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SDS Case Number 87-312

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

VOLUME XIV

Held: October 6, 1987

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

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

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

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

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

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

Donald C. Murray: Counsel for William Urquhart

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

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

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

Al Pringle: Counsel for Correctional Services Canada

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

Charles Broderick: Counsel for Carroll

S. Bruce Outhouse: Counsel for Wheaton & Scott

Guy LaFosse: Counsel for Davies

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

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

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

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

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COURT REPORTER'S CERTIFICATE ..... NN

INQUIRY RECONVENED AT 9:35 o'clock in the forenoon on Tuesday, the 6th day of October, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia

1 MR. SPICER:

2 Good morning, My Lord. There's two or three more volumes of exhibits
3 that I just wanted to get filed and tell counsel the numbers of the
4 various exhibits. They've all been distributed to counsel. The
5 large volume which contains the medical records of John Pratico from
6 the Cape Breton Hospital and the Nova Scotia Hospital would be
7 exhibit 47. There's a volume that was distributed this morning
8 which is called volume 22. Just to make it more interesting, it's
9 exhibit 48. That's information and associated documents concerning
10 Tom Christmas and Donald Marshall, Junior. And finally, there's a
11 separate volume of medical records of John Pratico which would be
12 exhibit 49 and which is contained in volume 23. All those materials
13 have been distributed to counsel.

14 MR. CHAIRMAN:

15 Fine. Before we start this morning's proceedings, simply for the
16 record because counsel have already received a schedule of hearings
17 for the remainder of this calendar year but for others that may be
18 interested, we will be sitting -- and this relates only to the
19 Sydney Sittings. We will sit this week through to Friday morning,
20 nine to eleven-thirty. And then we -- from there on we will be
21 sitting a four-day week Monday to Thursday's and we will adjourn
22 Thursday afternoon at four o'clock. We will be sitting on the week
23 commencing October 26th, November the 2nd, November the 9th,
24 November the 16th, November the 7th -- December the 7th, December the
25 14th and hopefully that will be the -- that will conclude the

DISCUSSION BETWEEN COURT AND COUNSEL

1 hearings in Sydney. I'm not particularly anxious to come back for
2 the week commencing December the 21st but I'm sure Counsel would
3 insist that we do that if it becomes necessary. So with that rider and
4 nebulous qualification, are you ready to proceed, Mr. Spicer?
5 MR. SPICER:
6 Thank you.
7 MR. PUGSLEY:
8 My Lord, just before my friend begins, the volumes given to us this
9 morning relates to an information concerning Thomas Christmas on
10 June the 11th of 1971. Evidence was given by John Pratico at the
11 preliminary at that time and by Mrs. Pratico. I've not had a full
12 opportunity of examining the evidence but had I had it at our last
13 sittings, My Lord, I think I would have taken the opportunity of
14 examining both John Pratico and Mrs. Pratico and the evidence they
15 gave at that time. I'd simply like the opportunity of going through
16 the transcript and if necessary, I would be making an application
17 that those two people be called -- recalled so that they may be
18 cross-examined on the evidence they gave at that preliminary.
19 MR. CHAIRMAN:
20 All right.
21 MR. SPICER:
22 Thank you, My Lord. The first witness is Rudy Poirier.
23
24
25

RAYMOND RUDOLPH POIRIER, being called and duly sworn, testified as follows:

BY MR. SPICER:

Q. Your full name, please?

A. Raymond Rudolph Poirier.

Q. And where do you live?

A. 90 Victoria Road.

Q. Mr. Poirier, in 1971, were you living in Sydney?

A. Yes, at 209 Bentinck Street.

Q. Did you have occasion in July of 1971 to give a statement to the Sydney Police Department?

A. Yes.

Q. Do you have -- and that statement is in volume 12, page 287. That's the document you have in front of you.

A. Yes.

Q. Do you have any recollection at this time of the giving of that statement?

A. Not exactly this one. What I remember though is just that we were sitting on the step that morning or afternoon, whatever it was on Sunday --

Q. All right, let me just stop you there before you get going. Can you just give us then your recollection of when this dicussion took place? It's a couple of days after the incident on May the 28th?

A. Yeh, I believe so.

Q. Okay, just tell us then what you remember of that discussion as

1 now reflected in your statement?
2 A. By not going what that is?
3 Q. Just tell us what you remember.
4 A. Well what I remember was we were sitting on the step. There was
5 me, Johnny Pratico, Glen Lamsen. Mr. Marshall was coming down
6 the -- from being questioned at the police station. He looked
7 nervous and asked us for a cigarette.
8 Q. Now before Junior got there, do you have any recollection whether
9 or not Mr. Pratico said anything to you about knowing anything
10 about the stabbing?
11 A. No, not a thing.
12 Q. He didn't or you don't remember.
13 A. I don't think he mentioned anything.
14 Q. He didn't mention anything. Okay, go ahead.
15 A. So we were just sitting there and when he asked us for a
16 cigarette, we asked him what was the matter and he -- we seen
17 the bandage on his arm. He showed us the stitches and then he
18 told us that him and his buddy, Sandy Seale, were walking through
19 the park. Two fellows approached him, asked him for a cigarette.
20 One guy stabbed Sandy Seale, made a stabbing motion at him, got
21 him in the arm and they left.
22 Q. Did he give any description to you of those guys that had done
23 the stabbing?
24 A. In the statement when the -- this statement, he did.
25 Q. Yeh.

1 A. He said there was shorter man in his fifties and a younger fellow
2 in his late twenties.
3 Q. And that's -- Your recollection of what he said to you that day is
4 what's written in that statement of July the 2nd. Is that right?
5 A. After I read the statement, yes.
6 Q. Yeh, okay. How long do you think the conversation lasted with
7 Junior Marshall?
8 A. Maybe ten, fifteen, twenty minutes.
9 Q. Your statement is on July 2nd. Can you give us any indication
10 of how it was that you came to give that statement?
11 A. How -- I'm not really sure. I think it was Mr. Pratico had
12 mentioned to the Detectives that we were sitting on the step
13 and they just wanted to verify what Junior Marshall had said
14 to us and one day I was home and they came to pick me up and
15 asked me to come up and give a statement.
16 Q. And who is they?
17 A. I think it was Mr. MacIntyre.
18 Q. Okay, do you remember the circumstances of giving that statement?
19 Where did it take place? At the station?
20 A. At the police station.
21 Q. Do you remember how many officers were present?
22 A. I think just the two. I think it was Mr. MacIntyre and Mr.
23 Urquhart.
24 Q. Do you remember what the tenor of the interview was? How was
25 Mr. MacIntyre's voice? Was he kind to you?

1 A. Just normal. No pressure.
2 Q. Was any attempt made to change anything that you were saying?
3 A. No.
4 Q. Do you know how John Pratico's name got to the Sydney Police
5 Department?
6 A. Not really.
7 Q. Did you give John Pratico's name to Sergeant MacIntyre?
8 A. Not that I remember.
9 Q. Not that you remember. Did you know John Pratico?
10 A. Yes, we were neighbours.
11 Q. Okay, and did John have any kind of a reputation with the kids?
12 A. No, not really.
13 Q. What did you think of his -- of his mental state at the time?
14 A. Oh, he was in bad shape.
15 Q. Yeh, now when you say he was in bad shape, in what sense was he
16 in bad shape to your knowledge?
17 A. Just by his reactions. His nerves were shot. He was always on
18 medication. You know if somebody hollared at him -- if his
19 mother hollared at him, he'd take off and run, you know.
20 Q. Do you know him to be the sort of guy that would make up stories?
21 A. Well, he -- Well at that time he used to make up all kinds of
22 stories, you know, but you wouldn't remember them now but you
23 know living next to him, you wouldn't believe what he was saying
24 half the time anyway because he was so doped up.
25 Q. I'm sorry. You wouldn't believe what he was saying half the time

1 because he was what, so doped up?
2 A. Yes.
3 Q. On medication?
4 A. Yeh.
5 Q. Okay, did you know that John Pratico was going to be a witness
6 at the preliminary or at the trial?
7 A. Not right off the bat, no.
8 Q. Did you know before it happened?
9 A. No.
10 Q. When did you realize that he'd been a witness?
11 A. When they started the preliminary hearings, I guess.
12 Q. Okay, so you would have known -- did you know then that he was
13 going to be a witness at the trial in November?
14 A. It's hard to say. I might have.
15 Q. Okay. Did you have any discussions with Sergeant MacIntyre or
16 anybody else with the Sydney Police Department concerning John
17 Pratico's state of health?
18 A. No.
19 Q. No. Were you ever contacted prior to the preliminary or prior
20 to Mr. Marshall's trial by any of the lawyers acting for Mr.
21 Marshall; that is, Mr. Khattar or Mr. Roseblum?
22 A. No.
23 Q. Were you ever contacted by the Crown Prosecutor, Mr. MacNeil?
24 A. No. Nobody.
25 Q. Subsequent to giving the statement on July 2nd, were you ever

1 contacted again prior to trial by anybody in the Sydney Police
2 Department?
3 A. No. Not --
4 Q. I'm sorry?
5 A. Not that I know of.
6 Q. Not that you know of.
7 A. Not that I recall.
8 Q. Were you contacted in 1982 by the R.C.M.P.?
9 A. Yes. Sergeant Wheaton.
10 Q. And do you remember the circumstances under which he contacted
11 you? Where were you?
12 A. I was home.
13 Q. Did he come to your house?
14 A. Yes.
15 Q. And what did he say to you?
16 A. Just asked me if I remember my statement, you know. I just
17 basically told him what I just said a little while ago.
18 Q. Did he have a copy of the statement with him when he came to see
19 you?
20 A. No, I don't believe so.
21 Q. No. Did he indicate to you why he was coming to talk to you?
22 A. Yes, he said there was a -- they were reopening the investigation.
23 Q. Did he say anything further or just that "we were reopening the
24 investigation"?
25 A. No, that's about all I can --

1 Q. Was he by himself?
2 A. Yes, I think his partner was in the car.
3 Q. Do you know who his partner was?
4 A. No, not at the time.
5 Q. And it's your recollection then I take it, that it wasn't you
6 that gave John Pratico's name to the Sydney Police Department
7 following that meeting on the steps?
8 A. Not that I can remember, no.
9 Q. Did you have occasion to talk to Junior Marshall again following
10 that morning on the steps prior to his arrest?
11 A. I never seen him after that except for at the trial.
12 Q. At the trial. Did you know Junior?
13 A. No.
14 Q. Was the first time you say him then when he came walking
15 along that morning?
16 A. Yeh.
17 Q. Did you know who he was?
18 A. No.
19 Q. No. Never seen him, never heard of him.
20 A. No.
21 MR. SPICER:
22 Thanks very much.
23 BY MR. RUBY:
24 Q. Am I correct, Mr. Poirier, that you now have very little memory
25 of this conversation apart from what is on this paper?

1 A. After reading this two weeks ago but I didn't remember half what
2 I had said, you know. Just basically similar to what I just
3 said when I first asked Mr. Spicer's answers.
4 Q. I'm trying to understand whether or not as a result of reading
5 the paper you now have a real recollection of the conversation
6 on the front porch --
7 A. No, not really. Just basic parts.
8 Q. Just the basic stuff and you're relying for detail on the state-
9 ment, I take it? You're relying for the details on the statement?
10 A. I was what?
11 Q. In terms of recollecting what took place, you're remembering it
12 because you've read this.
13 A. I remember it because I read this? No. Just basic parts I
14 remember but like the part in here where it says that older
15 person was in his fifties or that, I didn't recall that until
16 I heard this again.
17 Q. Okay. Once you read it, do you recall it being said, or are
18 you just accepting it as being said at the time because it's
19 down here on the paper?
20 A. Well, I accept it as from being down there that I said it.
21 Q. That's the way you're approaching this document, correct?
22 A. Yes.
23 Q. Okay. There's one statement here that I want to ask you a question
24 about and that's the third last line. "He", and I take it that's
25 Junior Marshall, "said then that two men took off and jumped in a

1 white Volkswagen. I'm wondering whether or not that came from
2 some other source, for example, Mr. Pratico because on May 31st,
3 1971, in a document found in Exhibit book Volume 16, page 22,
4 a statement of May 30th was given by Mr.Pratico where he uses
5 almost exactly the same words, word for word: "They jumped
6 into a white Volkswagen."?
7 A. Couldn't say.
8 Q. You're not sure if it came from Marshall or Pratico?
9 A. No. I'm not sure.
10 MR. RUBY:
11 Thank you, sir.
12 BY MR. PUGSLEY:
13 Q. The statement to which Mr. Ruby referred you a moment ago, the
14 statement of John Pratico was given on May 30th, 1971, which was
15 the Sunday after this incident, this incident occurring in the
16 park at around midnight on Friday night, on the 28th. It's my
17 understanding that the discussion you had with Mr. Marshall when
18 you were sitting on the doorstep occurred on the Saturday morning
19 on May 29th; that is before the statement given by John Pratico
20 on the 30th. My friend referred -- I'm sorry, my friend refers
21 me to your statement which says -- Do you have Volume -- You
22 have your statement in front of you.
23 A. Yes.
24 Q. And your statement is given on July 2nd and it says: "Sunday,
25 after the stabbing at the park", is it possible for you to recall

1 now whether that -- that incident -- that meeting with Marshall
2 occurred on the Sunday or the Saturday morning?
3 A. Probably. Right now I couldn't remember.
4 Q. All right. It doesn't really matter. The statement given by
5 Pratico was on Sunday afternoon. Perhaps the same day you met
6 Marshall, perhaps the day after, where Pratico talks about the
7 white Volkswagen and you as well talk about a white Volkswagen.
8 Is it likely that that white Volkswagen came from Donald Marshall,
9 that he was the person who originally spoke of the two men who
10 attacked him jumping in a white Volkswagen?
11 A. Most likely when I gave this --
12 Q. Most likely, yeh. Okay. You talked about Pratico making up
13 stories. That was a habit of his.
14 A. Yes.
15 Q. You gave that evidence to my friend, Mr. Spicer. Yes. Are you
16 aware that Mr. Pratico gave evidence before Judge John F.
17 MacDonald on June the 11th of 1971 where he was on the stand for
18 about six pages, that he gave evidence before the same Judge
19 MacDonald in July of 1971 at the preliminary of Donald Marshall
20 where he was on the stand for -- evidence after being transcribed
21 was nine pages long and that he gave evidence before Mr. Justice
22 Dubinsky and a jury in November of 1971 and the trial evidence
23 goes from pages 214 to 270, almost fifty-six pages of evidence
24 and these judges and that jury in November had an opportunity
25 of seeing Mr. Pratico. Were you aware of that, that he was

1 viewed not only by a judge and jury but by three -- on three
2 separate occasions in the summer and fall of 1971?
3 A. I guess so.
4 Q. And that at least to those judges and that jury he did not appear
5 to be making up stories.
6 A. I don't know. I couldn't say.
7 BY MR. CHAIRMAN:
8 Q. Mr. Poirier, you have no idea whether Mr. -- who Mr. Pratico
9 appeared before?
10 A. No, not really.
11 BY MR. PUGSLEY:
12 Q. Did he -- You were a next-door neighbour of his at this time?
13 A. Yes.
14 Q. Yes. Did he ever discuss with you the fact that he had given
15 evidence or that he was going to give evidence?
16 A. No.
17 Q. How often did you see him?
18 A. Every day for awhile and then I think after that happened, he
19 went back to his father for awhile and he was back and forth to
20 the Pier most times.
21 Q. Was he sleeping in the house next door? That was his mother's
22 house, was it?
23 A. Sometimes, yes. Sometimes he'd go down the Pier and stay with
24 his father and come back and stay with his mother.
25 Q. I see. Was there any rhyme or reason to that? Would he go for

1 a particular period of time to stay with his father?
2 A. No, not really.
3 Q. Would it be fair to say that you saw him at least every other
4 day throughout the summer of 1971?
5 A. No, I never seen too much of him. I think he went away, like,
6 went away for awhile.
7 Q. I see. We know that he went in the hospital in late August,
8 1971.
9 A. Yes.
10 Q. Up until that time, would you have seen him every other day?
11 A. I couldn't say.
12 Q. I see.
13 A. Before that, I -- you know, --
14 Q. Did you go -- were you going to school at that time?
15 A. No.
16 Q. Was he going to school in June?
17 A. I believe so.
18 Q. Yes. Were you working?
19 A. At the time, I don't remember.
20 Q. I see, but in any event, he never spoke to you at any time about
21 giving evidence in court.
22 A. Not that I -- not that I recall.
23 Q. About having given evidence or about to be -- about to give
24 evidence?
25 A. No.

1 MR. PUGSLEY:
2 Thank you.
3 MR. MURRAY:
4 No questions on behalf of William Urquhart.
5 MR. BARRETT:
6 No questions, My Lord.
7 MR. SAUNDERS:
8 No questions.
9 MR. BISSELL:
10 No questions, My Lord.
11 MR. ROSS:
12 No questions.
13 BY MR. WILDSMITH:
14 Q. Mr. Poirier, I just have a couple of questions. Just to follow
15 up what my learned friend, Mr. Pugsley, was just telling you,
16 am I correct in understanding that you did not know at any time
17 that John Pratico was claiming to be an eye witness to the
18 stabbing?
19 A. Not that I can recall.
20 Q. You didn't know when he was testifying that he was claiming to
21 be an eye witness?
22 A. No.
23 Q. I see. And my other question to you is: Did you know at the
24 time of the incident referred to in your statement that you have
25 in front of you when you first saw Mr. Marshall that he was an

1 Indian?

2 A. That did I know he was?

3 Q. Yes. Did you know that he was an Indian?

4 A. Yes.

5 MR. WILDSMITH:

6 Thank you. Those are all my questions.

7 MR. CHAIRMAN:

8 That's all, you may go, thank you.

9 MR. SPICER:

10 The next witness is Doctor Mian.

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1 DOCTOR MAQBUL A. MIAN, being called and duly sworn, testified as
2 follows:
3 BY MR. SPICER:
4 Q. What's your full name, please, sir?
5 A. My name is Maqbul, M-a-q-b-u-l, Maqbul A. Mian, M-i-a-n.
6 Q. And you are currently the Medical Director of the Cape Breton
7 Hospital?
8 A. Yes, sir.
9 Q. And have been so since 1969?
10 A. Yes.
11 Q. I'll show you a document which is, I believe, your C.V. which
12 we're having marked as Exhibit 50. Can you briefly just review
13 for us your professional training, Doctor Mian?
14 A. I'm a graduate of King Edward Medical College in Lahore,
15 Pakistan. I interned at the University of Illinois, the
16 same period of psychiatry training at University
17 of Illinois. Then I worked briefly in Seattle
18 and then moved to Canada. I then took post-graduate
19 training at Dalhousie University and I have worked here as
20 a psychiatrist from 1964 to '69 at the Cape Breton
21 Mental Health Center and later on I had been working at the
22 Cape Breton Mental Hospital which was a County Hospital at that
23 time.
24 Q. And you have been John Pratico's psychiatrist since about
25 1970?

1 A. Since about -- In actual practice, I have been since 1972
2 onward.
3 Q. And you'd seen him prior to that I believe?
4 A. Yes, I -- Because as Medical Director of the Clinic I have
5 because Doctor Binney was seeing him initially.
6 Q. And there are a number of volumes. Volume 47 -- or Exhibit 47
7 rather. Exhibit 47 and 49. Now Doctor Mian, I'm going to show
8 you two volumes of -- I see you've got your office copies there.
9 These are Exhibit copies of volumes 47 -- Exhibits 47 and 49,
10 and I believe those constitute the medical records of John
11 Pratico from the Cape Breton Hospital and also from the Nova
12 Scotia Hospital. Would you just have a look at them?
13 A. Yeh.
14 Q. They do. Okay, and you've had an opportunity to review both
15 those volumes prior to coming here today?
16 A. Yes, I just glanced through them.
17 Q. If you could just turn for a moment to Exhibit 47 which is the
18 grey volume you have in front of you, the first part of that
19 volume is for the most part consists of, it seems to be a
20 narrative called, "Accumulative Therapeutic Record", and there
21 are, in fact, no original notes. Could you explain to the --
22 to the Commissioners why the document we have is, in fact,
23 merely a summary of what would appear to be John's records over
24 the years?
25 A. Yes, as I mentioned a little earlier it was -- the Cape Breton

1 Hospital was a County Hospital for the care of chronic mentally
2 ill without the Cape Breton Mental Health Clinic and then we
3 started to rationalize and develop the services, the psychiatry
4 services for Cape Breton Island.
5 Q. When was that Doctor Mian?
6 A. Around that time.
7 Q. And that time being when?
8 A. Around 1970, or '69, we started to get the things together to
9 have one document and we -- they were all handwritten notes
10 and there was -- so we tried to put everything in the
11 narrative form and that's why we called it, "Accumulative
12 Therapeutic Record". That was basically all the information
13 on a particular patient we had, on a particular patient. We
14 tried to put that in.
15 Q. Okay. And the summary then is a net result of that process
16 that the original handwritten notes of various psychiatrists
17 who had ever worked there?
18 A. Yes.
19 Q. Incorporated into the Therapeutic Record and the originals were
20 chucked out?
21 A. Yes. Yes.
22 Q. Now there's a considerable amount of material in both those
23 volumes concerning John's condition. Perhaps to simplify
24 matters for the layman, could you describe to us what your
25 opinion was of John Pratico's condition in 1970? That would

1 be the year before the murder in 1971. What sort of shape was
2 he in when you first -- when he first came to --
3 A. He was basically born and raised in Sydney. He was about
4 sixteen years of age and was failing in school.
5 Q. Failing?
6 A. Failing in school.
7 Q. All right.
8 A. He was repeating his grade seven for the third time. The review
9 of his -- The daily historical debut of his developmental
10 social and academic records would be that he was functioning
11 as -- that he was a product of a poor social, economic
12 background with difficult informative years, exposed to
13 difficultly in social life by his peers. He was the target
14 of hostility and ridiculed in the community.
15 Q. He was being made fun of a fair amount, was he?
16 A. Yes.
17 Q. Yeh.
18 A. And he was an impulsive, high-strung lad who was greatly
19 troubled at home, at school, and in society at that time.
20 Q. Okay, and this is in 1970 or so?
21 A. Yes.
22 Q. All right.
23 A. In August of '70.
24 Q. How did he first come to your attention? In 1970 how would he
25 have come to you --

1 A. He was referred by his family doctor because of the difficulties
2 he was having in school as well as at home and was becoming
3 impulsive, aggressive, hostile, and -- These are the difficult
4 ones.
5 Q. Was he put on any medication at that time?
6 A. A very small amount of Nozinan and five milligrams later on.
7 Q. Sorry, what was the medication?
8 A. A minor -- It was a--If I recall it he was started on a
9 small amount of medication in July of '71 -- No, he wasn't
10 started at that time. It was a year later, yeh.
11 Q. So in 1971 he was not?
12 A. No.
13 Q. Okay. Can you tell us how his situation or condition changed
14 after May 28, 1971, that is, after the murder?
15 A. As I described earlier this man was functioning marginally
16 in the community. He had a poor personality resources
17 and coping abilities. Unfortunately, he was at the
18 wrong time, in the wrong place, and after that episode,
19 considering the set and the setting and the timing of the
20 events, he got into a -- The modern terminology would be a
21 "stress reaction" or a "trauma", and he manifested the
22 systems of acute post-traumatic stress syndrome which led
23 into his psychotic play. Very briefly he was very tense. He
24 was, anxious, apprehensive, impulsive; his memory, concentration,
25 all must have been affected.

1 Q. And how was that different qualitatively from
2 the sort of shape he was in in 1970?
3 A. It may have became worse.
4 Q. Worse in a noticeable way?
5 A. In a noticeable way.
6 Q. And can you give us a couple of indications of in what respects
7 it was noticeable, that is, that his condition had changed?
8 A. Well, he started to manifest startled reaction, that means he
9 would be jumpy.
10 Q. Jumpy?
11 A. Yes. He would be unable to sit still. He had to pace back and
12 forth. He couldn't sit long enough. He would jump from subject
13 to subject. It was difficult for us to keep him on the track,
14 and he would get us -- just to get us off the back he'll say
15 anything.
16 Q. I'm sorry, you said, just to get you off his back he'd say
17 anything?
18 A. Just to please you.
19 Q. At that time then subsequent to the murder, would -- would he
20 be the sort of kid if you said to him even though it was sunny
21 yesterday, "Gee, it was raining yesterday", he'd be just as
22 likely to say, "Yes, it was", to stop you from asking?
23 A. No, I don't -- He might have argued with it all, if it was
24 convenient to him, he might just pass it with a smile or with
25 a shrug.

1 Q. Fine.
2 A. Yeh.
3 Q. And in the months following the murder, June, July, and August
4 of 1971, was John then on medication of some sort?
5 A. Yeh, in July he was prescribed Nozinan five milligrams,
6 that's an anti-psychotic medication.
7 Q. Now you're referring for that reference, Doctor Mian, to -- Are
8 you on page one of --
9 A. Yeh, page one, at the bottom.
10 Q. Of Exhibit 47?
11 A. Yeh.
12 Q. Could we have volume 12. It might already be over --
13 A. That must be '70-- It says '71.
14 Q. The murder was in May of '71.
15 A. Yeh.
16 Q. Now Doctor Mian, I'm going to refer you to an affidavit that
17 you gave in 1982 which occurs in volume 12 at page 288 and
18 in particular to paragraph seven of that affidavit which
19 relates to 1971. Now you were saying in July of 1982 when you
20 gave that affidavit: "It is my medical opinion that the said
21 John L. Pratico was in 1971 and has been continuously to date..."
22 And we'll come to that later but let's stick with 1971 for
23 the moment. "...a wholly unreliable informant and witness with
24 regard to any subject or event, but more particularly in the
25 Sandy Seale murder case in 1971". Now why did you say that?

1 A. Because his mental condition was such all around this time
2 that we have seen him in various settings, one to one, in
3 groups, in occupational therapy and in all these he will make
4 up a story or he will just let -- he will tell you one thing
5 which was not based on truth. This was the way -- Over the years
6 this is how he was not reliable in that sense.
7 Q. I see, and when you say that was the way over the years that he
8 was not reliable, you are able to say in 1982 that that would
9 have been his condition in 1971. Is that right?
10 A. Yes, that was my basis, yes.
11 Q. Okay, and the basis for you saying that he was a wholly unreliable
12 witness would be what, that he made up stories?
13 A. He either made up stories or told what was convenient or what
14 he thought would save his neck because he felt that if he
15 goes one way or the other (He didn't want to annoy anybody.)
16 he thought the police will get him, the Indians would get him
17 and the Negros would get him.
18 Q. And that unreliability, that tendancy to make-up stories that
19 you described is a manifestation of what illness?
20 A. Basically because of his unstable mental state and because
21 of his chronic schizophrenia.
22 Q. Schizophrenia?
23 A. Yes.
24 Q. Did John Pratico at any time up until the trial, the first
25 trial of Donald Marshall in November of 1971, did he ever

1 indicate to you that he'd been to see the police and that
2 he told them a story or anything to that effect?
3 A. If I check my record I think it was in 1982 --
4 Q. Right.
5 A. -- that he did mention -- Yeh, he talked to the Social Worker.
6 Q. In what year was that, sir?
7 A. In 19 -- I have it here somewhere. That was in 19 -- in
8 October of 1984.
9 Q. And have you got a page reference that you can direct us to?
10 October of 1984?
11 A. Yeh.
12 Q. Okay. We'll come back to that.
13 A. Okay.
14 Q. But the question was whether or not he had spoken to you or
15 to your knowledge to anybody else in -- in the Cape Breton
16 Hospital or the Nova Scotia Hospital prior to Donald Marshall's
17 trial?
18 A. I think in his first admission to the Nova Scotia -- to the
19 Nova Scotia Hospital he did mention to the psychiatrist there
20 and arrangements for his discharge was made through the
21 community so that he can appear for it.
22 Q. Right, and at that time it was the case that he had indicated
23 that he'd witnessed a murder. Is that correct?
24 A. Yes, but I don't think he elaborated with any one of us what
25 happened.

1 Q. Right. Did he ever indicate to you up until the time of the
2 trial that the story that he had told to the police was, in
3 fact, not true?
4 A. No.
5 Q. No, and indeed did he ever indicate to you up until 1982, to
6 the time of the second Donald Marshall case in the review,
7 did he ever indicate to you that the story he told was not
8 true?
9 A. No.
10 Q. And to your knowledge up until that time, until 1982, did he
11 ever indicate to anybody to your knowledge that the story that
12 he told was not true?
13 A. I don't think so, no.
14 Q. No. You were certainly never advised of that?
15 A. No. No.
16 Q. In paragraph four of that same affidavit that I'd referred you
17 to a couple of minutes ago, you indicated that your medical
18 diagnosis of John Pratico since August, 1970, was that,"He
19 suffers from a schizo-form illness manifested in this case
20 by liability to fantasize and thereby, distortion of reality
21 and a rather childish desire to be in the limelight or the
22 center of attraction"?
23 A. Yes.
24 Q. Is that more or less what you've been saying to us for the
25 last few minutes?

1 A. Yes. Yeh.
2 Q. Okay, and had you concluded that, Doctor Mian, as would seem
3 to be the case from your affidavit, had you concluded that that
4 was John's situation in 1970?
5 A. Yes. Yeh.
6 Q. And that the effect of the murder was to sort of take a
7 quantum leap --
8 A. That's correct.
9 Q. It was. Now in 1982--In February of 1982, John spoke to the
10 R.C.M.P. and told them the -- the story?
11 A. Yeh.
12 Q. And then subsequent to that when you gave the affidavit that
13 I've been referring you to, in paragraph seven you indicated
14 that, "Even in July of 1982...", this being after he would
15 have finally told the truth as he saw it to the R.C.M.P. --
16 A. Yes.
17 Q. --that even at that point in July of 1982 he would still be
18 a wholly unreliable witness. Now can you explain to us
19 why that would still be the case in July of 1982?
20 A. Because I think at that time he was somewhat grandiose.
21 Q. Somewhat?
22 A. Grandiose.
23 Q. Grandiose?
24 A. Yes, and he thought that he -- he was only -- his self-esteem
25 was very high and he thought he had something to say and then

he was still not stable enough in my opinion at that time to be reliable.

Q. So what, at that stage of the game then in the summer of -- summer of 1982 was his condition, bearing in mind that he had, at that point, told the R.C.M.P. the truth? You're saying that even-- even five months later in the summer of 1982 he would still have been unreliable?

A. Yes, as far as I was concerned because it meant that he -- He was still having difficulties socially and in his community adjustments and maybe this was a fact that I wasn't aware of that this was -- this coming out but I didn't consider him to be reliable at that time.

