

Sept 9th 89

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ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Summary of Testimony

Date: September 9, 1987

Witness: Roy Newman Ebsary

Examination by: George W. MacDonald, Q.C.

The following information was elicited from Ebsary concerning the events of May 28th 1971 relating to the death of Sandy Seale:

Ebsary and William MacNeil were on their way from the State Tavern to Ebsary's house via a shortcut through Wentworth Park. On Crescent St. they were accosted by two young men. The taller of the two grabbed MacNeil around the neck and dragged him about sixty feet down the street. The second person confronted Ebsary and demanded that he dig deep and give him everything in his pockets.

Ebsary gave the man everything (unspecified) from his pants pockets and reached into the pockets of his raincoat which he was wearing around his shoulders. In one pocket he had a "pocket-knife" which he pulled out, opened and used to "take a swipe" at the man. The man then ran off on Crescent St. and disappeared from sight.

Ebsary then went to the assistance of MacNeil who was

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screaming loudly. Ebsary was unable to make MacNeil's assailant let loose so he scratched his arm with the pocket-knife. The man then released MacNeil and ran off in the same direction as the other individual. Ebsary and MacNeil continued to Ebsary's house and a short while later MacNeil left to go to his own home.

Ebsary claimed he did not believe he had injured his attacker when he took the "swipe" with the knife because the individual was able to run off.

Ebsary specifically denied the following:

- Carrying knives frequently or as a usual matter.
- Warning family members to be quiet about the events of the night, or talking with them at any time about the incident.
- Spending the evening at the State tavern or drinking beer there as in MacNeil's statement.
- Being drunk then or at any other time.
- That he washed blood from his pocket knife or hands
- Having any blood from person at whom he "swiped" on his hands or knife
- That he had any conversation with the assailants.
- That he knew the whereabouts of the pocket-knife.
- That he had ever carried the knife, identified as having fiber evidence from jackets of Seale and Marshall, on his person.
- That he became a recluse after the incident.
- That he stabbed or killed Sandy Seale.
- That he told anyone he killed Seale.

Concerning the video-tape played during the afternoon session: Ebsary stated that it was just play acting and was not an admission to Ratchford that he had killed Seale.

The testimony of Ebsary was full of inconsistencies, e.g. -It was too dark on Crescent street to tell whether his assailant was black or white but he could see that other assailant had his arm around MacNeil's neck sixty feet down the street.

-Was going to Isle Royal to sharpen his French knife when arrested for carrying concealed weapon but had a wheel in his basement which he used to sharpen and shape his knife collection.

-Which pocket, pants or raincoat, the pocket-knife was in. -Remembered and didn't remember putting knife into ground to clean it.

Ebsary emphasized that he had been mugged on several occasions and admitted stating, "the next man to try that on me will die in his tracks."

Cross-examination by Clayton Ruby, counsel for Donald Marshall, Jr. was mainly centered on claims made by Ebsary about his past life and glories as a naval officer, and whether Ebsary could differentiate between fantasy and reality. Ebsary claimed he was able to make that distinction.

Sept 10th 87

Summary of Testimony

Date: September 10, 1987

Witness: Roy Newman Ebsary

Cross-examination by: Clayton Ruby (cont.)

The bulk of the testimony elicited from Ebsary by Mr. Ruby consisted of denials of information contained in statements made by Ebsary, or about Ebsary by others: e.g.

-Not certain whether he struck inside or outside of Marshall's arm when he was trying to get Marshall to release MacNeil.

-Invited Marshall and Seale home for a barbecue although he could not see who they were and no conversation preceded the invitation.

-Saw James MacNeil only two or three times prior to May 28 '71

-Had no discussion with MacNeil prior to incident on the way home.

-Had no discussion with MacNeil after the incident other than to tell MacNeil to 'shut up'.

-Didn't know Marshall's name.

-MacNeil is a liar if he says he was not being strangled by Marshall.

-Did not tell wife about incident

-Had severe hangover Saturday morning but didn't drink much Friday night (shared one bottle of wine with older MacNeil).

-Not a heavy drinker, no black outs or failure to remember caused by drinking.

-Not involved in sexual assault in jail for which he was convicted.

Ruby brought out the following which may be most significant piece

of testimony by Ebsary: WHY DID YOU TELL RATCHFORD YOU HELPED DRINK THE SECOND BOTTLE OF WINE? I COULD HAVE TOLD HIM ANY BLOODY THING. WHY WOULD YOU TELL RATCHFORD 'ANY BLOODY THING'? BECAUSE HE WOULD BELIEVE IT. WOULD YOU DO THAT EVEN TODAY? YES. EVEN NOW? YES.

Cross-examination by: Mr. Ronald N. Pugsley, Q.C.

The following new or additional information was elicited from Ebsary by Mr. Pugsley:

- Ebsary had a plan to get Marshall out of jail.
- He is allergic to people, a loner not lonely.
- He was sober when looking in his garden for the pen-knife he previously threw there.
- Denies being a heavy drinker.
- Hears voices that tell him to keep his cool.
- No recollection of going to RCMP office other than to see Marshall's parents.
- "I suppose I did" in response to question of whether he told Wheaton on the phone that he had stabbed Seale.
- Ratchford brought him liquor (scotch) when he was doing video.
- Did not tell Police in first statement about slashing Marshall because "they didn't ask". Only told what they asked.

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Cross-examination by Mr. Donald C. Murray:

The following new or additional information was brought forth by Mr. Murray:

- Ebsary did not and does not know William Urquhart.
- Ebsary's plan to help Marshall get out of jail was to say that he, Ebsary, stabbed Seale, even if this got him into trouble.
- I always told the 'bloody' truth each time. Imagination creates everything around us.

Cross-examination by: Mr. Jamie W.S. Saunders, added the following:

- Ebsary gave up his money, a ring from his finger, a wrist watch and a ring of keys to his assailant, who stuffed them into his pants pockets.

Cross-examination by Mr. E. Anthony Ross, added the following:

- Ebsary claimed he was mugged once and robbed many times in Wentworth park during the time he worked at the Isle Royale hotel.
- After he quit the Isle Royale he was not mugged or robbed because he no longer crossed through the park.
- On the night of the incident he saw a group of teenagers under a big tree in the park and he asked them for a match but did not receive one.
- Put eyeglasses in shirt pocket before entering park.
- Got his pen-knife from the side pocket of his inside coat.
- Must have been sick in bed all day Saturday because MacNeil woke him with the news that the fellow that was stabbed in the park had died,

and Seale did not die until Saturday night.

- "I made up my mind to rot the Criminal Justice System from St. John's to Vancouver."

- I always tell the truth, "MY TRUTH"

Cross-examination by Mr. Bruce Wildsmith, added the following:

- Ebsary said he didn't remember wearing the same "blue berbery" when interviewed by the Sydney P.D. and when he went for the lie detector test at the Wandlyn. When reexamined by Mr. MacDonald a few moments later he said 'yes' both times when asked the same question.

- Didn't know Donald Marshall was an Indian.

Redirect: Ebsary's Navy serial number: PJX 547943.

END SUMMARY OF EBSARY TESTIMONY MAY 10, 1987.

