



PRELIMINARY INQUIRY

Dr. David Gaum

Page No.

Comment

7

He has been practising for over 25 years.  
He assisted Dr. Naqvi.

8

Seale suffered a wound as a result of some  
sharp object penetrating the abdomen and that  
was the cause of death.



PRELIMINARY INQUIRY

ROY GOULD

Page No.

Comment

- 12 He lives at 124 Membertou Street in Sydney. He was in the company of Marshall on May 28, 1971 and they returned to Sydney at approximately 9:30 p.m. He owned a yellow windbreaker which had white stripes on the side and it was in good condition on that day. He loaned the jacket to Donald Marshall, Jr.
- 13 Marshall was still wearing the jacket at 9:30 p.m. on the 28th of May. He next saw the jacket on Wednesday of the following week when he was asked to bring it to the Police Station. He asked Donald Marshall, Sr. for the jacket and received it from him and took it to the police. There was a rip on one of the sleeves and there was some blood stains on it.
- 14 There were no blood stains on the jacket when he loaned it to Donald Marshall, Jr.

No questions by the Defence.





PRELIMINARY INQUIRY

TERRANCE GUSHUE

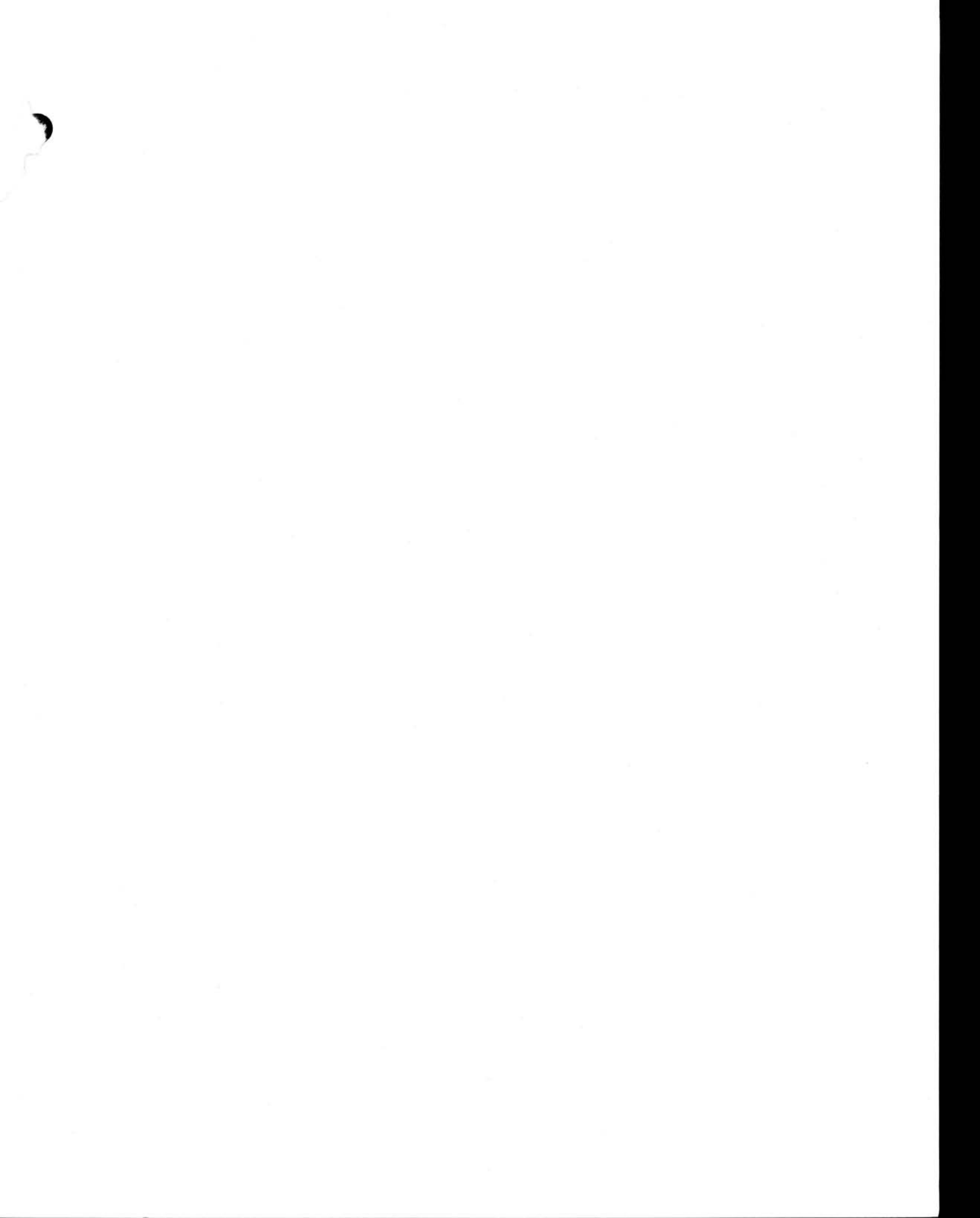
Page No.

Comment

- 28 He is 20 years old.
- 29 He lives at 2 Tulip Street in Sydney. He attended the dance at St. Joseph's Hall on May 28, 1971 which was a Friday night. He left the dance about 11:00 o'clock with Patricia Harris and they went down to Wentworth Park and had a cigarette. When they left, they went behind the Band-Shell and up to Crescent Street toward the Court House. He noticed Donald Marshall, Jr.
- 30 He saw Marshall on Crescent Street at the green apartment building standing by the curb. There was another person there but they did not pay any attention to this other person who was standing on the sidewalk. They were on the street. He asked Marshall for a match and was given it.
- 31 Marshall was wearing a light jacket and dark pants. After the conversation with Marshall he walked Patricia home. In the Park he saw four of his friends. He only identifies Gussie Dobbin and Robert Patterson who he saw walking back and forth.







MARSHALL TRIAL

DR. DAVID GAUM

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Comment

39

He assisted Dr. Naqvi on an operation that day.

40

He described the wound which Seale suffered and formed the opinion that the injuries were caused by some sharp instrument puncturing the abdomen.



MARSHALL TRIAL

ROY GOULD

Page No.

Comment

- He was with Marshall on May 27 and loaned him his yellow jacket which was Exhibit 3. It was in good condition when he loaned it to him.
- 50 The cuts and tears in the jacket and blood stains were not there when he loaned the jacket to Marshall.
- 51 He obtained the jacket Wednesday or Thursday of the following week from Donald Marshall, Sr., and he turned it over to Sgt. Michael MacDonald of the Sydney Police force.
- 52 The witness is Donald Marshall, Sr. He says he had the yellow jacket in his home in a closet for the week following May 28, 1971, and he gave it to Gould upon request.





MARSHALL TRIAL

TERRY GUSHUE

Page No.

Comment

- 82 He attended a dance at St. Joseph's Hall on May 28, 1971, and left about 10:30 and went to Wentworth Park. They sat on one of the benches next to the band shell and had a cigarette and talked and they left the Park after about 20 minutes.
- 83 They went to Crescent Street and met Junior Marshall and bummed a match off him. Marshall gave him a match and was talking to Patricia for a second and he did not see anything else. The only other guy he saw in the Park that night he knew was his friend Robert Patterson. There was nothing unusual going on while he was there.
- 84 He saw Marshall by the Green Apartments and there was one other person present on the sidewalk and he did not recognize him. The other person would be from 6-8 feet from Marshall. He doesn't know if it was a man or a woman.



STATEMENT OF TERRANCE GUSHUE, JUNE 17, 1971

This statement was taken on June 17, 1971 at 11:40 p.m. and finished at 12:03 a.m. It was taken by MacIntyre and Urquhart is present.

He is 20 years old and on May 28 went to the dance with Eddie Dicks. He was asked to leave by the police around 10:30 p.m. and as he was leaving he saw Patricia Harriss and asked her to go with him. They sat in the Park for a while and talked briefly to Robert Patterson. We walked behind the Band-Shell and started to walk up to Crescent Street. He remembers seeing Donald Marshall, Jr. on Crescent Street with another man.

He asked Marshall for a match and he received it. He did not have any other conversation with him. He did not know the other man. He did not know Sandy Seale. He has known Marshall for about one year. The encounter was between 11:30 and 12:00 p.m. When he met Marshall and the other man, they were standing on the lefthand side of the street going toward Kings Road.



PRELIMINARY INQUIRY

PATRICIA ANN HARRIS

<u>Page No.</u>	<u>Comment</u>
16	She is 14 years old and is going into Grade 8 at Central School. She is asked if she knows what it means to take an oath and says people who do not tell the truth commit perjury and would go to a home.
17	She lives at 5 Kings Road and attended a dance at St. Joseph's Hall on the evening of May 28, 1971. When she left the dance, she was accompanied by Terry Gushue. She left about 10:30 to 11:00 o'clock and went down to the Park.
18	She went down by the Band-Shell and they sat on the Band-Shell and had a cigarette and left and went up Crescent Street. They were in Wentworth Park for about 15 minutes. It was about quarter to twelve when they decided to leave Wentworth Park and they walked behind the Band-Shell and up Crescent Street. They went down toward the second park. They were walking toward Kings Road. She and Mr. Gushue saw Junior Marshall.
19	Marshall was standing by the green apartment building on Crescent Street. She thinks someone was with him but is not sure. There was somebody there but she did not pay any attention. There was not more than one person with him. Terry asked Marshall for a match and was talking to Junior for a while then we left for home. Junior Marshall held my hand. She had known him before. After Terry got his cigarette lit, we left for home going down Crescent Street until we came to the park and we walked down by the duck house, crossed the bridge to her house.
20	She is shown the plan marked M-1. She points out Crescent Apartments as the place where she saw Marshall.

CROSS EXAMINATION

There was someone there but she doesn't know if he was with Donald Marshall or not. She means there was a person near. She doesn't know if it was a man, a woman, a boy or a girl. Whoever the person was, no one had any conversation with him in her presence.

PATRICIA ANN HARRIS (Cont'd)

Page No.

