

RG44  
Vol 248  
= 4

ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION

VOLUME XI

- Held:** September 23, 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

**MEDIA POOL COPY**

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INQUIRY RECONVENED AT 9:47 o'clock in the forenoon on Wednesday, the 23rd day of September, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia

1 | MR. CHAIRMAN:

2 | I understand some microphones are not functioning at full volume  
3 | today but help is on the way from Halifax. Help is always on the  
4 | way from Halifax. So will you -- if the witness will speak up and  
5 | counsel will speak up and if I'll speak up, our words of wisdom  
6 | will be recorded.

7 | MR. MacDONALD:

8 | I'll certainly try, My Lord, and Inspector Ryan, if you'll do the  
9 | same please.

10 | JOSEPH TERRANCE RYAN, being called and duly sworn, testified as  
11 | follows:

12 | BY MR. MacDONALD:

13 | Q. Would you tell the Commissioners your name please?

14 | A. I am Joseph Terrance Ryan. I am a member of the Royal Canadian  
15 | Mounted Police, presently stationed in Fredericton, Province  
16 | of New Brunswick. I have been a member of the Royal Canadian  
17 | Mounted Police continuously since October of 1962. During the  
18 | years of 1970 to 1972, I was attached to the General Investi-  
19 | gation Section, County of Cape Breton, Province of Nova Scotia.

20 | Q. Your present rank?

21 | A. I am an Inspector.

22 | Q. Would you tell us your formal education?

23 | A. I have grade 12, Province of New Brunswick. I have a Bachelor  
24 | of Arts degree from Carleton University majoring in law and  
25 | economics. I have an LLB from the University of New Brunswick.

J. TERRANCE RYAN, by Mr. MacDonald

1 Q. When did you obtain that degree?

2 A. I graduated from U.N.B. in 1980.

3 Q. And you said in particular, you were stationed in Sydney in  
4 -- did you say '70 to '72?

5 A. In '70 until '72.

6 Q. You were with the G.I.S. division?

7 A. Yes, I was.

8 Q. How does one become a member of that division? Do you have  
9 to have some experience in the force or?

10 A. It's a decision made by our staffing branch and our Officer  
11 Commanding and probably the N.C.O. in charge of the section  
12 would be looking for members who had a considerable amount of  
13 investigative experience or detachment experience. They would  
14 be looking for a considerable amount of experience in the  
15 investigative field prior to being stationed to that unit.

16 Q. Was your first station with G.I.S. the one in Sydney?

17 A. No, I had been on Sydney Detachment for a short period of time  
18 prior to that but I arrived on Cape Breton Island in 1963 and  
19 I had served at various detachments throughout Cape Breton  
20 Island prior to that time as well as a short session on a  
21 "plain clothes" unit in 1964.

22 Q. In Cape Breton?

23 A. Yes, in Cape Breton.

24 Q. Would you explain again for the Commissioners G.I.S., what  
25 service it performs and for whom?

J. TERRANCE RYAN, by Mr. MacDonald

1 A. It's a unit that's within Sydney and has full responsibility  
2 for all of Sydney subdivision which took in all of Cape  
3 Breton Island and a small part of the mainland which consisted  
4 of Mulgrave. Our responsibility was to assist detachments in  
5 serious investigations, such as rape, murder, safe attacks,  
6 robbery. The unit would generally call our section, either  
7 our unit commander or through the Officer Commanding of the  
8 subdivision, and request assistance in a particular matter.

9 Q. What if any involvement would your -- would the G.I.S. division  
10 have with the Sydney City Police?

11 A. Only on a -- it would be on a exchange of information basis.  
12 We exchange information continually on a need-to-know basis.  
13 If we were doing a case and we felt that the Sydney City  
14 Police could assist, we would approach them, inform them of  
15 the information or of the case and if they had any information,  
16 they would supply it to us. On the reverse, if we could assist  
17 them or if they were doing something or a serious occurrence  
18 had taken place and we felt that we could assist them, we  
19 would approach them, obtain any information that they might  
20 have and contact our sources of information to see if we  
21 could obtain information that would assist them in their case.

22 Q. Okay. Did you from time to time in those early '70's have  
23 dealings yourself with the Sydney City Police?

24 A. Yes, I did.

25 Q. With any particular division?

J. TERRANCE RYAN, by Mr. MacDonald

1 A. We would deal with the Detective Division and most of my  
2 dealings as I can recall would be with Detective Sergeant  
3 MacIntyre or Detective Bill Urquhart.

4 Q. And what was your general impression of the -- of those two  
5 people?

6 A. I had known both of those individuals on and off from 1964.  
7 I would say that Detective MacIntyre was a very determined  
8 investigator. I would say that he was conscientious and on  
9 the surface, as I had known him, I would also say that he was  
10 competent, based on the police community at that time.

11 Q. Do you have any independent recollection yourself, Inspector,  
12 of the events surrounding the death of Sandy Seale and the  
13 subsequent investigation and charging of Donald Marshall,  
14 Junior, with that offense?

15 A. Independent of my notes, I can recall on June the 3rd, 1971,  
16 Detective Sergeant John MacIntyre contacting me at home and  
17 requesting that I accompany him to New Waterford.

18 Q. To?

19 A. New Waterford, Nova Scotia.

20 Q. For what purpose?

21 A. The purpose was to attempt to ascertain if there was anyone  
22 within the New Waterford area that had frequented Wentworth  
23 Park, had used it as a drinking place or might have been in  
24 the park that evening.

25 Q. Did you in fact attend at New Waterford with him?

J. TERRANCE RYAN, by Mr. MacDonald

1 A. Yes, I did. Detective MacIntyre picked me up at my residence  
2 in his private car. We travelled to New Waterford. I can  
3 recall going to the New Waterford Town Police Station and  
4 we would have contacted police officers at that station.  
5 I cannot recall who. I can also recall going to one residence.  
6 I'm not too sure where the residence was but I can't recall  
7 whether I went to the residence alone or -- and I can't recall  
8 if I had contacted any of my sources of information that  
9 evening or not.

10 Q. Do you recall if anything came of your visit to New Waterford?

11 A. Nothing. Nothing at all surfaced as a result of that visit.

12 Q. During those years, did you -- and that time, did you work as  
13 a partner with Staff Sergeant Wood, the last witness?

14 A. Yes, I did.

15 Q. And would that be a regular occurrence?

16 A. Yes, we worked together on a good number of cases.

17 Q. You have in front of you, Inspector, a notebook and that is  
18 your personal notebook, is it?

19 A. Yes, it is.

20 Q. And are there references in that notebook which are of relevance  
21 to the Seale murder and the subsequent investigation?

22 A. Yes, there is, starting on the 31st day of May, 1971.

23 Q. I've marked as exhibit 41 a copy of the relevant pages of  
24 your notebook. I'd like you to do the same thing as Sergeant  
25 Wood did for us, if you would take us through the various

J. TERRANCE RYAN, by Mr. MacDonald

1 entries and read them into the record so that we'll make sure  
2 everyone's understanding your writing.

3 A. The first entry is the 31st day of May, 1971. It says: "Light  
4 blue V.W.", which indicates Volkswagen, "Pitt Street, 9993-  
5 O.R. N.Y." indicating New York. "Damage to left rear, 9:45  
6 a.m., corner Pitt and Charlotte, male, five foot eleven,  
7 gray hair, gray beard, thirty years plus."

8 Q. Do you have any recollection of the events that are referred  
9 to in this note?

10 A. No, I do not.

11 Q. Just go on then, please.

12 A. The next entry I do not recall the significance. It's another  
13 vehicle. It says "Esplanade" which was a street here in Sydney.  
14 "814800, Ontario, convertible, '63 Pontiac, black and white,  
15 two persons." I have no knowledge if that entry has anything  
16 to do with the Seale inquiry.

17 Q. Okay, continue on.

18 A. The next entry is 31 of May, 1971. It's "eight-thirty a.m.  
19 until five p.m. Patrol locally via" and the next is a police  
20 car number, "H04-37, re: assistance City Police re: murder.  
21 Attempt to locate a white Volkswagen, possibly Ontario  
22 registration."

23 Q. And again do you have any independent recollection of the notes  
24 -- why those notes are contained in your diary?

25 A. I have no independent recollection.



J. TERRANCE RYAN, by Mr. MacDonald

1 Q. Can we assume that that is as a result of a request you  
2 received from the Sydney City Police to provide assistance?

3 A. It could have been as a request or it could merely have been  
4 that we had obtained the information that there was possibly  
5 a white Volkswagen involved and we had gone out and looked  
6 for it.

7 Q. Would you likely to have obtained information such as that  
8 from other than the City Police?

9 A. At that time I am not certain if -- if Constable Wood had  
10 been to the City Police station earlier, he might have obtained  
11 the information and then I would have obtained it from him.  
12 We might not have acted on a direct request from them but  
13 just merely went out and searched for the vehicle.

14 Q. Okay, go on then to page -- the next entry that's -- I have  
15 -- is it June the 6th or June?

16 A. June the 3rd.

17 Q. June the 3rd, sorry. What is on that entry?

18 A. The entry for eight-thirty a.m. until twelve noon has no  
19 significance to the Seale investigation. The entry from  
20 one p.m. until six p.m., it says "patrol locally, re: contact  
21 informant, S-32, and then to the County Gaol for Miller  
22 interview." The Miller interview has nothing to do with the  
23 Seale inquiry but the "patrol locally, contacting informants"  
24 would correlate with Constable Wood's notes and we were  
25 contacting an informant in relation to the Seale murder.

J. TERRANCE RYAN, by Mr. MacDonald

1 Q. And those are informants that you had developed over the --  
2 over your tour in Sydney?

3 A. Yes.

4 Q. People who would give you information if they had it.

5 A. Yes.

6 Q. Do you have any recollection of any information you received  
7 from any informants during that period of time?

8 A. No. The -- If information of value had been received, it  
9 would have been recorded.

10 Q. Okay, go on then, please.

11 A. The next entry is eight p.m. until twelve-thirty a.m., "patrol  
12 South Bar, New Waterford with Sydney City Police re: Seale  
13 murder - private car." And that is the entry covering my  
14 previous testimony where I went to New Waterford with  
15 Detective Sergeant MacIntyre.

16 Q. And at Detective Sergeant MacIntyre's request?

17 A. Yes, it was.

18 Q. To determine if there was anyone in New Waterford who may be  
19 able to give him information as to the identity of someone  
20 in the park that evening.

21 A. Yes.

22 Q. All right, is there any other entry in your notebook?

23 A. No, there is not.

24 Q. Do you have any other recollection of the events surrounding  
25 that particular time?

J. TERRANCE RYAN, by Mr. MacDonald

1 | A. No, I do not.

2 | BY MR. CHAIRMAN:

3 | Q. Is that on the fourth?

4 | A. On the third.

5 | BY MR. MacDONALD:

6 | Q. The entry on the fourth immediately below that, Mr. or Inspector,  
7 | on exhibit -- on the exhibit.

8 | A. Oh, I'm sorry. On -- Yes on the fourth of June, the first entry  
9 | eight-thirty a.m. until twelve noon, that again does not relate  
10 | to the Seale inquiry. One until five p.m., "patrol New  
11 | Waterford and local with Corporal Scott, re: Excise Act and  
12 | Seale murder." I take it I was back to New Waterford the  
13 | following afternoon, again trying to contact sources with  
14 | information.

15 | Q. During your time in Cape Breton with G.I.S., did you have  
16 | occasion to investigate serious crimes as you've described  
17 | them?

18 | A. Yes, I did.

19 | Q. Would you tell the Commission, please, generally the practice  
20 | that you would follow and perhaps, I realize it's hypothetical  
21 | but would you just assume you were the first officer on the  
22 | scene where someone has been seriously stabbed and is lying  
23 | on the street. Just tell us what you would do.

24 | A. Naturally your first concern would be assistance for the  
25 | victim, medical assistance or whatever. That would be your

J. TERRANCE RYAN, by Mr. MacDonald

1 prime concern. Your next concern would be securing of the  
2 scene, separation or removing people from the scene,  
3 preservation of evidence, taking names of witnesses, any  
4 persons that had been there, notifying your superiors or  
5 bringing in as much assistance as you could possibly bring  
6 in, assigning an investigator to either go to the hospital  
7 immediately or accompany the victim to the hospital and stay  
8 with that victim until the seriousness of the incident had  
9 been determined. If it was serious, naturally staying there,  
10 preserving of evidence, being present in case the witness could  
11 make or the victim could make comments as to what had taken  
12 place or obtain any verbal evidence from that individual. You  
13 would notify your Identification Section to assist at the  
14 scene for taking of photographs and the search of evidence.  
15 You'd probably notify, in a case such as that, a police  
16 service dog for the search of evidence. The priority would  
17 be to get and then to obtain as many resources as you could  
18 possibly obtain to determine as much evidence as you could  
19 possibly obtain and as quickly as you possibly could.

20 Q. If you have a scene where someone has been stabbed, is  
21 unconscious or is in a state of shock as a result and indeed  
22 is -- you realize that the intestines are coming out of the  
23 wound, would you consider that to be a serious crime?

24 A. Yes, I certainly would.

25 Q. And the steps you've just described, are those the steps

J. TERRANCE RYAN, by Mr. MacDonald

1           you would follow?

2    A.   Yes.

3    Q.   Follow up on that.  If you assume that the victim died, would  
4           you be interested in having a post-mortem done?

5    A.   Yes, that would be one of our priorities.

6    Q.   For what purpose?

7    A.   An endless line of reasons; everything from naturally blood  
8           samples for alcohol, drug determination, from examination  
9           of the stab wounds, the number of wounds, the direction of the  
10          wounds in an effort to probably reinact the crime to determine  
11          which direction the person had been stabbed from, up or down;  
12          again the depth so that you could possibly have some idea  
13          of what kind of weapon you were looking for.  You would be  
14          looking for anything under the fingernails or what-have-you  
15          to determine if there was an altercation, if there was  
16          scratching, hairs.  You would probably look for stomach contents  
17          in case you had to determine where the victim had been prior,  
18          had he eaten at restaurants or, you know, some determination  
19          in that manner.  It depends on the case but you would be  
20          looking at an endless line of -- endless pool of evidence.

21   Q.   Would the clothing of the victim be something you would be  
22          interested in?

23   A.   Yes, the member -- the member that was assigned to accompany  
24          the victim, one of his prime purposes would be to obtain the  
25          clothing from the victim at the earliest possible time.

J. TERRANCE RYAN, by Mr. MacDonald

1 Q. You said you would identify or attempt to identify witnesses  
2 at the scene?

3 A. Yes.

4 Q. What about taking statements from people?

5 A. You would -- if you had the resources, you would try to separate  
6 people and obtain at least enough in your notebook to determine  
7 who was there first and if somebody was there at the time of  
8 the incident and if you -- If you could determine who was  
9 there first or if somebody was there at that time, you would  
10 try to get statements as soon as possible before they would  
11 have an opportunity to talk to somebody else.

12 Q. What about taking -- taking written statements from various  
13 witnesses? Is that something you would do at some time and if  
14 so, when?

