

### 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

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 Archibald

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 answer 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 Court tests Stord?

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 & explain

p. 20

(18)  
(18A)

In detail. Note reference to R v Bennick & 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 exculpate 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 & Questions he would have asked  
 Refer Matheson evidence re Marshall - Tell the truth  
 XXV 4744/5  
 XXVI 5002-3  
 XXVII  
 2102

(23A) Use actual names such as Mark Kellog. Waters

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? Under ~~standing~~ 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

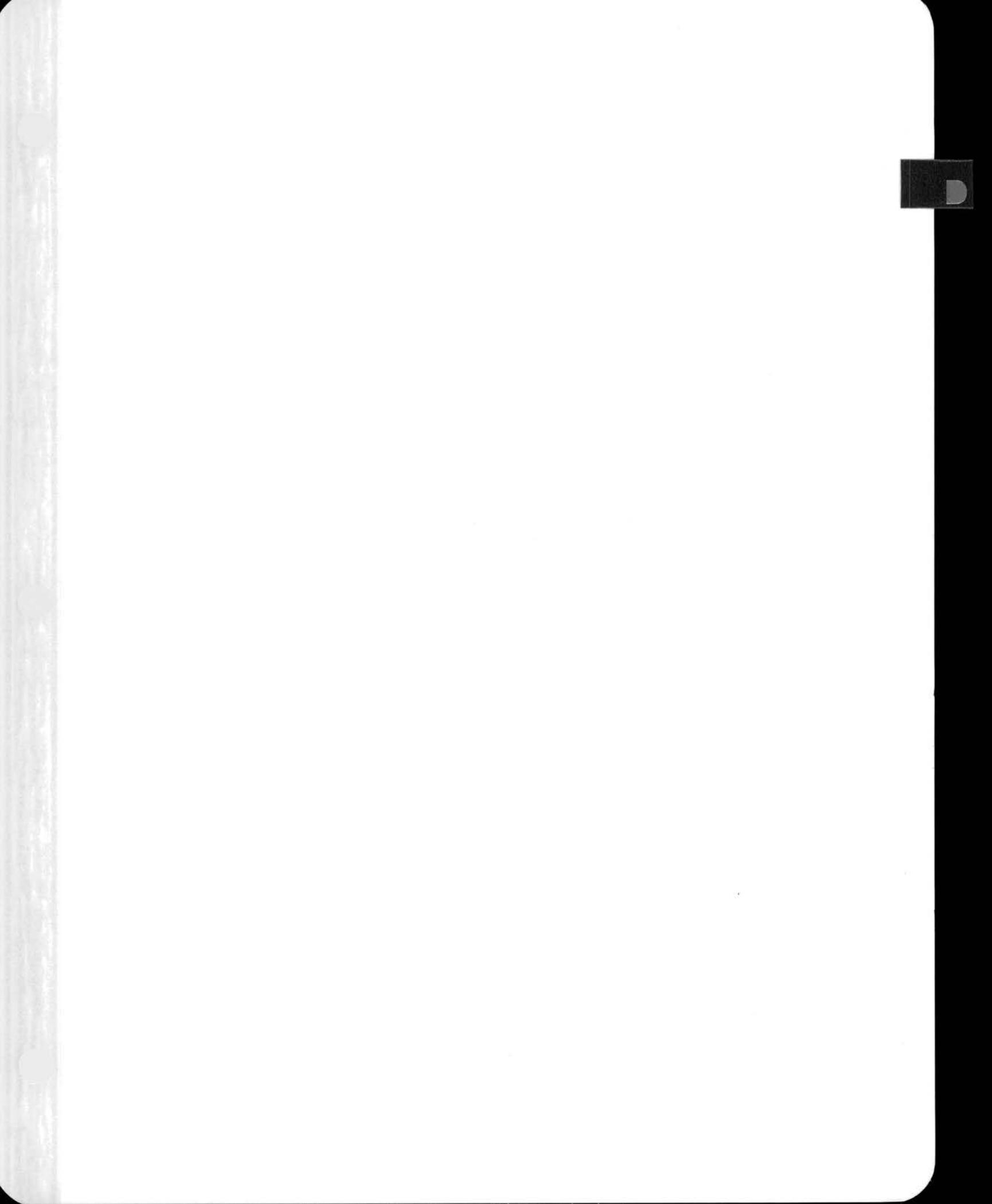
This statement is found in Volume G-2.

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



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

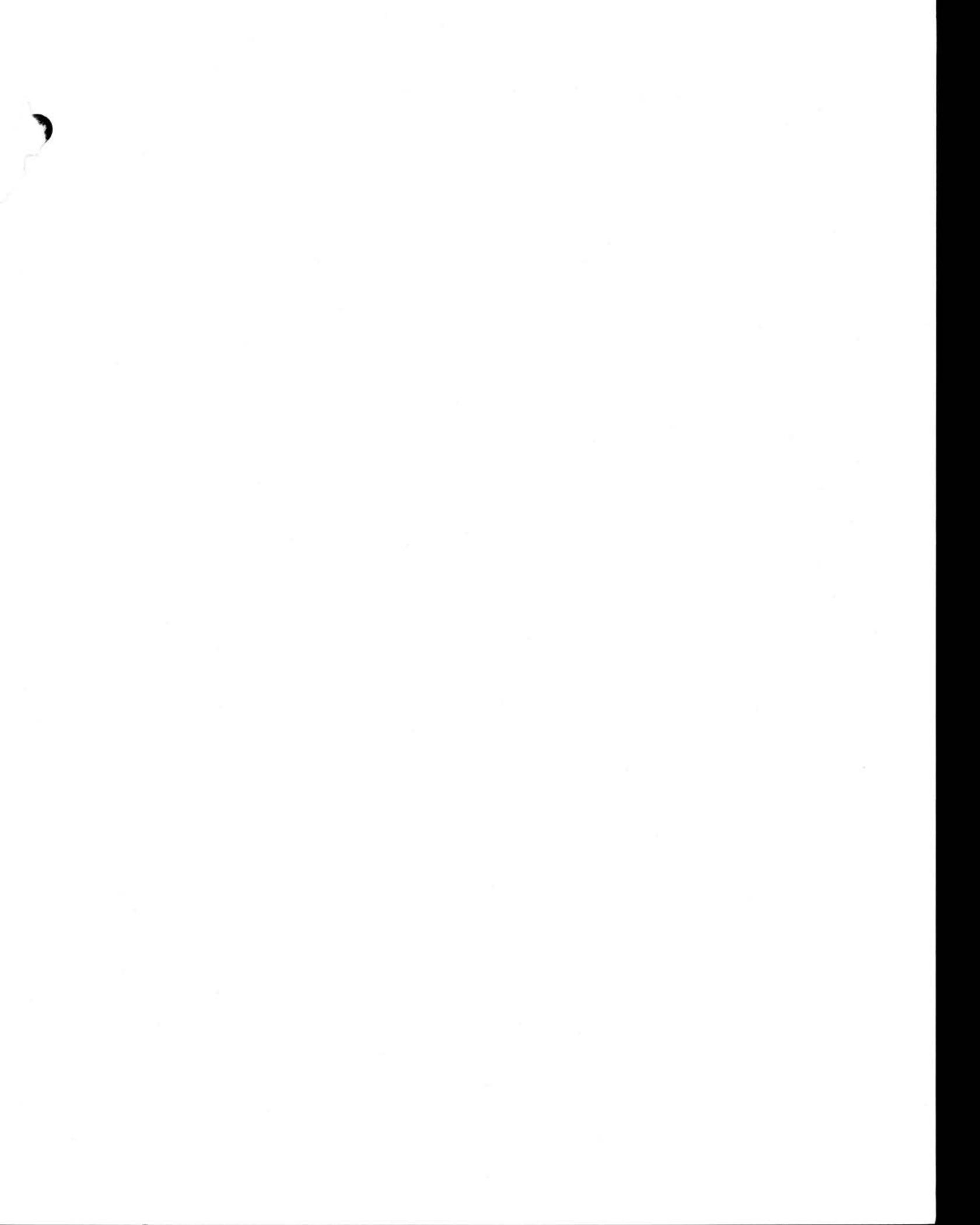
Page No.

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

Page No.

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)

