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Vol. 248
#3

ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION

VOLUME X

Held: September 22, 1987

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

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

Counsel: George MacDonald, Q.C., Wylie Spicer, & David Orsborn:
Commission Counsel

Clayton Ruby, Ms. Maryls Edwardh, & Ms. Anne S. Derrick:
Counsel for Donald Marshall, Jr.

Michael G. Whalley, Q.C.: Counsel for City of Sydney

Ronald N. Pugsley, Q.C.: Counsel for John F. MacIntyre

Donald C. Murray: Counsel for William Urquhart

Frank L. Elman, Q.C., & David G. Barrett:
Counsel for the Donald MacNeil estate

Jamie W. S. Saunders, & Darrel I. Pink:
Counsel for Attorney General

James D. Bissell: Counsel for the R.C.M.P.

Al Pringle: Counsel for Correctional Services Canada

William L. Ryan: Counsel for Evers, Green and McAlpine

Charles Broderick: Counsel for Carroll

S. Bruce Outhouse: Counsel for Wheaton & Scott

Guy LaFosse: Counsel for Davies

Bruce H. Wildsmith: Counsel for Union of N. S. Indians
Assisted by Daniel Christmas

E. Anthony Ross, & Kevin Drolet: Counsel for Oscar N. Seale

E. Anthony Ross, & Jeremy Gay: Counsel for Black United Front

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

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COURT REPORTER'S CERTIFICATE JJ

INQUIRY RECONVENED at 9:35 o'clock in the forenoon on Tuesday, the 22nd day of September, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia

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MR. CHAIRMAN:

Good morning.

MR. ORSBORN:

A housekeeping matter before we commence, and I would like to advise the Commission of the names of the witnesses who we would hope to call the remainder of this week. There have been some changes in the witness list and some additions due to the way the Hearings have proceeded. The list of witnesses is as follows: We will finish Mr. MacDonald. We'll then call Inspector Terry Ryan and Staff Sergeant Murray Wood of the R.C.M.P. They are two new witnesses, and later today we would propose to call Mr. Sandy MacNeil and a Mr. George MacNeil, a Mrs. Linda Muise, M-u-i-s-e (maiden name Mann, M-a-n-n).

MR. CHAIRMAN:

These are all new? These are all witnesses that are not listed in the --

MR. ORSBORN:

That's correct, My Lord.

MR. CHAIRMAN:

Just give them to me again.

MR. ORSBORN:

I'm sorry?

MR. CHAIRMAN:

Ryan, Wood?

DISCUSSION BETWEEN COMMISSION AND COUNSEL

1 MR. ORSBORN:

2 MacNeil, MacNeil, and Muise, and also Mr. Charles Livingston.

3 We may not finish all them today and --

4 MR. CHAIRMAN:

5 I was hoping we would.

6 MR. ORSBORN:

7 We may. We live in hope. Following that, a Mr. John Butterworth,

8 then Mr. John Pratico, Mrs. Pratico (John's mother), Doctor James

9 O'Brien, and Doctor Mian.

10 MR. CHAIRMAN:

11 So will we have a revised list -- a typed one in due course.

12 MR. ORSBORN:

13 Yes, My Lord.

14 MR. CHAIRMAN:

15 Thank you.

16 MR. ROSS:

17 My Lord, with respect to this new -- these new additions to the

18 list of witnesses, I wonder whether or not Commission Counsel

19 propose to turn over to us any material which he might have from

20 these recognizing they were not on the list previously. I would

21 not have had an opportunity to either interview these people or

22 to get any understanding of the type of evidence that would be

23 anticipated.

24 MR. ORSBORN:

25 Just before the session this morning, we met with all the counsel

DISCUSSION BETWEEN COMMISSION AND COUNSEL

1 | and indicated this new line up of witnesses to them. We indicated
2 | with respect to the two R.C.M.P. officers that these gentlemen
3 | have recently been brought to our attention. They have provided us
4 | copies of certain extracts from their notebooks and these copies
5 | have been prepared and distributed to counsel. They were given
6 | to counsel within about twelve hours of our receipt of them. We
7 | also advised counsel that with respect to Messrs. MacNeil and
8 | Livingston and Mrs. Mann that there are presently in the exhibit
9 | materials statements and documents related to those witnesses.
10 | We also indicated that we do have a statement from, I believe,
11 | Mrs. Muise and that is being copied and will be prepared to -- will
12 | be distributed to counsel. We also indicated to counsel the
13 | general tenor of the evidence of these individuals which is quite
14 | brief and quite to the point. We do not expect there will be any
15 | surprises. And with Mr. Butterworth, his statement has already
16 | been distributed to counsel this morning.

17 | MR. CHAIRMAN:

18 | Well, does that take care of your anxiety, Mr. Ross?

19 | MR. ROSS:

20 | Well I hear what my learned friend says but I think that for the
21 | -- for the proper care of my duties, I like to get more opportunity
22 | to get more than just an indication of the type of evidence. My
23 | view is that I've had one surprise so far when Debbie Timmins came
24 | forward. Had I known what Debbie Timmins was going to say, I would
25 | have examined other witnesses a lot more closely and I just do not

DISCUSSION BETWEEN COMMISSION AND COUNSEL

1 | want to find myself in that position again. Thank you, My Lord.

2 | MR. CHAIRMAN:

3 | Well, my understanding is that counsel quite some time ago gave
4 | -- Commission Counsel, rather, quite some time ago gave all
5 | counsel representing parties of standing a list of the witnesses
6 | and the exhibits. If any counsel upon receiving a list of witnesses
7 | has any anxieties as to whether there is any additional information
8 | that he or she should have, then the onus is on counsel for the
9 | person -- the counsel involved, rather, to make representation to
10 | Commission Counsel. The indication I have had and we've all had
11 | since this inquiry started that there has been unprecedented
12 | openness on the part of Commission Counsel with respect to counsel
13 | for parties with standing. And I take it, as Mr. Justice Evans
14 | brings to my attention, that we assume that if any counsel wishes
15 | to interview a witness, it's only a matter of bringing that to the
16 | attention of Commission Counsel and the arrangements can be made.

17 | MR. ORSBORN:

18 | I believe some interviewing has been -- has been done. Of course,
19 | counsel are quite free to go off on their own and interview any
20 | witness that they see fit.

21 | MR. CHAIRMAN:

22 | All right, so Mr. Ross, any time you want to interview a witness,
23 | go to it.

24 | MR. ROSS:

25 | Thank you, My Lord.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | MR. CHAIRMAN:

2 | Now are we ready to proceed?

3 | MR. ORSBORN:

4 | Yes, My Lord.

5 | MICHAEL BERNARD MacDONALD, resumes testimony, as follows:

6 | BY MR. ORSBORN:

7 | Q. Mr. MacDonald, you're still under oath from yesterday as you
8 | realize?

9 | A. Yes, sir.

10 | Q. I'd like to discuss with you briefly a couple of matters which
11 | we touched on yesterday and which we can perhaps clarify. I
12 | think you said you retired in 1985.

13 | A. Yes, sir.

14 | Q. What -- What --

15 | A. December, 1985.

16 | Q. December, 1985. Is there a fixed retirement age in the
17 | Sydney Force?

18 | A. Yes, sir.

19 | Q. What is that age?

20 | A. Sixty-five.

21 | Q. And were you sixty-five when you retired?

22 | A. December, yes.

23 | Q. So in December, '85 you were sixty-five and retired accordingly.

24 | A. Yes, sir.

25 | Q. We also talked briefly about what you would expect from

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | patrolmen or constables who would be the first to arrive on a
2 | crime scene and I'm wondering if you would mind just reviewing
3 | for us what you expected from the officers on the scene that
4 | night?

5 | A. Well, I would expect the officers -- what they saw was a man
6 | laying on the middle of the street, on Crescent, on that
7 | night and I would expect them to first of all see what they
8 | could do for the person on the street and make sure that he
9 | was taken to a hospital as soon as possible.

10 | Q. And beyond that?

11 | A. Well, when they were finished with that and they see what they
12 | could in the -- go to the area and see if they could find any
13 | evidence of what took place at that time.

14 | Q. And would you expect that to be done that night?

15 | A. Well, they have other work to do, you know.

16 | Q. Other work to do.

17 | A. You couldn't put all the police out that night in that scene
18 | right there. They had other work to do. You know, they
19 | could have had calls, they could have had breaks, they could
20 | have had anything that you couldn't spend too much time right
21 | in that park area.

22 | Q. So are you saying that you would expect them to attend to their
23 | other work in --

24 | A. Well, if they're --

25 | Q. -- priority to the park work?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 A. If they're authorized by the Sergeant at the Desk, they'd have
2 to go and do it even though if they were looking for evidence at
3 the scene of the crime.

4 Q. And would they then take their instructions from the Sergeant
5 at the Desk?

6 A. Yes, sir.

7 Q. Do you know whether or not the Sergeant at the Desk, who I
8 believe would have been Sergeant MacGillivray that night?

9 A. Sergeant Leonard MacGillivray.

10 Q. Do you know whether or not he issued any instructions to the
11 constables that night?

12 A. When I returned to the police station, I went into the Detective's
13 office where I already explained that I took my notebook and
14 I put some notes down on it and then I made a report and then
15 I went to the police -- In the -- The Detective Division is
16 separated from the main part of the police station. It's out-
17 side but I did go into the police station and I had a little
18 briefing with Sergeant Leonard MacGillivray and then from there,
19 he took it from there to detail the men with what he thought
20 should be done. And I believe, according to some of the
21 information I had that some of them when to the park area
22 and looked around.

23 Q. I see. Well, perhaps we'll come to that but you're not aware
24 of around twelve o'clock or twelve-fifteen whether or not
25 instructions were issued by him to the men in the park.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 A. No, I wasn't -- I wasn't in the vicinity at all, sir.

2 MR. CHAIRMAN:

3 We have some difficulty hearing this witness, Mr. Orsborn. Maybe
4 if you move the mike towards the centre.

5 MR. ORSBORN:

6 He's using a small --

7 MR. CHAIRMAN:

8 Yes but there's a second one that picks it up, however.

9 BY MR. ORSBORN:

10 Q. One other point that we touched on yesterday, Mr. MacDonald,
11 was the nature of the information that you received from the
12 officers at the scene and I believe the officers at the scene
13 were Constables Walsh, Mroz, Martin MacDonald, and Howard Dean.
14 We have heard that these gentlemen all went to the hospital
15 after the ambulance. Could you tell us what information, if
16 any these gentlemen gave to you at the hospital?

17 A. The only party I was talking or the officer I was talking to
18 when I did arrive at the City Hospital was Corporal Martin
19 MacDonald, and he was standing at a small room on the main
20 floor with Donald Marshall.

21 Q. Yes, and what did he tell you?

22 A. He just told me this was Donald Marshall and he was -- he had
23 a cut on his left arm, right above the wrist and I told him
24 just wait for a few minutes because Mr. Seale was already on
25 the main floor and I tried my best to ask him a question or
get a conversation with him but I wasn't allowed to go near him.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 I helped a little bit around the stretcher.

2 Q. So are you telling us that other than that very brief conversation
3 with Martin MacDonald, you received no information from the
4 officers at the scene?

5 A. No, sir, no.

6 Q. Now once you received the call from Sergeant MacGillivray
7 about the incident in the park, were you at that time in charge
8 of the investigation?

9 A. No, the -- the regular patrolmen who were there first on the
10 scene would -- I wasn't near the scene of the crime at all,
11 at that time.

12 Q. I understand that but once you were notified of the investigation
13 -- of the incident, did you assume control of the investigation?

14 A. Well, to a certain degree, yes.

15 Q. To what degree?

16 A. Well, I was in charge of the Detective Division that night, if
17 you want to put it that way and --

18 Q. Were you in a position to instruct the patrolmen and constables
19 on what should be done?

20 A. Yes.

21 Q. There were no other detectives out that night?

22 A. No, sir.

23 Q. How many detectives were there in the division?

24 A. Four.

25 Q. Did you give any consideration to involving any of the other

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | detectives?

2 | A. John MacIntyre, I think, according to the report I got from
3 | Sergeant Len MacGillivray was called regarding this incident.

4 | Q. I see. And John MacIntyre at the time was Sergeant of
5 | Detectives?

6 | A. Sergeant of Detectives, yes, sir.

7 | Q. Now you indicated that he was called?

8 | A. According to Sergeant Len MacGillivray.

9 | Q. What did Sergeant MacGillivray tell you?

10 | A. That he called Sergeant MacIntyre out.

11 | Q. That Sergeant MacGillivray called him.

12 | A. Yes, sir.

13 | Q. Why would he have done that?

14 | A. Pardon?

15 | Q. Why would he have done that, if you were the guy on call?

16 | A. Well there was a crime committed and I guess the reports were
17 | circulating that it was a -- it was a serious stabbing and
18 | from there, he must have got that information from the
19 | patrolmen.

20 | Q. Do you know at what point Sergeant MacGillivray called Sergeant
21 | MacIntyre?

22 | A. No, sir. I -- I didn't arrive at the police station until
23 | close to three -- three a.m. in the morning.

24 | Q. Did you request that Sergeant MacIntyre be called?

25 | A. No, I don't recall, sir.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 Q. Do you have any -- Did you have discussions with Sergeant
2 MacIntyre that night yourself?

3 A. No, sir.

4 Q. Did you have any discussions with the Chief of Police that
5 night yourself?

6 A. Yes, sir.

7 Q. What were those discussions about?

8 A. He asked me to proceed to his house a little after three
9 o'clock in the morning. I just went up and we had a little
10 briefing and I explained to him what took place.

11 MS. EDWARDH:

12 I'm having difficulty hearing the witness.

13 BY MR. ORSBORN:

14 Q. You say you proceeded to his house and explained to him what
15 took place?

16 A: Yes, sir.

17 Q. Now had the Chief called the station?

18 A. No. Sergeant Len MacGillivary called him.

19 Q. Why would he have done that?

20 A. Well, he's Chief of Police. Just a procedure we follow.
21 Anything serious, the Chief was -- would likely be notified.
22 And this was a serious --

23 MR. CHAIRMAN:

24 Would you take us through this again, Mr. -- I've lost the thread.

25 BY MR. ORSBORN:

Q. I gather, sir, you were at the police station at approximately

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 three o'clock. There's some water gone under the bridge that
2 we're going to have to go back and look at. So let's look
3 at three o'clock right now. And you were at the police station
4 and I gather that you had told us that, number one, that
5 Sergeant MacGillivray had called Sergeant MacIntyre?

6 A. Yes, sir.

7 Q. And Sergeant MacIntyre did not come out. Now you've also
8 told us Sergeant MacGillivray called the Chief of Police.

9 A. Yes, sir.

10 Q. Who was the Chief at the time?

11 A. Gordon MacLeod.

12 Q. Now why would Sergeant MacGillivray have called the Chief?

13 A. Well, it's a procedure. At a serious crime, the Chief of
14 Police always requested that he be called at any night --
15 at any time, night or day or if he was off for anything
16 serious. Just a procedure that was followed.

17 Q. Were you with Sergeant MacGillivray when he called the Chief?

18 A. No, sir.

19 Q. Do you know if he had called him prior to your arrival at the
20 police station?

21 A. Yes.

22 Q. Do you know whether or not the matter of Sergeant MacIntyre
23 not coming out was discussed by Sergeant MacGillivray and
24 the Chief?

25 A. I couldn't say.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Q. Did the Chief request that you go to see him?
- 2 A. See who, sir?
- 3 Q. See the Chief.
- 4 A. Sergeant Len MacGillivray asked me to proceed to the Chief's
- 5 home.
- 6 Q. Now would that have been normal for you to go to his home
- 7 and advise him rather than just advise him over the phone?
- 8 A. Well, if the Sergeant asked you, you would go.
- 9 Q. Had you done it before?
- 10 A. I can't recall, sir.
- 11 Q. What time --
- 12 A. Different Chiefs over the period of time.
- 13 Q. What time did you go the Chief's house, sir?
- 14 A. It was three a.m. or a little -- or after. I just can't
- 15 recall the exact time.
- 16 Q. And what did you discuss with him?
- 17 A. Just the -- what took place on Crescent Street.
- 18 Q. Did you tell him what the position of the investigation was
- 19 at that time?
- 20 A. Well, he would know pretty well himself on account of the
- 21 men, that the patrolmen who would be out that night and what
- 22 I did. I told him what I did and if I recall correctly he
- 23 just said, well, it was late in the morning. Wrap it up
- 24 until eight o'clock.
- 25 Q. Did you indicate to him whether or not you had any potential

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 suspects at the time?
- 2 A. No, sir.
- 3 Q. Did you have any potential suspects at the time?
- 4 A. No, sir.
- 5 Q. Did you discuss with the Chief the fact that Sergeant MacIntyre
- 6 had not come out?
- 7 A. No, sir. Sergeant MacGillivary might have.
- 8 Q. He might have.
- 9 A. He might have but I didn't hear a conversation.
- 10 Q. Why do you say he might of? Do you have any knowledge of it?
- 11 A. No, sir.
- 12 Q. Were you surprised that Chief MacIntyre did not come out that
- 13 night?
- 14 A. No.
- 15 Q. Was it -- At that time was it a -- such a serious crime that
- 16 you would have expected the Chief of Detectives to be out?
- 17 A. Well under the circumstances and at that hour of the morning,
- 18 I would think that there wasn't much as far as suspects. You're
- 19 looking for suspects. No doubt the men were looking for
- 20 suspects but they couldn't do too much that hour of the
- 21 morning. Your daylight hours would be a lot better.
- 22 Q. I see. Were you travelling in a police vehicle that night?
- 23 A. No, my own private car.
- 24 Q. Did you have any communications equipment in your car?
- 25 A. No, sir, not in my own private car.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Q. When we stopped yesterday, we were talking about Mr. Marshall
2 and whether or not Mr. Marshall had been sent down to the
3 police station and I had referred you to your Examination for
4 Discovery in the C.B.C. suit and there was some dicussion about
5 when that took place and whether or not you recognized the
6 lawyers that were there. Have you had an opportunity to think
7 about that since, sir?
- 8 A. Well, when I arrived at the police station and I made my
9 reports, I went in to the main station or from the Detective
10 office, it's possible -- it's possible Mr. Marshall might have
11 been at the station but I spoke to Sergeant Len MacGillivary
12 and we have a court room right off the police station, off the
13 main office and him and I went in there and we discussed this
14 as much as I could.
- 15 Q. You discussed it with --
- 16 A. Sergeant Len MacGillivary.
- 17 Q. All right, okay. I take it you have no recollection of sending
18 Mr. Marshall to the police station.
- 19 A. No. About -- what I gather is that he was taken to his home
20 by the police.
- 21 Q. What you gather. How do you gather that?
- 22 A. Well, when I came out from -- with Sergeant MacGillivary from
23 the court room, he wasn't near the station then. Whether he
24 went with one of the patrolmen or --
- 25 Q. Did Mr. Marshall give you any indication at the hospital that

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | here was a guy that should be taken down to the police station
2 | and interviewed in detail?

3 | A. No.

4 | Q. Did he give you any indication of: "Look, here's a guy we
5 | need to get a statement from right away."?

6 | A. Well, he give me part of a statement which I wrote down here
7 | but not a regular statement, signed, and --

8 | Q. Yes, I understand that. Do you recall in your discussions
9 | with Mr. Marshall at the hospital whether or not there was any
10 | reference to these men he described looking like priests.

11 | A. Just, may I read this, sir? Just one -- one man was --

12 | Q. I understand that. We read that yesterday and there's no
13 | reference in that to the word "priest". I'm wondering if in
14 | your recollection --

15 | A. No. No, sir.

16 | Q. -- there is any reference to that?

17 | A. No, sir.

18 | Q. In your recollections of your discussion with Mr. Marshall
19 | was there any reference to a possible argument between Mr.
20 | Marshall and Mr. Seale?

21 | A. No, sir.

22 | Q. Do you remember Maynard Chant?

23 | A. He was at the City Hospital.

24 | Q. At the hospital, yes. Do you recall having a discussion with
25 | Mr. Chant at the hospital?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | A. No, sir.

2 | Q. I just direct your attention to Volume 12, at page 175.

3 | Yes, page 175 of Volume 12, sir, and on the bottom half of

4 | that page, you were giving testimony at the trial of Mr.

5 | Marshall back in '71. You were being questioned by Mr.

6 | Rosenblum, I believe.

7 | A. Yes, sir.

8 | Q. And the evidence on this page indicates that you had a short

9 | conversation with Mr. Chant at the hospital and you then sent

10 | him down to the police station. Does that in any way refresh

11 | your memory about talking to Mr. Chant at the hospital?

12 | A. Well, at that time I mentioned for one moment.

13 | Q. Yes, I think you say for two or three minutes and one short

14 | time.

15 | A. Yeh. Yeh.

16 | Q. Do you have any recollection of that conversation?

17 | A. It's possible. I might have because he was on the ground floor

18 | with Jack Johnston and I believe Frank MacKenzie. They were

19 | the two of the officers that picked him up.

20 | Q. If Mr. Chant had said to you at the hospital that he was an

21 | eyewitness to the stabbing, do you think you would have

22 | remembered that?

23 | A. I would have.

24 | Q. If he had, what would you have done?

25 | A. Oh, certainly by all means, we would have held him, taken a

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 statement from him.

2 Q. When you say "held him", what do you mean?

3 A. Well, he would have been taken down the police station.

4 Q. And he was in fact sent to a police station.

5 A. He was taken down but there was no statement taken from him.

6 Q. Why was he sent to the police station?

7 A. Well, he was from Louisbourg and I guess it was better to --
8 if there was somebody coming for him from Louisbourg which
9 I think his father came back to Sydney and picked him up.

10 Q. From your discussions with Mr. Chant at the hospital, did'
11 you form any opinion as to whether or not he was involved in
12 the case at all?

13 A. Well I was more interested in Mr. Seale at the moment when Chant
14 was there. I just spoke to him for a minute or so and like
15 I said I think Jack Johnston and Frank MacKenzie, they were
16 gone when I came downstairs from the third floor and Mr.
17 Chant was gone also.

18 Q. I see. How long did you stay at the hospital that night?

19 A. It's hard to say. Maybe an hour, an hour and a half.

20 Q. Have you read Mr. Harris's book, Justice Denied?

21 A. Yes, sir.

22 Q. There is a reference in that book (I'm afraid I can't quote
23 you the page number.) to the effect that Mr. Marshall was
24 asked to view a couple of suspects while at the hospital.
25 Do you have any recollection of that?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 A. No, sir.

