



JDC/L

No. C.C. 96-18

*now*  
Ottawa,

*Ce 96/19*  
December 30th, 1918.

PLEASE ADDRESS REPLY TO  
DEPARTMENT OF JUSTICE  
REMISSION BRANCH,  
AND QUOTE OUR NUMBER

MEMORANDUM:-

*Re Hassen Kely*

By direction of the Deputy Minister the evidence in this case was today loaned to Mr. Wm. A. Henderson, Barrister, Manning Chambers, Toronto, who promised to return it.

Will Mr. Wright be good enough to make an entry to have this case brought before me on, say, January 30th next unless the evidence is in the meantime returned by Mr. Henderson.

*J. C. Clarke*

*614 A*

C.C. 96-18

December 27th,

8

MEMORANDUM FOR THE ACTING MINISTER OF JUSTICE:-Re Hassan Neryy.

This case was, as you are no doubt aware, disposed of a few days since when it was decided that it was one in which the law should ~~be allowed to~~ take its course.

Until the application by telegraph, herewith submitted, was received, I know of no application for clemency having been made on behalf of the prisoner. Certainly no one made representations in favour of clemency up to the time of the preparation of the case for presentation to the Governor General in Council.

It is usual in cases of this kind even where a case has been disposed of, if application is made for the presentation of a <sup>special</sup> plea on behalf of the condemned man, to receive such representations and if the Minister of Justice considers them of sufficient importance to warrant it to have the case submitted to Council with them for further attention.

The applicant's telegram has not been replied to. You will observe that he asks for an answer as to when he can have an interview.

# At the Government House, Ottawa

Thursday, the nineteenth day of December,

1918,

Present:

The Governor General



## In Council.

*The Governor General has been pleased to lay before the Privy Council the Report and notes of evidence of the Honourable Mr. Chief Justice Falconbridge, in the case of HASSEN NEBY,*

*who was tried before him at a sitting of the Supreme Court of Ontario, held at Toronto on the thirtieth and thirty-first days of October, 1918, for the Crime of MURDER and having been convicted thereof, was sentenced to Death—such sentence to be carried into execution on Friday, the third day of January, 1919.*

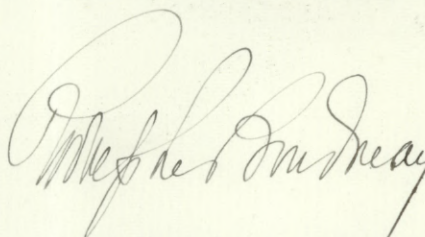
The Honourable,

The Minister of Justice.

*The Governor General has also laid before the Privy Council a transcript of the evidence adduced at the trial, and other documents relating to the case.*

*The circumstances of the case having been fully considered by the Governor General in Council, together with the Report of the Minister of Justice*  
adverse to . . . *the commutation of said sentence.*

*The Governor General is unable to order any interference with the sentence of the Court.*



**Clerk of the Privy Council.**

TSW.

C.C. 96-18

Dec. 14th 1918

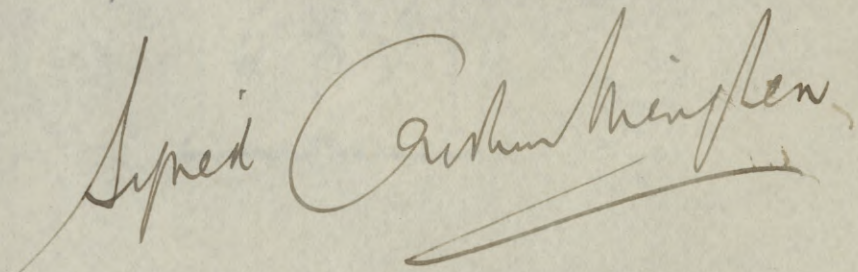
TO

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.  
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The undersigned has the honour to submit herewith the report of The Honourable Sir Glenholme Falconbridge, Knt., Bach., Chief Justice of the King's Bench, in the case of HASSEN NEBY, convicted of murder, at a sitting of the <sup>S</sup>upreme Court of Ontario, held at Toronto, on the thirtieth and thirty-first days of October, 1918, and sentenced to be executed on Friday the third day of January, 1919, together with a transcript of the evidence adduced at the trial, and other documents relating to the case.

