosecution. I would like to introduce my
15 fellow Commissioners. Seated to my right is Associate Chief
16 Justice Lawrence Poitras from the Superior Court of Quebec and
17 on my left is the Honourable Mr. Justice Gregory T. Evans of the
18 High Court of Ontario.

19 In Sydney, Nova Scotia, we will hear a large number of
20 witnesses who will testify concerning the circumstances surrounding
21 the death of Mr. Sanford William Seale on May 28th, 1971, and
22 subsequent charging, prosecution and conviction of Donald Marshall,
23 Junior of the non-capital murder of Sanford Seale.

24 We intend to conduct all the public hearings while in Sydney
25 at St. Andrew's United Church during weekdays from ten a.m. to

OPENING REMARKS, by the Chairman

1 five p.m. It is likely that the hours of sittings on Fridays
2 will be from eight a.m. until eleven-thirty a.m. in order to
3 accommodate travel arrangements. Thirty-two hearing days are
4 scheduled for Sydney which will take us to mid-November. A
5 daily recess of the Hearings is scheduled from twelve-thirty
6 p.m. until two p.m., although some flexibility may be exercised
7 when it is deemed necessary to give counsel the opportunity to
8 complete questioning of a witness. After the conclusion of the
9 Sydney sittings, we will hear further evidence in Halifax, the
10 precise particulars of which will be available before the
11 conclusion of the Sydney hearings. We anticipate, however,
12 that the Halifax sittings will begin in late November.

13 Since the Commission was created in October, 1986, Commission
14 staff have been actively engaged in collecting information
15 relevant to our Terms of Reference, much of which will be
16 presented today and as the Hearings progress in the form of
17 exhibits.

18 We do recognize the complexity of the job that we have been
19 given and it is our profound wish that our findings and recommenda-
20 tions be timely and based on the most expert advise available.
21 To that end, we are conducting research on issues which we have
22 judged to be crucial to properly completing the task before us.

23 While it is extremely important there be a public airing of
24 the evidence, we are mindful that this matter has already been
25 tried several times. It is not our intention to hold yet another

OPENING REMARKS, by the Chairman

1 trial but in order to make meaningful recommendations to
2 Government, the Commission must necessarily review the actual
3 circumstances of the Donald Marshall case.

4 As stated in the Order in Council by which we were established,
5 we are to make

6 "... recommendations to the Governor in Council
7 respecting the investigation of the death of
8 Sandford William Seale on the 28th-29th day of
9 May, 1971; the charging and prosecution of
10 Donald Marshall, Jr., with that death; the
11 subsequent conviction and sentencing of Donald
12 Marshall, Jr., for the non-capital murder of
13 Sandford William Seale for which he was
14 subsequently found to be not guilty; and such
15 other related matters which the Commissioners
16 consider relevant to the Inquiry".

17 These Terms of Reference, therefore, include the murder
18 investigation, the charging of Mr. Marshall, the conduct of the
19 trial and the appeal, Mr. Marshall's years in prison, the
20 eventual acquittal by the Nova Scotia Court of Appeal and the
21 process through which compensation was granted to him in 1984.
22 The R.C.M.P. reinvestigations of Mr. Seale's murder will also
23 be reviewed. This will cover the period from the time the
24 date of Mr. Seale's death in 1971 to the time this Royal
25 Commission was appointed.

26 In order to develop meaningful recommendations, all
27 contributing factors must be carefully and critically examined
28 in the context of the current state of administration of justice
29 in Nova Scotia. As I indicated in my opening statement at the
30 Hearings held in May, to consider the matter of funding, we will

OPENING REMARKS, by the Chairman

1 also examine among other things, the role of the Attorney
2 General as a member of Cabinet, the relationship of Crown
3 prosecutors with defense counsel and with the police, as well
4 as related matters. In addition, I advised that we intend to
5 give consideration to the allegations that minorities of this
6 Province are not treated equitably by the Justice system. It
7 is our ultimate aim to make recommendations which will ensure
8 that the unfortunate events surrounding Mr. Marshall will not
9 be repeated; to do this we must satisfy ourselves that the
10 present state of the administration of criminal justice in Nova
11 Scotia is sound. We will not avoid a discussion of these
12 issues.