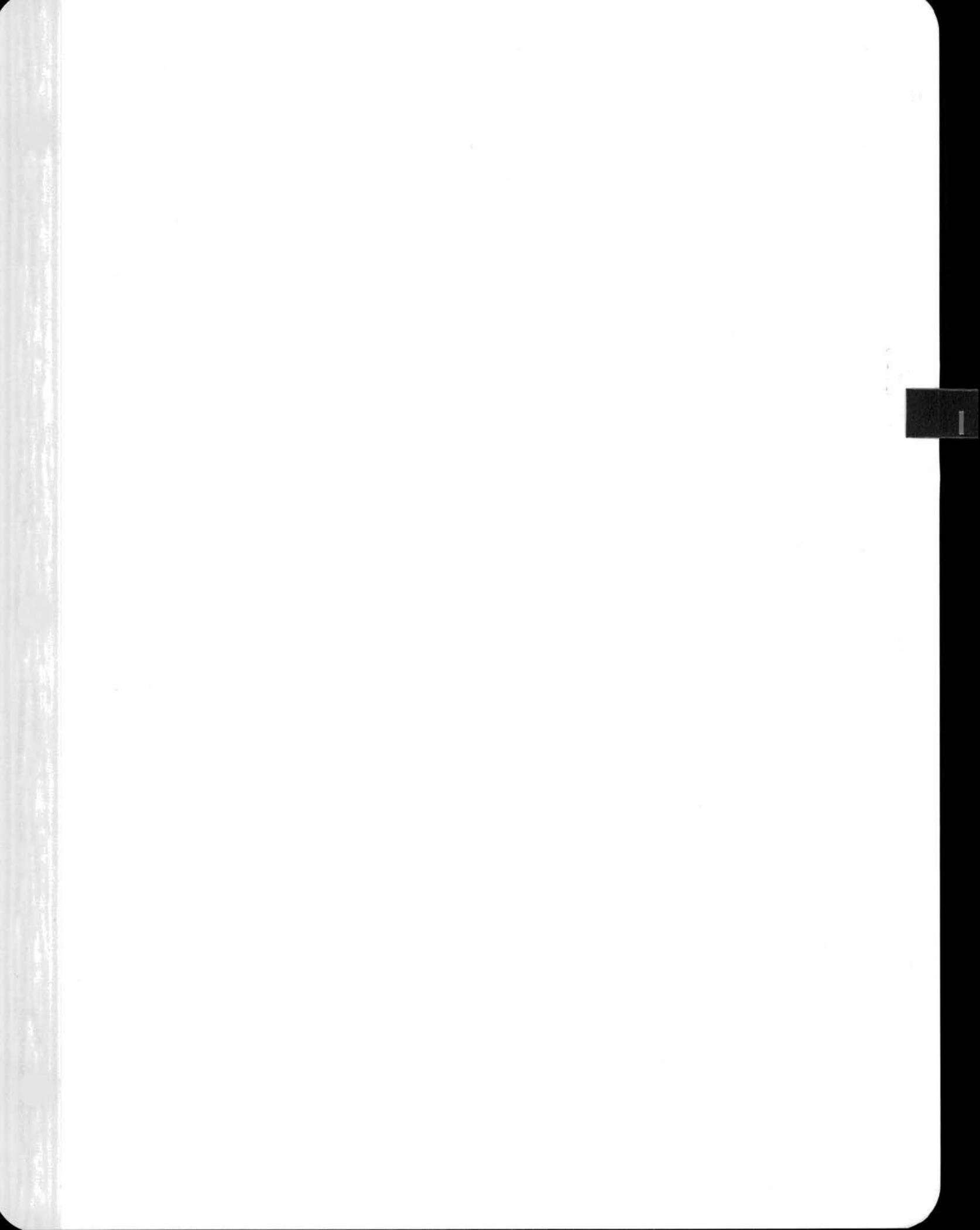
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Comment

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

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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.

K

L



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

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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)

Page No.

Comment

- 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

Page No.

Comment

- 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

Page No.

Comment

- 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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Comment

- 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

Page No.

Comment

- 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

Page No.

Comment

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)

Page No.

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.  
BOE 2V0

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

<u>Page No.</u>	<u>Comment</u>
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.



PRELIMINARY INQUIRY

Carl MacDonald

Page No.

Comment

- |    |  |
|----|--|
| 8  | He is a Land Surveyor qualified in Nova Scotia.  |
| 9  | Exhibit M-1 is introduced being a plan showing Wentworth Park which is bounded by Argyle Street, Crescent Street, Bentinck Street, Byng Avenue and George Street. He described that on the south side of Crescent Street the plan shows the first nine houses from Bentinck going toward Argyle. On the north side it shows a part of Wentworth Creek, the CNR tracks and various physical features. |
| 10 | The bushes which are shown on the plan are mostly between 4½ to 5 feet in height. The width of Crescent Street from curb to curb is 21 feet from Argyle to a point outside the Crescent apartment and from there it widens until it reaches a maximum of 35 feet at Bentinck Street.   |



PRELIMINARY INQUIRY

MICHAEL MacDONALD

Page No.

Comment

16

He is a Detective Sargeant with the City of Sydney Policy Department and has been acting as such for six years. On June 22 Gould delivered the yellow jacket to MacDonald. It was yellow on the outside with white stripes and white on the inside.

The jacket was in his care until he went to the R.C.M.P. Lab in Sackville and turned it over to them and in particular to a Mr. Duff.



PRELIMINARY INQUIRY

JOHN FRASER MacINTYRE

<u>Page No.</u>	<u>Comment</u>
65	He is the Sargeant of Detectives for the City of Sydney Police. He interviewed Donald Marshall on May 30, 1971.
66	The interview took place at his office on Bentinck Street. He was speaking to the accused on several occasions on that particular date and took the statement at about 5:00 p.m. in the evening.
66	He talked to Marshall on several occasions on May 30 and it was close to 5:00 p.m. in the evening when he took his statement from the accused. The statement is marked as Exhibit M-6.

CROSS-EXAMINATION

67	He had Marshall stay around the Station House pretty well all day. He had asked Marshall to come. He was not under arrest and neither was a Police Officer near him at all times.
68	He was told to stay around just in case he was needed. He believes he also talked to Marshall on Saturday, May 29, and he likely sent for him. He could have been there a matter of hours on the 29th as well and he was just hanging around.
69	The only time he can say for sure he was alone with Marshall was when he took the statement. He could have talked to Marshall on more than one occasion on the 29th.
70	He can't tie the amount of time down but he spent considerable time with the accused on the 29th and on the 30th. While he can say Marshall was there pretty well all day on the 29th he cannot say how long he was there on the 30th.
71	On the 30th he spoke to Marshall several times in the morning but just a few minutes at any time.
72	He confirms having spoken to Marshall several times during the day on the 30th. The conversations took place in the Detective's Offices or in the back room.

JOHN FRASER MacINTYRE (Cont'd)

Page No.

Comment

73

He was alone with Marshall in the room when taking the statement. The statement took from 4:50 to 5:12 and was written down by MacIntyre and later typewritten. He knew Marshall before the 29th to see him.



PRELIMINARY INQUIRY

ROBERT MacKAY

Page No.

Comment

43

He is 16 years old and lives at 225 Fulton Avenue in Westmount. He attended the dance at St. Joseph's Parish Hall on May 28, 1971 and left about twenty to twelve. He was accompanied by Debbie MacPherson. They went down around the Band-Shell and were sitting on the benches for 5 or 10 minutes. They walked up Crescent Street and he saw Sandy Seale lying on the side of the road. Debbie MacPherson noticed him first and they walked over and Seale said, Help me, I was stabbed. He then saw his girl home. She went to get a bus and he ran in the opposite direction.

44

He ran across the park up to Pollock's Drug Store and saw a fellow with a girl. They went back together and they saw a car pulling up and he saw Donald Marshall get out of the car. They went to a house to call the police but they were not allowed to use the phone. The police questioned him and told him to go home. He knew Sandy Seale before.

No questions by the Defence.



PRELIMINARY INQUIRY

PEARL MacMILLAN

Page No.

Comment

50

She is a registered Lab Technician.

51

She took the blood type of Sandy Seale and he was O positive.



RE-HEARING

JAMES MacNEIL

<u>Page No.</u>	<u>Comment</u>
80	He lives at 222 Mount Pleasant Street, Whitney Pier. He completed Grade 6 and he is 37 years old. He is single but is living common-law.
81	He says that he remembers what happened on Friday, May 28, 1971. At around 8:00 or 9:00 in the evening he was at State Tavern on George Street but it is no longer in operation. That is where he met Roy that evening.
82	Meeting Ebsary was accidental. He had known Ebsary for about 2 or 3 months. Ebsary lived on the rear of Argyle Street and he had been to his home on a few occasions. They had about 7 or 8 glasses of beer that night and that would be until approximately 11:00 o'clock.
83	Ebsary was kind of stocky and a little hunchback. He estimates he is about 5'7" and at the time was about 60 years old.
84	Ebsary was wearing a shawl over his shoulders and a sportcoat. The shawl was black. It would be about a 5 to 7 minute walk from the tavern to the Park. They were on the top of the hill and crossing over the street when they were approached by this colored youth and Marshall. Marshall put his hand up behind his back and MacNeil panicked.
85	He remembers Seale asking Ebsary for money saying "Dig man dig" and Ebsary said "I've got something for you". He heard the colored fellow screaming and saw him running and flopping. He never spoke to anybody in the Park before this event. He thinks he was approached from behind and everything happened so fast on the spur of the moment. He did not have any conversation with Marshall. He did see Marshall's face.
86	There was no conversation between he and Marshall. He describes Seale as being light complected.
87	Ebsary took out a knife and slit Seale up. He had not ever seen Seale or Marshall before.
88	After Seale was stabbed he ran for a piece and then fell on the ground and MacNeil heard him screaming.

JAMES MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
89	He marks on Exhibit 5 with an S the location where Seale fell. It is directly across from a house numbered 130 Crescent Street. Marshall tried to come at Ebsary but then he ran himself and MacNeil doesn't know where he went but he believes he tried to help Seale. When he arrived at the Park, he wasn't staggering but he was feeling good.
90	The plan is marked as Exhibit R-2.
91	After the stabbing he and Ebsary went to Ebsary's home on rear of Argyle Street.
91	He tries to explain how you get to rear Argyle Street but it is not clear.
92	They arrived at Ebsary's home between 11:30 and 12:00. Ebsary's daughter was home. He saw Ebsary wiping the blood off the knife underneath the sink and MacNeil went home. He heard the next day that the other fellow died.
93	The knife was only a pocket knife about 6 inches long. He starts to tell about Ebsary's son coming to see him and the Court tells Aronson he cannot go into that.
94	The next day he went to Ebsary's house and said "You didn't have to kill him" and you should have give him the money. He also told his son but when he tried to tell the Court what the son said the Court would not permit him. He then starts to explain that he told his family about it and he couldn't sleep. Aronson tells the Court that this is relevant but relates its relevance to the question of admissibility of fresh evidence. The Court says it is not relevant at this stage of the proceedings. The question was whether MacNeil had ever communicated what had happened on May 28 to the police. The Court then tells Aronson to pursue the fact that MacNeil went to the police.
95	He told the police in Sydney after Marshall was in jail for something he didn't do. He made a statement to Sgt. MacIntyre and Urquhart. This was about a week after Marshall was sentenced. He waited that long before going to the police because Roy's son told him that otherwise the whole family would be in trouble.

JAMES MacNEIL ( Cont'd )

Page No.

