

SCOTT MacKAY, by Mr. Spicer

1 INQUIRY RECONVENED: 2:01 p.m.

2 MR. CHAIRMAN:

3 Mr. Spicer.

4 MR. SPICER:

5 Thank you, My Lord. The next witness is Scott MacKay.

6 SCOTT MacKAY, being called and duly sworn, testified as follows:

7 BY MR. SPICER:

8 Q. Mr. MacKay, my name is Wylie Spicer. I'm one of the  
9 Commission Counsel. I'll be asking you some questions  
10 but just before I start, I'll just indicate to the other  
11 counsel and to their Lordships that the material that  
12 I intend to refer you to is in Volume 11 at page 169 and  
13 Volume 11 at page 170.

14 MR. SPICER:

15 Mr. MacKay also gave testimony at the Preliminary which is in  
16 Volume 1 at page 46 and 47 but I don't intend to refer him to  
17 that material.

18 BY MR. SPICER:

19 Q. Mr. MacKay, how old are you?

20 A. Thirty-three years old.

21 Q. And are you native of Sydney?

22 A. Of a community outside of Sydney by the name of Westmount.

23 Q. Westmount?

24 A. Yes.

25 Q. And at the time -- in 1971, how old were you?

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1 A. Sixteen years old.

2 Q. Sixteen years old and you attended a dance on the night of  
3 May 28th, I believe?

4 A. That's correct, Sir.

5 Q. Okay. Can you tell me who you went to the dance with?

6 A. With a young girl by the name of Debbie MacPherson.

7 Q. Had you been doing any drinking before you went to the dance?

8 A. No, Sir.

9 Q. No. Do you have any recollection of what time it was when you  
10 left the dance?

11 A. It was between 11:30 and 11:45.

12 Q. And how can you be sure of that so many years subsequent?

13 A. We were going to catch a bus that left -- it was around  
14 mid-night from King's Road. So we were heading for a bus,  
15 you know. So we left about a half hour before the bus was  
16 due to leave.

17 Q. Okay. And can you indicate on the map behind you the route  
18 that you took after you left the dance?

19 A. Yes. Okay, this is where the hall is and we walked down this  
20 here street, which is George Street and we came to Argyle  
21 Street and we walked down Argyle Street. And we're heading  
22 to go over to King's Road. That's where we're heading for.

23 Q. Okay, you get onto Argyle Street and then what happened?  
24 Can you turn around so that the Judges can see what you're  
25 pointing to.

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1 | A. I'm sorry, sure. Okay, we're at Argyle here and --

2 | THE CHAIRMAN;

3 | Where did you leave again? I couldn't see.

4 | BY THE WITNESS:

5 | A. Okay, I'm sorry. We left from the church hall over here,  
6 | came down to George Street, walked down George, turned onto  
7 | Argyle Street, and walked down Argyle and cut onto Crescent  
8 | Street. And there was a little pathway down to the Park. We  
9 | did walk down that pathway. We sat on a Park bench for about  
10 | five minutes. We got up off the bench. We headed back up to  
11 | Crescent Street and we walked a piece. I can't really say  
12 | for sure how long it was. It was maybe (inaudible) feet,  
13 | maybe a little longer. And Debbie had noticed -- the girl I  
14 | was with that night --.

15 | MR. CHAIRMAN:

16 | I'm afraid the court reporters are not picking up what you're  
17 | saying.

18 | BY MR. SPICER:

19 | Q. Perhaps you could go back to your seat.

20 | A. Where do you want me to start.

21 | Q. Go back to the church if that's where he was -- that's where  
22 | they started missing it. Go through the route again for us.

23 | A. Okay. We left the church it was around 11:30 to go home. We  
24 | were catching a bus. So we walked down to George Street.

25 | Are they picking this up now?

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- 1 Q. Yes.
- 2 A. Okay. We walked down to George Street, we come onto Argyle  
3 Street, walked down Argyle Street on to Crescent Street.  
4 On Crescent there's a pathway that leads right down into the  
5 Park. Well we went down that path, we sat on a Park bench  
6 for about five mintues talking. Then we got up we walked  
7 back up to Crescent Street and we walked a piece and Debbie,  
8 the girl I was with, noticed something on the road. She  
9 said, "That looks like a person on the road".
- 10 Q. Okay, perhaps you can take your seat again.
- 11 A. I can take a seat now.
- 12 Q. Yeh, take a seat.
- 13 A. Okay.
- 14 Q. Turn your mike back around. And what happened then?
- 15 A. We walked up to the body and we started speaking to the person.
- 16 Q. Did you know who it was?
- 17 A. Yes, Debbie did and I did also.
- 18 Q. And who did you recognize it to be?
- 19 A. Sandy Seale.
- 20 Q. And what was the conversation between the two of you?
- 21 A. As we walked up, Sandy said, "Please help I've been stabbed".
- 22 Q. Right. Did you ask him by whom?
- 23 A. No, Sir.
- 24 Q. And what else was said?
- 25 A. At that particular point in time I assumed he was drinking.

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1           That's why he was on the ground.

2           Q.   Why did you assume that?

3           A.   Just, I thought -- he may have been drinking.

4           Q.   Okay.

5           A.   And when I asked him a second time what was wrong. He said in  
6           a more mournful tone of voice, "Please help me, I've been  
7           stabbed".

8           Q.   Right.

9           A.   So at that point in time, I sent Debbie on her way to get the  
10          bus, I ran across the Park to get some help.

11          Q.   You sent Debbie on her way to get a bus and then you went back  
12          across the Park?

13          A.   Yes, I seen people on George Street, so I went right up over  
14          to them.

15          Q.   Okay, and were you successful in getting a couple of people?

16          A.   Two, two men, yes.

17          Q.   All right. And what did the three of you then do?

18          A.   We went across the Park again, up to the body and as we got up  
19          to the body, a car pulled up.

20          Q.   The route that you took across the Park to George Street, could  
21          you just get back up and do that for us. Remembering again  
22          to stand on the other side and we'll move the mike over for you.

23          A.   Sure. Okay, we're on Crescent Street, we find the body. Debbie  
24          goes on her way, I go across the Park here, across the bridge,  
25          over here and up the bank. So when I get up to the bank, there's

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1 | these two gentlemen that I had seen from the other side.

2 | Q. Right, now your indicating an area, just so that we have some  
3 | idea of where we are, around here?

4 | A. Approximately, yes.

5 | Q. Right there, okay.

6 | A. So I told them what had happened, we found, you know, a person  
7 | that's been stabbed and needs some help. So they came right  
8 | behind me and we followed the exact same route that I took over.  
9 | It's kind of like, taking short-cuts without going on these  
10 | walkways, we came back down over the hill and across the  
11 | bridge and up toward the body.

12 | Q. Right, and what did you see just as you got back to the body?

13 | A. Just as we were approaching the body, a car pulled up from  
14 | this direction here, from Argyle Street.

15 | Q. From Argyle coming up Crescent?

16 | A. He was coming up Crescent from Argyle, yeh.

17 | Q. From Argyle?

18 | A. Yeh.

19 | Q. Take your seat again.

20 | A. Okay.

21 | Q. Did you recognize anybody that got out of the car?

22 | A. Yes.

23 | Q. And who was that?

24 | A. Junior Marshall, Donald Marshall, Junior.

25 | Q. Okay, and did you have a discussion with Junior at that time?

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- 1 | A. I did.
- 2 | Q. And can you tell us what was said?
- 3 | A. I ran up to him and I said, "Junior what's going on?" And he  
4 | was kind of shocked that I knew him. He said, "You know me."  
5 | And I said, "Well, I know who you are". And he said, "Sandy  
6 | and I have been stabbed". And he said, "Look at my arm". And  
7 | he showed me an arm, his -- I don't know if it was his left  
8 | or right arm, I can't recall -- it was cut. And he told me  
9 | that these two people stabbed him in the Park.
- 10 | Q. Was there any blood coming from the cut?
- 11 | A. No.
- 12 | Q. At that time were there any police officers on the scene?
- 13 | A. No.
- 14 | Q. And did any police officers arrive shortly thereafter?
- 15 | A. Yes.
- 16 | Q. And can you tell us how they arrived?
- 17 | A. Yes. Well, I spoke to Junior, I said, "We should call the  
18 | police and an ambulance". And we were right around here.
- 19 | Q. What was Junior's response to that?
- 20 | A. It was negative, he didn't want to. He said, "No, I don't  
21 | want to call the police". So I said again, "Yes, we got to,  
22 | you know, there's a man stabbed here, we got to call for  
23 | help". Then he agreed. So I believe it was one of these  
24 | three houses that we went up to.
- 25 | Q. The record is not picking up which houses you're talking about.

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1 Are you talking --

2 A. Sorry, there's three houses here 120, 131 and 134.

3 Q. Okay.

4 A. I believe it was this house here.

5 Q. 120?

6 A. 120, yeh.

7 Q. And so did the two of you go over to that house?

8 A. Yes.

9 Q. And what happened when you got there?

10 A. We knocked on the door, a gentleman came to the door, he  
11 wouldn't open the door, it was like a screen door so we could  
12 speak back and forth to him. And we told him, like, we needed  
13 to call an ambulance and the police because there's a chap  
14 stabbed. And he wouldn't let us in the house to use the  
15 phone.

