

Frank Edwards

Outline

1. (A) Background & Experience

- (i) Defence Counsel
- (ii) Prosecutor.

2. Prosecutor Relationship with Police

- (i) During Investigation
- (ii) LAYING of Charges
- (iii) TRIAL PROCESS - Information Exchange

3. Prosecutor Relationship with Defence Counsel

- (i) During Investigation
- (ii) Before Preliminary - ^{interview witnesses} Coun Sheets ✓
- (iii) Before TRIAL ✓
- (iv) Before Appeal ✓

4. Prosecutor Relationship with ^WWitnesses

- (i) During Investigation
- (ii) Before Preliminary
- (iii) Before TRIAL.
- (iv) Any difference with Defence Counsel

5. Structure C.B. Prosecutor Office

A. Staffing and Relationship

✓ B. ✓ Filing System -

C. Relationships with A-G Office ✓

- (i) Reporting chain ✓
- (ii) advice received ✓
- (iii) Mediation ✓
- (iv) Control ✓

Revised Practice D.B.

May 75 ✓
Dec 78 - Crown Prosecutors

one murder case -

Some controversy: should have been law ✓

5 full time prosecutors - C.B. County. ✓

C.C. - Beira S.C. - Frank does most ✓

Guidelines from Halifax. ✓

Appeal - Hfx has the say on all appeals. ✓

Subject to statutory constraints has full autonomy.

Grey area - if reducing charge would check with Hfx
Sty → must be authorized ✓

Controversial cases: would advise ✓

Any by-passing of him - ✓

Withdrawn - before plea entered - no finding of not guilty
stay ✓

offer no evidence ✓

Not or much consultation with RMP now ✓

Criminal Record - if not let in trial would be
available to defense for cross ✓

5. MARSHALL Case

(A) General

- (i) Uniqueness
- (ii) Diary

(B) First Contact

- (i) initiation
- (ii) length of meeting
- (iii) Details

(C) Investigation Stage

- (i) Contacts with RCMP
- (ii) Contacts with Sydney Police
- (iii) Contacts with witnesses
- (iv) Contacts with A-G officials
- (v) His views

(D) Pre-Reference Stage

- (i) Involvement leading up to reference
- (ii) Extent of his instructions -
- (iii) Dealing with Aronson
- (iv) Dealing with Sydney Police
- (v) Dealing with other witnesses
- (vi) Applications re witnesses

6.

Reference

- (i) Instruction on position to take
- (ii) Preparation
- (iii) Conduct: Impression of Judge px.
- (iv) Dealing with Accused: A-G: Police: witnesses
- (v) Position adopted:
 - (a) why
 - (b) effect
- (vi) Decision
 - (a) Reaction
 - (b) Effect

7.

Post-Reference.

Seale Complaint.

Arroy TRIALS

Discussion Dr. MacLure

Diary

when more notes - Feb. 21

Page
①

① ✓ How was Meeting arranged.

✓ Who requested?

How long. ✓ What info available.

✓ Disciple set-up.

Who suggested RCMP take over?

Unique situation?

Comment on various Statements?

(Chant's first statement was "bull"
Don't bother with it.)

"Unknown to one another" ✓

Mac I impression ✓

Was F.E. to be kept advised ✓

MacIntyre: meeting took
6349 2-2½ hours
Scott: at least an hour:
9206 Could have been 2-2½

Page 1 (2)

- !! what does this mean - cross-examination of Chant + Patricia
- See Saxon Statement? 34/45
(Saxon told Marshall about Elson's story + the robbery attempt)
- ✓ → what agreed re press contacts who leaking!!

Page 2

- (1) when did he get this info?
- (2) why was chief exposed?

why start making notes on Feb 21/82

Should chief be kept aware of what happening

Page 3 ① what did he understand this to mean?

Edsony phone confession on Feb. 22

② what had happened to lead them to this conclusion? what told?
(Chond Statement page Feb. 16) 34/47

③ In detail, what did this mean?

Must have been told something concerning chief. Why not more specific note.

Did he speak with anyone other than intention to obtain information
See evidence next page

✓ ④ Already thinking pardon or reference?

⑤ See Petrus Statement? (34/50) —
First mention of police pressure?

1 needless to say, the press is going to become involved at some
2 point, some decision has to be made as to what we do. Does
3 he get a Royal pardon? Does...where do we go with it? What
4 do we do with it? And, these were administrative, if you
5 will, matters, matters of some consequence to the Department
6 of the Attorney General. In that sense I use the word
7 political, I don't mean...

8 Q. Now, was this...

9 A. ...big...

10 Q. ...an assumption on your part or were these sentiments
11 expressed to you?

12 A. I beg your pardon.

13 Q. Were these sentiments expressed to you or was this an
14 assumption on your part?

15 A. This would be an assumption portion...partially and expressed
16 partially I suppose by Mr. Edwards.

17 Q. What did Mr. Edwards express to you?

18 A. I don't recall Mr. Edwards' exact words, but they would be
19 something along the line as he has written in his notes that he
20 felt that he would like to contact his Department in Halifax
21 prior to the Chief being questioned.

22 Q. Uh-hum.

23 A. I...I take a little exception to the word "questioned." I would
24 have used the word "appraised." The Chief was the one who
25 came to Mr. Edwards and to Inspector Scott and it's the same

1 as I said with Mr. Aronson, I feel he should be...it was my
2 feeling and I'm sure Inspector Scott and Mr. Edwards can
3 speak for themselves, but it was my feeling that the chief
4 should be appraised at every level of the investigation.

5 Q. Yes.

6 A. All the way through.

7 Q. The matter of appraising Chief on the investigation, is that a
8 part of the conduct of the investigation?

9 A. Yes, sir.

10 Q. Why would you then take direction from Mr. Edwards on the
11 the conduct of the investigation?

12 A. Because he is the Crown Prosecutor and it's not only the
13 conduct of the investigation, it's the legal aspect of the
14 investigation as well.

15 Q. You did tell us this morning, I believe, that you would not
16 take direction from Mr. Edwards on the...or the Crown on the
17 conduct itself of the investigation and you...

18 A. Yes.

19 Q. ...now told us that the questioning or appraising of the Chief
20 would be part of the conduct of the investigation.

21 A. Uh-hum.

22 Q. I'm trying to fit your testimony this morning with that of just
23 now.

24 A. It's Mr. Edwards notes, Mr. Orsborn.

25 Q. I appreciate that.

- Page 4
- ① who looking story to press?
 - ② Khattar acknowledges awareness
Preliminary 1/27 Harris
Trial 151-154 Chord
 - ③ Should Deferu have been advised.
By whom? Appeal + file in Halifax
 - ④ Was there regular reporting
to A-G office.

- Page 5
- ① Wheaton says he did attend. why
send a note if wheaton there?
See evidence next page
 - ② Awareness of this from MacNeil
~~address~~ to Jerry
 - ③ Harris: 34/54
"Banging feet on desk": Even see sent
action by John Mac I
 - ④+⑤ Describe meeting & comments in
detail.
Any other meetings with P. Harris

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

- 1 A. Yes, sir.
- 2 Q. Just looking again at Mr. Edward's notes, Volume 17, page 5,
3 and I'm reading from the top of the...from the top of the
4 notes. "Harry Wheaton called this a.m. and he's writing on
5 March 1st to say that meeting with Chief MacIntyre had gone
6 down on Friday p.m. Just Inspector Scott attended as
7 Wheaton was involved in a surveillance exercise."
- 8 A. That is not correct about the surveillance exercise.
- 9 Q. So, you...you recall attending this meeting then with Chief
10 MacIntyre.
- 11 A. Oh, yes, and I recall a surveillance exercise, as well. As I say,
12 my drug section was doing privacy act thing and there was a
13 surveillance exercise. I think Mr. Edwards just got the two of
14 them mixed up.
- 15 Q. Okay. Was there anybody else present at this meeting with
16 yourself, Inspector Scott, and Chief MacIntyre?
- 17 A. No, sir.
- 18 Q. And where did it take place?
- 19 A. This took place at our headquarters on Alexander Street in
20 the City of Sydney in our conference room.
- 21 Q. Was the Chief asked to come down?
- 22 A. Yes.
- 23 Q. Who asked him?
- 24 A. I believe Inspector Scott. I don't recall asking him.
- 25 Q. And how long did the meeting take place? How long was it?

- page 6
- ① attempts by Sydney Pelicci to obtain info
 - ② when names exhibits go?
 - ③ Ever hear tone of his interview? Details.

page 7

- ① what report is this? Did he get all RCM reports.
 34/19 H. See 34/19!! why keep MacE informed
 34/64 34/67

- ② Asked by A-G to provide recommendations? when asked for this
 April 5/82 Vol. 31/22
 Deal with this report. what info did he have available at this time?
 who did he interview

Page 7 ③ Discuss this contact in detail

④ Did he understand full file had been turned over?

⑤ why significant?

Was it his practice to update his notebook periodically. Did he ever take wheaton's Diary & use it to prepare his own notes. How confident is he in the dates for the various entries?

Page 8 ① Explain this comment in full.

Scott 9259 ++

wheaton next page

1 All right. Thank-you.

2 MR ORSBORN

3 Q Did Inspector Scott indicate his agreement with Mr. Edwards'
4 point of view? Did he indicate that he agreed that Chief
5 MacIntyre had set him up?

6 A. I don't know as Inspector Scott would use the words "set up."
7 I recall it that we felt that we were misled, perhaps used a
8 bit.

9 Q Uh-hum. And...

10 A. "Set up" is Mr. Edwards' comment and these are his notes, one
11 can derive and use the vocabulary that he wishes, I suppose.

12 Q Um. Did you share the opinion that you had been misled and
13 used?

14 A. I felt definitely that I had been misled by Chief MacIntyre,
15 yes, sir.

16 Q Yes.

17 A. Knowingly.

18 Q Knowingly misled.

19 A. Yes, sir.

20 Q And over how long a period had you felt that you had been
21 knowingly misled?

22 A. It was a progressive thing as I found things out then I would
23 ask myself well why didn't...why did he say, i.e. that Chant
24 was a fine witness? When I got the transcript and read it I
25 found that at trial he was a hostile witness, declared a hostile

Page 8 ②

what meeting is he referring to?

③

Did he consider RCMB were
Dealing softly with Sydney Pelin?

Why would search warrant?

If concerned about authority would have
called it into him.

Page 9 ①

In detail. Can the date be
incorrect? Could it be 26th
34/26 - See this before.

Are the reference to Harris statement
& loss order desk mutually
exclusive?

Does he have any recollection of
the discussion? Any day timer etc.
notes

(if it had been Harris statement would have
strongly pushed for destruction)

See evidence

Page 10 ①

Wheaton still did not have the
entire file?

②

what did he mean by investigation?
who could initiate?

1 refer you back to Frank Edwards' notes, Volume 17, at page
2 nine. You'll see his date there is Saturday, April the 17th?

3 A. Yes, sir.

4 Q. In the second paragraph, he's speaking of a phone
5 conversation with yourself. He says:

6
7 While on phone told me that he and Herb
8 Davies had gone down to see Chief
9 MacIntyre late Friday p.m. and had spent a
10 couple of hours with him.

11 And then it goes on in some details. Does that in any way
12 shake your recollection?

13 A. I can't comment on Mr. Edwards' dates. I think he's wrong.
14 Mr. Edwards would have gotten dates from me and I was
15 wrong, as he wasn't there at the meeting.

16 Q. Is it your evidence then, sir, that this visit to the chief's office
17 with Corporal Davies was following receipt of the letter from
18 the Attorney General?

19 A. That is correct, sir, yes.

20 Q. Do you have Exhibit 88? Exhibit 88 is the typewritten copy
21 of the records turned over by the Sydney Police Department
22 to you. It would be a loose exhibit, sir.

23 A. Volume 34, sir?

24 Q. No, it's a loose Exhibit 88.

25 A. Yes, sir.

Q. Do you recognize Exhibit 88?

STAFF SGT. WHEATON. EXAM. BY MR. ORSBORN

1 the order had been made by the Attorney
2 General that they turn over all
3 documentation, I found a partially
4 completed statement dated 17th of June
5 '71, 8:15.

6 Is that the comment or the type of comment you're referring
7 to as supporting your recollection of it being the 26th when
8 you visited the Sydney Police Department?

9 A. Yes, sir, and there's another report somewhere, sir, in which I
10 stated that it's the 26th.

11 Q. I'll look for that. You met with Mr. Edwards, Inspector
12 Scott...Let me back up just a little bit. The note that you made
13 with respect to the meeting, reproduced on page three of
14 Volume 34, when did you make that note?

15 A. Note made dated 16th of April, incorrectly dated?

16 Q. Yes.

17 A. I would have made that in the afternoon of the 26th of April,
18 1982 at my office in Sydney.

19 Q. Did you discuss the content of that with Corporal Davies
20 before you wrote it?

21 A. Corporal Davies and I, yes, had a discussion en route from the
22 Sydney City Police office to our office in the subdivision
23 headquarters building as to, I read the partially completed
24 statement.

