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**ROYAL COMMISSION ON THE  
DONALD MARSHALL, JR., PROSECUTION**

**Volume 82**

Held: June 28, 1988, in the World Trade and Convention  
Center, Halifax, Nova Scotia

Before: Chief Justice T.A. Hickman, Chairman  
Assoc. Chief Justice L.A. Poitras and  
The Honourable G. T. Evans, Q.C., Commissioners

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David  
Orsborn: Commission counsel

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:  
Counsel for Donald Marshall, Jr.

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

Mr. Donald C. Murray: Counsel for Mr. William Urquhart

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

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the  
Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P.  
and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and  
MacAlpine

Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel  
for Staff Sgt. Wheaton and Insp. Scott

Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for  
the Union of Nova Scotia Indians

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black  
United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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MR. MARSHALL, EXAM. BY MR. SPICER

JUNE 28, 1988 - 9:30 a.m.

1 MR. CHAIRMAN

2 Good Morning.

3 MR. SPICER

4 The witness this morning is Donald Marshall, Jr., My Lord.

5  
6 DONALD MARSHALL, JR., duly called and sworn, testified

7 through an interpreter as follows:

8 NOEL KNOCKWOOD, duly called and sworn, testified for DONALD

9 MARSHALL, JR., from the Micmac language to the English

10 language.

11  
12 MR. SPICER

13 My Lord, before I start, I might indicate that the method  
14 which we're going to use by way of interpreting is I will ask the  
15 questions, obviously in English, and Mr. Marshall will hear my  
16 questions in English and then give his answer in Micmac and be  
17 translated back into English. To the extent that he feels that he  
18 needs interpretation of an English question, then he'll indicate that  
19 either to myself or to the interpreter. But, for the most part I  
20 think, the questions will be direct in English and the responses in  
21 Micmac.

22 MR. CHAIRMAN

23 Fine.

24  
25

EXAMINATION BY MR. SPICER

1

2 Q. Your name is Donald Marshall, Junior?

3 A. Yes.

4 Q. Where were you born, Mr. Marshall?

5 A. Sydney.

6 Q. Where were you brought up?

7 A. Sydney, Cape Breton.

8 Q. Were you brought up on a reservation?

9 A. Yes.

10 Q. Can you tell us which one?

11 A. Membertou.

12 Q. Do you have brothers and sisters?

13 A. Yes.

14 Q. Can you tell us how many brothers, how many sisters?

15 A. Five brothers and four sisters.

16 Q. Where did you go to school?

17 A. On an Indian Reserve.

18 Q. In your school, did you speak the English language or  
19 Micmac?

20 A. English.

21 Q. And in your home, did you speak the English language or  
22 Micmac?

23 A. Yes.

24 Q. Did you speak English or Micmac?

25 A. Both.

1 Q. Did you speak one more than the other? Did you speak  
2 English more than Micmac or Micmac more than English when  
3 you were at home?

4 A. He spoke Indian. Correction. I spoke Indian.

5 Q. Did your parents speak to you in Micmac?

6 A. Yes.

7 Q. And your brothers and sisters?

8 A. Yes.

9 Q. How old were you when you left school?

10 A. I was 15 years old.

11 Q. After you left school, did you start doing some work for your  
12 dad?

13 A. Yes.

14 Q. What sort of work were you doing?

15 A. I helped him.

16 Q. What sort of work did he do?

17 A. Drywalling.

18 Q. Did you assist him in the drywall work?

19 A. Yes.

20 Q. Were you learning the drywall trade with your father?

21 A. Yes.

22 Q. Mr. Marshall, in 1971, I want to take you to the night of  
23 Sandy Seale's murder and I want you to tell us, to the best of  
24 your recollection, what it was that happened that night?

25 A. Can I show you on the map?

MR. MARSHALL, EXAM. BY MR. SPICER

1 Q. Yes, by all means. If you like, we have a marker pencil here,  
2 if that's going to help you at all. Mr. Marshall, before you  
3 start, I may stop you during the course of your testimony just  
4 to ask you other questions.

5 A. I entered here.

6 Q. Just so that... I'm sorry to stop you, but just so that when we  
7 get... The record is going to need to know where it was that  
8 you stopped. So let's identify it. You say you came in off  
9 George Street and went down the walk, okay. So if you can  
10 just sort of try and be specific geographically as you can, so  
11 we know where.

12 A. I entered here and I ran across three men and one woman.

13 Q. Okay, just so the record will show that, Mr. Marshall, you've  
14 indicated those with x'es. Can you tell us who those people  
15 were?

16 A. There were three men and one woman, yes.

MR. PUGSLEY

17  
18 Mr. Spicer, I hate to interrupt, but it would be very  
19 convenient if Mr. Marshall could possibly turn around. I don't  
20 want to make it difficult for the translator but it would be much  
21 easier for me if I could see what he's doing.

MR. SPICER

22  
23 Q. If you could stand... The trouble, Mr. Marshall, is that the  
24 counsel can't see what you're doing here. So if you could  
25 stand over on this side while you're doing it, as long as the

1 interpreter can then hear where you are. Okay, you were at  
2 the point where you had just gotten down and seen the four  
3 people here and I was just asking you if you knew who those  
4 people were?

5 A. One man was, one man I knew, they were together when he  
6 was in the Air Cadets.

7 Q. What was his name?

8 A. I've forgotten. The one who killed and another man that was  
9 with him and the other was the friend, the girlfriend of the  
10 soldier.

11 Q. Are you saying then that two of those people were people  
12 that you later found out to be Ebsary and MacNeil?

13 A. Yes. I continued walking here. I met another man, a young  
14 man.

15 Q. Did you know who that person was?

16 A. Robert Patterson was his name. At the same time, I seen a  
17 coloured person coming from this direction. I was standing  
18 here.

19 Q. If I could just stop you there for a moment, Mr. Marshall. Are  
20 you saying that the coloured person is coming where? Along  
21 the walk beside Wentworth Creek?

22 A. Yes.

23 Q. Along in that direction.

24 A. He walked in that direction.

25 Q. Would that have been Sandy Seale?

1 A. Yes.

2 Q. He's coming in, as far as you know, along the walk off George  
3 Street and then along up by Wentworth Creek, is that correct?

4 A. Yes. Then there was three of us standing there. One of the  
5 people here was feeling good.

6 Q. Who was that?

7 A. It was a white man by the name of Robert Patterson. We  
8 continued to walk and I told the white man for him to lay  
9 down somewhere or he might be arrested.

10 Q. Was that because he was, you thought he was drinking or had  
11 been drinking?

12 A. Yes. The Negro and I continued walking here.

13 Q. Now you're going towards the bridge now over the creek.

14 A. Yes. As we continued to walk, I asked him where did he  
15 come from? And he answered me, "I came from the dance."  
16 We continued to walk here. Let's go back here for a minute.  
17 As we were talking at that time, these two other gentlemen...

18 Q. Who are those two other people, Mr. Marshall?

19 A. Roy Ebsary and James MacNeil.

20 Q. You didn't know them at the time?

21 A. No. I seen them walking in that direction. We were all  
22 talking.

23 Q. Okay, now we just want to stop for a minute. When you say  
24 that the two gentlemen who you later discovered to be Ebsary  
25 and MacNeil walking in that direction, they're walking back



1 from the position where you had originally marked them on  
2 the map with the x'es.

3 A. Yes.

4 Q. Back towards yourself and Mr. Seale?

5 A. No.

6 Q. No? Okay, tell us.

7 A. These two people went ahead. We stood here.

8 Q. Okay, wait a second. "Here" doesn't mean anything to us.  
9 When you say "you stood here", you are now standing where  
10 the three x'es are marked on this map, is that correct?

11 A. Yes.

12 Q. And the two other men, Ebsary and MacNeil, are walking  
13 towards the bridge ahead of you, is that correct?

14 A. Yes.

15 Q. Okay.

16 A. I continued to ask my friend where he came from. We were  
17 talking as we went along and he told me, "I'm going home."  
18 As we crossed here...

19 Q. You crossed over the bridge?

20 A. Yes. Somewhere over here...

21 Q. Now just a minute again, Mr. Marshall. "Somewhere over  
22 here", you're now marking two x'es on Crescent Street?

23 A. Yes. As we got to this point, approximately to this point...

24 Q. All right, now the point that you're now indicating is that  
25 yourself and Mr. Seale that just crossed over the bridge,

1 correct?

2 A. Yes.

3 Q All right, I'm going to put an "S" here and an "M" here to  
4 indicate where you are just after you got over the bridge,  
5 okay? At that point in time, sorry to interrupt you, at that  
6 point in time, where are Ebsary and MacNeil?

7 A. They're standing where I'm pointing.

8 Q Okay, they're standing at this point in time down here on  
9 Crescent Street?

10 A. Yes.

11 Q All right, we'll put an "E" there and an "MC" there, okay?

12 A. The elderly gentleman shouted at us and he asked me for a  
13 cigarette. As we continued here, he went in that direction  
14 and...

15 Q Wait again, let's just back up again for a sec...

16 A. I continued to go on.

17 Q Okay, let's just back up again for a second. We need to get on  
18 the record what we're, people are actually doing. Are you  
19 telling us that you continued to walk in this direction to the  
20 right down this walkway?

21 A. No.

22 Q All right, tell us where you were going?

23 A. As we are talking, we were asked if they had a smoke, those  
24 men. I did not care at the time. I did not give it a second  
25 thought. I continued to walk here.

1 Q. Now you are walking down the right-hand side of this path  
2 down toward Crescent Street, is that correct?

3 A. Yes.

4 Q. And Mr. Seale is with you?

5 A. Yes. As we talked, we met a man and a woman.

6 Q. Where did you meet the man and woman?

7 A. Right about here somewhere.

8 Q. And you've marked over here these two x'es here and this is  
9 a man and a woman?

10 A. Yes.

11 Q. All right, I'm going to put "M" and "Woman" there. Okay.

12 A. They asked me if I had a match. I continued to walk towards  
13 them to give them a match.

14 Q. At this point in time, if I could just stop you there, at that  
15 point where are Ebsary and MacNeil?

16 A. Those two are standing there.

17 Q. Still standing in the same spot that I marked earlier.

18 A. Yes. I did not know this person. My friend, the coloured  
19 person, I continued... Oh, I knew he did not know, yes,  
20 whether he met this others.

21 Q. Okay, let me just stop you there because I'm not quite sure I  
22 understand you. Are you saying that you don't know  
23 whether Sandy Seale knew the other people, is that what  
24 you're saying?

25 A. No. I did not know they were together. Oh, he didn't know at

1           that time but he was going down to give the other two the  
2           match, yes.

3       Q.   You didn't know who was going down to give somebody the  
4           match.

5       A.   No.  When I gave the match to these people...

6       Q.   That's the man and the woman.

7       A.   Yes.  I did not know this one.  Whether he continued to go on  
8           or whether he stopped there.

9       Q.   Are you talking about Sandy now?

10      A.   Yes.

11      Q.   Okay.

12      A.   Then I asked them, the man and the woman, where did they  
13           come from?  They told me they came from the dance, yes.

14      Q.   Did you know them?

15      A.   Yes.

16      Q.   What were their names?

17      A.   Patricia Harriss and Terry Gushue.  When I gave him the  
18           match, I continued to go in this direction.

19      Q.   That's walking in the direction towards Ebsary and MacNeil?

20      A.   Yes.  At that time, I seen him...  Oh, at that time, there were  
21           four of us, yes.  I began to talk to the elderly one.  I did not...  
22           He didn't know the person who he was talking to.

23      A.   Then we began to talk and he told me that he was a soldier.

24      Q.   Who told you this, which person?

25      A.   The elderly gentleman.  And he told me, "I belong to the

1           priesthood." At about a half an hour after talking to each  
2           other.

3           Q. Were you standing there talking for a period of time then?

4           A. Yes.

5           Q. And is that the half hour you were just talking about?

6           A. Yes. At that time he struck me with a knife and my friend,  
7           yes.

8           Q. Before that happened do you remember anything of the  
9           conversation, before you were struck with a knife? What else  
10          were you talking about at the time of the stabbing?

11          A. The old man said, "I want everything out of your pockets."  
12          No, he asked the old man, no, the old man asked the colored  
13          man, "I want everything out of your pockets."

14          Q. And what did Mr. Seale do?

15          A. He did not respond, didn't do anything.

16          Q. Where were his hands?

17          A. The hands were in his pockets.

18          Q. That's Mr. Seale.

19          A. Yes. After he stabbed him then I threw the other man aside,  
20          that's when he advanced to me and stabbed me. Yes. I began  
21          to run in this direction.

22          Q. Okay, and you're marking that with an arrow, you mean going  
23          along Crescent Street.

24          A. I continued running, yes, until I arrived here. There I met a  
25          man and I told him, "Help me, I've been stabbed. Two of us."

1 That man's name was Maynard Chant. Yes.

2 Q. And you ran into him on Bentinck Street where you've now  
3 marked two "x"s, is that correct?

4 A. Yes.

5 Q. Okay. Why were you running in that direction, do you  
6 remember?

7 A. I was running away and then I had to go back and, to see my  
8 friend lying there. Then I continued in this direction.

9 Q. Let me just stop you there for a minute. When you say you  
10 had to go back to see your friend lying there, after you met  
11 Mr. Chant did you go back first or did you go up then towards  
12 Byng Avenue?

13 A. I continued to go in this direction.

14 Q. Towards Byng?

15 A. Yes.

16 Q. With Chant.

17 A. Yes. Approximately here...

18 Q. Okay, now you're marking that with two "x"es on Byng  
19 Avenue and that's you and Chant, right there.

20 A. Yes. There was a vehicle coming in this direction.

21 Q. Towards you on Byng Avenue.

22 A. Yes. I stopped the car here. I stopped it here.

23 Q. Right. And for the, that's just to the left of the "A" in Avenue  
24 on the chart on Byng Avenue.

25 A. Yes. As it stopped I knew one person that was on it.

- 1 Q. Who was that person?
- 2 A. Mike Jameel.
- 3 Q. Was he the driver?
- 4 A. I've forgotten. I told them, no wait, I've forgotten something.
- 5 When I came here, when we got here I met, I believe it was
- 6 two men and two girls.
- 7 Q. On Byng Avenue?
- 8 A. Yes. I told them, "We've been stabbed." The young lady gave
- 9 me a Kleenex for my hand. Yes.
- 10 Q. Do you know the names of those people?
- 11 A. No. As we were standing here, that's the time the vehicle
- 12 arrived. I told them, "I've been stabbed."
- 13 Q. And you're standing now basically in front of Mattson's house,
- 14 the red house that's marked there.
- 15 A. Yes. We were put on the vehicle, me and Maynard Chant...
- 16 Q. You got in the car.
- 17 A. Yes. I told them, "Let's go in this direction, let's continue to go
- 18 in this direction."
- 19 Q. That's towards George Street on Byng.
- 20 A. Yes. As we continued in this direction, up to this point...
- 21 Q. All right, you go along George to the corner of Argyle.
- 22 A. Yes. We continued in that direction.
- 23 Q. Along Argyle.
- 24 A. And we re-entered here.
- 25 Q. Onto Crescent Street.

- 1 A. Yes. As we got approximately in this area...
- 2 Q. And the area you're marking is approximately the area where  
3 the incident took place?
- 4 A. Yes. As we got off the vehicle, just wait a minute...
- 5 Q. Take your time.
- 6 A. No, it's not there. Approximately in this area.
- 7 Q. In the area marked with a circle.
- 8 A. Yes.
- 9 Q. Okay.
- 10 A. I went into this third house...
- 11 Q. All right. That's the green house, is it, Mrs. Doucette, is that  
12 the one?
- 13 A. Yes.
- 14 Q. Number 120. Okay.
- 15 A. I asked them to call for help. The man asked me, "What's  
16 wrong?" And I responded and said, "We've been stabbed."  
17 And he told me, "I will help you." Then the young man and I  
18 walked out and we...
- 19 Q. You were with Mr. Chant at that time? Who's the young man  
20 you just referred to?
- 21 A. I believe it is him. Yes. The young man that was stabbed was  
22 lying there. As people began to gather the police arrived in a  
23 vehicle and I stood in front and stopped them.
- 24 Q. You stopped the police car?
- 25 A. Yes. Somebody pointed to me, I told them, I, too, have been



MR. MARSHALL, EXAM. BY MR. SPICER

1 stabbed.

2 Q The "them," Mr. Marshall, is the police officers you're talking  
3 to now?

4 A. Yes. They put me on their vehicle and took me to the  
5 hospital.

6 Q Do you remember who those police officers were? Did you  
7 know them?

8 A. No.

9 Q Okay.

10 CHAIRMAN

11 Mr. Spicer, before Mr. Marshall moves away from the  
12 description of what happened, earlier he, when he was testifying  
13 as to the incident itself, he referred to throwing a man to one side.

