

E. ALAN MARSHALL, by Mr. Spicer

1 MR. SPICER:

2 The next witness is Alan Marshall.

3 ERNEST ALAN MARSHALL, being called and duly sworn, testified as  
4 follows:

5 BY MR. SPICER:

6 Q. Mr. Marshall, what is your full name?

7 A. Ernest Alan Marshall.

8 Q. And you're retired from the R. C. M. P.?

9 A. I retired in May of 1983, yes.

10 Q. And where do you currently reside, sir?

11 A. Granville Center, Annapolis County, Nova Scotia.

12 Q. When did you join the R. C. M. P.?

13 A. On May the 10th, 1948, at Toronto.

14 Q. And how old were you at that time, sir?

15 A. Eighteen.

16 Q. Can you briefly describe to us your career through the ranks  
17 in the R. C. M. P.?

18 A. Yes, sir. I trained in Ottawa and Regina, Saskatchewan, and  
19 was transferred to Nova Scotia; Windsor, Nova Scotia, in  
20 January of 1949.

21 Q. What is your rank at this time?

22 A. Third-class constable.

23 Q. Okay.

24 A. I spent approximately two years in Windsor and was transferred  
25 to Amherst, Nova Scotia. I was promoted to Second-class

E. ALAN MARSHALL, by Mr. Spicer

1 constable. In 1952, I was transferred to Northern Baffin  
2 Island at my request, volunteer. And I spent the next  
3 three years there until 1955 when I was transferred to  
4 Halifax to the Customs and Excise Section. In 19 --  
5 in January of 1958, I was transferred to Sydney Detachment.

6 Q. Sydney?

7 A. Sydney, Nova Scotia, Detachment. And in the fall of '58  
8 promoted to corporal.

9 Q. So did you arrive then in Sydney as a -- shortly after you  
10 arrived in Sydney you became a corporal?

11 A. Yes, sir. In 1959, I was transferred to New Waterford  
12 Detachment. And in 1962, I was transferred back to Sydney,  
13 only this time in the General Investigation Section. In  
14 1964, I was transferred to Halifax Detachment. In the  
15 fall of that year promoted to sergeant. Now we're up to  
16 '64.

17 Q. '64 is where you are?

18 A. Oh, yeh. I believe it was in 1967, I could be out a year  
19 on this, I was transferred to Halifax General Investigation  
20 Section. And in the fall either '66 or '67 promoted to  
21 Staff-sergeant. In the next year or two, which would bring  
22 us to '68 or '69, I was transferred to the Halifax Sub-  
23 Division Headquarters office as Sub-Division N. C. O. In  
24 July of 1970, I was commissioned as Sub-inspector and  
25 transferred to the post of Detective Inspector H-Division.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. And is that the designation Sub-inspector that you held in  
2 1971?

3 A. That's correct. The Sub-inspector being the rank. The  
4 Detective Inspector being the job description.

5 Q. I see.

6 A. And I served in that position until, I think, early 1973  
7 when I was transferred to -- either late '72 or early '73,  
8 transferred to the position of Assistant Officer Halifax  
9 Sub-Division. In the summer of '73 I was transferred to  
10 Headquarters, Ottawa, and the position was Officer in Charge  
11 Federal Policing Branch. In the spring of 1974, for a short  
12 space of five or six months, I was the Officer in Charge of  
13 an Operational Audit Unit. And shortly thereafter transferred  
14 as Officer in Charge Contract Policing Branch. And after  
15 spending, I think, until early '77, I was transferred back  
16 as Officer in Charge Federal Policing Branch. And on  
17 November the 17th, 1977, I was transferred as Officer in  
18 Charge Operational Task Force which was a Task Force set up  
19 to provide research capability to the MacDonald Royal  
20 Commission of Inquiry. And I stayed in that position until  
21 1981, possibly '82, because when that Commission of Inquiry  
22 was over, there was some follow-up work to do. And I stayed  
23 there, as I say, until late '81 or '82. And then I was  
24 transferred to the Office of the Deputy Commissioner of  
25 Criminal Operations as Officer in Charge of Special Projects.