Comment

- Mr. Gushue smoked a cigarette at the Band-Shell.
- 21 Gussie Dobbin gave them a match at the Band-Shell. Marshall held her hand in a friendly manner. She did not smell any liquor on his breath. He seemed to be drinking because he never took her hand before. The whole thing only took a minute or so. When they left she never turned around to see if Marshall had left where he was standing.
- 22 Marshall had a light jacket on at the time. She thinks he got the match from his pants pocket. The jacket was hanging loose. It would be about midnight when she saw Marshall but she wasn't wearing a watch.
- 23 She first gave the information to three City Detectives. Sargeant MacIntyre was pointed out and she said he wasn't the first one she gave it to. She said it was Sargeant MacDonald who was sitting in the corner. MacDonald had called her mother and told her to get down to the Police Station. She spoke to Sargeant Michael R. MacDonald about two times. The next person she spoke to was Sargeant MacIntyre. She has spoken to MacIntyre twice about the evidence she was giving today. The last time she spoke was last Tuesday and she signed a statement.
- 24 She signed the statement the second time she spoke with MacIntyre and gave a written statement. She does not think she was asked to give a written statement before that. She was interviewed separate from Terry Gushue except the second time they were together in the presence of both Sargeant MacDonald and Sargeant MacIntyre. She can't say on what day she first spoke with MacDonald.
- 25 She knows it was May 28 that she first saw Donald Marshall because she was told that by Sargeant MacDonald. If he had not told her, she would not have known what night it was. She has known Donald Marshall for about six months. She only sees Marshall when she goes to dances at St. Joseph's Parish Hall.

PATRICIA ANN HARRIS (Cont'd)

<u>Page No.</u>	<u>Comment</u>
26	This is the first time she had seen Donald Marshall after a dance on Crescent Street or near Crescent Street. She has been going to dances at St. Joseph's Parish this year for a couple of months.
27	They hold dances on Friday and Saturday nights and she goes both nights and that was during the month of May.
28	She has not been to a dance at St. Joseph's Parish since May 28 because her mother would not let her go after what happened.

RE-EXAMINATION

Marshall was standing when she first saw him on Crescent Street. She can't say whether the other person was walking or standing. She first heard about the incident of the murder a couple of days after the event when her mother told her.





RE-HEARING

PATRICIA ANN HARRIS

<u>Page No.</u>	<u>Comment</u>
135	She is 26 years old and resides at 5 Kings Road in Sydney for close to 20 years. She finished Grade 10 in 1975. She has been convicted of shoplifting.
136	She attended a dance in St. Joseph's Parish Hall on May 28, 1971. She was 14 years old at the time. She was with her boyfriend Terry Gushue. They left the dance and proceeded to Wentworth Park.
137	She does not think she was drinking that night. She can't say for sure what time she arrived at the Park. She and her boyfriend sat on a bench and smoked a cigarette. She marks with the letter "P" where they were sitting. They then proceeded across the Band-Shell to Crescent Street on their way home.
138	She remembers seeing Robert Patterson who was sick. They did not see anyone else in the Park. They ran into Donald Marshall on Crescent Street and asked him for a match. She thinks Donald Marshall was standing and not walking. She did say there was someone there with him but she can't say who. She says there were two men present with Marshall.
139	One of the men was on each side of Donald Marshall but she cannot give a description of either one. She marks T-2 on the map to show where she met Marshall on Crescent Street.
140	The mark she put is opposite the Crescent Apartments. She recalls seeing Marshall at the dance and also Sandy Seale and that was the first time she had ever met him. He was trying to lick her hand and get the stamp off to get into the dance. She was only with Donald Marshall and the two other people on Crescent Street long enough to light a cigarette and leave. She does not recall any conversation. She just went to Kings Road and went home at that stage. Her home is not too far from Wentworth Park.
141	The police came to her home and asked her mother to bring her to the Police Station for questioning. She does not recall when that occurred. She was questioned for a long time.

PATRICIA ANN HARRIS (Cont'd)

<u>Page No.</u>	<u>Comment</u>
142	At Trial she did not mention the two men that she had seen with Marshall on Crescent Street. Through the long hours at the Police Station her statement was changed and she was scared and didn't want to mention it. There were long hours going over it and the word perjury was brought up a lot and they didn't seem to believe that I had seen these two characters. The word perjury was brought up by detectives and she recalls Sgt. Urquhart. She cannot recall how many statements she gave to the police.
143	The two individuals were alongside Marshall on Crescent Street. She would have recognized Seale if she saw him in the Park and she did not see him.
<u>CROSS-EXAMINATION</u>	
144	At this time she really doesn't have independent recollection and she remembers mainly from going over the contents of her earlier statements.
145	She says her original statement is correct but she can't recall from her own memory what the two men looked like. The men were not young in that they were not from the dance and in her mind they were just older men. Gushue was with her at that time.
146	Gushue was 5 or 6 years older than her and was her boyfriend and she had known him for a couple of years. She was tall for 14.
147	There is her Affidavit dated July 22, 1982 which has appended to it the various statements she gave to the police.
148 - 153	She is referred to her evidence at Trial where she said there was only one person with Marshall.
154	She says she wanted to say in Court that there were two people but she was scared to and she is absolutely sure there was more than one person with Marshall.
157	Her Affidavit is marked Exhibit R-5.

PATRICIA ANN HARRIS (Cont'd)

<u>Page No.</u>	<u>Comment</u>
161	She is referred to Exhibit "A" to her Affidavit which is a statement she gave on June 17, 1971 wherein she said she saw two men with Marshall in the Park.
162	She does not recall discussions with either of the O'Reilly sisters concerning the events on the night of May 28. The O'Reilly sisters were friends of hers and of Donald Marshall's.
164 - 165	There is discussion about a statement allegedly given by Mary Patricia O'Reilly dated June 18, 1971. Subsequently Miss O'Reilly denies having given the statement. Apparently Sgt. MacIntyre witnessed the statement.
166	She was at the Sydney Police Station on June 17, 1971 from approximately 8:00 p.m. until almost 2:00 a.m. when she completed giving her second statement.
167	She was allowed out to see her mother at least once. She never requested to have her in the interview room with her. She was allowed to be together with her boyfriend Gushue once during the interview. She gave her second statement because she was tired and wanted to get out of the Police Station.
168	The Preliminary Inquiry was about three weeks after she gave her second statement and she is referred to her evidence on the Inquiry.
169	She stayed with the statement of one person being present at the Preliminary because she was told that if she didn't, she would be charged with perjury. One of the detectives told her that. She had sought legal advice in the period between giving her statements and the Preliminary Inquiry. She repeats that despite her testimony earlier there was more than one person there with Marshall that night.
170	She does not remember seeing Chant on the night of the murder.



STATEMENT OF PATRICIA HARRISS, JUNE 17, 1971

In the extract of the statement in the Appeal Decision there is no note of the time the statement was taken or who the witnesses were.

She was born November 15, 1957 (that is she was 13 years old at the time the statement was taken).

On the night of the dance she and her boyfriend, Terry Gushue, left at 11:45 and sat on a bench near the grandstand and smoked a cigarette. They walked back of the Band-Shell onto Crescent Street in front of the big green building. She saw and talked to Junior Marshall who was with two other men.

One of the men was short with a long coat with grey or white hair. She was talking to Marshall and her boyfriend got a match from Marshall and Marshall said "They are crazy". They were asking Marshall for a cigarette.

She did not see Seale in the park. There were other boys and girls walking through the park.

STATEMENT OF PATRICIA HARRISS, JUNE 17, 1971

This statement was taken on June 17, 1971 at 8:15 p.m. The statement is not signed or witnessed. It notes she was born November 15, 1957 and therefore would have been 14 years old.

She left the dance around 11:45 with Terry Gushue and they sat on a bench near the Bandstand. Robert Patterson was on the grass being sick. They smoked a cigarette. She and Terry left, walked back of the Band-Shell to Crescent Street in front of the big green building. They saw and talked to Junior Marshall and there were two other men with him. One was short with a long coat and had grey or white hair. She was talking to Junior and Terry got a match from him and Junior said "they are crazy".







MARSHALL TRIAL

PATRICIA HARRISS

PAGE No.

Comment

- 74 She is 14 years old and in Grade 8.
- 75 When she is asked what would happen if she told a lie, she said it would be perjury, that is, you go to jail or school for girls.
- 76 She says that she stayed at the dance until about 10:30 at which point her boyfriend was asked to leave. They went down to Wentworth Park and stayed there for a while. They got a pack of cigarettes and a friend walked buy and we asked him for a match and lit the cigarettes and after that we left and came to Crescent Street - this would be about 10:45.
- 77 They were walking along Crescent Street and met Junior Marshall and asked him for a match and he gave them one.
- 78 She knew Marshall since she started to go to dances last year - that would be about 6-7 months. She thinks there was someone with Marshall that night. Then she says there was more than one person with Marshall but she doesn't know how many there were although there weren't many.
- 79 She was asked again if she saw anyone else there and how many people she saw with Donald Marshall and she said one. They just had a short conversation with Marshall on Crescent Street.

CROSS-EXAMINATION

- 80 There was nothing unpleasant about the encounter with Marshall. She says someone was there with Marshall

MARSHALL TRIAL

PATRICIA HARRISS (continued)