Witness: James William MacNeil

Examination by: David B. Orsborn

The following was elicited from MacNeil concerning the night of May 28th, 1971 relating to the death of Sandy Seale:

MacNeil was drinking at the State Tavern and met Ebsary there. After drinking together they left between 10:30 p.m. and midnight for Ebsary's house where MacNeil planned to spend the night on cot. He had done this a few times in the past. MacNeil considered himself a friend of both Ebsary and his family.

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MacNeil had no recollection of meeting a group of young people in Wentworth park as stated by Ebsary but said it was possible. MacNeil said he had had eight plus glasses of beer and was drunk but was able to walk without assistance. He did not know how much Ebsary might have had to drink. Ebsary was wearing a "coat-jacket" over his shoulders while MacNeil was wearing a blue college jacket with stripes on the sleeves.

MacNeil stated that he had a clear picture in his mind of the events of the evening which was not affected by the number of times that he had previously given testimony about the events.

End Summary of Testimony of James William MacNeil, Sept. 10, 1987.

Sept 11th 89

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Summary of Testimony

Date: September 11, 1987

Witness: James William MacNeil (cont)

Examination by: David B. Orsborn

The following items of MacNeil's direct testimony about the events of the night of May 28, 1971 have not been called into doubt during the direct examination, in the later cross-examination by Marlys Edwardh, or by previous statements or testimony of MacNeil:

-MacNeil was drinking at the State Tavern on the night of May 28th 1981

-MacNeil met Ebsary there.

-MacNeil left the State Tavern with Ebsary sometime prior to mid-night at which time MacNeil staggered but was able to walk without assistance.

-They were going to Ebsary's house and went through Wentworth Park, over the footbridge and up to Crescent St.

-The night was dark and misty.

-They were "confronted" by two individuals, one twisted MacNeil's arm behind his back, the other faced Ebsary and demanded "Dig Man Dig."

-Ebsary stabbed the man in front of him. The victim screamed, ran a short way down Crescent Street and fell to the ground. MacNeil was released by his assailant who moved toward Ebsary. Ebsary slashed downward on the arm of the man.

-MacNeil and Ebsary continued on to Ebsary's home. Ebsary washed the knife and his hands. Sometime later, MacNeil returned home.

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MacNeil admitted doubts or gave previous inconsistent statements or testimony about the following:

- Time of arrival, amount of beer consumed, by himself or Ebsary and the time they left the State Tavern.
- Whether he staggered, whether his speech was slurred
- Whether they saw or talked with anyone in the park.
- Identity of the assailants.
- The race or color of either assailant.
- Whether there was conversation other than Dig Man Dig.
- type and color of knife he saw Ebsary use.
- Whether Ebsary was washing blood off a knife and his hands.

MacNeil stated that his "only clear recollection is that Ebsary stabbed Sandy Seale".

MacNeil directly denied some elements of Ebsary's testimony:

- Where and how they met that evening.
- That he (MacNeil) was being strangled and was dragged sixty feet down the street.
- Conversation about a barbecue or inviting assailants to the house.
- That Ebsary handed over personal possessions.
- That Ebsary used a swiping motion as opposed to a stabbing motion.
- Direction they were heading and continued to head after the incident.

MacNeil admitted confusion about most details and said that he was in a "panic", in "shock". He conceded that many of his "recollections" may be the result of previous testimony, statement giving, reading or

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talking with others about the night of the incident. He told how he has been disturbed over the years by a nightmare in which he sees Seale murdered and blood spurt from the wound. He also admitted being on medication Diapan or Diazapan and using it to calm his nerves before testifying.

When the hearing adjourned for the day, MacNeil was being cross-examined by Marlys Edwardh, Counsel for Donald Marshall, Jr.

Sept 14th 87

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Summary of Testimony

Date: September 14, 1987

Witness: James William MacNeil

Cross-examination by Marlys Edwardh (cont)

MacNeil described his condition on the night of May 28, 1971 as:
"Pretty drunk but not paralyzed, staggering but not falling down."

He admitted confusion about details but was certain about Marshall's
"Red Eyes" and that he had been touched or grabbed on the arm.

MacNeil's testimony about the type and size of the knife, washing of
blood, direction of Marshall and Seale's arrival, how he was able to
identify the voice saying "Dig Man, Dig" as Seale's, direction they
walked from the park and events at Ebsary's house immediately after the
event were "confused".

MacNeil "did not see the knife but did see the stabbing."

He did not have any contact with lawyers for Marshall after making
his statement to the Sydney P.D.

Cross-examination by: Jamie W.S. Saunders brought out that at the time
of the incident, MacNeil was taking two dilantin and one phenobarb
tablet per day for his nerves under prescription from Dr. Gaum. In
addition he was drinking heavily at this time.

Cross-examination by: James D. Bissell elicited an admission that the
statement he believed he gave at the time of the polygraph examination
might have been a consent for the polygraph.

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Cross-examination by: E. Anthony Ross demonstrated that MacNeil does not have much memory of that period of his life, i.e. name of teachers, places worked, dates of events. Yet, MacNeil claimed the voice that said "Dig Man, Dig" was familiar to him as a "colored persons" voice because he knew some "colored people" in the Whitney Pier area of Sydney.

MacNeil added that a brother named David also heard him tell of the events of the night and went with MacNeil and his brother John to the Police Station in November 1971. David is still alive and resides on Victoria Road in Sydney according to MacNeil.

MacNeil denied referring to Seale as a "Nigger" and denied any problems with Blacks at any other time.

End Summary of testimony of James William MacNeil, September 14, '87.

Summary of testimony

Date: September 14, 1987

Witness: Robert Scott Mackay

Examination by: W. Wylie Spicer

Mackay provided the following about the night of May 28, 1971:

- Attended dance at St. Joseph's, did not see Marshall or Seale, whom he knew, at the dance. Left dance between 11:30 and 11:45 to take girl friend to bus stop on the Esplanade. (King's Road).
- Sat briefly in the park, saw no one. Went up to Crescent street and

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saw body in street.

-Recognized Seale, who said, "Help me, I've been stabbed". Sent girl friend off to catch her bus and ran across park to George Street, returned with others following.

-As he approached a car came up and Marshall got out. Marshall told that he and Seale had been knifed by two guys. No blood recalled.

-Ran with Marshall to nearby house to summon aid, returned as Police cars were arriving.

-Marshall was grabbed by two policemen and put into the back seat of the cruiser.

-Crowd gathering at the scene were dispersed by Police. Not aware of any attempt to preserve the crime scene. Body of Seale put in ambulance.

Mackay said he was later picked up by the Sydney Police some days later and taken to headquarters to make a statement. Although only 16 years of age he was not accompanied and spent four hours at the station. He said he felt intimidated and fearful. Was not pressured to change his story but Police picked at it and tore it apart.

Mackay said he did not talk with Marshall's lawyers prior to the original trial. He was subpoenaed but not called to testify.

He described Marshall as having a bad reputation for picking fights and being a trouble maker, but never had any personal problems with Marshall.

Mackay said he did not know Seale well but that Seale had a good reputation.

Cross-examination by: Clayton Ruby added the following from Mackay:

-Marshall was very upset, but went with him to call for help.

-Det. Urquhart was helpful. Sgt. MacIntyre was "overbearing and bullish".