16 Q. Did he indicate that he was going to make a call for you?

17 A. No.

18 Q. Did you have any understanding what he was going to do at  
19 all?

20 A. No.

21 Q. Okay, you can take your seat again. So you leave the house  
22 and where do you go?

23 A. We go back towards the body.

24 Q. All right, are there any police officers there by this time?

25 A. Just as we're getting back down to the street, a police



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1 cruiser pulls up from Argyle Street up to Crescent and another  
2 one very shortly after that, comes in the other direction  
3 from off Bentinck Street.

4 Q. Off Bentinck Street onto Crescent?

5 A. Right.

6 Q. Okay. And what happens then, Mr. MacKay?

7 A. The first -- the car that was down on this side --

8 Q. On Argyle --

9 A. The officers got out and they grabbed Junior Marshall and  
10 they threw him in the back of the car.

11 Q. Now okay, when you say they grabbed him and threw him in  
12 the back of the car, you mean, just -- describe to us what  
13 you mean by that?

14 A. Well, if you were involved in an incident where you were hurt  
15 normally you wouldn't be treated, I would think the way they  
16 treated him, they just picked him up and they forcefully put  
17 him in the car. Like, more or less if you were -- if a crime  
18 was committed or something, that's the way they treated him.

19 Q. Do you have any recollection of whether they asked him to get  
20 into the car or whether they put arms -- their hands on him  
21 or how it happened?

22 A. Something like, along the lines, "Come on you come with us".  
23 And I think there was an officer on either side, had him in  
24 the arms, by each arm.

25 Q. Do you know who those officers were?

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- 1 | A. No, Sir.
- 2 | Q. And I believe you indicated a couple of minutes ago that another  
3 | police car arrived?
- 4 | A. That's correct, yeh.
- 5 | Q. And how many officers were in that car?
- 6 | A. Two also.
- 7 | Q. Two. And by that time how many, how many people would there  
8 | have been around the scene?
- 9 | A. By the time Junior and I came back from the house, I'd say  
10 | there was about twenty - twenty-five that were mulling around  
11 | starting to gather around, yeh.
- 12 | Q. Okay. And from your recollection can you tell us what you  
13 | saw the police officers doing at the scene?
- 14 | A. They were dispersing the crowd.
- 15 | Q. By what method?
- 16 | A. Telling people to "go home, get out of here." An ambulance  
17 | had come just around this time also. They were taking the  
18 | body, they put the body in the car, rather in the ambulance  
19 | and the police were, you know, really want to get people  
20 | away from the scene.
- 21 | Q. Were you spoken to by any of the police officers that night?
- 22 | A. No, just to say "go home, get out of here."
- 23 | Q. Did you try to indicate to them that you had come upon the  
24 | body earlier in the evening?
- 25 | A. No.

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- 1 Q. Okay, if you could just turn to Volume 11 which you have in  
2 front of you, Page 169. That's a copy of the statement that  
3 you gave to the police. Do you recollect that?
- 4 A. Yes.
- 5 Q. Okay. Under what circumstances did that statement come to  
6 be taken. Were you picked up at home?
- 7 A. That's correct.
- 8 Q. Were you home from school or --
- 9 A. Yes.
- 10 Q. Did you answer the door or did someone else in your house  
11 answer the door?
- 12 A. Can't recall.
- 13 Q. Sorry.
- 14 A. I don't know, I don't remember who answered -- who -- no.
- 15 Q. Were your mother and father at home?
- 16 A. I recall my mother being at home.
- 17 Q. Do you know whether or not the police suggested that she  
18 come along with you?
- 19 A. If they did, it was not to my knowledge. They did not tell  
20 me that they asked her, so if they did, I would not have  
21 known about it.
- 22 Q. Okay. Did you then go to the police station by yourself  
23 with the police officers?
- 24 A. Yes.
- 25 Q. How long were you at the police station?

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1 A. Approximately four hours.

2 Q. And do you remember from what time in the evening to what  
3 time?

4 A. When I was speaking to you earlier today and I said about  
5 six o'clock in the evening, I see from my statement it was  
6 six-thirty. But it was around there, I knew it was around  
7 between six and ten at night. It was four hours.

8 Q. And you got home around ten or ten-thirty?

9 A. Ten-thirty, I'd say, yes.

10 Q. Okay. Do you remember who the officer was who questioned you?

11 A. The gentleman that came to pick me up was Detective Urquhart.  
12 He took me to the station and there I met with Detective  
13 MacIntyre, Detective Urquhart and there was another Detective,  
14 I don't know who that was.

15 Q. How many people would have been in the room during the  
16 questioning?

17 A. Three and me. Three officers, like, three Detectives and  
18 myself.

19 Q. MacIntyre, Urquhart and one other whose name you don't know?

20 A. That's right.

21 Q. Okay, who did the questioning?

22 A. Mostly MacIntyre and Urquhart.

23 Q. During the course of the interview, did any other police  
24 officers come in and out of the room?

25 A. Yes, at one point in time they were talking about the officers

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1 | were at the scene that particular night and they wanted me  
2 | to identify them and they had some officers come in in  
3 | plain clothes.

4 | Q. They would come into the room and you would be asked to  
5 | identify them and they would leave again?

6 | A. That's right.

7 | Q. Were you able to identify any of them?

8 | A. No, Sir.

9 | Q. Your statement Mr. MacKay is rather short. Can you tell us  
10 | what was going on for the four hours that you were at the  
11 | police station?

12 | A. Well, they -- first of all they asked me to give, you know,  
13 | the accounts of the night, which I did. Then they went over  
14 | it a second and the second time they started tearing it apart  
15 | and, you know, questioning -- the first -- like -- the first  
16 | time I said it, they didn't question too much and the second  
17 | time there was questions after every action it seemed like,  
18 | you know. So that took a while and then the officers came in  
19 | that were supposedly on duty that night in plain clothes.  
20 | So we went through that. They had me call a friend while I  
21 | was there too to confirm something, I can't recall what it  
22 | was exactly, I had to confirm --

23 | Q. They had you call a friend?

24 | A. Yeh.

25 | Q. Do you remember who the friend was?

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1 A. Yes, yes.

2 Q. Who was that?

3 A. His name was Charles Morrison.

4 Q. And you don't remember what he -- what you called him about?

5 A. Exactly, I don't know, no.

6 Q. Did any of the police officers that were questioning you at  
7 any time attempt to get you to change anything that you were  
8 telling them?

9 A. No, Sir.

10 Q. I believe you indicated to me a few minutes ago that the police  
11 had not spoken to you the night of the incident, do you know  
12 how the police came to get your name so that they could take  
13 you down for an interview?

14 A. Well, I -- as the news broke the next morning regarding Sandy  
15 Seale, I was speaking to a couple of my friends and I had told  
16 them that I had found the body. And as the news started to  
17 break that week, more people seemed to know that I, you know,  
18 that I was involved in this here somehow or other and I  
19 guess my, you know, my name got around or something, you  
20 know, that I had some information that could possibly  
21 help.

22 Q. You were never told directly by the police how they came to  
23 get your name?

24 A. No, Sir.

25 Q. You testified at the Preliminary hearing?

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- 1 | A. That's correct.
- 2 | Q. At any time were you talked to by any of Mr. Marshall's
- 3 | lawyers?
- 4 | A. No.
- 5 | Q. Were you talked to by the prosecutor other than to testify?
- 6 | A. No, no.
- 7 | Q. You were subpoenaed, I believe, for the trial but didn't
- 8 | testify, is that correct?
- 9 | A. That's correct.
- 10 | Q. You can flip the page in your Volume to 170. And ask you if
- 11 | you remember giving that statement in 1982?
- 12 | A. Yes, I recall this.
- 13 | Q. And do you remember the circumstances of giving that statement?
- 14 | A. Yes, the R. C. M. P. notified me in 1982. I believe it was
- 15 | in the Spring of the year, they said that new light has been
- 16 | shed on the, on the Donald Marshall case. That they, they
- 17 | think that the conviction could be changed and all that --
- 18 | it was, you know, pretty heavy ramifications (any how) of what
- 19 | was going on. So they said the whole case is being re-opened
- 20 | again and they would like, you know, for me to give a new
- 21 | statement or, you know, give my statement -- my original
- 22 | statement at this time. So I said, sure, you know, I would.
- 23 | Q. Do you remember who the officer was who interviewed you?
- 24 | A. No, Sir. But he was in R. C. M. P. uniform clothes when he
- 25 | came to my house.

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- 1 Q. To the time that the car came up that, that Junior got out of,  
2 you recollect whether or not you saw anybody else getting out  
3 of that car?
- 4 A. There could have been. Junior got out of the car on the same  
5 side of the road that I was on. So as soon as he got out, I  
6 went right over to him.
- 7 Q. Did you recognize anybody else though getting out of the  
8 car?
- 9 A. I believe there was, but I'm not a hundred percent certain,  
10 it was on the other side of the road, you know. He was the  
11 only one that got out on that side.
- 12 Q. Do you have any idea what type of car it was?
- 13 A. Not to the best of my recollection, no.
- 14 Q. Whether it was big or small?
- 15 A. I believe it was a small car.
- 16 Q. Small car.
- 17 A. Yeh.
- 18 Q. Did you see anybody else at the scene? For instance, did you  
19 see Mr. Chant? Do you know Maynard Chant?
- 20 A. No.
- 21 Q. You don't know him or you didn't see him?
- 22 A. I don't know him and I don't recall seeing him.
- 23 Q. Okay. I believe you indicated that Junior said that two  
24 people stabbed him?
- 25 A. Yeh, like his indication -- I can't recall if he said both



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1 of them were in the stabbing but that there was two people  
2 sort of, it appeared to me that two people attacked him and  
3 Sandy.

