

DR. JAMES V. O'BRIEN, by Mr. MacDonald

1 INQUIRY RECONVENED: 9:28 a.m.

2 DOCTOR JAMES VINCENT O'BRIEN, being called and duly sworn, testified
3 as follows:

4 MR. MacDONALD:

5 My Lords, I've had marked three exhibits and I've placed copies
6 in front of you. Exhibit 43 is a letter directed to me from
7 Doctor O'Brien, dated September the 16th, of 1987. Copies of
8 this document have been made available to all other counsel
9 on the day it was written, I believe, or the day after. Forty-
10 four which I've handed to you as well are copies of the Nova
11 Scotia Hospital medical records of Roy Ebsary and forty-five are
12 copies of the records of the Cape Breton Hospital with respect
13 to Roy Ebsary.

14 BY. MR. MacDONALD:

15 Q. Your name, sir, for the record is?

16 A. James Vincent O'Brien.

17 Q. And Doctor, if I could ask -- one of the difficulties we've
18 been having here is with the audio, so if you'd just perhaps
19 would speak a little louder than you normally might so that
20 people will be able to hear you here. On exhibit 43 which
21 I've put in front of you, Doctor, there is a C. V. for
22 yourself attached to that, I believe it's in about four
23 pages. Just a moment would you please to advise the
24 Commissioners of your experience and your qualifications,
25 please?

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1 A. You want to read threw this?

2 Q. All right, just summarize it if you will.

3 A. Okay, I graduated in medicine from Trinity College, Dublin,
4 in 1961. I immigrated to Canada first time in 1965. Worked
5 in general practice here and also worked in general practice
6 in Britain and in Ireland. I started psychiatry in 1972
7 in Dublin. I did two and a half years there and obtained
8 a diploma in psychological medicine of the Royal College of
9 Physicians and Surgeons of Ireland in 1974. I joined the
10 Dalhousie program of Psychiatric Residency Training Program
11 in '75. Completed that program and got my Fellowship of
12 the Royal College of Physicians and Surgeons in Psychiatry
13 in 1977. I was a staff psychiatrist at Statacona, the
14 naval base as a civilian psychiatrist there for a year from
15 '76 to 1977. I was staff psychiatrist at Nova Scotia
16 Hospital from March '77 to December '79. I was then staff
17 psychiatrist at the Abbey Lane Hospital from 1979 to 1981.
18 I returned to the Nova Scotia Hospital as staff psychiatrist
19 '81 to '87. During the year of '84 to '85 -- September
20 '84 to September '85, I was acting director of the Foresenic
21 Unit in the absence of the regular director, Doctor Akhtar,
22 who was away for a year. Also consulted at the Halifax County
23 Correction Center from 1979 to 1987. Currently I'm on a
24 year's leave of absence leaving in Cape Breton, working part-
25 time at the Cape Breton Hospital, part-time in private

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1 practice in Baddeck in Cape Breton.

2 MR. MacDONALD;

3 Is that fan interfering with the sound? It seems to be blowing
4 right in. Okay.

5 My Lords, I normally I would in a trial situation, I'd be asking
6 to have this witness qualified to give expert evidence. I don't
7 know if that's necessary here or not.

8 MR. CHAIRMAN;

9 That probably isn't necessary. It's obvious he is a very eminently
10 qualified psychiatrist.

11 MR. MacDONALD:

12 Thank you, My Lord.

13 BY MR. MacDONALD:

14 Q. Now Doctor O'Brien, at my request you've conducted an
15 examination of Roy Ebsary, is that correct?

16 A. That's true, yes.

17 Q. Had you ever examined Mr. Ebsary prior to seeing him some
18 ten days ago?

19 A. No, I have seen him previously but it was at a case conference
20 in the Nova Scotia Hospital some years ago. But that's all.

21 Q. Okay, and prior to meeting with Mr. Ebsary on September the
22 15th, I had given you certain information to review and in
23 particular had given you copies of the Nova Scotia Hospital;
24 records, the Cape Breton Records?

25 A. That's correct.

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1 Q. And the transcript of the video tape that had been played to
2 this Commission?

3 A. That's correct, yes.

4 Q. And also copies of the transcripts of the evidence given by
5 Mr. Ebsary to this Commission?

6 A. That's correct, yes.

7 Q. And did you review those documents before or at any time
8 before meeting with Mr. Ebsary?

9 A. I did, yes.

10 Q. And basically just tell the Commission in your own words,
11 what it was I was asking you to do?

12 A. Well, you asked me basically, I think, four questions, to see
13 if I could give some kind of an opinion on your questions, and
14 one was -- one of them -- the first one was, I think, "Could
15 you give any credence to his answers?" The second was, "Did he
16 have a psychiatric diagnosis?" The third one was, "Was there
17 any truth in his stories about his naval exploits, etcetera?"
18 And the fourth one was, "What was --

19 Q. I believe the fourth related to, "Could you give me some
20 indication of his I.Q.?"

21 A. Oh, yes, that's right, yes.

22 Q. All right, would you just tell us generally what you did in
23 order to be in a position to express an opinion to the
24 Commission on those four points?

25 A. Well, as you mentioned, I read through his testimony. I read
through his records from the Cape Breton Hospital and from

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1 | the Nova Scotia Hospital. I actually spoke to Doctor Akhtar
2 | who was -- saw him in the Cape Breton Hospital, who was
3 | the psychiatrist in charge at the time. And then I saw Mr.
4 | Ebsary for about an hour and a half, I think it was Tuesday
5 | the 15th.

6 | Q. Now when you saw Mr. Ebsary are there standard tests or
7 | standard questions or something that you would question
8 | him about?

9 | A. Well, I just had a standard interview I would do with any
10 | patient that I was asked to see with a particular bearing
11 | in mind the questions you asked me to offer an opinion on
12 | and, -- But I went through a standard thing -- my standard
13 | examination, really, for anybody.

14 | Q. Attached to your report entitled on pages called "cumulative
15 | therapeutic record", there are notes. Are those the notes
16 | that you took or type written copy of the notes that you
17 | took during your interview with Mr. Ebsary?

18 | A. Yes, yes that's right and an accumulation then of looking
19 | threw his charts and making out a summary of his admission
20 | to hospital, background, etcetera, yes, that's the full
21 | psychiatric survey that I made at the time, yes.

22 | Q. Now prior to seeing Mr. Ebsary, what was your understanding
23 | of his previous psychiatric history?

24 | A. Well, he had obviously had been admitted to hospital a few
25 | times. He'd -- he appeared to have had on several occasions

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1 | to have been quite disturbed -- behaving very peculiarly.
2 | I think on each occasion -- this had been associated with--
3 | he was diagnosed having an organic brain syndrome which
4 | was associated with in the opinion of the psychiatrist that
5 | it was probably alcohol or other substances but mostly
6 | alcohol.

7 | Q. For the benefit of the Commissioners, could you explain
8 | what organic brain syndrome is?

9 | A. Okay, well basically it's -- psychiatric syndrome I suppose
10 | are divided into organic brain syndromes and functional
11 | syndromes. An organic disorder is like something in which
12 | you -- to which there are definite identifiable pathological
13 | findings in someones brain or physiology. Now there are
14 | there are a series of other conditions the main two of which
15 | are schizophrenia and mannic depressive disorder in which
16 | there are no specific organic findings. All again that's
17 | becoming a bit less clear as more high powered investigations
18 | and methods are coming into use. For those of us, sir,
19 | it means an organic things -- it means really where there is
20 | some organic definite findings. Like something - something
21 | that can be found under a microscope or a physiological
22 | test or something.

23 | Q. Does it mean that you've had damage to your brain that's
24 | irreversible?

25 | A. No, it's reversible. There are some irreversible organic

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1 brain syndromes and some reversible ones.

2 Q. What are the things that has certainly given me questions
3 over the years and I'd like you to comment on this, we are
4 all aware that at one time Mr. Ebsary was found unfit to
5 stand trial and I believe that was in May of 1983 or '84,
6 and yet within several months he was found fit to stand
7 trial. Now how do you get from one state to the other?

