

### KEY DATES

- May 28, 1971 - Date of murder
- May 29, 1971 - Date Seale died
- May 30, 1971 - From 5:15 to 5:35 MacIntyre is taking the Statement from Chant.
- May 30, 1971 - At 6:00 p.m. Pratico's Statement is finished being taken.
- June 17, 1971 - Statement is taken from Patricia Harriss.
- July 5, 1971 - Date of Preliminary Inquiry
- July 28, 1971 - Second day of Preliminary Hearing
- November 5, 1971 - Date Marshall commenced serving his life sentence
- November 15, 1971 - MacNeil gives his Statement of MacIntyre
- September 8, 1972 - Opinion of Appeal Division on first Appeal
- August 29, 1981 - Date Marshall was paroled.
- June 16, 1982 - Date the Minister of Justice referred the matter to the Appeal Division
- December 1 and 2, 1982 - Re-Hearing Evidence taken in Appeal Division
- September 12, 1983 - First Ebsary Trial
- November 4, 1983 - Second Ebsary Trial
- January 9 - 18, 1985 - Third Ebsary Trial

THINGS TO DO OR CONSIDER

1. Speak to Wayne McGee and ask him if there was any mention of the word perjury during the Chant examination in Louisbourg.
2. Should we attempt to locate Donnie LeRoy and Jim MacKenzie who were the friends of Chant in the Correctional Centre at the same time as Marshall and who overheard Marshall confessing his guilt.
3. Read the Summary of Facts which was presented to the Trial Judge.
4. Arrange to have a large plan of Wentworth Park prepared for use as an exhibit.
5. Have our interviewers locate a George and Sandy MacNeil, both of whom gave statements to the Sydney Police on May 31, 1971 at 6:30 p.m.
6. Was there any evidence of money being found on Sandy Seale.
7. Consider whether Peter Cotter should be called as a witness to confirm the admission given to him by Roy Ebsary.
8. Consider whether Arsene Gittens (Leatha Seale's mother) should be called. Refer to her statement and in particular the conversation she had with John Pratico.
9. Note that George MacNeil gave a statement to the Police concerning seeing two people in the Park that night who appear to match the description given by Marshall.

10. Review with David the complaints registered by Mrs. Pratico as referred to on page 57 of Volume G-1. Have our investigators located the various policemen and talked about this matter with them.

11. Check the record of Christmas. In particular determine anything which is available concerning the charge of obstructing justice. (It is my recollection that no trial was held on this matter because no evidence was adduced).

12. Get a copy of Christmas's record. Would a two year sentence for break and enter in 1971 seem to be a reasonable sentence?

13. Discuss with David Orsborn the use, if any, to be made of the Statement of Arsene Gittens (found in Volume G-2).

14. Check the statement of F. MacKenzie found in Volume G-2 with those given by other police officers concerning the pick-up of Chant on George Street as he was hitchhiking on the night of the stabbing.

NOTES OF THINGS TO DO

1. Get all materials from the file at the Prothonotary's Office including the various Affidavits and Exhibits thereto. ✓
2. When speaking with Rosenblum and Khattar, try and determine if they believe Marshall was guilty. What efforts, if any, did they make to interview Pratico and Chant. Were they aware Pratico had spent the time between the Preliminary and the Trial under psychiatric care. ✓
3. Melinda MacLean apparently acted for Marshall at some time. Discuss the case with her.
4. One of the questions we are to ask "what is the obligation of defense counsel". ✓
5. Stewart Killen of the Nova Scotia Union of Indians is the person who retained Aronson. What information does Killen have? ✓
6. Doug Rutherford of the Department of Justice was involved in establishing the reference papers. ✓
7. Aronson said in 1982 he asked Gordon Gale for information and was refused.
8. The statement taken from Marshall in Dorchester was not given to Aronson until several months later. ✓
9. Would it be possible to have new polygraph readings taken of various witnesses. ✓
10. Find out what time the buses left Sydney for Louisbourg in May, 1971. ✓
11. Find out if Chant was under a curfew in 1971 and if so, the details of it. ✓
12. When discussing the matter with the Ebsary children, ask if their father ever carried a pocket knife. Ask if they know Jacques Brittan. ✓
13. What Evidentiary Rules will govern the conduct of the Inquiry. ✓
14. How did MacNeil get to cross-examine Chant during the Trial. ✓
15. Was Pratico working for police prior to this murder? ✓
16. How could the Appeal Court comment on whether or not there was a miscarriage of justice without having heard all of the evidence. ✓

17. How could a Court acquit without hearing all of the evidence? Should it not have required the evidence of the Police Officers during the Re-Hearing? How was the line-up of witnesses determined.
18. In Harriss' book there is reference to Donna Ebsary at school shortly after the occurrence being teased that her father had done it. Find this passage and question Harriss on the source. ✓
19. Discuss Donna Ebsary and the information she gave with Dave Ratchford; Elizabeth Boardmore who was an English Professor at the College of Cape Breton. ✓
20. Obtain a statement from Bob Ebsary. ✓

I N D E X

TAB A

APPEAL DIVISION (Notes of Decision, September 1972)  
AUTOPOSY (Memo Prepared by Anne Uteck)

TAB B

BARLOW, Sgt. (Voir Dire)

TAB C

CHANT, Maynard Vincent (Preliminary)  
CURRIE, Leo (Preliminary)  
CHANT, Maynard (Re-Hearing)  
CHANT, Maynard (Statement Taken May 30, 1971)  
CARROLL, Corporal James (Ebsary Trial II)  
CARROLL, Sgt. (Voir Dire)  
CHANT, Maynard (Notes of Discussion on February 19, 1987)  
CHANT, Maynard (Marshall Trial)  
CURRY, Leo (Marshall Trial)  
CHANT, Maynard (Statement Taken June 4, 1971)  
CHRISTMAS, Tom (Statement Taken February 24, 1987)  
COTTER, Peter (Sstatement)

TAB D

DAVIS, Merle Faye (Preliminary)  
DOUCET, Brian (Preliminary)  
DUBINSKY (Mr. Justice (Jury Address)  
DAVIS, MERLE (Marshall Trial)  
DOUCET, Brian (Statement Taken June 14, 1971)

TAB E

EVERS, Adolphus James (Preliminary)  
EBSARY, Donna E. (Re-Hearing)  
EBSARY, Gregory (Re-Hearing)  
EVERS, Adolphus James (Re-Hearing)  
EBSARY, Donna (Ebsary Trial I)  
EBSARY, Mary (Ebsary Trial I)  
EDWARDS, Frank (Jury Charge - Ebsary Trial I)  
EBSARY, Donna (Ebsary Trial II)  
EBSARY, Mary (Ebsary Trial II)  
EBSARY, Roy (Statement Taken November 15, 1971)  
EVERS, Adolphus James (Marshall Trial)

TAB F

FLOYD, Barbara (Notes of Discussion on February 18, 1987)

TAB G

GAUM, Dr. David (Preliminary)  
GOULD, Roy (Preliminary)  
GUSHUE, Terrance (Preliminary)  
GENTILE, Shawn (Notes of Discussion on February 25, 1987)  
GUSHUE, Terry (Notes of Discussion on February 19, 1987)

TAB G (Cont'd)

GOULD, Roy (Marshall Trial)

GUSHUE, Terry (Marshall Trial)

GUSHUE, Terrance (Statement Taken June 17, 1971)

TAB H

HARRISS, Patricia Ann (Preliminary)

HARRISS, Patricia Ann (Re-Hearing)

HARRISS, Patricia (Statement Taken June 17, 1971)

HARRISS, Patricia (Notes of Discussion on February 18, 1987)

HARRISS, Patricia (Marshall Trial)

TAB I

TAB J

JUDGE'S CHARGE TO JURY (Ebsary Trial I)

JURY, Submissions of Counsel to (Marshall Trial)



TAB K

TAB L

TAB M

MARSHALL, Donald, Sr. (Preliminary)  
MRAZEK, Sandra Catherine (Preliminary)  
MULLOWNEY, John (Preliminary)  
MARSHALL, Donald, Jr. (Re-Hearing)  
MARSHALL, Donald, Jr. (Ebsary Trial I)  
MARSHALL, Donald, Jr. (Ebsary Trial II)  
MROZ, Constable Leo (Ebsary Trial I)  
MROZ, Constable Leo (Ebsary Trial II)  
MARSHALL, Donald, Sr. (Ebsary Trial III)  
MATHESON, Judge Lou (Notes of Discussion on February 20, 1987)  
MARSHALL, Donald, Jr. (Marshall Trial)  
MATTSON, D. (Marshall Trial)  
MREZEK, Sandra (Marshall Trial)  
MULLOWNEY, Constable (Marshall Trial)  
MARSHALL, Donald, Jr. (Statement Taken May 30, 1971)

TAB Mac/Mc

MacDONALD, Carl (Preliminary)  
MacDONALD, Michael (Preliminary)  
MacINTYRE, John Fraser (Preliminary)  
MacKAY, Robert (Preliminary)  
MacMILLAN, Pearl (Preliminary)  
MacNEIL, James (Re-Hearing)  
MacNEIL, James (Statement Taken November 15, 1971)  
MacNEIL, James (Ebsary Trial I)  
MacDONALD, Michael James (Voir Dire)  
MacINTYRE, John (Voir Dire)  
MacINTYRE, John (Ebsary Trial II)  
MacNEIL, James (Ebsary Trial II)  
MacDONALD, Sgt. Michael (Ebsary Trial III)  
MacNEIL, Sandra (Notes of Discussion on February 19, 1987)  
McGEE, Wayne (Notes of Discussion on February 19, 1987)  
MacDONALD, Carl (Marshall Trial)  
MacDONALD, Michael (Marshall Trial)  
MacMILLAN, Pearl (Marshall Trial)  
MacNEIL, George and Sandy (Statement Taken May 31, 1971)  
MacKAY, Scott (Statement Taken June 2, 1971)  
MacDONALD (COUTURE) Deborah (Statement)