14 MR. SPICER

15 Yes.

16 CHAIRMAN

17 Before he was stabbed. Could you ask him about that,  
18 please?

19 MR. SPICER

20 Q You mentioned that at the time of the stabbing you threw the  
21 other man to one side.

22 A. Yes.

23 Q Can you, who was that other man?

24 A. Jim MacNeil.

25 Q And why did you do that?

- 1 A. There was another man coming with a knife in his hand.
- 2 Q. And that was who?
- 3 A. Roy Ebsary was his name.
- 4 Q. And can you tell us the reason that you threw MacNeil aside?
- 5 I still don't understand that part.
- 6 A. At the same time when the elderly gentleman was coming at
- 7 me I pushed him aside, yes.
- 8 Q. Pushed MacNeil?
- 9 A. The younger one. Yes.
- 10 Q. You gave some testimony a few minutes ago about a
- 11 conversation that happened at about the time of the stabbing
- 12 and I wasn't quite sure whether you're saying that it was Mr.
- 13 Ebsary who said to Mr. Seale something to the effect, "I want
- 14 everything that's in your pockets." Is that your recollection
- 15 of...
- 16 A. Would you repeat that, please?
- 17 Q. What did Ebsary say to Seale? Did he say anything to him?
- 18 A. He said, "I want everything out of your pocket." No.
- 19 Everything what you have in your pocket. I have in my
- 20 pocket. I will give you. That's the time he stabbed him.
- 21 Q. All right, I'm still a little confused as to who's saying what
- 22 here.
- 23 A. The old man said to the colored person, no, the old man told
- 24 the colored man, "I want everything from your pockets."
- 25 Q. Okay. Did...

1 A. "If you want it, everything in my pocket I will give you."

2 Q. The last part...

3 A. Yes, that's the time he stabbed him.

4 Q. The last part of that conversation, when you said, "If you  
5 want everything in my pocket you can have it." Was that  
6 something that Mr. Seale said?

7 A. No. The other one, the older man. Yes. His name was Roy  
8 Ebsary.

9 Q. So that whole conversation that you just told us about was all  
10 said by Mr. Ebsary?

11 A. Yes.

12 Q. And Mr. Seale said nothing?

13 A. No.

14 Q. Prior to that conversation, the conversation about if you want  
15 everything out my pocket, can you tell us what led up to  
16 that? Was there any conversation that proceeded, came  
17 before that?

18 A. I don't know. I don't think so. We were talking for about a  
19 half an hour. No one mentioned anything about anything in  
20 your pockets or about money. Yes. We talked about what the  
21 old man has told me, that is all I recall of that conversation.

22 Q. You told us that Mr. Seale had told you he was in the Park, he  
23 was on his way home, is that right?

24 A. Yes.

25 Q. And what about yourself, Mr. Marshall, why were you in the

1 Park?

2 A. I was looking for other Indians, young Indians, and I found, if  
3 I had found, we would have all gone home, yes. I heard that  
4 the dance was almost over. Yes. I believe that they would  
5 have been there.

6 Q. "They" being the other Indians, is that what you're saying?

7 A. Yes. If there is no one there I will continue to go home. That  
8 is the time I met the colored man, yes.

9 Q. When you met Mr. Seale that night, did you know him to see  
10 him?

11 A. Yes.

12 Q. How many times before had you seen him, spoken to him?

13 A. Two or three times, I believe.

14 Q. Did you ever play hockey with him?

15 A. No.

16 Q. Did you ever go to a hockey practice with him?

17 A. Once.

18 Q. Apart from that would you have hung around at all with  
19 Sandy Seale?

20 A. No.

21 Q. Would you consider him to be, would he be somebody that  
22 you would have gotten hold of if you wanted to go out in the  
23 evening?

24 A. No.

25 Q. After you were taken to the hospital that night, do you

1 remember whether or not you gave a description that night to  
2 any police officers of the two men?

3 A. Yes.

4 Q. Do you remember giving that description?

5 A. Yes.

6 Q. Do you remember where you were when you gave it?

7 A. I was just entering the hospital. One superior detective came  
8 towards me asking me the description and how these  
9 gentlemen looked. And I told them how they dressed and  
10 how they appeared and how they looked.

11 Q. When you left the hospital that night where did you go?

12 A. I was taken home by the police.

13 Q. And did you do anything the next morning by way of going  
14 back to where the scene of the incident occurred?

15 A. I don't know. The next morning or the other, I believe it was  
16 Sunday or Saturday.

17 Q. Okay. What did you do?

18 A. I returned where we were stabbed. I went looking for men  
19 that had stabbed us.

20 Q. When you say you went looking for the men who stabbed  
21 you, what did you do? Did you go from house to house or  
22 walk along the street or what did you do?

23 A. Yes. I began to look at the houses and knocked and looked  
24 and asked, "Did they see the men that I'm describing?" One  
25 or two houses that I came from, it was at that time when the

1 police arrived again. They put me themselves on the vehicle.  
2 Took me to the police station. As they were taking me in, one  
3 of the superiors, bosses, told me, "Don't you go looking. We  
4 will do it."

5 Q. Do you know who that was?

6 A. John MacIntyre.

7 Q. What happened then once you got into the station?

8 A. I was told to sit down on a chair and I sat there until  
9 dinnertime.

10 Q. Were you interviewed by anybody up until dinnertime?

11 A. No.

12 Q. For how long a period of time did you sit there?

13 A. About evening or suppertime. They took me back to the  
14 reserve. The following morning again they told me...

15 Q. Is this Sunday now you're talking about?

16 A. I believe so. They told me I have to return to the police  
17 station.

18 Q. By that time, had you given a statement to the Sydney Police,  
19 by the Sunday?

20 A. I believe I gave it to them while I was at the hospital or... I  
21 don't recall.

22 Q. At some point, you did give a statement to the Sydney Police.

23 A. Yes, I believe.

24 Q. I'm going to show you a statement...

25 A. I believe it was in the morning after what has taken place. Or

1 it was that morning or the day before.

2 Q. I'm going to show you a typed version of a statement which is  
3 dated May 30th, Mr. Marshall. If you would have a look at  
4 that. It's in Volume 16 at page 17.

5 A. Yes, I understand.

6 Q. Yes, page 17, do you remember giving that statement to the  
7 Sydney Police Department?

8 A. Yes.

9 Q. And if you want to take a second and just read through it, is  
10 that your recollection of what happened the night Sandy Seale  
11 was killed?

12 A. Yes.

13 Q. As I think you know, Mr. Jimmy MacNeil some time later  
14 after you, in fact, had been convicted in November of 1971,  
15 came forward and gave a statement to the Sydney Police. I'll  
16 just read you what he said and you tell me what you think of  
17 that, his recollection given in November. That's in Volume 16  
18 at page 176. He says:

19  
20 Myself and Roy Ebsary were at the State Tavern,  
21 George St., Sydney, late in the evening in May...  
22 We were there about an hr. or so. We left. We  
23 walked down George St. and took the short cut  
24 through the Park... We came up to Crescent St.  
and while walking along Crescent St. we were  
approached by an Indian and a colored fellow  
from behind.

25 What do you say about his recollection that he was

1 "approached from behind" by you?

2 A. He was not correct.

3 Q. Mr. MacNeil then goes on to say: "The Indian put my right  
4 hand up behind my back." What do you say about that?

5 A. And that's not true.

6 Q. "The colored fellow said dig man dig." What do you say about  
7 that?

8 A. That's not right.

9 Q. You're saying that didn't happen?

10 A. No.

11 Q.  
12 Then Roy Ebsary said I got something for you.  
13 He put his hand in his right pocket and took out  
14 a knife and drove it into the colored fellow's  
15 side.

15 A. That part is correct.

16 Q. Is all of it correct. The last part is, but the first part then,  
17 "Roy Ebsary said I got something for you."

18 A. Would you repeat that, please?

19 Q. MacNeil says in his statement that after "the coloured fellow  
20 said dig man dig," then Roy Ebsary said, "I got something for  
21 you." Do you have a recollection of that?

22 A. Roy Ebsary said, that's what he said, I did not hear the other  
23 person speak anything, say anything.

24 Q. Did you hear Roy Ebsary say "I got something for you."

25 A. Yes.



- 1 Q. But you didn't hear Sandy say, "Dig man dig."
- 2 A. No.
- 3 Q. Do you have any recollection as to what sort of condition you  
4 thought Mr. MacNeil was in the night of the murder?
- 5 A. He was feeling good.
- 6 Q. How could you tell that?
- 7 A. He was staggering and the elderly man and I were talking  
8 and I did not hear him say anything.
- 9 Q. Sorry, you didn't hear?
- 10 A. Jimmy MacNeil did not say anything.
- 11 Q. Jimmy MacNeil didn't say anything. I think you told us that  
12 Mr. Seale didn't say anything, is that correct?
- 13 A. Yes, that's correct.
- 14 Q. But Roy Ebsary did.
- 15 A. Yes.
- 16 Q. Mr. Marshall, you were eventually arrested on June the 4th,  
17 on the following Friday, is that correct?
- 18 A. Yes.
- 19 Q. During that week, that is during the time after the murder  
20 and up to the time that you were arrested, were you  
21 interviewed at all by John MacIntyre?
- 22 A. Would you repeat that, please?
- 23 Q. Sure. After the night of the incident and up until the time  
24 that you were arrested on June 4th, do you remember being  
25 spoken to at the station, at the police station by Mr.

1 MacIntyre?

2 A. Once, I believe.

3 Q. Can you tell us...

4 A. And he asked me what happened. That is the time we wrote  
5 a statement.

6 Q. And that's the statement you were just looking at a few  
7 minutes ago.

8 A. Yes.

9 Q. Other than that one occasion, were you questioned again by  
10 MacIntyre up until the time you were arrested?

11 A. I don't believe so.

12 Q. Did you have any discussions with, or did you know... Sorry,  
13 did you know the O'Reilley girls?

14 A. Yes.

15 Q. Did you have any discussions with the O'Reilley girls as to  
16 what had happened that night?

17 A. Yes.

18 Q. Did you tell them about the two old men or the two men?

19 A. Yes.

20 Q. Did you ever indicate to them that they should tell the police  
21 about the two men?

22 A. I don't believe so.

23 Q. But you would have discussed with them the fact that there  
24 were two men, is that...

25 A. Yes.

- 1 Q. Where were you when you were arrested, Mr. Marshall?
- 2 A. I was in Whycocomagh at my father's...grandfather's.
- 3 Q. Why were you there?
- 4 A. I was told that I should get away from the reserve, my
- 5 reserve.
- 6 Q. Who were you told by?
- 7 A. My father told me and he was advised by the ones in charge.
- 8 Q. The police officers?
- 9 A. Yes.
- 10 Q. That's your understanding. Who came to pick you up at
- 11 Whycocomagh?
- 12 A. MacIntyre.
- 13 Q. Anybody else?
- 14 A. And one R.C.M.P. officer from Baddeck and another person, I
- 15 believe, I don't know. I've forgotten.
- 16 Q. Do you remember did Mr. MacIntyre say anything to you
- 17 when you were picked up?
- 18 A. He told me you ran away from us... No, you're going to run
- 19 away. Yes, you're going to run away. He asked me that.
- 20 Q. He asked you, "Are you going to run away?"
- 21 A. Yes, "What are you running from?"
- 22 Q. What did you say to him?
- 23 A. I was weeping in the backseat.
- 24 Q. Sorry, you were what?
- 25 A. Crying. And I told him that he was sorry that... Oh, no one can

1 run away from what he has done or what they're going to do  
2 to me. And he told me, "Keep quiet."

3 Q. Was there any other conversation between the time you left  
4 Whycomomagh and the time you got back to the station, that  
5 you remember?

6 A. I don't believe so.

7 Q. I just want to ask you a few questions about your lawyers.  
8 You had Mr. Khattar and Mr. Rosenblum were your lawyers?

9 A. Yes.

10 Q. Do you remember when the first time was that you saw  
11 them? Were you already in custody?

12 A. Yes.

13 Q. Did you see them shortly after you were put in custody?

14 A. I don't know. But I do remember the second time when they  
15 came. Either once or twice they came to visit me. At that  
16 time, things were beginning where we were sitting. My trial  
17 started there.

18 Q. All right, let's just back a bit before we get to that point, if we  
19 could, Mr. Marshall. When you saw Khattar and Rosenblum  
20 the first time, did they ask you what happened the night of  
21 the incident?

22 A. Yes.

23 Q. What did you tell them?

24 A. I told them what had taken place.

25 Q. And is what you told them what you've told us today?

MR. MARSHALL, EXAM. BY MR. SPICER

1 A. Yes.

2 MR. CHAIRMAN

3 Did both Mr. Khattar and Mr. Rosenblum visit you in the cell  
4 at the same time?

5 Interpreter

6 We were in an office, Yes.

7 MR. CHAIRMAN

8 The two were together, both lawyers were together.

9 INTERPRETER

10 Yes.

11 COMMISSIONER EVANS

12 How many times did they visit you before your trial began?

13 INTERPRETER

14 I believe it was twice.

15 MR. SPICER

16 Q. Do you have any recollection, Mr. Marshall, of how long those  
17 visits took, how long were they with you?

18 A. No.

19 Q. Do you have any recollection of any of the conversation  
20 between yourself and those lawyers, other than you telling  
21 them what happened?

22 A. No.

23 MR. CHAIRMAN

24 Did you give them the names of the persons you had met  
25 that night following the stabbing?

1 INTERPRETER

2 No, I told him what they looked like and how they dressed.

3 MR. CHAIRMAN

4 No, no, I mean the...

5 MR. SPICER

6 Harriss and the other people.

7 INTERPRETER

8 No, I didn't tell them.

9 MR. CHAIRMAN

10 Patricia Harriss and the other... Chant.

11 INTERPRETER

12 I think so.

13 MR. SPICER

14 Q. You remember doing that? You remember telling them those  
15 names?

16 MS. EDWARDH

17 I believe Mr. Marshall said he thinks...

18 MR. SPICER

19 Q. He thinks so, yeah. Did you have any knowledge yourself, Mr.  
20 Marshall, at any time as to how much Mr. Khattar and Mr.  
21 Rosenblum were paid for defending you?

22 A. I think I heard, I believe it was \$5,000 they were paid.

23 Q. Can you tell us whether or not that was \$5,000 each or \$5,000  
24 altogether?

25 A. I don't know.

MR. MARSHALL, EXAM. BY MR. SPICER

1 Q. Do you remember who told you?

2 A. No.

3 Q. Did you have any involvement yourself in getting Mr. Khattar  
4 and Mr. Rosenblum to be your lawyers?

5 A. No.

6 10:55 a.m. - BREAK

7 Q. Mr. Marshall you attended your preliminary hearing.  
8 Correct?

9 A. Yes.

10 Q. Do you remember hearing, at the preliminary, the testimony  
11 of Chant?

12 A. Yes.

13 Q. Pratico?

14 A. Yes.

15 Q. Did you say anything to your lawyers about that testimony  
16 after you heard it?

17 A. I don't remember.

18 Q. You don't remember whether you did or not, is that what  
19 you're saying?

20 A. I don't remember.

21 Q. When you heard that testimony, Mr. Marshall, of Chant and  
22 Pratico, was that the first that you knew that they were going  
23 to say what they said at the preliminary?

24 A. Yes.

25 Q. So that was a complete surprise to you?

1 A. Yes.

2 Q. Between the time of the preliminary and the time of your  
3 trial did you see Bobby Patterson when you were on remand  
4 in jail?

5 A. Yes.

6 Q. Do you remember what you talked to him about?

7 A. I asked him as to whether he knew what was going on at the  
8 time when we were stabbed. And he told me, no.

9 Q. Did he ever say anything to you about having given a  
10 statement or being asked to give a statement to the Sydney  
11 Police? That's Patterson.

12 A. Yes.

13 Q. What did he tell you?

14 A. He said he told them that he does not remember what has  
15 taken place.

16 Q. He told, this is Patterson told the Sydney Police that, is that...

17 A. Yes.

18 Q. Do you have any recollection of anything else that Patterson  
19 said about the giving of that statement? Do you remember  
20 anything else?

21 A. No.

22 Q. Prior to, again prior to your trial, did, was there a time when  
23 you were visited by Bernie Francis?

24 A. Yes.

25 Q. And when was that?



1 A. Just before the trial began.

2 Q. What, the night before or the day before or do you  
3 remember?

4 A. The day before.

5 Q. The day before, okay. Can you tell us what Mr. Francis said to  
6 you?

7 A. He said, "Did they find the knife?" No, he said they had found  
8 the knife. And the blood of the colored person was on it. And  
9 the fingerprints were on it. Mine.

10 Q. Your fingerprints.

11 A. Yes.

12 Q. What did you say to him?

13 A. He told me it would be better if he pleaded to manslaughter.  
14 I told him why, what are you doing, why do you tell me that?  
15 I know it was my knife. No. I know it was not my knife. Yes.  
16 I told him if my knife is there tomorrow then I will plead to  
17 the manslaughter charge. But if it's not there, it's not mine.

18 Q. Was that the first suggestion that had been made to you that  
19 anybody had found the knife?

20 A. Yes.

21 Q. Was that the only suggestion that was ever made to you that  
22 the knife had been found?

23 A. Yes.

24 Q. At your trial do you remember anything about the incident  
25 involving John Pratico?

1 A. Yes.

2 Q. Can you tell us what you remember?

3 A. When I was sentenced, just before, my lawyer told me...

4 Q. Which lawyer, do you remember which one it was?

5 A. Rosenblum. He said that Johnny Pratico had said, it is not  
6 right what he has said and wishes to change it, yes. My  
7 lawyer told me the charge has been taken, they are going to  
8 take the charges off you.