4 Q. Right, now --

5 A. That's the indication that I got from him.

6 Q. Do you have any recollection -- do you know for sure whether  
7 or not two people stabbed me or just two people were in on it  
8 or --

9 A. No, Sir, I can't say.

10 Q. Can't say. I believe you said earlier on that you knew who  
11 Junior Marshall was?

12 A. Yes.

13 Q. Was he an acquaintance of yours?

14 A. No.

15 Q. How was it that you knew who he was?

16 A. I knew him from, like, seeing him at dances and what-not over  
17 the years. A few years.

18 Q. Did he have any sort of reputation to your knowledge?

19 A. Yes, it was a bad reputation.

20 Q. Bad reputation in what sense?

21 A. He'd pick fights with other people for no apparent reason and  
22 he was a trouble maker.

23 Q. What about Sandy Seale?

24 A. I didn't know him that well, but I -- he seemed to be a fine  
25 fellow, very sports minded and never, ever knew that he was

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1           ever in trouble before.

2   Q.   Okay, thank-you.

3   MR. CHAIRMAN:

4   Mr. Ruby.

5   BY MR. RUBY:

6   Q.   Sir, I'm counsel for Donald Marshall, Junior, and I would like  
7       to ask you a few questions.  First of all, I take it that Junior  
8       Marshall was not at the dance that night.  Is that correct?

9   A.   Could have been, you know, there was three or four hundred  
10      people there.  I did not see him.

11   Q.   You didn't see him?

12   A.   That's right.

13   Q.   And when you came across this body, you were quite naturally  
14      upset?

15   A.   Yes.

16   Q.   A very upsetting experience?

17   A.   Yes.

18   Q.   It would be for anyone young or old I should think.  Junior  
19      was very upset?

20   A.   Yes.

21   Q.   You could see that?

22   A.   Yes.

23   Q.   There's one difference I want to draw your attention to.  Have  
24      you got Volume 11?

25   A.   I believe I have.

SCOTT MacKAY, by Mr. Ruby

- 1 Q. You're at the right place, stay where you are right there.
- 2 A. Okay.
- 3 Q. Turn to Page 170.
- 4 A. I'm there.
- 5 Q. Today you told us that, if you'd just listen to my question  
6 for a moment, today you told us that when Junior came back  
7 from the car, you suggested that you get the police and an  
8 ambulance and Junior said, "no."
- 9 A. Yes.
- 10 Q. If you look at the statement that you gave in 1982 towards the  
11 end of the first paragraph on Page 170. Read this with me:  
12 "We ran back across the Park". Are you with me?
- 13 A. Yes.
- 14 Q. Good. "And when we did we saw a car stop by Seale's body.  
15 And Junior Marshall got out along with other people and the  
16 car went on". Then there's the conversation where describes  
17 it. And the second paragraph, "Then he told that two guys  
18 jumped him and Sandy and showed me his arm and said 'look what  
19 they did to me.' Then he showed me how the guy stabbed Sandy  
20 by putting his fist into my stomach". And here's the point,  
21 "Then I said we'd better call the police", not the police  
22 and the ambulance, just the police. "He said, 'no.' Then I  
23 said, we'd better get help". And I suggest to you that's  
24 probably the ambulance part and to that he says, "Yes, and  
25 the two of us started walking towards a house". Is that the

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- 1 correct version? Is that what happened?
- 2 A. Regarding the fist and the stomach business, I recall that  
3 that happened on the step.
- 4 Q. Okay.
- 5 A. Or leading up to the step of the house.
- 6 Q. Come down to the last part I read, "Then he said, we better  
7 call the police". He said no to that. "Then I said we'd  
8 better get help". I assume that means the ambulance. "And  
9 he said, yes, and the two of us starting walking toward the  
10 house". Is that true?
- 11 A. The way that I recall it is that I said police and ambulance  
12 and then he said, "no" and I repeated the original question.  
13 I don't know if it's shown in my first original statement.
- 14 Q. It's much the same way, but turn a page back.
- 15 A. Okay.
- 16 Q. Towards the end of the first paragraph about six lines from  
17 the bottom of that first paragraph. The main centre paragraph,  
18 "Junior said I was with him and he showed me his arm and so  
19 I told him we should go to a house and call the police". So  
20 again, no mention of ambulance. "He said, 'no.'" So I talked  
21 to him and both of us went to a house there and I said call  
22 the police". Is it fair to say that you would have been  
23 trying to tell the truth first of all in 1982 in the first  
24 of the two statements I gave you?
- 25 A. That's possible, yeh.

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- 1 Q. And your recollection in 1982 would be somewhat fresher than  
2 it is today? Is that fair?
- 3 A. Yes, I would -- you know, if, if it says in both the statements  
4 because -- you know, I was affirmative in this case ever  
5 since it, you know, opened -- things that happened the way  
6 I remember them and recall them, is exactly the way I  
7 remember them. And if it does not say ambulance there, then  
8 I did not say an ambulance.
- 9 Q. All right. I think we have had the experience with other  
10 witnesses, this is in fact a long time ago.
- 11 A. Yes.
- 12 Q. And we appreciate it that you're doing the very best you can  
13 to assist us.
- 14 A. Thank you.
- 15 Q. The -- Do you recall seeing Junior Marshall flagging down a  
16 police car?
- 17 A. No.
- 18 Q. I take it you weren't watching Junior Marshall all the time  
19 you were watching Seale a good portion of the time?
- 20 A. No, I was with Junior most of the time. Because we walked  
21 to a house together and I spoke to him mostly. I was  
22 more with Junior than with Sandy.
- 23 Q. When Junior arrived at the scene and gets out of the car,  
24 how long is it before you two take off for the house, seconds,  
25 minutes --

SCOTT MacKAY, by Mr. Ruby

1 A. Yeh, within a minute, like, like it was like seconds, two  
2 minutes, like, you know, a half a minute maybe. You know  
3 like we're talking to each other, he's surprised that I  
4 know him, he shows me what happened, told me what happened  
5 and then we went to the house. So however long that would  
6 take which maybe would maybe, you know, half a minute to  
7 a minute.

8 Q. You moved immediately to that house?

9 A. Yeh, I wasn't -- I didn't want to wait any longer.

10 Q. And Junior moved with you?

11 A. Yes.

12 Q. And how far would you have been from Sandy Seale when you  
13 were doing that half minute conversation?

14 A. I'm not sure, like, it's not like, you know, you'd be  
15 within probably seventy-five feet around there.

16 Q. Okay.

17 A. But, you know, I never had a measuring tape with me that  
18 night. I couldn't tell you. I wouldn't know.

19 Q. And when you came back after the house, where did you go  
20 and where did Junior go?

21 A. We walked back down the street and that's when one cruiser  
22 came up.

23 Q. And that's when Junior got man-handled into the car?

24 A. Right

25 Q. "Man-handled" the wrong word to use or is that a fair word?

SCOTT MacKAY, by Mr. Ruby

1 A. That's a fair word.

2 Q. Did the police do the kind of thing that you seen probably  
3 on television. There's a body -- did they try and rope off  
4 an area where people should not go?

5 A. No.

6 Q. They allowed people to mill about when they weren't chasing  
7 them away completely?

8 A. Yeh.

9 Q. Was there any police officers that you saw examining the area,  
10 picking things up?

11 A. No.

12 Q. Taking photographs?

13 A. No.

14 Q. Was anyone assigned to guard the body while it was there?

15 A. Well, like I said, when I got down and they took Junior,  
16 there was more people gathering around, there was more people  
17 around the body. There was people around the body, and there  
18 was police around the body. They, you know, they may have  
19 been trying to keep people away but, you know, it was a  
20 confusing time. There was a lot of people around then and  
21 you know, there was cruisers coming and Junior's getting put in  
22 like, you know, -- like I can't recall really, to tell you  
23 the truth.

24 Q. All right. Let me put it to you this way. Tell me if this  
25 is a fair assessment. If the police were trying to keep people

SCOTT MacKAY, by Mr. Ruby

- 1 away from the area of the body, they were not successful?
- 2 A. That's what I'd say, yes.
- 3 Q. How many people would have been milling around that area
- 4 close to the body?
- 5 A. Well, right immediately close to the body there may have been
- 6 three or four, but like right in the general vicinity there
- 7 may have been twenty to twenty-five people starting to come
- 8 around. They're all coming home from the dance.
- 9 Q. You were sixteen at the time this statement was taken?
- 10 A. Yes.
- 11 Q. Were you scared at being at the police station, being
- 12 interviewed by three police officers? What were your feelings?
- 13 A. I was very, very scared.
- 14 Q. Why were you scared? This maybe obvious to you but I want
- 15 to hear it?
- 16 A. Well, being a kid first of all. You know you run into three
- 17 Detectives, you have little or no experience speaking to
- 18 people like that. At one point in time the way they were
- 19 cross-examining me, I thought they thought I did it.
- 20 Q. Okay. Why did you think that they though that you did it?
- 21 A. Just the way they kept going about, you know, there must
- 22 be more to this. Or there must -- you must have seen more
- 23 and this and that and I was saying, "no." This is everything
- 24 I've seen. Everything I know that's I'm telling you now.
- 25 But they weren't satisfied it appeared because they, like



SCOTT MacKAY, by Mr. Ruby

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you know, had me there for four hours. You know, the events  
all took place in maybe ten or fifteen minutes, you know.