E. ALAN MARSHALL, by Mr. Spicer

1 And in, as I say, May -- May the 9th, 1983, discharged to  
2 pension.

3 Q. The rank of Sub-inspector would that be considered to be  
4 a commissioned officer?

5 A. Yes, sir.

6 Q. And is -- would that be the first commissioned officer rank?

7 A. Yes, sir, it doesn't exist any longer.

8 Q. We've heard some evidence, I think a few days ago, that it  
9 only existed for a short time, do you know this?

10 A. Yes.

11 Q. Over the course of your career with the R. C. M. P. and  
12 in particular up until 1971, had you -- I take it you had  
13 occasion to investigate crimes of one sort or another?

14 A. Yes, sir.

15 Q. Had you taken courses in investigative technics over the  
16 years?

17 A. In 1958, I took a six or eight week intermediate training  
18 course in Ottawa which covered criminal investigations and  
19 in 1968, I attend Canadian Police College for a period of  
20 about eleven or twelve weeks, when again where there was a  
21 broad range of police -- police work.

22 Q. And would you have been a person, sir, in 1971, who would  
23 have been in the R. C. M. P. considered to be competent  
24 to handle an investigation?

25 A. Yes, sir.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. Yes, and in fact, you had done so?

2 A. Yes, sir.

3 Q. You indicated to us that there were two occasions prior to  
4 1971, in 1958 and 1962, when you had been in Sydney, Nova  
5 Scotia?

6 A. Yes. I was transferred to Sydney in January of 1958.

7 Q. During your posting in 1958, did -- did you know John  
8 MacIntyre?

9 A. Yes, I did.

10 Q. In what context?

11 A. Only casually. You know, I believe the Sydney City Police at  
12 that time were lacking in Identi -- Identification Services,  
13 facilities, and I would see Detective MacIntyre at our office  
14 where he utilized the services of the Identification Branch,  
15 our Identification Branch.

16 Q. And what kinds of occasions would he come to you to use --  
17 utilize the services of your Identification Branch?

18 A. Well, if he had scenes of crimes that he wanted examined  
19 by the examiner and generally it was photographing prisoners,  
20 fingerprinting them.

21 Q. During that -- during that time, sir, did you come to know  
22 John MacIntyre at all?

23 A. Only casually at that time. It was when I was transferred  
24 back from New Waterford in 1962, that I had closer -- much  
25 closer contact with him and in fact, worked on a number of

E. ALAN MARSHALL, by Mr. Spicer

1 cases together with him.

2 Q. And what sorts of situations in the -- in the later time  
3 would you have worked together with Sergeant MacIntyre?

4 A. Well, I can -- I can recall a couple of cases if you wish  
5 me to site them.

6 Q. I don't necessarily mean the names, I'd like to know the  
7 types of work that you were doing with him?

8 A. Yeh, I had forgotten the names anyway. As I recall at  
9 that time there were only two detectives on the Halifax -- on  
10 the Sydney City Police Department. And when one went away  
11 they'd be rather short-handed. And I recall in one instance  
12 Detective MacIntyre coming to me and asking me if I would  
13 help him investigate or apprehend a person who he suspected  
14 of stealing money from a tavern.

15 Q. And would that tavern have been in the City of Sydney?

16 A. Yes, sir. The other -- the case that sticks in my mind was  
17 the theft of a Volkswagen car.

18 Q. Where did that theft take place?

19 A. As I recall in the Ashby district but we recovered parts of  
20 the automobile in an attic down in Big Pond. The perpetrators  
21 had taken it apart -- all apart and stashed it here, there  
22 and the next place. And put the engine in the water and  
23 I can recall getting the fenders out of the attic and the  
24 hood someplace else. Those are the two cases that stick out  
25 in my mind.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. What sort of opportunity did you have then to observe John  
2 MacIntyre's investigative technics during -- with respect  
3 to those two occasions?

4 A. Well, we worked side by side.

5 Q. And what was your impression of him?

6 A. My impression?

7 Q. Yes.

8 A. Well, my total impression was that here was a man who was  
9 a very dedicated policeman. Very energetic. Always ready  
10 to help, you know, if I wanted help. He impressed me as  
11 being reliable and besides that, a good fellow to work for or  
12 work with.