Q. There was some evidence given in an earlier session of the Hearings that prior to speaking to the R.C.M.P. in February of 1982, John had spoken to Sandy Seale's parents (This came out during some questioning by Mr. Pugsley.) and had told Sandy's parents the same story that he had told the Sydney Police in 1971 and yet very shortly thereafter he told the R.C.M.P. the true story. Can you give us any feelings or light on --

A. Because he was still in a conflict. He didn't want to -- Again he didn't want to displease and I think if I --

Q. He didn't want to -- Sorry, he didn't want to?

A. Displease them because I think he was a tenant at that time or had been or was going to be.

1 Q. At about that time?
2 A. Yes.
3 Q. And so your explanation, sir, then would -- would be what, that
4 he didn't want to displease?
5 A. The Seale's or Sandy Seale or -- but still wanted to keep peace
6 and kept on telling them the same thing.
7 Q. The same story?
8 A. Yeh.
9 Q. I see. Volume 21, and it's page 77 of this volume. Do you
10 recognize that, Doctor Mian, as the statement you gave to the
11 R.C.M.P. in 1982?
12 A. Yes. Yes. Yeh.
13 Q. In the second paragraph of that statement referring to John's
14 condition in the summer of 1971, about halfway through the
15 paragraph you say:
16 "At that time he..."
17 Being John.
18 "...expressed concern about the
19 trial and the outcome".
20 A. Yes.
21 Q. So I take it he'd indicated to you that he was going to
22 give testimony but at no time indicated to you that the story
23 he was going to tell wasn't the truth?
24 A. Yes, all he was concerned about as far as we are concerned,
25 what's going to happen to him.

1 Q. What's going to happen to him?
2 A. How he's going to go through the trial and what will be the
3 consequences of it for testifying.
4 Q. Can you help us a little bit, what sorts of concernes was he
5 expressing? Was he --
6 A. Basically he felt that he would be -- that either he would
7 be caught, beaten up, or intimidated or --
8 Q. By whom?
9 A. By any one of the groups.
10 Q. The groups being?
11 A. The police, the Negros and the Indians.
12 Q. All right, and was he expressing those fears to you?
13 A. Directly or indirectly.
14 Q. Right. I see.
15 A. Yeh.
16 Q. So in 1982 he's still, in your opinion, an unreliable witness
17 and then we get to the present, and at the beginning of
18 volume 47 -- Exhibit 47 rather, there's a letter of yours
19 dated March 18 --
20 A. Yeh.
21 Q. --addressed to -- to our investigator. In the second paragraph
22 you say:
23 "In my opinion he is under no stress
24 or duress now and he is capable to give information regarding Donald
25 Marshall Jr.'s case without any distortion of reality at this time".

1 MR. PUGSLEY:
2 What page and volume?
3 MR. SPICER:
4 Sorry, it's the very first page of Exhibit 47. That's the grey
5 set of medical records.
6 BY MR. SPICER:
7 Q. What is the difference between the condition that Mr. Pratico
8 was in in 1982 which enabled you to give the opinion that he
9 was unreliable at that time and the opinion that you gave to
10 the Commission in March of this year that he was able to
11 give testimony without any distortion of reality?
12 A. Now by this time -- As I stated earlier, this is a young
13 man with borderline intelligence, with limited resources,
14 poor coping abilities and was scared and running, and while
15 in the process of running he --
16 Q. Sorry, in the process of?
17 A. Running away.
18 Q. Running away. Okay.
19 A. From himself and from society. He told us what we wanted to
20 hear and by this time --
21 Q. And by this time, now you mean by 1987?
22 A. And a little earlier than that. I will say about a year longer
23 than that he -- that there has been a -- he resolved the
24 conflict which was the cause for his perpetual decompensation
25 or perpetual inability to live in the

1 community and since that time he has continued to maintain
2 improvement and has made significant gains.
3 Q. So that by March of 1987, in your view, he would be able to
4 come before this Commission and give --
5 A. Yeh. Yeh.
6 Q. --testimony that can be relied on?
7 A. That's one. Number two, another important factor, he was
8 not afraid of the consequences this time around.
9 Q. So he was not afraid of the consequences of coming to the
10 Commission and giving testimony?
11 A. That's correct.
12 Q. And was it your impression from having talked to him that in
13 previous cases in 1971, that he was afraid of the consequences?
14 A. Definitely true.
15 Q. And indeed since Mr. Pratico gave testimony at the Inquiry
16 have you had occasion to discuss this case with psychiatrists
17 who were seeing him?
18 A. Yes.
19 Q. And what would now seem to be his condition?
20 A. He's continued to maintain his full mental to the extent
21 that we have started cutting down his medication now and hopefully
22 we will try him on a drug holiday, that means we will give
23 him a week on and a week off and see how that comes about.
24 Q. And the drug holiday is time without drugs basically?
25 A. Yes. Yeh.

1 BY MR. CHAIRMAN:
2 Q. This is since he gave his testimony here two weeks ago or
3 thereabouts. Is that what you're saying?
4 A. Pardon, sir.
5 Q. This is the past couple of weeks that you've changed --
6 A. Yes, since he gave that testimony.
7 Q. All right.
8 A. Since he appeared here, after that.
9 BY MR. SPICER:
10 Q. I just wanted to ask you a few more questions, Doctor Mian,
11 and in particular some of them concern the circumstances of
12 the giving of your affidavit in 1982 which is in volume 12
13 at 288?
14 A. Yeh.
15 Q. This affidavit here?
16 A. Yeh.
17 Q. Can you recollect the circumstances under which you gave this
18 affidavit?
19 A. Well, if I remember correctly there were two police officers
20 from the R.C.M.P. and they had some authority, I don't know
21 what, and they came in to interview me.
22
23
24
25

1 Q. Okay, two R. C. M. P. officers by themselves? Did they have
2 a lawyer with them?
3 A. No, they were just -- if I might be mistaken --
4 I remember they were just two R. C. M. P. officers.
5 Q. Okay, and when they came to interview you, did they already
6 have with them the affidavit that occurs in Volume 12 at
7 288 or did they come an interview you and then come back later
8 with a completed affidavit? Do you have any recollection?
9 A. Sorry, I can't -- I can't -- I don't remember.
10 Q. Prior to the time that they did come to talk to you in your
11 office, did you have any discussions with the R. C. M. P.
12 officers? If I can help you a little bit there this affidavit
13 is taken in July 19, 1982, and your statement to the R. C. M. P.
14 that I referred you to a little bit earlier in Volume 21 at
15 page 77 is in February of 1982; so I take then you had spoken
16 to the R. C. M. P. officers in February of 1982 and your
17 affidavit is in July of 1982. Do you recollect any meetings
18 with the R. C. M. P. between the time you gave the statement
19 that's this document?
20 A. Yes, they -- I must have had two or three meetings with them.
21 Q. With the R. C. M. P.?
22 A. Yes.
23 Q. Do you remember whether or not any of those occasions there were
24 any lawyers there?
25 A. No, no.

1 Q. You don't recollect or there weren't?
2 A. I -- to the best of my knowledge, I don't think there was any
3 lawyer.
4 Q. Okay, do you remember discussing with the R. C. M. P. officers
5 the types of things that you were prepared to say about John
6 Pratico's condition that eventually ended up in this affidavit?
7 In other words, how was it that they came -- that you ended up
8 signing an affidavit, for instance, that says in paragraph four --
9 A. No, but this is what they asked me.
10 Q. Yes.
11 A. Yeh, I -- this is -- I put it in; they didn't.
12 Q. Did you then draft this or did you just respond to their
13 questions?
14 A. I really don't remember, no.
15 Q. Don't remember. But you were satisfied, I take it, Doctor
16 Mian, --
17 A. Yes.
18 Q. -- at the time you signed this affidavit that what was in that
19 document was correct?
20 A. Yes, yes.
21 Q. But you don't recollect having had any discussions with
22 any lawyers up to the time you signed it? No?
23 A. To the best of my knowledge, I really don't remember. I
24 don't think so.
25 Q. Thank you very much, Doctor.

1 THE CHAIRMAN:
2 Ms. Edwardh.
3 BY MS. EDWARDH:
4 Q. Doctor Mian, you say today that -- (away for a week and you get
5 rusty.) You say today that Mr. Pratico is and you've used the
6 word "stabilized"?
7 A. Yes.
8 Q. And would it be your opinion after treating him over this period
9 of time that he is in better shape today than he has been since,
10 let's say, August 1971?
11 A. Definitely.
12 Q. And in terms of his intellectual or cognitive functioning, the
13 question that I think must be posed is can he in fact account
14 or describe events which occurred in the past when he was ill?
15 Do you understand the question?
16 A. Could you rephrase it again, please.
17 Q. Yes, what I think everyone would be interested in is your view,
18 sir, if Mr. Pratico was mentally ill in August 1971 or in May
19 of 1971 with serious difficulties, could he today reliably
20 know what he saw in May of 1971?
21 A. He could or he couldn't. You know it could be both, you know
22 -- I can't say for sure because he was in acute at that time
23 he was in an acute stressful situation.
24 Q. Okay, now --
25 A. And under stress would tend to distort things all the time.

1 Q. Now it's much more likely I understand that he would be able to
2 recount reliably today if he was not psychotic at the time?
3 A. No.
4 Q. And have you any indication, sir, that at the time of May
5 the 28th that Mr. Pratico was suffering from any psychotic
6 manifestations?
7 A. Not at that time.
8 Q. And they in fact come later?
9 A. That's -- yes.
10 Q. And just so we keep the record straight, would you -- would
11 you define for us what you mean by psychotic?
12 A. Psychotic is when a person breaks away -- contact with reality
13 -- the system.
14 Q. So then if I'm correct what you're saying to us is that you
15 have no reason to say that Mr. Pratico could not give a
16 reliable account of his observations that far back. His
17 mental illness doesn't prevent him from even acquiring --
18 A. He -- he could have -- yeh, he could give reliable information
19 about those instances now as there's no stress involved at
20 this time and there's no fear to his life is involved at this
21 time.
22 Q. And the stress precipitates as far as you're concerned some
23 of the psychotic difficulties?
24 A. That's right, yes.
25 Q. Now according to the statement that you gave, Doctor, -- that

1 you gave to Wheaton, sir, you knew in 1971 that Mr. Pratico
2 was going to be a witness, correct?
3 A. Yes.
4 Q. Can you assist us, sir, as to whether at that time the thought
5 passed through your mind that perhaps you ought to indicate to
6 either the Police or Crown Counsel that the young man who you
7 were treating was a "highly unreliable and unstable individual"?
8 A. At that time he was in the Nova Scotia Hospital.
9 Q. You were familiar with him though?
10 A. Yes, yeh.
11 Q. You were familiar with his condition?
12 A. No, no, I wasn't; but he was at the Nova Scotia Hospital and
13 he was discharged from Nova Scotia Hospital to come and
14 testify. So from the records all I can say that legally he
15 might be fit to stand trial -- I mean to testify.
16 Q. So I take it from the time he was in the Nova Scotia Hospital,
17 you had no follow-up involvement with him or you didn't acquire
18 any information about him?
19 A. No, no.
20 Q. So you were unaware as the trial --
21 A. No, I -- we knew that he was going for this, you know, but
22 there has been no contact by the Police or anybody whether --
23 about his reliability.
24 Q. What -- what is your view, sir, of whether a psychiatrist
25 should or shouldn't raise a matter of such a character with

1 a police force or crown counsel?
2 A. In my personal opinion, it's up to the legal system.
3 Q. What do you mean by that?
4 A. I mean it's the Court that should request or the Prosecuting
5 Attorney or the --
6 Q. Are you saying, sir, that if you had received a call from
7 Crown Counsel --
8 A. Yes.
9 Q. -- or the Police officer in question --
10 A. Yes.
11 Q. -- you would have gladly given them any insight you could --
12 A. Yes.
13 Q. -- you would have?
14 A. Yes.
15 Q. And you see no bar to that?
16 A. That's correct, yes.
17 BY THE CHAIRMAN:
18 Q. Have you ever received such a request from Crown Counsel in
19 any -- and I don't mean in this case but in any case?
20 A. Yes, yes.
21 Q. You have?
22 A. Yes, about whether he could stand trial, about the, you know,
23 or the psychiatrical profile or evaluation. Now they do it.
24 Q. All right, what's the practice if a witness -- an accused
25 person or a prospective witness -- well, no, forget the

1 accused person -- any prospective witness, if there's some
2 doubt as to his or her capacity to testify, are they sent
3 to you that's if it's in the Cape Breton area or sent to the
4 Nova Scotia Hospital in Dartmouth?
5 A. No, the practice to my knowledge in Nova Scotia is only if we
6 have been given testimony in the Court on behalf of the
7 accused; not on behalf of the witness.
8 Q. Not on behalf of the Crown, is that what you're saying?
9 A. We have done that on behalf of the Crown too; but if a person
10 is accused whether he's fit to stand trial or not -- basically
11 that's the practice in Nova Scotia, but not of a witness.
12 Q. Not a witness?
13 A. Not to my knowlege.
14 Q. Well, I'm not clear then what your -- what the answer -- your
15 answer to my question was?
16 A. To my knowledge --
17 Q. I asked you if you had ever been asked by Crown Counsel or
18 Counsel for an accused person, to pass judgement on the
19 fitness of a witness, not the accused -- the witness -- a
20 witness to give reliable evidence in a criminal trial?
21 A. No.
22 Q. No?
23 A. Yes.
24 BY MS. EDWARDH:
25 Q. Let me follow up on his Lordship's question, so that you

1 understand that -- let me put the question this way to you,
2 not asking you about testifying in a court room about someone's
3 capacity but have you been consulted by the police, consulted
4 by Crown Counsel or Defense Counsel with the view to
5 understanding whether a witness had problems in terms of their
6 either capacity to testify or whether they would have trouble
7 being reliable?
8 A. Not really, as the practice in Nova Scotia is we only go to
9 the Court to testify usually about the fitness to stand trial
10 to my -- in my experience, no.
11 Q. Yeh, I don't mean testify; just even consult, sir, on a
12 telephone call?
13 A. Yes, that has happened.
14 Q. Yes, and in fact what you're really saying then is you would
15 get a telephone call from a police officer --
16 THE CHAIRMAN:
17 No, no, could you try that again, please.
18 BY MS. EDWARDH:
19 Q. I understand what you're saying, sir, is you have never
20 gone to Court to testify in relation to whether a witness
21 should give evidence or whether they were reliable, is that
22 correct?
23 A. Yes.
24 Q. Okay, but you had received inquiries from either the Police
25 or Crown Counsel or the Defense asking you if a witness

1 may have some psychriatic difficulties, whether they should
2 be aware of them?
3 A. Yes, yes.
4 Q. Okay, and that kind of contact is not extremely unusual is
5 it?
6 A. No.
7 MS. EDWARDH:
8 Does that assist, My Lord?
9 THE CHAIRMAN:
10 Yes, that's fine, thank you.
11 BY MS. EDWARDH:
12 Q. And I also understood you to say that you did not feel that
13 there was any bar to giving Crown Counsel that information
14 if they should call or the Police that information if they
15 should call?
16 A. I don't think so.
17 Q. Now going back to the diagnosis that -- and some of the features
18 of the diagnosis that Mr. Pratico had carried with him over
19 the years, would it be fair to say that one of the fundamental
20 manifestations of it was his desire to be in the limelight?
21 A. No, not really.
22 Q. Would it be fair to say that one of the fundamental
23 manifestations was his need to please people?
24 A. Yes.
25 Q. And you say that in the Hospital records, do you not when he's

1 often viewed "as very cooperative --
2 A. Yes.
3 Q. -- in the ward and trying to please --
4 A. Yes.
5 Q. -- the nurses and whatever"?
6 A. Yes.
7 Q. And indeed if this young boy were sitting in a room with
8 several Police Officers, would you agree, sir, that that
9 would be a compelling situation given his illness for his
10 need to please to arise?
11 A. Yes.
12 Q. He would want to please them?
13 A. Yeh.
14 Q. And if they, for example, were to suggest things to him,
15 is he not the kind of person who would respond by obviously
16 giving them whatever they suggested?
17 A. Yeh, he could pick on the cues.
18 Q. I'm sorry?
19 A. He would pick on the cues.
20 Q. He would pick up on the cues?
21 A. Yes.
22 Q. And as soon as he got the cue, then he would translate it into
23 yes, that's what happened?
24 A. Yes.
25 Q. And he would have no capacity to resist that or little

1 capacity to resist it?
2 A. Yes.
3 Q. In terms of putting Mr. Pratico on a spectrum, would it be
4 fair to say that he was easy prey for anyone in a position
5 of authority with respect to following up on suggestions
6 and giving them what they wanted?
7 A. Yes.
8 Q. Now you've had a chance to look over the records and can see
9 that people have had occasion to observe him in many different
10 situations from one to one therapy to occupational therapy --
11 A. Yes.
12 Q. -- and into the court room?
13 A. Yes.
14 Q. You say overall your view is that he has been between 1971
15 and '81, viewed by the Hospital staff as "unreliable"?
16 A. Yes.
17 Q. And I take it that means that he obviously recounts things
18 that are not connected to the social world or are fanciful?
19 A. Yes.
20 Q. Makes them up?
21 A. Yes.
22 Q. Now would you agree with me that in a court room setting, the
23 very structure of that court room would help Mr. Pratico give
24 a story that was believeable in a way that a free flowing
25 discussion would not?

1 A. It's quite possible.
2 Q. One last area, Doctor, when Mr. Pratico was released from the
3 Hospital in October and then testified and then went on to
4 the Nova Scotia Hospital, can you assist us from your
5 analysis of the medical records about how he was functioning
6 between October 25th, 1971, and his readmission was, I think,
7 was November the 29th?
8 A. Yes, yeh, a month later, yes.
9 Q. Yes, do the records document a consistent decline?
10 A. Yes.
11 Q. And heavy drinking?
12 A. Yes.
13 Q. And the absence of medication or the refusal to continue
14 medication?
15 A. Yes.
16 Q. So is it fair to say that he would have been in the process
17 of decompensating --
18 A. That's correct.
19 Q. -- during that period?
20 A. That's correct.
21 Q. And by decompenation we're describing a process where he
22 becomes less reliable, less attached to reality, etcetera,
23 all the way down the line?
24 A. Yes.
25 Q. Those are my questions, thank you, sir.

1 BY MR. PUGSLEY:
2 Q. Doctor Mian, we have a curriculum vitae from you this morning,
3 but I'd like to review your background with you. You went
4 to medical school where, sir?
5 A. In Pakistan.
6 Q. In Pakistan?
7 A. Yes.
8 Q. And how long was the course there?
9 A. Five years.
10 Q. And you graduated with -- an M. D.?
11 A. Yes.
12 Q. From the University of Pakistan?
13 A. From Lahore, Pakistan.
14 Q. From Lahore, Pakistan, and then what post-graduate work do
15 you have?
16 A. I did one year of rotating internship at Presbyterian-
17 St. Luke Hospital, Chicago, with -- and then I went to
18 psychiatry residency at University of Illnois.
19 Q. Yes.
20 A. And then I alternate one year post-grad psychiatry
21 residency at Dalhousie University and I'm a Fellow of the
22 Royal College of Physicians and Surgeons of Canada --
23 Q. Yes.
24 A. -- as a psychiatrist.
25 Q. You had --

1 A. And --
2 Q. -- I'm sorry, just if I could interrupt a bit, you had
3 psychiatric experience in Illnois, you say?
4 A. Psychiatry residency in Chicago, Illnois, yes.
5 Q. Chicago, for what period of time?
6 A. From 1969 -- no, until 1969 to 1963.
7 Q. From 1969?
8 A. To 1962, yeh.
9 Q. From 1959 to 1962?
10 A. 1962, yes.
11 Q. Yes, a period of three years?
12 A. Yes.
13 Q. And after Chicago you came where?
14 A. I worked as a psychiatrist in Fort Stellerton Seattle
15 State Hospital for two years.
16 Q. You worked as a psychiatrist for two years at a State
17 Hospital?
18 A. Yes.
19 Q. Yes.
20 A. Then I came to Sydney in September of 1964. I worked at the
21 Cape Breton Mental Health Clinic in '68 and then for one year
22 I was gone to Dalhousie University for another one year.
23 Q. What were you doing at Dalhousie? Were you teaching or we're
24 you --
25 A. No, no, I -- it was a requirement by the Royal College of

1 Canada that I should spend one more year in Canada --
2 Q. I see.
3 A. -- in psychiatry training. Which I did.
4 Q. And then you returned to Cape Breton in 1969?
5 A. Yes.
6 Q. Yes. And are you presently the Director of the Cape Breton
7 Hospital?
8 A. Since then I am the Director. Since July 1st, 1969, I'm the
9 Managing Director of Cape Breton Hospital.
10 Q. I see. And can you give us some idea of the size of the
11 Cape Breton Hospital in 1969, how many patients and beds did
12 you have?
13 A. At that time, I had three hundred -- three hundred and twenty
14 patients at the Nova Scotia Hospital for the care of chronic
15 mentally ill.
16 Q. Sorry, you had three hundred patients at the Cape Breton
17 Hospital?
18 A. Three hundred and twenty-six patients, yes.
19 Q. At the Cape Breton Hospital?
20 A. At that time.
21 Q. Three hundred beds?
22 A. Now it's sixty-two beds but at that time it was three
23 hundred twenty-six beds, -- hospital.
24 Q. I see. And what kind of a staff did you have?
25 A. Very limited.

1 Q. How many psychiatrists would you have on staff?
2 A. I was the only one for a while.
3 Q. Only one for a while?
4 A. Yeh and there were three in the Mental Health Clinic. So
5 there were four psychiatrists.
6 Q. I see, that was in 1969.
7 A. Yes.
8 Q. And in your capacity as Director was that to a large extent
9 an administrative function or did you see patients as well?
10 A. Well, it should be administrative but I never had enough
11 help so it was mostly clinical and very little administrative.
12 Q. Well, of the three hundred and twenty-six patients in the
13 Hospital, how many were your patients in 1969?
14 A. At that time the Mental Health Clinic was seeing about
15 roughly about five to six hundred a month.
16 Q. Yes. And how many would you be seeing?
17 A. Oh, I wasn't seeing too many in the out-patient; I was just
18 looking after the in-patients.
19 Q. I see, well how many of the in-patients would be your
20 responsibility, your direct responsibility in 1969 and 1970?
21 A. About seventy-five.
22 Q. Seventy-five?
23 A. Yes.
24 Q. When did you first see John Pratico?
25 A. When he returned the second time from -- I had discussed

1 and seen him superficially for other professionals during 19 --
2 the earliest --
3 Q. You say you saw him superficially; what does that mean?
4 A. Before '72.
5 Q. What does to see a patient superficially?
6 A. No, no, what I mean in consultation with another or another
7 professional.
8 Q. Yes, when did you first see him personally?
9 A. In March of '72.
10 Q. In March of 1972?
11 A. I think when he was first admitted to Cape Breton Hospital.
12 Q. When did you first become of the opinion that he was a
13 "wholly unreliable informant and witness" with regard to
14 any subject or event in 1971? When did you first form
15 that opinion?
16 A. That was after -- when -- after reviewing the documents and --
17 Q. After the what?
18 A. After -- when I gave this testimony, I reviewed that and that
19 has been my opinion.
20 Q. No, but when did you first form the opinion?
21 A. In '72.
22 Q. In 1972?
23 A. Yeh.
24 Q. Did you form the opinion in 1971 that Mr. Pratico was a
25 "wholly unreliable person"?

1 A. From the clinical records, yes, that's my opinion.
2 Q. And when did you form that opinion in 1971?
3 A. I didn't have the chance to do that; I first time saw him
4 in '72, personally.
5 Q. You first personally saw Mr. Pratico in March of 1972?
6 A. But I don't have any recollection.
7 Q. So that you -- you had no personal contact with him prior
8 to March of '72?
9 A. Yeh.
10 Q. But when did you first form the opinion that he was a "wholly
11 unreliable informant"?
12 A. When I was asked for it.
13 Q. When you were asked for it?
14 A. Yes.
15 Q. That was when you first formed that opinion?
16 A. That's right.
17 Q. And when were you first asked for it?
18 A. In 1982, I think.
19 Q. I see, so in 19 -- do I understand it that in 1971 you had
20 no opinion about this man at all?
21 A. I had opinion. That's what I gave, but nobody asked me.
22 Q. I want you to understand clearly, sir, the point that I'm
23 making. I want to know when you first formed the opinion
24 that this man was "an unreliable informant"?
25 A. In 19 -- when I was asked in 1982.

1 Q. All right, okay.
2 A. And when -- that's when I reviewed the charts and that's when
3 I wrote down that "he's unreliable".
4 Q. Yes.
5 A. But before that it was never read and I never wrote it down
6 and never --
7 Q. Was he being treated by any psychiatrist at the Cape Breton
8 Hospital in the year 1971?
9 A. Yes, Doctor James Binney, Doctor Donovan, Doctor MacDonough,
10 Doctor Samuels --
11 Q. Sorry, could you just give me the names again? Doctor --
12 A. Doctor James Binney, Doctor Donovan --
13 Q. Doctor James Binney. When did Doctor James Binney first
14 see Mr. Pratico?
15 A. August 16th, 1970.
16 Q. And on how many occasions did --
17 A. Well, six or seven.
18 Q. And when were they?
19 A. During -- before -- for that year.
20 Q. For the year 1970?
21 A. Until July of 1971.
22 Q. You say from August 16th of 1970 until July of 1971, Doctor
23 Binney, a psychiatrist at the Cape Breton Hospital, saw
24 Pratico --
25 A. At the Mental Health Clinic, yes.

1 Q. -- on approximately six occasions?
2 A. Six or seven, yeh.
3 Q. And Pratico was an out-patient at the time, was he?
4 A. Yes.
5 Q. And are there any notes of Doctor Binney's available for us?
6 A. Yeh, that's in the first -- on the "Accumulative Therapeutic
7 Records".
8 Q. Perhaps you can direct my attention to those notes?
9 A. On Page one.
10 Q. You're looking at Volume -- exhibit 47, are you?
11 A. Yeh.
12 Q. Yes. And you're looking at page one; but these are not
13 notes that were made in 1970?
14 A. No, no, I stated there are no notes available.
15 Q. There are no notes available?
16 A. I mean they were all hand-written and we put them in the
17 typed form in '79.
18 Q. But where are Doctor Binney's hand-written notes of 1970?
19 A. They are not -- they are all shredded.
20 Q. They're lost?
21 A. Yes.
22 Q. I see, okay. Did Pratico see any other psychiatrist at your
23 Hospital prior to July of 1971 apart from Doctor Binney?
24 A. Prior to Doctor -- after Doctor Binney.
25 Q. No, no, prior to July of 1971, did Mr. Pratico see --

1 A. No.
2 Q. -- any other psychiatrist at the Nova Scotia -- Cape Breton
3 Hospital?
4 A. No, not at that time.
5 Q. All right. Did Doctor Binney discuss with you Pratico's
6 condition?
7 A. Not -- other than the report and other than that these are
8 the, you know.
9 Q. No, my question is, did Doctor Binney discuss with you his
10 opinion of Mr. Pratico at any time?
11 A. Regarding what?
12 Q. With regard to his mental condition? Did Doctor Binney
13 discuss with you --
14 A. No, no.
15 Q. -- at any time?
16 A. No, no.
17 Q. He did not?
18 A. No.
19 Q. Where's Doctor Binney now?
20 A. In British Columbia, I think.
21 Q. And when did he leave the Cape Breton Hospital?
22 A. In around '79.
23 Q. Around 1979?
24 A. Yes.
25 Q. And you have not seen his notes, I take it?

1 A. No, we have seen his notes. These are -- these were taken
2 from those notes.
3 Q. Well, no, this is a summary that we have on page 1 of
4 Exhibit 47; this is a type-written summary --
5 A. Yeh.
6 Q. -- all prepared by whom? Who prepared this summary?
7 A. A social worker.
8 Q. A social worker?
9 A. Yeh.
10 Q. A social worker apparently went through some files that
11 existed in 1979 and make a summary of the information that
12 was in the files?
13 A. And, yeh -- and with my, you know, I had to look through those
14 --
15 Q. Did you look through these?
16 A. Yes.
17 Q. But you did not see Doctor Binney's original notes?
18 A. I must have, the original notes; but they were all hand-
19 written scratched notes.
20 Q. But why would you have seen Doctor Binney's original notes?
21 What would prompt you to make --
22 A. No, no, because then we were completing the perspective
23 on every patient. We didn't want to miss anything important.
24 To put this together.
25 Q. Why did Andy Arsenault in 1979 make a summary of John Pratico's

1 stay and his --
2 A. It's on every case we have done and not only John Pratico;
3 this is done on every case.
4 Q. Why in 1979?
5 A. This process has been starting from '71 onward and we have so
6 many out-patients -- as they patients come along, we complete
7 one for every one.
8 Q. I take it that Doctor Binney would have made notes of each
9 one of the six interviews he had with Pratico, would he?
10 A. Yes, but mostly they were the "progress maintained, progress
11 not maintained, started on medication, interviewed with the
12 mother, not getting along".
13 Q. I see, very brief notes?
14 A. Very brief notes.
15 Q. And I'm sorry, I've forgotten your answer, did you ever see
16 those notes?
17 A. Yes.
18 Q. When did you see those notes?
19 A. When -- we must have prepared this C. T. R. Now, I don't
20 know the exact date.
21 Q. Well, did you play any part in preparing this summary?
22 A. No, I over-viewed them, I over-seed them. I don't write
23 them out, no.
24 Q. I'm sorry, you say you went over this summary?
25 A. Yes.

1 Q. Why would you have gone over this summary?
2 A. Of all the cases on which the C. T. R. is completed, we have
3 to go over these summaries so that the, you know, other
4 professionals don't miss it out. If they are done by the
5 physicians --
6 Q. Well, how many summaries --
7 A. -- and so that all the --
8 Q. -- how many summaries would have been prepared?
9 A. They are about twelve thousand patients now.
10 Q. Twelve thousand?
11 A. Yes, sir.
12 Q. And you say that there were twelve thousand summaries
13 prepared of patients?
14 A. Over the years, yes.
15 Q. And you would have gone over each one?
16 A. All most, yes, sir.
17 Q. Well, your retention or your recollection of what was in
18 those summaries would be very limited, I take it?
19 A. Well, it was just usually want to go over --
20 Q. But -- are you saying that in addition to going over this
21 summary prepared by Arsenault in 1979, you also went over
22 Doctor Binney's personal notes of his interviews with John
23 Pratico from August '70 until July '71?
24 A. Yeh, because we have to audit it.
25 Q. But why would you have done it?