9 Q. Off Marshall?

10 A. Yes. Then they had a recess and they took Pratico back. And  
11 after lunch and everything they returned him. Then he told a  
12 different story. He told them my father had frightened him.  
13 Yes. And that's what they told me.

14 Q. Were you surprised when you were convicted?

15 A. Yes.

16 Q. Immediately, or within ten days or so after your conviction,  
17 there was a, the RCMP came up and there were a couple of  
18 polygraph tests taken. Were you ever asked whether or not  
19 you would submit to a polygraph?

20 A. No.

21 Q. No? Mr. Marshall, during the time that you were incarcerated  
22 there are three or four documents that I just want to refer  
23 you to and ask you for your comments and they're in Volume  
24 35 which you have there. And the first one is at page 3, right  
25 at the very beginning. All right, now just to get a sense of

1 what that is, the document actually starts at page 2, Mr.  
2 Marshall. If you would, okay, and then the comment that I  
3 wanted to ask you about is on page 3. All right, now this  
4 document is dated in July of 1972, which would have been  
5 just after you were, at the time you were received into  
6 Dorchester, is that correct?

7 A. Yes.

8 Q. Okay. The second last paragraph of that document, I'm going  
9 to read that to you and then ask you to indicate to us how Mr.  
10 Maillet and Mr. MacAulay might have got this impression. It  
11 says,

12 Marshall appeared very nervous and shy during  
13 various interviews. Interviewer is of the opinion  
14 that subject (that's you) has not as yet accepted  
15 the sentence as imposed by the Court. He denies  
16 the alleged offence and claims that he has the  
17 knife scar to prove same. He claims that his  
18 lawyer is presently appealing the conviction.

18 (And it's the last sentence I wanted to ask you about.)  
19

20 When questioned in regard to the appeal, subject  
21 stated that he would be prepared to plead guilty  
22 to a charge of Manslaughter for reasons of a  
23 reduced sentence.

23 Can you tell us how that came about? How he would have  
24 got ...

25 A. Bernie Francis actually spoke before you went to New

1 Brunswick. We talked about that. That's what I'm talking  
2 about now.

3 Q. All right. I'm sorry, I don't quite understand what you're  
4 saying. Mr. Maillet has indicated that that's something that  
5 you said, you would have said to him at the time, in July of  
6 '72. And the recounting that you said that you would have  
7 been prepared to be plead to a charge of manslaughter. And  
8 just tell me again what your explanation is for that.

9 A. It's still in my mind what Bernie Francis had told me.

10 Q. Yes.

11 A. And we wrote the papers, we wrote a letter, I thought he was  
12 still working on...

13 Q. Working on your appeal is that what you're talking about?

14 A. Yes. That's what I was talking about.

15 Q. Would you have said to him, Mr. Marshall, at that time, in  
16 July of '72, that you would have been prepared to plead  
17 guilty to manslaughter, are you talking about on the appeal, is  
18 that what you're talking about?

19 A. Yes.

20 Q. And what would have been your reason for that?

21 A. I would have continued to have fought unless, until I cleared  
22 myself for killing a man that was, that had died.

23 Q. But in the meantime you would have been prepared to plead  
24 to manslaughter, why, so, to get out earlier or what were you  
25 doing?

1 A. Would you repeat it, please?

2 Q. You say you would have continued to fight to be cleared of  
3 the murder and all I'm trying to understand from you, and if  
4 you don't remember how this came up then just, you know,  
5 by all means, just say look, "I don't remember." Why you  
6 would have been prepared to say at that point in time that  
7 you would have been prepared to plead to manslaughter.

8 A. We would have continued to fight until I was cleared.

9 Q. Yes. On the murder.

10 A. Yes.

11 Q. And to plead to manslaughter, what benefit would that have  
12 been to you? What did you think would be the benefit of that  
13 to you?

14 A. They did not listen to me when I fought. The only way I  
15 could return or bring back I had to bring down what was  
16 judged of me...

17 Q. What was, sorry, what was what?

18 A. What was, what I was charged with. Yes. Then we would  
19 have fought but it was thrown down to me. If I had got my  
20 appeal then I would have pleaded not guilty.

21 Q. Were you thinking of, I believe, were you thinking of using  
22 the manslaughter then, just to get yourself out. Is that...

23 A. Yes. I did not want to get out for manslaughter. I wanted to  
24 get out so that it could open what has taken place, what is  
25 happening today.

1 Q. And you saw this as a way to do that.

2 A. Yes.

3 Q. Sometime later, if you could turn now to page 71 of that  
4 volume, and again, you may want to look at the page before  
5 that, Mr. Marshall, just to give you some idea of what the  
6 whole document is because that's the second page of it. And  
7 on page 71, and we're now, I think, in 1975. In Paragraph 24  
8 of the document, which is halfway down page 71, I'll read you  
9 this and then you can tell us how it was that they came to  
10 have this impression.

11  
12 Precipitating circumstances - gang warfare -  
13 states he was stabbed and because of self  
14 defence he stabbed a person with his own knife  
15 and result was death. Before the court, inmate  
16 states he accepted the charge.

17 Can you tell us what the circumstances were that gave rise to  
18 that statement, Mr. Marshall?

19 A. The Classification Officer, whose name was Bill Leslie, was on  
20 vacation for two weeks and another man had taken over what  
21 he was doing.

22 Q. And who was that man, do you remember?

23 A. I believe his name was Mike McInnis. McGinn. He told me,  
24 "You'll be in jail forever if you do not say what you have  
25 done." At that same time I wanted to go to Springhill. Then I  
was told to think about it for two weeks and when the two

1 weeks was up and I returned, Bill Leslie was back. I told him  
2 what this paper is saying, yes, so I could go to Springhill.

3 11:15 a.m.

4 Q. And there's one other document in that material that I want  
5 to refer you to at page 170. And that would seem to be in  
6 September of 1981 and there's a report, 170 and 171, a  
7 report from Robichaud, psychologist. And in the third  
8 paragraph on page 170, I just wanted to take you through  
9 that, if you could tell us what that is all about.

10  
11 He continues to maintain his innocence. He  
12 added that he had received information three  
13 months ago which he referred to "as a leak in the  
14 bucket" which will continue to grow and will  
15 eventually exonerate from guilt.

16 This information came about in the  
17 following manner. His sister's boyfriend was  
18 drinking with a black individual in Halifax. As  
19 they were drinking, the black individual told his  
20 sister's boyfriend of an incident in which he had  
21 himself stabbed an individual some ten years  
22 ago and that another individual, an Indian, had  
23 finished him off. He says that the fact that there  
24 are two wounds in this individual's story will  
25 exonerate him since the pathology report  
indicated only one stab wound. This he  
(meaning you) interprets would be claim that  
this individual who was telling the story was the  
one who actually stabbed the individual.

23 A. It is written in this report here that this person had  
24 misinformed. It did not happen in Halifax. The coloured  
25 person was not involved. It was the old man by the name of

1 Roy Ebsary. That is the person they are speaking about.

2 Q. If I could just stop you there for a moment, Mr. Marshall. In  
3 September of 1981, did you know at the time that this report  
4 was put together about the story involving Roy Ebsary? Had  
5 you been told about that by that point?

6 A. I believe so, yes.

7 Q. All right, continue. Is what's on page 170 then, are you  
8 telling us that that's a wrong interpretation of the Ebsary  
9 incident?

10 A. Yes.

11 Q. Let's just talk about that for a second. How was it that you  
12 came to hear about Roy Ebsary?

13 A. A lady who used to visit me while I was in prison or jail, his  
14 brother, Shelly Sarson.

15 Q. It was her brother who used to visit you?

16 A. Yes... No, the girl is the one who visited me.

17 Q. Shelly visited you.

18 A. He only came to visit me once. It was at that time I got the  
19 old man's name.

20 Q. Who did you get the old man's name from?

21 A. Mitchell Sarson is the man's name.

22 Q. What were you told that Ebsary was saying?

23 A. He told me Ebsary was being robbed. The coloured man was  
24 going to steal from him. When I came, I helped the old man  
25 and then he said I stabbed him. And that's what he said.



1 Q Let's go back through that again. You're saying that Ebsary  
2 was saying that you had stabbed somebody?

3 A. Yes. They are talking about the person now, the coloured  
4 person that had died or was killed, Sandy Seale.

5 Q What I just want to be clear on and let's just go back over it  
6 again for a second. When the story that you were told by  
7 Sarson, did you understand from that that Ebsary had been  
8 saying that you had stabbed somebody or that somebody else  
9 had stabbed Seale?

10 A. He said he is the one that stabbed him once.

11 Q Who is "he" now?

12 A. Roy Ebsary stabbed first. Then when I came on the scene, I  
13 told him, according to what he says, I had told him go away.

14 Q Told who?

15 A. I told Roy Ebsary. He said I'm the one who stabbed again.

16 Q When he said, "I'm the one who stabbed again," you're saying  
17 that Ebsary said that you, Marshall, were the one that stabbed  
18 again, is that...

19 A. Yes.

20 Q What did you think of that story?

21 A. It was not correct.

22 Q Did Sarson tell you what Ebsary looked like? Did he describe  
23 him to you?

24 A. No, it was I who asked him.

25 Q Did he tell you?

1 A. Yes.

2 Q. Did you then recognize that, think that that perhaps was the  
3 man that had been in the park that night?

4 A. Yes.

5 Q. After September of '81, and after Mr. Aronson got involved,  
6 at some point in time you were visited by Harry Wheaton and  
7 Corporal Carroll, correct?

8 A. Yes.

9 Q. And I'll take you to another volume now for a second, Volume  
10 34 at page 52. Perhaps you want to take a couple of minutes.  
11 That's purported to be your statement, those two pages. Are  
12 you familiar with that statement, Mr. Marshall?

13 A. Yes.

14 Q. Can you tell us the circumstances that gave rise to you giving  
15 that statement to Wheaton and Carroll?

16 A. What I said here, I had to follow the elderly man's statement.

17 Q. All right, let me just stop you there for a minute. Before we  
18 get to the actual statement itself, when... You were visited by  
19 Wheaton and Carroll, correct?

20 A. Yes.

21 Q. Can you tell us what they said to you when they came to see  
22 you?

23 A. They told me we've come to help you and do not lie to us and  
24 what was in my mind, I have already heard what the old man  
25 had said and the other gentleman. Then I had to follow what

1 they had said.

2 Q And is that what you did?

3 A. Yes.

4 Q When you gave that statement. Okay, let's just go through  
5 that statement. In that statement on page 52 on the first  
6 page of it, the last full paragraph there towards the bottom of  
7 the page you're saying:

8 I asked Sandy if he wanted to make some  
9 money. He asked how and I explained to him we  
10 would roll someone.

11 Did that, in fact, happen?

12 A. No.

13 Q Why did you say that?

14 A. What I said a little while ago, I had to follow the instructions  
15 or directions that they had suggested, Roy Ebsary and Jimmy  
16 MacNeil, what they had said.

17 Q Why did you think that you had to do that?

18 A. I did not know that this would open. I did not think that this  
19 inquiry would not open. If I did not say what had taken  
20 place in 1971.

21 Q What you said there in your statement, "I asked Sandy if he  
22 wanted to make some money. He asked how and I explained  
23 to him we would roll someone." was not true, is that correct?

24 A. Yes.  
25

1 Q. And do I understand you to be saying that you said that  
2 because you thought it was consistent with what Ebsary had  
3 said, was the same, that there was a robbery?

4 A. Yes, I had to follow what he was saying.

5 Q. Now tell me again why it was you thought that you had to  
6 follow Ebsary's story? Why did you think you had to do that?

7 A. How it was opened when the R.C.M.P. had already asked that,  
8 they were talking what had taken place.

9 Q. Was it your understanding that the R.C.M.P. had talked to  
10 Ebsary and MacNeil at that time?

11 A. Yes.

12 Q. Did you think that in order for Wheaton and Carroll to believe  
13 you, you had to tell them a story that was the same as what  
14 had Ebsary and MacNeil had told them, is that what you're  
15 telling us?

16 A. Yes.

17 Q. Even though you knew at the time that that wasn't true?

18 A. Yes.

19 Q. Was there any discussion between you and Sandy that night  
20 about wanting to roll somebody?

21 A. No.

22 Q. The words in the statement, Mr. Marshall, are they your  
23 words? In other words, did you speak and they wrote down  
24 what you were saying?

25 A. Yes.

1 Q. If, as you say, there was no suggestion of rolling anybody, no  
2 attempted robbery, all the things that have been said, can you  
3 give us any explanation as to why Ebsary did what he did?

4 A. No.

5 Q. Did it come right out of the blue?

6 A. Yes.

7 Q. There was nothing in the conversation that preceded it  
8 happening that gave you any indication that he was about to  
9 do that?

10 A. No.

11 Q. So when it occurred, it was a complete surprise to you?

12 A. Yes.

13 Q. I'm going to jump ahead again in time now and go to, I just  
14 wanted to ask you a couple of questions concerning  
15 compensation. Not going through the whole bit but just a  
16 couple of things at the end. Can you tell us why it was that  
17 you finally decided to take the \$270,000?

18 A. I was told by my lawyer that he was told by government  
19 officials to take the money or you'll not get anything. Then  
20 my lawyer said that I owed him a lot of money and the other  
21 man that worked for me, Stephen Aronson. And we  
22 negotiated for six weeks and I told them that I did not want  
23 their money, but I had to take it in order to pay the people  
24 who were working for me.

25 Q. When you did finally settle on \$270,000, there were legal

1 bills that were paid.

2 A. Yes.

3 Q. How did you feel about having to pay legal bills out of that  
4 settlement?

5 A. I don't know.

6 Q. You don't have any recollection at all about how you felt  
7 about that at the time.

8 A. No, but I wanted to... I was not interested in money. I was  
9 interested in the one who had committed the murder and for  
10 him to go to trial.

11 Q. You've testified on a number of occasions.

12 A. Yes.

13 Q. At the reference before the Appeal Court and at the three  
14 Ebsary trials.

15 A. Yes.

16 Q. And by the time of the third Ebsary trial, you indicated that  
17 the statement that you gave in Dorchester was not true, right?

18 A. Yes.

19 Q. You hadn't done that prior to that point in time. Can you  
20 explain to us why it was only at the time of the third Ebsary  
21 trial that you said that that statement just wasn't true?

22 A. I thought they were going to clean him.

23 Q. What does that mean, sorry? You thought they were going to  
24 what?

25 A. Oh, that they wanted...

1 Q. Clear him?

2 A. To clear him.

3 Q. This is at the third Ebsary trial now?

4 A. Yes. And people began to see who had said what. People  
5 began to notice and see what Roy Ebsary had said, that he  
6 was going to be robbed and that's the reason why he killed. I  
7 thought then I should stop him.

8 Q. And it was only at the third Ebsary trial that you came to that  
9 conclusion, is that...

10 A. Yes.

11 Q. Can you tell us why after you had been found not to have  
12 committed the offence by the Appeal Court, why you didn't  
13 immediately in the first two Ebsary trials say, "Look what I  
14 said in Dorchester was completely wrong"?

15 A. They did not want to listen to me.

16 Q. Sorry, I don't understand that answer. Can you tell me a little  
17 bit more what you mean? Who didn't want to listen to you  
18 about what?

19 A. The Supreme Court and others. Those that were in defence of  
20 Ebsary and those others, government officials.

21 Q. They didn't want to hear what? They didn't want to hear  
22 what...

23 A. They had circled my story.  
24  
25

1 11:32 a.m.

2 Q. Sorry, let me just stop you there, Mr. Marshall, I don't  
3 understand what that means. What do you mean, "they'd  
4 circled your story."

5 A. Okay, they had changed my story.

6 Q. Who had?

7 A. Would you repeat the question, please?

8 Q. The overall question is this, let's just come back to that and  
9 maybe we can sort of forget about the details for a second.  
10 Why, can you tell me why, without necessarily getting into  
11 the details of it, why you decided to, when you got to the  
12 third Ebsary trial you said the Dorchester stuff is not right.  
13 But there were two Ebsary trials before that, and all I'm  
14 looking for from you is just an explanation as to why you  
15 didn't say at the first one, at the first Ebsary trial that it was  
16 wrong.

17 A. I was not given the opportunity to speak and to say, instead  
18 they believed what the old man had said and where he was  
19 going to be robbed. What Jim MacNeil said, they believed  
20 him.

21 Q. That was your sense of what was going on in those first two  
22 trials, that they were believing Jimmy MacNeil?

23 A. Yes.

24 Q. I see. And is that why you didn't say anything about the fact  
25 that that statement of Dorchester was wrong in the first two



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1 trials?

2 A. I could not say nothing.

3 Q. You wouldn't say anything contrary, is that what you mean to  
4 MacNeil?

5 A. Yes.

6 MR. SPICER

7 I'm finished, thanks very much.

8 CHAIRMAN

9 Mr. Pugsley?

10 EXAMINATION BY MR. PUGSLEY

11 Q. Mr. Marshall, my name is Ron Pugsley, I'm appearing on  
12 behalf of John MacIntyre. I'd like to ask you about your  
13 schooling, first of all. You went to an English school at  
14 Membertou?