13 Q. Good fellow to work with in what sense?

14 A. Well, he was easy to get along with.

15 Q. What sort of guy --

16 A. His enthusiasm was sort of infectious. His enthusiasm was  
17 infectious and he was always anxious to get on with the job.

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JMR.

E. ALAN MARSHALL, by Mr. Spicer

- 1 Q. Did you find him easy to relate to?
- 2 A. Yes, sir.
- 3 Q. Did you consider it a usual sort of thing to be called by him  
4 and asked, look, can you give me a hand with a particular  
5 investigation?
- 6 A. It didn't happen that often but it happened.
- 7 Q. And you were quite willing to go ahead and give him a hand?
- 8 A. Yes, sir.
- 9 Q. Did you also have an opportunity during either of these  
10 two tenures in Sydney to have any dealings with Detective  
11 Urquhart?
- 12 A. Not really. I -- You know, the most I can recall is seeing  
13 him around the police station. You know, I don't really  
14 recall working closely with -- at all with Billy Urquhart.
- 15 Q. And during those two times in Sydney, sir, did you also  
16 have any opportunity to observe Donald C. MacNeil?
- 17 A. Yes. Yes, in his capacity both as a prosecutor because  
18 he would at one point prosecute our federal statutes cases, yes --  
19 our excise cases federally and I think at that time he was  
20 defending -- he was acting as defense and not in the -- as  
21 a Crown and so the majority of the cases that I had before  
22 him, he was defending except for the federal statutes cases  
23 which he was prosecuting for us.
- 24 Q. And would you work with him in that context when he was  
25 working as a prosecutor?



E. ALAN MARSHALL, by Mr. Spicer

1 A. In the federal excise cases? Well, how it worked, you know,  
2 we'd apprehend a violator of the excise act and if he  
3 pleaded not guilty, we were obliged to seek counsel at that  
4 time and I would go to him with the evidence that we'd have  
5 and he would prosecute the case.

6 Q. And in that context then would you have -- you've had an  
7 opportunity to observe Donald C. MacNeil in the courtroom  
8 for instance?

9 A. Yes.

10 Q. And what was your impression of the way in which he conducted  
11 himself?

12 A. Well, he was a tenacious prosecutor and a defender. Very  
13 competent, I thought. He did a good job prosecuting for us  
14 and he did a good job defending his clients when need may be.

15 Q. Again, during this time in Sydney did you have an opportunity  
16 to observe Mr. Rosenblum?

17 A. Yes, I did.

18 Q. And in what context?

19 A. Only in the context of him defending -- him acting as defense  
20 counsel and it was usually liquor act cases, bootlegging.

21 Q. And as a result of those observations did you form any  
22 opinion as to Mr. Rosenblum's capability?

23 A. Yes, I thought he was very capable.

24 Q. And Mr. Khattar?

25 A. Not so much Simon Khattar. I -- you know, I'd -- I, of course

E. ALAN MARSHALL, by Mr. Spicer

1 | knew him by sight. I don't believe I had any cases. I  
2 | could be mistaken but I don't think he defended anybody  
3 | of any of the cases I had.

4 | Q. Up until 1971, had you had any -- had you been called upon  
5 | ever to go in and look at an investigation that had been  
6 | carried out by another police force?

7 | A. By another police force?

8 | Q. Yes.

9 | A. No, I hadn't.

10 | Q. And do know whether or not from your own experience in the  
11 | R.C.M.P. whether or not that would have been unusual to  
12 | be called in to look at the work of another Force?

13 | A. I think you could put it in the realm of being unusual. Now,  
14 | we did, as I recall, when I was in Halifax about the mid-sixties  
15 | there were some problems with the New Waterford Town Police  
16 | Department and our Force, in fact, provided an N.C.O. in  
17 | charge for -- I can't recall how long, for three or four  
18 | months -- to sort of run that police department. And I  
19 | cannot recall any cases where the Force was brought in to  
20 | look at other investigation -- conducted -- sorry --  
21 | investigations conducted by other police departments but  
22 | that's only my recall. There could have been cases.

23 | Q. There is a report of yours, sir, in Volume 16 at page 204.  
24 | Since we're going to be referring to it a fair amount, I've  
25 | got a clean copy of it here which I'll just hand to you.