Upon careful consideration of all which, the undersigned respectfully recommends that the law be allowed to take its course.

Respectfully submitted

A handwritten signature in dark ink, reading "Arthur Meighen". The signature is written in a cursive style with a long, sweeping underline.

Acting Minister of Justice.

*specimen  
please return  
Cc  
96/18*

THE KING

VS

HASSEN HEDY

Convicted of murder before  
The Honourable Sir Glenholme Falconbridge,  
Knt., Bach., Chief Justice of the  
King's Bench, at a sitting of the  
Supreme Court of Ontario, held at  
Toronto, on the 30th and 31st days of  
October, 1918, and sentenced to be  
executed on Friday, the 3rd day of  
January, 1919.

MEMORANDUM FOR THE HONOURABLE

THE ACTING MINISTER OF JUSTICE.  
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The prisoner, who is stated to  
be a native of Albania, was found guilty  
of the murder of George H. Tucker, in  
a Canadian Pacific Railway boarding car,  
on a siding at Weston, Ontario, on Sunday,  
May 19th last. The victim was an  
unmarried man, about twenty years of age,  
whose home was at Orangeville, Ontario.

With a foreman and five other  
workmen, Tucker left Woodbridge Station,  
on the Canadian Pacific Railway, on  
Saturday, May 18th, and went to Weston,  
where they took up quarters in a boarding  
car, on the siding. Four of the men  
went home for the week-end, and three,  
including Tucker, slept in the car on  
Saturday night, and remained there  
together till about half past one  
o'clock on Sunday afternoon, when Tucker

left.

JOHN HUNTER,  
p.3.

John Hunter, the foreman, who was one of these men, deposed that on Sunday they all got out of bed about twelve o'clock noon, and that he left about three, and returned at one o'clock Monday morning. He last saw the deceased about one-thirty p.m. on Sunday, May 19th, when he left the car. There were three doors in the car, one at each end and one at the side. Hunter says he gave Tucker the key of the side door, on the town side. On 15th May Tucker drew \$39 for wages. His board bill was \$14.75, which it was likely he paid, and he sent his mother \$10; and bought boots for \$5. If, therefore, he paid the board bill he would have about \$8 left; and if he did not pay it he would have that much more.

WILLIAM HILL,  
p.7

William Hill, the remaining employee who slept in the car, swore he left at between one and one-thirty on Sunday afternoon, and returned about ten p.m.; and found Tucker dead in his bunk. His trousers and under-drawers were torn, and down over his feet; and his shirt was up under his arms, the body being exposed from the breast to below the knees. The inference was that the person who thus stripped the deceased man, having killed him, was searching for money or valuables. Witness

deposed that there were no foreigners in their gang of seven; and all were on friendly terms. Witness missed a pair of field glasses, which he had in the car, also a bunch of keys.

DOCTOR  
ELI FRANKLIN IRVIN  
p.16

Doctor Eli Franklin Irvin, Weston, who made a post-mortem examination of the body, deposed that the deceased had been stabbed to death. The unfortunate man was, physically, one of the finest he had ever seen. Apparently, the first wound, over the heart, had caused death within a very few seconds. There were thirteen other wounds on various parts of the body, but they were probably inflicted after life was extinct. The condition of the wounds would be consistent with the use of a stiletto. The instrument was apparently sharp on both sides. From the condition of the undigested matter in the stomach, witness reached the conclusion that Tucker had partaken of a meal not more than an hour and a half, or two hours, before his death.