15 A. No, it was an Indian until they closed it, then we went to the  
16 English school.

17 Q. And were the classes at the Indian school at Membertou  
18 taught in Indian or taught in English?

19 A. No, there was only one classroom. We did not speak Indian.

20 Q. Did not speak Indian?

21 A. We were taught how to speak English.

22 Q. At the school at Membertou.

23 A. Yes.

24 Q. How many years did you attend that school?

25 A. About seven or eight years, I believe.

1 Q. And then you went to an English school?

2 A. Yes.

3 Q. And where was that located?

4 A. On Alexander Street in Sydney.

5 Q. And how many years did you attend that school?

6 A. Two or three.

7 Q. And you left school at what age?

8 A. I believe it was either 14 or 15.

9 Q. And what grade were you in when you left the school at  
10 Alexander Street?

11 A. 5.

12 Q. Did you pass any of the grades at the English school on  
13 Alexander Street?

14 A. One, I think.

15 Q. You were in the Halifax area on the morning of May 28th,  
16 1971?

17 A. Yes.

18 Q. And then you drove with a friend back to Sydney arriving at  
19 about 8:30 or 9 o'clock at night?

20 A. Yes.

21 Q. Where did you go when arrived back in Sydney?

22 A. I went home for a few minutes only...

23 Q. And then...

24 A. And then...

25 Q. And then where did you go?

1 A. And then I ran across my friend, Arty Paul was his name.

2 Q. Yes.

3 A. And then Roy Gould asked for us, for him to take us to town  
4 and he did take us.

5 Q. Were you living with your parents at Membertou?

6 A. Yes.

7 Q. How far would that be from Wentworth Park?

8 A. About a mile.

9 Q. Roy Gould drove you and Arty Paul into town?

10 A. Yes.

11 Q. And where did you go?

12 A. We were taken to the liquor store.

13 Q. Yes.

14 A. And we bought a bottle and we went to my friend's at the  
15 north end. Intercolonial Street was the name.

16 Q. I see. And how far would that be from Wentworth Park?

17 A. Perhaps over a mile, maybe two.

18 Q. And then where did you go?

19 A. At my friend's house at Intercolonial Street.

20 Q. And you were there for how long?

21 A. About an hour, maybe less.

22 Q. Yes. And then where did you go?

23 A. The three of us then left and we went to the dance. My  
24 friends went into a tavern to visit someone. It was there that  
25 I had lost them. I continued to walk down towards

1           Wentworth Park.

2           Q. I see. Was the tavern the Keltic Tavern?

3           A. Yes.

4           Q. And that would be how far from the Park?

5           A. Somewhere in approximately of Intercolonial Street.

6           Q. I'm not sure how far that is from the Park. Would that be a  
7           10-minute walk?

8           A. No, more than that.

9           Q. All right. Did you walk from the Keltic Tavern to Wentworth  
10          Park?

11          A. Yes.

12          Q. By yourself?

13          A. Yes.

14          Q. And this would be about what time?

15          A. About half past 11 or 12 o'clock.

16          Q. Were you planning to go to the dance?

17          A. Yes.

18          Q. You walked into the Park and, did you walk into the Park  
19          from Byng Avenue?

20          A. No.

21          Q. From George Street?

22          A. Yes.

23          Q. And walked in at the northeast corner, I guess, at George and  
24          Byng Avenue?

25          A. Yes.

- 1 Q. And you were still by yourself at that time?
- 2 A. Yes.
- 3 Q. And the first people you met in the Park were who? Do you
- 4 know their names?
- 5 A. Three, one I know at that time.
- 6 Q. And who was that?
- 7 A. The one that was a sergeant who was in the Air Cadets.
- 8 Q. I see. Do you know his name?
- 9 A. I don't remember his name at the moment.
- 10 Q. And he was with whom?
- 11 A. His girlfriend.
- 12 Q. Do you know her name?
- 13 A. No.
- 14 Q. They were standing together. Was there a third...
- 15 A. No, they were setting down.
- 16 Q. I see. Was there a third person with them?
- 17 A. There were two people.
- 18 Q. Just the two.
- 19 A. No, there were two others.
- 20 Q. I'm sorry, all right. Did you know the other two people?
- 21 A. No, not at that time.
- 22 Q. Did you later learn their names?
- 23 A. Yes.
- 24 Q. And who were they?
- 25 A. Roy Ebsary and Jim MacNeil.

- 1 Q. I see. Were Ebsary and MacNeil sitting down as well?
- 2 A. No.
- 3 Q. Were the four of them talking?
- 4 A. I think so.
- 5 Q. I see. Did you stay with them for a moment or so?
- 6 A. No. I continued walking.
- 7 Q. Towards the dance.
- 8 A. Yes.
- 9 Q. And while you were walking you met Sandy Seale.
- 10 A. Yes, him and Robert Patterson.
- 11 Q. Did Patterson sit down at that point in time?
- 12 A. No. He staggered and fell. No, he didn't fall, he staggered.
- 13 Q. You suggested to him that he lay down?
- 14 A. Yes.
- 15 Q. And did he do so?
- 16 A. Yes.
- 17 Q. And is that the...
- 18 A. I laid him down.
- 19 Q. And is that about the last time you saw him that night?
- 20 A. Yes.
- 21 Q. And did Seale tell you at that time that the dance was pretty
- 22 well over?
- 23 A. Yes.
- 24 Q. And that is why you did not go to the dance.
- 25 A. Yes.

- 1 Q. So Seale, what did Seale say he was going or where...
- 2 A. He was going home.
- 3 Q. Did you know where he lived?
- 4 A. Yes.
- 5 Q. And so you decided to walk with him?
- 6 A. No.
- 7 Q. How did you happen to continue on with him at that time?
- 8 A. Could I use the chart to tell you?
- 9 Q. Certainly, by all means.
- 10 A. Here, we stood here first.
- 11 Q. Could you put an "a", when you say we stood here first, just
- 12 put an "a", if you would, the letter "a" so we know...
- 13 A. The letter "a"?
- 14 Q. The letter "a", yes. Just an "a" where the two "x"es are so we
- 15 can identify it. You and Sandy Seale were standing there.
- 16 A. Yes.
- 17 Q. And were Ebsary and MacNeil still back with the other two
- 18 people?
- 19 A. No.
- 20 Q. Where were they at that point in time?
- 21 A. They were standing here on Crescent Street.
- 22 Q. I see. What were they doing?
- 23 A. I don't know. But I do know they asked me for a cigarette, a
- 24 smoke.
- 25 Q. They were on Crescent Street and you were at the letter "a"

- 1 and they called over to you for a cigarette?
- 2 A. Yes.
- 3 Q. How far would that, would they be away from you?
- 4 A. About the size of this room where we are.
- 5 Q. All right. About to the back of the room.
- 6 A. About that, yes.
- 7 Q. All right. Did you give them a cigarette?
- 8 A. Yes.
- 9 Q. Did you walk over then and give it to them when they asked
- 10 for it?
- 11 A. No.
- 12 Q. What did you do, when they called for the cigarette what did
- 13 you do?
- 14 A. I walked in this direction here, the two of us...
- 15 Q. That is you and Seale.
- 16 A. Yes.
- 17 Q. Did you walk over to them to Ebsary and MacNeil?
- 18 A. Yes.
- 19 Q. And did you give them the cigarette then?
- 20 A. No. We met a man and a woman here.
- 21 Q. And that was...
- 22 A. No, he met a man and a woman. They asked me for a match.
- 23 Q. I'm sorry. You and Seale walked over towards Crescent Street
- 24 and you met Harriss and Gushue?
- 25 A. Yes.



- 1 Q. And Gushue asked you for a match? Or Harriss?
- 2 A. Yes.
- 3 Q. Did you give them a match?
- 4 A. Yes.
- 5 Q. How far were they away from Ebsary and MacNeil?
- 6 A. Not all that far.
- 7 Q. Can you measure in the length of this room as to how far they
- 8 would be?
- 9 A. About what I said earlier. About the distance what I said
- 10 earlier.
- 11 Q. The distance that you said earlier was about the length of this
- 12 room and that was...
- 13 A. Yes, for Roy Ebsary and Jim MacNeil.
- 14 Q. Yes. You estimated, when you were at point "a" and Ebsary
- 15 called for a cigarette, you were about the length of this room
- 16 away from him. And my question is...
- 17 A. Yes.
- 18 Q. My question is when you gave the match to either Patricia
- 19 Harriss or Terry Gushue, how far were Harriss and Gushue
- 20 away from Ebsary and MacNeil.
- 21 A. About here.
- 22 Q. Yes. Would they be as far away as the length of this room as
- 23 well?
- 24 A. Approximately.
- 25 Q. All right. Okay. Were Harriss and Gushue talking to MacNeil

MR. MARSHALL, EXAM. BY MR. PUGSLEY

1 and Ebsary?

2 A. No.

3 Q. No. Okay. Did you talk to Harriss and Gushue?

4 A. Yes.

5 Q. For what period of time?

6 A. Not very long.

7 Q. Did Seale remain with you while you talked to them?

8 A. I don't know.

9 Q. And after you...

10 A. He was in the area though.

11 Q. All right. And after you finished talking to Harriss and  
12 Gushue you then went over to Ebsary and MacNeil?

13 A. Yes.  
14 11:50 p.m.

15 Q. And did you give Ebsary a cigarette?

16 A. Yes.

17 Q. And did you remain talking to Ebsary and MacNeil for about a  
18 half an hour?

19 A. Yes.

20 Q. Thank you, you can sit down, sir, if you prefer. Did you see  
21 John Pratico that night?

22 A. No.

23 Q. Did you know him?

24 A. Yes.

25 Q. How would you have known him before, under what

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1 circumstances?

2 A. We chummed around together with other Indians.

3 Q. Did he speak Indian?

4 A. No.

5 Q. You would have spoken English to Pratico?

6 A. I believe so.

7 Q. And you spoke English, of course, to Mr. Seale that night?

8 A. Yes.

9 Q. And to Patricia Harriss and Gushue?

10 A. Yes.

11 Q. And to Ebsary and MacNeil?

12 A. Yes.

13 Q. Did you see Pratico the following day, the Saturday?

14 A. Yes.

15 Q. Where did you see him?

16 A. He was sitting at his mother's on the outside step.

17 Q. Where did his mother live?

18 A. On Bentinck Street.

19 Q. Had you been to that house before?

20 A. No.

21 Q. Did you know he lived there?

22 A. Yes.

23 Q. About what time of day was it that you saw him on the  
24 Saturday?

25 A. It was in the afternoon sometime.

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- 1 Q. This was after you had been... Or had you been to the police  
2 station before you saw John Pratico on the Saturday?
- 3 A. Would you repeat that, please?
- 4 Q. Yes. Had you been to the police station before you saw John  
5 Pratico on the Saturday?
- 6 A. Yes.
- 7 Q. And then you saw Pratico in the afternoon sitting on the steps  
8 of his mother's house?
- 9 A. Yes.
- 10 Q. Was that purely accidental or were you...
- 11 A. Yes.
- 12 Q. Was anyone else present with Pratico?
- 13 A. Yes.
- 14 Q. Who was that?
- 15 A. An Indian. An Indian woman, and another younger white  
16 person.
- 17 Q. Do you recall the name of the Indian woman?
- 18 A. I believe it was, it was either Rosina Paul or Theresa Paul,  
19 I've forgotten.
- 20 Q. Would she be a sister of Arty Paul?
- 21 A. No, but a relation.
- 22 Q. Do you recall the name of the other white person?
- 23 A. I don't know whether his last name was Lynch or not. I've  
24 forgotten.
- 25 Q. Was there a Rudy Poirier there?

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- 1 A. I don't know a person by that name.
- 2 Q. Did you speak to John Pratico while he was sitting on the  
3 steps and tell him what happened to you the night before?
- 4 A. No, he asked me.
- 5 Q. What did you tell him?
- 6 A. I told him, he said first, let's get together and look for the  
7 person that had committed this murder.
- 8 Q. What did you say to that?
- 9 A. I did not think of it at the time.
- 10 Q. I'm sorry?
- 11 A. I did not think of it at the time.
- 12 Q. No, my question was, when Pratico said, "Let's get together  
13 and look for the person," what did you say to him in  
14 response?
- 15 A. I told him to forget it, for I just have been told, "Those of us  
16 in charge will look for the man."
- 17 Q. Did you tell Pratico about a white Volkswagen?
- 18 A. No.
- 19 Q. With a Manitoba license plates?
- 20 A. No.
- 21 Q. Did you tell anyone...
- 22 A. No.
- 23 Q. About a white Volkswagen with Manitoba license plates?
- 24 A. No.
- 25 Q. Do you recall when you were taken home from the hospital

MR. MARSHALL, EXAM. BY MR. PUGSLEY

1 after this incident, did you sleep at your father's house?

2 A. Yes.

3 Q. Do you recall being wakened by your father at 7:30 or eight  
4 o'clock in the morning to come to the telephone?

5 A. Yes.

6 Q. And who was on the telephone?

7 A. Oscar Seale.

8 Q. Sandy's father.

9 A. Yes.

10 Q. What was the conversation you had with him?

11 A. He asked me, "Who stabbed my son?"

12 Q. And what did you tell him?

13 A. I said, I don't know.

14 Q. Did you tell him about the white car or a white car with  
15 Manitoba license plates?

16 A. No.

17 Q. Would you please get for Mr. Marshall Volume 19 of the  
18 transcripts? May we take a few minutes, My Lord?

19 BREAK 11:55 a.m.

20

21

22

23

24

25

1 12:10 p.m.

2 Q. Mr. Marshall, I have asked the reporter to place before you  
3 Volume 19[sic] at page 5361. This is the evidence of Oscar  
4 Seale. Do you have any difficulty in reading English, Mr.  
5 Marshall?

6 A. No.

7 Q. And, indeed, when you communicate with other Indians, do  
8 you do so in English as well as in Indian?

9 A. Would you say that again, please?

10 Q. Yes, when you communicate with other Indians, with your  
11 friends, do you speak in Indian or do you speak in English?

12 A. It all depends as to who I am talking to.

13 Q. Roy Gould, for example?

14 A. Yes, we speak Indian.

15 Q. In Indian? Do you speak in English with Roy Gould as well?

16 A. Yes.

17 Q. Can the answer that is given at about Line 6 by Mr. Seale, he  
18 says that:

19  
20 I called and his father (that would be your  
21 father) answered the phone and I asked him was  
22 Donald home and he says yes and I said, well,  
23 they said he's in bed. I said, 'Well, I'd like to  
24 speak to him. I'm Oscar Seale,' I said, and 'I  
25 understand that he was with my son last night  
and he got, he was seriously wounded.' And Mr.  
Marshall states he didn't know nothing about it  
and so he said he would get him up. So he got

1 Donald up and Donald answered the phone and I  
2 asked Donald was he with Sandy last night and  
3 he says yeah. He said they were in the park, he  
4 said, and they were talking and two, two men  
5 pulled up in a car. I'm not quite sure if it said a  
6 white car with Manitoba license plates or a blue  
7 car with white Manitoba license plates or  
8 something to that effect.

9 Do you recall having any conversation with Oscar Seale to that  
10 effect, describing the car?

11 A. What he said here is not true about the white vehicle. Johnny  
12 Pratico is the one that said this when he was questioned.

13 Q. Yes?

14 A. I did not tell him that.

15 Q. I see. You did not tell John Pratico about the white car?

16 A. No.

17 Q. And you did not tell Oscar Seale about the white car?

18 A. No.

19 Q. And, in fact, Roy Ebsary and Jimmy MacNeil did not get out of  
20 a car?

21 A. No.

22 Q. At the top of the next page, 5362, the answer given by Mr.  
23 Seale is:

24 And he ran away. So I said 'Is that all you can  
25 tell me?' He said 'That's the way it happened'. I  
26 said 'About this car, are you sure it was  
27 Manitoba license plates?' He said yes. So I said  
28 'all right.'

29 Did that conversation take place with Oscar Seale?



1 A. No.

2 Q. You gave a written statement to the police on Sunday  
3 afternoon on May 30th.

4 A. Yes.

5 Q. Do you recall the policeman to whom you gave the statement?

6 A. Yes.

7 Q. Who was that?

8 A. Johnny MacIntyre, I believe.

9 Q. Would you be good enough to turn to Volume 16. I'm not  
10 sure if that's before you, at page 17. This is a typewritten  
11 copy of the statement that you gave. I'm not sure, do we  
12 have the original statement, Mr. Spicer?

13 MR. SPICER

14 It will take me a couple of minutes.

15 MR. PUGSLEY

16 All right, if you could look for it and I'll question Mr.  
17 Marshall in the interim.

18 Q. Do you recall being interviewed by John MacIntyre and  
19 discussing with him the events that happened in the park on  
20 May 28th?

21 A. Yes.

22 Q. Did he write down what you told him?

23 A. He said that he has to read that first before he answers your  
24 question.

25 Q. By all means. Take your time.

1 A. Yes.

2 Q. Was this the information that you gave to John MacIntyre?

3 A. Yes.

4 Q. And were there, was there any pressure or any threats by  
5 John MacIntyre in this interview against you?

6 A. Yes, but not that evening.

7 Q. Not that evening, I see, all right. Was there any pressure at  
8 all from MacIntyre with respect to this statement?