Cross-Examination by: Ronald N. Fugsley brought out the following:

-Seale was on the pavement of Crescent street almost in front of the big apartment building.

-He did not see anyone in the park or on Crescent street at the time.

-Seale was curled up on the pavement, his voice was weak but the wound was not visible.

-Mackay remembered Sgt. MacIntyre being the main questioner in his interview at the police station and being there most of the time.

-Mackay did not ask to be taken home or ask that parents be present.

Summary of Testimony

Witness: Debbie Timmins (MacPherson)

Examination by W. Wylie Spicer

MacPherson corroborated statements of Scott Mackay (above) and added following:

-While Mackay was seeking help, Seale asked for help and when told Mackay was gone to get it, Seale said, "No cops".

-Some days later she went to the Sydney Police station with her brother, Steven and uncle, Allen and made a statement, signed it but did not recall that she read it or had it read to her.

-She was not contacted by Marshall's lawyers. She was called and told of the reinvestigation in 1982 by someone from the R.C.M.P.

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Mr. Spicer pointed out that the statement of Debbie MacPherson was not among the material turned over by the Sydney Police to the Commission counsel.

Summary of Testimony

Witness: Marvel Mattson

Examined by: W. Wylie Spicer

Mr. Mattson's testimony consisted of the following:

- Around midnight on May 28, '71 when preparing to retire for the night in upstairs bedroom facing street at 103 Byng Ave, he heard someone say something about "bleeding in the park".
- called Sydney P.D.
- Saw individual waving arm in street, saw the individual get in a car, heard words "bleeding in the park" again.
- called police again.
- on cross examination he described the tone of the voice as expressing urgency
- at least two people were in front of his house but he saw only one individual who got into the car described above.

End Summary of Testimony for witnesses MacNeil, Mackay, MacPherson, Mattson, September 14, 1987.

Sept 15th 87

Summary of Testimony

Date: September 15, 1987

Witness: Maynard Vincent Chant

Examination by: David B. Orsborn

Chant, D.O.B. Oct 14, 1956, resides Louisbourg, married, two children, employed National Sea Products for 7 years.

In May 1971, Chant was 14 years old, living in Louisbourg with his parents, 3 brothers, 2 sisters, and was in school in grade 6.

The following is a summary of the current recollection by Chant of the night of May 28, 1971:

-Came to Sydney to attend Pentecostal Church on Victoria Road with his parents.

-Left there looking for a friend who would drive him home, missed friend wandered around city and ended up at Acadia Lines Terminal on Bentinck St., around midnight, missed bus, headed for George street to hitch a ride.

-Walked down Bentinck to Byng, left on Byng toward George.

-Overtaken on Byng by man, later identified as Donald Marshall, Jr. who told him a buddy was down on the other side of the park, stabbed, asked Chant for help.

-Chant saw cut on Marshall's arm, can't recall blood. Sleeves of Marshall's jacket rolled up. Marshall "very hyper".

-Walked down Byng toward George with Marshall, met 2 couples, girl in one couple gave Marshall a tissue to wipe arm, Chant believes girl was Patricia Harriss.

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- Saw car approaching which Marshall waved over. Two people in front seat, Marshall and Chant got in rear and drove back to scene of Seale's body, in street approximately in front of 120 Crescent st.
- Recollection of conversations not clear but believes Marshall told that he and buddy were jumped by two men.
- Knelt over and behind Seale who was curled up on the street. Took off shirt and put over wound.
- Later ran to a house to phone for help.
- Left scene when Seale was placed in the ambulance. Chant took his shirt with him and went to George st. where he was picked up by police.
- Taken to hospital but remained in police car and did not talk to anyone.
- Driven to Police Station to await father. While there gave information about the occurrence to a policeman who wrote it down.

The following is a summary of the current recollection of Chant about his statement to the Sydney Police on May 30, 1971

- Confused as to place where statement taken, believed he was in back seat of police car, possibly in Sydney.
- Remembers waiting in station, Marshall coming in room and saying words to the effect "remember there were two of them". Agreed with Marshall although he had no personal knowledge of incident.
- Recalls MacIntyre being there when statement taken, can't recall who else, but he was not accompanied by parents.
- "The statement only holds water as far as I get to Byng Avenue", None of the rest is true. Statement is just something I made up. Not anything I really did.

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-Unable to say how names of streets got into statement, because he didn't know them.

-Believes fear of Marshall, fear of police, being on probation, and pressure from within cited as cause of false statement. "Pressure would cause me to lie."

-Unable to distinguish parts of statement which were his own imagination vis a vis things suggested to him by previous conversations, news reports, Marshall or the police.

The following is a summary of the current recollection of Chant concerning his statement to the Sydney Police on June 4th, 1971.

-Taken at the Town Hall in Louisbourg, 1st. room to the left, big room with long table.

-Louisbourg Police Chief Wayne Magee, Probation Officer Lawrence Burke, two Sydney Police detectives, one now known to be MacIntyre, the other still not known by name, and Mrs. Chant were in the room.

-Mother repeatedly urged me to tell truth.

-I kept saying I didn't know "anything".

-MacIntyre kept saying I must know, said other person saw me in park, believed first statement not true.

- MacIntyre suggested Mother leave, that I might talk more freely if she were not there. Mother left.

-MacIntyre standing over me, moving up and down length of table, voice loud, 'persistent and forceful'.

-Someone said I could get in trouble because of not telling the truth, 2 to 5 years mentioned as penalty.

-I began to cry. I remember MacIntyre over me, Me looking up, He told

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me I was in an awful lot of trouble, pointed out that I was on probation and could do time.

-I began to give the false statement.

Beyond this point Chant was unable to recall any specifics of who said what or which parts of statement were made up by him, or which were suggested by others persons or events.

Chant remembers a drive to Catalone in a car he thinks was an unmarked police car.

He recalls being taken to Wentworth Park to describe what he says in his statement.

Recalls being assisted by uniformed and plain clothes police in park to clarify his statement about the scene: where Seale's body was, where I was on the tracks, where Pratico was in the bushes, which house I ran to for assistance.

Recalls seeing Pratico in park and later stayed one night at home of Pratico.

Believed Marshall might have been guilty so that telling lies was not really so bad.

Had discussions with the Crown Prosecutor about details of story but not certain when. Told not to say knife, rather shiny object.

No recollection of conversation with Marshall's lawyers

Had no contact with Marshall other than a chance meeting at the County jail.

Although he understood the meaning of taking an oath to tell the truth he lied on the witness stand . "I knew I was doing wrong" and was bothered by it.

Motivated by fear, of Marshall, of Police, of going to jail if it

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came out that I was lying.

End Summary of Testimony of Maynard Chant, September 15, 1987

Sept 16th 87

Summary of Testimony

Date: September 16, 1987

Witness: Maynard Vincent Chant (cont)

Examination by: David B. Orsborn

The following is a summary of the current recollection of Chant about his testimony in 1971:

- Chant knew he was not telling the truth, knew the meaning of the oath on the Bible, but unable to understand his motives for the false story he gave on the stand.
- Uncertain of times when he discussed testimony with Donald MacNeil the Crown Prosecutor.
- Remembers Pratico being present, discussion of right vs left side, shiny object vs knife, recalls discussions as getting story right before going to court.
- Unable to identify sources of specific details to which he testified such as Pratico's hair color, location of bush, which house he claimed to have run to, etc.
- Recalls a point in the trial when he didn't want to tell any more lies, but unable to explain why he continued making false statements after that point.
- Unable to make specific distinction between testimony at Grand Jury, Preliminary and/or Trial.