15 A. If you had somebody there that evening and he witnessed the  
16 event, you would try to obtain a statement as soon as possible.  
17 There, if possible. If not, you would probably make notes of  
18 enough information to go back to that person immediately  
19 following. You would have from him, in your notebook, the  
20 facts that he had given you. Then you would follow that up  
21 with a statement later. Yes, you would take statements from  
22 witnesses.

23 Q. If the event occurred in a residential area, would you at  
24 some time do a door to door canvass of the residents in  
25 that area?

J. TERRANCE RYAN, by Mr. MacDonald

1 A. Yes, you would. You -- That you'd probably do maybe the  
2 following day or two or three days after, depending on the  
3 circumstances surrounding the incident. That is a common  
4 practise used.

5 Q. And would you make notes of anything told to you, whatever was  
6 told to you by those residents?

7 A. Yes, you would.

8 Q. You had occasion, did you not, while you were with G.I.S. in  
9 Sydney to be involved with a murder on this Island?

10 A. Yes, we did. As a matter of fact, Constable Wood and I were  
11 the prime investigators in the murder of a taxi driver that  
12 had been murdered in the Ingonish Beach area and that would  
13 have been probably September of 1971.

14 Q. The type of practice as you've described with respect to  
15 post-mortem investigations, taking statements, and so on,  
16 is that the practice you followed at that time?

17 A. Yes, that was. That was a contested case and the evidence  
18 was all presented in the Supreme Court of Nova Scotia and  
19 would be available.

20 Q. Tell me about the Ident Section that you refer to. What is  
21 it?

22 A. It's a section that consists of specialists or experts in  
23 the area of fingerprinting, scene examination, photographing.  
24 They would visit the scene and try to obtain any evidence of  
25 an expert nature and like the photographs are very important

J. TERRANCE RYAN, by Mr. MacDonald

1 on the positions of the body or what was there or anything  
2 at the scene, to have the photographs and what-have-you prior  
3 to anything being moved.

4 Q. Would that be a normal procedure you would follow to have  
5 your Ident Section on the scene immediately to take photographs?

6 A. Yes, it would be.

7 Q. Was the Ident Section of the R.C.M.P. a service that would be  
8 available to the Sydney City Police if requested?

9 A. Yes, it would be.

10 Q. I want you to look at page 90 of Volume 16, Inspector, please.  
11 I'm asking you to look at Volume 16, page 90. Have you seen  
12 that document before?

13 A. No, only two evenings ago when it was shown to me by yourself.

14 Q. "M.C.I.S." division in Halifax, can you tell us what type of  
15 division that was?

16 A. It was the Maritime Crime Index Section. It was a section  
17 that was used to correlate information on various criminals  
18 and criminal activity throughout the region.

19 Q. What does "M.O." mean?

20 A. It means modus operandi or method of operation.

21 Q. And is that something that's of interest to investigators?

22 A. Yes, it is. When you're investigating a crime, you sometimes  
23 determine your suspects by looking at the method of operation  
24 or the modus operandi of your crime and looking at the modus  
25 operandi of similar incidents in the past.



J. TERRANCE RYAN, by Mr. MacDonald

1 Q. If -- and all of these questions I'm going to ask you to recall  
2 are directed primarily to the time when you were in Sydney  
3 with G.I.S. If you had been involved in an occasion of  
4 arresting someone who is carrying a concealed weapon, a ten-  
5 inch butcher knife, and convicted of carrying a concealed  
6 weapon, would that information get on to this M.C.I.S. system?

7 A. Yes, it would.

8 Q. What information would be put in?

9 A. There would -- There's a -- I believe it was on the fingerprint  
10 form at that time. There was details of crime or method of  
11 operation portion and you would put in there the incident  
12 involving a firearm or knife, stabbed somebody or the method  
13 that the accused has used to commit that crime would have been  
14 included.

15 Q. But if the crime is carrying a concealed weapon, not actually  
16 having stabbed someone, would it be noted that he was carrying  
17 a knife, a large knife?

18 A. Yes, that should also. That should have been recorded.

19 Q. And would that information, if you go to -- if you had gone to  
20 M.C.I.S. in 1971 and asked for an M.O. or the identity of  
21 people who had been -- used that type of M.O., would you  
22 expect to get that person's name back?

23 A. If the information had been forwarded to M.C.I.S., yes, you  
24 should obtain that information back to you some years later.

25 Q. Now do you know or are you able to tell us whether the Sydney

J. TERRANCE RYAN, by Mr. MacDonald

1 City Police would feed information into the M.C.I.S. system?

2 A. I have no knowledge of that of any kind.

3 Q. Did you have experience during your time in Sydney, Inspector,  
4 with Crown Prosecutor, Donald MacNeil?

5 A. Yes, I had experience both when he was defense counsel and as  
6 a prosecutor.

7 Q. Are you able to say whether in your experience, you would have  
8 delivered to the Prosecutor all of the information you would  
9 have obtained during your investigation?

10 A. Yes, we would prepare a detailed brief on our case and it  
11 would include statements, summaries of evidence, list of  
12 exhibits; quite a package on the case.

13 Q. Are you able to say from your own knowledge whether Donald  
14 MacNeil would make available to the defense copies of the  
15 information which you were giving to him?

16 A. I have no personal knowledge of that.

17 Q. During your time in Sydney, did you have occasion to carry  
18 out police activities on Indian Reserves?

19 A. Yes, I did.

20 Q. And specifically where?

21 A. At the Eskasoni Reserve and also I was stationed in St. Peter's,  
22 so I did work on the Barra Head Reserve as well. When I was  
23 stationed in Port Hawkesbury, we used to assist at the  
24 Whycocomagh Reserve as well.

25 Q. And have you had occasion during those times to charge Natives

J. TERRANCE RYAN, by Mr. MacDonald

1 with various crimes?

2 A. Yes, I have.

3 Q. In your experience, did you detect any difference in treatment  
4 afforded to Natives as compared to other races?

5 A. No.

6 Q. And by that question, I'm not only talking about your own  
7 treatment, but I'm asking if you detected any difference in  
8 the penalties meted out or the way that Natives were treated  
9 by the system?

10 A. No, I recall no different treatment of the Natives than any  
11 other.

12 Q. Did you have any dealings with Blacks?

13 A. Not that I can recall. If I did, it would be -- would have  
14 been extremely limited.

15 Q. And you don't recall --

16 A. I can't recall any.

17 Q. Thank you. Can you tell me if you were aware that in 1971  
18 in November the R.C.M.P. were carrying out a review of the  
19 conviction of Mr. Marshall for the murder of Seale?

20 A. I can recall simply one evening leaving the office here in  
21 Sydney, the G.I.S. office, that Sergeant MacKinley remained  
22 behind and I mentioned: "Are you leaving?" and he said, "No,";  
23 he was waiting for Inspector Marshall because there was some  
24 problems with the Seale murder and they were looking at doing  
25 a polygraph. And I do not recall any more detail, any further

J. TERRANCE RYAN, by Mr. MacDonald

1 conversation on it.

2 Q. And were you aware of the 1982 reinvestigation carried out by  
3 Sergeant Wheaton and Sergeant Carroll, I believe were the  
4 names?

5 A. No.

6 Q. Do you know either of those two officers?

7 A. Carroll and Wheaton?

8 Q. Wheaton.

9 A. Yes, I have met both officers in the past.

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*JMR*

J. TERRANCE RYAN, by Mr. MacDonald

1 Q. Were you interviewed by either of those officers in  
2 connection with your role that -- the evidence of which  
3 you'd given to this Commission today?

4 A. No, no.

5 Q. When you were travelling or when you were a partner with Staff  
6 Sergeant Wood in those days, did you used to tell each other  
7 what was happening?

8 A. Constable Wood and I?

9 Q. Yes.

10 A. Yes.

11 Q. I want to show you the diary entries from Constable Wood that  
12 were introduced yesterday as Exhibit 40, and I'm directing you  
13 particularly to the entry on page two. It's the May 29th--  
14 Staff Sergeant Wood read those to us yesterday and in particular  
15 I'd like to direct your attention to his passage:

16 Conversation with Edward MacNeil and  
17 Detective MacIntyre. Feeling at this  
18 time, Marshall was responsible. An  
incident happened as a result of  
argument between both Seale and Marshall.

19 Did your partner advise you at that time that that was the feeling  
20 of the -- in the Sydney Police Department the morning after the  
21 stabbing?

22 MR. PUGSLEY:

23 My Lord, I realize the rules of hearsay are extended in this  
24 hearing, but that seems to me to be somewhat verboten. I don't  
25 know how that assists Your Lordships in carrying on this Inquiry

J. TERRANCE RYAN, by Mr. MacDonald

1 as to whether or not Constable Wood had told this witness what  
2 he was told by other people on a morning in June.

3 MR. MacDONALD:

4 That doesn't go to -- I'm sorry, that's not hearsay, My Lord. I'm  
5 asking this witness if he was -- if he was advised of a fact and  
6 not whether or not this is a true statement that was made. It's  
7 whether he was advised that the statement was made. It's not  
8 hearsay.

9 MR. CHAIRMAN:

10 No, I'm not -- Well, there's no suggestion that it is -- it is  
11 hearsay.

12 MR. MacDONALD:

13 I thought my friend said it was extending the hearsay rule somewhat.

14 MR. PUGSLEY:

15 It's about the relevance of the matter, My Lord.

16 MR. CHAIRMAN:

17 Well, it's relevant in this sense that we had the testimony  
18 yesterday of Staff Sergeant Wood and we now have the evidence of  
19 the -- of the Inspector who says that there was -- there would be  
20 in the normal course of events a consultation between investigating  
21 officers and I think the purpose -- I assume the purpose of this  
22 question was to see whether he can recall if Wood communicated that  
23 to him, and I would have no difficulty in allowing that.

24 BY MR. MacDONALD:

25 Q. Do you recall the question, Inspector?

J. TERRANCE RYAN, by Mr. MacDonald, by Ms. Edwardh

1 | A. I do not recall Constable Wood advising me of this information,  
2 | however, I can give you the practice of Constable Wood and  
3 | myself, and that practice would be full disclosure to one  
4 | another of all events in which we were investigating.

5 | Q. Do you have any -- any recollection at this time whether you  
6 | were aware as you went about your own activities in late May  
7 | and early June of 1971, whether the Sydney Police considered  
8 | Mr. Marshall to be a suspect in this particular matter?

9 | A. There's no doubt in my mind that the Sydney City Police had  
10 | Marshall as a suspect.

11 | Q. From the beginning?

12 | A. I was not involved in the investigations or aware of the facts  
13 | until the 31st day of May.

14 | Q. From that time on?

15 | A. From that time on I would say based on the contents of  
16 | Constable Wood's notes that I as well would have been aware  
17 | of those facts.

18 | MR. MacDONALD:

19 | Thank you. That's all I have. Thank you, Inspector.

20 | BY MS. EDWARDH:

21 | Q. Sir, perhaps you can give us some information about the  
22 | use of polygraph. I take it in 1971 there were polygraphers  
23 | associated with the R.C.M.P.?

24 | A. There were?

25 | Q. Polygraphers, polygraphers?

J. TERRANCE RYAN, by Ms. Edwardh

1 | A. Yes.

2 | Q. And I take it during that time period you, yourself, had  
3 | occasion to sometime call upon their resources. Would that be  
4 | fair?

5 | A. I can't say that I did during 1971, but I have called on the  
6 | resources of the polygraph during my service, yes.

7 | Q. And roughly in that time period between '68 and '74, polygraph  
8 | was used by the force?

9 | A. Yes, it was.

10 | Q. Now would it be fair to say as an experienced investigator that  
11 | polygraph is not used and should never be used as a  
12 | determinative tool?

13 | A. The polygraph --

14 | Q. Yes.

15 | A. -- is merely a guide or an aid to an investigator. It is not  
16 | a determinative tool.

17 | Q. And that anyone who utilized polygraph even at that time would  
18 | be well aware of that?

19 | A. Yes, because I -- if I recall that would have been the time  
20 | that we were commencing to use polygraph.

21 | Q. And, in fact, if one were to say anything, it was probably less  
22 | reliable in 1971 than it is today?

23 | A. That I cannot say.

24 | Q. Okay, but in any event it would be fair, sir, to indicate that  
25 | from the force's perspective and your perspective as an



J. TERRANCE RYAN, by Ms. Edwardh

1 | investigator it was simply a tool and one of many?

2 | A. Yes.

3 | Q. Do you know, sir, whether in this time period you would have  
4 | also been aware that there were certain subjects who were  
5 | inherently dangerous to polygraph, for example, people with any  
6 | history or present emotional difficulty, mental instability  
7 | were not good subjects for polygraph?

8 | A. Yes, I would have been aware of that.

9 | Q. And do you know, sir, whether the involvement of the R.C.M.P.  
10 | with the polygraphing of certain suspects later on when you,  
11 | I gather, had your conversation with Inspector Marshall?

12 | A. I never had a conversation --

13 | Q. With McKinley, I'm sorry.

14 | A. Okay.

15 | Q. You spoke with Inspector McKinley or --

16 | A. Sergeant McKinley very briefly on that incident.

17 | Q. Did he ever subsequently discuss or talk to you around that  
18 | time about any difficulties with the individuals they were  
19 | polygraphing?

20 | A. I do not recall having any subsequent discussion with  
21 | Sergeant McKinley following the discussion --a very brief  
22 | discussion in the office that evening.

23 | Q. Okay. Now you were asked, sir, to outline some of the things  
24 | that you might do if you came upon a -- as the first officer  
25 | or one of the -- I suppose one of the first officers at the

J. TERRANCE RYAN, by Ms. Edwardh

1 scene of a homicide, and you have given us a fairly lengthy  
2 list of items. I take it, sir, that even with advances in the  
3 field of forensic science, most of what you described was  
4 standard fare for policing in 1971, cordoning off the scene,  
5 getting statements as soon as you could, particularly before  
6 the people had an opportunity to talk to others, having a  
7 post mortem examination, that's all standard fare. There's  
8 no magic to that.

9 A. It was standard most certainly for the R.C.M.P. or for a  
10 trained police officer, yes.

11 Q. Yes, and in fact, if you go through your list for a moment,  
12 getting assistance, separating certain witnesses, cordoning off  
13 the scene, looking for evidence, etcetera, and doing that  
14 as quickly as possible, most of those are fairly common sense  
15 kinds of things?

16 A. Yes, they probably are.

17 Q. Looking at, seizing the clothes of the victim, itemizing what  
18 was present on his person at the time of the assault, those  
19 are all fairly standard common sense things, correct?

20 A. Yes, they would be.

21 Q. Now you've described Sergeant MacIntyre as someone who is  
22 from your perspective, competent?

23 A. Yes.

24 Q. Had you ever had occasion to work with him on any kind of  
25 homicide investigation?

J. TERRANCE RYAN, by Ms. Edwardh

1 | A. No, I did not work with Sergeant MacIntyre in any detailed  
2 | fashion on any investigation or taking of statements or  
3 | assisting in an investigation to that extent.

4 | Q. So is it fair to say that your view of him does not arise from  
5 | having worked with him in any detailed way?