8 A. Well, because I mean it is not just with organic brain
9 syndromes but with many other syndromes, you get better.
10 Psychiatry isn't -- everyone that has a psychiatric illness
11 isn't stuck with it for life. People get better. A
12 considerable number of patients admitted say -- patients
13 admitted to the Forensic Unit are initially unfit to stand
14 their trial not because of alcohol at all because they
15 are severely disturbed schizophrenics or whatever the case
16 may be and after a month or two of treatment then they're
17 fit to stand their trials. I mean to be fit to stand
18 your trial you just have to have a number -- you have to
19 basically be -- understand the process of the court and
20 understand your counsel and a few other fairly simple things.
21 So it isn't that difficult to be fit to stand your trial and
22 people recover and with the condition like he had which was
23 a reversible organic brain syndrome, then as his mind cleared
24 up, he understood the nature of the charges against him
25 etcetera and therefore fit to stand his trial. That's the

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1 | usual run of things. Not just with organic syndromes, most
2 | the people found initially unfit to stand their trials
3 | finish up fit to stand their trials in a relatively short
4 | space of time.

5 | Q. When Mr. Ebsary is going through a bout of organic brain
6 | syndrome, how does it manifest itself?

7 | A. Well, in his case -- his case he was pretty disorganized in
8 | his behaviour, he didn't know where he was, he don't know
9 | what date it was and so on. So that's how it's recorded
10 | in the chart, it's there in his record. I can't remember
11 | the exact details. But he's obviously in pretty poor shape.
12 | He -- I gather he was -- nearly set fire to the place he
13 | was living in etcetera. And so that's how it manifested
14 | itself in his case.

15 | Q. And in his case is the -- is that sort of a problem triggered
16 | by some external mechanism?

17 | A. I'm -- yes -- he tends to -- doesn't deny that he drinks
18 | but like when the other things he has, he colours it and
19 | I think the evidence is there going way back that he --
20 | that alcohol has been a problem with him for many years.
21 | I think in some part of his record I read that his wife
22 | said, "Since his teenage years". And I think there's
23 | a record of Doctor Binney, I think, in 1972 seeing him as
24 | having problems with alcohol. So I think it's almost certainly
25 | related to alcohol. Now he may have been taking other

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1 substances as well that he's never told us about or that were
2 unrecorded.

3 Q. Will alcohol in his case trigger an event that he becomes
4 confused, disoriented, unable to recall things or can it?

5 A. I think it can do that with anybody. I think in his
6 case when you talk about the sort of state he was in when
7 he was admitted to hospital, you're talking about someone
8 whose been drinking heavily for quite a while and this is
9 a long term accumulation of things. But alcohol
10 disorientates anybody.

11 Q. When he is taken away from the external trigger mechanism,
12 can he return to, I hesitate to use the word but, return to
13 normal?

14 A. I think he has on several occasions. The record is there.

15 Q. Okay, you said yourself --

16 A. You can't just add a complication -- I think in someone like
17 Mr. Ebsary's case in which he's quite old, he also has
18 diagnosed difficulties with what's called obstructive lung
19 disease and I think also cardio-vascular disease. This
20 means essentially that his ability to pump oxygen through
21 his system is embarrassed both by his poor function of
22 his lungs and a poor function of his heart and therefore
23 if you add on top of this some kind of toxic substance, then
24 you are producing a state in which some kind of organic
25 brain symptoms are going to be much more likely to occur.

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1 Q. You saw him for an hour and a half?

2 A. About, yes.

3 Q. And during that time, did you perform any tests on him?

4 A. In the sense of psychological tests, no, because first of
5 all, I'm not a psychologist; second, these are really rather
6 these are -- fairly -- you have to have specific
7 training to do these tests and these are all in the
8 psychological field and not specifically -- or not psychiatric
9 field particularly at all. But I just go through -- I have
10 a little routine that I go through with everybody which I've
11 done for years but I'm not vouching for their scientific
12 accuracy or anything, it's just something I do because it
13 just tests people's memory and their concentration and it
14 does a few simple mathematical tests and because I've
15 used it for years it gives me some idea of the concentration
16 their memory and roughly their intelligence in this kind
17 of thing. But I won't swear to their accuracy but it gives
18 me some kind of picture.

19 Q. In your experience they -- the response of a patient to the
20 type of questioning or testing you give, enables you to
21 form an opinion?

22 A. Yes.

23 Q. Can you give us an example of the type of questions you
24 would put?

25 A. Well, it's just it's very simple. I usually teach people

1 I get them to learn a name and address. I give them a
 2 series of simple general knowledge tests. I do simple --
 3 a few mathematical tests and it's all fairly standard. In
 4 fact it's recorded there I think somewhere if you'll look --
 5 under "mental status", I think it's there. And I just asked
 6 him a few simple things. Things actually I was taught as
 7 a resident. I just kept doing it as a routine. That
 8 means I have a certain figures I can go back to and see if
 9 people change over the years and so on and I say it just
 10 gives a very simple basic picture of functioning on this
 11 level. But the interesting thing of having observed it
 12 and related these things to psychological testing for
 13 intelligence and so on, it coincides fairly well -- you
 14 know -- the sort of findings I make and the findings of
 15 psychologists come out roughly the same.

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 21 *J.M.*
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 23
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 25

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1 Q. Well, let me get to the -- some of the things in your
2 record, if I can. Put this question to you. Was there
3 any particular things in his past history, that were
4 given to you, that were of importance to you or that
5 you relied on in being in a position to give an opinion
6 to this Commission?

7 A. I'm a little bit -- I think you have to be more specific.
8 I'm not quite sure --

9 Q. Well, is there any particular information, in the records,
10 that you found, that is in his past records, that you
11 found to be of importance or of particular significance?

12 A. I don't see any particular thing. Is -- I suppose
13 the whole pattern, I suppose, is that I would say. I don't
14 think in particular, except, I suppose, that he seems to
15 have gone -- he seems to have at times been really quite
16 disorganized in his mind and made quite remarkable recoveries
17 in a relatively short space of time, which, I think, at
18 someone of his age and relative ill health, one might
19 expect not to be the case.

20 Q. Is there anything, in his past history, that would lead
21 you to conclude that there's no way that he could,
22 today, be capable of telling a credible story?

23 A. Oh, I -- Can -- Maybe I could go back and answer your
24 question, again. The first question. There is something
25 odd about Mr. Ebsary's psychiatric history, really.

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1 I'm basically -- And again, I think it's very curious,
2 that a man of his age, should suddenly become involved
3 with the courts and the police to the extent that he
4 has in the last ten or 15 years. And that this is certainly
5 odd. Usually people are involved in the courts, and so on,
6 in their younger years. They saw their wild oats and
7 settle down. He seems to have reversed the whole picture.
8 As far as I know, there was no involvement, to any kind of
9 criminal behaviour, before the age of 60 which is odd.
10 But, again, maybe we just don't have the record. I don't
11 know. So this is an odd part which is in answer to your
12 previous question. Now your next question was that --

13 Q. My question was, is there anything, in his past history,
14 which would lead you to conclude that he is incapable
15 of giving credible stories, today? Incapable from
16 a medical point of view?

17 Q. That's a very difficult one for me to answer because I'm
18 not sure, that as a psychiatrist, I'm much better at
19 forecasting that than anybody else. But I think to talk
20 about his stories, and so on, I mean -- you know. The--
21 His stories concerning, for instance, the incident of 1971
22 are, in fact, -- The three versions that I've read, one
23 is in his report to this Commission. The other in his
24 report to Mr. Ratchford and the other in his report to,
25 I think, to -- Was it Sergeant Carroll? Are, bar a few

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1 details, remarkably similar. So -- I know -- My answer
2 to that is, if, in fact, this story was an entire tissue
3 of lies, I think, it would be very difficult to remember
4 the kinds of details he remembers. I think that if
5 you were to tell a story, you know, -- If you or I or anybody
6 else are telling about an incident in the past, we can
7 recall it because we went through it and we experienced
8 it. If, in fact, I was to tell you an invented incident
9 and you asked me next year, I would have great difficulty
10 if I invented it. It's the picture in your mind you can
11 repeat. I think it would be very difficult to repeat this
12 kind of detail unless something very like this happened on
13 three or four different occasions. I -- So this is the
14 one story we can say. Now, his other stories about the
15 Royal Navy, and so on, I really don't know. I gather
16 he was in the Royal Navy. I can't tell you.