9 A. That night?

10 Q. When you gave the statement, yes.

11 A. All I can recall is that I gave him this.

12 Q. I see. Is the information that you gave to John MacIntyre  
13 recorded accurately in this statement?

14 A. Yes.

15 Q. Is there anything he left out?

16 A. I can't say.

17 Q. Do you recall signing this statement?

18 A. Yes.

19 Q. Did you read it over before you signed it?

20 A. I don't remember.

21 Q. Had you met Maynard Chant before the night of May 28th?

22 A. No.

23 Q. And the first time you saw him was after the stabbing when  
24 you ran down Crescent Street and onto Bentinck Street.

25 A. Yes.

1 Q. And then you walked with Chant along Bentinck Street onto  
2 Byng Avenue.

3 A. No, we ran.

4 Q. I'm sorry, you ran along Bentinck Street along to Byng  
5 Avenue.

6 A. Yes.

7 Q. And did you tell him what happened to you in the Park as  
8 you ran along with him?

9 A. I stopped him first, then I told him we have been stabbed, me  
10 and another person and would he help me.

11 Q. Did you describe to him the people who had stabbed you and  
12 Mr. Seale?

13 A. No, I don't believe so.

14 Q. You ran along Byng Avenue and you met some people, a  
15 woman gave you a Kleenex.

16 A. Yes.

17 Q. A car came along. You and Chant then got in the car and  
18 drove around to Crescent Street?

19 A. Yes.

20 Q. You and Chant went into a house to get some help.

21 A. I believe it was Chant.

22 Q. I see, all right. Eventually, the police came and you went to  
23 the hospital.

24 A. Yes.

25 Q. Did you see Chant on the Saturday at all?

1 A. No.

2 Q. Did you see him on the Sunday at the police station?

3 A. No.

4 Q. He has testified, and if you like I can get the exact words he  
5 used, but my recollection of what he testified... You might  
6 want to trans... I'm sorry, I've forgotten you were not  
7 translating my questions. My recollection of what Mr. Chant  
8 testified to was that at the police station, you came over to  
9 him and leaned over him and said to him something like,  
10 "Remember—there were two of them." Now this, he says, took  
11 place on the Sunday afternoon before you gave your  
12 statement and before he gave his statement to the police.

13 A. No, I did not see him Sunday.

14 Q. Did you ever say to Maynard Chant, "Remember—there were  
15 two of them"?

16 A. It might have been that when I told him that the first time  
17 that I seen him that two men had stabbed us.

18 Q. Yes, but the phrase that Chant used in describing what you  
19 said to him was, "Remember, Maynard," or "Remember—there  
20 were two of them." Meaning that he...

21 A. That's what I said to him when I first met him.

22 Q. But the critical word that Chant used was, "Remember," that  
23 he was to remember when he talked to the police that there  
24 were two people. Did you say to him that he was to  
25 remember to tell the police there were two of them?

1 A. He does not remember.

2 Q. All right. Was there any fighting or struggle in the park  
3 before Seale was stabbed?

4 A. No.

5 Q. Was there any struggle by you after Seale was stabbed apart  
6 from pushing Jimmy MacNeil aside?

7 A. When I was stabbed, things were happening so fast I don't  
8 recall.

9 Q. Did you kick Ebsary in the head area at any time?

10 A. I don't remember.

11 Q. Ambrose, do you know Ambrose MacDonald?

12 A. I recognize the name.

13 Q. Yeah, he is a police officer and he said that he was at  
14 Membertou, he has testified that he was at Membertou on the  
15 Sunday evening after you gave your statement to MacIntyre  
16 and he had a conversation with you to the effect, "I'm  
17 surprised, Donald, that you didn't do something when you  
18 were attacked in this way," and you said to him that you had  
19 "kicked the queer in the ear," I think was the phrase that you  
20 used.

21 A. No.

22 Q. Let me just get this evidence for you, so I can quote it  
23 accurately. It's found in Volume 7 of the transcript.

24 A. Mr. Marshall would like to know, sir, who is the "queer" and  
25 who are you talking about?

1 Q. I'm talking about Donald Marshall kicking Roy Ebsary in the  
2 ear and referring to Roy Ebsary as a "queer".

3 A. Mr. Marshall says that he did not know that was the character  
4 of that person.

5 Q. I see. And I may have been getting ahead of myself because  
6 the reference to "queer" is actually a report given to John  
7 MacIntyre by MacDonald at a later time and the evidence that  
8 MacDonald gave at page 1133, Mr. Marshall, of Volume 7,  
9 1133. And it's my recollection that this conversation that  
10 Ambrose MacDonald is speaking about occurred on the  
11 Sunday evening and in the long answer at the top of the page,  
12 he says about Line 8 or Line 9:

13  
14 I talked with him (Ambrose MacDonald saying  
15 that he talked with you) for quite awhile as I  
16 grew up near the reserve and I knew all the  
17 boys quite well. One thing that I said to him,  
18 knowing him as I did, I said, 'Junior, I can't  
19 imagine you running away no matter what. I  
20 can't understand why you didn't get a piece of  
21 that guy because you always did.' Well, he put  
22 his head down and he said 'I did, Amby. I fired  
23 a boot at the tall guy and I nicked him near the  
24 ear. There might be a mark or some blood on his  
25 ear.'

21 Do you recall that happening in the park on the night of the  
22 stabbing, that you fired a kick at Ebsary?

23 A. No.  
24  
25

1 MS. EDWARDH

2 It's not Ebsary.

3 COMMISSIONER EVANS

4 It's not Ebsary. It's "the tall guy".

5 MR. PUGSLEY

6 Q. I'm sorry, I beg your pardon, quite right. Do you recall "firing  
7 a boot" at MacNeil?

8 A. I pushed him aside only.

9 Q. I see, okay. The other reference that I was referring, just for  
10 the purpose of counsel, and I don't need to direct Mr.  
11 Marshall's attention to it, is found at Volume 19, page 124,  
12 where the reference to "the queer" is found.

13 MS. DERRICK

14 Is it the exhibit volume?

15 MR. PUGSLEY

16 Q. In the exhibit volume, not in the transcript volume. In the  
17 first statement given by John Pratico to the police, to  
18 MacIntyre, on Sunday afternoon, the 30th of May, he says, in  
19 part:

20 I seen Junior Marshall and Sandy Seale between  
21 the store and the dance hall. I was talking to  
22 them. They wanted me to walk through with  
23 them. I said no.

24 Is that accurate?

25 A. No.

1 Q. Okay. And in the later statement that he gave on June the  
2 4th, Pratico says:

3  
4 I met Donald Marshall and Sandy Seale. We  
5 walked to the corner of Argyle Street. Donald  
6 said, 'John, come down to the park' in a rough  
7 voice. I said 'no.'

8  
9 Sorry, would you like me to read that again? No. Did that  
10 occur?

11 A. No.

12 Q. Am I right that Mary O'Reilley is a sister of Catherine  
13 O'Reilley?

14 A. Yes.

15 Q. Did you go out with Catherine O'Reilley for a time  
16 immediately before this incident in the park?

17 A. It was one of her sisters.

18 Q. Which sister did you go out with?

19 A. I have forgotten.

20 Q. Did Mary O'Reilley go out with your brother, Pius?

21 A. Yes.

22 Q. Do you recall phoning Mary O'Reilley on the Saturday morning  
23 on the 29th of May, the morning after the incident in the  
24 park, and talking to her describing what happened in the  
25 park and who you saw?

A. I did speak to her sister, younger sister... No, no, the older  
sister by the name of Catherine O'Reilley.



MR. MARSHALL, EXAM. BY MR. PUGSLEY

1 Q. You spoke to Catherine O'Reilley on Saturday, the 29th?

2 A. I believe I spoke to both of them.

3 Q. Yes, all right. Now did you tell them about the men you saw  
4 in the park, describing Ebsary and MacNeil?

5 A. I don't recall.

6 12:35 p.m.

7 Q. Did, when Wheaton and Carroll visited you in Dorchester, did  
8 either of them threaten you?

9 A. No.

10 Q. And you say the reason that you told them about the robbery  
11 about you and Seale going to rob or roll someone was what?  
12 Why was, what was the reason that you offered for telling  
13 them that?

14 A. I have heard, I was told by Mitchell Sarson what Roy Ebsary  
15 had said. At that time, and that is the reason why I said that.

16 Q. But I take it that Wheaton and, had Wheaton and Carroll  
17 interviewed Roy Ebsary before they had interviewed you?

18 A. I do not know.

19 Q. I see.

20 A. But I believe so, yes.

21 Q. Did they tell you that they had interviewed Ebsary?

22 A. No. Not until after he had written a statement or the paper,  
23 wrote the paper.

24 Q. Did they interview you on two occasions? In Dorchester.

25 A. Yes.

MR. MARSHALL, EXAM. BY MR. PUGSLEY

1 Q. And the first one was interrupted because of an alarm?

2 A. Yes.

3 Q. And the statement was not completed then.

4 A. It wasn't written at the time.

5 Q. No.

6 A. I believe.

7 Q. In the first statement that you gave to them which was not  
8 signed because it was not completed, they had to leave early...

9 MR. ROSS

10 Is that Exhibit 101?

11 MR. PUGSLEY

12 Q. It's Exhibit 101 and I'll, do you have a copy of that that you  
13 can give to Mr. Marshall. Have you seen that statement  
14 before? Or that writing before? It's not really a statement.

15 A. No.

16 Q. Okay.

17 A. I may have written it but I don't remember.

18 Q. I'm not suggesting this is your handwriting, I think it's  
19 Corporal Carroll's handwriting, but my understanding is that  
20 this is the information you gave Carroll and Wheaton when  
21 they came to Dorchester on February the 18th.

22 A. That could be but I don't recall.

23 Q. All right. About six lines from the bottom it says,

24  
25 Sandy and I decided to take some money from

MR. MARSHALL, EXAM. BY MR. PUGSLEY

1 these fellows, one of them asked me for a  
2 cigarette or a light, we thought it would be a  
3 good chance to get closer to them. We walked  
4 over to them and had a short conversation about  
liquor, women and everything. They started to  
walk away from us, I called them back.

5 Is that accurate. Firstly, did you tell them that? Did you tell  
6 Wheaton and Carroll that?

7 A. This is the same as another writing that I have made.

8 Q. Yes. And that, perhaps we can refer Mr. Marshall to Volume  
9 16, page 41, I'm sorry, it's not Volume 16, it's Volume 34 at  
10 page 52. Do you have that in front of you? Do you have  
11 Volume 34? Have you had a chance to read pages 52 and 53?  
12 Just take a moment to read that, Mr. Marshall.

13 A. Yes, I remember.

14 Q. And is this the statement that you gave to Wheaton and  
15 Carroll which, on the, I believe this is early in March of 1982.  
16 And I particularly address your attention to the last  
17 paragraph on page 52, "I asked Sandy if he wanted to make  
18 some money. He asked how and I explained to him we would  
19 roll someone. I had done this before myself a few times."  
20 Had you, in fact, ever rolled anyone before?

21 A. I don't remember.

22 Q. I see. But what does the word "roll" mean?

23 A. I can't tell you.

24 Q. I see. The statement goes on to say, "I don't know if Sandy  
25 had ever rolled anyone before. We agreed to roll someone so

1 we started to look for someone to roll." Did you tell Wheaton  
2 and Carroll that? Did you give them that information?

3 A. Yes.

4 Q. Yes. The statement goes on to say, "The first time I saw the  
5 two fellows we later decided to rob was on the George Street  
6 side of the Park." Did you use the word "rob" when you were  
7 talking to Wheaton and Carroll?

8 A. Yes.

9 Q. You gave evidence before the inquiry in Halifax, you  
10 remember the five judges...

11 A. Yes.

12 Q. And there was some discussion there about rolling. And you  
13 gave evidence in the, Mr. Ebsary did not give evidence at the  
14 inquiry, that's my recollection. Mr. Ebsary did not give  
15 evidence at the inquiry.

16 A. I don't understand you.

17 Q. All right. At the reference, I'm sorry. Mr. Ebsary did not give  
18 evidence at the reference before the five judges.

19 A. There were, no, he was being protected.

20 Q. Yes. All right. Why did you, are you saying that you did not  
21 tell the truth at the reference?

22 A. I don't understand you.

23 MR. PUGSLEY

24 My Lord, if you were going to break for lunch it would be, I  
25 can certainly make this cross-examination a good deal more short

MR. MARSHALL, EXAM. BY MR. PUGSLEY

1 if I have the break now.

2 CHAIRMAN

3 I don't quite know what that means, what is short?

4 MR. PUGSLEY

5 Well I can make it a good deal shorter than it would be...

6 CHAIRMAN

7 What I had hoped was to finish your cross-examination by 1  
8 o'clock.

9 MR. PUGSLEY

10 I think I can certainly finish in 20 minutes. It would be  
11 helpful if I had a break before the 20 minutes, that's all.

12 CHAIRMAN

13 Well, fine. All right, we will rise until quarter to 2.

14 MR. PUGSLEY

15 Fine, My Lord, thank you.

16 12:40 - BREAK TO 1:50 p.m.

17 MR. PUGSLEY

18 Q. Thank you, My Lord. Mr. Marshall, the preliminary hearing  
19 started on July the 5th. Did you see Mr. Khattar or Mr.  
20 Rosenblum before July 5th, before the preliminary?

21 A. Was that in 1971?

22 Q. Yes, it was. Yes, the preliminary hearing, not before the judge  
23 and jury but the prelim-, the first hearing in the summer  
24 started on July 5th and lasted a couple of days.

25 A. He does not recall.

1 Q. You indicated that you saw them, I believe, on two occasions,  
2 a total of two occasions?

3 A. Yes.

4 Q. Did you, were they both together when they interviewed  
5 you?

6 A. I don't remember.

7 Q. You indicated you could not recall for what period of time the  
8 interviews lasted. Can you give us some parameters? Did  
9 they last a whole day, for example?

10 A. No.

11 Q. Would they have lasted half a day?

12 A. I don't believe so.

13 Q. The trial started on, before the judge and jury, before Mr.  
14 Justice Dubinsky, started on November 1st, I believe and  
15 lasted until around the 5th of November.

16 A. Yes.

17 Q. Did you see them shortly before the trial?

18 A. I don't...I believe so, yes.

19 Q. Were you prepared, did you know you were going to give  
20 evidence? Did they tell you you were going to be called to  
21 give evidence as a witness?

22 A. Would you define "witness"?

23 Q. Yes. Well, you gave evidence at the trial before the judge and  
24 jury, did your lawyers tell you in advance that they were  
25 going to call you to give evidence at the trial?

- 1 A. For the witness or for the accused?
- 2 Q. As an accused. At the trial. Did they, did your lawyers tell  
3 you and prepare you for the giving of evidence at the trial?
- 4 A. I don't remember.
- 5 Q. Did you tell your lawyers about when you first saw Maynard  
6 Chant on Bentinck Street?
- 7 A. I don't exactly recall what I've told the lawyers.
- 8 Q. Did you tell them that Maynard Chant did not see the  
9 stabbing and could not have seen the stabbing because he  
10 was not there?
- 11 A. He did not even know of his presence.
- 12 Q. Did you tell your lawyers that Maynard Chant could not have  
13 seen the stabbing because he was not there?
- 14 A. No.
- 15 Q. Maynard Chant gave evidence at the preliminary hearing in  
16 July. Were you given a copy of the evidence that was taken  
17 at that preliminary hearing before the judge and jury trial in  
18 November?
- 19 A. I am going to tell you that I've been to so many hearings that  
20 I do not recall.
- 21 Q. All right.
- 22 A. That particular one.
- 23 Q. Okay. This was the first hearing before Judge John F.  
24 MacDonald. This was the preliminary hearing in July after  
25 the incident in the Park, the first time you were in court as a

1 consequence of the stabbing.

2 A. I don't remember.

3 Q. I see. Did you tell your lawyers that John Pratico could not  
4 have seen the stabbing because he was not there?

5 A. I don't remember.

6 Q. Did you tell your lawyers about the people in the car that you  
7 met on Byng Avenue when you were running with Maynard  
8 Chant?

9 A. I don't remember.

10 Q. Did you tell your lawyers about the cadet and his girlfriend  
11 that you met in the Park that were standing with Roy Ebsary  
12 and Jimmy MacNeil?

13 A. I don't recall.

14 Q. Would you turn, sir, to Volume 3 which is the evidence taken  
15 at the reference at page 48? And near the bottom of the page  
16 at around line 28, the question appears,

17  
18 "All right. Do you remember what was  
19 said when they were called back?"

20 A. Just we asked them to come back.

21 Q. We asked them?

22 A. Yes.

23 Q. Are you suggesting now that both of you may  
24 have shouted for them to come back?

25 A. I'm not saying that. It was one of us. I don't  
know who it was.



MR. MARSHALL, EXAM. BY MR. PUGSLEY

1 Did either you or Sandy Seale call Ebsary and MacNeil back?

2 A. No.

3 Q. Would you turn to page 53, please? At about line 18, around  
4 the center of the page. The question,  
5 "Isn't it true, Mr. Marshall, that when Ebsary and MacNeil  
6 were called back at least the intention in your mind-- ...