The following is a summary of the current recollection of Chant about statements, affidavits and testimony 1982 and following:

- Uncertain whether Prosecutor MacNeil, Det. MacIntyre or some other person threatened perjury charge if he changed his statement.
- No recollection of telling MacNeil he lied.
- Recalled pressure from MacIntyre during Louisbourg statement but not pressure by Urquhart
- Pressure defined as: saying another witness had seen Chant, insistence that Chant knew more, refusal to accept statement "I didn't see anything", size of MacIntyre, standing position.
- Saw MacIntyre and Urquhart as a team, didn't know name Urquhart until 1982.
- Can't recall talking with Aaronson but recalls signing affidavit in Town Hall after being advised that the woman named MacPherson who witnessed was a clerk at the Town Hall in Louisbourg.
- No recollection of oath connected with affidavit, who prepared it or whether he read or had it read to him before signing.

Under cross-examination by Clayton Ruby, Chant agreed that:

- The pattern of lies began at first contact with police when he was picked up on George st. and not when Marshall reminded him that two individuals had been involved in the incident.
- Police were most likely source of detailed information contained in early statements and trial testimony.
- Some detail he might have conjured up from his imagination.
- Still believes that police were trying to help him during recreation of the incident.
- Chant and Pratico were together in office of Crown Prosecutor working over details of testimony, like a rehearsal.

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-Not aware that Marshall was Indian, frightened of him because he "was rugged looking".

-No fear of Indians prior to time of incident.

The following additional information was brought out on cross-examination by Ronald Pugsley

-Chant interviewed by Michael Harris, author of a book about Marshall case on at least one occasion.

-Chant underwent a conversion or rebirth in 1979, no longer drinks, smokes, uses drugs or uses foul language. His hatred for the justice system is gone, fear of Indians gone, became a follower of Jesus and is trying to make restitution for the harm he caused by telling the truth.

-No recollection of pressure by police during the May 30 statement.

-Thinks MacIntyre was trying to find out the truth.

End Summary of Testimony of Maynard Chant, September 16, 1987.

Sept 17th 87

Summary of Testimony

Date: September 17, 1987

Witness: Ambrose MacDonald

Examined by: W. Wylie Spicer

MacDonald is an Inspector in the Sydney Police Department in charge of the Administrative Division. He joined the force in 1967 and in May 1971 was a foot patrol officer assigned to a beat on the North end of Charlotte St.

The following is a summary of the current recollection of Ambrose MacDonald about the stabbing of Sandy Seale and subsequent investigation:

-May 28-29, 1971, on 12-8a.m. shift, sometime after midnight he was picked up by Cst. Mroz and Cst. Walsh and informed of stabbing in Wentworth Park.

-Given description, 1 man 6 ft., 2nd taller with white hair, checked various locations for persons answering description without success.

-May 29-30 1971, 12-8a.m. shift, no special instructions, continued looking for suspects described above.

-May 30, 1971, 4-12 midnight assigned to Membertou Reserve with Cst. Walsh because of rumors of possible retaliation against Indians by Black community.

-Did not know Marshall was suspect at the time

-Conversation with Marshall and Bernie Francis in police car.

-Marshall said he "fired a boot" at big guy and may have nicked on ear

or neck.

-Francis said "Boys out here won't tell MacIntyre anything, they hate him".

-No notes of conversation with Marshall or Francis but told to Urquhart the next day.

-later that week conducted visual search of park area for knife used in stabbing, results negative. No report made.

-Marshall reputation, troublemaker, mostly fighting.

-MacDonald well known to young men on Memberton because he grew up in the area and engaged in sports there.

Summary of information about reviewing the Appeal Court transcript in 1982:

-Asked by MacIntyre to review transcript of Marshall appeal to look for discrepancies:

-compiled notes relating to care and custody of evidence, selection of witnesses, fiber evidence, conduct of Crown Prosecutor

-discussed with MacIntyre and Walsh on almost daily basis during course of appeal.

Cross-examination by Edwardh

-Sydney Police structure and operation, 1971: no formal, independent civilian complaint procedure, Chief handled, his discretion.

-Detective division: MacIntyre, Sgt. in charge, Urquhart, M.J.

MacDonald and one other member of detective div. Detectives did all investigative work ^{by} foot patrol and car patrol not allowed.

-no I.D. branch, cooperation from R.C.M.P.

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-MacDonald did not know of any formal policy for the following: crime scene search, preservation of scene, homicide investigation or training for same, note taking other than "take notes".

-No Community Relations office, No formal training except occasional sessions in court procedure by local lawyers, No regular briefings for oncoming officers, events of shift were recorded on Occurrence Report, Crime Report or Motor Vehicle Report.

-Policy in 1971 not to interview children unless parent or lawyer present, policy not written but passed "orally".

-knew Jimmy MacNeil, did not know he had been given a polygraph examination.

-Did not know Ebsary or of him.

Cross-examination by Ross:

-MacDonald did not know Sandy Seale but knew family and knew of Sandy because of his activities in sports, had good reputation, not known to have been in any trouble with the law.

-Unable to understand how Seale and Marshall would have come to be together that night because of their different backgrounds.

Cross-examination by Jeremy Gay:

-MacDonald provided the following regarding Blacks and race relations in Sydney around the time of the incident:

-Most Blacks reside in Whitney Pier section of the city.

-No knowledge of source of rumors that resulted in his being sent to Memberton on Sunday after stabbing.

-Not aware of any racially motivated incidents in Wentworth Park or

Sydney generally at that time.

- Aware of some complaints of discrimination principally from Indians.
- No formal training for Police on Race Relations.

Cross-examination by Wildsmith:

- No training regarding minority groups.
- On the Job with a senior officer was only training
- No knowledge of records of complaints
- Record to show ethnicity of people arrested, held etc., only in physical description section of form - white, sawlow (Indian), Black.
- Band constables hired and paid by Band council. Could call upon city P.D. for assistance. City P.D. did not check with band constable when they had occasion to arrest or serve warrant on Reserve, good cooperation, some training provided by senior officers of P.D.

End summary of testimony of Ambrose Macdonald, September 17, 1987.

Summary of Testimony

Witness: Stf. Sgt. John Leon Ryan, R.C.M.P.

Examination by: W.Wylie Spicer

Ryan has 29+ years service with R.C.M.P., 25 in Identification.

Stationed in Sydney 1968 -72.

- Importance of quick response by Ident team in major case investigation in order to preserve evidence.

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- Was not called by Sydney P.D. detectives weekend of May 28th, '71.
- Service offered to MacIntyre or Urquhart Monday following, told no help needed "at this time".
- Sometime prior to Aug. 24, 71 (8-10 days) asked to take photos of Wentworth Park area. went with MacIntyre and Urquhart.
- Delivered Photos to D. MacNeil, Crown Prosecutor.
- Negatives and notes retained for file.
- Negatives and notes usually retained until file closed and property then returned to P.D.
- Search in c. March 1987 failed to turn up R.C.M.P. file.
- No knowledge of current whereabouts of file or photos.
- Should have been in R.C.M.P. office if not returned to Sydney P.D.

