RG 44
Vol 247
#3

MEDIA POOL COPY

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

Copy

INDEX - VOLUME I

OPENING REMARKS, by the Chairman 1

OPENING REMARKS, by Mr. MacDonald 6

Roy Newman Ebsary

By Mr. MacDonald 25

Video transcript 80

By Mr. Ruby 143

COURT REPORTER'S CERTIFICATE ..... AA

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

THE CLERK:

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

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

MR. CHAIRMAN:

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

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

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

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

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
> Sandford William Seale on the 28th-29th day of
> 8 May, 1971; the charging and prosecution of
> Donald Marshall, Jr., with that death; the
> 9 subsequent conviction and sentencing of Donald
> Marshall, Jr., for the non-capital murder of
> 10 Sandford William Seale for which he was
> subsequently found to be not guilty; and such
> 11 other related matters which the Commissioners
> consider relevant to the Inquiry".

12 These Terms of Reference, therefore, include the murder
13 investigation, the charging of Mr. Marshall, the conduct of the
14 trial and the appeal, Mr. Marshall's years in prison, the
15 eventual acquittal by the Nova Scotia Court of Appeal and the
16 process through which compensation was granted to him in 1984.
17 The R.C.M.P. reinvestigations of Mr. Seale's murder will also
18 be reviewed. This will cover the period from the time the
19 date of Mr. Seale's death in 1971 to the time this Royal
20 Commission was appointed.
21 In order to develop meaningful recommendations, all
22 contributing factors must be carefully and critically examined
23 in the context of the current state of administration of justice
24 in Nova Scotia. As I indicated in my opening statement at the
25 Hearings held in May, to consider the matter of funding, we will

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 administraton 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
John F. MacIntyre
16 William Urquhart
City of Sydney Police Commission
17 The Estate of Donald C. MacNeil, Q.C.
Royal Canadian Mounted Police
18 Correctional Service of Canada, National Parole Board
(Department of Solicitor-General of Canada)
19 Attorney General of Nova Scotia and the Department of the
Attorney General
20 Oscar Nathaniel Seale and Black United Front of Nova Scotia
Union of Nova Scotia Indians
21 R.C.M.P. Officers Adolphus Evers, Richard McAlpine and
Gary Green
22 Staff Sergeant James Carroll, R.C.M.P.
Staff Sergeant H. F. Wheaton, R.C.M.P.
23 Inspector D. B. Scott, R.C.M.P.
Sergeant Herb Davies, R.C.M.P.
24
Observer status has been granted to the Police Association of
25
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 Govenor 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
Donald Marshall, Junior, and after having analyzed
24 the present functioning of the Criminal Justice system
in Nova Scotia, we will make recommendations for the
25 future which are designed to increase the confidence of

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 magniture 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
justice should not only be done but should manifestly
and undoubtedly be seem to be done. Nothing is to be
16 done which creates even a suspicion that there has been
an improper interference with the course of justice."

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

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

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

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

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

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

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

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

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

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 deficiences 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

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.

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

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

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
witnesses will be conducted by
13 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
evidence, the Counsel representing
17 such party at his or her option
will have the election of going
18 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

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

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

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

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

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

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 Mullowney, 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.

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.

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
21 HEARING ADJOURNED AT: 10:48 a.m., AND RECONVENED, 10:58.
22 MR. CHAIRMAN:
23 Mr. MacDonald.
24 MR. MacDONALD:
25 Perhaps it would be inappropriate for me to suggest that if

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.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 ROY NEWMAN EBSARY, being called and duly sworn, testified as follows:
2 BY MR. MacDONALD:
3 Q. I'm going to be asking you questions, Mr. Ebsary, so would you
4 just tell the Commissioners here what your full name is?
5 A. I'm called the Reverend Captain Roy Newman Ebsary.
6 Q. And Mr. Ebsary, where do you live?
7 A. At the moment I'm boarding with Mrs. Sadie Short at 191 Vulcan
8 Avenue.
9 Q. Okay, and how long have you lived there?
10 A. I've been there since I left the hospital.
11 Q. Do you know when that was?
12 A. Approximately two months ago.
13 Q. When were you born, Mr. Ebsary?
14 A. When was I born.
15 Q. Yes.
16 A. In 1912.
17 Q. And where?
18 A. Do you think I'm senile or something?
19 Q. No, I certainly don't think that. When were you born? I'm sorry.
20 Where were you born?
21 A. St. John's, Newfoundland.
22 Q. And did you go to school in St. John's, Newfoundland?
23 A. Yes.
24 Q. For how many years?
25 A. Well, I went to grade twelve and then I went to sea for thirty year

1 Q. For thirty years?
2 A. Right.
3 Q. What sort of work were you doing at sea?
4 A. Well, I was doing -- I went from the engine room to the bridge.
5 Q. When did you stop going to sea?
6 A. When I was about sixty year old.
7 Q. When did you take up residence in Sydney?
8 A. When I first came to Sydney I didn't take up residence at the
9 time, but I first came to Sydney in 1939 in one of the
10 Newfoundland Canada steamship boats, but I used to come to
11 Sydney more often than I went to other ports, so the wife
12 wanted to come to Sydney. We moved to Sydney, I think it was
13 about in 1951, '52.
14 Q. And did you have children while you were living in Sydney?
15 A. Yeh, we had two and I adopted four.
16 Q. And the two natural born children were Donna and Greg. Is that
17 correct?
18 A. That's right. Yes.
19 Q. When you were living in Sydney did you work in Sydney also,
20 other than going to sea?
21 A. Well, after I left the boats I went -- When the wife said,
22 "That's your last goddamn boat," I went to work for the Isle
23 Royale -- with Gordon Elman at the Isle Royale Motel.
24 Q. Yes.
25 A. I worked with him in there for a few years, and when he fired
the whole lot of them in there he saved my bacon and he transferred

1 me down to the Hotel --
2 Q. The Isle Royale Hotel?
3 A. That's right.
4 Q. And how long did you work there?
5 A. About eight years I guess.
6 Q. What type of work were you doing?
7 A. Well, I'm the Chef.
8 Q. The Chef.
9 A. I mean a Chef, not a cook.
10 Q. Okay. You also worked at the Esplanade Grill for a little
11 while, didn't you?
12 A. Yeh, I -- Oh, yeh, and we were expecting Donna at the time.
13 The wife was carrying Donna and the doctors advised her at
14 the boat -- The doctors advised me to leave the boat until the
15 wife got over the trouble. I didn't know anybody in Sydney
16 and I happened to go into the Esplanade Grill and Steve Griffiths
17 was hiring me.
18 Q. And how long did you work the Esplanade Grill?
19 A. Possibly a year maybe.
20 Q. When did you stop working at the Isle Royale?
21 A. When I -- Wait now. Possibly around '58 or '59. I don't think
22 I went to work -- I retired because I was in the hospital with
23 pneumonia and when I came out of the hospital with pneumonia
24 like the doctors advised me to quit, so I retired. I was sixty
25 at the time.

1 Q. You were sixty when you retired from the Isle Royale Hotel?
2 A. Yeh, that's right.
3 Q. And that would be -- If you were born in 1912 that would be
4 what, 1972?
5 A. Yeh, around '72, I guess.
6 Q. Do you recall an occurrence, Mr. Ebsary, when you were arrested
7 by the Sydney Police for carrying a dangerous weapon?
8 A. Do I ever.
9 Q. And that involved a man named Tony Tratnick, didn't it?
10 A. Tony? Oh, yeh, Tony. Yes. Right. Yeh.
11 Q. What do you recall about that incident?
12 A. That was a damn foolish incident because we had the habit of
13 each one used their own knife.
14 Q. Each one of who?
15 A. Each one of the cooks, the chefs. You looked after your own
16 knife. That was practically. So I used to bring my knife home
17 every evening, back and forth, back and forth, back and forth,
18 right?
19 Q. Yes.
20 A. I took my knife that night to go down to run it over the grind-
21 stone to sharpen it. I don't know what ideas the wife got in
22 her head but evidently she called the police or something and
23 I got as far as Townsend Street when I was surrounded by the
24 police and they searched me and they found the knife and I was
25 charged with carrying a concealed weapon.

1 Q. And were you also charged at that time with being drunk?
2 A. I wasn't -- I wasn't aware that I was drunk.
3 Q. Okay. Just a moment. I want to show you some documents,
4 Mr. Ebsary.
5 MR. MacDONALD:
6 Volume 18 please.
7 BY MR. MacDONALD:
8 Q. I want to direct you, Mr. Ebsary, to a document which is found
9 in Exhibit 18.
10 A. Yeh.
11 Q. At page 34.
12 A. Right.
13 Q. And what that is, sir, is a copy of the Police Report in Sydney
14 on various activities they had with you over the years.
15 A. Yeh.
16 Q. And the first entry on that card is April 8 of 1970. Do you see
17 that?
18 A. 1970, yes.
19 Q. It says: "Section 85LC". That's the Liquor Control Act?
20 A. Right.
21 Q. And then on the same date: "Section 83 of the CC". That's the
22 Criminal Code?
23 A. Right.
24 Q. That's the event that involved you and Mr. Tratnick?
25 A. Yeh, they charged me a hundred dollars for carrying a concealed

1 weapon.
2 Q. Yes, and they also on the same date charged you with a charge
3 under the Liquor Control Act of being intoxicated. Is that
4 correct?
5 A. Well, I wasn't aware of that.
6 Q. You don't recall that?
7 A. I was aware that I paid the hundred dollars --
8 Q. Were you a fairly heavy drinker at that time?
9 A. No, I was never a heavy drinker.
10 Q. What type of drinking would you do, Mr. Ebsary?
11 A. I never drank to the extent that I didn't know what I was doing?
12 Q. Is that correct?
13 A. I made that a practice.
14 Q. Let me show you again in Volume 18, Exhibit 18, it's at page 85,
15 Mr. Ebsary. Now that is a report that was prepared by the
16 police.
17 A. Yeh.
18 Q. On April 8th of 1970. That's in connection with that incident
19 that we just discussed?
20 A. Yeh, well this -- Yeh, this is the incident we just discussed.
21 Q. Okay. Now let me just read that to you and get your comments
22 if I can.
23 A. All right.
24 Q. Okay?
25 A. Yes.

1 Q. It said: "I received" -- This is signed by Corporeal MacKay?
2 A. Yeh.
3 Q. "Received a call from Mrs. Ebsary."
4 A. Right.
5 Q. "Wanted the police to pick up her husband if they see him." "He
6 is supposed to be quite drunk and carrying a knife."
7 A. Right.
8 Q. "And is going looking for a Mr. Tratnik at 34 Charlotte" --
9 A. Tony was the Chef at the Isle Royale.
10 Q. "--who he had a falling out with today at work." Did you have
11 any arguement with Mr. Tratnik at work that --
12 A. Well, we did. It was over union matters.
13 Q. Was it?
14 A. Right.
15 Q. Now was it your intention when you left the home that day to
16 cause any harm to Mr. Tratnik with that knife?
17 A. I didn't --
18 Q. Did you have any intention to cause harm to him?
19 A. No, I certainly didn't and Tony wouldn't to me.
20 Q. All right, and then there's also on that page. This is a couple
21 of other police constables: "Searched the area and spotted
22 Mr. Ebsary at the corner of Charlotte and Townsend, stopped him,
23 and searched him and found a twelve inch butcher knife under
24 his belt". That's the one you said you were going to have
25 sharpened?

1 A. Right.
2 Q. All right. "I arrested him under those two sections we talked
3 about".
4 A. Right.
5 Q. "With him at the time was one Michael LeBlanc, age 17", who
6 worked with you at the Isle Royale. Do you remember
7 Michael LeBlanc?
8 A. No, I don't remember him but I guess he was one of the dish-
9 washers.
10 Q. Okay. Now --
11 A. And if I remember correctly he was living on Townsend Street.
12 Q. Now this says: "He", that's Mr. LeBlanc --
13 A. Yeh.
14 Q. --"said Ebsary had just called him and they were going to see
15 their boss Tony Tratnik?
16 A. Right.
17 Q. They had an arguement with him at work earlier?
18 A. Right.
19 Q. That's what you've just said. You did have an arguement?
20 A. Oh, yeh, we had an arguement over union matters.
21 Q. Did you used to carry knives with you?
22 A. I never made it a practice. The only knife I ever carried back
23 and forth was my own knife that I used.
24 Q. At work?
25 A. Yeh.

1 Q. And are you saying that the practice was each chef had his own
2 butcher knife that he would carry back and forth to work?
3 A. Well, they looked after their own knives.
4 Q. Okay. Do you recall any other incidents with the police in
5 Sydney, Mr. Ebsary, prior to, you know, the things that took
6 place in the '70's?
7 A. Yeh, I remember one morning I went to go down to the bank.
8 Q. When was this, any idea in time?
9 A. No, I haven't got any idea. It was a few years ago anyway.
10 I wanted to go down to the bank to draw some money and the
11 young fellow that was with me had a few belts under his belt
12 and he wanted to come into the bank with me. Well, he was the
13 sort of person to talk with, a buddy like that and I didn't
14 want that so I wouldn't allow him to come into the bank with
15 me so we stood on the corner and we were arguing about him coming
16 in and I'm not letting him come in and a policeman walked across
17 and arrested the two of us, so for one thing I was dowm in
18 the police station. The Sergeant who was in charge, he said,
19 "This man is not drunk." "Why did you bring him in for"?
20 They let me go.
21 Q. I just want to show you again, Mr. Ebsary, this card that's on
22 page 34, Volume 18, which is your arrest card from the Sydney
23 Police.
24 A. Oh, yes.
25 Q. You see it refers to an incident on May the 6th of 1970. That's

1 a Liquor Control Act problem as well.
2 A. Is that right?
3 Q. But you don't recall that, do you, or is that the one you just
4 talked about?
5 A. That's the one I just talked about.
6 Q. There's also a couple of incidents from 1978. Do you have any
7 recollection of anything back that far?
8 A. No, not that I can remember.
9 Q. That's what it says on my copy -- Oh, '58, I'm sorry. I said --
10 '58, that's what I meant to say and --
11 A. In '58?
12 Q. 1958.
13 A. Heavens I didn't know I was in Sydney in '58.
14 Q. Do you know Jimmy MacNeil, Mr. Ebsary?
15 A. Oh, quite well.
16 Q. When, did you get to meet him?
17 A. I met Judas one evening that I -- I dropped into the State
18 Tavern for a beer.
19 Q. When was that?
20 A. Oh, Christ, quite awhile ago. I met his father while we were
21 in there like, and --
22 Q. Where did MacNeil live when you knew him?
23 A. Rear George Street or what they called rear George Street.
24 Q. Where is that?
25 A. Well, you go partly up -- about halfway up George Street and

there's sort of a makeshift road runs down in a bit of a valley there like.

Q. When you say you go up George, are you heading up toward Hardwood Hill?

A. Oh, yes.

Q. And you --

A. After you go up Hardwood Hill?

Q. You're that far up, are you?

A. Oh, yes, right, and this makeshift road runs down a bit of a valley like going over toward another road, a road -- but the house where the MacNeil's lived was one of their own makeshift houses. Like it was about halfway between and that's where he lived.

Q. Did you know his father?

A. I've met his father, yes.

Q. And did you used to go and see his father from time to time?

A. Only once.

Q. When was that?

A. That was the night of the incident. That's where I spent that whole evening with that gentleman.

Q. Now when you say the night of the incident are you talking about the night Sandy Seale was stabbled?

A. Right.

1 Q. Okay. Tell us about that day that -- did Mr. Ebsary do you
2 recall that day?
3 A. Oh, yes, naturally.
4 Q. Do you have a clear picture of it in your mind?
5 A. You see, the anniversary of the sinking of the Bismark
6 was just about due, right. We sank the Bismark on the
7 26th of May.
8 Q. The twenty-sixth of May, what year please?
9 A. Forty-one.
10 Q. Okay.
11 A. Right.
12 Q. That anniversary is just about due?
13 A. Right, and my birthday was only a few days off.
14 Q. And when is your birthday again?
15 A. The second of June. You still think I'm senile, ah.
16 Q. No.
17 A. Well, why do you keep repeating it?
18 Q. Because I have time, I have trouble forgetting sometimes?
19 A. Oh, do you. That's the pair of us.
20 Q. Yeh, so your birthday was coming up. All right, go on from
21 there?
22 A. So the wife gave me a couple of bottles of wine for my birthday
23 right. And I decided to go over to the MacNeil house to see
24 the old man. And I went over shorty after supper. I had a
25 job to find the house but I stayed with that old man until

about eleven o'clock that night.

Q. Why did you go over to see him for the first time ever?

A. Well, we got to know each other, we got to know each other from meeting each other in the taverns. See the point.

Q. Okay. So you went to see him on that day. What, was this in the evening?

A. Oh, yes. Well, like I told you it was after supper.

Q. How long were you there?

A. I was there until about eleven-thirty that night.

Q. What took place then?

A. Jimmy came home and he had a drink of wine and he said he wanted to meet someone down at the State Tavern. Well, I said I'm on the way home, I'm going home now. And he said well, I'll walk down with yah. So we walked down that road that they live on, that far distant road, right.

Q. Rear George Street?

A. No, no. This other road that you walk towards to get at the house, right. And we walked down to the State Tavern but the State Tavern was closed as far as serving drinks was concerned. Still they said that I spent the evening at the State Tavern, which was a god damned lie.

Q. Don't worry about what anyone says though, Mr. Ebsary, I just want you to tell me what you did?

A. Yeh, but I want to tell you the truth.

Q. Okay, and I know that's what you want to do. So you walked

1 to the State Tavern and it was closed?
2 A. Yeh, well now it was, the doors weren't closed but they were
3 cut off from serving beer. You know as far as getting a beer
4 was concerned you couldn't get one.
5 Q. Okay.
6 A. So I couldn't have bloodly well drank eight or ten beer in
7 there. I wasn't there.
8 Q. Did you and Mr. MacNeil's father, did you drink the two bottles
9 of wine?
10 A. I don't know if we drank the two. I know the old man and I
11 did away with the first one. And then when Jimmy came home
12 he had a bang at the second one but actually I brought the wine
13 over for the old man anyway.
14 Q. All right. So you went to the State Tavern, you couldn't get
15 a beer, what took place after that?
16 A. Well, I didn't look for a beer.
17 Q. I'm sorry, I'm saying you went there and you couldn't get a
18 beer anyway?
19 A. Yeh, that's right.
20 Q. What took place after that?
21 A. Well, I decided to go home and Jim said I'll walk home with
22 yah. So we left the State Tavern and went along George, right?
23 Q. Yes.
24 A. Now I always took a short-cut even if I was coming from the
25 Isle Royale, through the Park, I cut off that long round, right.

1 Q. Yes.
2 A. And going through the Park it was a quicker way to get back
3 home.
4 Q. Let me just show you the plan that's been -- here -- this is
5 George Street you see in green and this is the Park that's
6 here with Wentworth Creek written on several parts and here
7 is Crescent Street, do you see it?
8 A. Yeh.
9 Q. And up on orange Bentinck Street and then into Rear Argyle.
10 And that's where you lived wasn't it, Rear Argyle?
11 A. Yeh, Rear Argyle.
12 Q. Now tell me again and I'll try and trace it for you. What
13 path you would normally take?
14 A. Well, say I'm leaving George Street or I'm leaving the State
15 Tavern.
16 Q. The State Tavern is up on George Street isn't it?
17 A. The State Tavern was at the corner of Falmouth and George.
18 Q. Okay, so you walked along George Street, did you?
19 A. Oh, yeh.
20 Q. All right, you tell me as I'm walking where you want to go?
21 You're going to go across the Park, are you?
22 A. Yeh, I'm going home.
23 Q. Would you cross the Park on these walks that I have go across
24 the bridge at the pond, is that what you would do?
25 A. Oh yes, you just go down over the the grade.