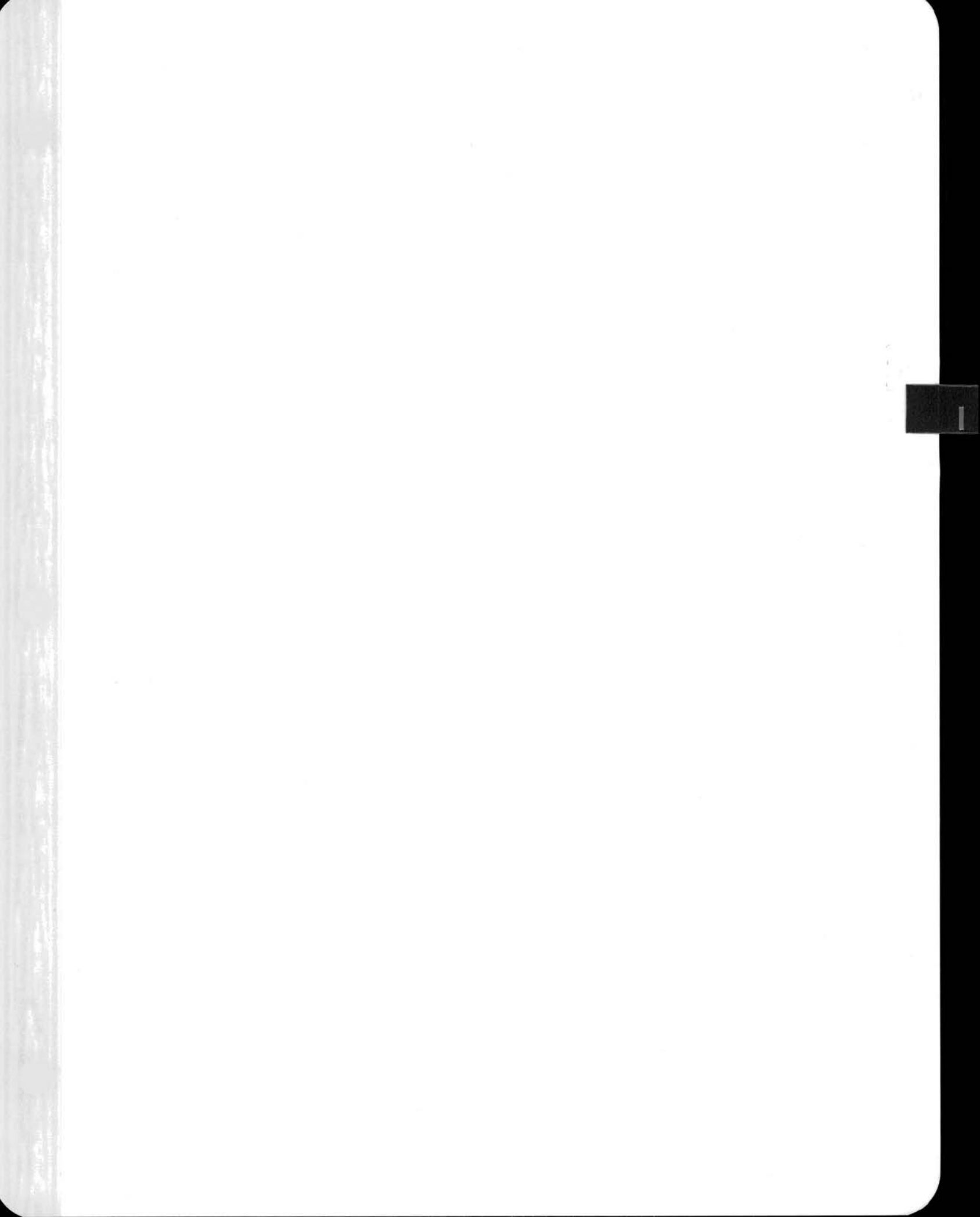
Page No.

Comment

but she never paid any attention. She couldn't say if it was a woman, a man or a child. She knew "he was there".

81

The other person that was around never had any conversation with her or Terry Gushue or Marshall while she was there.





EBSARY TRIAL I

JUDGE'S CHARGE TO JURY

<u>Page No.</u>	<u>Comment</u>
165	Before the charge Edwards takes issue with Wintermans' statement that "the onus is upon the Crown to disprove the defense of self-defense." He says that this overstates the proposition. The law appears to be that if the jury has a reasonable doubt whether he was acting in self-defense, the accused must be given the benefit of the doubt.
186	He points out the difference between a discrepancy and a deliberate falsehood. In the former that would not affect all of the evidence of a witness whereas in the latter it may well taint his entire evidence.
218	The jury comes back with no verdict and advised they cannot reach a unanimous decision.



MARSHALL TRIAL

SUBMISSIONS OF COUNSEL TO THE JURY

<u>Page No.</u>	<u>Comment</u>
225	Rosenblum refers to Pratico having given previous contradictory statements to what he said on the witness stand.
227	He says they arrested Marshall on evidence "on statements which were highly contradictory by Chant because he told them different stories."
230	In referring to Chant, he says, "He lied to the police."
236	MacNeil advises the Jury that Pratico gave evidence in the Court below which was exactly identical to what he gave in Court. When referring to the statement of Pratico out in the hall, he reminds them that Pratico first spoke to Donald Marshall, Sr.
238	He makes much of the fact that Pratico and Chant did not know each other before the statements were given to the police.
239	He tells the Court that the Sydney Police Department Detective Division worked on the case day and night until they finally came up with the evidence that has been presented in Court.
242	He suggests that the blood on Marshall's jacket must have come from Seale because Marshall's cut was not bleeding. He also points out that Marshall did not call any collaborative evidence that he was at Tobin's on that evening.
247	He says, "A superficial laceration" is a fancy name for a cut which is not deep enough to draw blood.



MARSHALL TRIAL

SUBMISSIONS OF COUNSEL TO THE JURY

Page No.

Comment

249

He says the reason Pratico and Chant did not come forward early is because they were scared and did not want to become involved. He refers again to the brilliant police work which brought this whole matter out in the open.

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PRELIMINARY INQUIRY

DONALD MARSHALL, SR.

Page No.

Comment

He lives at 38 MicMac Crescent and is the father of the accused. He gave the yellow jacket with white stripes to Roy Gould. He obtained the jacket from his home where it was hanging in one of the closets in one of the bedrooms.

15

He did not see his son with the jacket on or with him.

No questions by the Defence.



PRELIMINARY INQUIRY

SANDRA CATHERINE MRAZEK

Page No.

Comment

- 60 She is a serologist at the R.C.M.P. Crime Detection Lab in Sackville.
- 61 She examined M-3 for the presence of human blood. She found the jacket did contain human blood in several areas but she was unable to determine the group.
- 62 She also examined the brown jacket. She found human blood of Group 0 to be present on it. She also examined a pair of blue jeans which are marked Exhibit M-4. She found the presence of Group 0 blood to be present.
- 63 A tissue is marked as Exhibit M-5. She examined the tissue and found it to contain human blood of Group 0.

CROSS-EXAMINATION

- 63 They are not able to tell the age of blood stains. They could have been on the jacket for any length of time.





PRELIMINARY INQUIRY

JOHN MULLOWNEY

Page No.

Comment

64

He is a Police Constable for the City of Sydney. He, Constables Young and Crawford did a thorough search of the Wentworth Park area. They found a kleenex tissue on the lawn of the house at 130 Crescent Street. He is shown Exhibit M-5 and says it is similar to the one he had given to Sgt. MacDonald. The kleenex was found in the morning of May 29.

65

This is the only piece of kleenex on the lawn of 130 Crescent Street.



RE-HEARING

DONALD MARSHALL, JR.

<u>Page No.</u>	<u>Comment</u>
4	He is 29 and his date of birth is September 13, 1953. Prior to 1981 he had Grade 6 education completing in June, 1969. At the present time he has Grade 11 and upgrading.
5	His sentence was life imprisonment with parole eligibility after 10 years. He actually spent 10 years and 10 months in prison having first entered prison June 20, 1971 and he left August 29, 1981 (the reference to 10 years and 10 months must be incorrect. He actually entered prison June, 1971 and would be there for 10 years and 2 months.) Prior to going to prison he was employed as a labourer for his father in drywall work for about 3 years. He had been charged for theft under \$200.00 in 1970 and received one day in jail.
6	He recalls the night Seale was killed. It was a Friday night, May 28, 1971. He got home from Halifax about 9:30 that evening. He went to the Reservation and met a friend, Artie Paul, and he headed for town and they were picked up by Roy Gould who took them to the liquor store. They then walked to Intercolonial Street to Terry Tobin's house. They were at Tobin's house for about 1½ hours. On that night he had on a yellow jacket and blue jeans. They left Tobin's house at approximately 11:30 and went to the liquor store, then Tobin's and then the Keltic Tavern in Sydney. The Keltic Tavern is on Dorchester Street and they were only there for 5 minutes.
7	After dropping into the Keltic with Terry Tobin and Frankie French he lost contact with them. He had a drink out of the bottle which had been bought at the liquor store. He was going to St. Joe's dance and he ended up in Wentworth Park right after the dance.
8	He took a shortcut through the Park off George Street by the railroad tracks. There is a path going down to the Park.
9	He marks with a "M" on the plan the point where he entered Wentworth Park on Friday night. The M is on the intersection of the railway tracks and George Street.

DONALD MARSHALL, JR. (Cont'd)

Page No.

Comment

- 10 After he entered the Park he met four people by a bridge. He marks with a "B" the bridge he is referring to. It is the bridge between the words "Wentworth" and "Creek" on the plan prepared by Carl MacDonald.
- 11 Marshall says he never crossed the bridge at that time. He met up with Sandy Seale in the centre part of the Park and they had a little talk and he asked Seale if he would like to make some money with him one way or the other somehow. Marshall says he didn't have a plan how we were going to make the money but could be "bumming it, breaking in a store probably, take it off somebody". Seale was wearing brown corduroy pants and a brown jacket.
- (Remember the evidence of the Serilogist that there was Type 0 blood on the blue jeans.)
- 12 During the conversation with Seale he was standing and the conversation did not take more than 10 minutes. He had known Seale for approximately 3 years. He used to meet him at the dance halls and went to hockey practice with him. They met Robert Patterson who came behind the Band-Shell area and told them he was on chemicals and had been drinking. They asked Patterson if he knew who they were and he said yes and I told him to go sit down by a tree and we sat him down in case somebody would pick him up on the street for his drinking. Seale and he then ended up at the bridge that he pointed out earlier and they got on top of the bridge.
- 13 Somebody called him up from Crescent Street asking for a cigarette and a light and we decided to go up there and give them to them. Halfway between the bridge and Crescent Street he was called by another party to give them a match. This other party was Patricia Harris and Terry Gushue. He stayed with Gushue and Harris for approximately 5 minutes talking to them and then they left. Only he was present during that conversation. He believes Sandy Seale at that time was with the other two men that called us up earlier to borrow a cigarette and a light. He then proceeded to go to the company that called him first and he joined up with them.

DONALD MARSHALL, JR. (Cont'd)

Page No.

Comment

- 14                   The older guy, shorter guy, was about 5'8". He had white hair, black rimmed glasses, a topcoat, a navy blue coat, and some kind of sweater inside it or scarf or something under his coat. He would say he was about 55 anyway. The other guy was younger, about 30 and he was about 5'10" and had a brown corduroy coat on. Marshall had never seen these men before that particular occasion. He introduced himself to them and they introduced themselves to him and they shook hands and we just had a conversation. He was talking more to the older guy first.
- 15                   He asked the older guy where he was from and asked him if he was a priest because he looked like one. He asked where the bootleggers were and if there were any women in the Park. I told him yes because I was familiar with the Park and everytime I am there there is females. At that time he invited us to his house. He pointed to his house where he lived and he invited us to his house for a drink and we told him no. He never gave me an address only pointed to a house and told me he lived there. This conversation took place on Crescent Street and he estimates they spoke for 15 to 20 minutes. Just before they were leaving is when they asked us to come to their house for a drink and we told them no and walked away and almost got to the end of the street.
- 16                   Either Seale or Marshall called them back. The men were walking in the direction of Bentinck Street. He can't explain why they called the men back or who called them. When they came back, the younger guy walked on Marshall's righthand side. He had a few drinks that night because he had his head down and his hands in his pockets and he looked like he was ready to pass out and he slipped off the curb and Marshall grabbed him and at the same time I heard the older guy telling Sandy Seale if he wanted everything he had and at the same time he had him hoisted up with his arm and this is within 5 seconds of the whole thing. They were standing on the pavement when the men rejoined them.

