

ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

VOLUME III

**Held:** September 11, 1987

**MEDIA POOL COPY**

**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

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Bruce H. Wildsmith: Counsel for Union of N. S. Indians  
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E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

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INQUIRY RECONVENED AT 8:10 o'clock in the forenoon on Friday, the 11th day of September, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia

1

2 MR. CHAIRMAN:

3 Before we continue the Hearings I have to bring to the attention  
4 of some people present (I don't know who.) that the parking lot  
5 across the way is owned by the Salvation Army and they do not  
6 have any extra parking spaces there and they ask that we cease  
7 and desist from trespassing on their parking lot and secondly  
8 or firstly, that the following vehicles be removed by their owners  
9 forthwith: Fairmont A I S M 362; Dodge B B K 538; Fleetwood A U T  
10 686; and a Mazda truck, B C L 496.

11 Mr. Orsborn.

12 MR. ORSBORN:

13 Thank you, Mr. Chairman.

14 During yesterday's proceedings Commission counsel undertook to  
15 review the video tape of Mr. Ebsary to locate the reference to the  
16 Canadian and the Newfoundlander and we have done so and have located  
17 that section. The transcript that has been provided is an accurate  
18 transcript of that portion of the video but the video is still none-  
19 theless available should anybody wish to view that actual segment  
20 of it. I believe that fulfills our undertaking to counsel.

21 MR. CHAIRMAN:

22 Well, unless I hear otherwise, I will assume that's satisfactory  
23 to counsel. No one wants to run the risk of a breakdown of  
24 diplomatic relations between Newfoundland and Canada.

25 MR. ORSBORN:

A very wise course, My Lord.

JAMES MacNEIL, by Mr. Orsborn

1 | MR. ORSBORN:

2 | I'll resume the evidence of Mr. MacNeil, Mr. Chairman.

3 | MR. JAMES MacNEIL, resumes testimony, as follows:

4 | BY MR. ORSBORN:

5 | Q. How do you feeling this morning, Mr. MacNeil?

6 | A. Oh, very good.

7 | Q. Did you sleep well?

8 | A. Pardon?

9 | Q. Did you sleep well?

10 | A. Yeh, fairly good.

11 | Q. I might have to keep reminding you this morning to move a  
12 | little --

13 | A. Yeh, get a little closer if possible, yeh.

14 | Q. -- closer if you can to the mike. There was some difficulties  
15 | yesterday in picking you up.

16 | A. Yeh, okay.

17 | Q. Just to recap very quickly where we left off. Yesterday we  
18 | had been discussing with you your walk with Mr. Ebsary from  
19 | the State Tavern up to Wentworth Park and I think you had told  
20 | us that it was the first time you had in fact walked through  
21 | the park at night and the first time walking to Mr. Ebsary's  
22 | at night. Is that correct?

23 | A. That's correct, yeh.

24 | Q. Now you had indicated that you had drunk a quantity of beer at  
25 | the State Tavern and I'd just like to make sure that I under-

JAMES MacNEIL, by Mr. Orsborn

1 stand correctly what you told us about the, you know, about  
2 how you were feeling when you were walking home. You did  
3 say that you were, as you recall, too drunk to drive a car.

4 A. Yeh.

5 Q. How did you reach that conclusion?

6 A. Well, I didn't have a car. I didn't have a car.

7 Q. Had you had a car?

8 A. If I'd had a car, I wouldn't have the sense to drive.

9 Q. You would have had the sense not to drive?

10 A. Not to drive a car, you know, you don't drive --

11 Q. How do you know when you should not be driving?

12 A. Your own instincts would tell you that.

13 Q. Is that right?

14 A. Your own instincts should tell you what --

15 Q. Is there anything particular about what you do that would say  
16 to you I better not drive?

17 A. Well, it doesn't take too much to impare your driving, you  
18 know, even if you can walk good and every darn thing, but you  
19 have an excess amount of alcohol, four or five pints in your  
20 blood it can cause you to take your mind off the road for a  
21 minute or something like that.

22 Q. Now you said, I think, that you had seven or eight beers and  
23 in your previous testimony I think that number has generally  
24 been the same, that you've --

25 A. Yeh, that's been the same.

JAMES MacNEIL, by Mr. Orsborn

1 Q. That you drank?

2 A. Yeh.

3 Q. How do you come up with that number?

4 A. I just don't know. It's just if you -- when you sit down you  
5 usually order seven or eight or -- you know, it's like --

6 Q. At one time?

7 A. Yeh, like at one time and sometimes the waiter comes over with  
8 a tray there and you say, "Give us about seven or eight beer  
9 or six beer", you know.

10 Q. For yourself?

11 A. For myself. Not all for myself, but for the fellows I'm with there  
12 or the fellow that's -- That's whoever is drinking with me  
13 like.

14 Q. Again just try and move the microphone just a little closer  
15 in to yourself and then you won't have to make yourself  
16 uncomfortable leaning over.

17 A. Yeh.

18 Q. Would the number of beer that you drink or that you drank that  
19 evening, would that get greater as you stayed there longer?

20 A. Well, if you're drinking -- if you're drinking beer it depends,  
21 you know, like you don't -- some people like, you know, can  
22 get drunk and some people can drink beer and some people can  
23 drink so much beer and then it wears out, you know, like they  
24 can drink themselves as they call yourself -- drink yourself  
25 sober like, you know.

JAMES MacNEIL, by Mr. Orsborn

1 Q. And how does it affect you?

2 A. Pardon?

3 Q. How does it affect you? Do you drink yourself sober?

4 A. A few times I did. It depends upon what kind of a mood you're  
5 in. If you're in a happy mood you could sit down and drink  
6 a case of beer. You know, it's your mood, you know.

7 Q. Do you remember what kind of a mood you were in that night?

8 A. That night I was in a fairly good mood until this incident  
9 happened.

10 Q. I understand. Now you indicated to us yesterday that you  
11 arrived at the Tavern perhaps around five o'clock and some of  
12 your other testimony says that you might have got there as  
13 late as eight o'clock. Now I'm not too concerned about what  
14 time you got there but the question is whether or not -- If  
15 you got there at five o'clock would you have perhaps drunk  
16 a lot more beer during that night than if you had got there  
17 at eight o'clock?

18 A. Not really. Not really because if you're gabbing, you know,  
19 you're not going to be drinking every second if you're  
20 gabbing.

21 Q. You'd spent a fair bit of time at the State Tavern in the  
22 evenings, had you?

23 A. Yes, I did, yeh.

24 Q. Can you give us any idea on an average how many beer you might  
25 drink say in an hour?

JAMES MacNEIL, by Mr. Orsborn

1 | A. In an hour? I'd say five beer.

2 | Q. Five beer?

3 | A. Five beer, yeh.

4 | Q. So if you -- If last call was say at eleven would you then  
5 | say that from nine o'clock until eleven you would have  
6 | drunk ten beer?

7 | A. Yeh, I would say, yeh.

8 | Q. And from eight o'clock to eleven, fifteen beer?

9 | A. There's a possibility. Yeh, there's a possibility.

10 | Q. So the seven or eight that you've talked about is really  
11 | a guess, is it?

12 | A. Yeh.

13 | Q. I don't want to put words in your mouth but that's the impression  
14 | that I'm getting?

15 | A. Yeh, it's like it's -- Yeh, you could say that like a guess  
16 | like.

17 | Q. Okay, and one thing I noticed yesterday was that when you were  
18 | drinking your water you drank very quickly. Do you drink beer  
19 | the same way?

20 | A. No, I have something wrong with my throat, hey. I had to  
21 | get an operation on my nose and stuff backs down, and that's  
22 | why --

23 | Q. When you drink beer you just don't take it up and chug-a-lug  
24 | it, do you?

25 | A. Oh, no. No. No.



JAMES MacNEIL, by Mr. Orsborn

- 1 | Q. You also told us that after having this beer of perhaps an  
2 | indefinite number, that you had a stagger or a little stagger,  
3 | but I think you also told us that you didn't need any support.  
4 | You didn't have to hold onto Mr. Ebsary to keep yourself  
5 | up?
- 6 | A. Oh, no. No, I wasn't that -- I wasn't that drunk.
- 7 | Q. Okay. Now when you say a little stagger does this mean you  
8 | weave from side to side as you're walking?
- 9 | A. Yeh.
- 10 | Q. Okay. Do you remember doing that?
- 11 | A. Yeh.
- 12 | Q. Okay. Did you fall down at any time?
- 13 | A. Oh, no, I never fell down. No.
- 14 | Q. I've got a slight difficulty here, Mr. MacNeil, that I'd like  
15 | you to help me with if you can and I'm not trying to trap you  
16 | or, you know, trick you or anything like that; on a number  
17 | of other occasions that you've testified you've indicated that  
18 | you were positive that you weren't staggering?
- 19 | A. Yeh.
- 20 | Q. And now yesterday and today you indicate that you remember  
21 | staggering or a little staggering and weaving from side to  
22 | side and I'd like to understand, number one, which is  
23 | correct to the best of your memory and I'd also like to  
24 | understand why at one time you might be positive that you  
25 | weren't staggering and this morning you tell me that you were

JAMES MacNEIL, by Mr. Orsborn

1 |       staggering. Can you help me there at all?

2 | A. Well, I've been through this so many times there, you know.

3 |       You don't know sometimes if you're, you know -- you're --

4 |       you know, you get confused like, you know. I've been up

5 |       here so many times and that there, you know, so --

6 | Q. Right.

7 | A. Like you said there -- Repeat that question there you

8 |       said.

9 | Q. Okay. I'd just like to understand why your testimony would  
10 |       change from time to time in the past and I won't bore you

11 |       with the references to it, but they are there that you have

12 |       testified and said, "I'm positive that I was not staggering".

13 |       Okay, and yesterday and this morning you've suggested to us

14 |       that, "Yes, I remember staggering and I was weaving a little

15 |       bit". Now those -- that testimony is different and I'd

16 |       just like to try and understand why it should be different

17 |       and why at one time would you say that you were positive

18 |       and why this morning would you say that there was a stagger?

19 |       Like I said, I'm not trying to trick you. I'm just trying

20 |       to understand why there would be a difference.

21 | A. Well, there sometimes probably you'd be walking straight

22 |       a little bit and then stagger a little bit like or -- That's

23 |       probably why --

24 | Q. But when you said in the past that you were positive that you

25 |       weren't staggering, did you really believe when you said that

JAMES MacNEIL, by Mr. Orsborn

1 | that you weren't staggering?

2 | A. Yeh.

3 | Q. Okay, but now when you tell us that there was a bit of a  
4 | stagger and a weave, do you now really believe that night  
5 | that you were staggering a little bit?

6 | A. I -- Yeh, I believe now that I was staggering a little bit,  
7 | but I wasn't falling down.

8 | Q. I understand that. As you're talking to me now do you feel  
9 | at all confused about things?

10 | A. Pardon?

11 | Q. As you're talking to me now do you feel at all confused about  
12 | what you're telling me?

13 | A. In what sense confused?

14 | Q. About the staggering, are you unsure as to whether you  
15 | staggered or not or are you clear that you did, in fact,  
16 | stagger?

17 | A. I'm still unsure.

18 | Q. So you're not sure if you staggered or not?

19 | A. I'm not sure, no.

20 | Q. I see. Do you recall if your speech was at all slurred or  
21 | hard to understand that night after you had consumed these  
22 | beer?

23 | A. I couldn't -- I wouldn't know that.

24 | Q. Would it be unusual after you spent an evening at the  
25 | State Tavern if your speech was a bit slurred or hard to

JAMES MacNEIL, by Mr. Orsborn

1 understand?

2 A. Well, I think everybody that has a drink there -- after  
3 so many drinks their voice changes.

4 Q. That would be usual for you, would it?

5 A. That would be usual for me, yeh.

6 Q. I see. Do you recall whether or not there was any blurring  
7 of your vision? Could you see very clearly?

8 A. It was pretty dark down there. I could see pretty clearly.

9 Q. You could see pretty clearly?

10 A. Yeh.

11 Q. You say it was dark. Do you remember what the weather was  
12 like?

13 A. Thinking back now it was kind of damp, damp like.

14 Q. Okay. Now as you were walking through the park and I think  
15 it's common knowledge now that an unfortunate incident happened  
16 to you. You told us yesterday that certainly as you were  
17 coming into the park and crossing the bridge you don't remember  
18 seeing anybody or talking to anybody?

19 A. I don't remember, no.

20 Q. But you allow that Mr. Ebsary might have and you've just  
21 forgotten. What's the first thing unusual that you remember  
22 from your walk through the park?

23 A. The first --

24 Q. I'll stop you because I want to go through this fairly  
25 slowly, okay?

JAMES MacNEIL, by Mr. Orsborn

1 A. Yeh. The first unusual thing I noticed is when we came  
2 up across the bridge (There was a wooden bridge there.)  
3 when we came up --

4 Q. The wooden bridge is the one that's marked "bridge" here on  
5 the plan between the two creeks?

6 A. Yeh, there's a bridge there where you come up and then you  
7 come up onto Crescent.

8 Q. Yes.

9 A. Crescent runs --

10 Q. You came up this -- one of these walkways up to Crescent Street?

11 A. Yeh, one of the walkways and you came up to Crescent and when  
12 we crossed over on the other side of Crescent --

13 Q. So you crossed over on Crescent Street towards the houses?

14 A. Yeh, towards the houses. That's where the incident took  
15 place.

16 Q. Now when I point at this map here my finger is approximately  
17 by house number 130 which is a grey house. When you say this  
18 is where the incident took place, is my finger in approximately  
19 the right place?

20 A. Yeh. Yeh, it'd be around the right place, yeh.

21 Q. Well, could it have been as far up as the green building?

22 A. Just a minute now. We come across --

23 Q. Take your time.

24 A. When you come across you go across to the other side and it  
25 was like not too far after we crossed the street on the

JAMES MacNEIL, by Mr. Orsborn

1 other side there.

2 Q. Not too far after you crossed the street?

3 A. Yeh.

4 Q. Would it be fair to say that if you were going towards  
5 Mr. Ebsary's place the walkway that you would take to  
6 Crescent Street would be the walkway that is closer to  
7 Bentinck Street and not this walkway which goes back to  
8 Argyle?

9 A. Yeh, the one that's closer to Bentinck.

10 Q. So you would have come out on this --

11 A. No, no, not to Bentinck, to Argyle Street. The one that's  
12 closer to -- There's one -- That's the one that's closer to  
13 Argyle Street, the walk --

14 Q. I'm sorry. Perhaps you better come up here, Mr. MacNeil, and  
15 just point it out to me. There are two walkways here, one  
16 closer to Argyle Street and one closer to Bentinck Street, and  
17 Mr. Ebsary's house is located down here on rear Argyle.