13 The Commission has given full standing to the following
14 parties to appear in these Hearings:

15 Donald Marshall, Junior
16 John F. MacIntyre
17 William Urquhart
18 City of Sydney Police Commission
19 The Estate of Donald C. MacNeil, Q.C.
20 Royal Canadian Mounted Police
21 Correctional Service of Canada, National Parole Board
22 (Department of Solicitor-General of Canada)
23 Attorney General of Nova Scotia and the Department of the
24 Attorney General
25 Oscar Nathaniel Seale and Black United Front of Nova Scotia
Union of Nova Scotia Indians
R.C.M.P. Officers Adolphus Evers, Richard McAlpine and
Gary Green
Staff Sergeant James Carroll, R.C.M.P.
Staff Sergeant H. F. Wheaton, R.C.M.P.
Inspector D. B. Scott, R.C.M.P.
Sergeant Herb Davies, R.C.M.P.

Observer status has been granted to the Police Association of
Nova Scotia and to the Nova Scotia Branch of the Canadian Bar

1 Association. Because of the necessity of having a full and
2 fair inquiry into the issues before us, the Province of Nova
3 Scotia has agreed to pay the legal fees of several of the
4 parties who have been granted standing.

5 The Royal Commission has adopted Rules of Procedure which
6 will be followed throughout. The Rules require that counsel
7 for the Commission will be responsible for the calling of
8 witnesses and the order in which witnesses will be called.
9 Counsel for the Commission will conduct examination-in-chief,
10 while counsel for interested parties may cross-examine all
11 witnesses. The order of appearance by other counsel has been
12 established. Commission counsel will also have the right to
13 re-examine witnesses. While the Rules of Procedure in a court
14 of law may not apply to the same degree before this Commission,
15 I will, as Chairman, endeavour to ensure that a witness's
16 evidence is relevant and that there is no unnecessary repetition.

17 Extremely important public issues will be aired at these
18 Hearings and it is our intention to air them fully but fairly.
19 However, we must all remember, particularly in the Sydney phase
20 of the Hearings which is dealing almost exclusively with the
21 1971 incident, that this incident took place many years ago.
22 Many of the witnesses who will be appearing before us are
23 unaccustomed to the glare of publicity and may find it an
24 extremely trying experience. Their privacy and their difficulties
25 should be respected. I direct these comments particularly to

1 representatives of the media.

2 Before I ask counsel for the Commission to begin his opening
3 statement, I would like to thank, in particular, the people at
4 St. Andrew's United Church for their cooperation and continuing
5 assistance in allowing us to use their Church Hall for these
6 Hearings. Their help is very much appreciated.

7 Mr. MacDonald.

8 MR. MacDONALD:

9 Thank you, My Lord. I'm wired for sound. You'll have to remind
10 me now and then that there's a switch here I have to turn on.

11 Mr. Chairman, and Commissioners, as the Chairman indicated
12 in the statement which he just read, this Commission is required
13 to make recommendations to the Governor of Counsel of the province
14 respecting the investigation and death of Sanford William Seale.
15 The charging, prosecution, conviction and sentencing of Donald
16 Marshall, Junior as a result of that death and such other
17 related matters which you consider relevant. In the opening
18 statement of the commissioners which was read by the chairman
19 at the funding application heard in Halifax on May 13th of
20 this year. You set out in general terms your interpretation
21 of the mandate given to you and summarized your views as follows
22 and I quote from that eariler statement:

23 "On the basis of the understanding what happened to
24 Donald Marshall, Junior, and after having analyzed
25 the present functioning of the Criminal Justice system
in Nova Scotia, we will make recommendations for the
future which are designed to increase the confidence of

OPENING REMARKS, by Mr. MacDonald

1 all Nova Scotians in the system of administration of
2 Justice."