DONALD MARSHALL, JR. (Cont'd)

<u>Page No.</u>	<u>Comment</u>
17	He was looking directly at Sandy Seale and the other man. The older guy had Sandy Seale hoist up with one of his hands and told him did he want everything ... to Sandy and he said "I got something here". He called him a nigger and at the same time, this is within 5 seconds, I had the taller guy hoisted up and when I turned around the older guy let go of Sandy Seale and he come after me and I let go of the other guy. I blocked his arm with my arm. The older guy came at me with his arm coming toward me. I don't know what he had in his hand but he hit me and that's when I started running.
18	By "hoisted up" the older guy had his arm under Seale's stomach in his midsection and holding him up by the shoulder. Seale was hunched over. He doesn't recall any conversation when the two men came back. He didn't know whether the older guy was hitting Seale or doing something to him and I didn't realize that he was stabbed until I started running. When the older guy came at Marshall, he took a swipe at him and went to hit me in the stomach and I blocked him with my left hand and after I blocked him I ran. I ran toward Bentinck Street. He can't say what happened to these two men or what happened to Sandy Seale.
19	He ran toward Bentinck Street, that's going to the Court House direction. After he got off Crescent he ran down Bentinck and there is a bridge there on Bentinck and I met a young guy standing there and I told him "Look what they did to me". I told him "My friend is down the road there, he's got a knife in his stomach". At the time he did not know who the young fellow was.
20	He now knows the person he met was Maynard Chant and he did not know him prior to that night. After he explained that he was stabbed and Sandy Seale was stabbed or something, I told him to gather up some help and he said okay and we proceeded down to Byng Avenue and they met two girls and two guys on Byng Avenue and he asked them if they would help him and come back to where the accident happened and they were kind of worried so this girl gave me a handkerchief for my arm and a car came up Byng Avenue. I stopped it and told the people in the car I knew. I told them Sandy Seale is

DONALD MARSHALL, JR. (Cont'd)

<u>Page No.</u>	<u>Comment</u>
20 (Cont'd)	at the Park and was hurt and I asked them to help me. They offered their help and we went back to the scene. He did not realize what had happened to Sandy Seale before he was injured. He did not know until after what happened to Seale.
21	After they got help they went back to Crescent Street and all of them got out of the car. Sandy Seale was lying on the road and I ran 3 to 4 feet from him and indicated that we better get an ambulance and I went to a house and I called an ambulance for him. After he went back to the scene someone pointed to him telling the City Police that he was injured too and the City Police threw him in a car and took him to the hospital. His testimony in 1971 was not what he told the Court today.
22	In 1971 he did not mention anything about hitting somebody or robbing somebody or something like that. The robbery didn't happen, it wasn't even an attempt of a robbery and he was afraid that one way or the other they would put the finger at me, that is an attempted robbery and maybe the murder. His lawyers in 1971 were not aware of what he said in Court today.
23	Prior to the night Seale was stabbed he knew John Pratico. He did not see him on May 28, 1971. He saw him the next morning and on Sunday afternoon. He was on his way home from the Police Station and he was on police protection at the Police Station for a whole week and in order to go home I had to go down Bentinck Street past Pratico's home. While I was doing that, I met him twice. Pratico indicated some guys were going to get together to go look for them guys tonight whoever did it. He said okay and just shook his head. After he was in prison he was not aware of any subsequent investigations into the conviction and only became aware of those in the spring of 1981.
24	In an effort to have his conviction examined he contacted people in prison and the two former Prime Ministers, the Mayor of Sydney, the MLA for Cape Breton and the Human Rights Commission and he escaped one time. He did not have any communication with the witnesses



DONALD MARSHALL JR. (Cont'd)

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24 (Cont'd) who were testifying at the re-hearing but he did meet Patricia Harris one afternoon and just said hello. He thought about the events leading to his conviction every day while he was in prison and he has a good recollection of the events of the night Seale was stabbed. The only thing he is not sure of is where and when he met Harris and Gushue.

25 He did not stab or otherwise injure Sandy Seale on the night of May 28, 1971.

CROSS-EXAMINATION

25 The only thing he had to drink that evening was one drink of rum.

26 Around that time he was a heavy drinker. His initial intention after getting home from Halifax was to go to the dance and he usually drinks before he went to a dance. He knew Seale around 3 years. Colored guys and Indian guys were always together at dance halls and he took them as good people. He was at Seale's home once working for his father.

28 He didn't go to dances or functions with Seale on a regular basis. He had never dated Patricia Harris. He did hold her hand on the night in question while talking to her and Gushue. He doesn't know why he held her hand. This is the first time he and she had been that friendly. He had been out of school for 2 years at that time and had never attended school with Patricia Harris.

29 He did not know Maynard Chant casually before that evening or had not even seen him. He did know John Pratico and had spoken with him on the Saturday and Sunday following the stabbing. He can't remember if he told Pratico his version of what happened at the stabbing.

30 Pratico had started hanging around with the Indian fellows at the Park but Marshall didn't really get close to him. The impression he got was that Pratico needed some friends. He used to have to come up on the Reserve and eat with us some time. Occasionally Marshall took him home and fed him.



DONALD MARSHALL, JR. (Cont'd)

<u>Page No.</u>	<u>Comment</u>
31	One time someone was beating Pratico up at the Park and Marshall and a friend told him to cut it out. Pratico hung around with them prior to the stabbing. Someone had indicated to the Indians that Pratico was working for the City Police at the time. Marshall was not aware that Pratico had any type of mental problem and he is not aware of that yet.
32	He first became aware Pratico was going to testify against him about a week after the stabbing. He did not know where Pratico had gotten the story he was going to relate. Marshall is sure it didn't come from him. He is asked if he knows the O'Riley sisters and says he did.
33	He doesn't remember if he had discussions with the O'Riley girls immediately after the stabbing. It's possible he telephoned them but he doesn't remember. He told a lot of people a lot of things concerning this case but he does not believe he told John Pratico.
34	He had met Ebsary and MacNeil when he first entered the Park before he met Seale. They were two of the four people he met when he first went in the Park. There was one other person in the crowd that he knew but he can't remember his name but thinks he was a Sargeant in the Air Cadets when Marshall was in it.
35	He did not stop and have conversation with the four people but he got a good enough look at them to know that two of them were the same two he saw later. He had never seen the two men prior to that evening and he did not know their names. When he re-joined Sandy Seale who was talking to the two men on Crescent Street, they were introduced to each other.
36	There might have been names given but he doesn't recall and he doesn't remember them because they weren't important to him at the time.
37	He asked Ebsary if he was a priest because he was dressed like one and he told Marshall he was. Marshall thought he was off a ship or something at the time but that was just an assumption. Whatever he was didn't mean anything to Marshall. He now knows the older fellow was Roy Ebsary.

DONALD MARSHALL, JR. (Cont'd)

<u>Page No.</u>	<u>Comment</u>
38	He knows the younger fellow was James MacNeil. He has read MacNeil's Affidavit which is filed with the Court. He and Seale had a conversation with these fellows for about 15 to 20 minutes. There was some discussion about bootleggers and Marshall told them one. There was also a discussion about women in the Park and about money. Marshall brought up the conversation.
39	The topic of money was brought up when he first met Seale. The topic of money was not brought up when he was talking with those two fellows.
40	It was the older fellow who indicated where his home was. He didn't point directly to a house, just told Marshall "he lived up there". He said he just lived a short distance. He said "I live over there" and asked us if we wanted to come in for a drink. At that time he was pointing down Bentinck Street.
41	He is sure that Ebsary was pointing down Bentinck Street. It is not possible he was pointing over the Argyle Street way. It was at that time they started walking up Crescent Street toward Bentinck Street.
42	They would have gotten about 75 feet away and either he or Seale asked them to come back.
43	We wanted them to come back. He is sure they came back rather than he and Seale proceeding to them.
44	When they came back he noticed MacNeil was a little unsteady on his feet and he had not noticed that before. He couldn't tell if the older fellow was drunk but he did not appear to be staggering. He was not carrying a cane. When he came back he had his hands in his pocket and he had both hands in his pockets.
45	The younger fellow had his head down when he came back. He doesn't remember if MacNeil had his hands in his pockets. He was not carrying anything and he doesn't know if Sandy Seale was. Neither he or Seale had a knife on them.
46	MacNeil stumbled on the curb and Marshall grabbed him. The purpose was to keep him from falling off the sidewalk. The only purpose in grabbing him was to keep him from falling. He

DONALD MARSHALL, JR. (Cont'd)

<u>Page No.</u>	<u>Comment</u>
46 (Cont'd)	disagrees with MacNeil's statement that Marshall jumped him from behind and he did not put MacNeil's arm up behind his back.
47	The only thing he recalls is Ebsary asking Seale if he wanted everything he had.
48	He doesn't know if Seale spoke before Ebsary uttered those words. When Ebsary and MacNeil were called back, Marshall's intention was to get money regardless how he got it. MacNeil and Ebsary had a chance to keep going. Nobody cornered them or pressured them or threatened their lives. He doesn't see why they came back.
49	The intentions of them coming back was not to get robbed and they picked to come back and do us evil. Marshall didn't do anything to get money off them. The intention of getting money was there. There was no indication from him or Sandy Seale that they tried to rob these people and when they left, they should have kept going. Marshall doesn't know how tall he was at that time.
50	Marshall was taller than Sandy Seale but Seale was bigger. He denies grabbing MacNeil because he was bigger but said it didn't matter who he grabbed if he grabbed anybody. Marshall intended to get money off them, or out of a store or anything else. His intention was to get money regardless if he stole it off someone, bummed it off someone or took it out of a store or someone's house. At the time he had hold of MacNeil and Seale was having a conversation with Ebsary, he wasn't thinking about any store.
51	He can't say whether at that point he was thinking of getting money from those two men but he can't deny it. When the old guy had Seale hoisted up, Marshall could not see a knife. He had MacNeil by the shoulders at that time. He threw MacNeil on the side when he was attacked by Ebsary. Ebsary's intention was to stab Marshall in the stomach.
52	He can't say whether he had seen the knife or not. Ebsary took a swipe at him and he blocked it with his arm and ran and when he started running, he could feel blood coming down his arm. He doesn't remember if Seale dropped on the ground or if he tried to run. He ran away and saw Chant and had a conversation with him.

