

JOHN MULLOWNEY, by Mr. Spicer

1 JOHN HUGH MULLOWNEY, being called and duly sworn, testified as  
2 follows:

3 BY MR. SPICER:

4 Q. Tell us your full name, please, sir.

5 A. John Hugh Mallowney.

6 Q. You're presently employed by the Sydney Police Department in  
7 what capacity?

8 A. As Deputy Chief of Police.

9 Q. When were you first employed by the Sydney Police Department?

10 A. March 1955.

11 Q. And in what position?

12 A. Pardon.

13 Q. What position, sir?

14 A. As a constable.

15 Q. At the time you came on as a constable, sir, what training  
16 did you have?

17 A. None.

18 Q. Can you tell us what education you had at that time?

19 A. Grade nine.

20 Q. And can you tell us briefly the ranks that you went through  
21 going from constable to your present position and the  
22 approximate dates?

23 A. I went through corporal, sergeant and deputy chief.

24 MR. ROSS:

25 Could you repeat that, please.

JOHN MULLOWNEY, by Mr. Spicer

1 BY MR. SPICER:

2 Q. Sergeant and then deputy chief. Can you tell --

3 A. Sergeant, yeh --

4 Q. And during what period of time were you sergeant?

5 A. Around 1980.

6 Q. 1980 until when?

7 A. Until my present position in 1985.

8 Q. 1985, and previous rank prior to sergeant for how long did  
9 you hold that?

10 A. Corporal.

11 Q. Yes.

12 A. Five, six years maybe longer.

13 Q. And what position did you hold in 1971?

14 A. Constable.

15 Q. Since 1971 have you been a detective?

16 A: Yes, I have.

17 Q. And when did you become a detective?

18 A. Fourteen, sixteen years ago.

19 Q. 1963, no 1973?

20 A. No, 73.

21 MR. CHAIRMAN:

22 Mr. Spicer, it maybe of some interest at least for the record  
23 to find out how one would get in -- join the Sydney Police Force  
24 in 1955 up to 1979?

25

JOHN MULLOWNEY, by Mr. Spicer

1 BY Mr. SPICER:

2 Q. Could you respond to that question from the Chairman?

3 A. How we were --

4 Q. How were you recruited, how did come to become a member of  
5 the Sydney Police Department?

6 A. You responded by going to the office at the chief's office  
7 at that time and had an interview, filled out an application  
8 and then brought it back -- the application to the chief.

9 Q. Would that have been in response to anything in the paper or  
10 you just go down?

11 A. Yes, there would have been an ad in the paper.

12 Q. And ad?

13 A. Respond to an ad in the paper.

14 Q. Are you able to tell us whether or not that practice has  
15 changed over the years?

16 A: Yes, it has.

17 Q. And in what respects has it changed?

18 A. Well, the hiring policy of the City today and it has been for  
19 quite some time that you must have had previous police  
20 experience, coming from an accredited police department or  
21 police force or you must have attended an accredited police  
22 academy.

23 Q. For how long has that been the practice?

24 A. Since late 70's early 80's.

25 MR. SPICER:

Much of this current practice, My Lord, we'll come back to it.

JOHN MULLOWNEY, by Mr. Spicer

1 MR. CHAIRMAN:

2 Well, we'll hear -- We'll hear about the current practice of  
3 hiring later on.

4 BY MR. CHAIRMAN:

5 Q. Were there any educational -- minimum educational requirements  
6 in the '50's and --

7 A. Grade ten.

8 Q. Grade ten. You got in with grade nine.

9 A. No, well, I got -- I had partial grade ten.

10 Q. I see.

11 BY MR. SPICER:

12 Q. In May of 1971, what would your position have been?

13 A. May of 1971, I was a Constable.

14 Q. Constable. And on the evening of May 28th, were you working  
15 at the dance at St. Jo's?

16 A. I was.

17 Q. And would that have been as part of your duties as a policeman?

18 A. In those days, it was considered to be special duty.

19 Q. And can you describe for us what that means, by special duty?

20 A. Well, when you -- there would be a request go to the office  
21 for added police protection to these dances or whatever. And  
22 if you were day shift that was -- put you in line to work  
23 that special duty.

24 Q. Is that something -- is that a duty that you'd perform in  
25 uniform?

JOHN MULLOWNEY, by Mr. Spicer

- 1 | A. Yes.
- 2 | Q. Were you being paid for that by the Sydney Police Department  
3 | or by somebody else?
- 4 | A. Paid by the organization that would hire you.
- 5 | Q. And in the case of St. Joseph's Church, you'd be being paid  
6 | by whom?
- 7 | A. Being paid by the youth group that ran that dance.
- 8 | Q. And was this volunteer on your part in a sense that if you  
9 | were asked you could say no I don't want to be up there?
- 10 | A. Yes, I could. I had an option.
- 11 | Q. I see, and did you do these dances then from time to time?
- 12 | A. You usually did them when you were on day shift or on your  
13 | shift off.
- 14 | Q. Right. How many police officers would there be at any  
15 | particular dance?
- 16 | A: Depending on what the requirement was. If they asked for four  
17 | they got four. If they asked for two they got two.
- 18 | Q. How many did they ask for at St. Joseph's Church on that night?
- 19 | A. Two.
- 20 | Q. Two and who was the other officer?
- 21 | A. I -- if I can recall I believe it was Constable LeMoine, Fred  
22 | LeMoine.
- 23 | Q. Do you remember how many people attended the dance that  
24 | evening?
- 25 | A. Not specifically, no. There were crowds -- those crowds

JOHN MULLOWNEY, by Mr. Spicer

1 | would run depending on the type of night it was and what  
2 | activities were on, anywhere from two to three hundred.

3 | Q. What kind of age group are we talking about?

4 | A. Teenagers from fifteen on.

5 | Q. What kinds of responsibilities would you be called upon to  
6 | fullfil during the course of the dance?

7 | A. Watch for liquor, fights, outbreaks, undesirables.

8 | Q. Okay, on the evening in question did you see much liquor?

9 | A. No, sir.

10 | Q. What about fights?

11 | A. I don't recall anything outstanding that, you know, that I --  
12 | what happened that night was unusually at these dances, one  
13 | officer would kind of man the door and the other officer  
14 | would keep an eye to the inside and the reason for maning  
15 | the door would be to not allow anybody in that was  
16 | intoxicated.

17 | Q. I see, and what was your job on that evening?

18 | A. I was at the door.

19 | Q. You were at the door. Do you remember whether or not you had  
20 | to eject any people?

21 | A. Yes, I did.

22 | Q. Do you remember anybody in particular?

23 | A. Just the Seale boy.

24 | Q. And why would you have had to eject him?

25 | A. It was brought to my attention that a group had come in

JOHN MULLOWNEY, by Mr. Spicer

1 through the window. And by one of the kids or whoever was  
2 running the dance. So I went over in company with LeMoine  
3 and we just make a summons to him and two or three kids or  
4 four kids, I don't recall, were ones that had come through  
5 the window and we just took them to the door and ejected  
6 them.

7 Q. Was he cooperative when he was asked to leave?

8 A. Yes, yeh.

9 Q. And did you have to do this on more than one occasion that  
10 evening?

11 A. On another occasion he had gotten in when I had to go in-  
12 side for some reason. And was told to me by the people  
13 on the front desk that he didn't pay and I went and I checked  
14 on him and at that time there was a stamp being used to  
15 identify the ones that were coming and that were in and had  
16 paid their way. And he didn't have the stamp, so I requested  
17 him to leave and not to be around the property any more unless  
18 he was prepared to pay.

19 Q. And did he stay out?

20 A. He stayed out, yeh.

21 Q. And did you see him outside at all?

22 A. Did I see him outside?

23 Q. Outside, yes?

24 A. Well, not that I can recall, no. I mean there was nothing  
25 outstanding about it.

JOHN MULLOWNEY, by Mr. Spicer

1 Q. Do you remember what time of the evening it was that you would  
2 have put him out for the second time?

3 A. No, I don't.

4 Q. Did you know John Pratico at the time?

5 A. Yes, I knew of him.

6 Q. You knew of him, you knew him to see him?

7 A. Yes.

8 Q. Did you know anything about him?

9 A. Not partically, no. Other than the main reason why I knew  
10 of him or just see was he was more of a street person. He'd  
11 be around the streets quite a bit.

12 Q. Did you see him at the dance that evening?

13 A. Not that I recall.

14 Q. Do you remember what time the dance would have got out?

15 A. I would suspect roughly twelve o'clock.

16 Q. And would there be any particular reason why it would be at  
17 twelve o'clock?

18 A. I think because of the it being a parish hall and that the  
19 parish wanted it that way to keep the neighbourhood peaceful  
20 with regard to the neighbourhood -- neighbours.