TAB N

NAQVI, Dr. Mohammed (Preliminary)  
NAQVI, Dr. Mohammed (Ebsary Trial I)  
NAQVI, Dr. Mohammed (Ebsary Trial II)  
NAQVI, Dr. Mohammed (Marshall Trial)

TAB O

O'REILLY (Catherine Soltesz and Mary Csernyik, Notes of  
Discussion on February 18, 1987)

TAB P

PRATICO, John (Preliminary)

PRATICO, John (Statement Taken May 30, 1971)

POLICE (Chief Richard Walsh, Deputy Chief John MULLOWNEY,  
Corporal Howard Dean and Inspector Ambrose MacDONALD  
Notes of Discussion on February 19, 1987)

PRATICO, John (Notes of Discussion on February 18, 1987)

PRATICO, John (Marshall Trial)

PRATICO, John (Notes of Discovery Examination)

PRATICO, John (Statement Taken June 4, 1971)

PAUL, Arthur (Statement Taken June 2, 1971)

TAB Q

TAB R

REFERENCE (Notes of Decision of Appeal Court on Reference)

TAB S

SEALE, Leotha (Ebsary Trial III)

SEALE, Oscar (Ebsary Trial III)

TAB T

TAB U

TAB V

VIRICK, Dr. (Preliminary)

VIRICK, Dr. Mohan (Marshall Trial)

TAB W

WINTERMANS, Luke - Jury Charge (Ebsary Trial I)

WHEATON, Staff Sgt. (Voir Dire)

WHEATON, Staff Sgt. (Ebsary Trial III)

TAB X

TAB Y

TAB Z



NOTES OF THE DECISION OF THE APPEAL DIVISION

SEPTEMBER, 1972

<u>Page No.</u>	<u>Comment</u>
2	It is stated as a fact that Pratico was in the company of Seale and Marshall a very short time before Seale was stabbed. He left the two men and stationed himself behind a bush in Wentworth Park.
5	The only issue before the Court at trial was whether or not Marshall had committed the murder. His sole defence was a denial of that act and his theory was based on his own evidence that the murder was committed by one of two strangers, who claimed to be priests from Manitoba.
10	Referring to Chant and Pratico and the comments made about them by the Trial Judge. It is noted it was quite proper for the Trial Judge to point out to the jury that there was no evidence of collusion. They were characterized as "two very important and independent eye witnesses, with no apparent motive for collusion, and with no evidence to give the slightest support to any such suggestion had given to the Courts mutually co-operative testimony that had a direct bearing on the very issue to be decided by the jury."
12	The matter of Marshall being left-handed is irrelevant and did not require comment by the Trial Judge.
16	It is noted that the conflict in the Statements of Chant before and during trial are explained by the evidence which disclosed that his life was threatened if he testified that Marshall stabbed Seale. The record on the Voir Dire indicates that such threats were made to Pratico.
19	The Court comments that although the Trial Judge did not expressly state that Chant was adverse there can be no doubt that in the Trial Judge's opinion the witness had been proven to be adverse.
22	The Appeal is denied.  Note that Rosenblum argued the Appeal for Marshall and Gordon Gale for the Crown although the Factum is signed by Milton Veniot.





①

Bruce Archibald

1974 LLB

1975 LLM Columbia Univ. - Comparative Law  
Post Grad Paris 1975-76

Bar 1977

Articled - 3 mos Prosecutor's office

Teaching Fall 1976 Asst Prof.

1981 Assoc. Prof.

Criminal Law & Procedure - 2 years  
Evidence - 4 years

Law Reform Commission - Law of Torts  
Principal Consultant.

Compelling Appearance Bail  
Pre-TRIAL release.

what did to prepare:

Concepts of: with examples  
Relevance - 4  
weight

Hearsay - p. 13 prepare for excluding  
Exclusionary Rules - example confession  
limiting instruction  
adversarial System

Double p. 3

(2)

This TRIAL

Mrs. Davis

p. 9 showed Judge or Defense  
have interviewed or objected

only protective value.

got saw plain laceration & no blood  
VICIC 113/124

2/25

(9)

p. 10 M<sup>o</sup> Neil knew  
credibility to be key  
~~reference~~

Mr. & Mrs. Seal

Relevance of the clothing  
worn by Sandy Seal?

p. 11

10

General approach to Hearsay

"any statement made not in  
presence of accused is Hearsay"

any statement made in presence of  
accused is not Hearsay &  
therefore admissible"

Does presence of accused have  
any bearing at all?

Understanding of concept by  
Judge & Counsel

(2)

MacDonald

p. 15

(13)

(14) p. 16

p. 17 (15)

change to jury

p. 18 (12)

wrong application of case

p. 21

conclusion

Chouh

p. 22

(20)

(21)

# Pratibha

Shape of Cross Examination

prior inconsistent Statement

p. 26 - in detail

XXV	4744/5	Khatton
XXVII	5002-3	Maddan
XXII	2102	Pratibha

Go to my p. 4 in notes

Jumps end of Transcript  
"Serious Murder"

(6)

Duty of Appeal Court  
Securis blunder

p. 30  
31

(27)

lead + re-phrased

Recommendation

Bruce Ackelrod

p. 3 ① Is this accepted description. Assume counsel for each side concerned with his client only. Is that the situation in criminal prosecutions? Should Defense Counsel act any differently in criminal matters. Interview witnesses, etc. No discovery process per se

p. 4 ② Explain this in lay terms. Use the example contained on this page

p. 5 ③ Explain hearsay & why not considered reliable & therefore inadmissible. Give other examples of relevant evidence which is inadmissible.

p. 11 ④ Any example of this. Any relevance to the Marshall case

p. 6 ⑤ Efficiency of such a rule

p. 7 ⑥ Judges do, & must, rely on counsel to do the objecting, but less so in criminal trials.

p. 9 ⑦ On just reading the relevance is questionable, but later may be O.K.?

p. 9 (8) Relevance of Davis evidence (Vivix)  
Should there have been an objection? Should Judge have intervened? Should question have been asked in first instance.

p. 10 (9) Judge's outcome would depend on assessing credibility

p. 11 (10) Why is Mustoll's jacket relevant? Cut in sleeve? Person noticed that saw Stobling Seal wore yellow jacket?

p. 12 (11) Explain in detail  
13 (11A)

p. 13 (12) Give examples of Hearsay.

p. 15 (13) Refer p. 138(I) - Can the Crown object on basis there could be some prejudice to the accused? when accused's lawyer is asking question?  
138(K) actual question  
138(N) How does Hearsay become non hearsay when Chast tests Stand?

p. 16 (14) Explain this



p. 17

(15)

Roswellum knew about ~~some~~  
inconsistent statements to Police &  
lied to Police. If he had this from  
my friends could say (1) no  
accusation (2) lie to Police (3) Implicate  
Marshall - all very N.B.

(16)

If there is proof on deflection is  
it one to be made by other than  
the accused?

p. 18

(17)

Deal with this &amp; explain

p. 20

(18)

(18A)

In detail. Note reference to  
R v Bennett & proposition the  
case.  
discuss 18(A) [ ]

p. 21

(19)

Deal with this in detail.

22

(20)

In detail 1/79

23

(21)

Refer to actual statement which does in  
fact implicate Marshall 16/18  
In detail with the rest.

25

(22)

Explain the difference between  
the 2 types of evidence

p. 26 (23) Refer to Klatta Testimony & 4744/5  
 Questions he would have asked  
 Refer Matheson evidence re Marshall - Tell the  
 truth  
 XXV  
 5002-3  
 matter  
 XXVI  
 2102

(23A) Use actual names such as  
 Marshall.

28 (24) Is this "the law"?

29 (25) It is an irrefragable conclusion  
 that this curtailment of the  
 cross-examination and re-examination  
 of John Reutis constituted directly  
 to the conviction of Donald Marshall Jr.  
 and constituted a "substantial wrong or  
 miscarriage of justice"

(26) Duty of Appeal Court to raise  
 issues of its own.  
 Did it direct its attention to Reutis  
 problem. 2/131

30 (27) Had this in

31 (28) Make points Lloyd Caldwell  
 refers to. Difference of opinion.  
 Points on remission?  
 understanding of Judge & Counsel,

# McINNES, COOPER & ROBERTSON

INTER - OFFICE MEMO

To: George W. MacDonald

From: Anne Uteck

Date: 09 February, 1987

Re: Marshall Inquiry - Autopsy

File No: I-1816

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You have asked me to check the following:

1. Is there an absolute requirement that an autopsy be performed in cases of death by violence; and
2. Was there such a requirement in 1971.

## CONCLUSION

Under the present legislation, there is no absolute requirement that an autopsy be performed in any case, nor was there such a requirement in 1971. The Chief Medical Examiner has complete discretionary power as to whether or not to perform an autopsy.

The relevant provisions of the Fatality Inquires Act R.S.N.S. 1967 c.101 provides:

"3(1) Where a Chief Medical Examiner is informed that there is lying within the territory to which he is appointed the dead body of any person, and it appears that:

- (a) there is reasonable cause to suspect that the person died by violence, undue means, or culpable negligence; or
- (b) the person died in a place or under circumstances requiring an inquest under any Statute; or
- (c) the cause of death is undetermined; or
- (d) the person died in jail or prison;

the Chief Medical Examiner shall forthwith take charge of the body and shall make diligent inquiry respecting the cause and manner of the death of the person.