1 Q. Over the grade?
2 A. Which was the shortest.
3 Q. Now, is it your intention to walk up to Crescent Street and
4 then go home, is that what you're trying to do?
5 A. Right, sure.
6 Q. And is that the path you followed on that night?
7 A. Yes, that's right.
8 Q. Okay, what happened as you were walking that path?
9 A. Well, there was nothing happened as we were walking the path.
10 Q. Okay, just tell us what happened?
11 A. When we were up on Crescent Street and almost over to South
12 Bentinck, I heard footsteps behind us and there was two
13 fellas jumped around, jumped in front of us.
14 Q. Two fellas jumped in front of you?
15 A. Right.
16 Q. They came from behind you and jumped in front of you?
17 A. Yes, right.
18 Q. And what happened then?
19 A. They demanded everything we had on us and the bigger of the
20 two was flexing his muscles and telling us what he'd do to
21 us if we didn't dig out.
22 Q. What sort of things was he telling you he would do to you?
23 A. Well, he was described -- his bloody big muscles and a big
24 muscular guy, he would have put a beating on us as a matter
25 of fact he just put a beaten on Irving Cameron a few minutes

1 before we got on to Crescent Street.
2 Q. Now you were told that by Irving Cameron years later weren't
3 you?
4 A. Right.
5 Q. But I'm trying to find out what you saw yourself that night.
6 You were walking along and someone jumped in front of you?
7 A. Yeh, that's right.
8 Q. Tell us from there, Mr. Ebsary, what -- they demanded you
9 said everything from you?
10 A. Right.
11 Q. What happened after that?
12 A. They said dig down.
13 Q. Dig down?
14 A. Right. So the bigger of the one he grabbed MacNeil around
15 the throat -- he took -- the road's about forty feet wide
16 he took him across the road and about sixty foot down the
17 road, right, toward South Bentinck.
18 Q. Okay let me again just refer to the plan so we'll know
19 where you are. You said you had almost reached the end
20 of Crescent Street, did you?
21 A. That's right.
22 Q. The end of Crescent Street, do you see these houses this gray
23 green, red, was it somewhere in that vicinity?
24 A. Yeh, right.
25 Q. Were you on the sidewalk?

1 A. Yeh, we were.
2 Q. Now you said the bigger fellow grabbed MacNeil around the
3 throat and took him somewhere?
4 A. Right, yes.
5 Q. Took him where?
6 A. We weren't on the -- he took him across the street.
7 Q. So across the street toward, toward Bentinck Street?
8 A. No, toward the Park side.
9 Q. Toward the Park side, okay?
10 A. There was bushes there see.
11 Q. Okay, there are bushes shown on this part?
12 A. Yeh, and MacNeil started to scream.
13 Q. MacNeil was screaming?
14 A. MacNeil was screaming, you could hear him all over the
15 bloody Park. And this other fella said to me he said dig
16 down man, dig down, and give me all you got.
17 Q. What were you wearing that night Mr. Ebsary, do you remember?
18 A. A blue burbury.
19 Q. And what is a blue burbury?
20 A. A blue raincoat.
21 Q. A raincoat?
22 A. Yeh.
23 Q. Did you used to wear a coat like that over your shoulders
24 without putting your arms in the sleeves?
25 A. Yeh, right.

1 Q. But that was something you did as a matter of practice?
2 A. Right.
3 Q. What kind of a night was it?
4 A. A small pocket knife.
5 Q. I'm sorry, what kind of a night was it, was it raining or was
6 it clear?
7 A. No, it was a kind of a misty night because it had rained and
8 then there was a fine rain falling, see. So I had to take
9 off the glasses because the glasses were fogging up.
10 Q. And why do you wear glasses, is it far -- to see things in
11 the distance or up close or both?
12 A. Because if I take them off I can't see at all.
13 Q. And that night you had your glasses off, did you?
14 A. Well, I had to take them off because they were fogging up and
15 you know.
16 Q. Okay. Was it -- how was the lighting in that area?
17 A. It was poor. Crescent Street at that time was one of the
18 poorest lit streets in the City.
19 Q. All right, now you say the person in front of you says, what
20 did you say dig deep?
21 A. Dig man, dig.
22 Q. Dig man, dig. What happened, Mr. Ebsary?
23 A. Well, I gave him everything I had in my pocket, right. I
24 dug down, dug down. He was holding out his hands so I gave
25 to him what I had. And then when I put my hand down into the

1 raincoat pocket like, I found the bloody pocket knife.
2 Q. A pocket knife?
3 A. Yeh.
4 Q. Now would you just describe for the Commissioners what you
5 mean by a pocket knife?
6 A. Give me a piece of paper and I'll draw it.
7 Q. Okay.
8 A. A pocket knife is a small knife that you carry in your
9 pocket. About a three-inch handle like, like that, right.
10 Q. Yes.
11 A. Like that. There we are and then the blade is about that
12 length there. The point was off of it.
13 Q. The point was off of it?
14 A. Yeh.
15 Q. Now would that blade always be opened?
16 A. Why would it always be opened if I was carrying it in my
17 pocket.
18 Q. Well, that's what I'm trying to find out. Is it a knife
19 that folds up and closes?
20 A. Oh, yes. You fold that up into this, you see.
21 Q. Okay. When you stuck your hand in your pocket and came upon --?
22 A. Yeh, that was closed.
23 Q. That was closed?
24 A. Naturally you'd have a closed knife in your pocket.
25 MR. MacDONALD:
I don't know, Mr. Chairman, what you want to do with this.

1 MR. CHAIRMAN:

2 Make it Exhibit #23.

3 BY THE WITNESS;

4 A. That's about the size of the knife really.

5 BY MR. MacDONALD:

6 Q. Were you wearing anything on your head that night?

7 A. No, I wasn't.

8 Q. Okay. Was it your practice to carry a pocket knife in your

9 pocket at all times?

10 A. Well, I carried that one in my pocket at all times because

11 it had been given to me as a souvenir by a young French

12 immigrant who had come over from France and they had put him

13 to work at the Isle Royale Hotel.

14 Q. And he gave you that as a present?

15 A. And he gave it to me as a present.

16 Q. So you used to carry that in your pocket?

17 A. So I'd always carry it in my pocket.

18 Q. All right. You reached into your pocket, I think you said?

19 A. Yeh.

20 Q. Which pocket, was it in the burbury or was it in your pants

21 pocket or was it --?

22 A. It was in the burbury really.

23 Q. Okay. So you reached in and you found this pocket knife in

24 your burbury. What took place after that?

25 A. Well, I was after giving him all that I had, right.

1 Q. Yes.
2 A. So, I put my hand in the Burberry pocket to see what was in
3 there, right. I discovered the knife was there, right. And
4 I pulled it out and I opened it, right. And then I took a
5 swipe at him.
6 Q. You took a swipe at the fellow that was in front of you?
7 A. Yeh, right. But I don't know if I connected because the
8 other fellow was screaming on the other side of the street
9 and my mind was distracted because I didn't know what the
10 hell was happening over there.
11 Q. After you took a swipe at him, what, what did the fellow that
12 was in front of you do?
13 A. He ran the whole length of Crescent Street and went around
14 the bend that's in Crescent Street. And that's the last
15 I saw of him.
16 Q. Now again, let me just direct your attention to this plan,
17 Mr. Ebsary. You indicated you were up at this end of
18 Crescent Street opposite, approximately opposite this red
19 house?
20 A. Right.
21 Q. Now did the boy that was in front of you, which direction did
22 he run?
23 A. He ran the whole length of Crescent Street in the opposite
24 direction.
25 Q. Was that running up this way toward Argyle Street?

A. Well, he would have ran -- Crescent Street runs along this side of the Park, right.

Q. Yes.

A. And he would have been running toward George Street, right?

Q. Okay, fine that's good. And you said he ran around the bend in the street?

A. There's a bend there, you see and if you were up at one end of the street and you look along Crescent Street, you can't see around that bend.

Q. When was the last time you saw this fellow you took a swipe at? Where was he?

A. He was rounding that bend.

Q. And that's the bend that I'm tracing with my finger here now?

A. Well, the bend is toward the end of the street, toward George. I showed the investigator yesterday. We went over the route.

Q. Did you have any conversation with these fellows when they jumped in front of you? Any talking or anything?

A. No, there was no talking any more than what the big fella was going to do to us if we didn't hand over our -- whatever we had in our pockets.

Q. After this fellow ran away, what did you do then?

A. I went across the street to see what was happening to MacNeil, see.

Q. Yes.

A. And when I crossed the street, I discovered that the big fella

had MacNeil around the throat with his hands, right. I tried to get his hands off his throat, but I couldn't. So I took the knife and gave him a slight cut on the bloody arm and he dropped MacNeil, right. And then he took off and he ran in the same direction as the other boy had ran, down along Crescent Street across the area where we were, along Crescent Street and around that bloody bend. So I couldn't see him any more.

Q. Do you have any recollection, Mr. Ebsary, what arm you would have sliced, left/right?

A. Wait a minute now. He had his arms around him like this. I guess it would have been the left.

Q. What did you do after this, after the bigger fellow ran away?

A. Well, I dusted MacNeil off because he was in a bit of a mess. And I said let's go home and cook a steak.

Q. Okay, did you go home?

A. Yeh, we did.

Q. You and MacNeil?

A. Yeh, it was only a short distance from there to the house, really.

Q. Do you remember arriving home?

A. Well, naturally I remember arriving home.

Q. Tell us what happened then when you arrived home?

A. When we went in the door, the first thing I did, the wife was sitting in the living room, the first thing MacNeil

1 said to the wife was, he says, "Roy saved my life tonight". And
2 I said, "shut-up you fool".
3 Q. Now you said when you walked in your wife was in the living
4 room -- when you walk in that door of your house, where's
5 the living room when you walk in?
6 A. When you walk in, the living room is on your right.
7 Q. On your right as you walk in?
8 A. Yeh, the first room.
9 Q. And your wife was in there?
10 A. Oh, yeh.
11 Q. Was anyone else with her?
12 A. Yeh, Donna.
13 Q. Donna was there?
14 A. Right.
15 Q. So you told MacNeil to "shut-up you fool". What took place after
16 that?
17 A. We went into the blooming kitchen 'cause I wanted to get
18 some bloody steaks.
19 Q. Did you get some steaks?
20 A. Oh yah. I got, see I had a piece of sirloin in there like,
21 and I cut off two steaks off the end of the sirloin, right.
22 And I went out in the backyard to light the barbecue. I
23 forgot that it had been raining and the barbecue was full of
24 water so I couldn't light the bloody thing.
25 Q. So it was full of water, you couldn't have your barbecue.

1 What happened then?
2 A. Well, MacNeil then decided to go home, you see.
3 Q. Yes.
4 A. So I said, "I'll walk part way up George with yah." He said, "no I
5 wouldn't if I were you." He said, "because if we go out and
6 go across Argyle there, those two are going to be waiting
7 for us." So up to that time he had no idea that either one
8 of those boys were injured.
9 Q. Did you walk him part way home?
10 A. No, I didn't. He wouldn't go that way, you see, because he
11 was afraid. He went up -- there's a grave yard off Argyle
12 Street and he went up through the grave yard and then crossed
13 toward his house.
14 Q. Where's the grave yard on Argyle Street?
15 A. It's just off Argyle there like. I've never seen it but I've
16 been told it's there. But that's the way he went any way. He
17 said, "I'll walk through the grave yard."
18 Q. Did you see -- did you have any discussion that night with
19 your wife?
20 A. No.
21 Q. What about Donna?
22 A. I don't think I had any discussion with Donna, really.
23 Q. Now Donna says that that night she saw you when you come home
24 go into the kitchen and wash a knife under the tap and wash
25 some blood off it?

1 A. I told you I went into the kitchen, I cut two steaks off the
2 piece of sirloin, right.
3 Q. Yes.
4 A. You automatically clean a knife after you use it, right. And
5 that was the knife she saw me wash.
6 Q. What happened to the pocket knife after you sliced that fellow
7 that had his arms around MacNeil? What did you do with it?
8 A. Put it back in my pocket.
9 Q. And are you able to tell us where it is today?
10 A. I haven't got the faintest idea.
11 Q. What did you do after MacNeil went home?
12 A. I went to bed.
13 Q. Now what -- when did you next see MacNeil?
14 A. I thought -- it was in my mind, I don't know how clear it is.
15 I thought MacNeil came to the house the next morning and told
16 me that one of the young fellas that had attacked us down at
17 the Park was dead. But it didn't bother me.
18 Q. Was is that?
19 A. Well, why did it. Why would it. When the other fella
20 left me and ran the length of Crescent Street, as far as I
21 was concerned he wasn't injured. If MacNeil comes in the
22 next morning and tells me that he's dead, what the hell am I
23 supposed to do.
24 Q. Okay. So MacNeil --
25 A. So MacNeil got me out of bed. He said you might as well bring

1 my father down. I said no go ahead bring the old boy down.
2 So he went up and got his father and his father came down
3 so he brought two bottles of wine to the house. And I had
4 a white rooster that I had raised from a little chick.
5 Q. You had a what?
6 A. A white rooster.
7 Q. A white rooster, okay. Yes.
8 A. So I had raised from a little chick, you know. And I was
9 going to take it up the road and give it to some bloody
10 farmer. So that's what we did that morning. When MacNeil's
11 father came to the house, we climbed aboard the car, took
12 the rooster with us and went out to the country there, right?
13 And the first farmer we came across, we stopped and gave him
14 the blooming -- hen.
15 Q. Did you have any discussions with your wife the day following
16 or any time about what took place that night in the Park?
17 A. Not to my recollection.
18 Q. What about Donna?
19 A. No.
20 Q. What about your son, Greg?
21 A. No. Now we were not in the habit of holding conversations.
22 If I was in my room and they wanted something. They came
23 they asked for it. They got it, that was it, gone, right.
24 Q. You said you saw MacNeil the next day. Did MacNeil and you
25 continue to see each other?

1 A. No. I think that was the last time I saw MacNeil.
2 Q. Why is that?
3 A. Because the wife told me that she had given MacNeil strict
4 instructions not to come to the house any more.
5 Q. Not to come to your house any more?
6 A. Yeh, right.
7 Q. And did she say why she did that?
8 A. No, she didn't say anything.
9 Q. It's been told to us Mr. Ebsary that after this event, you
10 became what some people would call a hermit? You went up in
11 your room and other than coming out to eat meals or something
12 you virtually didn't come out for years. What do you say
13 about that?
14 A. Listen, I worked all day, right.
15 Q. Yes.
16 A. I stayed in all evening. I went to no shows, nothing. I
17 used to write and read. I had twenty-three hundred books in
18 the library. I never used to read the newspaper because the
19 newspapers were only trash. I had more interesting books on
20 the bloody shelf. I used to spend all my evenings as long as
21 I could remember alone like that reading or writing, right.
22 So if you call that a bloody hermit, I was a hermit.
23 Q. After you retired in 1972, did you used to spend your entire
24 day doing that same thing?
25 A. Right.

1 Q. Did you have any knowledge or did you keep track of the fact
2 that Mr. -- that Donald Marshall, Junior was being tried for
3 the murder of Sandy Seale?
4 A. I wasn't even interested.
5 Q. And did you know that it was going on?
6 A. Well, in a sense I suppose I did but I didn't pay any particular
7 attention to it.
8 Q. Did you ever tell your family that is your wife, and your son
9 and your daughter, that they better not talk to anybody about
10 what took place that night of May 28th?
11 A. Not to my knowledge.
12 Q. Do you recall Mr. Ebsary in November of 1980 - 1971 that's the
13 incident took place in October and in November the police
14 picked you up and took you to the police station?
15 A. Oh, yeh, I remember that.
16 Q. You remember that?
17 A. Sure.
18 Q. Tell us what you recall about that?
19 A. Well, a couple of cops came to the house and picked me up.
20 Brought me down to the police station. Asked me a pile of
21 questions. Asked me to have a look at my hands. So I showed
22 him my hands. And he said,"bloody hands". And I said,"there
23 was never any god damned blood on them hands", right.
24 Q. Yes.
25 A. So when I was going into the police station, I saw a car across

1 the street. It was black and white. So it looked identical
2 to my car that I had bought for Greg, right.
3 Q. Yes.
4 A. And I said to one of the cops, I said, "that's my car over there."
5 He said, "oh, no it's not." Well, I knew bloody well it was. So
6 I figured if my car was there, Greg had to be at the police
7 station. Right or wrong.
8 Q. That's what you figured, was it?
9 A. Yeh, right. And I figured right, he was. Because I learned
10 later he was.
11 Q. Did you give a statement to the police that night?
12 A. Well, I answered there questions whatever the hell they asked
13 me.
14 Q. I want to show you a copy of a statement that you gave that
15 night Mr. Ebsary. It's Volume 16.
16 A. I didn't even know who the two cops were that arrested me,
17 but somebody had told me afterwards it was, MacIntyre was
18 one of them.
19 Q. It's on Page 186 of Volume 16. Just before I get to that
20 Mr. Ebsary, on Crescent Street, you said you used to walk
21 it frequently as your short-cut home?
22 A. Yeh.
23 Q. Did you know the names of the people that lived in those
24 houses?
25 A. I didn't.

1 Q. You didn't?
2 A. No.
3 Q. Now let me show you Page 186 of Volume 16. And just following
4 that page a couple of pages later is a copy of the actual hand
5 written statement that's signed by you. I have the original
6 here that I can show you. That's your signature, is it?
7 A. Yeh, yeh.
8 MR. MacDONALD:
9 My Lord, the original of that statement was introduced in the, I
10 believe, Mr. Ebsary's last trial, as Exhibit #2, which I have but
11 the copy is in the volumes which we have given to you.
12 BY MR. MacDONALD:
13 Q. Now Mr. Ebsary I would just like to take the time to go through
14 that statement with you. When's the first time you saw that
15 statement?
16 A. I never.
17 Q. It wasn't shown to you the night you gave it?
18 A. No.
19 Q. You saw it yesterday, you and I --
20 A. I saw it yesterday for the first time.
21 Q. Let me just refer to some of the things in it, if I can. You
22 say, it first of all says, you were warned. Do you remember
23 being given any warning?
24 A. Not that I know of.
25 Q. It says I remember one night, myself and Jimmy MacNeil were at

1 the State Tavern. Now were you and he at the State Tavern?
2 A. Never that I know of.
3 Q. You told us that you went to the State Tavern but it was
4 closed?
5 A. That's right.
6 Q. You were going down George Street across the bridge in Wentworth
7 Park up to Crescent, what happened. It says,the typewritten
8 copy says when we're almost over to the corner of South Bentinck
9 two chaps. Now the hand-written copy says something different
10 at that point. It says when we were about over to the corner
11 of South Bentinck near Robbie Robertson on Crescent. Do you
12 know any Robbie Robertson?
13 A. I don't know any Robbie Robertson. I know that near the
14 corner one, two or three houses, there was two priests lived
15 with their father and mother. I don't know if I got to know
16 their name, I can't. If it was it certainly didn't stick in
17 my mind.
18 Q. Okay. I just want to show you the original handwritten copy where
19 it says near Robbie Robertson, do you see that?
20 A. Yeh.
21 Q. The hand-written statement, that's not your handwritting is it?
22 A. It looks like it. On the other hand it doesn't look like it.
23 Q. Do you recall writing out a statement yourself?
24 A. No.
25 Q. Now it goes on to say in the statement Mr. Ebsary on Page 186

1 two chaps who were behind us came around the sides of us and
2 asked us if we had cigarettes and if we had money?
3 A. Right.
4 Q. We told them we didn't?
5 A. Right.
6 Q. Now does that -- do you recall telling the police that?
7 A. It's quite possible I did.
8 Q. Now you go on to say they asked us to turn out our pockets,
9 so we turned out our pockets. Did that happen?
10 A. Yes.
11 Q. Both of you turned out your pockets?
12 A. No because Marshall had grabbed the other fella and taken him
13 across the street. So Marshall had nothing to do with the
14 robbery part of it.
15
16
17
18
19
20
21
22
23
24
25

1 Q. Now you say Marshall, did you know which Marshall
2 are you talking about?
3 A. The son of a bitch of a liar who stood up in court
4 and told all those bloody lies.
5 Q. You mean Donald Marshall, Junior?
6 A. Right.
7 Q. Did you know Donald Marshall, Junior--
8 MR. RUBY:
9 Now wait a minute. Are you criticizing my client?
10 MR. MacDONALD:
11 No, I'm not -- I'm trying to get it back to where it should be.
12 BY MR. MacDONALD:
13 Q. Donald Marshall, Junior, did you know him prior to May, 28th
14 1980 -- '71?
15 A. I'd never seen the sky over the son of a bitch.
16 Q. Have you ever met him since? Met him, now, personally?
17 A. No, not personally. I've seen him in court and I've heard
18 the son of a bitch lie.
19 Q. Yeh, okay. Forgetting that Mr. Ebsary --
20 A. I don't forget. I remember.
21 Q. All right. But they're --
22 A. That's the trouble, they think I'm bloody senile but their
23 going to make a bloody mistake.
24 Q. Are you saying that Donald Marshall, Junior was one of those
25 two fellows there that night?

1 A. Right.
2 Q. Which one? Was he the one --
3 A. He was the bigger of the two.
4 Q. Okay. Thank you.
5 You say this short fellow tried to take my ring off my finger?
6 A. Right.
7 Q. While the tall fellow had his arm around the other fellows
8 throat?
9 A. Yeh.
10 Q. That's Jimmy's throat?
11 A. Right.
12 Q. And had him on the ground?
13 A. No, he told him -- he took him across the street. Forty
14 feet across the street, sixty feet along the street and there
15 he was strangling him and the other fellow was screaming.
16 Q. The other fellow being Jimmy MacNeil?
17 A. Right.
18 Q. All right. In this statement again you go on to say:
19 "When he tried to get my ring I was not well. I tried to
20 wrestle him --
21 A. Yeh.
22 Q. -- and he slung me to the ground."
23 A. That's right.
24 Q. Is that correct?
25 A. Yes.