ELIZABETH WAGNER,  
p.19

Elisabeth Wagner stated that Tucker left her house <sup>in West Toronto,</sup> on the Sunday afternoon in question, about twenty minutes to six, when he said he was going to the boarding car. She invited him to stay for tea, but he declined, saying he had had a good tea.

FREDERICK K. DALTON,  
p.20

Frederick K. Dalton, who lived in the vicinity of the siding where the

boarding car was, stated that on Sunday evening, May 19th, about twenty minutes to eight o'clock he passed along a lane leading to the Roman Stone Company's premises, and met a man between the Canadian Pacific and Grand Trunk tracks, coming from the Grand Trunk to the Canadian Pacific tracks. He declared <sup>e</sup> he was reasonably sure the prisoner was the man; "He looks very like him." Witness said, "Good night," to the man, and he answered in a foreign tongue. He identified the hat produced in Court as like the one worn by the man he met; he added that he did not make a very close examination of the man's general appearance.

WILLIAM BLAIR,  
p.32

William Blair, caretaker of the Roman Stone Company's premises, deposed that on the Sunday night in question, about eight o'clock, he was at the gate where the Grand Trunk is, when he saw the prisoner come up the steps, and asked him, "Are you staying down in those cars now?" Prisoner replied, "Oh!, no, no, no." Prisoner had a parcel in his hand, wrapped up in paper, which he was trying to put in his pocket. Prisoner appeared excited, and in a hurry. The <sup>witness</sup> witness knew Dalton, to see him, and he saw him that evening about half an hour before. The man with the parcel, (who <sup>m</sup> he now identified

as the prisoner), got the parcel into his pocket, crossed the Grand Trunk track, and went to the main street, in the direction of Burk's Hotel. The witness further stated that a few days afterwards he was in the Canadian Pacific Railway office, when twelve men were being paid off. He then saw the prisoner receiving his cheque, and pointed him out, without any suggestion on the part of any one else, as the man whom he had seen in the vicinity of the scene of the murder on May 19th. Witness added that he was absolutely positive the man met by him and spoken to, on the occasion referred to, was the prisoner.

JOSEPH WATSON,  
p.46

Joseph Watson, a Conductor on the Toronto Suburban Railway, <sup>which</sup>~~who~~ has its terminus at Burk's Hotel, Weston, stated that he started back to West Toronto at ten minutes to the hour. On the Sunday night in question, he was, while in charge of his car, at the Burk's Hotel terminus, when a man rushed for the car, either at ten minutes to eight or ten minutes to nine. This man was the only passenger; and he saw him at the inquest a week later. He positively identified the prisoner as this passenger. The man never offered to get into the car till he rang the bell, waiting till the last moment, and then he made a rush for it. Witness did not remember what

clothing he wore, and he identified him only by his face, adding, "I am not mistaken; the more I see of him the more I am sure."

POLICE INSPECTOR  
JOHN MILLER,  
p.55

Police Inspector John Miller, deposed that he and Inspector Greer visited the premises at #569 King Street West, Toronto, where a number of Albanians lived, and made a search for a pair of field glasses, and a wallet, which had been taken from the car in which the murder had been committed.

In a vacant room, on the third floor, they found a black suit case, which contained the field glasses and the wallet, the latter having in it an insurance identification card, belonging to George H. Tucker (the murdered man). In the same suitcase were a coat, a muffler, a coloured shirt and other clothing, and two envelopes. Trousers corresponding to the coat were found in the bedroom occupied by the prisoner, who came in after the articles had been found. Prisoner denied that he owned the grip, and said it belonged to someone else. Asked where his own suitcase was, prisoner produced one that belonged to another Albanian. Subsequently he produced a suitcase <sup>of different colored leather,</sup> that belonged to Mike Domo, another fellow-countryman. When the prisoner was searched it was

found he had about \$73, in a purse in his pocket.

