PG44
Vol 251
#2

SDS Case Number 87-312

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

VOLUME XXXIII

Held: December 8, 1987

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

Before: Chief Justice T. 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. Marlys 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., Joel Pink, 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 MacAlpine

Charles Broderick: Counsel for Carroll

S. Bruce Outhouse: Counsel for Wheaton & Scott

Guy LaFosse: Counsel for Davies

Bruce H. Wildsmith, & Graydon Nicholas: Counsel for Union of Nova Scotia Indians

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

INQUIRY RECONVENED AT 9:33 o'clock in the forenoon on Tuesday, the 8th day of December, A.D., 1987, at Sydney, County of Cape Breton, Province of Nova Scotia.

1 JOHN F. MacINTYRE, resumes testimony, as follows:

2 BY MR. MacDONALD:

3 Q. Just before I go on, Chief, there was one answer or one question
4 I asked you yesterday several times, and reading the transcript
5 I'm not quite certain what the answer was and maybe it's the way
6 I phrased the question. Let me put it a little more directly.
7 Who do you believe stabbed Sandy Seale?
8 A. Well, up until '82, I had my belief on it that I was right,
9 and the Appeal Court at that time gave a different decision.
10 I've kept quiet ever since.
11 Q. Who do you believe today? What's your belief today? Who
12 stabbed Sandy Seale?
13 A. Well, I guess I'd go along with -- I'd have to go along with
14 what the Appeal Court said.
15 Q. So you believe it was --
16 A. It's -- The only problem I have with that is that the witnesses
17 have changed their stories so many times.
18 Q. The Appeal Court acquitted Donald Marshall, but I don't believe
19 the Appeal Court said who stabbed Sandy Seale. Is it your
20 belief -- Do you believe that Roy Ebsary stabbed Sandy Seale?
21 A. I think the question at this time is who -- that I'd have to ask
22 myself, who do you believe --
23 Q. Well, I'm asking you.
24 A. -- as far as the witnesses are concerned. They've told so many
25 stories, sir.

1 Q. Well, I'm asking --
2 A. And they're still telling stories as far as I'm concerned.
3 Q. I accept --
4 A. And it's adding to and what have you.
5 Q. Well, I accept that, Chief. I know what --
6 A. I'd leave that up to the Commission here to --
7 Q. But I'm asking, sir, what is your belief? Who do you believe
8 stabbed Sandy Seale?
9 MR. PUGSLEY:
10 My Lord, is this relevant to these proceedings? Does it have assis-
11 tance to the Commissioners to know what Chief MacIntyre believes
12 today in that regard?
13 MR. CHAIRMAN:
14 It has some relevance to -- particularly in the light of the evidence
15 that we heard to date where there has been a review of all the facts
16 surrounding the death of Sandy Seale and the investigation of the
17 stabbing and his subsequent death and conviction -- and the subse-
18 quent conviction of Donald Marshall and then his acquittal and then
19 the conviction of Roy Ebsary; so I would -- It is relevant. As to
20 its ultimate relevance, I guess that's something we will have to
21 decide after we've heard all the evidence, Mr. Pugsley.
22 BY MR. MacDONALD:
23 Q. Can I have an answer, Chief?
24 A. Again, I would leave it with the Courts; although, I have my
25 own problems with it.

1 Q. Okay. But what I --
2 A. I want to be fair with you. The witnesses have changed their
3 stories so many times in the course of -- that I wonder when
4 they're telling the truth, to be honest with you.
5 Q. I'm not asking you, sir, to judge who's telling the truth.
6 A. No.
7 Q. The simple question, Who do you believe?
8 A. I have the problem -- I have a problem with the witnesses though,
9 and at various stages what they've said, and of course, I have
10 questioned them on two different occasions as the Commission
11 knows and you know, and I got two different stories.
12 Q. I understand all that, but you're still have not answered my
13 question. Do you believe -- Who do you believe stabbed Sandy
14 Seale on the night of May 28th, 1971?
15 A. At this time, as I said yesterday, I'm going along with the
16 Appeal Court of 1982, what they decided on.
17 Q. Well, the Appeal Court in 1982, sir, I believe --
18 A. Yeh.
19 Q. We can look at it if you like, but I believe they decided merely
20 that Junior Marshall did not, or at least there was no evidence
21 on which a jury could convict him.
22 A. And again, that was because of the witnesses at that time because
23 they had changed their story again, sir.
24 Q. You sat through the evidence at trial --
25 A. No, I didn't -- which -- At which trial?

1 Q. That's what the --
2 A. The Appeal Court, you mean?
3 Q. No, I'm sorry, I didn't -- You didn't let me --
4 A. No.
5 Q. -- finish my question. You sat through the evidence, did you,
6 at the various Roy Ebsary trials?
7 A. No, I didn't. I was unfortunate. I wasn't called in the first
8 trial. The second trial I was called on one statement, and then
9 I was told I wasn't allowed to stay in. On the third trial, I
10 was called by the defence, sir, and at no time was I in on the
11 trials.
12 Q. Okay, I didn't -- That's good information for me to know. You
13 say people changed their stories all the time.
14 A. That's right.
15 Q. Jimmy MacNeil never changed his story, did he?
16 A. Yes, to a degree.
17 Q. In what way?
18 A. Well, now, when I questioned Jimmy MacNeil on November the 15th,
19 1971, in regard to Ebsary stabbing Marshall, he said that he
20 didn't -- that he never seen Ebsary stabbing Marshall, that
21 Ebsary -- that -- Wait now, just a minute. Yes, that Marshall
22 let him go and took off. He doesn't know where he went. I
23 noticed later on in the trials that he's got Ebsary -- he's
24 got Marshall going towards Ebsary. He's still not stabbing
25 him at -- making gestures.

9:40 a.m.

1 Q. Have you read --
2 A. I would say that that was different than what I had in 1971.
3 Q. Have you read the transcripts of the Ebsary trials then?
4 A. I've -- Yes, I've read the transcripts, yes.
5 Q. So you've at least had the benefit of reading the transcripts?
6 A. That's right. Yeh.
7 Q. Jimmy MacNeil never said anything other than, "Roy Ebsary
8 stabbed Sandy Seale," did he? He never said anything different
9 than that?
10 A. No. No, he didn't -- No. No.
11 Q. He told you that in November of 1971?
12 A. That's right, yeh.
13 Q. And he has sworn to that before the Appeal Court, before the
14 Supreme Court on at least three occasions, and here. He's
15 never changed that story.
16 A. Wait now, you talking about the three Ebsary cases too?
17 Q. Yes.
18 A. Yes.
19 Q. Jimmy MacNeil always, always testified that Sandy Seale was
20 stabbed by Roy Ebsary, did he not?
21 A. Well, I noticed -- You asked me if I read the transcripts. I
22 noticed in one of the Ebsary cases, Jimmy MacNeil again, who
23 was the star witness in 1982 according to the Appeal Court,
24 that Marshall's evidence alone wouldn't stand, but that Jimmy
25 MacNeil's evidence with it, and the story that the other three

1 told at that time that they were pressured and what have you
2 and changed their stories, that they would have to take that
3 into consideration, and therefore, I think that's on the -- why
4 the acquittal was allowed. But I notice in one of Ebsary's
5 trials that the -- MacNeil wasn't even going to be called by
6 the Crown, and he was on the indictment at that time. I was
7 very astonished about that.
8 Q. That may be --
9 A. It wasn't until the judge ordered for him to be called that he
10 was called.
11 Q. That may be, Chief, but at all times --
12 A. Sir --
13 Q. -- Jimmy MacNeils' evidence was --
14 A. Jimmy --
15 Q. -- that Roy Ebsary stabbed Seale. Isn't that correct?
16 A. Well, that's correct to --
17 Q. Yeh.
18 A. -- me. That's what you told me, yeh.
19 Q. You're -- If I get back to the question I asked you to start
20 today, and I suggest you still haven't answered it. Who do you
21 believe stabbed Sandy Seale?
22 A. Well, I wasn't there, and there was an eyewitness there. There
23 was eyewitnesses there. Some say now they didn't see it, and
24 it -- and MacNeil says he did see it. That portion of it --
25 And the Appeal Court bought that, and MacNeil told me that

1 I would have to go along with it at this time because the other
2 witnesses say that they were lying. I'd -- It's a very con-
3 fusing thing to me at this time, all the stories that were told
4 and now they were changed around. I want to be honest with
5 you, I'm not -- And again, I'm only going to deal with the '71
6 when I had it.
7 Q. See, here's my confusion. I had the same thing yesterday. I
8 take it you don't want to answer that question whether or not
9 you believe Ebsary stabbed Seale?
10 A. Well, I think there's other ingredients added that way that
11 comes along with that.
12 Q. You don't want to answer --
13 A. There's the stabbing of Marshall that as you know in 1971
14 bothered me. And I haven't go into that as yet, and I don't
15 know whether you're going to.
16 Q. Oh, I will. Yes.
17 A. Yes. So I have to -- You know.
18 Q. Perhaps at the end of the -- before you leave the witness--
19 A. Well, I mean -- Yes, I'd --
20 Q. Before you leave the witness stand, I will give you another
21 opportunity to --
22 A. Thank you.
23 Q. -- answer the question. We were talking yesterday afternoon,
24 Chief, about the events of Sunday on May the 30th.
25 A. Yes.

1 Q. Do you recall you went and brought Chant in and -- How did
2 Pratico end up at the police station on that day?
3 A. At this time, I couldn't say, but he was likely sent for
4 because -- I would say I had it in my mind to get a statement
5 from him.
6 Q. I'm sorry.
7 A. I say I would have it in my mind at that time that I was
8 probably going to have to get a statement from him on that
9 day.
10 Q. Why would you have that in your mind?
11 A. Because, I suppose, of information I received at that time.
12 Q. And who did you receive information from?
13 A. I just can't tell you at this time, sir.
14 Q. And no idea at all?
15 A. Not to my recollection at this time.
16 Q. Did you have any source of informants that -- around the city that
17 would give you information from time to time?
18 A. Well, I had people tell me things now and again, yes, sure.
19 Q. Did someone tell you that Pratico had something to say?
20 A. I couldn't investigate it always. It depends on that at times.
21 Q. Yeh, I can -- I believe -- I understand that.
22 A. Yeh.
23 Q. Did someone tell you --
24 A. What's your question again, sir?
25 Q. Did someone tell you that Pratico had some useful information

1 for you?
2 A. All I can say at this time, that must've came to my attention,
3 but I had nobody --
4 Q. You have no recollection of that?
5 A. No recollection of --
6 Q. Yeh.
7 A. -- what was done.
8 Q. Do you recall speaking with or some -- one of your officers
9 attending at Mrs. Pratico's house to get Pratico -- told to
10 go get him and being given a blood -- I'm sorry, a shirt of
11 Pratico's that was filled with blood?
12 A. No. I heard that testimony when I was here.
13 Q. Did you ever see a shirt of --
14 A. No.
15 Q. -- Pratico's with blood on it?
16 A. I don't recall seeing anything like that at all.
17 Q. If you did see such a thing, Chief, could we assume you would've
18 made a note of it somewhere?
19 A. I would -- I think that's something that I would remember, yes.
20 Q. And it's something you would've questioned Pratico about?
21 A. That's right.
22 Q. Was Pratico kept separated from Chant and Marshall at the
23 police station on that Sunday?
24 A. Yes. They wouldn't be together.
25 Q. Would they be in a position where they could see each other?

9:46 a.m.

1 A. I wouldn't say so.
2 Q. The second Chant statement said he saw Pratico at the police
3 station. Could that have been possible?
4 A. No, I wouldn't have them come in contact with one another, sir.
5 Q. I realize you may not have them come in contact --
6 A. No.
7 Q. -- but would it be possible --
8 A. No.
9 Q. Any possiblity of Pratico coming into contact with Marshall?
10 A. I wouldn't say so.
11 Q. Do you have any recollection of what you had been told Pratico
12 might be able to tell you? Why was he of interest to you?
13 A. Just as a result of information received, sir, that Pratico
14 was taken in. At this time, I just can't recall.
15 Q. And did you follow your usual practice with him of saying, "I
16 want to take a statement," and then writing down everything
17 that was said?
18 A. Pratico's statement? I would have to have a look at it, sir.
19 Q. It's on page 22 of Exhibit 16. That's a typewritten copy
20 of it, Chief, you'll realize.
21 A. Yeh, I realize that.
22 Q. Yeh. But I think it's an accurate typewritten copy.
23 A. Yeh.
24 Q. You didn't have another officer present?
25 A. That's right.

1 Q. In fact, you didn't have another officer present on that --
2 A. No, I had done all three of those myself.
3 Q. Yeh. Even though you had Michael MacDonald go out to Louisbourg
4 with you --
5 A. Yeh.
6 Q. -- to get Mr. Chant.
7 A. That's right. I'd done all three --
8 Q. And even though you're dealing with all juveniles?
9 A. Pratico wasn't a juvenile, sir.
10 Q. Pratico was sixteen. That's not a juvenile.
11 A. That's right. No.
12 Q. And Marshall's seventeen; so --
13 A. That's right.
14 Q. I'm sorry.
15 A. That's right. And Chant's mother was asked if she wanted to
16 come along and she said, "No, you can take -- He can go along
17 himself."
18 Q. Okay. Let's look at Pratico's statement. Would that comprise
19 everything that was said that day?
20 A. Yes.
21 Q. Do you have independent memory of that interview?
22 A. Well, I -- The purpose of talking to him was to take a statement
23 from him, and I would relate to him, of course, why he was
24 there and that -- what he might know about May the 30th.
25 Q. Just give me an -- I know you can't do it word for word, Chief.

1 A. I can't do it word for word, sir.
2 Q. Give me an idea of what you would say to him.
3 A. I would just tell him I was investigating -- what I would likely
4 tell him that I was investigating a stabbing over at the park
5 on Friday night, and I was wanting to know if he'd be able to
6 tell me anything about it.
7 Q. And then you would write down everything that was said?
8 A. I would do my best, yes, sir. Do my best to write down.
9 Q. Okay. He talks in that statement of seeing -- I'm sorry, of
10 being over by the Court House when he heard a scream.
11 A. Yes.
12 Q. Now, the Court House, you know from having grown up in that
13 area, is a block or so removed --
14 A. Yeh.
15 Q. -- is it not --
16 A. That's right, yeh.
17 Q. -- from the Crescent Street Apartments.
18 A. Yeh, that's right. It's still Crescent Street, but then the --
19 It's on the other side of the track and over towards Kings Road.
20 Q. Yes.
21 A. Yes, sir.
22 Q. He says when he heard the scream, he looked and seen two
23 fellows running from the direction --
24 A. That's right.
25 Q. -- and then said that he jumped in a white Volkswagen, and he

1 describes two individuals. Now, would you -- Why didn't you
2 ask him to -- some questions about those individuals? Why
3 didn't you ask him how old they were, for example?
4 A. Well, he gives a description of the car that he jumped into
5 and gives a description of the two parties that he seen jumping
6 into it.
7 Q. I know that, but why didn't you ask him? The other witnesses had
8 been talking about ages. Wouldn't you have asked him, "How
9 old were they? Any idea of their age?"? Why wouldn't you
10 ask him that?
11 A. Probably that's a question that I left out at the time.
12 Q. What color their hair was?
13 A. Yeh.
14 Q. Whether they were wearing glasses? None of those points seem
15 to have been covered.
16 A. I was taking his story at the time, sir.
17 Q. But you were also questioning and answering, Chief.
18 A. Yeh, I was. Yeh.
19 Q. Why didn't you ask him those very basic questions?
20 A. His answers to the --
21 ...One had a brown corduroy
22 jacket - 5'5 dark complexion; heavy set. The other...
23 -- fellow --
24 ...grey suit about 6 ft. tall;
25 husky; red sweater - like a pullover...

9:51 a.m.

1 Q. I know what he said --
2 A. Yeh.
3 Q. -- and I'm trying to find out why you didn't ask him, sir --
4 A. Well, they weren't asked, sir, and that's what -- the statement
5 I took from him at that time.
6 Q. Can you give me any reason why you wouldn't have asked given
7 the --
8 A. No.
9 Q. -- fact that the other people had talked about age, for example.
10 Why wouldn't you have asked him how old they were or did he notice
11 their age?
12 A. It had -- It wasn't asked, sir. I can't give any reason for
13 that.
14 Q. He refers in the statement in his last sentence there, Chief,
15 to a Robert Patterson.
16 A. Yes.
17 Q. Now, that is a name that Junior Marshall referred to as well.
18 A. Yes, and the Harriss girl also.
19 Q. Yeh. But at least on May 30th, two people gave you the name
20 Robert Patterson.
21 A. Yes.
22 Q. Did you ever speak with him?
23 A. No.
24 Q. Why not?
25 A. I didn't locate him.

1 Q. Did you try?
2 A. Well, my men were out looking for him, and it wasn't brought
3 to my attention.
4 Q. He --
5 A. The only part about Patterson, if you recall from all witnesses
6 that say that they seen him, was that he was down in the park
7 area on the other side of the pond, and he was supposed to
8 be intoxicated and sitting there by himself. In fact, I think
9 in one of the statements of Harriss's that he came down to the
10 park with them on that particular night and stayed in the park.
11 Q. Does the fact that he is drunk have any significance?
12 A. Well, according to some of them that he was so full that they
13 put him under bushes over there so the police wouldn't see him,
14 I believe, and I think that's the story of Marshall.
15 Q. Well, let's go back to Marshall's statement. That's on page 17.
16 Page 17.
17 A. Yeh.
18 Q. The first paragraph.
19 A. Yes.
20 Q. We met Bob Patterson. He
21 was drunk. We asked him if
he knew us and he called us
by name.
22 A. Yes.
23 Q. That's Sandy Seale and Marshall together.
24 A. Yes.
25 Q. So he's sober enough to know Sandy Seale and Junior Marshall.

1 There's no reference to Bob Patterson in Maynard Chant's state-
2 ment, and then Pratico just says Patterson was there and he
3 spoke to him, that Patterson told him where these two
4 individuals were from, that they were members of the Toronto
5 Saints Choice bike gang. It would seem to me that given what
6 you knew on May the 30th, Patterson would be a pretty important
7 person to find and talk to. Wouldn't ycu not agree with that?
8 A. No, I think Patterson was over on the other side of the park.
9 There's no evidence to state that Patterson was over around
10 Crescent Street or that Patterson was involved with any of
11 those people that I talked to.
12 Q. Let me come back to you, to May 30th, Sunday. You've already
13 gone through who you spoke to. It wasn't a lot of people up
14 until the time you brought in Marshall, Chant, and Pratico. And
15 when you're through with Marshall, Chant, and Pratico, this is
16 what you know at least as I see the information. You know that
17 Seale and Marshall met Patterson and that he called them by
18 name and that he was drunk, and you know that Pratico spoke
19 with Patterson who told him that the two people Pratico allegedly
20 saw carrying out a stabbing were from -- told him they were
21 from the Toronto -- or at least were from a certain bike gang
22 in Toronto. That's all you knew, isn't it?
23 A. Well, yes, that was his story, yes.
24 Q. That was --
25 A. That was --

9:56 a.m.

1 Q. -- the story of Pratico.
2 A. Pratico, yes.
3 Q. And Marshall?
4 A. Marshall is not talking about a Volkswagon.
5 Q. No.
6 A. No.
7 Q. I never suggested he was.
8 A. No.
9 Q. I'm trying to find out why you wouldn't have on Sunday or Monday
10 or Tuesday or any day, yourself, as the man in charge, gone
11 and found Patterson.
12 A. Well, he just wasn't located. That's all I can tell you, and
13 he wasn't interviewed, and --
14 Q. Do you think that was competent police work on your behalf?
15 A. I don't -- I didn't see anything wrong with it. I don't know
16 what Patterson could tell me except that what other people were
17 telling me that he was on the bench on the other side of the
18 park, if he was sober enough to realize that and that -- I had
19 no information that Patterson seen anything from anybody.
20 Q. You tell me what information you had that Patterson was on the
21 bench on another side of the park. Who told you that?
22 A. Well, I think -- Wasn't there evidence that when -- the people
23 who walked through the park that seen this fellow alone on a
24 bench?
25 Q. Are you saying you had that evidence before you spoke with

1 Marshall and Pratico?

2 A. Before I spoke -- I don't know what the Dixons -- I think I seen

3 the Dixon's on that same day, didn't I?

4 Q. Dixon is on page 24, Chief.

5 A. No, I don't know whether I had that before or not, sir.

6 Q. Alanna Dixon you saw on May the 30th, the same day.

7 A. Yeh.

8 Q. Her statement's on page 24. I don't see any reference in it

9 to Bob Patterson. Is there?

10 A. No, the only thing is here is:

11 Q. Did you see anybody else
in the park?

12

13 And they'd be coming in the direction from George from the

14 dance.

15 A. Just one man wearing some-
thing light sitting on a
16 bench with his head down.

17 Now, you know, who was that?

18 Q. I have no idea, Chief.

19 A. No, but I mean, that's where I -- That was my understanding at

20 the time that more than one person seen this Patterson in the

21 park. Now -- And my men tried to contact him with no success

22 at that time.

23 Q. Have you ever spoken to him?

24 A. No, I haven't. No.

25 Q. I come back, Chief, and suggest to you that when you have finished your

1 examinations on Sunday of those three witnesses, and including --
2 four witness, if you like. Alanna Dixon. You know that
3 Patterson may well have important information to give you, at
4 least important enough that you should go talk to him.
5 A. No, I didn't have important information that he could give me,
6 sir, from anybody, except he was sitting in the park -- He was
7 in the park and he was intoxicated, eh.
8 Q. That he had spoken to Seale and Marshall. You knew that? At least
9 that's what Junior Marshall told you.
10 A. That's what Marshall said, yes.
11 Q. And that he had knowledge of where the two people Pratico saw
12 came from -- who they were. He had knowledge of that.
13 A. Yeh.
14 Q. You didn't consider that important?
15 A. I just took what he had to -- Pratico had to say at the time
16 at that time. As you -- You know, as you realize, I went back
17 to Pratico at a later date.
18 Q. Did you not -- Were you interested in any evidence that -- you
19 know, might lead you to these two other people that were
20 supposed to be there?
21 A. You mean the two that Pratico was talking about?
22 A. Pratico. Chant was talking about two people. Marshall was
23 talking about two people.
24 A. I think Ryan of the R.C.M.P. gave information, and I don't
25 recall at this time, but I accompanied him to Waterford on a

1 Tuesday looking for this Volkswagen.
2 Q. Well, I think, in fact, what -- Ryan said you accompanied him
3 to Waterford --
4 A. It was in New Waterford. Yeh.
5 Q. -- to look for any witnesses there who might've been in the
6 park.
7 A. Yes, I think he did talk about the Volkswagen.
8 Q. He did talk about the Volkswagen?
9 A. That's what I think. I'm not that --
10 Q. Do you wish today, Chief, that you'd gone and seen Bob Patterson?
11 A. No, I don't -- Looking at today, what would it -- You're
12 talking about them belonging to a chain -- a bicycle gang in
13 Toronto and what have and what have you, and that didn't turn
14 out, did it, in the evidence?
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1 Q. It didn't turn out in the evidence because --
2 A. We're talking about Sunday now, but on Friday that was a different
3 story.
4 Q. Are you saying today --
5 A. On June the 4th it was a different story than May the 30th.
6 Q. On May the 30th?
7 A. Yes.
8 Q. Are you saying today that it was in your opinion good, competent
9 police work not to find Bob Patterson and take a statement
10 from him?
11 A. I'm saying today that my men looked for Bob Patterson and we
12 didn't find him, but what Pratico said on May the 30th was a
13 different -- is different than what he said on June the 4th, sir.
14 Q. I'm talking May 30th.
15 A. I know, May 30th. Well, I'm saying that we couldn't locate
16 him.
17 Q. Patterson couldn't be that hard to find.
18 A. Well, we -- my men couldn't locate him. That's all I can tell
19 you, sir.
20 Q. Well, do you know if they talked to Marshall and asked him
21 where they could find Patterson?
22 A. No, I don't know that, sir.
23 Q. Did you?
24 A. No, I didn't. No.
25 Q. Did you know if they talked to Pratico and said, "Where can we

1 find Patterson?
2 A. No, I --
3 Q. Did you?
4 A. I don't -- No, I didn't, sir, not that I recall --
5 Q. And as you said --
6 A. Not that I recall, no.
7 Q. Now are you saying that you told your men specifically, "Go
8 and find Bob Patterson for me"?
9 A. Yes, I would -- During this investigation his name came up and
10 I would say that the men were looking for him to the best of
11 my recollection.
12 Q. You would have --
13 A. And they never came up with him and in -- and the R.C.M.P. were
14 looking for the man too and didn't come up with him.
15 Q. You would instruct your men then, Chief, just so I understand--
16 A. I believe --
17 Q. Just let me ask the question and then you can answer. You're
18 telling me that you instructed your men on May 30th or shortly
19 thereafter to find Bob Patterson for you, that you wanted to
20 speak to him?
21 A. I would say that I discussed Bob Patterson with my men, yeh.
22 Q. Yeh, that's a different thing, Chief. Did you instruct your
23 men to go find him or not?
24 A. Well, if Bob Patterson could have been found (I'll put it this
25 way.) we would have questioned Bob Patterson, but he couldn't be

1 located, sir. That's all I can tell you at this time.
2 Q. Well, my question doesn't seem to me to be difficult, Chief.
3 Did you or did you not instruct your men to go pick him up for
4 you?
5 A. If he was seen around to pick him up, yes, that would be my
6 instructions.
7 Q. Okay. And what men are we talking about? Are we talking about
8 patrolmen?
9 A. It could be patrolmen. It could be Billy Urquhart that I was
10 working with. I mean then we all knew that Bob Patterson was
11 in the park that night and that several people had seen him.
12 And again I'm telling you, I don't know, although we couldn't
13 find him -- I'm being honest with you. But I'm telling you at
14 this time, I don't know what evidence he could -- you're
15 talking about his importance. I don't know what evidence
16 that he could give as this thing turned out later on with
17 those people.
18 Q. As it turned out later on, Chief --
19 A. Yeh.
20 Q. -- we still haven't -- you and I haven't reached an agreement
21 yet on what you think turned out later on.
22 A. No.
23 Q. The --
24 MR. PUGSLEY:
25 In fairness to the witness I wonder if my friend would direct his

1 attention to page 135.
2 MR. MacDONALD:
3 Thank you.
4 MR. PUGSLEY:
5 And at the two words at the top of the page which may assist in
6 this line of questioning.
7 MR. MacDONALD:
8 Thank you, Mr. Pugsley.
9 BY MR. MacDONALD:
10 Q. Chief, page 135 of volume 16. Can you tell me whose handwritting
11 that is, Chief?
12 A. That's William Urguhart's: "Patterson wanted".
13 Q. I don't know when those were made. It's not dated, but in any
14 event hopefully some day we'll be able to ask Mr. Urquhart about
15 that, and that's in quotes, "Patterson wanted". So you would
16 have told Urquhart then you wanted Patterson?
17 A. That is my recollection.
18 Q. Okay. That's fine. So you did want to talk to him?
19 A. I wanted to talk to him, yes.
20 Q. Now, was Patterson. Do you know him, Robert Patterson?
21 A. No.
22 Q. And you, yourself, did not ask Junior Marshall, John Pratico,
23 or anyone else who mentioned Patterson, you didn't ask them
24 where he lived, how can I get in touch with him?
25 A. I can't recall at this time, sir, but I -- you know, I have no

1 knowledge of asking them.
2 Q. And I suggest if you had asked, you would have then told
3 someone, go get him at such and such an address?
4 A. That's right. If they knew, yes.
5 Q. At the end of the day on May the 30th, that's Sunday, when you're
6 through taking these statements, is that the last thing you
7 would have done that day, Chief, with respect to this
8 investigation?
9 A. I couldn't say at this time.
10 Q. Could you tell me at the end of that day did you have your
11 patrolmen, your investigators, actively looking for anybody,
12 searching for any suspects?
13 A. I'll put it this way to you, sir, the police were aware of it
14 and the police were aware of what went on Friday night, they
15 were aware of descriptions. I don't know about this Volkswagen
16 business at that time.
17 Q. Let me just review with you, Chief, the various descriptions
18 that were available to the police on May the 30th in the
19 evening, just review them and then see if I can get you to
20 tell me which one would have been followed or which
21 description would have been given to your people to look
22 for? I've just summarized these and I can take you through
23 them if you wish, but this is what I've summarized. Mroz's
24 report said he had been told there was someone in their
25 mid-forties, very tall with white hair and there was a second

1 person much shorter and younger. That's what Mroz said.
2 Dean said it was a tall fellow with white hair and a short
3 fellow. M.R. MacDonald said one of them was heavy set and
4 short, wore a dark blue coat to his knees, grey hair, black
5 low shoes, wearing glasses, dark rims; the second was tall,
6 five foot eleven, black hair, clean shaven, corduroy coat,
7 brown in colour, three quarter length. We have the Telex
8 that was sent from the Sydney Police saying that there was
9 an unknown male, just one of them, five foot eight to six
10 foot tall, grey hair, approximately fifty years old. You
11 had Junior Marshall saying that it was small fellow, five
12 foot nine or ten, a hundred and ninety pounds, grey hair,
13 combed back, glasses, fifty years old, long wide face, long
14 blue coat, black shoes, rounded toes. And the second guy
15 was wearing a brown corduroy coat, five eleven, a hundred
16 and fifty pounds, black hair, thirty-five years, thin face.
17 And you had Chant saying, six foot two, light brown hair,
18 dark pants, suit coat, over two hundred pounds; six foot
19 tall, dark pants, dark hair, a hundred and sixty-five pounds,
20 couldn't say if he was young or old. And Pratico, one had on
21 a brown corduroy jacket, five foot five, dark complexion,
22 heavy set; the other was, a grey suit, six feet, husky with
23 a red sweater. What did you have your men looking for? What
24 description did you give your men? What did you tell them?
25 A. There was quite a few different descriptions here.