1 Q. Did you wrestle with this other fellow?
2 A. Well, I tried it, yes.
3 Q. And did he throw you to the ground?
4 A. Well, I didn't have a chance of a snowball in hell.
5 Q. Did he throw you to the ground?
6 A. Yes.
7 Q. You say: "I made a kick at him and he got up and ran off."
8 A. That's right. That's when he ran the whole length of
9 Crescent Street.
10 Q. "I went over to see how Jim was getting along with the
11 other fellow --
12 A. Yeh.
13 Q. -- and he dropped Jim and ran off with the other fellow."
14 A. Right, after I cut his arm.
15 Q. Now --
16 A. Because he wouldn't release -- he wouldn't release his
17 hands from the other fellows throat.
18 Q. Now, there's no reference in the statement to the police
19 of your having cut Marshall's arm or having made a swipe
20 at the other fellow. Why didn't you tell the police that?
21 A. I answered -- they asked me questions, I answered their
22 questions. Enough said.
23 Q. Okay.
24 A. Right or wrong.
25 Q. Now, the next question is -- said: "Did you stab the man

1 you were wrestling with?" And your answer is: "Hell, no.
2 Why would I stab him?
3 A. Yeh, that's right. Hell, no, why would I stab him?
4 Q. Well, did you -- I thought you told me earlier that you
5 at least took a swipe at him?
6 A. Yeh, I took a swipe at him but not when he was on the
7 ground.
8 Q. Okay.
9 A. You don't kick a man when he's down, not where I come from.
10 Q. All right. Now, the next series of questions -- would you
11 just look at those Mr. Ebsary and it says: "How old were
12 these fellows?" Do you see that?
13 A. Yeh, but I have no idea.
14 Q. Okay. I'm just going to read the question.
15 A. Right, go ahead.
16 Q. You said: "Young men. One fellow was tall. I had to look
17 up to him. What were they wearing? I would not be able to
18 tell you. What nationality were they?" And you said:
19 " I believe Canadian. I asked them where they were from
20 when they asked us for money and they said Truro."
21 A. That's true.
22 Q. Now, did you ask -- did you have a conversation with them to
23 ask them where they were from --
24 A. Well, I asked them where they were from when they told us
25 to turn out our pockets.

1 Q. And they -- did they say Truro?
2 A. Truro. That's what they said.
3 Q. Now, on page 187, Mr. Ebsary, just over the page there.
4 Just turn the page. You see where it says: "Did he tell
5 you the Seale boy had died? " And you said: "No, I can't
6 recall."
7 A. Yes.
8 Q. He's talking there about Jimmy MacNeil.
9 A. Right.
10 Q. Did Jimmy MacNeil tell you the Seale boy had died?
11 A. Yeh.
12 Q. Now, he did tell you that didn't he?
13 A. Well, that morning. I told you he came back -- as far
14 as I can remember he came back to the house the following
15 morning.
16 Q. You were asked --
17 A. But some people say it was the day after he came back to
18 the house. It couldn't have been. I thought it was the
19 following morning he came back to the house.
20 Q. But he did tell you that--
21 A. Oh yeh, he did.
22 Q. --that Seale had died?
23 A. He didn't tell me it was Seale that died. He said it was
24 one of the boys who attacked us last night.
25 Q. The next question, Mr. Ebsary is: "Do you carry a knife?"

1 And your answer was: "No."
2 A. That's right I don't usually carry a knife.
3 Q. Do you -- did you not used to carry that pocket knife?
4 A. Well, I only carried that after the young frenchman gave
5 it to me.
6 Q. Okay. Would you still have been carrying a pocket knife
7 that year in November after the police had arrested you?
8 A. No.
9 Q. How long were you at the police station that night, do you
10 remember?
11 A. Anywhere from fifteen minutes to a half hour, I guess.
12 Q. Did the police tell you that Jimmy MacNeil had been there
13 and told them that he had seen the incident on the night
14 of May 28th?
15 A. No, they told me nothing, I told you.
16 They told me nothing. They asked me questions. I answered
17 their questions. The only thing I asked them was --
18 I said, "that car across the street looks like my car. Is
19 my son here?" They said, "no". So they were bloody liars.
20 Q. Now, had the police picked you up at home that night?
21 A. Oh, yes.
22 Q. Did they take you home again?
23 A. Not that I can recall.
24 Q. How'd you get home?
25 A. I must have walked.

1 Q. What took place after that? What was the next involvement
2 you had?
3 A. What do you mean? Did they --
4 Q. Did the R.C.M.P. come and see you later?
5 A. Oh, that was quite a while later.
6 Q. What do you remember about that visit?
7 A. Well, the R.C.M.P. came. One. He said was a -- he was
8 in plain clothes and I was cooking something for grandfather
9 when he walked in the -- knocked on the door. Donna let him in,
10 he came in. And I said, "How do you do?" like that you know, and
11 he said, "I gather you don't know who I am," and I-- well I didn't
12 really. So he told me -- he said, "I'm the Chief of the
13 R.C.M.P. and I'm here -- I want you to come down to the
14 Wandlyn Hotel with me." Right? So I said to Donna, You
15 look after grandfather, like, and I'll go with him. So
16 I went out with him and we got in his car and he said, "Now
17 listen if you tell us the truth I'll bring you home." Right?
18 Q. If you tell us the truth I'll bring you home?
19 A. Yeh, "I'll bring you home." In other words if I didn't tell
20 the truth he wouldn't bring me home. Right?
21 Q. Yes.
22 A. Good. We understand each other. Now, then, -- what are
23 you laughing at? We go to the Wandlyn Hotel and they've got
24 a private room there you see? They've ordered a private room.
25 Right?

1 Q. Yes.
2 A. And the chap with the lie detector like, they had brought
3 him in from Ottawa and they told me he was an expert at the
4 trade. It was only a small room like, and the apparatus
5 and the chair that they said me in took up about the whole
6 of the space of the arms. So the chap who had brought me
7 down he stayed in the outside room and he closed the door.
8 And the chap who was putting me through the lie detector thing
9 like, he stood about there. The lie detector thing was here
10 and I was sitting right here. Right? He ran me though --
11 He said have you heart trouble or anything like?
12 Q. Have you any heart trouble?
13 A. Yeh.
14 Q. What did you tell him?
15 A. Well, I said nothing serious.
16 Q. Yes.
17 A. So he fastened some things on to me like, and then he started
18 his machine. Right. And he's over there watching and
19 like I'm sitting here and he's asking me all kinds of questions.
20 Q. Did he ask you any questions before he turned on the machine
21 other than about your health?
22 A. No, nothing that I can remember.
23 Q. Okay. So he was asking you questions with the machine
24 turned on?
25 A. Right.

1 Q. How long were you there?
2 A. Oh, well, they ran me through three times so I was there
3 quite a while.
4 Q. They ran you through -- was it the same questions three
5 times?
6 A. Yes, the same -- well there'd may be a little variation each
7 time but fundamentally they was the same questions. I even
8 asked him -- I said, "so turn around and ask me if I killed
9 the boy." "Turn around and ask me if I did so and so." See?
10 And he did. And he said I can't understand this. He said
11 I've ran you through three times and he said I'm satisfied
12 that you're telling the truth. We'll run you home.
13 Q. What happened after you were finished with the fellow with
14 the lie detector?
15 A. They drove me home.
16 Q. Who drove you home?
17 A. The Chief -- or the chap who said he was the Chief.
18 Q. Do you remember any of the questions that they asked you
19 that night?
20 A. No, I don't really.
21 Q. Let me just show you again the -- this is in Volume sixteen --
22 A. Right.
23 Q. -- on page 202. This is a report, Mr. Ebsary, that was
24 filed with the R.C.M.P. by Mr. -- Corporal Smith. That's the
25 fellow who operated the lie detector.

1 A. Was it?
2 Q. Yeh, that was his name.
3 A. Yeh, well, he was in plain clothes
4 Q. Okay. About half way down that first page --
5 A. Yes.
6 Q. -- there's reference to questions that he asked you and
7 I just want to refer you to them. He said you answered
8 no to the following test questions. The first question
9 he said --
10 A. Where are we now?
11 Q. You see here? It said -- He's talking about you answering no
12 to these questions: "Around the end of May --
13 A. To the following test questions.
14 Q. Yes, the following -- these, one, two, three.
15 A. Not this one. Yeh.
16 Q. "1. Around the end of May this year do you know who for
17 sure who stabbed Sandy Seale?" You answered "No" to that.
18 A. I did.
19 Q. Now, why would you answer no to that?
20 A. Because I didn't stab Sandy Seale.
21 Q. But it says, do you know --
22 A. Yes.
23 Q. It's like who did?
24 A. Well, I didn't.
25 Q. Okay. Now, the next question, it said: "Around the end of

1 May, this year, did you Roy Ebsary stab Sandy Seale?" and
2 you answered "No".
3 A. No, that's right. I didn't.
4 Q. Okay. Now, what you had told us earlier today that you at
5 least took a swipe at --
6 A. A swipe but I didn't say I stabbed him.
7 Q. Okay. So you answered "no" truthfully to that question?
8 A. Right. Right.
9 Q. Number three: "Around the end of May this year, were you right
10 there when Sandy Seale was stabbed?" You answered "No" to that
11 question.
12 A. What was the question?
13 Q. Around the end of May --
14 A. Yeh.
15 Q. That would be in 1971 --
16 A. Right.
17 Q. Were you right there when Sandy Seale was stabbed and again
18 you said, "no."
19 A. Well, I don't even know if I was there when he was stabbed.
20 Q. Okay.
21 A. How'd you figure that one out?
22 Q. And four. His last question was: "Around the end of May this
23 year, did you wash blood off a knife?" and again you said
24 "No."
25 A. I didn't. The only knife that I washed off was only the

1 bloody knife I cut the bloody steak with.
2 Q. Had you ever seen a lie detector before? The machine?
3 A. No.
4 Q. Had you ever - have you ever seen one since?
5 A. No.
6 Q. Though I hear enough to condemn them. I don't know why.
7 They asked me this and how did you fool a lie detector machine?
8 I said I didn't fool a lie detector machine.
9 Q. Who asked you that?
10 A. Well, several of the R.C.M.P. And I've been asked recently by
11 some of the investigators.
12 Q. Have you? Okay.
13 A. Right.
14 Q. Were you aware that Jimmy MacNeil was also given a lie
15 detector test?
16 A. No.
17 Q. When did you find that out?
18 A. I didn't.
19 Q. You didn't know that at all?
20 A. No.
21 Q. After that, Mr. Ebsary, after the lie detector was given to
22 you in November of '71 --
23 A. Yes.
24 Q. -- Did you have any contact with anyone in the police until
25 you met Wheaton and Carroll in 1982?

1 A. Not that I know of.
2 Q. Okay. Did you tell your -- tell the story of what happened
3 that night in the park to various people over the years?
4 A. Oh, yes. Lot's of bloody people that I been friendly with.
5 You know, the conversation would come up.
6 Q. And what would you tell them?
7 A. I tell them what -- I told them what I just bloody well
8 told you.
9 Q. Do you remember in particular telling that story to a
10 Mitchell Sarson?
11 A. Yes.
12 Q. And do you remember telling the story to Dave Ratchford?
13 A. Right.
14 Q. Who's Ratchford?
15 A. Dave Ratchford run a Kung Fu school down on Charlotte street
16 and my daughter used to be down there with him. Right?
17 Q. Yes.
18 A. Dave ran the Kung Fu school. Then he laid off and let himself
19 go to pot and Donna took over and we bought Dave Ratchford out.
20 And then Donna went to Boston.
21 Q. Do you remember telling Dave Ratchford the story of what
22 happened that night in the park?
23 A. Yes.
24 Q. And do you remember he in fact came to your house one night
25 with a video camera and --

1 A. Yes.
2 Q. -- took a video?
3 A. I also remember that he got permission from the Attorney
4 General to come out to the recreation -- I don't --
5 Q. Correctional Centre.
6 A. Correctional Centre and interview me with tape recorders.
7 Q. Yes.
8 A. They were supposed to be writing a book and making a video at
9 the same bloody time.
10 Q. Sure.
11 A. I remember making the video up at the apartment and I remember
12 them taping out at the centre.
13 Q. You were told that Ratchford was going to write a book about
14 your experiences?
15 A. That's right. About the whole thing. But this was the general
16 idea of taping everything I was telling them out at the
17 Centre.
18 Q. Okay.
19 A. And they thought it was a bloody good idea because it was
20 about time someone wrote a bloody book and exposed this
21 bloody place out here.
22 Q. Which place?
23 A. The Centre.
24 Q. Oh, the Correction Centre. Okay.
25 A. Right. Cause what goes on out there I'm going to tell you

1 bloody is -- is something bloody awful.
2 Q. Now, did you used to make a habit of keeping knives in your
3 home and making knives or --
4 A. Yeh, I had a whole blooming collection. I had a collection
5 of books. I had a collection of art objects and I was making
6 a collection of knives. Right?
7 Q. Yes.
8 A. Well, I loved my books. I loved the art objects and I liked
9 the knives I was making.
10 MR. MACDONALD
11 Do you have an exhibit tag for that?
12 THE CLERK
13 Yes.
14 BY MR. MACDONALD:
15 Q. This is exhibit 24 and it was exhibit number 8 in the Supreme
16 Court of Nova Scotia during the trial of Mr. Ebsary.
17 A. Yeh, it was one of mine.
18 Q. Yeh. And during that trial, Mr. Ebsary, there was evidence
19 given that that night this particular exhibit 24 contained
20 certain fibers on it which matched by --
21 If you just let me --
22 A. No. Those knives were eleven bloody years old.
23 Q. Okay.
24 A. How many times have they gone through a dishwasher. Then they
25 were thrown down the bloody cellar and then they're foolish enough

1 to get someone to believe there was fibers on it. Bull shit.
2 Q. I'm not asking you to accept it I'm just trying to --
3 A. I'm not going to accept it.
4 Q. I am sure you're not.
5 A. You're bloody right.
6 Q. But what I want you to do -- I'm just saying that so that
7 people understand what happened, Mr. Ebsary.
8 A. Good.
9 Q. The evidence was that there were certain fibers then. What
10 I want you to tell us -- Is that a knife that you had in
11 your home and that you put that handle on it?
12 A. Yes, I made that.
13 Q. Okay. And did you ever carry that knife around in your
14 pocket?
15 A. What for?
16 Q. I'm just asking --
17 A. Why would you carry a knife like that around in your pocket?
18 Q. Did you ever?
19 A. No.
20 Q. Did you ever carry it -- a knife -- or that particular knife
21 or anything like it in your belt?
22 A. No.
23 Q. Did you ever carry it on your person in any place?
24 A. No.
25 Q. When you used to carry -- you said your -- the butcher knife

1 you used at the hotel, would you --
2 A. Right.
3 Q. You used to carry that in your belt as well?
4 A. I used to carry it home every night.
5 Q. And how would you carry it? Would you put it in your belt?
6 A. Right.
7 Q. And do you remember yesterday afternoon I showed you some
8 of those knives from your home?
9 A. Right. And I recognized a french knife right off the bat.
10 Q. Okay. Is that -- is that one of the butcher knives that you
11 talk about?
12 A. Yeh. We didn't call them butcher knives. We called them
13 french knives.
14 Q. What I'm trying to find out is that the type of knife that
15 you would carry around in your belt --
16 A. Right.
17 Q. -- when you were going back and forth to work?
18 A. That's right.
19 Q. Okay. I'll bring one of those this afternoon just so
20 we'll understand --
21 A. Yeh, right.
22 Q. -- what they look like. Now do you remember Mr. Ebsary,
23 being contacted by the R.C.M.P. in I think it was 1982,
24 February? Remember Sergeant Wheaton and Carroll?
25 A. Oh, they came up to the house. Yes.

1 Q. Is that what your recollection is that the first time
2 you saw them was at your house?
3 A. Well, that was the first time I ever them two, yes.
4 Q. And did they take you up to their -- the headquarters on
5 Alexandra Street?
6 A. No, not that day. The only time I was up to the headquarters
7 there was to tell them I asked to see the Marshall family but
8 Marshall's father and mother. And they took me out there
9 and that was the only time I was out there that I know of.
10 Well, I was out there another time. I got out of the
11 centre out there, like. Some of the boys were sick and
12 they were on pills, right?
13 Q. I'm sorry?
14 A. Some of the boys were sick and they were on pills and they
15 couldn't get pills. So I got loads of pills home that
16 the doctors gave me so wait. So I comes home, had a few
17 drinks. Fills up a couple of bottles with pills and like
18 a bloody fool got on the telephone, called the center and
19 said I'm coming out with some pills. And I didn't know
20 the bloody line was tapped. So anyway I go out with the
21 pills and try to pass the pills through the window and
22 the boys inside are saying for Christ sake don't, for
23 Christ sake don't, you know. And all of a sudden there
24 was about twenty R.C.M.P. and cops came out of the bush
25 like flies.

1 Q. Do you remember Sergeant Carroll coming to your home and
2 tape recording a discussion with you?
3 A. Oh, yes, I loved old Carroll. He was an egg.
4 Q. He was a what?
5 A. He was a good egg.
6 Q. He was a good egg.
7 A. Yeh.
8 Q. But you do recall that meeting with him --
9 A. Oh, yes. Right.
10 Q. -- and discussing --
11 A. Yes.
12 Q. -- this -- he was making a tape recording of it?
13 A. Oh, yeh. Right.
14 Q. And later on --
15 A. But the only reason he made a tape recording of it was
16 you see -- my typewriter was on the blink at the bloody time.
17 Q. Yes.
18 A. So I suggested to him why not make a tape recording and he did.
19 MR. MACDONALD
20 Well, I wonder if this might be a convenient spot to break. That
21 other -- that statements fairly lengthy and I'd like to take some
22 time to go through it and I also want to set up for a video
23 presentation, too.
24 MR. CHAIRMAN
25 All right. We'll adjourn to two.

INQUIRY ADJOURNED: 12:10 p.m.

1 INQUIRY RECONVENED AT 2:00 IN THE AFTERNOON.

2 MR. CHAIRMAN:

3 I've been asked by the Court Reporters to request counsel whenever
4 they intervene, and I don't anticipate any intervention but in
5 the unlikely event of an intervention, would you please press the
6 button. Otherwise your words of wisdom will be lost to posterity
7 and probably state your name, too.

8 MR. MacDONALD:

9 I'm sorry, My Lord, one of those glitches, opening day glitches
10 having you sitting here without being here myself. If you'd just
11 give us a moment, we're going to try to figure how to work this
12 machine in front of me and we're going to, for convenience run
13 the video tape now and then I'll resume my questioning of Mr.
14 Ebsary.

15 My Lord, this is a videotape that was made in September of
16 1984 by David Ratchford and a cameraman working with him. Mr.
17 Ebsary made refrence to it this morning in his testimony and
18 Mr. Ebsary had the opportunity to view this yesterday afternoon
19 for the first time.

20 BY MR. MacDONALD:

21 Q. Is that correct?

22 A. Yes.

23 MR. MacDONALD:

24 So I would like to run it through, My Lords.

25 MR. CHAIRMAN:

All right.

1 MR. MacDONALD:
2 We're not going to run the entire tape. We have seen the entire
3 tape. We're going to run that part that we consider as -- is
4 important to the issues here but it has been and is available for
5 other people to see the whole thing if they feel they need to.
6 We have also made a transcript of that portion which you will
7 be seeing.
8 BY MR. MacDONALD:
9 Q. And Roy, you'll watch this as it plays, will you?
10 A. Yeh.
11 VIDEO PLAYED, transcript follows.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF ROY EBSARY VIDEO INTERVIEW WITH DAVID RATCHFORD

Ebsary: ... I said good for you, by God.

Ratchford: Did he have any idea when you're going to go to trial?

Ebsary: No. Not soon.

Ratchford: No?

Ebsary: But I got two operations rolling up. What about that?

Ratchford: Hum. When are you going in for the operations?

Ebsary: I got to see Tommy tomorrow, about one, this Sniderman.

Ratchford: Sniderman.

Ebsary: I see Sniderman tomorrow and after I get through with Sniderman, Sniderman is going to decide what date to operate, he'll tell me that tomorrow, you see. And from that, Gaum is keeping in touch with Halifax, but he is getting no reply from Halifax. So he's going to have to, the fellow that mended the bloody neck when I broke the son of a bitch, you know. So

Ratchford: So, she's all a waiting game.

Ebsary: Yeah, it's all a waiting game. It's a waiting game of, it's bloody waiting, it's bloody brutal.

Ratchford: Five years.

Ebsary: Is it five years?

Ratchford: Just about five years.

Ebsary: Since this, this started again?

Ratchford: It's ah, well, for the initial case to break open, it's ah, what was that, '81?