18 A. This here is the band shell.

19 Q. Right.

20 A. Okay, and this is the bridge. Okay. You come up here just --

21 Q. Across the bridge.

22 A. --across the bridge, right?

23 Q. Yes.

24 A. And then you come up to Crescent?

25 Q. So do you recall actually coming up this walkway here?

JAMES MacNEIL, by Mr. Orsborn

1 | A. Yeh. That's the -- Like there's a walkway. There's a bridge  
2 | and then there's a walkway. You come here and then you cross  
3 | over and the sidewalk runs towards like Kings Road, right,  
4 | and one comes right out to Argyle Street.

5 | Q. And which direction were you walking?

6 | A. We're walking like this towards Argyle Street because that's  
7 | where you'd go up to his house. We came up through there and  
8 | right up here, that's where everything happened.

9 | Q. Perhaps you could sit down again, Mr. MacNeil, and get closer  
10 | to the mike?

11 | A. Yeh.

12 | Q. Now it has certainly been my understanding in the past --

13 | MR. RUBY:

14 | Mr. Chairman, I heard him saying about that period where  
15 | everything happened, but I didn't get the actual spot. Maybe he  
16 | could put a mark where he says --

17 | MR. ORSBORN:

18 | Yeh, I think I'd just -- I'd like to review that just for a moment  
19 | perhaps before we put any marks on it.

20 | MR. RUBY:

21 | Before you do that, perhaps since I missed it, could I have him  
22 | point again to that spot so I'll be able to follow his testimony;  
23 | just what he said before that's where everything happens.

24 | MR. ORSBORN:

25 | I understand that.

JAMES MacNEIL, by Mr. Orsborn

1 BY MR. ORSBORN:

2 Q. Well, perhaps you can make a mark, Mr. MacNeil, on where you  
3 believe the incident happened as you were walking down  
4 Crescent Street and then I'd like to review it with you.

5 MR. ROSS:

6 I'm wondering if it would be appropriate to perhaps move the  
7 trestle over a bit so that we can see from this side.

8 BY MR. ORSBORN:

9 Q. Mr. MacNeil, perhaps you would just place that piece of paper  
10 where you now recall that that incident took place?

11 A. When you come up the walkway you cross over the other side  
12 and right here --

13 MR. CHAIRMAN:

14 Mr. MacNeil, could you face the other way. We can't see where  
15 you're going.

16 BY THE WITNESS:

17 A. It takes me right over to Argyle Street so, well, you cross  
18 over here and it'd be about -- about around here would be  
19 the place.

20 BY MR. ORSBORN:

21 Q. Now you've indicated, Mr. MacNeil, that you --

22 MR. PUGSLEY:

23 Well, perhaps that could be described for the purposes of the  
24 record. That sticker is going to remain on there for about  
25 two hours and that's it.



JAMES MacNEIL, by Mr. Orsborn

1 | MR. ORSBORN:

2 | I think for the record we could indicate that the sticker is  
3 | approximately halfway between the walkway directly adjacent to  
4 | Argyle Street and the walkway coming off the bridge which is  
5 | closer to Argyle Street and it has been located on the -- it  
6 | appears to be the west side of Crescent Street on which the houses  
7 | are located.

8 | BY MR. ORSBORN:

9 | Q. Now Mr. MacNeil, you have indicated that you were walking towards  
10 | Argyle Street once you came off the walkway?

11 | A. Yeh.

12 | Q. Is it your clear recollection now that that was the direction  
13 | in which you were walking?

14 | A. Yeh.

15 | Q. Is there any possibility that you were, in fact, walking in  
16 | the other direction?

17 | A. No, because that would be the closest way going to his place  
18 | because he lives up around here.

19 | Q. Well, the fact that Mr. Ebsary's residence is located on  
20 | rear Argyle Street as is indicated on the map which I believe  
21 | is off Richardson Street?

22 | A. Yeh, there's two ways to get to his place. Through the back --  
23 | Like there's a back way and then you can go right up like  
24 | Argyle, right off of Argyle when you pass a little store and  
25 | you go right down the lane. By the school -- There's a school

JAMES MacNEIL, by Mr. Orsborn

1       there and a big fence. You go down that way. There's two  
2       ways.

3       Q. So you are clear today in your recollection that you were  
4       walking towards Argyle Street?

5       A. Yeh.

6       Q. I think Mr. Ebsary has indicated that you were walking in  
7       the other direction. Does that, in anyway, challenge your  
8       memory of it?

9       A. No, I don't believe we were, no. Everything happened right  
10      after we came up off the walk and onto the street --after  
11      we came off the walk and onto the street.

12      Q. Everything happened after you came off the walk and onto the  
13      street?

14      A. After we crossed over, yeh.

15      Q. Now when you say that the incident happened what is your  
16      first recollection of that incident?

17      A. My first recollection of that incident is a scare. I got a  
18      scare.

19      Q. How were you scared?

20      A. Because Marshall put my right arm behind my back and I just --  
21      I frozed. I frozed.

22      Q. You froze?

23      A. Yeh, I frozed and I was just there like that because Marshall's  
24      eyes were right -- I remember -- I recall his eyes were right  
25      red.

JAMES MacNEIL, by Mr. Orsborn

1 Q. Let's just take that one step at a time and we'll use the  
2 names because there's probably not much dispute about the  
3 names that were involved. Did Mr. Marshall come from behind  
4 you or did he appear in front of you?

5 A. I believe he came from behind us.

6 Q. Came from behind you?

7 A. Yes.

8 Q. And were you able to see whether or not there was anybody  
9 else with him?

10 A. Yeh. Yeh.

11 Q. And what could you see about the people with him?

12 A. It was just him and Mr. Seale.

13 Q. I see. What was the lighting like when this incident took  
14 place?

15 A. The lighting was fair.

16 Q. When you say, "fair", what does that mean?

17 A. Well, it's not like today. Today it's all lit, but it was  
18 fair. There was, you know, a fair amount of lighting.

19 Q. How close were you to a street light?

20 A. Oh, I'd say approximately about twenty feet or something like  
21 that on. That's going out --

22 Q. We still may be losing you, Mr. MacNeil.

23 A. About twenty feet.

24 Q. And did Mr. Marshall appear in front of you before you felt  
25 your arm go up behind your back?

JAMES MacNEIL, by Mr. Orsborn

- 1 A. No, he didn't appear in front of me, no.
- 2 Q. So the first thing that you felt was an arm?
- 3 A. Yeh.
- 4 Q. Your arm going behind your back?
- 5 A. Yeh. Right.
- 6 Q. But you just told us a moment ago that you saw Mr. Marshall's  
7 eyes and they were red?
- 8 A. Yeh.
- 9 Q. How could you see his eyes if he were behind you?
- 10 A. When I looked at him when he had -- When I looked at him  
11 like that when he had his arm up behind my back and I  
12 looked up at him like that.
- 13 Q. You turned around?
- 14 A. Yeh.
- 15 Q. And looked?
- 16 A. Yeh.
- 17 Q. Did you know who it was?
- 18 A. No, I didn't know who it was.
- 19 Q. Could you tell if he were black, or white, or an Indian?
- 20 A. No, I couldn't tell, no.
- 21 Q. You couldn't tell?
- 22 A. No.
- 23 Q. Could you tell if his companion was black, or white, or an  
24 Indian?
- 25 A. Not really offhand until I heard his voice.

JAMES MacNEIL, by Mr. Orsborn

1 | Q. All right. And when Mr. Marshall was standing behind you  
2 | holding your arm, where was his companion?

3 | A. He was in front of Seale.

4 | Q. No, I'm sorry, where --

5 | A. In front of Ebsary.

6 | Q. And how far was Mr. Ebsary from you?

7 | A. He was only next to me like that.

8 | Q. All right. Now before you --

9 | MR. RUBY:

10 | How far away was he?

11 | MR. ORSBORN:

12 | I'm sorry.

13 | MR. RUBY:

14 | How far?

15 | BY MR. ORSBORN:

16 | Q: I'm sorry, how far was Mr. Ebsary from you?

17 | A. Just next to me like that.

18 | Q. And that would be approximately two feet from you?

19 | A. Two feet, yeh.

20 | Q. What you're showing us this morning. Before you felt the  
21 | arm go up behind your back was there any conversation between  
22 | yourself and either Mr. Marshall or Mr. Seale?

23 | A. No, there's no conversation. No.

24 | Q. Was there any conversation between Mr. Marshall and Mr. Seale  
25 | and Mr. Ebsary?

JAMES MacNEIL, by Mr. Orsborn

1 A. The only conversation that I heard was, "Dig, man, dig".

2 Q. Okay. Well, we'll get to that in a few moments. Let me just  
3 suggest a few things to you, Mr. MacNeil, and see if in anyway  
4 they jog your memory. Do you recall any reference to a place  
5 called Truro?

6 A. Truro? No.

7 Q. Do you recall any reference to priests?

8 A. No.

9 Q. Any reference to Manitoba?

10 A. No.

11 Q. Any reference to coming home to Mr. Ebsary's for a barbecue?

12 A. No.

13 Q. Mr. Ebsary testified yesterday (I don't know if you heard him.)  
14 that he invited these two gentlemen home to his house for a  
15 barbecue?

16 A. Oh, he's crazy as a bag of hammers. Barbecue? Oh, I wish  
17 we were having a barbecue for Christ sake.

18 Q. Now in that connection, Mr. MacNeil, you told us yesterday that  
19 Mr. Ebsary might, in fact, have talked to a group of young  
20 people around a tree close to the entrance of the park and  
21 might have asked for a light and you might have forgotten it.  
22 Is it possible that there was conversation between Mr. Ebsary  
23 and Mr. Marshall or Mr. Seale and you just might have forgotten  
24 it?

25 A. If there was, I don't remember. I don't remember if they had --

JAMES MacNEIL, by Mr. Orsborn

1       them having a conversation.

2       Q. If Mr. Ebsary had, in fact, asked them back to his house for  
3       a barbecue, is that the kind of thing that you would  
4       remember?

5       A. No --Yeh, I would remember if he was talking about barbecues,  
6       but I never heard nothing about barbecues.

7       Q. I guess what I'm trying to understand, Mr. MacNeil, is that --  
8       are you saying to us that that conversation did not take place  
9       or that it might have taken place and you just don't remember?

10      A. Well, if it took place I don't remember, but I don't think it  
11      did.

12      Q. You're not positive that Mr. Ebsary didn't say that?

13      A. Pardon?

14      Q. I say you're not positive that he didn't say that. He could  
15      have said it. He could have invited them home for a barbecue?

16      A. No, I would have remembered that.

17      Q. You would have remembered?

18      A. Yeh.

19      Q. I see.

20      A. Yeh.

21      Q. Was there any conversation about women down in the park?

22      A. No, not that I know of.

23      Q. Not that you recall?

24      A. Not that I recall.

25      Q. What about bootleggers?

JAMES MacNEIL, by Mr. Orsborn

1 A. Not that I recall.

2 Q. Was there any conversation referring to blacks or Indians  
3 that you recall?

4 A. No, not that I recall. No.

5 Q. And you told us that the lighting was such that you were  
6 not able to see whether either of these individuals that  
7 stopped you were white or black or Indians?

8 A. No.

9 Q. Had you seen either one of them before?

10 A. No, never in my life.

11 Q. Mr. Ebsary told us yesterday and I believe he's also indicated  
12 the same thing in a statement to the police that before this  
13 you had been set upon by Mr. Marshall on Hardwood Hill and  
14 beaten up?

15 A. Beaten up by Mr. Marshall?

16 Q. Yeh, that you had told Mr. Ebsary that you were beaten up by  
17 Mr. Marshall?

18 A. Bull shit. Mr. Marshall, I didn't even know him. No,  
19 Mr. Marshall bet me up.

20 Q. Let me just read to you very quickly from a volume of evidence  
21 that we have in here, Volume 11, and I'm reading at page 3.  
22 This is what Mr. Ebsary told the police and he told them this  
23 in 1982. He says:

24 "MacNeil..."

25 Which is you.



JAMES MacNEIL, by Mr. Orsborn

1                    "...told me..."

2            That's Ebsary.

3                    "...before this happened Marshall  
4                    had robbed him before and beaten  
5                    him up on Hardwood Hill."

6    A.    What a bag of hammers. Holy, that's -- that's lies.

7    Q.    You're saying that never happened?

8    A.    That never happened, no, for kripsake. Good heavens, what  
9            next.

10    Q.    Had you ever been accosted before when you were walking at  
11            night?

12    A.    Never, never.

13    Q.    This is the first time this had ever happened to you?

14    A.    The first time, yeh. The first time.

15    Q.    Since this thing happened, Mr. MacNeil, have you ever dreamt  
16            about it?

17    A.    Oh, yeh, I have nightmares.

18    Q.    You have nightmares about it?

19    A.    Yeh, I have nightmares.

20    Q.    And sometimes do you remember clearly what your nightmares are  
21            telling you?

22    A.    Well, I remember that young fellow getting killed. I remember  
23            him screaming.

24    Q.    You see that in your dreams, do you?

25    A.    I see that in my dreams and I remember him running. He never  
          ran too far.

JAMES MacNEIL, by Mr. Orsborn

1 Q. And sometimes do your dreams perhaps even seem more real  
2 than what happened?

3 A. Yeh, sometimes they do. Sometimes I see, you know --

4 Q. Is it possible on past occasions when you've testified that  
5 you might even be testifying as to what you saw in your  
6 dreams because they're so real?