End Summary of testimony of Stf. Sgt. Ryan, R.C.M.P.

Summary of testimony

Witness: Richard Joseph Walsh

Examination by W. Wylie Spicer

Walsh became Chief of Police for Sydney in Jan. 85., joined force in 1954, on patrol car duty on night of May 28th, 1971.

Walsh furnished following about his involvement in the investigation of the stabbing of Sandy Seale:

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- Left Police station with Cst. Mroz around midnight after call received about trouble in the park.
- Arrived on Crescent St. saw body of Seale, no one else noted in vicinity. Approached Seale, checked condition, directed Mroz to call for ambulance.
- No response from Seale to questions by Walsh.
- Walked to other police car where Cst. Dean and Cst. Martin MacDonald talking with Marshall. Saw cut on Marshall's arm. Saw Marshall leave with constables for hospital.
- Recalls Marshall's words as something to the effect "jumped in the park by two guys, 1 big, 1 small, dark clothes.
- met young man with bloody shirt; took his name, Maynard Chant, Louisbourg.

Walsh described the procedures employed by the Sydney P.D. at the time as very informal. Word of mouth rather than written word was used in important matters.

End Summary of testimony of Richard Walsh, September 17, 1987.

Sept 18th 87

Summary of Testimony

Request by Commission Counsel that TV camera and lights be turned off during testimony of John Pratico.

Psychiatrist Dr. Mian, wrote that the pressure of TV cameras and lights would be bad for the mental health of Pratico and affect his ability to give evidence.

Spicer: -The importance of the evidence and concern for the health of Pratico, good reasons to support request.

-No denial of public access, print, or audio recording during testimony. TV allowed to record prior to entry and on departure.

-TV has no 'right' to be present

Murrant: -On behalf of TV networks covering the hearings argued that the principle of openness demands very serious reason to exclude

-Pratico's testimony important not only to Commission but to public.

-Dr. Mian's letter was a polite request and did not include enough information, e.g. no detailed psychiatric report, no basis for opinion on harm, no indication of the extent of possible harm.

-Rigorous cross-examination possibly more harmful than lights and camera is not warned against by Dr. Mian.

-The burden to show why this is necessary is on the one applying and the evidence presented is not sufficient to justify excluding TV.

-Suggested alternate plan allowing one camera to remain.

Counsel for Parties: -Supported request if Commission deemed the action necessary to get best possible evidence. Mr. Ross noted that Murrant offered no evidence to dispute the statement of possible harm presented by D. Mian.

Decision: -The duty of the Commission is to get the facts. If public exposure might interfere with that duty, the Public is best served by the Commission doing its job without that exposure.

-Evidence shows that Fratico is a fragile individual with a history of mental instability. His psychiatrist says that exposure to TV cameras and lights could harm his mental health and reduce his ability to testify fully.

-Request to exclude TV cameras and lights during the testimony of Fratico granted.

Date: September 14th, 1987

Witness: Richard Joseph Walsh (cont.)

Examination by W. Wylie Spicer

Walsh added the following details to his previous testimony about his part in the investigation of the stabbing of Sandy Seale:

-He went behind the ambulance to hospital and assisted in preparing Seale for arrival of doctor.

-Saw Marshall there talking with Det. Sgt. Mike MacDonald.

-Returned to his duty on patrol, advised Cst. A. MacDonald about incident, looked for suspects matching description.

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-Returned to hospital about 4:10 a.m. to check condition of Seale, saw and talked with Seale's parents.

-Finished shift and went home. Made no notes of his activities during the night.

-Sunday 4-12 shift, assigned to go to Membertou reserve with Cst. A. MacDonald.

-Was present in the patrol car when Marshall and Francis sat in it for a conversation, not sure of substance of conversation, no recollection of road blocks, did not know Marshall was a suspect.

-Possibly Monday went to Wentworth park with Cst. A. MacDonald and did a casual search for a weapon or other evidence, nothing found, no notes kept about activity.

-No contact with detectives about case. Possibly conversations with other officers of P.D. but no specific recollection.

About the way the Police did things on that night, Walsh offered the following:

-He and other officers on the street had no training for investigation.

-Investigation might have been different if Seale had died at the scene, "quality of investigation did not change when Seale died".

-Detective division did not communicate with "foot soldiers".

-No special directions, instructions, or written policies were provided to guide the activities of the street patrols.

-The Police station was in the old city hall on Bentinck street, the detective division was housed in a converted garage, physically separate from the station.

-Not aware of any pressure to solve the case and did not detect any

atmosphere of urgency.

About subsequent investigations, trials, and his assessment of the transcript of the 1982 Marshall appeal, Walsh testified.

-Does not recall making any statement in 1982 about roadblocks or "kicking the queer".

-Believed MacIntyre's request to review the transcripts and comment was a private matter between friends. (but tells that it was frequently discussed by MacIntyre, A. MacDonald and himself at the station).

-Never saw RCMP telex about Marshall as suspect until 1982.

-Doesn't know if MacIntyre expressed the opinion in 1982 that he still believed Marshall guilty, but he (Walsh) firmly believes that MacIntyre still believed it.

-Comments about 1982 transcripts were just opinions, can't recall his reasons without reviewing transcript again.

-Believes "author of his own misfortune theory"

-Marshall case was the subject of ongoing discussions for over two years subsequent to 1983 acquittal.

Cross-examination by Anne Derrick added the following:

-No knowledge of Roy Ebsary or his arrest by officer Ed. MacNeil for carrying concealed weapon, but likely MacIntyre was aware.

-Knew of John Fratico but did not drive him to or from house.

-Teen dances in the city were worked by off-duty Police for extra pay, assistance of on duty men called if problem arose.

End Summary of Testimony, Richard Walsh, September 19, 1987.

Supt 21st 87

Summary of Testimony

Date: September 21, 1987

Witness: Richard Joseph Walsh (cont.)

Cross-examination by Mr. Saunders added the following information:

- Norman D. MacAskil who was Deputy Chief of Police at the time of the incident would be the best available person to comment about police procedures of the Sydney P.D. at that time.
- The following were detectives at that time: John MacIntyre, M.J. MacDonald, M.B. MacDonald and William Urquhart.
- Walsh had no conversations with Crown Prosecutor MacNeil about his involvement in the case.
- Felt it was unusual not to be called to testify because he was the first officer on the scene and thought he would be called.

Cross-examination by Mr. Ross:

- Walsh did not have access to or review the material relating to the hearing except for statements made by himself.
- Does not remember seeing Chant's shirt on Seale's body.
- Cannot explain why incident recorded on "occurrence" report rather than on "crime" report.
- Whitney Pier was not a disciplinary beat.
- Marked boundaries of Hembertou Reserve with green marker. Ex. 37.
- outlined Whitney Pier with marker. Ex. 37.
- Not aware of complaints about MacIntyre or how they would have been handled if made.