21 Q. What would be the last responsibility that you would have  
22 had at the dance that evening?

23 A. Stay on the lot and see that all the participants had  
24 dispersed without incident.

25 Q. And how much time would that have taken you?



JOHN MULLOWNEY, by Mr. Spicer

- 1 A. Twenty minutes -- twenty minutes to a half hour.
- 2 Q. Okay, when you completed those duties, what did you do then?
- 3 A. I went on to my home.
- 4 Q. And would you be walking or driving?
- 5 A. I probably had my car.
- 6 Q. And where would you -- which direction would you go when you
- 7 left the church?
- 8 A. I would have gone out Cottage Road or up George Street to the
- 9 top of it. The south end of the City.
- 10 Q. South end of the City. And would you had any occasion to go
- 11 by the Park at all?
- 12 A. No.
- 13 Q. Were you contacted by anybody in the Sydney Police Department
- 14 during the course of that evening after you left the dance
- 15 before the next morning?
- 16 A. No, I wasn't.
- 17 Q. Did you come back -- you would have been on the day shift?
- 18 A. In the morning, yes.
- 19 Q. I see, you would have come back on on Saturday morning?
- 20 A. Yes.
- 21 Q. At what time, sir?
- 22 A. Roughly I get to the office at half passed, quarter to eight.
- 23 Half passed seven.
- 24 Q. Sorry, half passed seven, quarter to eight?
- 25 A. Yeh, in that vicinity.

JOHN MULLOWNEY, by Mr. Spicer

- 1 Q. Okay and when you would get to the station, would you check  
2 the occurrence reports and the crime reports from the previous  
3 evening?
- 4 A. Yes, whatever would be available there, yes.
- 5 Q. Would that be your -- would've been your practice at the time?
- 6 A. That was the practice, yes.
- 7 Q. Do you recollect whether you did it on that Saturday morning?
- 8 A. I would like to think I did, you know.
- 9 Q. And do you remember whether or not you noticed anything in  
10 those reports that morning?
- 11 A. Not that I can put my finger on and recall.
- 12 Q. And what were you told to do that morning, sir, that Saturday  
13 morning?
- 14 A. Well, later on in the morning roughly, I would think, about  
15 eight thirty, we were detailed to the Park as -- I'd had  
16 known that there was a stabbing in the Park.
- 17 Q. And how did you come to know that?
- 18 A. I would -- well, the talk between the men that were working  
19 at that time and reading the reports.
- 20 Q. Right and by whom were you detailed to go to the Park?
- 21 A. Probably by my sergeant or Sergeant MacIntyre.
- 22 Q. When you were detailed to go to the Park on that Saturday  
23 morning, were you given any information as to what you were  
24 to go looking for?
- 25 A. We were to search the Park particularly for a knife.

JOHN MULLOWNEY, by Mr. Spicer

- 1 Q. Were the circumstances of the prior evening described to you  
2 before you left?
- 3 A. Other than that there was a kid, the young Seale who I'd  
4 put out of the dance on a couple of occasions, had been  
5 stabbed in the Park area.
- 6 Q. Were you given any description of any possible suspects?
- 7 A. No.
- 8 Q. So you were directed to go to the Park and look?
- 9 A. Right.
- 10 Q. And then what did you do?
- 11 A. Well, searched the area --
- 12 Q. What was the area?
- 13 A. In the Park and out of the Park. The -- up on the tracks.  
14 The whole immediate area of the Park.
- 15 Q. Did you find anything?
- 16 A. I found a kleenex or tissue with what appeared to be blood  
17 on it.
- 18 Q. And do you remember where you found that?
- 19 A. I found that on the Boudreau property, on the lawn.
- 20 Q. The Boudreau property is on Crescent Street; here it's the  
21 grey house towards the right hand end, is that correct?
- 22 A. One thirty.
- 23 Q. One thirty?
- 24 A. Yes.
- 25 Q. This one here?

JOHN MULLOWNEY, by Mr. Spicer

- 1 A. Yes.
- 2 Q. Sir, where did you say -- again where did you find it?
- 3 A. Just on the lawn, the front lawn to the right of the walkway.  
4 Walkway coming up the sidewalk into the front door.
- 5 Q. And had you been directed to search around in that particular  
6 area of Crescent Street and the Park?
- 7 A. Yes, just in the whole Park area wherever. Backyards and  
8 so on. They never -- I took that on myself, I suppose.
- 9 Q. Okay, perhaps you can help me a little be with that when you  
10 say the whole Park area, backyards and so on, what area were  
11 you in fact searching?
- 12 A. I was mainly up in this end up here. This end and there was  
13 a couple of other --
- 14 Q. And, sir, when you say in this end where are you talking about?
- 15 A. I'm talking around the 130 area.
- 16 Q. Up on Crescent Street?
- 17 A. -- Other officers and I don't recall who they might have  
18 been, also off the day shift had come in the -- came on that  
19 search.
- 20 Q. How many officers in total would have been on the search?
- 21 A. Three or four.
- 22 Q. Was there any discussion amongst yourselves as yourself and  
23 the other officers about any possible suspects or what might  
24 have happened the night before?
- 25 A. All I had knowledge of at that time was that there was a

JOHN MULLOWNEY, by Mr. Spicer

1 |       stabbing in the Park and that was it.

2 | Q. Had you heard --

3 | A. And young Seale was the kid that was stabbed.

4 | Q. Were you aware when you went out to do your search on the  
5 | Saturday morning that Donald Marshall had given a description  
6 | to some police officers the night before?

7 | A. I believe I was, yes.

8 | Q. And would --

9 | A. And, you know, I probably read that in the reports, I don't  
10 | know for sure.

11 | Q. Are you able to tell us whether or not you -- that description  
12 | was something that you kept in your mind when you went off  
13 | looking around the Park?

14 | A. I kept the description in my mind, yes.

15 | Q. Did you do anything special other than finding the kleenex  
16 | on Crescent Street, did you do anything else on your shift  
17 | that day in connection with the incidents of the night before?

18 | A. No, not that I recall.

19 | Q. All right and once you found this kleenex, what did you do  
20 | with it.

21 | A. I turned it over, I believe, to Sergeant M. R. MacDonald.

22 | Q. And when would you have done that?

23 | A. Sometime around the dinner time or probably before, I don't  
24 | recall exactly.

25 | Q. Would you have gone back to the station to do that?

JOHN MULLOWNEY, by Mr. Spicer

1 A. If that's -- if that's where I turned it over to him it  
2 would have been at the office, yes.

3 Q. Are you not sure where you turned it over to him?

4 A. I believe it was in the office. I'm not definitely sure  
5 of that right now.

6 Q. Do you know whether or not you got in touch with him and  
7 said, "Look I've found this piece of kleenex, what am I  
8 supposed to do with it"?

9 A. I can't recall.

10 Q. Can't recall. Do you know whether or not M. R. MacDonald  
11 was out in the Park himself looking around that morning?

12 A. He could have been, he could have been on the other side  
13 of the Park. I don't know --

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*John*

JOHN MULLOWNEY, by Mr. Spicer

1 Q. You weren't aware that he was?

2 A. No, I wasn't.

3 Q. So when you handed over the kleenex to M. R. MacDonald  
4 did you have any discussion about anything else you might  
5 do in connection with incidents of the night before for  
6 the balance of your shift?

7 A. No.

8 Q. And what did you, in fact, do for the balance of your shift?

9 A. Whatever duties were assigned to me. I don't even recall  
10 if I was in the car or on the street at that time.

11 Q. But I take it from what you just said, that you do recollect  
12 that nothing special with respect to the night before was  
13 assigned to you?

14 A. No.

15 Q. I see. Did you have any further involvement at all in the  
16 investigation in to the Seale stabbing?

17 A. No, I didn't.

18 Q. What did you know about John Pratico?

19 A. Just to know him to see him that's all.

20 Q. Had you heard anything about him?

21 A. Nothing in particular, no.

22 Q. Were you aware that he was giving statements to the police?

23 A. No, I was not.

24 Q. You were not aware of that?

25 A. No.

JOHN MULLOWNEY, by Mr. Spicer

1 Q. Were you aware generally of the procedures and the process  
2 of the investigation as it went along?

3 A. Not -- no. No, I knew that there was an investigation.  
4 Sergeant MacIntrye at the time was heading it up and who  
5 he was interviewing and so on I have no knowledge.

6 Q. Did you know Junior Marshall at the time?

7 A. I knew him to see him.

8 Q. Knew him to see him. Did you know anything about him?

9 A. No.

10 Q. Do you know about -- Did you know anything at that time  
11 of what kind of reputation he had?

12 A. At that time?

13 Q. Yes.

14 A. No.

15 Q. Did you know -- or know of Roy Ebsary at the time?

16 A. No, I did not.

17 Q. Jimmy MacNeil?

18 A. I knew of him, yes.

19 Q. Were you aware in 1971 in November that there was an R.C.M.P.  
20 re-investigation and that Mr. MacNeil was involved in that?