3(2) Immediately upon completing this inquiry he shall reduce to writing every circumstance respecting the condition of the body, and tending to show the cause and manner of the death, together with his own opinion as to the cause of the death, and shall sign the writing and file it with the Clerk of the Crown for the County in which he found the body.

4(1) If, as a result of the inquiry under section 3, the Chief Medical Examiner is of the opinion that a postmortem examination is necessary to determine the cause of death, he may perform it, but in all cases in which he performs such examination, he shall, before or immediately after making it, make a statement in which he shall state that in his opinion the postmortem examination was necessary, and his reasons for that opinion, as fully as the circumstances permit, and shall file this statement as part of his report.

4(1A) The Attorney General may:

(a) Direct a post-mortem examination where he deems it necessary;

(b) direct further inquiry into any of the circumstances attending a death where he thinks such an inquiry should be made,

and the Chief Medical Examiner shall take such action as is necessary to comply with the direction of the Attorney General."

Note: These provisions were in place in 1971 with the exception of section 4(1A) which was enacted in 1982.

These provisions have not been judicially considered, but it would appear that after the Chief Medical Examiner receives notification of a death, an autopsy will only be performed if, in his discretion, he deems it necessary, or he is directed to do so by the Attorney General.

I spoke with Dr. Terry, Chief Medical Examiner at the Coroner's Office, who confirmed that there is no absolute requirement today, nor has there ever been, that an autopsy be performed. Dr. Terry went on to say that even in cases of violent deaths, autopsys are not necessarily done as a matter of course.

According to Dr. Terry, the only requirement under the Act after the Coroner's Office receives notification of the death, is that an inquiry be made into the cause and manner of the death. In most cases, this can be determined by an external examination of the body, blood and urine samples together with the police report. Therefore, these results will provide the medical examiner with the cause and manner of the death sufficient to file his report and make it unnecessary to perform any further examination, i.e. an autopsy.

The bottom line, according to Dr. Terry, is that he has, as Chief Medical Examiner, complete discretionary power unless otherwise ordered by the Attorney General, to perform an autopsy in any case.

As regards the Marshall case then, the medical examiner had to have made the decision not to perform an autopsy on the Seale body. Assuming a report was filed pursuant to s. 41(1) by the medical examiner respecting the cause and manner of the death, it would have to have been based on an initial inquiry (i.e. police report) and external examinations.

AU/jmr (au5-7)



EBSARY TRIAL III

SERGEANT BARLOW - Voir Dire

<u>Page No.</u>	<u>Comment</u>
121	On October 26 he was with Carroll when they attended at Ebsary's home. Ebsary mentioned about a Mr. Doyle who was a prisoner at the County Jail in Richmond and he was a friend of his and Ebsary wanted Carroll to find out what he was in there for and make some arrangements to get him out of jail.
122	Ebsary was quite upset about Doyle being in jail and was anxious to get him out. He said during the conversation that if Carroll could get Doyle out of jail or make arrangements to get him out that Ebsary would give him the Marshall case. Carroll said I can't promise you anything, I don't have any idea why Doyle was in jail or anything or what for or where he was going.
123	The next morning Carroll told Ebsary that Doyle had been remanded to the Nova Scotia Hospital and either was in the hospital or on his way there and there was no way he could be released from jail. Ebsary was obviously upset about that and he said he wouldn't go back on his word about the Marshall case and that he would write up a statement.
125	Ebsary was quite demanding and wanted Doyle out of jail because he was a friend of his. The gist of the conversation was that Ebsary wanted Carroll to make whatever arrangements he could to get his friend Doyle out of jail in exchange for which Ebsary said I'll give you the Marshall case.
127	Ebsary said he wouldn't go back on his word on the Marshall case and said he would type a statement on his own typewriter which could be picked up the next morning.
128	The next morning they went back and Ebsary said he had broken his glasses or his typewriter or something and couldn't type the statement and he and Carroll made arrangements for a tape recorder and we left. It was Ebsary who suggested the tape recorder.





PRELIMINARY INQUIRY

MAYNARD VINCENT CHANT

<u>Page No.</u>	<u>Comment</u>
32	He is 14 years old and goes to school in Louisbourg. He says that if people don't tell the truth they commit perjury and would have to pay a fine or they could be sent to jail. He is in Grade 6 and has missed some grades.
33	He was in Sydney on the evening of May 28, 1971. At about half-past eleven he had just come from the bus terminal and was going toward the Park area. He went across the bridge where the two sides of the Park join and walked down the tracks toward George Street. The first thing he noticed was a guy hunched over in the bushes watching something. He did not recognize the man at first but afterwards he did.
34	He identifies the person he saw as John Pratico as the man he saw behind the bush watching something. He was looking toward Crescent Street. He looked back to see what he was looking at and he saw two guys talking to one another. He didn't know Sandy Seale at the time and didn't recognize Donald Marshall at the time either until afterwards. He saw them talking and they were using kind of profane language. Donald said something to the other fellow and the other fellow said something back and I saw Donald haul a knife out of his pocket.
35	Donald drove the knife into the stomach of the other fellow. The other fellow just keeled over and Chant ran toward George Street. He didn't go exactly towards George Street. There was a path on the other side of the tracks and he went up the path toward the bus terminal again. He points out on the plan showing where he was and where Pratico was.
36	He says he was about 35 feet below Pratico. After the incident he ran down the tracks, crossed the bridge and started to walk in the area designated as being a walk on the plan. He saw Marshall running north on Bentinck Street down to Byng Avenue. Chant turned

MAYNARD VINCENT CHANT

Page No.

Comment

36 (cont'd)

around and started to walk the other way and Donald caught up to him in the area of the house which is marked as M. Matheson. Marshall said "Look what they did to me" and showed him his arm. It had a long cut from his wrist up his arm to his elbow. There was no blood from the cut right at that moment but after a few minutes it started to bleed.

37

Marshall said "Look what they did to me" and Chant said who and Marshall said "The two fellows over at the Park" and then he said "My buddy is over at the Park with a knife in his stomach". Marshall was wearing a yellow jacket with the sleeves rolled up. He knew Marshall before to see him. The sleeves on Marshall's jacket were shoved up to the elbows. After the incident Marshall ran toward Bentinck Street. He did not see Marshall running after the stabbing. He and Marshall started to walk up and met two girls and two boys and Marshall stopped them and asked them for help. As they walked on by, there was a car which Donald Marshall flagged down and he and Chant got in it and drove over to Crescent Street.

38

He does not know who the driver of the car was. When they got to Crescent Street, he and Marshall got out of the car and rushed to where Seale was lying. Chant put his shirt on Seale's stomach. The only words Seale said was that he was going to die. His description of where Marshall was located at this time is not comprehensible. He thinks Marshall went up to a house or something and arranged for an ambulance but he does not know that. After the police came Marshall flagged the police down when they were coming over Crescent Street and told them what happened. They told him to get in the car and they phoned for an ambulance to come over and they took Marshall to the hospital.

39

Chant stayed there until the ambulance arrived. Seale had tried to get over on his stomach and Chant and a couple of other fellows moved him. The ambulance then came and put him on the stretcher. Chant did not know Seale before this evening. There are lights in the area,

MAYNARD VINCENT CHANT

Page No.

Comment

39 (Cont'd)

maybe two or three.

There were no questions by the Defence.



PRELIMINARY INQUIRY

LEO CURRIE

Page No.

Comment

49

He operates his ambulance business in Sydney and on May 28 answered a call in the vicinity of Crescent Street shortly after midnight. He put Seale on a stretcher, being helped by Brian Doucet and Richard Walsh and took the patient to the City Hospital. He assisted Dr. Naqvi in setting up the I.V.



RE-HEARING

MAYNARD CHANT

<u>Page No.</u>	<u>Comment</u>
171	He lives in Louisburg and was born October 14, 1956. He is married and works in a fish plant. He has Grade 7 education having completed school in 1970. He was 15 when he completed his last grade.
172	He had been at Church in Sydney on May 28, 1971. He is no longer a member of that Church but he goes to Church and has been regularly for 4½ years. On May 28 he left Church shortly before 9:30 and went to Whitney Pier.
173	He hitchhiked from the Pier to the bus terminal to get the bus from Sydney to Louisburg but when he arrived at the bus station, the bus had already left and that would be about 11:30. Since he missed the bus he was going to hitchhike to Louisburg and he started down Bentinck Street.
174	He was going to cross over on the Park side and he met up with Marshall who explained to him that his friend was stabbed and asked if Chant could give him some help. He marks the letters "MC" on Byng Avenue near the intersection of Byng and Bentinck as the place where he met Marshall. Their conversation mainly concerned getting an ambulance or help for Sandy Seale.
175	He did not know Seale and Marshall prior to this time. Marshall had both sleeves rolled up and a rather large gash on the inside of his forearm. He did not see any blood at the time he met him but as they proceeded down the road, we met a girl and her boyfriend and Marshall's arms started to bleed because the young girl had given him a handkerchief for his arm. We proceeded down Byng Avenue to get help for his friend.
176	Just as we met up with the two couples there was a car coming by and we flagged that over and they took us to where Seale was laying. We got out of the car and Marshall ran up to call an ambulance. After he came back he stood about 15 feet behind Seale's body and Chant then went up to see if they had called the ambulance because it was taking a long time. He marks "SS" on the plan as the location where Seale's body was located. After the ambulance came and Seale was safely inside, I proceeded