Cross-examination by Mr. Wildsmith:

- Walsh not familiar with manner in which ethnicity indicated on police department forms.
- Not aware of any statistical reviews or studies of the Sydney Police Department
- Went from Cpl. to Inspector in 1980 promotion; Ambrose MacDonald went from Cst. to Inspector.
- Not aware of role of Police Commission in 1971,
- Not aware of problems with Membertou Band Constable problems, or about contract between City of Sydney and Reserve for services.
- Not aware of complaints by Indians against Police in Sydney.
- Does not recall Indians being called "Piute" but is familiar with the names "Broken Arrows" and Wagon Burners" as names that Indians were called.

End Summary of Testimony, Richard Walsh, Sept. 21, 1987.

Summary of Testimony

Witness: Cpl. Howard Dean

Examination by: W. Wylie Spicer

Cpl. Dean gave the following account of his activities on the night of May 28, 1971:

- On duty in patrol car with Martin MacDonald on station in the parking lot of St. Joseph's hall standing by in case of trouble when dance at hall ended.

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- Received call of disturbance at Wentworth Park, checked behind Argyle Drugs, found nothing, proceeded on the Argyle to Crescent where he saw someone standing in the road waving arms. (later identified as Marshall)
- drove up and got out. Marshall said "me and my friend just got stabbed"
- received description: tall fellow with white hair and shorter fellow, Marshall showed arm with cut.
- Walked over and checked Seale briefly, called ambulance, at which time police car with Mroz and Walsh arrived.
- Took Marshall to hospital, did not talk with him on the way.
- left hospital and went back on patrol.
- filled out report at end of shift.

Concerning discrepancies between current recollection and report Dean conceded that the report was probably the best recollection.

Discrepancies: whether he checked Seale before leaving area; whether or not Mroz and Walsh arrived when stated or as in report; who called for ambulance.

Denied statement by Scot MacKay that Marshall was manhandled, "just walked over and got in".

Unable to recall any conversations which he might have had later in the course of his duties, unable to recall seeing anyone except police at the scene, received no directions, did not return to the scene or have any specific activity relating to the stabbing that he can recall.

It was Dean's practice to read reports from the previous day before going on duty but could not recall doing so.

Did not know Ebsary, MacNeil, Seale or Marshall. Knew Fratico from

being a crossing guard in Pier, but didn't know his name at the time.

Recalls that he stopped his car about 75 feet from Seale when he saw Marshall waving his arm or arms but can't recall how he determined the distance.

Many other things he did not recall were raised on cross-examination.

End Summary of Testimony Howard Dean, September 21, 1987.

Summary of Testimony

Witness: Dep. Chief John Mallowney

Examined by: W. Wylie Spicer

Mallowney gave the following account of his involvement in the incident on the night of May 28, 1971:

- Working "special duty" at the dance at St. Joseph's Hall on George St with Cst. Fred Lemoine.
- working the door, watching for liquor, fights or undesirables.
- No special recollection of the evening except that he had to eject Sandy Seale from the dance twice because he came in without paying, once through the window and once when Mallowney was away from the door.
- Dance ended at midnight and by about 12:20 everyone had departed and Mallowney left to go home.
- Next day he was assigned to search the area of the park, found a tissue with what appeared to be blood stains on the lawn of #130

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Crescent st. Sometime later turned tissue over to Sgt. M.B. MacDonald.

-No further involvement.

Knew Fratico to see him because he Fratico was like a "street person".

No recollection of anything special in occurrence reports on Saturday, It was his practice to read. No updated description of suspects or other information on the case given, just told to search for a knife.

Cross by Edwards:

-Wyman Young and Crawford searched with you according to report as well as Lemoine. No recollection of specific areas searched by others.

-Unable to find his notebook which was in safe keeping at home although he doesn't recall losing any others.

-Seems to recall MacIntyre in the park while he was searching. Seems to recall officer Wyman Young searching on the railroad tressel.

-No training to get on the force, no special training on the force.

-Recalls he might have smelled a beer on Seale's breath when he ejected him from dance but otherwise no sign of intoxication on part of Seale.

-No other recalls about procedure or the conduct of the investigation.

Cross by Fugsley:

-Mullowney was a detective with the Sydney P.D. for a period of 14 or 15 years and observed the methods and techniques of MacIntyre which he described as "very thorough".

Cross by Saunders:

-Fred LeMoine is now in charge of the records section at the Sydney Police Department, Wyman Young is with the Sydney Fire Department.

-Letter from Marshall to Ebsary with cc. to Mullowney recalled,

Mullowney turned to Chief MacIntyre because He was in charge of the case.

Cross by Ross:

-two or three others were ejected with Seale from St. Joseph's dance and does not remember anything about them, only remembers Seale because of the later stabbing.

Cross by Wildsmith:

-No knowledge of Indians, complaints by Indians, special instructions about going on the Hembertou Reserve, Had some Indian chaps on a junior hockey team he coached.

End Summary of Testimony John Mullowney, Sept. 21, 1987.

Summary of Testimony

Witness: Michael Bernard MacDonald

Examined by: David B. Orsborn

MacDonald joined the force in 1947 as a constable. In May of 1970 he became a sergeant in the detective division.

MacDonald provided the following information concerning his part in the investigation of the stabbing of Sandy Seale:

-Finished duty at midnight on May 28. Went home, received a call there from Sgt. MacGillivray the desk Sgt. to return because someone taken to City Hospital.

-MacDonald identified and read from his notes concerning the evening.

-Took no notes at hospital made notes later at station, can't recall much more of the details other than what he had in his statement.

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- No recollection of clothes or other personal possessions of Seale.
- No recollection if R.C.M.P. assistance available.
- No instructions given to constables on duty about course of action to take after leaving hospital.
- Confused as to what might or should have been differently.
- Confused about statement, suspects, how to conduct investigation.
- No training to be a detective, just picked it up on the job.
- Saw and talked with Marshall at Hospital, obtained description sent Marshall home in car with Cst. Johnstone.
- Did not consider Marshall a suspect because of cut on his arm.
- Saw Chant in hospital lobby, no recall of bloody shirt. Sent to station so his father could get him there.
- Does not recall his testimony at CBC/MacIntyre discovery hearings.

End Summary of Testimony, Michael B. MacDonald, Sept. 21, 1987

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Summary of Testimony

Date: September 22, 1987

Witness: Michael B. MacDonald (cont.)

Examination by: David B. Orsborn

MacDonald added the following information not included in the testimony of yesterday:

- After leaving hospital, MacDonald went to Crescent St. and walked about on the sidewalk with his flashlight looking in driveways and front yards, nothing found.
- MacDonald made his notes when he returned to the station and these were what he used to brief MacGillivray
- MacDonald briefed MacGillivray when he (MacDonald) returned to the police station at about 3:00 a.m., no personal knowledge of things which MacGillivray ordered.
- Sgt. MacGillivray was the person responsible for assigning patrol officers to assist with the Marshall investigation.
- MacGillivray called Sgt. MacIntyre, MacIntyre did not come out
- MacGillivray called Chief of Police MacLeod at sometime during the night, later MacDonald visited the chief at his house to brief him.
- No discussion about MacIntyre or his not coming out to handle the investigation. (can't recall)
- Can't account for discrepancies in physical description of suspects.

MacDonald either could not recall making statements or could not explain why what was said previously was now recalled differently: e.g.

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- Conversation with Chant at hospital, fact that his notes had no reference to Chant,
- Didn't know Marshall but signed information on charge against him a few months previous.
- Knew nothing about a line-up held at the station although he was there at the time.
- Witnessed Fratico statement, no recollection of doing it.