3 In performing our task as Commission Counsel today, we have
4 directed our attention to gathering the necessary evidence,
5 to place before you to enable you to answer the following
6 questions:

7 First, why did Donald Marshall, Junior, spend eleven years
8 in prison for a crime for which he was subsequently found to
9 be not guilty, and

10 Second, what if any changes must be made to the system of
11 administration of justice in this Province to prevent the
12 reoccurrence of such an event.

13 The tragic event which took place in Wentworth Park on the
14 night of May 28th, 1971, occupied but a few minutes but within
15 the legal system, that event spawned an incredible response
16 which has continued to the present day. From those few minutes
17 have come four trials, three appeals, a reference to the Nova
18 Scotia Court of Appeals and two Royal Commissions.

19 However, the magnitude of the legal response can in no
20 way match the human tragedies that have been caused, both by
21 the event itself and by the seemingly endless questioning and
22 re-questioning of those involved both directly and indirectly.

23 Commission Counsel have during the course of our investigation
24 become painfully aware of the hurt that has been suffered by
25 various people and of the natural reluctance of witnesses to
testify yet again.

1 We have also heard frequent statements which lead us to
2 conclude that there is a perception among many people that
3 problems and flaws exist within the justice system and the
4 system of administering justice in Nova Scotia.

5 As we embark on these Hearings, therefore, it seems appropriate
6 to remind ourselves of two of the fundamental principles which
7 have been and must continue to be cornerstones of our justice
8 system. These are quotations, My Lord, taken from cases I'm
9 sure you are very familiar with and I -- given a few moments,
10 you'd probably find cases of your own where you have quoted
11 statements -- these particular statements. The first is taken
12 from a decision in 1924 when Lord Heward, the Chief Justice,
13 said this:

14 "A long line of cases shows that it is not merely of
15 some importance but is of fundamental importance that
16 justice should not only be done but should manifestly
17 and undoubtedly be seem to be done. Nothing is to be
18 done which creates even a suspicion that there has been
19 an improper interference with the course of justice."

20 And the second quotation is from the Supreme Court of Canada in
21 a very famous case dealing with the Bill of Rights and dealing
22 with a native Indian of Canada, the very famous "Dry Bones"
23 case and in that case, interpreting what was said in the
24 Bill of Rights, Mr. Justice Ritchie noted:

25 "The right which is here at issue is 'the right of the
individual to equality before the law and the protection
of the law.'"

He then referred to a judgement in the Court of Appeal of
British Columbia where these words were interpreted to mean

OPENING REMARKS, by Mr. MacDonald

1 "a right of every person to whom a particular law relates or
2 extends, no matter what may be a person's race, national origin,
3 colour, religion, or sex, to stand on an equal footing with
4 every other person to whom a particular law relates or extends
5 and the right to protection of the law."

6 Subsequently, My Lord, this principle has been enshrined
7 in our Charter of Rights, of course, in Section 15.1 which
8 reads:

9 "Every individual is equal before and under the law
10 and has the right to the equal protection and equal
11 benefit of the law without discrimination and in
12 particular without discrimination based on race,
national or ethnic origin, colour, religion, sex, age
or mental or physical disability."

13 Commission Counsel have been given the responsibility of
14 ensuring that all issues are considered by the Commission and
15 that all relevant and necessary evidence is presented to the
16 Commission. We have concluded that in order for you to
17 appreciate fully the issues and the individuals involved, it
18 is necessary to commence by reviewing in detail the May 28th,
19 1971, incident itself. Hopefully this will be the last time
20 such an examination will be necessary. We believe that only
21 after a critical examination of the incident itself will all
22 the later events be able to be properly placed in perspective.