Comment

CROSS-EXAMINATION

- 96 MacNeil is certain he was not staggering and his walk was steady in the Park. He never stumbled or tripped before Marshall got hold of him. When Marshall had his arm up behind his back, he was not trying to keep him from falling.
- 97 He did not start shoving with Marshall and he does not recall Marshall saying anything to him.
- 98 It's "totally not true" that he and Ebsary spoke with Marshall and Seale for about 20 minutes before Marshall grabbed him. He did not talk anything about bootleggers or women in the Park. He remembers Seale saying to Ebsary "dig man dig". Seale was right in front of Ebsary at that time. Neither Marshall nor Seale had any weapons. He cannot recall he and Ebsary walking away from Marshall and Seale and being called back. This possibly could be but he could not recall it.
- 99 He does not believe they were called back. Ebsary said "I've got something for you" and at that time Ebsary's hands were down by his side and the next thing he saw was a knife coming up in an upward motion and it made contact with Seale. It was only a pocket knife not a dagger or nothing. The light at the time was fair.
- 100 There was enough light so that you could recognize faces. He can't remember what direction Marshall ran in. It would take he and Ebsary a couple of minutes to get to Ebsary's house. Ebsary's daughter at the time would be around 16. He believes the girl heard them talking when they walked in.
- 101 The next day he was there he was told not to go back to the house. He was back there the next day but never anymore. Ebsary went right to the sink that night to wash the knife. MacNeil was just sitting by the diningroom and could see him washing the knife and he would only have been about 10 feet away.
- 102 He is positive he saw blood on the knife. He believes the knife had a brown handle on it and

JAMES MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
102 (Cont'd)	was about 6 inches long. By a pocket knife he means one that just opens and closes and he is pretty sure of that.
103	He says he's positive it was a pocket knife. He never saw the knife again. He believes only Ebsary's daughter was home at that time.
104	He doesn't recall if Ebsary's wife was home.
104	He recalls giving a statement to the R.C.M.P. in February, 1982.
106	He is shown Exhibit "B" in his Affidavit which is the statement. In it it notes that he is "pretty sure I saw him wash the knife off in the sink. I can't remember if he had any blood".
107	He explains that when the police visited him, he was nervous. He is positive he saw Ebsary wash blood off the knife and there was blood on his hands too.
108	He had blood on both hands.
108	He never had any communication with Marshall or his family until this morning. During the time of the investigation no one asked him about the stabbing. At that time he was living at 10007 Rear George Street. He was living with his mother, father and the rest of the family.
109	He was not aware that Ebsary was carrying a knife and it surprised him. He had never seen Ebsary with a knife prior to that occasion. He says Ebsary was wearing a shawl on the night in question.



STATEMENT OF JAMES WILLIAM MacNEIL, NOVEMBER 15, 1971

The statement was taken at 7:25 p.m. and finished at 8:00 p.m. Detective J. F. MacIntyre took the statement and the witness was Corporal G. A. Taylor.

MacNeil says they were at State Tavern for an hour or so. He says that while walking along Crescent Street they were approached by an Indian and a colored fellow from behind. The Indian put my right hand up behind my back. The colored fellow said "Dig man dig" then Roy Ebsary said "I got something for you". He put his hand in his right pocket and took out a knife and drove it into the colored fellow's side.

The knife was driven into the lefthand side of the colored fellow and he saw Roy's hand and knife full of blood.

He did not see the Indian being stabbed.

Roy went home and I was with him. Roy washed the knife under the tap and washed his hands off. Then he told me not to say anything about it.

He asked Roy why he had done it and he said it was self defense. He indicates he was at Roy's house that night for about an hour after they arrived.

Page 43 - He went to Roy's house the next day and told him the fellow had died. Roy said it was self defense and I told him he did not have to kill him. Roy said he had two children and not to say anything to the police. I left then.

STATEMENT OF JAMES WILLIAM MacNEIL (Cont'd)

Roy's wife's daughter and son were at the house. They didn't say anything to him then but about two days afterwards his son, about 18 or 19 years old, came to MacNeil's house and drove him to the Wandlyn Motel and got his mother who came out to the car. Mrs. Ebsary got in the backseat and told him "Don't go to their house anymore because of what Roy done". The young fellow told me if I mentioned what happened to the police all your family will be in trouble and they will have to go to Court. Mrs. Ebsary was not present when he said that.

On the night of the murder I was wearing a college coat - blue with two white marks on the sleeve. Roy was wearing a black shawl over his shoulders, something like a priest wears over his shoulders.

The first one he told about this was his mother. She noticed he was not sleeping and walking around since the trial and she asked him what was wrong and I told her about the stabbing and the Indian man in jail for something he did not do. Last night I told my brother, Johnny, and he told me to go to the police. He did not know Marshall or Seale that night.



EBSARY TRIAL I

JAMES WILLIAM MacNEIL

<u>Page No.</u>	<u>Comment</u>
62	He lives at 222 Mount Pleasant Street in Sydney and is 39 years old. He is unemployed at the present time and in May, 1971 lived at 1007 Rear George Street and at the time he was employed in the landscaping buisness. He knows Roy Ebsary.
63	Prior to May 28, 1971 he knew Ebsary for about 3 months. They had a good relationship. He had met him in the State Tavern and used to drive the Ebsary car.
64	At the time his drinking habits weren't too bad but after the incident they got heavy. He would say Roy Ebsary had fair or moderate drinking habits at the time. He doesn't believe Ebsary was employed at the time. On the night in question they left the tavern between 10:30 and 11:00 o'clock.
65	He thinks they were in the tavern from about 6:00 or 7:00 o'clock and they had about 8 beer. He was feeling good but wasn't drunk and his walk was alright. Ebsary had about the same to drink.
66	State Tavern was located at the corner of Falmouth and George Street. He and Ebsary came down George Street and took a shortcut through the Park to Crescent Street heading towards Ebsary's place.
67	When we crossed Crescent Street, we were approached by Seale and Marshall. Marshall put MacNeil's hand up behind his back and he just froze. The next he heard was Seale asking Ebsary "dig man dig". I think the intentions were to rob Ebsary. Seale was standing right in front of Ebsary about 3 or 4 feet away.
68	Ebsary said I got something for you and slid his hand in his pocket and then "swish" I seen this big squirt of blood coming out of nowhere and I just went right into a state of shock. It was terrible. Marshall still had his arm but he left go of it because he tried to go for Ebsary. Seale ran and then I saw him falling, he fell down about 50 yards or so.

JAMES WILLIAM MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
69	Edwards walked away from MacNeil until MacNeil tells him to stop and it is about 40 feet which would be the distance Seale ran. MacNeil acts out what was done and there is an upward motion with his right hand.
70	Ebsary had a knife in his hand. I think it was a pocket knife. Usually that's what people carry. I can't be sure just exactly the size but a pocket knife would be a 6 inch blade but I can't be really sure. He never saw the blade. When Marshall went to Ebsary, Ebsary waved at him with an upward motion and then Marshall just vanished. I can't remember the direction Marshall took off in. He and Ebsary then went to Ebsary's place on Argyle Street.
71	He thinks it would have taken 15 minutes for he and Ebsary to get to Ebsary's home. He sat in the frontroom and Ebsary went in and was washing the knife off underneath the sink, the blood off the knife under the sink. I saw him from a distance. I stayed for a little while longer and went home. He can't recall if anyone else was there that night because he was in a state of shock. He went back to Ebsary's house the next day and told him the fellow died and Ebsary said it was self-defence.
72	MacNeil said he didn't really think and I couldn't accept it as being self-defence. I told Ebsary he didn't have to kill him. I said he should have handed over his billfold because the fellow never put a gun in his face or any darn thing. Ebsary just said self-defence. A couple of days later I was up at the house and his son and wife came up and told me not to go down to the house on account of what ... He is then stopped and said he cannot say what was told him by the wife and son.
73	As a result of the conversation with the wife and the son he never went back to the house.
73	He never told anybody what happened until he went to the police after Marshall was tried. He went to the Sydney Police about 10 days after the conviction and spoke with John MacIntyre.

JAMES WILLIAM MacNEIL (Cont'd)

Page No.

Comment

78 MacIntyre and another cop there with him wouldn't believe him so MacNeil said I'll take a voluntary lie detector test. I took that and that came out negative.

CROSS-EXAMINATION

74 MacNeil was 25 at the time of the incident and Ebsary around 60. He described Seale as being a little bit taller than Marshall.

75 He met Ebsary at the State Tavern by coincidence. Ebsary was there before him.

76 They never stopped in the Park but just kept walking through at a steady pace until they reached Crescent Street. Marshall and Seale approached them.

77 Marshall approached him from the front but I never saw him coming. He never saw Seale at any time before Marshall grabbed his arm. The first thing he remembers is Marshall grabbing his arm and pushing it up behind his back but there was not too much pressure on it.

79 He thought they were being robbed and he was afraid and thought he might get hurt.

80 Seale and Marshall were total strangers.

81 From the time he was grabbed until the knife came out and the two people were cut it would only take five or ten seconds. It all happened very fast. He understood Seale was telling Ebsary to give him his money. He does not believe there was any conversation between Seale and Ebsary before the comment "dig man dig"

81 He didn't actually see the knife at the scene and it wasn't until later at the house.

82 He saw the knife at Ebsary's residence but just had a glimpse of it. He figures it was a pocket knife and that means one where the blade folds into the handle. When they got to the house he did say something to the effect "You did a good job back there" and he told the daughter that.

JAMES WILLIAM MacNEIL (Cont'd)

<u>Page No.</u>	<u>Comment</u>
83	It's possible Seale had his hands on Ebsary but he's not sure.
84	He would say it was wrong to suggest that Marshall grabbed ahold of his arm because he thought MacNeil was drunk and staggering and was about to fall.
84	When asked if he is sure that the knife was a jack-knife, he said I figure that's the kind of knife people carry on them, a pocket knife or a jack-knife.
85	He was totally unaware that Ebsary had a knife on him. The lighting was fair at the Park that night.
87	He repeats the only place he saw a glimpse of the knife was in Ebsary's home when he was washing it under the sink and he figures it was only a pocket knife. He assumes it was the same knife used in the Park because there was blood on it and there was blood on his hands and blood on the handle.