1 A. Well, the reason we want to audit because this was done by
2 a social worker, right. So that no other pertinent medical
3 information is missed out. So one of the physicians or
4 myself had to audit this.
5 Q. What -- do I understand that you go over this summary
6 prepared by Arsenault and also all the other notes relating
7 to Mr. Pratico to make sure that Mr. Arsenault leaves
8 nothing out?
9 A. That's right. And I was also looking after him personally.
10 Q. Of course.
11 A. Until 1973 --
12 Q. In March of 1972, you did?
13 A. -- '72, onward.
14 Q. Okay, between July of 1971 and the end of August 1971, was
15 Mr. Pratico seen by any other psychiatrist at the Cape
16 Breton Hospital?
17 A. He was at -- no, he was seen by Doctor Donovan.
18 Q. By Doctor?
19 A. Doctor Binney, then he goes to Nova Scotia Hospital --
20 Q. Yes.
21 A. -- then he comes back, he sees Doctor Donovan.
22 Q. See Doctor who?
23 A. Donovan, Cornelius Donovan.
24 Q. Donovan, I'm sorry. When did he first see Doctor Donovan?
25 A. After his return from Nova Scotia Hospital.

DR. M. A. MIAN, by Mr. Pugsley

1 Q. So he saw no one at the Cape Breton Hospital from July of
2 1971 until sometime in November 1971?
3 A. Yeh.
4 Q. I see.
5 A. Because he was in between the Nova Scotia Hospital.
6 Q. Your opinion with respect to -- well, did you know -- did
7 you know anything at all about John Pratico before March
8 of 1972?
9
10
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A. No.

Q. Although you apparantly knew that he was going to give evidence in court? You knew that?

A. Yes, from the discharge summary of the Nova Scotia Hospital, yes.

Q. Well, I'm looking at the statement you gave in February of 1982, in volume 21 at page 77.

A. Yeh.

Q. Do you have that in front of you?
This is a red volume, Doctor. Volume 21?

A. Yeh. Okay.

Q. Now, this is a statement you gave to Mr. Wheaton. Do you remember giving this statement to Mr. Wheaton?

A. Yes. Yeh.

Q. Who is Mr. Wheaton?

A. Some R.C.M.P. officer.

Q. Yeh. And you signed this statement, did you?

A. Yes, I --

Q. This is a type-written copy of course.

MR. PUGSLEY:

Do we have the original Mr. Spicer?

MR. SPICER:

I don't think we do.

BY MR. PUGSLEY:

Q. Well, I take it that, you signed the original statement and that

1 it apparently was witnessed by Mr. Wheaton and also by an
2 Ann MacLeod. Who's Ann MacLeod?
3 A. Director of Medical Records.
4 Q. Who?
5 A. Director of Medical Records.
6 Q. The Director of Medical Data?
7 A. Medical Records.
8 Q. Medical Records.
9 A. Yeh.
10 Q. I see. And she was in, was she, at the interview between
11 Mr. Wheaton and yourself? She was present? Or did she
12 just come in to sign your statement as a witness?
13 A. I think she came in to sign the statement.
14 Q. All right. Now, the statement says:
15 I am a Medical Director to the Cape Breton Hospital.
16 I've treated John Pratico since August of 1970.
17 A. Yes.
18 Q. That's not accurate.
19 A. What I mean, by here, that I know of him since -- you know
20 his record since August of '70.
21 Q. You knew of him? When did you first know of John Pratico?
22 A. In about -- from the records, I mean.
23 Q. No, but when did you first know of him? Did you know anything
24 about him at all before March of '72?
25 A. No.

1 I didn't say I think I knew of him in '70.
2 Q. You think you knew of him '70? All right.
3 A. '71.
4 Q. But, in any event, it's not accurate to say that you treated
5 him since August of 1970?
6 A. Okay.
7 Q. Well, is it? I'm asking you? Is that an accurate statement?
8 A. Not -- this statement is not accurate.
9 Q. Not accurate. Okay. "I found him to be very unreliable
10 informant." When did you first find John Pratico to be
11 a 'very unreliable informant'?
12 A. From my contacts with him, he had never been reliable.
13 Q. From your contacts with him?
14 A. Yeh.
15 Q. And that was in March of '72?
16 A. Or earlier than that, yeh.
17 Q. Or earlier? When earlier?
18 A. Around that time, okay. Fine.
19 Q. Well, check your records --
20 A. I don't recall the dates, you know.
21 Q. Pardon?
22 A. I don't recall the date so --
23 Q. You had a piece of paper, you were referring to, when
24 Mr. Spicer was examining you. What was written on that
25 paper?

1 A. Whose paper?
2 Q. You had a piece of paper you were assisting --
3 A. They are just the dates.
4 Q. And what dates does that have on it? Does that have the
5 date when you first treated him?
6 A. That was -- Well, that would be March of '72.
7 Q. March of '72?
8 A. Yeh.
9 Q. Well, is it only since March of 1972, that you have found
10 him to be an 'unreliable informant'?
11 A. And -- That's correct. And on the basis of my own opinion.
12 He was in worse shape -- you know -- gradually in -- from
13 1971.
14 Q. And how did you come to that conclusion, that he was in
15 worse shape in 1971?
16 A. From the notes from the records, from --
17 Q. From what records?
18 A. From what I had on him.
19 Q. What did you have on him?
20 A. Doctor Binney's notes and Doctor Donovan's notes.
21 Q. Doctor Binney's notes and what?
22 A. Doctor Donovan.
23 Q. Doctor Donovan's notes?
24 A. Yes.
25 Q. Doctor Donovan didn't start seeing him until the middle of

1 November, '71?
2 A. Yeh.
3 Q. Did Doctor Binney's notes say that he was an 'unreliable
4 informant"?
5 A. No. No.
6 Q. They did not say that?
7 A. Nothing. He didn't say in those terms.
8 Q. What did they say? What did Doctor Binney's notes say about
9 him being reliable or 'unreliable'?
10 A. They don't say much -- doesn't say much.
11 Q. It doesn't say much?
12 A. No. Not about his reliability, you know.
13 Q. In response to the question the Chief Justice asked, did
14 Doctor Binney's notes say anything, at all, --
15 A. Yes.
16 Q. -- him being reliable or unreliable as an informant?
17 A. Doctor Binney described John further by saying that
18 he's jumpy, excitable, no self-awareness.
19 Q. I'm sorry, you are reading from where?
20 A. That's Doctor Binney's notes which are --
21 Q. Yeh. Where are you reading from though? Is that --
22 A. From page one.
23 Q. Exhibit 47, page one. About where sir? You're about two-
24 thirds of the way down the page --
25 A. 'Doctor Binney rendered the following' just above that.

1 Q. And you say Doctor Binney describes John further by saying
2 he was a 'jumpy, excitable young man'.
3 A. Yeh.
4 Q. He had 'no self-awareness and almost neutral supportive
5 relationships.'
6 A. Yes.
7 Q. 'He had strong ambivalent feelings of great intensity to
8 both parents.'
9 A. Yeh.
10 Q. Well, is there anything there about Doctor Binney saying
11 he's unreliable?
12 A. Go down further. A little down there.
13 Q. Yes.
14 A. After the Doctor Binney continued to see assessment
15 during these months -- six sessions. Angry, unreasonable, defiant.
16 Q. Well, that's -- I can read that. It says he was:
17 An angry, unreasonable, and defiant person.
18 A. Defiant, yeh.
19 Q. It doesn't say anything, at all, about him being unreliable?
20 A. Okay. It doesn't say that.
21 MR. CHAIRMAN:
22 What was the next sentence?
23 BY MR. PUGSLEY:
24 Q. The next sentence?
25 July 30th, 1971 --

1 John -- Sorry.

2 It was noted however, that he was not incoherent, depressed or retarded.

3

4 A. Yes.

5 Q. That's what Doctor Binney said. --

6 A. Yeh.

7 Q. Did you find -- Did you come to the same conclusion after

8 you stated treating him in March of '72?

9 A. No, that he was mentally border-line retarded.

10 Q. You say he was mentally borderl-ine retarded?

11 A. He is. Yeh.

12 Q. Doctor Binney didn't come to that conclusion though?

13 A. No.

14 Q. No. Well, is Doctor Binney a good doctor?

15 A. Yes.

16 Q. He was with the Cape Breton Hospital until 1979?

17 A. Yes.

18 Q. How was it that Doctor Donovan took over Mr. Pratico's

19 treatment in November, '71, and you took it over in March

20 of '72?

21 A. Because we -- we were short of psychiatrist and we had to

22 take over the case loads. And we -- or whichever is available

23 to take over the case.

24 Q. Did that mean that Doctor Binney was to busy, in November '71,

25 to look after Pratico?

1 A. Yeh, that's right.

2 Q. And did it mean that Doctor Donovan was to busy in March of

3 82 --'72, to look after Pratico?

4 A. Yes. Yeh, it's quite possible. Or the assignments were

5 changed.

6 Q. I see. Okay. Going back, to your statement, that you gave

7 to Mr. Wheaton, in volume 21.

8 I found him to be a very unreliable informant.
He tends to manipulate and fantasize, distort according
9 to his needs and wishes.

10 And when did you come to the conclusion that Mr. Pratico

11 did those things?

12 A. From day one, I knew him.

13 Q. From day one, you knew him?

14 A. I mean, once I got to know him. These are my feelings

15 since then.

16 Q. From day one or from when you got to know him?

17 A. When I got to know him. And I --

18 Q. How long did it take -- Excuse me. How long did it take you

19 to get to know him?

20 A. It took me years.

21 Q. How many?

22 A. It took me quite a while to know him.

23 Q. Did you say a year or years?

24 A. Years, I said.

25 Q. Years. Plural. Years. How many years did it get you -- did

it take you to get to know Mr. Pratico?

A. About two.

Q. About two years. Okay.

A. Yeh.

Q. And how many times did you see him, in those two year periods?

A. Roughly I saw him every week on the street --

Q. Every week?

A. -- in the shopping center.

Q. No, no. I mean in the patient/doctor relationship?

A. Yeh. He kept on -- you know -- He was -- He was coming every two weeks or so approximately.

Q. Every two weeks, did you say?

A. Yeh.

Q. And how long a time would he spend with you?

A. About half an hour, thirty-minutes. Twelve minutes. Depending on what shape he was in.

Q. Okay. All right. Well, if it took you two years, and you're a trained psychiatrist with a good deal of experience; if it took you two years to come to the conclusion that Pratico had these tendencies to manipulate and fantasize, is it any wonder that Mr. Pratico fooled Mr. MacIntyre, who took two statements from him? Is it any wonder that he fooled John MacDonald, the Judge who was at the Preliminary Inquiry? Is it any wonder that he fooled the same Judge MacDonald, about

1 three weeks later at another Preliminary Inquiry and finally
2 is it any wonder that he fooled a Supreme Judge and Jury
3 when he gave evidence for perhaps an hour or so?
4 A. It's quite possible.
5 Q. Yeh.
6 A. Yeh.
7 Q. Now, you say, in the statement of Febrary 19th, 1982, during
8 the time of the murder -- Sorry? I'm sorry. Just make a comment?
9 A. I didn't say anything?
10 Q. During the time of the murder trial, in 1971, I would have been treating John.
11
12 Well, that's not accurate is it?
13 A. Yeh, There's a discrepency in dates.
14 Q. Yeh. So my question to you, sir, is that in this statement
15 that you signed in February 19th, of 1982, when you said
16 that during the time of the murder trial: "I would have
17 been treating John." That is not an accurate statement?
18 A. Yeh, there's a discrepency there, yes.
19 Q. It's what?
20 A. Yes, it should be '72, yeh.
21 Q. I could be '72?
22 A. Yeh.
23 Q. Well, it was '72, was it not?
24 A. Yeh.
25 Q. Well, it's not '71 at all, is it?

1 A. No.
2 Q. No. That is not an accurate statement? Did you -- When
3 Mr. Wheaton came to see you, I take it you have a file,
4 do you, of each one of the patients you've treated?
5 A. This is it.
6 Q. No, I say, in the hospital --
7 A. This --
8 Q. -- do you have a file?
9 A. Yes.
10 Q. Yes.
11 A. Yeh.
12 Q. And do you personally have a file of all the patients you
13 treated?
14 A. No.
15 Q. Do you make notes of the meetings when you interview
16 patients?
17 A. Yes.
18 Q. Is your practise to make notes?
19 A. No, we dictate.
20 Q. Well, you dictate notes?
21 A. Yeh. And we have the part here, the notes which are dictated.
22 Q. I see. Was it your practise to dictate a note after you see
23 each patient?
24 A. Sometimes --
25 Q. Sometimes.

1 A. Not all times, no.
2 Q. Okay. Well, I take it, it would have been an easy matter
3 for you to check, at the Cape Breton Hospital, to determine
4 when you first started treating John Pratico? That would
5 have been an easy matter?
6 A. Well, that's what I did and that's what gave me this date,
7 I think.
8 Q. That's why you're able to say it's March of 1972?
9 A. Yeh.
10 Q. Now, you go on to say:
11 He was admitted to the Nova Scotia Hospital on 31st
12 of August, 1971. At that time he expressed concern
about the trial and the outcome.
13 A. Yes.
14 Q. He -- Did he -- Well, who did he express that concern to?
15 A. To -- it's in the discharge summary of the Nova Scotia Hospital.
16 Q. I see. That where we got that?
17 A. And Doctor John -- yeh.
18 Q. Would the notes of the Nova Scotia Hospital, with respect
19 to Mr. Pratico, had been sent to you?
20 A. Yes. They sent --
21 Q. And how quickly are they sent, to you, after the discharge
22 of a patient?
23 A. It usually takes one week.
24 Q. It usually takes one week to do so?
25 A. Yeh. Usually.

1 Q. I see. And when you received those notes, would you have
2 read them?
3 A. Yes.
4 Q. Or would Doctor Donovan or Doctor Binney have read them?
5 A. Yeh.
6 Q. Yes. Okay. You go on to say:
7 He was glad to be in the hospital and the results
8 from the Nova Scotia Hospital were the same as
my own findings.
9 A. Yes.
10 Q. What were the results, of the Nova Scotia Hospital,
11 that were the same as your own findings?
12 A. When he was -- He -- I don't know --
13 COMMISSIONER POITRAS:
14 What page was that, please?
15 MR. SPICER:
16 It's the Clinical Record towards the end of the Nova Scotia
17 Hospital. 72 03444.
18 COMMISSIONER EVANS:
19 72 03444?
20 MR. SPICER:
21 That's correct.
22 BY MR. PUGSLEY:
23 Q. Who was the physician in charge of his care at the Nova Scotia
24 Hospital for that two-month period between August and October,
25 1971?

1 A. Dr. P. K. Johns, M.B.B.S., M.S.A., F.R.C.P. of Canada,
2 Senior Psychiatrist.
3 Q. Did you know Doctor Johns?
4 A. He has gone back to England.
5 Q. Yes, I know. I realise that he's not there anymore but
6 did you know of him?
7 A. Yes.
8 Q. Did you know him personally?
9 A. I knew him professionally.
10 Q. Yes. And did he have a good reputation?
11 A. Yes.
12 Q. Yes. And was Doctor Johns' diagnosis, of Mr. Pratico,
13 the same as yours?
14 A. Yes.
15 Q. Did you -- Well, was Doctor -- Was it your opinion that
16 Mr. Pratico was psychotic, in 1971?
17 A. At that time he started to manifest.
18 Q. Well, was it your opinion, that in August and September and
19 October and November of 1971, that he was psychotic?
20 A. Yes, he was diagnosed as having schizophrenia with
21 paranoid ideation and he started to manifest psychotic
22 features.
23 Q. There's a note of Doctor Johns that I want to refer you to,
24 and I'm not sure that I can find it in --
25 A. No, it's all right.

1 Q. -- in exhibit 47. I'll just identify it for the purposes
2 of the record. At the top of the right hand page, it's
3 72-03444.
4 A. Yes.
5 Q. Perhaps we can find that page.
6 A. Yeh, I have it.
7 Q. Do you have that in front of you?
8 A. Yeh.
9 Q. There may be more than one -- I guess there's more -- there
10 may be more than one page with the same number.
11 A. Oh.
12 Q. The one I am looking at, sir, relates to the Clinical
13 record. It's page one and perhaps I'll just read it into
14 the record. It's a progress note of November 30th, 1971.
15 A. Yeh.
16 Q. And it says: 'This patient' -- now this the November 30th.
17 A. That's the second time around.
18 Q. I quite agree. It is the second time around.
19 A. Yeh.
20 Q. It says:
21 This patient arrived as a second admission. He is
22 extremely jumpy, jittery and hyperactive. He is
being treated with a large dose of --
23 How do you pronounce that?
24 A. Phenothiazines.
25 Q. Phenothiazines?

A. Yeh.

Q. He is functionally, marginally on the adolescent program, at the present time. He does not appear to be phychotic as reported by the family doctor, who referred him.

A. Yeh, because he was treated with anti-psychotic medication.

Q. I see. And it was the medication that was making him not psychotic?

A. That's right.

Q. I see. Okay. Was Doctor Binney aware, of the fact, that Mr. Pratico was going to give evidence in court?

A. That, I don't know.

Q. You don't know?

A. No.

Q. Okay, in any event, the doctors at the Nova Scotia Hospital were --

A. Yes, Doctor Johns knew.

Q. Yes. And if I can refer you to page -- in the exhibit 47. It's part of the Clinical Record at the Nova Scotia Hospital. It's entitled: 'Psychiatric Survey, August 31st, 1971'.

A. Yeh.

MR. ROSS:

About how far in is that Ron?

MR. PUGSLEY:

I'm not -- Unfortunately I've just got a loose copy of it and I'm just trying to find it in the exhibit. It's about two-thirds

of the way through and again at the top, in handwritting, it's 72-03444, Nova Scotia Hospital Clinical Record, Page One. It's about fifteen or so pages from the back of the volume.

COMMISSIONER EVANS:

Is there a date on it?

MR. PUGSLEY:

Well, it says 71-02158. And it says 'Psychiatric Survey, August 31st, 1971, at the top of the page.

MR. CHAIRMAN:

I have it.

MR. PUGSLEY:

It's a two page report signed by Doctor John's. It's about twenty pages from the end of the volume.

BY MR. PUGSLEY:

Q. Do you have that Doctor Mian? I'll show the copy I have.

A. This the copy?

Q. Yes, you've got it.

A. Yes.

MR. PUGSLEY:

And perhaps I'll just make sure the Commisssion has it.

MR. CHAIRMAN:

We have it.

MR. PUGSLEY:

Do you have it? Thank you.

BY MR. PUGSLEY:

Q. Now, under Mental Statis Examination, Doctor John writes:

> This shows a very anxious, jumpy, jittery sixteen year old boy. He seems to be quite frightened and scared and quite happy to be in the hospital. He stated that on top of all his problems he has got himself in a tight spot by witnessing a murder in the park not to long ago. He is one of the only two witnesses in this murder trial and there have been some threats on his life. This has not made matters easy for him. He has also stated that there are some racial overtones in this murder trial because the boy who was murdered was a negro lad and the murderer (alledged) was an Indian boy. It seemed that the whole Indian tribe, in the local area, considers him as an enemy and would like to liquidate him.

Now, there's no question, at all, the people in the Nova Scotia Hospital were aware of the fact that he was a very key person and going to give evidence at a murder trial shortly thereafter and yet no steps were taken by Doctor John or by anyone else to notify the court officials in Sydney or the Crown Prosecutor that Pratico would not be an appropriate witness?

A. That's correct.

MS. EDWARDH:

Nobody referred to that evidence.

MR. CHAIRMAN:

I agree. That's more of a question, whether or not he thought whether this witness is aware --

MS. EDWARDH:

In fairness to the witness perhaps he should be asked if he is aware.

1 BY MR. PUGSLEY:
2 Q. Are you aware of any -- Well, did Doctor John ever get in
3 touch with you or with anyone at the Cape Breton Hospital
4 to discuss the desirability of Pratico giving evidence?
5 A. No.
6 Q. As a key witness?
7 A. No.
8 Q. Did you have any opinion, at this time, as to whether or not
9 Pratico should be giving evidence? When I say at this time,
10 I mean in the fall of 1971?
11 A. No.
12 Q. Did you have any opinion, at this time, as to whether or
13 not he should be giving evidence in court?
14 A. No, I --
15 Q. No. Okay.
16 MR. CHAIRMAN:
17 Mr. Pugsley, would you inquire as to whether this report from
18 Doctor John, was indeed, sent to this witness in '71.
19 BY MR. PUGSLEY:
20 Q. Yes. Did -- I think you indicated, earlier that it was
21 the practise for the Nova Scotia Hospital to send all reports
22 to you with respect to patients that had come from the Sydney
23 area that had been treated at the Cape Breton Hospital. Did
24 you, in fact, receive these reports, that I've just been
25 referring to?

1 A. No, I don't know. I don't remember.
2 Q. Or did the Cape Breton Hospital --
3 A. Yeh, we did receive but I don't know when.
4 Q. What would the practise be? Would the Nova Scotia Hospital
5 would send to what? The Medical Records Librarian?
6 A. Discharge summaries.
7 Q. Pardon?
8 A. Usually, you know, they don't send all the record. They
9 just send us the discharge summary of the hospital.
10 Q. The discharge summary?
11 A. Yeh.
12 Q. Is this --
13 A. And if we want more information then we have to ask them for
14 that.
15 Q. Is the piece of paper, that I've just been referring to,
16 a moment ago, is that part of the discharge summary?
17 Is that part of the piece --
18 A. No, that just initial admission.
19 Q. I see. Yeh.
20 BY MR. CHAIRMAN:
21 Q. Would that have been sent to you? Would that have been sent
22 to your hospital? To the Cape Breton Hospital? The Clinical
23 Record of John Pratico? The one you're looking at there now.
24 Would that have been sent to the Cape Breton Hospital?
25 A. If we want the whole volume. If we want the whole detailed

1 records, they send us, otherwise they just send us the
2 discharge summary. When they transfer a patient, as
3 John Pratico was. This was sent to us.
4 Q. The discharge record, when it's sent from the Nova Scotia
5 Hospital to the Cape Breton Hospital, would it then be
6 referred to the psychiatrist who had been treating that
7 patient?
8 A. Yes.
9 Q. So, presumably, as you were not treating that patient --
10 A. Yes.
11 Q. -- Pratico, it would not have been sent to you?
12 A. That's right.
13 Q. All right.
14 BY MR. PUGSLEY:
15 Q. Who was treating Pratico at this time? That's in August,
16 September and October of 1971. I realize he was not
17 physically in Sydney --
18 A. Doctor Donovan was.
19 Q. Doctor Donovan was.
20 A. On an outpatient, yeh.
21 Q. He was in charge of Pratico, as far as your hospital was
22 concerned, at that time?
23 A. Yeh.
24 Q. And I take it that anything that came to the Cape Breton
25 Hospital from the Nova Scotia Hospital, with respect to Pratico,

1 would have been directed to Doctor Donovan's attention?
2 A. Yes. Yeh.
3 Q. And would he have put that in the file and when you took
4 over Pratico's care, in March of 1972, would that -- those
5 documents have been in Pratico's file?
6 A. Yeh.
7 Q. And would you have read those when you started taking over
8 his care?
9 A. Yeh.
10 Q. Okay.
11 BY MR. CHAIRMAN:
12 Q. Before you leave that, in that same file, on Pratico, would
13 there have been the Clinical Record that we're now looking
14 at? The Clinical Record that you have in front of you?
15 A. Yes, we had them.
16 Q. That would have been in your file, that is, Pratico's file
17 at that time?
18 A. Yes.
19 Q. Can I assume, therefore, that Doctor Donovan must have requested
20 that Clinical record?
21 A. Yes.
22 BY MR. PUGSLEY:
23 Q. If you will turn, about three pages later from the page I
24 was just referring to, there is a Social Service note made on
25 September 23rd, 1971 by J. Power for Mrs. Milne, it would appear.

1 And it says:

2 This young man has improved considerably since coming to Hospital. He has settled down to point where we
3 can now consider making some discharge plans for him. Accordingly we arranged to send him on a two-week
4 pass home. John became anxious, nervous and irritable and finally decided he was not ready to
5 try a pass home as yet.

6 And then about a couple of paragraphs down:

7 Mrs. Pratico is quite depressed, anxious and quick to react to John's moods. In short I think we have
8 a cause/ effect type of relationship here which probably will not make for a good adjustment for
9 the patient if he returns home.

10 I gather from this and other records, from the Nova Scotia
11 Hospital, that there was some difficulty between John and
12 his mother at this period of time?

13 A. Yeh. That's correct.

14 Q. Did that difficulty continue after John became your patient
15 in March of '72?

16 A. Off and on.

17 Q. Off and on?

18 A. Yes.

19 Q. Okay. Continuing in that note of Mrs. Power for Mrs. Milne;

20 Moreover the impending pressure of the court hearing (scheduled for sometime in October) seems to be
21 causing John some increasing anxiety. I have discussed this case with Peter MacDonald of the Family Court
22 in Sydney and he is to investigate the possibility of firming up some discharge plan for John back into the
23 community?

24 Do you know Peter MacDonald of the Family Court in Sydney?

25 A. I think I did.

Q. Do you have any idea --

A. I don't recall, no.

Q. Do you know why the Social Worker at the Nova Scotia Hospital would speak to a --

A. Because he was still under sixteen or around sixteen and he was having -- this case was brought in before the Family Court because of the troubles in the family and that's how the Family Court must have been involved.

1 Q. I see. If you turn a few pages later the the psychiatric
2 nursing notes -- They're handwritten notes again from the
3 Nova Scotia Hospital and I just -- Perhaps the easiest thing
4 would be just to read to you what I want to address to you,
5 Doctor, and ask you for your comment on it, Sir. Yes, you
6 have it there. That's correct. It's about half a dozen
7 pages from the end of that volume.
8 A. Yes.
9 Q. "Voluntary first admission," and so on -- I'm sorry. It's
10 page No. 1, it's got No. 17 at the top, psychiatric nursing
11 notes, page No. 1. About four lines from the top -- "John
12 comes from an unfavorable family situation. Mother is a very
13 heavy drinker, and she is on Social Assistance and lives with
14 an alcoholic boyfriend. Father has departed and lives with
15 another woman. John describes himself as a nervous, high-
16 strung, nailbiting individual, not too bright in school.
17 He has repeated Grades 5, 6, and 7, not being to study in
18 the home situation. John and his mother fight and argue
19 after mostly -- often mostly about the mother's drinking."
20 Was that consistent with the impression you had as well
21 that the fights that he had with his mother were mostly
22 about her drinking?
23 A. That's what he said, yeh.
24 Q. Yes. Yes. Okay. Did you ever see the mother?
25 A. No.

1 Q. Never saw her?
2 A. No. Never did at all.
3 Q. Pardon?
4 A. No. I never saw the mother, no.
5 Q. No.
6 A. Or the father. Or the father.
7 Q. To gain an insight into him and the treatment that he would
8 require, would it not have been desirable for you to have
9 interviewed the mother?
10 A. Yea, but they don't -- didn't want to come, you know.
11 Q. She didn't want to come?
12 A. I think so because she didn't want to and we tried. On the
13 phone we have talked to her two times. I didn't, but the
14 social worker have.
15 Q. Did you ever request Mrs. Pratico to come to see you?
16 A. Must have through John or through the social worker because
17 she didn't want to come near other place --
18 Q. Sorry, Sir, you say you must of but did you?
19 A. I don't remember, no, to be very honest.
20 Q. I see.
21 INQUIRY ADJOURNED: 11:25 a.m.
22 INQUIRY RECONVENED: 11:40 a.m.
23 Q. Was it your custom, Sir, to read the Cape Breton Post in 1971?
24 A. Yes.
25 Q. Yes.

1 MR. CHAIRMAN:
2 Doesn't everyone?
3 MR. PUGSLEY:
4 I beg your pardon?
5 MR. CHAIRMAN:
6 Doesn't everyone?
7 MR. PUGSLEY:
8 Yes, I'm sure they do, My Lord.
9 BY MR. PUGSLEY:
10 Q. The trial of Donald Marshall, Jr., and the subsequent
11 conviction of Donald Marshall was a matter of publicity in
12 the paper. Do you recall reading about it at the time?
13 A. Yes. Yes.
14 Q. I'd like to perhaps introduce through this witness -- I can
15 prove it formally if necessary -- some of the reports that
16 were in the paper. Sorry, the piece of paper I've passed to
17 you did not have the date put on it, but the photostat from
18 from which it was made does have the date, and I'll read
19 that into the record. This is Exhibit 51, and it purports
20 to be a photostat of a page from the Cape Breton Post,
21 Friday, November 5, 1971, headline, "Marshall Denies
22 Stabbing Seale," and the only matters I wish to bring to
23 your attention, Sir -- I've underlined some comments about
24 the middle of the column -- "The defense counsel said
25 only two of the Crown's eighteen witnesses were important,

1 and the whole case hangs on their testimony." And then later
2 down at the bottom of the column, "'Eyewitness John Pratico
3 said in the court corridors during the trial that Marshall
4 didn't stab Seale because he was afraid for his life,'
5 Mr. MacNeil said." Do you have any recollection at the
6 time of the Marshall trial that Mr. Pratico was a witness
7 during that trial, and would that have meant any -- Would
8 that name have meant anything to you?
9 A. What was the question, please?
10 Q. Yes. Do you recall reading the Cape Breton Post at about the
11 time of the Marshall trial and the play given to the evidence
12 given by the two eyewitnesses and one of them being identified
13 as John Pratico, and do you recall whether or not that name
14 would have meant anything to you at that time in November 1971?
15 Would Pratico's name have meant anything?
16 A. It did mean to me what was the outcome of the trial, that's all.
17 Q. I'm sorry. I missed what you said, Sir.
18 A. Yeh. I followed with interest and what the outcome will be.
19 Q. You were interested in what the outcome would be, yes?
20 A. Yeh, how -- what the Court is going to decide.
21 Q. Were you of interest that Mr. Pratico was a witness? Does
22 that name --
23 A. Yes. Yes.
24 Q. I see. And would Mr. Pratico's name have meant something to
25 you in November of 1971 as being a patient of --

A. Yes. Yeh.

Q. I see. You would have recognized that name?

A. Yes.

Q. Alright. I'll just give you one further report that appeared in the paper on November 4, 1971. This purports to be November 4. I can certainly get that verified. There's just a handwritten note that indicates this is November 4, but I can certainly take steps to confirm that that was the day. I'm going to show you Exhibit 52, Doctor Mian, which purports to be a page or part of a page from the Cape Breton Post of November 4, 1971. "Supreme Court -- Sixteen witnesses give evidence of Sydney teenager. Testified in Supreme Court yesterday he was hiding behind a bush in Wentworth Park late on the night of May 29 when he saw two youths arguing. John Pratico, 16, said he recognized them as Donald Marshall, Jr.--" And would that again have been a paper that you would have read?