1 Q. That's right.
2 A. Yeh.
3 Q. So what were your men looking for?
4 A. Well, I think that Marshall on Friday -- His description was
5 what on Saturday?
6 Q. Marshall's description to you, the handwritten one or --
7 A. Yeh.
8 Q. --the one that's taken down?
9 A. Yeh.
10 Q. May the 30th. The one that he gave to M.R. MacDonald was given
11 at the hospital on Friday night.
12 A. That's right.
13 Q. And the one that he gave to MacDonald was pretty similar to
14 the one that he gave to you. Is that the one you were relying
15 on?
16 A. Well, Marshall seemed to be the handiest to them at that time
17 for any statement.
18 Q. Is that the one you would have relied on? Is that the -- You
19 must have put a bulletin out, I take it, to your men?
20 A. I was getting a different statement -- different descriptions
21 from different people, including the police. A tall man
22 with grey hair, a short man with grey hair, the weight, a man
23 five foot, five foot 8, a hundred and eighty, a hundred and
24 ninety pounds, a pretty stocky individual, you know.
25 Q. So what did you tell your men?

10:10 a.m.

1 A. Well, that's what I would think that the men would be -- would
2 be looking out for and this Volkswagen, of course, came into
3 it on Sunday. And that's the only time I heard about the
4 Volkswagen and the screaming and two fellows running in that
5 direction. Marshall didn't give me that at all about any
6 Volkswagen. Marshall gave me a different description to what
7 I got here.
8 Q. Did Marshall give you a description of the car?
9 A. No car, no, sir. There was no car, sir. And Marshall was the
10 closest to the scene in my opinion. The other fellow --
11 Q. So do I take it from that that the description you would give
12 to your force to look out for is the one Marshall gave you?
13 A. Well, at that time also they would have the police reports and
14 there was different descriptions on them, hey, than what was
15 in this, but it -- it -- Now they're -- they're all different.
16 And again you're -- I'm taking statements here from those
17 people and one doesn't know what the other has said. It's
18 what they said, but they're all different descriptions.
19 Q. What I'm trying to determine, Chief, is the decision that
20 you made as head of this investigation?
21 A. As head of this investigation --
22 Q. What did you tell your men, your police staff? Did you tell
23 them to look out for particular people?
24 A. I was sticking to what Marshall said, the short-- you know,
25 the short --

10:13 a.m.

1 Q. Okay. So you were sticking with Marshall's description?
2 A. Yeh. That's right. At that time, yeh.
3 Q. Thank you. And what efforts were made to locate the people
4 that were described by Marshall, first by you and then by
5 others on your direction? What efforts did you make to
6 locate those people?
7 A. Well, the police were looking out on their beats and as you
8 know, some of the police had checked premises, hotels, and
9 boats, and different places for this description at the
10 time.
11 Q. And what did you do?
12 A. And then -- What did I do? I stayed pretty close to the
13 situation waiting for information.
14 Q. Did that --
15 A. You know, you don't -- you just can't pick this out of a --
16 Q. Do I translate that in that you stayed in the station waiting
17 for people to tell you --
18 A. Not in the station, but I -- I'd be around too in a car and
19 what have you.
20 Q. You'd be around --
21 A. But I can't tell you, you know, every minute what I done.
22 Q. At the end of that day on Sunday did you have any theory in
23 your mind as to what happened here?
24 A. No, I -- I gave the statements that I took a lot of thought.
25 I visited the scene to see if I could put together any of this.

1 Q. Did you do that on Sunday, Chief?
2 A. No, but it was -- it was the first of the week.
3 Q. But on Sunday --
4 A. No, I wouldn't say the first of the week, but somewhere
5 probably more close to the middle of the week. I can't tell
6 you just what night, but I'll tell you it was before June
7 the 4th. I went there myself at midnight and I -- I walked
8 this area and I observed what I could. The reason I went there
9 at midnight, because it was dark and I'd be able to observe it.
10 In fact, it was at midnight I went there.
11 Q. At the end of the day on May 30th, at the end of that day, that's
12 Sunday --
13 A. Yes.
14 Q. --did you believe the story that Junior Marshall had given to
15 you?
16 A. I had taken Junior Marshall's story at that time and I had
17 taken those other statements and I had still kept an open mind
18 on it, sir.
19 Q. Do I take it then you -- at that stage you were prepared to
20 believe what Junior Marshall told you?
21 A. Well, no, I wouldn't say that I was with those other stories
22 here. I wouldn't say I was. I still wanted to see some more
23 evidence.
24 Q. You wanted to see some more evidence?
25 A. Yeh, or get some more evidence, yes.

1 Q. Was there a blockade of Membertou Reservation?
2 A. I -- As I said before, I didn't know anything about that,
3 sir.
4 Q. You've never known anything about that?
5 A. I don't recall anything about that, no.
6 Q. Chief, I'm just going to show you an extract taken from
7 volume 19 of the Exhibits. This is a volume, I think, which
8 contains all the documents generated by the R.C.M.P. in 1982.
9 I'll just read it to you.
10 COUNSEL:
11 What page?
12 MR. MacDONALD:
13 I'm sorry, it's on page 124. Well, if we just wait, Chief, until
14 their Lordships get their copy of that.
15 BY THE WITNESS:
16 A. Yes, I recall.
17 BY MR. MacDONALD:
18 Q. That is referenced in -- in a report prepared by the R.C.M.P.,
19 Corporal Carroll.
20 A. Yeh.
21 Q. And it says:
22 O.C. ...
23 Whoever that is.
24 ...also advised Chief John MacIntyre
25 of Sydney P.D. had just called...

10:16 a.m.

1 A. Yeh.

2 Q. ...stating Inspector Richard Walsh and Ambrose MacDonald now remember
3 responding to a call at Membertou reserve when road blocks were
4 being set up to prevent trouble...

5 A. Yes.

6 Q. ...on the reserve (prior to MARSHALL'S arrest) at which time MARSHALL was
7 present...

8 A. Yeh.

9 Q. ...and was asked by MacDonald what he was doing while SEALE was being stabbed.
10

11 And he went on to say --

12 A. Yes, I recall this. Your question to me was whether I knew at
13 the time back in '71, if I've got you right --

14 Q. Yeh, but I --

15 A. Pardon me now, for a minute.

16 Q. All right.

17 A. If there was road blocks placed up at the Reservation and I
18 said no to that, this report here came to me on this particular
19 date here and the R.C.M.P. were investigating that at that time.
20 Those men never brought that to my attention before that and
21 getting this information I thought they should have them
22 if they want to interview my men.

23 Q. Okay.

24 A. Because I told my men when this investigation opened up to
25 co-operate fully with the R.C.M.P. if they came in to question.

1 But when -- when this came to my mind on that date I called
2 and conveyed that to them for their information at that
3 time, sir.
4 Q. And on that date, Chief, just for the record, it appears to
5 be June 16, 1982?
6 A. Yes. So that's when it came to my attention, sir.
7 Q. And so on June 16, 1982 --
8 A. Yeh.
9 Q. --you had been advised by Walsh that he and MacDonald --
10 A. I'm not sure whether it was Walsh or Ambrose that told me, but
11 I did say at the time, "You never told me anything about that",
12 or words to that effect and I called them and told them that
13 in case that they wanted to interview my men on that. I knew
14 nothing about that until that time.
15 Q. The advice you were given was that the road blocks were being
16 set up on the Reserve prior to Marshall's arrest?
17 A. Whatever's there. Whatever's there.
18 Q. That's what you were told?
19 A. Yeh, well, that's the message that they said I conveyed to
20 them.
21 Q. And you weren't aware of that?
22 A. No, sir. No.
23 Q. As the Sergeant of Detectives in Sydney Police you weren't
24 aware --
25 A. No.

1 Q. --that road blocks were being set up?
2 A. I wasn't aware of that, sir.
3 Q. Was there any knowledge that you have, any concern being
4 expressed that there was some racial overtones or some problem
5 that could arise on the Reserve?
6 A. It doesn't come to mind. I have no recollection of it, no.
7 Anyway, he talked to me about that.
8 Q. When was the search of the park carried out? I'm sorry, not the
9 search, the draining of the park.
10 A. The draining of the park, that would be very early, probably
11 Monday or Tuesday of that week.
12 Q. And just describe for me what you arranged to have happen?
13 A. Well, they -- That's where the Engineering Department and
14 the reservoir park which is a way out that controls the
15 water, the water coming into the creeks, the water was
16 stopped at that period, early in the evening, and, of course,
17 it would take an all night draining. And we came out at
18 daybreak, including some men -- I gathered some men at daybreak.
19 I should say I came out at daybreak when the water was down
20 to look for the weapon in all those creeks. I expected --
21 I thought that the weapon might have been fired into the
22 creek area.
23 Q. If you'd just look at the plan, Chief, to your right, would
24 all of the ponds shown on that plan have been drained?
25 A. Yeh, over to -- over to Bentinck Street, yeh. Yeh.

10:20 a.m.

1 Q. And that is the left extremity on that plan.
2 A. Yeh.
3 Q. All of those would have been drained?
4 A. They'd go right down, yes, and they'd flow then out to the
5 harbour, you know, they'd keep on going. So if you stopped
6 the water up at the reservoir then it gives you a chance to
7 drain it.
8 Q. Now had you ever seen that -- those creeks drained before?
9 A. Drained before? I might have. I might have, you know. For
10 some reason I might have, but they were drained for that
11 purpose at that time. Now during the night some time
12 somebody had interfered with the lock -- with the apparatus
13 that was controlling that of the reservoir, yes, and when we
14 got out there it was starting to -- starting to build up again
15 because of that -- that --
16 Q. Did it hamper your search in any way?
17 A. Well, we got out in time. We were out there -- We were out
18 there at daybreak.
19 Q. So it didn't hamper your search?
20 A. Well, I -- not to any great extent, no. We didn't have to
21 wait for another night.
22 Q. What were the bottom of those ponds like?
23 A. Very muddy and kind of a tar situation.
24 Q. Black?
25 A. You know you could -- Yeh, black muck, yeh.

1 Q. What --
2 A. I thought we might see a weapon laying there or stuck in
3 the mud or landed there. We weren't lucky enough.
4 Q. How was the search, how was it carried out?
5 A. Well, we searched the ponds, sir, right.
6 Q. How did you do that?
7 A. From the shore.
8 Q. From the shore?
9 A. From the shore, yes.
10 Q. Did you have any sort of device, metal detectors, anything like
11 that?
12 A. No, nothing like that, no.
13 Q. Did you attempt to have any of those?
14 A. No.
15 Q. Make any request of the R.C.M.P., for example?
16 A. No.
17 Q. How long would the search have taken?
18 A. Well, until we were sure that we -- that we -- there was nothing
19 there that we could see, sir, and then, of course, the place
20 was flooded later on that morning again.
21 Q. Did you have any devices, such as, binoculars to help you see
22 or anything of that nature?
23 A. I don't know if we had binoculars or not. I'm not sure if
24 we had binoculars.
25 Q. You, yourself, were present?

10:23 a.m.

1 A. The eyesight was pretty good at that time. We were out
2 looking and we didn't have to look too far.
3 Q. Okay. And what creeks -- Would you have looked at all three
4 of those creeks?
5 A. Over to Bentinck Street.
6 Q. Yeh.
7 A. Yeh.
8 Q. Now can you tell me what else -- We're on to -- We're into
9 Monday now. Tell me what you did on Monday as best you can?
10 A. Monday?
11 Q. I can help you a little bit.
12 A. I think there was a statement or two taken on Monday too, wasn't
13 there?
14 Q. If you go to -- first of all to page 15. That's of Exhibit 16
15 by the way.
16 A. Yeh.
17 Q. That would indicate that you had spoken with Keith Beaver at
18 the bottom of that page?
19 A. Yes. Keith Beaver on that particular evening, he -- he was
20 at the dance at St. Joseph's Hall with those other people,
21 Alanna Dixon and I believe -- No, the Cotie one, she wasn't
22 with them. What was it? Dixon and Noseworthy, I believe, yes,
23 they were there.
24 ...Keith Beaver in regard to Alanna
25 Dixon's story and the only change that
I found in his story was that they

1 were talking with Sandy Seale
leaving the dance and that he
2 walked down George St. with
them - that Sandy did not enter
3 the Park at that time. He kept
on down George by himself. The
4 Dixon girl stated that Sandy
walked through the Park in her
5 statement but went over the bank
to the railway track.
6

7 Yeh.

8 Q. Now you spoke with Beaver it appears on May the 31st?

9 A. Yes.

10 Q. Now the only other statement I can find that date in the

11 book is -- in volume 16 is the statement from George and

12 Sandy McNeil on the evening of May the 31st. That's on

13 page 26, Chief.

14 A. Yeh. And the Dixon girl's story, that was -- that was

15 May the 30th.

16 Q. The Dixon girl you saw the day before.

17 A. That's on twenty-four, yeh. All right. Yes, I have that

18 here.

19 Q. Now other than seeing Beaver, and we'll come to the McNeil

20 statement that started at six-thirty at night. Other than

21 seeing Beaver, can you tell us what else you would have done

22 on that May 31st, the Monday?

23 A. No, I have no recollection at this time just what I was --

24 what I was doing.

25 Q. McNeil, that is George McNeil, and Sandy McNeil testified that

10:26 a.m.

1 they contacted you, they came to the police rather than the
2 police having found them. Is that your recollection?
3 A. Well, that could be so. I -- I -- I thought I went to
4 Coxheath.
5 Q. There is a note --
6 A. I think -- Did they hear -- But they might have called and then
7 I went out there. I'm not sure. And look at ninety-- yes,
8 ninety-one, Bungalow Road, Coxheath.
9 Q. If you look at page 138, Chief, this might help you. Is that
10 your handwriting?
11 A. No, that's William Urquhart's handwriting.
12 Q. That's Urquhart's as well?
13 A. Yeh.
14 Q. Well, we'll have to ask him.
15 A. Yes, that's his handwriting, sir.
16 Q. In any event, you did take a statement from George and Sandy
17 McNeil?
18 A. Yes, it's-- Yes, on page 27 is the original. Yes.
19 Q. Whose handwriting is that on page 27?
20 A. That's mine. That's mine.
21 Q. So you took the statement from --
22 A. From the two of them at that time, yes.
23 Q. There's no time noted when the statement was finished?
24 A. No, that was the -- that was the crux of the statement right
25 there and the -- I think they seen a man down in the park, if

1 I recall, with -- in his fifties and he had a white--a grey
2 or white coat on him that night, if I recall.
3 Q. We'll look at his statement, but is there any reason you
4 wouldn't have put the date or the time when it was finished.
5 That wasn't your normal practice, was it?
6 A. It would have been, yes.
7 Q. Now this is a statement from McNeil.
8 A. From the two of them?
9 Q. Yeh, from the two of them.
10 A. Yeh.
11 Q. And that description they give you, isn't that quite similar
12 to the description that Marshall had given to you?
13 A. No.
14 Q. No?
15 A. No, they -- this -- this man here had a light or a white
16 coat on him. Marshall said it was a blue burberry this other
17 man was wearing if you recall.
18 Q. Okay.
19 A. Yeh.
20 Q. Marshall says the man was grey haired?
21 A. Yeh.
22 Q. And so does McNeil. Marshall said he was five nine or ten.
23 McNeil says he's five nine?
24 A. Yeh.
25 Q. Marshall said he weighed a hundred and ninety pounds, McNeil

10:29 a.m.

said a hundred and eighty pounds?

A. Yes.

Q. Hair flat on his head according to McNeil and Marshall says, hair combed back?

1 A. Yes, I see that.
2 Q. McNeil says: "Round fat face". And Marshall says: "Long
3 wide face". And they both say or Marshall says: "Fifty
4 years". McNeil says: "Late fifties". And then for the
5 second person, Marshall says: "Five eleven". McNeil says:
6 "Six feet, thin, average size". Marshall says: "He weighs
7 one hundred and fifty pounds". "Dark hair", Marshall says
8 "Black hair". "Late thirties". Marshall said: "Thirty-
9 five years". "Brown jacket". Marshall said: "Brown
10 corduroy coat". I suggest that they are very similar, yes?
11 A. Well, they're not -- some of this is similar, yes.
12 Q. Well, isn't the only difference --
13 A. There's a big difference between a blue Burberry coat and
14 this is on the -- this is on May the 31st he's talking and a
15 whiter -- white coat.
16 Q. That is the primary distinction, is it, in your own mind?
17 A. Well, no. But I mean that is -- that is -- you know, that
18 is very important what he was wearing on that particular
19 night, the party they're talking about. But the hair flat
20 on the head, that is -- that -- that is the same. "Round
21 fat face", and Marshall said, I think, a "round fat face",
22 and then he said "thin face".
23 Q. You were going --
24 A. And then he -- I'm sorry, yes.
25 Q. You -- you had told me that as of Sunday night --

10:30 a.m.

1 A. Yes.
2 Q. -- you were going on the description that Marshall had
3 given to you?
4 A. Yes.
5 Q. And then on May the 31st you have a description given to you
6 by an individ -- two independent people that is very similar
7 except for the coat and perhaps the description of the face.
8 And did you not consider that to be corroborative evidence
9 to support what Marshall had told you?
10 A. To -- yes, to a degree, yes. But those people were down in
11 the Park and the MacNeil's did not see those particular
12 people doing anything except that he did see -- take notice
13 of those people when he was coming through the Park.
14 Q. And he went through the Park around eleven-forty at night
15 or at least he left the dance eleven-forty?
16 A. Yeh, and then you have the others coming through the Park
17 too around that time. Beaver and Dixon and them and they
18 see nothing.
19 Q. Did you say Beaver and Dixon went through the Park?
20 A. That's -- yes, they did, yeh.
21 Q. Let me see, I -- yes --
22 A. "The four of us cut down through the Park", and --
23 Q. Yes.
24 A. -- they didn't -- they didn't see anything, sir.
25 Q. Thank you.

1 A. So, you know, a lot of confusing things there in that. You
2 have to sit down and start -- start sorting the thing out
3 and as I continued the investigation, of course, I --
4 Q. Did you -- did you suspect that Marshall had been in contact
5 with George McNeil and Sandy McNeil?
6 A. No, I didn't suspect that at all, no.
7 Q. Do you suspect that today?
8 A. No, no.
9 Q. So where do you think they come up with the description of
10 these two people?
11 A. Who is this now?
12 Q. McNeil -- George and Sandy?
13 A. I'm not -- I'm not saying, sir, that they didn't see somebody
14 down there, only I'm saying that they -- the description is
15 a little different. I'm not saying that the McNeil's didn't
16 see those people in the Park; but they didn't see them doing
17 anything is what I'm saying.
18 Q. They didn't see them doing anything; no, we know --
19 A. No, and -- no, but the descript -- the clothing and that is
20 different.
21 Q. Did you subsequently decide to reject this evidence of
22 McNeil, this George and Sandy McNeil as being not
23 important?
24 A. Not as important as the evidence that showed up later on that
25 week, sir, as I continued my investigation.

10:34 a.m.

1 Q. But that evidence was not important given what you were told
2 later by Chant and Pratico, is that what you're saying?
3 A. Chant and Pratico and --
4 Q. And?
5 A. And I suppose other things that I was looking at.
6 Q. What other things?
7 A. Well, I think that week I -- early that week, I can't tell
8 you what day it was; but I had that -- that jacket of mine
9 and I -- and that jacket of Marshall's I should say and I
10 looked that jacket over and I -- it bothered me quite a bit
11 when I did.
12 Q. What bothered you about it?
13 A. What bothered me about the jacket was the cuts and the tears
14 that were on it and several, of course. And then I had a --
15 Q. Why did they bother you?
16 A. Because I had to relate the sleeve -- the arm of that jacket
17 with the cut that was on Marshall's arm and the blood contact
18 on the jacket and what Marshall had told me before that about
19 how they were stabbed. And I had a problem with that and as
20 a result of that, I thought I should interview the doctor,
21 Doctor Virick, Which I did at the City Hospital and I asked
22 him if he could get a spot where we could talk for a couple
23 of minutes. And I told him -- identified myself at the time
24 and I think Doctor Virick knew me; I'm not sure. And I asked
25 him about the wound at that time. He was the attending

1 physician and he discussed the wound with me. And then I
2 had the jacket sent to the lab in Sackville, To the fibre
3 expert there to get expert examination done on the jacket
4 and I went -- I went to Sackville with M. R. MacDonald and
5 my recollection the party that was going to look at that
6 jacket wasn't there at the time; but I did talk to the
7 party that was there and told them what I wanted to -- why
8 and what -- wanting to know about those fresh -- those
9 tears and what-have-you in the jacket and see what the fibre
10 expert could tell me.
11 Q. Now I suggest to you, Chief, you just covered a fair point
12 in time. You were into a couple of weeks anyway.
13 A. Well, I mean, it was one time, one day, early in the week
14 was the jacket.
15 Q. Okay, but --
16 A. Later on was the trip to the -- Sackville. And I think the trip to
17 Sackville, in New Brunswick; I think was on the 15th of June.
18 Q. Yes, well, let's stick if we can to the early part of June
19 or May. When did you get the jacket?
20 A. No, they got the jacket -- I got the jacket in the first
21 of the week, which is, we're still talking about June.
22 Q. Yeh, May 31st, June 1st?
23 A. Yeh, you know, --
24 Q. You got it then, did you?
25 A. Or -- or -- or second.

1 Q. Pardon?
2 A. It was either Monday or Tuesday, I believe. It was the first
3 of the week anyway.
4 Q. And when you got the jacket, tell me again, what was it about
5 it that bothered you?
6 A. It bothered me about the condition of the jacket. The arm
7 and the sleeve and the wrist of the jacket was ripped --
8 ripped and I believe and cut, or I recall right, and there
9 was cuts, separations in the arm of the jacket. One
10 separation was quite long and the other -- other separations
11 were shorter. I'd say, well, I'm talking inch, inch and a
12 half; but none of them were continuous separations.
13 Q. Yes.
14 A. And then I relating that, as an investigator, with the cut that
15 was on the arm. I also noticed that there was very little
16 blood on that jacket. And I had in mind that somebody was
17 stabbed in the Park, namely, Sandy Seale and Marshall; but
18 that Seale was stabbed first and that knife should contain,
19 in my opinion and as a lay-person's, blood. And where the
20 cut was on the jacket and the cut on the arm, there was no
21 blood there on that jacket. Now I'd expect, as an
22 investigator, for blood to be there and I'd expect, also as
23 an investigator, for blood from the arm of Marshall to show
24 up on that jacket in the area. So that was the idea of me
25 making the trip to Sackville. And I went up there personally

10:37 a.m.

1 myself, sir, And stayed, I think, in Amherst that night and
2 went into the lab the next morning, And accompanied, of
3 course, by Mickey R. MacDonald.
4 Q. Before we -- I'm sorry, Chief, I don't like to interrupt you;
5 but before we get up to Sackville, can we just stay here in
6 May the 31st or early that week? Do I understand what you're
7 telling me that early in the week following the death of Mr.
8 Seale, you obtained the jacket of Marshall and that caused
9 you some concern?
10 A. Yes, it did.
11 Q. Okay, and the concern arose because of the presence of what?
12 A. The cuts on the jacket which were in different places on the
13 jacket coming from close to the shoulder and down to the --
14 down to the -- down to the wrist of the jacket.
15 Q. Okay, now that's -- that's what I -- I'd like you to describe
16 for me if you could?
17 A. Yeh, well, at this time now --
18 Q. To your best recollection?
19 A. At this time, I'm going to say there was several cuts and they
20 were continuous cuts. It wasn't one long cut and none others
21 it was a long cut, a shorter cut and I think there was one
22 up here or somewhere up close here and then there was damage
23 down here at the -- at the cuff.
24 Q. Okay, now be just, for again for the record, when you say there
25 was cut up here, you pointed to your shoulder and then you --

10:40 a.m.

1 A. Not a -- not a way up, sir. Somewhere but up a lot higher
2 than where this cut was here.
3 Q. Okay, just so I understand and again --
4 A. Yes.
5 Q. -- so we can describe it for the record, you're saying --
6 A. And that bothered me, yeh.
7 Q. -- you're saying that there was one long cut on the inside
8 of the arm?
9 A. Yes.
10 Q. Is that correct?
11 A. Yeh, not -- not where you're pointing though. You're pointing
12 at where the cut was.
13 Q. Okay.
14 A. I don't think it was there but the expert from the lab can
15 be called because he gave evidence in 1971 as to the
16 condition of the jacket, sir.
17 Q. Yeh, but I'm trying to get it from you, Chief, what it was
18 that got you -- made you concerned --
19 A. As an investigator, sir.
20 Q. Yes?
21 A. Yeh, because there was a man cut, namely, Marshall; his arm
22 was cut and it was cut on the inside.
23 Q. Yes?
24 A. And he was wearing a jacket that night, that yellow jacket.
25 And I real -- I was trying to relate the picture of the thing.