21 A. If I was aware of it at that time, it would only be talk  
22 among the men.

23 Q. Well, is it your recollection that you were aware of it?

24 A. I believe it is, yes.

25 Q. In November of 1971?



JOHN MULLOWNEY, by Mr. Spicer

- 1 A. Yes.
- 2 Q. And were you aware that Mr. MacNeil was involved?
- 3 A. No, I wasn't.
- 4 Q. You were not aware that he was involved?
- 5 A. I don't think -- I don't think, no.
- 6 Q. Did you grow up on Crescent Street? No?
- 7 A. Argyle -- at the end of Argyle.
- 8 Q. At the end of Crescent?
- 9 A. I mean at the end of Crescent.
- 10 Q. Right, at the end. And have you known Chief MacIntyre for
- 11 a long time?
- 12 A. Yes.
- 13 Q. Quite a while?
- 14 A. Not necessarily when I lived in that neighbourhood but since
- 15 then. Since later years I grew older.
- 16 Q. Were you friends before you joined the police department?
- 17 A. With Sergeant MacIntyre?
- 18 Q. Yes.
- 19 A. No. I just knew where he was formerly from.
- 20 Q. That was on Crescent?
- 21 A. Pardon?
- 22 Q. That was Crescent?
- 23 A. Where he formerly came from?
- 24 Q. Yes.
- 25 A. Yes.

JOHN MULLOWNEY, by Ms. Edwardh

1 MR. SPICER:

2 Thanks very much.

3 BY MS. EDWARDH:

4 Q. Sir you've indicated that -- you've indicated that sometime  
5 in the morning of May the 29th you were detailed to do a  
6 search of the park?

7 A. I was one. Yes.

8 Q. And I take it today you can not recall who you did that  
9 search with but if I could ask you to turn to page 167.

10 No, 167.

11 MR. CHAIRMAN:

12 Volume 18?

13 MS. EDWARDH:

14 It's volume 12, My Lord.

15 COMMISSIONER EVANS:

16 What page?

17 MS. EDWARDH:

18 160 -- I'm sorry. 165.

19 BY MS. EDWARDH:

20 Q. And I'm referring you, sir, to your testimony at the  
21 preliminary inquiry in 1971 when Mr. Marshall was accused  
22 of murder and at that time, sir, you testified -- If I could  
23 draw you attention to lines 11 and 12. The question was:

24 And what was the result of your search?

25 And your answer is: Myself, Constable Wyman Young, Crawford

JOHN MULLOWNEY, by Ms. Edwardh

1 were detailed to the area to do a thorough search of  
2 it. Does that assist you at all in refreshing your memory  
3 as who -- as to who you were with that morning?

4 A. It doesn't assist my memory in what transpired that day  
5 other than I do recall that we made a search and until  
6 I read it there I would have forgotten who they were.

7 Q. But the -- Okay. But does it assist you in refreshing your  
8 memory with respect to who you conducted the search with?

9 A. It does now.

10 Q. And were those sir, the two officers, Constables Young  
11 and Crawford?

12 A. Well, yes. If I gave this evidence in the preliminary  
13 back then then that who it was.

14 Q. And I take it it assists you in recalling that today?

15 A. Yes, it does.

16 Q. And I take it those -- just for clarification -- those  
17 are two officers? Wyman Young and a Constable Crawford  
18 as well?

19 A. Yes. Yes.

20 Q. So there were really just three of you searching the park?

21 A. If that's what I said then that's it was.

22 Q. I take it you're content that at this time in July, 1971  
23 you're memory would be clear and --

24 A. Yes.

25 Q. -- you could be precise about who you did the work with?

JOHN MULLOWNEY, by Ms. Edwardh

1 A. Yes.

2 Q. Okay. Now, you said you were detailed by your sergeant or  
3 Sergeant MacIntyre to do this?

4 A. Yes.

5 Q. And you said you were -- you received that instruction sometime  
6 around eight-thirty in the morning on Saturday?

7 A. I think that -- well, we were scheduled on shift at eight  
8 o'clock and I would suspect -- I'm only guessing from  
9 memory that it would have been initiated as soon as possible.

10 Q. Well, do you have any memory, sir, as to whether or not  
11 you commenced that evening or in the morning?

12 A. Oh, it was in the morning.

13 Q. It was sometime in the morning?

14 A. Sometime in the morning, yes.

15 Q. I take it you can not be specific?

16 A. No. No, I can't.

17 Q. Now, you made notes of your search, is that correct?

18 A. I made notes of locating the kleenex. That's just when  
19 I found the kleenex -- the tissue. And you would have  
20 made notes in your notebook.

21 A. I would -- I would have made notes, yes.

22 Q. And I take it you might well have made notes of your  
23 instructions given to you?

24 A. No, not necessarily, no.

25 Q. Well, do you have your notes?

JOHN MULLOWNEY, by Ms. Edwardh

1 A. I can't find that notebook.

2 Q. Have you made a thorough search for that notebook sir?

3 A. Yes, I have. In my home.

4 Q. When did you start to look for that notebook?

5 A. Probably a month or so ago.

6 Q. And I take it you did have your notebook when you  
7 testified at Mr. Marshall's preliminary inquiry?

8 A. I -- I -- yes. I think I did.

9 Q. For -- If it assists you would you take a look at page 165?

10 COMMISSIONER EVANS:

11 What volume was that?

12 MS. EDWARDH:

13 I'm sorry. Same volume, same page.

14 BY MS. EDWARDH:

15 Q. And if I take you down to about line 18 you make the  
16 statement: "May I refer to my notes?" Do you see that?

17 A. Yes.

18 Q. So I take it you would have had your notebook at that time  
19 when you made that request?

20 A. Yes. Yes.

21 Q. Now, were there any regulations about where you were to keep  
22 your notebook in 1971?

23 A. Just on your person when you came to work or in your home  
24 when you're off.

25 Q. And I take it sir, when the notebook was full you would be

JOHN MULLOWNEY, by Ms. Edwardh

1 issued a new notebook?

2 A. Yes.

3 Q. And what did you do with the notebooks you had utilized?

4 A. Retain it.

5 Q. Would they be retained in your locker or someplace in  
6 your department?

7 A. In my person, yeh.

8 Q. You took them home?

9 A. Yes.

10 Q. Were you under instructions to keep them safely?

11 A. Yes, sir. No, ma'am.

12 Q. I take it you realize your notebook may be important?

13 A. Yes.

14 Q. Might contain important information?

15 A. Right.

16 Q. Have you lost other notebooks?

17 A. Yes. Yes, I've lost notebooks in -- while on duty.

18 Q. I'm not talking about leaving them or --

19 A. No. No.

20 Q. -- losing them while you're on duty or on a shift?

21 A. Actually lose them on duty.

22 Q. Have you completed a notebook, put it away and had it  
23 disappear as well? Beyond this occasion?

24 A. Not that I recall.

25 Q. Did anyone take or borrow your notebook from you at any time,

JOHN MULLOWNEY, by Ms. Edwardh

1 | sir, in the last ten or 15 years?

2 | A. Not that I recall.

3 | Q. Now, you said you were detailed by either Sergeant MacDonald -  
4 | Sergeant MacIntyre or your sergeant. Who was your sergeant?

5 | A. That I do not recall. Who my sergeant of the day shift  
6 | was. It -- I strongly suspect it might have been the  
7 | late Sergeant MacPherson.

8 | Q. Do you have any recollection of Sergeant MacIntyre being  
9 | in the police station that morning?

10 | A. Vaguely. Vaguely. Or at -- I not -- I don't want to  
11 | emphasize the police station. The park area in assisting in  
12 | the search.

13 | Q. So you have some preception of him being with you that morning?

14 | A. In that general area but not side by side with me.

15 | Q. You searched a part of the park that you have designated  
16 | as being in and around the premises at 130 Crescent Street?

17 | A. Yes.

18 | Q. And also in the portion of the park that is -- yes, might  
19 | roughly be from 120 to 134 Crescent Street, is that correct?

20 | A. I was in -- I was in the -- I had the first three houses.  
21 | The back yard of Doucette's and the front and along through  
22 | here and the "v" marked there in the park. Down in that  
23 | area, the bank and so on.