17 Q. I, now, confess a memory lapse of my own. I did
18 give you, as well, the statement that he gave to Carroll
19 to read, didn't I?

20 A. Yes.

21 Q. So you have the story he gave to Carroll. You have the
22 story he gave -- or the transcript of the matter with
23 Ratchford and you have the evidence he gave at the Commission?

24 A. Yes.

25 Q. And you're -- Do I understand you to say that, the remarkable

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1 similarities between the three is of significance?

2 A. I -- I mean, I think, that these three stories seem to
3 me -- and indeed there are significant details maybe
4 from a lawyers point of view, very significant details
5 that are different. But, in fact, if you'd look at the
6 stories he tells, almost uses the same phrases over
7 and over again. "Jimmy MacNeil was" what? "Screaming
8 like a banshee across the road." And I -- you know, he
9 uses these phrases and it was always "dark". He always
10 "took his glasses off." "It was raining that night."
11 All these kinds of details. "He ran like a mad man around
12 the corner of the road." He's repeated these, of whatever
13 he says. Each time these kinds of phrases he describes.
14 They actually -- seems to be remarkably similar. That's
15 all I can tell you. I -- You know, all one can give
16 is a tendancy. I can not tell you that he was telling
17 the truth on any particular occasion. People who tell
18 the truth can tell lies. People who tell lies can tell
19 the truth.

20 Q. I'm not asking you to advise whether he was telling the
21 truth. I'm asking you, in effect, is he capable of telling
22 the truth?

23 A. Oh, certainly he's capable of telling the truth, yes.
24 That's what -- We all are.

25 Q. About events that took place in 1971?

1 A. I -- He's certainly capable of telling the truth. I mean,
2 he's -- but that's a generality. Anybody's capable of
3 telling the truth and he's certainly capable of telling
4 the truth about those events. Yes.

5 Q. It's probably my difficulty as a lay person. When I
6 see words, like, someone has chronic brain syndrome and
7 things that are -- that seem to the lay person to mean
8 that you may have some problems with your brain. I just
9 have difficulty understanding how that -- how you get
10 rid of that?

11 A. Well, -- Who diagnosed him as having chronic brain
12 syndrome?

13 Q. Doctor Akhtar. If I can take you to --

14 A. Yes, reversible. Not -- I mean that's a kind of a
15 contradiction in terms actually. I -- A chronic indicates
16 that it's going on and on and on. Reversible means that
17 it's not. So, I think, that a slight -- That's, I think,
18 Doctor Akhtar having his cake and eating it, a bit.

19 Q. I see.

20 A. I think that -- that it is reversible. The fact of the
21 matter is, in examining him now, and I say, I did not
22 do a profound psychological test but it is interesting
23 that on two occasions in the last couple of years, when
24 he's been specifically tested by psychologists, their findings
25 were not that he had definite, clear organic brain deficits.

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1 They were extremely ambivalent. And my findings,
2 on the other day, was that he plowed through my little
3 tests and I won't swear that they are absolutely untouchable,
4 but it was -- for a man of his age and he was extremely
5 clear. I hope I'm as clear in my mind at the age of 77
6 as he is.

7 Q. Okay. We'll leave that one alone. The reference you
8 made to Doctor Akhtar, Doctor, is contained in exhibit
9 44 on the third page in where it's the discharge report
10 from the Nova Scotia Hospital of July 30th, 1982. Is that
11 correct?

12 A. Yes.

13 Q. And the diagnosis that is contained there is, "chronic
14 brain syndrome, reversable and in remission." Now, do
15 I take that to mean that, while he came in exhibiting this
16 brain syndrome problem. Confusional state, unable to
17 recall. That he had -- the trigger mechanism was gone
18 and he now, in fact, -- when he was being discharged was
19 no longer confused or unable to recall?

20 A. Well, If you read the report, that seems to have been the
21 case, yes. And he made a very rapid recovery. Now, I'm
22 not saying that he hasn't got some -- if he was specifically
23 tested. I'm not saying that, in fact, Doctor Akhtar was
24 wrong. I'm saying, is that, his degree of brain disfunction
25 is really not very much. But I'm sure that perhaps if you

1 did really specific neuro-psychological testing, that
2 indeed, you may come up with some malfunction of his
3 brain but the degree is relatively mild. And if you
4 look at Doctor Akhtar's report when this man was put on a
5 Lieutenant Governor's warrant and put in the Nova
6 Scotia Hospital, he really recovered remarkably quickly.
7 My suspicion, I think, (Doctor Akhtar probably says this
8 somewhere,) is that he was removed from the toxic substance
9 and the circumstances in his brain got a chance to recover
10 and he did recover very well.

11 Q. If I can also ask you to look at the Cape Breton records.
12 They are -- They've been marked as exhibit 45. A report
13 from Doctor Donovan on March the 22nd, '82. His possible
14 diagnosis is also is also noted as chronic brain syndrome.
15 What's that next word?

16 A. Arteriosclerotic.

17 Q. What does that mean?

18 A. Well, it really means that he has a disease of his brain
19 arteries. But I would really doubt it, from the state
20 he's in now. I would -- Doctor Donovan had just -- sees
21 him briefly and makes this guess. I suspect because Mr.
22 Ebsary was not telling him about how much he was drinking.
23 And Doctor Donovan was looking for an explanation of his
24 state of mind. He clearly observed that he was in a pretty
25 poor state of mind. That was his guess. I think it was because

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1 Mr. Ebsary was downplaying the amount he was drinking or
2 whatever else he might have been taking. I don't know.

3 Q. Did you find Mr. Ebsary tends to downplay anything? Is
4 that your observations of him?

5 A. I think Mr. Ebsary colors all his stories to -- in which --
6 in -- He colors everything, I think, he says and sort of --
7 He tends to turn out looking fairly heroic and others
8 don't. I would think there's a tendency -- I don't --
9 -- There's a tendency to exaggerate, I think, in many things
10 he says.

11 Q. I'll come to that. If you can stay with the Cape Breton
12 Hospital records. That's the exhibit 45. Go on to one
13 that's of December 12, of '84. That's Doctor Kumar?

14 A. Yes.

15 Q. He is finding an "acute confusional state, probably
16 secondary to organic brain syndrome." That's the same --
17 Again, in 1984 --

18 A. Yeh.

19 Q. Something had triggered this mechanism, is that correct?

20 A. Yes. He was accutely confused, I mean, that's in a certain
21 sense, you might say, putting a slightly different label on
22 the same jam. I know, he was confused. Again, I think, it
23 remains a bit difficult to say why because he doesn't --
24 he's not telling the full story about how much he was
25 drinking, is my suspicion. The fact is, I think, he

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1 again recovered quite quickly.

2 Q. Okay. The next document is a January the 7th, 1985.

3 A. 1985, yeh.

4 Q. That is the results of a psychological test, --

5 A. That's right.

6 Q. -- Is that correct?

7 A. That's right.

8 Q. And that's a different science than psychiatry, as I
9 understand it. Psychology?

10 A. Yes, I suppose we cross over but Doctor Kaiser Sarwar
11 did specific tests. He put Mr. Ebsary through specific
12 psychological tests that involves doing calculations and
13 so on and so forth and observing figures and so on. In
14 fact he describes it there. But, again I think as I repeated
15 before, he's -- his results are equivocal.

16 Q. This is one of the psychological tests to which you refer--
17 There was two done.

18 A. He did -- Yes.

19 Q. There was one done at the Nova Scotia Hospital as well?

20 A. Yes. By -- yeh. About, I think, in '82. I think it
21 was earlier on.

22 Q. When you and I talked, it was sometime ago, the word
23 Alzheimers Disease came up. Is that anything related
24 to organic brain syndrome in any way?

25 A. Alzheimers Disease is a form of organic brain syndrome.

1 It's one of the organic brain diseases but it's just
2 one of them.

3 Q. Was there ever any evidence, in your opinion, that Mr.
4 Ebsary is suffering from Alzheimers Disease?

5 A. No. I don't think so, no.

6 Q. And if I can just direct you to the last page of this
7 exhibit 44. The very final page. This is the conclusion
8 of Doctor Munshi in January of 1985. He as well found
9 Mr. Ebsary to have "organic brain syndrome (in remission)".