23 Having considered the events, evidence will then be lead of
24 the subsequent events and activities which occurred culminating
25 with the conviction of Donald Marshall, Junior, of the murder of

OPENING REMARKS, by Mr. MacDonald

1 Sandy Seale. For the first time, evidence of some of the key
2 players in this tragedy will be given publically and be subject
3 to scrutiny.

4 It must be appreciated that witnesses will be testifying to
5 circumstances over sixteen years old. Human memory being what
6 it is many details will have been forgotten and over time, the
7 mere repetition of certain facts may have lead to their
8 acceptance as truth. In addition to the lapse of time, the
9 age and emotional maturity in 1971 of many of the witnesses
10 must be considered when assessing the testimony given by them
11 at that time.

12 Further we anticipate that on some points, although memories
13 may be clear, there will be obvious conflict in the testimony
14 to be presented. All of these facts will make your task as the
15 finders of fact extremely difficult.

16 As the evidence will disclose, a very short time after Donald
17 Marshall, Junior, was convicted, the Sydney Police were contacted
18 by an eye witness to the event and advised that Mr. Marshall had
19 not committed the murder. Evidence of the subsequent activities
20 of the Sydney Police and the Royal Canadian Mounted Police
21 following this startling conclusion will be presented to you.

22 At the conclusion of this evidence, the Sydney phase of
23 the hearings will come to an end. We anticipate the evidence
24 to be lead during the Sydney phase and we'll require approximately
25 twenty-five to twenty-eight sitting days, and that with

11
OPENING REMARKS, by Mr. MacDonald

1 necessary adjournments, this phase of the Hearing is likely to
2 last until approximately mid-November.

3 At the present time we plan to call forty-six witnesses
4 in this phase of the Hearing and this number may be increased
5 or reduced as necessary. In the event changes are made, we will
6 provide as much advance knowledge as possible to all counsel.
7 I should add, My Lord, a list of all witnesses and a proposed
8 chronology of calling those witnesses has been provided to all
9 counsel for the various parties.

10 Included among the witnesses to be called during the Sydney
11 phase are at least two persons who reside beyond the jurisdiction
12 of Nova Scotia and who are not willing to come to Sydney to
13 testify. We are planning to arrange for their testimony to be
14 taken by means of a video hook-up which will allow for full
15 visual cross-examination of those people by all counsel for
16 interested parties.

17 When the hearings resume in Halifax, evidence will be
18 introduced dealing with the events which took place after
19 December, 1971. This will include an examination of Mr. Marshall's
20 experiences in prison, subsequent attempts to have the Sydney
21 Police and the R.C.M.P. re-investigate the events leading to his
22 conviction and the ultimate re-investigation by the R.C.M.P.
23 which lead to the Minister of Justice for Canada ordering the
24 Nova Scotia Supreme Court, Appeal Division, to conduct a re-
25 hearing. The events surrounding the re-hearing and the

OPENING REMARKS, by Mr. MacDonald

1 circumstances leading to payment of compensation to Mr. Marshall
2 will be examined in detail.

3 During the Halifax phase of the Hearing, a review of the
4 administration of justice system in Nova Scotia from the time
5 of the occurrence to the present will be carried out. At
6 the Halifax Hearing evidence of various expert witnesses may
7 be presented; indeed, throughout the Hearings, evidence of
8 expert witnesses may be presented.

9 A statement detailing the evidence to be introduced during
10 the Halifax phase of the Hearing will be presented by Commission
11 Counsel at the opening of those Hearings.

12 While generally we have attempted to organize the evidence
13 in a chronological order, you will appreciate that the involve-
14 ment of some witnesses spans a long period of time. To avoid
15 recalling such witnesses, we have decided that each witness will
16 present all relevant evidence when called. While this will
17 distort to some extent the flow of the story, we consider it
18 will be less disruptive over-all than repeated recalling of
19 those witnesses.

20 Insofar as possible, it is our intention to put to each
21 witness any evidence of which we are aware that will be presented
22 by subsequent witnesses and which may conflict with the testimony
23 of the witness giving evidence. If conflicting evidence of which
24 we were not previously aware is introduced following the
25 testimony of any witness, we will be prepared with your permission

OPENING REMARKS, by Mr. MacDonald

1 to recall that witness and provide a full opportunity to
2 address any conflict which arises.