MAYNARD CHANT (Cont'd)

<u>Page No.</u>	<u>Comment</u>
176 (Cont'd)	to continue to hitchhike to Louisburg. Just as I got to George Street the police stopped me and saw the blood on my shirt.
177	The police asked him if he saw anything and he said "yes I've seen everything". He gave the police two statements altogether, one the night it happened and one three days later. The first statement was given at the Police Station in Sydney and the second in Louisburg at the Town Hall. His Probation Officer, Larry Burke, was present while the second statement was being given. So was his mother, Beulah Chant, and Wayne McGee, Chief of Police of Louisburg.
178	In 1971 he said he witnessed the murder and the statement he gives today says he did not. He was scared and felt pressured into giving a statement that he did not normally want to give.
179	He repeats that he was pressured into giving a statement when he was being questioned at the Town Hall in Louisburg. The statement he is giving today is exactly what he saw and he did not see the murder take place. In 1971 he tried to begin to tell the truth that he didn't see anything but the people who were taking the statements wouldn't believe him so he didn't know what to do and in the result gave a false statement. He doesn't know the names of the policemen but there were two of them and that was at Louisburg.
180	About 4 years ago he told his parents of the discrepancy in his testimony. About 1½ years later he told his Pastor. Even though he didn't witness the murder he figured Marshall was guilty because what had been told to him and what he acquired through friends that were doing time in the Correctional Centre the same time Donald Marshall was. He advises that he is a born again Christian and would not tell a lie today.
181	He had never seen John Pratico prior to trial.



MAYNARD CHANT (Cont'd)

Page No.

Comment

CROSS-EXAMINATION

- At the time of the trial he had not submitted himself to the teaching of Jesus Christ although he believed in him. He is saying with absolute certainty that he did not witness the stabbing.
- 182 -184 He is pressed about the differences in his evidence at Preliminary and Trial and his present evidence.
- 185 In his first statement to the police he gave the story that Marshall had told him pertaining to what had happened in the Park. Just as he arrived at the Police Station, Marshall was coming out of questioning and came over to him and stated "There were two of them, weren't there" and Chant was very afraid and said yes. A couple of days later two policemen took me in a room in the Town Hall in Louisburg, together with his mother and another gentleman and they began to question me. They told me that I had committed perjury pertaining to the statement that I had given that night in the cop station and they had a fellow that said that he saw me there and that he said that I had seen everything that he had seen. Just after that they put my mother out of the room and my Probation Officer was there and they began to tell me my record and the trouble that I was into and they told me again about the young fellow that had seen me there.
- 186 That's when I opened up and began to tell them I never seen nothing. One of the men said "You had to see something, tell us what you saw". I told him again I didn't see nothing then I said "What did the other fellow see". I don't remember if they told me what the other fellow saw but I remember giving a statement. The two people from the Sydney Police detectives were telling to him the seriousness of telling lies and they were after his true statement.
- 188 He is referred to his first statement and in it he says he saw someone other than Donald Marshall do the stabbing. That is the story he had gathered from what Marshall told him.

MAYNARD CHANT (Cont'd)

<u>Page No.</u>	<u>Comment</u>
189	He has read the portion of his second statement taken on June 4 and he says he does not recall giving it.
190	When he gave his statement, and at the preliminary and at the trial he knew what he was saying wasn't right and he probably said it because he was scared.
190 - 192	He is questioned by the Court concerning his statements. He says he didn't see anything pertaining to the murder. The only thing he saw was Donald Marshall when he met him on Byng Avenue.



STATEMENT OF MAYNARD CHANT, MAY 30, 1971

The statement was taken on May 30, 1971 commencing at 5:15 p.m. and ending at 5:35 p.m. (This would be on Sunday).

Chant is 15 years old. He says on Friday night he was in town and left the bus terminal on Bentinck Street about 11:40 p.m. He came over Byng Avenue and started to cross the tracks. He got halfway across the tracks and he saw two fellows walking and two more were walking kind of slow talking.

"The two fellows who stabbed Donald Marshall and Sandy Seale - they talked for a few minutes over on Crescent Street. One fellow hauled a knife from his pocket and he stabbed one of the fellows - so I took off back across the tracks to Byng Avenue and started to walk toward the bus terminal".

He saw Donald Marshall coming down and turned around and started to walk the other way. Marshall caught up to him and said "Look what they did to me". He showed me a long cut on his left arm and then he said help me - my buddy is over on the other side of the park with a knife in his stomach".

We started to look for help. We met some boys and girls - one of the girls gave Donald a handkerchief. We got a car to take us over to where Seale was lying on the pavement. I took my shirt and put it around his waist and Marshall went to a grey house and asked the man if he would call an ambulance. About 10 minutes later I went up and asked the man in the house to call again. I kneeled down beside Sandy Seale and he said it was hot. I unbuttoned his jacket and I then discovered his stomach was cut. I took my shirt and put it where the cut was and made him comfortable. Then the police arrived and they called for the ambulance and Seale was taken to the hospital.

STATEMENT OF MAYNARD CHANT (Cont'd)

He knew Donald Marshall to see him but did not know Seale. He describes the other men - one is 6'2" with light brown hair, dark pants and a suit coat over 200 pounds. The other fellow is 6' tall, dark pants, dark hair, 165 pounds. He did not see their faces and cannot say how old they were.

There were four men there. He saw a figure of a knife. He would be 45 feet or more down the tracks. He would not say that Marshall was drinking.

The statement was taken by Detective J. F. MacIntyre.

STATEMENT OF MAYNARD CHANT, MAY 30, 1971

The statement was taken on May 30, 1971 commencing at 5:15 p.m. and ending at 5:35 p.m. (This would be on Sunday). The statement was witnessed by MacIntyre.

He is 15 years of age. There is no notation as to where this interview took place.

Note his statements that he walked down Bentinck Street, came along Byng Avenue and started to cross the tracks (this is a natural route which would be followed). He talks about seeing two fellows stabbing Marshall and Seale and they were on Crescent Street. (This would not be very possible if he were crossing the tracks having walked along Byng Avenue.) Note he says he took off back across the tracks to Byng Avenue and started to walk toward the bus terminal and he saw Marshall coming down and he then turned around and started to walk the other way on Byng Avenue until Marshall caught up to him.

Marshall told him his buddy was on the other side of the Park with a knife in his stomach and they looked for more help and met some boys and girls and one of the girls gave Marshall a handkerchief. We got a car to take us to where Seale was lying on the pavement and I took my shirt and put it around his waist and Marshall went to a grey house and asked the man if he would call an ambulance.

He says about 10 minutes passed and he went up and asked the man in the house to call again. He says Sandy Seale told him it was hot. He unbuttoned Seale's jacket and discovered his stomach was cut and then the police arrived and they called for the ambulance and Seale was taken to the hospital.

He did not know Seale but he knew Marshall

to see him. He says one of the other men was 6'2", had light brown hair and dark pants and a suitcoat and weighed over 200 lbs. The other fellow was 6' tall with dark pants, dark hair and weighed 165 lbs. He is asked how far away he would have been and he said 45 feet or more down the tracks.





EBSARY TRIAL II

CORPORAL JAMES CARROLL

<u>Page No.</u>	<u>Comment</u>
179	He is familiar with the R.C.M.P. stationed in Sydney and has been a member of the force for 23 years.
180	He was involved in the 1982 investigation of Sandy Seale's stabbing and the investigation began in February, 1982. During the course of the investigation he had a meeting with Ebsary. On October 29, 1982 he took a statement from Ebsary and it was recorded at his home on Falmouth Street and just the two of us were present. It runs for about 20 minutes and took place in the kitchen area of his home. He has the tape recording with him in trial.
181	Edwards notes that Wintermans is waiving the necessity of a Voir Dire respecting the admissibility of the tape recording and is admitting it was voluntarily made.
183	At the time the recording was made he suspects Ebsary had one or two drinks of wine but he was far from being intoxicated and in fact was in a reasonably normal condition (tape is played) Carroll and Ebsary went to the location where Ebsary said he buried the knife and proceeded to dig up a small plot of land in the backyard of the home on Rear Argyle Street.
184	No sign of a knife was found.
184	It was the knife blade they were looking for since Ebsary had said the knife handle had been thrown away.
185	He saw Marshall in prison in Dorchester.
186	He was present when the Statement was taken from Marshall in Dorchester. He never said anything to Marshall to get him to write letters to Ebsary. He believes Ebsary told him he had received a letter from Marshall.
187	He is aware of the search of Ebsary's house and in fact he instigated it and they did seize numerous papers and cassette recordings. Ebsary has received all of them back.
188	He had been in contact with Ebsary a couple of times before the tape was made.



EBSARY TRIAL III

SERGEANT CARROLL - Voir Dire

<u>Page No.</u>	<u>Comment</u>
135	If any warning was given to Ebsary during the first meeting on February 22 it was done by Wheaton and he doesn't recall it.
139	At 4:45 on the afternoon of February 22 he went to Ebsary's place. Ebsary told him the incident was self-defense, that he had used a small pen knife and didn't have it any longer.
140	He said Marshall was fighting with MacNeil. He said he wanted to meet with Mrs. Marshall.
141	On February 23 in the morning he and Wheaton were at Ebsary's home. A warning was given to Ebsary at 11:00 a.m. by Wheaton and it was the standard warning and Ebsary was asked if he understood it and said he did.
147	He was at Ebsary's home on October 26, 1982 and a discussion was held concerning Gerald Doyle.
148	Ebsary said he thought Doyle was in trouble in the St. Peter's area and said if Carroll could get Doyle released, he would give him the Marshall case. I told him I could not promise him anything at all.
149	Carroll found out about Doyle and telephoned Ebsary to tell him and then reminded him of his words concerning the Marshall case and they agreed to meet the following day. They briefly met again on October 28 at 9:30.
151	On October 29 a tape recorder and tape were delivered to Ebsary's home.
152	Commencing at 11:50 a.m. he started to tape and record the conversation between himself and Ebsary.
154	He reads the first part of the transcript of the tape wherein a warning is given and he is advised of his right to have counsel.