1 Q. Did you ask any -- did you ask Marshall anything about how
2 the cuts came to be on the jacket?
3 A. No, he told me -- I knew that he was wearing a yellow jacket
4 that night. He told me about being stabbed on that
5 particular night.
6 Q. But early in the week then when you got that jacket you
7 started to have concern about --
8 A. Well --
9 Q. -- Marshall's story?
10 A. Well, I was concerned about how those cuts and again, I -- I'm
11 not an expert on that. I would have to get from the lab --
12 from the fibre expert what -- what was his opinion on it.
13 I wanted to get somebody else's opinion on it, sir.
14 Q. You started to have concern in your own mind about the cuts
15 and that --
16 A. That's right.
17 Q. -- couldn't -- that couldn't gel with the story that Marshall
18 told you?
19 A. That's correct.
20 Q. And that started early in the week?
21 A. Well, now Marshall didn't tell me anything about the cuts
22 on the jacket, sir.
23 Q. He told you --
24 A. He told me about the cut on the arm and he showed it to me,
25 you know.

1 Q. Yeh, that's what I mean, John, you started to have concerns
2 that Marshall's story about the cut on the arm really couldn't
3 be valid given what you saw on the jacket?
4 A. It warranted what I seen, further investigation at the time,
5 sir.
6 Q. Okay, --
7 A. It was just another aspect I was looking into. I think --
8 Q. I would just ask you to look at page 92 of exhibit 16.
9 A. 92?
10 Q. Now on page 92 is a report prepared by Mr. Evers and
11 approved by another person and describing the cuts that
12 appeared on the yellow jacket?
13 A. Yes.
14 Q. Do you see that?
15 A. Yes, I see that, yes.
16 Q. And it says in paragraph four that:
17 The yellow jacket...has two
18 separations in the material.
The first...approximately 1"
19 in length and is indicative
of being a cut, "fresh" in
20 appearance. The second
separation is approximately 8"
21 in length and is indicative
of being cut and torn and being
22 "fresh" in appearance.
23 And those I think, Chief, are the only two cuts that were
24 found on that jacket by the R. C. M. P. Inspector. Now do
25 I understand from what you've told me, you're recollection is

10:43 a.m.

1 that the -- the longer cut, "the 8" long cut", was in the
2 vicinity of where Marshall would have had the cut on his
3 arm?
4 A. I -- no, I don't think -- I don't think it was -- you're
5 talking about the inner arm where the cut was. I think the
6 '8" cut was, you know, over away from that. Now, you know,
7 that -- that's my recollection. He would be able to tell
8 you because he examined it. But I think there was more than
9 probably the '1"' and the '8"', I think and not only that
10 it doesn't say anything here; well, it says, it doesn't say
11 anything here about the cuff, does it? At a glance it doesn't
12 say anything being cut.
13 Q. Oh, I would expect that what it says here, is everything
14 that appeared on the jacket; but Mr. Evers will have to
15 tell us.
16 A. I think -- I think that you -- I think in the evidence it's
17 much stronger than that in the evidence that was given in
18 court, sir. I was very interested in that and I did read
19 what was said in the courts.
20 Q. It was your recollection then that all other --
21 A. All I'll tell at this time, sir, is that I'm talking now
22 back in '71, is that there was several cuts and there weren't
23 one cut as far as I was concerned in that jacket and if it
24 was one stab -- one -- if it was one stab wound that Marshall
25 was supposed to receive, the cuts were in different places on

1 that jacket which would indicate me, as an investigator,
2 that there would have to be more than one -- one swipe or
3 one cut on a jacket to do it.
4 Q. And you think that's significant?
5 A. I think it's very significant.
6 Q. You did at the time?
7 A. I think it's very significant. And I think if you's look at
8 Mr. Gould's statement that I took from him at that time, the
9 man that owned that jacket and what he said about it on that
10 particular night -- that afternoon that he gave it to him,
11 I think he'll tell you the jacket was in perfect shape at
12 that time. There was no cuts and so forth when he put it
13 on him. But all and all, it -- it warranted further
14 investigation, sir, by me and I looked for that.
15 Q. Now this book or this report on page 92 is directed to you.
16 It's dated June the 29th, 1971?
17 A. Yes.
18 Q. But you would have had it at the -- shortly thereafter I take
19 it?
20 A. Yes.
21 Q. At least I believe it's directed to you, Chief, isn't it?
22 A. It would have -- a copy at least would have came to the --
23 I don't --
24 Q. If you see, it says "FOR - The Chief of Police"?
25 A. Yes, that would -- well, I wasn't Chief at the time, you know.

10:46 a.m.

1 Q. But I assume the Chief would have given to you?
2 A. That's correct. It would have went to the Ident -- to the
3 -- our section, yes.
4 Q. Did you contact Evers and have any discussion with him about
5 the results of his inspection of those -- of that jacket?
6 A. No, I would -- I would have talked it over with the Crown
7 here, sir, and I -- and I understand -- my understanding is
8 Mr. Evers gave evidence at 1971 in the court in regard to
9 this jacket.
10 Q. He did.
11 A. He did. Now I think, is the evidence any different in -- in
12 his evidence than right here?
13 Q. Over the break, I'll have a look at that --
14 A. I think -- I think it is, sir.
15 Q. -- and refresh you.
16 A. I think it is, sir.
17 Q. I'll have a look at that over the break and we'll see.
18 A. And I think --
19 MR. CHAIRMAN:
20 I think this is an appropriate time to break.
21 INQUIRY ADJOURNED: 10:47 a.m.
22 INQUIRY RECONVENED: 11:10 a.m.
23 BY MR. MacDONALD:
24 Q. Now, Chief, we were looking at the report that was prepared
25 by the R. C. M. P., Mr. Evers, on page 92 of volume 16.

1 A. Yes.

2 Q. And you asked me to find the evidence and I put volume 1 in

3 front of you.

4 A. Yes.

5 Q. And the I'll ask you to first of all turn to page 61.

6 A. Yes.

7 Q. This is the evidence given by Mr. Evers at the Preliminary

8 Inquiry for Junior Marshall?

9 A. Yes.

10 Q. And down at the bottom of the page he's asked what he found

11 on that yellow jacket and he said this:

12 I found a separation on the
13 left arm of the jacket the
separation is continued from
the cuff upwards. Actually
14 there are two separations, the
first separation is approximately
15 one inch in length...

16 A. Yes.

17 Q. the separation is a fresh-appearing
cut; the second separation is
18 approximately eight inches in
length, the separation continues
19 down on to the cuff, approximately
six and one half inches, it is
20 indicative of being a fresh...
cut measuring a inch and a half
21 which continues through the cuff
and through the elastic (and) it
22 is indicative of being torn...

23 Now that's the same, I suggest, as said on -- in his report

24 which is on page 92?

25 A. There's some other stuff at the bottom of page 61 but I guess

11:12 a.m.

1 you can't make it out.

2 Q. I think that's just a --

3 A. No, it said, "it could have been cut by an axe, a knife",

4 what is that, something about "determine what made the cut,

5 the cut was" --

6 COMMISSIONER EVANS:

7 At the bottom of 62 is an overlap.

8 BY MR. MacDONALD:

9 Q. That's just on page 62 --

10 A. Oh, yes, I see what it is.

11 Q. -- it's just carried over.

12 A. All right, that's what it is.

13 Q. And if you also want to look at the trial evidence, it's on

14 page 103 of the same volume. Down at the bottom of that

15 page.

16 A. Yes.

17 Q. I found one cut approximately

18 one inch long on the left arm of the jacket. The cut is

19 fresh in appearance having occurred since the garment was

20 last washed, laundered or actively worn. The second

21 separation is approximately eight inches in length - six

22 and one half inches is indicative of being cut, again the cut is

23 fresh in appearance. The remaining one and a half inches which

24 continues through the cuff of the jacket is indicative of being torn.

25 The tear is fresh in appearance.

1 Now, Chief, isn't that saying that there's an "8 inch cut
2 starting at the cuff, part of it's torn, six and a half
3 inches cut and then there's a one inch cut further up on
4 the jacket"?
5 MR. PUGSLEY:
6 It's on page 104, perhaps, Mr. MacDonald.
7 MR. MacDONALD:
8 Thank you.
9 BY MR. MacDONALD:
10 Q. Yes, at the top of that --
11 A. Yes, that's what I was looking for.
12 Q. Anything else in that exhibit...
13 I found a number of superficial
14 cuts to be present near the large
separation. These superficial
15 cuts again appear to be fresh.
16 What do you mean by superficial...
17 (They)These are small cuts which
one can notice with a microscope.
18 I take it however good your eyes were, Chief, you wouldn't
19 have been able to notice those?
20 A. I noticed some cuts.
21 Q. At that cut at the -- at the cuff --
22 A. Not those, though.
23 Q. That cut at the cuff is the long one. That's the "8 inches"
24 extending from the cuff, isn't it? That's what Evers told
25 us?

1 A. That's what he's saying, yeh.
2 Q. Yeh, that's the man whose job it is to inspect these things?
3 A. He is the fibre expert, yes.
4 Q. Yes, and the only other cut he has des -- found on the
5 jacket, is a "one inch cut up the arm"; that's what he has
6 testified to?
7 A. Well, yes, and he said there was also several "small cuts
8 which one can notice with a microscope. They are just
9 where the material is separated. It doesn't go through
10 the material".
11 Q. And that is where the -- in the area of the large separation
12 at the cuff?
13 A. It doesn't say, I don't believe, does it, sir?
14 Q. Well, he says "they're in the area --
15 A. That's on the arm.
16 Q. -- of the large separation"?
17 A. Yeh.
18 Q. There's only one large separation and it's "8 and a half
19 inches long"?
20 A. Any how, my recollection is looking at the arm of the jacket;
21 you know, there was more than one cut there.
22 Q. So are you saying Evers is wrong?
23 A. No, I'm saying that's what -- why the jacket was sent away.
24 No, I'm reading his report here, sir. I'm not -- after all
25 that was back in '71.

11:15 a.m.

1 Q. But I'm trying to find out, Chief, is why the jacket somehow
2 got you upset and worried or thinking you had to look into
3 something?
4 A. There was one -- supposed to be one stab wound and the jacket
5 had more than one cut. It -- this was not a continuous cut
6 in the jacket that I was looking at.
7 Q. Did you expect that someone who was stabbed in the arm through
8 the jacket, that it will continue to cut through the jacket?
9 A. Well, it just depends what force is used behind. I would
10 intend to -- if there -- if there was force used behind
11 whatever sharp object it was, that it would penetrate more
12 than the jacket and that it would go in deep at point "A"
13 to some extent and come out at point "B" to nothing somewhere.
14 Q. Where is that now?
15 A. Where as it would be -- any place in your arm.
16 Q. Is that on the jacket or on the arm you're talking about?
17 A. I would say, no I'm talking about the -- the penetration now
18 in the --
19 Q. In the arm?
20 A. Yes. That what I would expect.
21 Q. And I'm trying to find out what it was on the jacket that led
22 you to this test --
23 A. I don't -- I have a recollect -- a faint recollection that
24 the cut on the jacket wasn't over here where the cut was
25 on the arm. Get what I mean? That it was somewhere else on

1 the jacket, that's what I'm -- now I'm not sure of that; but
2 that's -- that's in the back of my head.
3 Q. Did you get the jacket early in the week?
4 A. Yes, I can't tell you what date it was on.
5 Q. Before you went out to Louisbourg the second time --
6 A. No, no.
7 Q. -- to talk to Chant?
8 A. No.
9 Q. Before you went out to Louisbourg --
10 A. Oh, yes.
11 Q. -- the second time?
12 A. Yes, I think -- yes, I think we had the -- there's a statement
13 here on -- there's something here on that the chap that owned
14 the jacket, Mr. Gould, I believe.
15 Q. We'll come to his statement.
16 A. Yeh, no but it's there when he got the jacket and turned it
17 over to Mike MacDonald.
18 Q. In any event, you -- your recollection is that you got the
19 jacket early in that week and that started to make you
20 suspicious of Junior Marshall's story?
21 A. I was going to look at that to --
22 Q. You were suspicious of his --
23 A. -- to get it cleared up.
24 Q. -- story?
25 A. Yes, at that time.

1 Q. Okay.
2 A. Yes.
3 Q. Now in the face of and you considered that to be significant
4 what you had -- what you had seen on the jacket. Significant
5 enough to make you suspicious of Marshall?
6 A. That's significant enough to me to have it examined by an
7 expert, sir.
8 Q. And suspicious enough to make you suspicious of the story
9 Marshall told you?
10 A. Yes, I'd be --
11 Q. Okay, so Marshall is now a suspect, isn't he?
12 A. Well, of course, at that time -- yeh, you're -- all in the
13 one week other statements were taken also; but the jacket
14 -- we didn't have anything -- I don't think the jacket was taken
15 to the lab until the 15th to get -- to -- to get any of
16 that cleared up one way or the other.
17 Q. I'm not talking about when it went to the lab. Chief, you
18 told me that you got the jacket early in the week and that
19 when you received the jacket, it made you suspicious of what
20 Marshall had told you. He's then a suspect, is that not
21 correct?
22 A. Yes, I'm looking at -- I'm looking at that at that time; but
23 I'm still keeping an open mind on it.
24 Q. You're keeping an opened mind?
25 A. Sure, I am, yes.

1 Q. What did you do to try and follow up on what George and Sandy
2 McNeil gave you? The statement of these two people that were
3 in the Park?
4 A. I -- on June the 4th, I took two statements and at that time
5 they were eyewitnesses to what did happen.
6 Q. Yeh, but I'm asking you on May the 31st?
7 A. And I -- I -- I considered that more important than what the
8 two McNeil's seen somebody down in the Park that night and
9 couldn't add anything else to it.
10 Q. That's on June the 4th, Chief?
11 A. No, that's on -- on June the 4th, yes. Well, we're talking
12 about the same week as we had this jacket.
13 Q. But I'm talking early in the week. You've told me that
14 you got the jacket early in the week --
15 A. Yeh.
16 Q. -- you said you considered it significant --
17 A. I'm not sure what day I got the jacket.
18 Q. Was it before you took the statments from Chant and Pratico?
19 A. Well, I don't think -- I'd have to check -- I thought it
20 was the same week but I don't -- I'm not sure of the day.
21 And I would say it's before -- before I took the statement
22 from Chant.
23 Q. Before you took the statements from Chant and Pratico?
24 A. I think it was. If I could look --
25 Q. So before you went out to see -- before you saw Pratico the

11:18 a.m.

1 second time and before you saw Chant the second time, Marshall
2 was a suspect in your mind?
3 A. I was looking into the -- yes, yeh, I'm looking into the
4 jacket end of it, yeh.
5 Q. Marshall was a suspect in your mind then?
6 A. At that time, I suppose you could say that, yes.
7 Q. And it's based on the jacket?
8 A. Not only the jacket, of what took place at the Park that night
9 too.
10 Q. Well, what was it that took place in the Park?
11 A. Well, there was a -- there was a stabbing took place and not
12 in the Park, it was on Crescent Street. And Seale was stabbed
13 first what he told me that Seale was stabbed and then he was
14 stabbed. And he happened in a matter of a few seconds. There
15 was nothing about robbery. There was nothing about quarrelling
16 or anything like that. And that it happened -- both stabbings
17 took place in a few seconds.
18
19
20
21
22
23
24
25

11:20 a.m.

1 Q. You are confusing me, Chief. You told me that Marshall
2 was a suspect before you took the second statement from
3 Chant and Pratico. You told me one reason was because of
4 the jacket and you said the other reason is something that
5 happened in the park. What happened in the park to make
6 Marshall a suspect?
7 A. I was given a story and I was then comparing the story when
8 I seen the jacket and the cut on the arm and what have you.
9 Those things are all coming together that I have to look
10 at and think about and as I told you -- already told you
11 that the stabbing was a quick thing, that Seale was stabbed
12 and then Marshall was stabbed and I just thought in my own
13 mind that the wound should be deeper and if he was stabbed
14 the jacket should show that cut and there should be blood
15 on the jacket and what have you. I had many things to
16 look at.
17 Q. Are you telling me that Marshall's story itself is such
18 that you had -- you had concern about it. He's a suspect
19 as soon as he gave you this -- the story?
20 A. No, I'm telling you that week -- the week I was looking
21 that situation over.
22 Q. What was the event that occurred that made you suspect
23 Marshall as being the killer?
24 A. Oh, --
25

11:20 a.m.

MR. PUGSLEY:

I think in fairness to the witness, the witness has tried to say that he was keeping an open mind and my friend keeps hammering at him; when did you first start in suspecting Marshall as a suspect. The witness has not said that. He said he was keeping an open mind. He was looking into all things.

MR. CHAIRMAN:

Well, it's a very simple question for him to answer.

BY MR. CHAIRMAN:

Q. Mr. MacIntyre, at some time during your investigation did Junior Marshall become a suspect in your mind?

A. Yeh, I was taking a long look at him after I examined that jacket and seeing the cut on the arm before that, that was bothering me and I took those steps at that time.

Q. The question I just put to you --

A. Yes.

Q. -- was put --

A. I would say at that time, My Lord, that week, that he was considered as a suspect, yes, in my -- with me.

Q. Now, is that the answer we've been --

A. Yes.

Q. -- trying -- The answer is now yes?

A. Yes.

MR. MacDONALD:

My Lord, --

BY MR. CHAIRMAN:

Q. I guess then the next question is, when? At what point in your investigation?

MR. MacDONALD:

And that's what I asked him. What event triggered it? I'm trying to find that out.

BY MR. CHAIRMAN:

Q. At what point in your investigation did you treat Donald Marshall Junior as a suspect, not necessarily the only suspect at that time but a suspect?

A. I would say -- I would say -- Again I'm not sure of the day that I got the jacket, My Lord, but I think if I could check that other statement there of LeBlanc that had the jacket that -- the jacket was returned and then turned over to the police. I think it's the same week. I don't want to -- I think it was Tuesday or Wednesday of the week.

BY MR. MacDONALD:

Q. Which statement would you like, Chief? I'll show you.

A. Yeh, the statement of that man that owned the jacket, Gould.

Q. Artie Gould?

A. Yes, what page is that on please?

MR. PUGSLEY:

Page 16 of the preliminary evidence.

BY MR. MacDONALD:

Q. The statement of Gould is --

1 MR. PUGSLEY:

2 From the preliminary evidence.

3 MR. MacDONALD:

4 Page 16 of volume 1?

5 MR. PUGSLEY:

6 Yes.

7 BY MR. MacDONALD:

8 Q. Okay, Chief, page 16 of volume 1. The evidence given at

9 the preliminary inquiry.

10 A. Yes.

11 Q. It's the evidence of Mr. Gould and he says:

12 When was the next time you saw this
13 jacket?

14 Wednesday the following week, I was
15 asked to bring the jacket into the
police station.

16 A. Wednesday.

17 MR. CHAIRMAN:

18 What date is that?

19 MR. MacDONALD:

20 That would be the second.

21 MR. CHAIRMAN:

22 The second of June.

23 MR. MacDONALD:

24 June.

25

BY MR. MacDONALD:

Q. Now, does that help you, Chief?

A. Yeh, I would -- I would say it would be after I seen the jacket.

Q. And that's what my question was directed to. Was it when you got the jacket, that was the triggering event.

A. Well, on the same week, I don't know if it was the day before or that day also that I got in touch with Doctor Virick also on the wound at the hospital.

Q. You saw Doctor Virick?

A. Virick in reqard to the wound, yes.

Q. And -- So the wound had caused you some concern as well, had it?

A. No, I got -- Yes, I got his version on the wound.

Q. But why were you talking to him about the wound?

A. Because I was -- The wound seemed to be very slight in nature to me.

Q. Why was that of importance?

A. Well, at a stabbing -- I was looking at the arm and the concentration and also I thought in my own mind, again, that if you were stabbed that the wound -- a wound like that would be deeper at the point of entry and at point A and it would be run to nothing at Point B.
if it was -- if it was any type of a serious stabbing.

Q. Was that before you received the jacket that you were

11:26 a.m.

1 concerned about the wound?
2 A. I would say so. I would say so.
3 Q. Okay. And you had seen the wound when Junior Marshall--
4 A. When Junior --
5 Q. -- showed you once --
6 A. Yes, on the weekend, yes. Yes.
7 Q. You told us yesterday, I think, on Saturday he pulled the --
8 A. Yes.
9 Q. -- bandage down.
10 A. The bandage down, yes.
11 Q. And when did you start having questions about that wound
12 in your mind?
13 A. I suppose I -- after I done some thinking on it and we're
14 just talking there a matter of three or four days.
15 Q. It has to be before a Wednesday?
16 A. I looked at the jacket, yeh. I can't tell you just what day
17 I seen Doctor Virick.
18 Q. But, in any event, --
19 A. Again, I was looking at -- talking to somebody that -- trying
20 to get some type of professional evidence on it and Doctor
21 Virick was the man that stitched it and I just wanted to
22 talk to him to satisfy my own mind.
23 Q. You were concerned that the wound on Junior Marshall's arm
24 couldn't have been there as a result of a stab wound and you
25 wanted to test that out?

1 A. I was -- I was concerned at the time what his answer would
2 be. Was that wound, it was superficial, could it be self-
3 inflicted? That's what I was looking at.
4 Q. So, you were --
5 A. That's what I was looking at.
6 Q. You were considering at that time that that wound could
7 be self-inflicted?
8 A. It -- yes.
9 Q. And if it was self-inflicted, then Junior Marshall's story
10 to you on -- as recorded on May the 30th could not be correct?
11 A. If he said he was stabbed by somebody else but I didn't
12 make my mind up on that at that time. I had to send the
13 jacket away and find out about the jacket also. That's
14 why I had the jacket examined along with, of course, of the --
15 if there was any blood smears and what they might be.
16 Q. Is that why you went to get the jacket or asked for the
17 jacket --
18 A. No.
19 Q. Just listen to my question.
20 A. Yes.
21 Q. Did you go -- Did you ask the police to get the jacket
22 because you -- you had concerns that that wound could not
23 have been there as a result of a stabbing, --
24 A. No.
25 Q. -- it was self-inflicted?

1 A. I had wanted to get the jacket to look at it, sir, as
2 an investigator and also have it for the court for later
3 on also -- for the -- as an exhibit.
4 Q. Was it not as a result of your discussion with Doctor Virick
5 and your concern that this wasn't -- this was a self-inflicted
6 wound that you said, "get me the jacket"?
7 A. No. Doctor Virick didn't tell me that -- that it was or
8 it wasn't. It could be.
9 Q. But you thought it could be?
10 A. Well, I mean, I -- no doubt I had thoughts on it. Sure, I
11 had thoughts on it but I was --
12 Q. You thought it was self-inflicted.
13 A. That was one of the thoughts in my mind, yes.
14 Q. And you wanted the jacket to see if that could help you
15 at all in proving that theory.
16 A. I wanted to see the jacket because the jacket was on
17 him when he was stabbed, sir, and I wanted to have a look
18 at the jacket. That's correct, sir.
19 Q. And when you got the jacket, as you've told the Chief
20 Justice, then Marshall is a suspect?
21 A. I was looking at him at that time, yes.
22 Q. And that's before you had your second statement from Pratico
23 and Chant?
24 A. Yes, that would be on Friday I believe.
25 Q. What were you doing to try and support the story that Marshall

1 gave you that there were two people there and he gave
2 you the description and you had a description from the
3 two MacNeils confirming or at least corresponding in
4 many particulars, to Marshall's description? What were
5 you doing to try and assist his part of the story?
6 A. These -- Those two people that MacNeil seen were over on
7 the other side of the park in my understanding at the
8 time and the people that Marshall was talking about were up
9 on Crescent Street and as I said before, the description
10 wasn't the same in all respects and they couldn't offer
11 me anything further on it. They didn't witness any
12 stabbing, the people that were down in the park.
13 Q. It seems to me, Chief, that the fact that you didn't try
14 and get Bob Patterson or didn't get him and the fact
15 that you didn't follow up anything that the MacNeils
16 were telling you, that you weren't particularly interested
17 in finding any evidence that would support Donald Marshall's
18 story.
19 A. We couldn't find Bob Patterson and as I already said, the
20 only evidence that the MacNeils could offer was a description
21 at that time and they didn't see the party that they --
22 that they were looking at doing anything.
23 Q. They saw them in the vicinity, Chief, of this stabbing.
24 A. They seen them in the park but this happened up on Crescent
25 Street and --

1 Q. Chief, that's not very far, is it?

2 A. No, -- No but my understanding was they seen them on the

3 other side of the bridge in the park towards George. I

4 thought that's -- that's the area

5 Q. Well, let's look at page 26 of volume 16.

6 A. Yeh. 26?

7 Q. That is the -- That's the statement of the MacNeils?

8 A. That's correct, sir.

9 Q. Now, let's go through it and we'll give you the chance

10 to tell me why you --

11 A. Okay.

12 Q. -- you thought that.

13 We left the dance at St. Joseph's...
We walked through the park and seen
14 2 men hanging around.

15 And then gives you the description.

16 They spoke to a fellow and a girl
sitting on a bench closest to the
17 railroad tracks as you come over the
hill. They asked them for a cigarette.
18 The grey haired fellow said he had
just a dollar.
19

20 And that's the -- that's the result. That's the totality

21 of their description of where they saw this person. Now,

22 they saw two people, --

23 A. Yes.

24 Q. I suggest to you, whose descriptions correspond in many

25 particulars with those given to you by Marshall.

11:32 a.m.

1 A. Yes, they --
2 Q. They told us they saw them in that park, Wentworth Park,
3 on the same night at or around -- somewhere around 11:40
4 and a stabbing occurs up on Crescent at around midnight.
5 Don't you think that's significant evidence that should
6 be tracked down?
7 A. Well, yes, but I still don't -- We took that into consideration
8 of course. I did take that into consideration, what they
9 said but it was a different description as far as clothing
10 was concerned and I had no other thing to go along with that.
11 Q. What did you --
12 A. And more than -- the only witness I had to the stabbing, as
13 you know, at that time was Marshall.
14 Q. Not at that time.
15 A. No, not at that time, no. On May the -- No, maybe this
16 was May the 31st. Yeh, this was Monday.
17 Q. You had -- You had other people.
18 A. I had the statement Sunday evening, yes. Yeh.
19 Q. What did you do? As a policeman, what did you do to try
20 and find the people that were described by the MacNeils
21 to you on May the 31st?
22 A. In particular the two people there, as you say, I -- I came
23 up with nothing with that.
24 Q. Well, I'm not argueing what you came up with.
25 A. Yes.

1 Q. What did you do?
2 A. I don't think I done any more than the description that
3 we had already.
4 Q. You did nothing more than write it down.
5 A. No. Write it down. Take a statement of what they seen
6 and what they had to offer, yes.
7 Q. And that was it?
8 A. At that time, yes.
9 Q. Well, at -- Did you do anything further later with respect to
10 this statement --
11 A. Not that I --
12 Q. -- in trying to find these people?
13 A. My recollection is not that good at this time. I had no
14 names, as you realise, in '71 at that time, either, of those
15 two people.
16 BY MR. CHAIRMAN:
17 Q. Mr. MacIntyre, did you --
18 A. Yes, My Lord.
19 Q. -- attach any significance to the -- well -- the statement
20 made by the MacNeils and Donald Marshall Junior with respect
21 to the behaviour pattern of whoever it was they saw in the
22 park, namely,according to the MacNeils, these two fellows
23 had asked the couple for a cigarette and then according
24 to Donald Marshall Junior the two men who came up on him
25 and Seale made a similar request. Would that trigger or did

11:35 a.m.