6 | A. My view of him would be from having known him since 1964 and  
7 | having had a number of encounters with him through exchanges  
8 | of police information and what have you from seeing him in  
9 | the court room on numerous occasions with cases before the  
10 | Court. So I would have formed an opinion over him -- an  
11 | opinion of him based on a number of contacts with him over a  
12 | number of years.

13 | Q. Would it be fair to say that from your perspective you  
14 | regarded him as someone with a lot of common sense and wouldn't  
15 | miss the obvious?

16 | A. Yes, that would be a fair statement.

17 | Q. And if I were to tell you, and I'm sure you've been made aware  
18 | as a result of the information available about this case, that  
19 | many of the common sensical steps that you described as standard  
20 | fare, were not followed and in part were not followed by  
21 | Sergeant MacIntyre the next day or immediately thereafter,  
22 | would that surprise you?

23 | A. Yes, it would surprise me.

24 | Q. And it would be fair to say that from your knowledge of him  
25 | you would have expected that kind of thing to occur?

J. TERRANCE RYAN, by Ms. Edwardh

1 A. No, definitely not. I wouldn't --

2 Q. No, I'm sorry, from your knowledge of him you would have thought  
3 he would have done those things and taken those steps?

4 A. I would have thought that he would have taken those steps,  
5 yes.

6 Q. And would you agree with me, sir, that perhaps one of the most  
7 serious problems any detective or person conducting an  
8 investigation may have in the process of investigating is to  
9 develop "tunnel vision". Does that term mean anything to you?

10 A. Yes, it does mean something to me.

11 Q. And is it something that you as an investigator guard against?

12 A. Yes, you guard against it and I think it's one of the reasons  
13 possibly in our organization that we involve a number of  
14 levels within our investigative procedures.

15 Q. And if -- For the benefit perhaps of those who are not as  
16 familiar with the term, would it be fair to describe the  
17 phenomenon of "tunnel vision" as reaching premature  
18 conclusions without any foundation or fact to support that?

19 A. That would be one definition of tunnel vision, basically  
20 focusing -- focusing on one particular individual.

21 Q. And then building our case around that person?

22 A. That would be one possible definition, yes.

23 Q. And do I take it, sir, that as a matter of policy the R.C.M.P.,  
24 when you say you involve different levels, guards against  
25 that formally by assuring the different levels are involved?

J. TERRANCE RYAN, by Ms. Edwardh

1 A. Yes, because when I look at when we were doing a serious  
2 investigation we would have continuous meetings, we would  
3 be informing our -- most certainly my superior at that time,  
4 Sergeant McKinley, we would be informing the N.C.O. in charge  
5 of the detachment and we would also be informing our officer  
6 in command of the investigation, so there would be a number of  
7 levels involved in a decision making process as to what  
8 procedures would be followed.

9 Q. And I take it in each level there would be discussions and  
10 explorations about alternative theories of the investigation  
11 and where it should go?

12 A. Yes.

13 Q. Now with respect to your trip to New Waterford, if I could  
14 ask you to turn again to your partner's notes which is  
15 Exhibit 40, and in particular on the third page you will see  
16 some notations under the date the 30th of May, '71. They are  
17 notations which for the record indicate that certain names  
18 have been deleted from the note. Could I ask you just to  
19 pursue that starting with:

20 Both of the opinion Marshall responsible,  
21 names .... and ..... of New Waterford  
given to them as possible suspects.

22 Do you see that?

23 A. Yes.

24 Q. Would it be fair to suggest, sir, that your trip to New  
25 Waterford was, in fact, to pursue whether or not these two

J. TERRANCE RYAN, by Ms. Edwardh

1 individuals might have been in the area of Sydney at the park  
2 on the night of the stabbing?

3 A. No, because from what I can recall we were looking to obtain  
4 information of anybody from New Waterford that might have  
5 frequented the park. I cannot recall having any names or  
6 distinct names in mind.

7 Q. So I take it then, sir, you have no information or belief  
8 that this tip, if I could call it, or this potential lead was  
9 followed up one way or the other? You're saying you didn't  
10 follow it up?

11 A. I did not follow it up.

12 Q. And I take it New Waterford was in your jurisdiction?

13 A. The Town of New Waterford, no, it was not. That falls under  
14 the jurisdiction of the New Waterford Town Police.

15 Q. Do you recall any conversation with Sergeant MacIntyre as  
16 to why you were going out to make broad inquiries in New  
17 Waterford? Had he received certain information?

18 A. I am not certain. From what I can recall it is that basically  
19 we were looking for somebody from New Waterford that might  
20 have been in the park that evening or had the habit of  
21 frequenting the park or drinking in the park, somebody that  
22 might have been there that evening that could offer some  
23 assistance.

24 Q. So I take it from your perspective you were not necessarily  
25 looking for the person who had done the stabbing as much as

J. TERRANCE RYAN, by Ms. Edwardh

1 | anyone who might have been a witness to it as well?

2 | A. It could have been either a witness or an accused. We were  
3 | also looking for suspects.

4 | Q. Does the name John Pratico mean anything to you, sir?

5 | A. It does now but at that time, no.

6 | Q. Just one technical question, the retrieval mechanism through  
7 | M.C.I.S., that was all done on a computer I take it?

8 | A. I'm not -- I'm not certain.

9 | Q. If you put a request in for information about someone who had  
10 | been involved in a stabbing incident in the Sydney area and  
11 | had just a physical description and the facts, could you  
12 | have found through your system, for example, whether anyone  
13 | had been convicted or there was a similar event that had  
14 | occurred in the Sydney area in the last three -- was it for  
15 | three or four years preceding '71?

16 | A. In our own system or in the M.C.I.S. system?

17 | Q. Yes. Well, either -- any system that you would have had  
18 | access to.

19 | A. Well, the M.C.I.S. system, we most certainly could have obtained it  
20 | through that system had the information been forwarded  
21 | originally and that's the vital point, that the information  
22 | bank is -- it's only as good as the information stored in it.  
23 | We also at the time had our own independent system at the  
24 | office where we would have index cards at that time of  
25 | recently released criminals, individuals on parole, warrant --

J. TERRANCE RYAN, by Ms. Edwardh

1 individuals where warrants were outstanding, in our own  
2 system where we could search that as well for anybody  
3 that we might be interested in.

4 Q. But either of those systems then would depend on what the  
5 information base was and whether the Sydney Police had forwarded  
6 information to you?

7 A. Yes, exactly.

8 Q. And with respect to your own system in your office, did you have  
9 a regular information exchange about people charged and  
10 convicted in the Sydney area?

11 A. Each unit would maintain it's own index system and it's own  
12 file system, so if I went to Ingonish Beach to do an inquiry  
13 I would go to that unit and check their index system on a  
14 local basis, yes.

15 Q. But with respect to Sydney -- the City of Sydney?

16 A. The City of Sydney, I do not know what they had within their  
17 own Police Department for -- but for our own records, the  
18 G.I.S. records and the Sydney Detachment records, yes, there  
19 would be an index system there of our files and previous  
20 cases and what have you.

21 Q. Now would your indexes, and leaving aside the City of Sydney,  
22 the police here, would your indexes include occurrences and  
23 convictions arising from prosecutions that were handled  
24 through the City of Sydney Police?

25 A. No, they would not.



J. TERRANCE RYAN, by Ms. Edwardh, by Mr. Pugsley

1 | MS. EDWARDH:

2 | Those are my questions. Thank you.

3 | MR. CHAIRMAN:

4 | Mr. Pugsley.

5 | BY MR. PUGSLEY:

6 | Q. Inspector, what was the nature of the opinion that you had  
7 | when you made application to the force and were accepted?

8 | A. The requirements to join the force at that time?

9 | Q. No, not the requirements, the training you received after  
10 | that application was accepted.

11 | A. I received approximately ten months training, Depot Division.  
12 | That was fairly extensive training on methods of investigating  
13 | crime scenes and methods of taking statements, how to do  
14 | investigations, how to execute warrants, how to serve summonses--

15 | Q. Where was that training given?

16 | A. In Depot Division in Regina.

17 | Q. That was different than the Staff -- the college that Sergeant  
18 | Inspector Wood went to?

19 | A. He would have --

20 | Q. I think he went to Ottawa as I recall it.

21 | A. Okay. There was two colleges at that time one in Ottawa and  
22 | one in Regina.

23 | Q. I see, and what year was it that you attended this course?

24 | A. I attended and started commencing training in October -- on  
25 | October 25th, 1962.

J. TERRANCE RYAN, by Mr. Pugsley

1 Q. And did you receive refresher courses and training and other  
2 courses from time to time?

3 A. Yes, I did. Over the years I've probably attended at least  
4 fifteen various courses in such things as senior  
5 investigator's course, custom's course, courses in  
6 management, and any number of courses.

7 Q. Your attention was directed to volume 16, page 90, the Telex  
8 that was sent to Halifax from the Sydney office of the  
9 R.C.M.P. on the early hours of the morning of May 30th.  
10 This request for information could well have come from the  
11 Sydney City Police Department to the R.C.M.P. in Sydney?

12 A. Yes, it very well could have.

13 Q. It certainly does not indicate a closed mind as far as this  
14 investigation was concerned at that hour, did it?

15 A. No, it does not.

16 Q. The reference to Marshall is only "possibly the person  
17 responsible", and there is a request for additional information  
18 concerning M.O.'s relating to other -- to persons obviously  
19 other than Marshall who could have committed this crime?

20 A. Yes.

21 Q. Yes, and the trip that Sergeant MacIntyre asked you to take  
22 to New Waterford on June the 3rd certainly does not  
23 indicate a closed mind as far as this investigation is  
24 concerned?

25 A. That's correct. Yes.

J. TERRANCE RYAN, by Mr. Pugsley

1 Q. And indeed the reason that you were asked to go to New  
2 Waterford was because you had some familiarity with that  
3 area?

4 A. Yes, I had been stationed in New Waterford from 1964 until  
5 1967.

6 Q. And Sergeant MacIntyre knew that and thought that you  
7 obviously could be of assistance to him in that area?

8 A. Yes, he would have known that.

9 Q. Yes. You talked about the re-investigation that occurred in  
10 November, 1971. It's my understanding that that reinvestigation  
11 took place perhaps about eight or nine days after Mr. Marshall  
12 was convicted of the offense after a Jury Trial consequent  
13 upon some individuals coming to the Sydney Police Station and  
14 advising that Roy Ebsary was, indeed, the person responsible  
15 for -- for this crime. Is that your understanding as well?

16 A. At that time?

17 Q. Yes.

18 A. No. I had no -- As I had mentioned before, the only awareness  
19 that I had had at that time that there was any problems  
20 whatsoever was an extremely brief conversation with  
21 Sergeant McKinley to the point that he informed me that  
22 Inspector Marshall, he was -- he would be arriving  
23 and that there was some problem with that matter. It  
24 was very limited.

25 Q. Now it's my -- It's my understanding that -- And take it from

J. TERRANCE RYAN, by Mr. Pugsley

1 me that certain individuals came to see the Sydney City Police  
2 on or about the 15th of November, including Roy Ebsary who  
3 denied the stabbing, but including one James MacNeil and  
4 his brother as well as several other members of the Ebsary  
5 family and gave statements to the Sydney City Police at that  
6 time. It was the decision of the police force to involve  
7 the Crown Prosecutor's Department and also the R.C.M.P. in  
8 view of their involvement in the previous investigation last  
9 June. Now do you consider that to be an appropriate decision  
10 by the -- by the Sydney Police force, rather than conducting  
11 it themselves to hand it over to -- to your force?

12 A. Not being aware of the facts or the details or exactly what was  
13 going on at the time, I couldn't form an opinion as to the  
14 correctness of the decision.

15 Q. Well, assume that what I tell you is accurate, that having  
16 been involved in the investigation the previous Spring and  
17 having been advised of new information after Mr. Marshall  
18 was convicted, the Sydney City Police Department decided  
19 that it would be appropriate to hand the new investigation  
20 over to the R.C.M.P. Does not sound --

21 A. I would say that would be a wise decision.

22 Q. A wise decision. Okay, and if you were the R.C.M.P. officer  
23 who was asked to head that re-investigation on November 5th,  
24 1971, and to conduct a thorough re-investigation, what would  
25 you have done?

J. TERRANCE RYAN, by Mr. Pugsley

1 | A. I would say that I probably would have re-commenced the  
2 | whole investigation.

3 | Q. Yes, and would have personally interviewed all the individuals  
4 | who came forth to the Sydney City Police Department on  
5 | November 15th, '71, and gave statements involving another  
6 | person?

7 | A. If I was in charge of the investigation?

8 | Q. If you were in charge.

9 | A. I most certainly would.

10 | Q. And would you interview personally those witnesses who gave  
11 | evidence that gave to the conviction of Donald Marshall?

12 | A. Yes, I would.

13 | Q. That would be consistent with a thorough re-investigation?

14 | A. Yes.

15 | Q. Yes. I take it that what you would not do would simply be rely  
16 | upon a polygraph examination of two individuals, that would  
17 | not be a complete re-investigation or a thorough investigation,  
18 | would it?

19 | A. I would have used the polygraph as an aid in the investigation.

20 | Q. As an aid only, but not as the determining factor. You would  
21 | have used firsthand -- firsthand association with those  
22 | people who would come forward to advise of the new evidence  
23 | and you would personally interview those individuals who  
24 | gave evidence at the trial that led to the conviction of  
25 | Donald Marshall?

J. TERRANCE RYAN, by Mr. Pugsley

1 | A. I would have.

2 | Q. And you probably would have done other things as well if  
3 | you wanted to be thorough?

4 | A. I would have to be aware of the full facts and details  
5 | before I could answer that question.

6 | Q. Do you know the individuals who conducted the re-investigation  
7 | for the Royal Canadian Mounted Police in November of  
8 | 1971?

9 | A. I'm not too certain as to who did it. I believe Inspector  
10 | Marshall was involved.

11 | Q. Yes.

12 | A. I'm not too certain as to what extent Sergeant McKinley was  
13 | involved.

14 | Q. Let me direct your attention to volume 16 at pages 202 to 207  
15 | inclusive. Volume 16, pages 202 to 207 inclusive. Have you  
16 | seen any of these documents before, sir?

17 | A. No, I have not.

18 | Q. Okay, and I direct your attention to page 207 which is the  
19 | report. It is signed by E. A. Marshall. Who is -- Who --  
20 | Do you know that gentleman or did you know him at the time?

21 | A. Yes, I did know him at the time.

22 | Q. And who was he?

23 | A. He was a Detective Inspector or an Inspector working out of  
24 | our Halifax office.

25 | Q. Yes. I take it that information of this kind would be treated

J. TERRANCE RYAN, by Mr. Pugsley

1 | most seriously, or should have been treated mostly seriously,  
2 | information of another person who had -- who had apparently  
3 | caused the injuries and subsequent death of Mr. Seale. This  
4 | kind of information would have been treated most seriously  
5 | or should have been treated most seriously by a member of the  
6 | force?

7 | A. I would say most certainly it should have been treated most  
8 | seriously.

9 | Q. Yes, and if I direct your attention to page 204, near the  
10 | bottom of the page immediately above the words, "17  
11 | November, 1971, Inspector Marshall writes":

12 |           At this point the force became involved  
13 |           and I went to Sydney on the 16th of  
14 |           November of '71, where together with  
          Sergeant G. M. McKinley I see Sydney  
          G.I.S. A thorough...