MARSHALL TRIAL

MAYNARD CHANT

<u>Page No.</u>	<u>Comment</u>
86	A motion is made and granted to exclude all witnesses who have not yet given evidence from the Court room.
87	Chant is 15 years old and is in Grade 7. (He is not questioned to determine if he understands the nature of an oath.)
88	He was at the Acadian Lines bus terminal around 11:35 and he then started down Bentinck Street toward the Park and he crossed across the bridge and started to walk down the tracks.
89	He traces out his path and takes himself down Bentinck Street to the railway tracks and then started to proceed down the tracks. He noticed a fellow hunched over into a bush and he marks the bush with an "X" and it is the tenth bush from Bentinck or counting in an easterly direction along the railway tracks. It is between the houses marked E.F. MacDonald and N. A. McQuinn.
90	He kept walking a little bit further and he looked over and saw two people who were having a bit of an argument. One fellow hauled something out of his pocket and drove it toward the left side of the other fellow's stomach. The fellow keeled over and that's when I ran. The fellow who keeled over had a dark jacket and pants on. The other fellow had a yellow jacket. He ran down the tracks and cut across a path and started to walk up towards the bus terminal and I saw a fellow running toward me and I turned around.

MARSHALL TRIAL

MAYNARD CHANT (continued)

Page No.

Comment

- 91 The fellow caught up to me and it was Marshall. He points out Exhibit 5 to the area around Mattson's house. Marshall said, "Look what they did to me" and showed me his arm which had a cut on it. He said there were two fellows over in the Park who did it. Four people came along and Marshall asked them for help and one of the girls gave him a handkerchief to put over his arm. He showed them his arm and it was bleeding. A car came along and Marshall flagged it down.
- 93 When Marshall caught up to him he also said that his buddy was over in the Park with a knife in his stomach. When they went back to Crescent Street, there was a fellow keeled over on the street. This would be about 10-15 minutes from the time he saw the stabbing. Chant went to the fellow on the ground and jumped down beside him but he did not recognize him. Marshall came over near the body and somebody went and called the ambulance. Marshall did not go near the body when he came back.
- 94 Marshall stood behind the body for a minute and then he flagged a cop car down. He was standing behind Seale. Marshall did not assist in any way with Seale. Marshall showed the police his arm and then got in the police car and they took him to the hospital and by that time the ambulance arrived and Seale was put on a stretcher. He was on his way home when a truck picked him up and gave him a drive as far as the dance hall and he got out and started to hitchhike and was walking up Hardwood Hill when a police car came along and stopped and asked him if he was down at the Park and he told them he was.

MARSHALL TRIAL

MAYNARD CHANT (continued)

Page No.

Comment

- 95 The officers took him to the hospital and from there to the Police Station where someone called his father who came in and picked him up. He repeats the first thing he saw as he walked along the tracks was a fellow hunched over in the bushes and he did not recognize the man.
- 103 Starting on this page Chant is confronted with the evidence he gave at the Preliminary Inquiry and confirms all of that evidence and in particular that he recognized Marshall was the person driving the knife into Seale's stomach.

CROSS-EXAMINATION

Chant repeated Grades 6, 2 and 5.

- 108 He had asked whether he can swear that Donald Marshall whom he met on Byng Avenue is the man he saw previously.
- 109 He says he cannot swear that one of the men he saw on Crescent Street was Donald Marshall. He does say that he saw a man pull out a long shiny object which appeared to him to be a knife.
- 110 He says Donald Marshall flagged down a police car on Crescent Street and he says Marshall was telling the police about the two men who had stabbed Seale and himself.
- 111 At no time when he was in the company of at least four policemen did he say to any of them that Marshall had stabbed the man on the ground. He says he was at the Police Station only about 5 minutes.



MARSHALL TRIAL

MAYNARD CHANT (continued)

<u>Page No.</u>	<u>Comment</u>
112-113	He did not tell any of the police at the station that he had seen Donald Marshall stab Seale.
113	He next saw police officers on Sunday and was talking to two police officers, one of whom was Sgt. Michael MacDonald. He did not tell MacDonald and the other policeman on Sunday that he had seen Marshall stab Seale.
114	He disagrees with the suggestion that the only reason he said it was Donald Marshall who pulled out the object that looked like a knife was because the police told him it was Donald Marshall who did it. He says that he told the police a story that wasn't true.
115	He says he told the untrue statement on Sunday afternoon. He says the police took him in from Louisburg to Sydney for approximately two hours and he identifies Sgt. MacIntyre as the man who was questioning him.
116	In redirect examination, he says he told an untrue story because he was scared.
117	He is questioned by Justice Dubinsky and says that he did tell the police the true story after he had told them the untrue story. He is asked if he recalls anything about the clothing worn by the man who did something to the other and says that the person had a yellow jacket and a dark pair of pants and when asked whether there was any connection between the clothing worn by this man who he saw do something and the clothing worn by Donald Marshall, he said they had the same clothing.



MARSHALL TRIAL

LEO CURRY

Page No.

Comment

42

He operates the ambulance and arrived at the scene at approximately 12:15 a.m. There was a young man lying on the street and he took him to City Hospital.

43

He believes there were two policemen on the scene when he arrived and he thinks one of them was Richard Walsh. Also present was Brian Doucet who helped Curry. He did not see Donnie Marshall.



STATEMENT OF MAYNARD CHANT, JUNE 4, 1971

This statement was taken on June 4, 1971 at 2:55 p.m.

He left Acadian Lines on Bentinck Street about 11:30, walked down Bentinck Street to the tracks and then started down the tracks towards George Street. He noticed a dark haired fellow sort of hiding in the bushes opposite the second house on Crescent Street.

He did not know the guy's name but had seen him before out at the dances in Louisbourg. Since that he saw him Sunday afternoon at the Police Office in Sydney. He looked back to see what the guy was looking at and saw two fellows standing about 1½ feet from each other on Crescent Street near the house with the railing up the middle of the steps and this is the same house which he called the police from and an old man with gray hair and glasses answered the door.

The short dark fellow was facing the tracks and the taller man was facing the houses. He recognized Marshall who was wearing dark pants and a yellow shirt with the sleeves up to the elbows. He then says that when they were arguing Marshall's sleeves were down to his wrists at that time.

He was on the tracks watching them for about 5 minutes. You could hear some swearing and he thinks Marshall was doing most of it. He saw Marshall haul a knife from his pocket and jab the other fellow with it in the side of the stomach on the right side. He saw him jab it in and slid it down. He could tell it was a knife by the "figure" of it. It was shiny and long. When Marshall drove the knife in, Seale bent over. I ran toward George Street down the tracks.

I went into the Park, through the Park and then up to George Street. I crossed the tracks and then on to Byng Avenue. About three houses over I met Marshall and he said look at my arm. The cut was on his left arm and his sleeve was up. It was not a deep cut and was not bleeding at that time until we caught up to two boys and two girls. Marshall said to everyone, look what they done to me and said it was two fellows. He said his buddy in on the other side of the Park with a knife in his stomach. At that time a car came along and Marshall stopped it and ask for help. They picked us up and drove to the other side of the Park and we stopped about 6 feet away from Seale. Another man came along and knelt by Seale and then went over to a house and called an ambulance. He then came back and knelt alongside me about 5 minutes. The minute Chant got to Seale he put his white shirt on his stomach. Marshall did not call the police or ambulance at any time. Chant did first at the house with the railing coming down the centre of the steps but Marshall stayed on the sidewalk. Marshall said there were two men and the tall one with brown hair had done the stabbing but this of course is not true. Marshall did not know Chant was over the tracks. The statement finished at 3:45 p.m. and is prepared by MacIntyre. Urquhart, Mrs. Chant, Lawrence Burke and Chief Wayne McGee are noted to be present.



STATEMENT OF TOM CHRISTMAS, FEBRUARY 24, 1987

This statement is found in Volume G-2.