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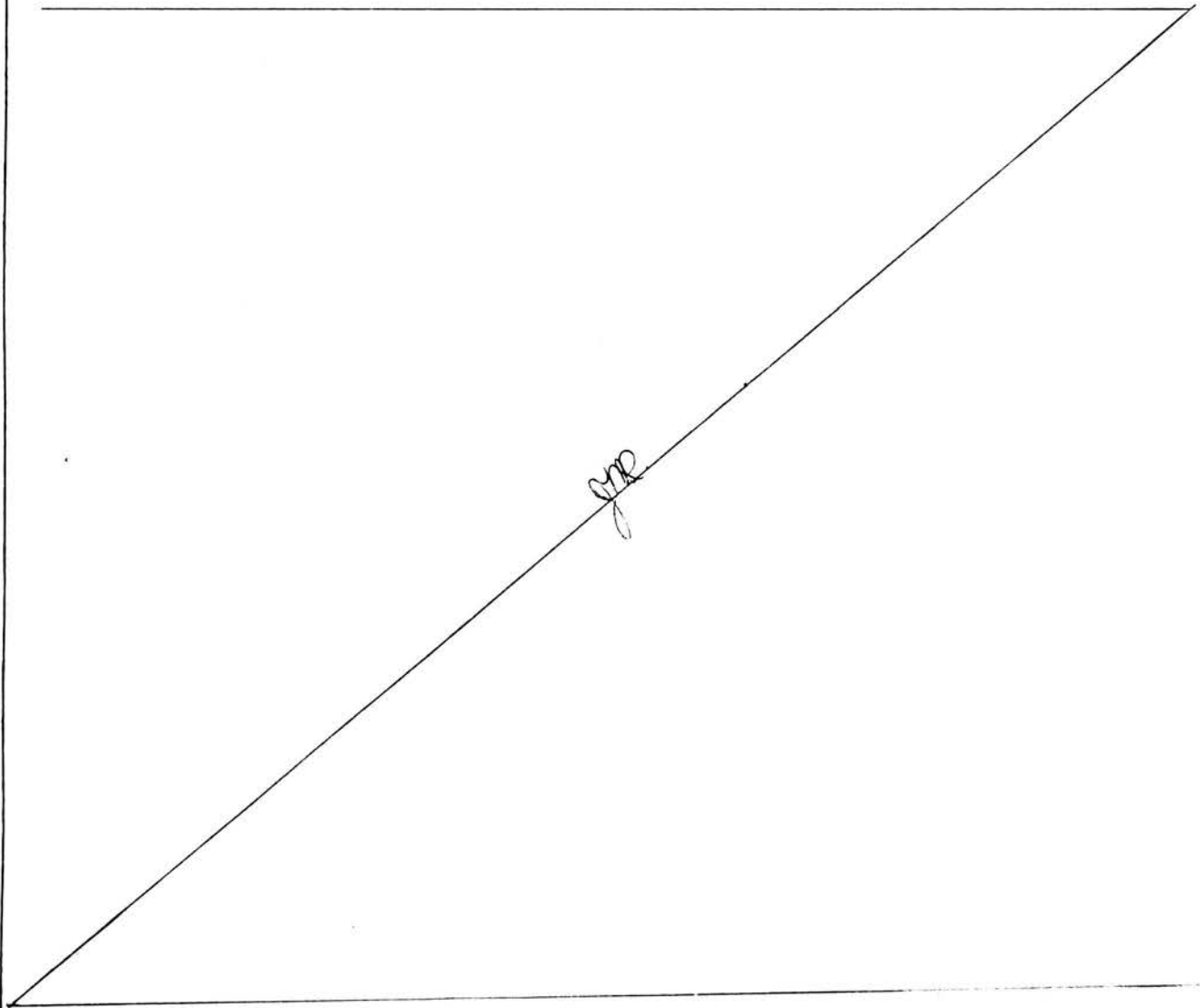
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JAMES MacNEIL, by Mr. Orsborn

1 A. No, no.

2 Q. You don't think so?

3 A. No.

4 Q. Now you told us that when you felt the arm go up behind  
5 your back, you just froze?

6 A. Yeh.

7 Q. Now when you say you froze, what do you mean?

8 A. I just got terrified, you know.

9 Q. Terrified.

10 A. I went to a frenz.

11 Q. You went into a frenz, okay. Now when you've spoken in the  
12 past about this, you used some different terms. You talked  
13 about being tensified, you talked about going into a state  
14 of shock. Now let's just talk about what you mean when you  
15 say you went into a state of shock because it might mean one  
16 thing to a doctor and it might mean something else to an  
17 electrician and I'd just like to know what the word "shock"  
18 means to you.

19 A. It's like fear. Like, it's just like fear, you know.

20 Q. What happens to you when you go into that state?

21 A. Well, it kinda reminded me of one time my father got robbed  
22 and he got beaten up pretty bad and that's, you know like I  
23 seen what he was like when he came home and --

24 Q. I'm sorry?

25 A. I said I seen the condition he was in when he came home and

JAMES MacNEIL, by Mr. Orsborn

1 | that, you know, I always -- I thought of that right away  
2 | when Marshall had my arm down my back. I thought I was  
3 | going to get -- I was going to get a beating and, you know,  
4 | (inaudible). And I wasn't -- I didn't have no money on me  
5 | or nothing.

6 | Q. No money.

7 | A. But I was scared.

8 | Q. Does it -- Does it affect your ability to react? Do you sort  
9 | of almost go into a trance?

10 | A. Well, if it happened today, it would be different. I'm in  
11 | a lot better health today but at that time I was in piss-  
12 | poor health.

13 | Q. Yes, I understand that. You told us yesterday that you --

14 | A. No, I wasn't.

15 | Q. You weren't very well.

16 | A. Not very well.

17 | Q. I'm just trying to understand what kind of a state was  
18 | created in you. Once that happened, once you went into a  
19 | state of shock, did you know what was going on around you?

20 | A. I -- Then everything was sort of like I heard -- I heard  
21 | voices. Then I heard like Mr. Seale saying, "Dig, man, dig."  
22 | and I heard Ebsary saying: "I got something for you." and  
23 | then all of a sudden my arm was dropped like and I -- it  
24 | just seemed like Ebsary coming up like that and going like,  
25 | sort of like that at Marshall, I thought anyway, at Marshall

JAMES MacNEIL, BY Mr. Orsborn

1 and then that was it.

2 Q. So even though you were in this state of shock, you do recall  
3 those things you've just told us --

4 A. I recall them, yeh.

5 Q. -- coming back through that?

6 A. Yeh, I recall it because I remember Marshall let go of my  
7 arm.

8 Q. Do you recall that clearly?

9 A. I recall it pretty clearly, yeh.

10 Q. Now again, Mr. MacNeil, I don't want to trick you or stop you  
11 but you recall that clearly from your memory from the night  
12 that happened or is it possible that you're recalling that  
13 from say, some dream or whatever that you've had since then.

14 A. No, from the night that happened.

15 Q. From the night that happened?

16 A. Yeh.

17 Q. Now when Mr. Marshall put his arm or -- arm and took your  
18 arm behind his back, did he take you away any distance from  
19 Mr. Ebsary?

20 A. No, he did not.

21 Q. Did he move you at all?

22 A. No, he did not.

23 Q. Did he fight with you?

24 A. He did not fight with me, no.

25 Q. Mr. Ebsary told us yesterday that you and Mr. Marshall sort of

JAMES MacNEIL, by Mr. Orsborn

1 | were off about sixty feet away from Mr. Ebsary on the other  
2 | side of the road and that you, I think Mr. Ebsary said,  
3 | were screaming like a banshee. Were you making any noise?

4 | A. No.

5 | Q. Did you say anything at all?

6 | A. Never said nothing.

7 | Q. Were you in fact dragged sixty feet away from Mr. Ebsary?

8 | A. No, I wasn't dragged nowheres.

9 | Q. Would you remember if you were?

10 | A. I would. I would.

11 | Q. Now you told us earlier that you were two or three feet away  
12 | from Mr. Ebsary. Did you stay that distance? Is that --

13 | A. Yeh.

14 | Q. -- far away you remained?

15 | A. Yeh.

16 | Q. So you're telling us when Mr. Ebsary testified that you were  
17 | sixty feet down the road screaming like a banshee, are you  
18 | telling us that he is wrong?

19 | A. He is wrong.

20 | Q. He's wrong.

21 | A. He is wrong.

22 | Q. When you heard the words, "Dig, man, dig.", what did you take  
23 | them to mean?

24 | A. Would you repeat that please?

25 | Q. When you heard the words, "Dig, man, dig.", what did you take

JAMES MacNEIL, by Mr. Orsborn

1 |       them to mean?

2 | A. Well, I knew there was a robbery going on then.

3 | Q. I see. Yeh, now as between Mr. Seale and Mr. Marshall, are  
4 | you sure which of those two said those words?

5 | A. I'm positive it was Mr. Seale.

6 | Q. Why are you positive of that?

7 | A. By the sound of his voice.

8 | Q. When you say the sound of his voice, what do you mean?

9 | A. By his voice, it sounds like he was coloured.

10 | Q. It sounded like he was coloured.

11 | A. Yeh.

12 | Q. So that you told us a few minutes ago, Mr. MacNeil, that you  
13 | didn't know if the -- even if the man behind you was coloured  
14 | or Indian or white and you weren't sure if Mr. Seale was  
15 | Indian or coloured or white. I'm trying to understand how  
16 | you knew which one of them was speaking. Could it have been  
17 | the man behind you that was speaking? Could it have been  
18 | Marshall who said, "Dig, man, dig."?

19 | A. Repeat that please?

20 | Q. Could it have been, in fact, Mr. Marshall that said, "Dig,  
21 | man, dig." to you?

22 | A. No.

23 | Q. Why not?

24 | A. He didn't say "Dig, man, dig." to me. That was to Ebsary.

25 | Q. Okay, how far was Mr. Seale from you when he made this comment?

JAMES MacNEIL, by Mr. Orsborn

1 A. Mr. Seale was just next like that, about two feet.

2 Q. So Mr. Seale was about two feet from your, two to three feet  
3 from you. Mr. Marshall was behind you and you're in this  
4 state of shock that you've talked to us about, and you hear  
5 a voice saying, "Dig, man, dig."

6 A. Yeh.

7 Q. All I want to know is how are you sure that Mr. Seale said that  
8 rather than Mr. Marshall?

9 A. Because Marshall wasn't talking. He just had me like that.

10 Q. You're sure about that?

11 A. Yeh.

12 Q. Do you have any recollection of Mr. Ebsary, in fact, giving  
13 anything to Mr. Seale, any of his property?

14 A. It happened so fast. Like as far as I'm -- as far as I know  
15 there was no -- he never gave them no property.

16 Q. You say it happened so fast. How long did this take?

17 A. Just a few seconds; that's all.

18 Q. A few seconds. Mr. Ebsary has testified that he passed over  
19 his watch and his ring and some money and some keys, I believe.  
20 Do you have any recollection of that?

21 A. No. That's bullshit. I would have -- I would've known if  
22 he did that.

23 Q. You would --

24 A. Yeh, I would have knew if he did that. He didn't pass over  
25 no money, keys.



JAMES MacNEIL, by Mr. Orsborn

- 1 Q. You would have known had he done that?
- 2 A. I would have known, you know, yeh.
- 3 Q. So when Mr. Ebsary testified that he did that, you're saying
- 4 he is wrong?
- 5 A. He is wrong. Wrong.
- 6 Q. And you've testified that you didn't have any money on you.
- 7 A. I didn't have a cent on me.
- 8 Q. Where would the money from the beer come from?
- 9 A. Ebsary bought it.
- 10 Q. Mr. Ebsary bought it for you?
- 11 A. Yeh.
- 12 Q. All night?
- 13 A. Yeh.
- 14 Q. You were perhaps at the tavern before he was, were you not?
- 15 A. Yeh.
- 16 Q. Who bought it for you when he wasn't there?
- 17 A. Different people that I worked with and that I knew at that
- 18 time.
- 19 Q. Now you testified that you heard Mr. Ebsary say: "I've got
- 20 something for you."?
- 21 A. Yeh.
- 22 Q. Again and I'm not wanting to trick you or trap you. Are you
- 23 sure now you have that in your memory from that night and
- 24 not something that has perhaps come into your mind since
- 25 then?

JAMES MacNEIL, by Mr. Orsborn

- 1 A. No, I have that in my mind it was that night since that night.
- 2 Q. I see. Other than saying, "Dig, man, dig.", did Mr. Seale
- 3 threaten Mr. Ebsary in any way?
- 4 A. Never threatened him in any way at all.
- 5 Q. Did he have any weapon that you're aware of?
- 6 A. No weapon at all.
- 7 Q. Did he stand up in front of Mr. Ebsary flexing his muscles?
- 8 A. No.
- 9 Q. Did Mr. Marshall stand up in front of you and flex his muscles?
- 10 A. No.
- 11 Q. Now again, Mr. Ebsary testified yesterday that, I believe,
- 12 Mr. Marshall stood in front of the two of you and flexed his
- 13 muscles. Do you have any recollection of that?
- 14 A. No recollection at all, no.
- 15 Q. Are you telling us that that did not happen?
- 16 A. I don't believe it did, no.
- 17 Q. So again when Mr. Ebsary testified to that effect, he's wrong?
- 18 A. He's wrong, yes.
- 19 Q. At any time did Mr. Marshall come around in front of you?
- 20 A. Repeat that, too, please.
- 21 Q. At any time during this incident, did Mr. Marshall come
- 22 around and face you?
- 23 A. Come around and face me. I can't remember.
- 24 Q. If you don't remember, just say so. If you're getting confused,
- 25 just take your time.

JAMES MacNEIL, by Mr. Orsborn

- 1 A. Like, I don't remember. I don't remember. I don't remember.
- 2 Q. At any time did he have his hand around your or his arm around  
3 your throat?
- 4 A. At no time he did not have -- he did not.
- 5 Q. If he did, would you have remembered that?
- 6 A. I would have remembered. I would have remembered.
- 7 Q. Now when Mr. Ebsary said, "I've got something for you.", can  
8 you tell us what you remember seeing Mr. Ebsary do?
- 9 A. He just put his hand in his pocket and he come up like that  
10 right quick, and then I heard Mr. Seale scream and he just  
11 ran a few yards and he fell.
- 12 Q. Okay, we'll come to that. You say you saw Mr. Ebsary put his  
13 hand in his pocket. I know it was dark. It happened quickly and  
14 you were in a bit of a -- you were scared. Do you know what  
15 pocket he put his hand into?
- 16 A. As far as I know the right-hand side, right-hand pocket.
- 17 Q. Do you know if it was his overcoat pocket or his pants  
18 pocket or his suit coat pocket?
- 19 A. I can't be sure because it happened so fast.
- 20 Q. Okay. And when you say "as far as you know, it was in his  
21 right-hand pocket.", Why do you say that?
- 22 A. Because when he come up like -- like that.
- 23 Q. So he come up with his right hand, did he?
- 24 A. Yeh, he come up with his right hand.
- 25 Q. And it's because he came up with his right hand that you believe --

JAMES MacNEIL, by Mr. Orsborn

- 1 A. Yeh.
- 2 Q. -- he put his hand in his right pocket.
- 3 A. Right.
- 4 Q. Did you see him taking any time after he put his hand in his  
5 pocket and before he --
- 6 A. No time at all.
- 7 Q. -- brought it up --
- 8 A. The fellow didn't even know what hit hm.
- 9 Q. And you've demonstrated that the motion Mr. Ebsary made was  
10 an upward thrust?
- 11 A. Yeh, upward motion.
- 12 Q. An upward motion. And Mr. Seale made a noise of some kind you  
13 said?
- 14 A. He screamed.
- 15 Q. He screamed.
- 16 A. Yeh.
- 17 Q. A loud scream?
- 18 A. Yeh.
- 19 Q. Would you think that could have been heard across the other  
20 side of the park?
- 21 A. Possibly, possibly.
- 22 Q. Now when Mr. Ebsary was doing this, was Mr. Marshall still  
23 holding your arm?
- 24 A. No, he let go of my hand. He come -- He came for Mr. Ebsary  
25 and Ebsary went like that right quick and that was it.