10 A. Well, again, I'm not saying that he hasn't got some mild
11 organic brain deficits but given his age and the other
12 things, I think he's remarkably clear in his head for
13 a man of his age and who has, I think, abused his brain
14 quite a bit. I think he's remarkably clear.

15 Q. Organic brain syndrome. Am I correct that it attacks short
16 term memory first?

17 A. Well, not necessarily. If -- Anything that attacks your
18 brain which can be identified on an x-ray, in physiological
19 testing and so on, if the cause can be identified becomes
20 an organic brain disease of disorder. If nothing can be
21 found, which is still the case of some -- we've got a number
22 of psychiatric conditions and that's the functional one because
23 it's -- the only thing you notice is wrong is the function.
24 The brain seems to be totally functioning okay. It's just
25 that peoples behaviour and function isn't right. So it's --

1 If you have, in things like Alzheimers Disease and the
2 other degenerative, senile conditions, the things that
3 tend to go first of all are your more recent memories.
4 But that's a specific type of chronic degeneration of
5 the brain and what -- you're memory for the recent things
6 then it goes back and back. But I don't think that it -- must--

7 A. Let me move into another area, Doctor. You're aware from
8 reading the transcript and perhaps the earlier -- or the
9 other documents I gave to you, that Mr. Ebsary tells stories
10 and, indeed, told stories here of, for example, being
11 present when the Bismark was sunk and other type of
12 stories. Now, I think it's fair to characterize the
13 reports following that as saying, this is -- this man's
14 crazy. Can someone come and tell you these type of stories
15 and not be crazy? That might not be such a technical --

16 Q. I -- I suppose people -- I mean, how many old salts exaggerate.
17 You know, I think that, you know -- how do we know these
18 are stories? I, you know, has anybody -- Was or was he
19 not in the Royal Navy? I gather he was. Why wouldn't he
20 have been on the Bismark? I think -- I don't know. Not --
21 he wouldn't have been on the Bismark but on the whatever the
22 other boat was that sank the Bismark. Why wouldn't he
23 have been one of the crew if he was in the Royal Navy?
24 Again, I don't know.
25

DR. JAMES V. O'BRIEN, by Mr. MacDonald

1 | MR. MacDONALD:

2 | My Lord, at this time, I'd like to file a document which is a
3 | Certificate of Service showing that Mr. Ebsary was, in fact, in
4 | the Royal Navy and did have the serial number -- or the service
5 | number, I guess it was, that he was asked then. He told what it
6 | was. The second time he was asked he had one number wrong but
7 | otherwise he was correct. We've tried to find through the War
8 | Service Office in Britain what ships Mr. Ebsary might have served
9 | on and we've not yet been able to get that information. We're still
10 | trying to track it down. We've also been advised that -- it's not
11 | shown on this and I'll get the actual -- a certificate of some form.
12 | But we were advised that, in fact, he was given three medals as
13 | well, but these are medals that are given to everybody who joins
14 | the Royal Navy, I guess. So I would file this Certificate of
15 | Service to -- just to have for the record. He was in the Royal
16 | Navy from November 4, 1940 until January the 8th of 1942 (And
17 | you'll appreciate this, My Lord.) when he was then repatriated to
18 | Newfoundland.

19 | MR. CHAIRMAN:

20 | We're very selective as to who we keep.

21 | COMMISSIONER EVANS:

22 | Especially one of the native sons.

23 | MR. CHAIRMAN:

24 | I gather, Mr. MacDonald, that as of now, your inquiries have been
25 | unable to confirm the names of the ships that Roy Ebsary served on
during his years of active service in the Royal Navy?

DR. JAMES V. O'BRIEN, by Mr. MacDonald

1 MR. MacDONALD:

2 That's correct, My Lord. And we're still trying but we have
3 not yet been able to get that information.

4 COMMISSIONER EVANS:

5 And particularly where he was serving when the Bismark was
6 sunk.

7 MR. MacDONALD:

8 That's of course one of the things we're interested to know.

9 He was in the Royal Navy during that time of the sinking,
10 as you'll see. We don't have any -- we don't have any record
11 that he was decorated by either Prime Minister of Britain at
12 that time or Charles DeGaulle.

13 MR. CHAIRMAN:

14 You may find, thought, if he was on the role -- seriously, if
15 he was indeed on the Rodney following that very successful
16 engagement that the whole ship's company would have been
17 recognized.

18 BY THE WITNESS:

19 A. That's right. That's right.

20 BY MR. MacDONALD:

21 Q. Are you saying that's right, Doctor?

22 A. Yeh, I don't think-(again it might be wrong) but I think for
23 what happened in the war-time is exactly as His Honour says.
24 At least, I think the whole crew would have been -- the
25 Prime Minister would run and pin medals on everybody from

DR. JAMES V. O'BRIEN, by Mr. MacDonald

1 | the cooks and everybody else and I'd suspect that's what
2 | Roy was, he was a cook. And got a medal like everybody else.
3 | It may be quite wrong but it wouldn't surprise me if it was
4 | true.

5 | Q. Well, let me take you to the specific questions I put to
6 | you, Doctor, and let the Commissioners have the benefit of
7 | your opinion. You set out the questions on both in your
8 | letter, but I'll take you to your summary.

9 | MR. MacDONALD:

10 | And it's the last two pages, My Lords, it's page -- of exhibit 43.

11 | BY MR. MacDONALD:

12 | Q. And the first question that you've outlined there, Doctor,
13 | "Is there any credence to what he says at all?" Would you
14 | advise the Commissioners if there could be any credence
15 | to the stories that Mr. Ebsary has given to the Commission
16 | about the events of May 28th, 1971?

17 | A. Can I first of all apologize for the letter -- the letter
18 | was an attempt to clarify it but unfortunately it was typed
19 | badly and Mr. MacDonald's carrier was there breathing down
20 | the neck of the secretary, so we didn't have a chance to
21 | correct it. So my apologies if it doesn't come across very
22 | clear. I'd again with what I've said -- all I can say again
23 | is in my view is that the outline of what I say here is,
24 | "that the outline of what he says is probably true".
25 | But I think he colours it and distorts it considerably. Again

DR. JAMES V. O'BRIEN, by Mr. MacDonald

1 I -- I can only offer an opinion on that. I -- someone
2 can prove that this is quite wrong but that's my impression
3 is that what he does is gives a very -- slanted view of what
4 actually happened. And can I give an example of this. He's
5 talked about writing five books. Now this has been dismissed
6 but you should actually ask him what happened about the five
7 books. I asked him about this -- you see, he met this
8 curious character who he's called Quotodome, which is a
9 lovely name, and then this man and he -- there's some
10 connection with his family and they were sort of got together
11 and Quotodome I think from what I gather was probably
12 somewhat an excentric individual who wrote these books and
13 sent copies around to governors and kings and so on and
14 this was the answer to the world's problems. And Roy Ebsary
15 was there and he described they lived together in some place
16 in Newfoundland and spent eighteen months writing these books.
17 Now if -- it's a fairly eccentric story but there are excentric
18 people around, that I don't think this is impossible at all.
19 There's some very odd people around. So when he says he
20 wrote the books I suspect that he was there when this
21 gentleman produced these curious books and I -- it maybe
22 entirely invented but it certainly wouldn't surprise me
23 to find out again that there's a basis of truth in it.
24 Q. So is the nub of that saying that probably in most of what
25 he says, there's a nub of truth but he tends to exaggerate

1 his own role?

2 A. And colour it, yes, and favour himself, yes.

3 Q. The second question on page 10, I asked about his I.Q. level
4 and what is your view on that?

5 A. Well, again as I say here -- again just through talking
6 to him I'm going through my little tests and so on it's
7 interesting that they coincide with the I.Q. level, I think,
8 it was actually given by the psychological testing in the
9 Nova Scotia Hospital, I think, in 1980, whenever he was
10 there '82, I think it was around an I. Q. of given around
11 110 - 111. Which comes in the upper range of normal. Now
12 that roughly was where I would put him from talking to him
13 and again, my rather, my brief little tests and I've noticed
14 over the years, that they have coincided roughly with more
15 accurate psychological testing. But I think he is has a
16 facile use of words and he's a quick wit. And he also he's
17 -- you know he likes the roar of the crowd (if you like) and
18 he likes appearing in public and he's not the least bit over-awed
19 by people who perhaps other people might think he ought to
20 be over-awed by. I think he probably appears with a great
21 degree of intelligence and maybe he actually has.