25 Q. Can you offer any explanation as why Mr. Edwards would
have a detailed chronology going through April 16th, April
17th, which, and April 19th, which would be at variance with

- 1 that?
- 2 A. The only reason that I could think of, Mr. Edwards was not
3 there when this meeting was held with the chief, Corporal
4 Davies, and myself and Mr. Edwards and I may very well
5 have met at the end of the week or some period of time
6 down the road and I probably incorrectly was reading from
7 my notebook and gave him this wrong date and he may have
8 been playing catch-up ball in writing his notes, I don't know.
9 But he could very well have gotten that wrong date from me
10 because I certainly have it wrong. I put a "1" down instead of
11 a "2".
- 12 Q. Are you suggesting that on occasion Mr. Edwards made catch-
13 up notes on the strength of your own notes?
- 14 A. You'd have to ask Mr. Edwards. I don't know.
- 15 Q. Did you ever see Mr. Edwards making notes when you were
16 yourself referring to your notebook?
- 17 A. I know I read to Mr. Edwards out of my notebook at various
18 times throughout this investigation, yes, sir.
- 19 Q. And did you see him making notes at those times?
- 20 A. Yes, I've seen Mr. Edwards making notes, yes, sir. Now
21 whether it was notes for these notes or notes on a legal pad
22 or, he kept records, yes, sir.
- 23 Q. Now this meeting that you had with Inspector Scott and Mr.
24 Edwards on the 16th was precipitated, I understand, by Chief
25 MacIntyre showing, was it the Ebsary statements, to Gordon

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 Do you remember visiting Mr. Edwards' office at 1:30 p.m. on
2 Monday, April 19, 1982, with those statements?

3 A. No, sir. I, and I'm not saying I didn't but I don't have any
4 recollection of it and I have no note of it. I don't think.

5 Q. Is it possible, then, that you did, in fact, visit his office on that
6 day with those statements?

7 A. I could have, yes, sir. I don't know.

8 Q. If you, in fact, then, visited his office on the 19th with a
9 statement of Patricia Harriss dated 17th of June 1971...

10 A. Then I would have had to have done the search.

11 Q. When did you get that statement?

12 A. I did not get the 17th of June statement, the partially
13 completed statement of Patricia Harriss until the search was,
14 or the letter of the Attorney General was executed at Chief
15 MacIntyre's office.

16 Q. Are you saying, then, sir, that Mr. Edwards' notes with respect
17 to the 19th at 1:30 p.m. is incorrect insofar as it refers to the
18 statement of Patricia Harriss?

19 A. Yes, sir. To the best of my recollection.

20 CHAIRMAN

21 Could you give me an explanation as to how Mr. Edwards
22 would have known the date of the statement of Patricia
23 Harriss?

24 A. Very good point, My Lord. He could only know that from the
25 fact that I had had it in my possession if his date of the 19th

page 10 ③

These are some statements
referred to on page 9 ②. Supports
Flemons' date

④

Basis for this speculation?
Ever talk with those girls?
(He is wrong on timing of O'Reilly
statements)

page 11 ①

Further support that 1st Hansen
statement obtained prior to April 19
& yet still didn't have full file

②

why is this note sent of
Reynolds (See handwritten) 17/43

page 12 ①

who is Patterson? was chief
joking about going to jail?
This also refers to March 5

Go to 24/88 - In detail

Go to Vol. 31/68
69

77-79

met with Redrupert & Solo

STAFF SGT. WHEATON, EXAM. BY MR. ORSBORN

1 A. The slipping of the thing, the statement under the desk is not
2 mentioned in the report but certainly was discussed with Mr.
3 Edwards and discussed with Inspector Scott at that time. It
4 was not included here. Why, I don't know, My Lord, other
5 than the fact that it's not an offence, I suppose.

6 MR. CHAIRMAN

7 That's not my point. What I'm trying to get cleared up here is
8 whether...it occurred at least to me from reading Paragraph 4 of
9 your report that you had discussed with the crown prosecutor
10 Frank C. Edwards the desirability of interviewing Chief MacIntyre
11 and Inspector Urquhart with respect to the testimony of Chant,
12 Pratico and Hariss.

13 A. That is correct, My Lord.

14 MR. CHAIRMAN

15 And that Mr. Edwards, presumably at your behest, discussed with
16 Gordon Gale the desirability of interviewing these two gentlemen
17 with relation to these three witnesses.

18 A. That is correct, My Lord.

19 MR. CHAIRMAN

20 And the instructions were to hold these interviews relating to
21 these three witnesses in abeyance for the present.

22 A. That is correct, My Lord.

23 MR. CHAIRMAN

24 So we're clear on that. Now, was there a separate discussion and a
25 separate request for...by Frank Edwards to Gordon Gale for

Aranson would require all the info gathered by RCM in order to prepare for reference?

He had the burden? Intention was to co-operate fully & did so?

~~Go to Vol. 28 & review the letters in detail.~~

~~(Consider leaving this until it fits in chronologically) Lay groundwork. Not it was to be quiet. Further evidence?~~

Vol. 31/52

63 His role in the Reference. Decision
68 Reference for 617 (c) why?
69 Explain change. Not req'd if Goretti is correct.

effect of the change for his role.

Vol 31/77
29/35

Submitting App for post-evidence

Page 12

② who was made. recollection? (10)
Purpose of meeting ^{witness} ^{ref page}

why undertaken then? wholly?

Length of Meeting

Attitude of various people

Management the day?

(Main & wholly report at end of day as Frank phrasing. But details.)

Deal with each point noted on the page.

any instruction other than contained on these pages of notes?

How was it left.

~~Refer to Aff.~~

why did he record Affidavit. why

knows Police be witnesses during

reference. He could only call "Defense"

witnesses.

Held against
Crown??

- 1 Q Did you discuss the file either formally or informally with any
2 of superiors in Halifax when you arrived in Halifax?
- 3 A. Not that I can recall, sir, no.
- 4 Q Uh-hum. Referring to Mr. Edwards' notes, Volume 17 at page
5 12. Volume 17, page 12, there is reference to a meeting on
6 July 12th, 1982, I would assume in Sydney. It refers to "my
7 office" meaning Mr. Edwards' office. "Present: John
8 MacIntyre, Mike Whalley, H. Wheaton," and I guess Mr.
9 Edwards.
- 10 A. The date of that meeting was what, sir?
- 11 Q. July 12th of '82.
- 12 A. Oh, yes, yeah. I attended that meeting, sir, yes.
- 13 Q. Did you return to Sydney for that meeting?
- 14 A. I believe so. I may still have been there at that time. I think
15 I was still there. I didn't leave Sydney actually until the
16 children were out of school, so it would have been the end of
17 June, first part of July. So, I was still there when that meeting
18 took place.
- 19 Q. And what is your understanding of the purpose of that
20 meeting?
- 21 A. The purpose of that meeting there was a lot of unanswered
22 questions. We were still waiting for something from the
23 Attorney General's Department. I was leaving...
- 24 Q. Sorry. Still waiting for something from the Attorney General's
25 Department with respect to what?

1 A. Whether we were going to do an investigation into the
2 Sydney City Police.

3 Q Uh-hum.

4 A. Mr. Edwards and I had discussed the matter on several
5 occasions and we felt it only fair to the Chief that he be
6 afforded the opportunity to speak to various accusations that
7 had been made by Mr. Chant, Mr. Pratico, Patricia Harriss, to
8 explain the various items that I previously noted, the line up,
9 and various items in the investigation. Mr. Edwards called me
10 and advised that he had arranged a meeting, this meeting,
11 and asked me if I would be present, and...

12 Q Did Mr. Edwards indicate to you the purpose of the meeting?

13 A. That was the purpose of the meeting, to afford the Chief the
14 opportunity to speak to these various accusations and what
15 have you.

16 Q And would you then regard that as part of an investigation of
17 Chief MacIntyre?

18 A. No, sir. This was...we dealt basically with the accusations of
19 Chant, Pratico and Harriss and some other items which Mr.
20 Edwards might be able to recall. I can't recall. I know those
21 specific ones.

22 Q There's reference in the early part of the note that says "It
23 began with summary of chambers and a-p-p-r," perhaps it
24 should be a-p-p-l. Do you recall any court documentation
25 being discussed at that time in connection with the reference?

1 Q "With respect to the allegations then of Chant." What did you
2 understand the allegations of Chant to be?

3 A. That Chief MacIntyre had put words in his mouth in the 4th
4 of June statement particularly and that he did not see the
5 murder and the reason he said he did see the murder was
6 due to pressure and threats by Chief MacIntyre. He then
7 gave Chief MacIntyre a statement and was told he should
8 stick to it or he would be charged with perjury and things of
9 this nature.

10 Q Now, in the meeting, who put these allegations to Chief
11 MacIntyre? Was it Mr. Edwards or yourself?

12 A. Mr. Edwards.

13 Q Did Chief MacIntyre respond with respect to Chant?

14 A. The...yes, he did. The meeting...the meeting was held, if you
15 will, in two parts, as I recall it. It was convened about
16 approximately eleven o'clock, ran until lunch time. We broke,
17 went to lunch, then came back after lunch. Now, I don't have
18 the times recorded but that's the way I recall the meeting. In
19 the morning part of it, if you will, the Chief basically couldn't
20 remember, couldn't say, you know, if two... Chant's two
21 statements, why take two statements, this sort of thing and so
22 on. The same with Pratico, same with Harriss, as I recall the
23 meeting without having read this. But that's how I recall it.
24 Then after lunch both he and Mr. Whalley became much more
25 aggressive toward Mr. Edwards and...

1 Q Aggressive in what sense?

2 A. Well, the meeting was polite and cordial, if you will, in the
3 morning and in the afternoon it became heated. The Chief
4 adopted an attitude of "How dare you heap scorn on this fine
5 gray-haired man," sort of thing.

6 Q What...

7 A. Mr. Edwards, you know, or Frank. And, it became aggressive
8 to the point where there was no point pursuing the meeting
9 and the meeting was terminated. In the afternoon portion of
10 it though when asked specific pointed questions in regards to
11 Chant, Pratico and Harriss, the Chief then said that Donald C.
12 MacNeil had been told everything, Donald C. MacNeil had been
13 made aware of this and that, the next thing, and that is my
14 impression of the meeting, sir.

15 Q Uh-hum. Were you present for the entire sessions, both
16 morning and afternoon?

17 A. I left toward the end of the afternoon session to go the
18 washroom and when I come back Mr. Whalley and the Chief
19 were standing over Mr. Edwards and there was finger
20 pointing going on and so on. And this was right at the end of
21 the meeting.

22 Q Standing over Mr. Edwards. Was Mr. Edwards seated?

23 A. He was seated, yes, sir.

24 Q I see. Any shouting?

25 A. Voices were loud. I wouldn't say shouting, but aggressive.

Page 14 (1) What did he believe at this point in time.

(2) when had he interviewed Magee. Why no note?

(3) why totally upset? what does this mean?

(4) what did initial Dept paragraph say?

(5) Discuss.

(6) He believed Marshall innocent. How did bond & caution come up with such similar lies? Concerned about this? Should that be brought out?

Refer Aff. No. I et al.
Full opportunity to review & correct?

Vol. 39 / 78

Meat I - Affidavit

✓ p. 79 Would he have recorded to know that Mac Intyre visited back with Peattie before the second statement taken?
N.B. Fact. X-sought

80 ① why suspect Marshall gave her story? Contact between Marshall & Peattie?

✓ (Harris Affid. p. 46. Statement to RCMP p. 51
See p. 5 of his notes. Even
"Banging fist on desk."

Would he have liked to know that prior to Gushue's statement Harris being "admonished" that she saw two people in discussion with Chief. Offer within 4 minutes changed her story completely

p. 81 See note p. 13. What happened in meantime?

p. 82 See notes

Why not call Gushue as Reference?

39
Vigilant 1/56

(13)

Q 77 (1) on p. 13 of notes said
he had no independent
recollection of interview
with Curtis.

(2) He was not present during
the 2nd statement from
Patricia Harris.
(Ex. 56 -
Vigilant evidence 9597, 8

(3) p. 13 of notes - Does not
recall interview with Harris.