3 I would be remiss if I did not, at the commencement of these
4 Hearings acknowledge the cooperation and courtesy which has been
5 afforded to us by those parties who have been granted standing
6 and their counsel. With very few exceptions, witnesses and
7 documents have been made available to Commission Counsel and
8 this has greatly facilitated the task of preparing for these
9 Hearings.

10 Of some disappointment to us is the fact that our requests
11 to interview Staff Sergeant Harry Wheaton and Corporal Gary
12 Green of the R.C.M.P. have been denied. We understand that
13 refusal is based on legal advise given to these individuals
14 by their own counsel to the effect that they are not legally
15 obliged to meet with us prior to their giving evidence at the
16 Hearing. Fortunately no other person who we asked to see
17 relied on such a technicality. Staff Sergeant Wheaton played
18 a major role during the 1982 R.C.M.P. re-investigation which
19 lead to the ordering of the re-hearing and the ultimate release
20 of Mr. Marshall. In the mid-1970's Corporal Green met with
21 Donna Ebsary and subsequently with Sydney Police representatives
22 and his superiors but no formal re-investigation occurred at
23 that time.

24 While we have some idea of the evidence which is likely to
25 be given by these two witnesses at the Hearing, we consider it

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1 | unfortunate that we will not be -- that we will be required to
2 | conduct direct examination of them without the benefit of
3 | having had preliminary interviews and thereby obtain precise
4 | details of the evidence to be given.

5 | I must express my appreciation also to all those individuals
6 | who are not parties to these proceedings but who as witnesses
7 | and prospective witnesses have willingly met with us on one or
8 | more occasions. Many of these people have repeated their
9 | stories on numerous occasions in the past and to subject them
10 | to interviews and testifying yet again was almost too much to
11 | ask; nonetheless, they have fully cooperated with Commission
12 | Counsel.

13 | I would like to mention also the efforts of the Commission
14 | staff in organizing and compiling the various volumes of exhibits
15 | which will be filed with you. I'm sure you'll appreciate when
16 | you see the volumes that such a task involves many hours of
17 | effort and I hope the manner in which they have been organized
18 | will facilitate your task.

19 | Our preparation for these hearings has been enhanced also
20 | by the work of our investigators, Jim Maloney and Fred Horne.
21 | They've located and interviewed numerous individuals particularly
22 | in the Sydney area and assisted counsel in identifying those
23 | witnesses whose evidence would be relevant to these proceedings.

24 | I mentioned earlier the human cost of this tragic incident
25 | and it's long history of proceedings. We have been made aware

OPENING REMARKS, by Mr. MacDonald

1 in stark terms of the hardships suffered by some individuals
2 and have been requested by some witnesses not to add to their
3 suffering if at all possible. Accordingly and in a very limited
4 number of cases, we will be asking you that the evidence of a
5 witness be heard in a closed session with all counsel and parties
6 being present but without the public and without the media. In
7 our opinion, the granting of such a request will not unduly
8 affect the public nature of these Hearings and will recognize
9 the high personal costs already paid by the individuals involved.

10 It will take many days of Hearings to present all the
11 relevant evidence to the Commission. I have no doubt that at
12 times the Hearings will become trying. At times, they'll
13 probably even become tedious. There are great expectations,
14 however, that ultimately you will be able to publish your
15 findings and proposed recommendations to answer questions which
16 have been asked many years including the following questions:

17 Are there deficiencies in the investigative process
18 followed by police and in particular, the procedures
followed when dealing with juveniles?

19 Is it time for reconsideration of and perhaps reform
20 of the current complex Rules of Evidence which govern
the conduct of criminal proceedings?

21 Do racism and discrimination influence the administration
22 of justice in Nova Scotia and if so, what safeguards can
be implemented to overcome this influence?