22 Q. Okay, would you classify his intelligence -- or as a result
23 of your test in the upper range of normal?

24 A. Range of normal, yes.

25

DR. JAMES V. O'BRIEN, by Mr. MacDonald

1 MR. MacDONALD:

2 I can't put my hands on it immediately, My Lords, but there is
3 a psychological test in the Nova Scotia records which shows that
4 his I.Q. tested at 111 which is in that range.

5 BY MR. MacDONALD:

6 Q. Is that correct, Doctor?

7 A. Yes, yeh.

8 Q. The third question, I asked you to comment on "his stories
9 about sinking the Bismarck and so on", and you've already
10 I think dealt with that today.

11 A. Can I add with regard that, I think his wife has commented
12 somewhere back in his history that "Roy was never anything
13 but a cook on any ships he was on". Again, I don't know
14 if that's true or not but my suspicion is that he -- that
15 he may well have been on one of these boats and that in
16 fact his role was not as the gunnery officer who actually
17 sank it but he was still a cook, and may have been there.

18 Q. And then the fourth question, you've expressed it in your
19 phrase, "Does he have a psychiatric diagnosis" and in
20 brackets is my question, "Is he crazy?" And your response
21 to that is what?

22 A. When I saw him, no. At the absolute most maybe he has some
23 remnant of a mild organic brain syndrome, but that's the
24 most I could say.

25 Q. And if I can take it to the final sentence in your actual

DR. JAMES V. O'BRIEN, by Mr. MacDonald, by Ms. Edwardh

1 letter to me, Doctor, on page three, you say that

2 In brief, I do not think that either
3 his stories or the record of his
4 behaviour in the past can be
explained away on the grounds of his
being psychiatrically ill.

5 And that is your opinion, is that correct? Yes for the
6 record?

7 A. Yes, yes.

8 MR. MacDONALD:

9 That's all I have of the Doctor, My Lords.

10 BY MS. EDWARDH:

11 Q. Doctor O'Brien, would you agree that the questions posed to
12 you by Commission Counsel were at least not in the vein
13 of the ordinary kinds of questions that psychiatry usually
14 deals with. For example, to be asked whether there "should
15 be any credence given to someone's story", is not a traditional
16 question that psychiatry addresses?

17 A. True.

18 Q. And I think you very frankly indicated, sir, that to some
19 extent their Lordships are equally well capable of identifying
20 whether or not there is any truth to any particular story of
21 Mr. Ebsary?

22 A. Absolutely, absolutely.

1 Q. And that, I take it, we are to approach your opinion as
2 virtually an opinion that says he has the capacity to tell
3 the truth?

4 A. Right.

5 Q. But whether he tells it or not is something you cannot with
6 any degree of probability assert?

7 A. Quite true, yes.

8 Q. Now do I understand, sir, that essentially your conclusions
9 from your examination -- Would it be fair to call it a
10 mental status examination?

11 A. Yes, that's right. Yes.

12 Q. Okay. So you did not do a neuro-psychological examination or
13 order CAT scans or any of that?

14 A. No, he has had a CAT scan done.

15 Q. Yes, I appreciate that. You didn't do an update to see if
16 there had been any change?

17 A. Actually, no, I was -- This is all very brief. I --

18 Q. So as a result of a mental status examination which has its
19 limits (You'll agree with that?) --

20 A. Absolutely

21 Q. --your conclusion was, he is with really -- he is without
22 a major psychiatric illness at this time?

23 A. Right. Right.

24 Q. But you do not, I take it, disagree that there would be
25 certainly a mild organic brain syndrome probably present?

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 That's a mild answer?

2 A. Right. Yeh, right. I think it's quite possible if he
3 was really tested accurately that something might turn up
4 like I say.

5 Q. And indeed, that's quite probable, is it not, by virtue of
6 the actual organic impairments that were detected in the
7 CAT scan?

8 A. I think it's quite likely, yes. Yeh.

9 Q. So that although the gross deficits that were seen go or
10 disappear, and he goes into remission, things like cerebral
11 atrophy and ventricular dilation, those don't usually
12 change?

13 A. Once they're there, they're there, yes.

14 Q. They're there. And that is the kind of organic tissue damage
15 that you described earlier for us as an indication of
16 organic brain disease?

17 A. Yes. Yes.

18 Q. So I take it what you're saying is he presents mildly now -- In
19 his clinical picture is a mild presentation of O.B.S. and that
20 sometimes it's been a very serious one?

21 A. Yes. Yeh. Yeh. I -- I would further say, if I never met him
22 before and he was sent to me for the first time and I knew
23 nothing about his history and I examined him, for a man of his
24 age and ill-health as you saw him, he's a very-- (He can
25 hardly stand up from the chair.) I think his mind is remarkably

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 clear.

2 Q. Now, I take it, when you say remarkably clear though, if you
3 look at his record from what we know, there are definite
4 indications of some functional deficits --

5 A. Oh, there certainly have been in the past. There's no question
6 about it. Yes.

7 Q. And in the context of his overall history, although he had
8 deficits or limited deficits when you saw him, but when you
9 saw him you would interpret the deficits you saw in relation
10 to his history?

11 A. Yes. Yes.

12 Q. So that it's a reasonable hypothesis for us to approach him as
13 being a man with mild O.B.S. now?

14 A. I suppose so. Yes. I suppose so. Yes.

15 Q. Now perhaps you can assist us. We have heard some evidence
16 and we have also -- I think we anticipate receiving some
17 evidence that Mr. Ebsary on occasion has been involved in
18 acts of physical aggression?

19 A. Yeh.

20 Q. And I take it, did you -- Did you talk to him about those?

21 A. Briefly, briefly. I didn't really go into that in detail.
22 Briefly.

23 Q. If I were to ask you, sir, to assume perhaps as a fact that
24 there had been occasions at least of perhaps assaulted
25 behaviour with his spouse or children, would that be out of

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 character for the gentleman who you saw?

2 A. No. No. I -- In a totally cross-sectional sense maybe,
3 but obviously from his history, no, I think it's quite clear
4 that when he's drinking he can be pretty unpleasant.

5 Q. And would it be fair to say that there is some evidence at
6 least in the record that when he is drinking he can be,
7 I'll use the term "explosive" and "aggressive"?

8 A. I think he seemed to be aggressive and maybe explosive as well.
9 I do think he's been found guilty of one other stabbing, hasn't
10 he.

11 Q. Well, he's certainly been found guilty of one?

12 A. Yes.

13 Q. There is a history of carrying a knife?

14 A. That's right. Yes.

15 Q. And allegations about --

16 A. That's right.

17 Q. --having intentions at least with respect to --

18 A. Back to 1972 I think, yes.

19 Q. In fact, in the record there was at least one view of him as
20 having an explosive personality disorder. Do you recall
21 that?

22 A. I didn't see that actually. I didn't see that.

23 Q. But in any event, the violent or aggressive outbursts are not
24 inconsistent with your observations?

25 A. No, no.

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 Q. Now if I could just try and go one step back to the question
2 of capacity to tell the truth, I take it your view is that
3 the psychiatric illness does not cause him to give inaccurate
4 depictions of a fact?

5 A. No, I don't think so. I think it's a personality trait. I
6 think that's the way he is. I think it's the fisherman who
7 tells he's caught a fish that long and it's that long. It's
8 the same kind of an exaggerated version of the same thing.

9 Q. So your better view then is he -- he deliberately then
10 misrepresents a fact to colour it to point to his own -- to
11 put himself in a better position and put other parties in
12 a less positive position?

13 A. I suspect, yes. I think -- I suspect he's one of these people
14 who probably colours it from the start and once he's coloured
15 it, then it stays like that. It becomes a fixed --

16 Q. And in fact, would you agree with me that sometimes there's
17 a remarkable continuity in how he colours things over time?