MacDonald could not explain why common sense practices of police in a serious matter, such as protecting evidence, interviewing witnesses, securing the crime scene, blood samples, post mortem etc. were not done other than to say that his concern was for Sandy Seale.

- Received clothes believed to be worn by Seale from his mother on June 3rd., no inquiry re the care and storage of same during the interim.
- Received yellow jacket believed worn by Marshall on the night in question, again, no inquiry about it recalled.

A Mrs. O'Handley may have been person who did typing of reports but only when the case was going to court.

In addition to his Crime report, MacDonald made a written report for the Detective division, doesn't know what happened to it after it was passed to MacIntyre.

Former Constable Ed MacNeil is now a member of the N.S. Police Commission.

MacDonald not aware of complaints by Indians against police in Sydney.

End Summary of Testimony, Michael B. MacDonald, Sept. 22, 1987.

Summary of Testimony

Witness: Stf. Sgt. M. Wood, R.C.M.P.

Examined by: George W. MacDonald

Wood, 26 years on force, stationed in Sydney 1964-72, was one of three officers in GIS of Sydney Detachment at the time of Seale stabbing.

Wood has kept his notebooks and provided copies of the notes taken by him relating to his involvement in the investigation of the incident.

Wood had no independent recollection of the events recorded in his notebook. It was and is his practice to record as soon as possible after an event.

Relevant portions of notes:

-Conversation with Cst. Ed MacNeil and Sgt John MacIntyre on Saturday morning May 29, 1971 between 9 and 11 a.m. in which he was told that Marshall was believed to be one responsible for Seale stabbing.

-Conversation with Cst Ed MacNeil and Wyman Young on Sunday May 30, 1971, "both" think Marshall responsible.

Described MacIntyre as a conscientious, take charge person who tries to do the job to the best of his ability.

Described Crown Prosecutor Donald C MacNeil as a capable prosecutor.

Described procedure of R.C.M.P. for crime scene and juvenile investigations. Differences between that and testimony of actions of Sydney P.D. noted.

Wood and RCMP had no investigative role in Sydney just offered

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assistance when major crime took place.

Conversations with MacIntyre, MacNeil and Wyman were result of offer of assistance by Wood upon hearing of Seale stabbing.

No personal knowledge of Wood about telex to Halifax in which Marshall was named as suspect.

Cross-examination by Pugsley brought out possibility that word "both" in the May 30 notebook entry could mean that MacIntyre did not concur in naming Marshall as suspect but rather Ed MacNeil who was common to both conversations.

End Summary of testimony, Stf. Sgt. M. Wood, Sept. 22, 1987

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Sept 23rd 87

Summary of Testimony

Date: September 23, 1987

Witness: Joseph Terrance Ryan, Inspector, RCMP

Examination by George W. MacDonald

Ryan, a 25 year veteran of the RCMP was the partner of Sgt Wood who testified Sept 22. Assigned to GIS Sydney Detachment 1970-72. Experienced before being assigned, many training programs in RCMP, including criminal investigations.

Regarding the investigation of the stabbing of Seale, the following was Ryan's involvement:

- Little if any independent memory, referred to notes. Practice to do notes during day of activity.
- June 3, '71 went to New Waterford with and at request of MacIntyre to see if anyone there might have been in Wentworth park on night of stabbing. Visited New Waterford P.D. and possibly one private home. No leads.
- On 31 May, noted a light blue volkswagon and later spent time looking for white Volkswagon. Most likely at request of Sydney P.D.
- One more visit later to New Waterford looking for info.

Regarding the conduct of the investigation by the Sydney P.D. Ryan offered the following:

- Many steps considered usual procedure by Ryan were not taken, e.g. guarding crime scene, collecting and preserving evidence, identifying and questioning witnesses.
- Assistance of Ident section available but not requested.
- NCIS data bank for possible suspects or NO similarities not used.

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-Opinion re MacIntyre - a determined investigator who on the surface appeared competent and conscientious.

-Opinion re Crown MacNeil - an experienced prosecutor who involved himself in cases he handled.

Ryan was asked to comment on the RCMP's role in the Nov. '71 "review/reinvestigation" after Jimmy MacNeil identified Ebsary as the one responsible for the stabbing, and on other aspects of RCMP involvement:

-Polygraph only a guide, Policy not to use in cases of mental instability, a tool, "not determinative".

-Tunnel vision- (focus on one theory or suspect to exclusion of other possibilities) guarded against in RCMP by review process.

-It was a good idea to request RCMP and Crown help for "reinvestigation/review"

-Actions taken by RCMP, E.A. Marshall and G.H. MCKINLEY more like a review than reinvestigation. "More should have been done."

-Crown or Local P.D. could not control if RCMP assumed responsibility for an investigation.

-No knowledge of different treatment of Native Peoples by RCMP.

End Summary of Testimony Terry Ryan, RCMP, Sept. 23, 87.

Summary: Roderick Alexander (Sandy) MacNeil

- Walked through Wentworth park on night of stabbing, saw couple sitting on bench near foot bridge, saw older man, heard older man ask for a cigarette, another taller man standing on bridge.
- gave statement to Sydney Police with description of men.
- later shown three mug shots by P.D.
- no further contact (missed contact with RCMP in '82) until Feb. 84.
- no independent recollection, no complaint of P.D. treatment.

Summary: George MacNeil

- With Sandy MacNeil, above, gave statement, no independent recollection.
- Interviewed by RCMP in '82, no recollection of details or persons.

Summary: Linda Huise

- On bench in Wentworth Park on night of stabbing with friend Andrew MacDonald.
- Left dance early and went to park 11:00-11:30, sat near bridge.
- "Indian Boy" bummed a cigarette.
- about same time saw older man with funny hat in the park.
- No contact with Sydney P.D. or RCMP
- No further recollection.

Summary: Charles Livingstone

- Walking from dance with friend Judy MacIsaac.
- Near Mac's Dairy fellow ran up and said, "my buddy has been stabbed".
- Went to where Seale was, 8-10 people around, no recall of Police.
- Someone took name, stood watching, returned to girl friend.
- PD called, went to station, talked with MacIntyre and possibly one or two others, asked questions, no details recalled, no further contact.

Summary: John Butterworth

- Constable, Sydney P.D. Hay, '71, no direct involvement in investigation.
- Common knowledge around station week after stabbing that Marshall was suspect.
- walking Charlotte street beat with Cst Art Woodburn, believe after arrest of Marshall, Fratico whom he knew to see tagged along.
- Fratico told of seeing stabbing and effect on him.
- No notes of that meeting or meeting again next night.
- Fratico known to be "kind of slow"
- favorable opinion of MacIntyre and Urquhart.

End Summary of Testimony, Sandy MacNeil, George MacNeil, Linda Muise, Charles Livingstone and John Butterworth, Sept. 23, 1987.

Summary of testimony

Date: September 23, 1987

Witness: John Pratico

Examination by: W. Wylie Spicer

John Pratico, lives alone, supported by Provincial Social Service, taking medication for "nerves", to calm me down, took 5mg. Moxanan (one half daily bedtime dosage) before coming.

About 15 or 16 years of age dropped out of school, grade 8, adjustment problems, "world just a little too hard for me".