Handwritten signature of Scott MacKay, written in cursive and positioned over the diagonal line of the page.

SCOTT MacKAY, by Mr. Mr. Ruby

1 Q. You told them what you saw. This is the pattern and  
2 you tell me if I'm correct. You tell them what you  
3 saw. They say: "Oh, no. You must have seen more  
4 than that. We want more." That kind of question?

5 A. No, it was, like, as -- as the story was going on -- as  
6 I'm telling -- you know, what I seen, they would stop me  
7 to say -- you know -- you're sure now, you didn't -- I'm  
8 saying, no. You know -- and this is -- but no, they weren't  
9 saying the story was like that. They would pick it -- at  
10 each -- you know -- section as I would say it. They would  
11 stop me. I might say two lines and then stop me and --  
12 you know-- then I might go on to say maybe a half a paragraph  
13 and then they -- you know, stop me again and maybe sometimes I  
14 just say a word or one line and they stop me again and  
15 -- you know, it took a bit of time, like.

16 Q. What was their tone of voice? Friendly, helpful?

17 A. I found Detective Urquhart quite helpful and friendly. I  
18 found Detective MacIntyre overbearing and bullish.

19 Q. How loud was his voice?

20 A. He wasn't screaming but, I mean, he was a big man and  
21 he didn't have to say anything too loud. You could tell  
22 like when he was getting ruffled and --

23 Q. He got angry did he?

24 A. He never lost his cool or nothing but, I mean -- you know, like  
25 he was starting to bother me.

SCOTT MacKAY, by Mr. Ruby

1 Q. All right. The process that -- you used the phrase, when  
2 my friend was asking the questions about the statement  
3 taking process: "tearing it apart." To quote reference to  
4 your statement. Have you told us know what you mean  
5 by tearing it apart or was it something that you just --

6 A. Well, just going over it so many times. Like, you know,  
7 you get tired of saying it and -- you know, like I can  
8 see giving a statement and going over it a second time but  
9 --you know, not going over it a third time and -- you know,  
10 like they were -- it just seemed to be a little to much --  
11 you know. That's all I'm saying.

12 Q. They went over it again and again?

13 A. Yes, sir.

14 Q. The same points? I guess sometimes the same points --  
15 sometimes different points?

16 A. Yeh, I guess. Yeh.

17 Q. Yes?

18 How long did this interrogation last? Can you estimate  
19 it for me?

20 A. It was four hours that -- from the time that I sat  
21 in to about the time we finished up. Approximately four.

22 Q. Four hours -- they were questioning you for a four  
23 hour process?

24 A. Yes, sir.

25 Q. And you were all alone?

SCOTT MacKAY, by Mr. Ruby

- 1 | A. That's right.
- 2 | Q. My goodness. Did they offer you at any point an opportunity  
3 | to have a adult there? Your mother, family member, older  
4 | brother?
- 5 | A. No.
- 6 | Q. Would you have liked such an opportunity to have someone there  
7 | with you?
- 8 | A. If I had have known what they were going to do, darn right.  
9 | I trusted them -- you know, they're officers -- you know,  
10 | but in my opinion they didn't treat me very good. Like,  
11 | but I'm sure if there was somebody else there it would have  
12 | been a little better.
- 13 | Q. And you wound up feeling, as I understand it, that you  
14 | were the criminal and not --
- 15 | A. Yeh, that feeling -- like you know -- like you know, it's  
16 | just -- I think they would have had a little more respect  
17 | of the situation, that they had me there, if I had my  
18 | father or mother or a professional lawyer or something.
- 19 | Q. You had the feeling that you were going to get in to  
20 | trouble?
- 21 | A. Sort of felt that way, yeh.
- 22 | Q. The last thing I want to ask you about is during Junior  
23 | Marshall's reputation. You said it was a bad one and he  
24 | reputation for picking fights and being a trouble maker,  
25 | did you personally ever see him pick a fight?

SCOTT MacKAY, by Mr. Ruby

1 A. Not on me but at one time he hit my brother. One time, like,  
2 he jumped -- him and some of his friends jumped my brother.  
3 A few of their friends -- they were going to a dance  
4 through the park and --

5 Q. Did you see this?

6 A. No. No. I recall -- like, my brother came home that  
7 night and told us the story, what happened, and he never  
8 seen a doctor or anything but he couldn't open his  
9 mouth for three or four days -- like he thought he had  
10 a fractured jaw. But whether he had one or not I don't know.

11 Q. Right. My point is -- my question is did you personally  
12 ever see Junior Marshall pick a fight?

13 A. Well, I heard so many things. Did I ever see him pick a  
14 fight? No.

15 Q. You never saw him make trouble for anyone did you? You?

16 A. It's -- Well, I mean -- like, I didn't hang around too  
17 much. If I seen him in an area, like, I wouldn't hang around  
18 to long there -- you know, so.

19 Q. Okay. The answer is no, you never saw it.

20 A. No.

21 Q. Thank you, sir.

22 A. Okay.

23 MR. RUBY:

24 That's all, My Lord.

25

SCOTT MacKAY, by Mr. Pugsley

1 | MR. CHAIRMAN:

2 | Mr. Pugsley?

3 | BY MR. PUGSLEY:

4 | Q. Mr. MacKay, I'm a lawyer acting on behalf of John MacIntyre.

5 | What is your birthdate, sir? Birthdate?

6 | A. September 6, 1954.

7 | Q. And where do you presently live?

8 | A. 195 Monteith Avenue in Westmount.

9 | Q. And what's your occupation?

10 | A. I'm a Customer Sales Agent for Canadian Airlines International.

11 | Q. How long have you been there?

12 | A. I've been employed with this company for thirteen years.

13 | Q. You're a married man with a family?

14 | A. That is correct.

15 | Q. Yes. When you first saw Mr. Seale -- I'm not sure that  
16 | you may have identified the location on the map, exhibit  
17 | 22 but would you point again and perhaps mark on the  
18 | plan where his body was when you and Debbie MacPherson  
19 | found him.

20 | A. His body was around this vicinity.

21 | Q. Put your initials by it if you would. Was he lying on the  
22 | paved portion of Crescent Street or was he on the --

23 | A. Yes.

24 | Q. -- on the grass? He was on the paved portion?

25 | A. yes.

SCOTT MacKAY, by Mr. Pugsley

1 Q. Was he clearly visible? How far were you from him when  
2 you --

3 A. The night in question there -- it was an overcast night.  
4 It was dark and Debbie picked up that there was something  
5 on the road before I did so clearly visible from -- you  
6 know, how far -- you know as you were getting up to him,  
7 yes, he was clearly visible. But from maybe one hundred  
8 fifty, two hundred feet he was --

9 Q. You were about one hundred and fifty to two hundred feet  
10 from him when --

11 A. No. No. I'm saying about about one and fifty to two hundred  
12 feet he may not have been clearly visible but from twenty  
13 feet he was. You know, what distance are we talking about  
14 here?

15 Q. How close was Debbie to him when she pointed --

16 A. When she picked him up?

17 Q. -- out to you that there was something there?

18 A. He was probably -- gee, I don't know. He was probably around  
19 one hundred and fifty feet just at a point where that --  
20 I couldn't really -- you know, see. And then as we -- you  
21 know, like five or six steps closer then yes I could see  
22 that there was somebody there.

23 Q. And as soon as you saw there was someone there you immediately  
24 went over to him?

25 A. Well, yes. Yes.

SCOTT MacKAY, by Mr. Pugsley

- 1 Q. And was he lying down?
- 2 A. Yes, he was. Stomach down.
- 3 Q. Stomach down. Lying on his stomach?
- 4 A. Yes, and curled. In a curled position.
- 5 Q. I see. Did you roll him over?
- 6 A. No, I bent down to speak to him. I didn't roll him over.
- 7 I didn't touch him.
- 8 Q. And the words he used were?
- 9 A. "Help me. I've been stabbed."
- 10 Q. The voice was a whisper or was he able to speak strongly or
- 11 how would you describe it?
- 12 A. If you're going to -- I'd say probably weakly. You know, it
- 13 was weak.
- 14 Q. Yes. Could you tell that he had been stabbed when he made
- 15 this comment to you?
- 16 A. No.
- 17 Q. At first I -- you say you did not believe him or you had some
- 18 doubts?
- 19 A. That's correct.
- 20 Q. Yes. But then he repeated it?
- 21 A. Yes.
- 22 Q. And when he repeated it you were satisfied that he was
- 23 in distress?
- 24 A. Yes.
- 25 Q. No one else around at the time. Just you and Debbie and