DONALD MARSHALL, JR. (Cont'd)

<u>Page No.</u>	<u>Comment</u>
53	He is aware that Chant says Marshall told him his buddy was over there with a knife in his gut. When he started running he knew he was stabbed.
54	He has no independent recollection of what the knife looked like. He himself went down to check out the neighbourhood and see if he could find where those two fellows were. He took his cousin, Stewart Marshall, with him.
55	He and Marshall had just got on Crescent Street when the City Police picked him up and told him it wasn't safe for him to walk the streets up there. He says that Ebsary just indicated he lived on that street somewhere.
56	Ebsary did not mention the name of the street. Ebsary just pointed in the direction and he does not know if it was the rear of Argyle, up Bentinck or inside behind the other houses. Marshall was entirely familiar with that whole area.
57	He knows where rear Argyle Street, Alexander Street, Bentinck Street and all of those streets run. If he had made some efforts, he probably could have discovered who those two fellows were. It's not his job to investigate and he was scared to death. He told the police who they were and it wasn't up to Marshall to go look for them. He never believed he was going to be convicted of the murder. It was not important to tell about the robbery because no attempts were made. They weren't after those two particular people but they were looking for money.
58	Marshall is asked whether he had ever rolled anyone before. Aronson objected and the Court held it was very relevant. Marshall agrees that "to roll somebody means to beat them or grab ahold of them for the purpose of forcing money from them".
59	Marshall will not answer whether he rolled anyone before because he does not think it's anyone's business. The night they met Ebsary and MacNeil their intention was to get money and the intentions were there but nothing like that happened. Marshall on three separate occasions refuses to answer whether he had ever rolled anyone before.

DONALD MARSHALL, JR. (Cont'd)

<u>Page No.</u>	<u>Comment</u>
60	The Court insists that Marshall answer the question and he says I might have and I may not have. he also said it's his business and he was not caught for it so why did he have to deal with it. He concedes it's possible he may have rolled someone before and it's possible it might have been 5 or 6 people.
61	He says he knows the transcript of the trial evidence off by heart.
62	After he met Chant and two guys and two girls, neither of the girls were Patricia Harris.
63 - 66	Counsel argue the point whether Edwards can cross-examine Marshall under Section 10 of the Canada Evidence Act with respect to the written statement given at Dorchester Penitentiary on March 9, 1982. The motion is granted.
67	When the statement was taken, the R.C.M.P. Officers told him to tell them everything and not to hide anything.
69	He tried to tell the R.C.M.P. Officers the truth and the statement is as close to the truth as he could come at that time. He is offered the opportunity to read the statement and says he does not need it.
70	The statement is marked Exhibit R-1.
71	He had the opportunity to read the statement before signing it and agreed with the contents in the statement.
72	The contents of his statement wherein he said he told Seale they were going to roll someone is not different from the evidence he gave in Court because rolling someone whether it's on the street or it's in his store or home doesn't matter. He just wanted to make some money regardless who he took it off or where he got it from. His statement also says "I had done this before myself a few times".
73	As far as he knew Sandy Seale had never rolled anyone before. He and Seale were out to find somebody or something.

DONALD MARSHALL, JR. (Cont'd)

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- 74 He disagrees with his statement that there was any mention about money when he was with Seale and the two men.
- 75 He disagrees with the contents of his statement where he noted that he called the two men back. He is confronted with his statement that "I got in a shoving match with the tall guy" but disagrees that it is different from what he gave in evidence.

RE-DIRECT

- 78 He knows that Sandy Seale had his hands in his pockets at the time he was talking to Ebsary. Aronson tries to have Marshall testify again as to what happened when the two men returned after having been called back but is denied the right to ask that question.
- 79 He is asked what would be the shortest route from where they were standing to rear Argyle and Marshall did not understand the question and Aronson leaves it.





EBSARY TRIAL I

DONALD MARSHALL

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- 18 All witnesses are excluded from the Court except when they are giving evidence. The only people present are Ebsary and Corporal Carroll.
- 26 Marshall is 29. He lives in Halifax and works as a plumber at the Reserve in Shubenacadie.
- 27 He has Grade 10 education and in 1971 had Grade 5. At the time he knew Sandy Seale and used to meet him at dances.
- 28 He saw Seale on the night of May 28 in Wentworth Park. He recalls leaving Intercolonial Street about 11:30 that evening. His recollections of time are approximate.
- 29 After leaving Intercolonial he went to the Keltic Tavern and remained there for about 5 minutes. He was heading for St. Joseph's Hall and took a walk down the Park to see if anybody was there. It was at this time that he met Sandy Seale. Prior to that time he had about one shot of rum and he doesn't remember if it had any effect on him.
- 30 At the time Marshall was about 5'10" and weighed about 145. When he met Seale, he asked if he wanted to make some money with him and Seale agreed. While they were talking two fellows called us up from Crescent Street.
- 31 The younger guy was taller and had a sportscoat on. The older shorter fellow had a navy coat or topcoat and grey hair combed back. Marshall had not known either of these gentlemen before that evening. He had seen them about a half an hour before that.
- When he saw them earlier, they were talking to a girl and a guy on a bench but they did not have any discussion with them at that time. This was before he met Seale. He doesn't believe he could identify either of those men now and he looks around the Courtroom and is not able to identify anyone. When they moved up to Crescent Street when they were called, Marshall bumped into Gushue and Patricia Harriss.



DONALD MARSHALL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
33	Marshall went over to Gushue and Harriss and Seale went to join the other two fellows. Marshall was with Harriss and Gushue for a couple of minutes and he then joined Seale and the other two who were on the street about 20 yards from them.
34	He started talking to the older guy, just general things and we were there for about 20 minutes talking following which the older guy invited us for a drink at his house. We told him no and they proceeded to go down home and I called them back and an argument started. They had proceeded about 100 yards from us before they were called back. Marshall said "Come back here" and they did.
35	He repeats that an argument started among the four of them. The only words he heard was the old fellow asking Seale if he wanted everything he had. At the time Marshall was standing by Jimmy MacNeil and we had a hold of each other. At the time the old fellow had Sandy Seale bent over just for a couple of seconds and he turned around and he came after me and I let the other fellow go.
36	The old fellow swung something at me and got me in the left arm. He did not see what made the slash in his arm. He ran down Crescent Street and down Bentinck and ran into Chant and asked him to help me out and he agreed with me and I headed towards Byng Avenue and I met some people there. I asked them to come back and they said no. A car came driving by and I stopped it and asked them to help me and they told me to get in the car and we went back to Crescent Street. Chant, the driver of the car and about two other fellows were present.
37	He knew one of the other three and his name is Mike Gentile. He doesn't recall where Seale was when Marshall was slashed in the arm or where Seale went after the old fellow had him bent over for a couple of seconds. He next saw Seale when he returned.
38	When they returned, he saw Seale lying on the ground. His idea was to go and get an ambulance so we went to a house on Crescent Street. He then went back outside and two Police Officers put him in a car and took him to City Hospital.

DONALD MARSHALL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
38 (Cont'd)	At the time Seale was laying in the street.
39	He believes Seale was in the street a distance from where they had an argument with the other two men. He got 10 stitches in his left arm at the hospital and he still has a scar which he then shows to the Jury.
 <u>CROSS-EXAMINATION</u> 	
40	He is now 6'1" tall.
41	Marshall agrees that he was a heavy drinker in 1971.
42	They were bad young guys at that time.
43	He says he doesn't know if Seale had a fairly athletic build. He doesn't recall or remember if he grabbed ahold of MacNeil on that night. He says they had ahold of each other. MacNeil fell off the curb. Marshall agrees there are a lot of different versions given as to what occurred on that night.
45	There were discussions between he and Seale as to how they would make money and Marshall suggested they would roll somebody. Just before the incident the other two would know that Marshall and Seale intended to roll them.
46	He says the Statement he gave to the R.C.M.P. in Dorchester is true. He says again that the two men were with him for approximately 20 minutes.
47	After talking to the other guys for 20 minutes they left and if they knew our intentions of robbing them, I don't see why they came back. He had a transcript of the evidence of the original trial for a portion of the time he was in prison.
48	He studied the transcript, read it over and over and over again. He says a robbery is when you are armed and he was not armed.

DONALD MARSHALL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
49	When he called them, they came but not to get robbed but to do us in. He denies that the four of them were struggling.
50	Neither of the other two were physically hurt.
51	It was Marshall's idea to roll them but not to rob them.
53	It is very confusing for him having gone through this so many times. He is still worried about the whole situation.
54	He is questioned whether he has a current lawsuit against the City of Sydney and whether he has a financial interest in the outcome of this situation.



EBSARY TRIAL II

DONALD MARSHALL

<u>Page No.</u>	<u>Comment</u>
11	He is 30 years old, resides in Halifax and is a plumber on the Shubenacadie Reserve.
13	In 1971 he would have been 5'10", 145 lbs. and 17 years old. He had left school when he was 14 and was employed in the drywall business with his father. He knew Seale prior to the incident and they were about the same age.
14	He knew Seale the same as everyone else, just the group, and he had been at his home once to help his father do drywall work which would be months before the event. He had never had any arguments or fights with Seale. He arrived back in the Sydney area about 9:30 p.m. on May 28, 1971.
15	He met a friend, Artie Paul, and they were going to Tobin's house on Intercolonial Street. Prior to that Roy Gould drove them to the liquor store and they bought a quart bottle of rum. When they got to Intercolonial Street, they got together in the backyard.
16	He stayed there for about 10 or 15 minutes and he left. He did not have anything to drink before he got home and he had one drink out of the bottle of rum.
17	When he left Intercolonial, he went to Keltic Tavern with Gary Tobin and some other guy. When they walked in, he lost track of them and went out the back door and kept going. He was only there a couple of minutes. He was going to the dance at St. Joseph's Hall. When I reached Wentworth Park, I walked down one of the paths but his intention was to go to the dance.
18	It was while he was in the Park he bumped into Seale about where the Band-Shell area is. He marks on the plan the place where he met Seale by putting the initials "DM" and "SS". He asked Seale where he came from and he told me he came from the dance and that the dance was closing down.