15 | And I emphasis the word "thorough".

16 |           ...A thorough review of the case was  
17 |           conducted with the following results...

18 | Sergeant G. M. McKinley was who?

19 | A. At that time he was the N.C.O. in charge of Sydney G.I.S.,  
20 | the unit that I had been attached to.

21 | Q. Right, and you knew that man personally?

22 | A. Yes, I did.

23 | Q. Would you be astounded that he was involved in a re-investigation  
24 | where no personal accounts were taken from the witnesses who  
25 | gave evidence at trial?

J. TERRANCE RYAN, by Mr. Pugsley

1 A. I have no knowledge as to the depth of involvement of Sergeant  
2 McKinley.

3 Q. All right. Sergeant McKinley would have had the same  
4 training you had?

5 A. Yes, he would have.

6 Q. Would Inspector Marshall have had the same training you had?

7 A. Yes, he would have.

8 Q. Do you know the gentleman who took the polygraph, the E. C.  
9 Smith whose name appears at the bottom of page 203?

10 A. Yes, I know Mr. Smith.

11 Q. And would he have had the same kind of training you had?

12 A. Basically, yes.

13 MR. PUGSLEY:

14 Thank you.

15  
16  
17  
18  
19  
20 jmr  
21  
22  
23  
24  
25



J. TERRANCE RYAN, by Mr. Murray

1 | MR. CHAIRMAN:

2 | Mr. Murray.

3 | BY MR. MURRAY:

4 | Q. Inspector Ryan, I would ask you to refer to Page 22 in Volume  
5 | 16.

6 | MR. CHAIRMAN:

7 | What page is that Mr. Murray?

8 | MR. MURRAY:

9 | Page 22.

10 | BY MR. MURRAY:

11 | Q. Volume 16, Page 22, have you ever seen that document before,  
12 | sir?

13 | A. No, I have not.

14 | Q. Perhaps you take an opportunity to just read through it  
15 | briefly. That's dated May 30th, the Sunday?

16 | A. Yes, it is.

17 | Q. And in that statement there's a reference to a white  
18 | Volkswagen with a blue license and white number on it?

19 | A. Yes.

20 | Q. I ask you now to refer to Volume 16, Page 85, have you seen  
21 | this document before, sir?

22 | A. No, I have not.

23 | Q. Perhaps you could read through that briefly. That statement  
24 | is dated July 2nd, '71?

25 | A. Yes.

J. TERRANCE RYAN, by Mr. Murray

1 Q. And the substance of the statement is a conversation involving  
2 John Pratico, Glen Lamson, Junior Marshall and the person  
3 giving the statement, a Raymond Poirier?

4 A. Yes.

5 Q. And in that statement referring to Donald Marshall and this  
6 is the day after the stabbing or the Sunday after the  
7 stabbing, he said

8 He said then two men took off and jumped in  
9 a white Volkswagen. He said he did not  
recognize them at all.

10 Do you see that?

11 A. Yes, I do.

12 Q. I would ask you to take your notes, exhibit --

13 MS. EDWARDH:

14 (inaudible - microphone not transmitting) ... not the day after the  
15 stabbing. It may be what the witness is recounting but the  
16 statement itself is dated July 2nd.

17 MR. MURRAY:

18 I pointed that out.

19 BY MR. MURRAY:

20 Q. Perhaps if you'd take your notes, exhibit 41, it's reasonable to  
21 assume from your notes on, on May 31st, that you were aware  
22 of this Volkswagen theory on the part of the Sydney City  
23 Police?

24 A. Yes.

25 Q. And that--that's why you would have in fact been making notes

J. TERRANCE RYAN, by Mr. Murray

1 | of Volkswagens?

2 | A. Yes.

3 | Q. And that is why indeed your partner would have been making  
4 | notes of Volkswagens?

5 | A. Yes.

6 | Q. And that would not be consistent, I suggest, with having  
7 | decided that Donald Marshall was responsible?

8 | A. I would say no, it would have been looking for somebody else  
9 | or suspects.

10 | Q. Now in your experience in working with Detectives' Urquhart  
11 | and MacIntyre of the Sydney City Police, I take it that they  
12 | didn't share information with you about leads that they  
13 | weren't interested in having you pursue?

14 | A. No, absolutely not, I -- at least I would hope not. They  
15 | would give us the facts required to assist in the  
16 | investigation.

17 | Q. Now I understand from the testimony from your partner and  
18 | from yourself this morning that one of the procedures you  
19 | would want to follow at a crime scene, is to separate  
20 | the witnesses?

21 | A. Yes.

22 | Q. And that is so they will not discuss what happened?

23 | A. Yes.

24 | Q. And possibly contaminate their own recollection of events?

25 | A. Yes, that's correct.

J. TERRANCE RYAN, by Mr. Murray

1 Q. Or be influenced by someone as to what the events were?

2 A. That's correct.

3 Q. I'd like you to turn to Volume 16, Page 75, and perhaps in  
4 fairness, if you've not seen that document before, it's a  
5 statement by Mary Patricia O'Reilly, if you would read  
6 that statement through and become familiar with it. Page  
7 74 and 75. I would like to specifically direct your  
8 attention to the last two or the second and third to last  
9 questions and answers in that statement

10 Did you discuss this matter with Patricia Harriss?

11 Answer

12 Yes

13 Question

14 Did you tell her about the grey haired man?

15 Answer

16 I told her there was supposed to be a grey  
17 haired man there. I told her if she was  
18 questioned by the police she should tell  
19 about the grey haired man that Junior told  
20 me about.

21 I suggest that that is precisely the kind of problem that  
22 you would want to avoid?

23 A. Yes, it is.

24 Q. Would it concern you as an investigator officer, if you were  
25 aware that a person who was associated with an apparent  
offense was going around talking to witnesses a great deal?

A. It's a normal occurrence that you can't avoid.

Q. Does it concern you?

J. TERRANCE RYAN, by Mr. Murray

1 A. It most certainly concerns me, yes.

2 Q. Does it raise any concerns about the individual himself  
3 sometimes?

4 A. About which particular individual?

5 Q. The individual who is going around talking to the different  
6 witnesses.

7 A. If somebody was going around and talking to witnesses and  
8 putting words in their mouth, I would be quite concerned  
9 and I would say make every effort to interview that  
10 individual.

11 Q. All right, and why would you be concerned, sir?

12 A. Because you're looking again at a possible somebody -- if  
13 it's a case before the court, it could be encouraging  
14 perjury, you could be leading towards a separate crime, you  
15 could be effecting the outcome of an investigation or case  
16 before the court. There's any number of reasons why you  
17 would be interested.

18 Q. Would it attract suspicion to that individual himself, sir?

19 A. To that individual or somebody else that he maybe aiding.

20 MR. MURRAY:

21 I have no further questions of this witness, Your Honour.

22 THE CHAIRMAN:

23 Mr. Elman.

24 MR. ELMAN:

25 No questions, My Lord.

J. TERRANCE RYAN, by Mr. Pink

1 | THE CHAIRMAN:

2 | Mr. Bissell, no, I'm sorry. Mr. Ross. No, Mr. Pink.

3 | MR. PINK:

4 | It's okay, Mr. Lord.

5 | BY MR. PINK:

6 | Q. Just a couple of questions, Inspector. Sergeant MacKinley  
7 | is he still with the force today?

8 | A. No, he is not. He is since deceased.

9 | Q. He is since deceased?

10 | A. Yes.

11 | Q. There were some questions yesterday about notebooks of members  
12 | of the Force, what happens with notebooks when a person  
13 | leaves the Force, do you know that?

14 | A. I would have to check the policy before I could determine  
15 | what happens to them. I believe the members retain them  
16 | but that's my belief but I'll have to check the policy  
17 | to be certain on that.

18 | Q. Do you retain your own notebooks?

19 | A. Yes, I do.

20 | Q. The conduct of an investigation itself -- when you're in charge  
21 | of an investigation I take it your the one that controls  
22 | how the investigation is carried on?

23 | A. No, it depends on the investigation. I have certain  
24 | responsibilities. I might be overall responsible but I have  
25 | people that I report to who have direct control over me. So

J. TERRANCE RYAN, by Mr. Pink

1 | if they would detect that I was going in the wrong direction  
2 | or doing something wrong, then most certainly I would be  
3 | advised as to a path to follow.

4 | Q. In other words you would take instructions from your  
5 | superiors?

6 | A. Yes, I would.

7 | Q. Have you ever been involved in a joint force operation with  
8 | local police departments in Cape Breton?

9 | A. No, I have not.

10 | Q. Have you ever taken over an investigation from a local police  
11 | department?

12 | A. I cannot recall having taken over an investigation.

13 | Q. Just so that I'm clear, what I mean by that is that there is  
14 | a serious crime that takes place in a jurisdiction that a  
15 | local police department has responsibility for and they ask  
16 | the R. C. M. P. to come in and handle that investigation?

17 | A. I cannot recall having done that.

18 | Q. When you were with G. I. S. in Sydney, was the G. I. S.  
19 | Section involved in that kind of thing even though you  
20 | personally were not?

21 | A. Yes, we probably were.

22 | Q. And in that situation, was it G. I. S. that determined how  
23 | the investigation was carried out or was it the local  
24 | police department?

25 | A. If we assumed responsibility to do an investigation, we

J. TERRANCE RYAN, by Mr. Pink

1 | would determine what action would be taken.

2 | Q. So just so that I understand, I take it they would turn the  
3 | investigation over to you, give you the information that they  
4 | had and it was for the R. C. M. Police to determine what  
5 | further steps were taken and what further steps were required?

6 | A. Yes, that would be correct.

7 | Q. Without regard to any instructions that might be given by the  
8 | local police department?

9 | A. We most certainly would work with and cooperate with the  
10 | local police department but we would direct the investigation.

11 | Q. Sure, they couldn't tell you what to do, could they?

12 | A. It would not --

13 | Q. In terms of restricting the investigation?

14 | A. No, they would not restrict the investigation.

15 | Q. And is the same true for the Crown, that the Crown wouldn't  
16 | be able to restrict an investigation that the R. C. M. Police  
17 | were investigation?

18 | A. No, they could not.

19 | Q. So again, you and your superiors would use their best  
20 | judgement to determine how an investigation should be done,  
21 | what was required to complete a thorough investigation?

22 | A. Yes, that's correct.

23 | Q. Without regard to the considerations or thoughts that the  
24 | Crown might have in restricting it?

25 | A. We would most certainly consult with the Crown at various



J. TERRANCE RYAN, by Mr. Pink, by The Chairman

1 | levels depending on the problems that we might encounter  
2 | along the way, with search warrants, legal documents, certain  
3 | procedures; but we would do the investigation. We would  
4 | direct the investigation.

5 | Q. Sure, and you would determine the scope of the investigation?

6 | A. Yes, we would.

7 | Q. That's all I have, thank you.

8 | BY THE CHAIRMAN:

9 | Q. Before you leave that, Inspector. Having carried out  
10 | investigations and submitted your report to the Crown  
11 | Prosecutor assigned to that case, would on occasion or as  
12 | a matter of practice, would the Crown Prosecutor come back  
13 | to you and indicate additional investigation?

14 | A. Yes, on many occasions he would review a brief and he would  
15 | ask us maybe to re-interview witnesses, to do certain things  
16 | that he felt were very important prior to going to trial.

17 | Q. And would you carry out these instructions?

18 | A. Yes, we would.

19 | MR. PINK:

20 | If I may follow up on that, Mr. Lord.

21 | BY MR. PINK:

22 | Q. I presume that that would be, Inspector, that would be  
23 | subsequent to your delivery of the facts to the Crown maybe  
24 | prior to the laying of an Information or even subsequent  
25 | in a preparation for trial?

J. TERRANCE RYAN, by Mr. Pink, by The Chairman

1 A. That would generally take place after a brief had been  
2 presented to the Crown. He would have had an opportunity  
3 to review the brief, review it's contents and then he  
4 would come back with certain requirements.

5 Q. Was it your experience in 1971 that it was the R. C. M. Police  
6 that determined when a charge would be laid?

7 A. I can very clearly recall the policy of the Crown Prosecutor  
8 at that time.

9 Q. And what was that policy?

10 A. His policy was, "you present me with a brief and the facts,  
11 I will advise you as to the charge that you should proceed  
12 with. If you do not agree with that charge, you proceed  
13 with the charge you feel you should agree with; but if I  
14 lose the case, don't come to me".

15 Q. That's all I have, thank you.

16 THE CHAIRMAN:

17 I take it the old adage that the Crown never loses a case, that  
18 justice is done -- never wins a case rather, but only justice  
19 is done; it didn't prevail with absolute infallibility.

20 BY THE CHAIRMAN:

21 Q. But apropos that, Inspector. Supposing you had completed an  
22 investigation and submitted your file and carried out any  
23 further investigation under the instruction of a Crown  
24 Prosecutor and recommended to the Crown Prosecutor that a  
25 particular charge be laid and the Crown Prosecutor based

J. TERRANCE RYAN, by The Chairman, by Mr. Pink

1 on his or her examination of the file concluded that there  
2 was insufficient evidence to lay a charge, what would you  
3 do then?

4 A. I would follow the instructions of the Crown Prosecutor.

5 It would have to depend on the case, the seriousness of  
6 the case, the complexities of it -- if it was a serious  
7 case and the Crown advised us not to proceed with prosecution,  
8 if I had serious feelings about the case, I would prepare  
9 a report and submit it to my superiors in Halifax for direct  
10 consultations with the Department of Justice in Halifax  
11 should that be necessary. I would not lay a charge on my own.

12 THE CHAIRMAN:

13 Mr. Ross.

14 MR. ROSS:

15 Thank you, My Lord.

16 MR. PINK:

17 My Lord, there's just one point that I would like to ask. Sorry  
18 to interrupt you, Mr. Ross.

19 MR. CHAIRMAN:

20 All right, Mr. Pink, go ahead.

21 BY MR. PINK:

22 Q. Inspector, just so that it's clear, the present practice in  
23 New Brunswick is different, is that correct?

24 A. Yes, it is.

25 Q. The practice in New Brunswick at the present time is that no

J. TERRANCE RYAN, by Mr. Pink, by Mr. Ross

1 charges are laid without the consent of the Crown Prosecutor?

2 A. We consult the Crown Prosecutor in advance and yes, he decides  
3 on what charge will be laid.

4 Q. And in fact it's my understanding that the information is  
5 actually initialed by the Crown Prosecutor before the Justice  
6 of the Peace or the Court Official will swear it, is that  
7 correct?

8 A. Yes, that's the general practise.

9 Q. Thank you.

10 MR. CHAIRMAN:

11 Mr. Ross, the third time and maybe more.

12 MR. ROSS:

13 Three strikes, yes, Mr. Lord.

14 BY MR. ROSS:

15 Q. Inspector Ryan, I am interested just in one thing and that's  
16 the records which might have been maintained back in 1971.  
17 Now could you tell me whether or not there's a departmental  
18 policy with respect to the destruction of records after a  
19 certain time?