24 | Q. Let me just understand you. You were designated to search  
25 | the front and back yards --

JOHN MULLOWNEY, by Ms. Edwardh

1 A. No, it's that I designated myself. I -- okay.

2 Q. You designated yourself to search --

3 A. Yes.

4 Q. -- the front and back of three houses --

5 A. Right.

6 Q. -- 120, 130 and 134? Correct?

7 A. Yeh.

8 Q. And further you designated yourself to search the "v" in  
9 the walkway --

10 A. Yes.

11 Q. -- just past the footbridge?

12 A. This side of the footbridge.

13 Q. This -- okay. The Crescent Street side of the footbridge?

14 A. Yes.

15 Q. Did you discuss your designation with your fellow officers?

16 A. I believe that between -- when I look here there's two  
17 others -- that this is what we did. That we broke up the  
18 areas in which we were going to take.

19 Q. Okay. What areas did they search?

20 A. I don't recall. I remember looking -- I believe it  
21 was Wyman Young at the time up on the tracks. Walking  
22 along the tracks.

23 Q. And --

24 A. And Freddy LeMoine probably had this other end.

25 Q. If I could just stop you for a moment. The tracks -- moved --



JOHN MULLOWNEY, by Ms. Edwardh

1 -- throughout the whole area of the park.

2 A. Yes.

3 Q. Were do you recall him looking?

4 A. I recall looking at him when he was over the trestle  
5 he was walking along the tracks looking down at his feet,  
6 so to speak.

7 Q. When you say over the trestle here?

8 A. Yes.

9 Q. So I take it you don't know whether he searched down at  
10 Crescent and Bentinck or as far up as George and Byng?

11 A. I don't know exactly how far he was.

12 Q. And the other officer?

13 A. LeMoine?

14 Q. Where do you recall him --

15 A. I don't recall.

16 Q. You don't recall where he searched at all?

17 A. No.

18 Q. Did you sit and discuss beforehand where would you conduct  
19 your search?

20 A. Well, I believe we did so as we wouldn't be -- the three  
21 of us side by side going around.

22 Q. Do you have any recollection of that?

23 A. No, I don't.

24 Q. Were you ever trained as an identification officer at all  
25 prior to this time period?

JOHN MULLOWNEY, by Ms. Edwardh

1 A. No.

2 Q. Any of the other officers searching with you, were they  
3 trained, to the best of your knowledge?

4 A. Not that I -- Not that I know of.

5 Q. You're aware that the R.C.M.P. offered their services in  
6 the field of identification at that time to your force?

7 A. To our force?

8 Q. Yes.

9 A. They were available.

10 Q. Yes.

11 A. Yes.

12 Q. Do -- You were aware of that in 1971 in May?

13 A. Yes, but they were available --

14 Q. Did you discuss -- yes.

15 A. -- for whatever work the department required.

16 Q. Did you discuss whether you could usefully utilize their  
17 services at that time?

18 A. No, I didn't.

19 Q. Were you in fact looking for a kleenex?

20 A. No, I wasn't.

21 Q. You had received certain information that made the kleenex  
22 significant to you, isn't that fair, sir?

23 A. Pardon?

24 Q. You had received certain information that made the kleenex  
25 significant to you?

JOHN MULLOWNEY, by Ms. Edwardh

1 A. No.

2 Q. Isn't that right?

3 A. No, we were mainly looking for a weapon of some sorts and  
4 I came across the kleenex and when I saw blood on it I felt  
5 that it might add something to that particular case.

6 Q. You saw, I take it, ample other items of kleenex, debris,  
7 paper in and around your search?

8 A. Yes.

9 Q. This is the only kleenex you seized?

10 A. Yes. It's the only one I seized because it had markings of  
11 what I -- what appeared to me to be blood.

12 Q. It is the only item you seized in the whole park?

13 A. That's right. Yes.

14 Q. Is that correct?

15 A. Yes.

16 Q. It is not the only item of that kind or character that you  
17 saw?

18 A. No. No.

19 Q. And I put it to you, sir, that you were aware that that  
20 kleenex might have significance because there was some  
21 suggestion that Mr. Marshall may have had a cut. That might  
22 be a kleenex that he'd used?

23 A. No.

24 Q. Might have -- you might have been told that? Is that fair?

25 A. I might have been told and I don't recall that I was but

JOHN MULLOWNEY, by Ms. Edwardh

1 where I was coming from I believe at that time was when  
2 there's a stabbing there's usually blood to follow and I just  
3 assumed this kleenex was -- would form part of.

4 Q. And was there blood on the street too?

5 A. Not that I recall seeing. I looked and I didn't recall --  
6 I don't recall seeing any.

7 Q. Do you recall, just so I understand your evidence, carefully  
8 examining the area where Mr. Seale had been lying and  
9 determining there was no remnants of blood?

10 A. I don't recall seeing any blood on the street.

11 Q. Did you swab it?

12 A. Did I swab the street?

13 Q. Yes.

14 A. No.

15 Q. Did you make any -- were you looking for blood I take it  
16 as well in the area?

17 A. No. No. I was looking for a weapon. What would be used  
18 as a weapon or what could be construed to be a weapon.

19 Q. And if I can just go back to the kleenex for a moment.  
20 Would it be fair to say that it is possible that someone  
21 told you that Mr. Marshall may have been injured and kleenex  
22 was significant? Is that what I understand your evidence  
23 to be, sir?

24 A. No, the main purpose there was to search for a weapon and I  
25 came across the kleenex and there was no reflection as to who

JOHN MULLOWNEY, by Ms. Edwardh

1 | that blood might belong to.

2 | Q. Did you in taking up the kleenex place it in any kind of  
3 | container?

4 | A. No, I didn't.

5 | Q. Have you ever received any instructions or training with  
6 | how to handle exhibits that are going to be sent for testing?

7 | A. Today, yes.

8 | Q. How about in 1971?

9 | A. No.

10 | Q. Had you been made aware at least that you should not handle  
11 | exhibits?

12 | A. No.

13 | Q. Sir, if you had found the knife, would you have picked that  
14 | up too?

15 | A. Probably in a -- preservable way.

16 | Q. In a preservable way?

17 | A. Yes.

18 | Q. So that you wouldn't have destroyed any fingerprint evidence?

19 | A. Right. Or I might have sat on it. Depending if I had  
20 | found it at the time I might have sat on it and summoned  
21 | somebody to come and assist.

22 | Q. So you would have recognized that some care had to be taken  
23 | with it as an exhibit?

24 | A. That's right. Yes.

25 | Q. Did you take any care with the kleenex for example?

JOHN MULLOWNEY, by Ms. Edwardh

1 A. Other than picking it up where there wasn't blood.

2 Q. And putting it in any kind of container at all?

3 A. I -- I --

4 Q. A sealed package?

5 A. I held on to it.

6 Q. Yeh, but --

7 A. Until whenever. I don't know how this -- I had no sealed  
8 package, no.

9 Q. When you carried it around and eventually handed it to  
10 Detective MacDonald, you would have had it for some hours,  
11 correct?

12 A. I don't know. I don't know.

13 Q. Well, did you put it in anything before handing it to  
14 Detective --

15 A. No, I don't think I did. I might -- I might have gotten  
16 an envelope and placed it in it. I'm not sure.

17 Q. You've no recollection?

18 A. No.

19 MR. CHAIRMAN:

20 While you're on that, (inaudible - microphone not transmitting)..  
21 on page 165, is that where there's reference to an envelope marked  
22 exhibit M-5. "Would you tell me what was in that envelope?" and  
23 the answer is "It is a kleenex."

24 MS. EDWARDH:

25 Sir, I wasn't sure that that was --

JOHN MULLOWNEY, by Ms. Edwardh

1 BY MS. EDWARDH:

2 Q. Do you -- do you recall, sir, at all that whether when you  
3 handed the kleenex over to Detective MacDonald, he put it in  
4 an envelope of some kind?

5 A. I don't recall. I was able to identify it in the preliminary  
6 hearing and I would like to think that probably my initial  
7 might have been attached to it or my writing on the envelope  
8 or something.

9 MS. EDWARDH:

10 There's no suggestion on the record, My Lord, that there was  
11 an initialing of the item. That's why I can't assist the witness  
12 in that way.

13 BY MS. EDWARDH:

14 Q. Did anyone at all suggest to you that morning that they were  
15 interested in ascertaining the blood type of any blood that  
16 might be found that could be linked to the scene?

17 A. No.

18 Q. Do I take it, sir, that as a result of your search you  
19 in effect did not file any report? The three of you together  
20 didn't file a report of what you searched for and where  
21 you went?

22 A. No, there was no report made that I recall.

23 Q. Now, as someone who didn't have identification training,  
24 would you agree sir that someone skilled in identification  
25 training would search for a knife quite differently than you

JOHN MULLOWNEY, by Ms. Edwardh

1           might search for one?

2    A.   Probably so.

3    Q.   And do you recall any discussion that you raised the topic  
4           or your colleagues may have raised that you should have  
5           some assistance from the R.C.M.P. at this time as you began  
6           to search the park?