DONALD MARSHALL

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- 19 Seale said he was on his way home when he met him. He asked Seale if he wanted to make some money with him and he said okay. His intentions at the time were to make money by bumming it. He used to bum money in the Park all the time so it was just to bum money. The conversation didn't last more than 10 minutes. He met Seale between 11:30 and 12:00. He and Seale then went to a footbridge and were there for not over 10 minutes. We were called by two guys on Crescent Street asking for a cigarette. As they were going up, they met Terry Gushue and Patricia Harriss. He did not recognize the two men that called him up to Crescent Street.
- 20 He went over the Harriss and Gushue and they asked him for a light and he gave it to them. Seale went to the two guys that called us the first time. He, Harriss and Gushue would be about 100 feet from Seale and the other two. He estimates the distance by saying it is three times the length of the Courtroom. He stayed with Harriss and Gushue not more than 5 minutes and then went to join the two men that called us up.
- 22 He was talking to the older guy about everything and I asked him where he was from, I told him he dressed like a priest and he told me he was a priest and we talked about 20 minutes to half an hour. He would say the younger guy was about 30 years old and about 5'10", medium build. He had a brown corduroy coat on.
- 23 He would say the old guy was 55 to 60 years old, about 5'8" and weighed about 175 lbs. He had a navy coat on down to his calves and it was closed in front.
- 24 The man had black rimmed glasses on and his white hair was combed back and he had a wide face. The conversation lasted no more than half an hour. The older guy asked us to come to his house to have a drink and I told him no and they proceeded to walk down Crescent Street to go home because he indicated where he lived.
- 25 He told us, I just live up here and said why don't you come up for a drink and I told him no. They proceeded to go home and I called them back. When I called them back they had

DONALD MARSHALL

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- 25 (Cont'd) gotten about 100 feet from Seale or maybe more. I just told them "come on back here" and they did. They just walked back. When they caught up to us the old fellow went to Seale and asked if he wanted everything he had. The younger guy was standing beside me and we grabbed onto each other.
- 26 He doesn't know why they grabbed onto each other. Everything happened the same time and he doesn't know if he and MacNeil grabbed each other before Ebsary asked Seale if he wanted everything he had. Seale said nothing and I had not heard him say anything before.
- 27 After Ebsary asked Seale if he wanted everything he had, that's when he knifed him. Marshall demonstrates by standing side by side with Edwards and says after Ebsary asked Seale if he wanted everything he had, Seale nodded his head and Ebsary turned around and grabbed him by the left hand on his right shoulder.
- 28 Ebsary must have stabbed him with his right hand. After he stabbed Seale, he came after me. He didn't know Seale was stabbed before Ebsary came after him. He only heard Seale moaning. Seale was bent over down to his knees. I let go of MacNeil.
- 29 He and MacNeil were 5 feet from the others. Ebsary came after me and he swung from his waist and he swung the knife at me. He hit me in the inner part of my forearm on the left arm and I got 10 stitches at the hospital that same night. I was wearing a light yellow jacket.
- 30 Marshall shows his arm to the jury and exhibits the scar. After he was cut he started to run down Crescent Street toward Bentinck and he met up with a young fellow on one of the bridges there.
- 31 He asked Chant to help him out having learned his identity later. Chant asked him what happened and I told him my buddy was stabbed down in the Park. Chant said let's go then I'll help you out and we went down towards Byng Avenue and met a bunch of people there and I asked them to help and one girl gave me a handkerchief to wipe my arm and they said they didn't want to go down to the Park.

DONALD MARSHALL

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- 32 He stopped a car on Byng Avenue and asked them to help me. We went back to the place where Seale was lying. Not too much time had elapsed from the time his arm was injured and the time he got back to where Seale was. He was not armed that night and he does not believe that Seale was.
- 33 When we got back there, he saw Seale lying on the ground and I thought he needed an ambulance so I went to a house to call an ambulance. He doesn't recall if Seale was conscious. He was put in a police car and taken to the City Hospital. Once he hit the street, two City policemen put him in a car and took me to the City Hospital.
- 34 On the plan he indicates the area between the two walkways that come up from the footbridge to Crescent Street and that is the area where he and Seale had their discussion with Ebsary and MacNeil. He marks PH and TG for the area where he spoke with Harriss and Gushue. At that time Seale and the others were back toward Argyle Street and Crescent Street.
- 35 After the discussion Ebsary and MacNeil proceeded along Crescent toward Bentinck. He marked the place where the second meeting and the stabbing took place.
- 35 He was charged with the murder about a week after the event and was convicted on November 5, 1971.
- 37 - 49 A Voir Dire is held to permit Edwards to cross-examine Marshall on the Statement given to the R.C.M.P. in Dorchester.
- 49 Marshall identifies Ebsary.
- 51 Marshall agrees that his evidence is different than he told the R.C.M.P. on March 9, 1982.
- 53 He confirms his evidence that the intention was to bum but he can't explain the difference between that and his earlier statement where he clearly said the intention was to rob.



DONALD MARSHALL

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CROSS-EXAMINATION

- 55 On the night in question it was dark in the area but it wasn't totally dark. He didn't see the knife which he said Ebsary had.
- 58 He says his memory is very good of the events of that night.
- 60 He can't recall if he grabbed MacNeil or MacNeil grabbed him.
- 63 He accepts as the truth his Statement at the Preliminary that "I don't know if I should say I was fighting and holding the other guy".
- 64 With respect to his Dorchester Statement to the R.C.M.P. he says he could have used other words. He had got to the point he felt the only way they are going to believe me is to use certain words. He could have put it in a politer way.
- 65 He says Seale never laid one hand on Ebsary. He denies it could have been Seale who put his hand on Ebsary's shoulder rather than the reverse.
- 68 He says he wasn't with Ebsary and Seale at the very beginning of the incident. He can't say, however, whether threats were or were not made at thta time.
- 71 His previous record of theft under \$200.00 and a sentence of one day was presented to him. He doesn't recall the 1970 conviction for drunkenness and the fine of \$10.00.



EBSARY TRIAL I

CONSTABLE LEO MROZ

<u>Page No.</u>	<u>Comment</u>
56	He has been employed with the Sydney Police Department for 20 years. On May 28, 1971 in company with Constable Richard Walsh he attended a complaint at Wentworth Park. They arrived at location at approximately 2 minutes to 12. They were walking the 12 to 8 shift.
57	They went by way of South Bentinck Street to Crescent and observed a victim lying in the street. His head was lying toward the centre of the street and his feet toward the right shoulder. On close examination he knew it was Sandy Seale. He was attired in a T-shirt and it appeared directly underneath he was concealing something. Seale was conscious when Mroz arrived. The only words he uttered were "Oh God no" and "Oh Jesus no".
58	There was a noticeable bulge on the area of the high chest or high abdomen. Inspector Wallace raised the shirt and beneath we discovered a large amount of intestines and others were coming out of a stab wound in a snakelike fashion. There were more emerging at all times. Walsh is now an Inspector. They had a little difficulty bringing the garment back to the waist level. Mroz immediately went to the cruiser and requested an ambulance. There was some delay in the arrival of the ambulance.
59	The ambulance did not arrive until approximately 15 minutes had passed. While we were waiting a second cruiser arrived driven by Constable Dean and the late Corporal Martin MacDonald. In the high beams of the oncoming cruiser I observed Donald Marshall Jr. approximately 150 feet across Crescent Street and slouched against a rather large tree in the park area. His right hand was extended over his left wrist area and he appeared to be sort of gripping his left arm with his right hand. He believes the other police cruiser took Marshall to the hospital. He knew Marshall previously. Seale appeared to be in great pain and you could see it on his forehead.
60	He followed the ambulance to the hospital. Seale was wheeled into Outpatients and Dr. Naqvi.

CONSTABLE LEO MROZ (Cont'd)

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Comment

CROSS-EXAMINATION

60

Naqvi was at the hospital when Mroz entered the Outpatients area. He waited for the ambulance rather than attempt to move Seale by car because he thought Seale would be better in a prostrate position.



EBSARY TRIAL II

CONSTABLE LEO MROZ

<u>Page No.</u>	<u>Comment</u>
152	He has been employed with the City Police for 20 years and was on duty on the evening of May 28, 1971.
153	He responded to a call for an incident on Crescent Street with Constable Richard Walsh. The response was approximately 5 to midnight. We travelled by way of Bentinck, south Bentinck to Crescent. We made a left turn from Bentinck to Crescent and we travelled a few hundred feet where we found the victim lying in the street. On close examination I knew the victim was Seale but not his first name.
154	Seale merely said "Oh God no" and "Oh Jesus no" and immediately slipped unconscious. He was wearing a white T-shirt or white sweater. There appeared to be something concealed under it and we proceeded to raise the garment and found a considerable amount of body intestines. Practically the entire front of his chest and abdomen was laden with intestines.
155	He immediately went to the radio in the car and stressed the urgency of the situation to the desk but for some reason the ambulance was rather slow in responding. The ambulance arrived about 22 or 25 minutes after midnight. Mroz assisted the removal of Seale from the ground into the ambulance and followed it to the hospital. He observed Dr. Naqvi cutting the garment and it was then very visible under clear light and it was apparent Seale was quite badly injured.
156	He would say Seale was about 5'6" and weighed about 145 lbs. I had pre-knowledge of him and he was a very athletic boy in extremely good condition. He was slight and well built. While we were waiting for the ambulance, another car manned by the late Corporal Martin MacDonald and Constable Howard Dean had travelled from South Bentinck in toward Crescent. In the light of their high beams I observed Marshall 200 to 300 feet from the point where Seale was lying and he was leaning against a tree in the Park and his right hand was extended over to his left wrist or forearm and he appeared to be clasping it.

CONSTABLE LEO MROZ

<u>Page No.</u>	<u>Comment</u>
158	The other cruiser took Marshall to the hospital. It would be about 5 to 7 minutes after Mroz's arrival on the scene that he observed Marshall. He didn't see anybody at all during his stay on Crescent Street.
158	On Exhibit 1 he marked where Seale was lying. He also marks with a "X" where he saw Marshall.
159	It was basically dark and fairly poorly lighted in the area. There was heavy tree growth in the area which obscured the little light that did exist.

CROSS-EXAMINATION

159	He actually saw the intestine coming out. After Seale was at the hospital for about 10 minutes it was at a point where it had stopped coming out.
160	Dr. Naqvi was actually at the Outpatients Department when we arrived and was attired in his operating gown.





EBSARY TRIAL III

DONALD MARSHALL, SR.