EBSARY TRIAL II

DEPUTY CHIEF MICHAEL JAMES MacDONALD (Voir Dire)

Page No.

Comment

142

He is Deputy Chief and has been a member of the police force for 37 years. In 1971 he was a Sargeant. He is shown the Statement of Ebsary where he signed as a witness and says he has no independent recollection of the evening. The practice was such that he would not have said anything at all and he wasn't allowed to ask questions. If there was a question he wanted asked, he wrote it on a piece of paper and passed it to MacIntyre.



EBSARY TRIAL II

CHIEF JOHN MacINTYRE (Evidence on a Voir Dire)

<u>Page No.</u>	<u>Comment</u>
128	He is Chief of Police in Sydney and has been for 8 years. He has been with the Department since May, 1942 and in 1971 he was Detective Sargeant in charge of the investigation of Seale's death.
129	On November 15, 1971 he took a Statement from the accused Roy Ebsary. Prior to that time he did not have any contact with Ebsary in relation to this particular investigation.
130	On November 15, 1971 he had a visit from James MacNeil and his brother and as a result of conversations he had with them and Statements he took from them it seemed fit to take a Statement from Ebsary. The Statement is in MacIntyre's handwriting and Sargeant Mike MacDonald was present when it was taken. Prior to it being taken he and MacDonald were the only two Police Officers who had contact with Ebsary.
131	The signature of Ebsary was placed on it by Ebsary. Prior to giving the Statement, Ebsary was given a warning that he need not say anything and that he had no promise or favour and no fear from any threat whether he said anything and anything that he said could be used as evidence. Ebsary appeared to understand the warning.
132	His practice in taking Statements is in all cases to ask the party if he wishes to read it or examine it. His procedure was to do all the talking himself and the man sitting as a witness was not to do any talking and if there were any questions he wanted to ask, he would have to write them down and pass them to MacIntyre. The Statement notes he started to take it at 9:15 and finished at 10:10.
135	The Statement from his son Gregory notes that it started at 9:55 and was over at 10:20. The Statement of Mary Ebsary commenced at 8:45 and was over at 9:07. Gregory's was witnessed by Corporal Gerald Taylor. Mary's was witnessed by William Urquhart.

CHIEF JOHN MacINTYRE (Evidence on a Voir Dire)

Page No.

Comment

CROSS-EXAMINATION

- 137 He explains the difference in time as being a mistake and denies that he ever examined two of the witnesses at one time (there is an overlap in time in the recorded time of completion of Roy Ebsary's Statement and the commencement of Greg Ebsary's Statement).
- 138 He says he did not have any conversation with Roy Ebsary prior to commencement of the Statement.
- 139 There was something said to Ebsary but not until he was warned. He expects he would have told Ebsary he had fresh evidence on the Seale murder and evidence that there had been a disturbance in the Park area between Ebsary and Jim MacNeil and two others. Ebsary then started to talk.
- 140 It was not the practice in those days to note on the Statement that a warning had been given and have the witness sign that he understood the warning.
- 142 His practice when sending someone to pick up a witness is to tell them not to have any conversation of any kind with the witness.



## EBSARY TRIAL II

### CHIEF JOHN MacINTYRE

<u>Page No.</u>	<u>Comment</u>
161	In 1971 he was Sargeant of Detectives. He had been in detective work for over 20 years.
162	In an attempt to find the knife the area was searched and the creeks were drained to the best of our ability. No weapon was found. He first had contact with MacNeil on November 15, 1971 which was following the conviction of Marshall. As a result of ocnversations he had with MacNeil, he took a statement from Ebsary.
163	On the same day he took statements from James MacNeil and his brother, Mrs. Ebsary and Gregory Ebsary. Following the taking of the statements he consulted with the Crown, being the late Don MacNeil and Mr. Levatte. He requested that because he had handled the Marshall case he thought another force should look into it and the Crown arranged for the R.C.M.P. to become involved and he had nothing more to do with it. The statements he took were turned over to the Crown.
164	Ebsary's statement is marked Exhibit No. 2. Prior to taking the statement he gave Ebsary the normal warning.
165	He explains his practice which he followed in taking statements.
166	He always gives a warning and asks the witness if he understood it and he doesn't recall ever being answered in the negative. He reads the statement to the jury.
<u>CROSS-EXAMINATION</u>	
169	He doesn't know whether the police picked Ebsary up or merely contacted him and asked him to come to the station.
171	It is his practice to indicate the time the statement commences and the time it is finished. On Greg Ebsary's statement it notes starting at 9:55 and finishing at 10:20. A witness would not leave the room while he is being questioned.

CHIEF JOHN MacINTYRE

<u>Page No.</u>	<u>Comment</u>
172	He never takes two Statements at one time or gets involved in the second one when he takes the first one.
175	He would not have told Ebsary any of the contents of MacNeil's statement. It was he who decided, on advice of the Crown, that there was sufficient evidence to lay a charge against Donald Marshall.
178	The investigation was taken over by two R.C.M.P. Officers from Halifax. One was Staff Sargeant Allan Marshall and the other he believes was Sargeant Smith.



EBSARY TRIAL II

JAMES MacNEIL

<u>Page No.</u>	<u>Comment</u>
75	He lives at 222 Mount Pleasant Street, is 39 years old and works part time at casual labour.
76	He had known Ebsary a couple of weeks prior to May, 1971.
77	He met Ebsary at the tavern between 6:00 and 7:00 in the evening.
78	He remained in the tavern for about two hours and had about 7 or 8 beer. It was after 10:00 o'clock when they left.
79	They were headed for Ebsary's home. When they got to the Park, they took a shortcut. There is a bridge there which is now concrete but used to be wood. We came up at Crescent Street and were on the sidewalk.
81	He indicates they were heading towards south Bentinck Street. They were approached by Sandy Seale and Marshall. Prior to that time they did not know either Seale or Marshall.
82	They approached us from the front but then Marshall had my right arm and started coming counter-clockwise and put it behind my back. At that time Seale was facing Ebsary on the inside side, that is from the street. He and Marshall would have been out by the curb. I heard Seale telling Ebsary dig man dig.
83	I figured it was probably a robbery. I didn't have any money and I was kind of shook up. Ebsary said I've got something for you. Seale's hands were just lying by his sides.
84	Ebsary came out of his pocket with his right hand and he shows an upward motion and made contact with Seale in his abdomen. I didn't see if Ebsary had anything in his hand but I seen blood coming out of the deceased. I heard a scream coming from Seale and I seen him, he ran.
85	Seale sort of ran to the other side of the street. I think Ebsary made a swing for Marshall. I think Marshall was trying to help his friend or something.

JAMES MacNEIL

Page No.

Comment

- 86 Marshall reached toward Ebsary who made sort of a downward motion with his right hand and after that Marshall just disappeared.
- 87 It took them about 10 minutes to go to Ebsary's house and they went into the house. He never saw anyone else there that night. He sat out in a room right off the kitchen and looked in the kitchen and saw Ebsary cleaning the knife.
- 88 He cannot describe the knife but it had a brown handle. He cannot remember the length of the blade. He stayed for about an hour and he did not talk to anyone other than Ebsary.
- 89 He went there the next day after he heard the young fellow had died. Ebsary said it was self-defense.
- 90 I said you didn't have to kill him and you should have give him the money and Ebsary said it was self-defense.
- 91 Ebsary said I've got a family and we'd have to go to Court. I told him he should have give him the money and this thing wouldn't have happened because he wasn't armed and he wasn't cursing. Ebsary just said it was self-defense. He never went back to the house again.
- 92 After Marshall was convicted, I went down and made my statement to the police and I don't think they believed him. At the time he knew Ebsary's daughter, Donna.

CROSS-EXAMINATION

- 94 He has Grade 6 education and finished school at age 16. He is now taking Valium for his nerves.
- 96 He is not sure what time they arrived at the tavern, it could be between 6:00 and 8:00. It was sometime in the eraly evening.
- 98 It could have been 11:00 o'clock when they left the tavern. He figures he was approached by Seale and Marshall from behind and Marshall put his arm up behind his back.

JAMES MacNEIL

Page No.

Comment

- 99 Marshall never said a single word to him and I never heard him saying anything to Ebsary. He was saying Marshall was wrong to say they had a half hour conversation before the incident. It happened fast but in a sense I think I did see Marshall before my hand was put behind my back.
- 100 Ebsary looked a lot spryer at the time than he does now. He knew Ebsary for about two months before the event.
- 101 When Marshall lput his arm up behind his back, he was afraid.
- 102 He didn't see any knife in Ebsary's hand in the Park. The lighting was only fair at the time.
- 103 There were no lights on the bridge at that time.
- 104 He couldn't say for certain that Seale and Marshall were not armed but he didn't see any weapons.
- 106 We were going pretty fast back to the Ebsary's house.
- 106 They were walking through the Park minding their own business when they were attacked by Seale and Marshall.
- 107 He is positive he saw blood on the knife in the kitchen.
- 108 He discussed it with the police after Marshall was convicted and never discussed it again until on February 8, 1982.
- 109 He adopts his evidence in the Appeal Court that he had a glimpse of the knife before it stabbed Seale and it was only a pocket knife.
- 109 He does not recall seeing Donna Ebsary at Ebsary's house on that night nor did he see Mary Ebsary. There wasn't much time to think before Ebsary used his knife.

JAMES MacNEIL

Page No.

Comment

110

When he said it was only a pocket knife, he just presumes that's what the type of knife people carry.



EBSARY TRIAL III

SERGEANT MICHAEL MacDONALD

Page No.