A. Yes.

Q. And an article that you would have read?

A. Yes.

Q. Yes. Do you recall having any discussion with Doctors Binney or Doctor Donovan concerning the fact that Pratico was giving evidence in court and whether or not it was appropriate for him to do so?

A. I might have. You know. I don't remember that.

1 Q. Okay. But, in any event, I take it from what you said
2 earlier that even if you had -- Even if you were of the
3 opinion that it was not appropriate for Pratico to give
4 evidence -- that he was not reliable -- that you would
5 not have taken the initiative yourself and advised the Crown
6 Prosecutor or any authorities, but you would have responded
7 to a request from an appropriate party for information con-
8 cerning his condition. But you would not have taken the
9 initiative?
10 A. That's correct.
11 Q. I see. Was that the practice that was followed by all the
12 doctors in the Cape Breton Hospital at that time?
13 A. I think so.
14 Q. Was that, in fact, a practice of the hospital?
15 A. Yes.
16 Q. I see. My friend, Ms. Edwardh, asked you about Pratico's
17 condition, and, as I recall your evidence, you suggested
18 that from October and November of 1971, he went downhill
19 until he got back into the Cape Breton Hospital in November
20 of 1971.
21 A. Yes.
22 Q. And that was your evidence?
23 A. Yes.
24 Q. I want to refer you to the clinical record of Mr. Pratico
25 from the Nova Scotia Hospital. That is the psychiatric

survey dated November 29, 1971. I'll just try and find that page for you in Exhibit 47. It's slightly more than one page again by Dr. P.K. John. November 29, 1971.

A. Yes, I have it.

Q. You have it? Good. I'll just --

A. November 29, '71?

Q. I'll show you the page I'm looking at, Doctor.

A. Fifty-three it says. Yes, Sir. I have it.

Q. You have that one there?

A. Yeh.

MR. PUGSLEY:

Does the Commission have it? It's November 29, 1971. I'll try and find the location. Yes. No. It's November 29, and it's a little more than one page. Just one second. I'll just try and find where that is located in Exhibit 47. Let's see now. I think Doctor Mian has found it. I'll just take a look in his book and see where it's at.

THE WITNESS:

This one?

MR. PUGSLEY:

That's the one. You've got the right one, Doctor, and it would appear to be about halfway -- about in the middle of the book.

COMMISSIONER EVANS:

What is the first line?

MR. PUGSLEY:

The first line is --

1 The first line is, "Psychiatric Survey, November 29, '71.
2 Situation, Complaint, and Problem."
3 MR. CHAIRMAN:
4 Carry on.
5 MR. PUGSLEY:
6 All right, thank you.
7 BY MR. PUGSLEY:
8 Q. This again is a report by Dr. P.K. John, and it says: "This
9 patient was in the Nova Scotia Hospital Adolescent Program
10 from 25/08/71. That's from August 25, '71 to 25/10, a period
11 of two months to October 25, '71 with the diagnosis of
12 schizophrenia. He was discharged on chloropromazine and
13 referred to a local psychiatrist." On the mental status
14 examination, Doctor John writes, "This shows a very hyper-
15 active, jumpy, jittery male who is walking around rapidly
16 from end to end of the ward. It is difficult to reason with
17 him or carry on an organized conversation with him because
18 he's argumentative and somewhat hostile. He seems also to
19 be putting on quite a dramatic show to impress the staff and
20 the patients. He made statements that he does not need to
21 be in hospital. He uses vulgarities lavishly. He seems to
22 be in good contact with reality." And I stress those words
23 to you. Did you -- Is it your opinion that Mr. Pratico was
24 "in good contact with reality" in November of 1971?
25 A. It appears from the record. Yes. He could have been in

1 contact with reality because he was still on chloropromazine.
2 That's 200 mg. Q.I.D. That's 800 mg. That's quite a heavy
3 dose --
4 Q. Yes.
5 A. -- of medication.
6 Q. Doctor John goes on to say, "His sensorium appears normal."
7 What does the word "sensorium" mean?
8 A. His intellect; for example, contact. You know. Is he
9 oriented to time, place, and person?
10 Q. His what?
11 A. Is he oriented to --
12 Q. His orientation with --
13 A. -- towards time --
14 Q. Towards time?
15 A. -- place, and person.
16 Q. Towards time, place, and person. Okay. "He shows no dis-
17 orientation. His thinking seems to be clear. There is no
18 evidence of delusions or hallucintions." Then it goes on
19 to say at the bottom of that page, "He says that he has been
20 doing a considerable amount of drinking, mostly rum and wine.
21 He said that the trial of the Indian boy about which he was
22 worried on his last admission is over with. The man was
23 apparently sentenced and sent to Dorchester. John himself
24 was a witness at the trial." Doctor John obviously was
25 aware that he was a witness, as I guess -- as you have

1 indicated you were as well. At the top of the next page, he
2 says, "He does not appear to be overtly psychotic but more
3 hypomanic at the present time." What does the word "hypo-
4 manic" mean?
5 A. Hyperactive grandiose -- agitated.
6 Q. And the following page the word appears -- the conclusion
7 appears, "He does not appear to be psychotic as reported by
8 the family doctor who referred him." Did Doctor Donovan
9 see him between October 25 and November 25? Did Doctor
10 Donovan? Your Doctor Donovan?
11 A. Yes. Yea.
12 Q. At the Cape Breton Hospital.
13 A. Between?
14 Q. Between October 25, when I believe he was discharged from
15 the Nova Scotia Hospital and November 25, when he went back.
16 A. He was there from November 29, '71 to March 29, '72 --
17 Q. Yes.
18 A. -- at the Nova Scotia Hospital.
19 Q. Yes.
20 A. And he --
21 Q. My question was: Was he seen by anyone at the Cape Breton
22 Hospital between October 25, '71 and November 29, '71.
23 A. Between October -- Young brother, Richard, joined army in
24 October of '71, and he was planning to go there.
25 Q. Yes.

1 A. That's about all I have in here.
2 Q. I see.
3 A. I don't know.
4 Q. Alright. Okay. In 1971, is it your -- I'm sorry -- Is it
5 your opinion now that in 1971 that Mr. Pratico would have
6 reacted or would have become more upset under conditions
7 of stress?
8 A. Yes.
9 Q. Yes. I take it that the trial -- the Supreme Court trial with
10 a judge and a jury would have been a very stressful situation
11 for him?
12 A. Yes. That's correct.
13 Q. Is it fair to say that that probably would be the most
14 stressful kind of situation that he would be put in in that
15 year?
16 A. That's correct.
17 Q. And that if he was going to fly apart or show obvious
18 distressful problems, they would have been manifested
19 during the course of giving evidence at that trial?
20 A. Yes, but he was also on quite a bit of medicaiton. That
21 might have helped him a little.
22 Q. I see.
23 You've indicated that part of his condition was that he liked
24 to please people. He liked to tell them what they wanted to
25 hear.

1 A. That's correct.
2 Q. And is that something that continued throughout 1971 --
3 throughout 1982 as well?
4 A. Yes.
5 Q. And when he saw Constable Carroll -- or Corporal Carroll -- in
6 February of 1982, would he have wanted to say things that
7 would have pleased Corporal Carroll?
8 A. Now, in my opinion, that's quite possible, but I think
9 that the first time because he started to face the truth,
10 I think, because, if I remember correctly, around that time
11 he saw Mr. Seale in New Waterford and told him the same
12 story that he stuck to -- original story.
13 Q. Yes.
14 A. If I remember correctly.
15 Q. I think your memory is correct as far as we know. We're not
16 sure exactly when that interview with Mr. and Mrs. Seale
17 took place. We believe it was early in 1982.
18 A. It's around that time, yeh.
19 Q. Yes, but leaving that aside for a moment, as far as
20 Corporal Carroll is concerned in February and in the
21 early months of 1982, was part of Mr. Pratico's condition
22 such that he wanted to please people, such as Corporal
23 Carroll with whom he came in contact?
24 A. It's quite possible.
25 Q. Yes. And, indeed, you felt he was still ill at that time?

1 A. Yes. Yeh.
2 Q. In fact, you've sworn an affidavit to the effect that he was
3 ill at that time.
4 A. Yes.
5 Q. With respect to Mrs. Seale and Mr. Seale, I don't quite
6 follow why he felt that it would be pleasing for him to say
7 that he saw their son murdered. Why would he feel that that
8 was a good thing to say to Mr. and Mrs. Seale?
9 A. I don't know.
10 Q. I see. Turning to your affidavit, which is found in
11 Volume 12 at page 288 -- If you would just turn to that
12 for a moment, Doctor. Volume 12, a red book.
13 A. This volume?
14 Q. It's a large book. I think it's probably at the front here,
15 Sir. Page 288? Right. Very close to the second-last page
16 in the Volume. Page 288, the second-last page in the Volume?
17 A. Oh, okay. I don't have page 288.
18 Q. Oh, I'm sorry. I'm sorry. I gave you the wrong Volume.
19 That's Volume 21. Volume 12. That's it right there, Doctor.
20 I'm sorry.
21 A. 288?
22 Q. 288, yes. Is it your recollection, Sir, that it was Corporal
23 Carroll or Corporal Wheaton who brought this affidavit to you?
24 I notice that -- It would appear to be a John Khattar who took
25 your affidavit. I guess we don't know who is the person who

is the person who took that affidavit ,(but it was obviously someone who described himself as being a lawyer, a barrister of the court), but is it your evidence that Corporal Carroll or Corporal Wheaton brought this affidavit to you?

A. I don't remember which one.

Q. But you did say in response to a friend -- to a question from my friend, Ms. Edwardh, that there were probably two or three occasions that you discussed with Wheaton and Carroll the contents that eventually went into this affidavit?

A. I think so.

Q. Yes. Okay.

A. You say,"That I am a psychiatrist and presently the Medical Director of the Cape Breton Hospital, an institution for the treatment of the mentally ill and that that statement was true." That statement is true, yes?

A. Yes. Yes. Yeh.

Q. Secondly,"That I know John Louis Pratico who testified at the preliminary hearing in July 1971 and trial of Donald Marshall, Jr., who was subsequently convicted of the murder of Sandy Seale." And that certainly was true.

A. Yes.

Q. Thirdly, "That the said John L. Pratico has been a psychiatric patient of mine from August 1970 to date." We discussed that earlier -- that's not true.

A. Yea. It should be corrected.

1 Q. That should be corrected. Yes. Right. Did you understand the
2 difference between an affidavit and a statement? Did you
3 understand that the statement that you signed for Corporal
4 Wheaton found in Volume 21 at page 77 was a statement that
5 you signed and that an affidavit is a document in which
6 you swear that what you are saying is the truth? Did you
7 differentiate between those two in your own mind?
8 A. No. No, I didn't.
9 Q. You did not.
10 A. No.
11 Q. I'm not saying that you should have.
12 A. Thank you very much. Yeh.
13 Q. Alright. You say that, "My medical diagnosis of the said
14 John Pratico since August 1970 is that he suffers from a
15 schizo -- And what is that word? Is that your word?
16 A. Schizophreni - form. That's a terminology in which the
17 diagnosis of acute schitzophrenia with a little bit of
18 mental retardation. It's a illness resembling schitzophrenia.
19 Q. That is a medical term, that word as it is spelled right
20 there, is it?
21 A. Yea.
22 Q. Okay. "Manifested in his case by liability to fantasize and
23 thereby distortion of reality and rather childish desire to
24 be in the limelight or center of attraction." You go on to
25 say that, "In order to function outside of a psychiatric

1 institution, the said John Pratico has since August 1970
2 to date been on continual medication under my direction."
3 A. No.
4 Q. Well, that was not accurate, was it? It was not under your
5 direction that he was on medication since August 1970?
6 A. For that period, you know, from '72 it has been my --
7 Q. From '72, quite so. When did he first start taking
8 medication?
9 A. When he first went to Nova Scotia Hospital and prior to that
10 on a very small --
11 Q. How long prior to that was he on --
12 A. That was -- It was 5 mg. B.I.D. from July 30, 1971. Nozinan.
13 Q. Is that when he first started medication?
14 A. Yeh. That's when he was started, but he was not very
15 compliant.
16 Q. I'm sorry?
17 A. He didn't take it regularly, but that's when it was given --
18 prescribed to him to be administered by the mother because
19 he was still an adolescent at that time.
20 Q. Yes, but did he start taking medication before July 30?
21 A. Yea. This was on July 30, '71. He was prescribed that
22 medication.
23 Q. That's the first time he was prescribed medication?
24 A. Yea, a very small amount.
25 Q. Okay.

1 A. This on page one.
2 Q. Yes.
3 COMMISSIONER EVANS:
4 1971?
5 MR. PUGSLEY:
6 1971, yes. Yes.
7 BY MR. PUGSLEY:
8 Q. Were you asked for an opinion as to whether or not it was
9 appropriate for Mr. Pratico to give evidence before the
10 Appeal Division of the Supreme Court of Nova Scotia in December
11 of 1982?
12 A. Yes.
13 Q. And to whom did you give the opinion?
14 A. It's here somewhere. It should be here.
15 Q. I thought it was here too, and Mr. Spicer can perhaps assist in
16 that regard.
17 MR. PUGSLEY:
18 Is there some other document where -- that Doctor Mian has signed --
19 MR. SPICER:
20 1982?
21 MR. PUGSLEY:
22 Yes, with respect to the giving of evidence at the Appeal Division.
23 THE WITNESS:
24 Just these two. That's all.
25

MR. SPICER:

I don't think so. I think maybe he's talking about the opinion in the affidavit.

THE WITNESS:

That was on July 19, 1982.

BY MR. PUGSLEY:

Q. Yes. In December 1982, there was a hearing in Halifax at which certain individuals gave evidence. Mr. Pratico was not one of them. It's my recollection. Were you asked to give an opinion as to whether or not it was appropriate or he was capable --

A. If I recollect, they said this would be more than enough and there was no need. If I remember correctly. I don't --

Q. You don't recall whether you were asked to give advice on that point or not? Do you recall whether or not you were asked to advise as to whether or not he was capable of --

A. Yea. We were talking about what December it was.

Q. December of 1982, six months after your affidavit.

A. Oh, I remember it now that I was supposed to testify.

Q. You were supposed to testify?

A. Yes, about his not being reliable and then it was supposed to be in Halifax or Dartmouth, I think.

Q. Yes.

A. I was to appear, but then I was advised that there's no need for me to come.

Q. I see. Did they ask you whether or not Mr. Pratico should

1 testify?
2 A. I presume that he was not going to testify anyway and that's
3 why they wanted me to go and testify. I think it was in
4 Dartmouth. It was scheduled in Dartmouth. Right. And then
5 I advised that there's no need for me to come.
6 COMMISSIONER POITRAS:
7 I think his ability to testify is in relation to 1987, before this
8 Commission.
9 MR. PUGSLEY:
10 Yes, I wondered whether or not he had given any advise in 1982.
11 COMMISSIONER POITRAS:
12 '82. I havent' seen any.
13 MR. PUGSLEY:
14 No, I perhaps was wrong in thinking that Doctor Mian had been asked
15 for an opinion on that point.
16
17
18
19
20
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25

BY MR. PUGSLEY:

Q. When did you consider that it was appropriate for him to testify?

A. When I was asked again and that was -- that was -- That's the first letter?

Q. In your letter?

A. Yes.

Q. Yes. Your letter I think is 1987?

A. March 18th, 1987.

Q. Did you consider that he was capable of testifying before that time?

A. No, I don't think I entertained that, you know. When I was asked then I examined him and then that's when I wrote this letter.

Q. Yes, but at any time prior to 1987, did you consider that he was in a fit condition to testify?

A. If you ask me now, I think for the past few months, you know, since --

Q. Only the past few months?

A. From '86 onward --

Q. Yes.

A. --he has continued to maintain improvement, but I did not especially address this issue at any interviews, whether he is capable to testify or not.

Q. You've had a number of interviews with Mr. Spicer, the

1 gentleman who examined you this morning?
2 A. Yes.
3 Q. Interviews that have taken place, I guess, from March of this
4 year onward?
5 A. Very brief ones, yes.
6 Q. Yes. Right. Did you tell Mr. Spicer that you had looked after
7 Mr. Pratico in 1971, at the time of the Marshall trial?
8 A. I don't remember. I must have said the same statement, yes.
9 Q. Yes.
10 A. Yeh.
11 MR. PUGSLEY:
12 One moment, My Lord, if I may.
13 BY MR. PUGSLEY:
14 Q. Would -- In your opinion, Doctor, would Mr. Pratico's mental
15 problems have been apparent to the Jury or the Judge in the
16 Donald Marshall trial in November of 1971, and just to give you
17 a little assistance in that regard, he was on the stand for
18 a period of time. I'll try and assist you by showing you
19 the length of the examination which doesn't really tell you
20 how long he was on the stand, but it gives you an idea of the
21 extent to which he was questioned, and I'm referring to
22 volume 12, starting at page 214 and it goes on to 270, and you
23 can -- There was some arguement during the course of that
24 hearing between the lawyers so it just wasn't all questioning
25 of Mr. Pratico but there was a fair length of time that he was

on the stand, and he was not only examined-in-chief by the Crown Prosecutor but he was cross-examined by Defence Counsel as well. I realize it's difficult for you to speculate on this because you weren't there but in your opinion would his mental problems -- should they have been apparent to a Jury or a Judge in November of '71?

A. I think so. They should have been because under stress he is over-talkative.

Q. Over-talks?

A. Over-talkative.

Q. Yes.

A. Anxious. His concentration gets effected too, but he must have been under medication, but under that kind of stress I would speculate that he could manifest something.

Q. And how would you expect -- What would be the kinds of things that would give him away if you like?

A. For example, if you question him constantly and ask him, he might become belligerent--

Q. Yes.

A. --or uptight or he might want to leave the court or some sort of aggressive or impulsive out-burst under pressure.

Q. Yes.

A. And that -- It would have manifested that in the court but he went through all that according to --

Q. Yes.

1 A. Yeh.
2 Q. You said that you saw -- started seeing him in March of 1972
3 and saw him every two weeks for --
4 A. Almost, yes.
5 Q. --for what period of time did that continue?
6 A. All throughout the --
7 Q. Throughout?
8 A. Depending upon, once a month to every three weeks, but he has
9 been --
10 Q. So you would have see him--between 1972 and the present time
11 you would have seen him --
12 A. Yeh.
13 Q. --a hundred times?
14 A. Around. About. Okay. Yeh.
15 Q. Sure, and at no time did he mention to you the fact that he had
16 given evidence that was not accurate until 19 -- when, 19--
17 A. In 1982 when he talked to the Social Worker. He didn't want
18 to talk to me. He wanted to talk to the Social Worker, something
19 was bothering him, and then I think the Social Worker, Mr.
20 Arsenault arranged the meeting with the -- Sergeant Carroll
21 or something?
22 Q. Yes.
23 A. And after their interview, he was relieved
24 and after all that was done, then John came and -- with the social
25 worker would discuss his --

1 Q. But his first -- his first approach was to Mr. Arsenault
2 the Social Worker?
3 A. I think so.
4 Q. Is he still with you?
5 A. Yeh.
6 Q. Yes. What were his qualifications at that time?
7 A. He has a Master in Social Services -- Social Work.
8 Q. The fact that he approach Mr. Arsenault first rather than you,
9 does that mean that he was more at ease with Mr. Arsenault or--
10 A. No, I was just supervising. I didn't have time to sit with
11 him for half an hour and Mr. Arsenault was talking to --
12 kept -- you know that's C.T.R.
13 Q. And do you know whether or not Mr. Pratico took the initiative
14 with Mr. Arsenault before the R.C.M.P. spoke with him in '82,
15 or after?
16 A. I think the date is here. If I may refer to page -- on page
17 ten, volume --
18 Q. Yes. That would be Exhibit 47 I guess.
19 A. And the date at the bottom paragraph --
20 Q. February 28th, 1982?
21 A. Yeh.
22 Q. John was seen by Constable Carroll?
23 A. Yeh.
24 Q. Yes, but at that time -- Even in February of 1982 you felt that
25 his communications were unreliable?

1 A. Yes.
2 MR. PUGSLEY:
3 Thank you, Doctor. That's all the questions I have.
4 MR. MURRAY:
5 No questions on behalf of William Urguhart.
6 MR. ELMAN:
7 No questions.
8 MR. PINK:
9 No, My Lord.
10 MR. SAUNDERS:
11 No questions.
12 MR. CHAIRMAN:
13 Mr. Bissell.
14 BY MR. BISSELL:
15 Q. Doctor Mian, just a couple of very brief questions. If you
16 would turn again please to volume 12 of the Exhibit Books to
17 your affidavit at page 288 and 289.
18 A. Yeh.
19 Q. That's volume 12 of the Exhibit Books. Volume 12. Over on the
20 last page of the affidavit, the signature there of the lawyer
21 John Khattar, or it appears to be a John Khattar or someone,
22 does that assist you in any way to recall the events around
23 the taking of the affidavit?
24 A. John Khattar is our hospital's solicitor.
25 Q. I see.

1 A. And I must have requested this because he is our hospital's
2 solicitor and that's why his name is there.
3 Q. You say you must have requested it. Do you recall today?
4 A. No, not really. I'm sorry.
5 Q. I take it then it's fair to say that you have no independent
6 recollection of the signing of this affidavit?
7 A. No, I -- These are my signatures. I have signed it.
8 Q. Yes, but today you don't recall signing it, I take it. Is that
9 correct?
10 A. Oh, no, I remember signing it and Mr. Khattar was there too
11 when I signed it. I don't remember who initiated it or who
12 prepared it.
13 Q. Do you recall if anyone else was there with you besides
14 Mr. Khattar and yourself?
15 A. Not really. I'm sorry.
16 Q. I take it then, is it -- is it fair to say that you don't
17 really recall many of the circumstances or the details as
18 to how the information that's contained in this affidavit was
19 communicated to the individual who prepared the affidavit
20 for your signature?
21 A. What -- You want -- Could you clarify or make it simpler for me please?
22 Q. Okay. Do you recall today --
23 A. Yeh.
24 Q. --how the information that's in this affidavit was communicated
25 to the person who prepared it for your signature?

1 A. I think it was the R.C.M.P. who initiated some sort of
2 investigation and I was given a directive or requested to
3 give this affidavit or give my -- what I thought of the case.
4 Q. And who was it that directed you to give the affidavit, do you
5 recall that?
6 A. The R.C.M.P. officers, you know -- I don't remember really.
7 Q. Does the name Mr. Aronson mean anything to you?
8 A. Mr. who?
9 Q. Aronson, Steven Aronson? You don't. Okay, fine.
10 MR. BISSELL:
11 Thank you, Doctor Mian.
12 MR. CHAIRMAN:
13 Mr. Ross.
14 BY MR. ROSS:
15 Q. Doctor Mian, perhaps you could help me understand something.
16 Now by my calculation John Pratico would have been around
17 sixteen years and five months in May of 1971, and almost
18 seventeen when he had completed giving his evidence in
19 November of 1971. Now you describe him, as I understand it,
20 as somebody who was on the edge of being retarded. Am I correct
21 with that?
22 A. Yes.
23 Q. And you also described him as somebody who was a bit of a slow
24 learner. Am I correct with that also?
25 A. Yes.

1 Q. Yes, and you further indicated that he had the capacity to
2 fool the investigating police, to fool the Judge at the
3 Preliminary Inquiry, to fool the Judge again at another
4 Preliminary Inquiry, and to fool a Judge and Jury. Now as
5 a member of the legal profession I find that a little bit
6 untenable. Perhaps you could explain. Does this seem
7 reasonable to you?
8 A. Let me try to explain it to you. Here is a man who has been
9 victimized all through his formative and developmental years.
10 He finds himself in this situation. The only way he knows to
11 deal with it is either to fight the system or join them, so
12 considering his mental state at that time and the circumstances
13 at that time, he did not know what would be -- which way should
14 he turn, and he goes through a lot of emotional turmoil.
15 It was a very traumatic event for him and he stuck to one
16 story, and once he decided that this is where his survival
17 lies and for -- once we know that we can survive with this,
18 that's what he stuck with, whether he lives with it or not,
19 that's separate.
20 Q. Well, wouldn't you agree that this is where his self-
21 victimization, if he put himself in a position to have to
22 create a story?
23 A. Yes. I mean -- Could you say that again please.
24 Q. Yes. You said that he was victimized. Now my understanding
25 is that he created the story himself. How would he be

1 victimized?
2 Q. Because he got -- remember that if he go this way, he would
3 be in trouble. If he this go -- If he go that way, he will
4 be in that group so I thought he went along where he will
5 have some kind of a security or self-survival even though
6 it was detrimental to him in the long run, but anyway this
7 is -- this is my explanation.
8 Q. I see, but the fact is that you did not really become in
9 personal contact with him until sometime in 1972?
10 A. Yes.
11 Q. Yeh.
12 A. Yeh.
13 Q. I see. Now I am going to want to question other witnesses
14 about your affidavit and as such,I'd ask you to be good enough
15 to help me to correct it. Perhaps we'll just refer you to
16 your affidavit which is in volume 12 at page 288. You've
17 got it, volume 12?
18 A. I have my affidavit.
19 Q. Yes. Volume 12?
20 A. Yes.
21 Q. Page 288, you've got that?
22 A. Yeh.
23 Q. Okay. In paragraph three you say that:
24 "John Pratico has been a psychiatric
25 patient of mine from August, 1970, to date".

1 And that date would be July 19th, 1982, the date of the
2 affidavit?
3 A. Yeh.
4 Q. Yes. Now August, 1970, that's incorrect. Am I --
5 A. Yeh, it should be that -- that, "...has been a psychiatric
6 patient of ours ...", instead of "mine".
7 Q. Of ours?
8 A. Yeh.
9 Q. I see, and then if it was "ours" then you and somebody else
10 would have to sign the affidavit?
11 A. Yeh.
12 Q. Now I want to know about your personal knowledge. As far as
13 your personal knowledge is concerned, what would be the proper
14 date instead of August, 1970. Would that be March, 1972?
15 A. Oh, yes. Yeh.
16 Q. So if we put March, 1972, then that paragraph will be correct.
17 Am I --
18 A. Yes.
19 Q. And then you go on paragraph four to say that:
20 "My medical diagnosis of the said
21 said John Pratico since August,
1970..."
22 And it continues. So if we change August, 1970, again to
23 March, 1972, will that paragraph number four then be correct?
24 A. Yeh. Yeh.
25 Q. And then in paragraph number five it says that:

1 "In order to function outside of
2 my psychiatric institution, the said John Pratico has since
3 August, 1970, to date been on continual medication under my direction".
4
5 Should we take that date out, August, 1970? And what --
6 A. I think we should make it under "our" direction because there
7 were other psychiatrists who --
8 Q. Well, yes, but we'll get to the other psychiatrists. I
9 want to talk to you.
10 A. Okay. Fine.
11 Q. Yes. So we'll take that August, 1970, out and what should we
12 put in there?
13 A. March the -- This other date. Yeh.
14 Q. March, 1972. Am I correct?
15 A. Yeh.
16 Q. And should it also say that he has been your patient from
17 time to time instead of continually?
18 A. He had been under my continual care.
19 Q. Under your continual care?
20 A. Although I had designated that care to somebody else.
21 Q. I see.
22 A. Yeh.
23 Q. So then if we just change the date you will stand by paragraph
24 five as being the truth?
25 A. Could you read that again please.

1 Q. I'm asking you to look at paragraph number five of your
2 affidavit --
3 A. Yes.
4 Q. --of July 19th, 1982?
5 A. Yeh.
6 Q. And I'm suggesting to you that it is incorrect but with
7 particular reference to the date August, 1970, and you've
8 agreed with me that that date should be March, 1972.
9 A. Okay. Fine.
10 Q. Yes, and I'm asking you if I make that one change from
11 August, 1970, to March, 1972, will that paragraph number five
12 then be absolutely correct after that change is made?
13 A. Under -- Yeh, under "bur" direction because other psychiatrists
14 have prescribed too.
15 Q. Yes, I appreciate that, Doctor Mian. I appreciate that but
16 I just want to know about you right now. Perhaps we'll get to
17 the others later.
18 A. Oh, okay. Fine. Fine.
19 Q. I just want to be sure, so that if paragraph five was to read:
20 "That in order to function outside of
21 a psychiatric institution, the said
John L. Pratico has since March, 1972,
22 to date been on continual medication
under my direction".
23 A. Okay.
24 Q. Would that be a correct statement?
25 A. Yes.

1 Q. And as far as paragraph six is concerned, it reads:

2 "That on August 31, 1971, the said
John L. Pratico was admitted to the
3 Nova Scotia Hospital in Dartmouth
for psychiatric treatment".
4

5 A. Yeh.

6 Q. That statement would remain?

7 A. That's correct.

8 Q. Yeh. Now you go on to say that:

9 "In my medication opinion that the
said John L. Pratico was in 1971,
10 and had been continuously to date
a wholly unreliable informant and
11 witness with regard to the subject
or event, but more particularly in
12 the Sandy Seale murder case of
1971".
13

14 A. Yes.

15 Q. That paragraph, is that correct or would you like to change it?

16 A. I think it is correct. That's my, you know -- Reviewing all
17 his charts and the documents and everything, that's my
18 opinion.

19 Q. And then as far as reviewing the charts are concerned now you --
20 I take it that you are referring to his medical information.
21 Am I correct with that?