7    A.   No, I don't recall any conversation in that regard.

8    Q.   Today, in retrospect sir, would you agree that your search --  
9           that there was no guarantee that your search was by any  
10          reasonable description a thorough or exhaustive search?

11   A.   It was only done by foot and by sight.

12   Q.   Literally?

13   A.   Right.

14   Q.   You had nothing to move aside branches with or anything like  
15          that?

16   A.   My hands, that's all.

17   Q.   Just your hands?

18   A.   Yes.

19   Q.   You didn't have any magnets or anything else that would  
20          assist you?

21   A.   No.   No.

22   Q.   That evening you were with a Constable LeMoine?

23   A.   At the dance?

24   Q.   At the dance.

25   A.   I believe it was he, yes.



JOHN MULLOWNEY, by Ms. Edwardh

1 Q. And I take it that after you completed your work, both  
2 of you then simply left your shift?

3 A. Yes.

4 Q. I'm going to ask you, sir, to turn to volume one -- I'm sorry,  
5 page one of volume 16. Of a report signed by Constable  
6 MacNeil and your partner in that evening Constable LeMoine.  
7 It relates to an incident involving one Roy Newman Ebsary.  
8 Could I just ask you to peruse that sir?

9 A. Did you say it was this --

10 Q. Do you see that?

11 A. This page? Is that got R.C.M.P. 139 on it?

12 Q. No, it's page one --

13 A. Yes.

14 Q. Yes.

15 A. Okay.

16 Q. Have a chance to -- take your time. Okay? Now, assuming  
17 for a moment that 'F. LeMoine' would be the same gentleman  
18 that you were in the car with that night. Is that a fair  
19 assumption? By the initials?

20 A. Not in the car. At the dance.

21 Q. I'm -- yes.

22 A. Yeh.

23 Q. Is 'F. LeMoine' the same gentleman --

24 A. Fred LeMoine. I -- yes.

25 Q. That was his first initial as well?

JOHN MULLOWNEY, by Ms. Edwardh

- 1 A. Yes.
- 2 Q. Okay. Did you ever have occasion to talk with him about  
3 Roy Newman Ebsary at all in the years after the stabbing?
- 4 A. No.
- 5 Q. Did you ever have occasion when the re-investigation started  
6 to take place to look at the question of how well known  
7 Mr. Ebsary was in the police department --
- 8 A. No.
- 9 Q. -- around 1971?
- 10 A. No.
- 11 Q. When it came to light that Mr. Marshall was convicted of  
12 a crime for which he was not responsible, did you as  
13 Deputy Chief or any officer under your command engage in  
14 a review of the procedures that had been present at the  
15 time that may have resulted or assisted in taking you  
16 astray?
- 17 A. Can I get you to reask that question because I wasn't Deputy  
18 Chief at that time.
- 19 A. Yes. Okay. How -- Are you aware, sir, that anybody in  
20 the force ever said I wonder if we contributed to this and  
21 on that basis conducted a review of the procedures and policies  
22 of the Sydney Police Department?
- 23 A. Not in my presence.
- 24 Q. Did you -- outside of your presence that you have heard of?
- 25 A. No.

JOHN MULLOWNEY, by Ms. Edwardh

1 Q. Now, when you saw Mr. Seale that night and you ejected him  
2 from the premises, did you make any observations as to  
3 whether or not he had consumed any alcohol?

4 A. I detected the smell of what I thought to be beer.

5 Q. Would it be fair to though, that even if you did detect  
6 it there was nothing that lead you to beleive he was  
7 intoxicated?

8 A. No, he was not intoxicated.

9 Q. And that his behaviour when you requested that he leave was  
10 appropriate --

11 A. Of course.

12 Q. --in other words he wasn't bellicose or difficult or  
13 aggressive with you?

14 A. No.

15 Q. With respect to Mr. Pratico as a young person who was  
16 as you described it 'a street person'. Was he fairly  
17 well known among officers who were on car patrol or foot  
18 patrol? As a street kid?

19 A. I would think so, yes.

20 Q. And would it be also fair to say that he was known to  
21 have some problems?

22 A. Well, I don't know how the other officers might have projected  
23 them but I personally felt that there was something lacking.

24 Q. And when we talk about lacking, would it be fair to say that  
25 he seemed to -- being as polite and gentle as possible -- that

JOHN MULLOWNEY, by Ms. Edwardh

1 he didn't seem to have perhaps the social or intelligence --

2 A. That's true.

3 Q. -- that other young children his age might have had?

4 A. Yes.

5 Q. And I take it that you became aware that he was a 'key  
6 witness' in the Marshall case?

7 A. Yes.

8 Q. Did you ever have occasion to discuss Mr. Pratico's  
9 deficiencies with any of the detectives, particularly  
10 Detective MacIntyre?

11 A. No, I didn't.

12 Q. Did you ultimately become aware that Mr. Pratico was in  
13 a psychiatric facility?

14 A. I never knew that he was there unless I heard it and this is -

15 Q. Did you hear it from anyone?

16 A. Well, just what I read by -- for instance, the situation  
17 that exists with him today. You know.

18 Q. Leaving aside today.

19 A. No.

20 Q. Around that time period?

21 A. No. I didn't.

22 Q. You did not know it?

23 A. No.

24 Q. You just spotted him as a troubled, not very bright, young  
25 person?

JOHN MULLOWNEY, by Ms. Edwardh

- 1 A. Right.
- 2 Q. And do I understand your evidence to be although you were  
3 on duty the next day and I take it you had a car the  
4 next day so you're in car patrol on Saturday --
- 5 A. I don't recall what my duties were that particular day.  
6 I --
- 7 Q. Well, you would have had a car in the next two or three  
8 days, is that correct?
- 9 A. I don't recall.
- 10 Q. Okay.
- 11 A. I don't recall. I somehow suspect I might have been  
12 pounding a beat that day because I don't know that they  
13 would take the car off patrol to do a search of the park.
- 14 Q. Do I understand it's -- it's your evidence sir that at  
15 no time on Saturday were you given a specific description  
16 to go and search for? The identities of certain people?
- 17 A. Not for people. No.
- 18 Q. No. And on Sunday or Monday?
- 19 A. Well, having read the report to -- I think it would be a  
20 think-tank situation. If you could come up with what who  
21 you saw who might answer the description.
- 22 Q. Did you have those kind of think-tank situations?
- 23 A. Among the -- among your peers on the beats and that. You  
24 had conversation.
- 25 Q. But this would be -- I'm asking I suppose that that specific

JOHN MULLOWNEY, by Ms. Edwardh

1 weekend. On Saturday and Sunday, do you recall sitting with  
2 your colleagues and thinking who could this description match?

3 A. Yes.

4 Q. And I'm going to suggest to you, sir, that there were some  
5 people in that department such as Officer MacNeil who thought  
6 that that description matched Roy Newman Ebsary?

7 A. I don't know that.

8 Q. Do you recall anyone saying that they thought the description  
9 matched somebody? Forget that you can't remember the name.

10 A. No. No.

11 Q. And I take it the description you were all talking about would  
12 be the description of whatever you had read in whatever report  
13 had to be -- happened to be filed? So sometimes it would  
14 be the May 29th description and sometimes it would be  
15 the description that you would be -- that would be put down let's  
16 say on May 30th, if they changed?

17 A. If they changed I'd be looking for whatever the changes  
18 were.

19 Q. Do you recall there being any changes in this case?

20 A. No, not particularly.

21  
22  
23  
24  
25  


JOHN MULLOWNEY, by Ms. Edwardh, by Mr. Pugsley

1 Q. One other question, with respect to Mr. Pratico and the night  
2 in question, do you recall seeing Mr. Pratico at the dance?

3 A. Not that I recall, no. He could have been there. I don't  
4 know. I don't recall.

5 Q. Would it assist you, sir, if I suggested that Mr. Pratico  
6 has indicated and there seems to be evidence that not only  
7 was he there but he was also quite intoxicated?

8 A. No, we didn't assist him at all.

9 MS. EDWARDH:

10 Okay. Those are my questions. Thank you very much.

11 MR. CHAIRMAN:

12 Mr. Pugsley.

13 BY MR. PUGSLEY:

14 Q. Deputy Chief, I'm acting for John MacIntyre. I'll address  
15 your attention to volume 12, page 165 which my friend referred  
16 you to a moment ago, and in the middle of the page about line 13:

17 Q. "And what was the result of your  
18 search"?

19 A. "Myself and Constable Wyman Young and  
20 Crawford were detailed to the area  
21 to do a thorough search ..."

22 And those were the instructions you received, were they, to do  
23 a thorough search of the area?

24 A. Yes.

25 Q. And that's, in fact, what you did, a thorough search?

A. As best as we could, yes.

JOHN MULLOWNEY, by Mr. Pugsley

1 Q. Yes, and in the next line you go on to say:

2 "We checked the complete area  
3 considerably".