SCOTT MacKAY, by Mr. Pugsley

1 Mr. Seale?

2 A. That's correct.

3 Q. Had you seen anyone as you walked down Crescent Street?

4 A. No.

5 Q. On Crescent Street when you approached Mr. Seale?

6 A. No, sir.

7 Q. So you told Debbie to go and get her bus and that  
8 you would go and seek assistance?

9 A. Yes. Yes, that's correct.

10 Q. So you ran over to George Street on the bridge between the  
11 two waters of Wentworth Creek?

12 A. Yes.

13 Q. And you found some men up on George Street?

14 A. Yes, sir.

15 Q. Did you run?

16 A. Yes, sir.

17 Q. As fast as you could, I suppose.

18 A. Yes.

19 Q. And you called to the people -- hailed the people on George  
20 Street?

21 A. Yes, sir.

22 Q. Did you have any idea who they were?

23 A. No, sir.

24 Q. Their age?

25 A. One chap seemed to be about the same age as me and the

- 1 | other one may have been two years older. They were around  
2 | my age if not a little older.
- 3 | Q. Could you make any determination as to whether or not they  
4 | had been drinking?
- 5 | A. No, sir.
- 6 | Q. You couldn't tell whether they had to had not?
- 7 | A. There was no way, no, I could tell no.
- 8 | Q. You hailed them and said come and give me a hand or help  
9 | me or something?
- 10 | A. Yes. I explained what happened. You know -- a young fellow -
- 11 | Q. What did you tell them?
- 12 | A. There's a fellow over there needs help. He's been stabbed.
- 13 | Q. So you then ran back to the scene?
- 14 | A. Yes.
- 15 | Q. They ran behind you?
- 16 | A. Yes.
- 17 | Q. Did you get up to Mr. Seale's body again before you saw the  
18 | police car arrive?
- 19 | A. Oh, yes. We were just getting up the the body when a car  
20 | arrived and --
- 21 | Q. I'm sorry. When a car arrived, yes.
- 22 | A. When a car arrived, yes.
- 23 | Q. And that car came from Argyle Street?
- 24 | A. That's correct.
- 25 | Q. And it stopped?

SCOTT MacKAY, by Mr. Pugsley

1 A. Yes.

2 Q. And Junior Marshall got out?

3 A. Yes.

4 Q. Did anyone else get out?

5 A. There could have been somebody get out around the other  
6 side but when Junior got out I went right over to speak  
7 to him.

8 Q. What happened to that car? Did it leave the scene then?

9 A. To my recollection, yes. It left after him and if somebody  
10 else got out the other side -- got out of the car.

11 Q. Could it drive down Crescent Street past Seale's body? Was  
12 it in the way?

13 A. I could have. Whether it went down that way or backed  
14 in a yard and went -- because like I said I started talking  
15 to Junior and then we went to a house for help. It left  
16 the scene but how it left, I don't know.

17 Q. Was Seale's body visible in the headlights of the car?

18 A. My back was turned to Seale's body when I was talking  
19 to Junior so I couldn't say.

20 Q. I see. How close did the car stop from Seale's body?

21 A. Roughly about, maybe, one hundred and twenty, one hundred and  
22 thirty feet but I really -- you know. I don't know. It  
23 was about that I guess. It wasn't really close to it but  
24 it wasn't -- you know, real far away from it either.

25 Q. At this point in time you were just about as close to Seale's

SCOTT MacKAY, by Mr. Pugsley

- 1 body on your return from George Street as the car was?
- 2 A. No, just as -- just as we're getting back up over the hill
- 3 by the body there, this car pulled up.
- 4 Q. I see. How close were you to the body at that time?
- 5 A. Maybe -- maybe ten, fifteen, twenty feet.
- 6 Q. I see.
- 7 A. Anyone else --
- 8 Q. And as a car pulled -- was pulling up, it was slowing
- 9 down and stopping and Junior Marshall got out and I approached
- 10 the car. So the car was probably about another fifty or
- 11 sixty feet back from where I was.
- 12 Q. So --
- 13 A. So the car was probably about one hundred feet from the
- 14 body.
- 15 Q. You did not go over to Seale before you went back to
- 16 the car?
- 17 A. No, I went right to the car.
- 18 Q. Why did you do that?
- 19 A. Because -- well, maybe the car got there just before
- 20 or just we're getting up the hill. I seen Junior Marshall
- 21 get out and I went over to see him because I knew him too.
- 22 Q. And what did you say to him?
- 23 A. I said: "Geez, what's going on here?" And then he started
- 24 to explain what happened.
- 25 Q. At that time --

SCOTT MacKAY, by Mr. Pugsley

- 1 A. That he was with him. I went over and -- you know,  
2 I --
- 3 Q. Was his first comment surprise that you knew him or  
4 concern that you knew him?
- 5 A. Surprise.
- 6 Q. Surprise?
- 7 A. Yes.
- 8 Q. What did he say?
- 9 A. He said: "You know me?" I said: "Well, I know who you are."  
10 Q. What did he say then?
- 11 A. And he says: "Sandy was with me." He said. And he said:  
12 "These guys, with a knife" -- or knives -- "jumped them"  
13 And he said: "Look at my arm. Look what they done to me."
- 14 Q. Sorry? Sandy was with me?
- 15 A. Yes.
- 16 Q. Yes. And what else did he say?
- 17 A. That these two men attacked them.
- 18 Q. Yes.
- 19 A. And he showed me his arm and he said that he stabbed Sandy  
20 and "Look what they done to my arm" he said.
- 21 Q. Now, at this point in time Mr. Seale was still lying on the  
22 ground some one hundred feet away?
- 23 A. And there was some people around -- with him, yeh.
- 24 Q. Did Marshall make any effort to go up to Seale?
- 25 A. Well, as he was -- yeh, I suppose right at that point in time

SCOTT MacKAY, by Mr. Pugsley

- 1 | that's when I brought up about we should call the police.
- 2 | Q. At this -- but Marshall made no attempt to approach Seale
- 3 | from the time --
- 4 | A. He made have been but I stopped him. If he was, I can't
- 5 | recall. If he was making any attempt or not making any
- 6 | attempt.
- 7 | Q. You can not recall him making attempt to go and see how
- 8 | Seale was?
- 9 | A. That's right.
- 10 | Q. You then said: "Let's call the police." or "Let's call
- 11 | an ambulance."
- 12 | A. I just explained to the gentleman here. It must have been
- 13 | just call the police.
- 14 | Q. And what did he say to that?
- 15 | A. He said: "No."
- 16 | Q. And what did you respond?
- 17 | A. I said: "Geez, we got to." I said: "You know, there's
- 18 | a fellow stabbed up there." I said: "We got to get
- 19 | help." and then he said: "Okay."
- 20 | Q. So what did you do?
- 21 | A. We proceeded to a house to call.
- 22 | Q. Did you make the call?
- 23 | A. No, the person wouldn't let us in the house to make the call.
- 24 | Q. I see. The person made the call? The person made the call?
- 25 | A. I don't know if he did or not. He never said he was going to.

SCOTT MacKAY, by Mr. Pugsley

1 Q. But in any event, how long were you -- do you think you  
2 were at that house, speaking to the --

3 A. Not long. Maybe a minute.

4 Q. Yes.

5 A. You know, it wasn't --

6 Q. Was the time you left the steps, the police car was there?

7 A. As we're -- yeh, as we're turning to head back down the  
8 street, yeh. One cruiser pulls up.

9 Q. You gave evidence at the Preliminary?

10 A. Yes.

11 Q. And have you reviewed your evidence before you gave evidence  
12 here today? Have you reviewed your evidence that you  
13 gave at the Preliminary before you came on the stand here  
14 today?

15 A. I was speaking earlier today with the Commission Counsel  
16 here and he showed me the book but I never read it though.  
17 I never read it -- read it through. I just looked at  
18 the first line or two and he was saying: "Is this is the  
19 statement you gave at such time" and I said: "Yes."

20 Q. And in the course of that evidence you stated at the  
21 Preliminary that you saw Mr. Marshall at the scene and  
22 had a discussion with him?

23 A. Yes.

24 Q. You say you were not interviewed by any lawyers acting on  
25 behalf of Mr. Marshall at any time after you gave evidence

SCOTT MacKAY, by Mr. Pugsley

1 at the Preliminary?

2 A. I was not.

3 Q. Or before trial?

4 A. That's right.

5 Q. Am I fair in suggesting to you that Mr. Marshall was more  
6 concerned about showing you the mark on his arm than he  
7 was about investigating the condition of Sandy Seale?

8 A. I really couldn't say. You'd have to ask Junior Marshall  
9 that. I couldn't make that assumption.

10 Q. Let me direct to the first statement you gave to the police.

11 Or the statement you gave to the police on June 2nd, 1971.

12 I believe you have it in the book in front of you.

13 I think it's at page one hundred and sixty nine?

14 Do you have that statement?

15 A. Yes.

16 Q. I direct your attention to approximately the middle of the  
17 statement: "So we ran back down through the park & up Crescent  
18 Street but by the time we were getting up to him a car  
19 slowed down and a Marshall boy got out. Junior said, 'I was  
20 with him' and he showed me his arm and so I told him we should  
21 go to a house and call the police." Is that essentially  
22 what happened?

23 A. Yes, sir.

24 Q. On the evening that you were at the police station on  
25 June 2nd, do you recall as to whether or not that was the



SCOTT MacKAY, by Mr. Pugsley

1 evening in question?

2 A. It was a Wednesday, yes, following the incident.

3 Q. It was Wednesday. June 2nd was a Wednesday.

4 You made a call to a friend at some point during the evening?

5 A. Yes, about half way through the -- half way through the  
6 night. It was -- like, I was there for about four hours.