18 A. Oh, yeh. Yeh. It's quite possible, yeh.

19 Q. Now one of the things that puzzles me is you also noted in
20 your report, sir, that he may be delusional, and I take it
21 at the point that you indicate that --

22 A. By the way, I only said that because he had been described
23 as delusional previously. He had been described as delusional
24 I think -- Where did I read it somewhere? See -- It would
25 be after you get to the definitions, spots of delusion.

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 Q. Yes. Well, that was my question.

2 A. Okay. Well -- Well, a simple definition of a delusion is a
3 fixed false belief unamenable to reason --

4 Q. Now I think --

5 A. --and culturally inappropriate.

6 Q. Now I take it, sir, your view is that at the time that you saw
7 him he was not delusional?

8 A. No, no, not in the psychiatric sense, no.

9 Q. And these stories, assuming that they are -- there may be a
10 kernel of truth and then he has gone on to build a fairly
11 elaborate exaggeration of them, that is not a delusion?

12 A. No, not really. No.

13 Q. Just so we can make the distinction --

14 A. Yes.

15 Q. Now what your -- what you're describing then I think you've
16 indicated in your letter is that he has a peculiar cognitive
17 style?

18 A. Right.

19 Q. So what he does is he tends to take a kernel of truth--

20 A. Yes.

21 Q. --and then build onto it a fairly elaborate series of other
22 facts and exaggerations putting himself in a position of
23 some grandeur?

24 A. That's my impression, yes. Yes.

25 Q. And I take it that you see that pattern in many of the stories

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 | that he tells, and not just the Bismark?

2 | A. Yeh. Yeh. I think that's quite likely possible.

3 | Q. Now when he seeks to -- Looking at this cognative style for
4 | a moment, in seeking to put himself in a good light, would it
5 | be fair to assume that what he does is he tries to put himself
6 | in a situation where it appears that he has physical prowess,
7 | I mean, is that part of the good light?

8 | A. That's a good point. I hadn't thought of it that way, but
9 | fair enough. Yes, he sank the Bismark and he's the fastest
10 | blade in the west or the east, whichever way it is, and this
11 | kind of thing, yes.

12 | Q. And he also enhances his -- leaving aside just physical
13 | prowess, his combative qualities are enhanced?

14 | A. Yes, that's -- that's --

15 | Q. In his stories?

16 | A. I think so. Yes, that's my opinion.

17 | Q. Now but aspects of those that tend to indicate bad judgement
18 | on his part or cowardness would all be detracted from him?

19 | A. I would say it's quite likely, yes. I think it's not
20 | unlikely, yes.

21 | Q. And in putting others in a bad light, I would take it that
22 | if he had been criticised for something, he would tend to
23 | shift blame and do things like that, that would be part of
24 | that cognative style?

25 | A. I wouldn't be the least bit surprised, yes.

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1 Q. Now is it also your evidence, sir, that it is very hard today
2 without a detailed, detailed, process of verification, to
3 find out just how elaborate the reconstruction is in any of
4 these stories?

5 A. I think it would be very hard, yes. I think you'd -- you'd --
6 For instance, these naval stories and his writing books, I'm
7 just guessing about the books. I'm just guessing from his
8 description, but that's right, you'd have to have the details.
9 That's right.

10 Q. We go from Mr. Ebsary having written all those books to him
11 having known someone and maybe being present at a time when
12 they wrote the book to there being no books at all. We don't
13 really know?

14 A. We don't really know. No, we don't.

15 Q. And with the Bismark we know--If I could just refer you to the
16 record (You have it in front of you.) we know, for example, that
17 he was in the Royal Navy. We don't know anything about his
18 ships, but we also know he was an ordinary serviceman, rank
19 O.S. Is that ordinary serviceman?

20 MR. CHAIRMAN:

21 Ordinary seaman.

22 BY MS. EDWARDH:

23 Q. Ordinary seaman.

24 A. Ordinary seaman, yes.

25 Q. And I would take it that would mean he was not a captain?

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 A. From my knowledge of the Royal Navy, that means he was not
2 a captain.

3 Q. So he may have been on a boat and been a cook, but somewhere
4 between that and sinking the Bismark as a gunnery officer
5 is the truth?

6 A. Yes, I -- Yes, I would suspect so, yes.

7 Q. Now I'd take it, sir, you have not done any of that factual
8 verification?

9 A. No.

10 Q. And nor has anyone really given you a basis other than this
11 one sheet to begin that process?

12 A. No.

13 Q. Now you also heard of the and have been given some of the
14 statements and testimony of Mr. Ebsary. Would you agree with
15 me that the most likely kernel of truth in his story about
16 Mr. Seale and what happened on May 28th, 1971, is that he
17 stabbed Sandy Seale (And let me carry it on with another
18 question,) and that is most probably the kernel of truth
19 because it is the kind of act that he would most likely
20 remember and then fix as they point to -- then build his
21 explanations and rationalizations?

22 A. I can't really answer you. I really don't know. I honestly
23 don't know. You may be quite right. I think your guess
24 is probably as good as mine. I don't know. What he has said,
25 I think, and repeatedly, he "took a swipe" at him. Now I believe

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 in his words he "swiped" him. I think it's quite possible
2 in the reality of a fairly tense situation in which he
3 said he felt he was going to be mugged, the fellow was asking
4 him to dig down and bring all these out, it was dark and
5 the rain was pouring, and he got the knife and took a "swipe"
6 at him. I think it's quite possible to possibly just stick
7 a small knife into someone and not even be fully aware of
8 it or how far he went. I don't know.

9 Q. Let me just propose a hypothesis to you. Let me ask you to
10 assume for a minute that he stabbed Mr. Seale and that it
11 was a very powerful wound to the abdomen.

12 A. Yes.

13 Q. One stab. And that Mr. Ebsary now says he swiped -- he took a
14 "swipe" at someone. Isn't that -- Using the paradigm you've
15 been using of his cognitive style, isn't that precisely the
16 kind of thing he does, he fixes on the truth that he had a
17 knife and stabbed Sandy Seale and then he minimizes so to
18 excuse himself?

19 A. Oh, it is quite possible. Yes, Yes. Indeed it's quite
20 possible, yes.

21 Q. So if one were to take that cognitive style and impose it
22 upon this case, that would be the conclusion you'd come to
23 most probably?

24 A. It's not at all unlikely anyway, yes.

25 Q. And further that when he says, "I was attacked and then I struck

DR. JAMES V. O'BRIEN, by Ms. Edwardh

1 in self-defence," that's also the kind of circumstance that
2 Mr. Ebsary would recreate to enhance his entitlement to
3 act, his prowess in defending himself?

4 A. Yes. Yes. Again though, I think I would say though that
5 again with the cognitive style I think that he would be most
6 unlikely or unlikely to do it unless he felt threatened in
7 some way.

8 Q. And would you agree with me, sir, that men who drink the way
9 Mr. Ebsary drank and had the difficulties associated with
10 his life style and pattern in 1970 through to 1980, go through
11 periods of time where they may well suffer from paranoid
12 ideation and some of that is present in his record?

13 A. It's possible. Is there a record of paranoid ideation on
14 him.

15 Q. I thought that there was reference to it in some of the
16 admissions?

17 A. Oh, when he retired to his room or something. You might be
18 right. I think there's a fairly mild reference, but you
19 may be right. Yes, you may be right.

20 Q. But it's also typical of that syndrome?

21 A. Well --

22 Q. Or let me put it this way, it may be typical of that syndrome?

23 A. In a way -- I suppose in a way I'm getting right out of my
24 depth here when I say his cognitive style. I mean that's --
25 I don't think that's any psychiatric illness, and therefore,

1 in a certain sense your guess about it is as good as mine.

2 You know, people who exaggerate and tell stories and so on
3 and so forth are not psychiatric people. Now they may be
4 peculiar, but they're not psychiatric people. Therefore, your
5 guess about it is really as good as mine.

6 Q. So what you're really saying, sir, is, on this whole set of
7 issues about whether he is believable or not believable or
8 telling the truth or whatever, that's beyond the area of
9 expertise that a psychiatrist really has?