Page No.

Comment

233

He took possession of the jacket his son was wearing on the night of the death. It was a yellow jacket and they left it in the house for a week or so. Either someone came for it or he took it to Roy Gould since it was his jacket.



NOTES OF DISCUSSION WITH JUDGE LOU MATHESON

I met with Judge Matheson and Darrel Pink at Judge Matheson's office in Sydney on Febraury 20. The meeting commenced at 10:30 and lasted approximately two hours.

Judge Matheson was the Assistant Crown Prosecutor at the time of the Marshall trial. At that time, Donald MacNeil was the Chief Prosecutor and handled most of the Sydney work. Judge Matheson would be involved primarily with work from other municipalities in the Cape Breton area. There was only one large office, however, and all Prosecutors worked out of that office. He and MacNeil would be aware of each other's work and generally be able to switch back and forth as required. Judge Matheson also carried on his duties as Registrar of Probate.

Files were kept but would contain only material prepared by the Prosecutors, such as handwritten questions and a summary of addresses to juries and such materials. There may also be copies of materials taken by the Prosecutors from the Police file.

In 1961 the practice was that the Police File was kept in the custody of the police. At that time there was no Crown Sheet used by the City Police. The R.C.M.P. often had something similar to the Crown Sheet. The practice today is that there is a Crown Sheet which would have on it a summary of the evidence given by all witnesses.

In the Marshall case, the Crown Prosecutor's office was involved in determining what charges would be laid, while there may not have been frequent meetings to deal specifically with the Marshall investigation, the Prosecutors generally were aware of the progress of the investigation. When sufficient witnesses were found saying that Marshall committed the crime, the Information charging the murder, was laid. Judge Matheson's recollection is that the investigation period was fairly lengthy and for a long period of time witnesses were not forth-coming and notices were being placed in the newspaper urging witnesses to come forward.

Judge Matheson knew Marshall because of previous charges which had been laid. Not all charges would have involved Marshall but he was known to attend a trial with other younger Indians who may be charged from time to time with offences. He has a recollection that Marshall and one other person may have been convicted at one time of hanging a dog. Judge Matheson says he knows Marshall's father better than any other native person and thought very highly of him.

As this matter went forward to trial Judge Matheson recalls expressing concern as to what a jury was going to think of these three kids and in particular, Pratico, who admitted having consumed such a quantity of liquor on that night that he would have to be drunk and have some difficulty observing the scene in the dark from a considerable distance.

Judge Matheson believes he was around when Pratico was present but does not recall taking part in any discussions. He does recall Pratico indicating being in fear of being beaten up by Marshall's friends. He suspects this may have been at the time of the Preliminary and recalls that surveillance was kept on Pratico for a period of time. He was aware of Tom Christmas and that he was part of Marshall's group and considered he was quite capable of violence.

Judge Matheson's belief is that if inconsistent statements were given by witnesses they no doubt would have been available to the Crown. It was the practice of Donald MacNeil and the policy of the Department that if any information was in the possession of the Crown which would be useful to the Defence, then such information would be given to the Defence. It is unlikely that the complete Police File would be turned over to Defence Counsel but more likely that the Crown would let the Defence know what was useful to them. Many times the information would be given orally to Defence Counsel, but copies of statements would never be denied to them if they were sought.

Judge Matheson has no particular knowledge whether the inconsistent statements were turned over to the Defence in this case. He did refer to the Summary of Facts which was always provided to the Trial Judge by the Crown and to the comment contained therein that Pratico may be required to be confronted under the Canada Evidence Act because of the presence of inconsistent statements. He also recalls from time to time throughout the trial wondering why the Defence were not doing particular things which he expected they might have done.

Judge Matheson sat in through the trial but does not believe he would have been involved in the Preliminary. He performed the role of Associate Counsel following the evidence, keeping notes and making certain Mr. MacNeil did not miss any matters which were contained on his notes. He was not surprised by the verdict and says he would have been surprised if an acquittal had been entered. That was his feeling at the end of the trial, although, as noted earlier when entering the trial he had some concern whether a jury would be prepared to accept the evidence of the three young witnesses.

He does not recall a visit to the Park with various witnesses to review the evidence. He says files were kept in the Crown Prosecutor's Room, which was located in the area where the Prothonotary's Office is at the present time. The files were stacked on an old oak table and as they accumulated they were cleared out from time to time. The primary purpose of keeping the files was for precedent purpose. It is likely the Marshall file was turned over although there are some files in the attic of the building now occupied by the Crown Prosecutors. At one time, Judge Matheson combed through those files and was unable to find anything related to Marshall.

Judge Matheson believes he knew Pratico was in the Nova Scotia Hospital prior to the trial but he connected the visit to the result of the intimidation Pratico considered he was being subjected to. It was not unusual for Sydney police officers to transport Sydney residents to the Nova Scotia Hospital in those years.

Concerning the disclosure practices Judge Matheson commented that it was unlikely the Police File would be kept in the Prosecutor's Office because of the risk of losing statements or other materials. The Prosecutor worked from photocopies of the originals and the original Police File was kept under lock at the Police Headquarters. The policy was to give everything of help to Defence Counsel unless there was a good reason to do otherwise.

Mr. Rosenblum had been a Prosecutor himself and he certainly would talk to the Prosecutors to know what was the case to be met. I had the impression, however, that the actual logistics of disclosure are not absolutely clear and defined and that primarily the burden would lie on the Defence Counsel to ask for the information which would then be given subject to the caveat that there was no good reason to do otherwise. One good reason could be the concern that witnesses may be subjected to harassment or duress if the existence of their statement was known.

I asked Judge Matheson if he had inconsistent statements from a witness, such as the Harriss statements, would he present both statements in direct evidence. His belief is that he would have made both statements available to the Defence and leave it to them to cross-examine and he would not raise both statements in direct evidence.

A short time after the verdict was handed in, he was called at home at approximately 6:00-6:30 and went to the Police Station because he was informed a witness had come forward to say that he knew that a man in a long blue coat had actually killed Sandy Seale. Judge Matheson read the statement given by James MacNeil and had the impression that the described event could be possible. He compared this statement with other statements given by earlier witnesses and spent a considerable time doing this. He then spoke to MacNeil. He was not impressed with MacNeil and found him to be very nervous and retiring and totally lacking in confidence in what he said. He was asked why he did not come forward at an earlier date and MacNeil said something to the effect that he knew Marshall hadn't committed the crime and therefore the jury would not convict him. When asked why he was now coming forward he indicated he had told the story to his brother who advised him to go to the Police.

Judge Matheson knew the story had to be completely and thoroughly checked out. He considered it vital that Ebsary and all members of his family who were at home on the night of the alleged event be confronted by the MacNeil statement at a time when they were separate and apart and thus not able to agree on the story to be given. He suggested this procedure to the Police and that this be done immediately. In particular he recalls being asked by Corporal Carl 'Jeep' MacDonald what he wanted to be done and Judge Matheson explained that everyone who was at home that night was to be questioned and their answers taken down in writing. He has the impression that all of the Police Force, both patrolmen and detectives were present on that night and were aware that the MacNeil statement had been given. Later that night he was advised, he believes by Deputy Chief MacAskill, that all members of the Ebsary family had denied the MacNeil statement. He was under the impression that all members of the Ebsary family who were home on that evening had been interviewed. He was not aware until I advised him that Donna Ebsary had not been interviewed on that night. He was under the impression that she had been interviewed and that her subsequent evidence saying that she had seen her father washing blood from a knife represented a contradiction to the statement given by her on the evening when MacNeil gave his statement.

On that evening he was told by the Police that Ebsary said he would take a lie-detector test. MacNeil indicated the same thing. There were no polygraph machines in Cape Breton and that was one of the reasons Matheson contacted Robert Anderson in Halifax. Another reason was his belief, discussed that evening with the Sydney Police, that the matter should perhaps be investigated by another Police Force. In addition, he was concerned as to which office should be involved in this matter.

The trial was concluded and a Notice of Appeal had been filed, or was imminent, and in those circumstances the file would be turned over to Halifax and Sydney would have no further involvement. At the time Don MacNeil was away on holidays and could not easily be reached.

Judge Matheson and Robert Anderson spoke for a long time. During their discussion Judge Matheson outlined his thoughts on all topics. The only thing resolved at that time was that Anderson would make arrangements for a lie-detector. By Friday morning, Judge Anderson knew the two officers of the R.C.M.P. were to be down in Sydney early the following week. Don MacNeil returned home on Sunday night and was contacted by Judge Matheson and advised of the various things which had happened.

A couple of nights later, Judge Matheson was aware that the investigation had been completed and Don MacNeil said he was waiting for the R.C.M.P. to provide him with the results. In the early evening, both of them met with the R.C.M.P. at the Motel and were told of the polygraph results. Judge Matheson recalls that the results were that Ebsary was telling the truth and that MacNeil was unreliable. Since that time he has read the actual report which indicates Ebsary is telling the truth and the polygraph result on MacNeil is inconclusive. He is aware that Don MacNeil continued to deal with someone in Halifax concerning this matter although he did not believe MacNeil would have argued the Appeal.

Judge Matheson felt the Defence Counsel should have been advised of this development and during discussions with MacNeil this topic was raised. Judge Matheson thought of this possibility the evening the MacNeil statement was given, but thought it would be preferable to await further investigation before bringing it to the attention of the Defence. He recalls that when he read the Appeal Court decision he considered it strange that no reference was made in that decision to the fact that MacNeil had come forward after the trial. Judge Matheson considers it would be appropriate and important to make the fact of this subsequent statement and the investigation known to the Defence at the conclusion of the investigation.

He does not recall being aware in 1971, that Ebsary had been convicted of a concealed weapons offence involving a knife in April, 1970. He said he was aware the police were not speaking particularly highly of Ebsary. On the other hand Mrs. Ebsary was defined to be the "anchor in the household" and to be a responsible person and it was not considered that she would be a party to covering a stabbing offence.

The possibility that MacNeil had been put up to telling the statement certainly crossed everyone's mind. Here was a guy telling a statement consistent with Marshall but his lack of conviction in the story and in light of the earlier threats of intimidation against Pratico, there was certainly some suspicion aroused.

On the night in November, 1971, when he was at the Police Station, Judge Matheson compared MacNeil's statement with the other statements available. He doesn't recall having seen the earlier statement of Patricia Harriss. He does recall asking a senior police officer to review the various statements and give his opinion. The policeman said, while you could not discard



the MacNeil statement out of hand, there were some discrepancies in the time given for various events.