2 Q. Is that comment then in error?

3 A. Would I ask him if he --

4 Q. Did you ask Mr. Marshall to view any suspects at the hospital?

5 A. No, sir.

6 Q. Did you have any suspects at the hospital?

7 A. No, sir.

8 Q. Do you recall what time you left the hospital?

9 A. Not exactly.

10 Q. Where did you go after you left the hospital?

11 A. I drove from the City Hospital down to the Crescent Street
12 area and drove through the park area.

13 Q. You drove through the park area?

14 A. Yes, sir.

15 Q. May I ask why?

16 A. Well, I stopped -- I stopped at the corner of Crescent Street
17 and Bentinck and I got out of my -- I had my own car. I got
18 out of my car and I took my flashlight and I walked along the
19 sidewalk on the side the houses were on for around four or
20 five houses or so.

21 Q. Why --

22 A. Well, just looking and maybe I might have picked something
23 up or saw something.

24 Q. Did you know where Mr. Seale had been found?

25 A. From the information I received, yes. Down closer to the
bandshell area; you know, off the park and Crescent Street.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Q. Did you walk to the spot where he was found?
- 2 A. No, sir, I didn't.
- 3 Q. May I ask why?
- 4 A. I just didn't.
- 5 Q. I'm sorry.
- 6 A. I just didn't.
- 7 Q. Did you, in fact, find anything on your visit to the park?
- 8 A. No, sir.
- 9 Q. How long were you there?
- 10 A. Oh, maybe fifteen, twenty minutes.
- 11 Q. And then what did you do?
- 12 A. Drove to the police station.
- 13 Q. Were you by yourself?
- 14 A. Yes, sir.
- 15 Q. Do you recall what time you got to the police station?
- 16 A. Not exactly.
- 17 Q. And what did you do at the police station?
- 18 A. I went to our Detective Office and made my reports that I
- 19 received from Mr. Marshall and then I made my -- my own
- 20 report.
- 21 Q. Run that by me again, sir.
- 22 A. I jotted down the notes that I got from Mr. Marshall at the
- 23 hospital and then my own crime report, I made that out.
- 24 Q. The crime report on the crime sheets?
- 25 A. On the -- Yeh, right, sir.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Q. Did you have -- Did you see Mr. Chant at the police station?
- 2 A. He could have been there. I can't recall.
- 3 Q. I take it from that that you don't recall --
- 4 A. I was under the impression or understanding that Mr. Chant's
- 5 father came in from Louisbourg, now who contacted him, I
- 6 don't know.
- 7 Q. Again while at the station did you form any opinion as to
- 8 whether or not Mr. Chant had been in any way connected with the
- 9 incident?
- 10 A. No, I never received any information on that.
- 11 Q. Your notes that we have looked at contain no reference to
- 12 Mr. Chant?
- 13 A. Not these notes from Mr. Marshall, no.
- 14 Q. No, so they're your notes as to what you did that night. Can
- 15 you tell us why they would not contain any reference to his
- 16 name?
- 17 A. No, I can't explain that.
- 18 Q. And did I understand you to say that from the police station you
- 19 then went to see the Police Chief?
- 20 A. Yes, sir. Yeh.
- 21 Q. And from -- from the Police Chief's house where did you go?
- 22 A. Back down to the police station.
- 23 Q. Why did you go back to the police station?
- 24 A. I had the police car with me to the Chief's home. I left my
- 25 own car at the station.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 Q. So you took the police car from the station to the Chief's
2 and then you went back to the station?

3 A. Right.

4 Q. Did you remain at the station when you went back?

5 A. No, I just put the car away and went home.

6 Q. Do you recall what time you got home?

7 A. It could be around four o'clock.

8 Q. You had a long night?

9 A. Yeh, a long night. Yeh.

10 Q. Now, sir, before you went home, at any time during that evening,
11 did you give any instructions to any other Police Officer or
12 Constable as to anything that you wanted done?

13 A. No, just Sergeant MacGillivray, we had a briefing and he was
14 the Desk Sergeant and I think from what I hear, he contacted
15 patrol cars and advised them what to look for, for the rest of
16 the night.

17 Q. Did you give the information to Sergeant MacGillivray?

18 A. Well, I had a briefing with him on this incident.

19 Q. Okay. When you say a briefing, what exactly does that mean?

20 A. Well, I -- to the best of my knowledge I explained to him what
21 took place on Crescent Street and the men in the patrol cars,
22 what they -- you know, for the rest of the night what they
23 would look for and maybe somebody came back into the park
24 fitting the description that I received from Marshall and if
25 they wanted to look around the park area, you know, if they

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 had a few mintues to spare away from their regular patrol.

2 Q. Were you treating this as a priority at the time?

3 A. Pardon, sir.

4 Q. Were you treating this investigation as a priority on three
5 o'clock on the Saturday morning?

6 A. Well--Yes.

7 Q. You're telling us that the patrolmen would look around if they
8 had time off from their other duties?

9 A. Right. Well, they had the rest of the City to look after also.

10 Q. I see. That sounds like, sir, that the rest of the City becomes
11 a priority and this investigation would take second place?

12 A. Well, that's hard to -- hard to explain.

13 Q. Do you recall giving any specific instructions to Sergeant
14 MacGillivary as to what you'd like the Constables to do for
15 you?

16 A. Well, like I explained to -- if they had a few minutes, they'd
17 go in the park area and some of them can do some walking, you
18 know, around the area of the crime.

19 Q. How would Sergeant MacGillivary communicate those instructions
20 to his men?

21 A. By radio.

22 Q. By radio. There is a Continuation Report, sir. It's in
23 volume 16 at page ten and perhaps it might be easier if you
24 looked at it.

25 A. Page ten, sir?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 Q. Yes, page ten. This is a typed version of a Continuation
2 Report from Constable Rose dated May 29th, and the description
3 that Constable Rose uses, the second paragraph there, is:

4 ...a man in his mid-forties, very
5 tall and having white hair, the
6 second man much shorter and younger.

7 Now did you tell us that Constable Mroz would have received his
8 instructions from Sergeant MacGillivary?

9 A. I couldn't say, sir.

10 Q. Isn't that what you just told us that Sergeant MacGillivary
11 would have communicated with his --

12 A. As an individual you mean or as in a patrol car?

13 Q. In a patrol car.

14 A. Yeh, it would be whatever Constable Mroz has put on his report
15 here. The description is --

16 Q. Now the description is --

17 A. Now who he was talking to reading the descriptions, whether from
18 Sergeant MacGillivary or somebody -- somebody else, I can't
19 say.

20 Q. Other than Sergeant MacGillivary who could it have been?

21 A. Constable Walsh might have heard something. He was in the car
22 with him.

23 Q. He might have heard something?

24 A. Well, he might have passed it on to Constable Mroz and that's
25 why he put it on this report. But when I -- When I spoke to
Sergeant MacGillivary on the briefing, this is what I gave him.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 Q. Yes. Now the descriptions that night as I understand it
2 went from Mr. Marshall, to you, to Sergeant MacGillivary?

3 A. Right, sir.

4 Q. Is that right?

5 A. Right.

6 Q. Is there any other chain of information that you're aware of?

7 A. No, I couldn't say, sir.

8 Q. Now, "a man in his mid-forties, very tall and having white hair",
9 and the two men that you described are short and grey haired
10 and tall and black haired. Can you give us any help at all as to
11 how Constable Mroz could have come up with this description?

12 A. No, sir.

13 Q. Does it bear any relationship to the two men that you've
14 described?

15 A. Well, I didn't ask Marshall -- I seen Constable Mroz got an
16 age here of possibly mid-forties. That's the first I --

17 Q. But in terms of the height and hair colour, does that
18 description bear any relationship to the two that you got from
19 Mr. Marshall?

20 A. Well, one tall man and one short man pretty well --

21 Q. So with the combination of height and hair colour, does that
22 description bear any relationship to the two that you got from
23 Mr. Marshall?

24 A. Well, one fellow had grey hair and Mroz is saying white hair,
25 so --

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Q. At this time, sir, did you know or know of Roy Ebsary?
- 2 A. No, sir.
- 3 Q. Did you know of a town character in a long blue coat and
4 grey hair that used to walk around the streets?
- 5 A. Oh, I heard a report but I didn't know Roy Ebsary.
- 6 Q. What was the report that you heard?
- 7 A. Like you're saying, a man with a gabardine coat walking around
8 with a bunch of metals on his chest, up and down Charlotte
9 Street.
- 10 Q. Were you familiar with that character at the time of this
11 investigation?
- 12 A. No, sir.
- 13 Q. When did you become familiar with -- When did you hear this
14 report that you're talking about?
- 15 A. This report here?
- 16 Q. No, no, the report about the man walking up and down Charlotte
17 Street with metals.
- 18 A. Oh, it could have been the year back -- In 1970 maybe or 1969
19 or so. I don't know.
- 20 Q. Very well. I think you misunderstood my question. Are you
21 telling us that you were aware of this character then either
22 at the time of or before this investigation?
- 23 A. Well, I heard -- Before this investigation in 1971 I heard
24 of Roy Ebsary. I didn't know his name, but I heard of a
25 man, you know, walking Charlotte Street with a bunch of

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 metals on and telling people that he was in the Royal Navy
2 or something but I didn't know his name.

3 Q. Was there anything in the description that Mr. Marshall gave
4 you that would remind you in any way of this character walking
5 up and down Charlotte Street?

6 A. No, sir.

7 Q. You associated him with metals and a Navy, did you?

8 A. Well, in my report here there's -- there's no metals or --
9 there's nothing there.

10 Q. I appreciate that, but the character that you were aware of
11 you associated more with metals and the Navy?

12 A. I would think so.

13 Q. Now at the -- at the time you went home, approximately four
14 o'clock, as I understand your evidence, sir, you had been
15 in charge of the investigation up to this time. You had
16 been the only detective involved up until four o'clock in the
17 morning?

18 A. Yes, sir.

19 Q. At that time what type of a crime did you believe you were
20 dealing with?

21 A. Well, just a stabbing.

22 Q. Just a stabbing. A serious stabbing?

23 A. According to what I -- the information I got at the hospital
24 it --

25 Q. Was it your normal run-of-the-mill stabbing if there's such a
thing?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 | A. Well, I -- A run-of-the-mill stabbing, I can't --
- 2 | Q. Well, how serious does a crime have to be before the Chief of
- 3 | Police is notified at three o'clock in the morning?
- 4 | A. Well, a serious crime. I guess you would put it down as a
- 5 | serious crime. It's a bad stabbing.
- 6 | Q. A bad stabbing. At four o'clock in the morning, sir, did you
- 7 | have any leads?
- 8 | A. No, sir.
- 9 | Q. Did you have any suspects?
- 10 | A. No, sir.
- 11 | Q. My next question is perhaps obvious, but was Donald Marshall, Jr.,
- 12 | a suspect?
- 13 | A. No, sir.
- 14 | Q. I'd like to be clear on what we mean by the word "suspect", and
- 15 | I'd like you to imagine that I'm your ten year old grandchild
- 16 | and if I said to you, "Granddad, what do you mean when you say
- 17 | you got a suspect?", how would you explain it to me?
- 18 | A. Well, first of all you'd -- in a crime of this nature you would
- 19 | have to take a statement from the person, a signed statement,
- 20 | then I would say that if he was implicated in any way at all
- 21 | in this crime you'd have a suspect.
- 22 | Q. So before somebody is called a suspect you require some --
- 23 | something that connects them to the crime?
- 24 | A. Right.
- 25 | Q. And I don't want to put words in your mouth, sir, but are you

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | telling us that you require some evidence that the person is
2 | connected to the crime?

3 | A. If you took a statement from a person who was at a scene of
4 | a crime and if you received that news from him that -- and
5 | you indicated yourself that he was a suspect then --

6 | Q. So Mr. Marshall would not be a suspect simply because he was
7 | there when it happened?

8 | A. No, I wouldn't say.

9 | Q. Your answer is no?

10 | A. I would say no.

11 | Q. Okay. Thank you. Did you work the next day, that Saturday?

12 | A. Yes, I was out at half past seven in the morning.

13 | Q. Not much sleep?

14 | A. No.

15 | Q. Were you scheduled to work that Saturday?

16 | A. No, sir.

17 | Q. Why did you come out?

18 | A. Well, it was the nature of the crime and I knew Sergeant MacIntyre
19 | would be out early and maybe other detectives. I'm not sure
20 | who came out. I know Sergeant MacIntyre did come out early
21 | in the morning, you know.

22 | Q. Why did you know -- How did you know Sergeant MacIntyre was
23 | coming out?

24 | A. Well, I presumed he would be out. No doubt -- Once he was
25 | called by Sergeant MacGillivray there was no doubt he -- there

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 | was other conversation which I wasn't aware of.
- 2 | Q. Why would you not have remained in charge of the case?
- 3 | A. The next day?
- 4 | Q. Yeh.
- 5 | A. Sergeant MacIntyre was the Sergeant of Detectives.
- 6 | Q. Yes.
- 7 | A. It would be his place to take over the investigation.
- 8 | Q. Did you not have investigations that you conducted yourself?
- 9 | A. Did I?
- 10 | Q. Yes. In the normal course of events you would have
- 11 | investigations that you would retain --
- 12 | A. No, all the information was turned over to Sergeant MacIntyre
- 13 | that morning and we --
- 14 | Q. But you -- But in the investigation of other crimes, you would
- 15 | be in charge of certain investigations?
- 16 | A. Oh, there was -- there was other things happened that
- 17 | Sergeant MacIntyre wouldn't get involved in it.
- 18 | Q. What I'm trying to understand is, what would determine
- 19 | whether or not you remained in charge of the investigation?
- 20 | A. Well, if you're working your shift and you get into something
- 21 | as such as a break or a bad assault or, you know, you'd stay
- 22 | on it.
- 23 | Q. All right. So here you have a bad assault occurring at least
- 24 | during your own call shift and I'm trying to understand why
- 25 | you would not have remained in charge of the case?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 | A. I can't answer that, sir.
- 2 | Q. Did Sergeant MacIntyre express any reason for wanting to take
3 | over the case?
- 4 | A. No, not to me.
- 5 | Q. So you were not scheduled to work on that Saturday but you
6 | came out?
- 7 | A. Yes.
- 8 | Q. You came out specifically because of this case?
- 9 | A. Yes, sir.
- 10 | Q. And did you work a full day?
- 11 | A. Just about.
- 12 | Q. Did you work on any other case that day?
- 13 | A. No, we were pretty well looking at this.
- 14 | Q. And when did you first speak to Sergeant MacIntyre about the
15 | case?
- 16 | A. When he came out in the morning.
- 17 | Q. Do you know how early that was?
- 18 | A. It could have been close to eight-thirty, nine o'clock.
- 19 | Q. Eight-thirty, nine o'clock, and where did you speak to him?
- 20 | A. In the Detective Office.
- 21 | Q. And what did you tell him?
- 22 | A. I explained to him what took place. I read my report to him
23 | and I read this -- this report here and from there we --
- 24 | Q. You read over your notes?
- 25 | A. Yes, sir.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Q. Do I understand you had no statements at that time?
- 2 A. Statements?
- 3 Q. You had no statements from --
- 4 A. From any people?
- 5 Q. Yes.
- 6 A. No, sir.
- 7 Q. And you had no suspects?
- 8 A. No, sir.
- 9 Q. Would you at that time have had the occurrence and crime
- 10 reports written up from the previous evening?
- 11 A. Yes, I -- when I came to the police station in the morning
- 12 the occurrence and the crime reports --
- 13 Q. Do you recall if they were reviewed?
- 14 A. We had them in the Detective Office.
- 15 Q. Was there anybody else questioned at this briefing?
- 16 A. I can't recall, sir.
- 17 Q. Did you express to Sergeant MacIntyre any opinions that you
- 18 held on the case?
- 19 A. Just what I had on my notes.
- 20 Q. You indicated to Sergeant MacIntyre that Mr. Marshall was
- 21 involved?
- 22 A. Yes, sir.
- 23 Q. Did he have any reaction to that?
- 24 A. No, not of --
- 25 Q. Did you make any suggestion to Sergeant MacIntyre that Mr. Marshall

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | was possibly the person responsible?

2 | A. No, sir.

3 | Q. Did you receive any instructions from Sergeant MacIntyre?

4 | A. No, not at the time. No.

5 | Q. Do you recall how long that briefing would have taken?

6 | A. Oh, maybe fifteen, twenty minutes.

7 | Q. And what did you do after that?

8 | A. Well, the day shift -- the day shift was after being out at
9 | eight o'clock and I believe from one -- the best of my
10 | knowledge that some of them were asked to go into the park
11 | area, how many men, I can't say, but Sergeant MacIntyre
12 | and I later on took a -- took the police car and we went into
13 | the park area.

14 | Q. Yes, and what did you do there?

15 | A. Well, we looked around from Crescent Street over to the area
16 | of, I believe, the Doucette's house, that's on Crescent Street,
17 | (I don't know the number.) and we walked by through that area,
18 | you know.

19 | Q. Yes, and was the location where Mr. Seale was found pointed out
20 | to you?

21 | A. There was only the two of us. We had none of the back shift
22 | men that were on that scene, the exact area, but I recall
23 | it was on the street anyway in front of Doucette's house I
24 | believe.

25 | Q. But you were not accompanied by any of the men that had found

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Mr. Seale?
- 2 A. No, sir, there were -- that's back shift. They were gone home.
- 3 Q. I see. Did you make any request that they should come out
4 and show you what they had found?
- 5 A. No, sir.
- 6 Q. Do you recall whether or not you saw any blood on the street
7 anywhere?
- 8 A. No, I can't recall.
- 9 Q. What were you looking for?
- 10 A. Well, it was a stabbing to the best of my knowledge. It's just
11 possible there could be a knife of some nature in one of the
12 driveways or around a house or something.
- 13 Q. Did you conduct any organized search for a weapon in the park
14 area?
- 15 A. I didn't conduct it. It might have been conducted by
16 Sergeant MacIntyre or --
- 17 Q. Were you part of any weapon search that was conducted?
- 18 A. No, sir, only what I did myself.
- 19 Q. I see. How long did you spend in the park?
- 20 A. On searching?
- 21 Q. Yes.
- 22 A. It could have been two, three, or four times during the day.
- 23 Q. Three or four times during the day?
- 24 A. Right.
- 25 Q. Why would you go back three or four times?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 A. Well, if there's an area that's -- You know, something might
2 pop up, just --

3 Q. What did you think could pop up, sir?

4 A. Well, like Sergeant Mallowney the day after reported picking
5 up the kleenex with blood on it, you know.

6 Q. Yes.

7 A. That was laying in the area for a day or so.

8 Q. Yes. Do you consider that having popped up?

9 A. Well, you can put it that way.

10 Q. It just strikes me, sir, that evidence such as that is either
11 there or it's not there and you would find it the first time
12 or --

13 A. Well, you wouldn't disregard the whole area then and say, well,
14 there's nothing here, forget about it. Like I say we -- I
15 drove through the park at different times during this start
16 of the investigation.

17 Q. Yes. Did you talk to any of the people in the houses along
18 Crescent Street?

19 A. No, sir.

20 Q. Did you talk to any of the people in the houses along Byng
21 Avenue?

22 A. No, sir.

23 Q. May I ask why?

24 A. I had no reason to.

25 Q. To your knowledge did anybody else?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 A. There was a report from -- well, he was an R.C.M.P. Officer.
2 I don't know his name.
- 3 Q. Mr. Mattson?
4 A. Mr. Mattson?
5 Q. Yes.
6 A. I read a report that he called the police station, but now who
7 went to see him I don't know.
- 8 Q. I see. I'm not a policeman, sir, but do you not consider
9 it would have been basic investigative technique to
10 conduct a house to house interview of the people on Crescent
11 Street?
12 A. Well, now, it might have been done. I don't know.
- 13 Q. I see. Even though it might have been done, do you consider
14 that it would have been basic technique to have done that?
15 A. Under the circumstances, yes.
- 16 Q. Now when you were in the park on that Saturday, sir, what did
17 you do in connection with this investigation on the Saturday?
18 A. Well, I can explain it. I just got out of the car and I --
19 I looked around the driveways and around the houses.
- 20 Q. In the park area?
21 A. On -- Off of Crescent Street, now that's --
- 22 Q. But other than your visits to the scene and the surrounding
23 area, other than that, what did you do on that Saturday in
24 connection with this investigation?
25 A. I can't recall, sir.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 Q. Did you spend any time at the police station?

2 A. At the police station?

3 Q. Yes.

4 A. Oh, yeh, back and forth.

5 Q. Did you conduct any interviews at the police station on that
6 day?

7 A. No, sir.

8 Q. Do you recall whether or not Mr. Marshall was at the police
9 station on that day?

10 A. I believe he was. Yes, I -- when I read off of this stuff
11 I know it.

12 Q. Right. You're reading from your testimony, I believe, are
13 you, sir?

14 A. Yes, Mr. Rosenblum and Mr. Marshall being at the police
15 station.

16 Q. Did you talk to Mr. Marshall that Saturday?

17 A. At the station?

18 Q. Yes.

19 A. No, sir. He was standing out in the main driveway at the
20 side of the police station where it runs out to the street,
21 he was standing in around that area.

22 Q. You didn't talk to him at all?

23 A. No, sir.

24 Q. You didn't ask him how his arm was?

25 A. No, sir.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 Q. Did you make any suggestion that perhaps we should get a
2 statement from him while he's here?

3 A. No, I didn't.

4 Q. And may I ask why?

5 A. Well, he was asked -- I believe he was asked down by
6 Sergeant MacIntyre, so it'd be up to Sergeant MacIntyre
7 if he wanted to get a statement or not.

8 Q. I see. I think yesterday, sir, if I recall, you told us that
9 you did not know Mr. Marshall and did not recognize him at
10 the hospital. Is that correct?

11 A. I didn't know Donald Marshall whatsoever --

12 Q. Okay.

13 A. -- to the best of my knowledge.

14 Q. Okay. I'll show you, sir, a reduced copy of an Information
15 dated May 3rd, 1971. Is that your signature, sir, on the
16 Information?

17 A. Yes, sir.

18 Q. Keep that copy and I'd ask that this be marked as an Exhibit,
19 Exhibit number thirty-nine. Copies of this have been
20 distributed to Counsel some time ago. Now, sir, as I read it
21 that is an Information dated May 3rd, 1971, in which
22 Mr. Marshall is charged with damaging a "no parking" sign
23 and you are the informant. This is somewhat less than a
24 month before the incident in question. Do you have any
25 recollection of that information, sir?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 A. Well, it's my signature and if I may explain, the procedure
2 is or was at the police station, if any of the detectives
3 on day shift were going to the court house they would take
4 the -- either the occurrence reports or the crime reports.
5 If there was going to be any charges laid, they would lay the
6 charges at the court house.