10 A. I think so, yes.

11 Q. And so all you can tell us really today then is that he
12 is capable of telling the truth and on some occasions he
13 doesn't?

14 A. That's right. Yes.

15 Q. Is that a fair statement of your evidence?

16 A. Yes, and perhaps (to add to that in my view and again) I
17 could be disputed over this, is that in most of these things
18 there is this kernel of truth in it?

19 Q. Yeh.

20 A. Now where the kernel is at, that I can't really say, but
21 my impression is that most of the things he describes has
22 this kernel of truth and they're exaggerated and distorted
23 in which he comes out looking pretty good.

24 Q. And would you agree, sir, that from your assessment anyways
25 the level of extortion and distortion and exaggeration may,

DR. JAMES V. O'BRIEN, by Ms. Edwardh, by Mr. Murray

1 in fact, be quite extensive?

2 A. Well, you may be right.

3 MS. EDWARDH:

4 Those are my questions.

5 MR. CHAIRMAN:

6 Now Mr. Murray.

7 BY MR. MURRAY:

8 Q. Doctor, my name is Donald Murray and I'm going to be asking
9 some questions on behalf of John F. MacIntyre and William
10 Urquhart. You mentioned to my friend that -- something to
11 the effect that if you'd never met Mr. Ebsary before and if
12 you hadn't had all these records to deal with it would strike
13 you that his mind was remarkably clear?

14 A. Yes.

15 Q. And, I take it, sir, that for a layman it would be even more
16 difficult to determine whether there was any problem with
17 Mr. Ebsary?

18 A. I would hope so, yes.

19 Q. Do I understand from what you said that Mr. Ebsary's slant of the
20 truth is a conscious slanting of the truth?

21 A. I didn't say that. I'm not sure. I'm not sure. I suspect--
22 I don't know really. I can't answer -- I suspect that
23 maybe when things first happened he maybe consciously slants
24 it when the things originally -- when he's telling the story
25 the first time, after that it becomes how it actually was.

DR. JAMES V. O'BRIEN, by Mr. Murray

1 | Whether that's entirely conscious or subconscious, I mean,
2 | I'm really not -- I think that that would be a question you
3 | could argue about back and forth all night. I'm not sure
4 | really. I think as I say -- I think as I said to your -- to
5 | the last lawyer was that it's a -- it's a cognitive style.
6 | It's a way of thinking that he has. It's pretty -- It's an
7 | odd distortion he has of looking at the world.

8 | Q. I see. Is he the kind of person that takes pleasure in
9 | misleading others?

10 | A. I don't know. I think he likes to tell a good story.

11 | Q. Spinning yarns?

12 | A. Well, I think so.

13 | Q. There was some mention in your -- in your letter to Mr. MacDonald
14 | about the affect of alcohol on Mr. Ebsary and his telling of
15 | stories. On the third page.

16 | A. Where's my letter? I've actually mislaid a letter here
17 | somewhere, wherever it is. Go on anyway. What was the
18 | reference?

19 | Q. In my view rather than being psychiatrically
20 | ill he is a rather eccentric, curious old
21 | man with a number of quite nasty traits and
22 | a number of good ones also which almost
23 | certainly become exaggerated when he is under
24 | the influence of alcohol.

23 | A. Yes.

24 | Q. Would that include his exaggerating in stories?

25 | A. I really couldn't say because I haven't met him when he was

DR. JAMES V. O'BRIEN, by Mr. Murray, by Mr. Ross

1 drunk. The reason I know about the other things is that it's
2 been recorded he was like that. His wife and his children
3 say the same things so I'm simply taking that on the
4 records of the past, but I --

5 Q. Is he like that?

6 A. Sure. It's quite possible. Yes.

7 MR. MURRAY:

8 No further questions.

9 MR. BARRET:

10 No questions, My Lord.

11 MR. SAUNDERS:

12 No questions, My Lord.

13 MR. BISSELL:

14 No questions.

15 MR. PRINGLE:

16 No questions.

17 MR. CHAIRMAN:

18 Mr. Ross.

19 MR. ROSS:

20 Questions, yes, My Lord.

21 BY MR. ROSS:

22 Q. Doctor O'Brien, my name is Anthony Ross and I'll be asking
23 you some questions on behalf of Oscar Seale.

24 A. Yes.

25 Q. Now as I listened to questions this morning it appeared as

DR. JAMES V. O'BRIEN, by Mr. Ross

1 | though a psychologist as opposed to a psychiatrist might
2 | be most appropriate to answer the questions you were
3 | asked this morning. Am I correct in that?

4 | A. You might be right. Yes, you might be right. In particular
5 | to give a detailed neuro-psychological record maybe obvious
6 | of the degree, if you like, or if it exists, of his organic
7 | brain syndrome, yes. I think you're probably right, yes.

8 | Q. And I take it that as a psychiatrist you deal with things
9 | more from a medical as opposed to a psychological and not
10 | analytical perspective?

11 | A. I think as a psychiatrist I sort of try to keep a foot in
12 | both camps if you like.

13 | Q. I see. I'm particularly interested in this because my
14 | learned friend here Ms. Edward was -- just about asked you
15 | to give as a professional opinion that Ebsary would have
16 | stabbed Seale and I noticed you backed away from that?

17 | A. Because I don't know.

18 | Q. I see. Now tell me, with respect to the questions about the
19 | capacity to tell truth by Mr. Ebsary, is it fair to say that
20 | your answers were more speculative than professional opinion
21 | in that regard?

22 | A. I think they're definitely speculative because I don't think
23 | really that that -- I think -- you know, I don't think
24 | that I am a particularly good judge on that particular
25 | question. I don't think it is a particularly professional --

DR. JAMES V. O'BRIEN, by Mr. Ross

1 Q. And then I must then ask you three short questions and if
2 the answers are better given by a psychologist as opposed to
3 a psychiatrist, perhaps you'd be good enough to give me that
4 as the answer, and if it is the type of question that a
5 psychiatrist could respond to, then I'll ask for your
6 response. The first question is, you've told us that while
7 the Reverend Captain Ebsary may not have actually sunk the
8 Bismark but he might have been there. Now I take it that
9 you didn't do any real research with Mr. Ebsary to respond
10 the way you responded from a psychiatric as opposed to a
11 psychological point of view?

12 A. I'm a bit mystified. I don't quite get the question.

13 Q. You think you're mystified, ask us. Anyway, I will try it
14 again and perhaps I'll indicate to you what I'm getting
15 at. We've heard a suggestion that the Reverend Captain's
16 responses might be substantially exaggerated, (a) perhaps with
17 respect to the Bismark, and (b) with respect of the books
18 that have been written. Would it also be consistent with
19 your view that he would exaggerate anything that might
20 have happened around Wentworth Park
21 the night of the stabbing had he been in the general area?

22 A. I -- I think that that's a fair answer, yes. I mean--as I
23 say I think he has a certain cognitive style which I
24 think he will apply to all the episodes of his life, particularly
25 what he sees as the more, I suppose, exciting episodes of his

1 life. I think he has a tendency to distort them in his favour
2 if you like.

3 Q. Sure. There's one other thing that I'm personally confused
4 on and perhaps you could help with this, Doctor O'Brien, and
5 that is the circumstances under which one is released from
6 a mental institution on this so called Lieutenant Governor's
7 Warrant.

8 A. Yeh.

9 Q. Now my understanding is that around May of 1982 Mr. Ebsary was
10 committed?

11 A. Yeh.

12 Q. And around June he was released?

13 A. Yes.

14 Q. As I look at the nurses' notes it appears as though the nurses'
15 notes are, "consistent and no confusion throughout the period
16 of his stay". What process would have to be invoked before
17 he can be properly released, do you know?

18 A. Yes.

19 Q. What's that?

20 A. If someone's on Lieutenant Governor's Warrant then the
21 Review Board --

22 Q. Could you perhaps just hold until Commission Counsel finishes
23 with their findings -- They will instruct me-- Yeh.