20 A. Yes, there is.

21 Q. And what is this time?

22 A. I'm not sure of the time but records such as routine calls,  
23 routine complaints and what have you, would probably have  
24 been destroyed at the termination of either three or five  
25 years. I'm not certain of the policy at that time but they

J. TERRANCE RYAN, by Mr. Ross, by Mr. Wildsmith

1 | would have been destroyed.

2 | Q. I see, can I take it then that after, after this five year  
3 | period, the only thing that's left is the individual notebooks  
4 | of the individual officers?

5 | A. Yes, that should be -- that would be correct.

6 | Q. So that in fact if calls were made by Oscar Seale on the  
7 | 29th of May, 1971, our only opportunity for recovery at this  
8 | time would be if the officer himself could be found and if  
9 | he made records of those calls in his personal notebook?

10 | A. Yes, that's correct; but it would be highly unlikely that a  
11 | member would make a record of a call such as that in his  
12 | notebook if he was at our communications center or a  
13 | detachment taking calls during that period. He would open  
14 | up -- or a complaint or make a record of it in the complaint  
15 | book or our C-238 at that time and that would be the record.  
16 | He would not be making a record of every call in his notebook.

17 | Q. Sure, and it's those records the complaint book and the  
18 | C-238 that's what's destroyed after a time?

19 | A. That would be destroyed.

20 | Q. Thank you very kindly.

21 | THE CHAIRMAN:

22 | Mr. Wildsmith.

23 | BY MR. WILDSMITH:

24 | Q. Just a couple of questions, Inspector Ryan, you mentioned  
25 | familiarity with work on other Indian Reserves in Nova

J. TERRANCE RYAN, by Mr. Wildsmith

1           Scotia besides Eskasoni, is that correct?

2    A.   Yes.

3    Q.   Were you here yesterday when I was asking a few questions of  
4           Sergeant Wood about special Indian constables?

5    A.   Yes, I was.

6    Q.   And it's true, is it not, that there are special Indian R. C. M. P.  
7           constables working with respect to other Reserves in Cape  
8           Breton under the jurisdiction of the R. C. M. P.?

9    A.   Yes, there is.

10   Q.   Thank you. Do you also have some knowledge about the treatment  
11          of Indians in the Criminal Justice System in New Brunswick?

12   A.   Yes, I do.

13   Q.   And would it be your conclusion that Indians in New  
14          Brunswick were treated no differently in the Criminal Justice  
15          System than others?

16   A.   That would be my conclusion.

17   Q.   Are you aware of a Federal Department of Justice study  
18          completed in the spring of this year on Indians in Criminal  
19          Justice in New Brunswick?

20   A.   No, I am not.

21   Q.   You would then be surprised to learn that that study found  
22          the existence of discrimination in the Criminal Justice  
23          System in New Brunswick?

24   A.   Yes, I would be.

25   Q.   And that would give you some cause, would it not, --

J. TERRANCE RYAN, by Mr. Wildsmith

1 THE CHAIRMAN:

2 According to our terms of reference -- fortunately for --

3 MR. WILDSMITH:

4 If I might just ask the last question, My Lord.

5 MR. CHAIRMAN:

6 He's not an accused of the Province of New Brunswick.

7 MR. PRINGLE:

8 And with respect, My Lord, the reference before it is certainly  
9 not here in evidence and there's no knowledge or we weren't made  
10 aware that there'd be any reference to such a report from the  
11 Department of Justice.

12 MR. WILDSMITH:

13 I have but one question to complete this series.

14 MR. CHAIRMAN:

15 All right, just let me hear it. So long as you understand --  
16 So long as you understand that you have gone way outside the --  
17 our terms of reference but ask the question anyway.

18 MR. WILDSMITH:

19 If Your Lordship feels that way, then I won't ask the question.

20 MR. CHAIRMAN:

21 Don't -- Ask the question. Then we can rule on it, whether or not  
22 it's relevant.

23 BY MR. WILDSMITH:

24 Q. If it were true that there were such a study and that it did  
25 find discrimination in the treatment of Indians in the Criminal

J. TERRANCE RYAN, by Mr. Wildsmith

1 Justice System in New Brunswick, that would give you some  
2 cause, would it not, sir, to reassess your understanding and  
3 perceptions about discrimination of Indians in the Criminal  
4 Justice System?

5 MR. CHAIRMAN:

6 Go ahead if you can fight your way through all these if's, Inspector,  
7 I have no objection to your answering him.

8 BY THE WITNESS:

9 A. If there is a report in existence that exists in New Brunswick that the  
10 is a problem with the administration of justice in New Brunswick  
11 in relation to treatment of Indians and that is a credible  
12 report done by credible people, has a reflection upon the way  
13 that the R.C.M.P. treats Indians within the Province of  
14 New Brunswick, then I know for a fact the R.C.M.P. would  
15 react to that report and take necessary steps to correct  
16 any deficiency.

17 BY MR. WILDSMITH:

18 Q. I believe the question that you were asked by Commission  
19 Counsel was much broader than the role of the R. C. M. P.,  
20 are you suggesting that your response is only with respect  
21 to the conduct of the R. C. M. P.?

22 A. I can only speak for the conduct of the R. C. M. P. I  
23 cannot speak for the conduct of other departments.

24 Q. Then you did not purport to offer an opinion about the  
25 treatment of Native people by the Courts themselves?



J. TERRANCE RYAN, by Mr. Wildsmith,

1 | A. I have --

2 | Q. I understand your --

3 | A. In my experiences before the Courts with a Native person  
4 | present in the Court at any time that I have been there,  
5 | I have no knowledge or recollection of any different  
6 | treatment to the Native person than I do to any other  
7 | person.

8 | BY THE CHAIRMAN:

9 | Q. I assume that applies to Nova Scotia as well?

10 | A. Nova Scotia and New Brunswick.

11 | BY MR. WILDSMITH:

12 | Q. And my somewhat hypothetical question to you was that if there  
13 | were such a study in New Brunswick that suggested discrimination  
14 | in the Criminal Justice System, that would cause you to  
15 | reassess your understanding of the concept of discrimination,  
16 | would it not?

17 | A. I can only speak for the R. C. M. P. and with the answer  
18 | that I have previously laid out; that you would examine  
19 | that report as it relates to the R. C. M. P.'s role within  
20 | the Justice System and determine --

21 | Q. Exactly and that's my point, it would cause you to reassess  
22 | your understanding and your conclusion?

23 | A. The R. C. M. P.'s understanding.

24 | Q. Yes, your personal understanding because that's what you're  
25 | speaking from, sir?

J. TERRANCE RYAN, by Mr. Wildsmith, by Mr. Pringle

1 A. I have a good knowledge of the R. C. M. P. as well.

2 Q. Thank you.

3 THE CHAIRMAN:

4 Mr. --

5 MR. PRINGLE:

6 It's Mr. Pringle, My Lord.

7 BY MR. PRINGLE:

8 Q. A few questions, Inspector. Are you aware whether the Royal  
9 Canadian Mounted Police has courses concerning interaction  
10 with ethnic or minority groups for the members?

11 A. Yes, we do. The R. C. M. P. has a course known as a Cross-  
12 cultural Course which is given to various members so that  
13 members have a better understanding of a Native community  
14 or other cultural groups which we might work with.

15 Q. And that, of course, would be available to members in New  
16 Brunswick as well as all other provinces in which the  
17 Royal Canadian Mounted Police do policing services?

18 A. Yes, it would be.

19 Q. Thank you. You were asked some questions by Mr. Pugsley, I  
20 believe, about November 1971. Are you aware, Inspector, from  
21 whom Inspector Marshall was taking any direction in 1971?

22 A. I am not certain at that time who the C. I. B. officer for  
23 "H" Division would have been; but his -- would have been taking  
24 direction, I believe, from that office.

25 Q. Are you aware of how -- whether any contact was made with

J. TERRANCE RYAN, by Mr. Pringle

1 "H" Division Headquarters from the Attorney General's  
2 Department with respect to this matter?

3 A. No, I am not.

4 Q. Are you aware of the extent of Inspector Marshall's involvement --  
5 what he was requested to do when he came down here?

6 A. No, I was not; I am not.

7 Q. I refer you, Inspector, to Volume 16 at Page 204, you were  
8 asked to look at that earlier by, I believe, Mr. Pugsley.  
9 And in particular paragraph three the last, the last several  
10 lines. Would you read for us, sir, what the last sentence  
11 is in paragraph three of Volume 16, Page 204?

12 A. Starting at "At this point"?

13 Q. Yes, please.

14 A. At this point the Force became involved and  
15 I went to Sydney on the 16th of November,  
16 1971, where together with Sergeant G. M.  
17 MacKinley, I.C. Sydney, G. I. S..  
Thorough review of the case was conducted  
with the following results --

18 Q. Do you understand, sir, in your experience with writing this  
19 sort of police report, whether or not there is a difference  
20 between a review and a re-investigation or an investigation?

21 A. A review would be something considerably less in my opinion  
22 than a re-investigation.

23

24

25

J. TERRANCE RYAN, by Mr. Pringle, by Mr. MacDonald

1 Q. I don't think anyone asked you, Inspector, about your  
2 notes -- your practise as to when you made your notes.  
3 Can you tell us please?

4 A. It would depend if I was making notes of a case involving  
5 something that I felt that I might have to appear in court  
6 in or what have you. I would make them as soon as I possibly  
7 could after that occurrence and I would usually indicate  
8 the time in -- within the notes that I had made the notes.  
9 The regular notes I would probably make them following  
10 a shift or sometimes during the day. It would depend  
11 on the occurrence.

12 Q. Yes. And I believe you're here under a subpoena, is that  
13 right Inspector?

14 A. Yes, I am.

15 Q. From the Commission? Yeh.

16 A. Yes.

17 Q. And as that correct, to your knowledge, for Staff  
18 Sergeant Wood, the previous witness?

19 A. Yes, it is.

20 MR. PRINGLE:

21 Thank you very much.

22 MR. MACDONALD:

23 I just have a couple of questions, My Lord.

24 BY MR. MACDONALD:

25 Q. Inspector Ryan, in response to -- I think it was Mr. Pink --

J. TERRANCE RYAN, by Mr. MacDonald, by The Chairman

1 -- you laid out somewhat emphatically, the rule or the  
2 practise of -- you said the prosecutor at that time --

3 A. Yes.

4 Q. -- that would require certain steps to be taken. Who  
5 were you talking about?

6 A. Donald C. MacNeil.

7 Q. I thought so but I -- that didn't get on the record. So  
8 his practise was to be involved in deciding what charge  
9 was to be laid but he left the ultimate decision to the  
10 police?

11 A. We would consult with him. We would present our evidence to  
12 him. We would recommend a charge. He would review the  
13 brief completely and then he would make his recommendations  
14 and without a doubt as a rule we would follow -- or  
15 generally follow his recommendations.

16 Q. But you did say that he would also say to you, if you  
17 don't agree and you want to lay something else, go ahead.

18 A. Yes.

19 Q. But the consequences are yours, so to speak?

20 A. Exactly.

21 Q. Okay. Now, --

22 BY THE CHAIRMAN:

23 Q. You refer to another murder investigation in Ingonish Bay?

24 A. Yes.

25 Q. Who was the prosecutor then? Crown Prosecutor then?

J. TERRANCE RYAN, by Mr. MacDonald

1 A. That was Donald C. MacNeil.

2 BY MR. MacDONALD:

3 Q. I'm sure everyone around the tables is interested in  
4 the distinction between a review and in a re-investigation.  
5 Perhaps, I won't try and put words in your mouth, you tell  
6 me what a review is first of all?

7 A. If I had -- was -- somebody that was in the powers that  
8 be asked me to go to a certain area and could you review  
9 the procedures, the practises or determine what had taken  
10 place at a given time to try and come to some conclusion  
11 as to what had happened. It -- It's -- I would say there's  
12 a fine line probably between review and re-investigation but  
13 it's -- there would be a difference. I would say if it  
14 was a review you would probably have established terms of  
15 reference.

16 Q. Well, let me go back to page 204 in exhibit 13 and let's  
17 not look at only at the final sentence of this paragraph.  
18 Let's look at -- at what's being said here.

19 A. 16?

20 Q. Volume 16. I'm sorry. Page 204.

21 Now, starting in paragraph three. It says:

22 After sentence was passed, one James William  
23 MacNeil, aged 25 came forward and said that he  
24 was with a man by the name of Roy Ebsary during  
25 the evening of 29, May. And that he, Ebsary,  
had in fact murdered Seale in Wentworth Park.  
MacNeil was interviewed by Sydney City Police  
and the Prosecuting Officer for Cape Breton County,

J. TERRANCE RYAN, by Mr. MacDonald

1 Donald C. MacNeil on Monday, 15 November.  
2 Roy Ebsary was picked up and interviewed  
3 and he denied murdering Seale although he  
4 did say that MacNeil and himself were in  
5 the park after visiting a tavern during the  
6 evening of 28, May. And that he and MacNeil  
7 became involved in an altercation with two  
8 men later determined through investigation to  
9 be Marshall and Seale. According to MacNeil  
10 and Ebsary, Marshall and Seale attempted to  
11 rob them in the park. This altercation which  
12 obviously happened prior to the murder was  
13 not known to the police until MacNeil came forward  
14 on 15, November.

15 And then the sentence that you've wrote. And the first  
16 paragraph talks about Marshall being convicted of that  
17 event. So you have a circumstance where Marshall has  
18 been convicted. You have an eyewitness, allegedly --  
19 an alleged eyewitness coming forward after the conviction  
20 and saying that that was not done by Marshall. It was done  
21 indeed by someone else during the course of a robbery.  
22 In those circumstances you're asked to do a review, what  
23 do you understand that means?

24 A. I would carry that from a review to a re-investigation.

25 Q. Sure. So when you told Ms. Edwardh earlier, re-investigation,  
you would have done what you said then?

A. Yes.

Q. To Ms. Edwardh?

A. Yes.

O. Thank you. And you also told Ms. Edwardh that -- or Mr.  
Pugsley. Sorry. You also told somebody that the --

J. TERRANCE RYAN, by Mr. MacDonald

1 | MR. CHAIRMAN:

2 | If you're going to give out Emmy Awards, you likely would make  
3 | sure you have the right actors.

4 | BY MR. MacDONALD:

5 | Q. You also told someone, Inspector, that to avoid this "tunnel  
6 | vision" concept that the force, as a practise, would make  
7 | certain that during an investigation various levels would  
8 | be involved?

9 | A. Yes.

10 | Q. Could I take it that you would expect the same procedure  
11 | to be followed during the course of a re-investigation?

12 | A. Yes.

13 | Q. And when you're dealing with an Inspector -- Inspector  
14 | Marshall, someone of his rank, what levels would you  
15 | expect to be involved during the course of a re-investigation?

16 | A. I would expect that he would be reporting directly to  
17 | the C.I.B. officer of that day.

18 | Q. And in particular, and I assume your understanding would be  
19 | that, that C.I.B. officer would make certain that Inspector  
20 | Marshall was not falling victim to this "tunnel vision"  
21 | problem?

22 | A. I would anticipate that that report would be -- would have  
23 | been reviewed by the C.I.B. officer or people within his department  
24 | and analysed.