1 that trigger in your mind that whoever was in the park
2 that night seemed to be exhibiting the same behavioural
3 pattern that they were looking for cigarettes amongst
4 other things?
5 A. It could have, My Lord, but I don't remember at this
6 time of--
7 MR. CHAIRMAN:
8 The MacNeils were not called?
9 MR. MacDONALD:
10 No, they weren't, My Lord, at any trial.
11 BY MR. CHAIRMAN:
12 Q. Can you tell us, Mr. MacIntyre, whether the statement
13 taken from the two MacNeils was handed over to the Crown
14 Prosecutor?
15 A. All those statements would be in the file, sir, and I would
16 say the Crown Prosecutor seen the whole file.
17 BY COMMISSIONER EVANS:
18 Q. Including -- (To pin that down.). I'd just like
19 to make certain that he did receive that as the Crown
20 Attorney. He did receive the statement that you obtained
21 from George and Sandy MacNeil?
22 A. Yes, I kept nothing away from the Crown Prosecutor, sir.
23 BY MR. MacDONALD:
24 Q. And you've told us what you were doing on May 31st. According
25 to these documents you saw Beaver, the MacNeils came to see you

1 at six-thirty. Was it that day, the Monday, that you
2 went to see Doctor Virick?
3 A. Yeh, I'm not sure. It was the first of the week that I
4 went to see him.
5 Q. The first of the week?
6 A. The first of the week.
7 Q. And the reason you went to see Doctor Virick is because
8 you had some question in your mind whether the wound on
9 Junior Marshall's arm could have been a result of a stab
10 as he described it to you? Yes?
11 A. That's right, yeh.
12 Q. So you were questioning, at least in your own mind, Marshall's
13 story that he had been stabbed or at least you wanted to
14 have it -- you wanted to talk to some expert about it?
15 A. I did, yes. I wanted to talk to the doctor that stitched
16 it and see what he had to say about it.
17 Q. And I suggest to you that, and as early as that first
18 of the week when you went to Virick at least, you were
19 questioning Marshall's statement to you and he was
20 a suspect in your mind.
21 A. I was looking at it. I was looking at that at that time,
22 yes. I'd have to say yes.
23 Q. Did you ever hear of the phrase 'tunnel vision'?
24 A. I heard it here.
25 Q. Yeh. Did you ever hear of it before?

11:37 a.m.

1 A. Can't say I did.
2 Q. Well, forgetting the phrase, did you ever hear of the
3 concept that you made up your mind and then you just
4 build the facts to support your conclusion?
5 A. That would be it, I suppose.
6 Q. You've heard of that?
7 A. I've heard it discussed, yes.
8 Q. Is that one of the dangers that a policeman should be --
9 should avoid or try to avoid?
10 A. I would say.
11 Q. Do you think you were exhibiting that particular phenomenon
12 in your investigation of this case?
13 A. I wouldn't agree with that at all unless you got eye
14 witnesses to the -- what took place. There's no doubt
15 an investigator has thoughts in his mind unless he gets
16 evidence which -- which he thinks is concrete evidence
17 or evidence that should be put to the Crown and the Crown
18 to the courts. There's nothing you can do about it and I
19 think every investigator has thoughts when he's investigating
20 something and I think every investigator digs to see what
21 he can come up with.
22 Q. Didn't you have thoughts in your mind, Chief, on Saturday
23 morning, right after this, that Junior Marshall had done
24 the stabbing?
25 A. Did I have thoughts?

1 Q. Yes.
2 A. No, I wouldn't say I had thoughts, no.
3 Q. But someone in the police department did as reported to
4 the R.C.M.P.
5 A. Well, I can't answer for them, sir, but if you recall
6 that week I was down at midnight looking over the area
7 myself and putting the -- what I'd gathered up together
8 and --
9 Q. When did you do that?
10 A. I done that -- I done that that week also before I -- that's
11 why -- that's the reason that I got Pratico back in on
12 June the 4th.
13 Q. Which week are we talking about, Chief?
14 A. Well, it was before June the 4th, sir.
15 Q. Okay, before June the 4th.
16 A. That's right. And I went down there and I parked my car
17 and I went -- I walked that area there to see what I could
18 see and what Pratico told me that he could see and that's
19 why I got him back in on June the 4th, sir, and then when
20 I got another story from him, well, I thought that I would
21 visit Chant again which I did.
22 Q. Who was your investigating team? It was you at the head
23 of it. Who was on your team?
24 A. Well, it'd -- I was alone on this and the officer that
25 would be with me. I think in Pratico's statement, I think,

M. R. MacDonald was around on that one. I'd have to look at it.

Q. No, it was -- It's Urquhart but I'm -- Did you do the investigation yourself or did you have people assisting you?

A. I done this. I took statements from Pratico on the 4th. I took statements -- There was a party with me, yeh.

Q. I'm not talking about the 4th alone; I'm saying that when this --

A. When I went down to visit the scene, I done it myself, sir.

Q. When this thing happened, Chief, when you're dealing with a stabbing ultimately with a murder--

A. Yes.

Q. -- you were the investigator. Did you have a team together or was it just you?

A. Just me and any -- anybody that was with me.

Q. Anyone that you would ask?

A. Yeh, that's right.

Q. But no one was assigned to it?

A. No.

Q. And when you were in charge of an investigation; you, John MacIntyre, you took control of it, didn't you?

A. Yes.

Q. You didn't let anybody else do the work unless you told them to do it?

1 A. Well, we had -- I had -- No, I had others take statements.
2 I think there was statements taken besides on this. They
3 were assisting me -- were all in --
4 Q. They were assisting you?
5 A. They were all in this together, yeh.
6 Q. But unless you told them to do something they wouldn't do it.
7 A. I asked them or I told them to come with me. That was it, yeh.
8 Q. And it's unlikely that Ed MacNeil would be around telling
9 the R.C.M.P. who the suspects are in the case?
10 A. Well, Eddie MacNeil would be talking to different members
11 of the department also, I suppose. I can't tell you what
12 he might have said.
13 Q. Would he --
14 A. I didn't -- I didn't -- You know, I'm not aware of it.
15 Q. Would he say it in your presence that here is -- who the
16 suspect is?
17 A. No, I don't think he'd have any grounds to say that at that
18 time. That was supposed to be said, I think, it was
19 early Saturday morning.
20 Q. Would he say it in your presence?
21 A. Would he?
22 Q. Yes.
23 A. I don't recall him saying anything in my presence about
24 that and I -- and if he did I think I'd recall it.
25 Q. And if he did you would have picked him up if you didn't agree

11:42 a.m.

1 with him?
2 A. If I -- Sure, I'd want to know where he got it or why his
3 mind was made up on it.
4 Q. You don't agree with me that you had made up your mind fairly
5 early that Junior Marshall was the person who committed this
6 crime and you were just going to build up -- get the
7 evidence to support that?
8 A. No, I wouldn't say it was done that way.
9 Q. Okay. Can you tell me what you did on June the 1st? That's
10 Tuesday. I can show you again, Chief.
11 A. Yes.
12 Q. On page 15 there's a typewritten note that you had
13 interviewed a Mr. James Cotie.
14 A. Oh, yeh. That was a chap that lived down North George
15 Street in the city and he was supposed to have some type
16 of a wound or -- anyhow I interviewed him. What page
17 is it on? 15?
18 Q. 15.
19 A. And I think he had fallen down a stairway at home or
20 something.
21 Q. That's correct.
22 A. And had nothing to do with this though.
23 Q. So he had nothing of any consequence to tell you?
24 A. No. There was nothing there, no.
25 Q. And I don't have any other documents of June the 1st to show that

1 A. No.
2 Q. -- there was any documents taken by you on that day. Are
3 you able to tell us what you would have done on that day?
4 A. No. No present--
5 Q. Are you able to tell this -- whether you had any theory on
6 that day that you were trying to establish?
7 A. That would be what day? Monday, Tuesday?
8 Q. Monday, Tuesday.
9 A. Yeh, that would be a Tuesday.
10 Q. That was your theory at that time?
11 A. Well, I suppose that was one of the days we drained the park,
12 wouldn't it, and that's one of the days I'd be talking with
13 Doctor Virick.
14 Q. So at least one of the theories --
15 A. I don't know -- I don't know if it was that day or not
16 but it was around that time.
17 Q. One are the theories that you're operating on early that
18 day -- or early that week, I'm sorry, is that Marshall
19 was not stabbed by someone else and therefore must have
20 been involved in the stabbing of Seale?
21 A. I was looking at the possibility.
22 Q. That's one of the theories that you had in mind?
23 A. I was looking into that possibility, sir.
24 Q. Was there any other theories that you were looking into the
25 possibility of?

11:45 a.m.

1 A. Well, at that time, of course, I was waiting also for
2 any other evidence that might come in or any other names
3 that might come to us.
4 Q. How, are they going to come to you?
5 A. Oh, people would call up or through talking somebody gets
6 in touch with you. There's different angles of police
7 picking up things. Police, themselves, they talk with people.
8 I notice there we were taking evidence long beyond -- not
9 long but later on from people.
10 Q. It appears, at least from the documentary of them Chief, that
11 Monday, Tuesday, you saw Keith Beaver, you took the statement
12 from MacNeil and you went and saw that Cotie. I don't
13 have any other documents to show that you were doing -- what
14 you were doing. You told us that you went to see Doctor
15 Virick sometime. Were you doing anything to try and support
16 or find evidence--
17 A. To the --
18 Q. -- to support the story that Marshall and MacNeils had
19 given to you?
20 A. No, I had it in mind. That's about all I can tell you.
21 Q. You had it in mind to do what?
22 A. Yeh, there was nothing there except the description that
23 -- the description that they were in the park around that
24 time.
25 Q. You said that one of these evenings you went to the park in

the night?

A. Yes.

Q. Would -- That was early in the week, was it?

A. That was -- That would be before June the 4th.

Q. And what was the purpose of that visit?

A. I wanted to do some thinking and some looking there and I decided that time that I should interview Pratico again which I did on June the 4th.

Q. As a result of your visit to the park?

A. Yes.

Q. Why is that? What would be --

A. Well, I didn't and again it was my thinking that he couldn't see what he did see over by the court house when he said he'd heard those screams and seen this -- those people jump into a Volkswagen and what have you, that he couldn't see it from that -- the distance he was at and I thought I should have another talk to him. That was my opinion at the time and which I carried out as -- to interview him and on that morning when he was interviewed he told a different story.

Q. What about Chant?

A. Chant, yes.

Q. Did you find his first story as a result of your visit to the park, was it believable?

A. Chant's story -- first visit up to the park, he stayed

on the other side of the trestle there was two men walking and two more, I think, were walking slow, talking and he was supposed to see that. After I took a statement from Pratico I decided that, on the same day, I would -- that I would visit Chant.

1 Q. Let's get back to your visit to the park in the night, though,
2 Chief.
3 A. Yeh.
4 Q. Did you go there for the purpose of determining whether the
5 statements of Pratico could be correct, the statement of Chant
6 could be correct?
7 A. And what their vision would be at the time.
8 Q. That's why you were there?
9 A. And what they said in their statement, yeh.
10 Q. And as a result of that visit, did you conclude that Pratico
11 could not have been telling you the truth?
12 A. That's what I thought, I wasn't getting all the truth from
13 him. I thought I should go back in and have another talk to
14 him, which I did.
15 Q. And what about Chant? Did you --
16 A. I thought I should visit him again, which I did.
17 Q. So do I take it that you formed the conclusion after your visit
18 to the park in the evening that both -- that Chant and Pratico
19 had given you an incorrect statement?
20 A. That I wasn't getting -- that there was something wrong. On
21 Pratico it was that he -- I didn't think he could -- vision--could
22 see over where this took part on Crescent Street from the
23 vantage point that he was in -- at.
24 Q. Well, Pratico said he was by the Court House.
25 A. Yeh.

11:49 a.m.

1 Q. He heard a scream, and he looked and he seen two fellows running.
2 Are you saying that from the Court House you could not see that?
3 A. No, not in my opinion at that time.
4 Q. All right. We'll come to that statement in a moment then to
5 the second statement. Let's go to June the 2nd. There's a
6 statement on page --
7 A. Robert Scott MacKay?
8 Q. No.
9 A. No?
10 Q. On page 28 of Volume 16, a statement from Francis French, and
11 that's at three fifty-five in the afternoon. Were you doing
12 anything else on that day that you can recall?
13 A. There was a statement taken from Scott MacKay on that date
14 too on page 31.
15 Q. Yes, okay. And there's also one of Lawrence Paul --
16 A. I think there was two --
17 Q. -- on page 34.
18 A. I think there was two Paul's.
19 Q. Yes, and there's one of Artie Paul on page 36. Do you recall
20 taking the statement from Scott MacKay?
21 A. What page is that on, sir?
22 Q. That's on page 31.
23 A. Yes, it was me that took it.
24 Q. That's your handwriting?
25 A. That's correct.

1 Q. You don't have anyone present with you?
2 A. No, sir.
3 Q. How did you come across Scott MacKay?
4 A. I don't know; unless he called up.
5 Q. I'm sorry.
6 A. Unless he called up in our notes here. I'm not sure.
7 Q. That is in your handwritten notes?
8 A. I'm wondering if there's something there.
9 Q. Mr. MacKay has testified here that he was -- that you sent
10 Detective Urquhart to pick him up. Do you recall that?
11 A. Not at this time, no. I see in Urquhart's handwriting here on
12 page -- in notes 135 that -- Item 4, he's got the name here.
13 Q. One thirty --
14 A. One thirty-five
15 Q. Where is MacKay's name on 135?
16 A. Down below on number four.
17 Q. Oh, yes.
18 re - Scott MacKay statement.
19 A. Yes.
20 Q. But that would be after he took his statement, I take it? Would
21 it not?
22 A. What's that?
23 Q. That would be after his statement was taken from him. It's
24 referring to the statement.
25 A. It could be, yeh.

11:53 a.m.

1 Q. You don't remember why he was brought to the station?
2 A. He was brought to the -- We had got his name somewhere or he
3 had called up. One of the two. No, I don't recall at this
4 time, sir.
5 Q. If Sergeant Urquhart had been present with you --
6 A. Yes.
7 Q. -- when you took the statement from MacKay, --
8 A. Yes.
9 Q. -- would his name be on it?
10 A. Should be, yes.
11 MR. PUGSLEY:
12 The answer to that may be found in Ambrose MacDonald's evidence
13 on page 1138. He apparently told Sergeant Urquhart about --
14 MR. MacDONALD:
15 Eleven thirty-eight?
16 MR. PUGSLEY:
17 Yes, page 1138.
18 MR. MacDONALD:
19 That he picked him up?
20 MR. PUGSLEY:
21 Yes.
22 BY MR. MacDONALD:
23 Q. I'm advised that Ambrose MacDonald testified that he would've
24 picked up Scott MacKay.
25 A. I see.

1 Q. Okay.

2 MR. PUGSLEY:

3 No, I'm sorry. Ambrose MacDonald testified:

4 ...So I left and I went over
5 to the Detective office and I
furnished the name to Sergeant
6 Urquhart and I understand from
there, arrangements were made
and the witness was interviewed.
7

8 MR. MacDONALD:

9 Okay.

10 BY MR. MacDONALD:

11 Q. So he gave the name -- Ambrose MacDonald gave the name, Chief.

12 A. I see.

13 Q. That's what -- There is no time noted on the MacKay statement

14 when it finished.

15 A. No, I noticed that, sir.

16 Q. Do you have any memory as to when it would've finished?

17 A. It's just a short statement. I don't imagine it took that

18 long.

19 Q. You don't imagine it took that long?

20 A. No, it -- No.

21 Q. Do you remember this particular statement?

22 A. Not particularly, I don't think.

23 Q. Let me read you some of the things Scott MacKay said here and

24 get your comment on them. And I'm reading from page 653. He

25 says he was picked up by Sergeant Urquhart who took him to the

11:56 a.m.

1 station, and there he met with you, Detective Urqhart, and
2 another detective and that the interview took -- I'm going
3 to page 668 -- four hours -- that he was there for four hours.
4 Now, do you have any comment on that?
5 A. Well, he wouldn't be there for four hours, no.
6 Q. Are you saying that --
7 A. I'd say this is a very short statement.
8 Q. Are you saying Scott MacKay is wrong?
9 A. Well, he couldn't be there for four hours, no.
10 Q. Well, how long would he have been there?
11 A. I'd say this was within -- This would be probably within a
12 half hour period, a statement like this. I notice that there's
13 very few questions. There's only one question asked. It looks
14 like what he wanted to say, and I wrote it down.
15 Q. So when he says he was there for four hours, he's wrong.
16 A. No, he wasn't there four hours in that statement, no.
17 Q. And when he says that Mr. Urquhart -- or Detective Urquhart
18 and another detective were present throughout when the state-
19 ment was being taken, could that be correct?
20 A. No, I'd say I took that statement by myself, sir.
21 Q. So MacKay's wrong on that too?
22 A. At this time, yes.
23 Q. He also said that during the course of the interview, officers
24 were brought into the room -- officers that -- who were at
25 the scene that night -- the night of the stabbing. That they

1 were brought into the room in plain clothes and asked -- He was
2 asked if he could identify them. Do you remember doing that?
3 A. No, that never -- As far as I'm concerned, that never took place.
4 Q. That never took place?
5 A. No.
6 Q. So MacKay is wrong on that as well? Is that right?
7 A. That is correct.
8 Q. Now, he refers in the statement to a Debbie MacPherson, that he
9 left the dance with her. Do you see that on the first state-
10 ment?
11 A. Yeh.
12 Q. Do you remember seeing Debbie MacPherson?
13 A. I don't recall at this time.
14 Q. I'll show you page 127 of that Volume 16.
15 A. Yeh, I see her name here.
16 Q. Is that your handwriting?
17 A. That's my handwriting, yeh. I don't --
18 Q. Do you know when those notes were made?
19 A. No, I can't give you the date. There's no date on them, sir.
20 Q. Would they have been made at the time that you -- Does that
21 mean that you saw Debbie MacPherson at Keltic Drive. Is that
22 what the note means?
23 A. No. Wait just one minute please. No, that would mean her address re
24 Scott MacKay's statement.
25 Q. And does that tell you -- Does it assist you at all in saying

1 whether you met with Debbie MacPherson?
2 A. I have no recollection at this time.
3 Q. You have no recollection?
4 A. At this time, no.
5 Q. If you had met with her, would you have taken a statement from
6 her?
7 A. I think I would've. He claims here that she was with him.
8 Q. Do you recall ever taking a statement from her?
9 A. No, I don't recall, sir.
10 Q. Debbie MacPherson, who is now Deborah Timmins, testified here,
11 Chief, and I am referring to page 714 of the transcript. She
12 was asked -- She said that she was at the police station.
13 She got to the police station and was interviewed by you and one
14 other gentleman and that she says she was there for an hour
15 and a half and being questioned by you most of the time.
16 MR. PUGSLEY:
17 For an hour or an hour and a half.
18 BY MR. MacDONALD:
19 Q. For an hour or an hour and a half, sorry. And that she found
20 you a little suggestive, things that she didn't see that maybe
21 she should've seen -- that you were suggesting things to her.
22 Recall that?
23 A. I have no recollection of that, no.
24 Q. No recollection of that?
25 A. No recollection of that.

1 Q. And that she told you that she had spoken with Sandy Seale on
2 the night of the killing, and he had told her, "No cops." Do
3 you recall that?
4 A. No, don't recall that, no.
5 Q. Are you saying that you didn't interview her or you just don't
6 remember?
7 A. I have no recollection of interviewing her, sir.
8 Q. Would you think that that would be a fairly significant piece
9 of evidence to get?
10 A. If she said that at that time, yes, I would suggest that I
11 would've had it written down.
12 Q. Does the fact that you don't have it written down indicate to
13 you that you probably did not interview her?
14 A. I have no recollection of interviewing her.
15 Q. But if you had, and she had told you the things which she has
16 testified to here, you would've made notes of that?
17 A. I would've taken -- I would say I would've taken a statement
18 from her. I was very handy at taking statements from people.
19 Q. She testified on page 732 that a statement was taken.
20 A. I have no recollection of that at all, sir.
21 Q. Now on that same day, June the 2nd, you saw the two Pauls,
22 Lawrence and Artie Paul. Why were you interviewing those people?
23 A. Well, they were at the dance at St. -- at the hall that night.
24 See if they had -- could be of any assitance, I --
25 Q. Where did you get their names?

12:01 p.m.

1 A. They came to us. I don't know just who -- through who at this
2 time. I believe I seen their names over here. Page 140.
3 Lawrence Paul. Yes, page 140. It was written by William
4 Urquhart.
5 Q. One forty is dated June the 14th?
6 A. Yeh.
7 A. That'd be a later date than I had took the statement. I took
8 the statement of Lawrence Paul on June the 2nd.
9 Q. Did you get anything useful out of those statements from
10 Lawrence Paul and Artie Paul. Did they help you at all in your
11 investigation?
12 A. No, it just ties in time there that -- 11 p.m., left the hall --
13 Friday night I was at the dance
14 at St. Joseph's Hall, George
St...left the...
15 -- hall --
16 ...about 11 p.m...
17 and walked to the Mira Road with his girlfriend -- with a
18 young lady and when
19 ...we turned back and went
20 back to Wentworth Park and
sat there for about 20
21 minutes and then went back
to the hall...I was talking
22 with Sandy...
23 -- the late --
24 ...with Sandy Seale just
25 outside of the hall.

1 Q. And down the bottom that he had seen Sandy Seale outside of
2 the hall just before midnight.
3 A. Yes, I didn't get down to that, sir.
4 Q. Was that a fact of any significance to you? Any importance?
5 A. Yeh, he was placing Sandy Seale there just before midnight, yes.
6 Q. And then Artie Paul's statement talks about having -- met Junior
7 on the night --
8 A. Yeh, he was down in that car on -- with the -- Tobin's son.
9 Q. And that he spoke to Junior the next day.
10 A. Intercolonial Street. Yes.
11 Q. So -- And then the only other statement, Chief, before June
12 the 4th is from Gary Tobin, and that was taken on June the 3rd.
13 A. Yes, that was taken by myself also.
14 Q. Now, on June the 2nd -- That's the Wednesday. That's the day
15 you also received the jacket, isn't it? We've already shown
16 you that.
17 A. June?
18 Q. The Wednesday. You received the jacket that Junior had worn on
19 the night of the stabbing.
20 A. That was the night it was turned over to M. -- That was the day it
21 was turned over to M.R.
22 Q. Okay.
23 A. Yeh.
24 Q. And you would've visited the scene yourself in the night and
25 during the day?

1 A. Yeh.
2 Q. And you had then concluded that Pratico had told you an incorrect
3 statement or his statement could not have been correct, is that
4 right?
5 A. That was my opinion that he couldn't see what he said he did
6 see from being over at the Court House.
7 Q. And did you believe that Chant -- that his statement was
8 believable?
9 A. I'd have to go over the statement again, but I think I decided
10 that I should go and see the two of them again, which I did
11 on the same date.
12 Q. In 1982, Chief, you swore an affidavit of -- to be used in
13 the Appeal Division, and I'd like you to look at Volume 15 at
14 page 12.
15 A. What book?
16 Q. Fifteen at page 12.
17 A. Yes.
18 Q. Paragraph 14 of that affidavit says:
19 THAT the reason I did...
20 I being you.
21 ...did not believe Chant had
22 been truthful in Exhibit 'A'...
23 Exhibit A is his first statement.
24 ...or Pratico in Exhibit 'C'...
25 Exhibit C is Pratico's first statement.

12:08 p.m.

> ...was that I suspected that each had previosuly obtained their respective stories from the appellant Donald Marshall, Jr., and their stories regarding their respective vantage point did not seem possible based upon my personal examination of the scene.

Now, why did you believe or suspect that each of those people had previously obtained their story from Donald Marshall, Jr.?

A. Well, they had both been in contact with him before this.

Q. When was Pratico in contact with him?

A. Donald Marshall, Jr., -- I -- If memory serves me right, he was down there on Saturday and Sunday morning.

Q. Down where? Pratico's place?

A. Pratico's, yeh.

A. And Chant, of course was -- met Donald Marshall on Byng Avenue the night of the stabbing.

Q. And you believed that Marshall gave them the stories they'd told you the first time? You suspected that they -- he had?

A. I believed that there was a discussion took place, but I wasn't there and I don't know if --

Q. Well, you swore an affidavit saying that you suspected that each of them had obtained their stories from Marshall.

MR. CHAIRMAN:

Swore or signed?

MR. MacDONALD:

I'm sorry, signed an affidavit.

1 THE WITNESS:

2 Yeh.

3 BY MR. MacDONALD:

4 Q. Is that correct?

5 A. Yes.

6 MR. CHAIRMAN:

7 Is there any reason why that affidavit was not completed?

8 MR. MacDONALD:

9 I believe, My Lord, that it -- If you will look at page 15. I think

10 we only have a copy of the thing. I believe there is a signed copy

11 of that affidavit--the sworn copy in the files at the Court House.

12 This -- We don't have one here.

13 MR. CHAIRMAN:

14 Okay.

15 MR. MacDONALD:

16 There is one in the file at the Court House, though.

17 MR. CHAIRMAN:

18 So it was sworn to?

19 MR. MacDONALD:

20 It was sworn, yes.

21 MR. CHAIRMAN:

22 Yeh. All right.

23 BY MR. MacDONALD:

24 Q. What did you have in your possession to swear an affidavit saying

25 that you suspected Chant and Pratico had been given their stories

1 by Marshall?
2 A. Well, Marshall was talking about the two men. He gave a -- He
3 was talking to Pratico on that particular night about those
4 two men. He was down at -- not Pratico, but Chant, I should
5 say -- May -- of the 28th. And on the 29th and 30th, I think
6 both days, he was down at Pratico's and -- discussing this
7 thing.
8 Q. Well, if he talked to them and gave him the stories, he -- I
9 suggest he must've given them opposite stories because their
10 statements to you aren't similar.
11 A. No, but at -- On the statement of Poirier, which is taken later,
12 I think it -- There was a chap by the name of Poirier present
13 at Pratico's on a Sunday -- that Sunday morning, and the
14 Volkswagen was discussed at that time.
15 Q. Okay, let's -- Poirier's statement was taken on July the 2nd.
16 Had you spoken with Poirier before that?
17 A. No, I took a statement from him on that date, I believe.
18 Q. On July 2nd?
19 A. Yeh. What page is that on?
20 Q. That's on page 85.
21 MR. SPICER:
22 Volume 16.
23 BY MR. MacDONALD:
24 Q. Is that what you rely on to tell the Appeal Division of this
25 province that you suspected Marshall had given Pratico the

12:12 p.m.

1 statement to tell? His first statement?

2 A. Would you mind if I looked this over, please?

3 Q. No, please do.

4 MR. PUGSLEY:

5 You'll also on page 127, Mr. MacDonald.

6 MR. MacDONALD:

7 Yes, I noticed that before, thank you.

8 BY MR. MacDONALD:

9 Q. Page 127 is your handwritten note.

10 A. Yes.

11 Q. Saying what, Chief. Read your writing for me. That's the one

12 on the top.

13 Mary O'Reilley said to Miss
Harriss that Sandy Seale ran
14 up to the corner where Pollett's...

15 Q. I'm sorry. Page 127.

16 A. Oh. -- Rudolph --

17 Poirier seen Junior Marshall
at John Pratico's Sunday
18 morning after stabbing - re
story to tell.

19

20 Q. Now, where did that -- Where did the information come for you

21 to make that note, and do you know when the note was made?