MS. EDWARDH

8 Would you please speak more slowly?

MR. PUGSLEY

9 Yes, course. Certainly.

10  
11 Q. Isn't it true, Mr. Marshall, that when Ebsary  
12 and MacNeil were called back at least the  
13 intention in your mind--you can't speak for  
14 Seale but in your mind, your intention was to  
role[sic] those fellows.

15 A. Intentions of -- was to get money  
16 regardless how I got it. These men, after they  
17 left us, they had a choice to keep going so --  
18 they had the choice to leave when they left.  
19 Now I direct your attention particularly to  
your statement, "Intention was to get money  
regardless how I got it." Was that true?

20 A. Would you please tell me what trial you are in reference to?

21 Q. Of course. This is in connection with the reference before the  
22 five judges in Halifax.

23 A. No, I did not tell them that.

24 Q. Sorry, just so that I understand your answer. The evidence  
25 reads that you said that the intention was to get money

1           regardless how I got it. It would appear that you did say that  
2           before the reference and my question to you is, was that true,  
3           that it was your...

4           A. No.

5           Q. No, okay. Would you turn to page 55, please, Mr. Marshall, at  
6           about line 22, sir, about two-thirds of the way down the page  
7           the question,

8                                You're staying with your testimony that you  
9                                intended to get money from them no matter  
10                              what you had to do. Isn't that right?

11           A. Off them. Off them or out of a store or  
12           anything else. My intentions was to get  
13           money regardless if I stole it off somebody,  
14           bummed it off somebody, or took it out of a  
15           store or someone's house.

16           Now this is the evidence that you gave at the reference. Was  
17           it true that that was your intention?

18           A. No.

19           Q. Why did you say these things under oath if they were not  
20           true?

21           A. I was following the story that Roy Ebsary had said.

22           Q. Why did you think it was important before the five judges in  
23           Halifax that you follow the story that Roy Ebsary gave?

24           A. Would you repeat it, please?

25           Q. Yes. Why did you think it important when you gave evidence  
             at the reference before the five judges that your evidence

1 follow the story that Roy Ebsary gave? Why did you think  
2 that was important?

3 A. Because they had doubted in what I had said in 1971. And  
4 they believed what he had to say when they said they were  
5 going to rob him.

6 Q. But Roy Ebsary did not give evidence in 1971 and although  
7 you may not have known it at the time you gave your  
8 evidence in 1982 before the reference, Roy Ebsary did not  
9 give evidence before the reference. Why did you think that  
10 his story that he told someone could affect you?

11 A. I had already gone to the ones that were in control and they  
12 doubted me at that time. And I told them what had occurred  
13 in '71 and '82 and '83. They would not have believed me.

14 Q. Did someone tell you that you would not be believed unless  
15 you gave this story?

16 A. I told myself that.

17 Q. I see. No one...

18 A. Because I know the behaviour of these ones that are in  
19 charge.

20 Q. Because of the experience you had before the judge and jury  
21 in 1971, you felt that you...

22 A. And also the police. They did not listen to me then and they  
23 did not wish to listen to me in '81.

24 Q. Who did not wish to listen to you in 1981?

25 A. One individual by the name of Leonard Pace. He was under

1 the influence when I went to court.

2 Q. Having opened that up I guess I better explore it. What do  
3 you mean by that?

4 A. He was drunk for the two days that I was there. And he said,  
5 "I don't have to listen to you and why should I listen to you."

6 Q. You're saying that he was intoxicated while...

7 A. Yes.

8 Q. During the course of this hearing in 1981?

9 A. Yes. And I can bring a witness if you so desire.  
10 2:05 p.m.

11 Q. And you say that he, you made some further comment about  
12 him not needing to listen to you. Could you just give that to  
13 me again, please?

14 A. He told me, "Why am I sitting here listening to you?"

15 Q. You say that was the attitude of one of the judges, one of the  
16 five judges who was on the reference.

17 A. Yes.

18 Q. Do you have any comment to make about the other four  
19 judges who sat on the reference?

20 A. He was the only one that I noticed and he was the only one  
21 that was speaking at the time and I recognize the person who  
22 was under the influence.

23 Q. And so you... Is your evidence that to make your story  
24 acceptable, you thought you would have to give this story  
25 about the robbery, is that what you're saying?

1 A. No. I wish to tell you that the robbery business had already  
2 been there before I came in and at the time when I made the  
3 statement in 1971, they did not look at that one. And they  
4 didn't look at the '71 either.

5 Q. You gave the same story about the robbery or the rolling at  
6 the first Ebsary trial. Do you recall that?

7 A. Yes.

8 Q. Why did you persist in the same story at the first Ebsary  
9 trial?

10 A. I wanted to get hold of this person that had committed the  
11 murder. I had to say what he was saying. They were making  
12 him into a hero and were treating him as a gentlemen of high  
13 status.

14 Q. My question was directed to the first Ebsary trial and at that  
15 first trial, it's my recollection that you maintained that you  
16 and Seale were looking for money in the park. Perhaps I can  
17 just refer that to you. It's Volume 5, I believe, at page 44 is  
18 the first reference.

19 A. Mr. Marshall wishes to indicate that he did not... I did not tell  
20 anyone or I did not admit to anyone when I went to court  
21 that I had intentions of stealing.

22 Q. Would you just rephrase that, please? I don't quite  
23 understand what Mr. Marshall meant by that response.

24 A. I did not steal from this man and I have never said that I  
25 have stolen from him and I did not say that in court. But I

1 was only following what other people were saying.

2 Q. Would you turn to page 44 in Volume 5, please? Near the  
3 bottom of the page, the question at Line 46, and this is the  
4 first Ebsary trial. This is in September of 1983, the first  
5 Ebsary trial. The question at Line 46:

6 Q. Can you tell the jury what that discussion was  
7 about?

8 A. When I met Sandy Seale, I asked him if he  
9 wanted to make some money with me and he  
10 agreed with me.

11 Was that true?

12 A. No.

13 Q. Why did you give that evidence in the first Ebsary trial?

14 A. I told you three times already what I have said earlier.

15 Q. But I understand your comments with respect to the  
16 reference when the question of your innocence was a matter  
17 that was before the court. But here, at the first Ebsary trial,  
18 you were in no jeopardy. You were not on trial.

19 A. I felt that I was on trial.

20 Q. And is that the reason that you offer for continuing to give  
21 evidence concerning these attempts to get money in the park,  
22 because you felt you were on trial?

23 A. Would you say it again, please?

24 Q. Yes. Is that the reason you offer for continuing to give  
25 evidence as you did throughout this first Ebsary trial; namely,

1 that you felt that you were on trial?

2 A. Yes.

3 Q This morning you gave evidence that Ebsary tried to take  
4 money from you and Sandy Seale.

5 A. No.

6 Q Then I've misunderstood your evidence.

7 A. Yes.

8 Q Could you tell us again the conversation that occurred in the  
9 park immediately before the knifing?

10 A. Are we talking about an elderly gentleman, Ebsary?

11 Q Yes.

12 A. Ebsary said or told him, the coloured person, "If you want  
13 everything from my pockets, I'll give it to you now." At the  
14 same time, he stabbed him.

15 Q All right, I did misunderstand your evidence this morning  
16 then. Ebsary said to Seale if you, Seale, want everything in  
17 my pockets, then I'll give you something now?

18 A. He said if you want everything in my pocket, and at the same  
19 time he stabbed him.

20 Q I see. What did Seale say immediately before that? Did he  
21 ask Ebsary for everything in Ebsary's pocket?

22 A. He never said anything.

23 Q What would prompt Ebsary to refer to his pockets?

24 A. Perhaps a little crazy, sir.

25 Q Seale did not say "dig man dig"?

1 A. No.

2 Q. Or ask him for money?

3 A. No.

4 Q. Would you give Mr. Marshall Volume 25, please? Not the  
5 transcript but exhibit. Exhibit 63. If you would turn to page  
6 14, please. Is that a copy of a letter that you wrote to Roy  
7 Gould?

8 A. Yes.

9 Q. And that letter is in English. Would you normally write Roy  
10 Gould in English?

11 A. Yes.

12 Q. In the second sentence of that letter, you say: "That name I  
13 gave you, that's between you and me, okay?" What name did  
14 you give to Roy Gould in January of 1979?

15 A. His name was Mickey Flinn.

16 Q. Who was he?

17 A. He is the one that was living with Pratico's mother, I believe.

18 Q. Was he the person that you thought had stabbed Sandy  
19 Seale?

20 A. No, I thought about him. He stood up twice to be identified in  
21 a police line-up.

22 Q. What police line-up?

23 A. The one that was occurring at Sydney.

24 Q. Was this on the Sunday morning or the Saturday morning  
25 after the incident in the park?



1 A. I don't remember. It was confusing because of the time span  
2 at the time of the line-up when they asked me to look at this  
3 man again the second time. One man asked me by the name  
4 of Johnny MacIntyre and I told him that is the man... No. I  
5 told him that is not the man.

6 Q. You saw two line-ups and in both line-ups, there was a man  
7 by the name of Mickey Finn...

8 A. There was only one line-up.

9 Q. I see.

10 A. When I went in, I looked at them all. Then Johnny  
11 MacIntyre said, told me to go back in and look at the elderly  
12 gentleman at the end of the line-up.

13 Q. And that person happened to be Mickey Finn, did he?

14 A. Yes.

15 Q. Did you know him before you saw him in the line-up?

16 A. No.

17 Q. Did you at any time think, at a later time think that Mickey  
18 Finn was the person who stabbed Sandy Seale?

19 A. When I was asked to look at, identify the man twice in a line-  
20 up. He stood next to another man whom his mother had gone  
21 out with or whom he had gone out with his mother. His son  
22 squealed on me and we talked when I was arrested at the  
23 county jail he was there. He had just been released from  
24 Dorchester and he was rearrested and they took him to  
25 Dorchester after.

- 1 Q That is, they took Mickey Finn to Dorchester after?
- 2 A Yes.
- 3 Q At page 20 of the same volume, am I correct that pages 19,  
4 20, and 21 are a copy of a letter in your handwriting?
- 5 A Yes.
- 6 Q And the date of that letter is April 24th, 1978.
- 7 A Yes.
- 8 Q And on page 20 and about Line 8, you say, "I know Shelley I  
9 talked to this guy when they put him in the county jail." Is  
10 that Mickey Finn?
- 11 A Yes.
- 12 Q And about four lines later you say: "They know what I  
13 thought, this guy did me wrong and I wanted him for myself."  
14 That's Mickey Finn, is it?
- 15 A Where is the place you're referring to?
- 16 Q It's about the middle of the page and "They know what I  
17 thought, this guy did me wrong and I wanted him for myself."
- 18 A Are you asking me that I wrote this?
- 19 Q Yes, and is the person you're referring to Mickey Finn?
- 20 A Yes, but I thought to be him because he was there from day  
21 one until that time we were incarcerated together.
- 22 Q If I can refer you just back again closer to the top of that  
23 same page, about seven lines from the top you say: "I'm not a  
24 rat and I can't take any more and I did seven years for that  
25 bastard." Again, is that "bastard" Mickey Finn, is that who

MR. MARSHALL, EXAM. BY MR. PUGSLEY

1       you meant?

2       A. Yes.

3       Q. And why do you say you did seven years for him? Why do  
4       you say he was responsible for placing you there?

5       A. Well, I said a little while ago, he was in the line-up twice and  
6       we spoke together when he was arrested. And his mother  
7       and Johnny Pratico and he said to me when he was arrested  
8       in the county jail, he heard Johnny MacIntyre say tell Johnny  
9       Pratico what to say when he went into his house.

10      MR. PUGSLEY

11           Thank you, My Lords. That's all my questions.

12      MR. MURRAY

13           I have no questions, My Lords.

14      INTERPRETER

15           Just a moment, sir, he would like to say something to this  
16      person, to this gentleman. Are you working for Johnny MacIntyre  
17      now?

18      MR. PUGSLEY

19           Yes, I'm his lawyer.

20      INTERPRETER

21           He wishes for you to tell him that he does not want his  
22      apology or forgiveness, is what I want to tell you.

23      MR. PUGSLEY

24           Thank you.

25

MR. CHAIRMAN

1 I'll have to insist that we have no demonstrations during  
2 these hearings.

MR. BARRETT

3  
4 No questions, My Lord.

EXAMINATION BY MR. SAUNDERS

5  
6  
7 Q. Mr. Marshall, my name is Saunders and I act on behalf of the  
8 Attorney General and his Department. Mr. Marshall, when  
9 you were arrested on June 4th, did you recognize the  
10 seriousness of the offence with which you were charged?

11 A. Yes.

12 Q. Did you know that it was important for your defence lawyers  
13 to have every detail as to what happened to you in the park?

14 A. Yes.

15 Q. Did you ever tell Mr. Rosenblum or Mr. Khattar about  
16 encountering the sergeant from your air cadets and his  
17 girlfriend in the company of Mr. Ebsary and Mr. MacNeil?

18 A. I didn't know whether they told him.

19 Q. Pardon me?

20 A. He does not know that he told his lawyer. I do know that I  
21 did tell a policeman.

22 Q. Which policeman did you tell?

23 A. John MacIntyre and Urquhart, I believe.

24 Q. Did you identify the name of the sergeant in the air cadets  
25 who you saw in the park?

1 A. Yes, but I did not know his name.

2 Q. Do you know his name today?

3 A. Not really.

4 Q. Am I correct when I say that you do not remember if you  
5 told your lawyers that person's name?

6 A. I told them I knew the man that was in the air cadets and I  
7 told them to look at the list to find that man from there.

8 Q. And are you sure that you told Mr. Rosenblum and Mr.  
9 Khattar that fact?

10 A. I did not say that. I said I told the police.

11 Q. Yes, my question is, did you ever tell your defence lawyers  
12 that in the park that night you saw the sergeant from your air  
13 cadet group?

14 A. My lawyers did not talk too much.

15 Q. My question is, did you ever tell your lawyers that?

16 A. I don't remember.

17 Q. Thank you. Whoever that sergeant from the air cadets was  
18 and whoever the girlfriend of that person was, they were in  
19 the company of Mr. Ebsary and MacNeil?

20 A. Yes.

21 Q. They were standing there talking to them?

22 A. Yes.

23 Q. And would have seen the way Ebsary and MacNeil looked  
24 that night?

25 A. I believe so.

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1 Q. Thank you. Did your lawyers ever ask you to tell them about  
2 all people you encountered in the park?

3 A. I did tell somebody.

4 Q. Did you tell your lawyers?

MS. EDWARDH

5  
6 My Lord, he's gone over this at least three or four times and  
7 I think the witness has given his answer.

MR. SAUNDERS

8  
9 Well, with respect, My Lord, I don't think he's been asked  
10 what he told his defence counsel.

MS. EDWARDH

11  
12 Well, he doesn't remember to identify individuals who were  
13 in the park.

MR. CHAIRMAN

14  
15 This morning I had gotten a different impression. Mr.  
16 Marshall may be having some trouble with the question.

MR. SAUNDERS

17  
18 Q. Are you having difficulty, Mr. Marshall, with the question?

19 A. No.

MR. CHAIRMAN

20  
21 Just let me try. Mr. Saunders is asking you if when Mr.  
22 Rosenblum and Mr. Khattar came to see you in the county jail  
23 before you you were tried, if you told them of the names of any of  
24 the people you saw in the park that night, including the person  
25 who you knew as a sergeant in your air cadets.

MR. MARSHALL, EXAM. BY MR. SAUNDERSINTERPRETER

Perhaps so.

MR. CHAIRMAN

But you can't say definitely yes or no.

INTERPRETER

No.

MR. SAUNDERS

Q. And, Mr. Marshall, quite apart from the names, did you tell your defence lawyers who you did see in the park that night?

A. He asked me the same question.

Q. Let me try it again, Mr. Marshall. The Chief Justice asked you if you gave the names of people to your lawyers and I'm not asking you about whether you gave names. I'm instead asking you did you tell your lawyers the persons that you saw in the park that night? Who it was you saw that you...

MS. EDWARDH

My Lord, I don't think that's fair.

MR. CHAIRMAN

That's the same thing. I know what Mr. Saunders is... Let me try for you again. I don't want to overdo this. You've told me that you can't remember whether you told your lawyers the names of the persons you saw in the park, is that correct?

INTERPRETER

Yes.

MR. MARSHALL, EXAM. BY MR. SAUNDERSMR. CHAIRMAN

1  
2 Now what Mr. Saunders is asking you, I think, did you tell  
3 your lawyers that there were persons in the park that night?

INTERPRETER

4  
5 I believe perhaps.

MR. SAUNDERS

6  
7 Thank you, My Lord.

8 Q You flagged down a car when you were with Mr. Chant?

9 A. Yes.

10 Q You said earlier today that you recognized one of the people  
11 in the car?

12 A. Yes.

13 Q Whose name was Michael Jameel?

14 A. Yes.

15 Q Did you tell your lawyers that person's name?

16 A. I don't remember.

17 Q That person would have been able to verify or confirm that  
18 you were together with Mr. Chant?

19 A. Yes.

20 Q That person also would have been able to confirm that you  
21 were wounded?

22 A. Yes.

23 Q Thank you. Did you ever tell the police Mr. Jameel's name?

24 A. I don't remember.

25 Q Were you visited in the jail in Sydney, Mr. Marshall, by your



1 relatives and friends between June and your trial in  
2 November?