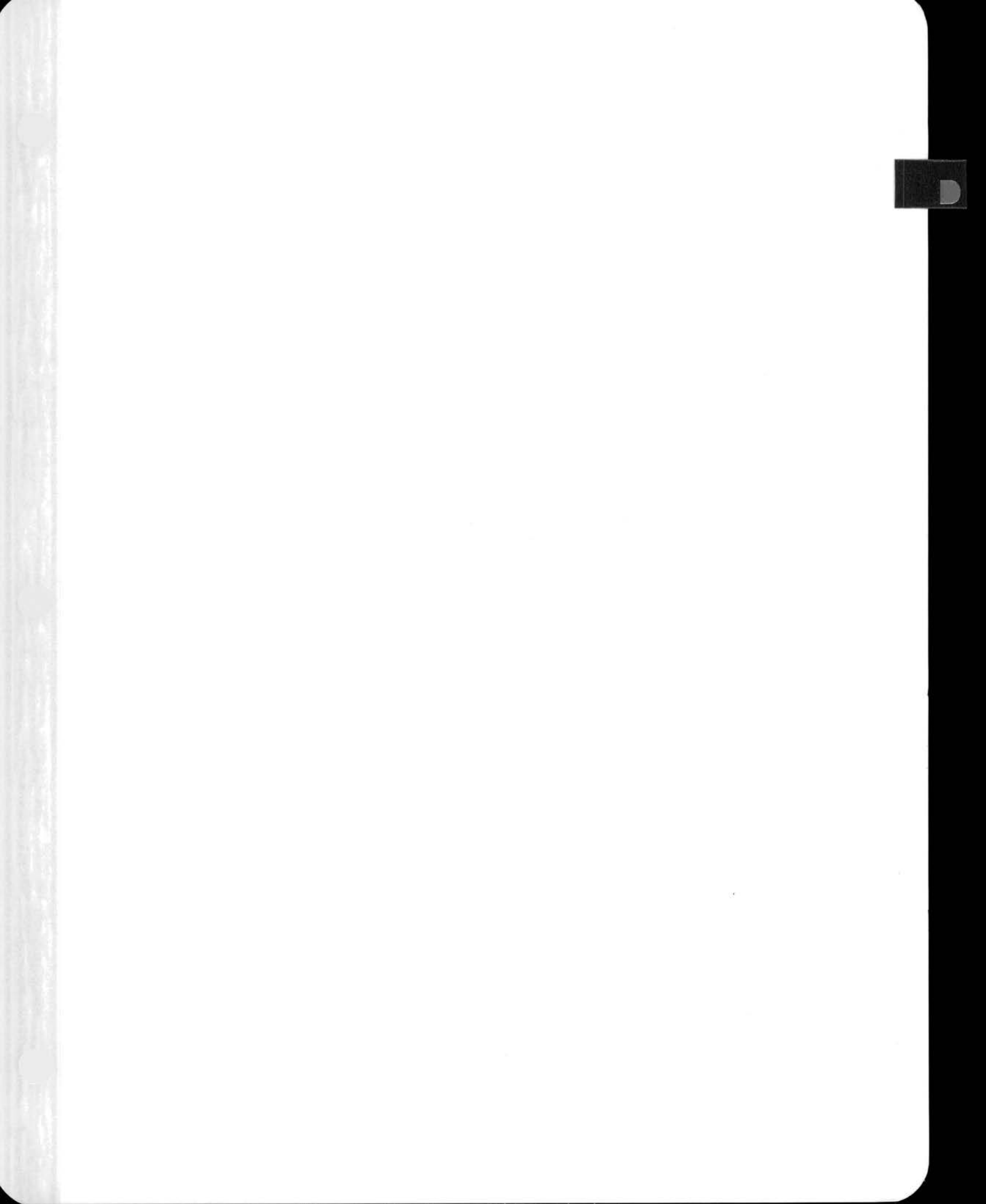
On the night of the murder he saw Junior at the Reservation at approximately 2:00 a.m. He was told that there were two men dressed like priests from Manitoba who were looking for girls. The older fellow said he didn't like niggers or Indians and that is when the older fellow stabbed Seale. Junior knew Christmas well and trusted him and he made no mention of any panhandling going on that night.

On the following Friday night he was attending a dance when he heard that Marshall had been charged and John Pratico had told the police he had seen it happen. He went to Pratico's house and spoke to Pratico's mother and Pratico. He and Pratico went outside and he asked why Pratico had told the police he had seen Junior stab Seale. Pratico said the police had forced him and threatened to put him in jail for a long time. Christmas told Pratico he had to go back to the police and tell them the truth. Christmas says there was no threats made to Pratico. Pratico saw a cop coming out of the Police Station and yelled to him that Christmas was going to kill him. The next morning the Sydney Police came to his house with a warrant for his arrest and took him to the Police Station. Eventually he was locked up and charged for obstruction of justice. He says he elected trial by Judge and Jury and at the Preliminary Hearing sometime around July, 1971 the case was thrown out because Pratico's mother came to Court and told the Court that Christmas would not do such a thing because he was Pratico's friend. Mrs. Pratico told the Court that John Pratico was not telling the truth when he said Christmas threatened him and this is when the case was thrown out.



In September Christmas was charged and pled guilty to a break and enter offence. Christmas did not have a big record at the time and although there had been a break-in, nothing was stolen. MacIntyre told him that if he pled guilty, he would get a minimum sentence and both MacIntyre and Urquhart said they would talk to the Crown Prosecutor. Christmas expected to get one or two months but instead was sentenced to serve two years in Dorchester. He was in Dorchester at the time Marshall went to trial. He wanted to be a witness at the trial because he knew Pratico was not telling the truth. He repeats that Pratico told him he had been pressured by the police to say he had seen Junior stab Sandy.





PRELIMINARY INQUIRY

MERLE FAYE DAVIS

Page No.

Comment

55

She is a Registered Nurse and works in the City Hospital. She identifies Donald Marshall and says she saw him on May 28 at about 12:15. She found a laceration on his left forearm about 3 inches in length. It was not bleeding when he entered the hospital and she did not see any blood coming from it at any time.

56

It was a laceration, certainly not severe and not very deep.

CROSS-EXAMINATION

She did not do anything for the patient preparing him. She just looked at the arm and got the tray ready for the doctor.



PRELIMINARY INQUIRY

BRIAN DOUCET

Page No.

Comment

- 44 He resides at 120 Crescent Street.
- 45 He was at home on the evening of May 28, 1971. He indicates his home on the east side of the Crescent Apartments. Between 11:30 and 12 he heard two voices in our front porch and when he opened the door he was asked to call an ambulance. It was Donald Marshall asking and there was a young fellow with him. He asked what happened and they told him there was a person lying over there hurt and asked him to please call an ambulance. He said he would call the police first and ask for an ambulance later.
- 46 After he called the police station he went outside to where the victim was lying on the street. There was a young fellow down alongside of him comforting him. When the ambulance arrived, they proceeded to put him on the stretcher and into the ambulance. He went into the ambulance to the hospital with him. He was taken to the Outpatients Room where his clothing was removed and a doctor was present. He remained there until the Commissioner came in and told him to leave. He was there when the doctor arrived.

CROSS-EXAMINATION

- 47 Marshall showed him a wound on his arm when he came through the door. It was long cut from the wrist to the elbow. There was no sign of blood. The cut was noticeable and appeared to be very recent. The fellow who was with Marshall was in Court and has already been a witness. When he came to where Seale was lying on the ground, Marshall was not there. When he was coming out of the house, he saw Marshall being taken in the police car.
- 48 The sleeve on the arm that was cut was rolled up. He did not smell any liquor off Marshall's breath.



JURY ADDRESS OF MR. JUSTICE DUBINSKY

Found in the Case on Appeal for the First Appeal

<u>Page No.</u>	<u>Comment</u>
2	He refers to the "four members of the Bar" who appeared before us during this trial.
3	He refers to the authority which requires him to point out to the Jury the pivotal points on which the prosecution and the defense rest.
4	He points out that it is for the Jury to find the facts and they are not required to agree with him on any of the facts or opinions which he expresses.
5	He points out that if they have any doubt as to the accuracy of his notes as he refers to them from time to time, they are to take their own recollection rather than his. He advises them not to make any inference against Marshall unless in their judgment it is the only reasonable and rational inference open on the facts.
6	He points out the various things they should consider when deciding whether to believe a particular witness. In particular he points out the possibility of a witness having discussed the case with others and gradually building up an account of what took place which the witness may believe to be true but which is more a result of rationalizing what took place rather than what he actually saw.
16	He advises the Court that in his opinion whoever committed the wounds on Sandy Seale committed non-capital murder.
17	He tells the Jury that the only verdicts possible in this case are guilty or not guilty or murder. He points out that the Crown's case is based principally upon the evidence of Chant and Pratico. He proceeds to read from the official record of evidence given by these two.
24	He asks the Jury to consider what possible motive Chant would have to tell a story implicating Marshall. He notes there is not the slightest suggestion that Chant was in collusion with Pratico.
28	He again says the Jury must ask themselves what possible motive could Pratico have to put the finger of guilt on Marshall. He notes the defense is not self-defence but is a complete denial. If it was self-defence, however, he



JURY ADDRESS OF MR. JUSTICE DUBINSKY (Cont'd)

<u>Page No.</u>	<u>Comment</u>
28 (Cont'd)	would instruct them that stabbing someone who puts up his fists is going far beyond the right to self-defence.
29	He again asks what possible motive would Pratico have to say that Marshall stabbed Seale. He also refers to the evidence of Patricia Harriss and Gushue and on the top of page 30 says that Harriss, Gushue, Chant and Pratico all said there were two people present there; i.e. Marshall and Seale.
33	He reviewed the evidence of Marshall and points out that he stood up through a vigorous cross-examination. He advises the jurors, however, that they will have to very carefully assess the story that Marshall told concerning the two strangers who looked like priests.
34	He asked the jurors why one of the strangers who had been involved in a friendly discussion would out of the blue without the slightest verbal or physical provocation take out a knife and make a murderous attack on Sandy Seale.



MARSHALL TRIAL

MRS. MERLE DAVIS

<u>Page No.</u>	<u>Comment</u>
45	She is a nurse and saw Donald Marshall, Jr. on the evening of May 28, 1971.
46	Marshall had a laceration on his left forearm about 3" long. It was a plain laceration and there was no blood. She says she saw Marshall's arm today when he displayed it to the Jury and noticed a tattoo on his arm which said, "I hate cops".
48	She would ordinarily expect blood from that type of wound but she did not see any congealed blood.