4 A. Yes.

5 Q. My friend asked you about the time of day as to when you would  
6 have started the search. May I direct your attention to page 168  
7 in the same volume. At the bottom of the page, cross-examination  
8 by Mr. Rosenblum:

9 Q. "You searched the park grounds, did you  
10 not"?

11 A. "Yes, sir".

12 Q. "When was the -- When was that  
13 Constable Mallowney, when you  
14 did the searching"?

15 A. "On the morning of the 29th".

16 Q. "About what time"?

17 A. "We detailed there at approximately  
18 quarter to nine in the morning".

19 A. Yes.

20 Q. Yes, and that would be the approximate time?

21 A. I would quesstimate that eighty-thirty, in that area, that we  
22 would have been requested to go over and I can't recall how we  
23 even got over there.

24 Q. Yes. You were in the Detective Department for awhile, sir?

25 A. Yes, sir.

Q. For what period of time?

A. Probably fourteen, fifteen years.



JOHN MULLOWNEY, by Mr. Pugsley

1 Q. Yes, and was Chief MacIntyre in the Department this same time?

2 A. In the Detective Department?

3 Q. Yes.

4 A. When Chief MacIntyre was in the Detective Department I would  
5 have been down there on a loan basis from the regular patrol  
6 on occasions to fill in for a vacation or whatever.

7 Q. Yes, and when he became -- Would you have an opportunity to  
8 observe his techniques and his methods at that time and also  
9 subsequently when he became Chief of Police?

10 A. Yes.

11 Q. Yes, and what opinion do you hold of his -- of his capabilities  
12 as a Police Officer?

13 A. He was very thorough. He saw to it that we did, you know,  
14 assist when -- as a -- my former boss, he assisted and would  
15 ask questions about a certain file, if you had done this or  
16 if you had done that and sometimes I would not have done --  
17 it had escaped my mind and I would have done as he suggested  
18 or requested.

19 Q. Did he carry out his responsibilities as a Detective and -- and  
20 as a policeman in a proper manner?

21 A. In my opinion, yes.

22 MR. PUGSLEY:

23 Thank you, sir. That's all the questions I have.

24 MR. CHAIRMAN:

25 Mr. Barrett.

JOHN MULLOWNEY, by Mr. Saunders

1 MR. BARRETT:

2 No questions.

3 BY MR. SAUNDERS:

4 Q. Deputy Chief, can you tell us where former Constables  
5 LeMoine and MacNeil are today?

6 A. Constable LeMoine is in charge of the record section presently  
7 in the Department.

8 Q. In the Sydney Police Department?

9 A. Yes.

10 Q. Yes, sir.

11 A. And he is Court Attendance Officer for the Department. He  
12 attends all Court functions. Wyman Young, he is presently with  
13 the Sydney Fire Department.

14 Q. The Sydney Fire Department?

15 A. Yes.

16 Q. All right. In 1971, sir, did you know Terrance Gushue?

17 A. I didn't know him but I heard the name.

18 Q. Did you know him by face?

19 A. No.

20 Q. Do you have any knowledge whether he was at the dance on  
21 May 28th, 1971?

22 A. No, I don't. No, I don't.

23 Q. How well did you know Donald Marshall, Jr., in May, 1971?

24 A. Just to see him. I would recognize who he was.

25 Q. You knew who he was?

JOHN MULLOWNEY, by Mr. Saunders

- 1 | A. Yes.
- 2 | Q. Yes. Were you friendly with Donald Marshall, Jr.?
- 3 | A. Not -- No, I had no -- no occasion to make acquaintances or  
4 | other.
- 5 | Q. Did you have any occasion to have contact with Donald  
6 | Marshall, Jr., while he was incarcerated at Dorchester?
- 7 | A. No.
- 8 | Q. In 1981 were you the only John Mallowney on the Sydney Police  
9 | Department?
- 10 | A. Yes.
- 11 | Q. Could I get you to look at volume 16, page 214 please.
- 12 | A. Two-fourteen?
- 13 | Q. Two hundred and fourteen. It's almost at the end of the book.
- 14 | A. Yes.
- 15 | Q. Do you have that before you, sir?
- 16 | A. Yes.
- 17 | Q. It appears to be a typed letter from Mr. Marshall to Mr. Ebsary  
18 | not dated, and you see Mr. Ebsary's address in the top left-hand  
19 | corner of the page?
- 20 | A. Yes.
- 21 | Q. And you are shown as receiving a copy of that letter, sir. Did  
22 | you receive a copy of it?
- 23 | A. I did.
- 24 | Q. You did?
- 25 | A. Yes.

JOHN MULLOWNEY, by Mr. Saunders

- 1 Q. Can you tell the Commission when it was you received your  
2 copy?
- 3 A. As far as a date is concerned?
- 4 Q. Yes.
- 5 A. No, I can't.
- 6 Q. What did you do with it when you got it?
- 7 A. I turned it over to Sergeant MacIntyre who I think at that time  
8 was Chief of Police.
- 9 Q. And where were you when you received your copy of this letter,  
10 sir?
- 11 A. I would have been down in the Detective Division.
- 12 Q. And did it come to you at the police station in Sydney?
- 13 A. Yes, it did. As far as I recall it did. I'm not sure.  
14 It could have come from my home. I'm just not that sure.
- 15 Q. Did you read the letter when you got it?
- 16 A. Yes, I did.
- 17 Q. Yes, and then you gave it to Chief of the day, MacIntyre?
- 18 A. Right.
- 19 Q. Did you have any communication yourself with Mr. Marshall  
20 after receiving this letter?
- 21 A. No, I didn't.
- 22 Q. Do you have any idea why Mr. Marshall directed a copy of the  
23 letter to you?
- 24 A. No, I don't.
- 25 Q. Was there any discussion between yourself and Chief MacIntyre

JOHN MULLOWNEY, by Mr. Saunders, by Mr. Pringle

1 about the letter when you received it?

2 A. As I recall it was very short. I believe I indicated to him  
3 that I couldn't understand why I would be recipient of the  
4 document and I said, I -- there's nothing I can say in here  
5 as to his guilt or his innocence and I gave the document to  
6 Chief MacIntyre at that time because he was the Investigator.

7 Q. Can you recall any other conversation between yourself and  
8 Chief MacIntyre about the contents of the letter?

9 A. No, other than I just disclosed to him that I couldn't  
10 understand why I would be the recipient of it because I  
11 knew nothing of the file.

12 Q. Yes. Beyond saying that to him did you say anything else?

13 A. No, not that I recall.

14 MR. SAUNDERS:

15 Thank you. Those are my questions.

16 MR. PRINGLE:

17 Just a couple of questions, My Lord.

18 BY MR. PRINGLE:

19 Q. Deputy Chief, throughout your time in the Detective Department  
20 did you have occasion to utilize the polygraph test in any  
21 way?

22 A. To what, sir?

23 Q. The polygraph, lie detector test, did you use that at any  
24 time?

25 A. Did I ever use it?

JOHN MULLOWNEY, by Mr. Pringle

1 Q. Yes.

2 A. No, I was only ever introduced to it once on a major crime  
3 course in Halifax.

4 Q. Is that the joint forces operation that was referred to earlier?

5 A. It wasn't an operation. It was a major crime course conducted  
6 in Halifax by the R.C.M.P.

7 Q. Oh, I'm sorry. Right. Okay.

8 A. It was a two-week course.

9 Q. Have you ever requested the assistance of the Royal Canadian  
10 Mounted Police and the use of their polygraph men and  
11 equipment?

12 A. No, I haven't.

13 Q. At any time?

14 A. No, I haven't.

15 Q. Thank you very much.

16 A. Not personally.

17 Q. Has the Police Department in Sydney done that recently to your  
18 knowledge?

19 A. I believe we've had the assistance of the instrument in the  
20 past on a couple of occasions.

21 Q. Okay. Who would make those requests from the City Police  
22 force?

23 A. Well, the request has got to come through the Chief to the  
24 Inspector locally who in turn goes to his superior.

25 MR. PRINGLE:

Thank you.

JOHN MULLOWNEY, by Mr. Ross

1 MR. CHAIRMAN:

2 Mr. Ross.

3 BY MR. ROSS:

4 Q. Officer Mallowney, my understanding is that on the 28th of  
5 May, 1971, you and Constable LeMoine were policing the -- the  
6 dance at St. Joseph's?

7 A. Yes.

8 Q. Now did you, in fact, find any liquor that night?

9 A. I could have. I could have. I don't recall but I could have.

10 Q. Well, tell me something, when you police dances like that one,  
11 would you keep any record of anything which occurred at the  
12 dance?

13 A. If you made an arrest there would be a self-record in that  
14 you'd have to call the car to come up and the car would make  
15 a report as to they're responding as to why.