Comment

235

On June 2, 1971 he received the dark colored jacket from Mrs. Seale and on June 3 he received a jacket from Roy Gould. The jackets were placed in my locker at the Sydney Police Department.

236

On June 16, 1971 he turned both jackets over to Evers at the Crime Lab in Sackville.







MARSHALL TRIAL

CARL MacDONALD

Page No.

Comment

He is the surveyor who prepared the plan of the Wentworth Park. His evidence starts at page 31 and continues to 38.



MARSHALL TRIAL

SGT. MICHAEL MacDONALD

Page No.

Comment

- 54 He is a Detective Sergeant with the Police. He came into possession of the yellow jacket from Roy Gould and he gave it Evers at the Crime Lab. He also obtained Exhibit 4, being the brown jacket from Mrs. Seale and turned it over to the Crime Lab.
- 55 He also turned over a pair of overalls and the piece of tissue. He attended at the City of Sydney Hospital on the night of the stabbing approximately 12:10 a.m.
- 56 He saw Maynard Chant about 2:00 a.m. in the morning at the City Hospital. He talked to Chant for 2-3 minutes and sent him down to the Police Station.
- 57 He saw Chant at the Police Station about 3:20 and he was present with Sgt. Len MacGillivray, Corporal Martin MacDonald and Mr. Chant's father. He didn't see him again until the following Sunday and he was present with Detective Sgt. John MacIntre. He asked if Chant told him anything when they met at the Sydney City Hospital and there is objection by the Crown. Following argument, Justice Dubinsky rules that no reference could be made to the conversation other than the fact that it was held.
- 66 MacDonald said he saw Chant in Louisburg on May 30 on the street.
- 67 MacIntyre was with him and it was in the afternoon and Chant got into the Police car. They were with him for a couple of hours. MacDonald says he may have seen him once more during the week but doesn't know which day it was.

MARSHALL TRIAL

SGT. MICHAEL MacDONALD (continued)

<u>Page No.</u>	<u>Comment</u>
68	He says he saw him again in the Detective's office at the Police Station in Sydney and he would have been there for the entire afternoon but he can't give an exact date.
69	He said he saw Marshall at the Police Station several times following the incident. He was there on the Saturday morning for 4-5 hours.
70	Marshall had been asked to be there by Sgt. MacIntyre. He saw him again on Sunday morning at the Police Station and Marshall was there again for 4-5 hours. They had him for a line-up on Sunday morning.



MARSHALL TRIAL

PEARL MacMILLAN

Page No.

Comment

176

She is a Lab Technician at the City Hospital in Sydney. She typed Sandy Seale's blood has 0 positive.

177

0 positive is the classification having the largest number people.



STATEMENT OF GEORGE MacNEIL AND SANDY MacNEIL, MAY 31, 1971

This statement was taken at 6:30 p.m. We do not know who witnessed the statement.

George is 18 years old and Rod is 17 years old and both live at Coxheath.

They left the dance around 11:40 and walked to the Park. They saw two men hanging around. One was grey haired with a grey or white topcoat. He was 5'9", 180 lbs. with hair flat on his head and was trampish looking. The second man was about 6', was average size and with dark hair and was in late 30's or early 40's. He had a brown short jacket on. He saw these two people speak to a fellow and a girl sitting on a bench closest to the railway tracks and asked them for a cigarette.



STATEMENT OF SCOTT MacKAY, JUNE 2, 1971

This statement was taken on June 2, 1971 at 6:30 p.m. and witnessed by MacIntyre.

MacKay is 16 years old and lives at Westmount. He left the dance at 11:45 with Debbie MacPherson who wanted to get the North Sydney bus. They were walking on Crescent Street when Debbie noticed Sandy Seale lying on the roadway. They went over and asked him what was wrong and Seale said he was stabbed and needed help.

MacKay told Debbie to go get a bus and he then ran to find a person to get help. He ran up to the Drug Store and found a boy named Livingston from East Bay and both of them went back. By the time they got there a car slowed down and Marshall got out. I told Marshall to go to a house and call the police and Marshall said no. Both of them went to the house and asked a man to call the police.

The police questioned me and told me to leave. He asked Marshall who had stabbed him. Marshall said a man with glasses and a younger man with him. He said the man with the glasses stabbed Sandy and said that is for you, buddy. Junior then tried to get away and the man stabbed him in the arm.



STATEMENT OF DEBORAH MacDONALD COUTURE, MARCH 29, 1982

This statement is found in Volume G-2.

She says approximately three years ago she went to Boston with Donna Ebsary. At that time Donna knew Deborah was with the National Parole Service. She told Deborah that her father had killed the guy that Donald Marshall was serving time for. She couldn't remember the name and Deborah asked her if it was Sandy Seale. Donna related how her father came home with blood on his shirt and a knife which he was cleaning in the kitchen. She referred to a statement by the other guy that "that was some job you did on the nigger". Donna allegedly told Deborah that Donna and her brother, Greg, went to the police and saw Bill Urquhart and told him they knew who did the murder but Urquhart told them he had the man responsible and for them to go home. Deborah refused to sign the statement.



PRELIMINARY INQUIRY

Dr. Mohammed Naqvi

Page No.

Comment

- 2 Seale was brought into the Emergency Room in a state of shock with no blood pressure and no pulse and was pale and unresponsive. This was approximately between 12 midnight and 1:00 o'clock on May 29. The patient was given 4 units of blood and was placed on a respirator and transferred to the operating room.
- 3 He describes in detail the damage which he observed and the procedures followed in an attempt to repair the damage.
- 4 In spite of procedures taken Seale continued to be in a state of shock with no response. Again there is extensive discussion of the procedures which were followed.
- 5 During the entire procedure 27 pints of blood were given to the patient but to no avail. He was pronounced dead between 8:00 and 10:00 a.m. on May 29.
- 6 Seale's blood type was 0 positive. The patient was brought in with the small bowel outside the abdomen. There is an opening in the abdomen which was made by a sharp object. The injuries would be consistent with a stab wound of any sharp object. The death was caused by the stab wound due to a sharp object.
- There were no questions asked of the Doctor by counsel for Marshall.



EBSARY TRIAL I

DR. NAQVI

Page No.

Comment

- 98 He is admitted to be qualified to give evidence in the field of general surgery.
- 99 He first saw Seale some time after midnight on the night of the stabbing.
- 100 Seale was about 5'6" or 5'7" and an average build. He was unconscious, did not have any blood pressure and had a wound in his abdomen and there was intestine lying over the abdomen at that time.
- 101 The wound would be as wide as his finger and about 3 or 4 inches. The wound extended from the abdomen on the front part all the way to the back where the aorta lies. The wound would be a depth of a good 6 inches, maybe more.
- 102 He describes the surgical procedure that was carried out.
- 103 Seale died at 8:00 o'clock in the evening. The cause of death was his abdominal injuries as a result of an injury by a sharp object.

CROSS-EXAMINATION

- 103 There was just one injury, that is just one stab wound to Seale.
- 104 The wound would be somewhere around the umbilicus and that is below the ribcage.
- 105 There was no autopsy done and they never actually measured the depth of the injury. He could not describe the incident without his notes.
- 106 - 107 He is referred to earlier evidence and there is some confusion over the time of death.
- 109 He agrees he is not sure exactly how deep the injury was. At the time he was not particularly interested in that point.

RE-DIRECT EXAMINATION

It is attempted to have him say the minimum length of blade required to cause the injuries he saw.



EBSARY TRIAL II

DR. NAQVI

Page No.

Comment

- His qualifications as a surgeon are admitted. He practices surgery in Sydney for approximately 15 years.
- 196 He doesn't know the exact time he saw him. The admission record is noted at 2:00 a.m.
- 198 When he first saw him, there was a stab wound in the abdomen with the evisceration of the small bowel over the abdominal wall. He was in a state of shock with no blood pressure. He was taken to the operating room directly and an emergency operation was performed. The wound was as a result of a sharp object.
- 199 An incision above and below the wound was extended. There were no tears in the small bowel but there was a tear into the large bowel. He describes the various damages he found.
- 201 He was taken back into the operating room in the morning to repair the aorta and it was repaired.
- 202 The patient was pronounced dead at 8:05 p.m. The cause of death was massive hemorrhage and abdominal injuries. He had been given 27 pints of blood and this would be almost total body blood replacement.
- 203 The minimum length of blade that could have inflicted that injury would be approximately 3½ inches.

CROSS-EXAMINATION

- He is relying on the notes of the hospital records to give his evidence. He does not have an independent recollection of the events.
- 206 He was with Seale from the time he was admitted until he died.
- 207 Once anyone cuts into the abdomen and the cut is big enough, the pressure pushes the intestine out.
- 208 Running or falling or the extruding of the intestine would not cause the injury to tear more. There was only one stab wound.

DR. NAQVI

Page No.

Comment

209

The injury was located approximately around the belly button.