Abbass: '81 - '82, wasn't it?

Ratchford: Yeah, '82.

Ebsary: Bloody right. Or else I haven't been to the Nova

Scotia Hospital, for Christ sakes, twice.

Ratchford: That's right, '82.

Ebsary: The bloody pyschiatrist told to the Judge of the bloody Court that man is absolutely insane. (laughs) Jesus. So he sends me back to the God damn Nova Scotia Hospital and I God damn well told you that I God damn well wasn't insane. They said well by Christ we'd like to have that, a head like you got. Geez, what a laugh. It was a laugh alright. Jumpin Christ.

Ratchford: So how do you feel about going up again?

Ebsary: Well, I feel lousy that there should be another bloody trial. Because you know to sit in that bloody court room is bloody murder. But if that bastard is lying, like they did at the last trial, I'm going to be on my God damn feet this time, irregardless of the lawyers and fuck all else, and I'm going to tell him he's a God damn liar.

Ratchford: Who?

Ebsary: Marshall.

Ratchford: Um hum.

Ebsary: And Seale, and uh, what's his name, O'Neil. But his lawyer says if I go and contend O'Neil, it's going to make it bad for the case.

Ratchford: You mean MacNeil.

Ebsary: MacNeil. The son of a bitch turned Judas, didn't he?

Ratchford: Um hum.

Ebsary: I tried to save his bloody life that night.

Ratchford: Um hum. And then he turned around

Ebsary: And he turned around and becomes state business, to save his bloody head.

Ratchford: Do you think they are going to have the same witnesses this time as they had the last time?

Ebsary: Right. There are no other witnesses. They claimed there was four men there, only four. They are forgetting Irving ...., that's five. He saw him, what he could see in the dark, but he heard MacNeil's screams. Darn right. Cause that one

was screaming like a banshee. Until he turned around and took us to court, said him and Marshall was standing by the side of the bloody road and saw me sticking, stick the bloody knife, or stick something in the guy. They asked him did you see a knife. They saw no bloody knife. How could they? I was wearing a cape.

Ratchford: That's right.

Ebsary: I was wearing my coat like a cape. After that, well, you take it now. Marshall was further away from me to that bloody house is over there. In the park on a dark night, and believe me it was dark, no lights. They saw nothing. So they are lying through their bloody teeth. It was impossible to see. Well, I couldn't see Seale in front of me. I saw a shape with a big afro hairdo. You know, bloody right. And I didn't take the hand out of the pocket. I didn't have to. The Burbury is made so you put your hand here. If you put it in, you can put it down in the pocket or you could put it right up there like that.

Ratchford: Um hum.

Ebsary: So it was bloody easy with the God damn, well he says, "Give me every fuckin thing you got". I said, "Well, you'll get everything I've got". I just put my hand in my bloody pocket like that, the hand went out there like that, between the bloody cape, when ... sixty bloody feet away in the dark. How in the hell could you see anything.

Ratchford: Roy, I'm thinking about the way you stabbed him. I'm trying to, is that coat here? Do you have a coat like that here?

Ebsary: No. You know, the Mounties took that coat and never brought it back. They must have been looking for blood stains or something on it.

Ratchford: Yeah.

Ebsary: But they were bloody foolish cause who in the hell would be foolish enough to put blood stains on the God damn clothes you were wearing?

Ratchford: Really.

Ebsary: Just like Donna saying she saw me wash blood off the knife in the sink, right?

Ratchford: Right.

Ebsary: She didn't. She assumed it was blood I was washing off the knife. I was washing .... off the knife because I put the knife in the earth. After I cut Marshall in the bloody arm, I stuck the knife in the earth. That's what I automatically do to clean your knife.

Ratchford: Right.

Ebsary: Well, Christ. Geez, how in the Christ could Donna see me wash blood off the bloody knife. Fuck 'em. Assumptions was all it was, bloody assumptions.

Ratchford: When you stuck your hand out from the coat, okay, you had your hand inside the coat. Was the knife in the coat pocket or your pants pocket, and you pulled it out of your pants pocket or was it in the coat?

Ebsary: Yeah. It was in the pant's pocket. I put my hand down there like that, see?

Ratchford: Let's assume that I'm Sandy Seale standing right in front of you and we will re-enact this whole thing, okay?

Ebsary: Good. Dave, get my coat.

Ratchford: And I'll even get a

Abbass: Time out there, Dave?

Ratchford: Okay, I'm in a position, this is the position of Sandy Seale. What was he, arm's length away from you?

Ebsary: Now, I'm digging out and handing him this

Ratchford: Okay, so he's

Ebsary: Digging out and handing him that, and giving it to him. Now he got both hands are like that, right?

Ratchford: Yeah.

Ebsary: Okay. Now he says, "Give me everything you got." So, I dug down again like this.

Ratchford: What did he do with this stuff in his hands?

Ebsary: Put them in his pockets.

Ratchford: So he puts this in his pockets.

Ebsary: Right.

Ratchford: Now, he's standing there. Does he grab you or touch you?

Ebsary: No, because he's waiting for the rest of it. He wants everything I got.

Ratchford: Okay. So he has his hands stuck out.

Ebsary: So when he said, "I want everything you got", I dug down again and I hit the pocket knife. So I took it out like that, flipped it like that and did it like that.

Ratchford: And so, when you hit him, he did exactly what I did. He fell forward and then the knife then continued on up into the

Ebsary: Yes, like that.

Ratchford: So what happened then, did he fall flat down?

Ebsary: No, he didn't fall down.

Ratchford: So what happened?

Ebsary: The son of a bitch took off running like a son of a whore.

Ratchford: So he turned around and ran?

Ebsary: Yes.

Ratchford: Or did he run past you?

Ebsary: No. He, well

Ratchford: Did he hold his stomach?

Ebsary: No, he, he had his hands like this and he was running like old blazes. So I thought that the knife had only gone into his bloody clothes.

Ratchford: Oh yeah.

Ebsary: See? I didn't think the God damn thing had gone into his ....., and the God damn blade was only a God damn knife, like that.

Ratchford: Right.

Abbass: Can we see that again, Roy? Can we see how big the blade was again? Show us the length of that

thing. That's the length of it right there, eh Roy?

Ratchford: Then he turned and ran?

Ebsary: Right.

Ratchford: Like this?

Ebsary: And ran right down the bloody road and round the bend into the bloody park. And that's where he dropped, but that's pretty common.

Ratchford: Yeah.

Ebsary: So it stands to reason that he ran that bloody park. Now, the other fellow is screaming across the road.

Ratchford: Marshall had him on the ground?

Ebsary: Yeah. With his hands like this and his

Ratchford: Okay, so now I assume Marshall's position. You show me ah, you show me where, okay, you can stand over on this side over here.

Ebsary: Yeah, that's right, and Marshall was there.

Ratchford: Okay, am I on the ground or am I standing up?

Ebsary: No, you're standing up and you got your arm around the other fellow

Ratchford: Like this?

Ebsary: Right.

Ratchford: And MacNeil is on the ground?

Ebsary: MacNeil is on the ground.

Ratchford: So he's on the ground.

Ebsary: Right.

Ratchford: Is this the shoulder that's exposed to you or is it like this?

Ebsary: This one.

Ratchford: This one. Oh, so he's using his left arm then?

Ebsary: Right.

Ratchford: Okay, he's using his left arm to hold him.

Abbass: Okay, wait now, Dave, I can't see what you're doing over there.

Ebsary: You got a hold of both hands.

Ratchford: Oh yeah, so right around the neck.

Ebsary: And one arm here, like this, like that. So, I can't get that hand down, like that, you know, so I went strike (?) like that.

Ratchford: Stabbed him? Oh, I see, so you ripped him right down the arm, the left arm.

Ebsary: Right. Ripped him right down the arm like that. Then he dropped the arm.

Ratchford: So they said, and the authorities claimed that he inflicted that wound himself.

Ebsary: Oh yes.

Ratchford: Um hum. So, okay, so you slashed him on the arm, what did he do?

Ebsary: He dropped the young fellow then.

Ratchford: Yeah. And did he hit you or?

Ebsary: No, he took off running in the same direction.

Abbass: Move out of the way, Dave.

Ratchford: He ran in the same direction as Seale?

Ebsary: As Seale.

Ratchford: That's down toward the bandshell?

Ebsary: Toward the bandshell, right.

Ratchford: Yeah. Up on Crescent?

Ebsary: That's right.

Ratchford: And that was the last you encountered

Ebsary: That's, that's the last I encountered. Now, as I figured, neither one was seriously hurt, so MacNeil comes up to the house with me. We went into the house and he was yelling, "Roy saved my life, Roy saved my life." This is what he was yelling to the missus, you know, when we came

through the door, and I turned around and I said to him, "Shut up", like that. So I went to the bloody kitchen, I took the bloody knife, but there was no blood on it.

Ratchford: Want to follow that action, Chris, and we will do that, just as though you were coming in the house?

Abbass: Okay, show us again, Roy.

Ratchford: Okay, we can go out to the kitchen and have him go and actually do that.

Abbass: Okay, if you like.

Ratchford: Can you carry the gear, have you got it?

Abbass: Yes, oh yes.

Ratchford: Let's assume that the hallway here is where you and Jimmy MacNeil were coming in. We will re-enact this.

Ratchford: Where the family and all that is, and that will be the living room, wouldn't it.

Ebsary: Yes.

Ratchford: Okay, so Jimmy MacNeil is ahead of you coming in the door?

Ebsary: Yeah, right. .... ahead of me.

Ratchford: So, he coming in the door?

Ebsary: Like that, and he's yelling, and he looked in there, and he sees the wife, see? So, he says, "Roy saved my life tonight, Roy saved my life tonight". Right? And I said, "Shut up, you fool", and I headed for the kitchen.

Ratchford: Oh yeah.

Ebsary: Now I head for the kitchen and I head for the sink, but the knife is clean because I ran the knife down to the earth so there was nothing on the knife. But I took it like that and I washed it. ... and I washed it. That was it.

Ratchford: So, what happened after that now? What did you say? What did you do with the knife first of all?

Ebsary: Put it back in my pocket.

Ratchford: Yeah?

Ebsary: After I washed the knife, I put it back in my pocket again.

Ratchford: Okay.

Ebsary: Cause it's only a small knife.

Ratchford: Right.

Ebsary: You know, I'd imagine putting it in but can I get it out? There we are.

Ratchford: So, did you go in the room and speak to Mary?

Ebsary: No.

Ratchford: And what did Donna do?

Ebsary: She stayed there, well, she's says that she came into the room, the kitchen.

Ratchford: So, we can sit back down now. I guess there's no need of, that was great, Roy. That was a good re-enactment of that too. That was good.

Ebsary: So, MacNeil and I head out to the backyard.

Ratchford: Both of you, did you tell him to get out the door or?

Ebsary: No, first I went to the fridge. I took out some meat that I had. New York cut sirloin, you know, for steaks.

Ratchford: Um hum.

Ebsary: So, this is when she saw the blood on the knife. I used that small knife again for cutting the steak, the small steak, like that.

Ratchford: Oh yeah.

Ebsary: So, I cut the small steak, and I says to him, "MacNeil, we'll have a barbecue out back. But what I didn't realize was a light rain was falling and the barbecue was wet, so the bloody thing wouldn't ignite. So, MacNeil says, "I think I'll go home." Well, I says, "I'll walk up the street with you." He says, "No, because them two", he says, "might be waiting for me when I get up on Argyle Street". Now, he never figured that either of them was there..., eh?

Ratchford: No, he couldn't have

Ebsary: **Because if he did, why would he be afraid that they would be waiting on Argyle Street for him?**

Ratchford: Really.

Abbass: Excuse me, Roy. This MacNeil fellow, was he a bit of a drinker?

Ebsary: Yes, he was.

Abbass: Was he drunk at that time?

Ebsary: Yes, cause I'll tell you. He claimed that we were down to a tavern that night. We were to a tavern, but I wasn't to a tavern drinking. I spent that evening up at his father's, off George Street, some street off George Street, or like. And we waited for MacNeil to come home. Well, the old man and I had finished a bottle of wine, but there was still a full one there, so MacNeil

Abbass: Who's the old man, Roy?

Ebsary: Eh?

Abbass: Who's the old man?

Ratchford: Jimmy MacNeil's father.

Ebsary: Jimmy MacNeil's father.

Abbass: Okay.

Ratchford: So, you had finished off that bottle of wine with him?

Ebsary: Right. Now then, MacNeil said, "Let's go down to the", what's the name of the tavern?

Ratchford: At that time, on the corner, it was the ah, Steel, City

Ebsary: No.

Ratchford: No, it wasn't, it was the, what the heck did they call that tavern.

Ebsary: The Helm?

Ratchford: Not the Helm, that was on ah,

Ebsary: The Helm was down on the Esplanade.

Ratchford: Gosh, I

Ebsary: What the hell is the name of the tavern? ... just at the bottom of the street.

Ratchford: Yeah, right.

Ebsary: Right. He said, "Let's go down there". He wanted to see some fellow, a friend, you know. So, I said, "I'll walk down with you".

Ratchford: It was the State Tavern.

Ebsary: The State Tavern. "I'll walk down with you". So, we went into the State, but the State was closed. So, how could we have drank any God damn amount of beer if the God damn tavern was closed?

Ratchford: Really.

Ebsary: You couldn't. It was impossible.

Ratchford: Um hum.

Ebsary: So, he's lying there. He said I drank at least about eight. He saw me drinking at least eight, and the tavern closed. Is this right? So, he's lying like a bastard. And the D.A. asked him, "Do you figure if you had been drinking before?" How many beer has he had before. MacNeil said he didn't know. But they assumed that I spent the God damn night at the Helm Tavern. I didn't. I spent the night up with MacNeil's father. This is right.

Ratchford: That man is still alive today and living at the, is it, the MacGillvray Guest Home.

Ebsary: Why don't you go see the old bastard?

Ratchford: We went up to see him, but he was asleep when we went there.

Ebsary: He was asleep?

Ratchford: Yeah. So, I think that might be a good idea. We'll go and interview him.

Ebsary: You are bloody right.

Ratchford: Yeah, and ah, we'll get that story from him.

Ebsary: Because I spent the night with that man, right up until I went to the, the tavern was closed when we

got out here, and the tavern closes at 11:00 o'clock, right?

Ratchford: Um hum.

Ebsary: The tavern was closed.

Ratchford: Yeah.

Ebsary: So, I didn't hang around. I head out and we took the shortcut through the park. The the shortest way home was through

Ratchford: The park.

Ebsary: Through the bloody park.

Ratchford: Was it raining, by the way, that night?

Ebsary: Yeah, it was.

Ratchford: Um hum. There's was one

Ebsary: It was raining, it was raining cause I was wearing a raincoat, you see?

Ratchford: Um hum. We checked with the Sydney Weather Office and, indeed, it was overcast and raining that night. Yet one witness on the stand said that it was a clear night.

Ebsary: No, it was not a clear night.

Ratchford: And that was an authority.

Ebsary: Yeah.

Ratchford: You know, that was one of the law enforcement.

Ebsary: Go away?

Ratchford: The authority said it was a clear night that night.

Ebsary: It wasn't a clear night. It was a God damn, a kind of a foggy, hazy and rain.

Ratchford: Yeah. The Sydney Weather Office confirmed that, they confirmed that.

Ebsary: Bloody right, sure.

Ratchford: So, after that stabbing, Roy, after that whole incident, was there much tension around your place the days following that?

Ebsary: No.

Ratchford: Did it, was it ever brought up in the family again?

Ebsary: No. Never.

Ratchford: Did Mary know that you had stabbed that boy?

Ebsary: I told her. I told her the next bloody morning.

Ratchford: Um hum. And um, did she have any contact with Jimmy MacNeil after that?

Ebsary: She met MacNeil coming up to the house and she told him, "Look, don't come near the house any bloody more". So that finished him. So, then he went to the police and told the police about the stabbing. That was when he went to the police. When the wife prevented him to come to the house anymore, to hit back, he went to the City Police and told what happened down in the bloody park, and they wouldn't believe him. And then they come up and pick me up and they brought me down there like, and they questioned me about blood on the hands and all that. And I said, "By geez", I said, "There was never any blood on the hands", and there wasn't.

Ratchford: Um hum.

Ebsary: Well, about a month after that, the R.C.M.P. stepped in. And they brought down an expert from Ottawa with his lie detector apparatus. And we went down to the Wandlyn Hotel, took a room, set up the apparatus, and they put me through that machine three fuckin times. Because the fellow who was ..... like this. But they never asked me one fuckin ..... They said, "Did you see MacNeil? Did you see Seale stabbed?" I didn't. It was too bloody dark.

Ratchford: So, you justified that immediately with

Ebsary: I justified it immediately. I didn't. It was too bloody dark.

Ratchford: What other questions did they ask you and how did you answer them?

Ebsary: They asked me if I saw who killed Seale. I said no. I didn't.

Ratchford: Did they ask you, did anyone, did the police or anyone ask you, "Did you kill Sandy Seale?"

Ebsary: Right.

Ratchford: Did any of them ask you that?

Ebsary: Oh yes.

Ratchford: And what did you say?

Ebsary: Well, they asked me, when they had me on that lie detector test?

Ratchford: Um hum.

Ebsary: I said no. I didn't.

Ratchford: Yeah.

Ebsary: Because, I said, the last time I saw Seale that night, he was running the length of the bloody park. And if you kill a man, he don't run the length of the park.

Ratchford: Did you tell them that he had accosted you?

Ebsary: Oh yes, sure.

Ratchford: Did you tell them that you did pull a knife?

Ebsary: I told them, when he demanded "all you got", "I want everything you got", so I started to empty the pockets and then finally when I put my hand in the what-do-you-call-it pocket, I came across this small pocket knife. So, I just slipped it open, like that. It was a small knife and I twisted it like, it was a small knife. There's a young French fellow had given it to me, like you know? Like that.

Ratchford: And did you tell the police, when they asked you, that you drove the knife into him? Did you, how did you

Ebsary: I told them, I said, I made a swipe, whether I connected or not, I don't know. And when I saw Seale run through the park, I still didn't know that I had gone into him.

Ratchford: Yeah.

Ebsary: I thought, the clothes he was wearing, I'd only got the clothes.

Ratchford: Did you tell them that you ripped Marshall in the arm?

Ebsary: Oh yes, I told them that.

Ratchford: And yet in the Court they tried to say that that was a self-inflicted wound.

Ebsary: Um hum.

Ratchford: You mean they literally completely ignored your own testimony?

Ebsary: Right.

Ratchford: After that, after the lie detector tests, and after Marshall went to Court, during that trial, did it ever occur to you that, that, you know, that you might have done something wrong?

Ebsary: No.

Ratchford: Did you feel that whatever happened to Marshall was his own fault?

Ebsary: It was his own bloody fault. God damn it, they attacked us. So, what do you do, you bloody fight back. And that first Judge, when I had the first trial, right? That Judge, the jury come out and they asked him to define, give them the definition of self-defence, and he turned around and he explained to them. He said, "If you are attacked, like Ebsary was attacked, under the circumstances, you are justified in using anything at hand to defend yourself. Anything. Now, he emphasized that. So, they came back with a hung jury.

Ratchford: Um hum.

Ebsary: But it was that explanation of self-defence that hung that jury.

Ratchford: Yeah.

Ebsary: You're bloody right.

Ratchford: So, somebody, some people, or some of the testimony said that after that happened, well, it was shortly after that you moved to Mechanic Street, wasn't it?

Ebsary: Yeah, right.

Ratchford: So, if Donna said that you became almost a complete recluse and that you kind of stayed just within the house, etc. and so forth.

Ebsary: I've always been a bloody recluse.

Ratchford: Yeah.

Ebsary: I've been alone all my life. I've been all over the bloody world, but I was a loner. I went to tour alone. I went to see sites alone. I went to my cabin alone. I God damn slept alone. Now, I've changed my mind. (laughs)

Ratchford: So, during those years at Mechanics Street, did you, was there any feeling of guilt or anything within you? Cause you are a man of esoteric arts.

Ebsary: Yeah.

Ratchford: You are a man who dwells in theology and everything else. You know the Bible just as well as any clergyman. You are a Minister in the Universal Life Church. Did you ever contemplate after that, for one minute, that maybe you were wrong?

Ebsary: No, I didn't.

Ratchford: And did you

Ebsary: Mind you, it's entered my mind lots of bloody times, but not that I was bloody wrong.

Ratchford: Yeah, yeah.

Ebsary: I could justify it. I figured it out like this. With one stroke, I put away two bloody crooks. I'd eliminated two bloody crooks from society. And I had. One was dead, that wasn't my God damn fault. That was the fault of the God damn hospital and the God damn doctors on the case when they bloody operated. So, I exonerated myself from any God damn guilt there. The other put in jail. I said fuck it. He fuckin well deserves it. So, I killed two birds with one God damn stone. Now that's the way I figured it.