16 Q. I see, but apart from that you'd maintain no records?

17 A. No.

18 Q. So at this point you couldn't tell us whether or not there was  
19 any liquor incidents?

20 A. No, I can't. No, not by recollection.

21 Q. As far as fights are concerned, do you recall any fights at  
22 the dance?

23 A. Not that particular night, no.

24 Q. As a matter of fact I think we're going to find evidence from  
25 Terry Gushue and probably Patricia Harris that there was a fight

JOHN MULLOWNEY, by Mr. Ross

1 and Terry Gushue was involved and was ejected from the dance  
2 around ten-thirty. Do you recall anything about that?

3 A. No, I don't. No. No.

4 Q. Did you discuss this evening with Officer LeMoine?

5 A. Did I discuss it?

6 Q. Yes, with Officer LeMoine.

7 A. With regard to the fight?

8 Q. Well, after the reinvestigation and -- of 1971, and again after  
9 the R.C.M.P. got involved in 1982.

10 A. Nothing other than that we recall having to put Sandy Seale out  
11 of the dance.

12 Q. That's the only thing that you can recall for the night?

13 A. That's the only -- That's right.

14 Q. I see, and -- but as far as the fight itself is concerned, if  
15 there was a fight you don't recall and if --

16 A. Well, there could have been a fight. I'm not saying that  
17 there wasn't, but it doesn't stand out.

18 Q. Yes. Do you recall any other persons that had to be put out  
19 or was it just Sandy Seale?

20 A. No, as I recall on my first response to the area where these  
21 kids were getting in, there was two or three that we were  
22 able to identify had not had the stamp on their hand which  
23 would allow them to gain admission. Now it was my understanding  
24 that several others had gotten away before we got to the area  
25 and got mingled in among the crowd.



JOHN MULLOWNEY, by Mr. Ross

- 1 Q. But the only one that was drawn to your attention really was  
2 Sandy Seale?
- 3 A. No, there was a group.
- 4 Q. And the only one that you recall in any event was Sandy Seale?
- 5 A. Yes, because of the situation that has transpired since.
- 6 Q. Okay. I understand. Do you recall the time -- around --  
7 around -- How early was it that Sandy Seale was put out of  
8 the dance the first time?
- 9 A. I would think around nine, nine-thirty, in that area.
- 10 Q. Around nine to nine-thirty?
- 11 A. In that area.
- 12 Q. And what about the second time, any recollection?
- 13 A. The second time, probably a half hour later or towards an hour  
14 later.
- 15 Q. I see. Approximately ten, ten-thirty?
- 16 A. Right.
- 17 Q. Yes. Now there was a suggestion from some of the statements  
18 that I've read that the dance had been sold out. Is that your  
19 recollection?
- 20 A. That could be possible because at that time that parish dance  
21 was "the" thing in that -- in the Town proper.
- 22 Q. Had you worked many of these dances before?
- 23 A. Yes.
- 24 Q. And there'd be dances that you worked. Did you recall Sandy  
25 Seale being at any of the dances prior to this?

JOHN MULLOWNEY, by Mr. Ross

1 A. No.

2 Q. Did you really know Sandy Seale?

3 A. Only through his association through hockey.

4 Q. When you received that -- the copy of that letter from  
5 Donald Marshall, Jr., to Roy Ebsary, was it the policy of  
6 the Department to date stamp when -- correspondence or  
7 documents when they were received?

8 A. I don't know what the Administration's policy in those days  
9 were. I do not know.

10 Q. But this would have been around 1982 that you would have  
11 received that letter, wouldn't it?

12 A. I don't recall what date I got that letter. I do not recall,  
13 and I think -- but I think --

14 Q. But in any event --

15 A. Pardon.

16 Q. But in any event, did you have a policy of date stamping  
17 your correspondence?

18 A. I would have dated stamped something that was directly  
19 involving myself or my file as to -- and that would have  
20 been done by hand.

21 Q. Yeh, but --

22 A. But in this case where it had no concern of mine and I didn't  
23 have the file, I felt that this should go to the Chief  
24 because it was correspondence that he had something to do  
25 with and I had nothing to do with it.

JOHN MULLOWNEY, by Mr. Ross

1 Q. In spite of the fact that it was specifically directed to you?

2 A. That's right.

3 Q. Yes. Did you have any dicussion with Roy Gould about this  
4 letter?

5 A. I might have. I might have. I don't know. I might have  
6 brought it to his attention or whatever that -- you know,  
7 asking a question, "What's going on, sir"? I don't know.  
8 I can't recall.

9 Q. What about Steven Aronson, did you have any discussion with  
10 Steve Aronson about this later?

11 A. No, sir.

12 Q. I see. Did you at any time try to follow-up with Chief  
13 MacIntyre as to whether or not there as a response or any  
14 result as -- any repercussions as a result of his receiving  
15 this letter?

16 A. No.

17 Q. You just gave it to him and that was about it?

18 A. I think I questioned him sometime later as to the -- what became  
19 of that letter and I had to remind him that I did give him  
20 one and his response was, "I don't recall what it was", and  
21 I think he said, "It's in the file", or whatever. I don't  
22 recall.

23 Q. I see. But from the text it would seem to be a fairly  
24 important document, wouldn't it?

25 A. Pardon.

JOHN MULLOWNEY, by Mr. Ross

1 Q. From the text of the letter it would appear to be a fairly  
2 important document?

3 A. I would say so, yes.

4 Q. And you passed this off to the Chief and he had no response?

5 A. Not at that time, no.

6 Q. And you didn't follow it up?

7 A. No, I didn't.

8 Q. Why not?

9 A. Well, when I gave it to the Chief I indicated to him at that  
10 time that there's -- you know, I have no -- nothing to do  
11 with this. It was your file. You did the investigation and  
12 so on and I just left it at that.

13 Q. Sort of washed your hands of it?

14 A. No, I wouldn't say, "washed my hands of it," but there was  
15 nothing I could do with it, but I had to bring it to his  
16 attention to let him know that this was directed to me.

17 Q. What was your rank at that time, you were a detective, weren't  
18 you?

19 A. Yes.

20 Q. And that would be a fairly senior rank, wouldn't it?

21 A. I would have been a Sergeant, I suppose, if I knew the  
22 date, but there's no date. I don't recall the date.

23 Q. Well, as a matter of fact by looking at the reply, the reply  
24 I recall was around February of 1982, and it would suggest  
25 that this letter might have been late '81, perhaps early '82?

JOHN MULLOWNEY, by Mr. Ross

1 A. I would have been a Detective Sergeant at that time.

2 Q. Yes, and a fairly senior man?

3 A. Yes.

4 Q. And as a fairly senior man with a fairly serious looking  
5 problem you did nothing?

6 A. I gave it to the Chief who investigated that file.

7 Q. And do you think that was the full extent of the --

8 A. And it's making the request of me to render assistance which  
9 I have no knowledge of the particular file or its investigation  
10 at the time other than my participation at the dance the night  
11 prior to and the search of the park that day and that was my  
12 part of the investigation of that particular file.

13 Q. Officer, I could understand your involvement in 1971, but  
14 I'm saying to you that some ten years later when I very  
15 serious matter is drawn to your attention, that I do not  
16 believe that it's enough to pass this off to somebody, and  
17 when there's no action, you yourself do nothing, do you  
18 agree?

19 MR. PUGSLEY:

20 With respect, My Lord, I don't think we need to subject this  
21 witness to any of that line of questioning. It's completely unfair.

22 MR. CHAIRMAN:

23 I just had my finger on the button, number one, I see no request  
24 in that letter for assistance from this gentleman and he has  
25 explained to the Commission why -- what he did, and he passed it

JOHN MULLOWNEY, by Mr. Ross

1 | to the head of the police force. Now --

2 | MR. ROSS:

3 | I appreciate that.

4 | MR. CHAIRMAN:

5 | --it will be for us to interpret whether that constitutes doing  
6 | nothing or whether it was an adequate response to information  
7 | that was given to him without a request for assistance.

8 | MR. ROSS:

9 | If it pleases, My Lord, I agree that there is no indication of a  
10 | request to this Officer. I would further put -- further identify  
11 | that the word -- it was passed in but the request came from his  
12 | mouth, not mine. I didn't suggest to him that there was any  
13 | request. I wanted to know what he did with it and whether or not --  
14 | when nothing was done --

15 | MR. CHAIRMAN:

16 | Well, I repeat, that surely is a decision for the Commission or a  
17 | factor for the Commission to take into consideration whether his  
18 | handing it over to the Chief of Police was all that would -- could  
19 | be reasonably expected of him at that time, and I had some  
20 | difficulty with your question of suggesting to him or implying  
21 | to him that he should have done more. I don't know if he should  
22 | have done more or not but let's wait and see as the evidence  
23 | unfolds and then we'll reach that conclusion.