23 What are the duties and obligations of Crown Prosecutors?

24 What are the duties and obligations of defense counsel?

25 Are there any conflicts created because the chief law
officer of the Crown, the Attorney General, is also an

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1 elected politician, and if so, how may these be
2 lessened or eliminated?

3 This is not intended to be an exhaustive list of questions that
4 you will be answering but illustrative only.

5 I am confident that Your Lordships and all counsel and
6 parties present will give careful consideration and assistance
7 in the coming weeks to the investigation of these important
8 issues. Thank you.

9 MR. CHAIRMAN:

10 Mr. MacDonald, I propose for the record to have counsel indicate
11 -- to receive an indication from counsel present. So before we
12 proceed with the hearing of evidence, if you would indicate to
13 me and to us for the record who's appearing as counsel for the
14 Commission.

15 MR. MacDONALD;

16 Mr. Chairman, I'm, of course, appearing as Counsel for the
17 Commission and with me is Wylie Spicer and David Orsborn.

18 MR. CHAIRMAN:

19 Who is appearing for Donald Marshall, Jr.?

20 MR. RUBY:

21 I'm Clayton Ruby. This is Marlys Edwardh, and our counsel
22 required by the Rules of Nova Scotia Law Society for the opening
23 day is Anne Derrick. She also will be joining us throughout.

24 MR. CHAIRMAN:

25 John F. MacIntyre.

MR. PUGSLEY:

 Ronald Pugsley appearing for John MacIntyre.

OPENING REMARKS, by Mr. MacDonald

1 MR. CHAIRMAN:

2 And William Urquhart.

3 MR. MURRAY:

4 Donald Murray appearing on behalf of William Urquhart.

5 MR. CHAIRMAN:

6 The City of Sydney Police Commission.

7 (NO RESPONSE)

8 The estate of Donald C. MacNeil, Q.C.

9 MR. ELMAN:

10 Frank Elman and I'm assisted here by David G. Barrett.

11 MR. CHAIRMAN:

12 The Royal Canadian Mounted Police.

13 MR. BISSELL:

14 James Bissell and I'm assisted by Al Pringle

15 as well for the Correctional Services of Canada and the National
16 Parole Board.

17 MR. CHAIRMAN:

18 The Attorney General of Nova Scotia and the Department of the
19 Attorney General.

20 MR. SAUNDERS:

21 Yes, Mr. Chairman, Jamie Saunders and Darrel Pink.

22 MR. CHAIRMAN:

23 Oscar Nathaniel Seale and Black United Front of Nova Scotia.

24 MR. ROSS:

25 Anthony Ross appearing for Oscar Nathaniel Seale and with me is

OPENING REMARKS, by Mr. MacDonald

1 Kevin Drolet and with reference to the Black United Front with
2 me is Jeremy Gay.

3 MR. CHAIRMAN:

4 The Union of Nova Scotia Indians.

5 MR. WILDSMITH:

6 I'm Bruce Wildsmith and with me today is Mr. Dan Christmas. Mr.
7 Christmas is not a lawyer. He is the executive assistant to the
8 President of the Union of Nova Scotia Indians and he will on occasion
9 be sitting in my absence.

10 MR. CHAIRMAN:

11 The R.C.M.P. officers, Aldophus Evers, Richard McAlpine, and Gary
12 Green.

13 (NO RESPONSE)

14 Staff Sergeant James Carroll, R.C.M.P.

15 MR. BRODERICK:

16 Charles Broderick, My Lord, representing James Carroll.

17 MR. CHAIRMAN:

18 Staff Sergeant H. F. Wheaton, R.C.M.P.

19 (NO RESPONSE)

20 Inspector D. B. Scott, R.C.M.P.

21 (NO RESPONSE)

22 Sergeant Herb Davies, R.C.M.P.

23 (NO RESPONSE)

24 MR. MacDONALD:

25 My Lord, I would also like to introduce to you sitting with Counsel

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1 | this morning, Allan Nicholson, who's at the back of the room.
2 | Mr. Nicholson is representing Roy Ebsary while Mr. Ebsary is
3 | giving evidence.