3 A. Yes.

4 Q. Did you tell your relatives or friends of the identity of the air  
5 cadet sergeant or Mr. Jameel in the car?

6 A. I don't remember.

7 Q. Was Mr. Francis, Mr. Bernie Francis, a friend of yours?

8 A. No.

9 Q. I take it from your evidence earlier today that he met with  
10 you the day before your trial began?

11 A. Yes.

12 Q. Was that meeting at the jail, sir?

13 A. Yes.

14 Q. Did he speak to you privately?

15 A. Yes.

16 Q. Did he speak to you in Micmac?

17 A. I don't remember.

18 Q. It was at that occasion that he told you the police had found a  
19 knife?

20 A. Yes.

21 Q. And he said it was your knife and it had the blood of Mr.  
22 Seale on it and your fingerprints?

23 A. Yes.

24 Q. What response did you give to Mr. Francis when he said that  
25 to you?

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1 A. I doubted him.

2 Q. Did you tell him it couldn't be true because you didn't have a  
3 knife and you didn't stab Seale?

4 A. Yes.

5 Q. You told him that?

6 A. Yes.

7 Q. You told Mr. Francis that, that it couldn't be true because you  
8 did not have a knife?

9 A. Yes.

10 Q. And you did not stab Seale?

11 A. Yes.

12 Q. Did you ever tell Mr. Francis the fact that Mr. Jameel was in  
13 the car that drove you and Chant to where Mr. Seale was?

14 A. I thought at the time that Bernie was not interested.

15 Q. Besides the one or two meetings that you had with your  
16 defence lawyers, Mr. Marshall, did they communicate with  
17 you in any other way during the time you were in jail? Did  
18 they telephone you, for example? Did they send other people  
19 from their office to see you or did they write to you?

20 A. No.

21 Q. There was some evidence last week, Mr. Marshall, that you  
22 were in the habit of carrying a knife. Were you carrying a  
23 knife on May 30, 1971?

24 A. No.

25 Q. It is your testimony, sir, before the Commission that it was

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1 only when Mitchell Sarson identified the name Roy Ebsary to  
2 you and described what Ebsary had said about the incident in  
3 the park that you knew that Mr. Ebsary was talking about a  
4 robbery?

5 A. Yes.

6 Q. And so the very first time that you decided to describe a  
7 robbery taking place in Wentworth Park was after you heard  
8 it from Mitchell Sarson?

9 A. Yes.

10 Q. Now am I correct, Mr. Marshall, that Mr. Sarson visited you on  
11 only one occasion at Dorchester Penitentiary?

12 A. I believe so, yes.

13 Q. And it was on that one occasion that Mr. Sarson revealed the  
14 name of Roy Ebsary to you?

15 A. Yes.

16 Q. Could the witness be shown Volume 34, please? It's red  
17 volume #34 and I would ask you to turn to page 45, Mr.  
18 Marshall? And this is a statement obtained from Mr. Sarson  
19 by the R.C.M.P. on the 9th of February, 1982. Do you see that,  
20 sir?

21 A. Uh-huh.

22 Q. At the bottom of the first page of that statement, the bottom  
23 of page 45, do you see this recorded quote:

24 I thought this was just another one of Roy's  
25

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1 stories but I mentioned it to Junior Marshall just  
2 before Christmas of 1981 and he was quite  
3 interested and we discussed it and he asked me  
4 to talk to one of his lawyers which I did.

5 Do you see that, sir?

6 A. Yes.

7 Q. And are you able to confirm, Mr. Marshall, that it was shortly  
8 before Christmas of 1981 that you had that conversation with  
9 Mr. Sarson?

10 A. Yes.

11 Q. And you then passed on that information to your lawyer,  
12 Stephen Aronson, is that correct?

13 A. No, Roy, I passed it to Roy Gould.

14 Q. Thank you. And is it your understanding that Mr. Gould  
15 passed the information on to Mr. Aronson?

16 A. He and Danny Paul, yes.

17 Q. And in the same volume, if I can get you to turn to page 22,  
18 please. And this is a letter from Mr. Aronson to the Chief of  
19 the Sydney Police dated January 26, 1982 in which Mr.  
20 Aronson reveals the name Mitchell Bayne Sarson and states  
21 that he has interviewed Mr. Sarson himself. Do you see that,  
22 Mr. Marshall?

23 A. I did not know.

24 Q. Were you aware that Mr. Aronson had written to the Chief of  
25 Police in Sydney asking that an investigation be conducted on  
account of what Mr. Sarson had to say?

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1 A. No.

2 Q. At the bottom of page 22, you will see that a copy of the  
3 letter is shown as going to you and it's your evidence that you  
4 never received a copy?

5 A. I don't remember.

6 Q. In any event, the R.C.M.P. officers, Wheaton and Carroll,  
7 interviewed you at Dorchester Penitentiary and obtained your  
8 statement on March the 9th, 1982?

9 A. Yes.

10 Q. And at page 52 of the same volume, Mr. Marshall, is the  
11 statement that was taken from you by the R.C.M.P. officers?

12 A. Yes.

13 Q. And it's in this statement, sir, that you are saying for the first  
14 time by your evidence to anybody in authority that you and  
15 Mr. Seale were in the park to rob people that night?

16 A. Would you repeat it, please?

17 Q. Yes. This is the first time that you are telling anyone in  
18 authority that you and Mr. Seale were in the park that night  
19 to rob people?

20 A. Corporal Carroll was waiting for Harry Wheaton at the time.  
21 Are you talking about these two people?

22 Q. Yes, I am.

23 A. Yes.

24 Q. So this is the very first time that you told Carroll and  
25 Wheaton that you and Mr. Seale were in the park to rob

1 persons that night, correct?

2 A. Yes.

3 Q. And it's your testimony today before this Commission that the  
4 only reason you gave this statement containing these false  
5 details to the R.C.M.P. is because that's what you had been led  
6 to believe by Mitchell Sarson?

7 A. Yes.

8 Q. And just so that I'm positive as to what is false in the  
9 statement, Mr. Marshall, at the bottom of page 52, third or  
10 fourth line from the bottom of the page, you say: "The first  
11 time I saw the two fellows we later decided to rob was on  
12 George Street side of the park." And that's not true, correct?

13 A. Yes.

14 Q. Then over on page 53, Mr. Marshall, eight lines from the top  
15 where you say in your statement: "They then knew we  
16 meant business about robbing them." That was false?

17 A. Yes.

18 Q. And at the bottom of page 53 in your statement, the last  
19 paragraph, you say: "When questioned about this, I did not  
20 mention that Sandy and I were robbing these two because I  
21 thought I would get into more trouble." That was false?

22 A. Yes.

23 Q. And when you say six lines from the bottom:

24 I never told my lawyers or the court. I just  
25

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1 thought I would get in more trouble. I felt bad  
2 about Sandy dying as it was my idea to rob these  
3 guys.

4 Your comment about it being your idea to rob these guys was  
5 false?

6 A. Yes.

7 Q. Now was Mr. Aronson, did you consider Stephen Aronson a  
8 friend of yours, Mr. Marshall?

9 A. What are you talking about?

10 Q. Stephen Aronson, the lawyer, who acted on your behalf, do  
11 you consider him a friend?

12 A. Today?

13 Q. Today.

14 A. Yes.

15 Q. Did you consider him a friend when he acted for you at the  
16 reference in 1982?

17 A. I don't know.

18 Q. You were, as I recall the evidence, Mr. Marshall, you were  
19 released in late March 1982?

20 A. Yes.

21 Q. Did you have several meetings with Mr. Aronson between the  
22 time of your release and the time you testified in court in  
23 December of 1982?

24 A. He requests for a break at this point.

25 Q. Absolutely, sure.

MR. MARSHALL, EXAM. BY MR. SAUNDERS1 COMMISSIONER EVANS

2 Mr. Saunders, just for my information, could you tell me  
3 when that statement was taken from Junior? That is the one on  
4 page 52 and 53?

5 MR. SAUNDERS

6 I thought it was on March the 9th, 1982, My Lord. I no  
7 longer have the page open but I thought that was the date.

8 COMMISSIONER EVANS

9 March the 9th?

10 MR. SAUNDERS

11 Yes. Five-minute break, My Lords?

12 MR. CHAIRMAN

13 Yes.

14 2:40 p.m. BREAK

15

16

17

18

19

20

21

22

23

24

25



1 2:55 p.m.

2 MR. SAUNDERS

3 My Lords, before we broke Mr. Justice Evans asked for the  
4 citation for the statement obtained from Sarson by the RCM Police  
5 and that's at exhibit Volume 34. It's Volume 34, Exhibit 99, page  
6 45. And the date of the statement is February the 9th, 1982, 2:30  
7 p.m. I had said March. I was incorrect. It's February the 9th.  
8 I'm informed that the question that you asked was about Junior's  
9 statements at page 52 of the same volume, My Lord.

10 CHAIRMAN

11 Right.

12 COMMISSIONER EVANS

13 What's the date?

14 CHAIRMAN

15 March.

16 COMMISSIONER EVANS

17 March the 9th, 1982?

18 MR. SAUNDERS

19 I'm so informed. My friend behind me says March the 8th so  
20 I'm not sure that we're any further ahead.

21 CHAIRMAN

22 Well anyway, let's proceed with the cross-examination.

23 MR. SAUNDERS

24 On the 8th or the 9th of March.

25

MR. MARSHALL, EXAM. BY MR. SAUNDERSCOMMISSIONER EVANS

1  
2 There's no date on it is...

MR. SAUNDERS

3  
4 No, there's not.

MR. SPICER

5  
6 At page 2 of that volume. The notes have that. Marked as  
7 March 9, I have 11.

MR. SAUNDERS

8  
9 Thank you.

10 Q. Mr. Marshall, am I correct in thinking that between late  
11 March of 1982, when you were released, sir, and December of  
12 1982 when the reference was convened you had several  
13 meetings with your lawyer, Stephen Aronson?

14 A. Yes.

15 Q. And did you ever tell Mr. Aronson, sir, that the commentary  
16 in the statement that you gave to the RCMP about robbing  
17 people was false?

18 A. I don't remember.

19 Q. You were called as a witness at the reference by Mr. Aronson  
20 and he questioned you first. Is that correct?

21 A. Perhaps.

22 Q. To refresh your memory, sir, Volume 3, page 8 confirms, and  
23 you needn't look it up, confirms that you were called on direct  
24 examination by Mr. Aronson and that he was the first lawyer  
25 to put questions to you. Do you remember that now?

1 A. I have to look at it.

2 Q. All right. Would you do so then, please? Third volume, page  
3 8. And towards the bottom of page 9 you see Mr. Aronson  
4 say, "I call Donald Marshall, Jr."

5 A. Yes.

6 Q. And at the top of page 10 the questioning begins by Mr.  
7 Aronson. So does that now refresh your memory, Mr.  
8 Marshall, that your lawyer called you and asked you the  
9 questions first?

10 A. Yes.

11 Q. Now if I can get you to turn to page 17 of the same volume,  
12 sir. And on that page do you remember in answer to Mr.  
13 Aronson's question of you at page 17, line 19. "...and I asked  
14 him if he would like to make some money with me one way  
15 or the other somehow." And then Mr. Aronson went on to ask  
16 you what ways you had in mind of making money and asked  
17 you whether you could give examples and at line 30 of the  
18 transcript you answered Mr. Aronson, "Bumming it, breaking  
19 in a store probably, take it off somebody." Do you remember  
20 giving that answer to your lawyer's question at the  
21 reference?

22 A. Yes.

23 Q. Before Mr. Aronson acted on your behalf, sir, you were  
24 represented by Truro lawyer, Melinda MacLean?

25 A. Yes.

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1 Q. And do you remember her sending an associate of her office  
2 to interview you at Springhill Institution?

3 A. Yes.

4 Q. And do you remember the gentleman coming and  
5 interviewing you at the institution and his name being  
6 Lawrence O'Neil?

7 A. I did not know that was his name but I do recall someone  
8 coming there.

9 Q. Thank you. And he interviewed you at the institution and did  
10 he take notes while he was questioning you, sir?

11 A. I don't believe so.

12 Q. At page 22 of Volume 36, that will be obtained for you in just  
13 a moment, Mr. Marshall. And at page 22 of that volume that  
14 you've just been handed, sir, I'll just wait a moment for the  
15 judges to get their copies.

16 A. What page was that, sir?

17 Q. Yes. Page 22, Volume 36. Have you had a chance to look at  
18 page 22, Mr. Marshall?

19 A. Yes.

20 Q. Do you recognize that as your letter to your lawyer, Melinda  
21 MacLean?

22 A. Yes.

23 Q. Written by you on the 2nd of March 1980?

24 A. Yes.

25 Q. And in the second to last sentence of your letter you write,

1 "The information I gave to your assistant is the best I could  
2 do but that's what I've been collecting."

3 A. Yes.

4 Q. And I take it that that refers to the interview you had  
5 previously with Ms. MacLean's assistant from her office in  
6 Truro?

7 A. Repeat it, please?

8 Q. Yes. I take it that your comment in the letter refers to the  
9 time you were interviewed by Mrs. MacLean's assistant?

10 A. I believe so, yes.

11 Q. Now in this volume, Mr. Marshall, we've been given materials  
12 from Mrs. MacLean's file and I would ask you to turn to page  
13 15 of the book. And do you see at the heading of the page, or  
14 the top of the page the heading, "Marshall Interview Jan.  
15 11/80 at Springhill." Do you see that, sir?

16 A. Yes.

17 Q. And were you interviewed on only one occasion by someone  
18 from Mrs. MacLean's office?

19 A. Yes.

20 Q. Turning to page 16 of the same book, Mr. Marshall, you see in  
21 handwriting, "Mickey Flinn of Sydney may be (something)  
22 about 50 non-Indian he was trying to protect himself thought  
23 Marshall was going to rob him." Do you see that written, sir?

24 A. Yes.

25 Q. Did you tell Mrs. MacLean's assistant in January of 1980 that

MR. MARSHALL, EXAM. BY MR. SAUNDERS

1           you were in the Park that night intent to rob someone?

2           A. I don't recall telling this gentleman that and I don't  
3           remember writing this information here.

4           Q. I'm not suggesting you wrote it, I'm wondering if you said it  
5           to Mr. O'Neil when he interviewed you in January of 1980.

6           A. I don't remember.

7           Q. Seven lines from the top of that page, Mr. Marshall, the  
8           comment,

9                               Glasses on face. Called them back (Marshall or  
10                              Seale) asked them where they were going, then  
11                              he yelled names at Marshall. Bummed cigarette.  
12                              Small talk, women in Park. This made them  
13                              think of robbery.

13           Do you see that written, sir?

14           A. Who is there, Mickey Flinn and who?

15           Q. I have no idea but I'm asking Mr. Marshall whether he said  
16           what is written on this page and the quotation that I have  
17           just stated to Mr. O'Neil when interviewed in January of 1980.

18           A. I don't recall.

19           Q. Do you have any explanation, Mr. Marshall, as to how this  
20           written material came to be in Mrs. MacLean's file?

21           A. No.

22           MR. SAUNDERS

23           Thank you, Mr. Marshall.

24           MR. PRINGLE

25           No questions, My Lord.

EXAMINATION BY MR. ROSS

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Q. Mr. Marshall, my name is Anthony Ross and I will ask you a couple of questions with respect to Sandy Seale. I take it, sir, that after your trial in 1971 you adopted the position that you were not guilty and maintained that through to about 1975?

A. Yes.

Q. And between 1975 and around 1981, from time to time you gave the statement that it was self-defence.

A. Yes.

Q. And I take it, sir, that any indication that you might have given at any time that it was self-defence is false.

A. Yes.

Q. And I refer you to Exhibit 112, which is Volume 35 and ask you to turn to page 81. Have you got it, sir?

A. Yes.

Q. This is a 3-page document signed by E. Ryan and it's dated August 27, 1975, do you see that? On page 83.

A. Yes.

Q. And do you know who E. Ryan is?

A. A psychiatrist from Springhill.

Q. And I take it you spoke with Mr. Ryan.

A. Would you say it again, please?

Q. I take it, sir, that you spoke with this person, Ryan?

A. Yes.

MR. MARSHALL, EXAM. BY MR. ROSS

1 Q. And is it fair to say that this case, the report on the case  
2 conference would have been gone over by you?

3 A. I don't understand.

4 Q. After you spoke with Ryan, was Ryan male or female? Was it  
5 Mr. or Miss Ryan?

6 A. Man.

7 Q. A man. Now after you had met with Mr. Ryan and he put  
8 together this report, did he go over it with you?

9 A. I don't understand. Would you say it again, please?

10 Q. Did Mr. Ryan read over this report with you?

11 A. I've forgotten.

12 Q. I see. In any event, did you tell Mr. Ryan that you had  
13 known Sandy Seale quite well for approximately two years  
14 before the offence?