22 A. No, but I -- No, I wouldn't be able to tell you at this time.

23 Q. But we do know that when you --

24 A. Well, there was a statement taken from Poirier. What page is

25 that on now?

1 Q. I've already given you -- page 85.

2 A. Yes. And in that story, they were talking about the

3 Volkswagen.

4 Q. When you swore the affidavit, Chief, that was filed with the

5 Appeal Division, that was in 1982. You would've had knowledge

6 of the statement that Poirier had given to you?

7 A. Yes.

8 Q. And is -- Do you have anything else that you rely on to form

9 your suspicion that Marshall had given Pratico the story that

10 he had told you the first time -- the story he gave you on

11 Sunday?

12 A. No, I don't think.

13 Q. Did Pratico ever tell you that Marshall had told him what to

14 say?

15 A. No, I don't think he did.

16 Q. Well, if you read the statement of Poirier, down toward the

17 bottom, question and answer --

18 A. Yes, I see that.

19 Q. What did the guy look like?

20 A. He said one guy was about
21 50 yrs. old with grey hair
and he said that was the
22 fellow that stabbed Sandy.
He said the other fellow
23 tried to stab him - he was
about 35 yrs. old...

24 A. Yeh.

25 Q. That's not what Pratico told you on March -- on May the 30th.

1 That's not the statement he gave you.

2 A. No.

3 Q. But why do you say or swear it to the Appeal Division?

4 A. I'm talking about the Volkswagen here. That's the only other

5 time that came in. Pratico said they'd jumped into a

6 Volkswagen.

7 Q. So that's what you're saying?

8 A. And he -- the bottom of that page, it says:

9 ...He said then the two men took
10 off and jumped into a white
Volkswagen...

11 Q. But are you saying that Marshall gave Pratico part of the

12 statement to tell you or all of the statement? The statement

13 that he gave on May the 30th. Did Marshall give him everything?

14 A. Oh, I wouldn't say that. I meant to --

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1 Q. Well, that's what you swore though, Chief. You said: "The
2 reason I didn't believe Pratico, I suspected he had been given
3 his story from Marshall"?
4 A. Well, he did give him part of it anyway, and this was made
5 up at the court house by the Crown Prosecutor of the day and
6 after going over the evidence and Pratico is talking about a
7 Volkswagen on that night and Porier is talking about a
8 Volkswagen here and -- and --
9 Q. Are you saying that the contents of paragraph fourteen of your
10 affidavit are not correct, at least not totally correct?
11 A. I'm going to read it again, sir. It's the vantage points that
12 we're talking about in paragraph fourteen, sir.
13 Q. Chief, however fourteen is -- I submit -- I suggest to you
14 that fourteen -- paragraph fourteen is very straight
15 forward. It says: "The reason I didn't believe Chant
16 had been truthful in his first statement or Pratico in
17 his first statement was that I suspected that each had
18 previously obtained their respective stories from the appellant
19 Donald Marshall Jr., and their stories regarding their
20 respective vantage point did not seem possible based upon my
21 personal examination"?
22 A. Yeh, well, I did examine it and I didn't think it was possible,
23 no.
24 Q. But are you saying that you believe, and you do today or you
25 did in 1982, when you swore this affidavit that Marshall gave

12:16 p.m.

1 Pratico the information that he conveyed to you in his first
2 statement?
3 A. Yes, I would -- I would say that Marshall was down at
4 Pratico's on that Sunday morning which was two days after the
5 stabbing and he was talking about a Volkswagen and about what
6 took place at that time.
7 Q. He was also talking about a man fifty years old with grey hair.
8 Pratico makes no mention of that in his first statement to you.
9 A. No.
10 Q. Do you want to turn that up? That's on page 22. Are you saying
11 that Pratico met with Marshall more than once before he gave
12 you the statement--before Pratico gave you the statement on
13 May the 30th?
14 A. My recollection tells me that he was at Pratico's on Saturday
15 and Sunday. I took this statement in the afternoon.
16 Q. But in 1982 you swore an affidavit saying you believed that
17 Marshall gave Pratico the information that's contained in
18 the first statement?
19 MR. PUGSLEY:
20 No, he didn't. He said the respective story was given by
21 Marshall, and the respective story is that these people jumped
22 into a white Volkswagen and that's borne out.
23 MR. MacDONALD:
24 That's a very selective reading of an affidavit, My Lord, with
25 respect of a statement. The statement talks about a white Volkswagen.

1 It also talks about two people who jumped him and gives a
2 description. It also talks about a Bobby Patterson and a --
3 the bike gang. It talks about all kinds of things.
4 MR. CHAIRMAN:
5 This is Pratico's statement?
6 MR. MacDONALD:
7 Yes.
8 MR. CHAIRMAN:
9 Yes.
10 MR. MacDONALD:
11 And I think it's proper to ask the Chief what he meant in his
12 affidavit.
13 BY MR. MacDONALD:
14 Q. You're saying that the story that Pratico gave you on May 30th,
15 1971, was given to him by Marshall. That's what you swore in
16 an affidavit filed in the Appeal Division?
17 A. The Volkswagen part of it -- I don't know other conversation
18 he had, but the Volkswagen part of it -- the Volkswagen part
19 of it I would say came from Marshall.
20 Q. Well, where did Pratico get the part about the -- the
21 description of the men, five foot five, dark complexion,
22 heavy set; six foot tall, husky, read sweater, grey suit.
23 Where did he get that?
24 A. I couldn't say.
25 Q. Did he get it from Marshall?

12:21 p.m.

1 A. I couldn't say, sir, at this time.
2 Q. Is that what you intended to tell the Court in -- when you
3 swore the affidavit in 1982?
4 A. No, I -- the Volkswagen part was the first time that a car
5 showed up here and it was -- and Marshall is telling it there
6 on Sunday morning and I guess that's what I looked at -- I -- when
7 I read it over.
8 Q. So that paragraph in your affidavit with respect to
9 Pratico now is not totally correct. It doesn't totally --
10 You're not saying --
11 A. The vantage points came from myself.
12 Q. Yes, the vantage point. I'm talking about the story that
13 Pratico gave you on May 3rd.
14 A. You mean the -- the description of the men?
15 Q. Yes.
16 A. That part there, I'm not sure on that, but I'm sure on the
17 vantage points and I'm -- I took it that the Volkswagen part
18 came from Marshall.
19 Q. What made you swear -- What evidence were you relying on or
20 facts were you relying on to tell the Appeal Court that
21 you believed Chant got his -- the story -- his first story
22 from Pratico -- from Marshall?
23 A. Because of him discussing the thing with him on May 28th, I
24 guess from my recollection.
25 Q. The encounter they had -- You mean the encounter Marshall and

1 Chant had on Byng Avenue the night of the stabbing?
2 A. And they talked about it, yeh, what took place.
3 Q. That's what you mean there?
4 A. Which number is that you're talking about?
5 Q. I'm still talking about paragraph fourteen, Chief.
6 A. Yeh. Oh, yes, he's in that.
7 BY MR. CHAIRMAN:
8 Q. Who prepared the affidavit?
9 A. Mr. -- I would say -- I don't know. The day I was there
10 it was Mr. Edwards and Mr. Wheaton were there and it's from
11 them I got the affidavits.
12 BY MR. MacDONALD:
13 Q. Did you not have Mike Whalley available as well as your
14 solicitor or acting on your behalf?
15 A. We weren't present. We weren't present when those affidavits
16 were made up. We were given them. Mr. Whalley was up there,
17 I believe, on one occasion.
18 Q. Did you not give instructions to Frank Edwards in order that he
19 could prepare the affidavit?
20 A. I did not.
21 Q. Did you not discuss it with him?
22 A. No. No.
23 Q. So he just prepared it himself and called you in?
24 A. That's right.
25 BY MR. CHAIRMAN:
Q. Can you just take me through that again? Mr. Edwards who

12:23 p.m.

1 prepared the affidavit must have gotten --
2 A. I don't know. The day I was there Mr. Edwards and
3 Mr. Wheaton was there, the Staff Sergeant of the R.C.M.P.,
4 and the Crown Prosecutor.
5 Q. Yes.
6 A. And we were given those and they weren't made up in my
7 presence. That's all I have to say, sir -- My Lord.
8 Q. No, but you did meet with them -- with Mr. Edwards I
9 understand -- I assume?
10 A. That's right.
11 Q. Before the affidavits were prepared?
12 A. Before this was written down?
13 Q. Yes.
14 A. No.
15 Q. Well, would he have gotten the information?
16 A. They made them up.
17 BY MR. MacDONALD:
18 Q. Chief, let me refer you to volume 17.
19 BY MR. CHAIRMAN:
20 Q. Well, what do you mean they made them up? They -- They --
21 A. They made up this so --
22 Q. You mean they prepared them?
23 A. Prepared them, yes.
24 Q. But in preparing them they must have gotten the information
25 contained therein from somewhere and the question is, did they

1 get it from you?
2 A. They weren't talking to me before that, My Lord.
3 Q. Well --
4 MR. MacDONALD:
5 Could I have volume 17?
6 BY MR. MacDONALD:
7 Q. Do I understand you to say you didn't meet with Frank Edwards
8 for a period of time in order that he could get the information
9 to prepare that affidavit?
10 A. The information from me?
11 Q. Yes.
12 A. I don't recall meeting with him, no.
13 COMMISSIONER EVANS:
14 What page?
15 MR. MacDONALD:
16 On volume 17?
17 COMMISSIONER EVANS:
18 Right.
19 MR. MacDONALD:
20 I'm going to start on page 12, My Lord.
21 THE WITNESS:
22 What are you showing me there?
23 BY MR. MacDONALD:
24 Q. What I've handed to you, Chief, is volume 17 and they
25 contain hand -- typewritten parts-- typewritten notes prepared

1 by Frank Edwards from -- at the -- his evidence will be, at
2 or about the time that they are dated. That will be the
3 evidence of Mr. Edwards I suspect. And you see he says on
4 Wednesday, July 12th --
5 A. What page are you on there, sir?
6 Q. On page 12, I'm sorry. He says: "My office"... After he
7 lists:
8 1. Chant
9 2. Pratico
10 3. Harris
11 My office - present John MacIntyre,
12 Mike Whalley, H. Wheaton Began with summary of Chambers appr.
13 Do you see that?
14 A. Yes, I see that.
15 Q. And he goes on to -- Have you seen these notes before?
16 A. I think I -- Yes, I think I did. Yes, I did somewhere.
17 Q. Then let's go over to page 13.
18 A. Wait now.
19 My office - present John MacIntyre,
20 Mike Whalley, ...Wheaton Began with summary...
21 Q. Let's go over to page 13, Chief.
22 A. Yeh.
23 Q. It says -- See under John Pratico:
24 - did he know him before? had known
25 him to see him before. May 30 - figures he was lying when he gave (his) 1st statement

12:26 p.m.

1 See that?

2 A. Yes, I see that, yeh.

3 Q. And up above there's John F. MacIntyre:

4 - doesn't recall who was with
5 her...

6 He's talking about Patricia Harriss and other people.

7 A. Yeh.

8 Q. Don't you remember meeting with Frank Edwards to discuss all
9 this stuff?

10 A. I remember being up there on two occasions I believe.

11 Q. What were the two occasions?

12 A. Well, I was up there in regard to this here.

13 Q. To what?

14 A. This -- This document we're looking at here.-- over here.

15 Q. The affidavit?

16 A. Yeh.

17 Q. Were you up there on two occasions with respect to the
18 affidavit?

19 MR. PINK:

20 -- on page 14.

21 MR. SAUNDERS:

22 The middle of page 14.

23 MR. MacDonald:

24 Yes, I'm coming to that. That's a different date. It's later.

25 BY MR. MacDONALD:

Q. Were you there twice with respect to this affidavit?

1 A. I'm not sure at this time to be honest with you.

2 Q. Go to page 14 of volume 17, Chief.

3 A. Yes.

4 Q. Now under Thursday, July 22nd, 1982, do you see that?

5 I'm sorry, Chief, volume 17, Frank Edward's notes.

6 A. Yeh.

7 Q. Go to page 14.

8 A. Yes.

9 Q. Do you see that, where it says Thursday, July 22nd, 1982:

10 - Whalley, MacIntyre and Urquhart
11 come to office with affidavits I
had previously drafted.

12 - Urquhart and MacIntyre want to
delete paragraph regarding their
13 lack of knowledge of John Pratico
in 1971. Chief says it's
14 possible that Pratico's mother
would have told him her son was
15 on pills at the time.

16 - MacIntyre wants paragraph added
relating to statements he took from
17 the Ebsary's on Nov. 15 ...
after he had learned about
18 Ebsary's possible involvement
in stabbing from MacNeil.
19

20 - Told them I would make requested
changes and have them sign revised
21 affidavits.

22 Don't you recall that, Frank Edwards drafted an affidavit, you

23 reviewed it, you made changes in it?

24 A. I didn't mark down any conversation I had with him at the time.

25 I see his remarks here. Yeh, he's claiming here that it was him

1 that previously drafted the affidavit.

2 Q. After having met with you on July 12th and gone over the

3 evidence of Chant, Pratico, and Harriss? You're not

4 suggesting Frank Edwards just sat down and prepared

5 affidavits all by himself without having received instructions

6 from you?

7 BY COMMISSIONER EVANS:

8 Q. On page 14, above that, under Wednesday, July the 21st,

9 where you come to the paragraph:

10 G. Coles said they were concerned
...I wasn't calling enough witnesses.
11 Magee was one of...

12 those...

13 ...mentioned - told him I had prepared...

14 Now I take it that is Frank Edwards?

15 A. Yes.

16 Q. ...I had prepared affidavits for
Urquhart, MacIntyre and Magee. That
17 all affidavits would be reviewed by
Mike Whalley, and I would make any
18 changes they wished.

19 So that they had obviously been prepared by --

20 MR. MacDONALD:

21 Oh, I don't -- The evidence of Mr. -- The evidence of Mr. Edwards

22 will be that he prepared the affidavit.

23 COMMISSIONER EVANS:

24 Right, and that later they were submitted to Whalley and then

25 later on they were again given to Mr. MacIntyre.

1 THE WITNESS:

2 Yeh.

3 BY MR. MacDonald:

4 Q. And Whalley was acting as solicitor for you, wasn't he? Was

5 he the City Solicitor?

6 A. Not me -- I think he came up with us, yeh, he's solicitor for

7 the City.

8 Q. So I suggest to you, Chief, that you had ample opportunity

9 to review that affidavit in detail and that you did review it

10 before you swore to it?

11 A. Yes, I looked it over and I did swear to it, that's right.

12 COMMISSIONER EVANS:

13 He asked him on the 22nd as I have it. He had them before that

14 because it said on the 22nd:

15 - Whalley, MacIntyre and Urquhart ...

16 came...

17 ... to (the) office with (the)
18 affidavits I had previously drafted.

19 And that would be -- Then that affidavit was not sworn until the

20 26th.

21 MR. MacDONALD:

22 That's correct, My Lord.

23 COMMISSIONER EVANS:

24 And then there was a subsequent application or change made on that

25 particular affidavit to delete paragraph 29.

1 MR. MacDONALD:
2 That's correct.
3 COMMISSIONER EVANS:
4 So that you're --
5 MR. MacDONALD:
6 This all arose, My Lord, because I understood the witness to be
7 saying that he almost had no part in giving the instructions
8 for preparing this affidavit.
9 BY THE WITNESS:
10 A. Explain yourself on that one, sir, that I had no part in
11 what, giving instructions?
12 BY MR. MacDONALD:
13 Q. I had understood you to say earlier, Chief, with respect to
14 the affidavit that you didn't even meet with Edwards before
15 the affidavits were drafted?
16 A. I told you that I thought I was up on two different occasions
17 and that Whalley was with us, and that the affidavits that --
18 I don't recall taking the affidavits from the office, but
19 somebody else said that we did, you know, and I don't
20 recall at this time but I thought we were up there on two
21 occasions.
22 MR. MacDONALD:
23 It's an appropriate time to break, My Lord.
24 MR. CHAIRMAN:
25 Yes, we'll rise until two.

INQUIRY ADJOURNED AT: 12:35 p.m.

1 INQUIRY RECONVENED: 2:02 p.m.

2 BY MR. MacDONALD:

3 Q. Can we move to June the 4th, 1971, Chief MacIntyre, would
4 you agree with me that that's probably the most important
5 day of all of the investigations that you carried out?

6 A. Yes, it was a very important day, yes. What page did you say --
7 are you --

8 Q. I haven't got a page yet.

9 A. Oh, fine.

10 Q. I'll come to it. I take it from what you've told me already
11 when you started your efforts on June the 4th, you had
12 spoken to Doctor Virick about the cut on Junior Marshall's
13 arm. You had his jacket and you had formed some concerns
14 as a result of looking at his jacket. He was a suspect in
15 your mind if not the only suspect, a suspect, and you had
16 belief from a -- as a result of your visit to the Park in
17 the evening that John Pratico had lied to you or had not
18 told you the truth when he gave you the first statement,
19 is that correct?

20 A. Yes, I decided I would talk with him again.

21 Q. Yes, now at that time before you spoke with him again, had
22 you formed the opinion then that his first story, the one
23 that you could not accept, had been given to him by Junior
24 Marshall?

25 A. I suspected that, yes.

1 Q. Okay, tell me then how you contacted Pratico on that day and
2 what took place with Pratico?
3 A. On that day he was taken to the station by who at this time
4 I don't recollect.
5 Q. At your -- on your instructions?
6 A. Yeh, that's right and a statement was taken from him.
7 Q. He was picked up, taken to the station and a statement was
8 taken from him?
9 A. That's right, yeh. And he would have been told that I
10 figured there was more he could tell me in regard to what
11 happened or I don't -- I don't remember my exact words; but
12 I --
13 Q. That's the way --
14 A. -- I knew that he knew that I was making -- I would make it
15 known to him that I thought probably I wasn't getting the
16 truth in the first statement. Something -- words to that
17 effect.
18 Q. But you didn't feel you -- he had given you the truth on
19 the first statement and you wanted the truth?
20 A. That's right, yeh.
21 Q. And then having said that to him, you would have taken down
22 everything that he said?
23 A. That's right, yes.
24 Q. Had you seen him since you had taken the statement on May 30th
25 until he was brought to your office on June the 4th, which was

2:06 p.m.

1 a Friday?
2 A. No, no.
3 Q. So this was your first contact with him from the first
4 statement until the second. And you told him, "I don't
5 think you", or words to this effect, "you weren't telling
6 me the truth before, I want the truth"?
7 A. That's right, yes. Some words to that effect.
8 Q. Who was present do you recall, Chief, when you interviewed
9 him?
10 A. Yeh, may I see the statement, sir?
11 Q. Yes. It's on page 41 of volume 16. Volume 16, Chief?
12 A. Yes, I'm getting it. Sergeant Urquhart --
13 Q. Sergeant Urquhart --
14 A. Sergeant Urquhart was with me.
15 Q. It's your handwriting isn't it on this statement?
16 A. The statement itself, yes.
17 Q. Yes, okay. Why did you have Urquhart present?
18 A. Well, he was around on that morning with me, I guess. That's --
19 Q. Did you make any --
20 A. Sergeant Urquhart might have taken him to the station. I
21 haven't got any recollection at this time.
22 Q. And that statement started at 10:45 a.m.?
23 A. Yes.
24 Q. And you believe there would have been some introductory remarks
25 made by you?

1 A. Yes.
2 Q. With reference to his earlier statement?
3 A. That's right.
4 Q. Was there any reference -- was there any statements such as
5 "I don't believe you told me the truth the last time. You're
6 going to be in real trouble if you don't tell me the truth"?
7 A. No, I don't, as I said yesterday, I don't -- I keep away from
8 making any threats.
9 Q. Would you have been sitting as this statement was taken or --
10 A. That's correct.
11 Q. Throughout?
12 A. I sit when all statements -- yes, this statement and all
13 others when I take them.
14 Q. And all other statements?
15 A. Yeh, throughout.
16 Q. I just want to refer you to a couple of statements that Mr.
17 Pratico gave here and have your comment on them. And this
18 is with respect to the second statement. I'm referring to
19 page 2064, Chief, I'll just read it. He's saying:
20 Sergeant MacIntyre.
21 MR. CHAIRMAN:
22 What page is it?
23 MR. MacDONALD:
24 I'm sorry, 2064.
25

1 MR. CHAIRMAN:

2 Of the transcript.

3 BY MR. MacDONALD:

4 Q. Okay:

5 Sergeant MacIntyre, "All we want
is the truth.".

6

I said...I (don't)didn't know what
7 to say so we kept talking and he
said, "You know, if we don't get
8 the truth, you could be going to
gaol."

9 Did you say that to Mr. --

10 A. No, I didn't.

11 Q. -- Pratico?

12 A. No, I didn't.

13 Q. Okay, and then he said:

14 So we're talking a little bit and
15 he said

Talking about you again:

16

"We have a witness saying you were
17 in the park that night."

18 That I was in the park

19 and a witness was in the park

20 and seen what happened.

21 Did you tell him that?

22 A. No, sir.

23 Q. And he repeated that on a couple of occasions. You did not

24 tell him that, I take it?

25 A. I did not tell him that, no.

2:09 p.m.

1 Q. Let me take you to the statement then, Chief, it's on page 41.
2 He starts out by saying he went to the dance "last Friday
3 night" and he named certain people that he went with. At
4 any time did you talk to those people, Bobby Christmas,
5 Donald Gordon and Bob Janes?
6 A. I have no recollection of that.
7 Q. Okay. Did you ever make any attempt to determine the state
8 of Pratico that night? That is his -- whether he was drunk
9 or sober or --
10 A. Just what he -- just what he told me that's here --
11 Q. That's what he had told you in the statement?
12 A. That's right. That's right.
13 Q. Okay, we'll come -- you made no independent effort to determine
14 his state?
15 A. No.
16 Q. Okay, he goes on to say:
17 I met Donald Marshall and
Sandy Seale. We walked (down)
18 to the corner of Argyle St.
Donald said John come down to
19 the Park in a rough voice. I
said No. I went down Argyle
20 St. and over Crescent St. I
was walking on the park side.
21 I seen Sandy and Donald on the
other side of the bridge stopped.
22 I did not pay much attention to
them. I kept walking for the
23 tracks. On the tracks, I
stopped where I showed you.
24
25 What does he mean, where he "showed you"?

1 A. Well, I have no recollection of -- of picking him up but I
2 would say that that must have -- that he must have showed
3 me where he was standing and I must have been in the car.
4 I don't know.
5 Q. You must have been in the Park with him?
6 A. No, but I mean, "I stopped where I showed you".
7 Q. He stopped on the tracks, "where I showed you"?
8 A. Yeh, yeh.
9 Q. He must have showed you where he stopped in the tracks?
10 A. Yeh, that's what I'm saying.
11 Q. So when were you in the Park with him?
12 A. It must have been the morning he was picked up.
13 Q. Did you pick him up?
14 A. I've -- I've no recollection of it at this time.
15 Q. Mr. Pratico testified on page 2128 and this is in response
16 to questions from Ms. Edwardh:
17 ...I went to the Park with them
after the first statement...
18
Okay, that's what I wanted to...
19 draw (to) your attention. So
let's talk about the time you went
20 to the Park before you gave this
second statement.
21
Okay, and do you recall who you went
22 to the Park with on that...occasion?
23 Who was that?
24 Sergeant MacIntyre.
25 Did you take him to the Park?

1 A. I would say that I was over at -- must have been over at the
2 Park with him; although I got no recollection of it.
3 Q. Well, certainly this statement would led one to that
4 conclusion, wouldn't it?
5 A. Yes, but the -- the first statement he was supposed to be
6 over to the court house, so it couldn't --
7 Q. I know, Chief, I'm talking about you and Pratico?
8 A. Yes, I would say I must have been.
9 Q. And you and Pratico were together in the Park before he gave
10 you this second statement, isn't that correct?
11 A. I would say by this statement that I must have been.
12 Although I have no recollection of it now. That's what I
13 said.
14 Q. Is that just -- are you just coming to that now as a result
15 of my showing you this statement?
16 A. Yeh, that's right, yeh.
17 Q. Did you walk about the Park with him?
18 A. Yes.
19 Q. Did he take you to the place on the tracks that he "showed" you?
20 A. I know where he was supposed to be on the tracks.
21 Q. Where?
22 A. I think it was the -- the bush in front of the second house.
23 Q. How do you know where he was supposed to be?
24 A. I -- he says, "I stopped where I showed you", so --
25 Q. I know he says that, but you just said you knew where he was

"supposed" to be. How did you know where he was supposed to be?

A. I'm saying I have no recollection of it now; but he must have taken me over there. That's as far as I can go on that, Mr. MacDonald.

Q. So you must have been in the Park with him then?

A. Well, I could have been, but I don't, you know, I have no recollection of it right now.

Q. That's something, Chief, I would think would be pretty important for you to recollect. That's a pretty important fact whether you were in the Park with him before you took that second statement?

MR. PUGSLEY:

It may or may not be important; but the man has said five times he doesn't recall if he was there or not. I mean whether it's important or not it's something that he --

MR. CHAIRMAN:

He also said -- made a statement that I presume will be clarified, that Mr. Pratico was where he was supposed to be. Now I don't quite know what that means either, so I'm -- So if I could get that clarified then, we can move on.

BY MR. MacDONALD:

Q. Where was he supposed to be?

A. My recollection, you know, at the time, my recollection was that Chant was down near the trestle and Pratico was up near

1 Bentinck Street.
2 Q. But did you tell Pratico where Chant was supposed to be?
3 A. No, indeed I didn't.
4 Q. No reference to that at all?
5 A. No, sir.
6 Q. But where was Pratico supposed to be?
7 A. Pratico -- Pratico, my recollection at the time was that
8 Pratico was supposed to be up near Bentinck Street on the
9 -- near the railroad track.
10 Q. Supposed to be there?
11 A. Yeh.
12 Q. Where did you get that information, Chief? Why was he
13 supposed to be there?
14 A. Why?
15 Q. Yes?
16 A. I have recollection that he was having a bottle of beer and
17 he was watching what was going on. I don't -- I didn't --
18 I didn't read this yet, Mr., I don't know what's in here,
19 Mr. MacDonald.
20 Q. But you're telling me that you copied down -- you told me,
21 you copied down verbatim as best you could what was said by
22 Pratico, isn't that correct?
23 A. That's what I thought I did, yes.
24 Q. Yes, and so as we go through it, he says "I stopped on the
25 tracks", not in a bush, "on the tracks, where I showed you"?

2:14 p.m.

1 A. Yeh.

2 Q. And you offered the comment, "he was supposed to be some
3 place"? And are you saying he was supposed to be behind
4 a bush up on Bentinck Street?

5 A. No, there was bushes along the track, along the railway on
6 the Crescent Street side.

7 Q. Is that where he was supposed to be?

8 A. That's where he was supposed to be, yes.

9 Q. I see. Okay, let me just go on:

10 Then Donald Marshall and Sandy
11 Seale were up where the incident
happened.

12 What does that mean, "where the incident happened"?

13 A. Could I -- I'd like to read some more of this statement if
14 you don't mind, sir?

15 Q. Take your time, Chief, I'm -- Would I be correct in
16 assuming you've read that statement a lot of times over the
17 past sixteen years or seventeen -- sixteen years. You've
18 seen that statement a lot of times?

19 A. I've seen it, yes, on several occasions, yes.

20 Q. Okay, what does it mean; "where the incident happened"?

21 A. I would say that the -- I would say that he had, in that,
22 that he had pointed out where he was at and where the
23 incident happened over on Crescent Street?