7 Q. Yes.

8 A. And then get a summons out for the person that was charged.

9 Q. I see.

10 A. This is only a procedure. We're saving men that work --
11 maybe work on the back shift. I imagine this would have
12 took place here if there was a stop sign broken or kicked
13 or something and the men on the back shift would not have to
14 come back to Court at ten o'clock in the morning after working
15 all night and the Sergeants or detectives would go to the
16 court house and take this Information to the -- to the
17 Manager of the Court and make up those Informations and sign
18 them. That's the reason --

19 Q. So it was a practice that the detectives would swear out the
20 Information on the basis of information provided by the --

21 A. The information from the Officer.

22 Q. --Constables?

23 A. Right.

24 Q. I understand. So that you would not have met Mr. Marshall as
25 a result of this Information?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 | A. Oh, I wasn't in the court room. The Information was signed
2 | and that was it.

3 | Q. Do you recall, sir, if it was the practice that the detectives
4 | would swear all Informations?

5 | A. Oh, no. Oh, no.

6 | Q. The Constables would do some?

7 | A. Oh, there was days the Constables would be working day shift
8 | and the Information would be laid by them at the court house.

9 | Q. This was just a convenience for the --

10 | A. This was a convenience for the back shift men that were
11 | working all night and wouldn't have to stay out of bed in
12 | the morning to go to Court for an hour or so.

13 | Q. Could I direct your attention, sir, to volume 16 at page 107,
14 | volume 16, page 107. I believe this to be a fingerprint
15 | record from the Sydney Police Department dated June 12th,
16 | 1970, I believe. The signature directly under the fingerprints
17 | to the left-hand side, sir, is that your signature?

18 | _____
19 | _____
20 | _____
21 | _____
22 | _____
23 | _____
24 | _____
25 | _____

gmr

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 A. No, sir, that's detective M.J. MacDonald.
- 2 Q. Okay, the following Page, sir, 108. Again a fingerprint
3 record dated November 17th, 1970, is that your signature?
- 4 A. That's my signature, yes, sir.
- 5 Q. And this is a fingerprint record of Donald Marshall?
- 6 A. Yeh, Donald Marshall, Junior.
- 7 Q. Yes, a small point, sir, the signature is M. R. MacDonald,
8 do I understand that you were called M. R. within the
9 police station because there were two Michael Bernard
10 MacDonalds?
- 11 A. There was three.
- 12 Q. Three?
- 13 A. Yes, sir.
- 14 Q. Three Michael Bernards?
- 15 A. Yes.
- 16 Q. Good heavens.
- 17 A. Well, no, not Michael Bernard but M. B's.
- 18 Q. Three M. B.'s. Your Michael Bernard but your signature may
19 appear M. R.?
- 20 A. Yeh, just the initials were changed.
- 21 Q. Were you one of the black or red Mikes?
- 22 A. Well, you could call be red Mike.
- 23 Q. You were called red Mike, were you?
- 24 A. Yes.
- 25 Q. Okay, this record, sir, is dated November 17th, 1970, and it

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 | apparently involves a couple of charges under the Liquor
2 | Control Act. Do you have any recollection of taking Mr.
3 | Marshall's fingerprints in connection with this matter?
- 4 | A. No, sir, I don't recall it. It's my signature and the
5 | fingerprints are there and the charge is there but --
- 6 | Q. Do you recall what your practice was with respect to fingerprinting
7 | accused for charges under the Liquor Control Act? Would it
8 | have been your custom to take fingerprints on such a charge?
- 9 | A. I don't know at that -- from this here, sir, why the
10 | fingerprints were taken, I couldn't say.
- 11 | Q. Was it your practice to take fingerprints on all such charges?
- 12 | A. Not on -- this is Liquor Control Act, no it's not or it
13 | wasn't.
- 14 | Q. What kind of charges would you take fingerprints for?
- 15 | A. Well, crimes, mostly crime reports, you know.
- 16 | Q. Crimes such as indictable offenses?
- 17 | A. Well, indictable offenses, yes, sir.
- 18 | Q. The proceeding page, sir, I recognize as not your signature
19 | but Page 107, "theft under fifty", as a criminal code offense --
- 20 | A. 109, sir?
- 21 | Q. The proceeding page, sir, 107, I'm sorry.
- 22 | A. Sorry.
- 23 | Q. A charge "theft under 50", would you call that a crime?
- 24 | A. Well, under the circumstances I can't say much about it but
25 | Detective M. J. MacDonald took those prints and he signed

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 | them. It would be a crime to a --
- 2 | Q. A criminal offense?
- 3 | A. Right.
- 4 | Q. But the ones under the Liquor Control Act would be summary
- 5 | conviction?
- 6 | A. Right, sir.
- 7 | Q. When you saw Mr. Marshall on the night in question, was he
- 8 | carrying a knife?
- 9 | A. Was he carrying a knife?
- 10 | Q. Yes.
- 11 | A. I couldn't say, sir.
- 12 | Q. Did you ask him?
- 13 | A. I didn't search him.
- 14 | Q. Did you ask him?
- 15 | A. No, sir.
- 16 | Q. Are you -- you told us that on the Saturday in question you
- 17 | were involved in nothing else other than this investigation.
- 18 | How late did you work that day?
- 19 | A. I can't say for sure when I finished up.
- 20 | Q. Would it have been around supper time?
- 21 | A. I didn't -- I didn't have to work. Yeh, it would be close to
- 22 | evening, yeh.
- 23 | Q. Are you able to tell the Commission where the investigation
- 24 | stood at the end of that first day? If I'm the Chief of
- 25 | Police and I'm asking you for an update, what did you know?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 A. Well, I'm not sure if Sergeant MacIntyre had Donald Marshall
2 in the office and took a statement from him. I'm not sure
3 on that day.
- 4 Q. I think it's fair to say, sir, the first statement that we're
5 aware of is dated the 30th, which would be the following day?
- 6 A. On a Saturday.
- 7 Q. Sunday.
- 8 A. Or Sunday.
- 9 Q. So to our knowledge there were no -- there was no statement
10 from Mr. Marshall at least not on the Saturday?
- 11 A. Not to my knowledge.
- 12 Q. But from your knowledge the investigation on that day you're
13 going to the Park, your being with Sergeant MacIntyre and
14 you're generally being around. I'd like to know where you
15 believed where the investigation stood at the end of that
16 first day?
- 17 A. Well, it was still -- it was a stabbing that took place, and
18 Mr. Seale was still a patient in the hospital and we were
19 just waiting for reports from the hospital to see how far
20 we -- this was going to go.
- 21 Q. Am I correct that there had been no statements taken up until
22 that time?
- 23 A. I couldn't say, sir.
- 24 Q. To your knowledge were there any suspects at that time?
- 25 A. No, not, not during Saturday.

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- 1 Q. Okay, and would it follow that at least at that time that
2 Mr. Marshall was not a suspect?
- 3 A. No, I don't think, sir.
- 4 Q. He was not?
- 5 A. No.
- 6 Q. I would like to direct your attention, sir, to Volume 16, Page
7 90. Now we believe --
- 8 A. Ninety?
- 9 Q. Page 90, yes, sir, it's a telex.
- 10 A. Oh, yes.
- 11 Q. We believe this to be a telex sent by the Sydney Detachment
12 of the R. C. M. P. at three o'clock on the Sunday morning
13 which is the very early morning after the -- after you had
14 gone off on the Saturday. I'll just read the middle of the
15 telex, sir, and this is after Mr. Seale died, and he says
- 16 Circumstances presently being investigated by
17 Sydney Police Department. Investigation to
18 date reveals Marshall possibly the person
19 responsible.
- 20 Do you have any knowledge of that telex, sir?
- 21 A. No, sir. The first time I read it.
- 22 Q. Can you suggest why -- or what it was at this time which is
23 early on -- very early Sunday morning, what had the
24 investigation revealed that would suggest that Mr. Marshall
25 was responsible?
- 26 A. I can't say.
- 27 Q. When you went off work on the Saturday evening, did you hold

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 the opinion that Mr. Marshall was possibly the person
2 responsible?

3 A. No, sir.

4 Q. When you went off work that evening, had Sergeant MacIntyre
5 expressed to you the opinion -- his opinion that Mr. Marshall
6 was possibly the person responsible?

7 A. No, sir.

8 Q. Had any police officer express that opinion to you?

9 A. No, sir.

10 Q. Did you have any contact with the investigation on that
11 Saturday night after you went home, any phone calls go out to you?

12 A. No, I don't think, sir.

13 Q. When did you become aware that you were dealing with a
14 homicide?

15 A. I believe it was Sunday.

16 Q. And did you work that Sunday?

17 A. Yes, sir.

18 Q. After you became aware that Mr. Seale died, can you recall
19 if there was any consideration given to an autopsy?

20 A. No, sir.

21 Q. There wasn't any or you don't recall?

22 A. I don't recall, sir.

23 Q. You don't recall. If you had been in charge of the
24 investigation, is that something that you would wanted done?

25 A. I'd think so.

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1 Q. You'd think so?

2 A. I would think so.

3 Q. Had you been involved in any homicide investigations before
4 this one?

5 A. No, sir.

6 Q. When did you go to work that Sunday?

7 A. When?

8 Q. Yes.

9 A. Eight o'clock in the morning, well, between eight and eighty-
10 thirty.

11 Q. Okay, were you scheduled to work that day?

12 A. Right, sir.

13 Q. This was your normally scheduled day?

14 A. Four to twelve and then day shift.

15 Q. I see, and on that day did you do any work in connection
16 with the Seale murder?

17 A. I believe Sergeant MacIntyre and myself we went back into the
18 Park area we were looking once again for --

19 Q. Something to pop up?

20 A. Something to pop up. And I think we made arrangements that
21 day with the City, I believe that was the day, if I'm correct,
22 to drain the Wentworth Park. We made those arrangements.

23 Q. Yes, and was that done that day?

24 A. I'm not sure if they were done -- if it was done on Sunday
25 or done on Monday, but it was drained.

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- 1 Q. And were you in the Park area when that draining took place,
2 be it Sunday or Monday?
- 3 A. Well, after it was drained out, we walked along the shore --
- 4 Q. Walked along the shore --
- 5 A. Or at least I did anywhere I don't know if Sergeant MacIntyre
6 walked along or not.
- 7 Q. You don't recall if that was Sunday or Monday?
- 8 A. I'm not sure, sir.
- 9 Q. Was the Creek totally drained?
- 10 A. Up to the bridge at Bentinck Street, I thought there was water
11 coming in from the Harbour side.
- 12 Q. Above that?
- 13 A. Above, yeh. But the, the other part from the reservoir only
14 coming down --
- 15 Q. So we'll look at that map. Would it be fair to say that the
16 three Creeks below Bentinck Street were drained?
- 17 A. Below or above --
- 18 Q. Well --
- 19 A. Your talking -- below would be --
- 20 Q. Looking on this map to the right hand side of Bentinck Street --
- 21 A. Oh, yes, one -- yeh the three of them above Bentinck Street.
- 22 Q. Do you recall how many men were involved in that search of the
23 Creek?
- 24 A. I can't recall, sir. There was other men, I can't recall how
25 many.

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- 1 Q. Do you recall how the search was conducted?
- 2 A. Well, the only way you could conduct it was from the shoreline.
- 3 Q. Conducted to the shoreline?
- 4 A. Yeh.
- 5 Q. And conducting from the shoreline, why would you drain the
6 Creek?
- 7 A. No, but in the area of the water where it was drained.
- 8 Q. Okay.
- 9 A. You couldn't walk into the Creek -- if you follow me, you
10 know.
- 11 Q. Was it muddy?
- 12 A. Oh, yes.
- 13 Q. Did you have any equipment that would enable you to detect
14 metal?
- 15 A. No, sir.
- 16 Q. It was just a visual search or you --
- 17 A. Just a visual search, right.
- 18 Q. You'd hope you'd walk on something?
- 19 A. Yes.
- 20 Q. Or something would pop up?
- 21 A. Something would pop up.
- 22 Q. Did you find anything?
- 23 A. No, sir.
- 24 Q. On the Sunday, sir, do you recall if there was a lineup
25 conducted?

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- 1 | A. I believe there was.
- 2 | Q. Were you present?
- 3 | A. No, sir.
- 4 | Q. Why do you believe there was?
- 5 | A. I just -- I was out working but I was under the impression --
- 6 | the understanding was that they went out on the streets and
- 7 | picked up some men to come in and use them in a lineup.
- 8 | That's procedure.
- 9 | Q. I see, what would have been your practice with respect to the
- 10 | type of individuals you'd go and pick up? I'm thinking
- 11 | particularly of the description of individuals that you'd
- 12 | look for?
- 13 | A. Well, this description here would be first hand.
- 14 | Q. Yes.
- 15 | A. Of the - this is the information we got from Donald Marshall.
- 16 | Q. Yes.
- 17 | A. You know, if you were looking for six men, a description
- 18 | would be given to each officer as to this here, you see.
- 19 | Q. Right, and would you people fill the lineup just at random?
- 20 | A. Oh, yes.
- 21 | Q. And would you hold the lineup until you had a suspect --
- 22 | before having a suspect would you hold a lineup?
- 23 | A. You mean hold them at the police station to --
- 24 | Q. No, would you conduct a lineup before you had a suspect?
- 25 | A. Well, I wasn't there when the lineup was taken and I don't

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1 even know if -- who's there to -- as a suspect or who was
2 supposed to be. Sergeant MacIntyre would know more about
3 that.

4 Q. Yes, what about your normal practice then, sir, with respect
5 to lineups?

6 A. Well, if you had a suspect.

7 Q. Yes.

8 A. He would be there.

9 Q. And if you didn't, would you still have a lineup?

10 A. Well, you wouldn't have a lineup if you didn't have a
11 suspect.

12 Q. So do I gather from that that the fact that a lineup was held
13 or you believe a lineup was held, meant that you had a suspect
14 at that time?

15 A. Well, I couldn't say, Sergeant MacIntyre would --

16 Q. Would that be a reasonable conclusion?

17 A. I couldn't say, sir.

18 Q. It wouldn't make any sense to have one otherwise, would it?

19 A. Right, right.

20 Q. What was your practice, sir, in terms of keeping records of
21 a lineup? Would you keep records when the lineup was
22 conducted, who viewed and who was in it?

23 A. Oh, yes.

24 Q. And where would they keep that?

25 A. They'd take the peoples -- well, I'd imagine it would be

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- 1 | kept in the detectives office.
- 2 | Q. I see, okay.
- 3 | A. The names and addresses of the personnels.
- 4 | Q. Now other than visiting the Park on that Sunday, do you recall
- 5 | what other involvement you had in this investigation on that
- 6 | day?
- 7 | A. No, sir.
- 8 | Q. Do you recall whether or not you had occasion to visit Mr. Chant?
- 9 | A. We went to Louisbourg but I can't say the date.
- 10 | Q. Okay --
- 11 | A. I have it --
- 12 | Q. Tell us about when you went to Louisbourg?
- 13 | A. Sergeant MacIntyre and I proceeded to Louisbourg on a Sunday
- 14 | afternoon. We --
- 15 | Q. It was a Sunday was it?
- 16 | A. Sunday, yes, sir.
- 17 | Q. Okay.
- 18 | A. The date I can't give you.
- 19 | Q. Was it the Sunday --
- 20 | A. I think --
- 21 | Q. Close to the invesitgation -- close to the incident?
- 22 | A. Next -- right --
- 23 | Q. Would have been the 30th?
- 24 | A. Yeh.
- 25 | Q. Okay.

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1 A. Proceeded to the Town of Louisbourg.

2 Q. If I could just stop you there, did you know why you were
3 going to see Mr. Chant?

4 A. Well, he was there -- or at the hospital and at the scene
5 and we wanted to have a talk to him.

6 Q. Okay, continue.

7 A. Proceeded to the Town Hall. I believe the Chief of Police
8 was there. I believe it was Wayne Magee, he was Chief of
9 Police at that time, I think. And we got an address for
10 Mr. Chant and proceeded to his home. I don't know his
11 address I can't give it to you. And Sergeant MacIntyre
12 spoke to either his mother or father, I can't say, I stayed
13 in the car. And from there we proceeded back from Louisbourg
14 toward Sydney and Mr. Chant was in a ball field or similar
15 to a ball field at the side of the road of the Louisbourg
16 highway.

17 Q. Yes.

18 A. Sergeant MacIntyre spoke to him and --

19 Q. Did he speak to him in the car?

20 A. Outside the car.

21 Q. Outside the car, were you present?

22 A. No, sir.

23 Q. What happened?

24 A. Proceeded back to Sydney with Mr. Chant.

25 Q. I see, did Mr. Chant say anything about the incident while in

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 | the car?
- 2 | A. Not a word, sir, no.
- 3 | Q. How did he appear to you?
- 4 | A. Well, he was playing ball when we first landed there and he
- 5 | did -- I didn't take any notice of how his appearance was.
- 6 | Q. Did he seem scared?
- 7 | A. I couldn't say, sir, I was driving the car.
- 8 | Q. Did you know how old he was?
- 9 | A. No, sir, I had no -- I never spoke to Chant from the time he
- 10 | got into the car til he landed in Sydney.
- 11 | Q. Did he look to you like he was fourteen - fifteen years of
- 12 | age?
- 13 | A. It's possible.
- 14 | Q. What was your practice at the time, sir, in terms of getting
- 15 | information from, from people of that age and I'm thinking
- 16 | of how many police officers would be involved, whether or
- 17 | not parents would be involved, that kind of thing? What was
- 18 | your practice that you followed?
- 19 | A. Well, if he's classed as a juvenile --
- 20 | Q. When you say juvenile, what age bracket are we talking about?
- 21 | A. Sixteen.
- 22 | Q. Sixteen and under, okay.
- 23 | A. Well, at that time.
- 24 | Q. Yes.
- 25 | A. I think there's different --

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1 Q. Okay, everything is different today.

2 A. Everything is changed.

3 Q. We hope. What was your practice, sir, of talking to juveniles
4 and I'm thinking of juveniles who are not accused?

5 A. Well, you have to see the parents of the boy first or the
6 person.

7 Q. Yes.

8 A. And if you want to take a statement from them, you'd have to
9 have one of the parents, you know, with him.

10 Q. Was that your practice?

11 A. Yes, that's the -- that was the practice of the police
12 department.

13 Q. Is that written down anywhere?

14 A. Pardon.

15 Q. Is that written down anywhere?

16 A. No, it was just, just a practice.

17 Q. You took Mr. Chant back to Sydney?

18 A. Back to Sydney, yes, sir.

19 Q. Any of the parents go with you either of the parents?

20 A. No, not at that time.

21 Q. Okay, --

22 A. Mr. Chant did arrive in to Sydney. I'm not sure if Mrs.
23 Chant was with him or not, I'm not sure.

24 Q. They didn't go in the car with you?

25 A. No, sir.

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- 1 Q. And what did you do when you got back to the station with Mr.
2 Chant?
- 3 A. Sergeant MacIntyre took him in to the detective's office and
4 that's the last I seen of him.
- 5 Q. Did you go in?
- 6 A. No, sir.
- 7 Q. Why not?
- 8 A. I can't recall.
- 9 Q. Did a parent go in with Mr. Chant?
- 10 A. I can't recall that either, sir. I believe one of them, maybe
11 the two of them, landed at the police station.
- 12 Q. I see --
- 13 A. At, you know, a later time.
- 14 Q. If in fact a statement was taken from Mr. Chant in the absence
15 of either of his parents, is it your evidence that that would
16 have been contrary to the practice of the police department?
- 17 A. Well, I don't know if a statement was taken from him.
- 18 Q. Say if it were?
- 19 A. Well, like I said before the practice is a juvenile, a member
20 of his family would have to be there with him.
- 21 Q. Right, is that a practice that you followed?
- 22 A. I did follow it, yes.
- 23 Q. Was there --
- 24 A. Any juveniles that I dealt with.
- 25 Q. So the taking of a statement without -- the taking of a

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1 statement of a juvenile without a parent would be contrary
2 to that practice would it?

3 A. Well, it would -- yeh.

4 Q. At any time on that Sunday did you have any discussion with
5 Mr. Chant?

6 A. No, sir.

7 Q. Do you know how he got home?

8 A. No, sir, I don't if his father and mother took him home or --

9 Q. At that time, sir, did you know John Pratico?

10 A. 1971?

11 Q. Yes.

12 A. No, sir.

13 Q. There's some suggestion, sir, again in Volume 12 at Page 193,
14 this is the C. B. C. matter again. I'm sorry Volume 12, sir.

15 A. One ninety-three?

16 Q. No 12, sir.

17 A. I'm sorry.

18 Q. Page 193, sir, and I believe this to be your examination here
19 question number twenty-one. Question

20 What did you know of John Pratico as back
21 in --

21 And your answer

22 Just as being around the City. He didn't
23 seem to be something wrong some of his
24 actions or whatever it was we had problems
25 with him. The name came up a couple of
times on the charge books.

25 Question

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1 Didn't appear to be fully competent?

2 Answer

3 Yeh, right.

4 Do you have any recollection of giving that testimony, sir?

5 A. I don't recall this, sir, it's -- he's saying MacDonald here.

6 I don't recall talking to him or the name might have -- the
7 name might have come up around the street or something.

8 Q. Right.

9 A. It's possible. I don't recall this here.

10 Q. At this time --

11 A. Him being at the police station --

12 Q. At this time do you have any recollection of knowing or knowing
13 of John Pratico in 1971?

14 A. No, sir.

15 Q. Did you ever have occasion to transport a patient to the
16 Nova Scotia Hospital from Sydney?

17 A. At any time?

18 Q. Yes.

19 A. Yes, sir.

20 Q. Was that a practice followed by police officers in Sydney?

21 A. Yes, sir.

22 Q. How did it come about, is that something police officers
23 normally do?

24 A. At that time, they don't do it any more.

25 Q. I see, was this part of their regular duty?

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- 1 A. No, sir, it was done on a -- if your day was off or you had
2 time off to make a trip to Dartmouth, the Chief of Police
3 would detail it to you.
- 4 Q. Yes.
- 5 A. And the County was paying the shot for the, for the trip.
- 6 Q. Do you have any recollection, sir, of transporting John
7 Pratico to the Nova Scotia Hospital at any time?
- 8 A. I don't recall. I'd have to see it on paper.
- 9 Q. Yes. After the 30th of May which was the Sunday, to your
10 recollection did you have any involvement in this investigation?
- 11 A. The 30th of May?
- 12 Q. Yes.
- 13 A. The last day -- 30th of May of 71?
- 14 Q. Yeh, after the Sunday you mentioned that you went to Louisbourg
15 and picked up Mr. Chant and after that day did you have any
16 involvement to your recollection in the investigation?
- 17 A. Not to my knowledge, sir, no.
- 18 Q. There's just one minor point, so I bring it to your attention
19 it's in Volume 16, I think the bottom one, is it, at Page 82 -
20 Page 82 and Page 83. At the bottom of Page 83, sir, is that
21 your -- bottom of Page 83, is that your signature?
- 22 A. Yes, sir.
- 23 Q. It appears that you showed up as a witness to a statement?
- 24 A. I was a witness with Sergeant William Urquhart. He took the
25 statement.