7 About two hours in to our -- in to the statement I was  
8 giving I called a friend.

9 Q. Yes. Where did you call the friend from? The room  
10 in which you were being asked questions or from another  
11 room?

12 A. Yes.

13 Q. There was a telephone there, was there?

14 A. Yes.

15 Q. Yes. Do you recall what the conversation was about?

16 A. It was about something. I can't recall exactly. It was  
17 something about --

18 Q. What you were going to do that night?

19 A. -- seeing someone maybe at the dance that night or something  
20 because he was at the dance too. This, particular --

21 It was about something like that. It was a vague --

22 Q. To check your recollection or something?

23 A. I suppose, I don't know.

24 Q. Yes. The material that we have, and I'll show you --

25 I wonder if you could give the witness volume sixteen, exhibit

SCOTT MacKAY, by Mr. Pugsley

- 1 book volume sixteen, please.
- 2 Is it your evidence, Mr. MacKay, that Mr. MacIntyre was  
3 present with you for that four hour period?
- 4 A. To the best of my recollection he was there pretty well  
5 for the full four hours, yes. He may have went out for  
6 a coffee or something or a sandwich or something but --
- 7 Q. Well, the --
- 8 A. To the best of my recollection he was there for the  
9 whole time.
- 10 Q. The documentary information we have indicates that he  
11 was absent for some period of time. If you would turn to  
12 page thirty one of volume sixteen that has been placed  
13 in front of you, you'll find a copy of -- page thirty one?
- 14 A. Page thirty one?
- 15 Q. The pages are marked in the centre at the top of the page.
- 16 A. Okay.
- 17 Q. And if you look at page thirty two and thirty three, what  
18 appears to be a photostat of the handwritten statement you  
19 gave at that time. You'll notice signatures at the bottom  
20 of page thirty two and after the statement on page thirty  
21 three. Scott MacKay.
- 22 A. Yes.
- 23 Q. Is that your signature?
- 24 Are you nodding yes?
- 25 A. Yes.

SCOTT MacKAY, by Mr. Pugsley

1 Q. And you had signed those two pages after the statement  
2 was written down by Sergeant MacIntyre?

3 A. Yes, sir.

4 Q. Yes. If you turn to page thirty four-- page thirty four  
5 appears to be a statement taken on June 2nd, 1971, the  
6 same evening at seven thirty p.m. from a Lawrence Paul  
7 signed by Detective MacIntyre. Do you know Lawrence Paul?

8 A. No, sir.

9 Q. No. And if you turn to page thirty six, there's a statement  
10 again on June 2nd at eight o'clock signed by Arthur Paul  
11 and witnessed by Detective MacIntyre as well. Could  
12 it well be that Sergeant MacIntyre saw you when you initially  
13 came in at around six thirty in the evening but was out  
14 for a period of time at seven thirty and then eight o'clock  
15 to take these other statements and then returned to the  
16 room where you were being questioned?

17 A. Yes, like I said he was gone at certain times. He wasn't  
18 there for the full four hours but he was there for the  
19 greater part -- like two thirds of the night he was there.

20 Q. You indicated to my friend that you would have been happier  
21 if an adult had been present with you. If your mother  
22 had been present with you?

23 A. Yes.

24 Q. Did you make the request that your mother be present?

25 A. No, sir.

SCOTT MacKAY, by Mr. Pugsley

- 1 Q. Was there any attempt by either Detective MacIntyre or  
2 Detective Urquhart to force you to stay in the room  
3 against your will?
- 4 A. Well, they weren't going to let me go until they were  
5 satisfied with what they had. I mean I -- if come say  
6 eight o'clock I'm getting tired of what's going on and  
7 said I'm going to leave now, I don't think I could have  
8 been able to leave.
- 9 Q. I see. Did you say that you wanted to leave?
- 10 A. No, I wanted to satisfy them to -- you know, I wanted to --  
11 I gave a story and I wanted them to be satisfied with with  
12 I recalled that night and --
- 13 Q. Of course.
- 14 A. -- you know, I didn't want to stay there, no. Sure. So  
15 maybe it was against my will although I didn't say I wanted  
16 to leave.
- 17 Q. No.
- 18 A. Like they came over to Westmount and picked me up. The  
19 City Police and I had no way home. I had no money to  
20 get a bus or nothing so -- you know. As far as I was  
21 concerned when I was going home was when they were satisfied.
- 22 Q. Was your mother there at home when they picked you up?
- 23 A. Yes.
- 24 Q. She knew where you were?
- 25 A. Yes, sir.

SCOTT MacKAY, by Mr. Pugsley

1 Q. Yes. At page thirty-one, the statement that you gave.  
2 The last question at the bottom of the page: "Did you  
3 ask Junior Marshall who stabbed them?" Answer: "Yes, he  
4 said a man with glasses." I just want you to focus on that  
5 for a moment. Is it your recollection that Mr. Marshall  
6 said that it was a man with glasses? As distinct from a  
7 man without glasses? Obviously he wouldn't say a man without  
8 glasses stabbed me but is it your recollection that he did  
9 say a man with glasses?

10 A. Yeh, I can't one hundred percent say that I can remember  
11 Junior saying it was a man with glasses.

12 Q. And you'll note that it goes on to say: "And the younger  
13 man with him. Junior said the man with the glasses stabbed  
14 Sandy." The glasses is repeated on two occasions there.

15 A. Right. yes.

16 Q. Sorry, I may have asked you this before, Mr. MacKay, but I  
17 can't recall your response. When you and the two men from  
18 George Street returned to the scene, was there anyone else  
19 around Seale at the time or were you again the first three  
20 to arrive?

21 A. As far as I recall we were the first three back again.

22 Q. Yes. Do you have any recollection as to whether or not  
23 you saw Mr. Seale at the dance?

24 A. I can't recall, sir.  
25

SCOTT MacKAY, by Mr. Pugsley

1 | MR. PUGSLEY:

2 | Excuse me for one moment, My Lord.

3 | BY MR. PUGSLEY:

4 | Q. The statement that you gave 1982, do you recall the  
5 | name of the R.C.M.P. Constable that you gave that statement  
6 | to?

7 | A. No, sir.

8 | Q. That statement is found in exhibit book eleven which I believe  
9 | you have in front of you at page one hundred and seventy.  
10 | Are my notes correct that when they came in to -- when the  
11 | R.C.M.P. came in to see you -- You tell me what did they  
12 | say when they came in to see you in the reinvestigation?

13 | A. Well, prior to them coming to see me they called me and --  
14 | you know, explained what was going on and they said there  
15 | was going to be a reinvestigation into the Donald Marshall  
16 | case. That they had found some new evidence that -- you  
17 | know, leads to them to believe that he didn't do it.  
18 | So they were going -- you know, appeared to be a whole  
19 | new trial was going to happen and they wanted to get in  
20 | contact with all witnesses that were involved before and  
21 | take new statements.

22 | Q. They told you this on the telephone?

23 | A. Yes.

24 | Q. Yes. Did they reiterate that when they saw you?

25 | A. Yes, sir.

SCOTT MacKAY, by Mr. Pugsley

1 Q. Do you know how long before the taking of the statement the  
2 telephone call occurred?

3 A. I -- you know, the best of my recollection, the call was  
4 sometime -- ten or eleven in the morning and they came  
5 by around two or two thirty in the afternoon.

6 Q. Same day?

7 A. Yeh.

8 Q. This was the first indication that you had of it, was it?

9 A. Yes.

10 Q. The statement would appear to be have taken on 82/03/02  
11 which I assume was the second day of March, 1982?

12 A. Yeh, it was -- I believe it was in March. I knew it was  
13 in the spring of the year but it must have been March  
14 and not February, yeh.

15 Q. At the second paragraph of that statement on page one hundred  
16 and seventy. "Then he told me that two guys him and Sandy.  
17 He showed me his arm and said look what they did to me.  
18 Then he showed me how the guy stabbed Sandy by putting his  
19 fist in to my stomach. Then I said we better call the  
20 police." Now, all those things to place before you made  
21 any reference to the police or any attempt was made to  
22 see Seale by Marshall.

23 A. As I spoke to the gentleman here, I recall this fist incident  
24 in the stomach was on our way to the house.

25 Q. Was what?

SCOTT MacKAY, by Mr. Pugsley, by Mr. Murray

1 | A. Was on our way to the house.

2 | Q. On your way to the house?

3 | A. Yeh, I stated to get help before that happened as I recall.

4 | Q. I see. Okay.

5 | Thank you, Mr. MacKay.

6 | A. Thank you.

7 | MR. CHAIRMAN:

8 | Mr. Murray?

9 | BY MR. MURRAY:

10 | Q. Mr. MacKay, my name is Donald Murray and I'm representing  
11 | Detective Urquhart who I understand you spoke to on the  
12 | night of June the 2nd in 1971?

13 | A. Yes.

14 | Q. You commented to a previous questioner that at no time  
15 | did either of the officers or any of the officers you  
16 | spoke to attempt to change your story?

17 | A. Sorry, go over that again.

18 | Q. You testified earlier in response to one of the questioners,  
19 | I believe it was Commission Counsel, that at no time  
20 | did any of the police officers attempt to change your story?

21 | A. They didn't try to change my story, no, but they were finely  
22 | going over the story and trying to say well, you -- you know  
23 | you must have seen something else or something like that  
24 | but they didn't try to change it other than try to -- you  
25 | know, have me think it over more or something. I don't know.