25 | Q. Thank you.



J. TERRANCE RYAN, by Mr. MacDonald

1 A. Only one other --

2 MR. CHAIRMAN:

3 Before you leave there, Mr. MacDonald. Would you ask this  
4 witness -- Would you take him to paragraph five on page 205?

5 MR. MacDONALD:

6 I certainly will, My Lord. Thank you.

7 BY MR. MACDONALD:

8 Q. And we go through paragraph five, Inspector.

9 Sergeant MacKinley received MacNeil's written  
10 permission that he would undergo the polygraph  
11 test. We interviewed MacNeil and it was obvious  
12 by his demeanor and speech that he had subnormal  
13 intelligence and is slightly mental.

12 From what you --

13 MR. MacDONALD:

14 I'll just continue with it, My Lord, and then ask some questions  
15 if I might.

16 BY MR. MacDONALD:

17 He was nonetheless convinced that Ebsary had  
18 stuck a knife in to the deceased and that later  
19 they went to Ebsary's home where he, Ebsary,  
20 washed off the knife. Because we were certain  
21 that MacNeil's account of the altercation, in  
22 so far as it concerned Ebsary allegedly stabbing  
23 Marshall, was a figment of his imagination. We  
24 did not immediately question him or take any  
25 further action with respect to MacNeil at this  
time. Rather a number of hours were spent by  
Sergeant MacKinley and myself going over statements  
given by various witnesses to the police during  
the initial investigation and later. And visiting  
the scene of the crime with Sergeant of Detectives,  
John MacIntyre, of Sydney Police Department and  
additionally pursuing transcripts of evidence given  
at the preliminary hearing and some transcripts of  
evidence given in High Court.

J. TERRANCE RYAN, by Mr. MacDonald

1 That, if you can assume, Mr. -- Inspector Ryan, is the  
2 type of work that was done by Inspector Marshall and  
3 Sergeant MacKinley. And, in fact, there was no interviews  
4 done of people who gave statements at the trial or to  
5 the police. Would you consider that to be a proper  
6 procedure to be followed by an R.C.M.P. officer carrying  
7 out a re-investigation?

8 A. Based on the knowledge that I have of the case presented  
9 before me here, I would say -- or draw the conclusion that  
10 more should have been done.

11 Q. And what do you say about submitting, to a polygraph test,  
12 someone who, in your opinion, has "subnormal intelligence  
13 and is slightly mental"?

14 A. Polygraph tests, from such an individual, would have  
15 no credibility with myself.

16 Q. That's all I have. Thank you Inspector.

17 MR. CHAIRMAN:

18 Thank you, Inspector. We will take a short break.

19 INQUIRY ADJOURNED: 11:22 a.m.

20 INQUIRY RECONVENED AT 11:37 a.m.

21 R. ALEXANDER MacNEIL, being called and duly sworn, testified as  
22 follows:

23 BY MR. SPICER:

24 Q. State your full name, please sir?

25 A. Roderick Alexander MacNeil.

R. ALEXANDER MacNEIL, by Mr. Spicer

- 1 Q. And you go by Sandy?
- 2 A. Yes.
- 3 Q. Sandy, how old are you?
- 4 A. Thirty-three.
- 5 Q. Thirty-three?
- 6 A. Yes.
- 7 Q. And when were you born?
- 8 A. June 12, '54.
- 9 Q. And where did you live in 1971?
- 10 A. Bungalow Road in Coxheath.
- 11 Q. Is that in Sydney?
- 12 A. It's outskirts of Sydney.
- 13 Q. Outskirts of Sydney? And did you have occasion to attend
- 14 the dance on May 28th?
- 15 A. Yes, we -- myself and a friend of mine had stopped at the
- 16 dance at St. Joseph's coming from a show in Sydney.
- 17 Q. Who was the friend of your's?
- 18 A. George MacNeil.
- 19 Q. George MacNeil?
- 20 A. Yes.
- 21 Q. You stopped in at the dance on your way from the show?
- 22 A. Yes. And --
- 23 Q. And what was the name of your friend, again? In case the
- 24 Commissioners didn't hear.
- 25 A. George -- George MacNeil.

R. ALEXANDER MacNEIL, by Mr. Spicer

1 Q. George MacNeil. Okay. How long did you stay at the  
2 dance for?

3 A. Oh, maybe 15 minutes, half an hour. We couldn't get in.  
4 The dance was sold out. So we just stayed around for a  
5 few minutes and then we proceeded on our way home.

6 Q. Can you indicate on the map beside you, sir, the route  
7 that you took to get home?

8 A. Dance was approximately up -- up here. Down George Street.  
9 In back of the drug store. Down this walkway over towards  
10 the bridge.

11 Q. All right. You're indicating going up along a walkway  
12 on the right hand side of Wentworth Creek. Is that right?

13 A. Right.

14 Q. Okay, continue on.

15 A. Over here, across, over the railroad tracks and down  
16 towards the Esplanade.

17 Q. Okay. Now, during the course of that walk, through the  
18 park, did you see anything?

19 A. Yes. Just about the bridge, here, we met an older man  
20 and I believe there was a young couple sitting on the  
21 bench opposite the bridge.

22 Q. Now, do you remember what the old man looked like?

23 A. He was wearing a hat and a long trenchcoat.

24 Q. At this time, do you remember anything else about that  
25 man?

R. ALEXANDER MacNEIL, by Mr. Spicer

- 1 A. No. He was talking to the couple on the bench, I believe.
- 2 Q. Do you remember anything about the couple on the bench?
- 3 A. Not in particular.
- 4 Q. Okay. Anything else, of any importance, happen on your  
5 was home?
- 6 A. No. There was also somebody standing on the bridge.
- 7 Q. Do you have any recollection of what that person looked like?
- 8 A. No. It was -- It was a younger person. Taller. Oh, I can't --  
9 we weren't really that close to him but --
- 10 Q. Are you able to say whether or not he was Black, White?
- 11 A. He was White. Middle aged.
- 12 Q. A few days later, Mr. MacNeil, you had occasion to give  
13 a statement to the police?
- 14 A. Yes --
- 15 Q. If I could just direct your attention to that volume 16,  
16 which is in front of you, at page 26. You're the Roderick  
17 Alexander MacNeil that's referred to there?
- 18 A. Yes.
- 19 Q. Have you had occasion, the last few days, to review that  
20 statement?
- 21 A. Yes. My first occasion was February of this year. And then it  
22 was last week.
- 23 Q. With myself?
- 24 A. Yes.
- 25 Q. Can you tell us the circumstances that gave rise to you

R. ALEXANDER MacNEIL, by Mr. Spicer

1 giving this statement? How were you contacted?

2 A. The following morning we heard, on the radio, that there  
3 had been an incident in the park and George MacNeil contacted  
4 the police department and told them of our being there  
5 and who we seen. That was -- That was about all.

6 Q. Were you picked up by the police or did you get yourself  
7 down to the station?

8 A. We were picked up by the police and taken in. I'm not  
9 sure what day it was. The next day or that day -- whatever --

10 Q. Do you remember who the officers were that picked you up?

11 A. No, I don't.

12 Q. No. And what happened when you got to the police station?

13 A. George was taken in first. In to the back office --  
14 whatever and questioned for 15, 20 minutes -- whatever. And  
15 then I was taken in and questioned.

16 Q. And during the time that he was being questioned, what were  
17 you doing?

18 A. Sitting in the next room, waiting.

19 Q. By yourself?

20 A. There might have been a few more people around. There was --  
21 I can't --

22 Q. Any police officers?

23 A. I can't -- I can't recall.

24 Q. For how long were you questioned?

25 A. About the same time. 15, 20 minutes.

R. ALEXANDER MacNEIL, by Mr. Spicer

1 Q. Do you have any recollection as to who you were questioned  
2 by?

3 A. No, I don't. Not at the time. I -- most likely it would  
4 be Mr. MacIntyre but I can't say. I can't recall.

5 Q. Were -- Was there more than one police officer in the  
6 room when you were being questioned?

7 A. I believe there was, but I can't remember very --

8 Q. Perhaps, you could just have a look at your statement. And  
9 at the time that you gave the statement, you gave a fairly  
10 detailed description of these two individuals. Half way  
11 down the page.

12 A. Yes.

13 Q. Do you know how you came to give -- to give such a detailed  
14 description?

15 A. Well, we were -- we were close enough to the older fellow.  
16 And he was grey haired. It was a light -- well, it  
17 says here: "White topcoat" but it was a light coloured  
18 topcoat. Tan or sand or whatever. And, well, I was five-eleven or  
19 thereabouts and he was shorter than I was.

20 Q. When you say: "Trampish looking", do you remember why you  
21 would have described --

22 A. Well, I don't think it was raining that night and it wasn't  
23 too cold and he was wearing an overcoat so -- There wasn't  
24 to many people around wearing overcoats so I just put it  
25 down as "trampish looking".

R. ALEXANDER MacNEIL, by Mr. Spicer

1 Q. What about the second man?

2 A. Well, he was taller -- taller -- tall and thin. I can't  
3 remember the dark hair and the age and that but -- jacket  
4 "brown jacket". I think there was a street light there,  
5 about the bridge. But in passing through you -- you just  
6 see something -- you see -- you keep on going through.

7 Q. The description that you gave, to the police, of these two  
8 gentlemen was that -- That's a description that came entirely  
9 from you or was any of it suggested to you by any police?

10 A. I just believe it was what we seen ourselves.

11 Q. Can you indicate, to us, the manner in which you were  
12 questioned by the police? In other words, were -- did --  
13 was it straight forward? Did anybody raise their voice?

14 A. No, I'd say it was normal talking. Nothing forced on us or  
15 anything like this.

16 Q. Were you ever asked to -- Was it ever suggested to you  
17 that you change anything in your statement?

18 A. No.

19 Q. No. In the -- Have you been following the Inquiry?

20 A. Part -- Parts of it. When I was able to.

21 Q. Have you seen pictures of Mr. Ebsary, Mr. MacNeil --

22 A. Yes, I have. Yes.

23 Q. Are you able to tell us now, after all these years, whether  
24 or not when you -- now having seen those gentlemen, whether  
25 or not you recognize them as being people you might have seen



R. ALEXANDER MacNEIL, by Mr. Spicer

1 in the park?

2 A. Well, I came to realize, later on, that the older man I  
3 did see was Ebsary. And -- Well, I figure the fellow on  
4 the bridge must have been MacNeil too.

5 Q. Why are you saying you're figuring the man on the bridge must  
6 have been MacNeil?

7 A. Well, I -- geez -- Fits -- They just both fitted the  
8 description.

9 Q. So what point in time did you realize that it was Mr.  
10 Ebsary?

11 A. Not until -- I think -- February of this year when I was  
12 questioned by Mr. Horn and Mr. Mallowney.

13 Q. Did you have occasion a couple of days after you gave this  
14 statement, sir, to be visited by the Sydney Police?

15 A. Yes. They called up Georgie again. Well, he had a phone  
16 and I didn't. And they asked would we be around sometime  
17 that day to look at some pictures. And sometime that  
18 day they -- an officer came out and had some mug-shots.  
19 If we could identify the men we seen, in the park, as  
20 these here pictures.

21 Q. Do you have any recollection who the officer was who came  
22 out with the mug-shots?

23 A. I -- I'm not certain but I'm thinking it might have been  
24 Ed MacNeil.

25 Q. And why do you think it might have been Ed MacNeil?

R. ALEXANDER MacNEIL, by Mr. Spicer

1 A. Well, I didn't realize till yesterday -- I -- The name  
2 again. And then I remembered he had the same name as I  
3 did, MacNeil, so --

4 Q. And was this officer by himself?

5 A. I believe he was.

6 Q. Do you have any recollection of how many mug shots you  
7 were shown?

8 A. I think there was three.

9 Q. Can you tell us whether or not they were mug shots of persons  
10 who were White or Black?

11 A. They were all White.

12 Q. All White?

13 A. All White.

14 Q. Were they all men?

15 A. All men.

16 Q. Did you have any further contact with the Sydney Police  
17 Department in the course of the investigation?

18 A. No more.

19 Q. Nothing at all?

20 A. No, nothing. We never heard anything else.

21 BY MR. CHAIRMAN:

22 Q. Did you absolutely recognize any of the persons?

23 BY MR. SPICER:

24 Q. Did you recognize any of the people in the mug shots?

25 A. Oh, I -- not as people I'd seen in the park but I did

R. ALEXANDER MacNEIL, by Mr. Spicer

1 recognize one fellow that I'd seen at the -- prior to that  
2 around the bus terminal before.

3 Q. And did you indicate that to the police officer?

4 A. I -- I told him, yes.

5 Q. And it was a person that you'd seen at the bus terminal, when?

6 A. Oh, I'd seen him different times. He was from around  
7 Sydney possibly.

8 Q. Were you contacted by the R.C.M.P. in 1982?

9 A. Yes, I was. And at that time I -- they were at my home. I  
10 wasn't home that day. And when I did contact them, the  
11 following day at the R.C.M.P. headquarters on Alexander  
12 Street, the officers who were looking for me were not in  
13 that day.

14 Q. Do you remember who the officers were?

15 A. I don't, no. So I spoke to another officer and gave him  
16 that statement that -- from what I could remember of the  
17 time and -- I wrote -- I don't know if I filled out a paper  
18 or he filled out a paper.

19 Q. Do you remember when you gave a written statement?

20 A. Well, possibly, what I said, he wrote down. But the papers --  
21 my former statement, he didn't have it, because the other  
22 officers were not in at the time.

23 Q. When you say, your former statement, you mean the one that  
24 you've been talking to us about --

25 A. Yes.

R. ALEXANDER MacNEIL, by Mr. Spicer, by Ms. Edwardh

1 Q. Do you have any recollection, though, whether you eventually  
2 signed anything when you --

3 A. I can not remember.

4 Q. No. In 1971, after you gave your statements, were you  
5 at any time contacted by any of the lawyers who were acting  
6 for Junior Marshall?

7 A. No, I was not.

8 Q. Were you ever contacted by Crown Prosecutors office?

9 A. No.

10 Q. And subsequent to your meeting with the R.C.M.P. in 1982  
11 were you contacted by them again?

12 A. No, I was leaving for work in Northern Ontario the following  
13 day and I never heard no more until this past winter.

14 Q. So your next contact would have been, then, in February of  
15 this year when you were contacted by our investigators?

16 A. Right.

17 Q. Thank very much.

18 A. Thank you.

19 Q. No, you don't get to go yet.

20 A. Oh.

21 BY MS. EDWARDH:

22 Q. Mr. MacNeil, you've got in front of you the statement  
23 you gave on May the 31st and the description. And I take it,  
24 sir, that you're satisfied that no one put words in your  
25 mouth and that was really to your best recollection, on May

R. ALEXANDER MacNEIL, by Ms. Edwardh

1 31st, '71, of what these two individuals looked like that  
2 you saw?

3 A. Yes.

4 Q. And today, sir, you indicate that the older man or the --  
5 may have been wearing a hat?

6 A. Yes.

7 Q. Now, could I ask you just to read your statement, perhaps  
8 I'm missing it. I certainly don't see any mention of a  
9 hat.