4 | I would like to advise the Commission of the order of Examination
5 | that is going to be followed so that you will be aware of that. A
6 | meeting was held some time ago of all Counsel and parties in an
7 | attempt to agree on the order to be followed, recognizing that there's
8 | no necessarily logical procedure to be followed and -- but having
9 | to have something. A consensus was reached Mr. Chairman and I'll
10 | read that into the record if I may:

11 | As you indicated in your statement,
12 | the Direct Examination of all
13 | witnesses will be conducted by
 Commission Counsel.

14 | Following that the order of Cross-Examination will be as I'm
15 | to read it to you with this exception:

16 | In the event any party is giving
17 | evidence, the Counsel representing
18 | such party at his or her option
 will have the election of going
 last.

19 | Now with that exception, here is the order that is going to be
20 | followed: Following Direct Examination by Commission Counsel, Counsel
21 | for Donald Marshall, Jr., will Cross-Examine, next will be the
22 | City of Sydney Police Commission, then Counsel for John F. MacIntyre,
23 | Counsel for William Urquhart, Counsel for the Estate of Donald
24 | C. MacNeil, Counsel for the Department of the Attorney General,
25 | Counsel for the R.C.M.P., and the Correctional Services of Canada,
Counsel for the individual R.C.M.P. Officers and we've written them

OPENING REMARKS, by Mr. MacDonald

1 | in this order: Carroll, Wheaton, Scott, Davies, Evers, McAlpine,
2 | and Green, and you will appreciate that on some occasions one
3 | lawyer is representing two or three of those individuals, then
4 | Counsel for Oscar Seale and The Black United Front, and finally
5 | the Union of Nova Scotia Indians. Following which Commission Counsel,
6 | if they wish, would have the opportunity to re-examine.

7 | Now Mr. Chairman, we have filed and marked various Exhibits.
8 | They have been bound in volumes and I would just read into the record
9 | again what is obtained in each volume. I believe a copy of each
10 | volume is made available to each of Your Lordships. Volume 1 which
11 | which would be Exhibit one--So we've started the Exhibits with
12 | Volume one. Volume one would contain the transcripts of the evidence
13 | given at the Donald Marshall preliminary inquiry, a statement of
14 | facts which was filed by the Crown Prosecutor at the -- prior to
15 | the trial of Mr. Marshall, and the commencement of the transcript
16 | of the trial of Mr. Marshall, that's in Volume one.

17 | In Volume two the concluding evidence from the Marshall trial and
18 | the transcript of the Marshall Appeal that was heard in January of
19 | 1972.

20 | Volume three contains the reference and as does Volume four which does
21 | contains factums filed by Counsel on the reference and the reason
22 | for judgement of the Nova Scotia Court of Appeal. Volume four also
23 | contains the transcript of the preliminary inquiry for Mr. Ebsary.

24 | Volume five contains the transcript of the evidence of the first
25 | trial of Mr. Ebsary.

OPENING REMARKS, by Mr. MacDonald

1 Volume six contains the transcript of his second trial in part and
2 Volume seven continues with the second trial.

3 Volume eight contains the third Ebsary trial as does Volume nine,
4 continued on, as does Volume ten in part, and Volume ten also refers
5 to the Ebsary Appeal.

6 Following that there are various volumes which have evidence of
7 documents that will be referred to with various witnesses and that
8 is organized in the same fashion as the witnesses are to be called.

9 So Volume 11 contains documents referenced to Roy Ebsary,
10 James MacNeil, Robert MacKay, and Marvel Mattson. Those would be
11 the -- As presently advised those would be the first four witnesses
12 in that order.

13 Volume 12 contains documents referenced to Maynard Chant,
14 Richard Walsh, John Mallowney, Howard Dean, Michael MacDonald,
15 John Pratico, Raymond Poirier, and Doctor Mian.