22 A. Prior to '72, yes.

23 Q. Just referring to his medical information?

24 A. Yes.

25 Q. Now I take it that if you look at the grey volume, Exhibit 47,

1 that's pages one to eleven of the "Accumulative Therapeutic
2 Record". Pages one to eleven would cover the period prior to
3 your affidavit?
4 A. Pardon.
5 Q. I'll ask you to look at Exhibit 47, the grey volume.
6 A. Yes. Yeh.
7 Q. And I asked you to look at the "Accumulative Therapeutic
8 Record".
9 A. Yeh.
10 Q. And just to confirm for me that pages one to nine (Sorry.)
11 inclusive of that record would be the information that would
12 precede your affidavit?
13 A. Yes.
14 Q. And is it fair to say that prior to 1982 when you were called
15 upon to do this affidavit or give a statement, that John
16 Pratico was really just one of many patients that you were looking
17 after?
18 A. That's correct.
19 Q. And is it fair to say that you would not have had any particular
20 or peculiar interest in John Pratico over and above any other
21 patient?
22 A. I would like to disagree with you there.
23 Q. Well, then perhaps you could explain to me --
24 A. Yes.
25 Q. --why would you have any peculiar or special interests in

1 John Pratico over any other patient?
2 A. Okay. Because his community functioning -- Because we tried
3 him on many programs and it was always a hit and a miss and
4 I was always constantly in consultation with community
5 friends and with the Social Workers and with other agencies
6 and John would come in many times in distress, so that -- and
7 he would be, if not handled in a crisis situation would
8 present difficulty.
9 Q. I see. So there was a reason for special interest with
10 John?
11 A. Yeh.
12 Q. Yes.
13 A. It was his stability.
14 Q. Yes. Now I also understand from your testimony, and correct me
15 if I'm wrong please that as far as your information about John
16 is concerned, you'll get this information primarily from the
17 "Accumulative Therapeutic Records"?
18 A. Yes.
19 Q. Yes, but then, you see, as I look at the "Accumulative
20 Therapeutic Record", and I turn to page four -- sorry, page
21 five, I notice that at the bottom of page five going on to
22 the top of page six there is just a very small reference, a
23 very short reference to John being hospitalized in 1971?
24 A. On page five?
25 Q. On the bottom of page five going to the top of page six.

1 A. Yeh. Okay.
2 Q. There are just two paragraphs really --
3 A. Yeh. Yeh.
4 Q. --which address the fact that John was hospitalized and they
5 don't go into very much detail?
6 A. The reason is we have a Discharge Summary from the Nova Scotia
7 Hospital on record.
8 Q. Oh, yes, and I take it that you looked at the Discharge Summary?
9 A. Yeh.
10 Q. And--
11 A. And the records from the Nova Scotia Hospital.
12 Q. So I take it then that what you did is you read the Discharge
13 Summary and you read the records from the Nova Scotia Hospital.
14 Am I correct?
15 A. Yes.
16 Q. And you accepted them as written?
17 A. Yes.
18 Q. And having accepted them, that was really -- that constituted
19 really the basis of your opinion?
20 A. This is my own knowledge of him from '72 onwards.
21 Q. I see, and -- but how would that assist you in coming to the
22 conclusion that in 1971 prior to your even meeting John
23 Pratico, that he would have been an unreliable witness?
24
25

1 A. As I explained to you before, this -- as you pointed out
2 too -- that this is a boy who was making a marginal improvement
3 in the community.
4 Q. Pardon me?
5 A. This lad -- this man was having a difficult time in the
6 community and at home. He was --
7 Q. Perhaps I may interrupt you. He was having a difficult time,
8 and in your experience, when did this difficult time begin?
9 A. Ever since he - you know, in his developmental and formative
10 years. He was slow and -- a slow learner.
11 Q. Well, would that mean when he's at age nine, ten, 15? What
12 age?
13 A. Around that -- you know, maybe after -- you know, around
14 age five or six. He repeated grade five, six and seven.
15 So it was a clear indication that this boy was having diffuculties
16 from when he was about nine or ten.
17 Q. But, is -- Wouldn't it be correct that the doctors who were
18 in actually physical contact with this patient, in 1971, would
19 be in a much better position to judge whether --
20 A. That's correct.
21 Q. -- or not he would be reliable or unreliable?
22 A. That's correct. And all I'm doing is giving an opinion.
23 Q. I'm going to come to that. And is it also correct that,
24 from whatever you read about John, you never found any other
25 doctor -- anybody else speaking about him as being unreliable

in that regard?

A. But I -- If you look at the Nova Scotia Hospital Records and the progress notes, he was not reliable. He was not dependable. He was hyper. He was destractable. It is indicated in there.

Q. I see. So, that really was the basis, of your opinion, as far as paragraph seven of your affidavit is concerned?

A. Yes.

Q. I see. Now, when you spoke with Mr. Pugsley, you spoke with him about your statement. The statement that was given by you, which appears in volume 21 at page 77. Have you got that statement? The one page statement of February the 19th, 1982?

A. This one?

Q. The one page statement of February in 1982. Have you got that paper?

A. Yes.

Q. Yes. And, from Mr. Pugsley's examination of you and your admissions to him, I would get the impression that that statement is, to a large degree, unreliable. Would you agree with me to -- with that conclusion?

A. That John is -- is unreliable?

Q. That the statement -- the statement as written.

A. That I found him to be unreliable informant.

Q. No. No. Perhaps we are missing the point. Perhaps I'll go through it with you. The statement, which you gave to Wheaton

1 on February the 19th, 1982.
2 A. Yes.
3 Q. You indicated to Mr. Pugsley that a substantial amount of the
4 information was incorrect. In that statement. The statement
5 of February 19th, 1982.
6 A. February -- yeh, February 19th, 1982.
7 Q. Yes. That, for instance, that second line -- the second line
8 when you say:
9 I've treated John Pratico since August of 1970.
10 A. Yes.
11 Q. That was one of the incorrect statements? Am I correct?
12 A. Yeh, I would have but I'm not sure here.
13 Q. Pardon me?
14 A. Yeh, that should be amended, yeh.
15 Q. And it should be amended to read what?
16 A. Yeh.
17 Q. Should that be amended to read March of 1972?
18 A. That I -- He wanted to recommend -- yeh.
19 Q. I'm not taking you quite clear, Doctor, for some reason.
20 A. How would you like to correct it?
21 Q. I'm asking you. I just want to get the correct thing. You say
22 that he had had a medical -- that--:
23 I am a Medical Director of the Cape Breton Hospital.
24 A. Yes.
25 Q. That's a correct statement?

1 A. Yes.
2 Q. And when you say:
3 I have treated John Pratico since --
4 A. Yeh, it should be we have treated.
5 Q. No, I'm going to ask about you. We're going to get to the
6 "we" eventually.
7 A. Okay.
8 Q. As far as you are concerned, you say:
9 I have treated John Pratico since August of 1970.
10 A. That should be March of '72.
11 Q. March of '72, right?
12 A. Fine.
13 Q. You say:
14 I have found him to be a very reliable informant.
15 A. Yeh.
16 Q. As an informant in what sense? What did you mean when you
17 said, "informant"?
18 A. Any information.
19 Q. Any information to you?
20 A. Yeh.
21 Q. Yes. And that was your personal experience?
22 A. Yes.
23 Q. So that, really, if that statement is expanded upon to reflect
24 the truth, you would say that since you met him in 19 -- in
25 March of 1972 until --

1 A. Okay, yes.
2 Q. -- February of 1982, that's the way you found him.
3 A. Oh, okay.
4 Q. Am I correct?
5 A. Yeh.
6 Q. But, isn't it fair to say that you couldn't make such a broad
7 statement with anything before you met him? There would be
8 no basis, would there?
9 A. I could from the records.
10 Q. From the records?
11 A. Yes.
12 Q. Yeh. I see. Now, again Doctor, when you were being examined
13 by Commission Counsel and again by Mr. Pugsley, there was
14 reference to the fact that there was some discussion between
15 John Pratico and Mr. and Mrs. Seale back in 1982. Do you
16 recall that discussion?
17 A. Just the reference, yes.
18 Q. Now, my recollection is that, it was advanced to you that John
19 might have wanted to say something to Mr. and Mrs. Seale which
20 might not have been true but later on, after he had spoken
21 to Wheaton and Carroll, that he tended to tell the truth?
22 A. February -- yeh, February of 1982.
23 Q. So after February of 1982, when he gave this revealing statement
24 to Wheaton or Carroll, or whoever it was, from then on it's
25 you view that he started to tell the truth?
A. Yeh.

1 Q. Yes. Would you find it really surprising and inconsistent
2 with your general impression, if sometime after he had spoken
3 to Wheaton and Carroll, that he would have reverted back to
4 the old story to say that he saw Marshall stab Sandy Seale?
5 A. Yeh.
6 Q. I see. Well, my information is, and we'll be calling evidence
7 to the effect, that when he spoke to Mr. and Mrs. Seale it
8 was subsequent to his giving a statement to the R.C.M.P?
9 A. It could be.
10 Q. Do you find that a difficult proposition to accept in light
11 of your other testimony?
12 A. Would you enlighten me a little more? I am --
13 I am not following you.
14 Q. Well, as I understand the chronology, he will hold on to
15 one story and he held on to a story right up until 1982 when
16 he spoke to the R.C.M.P.
17 A. Yes.
18 Q. That he then changed that story and then told something else
19 to the R.C.M.P.
20 A. Okay.
21 Q. And I'm suggesting to you, that subsequent to that, he
22 reverted to his former story and I'm trying to find out from
23 you, if you've got any explanation why he would do that?
24 A. My only -- I -- All I can inform -- that there was a fire
25 on George Street just in February or March of 1981, If I

1 remember correct. And around this time, he was again
2 afraid that he was in that area and this might have reactivated
3 the whole trauma of the past and he might have switched back
4 and forth becuase in November, December, around that -- of
5 '81 or so, he had -- the case was dropped or he -- he sought
6 admission to Nova -- Cape Breton Hospital. Just --
7 Just one second, let me find that.
8 Q. Sure.
9 A. That's the only thing I can think of. Well, I refer you to
10 page nine. Page nine of the Cumulative Therapeutic Record.
11 Q. Of which volume? The grey volume?
12 A. Yeh, the grey volume.
13 Q. Page nine.
14 A. Paragraph three.
15 Behind this admission was the reason for John
16 to feel the way he did. The was due to the recent
Church fire on George Street. Somehow John felt
17 that he might be picked up because he was loitering
around on George Street.
18 Now, I think, this triggered it again, and maybe -- that's
19 just a speculation on my -- because the charges would have
20 been drawn to something by the end of this time.
21 Q. Yes, but Doctor, at it, as a matter of fact it appears this
22 was sometime around --
23 A. In February of '82.
24 When he talked to the police in February of '82, when he
25 switched back and forth.

1 Q. Yeh, this is my point, Doctor. In -- It appears as though
2 this fire situation was sometime around April of 1981.
3 Am I correct?
4 A. Yeh.
5 Q. Yes. And then in February of 1982, he speaks to the R.C.M.P?
6 A. Yeh.
7 Q. And for the first time, he gives them a totally new story
8 to what he'd been saying between 1970 and 1982.
9 A. That's correct.
10 Q. Yes. And having given them that story, the new story, why
11 would then he revert which -- he revert to the old story?
12 A. I don't know.
13 Q. I see. Thank you, Doctor.
14 MR. ROSS:
15 There are no more questions.
16 MR. CHAIRMAN:
17 Mr. Wildsmith?
18 MR. WILDSMITH:
19 I do have five to ten minutes worth, My Lord.
20 MR. CHAIRMAN:
21 Yeh. We have to get through this witness before lunch.
22 MR. WILDSMITH:
23 Q. Doctor, I'd like to take you back to that one paragraph, that
24 is in your affidavit, that appears in volume 12 to page 289.
25 And you've been questioned several times on this, and I don't

1 want to go over the same ground again. My one question, to
2 you, about it is this: Is it your judgement, today, that
3 sufficient information existed -- that there was a sufficient
4 record by November the 1st of 1971 to come to the conclusion
5 that John Pratico would make -- as you put it there:
6 "A wholely unreliable informant and witness."
7 A. No, we didn't have sufficient information.
8 Q. You did not?
9 A. As of November?
10 Q. November 1971.
11 A. What was your question? Was he -- did we have enough
12 information?
13 Q. Yes.
14 A. To declare him as a unreliable witness? This is the question?
15 Q. That's exactly the question. And your answer is no, is it?
16 A. I really don't think we could have catagorically stated at
17 that time.
18 Q. All right. When you've testified, today, about feeling that
19 he was, in fact, unreliable in 1971, that's --
20 A. That's the hindsight.
21 Q. Based on hindsight.
22 A. Yes. Okay. Thank you. Another question that's of interest
23 to me is this. Would you say that it was fair to conclude that
24 John Pratico, in the time period of 1970, 1971 had difficulty
25 with social relationships?

1 A. Yes.
2 Q. And difficulty making and keeping friends?
3 A. Yes.
4 Q. Thank you. Why is it that you would come to that conclusion?
5 A. Because he was never able to fit in. Right from grade five
6 six and seven, he had difficulty maintaining friends. He tried
7 to buy friends. And even now that pattern has improved
8 somewhat but it was difficult for him to form lasting
9 relationships.
10 Q. If I suggested, to you, that in this time period of late
11 '60's and early '70's, he had been accepted as a friend within
12 the Indian community, would you have any comment to make?
13 A. No.
14 Q. Okay. Now, getting back to your qualifications, Mr. Pugsley
15 went over that in some detail. I take it that since 1969
16 you have been a Director and a full-time staff psychiatrist
17 at the Cape Breton Hospital?
18 A. Yes, sir.
19 Q. And would the Cape Breton Hospital be the only psychiatric
20 facility on Cape Breton Island?
21 A. Yes.
22 Q. And so anybody, on Cape Breton Island, with a psychiatric problem
23 would be treated in the institution that you are a full-time
24 psychiatrist and Director of?
25 A. No, that has changed. I think since '79 because

1 Q. I'm sorry. I'm going back to the time period of '70, '71.
2 A. From --
3 Q. In 1970, '71 the hospital that you were the full-time
4 psychiatrist --
5 A. No, I'm there since '69.
6 Q. Yes. And you were there in '70 and '71?
7 A. Yes.
8 Q. And my question to you is, was this the only hospital, the
9 only treatment facility on Cape Breton Island?
10 A. Yes.
11 Q. For psychiatric patients at that time?
12 A. Yes.
13 Q. Okay. Are you also a member of the Canadian Psychiatric
14 Association?
15 A. Yes.
16 Q. And are you aware of a section of the Canadian Psychiatric
17 Association that deals with Native mental health?
18 A. Yes.
19 Q. Are you able to confirm for us, today, whether there exists
20 or not a particular body of knowledge that deals with psychiatric
21 and psychological problems more perculiar to Indians or
22 more common with Indians than members of the White majoritorian
23 society?
24 A. Yes.
25 Q. There exists such a body?

1 A. I mean, they have formed a sub-committee and we looking
2 into this and time to work out the Welfare program.
3 Q. Okay. My question to you, following from that, is that
4 there does exist a body of knowledge that deals with
5 Indian psychiatric problems?
6 A. Yes.
7 Q. Thank you. Can you say -- Are you familiar with that
8 body of knowledge?
9 A. Yes, somewhat.
10 Q. Somewhat. Okay, that's fair enough. Can you say that some
11 of these psychiatric and psychological problems have to do with
12 the cultural, social and economic background of Indians?
13 A. Yes.
14 Q. And problems of aculturation with the White society?
15 A. Yes.
16 Q. Thank you. Are you involved in treating Indians in your
17 practice?
18 A. Yes.
19 Q. I'd like to read to you a statement and get your professional
20 opinion about this. Perhaps for the record, I should identify
21 what I'm reading from. Although I'm really concerned about
22 the witnesses' response. Would you like me to indicate the
23 source?
24 MR. CHAIRMAN:
25 Go ahead.

BY MR. WILDSMITH:

Q. Sure. Okay. This -- Here is the statement:

> When White people are placed in an anxiety provoking situation, such as a party, there are all kinds of situations but one of them is the psychiatric interview, they are taught to react in an anxiety provoked situation with a great deal of activity and that is usually talking. Talk your head off. That is what they will do.

Referring to the white person.

> Whereas an Indian will become less talkative, the more anxious he gets. This slowing down and wanting to understand what the rules and regulations are. What the lay of the land is. What the appropriate behaviour is. What the protocol is. What the rules are. Slows down further and further. The more he slows down the more the White person asks him to talk. The more quiet the Indian becomes the more frantic the White person becomes to get some sort of response out of him. So the White person is sitting there flapping and the Indian is getting quieter and quieter. This has resulted in an enormous number of mis-diagnosis's among Indian people as far as psychiatric disorder is concerned.

Was that -- Is that a statement that you would agree with?

A. To some extent.

Q. To what extent?

A. I mean, we not any better, as you pointed out. That we have a body of knowledge now and considering those factors we try to consider the -- consider the -- and take in to account the social culture factor of the person that come from and try to overcome this.

Q. Yes. If I understand your response correctly, what you're suggesting is that, mis-diagnosis by psychiatrists is less

1 common? Is that what your response is?
2 A. Say that again, please?
3 Q. I'm trying to get what part you agree or disagree with about
4 the statement that I read to you. And I'm understanding
5 your response to be that the suggestion of mis-diagnosis by
6 psychiatrists would be less common today, in your view?
7 A. Yes, that's correct.
8 Q. Okay. Are you agreeing with the psychiatric assessment of
9 how Indians tend to react to anxiety provoking situations?
10 Did you agree with that part of it?
11 A. That's correct but if you consider different ethnic groups.
12 Every ethnic group reacts to emotional stress in a different
13 way.
14 Q. Okay. And the description I've given to you of how Indians
15 would react, would you agree that that is reasonably accurate?
16 A. If --
17 Q. Becoming quieter and quieter.
18 A. Yeh, if there are no other factors involved.
19 Q. Yes.
20 A. That's -- They usually tend to withdraw. They are aloof
21 and detached. They on the unit and -- and they don't
22 know what the protocols are, what the relationships are,
23 what the expectations are. That's correct.
24 Q. Fine. Now, would giving evidence in court be such an anxiety
25 producing situation?

1 A. Could be.
2 Q. You would expect that it would be, especially if you
3 were giving evidence in your own defense?
4 A. Yes.
5 Q. And particularily if you were charged with murder and
6 giving evidence in your defense?
7 A. I would be very difficult for anyone.
8 Q. Yes, it would be a very anxiety producing situation?
9 A. Yes.
10 Q. And would you also agree, to me, that giving a statement
11 to the police may be such an anxiety provoking situation?
12 A. It could be.
13 Q. And would you agree, with me, that if there has been, and
14 may still be a tendancy on the part of psychiatrists to
15 mis-diagnose, that other people involved in a criminal
16 justice system, such as the police, judges and juries are
17 more likely to mis-diagnose or to mis-understand what they
18 are seeing, when an Indian gives a statement or gives
19 testimony?
20 A. It depends upon whether they would consider all the factors
21 of the case.
22 Q. Yes. But my point to you, is that, you would expect those
23 not trained in psychiatry to be less able to understand
24 what they are observing when an Indian response in an anxiety
25 provoking situation?

A. That's correct.

MR. WILDSMITH:

Those are all my questions.

MR. CHAIRMAN:

Mr. Spicer?

MR. SPICER:

There's just one area, My Lord, for a couple of minutes. Thank you.

BY MR. SPICER:

Q. Doctor Mian, a lot of the changes that have been made to the various documents, of yours, I noticed were changes from "I" to "we" in various places. And if I understand you correctly, you didn't personally know John Pratico until 1972. And in the various of your documents you say; "I" treated. "I" this and you changed it to "we."

A. Yeh, that's -- I'm sorry for that. I -- as a Medical Director of the Institution when most of the profession were -- gone or changed. I gave this this global statement. It should have been that we had been looking after and we -- I personally am really involved. That's my --

Q. Okay. And all I want to be sure of is that, not withstanding the fact that you've changed these documents from "I" to "we", are you satisfied having done that, though, that your medical diagnosis is still correct?

A. No, the only thing which is not correct here is the date.

1 You know, as I said, being -- I'm in charge of the whole
2 thing and most of the doctors are not there and we -- I'm
3 taking responsibility for these Cumulative Therapeutic Records.
4 Q. I understand that. In --
5 A. And there is no change in the medical diagnose.
6 Q. Okay. And are you telling us that, as the overall Director,
7 that you would have been satisfied, for instance to rely on
8 the Cumulative Therapeutic Record in coming to your conclusion
9 that John was unreliable? Not withstanding the fact that
10 you hadn't seen him personally in 1971?
11 A. That's correct.
12 Q. And are you able to tell us, whether or not, on page five
13 at the bottom of the Cumulative Therapeutic Record referring
14 to the 1971 admission. It says:
15 John was diagnosed as an accute adolescent situational
16 reaction in schizophrenia.
17 Are you able to say, generally, whether or not somebody has
18 that sort of diagnosis, whether you'd be prepared to say --
19 with out having seen that person, that that persons probably
20 unreliable?
21 A. Say that again, please?
22 Q. Well, with a -- let's say you have a person you haven't seen
23 who's diagnosed as accute adolescent situational reaction
24 in schizophrenia. And all you know about that person is
25 that fact, at that time, would you -- would you --

1 A. No. Now, I can't reach that conclusion by a diagnostic
2 labour.
3 Q. Right.
4 A. I have to -- In order for me to reach some conclusion I have
5 to know more detail of their daily functioning, their
6 school functioning, their -- and putting all that element
7 factors of the case, I would be able to give an opinion.
8 Q. Okay. But, overall, what you're telling us, if I understand
9 you correctly is that, when you gave these statements in
10 1982, both in the affidavit and in to the R.C.M.P. that you
11 were prepared to rely on the Cumulative Therapeutic Record
12 for the period of time prior to when you actually knew John?
13 A. Yeh.
14 Q. Okay. And you made a statement, I think, to Mr. Pugsley,
15 and I think just to round out the picture. I think you
16 indicated to him that as far a John's mental problems were
17 concerned at the trial that they should have been apparent
18 to the judge and the jury. I take it if that were the case
19 that they also perhaps should have been apparent to the police,
20 to the prosecutor and to the defense counsel? I'm just
21 trying to -- Mr. Pugsley asked you a question, concerning the
22 trial and John's giving of testimony, and he asked you whether
23 or not John's mental problems were of such a nature that those
24 problems should have been apparent to the judge and the jury
25 and your answer to that was yes.

1 A. Yes.
2 Q. And all I'm asking you is whether or not if that were
3 the case, would they not also have been apparent --
4 A. But there was a -- I think there is -- it should have been
5 evident --
6 Q. To everybody?
7 A. -- to everybody. But he was on medication, remember.
8 Q. Yeh.
9 A. 150-200 of those --
10 Q. Okay. Thanks very much.
11 MR. PUGSLEY:
12 Before we break for lunch if my friend is trying to introduce
13 evidence before this commission to show that, through this
14 witness, Pratico was an unreliable witness in 1971 and I think
15 the -- it's inappropriate to go through this witness as is --
16 for the reasons set out in my cross-examination but surely there
17 is one person who knew something about Pratico. At lease one,
18 if not two, in 1971, who had first-hand information. Doctor P.K.
19 John at the Nova Scotia Hospital and Doctor Donovan or Doctor
20 Binney. Those are the people that my friends should be
21 calling to give evidence of this point rather than introduce it
22 the back way through Doctor Mian.
23 MR. CHAIRMAN:
24 Well, it may be these witnesses will be in due course be called.
25 We have to deal with the witness we have here now.

1 MR. PUGSLEY:

2 I appreciate that but I would hope that my -- efforts will be made.

3 MR. CHAIRMAN:

4 And I'm sure Commission Counsel are listening very attentively

5 to your comments as we are. (Thank you very much, Doctor Mian.)

6 We will adjourn until two-thirty.

7 INQUIRY ADJOURNED: 1:03 p.m.

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INQUIRY RECONVENED: 2:33 p.m.

1 MR. MacDONALD:

2 The next witness then, My Lord, will be Doctor Naqvi. My Lords,
3 I'll be dealing with a couple of statements that are contained
4 in Volume 16 of the exhibits. I may be referring to Volume 13.
5 That depends on whether there's reference to the evidence given
6 by Doctor Naqvi from time to time, and also I've had marked and
7 put in front of you Exhibit 53 and it's called Volume 24 but it's
8 Exhibit 53. Those contain the portion of the Sydney City
9 Hospital records with respect to Sandy Seale.

10 DOCTOR MAHMOOD ALI NAQVI, being called and duly sworn, testified
11 as follows:

12 BY MR. MacDONALD:

13 Q. Now Doctor for the record, would you tell us your name sir?
14 A. Mahmood Ali Naqvi.
15 Q. And you spell you last name how?
16 A. N-a-q-v-i.
17 Q. You're a medical doctor?
18 A. I'm a certified general surgeon and a vascular surgeon.
19 Q. And when did you obtain those qualifications?
20 A. General surgery in 1968 and vascular surgery afterwards.
21 Q. And are you a member of any --
22 A. I'm a member of the American College of Surgeons. I'm the
23 member of the American Board of Surgical Specialties and
24 a Diplomate of the American Board of General Surgery and the
25 Royal College of Surgeons of Canada and a Fellow of the Royal

1 College of Surgeons of Canada in Vascular Surgery and the
2 American College of Gastroenterology, American College of
3 Angiology and the American College of -- International
4 College of Surgeons.
5 Q. Thank you. How long did you practice in Halifax -- or in
6 Sydney?
7 A. I've been here in Sydney since 1969.
8 Q. Okay, and in particular, Doctor, in 1971 you were carrying
9 on practice in Sydney?
10 A. That's right.
11 Q. And were the attending doctor on Sandy Seale when he was brought
12 to the hospital on the night of May the 28th, 1971, early in
13 the morning on May 29th?
14 A. That's correct.
15 Q. Do you have any at this stage, Doctor, any independent
16 recollection of the events of that night? Do you have to
17 refer to your notes to tell us what you did that night?
18 A. That's correct.
19 Q. You have no independent recollection?
20 A. The only thing is that ever since 1971 I have been in this
21 Court or otherwise so many times that now I'd be reading my
22 notes at least times and times and over and over again. So
23 I know a lot of that what's going on. But otherwise generally
24 speaking, no.
25 Q. All right. Let me ask you to look -- I've put in front of you

1 Exhibit 53. Perhaps -- these are the hospital records or
2 copies of the hospital records and I'm going to show you
3 page 22. Those are copies of the nurses' record. Is that
4 something that's kept at the hospital, Doctor, in a regular
5 fashion whenever a patient is admitted?
6 A. That's true.
7 Q. And it shows the time of admission at 12:15 a.m. Do you see
8 that?
9 A. That's true.
10 Q. Now is that or do you know if those records are made at the
11 time of the occurrence or are they made later on in the day?
12 A. They're made at the time.
13 Q. At the time?
14 A. Yes.
15 Q. So we can take it then that Mr. Seale was delivered to the
16 hospital at or about 12:15 a.m. on that morning?
17 A. Based upon these records.
18 Q. Based on the records, yes.
19 A. That's right.
20 Q. But the records are made in the ordinary course of things,
21 aren't they?
22 A. That's right.
23 Q. All right. And it shows that you were present -- does it
24 say at "12:25"?
25 A. That's right.

1 Q. Were you -- do you recall how you received the notification
2 to get there or were you already in the hospital?
3 A. No, I was notified but I can't tell you how.
4 Q. And --
5 A. Generally speaking what has happened if a -- if a patient is
6 coming in the out-patient department and that patient is
7 critically ill, the nurses do inform and tell you in advance
8 the patient's coming in. So this is the way normal sequence
9 is and that's -- in this particular case, I was informed
10 the same way.
11 Q. And you live close by and were able to get there quickly?
12 A. Yeh, you asked me before. I only live a block out from the
13 hospital.
14 Q. Okay, now there are other records that are kept, Doctor, and
15 if you'll look at Volume 16 at page 159, those are copies
16 of that page and following of Report of Operations. Those
17 are prepared by you, is that correct?
18 A. That's right.
19 Q. And are those prepared at the time the operation is done or
20 on the same day or can you tell me?
21 A. At the time of the operation is done.
22 Q. Okay, and then starting on page 163 of that same Volume, there
23 are Progress Notes also noted to be made by you. Those are
24 notes you make from time to time following surgery, is that
25 correct?

1 A. That's right, that's right.
2 Q. Okay, can you help me also, Doctor, go back to Volume 24 that's
3 Exhibit 53, that's the small volume. Here it is. Just generally
4 going through that, the Doctor's Orders is that your hand-
5 writing?
6 A. That's right.
7 Q. And those are orders that would be given as to what you want
8 done with the patient, is that correct?
9 A. Yes.
10 Q. All right, can you just follow through with me and tell me
11 generally what the other documents are. On page 3 what is --
12 A. Okay, this is Doctor's Orders. And this is my signature.
13 Q. On Page one, and two?
14 A. Page two is my signatures;continued Doctor's Orders.
15 Q. What's page three?
16 A. Okay, page three is Post Anaesthetic Condition. That's in
17 the recovery room after the patient being transferred from
18 the operating room.
19 Q. Okay, and page four?
20 A. Page four is the Anaesthesia's Record.
21 Q. Okay, and page five?
22 A. Page five is the same, the Recovery Room Post Anaesthetic
23 Condition of the patient.
24 Q. And six is another report of the --
25 A. Anaesthesia.

1 Q. Anaesthesia. Seven is just a Consent to Operation?
2 A. That's right.
3 Q. Eight, more Doctor's notes, your notes?
4 A. My notes, yeh.
5 Q. Nine is the same thing?
6 A. That's right.
7 Q. Okay, what is ten?
8 A. Ten is Emergency Out-Patient Record.
9 Q. And is that made at the Out-Patient Department?
10 A. That's right.
11 Q. When the patient is brought in?
12 A. Yes.
13 Q. All right, what is eleven?
14 A. Eleven is the Admission and Separation form of the patient
15 to the hospital. That is every patient when is admitted
16 to the hospital they have to have an Admitting form for the
17 purpose of hospital insurance commission --
18 Q. All right.
19 A. -- and also send -- serve as the Separation form at the time
20 of discharge.
21 Q. Number twelve or page 12?
22 A. Consent to Operations.
23 Q. Is that something that you look after or is that done by the
24 staff getting the consent?
25 A. At that time I really couldn't tell you; but it's a mutual

1 effort. Both the -- the paper work is done by the nurses
2 but the doctor has to speak to the patients, all the patients'
3 family and discuss what's going on, what is to be done; but
4 -- just to take the consent and somebody has to witness,
5 that -- the nurses do that.
6 Q. If you look at page seven again, seven and twelve, they're
7 both Consents to Operation dated the same day -- seven --
8 A. Yes.
9 Q. Number seven or page seven refers to the type of operation
10 as a "Laparotomy" and number twelve doesn't refer to anything?
11 A. Yes, sir.
12 Q. Any reason for that?
13 A. Because at that time we didn't know what we were going to do
14 with him and I think this is the second Consent, I believe.
15 Q. The second Consent being the one --
16 A. Yeh, because at that time we had to go both to control his
17 bleeding from his chest as well as from his abdomen.
18 Q. Okay, and for the record, Doctor, when you say this one is
19 the second operation, that's the one on page twelve? Is that
20 correct?
21 A. Well, it was one of them I can't be sure.
22 Q. What's on page thirteen?
23 A. That's another Out-Patient Record.
24 Q. And fourteen is a laboratory -- fourteen, fifteen --
25 A. Yeh, that's Laboratory work.