E. ALAN MARSHALL, by Mr. Spicer

1 | A. Thank you.

2 | Q. If you -- Do you recognize that as a report that you filed?

3 | A. Yes, sir.

4 | Q. Can you tell us, sir, how it was that you came to be involved  
5 | in the situation giving rise to that report?

6 | A. In November of 1971 while I was Detective Inspector in  
7 | Halifax and around November the 16th the -- my immediate  
8 | superior, Superintendant Wardrop called me to his office  
9 | and to the best of my recollections said, there's been a  
10 | murder investigation -- murder case in Sydney were a young  
11 | fellow has been in -- just convicted of murder and subsequent  
12 | to his conviction a man, Jimmy MacNeil, had come forward  
13 | and said that the wrong man had been convicted and I should  
14 | -- should have prefaced that statement by saying he, Wardrop,  
15 | said to me, I've had a call from the Attorney General's  
16 | Department wondering --

17 | Q. Did he indicate from whom he'd had the call?

18 | A. No, sir. Well, if he did I certainly don't remember.

19 | So, okay, here's this murder case in Sydney handled by the  
20 | Sydney City Police where after the conviction a man by the  
21 | name, MacNeil, had come forward and said the wrong man had  
22 | been -- the wrong man had been convicted. He said, -- excuse me --  
23 | He said, I want you to go to Sydney, go down to Sydney, and  
24 | determine if there's any substance to this man's allegations.  
25 | Now, I, to the best of my recall, I believe that was November

E. ALAN MARSHALL, by Mr. Spicer

1 the 16th and I say that from looking at this report as  
2 opposed to having the actual recall in my head. In any  
3 event I went directly to Sydney --

4 Q. Before you get there --

5 A. Yes.

6 Q. What was it that you understood that you were supposed to  
7 be doing when you came to Sydney from that -- from what  
8 you've been told by Inspector Wardrop?

9 A. Well, to the best of my recollection and there were no  
10 written instructions I was to determine if there was any  
11 substance to what MacNeil had said.

12 Q. And would that mean getting to the bottom of it, trying  
13 to figure out what, in fact, had happened?

14 A. Eventually yes.

15 Q. Eventually yes. I've indicated to you before and I'll just  
16 suggest this -- mention this to you now. We had spoken  
17 to Wardrop who's not yet testified but it indicated to us  
18 that the direction that he gave to you and I'm reading  
19 from my notes on a telephone conversation with him,  
20 Marshall was asked to look into it in depth and not  
21 just from MacNeil's perspective. I agreed to him looking  
22 into it in depth. Would you agree with that characterization  
23 of what you were supposed to be doing?

24 A. That's not my recall. My -- I -- What I recall is that  
25 we were to look at what MacNeil had said.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. And your intention though, I think you told me a couple of  
2 minutes ago, was to get to the bottom of it, was it not?

3 A. Yes. Yes.

4 Q. And indeed later on, if you look at your own report, you say  
5 in your own report that -- the end of paragraph three of  
6 that report on the first page of it.

7 ... I went to Sydney on the 16 Nov.  
8 where, together with Sgt. McKINLEY...  
9 a thorough review of the case was  
10 conducted with the following results.

11 Is that what you eventually thought you had done, "a thorough  
12 review of the case"?

13 A. When I wrote this report I had already done a number of things.  
14 I had gone over the investigation with Detective MacIntyre,  
15 with Sergeant McKinley. I'd looked at the evidence adduced  
16 at preliminary hearing which was provided to me by Detective  
17 MacIntyre and some statements and because of this I had -- I  
18 used the term "review", "thorough review".

19 Q. That's what you thought you were doing, I take it, from  
20 your report, sir?

21 A. Yes, to review it.

22 Q. And would it be the case that when you left Halifax to go  
23 to Sydney that nobody had placed any restrictions on what  
24 it was you were supposed to be doing when you got there?

25 A. There was no restrictions but the reason I think I'm right  
in recalling that there wasn't -- there was not an instruction

E. ALAN MARSHALL, by Mr. Spicer

1 to the effect that if the case was to be re-investigated  
2 is because of the fact that I went there alone. Had the  
3 instruction been, I want the case re-investigated, then there  
4 is no way in the world that I would go there alone without  
5 -- without taking at least two teams of investigators  
6 with me.