INSPECTOR  
GEORGE KENNEDY,  
p.66

Inspector George Kennedy, who belonged to the <sup>Toronto</sup> City Police Force, gave evidence as to the statement made by the prisoner after his arrest; at which time he denied ever having been at Weston or West Toronto; stated he was at home in Toronto all Sunday, May 19th; denied ownership of the black suit case and the articles found therein; and claimed his suitcase was of a yellowish colour.

CONSTABLE  
WILLIAM CAMPBELL,  
p.83

Constable William Campbell swore that he searched the murdered man's clothing after the body was discovered. He found no money; the pockets were empty.

SAM ALI,  
p.84

Sam Ali, who was foreman for the Canadian Pacific Railway, when the prisoner with other Albanians were working for that corporation, stated that they left the service of the company on 26th April. The prisoner boarded for a short time in the car, at Weston, and afterwards, he, with the prisoner and other Albanians, boarded at #569 King Street ~~West~~, Toronto. Witness identified a black suitcase found on these premises as belonging to the prisoner. He also identified a coat, trousers and muffler, as the property of the prisoner. The envelopes found in the prisoner's suitcase, were he stated, given to Hoby by him, so that the prisoner might have the addresses given on them. Witness stated that

there was a meeting of Albanians at #534 King Street West, on May 19th. When he went to his work at 5.30 that evening prisoner was in the house at #569 King Street West.

JIM CHARLIE,  
p.104

Jim Charlie, another Albanian, says prisoner went out of the house, on May 19th, about six p.m., after partaking of supper, and came back about nine p.m. The evidence of this witness was in the main corroborated by John Ali, another Albanian.

DETECTIVE  
WILLIAM GREER,  
p.114

Detective William Greer stated that a person could go by street car, from #569 King Street West, to Weston, easily in fifty minutes.

HASSEN NEBY,  
p.117

Hassen Neby, the prisoner, was the only witness examined for his defence. He stated that he boarded in the Canadian Pacific car while in Muskoka, and came down in it to Weston. He left the car and the employment of the railway company as soon as he got to Weston. Prisoner now identified the black suit case as his. He denied that he had at any time said he did not own this suitcase. He had only denied owning the articles found in it. He did not know how the field glasses and the wallet came to be in the suitcase, and he had never seen these articles before they were produced in the Police Court. Prisoner said he was living at #569 King Street West, Toronto, on May 19th, when Tucker was murdered; but he

denied he knew anything about Tucket, or the crime. He could not explain <sup>how</sup> about the two envelopes found in his suitcase came to be there. They were not given him by Sam Ali, as sworn to by that witness.

HASSEN NEBY -  
Cross-examination -  
p.121

In cross-examination, prisoner said he had lived in Canada for three years; that he was not in Waterbury, Connecticut, in the Fall of 1917, or in January of this year; that he had not been convicted at Waterbury of attempting to murder Frank Dowd, and sentenced to eighteen to twenty years in the State Prison; and he added that he did not escape from the New Haven County Sheriff while being conveyed to gaol. Prisoner stated that on the 9th January, 1918, he was ~~was~~ working on the Canadian Pacific Railway at Muskoka. He changed his name to Jack Ali in April last, when he went to work for the John Inglis Company, in Toronto, with which firm he remained till he was arrested. Prisoner declared he had supper on 19th May at #569 King Street ~~West~~. He remained there till half past six, when he went to #534 King Street ~~West~~, where he was till eight o'clock. There were from twenty to thirty persons at that place, who were there all the time till he left. He declared he knew all of them.