Began drinking about 15 years of age, drank when ever he had money, to get beer, more on weekends, as much as a couple of cases if he could get it. Also drank wine or rum when available.

Spent time hanging around streets of Sydney, Picked up by Sydney PD on a number of occasions and held at the station until sober. Got loud "rowdy" when drinking.

Knew Sandy Seale from the "Pier", hung around with Marshall for a time, did not know Haynard Chant. Knew policemen Dean, Woodburn and Butlerworth.

The following is his recollection of the day of Seale stabbing:
-Afternoon, drank a few beer, about 6pm bought a dozen "Schooner", drank some, gave some away.
-Evening, dressed for dance, arrived 8-8:30, danced, drank more beer, might have drunk quart and a half of wine.
-Left dance with two or three beer in pockets, Walked to park and through, across foot bridge to Crescent St. Sat in bushes across from

approximately 106 or 108 Crescent, drank beer.

-Finished beer, walked home via Bentinck St., went to bed.

-Nothing observed in park. "Under the weather pretty well".

The following is Fratico's recollection of Saturday May 29, '71:

-Sometime in morning heard on radio of stabbing

-later, sitting on front step saw Marshall with bandage on arm, asked what happened, can't recall details, believe Marshall said something like, "something terrible happened".

Recollection of Sunday May 30, '71.

-Mother woke up, time uncertain, police there to take him to station.

-Sat on bench with person later known as Maynard Chant.

-Called into office, MacIntyre at desk, MacDonald behind and to the right.

-Answered questions - I was at dance, I was in park, I didn't know anything about stabbing.

-Gave statement saying I didn't know anything.

Statement from evidence Vol. 16, pp 22, 23 shown to Fratico:

-Did not recognize it as the statement he gave first, saying he didn't know anything.

-recognized signature, not recall signing.

-was using Valium at the time

-not sure how or when he got home but was home for supper 4-5pm.

-MacIntyre, "kind of roughish talking", MacDonald silent.

-I was frightened, I didn't know what was expected of me by police and that made me frightened.

End Summary of Testimony, John Fratico, Sept, 23, 1987.

Sept 24th

87

Summary

Date: September 24, 1987

Witness: John Fratico (cont.)

Examination by: W. Wylie Spicer (cont.)

Fratico stated again and again that during the period after the stabbing his "mind was not clear", he knew the information in his statements and testimony were not the truth, he was frightened, was drinking and/or taking medication, his health got worse, (inability to sleep, shaking, not eating, crying), and he did not recall or remember details.

The following things Fratico stated with assurance:

- He did not see Marshall or Seale in the park. He did not see the stabbing.
- He gave statements to police and later in court because he was "frightened, confused, mixed-up in my mind, didn't know what was expected of me, and pressured.
- Today he has stabilized to the point that he feels that he can tell the truth.

Source of pressure and things that caused him to be afraid:

- John MacIntyre,
- Police
- the whole system
- people would not believe him if he told truth and would call him crazy.

Denies being frightened of Tommy Christmas because he just wanted me

to tell the truth. Denied being afraid of other Indians.

Admits his signature on 1st statement but doesn't know where information contained in it came from.

Alleges threats by MacIntyre: "If you do not tell us what happened, you could go to jail".

Does not recall Mother present at any statement or interview.

Did not tell anyone that he did not see Marshall stab Seale until he told to Khattar, Marshall, Sr., Sheriff MacKillop, in hallway of courthouse.

Does not recall questions or testimony at court about his attempt to tell truth.

Psychiatric treatment before and continuously since event.

Told the truth to Carroll, felt better after and has been getting better ever since.

Prosecutor MacNeil did not frighten him, McNeil coached, i.e. helped him to get his story right.

H. B. MacDonald is policeman who drove him, mother and sister when he was taken to N.S. Hospital.

No recall of talking with defense attorneys outside of court.

Insists Maynard Chant did not spend a night in his house at any time.

Told Carroll the truth to best of my ability.

Insists none of it would have happened "if I wasn't pressured" and today he is certain that the source of that pressure was "Chief John MacIntyre". Urquhart just sat there kind of silent.

End Summary of Testimony, John Pratico, Sept. 24, 1987.

Sept 25th 87

Summary of Testimony

Date: September 25, 1987

Witness: Mrs. Margaret Pratico

Examination by: W. Wylie Spicer

Mrs. Pratico gave the following information about her recollection of the events of May 1971 and the period following:

- John came home from the dance with blood on his shirt which he said came from a fight at the dance.
- First news of the stabbing came from the radio. John was in bed at the time and asked who got hurt.
- Sunday, MacIntyre came to the house took John to the station. She went a short while later, did not see John, did not ask why John was there, did not request to be with John.
- At some point gave police the bloody shirt John had been wearing, no knowledge of what ever happened to it.
- A few days later Tom Christmas and Howard Hawkins came to door looking for John. She sent them away, John followed them and returned a while later to say that he had been threatened by Christmas.
- She called Police for protection. She went to court and testified against Christmas at a trial.

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- She did not attend any of the court proceedings in the Marshall case.
- No conversation with John about case, no conversation with Marshall's lawyers or the crown.

Mrs Pratico offered the following about John's condition at the time:

- John's nerves were bad in 1971 and got worse resulting in a trip to the N.S. Hospital sometime during August or September. Believes Sgt. MacDonald of Sydney PD drove them to Halifax, not in uniform, no recall of Police vehicle.
- John was drinking "quite a bit", at the time
- John got to Halifax on his own for the second visit to the N. S. Hospital.
- Recalls one incident when John locked himself in her bedroom and refused to come out until Police were summoned, no problem resulted.
- Would believe what John has told the Commission because: "can you give me a good reason why a mother should not believe her son?".

End Summary of Testimony Mrs. Pratico, September 25, 1987.

Summary of Testimony

Date: September 25, 1987

Witness: Dr. James Vincent O'Brien

Examination by: George W. MacDonald

After presentation of his c.v. and brief description of his experience, Dr. O'Brien was considered as an expert for the sake of the hearing.

Dr. O'Brien examined the psychiatric records of Roy Ebsary and interviewed him for about an hour and a half to prepare his assessment. He also viewed the "Ratchford" Video-tape.

Dr. O'Brien's analysis of Ebsary based on the above was that:

- Ebsary is capable of telling the truth, whether his recent testimony is truthful or not "your guess is as good as mine."
- Records indicate Ebsary has a "Mild Organic Brain Syndrome" which may be worse if he uses alcohol or other toxic substances, but which now seems to be in remission.
- His stories have a grain of truth and he exaggerates around that grain. He "colors his own role" to make himself the hero.
- He is in remarkably good shape considering his age and physical infirmities.
- Ebsary's I.Q. is in high normal range.
- From his history it appears Ebsary is likely to be aggressive, even

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"explosive" when using alcohol or other substances.

- "Psychiatric illness does not cause him to lie."

Mr. MacDonald offered in evidence a service certificate showing that Ebsary served in the Royal Navy, Nov. 4, 1940 - Jan. 8, 1942.

End Summary of Testimony, James V. O'Brien, September 25, 1987.

Request to hear testimony of Rudy Poirier at this time opposed by counsel for various parties. Deferred to Oct. 6, 87.

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