Ratchford: So, now at this stage now, after all these years, and after this thing finally blown open again and them trying so hard to condemn you for the crime, and trying, in a lot of ways I guess, to try to ah

Ebsary: Crucify me.

Ratchford: Right. How do you feel about yourself as a warrior, first of all, as a fighter-back? Are you like they say, a senile retired recluse?

Ebsary: Are you kidding?

Abbass: Roy, can we get a look at some of the drugs that the doctor has you on?

Ebsary: Yes.

Abbass: How many different doctors do you have, Roy?

Ebsary: How many do I have?

Abbass: Yeah.

Ebsary: Jesus, how many have I got?

Abbass: Are these Court appointed doctors, Roy?

Ebsary: Oh no.

Abbass: These are all doctors that you got yourself, on your own?

Ebsary: Yes. These are doctors that I, I've had those doctors for the past 14 years. Gaum, Caddeux(?)

Abbass: Why do they have you on so many different drugs, Roy?

Ebsary: To try to keep me going.

Ratchford: Do you think that without the drugs, that you would die?

Ebsary: Yes. And they know. .... told me, he said, "You can fool the world, but God damn you", he said, "You're not going to fool me". He said, "You're dying in your bloody tracks. I know it.", and he said, "You know it".

Ratchford: How do you feel about that? What does it mean to you?

Ebsary: Without the bloody drugs, I kick the fuckin bucket.

Ratchford: Now what about your will now like is your spirit still as powerful as it ever was?

Ebsary: You've got it --

gmh

(318 at Tape)

Ebsary: Ask me what nationality I am.

Ratchford: What nationality are you?

Ebsary: I'm a bloody Newfoundlander, and anybody who calls me a God damn Canadian, I might do what I did to Seale. (laughs)

(the video tape continues on discussing his Will and other things, but nothing more concerning the stabbing incident)

1 MR. MacDONALD:

2 Now, My Lord, as I indicated there is additional things on
3 that tape, but in our -- the last three lines, My Lord, seemed to
4 be out of context somehow.

5 MR. CHAIRMAN:

6 You skipped to the last lines.

7 MR. MacDONALD:

8 Pardon?

9 MR. CHAIRMAN:

10 You skipped to the last seven words.

11 MR. MacDONALD:

12 The last seven words, yes, and I'm just not sure if we can find
13 that. It may be on tape. I don't know if I got the counter on
14 that, but that's obviously a very relevant part to show. If you
15 give me a minute I'll try and --

16 MR. CHAIRMAN:

17 Why not at the break --

18 MR. MacDONALD:

19 Why don't we find it at the break we'll find it because I'm not quite sure --

20 MR. CHAIRMAN:

21 All right.

22 MR. MacDONALD:

23 I just cut it off because it went on to something that's not
24 on this transcript.

25 BY MR. MacDONALD:

Q. Do you remember the occasion when Mr. Ratchford was at your

1 house and you did this tape?
2 A. Oh, quite. I'm not senile.
3 Q. No, I never suggested -- You do remember that, do you?
4 A. Yes, but you implied it.
5 Q. What?
6 A. You implied it.
7 Q. Now there's a couple of questions I'd like to ask you arising
8 out of what's on that video and what you said this morning.
9 I'll just give you an opportunity to explain several things.
10 A. Yeh.
11 Q. When you said this morning that you took the pocket knife out
12 out and made a swipe at Seale?
13 A. Yeh.
14 Q. Are you describing what's shown on that tape, that you took it
15 out and you --
16 A. No, not necessarily.
17 Q. Yeh, well, what did you mean by saying a swipe?
18 A. Well, I told you this morning when you asked me --
19 Q. Yes.
20 A. --if I took a swipe at him, I didn't know whether I connected
21 or not, right.
22 Q. Yeh. Now all I'm asking you --
23 A. That there is a play acting.
24 Q. Yes.
25 A. That was done in the bloody apartment for Ratchford.

1 Q. Yes. Is that what you mean by a swipe?
2 A. Right.
3 Q. Okay. What was shown on that tape is what you mean by a swipe?
4 A. No, it wasn't because there I didn't take the hand out of the
5 pocket.
6 Q. Oh, I thought you did. I thought it showed you coming --
7 A. Well, if you had been watching that very carefully you would have
8 noticed that I didn't take the hand out of the pocket.
9 Q. All right. What you mean by what you said this morning that a
10 swipe--you took the pocket knife out of your pocket and then --
11 A. I made the swipe like this.
12 Q. And "like this" you're saying is a motion similar to a swaying
13 motion?
14 A. Right. That's right. Right.
15 Q. Okay.
16 A. That's why I don't know if I connected or if I didn't.
17 Q. Okay. One of the questions I didn't ask you this morning, I
18 forgot, was what you did with the knife after you had told us
19 you nicked or slashed Mr. Marshall?
20 A. Marshall wasn't slashed, he was scratched.
21 Q. Scratched, okay. After you scratched him did you wipe blood off
22 the knife?
23 A. Not necessarily.
24 Q. Well, do you recall whether you did or not?
25 A. No, I don't really.

1 Q. In the -- What you said on the tape was that you took the knife
2 and put it into the earth to take the blood off.
3 A. Well, it's a possibility. It's quite possible I did.
4 Q. So that's possible that you did that?
5 A. Oh, yes, it's possible.
6 Q. You said a couple of times today or perhaps it was once on the
7 tape and once this morning that when MacNeil arrived at your
8 house he was saying: "Roy saved my life"! "Roy saved my life"!
9 A. That's right.
10 Q. Was there any danger to your life that night as far as you're
11 concerned?
12 A. Well, as far as MacNeil was concerned if I hadn't got to him
13 when I did, Marshall would have bloody well strangled him to
14 death. You take that into consideration.
15 Q. Were you concerned about your life that night?
16 A. No, I wasn't. Why the hell should I. I didn't have that long
17 to live.
18 Q. On a couple of occasions also you've referred to MacNeil as
19 Judas?
20 A. That's right.
21 Q. Why are you calling him that?
22 A. Listen, I don't think you're a very dense man, but you are
23 dense now. MacNeil was with me that night, right?
24 Q. Yes.
25 A. If he had told the truth that it was robbery with violence, right,

1 and suppose, for instance, I had stabbed young Seale, I would
2 have been arrested, right? MacNeil would have been arrested
3 as an accomplice before and after the fact. Do you see the
4 point? So MacNeil slides over with Marshall.
5 Q. So that's why you refer to him as Judas?
6 A. Judas.
7 Q. On the tape, if you remember, you demonstrated when you came in
8 the house.
9 A. Yeh.
10 Q. And you told MacNeil to, "shut up you bloody fool" or whatever it
11 was and then you went to the sink and you said, "And then I
12 washed off the pocket knife".
13 A. That's right.
14 Q. Is that accurate? Is that what you did that night?
15 A. Well, I don't know really.
16 Q. You can't remember?
17 A. No, but if -- probably I did.
18 Q. Okay. So you don't remember today then, do you, whether you
19 wiped that pocket knife off under the tap or not?
20 A. Probably it's quite possible I did. I don't remember every
21 goddamn thing that happened.
22 Q. Okay. That's fine. Now also on the tape you said you were
23 asked if your wife knew that you had stabbed that boy and you
24 said you told her the next morning?
25 A. Yeh, that's what I told Ratchford.

1 Q. That's what you told Ratchford?
2 A. Do you understand that this here is only a play act?
3 Q. What, the video tape?
4 A. Yes, the video tape was only a play act that was done in my
5 bloody apartment.
6 Q. Yes, I understand that.
7 A. Right. It wasn't the real McCoy.
8 Q. Was it your intention when you were giving that -- making that
9 tape or when Ratchford was asking you evidence, was it your
10 intention to tell him as best you could everything that
11 happened that night?
12 A. Ratchford--at that time Ratchford and --
13 Q. Abbass, Chris Abbass.
14 A. No.
15 Q. Cotter?
16 A. He works with the C.B.C.
17 Q. A fellow named Cotter?
18 A. The broadcaster, what the hell is his name? Cotter, Peter Cotter.
19 Q. Peter Cotter.
20 A. Those two got permission from the Attorney General to come out
21 at the center where I was and to tape my story, right?
22 Q. Yes.
23 A. So they did. At the same time they were supposed to make the
24 video, right? I never saw the book. I never saw the video.
25 I never saw Ratchford since. Do you see the point?

1 Q. Okay. But if you'd get back to my question, when you made that
2 video with Ratchford --
3 A. Yeh.
4 Q. --were you intending to tell him and have recorded your best
5 recollection of what took place on the night of May 28th, 1971
6 and the day after?
7 A. We were putting on an act.
8 Q. So was it just an act? It wasn't the truth?
9 A. Well, it was just an act. He wanted me to act the part so I
10 acted the part. If I didn't do such a bloody good job, what
11 the hell.
12 Q. Did you tell your wife the morning after, that's on May 29th,
13 that you had stabbed someone the night before?
14 A. No.
15 Q. Also on the tape when you were talking about being picked up by
16 the police in November and giving them the statement, you --
17 Ratchford asked you if you told the police that you had ripped
18 Marshall in the arm and you said, yes, you had told them that.
19 Did you tell the police that?
20 A. Not to my recollection because they didn't ask me. I only
21 answered the questions that they asked me and that's all I'm
22 doing to you.
23 Q. Thank you. Have you ever seen the statement, Mr. Ebsary, that
24 Jimmy MacNeil gave to the Sydney Police in November of 1971?
25 A. I think I've told you before that I've seen nothing, right?

1 Q. I want to show you a copy of that statement so you can -- I
2 want to ask you some questions about that. That's Volume 16.
3 A. I've seen nothing. I've seen no statements, nothing.
4 MR. MacDONALD:
5 My Lord, perhaps it would be appropriate to mark that transcript as
6 an Exhibit.
7 MR. CHAIRMAN:
8 Exhibit 25.
9 MR. MacDONALD:
10 Twenty-five.
11 BY MR. MacDONALD:
12 Q. I'm showing in Volume 16 a page 176, a copy of the statement
13 that -- It's a typewritten copy of the statement that Jim
14 MacNeil gave to the Sydney Police in November.
15 A. Yeh, I didn't see it.
16 Q. Oh, I know you didn't.
17 A. Right.
18 Q. But what I would like to do is just review it with you and ask
19 you your comments on what MacNeil has said because I understand
20 that MacNeil is going to comment on it.
21 A. I see. Right. I see your point.
22 Q. So he says: "Myself and Roy Ebsary were at the State Tavern
23 late in the evening of May this year".
24 A. Well, I told you we were at the State Tavern. How we got there,
25 what time we got there --

1 Q. That's right. You've told us that.
2 A. What, do you think I'm a bloody liar?
3 Q. No. No. I'm just referring you to what's been said here to
4 get your comments on it. "We were there about an hour or so".
5 You don't agree with that as I understand?
6 A. No, I don't because we were only there a few minutes but the
7 place was closed.
8 Q. "We left". "We walked down George Street and took the short cut
9 through the park".
10 A. Right.
11 Q. That's correct, is it?
12 A. Right. Yes.
13 Q. "We came up to Crescent Street and while walking along
14 Crescent Street we were approached by an Indian and a coloured
15 fellow from behind"?
16 A. Right.
17 Q. "The Indian put my right hand up behind my back and the coloured
18 fellow said, dig, man, dig". Now is that all accurate?
19 A. That's right.
20 Q. Then Roy Ebsary said, "I got something for you and put his hand
21 in his right pocket and took out a knife and drove it into
22 the coloured fellow's side". Is that accurate?
23 A. He's a bloody liar.
24 Q. Okay. He goes on to say what side. He says, "the left-hand
25 side of the coloured fellow". I seen Roy's hand and knife

1 full of blood". Did you have any blood on your hand?
2 A. I never had any blood on those bloody hands. Now here's another
3 thing, I told you when MacNeil saw all this he was forty feet
4 across the bloody street and sixty feet left of the bloody
5 street, right, when Seale was hurt, but here he says it happened
6 when we were all together. Well, it's a bloody lie.
7 Q. Okay.
8 A. And this, for instance, what side, right?
9 Q. Yes.
10 A. Marshall even went to the point of telling the Judge how was
11 he stabbed. He said he stooped down like that and come up like
12 that. How in the hell did he know. His back was toward the
13 street where we were. How in the hell could they see anything
14 at all.
15 Q. Now I just want to --
16 A. Well, that's all right. Go ahead.
17 Q. Okay. I just want to continue. "Did you see the Indian being
18 stabbed"? "No, I did not." That's MacNeil saying he did not
19 see Marshall being stabbed.
20 A. Listen, now, Marshall had his arm around the other fellow's
21 throat, so the other fellow couldn't see anything anyway, could
22 he?
23 Q. So MacNeil couldn't have seen anything?
24 A. No, he couldn't have. How could he?
25 Q. "What happened then"?

1 "Roy went home and I was with him". "He washed the knife
2 under the tap and washed his hands off and then he told me
3 not to say anything about it". What do you say to that?
4 Did that happen?
5 A. It's news to me.
6 Q. That did not happen?
7 A. Well, it's news to me.
8 Q. Okay. "Did you ask him why he done it"? "Yes, he said it was
9 self-defence". Was there any talk about that?
10 A. No.
11 Q. "What time did you get home that night"? "About twelve p.m."
12 A. Yeh, approximately.
13 Q. Approximately. "How long were you at Roy's house that night"?
14 "About one hour after that".
15 A. No, possibly a half hour because he went up through the grave
16 yard.
17 Q. "When did you see Roy again"? "The next day I went to his house".
18 "He was lying in bed". "I told him that the fellow died".
19 A. It was the next day.
20 Q. Is that correct, you were lying in bed and he told you that
21 the fellow had died?
22 A. Yes, that's right.
23 Q. "What did he say"? "What did Roy say"? "He said it was self-
24 defence". "I told him he did not have to kill him". "He
25 told me he had two children, a girl and a boy and not to say

1 anything to the police". "I left him". Did you have that
2 conversation with MacNeil?
3 A. No, the only conversation we had is he asked me if he could
4 bring his father down and I said yes.
5 Q. "Who seen you at the house besides Roy, his wife, daughter,
6 and son"? I don't know when that's -- Was it the day after?
7 Was your son home the day after?
8 A. He came down to the house. It was early in the morning. It
9 was the next day. They're trying to say it was the day after
10 but it wasn't. It was the following morning when he came down
11 and I was still in bed.
12 Q. He says that you were lying in bed?
13 A. Yeh, that's right.
14 Q. Was your wife -- Were your wife and children home that morning?
15 A. Well, they would have been in bed.
16 Q. "Did they say anything to you then"? "No, not that day".
17 A. No, that's right.
18 Q. "About two days after that then his son about eighteen or
19 nineteen came to my house with --
20 Did you know that your son and wife went to see Jimmy MacNeil
21 and told him not to go to your house any more.
22 A. No, because I was told nothing.
23 Q. Were you told that at any time?
24 A. No, never.
25 Q. "What were you wearing that night"? "I was wearing a college

1 coat, blue with two white marks on the sleeve". That's
2 Jimmy MacNeil. Do you remember what he was wearing on the
3 night this thing happened?
4 A. No, I don't remember.
5 Q. "What was Roy wearing"? "A black shawl over his shoulder,
6 something like a priest wears over his shoulder".
7 A. I was wearing a blue raincoat.
8 Q. And you did have it over your shoulder?
9 A. I might have had it over my shoulders. Well, Marshall says
10 I was dressed like a priest.
11 Q. All right. I guess the rest he's just talking about his own
12 activities that night.
13 A. Right.
14 Q. When you were taking that polygraph -- You talked this morning
15 about the lie detector?
16 A. Yeh.
17 Q. And you told us about a man who identified himself, he was
18 in plain clothes and identified himself as the Chief of the
19 R.C.M.P.?
20 A. That's right.
21 Q. Did that man ever question you at all?
22 A. No. The only thing he said to me was, "I'll drive you down
23 and you take the lie detector test. Under no circumstances
24 are you to tell anyone that you were down here and took a lie
25 detector test."

1 Q. Did he ever question you about what happened on the night of
2 the Seale incident?
3 A. Never. We never had no conversations outside that when he
4 said,"I'll run you down". He said, "If we figure you're
5 telling the truth, we'll drive you home". That's the
6 extent of the conversation.
7 Q. When you were actually taking the test, was there anyone in
8 the room except you and the man who was running the machine?
9 A. No. The room is only small see and there was only room for the
10 machine, the chap who was questioning me and myself.
11 Q. Thank you. Now you made reference this morning to, I think you
12 said a butcher knife or a chef's knife. What did you call
13 it --
14 A. The chef's knife.
15 Q. --that you used to carry back and forth to work?
16 A. Yeh.
17 Q. I want to show you this knife from yesterday afternoon when
18 remember we looked and you told me that's what you call a
19 chef's knife, isn't it?
20 A. A chef's knife. A french knife --
21 Q. A french knife?
22 A. A french knife or a chef's knife.
23 Q. And that is a knife that you owned at one time, isn't it?
24 A. Yeh, right.
25 Q. That also was introduced as an Exhibit at one of your trials.

1 A. What for?
2 Q. It's Exhibit number ten.
3 A. What did you think I was hunting, tiger.
4 Q. Now you talked about having been picked up. Remember that time
5 with Tony Tratnik and you said you've been picked up.
6 A. Right.
7 Q. And that you were going down to sharpen your french knife.
8 That was a knife similar to this, isn't it?
9 A. Well, a knife similar to that anyway.
10 Q. Similar to that?
11 A. Because I had quite a few of them.
12 Q. So it was a knife similar to that. Is that what you had tucked
13 in your belt, a knife similar to that?
14 A. A knife similar to that, yes.
15 Q. And that's what you had when the police picked you up?
16 A. That's what the police took off me.
17 Q. And the police took that, didn't they?
18 A. Oh, yeh.
19 Q. And the police kept that?
20 A. No, as a matter of fact several days later while I was up
21 in Court paying the hundred dollar fine, they gave me the
22 knife wrapped in paper.
23 Q. They gave it back to you?
24 A. Yeh, they gave it back to me.
25 Q. But it was a knife similar to this?

1 A. Oh, it was similar to that.
2 Q. Now I want to show you also and I'll perhaps have these marked
3 as just one group.
4 MR. MacDONALD:
5 Mr. Chairman, if we get an envelop to put them in --
6 BY MR. MacDONALD:
7 Q. These are another group of knives, Roy, that we're --
8 A. That's only half that the Prosecuting Attorney had down in
9 the Court.
10 Q. Is it? Well, these are in any event knives that were introduced
11 during one of your trials and there's all sorts of different
12 types of knives. Those are all knives that you had sharpened
13 or worked on over your -- while you lived at rear Argyle Street,
14 was it?
15 A. Sure.
16 Q. What did you used to do, put handles on --
17 A. Yes. See when the bone handle would break off I used to put
18 a metal handle on it.
19 Q. And this knife here which is Exhibit nine, is that another
20 french knife with a broken tip?
21 A. It is broke off, yeh.
22 Q. Okay, and there's a knife, Exhibit seven, which is similar
23 to the one we saw this morning?
24 A. That's right.
25 Q. Did you used to sharpen both sides of those knives?

1 A. Sometimes.
2 Q. Why would you do that?
3 A. I don't know.
4 Q. Did you have a wheel or an emery board or something at your
5 house so you could do that, did you?
6 A. I had an electric grinder you see.
7 Q. And what is that knife? What type of knife would you --
8 What would you use that for?
9 A. A bread knife.
10 Q. A bread knife. And the one that's serrated?
11 A. That would have been used for a bread knife too.
12 Q. Okay. Now were those all knives that were used at your home
13 every day or were they a collection that you kept?
14 A. No, they were used -- Well, when we lived on Argyle Street
15 those knives were used every day, right?
16 Q: As family knives for --
17 A. As family knives, right. When we moved to Mechanic Street
18 everything new went into the bloody house so naturally all
19 of this had been through down in the bloody cellar.
20 Q. This knife here, the one Exhibit seven and the one I showed
21 you earlier today, would they be used in the ordinary course
22 of the day in the house?
23 A. Yeh, I'd put them on the table.
24 Q. Okay, and that would be just a regular kitchen knife?
25 A. Right.