SAM ALI -  
Recalled -  
p.130

Sam Ali was recalled to deny

*Ca/*

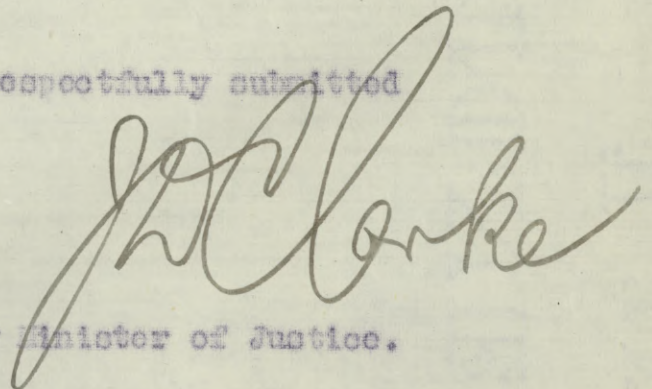
the evidence of the prisoner that he, Ali, was working for the Canadian Pacific Railway, <sup>in</sup> ~~at~~ Muskoka, in January last, and that he had the prisoner working under him. Witness did not start to work for the Canadian Pacific <sup>Ry.</sup> till 26th February, when the prisoner also began to work. Witness also contradicted the prisoner's statement that he did not work at Weston. Heby actually did work seven or eight days at Weston, in April last.

It is conceded that the prisoner had a fair trial, and that ample opportunity was given him to establish his defence. By Heby's own evidence alone, an attempt was made to set up an alibi, to meet the testimony of the men who swore positively that they saw, or met and spoke to him, in the vicinity of the place of the murder, on the evening of the tragedy. But this expedient signally failed. The prisoner's assertion that he was not in Weston, or neighbourhood, between the hours of six and eight o'clock, on the evening of May 19th (the time when in all probability the murder was committed) but at a meeting of his compatriots, a short distance from his place of abode, was capable of proof, if proof there was, inasmuch as, according to the prisoner's own statement there was at the meeting which he attended, twenty to thirty of his countrymen, whom he knew and who knew him, and who were

present all the time that he remained in the place. Why then were not one or more of these friends of the prisoner called to support his story? Simply, one is forced to the conclusion, because it was not true. The prisoner's numerous contradictions of the evidence given by himself at previous enquiries, and his unsatisfactory explanations in regard to his immediate past life, all told against him, and made it a comparatively easy task for the jury to reach the conclusion that he was guilty of the murder and robbery - a verdict acquiesced in by the trial Judge, who in imposing sentence declared that the prisoner was guilty of a most cruel and barbarous murder.

There is really nothing in the record now submitted to support any other conclusion, and the undersigned is therefore of the opinion that the law should be permitted to take its course.

Respectfully submitted

A large, stylized handwritten signature in dark ink, appearing to read 'J. P. Clarke'. The signature is written over the typed name and extends across the right side of the page.

For Deputy Minister of Justice.

DECEMBER 6TH, 1918.

(JDC/TSW).

No. C.C. 96-18

Ottawa, Dec. 6th 1918 191

PLEASE ADDRESS REPLY TO  
DEPARTMENT OF JUSTICE  
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## MEMORANDUM

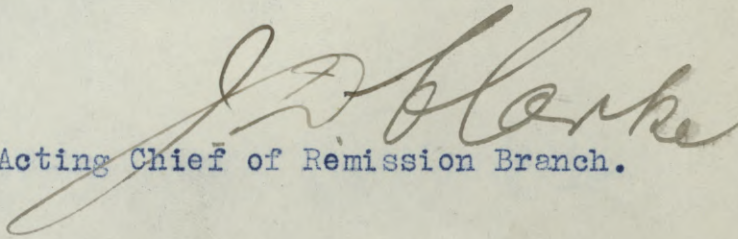
For Mr. Meighen  
-----RE HASSEN NEBY.

This is the first of the murder trials, the date of execution being set, as you will observe, for January 3rd.

So far no representations whatsoever have been made on behalf of this Albanian, who apparently has few, if any, friends.

I have made the report thus early in order that you may be able to dispose of it before Christmas, as well as the other case in which there is more evidence, and about which Mr. Doherty wrote you before he went away: and which I will now take up. Execution in the case to come is for January 8th next.

I will be ready to prepare for your signature whatever report you see fit in the case of Neby, as soon as you have reached a conclusion with regard to it.

  
Acting Chief of Remission Branch.



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