1 Q. And that's fourteen through twenty-one.
2 A. Fourteen, fifteen, sixteen, seventeen, eighteen, nineteen,
3 twenty, twenty-one, all the Laboratory Work.
4 Q. And then twenty-two through twenty-seven are the Nurses'
5 Records?
6 A. Yeh, that's right.
7 Q. And twenty-eight is the Record of Death?
8 A. That's right.
9 Q. Thank you. All of these records are kept in the normal
10 course of things, is that correct?
11 A. Yes.
12 Q. And they're then retained on microfilm, I think, at the
13 hospital?
14 A. Yeh, like you have this O. R. Report, that must be from
15 the microfilm because it's thinned out.
16 Q. Okay.
17 A. But my own copy is the full report.
18 Q. Your own copy that you have in your file is just --
19 A. Yeh --
20 Q. -- a different style?
21 A. -- just a different type, yeh, that's right.
22 Q. All right. Let me -- when the -- if we can go to your
23 report then, Doctor, and we'll come to the others as,
24 as necessary. Mr. Seale was brought into the hospital at
25 12:15 according to the Nurses' Record on page twenty-two.

when he arrived; but when you saw him first, he was in a state of shock, is that correct?

A. That's right.

Q. And he had no blood pressure?

A. That's right.

Q. And what is the state of shock?

A. Well, shock is a condition that when the person has -- loses his blood pressure, his pulse goes very fast, he does not get the oxygenation and his heart fails;whether it fails because the heart is not getting enough blood or whether it fails because it's own pumping action fails and/or whether the heart is -- or the patient is losing blood or fluid from his own system that there isn't enough blood or fluid coming to the heart to pump back to the system. So the shock is defined as a condition or state -- condition which resulting due to poor tissue profusion, poor oxicidation, lactic acidosis and respiratory failure. And those circumstances it could be a either a cardiogenic shock or it could be a hemorrhagic shock or a shock due to massive fluid loss. Cardiogenic shock what we typically see patient who has a coronary and he gets into shock and he is sent to the coronary unit. Whereas the shock due to massive blood loss and the fluid loss is what we call hypovolemic shock where the pump although it's good; but there isn't enough blood coming to the heart to pump back through the system.

1 Q. Now this patient was in shock because of massive blood loss,
2 isn't that correct?
3 A. That's right.
4 Q. And you would have known that from the time you first saw
5 him?
6 A. That's right.
7 Q. Okay, how does one suffer massive blood loss? What has to
8 be happening inside to have this massive blood loss occur?
9 A. Well, the massive blood loss could be either an external
10 blood loss or could be an internal blood loss. An external
11 blood loss where you have a broken bone or an open fracture,
12 open wound and the patient -- an open artery -- the patient
13 bleds out. An internal blood loss where the patient will
14 have a bleeding inside the system itself.
15 Q. Does it have to be an artery before you're going to have
16 massive blood loss?
17 A. No, it could be -- it could be a vein.
18 Q. It could be a vein?
19 A. It could be a vein or it could be a conglomeration of veins --
20 four or five put together or it could be a multiple of small
21 arteries or it could be major internal fracture where there
22 is blood accumulation pools into the closed spaces.
23 Q. Did you have any idea of what this massive blood loss was
24 being caused by before you went into the body?
25 A. Well, in this particular case there was -- there was a very

1 obvious injuries and if I can refer back to my notes.
2 Q. Please do, yes.
3 A. Yeh, if I refer back to my notes, it's obvious injuries on
4 your own hospital record --
5 Q. What page are you referring to, Doctor?
6 A. Volume 24, page eight at the time he arrives --
7 Q. Page eight?
8 A. Page eight -- I think it's eight.
9 Q. Thank you.
10 A. Eight and nine. And actually the way it should read:the
11 nine should be eight and the eight should be nine.
12 Q. Is that right, okay?
13 A. The history comes first and the examination comes afterwards.
14 It just -- so we can go back to nine first and then come
15 back to eight.
16 Q. All right, tell us then what's of importance on nine there?
17 A. Okay, at that time it was important
18 Admitted as a result of a stab wound
19 of the abdomen.
Patient no past history available.
20 He was brought to Emergency room
by Police as a result of the stab
21 wound to the abdomen.
His present illness:
22 Started few hours ago when patient
was stabbed into the abdomen.
23 No other history obtained.
24 Because we could not find -- get any other history and
25 this was just the circumstantial history.

1 Q. Can I just -- before we turn to page eight.
2 A. Yes.
3 Q. When it says:
4 Started few hours ago
5 What does that refer to?
6 A. It refers to circumstantial history -- who so ever brought
7 him in. And we were told that this happened within the
8 past few hours.
9 Q. Someone would have told you that?
10 A. Somebody must have told at that time, yes.
11 Q. You couldn't tell that from looking at the boy?
12 A. No.
13 Q. Okay, all right. And then you go back to page eight, then?
14 A. Yeh. At page eight at that time he was pale, he -- you
15 could not get his pulse, he was cyanotic it means again
16 poor profusion, poor oxygenation, he was restless, he
17 had difficulty breathing and obviously this is all signs
18 of shock -- the state of shock.
19 Pulse could not be recorded. His
20 blood pressure was 0/0.
21 Q. That means -- that's no blood pressure?
22 A. That's right.
23 Q. Okay.
24 A. Respiration was 36 a minute
25 Normally the respiration would be twelve to fifteen. His

1 Conjugativa was pale
His trachea was mid line
2 His respiration was shallow
His both lungs although move
3 on respiration
No obvious site of injury into
4 the lungs
Heart, pulse could not be
5 recorded. Blood pressure could
not be recorded. Bowel is lying
6 outside the abdominal wall with
profuse bleeding and markedly
7 dusky in colour
Profuse bleeding from the side
8 of the stab wound.

9 Q. So the profuse bleeding --

10 A. So his bleeding was obvious right there at that time.

11 Q. At the external --

12 A. From that bowel, yes.

13 Q. Okay, and with no blood pressure being able to be obtained,
14 is that indicative that that there has been massive blood
15 loss?

16 A. That's right.

17 Q. Would that be the -- at that stage before actually going in
18 and having a look, would that be your view of the life
19 threatening problem that you have there that you have a
20 massive blood loss occurring?

21 A. Well, in fact according to this note, the boy now for all
22 purpose was dead.

23 Q. When he was first brought in?

24 A. Yeh, just about, yes.

25 Q. Okay, but in any event the -- if he was it was because he

1 bled to death, is that correct?
2 A. Yes, yes.
3 Q. And if you're going to save his life, if there's any chance,
4 you're going to have to stop that blood loss?
5 A. That's right.
6 Q. So what actions did you take then? Where do we go to next?
7 A. Well, you can go to next resuscitation --
8 Q. What page are you looking at now, Doctor?
9 A. Maybe you could go to the nurses' notes.
10 Q. Yes, okay, page twenty-two.
11 A. Yeh.
12 Q. Twelve twenty-five, you're shown as being present. I think
13 that says 12:25?
14 A. Yeh, 12:25, yes.
15 Q. Yes, and what is --
16 A. Well, we started -- he started getting into resuscitation and
17 he's got fluid replacement right away. He's got four units
18 of whole blood given & cross- matched. He's got 1,000 cc's
19 of fluid given again. Another 1,000 cc's of fluid is given.
20 Another 1,000 cc's of fluid is given. Another 1,000 cc's
21 of fluid. Whole blood again given; 500 cc's. This is all
22 done within a span of -- okay, it's got 12: --
23 Q. He's transferred to the --
24 A. it's got 12:25 --
25 Q. At 1:20 he's transferred to the operating room as I read the

1 nurses' notes, is that correct?
2 A. Okay, "transferred to the O. R." that's right. So what was
3 given in that span of -- he has has received lots of blood
4 he has received fluids and by this time he was transferred
5 to the operating room. That's right.
6 Q. Now perhaps just for my own benefit, why would there be a
7 delay of approximately an hour from the time he arrives in
8 an obvious state of shock from loss of blood before he's
9 taken to the operating room?
10 A. Well, it's very simple and nobody will anaethesize a person
11 without the blood pressure.
12 Q. Without blood pressure?
13 A. Yeh.
14 Q. Okay.
15 A. So you have to -- you have to give him enough blood to see
16 if he has any blood pressure, otherwise as soon as you
17 anaesthesize, you're anaesthesizing a dead body.
18 Q. I'm sorry --
19 A. You're anaesthesizing a dead patient.
20 Q. Okay, thank you. So it was necessary to build some blood
21 pressure up before you can operate?
22 A. Anaesthetate -- you resuscitate to a level that you could
23 take him to the operating room and work on him.
24 Q. Okay, so then do we now go to your report of the operation
25 as the next record that we would look at?

1 A. That's right.
2 MR. MacDONALD:
3 And my Lords, that page 159 of exhibit 16.
4 BY MR. MacDONALD:
5 Q. Now this is something -- the report of the operation you say
6 would be prepared relatively soon after the operation, is
7 that correct?
8 A. It's prepared within the -- before you leave the operating
9 room.
10 Q. Thank you.
11 A. That --
12 Q. How's that done, Doctor, is it done through a machine or do
13 you write it out?
14 A. Traditionally you use the dictaphone. There's a dictaphone
15 in the operating room where after you've finished the
16 operation you go to the dictaphone and you dictate the
17 operations. They are -- those tapes are picked up by the
18 medical records and the medical records transcribe the
19 tapes on their next working day.
20 Q. Okay.
21 A. This used to be at that time. Today all you have to do is
22 when you finish the operation, there's a certain number you
23 dial -- you dial this certain number and that's automatically
24 you can dictate a medical record. They pick them up right
25 away.

1 Q. Okay, do you or did you follow the practice in those days of
2 requiring a Consent to Operate before you would operate?
3 A. Oh, yeh, you always do that.
4 Q. Pardon.
5 A. You always do that except in situations where there is a life
6 and death situation.
7 Q. In this case the nurses' notes indicate that the father's
8 consent was obtained when he was transferred to the O. R.
9 Are you able to say whether you were waiting for that before
10 you would operate?
11 A. No, I think -- I think we took him to the O. R. -- I can't
12 tell you what nurses' notes says but we generally if there
13 is -- if it is any chance that we could save the boy, we
14 take him to the O. R. Whether the father was there or not
15 there at that time.
16 Q. Thank you. Now if you go to your report, it has a "Pre-operative
17 Diagnosis" and a "Post-operative Diagnosis" at the top?
18 A. Pre-operative would precede. Post-operative;what we see after
19 we finish the operation inside the abdomen.
20 Q. Are they both done though after the operation? Both the
21 Pre-operative and the Post after you've done your operation?
22 A. In this record they are but you have a Pre-operative
23 Diagnosis when you take the patient to the operating room.
24 Q. Okay, and then it says the "Name of the Operation".
25 A. That's right. So you have to tell what you have done to

1 that patient. And that's the "Name of the Operation".
2 Q. All right. Now let me just take you -- we'll go through
3 the report if we can, then we'll perhaps come back to your
4 "Post-operative Diagnosis".
5 A. Yes.
6 Q. The
7 Name of Operation:
8 Laparotomy, repair of the superior mesenteric vein and ligation of the branch of the middle colic artery
9 and a transverse colostomy.
10 A. That's right.
11 Q. What does "Laparotomy" mean?
12 A. "Laparotomy" simply means opening the abdomen.
13 Q. Okay. And what is the "Superior mesenteric vein"?
14 A. The "Superior mesenteric vein" is a vein that drains the blood
15 from the small intestine to the portal circulation.
16 Q. Veins are always draining blood, isn't that correct?
17 A. Yes.
18 Q. And arteries are delivering blood?
19 A. That's right, artery always supplying and vein always draining.
20 Except in case of the bowel it is the "superior mesenteric
21 vein" drains into the portal system where they take all the
22 nutrients to the liver.
23 Q. All right, let's go on now
24 Patient was brought in from the emergency room in a state of
25 shock with no blood pressure,

1 no pulse and with rapid respirations
2 who was pale.

3 We already looked at your notes to show where that came from.

4 Patient was prepared after giving
5 three IV's and giving four units
of O positive blood in order to
6 bring pressure, however, with no
luck

7 Now do I take it that to mean that you were not able to bring
8 any blood pressure up in your patient dispite giving him blood?

9 A. That's right, well, what is meant is very -- it hasn't come up
10 to a very acceptable range of the pressure; but there was some
11 pressure at that point. If you go back to the notes of the
12 Anaesthetia in your small book.

13 Q. Right, show us where to look there.

14 A. Pardon.

15
16
17
18
19
20
21
22
23
24
25

1 Q. Where? Where -- page four, I think, and five are the --
2 A. You showed me two anaesthetic records. You showed -- go back
3 to the first one.
4 Q. Okay. I think it's page four. Is that correct?
5 A. Now -- okay, here we go. This is page four.
6 Q. Yes.
7 A. Okay, the pressure is still at the time he was brought into the
8 operating room was fifty. Now fifty is not an acceptable pressure
9 to put anybody to sleep but with that much resuscitation, you
10 hope that you can -- you are able to stop the bleeding and perhaps
11 this will bring the pressure back up again.
12 Q. Okay, and for the benefit of everyone that can't see, you've
13 turned that book on its side and you're reading up the column
14 that has ten up to two hundred and where there's a mark on fifty
15 A. That's right.
16 Q. That would show his pressure when he was brought into the operating
17 room, was it?
18 A. That's -- that's the blood pressure. That's right.
19 Q. And as you read that along, at one time during the operation,
20 it jumped up to around eighty or ninety and then at the end of
21 the operation, it's back around forty. Is that correct?
22 A. Yeh, that's right.
23 Q. Okay, so with a fifty blood pressure, you -- it was serious
24 enough that you were going to go in and try and do what you could.
25 Is that correct?

1 A. That's right.
2 Q. Okay. Now you say that an incision above and below the stab
3 wound was made and this was converted into a paramedian
4 incision. What does paramedian incision mean?
5 A. A paramedian incision is any incision you make at the right of
6 the belly button or left of the belly button about half an
7 inch to a three-quarter of an inch away from it is paramedian.
8 An incision which you made above the belly button and below and
9 in the centre or the mid-line is called the mid-line incision
10 so it all has to do with the belly button.
11 Q. All right, are you able to tell from this description whether
12 the stab wound would have been vertical or transverse?
13 A. Vertical.
14 Q. Vertical.
15 A. Yeh.
16 Q. The running up and down the body?
17 A. That's it.
18 Q. There was only one stab wound, wasn't there?
19 A. According to my notes, there was but one stab wound. That's all.
20 Q. You have no recollection of any other? Okay, we go along and
21 say "there was a tear into the mid-transverse colon and there
22 was free spillage of fecal material into the peritoneal cavity."
23 That is a cut in the intestine, is it, and the --
24 A. That's right. That's the large --
25 Q. Causing the fecal to spill in.

1 A. That's the large intestine.
2 Q. Now you next says -- would you tell us what that means: "a
3 hugh retroperitoneal hematoma"?
4 A. Well, the abdominal cavity is divided into two parts, one is
5 intra-abdominal, one is extra-abdominal. The intra-abdominal
6 is the structures of bowels and so on which were all injured
7 in this particular patient. And the extra-abdominal is the
8 aorta and the vertebra, the bones in the back, and the pelvic
9 structures, kidneys, uterus and so on and these are all covered
10 over with the peritoneum. So anything that's injured behind
11 that, we call the retroperitoneum or the retroperitoneal hematoma
12 that's a hematoma behind the peritoneum. That could conceivably
13 involve any of the retroperitoneum structures.
14 Q. And a huge hematoma -- a hematoma is just a collection of blood.
15 Isn't it?
16 A. That's right, yeh.
17 Q. A huge hematoma in that area would indicate that there's some
18 damage to either to the arota or the -- or one of the veins
19 in that area?
20 A. That's true.
21 Q. Now you say: "Although the aorta was palpated and as it appears
22 pulsatile..." What does that mean, "the aorta was palpated"?
23 A. These are the lights of the patient.
24 Q. Pardon?
25 A. It means he was still alive, and there was still hope that we

1 could salvage him.
2 Q. Does it mean that the aorta is actually pumping?
3 A. Yeh.
4 Q. Okay, and you say "but this was probably secondary to a stab
5 wound into the aorta..."
6 A. Yes.
7 Q. So you suspected there was a stab wound into the aorta.
8 A. Well bascially what I have said here and what I mean although
9 the aorta was palpated and as it appears pulsatile but this
10 probably was secondary to the stab wound into the aorta which
11 was sealed off into the retroperitoneal space. So I felt there
12 was an injury -- the aorta was injured but because it was
13 pulsating, we didn't do anything with it.
14 Q. The aorta as I understand it is the major artery in the body.
15 A. Yeh.
16 Q. What would be the diameter of the aorta in an adult male?
17 A. Anything -- anything up to two centimeters is the normal.
18 Q. Two centimeters would be the normal?
19 A. Approximately two centimeters.
20 Q. Okay, and it's the -- the wall of the aorta, is that fairly
21 thick?
22 A. No, the wall of the aorta is elastic, just like a real elastic.
23 It's thicker -- a lot thicker than the vena cava.
24 Q. It's a lot thicker than the vena cava.
25 A. Yeh.

1 Q. Well, the fact that it's pulsatile, I don't understand why that
2 would lead you to conclude that the aorta has some -- that the
3 cut is sealed off. Is that what you're saying?
4 A. Well, we call -- what we call is a pulsating hematoma. If we
5 a hematoma around a major vessel and it's pulsating, we know
6 that the major vessel has communication to that hematoma and
7 that's what this applies to.
8 Q. Well wouldn't it be pulsating by just pumping, pumping blood out
9 into the hematoma, just adding to the amount of blood there?
10 A. Yeh, but the blood is -- the blood could be tempanaid (?) at
11 at that point.
12 Q. Could be what?
13 A. Bleeding could be stopped at that point.
14 Q. By what process? That's what I'm trying to find out?
15 A. Due to pressure from the paritoneum outside.
16 Q. So that the pressure of the blood itself is pressing back somehow
17 and sealing off the --
18 A. Yes.
19 Q. Even though you've got that great pressure from inside the artery?
20 A. Yeh.
21 Q. That was your conclusion, was it?
22 A. Yeh.
23 Q. Okay. You say this hematoma "was not touched with a fear of a
24 bright bleeding already present into the peritoneal cavity."
25 What does that mean?

1 A. Well, obviously you have a patient with a blood pressure of
2 forties and fifties who is in a state of shock, has got so
3 many other injuries, we are trying to resuscitate him. We're
4 giving him a lot of fluid, so what we were trying to do at that
5 time whatever we could do and see if he could be salvaged.
6 And because of so many other bleedings, he could be dead on the
7 table just the same, so we didn't touch anything which wasn't
8 really actively bleeding. In this particular case, the aorta
9 was tempanaid with the peritoneum so we didn't push that way.
10 Q. So you concluded that you weren't concerned at least immediately
11 about the possibility about the blood continuing to stay in the
12 aorta.
13 A. We were concerned but we were concerned to stop the bleeding
14 which was just freely bleeding already.
15 Q. So you went on to fix up other veins that were bleeding in the
16 area that you could see.
17 A. That's right. Well, either that or those veins if you -- if
18 you didn't do that, it would have caused gangrene of the bowel
19 just the same.
20 Q. If the aorta had been cut by the knife going through, would the
21 knife not had to have gone through this membrane that you
22 talked about?
23 A. Yes. Yes.
24 Q. Why wouldn't it be gushing out through there if it was under
25 pressure?

1 Q. Well quite often the arterial bleeding seals off. Venus
2 bleeding does not seal off. The artery has not only an elastic
3 structure but also produces enzymes and in -- within their own
4 system that the arterial wall and itself closes up and we see
5 this sometimes in the major injuries of the legs, the lower
6 extremities that although the leg is crushed when the patient
7 is brought in, artery is exposed but plugged with clot
8 right at the very end.
9 Q. Any -- I didn't make myself clear. I'm talking about that mebrane
10 that you said there was a huge hematoma behind it sufficiently
11 pressurized that it's going to close off the cut in the aorta
12 but my concern is the membrane itself. Wasn't that penetrated
13 by the knife too?
14 A. Yeh, that was very, very small opening and a very small opening
15 seals -- seals itself.
16 Q. So it would seal itself? Yes?
17 A. Yes.
18 Q. Thank you. All right, you did a colostomy on Mr. Seale. Is that
19 correct?
20 A. Yes.
21 Q. And then that is taking what, the large bowel outside and leaving
22 it outside?
23 A. That's right.
24 Q. You note that there was a large amount of blood into the stomach.
25 You didn't open the stomach, did you?

1 A. No.
2 Q. How could you tell there was blood in the stomach then?
3 A. Because he had a tube in the stomach and the tube was bringing
4 out the blood.
5 Q. The tube was -- so what you do is feed a tube down through the
6 nostrils, is it, to the stomach?
7 A. Yeh. Yes.
8 Q. And blood was coming out of there?
9 A. Yes.
10 Q. Where would the blood have gotten into his stomach?
11 A. The stress.
12 Q. Stress?
13 A. Yeh, stress. Any major trauma can cause a chain of reaction into
14 a body, specially given the stress factor where people will have
15 multiple -- develop multiple ulcerations, superficial ulcerations
16 and they will bleed into the gastroesoph tract which is the
17 common place for the bleeding. You see this phenomena
18 happen in a patient who will receive transplantations or so on
19 and post-operatively they will be -- they will have difficulty
20 in breathing and then they will have these ulcerations. This
21 is the phenomena we suspected here.
22 Q. So it's caused just by stress of the trauma that he suffered.
23 A. Yeh.
24 Q. Now you say the bowel was placed in the peritoneum cavity which
25 again could not be -- what's that say, placed because of this

1 huge hematoma occupying the entire adbominal cavity?
2 A. Yes.
3 Q. I don't understand that. It says --
4 A. Well, the hematoma --
5 Q. -- it was placed but it couldn't be placed. What does that
6 mean?
7 A. The hematoma was in the back but of course it takes some
8 space and that is space between a sort of compromise into the
9 abdominal cavity space and so what happens is when you --
10 when you try to put the bowel back, the space -- the abdominal
11 space becomes quite tight and that's what happened here,
12 although we were able to put it back. It was just a matter
13 that it was difficult to put it back.
14 Q. Okay, I just have trouble, I guess, with the way it's written.
15 It says the bowel "was placed" which again "could not be placed".
16 A. Yes. Yeh. I mean we did put it back. It just was difficult
17 to put it back.
18 Q. Okay. That huge hematoma you're talking about is the one that
19 we talked about before, is it?
20 A. Yes.
21 Q. And on the page -- the next -- the final page of your report,
22 the first report, you say the patient in spite of all of
23 this has not had any urine output and he was transported to
24 the recovery room having received over twelve pints of blood
25 to combat --

1 A. Hypovolemia.
2 Q. What is hypovolemia?
3 A. Blood loss or fluid loss.
4 Q. What is -- how many pints of blood are in a normal -- in a
5 male of a hundred and fifty pounds?
6 A. Maybe ten. It depends.
7 Q. It depends so he's already had his blood supply completely
8 replaced. Is that correct?
9 A. Yeh.
10 Q. And more than that.
11 A. Yeh.
12 Q. A couple of pints beyond that?
13 A. Yeh.
14 Q. And then he was closed up and sent back to the recovery room.
15 A. There's other thing happens. When you replace that much blood
16 and the entire clotting mechanism is altered, so blood does not
17 clot in the person. That also takes into consideration for
18 bleeding from other non-injured sites or unrelated sites
19 like blood in the stomach in this particular patient because
20 the bleeding -- blood does not clot any more once you give
21 them that many transfusions.
22 Q. If you go back to your post-operative diagnosis, Doctor, on
23 page 159, you say "stab wound of the abdomen with perforation
24 of the colon, tear into the medacolic artery, tear into
25 superior mesenteric vein, huge retroperitoneal hematoma with
possible tear into the abdominal aorta." The abdominal aorta

1 is the one we're talking about and it runs down the backbone,
2 doesn't it, or just to the left of it?
3 A. Yeh.
4 Q. So when you finished this operation, you -- there was a --
5 knew there was a possible tear into the abdominal aorta.
6 A. Yeh.
7 Q. But you -- you were under the impression that it was sealed
8 off by the pressure. Is that correct?
9 A. Well, we wanted to see how the patient behaved, how he was --
10 how -- what was going on with his vital signs. He -- as I
11 mentioned here there was no urine output, his kidneys weren't
12 functioning, his blood pressure still was low.
13 Q. What's all that -- what does that indicate to you?
14 A. It indicates his major -- major systems failed and --
15 Q. Well, why would they have failed?
16 A. They failed because he bled to death. I mean he bled to a
17 level where he had no -- he didn't have enough blood pressure
18 to maintain --
19 Q. So he wasn't -- he wasn't getting blood to these vessels?
20 A. That's right. He didn't have enough blood pressure to maintain
21 his profusion of his kidneys.
22 Q. And when you -- when you finished the operation, he still
23 didn't. Is that correct?
24 A. Up to that time, yeh.
25 Q. Well, wouldn't that have indicated to you that perhaps you

1 should have looked at the aorta then, gone in and see if in
2 fact it is sealed off?
3 A. Oh, I -- there's no question I did but I had to make some
4 preparations before you could do that.
5 Q. What preparations did you have to make?
6 A. One of the preparations is when you have such a big hematoma,
7 you have to prepare to control the bleeding. If your bleeding
8 is not controlled, you lose the person on the operating table;
9 therefore I had to prepare more blood for him. He'd been in
10 the hospital only for a few hours and already we had so much
11 blood and we -- you know, once the aorta is injured and you
12 open that injured aorta, each minute the whole volume of the
13 blood from the heart goes through, so we had to have blood.
14 We had to have the operating room prepared for the --
15 the opening of the chest just in case we had to go to the
16 chest but and also see if there is any response to him.
17 Q. Any response to what?
18 A. Any mental response to him.
19 Q. So are you saying that you would have liked to go in and see
20 if the aorta could be corrected or sealed up when you were
21 doing the first operation but you didn't have enough blood
22 or you didn't have the necessary preparations.
23 A. Well, you also have -- would -- under the circumstances that's
24 the best you could do at that time, and hoping that if it
25 doesn't stop, you still have to bring him back and if -- if it

1 tempornized -- it means if it stops temporarily, it will give
2 you time to build him up.
3 Q. But surely, Doctor, this is a life-threatening injury, the
4 fact that the blood is pumping out. It's not getting to the
5 other organs. Yes?
6 A. The blood was going through the aorta.
7 Q. But it wasn't getting to the other organs. I think that's what
8 you said, that the -- all these external signs would indicate
9 the organs are not getting blood.
10 A. That's right.
11 Q. Well, doesn't that indicate to you that the aorta is separated
12 and the blood is not getting to where it should be getting
13 and the fact that you only have forty blood pressure when
14 you're through?
15 A. I don't think anybody would even today in this day and age
16 would operate upon anybody with forty blood pressure.
17 Q. No, but you did and I'm not criticizing you for doing that.
18 A. And basically this is what happened there,so in order for me
19 to carry on, we needed more blood, we needed more fluid, we
20 needed more things so since I go back to -- since at that
21 time when we brought him back, we had -- we did some of his
22 hemaglobin.
23 Q. And what are you looking at now, Doctor, just so we can all
24 see what you're --
25 A. Seven-thirty a.m., he's brought back from the operating room.

1 Q. Okay, that's fine. I just wanted to know the notes so we can
2 all see the same thing.
3 A. Okay. Seven-thirty a.m.
4 MR. MacDONALD:
5 And that's on page, My Lord, -- that is on page 163 I believe of
6 or 164 of Volume 16.
7 BY MR. MacDONALD:
8 Q. I believe that's the one you're looking at, Doctor, okay.
9 A. What I'm looking at is we did enough to see if we could
10 temporize him and we brought him back. And at that time,
11 my notes says his hemoglobin was eleven grams. That
12 means we have replenished a lot of his blood that he has
13 lost which was a good sign according to ourselves.
14 Q. Well, let's just go through your note here, Doctor, and you
15 can explain this to me.
16 A. Yes.
17 Q. It says: "Patient did regain some consciousness. There is
18 free bleeding through the Levine tube.", is it? That's the
19 one you talked about that went through the nostrils down into
20 the stomach?
21 A. Okay, which one are you going to?
22 Q. I'm reading that one that you've just referred to.
23 A. Yeh, okay.
24 Q. I think so.
25 A. Yeh, "There is free bleeding through the Levine tube.". Yeh.

1 Q. That indicates that there's still stress bleeding in the
2 stomach. Is that correct?
3 A. Yeh, that's right, yeh.
4 Q. Free bleeding. Would that indicate that that's a free flow
5 of blood into the stomach? It's continuing to go in there?
6 A. Pardon?
7 Q. What does "free bleeding" mean? Does that indicate that --
8 A. It means every time you -- Free bleeding means that you
9 aspirate the Levine tube or the nasal-gastric tube and you
10 get the blood in the stomach.
11 Q. When it's free, does it mean it's there all the time? That's
12 what I'm trying to find out.
13 A. Yes, it does, yes. Just about, yeh. Just about.
14 Q. Okay, so it's like a flood of -- a continuous flow of blood
15 through that tube from the stomach?
16 A. That's right. Yeh.
17 Q. And that because of -- you indicated that because of the
18 stress due to the trauma he received.
19 A. Yes.
20 Q. Okay. The dressing was saturated with blood. Now that's the
21 dressing, I take it, around the colostomy.
22 A. Abdominal -- yeh.
23 Q. Which would indicate that there's free bleeding from the
24 incision. Is that correct?
25 A. That would indicate that he probably has now clotting problems,

1 problems that his blood is not clotting because he's got a
2 bleeding from the stomach. He's got a bleeding from his
3 dressings. He's got a bleeding from his wound. We have
4 replaced all his total blood supply and now all the clotting
5 factors are now altered so he's got bleeding from all over.
6 Q. But you said in your notes that this was bleeding from the
7 retroperitoneal space. That's the hematoma that you talked
8 about.
9 A. Yeh.
10 Q. I take it and you tell me if I'm incorrect that that sentence
11 says the dressing is saturated with blood which is coming from
12 that hematoma. That's what that sentence says.
13 A. "The dressing was saturated with blood which again was no
14 alternative because this was bleeding..." Yeh, I guess that's
15 -- that's possible. That's what it says.
16 Q. Well, that's what you said.
17 A. Yeh.
18 Q. So you're opinion at seven-thirty in the morning was that
19 the dressing was saturated because the hematoma was continuing
20 to bleed.
21 A. That's right.
22 Q. There has not been any urine output.
23 A. Yeh.
24 Q. Now that -- I indicate -- I understood you to say earlier
25 that would indicate that the body isn't getting the fluid

1 and is not getting the blood supply that it needs.
2 A. That's right.
3 Q. So he's still not getting the blood supply that he needs at
4 seven-thirty in the morning. Correct?
5 A. True.
6 Q. Now you repeat that there's a large amount of bleeding through
7 the Levine tube and then you talk about the last hemoglobin
8 that shows a particular reading. That was an encouraging sign,
9 was it?
10 A. Yeh.
11 Q. Thank you. Can I just go back for a moment? Someone pointed
12 out to me and I want to get your help on this, on the -- on
13 the records of the anaesthetist, the time says nine-fifteen,
14 does it not, up at the top? That's probably -- can I take
15 it that that is the second operation, the one that took place
16 in the morning?
17 A. I would think, yeh.
18 Q. Okay, if we go to page --
19 A. Okay, just go back to the other.
20 Q. If we go to page six, yeh.
21 A. Yeh.
22 Q. Okay. That isn't showing as I read page six, that's the first
23 one. He's in shock. He's not showing any blood pressure
24 there, is he?
25 A. Not here.