10 A. No, I do not either but, at the time, maybe I thought he  
11 was wearing a hat but -- and so I --

12 Q. Okay. Would it be fair to say, as 17 years later, that your  
13 description of this person is, "wearing a hat," may not be  
14 accurate. And the most reliable memory you have is the  
15 one that's recorded here.

16 A. Yes.

17 Q. Okay. Now, you indicated to the officers -- the officer, that  
18 you didn't know whether you would know these two men again  
19 if you saw them? Correct?

20 A. Right.

21 Q. And I take it from that you weren't saying you wouldn't know  
22 them but that you would have to see them --

23 A. Right.

24 Q. -- to see whether you could identify them?

25 A. Yes.

R. ALEXANDER MacNEIL, by Ms Edwardh, by The Chairman

1 Q. And beyond being shown those three mug shots, were you  
2 contacted, sir, at any time, for example in November of  
3 that year, to view any individuals to say we'd like you  
4 to now look at someone --

5 A. No.

6 Q. -- to see whether this meets that description?

7 A. No. I was not contacted anymore.

8 Q. Were you ever invited to participate in a lineup at  
9 any time?

10 A. No.

11 Q. Now, the three individuals that you were shown, you said  
12 they were all White. Would I take it, that, when you say  
13 all White, that one might have been a native person? It's  
14 just that you're saying they weren't -- they weren't Black  
15 people?

16 A. No, I'd say they were three White men.

17 Q. And you said you recognized one of these persons as an individual  
18 you had seen around at the bus station but you had not  
19 seen them in the park that night?

20 A. Right.

21 Q. Sir, --

22 BY MR. CHAIRMAN:

23 Q. You say, the bus station that night? I thought you said  
24 the bus station on several occasions? Around town. You'd  
25 seen him waiting for buses?

R. ALEXANDER MacNEIL, by Ms. Edwardh

1 A. Yeh, well I've seen him around town. At the bus station  
2 in particular.

3 Q. Not the bus -- not that night?

4 A. No, not that night. No.

5 MS. EDWARDH:

6 Thank you, My Lord.

7 BY MS. EDWARDH:

8 Q. And do you, sir, know what John Pratico looks like, now, today?

9 A. No, I don't.

10 Q. Can you, today, give us a description of the man who you  
11 saw in the photograph that you could -- that you thought you'd  
12 seen around?

13 A. Yeh, I could then but I don't know what he looks like today or  
14 -- he could have changed quite a bit.

15 Q. What's your recollection on what he looked like then?

16 A. Oh, fairly tall. Brush clipped. Marked face.

17 Q. What do you mean by a marked face?

18 A. Oh, pocked face. Pretty well all over. That was mostly --

19 Q. Approximate age?

20 A. Well, then, maybe in his 30's. I -- I'd say, yes, mid-thirties.  
21 Thereabouts.

22 Q. And just to clarify the position you were in. You have a  
23 fairly clear image of the old man. How far away would he  
24 have been from you, at the time you made your closest  
25 observations of him?

R. ALEXANDER MacNEIL, by Ms. Edwardh

1 A. Maybe six feet, eight feet. It's not a very wide walkway  
2 and he wasn't -- we were about the centre and he was  
3 between us and the grassy area, I suppose.

4 Q. And the younger man, who was tall and thin, do you recall  
5 how close he would have been at the time he was closest  
6 to you?

7 A. Oh, maybe 20 feet.

8 Q. Now you recall the old man asking for a cigarette?

9 A. Yes.

10  
11  
12  
13  
14  
15  
16  
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18  
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22  
23  
24  
25

*JMH*



R. ALEXANDER MacNEIL, by Ms. Edwardh

1 Q. Do you recall whether he got it?

2 A. I can't say. We were passing by and that was close enough  
3 to hear-- That was about it.

4 Q. Do you recall how he asked for it? Did he appear to be  
5 bumming the cigarette or --

6 A. No, I can't -- I think it would be bumming the cigarette, yes.

7 Q. Was there any aggressive tone in his voice that you heard?

8 A. I cannot remember.

9 Q. And for some other reason your other note here:

10 ... other than they asked him for a  
11 cigarette...

12 And then you say:

13 The grey haired fellow said he had  
14 just a dollar.

15 Do you remember any more of that conversation? How did that  
16 fit?

17 A. I -- I -- I don't know.

18 Q. That's the only --

19 A. I can't remember. It was just within -- passing by that  
20 we picked up part of the cigarette conversation and the  
21 dollar or whatever.

22 Q. Now I take it you had also seen Sandy Seale at the dance?

23 A. Yes, we did.

24 Q. Did you know Mr. Marshall at that time?

25 A. I knew of him, but I didn't really know him to talk to him.

R. ALEXANDER MacNEIL, by Ms. Edwardh, by Mr. Pugsley

1 Q. You knew who he was?

2 A. I knew who he was.

3 Q. And did you see him at the dance?

4 A. No, we did not.

5 MS. EDWARDH:

6 Those are my questions. Thank you.

7 BY MR. PUGSLEY:

8 Q. Did you see Mr. Marshall in the park?

9 A. No, we did not.

10 Q. Did you see Mr. Seale in the park?

11 A. No, we did not.

12 Q. What was Mr. Seale doing at the dance?

13 A. He was standing outside the door in the same area we were  
14 at, waiting to get in.

15 Q. Yes. I take it during the taking of this statement on May 31st  
16 that we find on page 26 of volume 16, that you have no  
17 complaints of any kind whatsoever about the manner in which  
18 the police took the statement?

19 A. No complaints, no.

20 MR. PUGSLEY:

21 Thank you.

22 MR. CHAIRMAN:

23 Mr. Murray.

24 MR. MURRAY:

25 I have a few questions, My Lord.

R. ALEXANDER MacNEIL, by Mr. Murray

1 | Q. Mr. MacNeil, you've got volume 16 in front of you, and on  
2 | page 26 is your own statement. Is that what's open in front  
3 | of you?

4 | A. Yes.

5 | Q. I'd just like to direct your attention again to the "one man,  
6 | grey haired, grey or white topcoat", and my friend Ms. Edwardh  
7 | suggested that this is your best recollection?

8 | A. Yes.

9 | Q. And you were about six to eight feet away?

10 | A. Well, approximately. I was maybe closer, maybe a little farther.

11 | Q. And you'd go along with that description of the colour? You  
12 | went into some more detail in direct examination today?

13 | A. Yes, that was -- that was only the next day or whatever so it  
14 | was quite memorable then, but --

15 | Q. I see. The coat was not a dark blue coat?

16 | A. No, it was not.

17 | Q. Perhaps the witness could have Exhibit 38, and if you'd turn  
18 | to the second page of that, on the right-hand side of the  
19 | page it says: "heavy set".

20 | A. On the second page.

21 | Q. These are the notes of Michael MacDonald. I refer you to the  
22 | fourth original sheet or the last original sheet which  
23 | begins:

24 |                   One heavy set, short, dark blue  
25 |                   coat to knees, hair grey, black  
                     shoes, wearing glasses, dark rims.

R. ALEXANDER MacNEIL, by Mr. Murray

1 That is not your recollection of the man you saw in the park?

2 A. No, it isn't.

3 Q. I would refer you to volume 16, page 22, sir. This is a  
4 statement of a John Pratico. I take it you've never seen  
5 this document before?

6 A. No, I did not.

7 Q. Would you take an opportunity to read that, sir?

8 A. Would you show it to me?

9 Q. Yes. There's reference in that statement, sir, to:

10 One had a brown corduroy jacket, five  
11 foot five, dark complexion, heavy set;  
12 the other, grey suit, about six feet  
tall, husky, red sweater like a pullover.

13 Is that more consistent with your description, would you say?

14 A. I did not see these fellows or --

15 Q. I see. I will then refer you to volume 16, page 17, and  
16 you see the last "Q" at the bottom of the page:

17 Q. Describe these fellows to me?

18 The first description there again refers to a long blue coat?

19 A. Yes.

20 Q. And that is not what you saw?

21 A. No.

22 Q. So I would suggest to you, sir, that it's not possible for  
23 you to say that you saw the same person as Donald Marshall  
24 may have seen later that evening?

25 A. Right. I was through earlier before -- before they were through

R. ALEXANDER MacNEIL, by Mr. Murray, by Mr. Spicer

1 | most likely.

2 | Q. Or the person that Donald Marshall described in any event?

3 | A. Right.

4 | MR. MURRAY:

5 | No further questions, My Lord.

6 | MR. ELMAN:

7 | No questions, My Lord.

8 | MR. SAUNDERS:

9 | No questions, My Lord.

10 | MR. BISSELL:

11 | No questions, My Lord.

12 | MR. ROSS:

13 | No questions, My Lord.

14 | MR. WILDSMITH:

15 | No questions, My Lord.

16 | MR. CHAIRMAN:

17 | Do you have any questions on re-direct?

18 | MR. SPICER:

19 | Well, there's just one thing, My Lord.

20 | BY MR. SPICER:

21 | Q. You have the handwritten notes there, Sandy, and on the last  
22 | page of those, the second description, do you see that  
23 | one:

24 | ..tall, five eleven...

25 | A. "Tall, five eleven, black hair..."

R. ALEXANDER MacNEIL, by Mr. Spicer, by Mr. Chairman

1 Q.

2 ...black hair, clean shaven, and  
3 corduroy coat, three-quarter length,  
4 brown in colour...

5 Does that go along fairly well with the description of the  
6 second man in your original description -- in your original  
7 statement? Look at the second man in your statement on  
8 page 26.

9 A. Yeh, that's pretty close.

10 MR. SPICER:

11 Thank you.

12 BY MR. CHAIRMAN:

13 Q. Do I understand you to say, Mr. MacNeil, that you now recall  
14 that the -- the older man was wearing a hat?

15 A. I -- I think I took it as hair flat and I read it by mistake  
16 and then I said, "a hat", but I don't think -- He could have  
17 had a hat on but I can't remember now, but this here statement  
18 would have been -- I would have seen a hat if he was wearing  
19 one.

20 Q. Was he wearing a beret?

21 A. I -- I cannot say.

22 MR. CHAIRMAN:

23 Thank you.

24 (WITNESS WITHDREW)

25 MR. SPICER:

The next witness is George MacNeil.

GEORGE W. MacNEIL, by Mr. Spicer

1 GEORGE WALLACE MacNEIL, being called and duly sworn, testified as  
2 follows:

3 BY MR. SPICER:

4 Q. Would you tell us your full name please, Mr. MacNeil.

5 A. George Wallace MacNeil.

6 Q. And how old are you, sir?

7 A. Thirty-four years old.

8 Q. And in 1971 you would have been eighteen?

9 A. Yes, sir.

10 Q. Where were you living?

11 A. I was living at 191 Bungalow Road, Coxheath.

12 Q. And did you have occasion to attend the dance at St. Joseph's  
13 Church on the night of May 28th?

14 A. I did.

15 Q. Can you give us your recollection of -- of that evening if you  
16 have any at this point?

17 A. It's very, very vague.

18 Q. Do you remember how you got home from the dance?

19 A. Let's say we probably left St. Jo's and walked up George and  
20 probably took the railroad tracks, a shortcut down towards  
21 the Esplanade, on the front of Atlantic --

22 Q. So your recollection would have been that you went up George  
23 and then cut across at the tracks?

24 A. Well, the shortest possible route.

25 Q. You're going to have to pick that up again. You're stepping

GEORGE W. MacNEIL, by Mr. Spicer

1 on the cord and I think that's the reason it's falling off.

2 A. We probably took the shortest route on the walkway I'd  
3 say and probably the tracks down.

4 Q. Now the walkway is the walkway which is to the right of the  
5 Wentworth Creek. Is that correct?

6 A. Yes, sir.

7 Q. Okay, and then up across to the tracks and out, is that it?

8 A. Yes.

9 Q. Can you hook yourself back up there again, the cord --

10 A. Yes.

11 Q. George, do you have any recollection now of anything that  
12 you saw in the park that night?

13 A. Just very, very vague.

14 Q. Okay. Could I direct your attention to page 26 of the volume  
15 you have in front of you? Is that the page that's open?

16 A. Yes.

17 Q. And also page 27, if you just want to flip over. Is that your  
18 signature at the bottom of page 27?

19 A. It is.

20 Q. And do you remember giving a statement to the Sydney Police  
21 Department?

22 A. Yes.

23 Q. Okay. Just flip back to page 26. Can you tell us the circumstances  
24 in which you gave that statement?

25 A. Exactly the right -- the day, I don't remember but there was a



GEORGE W. MacNEIL, by Mr. Spicer

1 public plea over one of the medias and --

2 Q. If I could just stop you there for a second, George, when  
3 you say a public plea, what do you mean by that?

4 A. Well, it was -- It came over the radio, I'm pretty sure, that  
5 if anyone was in the park the night of the murder would they  
6 come in and just make a statement to what they recollect that  
7 evening.

8 Q. And having heard that what did you do?

9 A. I, myself, called the Sydney Police Department and told them  
10 the situation, that I was in the park that evening. I walked  
11 through that evening.

12 Q. And you walked through with Sandy?

13 A. Yes, sir.

14 Q. All right.

15 A. Yeh, and made reference to seeing the gentleman in the park.

16 Q. Do you recollect whether or not you did this over the  
17 telephone with the police initially?

18 A. I have no recollection.

19 Q. Okay. Do you have any recollection as to how you got to the  
20 police station?

21 A. No, I do not.

22 Q. Okay. Do you recollect whether or not the statement was given  
23 at the police station?

24 A. Yes, it was.

25 Q. Okay, so we'll get you to the police station. Do you remember

GEORGE W. MacNEIL, by Mr. Spicer

1 |       whether or not your statement was taken -- whether or not you  
2 |       were interviewed by the police before or after Sandy?

3 | A. I do not remember if I was first or if Sandy was first.

4 | Q. Okay. During the time that you were interviewed by the police,  
5 |       do you remember who the interviewing officer was?

6 | A. No, sir.

7 | Q. Do you have any recollection of what he looked like?

8 | A. No, sir.

9 | Q. Can you tell us whether or not there were one or two officers  
10 |       in the room?

11 | A. I have no recollection. I don't know if it was one or two.

12 | Q. Okay. Perhaps you could just review your statement.

13 | A. Yes.

14 | Q. The description that you've given there of the two gentlemen --

15 | A. Yes.

16 | Q. --is that a suggestion that came entirely from yourself?

17 | A. Yes.

18 | Q. And can you indicate to us why or how you came to remember  
19 |       it in such detail?

20 | A. No, I can't. It's just that we were walking through the  
21 |       park and we just happened to notice it. I mean we probably  
22 |       noticed the old grey haired gentleman with the white coat  
23 |       because it wasn't -- you'd never notice people with trenchcoats  
24 |       on in the park.

25 | Q. What would you normally see in the park at night?