STATEMENT OF BRIAN DOUCET, JUNE 14, 1971

This statement was taken on June 14, 1971 at 7:55 p.m. by Sgt. Urquhart.

Around 12:00 a.m. May 28th two fellows came to his door and asked him to call an ambulance. He called the police and in particular, Sgt. Len McGillivray and told him to call an ambulance. He put his shoes and jacket on and went out and two police cars were there. The first car that came took a fellow with a yellow jacket, one of those two that had been at his door and who had showed me a cut on his left arm from which there was no blood. He helped Currie put a body in the ambulance which was lying on Crescent Street near the residence of Dan Campbell almost in line with the double driveway that services the Campbell residence and Crescent Apartments.



PRELIMINARY INQUIRY

ALDOPHUS JAMES EVERS

<u>Page No.</u>	<u>Comment</u>
56	He is employed in the Hair and Fibre Section at the R.C.M.P. Crime Detection Lab at Sackville, New Brunswick. He has a BA Degree with a major in biology and has had training in hairs and fibre.
57	He met Sgt. Michael MacDonald at the R.C.M.P. Crime Detection Lab in Sackville and had two exhibits turned over to him. One exhibit was a light brown jacket and the second was a bright yellow jacket. He had the exhibits in his possession at the present time.
58	The brown jacket is marked Exhibit M-2 and the yellow is marked Exhibit M-3. On the brown jacket he found one fresh appearing cut on the front lower lefthand side. It was approximately 2 3/4 inches in length and continued through the jacket to the back where the cut was approximately 1 inch in length. On the yellow jacket he found a separation of the left arm of the jacket from the cuff upwards.
59	There are actually two separations in the yellow jacket, the first is approximately 1 inch in length and is a fresh-appearing cut. The second is approximately 8 inches in length and continues down onto the cuff approximately 6 1/2 inches. It is indicative of being a fresh-appearing cut measuring an inch and a half which continued through the cuff and through the elastic and it is indicative of being torn and it is a fresh-appearing tear. He thinks the tear occurred since the garment was last washed, laundered or worn. The fibres appear straight, that is what one would see in something that is cut. The torn fibres are jagged and the fibres are separated more than with a cut.
<u>CROSS-EXAMINATION</u>	
59	He did not examine the yellow jacket for blood. The cut he speaks of is consistent with it being cut by a knife or scissors or an axe. The cut was quite irregular, that is that it was not one straight long cut.

ALDOPHUS JAMES EVERS

Page No.

Comment

60

The cut is indicative of not being one straight long cut.





RE-HEARING

DONNA E. EBSARY

Page No.

Comment

- 112 She resides at 180 River Street, Apt. 5A Waltham, Massachusetts. She was born June 16, 1957 and has 3 years of college at the College of Cape Breton. She is a Manager of a furniture company and has lived in Massachusetts for about 3 years. Prior to that she resided at 46 Mechanic Street, Sydney with her family, including her sister-in-law and two children.
- 113 Prior to that she lived at 126 Rear Argyle Street in Sydney for approximately 11 years. In May, 1981 she, her father, mother and brother lived at that address. Her father was a chef at the Isle Royale Hotel and also at a grill on the Esplanade. She can recall hearing of the murder of Sandy Seale in May, 1971.
- 114 She started hearing stories of the murder the day after it happened. The night before she was home. Her father was out drinking with a friend which was not uncommon for him and he arrived home late at night with the friend. His friend was excited and her father was trying to get the friend to quiet down. She followed the two of them into the kitchen. My father had a knife in his hand and he put it in the sink and washed it. The friend was Jimmy MacNeil.
- 115 The knife is a small knife, it had a short blade and a brown handle with tape around the bottom of the handle. She is certain of that. On that night her father had on his blue coat draped over his shoulders. He always wore dark clothes. MacNeil and her father were talking when they came in. At that time Jimmy turned to her father and said "That's a good job" but was then stopped from giving any indication as to what was said.
- 116 There was something on the blade of the knife and it seems to her it was blood and she is pretty certain of that. After the knife was washed her father went upstairs and put the knife in his room. She looked for the knife for a long time after that because she felt if she could find it someone would listen to what she had to say but she could never find it. Her father was about 60 years old in 1971.

DONNA E. EBSARY (Cont'd)

Page No.

Comment

- 117 Her father was a small man, maybe 5'2". Her father liked to play with knives a lot. He always had a lot of knives in the house. He owned canes that he hollowed out and fitted knives into the handles. He had a lot of knives in the basement.
- 118 She herself never spoke to the police but she spoke with a friend who suggested she go to the police. She never saw Jimmy MacNeil after May 28, 1971. Her father's behaviour changed after May, 1971. At this point the Court began to interfere with Aronson's questioning.
- 120 Her father had a great potential for physical violence. He was very easily enraged and he would beat up the house and kill things and on occasion had been stopped from going out and killing people. On one occasion he ripped the head off of a budgie which she owned and on another occasion killed a cat.
- 121 Frank Edwards asked the Court to allow him to question her on the statements made by MacNeil when they entered the house that night. The Court very reluctantly agrees.

CROSS-EXAMINATION

- 122 When MacNeil and her father came in, MacNeil said "You did a good job back there" and her father said "Shut up, be quiet, don't say anything". From there the two of them proceeded into the kitchen. MacNeil looked very elated and excited at the time.
- 123 Normally MacNeil was very placid.
- 124 She doesn't have any real feeling for her father. If anyone asked her about him, she might tell them he was dead. In 1971 she wanted the authorities to know that her father had done the stabbing. She had grown up afraid of her father and she wanted a stop put to him. On several occasions she spoke to people about what happened. She spoke to Dave Ratchford who brought it to the Mounties. Ratchford was her teacher and this would be 1974. She also discussed it indirectly with Elizabeth Boardmore who is an English Professor at the College. She recalls conversations between her uncle Bob Ebsary and her father.

DONNA E. EBSARY (Cont'd)

<u>Page No.</u>	<u>Comment</u>
128	She left the family home in 1978. She was there when the move was made to Mechanic Street.
129	Her father kept some of his favourite knives in his bedroom mounted on a wall plaque. Longer knives he kept in canes. Others he re-designed and kept in the kitchen for his own use and others he was in the process of re-designing he kept in the hall area. She would recognize those knives if she saw them again. At the time of the move she did not witness the packing of the knives.
130	After the move she saw some of the same knives that had been on Argyle Street and they were her father's. Knives are marked as Exhibit R-4-A,B,C,D,E,F,G,H,I,J.
131	She identifies all the knives as being ones that belonged to her father. R-4-G, H, and J and A are from the kitchen. The brass handles were all made by her father. Exhibit R-4-I is a knife that he carried more frequently than others.
132	R-4-C is one that he would have carried or you might have found in a pocket. Knife R-4-I closes resembles the blade of the knife she saw on the night of the murder but the handle does not correspond with what she remembers. The handle on R-4-I is greenish and she remembers the handle of the knife in question being brown.
133	On May 28 her father had on a long blue trench coat that he hung over his shoulders as if he was playing a captain. He never put his arms in that long coat.
134	She was aware of the Preliminary Inquiry and the Trial. It was a prime topic around town. It was after the Trial that the detectives first came to their house.



RE-HEARING

GREGORY EBSARY

<u>Page No.</u>	<u>Comment</u>
193	He is employed as a taxi driver and is 28 years old and was born in 1953. He completed Grade 12 and he resides at 46 Mechanic Street. Prior to that he lived at 126 Rear Argyle Street.
194	It is about 3 minutes walk from Wentworth Park to Rear Argyle Street. In 1971 his father was about 5'3". His father is 70 years old on June 2, 1982. He describes the way his father dressed in 1971.
196	His father had a special interest in sharp instruments, especially knives. He used to sharpen both sides of a knife down to a point. He made sword canes with them. Most of the knives were kitchen knives. Some of them he obtained from the Isle Royale Hotel. At the time he was a cook at the Isle Royale.
197	He is shown the knives which were marked as exhibits and says all of them at one time or another belonged to the Ebsary family.
198	Exhibit R-4-I is sharpened to a point and this was done by Ebsary. All of these knives were in the house on Argyle Street because Gregory moved them to Mechanic Street.
200	Exhibit R-4-I is similar to R-4-C. Ebsary had sharpened these for letter openers and it is likely those two were upstairs in his bedroom.
201	Exhibit R-4-I is one where he changed the handle but he can't say when the change took place.
202	The exhibit which is in Court has been like that at least 10 years. After the murder he was called and questioned by John MacIntyre. He wanted to know if Gregory had overheard his parents talking about the murder and I did not and he wanted to know if I thought my father had done it and I couldn't tell him. He is pretty sure this would have been in November, 1971. His father was a very violent person particularly if he had a few drinks in him.

GREGORY EBSARY (Cont'd)

Page No.

Comment

CROSS-EXAMINATION

- 203 His father carried knives constantly. He had knives in his pocket, in his belt constantly.
- 204 He remembers James MacNeil being at the house the day after the stabbing. He doesn't recall MacNeil telling him what happened in the Park on the night in question.
- 205 He saw his father change handles on several knives. He didn't actually see him change the handle on R-4-I. The smaller ones were his favourites because they fit right into his pocket.
- 208 Sometime in 1979 after Ebsary moved out the various knives that were in his room were collected and taken downstairs to either the kitchen or diningroom.
- 209 Later he took knives from the drawer and they were going to go to the dump but because they were so sharp he put them in a peach basket and put them above his workbench in the basement and that's where they stayed until Sgt. Wheaton took them.





RE-HEARING

A. J. EVERS

Page No.