- 1 second statement taken on the morning of the 18th there
2 having been one earlier from Mary O'Reilley. Can you suggest
3 any reason why there would be a problem with the date?
- 4 A. No.
- 5 Q. Had already taken a statement on the 18th, a half an hour
6 before. Can you suggest any...
- 7 A. No.
- 8 Q. ...reason for that? Now, I wonder, Mr. Urquhart, if you'd look
9 at pages 69 and...or particularly page 70, 69 and 70 of this
10 volume.
- 11 A. 69 and 70.
- 12 Q. Yes. This is a typed version of Mr. Gushue's statement.
- 13 A. Yes.
- 14 Q. And turning to page 70 you see your name on that statement.
- 15 A. Typed in on the bottom right-hand corner.
- 16 Q. Yes. Now, you've already told us that you weren't there. Is
17 that so?
- 18 A. Correct.
- 19 Q. Can you indicate to us, suggest any possible reason for your
20 name appearing on this statement?
- 21 A. No, I cannot, sir.
- 22 Q. If you'd turn to pages 65 and 66, please, and in particular
23 page 66. This is the later statement of Patricia Harriss. And,
24 do you see your name on page 66?
- 25 A. Yes, typed in on the right-hand corner.

MR. UROUHART, EXAM. BY MR. ORSBORN

- 1 Q. Yes. And, again, correct me if I'm wrong, but you've already
2 told us that you weren't there.
- 3 A. That's right.
- 4 Q. Can you suggest any reason why your name would appear on
5 the typed copy?
- 6 A. No, I have no particular reason for it, but I was working with
7 John on the case and perhaps Kay just put my name down as
8 one of the ones that was in on the statement, but that's the
9 only answer I could give you for it.
- 10 Q. But you were not there.
- 11 A. I was not there.
- 12 Q. Did you tell her to type the name in?
- 13 A. No, sir, I didn't.
- 14 Q. And would you turn, please, to pages 76 and 77, oh, I'm sorry,
15 74 and 75?
- 16 A. Yes, sir.
- 17 Q. This is a typed version of the statement from Mary O'Reilley
18 taken...the first statement taken on the morning of the 18th,
19 the following morning, and again I see your name on page 75.
- 20 A. Yeah, but am I on the original?
- 21 Q. No.
- 22 A. No, well.
- 23 Q. No, you're on the original of the Catherine O'Reilley statement.
- 24 A. Uh-hum.
- 25 Q. But you testified earlier that if your name was on the original

Page 15 @ Detail of this

what happened between
July & before hearing

Oct. Court Appearance. Vol 17/74 ff
See notes

Reading from Court position.

Hi Brief Vol. 39/185

Decision p. 190

Vol 17/73
explain these notes. Purpose?

Vol. 29/46

49

50

51

Reference

Issue!!

Conrad Bond - His reaction.

His reading of the Court.

Impression of witnesses. Role he was to play.

✓ Harris - Still believe her?

Jim New Nuel : Believe him

Why they lied!!

Chard - Same

→ Marshall : Lamebrain. Sentimental to money matters?

Did he believe him.

Speak to him in advance.

Spoken: Voluntary? Fair to use it for cross-examination? voir dire or voluntary?

more on ability

Vol. 3 / 69
70

Vol 3 / 64 Can call anyone before. Proper question? Fair?

What did possibility of
 robbery have to do with
 issue before App. Div.?

Issue: Did Lt. Marshall stab
 Sandy Seal.

Isn't Marshall's intention or activity
 only relevant to question whether
 he was author of seal's misfortune?

If Act is on issue why not subject
 Police to ~~some~~ questioning.

31/77 F.E.

Marshall - Reference Evidence

12~~6~~ - Tobin's Home after liquor store with
Artie Paul & Ray Gould
1 1/2 hours at Tobin's Home. Dan Keltie

16 after entered park met 4 people

17 met Seal in Park - did he want to
make some money with me one way
or other
"Bumping J. breaking in a store
probably. take it off somebody"

18 ^{Spoke for 10 minutes}
met Patterson. knew Dale from donee
labs. Went to hockey practice with him

19. Called by somebody on Crescent to give
a light. Then also called by Hurness &
Bushman. Spoke to them for 5 minutes

20 Desires the two men

21 "Piest" "bootlegger" "only woman
in Park" Invited us to house
pointed to a house
Spoke 15 - 20 minutes

22. Men called back. Doesn't know why
Mr Neil slipped off curb - grabbed him
elder guy attacked Seal

23 Called him a Nigger. He blows Elroy
to arm

24. Went to hit me in stomach + I belted him with left hand
26. Met 2 girls + 2 guys on Byrd St.
Stopped a car
27. Didn't give some testimony at TRIAL
28. In 1971 didn't mention robbery because it didn't happen. Lawyers not told

Cross

32. Knew Seal some or other guys who hung around at Jones
33. as close or he was to other colored guys.
42. He [one of them] introduced themselves
43. asked if he was a friend because dressed like one.
45. topic of money not brought up by them with Elson
46. 53. Intention to get money. No pressure on these guys to come back.
55. Intended to get money. Steal it - burn it take it from store or house.
63. Definer to "roll someone"
64. Ever roll anyone before
69. No way did he try to prevent voluntariness of statement given by Marshall.
- 70.

my notes!!
question!!

!! FAIR? 70

p. 15

- ① what role Herskov play throughout? Superintending?
- ② If not interested in knowing why witnesses lied how the Court consider whether there had been a miscarriage of justice? Allegation was that Police had pressured witnesses.
- ③ Information only? Not necessarily consent?

Page 16

① Was it a mere objection to
protest police as a part of
system?

Still no investigation? Could
be obstruction of justice?
Counselling perjury?

② What is role of the
prosecutor in an appeal.
Always take a position?

③ Still believed Marshall
guilty?
Last time Chief told him that?

Page 17

① Did this conversation with Deputy occur recently?

Go to vol 31/126

Review in detail.

Why taking these positions?
Complete reversal?

No additional evidence against Marshall

②

Useful to discuss with Holife officials the position to be adopted in Court?

Jan 25/83

(19)

Page 17

18

① what did he expect.

Being asked to compromise?

Deal with each concern

Role of Coles: Dale: Hershorn

① Ever before discuss role of Crown in appeal? This is on appeal?

Was he being asked to give up his April 3/82, view re "miscarriage"?

② Ever taken off a case before?

③ what was theory?

④ what problems?

page 19

①

Can followed up?
 Can speak Woodman?
 MacGinn?
 Cameron?

p. 20

Purpose of this?
 Summary N.B. events?

Why no further diary notes
 after Feb/83

Vol 17/68

Review this note of
Feb-3/83 Conversation with Uegubant

Feb 4/83

Fasten Files
Vol 4/1~~Box "miscommunication"~~

Agreement Hearing: why Court do
 Reaction of Court against miscommunication
 Comments.

Reference Decision
Vol 4 1.80

Was he ever asked to comment on this personally.

Was he surprised by the Decision
Comment on p. 143, 4

Refer to p. 145 Surprise?
146 Comments.

was connected.
of holding ✓

Obiter dicta.

M 10W



May 1983

Asked to review decision & comment
on Beijing charges

Vol 32/152

154

Can speak with Marshall
about, Peatino, Harris prior to
giving his opinion?

32/209

July 1983

32/210

① Speak to Marshall before he gives
consideration?
Conduct money?

212 ② aware of these recommendations?

213 ③ Discuss with collector? Agree?

Vol 32/228 where is that finding?

234

Discuss with Coles. Apparent
Cremosity between them?

236

✓ March 1/84

Vol. 17/65

why M.H. want Marshall record?

✓ Discussion media? Harris

✓ where - lay charges against me type

✓ Good Faith !!

His subsequent involvement? ✓

Compensation?

~~Elvany TRIALS + Appeals.~~

— Disclosure Dispute Oct. 23/84

Vol. 28

Review letter in detail

— Elvany TRIALS

Go to "Miscellaneous of Justice" section

most thoroughly used
by HCP used

Edwards Notes

I N D E X

VOLUME 17

FRANK EDWARDS' NOTES -----PAGES 1 - 82

ESKASONI PRESS CLIPPINGS -----PAGES 83 - 86

notes
written
in
the
office
of
the
investigating
officer
present
he was

NOTES RE CONSULTATIONS ON MARSHALL CASE

Feb. 3/82

①

was this N.B. why? Still so.

1:30 p.m. met at my office with Chief MacIntyre and Insp. Scott - Chief MacIntyre briefed us on investigation which led to Marshall being convicted of murder in 1971 (by Sup. Ct. jury) - Main point is that conviction obtained because of evidence of two teenage boys - Chant and Pratico (unknown to one another) who had given police written statements stating that Marshall and Seale had been accosted by two individuals. Subsequent statements said Marshall had done stabbing.

Oct. '71 - one MacNeil states that one Roy Ebsary had done stabbing.

- investigation turned over to R.C.M.P. who did polygraphs: MacNeil - non-conclusive
Ebsary - truthful

Oct. '79 - one Mitchell Bayne says Ebsary admitted stabbing - see letter from Aronson Jan. 26/82.

Feb. 16/82

② *did they believe him?*

- met at office with Harry Wheaton and Jim Carroll - advised that they had interviewed

1. Mitchell Bayne Sarson - not impressed by him - drug trafficker and friend of Marshall's ✓
2. Ebsary's wife
3. Learned that Pratico has severe psychological problems.
4. Were going to interview Chant that evening.

- Would get back to me in a week. - Had transcript of trial. Chant and Pratico had been cross-examined on previous statements.

Feb. 21/82

- also discussed fact that press and particularly Parker Donham was digging into the case. Told them that Billie Urquhart had called me at 9:25 a.m. on Feb. 15th when he advised that Donham had been to C.B. Post and had been digging out old newsclippings re the offence.

- We agreed that facts given out would be at minimum - that I would confirm that R.C.M.P. were investigating. No objection from Wheaton. (Cpl. Carroll though present did not take part in meeting. Mentioned that he was updating his notebook only.)

Notes continued

Feb. 21/82

2
Returned call to Parker Donham (he had called day before - see attached message).

(1)
- Discussed TV interviews of week before re Olson. Stated he had been calling me on Feb. 15th to ask for definition of "theft by conversion". Said "while I have you want to ask you about Marshall case - said he had originally intended to wait and call me after he had a few more facts. Told him the matter was being investigated by R.C.M.P. and that he would get full story after investigation completed. He said "Harry Wheaton is the investigator is he?" and I confirmed that he was. (Sat. Feb 13th C.B. Post had noted in BTL column that family trying to get case reopened). "Well can you tell me anything about case." Told him that everything from then on was strictly off the record and he acknowledged that it was. Briefly told him that Marshall convicted by judge and jury in June '71. Two witnesses Chant and Pratico had given evidence. They had earlier given written statements which were known to Defence at time of trial and both were cross-examined on them. He asked how the case had arisen and I told him that a lawyer had been making inquiries (told him name of lawyer and date of letter - did not read contents - also reminded him of BTL comment which he acknowledged he had seen. Told him that an individual claimed that another had confessed to him in 1979 that he had in fact stabbed Seale. He wanted names but I told him that that was all I was going to say for now; the rest would be told when the investigation was complete.

Re: Chief
MacIntyre

(2)
This a.m. (Sun. Feb. 21/82) met at Sydney police station with investigators on Weatherbee case - Chief MacIntyre kept me back and asked about Marshall investigation. Told him (Urquhart present) that I couldn't say much about it - that it was an independent investigation and that when it was all over I would like to be able to say that here are the results of an independent investigation and that Chief MacIntyre had no part in nor influence on it. Chief mentioned Donham and that he heard Donham was questioning witnesses - was quite upset about the whole matter. - Told them I spoke with Donham but told him nothing which was not already public record.

Harry Wheaton Phoned Harry at home at approximately 3:30 p.m. Told him about conversation with Chief and that I had received several inquiries from Chief re progress of the investigation. Told him I was concerned about awkward position I was in - that I had been deliberately vague about situation until today when I told him as above. Harry said there had been new developments and that he and Scott had decided there would be no further communication until report for Attorney General was ready. At that time they would sit down with me and discuss it. I said that was best for me because now I could honestly say to Chief "I don't know."

(1) ↓
 (1A)

Told Harry I had spoken with Donham after our meeting - that I told him R.C.M.P. investigating and that he knew Harry was the investigator. Told him that as precaution I went off the record but only related matters which were of public record. Also that matter had been raised by lawyer and lawyer's name.

Asked him whether Ebsary had been called at the trial and he said no. (Had earlier mentioned that there had been leaks about the case so if Donham got Ebsary's name it would be obvious that someone had been talking.)

(2) Tues Feb. 23/82 Met at office with Wheaton and Carroll - they updated investigation. Now believe Marshall to be innocent.

(3) ↓
 (1B)

11:00 p.m. - call Wheaton - suggested investigation not complete until Chief MacIntyre questioned though he should not be privy to conduct of investigation until Dept. has had opportunity to decide upon it.

Wed Feb. 24/82 Off work for personal reasons.

G.S. (1) →

Thurs Feb. 25/82 spoke with Gale and Herschorn, briefed them on progress of investigation. Gale had already been briefed by Christen.

- Phoned Harry Wheaton after I began reading transcript and realized that trial was in Nov. '71 and not June '71 as I originally thought. (Believe Chief MacIntyre had given this date during our first meeting.)