JAMES MacNEIL, by Mr. Orsborn

- 1 Q. So what you're telling us is that when Mr. Ebsary made a  
2 thrust at Mr. Seale, Mr. Marshall let go of you --
- 3 A. Yeh, he let go of me, yeh.
- 4 Q. -- and went towards Mr. Ebsary and you're demonstrating that Mr.  
5 Ebsary made a downward slashing motion.
- 6 A. On Marshall.
- 7 Q. With his right arm? Mr. Ebsary's right arm?
- 8 A. Yeh.
- 9 Q. Were you able to tell if Mr. Seale was injured?
- 10 A. Well, it was pretty dark but by the sound out of him, sure  
11 you could, you know, because you don't -- you don't forget  
12 that sound.
- 13 Q. The sound being what?
- 14 A. Of well being hurt like.
- 15 Q. The scream?
- 16 A. The scream, yeh.
- 17 Q. I see. Other than the fact that he screamed, were you able  
18 to tell if Mr. Seale was injured?
- 19 A. I could visualize him in my mind running like and falling.
- 20 Q. Okay, now when you say you can visualize him in your mind  
21 running, again can you visualize it from that night or is  
22 it something that's been perhaps in your dreams since then?
- 23 A. I can visualize it from that night.
- 24 Q. Visualize it from that night?
- 25 A. Yeh.

JAMES MacNEIL, by Mr. Orsborn

1 Q. And are you able to tell us which direction he ran in?

2 A. He ran in the opposite direction, like towards King's Road,  
3 like -- like towards King's Road.

4 Q. So if we were to go to the map and start from the sticker  
5 that we have placed there, you're indicating that he ran  
6 in the direction towards Bentinck Street?

7 A. Yeh, towards Bentinck Street.

8 Q. I believe --

9 A. (Witness refers to map, unable to pick up voice for transcript.)

10 Q. He ran up Crescent Street towards Bentinck Street.

11 A. Yeh.

12 Q. And to do that, he would have had to turn around and run  
13 in that direction, I take it, would he?

14 A. Yeh.

15 Q. Could you see if he were running naturally or did it appear  
16 that he was doubled over as he was running?

17 A. He appeared that he was doubled over.

18 Q. Did you watch him?

19 A. Just for a second.

20 Q. What did Mr. Marshall do?

21 A. Everything was -- Everything, like I said, happened so fast  
22 there, Marshall was there and then like, that was it there.

23 Q. That was it?

24 A. Yeh.

25 Q. Did you see Mr. Seale disappear out of your sight?

JAMES MacNEIL, by Mr. Orsborn

- 1 A. What do you mean disappear out of my sight? Disappear?
- 2 Q. Well, did he keep running until you couldn't see him any more?
- 3 A. No, he couldn't run -- he couldn't run too far.
- 4 Q. And what happened to him?
- 5 A. I seen him dropping.
- 6 Q. You actually saw him fall down?
- 7 A. Yeh.
- 8 Q. Are you able to give us any estimate of how far he ran before
- 9 he fell down?
- 10 A. I'd say no more than about twenty feet or twenty-five feet.
- 11 Q. Twenty to twenty-five feet?
- 12 A. Yeh.
- 13 Q. Would that then be say less than the width of this room?
- 14 A. Yeh, about this. About the width of this room.
- 15 Q. About the width of this room, and --
- 16 A. Yeh.
- 17 Q. -- it's probably perhaps a little more than twenty-five feet
- 18 but about the width of this room?
- 19 A. Yeh.
- 20 Q. Was it as far as the length of this room?
- 21 A. Pardon?
- 22 Q. Was it as far as the length of this room?
- 23 A. No.
- 24 Q. Not as far as the length?
- 25 A. No.

JAMES MacNEIL, by Mr. Orsborn

1 Q. Are you able to indicate on the plan to the best of your  
2 recollection where you saw Mr. Seale fall down? In fact,  
3 you can --

4 A. On the other side --

5 Q. -- put another sticker on the plan.

6 A. On the other side but there's no sidewalks. There's no side-  
7 walks. It's all grassy-like.

8 Q. Well, why don't you just stand up and just put that where you  
9 recall he fell down.

10 A. (Witness refers to map, unable to pick up voice for transcript.)

11 MR. PUGSLEY:

12 If counsel would not mind, My Lord, I understand that cellophane  
13 top can be removed and you can mark on the plan itself. It might  
14 be of assistance to have the witness to mark on it itself.

15 MR. ORSBORN:

16 The cellophane top is really put there for the purpose of marking  
17 on that top if you wish because there may be a number of marks  
18 end up on the plan. If we put it on the plan underneath, I'm  
19 not sure they can be erased.

20 MR. PUGLSEY:

21 Well, if there are too many marks on the plan, perhaps you could  
22 get another copy --

23 MR. ORSBORN:

24 Another plan.

25 MR. PUGSLEY:

It just seems to me that marking it in that manner, it's not going



JAMES MacNEIL, by Mr. Orsborn

1 | to be a permanent record (Inaudible, microphone not transmitting)

2 | MR. CHAIRMAN:

3 | For the record as well, let's get this witness to describe the  
4 | location he's just marked.

5 | BY MR. ORSBORN:

6 | Q. Now if I mark that there, Mr. MacNeil, which I think is where  
7 | you -- believe is where you placed your sticker and I will  
8 | then describe it. On this side of the walk?

9 | A. Yes.

10 | MR. ORSBORN:

11 | For the record, the --

12 | COMMISSIONER EVANS:

13 | Mr. Orsborn, if you -- I suspect there'll be more marks on that  
14 | plan. If you could put an initial or some identifying feature  
15 | so that we'll know that that was Mr. MacNeil's mark.

16 | MR. ORSBORN:

17 | Yes. The plan now has marked on it as J.M.-1 the location where  
18 | Mr. MacNeil has identified the initial incident as taking place  
19 | and the plan also has marked on it as J.M.-2 the location on the  
20 | park side of Crescent Street immediately north of the centre  
21 | walkway coming off the bridge, the location at which he believes  
22 | Mr. Seale fell down.

23 | BY MR. ORSBORN:

24 | Q. Now we got to the point, I think, where Mr. Marshall let go  
25 | of you and Mr. Ebsary made the slash at him that you have

JAMES MacNEIL, by Mr. Orsborn

1 described. What did Mr. Marshall do then?

2 A. Repeat that please.

3 Q. What did Mr. Marshall do after Mr. Ebsary took the slash at  
4 him?

5 A. Then he just vanished out of sight.

6 Q. He vanished out of sight?

7 A. Yeh.

8 Q. Were you able to tell in which direction he vanished?

9 A. No, I couldn't tell.

10 Q. You couldn't tell.

11 A. No.

12 Q. What did you do?

13 A. We went right to his place. We vanished, too.

14 Q. You vanished, too?

15 A. Yeh.

16 Q. And when you say you went to "his place", you went to Mr.  
17 Ebsary's place?

18 A. Yeh.

19 Q. Were you and Mr. Ebsary in any hurry to get away from the park?

20 A. Yeh, he was in -- we walked pretty fast. He was in a hurry  
21 after. I guess he knew he stabbed him so he -- he was in a  
22 hurry to --

23 Q. He was in a hurry --

24 A. He was in a hurry to get away from the park.

25 Q. He was in a hurry.

JAMES MacNEIL, by Mr. Orsborn

1 A. Yeh.

2 Q. Did he say that?

3 A. No, he didn't say it but you could tell by the way he was  
4 walking there he was in a hurry. I was -- I was still a  
5 little bit confused and, you know, like I was, you know,  
6 it was a -- It was a rough thing, you know.

7 Q. You were still confused?

8 A. Yeh.

9 Q. Were you still in a state of shock that you --

10 A. Yeh.

11 Q. -- told us about?

12 A. Yeh.

13 Q. Did Mr. Ebsary make any comment about wanting to get his  
14 watch or his ring or his keys back?

15 A. I didn't hear him making nothing -- I never heard nothing about  
16 no keys or watches. I didn't hear nothing about no keys or  
17 watches or rings or anything.

18 Q. On which direction did you walk in to go back to Mr. Ebsary's?

19 A. We went up Argyle Street to his place there, up Argyle.

20 Q. Again, could you come closer to the mike?

21 A. We went up Argyle and up to his house, up Argyle Street.

22 Q. Well, would you mind perhaps just indicating for us on the  
23 plan which direction you went and then I'll try and put it  
24 on the record.

25 A. Yeh.

JAMES MacNEIL, by Mr. Orsborn

1 Q. My recollection is that you walked down Crescent Street, and  
2 this is in the opposite direction from which Mr. Seale ran,  
3 is it?

4 A. Yeh.

5 Q. You turned around and went down Crescent Street to Argyle?

6 A. Yes.

7 Q. Is this correct?

8 A. Right.

9 Q. And then along Argyle Street which continues on, I believe, to  
10 rear Argyle Street?

11 A. Yeh, right, to his house.

12 Q. How long did that take you?

13 A. Between I'd say about fifteen minutes, I imagine. Fifteen  
14 minutes.

15 Q. Okay. Now in the park when this incident happened, did you  
16 at any time -- In the park now, did you at any time see a  
17 knife?

18 A. No, I never seen a knife, no.

19 Q. You don't recall a knife at any time --

20 A. No.

21 Q. -- in the park? Did you at any time see Mr. Ebsary put anything  
22 back in his pocket?

23 A. No.

24 Q. Did you at any time see him make any motion like sticking  
25 something in the ground?

JAMES MacNeil, by Mr. Orsborn

- 1 A. No. No.
- 2 Q. If he had done that, do you think you would recall it?
- 3 A. I would have recalled it if he had done it.
- 4 Q. Did you at any time see him wiping his hands?
- 5 A. Yeh. When he got back home --
- 6 Q. No, I'm talking about, I'm sorry, in the park.
- 7 A. No.
- 8 Q. In the park.
- 9 A. No.
- 10 Q. At any time did you see him wiping his hands?
- 11 A. No.
- 12 Q. In the park, do you recall seeing any blood?
- 13 A. No, I don't -- I don't recall seeing any blood, no.
- 14 Q. You don't recall seeing any blood in the park?
- 15 A. No.
- 16 Q. Okay. Now when you saw Mr. Seale run off and then fall down,
- 17 did you think he was badly hurt?
- 18 A. No, I couldn't be sure right off the hand then, you know.
- 19 I didn't -- you know, I couldn't really -- but I could,
- 20 you know, tell that he was hurt because I heard him scream
- 21 like but I couldn't -- Would you phrase that question
- 22 again? I can't --
- 23 Q. Okay. When you saw Mr. Seale run off, did you think he was
- 24 badly hurt?
- 25 A. Yeh.

James MacNEIL, by Mr. Orsborn

1 Q. You did think he was badly hurt?

2 A. Yeh.

3 Q. Did you think that he needed help?

4 A. No, I didn't think he needed any help.

5 Q. You didn't think he needed help?

6 A. No.

7 Q. So I -- You didn't give any thought to going and helping  
8 him?

9 A. No.

10 Q. Or calling an ambulance for him?

11 A. No.

12 Q. Now you told me a couple of questions back that you don't  
13 recall seeing any blood in the park. Again, Mr. MacNeil, on  
14 occasions when you have -- when you have testified, you've  
15 testified to seeing a big squirt of blood, seeing blood  
16 coming out of Mr. Seale and I think at Mr. Ebsary's last  
17 trial you testified that you saw intestines coming out of  
18 Mr. Seale's stomach.

19 A. Yes.

20 Q. But this morning you told us that you don't remember seeing  
21 any blood, and again I'm having the same problem that we had  
22 a little while ago.

23 A. Yeh, well --

24 Q. I'd like to understand what you remember as being right, what  
25 you remember seeing, not what you might have dreamed afterwards.

JAMES MacNEIL, by :Mr. Orsborn

1 | A. Yes.

2 | Q. And when you tell us you didn't see any blood, is that  
3 | true to the best of your memory?

4 | A. That's true to the best of my memory.

5 | Q. But when you testified in the past that you saw a big squirt  
6 | of blood or you saw his intestines coming out of his stomach,  
7 | where did you get those pictures from?

8 |

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*DATE*

JAMES MacNEIL, by Mr. Orsborn

- 1 A. It-probably in my thoughts.
- 2 Q. Where would you get those thoughts?
- 3 A. From dreaming.
- 4 Q. From dreaming?
- 5 A. Yeh.
- 6 Q. Are you able to tell us from your testimony this morning, that's  
7 there any parts of your testimony that you might have dreamt  
8 rather than actually seen?
- 9 A. Just the part about -- probably about seeing the blood. I  
10 probably dreamt that. But I didn't -- the rest I didn't  
11 dream.
- 12 Q. You didn't dream, you didn't dream about the "dig, man dig?"
- 13 A. No, I didn't dream that.
- 14 Q. You didn't dream about the upward thrust?
- 15 A. I didn't dream about that.
- 16 Q. You didn't dream about the slash down?
- 17 A. I didn't dream about that.
- 18 Q. I see. What about Mr. Seale's scream?
- 19 A. I didn't dream about that.
- 20 Q. You didn't dream about that?
- 21 A. No.
- 22 Q. But the blood you might have dreamt about?
- 23 A. I might have dreamt about, yeh.
- 24 Q. At any time during this incident in the Park, did you think  
25 that your life was in danger?



JAMES MacNEIL, by Mr. Orsborn

1 A. Yeh, I was, I got scared.

2 Q. You got scared but you told us the only thing that Mr.  
3 Marshall did was take your arm up behind his back?

4 A. Yeh.

5 Q. How would that make you think your life was in danger?

6 A. Well, it's just a feeling that comes over yah. You know,  
7 you just freeze, you get scared like.

8 Q. But nobody threatened to kill you?

9 A. No, nobody threatened to kill me, but it was dark, ah, and  
10 then, I was, you know, like I said, there you get scared  
11 there.