24 | MR. ROSS:

25 | Well, if it pleases, My Lord, I thought I would be assisting the

JOHN MULLOWNEY, by Mr. Ross

1 Commission in getting the evidence to unfold if I could find out  
2 really what they -- what they did. I'm just asking him.

3 MR. CHAIRMAN:

4 Well, he's told us ad nauseam what he did or what he didn't do, and--

5 MR. ROSS:

6 Well, I will not continue the questioning. I will just say that  
7 perhaps you --

8 MR. CHAIRMAN:

9 Don't misinterpret. I don't want to hear tomorrow that you were  
10 cut off or anything. You can question, but questioning and commenting  
11 on the evidence -- I suggest that commenting on the evidence is in  
12 a totally different category. That's for the Commission. That's  
13 what we're here to decide. Question him as long as you wish, as  
14 long as the questions have even a semblance of relevancy.

15 MR. ROSS:

16 A `semblance. I'll try my best, My Lord.

17 BY MR. ROSS:

18 Q. So I take it then, Officer, that having handed over this letter  
19 to your Chief you were satisfied that you did as much as you  
20 should be doing at that time?

21 A. Yes.

22 Q. Getting back for a minute to the night of the 28th of May and  
23 to Sandy Seale. Now you indicate that you detected the smell of  
24 what you thought was beer on his breath?

25 A. Yes.

JOHN MULLOWNEY, by Mr. Ross

- 1 Q. Did you ask him whether or not he had been drinking?
- 2 A. No, I didn't.
- 3 Q. You made no further inquiries?
- 4 A. No.
- 5 Q. Was he searched to see whether or not he had any liquor on
- 6 his possession?
- 7 A. No.
- 8 Q. So I take it that -- I mean this was just your best guesstimate
- 9 at the time that he might have been drinking?
- 10 A. Well, I guess that I detected the smell, what I took to be
- 11 beer. He was not intoxicated, and he was not obnoxious
- 12 or disrespectful or anything at all. He just left at my
- 13 request.
- 14 Q. Thank you. Now after the dance had -- After the dance had --
- 15 was finished around midnight on the 28th of May, 1971, I
- 16 take it you would have stayed there with Officer LeMoine
- 17 until everybody had gone home?
- 18 A. Yes.
- 19 Q. Around what time --
- 20 A. Left the immediate area.
- 21 Q. Pardon me.
- 22 A. Left the immediate area.
- 23 Q. Left the immediate area?
- 24 A. Yes.
- 25 Q. Have you got any recollection of around the time that -- that



JOHN MULLOWNEY, by Mr. Ross, by Mr. Wildsmith

1 the majority of the people left the area, was it shortly  
2 after twelve or closer to twelve-thirty, as you recall?

3 A. I would -- I would say probably in fifteen minutes the  
4 majority or three quarters of the crowd would have disbursed?

5 Q. And you would have left shortly after that?

6 A. I would have left shortly after -- as long as that parish lot  
7 was free of the kids and vehicles we would have left. That  
8 was policy.

9 MR. ROSS:

10 Thank you very much, Officer.

11 MR. CHAIRMAN:

12 Mr. Wildsmith.

13 BY MR. WILDSMITH:

14 Q. Deputy Chief, I'd like to start by asking you whether you're  
15 aware of Indian youth hanging around in Wentworth Park in the  
16 time frame of 1970 or '71?

17 A. Nothing out of the ordinary.

18 Q. Nothing out of the ordinary?

19 A. No, not that I'm aware of.

20 Q. I'm sorry.

21 A. Nothing out of the ordinary. It was a gathering spot for the  
22 youth at night depending on the type of night it was, if it  
23 was a weekend and that sort of thing.

24 Q. And nothing peculiar about youth in general hanging around in  
25 the park. Is that your evidence?

JOHN MULLOWNEY, by Mr. Wildsmith

- 1 A. It's just that it was a hangout. There was -- Kids would hang  
2 around there at different times of the year and the week.
- 3 Q. Were you ever involved in any incidents removing Indian youth  
4 from the park?
- 5 A. No.
- 6 Q. And are you aware of any incident where other Police Officers  
7 may have done that?
- 8 A. May have?
- 9 Q. Yes.
- 10 A. Nothing standing out.
- 11 Q. All right. Did you receive any particular instructions  
12 when you joined the force and in the time frame around 1970  
13 or '71 dealing with Indians?
- 14 A. Did I get any particular instructions pertaining to the  
15 Indian people?
- 16 Q. Yes.
- 17 A. No.
- 18 Q. Any particular instructions with respect to entering the  
19 Membertou Reserve?
- 20 A. No, when you got a call you just went on that call.
- 21 Q. Did you have any contact yourself with Indian people outside  
22 of your official police duties?
- 23 A. Just to say hello if the occasion arose with some individuals  
24 that I personally knew.
- 25 Q. Yes. Were you ever encouraged by the Sydney Police Department

JOHN MULLOWNEY, by Mr. Wildsmith

1 to make informal or social contacts with Indians or other  
2 racial minorities?

3 A. No.

4 Q. Did you belong to any organizations, fraternities, sports teams  
5 or anything of that nature that would put you in contact  
6 regularly with Indians?

7 A. No.

8 Q. Thank you.

9 A. Just to re-clarify that, when I coached Junior Hockey I had  
10 a couple of Indian chaps play on my particular team for a  
11 couple of years.

12 Q. Thank you.

13 A. And socialized with them if there was an event that the kids  
14 wanted to put on.

15 Q. Thank you. Did you ever receive any complaints about  
16 Sergeant MacIntyre?

17 A. No.

18 Q. You have no knowledge of complaints?

19 A. No.

20 Q. Do you have any knowledge of complaints by Indians about  
21 their treatment by the Sydney Police Department?

22 A. No.

23 Q. Around about the time of Sandy Seale's death, do you recall  
24 rumours in the City of Sydney about racial tensions?

25 A. The first I heard of it was when I read the book.

JOHN MULLOWNEY, by Mr. Wildsmith

1 Q. I see. You're referring to Michael Harris's book?

2 A. Well, whoever wrote it, yeh.

3 Q. "Justice Denied"?

4 A. Yes.

5 Q. Yes. Did you hear the reference this morning to a meeting of  
6 the Police Commission and the Police Department resulting  
7 in the formation of a tactical squad?

8 A. I wasn't here at that time, no.

9 Q. I see. Do you have any knowledge about a tactical squad being  
10 formed by the Sydney Police Department within a matter of days  
11 after Mr. Seale's death?

12 A. The Department consisted of a tactical squad as such, but not  
13 days after, it was years after I would like to think.

JMR

JOHN MULLOWNEY, by Mr. Wildsmith

1 Q. I'm sorry?

2 A. It was years after.

3 Q. It was years after that the first one was formed.

4 A. Yes.

5 Q. Yes.

6 A. I'm talking after the fact of 1971.

7 Q. Yes. Do you have some personal involvement in that yourself?

8 A. No, I didn't.

9 Q. I see. Do you recall being dispatched to the Membertou  
10 Reserve on the evening that Mr. Marshall was arrested?

11 A. No, I wasn't.

12 Q. My information and perhaps you'll now indicate you have  
13 no knowledge about this, is that yourself and Constable  
14 Wyman Young were dispatched and assigned to the Membertou  
15 Reserve that evening because of threats to Mr. Marshall  
16 and his family?

17 A. I don't recollect that.

18 Q. You have no knowledge of that?

19 A. I have no recollection of it.

20 Q. Would you have ever discussed indians with your fellow  
21 officers?

22 A. No, not that I --

23 Q. And do you recall ever overhearing conversations that  
24 your fellow officers might have had about **I**ndians?

25 A. No.

JOHN MULLOWNEY, by Mr. Wildsmith

1 MR. WILDSMITH:

2 My Lord, I do want to put this complaint sheet to this witness.

3 Would you prefer that I do that during the break or --

4 COMMISSIONER EVANS:

5 Do it now.

6 MR. WILDSMITH:

7 Thank you.

8 BY MR. WILDSMITH:

9 Q. Would you take a look at these two sheets which purport  
10 to be a list of complaint against the Sydney Police Department  
11 at about misconduct towards indians and indicate whether  
12 you have any knowledge of any of these particular incidences  
13 and whether you yourself may have been one of the officers  
14 referred to?

15 You're nodding your head. You have no knowledge of any  
16 of the incidents at all?

17 A. No.

18 Q. And you've never seen this sheet before?

19 A. I've never seen it, no.

20 MR. WILDSMITH:

21 Thank you. That's all the questions I have.

22 MR. CHAIRMAN:

23 Mr. Spicer?

24 MR. SPICER:

25 No, Your Honour.