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- 1 Q. When you appear as a witness to a statement, do you take any
2 part in the interview itself?
- 3 A. No, sir.
- 4 Q. Would you be present for the whole interview if you appear
5 as a witness?
- 6 A. You stay right with it.
- 7 Q. Was it the practice that two police officers would be present
8 when statements were taken?
- 9 A. Well, it was my policy.
- 10 Q. I see, do you know if it was a practice in the detective
11 division?
- 12 A. Yeh, I would say it was.
- 13 Q. Did you keep in touch with this investigation as it, as it
14 progressed?
- 15 A. Well, I to a certain degree I did. I had -- I was still
16 doing detective work but I was getting transferred --
- 17 Q. I'm sorry --
- 18 A. I was getting -- in the verge of getting transferred from
19 detective division to desk sergeant. And I
- 20 Q. But you were aware, I would take it, when Mr. Marshall was
21 charged?
- 22 A. I was aware of it, yes.
- 23 Q. Would you have been aware that Mr. Chant and Mr. Pratico were
24 key witnesses?
- 25 A. No, sir.
- Q. You weren't?
- A. John Pratico?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

- 1 Q. John Pratico and --
- 2 A. At the first trial?
- 3 Q. Yes, and Maynard Chant. Were you aware that they were
4 eyewitnesses?
- 5 A. I can't recall, sir.
- 6 Q. Were you present for the trial? Or you were called as
7 a witness?
- 8 A. I was called as a witness.
- 9 Q. Did you sit through any of the proceedings?
- 10 A. Pardon?
- 11 Q. Did you sit through any of the proceedings?
- 12 A. Well, I imagine I did. I was on the stand twice.
- 13 Q. Given your contacts with Mr. Chant at the hospital and
14 at the police station very early in the -- in the investigation,
15 is it not somewhat unusual that he pops up as an eyewitness
16 at the trial?
- 17 A. Popped up as an eyewitness?
- 18 Q. Yes. He didn't tell you he saw the -- saw the murder?
- 19 A. Oh, no.
- 20 Q. Would it not strike you as unusual that he was a key witness?
- 21 A. That would be up to Sergeant MacIntyre.
- 22 Q. Whether or not -- It was up to Sergeant MacIntyre --
- 23 A. Whether or not --
- 24 Q. -- whether or not it struck you as unusual?
- 25 A. I can't say, sir. Unusual or otherwise.

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1 Q. In November of 1971, sir, there was a review conducted
2 by some members of the Royal Canadian Mounted Police.
3 Do you have any recollection of that review?

4 A. I remember -- I imagine this is the review.

5 Q. This is very shortly after the conviction.

6 A. Sergeant Wheaton.

7 Q. No, I'm thinking -- Sorry, sir. Right back in November, 1971
8 about five days after the trial?

9 A. No, sir.

10 Q. You have no knowledge of it?

11 A. No, sir. I can't recall.

12 Q. You mentioned Sergeant Wheaton. There was a re-investigation
13 conducted by the R.C.M.P. in 1982.

14 A. Oh, that was it sir. I'm sorry.

15 Q. Did you have any discussions with any of the R.C.M.P.
16 officers involved in it?

17 A. Sergeant Wheaton.

18 Q. I see. We've had some discussion over the last couple
19 of days about the practise of whether or not one would talk
20 to suspects or witnesses in the car when you were going
21 to the police station. You were taking Maynard Chant from
22 the ballfield in to the police station -- excuse me --
23 the police station in Sydney. Was there any particular
24 rule or policy that would forbid you from talk -- forbid
25 you to talk to him?

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1 A. No. There was no policy. Like I explained this.

2 Sergeant MacIntyre was doing the talking to him outside
3 the car. I wasn't -- I was sitting in the car. Whatever
4 he said to him -- asked him, I can't --

5 Q. Was there anything to prevent you from talking to him
6 in the car?

7 A. Oh, nothing to prevent me, no. I just didn't say anything.

8 Q. And in terms of the reports that detectives in the division
9 would file, other than the occurrence and crime reports
10 that -- that we have, are there any types of reports that
11 you would be required to file during an investigation?

12 A. I don't follow you on that question, sir.

13 Q. Other than the occurrence or crime reports that we have
14 that were on these big sheets in the police station, as
15 you were going through an investigation would there be
16 any other kind of reports, documents or anything that
17 you would be required to make up?

18 A. No, sir

19 Q. Now, my understanding sir, is that you were at least
20 in touch with this investigation on the -- on the Saturday
21 and on the Sunday. The documents that we have indicate
22 that the first statements were taken from Mr. Marshall and
23 Mr. Chant, at least, on the Sunday and late on the Sunday.
24 And that's, I think, some 40 hours after the incident
25 occurred. That seemed like a long time before one gets the

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 statements from key people. In your experience is
2 it usual to wait that long before you get formal statements
3 from people involved? Certainly for Mr. Marshall?

4 A. Well, I'm not sure if it was 40 hours after the incident
5 took place that -- that Mr. Marshall was taken in for
6 a statement. I couldn't say. When -- You're saying 40
7 hours, I --

8 Q. Well, subject to my errors in calculation which not unknown
9 in the past take it as given, and if it were in fact 40
10 hours when you -- You had an incident that occurs roughly
11 at midnight, 28th, 29th, Friday night. You get a statement
12 taken five or six o'clock Sunday evening. Well, it's
13 a fair piece of time. In your practise and in your opinion
14 is that a long time to wait to get a statement from a person
15 such as Mr. Marshall?

16 A. Well, under the circumstances there, if there was still no
17 suspect -- you know, to get a statement from and I imagine
18 after -- you're saying 40 hours -- maybe after 24 hours.
19 I don't know. Maybe Sergeant MacIntyre come up with something
20 or heard something or -- you know. Maybe he just took that
21 time to get Marshall in for a statement and Mr. Chant. I don't
22 know when -- that he took a statement from Mr. Chant on
23 Sunday evening or not.

24 A. But he didn't? Although you recall Mr. Marshall's being
25 around the station on Saturday?

MICHAEL BERNARD MacDONALD, by Mr. Orsborn, Ms. Edwardh

1 A. He was around the station on Saturday. He was asked to be
2 down.

3 Q. That's all I have, sir. Thank you very much. You've
4 been very patient.

5 MR. CHAIRMAN:

6 Before we -- the -- start cross-examination of any, we will
7 pause for a few minutes.

8 INQUIRY ADJOURNED: 11:09 a.m.

9 INQUIRY RECONVENED AT 11:25 a.m.

10 MR. CHAIRMAN:

11 Ms. Edwardh? Any cross-examination?

12 MS. EDWARDH:

13 I'm having some audio problems. Try again? Can you hear me? Okay.

14 BY MS. EDWARDH:

15 Q. Let me begin, sir, by trying to clarify what the lines
16 of authority were on the evening that you were at the
17 hospital. You were a sergeant in a -- the detective squad
18 in effect?

19 A. Yes.

20 Q. And you were the only detective that was on duty that
21 evening, correct?

22 A. Yes, ma'am.

23 Q. So I take it that if anyone had any responsibility to
24 direct the investigation at that time, am I correct sir
25 that it was your responsibility?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 A. Yes, ma'am.

2 Q. And what would have been the relationship of your
3 responsibility to Mr. Len MacGillivray -- Sergeant
4 MacGillivray? He was the Desk Sergeant, correct?

5 A. He was still the Senior Sergeant of the shift.

6 Q. Right. But I take it as the person who is out in the
7 field you would not have looked to him to direct the
8 investigation at that time?

9 A. No, ma'am.

10 Q. That would be your task?

11 A. Right, ma'am.

12 Q. Okay. Now, until Sergeant MacIntyre arrives on Saturday
13 morning at the police station, am I correct, sir, that you
14 continue to be responsible in effect for the investigation
15 so that if something had happened at four or five in the
16 morning the officers would have called you?

17 A. Yes, ma'am.

18 Q. And when Sergeant MacIntyre comes on duty at eight-thirty
19 or nine o'clock, am I correct then that he, who is
20 the senior detective on the police force, is instantly really
21 back in control and responsible for the direction of the
22 investigation?

23 A. Right.

24 Q. Is that correct?

25 A. Right.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 Q. Now, I take it sir, that at the time this incident
2 occurred you had had no training in homicide investigation?

3 A. No, ma'am.

4 Q. Indeed you had never even had the kind of benefits that
5 an officer would have of having worked on a number of
6 homicide investigations? Is that correct?

7 A. Right.

8 Q. And would it also be true to say that Sergeant MacIntyre
9 had had training in homicide investigation prior to this?
10 That he had been involved in the investigation of the --
11 what I think is referred to as the Seto murder?

12 A. Yes, ma'am.

13 Q. So I take it, sir, that you were aware that you had some
14 limitations that your senior sergeant might not have?
15 In other words you just didn't have the training that he
16 might have?

17 A. That's correct.

18 Q. Now, when you were aware -- when you were made aware that
19 Sergeant MacGillivray called Sergeant MacIntyre at home,
20 isn't it a fair assumption, sir, that what you had done
21 was indicated to Sergeant MacGillivray that you might
22 need a little assistance that night?

23 A. Sergeant MacGillivray made the call to Sergeant MacIntyre?

24 Q. Yes.

25 A. Yes.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 Q. Hadn't you, in fact, told Sergeant MacGillivray that
2 you needed a little help or you thought you could use
3 some help?

4 A. It's possible. I could have told him that.

5 Q. And let me ask you, if I could sir, to turn with me to page
6 194. And I'm again asking you to look at some testimony
7 which you gave, under oath, at the time of the litigation
8 between the C.B.C. --

9 A. Volume 12?

10 Q. Yes. And Sergeant MacIntyre. You were called and at page
11 194.

12 COMMISSIONER EVANS:

13 Volume 12?

14 MS. EDWARDH:

15 Yes.

16 BY MS. EDWARDH:

17 Q. Why don't you just take a moment and read over that
18 page and see if you can refresh your memory about that
19 incident. Do you see, sir? There are two comments
20 I like expressly to draw your attention to. First of
21 all the question and answer that's marked number 28.
22 Question: "What was the conference with the Chief about?"
23 I take it's the Chief of Police. Answer: "I needed some
24 help and he was in charge of the detective division."
25 So I take it, throughout that night, you were aware you

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 needed some assistance, correct?

2 A. Yes, I imagine that would be the -- fair to say.

3 Q. Well, I just want to establish, for the Commissioners, that
4 you had no illusion that you were not skilled in homicide
5 investigation. You knew you hadn't done it before?

6 A. Right.

7 Q. And there is an indication at question number 31 also, sir,
8 that you might have called Mr. MacIntyre -- Sergeant MacIntyre.
9 Can I take you down to the end of that page?

10 Question: "You were at the police station when it happened?"

11 Answer: "No, when I called John MacIntyre. I was at
12 home when it happened." The inference I draw from that
13 is that sometime when you were at home, most probably, you
14 made a telephone call to Sergeant MacIntyre?

15 A. No, ma'am, I didn't. This is --

16 Q.. I maybe mistaken but you did not?

17 A. I'm sorry. No, I didn't.

18 Q. Okay. And I take it, your recollection is that night
19 you had no conversation with Sergeant MacIntyre at all?

20 A. No, ma'am.

21 Q. And the only thing that you were aware of was that your
22 Desk Sergeant, in fact, had put a call through to him?

23 A. That was -- I was told that by Sergeant Len MacGillivray.

24 Q. Right. And would it be fair to say that the purpose of that
25 call, as best you believed it to be, was to get Mr. -- Sergeant

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 MacIntyre to come out to give you some assistance if he
2 could?

3 A. Yes, I believe that's right.

4 Q. And I take it that it was Sergeant MacGillivary who told you,
5 for whatever reasons, that Sergeant MacIntyre wasn't going to
6 be able to get out that evening?

7 A. Just in saying -- he told me he wasn't coming out, that's
8 all.

9 Q. Yeh. And I take it, the person who is ultimately responsible
10 for the detective squad or the detective branch of the
11 department is the Chief of Police?

12 A. Oh, yes. Right.

13 Q. And because of his ultimate responsibility is, in fact,
14 that's why you went to see him at three in the morning to
15 brief him on what had transpired?

16 A. Well, it was Sergeant Len MacGillivary once again that
17 called the Chief -- like I explained before, pertaining --
18 The Chief of Police always -- any Chief, to my knowledge,
19 since 1947 on any -- something like this or any crime
20 reports it was necessary for him to -- you know, to get
21 first hand information and he'd like to know what's going
22 on.

23 Q. But, sir, you wouldn't want to leave us with the impression
24 that if there was a mischief that was committed somewhere you
25 were waking up your Chief at three a.m.?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 A. No. Oh, no. No.

2 Q. That you're talking about, what you knew to be, a very
3 serious criminal offense?

4 A. It was a bad stabbing.

5 Q. And since some people here may not know that stabbing
6 itself is not a criminal offense, would you agree we were
7 looking at an attempted murder or a wounding? Something in
8 that range?

9 A. Well, to the best of my knowledge, that night it was a
10 bad stabbing.

11 Q. Yeh. That's the fact of what happened but if you were to
12 lay -- if you were to have taken those facts and gone down
13 to the Court House to lay a charge against someone because
14 -- this is just a hypothetical, sir, -- If you had that
15 kind of injury in that region of the body would you agree
16 with me that most probably that the offense you would have
17 charged the person with is attempted murder or wounding
18 because of the nature of the injury?

19 A. Well, first of all that would -- that information would
20 have to be given to the Crown Prosecutor and the charge,
21 on his say, would be laid. Whatever would be the appropriate
22 charge.

23 Q. I had thought, sir, that you had indicated that often
24 detectives laid the informations?

25 A. Well, you still talked to the Crown Prosecutor.

1 Q. I see. So you would not have laid this one or one
2 of this serious of offense with out consultation with
3 Crown Counsel?

4 A. Right.

5 Q. In any event, that night you knew that you had a critically
6 injured teenager?

7 A. Yes, ma'am.

8 Q. He was unconscious?

9 A. Yes, ma'am.

10 Q. Unable to communicate?

11 A. Yes, ma'am.

12 Q. And was on his way in to surgery?

13 A. Right.

14 Q. And you, in fact, did help undress him? You had given --

15 A. No.

16 Q. I'm sorry.

17 A. No. No. I didn't undress him. I helped him. Remove him
18 from one stretcher to another.

19 Q. And were you in a position at all to see the injury at that
20 time?

21 A. No, ma'am. He was covered.

22 Q. Would it be fair though to say that when you were at the
23 hospital, you knew that there was at least some risk to
24 Mr. Seale's life?

25 A. Well, I'm not a doctor. I couldn't say just what the nature

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 of the -- of the wound in the stomach was.

2 Q. It wasn't a inference you drew from his state of unconsciousness
3 and other things surrounding the incident, that there
4 was some risk to Mr. Seale's life?

5 A. Not at the moment.

6 Q. Did you believe that you -- Did you have any opinion,
7 perhaps I'll ask it that way sir, as to whether there
8 was a risk to his life?

9 A. I still say I'm not a doctor.

10 Q. So you --

11 A. I couldn't come up with any facts that would indicate that
12 it could -- it could be a death occurred on it.

13 Q. So you didn't have a view one way or the other?

14 A. No, ma'am.

15 Q. Okay. Now, if I could just ask you a couple of questions
16 about what you did at the hospital and later. I take it
17 that you did not make any request of any of the doctors
18 to have any of Mr. Seale's blood tested and sent off for
19 analysis for alchohol or drugs?

20 A. No, ma'am.

21 Q. Did that consideration pass through your mind?

22 A. Oh, I can't recall.

23 Q. Is it something, that in retrospect, you have formed an
24 opinion you ought to have done?

25 A. Well, the possibility of getting the blood for a blood test

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 to the lab could be done anytime during -- the next
2 day for that matter.

3 Q. If you were testing for alcohol or drugs, sir?

4 The effect of alcohol and drugs dissipates in the body
5 over a time, correct?

6 A. Yes. Yes.

7 Q. So if you want to take a sample, as close to the event as
8 possible, you've got to get the sample, correct?

9 A. Well, there was nothing said to any of the doctors as
10 far as I was concerned.

11 Q. In retrospect, do you -- is it your opinion that should
12 have been done?

13 A. I can't say.

14 Q. Are you aware of whether it would be done in most homicide
15 investigations with a victim?

16 A. I can't say.

17 Q. Did you have any conversation at all with Sergeant MacIntyre
18 later about whether that should have been done or ought to
19 be done if it were possible to be done?

20 A. No, ma'am.

21 Q. You didn't seize any of Mr. Seale's clothing, correct?

22 A. I came in possession of clothing but not at -- from the
23 hospital.

24 Q. On the night in question Mr. Seale's clothing was removed
25 and just simply left with whoever happened to have it, correct?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 A. I believe that's correct.

2 Q. You didn't itemize it? You didn't make any notes or you
3 didn't seize it?

4 A. No.

5 Q. Is that correct? You didn't search any of his -- any
6 parts of his clothing or any wallet he might have to
7 ascertain, for example, whether he had any money on his
8 person at that time?

9 A. No, ma'am.

10 Q. Or any items that did not, in fact, belong to him?
11 You subsequently came in to possession of Mr. Seale's clothing,
12 is that correct, sir?

13 A. At a later date.

14 Q. And can you recall, sir, when that date was?

15 A. On June the second. Pardon me. I received -- well, what
16 we're talking right now. We're talking about Donald
17 Marshall here. Mrs. Seale came to the police station on
18 June the 3rd and turned over a coat and a pair of overalls.

19 Q. And did you inquire from her, as to whether or not those
20 were the items of clothing that Mr. -- her son was wearing
21 on the night of the stabbing?

22 A. Well, now -- Pardon me. I wasn't talking to Mrs. Seale
23 or Mr. Seale regarding this. I don't know who did the
24 confrontation with her but when they were brought to the
25 police station I was handed the jacket and a pair of overalls.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 Q. She did not hand you those items? Is that your evidence, sir?
2 You didn't -- she didn't give you that material?
- 3 A. Mrs. Seale, yes.
- 4 Q. She handed them to you?
- 5 A. Yes, at the police station.
- 6 Q. Did she identify what these items of clothing were?
7 Did she give you any information about those items?
- 8 A. No, ma'am, she didn't but I took for granted that it was
9 the clothing that young Seale was wearing.
- 10 Q. Well, you took it for granted to the extent of submitting it
11 to the R.C.M.P. crime labs?
- 12 A. Right.
- 13 Q. But are you aware that anyone inquired whether those were
14 the items of clothing that he had on that night?
- 15 A. I can't recall at the moment.
- 16 Q. And I take it you -- Did you make any inquiry that you
17 can recall with respect to what she had done with the jacket
18 or the pants or whether she had washed them or done anything
19 with them or changed their condition in any way?
- 20 A. No, ma'am.
- 21 Q. And I take it subsequently you around the same date, June 2nd,
22 you came in to possession of a jacket. That was a yellow
23 jacket, is that correct sir?
- 24 A. Yes, I came in possession of a jacket from Mr. Roy Gould.
- 25 Q. And did you make any inquiry of a similar kind to Mr. Roy Gould

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 as to where the jacket had been, whether anything had
2 been changed about it or anything of that kind?

3 A. Well, to the best of my knowledge, I believe he -- the
4 jacket that Donald Marshall was wearing the night of the
5 incident.

6 Q. I appreciate that. That's your belief now, sir. Did you
7 make any inquiry of Mr. Gould about where the jacket was,
8 how it had been kept, whether it had been washed or anything
9 to that effect?

10 A. No, ma'am.

11 Q. And I take it you forwarded that -- delivered it to the
12 R.C.M.P. crime labs?

13 A. Yes, ma'am.

14 Q. And you requested that they do a blood analysis and a
15 fibre analysis, is that correct?

16 A. Sergeant MacIntyre also was in the -- at the crime lab
17 with me. I think he was talking to the people involved
18 in the -- whatever information he gave them.

19 Q. So I take it sir, that the questions posed in terms of
20 what kind of analysis was desired were posed by Sergeant
21 MacIntyre, not by yourself?

22 A. I think so sir -- ma'am. I'm sorry.

23 Q. That's all right. Happens regularly. Now, one of the
24 things that you have said over and over again in your evidence
25 sir, is that although you may have been physically present,

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 conversations were conducted by Sergeant MacIntyre?

2 Do I take it that, and this is not a criticism of anyone,
3 that Sergeant MacIntyre's style was when he took over
4 an investigation, he really took it over? He didn't consult
5 you necessarily or tell you what he was thinking. He would
6 make those decisions on his own?

7 A. Oh, no -- we had conversations.

8 Q. Okay. Did you discuss with him the question of whether
9 there ought to be a post-mortem examination on Saturday
10 or Sunday?

11 A. I can't recall.

12 Q. Do you recall any conversation around that topic either
13 on Sunday or Monday?

14 A. No, ma'am.

15 Q. Would it be fair to say that it would be Sergeant MacIntyre
16 who made the decision at that time?

17 A. I would say so.

18 Q. That he would not call in -- I'm not -- I'm going to
19 use the word Coroner but where I come from it's the Coroner --
20 the Coroner to direct a post-mortem. And that would
21 be a decision that the police would make?

22 A. I would say so, yes.

23 Q. Now, that's the kind of decision I'm curious about, sir,
24 as to did it dawn on you that well we have a death here
25 and why are we having a post-mortem. Did you raise that

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 with Sergeant MacIntyre?

2 A. No, ma'am.

3 Q. Is there any reason you can assist us with today as to
4 why you might not have raised it with Sergeant MacIntyre?

5 A. There might have been something said at the station but
6 I can't recall it.

7 Q. Are you aware, sir, that by not having a post-mortem
8 examination the benefits of a careful physical examination
9 of nail scraping and fibres, excetera, is now not available
10 or was not available at the time of the trial?