12 Q. Now when you were walking back to Mr. Ebsary's house, were  
13 you still in this state of being scared?

14 A. Yes, I was, yeh.

15 Q. Was there anything said between you and Mr. Ebsary on the  
16 way back to his house?

17 A. Not that I recall.

18 Q. Did you say to Mr. Ebsary before you got back to his house,  
19 "Gee, thanks for helping me there"? Before you got back to  
20 his house?

21 A. No, no.

22 Q. Why did you continue to go back to Mr. Ebsary's, why didn't  
23 you go back to your own home?

24 A. I can't -- I don't know. I can't answer that.

25 Q. Did Mr. Ebsary say to you before you got home, "I saved your

JAMES MacNEIL, by Mr. Orsborn

1 life there you know". Did he suggest to you that he saved  
2 your life?

3 A. Now that's a phrase I can't be sure if he said that. It's  
4 a possibility, like.

5 Q. Yeh, I'm not asking you for possibilities or things that  
6 sort of might have happened. I'm just asking if you remember  
7 if he said that to you?

8 A. I can't remember if he said that or not.

9 Q. You can't remember?

10 A. No, no.

11 Q. Okay. Do you remember on the way home Mr. Ebsary at any time  
12 put anything back into his pocket?

13 A. No.

14 Q. Do you remember if he wiped his hands on anything on the way  
15 home?

16 A. No.

17 Q. And your recollection is that there was nothing said between  
18 you?

19 A. Yeh.

20 Q. Until you got home?

21 A. Yeh.

22 Q. Do you recall what time it was you got back to his house?

23 A. No, I can't recall.

24 Q. Do you recall if there was anybody else home?

25 A. I never seen anybody. If there was anybody there, I don't recall.

JAMES MacNEIL, by Mr. Orsborn

1 Q. Okay. Now again you testified there in the past that there  
2 was nobody there and on other occasions you testified, I  
3 believe, that his daughter, Donna, was home. I'd like to  
4 get from you now what your best memory is of who was home?

5 A. My best memory is that I can't -- as far as I know, there  
6 was nobody home. I never seen anybody.

7 Q. Can you suggest to us why in the past why you might have  
8 testified that Donna was home?

9 A. I don't know, I can't, I can't recall, I can't -- as far  
10 as I know there was nobody home.

11 Q. Far as you know there was nobody at home?

12 A. No, no.

13 Q. So when you got there was nobody else other than Mr. Ebsary  
14 for you to talk to?

15 A. Yeh.

16 Q. That's all?

17 A. That's all.

18 Q. Now Mr. Ebsary has testified that when you got into the house  
19 you said to somebody there, "Roy saved my life, Roy saved my  
20 life." And he said, "shut-up you fool". Do you remember that  
21 happening?

22 A. I don't remember saying that, but if I did, like I said, I  
23 was in a shock there. And I'm not saying that I didn't  
24 say it, but I can't remember saying it.

25 Q. You can't remember saying it?

JAMES MacNEIL, by Mr. Orsborn

1 A. I can't remember saying it.

2 Q. Right. And you were still in the state of shock in though  
3 you had walked for a few minutes through a cool night?

4 A. Yeh.

5 Q. Do you remember what Mr. Ebsary did when he got home?

6 A. Well, I remember is he -- I'm sitting out in the -- I'm  
7 sitting out in the room and he was washing -- he turned on  
8 the tap and he was washing the blood. There was -- his  
9 hands were just coated with blood.

10 Q. You were sitting out in the room. What room were in sitting in?

11 A. Just when you go in the kitchen like.

12 Q. You were sitting in the kitchen, were you?

13 A. Yeh, there's a little room out there and I remember he was  
14 washing his hands under the tap.

15 Q. You remember that?

16 A. Yeh.

17 Q. Was that the first thing he did when he got in the house?

18 A. To my knowledge, yeh.

19 Q. Now again, were talking about and knives and that's pretty  
20 startling stuff?

21 A. Yes it is startling.

22 Q. Okay, now you've told us that even though on other occasions  
23 you saw blood in the Park that you probably dreamt that. What  
24 I would like to know is that when you saw the blood here in  
25 the kitchen, did you dream that or did you actually see that?

JAMES MacNEIL, by Mr. Orsborn

- 1 A. I actually seen it.
- 2 Q. You actually saw it?
- 3 A. Yeh.
- 4 Q. You're sure? It is important.
- 5 A. I'm sure, I'm sure. I didn't dream that, I didn't dream it.
- 6 I'm sure.
- 7 Q. Did he still have his coat on when he was doing this?
- 8 A. Yeh, some kind of a coat or a shawl there. Something like a
- 9 shawl.
- 10 Q. Now when you saw this blood, did you then wonder if Mr. Seale
- 11 was badly hurt?
- 12 A. I did, I did wonder about it. I did.
- 13 Q. Did you say anything to Mr. Ebsary about it?
- 14 A. I didn't say nothing. I went home.
- 15 Q. You went home?
- 16 A. Yeh.
- 17 Q. Did you think that Mr. Seale might have needed some help?
- 18 A. No, at that time I didn't know.
- 19 Q. You didn't. Even though you had heard him scream and saw
- 20 a lot of blood on Mr. Ebsary's hands, you didn't think that
- 21 Mr. Seale might have needed some help?
- 22 A. No.
- 23 Q. Why not?
- 24 A. I don't know.
- 25 Q. You saw him washing his hands and you say you saw a knife at  
this time also?

JAMES MacNEIL, by Mr. Orsborn

1 A. Yeh.

2 Q. You sure?

3 A. Pretty sure.

4 Q. You're pretty sure?

5 A. Pretty sure.

6 Q. Okay. Can you still see it in your mind?

7 A. I can still see it in my mind.

8 Q. Okay. Now can you see it from that knife or can you see it  
9 from a dream?

10 A. I can see it from that night.

11 Q. Have you dreamt about that night since then?

12 A. No. No.

13 Q. Okay. From your picture of that knife that you've got in your  
14 mind, what did it look like?

15 A. It looked like a small knife with a brown handle on it.

16 Q. Come a little closer.

17 A. It looked like a small knife with a brown handle on it.

18 Q. A small knife with a brown handle on it?

19 A. Yeh.

20 Q. I think on occasions you've described that knife as a pocket  
21 knife?

22 A. Yeh.

23 Q. Now what do you mean when you say a pocket knife?

24 A. Well, it's just a small knife. A pocket knife.

25 Q. A pocket knife?

JAMES MacNEIL, by Mr. Orsborn

1 A. Yeh.

2 Q. How long was that knife?

3 A. It would be about probably a three and a half inch blade. Or  
4 something like that, small. Three and a half inches.

5 Q. Three and a half inch blade or blade and handle?

6 A. Blade and handle.

7 Q. Blade and handle?

8 A. No, just the blade.

9 Q. Just the blade, three and a half inches?

10 A. Yeh, yeh.

11 Q. And you say there was a brown handle?

12 A. A brown handle, yeh.

13 Q. Now when you use the term pocket knife, do you mean a knife  
14 that can fold and put in one's pocket?

15 A. Yeh.

16 Q: Okay. Did you have at any time see Mr. Ebsary fold that  
17 knife up?

18 A. No, I never seen him folding it.

19 Q. Did you see what he did with it after he washed it?

20 A. I did not see what he done with it.

21 Q. Have you ever seen that knife since?

22 A. Never seen it since then.

23 Q. Mr. MacNeil, I'm going to show you a knife with a red tag on  
24 it. It's marked Exhibit R4 and it's been introduced into  
25 evidence at the hearings in a group of knives and numbered

JAMES MacNEIL, by Mr. Orsborn

1 as Exhibit 27. Have you ever seen that knife before Mr.  
2 MacNeil?

3 A. No. I can't recall seeing that.

4 Q. Can't recall seeing that?

5 A. No.

6 Q. I'll show you another knife which is marked Exhibit R4(I)  
7 with a red tag and introduced into evidence at these hearings  
8 as Exhibit 24. Now apart from the white sticker on that  
9 knife, have you ever seen that knife before?

10 A. I think I might have seen this one before.

11 Q. You think you might have seen that one before?

12 A. Yeh, yeh.

13 Q. When do you think you might have seen that one before?

14 A. I don't know. I don't know. It looks like the one that he  
15 had washing the blood off it.

16 Q. Which one is that?

17 A. This one here.

18 Q. The one marked Exhibit 24?

19 A. Yeh, yeh.

20 Q. When you say you think, how sure are you?

21 A. Well his hands were all full of blood and everything. And  
22 you can't, you know, you can't make out the knife too good.  
23 But --

24 Q. Why do you think it might have been that one rather than the  
25 other one?



JAMES MacNEIL, by Mr. Orsborn

- 1 A. I can't answer you that.
- 2 Q. Is it possible it was the other one?
- 3 A. It's a possibility. Brown, brown, brown, brown. Something  
4 was brown I know that.
- 5 Q. Something was brown?
- 6 A. He had in his hand there like the knife. So that might have  
7 been what I seen over here. The brown, when I said brown.
- 8 Q. You're pointing to the knife from the group in Exhibit 27  
9 and you're saying that has a brown handle?
- 10 A. Yeh.
- 11 Q. And it might have been that one?
- 12 A. Yeh.
- 13 Q. What colour is the handle on the other one Mr. MacNeil,  
14 Exhibit 24?
- 15 A. That's green, I think green.
- 16 Q. It's green?
- 17 A. Yeh.
- 18 Q. Although when you testified that the handle was brown. Is  
19 is possible it was green?
- 20 A. Could be possible.
- 21 Q. Could it be possible it was black?
- 22 A. Could be possible it was black?
- 23 Q. Or white?
- 24 A. Possible. But that brown, it looks like that brown. I don't  
25 know why that brown colour sticks in my mind -- I said

JAMES MacNEIL, by Mr. Orsborn

1 I don't know why that brown colour stays in my mind.

2 Q. Brown colour stays in your mind?

3 A. Yeh, yeh.

4 Q. In fairness Mr. MacNeil, are what you're telling us this  
5 morning, you don't really know whether it was one of those  
6 knives or not?

7 A. To be truthful, yes.

8 Q. Yes, you don't know?

9 A. I don't know.

10 Q. Do those knives scare you?

11 A. Yes, they do.

12 Q. Why?

13 A. I don't know, they just scare me, that's all.

14 Q. Did you see Mr. Ebsary cut up any steaks that night?

15 A. No.

16 Q. Mr. Ebsary has testified that if in fact you saw him washing  
17 a knife, he was washing a knife after he cut up some steaks  
18 to put on the barbecue?

19 A. No, I don't --

20 Q. Do you have any recollection of steak from that night?

21 A. No, no.

22 Q. If he had cut up steaks that night, would you have remembered  
23 it?

24 A. I would have remembered.

25 Q. How long did you stay there?

JAMES MacNEIL, by Mr. Orsborn

- 1 A. Oh, I imagine an hour.
- 2 Q. An hour?
- 3 A. Yeh.
- 4 Q. Were you still scared?
- 5 A. Yeh.
- 6 Q. What did you do all the time, the hour that you were there?
- 7 A. I just, well, I just was in a frenz , like I was -- then I
- 8 went home. But like I can't remember what I done within the
- 9 hour that I was there.
- 10 Q. You don't remember if you talked to anybody?
- 11 A. No.
- 12 Q. Did you have anything to eat?
- 13 A. No, not that I remember.
- 14 Q. Had you planned on staying there the whole night?
- 15 A. No.
- 16 Q. You hadn't
- 17 A. No.
- 18 Q. How did you get home?
- 19 A. I walked home.
- 20 Q. Did you walk through the Wentworth Park area?
- 21 A. No. It was down Argyle and up Hardwood Hill.
- 22 Q. Down Argyle and up Hardwood Hill?
- 23 A. Yeh.
- 24 Q. So you would not have gone through the Park anyway?
- 25 A. No.

JAMES MacNEIL, by Mr. Orsborn

1 Q. On your normal route?

2 A. No.

3 Q. Now Mr. Ebsary has testified to the effect that you were, you  
4 were scared?

5 A. Yeh.

6 Q. To go home because these two guys might be out looking for you  
7 still. Do you remember that?

8 A. No. I don't remember that.

9 Q. Is it possible that that in fact was the case and you just  
10 don't remember?

11 A. It could be -- yeh it could be possible.

12 Q. Because you were walking home alone?

13 A. Yeh.

14 Q. Did you ask him to walk home with you?

15 A. No.

16 Q. Was this the first time you had seen Mr. Ebsary with a knife?

17 A. Yeh, it's the first time. I didn't know -- I heard after --  
18 later on, I heard that he had knives, collected knives. And  
19 he had knives in his basement and every darn thing. I didn't --  
20 the way he seemed like a nice man for pete's sake.

21 Q. Yeh, you spent a fair bit of time over there and spent a number  
22 of nights over there, I think. And were friends with him?

23 A. Yeh, yeh.

24 Q. He had never showed you any of his collection of knives?

25 A. He never, never showed me the collection of knives or nothing.

JAMES MacNEIL, by Mr. Orsborn

1 This is what shocked me.

2 Q. When you got home that night, was anybody up at your place?

3 A. No.

4 Q. Everybody had gone to bed?

5 A. Yeh.

6 Q. So there was nobody to tell when you got home?

7 A. No.

8 Q. Did you see Roy Ebsary again after that night?

9 A. I'd seen him a couple of days after that.

10 Q. Couple of days after that?

11 A. Yeh.

12 Q. And would you tell us the circumstances of that, please?

13 A. I went to his house. I told him the young fellow died in --

14 Q. Did you know that was the same young fellow that you had  
15 seen?

16 A. Yeh, I heard it on the radio.

17 Q. How did you know that it was the chap that you had run into?

18 A. Pardon.

19 Q. How did you know that this was the man that you had run into  
20 in the Park?

21 A. Well, I heard about the murder on the news.

22 Q. How did you make that connection? You told us before that  
23 you didn't think he was badly hurt. Didn't think he needed  
24 help. How did you put two and two together?

25 A. Yeh, but when I heard it on the radio after I was home for

JAMES MacNEIL, by Mr. Orsborn

1 a couple of days, I heard it there. It was on the radio,  
2 somebody was stabbed in Wentworth Park. Somebody was  
3 stabbed in Wentworth Park.

4 Q. You heard it on the radio?

5 A. Yeh.

6 Q. And you then felt because you had been in the area and there  
7 had been this incident, this was the guy that was stabbed?