(4)

- Also told Wheaton that sections which may be relevant were ss. 617 and 683 of the Code. He was going to put those sections in his report as observing scrutiny.

(5)

2:45 p.m. (phoned) spoke with Cpl. Carroll re Allen case. Mentioned he had spoken to Pratico who said he had been pressured by police to lie.

Feb. 25/82

-3:40 p.m. - Returned call to Mr. James Warren, 983A Westmount Road (539-2786) - said he was brother-in-law of Sandy Seale. Had heard rumors that R.C.M.P. were investigating and family was concerned that Marshall was going to be let out of jail. Asked him for source of rumors and he mentioned he "heard it around" and also from mother-in-law who lives in New Waterford.

- Told him R.C.M.P. were looking into it but I could not comment further. Told him not to worry. I would take name and address and probably would contact him at some future date.

-Immediately phoned R.C.M.P. - spoke with Wheaton and advised him of above.

Feb. 25/82

9:00 p.m. - phoned Harry Wheaton at home. - told him I had just finished reading transcripts of evidence of Chant and Pratico. Told him that it was now my opinion that Crown never disclosed first statements to Defence.

(Just occurred to me while writing that possibly the 1st statements were mentioned during the preliminary inquiry - this is very doubtful because surely defence would have cross-examined on them at trial.)

(Also my feeling, though I didn't mention to Wheaton, that Rosenblum and Khattar should be specifically asked whether they were aware of existence of 1st statements.)

- Harry mentioned latter possibility though we didn't pursue it further. He also stated that he and Scott were going to see MacIntyre tomorrow.

Wheaton doubtful whether Defence ever learned of further investigation which probably was in progress while the case was under appeal.

9:05 a.m. - H. Wheaton phoned to confirm my opinion that Defence did not know of previous inconsistent statement. I told him that in my opinion they did not. H. Wheaton said he and Scott were going to see Chief MacIntyre this morning.

9:30 a.m. phoned Herschorn - told him of above.

11:35 a.m. - H. Wheaton dropped off Preliminary Inquiry transcript and Vol. 2 of trial transcript.

(Vol. 1 and factums, decision and charge had been left here by Wheaton on Tuesday, Feb. 23)

- H. Wheaton conf'd that meeting with Chief MacIntyre was in p.m.

①

→

F.E. Fisher. Refer Chant evidence on cross also Harris or Beaker

②

Should not be updated.

③

Feb. 26

④

Wheaton says he attended.

March 1/82
Notes began
4:00 p.m.

Harry Wheaton called this a.m. to say that meeting with Chief MacIntyre had gone down on Friday p.m. - Just Insp. Scott attended as Wheaton was involved in a surveillance exercise.

- Said MacIntyre had dismissed whole thing out of hand and Scott did not have sufficient details to pin him down. (Remember wondering why Wheaton had not thought this investigation more important than surveillance exercise but I did not communicate this to him.) Said Chief pinned his argument on fact that Marshall had met Harris and Gushue in park and they said there was only one other person.

1:30 p.m. Harry Wheaton had left message re important message and I returned his call. Said he had interviewed Patricia Harris who had given statement - he read it to me.
- said she had been pressured by police - that there was more than one person present at time she met Marshall.
- Said her parents were not allowed to be present. (mother told her she had been ordered to leave police station).
- Wheaton requests that I interview her.

3:00 p.m. Wheaton and Carroll arrive. P. Harris arrives a few minutes later. I question her in their presence.
- She confirms above. Says she gave more than one statement. That she was in tears; that Gushue was brought in during questioning - that she and he felt it would be best to get it over with though she can't recall discussing with him the number of people who were in the park. - says she can only recall Urquhart's name though others were present.

- says she was first questioned a few days after the incident.

- feels the police acted improperly.

- said she was not convinced at time that Marshall was guilty.

- said she was aware of what his defence would be prior to giving evidence at preliminary on July 5/71

- didn't meet with prosecutor MacNeil.

- says she doesn't know where Gushue is now.

Impression - truthful person doing her best to recall though having difficulty because of passage of 11 years.

- said no one had contacted her prior to today when S/Sgt. Wheaton contacted her. Was very surprised to say the least.

- Says that she had been troubled by evidence she had given at time - has discussed with her parents since.

- Asked her not to discuss with anyone - fewer people who know the better.

①

②

③

④

⑤

Emphasize →

Wheaton never met her again to discuss her story?

Fri., Mar 5/82

Met at office with H. Wheaton - mentioned he was going to Dorchester on Monday, March 8 to take statement from Marshall. Updated investigation.

when did he get copy of Marshall statement?

(1)

Later W. Urquhart called re unrelated matter. Chief came on phone; wanted to know about Marshall - told him I was not at liberty to discuss.

Urquhart comes to office - tries to find out about investigation - tell him I'm not at liberty to discuss.

Had meeting with Wheaton - didn't record date.

Wed. Mar 17/82

- met at noon with Wheaton - says he has talked to Lew Matheson.

Mon. Mar 22/82

3:10 p.m. - Ian MacNeil called - wants to be remembered when story breaks - said he had been speaking with Aronson no comment - family - n/c - Told him I couldn't comment - called H. Wheaton and advised him of call. (Ian knew of 3 options - parole, new trial, pardon)

- 3:50 p.m. - Dr. Donovan called - is going to record cat scan for Ebsary - advised Wheaton.

4:00 p.m. - Spoke with Wheaton - said he had been contacted by Dolphe Evers who confirmed that fibers on knives taken from Ebsary's wife's basement came from Marshall's jacket (he had saved original exhibit).

(2)

- Wheaton asked me to check at Court House for Seale's jacket - I did and returned call and not there.

4:20 p.m. - Returned call to B. Urquhart - said he was disturbed that he was hearing about Marshall case on the street - said he heard parole, pardon, new trial (no doubt in my mind he had been speaking with Ian MacNeil - told him I was privy to the investigation and couldn't comment.

Notes made
Sun Mar 28/82

- First learned that story broke while en route to Halifax on Wednesday, March 24/82.

- Thurs. March 25 - while in Halifax - learn from Anne that story had been carried on front page of Wednesday's C.B. Post - also that Pratico had been interviewed on radio and had denied changing his story.

(3)

- Learned from other family members that jury foreman, Simon Khattar & Chant were also on radio.

- 12:30 p.m. today Ian MacNeil called me at home. Was aware of Ebsary and also that we had enough evidence to charge Ebsary. Speculated that Marshall could be pardoned and then Ebsary charged with murder. No comment.

in con

- Called H. Wheaton - will bring me copy of report tomorrow - told him about Ian Mac Neil

- B. Urquhart called me - wanted to know if Ebsary was being charged on Tuesday - told him no - that he was probably going to N.S. Hospital.

Gary Green Billy Urquhart

Barbara Floyd
Pratico not in park
Int. by MacIntyre &
Mullowney

Ratchford - Donna Ebsary
(father had
admitted to her)

Vol. 31/22 *Recommendations* (2)

Notes made on Apr 19/82
beginning at 9:00 a.m.

Fri. or 16/82

Ed

Called G. Gale in the a.m. to ask him about Chief MacIntyre's visit. (I had been advised day before by Wheaton that MacIntyre had been to Dept.) Gale advised Chief had been there with Marshall file. Two points struck Gale:

1. Mitchell Sarson: when Marshall had gone AWOL in 1979 he had stayed with Sarson's sister. Told him that I believed the R.C.M.P. report made clear that Sarson wasn't most reliable witness.
2. That Chief had produced statements from Ebsary's wife, son and daughter which were opposed to what they were saying now. I said that if such was the case the probable explanation was that they were living in fear of Ebsary at the time.

Told him I was concerned about fact that Chief was producing statements now which neither I nor the R.C.M.P. had known about before - told him I would confirm this with R.C.M.P. and get back to him.

Gale also under impression that someone had recently been charged with threatening witness - I replied that if so it was not to my knowledge. He also believed Chief had said that Ebsary had been charged on night in question with carrying a 12" butcher knife - told him I believed that related to April, 1970 incident. (R.C.M.P. later confirmed this was so.)

- Significant that Chief left nothing with Gale - collected all papers before leaving.

Gale and I also spoke about Aronson and letter dated April ??, 1982 - can't recall contents.

*Wm
Leg C.*

*Wm
of T.*

F.C. why Significant? (3)

Fri Apr 16/82

After call with Gale, phoned Wheaton who confirmed that they had known nothing about earlier statements by Ebsary's wife and family. Said that on the two occasions when they had briefed MacIntyre they had asked him whether he had anything further which might help the investigation - he had said no. (It is now clear that MacIntyre has been less than forthright throughout and I believe that from the beginning he has set out to have the investigation reach a predetermined goal; at best he has been manipulative.)

Chief MacIntyre: - now seems clear that he used the Feb 3/82 meeting to "set up" both Scott and myself, i.e. he produced only those parts of the file for which he had an explanation e.g. both statements from each of Chant and Pratico - results of November 1971 R.C.M.P. investigation, his theory re Mitchell Sarson. He probably felt the R.C.M.P. would merely go and check Sarson - that would lead them back to Ebsary who had already passed the polygraph. Doubtful that he figured on the detailed investigation which ensued. (Feelings shared by Scott at our April 16th p.m. meeting described below.)

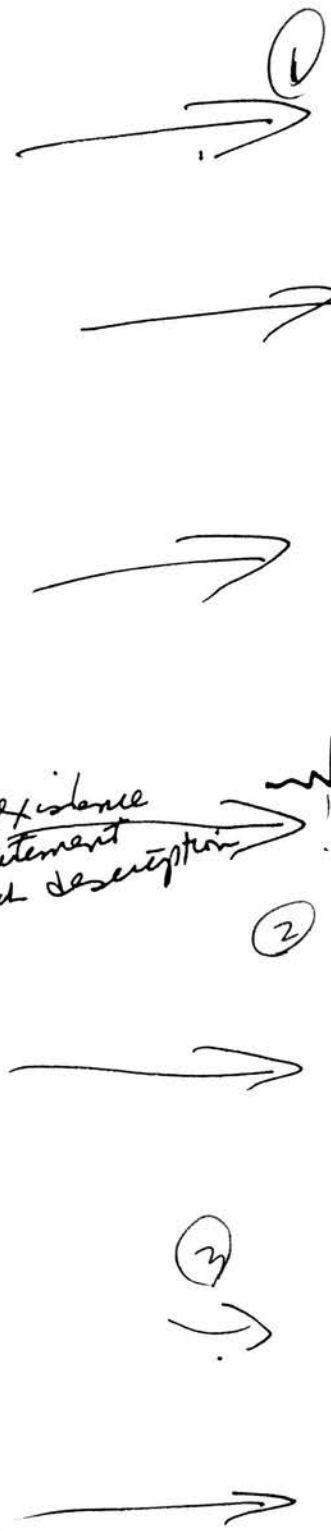
- Significant that Chief has always retained full file in his possession and only turned over what was specifically asked for. e.g. did not volunteer fact of previous statements by Ebsary's wife nor the statement of Patricia Harris wherein she describes a person like Ebsary.

- At time of first briefing by R.C.M.P. he pointed to Harris testimony as being proof that Marshall story was not true - then R.C.M.P. interviewed Harris who gave her story which damaged Chief's theory. He then related to G. Gale why Harris was unreliable witness who couldn't be believed.

In call with Wheaton, he suggested that he, Scott and I meet. I agreed - he phoned back to say meeting was on for 2:00 p.m. - had meeting I suggested that they should demand file and all information from Chief and threaten use of search warrant if necessary. They wanted a direction to Chief from A.G. to turn over information. - Also discussed having a meeting in Halifax with Brass I agreed and they were going to try it on Christen. - they, as stated, denied knowing of previously existing Ebsary statements.

- I phoned Gale again and told him of above meeting - said he would wait until Monday to hear from Christen.

F.E. when aware of existence of another statement containing such description



Sat Apr 17/82

1:45 p.m. - Wheaton called me at home to say they had almost completed taking statement from Donna Ebsary and we agreed to meet at my office at 2:30 p.m. Also briefed me on what she was saying.

While on phone told me that he and Herb Davies had gone down to see Chief MacIntyre late Friday p.m. and had spent a couple of hours with him. After being pressed Chief turned over previous written statement by Patricia Harris in which she described someone matching Ebsary. (Wheaton said Chief went scarlet when pressed about this statement) - also turned over November 1971 statements of Mary & Greg Ebsary (probable that R.C.M.P. had seen these during 1971 investigation which is an out for MacIntyre).

Also told me that Herb Davies had noticed Chief skipped some of the information on floor behind desk - believes it was some information with transcript attached relating to threat by Xmas against Pratico - believes there was a charge against Xmas at time.

- Said he also saw Prosecutor MacNeil's notes on Chief's file.