7 Q. When you left Halifax to go to Sydney if there were no  
8 restrictions on what it was that you were to do with  
9 respect to what you call a review, if when you got to  
10 Sydney you'd seen things that had -- you thought looked  
11 a little awry would you not then have gone farther?

12 A. Yes.

13 Q. You would have?

14 A. Yes.

15 Q. And in coming to try and decide whether or not Jimmy MacNeil  
16 had told the truth would it be the case, sir, that you  
17 would expect to do more than just talk to Jimmy MacNeil and  
18 ask him whether or not he told the truth?

19 A. Yes.

20 Q. And indeed you did speak to people and you did review  
21 documents other than Jimmy MacNeil's statement?

22 A. Yes, that's right.

23 Q. So when you got to Sydney you did, indeed, do things other  
24 than reviewing the statement which I believe you got of  
25 Jimmy MacNeil?

E. ALAN MARSHALL, by Mr. Spicer

1 A. Yes.

2 Q. With the intention, as you say in your report, to do a  
3 thorough review?

4 A. Yes.

5 Q. Okay. Was it your understanding, sir, when you left for  
6 Sydney that you were the person that was in charge? When  
7 you got up here you were to decide what was to be done?

8 A. Yes, that's correct.

9 Q. And you were to do that independently of the Sydney Police  
10 Department?

11 A. Yes.

12 Q. Independent of any direction from the Sydney Police Department?

13 A. Yes.

14 Q. Would I be correct, sir, in taking from your report on the  
15 first page where you indicated 17 November 1971, would  
16 the paragraphs that follow over to 23 November '71 on the  
17 last page of your report constitute the things that you  
18 did on the 17th of November '71 insofar as they relate to  
19 facts and things that were done?

20 A. Yes.

21 Q. Do I understand then that you arrived in Sydney on November  
22 17th?

23 A. I don't recall whether it was the morning of the 17th or the  
24 afternoon or evening of the 16th.

25 Q. Okay. When you got to Sydney did you get in touch with Sergeant

E. ALAN MARSHALL, by Mr. Spicer

1 MacIntyre?

2 A. Yes.

3 Q. Did you go and meet with him?

4 A. Yes.

5 Q. Was there anybody else at the meeting other than yourself  
6 and Sergeant MacIntyre?

7 A. Not that I recall.

8 Q. Can you tell us today what the substance of that conversation  
9 was that you had with Sergeant MacIntyre?

10 A. Well, the substance of the conversation was that he knew  
11 I -- why I was there. He had a transcript and some statements  
12 for me and I, you know, I'm having -- I have difficulty  
13 recalling what it -- you know -- the exact words we spoke  
14 or what we said.

15 Q. Did you have an impression from that conversation as to  
16 whether or not -- what Sergeant MacIntyre's view was of  
17 the case?

18 A. Yes, my impression is that he was very confident that he  
19 had the right man.

20 Q. Can you recollect in any way how it was that he expressed  
21 that confidence to you? What --

22 A. I'm -- You know, I'd be guessing sir really. I can't -- but  
23 that's the clear impression that I have, is that he was  
24 convinced that he had the right man.

25 Q. And you indicated to me a minute or so ago that you were given



E. ALAN MARSHALL, by Mr. Spicer

1 certain material and I know now you've had an opportunity  
2 to try and think about what it was that you were given.  
3 Do you think at that meeting you were given, as you do indicate  
4 in your report in paragraph five in the last three or four  
5 lines, that you'd been given some statements?

6 A. Yes.

7 Q. Now, is it your recollection now that the statements you  
8 were given would have been the June 4 statement of John  
9 Pratico which is in volume 16 at page 41?

10 A. Yes.

11 Q. The June 17 statement of Terrance Patrick Gushue which is  
12 in the same volume at page 69.

13 MR. PUGSLEY:

14 I think, My Lord, if you wish evidence from the recollection  
15 of the witness as to what he was given, it would be best not to  
16 lead him through this. Put these statements in front of him.  
17 It may save time as far as my friend is concerned but if we're  
18 interested in bringing out whether it's the witness's recollection  
19 rather than my friend leading on him, I think it would be  
20 appropriate not to lead.