15 A. Perhaps.

16 Q. And in the event that you did say that, that was not true. Am  
17 I correct?

18 A. I can't say anything at this point in time.

19 Q. I see. But is it true that you played hockey on the same team  
20 with Mr. Seale?

21 A. No. I only went there once and he was at the practice.

22 Q. And approximately two weeks before the stabbing you didn't  
23 have an alter-, you didn't have a fight with your girlfriend  
24 and Mr. Seale did not step in, did he?

25 A. No.



MR. MARSHALL, EXAM. BY MR. ROSS

1 Q. So that the entire statement as given to Ryan was false, am I  
2 correct?

3 MS. EDWARDH

4 I'm sorry, I don't think that's fair.

5 CHAIRMAN

6 There's no evidence that this is a statement given by Mr.  
7 Marshall to Mr. Ryan.

8 MR. ROSS

9 Well, very good. Thank you. I can just go through it line by  
10 line then, My Lord.

11 Q. And is it true that you had a fight with your girlfriend and  
12 Mr. Marshall stepped in? Sorry, that Mr. Seale stepped in.

13 A. Would you tell me where it is?

14 Q. On page 81, the third paragraph, the third sentence and it  
15 reads,

16  
17 Approximately two weeks prior to the murder  
18 Marshall claims that he was having an argument  
19 with his girlfriend on the street. The victim  
(who is Sandy Seale) just happened to be  
walking by and tried to interfere.

20 Is that a true statement?

21 A. Someone else said that, I did not say that.

22 Q. I see. But in any event, sir, any evidence of that Sandy Seale  
23 was killed in self-defence by you would be false.

24 A. Yes.

25 Q. And then as far as the robbery is concerned, I'm a little bit

1 confused about the evidence this morning and you must bear  
2 with me. I take it that four people were present. There was  
3 Ebsary, MacNeil, Sandy Seale and you?

4 A. Yes.

5 Q. Did Sandy Seale try to rob anybody at all?

6 A. No.

7 Q. Did you try to rob anybody at all?

8 A. No.

9 Q. Did MacNeil try to rob anybody?

10 A. No.

11 Q. Did Ebsary try to rob anybody?

12 A. No.

13 Q. So that any evidence that you might have given at any time  
14 about the robbery was false.

15 A. Yes.

16 Q. Did you speak to Michael Harris at any time?

17 A. What do you wish to ask me?

18 Q. I would like to know if you spoke with Michael Harris about  
19 being in prison.

20 A. We spoke to one and other two years when we made a book.

21 Q. And during the time that you were speaking to Mr. Harris, did  
22 you tell him that Sandy was trying to rob anybody?

23 A. No. I don't know.

24 Q. I see. So that if anything appears in Mr. Harris' book about  
25 the robbery that is false, am I correct?

MR. MARSHALL, EXAM. BY MR. ROSSMS. EDWARDH

1  
2 That's far too broad and not fair to either Mr. Harris or the  
3 witness. Perhaps he'll put a specific statement that he wants the  
4 witness to deal with but to say anything about the robbery...

MR. ROSS

5  
6 Fine, I will narrow the question.

7 Q. Did you indicate to Mr. Harris that there was a robbery or an  
8 attempted robbery?

9 A. Once I heard what they were talking about I told him, I have  
10 to retell you again what they had said. I followed that.

11 Q. Did you make it clear to Mr. Harris that you were just  
12 repeating the Ebsary story rather than telling the truth about  
13 a robbery?

14 A. I don't remember.

15 Q. And just to confirm, the first time you heard about this  
16 robbery was when you heard it from Sarson around 1981?

17 A. Yes.

18 Q. Finally Mr. Marshall, you indicated that you did not want an  
19 apology from John MacIntyre.

20 A. Yes.

21 Q. How do you feel about the Seale family and the fact that their  
22 son's name has now been classified as a robber?

MS. EDWARDH

23  
24 My Lord, I don't think that's fair to Mr. Marshall in the  
25 slightest degree.

MR. MARSHALL, EXAM. BY MR. ROSSMR. ROSS

1           It's just as appropriate as the earlier question and response  
2 if it please, My Lord, at one point...

CHAIRMAN

3           But that was not a question. That was an unsolicited  
4 response. Listening to Mr. Marshall's evidence today very, he has  
5 been very definite in his statement that Sandy Seale was not  
6 there for the purpose of robbing or involved in a robbery. Now  
7 unless you want to change that it seems to me that that is a very  
8 clear definitive statement from a person who was present which  
9 certainly does not cast any reflection upon your, upon the son of  
10 your, the late son of your clients. So, you know, I'm at a loss to  
11 understand what...

MR. ROSS

12           Well, My Lord, I will not pursue it. I will just point out that  
13 when that same question was framed by Mr. Ruby when Mr.  
14 MacIntyre was on the stand, it was permitted.

MS. EDWARDH

15           No, it was not permitted.

MR. ROSS

16           Yes, it was.

CHAIRMAN

17           It was not permitted.

MS. DERRICK

18           Was not permitted.

MR. MARSHALL, EXAM. BY MR. ROSS

1 MS. EDWARDH

2 It was not permitted.

3 MR. ROSS

4 Thank you very much. No more questions of this witness.

5 EXAMINATION BY MR. WILDSMITH

6 Q. One very small matter. I'm informed that perhaps in the  
7 translation something was lost with reference to the time at  
8 which John MacIntyre came to the Whycocomagh Reserve to  
9 arrest you, Mr. Marshall. And I'm wondering if you would  
10 just repeat for us the conversation that took place between  
11 you and John MacIntyre at that time.

12 A. My father and he were speaking first. And he told my father  
13 that I had committed the crime, the murder. And my father  
14 asked me, did I do it. And I told him no. Then when they put  
15 me on the vehicle MacIntyre asked me what am I running  
16 away from. And I told him, "You're not going to get away in  
17 what you're about to do."

18 Q. And that was a remark that you made to John MacIntyre?

19 A. Yes.

20 Q. Anything further?

21 A. And I told him that I killed a man, no, I did not kill the man.

22 MR. WILDSMITH

23 Thank you, that's all I have.

24 CHAIRMAN

25 Ms. Derrick?

MR. MARSHALL, EXAM. BY MR. WILDSMITH

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MS. DERRICK

No, thank you, My Lord. We have no questions of Mr. Marshall.

MR. SPICER

No re-direct.

CHAIRMAN

Thank you very much, Mr. Marshall. That's the end of your testimony and I thank you for coming here.

WITNESS WITHDREW

3:20 - BREAK

MR. MACDONALD - STATEMENT

3:40 p.m.

MR. CHAIRMAN

Mr. MacDonald?

MR. MACDONALD

Thank you, My Lords.

As I advised you yesterday, Mr. Marshall would be the last witness for this phase of the Inquiry.

As indicated at the time of the opening statement which I delivered in September of 1987 and repeated in January of 1988 when we commenced the Halifax hearings, it is the intention of counsel to present evidence in other cases in order that Your Lordships may be in a position to make meaningful comments and recommendations, if necessary, on the operation of the criminal justice system in Nova Scotia.

In preparation for presenting such evidence, we sought and we obtained documents from the Attorney General and other departments concerning the cases we have selected.

The Notice of Appeal which was filed on June the 15, 1988 on behalf of the Department of the Attorney General in response to the decision concerning Cabinet confidentiality raised some questions which required an answer before we could reasonable schedule resumption of hearings.

In particular, the following grounds of appeal gave us some concern and I'm quoting from the Notice of Appeal.

First, that the Chief Justice erred in law in her interpretation

MR. MACDONALD - STATEMENT

1 of the scope of the terms of reference of the Commission contained  
2 in the Order-in-Council dated October 28, 1986, and in her  
3 determination of the matters before the Commission relevant to  
4 those terms of reference.

5 Secondly, that she erred in law by failing to rule that the  
6 Commission erred in law and jurisdiction by its interpretation of  
7 the scope of its terms of reference contained in the Order-in-  
8 Council, and in its determination of the matters relevant to those  
9 terms of reference.

10 And, thirdly, in particular without limiting the generality  
11 of Numbers 1 and 2, the Chief Justice and the Commission erred  
12 by interpreting its mandate as set forth in the Order of Council so  
13 as to permit compulsion of evidence from the appellate on matters  
14 which are not related to the charging and prosecution and the  
15 conviction and sentencing of Donald Marshall, Jr.

16 These matters include the process by which compensation  
17 was paid by the appellate to Mr. Marshall and other aspects of the  
18 administration of justice not related to the charging and  
19 prosecution, conviction, and sentencing of Mr. Marshall.

20 These grounds were not raised in the argument on the  
21 application which was heard by the Chief Justice and which gave  
22 rise to her decision. And we were concerned that the Attorney  
23 General was appearing to intend to challenge the right of Your  
24 Lordship to consider these other cases we wish to present to you.

25 Your Lordships provided a public interpretation of the terms



MR. MACDONALD - STATEMENT

1 of reference when you made a statement at the opening of the  
2 funding application hearings and again when the full hearings  
3 opened in September, 1987. That statement was a clear  
4 acknowledgement at those times of your intention to look at cases  
5 other than the Donald Marshall, Jr. incident and we have  
6 proceeded to obtain evidence and identify witnesses to be called  
7 in such other cases.

8 We did not wish to assemble counsel, witnesses, and Your  
9 Lordships on September 12th, 1988 only to have the Attorney  
10 General take the position that Your Lordships could not proceed  
11 because you were acting outside your terms of reference. Neither  
12 would it have been appropriate to be proceeding with the hearing  
13 of evidence in such other cases if on September 14th, the date set  
14 for the appeal, the Attorney General was asking the Appeal  
15 Division of our Supreme Court to limit the scope of the Inquiry  
16 which can be conducted by Your Lordships.

17 We have had discussions with counsel for the Attorney  
18 General and we are assured that it is not the government's  
19 intention to question the jurisdiction of this Commission to  
20 consider such other cases either before this commission or before  
21 the Appeal Division of the Supreme Court of Nova Scotia. The only  
22 issue to be argued on behalf of the Attorney General in the Appeal  
23 Division on September 14th relates to the right of this Commission  
24 to question members of the provincial Cabinet concerning the  
25 details of discussions which occurred in Cabinet on any topic

MR. MACDONALD - STATEMENT

1 whatsoever.

2 Accordingly, we do recommend that these hearings resume  
3 on September the 12th, 1988 as expected, or as originally  
4 planned.

5 Finally, My Lords, we have been together now with counsel  
6 for all other parties granted standing for many days. As we  
7 proceed in September, it is expected that only a few of those  
8 counsel will continue to be present during the hearings. I would  
9 like to take this opportunity, therefore, to express our  
10 appreciation to all counsel for the cooperation we have received  
11 throughout and, in particular, for their assistance in making their  
12 clients available to us in order that we could prepare to present  
13 their evidence.

14 Thank you.

MR. CHAIRMAN

16 Simply for the record, Mr. Saunders, I understand you and  
17 Mr. MacDonald have been carrying out some negotiations to  
18 clarify the position. Will you confirm that the position put by Mr.  
19 MacDonald is accurate and correct?

MR. SAUNDERS

21 Yes, My Lord, I do, in fact. We conferred today and  
22 exchanged correspondence yesterday and conferred on the  
23 content of the statement which my friend has just read.

MR. CHAIRMAN

25 To date, the Commission has held 82 days of Public Hearings,

CHAIRMAN - STATEMENT

1 during which testimony has been given by 103 witnesses,  
2 comprising over 14,000 pages of recorded evidence. 163 exhibits  
3 have been filed.

4 This evidence has in general been directed to the response  
5 of the Nova Scotia criminal justice system to the death of Sandford  
6 Seale, and to how, within that system, Donald Marshall, Jr. was  
7 charged, convicted and subsequently released, acquitted and  
8 compensated.

9 We believe that as a result of our broad approach to  
10 receiving testimony, we now have almost all of the relevant  
11 evidence on Donald Marshall, Jr.'s own experience with the system  
12 of administration of justice. As of today, we are awaiting only the  
13 testimony of Michael Harris, which hopefully will be obtained  
14 during July or August, and the evidence of some other witnesses  
15 whose status is still before the Courts for determination.

16 This detailed examination of the experience of one  
17 individual has raised questions about the impartiality of  
18 treatment afforded by the justice system to all individuals, be  
19 they black, indian, white, unknown, or well-known. As we have  
20 said on other occasions, the Commission cannot properly fulfil its  
21 mandate and responsibility to develop meaningful and current  
22 recommendations without a full understanding of the system of  
23 administration of justice and without examining carefully how the  
24 system responds in a variety of situations.

25 The evidence to date suggests a concern over the treatment

CHAIRMAN - STATEMENT

1 afforded minorities. To assist in our analysis of this issue, we  
2 commissioned the following studies:

3 Adverse Effects for Native People Through Involvement in  
4 Nova Scotia Criminal Justice System.

5 Discrimination Against Blacks in Nova Scotia and the  
6 Criminal Justice System.

7 These studies have been subject to careful scrutiny by peer  
8 reviewers and at a workshop attended by us, our counsel and  
9 staff, and other persons with expertise in these particular areas.  
10 These studies may be subject to further review but will not  
11 require our hearing sworn evidence from any witnesses.

12 The evidence has also raised a concern over the appropriate  
13 role and obligations of the Crown Prosecutor, police organization,  
14 training standards and practices, and the proper functioning of the  
15 Office of the Attorney General. Studies have been commissioned  
16 dealing with issues relating to prosecutors and police. These  
17 studies have been, or will be, subject to the peer review and  
18 workshop processes outlined above.

19 In addition, expert opinions have been commissioned  
20 dealing with various aspects of the office of the Attorney General.  
21 It is evident that an examination of the relationship between, and  
22 the roles of, the police, prosecutors and the Attorney General will  
23 require some further viva voce evidence to determine whether or  
24 not these relationships are such that impartial treatment of all  
25

CHAIRMAN - STATEMENT

1 individuals is assured. While this evidence will, hopefully, be of  
2 assistance to the Commission, counsel have advised that it will not  
3 relate directly to the interests of a number of the parties now  
4 before us.

5 It is our intention to commence hearing this evidence in  
6 Halifax on Monday, September 12th, 1988, and hopefully to  
7 conclude within a few days thereafter. We have been advised by  
8 Commission counsel that an appeal of Chief Justice Glube's decision  
9 on Cabinet confidentiality is to be heard on September 14th. We  
10 have also been advised that the Government's Notice of Appeal in  
11 this matter raised for the first time broad questions relating to the  
12 Commission's Terms of Reference, and its jurisdiction to look at  
13 such matters as the process by which compensation was granted  
14 to Donald Marshall, Jr. Clearly, it would not be appropriate to  
15 commence Hearings on September 12th if our jurisdiction to  
16 conduct those Hearings was to be challenged on September 14th.  
17 However, Commission counsel have today advised us that they  
18 have been assured by counsel for the Department of Attorney  
19 General, whose assurance we now have, that the Government does  
20 not intend to challenge our jurisdiction to examine other matters,  
21 except insofar as such examination may involve testimony on  
22 Cabinet discussions.

23 Based on the Commission's understanding that the  
24 forthcoming appeal will raise only the issue of Cabinet  
25 confidentiality and not the issue of the Commission's substantive

CHAIRMAN - STATEMENT

1 jurisdiction, and that there will not be any challenge to our  
2 proceedings as indicated on September 12th, we will resume  
3 Hearings on September 12th, 1988.

4 Commission counsel will be in touch with counsel for all  
5 other parties concerning the procedure to be followed with  
6 respect to counsel's submissions and arguments. At this time, it is  
7 hoped that all written submissions will be filed with the  
8 Commission on or before Friday, October 28th, 1988. It is  
9 Commission's intention to sit for one week in Sydney, Nova Scotia  
10 commencing Monday, October 31st, 1988 for the purpose of  
11 hearing oral argument.

12 There is one further outstanding issue. On the advice of  
13 Commission counsel, the Commission has decided that it is  
14 appropriate to appeal the decision of Chief Justice Glube  
15 concerning the immunity of the judges of Nova Scotia Court of  
16 Appeal from testifying about the 1982 Reference. However, the  
17 Commission recognizes the unusual situation which would result if  
18 the Nova Scotia Court of Appeal were required to adjudicate this  
19 matter. The Commission is also acutely aware that, while an  
20 appeal is appropriate, it must not delay the Commission's  
21 proceedings any longer than is absolutely necessary.

22 Accordingly, we have accepted our counsel's advice to  
23 initiate a little-used procedure whereby, if leave is granted by the  
24 Supreme Court of Canada, the appeal may be taken directly to that  
25 Court. In order for the Commission to apply directly to the

CHAIRMAN - STATEMENT

1 Supreme Court of Canada for leave to appeal this decision, it is  
2 necessary to have the consent of all the parties to the court  
3 proceeding. We have instructed our counsel to request this  
4 consent, and it is our hope that, in the interests of resolving the  
5 matter as expeditiously as possible, and of avoiding the Nova  
6 Scotia Court of Appeal having to rule on an issue in which it is  
7 involved, the consent will be readily forthcoming.

8 This Hearing now stands adjourned until Monday,  
9 September 12th, 1988 at 9:30 a.m. in this room.

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## REPORTER'S CERTIFICATE

I, Margaret E. Graham, Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.

  
\_\_\_\_\_  
Margaret E. Graham

DATED THIS 28day of June 1988 at Dartmouth, Nova Scotia