- Left with only statement and a few other papers - still did not demand full file and all information from Chief.

Meeting with Donna Ebsary - my office 2:30 p.m. Saturday, April 17, 1982 - met with above noted and S/Sgt. Wheaton - 24 years old - working in Boston - no work visa - extremely anxious that publicity will alert American authorities to her situation - working in some sort of furniture factory - didn't volunteer particulars and I didn't press.

- she has some university training (2 yrs) and has completed N.S. Grade XII - is embittered because of youth spent under father's roof - says she has trouble mixing with people to this day - was not allowed to have friends or bring anyone home. Was not allowed out of own yard except to attend school. Is obviously a bright individual who articulates very well - says she has vivid recollection of night of Seale murder.

- Gave written statement to Wheaton which I read as I interviewed her. Describes MacNeil and Father coming home on night of murder and father washing brown handled knife. (Not consistent with Exhibit #8 - probably murder weapon) - says he took it upstairs and she looked for it on several occasions afterwards but could never find it.

(W)

(1)

Back to page 8 !!

on

*Back in a
usual manner* →

Sat Apr 17/82

Also described re-enactment of murder by her father for her uncle Bob Ebsary from Newfoundland. Her description of that event matches perfectly with Marshall's most recent statement and also that of MacNeil particularly the words: "you want what I've got...etc."

She said that in 1971 - she was not questioned by the City Police - she waited outside police station in car with dog for hours while her father, mother and brother were questioned. (Though she couldn't remember, this was undoubtedly during the Nov '71 investigation.)

Told me about her home life and fact that her father could be very violent - always had knives. Would break up furniture or sell it for booze. Was always "bringing stray males home."

- She left after assuring me she would cooperate.

Told Wheaton that I thought he should get entire file from City Police. Said he would go down Monday and get it.

①

Mon Apr 19/82

This a.m. - phoned by Herschorn on unrelated matter - told him there were new developments in Marshall - he phoned me back with him and Gale on conference phone. Briefed them thoroughly on above. Suggested that investigation should now focus on city police - Gale was going to speak with Attorney General re direction to City Police under Police Act to turn everything over to R.C.M.P.

②

Phoned Wheaton - told him I wanted copies of newly acquired statements - he also advised that Scott told him they now had enough to investigate and not to go to MacIntyre for rest of file. Would bring statements down this p.m.

1:30 p.m. Wheaton arrived with statements of Ray, Greg & Mary Ebsary dated Nov. 15/71; Donna Ebsary 17 April 82; Patrician Harris 17 June '71 - also is going to provide me with Chant and Pratico 2nd statements.

- note Patricia Harris not complete - i.e. may have been a p. 2.

- also showed me statements of O'Reilley girls at least one of whom said she had told Harris to say she saw old man with white hair and long coat. Note this statement was taken before Harris' 2nd statement, though police could have previously been aware of what O'Reilley was going to say thus affording them an excuse for not believing Harris' first statement.

F.E.
First knowledge of Rose??

③

④

S

Mon Apr 19/82

Insp Scott called just as Wheaton was leaving. Said he was concerned about Harris statement and fact that MacIntyre had been holding back. Said that they had briefed Christen, were preparing a presentation, and expected that there would be a meeting.

Told him that I was disappointed that they still didn't take all of file from Chief. He said they couldn't be sure of getting it all that way.

Said they would keep me informed. Told him Gale expected to hear from Christen and that there would likely be further developments in the week.

In meeting with Wheaton also discussed advisability of questioning Rosenblum. Told him it would be extremely material to the admissibility of the present testimony of Chant and Harris to show that Defence did not know of this evidence at the time. - i.e. must be able to show that this evidence was ^{not} left out by defence for tactical reasons.

Had visit from Allan Story, writing for Globe and Mail. Knew Donna Ebsary's name and fact she was in Boston. (Apparently got it from Ratchford) said Wheaton down in Boston last weekend - I told him this was not so. Said he had been told by City Policeman that I was wondering who next Chief was going to be. I denied making such a statement.

Control list this memo? →

See give him over info?

F.E. →

April 20/82

Called H. Wheaton and told him of Story's visit.

10:15 a.m. Ian MacNeil visited - discouraged him from contacting witnesses - told him case would be ruined if they took off.

Fri March 5/82

a.m. - Jim Carroll at office re Allen case - says he's going to see Ebsary when he leaves.

3:30 p.m. approximately - Harry Wheaton comes to office. says he's had another meeting with Ebsary's wife and son. Says that after polygraph Ebsary stays in his room for 7 years. - confirms that he has fetish about knives and Wheaton takes them and sends to lab.

Is going to Dorchester to take statement from Marshall on Monday. Wants to know if I can suggest any questions. Tell him I'll think about it and call him at home on weekend.

(2)

Fri Mar 5/82

F.E. Ser details?
joking?

After Wheaton leaves, return call to Insp. Urquhart re Patterson. When we finish, Chief comes on line. Asks me for news on Marshall case - says they're not going to put me in jail are they. Have I been talking with them? Yes, I've been talking but I'm not at liberty to say what about. Says OK I won't ask any more questions about it.

Wed July 12/82

- 1. Chant
 - 2. Pratico
 - 3. Harris
- My office - present John MacIntyre, Mike Whalley, H. Wheaton
Began with summary of Chambers appr.

Chant - 2 st'd May 30 and June 4
- also read Feb 16/82 statement
- summarized

- 1. May 30, 1971 statement - meeting with Mike MacDonald before this statement - can't recall whether this statement was specifically read over by Don MacNeil - doesn't remember whether Lew was in on conversations.

- p. 116, 117 - of transcript - Chant says he told untruth when questioned by the City Police.

May 30th - MacIntyre only witness - Mike MacDonald says he didn't.

- 2. June 4, 1971 - admits his handwriting on last page of original - knew nothing about Chant's probation - says all persons named were there - Burke definitely there the whole time - mother there the whole time - MacGee there whole time - something about "milk money" - doesn't know who brought it.

Re: Chant

- says he did not discuss Chant's criminal record with MacGee prior to meeting
- no threats or questions by anyone to Chant during meeting.

- warrant issued when (probably same day)
- says he discussed with Donnie - and Donnie ordered charge
- says he didn't mention Pratico's earlier statement on June 4th

- Between May 30 and June 4 - absolutely no conversation between Chief and Chant

- When did he take Chant down to tracks? - Can't recall exactly when that was.

- Between June 4 and July 5 didn't have any conversations with Chant

- Can't recall any meetings between July 5 and Nov. 2.

- Chant says during adjournment at trial when he was declared hostile witness, he was pressured by police and prosecutor to give evidence - MacIntyre says he can't recall

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who giving this info?

After Nov 2nd?

who cared this? why
Mr. B.?

where did this come from? →

affair →

Wed July 12/82

Urquhart - says Burke there whole time

- Chant's mother there whole time

13 - came right back to Crown's office and spoke to Don MacNeil - Sgt. MacIntyre authorized to lay the charge.

Patricia Harriss

June 17 8:15 p.m. -

June 18 1:20 a.m. -

March 1/82

J.F. MacIntyre

- doesn't recall who was with her, but there was someone.
- doesn't recall other person being kept out of office.
- doesn't recall 8:15 p.m. statement
- can't recall how long he was present during questioning.
- may have thought she was over 16.
- can't recall whether he spoke to O'Reilly previously.

Urquhart

- Doesn't recall interview with Harriss
- doesn't recall O'Reilly
- doesn't recall mother being there at the time
- no banging desk and hollering

Refer to Gushue statement

John Pratico

- did he know him before? had known him to see him before.

May 30 - figures he was lying when he gave 1st statement

June 4 - just 3 present

- didn't believe 1st statement
- told him he wanted truth

- wouldn't say he was totally reliable but placed credence where his story was corroborated by other witnesses (Chant and Harriss)

- wasn't aware that he was in M.S. Hosp. between July 5 and Nov. never

MacIntyre believes prosecution was aware of all statements

Urquhart - no pressure tactics June 4

- has no independent recollection of interview
- was witness only

Ebsary - doesn't think he had any knowledge of Ebsary prior to Seale murder - (Urquhart concurs)

- 1st knowledge was in November when MacNeil came forward.

- didn't know of previous conviction for carrying concealed weapon - April '70

U & M - don't recall any lineup.

Search for knife - creek drained - no results

Why was this raised. No mention of O'Reilly in business statement. Mac I Affidavit

Why interested in this?

Who giving this info?

Why not ask if any contact between these statements given?

Didn't have other at this time P.B. to O. O'Rourke?

Why recall Louisbourg not Peter's?

Why not?

Relevance

Wed, July 21/82

Received call from G. Coles. - advised that he was getting feedback from source he wouldn't identify regarding lack of impartiality by the Crown - said he wouldn't want us to prejudge the situation.

①



Became evident in our conversation that complaint had come from Mike Whalley. Told him that when I met with Whalley, MacIntyre and Urquhart (Wheaton present) on Monday, July 12, that I told them that I didn't believe Marshall had done murder, that there was sufficient evidence to charge Ebsary.

②



G. Coles said they were concerned that I wasn't calling enough witnesses. Magee was one of the names mentioned - told him I had prepared affidavits for Urquhart, MacIntyre and Magee. That all affidavits would be reviewed by Mike Whalley, that I would make any changes they wished.



③

Thurs, July 22/82

- that I was interested in getting fully story out.
- 10:30 a.m. to 12:15 p.m.



④

- Whally, MacIntyre, and Urquhart come to office with affidavits I had previously drafted.
- Urquhart and MacIntyre want to delete paragraph regarding their lack of knowledge of John Pratico in 1971. Chief says it's possible that Pratico's mother would have told him her son was on pills at the time.
- MacIntyre wants paragraph added relating to statements he took from the Ebsary's on Nov. 15, 1971 after he had learned about Ebsary's possible involvement in stabbing from MacNeil.

⑤

- Told them I would make requested changes and have them sign revised affidavits.
- Left them alone in my office to read Aronson's affidavits while I talked in other office with V. King R.C.M.P. commercial crime about another matter. When I returned the Chief was reading the R.C.M.P. report - and did not leave until he completed same.

⑥

- Assured them that I would do everything possible to have their side of story presented.



John's Affidavit

Para. 15 - delete.

25 & 27 Insert Para between 27 and 28 relating to statements taken from Roy, Greg and Mary.

Nov. 8/82 Re: Oscar Seale 562-1792

- Gordon Gale called this a.m. to advise that he had just spoken by phone with Mr. Seale. Latter concerned that I was not being straight with him and wondered what I was going to do to protect his son's reputation.

- Told Gordon I would call Seale.

4:25 p.m. - (Brian present) phoned Seale - asked him if he wished to speak. Said yes he was waiting for my call. Said he was concerned that I did not know about his son.

- suggested that he was concerned about his son's reputation. He agreed. Told him that he should seek independent legal advice - wanted me to recommend - told him no but referred him to Barristers' Society referral service.

- Started to ask me about case - replied that because he felt that I had either misled him or deliberately lied in the past that future communication should be through his solicitor.

- Pressed me about lie: "Well, didn't you? Didn't you tell me that Marshall had taken the polygraph. Told him I definitely had not; I had never lied to him. "Well am I dreaming it up". Told him I did not know where he was getting it. He said "Don't put me down".

Told him that all I was interested in was getting at the truth. You're saying I'm a liar and I'm saying I'm not - so we have a stand off.

- Started to ask me another question but I told him I was stopping here and reiterated that he should retain a lawyer and communicate with me through him.

Dec. 6/82 Re: telephone conf. Martin Herschorn re Donald Marshall
conf. 11:00 a.m. Notes 12:15 p.m.

(1)
(2)
(3)
- Phoned Martin Herschorn re unrelated matter - said he was just going to phone me. Inquired as to reasons why I had decided not to call police officers. Told him that Court had signalled that they did not want to get into that. When I was asking for leave to cross on O'Reilly statement, C.J. had made the point that witnesses now admit they had lied, no point in getting into why they had lied. (Recalled that he had made at least three references in that vein.

Also told him that I had conferred with Mike Whally during the noon adjournment on Dec. 2/82. At that time Whally agreed that there was not much point calling police because he felt it was obvious that all the witnesses were lying anyway.

Dec 6/82

- Also told Martin Herschorn that the City Police had fared far worse in the press than they had in court. Told him that cross-examination had lessened the impact of the evidence of Harriss and Chant. - Chant agreed that he had believed Marshall guilty anyway - that his mother and probation officer present when 2nd statement taken, and that the police had kept pressing him for the truth.

(7)

- told him that Eddie MacNeil of Police Commission had commended me on the job and said he would phone MacIntyre to tell him about it. Also Oscar Seale had phoned office on December 3rd and left work that he thought I had done a good job.

Bottom line was that police had come through in best possible light and calling them would not have improved their position.