1 Q. And I take it they'd be washed every time they're used?
2 A. Sure. That's what I'm saying. Knives that have gone through
3 the wash or have been washed for eleven or twelve bloody years
4 and then they'd be foolish enough to tell me that there was
5 fibers on it. Where did the fibers come from? It don't make
6 sense, the darn thing.
7 Q. Now, did you say that's only a few of them? Did you have a lot
8 more than that?
9 A. Well, you should have seen what the Prosecuting Attorney had
10 down in the Court. Christ, he had a sack full of them.
11 Q. I thought this was all of them, but did you have a whole lot?
12 A. Of what?
13 Q. Of knives?
14 A. Yeh, I had quite a few.
15 MR. CHAIRMAN:
16 Will these be going under just one Exhibit?
17 MR. MacDONALD:
18 I'll just count them, Mr. Chairman. There's eight of them.
19 We'll get an envelope I guess to put those in.
20 BY MR. MacDONALD:
21 Q. What happened to the pocket knife you've talked about? Did
22 I ask you that this morning?
23 A. I don't know. Did you? No, I don't think you did really.
24 Q. What happened to that?
25 A. I don't know. I had it for quite awhile and the tip had been

1 broke off it, you see?
2 Q. Yes.
3 A. I think I busted it again trying to open a can of varnish and
4 I threw it out in the blooming garden, in the flower garden,
5 and I helped the Mounties go up there and look for the bloody
6 knife and we couldn't find it.
7 Q. You actually went out to look for it with the Mounties?
8 A. Yeh, with the Mounties.
9 Q. Okay. Now when we talk about the Mounties, do you recall we
10 started talking this morning about the time you and Mr. --
11 Corporal was it or Sergeant Carroll sat down at your home
12 and he taped an interview that he had with you?
13 A. Yeh.
14 Q. You remember that?
15 A. Oh, yes, sure.
16 Q. Could I have Volume 19 please. Volume 19 at page 138.
17 A. What's this?
18 Q. Now that is a transcript of the conversation that you had with
19 Carroll at your kitchen table that day?
20 A. Yeh.
21 Q. It was the 28th of October, 1982?
22 A. Yeh.
23 Q. You recall him being there at your home and taking a tape
24 recording of what was being said?
25 A. Yes, because the other fellow who said he was the Chief of the

1 Mounties turned around and said I had no guts and walked out.
2 Q. Who was that? Do you remember his name?
3 A. No. Well, you might know his name because I told you he told
4 me he was the Chief of the Mounties and that he'd come down
5 from bloody Ottawa. Do you remember?
6 Q. Well, I don't want to get confused. Are you talking --
7 A. You won't get confused because there's only a simple question
8 and a simple answer.
9 Q. Well, I'm trying to find out -- When you mentioned the word
10 "Chief" I thought it was when you were taking the lie detector
11 test?
12 A. Well, this is when he told me he was the Chief. Do you see the
13 point.
14 Q. This is Roy --The interview with Carroll took place in 1982.
15 That's eleven years later.
16 A. Well, listen now. There was -- That same man--each time
17 Carroll came to the house that man was with him.
18 Q. Okay.
19 A. Right.
20 Q. The same man who brought you to take your lie detector test?
21 A. Right, with one exception. One day when he was sitting at
22 the table and they were questioning me he got up and he said
23 to Carroll, "I'm fucking off". He said, "He got no guts".
24 Q. Meaning you?
25 A. Right. He didn't know how much I had.

R. N. EBSARY, by Mr. MacDonald

1 Q. When you were giving your interview to Carroll, was it your
2 intention that time to tell Carroll as best you could your
3 recollection of what had taken place on May the 28th?
4 A. That's right.
5 Q. And did you ever -- Has anyone ever shown you before yesterday
6 a copy of that document --
7 A. No.
8 Q. this -- that I put in front of you.
9 A. That's right.
10 Q. Yesterday was the first time you read it?
11 A. Right.
12 I told you I've seen no papers, I've heard no tapes, nothing.
13 Q. Okay. Well, let me just refer you if I can to some of the
14 comments in that interview with Carroll and get you to comment
15 on those if we can. I want to show you first of all on page
16 139.
17 MR. CHAIRMAN:
18 Which page are we on?
19 MR. MacDONALD:
20 Page 139, My Lord.
21 BY MR. MacDONALD:
22 Q. You see at the top of that page --
23 A. What's this here? Carroll:"I'm not going to ask any questions".
24 "I'm just going to amke sure the machine is working properly."
25 Q. Whenever it says "Carroll" that means Carroll said something

1 and whenever it says "Ebsary", it's you talking off the tape.
2 A. Right.
3 Q. Now I want to refer you to where you say: "Okay, I remember the night vividly".
4 A. Yeh, I did.
5 Q. You did remember the night vividly?
6 A. I still do.
7 Q. And the night we're talking about is the night that Seale was hit?
8 A. That's right.
9 Q. Okay. Now let's go to this long paragraph there: "I remember
10 the night vividly".
11 A. Yes.
12 Q. "It was kind of a misty night". You told us that already?
13 A. Right.
14 Q. "So I had to take off my glasses but I can't see very well anyway".
15 A. Yeh, see the glasses were getting fogged up.
16 Q. "So with the glasses off I couldn't see at all".
17 A. Well, I couldn't, not very well.
18 Q. "So I went over to visit O'Neil". "Now not the young O'Neil, his father, and
19 we sat and we consumed". "It was a few days before my birthday".
20 A. That's right.
21 Q. "And actually I put the two bottles of wine in my pocket and went
22 over to visit O'Neil". You told us that this morning.
23 A. Yeh, that's right.
24
25

1 Q. His son wasn't home?
2 A. That's right.
3 Q. So: "Okay, we consume one bottle of wine, Mr. O'Neil and
4 I."
5 A. Right.
6 Q. "Damned, his son come home and we consumed the second one."
7 Do you remember that?
8 A. Well, I don't know about consumed the second one because
9 we wanted to go down to State Tavern.
10 Q. Okay. Now then: "When I was about to leave to go home
11 the boy said he wants to go to the State tavern and meet
12 somebody."
13 A. Yeh, that's right.
14 Q. "I don't know who."
15 A. No. Well, he said he wanted -- there was a friend or
16 something that he wanted to see at the State Tavern.
17 Q. "But he didn't have any success because--" and then there's
18 indication of an interruption.
19 A. Yes, because the tavern was closed.
20 Q. Let's see: "We must have come up George and I've gone through
21 the park several times with the police."
22 A. Yeh.
23 Q. But Wentworth Park at that time --
24 A. I been through with the police. I -- the police took me in
25 a car and we went over all the route.

1 Q. When did they do that?
2 A. That time they come up the house to pick me up.
3 Q. Did you --
4 A. And took me down to question me, like.
5 Q. The time you had the lie detector -- or around the same
6 time?
7 A. Oh, no. Before I took the lie detector test.
8 Q. Oh, before you took the --
9 A. Do you remember when I told you they come up to the house
10 to pick me up, took me down there, questioned me. Right?
11 Q. Okay. I remember now.
12 A. Well, they put me in the car and they said now show us
13 exactly where the incident happened. So they took me
14 all around the area. Right?
15 Q. Do you remember what police you were dealing with at that
16 time, Mr. Ebsary?
17 A. No, I don't.
18 Q. Okay. Do you know any of the police in the Sydney by name?
19 A. Well, I know MacIntyre because they offered me a job to
20 bump him off.
21 Q. Okay. They offered him a job to bump him off.
22 A. That true, Your Honour. I was coming -- the police were
23 giving me a lift home one night. Two constables in the
24 car, right? I was sitting in the back seat. One of them
25 the driver, he turned around to me and he said, "Ebsary you

1 you could do us a favour." I said, "now how in the hell could
2 I do guys like you a favour?" They said, "easy." I said, "what?"
3 They said, "get rid of the chief." I said, "what are you talking
4 about?" They said, "get rid of the chief." "There's not a son
5 of a bitch on the force got any use for him." "And you could
6 do it easy." Now that was the police force.
7 Q. Did the police force -- did members of the force used to
8 drive you home from time to time Roy?
9 A. Lots of times.
10 Q. Over what period of time would that have occurred?
11 A. Wait a minute now, I'll see how close I can get to that.
12 Oh, at the neighbours -- one night I went over to visit
13 the wife.
14 Q. Was this after you and your wife had separated?
15 A. Oh, yes.
16 Q. Well, let me get back to --
17 A. She lived on Mechanic street at the time, see.
18 Q. Let me get back to this page--
19 A. And I'd walk around eleven from over there.
20 Q. Now, let me get back to this page here, one thirty nine.
21 "When the police asked me who attacked me I wasn't even
22 able to tell them the colour."
23 A. No, that's right I couldn't. But up here it seems that --
24 Q. Carroll?
25 A. Judas could tell right off the bat what was -- and indeed the

1 other one was a bloody black.
2 Q. Okay. We'll come to that. Now, "I said two men attacked me."
3 A. Right.
4 Q. Okay. "I turn around and he says to me give me everything
5 you got in your pockets."
6 A. Right.
7 Q. "And I gave him everything I had in my pocket."
8 A. Right.
9 Q. "But when I put my hand in my pocket I discovered I had
10 a pen knife."
11 A. Yeh.
12 Q. "Now, it was only a pen knife. It was no knife that you
13 took from my home."
14 A. That's right.
15 Q. "And it was a pen knife and that pen knife was given to
16 me by young Jacques Brittain."
17 A. That's right.
18 Q. Now, you go on to say: " The blade was about three inches
19 long." And that's what you told us this morning.
20 A. Yeh, but the tip was broke off.
21 Q. Okay, yeh. That's what you --
22 A. Right. Yeh.
23 Q. There's no reference to that here. So when this --
24 A. I can't see to well.
25 Q. "When he said to me, give me everything you got in your pocket.

1 I said listen, you're going to get everything I got in
2 my pocket. So I gave him everything I had in my pocket.
3 Everything. My watch, my ring but the knife was in my
4 top pocket and I opened it in my pocket and I said brother
5 you asked for everything and you're going to get everything
6 and I gave him everything."
7 A. Now, this was what's-is-name's answers eh.
8 Q. No, this is you.
9 A. This is me?
10 Q. Yeh. This is a recording of your discussion with Mr.
11 Carroll. "Now the blade was that small that the boy
12 that night he ran."
13 A. Right.
14 Q. "In the meantime Marshall just strangled the other boy
15 across the road. That young O'Neil."
16 A. Yes, that's right.
17 Q. Now do you remember telling Carroll that? That you --
18 what does it say -- you opened the knife in your pocket and
19 you gave him everything and that the boy then ran?
20 A. Well, I was perfectly candid with Carroll.
21 Q. Okay. You just -- you go on to say: "Marshall was a thug
22 and so was Seale."
23 A. Right. They were a couple of Seale.
24 Q. But you didn't know them at the time did you?
25 A. No, I didn't.

1 Q. What --
2 A. Any two guys that'll hold up people in the back, their
3 either gutter snipes or thugs.
4 Q. Okay.
5 A. How else would you describe them? Gentlemen?
6 Q. No. Let me --
7 A. Or the average Canadian?
8 Q. Let me go down to the bottom of this -- half way down the
9 page now. This again is you talking.
10 A. Right.
11 Q. "Now listen, young Seale that night ran. He ran. Now listen,
12 I was only about fifty feet from South"-- I think that
13 word should be Bentinck.
14 A. Right.
15 Q. I don't know what's missing there.
16 A. That's right.
17 Q. "Fifty feet, but he ran the whole length of that bloody street
18 so I don't think the boy was hurt."
19 A. Yes, he did.
20 Q. "I didn't think the boy was hurt. The next morning O'Neil
21 came to me house and he said Ebsary do you know a young
22 fellow was killed in the park last night. And I said he
23 must have had bad luck. He took us for all we had but he
24 must have bumped into somebody who gave him the works."
25 A. Right.

1 Q. "I didn't believe I did it."
2 A. No, I didn't.
3 Q. " I couldn't convince myself I did it."
4 A. I bloody well couldn't either.
5 Q. What do you think today, Roy? Do you think that you --
6 A. I know bloody well I wasn't.
7 Q. Wasn't what?
8 A. That I didn't do that young fellow in.
9 MR. PUGSLEY:
10 What was the last question?
11 MR. MACDONALD:
12 He didn't do that young fellow in.
13 BY MR. MACDONALD:
14 Q. Now, on page one forty one. It's about half way down.
15 "He said I want everything you got in your pocket."
16 A. Yeh, Right.
17 Q. "Now, I'd been mugged before coming through the park umpteen
18 times but I never complained to the police."
19 A. Well what was the use? I'd been robbed umpteen times up
20 in the bloody apartment. I've gone to the police. What
21 in the hell have they done about it? Nothing.
22 Q. Have you -- were you mugged in that park before?
23 A. Yes.
24 Q. Okay. And what do you mean by mugged? What would happen
25 to you?

1 A. Well, they'd rough you up and take what bloody cash you had
2 on you and that was it.
3 Q. How often did that happen? Any idea?
4 A. Well, several times.
5 Q. And was that several times before the night that Seale was --
6 A. Oh, yes.
7 Q. --killed?
8 A. And that's the reason I said the next one that mugs me I'll
9 drop him in his tracks.
10 Q. Okay. We'll come to that cause that's in this --
11 A. Well, that's the expression I used.
12 Q. That's right.
13 A. I'd say the same to you if you did it.
14 Q. Now down the bottom of that page --
15 A. Yeh.
16 Q. -- you see it says: "Now, I stuck the knife in the ground.
17 Now, the people what say they saw me wash blood off the
18 knife were telling bloody lies."
19 A. That's right.
20 Q. "Because you stick a knife in the ground and there's no
21 blood on the god damn knife is there?"
22 A. No, that's right.
23 Q. Again, do you remember sticking that knife in the ground?
24 A. No.
25 Q. Okay.

1 A. Because I was too concerned with trying to straighten
2 MacNeil up. The bloody mess he was in where I picked
3 him up off of the bloody ground where the other fellow had
4 him down.
5 Q. But do you --
6 A. I don't remember every little detail.
7 Q. So you do not recall to date whether you stabbed that
8 knife in the ground or not?
9 A. No, I don't remember that.
10 Q. Thank you.
11 A. But still it's possible I did.
12 Q. Now, let me go to page one forty two. Mr. Carroll says:
13 "So you're not saying you defended yourself or stabbed
14 Mr. Seale." You said: "Yes, I did defend myself."
15 A. Right.
16 Q. "Sure I defended myself."
17 A. Right.
18 Q. "What the hell else was I supposed to do?"
19 A. That's right.
20 Q. You go down to say later: "I made a swipe at Seale."
21 A. Right.
22 Q. "What particular part of his anatomy did you swipe at?
23 I don't know. I don't know. I told you I was after consuming
24 two bottles of wine. I just made a blind swipe and he ran."
25 A. Right.

1 Q. "Would you say --", this is Carroll, -- "Would you say
2 the upper part of his body, from the head down to the
3 waist or from the waist down? " And you said: "Possibly
4 got him, possibly got him in the guts. Possibly I got him
5 in the guts."
6 A. Yeh, possible. Why'd didn't I get him in the chest?
7 Q. Mine says possibly.
8 MR. MACDONALD
9 There's apparantly two versions, My Lord, of the -- of this
10 particular --
11 BY THE WITNESS:
12 A. Who wrote that? Carroll?
13 BY MR. MACDONALD:
14 Q. Yeh. No, what this is Mr. Ebsary is a -- somebody took
15 the tape recording that you made --
16 A. Yeh.
17 Q. and transcribed it down.
18 A. Yeh. All right.
19 Q. So somebody-- I imagine that original tape is still available
20 and we could book it if we had to -- or hear it.
21 And you go on to say: "It was only one blow."
22 A. Yeh, well, that's all there was.
23 Q. Now, down at the bottom, Mr. Carroll says: "At this time
24 Marshall was fighting with MacNeil."
25 A. Right.

1 Q. You said: "Yes." You say: "Strangling MacNeil."
2 A. Yes, he was.
3 Q. And you say at the top: "Yes, strangling MacNeil."
4 A. Yes.
5 Q. "So you know what I did? I still had the knife in my
6 hand --
7 A. Right.
8 Q. -- so I ran across the road --
9 A. Yeh.
10 Q. -- and I stuck in the arm."
11 A. That's right.
12 Q. So again, you're saying you had to cross the road to get
13 to those two people.
14 A. Yeh, because they were forty there and it was sixty that
15 way. Right?
16 Q. All right. I just want to show you just for interest on
17 page one forty four you relate this story about this
18 little white rooster or chicken that --
19 A. Yes, that's right.
20 Q. -- you talked about this morning.
21 A. Well, we did that the following morning.
22 Q. Okay. Now let me take you to page one forty four and the
23 bottom of that page. You say: " I told you to me it was
24 only an incident."
25 A. That's right.

1 Q. Carroll: "You have been mugged before." You say: "Yes,
2 you're damned right I've been mugged there before."
3 Carroll said: "Have you had to defend yourself before?"
4 And you said: "Right."
5 A. That's right.
6 Q. Carroll: "Or did you just give in?" "Gave in. I got beat
7 up." And then you said: "But I swore by my Christ --
8 A. Right.
9 Q. -- I swore by my Christ that the next man that struck
10 me would die in his tracks."
11 A. I -- in his tracks. Right.
12 Q. Now, what did you mean by that.
13 A. That's a common bloody expression. I'd say the same bloody
14 thing to you.
15 Q. Would you?
16 A. Well, if you attempted to molest me, I'd drop you in your
17 tracks.
18 Q. Okay.
19 A. Some way or another.
20 Q. Now, on page one forty eight, you start referrring to the
21 search I think that you talked about. You and the R.C.M.P
22 together --
23 A. Oh, yeh.
24 Q. Search for that blade of the pocket knife.
25 A. Right.

1 Q By the way, when you use the word penknife --
2 A. Yeh.
3 Q. -- back here. Is that the same thing as pocket knife?
4 A. Oh, yes. Right. Penknife, pocket knife.
5 Q. And did you take Carroll to a spot and try and find the
6 blade of that pocket knife?
7 A. Yeh, you see, I thought I'd thrown the thing out. We
8 were going -- we had a bed of flowers outside the window,
9 right.
10 Q. Yes.
11 A. And I thought that's where I threw the bloody knife thing
12 see. So Carroll and I went out there. One morning when
13 I was sobered up or when he got me to sober up. And we
14 removed about eight inches of earth. Right from the
15 top down. Right? And we even put it through a bloody
16 sieve. And we couldn't come up with the bloody knife.
17 Q. It was your recollection that's where you had thrown the
18 knife?
19 A. Yeh.
20 Q. You had a -- an exchange of letters with Donald Marshall,
21 Junior when he was in prison. Do you remember that?
22 A. You're right.
23 Q. I want to show you the letter from Mr. Marshall to you and
24 that's in volume sixteen of page two one four.
25 A. Right. Well, I had several letters but I didn't save them.

1 That's were I was foolish -- like you know. I should
2 have hung on to the letters.
3 Q. Volume sixteen on page two forteen. There's a letter
4 from Mr. Marshall to you.
5 A. Right.
6 Q. It's not -- it isn't dated. All I can say it's written
7 from Dorchester.
8 A. This must be the first one he wrote me. You see, cause he
9 even -- he says: "My name is Donald Marshall." So it
10 must have been the first letter he wrote me.
11 Q. Okay.
12 A. Right. "And I am serving a life sentence for the murder
13 of the late Sandy Seale. I was -- It was brought to my
14 attention that you know the circumstances surrounding
15 this importment matter. I have maintained my innocence
16 for eleven years and unfortunately could not get a re-trial.
17 I know the facts and that is why I'm asking you to come
18 out with what information you may have. Mr. Epsary I've
19 been locked up for eleven years. I am still a young man
20 so believe me when I tell you that I went through hell
21 dealing with this case. I suffered long enough my friend,
22 for --"
23 Q. "For somebody's mistake."
24 A. Well you read it.
25 Q. --"for somebody's mistake."

1 A. Right.
2 Q. -- and knowing I'm an innocent man I'm asking you to be
3 sincere and to help me concerning this very important matter.
4 A. Right.
5 Q. I will pray that you will be honest about it and ask God
6 to give me the strength to forgive you and to forgive the
7 people that were involved with my trial."
8 Now, when you got that --
9 A. Yeh.
10 Q. -- what did you do?
11 A. I answered Marshall.
12 Q. Okay.
13 A. And him and I communicated for a while.
14 Q. Now, I guess I need nineteen.
15 A. What's the problem, chaps?
16 Q. I just get in trouble with all these numbers. Confused.
17 Ninty six.
18 A. Well, if I turned around and asked you for help, would you
19 refuse it? I wouldn't because I'm not the type.
20 Q. Ninty six in volume nineteen.
21 A. Right.
22 Q. There's a copy, Mr. Ebsary, of the letter which you wrote
23 to --
24 A Marshall?
25 Q. Marshall on the 24th of February, 1982.