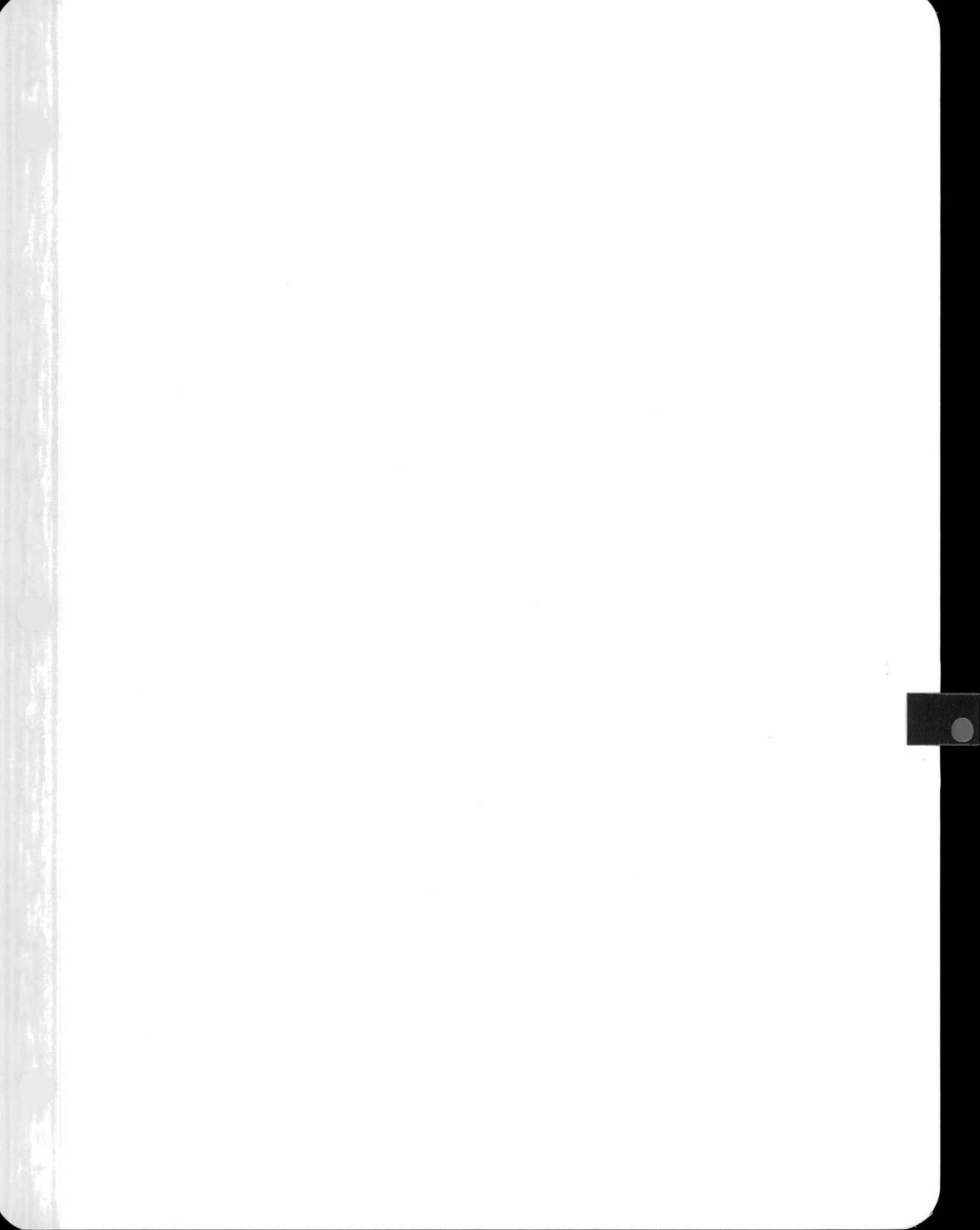
MARSHALL TRIAL

DR. MAHOMAND NAQVI

Page No.

Comment

- 19 He saw Seale in the emergency room. His bowel was outside his abdomen and an opening of approximately 3"-4" wide was in the abdomen. He had no pulse or blood pressure and was on the verge of death and he was given blood.
- 20 Over 15-20 pints of blood were administered. The injuries were caused by a sharp pointed object that penetrated through the abdomen and all the way to the back.
- 21 Cause of death was injuries to the bowel and his vessels.
- 22 He says there was only one insertion of the sharp object into Seale's body.





PRELIMINARY INQUIRY

JOHN PRATICO

Page No.

Comment

- 40 He lives at 201 Bentinck Street and is 16 years old and he knows Donald Marshall for about a year. He saw Marshall in the late hours of May 28, 1971 in Wentworth Park. He does not know if he saw Marshall before that but believes he saw him on George Street. He then says he spoke with Marshall on George Street and left him and went down Argyle Street.
- 41 He believes Marshall suggested that Pratico come down to the Park or something like that. Pratico admits that he is nervous. He says he met Marshall on George Street by the store. He again says he believes Marshall said something about coming down to the Park. Pratico left and went down Argyle Street and turned up Crescent Street and walked up the railway tracks and went into the bush and started to drink a pint of beer. He is shown Exhibit M-1 and shows where in the bush he was.
- 42 The bush pointed out by Pratico is opposite the house designated as D. W. Campbell. He saw Marshall and Seale talking. Marshall was on the sidewalk and Seale was facing him. They were talking for a while and they were arguing and I saw Marshall haul something from his pocket and stab Seale. When Seale was stabbed, he dropped. He had known Seale before this night. He does not know what Marshall did then because Pratico started to run. He ran down the tracks by the bridge and up Bentinck Street.

No questions by the Defence.



STATEMENT OF JOHN PRATICO, MAY 30, 1971

It does not indicate when the statement started to be taken but it concluded at 6:00 p.m. The statement was taken by Detective J. F. MacIntyre.

Pratico is 16 years old. Friday night he was at St. Joseph's dance and left around 12:00 p.m. He saw Marshall and Seale between the store and the dance hall and was talking to them. They wanted him to walk through with them and he said no.

He went down Argyle and over Crescent Street. He was over by the Courthouse when he heard a scream. He looked and saw two fellows running from the direction of the screaming. They jumped into a white Volkswagon with blue license and white numbers on it. One had a brown corduroy jacket and was about 5'5" with dark complexion, heavysset. The other had a grey suit, was about 6' tall, husky with a red sweater like a pullover. Pratico started to run home.

He has not seen the Volkswagon since but he saw the two fellows twice last night walking in the park. He saw the two guys at the dance. Robert Patterson said they were from the "Toronto Saints Choice Bike Gang".

STATEMENT OF JOHN PRATICO, MAY 30, 1971

The statement was taken at 6:00 p.m. and was witnessed by Sgt. MacIntyre.

Pratico is 16 years of age. He left the dance around midnight and he saw Marshall and Seale between the store and the dance hall and was talking to them and they wanted Pratico to walk with them and he said no.

He went down Argyle Street and over Crescent Street and was over by the Court House when he heard a scream. He looked and saw two fellows running from the direction of the screaming. They jumped into a white Volkswagen. One had a brown corduroy jacket, 5'5", dark complexion, heavy set. The other guy was in a grey suit and was about 6' tall, husky and had a red pullover sweater.

He saw the two fellows twice last night walking near the Park. Bobby Patterson had said they are from the Toronto Saints Choice Bike Gang.







MARSHALL TRIAL

JOHN PRATICO

Page No.

Comment

- 118 He says when he left the court room he discussed the case with Mr. Khattar and Mr. Marshall, Sr.
- 119 When he spoke with Mr. Khattar, he then spoke with Mr. MacNeil and Mr. MacIntyre and Mr. MacDonald.
- 120 He first saw Marshall on May 28th at St. Joseph's Hall and he was with Sandy Seale and he walked with them down as far as the Park.
- 121 When they reached the corner of George and Argyle, Seale and Marshall went into the Park and he went up Argyle to Crescent. He went down Crescent as far as the railway tracks and went behind a bush and stayed there. This would be around 11:30-11:45. He observed Marshall and Seale talking and it seemed like they were arguing.
- 122 He knew Marshall since last summer and Seale for a couple of years.
- 123 While Seale and Marshall were arguing, Marshall's hand came out, his right hand, and he plunged something into Seale, like it was shiny. The shiny object was plunged towards Seale's stomach. Seale fell and that's the last I saw. He started running up Bentinck Street. Marshall was wearing a yellow jacket.

CROSS-EXAMINATION

- 125 He was drunk on May 27 and May 28.
- 126 He says he didn't see Marshall at the dance or near the dance hall but saw him down the road.

MARSHALL TRIAL

JOHN PRATICO (continued)

<u>Page No.</u>	<u>Comment</u>
127	He was liquor sick at the dance on May 28 and was taken into the washroom and given some help by some of his friends.
130	He says he said hi to Marshall and Seale just before you get to the Park but then he says he's not sure it was them two.
134	He saw Marshall on the Saturday or Sunday. It was the day the detectives picked him up. Sgt. MacIntyre sent for him on more than one occasion and he thinks it was twice.
136	He does not recall making a statement to Mary Teresa Paul, who was with Gordie Lynch, that Marshall did not do the stabbing. He is not prepared to say he didn't make the statement but just that he cannot remember.
137	He met Tom Christmas on a Saturday in Wentworth Park and he was sober and he told Christmas that Marshall did not stab Sandy Seale.
138	He started to drink 7:00-8:00 o'clock in the evening on May 28.
139	He drank half a bottle of wine, half a dozen quarts of beer and two or three pints. He thinks he also was drinking something else.
144	He knows he saw Marshall and Seale on Crescent Street and these were the only two people he noticed.
146	He drank a full bottle of beer while he was squatted behind the bush. He opened it as soon as he got there and drank it kinda fast. I saw Marshall's hand come out like this and go toward Mr. Seale's stomach and that's all I saw.

MARSHALL TRIAL

JOHN PRATICO (continued)

<u>Page No.</u>	<u>Comment</u>
147	He thinks Seale put his fists up.
148	Marshall took his right hand and plunged it into Seale's stomach. He says that yesterday afternoon in the presence of the Sheriff he told Khattar that Marshall did not stab Seale.
149	He agrees that Khattar said he did not want to talk to him unless the Sheriff was present and there was no conversation until the Sheriff was present.
149	Justice Dubinsky tries to limit the examination Khattar is conducting on the conversation with Pratico to a previous inconsistent statement. Pratico agrees the conversation he had concerned the evidence he gave to Judge MacDonald on the Preliminary Hearing.
154	He agrees that after making this statement to Khattar and the Sheriff, he also told the Crown Prosecutor that Marshall didn't do the stabbing.
155	He is asked to whom else he made the statement and that question was not permitted by the Judge.
155	Sgt. MacIntyre was present when the statement was made.
160	He is questioned by Judge Dubinsky and says that he first of all had a conversation with Donald Marshall, Sr. in the hall and after this conversation, Mr. Marshall got Mr. Khattar to come.