GEORGE W. MacNEIL, by Mr. Spicer

- 1 | A. Probably a lot of young people at that time.
- 2 | Q. So it would be unusual to see an older man in the park  
3 | then?
- 4 | A. Yes, definitely.
- 5 | Q. Was it ever suggested to you by the officer or officers that  
6 | were interviewing you that you'd change any of the things  
7 | that you were telling them?
- 8 | A. No, none whatsoever.
- 9 | Q. And are you satisfied that at the time you gave your  
10 | statement you gave your best recollection of what you  
11 | seen that evening?
- 12 | A. Exactly, yes.
- 13 | Q. Subsequent to the giving of the statement, were you ever  
14 | contacted by any of the lawyers acting for Junior Marshall?
- 15 | A. No.
- 16 | Q. Were you contacted by the Crown Prosecutor?
- 17 | A. No. Not that I can recollect, no.
- 18 | Q. Did you have any other involvement with the Sydney Police  
19 | Department concerning this investigation?
- 20 | A. No, I can't remember.
- 21 | Q. Were you contacted by the Sydney Police Department a few  
22 | days later concerning the mug shots?
- 23 | A. I heard Sandy make -- give reference to it but I can't  
24 | remember that, no.
- 25 | Q. You have no recollection of that at all?

GEORGE W. MacNEIL, by Mr. Spicer

1 A. None whatsoever.

2 Q. Were you contacted by the R.C.M.P., sir, in 1982?

3 A. I was, yes.

4 Q. And how were you contacted?

5 A. I was at my parents' house visiting and as I was there an  
6 R.C.M.P. police car pulled up in front of my place and  
7 was talking to my father. My father's name was the same  
8 as mine and the officer asked for George MacNeil, so I  
9 started to laugh because I didn't know if he wanted me or  
10 my father and then I realized it was for me because he made  
11 reference to my statement and the Marshall Inquiry.

12 Q. And were you then interviewed by that R.C.M.P. officer?

13 A. I was.

14 Q. Do you remember anything about that interview?

15 A. I remember going out to the police car and the officer showing  
16 me my statement that I made back in '71.

17 Q. Do you remember what he asked you about it?

18 A. No, sir.

19 Q. Do you have any recollection of anything else concerning  
20 that interview?

21 A. No.

22 Q. Do you remember who the R.C.M.P. officer was?

23 A. No, I do not.

24 MR. SPICER:

25 Thank you.

GEORGE W. MacNEIL, by Ms. Edwardh

1 | BY MS. EDWARDH:

2 | Q. Sir, I take it, your recollection is that the old man was  
3 | wearing a trenchcoat?

4 | A. Yes.

5 | Q. And do you recall whether he had his arms in the sleeves of  
6 | the coat or it was just over his shoulders to give a baggy  
7 | appearance?

8 | A. I'd say he had it on.

9 | Q. And when you heard the plea over the radio are you clear that's  
10 | what precipitated you going? You have a distinct recollection  
11 | of that, do you?

12 | A. I'm pretty sure, yes.

13 | Q. And did it go out as to, "Anyone in the park that night come  
14 | forward or --

15 | A. Oh --

16 | Q. If I can just finish my question --

17 | A. Okay.

18 | Q. Or did they say they're looking for two individuals. Was there  
19 | a description broadcast?

20 | A. No, I think it was just a public plea with anyone that was  
21 | in the park that evening.

22 | Q. I take it, sir, that when you told the police on May 31st  
23 | that -- when they asked you the question, "Would you know  
24 | them again?", and you answered, "We don't know", I take it  
25 | what you were saying there is that you might well be able

GEORGE W. MacNEIL, by Ms. Edwardh, by Mr. Pugsley

1 to identify them if they were brought to you but you couldn't  
2 be sure you could?

3 A. Exactly.

4 Q. Were you ever at any time asked to participate and view a  
5 line-up?

6 A. No, not that I can recollect.

7 Q. If you had gone down to the police station to view suspects  
8 or view individuals, I take it you probably would recall that?

9 A. I'd say, yes.

10 MS. EDWARDH:

11 Those are my questions. Thank you.

12 MR. CHAIRMAN:

13 Mr. Pugsley.

14 MR. PUGSLEY:

15 Thank you, My Lord.

16 BY MR. PUGSLEY:

17 Q. Mr. MacNeil, I'm going to show you a notice that appeared in  
18 The Cape Breton Post, according to my instructions, on May 29th  
19 of 1971, that I've just had photostated, and I'll ask you as  
20 to whether or not you can identify this as being the ad to  
21 which you responded? Did you see that -- that advertisement?

22 A. It's possible I guess.

23 Q. It's possible.

24 MR. PUGSLEY:

25 I guess we can make some efforts, My Lord, to get this formally

GEORGE W. MacNEIL, by Mr. Pugsley

1 | approved if you consider it desirable. I think it's probably  
2 | desirable to have it put in as an Exhibit.

3 | MR. CHAIRMAN:

4 | Exhibit 42.

5 | MR. PUGSLEY:

6 | Forty-two, thank you.

7 | BY MR. PUGSLEY:

8 | Q. You have no complaints whatsoever about the manner in which  
9 | Detective MacIntyre took the statement from you?

10 | A. None whatsoever.

11 | MR. PUGSLEY:

12 | Thank you. I have no --

13 | MR. CHAIRMAN:

14 | What's the answer? Did he say he had seen this?

15 | MR. PUGSLEY:

16 | He said --

17 | THE WITNESS:

18 | Well, it's possible.

19 | MR. PUGSLEY:

20 | It's possible.

21 | MR. CHAIRMAN:

22 | Possible.

23 | MR. PUGSLEY:

24 | Yes. Thank you. I have no other questions.

25 |

GEORGE W. MacNEIL, by Mr. Bissell

1 | MR. ELMAN:

2 | No questions.

3 | NO QUESTIONS FROM REMAINDER OF COUNSEL

4 | MR. CHAIRMAN:

5 | Mr. Bissell.

6 | BY MR. BISSELL:

7 | Q. Just one brief question. Is this the first time that you've  
8 | testified regarding the events of May 29th?

9 | A. Yes, it is.

10 | Q. You didn't testify at the trial or the preliminary?

11 | A. No, sir.

12 | MR. CHAIRMAN:

13 | Mr. Ross.

14 | MR. ROSS:

15 | No questions.

16 | MR. CHAIRMAN:

17 | That's all, thank you, Mr. MacNeil.

18 | INQUIRY ADJOURNED: 12:15 p.m.

19 |

20 |

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*JWB*



LINDA L. MUISE, by Mr. Spicer

1 INQUIRY RECONVENED: 2:00 p.m.

2 LINDA LOUISE MUISE, being called and duly sworn, testified as  
3 follows:

4 BY MR. SPICER:

5 Q. What's your full name, please?

6 A. Linda Louise Mann -- Muise, sorry.

7 Q. And how old are you?

8 A. I'm thirty-three now.

9 Q. Thirty-three?

10 A. Yes.

11 THE CHAIRMAN:

12 Is nothing sacred.

13 BY MR. SPICER:

14 Q. And in 1971 were you living in Sydney?

15 A. Yes.

16 Q. Were you brought up in Sydney in fact?

17 A. Yes.

18 Q. And did you attend the dance on a night of May 28th?

19 A. Yes.

20 Q. 1971, you did?

21 A. Yes.

22 Q. Okay, do you remember who you went with?

23 A. Yes.

24 Q. And who was that?

25 A. Andrew MacDonald.

LINDA L. MUISE, by Mr. Spicer

1 Q. And Andrew MacDonald is now an R. C. M. P. officer, is that  
2 correct?

3 A. Yes.

4 Q. Okay, tell us what you remember about that evening?

5 A. Not very much, just that we walked to the Park. We left the  
6 dance early.

7 Q. I'm going to stop you as you go through the story just to get  
8 some details from you. Do you remember what route you took  
9 going to the Park?

10 A. Right down George Street.

11 Q. So if you turn and you see the map there beside you, you would  
12 have left the church and walked down George Street?

13 A. Yes.

14 Q. Okay, continue.

15 A. And crossed the street in front of Mac's Dairy there and went  
16 down the Park.

17 Q. Okay, can you just show us where that would have been?

18 A. This would be Mac's Dairy here.

19 Q. Right.

20 A. And let me just -- went down the Park.

21 Q. So you go into the first walkway after -- parallel to Argyle  
22 Street?

23 A. Yes.

24 Q. Okay, and you go into the Park?

25 A. And we sat on -- I can't remember now -- the second or third

LINDA L. MUISE, by Mr. Spicer

1 bench in.

2 Q. And can you tell us where that would have been?

3 A. Around -- let's see the bridge would have been -- might have  
4 been around this area somewhere.

5 Q. And just so the record will see that, that's more or less  
6 directly across from the bridge, is it, on the walkway?

7 A. Yes.

8 Q. Okay, so you sat on the bench?

9 A. Yes.

10 Q. With Andy?

11 A. Yes.

12 Q. And then what happened?

13 A. And then a person came up and bummed a cigarette from him.

14 Q. Now can you tell us anything about the person that came  
15 along and bummed the cigarette?

16 A. It was an Indian boy.

17 Q. Okay, are you able to tell us now in retrospect whether or  
18 not that was Donald Marshall?

19 A. No, I wouldn't.

20 Q. You're not able to tell us?

21 A. No.

22 Q. Okay, do you remember seeing anybody else there that night?

23 A. Well, just because of watching tv. we remember see -- well  
24 we -- we spoke afterwards we remembered seeing an older  
25 man in the Park that night with a funny hat and coat on.

LINDA L. MUISE, by Mr. Spicer

- 1 Q. And did you see him at or about the same time as you saw the  
2 Indian boy?
- 3 A. Yes.
- 4 Q. Was he with him?
- 5 A. No, they didn't seem to be, no.
- 6 Q. Do you know how much time elapsed between seeing the first --  
7 the Indian boy and the older person?
- 8 A. I don't think it was that long because we didn't stay in the  
9 Park long at all.
- 10 Q. And do you remember what direction, first of all, the Indian  
11 boy was going in?
- 12 A. Up towards George Street, I guess. Oh, I can't even say --  
13 I really don't know.
- 14 Q. Can't remember?
- 15 A. No.
- 16 Q. Okay, and what about the other fellow, the older man?
- 17 A. No, don't remember.
- 18 Q. Okay, do you remember what the older fellow -- you can sit  
19 down again if you like.
- 20 A. Thank you.
- 21 Q. Do you remember what the older fellow was wearing?
- 22 A. Well, like I say it was -- you couldn't see faces.
- 23 Q. Right.
- 24 A. But I just remember a funny hat and a long coat, that's all.
- 25 Q. Funny hat and a long coat?

LINDA L. MUISE, by Mr. Spicer

- 1 A. Yes.
- 2 Q. Okay, what's a funny hat?
- 3 A. Well, not a funny hat, let's say unusual.
- 4 Q. Unusal in the sense, was it --
- 5 A. But he didn't -- not many people wore hats then and this man  
6 had a hat on and for an older man in the Park late at night --  
7 maybe -- I shouldn't say -- I really don't know.
- 8 Q. Can you remember whether it was a hat with a brim or a beret  
9 type hat or anything like that?
- 10 A. No, I don't. I just remember the unusual look, the unusual  
11 appearance, that's all.
- 12 Q. And you're saying the appearance was unusual by -- merely by  
13 reason of the fact that he had a hat on or that the hat  
14 was unusual?
- 15 A. I don't remember. I just don't remember, really.
- 16 Q. You don't remember?
- 17 A. No.
- 18 Q. Do you have -- can you -- do you have any recollection at  
19 all as to what colour the coat was?
- 20 A. No.
- 21 Q. Light or dark?
- 22 A. No, really I don't.
- 23 Q. No.
- 24 A. No.
- 25 Q. Now in the years subsequent, you had occasion to see pictures

LINDA L. MUISE, by Mr. Spicer, by Ms. Edwardh

1 of Roy Ebsary?

2 A. Yes.

3 Q. And are you able to tell us now whether or not you think that  
4 the person, the old man you might have seen in the Park that  
5 night, was Roy Ebsary?

6 A. I thought it might be, yes.

7 Q. Okay, were you ever contacted by the Sydney Police Department  
8 concerning this incident?

9 A. No.

10 Q. No, did you make any attempt to contact them yourself?

11 A. No.

12 Q. Were you ever contacted by any of the lawyers involved in  
13 the original trial? Donald Marshall's lawyers or the Crown  
14 Prosecutors?

15 A. The original -- no.

16 Q. No.

17 A. No.

18 Q. Subsequently to that, were you ever contacted by the R. C. M. P.?

19 A. No.

20 Q. Okay, thank you.

21 BY MS. EDWARDH:

22 Q. Mrs. Muise, you said you left the dance early that evening,  
23 would you happen to recall when approximately you left?

24 A. Well, it was fairly late. It might have been eleven or  
25 eleven-thirty.

LINDA L. MUISE, by Ms. Edwardh

1 Q. And did you proceed then directly down to the Park area?

2 A. Yes.

3 Q. Now you say today that there was a young Indian fellow who  
4 asked for a cigarette when you were sitting on the Park  
5 bench?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. And would it be fair to say that there are other times  
10 when you've recalled this incident that you were not sure  
11 that that you think it really just might be an Indian chap  
12 that bummed a cigarette?

13 A. Yes.

14 Q. And I take it that at the time of this event and in the  
15 years after, you never sat down to recall specifically what  
16 had transpired -- never made any notes of it, is that  
17 correct?

18 A. I thought about it.

19 Q. Thought about it but you didn't make a record of it to  
20 refresh your memory --

21 A. No, no, no.

22 Q. Now with respect to the older fellow that you saw, you  
23 have an image in your mind, I take it, that however you  
24 describe him he appeared unusual to you?

25 A. Yes.

LINDA L. MUISE, by Ms. Edwardh

1 Q. And when you describe him wearing a, I think it -- was it  
2 a long coat?

3 A. Yes.

4 Q. Do you have an image of that in your mind as being a dark coat  
5 as well?

6 A. It was very black that night.

7 Q. Is there anything about the image you have, if you have any,  
8 that indicates as well he was wearing something dark?

9 A. I can't remember.

10 Q. Could it have possibly been that this man, the older fellow,  
11 bummed the cigarette from Andy MacDonald?

12 A. No.

13 Q. You're clear about that in your own mind?

14 A. Yes.

15 Q. Now, I'm sorry, did you indicate that you never gave a  
16 statement to the police at all?

17 A. That's right.

18 Q. You did not give one?

19 A. That's right.

20 Q. And did you see a notice in the Cape Breton Post asking for  
21 information or hear any request for information about what  
22 had happened in the Park that night?

23 A. I didn't think that it was any -- there wasn't any need of  
24 it, you know, what I saw anyway that night.

25 Q. Were you aware of such a request that any member of the public



LINDA L. MUISE, by Ms. Edwardh

1 who had been in the Park that night come forward?

2 A. No, I was not.

3 Q. Okay, those are my questions, thank you very much.

4 A. Thank you.

5 THE CHAIRMAN:

6 Mr. Pugsley.

7 MR. PUGSLEY:

8 No questions, My Lord, thank you.

9 NO QUESTIONS FROM THE REMAINDER OF COUNSEL

10 MR. CHAIRMAN:

11 Thank you, Mrs. Muise.

12 MR. ORSBORN:

13 My Lord, the next witness will be Mr. Charles Livingstone.

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*pmc.*