24 Q. But how could he point that out to you in the office?

25 A. No, I said before that I must have been over there with him

2:18 p.m.

1 in the car.
2 Q. You must have been over there with him in the car?
3 A. Yes, when I -- and he's saying:"I stopped where I showed
4 you".
5 Q. Yes?
6 A. Yes.
7 Q. And he -- did he point out where the incident happened?
8 A. Yes, he did.
9 Q. Or did you?
10 A. No, I didn't -- I didn't point anything out because I wasn't
11 there, sir, on that particular night I was seeing what he
12 had to say.
13 Q. You were there with Pratico in the Park, were you?
14 A. Well, I was in that vicinity, yes.
15 Q. Were you standing on the tracks?
16 A. No, I can't --
17 Q. Where he showed you?
18 A. I can't recall. He could have pointed that out from the car
19 where he was at on Crescent Street if we were on it.
20 Q. Now, Chief, wouldn't you have been having discussions with
21 him then when you were in the car or on your foot whatever
22 you were, you would have been having discussions with him
23 as to what happened on that night?
24 A. Yeh, yes, I would have.
25 Q. Then why didn't you take a statement about that? Why didn't

2:20 p.m.

1 you make a note about that somewhere?
2 A. Well, I haven't got it there. Only he says, "I stopped where
3 I showed you".
4 Q. Chief, I'm talking about the --
5 A. Yeh.
6 Q. -- time you must have been in the Park with him or in your
7 car?
8 A. Yeh.
9 Q. And you're -- and you're at the scene?
10 A. Yes.
11 Q. Why didn't you make some note to your file, take a statement
12 from him then? You've left the impression, sir; I suggest
13 to you, that everything you've talked about with Pratico,
14 everything, is contained in this statement?
15 A. But he's saying something in the statement that must have
16 taken place before I took the statement. He says:
17 I stopped where I showed you.
18 Then Donald Marshall and Sandy
Seale were up where the incident
19 happened.
20 Q. Chief, shouldn't you --
21 A. So I must have -- I must have -- I must have been over to
22 the -- to the Park with him. I might have been in the car
23 when he was picked up. I'm saying that I don't recollect
24 that at this time.
25 Q. Is it possible, Chief, that what you did with Pratico was

1 take him over to the Park. Take him where he said he was
2 on his first statement and say; "That's not possible, you're
3 lying"? Did you do that with him?
4 A. I don't recall that, no.
5 Q. You don't?
6 A. No, no.
7 Q. And then was it possible that you then took him and said, "Let's
8 go up where the incident happened and see if you have any
9 recollection about that."?
10 A. I -- I would say that I must have went up to the Park with
11 him; but he would -- I wouldn't be showing him where the
12 incident happened. I'd want to know what -- what he had
13 to say.
14 Q. Were you assisting him --
15 A. If anything --
16 Q. -- in any way?
17 A. No, I would say, no.
18 Q. Although you don't really recollect being with him at all?
19 Isn't that so?
20 A. No, I don't recollect it at this time, sir, no.
21 Q. But you will agree with me that you must have been with him
22 somewhere --
23 A. Yes.
24 Q. -- in that vicinity?
25 A. Yes, when this is in the statement the way it is here, yes.

1 Q. Thank you. What's your best recollection today of where
2 Pratico was supposed to be?
3 A. Behind a bush, near the track, near Bentinck Street on the
4 Crescent Street side.
5 Q. And is that what you got from your discussion with Pratico?
6 A. That's what I --
7 Q. Okay, now, Chief, you take the time (You just have) to read --
8 to read through this statement.
9 A. Yeh.
10 Q. There is no reference in this statement at all, I suggest.
11 A. Yes.
12 Q. To Pratico being behind any bush?
13 MR. CHAIRMAN:
14 Which statement is this -- the first?
15 MR. MacDONALD:
16 That is Pratico's statement, My Lord, yes the second one, starting
17 on page 41.
18 MR. CHAIRMAN:
19 Wait now --
20 BY THE WITNESS:
21 A. On the next page --
22 MR. CHAIRMAN:
23 Yeh.
24 BY THE WITNESS:
25 -- Were you standing on the track

2:24 p.m.

1 at the time Sandy Seale fell
2 to the ground
3 Yes. I was.
4 BY MR. MacDONALD:
5 Q. Okay, why were you standing on the tracks?
6 A. Why were you standing there
7 I was drinking a pt. of beer
8 Wait now, there's something else here.
9 MR. PUGSLEY:
10 There is a reference at the bottom of the page --
11 MR. MacDONALD:
12 Yes, I'm going to direct him to that.
13 MR. PUGSLEY:
14 It would be kind of you to direct it to him before you make an
15 allegation that there's no reference at all in the statement.
16 MR. MacDONALD:
17 I think the record will show that my allegation, if it is an allegation,
18 My Lord, is that there's no reference in the statement of Mr.
19 Pratico standing behind or squatting behind a bush and if there
20 is, I'll certainly withdraw it.
21 BY MR. MacDONALD:
22 Q. The only reference to a bush, Chief, is the second last
23 answer.
24 A. Yes, I see it here.
25 Q. It says:

1 Would there be any obstruction
between you and Sandy Seale and
2 Donald Marshall when you were on
the tracks from them seeing you
3
Bushes between them and me -
4 blocking the view

5 A. ...on them.

6 Q. It was easier for me to see them.

7 A. Yeh.

8 Q. Do you take from that that he's saying he's squatting behind
9 a bush having a beer?

10 A. Well, the bushes were -- the bushes were quite handy the
11 track along there. There was probably, I don't know how
12 many, there was every -- every so many feet there were
13 bushes and that's what I took; that he was behind one of
14 those bushes near the railroad tracks.

15 Q. Do I understand then when you completed taking the statement
16 from Pratico on June the 4th, it was your understanding and
17 your conclusion that he told you he was behind a bush up
18 around Bentinck Street?

19 A. He was -- no, he was on the -- the railroad track and those
20 bushes were quite handy to the rail -- to the track on
21 Bentinck, they'd be on the right hand side, on the Crescent
22 Street side. And they were so many feet apart each one of
23 them. And they were so high. And I -- I took it that that's
24 where he was standing.

25 Q. Standing on the tracks or behind a bush?

2:26 p.m.

A. Well, near -- near the tracks by the bushes.

Q. Even though he had told you in the statement he was:

standing on the track

A. Yeh.

Q. at the time Sandy Seale fell to the ground?

A. Yeh.

Q. That's what he told you?

A. Well, I think he probably meant the track area, you know, he was right -- that's where he would be.

Q. Well, if you -- if I can just take you the statement again, on page 41, we already looked:

> On the tracks, I stopped where I showed you.

We looked at that already?

A. Yes.

Q. And then if you go over to the top of page 42:

> Were you standing on the tack at the time Sandy Seale fell to the ground
>
> Yes. I was.

A. Yeh.

Q. How can you take from that, sir, that he may not have been on the track?

A. Well, I said before, I must have been at the scene and he must have showed it to me. And I -- I took it it was --

1 the bushes were quite handy the track and he was there.
2 Q. And that's my point, Chief, when you left after you finished
3 your statement from Pratico, no matter what was said, it was
4 your impression --
5 A. Yeh.
6 Q. -- that he was by a bush?
7 A. That he was, yeh, and by the track, yeh.
8 Q. Thank you. And then Pratico told you starting on the bottom
9 of page 41:

10 I seen Sandy fall to the ground
11 and Donald Marshall running up
Crescent St. towards Argyle St.

12 Now my understanding of that is that you would be running
13 then on Crescent Street in a -- an easterly direction, is
14 that correct that Marshall would be?
15 A. In a westerly direction, yeh.
16 Q. Easterly?
17 A. Well, he ran towards Bentinck.
18 Q. Running, no, running toward Argyle?
19 A. I know, but Argyle -- Argyle is up parallel with Crescent,
20 back.
21 Q. Isn't it also at the other end of -- isn't it at the other
22 end of Crescent Street?
23 A. Oh, in --
24 Q. Toward Argyle?
25 A. If he was going easterly -- if he was going -- yes, if he was

2:28 p.m.

1 going that way, he'd be going east. It runs east and west,
2 Crescent Street.
3 Q. Well, Pratico said "I saw Marshall running along Crescent
4 Street to Argyle", didn't he?
5 A. Yeh, but he could be running either way to go to Argyle.
6 Q. But did you ask him which way he was running?
7 A. No, I didn't, why?
8 Q. Would that be as important?
9 A. At Crescent Street, Argyle was at one end -- at one end over
10 here and if you go up Bentinck, just one block, you're on
11 Argyle. It goes right through. The same as Crescent does
12 goes straight through to Alexandra.
13 Q. You didn't -- you would agree with me, Chief, that he could
14 be running easterly toward Argyle?
15 A. He could be, yes, or he could be running the other way. I
16 could take it to be either.
17 Q. But you didn't ask him either one?
18 A. No, no, no.
19 Q. But Pratico said that what he did was: "run home up Bentinck
20 Street"? That's what he told you, didn't he?
21 A. Yes, yes.
22 Q. And that would mean --
23 A. Northerly.
24 Q. He would be running north on Bentinck Street?
25 A. That's right. That's right.

1 Q. Did you think they were both running in the same direction,
2 Marshall heading towards Bentinck and then going up Argyle
3 and Pratico heading towards Bentinck and going north?
4 A. He could have been.
5 Q. Is that what you thought?
6 A. That's what I thought, yeh.
7 Q. Are you surprised they didn't bump into each other?
8 A. No. No, because Pratico would be quite handy the corner --
9 right handy Bentinck on Crescent where he was supposed to
10 be standing and the other fellow would be over further on
11 Crescent. He'd be over one, two, three, four -- four to
12 five houses over.
13 Q. Pratico told you they were about forty feet away from him?
14 A. Yeh.
15 Q. Thirty to forty feet?
16 A. Yeh.
17 Q. That's not far?
18 A. No, it would be further than that.
19 Q. Pardon?
20 A. It'd be further than that.
21 Q. No, but I'm just referring to the statement?
22 A. Yeh.
23 Q. If you look at the statement on page 42, about half way down
24 it says:
25 How far...would you be from Sandy

2:30 p.m.

Seale and Donald Marshall
when they were on Crescent St.

30 to 40 ft.

A. Yeh, well, each lot is fifty. Each lots between forty and fifty feet wide and he was supposed to be close to the second house, so there'd be one, two, three, it'd be a hundred, could be a hundred and twenty to a hundred and fifty feet.

Q. Who was? Was Pratico?

A. No, no. Where Seale and -- where Seale and --

Q. Marshall?

A. -- Marshall are supposed to be.

1 Q. Are you saying that they would be one hundred and fifty
2 feet from Pratico?
3 A. Well, there was three houses there. Three -- Queen's,
4 Campbell's and MacDonald's. It would be one hundred and
5 fifty feet away.
6 Q. Where do you get that, Chief, out of Pratico's statement?
7 Pratico told you --
8 A. Wait now.
9 Q. -- that he was thirty or forty feet away.
10 A. Yeh.
11 Q. How can you tell us --
12 A. That was his estimation,yeh.
13 Q. Well, did you challenge him on it?
14 A. No, I just took what he said at the time.
15 Q. But you took it to be wrong then, did you? You didn't
16 accept it.
17 A. It says:
18 I stopped where I showed you. Then
19 Donald Marshall and Sandy Seale were up where the incident happened.
20 You see? So --
21 Q. Yes.
22 A. -- I thought at that time that he had pointed out that spot
23 on Crescent Street. Yeh.
24 Q. Where the incident happened?
25 A. Yeh.

2:31 p.m.

1 Q. We know where that is, don't we?

2 A. Yeh.

3 Q. But the spot where he showed you, you're saying then is the

4 bush close to Bentinck Street?

5 A. That's where he was standing, yes.

6 Q. And that's where he showed you, is it?

7 A. No, I think there's a double --

8 How far away would you be from
9 Sandy Seale and Donald Marshall
when they were on Crescent Street?

10 30 to 40 feet.

11 So, he says:

12 How long were they standing there?

13 About 10 minutes.

14 Now he said:

15 I stopped where I showed you.

16 meaning -- I took that to mean himself near the railroad

17 track. And then:

18 Then Donald Marshall and Sandy Seale
were up where the incident happened.

19 Q. Well, I know --

20 A. I know what you're saying. You're saying 35, 40 feet

21 away.

22 Q. No, I don't mean to say anything. I'm just suggesting to you --

23 A. Yeh, that that's what's there. Yes.

24 Q. Yeh. If he stopped where he showed you and you've told us that

25 that was up -- a bush up around Bentinck Street, if he was

1 there --
2 A. Yeh, the second --
3 Q. -- then he would be about one hundred and fifty feet away
4 from where the incident happened, isn't that correct?
5 A. That would be close to it, yes.
6 Q. And that's how you came up with the one hundred and fifty
7 feet?
8 A. Yeh.
9 Q. And that is just, I suggest, further evidence or corroboration
10 for you that indeed Pratico must have showed you where he
11 was on Bentinck Street around the bush.
12 A. That's right. That's right, sir.
13 Q. Okay.
14 BY MR. CHAIRMAN:
15 Q. Was it a well lit area at night?
16 A. What's that?
17 Q. That section of the park, Crescent Street.
18 A. There was a couple of lights in the area. I think on the
19 -- I think when the city -- I think there was a light in
20 front of MacQueen's which would be the third house on
21 Crescent according to the plan that the city drew and I think
22 the other street lamp was one hundred -- I think it was one
23 hundred and sixty-five feet between the two of them. There
24 was two poles and two lamps in the area.
25 Q. Given the conditions, in your estimate, that Mr. Pratico --

1 John Pratico, was one hundred and fifty feet from where the
2 stabbing occurred, would that have caused -- this part
3 of the statement of John Pratico then cause you some concern
4 when he said he -- to quote him:

5 > I just seen Donald Marshall's hand
6 > going towards the left hand side of
> Seale's stomach. He drove his hand
> in - turned it and pulled it back.

7 Would you think that Mr. Pratico would have been able
8 to see all of that from one hundred and fifty feet away
9 at night?

10 A. Well, he knew those people before that and Marshall was
11 the taller of the two and what he was wearing, I imagined
12 he wouldn't have any problem making him out there and they
13 had talked to him before that. He knew both of them and
14 let me see now. The first light is in front of MacQueen's,
15 the -- MacDonald's and there'd be Campbell's. That would
16 be one hundred so I think the second light would be somewhere
17 around the big apartment house. The green -- the large one
18 there.

19 Q. No, I was thinking about the actions --

20 A. I know what you're saying.

21 Q. Putting it in --

22 A. I get it, My Lord, yeh.

23 Q. -- turning it.

24 A. Yeh.

25 Q. Turning his hand to the left.

2:34 p.m.

1 A. I don't know how much of that would be -- but he says he
2 did see him doing that and really I didn't give that that
3 much thought. It's a good point. But there was two lights
4 in the area there.
5 Q. Okay.
6 BY MR. MacDONALD:
7 Q. You were there in the evening yourself, Chief, to see whether
8 it was possible to get a good view, weren't you?
9 A. Yeh.
10 Q. And you were satisfied that there was --
11 A. I was of the opinion that they did see it. Now, whether --
12 Chant at the other time was on the other end of the track.
13 I thought they could see what was -- you know -- what was
14 going on there.
15 Q. At that time, what was your knowledge of John Pratico?
16 A sixteen year old boy. What did you know about him?
17 A. Well, I knew that he -- I took him to be a very nervous
18 chap but I didn't know very much more about him. I don't --
19 Q. Did you know --
20 A. I didn't have any dealings with him.
21 Q. Did you know his mother?
22 A. I knew her, yes.
23 Q. Did you know he used to periodically sleep off drunks in
24 the tank in the police station?
25 A. Well, I've -- To be honest with you I never seen him in there

1 but that's the evidence.
2 Q. No, I'm asking if you knew that?
3 A. No, I didn't know that, no.
4 Q. The evidence --
5 A. No, I have no recollection of any of that stuff.
6 Q. The evidence that you obtained on June 4th, this statement
7 from Pratico, that would be very important evidence, would
8 it not?
9 A. It would be, yes.
10 Q. Did it ever occur to you that a boy of sixteen who had --
11 if he had seen what he said he did may have related that to
12 his mother?
13 A. Well, he could have but I wouldn't know whether he did or
14 not.
15 Q. Well, I ask you did it ever occur to you he might have?
16 A. Well, he might have.
17 Q. You knew he lived with his mother?
18 A. Yes.
19 Q. Or is father?
20 A. He lived with his mother, I think. I don't think his father
21 was there. I'm not sure.
22 Q. Did you ever ask his mother if John had ever told her about
23 the incident that he says he saw on the night of May 28th?
24 A. No, I didn't, no.
25 Q. Why not?

2:37 p.m.

1 A. I just didn't.
2 Q. Did you believe John Pratico when he gave you this statement
3 on June the 4th?
4 A. I took it -- took down what he had to say and then of course
5 I wanted to see what this Chant had to say and Chant, when
6 I took a statement, it re-enforced that it was a dark-
7 haired fellow and I think that's around the bush there
8 quite handy Bentinck Street in the vicinity of the tracks.
9 I think that's what he told me in his statement and that--
10 Q. We'll come to Chant in a moment.
11 A. Yeh.
12 Q. Did you ever interview Pratico again after June the 4th?
13 A. This is the last statement I took from him. I don't
14 recall -- I don't recall.
15 Q. Never took another statement from him?
16 A. No.
17 Q. Having received that statement from Pratico you then elected
18 or decided you would go to Louisbourg. Is that correct?
19 A. That's right.
20 Q. Why is that?
21 A. I wanted to have another chat with Chant.
22 Q. Why did you want to talk to Chant again?
23 A. Well, Chant was supposed to be on the track that night and
24 he was on the George Street side of the trestle and claimed
25 that -- I have a statement here of May the 30th, what he claimed

he seen and the description he gave of the men and I wanted to see if -- I thought that probably I wasn't getting all the truth from him too. That was my opinion at the time.

Q. So you decided to go to Louisbourg and at that time you asked for the assistance of the Louisbourg police, didn't you?

A. Yes, we went to the Town Hall and requested Chief MaGee to -- if he'd go and look for Chant for us and bring him to the station. I also requested that, if his mother was there, to have the mother or the father to come along and we stayed at the Town Hall until he arrived back and he had his mother with him and there was a Burke chap with him. He was a probation officer-- Junvenile Probation Officer. They came into the room and I introduced myself and Urquhart that there were --

They sat down. There was a long table. It was twelve or fourteen feet long and I recall that. The three of them sat on one side of the table and young -- the young chap sat opposite them and we were down -- Urquhart and I -- at this end of the table.

Q. A twenty foot long table, did you say?

A. No, It wouldn't be twenty. Probably fourteen. Twelve, Fourteen. Somewhere in that vicinity.

Q. Fourteen, sorry.

A. There was a bunch of -- those tables here I believe put together.

2:40 p.m.

1 I'm not sure.
2 Q. And if we can just use the one that's up front.
3 A. Yeh. About --
4 Q. For example, you were sitting -- Were you at one end?
5 A. I was -- This end, yes. I was at this end of the table,
6 Urquhart and I.
7 Q. Sitting in the same type of position that Justice Poitras
8 is? The last one here?
9 A. I think I was at the end of it but they were both on this
10 end but he'd be up quite a piece at the other end and the
11 three that came in, Mrs. Chant, MaGee and Burke were sitting
12 on that side.
13 Q. Okay. So Chant would be up approximately where Justice
14 Evans would be and --
15 A. That's correct. Across.
16 Q. -- his mother and the other two on -- across from him?
17 A. That's right, on that side.
18 Q. And you and Mr. Urquhart sat at this end?
19 A. That's right.
20 Q. And did all of those people stay throughout?
21 A. They did.
22 Q. Now, you are aware, of course, that there is conflicting
23 evidence on that point?
24 A. I am.
25 Q. And I want to put some of that evidence to you.

1 Mrs. Chant -- This is in volume 20 of the evidence on
2 page 3538. The question was:

3 Did you stay in this room to your
4 recollection for the whole
interview?

5 The answer was:

6 No, they asked me if I would leave, and
I said, "Yes." So I got up and left.
7
Do you recall who asked you to leave?
8
I believe it was Sergeant MacIntyre.
9
And also -- this is on page 3535:
10
Do you have (any) recollection today...of
11 that interview...

12 I don't remember, like, too much. I
know we went in the room and they
13 had talked to him for a bit, but they
thought they weren't getting anywheres
14 with him; so they asked me if I would
leave.
15

16 Did that happen?

17 A. That never happened. Mrs. Chant didn't leave that room
18 from the time this statement started until it was over.

19 Q. And then Maynard Chant testified on page 857. He talked
20 about his mother being upset and she said -- he said:

21 ...so he beckoned to her...

22 the he -- you

23 ...so she come over and they
stood behind me and...I remember
24 him saying something reflecting
that he, he's not going to -- maybe
25 if you leave the room, he'll tell us
more. He felt that by her being there,

2:44 p.m.

1 I wasn't being -- I wouldn't
2 tell them anything. So she
left the room.

3 Do you have a clear recollection
of your mother leaving the room
4 that day?

5 Yes, I do.

6 And he said that three or four times.

7 A. Yeh, and that is not right, sir.

8 Q. That is not correct?

9 A. That is not correct, no.

10 Q. Okay. And then we have Mr. Burke. Do you say he was present
11 throughout?

12 A. That's correct.

13 Q. And you heard his evidence in this --

14 A. I did.

15 Q. -- in where he denied being there?

16 A. Yes.

17 Q. And he's wrong too is he?

18 A. That's right.

19 Q. So they were all wrong when they say -- Mrs. Chant when
20 she says she was asked to leave the room, Maynard when
21 he says you asked his mother to leave the room, and Burke
22 when he says he wasn't there?

23 A. That's correct.

24 Q. Now, what --

25 A. Yeh.

1 Q. Now what was said to Chant then when he arrived?
2 A. Words to the effect that I spoke, I think, to his -- spoke
3 to his mother and told her that I'd interviewed him before
4 on this matter here and that this time that I had a -- I think
5 I told her I had a murder on my hands. I didn't think I was
6 getting all the truth and I would like to interview him again
7 today and I'd like to get the truth so she --at that point
8 she pointed at her son across the table and she said,
9 Maynard, if you know the truth about this -- If you know
10 anything about this, she said, you tell the Sergeant the
11 truth, words to that effect, and then of course Maynard
12 started to talk and as I see here it was -- there's a
13 paragraph there and then it's all question and answer from
14 there and when this statement was completed Urquhart and I
15 signed it and on an extra page here I put down the names
16 of Mrs. Beulah Chant, Mother, Lawrence Burke, Probation
17 Officer, Juvenile Court, Chief Wayne R. Magee, Urquhart and
18 myself. I put down their names as being present there and --
19 Q. Do you have a vivid recollection of taking that statement?
20 A. Yes, I have. Yes.
21 Q. Is there any particular reason you recall that one vividly
22 and you haven't recalled very many other ones?
23 A. No, there's no reason. I -- This statement here, of all
24 those people being present and that statement, I think, took
25 about fifty minutes. I have --

1 Q. You can recall it?
2 A. I can recall this one here, being there, yes.
3 Q. Okay.
4 A. And what took place, yeh.
5 Q. And it does contain the statement, everything that was
6 said by you or Chant other than your admonition at the beginning
7 to tell the truth or Mrs. Chant's statement to him to tell
8 the truth.
9 A. After she said that he started talking and I started to
10 write it down and I asked questions and I got answers and
11 to the best of my ability I wrote the answers down.
12 Q. Didn't you tell -- Did you say to Maynard Chant at any time throughc
13 that interview, we have somebody who saw you there. We
14 have a statement from someone who saw you there.
15 A. No, I didn't make any remarks like that.
16 Q. Any suggestion at all that what he was telling you was
17 inconsistent with what you had been told by any other witness?
18 A. Inconsistent with what I'd been told by any other witness.
19 Q. Any statement to Maynard that anything he said that day
20 is -- doesn't correspond with --
21 A. No.
22 Q. -- what you'd been told by another witness?
23 A. No, I didn't.
24 Q. No suggestion of that?
25 A. No, sir.

2:48 p.m.

JOHN F. MacINTYRE, by Mr. MacDonald

1 Q. Okay. I want to refer you again to some evidence if
2 I could to get your comments. Mrs. Chant, and this
3 is on page 3534, it's in volume twenty and this is
4 a statement that she says was made at her home and she
5 says the Sydney Police came to her on to get her -- to
6 get Maynard and this is what she said:

7 Yes. They said they had a witness to
8 prove that Maynard had been there
and that he was lying.

9 Question was:

10 Was this said to you in the house?

11 The answer was:

12 Yes.

13 And then on 3540 the question was:

14 ...do you recall this being stated at
the Louisbourg Town Hall that this
15 eye witness was there -- that they
had other evidence to prove that
16 Maynard was lying?

17 A. Yes.

18 Was that ever said to him?

19 A. That was never said to them by me and I was the only
20 person that done the talking there.

21 MR. PUGSLEY:

22 In fairness to the people involved, it's my recollection of the
23 evidence that Wayne Magee said that he was the one that picked
24 up Chant.

25

2:50 p.m.

1 MR. MacDONALD:

2 I appreciate that. That's why I identified that it happened

3 at the house.

4 MR. PUGSLEY:

5 Yes, right.

6 MR. MacDONALD:

7 That's why --

8 MR. PUGSLEY:

9 Mrs. Chant is certainly in conflict with Wayne Magee's evidence

10 on that point.

11 BY MR. MacDONALD:

12 Q. And Maynard Chant -- I'll just refer to some of them.

13 This is on page 866, Volume 5. I guess, actually 855 first.

14 This is about starting at line 11, 855:

15 So at one point in time through
16 the questioning, they had told
me that there was a, that they
17 had a witness there that had told
a story and he said that he saw
18 me there. And that I had seen
what he had seen regarding to the,
19 to the incident that had happened
that night on May the 30th.

20 You have a recollection now of being
told that during that interview?

21 A. Yes.

22 And down the bottom:

23 Who told you?

24 I believe it was MacIntyre.

25 Did you ever say that?

1 A. No, that is not right.
2 Q. And just without referring to them all, it's also similar
3 statements down on pages 866, 868, 872, 943, 44, 961, 62
4 and 64 of Maynard Chant's evidence. You heard him
5 Chief, say that numerous times didn't you?
6 A. Yes.
7 Q. You heard him testify here?
8 A. Yes, sorry.
9 Q. But you say you never said that to him?
10 A. No.
11 Q. Would you have in telling Chant you must have seen
12 something --
13 A. No, I -- The statement I took from him is down here
14 in question and answer form, sir.
15 Q. Okay. Let me read to you from the evidence of Wayne Magee.
16 A. Yes.
17 Q. It's on page 3634. That's in volume 20. Down at the
18 bottom of line 20:
19 Do you recall the format of the
20 interview whether or not it was
a discussion or whether or not it
21 was a more formal question and
answer approach?
22 A. Detective MacIntyre conveyed to Maynard
that certain information in a prior
23 statement did not correspond with other
information that they had obtained afterwards
24 and that they wanted more or less some
clarification pertaining to the first
25 statement...

2:53 p.m.