8 A. Yeh.

9 Q. Okay. How did that make you feel?

10 A. It made me feel pretty bad. I didn't -- I felt pretty  
11 terrible and --

12 Q. What did you do about it?

13 A. I went to his house and I told him the fellow died. I told  
14 him the fellow died and he said, "Well, it was self defence".  
15 He said, he said, "Don't go to the cops," he said, "I got a  
16 boy and a girl at home." He said, "It was self defence".

17 Q. Was he in bed when you went over?

18 A. Pardon.

19 Q. Was he still in bed when you saw him?

20 A. It was in the afternoon. I don't think, I don't believe,  
21 I don't think he was in bed. I don't believe.

22 Q. So this was in the afternoon and you, you're sure that you  
23 knew at the time that Mr. Seale had died?

24 A. Yeh.

25 Q. Okay. So my understanding is that Mr. Seale died sometime

JAMES MacNEIL, by Mr. Orsborn

1 around seven or eight o'clock on Saturday night. And it would  
2 have been on the radio Sunday morning. So are you telling us  
3 that you went to Mr. Ebsary's sometime on Sunday?

4 A. No, it was on Monday. It was two days after.

5 Q. You went on Monday?

6 A. Yeh, it was two days after.

7 Q. Could it have been Sunday?

8 A. No. Well --

9 Q. Because the incident happened on a Friday night?

10 A. Well, I can't -- it's in my affidavit there. I'd have to  
11 look it up there.

12 Q. But was -- was it the same day that you heard Mr. Seale had  
13 died?

14 A. Yeh.

15 Q. Did your father go with you when you went over to see Mr.  
16 Ebsary?

17 A. No. My father never -- my father -- I told my father about  
18 it. Well he said, "The man is in his rights, he's got to  
19 protect himself".

20 Q. You spoke to your father about the incident, did you?

21 A. Yeh, yeh.

22 Q. When?

23 A. After I heard about it there, I told him. He said, "A fellow  
24 in his rights, you got to protect yourself". Well, I said  
25 "I don't believe in that there for frig sake. He could of

JAMES MacNEIL, by Mr. Orsborn

- 1 gave, why didn't he give, why didn't he give him his money.  
2 Or, you know, and then there wouldn't have been none of this  
3 shit".
- 4 Q. So the attitude of your father was that a man had the right  
5 to protect himself?
- 6 A. Yeh, that's was his attitude.
- 7 Q. And you spoke to your father before you went to see Mr. Ebsary?
- 8 A. Yeh, before I went.
- 9 Q. I see. And when you went over to see Mr. Ebsary, did your  
10 father go with you?
- 11 A. No, I went by myself.
- 12 Q. Mr. Ebsary told us yesterday that both you and your father came  
13 over to see him and you took a rooster out to some farm. Do  
14 you have any recollection of taking a rooster out to a farm?
- 15 A. No, no. Jesus what next. Rooster out to -- no, no. Christ  
16 bloody rooster, Jesus.
- 17 Q. Would you remember if you had taken a rooster out to a farm?
- 18 A. Jesus I would have remembered that. A rooster to the farm  
19 what next. Holy, -- you need a drink after that. Rooster  
20 out to the farm, Jesus. Oh my --
- 21 Q. So I take it from your reaction, you're telling us that Mr.  
22 Ebsary's testimony about the rooster is not quite right?
- 23 A. I guess not, Christ Almighty, that's foolish. Jesus --
- 24 Q. Is that the first time you've heard that?
- 25 A. The first time I heard that. A rooster - oh my Christ Almighty--



JAMES MacNEIL, by Mr. Orsborn

1 Q. Did Mr. Ebsary ever meet your father?

2 A. I think he did but I don't, I didn't, I wasn't with them too  
3 much, you know. He met him in a tavern. But I can't recall  
4 of him being up our house.

5 Q. You have no recollection of that?

6 A. I have no recollection of that.

7 Q. Okay. Did you have any contact with any of Mr. Ebsary's  
8 family after you had seen Roy over at his house?

9 A. Yeh, I had contact with them. I had contact with them, yeh.

10 Q. And could you tell us about that please? Who they were and  
11 under what circumstances?

12 A. The heck I -- I told his son about it there -- Greg, I told  
13 Greg about it and Greg said, "Don't come to the house anymore".

14 Q. When did you see Greg?

15 A. A few days after that I remember that she was working at the  
16 Wandlyn Motel.

17 Q. She was working at the Wandlyn?

18 A. Yeh.

19 Q. Who was that?

20 A. His wife.

21 Q. His wife, Mary?

22 A. Yeh.

23 Q. Okay. And where did you see Greg?

24 A. I seen him and we drove out there to the Wandlyn.

25 Q. Sorry?

JAMES MacNEIL, by Mr. Orsborn

1 A. I think we drove out to the Wandlyn Motel there or we -- it's  
2 in my affidavit, I can't -- Jesus, I can't think of everything.

3 But I remember they told me not to come to the house.

4 Q. So Greg picked you up and drove you to the Wandlyn?

5 A. Yeh.

6 Q. And then he and Mary spoke to you together?

7 A. Yeh.

8 Q. And who was it that told you not to come to the house any  
9 more?

10 A. Greg.

11 Q. Mary or Greg?

12 A. Greg.

13 Q. And did he say why?

14 A. Because of what his father had done. .

15 Q. And what did he say his father had done?

16 A. On account of stabbing Mr. Seale.

17 Q. So did you get that, from that conversation, did you get the  
18 impression that Mary Ebsary and Greg Ebsary knew of the  
19 stabbing and Mr. Ebsary's involvement in it?

20 A. I think they did, yeh. I think they knew.

21 Q. We expect that Mrs. Ebsary is going to testify that when she  
22 told you, when they told you not to come back to his house  
23 it had nothing to do with the stabbing at all. It was just  
24 that they wanted to try and cut out Roy's drinking. That he  
25 was starting to cut down his drinking and they wanted to stop

JAMES MacNEIL, by Mr. Orsborn

1 his drinking. And they were trying to get him away from all  
2 the people that he might have drank with?

3 A. Yes.

4 Q. And it had nothing to do with the stabbing at all? But you're  
5 telling us this morning that it was to do with the stabbing?

6 A. Yeh.

7 Q. Are you sure about that?

8 A. I would be pretty sure because they would know something.

9 You know, they must have, they must have heard something, or --

10 Q. Okay, let's just be sure now. When you have they must have  
11 heard something. Why do you say that?

12 A. Well, if there was anybody in the house that night, they  
13 must have heard, heard, heard me talking or they must have  
14 heard Roy talking about it or --

15 MR. CHAIRMAN:

16 Mr. Orsborn, we have to take a ten minute break.

17 MR. ORSBORN:

18 Yes, My Lord.

19  
20 INQUIRY ADJORNED: 9:31 a.m.  
21  
22  
23  
24  
25

JAMES MacNEIL, by Mr. Orsborn

1 INQUIRY RECONVENED AT 9:51 IN THE FORENOON.

2 BY MR. ORSBORN:

3 Q. Mr. MacNeil, when we broke, we were just discussing your  
4 conversation with Greg Ebsary and Mary Ebsary and you  
5 indicated that you felt they must have known what Roy had  
6 done. What I would like to be sure of is whether that's  
7 because of anything they said to you or you figured they  
8 must have known because they live with him?

9 A. They must have known, they must have known because they  
10 lived with him, like.

11 Q. They must have known because they lived with him?

12 A. Yeh.

13 Q. But did they say anything to you which gave you that thought?

14 A. No.

15 Q. They didn't say anything to you?

16 A. No.

17 Q. Did you read the newspapers around this time concerning the  
18 stabbing and the murder?

19 A. Yeh, I browsed through them.

20 Q. You browsed through them?

21 A. Yeh.

22 Q. How was your reading ability at the time, Mr. MacNeil?

23 A. Not the best but I could read.

24 Q. You could read but it wasn't the best?

25 A. Yeh.

JAMES MacNEIL, BY Mr. Orsborn

1 Q. Okay. Did you know that the police were looking for somebody  
2 who was dressed in a cape and about fifty-five or sixty years  
3 of age? Were you aware of that?

4 A. No, I wasn't aware of that.

5 Q. You weren't aware of that. Did you talk to anybody in your  
6 family about it other than your father that you spoke of  
7 before?

8 A. No.

9 Q. Nobody at all?

10 A. No.

11 Q. Were you bothered by it?

12 A. Indeed I was.

13 Q. What bothered you?

14 A. Well, the fact that Marshall was, the fact that Marshall  
15 was convicted for, put away for something he did do.

16 Q. Yeh, but before we get there. Before, before the matter  
17 went to trial were you bothered about it?

18 A. Yes, I was.

19 Q. What bothered you about before Mr. Marshall went on trial?

20 A. Well, I felt that, what the heck, I was wishing it would  
21 happen to somebody else, not me. To end up in a predicament  
22 like that, no I never thought I would get in a predicament  
23 like that.

24 Q. You were bothered because you were involved in it?

25 A. Yeh.

JAMES MacNEIL, by Mr. Orsborn

1 Q. I see. And I take it you understood that Mr. Marshall went  
2 to trial and you found out that he had been convicted, did you?

3 A. Yes, I did.

4 Q. Did that bother you?

5 A. Yes, it did.

6 Q. Did you know then that Mr. Marshall didn't do it?

7 A. Yes, I did.

8 Q. What did you do about it?

9 A. Well, I just went -- I couldn't take it too much longer, I  
10 just went to the police and told the police about.

11 Q. You told the police about it?

12 A. Yeh.

13 Q. Had it been affecting you the way you lived?

14 A. Yeh, --

15 Q. How had it affected you?

16 A. Mentally and physically and --

17 Q. Did anybody in your family notice that you weren't acting the  
18 same?

19 A. So much of everybody to himself and so much boozing going on  
20 I don't think they give a care anyway.

21 Q. Is that right?

22 A. Yeh.

23 Q. Did your mother know that you weren't feeling good?

24 A. Well, my mother wasn't feeling well herself. She was very  
25 sick.

JAMES MacNEIL, by Mr. Orsborn

- 1 Q. But did you talk to anybody in your family about it before  
2 you went to the police?
- 3 A. Just my oldest brother, Johnny.
- 4 Q. Your oldest brother John?
- 5 A. Yeh, when he came down from Ontario.
- 6 Q. He came down from Ontario. Why did you speak to him rather  
7 than one of your other brothers?
- 8 Q. Well, my other brother wasn't feeling too well and I didn't  
9 want -- I spoke to Johnny because I looked up to him because  
10 he was my older brother. So he told me -- he noticed there  
11 was something wrong there when he came down from Ontario.  
12 He seen the -- he said, "what the heck is going on here, you're  
13 not the same fellow. Is something bothering yah or something"?  
14 So I told him. Well he said, "Jesus", he said, "let's get  
15 down to the police and get --"  
16 Q. Go to the police?
- 17 A. Yeh.
- 18 Q. And I think that was around November 15th, 1971, from the  
19 information we have?
- 20 A. Yes, it was, yeh.
- 21 Q. Who went with you when you went to the police station?
- 22 A. Johnny, my brother, my oldest brother.
- 23 Q. Okay. Were you still drinking at this stage?
- 24 A. I was still drinking, yeh.
- 25 Q. Yeh. Do you know if when you went to the police station

JAMES MacNEIL, by Mr. Orsborn

1 | you had been drinking on that day?

2 | A. I had -- I had been drinking on that day. Not heavy, but I  
3 | had a few drinks earlier in the day.

4 | Q. Had a few drinks earlier in the day?

5 | A. Yeh.

6 | Q. Were you drunk when you went to the police station?

7 | A. No, indeed no. I wasn't drunk.

8 | Q. You weren't?

9 | A. No.

10 | Q. Do you remember that for sure?

11 | A. I remember that for sure, yeh.

12 | Q. Okay. Do you remember who you saw at the police station?

13 | A. I think it was Detective Urquhart or MacIntyre. One of the  
14 | detectives there at that time.

15 | Q. Did you know them?

16 | A. Not personal. I didn't know them at, all.

17 |

18 |

19 |

20 |

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25 |

*jm*



JAMES MacNEIL, by Mr. Orsborn

1 Q. Had you ever met them before?

2 A. I never met them before, no.

3 Q. Any dealings with the police before?

4 A. No.

5 Q. Were they surprised when you showed up?

6 A. Yeh, they were. I believe they were surprised.

7 Q. I see. How could you tell that they were surprised?

8 A. By the expression on their face.

9 Q. What did you tell them?

10 A. Well, I just told them that the fellow was in gaol for some-  
11 thing he didn't do and so they took a statement from me then.

12 Q. So the first thing that you told them, you said that there's  
13 a man in gaol for something he didn't do?

14 A. Yeh.

15 Q. Do you remember telling them that?

16 A. Yeh, but I was awful frenzy. I was, you know, like nervous  
17 and --

18 Q. Okay. You just tell us a little bit about how you were  
19 feeling then. You say you were frenzied?

20 A. Yeh. Nervous.

21 Q. Okay, and were you shaking?

22 A. Yeh.

23 Q. Had you been like that before?

24 A. Yeh.

25 Q. So you said: "You got the wrong man in gaol." and then they

JAMES MACNEIL, by Mr. Orsborn

1 | proceeded to take a statement from you?

2 | A. Yeh.

3 | Q. Okay. Do you remember how many policemen were there  
4 | when you gave your statement?

5 | A. I believe there was two.

6 | Q. And was there anybody with you from your family? Was  
7 | any one of your brothers with you?

8 | A. Geez.

9 | Q. When you gave your statement?

10 | A. Johnny, I think. Johnny was with you.

11 | Q. He was with you when you -- at the time you gave your  
12 | statement? In the same room with you?

13 | A. I don't think we was in the same room. I think I was  
14 | in a different room.

15 | Q. Okay.

16 | Now, I'd like to go over the statement that you gave  
17 | Mr. MacNeil, at that time. I'd just ask you to comment  
18 | on some sections. It's found in volume eleven at page  
19 | four. This is a typed copy, Mr. MacNeil, of that  
20 | statement that you gave and it's indicated that it  
21 | was taken by Detective J. F. MacIntyre and witnessed  
22 | by Corporal Taylor. And it was taken on November 15, 1971  
23 | commencing at 7:25 p.m. and finishing at 8 p.m.

24 | And I'd just like to ask you a couple of questions.

25 | Now, you say in the middle of the first paragraph:

JAMES MACNEIL, by Mr. Orsborn

1 "We were approached by an Indian and a coloured fellow  
2 from behind." Now you told us this morning that when  
3 the incident happened you couldn't tell if the gentlemen  
4 were Indian or coloured or black or white. Do you  
5 recall how you reached the conclusion at this time that  
6 it was an Indian and a coloured fellow?