*know
of
to
Police ~*

Martin Herschorn asked whether I had been pressed to give any theory, and I reminded him of our talk on Dec 2/82 wherein I had told him and Bob Lutes that when pressed I told the Court that the Crown's position was inquisitorial rather than adversarial. Also reminded him of earlier conversations wherein I told him that the day would probably come where we would have to take a position and that in my professional opinion, we should at that time advocate Marshall's acquittal. M. Herschorn said I should hold off giving such an opinion as long as possible because the Deputy Attorney General was concerned that we should not appear to be espousing any particular theory. I replied that I would do my best but that sooner or later a position would have to be taken.

(2)

Mon Jan 17/83 Notes re Marshall

Received unannounced visit at office by Chief John MacIntyre ostensibly to discuss necessity of having wiretap done in arson case being investigated by police.

Told him I had made copy of Dec 1 & 2/82 proceedings re Marshall - as I told him I would do during discussion at police station in August.

- Chief then began to rehash facts of case and try to ascertain what my views now were at this stage of the proceeding. Told me he would go to his grave believing that Marshall had inflicted the wound to his left arm himself. (Ref'd to fact that expert had said jacket was cut as well as torn)

(W) (3)

Mon Jan 17/83

Also said that reason Marshall had removed stitches in arm was so that no blood sample could be taken from him when he returned to hospital to have stitches removed. I queried whether Marshall knew that MacIntyre had arranged with Dr. to have blood sample taken and he said that he had not.

- Ref'd to Marshall going back to scene and staying out of Seale's line of vision so that Seale could not identify him as the assailant (Begg question of why Marshall would have gone back in the first place)

- Was noncommittal on my position. (Mentioned during conversation that he would like to see my factum, I didn't acknowledge that I had heard the request.

Toward end of conversation, Chief told me that he had had a meeting with the Deputy Attorney General and that at end of that meeting, Deputy had walked around table, placed his hand on Chief's shoulder and said "As far as I'm concerned, that fellow was the author of his own misfortune."

Telephone Conference with Gordon Gale

If Court accepts evidence given, then they have no option but to acquit.

G. Gale said it was not the sort of thing to be talked about over the phone, that I should come to Halifax so the four of us could talk about it.

(Had initially told me that he, Martin and Coles had discussed my letter - not sure that he and Martin agree with me - feels that a reasonable compromise position could be taken.

Told him I would fly up in the a.m., i.e. Jan 25/83.

Jan 25/83

7:15 leave

7:58 arrive Halifax

Preparation for Jan 25/83

- Refer to original appeal factum - how strong was Crown's position?
- Refer to early memo's to Dept. - did I make it clear that eventually we'd have to support acquittal? -----
- Is suggested "compromise", a compromise of my professional integrity?
- Is there risk that a new trial would be ordered if we waffle. Best scenario: acquittal, then lay charge against Ebsary the same day Supreme Court acquits.

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~~Vol. 44/29~~

Jan 24/83

(1)

Jan 25/83

- Fact that Ebsary to be released and constitutes danger
- Do they want me to say that I have been instructed by the Deputy Attorney General not to take a position in this matter?
- Trying to shift onus of decision onto Court and escape complicity in or responsibility for that decision.
- Whole problem would not have arisen save for Whalley's visit.

July →

notes of Jan 25/83
Meeting in Hfx
(Made Jan 26/83)

Attended at the office of the Deputy Attorney General (Coles. Present were Coles, Gale and Herschorn.

①

- Meeting lasted approximately 2½ hours and began with Mr. Coles explaining his perception of the role the Crown ought to play in this case. Basically, he said that the Crown should outline the strengths and weaknesses of the evidence of the various items of evidence and then say to the Court, "if you believe this, you can rule one way, but if you don't, you can rule another way. Although he maintained that such a posture would be a Crown position, I disagreed.

- It was my view that the Crown should take a definite position on ultimate disposition of the case and that should be that Donald Marshall be acquitted.

②

- Same points canvassed a number of times and at one point Coles threatened to take me off the case - told him I would prefer that he take me off the case than order me to adopt his "position" in court - in which case I advised that I would tell the court that I had been directed by the Deputy not to take a position on the case.

- Coles said that there was not time for him to take me off the case but if there were he would do so because he was not comfortable with my position.

- Stated that it was not role of Crown to take position that it was the responsibility of the Court to make the decision - agreed with him on latter point but not on former - reminded him that Crown in its factum in 1972 had taken position that the appeal should be dismissed.

- Coles said this was a different type of case and Crown was not cast in its usual role - that furthermore we were now dealing with questions of fact not of law - that there was no theory of the Crown.

③

- Told Coles there was a Crown theory and that even if it were straight question of fact, Crown should still take a position.

- In the end Coles said - "We're in your hands, try not to create more problems for me than I already have."

Feb 8/83

Brooks McGuire, Campbell St., age 28 - 17 yrs old in 1971

- was at dance (St. Joes)
- common knowledge that M & S were fighting that night - though he didn't see it
- common knowledge the two of them hated each other. (not best of friends)
- named other people - Mike Jamael (Tom Jamael's son) - Florida
- another fellow attending university in Ontario
- M.B. McGuire said he had not seen incident himself
- Information provided by Cpl. Woodburn
- relayed to Cpl. Carroll

Feb 9/83

- told him I didn't think there was anything worth following up at this point.

Feb 15/83

- spoke with Insp. Scott and Cpl. Carroll
- re Brooks McGuire and Irving Cameron
- Scott couldn't recall latter party only fact that he had been told of someone by Chief MacIntyre. I told Scott that Carroll had appraised me of conversation he had had at Correction Centre with Cameron - Scott said he thought statement should be taken from McGuire just to confirm that he had not actually seen anything - told him it would do no harm but I left it up to him
- Told him Woodburn had not gotten back to me with more names from McGuire

*What is this?
Summary of
N. B. excerpts??*

- Feb 23/82 1. not complete until Chief MacIntyre questioned
 2. should not be privy to conduct of investigation
- Feb 26/82 - Scott briefs MacIntyre
- April 16/82 - MacIntyre meets with Gale
 - Scott and I and Wheaton meet - I told them they should demand file
 - they want directions from Attorney General
 - Wheaton and Davies go to Chief - but leave without demanding file.
- Sat Apr 17/82 - telephone call with Wheaton - again tell him to demand file - said he would go Monday and get it.
- Mon Apr 19/82 - phone conference with Gale and Martin Hershcorn - told them I thought investigation should now focus on City Police - Gordon Gale said he would get direction under Police Act from Attorney General to turn everything over.
 - phoned Wheaton - Scott had told him they now had enough and not to go get file - Scott phones later and I told him I was disappointed they hadn't demanded file.
- April 20/82 - Attorney General's letter to MacIntyre

Author of own misfortune

"miscarriage of Justice"

①

April 5/82

Vol 31/22

Known at that time ① Vol 34/16 52
robbery intention

② Harris cont & Reavis.

"most desirable result - miscarriage."

Had New spoken to Marshall
what was re "miscarriage"

May 3/82

34/29

April 16 + 17 - MacIntyre manipulation
cause of 2nd Harris Statement.

(4) (8) (11) (21) (23)

still believe most desirable
result "miscarriage"

Jan. 18/1983

34/126

In detail, where does all this come from!!

i.e. Not a miscarriage of justice?

what changed in meantime.

Any pressure? From whom?

Feb. 4/83

Vol. 4/11

p.15 - Not given to Defense. "miscarriage"

18 - miscarriage

19 - Some Court Notes Harris ??

39 - no miscarriage

40,41 - why say this.
Does he adopt that statement today

42 - explain

41 (1) - go to next page

2)

Jan. 1985 - 3rd Ebsary TRIAL

Vol 9 -

121, 126

Believes Marshall and
McNeil

Presented Marshall evidence as
credible and believable.

address to jury 9/85, 6

Evidence at this TRIAL

Review in detail

no attempt to impeach or cross-examine

• after 114 & 115

refer Carroll evidence

Is this story more credible or
plausible than that given on May 30/71
and during Trial.

Nov. 1971 TRIAL Vol. 2/6-11

Review parts marked.

May 30/81 Statement
Vol 16/17

Description - Mardones 20/2
Ex. 38

George McNeil Statement
Vol 16/24

Why should Marshall be blamed in
any way because he did not tell
Police about calling men back - ~~and~~
~~etc~~

How can he be blamed because three
independent and unconnected Teenagers
lied at TRIAL.

Given fact that 2 unconnected independent witnesses said they saw Marshall stole Seale is there any reasonable probability that Marshall would be acquitted - no matter what story he told.

See (4A) first

Guinn: If Sisape let me know

- ① Marshall did not steal Seale
- ② He gave description of the killer to Police on May 29 & May 30 /71
- ③ The Police had a similar description from other independent witnesses.
- ④ Two people lied and testified they saw Marshall steal Seale
- ⑤ 10 days after conviction an independent witness told Police that he witnessed Seale being stabbed by Elsbary
- ⑥ A re-investigation was carried out and no one ever spoke to Marshall or the lying witnesses

Robbery

Now believe Marshall?

Scale: 1. no record.

2. no history of criminal activity.
not even mischief

3. Fine upstanding family

4. Seen by Beaver and others
shortly before midnight
Beaver Vol. 39/123 (see above - betw 11:30 & 12)
Dixon 34/29

5. Not a close friend of Marshall

6. By 12:40 a.m. Marshall is on Byron Avenue.

7. Then sees a discussion with Harris + Gustin that lasted couple of minutes

8. Discussion with Gibson + Marshall

Reasonable to assume Marshall conceived Scale in that short period of time to embark on a robbery attempt - Commit a crime?
"Bear some money?"

Sentence for robbery in 1971?

⑤
⑦ Marshall spent approximately 11 years in prison.

A. Wouldn't you agree that the circumstances of this case ~~constitute~~ do call the credibility of our criminal justice system into question?

B. Wouldn't you agree that ~~that~~ ^{Mr.} Marshall has been the victim of a gross miscarriage of justice?

C. Wouldn't you agree that the Court should have taken such a position before the Appeal Division. &

Harris Quote

301.

0. MR. MARSHALL, Jr., Direct Examination

precise moment?

A. I was looking at Mr. Ebsary doing what he was doing and MacNeil was coming, MacNeil was with me.

Q. MacNeil was with you at that point.

5. A. Um-hmm. Well, he came towards me, right.

Q. Okay.

A. I grabbed him and I threw him and it was at that point Mr. Ebsary was coming after me at that point.

10. Q. Well, let's just - I know it all happened fast but if we could break it down step by step. You say that when MacNeil made contact with you, you threw him.

A. Yes.

Q. Now describe the motion there. How did you make contact? When he made contact with you where were his hands?

15. A. I don't remember.

Q. You don't remember that.

A. No.

20. Q. So how did you grab hold of him, where on his body?

A. I grabbed him right here.

Q. All right, now you're indicating two hands against MacNeil's chest area.

A. Yes.

Q. Yes?

25. A. And . . .

Q. And then?

A. I threw him towards the sidewalk and . . .

Q. You threw him towards the sidewalk.

A. Yes.

30. Q. Was there any conversation between you and

302.

0. MR. MARSHALL JR., Direct Examination

MacNeil at that time?

A. No.

Q. Up to that point in time had you heard Sandy Seale say anything to either MacNeil or Ebsary?

5. A. No.

Q. Although he may have been the one who called him back. You don't know if it was you.

A. I don't know if it was him or I.

10. Q. So now you throw MacNeil away from you, Seale is stabbed and down and you said that when you threw MacNeil Ebsary was coming for you. What did you mean by that? Describe what Ebsary was doing at that point?

A. At that point he - after him stabbing Seale he come towards me and in different words, he said I got something for you too, you Indian.

Q. I'm sorry, I got something for you too what?

15. A. He called me an Indian, right? And he made - he come towards me and he had something in his hand and he walked towards me, I was about five feet from him at that point and he walked towards me and he had something like that and he went to stab me here and I blocked the knife and he got me here.

20. Q. So he called you an Indian, and Sandy Seale, he was black.

A. Yes.

Q. What if anything was said about Sandy's race?

25. A. I don't remember. The only thing I remember Mr. Ebsary saying, do you want everything I have? That's all I remember him saying to him.

30. Q. Now Mr. Campbell, could I have the . . ? Just stand down a minute, Mr. Marshall. Now I am Ebsary and you say-I want you to put my hand in the position his was in when he came at you.

303.

0. MR. MARSHALL, JR., Direct Examination

Down low. Now do you remember if it was in his right hand or his left hand?

A. It was in his right hand.

5. Q. His right hand. Okay. So then you say that he lunged towards your stomach.

A. Yes.

Q. All right. So just grab hold of the blade here and pull my hand the way the knife came.

A. He came towards there and . .

10. Q. All right. Now so the ruler is going towards your abdominal area. Now how did you move when the knife was coming towards your abdominal area?