Comment

- 213 He describes the articles he examined and which he gave evidence with respect to at trial. He does not know the whereabouts of those items now.
- 214 He is shown Exhibit R-4-I and identifies it and was asked if it was capable of causing the cut which he referred to in the brown jacket. His answer is incomprehensible.
- 216 Exhibit R-6 is a small swatch of material he removed from the yellow jacket.
- 217 Exhibit R-7-A is a small sample of the lining of the brown coat. Exhibit R-7-B is a small sample of the brown wool of the brown jacket. Exhibit R-7-C is a small sample of the yellow jacket. It is a small amount of R-6 that he put onto a slide to examine.
- 218 He examined the 10 knives and the contents of the envelope for the presence of fibres and compared any fibres to the small pieces of materials he had removed from the jackets in 1971. The envelope contained two light brown wool fibres consistent with the brown jacket. The piece of tape present in the envelope contained two synthetic fibres consistent with the inner lining of the brown jacket.
- 219 Exhibit R-4-H contains one synthetic fibre consistent with the inner lining of the brown jacket. Exhibit R-4-B contained four synthetic fibres consistent with the inner lining of the brown jacket. Exhibit R-4-E contained two synthetic fibres consistent with the inner lining of the brown jacket. Court Exhibit R-4-F contained two synthetic fibres consistent with the inner lining of the brown jacket and Exhibit R-4-I contained 8 such synthetic fibres. Exhibit R-4-I also contained one light brown wool fibre consistent with the brown jacket and contained 3 light acetate fibres consistent with the lining of the yellow jacket.
- 221 The basket which contained the knives was examined and he found 4 synthetic fibres consistent with the lining of the brown coat.

A. J. EVERS (Cont'd)

Page No.

Comment

222 He is asked whether he has an opinion as to whether any one particular knife is more significant than the others and that question is objected to and the objection is upheld. Exhibit R-4-I had adhering to the handle, the blade was free of fibres, 12 fibres which he found to be consistent with the two articles of clothing.

CROSS EXAMINATION

226 He says the charges of the fibres coming from a source other than the brown jacket and the yellow jacket is fairly remote.

227 Exhibit R-4-I is the only one which has fibres consistent with the fibres in both jackets.

228 The fact that there was nothing unusual about the coats themselves does not make him qualify his opinion in any way as to the probability of the source of the fibres.

229 When he says a fibre is consistent, a layman may use the term identical.



EBSARY TRIAL I

DONNA EBSARY

Page No.

Comment

- 94 She resides at 180 River Street, Waltham, Mass. and is 26 years old and is the daughter of the accused. In 1971 she would be in Grade 7. She is a Manager of a furniture company.
- 95 She has her Grade 12 diploma and 4 years of university, three at the College of Cape Breton and one in U.S. studying acupuncture. She recalls the night of May 28, 1971. It was the next day she learned that Seale had been stabbed in the Park.
- 96 She was at home in the livingroom with her mother and her father and MacNeil came home and it was very late and she knows the late news was on. They came in and stopped at the frontroom door where she was with her mother. MacNeil seemed to be kind of excited and was telling her dad he had done a good job and my father told him "Be quiet, don't, you know, just be quiet". They went into the kitchen and I followed them. She observed her father go to the kitchen sink and he was washing blood from a knife. She left the kitchen and I went back with my mum. She does not recall MacNeil being at the house after that.
- 97 She talked with a friend of hers and her friend went to the police but she herself did not.

CROSS-EXAMINATION

She did not notice any blood on her father's clothes that night.



EBSARY TRIAL I

MARY EBSARY

Page No.

Comment

- 90 She recalls the night of the stabbing. Her husband came home with Jim MacNeil between 11:00 and 12:00. MacNeil was quite agitated and excited and so was her husband. Her husband went in the kitchen and MacNeil stayed in the hallway.
- 91 MacNeil kept repeating "Roy saved my life tonight" and Donna got up and she was in the livingroom with her and went out in the hallway and spoke some words with MacNeil. Donna was about 14 at the time. She didn't speak with her husband that night.
- 92 MacNeil was there for about 15 minutes. He was at the house again the following afternoon but if any conversation took place, she wasn't there.
- (No questions were directed to her concerning the alleged discussion with MacNeil several days later when he was told not to make any comment to anyone).



JURY CHARGE - EBSARY TRIAL I

FRANK EDWARDS

No evidence was called by the Defense. On page 117 it is noted that Ebsary would not be calling any evidence at this time or at any time.

Page No.

Comment

121	He states the first question to be answered is whether or not on the day in question Ebsary assaulted Seale. The second question is whether the assault caused Seale's death.
122	The third question is whether the assault was lawful. The question then is whether the defense of self-defense applies. He refers to Section 27, Section 34 and Section 37 of the Criminal Code.
124	He asked them to accept the credibility of MacNeil's testimony because he told the police the same story in November of 1971.
127	He refers to the weapon and says unfortunately we don't have it and it will never be recovered. He asks them to consider whether it was a little pocket knife considering the size of the wound that was inflicted.





EBSARY TRIAL II

DONNA EBSARY

Page No.

Comment

- 118 Her present address is 380 River Street, Waltham, Mass.
- 119 In 1971 she would have been about 13 years old and in Grade 7 or 8.
- 120 When she saw her father that evening, the late news was on and MacNeil was with him. She doesn't recall him being at the house after that. Her father had on a dark blue overcoat which hung below his knee.
- 121 As they came in, MacNeil appeared excited, he said "Gee you did a good job back there" and my father told him to be quiet. They went into the kitchen and she followed them. Her father was over the sink and he was washing a knife off in the sink. The knife had blood on it.
- 122 It was a small knife that her father could carry in his pocket. It had a brown handle with a short blade. She estimates the handle to be about 6 inches and the blade to be about the same. The handle of the knife was brown. After he washed it, he took the knife upstairs.
- 123 She could never find the knife after that and she looked for it. She looked because she felt that someone else was being accused for something they hadn't done. She didn't really start to look for it until a few months had passed.
- 124 When he came home he turned to Jimmy and told him to be quiet and not to say anything. He seemed to be following something that he had already determined to do.

CROSS-EXAMINATION

- 125 She did not notice any blood on her father's clothing that evening.

EXAMINED BY COURT

Apparently when she was describing the knife, she indicated the handle as being approximately 3 inches and the blade also 3 inches for a total of 6 inches. She said the knife was not

DONNA EBSARY

EXAMINED BY COURT (Cont'd)

a pocket knife and it did not have a fold-up blade.

126

She was kind of to the side of her father when she observed the knife. She doesn't know how long she observed it. When she saw the knife, it was one that she recognized.



EBSARY TRIAL II

MARY EBSARY

Page No.

Comment

- 111 She and Ebsary lived together for 30 years.
- 112 On the night of the stabbing she was home with Donna.
- 113 Roy arrived home between 11:30 and 12:00. She takes the time because she was watching the late news. Ebsary had MacNeil with him. Their entry was very agitated. MacNeil stood in the hallway and Ebsary proceeded into the kitchen area. She couldn't see the kitchen from where she was.
- 114 When Roy came out of the kitchen, he told Jimmy to shut up and go home. Jimmy was saying something like Roy saved my life tonight and he kept repeating that to nobody in particular. Ebsary was in the kitchen for about 5 minutes.
- 115 MacNeil came to her home many times after that evening.



STATEMENT OF ROY EBSARY DATED NOVEMBER 15, 1971

This Statement is taken at the Sydney Police Station and is signed by Ebsary. The Statement was taken by John MacIntyre and witnessed by Michael MacDonald.

Ebsary says he remembers he and MacNeil being at the State Tavern and going home down George Street, across the bridge and Wentworth Park and up to Crescent Street.

When we were about to the corner of South Bentinck, near Robbie Robertson's, two chaps who were behind us came around the side and asked if we had cigarettes and if we had any money. We told them we didn't and they asked us to turn out our pockets and we did. The short fellow tried to take the ring off my finger and the tall fellow had his arm around Jimmy's throat and had him on the ground. I was not well, I tried to wrestle him and was swung to the ground. I made a kick at him and he got up and ran off. I went over to see how Jim was getting along and the other fellow dropped Jim and ran off.

When asked if he stabbed the man he was wrestling with, he said "Hell, no, why would I stab him". He says the other two were young people and one was tall and they were both Canadian and white. He couldn't say what they were wearing.

He and Jimmy went to Ebsary's house for a few minutes and then Jimmy went home to Hardwood Hill. I saw Jimmy again the next day with his father and they had just dropped in and I was in bed. They asked Ebsary to have a drink of wine. He can't recall if they told him the Seale boy had died. Ebsary denied that he carried a knife. He said he has not seen MacNeil for a long time and said he was not a regular caller at his house. He was to MacNeil's house once. The

disturbance took place on Crescent Street after 11:00 p.m. in May, 1971 the same night that the boy was stabbed. Ebsary was wearing a reversible blue topcoat that night.





MARSHALL TRIAL

ADOLPHUS JAMES EVERS

<u>Page No.</u>	<u>Comment</u>
13	He is employed with the hair and fibre section of the R.C.M.P. Crime Lab in Sackville.
14	He examined the yellow jacket and found one cut approximately 1" long on the left arm. The second separation is approximately 8" in length, 6½" being indicative of being cut and the other 1½" indicative of being torn.
15	He examined the brown jacket and found one cut approximately 2 3/4" in length and approximately 7" from the bottom of the jacket on the front side. The cut continued through the jacket and is approximately 1" in length in the back part or in the inside part of the jacket.

F