1 A. Wait now.
2 Q. It's a little difficult to read so perhaps I could help
3 you and read it for you. The copy isn't very clear.
4 A. Have you got a better copy there?
5 Q. Well, it's not a whole lot better but --
6 A. Yeh.
7 Q. It say: "Dear Don. I've tried to reach by phone --"
8 A. Yeh.
9 Q. --"but no luck."
10 A. That's right.
11 Q. "I'm collaborating with the R.C.M.P. to get you out of
12 that mess."
13 A. Right.
14 Q. "I can't do much 'till after the fifth of March."
15 A. Right. And I got sick and I had to into the bloody hospital.
16 So I wrote Marshall and told him, "I'm sick and I got to
17 go into the hospital but as soon as I get out I'll act."
18 And I did. And the mounties and I had a row. I said,
19 "Marshall was entitled to a second trial." They said, he wouldn't
20 get a second trial. I said, why? They said, "he won't get a
21 second trial." Well, I said, "I bet you a god damn he will
22 get a second trial because I'll get him a second trial."
23 They said, "you won't, not on your own." But I said, "you
24 watch my smoke."
25 Q. Okay. Now you say --

1 A. So then I started to correspond with the boy.
2 Q. Okay.
3 A. Right?
4 Q. "Yesterday at my request I met your Dad and Mum."
5 A. Yes.
6 Q. And you did meet Mr. and Mrs. Marshall?
7 A. Yeh, I did. I asked to meet them.
8 Q. Okay. "I've been badly beaten up. I can't walk. I can't
9 see to well. Having failed to reach via phone the R.C.M.P.
10 suggest --"
11 A. That's right.
12 Q. --"I drop you a line. Your letter was stolen as well
13 as a sum of money while I was unconscious."
14 A. Yeh. That's right.
15 Q. Okay. Now, you say police investigation etcetra, etcetra
16 "No favourable results. --
17 A. Right.
18 Q. --"I'm not running, kid. I'm in your corner."
19 A. Right.
20 Q. "I'll do all I can to get you freed."
21 A. That's right.
22 Q. "I promised your mom and dad that yesterday."
23 A. Right.
24 Q. "I can't see to well but I trust you get the message."
25 And I'm having a little trouble reading that myself.

1 A. Are you? Wait now.
2 Q. "I'm in your corner anyhow."
3 A. Right.
4 Q. "I'm sorry kid, things turned out --"
5 A. He asked me for help. I was right in his corner to
6 help him. Why not? I had my doubts about that whole
7 bloody night down there because there was five down there.
8 There wasn't four. There was five people. Marshall was
9 condemned on circumstantial evidence. Right?
10 Q. Well --
11 A. He wasn't given a fair bloody trial. If I'd have been
12 listening to Marshall's trial, I would have said it
13 was a kangaroo court that condemned me.
14 Q. Well, you're -- you wanted to get Donald Marshall a
15 second trial --
16 A. Right.
17 Q. Is that what you're saying?
18 A. That's what I was fighting for.
19 Q. And that was in February of 1982?
20 A. Right. What in the hell, do you want to condemn me for that?
21 Q. No, I'm not. I'm just trying to find out what it was that
22 you were -- your objective was.
23 A. Well, that's what I was doing.
24 I don't give a damn who knows it.
25 Q. Now, subsequently, Mr. Ebsary, after I think three trials

1 you were --
2 A. Yes.
3 Q. -- you were convicted of manslaughter --
4 A. Right.
5 Q. -- were you not?
6 And you did serve your sentence at the Cape Breton
7 Correctional Centre?
8 A. Right. And I sweated out each appeal out there.
9 Q. You were out --
10 A. And I want to tell you another thing, old boy. You having an
11 an investigation here, right? Well, you should take your
12 investigation up to the bloody Correctional Centre and
13 find out what going on out there.
14 Q. Okay.
15 A. Because they're making mothers out of each other out there.
16 And I don't mean maybe. You know we had a saying in the
17 British navy. You join the navy, we'll make everything
18 out of you over here but a mother and we'll have a good
19 crack at that. Do you see the point?
20 Q. Yeh. Now --
21 A. So the same thing is going on out at the correctional centre.
22 I know it. Jim MacKillop knows it.
23 Q. You were -- in the video tape that we've seen there was
24 reference to a number of medications that you were taking.
25 A. That's right.

1 Q. Taking. I believe you're still taking a large number
2 of medications --
3 A. That's right.
4 Q. Is that correct?
5 A. Yeh.
6 Q. Are you able to tell us what medications you're taking?
7 A. Well, I'm not able to name them but I am -- I got heart
8 pills in my bloody pocket.
9 Q. Heart pills.
10 A. Yes, because the doctor tells me I got this serious stoppage
11 -- you know the blood flows to the heart. There's a serious
12 stoppage so I take a half pill in the morning when I get
13 and I take one when I go to bed at night.
14 Q. Okay. Now, do you take any other pills?
15 A. Oh, yes, I take a few. Doctor Sniderman operated and took
16 away part of the prostate gland and they found cancer so
17 he decided that he'd try and shrink the rest of the prostate
18 gland. He found cancer in the bladder and he gave me pills
19 and I have to take four a day. Two four times a day and
20 I've got to take them for the rest of my bloody life. You
21 should try it sometimes.
22 Q. Yeh, I know. Yeh, are there any other --
23 A. The -
24 Q. -- any other medications you're taking?
25 A. Painkillers where I broke the bloody neck and buggered up my

1 shoulder and arm.
2 Q. Now, from time to time --
3 A. Actually all together there's thirteen different kinds of
4 medicine and I'm after making Buckley rich, Art MacVicars
5 rich and the other chemists on the -- down the road the
6 end of Charlotte Street. I put thousands of them bloody--
7 well bloody medications. And look at me now. I'm bloody
8 wreck.
9 Q. Now, you've also -- and I believe you refer to this as well,
10 on the video tape. That you've seen psychiatrist's from
11 time to time. Is that correct?
12 A. Oh, yeh. That's right.
13 Q. Well, did --
14 A. I did it at the suggestion of my lawyer, Luke Wintermans.
15 Right?
16 Q. Now, you've seen doctors at the Nova Scotia Hospital?
17 A. Yes.
18 Q. And also at the Cape Breton Hospital?
19 A. Right.
20 Q. Do you recall when the last time you saw a psychiatrist
21 at all?
22 A. Let me think. I tell you -- I think the last time was out
23 here at the Cape Breton Hospital. I got sick one night and
24 the police came to have a look see what was the matter.
25 They took me up the the City Hospital and it suddenly struck me

1 what this Wintermans had said. Go into the Cape Breton
2 Hospital and have a survey before your next appearance
3 in court, right. So I asked the police to take me
4 in to the Cape Breton Hospital and they said well that's
5 a strange request. Well, I said the lawyer suggest it
6 so let's try it. So I went in. They examined me and
7 everything like, and Doctor Mian and Doctor Menzies said,
8 "we don't know why the hell they sent you in here." I said,
9 "the lawyer suggested I come in here."
10 Q. And that's the last time you recall seeing any psychiatrist?
11 A. Yes, that's the last one I can recall.
12 Of course I will see one now.
13 Q. Have you ever been given copies of the reports prepared
14 by those psychiatrists?
15 A. No, never.
16 Q. You've never seen them?
17 A. No.
18 Q. Has anyone ever -- has any of those doctors ever told
19 you what their accessment was?
20 A. Yes.
21 Q. Who and what did they tell you?
22 A. They told me they wished they had a head like I've got.
23 Q. Is that right?
24 A. Right.
25 Q. You know which doctor said that?

1 A. Well, the chief doctor -- the chief psychiatrist up at the
2 Nova Scotia Hospital. Doctor Menzies in here at the
3 Cape Breton Hospital.
4 Q. Yes.
5 A. Doctor Cardue before he went back to England after they
6 robbed him and let's see. Doctor Gaum?
7 Q. Okay.
8 A. And he said I'll stick with you and never let you down and
9 he never did while he lived.
10 MR. MACDONALD:
11 My Lord, this would be a good time to have a recess.
12 RECESS -- 3:26 P.M.
13 RECONVENED -- 3:50 P.M.
14 MR. MACDONALD:
15 My Lord, we were unable to find quickly that portion of the video
16 tape that we referred to. And we'll find that overnight and we'll
17 have it available during the morning. That's all the evidence that
18 I tend to introduce.
19 MR. CHAIRMAN:
20 Mr. Ruby, I think you're first.
21 BY MR RUBY:
22 Q. Mr. Ebsary, my name is Clayton Ruby. I am counsel for
23 Donald Marshall, Junior.
24 A. It's a pleasure to meet you.
25 Q. Sir.

1 A. I just hope we have a good argument.
2 Q. I'm going to ask questions and if I speak to quickly which
3 I sometimes do --
4 A. Yes.
5 Q. Or if you don't understand my question --
6 A. Right.
7 Q. -- will you stop and I'll repeat it and we'll go over it
8 again?
9 A. Yes. And if I fly off the handle will you forgive me?
10 Q. I'll do my best.
11 A. Good, we understand each other.
12 Q. Well, maybe you could help me understand something that
13 I saw before the Commissioners came in. When you were
14 sitting down at that table --
15 A. Now --
16 Q. -- before they came in.
17 A. If you slow down a bit and speak english I might understand
18 you.
19 Q. All right. Before the Commissioners came in --
20 A. Yes.
21 Q. I saw you winking at the audience and making a V for victory
22 in the air like this.
23 A. That way?
24 Q. Could you explain those two things to me? What were you doing?
25 A. What was I doing?

R. N. EBSARY, by Mr. Ruby

1 Q. Yes.
2 A. Well, I couldn't have been making love to everybody in the
3 bloody shack. And V for victory is out of the old
4 Churchill sign. Right or wrong.
5 Q. The old church sign?
6 A. The old Churchill sign.
7 Q. Churchill sign.
8 A. Right and now what?
9 Q. Why were you doing that?
10 A. Why was I doing that? Habit. You know I killed three thousand
11 men one morning before breakfast.
12 Q. Would you explain that for me?
13 A. Yes, I sank the Bismark.
14 Q. And what ship were you on when you sank the Bismark?
15 A. The H.M.S. Rodney and you can check that if you like.
16 Q. The Rodney?
17 A. Right. H.M.S. Rodney.
18 Q. What was your position on the Rodney.
19 A. Chief Gunnery Officer.
20 Q. As a commissioned officer position?
21 Is that a commissioned officer position?
22 A. You don't take a commission. If you're a Chief Gunnery
23 Officer you're equivalent to a Chief Warrant. Right?
24 Do you know what a Chief Warrant Officer is?
25 Q. No, but I don't -- what I want --

R. N. EBSARY, by Mr. Ruby

1 A. Well, it's a step below --
2 Q. -- find out --
3 A. Well, see you're going to find out.
4 Q. All right.
5 A. It's a step below a Commissioned Officer.
6 Q. And how was it that you killed these men? You personally?
7 A. I didn't kill personally. I and my crew. We had sixteen
8 inch guns. The Bismark had fifteen inch. She sank the
9 Hood. Yeh, she sank the Hood with fourteen hundred men.
10 Right. So we were all together and it took three days
11 to hunt her in the fog. The germans always had a reputation
12 of getting in the first shot and sinking everything they met.
13 And the Bismark was supposed to be unsinkable. Well, we
14 met her at dawn one bloody morning and we got in the
15 first bloody shot. We killed the Admiral, the Captain.
16 There was three thousand men. Out of three thousand men,
17 there were ninety-nine survivors that we picked out of the
18 water.
19 Q. And it was your getting in the first shot that did it I
20 take it?
21 A. Well, she had fifteen inch guns. We had sixteen inch, right?
22 Our first salvo we had nine sixteen inch guns like this.
23 Three, three, three sixteen inch. All our salvo in wiped
24 her deck clean of her fifteen inch. So she was left with
25 secondary armaments.

1 Q. Left for the secondary?
2 A. Armament.
3 Q. How long did it take? This engagement in the morning.
4 A. Two hours.
5 Q. You remember it?
6 A. Oh, I remember it vividly.
7 Q. All right.
8 A. If ever I prayed, I prayed that morning.
9 Q. You told us in your Examination in Chief --
10 A. Yeh.
11 Q. -- that the anniversary of the sinking of the Bismark was
12 May 26.
13 A. That's right.
14 Q. Occurring in what year originally?
15 A. 1941.
16 Q. Okay. I'm just wondering about your memory because you
17 see I consulted the Encyclopedia Brittanica because I
18 wasn't around then.
19 A. Oh, well.
20 Q. And the Bismark was sunk on the morning of May 27th, 1941.
21 Do you remember that?
22 A. Well, wait a minute. According to all statistics the
23 Bismark was sank on the 26th of bloody May, 1941 so whoever
24 put that in to Encyclopedia Brittanica made a bloody mistake.
25 Q. It's a mistake?

R. N. EBSARY, by Mr. MacDonald

A. Right.

Q. And if I suggest to you that there is no record of your having served on the Rodney or indeed in the British Royal Navy at all --

1 A. What do you mean?
2 Q. Would that be a mistake as well?
3 A. You mean I never served in the Royal Navy?
4 Q. That's right.
5 A. You know, you're a god damn liar.
6 Q. You remember the service?
7 A. I do and I should.
8 Q. Because one of the things I'm concerned about is whether your
9 memory for events that happened a long time ago is solid and
10 reliable. You remember serving in the British Royal Navy.
11 A. Oh, I do. In other words, you think I'm bloody senile. Well,
12 I'm going to prove that you are.
13 Q. All right. What was the position you had finally when you
14 -- your last position in the British Royal Navy?
15 A. My last position in the British Royal Navy, let me see. I
16 think I was the captain's tiger.
17 Q. Captain's?
18 A. Tiger.
19 Q. Tiger. What's a captain's tiger?
20 A. Oh, you don't know. You're a pretty ignorant man. The
21 captain's tiger is the captain's personal aid.
22 Q. Did you tell one of the psychiatrists at the Nova Scotia
23 Hospital -- I'm sorry, did you on May 8th, 1982, tell other
24 patients at the Nova Scotia Hospital that you were an admiral
25 on a ship?

1 A. Why would I tell them a bloody lie like that?
2 Q. It's not true, is it?
3 A. No. And I didn't tell them because I'll tell you something,
4 I never spoke to a god damn patient in the Nova Scotia
5 Hospital. The only ones I spoke to up there was the chief
6 psychiatrist and the head nurse, Higgins. I had nothing to
7 do with anything up there.
8 Q. See, the nursing notes which you haven't seen but which I have
9 read say that you socialized quite well with other patients.
10 A. Pardon?
11 Q. The nursing notes of the Hospital which you haven't seen
12 which I have say that you socialized very well with other
13 patients during the time of your incarcerations in '82, for
14 example.
15 A. Yeh. So what does that prove?
16 Q. It's not true? You didn't talk to the other patients?
17 A. How do I know?
18 Q. You just told us under oath you didn't. Is it a lie?
19 A. Well, you're supposed to prove I'm senile and I'm proving
20 you're senile.
21 Q. All right.
22 A. Okay.
23 Q. You do understand that the purpose of this particular Hearing
24 is to investigate --
25 A. Yes. Your particular duty is to try to crucify me but you're

1 shit out of luck because you're not going to do it.
2 Q. Let me ask you about the Abolition captain. Were you ever
3 a captain?
4 A. It's quite possible.
5 Q. Well, again, sir, I'm trying to see what your memory tells you
6 because I want to know whether it's reliable. Were you ever
7 a captain?
8 A. You look up the Encyclopedia Britannica and find the proof.
9 Right.
10 Q. Isn't it your position, sir, that you do not remember whether
11 or not you were ever a captain --
12 A. Yes.
13 Q. -- or do you not know?
14 A. Right.
15 Q. You don't know?
16 A. I do -- What do you mean I don't know? Now you're trying to
17 prove I'm senile, eh.
18 Q. No. If you do know, I'd like to know whether you were or were
19 not.
20 A. I was.
21 Q. When were you a captain and where?
22 A. Let me see. Well, I can't remember right off the bat but I
23 know I've been everything from the stoke-hole to the bridge.
24 I spent thirty bloody years at sea. I had thirty-four
25 different bloody ships. I've been over practically all the

1 world.
2 Q. What was your last ship in the military service, military navy?
3 A. In the military navy, the armed merchant cruiser, Canton.
4 Q. What kind of cruiser?
5 A. The armed merchant cruiser. We used to call --
6 Q. The armed merchant cruiser, Canton.
7 A. Yes. We used to call them admiralty coffins.
8 Q. All right. You also as I understand it have a number of
9 medals given you for your work in battle.
10 A. That's right.
11 Q. You're not wearing them today.
12 A. No.
13 Q. Why?
14 A. Because when I went out in the slammer out there, I was wearing
15 earrings, not because I'm a queer or a homo but just to be
16 different. When I went out there, the boys didn't have their
17 ears pierced and they had no earrings so they saw the medals
18 I was wearing. They said, "What about making earrings?" I
19 said, "Go ahead." They pierced each other ears. I gave them
20 the bloody medals to make earrings. Does that explain the
21 situation?
22 Q. All right. It does, sir, thank you.
23 A. Thank you.
24 Q. And I'm told that you told some psychiatrist at the Nova Scotia
25 Hospital in 1982 first that you were given the Distinguished

1 Service Medal --
2 A. That's right.
3 Q. -- by Winston Churchill personally.
4 A. Right, that was for the Bismark do.
5 Q. That was for the Bismark.
6 A. Right.
7 Q. When were you given that decoration and where?
8 A. When we put back to Scotland after the battle, they swore
9 the Rodney would never get back. We did get back, right,
10 and Winston Churchill came down to visit us because they
11 didn't think think the Rodney would make it but she did make
12 it, right.
13 Q. And decorated you personally with the Distinguished Service
14 Medal?
15 A. The Distinguished Conduct Medal.
16 Q. Ah. And Winston Churchhill himself pinned it on your little
17 chest.
18 A. That's right. What do you mean my "little chest"? What's
19 the matter with my bloody chest.
20 Q. A matter of speaking. Next, I'm told you told them that
21 Charles DeGaulle --
22 A. Right.
23 Q. You're familiar with Charles DeGaulle?
24 A. Yes.
25 Q. Is it a close relationship?

R. N. EBSARY, by Mr. Ruby

1 A. I'm quite -- No, it's not a close relationship but I'm quite
2 familiar with the man.
3 Q. How?
4 A. How? Well, Christ, his picture has been plastered all over
5 the bloody world.
6 Q. And I'm told you came in contact with him once?
7 A. Yes.
8 Q. More than once?
9 A. Yes -- No, once.
10 Q. And he gave you and pinned on your chest --
11 A. Yes, the Cour de Guerre.
12 Q. The Cour de Guerre?
13 A. Right.
14 Q. What was that for?
15 A. The Bismark, too.
16 Q. The Bismark, too?
17 A. Right.
18 Q. I thought it was for saving Frenchmen.
19 A. Yes. Well, god damn it, we did save Frenchmen at Dieppe.
20 Who the hell took them -- Who took the stranded soldiers
21 and army off Dieppe? Who?
22 Q. You?
23 A. We did, yes.
24 Q. You?
25 A. And small boats.

1 Q. You?
2 A. You're bloody right.
3 Q. What ship were you on then?
4 A. Let me see. Let me think. Let me think. God, I don't think
5 I can remember.
6 Q. Well, surely sir, you can remember the last ship on which you
7 served. You can remember the one on which you made this
8 heroic rescue at Dieppe.
9 A. The last ship I served in. You didn't ask me the last ship
10 I served in.
11 Q. No, I asked you the one you were in when you rescued the French
12 soldiers at Dieppe.
13 A. Yeh. Well, that's right. That's what I'm trying to remember.
14 Q. Take a moment to think.
15 A. Yeh, right. You don't mind if I take a half today, do you?
16 Q. No, but I would have thought that if Charles DeGaulle personally
17 decorated you for this action, you might have it stick in your
18 mind.
19 A. But suppose I was senile at the time he gave it to me.
20 Q. Were you?
21 A. I might have been.
22 Q. You hallucinate some times?
23 A. Well, I must have been senile to serve in World War II.
24 Q. Why?
25 A. Why? Because there's only somebody senile who would inlist to

1 go over there.
2 Q. I see.
3 A. Do I make myself clear?
4 Q. I suppose so.
5 A. Right. Because I know half the gang we had with us didn't have
6 all their marbles.
7 Q. Half of them were crazy?
8 A. Yes.
9 Q. You don't think that if Charles DeGaulle gave you the Cour de
10 Guerre for this particular action you could remember something
11 about it, like what ship you were on, who your commanding
12 officer was.
13 A. My commanding officer was Sir John -- wait now. He was the
14 captain and he was promoted by the Queen to a Sir. Sir
15 Frederick Dalrymple Hamilton. Check that.
16 Q. And he was the commander of your ship?
17 A. Right.
18 Q. At Dieppe?
19 A. Right.
20 Q. All right.
21 A. He was also the captain of my ship when we sank the Bismark,
22 but he was only a captain when we sank the Bismark. After
23 we sank the Bismark, he was promoted to the rank of full
24 admiral and made a "Sir". In other words, he was knighted.
25 Q. And what was your position in connection with him?