7 A. Well, maybe I was a little more aware of it then than  
8 I -- I've been it -- through it so many times.  
9 Maybe I'm --

10 Q. Well, this time you hadn't been through it to many times.  
11 This was the first statement that you gave. This was  
12 about four or five days after Mr. Marshall's trial  
13 was over.

14 Had you been following the trial in the newspapers?

15 A. No.

16 Q. Did you know by this time that there was an Indian and  
17 a coloured fellow involved in the incident?

18 A. Yeh.

19 Q. And did you know that from what you'd read or heard  
20 on the radio?

21 A. Well, what I heard on the radio and what I read.

22 Q. So is it possible, sir, and I hesitate to put it to you  
23 this way but I think I might have to. Is it possible  
24 that this detail that you have in here was detail that you  
25 picked up from the radio or the newspapers?

JAMES MacNeil, by Mr. Orsborn

- 1 A. Yeh, it's possible.
- 2 Q. Okay. Now, you go on to say: "Mr. Ebsary put his  
3 hand in his right pocket and took out a knife."  
4 Now, you told us this morning again that in the  
5 park you didn't see a knife and is it possible your  
6 reference here to a knife was taken from the fact  
7 that you saw him wash a knife at his house?
- 8 A. Well, that's possible. Yeh. That's possible.
- 9 Q. Now, the reference to the side of Mr. Seale that was  
10 injured. You say: "The left hand side of the coloured  
11 fellow." Can you tell us how you reached that conclusion?
- 12 A. By the way he was standing in front of Roy.
- 13 Q. Can you just explain that to us a little more please.
- 14 A. Well, Roy came up like that in his right hand --
- 15 Q. Speak into the mike please.
- 16 A. Roy came up like that with his right hand. The way  
17 he was standing in front of Roy.
- 18 Q. Was he standing directly in front of Roy?
- 19 A. Directly in front of Roy.
- 20 Q. So do I take it that you are saying because it was  
21 Mr. Ebsary's right hand that you then figured  
22 it was Seale's left side?
- 23 A. Right. Yeh.
- 24 Q. You didn't actually see it go in to the left side?
- 25 A. No.

JAMES MacNEIL, by Mr. Orsborn

- 1 Q. But because it was Mr. Ebsary's --
- 2 A. Yeh.
- 3 Q. -- right hand?
- 4 A. Right.
- 5 Q. That's the only reason?
- 6 A. That's the only reason, yeh.
- 7 Q. It could have been the middle of Mr. Seale?
- 8 A. Pardon?
- 9 Q. It could have been the middle of Mr. Seale?
- 10 A. Yeh, it could have been the middle.
- 11 Q. It could have been the right side of Mr. Ebsary's hand
- 12 that come across?
- 13 A. Yeh.
- 14 Q. Now, you say: "I seen Roy's hand and knife full of blood."
- 15 Now, you told us this morning you didn't see any
- 16 blood in the park and the way this statement reads this
- 17 suggests at least that you saw his hand and knife full
- 18 of blood in the park? I'm wondering why the statement
- 19 would say that?
- 20 A. I can't answer that.
- 21 Q. Can't answer that.
- 22 A. Can't answer it, no.
- 23 Q. Now, the next question is: " Did you see the Indian
- 24 being stabbed?" Did you tell the police that you
- 25 had seen Marshall stabbed?

JAMES MacNEIL, by Mr. Orsborn

1 A. No.

2 Q. You didn't tell them?

3 A. No.

4 Q. Now you've told us this morning that you remember Mr.  
5 Ebsary making the swipe down at Marshall's arm.

6 A. Right. Yeh, right.

7 Q. Why did you not tell them that at the time?

8 A. I guess I was nervous I suppose.

9 Q. You're nervous.

10 A. Yeh. Yeh.

11 Q. This morning, sixteen or seventeen years later, do you  
12 still remember that in your mind?

13 A. I still remember it yeh.

14 Q. That you were too nervous then when you spoke to the  
15 police?

16 A. Yeh.

17 Q. You still remember that?

18 A. Right. I was.

19 Q. Now, you say on the second page. At the top of that  
20 page when you're talking about your discussions with  
21 Greg Ebsary and his mother. Says: "He got in--"  
22 this is Greg, "--and she --" which is Mary, "--said  
23 don't go to their house anymore because of what Roy  
24 done. The young fellow told me that if I mentioned  
25 what happened to the police all your family would be

JAMES MacNEIL, by Mr. Orsborn

1 | trouble. They will have to go to court." Now, I'm  
2 | a little unclear from what you told us this morning  
3 | whether or not they actually told you to stay away  
4 | because of what Roy had done or they told to stay away  
5 | and you assumed it was because of what Roy had done.  
6 | There's a fair amount of detail in the statement about  
7 | them talking court and trouble with the family. Did  
8 | they actually say that to you?

9 | A. To my knowledge, yeh. That's -- I remember now. Yeh.

10 | Q. But is it possible that they told you stay away and  
11 | you might have just assumed that if you told anybody  
12 | about it you'd have to go to court?

13 | A. It's a possibility.

14 | Q. It's a possibility?

15 | A. Yeh.

16 | Q. You talked about the clothes that Roy was wearing and the  
17 | you say: "A black shawl over his shoulders" and that's  
18 | I think what you told us yesterday. You say: "Something  
19 | like priest wears over his shoulders." Did Roy look  
20 | like a priest to you when he was dressed up that night?

21 | A. No.

22 | Q. He didn't look like a priest to you?

23 | A. No, he didn't. No.

24 | Q. Do you have any idea where that word priest came from?

25 | A. I don't know. It's probably from -- like the monks used

JAMES MacNEIL, by Mr. Orsborn

- 1 to wear like a shawl like. A monk.
- 2 Q. Did he look a monk to you?
- 3 A. No, not -- no. He did not look like a monk.
- 4 Q. What did he look like?
- 5 A. Just looked like a strange man that's all. You know --
- 6 Q. The reason for the question is whether or not that
- 7 word priest is something that you would have used?
- 8 A. No.
- 9 Q. Do you now where it came from then?
- 10 A. No.
- 11 Q. It showed up on the statement.
- 12 A. I don't know where it came from.
- 13 Q. Now, you say here that: "The first one you told about
- 14 this was your mother because she noticed that you weren't
- 15 very happy." And you told us this morning you didn't
- 16 speak to your mother because she wasn't very well.
- 17 Do you remember is you did or didn't speak to your mother?
- 18 A. No, I don't remember, no.
- 19 Q. You don't remember.
- 20 A. No.
- 21 Q. Could you have spoken to your mother?
- 22 A. I could have, yeh. I could have spoken to her.
- 23 Q. Do you have any knowledge of whether or not the police
- 24 had any time spoke to your mother?
- 25 A. The police?



JAMES MacNEIL, by Mr. Orsborn

1 Q. Yeh.

2 A. Could you repeat that question?

3 Q. Do you know whether or not the police ever spoke to  
4 your mother?

5 You're telling the police that your mother knew about it  
6 because you told her and I'm just wondering if they spoke  
7 to your mother about it at any time?

8 A. No, not to my knowledge.

9 Q. Not to your knowledge?

10 A. No, not to my knowledge.

11 MR. CHAIRMAN:

12 Mr. Orsborn if you could go over that once more with that  
13 witness because I think the statement refers to a time period  
14 after the trial rather than -- after the trial of Mr.  
15 Marshall rather than after the incident.

16 MR. ORSBORN:

17 Oh, yes. This statement was given after the trial, Mr. Lord.

18 MR. CHAIRMAN:

19 I appreciate that but the questionings you put to this  
20 witness earlier as to whether he had told his mother may have  
21 been -- may have related to an earlier time period.

22 MR. ORSBORN:

23 Okay.

24 BY MR. ORSBORN:

25 Q. Before you went to the police -- before you gave your statement

JAMES MacNEIL, by Mr. Orsborn

1 to the police do you have any recollection of talking  
2 to your mother about this at all?

3 A. I have -- haven't have a -- haven't got recollection  
4 of talking to her -- talking to her.

5 Q. You don't have a recollection of talking to her?

6 A. No.

7 Q. Now, if the statement shows here that you in fact did talk  
8 to your mother and apparently after the trial, is  
9 it likely that is a true statement at the -- from 1971?

10 A. It would be -- would be true.

11 Q. Could be?

12 A. Yeh.

13 Q. But you don't remember know?

14 A. I don't remember now.

15 Q. Your mother is not alive now is she?

16 A. No, she died.

17 Q. And your father is not alive?

18 A. He's -- died too.

19 Q. So if I can summarize your testimony on your discussions  
20 with your family and you tell me if I'm right or wrong  
21 from what you told us. That you remember talking to your  
22 father very shortly after the incident and he said don't worry  
23 about it or something to that effect. It was self defense.  
24 You don't remember talking to your mother although you  
25 could have have because the statement says so.

JAMES MacNEIL, by Mr. Orsborn

1           You do remember talking to your brother John shortly  
2           before you went to the police?

3   A.   Yeh, right.

4   Q.   Is that about what you said?

5   A.   Yeh.

6   Q.   What did you hope would happen after you gave this statement  
7           to the police?

8   A.   Well, I thought the police would get Marshall out, that they'd  
9           open -- let him out, would look into the matter right away,  
10          you know, look -- get things done.

11   Q.   Did they tell you they would do that?

12   A.   No, not right out. They didn't tell me. It was about -- well,  
13          after you talk to the police, well, you figure, well, christ,  
14          you know, you leave it in their hands. That's it. This was  
15          important information I gave them so --

16   Q.   Did they ask you why you waited so long to come forward?  
17          This was about five months after the incident.

18   A.   Yeh, I think they did but I forget what I --

19   Q.   You don't --

20   A.   I forget just what I said to them but I --

21   Q.   You don't remember.

22   A.   I don't remember what I said to them.

23   Q.   Were they angry at you for waiting so long?

24   A.   No, they didn't seem angry. They didn't seem to be angry.

25   Q.   How did they treat you when you were there?

JAMES MacNEIL, by Mr. Orsborn

1 A. The police -- they treated me good. Like they didn't  
2 say anything to me out of the way or anything. You know  
3 like they didn't holler at me or anything like that.  
4 They just -- I just told them and that was it and --

5 Q. Well, they didn't say well, we've already got our  
6 man. Go away?

7 A. No, they didn't say that. No.

8 Q. Did you feel that they had given you a chance to tell them  
9 everything you wanted to say?

10 A. Yeh, I felt that I -- that we've -- they have given me  
11 the chance.

12 Q. After you went to the police did you feel better?

13 A. Oh, I felt great. I felt good because it was the  
14 lot, you know, off my mind -- like I felt great  
15 after I went to the police because it was a lot off  
16 my mind.

17 Q. Were you scared that Mr. Ebsary would come after you?

18 A. A wee bit I was scared. A wee bit I was scared.

19 Q. And did he or any of this family come after you?

20 A. No.

21 Q. Did you ever see them again?

22 A. No.

23 Q. After you went to the police and in the months and years  
24 that followed did you still go to the State Tavern for  
25 a drink in the evenings?

JAMES MacNEIL, By Mr. Orsborn

1 A. Yeh, I still went.

2 Q. And you never ran in to Roy Ebsary there did you?

3 A. No.

4 Q. Did you ever wonder what had happened to him?

5 A. No, and I didn't care. Didn't care.

6 Q. I understand that shortly after you went to the police --  
7 the Sydney Police that you had occasion to be interviewed  
8 by the Mounties. Is that true?

9 A. Yeh.

10 Q. Can you tell us how that came about?

11 A. Oh, goodness I had about two or three visits from the  
12 Mounties.

13 Q. I'm thinking now back in 1971 right after you went to  
14 the Sydney Police.

15 A. Well -- the -- oh, yeh, for the lie detestor test or  
16 something like that, I think. At that time. Yeh, they --

17 Q. I think the record --

18 A. I think that that's the ones that took the lie detector  
19 test at the --

20 Q. Right. That's what I want to talk about.

21 A. -- the police. Yeh.

22 Q. All right. The records will show that you, in fact, took  
23 a lie detector test on the 23rd of November, 1971 which  
24 is just a little over a week after you saw the Sydney Police.

25 A. Yeh, right.

JAMES MacNEIL, by Mr. Orsborn

1 Q. So did you believe then that the Sydney Police had followed  
2 up on your statement?

3 A. Yeh, I did.

4 Q. All right. And were you pleased about that?

5 A. I was pleased about it.

6 Q. And what can you tell about that lie detector test?  
7 Where did it take place?

8 A. In the City Police Station.

9 Q. At the City Police Station?

10 A. Yeh.

11 Q. You sure about that?

12 A. Yeh, I'm sure.

13 Q. Okay. There is some suggestion in the record that it  
14 took place at the Wandyln Motel.

15 A. At the Wandyln Motel? Well, -- at that time, I believe  
16 so, yeh. It's a possibility.

17 Q. Possibility?

18 A. Yeh.

19 Q. Did they come and pick you up?

20 A. Yeh.

21 Q. And when I say they is this the Mounties?

22 A. Yeh.

23 Q. Do you know who they were?

24 Did they give you any names?

25 A. Gee, it was -- I know it was at -- I just forget their names now.

JAMES MacNEIL, by Mr. Orsborn

1 Q. You forget their names. Okay.

2 So how many of them were there?

3 A. There was two. I don't know was it the same one -- this --  
4 the only ones I know was Wheaton and Carroll.

5 Q. Okay, they came along a fair bit later.

6 A. Yeh, they came along -- so it's --

7 Q. We're going back now about sixteen years.

8 A. Yeh.

9 Q. Two different ones?

10 A. Two different ones, yeh.

11 No, I can't recall the names.

12 Q. You can't recall.

13 A. No.

14 Q. At around the time at these Mounties were talking  
15 to you and you were taking the polygraph, do you  
16 recall then seeing any members of the Sydney Police  
17 Department?

18 A. No, I can't recall.

19 Q. Just the Mounties?

20 A. Just the Mounties, yeh.

21 Q. And they took you over for a lie detector test at either  
22 they City Police Station or the Wandyln?

23 A. Yeh.

24 Q. Do you remember that now?

25 A. Yeh, I remember the -- what I remember is they were

JAMES MacNEIL, by Mr. Orsborn

1 showing me numbers in front of me -- or cards.

2 Q. Okay. When you say -- when you say they, was there  
3 one of them or two of them?

4 A. I think there was two of them.

5 Q. Two of them showing you numbers?

6 A. Yeh.

7 Q. Okay. Now, before they hooked you up to the machine, did  
8 they spend any time talking with you about the incident?