A. I pushed his arm . .

Q. All right, now you are hitting my right hand with your left hand. All right. So you pushed the knife aside.

15. A. Yes.

Q. Now show us - previous evidence indicates that you had a cut arm that night. Which arm was cut?

A. My left arm.

Q. Do you have a scar from that?

20. A. Yes.

Q. Will you show wit to the jury?

Okay. The record shows there's a scar on the inside of Mr. Marshall's left forearm about three inches in length. Would you show that to His Lordship? Okay.

25. All right. So I'm Ebsary coming at you. I want you to show what you did.

A. (Answer inaudible)

Q. Now how did you get the cut in your left arm? I'm coming at you like this, okay. Show us how the knife makes contact with your left arm.

30. A. I grabbed him by the arm there and . .

-187- DONALD MARSHALL, JR., Dir. Exam.

Q. In Bedford. Who were you with?

A. Roy Gould.

Q. Roy Gould. And you borrowed this jacket, this yellow jacket from Roy Gould?

A. Yes.

Q. And you were wearing it on the night of May 28 of this year?

A. Yes.

(10) Q. All right. Now had you been drinking on the night of May 28 when you were at the home of Tobin's?

A. No.

Q. And where did you go after you left Tobin's home?

A. Down the park.

Q. Down to Wentworth Park. And did you go in the park?

A. Yeah.

Q. Were there people in the park?

A. No.

Q. Did you meet anybody in the park?

(20) A. Sandy Seale.

Q. Sandy Seale. Did you have any argument with him?

THE COURT:

Will you kindly ask the witness to tell the story? Don't lead him.

MR. ROSENBLUM:

Thank you.

BY MR. ROSENBLUM:

Q. What happened when you met Sandy Seale?

A. Talking for -

(30) THE COURT:

Speak up, Mr. Marshall, please.

BY MR. ROSENBLUM:

Unfortunately it is very difficult for him to do. I have instructed him to do it and I am standing back for him to do that very thing. Take your hand down, Donnie, and speak loud.

-186- DONALD MARSHALL JR., Dir. Exam.

DONALD MARSHALL JR., being called and duly sworn, testified as follows:

BY MR. ROSENBLUM: Dir. Exam.

- Q... Now Donald, I'm going to stay back here so that you have to speak up loud enough for me to hear and by so doing, every jurymen here will hear you. Your name is Donald Marshall, Jr?
- A. Yeah.
- Q. Now speak out loud. Are you right-handed or left-handed?
- (10) A. Left-handed.
- Q. Just take your hand down. Now did you know the late Sandy Seale?
- A. Yeah.
- Q. How long did you know him before he was stabbed on the night of May 28, 1971?
- A. Three years.
- Q. Three years. Did you use to go places with him?
- A. Yeah.
- Q. Were you good friends with him?
- (20) A. Yeah.
- Q. On the night of May 28, 1971 where were you the early part of the evening?
- A. Home of Tobin's.
- Q. Home of Tobin's - what street do they live on?
- A. Intercolonial.
- Q. Intercolonial Street. And you stayed there until about what time?
- A. Uh -
- Q. Roughly?
- (30) A. About 11:00 o'clock.
- Q. About 11:00 o'clock at night. Now had you been in Sydney or Cape Breton for a few days before May 28?
- A. No.
- Q. Where were you?
- A. Trying to think of the name -
- Q. Take your hand down Donnie.
- A. Bedford.

-188- DONALD MARSHALL, JR., Dir. Exam.

BY MR. ROSENBLUM:

Q. Now when you met Sandy Seale, what happened when you met him in the park?

A. We were talking for a couple of minutes and Patterson come down -

Q. What's that?

A. Patterson come down.

Q. You met a fellow by the name of Patterson?

A. Yes.

Q. What condition was he in?

A. Drunk.

Q. He was drunk. What happened then when you met Patterson?

A. Put him on the ground. Walked up to the bridge.

Q. Who walked up to the bridge?

A. Me and Seale.

Q. Will you put that hand down Donnie. We want to see and hear you. Yes, you and Seale walked up to the bridge. Go ahead.

A. Two men called us up Crescent Street.

Q. Two men what?

A. Crescent Street.

Q. Crescent Street, yes. What happened when you met these two men up there?

THE COURT:

I appreciate your problem, Mr. Rosenblum, but you must try to whatever extent you can not to lead. You're doing it all right now.

MR. ROSENBLUM:

Thank you, my Lord.

BY MR. ROSENBLUM:

Q. Yes, you met two men. You'll have to take that hand down, Donnie. I will tell you that repeatedly. You met two men and you walked up towards Crescent Street. Go ahead.

(10)

(20)

(30)

-189- DONALD MARSHALL, JR., Dir. Exam.

A. Bummed us for a cigarette.

Q. Umm?

A. A cigarette.

Q. What?

A. Smoke.

Q. What about them?

A. Asked for a cigarette.

Q. What?

(10) A. And a light.

Q. When they asked you for the cigarettes and the light, what did you do?

A. I gave it to them.

Q. Go ahead.

A. I asked them where they were from. Said Manitoba. Told them they looked like priests.

Q. Told them what?

A. Looked like priests.

(20) Q. Why did you make that remark to them? Take your hand down, Donnie.

A. Looked like it.

Q. In what way?

A. Dressed.

Q. Umm?

A. Dress.

Q. What kind of dress? How were they dressed?

A. Long coat.

Q. What colour?

A. Blue.

(30) Q. What religion are you yourself?

A. Catholic.

Q. So when you asked them if they were priests, did you get an answer?

MR. MacNEIL:

No, no, my Lord. I don't think he said he asked them if they were priests. At least not that I could hear. He said they looked like priests. He didn't say that he asked them.

MR. ROSENBLUM:

I'm very grateful for your interruption but please, it is

-190- DONALD MARSHALL, JR., Dir. Exam.

MR. MacNEIL:

Just one minute, if Your Lordship pleases, I take an objection to my learned friend leading the witness. I am suggesting that he is putting words into the mouth of this witness that he never uttered.

THE COURT:

Now gentlemen -

MR. ROSENBLUM:

10) It is very harsh language, My Lord, with the accused on the witness stand. I resent that. However -

BY MR. ROSENBLUM:

Q. What did you say to these men?

A. They looked like priests.

Q. Yes, go ahead. Did you get an answer to that?

A. Yeah.

Q. Tell us.

A. The other guy, the younger one, said, "We are".

Q. Go ahead.

(20) A. They asked me if there were any women down the park. Told them there were lots of them down the park. And any bootleggers. I told them I don't know.

Q. Take your hand down, Donnie, please. Go ahead.

A. Told us, don't like niggers or Indians.

MR. MacNEIL:

Can't hear the witness, My Lord.

THE WITNESS:

We don't like niggers or Indians. Took the knife out of his pocket -

30) BY MR. ROSENBLUM:

Q. Who did?

A. The older fellow.

Q. What did he do?

A. Took the knife out of his pocket.

Q. Yes.

DONALD MARSHALL, JR., Dir. Exam.

A. Drove it into Seale.

Q. What part of Seale?

A. Here.

Q. Are you referring to the stomach?

A. Yeah.

Q. Yes. And then?

A. Swung around me, moved my left arm and hit my left arm.

Q. Hit your left arm? Just roll back your sleeve, please.

(10) Is there a scar now visible from the slash of the knife?

A. Yes.

Q. Just show it please.

A. (Witness complied.)

Q. Is that the scar that the doctors described?

A. Yeah.

Q. Show it to His Lordship as well. On what arm is that slash?

A. Left arm.

Q. On your left arm. Yes, after that happened what did you do?

(20) A. Ran for help.

Q. Where did you run?

A. Byng Avenue.

Q. Take your hand down Donnie. Did you meet anybody on Byng Avenue?

A. Yeah.

Q. Who did you meet?

A. I don't know his name.

Q. Take your hand down.

A. Don't know his name.

(30) Q. Take your hand down, please. Did you see him on the witness stand here?

A. Yeah.

Q. May I suggest the name, My Lord? May I suggest the name of the person he met on Byng Avenue? He can't recall his name. Was it Mr. Maynard Chant?

A. Yeah.

Jan. 1985 Vol. 9

Marshall Direct 3rd Elsbury

- 33 Home on May 28th at 9:30
- 34 Liquor Store + then International of (Part)
- 35 Down George St. to Reback
- 37 Met Seale at Park around middle.
Knew him
- 38 told Sandy going to scrape up some
money. Been off somebody in Reback
39. Called by one couple + met another
Sandy + other two
- 40 With Beshue + Hurwin for couple of minutes
- 41 First saw Elsbury + MacNeil when he
entered Park
- 43 when he joined them started talking
to older person "Deception"
- 44 Said he looked like a priest
* Said he was from Manitoba - worked
about women. Offered to take
Seale + Marshall to his home
- 45 Elsbury said he lived around corner
from Crescent Street
- 47 one of us called them back
- 48 Neither Seale or Marshall had creagons
- 47 Describes Stalling
- 50 "Do you record everything I have"
- 51 He grabbed MacNeil + knew him

Marshall TRIAL
Vol. 2

- 6 at John's home until 11
- 8 Met Seal & talked for a few minutes
2 men called us up to Crescent St
- 9 asked for a cigarette. Asked
where they were from. Said Monitoh
old Nam they looked like priests
why - Long blue coat
- 10 Asked if any women down in Pass.
any bootleggers
Said don't like Indians or niggers.
took knife out & drove it into
Seal.

Marshall Statements May 30
Vol. 16/17
Review

ex. 38 macdonald notes
Description

George MacNeil Statement 39428
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MR. MARSHALL, JR. Direct Examination

I don't know the name of the street where the Keltic Tavern was.

Q. Your voice is getting soft again.

5. A. On George Street, I took the route on George Street to the park. That leads to the park.

Q. And did you go to St. Joseph's Hall?

A. No, I didn't make it there.

Q. Where did you go?

10. A. I went to the park to see if any of my Indian friends were there at the park that time to join up with them and I met Sandy Seale at the park.

Q. Yes. Now had you known Sandy Seale prior to that day?

A. Yes, I met him in dance halls. I knew him.

Q. So you met Sandy Seale exactly where in the park?

15. A. In the center of the bandshell area and the pond there. I met him around the middle of the park. And I asked him where he came from and he told me he came from a dance and he was heading home.

Q. You can't tell us what he said to you.

20. A. Okay.

Q. But you and he had conversation.

A. Yes.

Q. You can tell us what you told Sandy but you can't tell us what he told you. Do you recall what you said to him at that time?

25. A. I asked him where he came from and he told me where he came from and . .

Q. Just take your time. What if anything did the two of you decide to do or did you go your separate ways at that time?

30. A. We didn't go our separate ways. I was down

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0. MR. MARSHALL, JR. Direct Examination

there to see if I could find my Indian friends down there and I told him I was ogoing to try to scrape up some money for later on and . .

Q. And what did you want the money for?

5. A. Probably head out to the bootleggers or something when we get home on the Reserve.

Q. And how did you intend to get the money?

A. Like I usually do. I bum it down there. Like I bum it off people.

10. Q. You're saying you usually bum the money off somebody in the park.

A. Yes.

Q. All right. So where did you and Sandy proceed after you met him in the bandshell area?

A. We walked to the footbridge in the park up there.

15. Q. That's a bridge which spans a creek there?

A. Yes.

Q. Yes?

A. And at that time we were - I don't know what we were talking about at that time and two people, one of the people there was on Crescent Street, asked me to give him a cigarette at that time.

20. Q. Now you said two people.

A. Yes.

Q. Where were these two people that you're referring to?

25. A. They were on Crescent Street.

Q. And you and Sandy were down at the footbridge.

A. Yes.

Q. So what'd be the approximate distance between these two people and you and Sandy Seale?

30. A. About . .

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0. MR. MARSHALL, JR. Direct Examination

Q. Well, take lengths of this court room.

One, two, three, four lengths of this court room or what?

A. Three or four. Four maybe.

5. Q. About four lengths of the court room. Yes?

A. And one of them asked me if I had a cigarette on me and I had one so we were going to go, we were going up to where these two people were and I met this other couple that were on Crescent Street.

Q. Now this was before you got to the two who had asked you for the cigarette?

10. A. Yes.

Q. Now who were these other two people you met?

A. Terry Gushue and Patricia Harris.

THE COURT: Is that Terry?

A. Yes.

15. MR. EDWARDS: Terry Gushue.

A. And they asked me for a cigarette at the same time. I went to see Terry Gushue and Patricia Harris and Sandy Seale walked up to the . .

Q. To the two that called you in the first place.

A. Yes.

20. Q. Okay. Now you are in location with Gushue and Harris.

A. Yes.

Q. Then there's the two guys, the two people who asked you for the cigarette. Where is Sandy at the time you're with Gushue and Harris?