11 A. I can't say.

12 Q. Are you aware that a post-mortem examination can give
13 useful pieces of information to any investigator?

14 A. Oh, yes.

15 Q. And you were aware of that at the time?

16 A. Yes.

17 Q. Now, you did not detail any of the police officers to
18 go back to the scene to cordon off the area or check the
19 area that night, is that correct?

20 A. Like I explained before, I had a briefing with Sergeant
21 Len MacGillivary. He's in charge of the shifts and he
22 detailed the men after I had the briefing with him, to
23 whatever he wanted to do. He couldn't put all the cars
24 in the park area. He had the -- he had his men out. He
25 had the rest of the city to look after --

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 Q. Certainly.

2 A. And there was always -- there was always calls coming in at
3 three, four, five o'clock in the morning.

4 Q. My question to you, sir, was, you didn't detail anyone?

5 A. No ma'am.

6 Q. You left that entirely up to Sergeant MacGillivary?

7 A. Right.

8 Q. You understood he would do as best he could with the manpower
9 he had. Is that what you're suggesting?

10 A. Right.

11 Q. Now at any time that night did you discuss with Sergeant
12 MacGillivary that he should inquire as to whether the
13 names or addresses were taken of anyone who was around the
14 scene and that he should direct the men if they had a few
15 minutes the next morning or the next day to contact those
16 people?

17 A. Oh, I imagine he would have.

18 Q. No, did you direct that, sir?

19 A. Not to the men, no.

20 Q. Did you direct Sergeant MacGillivary to see whether there
21 could be any manpower available to interview people if their
22 name and address had been taken at the scene?

23 A. Oh, I would say that's correct.

24 Q. You would have done that?

25 A. I would have done it?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 Q. You would have told Sergeant MacGillivray to tell the men that,
2 that's my question?
- 3 A. Well, that would be up to -- I told Sergeant MacGillivray in
4 the briefing what took place and it was up to him to detail
5 men or just ask the men in the patrol car which I presume
6 they did to do the park areas anytime they had a few minutes
7 to -- whatever they could find --
- 8 Q. If I hear you correctly, sir, what you're saying to us today
9 is that really what you did with Sergeant MacGillivray is
10 tell him the facts and you didn't tell him to organize any
11 kind of investigation?
- 12 A. No ma'am.
- 13 Q. You left it entirely up to his discretion as to what to do,
14 if anything. Is that fair?
- 15 A. Right.
- 16 Q. Now you were very concerned as you said on a number of occasions
17 with what was happening with Mr. Seale at the hospital, and
18 that's why you didn't follow-up on certain things or that's
19 why you didn't do other things at the time. Your primary concern--
- 20 A. Yes, I was interested in young Seale.
- 21 Q. You wanted to find out whether there was a moment in which you
22 could speak to him and whether he was lucid at all?
- 23 A. I tried twice at the hospital to speak to him and --
- 24 Q. Now -- I'm sorry, I didn't mean to cut you off.
- 25 A. That's -- That's all right.

- 1 Q. At the time that you first arrived you see that the ambulance
2 attendants or Leo Curry is there?
- 3 A. Mr. Leo Curry.
- 4 Q. And also Mr. Doucette?
- 5 A. To the best of my knowledge there was Mr. Doucette.
- 6 Q. Did you understand him to be a neighbour or a person who
7 resided in the area?
- 8 A. I believe he's a neighbour on Crescent Street, I believe.
- 9 Q. Now did you interview either the ambulance attendant or
10 Mr. Doucette as to any utterances that Mr. Seale may have made
11 in the ambulance?
- 12 A. No, ma'am.
- 13 Q. Is it unusual, sir, that the ambulance attendant and a civilian,
14 Mr. Doucette went in the ambulance with Mr. Seale instead of a
15 police officer?
- 16 A. Well, Mr. Leo Curry at that -- in 1971, if I recall, hasn't
17 got the service for the City of Sydney like he has today.
18 He's got a fleet of ambulances. He came out on call himself
19 during the night, Mr. Curry, and there was always -- it
20 was a practice if it was a bad car accident or anything
21 that took place to use an ambulance, there was always a
22 policeman that would go if he was alone and help him put the
23 stretcher in and take -- go to the hospital behind him with
24 the police car and help him into the hospital with the
25 patient. That was a little practice that we had, you know,

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 down through the years.

2 Q. My question though, sir, is a little different. I understand
3 that the police were quite helpful to Mr. Curry on those
4 occasions. My concern today is the following and let me try
5 and raise it with you. We have heard evidence before the
6 Commission that none of the police officers got into the
7 ambulance and drove from Crescent Street to the hospital.
8 What they did was they followed the ambulance. Do you
9 understand that?

10 A. Yes, ma'am.

11 Q. I further understand that -- and you said in your testimony
12 that Mr. Doucette, a gentleman that resides in the area, was
13 in the ambulance with Mr. Curry. That's what I understood
14 your testimony to be that --

15 A. Yes, Mr. Curry and Mr. Doucette.

16 Q. Now I'm asking you, sir, whether it strikes you in any way as
17 being unusual that a civilian -- Mr. Doucette being a civilian
18 would have been in the ambulance instead of a police officer?

19 A. Well, he could have been -- he could have been on the street --

20 Q. Assuming he was --

21 A. --at the scene of the crime and helped Leo Curry to remove the
22 body or the -- the person I should say, to the ambulance and
23 maybe Mr. Curry -- I don't know. I didn't speak to Mr. Curry.

24 Q. So in any event, the two gentlemen that were with Sandy Seale
25 as he went -- as he drove to the hospital were not interveiwed

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 | by yourself?
- 2 | A. No, ma'am
- 3 | Q. On that night?
- 4 | A. No, ma'am.
- 5 | Q. So I take it -- Sir, are you aware at least the next day --
- 6 | Did you talk to them the next day?
- 7 | A. No.
- 8 | Q. Mr. Doucette or Mr. Curry?
- 9 | A. No, ma'am.
- 10 | Q. Are you aware in the week that proceeded this if anybody
- 11 | interviewed them and asked them if Mr. Seale said anything in
- 12 | the car?
- 13 | A. Well, somebody else in the Detective Division might have
- 14 | spoke to them, I don't know.
- 15 | Q. You have no knowledge of that?
- 16 | A. I have no knowledge.
- 17 | Q. Now one of the other things that has become apparent and
- 18 | that I'd like you to comment on is that you got a description
- 19 | from Mr. Marshall that night?
- 20 | A. Yes, ma'am.
- 21 | Q. And I would take it that in the ordinary course as being the
- 22 | highest ranking officer on the scene, the description that you
- 23 | had is the one that you would have wanted to be broadcast over
- 24 | the radio and for the patrol cars to be working --
- 25 | A. Right, ma'am.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 Q. --to be working with. Now if you read volume 16 on page ten,
2 the description that Constable Mroz had. I think what my
3 learned friend was doing was pointing out to you that your
4 description is quite different from Constable Mroz's.
- 5 A. I read that report, ma'am.
- 6 Q. Yes. It's at page ten and the way it's different most
7 particularly is that the white haired man is described as
8 being the tall man in his mid-forties. You, of course, in
9 your description have the shorter man with the grey hair,
10 correct?
- 11 A. Yes, ma'am, the short -- the short man is wearing a dark blue
12 coat and grey hair and black -- and wore black low shoes, and
13 was wearing glasses.
- 14 Q. So the point I'm really trying to make, sir, is if Mr. --
15 if Constable Mroz was out looking for a tall man with white
16 hair as well as another man, he would have been looking for
17 a man who was quite different from the man you would have been
18 looking for.
- 19 A. Well, I don't know --
- 20 Q. You would have been looking for, if you had been looking
21 hypothetically, for a short man with grey hair, correct?
- 22 A. I would, yes.
- 23 Q. Yes, so assuming he would have been looking for the person
24 he has described in his report on page ten, then he would
25 have been looking for a man in his mid-forties, very tall, with

1 white hair which is quite different, right? What we're trying
2 to find out, sir, is how it was that this report probably
3 written the next morning as well as other reports when these
4 officers came off their shift, doesn't have the description
5 that you gave to Sergeant MacGillivary.

6 A. Sergeant MacGillivary, right.

7 Q. Can you assist us in why that description would not have been
8 generally available?

9 A. I can't -- I can't understand that.

10 Q. You can't understand that.

11 A. Unless they spoke to Marshall on the way down to the police
12 station (I don't know.) and he -- he must have gave them the
13 description again.

14 Q. In any event, would you assume, sir, that when you talked to
15 Marshall as the detective that they would listen to your
16 description and not from a casual conversation in the car or
17 under a tree with Seale?

18 A. Yeh, but I had no conversation with the patrolmen at the
19 hospital or otherwise.

20 Q. No, but you thought Sergeant MacGillivary was sending it out
21 I thought you said?

22 A. Well, maybe he didn't send his out until after the patrol
23 cars got back in from the street. I don't -- I'm not sure.

24 Q. So if I were to ask them if there was any probable explanation
25 to explain this description and your description, would it be

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1 fair to say you really do not have one?

2 A. I had a description and I was going by this but I turned it over
3 to Sergeant Len MacGillivray. Now where Constable Leo Mroz
4 got this I can't say, ma'am.

5 Q. If I were to suggest to you, sir, that there were people in
6 patrol cars that never heard a description go over the radio
7 that night, would you be surprised?

8 A. I would be because Sergeant MacGillivray was -- I didn't order
9 him but I told him to give the men out in patrol cars --

10 Q. That description that you had?

11 A. --that -- this description right here.

12 Q. So it would surprise you if it had not been --

13 A. Yeh, I was very much surprised when I read this report from
14 Constable Leo Mroz.

15 Q. Okay. That's of some assistance. Thank you, sir. Now it is
16 of -- It was an issue in some of the trials whether or not
17 some of -- well, both Mr. Marshall's trial and also
18 subsequent trials involving Mr. Ebsary, whether or not Mr. Seale
19 may or may not have run any distance after being stabbed. When
20 you went back into the park that night, for example, did you
21 look at the area where the stabbing had taken place to
22 determine where the blood was or mark it in any way or mark it
23 at least in your mind and then see if there was any trail
24 of blood in any direction?

25 A. I just had my flashlight and when I walked through the park area

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1 myself I went along the sidewalk, I did a few houses,
2 driveways, and around the basements. I don't recall going
3 to the area --I just couldn't pinpoint the area at that
4 time where Seale was laying on the street.

5 Q. Did you look for an area where there was blood?

6 A. Well, I went along the sidewalk area of Crescent Street.
7 I didn't go out on the middle of the street anywhere --

8 Q. But you had a flashlight?

9 A. --to the best of my knowledge. I had a little flashlight and--

10 Q. And you would be casting it around the area. So you're
11 saying you didn't look in the center of the street but you
12 looked on the --

13 A. I was more -- My attention was more on the driveways of the
14 houses along Crescent Street.

15 Q. And what were you looking for in the driveways of these
16 houses?

17 A. Well, there could be anything that you would -- You know, the
18 next day they found the kleenex with blood on it. That was
19 the next day. I don't recall seeing it. I just don't
20 know whether Constable John Mallowney picked it up on the
21 grass or down by the park, down by the water, handy Crescent
22 Street or where.

23 Q. I guess my question to you, sir, and let me narrow it and see
24 if you can recall. Did you go out specifically that night
25 to look for the area where Mr. Seale had fallen to look at

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 | whether there was blood on the road and to look for any pattern
2 | of blood?
- 3 | A. No, ma'am.
- 4 | Q. Do you recall asking any of the other officers or Sergeant
5 | MacGillivray that night to collect from the officers at the
6 | scene any information by way of names that they may have got
7 | of other people who were there?
- 8 | A. Constable Richard Walsh and Leo Mroz, two very good police
9 | officers, and I think if -- if there was anybody in that
10 | area that would be their first move to get some names.
- 11 | Q. I appreciate your faith in them, sir, my question though is,
12 | did you ask Sergeant MacGillivray to get the officers to bring
13 | in that kind of information to the detective squad?
- 14 | A. I can't recall.
- 15 | Q. And do you recall any time that night, even when you spoke
16 | with the Chief of Police, where you discussed or thought about
17 | the initiation of a door-to-door search?
- 18 | A. Not at that time, no.
- 19 | Q. Do you recall the first occasion where the detectives
20 | discussed the door-to-door search?
- 21 | A. No, I can't say.
- 22 | Q. Do you have any knowledge that a door-to-door search was
23 | ever conducted in and around the Crescent Street area?
- 24 | A. No, ma'am.
- 25 | Q. You have no such knowledge?

- 1 | A. No, ma'am.
- 2 | Q. Do you have any belief from reading any reports or documents
3 | that it might have been done?
- 4 | A. I don't recall.
- 5 | Q. Did you instruct anyone before Sergeant MacIntyre took over
6 | that maybe we should -- or maybe they should go through the
7 | police records and see if there was someone who had been
8 | convicted recently of using or carrying a knife in the
9 | Sydney area, especially in this area?
- 10 | A. No, ma'am.
- 11 | Q. Could you have done that?
- 12 | A. That night?
- 13 | Q. Or the next day?
- 14 | A. The next day?
- 15 | Q. Could anybody have found them in the Sydney Police records?
- 16 | A. If you wanted to go through the records.
- 17 | Q. Was that done on occasion?
- 18 | A. No, I don't think.
- 19 | Q. You've never seen it done in an investigation to say,
20 | go back and look?
- 21 | A. No, ma'am.
- 22 | Q. In terms of your assessment, I take it from what you testified
23 | to yesterday, sir, that it's your impression that when you
24 | spoke with Mr. Marshall he was clearheaded and there's no
25 | indication that he had been consuming alcohol in the -- that

1 | night?

2 | A. Not to my knowledge.

3 | Q. You didn't form that impression at all?

4 | A. No, ma'am, no.

5 | Q. And did you -- I take it you didn't really get close enough to
6 | Mr. Seale to make that assessment?

7 | A. No, ma'am.

8 | Q. I'd like to go back, if I could, to the discussion of your
9 | involvement with John Pratico, and am I correct, sir, having
10 | shown you or -- I'm sorry, Mr. Orsborn having shown you
11 | page 192 and 193, am I to understand that you now basically
12 | recall that you had had some contact with Pratico prior to
13 | this stabbing. You knew who he was?

14 | A. No, I -- I can't understand this report here.

15 | Q. You can't understand -- Not the report, sir-- That's your
16 | testimony, sir. That's what you said under oath three or
17 | four years ago.

18 | A. I'm trying to recall it but I don't recall it myself.

19 | Q. I'm sorry, what --

20 | A. I didn't know Pratico. He might have been in the court room
21 | for me to have any dealings with the man. I can't recall.

22 | Q. Let me just take you back there. Is it possible, sir, that the
23 | lapse of time is such that you can no longer really recall
24 | whether you had some vague knowledge of Mr. Pratico, but that
25 | at the time you answered those questions -- a question on

- 1 | page 193, and let me read it to you. "What did you know" --
- 2 | A. Number 16?
- 3 | Q. I'm sorry. Yeh --No, volume 12, page 193. I'll let you
- 4 | find it. You'll see question 21:
- 5 | What did you know John Pratico as
- 6 | back in --
- 7 | A. Just as being around the City. He
- 8 | didn't seem to be -- There's
- 9 | something wrong somewhere that his
- 10 | actions or whatever it was -- We
- 11 | had problems with him. The name
- 12 | came up a couple of times in the
- 13 | charge book.
- 14 | Q. He didn't appear to be fully
- 15 | competent?
- 16 | A. Yeh, right.
- 17 | Now, sir, if you answered those questions in 1982 that way, is
- 18 | it possible that today some years later and not much farther
- 19 | away from the event you just are confused or have difficulty
- 20 | recalling and that you may, indeed, have had this vague
- 21 | knowledge of Mr. Pratico at the time?
- 22 | A. Well, now reading this report here, ma'am, the name came up
- 23 | a couple of times on charge books. That could be possible.
- 24 | That could be possible. I'm not saying that I knew John
- 25 | Pratico. I would --
- Q. No, but you -- I'm sorry.
- A. I would read charge books every day of the week to find out who was charged and what they were charged with.
- Q. And go on to what else you'd say, sir.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 A. I'm not sure that I knew John Pratico at that time.

2 Q. And what else do you say under oath there, sir?

3 A. "The name came up on the charge books".

4 Q. Yes, and what else do you say?

5 A. "He didn't appear to be fully competent". I might have met
6 him at the police station if he came up on charge reports.

7 Q. That's all we're trying to get at, sir, not that you knew him
8 well, but rather that you had a vague sense of who the young
9 man was and you knew that he might not be fully competent?

10 A. Well, like I say, I might have seen him in the police station
11 if he was up on charges.

12 Q. You might have heard his name and heard him discussed?

13 A. Right, ma'am.

14 Q. And would it be also fair to say that if you made that statement
15 in October, 1984, that in your opinion you agreed he was not
16 fully competent, you knew that he was a young man who had some
17 problems and wasn't very bright. Did you know that, sir?

18 A. Well, I said it here.

19 Q. Yes, and I take it in answering that question under oath, you
20 would not have answered it if you weren't quite clear of it
21 in 1984?

22 A. That's right.

23 Q. Now do you recall at any time raising with Sergeant MacIntyre
24 the problems of John Pratico's abilities, his intelligence
25 when he became a "eye witness"?

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- 1 A. I don't recall.
- 2 Q. And I take it -- Do you recall ever hearing Sergeant MacIntyre
3 discuss this topic, John Pratico's difficulties as a
4 witness or his --
- 5 A. No, not to the best of my knowledge right now.
- 6 Q. And when Mr. Pratico was interviewed as I recall your evidence,
7 you and Sergeant MacIntyre picked him up but you had nothing
8 to do with that interview. Is that correct? You were
9 not present at any time?
- 10 A. I would have to see that report, ma'am. Where --
- 11 Q. Well, I'm sorry, I maybe -- I'm confusing someone. Were
12 you present at all when Mr. Pratico was interviewed at any
13 time?
- 14 A. No, ma'am. No.
- 15 Q. You've indicated, sir, that in your view it was standard
16 Police Department procedure to not interview young juveniles
17 or juveniles without their parent's consent or an adult
18 present, a parent present, correct? That's your view of
19 the procedure?
- 20 A. Yeh, that was my policy.
- 21 Q. And would you agree with me, sir, that one of the reasons
22 that policy was enforced is that young children are
23 generally viewed as being impressionable, for a dramatic
24 effect, impressionable?
- 25 A. Yeh, that's possible. Yeh.

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1 Q. And that's police --

2 A. Yeh. Right.

3 Q. And kids can get scared and say things, right?

4 A. Yes, ma'am.

5 Q. And that's why the parent is there. Is that also one of the
6 reasons that it's particularly important with impressionable
7 children to have two officers present when children are
8 interviewed --

9 A. Well, --

10 Q. --as well as the parents?

11 A. On all statements there should be two police officers. If
12 there was a crime committed and there was a statement
13 taken there should be two police officers involved.

14 Q. Well, would you agree with me that the reason there should
15 be two police officers is if the person later says, "I didn't
16 say that", there have been two police officers who heard it
17 and not just one?

18 A. Right, yeh.

19 Q. And with children that you have two police officers present,
20 not only for that reason, but also to ensure that the other
21 officer can account for what happened in the interview?

22 A. Right, ma'am.

23 Q. And you probably do it with rape victims too, correct, or
24 women charged -- alleging sexual assault, you'd put two
25 police officers and also a police woman in there, right?

- 1 A. You'd have one police officer taking the statement and you'd
2 have one police officer, a witness.
- 3 Q. And watching the interview?
- 4 A. And watching the interview.
- 5 Q. Yeh, so they can make sure that there are no improprieties
6 or anything like that?
- 7 A. Right.
- 8 Q. And that's why that procedure is done, correct?
- 9 A. Right, ma'am.
- 10 Q. Well, your interview, I take it -- Your conversation with Chant
11 at the hospital, let me just take you back there. You said
12 to us today that -- and yesterday as I understand your
13 evidence that when Maynard Chant was brought to the hospital
14 you didn't think of him as anything more than a young kid who
15 was hitchhiking?
- 16 A. Right, ma'am.
- 17 Q. And that you simply directed that he be removed to the
18 police station in order to facilitate his father coming
19 from Louisbourg and getting him?
- 20 A. Coming from Louisbourg, right.
- 21 Q. And I take it at that time you didn't notice that he had blood
22 on his person or he wasn't carrying a bloody shirt?
- 23 A. I never noticed.
- 24 Q. Now I'd like to direct you, sir, to page six of volume 16,
25 and this is a report signed by Constables Johnston and

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1 MacKenzie, and also the last part of it by Constable Walsh.

2 Do you see this report, page six?

3 A. Page six?

4 Q. Yes, dated May 29th -- I'm sorry, did I say volume 12. Yes,
5 it is volume 16, sir.

6 A. Oh, sixteen, is it?

7 Q. Yes, it's volume 16.

8 A. Sorry.

9 Q. And the last two or three sentences are the sentences I'd
10 like to draw your attention to, referring to Mr. Chant,
11 the officers say:

12 He was put in the police car and taken
13 to Detective M. R. MacDonald who was
14 at the City Hospital. After being
15 questioned by Detective M. R. MacDonald
he was taken to the station where he
called his father to come to Sydney to
pick him up.

16 Now I'd like to just ask you a couple of questions about that.
17 It's been a long time. It's been a long time since 1971,
18 sir. We all know that. If the officers wrote this report the
19 next morning would that assist you in refreshing your memory
20 that you must have had some conversation with Mr. Chant. You
21 must have asked him some question?

22 A. Not at the City Hospital, ma'am. I can't recall. I was too
23 interested in young Seale. Constable Walsh and Leo Mroz
24 were there and Corporal -- Constable Johnson and Frank
25 MacKenzie. Now you got four police officers there with him

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1 and they might have told me -- they might have said, "This is
2 Chant". "He was picked up over on George Street hitchhiking
3 to Louisbourg and he had blood on his shirt".

4 Q. They might have told you that?

5 A. They might have told me that.

6 Q. And they might have even said to you, sir, that Mr. Chant says
7 he saw some of it, and --

8 A. Well, he's telling these police officers --

9 Q. They might have said that -- The police officers might have said
10 that to you?

11 A. No, I don't recall. No.

12 Q. If they had said to you, "This is Maynard Chant and he had
13 blood on his shirt", wouldn't that send off alarm bells in
14 your mind about some explanation of where the blood came
15 from?