1 Q. Throughout the operation no blood pressure.
2 A. Not here.
3 Q. According to the records of the anaesthetist.
4 A. That's right.
5 Q. Thank you. The -- Can we go back to the nurses' notes, Doctor,
6 and you can just -- That's on page 22 of this exhibit 53.
7 As I understand, he was transferred to the O.R. at one-twenty
8 in the morning and he was brought back at -- is that five a.m.?
9 Is that what it looks like to you, that he was brought to the
10 recovery room?
11 A. Could be five, could be three. I can't -- it's hard to tell.
12 It could be five.
13 Q. I can't tell either.
14 A. It could be five. It's five a.m.
15 Q. The type of operation that you performed and we've just been
16 through, is that something that would take three to four hours
17 to perform?
18 A. It can take eight hours. Other places take eight hours.
19 Q. Okay, so I mean it's no unusual that it be five o'clock. Is
20 that correct?
21 A. That's right.
22 Q. Thank you. Now he continues to get a whole lot of blood as I
23 see it and at five a.m., does that say -- perhaps I'll show
24 you and you can help us out. This report here, Doctor.
25 A. Blood, yes.

1 Q. And how many cc's is that talking about?
2 A. Five hundred.
3 Q. Five hundred cc's. How many cc's in a unit?
4 A. Five hundred.
5 Q. And there's ten units of blood in a body approximately? Is
6 that correct?
7 A. Ten units, yeh. I say maybe less.
8 Q. Maybe less than ten units.
9 A. Yeh.
10 Q. Okay, so he -- at five o'clock, five hundred cc's of whole
11 blood and then if you go over --
12 A. Just a minute now. Just keep -- stay there.
13 Q. Okay, thank you.
14 A. At that point, at that point at five o'clock he came from
15 the operating room, his blood pressure was ninety over sixty.
16
17
18
19
20
21
22
23
24
25

1 Q. Yes. Okay. Thank you for pointing that out.
2 A. And his pulse was a hundred and twenty so that was an
3 encouraging sign that we did something right.
4 Q. Okay.
5 A. Because he is getting a little better.
6 Q. All right. Now let's just continue on.
7 A. Yeh, and then here is "Levine tube irrigated by Doctor Naqvi",
8 so I did my own irrigation for the same reason, because of
9 the bleeding. "And connected to the Gomco Catheter from
10 the operative site connected to drainage bag".
11 Q. And then if you go to the next one, in fact, his blood pressure
12 gets to one hundred and four over sixty?
13 A. A hundred and four over sixty, so it's still a better sign
14 that he's getting a little better.
15 Q. Okay.
16 A. Okay. Then here: "Starts bright drainage from the abdominal
17 dressings".
18 Q. Yes.
19 A. Okay. That's the time the family visited.
20 "Family visited", and still the blood pressure is ninety-four
21 over -- ninety-four over fifty and the pulse is a hundred
22 and forty and the blood pressure has now dropped from ninety-four
23 to seventy, and that's at five forty-five a.m.
24 Q. So that's forty-five minutes after his return to the Recovery
25 Room?

A. That's right.

Q. His pulse is dropping and his -- His pulse is rising and his blood pressure is dropping?

A. That's right, but he got some more blood here, five hundred cc at five forty-five a.m.

Q. So again that forty-five minutes later he's -- he's already consumed five hundred cc's and he's getting more?

A. Yes, and from seventy it goes to sixty at six-twenty.

Q. Yes.

A. Okay, at six-thirty he's still sixty and by -- I think by seven the blood work's done and the gastric output, and by seven -- seven to three, this is a new shift that came on at seven o'clock, the blood pressure was a hundred -- the blood pressure was sixty.

Q. Yes.

A. And:

> Abdominal dressing changed by Doctor Naqvi. Large amount of bright blood . Serile dressing applied . 500 cc of blood given by Doctor Naqvi. "Blood pressure was sixty .

At this time he was taken back to the O.R. again.

Q. He was taken to the O.R. at nine-ten in the morning?

A. That's right. Yeh.

Q. But that's some four hours after he was returned to the Recovery Room?

A. By this time he had -- had not -- That's right, yeh.

1 Q. Okay, and that's -- You then are going to do a second
2 operation. Now in the meantime had you obtained all this
3 extra blood supply and so on that you wanted to have
4 available for this second operation?
5 A. The second operation is there. We took him up because what
6 happened is when his blood pressure continued to drop, it was
7 a systolic blood pressure of forty to fifty and we did open
8 up his abdominal incision of course.
9 Q. Perhaps if we can -- Just before we get to that, your post
10 or pre-operative diagnosis this time is that there is an
11 aortic laceration of the abdominal aorta. Is that correct?
12 A. Yes.
13 Q. That's what specifically you are going in to repair?
14 A. Yeh.
15 Q. Okay. The small valve is violaceous. That's colour indicating
16 that it's not getting blood. Is that correct? Yes?
17 A. Yeh.
18 Q. And the colon was already violaceous?
19 A. Colour indicating that it's not getting blood and perhaps
20 the blood is not draining away from the bowel to the
21 -- to give poor circulation.
22 Q. Okay. "The bowel is retracted and the hematoma in the
23 retroperitoneal space was extended considerably since last
24 night at first exploration." Now that, as I understand it,
25 is saying that it's much bigger now.

A. Yeh.

Q. And is that because the blood that you've been pumping in to --

A. Because his pressure went up so he extended out.

Q. Yeh. So as his pressure went up -- if you increase the blood pressure and you have an opening in the aorta, that's only going to increase the size of that hematoma, isn't it?

A. Yeh.

Q. Yes?

A. That's right.

Q. And that's exactly what happened here?

A. Yeh.

Q. Now you say:

> Because of this, Dr. Dave put a pressure on the aorta behind the esophagus...

And with the pressure behind the esophagus the aorta was dissected. Now the esophagus is -- is visible is it, while you've had this opening that you've talked about before?

A. Well, the esophagus, aorta, and the vena cava were three structures, they come through the diaphragm into the abdominal cavity.

Q. Okay. So it's in the abdominal cavity. Now do I understand what Doctor Dave was doing was trying to put a pressure on the aorta something like a tournequet so that you could cut below that?

1 A. Yeh. That's right. It's a -- What we call it is proximal
2 control -- proximal control by finger pressures, yes.
3 Q. So he is trying to prevent the blood --
4 A. Yeh, he's --
5 Q. He's sealing it off?
6 A. That's right.
7 Q. So that you in the meantime can repair the cut?
8 A. That's right.
9 Q. Okay, and that didn't work as I understand it and it was then
10 necessary for you to open up the chest --
11 A. Yes.
12 Q. --in order to get to the aorta itself at a higher level?
13 A. Yeh.
14 Q. And to clamp it up?
15 A. Yeh.
16 Q. And having done that you did find that there was a cut in the
17 aorta. Is that correct?
18 A. That's right.
19 Q. Was there only one?
20 A. That's right.
21 Q. And was it on the -- just on the front of the aorta or did it
22 extend through the aorta?
23 A. Just the front.
24 Q. Just the front. And that was then closed?
25 A. Yeh.

1 Q. And the blood pressure then, let's say -- Okay. Let me just
2 take you here. It says:

3 The opening was seen into the aorta
4 distally which was just below the level
of the renal vein. This opening was
5 quite large and was closed with a 4 0
silk suture.

6 Now do you have any recollection of what that means? What does
7 quite large mean?
8 A. An aortic opening, if we have something like this, anything
9 over a sonometer.
10 Q. Another over a sonometer?
11 A. Yeh.
12 Q. Okay. "4 0 silk suture", is that a particular size of tread?
13 Is that what that is?
14 A. Yeh.
15 Q. Is that big or small?
16 A. Well, that's what you had to use in those days.
17 It's a -- 4 0 is a small suture material. It's a fine suture
18 material.
19 Q. Okay. You say once it was closed and the clamps were released,
20 there was some increase in blood pressure?
21 A. Yeh.
22 Q. "And the tension was drawn to close the thoracotomy wound".
23 What's the thoractomy wound? Is that where you opened up the
24 chest to get at the aorta?
25 A. Yes.

1 Q. What else did you do then, Doctor? Just take us through what
2 else you did after you closed the aorta on that second time?
3 A. Once the hemostatis was achieved and
the opening was closed, the pressure
4 packs were applied and the aorta
clamps were slowly released. After
5 releasing the clamps, there was some
increase in the blood pressure and
6 attention was drawn to
close the...
7
8 Chest wound. That's the same as thoracotomy.
9 The thoracotomy wound was closed with
an interrupted chronic suture.
10 Hemostasis was achieved. Continuous
sutures were applied into the muscles
11 and the fascia. Skin closed with
black silk sutures and a chest tube
12 was inserted for thoracic drainage.
13 Q. And that's all that --
14 A. That's a routine house cleaning.
15 Q. That's a requirement because the chest had to opened at the
16 -- to clasp the aorta?
17 A. That's right. Yeh. Yes.
18 Q. Okay.
19 A. Following this, attention was drawn
to the abdominal incision and there
20 was oozing and bright bleeding from
the retroperitoneal space which was
21 not from the aortic opening.
22 So we still had some bleeding there but it was not from the
23 aorta.
24 However, we were unable to visualize
this area but the posterior peritoneum
25 was closed with continuous sutures to

1 achieve hemostasis posteriorly.
2 Q. Now is that saying that there was bleeding in there, you
3 couldn't see where it was coming from, and so it was all
4 sewed up. Is that what -- Is it saying what I think it --
5 A. What it implies is when you have a person and you open them
6 up and they have bled so much, no matter where you make the
7 incision they just continue to ooze. They keep on oozing.
8 Q. Okay.
9 A. Then the small bowel was violaceous
although there was no frank gangrene
10 but there was extensive color change
into the small bowel with involved
11 almost the small bowel, two feet
from the ligament of Treitz all the
12 way to the terminal ilium of the
transverse colon was also gangrenous
13 where the previous perforation was
encountered...
14
15 Q. And was that --
16 A. ...and this was exteriorized in the
original surgery.
17
18 What it meant is coming out we had a chance to look at the
19 bowel and the bowel where it was repaired, that vein
20 and the artery, that bowel also, not because of the aortic
21 injury but because of the injury to the vessels to the bowel,
22 that bowel was just about pre-gangrenous from one end to the
23 other.
24 Q. All right.
25 A. With this in mind keeping for an
extensive resection, it was best

1 felt at this point to drop all the
bowel and this could have have been
2 due to the tear into the superior
mesenteric vein which sutured and
3 this could be thombosed and no
attempt was made to resuture or
4 dissect the superior mesenteric
vein and it was felt if the
5 patient's condition continued to
improve, probably a second operation
6 will be required...

7 What I -- What I did mean mainly is nobody can live if you
8 remove all the bowel from one end to the other and in this
9 particular situation there was only one chance and the chance
10 was that if you leave the whole bowel in there and if he
11 survives and if he continues to get better within forty-eight
12 to seventy-two hours, you have what you call a second look
13 operation where you look at the bowel and see what is frank
14 gangrene and what is not gangrene. So you'd remove the
15 gangrenous part hoping that you leave maybe two or three or
16 four or five feet of a small intestine so that patient
17 could still survive. That much is short bowel syndrome.
18 Q. This problem with his bowel that you've just described was
19 not related in any way to the -- to the injury to the aorta.
20 Is that correct?
21 A. That's right.
22 Q. Okay, and so even if the aorta had been fixed immediately --
23 A. It would make no difference.
24 Q. --he was still going to be a very sick boy and maybe die anyway?
25 A. Yeh. Yeh, but going for the aorta it gave us the chance to look

at the bowel and see what was happening.

Q. It hadn't been gangrenous when you were in there the first time though? When you closed up you didn't notice that?

A. No, it was a pretty dusty colour. If you'll go back to notes, they say that it was quite dusty.

Q. Okay. Now you say there was an extensive hematoma on the wall of the --

A. There was an extensive hematoma on the wall of the fourth portion of the duodenum and the proximal jejunum and massive bleeding still present from the Levine tube through the stomach and the small bowel.

Q. Now was that starting to give you any concern? This stomach is obviously -- You've got quite a blood flowing into there as well or quite an amount of blood, haven't you?

A. Well, you see what happens once you have the blood into the retroperitoneal space, all the structures in that area could be compressed or the cause of the bleeding and, of course, once you have a -- once you have a generalized ooze it will continue to ooze, immaterial -- no matter what you do and the duodenum, of course, is comprised -- that fourth part of the duodenum just lie over the aorta, the top of the aorta.

Q. I'm sorry, but my concern is -- You keep talking about massive bleeding in the stomach. What -- What is causing that or what -- what are you going to try to do to correct that

1 problem or is there anything that can be done?

2 A. The only thing to do is take the stomach out and you couldn't

3 operate on him again.

4 Q. Okay. Thank you.

5 Patient was transferred to the Recovery
Room again with a pressure of 40-50.
6 There was no urine output...

7 A. Yeh.

8 Q. So he's still not getting the body fluids that -- that he

9 requires. Is that --

10 A. No, what happens there -- What happens with the kidney -- it's

11 not that he is not getting enough fluid and blood now. If

12 a person's blood pressure drops below the profusion pressure

13 which is maybe ninety systolic, and if that person remained

14 hypotensive for an hour or any longer period, those kidneys

15 will go into what they call acute tubalnegosis (?)

16 or renal shutdown. After that, no matter how much blood

17 you give them or how much fluids you give them, he's got

18 renal shutdown or renal failure. Now that renal failure may

19 or may not open by itself and this is where a patient -- if

20 the patient survives that is the kind of a patient that

21 becomes a candidate for dialysis.

22 Q. Thank you. The last note on this, Doctor, is that:

23 The patient was profused to a maximum
up to the level of 12-13 central venous
24 pressure requiring over a total of 27
pints of blood since the arrival
25 through the emergency room with no
essential change.

1 So this -- this boy received 27 pints of blood since he
2 arrived?
3 A. What -- What does -- That's right. What the central
4 venous pressure is, again is the filling pressure of the heart.
5 Shock is a condition where the blood and the fluid is not coming
6 to the heart and the heart is empty, so you try to profuse the
7 system and give the patient blood and fluid to a level where
8 that is now an optimum. I mean between 12 and 13 means he
9 has got the maximum fluid replacement and the blood
10 replacement. After that if you give him -- all you're going
11 to do is he will be in heart failure.
12 Q. Now despite all of your efforts, Mr. Seale did die that
13 evening. At eight o'clock he was pronounced dead. That's what
14 your notes indicate?
15 A. That's right. Yeh.
16 Q. And the mechanism of death, was it not the massive hemorrhage,
17 that's what killed him?
18 A. The massive hemorrhage is a result of all these injuries.
19 Q. Yes, as a result of the stab wound, but the massive hemorrhage
20 was the mechanism?
21 A. Yes.
22 Q. Now appreciate this as hypothetical, but if that aorta wound
23 had been gone to immediately and sewn up or fixed, what do
24 you say as to whether he would have died as a result of
25 hemorrhage?

1 A. It's debatable. I don't think there would have been --
2 I don't think there is -- there is no change because it's--
3 it has -- he has had so many injuries. It's just not one
4 injury that you could pinpoint and say, "Here it is". "Make
5 this better". The rest of them will be -- will be okay.
6 And in this case it is debatable whether -- it is questionable
7 whether you could even correct any of the injuries in the
8 first place.
9 Q. No, my question was if the aorta injury had been corrected
10 immediately, if it had, would he still -- is there any
11 possibility that he would have died as a result of a massive
12 hemorrhage?
13 A. It is possible. I can't be sure.
14 Q. Is there such a thing as irreversible shock?
15 A. Yes.
16 Q. What is that?
17 A. He's got it.
18 Q. Pardon.
19 A. Mr. Seale has it.
20 Q. He's got it. He reached the point where it was irreversible?
21 A. Yeh, it is --
22 Q. And are you able to say when he would have reached that point,
23 at what time?
24 A. I think, well, at the time when you try to resuscitate
25 and you brought his central venous pressure up to its maximum

1 and his fluid balance was well maintained and he still had
2 the main hypotensive and it still remains in the -- in inuric
3 of no urine output and he'd still be respirator dependent
4 This is irreversible shock.
5 Q. What time? If you can --
6 A. I couldn't tell you the time.
7 Q. Was it before the first operation or before the second
8 operation?
9 A. I couldn't tell you.
10 Q. You can't say, but in any event, there was irreversible shock
11 and that's what led to his death?
12 A. Well, as simple as that, with irreversible shock, they die, and
13 with reversible, they live. That's all.
14 Q. The wound in this case, Doctor, did not extend right through
15 the body, did it? It only went to the front of the aorta?
16 There was no exist wound on the rear?
17 A. No. No.
18 Q. You find that amusing. I'm just trying to --
19 A. Well, because -- Why I find it amusing is that first of
20 all, the nature is very good because all the bones in the
21 behind, so you can't get through the bones unless you have
22 bullet wounds or something.
23 Q. Okay. Thank you.
24 A. The second things is, in this particular case we got as far
25 as -- We did go as far as from the front to the back, right up

1 to the aorta and if the wound extended anything beyond that,
2 the first place it would go through would be the posterior
3 at the back wall of the aorta, and then, of course, it will
4 go somewhere else.
5 Q. And there certainly was no wound through the back part of
6 the aorta?
7 A. No.
8 Q. Okay. The injuries that you saw on this boy, could they have
9 been caused by a knife having a blade only three inches long?
10 A. They could be.
11 Q. They could be?
12 A. Yeh.
13 Q. It's not inconceivable that that could happen?
14 A. Yes.
15 Q. Could they be inflicted by a person -- a smallish person,
16 a person a hundred and ten, a hundred and fifteen pounds
17 wielding a knife with a three inch blade?
18 A. Well, I -- I can't tell you. All I know is that there's
19 a lot of force behind it.
20 Q. A lot of force?
21 A. Because -- Yes, because when you -- when the knife went
22 through all the way there had to be a lot of force behind
23 it.
24 Q. When the knife reached the aorta there has to be a lot of
25 force?

1 A. Yeh.
2 Q. But what does a lot of force mean? It doesn't -- That doesn't
3 help me very much? Is it similar to a good punch in the
4 stomach, for example?
5 A. I never got -- I never got one so I don't know.
6 Q. Okay. I'm just trying to get some -- some feel for what type
7 of force is necessary for the knife to go through. There's
8 no bones or anything in the way, is there?
9 A. Just the muscle.
10 Q. You signed a -- or I guess you didn't sign it, but the Record
11 of Death, that is in the records as well, Doctor, on page 28.
12 Is that a normal record that's filled out at the hospital in
13 the event of a death?
14 A. Well, if it is here I'm sure it would be done.
15 Q. Well, are you aware whether such records are completed or
16 not?
17 A. I'm aware of the records of the -- I'm aware that the
18 Death Records are completed and not only that, we also have
19 to sign the Death Certificates.
20 Q. There is a provision on that record, Doctor, for a notation
21 of autopsy and who performed it. What is the practice at --
22 What was the practice at the Sydney City Hospital in those
23 days with respect to performing autopsies in the event of
24 violent death?
25 A. Well, in a case it would go through the -- the body would have

1 to be released by the Medical Examiner.
2 Q. The body must be released by the Medical Examiner?
3 A. Well, he has to okay whether he thinks the autopsy is
4 necessary or it isn't necessary because in this particular
5 case since he had the injuries and they were all -- the
6 injuries were documented, that may be -- this may be a
7 factor, but generally speaking it is the Medical Examiner
8 who has to okay them and any patient who dies -- who dies
9 within twenty-four hours in this kind of a situation, they --
10 it's his responsibility.
11 Q. It's the responsibility of the Medical Examiner. And who was
12 the Medical Examiner at that time?
13 A. At the time it was Doctor Sandy MacDonald.
14 Q. Sandy MacDonald. And whose responsibility was it to notify
15 him?
16 A. Well, the best I can recall is the doctor who had the patient
17 then would notify him.
18 Q. So that would be, in this case, your responsibility?
19 A. Yeh, but I have no record here at the time.
20 Q. You have no record of having notified him?
21 A. Well, I don't have a record. I don't see a record here.
22 Q. Well, I'd like to help you. I've given you all of the
23 records that are at the City Hospital. I don't have anything
24 else. Is there anything in any of these records which
25 would indicate to you that the Medical Examiner was notified?

1 A. Yeh, what is this here? That's at seven thirty-five.
2 Q. What page is that, Doctor?
3 A. Twenty-six.
4 Q. Twenty-six.
5 A. Mrs. L? Oh, I know, Mrs. L. Herns, a supervisor.
6 Q. Yes, Mrs. L. Herns and Doctor Naqvi.
7 A. Notified.
8 Q. "Notified Re: Condition."
9 A. Aramine Drip is feeding him.
10 Q. He's still alive at that time.
11 A. "Operation, no pulse, no blood pressure." Okay. What is this
12 here. "Pronounced dead by by Doctor Naqvi."
13 Q. And taken to the Morgue by an orderly?
14 A. Yeh. That is just -- This is the way you could do it and
15 we did this then at that time, is we notified the Medical
16 Examiner and if he was satisfied of the situation, the
17 autopsy was not done, but if he was not satisfied, the
18 autopsy was done.
19 Q. You're satisfied then that you would have notified Doctor
20 MacDonald?
21 A. Oh, yeh. Oh, yeh.
22 Q. He was available on the weekends as well as during the week?
23 A. Twenty-four hours a day.
24 Q. Yes, and would he ask your opinion whether an autopsy was
25 necessary?

1 A. Sometimes.
2 Q. In your opinion, in this case was an autopsy necessary?
3 A. No, it was -- He already had two operations and everything
4 was -- all the injuries were documented so I would
5 suggest that there wasn't -- there wasn't much that they
6 could accomplish in the Morgue. That's probably the way
7 it was.
8 Q. What's the -- In your opinion, what's the purpose of an
9 autopsy? What do --
10 A. To determine the cause of death.
11 Q. To determine the cause of death?
12 A. Yeh.
13 Q. Are there any other purposes?
14 A. Medical legal I suppose.
15 Q. I'm sorry.
16 A. Medical legal. To find out your problem and what your
17 problem involved.
18 Q. Could there have been information obtained as a result of
19 an autopsy that might have been of assistance to the
20 investigators?
21 A. I can't answer your question because I really -- All I know
22 is this was the practice at that time and we did the
23 autopsies and we did notify if there was anything. The
24 Medical Examiner ordered the autopsies. If they were not
25 done on the weekends, they were done on the weekdays.

1 Q. I'm sorry.
2 A. If they were not done on the weekends, they were done on the
3 weekdays.
4 Q. If they weren't done on the weekends. Are you saying that
5 they probably wouldn't be done on the weekends?
6 A. Sometimes if a patient dies Sunday or -- they will not be
7 done until Monday morning.
8 Q. Is that still the practice today that in the event of death
9 you will notify the Medical Examiner?
10 A. Yes.
11 Q. And is an autopsy always done today in the event of a violent
12 death?
13 A. Probably it's the same thing that if the Medical Examiner
14 feels that there is cause of concern and he wants the
15 autopsy, he'll order an autopsy?
16 Q. So it's not an automatic thing?
17 A. No.
18 Q. And today as well is your -- as a surgeon, is your
19 advice asked whether or not an autopsy should be done or
20 not?
21 A. Sometimes.
22 Q. And do we understand that it's your opinion that the
23 purpose of an autopsy is to determine the cause of death?
24 A. Well, this is as I understand, yes.
25 Q. Yeh.

1 COMMISSIONER POITRAS:
2 Is your question, Mr. MacDonald, that an autopsy is not automatic
3 in the event of a violent death?
4 MR. MacDONALD:
5 That was my question.
6 BY MR. MacDONALD:
7 Q. And I believe you said --
8 A. I didn't discuss a violent death. I --
9 Q. Well, that was my question, Doctor. In the event of a
10 violent death today, is an autopsy automatic?
11 A. I couldn't tell you.
12 Q. As far as you know -- You don't know?
13 A. I don't know.
14 Q. Who is the Medical Examiner today?
15 A. You should ask Roland Perry. He's got a new system where --
16 Q. I have.
17 A. What?
18 Q. I have.
19 A. Okay. There is about five doctors that he has assigned for
20 this job to do it and --
21 Q. Who is the Medical Examiner in Cape Breton? Who do you --
22 If you had a violent death tonight, who do you report
23 to?
24 A. Well, if I had a violent death tonight I'd have to look at
25 the board to see who is on that night --

1 Q. I see. So it's not a permanent person. It rotates.
2 A. Yeh.
3 Q. Have you, yourself, served as Medical Examiner?
4 A. No.
5 Q. You've never done an autopsy?
6 A. Oh, I've done autopsies in my training, yes.
7 Q. During training, but I mean since you've been practicing as
8 a surgeon?
9 A. Oh, I have gone in to watch the autopsy but I haven't done
10 my own, no.
11 Q. With the type of injuries that Mr. Seale had, would it have
12 been possible for him after he was hit with the knife, to
13 run a hundred feet or so?
14
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1 A. Could be possible.
2 Q. Could be possible?
3 A. Yeh. Because all this trauma, you have first --
4 Q. I'm sorry.
5 A. There's a lot of research that has taken place in the past
6 few years and some of the research has been applied
7 clinically and one of the main research firsts that after
8 any road accident or trauma, the person has the first
9 golden hour.
10 Q. Golden?
11 A. Golden hour. It means the first sixty minutes.
12 Q. Golden hour, okay.
13 A. He could -- He could be like, come out of the car
14 perhaps try to look for help or something but this could
15 be possible.
16 Q. So it's possible. Two things. That the injuries, that
17 you saw, that were sustained by Mr. Seale, could have
18 been caused by a knife having a blade of about three inches
19 and it's also possible that having sustained those injuries,
20 Mr. Seale could have run for up to 100 feet or so.
21 A. Any sharp pointed object could cause those injuries. I say,
22 any sharp pointed object could cause those injuries.
23 Q. It's not whether it sharp or not, I'm just trying to find out
24 the length. Three inches is the length I'm concerned with. Is
25 that long enough, sharp object to cause the type of injury you saw

1 A. Two inches long?
2 Q. Blade, three inches long.
3 A. Yeh, possibly.
4 Q. And also, having the type of injury you saw, it would be
5 possible for someone having sustained that injury to
6 run for some distance?
7 A. It's possible.
8 Q. That's all I have Doctor, thank you.
9 MS. EDWARDH:
10 May I have a few minutes, My Lord. I'd like to take a break --
11 MR. CHAIRMAN:
12 Well, I'd like to get this witness through this afternoon if we
13 can. Maybe we will take five minutes and help speed up the
14 process.
15 INQUIRY ADJOURNED: 4:00 p.m.
16 INQUIRY RECONVENED: 4:12 p.m.
17 MR. CHAIRMAN:
18 Ms. Edwardh.
19 MS. EDWARDH:
20 Thank you, My Lord.
21 BY MS. EDWARDH:
22 Q. Doctor Naqvi, if I could just take you back a few steps. As
23 a person with an expertise in general surgery, I take it, that
24 your knowledge of, let me call it general pathology, would
25 be that acquired when you went to medical school?

1 A. Yes.
2 Q. You have no expertise beyond that, correct?
3 A. In pathology?
4 A. It depends on what you want. I mean there are two kinds
5 of pathology that -- one is, of course, we deal all the time.
6 Every operation, we deal with pathology.
7 Q. Well, pathology not in the --
8 A. Except we don't have pathology for dead people and that's
9 the pathologist --
10 Q. That's the pathologist I'm talking about.
11 A. Yeh.
12 Q. The pathologist who is accustomed to taking a body and
13 carefully examining it to find, for instance, if there is
14 violence, what are the mechanisms of death, whether there's
15 any evidence surrounding it, addressing medical legal questions.
16 That's outside your experience, correct? I'm sorry. You have
17 to answer because it has to be taken down. Was that yes or no?
18 A. Well, I mean, as far as the operative findings was concerned or
19 the inside of the body, what's going on in to the abdominal
20 cavity or chest cavity or otherwise, in fact, we have a lot more
21 information than pathologists.
22 Q. Well, let me pose this question to you. Is general pathology
23 a recognized medical specialty?
24 A. Oh, yeh.
25 Q. And do pathologist examine bodies to determine the mechanisms

of death?

A. You have to ask them.

Q. You're not able to assist us with that?

A. No.

Q. Now, you came to Sydney, as you indicated, in 1969. How long had you had your specialty certificate in general surgery at that time, sir?

A. I had a specialty certificate in 1968.

Q. '68?

A. Yeh.

Q. So in 1971, do I take it then you had been practising at -- for four years as a general surgeon?

A. Maybe longer.

Q. So --

A. I was practising five years of -- doing the surgical training.

Q. That's a training period?

A. Yeh.

Q. And --

A. And then I was practising afterwards.

Q. Four years with your certificate?

A. Yeh.

Q. Now, in the course of either your training or in your work in any hospital, did you have occasion to work extensively, and let me use that term first, with trauma? And I would --

A. All the time.

1 Q. Trauma externally applied?
2 A. All the time.
3 Q. And does, for example in the city of Toronto where I come from,
4 there's is something called a Regional Trauma Unit where many
5 head injuries would arrive.
6 A. What year that you were there? In Toronto?
7 Q. I'm saying, in the city in which I live.
8 A. Oh, I see.
9 Q. There is a Regional Trauma Unit.
10 A. Because I trained -- I interned at Harlem Hospital and you
11 can not have any other place in North America with a trauma
12 than Harlem Hospital.
13 Q. In Harlem -- where is that? In New York?
14 A. That's right.
15 Q. Okay.
16 A. And I did my training in New York city where I had four
17 years at the Mount Sinai School of Medicine and the
18 Elmherst Hospital and all you had just from the Friday night
19 to the Monday morning was nothing but nonstop trauma.
20 Q. Now, let me ask specifically, whether you can assist us,sir,
21 as to whether you have treated other abdominal stab wounds and
22 if so, roughly how many prior to this incident?
23 A. Well, I can not give you a number but I can tell you it was
24 a marathon every weekend. During the training and during my
25 stay in New York city.