SCOTT MacKAY, by Mr. Pugsley

1 Q. They were trying to determine if you knew any more?

2 A. I suppose, yeh.

3 Q. And you mentioned that in particular Mr. Urquhart was  
4 helpful?

5 A. Yes.

6 Q. And he was friendly?

7 A. What's that?

8 Q. And he was friendly?

9 A. Well, he'd give me a cigarette or you know, he seemed  
10 concerned. Out of the three of them he seemed concerned  
11 to be genuinely -- you know, he'd get you a coffee or a  
12 cigarette or -- he picked me up -- like, he come over to  
13 Westmount to pick me up in the car and drove me home and  
14 that.

15 Q. And it was a particularly serious matter that they wanted  
16 to talk to you about, isn't that so?

17 A. Yes.

18 MR. MURRAY:

19 Let me have a moment, My Lords.  
20  
21  
22  
23  
24  
25

SCOTT MacKAY, by Mr. Murray

BY MR. MURRAY:

1 Q. Mr. MacKay, you've mentioned that when you first met Mr. Marshall  
2 he appeared to be upset. What particular physical observations  
3 did you make that led you to that conclusion?

4 A. Well, he was quite excited. He was talking very fast and he  
5 seemed to be out of breath.

6 Q. I see.

7 A. And like his hair was messed up. It looked it -- It appeared  
8 like he was running before --

9 Q. It appeared like?'

10 A. He was running or something. Although he just got out of  
11 a car it appeared that he was, you know, doing some physical  
12 activity of some sort because he was out of breath, whether  
13 that was because he was excited or what I don't know.

14 Q. Nineteen seventy-one was some time ago and other Counsel have  
15 referred you to both the 1971 statement and the 1982  
16 statement, and in neither of those statements do you refer to  
17 the fact that Donald Marshall was grabbed and manhandled into  
18 the back of a police car almost immediately upon the police  
19 arrival. Could Mr. Marshall have been put into a police car  
20 at some later point than immediately?

21 A. No, it was within a minute or two of us coming back from the  
22 house he was put in the car.

23 Q. You have no doubt about that in your mind?

24 A. That's right.

25 MR. MURRAY:

Thank you.

SCOTT MacKAY, by Mr. Bissell

1 MR. CHAIRMAN:

2 Mr. Elman.

3 MR. ELMAN:

4 No questions, My Lord.

5 MR. CHAIRMAN:

6 Mr. Saunders.

7 MR. SAUNDERS:

8 We have no questions, My Lord.

9 MR. CHAIRMAN:

10 Counsel for the various R.C.M.P. Officers.

11 BY MR. BISSELL:

12 Q. Mr. MacKay, I'm curious as to whether or not you were familiar  
13 with Roy Ebsary back in May of '71?

14 A. No.

15 Q. You had never heard of Mr. Ebsary?

16 A. No.

17 Q. And one other question, was it the officers from the first  
18 police car that placed Mr. Marshall in the police car or  
19 from the second car?

20 A. The first car which came from Argyle Street is the car that  
21 he was put in.

22 MR. BISSELL:

23 Those are all the questions that I have. Thank you.

24 MR. CHAIRMAN:

25 Mr. Ross.

SCOTT MacKAY, by Mr. Drolet

1 MR. DROLET:

2 I have just a few questions for Mr. MacKay.

3 COMMISSIONER EVANS:

4 Would you give your name please.

5 MR. DROLET:

6 Kevin Drolet, I'm Counsel for Oscar Seale, and I have just a few  
7 questions.

8 BY MR. DROLET:

9 Q. Perhaps If I came forward I could clarify some matters with  
10 you with respect to your movements on the night prior to  
11 finding Sandy Seale's body. You indicated that you came from  
12 St. Joseph's Church, down George Street, left onto Argyle,  
13 left again down into the park by the band shell where you --

14 A. No, no, right into --

15 Q. Right into the park itself?

16 A. No, right on Crescent and then into the park.

17 Q. Oh, I see, and then from Crescent into the park?

18 A. Yes.

19 Q. And you indicated in your evidence that you and Debbie then  
20 sat on a park bench for a few moments?

21 A. Yes.

22 Q. Could you see the park at that time?

23 A. Yes, we were sitting down and we were -- like we were facing  
24 the band shell. You could see the band shell.

25 Q. Was it very, very dark?

SCOTT MacKAY, by Mr. Drolet

1 A. Well, the night -- It was a dark night and an overcast night,  
2 like fog and heavy mist, and in the park itself there's  
3 a lot of lighting down there anyhow, so right in the park  
4 down by the Wentworth Creek there it was fairly lit up.

5 Q. Yeh, could you see anybody --

6 A. But up --

7 Q. --from where you were sitting, walking around the park?

8 A. No, I didn't see anybody in there.

9 Q. You didn't see anybody at all?

10 A. No.

11 Q. And then you got off and you began to walk through the park  
12 heading down towards the bus. Is that correct?

13 A. No, we got up off the bench and we went back up on the bank  
14 that's in the park onto Crescent Street.

15 Q. And you were at that time intending to go to catch a bus?

16 A. Yes, sir.

17 Q. Where was it that you intended to catch the bus?

18 A. On Kings Road.

19 Q. On Kings Road?

20 A. Yes.

21 Q. So it would be somewhere off this map?

22 A. Yes.

23 Q. Would you have proceeded -- When you sent Debbie home which way  
24 did she head? Would she have continued --

25 A. Well, I don't know north, east, west, here, you know, she kept

SCOTT MacKAY, by Mr. Drolet

1 heading up Crescent in the opposite -- like heading towards  
2 Bentinck Street on Crescent.

3 Q. Okay. Now you've indicated a spot here on the map with your  
4 initials indicating where you think the body of Sandy Seale  
5 may have been located when you came upon it. If you notice  
6 here on the map there's a little black dot which represents  
7 I think you'll see a power pole with a 120 m.v. light. Do  
8 you recall what the lighting was like in the area where you  
9 found Sandy's body?

10 A. Well, the lighting was poor because of the conditions of the  
11 night. That's why I say we were -- You know, we weren't that  
12 far from him when we picked him up. If it was maybe a clear,  
13 clear night, like a full moon and stars and whatnot, we probably  
14 would have picked him up sooner, so I had -- To the best of  
15 my recollection the lighting was poor in the area.

16 Q. How close did you have to get to Sandy? You say from approximatel  
17 a hundred and fifty feet you could make out the form of a  
18 person. How close was it before you recognized Sandy Seale?

19 A. Well, I'd say -- I don't know. Maybe halfway up or maybe  
20 a little closer. Maybe -- I really can't recall. You know,  
21 we seen somebody -- Debbie seen somebody from I'd say  
22 approximately two hundred feet. I picked him up a little  
23 bit later and when we knew it was him we could have been  
24 right over him, I don't know. I don't recall.

25 Q. So you're still quite a --

SCOTT MacKAY, by Mr. Drolet

1 A. Like the person was laying down on the ground with their face,  
2 you know, towards the ground. You know, normally you're not  
3 going to know who it is until you're right up to him anyhow.

4 Q. Right. Yeh, I understand that. So you had to get quite close  
5 to him before you could tell that it was Sandy?

6 A. Yes.

7 Q. And you've been asked by Commission Counsel how well you knew  
8 Sandy and you indicated that you knew him pretty well?

9 A. No, I didn't know him well at all. I knew who he was and he  
10 went to a different school than I did. He lived in the same  
11 community as I did but he had only moved over there, I think,  
12 within that year, so I didn't know him well at all, sir.

13 Q. So you just knew him well enough to know that he was a pretty  
14 good guy, that he --

15 A. From all the people that --Like he was friends with people  
16 that I knew of in Westmount and they all had good things to  
17 say about him.

18 Q. And you knew that he was quite -- I think you said he was  
19 quite sportsman like?

20 A. Sport minded, athletic.

21 Q. Sport minded?

22 A. Yeh.

23 Q. And had you ever played sports with him?

24 A. No, sir.

25 Q. At all?

SCOTT MacKAY, by Mr. Drolet

1 A. No.

2 Q. You've indicated that both you and Sandy were living in  
3 Westmount at the time. Is that correct?

4 A. Yes.

5 Q. So would you have both been taking the same bus home from the  
6 dance that night?

7 A. No, the bus that we were going to get, and Debbie was going  
8 to get on, was a bus going to North Sydney.

9 Q. Okay, and you weren't headed for the bus then?

10 A. No, I was just taking her to the -- taking her to the bus and  
11 then I was going to hitchhike home.

12 Q. I just wanted to take you back to the dance for a moment again.  
13 You indicated to Counsel for Mr. Marshall that, in fact, you  
14 didn't see Junior at the dance that night. Did you see Sandy  
15 at the dance that night?

16 A. I don't recall.

17 Q. You don't recall. When you moved into the park and you had  
18 identified Sandy, then you ran off to get help, you indicated  
19 that you came back and you found as you headed back towards the  
20 body of Sandy Seale a car pulled up and stopped and Junior  
21 Marshall got out of the car. He appeared very upset to you.  
22 Did you notice anything particular about his eyes?

23 A. They may have been a little glazy or something, again I  
24 was saying it seemed like he was out of breath running and  
25 that could do that to a person, you know.