16 A. If they did say that to me, ma'am, and -- like I said before,
17 I was interested in young Seale to see if I could get a word
18 with him. It was more important than -- The police officers
19 had Chant and I imagine I just told them to take him down to
20 the police station and when I get finished I'll go down and
21 talk to him, but I was more interested in young Seale.

22 Q. We appreciate that, sir, and what I'm going to suggest to you
23 is that it's entirely consistent that they gave you that
24 piece of information and that's why you had him taken to the
25 police station because once you knew that they had him and you

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1 | knew who he was, and you knew where he lived, you knew you could
2 | interview him later. It wasn't a problem.

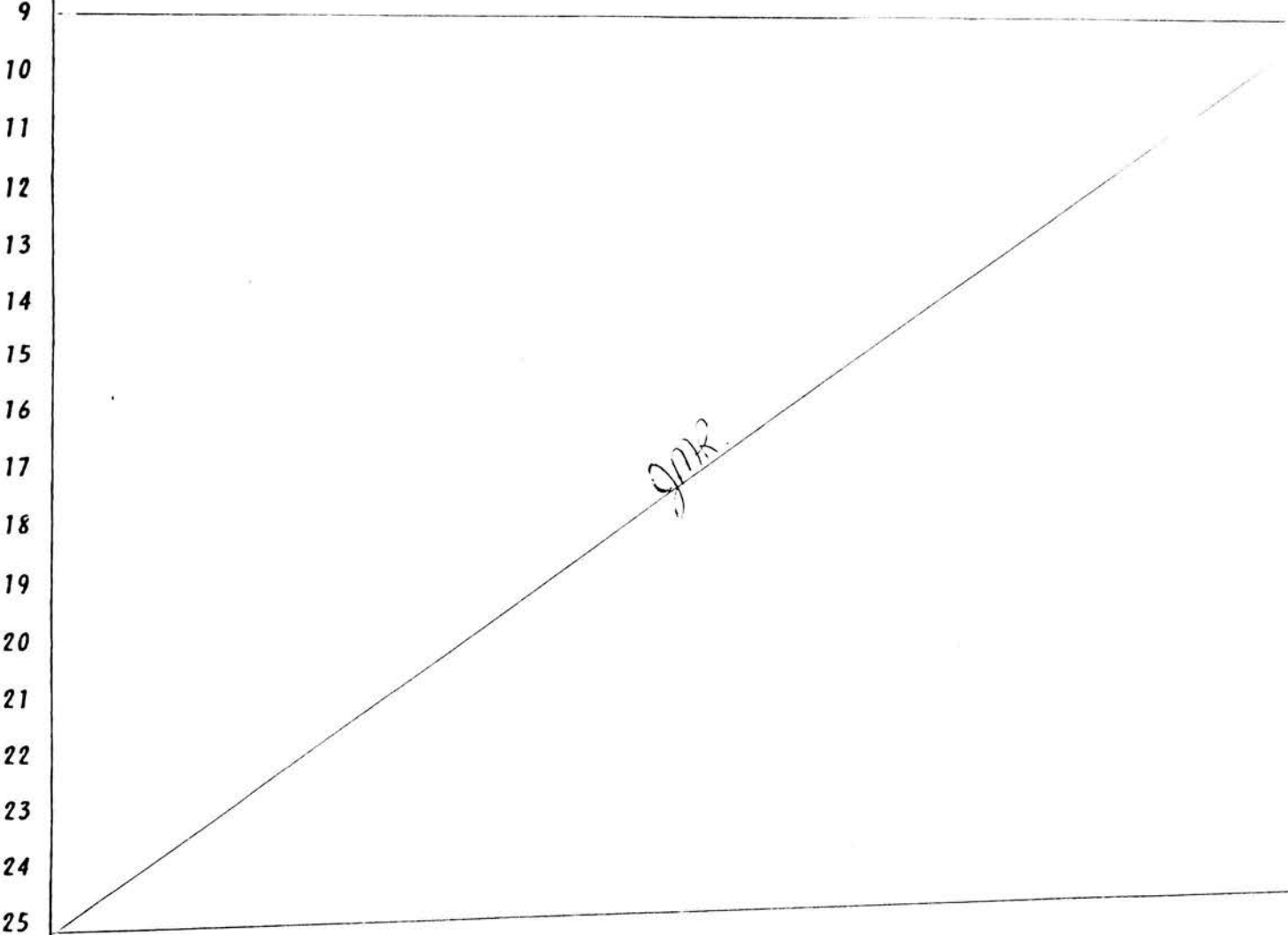
3 | A. I can't recall any conversation. I'm sorry.

4 | Q. Now with respect to your next contact -- Did you have any
5 | further contact with Mr. Chant?

6 | A. No, ma'am.

7 | Q. Did you participate in any interviews with Mr. Chant?

8 | A. No, ma'am.



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- 1 Q. Did you go with Sergeant MacIntyre to conduct an interview
2 and remain outside at any time?
- 3 A. We, like I explained a little while ago, proceeded to the
4 Town of Louisbourg in the County of Cape Breton.
- 5 Q. And do you recall whether that interview lasted at least
6 a couple of hours while you waited?
- 7 A. Away a couple of hours?
- 8 Q. No, that the interview lasted a couple of hours?
- 9 A. I wasn't on an interview.
- 10 Q. No, I appreciate that. You were waiting outside.
- 11 A. I was in the police car.
- 12 Q. Right. I'm going to suggest to you that the interview between
13 Mr. Chant and Sergeant MacIntyre lasted a couple of hours.
- 14 A. In Louisbourg?
- 15 Q. Yes.
- 16 A. No, ma'am.
- 17 Q. May I ask you to look at page 186, Volume 12. Would you read
18 that page?
- 19 A. 187?
- 20 Q. 186.
- 21 A. Right.
- 22 Q. Have you read 186?
- 23 A. Yes, ma'am.
- 24 Q. Okay, let's start at the beginning. Your recollection today,
25 sir, is that you first accompanied Sergeant MacIntyre to Mr.

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1 to Mr. Chant's home and Sergeant MacIntyre spoke with a parent
2 or an adult.

3 A. Yes, ma'am.

4 Q. And you remained in the vehicle?

5 A. Yes, ma'am.

6 Q. Now on these -- Today I also understand that you recall not
7 being present when Sergeant MacIntyre conducted an interview
8 with Mr. Chant. That's your evidence today?

9 A. Right.

10 Q. If you read page 186, am I being unfair to you, sir, to suggest
11 that you -- didn't you imply on this occasion that you were
12 present? If I can take you down to --

13 A. That's taking of a statement, ma'am? Are you referring to a
14 statement or an interview?

15 Q. Well, perhaps you can assist me. I may be mistaken. Were there
16 more than one -- Was it more than one occasion that you and
17 Sergeant MacIntyre were down at Louisbourg?

18 A. No, not that I recall, just one -- one particular day.

19 Q. And it seems to be describing here an interview that lasted
20 about -- approximately two hours in the car. You say about
21 line 18, question:

22 Did he get into the police car?

23 A. Yes.

24 Q. And how long were you and Sergeant John
25 MacIntyre in the company of Maynard Chant on
that particular occasion?

A. Maybe a couple of hours.

So is your recollection different today, sir?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 A. Sergeant MacIntyre could have been talking to him in the car
2 and even driving towards Sydney. I can't recall.
- 3 Q. You don't recall.
- 4 A. I don't recall at all. I had nothing to say to Mr. Chant at
5 any time.
- 6 Q. Your best recollection is that Sergeant MacIntyre's conversation
7 occurred outside of your presence. Is that correct?
- 8 A. Where young Chant was stopped with some other boys.
- 9 Q. And indeed if he was interviewing Maynard Chant in your
10 presence, wouldn't it be fair to say that standard policing
11 procedures would have told you to stop the car and start
12 writing, because you're dealing with a juvenile, you're the
13 witness to the interview, and someone has to make the notes.
14 But in fact you would not have been present. That's what
15 I'm trying to add some support to --
- 16 A. At the interview?
- 17 Q. Yes.
- 18 A. In Sydney?
- 19 Q. No. In Louisbourg. If one took place in the car.
- 20 A. Oh, I was in the car at all times.
- 21 Q. Okay. Now I'm confusing you. Let me start again. You have
22 no recollection of any conversation in the car, correct?
- 23 A. No, ma'am.
- 24 Q. And at some point in Louisbourg, you're out of the car and
25 Sergeant MacIntyre gets out of the car, right?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 A. Sergeant MacIntyre was out of the car, yes.
- 2 Q. And he goes in and he has a conversation, does he not?
- 3 A. With Mr. Chant's parents.
- 4 Q. Right. And then at no time is Mr. Chant ever removed from
5 the car, is that your evidence, after he gets into the car
6 before you get to Sydney? You pick him up on the road, you
7 drive directly to Sydney to the police station.
- 8 A. Right.
- 9 Q. Okay, and then in Sydney you have no participation in the
10 interview. Is that your evidence?
- 11 A. I can't recall. I believe Sergeant MacIntyre took him in the
12 Detective's office and that was it.
- 13 Q. Now, if I can just back-track and ask for some common-sense
14 observation from you, it's about a forty minute drive?
- 15 A. Forty, fifty minutes.
- 16 Q. You've got a juvenile in the car. Correct?
- 17 A. That's right.
- 18 Q. Do you -- do you recall any effort being made by either of
19 you, as police officers, to ease Mr. Chant's probably obvious
20 anxiety? He's a kid. He's in a police cruiser. Did you chat
21 with him, talk about baseball, anything?
- 22 A. Never spoke a word to Mr. Chant from Louisbourg to Sydney.
- 23 Q. And your perception is it's deadly silent as you drive
24 him in in the police cruiser?
- 25 A. That's the way it happened.

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- 1 Q. Let me just jump around if I may, sir. Donald Marshall appeared
2 at the police station on Saturday morning. Correct?
- 3 A. The next -- Yeh. Right, ma'am.
- 4 Q. Yeh. And do I understand from your evidence he was asked there
5 by Sergeant MacIntyre? Is that correct?
- 6 A. I believe so, ma'am, that's correct.
- 7 Q. And do you know how Sergeant MacIntyre got in touch with Mr.
8 Marshall?
- 9 A. No, ma'am, I don't.
- 10 Q. Do you recall how Mr. Marshall arrived at the station?
- 11 A. When?
- 12 Q. How he arrived? On foot, by police car?
- 13 A. I believe to the best of my knowledge, a police car went up and
14 picked him up.
- 15 Q. And would he have arrived some time in the morning around nine-
16 thirty or ten?
- 17 A. Yes, it was early in the morning.
- 18 Q. And I understand, sir, that he sat there for roughly five hours,
19 four to five hours. Take a look at page 188, Volume 12, if
20 that assists you, starting from about question 25 down.
- 21 A. 188 on 12?
- 22 Q. Yes. Starting from about two-thirds the way down the page.
23 What I'm asking you to address is the time period that Mr.
24 Marshall was sitting there at the station.
- 25 A. Well, he was at --

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- 1 Q. Are you saying --
- 2 A. He was at the station.
- 3 Q. If you look at your answer to question 30 or line 30, I'm
4 sorry:
- 5 Q. How long was he there?
6 A. Four or five hours.
- 7 Would that be accurate, sir?
- 8 A. That could be; oh, yes.
- 9 Q. And I take it your recollection is Mr. Marshall didn't do any-
10 thing except sit outside of the Detective's office.
- 11 A. That's about correct.
- 12 Q. You didn't observe him in an interview situation with any
13 Detective let alone Detective MacIntyre?
- 14 A. No, ma'am.
- 15 Q. Did you observe him having casual conversation with anyone?
- 16 A. No, ma'am.
- 17 Q. And do you recall how it came that Mr. Marshall was released
18 and told to go home?
- 19 A. I can't recall.
- 20 Q. Now what was your understanding of why Mr. Marshall was sitting
21 there?
- 22 A. Well, there could have been work to be done by Sergeant
23 MacIntyre or one of the other Detectives. I don't know. I
24 couldn't say.
- 25 Q. Who else other than MacIntyre was working on the case that day,
Saturday morning, other than yourself of the Detectives?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 | A. Well, I'm not sure if William Urquhart or M. J. MacDonald.
2 | I'm not sure who was out.
- 3 | Q. What confuses me perhaps a little, sir, is this is the 17 year-
4 | old who was obviously out till the wee hours of the morning
5 | the night before with his friend seriously injured and he sits
6 | in the police station for five hours. Did you have any concern
7 | about that?
- 8 | A. No.
- 9 | Q. Did Sergeant MacIntyre let you in on why he wanted Marshall
10 | there?
- 11 | A. No, ma'am.
- 12 | Q. Do you assume it was his request that Marshall was there or
13 | was it -- could it have been one of the other officers?
- 14 | A. Oh, no, it would be Sergeant MacIntyre.
- 15 | Q. So anyway, Mr. Marshall leaves and then you find him back at the
16 | police station the next day, correct?
- 17 | A. Sunday.
- 18 | Q. Yes, Sunday.
- 19 | A. Right, ma'am.
- 20 | Q. He comes back. And do you recall how he got there on Sunday?
- 21 | A. No, ma'am.
- 22 | Q. And do you recall when he arrived on Sunday?
- 23 | A. No, ma'am.
- 24 | Q. And would it be also fair to say that he spent roughly the same
25 | period of time on Sunday at the police station? He was there

1 five or six hours on Sunday, too. If you want to assist your
2 recollection, sir, take a look at page 189, the testimony that
3 you gave at Mr. Marshall's trial in 1971, and down about half-
4 way through the page, there's the indication that -- if I can
5 read this to you:

6 Q. What was he doing there for four or five
7 hours? What was he doing there?

8 A. He was asked to be there by Sergeant
9 MacIntyre.

10 Q. Yes, so he came there as a result of
11 that. Now he got there in response to a
12 request by Sergeant MacIntyre. What
13 happened when he got there?

14 A. He stayed for four or five hours.

15 Q. What happened during the four or five
16 hours?

17 A. I couldn't say, sir. He was there.

18 And then:

19 Q. All right. When did you see him again?

20 A. Sunday morning.

21 Q. Where did you see him?

22 A. At the police station.

23 Q. How long was he there then?

24 A. Four or five hours.

25 So would you agree with me, sir, that he most probably spent
four or five hours on Sunday as well?

A. It's possible.

Q. Well if you answered that in 1971 under oath at Mr. Marshall's
trial, wouldn't you have been more certain of it than just
merely possible?

A. Well, you're saying four or five hours --

Q. Yes.

A. -- on a time limit.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 Q. Four or five hours. Mr. Marshall --

2 A. I mean I -- I didn't look at my watch when he landed there and
3 I didn't look at my watch when he left. I'm --

4 Q. What I think I --

5 A. -- only saying here that it could have been four or five hours.

6 Q. What I'm trying to get at, sir, is that your perception on
7 Sunday was that Mr. Marshall sat around the police station
8 for a lengthy period of time. Is that correct?

9 A. Oh, yeh. Yes.

10 COMMISSIONER POITRAS:

11 I just want to draw your attention to page 190, lines six and seven.

12 MS. EDWARDH:

13 Thank you very much.

14 BY MS. EDWARDH:

15 Q. And the four or five hours you've used in your testimony you
16 think is just an approximation of the period of time he was
17 there. It could be longer. It could be a little shorter.
18 Correct?

19 A. Correct.

20 Q. And when he was there on that occasion, was he also brought
21 by Sergeant MacIntyre?

22 A. Any time he was ordered to the police station, he was ordered
23 by Sergeant John MacIntyre.

24 Q. Didn't it strike you as odd to see this young man sitting
25 again -- sitting around again?

A. No.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

- 1 Q. Did you say to Sergeant MacIntyre, have I missed something
2 here? Is he now a suspect in this case?
- 3 A. No, ma'am, I don't recall asking Sergeant that question.
- 4 Q. Was it evident to you because Mr. Marshall was cooling his
5 heels outside that he thought that Mr. Marshall was a suspect?
- 6 A. That who thought?
- 7 Q. Sergeant MacIntyre.
- 8 A. Sergeant MacIntyre?
- 9 Q. That that was his belief.
- 10 A. I didn't ask that question of Sergeant MacIntyre.
- 11 Q. From his conduct as a police officer, by having Mr. Marshall
12 sit, would you agree that that would not be the ordinary case,
13 that would not be what Sergeant MacIntyre would have done if
14 he had given Mr. Marshall merely the status of being a
15 victim?
- 16 A. No, I can't answer that. I'm sorry.
- 17 Q. And in the period that he was there on Sunday, and let me
18 draw this to your attention, there was a line-up as well.
19 Were you present for that line-up, sir, at all? Were you
20 in and around the station?
- 21 A. I could have been in around the station.
- 22 Q. Okay, you were -- do I take it you were physically present
23 during the line-up process?
- 24 A. Yes, I believe the line-up was held in the court room of
25 the police station.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 | Q. The court room. And would the line up have taken much more
2 | than an hour or so?

3 | A. That's a hard one. I can't answer that. It might have been
4 | two hours.

5 | Q. Do you recall when the line up was? Was it in the early
6 | afternoon, late afternoon?

7 | A. Sunday morning. Some time Sunday morning.

8 | Q. In the morning hours.

9 | A. Yes, ma'am.

10 | Q. So before noon?

11 | A. Well, Sunday morning.

12 | Q. Well, I'm asking do you have any recollection of when it was.

13 | A. No, ma'am.

14 | Q. So you're relying exclusively on this transcript?

15 | A. Right.

16 | Q. Do you recall Mr. Marshall hanging around or being around the
17 | station on Tuesday or Wednesday or Thursday?

18 | A. No, I don't recall.

19 | Q. If I were to suggest to you that he was, would you have any
20 | recollection that -- of anything that transpired that would
21 | make that incorrect?

22 | A. It's possible. He was around. It's possible.

23 | Q. And can you assist us in determining what purpose it would
24 | serve to have one of these other victims sitting in the
25 | police station for a number of hours? Can you assist us as

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 to what Sergeant MacIntyre was working on that would have made
2 that a useful activity?

3 A. No, ma'am, I can't.

4 Q. And you didn't discuss it with him?

5 A. No, sir.

6 Q. Now my learned friend suggested to you that there had been
7 some suggestion that at the hospital you brought out one or
8 two persons and showed them to Mr. Marshall. Do you recall
9 a question of that kind from Mr. Orsborn? I'm not saying
10 you made the suggestion, sir. Don't look like that, but there
11 was a suggestion made elsewhere I think in Michael Harris's
12 book that Mr. Marshall had been shown one or two individuals
13 that night at the hospital.

14 A. Not to my knowledge.

15 Q. I'm going to put to you the possibility that you asked Mr.
16 Marshall just to take a look at Mr. Chant. He was a kid.
17 He was a hitch-hiker. Could you have done that?

18 A. No, ma'am.

19 Q. You have no recollection of doing that?

20 A. I didn't do it.

21 Q. You didn't do it. You're certain of that?

22 A. I just spoke to Marshall in a room by himself. Mr. Chant
23 was out on the main floor.

24 Q. You're certain of that, sir? Is that --

25 A. To the best of my knowledge.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 Q. That's my question. Okay. Do you recall in your conversation
2 with Mr. Marshall that night that he indicated to you at any
3 time that in meeting these two men, that one of whom had
4 stabbed Sandy Seale, that one of them had gestured to an
5 area around the park indicating that's where he resided?

6 A. No.

7 Q. Do you recall that ever being the subject matter of a discussion
8 later on after Sergeant MacIntyre had interviewed Mr. Marshall?

9 A. Not to my knowledge.

10 Q. That Marshall had said that the person lived up there. Not
11 to your knowledge?

12 A. I can't recall that.

13 MS. EDWARDH:

14 I wonder, My Lord -- I may be able to cut short this significantly.
15 Is it a good time to break for lunch now? I'll probably take
16 more time now than I would if I had a chance to review these notes.

17 MR. CHAIRMAN:

18 All right, we'll adjourn until two.

19 INQUIRY ADJOURNED: 12:33 p.m.

20
21
22
23
24
25



MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 INQUIRY RECONVENED: 2:00 p.m.

2 BY MS. EDWARDH:

3 Q. So just a couple of last areas I'd like to deal with. You've
4 indicated that prior to laying of an Information Crown
5 Counsel would usually be consulted especially in a serious
6 case like this?

7 A. Yes, ma'am.

8 Q. Correct?

9 A. Yes.

10 Q. I'm not sure you're on.

11 A. Yes, ma'am.

12 Q. Okay, and would it also be the usual case or the usual situation
13 that Crown Counsel would also be involved as an investigation
14 of this kind was being brought to a conclusion?

15 A. Oh, yes.

16 Q. So would I then expect it to be the fact that Mr. MacNeil
17 would have been kept somewhat abreast of events and would
18 have been consulted perhaps even on an ongoing basis about
19 the investigation?

20 A. That's pretty accurate.

21 Q. Pretty accurate?

22 A. Yes.

23 Q. Okay, you have no reason to think that did not happen in this
24 case?

25 A. No, I don't think so.

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 Q. And did you yourself consult Mr. MacNeil in this week or two
2 after the stabbing?

3 A. Not by myself consult him. I couldn't --

4 Q. Were you present when --

5 A. I could have been present in his office when some information
6 was discussed.

7 Q. Now if I could ask you just to think back and take a moment,
8 do you recall when you say you could have been present I take
9 it it would be typical that you would be there but can you
10 recall specifically if you were present on this case, who
11 was with you and what you might have been discussing with
12 Mr. MacNeil?

13 A. I can't recall, ma'am.

14 Q. Now I believe, sir, we will receive some testimony to the
15 effect that you drove Mr. Pratico perhaps in the company of
16 his mother and sister to the Nova Scotia Hospital sometime
17 between the Preliminary Inquiry involving Donald Marshall
18 as an accused and also his trial in November. You've
19 indicated to us that you did on occasion drive people to
20 the Nova Scotia Hospital, correct?

21 A. Oh, yes.

22 Q. And do you recall specifically, sir, whether around that time
23 period you drove people to the Nova Scotia Hospital let's say
24 between the Preliminary in July --

25 A. Are you talking about Pratico or people?

MICHAEL BERNARD MacDONALD, by Ms. Edwardh

1 Q. Just people in general at that time?

2 A. I couldn't say, that's a long time.

3 Q. And I -- do I understand your evidence to be that you might
4 have driven Pratico but today you simply cannot recall?

5 A. I don't think I did, really.

6 Q. Did you know that Pratico had been admitted into a psychiatric
7 facility prior to his testimony and trial?

8 A. No, ma'am.

9 Q. Now the other area with respect to Mr. Pratico, sir, is I
10 believe we may hear some evidence, do you recall ever being
11 in the Park or taking Mr. Pratico to Wentworth Park in the
12 week after the stabbing?