25. A. He's with the two men that asked me for the cigarette already.

Q. So we've got two groups of three.

A. Yes.

30. Q. Now how far are those two groups of three apart?

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0. MR. MARSHALL, JR. Direct Examination

A. Two lengths of this court house.

Q. The court house or the court room?

A. The court room, I mean.

Q. Now where you were with Gushue and Harris were the other three visible to you?

5. A. Yes.

Q. Describe the lighting there that night?

A. I don't remember the lighting.

I can't recall that.

Q. Could you or did you observe what Seale and the other two were doing?

10. A. No. They were just standing there.

Q. And what about you and Gushue and Harris? What were the three of you doing?

A. After I gave them a cigarette I asked them where they came from and they told me they came from the dance.

15. Q. Again you can't tell what anybody told you. So you were having a discussion.

A. Yes.

Q. So how long were you with Gushue and Harris?

A. A few minutes.

20. Q. Pardon me?

A. A couple of minutes.

Q. A couple of minutes. Yes. So then did they leave you or did you leave them?

25. A. We both left each other. They were going home. They were on their way home.

Q. Yes. Now Terry Gushue, what kind of condition was he in that night?

A. He was drunk.

Q. He was drunk. What about Patricia Harris?

30. A. She was in pretty good shape. I don't think she was drinking, or if she was she didn't drink too much.

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MR. MARSHALL, JR. Direct Examination

Q. Had you known Gushue and Harris prior to that evening?

A. Yes.

5. Q. Okay. So after you and Gushue and Harris left each other, as you say, where did you go from there?

A. I went to join up with the other party that called Sandy Seale and I up.

Q. Sandy Seale and the other two.

A. Yes.

10. Q. Now up to this time, when you left Gushue and Harris, did you know who the two people were with Sandy Seale?

A. No.

Q. No.

15. A. I met them when I walked in through the park area. They were talking to a man and woman in the park at that time. That's where I first seen them.

Q. This is before you even met Sandy Seale.

A. Yes.

20. Q. Do you know who they were talking to at that time?

A. One of them was - when I was in the Air Cadets he was one of the officers that took care of the groups and I was in his group so I knew him.

Q. Do you know his name, first or last?

A. I don't know his name.

25. Q. Okay. Do you know who the other person was these two were talking to?

A. No. It was a woman that was with the person I knew.

30. Q. Okay. So when you first went in the park you saw these two people who later asked you for a cigarette.

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Michael
Statement

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MR. MARSHALL, JR., Direct Examination

you have left Gushue and Harris and you're going up to join Seale and these two men who asked you for a cigarette.

A. Yes.

5.

Q. Take it from there. What happened to them?

A. When I joined up with them I started talking to the older person that was there and I asked him how are you doing and whatever, and . . .

10.

Q. All right. Now before we get into that conversation, describe this older person. I take it you're saying that one of the men was older than the other.

A. Yes.

Q. Describe the older person. How tall was he, what colour hair did he have, if you saw that, how was he dressed?

15.

A. At that time he was about 50 years old or whatever and he had white hair, glasses on and he had some kind of a navy coat on, some kind of a cape he had on at that time.

Q. A navy coat or a cape.

20.

A. Yes.

Q. Yes?

A. And . . .

Q. Did you know him when you saw him?

A. No.

25.

Q. Do you know who he is now?

A. I think so, yes.

Q. Is he in this court room?

A. Yes.

Q. Would you point him out?

A. He's right there.

30.

Q. What's he wearing?

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0. MR. MARSHALL, JR., Direct Examination

A. Wearing a brown coat with a blue shirt.

Q. The record shows he's pointing to Mr. Ebsary. All right. So you and Mr. Ebsary had some conversation when you joined up with the three.

5. A. Yes.

Q. Now can you tell us what that conversation was?

10. A. I asked him about his coat he had on, I told him you look like a priest with that coat on, he told me he was a preacher or something, I don't know, and he said that he was a sea captain and he was a priest or some sort of a priest, I don't know what kind of a priest he was, and we were talking and . . .

Q. What were you talking about? What type of things were you talking about?

15. A. I asked him where he was from and he told me he was from Manitoba, right, and he asked me if there was any women around the park area and at that point I hung around the park for about three years at that time and I told him there was all kinds of women in the park and whatever, and he . . .

20. Q. Take your time, try to remember everything that was said as best you can.

25. A. The only things I remember is he told me he was a priest and a sea captain, and he offered me, he offered us, Sandy Seale and I, he offered us to go to his home while we were talking and he told us he had a quart of rum up there at that time and . . .

Q. And what did you or Sandy say to that invitation?

30. A. I said no to him because I didn't know the person and in '71 the Indian friends I had, we had to stick together for gang reasons or whatever it was.

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MR. MARSHALL, Jr.,. Direct Examination

Q. Are you explaining now why you didn't go to this man's home?

A. I wasn't interested in going to his home.

5.

Q. So when you refused the invitation to go to his home, was there any conversation after that?

A. He told me he just lived around the corner where we were at on Crescent Street and he proceeded to go home, right?

Q. He proceeded to go home.

A. Yeah.

10.

Q. Now what way did he walk?

A. What way?

Q. Yes. How did he proceed to go home?

A. He walked - he was on Crescent Street and he walked towards Bentinck Street. I think it's Bentinck Street.

15.

Q. Bentinck Street is another street that borders Wentworth Park.

A. Yeah.

Q. Now before we leave that part of the sequence of events, what about the other man who was with Mr. Ebsary at that time? Did you know him before?

20.

A. No.

Q. Was he taller or shorter than Ebsary?

A. He was taller.

Q. Yes. And could you - do you remember how he was dressed?

25.

A. He had a brown corduroy coat on, that's all I remember of him.

Q. Now what could you say about his condition at the time?

A. He appeared to be feeling pretty good.

30.

Apparently he was drinking, I guess.

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0. MR. MARSHALL, JR., Direct Examination

Q. What made you think that?

A. Just by his condition, I guess. I could tell he was drinking.

5. Q. When you and Ebsary were having the conversation, did this other man have any conversation with you?

A. No.

Q. You already told me you didn't know who he was at the time.

A. I didn't know him.

10. Q. Have you seen him since?

A. Yes, I seen him.

Q. Yes. And do you know his name?

A. Yes.

Q. What is it?

A. Jimmy MacNeil.

15. Q. Jimmy MacNeil. All right. So let's go back then to where Mr. Ebsary you say started to walk away from you and Sandy Seale. You said he started to go home.

A. Yes.

Q. Where did MacNeil go when Ebsary left?

20. A. He went with him.

Q. He went with Ebsary.

A. Yes.

Q. So that left you and Sandy Seale standing on Crescent Street.

25. A. Yes.

Q. Now Ebsary and MacNeil walk away from you. Were you watching them as they walked away?

A. Yes.

Q. Describe how MacNeil walked?

30. A. I don't think I can describe how he walked.
I don't remember.

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MR. MARSHALL, Jr., Direct Examination

Q. So what about Ebsary's walk, anything . . .

A. No.

Q. So the two of them walked away from you.

How far did they get?

5.

A. About two lengths of this court room.

Q. About two lengths of the court room. Okay.

Now what happened then?

A. One of us called him back.

Q. Do you remember which of you, you or Sandy called him back?

10.

A. I don't remember who.

Q. Do you remember what was said when you called them back?

A. No.

Q. So when either you or Sandy called Ebsary and MacNeil back, how did they respond? What did they do?

15.

A. They came back. They walked back towards us.

Q. They walked back towards you.

A. Yes.

Q. Now you already said that you and Sandy were standing on Crescent Street. Now what positions were you in, side by side, were you in front of him or in back of him, or just what position were the two of you in when Ebsary and MacNeil started coming back towards you?

20.

A. We were standing side by side but I was in front of Sandy Seale, beside him but in front of him.

25.

Q. Beside him but in front of him.

A. Yes.

Q. So how far were you from Sandy?

A. Five feet anyway.

30.

Q. Well, can you show us by spreading your arms the distance that you and Sandy were apart?

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0. MR. MARSHALL, JR., Direct Examination
A. I'd say about five feet.
Q. Now you and Sandy were about five feet apart and Ebsary and MacNeil are coming back towards you.
5. A. Yes.
Q. Are they coming together or is one in front of the other or just . . .
A. They're coming together.
Q. They're coming together.
A. Yes.
10. Q. I forgot to ask you. Is Sandy Seale standing to the right of you or to the left of you?
A. He's standing on the right of me.
Q. He's standing on your right. So Ebsary and MacNeil are coming back towards you and you say they're coming together.
A. Yes.
15. Q. Now were either you or Sandy Seale carrying any weapons that night?
A. No.
Q. When Ebsary and MacNeil were coming back towards you, could you see their hands?
20. A. No.
Q. Was there any conversation among the four of you as they came back towards you on Crescent Street?
A. The only conversation that went on, Mr. Ebsary told Sandy Seale if he wanted everything he had.
25. THE COURT: Sorry, Mr. Ebsary told Sandy Seale . . .
A. If he wanted everything he had.
MR. EDWARDS: If he wanted everything he had.
A. Yeah.
Q. Now How far from Seale was Ebsary when he asked him do you want everything I have?
- 30.

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0. MR. MARSHALL, JR., Direct Examination

A. He was standing almost together with him.

Q. Almost together with him. All right.

Now you would've been standing slightly in front of Sandy Seale.

5. A. Yes.

Q. Were there any words spoken between you and Ebsary as he - he must've passed you to get to Seale?

A. No, there was no words between him and I.

Q. Now when Ebsary spoke those words where were Sandy Seale's hands?

10. A. In his coat pocket.

Q. And was Sandy Seale saying anything?

A. When Mr. Ebsary asked him if he wanted everything he had, I guess he didn't - he didn't say nothing.

Q. Sandy Seale didn't say anything.

15. A. No.

Q. Okay. So what happened then?

A. He put his hand on his shoulder.

Q. Who put whose hand on . . .

A. Mr. Ebsary put his hand on Seale's shoulder, right.

Q. Yes.

A. And at the first time when that happened I thought he punched him in the stomach but apparently he stabbed him in the stomach.

25. Q. So he puts one hand, you say Ebsary puts one hand on Seale's shoulder.

A. Yes.

Q. What does he do with the other hand?

A. He had it in his pocket.

Q. He had the other hand in his pocket.

30. A. Yes.

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0. MR. MARSHALL JR., Direct Examination

Q. Yes?

5. A. And he stabbed him at that point and at the same time this happened pretty fast so when he asked him if he wanted everything he had at the same time he had him on the shoulder and at that time he stabbed him.

Q. I'm sorry, I missed what you said. At the same time he put his hand on his shoulder he what?

A. He stabbed him at the same time.

10. Q. Now show the jury the way Ebsary's hand that had been in his pocket moved. Show us the motion he made or he must've made towards Seale. Do you want to stand up?

15. A. They were pretty close together. He had him on the shoulder. He said do you want everything I have and before he could say anything he put the knife in him.

Q. All right. Now you took your hand out of your pocket and you made an upward motion with your hand and that's what you're saying the motion was that Ebsary made.

20. A. Yes.

Q. Okay. When Ebsary did that to Seale how did Seale react?

A. He bent over.

Q. Did he stay there or did he go away?

25. A. He fell down at that point.

Q. Seale did.

A. Yes.

30. Q. All right. Now that's what two of the people are doing. You were standing slightly in front and to the side of Sandy Seale. Now when this happened, when Seale apparently got stabbed, what were you doing at that

- that he had this knife in his pocket. He had that knife, damnit he was ready, he was at the ready. The prior conversation, just let me briefly recall for you what Donald Marshall's evidence was on that point. I'm going to say a little bit of Donald Marshall in a few moments. Now, again you have to go by your recollection, but our notes say that
- (10) Donald Marshall on direct says when he joined up and after he spoke with Harris and Goosu..remember he said that Seale had gone to the two guvs who had called him up for the cigarette. So then he leaves Harris and Goosu, he walks over where Seale, Ebsary and MacNeil are and he says now they had some conversation then, which I take it lasted at least several minutes and Marshall said to Ebsary, "I said he looked like a priest. He said he was a preacher of some kind and a sea captain." There were four
- (20) items of conversation there: "He told me he was from Manitoba." "He asked if there was anv women in the park." "He offered us to go to his home." "He said he had a quart of rum." You heard Mary's evidence about him inviting people home or taking people home from time to time. "He told me he lived around the corner from Crescent Street." Now, did that conversation (we'll consider the significance of it later), but for the moment, let's consider whether or not that conversation did in fact take place. Well there were
- (30) only really two people who've given evidence on that point: that's MacNeil and Marshall and I called them both. It's up to you to decide about that conversation. Now what does MacNeil say? He says that after he and Ebsary left the State Tavern, they were walking straight through, minding their own business, that's what he said on cross examination by my learned friend. Now he..there's no mention there of whether or not there had been prior conversation, but on face value, you get the impression that there was