1 Did you do that?
2 A. No, I --
3 Q. Did you tell Maynard --
4 A. No, only on -- at the opening of the statement, as I
5 said before, I told his mother why I was out there. That
6 I had taken a statement from Maynard before and I didn't
7 think I was getting all the truth and that I had a very
8 serious case on my hands and I'm out here to get the truth
9 today and is that to much to ask.
10 Q. Did you tell Maynard --
11 A. That's what I remember saying, sir, and a statement started.
12 Q. Did you tell Maynard, as Wayne Magee testified, that certain
13 information in a prior statement did not correspond with
14 other information that you had obtained afterwards?
15 A. No. No, I didn't say that, no, but I imagine that might
16 have been the way he tried to put what I did say first.
17 I don't know what he had in mind there. I thought it
18 was very neutral that day. Everything went along, I thought,
19 fine and there was no questions asked except for myself.
20 Q. Let me read you something else that Wayne MaGee said.
21 A. Yes.
22 Q. This is on page 3647:
23 Now, you've related to us the --
24 you recall comments being made to
the effect that there was information
that was inconsistent with what
25 Maynard had said?

A. Yes.

Q. And you wanted to question Maynard again. Do you have any recollection of what that other information was that the police had at that time?

A. I can't recall specifics. I do recall that there was answers that Maynard gave to Detective MacIntyre that, I think, he felt that wasn't quite right and that he would -- he may say well, we were talking with this individual and they said this and -- that line of questioning...

Did that happen?

A. No, what happened there, is written down here, the questions and answers as I put them down, sir.

Q. And then on the bottom of page 3648 continuing on to 49. Again, Wayne Magee:

Q. Okay. If I understand you correctly, and please correct me if I'm wrong, was there a sort of a scene painted for Maynard so that he could put himself into it?

A. I don't think that would -- that that was the case. I believe that Maynard was -- he might have been getting confused and he was given advice as to well, you know, this one in this statement didn't say that. You know, what's the situation here or there...

Magee's wrong about that too, is he?

A. I --

Q. Did you tell Maynard Chant during that interview that he could be in trouble if he was lying or that he could

2:56 p.m.

be charged?

A. No, sir.

Q. On page 3541, Mrs. Chant. She was asked:

> Q. While you were in the room, do you recall any reference being made to the fact that Maynard was on probation and could get in some trouble?
>
> A. Yes...
>
> Q. Do you recall who made that reference?
>
> A. No, I don't know. But I know -- It was said that he was on probation and he could be in a lot of trouble if he didn't tell the truth...
>
> Q. Who was doing most of the talking?
>
> A. I believe it was Sergeant MacIntyre.

A. Yeh.

Q. Was that ever said?

A. No, sir.

1 Q. So then, so I understand it, the statement that we've got here
2 is typed on page 46 -- starting on page 46 of 16 and continued.
3 That contains everything that was said other than your initial
4 comments?
5 A. Yes.
6 Q. Would it be question/answer, or would there be periods of dis-
7 cussion take place and then you would write down the answers?
8 A. No, it'd be question and answer.
9 Q. Would there be periods of discussion for two or three minutes
10 before you'd write down an answer?
11 A. No, there wouldn't be two or three minutes. I'd ask a question
12 and then I'd get the answer from him and would proceed with a
13 question. They were very short answers.
14 Q. Let me read to you just another passage from the evidence of Wayne
15 Magee. This is found on page 3662.
16 Q. But you said they would quiz
17 each other. I want an example
of Maynard Chant quizzing
18 Sergeant MacIntyre.
19 A. That's my error. I totally
meant that Detective
20 MacIntyre was asking-was
asking the questioning --
21 questions and Maynard was
answering. There was no
22 argumentative type answer --
question-answer.
23 Q. Well, as an example that I might
dream up --
24
25 A. Yes.

2:59 p.m.

1 And this is in the form of a question, Chief.

2 Q. -- of Maynard Chant quizzing
3 Sergeant MacIntyre would be:
"Sergeant MacIntyre, how can
4 I swear to this if it didn't
happen? Sergeant MacIntyre,
5 I've told you a number of times
I wasn't there and didn't see
6 the murder. How can I confess
that he did it, that this man
7 did it?" Those are examples,
are they not, of Chant quizzing
8 MacIntyre?

9 Magee said:

10 A. Well, they would be examples,
but I do not recall it being
11 said.

12 Question -- This is what I wanted to direct your attention to.

13 Q. You said that there were periods
of one and a half to two minutes
14 of questioning before the answer
would be written down. Correct?
15
16 A. That would be my estimate, more
or less...

17 Could that have happened?

18 A. Well, it took time to write -- for me to write the question

19 and time to answer it and it took time to -- I mean, it took

20 time to write the answer down.

21 Q. Okay, let's go to the --

22 A. I thought it was fairly fast.

23 Q. -- statement on page 46. He says:

24 Last Friday night after 11:30...
I left the Acadian Lines on
25 Bentinck...and walked down

1 Bentinck St. to the tracks.
Then I started down the tracks
2 toward George St.

3 Now, as I understand that, Chief, he's coming down Bentinck
4 Street until he hits the tracks, and then he starts walking
5 down the track heading toward George Street.

6 A. That's right.

7 Q. That's right?

8 A. Yeh.

9 Q. Okay. Now, you had been told by Pratico that he was standing
10 on the tracks there. Did it occur that Chant and he may have
11 bumped into one another?

12 A. I thought that he was -- Although that says that here, I was of
13 the opinion that he was by the bush, that he wasn't between the
14 rails.

15 Q. "He" being Pratico?

16 A. Yeh. Yeh.

17 Q. That's what Chant says.

18 I noticed a dark haired fellow
sort of hiding in the bushes about
19 opposite the second house on
Crescent St.
20

21 Now, that's where Pratico was supposed to be, isn't it?

22 A. That's where he was supposed to be, yes.

23 Q. Did you tell that to Chant, that that's where Pratico was
24 supposed to be?

25 A. No, sir.

3:03 p.m.

1 Q. Okay. He just came up with that himself?
2 A. That's right, sir.
3 Q. That he put Chant in the same place that you say Chant was
4 supposed to be? Is that correct?
5 A. That's right.
6 Q. You have no suggestion or indication that there was any
7 collaboration between Chant and Pratico, do you?
8 A. No, I didn't suspect anything like that had -- In fact, I didn't
9 think they -- I was of the opinion they didn't even know one
10 another.
11 Q. All right.
12 A. But I think he said something later on that he might've seen
13 this fellow at a dance in Louisbourg or something.
14 Q. Well, let's just go on.
15 A. Yeh.
16 Q. Did you know him.
17 A. No, I did not know his
name but I had seen him
18 before out at the dances
in Louisbourg.
19
Q. Did you see him since?
20
A. Sunday afternoon at the
21 Police Office in Sydney.
22 So he had seen him in the police office in Sydney. That's what
23 he told you, wasn't it?
24 A. That's what he's saying there, yeh.
25 Q. Even though you tried to keep them separate and apart?

1 A. That's correct, sir.

2 ...I walked by this fellow on
the track...
3

4 A. Yes.

5 Q. ...I looked back to see what he
was looking at. Then I saw 2
6 fellows standing about 1½ feet
from each other on Crescent St.
7 near the house with the railing
up the middle...
8

9 A. Yeh.

10 Q. Now, what house would that be?

11 A. That's be the grey house. That's be Campbell's.

12 Q. Is that the --

13 A. That's the house on this side of the green apartment there.

14 Q. On the west side of the green apartment?

15 A. On the west side, right.

16 Q. Is that about where the incident happened?

17 A. That's about where the incident happened, yes.

18 Q. ...The same house which I called
the police from.
19

20 A. That's --

21 Q. -- There was --

22 ...an old man with grey hair &
glasses answered the door.
23

24 Is that Mr. Campbell.

25 A. That's be correct. He's deceased now, yes.

1 Q. Did you ever talk with Mr. Campbell?
2 A. Yes.
3 Q. And what did you find out from him?
4 A. I'm not -- I don't know if I talked about this or not to
5 Mr. Campbell. I don't recall, but I don't -- knew the Campbells
6 very well, you know, and I did -- I was in the area there.
7 I remember chatting with him. I don't -- can't recall my
8 conversation at this time.
9 Q. You don't know if you went to see him after --
10 A. I think I did.
11 Q. -- Chant gave you this statement?
12 A. I would say I did. I think I did. I knew them very well.
13 Q. Now, he says that he was on the tracks. This is on top of
14 page 47.
15 Q. How long were you on the tracks
16 watching them?
17 A. About 5 minutes.
18 Did you ask him if he saw anyone else there on the tracks or --
19 A. No, I didn't. No, I don't think I did, no.
20 Q. Then he goes on, Chief, to say that he saw Marshall haul a knife
21 from his pocket and jab the other fellow with it on the right
22 side. He saw him jab it in and slit it down. Where did you
23 understand Chant was standing when he was observing all this?
24 A. The -- It'd be the west side of the trestle there joining the
25 two parks -- where the two parks -- where the culvert is on the
track there.

3:07 p.m.

1 Q. So he would be on the Bentinck side --

2 A. Be on the Bentinck side of that.

3 Q. Bentinck Street side of that?

4 A. That's right, yeh.

5 Q. And you thought it would be -- from where he was standing, he

6 could see that sort of activity, jab it in and slit it down.

7 A. Well, that's what he said.

8 Q. And did you think that that was believable?

9 A. Well, I took his story, and I believe he could see some -- he

10 could see some activity going on there.

11 Q. He then says:

12 A. When Marshall drove the knife
13 in, Seale, he bent over.

14 When Chant gave you a statement on May 30th, he said he didn't

15 know Seale.

16 A. That's right, yeh.

17 Q. Were you surprised that he is now identifying who was stabbed?

18 A. Well, this is on June the 4th, unless he heard -- got the names

19 since that.

20 Q. All right. Then he says he ran down George Street -- down

21 toward George Street, down the tracks onto Byng Avenue. So what

22 he's doing there, isn't it, he's running across that trestle,

23 down the path onto Byng Avenue?

24 A. That's right, sir.

25 Q. And he runs into Marshall right at Mattson's house. We know

1 that, don't we?
2 A. Yes. Yes.
3 Q. Which is almost directly across from the path that he would
4 come down.
5 A. Yes, pretty close to it. Pretty close to it.
6 Q. And that's where he met Marshall?
7 A. Yes.
8 Q. Well, Marshall would've had to run from the scene of the
9 incident, up Crescent, down Bentinck, and along Byng -- two-
10 thirds of the way along Byng Avenue to catch Chant. Yes?
11 A. Yes. Yes.
12 Q. While Chant is going a relatively small distance.
13 A. Wait now. Wait. Chant says:
14 ...Then I ran toward George St.
15 down the tracks. I went into the Park, through the Park; then
16 up to George St.; crossed the tracks and then on to Byng Ave. -
17 about 3 houses over I met Donald Marshall...
18 So he would go down the tracks and he would then cut into the
19 park area and then up to George, across the track again and
20 then over to Byng Avenue.
21 Q. So you think he would run all the way down to George Street --
22 A. That's what he's saying here, sir, you know.
23 Q. Okay. Now, that doesn't make much sense, does it, Chief? Why
24 would he be doing that?
25 A. Well, I haven't got an answer for it unless he -- after what

1 he'd seen, probably got worked up over it. I don't know what
2 took him there.
3 Q. It's not a very logical route for him to be heading back to the
4 bus station?
5 A. No, that is -- That's what he said, though, what I've written
6 down there.
7 Q. Did you -- Did it raise any question in your mind?
8 A. No, not at that time.
9 Q. You would know, though, at that time that, according to his
10 story, Marshall would've had to run from that grey house on
11 Crescent Street, up to Bentinck, north on Bentinck, onto Byng
12 Avenue and over there. Is that correct?
13 A. Yeh, but it --
14 Q. Yeh. Did it ever occur to you that in the meantime, Pratico,
15 who was also running in the same place, and Marshall should've
16 come upon one another?
17 A. No, I would say Marshall would be ahead of -- If he took off up
18 Bentinck Street, he would have a -- He'd -- whether he was
19 running or walking, I don't know.
20 Q. Who is?
21 A. Pratico. But he would have a head start on the other fellow
22 if he took off at that -- you know, at the moment he --
23 Q. Didn't it strike you strange though that everybody -- There's
24 a couple of people running around Bentinck Street there.
25 They're not seeing each other. They're not bumping into each

3:11 p.m.

1 other.

2 A. Now, once he would clear Byng Avenue on -- going up Bentinck,

3 then Marshall would be -- He'd be out of Marshall's reach.

4 Q. Down toward the bottom of page 47, in that long paragraph, he

5 says:

6 ...At the time a car came along
and Donald stopped it and...asked
7 for help...

8 What efforts were made by you to find the driver of that car?

9 A. I -- The driver of the car wasn't picked up, but I thought

10 there might've been a note on something here -- one of the

11 notes.

12 Q. You had known about that car from the first time you spoke with

13 Chant on Sunday. That's in his first statement as well.

14 A. Yes.

15 Q. What efforts did you make to find the driver of that car so you

16 could interview him and find out if he knew anything?

17 A. I didn't -- I don't think I made any effort.

18 Q. Wouldn't you think that that person may be an important witness?

19 A. Well, yes, I suppose, in -- to what they might've been told

20 at the time.

21 Q. But you didn't make any effort to get --

22 A. Well, it didn't come to my attention at that time, and I didn't

23 know who it was.

24 Q. On page 48, you ask this question of Chant:

25 Q. Did Donald Marshall call the

1 police or ambulance at any time?
2 Why were you asking him that question?
3 A. Well, I wanted to know if he did.
4 Q. Why?
5 A. Why? Because I thought it would -- I thought that he should've
6 called. I thought that probably he should've got help on
7 Crescent Street before he left the area if that man was injured.
8 Q. But was this again evidence --
9 A. No.
10 Q. -- that you considered important to point the finger of guilt
11 to Marshall?
12 A. No, I was wondering why he didn't try to get help before he
13 went to Byng Avenue from one of the houses along Crescent
14 Street for his buddy at the time.
15 Q. Did you ask Marshall that?
16 A. I couldn't say if it's in his statement of not.
17 Q. I don't believe it --
18 A. I don't think it is.
19 Q. Why didn't you ask him if you were wondering about it?
20 A. I just didn't, sir.
21 Q. Having got this statement from Chant, did you compare it with
22 his earlier one or did you just disregard the earlier one
23 totally?
24 A. Well, when we got this statement here into Louisbourg -- from
25 Louisbourg, we went to see the Crown with it; so --

3:15 p.m.

1 Q. At this time --
2 A. And a discussion took place on it.
3 Q. At this time, did you think you had the truth?
4 A. I thought that that was a -- Coupled with the other statement
5 as --
6 Q. The other statement being Pratico?
7 A. Pratico's and what this chap here said he seen. They didn't
8 know one another. They lived thirty-one miles apart, and
9 given this type of statement, I thought that the -- that I
10 was getting the truth from them.
11 Q. You thought you were getting the truth?
12 A. I thought I was, yes.
13 Q. Did you ask him why he told you an untrue statement earlier?
14 A. No.
15 Q. Why not?
16 A. Well, I didn't, sir.
17 Q. But that would be a -- I would think -- just a fundamental
18 question you would ask him.
19 A. Yeh. No, I didn't go into that?
20 Q. Weren't you interested?
21 A. It would've been here if I had asked him that question.
22 Q. Well, weren't you interested?
23 A. Well, I was interested. Yes, I was, but I didn't ask him the
24 question there.
25 Q. Why didn't you have all of the witnesses or all the people

1 you've said were present -- Why didn't you have them all sign
2 the report or your handwritten statement?
3 A. Do you mean on the statement?
4 Q. Yes.
5 A. Yeh. I didn't think it was necessary at the time as long as I --
6 I felt it was necessary for me to write their names down in
7 case it had to be referred to at a later time that they were
8 there. Urquhart and I witnessed the statement, and I just wrote
9 it on another sheet here, that's all.
10 Q. Now, you -- Then on June the 4th at three forty-five p.m. in
11 the afternoon, had two statements from witnesses who like
12 you just said lived thirty-one miles apart, no connection one
13 with the other.
14 A. Not that I knew of, no.
15 Q. Who told you that Junior Marshall had stabbed Sandy Seale?
16 A. That's right.
17 Q. Can I come back to the question I asked you this morning, Chief?
18 Who do you believe stabbed Sandy Seale?
19 A. At this time here --
20 Q. No, now.
21 A. Well, I suppose, I would have to say that -- To be honest with
22 you, I'm a little confused over the thing. Everybody says they
23 were lying at this time and --
24 Q. Do you believe today --
25 A. You know, I ask when, you know, when are they telling the truth?

3:18 p.m.

1 Q. Do you believe today --
2 A. You know.
3 Q. -- that Donald Marshall stabbed Sandy Seale?
4 A. The Court has found Mr. Ebsary guilty, and I would have to go
5 along with the findings of the Court on that, sir.
6 Q. I recognize as the --
7 A. No, it's not what I -- It's not what I think. I mean, I have
8 thoughts on many people who took part in this and the
9 confusion that it caused and the lies that were told, and I
10 thought I was getting the truth in '71, and it was quite a
11 surprise, you know, to find out that this did take place, and
12 I thought I --
13 Q. Do you believe today that Maynard Chant lied to you on June the
14 4th, 1971, when he said he saw Marshall stab Seale?
15 A. Well, if -- I'll put it this way. If Ebsary was convicted of
16 the offence, the evidence couldn't have been there, sir. He
17 says he lied to me in '71.
18 Q. And I'm asking, do you now --
19 A. You know, if he says he lied, and the Court has convicted some-
20 body else, I'll have to take the ruling of the Court.
21 Q. Yeh, I know you will do that as a police officer.
22 A. Yeh. Yeh.
23 Q. You will do that, and that's your --
24 A. Yeh.
25 Q. -- training, but do you believe in your heart of hearts that

3:20 p.m.

1 Marshall did not stab Seale?
2 A. Well, I believe in '71 that -- I believed that at that time,
3 but in '82, I had to take another look at it. And --
4 Q. And what about '87? What do you say today?
5 A. Eighty-seven?
6 Q. Yeh. Deep down, what's your belief?
7 A. Well, I think now, from what I hear, that Ebsary did have a --
8 did have a -- did stab Seale.
9 Q. Okay. Thank you. And if that's the case, then you will agree
10 with me that Chant and Pratico certainly couldn't have seen
11 Marshall stab Seale?
12 A. No, they said they lied to me.
13 Q. Yeh, so they could not have seen --
14 A. That'd mean they lied to me. But are -- You know, on the other
15 hand -- My problem is this. Are they reliable witnesses at
16 any time, you know?
17 Q. Can we come back to the same point then, Chief?
18 A. You know, I don't know.
19 Q. Are you saying --
20 A. You know, I mean --
21 Q. Are you saying that you're not convinced? You really don't
22 believe --
23 A. You know, I wouldn't believe Chant today, no.
24 Q. You wouldn't believe him today?
25 A. No. No.

1 Q. So when he says, he lied to you --
2 A. Well, I heard him on the stand here and when I was taking the
3 statement, I was walking up and down the hall -- or the room
4 in Louisbourg and what have you. That wasn't true; so, you
5 know, he wasn't telling the truth about that and other state-
6 ments he was making.
7 Q. So you wouldn't believe him today?
8 A. No, not listening to him now, and he said he lied to me and
9 then -- He lied twice to me.
10 Q. Okay. You don't believe him today?
11 A. Yeh.
12 Q. You don't believe Chant?
13 A. Yeh.
14 Q. And this may be a double negative: -- And are you saying you
15 don't believe that he lied to you in -- You don't believe him
16 when he said he lied to you in June of 1971?
17 MR. PUGSLEY:
18 I don't even follow that question. If you can repeat it.
19 THE WITNESS:
20 This is getting --
21 MR. PUGSLEY:
22 I don't understand the question.
23 BY MR. MacDONALD:
24 Q. You don't believe anything Chant said?
25 A. I believed Chant in '71, sir.

1 Q. Yeh. You don't believe him today?
2 A. And I believe Pratico in '71, sir.
3 Q. I know that. I know that.
4 A. Yes. The Court has ruled different on evidence that they got
5 since that in '82.
6 Q. You don't believe Chant today?
7 A. Well, I -- I've heard him on the stand, sir, and I ask, you
8 know -- I don't think you were getting the truth in '82 either.
9 You don't -- getting all the truth now.
10 Q. You don't believe Chant today? Yes?
11 A. I don't believe him in which --
12 Q. When he -- You don't believe Chant's evidence?
13 A. You mean back -- that he gave in '71 or that he gave when?
14 Q. The evidence that Chant gave to the Commission here, you don't
15 believe it?
16 A. Well, Chant told the Commission that when I was taking a state-
17 ment, sir, that I was walking up down the -- which I wasn't,
18 and that's not truthful. That's what I'm talking about.
19 Q. Chant said --
20 A. And I think that's the evidence that Chant put before the
21 Commission for My Lords to believe, and I was sitting down
22 when -- at all times when I took this statement. Still, he
23 made a statement here under oath that I was on my feet and that
24 I was walking. Am I correct, sir?
25 Q. So did a couple of other witness, Chief.

1 A. Yeh, but this was -- Well, we're talking about Chant now.
2 Q. Yeh, we're talking about Chant.
3 A. Yeh.
4 Q. When Chant says he lied to you in 1971, when he said that -- You
5 know he has said that in the Appeal Division. You know he has
6 said that in the Trial Division on three or four times. You
7 know he has said it to the Commission. Do you believe that?
8 A. I have to believe, don't I?
9 A. You do accept that evidence?
10 A. I have to believe it at this time because that's what --
11 Q. And when Pratico says that he lied to you in June of 1971, do
12 you believe that?
13 A. At this time, I go along with the Courts. The Courts believe
14 that they lied at that time. They said they lied at that time.
15 What else could I have to --
16 Q. When Pratico says he lied to you in June -- on June 4th, 1971,
17 do you believe that?
18 A. Well, it was the evidence of the witnesses who told -- I thought
19 told me the truth in '71, that turned the conviction over in '82
20 by the Court.
21 Q. I'll repeat it again, Chief, and I'm going to keep saying it
22 at least until you give me an answer.
23 MR. PUGSLEY:
24 With respect, that's unfair. My friend's been at this for the last
25 fifteen or twenty minutes as to whether or not he believes that

1 Seale was stabbed by Ebsary, and he said he did and he was at him
2 for fifteen minutes this morning. How this is relevant I really
3 don't quite see but I think my friend is now getting to the point
4 where he is badgering the witness.
5 MR. CHAIRMAN:
6 Well, our terms of reference asks us to examine the investigation
7 into the death of Sandy Seale and clearly a very relevant and key
8 part of that investigation was the interviews of Maynard Vincent
9 Chant and John Pratico; and in that context, it is, in my
10 opinion, a relevant question. The question I think that is being
11 -- that an answer is being sought from is a rather simple one and
12 that is, does Mr. MacIntyre today believe Maynard Chant when he
13 now says under oath "I did not see Junior Marshall stab Sandy
14 Seale.". That's the question and I'm still waiting for that
15 answer too.
16 BY MR. CHAIRMAN:
17 Q. So what's the answer to the question, Mr. MacIntyre?
18
19
20
21
22
23
24
25

1 A. I'd say I'd have to believe that.
2 BY Mr. MacDonald:
3 Q. And the same thing for John Pratico?
4 A. Yes.
5 MR. MacDONALD:
6 I think this would be an appropriate time to break, My Lord.
7 MR. CHAIRMAN:
8 Okay.
9
10 INQUIRY ADJOURNED AT: 3:27 p.m., AND RECONVENED AT: 3:43 p.m.
11
12 BY MR. MacDONALD:
13 Q. Chief MacIntyre, I don't know if it's possible, sir, but if
14 you just could sort of keep your hand available to flip from
15 the Statement of Pratico to the Statement of Chant on June
16 the 4th --
17 A. Yeh.
18 Q. --so we can go one to the other. Now these are two people,
19 as you've described them they're thirty-one miles apart, they
20 don't know each other and they certainly haven't collaborated;
21 but they have told an amazingly similar story and I'd just like
22 to point out some of the similarities and see if you agree
23 with me that this story is very similar. Mr. Pratico said
24 he was on the tracks and could see where the incident was
25 happening about thirty or forty feet away. We've already seen

1 that as you recall.
2 A. Yeh.
3 Q. And Chant said he was on the track and he saw Pratico in the
4 bushes. Of course, the evidence of Pratico is that he wasn't
5 in the bushes at all. He wasn't there. But in any event,
6 that's what's in the statement. And then both of them say
7 that they saw Seale and Marshall arguing. That's in both
8 of their statements, isn't that correct? In Chant's on page 41
9 toward the bottom of that last -- of the last long paragraph.
10 COMMISSIONER EVANS:
11 Pratico?
12 THE WITNESS:
13 Pratico, yes.
14 MR. MacDONALD:
15 I'm sorry, Pratico.
16 BY MR. MacDONALD:
17 Q. See where he says:
18 They were standing at this time where
19 the incident happened. They were still arguing.
20 A. Yes.
21 Q. And you have Pratico saying -- I'm trying to find that in
22 Chant's. Just give me a moment.
23 A. Yeh, that's up at page 47.
24 Q. On 47?
25 A. Yes, one, two, three, four, fourth line down.

1 Q. The fourth line:

2 I...heard a mumbling of swearing.

3 So that they were both suggesting that they were arguing,

4 and then they both say that Sandy Seale was facing the

5 tracks. Do you see that? That's on page 41 of Pratico --

6 A. Facing the tracks, yes.

7 Q. --and on page 46 of Chant: (The)

8 A. Short dark fellow was facing the tracks.

9

10 Do you see that?

11 A. Yes.

12 Q. They say Marshall was facing the other way. They both say

13 that. And they both say -- or at least Chant says they were

14 about one and a half feet away from each other. Oh, yes, on

15 46 about halfway down:

16 Then I saw 2 fellows standing about 1½ ft. from each other...

17

18 That's what Mr. Chant said. And Pratico said they were within

19 arms length. Yes, on page 41:

20 Q. How close were they

21 A. Arms length

22 A. Yes.

23 Q. Pratico said Marshall's hand went toward the left side of

24 Seale's stomach, and Chant said Marshall took a knife from

25 his pocket and jabbed the right-hand side of Seale. And Chant

3:48 p.m.

1 says Seale bent over and Pratico says Seale fell and Marshall
2 ran away. Now you would agree with me, Chief, that those --
3 there's a lot of similarities in those stories?
4 A. Yes.
5 Q. And that was compelling to you in June, 1971, when you heard
6 it?
7 A. Yes.
8 Q. Do you have any suggestion you can give the Commission as to how
9 two people completely unconnected with no opportunities
10 to collaborate could possibly have come up with that same
11 story?
12 A. That's what bothered me. That's why I said they didn't even
13 know one another.
14 Q. Isn't the only possibility -- Isn't there only two possibilities;
15 one, that they were telling the truth, or secondly, that someone
16 must have prompted them and given them the information?
17 A. Somebody must have prompted them.
18 Q. And given them the information?
19 A. Well --
20 Q. There's no other possible -- no other probable way, is there?
21 A. That's what I've been saying all along.
22 Q. That -- What, either they saw it happen --
23 A. Well, if they weren't there how could they make those
24 statements. That's what I was saying.
25 Q. Well, they could make them if, for example, Chant was telling

1 the truth when he gave evidence here and said that you told
2 him he had -- that you had a witness who saw him there and
3 he asked you, "All right, tell me, what did he say I saw"?
4 A. And I'm saying that I didn't tell Chant anything.
5 Q. I know you are.
6 A. Yeh, so that's -- as far as I'm concerned, that's out, you know.
7 Q. It could happen if Pratico -- if you had taken Pratico to the
8 park as you say you did, and showed him where he was and what
9 happened?
10 A. No, I--show him where who was, Chant?
11 Q. No, where Pratico was. Where he was supposed to be.
12 A. I wouldn't suggest where he was supposed to be. I would want
13 to know where he was at, sir.
14 Q. Can you come up -- Can you offer any other possible, reasonable
15 explanation for the fact that these guys came up with
16 identical stories, other than this, either that they're telling
17 the truth that they did see Marshall stab Seale or that
18 someone told them -- put the evidence in their mouth?
19 A. No, I can't.
20 MR. PUGSLEY:
21 Whether or not they are similar as my friend suggests or whether
22 or not they are different as I will submit is a matter of argument
23 and I will be submitting an argument how these two stories were
24 concocted.
25 MR. MacDONALD:
Well, let me put this to you --

3:50 p.m.