1 A. Who?
2 Q. Dalrymple or whatever his name was.
3 A. I was one of his crew.
4 Q. Just part of the ordinary crew?
5 A. Yes, naturally.
6 Q. No special position?
7 A. Any man aboard the ship is a member of the crew.
8 Q. Right. What was your position on that ship?
9 A. Let me see. What ship did I say I was in that time?
10 Q. Pardon?
11 A. What ship did I say I was in that time?
12 Q. You didn't, sir.
13 A. Didn't I?
14 Q. No.
15 A. How fortunate. Let me see. The Balt Rover.
16 Q. Say it again.
17 A. The Balt Rover.
18 Q. Bart?
19 A. Balt, B-a-l-t. Balt. Rover, R-o-v-e-r.
20 Q. R-o-v-e-r.
21 A. Balt Rover.
22 Q. Thank you.
23 A. She had a permanent starboard list. It was built in and we
24 could never straighten her up. It took us thirty-four days
25 to get from St. John's to Halifax, an ordinary eight-day run.

R. N. EBSARY, by Mr. Ruby

1 Q. And that was the ship that went to Dieppe?
2 A. Yes. You must remember that everything available and everything
3 that could float was sent to Dieppe to rescue the bloody troops
4 from the beaches.
5 Q. And what was your position on that ship?
6 A. Which? The Balt Rover.
7 Q. Yes.
8 A. Captain's Tiger.
9 Q. All right. Do you from time to time hallucinate?
10 A. Pardon?
11 Q. Do you from time to time hallucinate?
12 A. Hallucinate?
13 Q. Do you know what I mean by "hallucinate"?
14 A. Sure. Hallucinate. Have you ever heard tell of immortality?
15 Q. Yes, sir.
16 A. Have you? How do you attain immortality?
17 Q. Why don't you tell me?
18 A. No, you tell me.
19 Q. I don't know.
20 A. You're the wise guy.
21 Q. Do you know how to attain immortality?
22 A. Yes, certainly.
23 Q. Would you tell me?
24 A. I was taught. It'll cost you.
25 Q. And how does one do that?

1 A. Put your shoes under my bed any time.
2 Q. All right. The question I'd asked you before we got into the
3 digression about your shoes was whether or not from time to
4 time you've hallucinated.
5 A. No, but there are times when I use my imagination because
6 it's from imagination that we've got the world we're living
7 in today. Man creates because he uses his bloody imagination.
8 If he has no imagination, he can't create bugger-all. Something
9 like yourself.
10 Q. Do you from time to time have difficulty --
11 A. Pardon?
12 Q. Do you from time to time have difficulty telling hallucinations
13 from what is real?
14 A. No, no difficulty at all. The only difficulty I have is when
15 when I go to the bathroom and that's Doctor Sniderman's fault,
16 not mine.
17 Q. When you went into the hospital in 1982, were you the person
18 who -- a person who was abusing a drug called Benzoid-
19 diazepam, sometimes called, I believe, Valium?
20 A. I never misused any bloody drug that's made.
21 Q. The Hospital record indicates that was one of the things for
22 which they were treating you. That's an error?
23 A. Well, how in the hell would I know?
24 Q. You never told them you were abusing a drug?
25 A. I never used any drugs that wasn't prescribed by a first-class

1 doctor.
2 Q. All right. Whether or not it was prescribed, were you abusing
3 it, taking more than you're supposed, finding yourself
4 dependant upon it?
5 A. Are you crazy? I followed directions.
6 Q. All right, do you from time to time suffer blackouts?
7 A. Yes, I have had one or two.
8 Q. One or two over what period of time?
9 A. No. I've had them recently, right, and the doctors figure
10 it's from the broken neck.
11 Q. How recently is recently?
12 A. Oh, possibly a couple of months. They hauled me into the
13 hospital --
14 Q. Any prior to a couple of months ago?
15 A. Pardon?
16 Q. Any blackouts prior to a couple of months ago?
17 A. No.
18 Q. None?
19 A. No.
20 Q. And if the hospital records indicate that was one of the
21 problems that you presented as requiring treatment, that
22 would be incorrect?
23 A. What did you say?
24 Q. Let me put it differently so you'll understand. I don't
25 want to confuse you with the way I put the question.

R. N. EBSARY, by Mr. Ruby

1 A. That's right, speak English.
2 Q. I'll try. The hospital records disclose that from time to
3 time you told them you suffered from blackouts.
4 A. Yes.
5 Q. Is that true?
6 A. Right.
7 Q. How often did you suffer from blackouts?
8 A. Oh, quite often.
9 Q. This is prior to a few months ago.
10 A. Yes.
11 Q. A minute ago you said not until a few months ago. Which is
12 true?
13 A. Am I supposed to tell the truth all my life?
14 Q. Yes.
15 A. Am I?
16 Q. Which is the truth, that you told us a minute ago that you
17 had no blackouts until a couple of months ago or that you
18 just now told us you had a number of them prior to that?
19 A. Every time that the pain hits me in the guts if I don't
20 get a needle, I black out. And you'd be surprised at the
21 bloody taxi fares I've had to pay to get and forth to the
22 hospital to get that bloody needle. Now you check with the
23 hospital and find out that.
24 Q. Would it be true, sir, to suggest that one of the reasons why
25 you get blackouts is because you drink too much?

R. N. EBSARY, by Mr. Ruby

1 A. You're a god damn liar. I don't drink at all.
2 Q. All right. Didn't you just tell us when my friend was asking
3 you questions that you drank with some regularity?
4 A. How many years ago was that?
5 Q. Just this morning.
6 A. Yes but how many years ago was it that I drank?
7 Q. Ah. How long has it been since you have had a drink?
8 A. Yeh, how long is it? How long do you reckon it is?
9 Q. I'm asking you, sir.
10 A. Right. The last time I had a drink, I think, was the last
11 time I saw Carroll.
12 Q. And that was in 1982?
13 A. Yeh. It's that long.
14 Q. You haven't drunk since then?
15 A. No.
16 Q. Oh. Were you drinking when you saw Carroll?
17 A. Oh, yes.
18 Q. Drunk?
19 A. No.
20 Q. Just drinking.
21 A. I never drank to get drunk.
22 Q. Okay, but you haven't drunk since 1982?
23 A. Not that I know of.
24 Q. You would know.
25 A. What? Well, I would know, wouldn't I?

1 Q. You would.
2 A. That's right.
3 Q. In any event, you never got blackouts from drinking too much.
4 A. No.
5 Q. And if the hospital records showed that that's the pattern
6 you presented right through 1972 to 1982, that's not correct?
7 A. No.
8 Q. It's a mistake?
9 A. Right, and that's not the first god damn mistake they made.
10 Q. You also call yourself "Reverend".
11 A. Right.
12 Q. And why is that?
13 A. Because I've got -- I've got papers to prove it.
14 Q. What is that?
15 A. What are you saying now?
16 Q. What are the papers to prove it?
17 A. I was ordained by the Universal Life Church of California in
18 1972. Now call me a liar.
19 Q. No, I wouldn't dream of it. What course of training did you
20 go through and what colleges, if any, did you attend to
21 achieve that distinction?
22 A. They accepted me for my knowledge and my way of living.
23 Q. Did you attend any training courses?
24 A. Any training courses?
25 Q. Any training courses at all?

1 A. Yes, I have plenty. I was all over the world and I learned
2 as I travelled.
3 Q. Did you attend any training courses offered by the Universal
4 Life Church?
5 A. No. I didn't have to.
6 Q. I know, because it's a mail-order operation. Is it not?
7 You send your money in and they send you back a piece of paper
8 saying you're a "Reverend"?
9 A. No. You're wrong.
10 Q. No. Tell my why I'm wrong.
11 A. Well, I'll tell you. The person who recommended me to the
12 Universal Life Church was an expert at telemetry at Cape
13 Canaveral, right, and him and I were as close as that. He
14 was the chief gunnery officer and the olderst gunnery officer
15 in the U.S. Navy, right. He lived at Coco Beach, Florida.
16 He recommended me to the Universal Life Church, right, and
17 through him I was ordained. What else would you like to
18 know?
19 Q. What was his name?
20 A. Francis Quotidomine.
21 Q. Spell the last name for me.
22 A. Q-u-o-t-i-d-o-m-i-n-e, Quotidomine.
23 Q. All right. And --
24 A. His people were extracted or immigrants from Italy. He had
25 an uncle who was a priest at the Vatican. Check that if you

1 like.
2 Q. All right. And am I correct in saying that you had to spend
3 some money in order to obtain this document? You had to send
4 money in the mail.
5 A. What for?
6 Q. To get your certificate from the Universal Life Church.
7 A. Not that I know of.
8 Q. You sent no money?
9 A. No.
10 Q. It was free.
11 A. That's right.
12 Q. Took no training.
13 A. No.
14 Q. No courses.
15 A. I didn't need it.
16 Q. No certification of any kind?
17 A. I've been trained ever since I was a kid.
18 Q. That's the only training you've had.
19 A. Well I didn't grow up to be a bloody ignoramus.
20 Q. All right.
21 A. But I'm talking to one now.
22 Q. How far did you go in school?
23 A. Let me see. About two miles.
24 Q. How far did you go in school?
25 A. I told you two miles.

R. N. EBSARY, by Mr. Ruby

1 Q. Do you think I'm asking you how far it was to your school?
2 A. No, you asked me how far I went to school.
3 Q. How far you went in school.
4 A. Well, see if you speak English, I'd understand you.
5 Q. Thank you, sir.
6 A. Right. But when you speak that gibberish, I don't understand
7 half what you're bloody saying, man.
8 Q. Do you think you could answer the question now?
9 A. Right.
10 Q. How far did you go in school.?
11 A. Repeat it. Nine.
12 Q. Grade nine?
13 A. Yes.
14 Q. You're sure of that?
15 A. Oh, I'm quite sure of it.
16 Q. This morning you told us it was grade twelve.
17 A. Well that's all right. It might have been twelve. I had
18 twenty-three hundred books in my library. Twenty-three
19 bloody hundred. Right. I had access to twenty-three hundred
20 bloody minds, right. So from grade nine or twelve, whatever
21 the hell it was, I educated myself. right.
22 Q. Let me suggest to you, sir, that this is what's happened here.
23 A. Yeh, what?
24 Q. This morning you were asked a perfectly ordinary question which
25 one would think you'd remember: How far did you go in school?,

1 and you said grade twelve. And you said it convincingly and
2 clearly and without hesitation. You were sure about it.
3 A. Yeh.
4 Q. This afternoon you were asked that same question again and
5 convincingly and without hesitation and clearly you said
6 grade nine.
7 A. Right.
8 Q. They both can't be true, correct?
9 A. But what did I tell you the first time?
10 Q. Grade twelve.
11 A. Yeh, well, there you are. What's the difference in nine and
12 twelve?
13 Q. Well, it's a question of whether you can remember or whether
14 you in fact were hallucinating having been that far at all?
15 A. But probably I am hallucinating. Who knows?
16 Q. You do.
17 A. No, you don't. Do you?
18 Q. Well, I'm more interested in whether you know you're hallucinating
19 Do you know when you hallucinate?
20 A. What qualified you to make a lawyer?
21 Q. I'm sorry, I'm not in the order of things here to answer your
22 questions.
23 A. No? Well, if I'm here to answer your questions, you're here
24 to answer mine. That's my -- That's the Bill of Rights.
25 MR. RUBY:

May I have your assistance, My Lord?

1 BY THE CHAIRMAN:
2 Q. Mr. Ebsary. Well, we'll deal with the Bill of Rights if and
3 when it becomes appropriate.
4 A. You mean I have no rights here?
5 Q. You have all sorts of rights here.
6 A. Thank you.
7 Q. The exchange that's been going on between you and Mr. Ruby
8 must -- cannot continue in the --
9 A. Right. Well, he's going around with a chip on his shoulder.
10 Q. Mr. Ruby has an absolute right to cross-examine you and to
11 question you on matters that are relevant.
12 A. Right.
13 Q. And I have to ask you not to become argumentative. You're
14 responsibility is to answer the questions if you can. If
15 you can't answer them or you don't know the answer, then all
16 you have to do say so.
17 A. Right, I love an argument.
18 Q. That won't -- But we don't -- But this is not the place for
19 an argument and I don't propose to allow an argument.
20 A. Okay, thank you.
21 BY MR. RUBY:
22 Q. Let me move to something else. One of the things you said
23 in the statement to Mr. Carroll, Officer Carroll, -- I have
24 a different copy than you have. Volume 19, page 138.
25 A. Now how about taking that chip off your shoulder while you're

1 here.
2 Q. I'm going to mark this copy just -- mark it where I want you
3 to look at.
4 MR. RUBY:
5 Volume 19, My Lord, page 145, if you will.
6 BY MR. RUBY:
7 Q. You already looked at this but I want to ask you a particular
8 question about it.
9 A. Yeh, what?
10 Q. I've marked it right there. It's two-thirds of the way down
11 page 145.
12 A. You want me to read this here?
13 Q. No.
14 A. What? Well, that's what you marked.
15 Q. Yeh. Take a look at it and read it silently starting "Ebsary:
16 No, I didn't." It's that paragraph.
17 A. Yeh, you want me to read this.
18 Q. Read it to yourself so you're familiar with it.
19 A. Right.
20 Q. Two-thirds of the way down, 145.
21 A. Yeh. Well, that's true. No because you know what I thought?
22 Q. Right.
23 A. "I thought Marshall finished Seale off and I wasn't the only
24 one."
25 Q. Just read it silently please.

1 A. Okay. Well, that's what -- That's what's there, eh.
2 Q. Yes. Read it silently and I'll ask you a question about it.
3 A. "Yes, because I thought Marshall finished off. Yes, because
4 it was very easy -- very easy to put a knife into a wound."
5 And so it is. "Because the rip that guy got in the guts
6 didn't come from a three-inch knife. It was impossible."
7 And so it was. It was impossible for a three-inch blade to
8 create the damage that was in that boy's gut.
9 Q. Carry on and read it.
10 A. Right. Now I'll read the doctor's statement. "That boy's
11 guts were torn up." Well, you can't tear up a boy's guts
12 with a three-inch knife. Now I read that much and I know
13 that a three-inch blade couldn't have done it. So I said,
14 "Marshall, I convinced myself that Marshall had finished Seale
15 off."
16 Q. That's it.
17 A. Now.
18 Q. Let me ask you a question about it.
19 A. Right.
20 Q. You used the language, "I convinced myself that Marshall had
21 finished Seale off." Now is that the process that you went
22 through? Is it accurate? You wind up convincing yourself
23 of things like that.
24 A. Well, all the evidence pointed to the fact that Marshall had
25 done it. Right or wrong?

1 Q. The question is: do you wind up convincing yourself? Is
2 that the process you go through about factual reconstruction
3 after the event?
4 A. What we do, we assemble the facts, right, and we arrive --
5 we arrive at our conclusions by summing up our facts and I
6 wasn't the only one that was convinced that Marshall had
7 killed Seale because it's never been proved that Marshall
8 didn't kill Seale.
9 Q. All right, now if you drop down a little bit farther, there's
10 another passage down there where you say on the next page.
11 A. What's this?
12 Q. The middle of page 146, "Yes, I've served time in the slammer,
13 too. I only spent a few months, nine months, but I realize
14 that young Marshall must have gone through eleven years."
15 A. Yeh, right. So what's the matter with that?
16 Q. And according to the transcript I've got at that point you
17 were crying.
18 A. What?
19 Q. You were crying.
20 A. Who was crying?
21 Q. You broke into tears.
22 A. Listen, my boy, if you had two mounties come into your house
23 every day and telling you that Marshall had turned into a
24 plaster saint in Dorchester, right, what would you do?
25 Laugh at it.

1 Q. Well, were you crying? Do you remember that?
2 A. Yes, I do.
3 Q. If Marshall in fact, as you said, killed Seale, and you
4 convinced yourself of that --
5 A. I didn't convince myself of it. I just came to -- I just came
6 to the bloody conclusion that with the facts as we had them,
7 there was no other possibility.
8 Q. But if you came to that conclusion, why did you cry at that
9 stage about what Marshall had gone through?
10 A. Probably I was too sentimental.
11 Q. Just too sentimental.
12 A. Yeh. It's quite possible.
13 Q. And on the next page of my transcript, you make the sentimental
14 comment, "I told you it was only an incident. It didn't matter
15 to me, boy, one way or the other."
16 A: Yeh. That's right, it didn't. Well, at that time it didn't,
17 really.
18 Q. Well, did it or didn't it?
19 A. It didn't at the time, no, because at the time I didn't know
20 the boy was even bloody hurt.
21 Q. Do you remember telling Officer Carroll that the blade of the
22 knife had been buried in the back garden of the house at Rear
23 Argyle?
24 A. It wasn't buried in the garden. It was thrown in the garden.
25 Q. And went right in the corner of the garden, correct?

1 A. It went right in the bloody flower bed and it was the flower
2 bed they dug up to see if we could find it.
3 Q. Okay. The handle went across the field.
4 A. Yeh, that's right.
5 Q. Why would the two be separated, the handle and the knife?
6 A. Well, the handle was a better -- something better to throw
7 and the garden is two gardens away, right?
8 Q. No, explain that to me.
9 A. The handle was the heaviest part of the knife, right. When I
10 broke the knife off, I threw the handle across the garden. I
11 threw the blade out the window. The blade went down into the
12 flower garden and I told Carroll that as far as I was
13 concerned, the blade was in the flower garden and we went
14 through the trouble to remove the earth from the top of the
15 flower garden, right, and we even sifted through it to see
16 if we could find the blade but we couldn't.
17 Q. When you threw the objects, the handle and the blade, were they
18 attached to one another?
19 A. What? No.
20 Q. They were separated?
21 A. Right.
22 Q. Why were they separated?
23 A. Because I'd broken the bloody knife off.
24 Q. On what?
25 A. On a tin of varnish.

R. N. EBSARY, by Mr. Ruby

1 Q. And that was quite some time later?
2 A. Oh, yes, quite some time later.
3 Q. This wasn't a fantasy with the knife being buried in the corner
4 garden? It wasn't something you'd made up or hallucinated?
5 A. You know, my friend, you're hallucinating, not me.
6 When I use my imagination, I use it for a purpose, to create
7 something.
8 Q. This morning you remember saying you put it in your pocket.
9 A. Well, Jesus Christ, I did put it in my bloody pocket, sure.
10 Q. Would there not have been some blood on that knife?
11 A. What?
12 Q. No blood on that knife at all?
13 A. How could there be? How could there have been any blood on
14 the knife?
15 Q. You said you stuck it into the earth?
16 A. yeh.
17 Q. That would cover some of the blood with earth, surely, but
18 unless you wiped the earth off the blade with something, it's
19 going to have blood mixed with earth on it.
20 A. Is it?
21 Q. No?
22 A. You remember that there were people who testified that they
23 saw me wash the god damn knife. Eh?
24 Q. Is that true or not true?
25 A. It's not true.

R. N. EBSARY, by Mr. Ruby

1 Q. Okay. I'm asking you a question about the knife.
2 A. Yeh.
3 Q. You said you stuck it in the earth.
4 A. Right.
5 Q. And I'm suggesting to you that even if you did that at the
6 end of doing that, the knife would still have blood mixed with
7 earth on it.
8 A. Would it?
9 Q. Not true?
10 A. Well what about if you pull it through your fingers?
11 Q. Did you pull it through your fingers?
12 A. Why not? It's a natural thing to do, isn't it?
13 Q. Did you?
14 A. I might have.
15 Q. Then you'd have blood mixed with earth on your fingers.
16 A. Yes, right.
17 Q. And you've told us there was no blood on these hands.
18 A. There was no blood on my hands.
19 Q. If you put your hand to wipe off the dirt and blood, surely
20 there's blood on the hand.
21 A. I said "if". If I put my hand like that. I didn't say I
22 did it. I said if -- suppose a person did it.
23 Q. I'm sorry. I thought you said you did.
24 A. No, I didn't. I said suppose I did.
25 Q. Did you do it?

R. N. EBSARY, by Mr. Ruby

1 A. What? No, I didn't. Why could I?
2 MR. RUBY:
3 My Lord, it's almost four-thirty and I'm mindful of my friend's
4 admonition that the witness may be tiring. I'm prepared to
5 continue but I'm also prepared to stop if you wish.
6 BY MR.CHAIRMAN:
7 Q. All right, we can rise now, Mr. Ebsary, or we can go on to
8 five o'clock.
9 A. Well, I wouldn't mind going home and going to bed for an hour.
10 Q. Well, in that case, we will adjourn until ten o'clock tomorrow.
11 A. Thank you. You're a very good citizen.
12
13
14
15 INQUIRY ADJOURNED AT 4:26 o'clock in the afternoon on the 9th
16 day of September, A.D., 1987.
17
18
19
20
21
22
23
24
25

AA COURT REPORTER'S CERTIFICATE

I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 9th day of September, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to typewritten copy.

Judith M. Robson
Official Court Reporter
Registered Professional Reporter

Sydney Discovery Services
September 9, 1987