1 Q. Well, lets deal with the four years when you were certified
2 as a general surgeon, in Cape Breton --
3 A. Let me ask you other question. How many --
4 Q. No, sir, you're here to answer the questions. I'm sorry.
5 A. Okay. Sorry. All right. It all depends. The stab wound
6 of the abdomen, in Nova Scotia, if you take the statistics
7 I say the -- with those statistics, whatever stab wounds
8 have come in the Cape Breton Island, I think, I've been responsibl
9 for pretty well 80% of them. But I can not give you the
10 numbers because the numbers in Nova Scotia --
11 Q. Are we talking about --
12 A. -- is almost zero.
13 Q. Okay. So, would I take it, that in that four year period
14 you would have, in fact, dealt with few arising in Nova
15 Scotia?
16 A. Oh, sure. Comparing to my residency, yes.
17 Q. And, I take it, as a resident you're under the supervision
18 of a doctor, correct?
19 A. All the time.
20 Q. Yes. Now, with respect to the questions of post-mortem
21 examinations, I take it, it was your evidence that you would
22 have, indeed, called the medical examiner, correct?
23 A. That's the practise.
24 Q. Well, is there any reason you wouldn't have done so in this
25 case?

DR. M. A. NAQVI, by Ms. Edwardh

1 A. I don't know because I don't have record. I don't have
2 any documentation.
3 Q. Can you think of any reason? Can you recall any reason
4 that would have caused you not to call the medical examiner?
5 A. It's possible. I can't be sure.
6 Q. Well, indeed, isn't it your duty to call him since there
7 has been a death?
8 A. We called -- we always call them. Tell what happened,
9 what the case is, what has happened. And if medical
10 examiner says we want the autopsy on, we get the autopsy.
11 Q. And who would have done the post-mortem examination?
12 A. Pathologist.
13 Q. And --
14 MR. CHAIRMAN:
15 I didn't hear. Who would have done it?
16 MS. EDWARDH:
17 Pathologist.
18 BY MS. EDWARDH:
19 Q. In addition to post-mortem examinations conducted by -- at the
20 request of the medical examiner, is it the practise for
21 hospitals to occasionally conduct post-mortem examinations
22 if, for example, the death occurs within a relatively short
23 period after surgery?
24 A. Yeh.
25 Q. And, indeed, is that not the practise of the hospital that you

1 were associated with? Sydney City Hospital.
2 A. That's correct.
3 Q. And to the best of your knowledge, was there any post-mortem
4 examination done by the hospital, on this occasion?
5 A. On this case?
6 Q. Yes.
7 A. I don't see any.
8 Q. Do you have any recollection?
9 A. No.
10 Q. Can you explain whether that's a general rule? That if
11 someone dies, let's say within twenty-four hours of
12 surgery, a post-mortem is done?
13 A. The general rule, if somebody dies within twenty-four after
14 surgery, you have to talk to the medical examiner and
15 if the medical examiner feels the cause of death is
16 evident, is there, he won't order the autopsy and if he
17 feels the cause of death is not there or obscure or something
18 that require autopsy, he will order it.
19 Q. Yes. No, I'm not talking, sir, about those ordered. I'm
20 talking about that class of post-mortem examinations that
21 occur as a result of the hospital wishing to conduct one even
22 if the medical examiner says it's not necessary.
23 A. Hospital does the same. The policy of the hospital is, the
24 hospital requires the doctor or the surgeon to phone the medical
25 examiner and it's the medical examiner who would look after

1 that part of the --
2 Q. So your saying that the hospital, itself, has no internal
3 policy that would allow it to conduct it's own post-mortem?
4 A. Hospital conducts the post-mortem examination at the consent
5 of the family or -- and, of course, if there is no consent
6 and the death has taken place within twenty-four hours, that
7 does not require consent provided the medical examiner orders
8 the autopsy.
9 Q. And if you did not telephone the medical examiner in this
10 particular case, was there anybody else who might have had
11 responsibility for doing that? You've read the records --
12 A. Well, it could be the -- it could be -- I mean, his own
13 doctor but I don't see any notes here so I can't really make
14 any comment about that.
15 Q. Well, there was a Doctor Dave assisting you that evening?
16 A. Dave Gaum. Yes, Doctor Dave Gaum.
17 Q. Dave Gaum?
18 A. He was assisting on the case, yes.
19 Q. Would he possibly have done that?
20 A. It's possible. If I had recollect who said that to you.
21 Q. Now, you've said that in the ordinary course you might
22 be consulted, I gather, by the medical examiner as to whether
23 or not it would be useful to perform the post-mortem?
24 A. My own patient.
25 Q. Your own patient, yes.

1 A. Yes.
2 Q. So he might -- If this was a death that you directly
3 had been involved with, you -- he would ask you your views?
4 A. Yes.
5 Q. Now, in this case, hypothetically since you have no direct
6 recollection, if you had been asked, what would you have said
7 sir?
8 A. I'd say, well, I'll open him up. We have all the injuries
9 there so I couldn't say to much about that any more we could
10 find inside the --
11 Q. Now you, I take it, realized that this person was obviously
12 the victim of an act of violence? Most probably.
13 A. Yeh.
14 Q. And, I take it, you would have realized, sir, that if the
15 police were to find someone they alledged was responsible,
16 you were looking at a murder victim? Correct?
17 A. A murder.
18 Q. Might well be looking at.
19 A. Yeh, sure.
20 Q. Yes. And let me just ask you some questions about, I know
21 you've said you don't really fully grasp the field of general
22 pathology, but would you agree, from your general experience,
23 that when you do surgery in circumstances like this, you
24 do not carefully measure the depth of the wound? You don't
25 probe it? Correct?

1 A. That's true.
2 Q. And further you don't examine in a special way to determine
3 the angle of entry, correct?
4 A. That's true.
5 Q. And you don't explore the tissues to see if there is any
6 residual material? Fibers or something like that?
7 A. That's true.
8 Q. And you don't document, by drawing out, the precise location
9 of the injury?
10 A. Well, that's true too.
11 Q. And you don't measure it's width?
12 A. Yeh, but there is a little difference in this particular case
13 and what you're describing because in this particular case,
14 when he came in, it was a matter of life and death and we
15 got busy with the patient, forgot everything else.
16 Q. Oh, I'm sorry --
17 A. If you have a patient who has walked in -- when you have
18 a patient who's got a stab who is stable, you can call the
19 medical examiner, you can go through all these -- you can
20 go inspect the wound. You do everything else before you even
21 operated on those patients.
22 Q. I'm not suggesting you do the equivilent of a post-mortem
23 examination during surgery. I'm just pointing out what the
24 apparent differences between the two processes are. And in
25 addition to that, do not general pathologist usually take

1 tissue samples?
2 A. Well, yes. Sure.
3 Q. Yes. And in those tissue samples, they would send some off
4 to Toxicology to determine drug or alcohol content in either
5 tissues or blood stream? Correct?
6 A. If this, again, I'm not expert. I give you the -- what they
7 do. But it all is based upon what their looking for and who
8 is working with them.
9 Q. But they are trained to look at a broad range of issues?
10 A. Oh, yes.
11 Q. Not necessarily to find the answers but to, at least, preserve
12 the evidence so it can be examined. Correct?
13 A. Oh, yeh. Sure.
14 Q. And I take it, sir, you did not approach your --
15 A. Not in this particular case.
16 Q. Now, would you agree, sir, that if a general pathologist
17 had examined, in a post-mortem examination, we might have
18 been able to know more precisely the length of the instrument
19 that caused the injury?
20 A. You'll have to ask the pathologist to answer that question.
21 Q. You can't assist on that?
22 A. No. Because in this particular case, all I know is, he had
23 the wound, we extended his own wound, made a big incision
24 from one end to the other end of the abdomen. So, by this
25 time, even if he got to the pathologist, there was nothing

1 for him to measure as far as the width of the wound was
2 concerned. So --
3 Q. Sir, did you even weigh the body?
4 A. Pardon me?
5 Q. Did you even weigh the body?
6 A. No, it's not -- you have to ask the hospital for that.
7 Q. Are they in the records, the weight and height of this
8 young man?
9 A. Well, you have the records. Have a look at it. I don't know.
10 Q. You take a look through the records and you tell me --
11 A. I looked at -- I can't --
12 Q. You can't see it?
13 A. I can't see it.
14 Q. Would you agree, sir, that by not doing a post-mortem examination
15 you -- we have no indication of the direction or the possible
16 direction of any -- the entry of the knife we might have had?
17 A. Well, I know there's one direction of the entry of the knife.
18 He went from the front to the back.
19 Q. How about up and down?
20 A. Well, it didn't go up and down because that's the way it went
21 and that's the way all the vessels are damaged to.
22 Q. So you're saying that the knife entered?
23 A. Right from the front part of the abdomen and went to the
24 back.
25 Q. And at a 90 degree angle?

1 A. That's right.
2 Q. In the course of giving your testimony, on different occasions,
3 I take it your best estimate is that the injury was approximately
4 three inches wide. That's your best estimate? You've
5 made that comment--
6 A. No, I said it's possible.
7 Q. It's possible. Would that be fair to say that it's --
8 A. It could be longer, could be shorter, could be longer, could
9 be more.
10 Q. So you -- really, when you made that statement earlier, I take
11 it that's just a very rough estimate?
12 A. That's right.
13 Q. And is it also, then, a rough estimate that the depth of
14 the wound would be three or four inches? I think you
15 said that on one occasion and up to six inches. That's
16 just a rough estimate. It's depends on actually the size
17 of the body in question?
18 A. That's right.
19 Q. Now, you've indicated today, and also, I think, testified
20 earlier, that at some point, Mr. Seale regained some element
21 of consciousness. If you'd like me to refer you to the references
22 there's one in volume 13 at page 53 and also one --
23 A. What page is that?
24 Q. There's -- volume 13 at page 53 and volume 16 at page 164.
25 Can you assist us, sir, as to whether that level of consciousness

1 ever permitted him to have any conversations of any kind?
2 Was he rational or lucid in any way? That's -- you see the
3 note --
4 A. On page 163?
5 Q. 164, just over you'll see that at seven-thirty a.m. you made
6 a --
7 A. Yeh, this is just a very minimum --
8 Yeh, this is just a very minimum -- this will not permit
9 him for any level of conversation, understanding or anything.
10 Q. So, to the best of your knowledge, that would not indicate
11 that he could even understand anything you said to him?
12 A. That's right.
13 Q. I take it you have no recollection of the police ever speaking
14 to him on that evening? Let me pose the question back a
15 step. Were --
16 A. Well, again, it's not in my note. I have to look back to
17 the nurses note. If the nurses were there, if the police
18 talked, well, the nurses will know. But I can't -- I can
19 tell you one thing. Nobody could talk to him because I -- he
20 was not in anyway to understand anything.
21 Q. Do you recall whether any of the police officers asked you
22 permission to try and speak with him and you gave them some
23 direction?
24 A. I don't have any recollection.
25 Q. Do you recall whether any of the police officers inquired

1 prior to going in to surgery what your best view of
2 how serious his condition was?
3 A. Well, is it anywhere in the notes?
4 Q. No, sir, it's not in your notes or the hospital notes.
5 A. No, I can't recall.
6 Q. If you had been asked, would you have conveyed that this
7 was a very serious condition?
8 A. That's right.
9 Q. There'd be no mistaking that in your own mind, again?
10 A. That's right.
11 Q. Do you recall whether you ever saw Donald Marshall that
12 night at the hospital?
13 A. Does it say in the notes?
14 Q. I take it when you ask me that question, you have virtually
15 no recollection other than what's written down?
16 A. I don't even know what Donald Marshall looked like.
17 Q. Well, that's the answer to my question, sir.
18 Do you recall having any conversations with the police,
19 either on Saturday or Sunday or in the few days after
20 Mr. Seale died, discussing with them the nature of the
21 injuries? Not in your notes, sir.
22 A. Well, if it's not in the notes, I'm sorry.
23 Q. Now, when you say, for example, that the injury was at a
24 90 degree angle. That's not in your notes either. Where
25 do you get that from today?

1 A. Because the way the injury in the aorta was below the
2 renal vein and the bowel was outside. So there is only
3 one place the knife is going, is straight down.
4 Q. When you say straight back, --
5 A. Yes.
6 Q. I had heard in your description of the injuries to Mr.
7 MacDonald, and please correct me if I'm wrong, that
8 at one point in the second piece of surgery, you had
9 to open up the chest as well as the abdomen, correct?
10 A. True.
11 Q. And the reason you opened up the chest was because the
12 pressure placed on the aorta produced a gushing and in
13 order to control it you had to open up the chest. Correct?
14 A. Actual it was to stop the bleeding.
15 Q. Yes, but it produced a gush --
16 A. There was not enough pressure that you could create through
17 the abdomen to stop bleeding so you had to open his
18 chest for that.
19 Q. And I got the impression, sir, that that area of bleeding
20 was also higher up. Is that incorrect?
21 A. The bleeding was -- the hematoma was higher but the point
22 of the injury in the aorta was below the renal vein.
23 Q. And --
24 A. It's in the notes here.
25 Q. Which page are you referring to?

1 A. You said second operation, didn't you?

2 Q. Yes.

3 A. Okay. So if you take second operation,

4 Because of this, Dr. Dave put a pressure on the aorta
5 behind the esophagus and with the pressure behind
the esophagus, the aorta was dissected. With this
6 dissection, there was a gush of bleeding and we lost
the control of the aorta at this point. Because of
7 losing control, an immediate thoracotomy was done
though the left thoracic incision cutting the two
8 costal cartilages and going between the 6th rib
intercostal space. The aorta was clamped in the chest
9 with a Stinsky clamp. Then opening was seen into
the aorta distally which was just below the level
of the renal vein.

10

11 Below the renal vein, is just, right there. That's

12 your surface marking, between the embolitis and the bone here --

13 that's called the thyroid

14 Q. Okay, so if I had interpreted this as indicating that there

15 was also an injury higher up. That would be incorrect?

16 A. Yes.

17 Q. Now, when you say, with such certainty for example, that you're

18 satisfied the angle of entry would be 90 degrees, isn't

19 it also fair also to say that you can't really tell whether

20 it's 80, 90, 100 --

21 A. You said 90, I said straight down.

22 Q. No, well. You said straight down, sir, and that means 90

23 degrees, correct?

24 A. Well, I mean, it could be 90 I said. It's possible.

25 Q. Could be 90?

1 A. I didn't say it was 100 percent.
2 Q. Could be 80?
3 A. Yeh.
4 Q. Could be 120?
5 A. Yeh.
6 Q. So in other words the expertise you bring to it doesn't
7 give us that information, fair?
8 A. Well, maybe you should ask for expertise. But they could
9 give you a definite angle just the same.
10 Q. Yes. And that expertise lies with the general pathologist,
11 correct?
12 A. It's possible.
13 MS. EDWARDH:
14 Those are my questions.
15 BY MR. PUGSLEY:
16 Q. Doctor, I take it, that the remedial work, you've carried
17 out in an attempt to save this young mans life, would have
18 pretty well obliterated the initial area of the wound that
19 was a violent act against him prior to the time he came to
20 the hospital?
21 A. That's correct.
22 Q. Yes, in other words, in an attempt to save his life, you
23 were required to cut him open, as it were, and this would
24 have made it virtually impossible for a pathologist
25 to subsequently tell us about the depth of the wound, the

width of the wound, and the angle of the wound, the things that my friend suggested?

A. That's --

MR. RUBY:

Well, it's up to the witness to establish himself as a non-expert in pathology. My friend may want to ask a pathologist this question.

MR. CHAIRMAN:

Well, he's commented before dispite is non-expertise so we will have to continue in the same line and then we, as Commissioners, will decide the strength of the non-expert evidence.

BY MR. PUGSLEY:

Q. Your answer to my question was yes, Doctor?

A. Would you ask the question again, please?

Q. Certainly. As a consequence of the remedial work you were required to carry out in an attempt to save this young man's life, do I understand your evidence correctly that this remedial work would have lengthened or -- the wound that was originally suffered by him so that it would make it very difficult for any physician, whether a pathologist, or otherwise, to determine the length of the wound, the depth of the wound, the angle of the wound, etcetera.

A. That's correct.

Q. Yes. Doctor, the decision as to whether or not an autopsy was to be performed on Mr. Seale was a decision of Doctor

1 Sandy MacDonald?
2 A. That's right.
3 Q. Yes, now, he is no -- he is now deceased, I understand.
4 A. That's right.
5 Q. Yes. And the very fact that autopsy was not performed, is
6 it fair for us to conclude that Doctor MacDonald came to
7 the decision that an autopsy was not necessary?
A. That's right.
8 Q. Thank you, sir, that is all the questions I have.
9 BY MR. CHAIRMAN:
10 Q. That is assuming that it was reported to Doctor Sandy
11 MacDonald?
12 A. That's right.
13 BY MR. MURRAY:
14 Q. Doctor Naqvi, --
15 MR. PUGSLEY:
16 I'm sorry. Could I just ask one question, in response to his
17 Lordship last --
18 BY MR. PUGSLEY:
19 Q. Although you have no independant recollection of reporting
20 this to Doctor Sandy MacDonald, you testified that it was
21 your practise to so report?
22 A. Yeh, that's the practise. We notify all the deaths.
23 Q. And there is no reason why this practise would not have
24 been followed in this instance?
25 A. That's correct.

1 MR. PUGSLEY:

2 Thank you.

3 BY COMMISSIONER EVANS:

4 Q. This practise was recorded in the notes as well?

5 Could you --

6 A. Could you ask the question again?

7 Q. Pardon?

8 A. What is the question?

9 Q. If the examiner is called, is it normal to record it in the

10 notes of the Hospital records?

11 A. That's right.

12 Q. And in this case there is no record.

13 A. That's right.

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BY MR. MURRAY:

Q. Doctor Naqvi, my name is Donald Murray and I represent William Urquhart. Just on the last point of autopsies, who would perform autopsies in 1971 in the City of Sydney?

A. They commonly-- The pathologist that I know of that did most of the autopsies was Doctor Mathieson , but Doctor Sandy MacDonald used to order other pathologists to do the autopsies just the same, and all the area pathologists used to participate who were there.

Q. I see.

A. But I can't tell you specifically who would do what pathology.

Q. Now that name you gave us, was that Mattson or Mathieson?

A. Robert Mathieson.

Q. And --

A. He was a pathologist at the City Hospital, but he did not necessarily do all the autopsies.

Q. Is he still alive?

A. Yes, he's alive but he's not living in Sydney and retired from the practice of pathology.

Q. In questions from Commission Counsel, there was some discussion as to why you had not dealt with the aorta on the first -- first trip in, and I'd like to refer you to volume 13 if that's in front of you, and I ask you to refer to pages 20 to 21 starting about line 15 on page 20 and continuing on.

1 A. On page 20 you are referring to this twenty-five twenty--
2 twenty, hey.
3 Q. Yes.
4 A. And I understand that on the first of those exploratory
5 surgeries that certain injuries were dealth with, but as I
6 understand in -- the rupture to the aorta was not seen at
7 that time. Is that what you're implying?
8 Q. Yes. Yes. Starting with that question and your answer
9 to it, sir.
10 A. Well, I -- I can't recollect this testimony, when it was?
11 Q. This testimony is as I understand it, from a Preliminary
12 Inquiry held with respect to The Queen vs. Roy Ebsary in
13 August, 1983.
14 A. Well, all I know is we had -- on one of these examinations we
15 had difficulty of getting the operative records.
16 Q. Yes.
17 A. And when we did get some of the operative records there was
18 some mix-up in those records. It was hard to read them.
19 Q. Does it assist you --
20 A. And in the same record, I think, there was also a problem
21 involved with the timing of his death. Is that the same
22 testimony you're referring to?
23 Q. I'm not sure, sir. Does it assist you that you said on the
24 first injury, "you'd repair most of the bowel, but he was in
25 such bad shape, we couldn't proceed to continue with the

1 operation". Is that essentially your understanding today?
2 MR. MacDONALD:
3 Referring to what? And why is he being referred to the evidence?
4 I don't understand the purpose of the examination.
5 MR. MURRAY:
6 I'm being -- referring him to the evidence because Commission
7 Counsel in the direct examination pressed the witness strongly
8 as to why he had not dealt with the aorta on the first time in.
9 And I am --
10 MR. CHAIRMAN:
11 I believe he gave his explanation and as I look at this now, it
12 would indicate -- I suspect what you're doing is drawing to the
13 Doctor's attention that that's not the first time he's given the
14 same explanation. Is that the purpose of the --
15 MR. MURRAY:
16 I'm trying to understand if it was the same explanation, My Lord.
17 MR. CHAIRMAN:
18 Pardon?
19 MR. MURRAY:
20 I was trying to understand if it was the same explanation and
21 perhaps he's used different words today.
22 MR. CHAIRMAN:
23 Oh, if you're trying to seek a different explanation, if you have
24 reason to believe that that line of questioning will lead to a
25 different answer or a different conclusion or add some new light,

1 then I have no difficulty in allowing it, but if it is simply
2 to draw to the attention of the Doctor that he's still continuing
3 to say the same thing whenever he appears before a Tribunal
4 and gives evidence, I -- you know, it's -- it won't help us.
5 MR. MURRAY:
6 No, I was trying to clarify my understanding and perhaps the
7 understanding of the Commission as to why he had not dealt with
8 the aorta on the first trip in. If Your Lordships understanding--
9 MR. CHAIRMAN:
10 Oh, we understand it clearly.
11 MR. MURRAY:
12 Fine. I have no further questions then.
13 MR. BARRETT:
14 No questions, My Lord.
15 MR. ELMAN:
16 No questions.
17 MR. PINK:
18 No questions.
19 MR. SAUNDERS:
20 No questions.
21 MR. BISSELL:
22 No questions.
23 MR. PRINGLE:
24 No questions.
25

1 MR. CHAIRMAN:
2 Mr. Ross?
3 MR. ROSS:
4 Just a moment, My Lord. I have one or two questions here.
5 BY MR. ROSS:
6 Q. My name is Anthony Ross and there are a few questions I want
7 to ask you on behalf of Oscar Seale. Now when you were
8 speaking to Commission Counsel I think he pressed you to
9 get an opinion as to the -- as to whether or not the -- the
10 injuries suffered by Sandy Seale could have been caused by
11 a three inch knife and as I recall you told him it was
12 possible. Am I correct?
13 A. Yes.
14 Q. Yes. Is it fair to say, Doctor, that as far as the knife is
15 concerned, that you've got no real reasonable basis for
16 concluding whether it was a three, four, a five, or even a
17 six inch knife?
18 A. I said any sharp pointed object.
19 Q. Any sharp pointed object?
20 A. Such as a knife.
21 Q. Such as a knife. Sure. Do you recall, Doctor, whether or
22 not in the hour that Sandy Seale spent in the hospital for
23 the last time that you spoke with his mother and father at
24 any time, do you recall?
25 A. I'm sure I spoke to them all day, but I do not know what I

1 spoke to them about except it would be his son's condition.
2 Q. You can't recall the conversation?
3 A. I can't recall that.
4 Q. No?
5 A. All I know is that we were concerned about his son and I
6 spoke to them all day.
7 Q. Absolutely.
8 A. They were there all day.
9 Q. Perhaps I might be able to refresh your memory. Tell me if
10 you recall this, my understanding is that you indicated to
11 Mr. and Mrs. Seale that the wound was inflicted with a long
12 dirty knife. Does that ring a bell with you?
13 A. I don't have it in my records and I can't -- I can't recall
14 something that I don't have documented.
15 Q. I see, and I take it then that the only things you can tell
16 us about the day are things that were actually in the records?
17 A. That's right.
18 Q. So if it was not in volume 24 which is Exhibit 53, or any of
19 the other volumes which contain the Hospital Records, there
20 is nothing you can add or subtract?
21 A. Not today.
22 Q. I see. Perhaps I will try one more. My understanding further
23 is that when Sandy was in a -- when he had regained a certain
24 level of consciousness that his mother and father were in the
25 room with him and he was asked to confirm whether he knew that

1 the gentleman was his father and the lady was his mother,
2 to which he nodded. Could you recall any of that?
3 A. It could be possible, but I still can't recollect. I know
4 that this is the -- again this is the usual practice that
5 I do take the families with him, especially the father
6 and mother if the boy is sick and they go and visit him, but --
7 and a lot of times the parents think that if they see their
8 son or he recognizes them, vice versa, but I can't -- I can't
9 really recall that -- in this particular situation that he
10 knew the whole thing and what was going on.
11 Q. I see. The bottom line being that this case for all intents
12 and purposes is out of your mind except for the items which
13 are documented from which you can refresh your memory from
14 time to time?
15 A. Yes, but that is common practice to take the family to the
16 patient.
17 MR. ROSS:
18 Thank you very kindly, Doctor.
19 MR. CHAIRMAN:
20 Mr. Wildsmith.
21 BY MR. WILDSMITH:
22 Q. Just a couple of points. Doctor, I'm here representing the
23 Union of Nova Scotia Indians and I want to ask you a couple
24 of questions of a different character than what you've been
25 asked so far. You've indicated that you've practiced medicine

in Sydney since 1969?

A. That's correct.

Q. And I'm wondering if in the course of your practice you have treated Indians?

A. Of course.

Q. Of course?

A. I'm Indian too.

Q. Okay. I see your point. I'm particularly talking about Native North American Indians.

A. Oh, yes.

Q. I'd like to put to you a couple of statements that are attributed to Doctor Virick to see if you can confirm whether if your own experience these statements are true?

MR. CHAIRMAN:

Who's Doctor Virick?

MR. WILDSMITH:

Doctor M. Virick is a doctor in Sydney. These statements appear in "Justice Denied". Doctor Virick, I believe, treated Junior Marshall the same night we're speaking about in the hospital although two statements are not related to that incident.

COMMISSIONER EVANS:

We just wanted to know who he was, not his history.

MR. WILDSMITH:

Yes. Thank you.

BY MR. WILDSMITH:

Q. In order to understand these two statements that Doctor Virick--

that's attributed to Doctor Virick in this book, I'd like to just read you the balance of the paragraph that leads up to it and this appears at page 18 in "Justice Denied". The author says:

> By 1970, the same cycle of despair that gripped Nova Scotia's other twelve Reserves--joblessness, welfare, and alcoholism--had enmeshed Membertou's residents. A report issued by the Union of Nova Scotia Indians claimed that ninety-eight percent of the violence on the reserves was linked to alcohol and drugs. Significant numbers of Indian children were found to be drinking vanilla and shaving lotion to temporarily escape the barren reality of Reserve life.

Here's where Doctor Virick comes in.

> At that time, Dr. Mohan S. Virick of Sydney told the Micmac News that he was treating a growing number of Indian children for peptic ulcers, which he believed wre being brought on by glue and gasoline-sniffing.

I'm wondering, Doctor, if you can confirm based on your experience whether the statements about glue and gasoline-sniffing and peptic ulcers in Indian children was something you saw in your practice?

A. I think what you should do is to speak to Doctor Virick and the book -- the guy who wrote the book because I'm a surgeon and my specialty is surgery. I'm not a General Practitioner and I don't see that kind of patients.

1 Q. You don't see patients that have --
2 A. I only see -- I only see patients referred to me for a
3 surgical element.
4 MR. WILDSMITH:
5 Very good. Thank you. No further questions.
6 MR. CHAIRMAN:
7 Mr. MacDonald.
8 BY MR. MacDONALD:
9 Q. I was interested, Doctor, in your response to Mr. Pugsley
10 saying that after you had cut in the area where the knife went
11 in, you wouldn't really be able to tell the difference. Are you
12 saying that a pathologist couldn't tell the difference between
13 a surgical scalpel cut and one that's ripped open by a knife?
14 A. If you did not make -- The surgical is cut -- Ripped open
15 by knife. If you did not make that into a surgical incision.
16 If a person went in with one stab wound, of course, that's
17 a different ball game. Well, in this case --
18 Q. But there was one stab wound right through the body, as I
19 understand it, to the back bone.
20 A. Yes.
21 Q. And you went in and extended that?
22 A. That's right. Well, in this case the incision was extended
23 up and down and now pathologists have no way where it started,
24 because all you do is just make the same --
25 Q. One is made though with a very sharp surgical scalpel, yours?

1 A. Yes.
2 Q. And the other is made probably with a knife. Are you trying
3 to say that a pathologist using whatever instruments he had
4 couldn't tell where your work started and the other fellow
5 had stopped?
6 A. That's right.
7 MR. MacDONALD:
8 Thank you.
9 BY MR. CHAIRMAN:
10 Q. Doctor, just one question. Is there a forensic pathologist
11 in Cape Breton?
12 A. Forensic pathology as a specialty, no.
13 Q. Is there one in Nova Scotia?
14 A. I believe, I have to refer this to Doctor Perry,
15 but I think there's maybe one in Nova Scotia, in Halifax, but
16 I am not so sure.
17 MR. CHAIRMAN:
18 That's all. Thank you.
19 MR. MacDONALD:
20 Just perhaps, My Lord, before we adjourn for the day if I can
21 tell you who is coming on tomorrow so everyone will know. You
22 may recall the evidence a couple of weeks ago, there was a reference
23 to an Ed MacNeil who was referred to in Sergeant Wood's notes.
24 He was present when Sergeant Wood was there the next morning and
25 spoke to Detective Sergeant MacIntyre and Constable MacNeil, and

1 we've located MacNeil. He's from Halifax and he can be here first
2 thing in the morning. We propose putting him on first thing in
3 the morning, and then we're going to follow with Arthur Paul,
4 Terrance Gushue and Patricia Harriss and Eunice Harriss as in
5 the list, but we are going to insert Mr. MacNeil because of the
6 requirement to bring him down from Halifax specifically for that
7 purpose.
8 MR. CHAIRMAN:
9 Are you anticipating getting to the bottom of the page by tomorrow?
10 MR. MacDONALD:
11 The bottom of the page? Which page are you looking at, My Lord?
12 MR. CHAIRMAN:
13 The same one you have. We'll adjourn until nine-thirty.
14
15
16 (WITNESS WITHDREW)
17
18
19
20 INQUIRY ADJOURNED AT 4:52 o'clock in the afternoon on the 6th
day of October, A.D., 1987.
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NN 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 6th day of October, A.D., 1985, 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

Sydney Discovery Services
October 6, 1987