1 MR. PUGSLEY:
2 And this is a matter of argument and my friend is putting it.
3 MR. CHAIRMAN:
4 The question itself is not an argumentative one, Mr. Pugsley, but
5 there are differences in the two statements and they have been
6 drawn -- these differences have been drawn to the attention of
7 the witness, but there are some similarities as well, and so that
8 the statement -- the opportunity that is presented to Mr. MacIntyre
9 to let us have his reason as to why the similarities, wherever there
10 are similarities are contained in these two statements, that's
11 relevant. And I think it's fair to give him the opportunity at
12 this time to advance his views or opinion based on his years in
13 the -- in the Police Department as a Detective as to how that
14 could happen. Now when it comes to argument it's perfectly within
15 your rights, and I'm sure you will do -- submit to the Commission
16 that there are a lot of dissimilarities in these statements.
17 MR. PUGSLEY:
18 Yes, I will, My Lord.
19 BY MR. MacDONALD:
20 Q. Chief, let me put it this way, whatever the similarities
21 or dissimilarities may be, they both said that they saw
22 Marshall stab Seale, isn't that correct?
23 A. Correct.
24 Q. And there's no -- no difference there. Now I'm inviting you,
25 if you can come up with any other reasonable explanation that

1 two people say they saw Seale stab Marshall other than they
2 did see it or that someone -- two people that had no
3 opportunity to meet and collaborate, someone must have told
4 them that they saw it, put the words in their mouth. Is
5 there any other possibility that you can offer to us?
6 A. No, I -- but I always -- that was the -- that's what I always
7 looked at, how two people that didn't know one another and
8 lived that far apart could tell a story like this and not be
9 there. That was my opinion all along, sir.
10 Q. But the other --
11 A. You know, it's hard -- hard to believe. It's --
12 Q. It's hard to believe?
13 A. Yeh, that they -- Yeh, without them being there.
14 Q. Or without somebody -- And I'm not inviting you to accept this,
15 but I'm saying that --
16 A. No.
17 Q. --the other reasonable explanation is that someone gave them
18 that information, someone put the words in their mouth?
19 COMMISSIONER EVANS:
20 There's another alternative; or that they collaborated unknown to
21 the Chief.
22 MR. MacDONALD:
23 That's correct, My Lord, and that is the third -- I --
24 THE WITNESS:
25 I have no --

1 MR. MacDONALD:
2 I'm sorry.
3 THE WITNESS:
4 I have no --
5 MR. MacDONALD:
6 I premised that on the basis that there had been no collaboration.
7 THE WITNESS:
8 Yeh, I didn't know of any, you know.
9 BY MR. MacDONALD:
10 Q. Now as of June 4th, would you agree, to that date you had really
11 taken no active step to investigate anything other than the
12 possibility that Junior Marshall had killed Seale?
13 MR. PUGSLEY:
14 I'm sorry, I missed that question, Mr. MacDonald, would you repeat
15 it please.
16 BY MR. MacDONALD:
17 Q. That as of June 4th, you had taken no active step, and by that,
18 Chief, I mean going around and doing investigating yourself
19 to show anything other than that Junior Marshall was the
20 guilty party?
21 A. Guilty party after those statements were taken?
22 Q. Yes, prior to the statements you've gone to Doctor Virick
23 because you were -- really, you weren't accepting that this
24 wound had been caused by a stab, at least you were
25 questioning it, you had the jacket and that raised questions

3:54 p.m.

1 in your mind as well?
2 A. That's right.
3 Q. And you believed when you went out to Pratico on June 4th
4 that Marshall had told him the story that he had told you on
5 May the 30th. Had you done anything active now,as opposed
6 to sitting around waiting for something to come to you to
7 prove any other theory other than that Marshall was guilty?
8 A. It was after those two statements were taken and I interviewed
9 the Crown that Marshall was charged.
10 Q. I appreciate that. I know when he was charged.
11 A. On instructions from the Crown, sir.
12 Q. You'd made no attempt --
13 A. I could have all the theories I want. Unless I had proof of
14 it, and I thought that two eyewitnesses were proof at this
15 time and I took it to the Crown at that time, sir.
16 Q. You made no attempt to locate the men that were described
17 by Junior Marshall and by George and Sandy Seale, you made
18 no attempt?
19 A. The men weren't located.
20 Q. You made no attempt? I'm talking of John MacIntyre now.
21 A. Nothing came to my attention that would --
22 Q. Can I put it this way?
23 A. Yes.
24 Q. That you were waiting for something to come to your attention
25 on that matter?

1 A. I wasn't -- Well, of course, I was, yes.
2 Q. You had not carried out any review of the Sydney Police
3 records which might have lead you to the record of Roy Ebsary?
4 A. No.
5 Q. You had made no request for assistance from the R.C.M.P. or from
6 M.C.I.S. services?
7 A. Not at that time, no. No. No.
8 Q. You did not carry out -- or perhaps this is my recollection.
9 I may be wrong. I understood you said you did not carry out
10 a house-to-house canvas of the neighbours?
11 A. No, not a house-to-house, but I was talking to some of
12 the neighbours, but not a house-to-house.
13 Q. Would you not agree really what you were doing, Chief,
14 that you had made up your mind that Marshall was guilty
15 early and were looking for facts that fit that theory?
16 A. No, I wouldn't make up my mind on that that early at all.
17 Those are things that came to me and I was keeping them in
18 mind, but I didn't make up my mind on Donald Marshall until
19 the evidence on June the 4th when those statements were
20 received by me.
21 Q. And those statements we now know and you've accepted are
22 fabrications of the witnesses?
23 A. The -- That's what they're taken to be, yes.
24 Q. Yes. Okay. You've talked about laying the information. That
25 was after a discussion with the Crown, was it, sir?

3:58 p.m.

1 A. That's correct, sir.
2 Q. And that was Donald MacNeil?
3 A. Yes, sir.
4 Q. What did you bring to Donald MacNeil -- Was he kept up to date
5 as you did -- were carrying out your investigation?
6 A. I would say that Donnie MacNeil knew everything I was doing.
7 Q. As you carried out your investigation?
8 A. We were very close on things like this and I -- I wouldn't
9 be prepared to say that -- whether it was at one time I sat
10 down on all this with him or whether it was on a couple of
11 occasions I met him. I'm not prepared to say at this time.
12 My recollection doesn't go back to that but Donnie MacNeil
13 would know, and I would have the file with me, what was going
14 on here and what was going on and read those statements.
15 Q. Do you recall going to see Donald MacNeil after you took the
16 statements from Pratico and Chant?
17 A. The same afternoon, sir.
18 Q. And where would that have been?
19 A. That would be at the court house on Crescent Street in
20 Sydney.
21 Q. And the information you had with you was what? What did you
22 have?
23 A. I had statements -- statements from Pratico and statements
24 from Seale.
25 Q. And Chant you mean?

1 A. Or Chant I mean, yes. Yeh.
2 Q. Did you have both statements from them or just one?
3 A. I would have -- I can't say whether I had my file with me
4 that afternoon or not, you know, I can't say.
5 Q. But at least you had the latest one?
6 A. Yes, I made him aware of what was going on, yes, and he read
7 those statements and then he ordered the charge laid.
8 Q. And at that time what Donald MacNeil had placed in front of
9 him was statements from two witnesses unconnected --
10 A. That's right.
11 Q. --thirty-one miles apart both saying that they had seen
12 Donald Marshall stab Sandy Seale?
13 A. That's correct, sir.
14 Q. Do you know -- And I guess you've answered; you're not
15 sure if you had your file with you or not?
16 A. At that time, I'm not -- I'm not sure, no.
17 Q. In any event, acting on the prosecutor's instructions an
18 Information was sworn?
19 A. That's right.
20 Q. Is that correct? And you then -- Were you, yourself, involved
21 in the arrest of Donald Marshall?
22 A. That's correct.
23 Q. Tell me about that. How did that happen?
24 A. I got a warrant for his arrest and we went up to the Membertou
25 Reservation in Sydney to the home of Donald Marshall looking for

4:00 p.m.

him and we were advised there by a brother of his that, I believe he was up in Whycocomagh. I proceeded up there and we did meet -- I think we picked up an R.C.M.P. Constable in Baddeck and he went along with us, and we went up there and Donald Marshall, Jr., was there, his father was there, I think the other -- part of the family were there. We had got a warrant for Donald and I talked with -- I remember talking to the father aside and we read the -- I read the warrant to Donald and he was taken in the car to Sydney.

Q. Was there any warning of any kind given to him?

A. Yeh, I did give him a warning. I gave him a warning that you usually give and there was no communication from there to Sydney.

Q. What would the warning be? Is it a standard --

A. A standard warning, you need not say anything, you've got nothing to hope from any promise or favour, nothing to fear from any threat whether or not you say anything and anything you may say may be used as evidence.

Q. Did Donald Marshall, Jr., say anything?

A. No, no, he didn't do any talking.

Q. Did he deny?

A. No.

Q. Nothing at all?

A. Nothing, sir.

Q. Were you at that time, or when you finished getting your statements from Chant and Pratico, were you surprised that

1 Donald Marshall had in your -- as far as you knew then
2 committed this crime? Was that a surprise to you?
3 A. Well, I knew that -- I knew he was in the park that night
4 and here's two eyewitnesses saying that they seen it and
5 ordered by the Crown to lay the charge --I had to -- and
6 I was investigating the matter at the time. I had to go
7 along with his request and there's two eyewitnesses there at
8 the time that said that they seen it.
9 Q. Yeh, I know that and I'm saying that based on your knowledge
10 of Marshall, and we've gone through your experience with him,
11 were you surprised that he had done such a thing?
12 A. No, I don't think I was when I seen the -- there was
13 eyewitnesses to the thing and --
14 Q. I'm not asking you whether -- but if you did -- I'm saying
15 well, did it surprise you -- were you saying: I'm surprised that this
16 guy would have done that?
17 A. No, I don't think it hit me that way.
18 Q. And I referred you yesterday to your evidence given on Discovery
19 where you said based on your previous knowledge of him you
20 wouldn't be surprised or alarmed if he was involved in the
21 stabbing? Isn't that correct?
22 A. Yeh, he was never into anything like -- never in a stabbing
23 before but it did happen and there was eyewitnesses to it.
24 Q. Did you carry out any search of Marshall that day to determine
25 if he had any weapon?

1 A. I can't say.
2 Q. Did you get a warrant to search his home to see if he --
3 A. No.
4 Q. --had any weapon?
5 A. No, sir.
6 Q. Wouldn't that be a fairly fundamental thing to do? I mean we
7 are --You didn't have a weapon at this stage?
8 A. That's correct.
9 Q. Well, why wouldn't you have at least gone to where the fellow
10 lived to see if he had a weapon?
11 A. I didn't, sir.
12 Q. I know you didn't, Chief, but I'm trying to find out why you
13 wouldn't.
14 A. All I can say is I didn't.
15 Q. Do you agree that that would be a standard and routine thing
16 that you should have done?
17 A. Well, I wouldn't be able to identify any weapon there, I don't --
18 Q. Well, you would have been able to identify a knife if you
19 saw a knife?
20 A. Identify it as a knife, yes.
21 Q. Yes.
22 A. But it wouldn't -- It wouldn't -- At that time I don't think
23 it was -- It might. I don't know.
24 Q. Well, why would that --
25 A. Anyhow I didn't search the house for a knife, sir.

4:05 p.m.

1 Q. Yeh, I appreciate it. I'm just trying to find out if you
2 would agree that that's something that should have been
3 done?
4 A. I don't know. It could have been done, I suppose, sir,
5 but I didn't do it.
6 Q. Okay. Now during the next several days did you continue to
7 be involved with this case after Donald Marshall was arrested?
8 A. There was statements taken after that.
9 BY MR. CHAIRMAN:
10 Q. Did you ever, after the charge was laid, take your file to
11 the Crown Prosecutor, Mr. MacNeil, the entire file, the
12 file that contained the statements of the MacNeil's, the
13 statements -- the two original statements of Pratico and
14 Chant?
15 A. All I can say at this time, My Lord, is that -- I will say
16 that I did, but at this time -- at this stage I -- I --
17 Donnie MacNeil would be the type that would want the whole file,
18 would want to go over it, and I would say that I would.
19 Q. Do you recall discussing with the Crown Prosecutor the
20 differences, for want of a better word, between the original
21 statements and the second statements?
22 A. No, I -- just that they -- they had told me two different
23 statements. They lied. I would do that and then,
24 of course, leave the file -- If he wanted the file left
25 with him I would leave it with him.

4:06 p.m.

1 BY MR. MacDONALD:
2 Q. When did you decide that you would want a blood sample from
3 Donald Marshall?
4 A. I spoke to Doctor Virick about that when I was talking with
5 him.
6 Q. Is this after Marshall was arrested?
7 A. No. No, that was before that.
8 Q. How were you going to get a blood sample from him if he --
9 A. Yes, after Donald was arrested but he was -- what I meant --
10 He was in the County Gaol, that's what I meant, you know.
11 Q. And you were going -- You wanted to get a blood sample?
12 A. It was after -- Yes.
13 Q. Why?
14 A. Well, I'd like to have a blood sample. We had picked up
15 Kleenex as you know with blood on it and I'd like to know
16 the type and Doctor Virick said that he'd see what he could
17 do for me.
18 Q. Did you ever ask Marshall if he would give you one?
19 A. No, I didn't ask Donald, no.
20 Q. You knew he was represented by Counsel?
21 A. Yes.
22 Q. Did you think of asking their Counsel?
23 A. I don't know when he was represented by Counsel, sir, at that
24 time. This was -- He was remanded at the County Gaol and
25 he was to go out on Friday and I believe he was to go the

following week some time to have the stitches taken out at the City Hospital, and I spoke to Doctor Virick about it and he told me he'd see what he could do.

Q. He'd try and get you a sample?

A. He said he'd see what he could do, yes.

Q. Now do you consider that's a proper way to -- to approach getting evidence from someone who was accused of a crime?

A. Well, he was the -- he was the doctor in charge of his wound at the time and I told him to see what he could do for me.

Q. You asked him to get you -- get a sample of Marshall's blood?

A. Yes.

Q. Without advising Marshall?

A. I imagine he would ask him for it. He was going to deal with him taking the stitches out of his hand.

Q. And if you wanted the sample of blood and you were -- you were prepared to ask for it, why didn't you just go ask instead of asking the police to run around and -- I'm sorry, the doctor to run around and pick up a bandage or something? Why wouldn't you just go straight at it?

A. I didn't expect the doctor to run around at all, sir. He was going to -- He had an appointment with the doctor the following week to take his stitches out at the hospital.

Q. Did you expect the doctor would ask him, Mr. Marshall, can I take a sample of your blood?

A. Yes, I expect -- I would expect, yeh. Yeh. Yeh.

1 Q. Why would you ask the doctor to do that for you as opposed to
2 just yourself going and saying, "Can we have a sample of your
3 blood"?
4 A. Yes, I suppose -- I thought either way would -- either way would
5 be all right I suppose.
6 Q. The doctor was going to co-operate with you, was he?
7 A. He said he'd see what he could do, yes.
8 Q. Did you advise the Crown Counsel, Mr. MacNeil, that you were
9 interested in getting a blood sample from Marshall?
10 A. I can't say at this time, sir.
11 Q. Okay. There is a couple of other statements, Chief, that were
12 taken the next couple of days. I don't think that there are
13 any particular consequences. Roy Gould -- You're just
14 taking a statement of him getting the --
15 A. About -- about the jacket, yeh.
16 Q. -- getting the jacket. There's Marvel Mattson. That is one
17 that he prepared himself, isn't it? You didn't interview
18 Mr. Mattson? That's on page 59 --
19 A. Fifty-nine.
20 Q. -- of Exhibit 16.
21 A. Now I see it. I don't -- It could have been. I don't see
22 any original from me.
23
24 JMB
25

4:09 p.m.

1 Q. Okay, I believe Mr. Mattson testified that he prepared that
2 himself and just delivered it to the police.
3 A. Yeh.
4 Q. But you knew that Mattson was the person who called in the
5 report initially, didn't you?
6 A. Yes.
7 Q. And that's -- that's on your occurrence report.
8 A. That's right, yeh.
9 Q. Why wouldn't he be one of the first people you'd go see?
10 A. I believe -- I believe I was talking with him. I knew Dwight.
11 He worked -- I think he worked for the City at the time. He
12 was am ex-R.C.M.P. officer and I believe he was working for the
13 City at the time.
14 Q. Do you believe you talked with him before you got the statement?
15 A. Yeh. I think I was talking with him, sir.
16 Q. All right. John Butterworth gave evidence here, Chief. Do
17 you remember John Butterworth?
18 A. Yes.
19 Q. And he talked about a meeting with Pratico up on Charlotte
20 Street --
21 A. Yes, I --
22 Q. -- where Pratico was supposed to have advised or told him,
23 described to him a stabbing that he witnessed Marshall
24 stabbing Seale. You heard Butterworth give that evidence?
25 A. Yeh. Yes.

4:11 p.m.

1 Q. Did Butterworth ever tell you about that?
2 A. I have no recollection at this time about it.
3 Q. Is it something that you would have expected your patrolman
4 to tell you?
5 A. Yes, I would.
6 Q. But you don't recall him telling you?
7 A. No, I don't recall. No.
8 Q. There was an incident involving Tom Christmas and alleged
9 threats against John Pratico. Do you remember those? Do
10 you remember that incident?
11 A. Yes, I knew there was -- a recollection that there was a
12 charge laid there, I believe.
13 Q. Yes. And that was Exhibit 22, Chief. I think you have it
14 in front of you, as well. Do you? If you'll turn to page
15 sixteen.
16 A. In Volume 16?
17 Q. No, I'm sorry, in Volume 22, volume 16. Yes, I think it's
18 that one, I think.
19 A. Which one?
20 Q. The one on the bottom.
21 A. No number on it. Oh, yeh. Volume 22. Page what?
22 Q. Page 16.
23 A. Thank you. Yes.
24 Q. Do you have that page 16?
25 A. I have it.

1 Q. Now that's an Information sworn by you, is it not? Yes?
2 A. Yeh, the one that -- pardon me, yes.
3 Q. And do you recall that event?
4 A. My name is on the Information and it's not that clear
5 to me at this time.
6 Q. You don't remember it?
7 A. Well, I remember there was something about -- about it
8 but I just can't give you the details at this time.
9 Q. When you took the statement from John Pratico on June
10 the 4th, did you tell him to keep away -- not to associate
11 with Indians and not to discuss his evidence with anybody?
12 A. No.
13 Q. You never told him that?
14 A. No.
15 Q. And in particular, did you tell him not to go near Tom
16 Christmas?
17 A. No.
18 Q. Let me ask you to look at page 25 of Volume 22. This
19 is the transcript of the preliminary inquiry for Tom
20 Christmas on that charge of obstructing justice.
21 A. Yes.
22 Q. And this is the evidence given by Margaret Pratico.
23 Was it your practice, Chief, as a -- when you were the
24 informant to be present during preliminary inquiries?
25 A. Yes.

1 Q. Okay. I want you to look at page 25 and starting
2 about a quarter of the way down:
3 Did anybody suggest to you
that Tom Christmas should not
4 be around your house?
5 A. Not then, but when this other
thing came up, they told Johnny...
6
Johnny is what she calls her son.
7
...they didn't want him with them.
8
Who did want...?
9
Mr. MacIntyre.
10
Mr. MacIntyre meaning who?
11
He told my son to stay clear of him.
12
Which Mr. MacIntyre?
13 Were you present when this conversation
with Sgt. MacIntyre took place?
14
Up at the station.
15
You heard it. Were you present?
16
Yes.
17
And what did MacIntyre say?
18
He told Johnny last Friday that
19 Johnny was to keep clear and not
to go down around the park and
20 not to go with those Indian boys.
21 A. I have no recollection of that, sir.
22 Q. No recollection?
23 A. No.
24 Q. Do you recall Mrs. Pratico giving that evidence?
25 A. I heard her giving evidence here that day, yes.

1 Q. And on page 28, this is the evidence of John Pratico,
2 starting at line 10:

3 Tell me, sir, were you ordered by anyone to cease from discussing the case
4 you are to be a witness in with anybody?

5 Yes, sir.

6 Who instructed you?

7 Sgt. MacIntyre, sir.

8 Anybody else?

9 That's all sir.

10 Did the Crown Prosecutor instruct you?

11 Yes, sir.

12 Do you recall that?

13

14 A. No, I don't.

15 Q. Do you remember, Chief, that when that case came on for
16 trial -- I guess, I'm sorry, between the time of the
17 preliminary and when it was supposed to come on for trial
18 Mr. Christmas was charged with another offense. The
19 information is on page 46 of volume 22. That is a charge
20 of break and enter is it not? Do you have that? 46?

21 A. Oh, pardon me. 46, yeh.

22 ...with intent to commit an indictable offence...

23 Yeh.

24 ...therein, to wit: the crime...

25 Q. Do you remember that?

4:18 p.m.

1 A. ...of indecent assault...
2 Q. Do you remember that incident?
3 A. I can't recollect it.
4 Q. You were not the informant here. That's --
5 A. No.
6 Q. That's Detective M. J. MacDonald.
7 A. M. J. MacDonald, yes.
8 Q. When the charge for the obstruction of justice, interferring
9 with the witness came up no evidence was called and that
10 charge was allowed to lapse. Are you aware of that?
11 Any knowledge of why that was done?
12 A. No, only what I heard the other day here, sir. I have
13 no recollection at this time.
14 Q. That's on page 44.
15 A. Only what I heard here the other day in the court from
16 Mr. Elman that was --
17 Q. You can't remember it yourself?
18 A. No.
19 Q. Thank you. Let's go to June the 17th. That's the day
20 of the Harriss statement. That's the date to remind you
21 of that.
22 Do you remember that day?
23 A. June the 17th. What page was that on?
24 Q. Pardon?
25 A. What page was that on?

1 Q. I haven't got a page. I'm just saying --
2 A. Oh, yeh.
3 Q. -- do you remember the day of taking the statements from
4 Patricia Harriss?
5 A. Yes.
6 Q. Did you tell me this morning that you were up Sackville
7 around June the 15th, Sackville, New Brunswick?
8 A. Yes, that's what I thought, yeh.
9 Q. And that was to take up the jacket and find out what--
10 A. Yeh.
11 Q. -- what the police could do.
12 A. The -- Not only the -- the exhibits.
13 Q. Yeh.
14 A. Yeh.
15 Q. Is that normal for you to deliver them up like that?
16 A. By car. I think they were delivered by car, yeh.
17 Q. Why was Patricia Harriss picked up on the --
18 A. Page 64. I have it here.
19 Q. Why was she picked up and brought -- why was she asked
20 to come to the police station?
21 A. Somebody must have had -- Sergeant Urquhart must have had
22 evidence that she was able to tell him something.
23 Q. If you look at page 140, Chief, the volume 16, there's
24 reference to Terry Gushue and Patricia Harriss. That's
25 the only, I think, the only reference I've seen. That's

1 Mr. Urquhart's writing is it?
2 A. Yes.
3 Q. Were you present when Mrs. Harriss and Patricia Harriss
4 arrived at the police station on June the 17th about eight-
5 fifteen p.m?
6 A. No, I don't recall that but I do recall talking with her
7 later on that evening or that night.
8 Q. But you don't recall being there when she arrived?
9 A. At eight-fifteen. At eight-fifteen, no.
10 Q. Mrs. Harriss, Eunice Harriss, has testified that you
11 were there and that she's known you for years, I think,
12 from your -- both your childhood, is that correct?
13 A. That's right.
14 Q. Are you saying that she's wrong or you just don't remember?
15 A. No, I have no recollection of it. Later on in the night
16 I have but -- and I wasn't sure at that time whether it
17 was -- I knew there was two Harriss women down there.
18 And I wasn't sure till I heard her here that it was her.
19 MR. MacDONALD:
20 My Lords, I'm going to be referring to some evidence again and
21 rather than get into that now.
22 MR. PUGSLEY:
23 My Lord, before we adjourn the matter, Your Lordship raised a
24 question to this witness about the disclosure of the file to
25 Mr. MacNeil. I have some references that would be helpful, I think,

4:23 p.m.

1 to Your Lordship if you would like to take them.

2 MR. CHAIRMAN:

3 All right.

4 MR. PUGSLEY:

5 In the evidence of Judge Matheson in volume 26 at page 4943.

6 It's -- Judge --

7 MR. CHAIRMAN:

8 What's the page number?

9 MR. PUGSLEY:

10 4943. He says:

11 I was aware that they had given
12 -- earlier on they had made statements which were not consistent.

13 When you say "they" sir, who are you referring to?

14 Yeh, I believe Chant and Pratico --

15 Yes.

16 -- had made statements which were not
17 consistent with what we came to believe as the truth of the matter.

18 And then at page 4946:

19 You've indicated earlier that you were--
20 concerned maybe too strong, but you were aware after you reviewed the file
21 that there were inconsistent statements from at least Chant and Pratico. Did you
22 raise this matter of the inconsistent statements with Mr. MacNeil?

23 A. Yes.

24 And then at page 4964:

25 So if I were to ask you directly, sir,

1 as -- for your opinion as to
2 whether or not the police provided
you with both statements of Patricia Harriss,
what would your answer be?

3 A. My note indicates to me that they did.

4 MR. CHAIRMAN:

5 So this would indicate that the file -- the entire file you're --

6 MR. PUGSLEY:

7 Was given to the Crown Prosecutor.

8 MR. CHAIRMAN:

9 Was given to the Crown Prosecutor?

10 MR. PUGSLEY:

11 That's right. Yes, My Lord.

12 MR. CHAIRMAN:

13 All right.

14 COMMISSIONER EVANS:

15 One thing, Mr. MacDonald, I didn't know whether I got the
16 impression that you had suggested to the witness that Mr.
17 Marshall had done nothing about seeing -- getting help.

18 MR. MacDONALD:

19 No, I didn't suggest that to the witness, My Lord. I referred
20 to the question that was put to Chant whether or not Marshall
21 did go to get help and I will be dealing with that question later
22 on because it arises out of comments, I think, made by Inspector
23 Marshall.

24 COMMISSIONER EVANS:

25 Because in Marshall's statement, the first statement he made, he

1 says that he went to get help.
2 MR. MacDONALD:
3 Yes, My Lord, I appreciate that and the evidence is that he went
4 to get some help and I'll deal with that at a later date.
5
6
7 INQUIRY ADJOURNED at 4:26 o'clock in the afternoon on the 8th
8 day of December, A.D., 1987.
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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 8th day of December, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to typewritten copy.

Judith M. Robson
Official Court Reporter
Registered Professional Reporter

Sydney Discovery Services

December 8, 1987