13 A. No, ma'am.

14 Q. Do you recall being in the Park when there was an effort on
15 the part of the policemen to -- part of fellow officers to
16 assist Mr. Pratico or Mr. Chant to identify where they were
17 standing or something to that effect?

18 A. No, ma'am.

19 Q. You recall nothing of that event?

20 A. No.

21 Q. Now if I could just ask you, sir, to turn with me to Page 196
22 and 197 of Volume 12. And I'd like to ask you about some
23 phrases you have used. Starting out at Page 196 at question
24 45. Do you see that question? Let me read it with you
25

1 Question

2 When you spoke to Marshall that night at the
3 police station, did you believe what he was
telling you?

4 Answer

5 Well, I didn't know Marshall you know, he
6 was a friend of Seale's from what I gather.
I couldn't disbelieve or believe. I just
7 said,

8 and these are the words I want to underline

9 I just said, 'we'll put it on hold until
the morning and see what would happen'.

10 Keeping those words in mind, I'd also like you to turn over
11 the page to 197, question 49

12 Anything else that you did to follow this up?

13 Answer

14 No. That was it. Once we got Marshall we
15 put it on hold to see what happened at City
Hospital.

16 Now what I've asked you, sir, to address your mind to is
17 whether from your perspective you had in fact got Marshall
18 and what did you mean by "once we got Marshall, we put it
19 on hold to see what would happen"?

20 A. I can't explain that ma'am.

21 Q. Could it be possibly the case that you believed that Mr.
22 Marshall was in fact implicated in this?

23 A. No, I didn't.

24 Q. And then let me put another interpretation to you, sir, and
25 see whether this jogs your memory. Would it be fair to say

MICHAEL BERNARD MacDONALD, by Ms. Edwardh, by Mr. Pugsley

1 | that your involvement initially in the investigation was
2 | relatively minor and you just left things as they were until
3 | Sergeant MacIntyre took over in the morning, is that what
4 | you mean when --

5 | A. From the time I went home which was around four a.m. in the
6 | morning.

7 | Q. But you really didn't do much even between twelve o'clock
8 | and four in terms of furthering the investigation, correct?

9 | A. That's right.

10 | Q. And is the reason you didn't do much was because you were in
11 | fact putting things "on hold" as you've used those words till
12 | Sergeant MacIntyre arrived in the morning?

13 | A. That's right.

14 | Q. And is that because when a homicide or something that serious
15 | happened in Sydney, it was clear to you that Sergeant MacIntyre
16 | would want to be in control of the investigation? He would
17 | want to direct it?

18 | A. I would think so.

19 | Q. It was clear to you that he would want to direct it?

20 | A. Right, right.

21 | Q. Those are my questions. Thank you very much, sir.

22 | THE CHAIRMAN:

23 | Mr. Pugsley.

24 | BY MR. PUGSLEY:

25 | Q. I'm Ron Pugsley, Mr. MacDonald, and I'm appearing on behalf

MICHAEL BERNARD MacDONALD, by Mr. Pugsley

1 of John MacIntyre. With respect to the last question that my
2 friend addressed to you, I take it's not your evidence that
3 you did nothing the night of this incident between the hours
4 of twelve and four o'clock but rather you did what you
5 considered to be appropriate and the proper thing to do?

6 A. Right, sir.

7 Q. Yes, the Discovery examination that you were referred to
8 which starts at Page 191 in the Volume that you have, Exhibit
9 12, before you. And am I correct in suggesting to you that
10 you had no interviews with either myself or Mr. Murrant prior
11 to this Discovery Examination but you just happened to be in
12 the police building and Mr. Murrant summoned you upstairs
13 where people started asking you questions about incidents
14 that occurred thirteen years earlier. Is that about the
15 way it happened?

16 A: I can't recall, sir.

17 Q. You can't even recall that, I see, okay. Do you recall whether
18 or not you were given any advance warning that you were going
19 to be questioned concerning the events that occurred in 1971
20 before you gave this evidence in 1984? Let me rephrase the
21 question. Did you have any opportunity to consider the
22 events of 1971 before you gave your evidence in 1984?

23 A. Pertaining to the Marshall case?

24 Q. Yeh, did you have any chance to think about it before you were
25 brought into a room by Mr. Murrant and started being questioned?

MICHAEL BERNARD MacDONALD, by Mr. Pugsley

- 1 A. No, I didn't, sir.
- 2 Q. Did you have any opportunity of reviewing notes or files?
- 3 A. No, sir.
- 4 Q. No, okay. My -- my understanding is that you were home at
5 the time you received a call from the Desk Sergeant, Len
6 MacGillivary?
- 7 A. Yes, sir.
- 8 Q. And this would be shortly after midnight?
- 9 A. Right.
- 10 Q. And did Sergeant MacGillivary tell you at that time that he
11 had been in touch with John MacIntyre and that he was not
12 coming out?
- 13 A. Not at that time, sir, no.
- 14 Q. When did he tell you that?
- 15 A. I didn't arrive to the station until, oh, it was after two
16 closer to three o'clock in the morning.
- 17 Q. Yes.
- 18 A. And this --
- 19 Q. And at that time --
- 20 A. At that time I had a briefing with Sergeant MacGillivary.
- 21 Q. Yes.
- 22 A. And this was -- you told me that he called Sergeant MacIntyre.
- 23 Q. He told you at that time that he had called Sergeant
24 MacIntyre?
- 25 A. Right, sir.

MICHAEL BERNARD MacDONALD, by Mr. Pugsley

- 1 Q. Yes, did he say what time he had called him?
- 2 A. No, he didn't.
- 3 Q. Did you have any discussion with the Police Chief at around
- 4 what four o'clock in the morning?
- 5 A. Between three or --
- 6 Q. Between three or four?
- 7 A. I didn't jot down the times, but it was in that --
- 8 Q. But it was after I take it that you had been to the hospital
- 9 and after you had gone back to the police station where you
- 10 apparently had a short discussion with Maynard Chant, is that
- 11 correct?
- 12 A. No, I had no discussion with Maynard Chant, only I saw him at
- 13 the hospital.
- 14 Q. I see, you had no discussion with Maynard Chant at the police
- 15 station?
- 16 A. No, but I recall he was there.
- 17 Q. Yes.
- 18 A. But I had no, I had no discussion with him.
- 19 Q. I see, was it after you were at the police station that you
- 20 went to see the chief?
- 21 A. Yes, sir.
- 22 Q. Yes, --
- 23 A. On the instructions of Sergeant Len MacGilivary.
- 24 Q. Yes, did you have any discussion with the chief about John
- 25 MacIntyre not coming out that night?

MICHAEL BERNARD MacDONALD, by Mr. Pugsley

- 1 A. No.
- 2 Q. No.
- 3 A. I just briefed him on --
- 4 Q. On what you --
- 5 A. On what was taken place.
- 6 Q. It's my instruction that the Chief was the kind of man who
7 if he thought MacIntyre should have been on the job that night
8 he the Chief would have called him and told him to get out?
- 9 A. Well, that would be up to the Chief of Police.
- 10 Q. But was he not that kind of a fellow?
- 11 A. Was --
- 12 Q. The Chief --
- 13 A. Was he that kind of a fellow?
- 14 Q. Yeh, the Chief that kind of a fellow?
- 15 A. Well, I knew the man for twenty-five, thirty years but I mean
16 describing what he really would want to do that night or anything
17 else, I couldn't say.
- 18 Q. My question to you is if the Chief of Police thought that
19 MacIntyre should have been out there that night he the
20 Chief would have called MacIntyre and told him to get out?
- 21 A. I would think so.
- 22 Q. Was it Sergeant Len MacGilivary's job or position that you
23 took?
- 24 A. Yes, sir.
- 25 Q. And when was it that you assumed that new position, sir?

MICHAEL BERNARD MacDONALD, by Mr. Pugsley

- 1 A. You don't mind me looking.
- 2 Q. Not at all.
- 3 A. I was transferred on August the 17th.
- 4 Q. August the 17th?
- 5 A. 1971.
- 6 Q. And when did you assume your duties?
- 7 A. It was about three weeks after I recall taking my vacation
8 in August and Sergeant MacGillivray was retiring, I think,
9 at the end of August.
- 10 Q. I see, did you assume your duties before that period of time?
11 Did you assume your duties as desk sergeant before that time --
- 12 A. Before --
- 13 Q. Before the end of August?
- 14 A. No, sir.
- 15 Q. Okay, am I correct in my understanding that you joined the
16 detective division of the Sydney department in about 1965?
- 17 A. Detective division?
- 18 Q. Yes.
- 19 A. Something around that.
- 20 Q. I think yesterday your evidence was to the effect that it was
21 around 1970 only about a year before this incident that you
22 joined the detective division but it's my instruction that
23 you in fact joined the detectives about 1965?
- 24 A. Yeh, we were appointed sergeants in 1970.
- 25 Q. Oh, I see, but you were a member of the detective division

MICHAEL BERNARD MacDONALD, by Mr. Pugsley, by Mr. Barrett

1 prior to that time?

2 A. Yes, sir.

3 Q. Yes, were you appointed to the detective division at the
4 same time as others were appointed to the detective division?

5 A. Yes, the other three members I think --

6 Q. And who were the others, do you remember?

7 A. Michael J. MacDonald and William Urquhart.

8 Q. Yes, all appointed at the same time?

9 A. To the best of my knowledge we were appointed the same night.

10 Q. Thank you, sir, that's all the questions I have.

11 MR. MURRAY:

12 Mr. Murray for Mr. William Urquhart, no questions.

13 BY MR. BARRETT:

14 Q. Yes, Mr. MacDonald, my name is David Barrett, I represent the
15 estate of Donald MacNeil and I just have a few questions for
16 you. You've testified to Ms. Edwardh I understand that the
17 Crown or you would normally consult with the Crown or the
18 police department may consult with the Crown in the laying
19 of a charge?

20 A. Oh, yes.

21 Q. But you've indicated that you weren't present at any discussions
22 of the laying of the charge against Donald Marshall in this
23 case?

24 A. No, sir, not of laying the charges.

25 Q. Just out of interest, Mr. MacDonald, could you advise us how

MICHAEL BERNARD MacDONALD, by Mr. Barrett

- 1 many police officers were working that four to midnight shift
2 on the 28th of May, 1971?
- 3 A. On the four to twelve or twelve to eight?
- 4 Q. No, the four to midnight shift?
- 5 A. No, I couldn't, sir.
- 6 Q. You have no idea of how many officers would normally work that
7 shift?
- 8 A. Well, normally it would be eight or nine it would all depend
9 you might have a man off sick or --
- 10 Q. Okay, now and how many man would normally work the midnight
11 to eight shift?
- 12 A. I would say eight or nine also. The shifts were pretty well
13 divided up.
- 14 Q. Now at this time if a man was to work passed twelve o'clock
15 midnight, would he be paid overtime for that work?
- 16 A. If he was told to stay on and do some more work.
- 17 Q. Okay and who in fact would make that decision as to extra
18 man power?
- 19 A. The sergeant of the desk.
- 20 Q. Okay and he in fact would authorize that overtime?
- 21 A. Yes, sir.
- 22 Q. Would he have to consult with the Chief?
- 23 A. The Chief of Police.
- 24 Q. So he would have to consult with the Chief of Police before
25 bringing extra men out?

MICHAEL BERNARD MacDONALD, by Mr. Barrett

1 A. No, not necessarily.

2 Q. Just one other area, you've indicated the policy in 1971
3 and your policy at that time was to have a parent present
4 when interviewing a juvenile?

5 A. Yeh, that was pretty well the policy.

6 Q. Okay and you've also indicated that two officers would be
7 present at the time the statement was taken?

8 A. One would take the statement and the witness.

9 Q. Now would that policy be different if it wasn't a warrant
10 statement. By a warrant statement I'm indicating one in which
11 admissibility to the courts would be in issue?

12 A. Well, if it wasn't serious and one man could sit down and take
13 a statement from the juvenile providing there was a parent
14 with him.

15 Q. So your --

16 A. With the juvenile.

17 Q. So you've -- you're indicating then that whether it was a
18 warrant statement in other words if a juvenile witnessed a
19 motor vehicle accident and you were to go out and get a
20 statement from that juvenile witnessing a motor vehicle
21 accident, would you have a parent present?

22 A. Yeh, one person one -- well, the parent and one officer would --

23 Q. So that policy was the same whether this was a warrant statement
24 or it was just a statement of somebody witnessing something?

25 Q. It would -- the policy would be one man could -- could go

MICHAEL BERNARD MacDONALD, by Mr. Barrett

1 to the parent's home or to the juvenile's home and explain
2 the situation to the mother or father and could talk to the
3 juvenile right there.

4 Q. And just one other area, could you indicate perhaps for the
5 Commission where the Sydney Hospital is in relation to
6 Crescent Street?

7 A. George -- no, it wouldn't be -- the streets wouldn't be on
8 here.

9 Q. Perhaps you can indicate the general location of the Sydney
10 Hospital?

11 A. City Hospital.

12 COMMISSIONER EVANS:

13 If we got the other map that has been entered as an exhibit would
14 probably help. Exhibit 37.

15 BY THE WITNESS:

16 A. Townsend Street -- Whitney Avenue -- Whitney Avenue --
17 Park area -- Whitney Avenue -- Howe Street and it's right
18 in this area. Will I show it to them. It's right here.

19 BY MR. BARRETT:

20 Q. How far would that be from the Crescent Street area?

21 A. About a half mile.

22 COMMISSIONER EVANS:

23 Could we have that lined. What's the name -- City of Sydney.

24 BY MR. BARRETT:

25 Q. Could you perhaps, Mr. MacDonald, give some estimate of time-

MICHAEL BERNARD MacDONALD, by, Mr. Barrett, by Mr. Saunders

1 wise, how long would it take an ambulance to get from
2 Crescent Street to the City Hospital?

3 A. Four or five minutes.

4 Q. Those are all my questions.

5 THE CHAIRMAN:

6 Mr. Saunders.

7 MR. SAUNDERS:

8 Thank you, My Lord.

9 BY MR. SAUNDERS:

10 Q. Mr. MacDonald, before we leave the subject of occurrence and
11 crime reports, I still have some confusion and I'd like to
12 have you clear it up for me before we lose your benefit and
13 you leave the stand. I still don't understand how these
14 crime reports and occurrence reports were there to be
15 completed by police officers as they finished their tour
16 in May of 1971. Can I ask you, sir, where these pads of
17 paper that were headed crime report or occurrence report
18 assembled ahead of time as pads so that an officer would
19 just take off a sheet and fill it in. Is that the way it
20 was?

21 A. He would use the pad and everything and just flick the sheet
22 right off it and put it with the rest of the reports.

23 Q. Right, so a police officer would finish his tour of duty on
24 that particular shift in May of 1971 and where would that
25 officer go to find the piece of paper whether it was a crime

MICHAEL BERNARD MacDONALD, by Mr. Saunders

1 report paper or an occurrence report paper to fill in?

2 A. Well, sir, at one time we had an area out in the main police
3 station off the main desk and it was just, we called it the
4 cubby-hole, but the reports were in there to be taken out
5 by the members who ever wanted to use them.

6 Q. Yes.

7 A. There were three -- there was the occurrence reports, crime
8 report and the motor vehicle reports. You know, the plain --
9 but the members wanted any of those sheets, they were at
10 their disposal.

11 Q. So it was left up to an officer to decide as he came in
12 having finished his tour or shift whether or not he would
13 record what he had done on a particular piece of paper?

14 A. Yes, sir.

15 Q. And it was in a location that was close to the front door
16 that the officers would be coming through?

17 A. Well, as soon as they come in the main station they were
18 right there. When they were all finished their reports, they
19 would turn it over to the desk sergeant. In turn, there
20 was another drawer behind the desk for the desk sergeant to --
21 if he wanted to read them or make notes or, you know --

22 Q. So the officer who kept control or possession of the completed
23 reports was the desk sergeant?

24 A. Desk sergeant, sir.

25 Q. And as I have looked at the examples of crime reports and

MICHAEL BERNARD MacDONALD, by Mr. Saunders

1 occurrence reports that we have in the exhibit books, it seems
2 to be a commentary so that when one officer finished his
3 entry a next officer could add his own commentary in the rest
4 of the blank on the page?

5 A. The sergeant at the desk would receive a call.

6 Q. Yes.

7 A. He would give it out to the patrol cars and he'd make his
8 note off the call; on one side of if it was occurrence or crime
9 or motor vehicle.

10 Q. I understand that and that would be the entry made by the desk
11 sergeant?

12 A. Now when the constable pertaining to the accident or whatever
13 it is would come in, he would put his report on the right hand
14 side of that sheet.

15 Q. Yes, the same sheet that the desk sergeant had made his entry
16 on.

17 A. Right.

18 Q. So he would have to go where these pieces of paper were kept
19 and physically write in his entry and pass it back to the
20 desk sergeant or leave it where he found it?

21 A. No, normally he would give it to the sergeant of the desk to
22 put it in behind the desk and the sergeant was in charge of it.

23 Q. Yes, okay, and was it expected and standard procedure for a
24 police officer finishing his shift, to review what had been
25 written in before by other officers?

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 A. It's possible.
- 2 Q. Was that --
- 3 A. Not procedure.
- 4 Q. It wasn't procedure?
- 5 A. No. I mean if an officer came in, he didn't have to look at
6 another officer's report of anything if he didn't want to.
- 7 Q. Yeh, well how would one officer know what another officer
8 had done that shift if it pertained to the same subject matter?
- 9 A. That's a good question, sir.
- 10 Q. Do you have any answer for it?
- 11 A. No, he didn't have to read the reports if he didn't want to.
- 12 Q. Was an officer expected to read what had been written in the
13 report by officers ahead of him?
- 14 A. Not necessarily.
- 15 Q. Who did the typing, Mr. MacDonald, who actually took the
16 hand-written crime reports or occurrence reports and later
17 transcribed them in typed form?
- 18 A. If they were needed.
- 19 Q. Pardon me.
- 20 A. If they were -- they weren't all typed, you see. All the
21 reports --
- 22 Q. They weren't all typed?
- 23 A. No, only if a report was needed for the court of something
24 it was typed out.
- 25 Q. What else would determine whether a report would be typed

MICHAEL BERNARD MacDONALD, by Mr. Saunders

1 | besides it having to be used in court?

2 | A. That was about it.

3 | Q. That's the only reason you can think of for having it typed?

4 | A. Yes, sir.

5 | Q. And who physically did the typing of the reports, sir?

6 | A. Well, to the best of my knowledge would be, Mrs. O'Handley,
7 | she was the stenographer.

8 | Q. Yes, a stenographer with the Sydney Police Department?

9 | A. Yes, sir.

10 | Q. All right, and the procedures that you've just outlined
11 | to me, is that what the procedure was in place in May of 1971?

12 | A. I'd imagine it would be, yes.

13 | Q. And you as a detective at that time, sir, the occurrence reports
14 | and crime reports that you completed, where those also the
15 | same ones that you've described that is in the custody of the
16 | desk sergeant?

17 | A. Yes, well, the reports I made that night were left in detective
18 | division until Saturday morning.

19 | Q. Yes.

20 | A. With my own notes and my own report.

21 | Q. Yeh, your statement your own report is this something in
22 | additional to the notes exhibit 38 that you wrote out in
23 | your handwriting?

24 | A. Oh, yes, I just made a note on the occurrence -- on the crime
25 | that I responded to this call.

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 Q. Was this an occurrence report or a crime report?
- 2 A. No, a crime report.
- 3 Q. A crime report. I haven't seen any crime report prepared by
4 you Mr. MacDonald. The only item I've seen prepared by you
5 is exhibit 38?
- 6 A. It was in the detectives office and I think Sergeant MacIntyre
7 seen it on Saturday morning. I briefed him.
- 8 Q. Was there any information besides what is contained in exhibit
9 38 written into your crime report that you referred to?
- 10 A. No, it was where I responded to the City Hospital and then
11 what I did in the Park area and briefed Sergeant Len
12 MacGillivray.
- 13 Q. When was the last time you saw the crime report you filled in
14 on May 29th, 1971?
- 15 A. I believe it was Saturday.
- 16 Q. That same day?
- 17 A. Yes, sir.
- 18 Q. That's the last you saw of it?
- 19 A. To the best of my knowledge.
- 20 Q. Besides that crime report you completed and exhibit 38 which
21 is your hand-written notes, did you complete any other
22 document with respect to your investigation of the Seale
23 stabbing?
- 24 A. No, sir.
- 25 Q. Now my learned friends ahead of me have already gone through

MICHAEL BERNARD MacDONALD, by Mr. Saunders

1 the differences in the description that you reported in
2 exhibit 38 from the description recorded by other police
3 officers, such as, Officers Dean and Mroz and you spoke to
4 that this morning. Do you recall that?

5 A. Yes, sir.

6 Q. Yes, my question isn't so much directed to the differences
7 today, Mr. MacDonald, but rather a comment you made in your
8 evidence this morning that you said, "you were surprised
9 when you read what had been recorted by Constable Mroz in
10 his notes". Do you recall that evidence today?

11 A. Yes, sir, yes.

12 Q. And my question of you, sir, is when were you surprised when
13 did you actually read Constable Mroz's record and if you
14 have the book before you, Constable Mroz's record is in
15 Volume 16 at Page 10. You'll see that Page 10 is the typed
16 version of what Constable Mroz prepared.

17 A. Yes, sir.

18 Q. Yes. And am I accurate in thinking that it wouldn't have been
19 the typed one that you would have read but rather the hand-
20 written entry written by Constable Mroz which is the next
21 page, Page 11?

22 A. Well, my interpretation of that is Constable Mroz must have
23 or Dean must have spoke to Marshall before I did.

MICHAEL BERNARD MacDONALD, by Mr. Saunders

1 Q. Well, quite apart from what Mr. Dean or Mr. Mroz did and
2 they are not around to tell us. My question to you, sir,
3 is when was it that you read page 11 of volume 16 for the
4 first time?

5 A. I can't recall.

6 Q. What's your best recollection as to when you read it, Mr.
7 MacDonald?

8 A. Well, this was written sometime in May the 29th, 1971.

9 Q. That's the date written by Mr. Mroz.

10 A. Mroz --

11 Q. That's right.

12 A. -- and Constable Walsh and Mark MacDonald --

13 Q. Yes.

14 A. -- and Dean.

15 Q. Yes. Do you think it more likely then than not that
16 you read it on or about May 29, 1971?

17 A. I can't recall, sir.

18 Q. Do you think it's more probable that that -- that is
19 the date that you read it? That is close to the time
20 that it was prepared by this constable?