21 MR. CHAIRMAN:

22 He told us that he received some statements from -- presumably  
23 from people who had given statements during the investigation  
24 of this crime. I seriously doubt if he could remember at this  
25 time, if you could expect him to remember the names.

E. ALAN MARSHALL, by Mr. Spicer

1 | MR. PUGSLEY:

2 | But I have serious doubts as well and so it's my friend's  
3 | recollection that's getting on the record rather than the  
4 | witness's.

5 | MR. SPICER:

6 | I thought -- think there will be subsequent evidences from his  
7 | own report as to why he thinks these statements that he has here --

8 | MR. CHAIRMAN:

9 | This -- I interpret this as being a method of this witness deciding  
10 | whether or not these were the statements as opposed to whether  
11 | it came from John Jones or William Smith and I see nothing wrong  
12 | with the approach being used by Commission counsel.

13 | BY MR. SPICER:

14 | Q. And the last statement is, are you able to tell us whether  
15 | or not you would have received the June 4, 1971 statement  
16 | of Maynard Chant?

17 | A. I feel sure that I did, certain I did.

18 | Q. You indicate in your report, sir, that you--on page two in paragr oh  
19 | five, you perused "transcripts of evidence given  
20 | at the preliminary hearing". Are you able to tell us today  
21 | whether or not you were given the transcript of the preliminary  
22 | hearing?

23 | A. To the best of my recollection I did receive the transcript. Yes.

24 | Q. You also say that you received "some transcripts of evidence  
25 | given in high court during the trial". Do you have any

E. ALAN MARSHALL, by Mr. Spicer

1 recollection of what those -- what that material might  
2 have been?

3 A. I think I did but I've forgotten about it for a moment.

4 I think Judge Dubinsky quoted some evidence -- some of the  
5 evidence in his direction to the jury and I think I got some  
6 of that.

7 Q. That material is contained, for the benefit of counsel, in  
8 Volume two, pages 88, 89, 90, 91, 92, 95, 96, 97, 101 and  
9 102. I'll show you this material, sir, and ask you, do you  
10 have any recollection of receiving anything from Sergeant  
11 MacIntyre that would have contained these transcriptions  
12 of the testimony that was given at trial?

13 A. I'm on thin ice. I'm on thin ice about this one.

14 Q. Okay, well if you don't remember then just set it aside  
15 if you have no recollection of getting it. Did you ask  
16 Sergeant MacIntyre for the entire file?

17 MR. CHAIRMAN:

18 Q. What your saying is that you recall receiving a portion of--  
19 a transcript of a portion of Mr. Justice Dubinsky's Charge  
20 to the jury which contained quotations from some of the  
21 evidence. Is that what your saying?

22 A. Yes, sir.

23 Q. But you can't identify what's been shown to you as being the--

24 A. The one that I got.

25 Q. -- the one that you received?

E. ALAN MARSHALL, by Mr. Spicer

1 A. Yes, My Lord.

2 Q. Okay.

3 BY MR. SPICER:

4 Q. Do you recollect, sir, whether or not you asked Sergeant  
5 MacIntyre for the entire file that he had?

6 A. No, at that time I did not.

7 Q. And why did you not ask him for the file?

8 A. Well, at that point in time I was seeking his co-operation.  
9 I was treading very gently and he had this dossier of  
10 papers prepared for me.

11 Q. When he handed that dossier to you, sir, did he say anything  
12 about what it was that he was giving you?

13 A. Yes, to the best of my recollection he was saying -- Oh --  
14 these are the crucial pieces of evidence adduced by witnesses  
15 surrounding the eye witness accounts of the murder. Now  
16 I must tell you that this is -- this was not my style of  
17 doing investigations and I'm really half at a loss as to  
18 why I was going so slowly at that time.

19 Q. Going so slowly in what sense?

20 A. In the investigation. Instead of going full-bore  
21 and saying give me this, give me that or I'll get a --  
22 you know, I'll get a subpoena or -- and to the best of my  
23 recollection the reason that I wasn't being more forceful  
24 at that time was because of the mandate that was given to  
25 me to look just at the -- into the aspect of MacNeil making--

1 | that is Jimmy MacNeil making a statement. So for whatever  
2 | reason I was treading very lightly at this stage of the game.