16 Volume 13 contains evidence for Doctor Naqvi, Terrance Gushue,
17 Patricia Harris, Mary Csernyik, Catherine Soltesz, Barbara Floyd,
18 Sandra Cotie, Wayne Magee, and Lawrence Burke.

19 Fourteen is Beudah Chant, Roy Gould, Mary Ebsary, Gregory Ebsary,
20 Eugene Smith, and William Urquhart.

21 Fifteen is John MacIntyre and Donna Ebsary.

22 Volume 16 is a volume containing documents contained in the
23 City of Sydney Police vault.

24 Volume 17 contains notes that were made by the Crown Prosecutor
25 Mr. Edwards and clippings taken from the Eskasoni Press.

OPENING REMARKS, by Mr. MacDonald

1 Volume 18 contains documents relating to the 1971 R.C.M.P.
2 investigation and documents relating to Roy Ebsary.

3 Nineteen contains the documents relating to the review and
4 re-investigation from January, 1982, to March, 1983.

5 Twenty contains the documents relating to the review and
6 re-investigation of May, 1983, to August, 1986.

7 Twenty-one is the document containing all those documents that
8 are compiled by Staff Sergeant Wheaton in 1982, and those have
9 been introduced as Exhibits one through twenty-one.

10 Also marked as an Exhibit (I think it's Exhibit 22.) is this
11 large plan to my left, to your right, which is a plan prepared by
12 Carl MacDonald, a local surveyor. Mr. MacDonald prepared the plan
13 that was used in the original trial of Mr. Marshall, and he had access
14 to the original document. At our request he has added to that to
15 show certain information that was not contained on the original plan,
16 for example, we have added the location of St. Joseph's Church,
17 rear Argyle Street, the Acadian Lines Bus Terminal and a couple of
18 other points that will become obvious as we go through the evidence.
19 Those are names that will come up from time to time. That has been
20 marked as Exhibit 22. Those are all of the Exhibits.

21 The first witness to be called, Mr. Chairman, is Roy Ebsary.

22 MR. CHAIRMAN:

23 Before you go on to that, copies of these Exhibits have been
24 distributed to all Counsel.

25 MR. MacDONALD:

Yes, My Lord, I believe so.

OPENING REMARKS, by Mr. MacDonald

1 MR. CHAIRMAN:

2 Fine.

3 MR. MacDONALD:

4 Now Mr. Ebsary is in rather frail health and if we could perhaps
5 take a break for a few minutes so that I can get him comfortably
6 seated at the witness table and resume at that time and perhaps
7 press on until twenty-thirty or so. I should also say, Mr. Chairman,
8 Mr. Ebsary is, I believe, seventy-five or seventy-six and if we could
9 restrict any examination of him until-between an hour and a half and
10 two hours at a stretch I think that would be very helpful for him.

11 MR. CHAIRMAN:

12 We'll do our best to accommodate.

13 MR. MacDONALD

14 Thank you.

15 MR. CHAIRMAN:

16 Before we adjourn for ten minutes I -- simply for the record
17 we admit Exhibits one to twenty-one as filed by Commission Counsel
18 and Exhibit 22 the plan of Wentworth Park vicinity. So we'll
19 rise and you'll let us know when you're ready to continue.

20 HEARING ADJOURNED AT: 10:48 a.m., AND RECONVENED, 10:58.

21
22 MR. CHAIRMAN:

23 Mr. MacDonald.

24 MR. MacDONALD:

25 Perhaps it would be inappropriate for me to suggest that if

OPENING REMARKS, by Mr. MacDonald

1 Counsel wanted they could remove their jackets. It's very hot in
2 this room.

3 MR. CHAIRMAN:

4 I suspect that that's so. We'll put it this way, dress is
5 optional.

6 MR. MacDONALD:

7 Mr. Chairman, the first witness to be called will be Roy Ebsary.
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