21 A. I don't even recall reading it.

22 Q. You do not recall reading it?

23 A. To the best of my knowledge. When I read it on this report
24 this morning to see the difference of descriptions I was
25 wondering where Mroz got the description ahead of me from

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 Marshall.
- 2 Q. I see. So, it's today, giving evidence before this hearing
3 that you became surprised to read the description given
4 by this police officer?
- 5 A. Yes, sir.
- 6 Q. I see. Could you turn to 16, page four, Mr. MacDonald please?
7 And this is a typed version of the continuation report
8 prepared by Constable Dean. And the page ahead of it, page
9 three, is the -- is the -- sorry, the page behind it, page
10 five, is the handwritten record made by Constable Dean?
11 Now, my question sir, did you ever see before giving evidence
12 at this hearing today, occurrence reports at page five?
- 13 A. It's possible I might have come across it and read it.
- 14 Q. Well, do you remember ever coming across it and reading
15 it prior to this afternoon?
- 16 A.. No, sir.
- 17 Q. Your answer is no?
- 18 A. Yes, sir.
- 19 Q. You'll see that Officer Dean records a different description
20 than that contained in exhibit number 38, doesn't he?
- 21 A. So I'm saying they must have got to Mr. Marshall before I
22 did.
- 23 Q. Well, we don't know whether they did or did not but the --
- 24 A. Well, I don't know either.
- 25 Q. -- description contained in Mr. Dean's report is different

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 | than that recorded by you in exhibit 38?
- 2 | A. Well, the same as -- 38 is a tall man and a short man.
- 3 | Q. Well, quite apart from -- quite apart from the notion
- 4 | that there were two men, one tall and one short. Mr.
- 5 | MacDonald, would you agree with me that Officer Dean
- 6 | clearly describes the tall fellow as having white hair
- 7 | where your notes, exhibit 38, describe the tall man -- the
- 8 | very tall man as having black hair, correct?
- 9 | A. Black hair and clean shaven.
- 10 | Q. Yes. That is the tall man in your notes?
- 11 | A. Right.
- 12 | Q. Whereas Mr. Dean records it as the tall man having white
- 13 | hair? Correct?
- 14 | A. Well, I only wrote down on what I received from Mr. Marshall.
- 15 | Q. No, I'm asking you sir, the record entered by Mr. Dean
- 16 | is that the tall man had white hair?
- 17 | A. Yes, that's what he put it here, yes.
- 18 | Q. All right. Thank you. At any time during the days between
- 19 | the Seale stabbing and the arrest of Mr. Marshall did you
- 20 | discuss with any police officer the difference in the
- 21 | description that you recorded in exhibit 38 from the other
- 22 | descriptions apparantly recorded by other investigating
- 23 | officers?
- 24 | A. No, sir.
- 25 | Q. You were referred earlier today, sir, to volume 16, page 90

MICHAEL BERNARD MacDONALD, by Mr. Saunders

1 which has been described for the moment until it's
2 identified by it's writer as likely being a telex
3 from the Sydney R.C.M.P. detachment to the Halifax
4 R.C.M.P. and I draw your attention to the middle portion
5 of that telex, sir, which gives a description

6 'by an unknown male, approximately five foot
7 eight to six feet tall, grey hair, approximately
8 50 years'

8 Do you see the description that I have --

9 A. Yes, sir.

10 Q. -- referred you to?

11 A. Yes, sir.

12 Q. Do you have any knowledge, Mr. MacDonald, where the
13 R.C.M.P. came to get that information?

14 A. No, sir. None whatsoever

15 Q. Is today, giving evidence at this Royal Commission Hearing
16 the first time that you have seen 16, page 90?

17 A. Yes, sir.

18 Q. Thank you. You said yesterday that after seeing Mr. Marshall
19 at the hospital, you assumed that he had been driven to
20 his home by Constable Jackie Johnson? Do you remember
21 last day when you --

22 A. Yes, I recall that.

23 Q. -- came from upstairs to downstairs but a number of the
24 officers had left and, I think, you said that the only
25 officer remaining was Jackie Johnson?

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 A. I think that's correct.
- 2 Q. All right. And was it your understanding that Constable
3 Johnson drove Mr. Marshall to his home?
- 4 A. I thought he did but then --
- 5 Q. Now, you're not sure?
- 6 A. -- I'm not sure if he was at the police station when I
7 arrived there to brief Sergeant Len MacGillivray.
- 8 Q. Okay.
- 9 A. I'm not sure.
- 10 Q. Tell me this, Mr. MacDonald, did you give any instructions
11 to Constable Johnson as to what he ought to do or say while
12 in the presence of Mr. Marshall driving him home?
- 13 A. No, sir.
- 14 Q. You gave no instructions to Constable Johnson as to being
15 alert to possible things said by Mr. Marshall?
- 16 A. No, sir. Never-- I never spoke to Mr. -- Constable Johnson
17 except he said that he was going to take him.
- 18 Q. Yes.
- 19 A. I went up the the third floor then of the City Hospital.
- 20 Q. And -- And you do not know today whether or not Mr. Johnson
21 drove Mr. Marshall home?
- 22 A. I couldn't say, sir.
- 23 Q. All right. Am I right in saying that you never examined the
24 clothing of Mr. Seale after it was brought to you by his
25 mother?

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 A. Examined it?
- 2 Q. Yes.
- 3 A. Well, I might have looked it over.
- 4 Q. Did you, in fact sir, examine the shirt or jacket worn by
- 5 Mr. Seale at the time of the stabbing?
- 6 A. I can't recall. I might have.
- 7 Q. If I could get you to turn to book 16 at page three.
- 8 And you were looking at that a few moments ago sir. This
- 9 is the handwritten crime report completed by officers on
- 10 that date. Do still have it before you? Mr. MacDonald
- 11 do you have the handwritten page before you?
- 12 A. Yes, sir.
- 13 Q. Yes. And it's signed collectively by Mroz, Dean, Walsh
- 14 and MacDonald and you'll see the phrase on the fourth line,
- 15 right hand side of the page:
- 16 On arrival, noticed Sandy Seale of Westmount on
- 17 the ground after being felled by three stab wounds
- 18 inflicted apparantly from a person or persons
- 19 who had fled the scene.
- 20 My question to you, sir, is before giving evidence today
- 21 at this Royal Commission Hearing have you ever heard it
- 22 said that Mr. Seale had three stab wounds?
- 23 A. No, sir.
- 24 Q. Had you known that Mr. Mroz had recorded that entry on
- 25 16, page three, would you have made sure that you checked
- the clothing that was brought to you by Mrs. Seale?

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 | A. It's possible that I would check that clothing that -- when it
2 | was brought in to the detective division.
- 3 | Q. Wouldn't you be interested having read the entry that
4 | Mr. Seale was supposedly stabbed three times -- wouldn't
5 | you be interested then in checking the clothing to see if
6 | the clothing might verify that suggestion?
- 7 | A. I can't recall, sir.
- 8 | Q. But wouldn't you today, whether or not you recall, if you
9 | had been appraised of what the officer had recorded here
10 | the suggestion being that the man was stabbed three times,
11 | would you not be interested in then checking the clothing
12 | of Mr. Seale to determine if that could be verified?
- 13 | A. No, I can't recall sir.
- 14 | Q. I'm not sure you understand my question, sir.
- 15 | A. I might have checked the clothing and put it in a
16 | container and put it in my locker. I signed the cards
17 | for it and everything else. I put it in my locker.
- 18 | Q. Yes. Yes, I've heard you say that you can not recall
19 | whether you checked Mr. Seale's clothing when it was
20 | handed to you by his mother but my question is not that.
21 | My question is instead, if you were appraised of the note
22 | made by this police officer that the victim was felled by
23 | three stab wounds on May 28th, 1971, would you not have
24 | been interested in checking the clothing to see if that
25 | could have been verified?

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 A. I might have read this report before I received the
2 clothing. Might have. But once I received the clothing
3 it was tagged and put in a --
- 4 Q. Mr. MacDonald, let me put the question again a little
5 differently. I know you have said to this Commission this
6 afternoon that you don't remember checking Mr. Seale's clothing.
7 You don't remember whether you did or not. My question
8 is not that, Mr. MacDonald. My question is this: A police
9 officer has in this handwritten record indicated that the
10 victim was felled by three stab wounds. Do you see that
11 before you sir --
- 12 A. Yes, sir.
- 13 Q. - on page three?
- 14 A. Yes, sir.
- 15 Q. Yes. If you were appraised of that note-- if you knew the
16 note had been made by the officer, would you have checked
17 the clothing of Mr. Seale to determine if it verified that
18 note?
- 19 A. I still can't say that I'd check the clothing for any
20 stab wounds or anything else.
- 21 Q. Would you not be interested, sir, as a detective at the
22 time in checking the clothing to see if it bore out the
23 suggestion that the body had been stabbed three times?
24 Wouldn't that be an interesting thing for you to check?
- 25 A. Yes, it would be.

MICHAEL BERNARD MacDONALD, by Mr. Saunders

- 1 Q. In May of 1971, Mr. MacDonald what was the rank of Ed
2 MacNeil?
- 3 A. Edward MacNeil?
- 4 Q. Edward -- I'm not sure what his first name was. I only
5 know the name as having the name Ed in front of it. Was
6 there an Ed MacNeil who was on the Sydney Police Department
7 in 1971?
- 8 A. Yes, there was an Edward MacNeil.
- 9 Q. Edward?
- 10 A. Right.
- 11 Q. Yes? And what was his rank?
- 12 A. I believe he was just a constable. To the best of my
13 knowledge.
- 14 Q. Was he the only E. MacNeil on the force in 1971?
- 15 A. Yes, I believe he was, sir.
- 16 Q. Do you have any idea where Mr. MacNeil is today sir?
- 17 A. The Mr. MacNeil you're talking about is with the Nova
18 Scotia Police Commission in Halifax.
- 19 Q. Yes. And when did he leave the Sydney Police Department?
20 Do you know?
- 21 A. No, sir.
- 22 Q. You were a witness, sir, at the trial of Mr. Marshall in
23 November, 1971?
- 24 A. Yes, sir.
- 25 Q. Yes. And my information, sir, is that there was a motion to

MICHAEL BERNARD MacDONALD, by Mr. Saunders, by Mr. Wildsmith

1 | exclude witnesses at the trial in November, 1971. Does
2 | that refresh your memory at all as to whether or not
3 | you were actually present during any witnesses testimony?

4 | A. I don't recall, sir.

5 | Q. Am I accurate in saying that sitting here today you have
6 | no memory of sitting in the trial during it's course?

7 | A. Right, sir.

8 | Q. Those are all my questions. Thanks Mr. MacDonald.

9 | MR. CHAIRMAN:

10 | Mr. Bissell?

11 | MR. BISSELL:

12 | No questions.

13 | MR. CHAIRMAN:

14 | Mr. --

15 | MR. DROLET:

16 | No questions.

17 | MR. CHAIRMAN:

18 | That leaves Mr. Wildsmith.

19 | BY MR. WILDSMITH:

20 | Q. Mr. MacNeil, my name is Bruce Wildsmith. I'm here for the
21 | Union of Nova Scotia Indians. I have a couple of questions.

22 | A. Mr. MacNeil?

23 | Q. I'm sorry?

24 | A. Mr. MacNeil?

25 | A. I'm sorry. Mr. MacDonald.

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith

- 1 A. Thank you.
- 2 Q. Mr. MacDonald you've lived in Sydney most of your life
3 I take it?
- 4 A. 40 years.
- 5 Q. Yes. We've heard some reference to various areas of the
6 city such as Whitney Pier, Ashby, Westmount, Membertou.
7 Are there other areas of the city that have common designations
8 amongst the people here?
- 9 A. No, that pretty well describes it.
- 10 Q. Are there other areas, sir, that I didn't included in that
11 list? Are there other areas of the city --
- 12 A. Would you read them over again, please?
- 13 Q. Whitney Pier, Ashby, Westmount, Membertou.
- 14 A. Westmount has nothing to do with the City of Sydney.
- 15 Q. It doesn't eh. Are there other areas of the city that
16 have common designations like that? Like the Pier or
17 Ashby?
- 18 A. No, if --
- 19 Q. No. The reference to Membertou that I made. Is it
20 your understanding that Membertou is always used as
21 a reference to the Indian Reserve at Membertou?
- 22 A. Yes, sir.
- 23 Q. And so if you were to identify as somebody as being from
24 Membertou you would be identifying them, in all likelihood, as
25 being an Indian?

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith

1 A. I might add to that, sir, there is white people. I can't
2 say if they're there today or not but they were living
3 on the Reservation.

4 Q. I see.

5 A. On the main road going in to the Reservation. It was still
6 the Reservation area.

7 Q. Would it be true though that by in large if you refer
8 to somebody as being from Membertou, you would be by in
9 large referring to them as likely being an Indian?

10 A. Right sir.

11 Q. I'd like to show you exhibit 39, if I could. Exhibit 39
12 is an information that you swore to. Could you tell
13 me is the information prepared by the detective division
14 of the Sydney Police Department?

15 A. The informations?

16 Q: Yes. Is it physically prepared in the detective division and
17 typed up by someone in that office?

18 A. No, the report's made up by the constables or whoever --
19 like I explained this morning. If you were going to the
20 court in the morning and there was reports there -- even
21 pertaining to this one, made up by somebody on the back
22 shift. They didn't have stay out in the morning till
23 ten o'clock to go to court. Somebody would take this
24 information, take it to the court house --

25 Q. Yes. If I might interrupt you sir. My question is really

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith

1 about the preparation of the words that are contained
2 in this document. Is this done within the Sydney Police
3 Department and then taken by the detective to the
4 Justice of the Peace?

5 A. To the court house.

6 Q. So that the typing is done within the police department?

7 A. Right. In the department, yes.

8 Q. Okay. Now, I'd like to draw your attention to the
9 portion of that information that identifies that place
10 from which Donald Marshall comes?

11 A. "Donald Marshall, Membertou, Sydney."

12 Q. Yes. Now, would it be the case that for any of the other
13 districts of Sydney in that particular spot on the informations
14 commonly filled out by your department, you would designate
15 anything except the City of Sydney?

16 A. Well, the party's name would be here and his address.

17 Q. You would normally put in --

18 A. Right.

19 Q. -- a longer address? You wouldn't simply say of --

20 A. No.

21 Q. -- the City of Sydney?

22 A. No, no, no.

23 Q. Okay. Thank you.

24 A. The address would come next to the name.

25 Q. All right. And I believe you've had the opportunity already to

MICHAEL BERNARD MacDonald, by Mr. Wildsmith

1 look at the sheets that you are now holding which is a
2 photocopy of two yellow sheets I've used on other days.
3 Do you have any knowledge of having seen those complaints
4 previously?

5 A. First time I've read this, sir.

6 Q. All right. And do you have any knowledge of the incidences
7 that are referred to in those sheets?

8 MR. CHAIRMAN:

9 If I can get this thing working up here. Oh, yeh. Are these
10 the sheets that we, this Commission, directed would be entered
11 in evidence to a particular witness that we now seem to be
12 reading about in the press?

13 MR. WILDSMITH:

14 I'm not sure about reading about it in the press, My Lord, but
15 these are the sheets that I had present yesterday and had showed
16 to the police witnesses yesterday. I asked Mr. MacDonald to
17 -- Commission Counsel MacDonald, to provide it to this witness
18 this morning so that he wouldn't have to take up Commission's
19 time in reading it when it came my turn.

20 MR. CHAIRMAN:

21 But it is the same document?

22 MR. WILDSMITH:

23 Yes, it is the same document. I'd be quite happy to put this
24 document, rather than a photocopy that this gentleman has
25 been reading this morning.

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith

1 MR. CHAIRMAN:

2 That's not the point, Mr. Wildsmith. The point I'm trying to
3 make is that yesterday we, as Commission, made a rule as to
4 when that piece of evidence would become part of the public
5 record. And we -- and it was decided that we -- whilst we
6 do not follow the -- strictly the rules of evidence one would
7 find in a court -- always apply in a court of law. That we
8 would rely on the best evidence rule and as you had indicated
9 that the author of this mysterious piece of paper would be
10 giving evidence and listed as a witness to be called, that it'
11 would go in through him. But we -- it was agreed that rather
12 than recall these witnesses, these documents, without identifying
13 it, -- this document rather, would be shown to them. And to
14 our -- I guess that's a good word -- our consternation, we find
15 that the three of us seem to be the only people in Eastern
16 Canada that haven't -- that are not aware of the contents.
17 And I simply want to remind counsel that we have a serious
18 obligation as Commissioners to see that rules that we lay down
19 are complied with by counsel. I'm not going to be presumptuous
20 to ask how these things happen but counsel do have responsibilities
21 as counsel for documents that are in their possession which they
22 tend -- intend to produce as evidence and -- before this
23 Commission and we must maintain the proper decorum and enforce
24 the reasonable rules and I emphasize reasonable because we have
25 been very lax in the -- deliberately so, because in our

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith, by the Chairman

1 anxiety to ensure that all evidence comes before the Commission
2 in the proper manner and the proper time and in their proper
3 sequence. This suffices to say it is not very consoling to the
4 Commission to find they are kept in the dark when everyone else
5 seems to know what is that. I have no idea what the document
6 is. I have no idea except that I read that it was 1970 and I
7 presume that it would be easy. My problem now is just to
8 ascertain whether indeed it was written in 1970.

9 MR. WILDSMITH:

10 Yes, My Lord. I'd certainly like to say that particular turn
11 of events is regretful. I'd like to assure and put on the
12 public record that I did not disclose this document to the
13 press and that the press requested copies and I refused that.
14 I have no knowledge as to how the press did obtain a copy.

15 MR. CHAIRMAN:

16 Fine, I -- no, I accept your position and I wasn't suggesting
17 you had. There's nothing sinister about it and I don't care
18 if in one sense that the press has it but it seems to me to
19 be not in the best interest of the Commission and one that
20 could lead to impede the work of the Commission if our rules
21 that are laid down as we progress aren't followed.

22 BY MR. CHAIRMAN:

23 Q. In any event Mr. MacDonald, do you know anything about that
24 piece of paper?

25 A. No, My Lord.

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith, by the Chairman

1 Q. Have you ever seen it?

2 A. No, sir.

3 Q. Do you know anything about the events that are -- or the
4 allegations contained therein?

5 A. No, My Lord.

6 BY MR. WILDSMITH:

7 Q. And none of the officers who are not referred to by
8 name but whose activities referred to in there was
9 yourself?

10 A. Right.

11 Q. Okay. Thank you. Just a couple of other questions, Mr.
12 MacDonald. Are you aware of any other complaints that
13 Indian people may have made about the Sydney Police
14 Department?

15 A. No, sir.

16 Q. Thank you. Are you aware of young people hanging around
17 in Wentworth Park?

18 A. During the summertime --

19 Q. Yes. After dark -- after --

20 A. Band concerts on. You're bound to have young people.

21 Q. After dark, sir?

22 A. Well, the band concerts are on late in the evening.

23 Q. Yes. I'm talking about times when there aren't public
24 activities going on in the park.

25 A. During the summer you're bound to see a lot of people in

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith

1 | the park area.

2 | Q. And would Indian youth be amongst those young people?

3 | A. Oh, I couldn't say, sir.

4 | Q. I see. Do you know anything about any incidences that might
5 | involve the police taking the names of the young people,
6 | in particular the Indian young people, hanging around in
7 | the park or chasing them away, arresting them or dealing
8 | with them in any other way?

9 | A. Thank you. About the time of the Seale stabbing and the
10 | arrest of Mr. Marshall, do you know anything about rumors of racial
11 | tensions in the City of Sydney?

12 | A. No, sir. Not to my knowledge.

13 | Q. Did you hear such rumors, yourself?

14 | A. No, sir.

15 | Q. Do you know anything about a police car being dispatched to
16 | the Membertou Reserve the night that Mr. Marshall was
17 | arrested?

18 | A. The night he was arrested for --

19 | Q. Yes.

20 | A. No, sir.

21 | Q. And do you yourself, sir, have any contact or had any
22 | contact with Indians while you served on the Sydney Police
23 | Force outside of your official police duties?

24 | A. Outside my duties as a police officer?

25 | Q. Yes

MICHAEL BERNARD MacDONALD, by Mr. Wildsmith, by Mr. Orsborn

1 A. No.

2 Q. Do you not think as a detective that it might have
3 been helpful for you to have friendly relations with
4 the Indian community?

5 A. During my tour of -- as being a police officer I -- I've
6 knew quite a few from the Indian Reservation.

7 Q. Yes, but do you rely upon the community for sources of
8 information at times?

9 A. No, not necessarily.

10 MR. WILDSMITH:

11 Thank you then. That's all my questions.

12 MR. CHAIRMAN:

13 Mr. Orsborn?

14 MR. ORSBORN:

15 I was waiting for Mr. Ross.

16 MR. CHAIRMAN:

17 There's been an indication that counsel for the -- Mr. Seale said
18 he had no questions.

19 MR. ORSBORN:

20 I have a few questions.

21 BY MR. ORSBORN:

22 Q. Mr. MacDonald, you were asked some questions about a line-up
23 and discussed it briefly this morning. Do you recall who
24 arranged the line-up on the Sunday morning?

25 A. Could have been Sergeant MacIntyre.

MICHAEL BERNARD MacDONALD, by Mr. Orsborn

1 Q. Would it have been more likely than not to have been Sergeant
2 MacIntyre?

3 A. Yes. He would order it --

4 Q. Yes. You mentioned about -- I'm sorry?

5 A. And make the arrangements.

6 Q. Thank you. You mentioned about the records that
7 would have been compiled for a lineup. Whose responsibility
8 -- whose responsibility would it have been to compile those
9 records?

10 A. The officers that went out on the street to ask those people
11 to come to the police station.

12 Q. And what responsibility would Sergeant MacIntyre, if any,
13 have had in compiling those records or seeing that they
14 were compiled?

15 A. Well, I imagine he'd hold on to the reports as to the
16 people that were in the lineup.

17 Q. I see. Did you ever see the records of that lineup?

18 A. No, sir.

19 Q. Can you suggest any reason why they have not been found
20 in the records of the department?

21 A. No, I couldn't say, sir.

22 Q. That's all Mr. MacDonald. Thank you.

23 MR. CHAIRMAN:

24 Thank you very much, Mr. MacDonald. That's all.

25 MR. MacDONALD:

Staff Sergeant Wood will be the next witness.