3 | Q. What possible connection would there be between your  
4 | coming to see whether or not Jimmy MacNeil was telling the  
5 | truth and your failure to ask for the entire file?

6 | A. Well, you know, my memory's hazy. It's 16 years ago and the  
7 | long and the short of it is I didn't ask at that time, you  
8 | know, and I think --

9 | Q. And my question still is what connection is there between those  
10 | two things? I'm struggling to understand what it is that  
11 | would connect your failure to ask for the file with your  
12 | mandate, as you've explained it, to come and see whether  
13 | Jimmy MacNeil was telling the truth?

14 | A. Well, I think really that I'd had it in my mind at that time  
15 | to use the polygraph and that rather than go full-bore into  
16 | a total review of the case, everything that MacIntyre had,  
17 | I was content to say, Okay how do we go about this thing.  
18 | Let's try the polygraph.

19 | Q. You wouldn't have been at the -- Would you have been of the  
20 | view at that time, sir, that you could use the polygraph to  
21 | the exclusion of getting the full story as may have been  
22 | revealed by the file at the Sydney Police Department?

23 | A. I thought that by using the polygraph it would knock the  
24 | thing on the head pretty quick.

25 | Q. Did you think that you could do that in the absence of

E. ALAN MARSHALL, by Mr. Spicer

1 understanding what the whole story was as might have been  
2 gleaned from the entire file?

3 A. Well, I go back to what I say before, that I thought the  
4 polygraph would get to the heart of the matter very quickly.

5 Q. Without having to look at the entire file?

6 A. Without having to re-investigate or look at -- yeh, even  
7 look at the whole file.

8 Q. Without having a look at everything that was available?

9 A. Yep. Yes, sir.

10 Q. Is it fair to say that at the time that you accepted the  
11 materials from Sergeant MacIntyre that you accepted his  
12 word for what he was giving you as the crucial material  
13 related to the eye witnesses?

14 A. Yes, absolutely.

15 Q. Do you think, sir, that in going to look at the work of  
16 another police force on reflection that it's good practise  
17 to accept the word of the original investigating officer?

18 A. Well, let me put it this way. Probably not and probably  
19 I didn't go there, you know, initially with the intention  
20 of just listening to MacNeil -- I'm sorry -- to Detective  
21 MacIntyre and accepting his word carte blanche but I tell  
22 you this, that if you work with a man over the years and  
23 grown to respect him as a policeman, as an honest man that  
24 I think that preys on your mind whether you want to believe it  
25 or not, in other words subliminally.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. You would agree with me though that it's not good practise  
2 to accept the word of the original investigating officer?

3 A. Today I would, yes.

4 Q. Are you able to tell us, sir, whether or not you received  
5 any conflicting statements, written statements from Sergeant  
6 MacIntyre at the time you received the package of material?

7 A. No, to the best of my recollection when we were having  
8 the discussion about what transpired he said, look, I had  
9 -- initially I had some difficulty with Chant and Pratico  
10 but they soon, sort of, came around and I got the right  
11 words out of him or -- I'm not -- Sorry, that's not what  
12 he said. That's not what he said.

13 Q. What was it that he did say?

14 A. Well, what he said was, I had some difficulty with these  
15 witnesses at first and -- but then they came around and told  
16 the truth pretty quickly, in that context.

17 Q. And having been told that you asked no further questions  
18 at that time?

19 A. No, because, you know, that is a relatively common experience.  
20 At least it has been my relatively common experience --  
21 relative common experience, to experience people who initially  
22 who are not forthcoming or not ingenuous and as a matter  
23 of fact I think it was not more than two years before this  
24 that Corporal Smith and I were involved in a murder case  
25 when the exact same thing happened where one man, one witness  
was reluctant.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. Is this the same Corporal Smith who were --

2 A. Yeh.

3 Q. -- going to hear about later?

4 A. Yes, sir.

5 Q. The polygraphist?

6 A. Yep.

7 Q. The material that you took away from that meeting, sir, I take  
8 it that you carefully reviewed the material that was handed  
9 over to you by Sergeant MacIntyre?