MARSHALL TRIAL

JOHN PRATICO (continued)

<u>Page No.</u>	<u>Comment</u>
160-171	There is considerable discussion in the absence of the Jury as to the questions which can be put to the witness concerning threats made to him or conversations he had with other people. The Judge rules he can be asked why he made the inconsistent statement and tell the Jury that he was scared but could not go on to ask the basis for his fear.
172	Pratico says he saw Tom Christmas and Teresa Mary Paul and Artie Paul some time but it was not yesterday.
173	He says before he discussed it with Khattar, he saw Donald Marshall, Sr. He said he made the statement yesterday to Khattar which is inconsistent with his evidence because he was scared of his life being taken.
174	He says his fear of his life being taken was not because of anything the accused said to him at any time.



NOTES OF THE DISCOVERY EXAMINATION

OF JOHN PRATICO

Page No.

Comment

276, Q. 53

He is asked if he saw anyone stab Sandy Seale and he says no. He was asked why he made the statement and he said, "I take it there were a few threats made to me, but I really don't know." "They said, if you don't tell us what happened, it's the County Jail. I was scared of anybody when you're threatened to go to jail at a young age."

278, Q.68

He was referred to a statement he gave to Corporal Carroll in 1982 wherein he again referred to the fact that MacIntyre told him that he did know what happened and if he didn't tell, he would be put into jail. He confirmed that that is what was said to him. He repeats that the police said that if you don't tell us what happened, you're going to go to jail.

280, Q.89

He confirms that the Sydney Police drove him to the Nova Scotia Hospital after the Preliminary Hearing but before the Trial and says this was arranged by Dr. Gaum.

282

He agrees with the statement contained in his Affidavit of July 15, 1982, to the effect that he confessed to witnessing the murder under duress and pressure being exerted by MacIntyre and Urquhart.



STATEMENT OF JOHN PRATICO, JUNE 4, 1971

This statement was taken on June 4, 1971 at 10:45 a.m.

Pratico is 16 years old. He said last Friday night he went to the dance and names certain people he met there. He was at the dance until about 10 or 5 to 12 and walked out by himself. He says he met Marshall and Seale and they walked down to the corner of Argyle Street and they asked him to go down to the Park and he said no.

Pratico went down Argyle Street and over Crescent Street walking on the Park side. He saw Sandy and Donald on the other side of the bridge stopped and did not pay attention to them and he kept walking for the tracks. On the tracks he stopped. By then Donald Marshall and Sandy were up where the incident happened. He heard Sandy say to Junior "you crazy Indian" and then Junior called him "a black bastard". They were standing where the incident happened and they were still arguing and talking low and he could not make out what they were saying. (Note Pratico says he stopped on the tracks "where I showed you").

Seale was facing the tracks and Marshall facing the street. He saw Marshall's hand going toward the left hand side of Seale's stomach and he drove his hand in, turned it and pulled it back. I saw Sandy fall to the ground and Marshall running up Crescent Street toward Argyle Street.

Pratico ran home up Bentinck Street. He was standing on the track at the time Seale fell to the ground and he was drinking a pint of beer. There was no one else around. He had known Seale for 4 or 5 years and Marshall since last summer. He had never quarrelled

with either boy. He was talking to Seale at the dance about 10:30 p.m. He would be about 30 to 40 feet from Seale and Marshall when they were on Crescent Street. They were standing there about 10 minutes arguing. There were some bushes between he and them which would make it easier for Pratico to see them than for them to see him. He saw Marshall since the event on Saturday or Sunday. The statement is taken by MacIntyre and witnessed by Urquhart and finishes at 11:30 a.m.

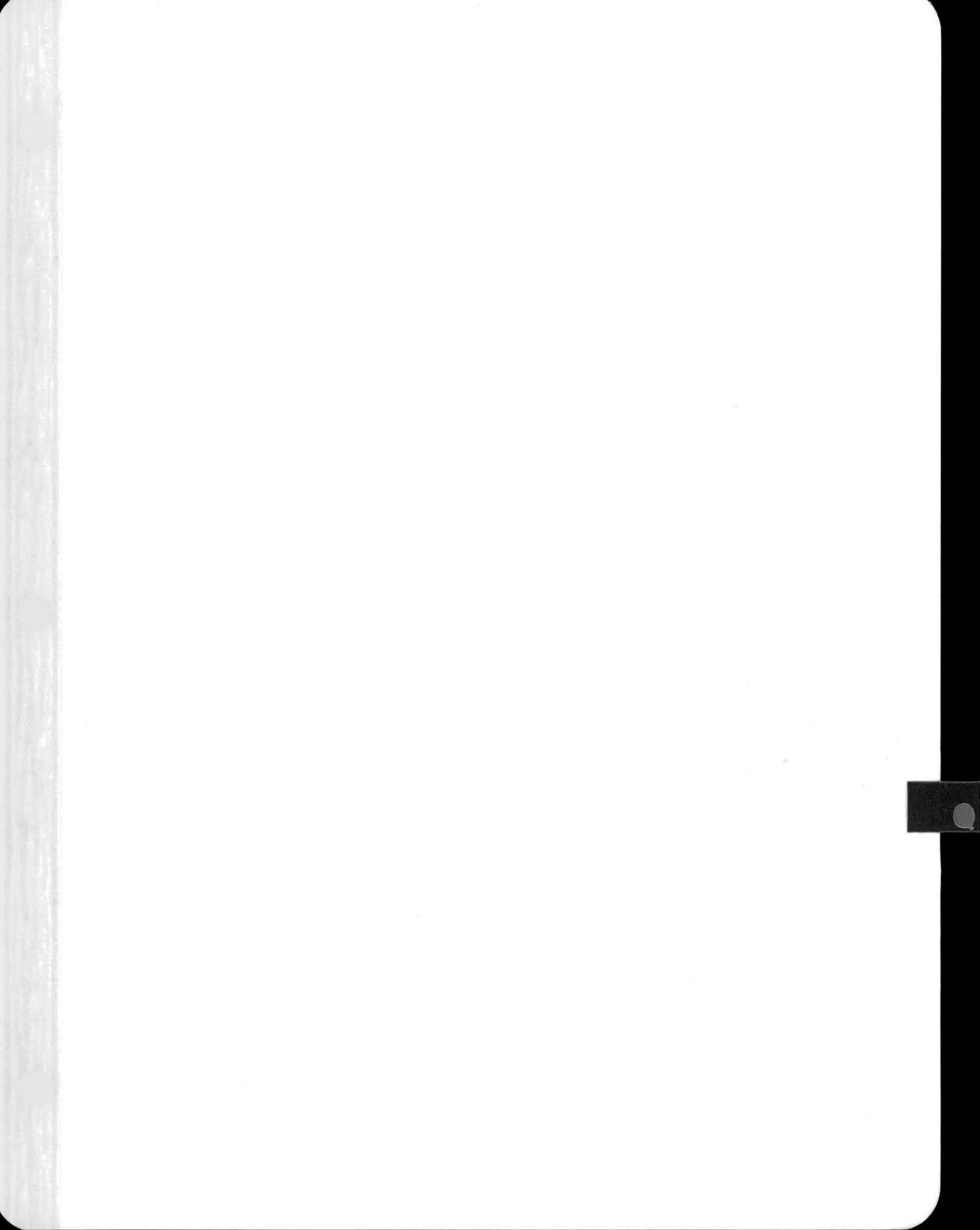


STATEMENT OF ARTHUR PAUL, JUNE 2, 1971

The statement was taken on June 2, 1971 at 8:00 p.m. and witnessed by MacIntyre.

He was with Marshall on the Friday night at Tobins. Junior left to go to the dance.

He saw Junior on Saturday morning about 2:00 or 2:30 a.m. Junior told him that he and Sandy met on the bridge at the Park and there were two guys up on the hill and they were asking for a match. The two fellows asked Junior if he was coloured and he told them he was an Indian. The fellow said he hated niggers and the short fellow with the white hair stabbed Sandy and then stabbed Junior in the arm. They had asked Junior where there were bootleggers and women. He says they also asked them to meet them in the Park tomorrow night.





NOTES OF DECISION OF THE APPEAL COURT ON THE REFERENCE

<u>Page No.</u>	<u>Comment</u>
1	The Reference is made pursuant to paragraph 617(v) of the Criminal Code.
6	The powers of the Court on the Reference are referred to and are contained in Section 613 of the Criminal Code. In particular Section 613(i)(a)(iii) provides for the Appeal being allowed if there was a miscarriage of justice.
8	The Court sets out that if it concludes that the decision of the jury is unreasonable or cannot be supported by the evidence, it must then determine whether a new trial should be ordered or a verdict of acquittal entered.
25	Reference is made to the evidence of Pratico at trial. In particular the fact that on the day following the murder when he talked to Mary Theresa Paul he did not mention Marshall had done the stabbing and also he told Tom Christmas that Marshall did not stab Sandy Seale.
31	Reference is made to the fact that no attempt was made by the Defence to produce evidence of Marshall's blood grouping.
32	It is stated that in order for a jury to reach the conclusion they did it must have drawn an inference that the uncertainties of the accounts of the eyewitnesses and their failure to immediately inform the police of what they had seen had been caused by some pressures brought to bear upon them on behalf of the accused.
34	Of all the evidence given on the Re-Hearing, that of James MacNeil was the most significant and met the test of fresh evidence that could be properly produced. The Court says that MacNeil's evidence was such that if believed it would establish that Marshall had not committed the crime.
35	The Court says even if MacNeil's evidence were not completely accepted, it would permit a Court to say that no jury properly instructed with such evidence before it could reach a verdict of guilty of the offence charged.