SCOTT MacKAY, by Mr. Wildsmith

1 MR. DROLET:

2 No further questions. Thank you very much.

3 MR. CHAIRMAN:

4 Mr. Wildsmith.

5 MR. WILDSMITH:

6 Yes, I do, My Lord.

7 BY MR. WILDSMITH:

8 Q. Mr. MacKay, my name is Bruce Wildsmith and I'm here on  
9 behalf of the Union of Nova Scotia Indians. Let me just ask  
10 you a couple of preliminary questions about your background  
11 now. I understand that -- from what you said previously  
12 that you live in Westmount.

13 A. That's right.

14 Q. And that's a suburban kind of area around Sydney?

15 A. Yes.

16 Q. How long have you lived there?

17 A. I lived there for -- Well, I was born in Sydney but I lived  
18 in Westmount ever since I was just going to come home from  
19 the Hospital.

20 Q. I'm sorry, since when?

21 A. Since I come home from the hospital from being born and  
22 I lived there all my life.

23 MR. CHAIRMAN:

24 Now Mr. MacKay, could you move your mouth a little closer to  
25 the mike, please.

SCOTT MacKAY, by Mr. Wildsmith

1 THE WITNESS:

2 Sure.

3 BY MR. WILDSMITH:

4 Q. So I take it that you lived in Sydney -- in the Sydney area  
5 all of your life. You've described being at this particular  
6 dance on that evening with three or four hundred other people.  
7 I take it you've gone to other dances, yes?

8 A. Yes, sir.

9 Q. Would you describe yourself as being part of the teenage  
10 community in Sydney in about 1971?

11 A. Well, yeh. There was like different groups of people that  
12 used to hang out and, you know, like I went to dances. I  
13 went to pool halls, etcetera, you know, so, yeh, I guess  
14 I'd be part of that, yeh.

15 Q. Okay, and you were reasonably active then with other teenagers  
16 in the Sydney area?

17 A. Yes, mostly though from the -- from the community of Westmount  
18 and the surrounding area more so than people in Sydney.

19 Q. All right. Now you've given some testimony about giving the  
20 statement in 1971 to Detective Urquhart and Detective MacIntyre,  
21 and you've described there being three people in this room  
22 at the Sydney Police Headquarters. Could you describe that  
23 room for us?

24 A. There is a small room -- It was like a -- almost like a  
25 building to itself they used to have behind the Police

SCOTT MacKAY, by Mr. Wildsmith

1 | Headquarters. I believe it used to be on Bentinck Street, but I'm  
2 | not sure.

3 | Q. Now you've described it as being a small room. What do you mean  
4 | by small?

5 | A. Well, like I said, it seemed like a separate building away from  
6 | everything and it wasn't real big. Like there was an outer-office  
7 | and then an inner-officer.

8 | Q. And where were you, the inner or outer-office?

9 | A. Yeh, the inner most office.

10 | Q. And can you give us dimensions of that room approximately?

11 | A. It's been a long time, you know. I -- You know, I never --

12 | Q. Can you tell us anything about what was in that room?

13 | A. A desk and chairs and a filing cabinet, typewriters.

14 | Q. And can you tell me whether there was much room to move around  
15 | in that room then once the desk, the chairs, the filing  
16 | cabinets were in there? In other words, was it a crowded  
17 | room?

18 | A. I'd say it was an adequate size for what they had to do. You  
19 | know, it wasn't cramped and it wasn't overly big.

20 | Q. Were there windows?

21 | A. To the best of my recollection there was, yeh.

22 | Q. Okay. So you've told us that you were reasonably active in  
23 | the teenage community in Sydney and the surrounding area.  
24 | You've told us as well although I don't want to go into this  
25 | with you, about a particular reputation that Junior Marshall

SCOTT MacKAY, by Mr. Wildsmith

1 had. Now my question to you is, can you tell me anything  
2 about the reputation that the Indians in and around Sydney  
3 enjoyed amongst you and your colleagues?

4 A. You mean the younger Indian like teenagers?

5 Q. Yes.

6 A. Well, we never -- You know, we never hung out with them or  
7 anything. They were -- Sometimes Junior was down the park  
8 with a group of them and they were, you know, fighting with  
9 people and that.

10 Q. They were fighting with people a lot?

11 A. Yeh.

12 Q. All right. When you said, "Junior with other people", do you  
13 mean other Indians?

14 A. Yes.

15 Q. Okay. You mentioned an incident which we don't need to go  
16 into in detail, but I take it that there was an incident that  
17 involved your brother and a fight?

18 A. Yes.

19 Q. And were the other people that your brother was fighting with,  
20 were they Indians?

21 A. Yeh, well, he was with some friends of his and these Indians  
22 came up on him in the park and started giving him a hard time  
23 and then they started beating him up.

24 Q. Okay. Now the --

25 MR. CHAIRMAN:

This is certainly straining the rules of admissibility,

SCOTT MacKAY, by Mr. Wildsmith

1 Mr. Wildsmith, but I suppose if no one objects, we might  
2 as well hear it.

3 BY MR. CHAIRMAN:

4 Q. Well, what's your brother's name?

5 A. Stuart MacKay.

6 Q. Stuart MacKay. Is he still living in the Sydney area?

7 A. Yes.

8 MR. WILDSMITH:

9 What I'm interested in generally, My Lord, is getting some  
10 sense of the mood in Sydney about this time and something about  
11 the relationship with the Indian community.

12 MR. CHAIRMAN:

13 Oh, I understand the purpose of that questioning, but his  
14 description of what happened to his brother as he walked through  
15 the park one night is certainly stretching the hearsay rule --

16 MR. WILDSMITH:

17 I think as evidence of an actual event which took place but  
18 perhaps not as something which was known as part of the kind  
19 of rumour mill in the community at the time.

20 MR. CHAIRMAN:

21 I suppose.

22 BY MR. WILDSMITH:

23 Q. So speaking now about Wentworth Park, you described this  
24 incident as taking place in Wentworth Park. Is this a place  
25 where you've been on a number of occasions?

SCOTT MacKAY, by Mr. Wildsmith

- 1 A. No, I never made a habit of going down there, no.
- 2 Q. You did happen to be there this particular night, I believe?
- 3 A. Yes, heading home.
- 4 Q. Is it your understanding that Indians generally hang around  
5 in Wentworth Park?
- 6 A. Can you say that again please.
- 7 Q. Do Indians in general hang around in Wentworth Park?
- 8 A. When I was younger that was common, yes.
- 9 Q. Yes, and would other people as well as Indians hang around in  
10 Wentworth Park?
- 11 A. At times of the day. In the afternoon families and --  
12 you know, like husbands and wives and children would be  
13 down there and in the evenings you'd have some Indians down  
14 there. You'd have some white kids down there too and you  
15 might have, you know, a few winos down around there too.
- 16 Q. Were you -- At these dances you were attending I take it that  
17 there was some kind of security enforced-- in place at the  
18 dances?
- 19 A. Yes, sir.
- 20 Q. And would they by in large be off-duty Sydney Policemen?
- 21 A. I don't know. I can't remember who they were.
- 22 Q. Would they be people in uniform?
- 23 A. I can't recall.
- 24 Q. Okay. Now were there occasional fights at these dances?
- 25 A. Yes.

SCOTT MacKAY, by Mr. Wildsmith

1 Q. And who would be involved in these fights?

2 A. Anybody that --

3 MR. CHAIRMAN:

4 Mr. Wildsmith, would you -- I don't want to interrupt you  
5 unnecessarily, but whether there were fights at dances in Sydney  
6 leaves me with some doubt as to the relevancy to the issues  
7 including the issues to whether or not there were racial discrimination  
8 It --I think we can take judicial note of the fact that fights  
9 have started at dances over the years regretfully throughout most  
10 of Canada and certainly all of West Canada prior to '49.

11 MR. WILDSMITH:

12 Well, the particular point that I'm interested in, My Lord, is  
13 whether the fights were organized in any kind of racial way.

14 BY THE WITNESS:

15 A. No, they weren't.

16 MR. WILDSMITH:

17 Whether there was any racial --

18 MR. CHAIRMAN:

19 He's answered the question for you.

20 MR. WILDSMITH:

21 Fair enough.

22 BY THE WITNESS:

23 A. No.

24 BY MR. WILDSMITH:

25 Q. Now you've mentioned, Mr. MacKay, that you didn't hang around

SCOTT MacKAY, by Mr. Wildsmith

1 with the Indians. Had you ever been to the Indian Reserve  
2 of Membertou?

3 A. I've been to Eskasoni Reserve before but I was never to  
4 Membertou, driving through and that, but never --

5 Q. Driving through the Eskasoni Reserve?

6 A. Yeh.

7 Q. That's a public highway that goes right through the middle  
8 of the Reserve?

9 A. Yes.

10 Q. And did you ever have any other experience or contact with  
11 Indians?

12 A. No, sir.

13 MR. WILDSMITH:

14 Thank you.

15 MR. CHAIRMAN:

16 That's all. Thank you, Mr. MacKay. This is probably a  
17 satisfactory time to take a short recess while you're getting  
18 ready for the next witness.

19  
20 INQUIRY ADJOURNED: 3:19 p.m., AND ADJOURNED: 3:31 p.m.

21  
22 MR. CHAIRMAN:

23 Mr. Spicer.

24 MR. SPICER:

25 Thank you, My Lord. My next witness is Debbie (MacPherson) Timmins.