24 A. If someone is confined on a Lieutenant Governor's Warrant
25 and the only forensic unit where they are confined in Nova

DR. JAMES V. O'BRIEN, by Mr. Ross

1 Scotia is in the forensic unit of the Nova Scotia Hospital.
2 The Review Board reviews all their cases and I think they
3 have to -- The Review board has to see them, I think, at
4 least every six months. Now each individual on the
5 Lieutenant Governor's Warrant is brought before that board
6 once at least every six months and the staff of the unit,
7 the psychiatrists, the psychologists, the nurses, etcetera,
8 present that case and they say, "Look, we have got whatever
9 it is here". "We have this person here". "This is how
10 we find him now." Our view is that he's well enough to have
11 the Lieutenant Governor's Warrant lifted or the opposite.
12 The Board listens to the evidence of the staff and sees the
13 individual at some considerable length and then decides
14 whether they agree or not. It's that Board that decides and
15 at the present time that Board then makes a recommendation
16 to the Lieutenant Governor who as far I -- at the present
17 I think really "rubber stamps" their opinion. I don't think
18 he's ever changed the opinion of the Board. So that's how
19 it's lifted.

20 Q. I see. So I take it then that if somebody's committed,
21 it's really for observation and it's lifted after the staff
22 is satisfied there is no further need for them to be committed?

23 A. Observation and treatment, yes.

24 MR. ROSS:

25 Thank you very much, Doctor.

DR. JAMES V. O'BRIEN, by Mr. Ross, by Mr. Wildsmith

1 | THE WITNESS:

2 | You're welcome.

3 | MR. CHAIRMAN:

4 | Mr. Wildsmith.

5 | MR. WILDSMITH:

6 | Just a few questions, My Lord.

7 | BY MR. WILDSMITH:

8 | Q. Doctor, are you a member of the Canadian Psychiatric
9 | Association?

10 | A. Yes.

11 | Q. And do you know whether or not that Association has a particular
12 | section that deals with native mental health?

13 | A. That's a very good question. I don't think so, no, but it
14 | may have.

15 | Q. Let me ask you a question that would stem from that. Can you
16 | confirm whether there exists a body of knowledge that deals
17 | with psychiatric problems more peculiar to Indians or more
18 | common with Indians than the majority population?

19 | A. I suspect there strongly is in Ontario, but frankly I don't
20 | know too much about it.

21 | MR. WILDSMITH:

22 | Okay. That's all my questions then. Thank you.

23 | MR. CHAIRMAN:

24 | Mr. MacDonald.

25 | MR. MacDONALD:

Just one question, My Lord, and this is for my benefit later when

DR. JAMES V. O'BRIEN, by Mr. MacDonald

1 I'm reading the record I guess.

2 BY MR. MacDONALD:

3 Q. Would you tell me what paranoid ideation is?
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JMB.

DR. JAMES V. O'BRIEN, by Mr. MacDonald, by Commissioner Evans

1 A. Well, the word paranoid has become a bit distorted. The
2 word paranoid really strictly means delusional and they
3 should be interchangeable. But because paranoid --
4 because delusions are usually delusions of suspiciousness.
5 I'm suspicious that people are talking about me or against
6 me in some way. The word -- the word -- people -- the
7 popular use of the word paranoid has become synonymous
8 almost with being of suspicious. People -- patients come to me
9 and say "I'm paranoid". What they mean is they feel that
10 people looking at them are sort of suspicious of them
11 in some way. So paranoid ideational really means someone
12 who has this kind of -- who's vaguely feels that people are
13 against him in some way without having a fixed delusion of
14 some sort -- it's sort of a general feeling that that people
15 are against him really. So that's the simplest explanation
16 of it.

17 MR. MacDONALD:

18 Thank you, I have no other questions, My Lord.

19 BY COMMISSIONER EVANS:

20 Q. Doctor, would it be fair to say in just a brief sum-up that
21 this is a 77 year old eccentric character who is in poor
22 physical health, contributed to by in part at least, by
23 abuse of alcohol or drugs, who has a very vivid imagination
24 and is quite articulate with an I.Q. in at least an average or
25 high normal range, that he is not delusioned and has no

1 major psychiatric problems, but who in the recitation of
2 factual situations in which he has become -- has been
3 involved, his tendency is to present those facts in a manner
4 which makes him out as the hero and all others involved as
5 far lessor lights. And the man who is a stage player, who
6 does not mind the audience when he is telling his story. In
7 fact, he loves to have an audience in telling his story; but
8 that he is not psychologically ill at the present time.

9 A. I -- you have put it exactly, I think. I couldn't have put it
10 better. I agree with you completely.

11 Q. Thank you. That's one of the few times anybody's ever agreed
12 with me completely.

13 BY THE CHAIRMAN:

14 Q. May I, Doctor, just for my own curoosity -- not curoosity but I
15 missed the -- who is the name of the co-author.

16 A. Quotodomine.

17 Q. Oh, yes.

18 A. And apparently according to Mr. Ebsary they were secluded
19 in Argentia for eighteen months while they produced these
20 volumes.

21 Q. Argentia.

22 A. Yes, he gave me the name of them.

23 Q. Did he really?

24 A. I remember four -- he remembered four of the five of them.

25 Q. In trying to get his history, did he indicate to you where

DR. JAMES V. O'BRIEN, by Mr. Chairman

1 he attended school?

2 A. In Saint John's.

3 Q. I know but the -- I thought I detected a boarding school
4 accent. I'm sure I've insulted everybody here now who's
5 attended --

6 A. I think that his accent and his phraseology is very much
7 coloured by (a) his experience in the Royal Navy and (b)
8 he had a curious up-bringing in which -- in which he
9 describes -- he was brought up really by his grandmother
10 who had an all-absorbing interest in the Royal Family and
11 she knew every cousin of the Royal Family back to the year
12 -- the fifth century or sixth century I think -- anyway --
13 and I think Roy was brought up and his was -- he knows a
14 great deal about his family that he came from a village in
15 Sussex and whatever it was and so and so. He has this sort
16 of strong sort of English connection of which he is very
17 proud and I think that this is where this probably comes
18 from. I don't think he went to a boarding school. I just
19 think it went to local school but there is this several
20 years in the Royal Navy and he got several expressions
21 like, "nothing wrong with the old bean", he said to me.
22 You know, that's a very English expression. And a few
23 other things. I underlined them actually because it struck
24 me at once as being so non-Canadian and so I think this is
25 where that comes from. That's my suspicion.

DR. JAMES V. O'BRIEN, by Mr. Chairman

1 Q. Fine, thank you very much Doctor.

2 BY MR. MacDONALD:

3 Q. Thank you, Doctor, that's all.

4 MR. MacDONALD:

5 My Lord, if other counsel have no objection, there is another
6 witness we can call now and I would think a short witness. It's
7 Mr. Poirier who had been on the -- he was on the stairs with
8 Mr. Pratico and he initially had been scheduled to come right
9 after Mr. Mian or Doctor Mian. He wouldn't -- we don't expect
10 he will be long. If you want to use up the time this morning --

11 MR. CHAIRMAN:

12 Would you guarantee that he'll be out within a half an hour?

13 MR. MacDONALD:

14 Oh, we'll guarantee, My Lord, that we'll stop in a half an hour
15 and if he's not, it's just as good, I suppose. Is there any --
16 unless there's some objection from some other counsel.

17 MS. EDWARDH:

18 If I may, My Lord, I don't -- there are some things that this
19 witness says that I have a real interest in and will want to
20 cross-examine him. I do not have the materials here. On the
21 basis of what was said in terms of our program, they were packed
22 away and not retrievable in an immediate forty-five minutes. I'm
23 sorry.

24 MR. MURRAY:

25 Similarly.

DISCUSSION BETWEEN COMMISSION AND COUNSEL

1 MR. MacDONALD:

2 That's fine, My Lord. I had anticipated Doctor O'Brien may have
3 taken longer. That's all.

4 MR. CHAIRMAN:

5 So we will adjourn until Tuesday, October the 6th, 1987, at nine-
6 thirty a.m.

7
8 INQUIRY ADJOURNED AT 10:46 o'clock in the forenoon on the 25th
9 day of September, A.D, 1987.

COURT REPORTER'S CERTIFICATE

I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 25th day of September, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to typewritten copy.



Judith M. Robson
Official Court Reporter
Registered Professional Reporter