REFERENCE (Cont'd)

<u>Page No.</u>	<u>Comment</u>
41	Reference is made to MacNeil's Affidavit (Was this introduced as part of the case).
45	The Court finds the evidence of Donna Ebsary, Gregory Ebsary and A. J. Evers to be highly speculative and by itself not of much force in determining the guilt or innocence of Marshall. It is only to the extent it is consistent with the evidence of MacNeil that it has any independent validity.
47	Reference is made to the statement made by Chant on May 30, 1971. The Court notes that no reference to the statement was made at trial and counsel for Marshall did not know of its existence.
49	The Court says that Chant has changed his story so many times that in the Court's opinion no weight can be placed upon his evidence either at the trial or now. It is noted that his evidence could no longer be of much assistance to the Crown should a new trial ever take place.
49	The Court states that with the consent of counsel for the Crown the Appellant produced an Affidavit in which Pratico indicated he had not in fact been a witness to the actual killing even though he had said so at trial, together with a second Affidavit from a psychiatrist indicating Pratico had been a patient prior to the time of the murder and continues under psychiatric treatment to the present day.
50	Also referred to is the statement which Pratico gave to the Sydney Police on May 30, 1971 and which is attached to the Affidavit of Pratico.
51	There is reference to the statement given by Patricia Harris on June 17, 1971. Reference is also made to Marshall's evidence and the fact that it now includes many facts which if they were known to Marshall at the time of his trial must have been wilfully held back from the Court at that time.

REFERENCE (Cont'd)

Page No.

Comment

- 61 The Court says there is evidence before them to the effect that counsel for Marshall at the time of his trial had no knowledge of the prior inconsistent statements given to the police by Chant, Pratico and Harris. The Court notes it must determine whether the conviction of Marshall is unreasonable, or cannot be supported by the evidence, or whether an injustice has been done.
- 63 The Court notes Marshall obviously is not prepared to admit at this stage that he was engaged in a robbery. The Court notes that Marshall's new evidence "despite his evasions, prevarications and outright lies" supports the essence of MacNeil's story that Seale was not killed by Marshall but died at the hands of Ebsary in the course of a struggle during the attempted robbery. In the Court's opinion Marshall's evidence, old and new, if it stood alone, would hardly be capable of belief.
- 64 The court notes that "unfortunately" MacNeil's evidence was not adequately tested by rigorous cross-examination by Crown counsel. MacNeil's evidence is clearly capable of being believed "even though the various members of this Court may have varying degrees of belief as to some aspects of that evidence". It is noted that the evidence even if much is not believed would make it impossible for a jury to avoid having a reasonable doubt as to whether the Appellant had been proved to have killed Seale. The Court concludes the verdict of guilty is not now supported by the evidence and is unreasonable and the conviction must be quashed. Further the Court finds that the evidence now available, with the denials by Pratico and Chant that they saw anything, could not support a conviction of Marshall and accordingly a judgment of acquittal must be entered in favour of Marshall.
- 65 The Court says that any miscarriage of justice is more apparent than real. Marshall admittedly committed perjury for which he still could be charged. By lying he helped secure his own conviction. He misled his lawyers and presented to the jury a version of the facts he now says is false, a version that was so far fetched as to be incapable of

REFERENCE (Cont'd)

Page No.

Comment

65 (Cont'd)

belief. By hiding the facts from his lawyers and the police Marshall effectively prevented development of the only defences available to him. He now says he knew approximately where the man lived who stabbed Seale and had a pretty good description of him and with this information the police may well have uncovered Ebsary.

66

Even at the time of giving fresh evidence Marshall was far from being straightforward. He continued to be evasive about the robbery and assault and refused to answer questions until ordered. There can be no doubt that Donald Marshall's untruthfulness throughout this whole affair contributed in large measure to his conviction.



EBSARY TRIAL III

LEOTHA SEALE

<u>Page No.</u>	<u>Comment</u>
225	She is the mother of the late Sandy Seale who was a Grade 9 student at the time of his death. He was 17 years old and was 5'7" and weighed 155 lbs.
227	Sandy was wearing a brown heavy jacket of waist length and a white short sleeved T-shirt and a long turtleneck sweater and blue jeans.
228	She next saw Sandy in the hospital and he was conscious. The jacket he was wearing had been given to her husband by the City Hospital and she put it away. Subsequently she gave it to Sargeant Michael MacDonald and she never got the jacket back.
229	Sandy would have caught the bus home at around midnight and he caught it at the corner of Crescent and Kings Road.



EBSARY TRIAL III

OSCAR SEALE

Page No.

Comment

230

He is the father of the late Sandy Seale. He had received a jacket, blue jeans, boots in a plastic bag and took them home and gave them to his wife. He says his son was 5'8½" and weighed between 158 and 162.

231

His son played hockey, baseball, was a good swimmer and was a very good athlete and was very strong. When he saw his son he was conscious. The doctor took him in to see him and he communicated by nodding his head in response to questions. The only questions asked were "Is your name Sandy Seale" and "Do you know your parents". He wasn't asked anything about who may have caused his injuries.







PRELIMINARY INQUIRY

DR. VIRICK

Page No.

Comment

- 51 He knows Donald Marshall.
- 52 He saw Marshall on May 28 at the Outpatients Department and treated him. Marshall had a laceration on the left arm which he sutured. The laceration was approximately 4½ inches in length and it was 7 inches from wrist joint. It was an even cut and there was no bleeding from the cut. That is there was no bleeding at the time he saw the patient. He had already been prepared to receive the treatment. It was not a very deep laceration but it was a superficial laceration. He put 10 stitches in it.
- 53 10 stitches were put in because of the length of the wound. There is movement of the arm so much that there is a possibility of gaping of the edges and to be on the safe side they usually suture quite close so there is no cosmetic defect. He made an appointment for the removal of the sutures but when he went to visit Donald Marshall in jail, he had already removed the sutures himself.
- CROSS-EXAMINATION
- 53 Marshall had already been attended to by some nurse or some doctor in the Outpatients Department before Virick saw him. Usually the only thing a nurse would do is put pressure on the wound.
- 54 That pressure would be to stop the flow of blood. He can't say whether prior to seeing the wound that there could have been blood coming from it. There would be between 12 and 15 days later that he called at jail to remove the stitches. The wound healed nicely. Given the fact that this is along wound if it were self-inflicted, he would expect an element of hesitation, a person couldn't just sit down and make a clean cut wound but would have hesitated a moment or two. Based on his knowledge he would not be of the opinion that the wound was self-inflicted.
- 55 He says the wound could have been self-inflicted.



MARSHALL TRIAL

DR. MOHAN VIRICK

Page No.

Comment

- 24 He saw Marshall on the night of the stabbing. He had a cut on his left arm approximately 7½" from the wrist and approximately 4" long and Virick sutured it. There was no bleeding from the cut at the time he was there and the patient had already been prepared by the nurse.
- 25 He describes the cut as superficial, that is, it isn't a bruise but the deeper tissues, the muscles, etc. are not involved in the laceration. He administered ten stitches under local anesthetic. If it had not been sutured, there would have been a scar and probably infection. He made an appointment to remove the sutures but when he went to see Donald Marshall in jail, the sutures were already removed and Marshall said he had done it himself.
- 26 It's possible the cut could have been self-inflicted. It was the same depth all the way down.
- 25-26 He was confronted on his evidence on the Preliminary Inquiry when he gave the opinion that it was not a self-inflicted wound although it was possible.
- 27 He agrees it is likely that the wound had bled at some time before he saw it.



JURY CHARGE - EBSARY TRIAL I

LUKE J. WINTERMANS

<u>Page No.</u>	<u>Comment</u>
130	He points out that the whole incident only took 5 or 10 seconds and Ebsary didn't have a lot of time to decide what to do.
131	He suggests that Ebsary would expect to be beaten up and his money taken away from him and that would be grievous bodily harm.
134	He says that a defense such as self-defense when it is raised places the burden on the Crown to disprove it.
138	He talks about what Ebsary's intention was. He says his intention was not to cause bodily harm but to stop the commission of an offence (Remember Ebsary didn't give any evidence).
145	He says Marshall is an admitted robber who perhaps spent a little longer in jail than he would have if he had been caught for what he really intended to do that night.



EBSARY TRIAL III

STAFF SARGEANT WHEATON - Voir Dire

<u>Page No.</u>	<u>Comment</u>
66	He is a member of the R.C.M.P. stationed in Halifax and formerly in Sydney. He was the Officer in charge of the re-investigation of the Marshall case. His first contact with Ebsary was on February 22, 1982.
70	He gave Ebsary the normal warning. He read to him the statement which James MacNeil had given to him in 1982.
71	In the MacNeil statement he told of the activities on the night of the murder and the fact that he had observed Ebsary stabbing Seale.
72	He reads notes of a telephone conversation he had with Ebsary on February 22 later in the day and in it Ebsary admitted to stabbing Sandy Seale. His next meeting with Ebsary was on February 23.
73	Nothing was accomplished during that meeting on the 23rd. They did arrange a meeting with the Marshall family as requested by Ebsary.
81	On several occasions Ebsary said he held the key to Marshall getting out of jail.
86	He recalls Ebsary saying words to the effect that he was going to single handedly get Donald Marshall out of jail.

EBSARY TRIAL III

STAFF SARGEANT WHEATON

<u>Page No.</u>	<u>Comment</u>
243	He has been a member of the R.C.M.P. for 23 years.
244	He commenced the investigation of the Marshall affair on February 4, 1982. He interviewed Marshall on two occasions in Dorchester in February and March, 1982.
245	He also took statements from Chant, Pratico, Harriss, Gushue and a number of others. The investigation was done exclusively by the R.C.M.P.
246	He also interviewed Mary, Donna and Gregory Ebsary and as a result of conversation with those people he took possession of certain exhibits.
247	He describes getting the knives from a fruit basket which was on a beam over a workbench in the Mechanic Street home and this was on March 3. He packed the knives in an envelope and forwarded them to the Crime Detection Laboratory in Halifax to be examined for blood.