He thought the reason two R.C.M.P. officers were sent down would be to check the whole thing out. He does not recall if there was any investigation beyond the actual lie-detector test. In 1982 Wheaton spoke to him briefly at a motel in Port Hawkesbury but the discussion was very brief and of no substance.

Judge Matheson was aware that polygraphs were not considered reliable from an evidentiary point of view, but he considered they should be a reliable investigatory aid. When he heard the results of the tests he tended to believe that MacNeil was emotionally upset and thought that he was somewhat similar to Pratico.

Judge Matheson recalls speaking to Michael Harris on one evening. Mr. Harris apparently was quite upset when Judge Matheson suggested that there was no fault on behalf of anyone in this particular matter and it was all an unfortunate circumstance. He has also discussed the matter with Ron Pugsley and Don Murray but was not called to give Discovery evidence in the CBC case.

In the mid 1960's Wentworth Park was becoming a gathering place for people and he was aware of the various activities in the Park and that there was a lot of difficulty being encountered by the police.

Concerning this particular matter, Judge Matheson says he is not aware that any individual deliberately or negligently did anything to bring about a precalculated result.

Judge Matheson does not recall seeing actual written statements taken from various witnesses on the evening MacNeil gave his statement but believes there must have been such statements since his instructions to the police and in particular to Corporal Carl 'Jeep' MacDonald were to take down in writing everything that was said by the various witnesses. Judge Matheson was not aware that the Ebsary family were actually in the Police Department building on that night.

Judge Matheson suggested it might be an interesting exercise if we were to speak with various members of the Cape Breton Bar who had experience in dealing with Donny MacNeil as a Prosecutor. He suggested Judge Ryan, Hinchey, Wally, A.O. Gunn, W.A.D. Gunn, Vince Morrison and perhaps Frank Elman.

APR 01 1987

D. LEWIS MATHESON, Q.C.  
JUDGE



JUDGE'S CHAMBERS  
P.O. BOX 404  
PORT HAWKESBURY, N.S.  
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TELEPHONE (902) 625-2605

March 24, 1987

RECEIVED

MAR 30 1987

PATTERSON KITZ

Mr. Darrel I. Pink  
Patterson Kitz  
P.O. Box 247  
HALIFAX, Nova Scotia  
B3J 2N9

Dear Darrel :

I have your letter of March 13th, containing the notes of our discussion of February 20th with Mr. George MacDonald, as recorded by him.

On page 1, paragraph 2, my prosecutor's duties were restricted to Cape Breton County.

On page 3, paragraph 3, the call from the police came between 6:30 and 7:00.

On page 4, paragraph 4, the last sentence. I do not recall exactly what I said to yourself and Mr. MacDonald but if I left the impression which that sentence seems to imply I would like to correct it.

On the evening MacNeil came forward, it occurred to me that the defense would be very interested in what he had to say, but because of our reluctance to believe MacNeil at that point I felt it would have been irresponsible to make the information known to anyone outside the department, until it had been thoroughly investigated. After that point the decision to disclose or not was in the hands of other officers of the department and I am not aware of what further investigation may have disclosed. To say what I might have done had I had such information and the benefit of consultation is purely speculative. As I indicated earlier in the paragraph, on the basis of the information and knowledge that came to my attention while I had the matter in hand I saw no reason not to disclose the information when fully investigated.

.../2



Page 5, paragraph 3 states, "Judge Matheson was aware that polygraphs were not considered reliable from an evidentiary point of view but he considered that they should be a reliable investigatory aid." My recollection is that I said I considered that they could be a helpful investigatory aid when considered with other evidence.

As for the remainder of the notes, I think they generally reflect the outline of our discussion.

Yours truly,



D. Lewis Matheson  
Judge

DLM/bll



MARSHALL TRIAL

DONALD MARSHALL, JR.

<u>Page No.</u>	<u>Comment</u>
186	He is left handed. He knew Sandy Seale for three years prior to the night of the stabbing and used to go places with him and they were good friends.
187	He spent the early part of the night at Tobin's home and when he left there he went down to the Park and into the Park. He met Seale there.
188	While he and Seale were talking, Robert Patterson came down and he was drunk. He and Seale walked up to the bridge and two men called them up to Crescent Street.
189	The two men bummed them for a cigarette and a light and I gave it to them. I asked them where they were from and they said Manitoba and I told them they looked like priests. The men were dressed in a long blue coat.
190	When he told them they looked like priests, the younger one said, we are. They asked if there were any women down in the Park and I told them there were lots of them. They asked if there were any bootleggers and I told them, I don't know. They told us they don't like niggers or Indians and the older fellow took a knife out of his pocket.
191	He drove the knife into Seale's stomach and then swung around. I moved my left arm and he hit it. After that happened, he ran for help and ran to Byng Avenue. He met someone there and it was Maynard Chant.

MARSHALL TRIAL

DONALD MARSHALL, JR. (continued)

Page No.

Comment

- 192 He stopped a car and Chant went with him to Crescent Street. They went to Crescent Street and saw Sandy Seale lying on the ground. Marshall went to Doucet's house and told them to call an ambulance for me and the cops. He stayed until the ambulance and police arrived and then he went to the City Hospital and he went home after he was treated. He next saw the police the next morning.
- 193 He visited the police station all the next week and stayed there about 5 hours each day. He was talking to Sgt. MacIntyre. He denies stabbing Seale or laying a hand on him of any kind.

CROSS-EXAMINATION

- 194 He was not around St. Joseph's dance that evening. He does not remember meeting Pratico or seeing him on George Street or inviting him to go down into the Park. He knew Pratico for about six months.
- 195 He did meet Miss Harriss somewhere on Crescent Street and Mr. Gushue. He said he had a blackout in his mind after he was stabbed.
- 196 He was not on Crescent Street before the two men called him up. He can't say on what road he met Miss Harriss but then says it was on Crescent Street.
- 197 He says he was not up on Crescent Street with Sandy Seale before the two men called him up. The two men that looked like priests were standing then on the sidewalk when he gave the light to Miss Harriss.

MARSHALL TRIAL

DONALD MARSHALL, JR. (continued)

<u>Page No.</u>	<u>Comment</u>
200	He puts a "S" on Exhibit 5 where the stabbing took place. The "S" is placed in the area where the path joins Crescent Street. His memory is blank as to meeting Gushue and Harriss.
201	He does not remember holding Miss Harriss' hand. He says he was on the street but he can't remember where.
202	Seale fell to the ground immediately he was stabbed and was still there when they came back in the car. He then says when he came back Seale was not where he fell but was in the middle of the road in the same vicinity where he marked "S". He then says it could have been in the area opposite the building marked the Green Building Apartments.
204	When he met Miss Harriss the other three people would be with him.
208	When they came back to where Seale lay, he stayed to the back of Seale.
209	After the stabbing he did not run toward Argyle Street. When he was running, he looked back and the two men ran behind the house. He says if he had gone into any house on Crescent Street, the two men would have come after him. He says the men were running a few feet behind him.
210	He did not go into any of the houses on Byng Avenue. He removed the stitches from his arm because they were on there too long. He left them there for 15 days.

MARSHALL TRIAL

DONALD MARSHALL, JR., (continued)

<u>Page No.</u>	<u>Comment</u>
211	He went down to Pratico's house on Sunday evening. He did see Pratico Saturday afternoon.
212	He says he was by Pratico's house and saw him outside on Saturday afternoon and Sunday evening. He has shown me a small cut on the yellow jacket approximately ½" long on the sleeve and says he doesn't know how it got there.
213	He seems to be saying that his cousin cut the bottom part of the coat because Marshall's wrist was hurting him.
214	Being questioned by the Court, he says he asked the two men where they were from and they said Manitoba. It was the older man who said they don't like niggers or Indians.
215	When he saw Pratico on Saturday evening, he did not know that Pratico had been in the Park on Friday night.
216	When he saw Pratico on Sunday, he did not know he had been in the Park.



MARSHALL TRIAL

D. MATTSON

Page No.

Comment

- 181                    Shortly before midnight he was in his home getting ready to go to bed when he heard a conversation coming from the street.
- 182                    As a result of what he heard, he called the police. He observed a man walk out to the centre of the street, hold up a car and display his arm and then this man got in the car which went in the direction of George Street and he then again called the Sydney police.
- 183                    He didn't notice if more than one person got into the car.





MARSHALL TRIAL

SANDRA MREZEK

Page No.

Comment

- |    |  |
|----|--|
| 9  | She is a Serologist at the R.C.M.P. Lab in Sackville.  |
| 11 | She identifies a pair of blue jeans and a blue belt which she received from Sgt. MacDonald of the Sydney Police. She human blood Group O present on these articles. She also indentifies a facial tissue which also contains the same blood type. She also examined a yellow jacket and found human blood on it but was unable to determine the group. |
| 12 | She also examined a brown jacket and identifies it as having human blood of Group O type on it.  |



MARSHALL TRIAL

CONSTABLE MULLOWNEY

Page No.

Comment

178

He searched the area of Wentworth Park on May 29th in the morning. During the search he found a piece of tissue on the lawn of 130 Crescent Street.



STATEMENT OF DONALD MARSHALL, JR., MAY 30, 1971

The statement was taken on May 30, 1971 starting at 4:50 p.m. and finishing at 5:12 p.m. Sgt. MacIntyre was the witness.

He entered the Park around 12:00 p.m. from George Street near the tracks and he met Seale coming towards him. They met Bob Patterson who was drunk. They started to walk to the bridge and stood there for a few seconds. Two men who they did not know called them up from Crescent Street and asked for a cigarette and Marshall gave them one and also a book of matches. The old guy started to talk to him about women and Marshall said there were a lot of them in the Park and they also wanted to know where a bootlegger was.

Marshall asked them where they were from and they said Manitoba. Marshall asked them if they were priests and the tall fellow said they were. One fellow had a long blue coat on. They told us we don't like coloured people and Indians. The old guy turned to Sandy and said there is one for you black boy and he put the knife in his stomach. He then took the knife out of Sandy and swung it at me and put it in my left arm and said this is one for you Indian.

Marshall ran for help and the other two ran away up back of a green house. Marshall circled around and got help. Marshall describes the small fellow as 5'9" or 10", 190 lbs., and grey hair combed back. He wore black rimmed glasses and was about 50 years old with a long wide face and a long blue coat. The other fellow had a brown corduroy coat, was 5'11" and about 150 lbs. and black hair and was about 35 years old.