9 A. No, I don't think. Not that I'm -- not that I remember.,  
10 I don't think they spent to much time.

11 Q. You don't -- didn't spend to much time?

12 A. No.

13 Q. Did they sit down and take a statement from you?

14 A. I believe they did, yeh.

15 Q. Apart from the polygraph statement?

16 A. Yeh, I'm pretty sure.

17 Q. Okay. And you signed the statement?

18 A. Yeh.

19 Q. Okay. What do you remember about the polygraph test?

20 A. All I remember I was just sitting down and they told  
21 me to pick letters and look at them -- look at numbers like.  
22 And that's about all I remember about it there. They  
23 hooked up something on your arm and tell you this.

24 Q. Right, you seem to recall there was two of them. Is it  
25 possible that there was just the one Mountie who was



JAMES MacNEIL, by Mr. Orsborn

1 giving you this test?

2 A. It could have been possible. Could have been one.

3 Q. Could have been one. Could have been two.

4 A. Yeh, right.

5 Q. And they asked you some questions about the incident?

6 A. Yeh.

7 Q. After you were taken off the polygraph machine, did  
8 one or both of the Mounties sit down and interview you?

9 A. I can't be sure if there was just one or the two.

10 Q. But did they -- What I'm trying to understand is whether  
11 or not they talked to you apart from the machine part  
12 of it?

13 A. Yeh, I believe they did.

14 Q. They did?

15 A. Yeh.

16 Q. For how long?

17 A. Probably half an hour.

18 Q. Half an hour?

19 A. Yeh.

20 Q. Just after you got off the machine?

21 A. Yeh .

22 Q. I think you know now that the results of the test  
23 on the polygraph machine were going both ways. They  
24 couldn't make up their minds if you were telling the  
25 truth or not.

JAMES MacNEIL, by Mr. Orsborn

1 A. Yeh. I think --

2 Q. How did that make you feel?

3 A. Terrible.

4 Q. Is that right?

5 A. Yeh. I didn't feel good about it.

6 Q. Now, they've said in their reports that after the tests  
7 that you were joking with them and you admitted that  
8 you were lying. Do you recall joking with the Mounties  
9 after the test?

10 A. I don't recall joking with them after the test.

11 Q. Let me just read you, Mr. MacNeil, and extract from  
12 a report that we have from E. C. Smith who was the  
13 Mountie who gave you the poly graph and I'm reading  
14 from volume sixteen at page 203. And this is a report  
15 that he did up after the test and he says: "The subject --"  
16 and that's you --" The subject was interviewed after  
17 the examination and on a number of occasions was quite  
18 ready to admit that he was lying and he was only joking  
19 when he said the Ebsary had stabbed Seale. He would  
20 then revert to his original story." This is the Mountie  
21 Mr. Smith --

22 A. Did he tell me -- Was that after I failed the polygraph?  
23 After I failed? After I --

24 Q. Well, I don't know if there's pass or fail to a poly-  
25 graph. It was after he couldn't make up his mind as

JAMES MacNEIL, by Mr. Orsborn

1           whether or not you were telling the truth.

2           It was after the test.

3           A. But was it after the test that he said you failed?

4           That he tell me -- Is it written there that -- Did --

5           Did he say that I failed?

6           A. No, he didn't say that you failed. He simply says

7           that he spoke to you after the test. I think and

8           I believe what happened was that he gave you the test

9           and he was having trouble interpreting the test.

10          Trying to figure out what the machine had said about you.

11          A. Yes.

12          Q. And after the test he says he spoke to you and that you

13          told him that you were lying and joking. Now, he

14          might have said to you, I can't tell whether you're

15          telling the truth or not. And then he reports in this

16          document here. He says that you were lying or

17          joking. Do you have any recollection of that?

18          A. I have no recollection of that there. If --

19          Q. Were you nervous?

20          A. Yeh, I was nervous but if he told me that I'd failed

21          I probably would have agreed with him because then maybe

22          I figured I might be in trouble for taking the test

23          and sometimes things --

24          Q. Okay, that's what I was going to ask you?

25          A. Yeh, that's a possibility there.

JAMES MacNEIL, by Mr. Orsborn

1 Q. What you told us, I believe, that -- that was if  
2 Corporal Smith had told you that you failed, you  
3 would have perhaps have agreed with him and admitted  
4 that you were lying or joking because you didn't  
5 want to get in to trouble for failing the test.

6 A. I -- No, no, I wouldn't. That's true. I wouldn't --

7 Q. Is that what you told me? Is that --

8 A. Yeh.

9 Q. Am I right?

10 A. Yeh, you're right there. Yeh.

11 Q. Did you feel that this was test that you would pass  
12 or fail?

13 A. I was going -- I figured -- I'll pass this. No trouble.  
14 I said I'll pass this with no trouble. I didn't, you  
15 know, I didn't -- I didn't think I was going to fail it.

16 Q. And when you say fail, you were concerned that they  
17 weren't going to believe you?

18 A. No, I thought they were going to lock me up or some  
19 darn thing.

20 Q. Did anybody tell you that?

21 A. No.

22 Q. Why did you think that?

23 A. Just on account of failing the test.

24 Q. So you felt that if they didn't believe you, you'd  
25 failed?

JAMES MacNEIL, by Mr. Orsborn

- 1 A. Yes.
- 2 Q. And if you failed you thought something might happen to  
3 you?
- 4 A. Yes, I did.
- 5 Q. So you told them as a result that -- or you could have  
6 told them that I was only joking?
- 7 A. Yeh. Yeh. Yeh.
- 8 Q. Once you failed the test, Mr. MacNeil, did you begin to  
9 wonder if you'd even seen what you -- what you thought  
10 you had seen?
- 11 A. Yeh, I was -- I was so hurt inside. I was hurt and  
12 after I failed the test I was really burnt up, you know,  
13 and then I said Geez I must be -- maybe I'm crazy or  
14 some darn thing, you know.
- 15 Q. You begin to doubt yourself?
- 16 A. I begin to doubt myself, yeh. I did.
- 17 Q. Did anybody ever take you over to the -- the the park,  
18 either the Mounties or the Sydney Police and ask you  
19 to point out where you had been?
- 20 A. No, they've never. No.
- 21 Q. Do you know -- or did you know Donald C. MacNeil who  
22 was the Crown Prosecutor at the time?
- 23 A. No, I did not. No.
- 24 Q. Ever meet him?
- 25 A. Never met him. No.

JAMES MacNEIL, by Mr. Orsborn

1 Q. Did you know Mr. Rosenblum who was one of Mr. Marshall's  
2 lawyers?

3 A. No, I -- I've heard a lot about but I don't know him.

4 Q. You never met him?

5 A. No.

6 Q. Did you know Mr. Khattar who was also one of Mr. Marshall's  
7 lawyers?

8 A. No.

9 Q. Never met him?

10 A. I just heard of him -- heard his name.

11 Q. Okay. Until the Mounties came to see you in 1982 which  
12 was a lot later, did you talk to anyone else about the  
13 incident?

14 Until Wheaton and Carroll came along in 1982?

15 A. Yeh.

16 Q. Did you speak to anybody else?

17 A. No, I did not. No.

18 Q. Did you believe after you failed the test that maybe  
19 that Mr. Marshall had done it after all?

20 A. No. Oh, no.

21 Q. Did you ever believe that?

22 A. No, No, No, No, No, No.

23 Q. But you knew that he was in jail?

24 A. Yeh. Yeh.

25 Q. Did you -- did that bother you over these years, that

JAMES MacNEIL, by Mr. Orsborn

1 he was in jail?

2 A. It bothered me. It bothered me because I was also in  
3 jail too. Inside.

4 Q. Were you?

5 A. Inside.

6 Q. Was there anybody at all that you could have spoken to?  
7 A teacher or a minister, priest?

8 A. Well, I thought of that but I said well they probably  
9 wouldn't believe because once they hear about family  
10 history of drinking and that there they'll say oh well  
11 this fellows -- so.

12 Q. You felt that nobody would listen to you.

13 A. I felt that way.

14 Q. Were you surprised when the Mounties showed up again  
15 in 1982?

16 A. Yeh, that was Wheaton and Carroll wasn't it?

17 Q. Wheaton and Carroll. That's right.

18 A. Yeh.

19 Q. How did you feel about that?

20 A. I felt good about it.

21 Q. Did you?

22 A. Yes, I did.

23 Q. Had you forgotten about it over the years?

24 A. No, I never forgotten about it.

25 I've never forgotten about it.

JAMES MacNEIL, by Mr. Orsborn

1 Q. Now when they came to you in 1982, we have a copy of  
2 a statement that you gave and I think Staff Sergeant  
3 Wheaton and that's reproduced at volume eleven, page six.  
4 The typed version of that. Just turn the page, sir and  
5 see --

6 A. Thank you.

7 Q. And I'll just ask you a couple of comments about that.  
8 Do you remember where you were at the time, whether  
9 you were at home or at the Police Station?

10 A. Repeat that please?

11 Q. Do you remember where you gave them that statement?  
12 Were you at home or were you at the Police Station?

13 A. One time they came to see me I was working. I don't  
14 know -- was I home at that time or -- What year did you  
15 say that was?

16 Q. This is 1982. This is when they -- I believe they  
17 first came to you after ten or eleven years had gone  
18 by.

19 A. '82. '82. I was home.

20 Q. You were home?

21 A. Home, yeh. That's right I was home.

22 Q. Now, just a couple of things about that statement, Mr. MacNeil  
23 and I won't be too much longer.

24 A. Excuse me. (Clears throat)

25 Q. You say here in the second paragraph. You say: "I heard one



JAMES MacNEIL, by Mr. Orsborn

1        fellow, the coloured fellow or the Indian guy say,  
2        Dig, man, Dig!" Now you told us this morning that you  
3        were quite sure it was the coloured fellow, Mr. Seale,  
4        that said "Dig, man, Dig".

5        A. Yes.

6        Q. When you gave a statement to Staff Sergeant Wheaton, you  
7        said it could have been one or the other. Why is that?

8        A. Well, I was -- I was nervous at that time, too. My nerves  
9        are --

10       Q. Are your nerves bad?

11       A. Yeh, my nerves have been always bad.

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*J.M.*

JAMES MacNEIL, by Mr. Orsborn

1 Q. How are your nerves this morning?

2 A. Not the best.

3 Q. Are they better than they were then?

4 A. Pardon?

5 Q. Are they better or worse than they were then?

6 A. They're better. They're better.

7 Q. Okay. So are you able to tell us this morning that it was  
8 Mr. Seale that said, "Dig, man, dig"?

9 A. Yeh.

10 Q. Your answer is yes?

11 A. Yes.

12 Q. Okay. You go on to say:

13 "I'm pretty sure I saw him wash the  
14 knife off in the sink".

15 Again you told us this morning that you, in fact, did see  
16 him. Now it seems strange for a recollection to be clearer  
17 five years later than it was back in 1982. Can you give me  
18 any help there?

19 A. I can't answer that.

20 Q. Now there's no reference in that statement Marshall being  
21 slashed on the arm by Mr. Ebsary?

22 A. Yeh.

23 Q. Was that still in your mind?

24 A. I guess they never asked me and I forgot. I guess I forgot.  
25 If they had asked me I would have remembered.

JAMES MacNEIL, by Mr. Orsborn

1 Q. Now you said in some of your testimony, Mr. MacNeil, that when  
2 you gave this statement you weren't in very good shape?

3 A. Yeh.

4 Q. Was it just your nerves or had you been drinking as well?

5 A. I had a few drinks before that.

6 Q. I see. Did the Mounties know that you had had a few drinks?

7 A. No, I don't think they knew. Maybe they did, but --  
8 Maybe they did.

9 Q. And what were you like when you had a few drinks? Would you  
10 be difficult to understand, would your eyes be bloodshot?

11 A. My eyes would be bloodshot.

12 Q. Your eyes would be bloodshot?

13 A. Yeh.

14 Q. And would they be able to see that your eyes were bloodshot?

15 A. They could -- Yeh, they would notice.

16 Q. Did they come back and see you again after this statement to  
17 your recollection?

18 A. Yeh, after -- That was -- What year was that?

19 Q. '82.

20 A. '82. They came back in what, '86 or --

21 Q. About '86, yeh.

22 A. Yeh, they came back.

23 Q. Not in '82?

24 A. No.

25 Q. Now after all the testimony that you've given, Mr. MacNeil,

JAMES MacNEIL, by Mr. Orsborn

1 and after all the dreams you've had and problems with your  
2 nerves and whatnot I appreciate that all this has been  
3 pretty hard on you. Are you able today, to tell the  
4 Commission whether or not you know for sure, not in your  
5 dreams, but whether or not you know for sure who killed  
6 Sandy Seale?

7 A. I know who killed Sandy Seale.

8 Q. I'm sorry.

9 A. I said, "I know who killed Sandy Seale".

10 Q. And who was that?

11 A. Roy Ebsary.

12 Q. And you're sure of that?

13 A. Positive.

14 MR. ORSBORN:

15 That's all I have, My Lord. Thank you.

16 MR. CHAIRMAN:

17 Before you finish, Mr. Orsborn, I have a note here that early  
18 in his testimony this morning, Mr. MacNeil started to tell us  
19 about -- I believe he was about to tell us about some incident  
20 as he crossed the bridge when they walked through the park.  
21 If he answered it I didn't hear it.

22 MR. ORSBORN:

23 I see.

24 MR. CHAIRMAN:

25 The other thing is, would you ask him where brother John is.

JAMES MacNEIL, by Mr. Orsborn

1 BY MR. ORSBORN:

2 Q. We'll start with the easier one. Where is your brother  
3 John?

4 A. He's dead.

5 Q. He's dead, is he?

6 A. Yeh.

7 Q. When did he die?

8 A. He died a couple of years ago.

9 Q. A couple of years ago?

10 A. Yeh, two years ago.

11 Q. Now you've told us, Mr. MacNeil, that the incident happened  
12 on the plan here where we've marked J.M.-1 where Mr. Marshall  
13 put your arm behind your back.

14 A. Yeh.

15 Q. And that to get to J.M.-1 you walked across the bridge marked  
16 on the plan. Was there anything that you recall that  
17 happened to you as you were walking through the park and  
18 across the bridge?

19 A. Nothing that I can recall.

20 Q. You have no recollection of --

21 A. No recollection, no.

22 Q. --of Mr. Ebsary or somebody else shouting out cigarettes  
23 or a lit?

24 A. No, I have no recollection.

25 Q. Okay. There was nothing in the park that you recall until