10 A. Well, I thought I did. I went over it with Corporal --  
11 Sergeant McKinley and I went over parts of it with Donnie  
12 MacNeil. And I went over parts of it with myself or  
13 studied it when I got back to Halifax.

14 Q. You indicate in your report that--that at least insofar as  
15 November the 17th is concerned, sir, on page 2 in paragraph 5,  
16 about half way down:

17 Rather, a number of hours were  
18 spent by Sgt. MCKINLEY and myself  
19 going over statements given by various  
witnesses to the police during the  
initial investigation.

20 A. Yes.

21 Q. And later --

22 A. But don't ask me whose office or where or, you know, that's  
23 my report. I wrote that. Of that there is no doubt. But  
24 when you try to pin me -- if you try to pin me down about  
25 where or why or how long, I'm sorry, it's been too long. I --



E. ALAN MARSHALL, by Mr. Spicer

1 Q. No, I was only --

2 A. I can't recall.

3 Q. The question was merely directed to finding out whether at  
4 the time you were satisfied that you carried out a careful  
5 review of the material that was given to you?

6 A. Yes.

7 Q. Okay, you spent sometime then with Sergeant MacIntyre on  
8 the 17th, and your report indicates also, sir, that on the  
9 17th you:

10 visited the scene of the crime  
11 with Sergeant of Detectives John  
MacINTYRE, ...

12 Do you remember doing that?

13 A. I remember visiting the scene of the crime. If you were  
14 to ask me whose car, what time of the day it was, I can't  
15 recall.

16 Q. Do you remember whether it was the day or the night?

17 A. I can't -- I think it was daytime.

18 Q. Okay.

19 A. I'm almost certain it was daytime.

20 Q. Do you remember how long you spent in the Park?

21 A. No, you know, at that time having been -- been stationed in  
22 Sydney just a few years previous, I was familiar with the  
23 focus of the place and I just think I went there to see  
24 whether or not -- to see how the lighting situation was,  
25 where the light standards were. But again, it's -- that's

E. ALAN MARSHALL, by Mr. Spicer

1 hazy in my memory.

2 Q. Do you have any idea how much time you spent in the Park?

3 A. No, I'm sorry I don't.

4 Q. No, do you have any recollection of what you were shown or  
5 what you did when you were there?

6 A. No, no.

7 Q. You indicate also in your report, sir, in paragraph 5, I take  
8 it this is still related to November 17th, at the beginning:

9 Sgt. McKINLEY received MacNEIL's  
10 written permission that he would  
11 undergo the polygraph test. We  
12 interviewed MacNeil and it was  
13 obvious by his demeanour and  
speech that he has sub-normal  
intelligence and is slightly  
mental.

14 Did you interview Jimmy MacNeil on the 17th?

15 A. On the 17th? My report says I did. I have no reason to  
16 believe otherwise. But I can't recall the circumstances  
17 of speaking to him then.

18 Q. Did you discuss Jimmy MacNeil with Sergeant MacIntyre on  
19 the 17th?

20 A. Oh, I'm sure we did. I'm sure we did.

21 Q. Okay.

22 A. We, you know, we talked about it.

23 Q. Can you give us any indication today how you reached the  
24 conclusion that he was:

25 has sub-normal intelligence and  
is slightly mental?

E. ALAN MARSHALL, by Mr. Spicer

1 A. Well, you know, I couldn't seem to get a consistent story  
2 out of him. He'd skip around. How do you -- how do you  
3 know that anybody is -- is without giving them an I.Q.  
4 test, what their intelligence level is, you know.

5 Q. So your recollection of how you reached that conclusion is  
6 just from interviewing him?

7 A. Yes.

8 Q. Your report then says:

9 He was, nonetheless, (presuming that's Mr. MacNeil)  
10 convinced that EBSARY had stuck a knife into  
11 the deceased and that later they  
12 went to EBSARY's home where he,  
13 EBSARY, washed off the knife.

14 You then say:

15 Because we were certain that  
16 McNEIL's account of the  
17 altercation insofar as it  
18 concerned EBSARY allegedly  
19 stabbing MARSHALL was a figment  
20 of his imagination, we did not  
21 immediately question him or take  
22 any further action with respect  
23 to MacNEIL at this time.

24 How did you conclude on November the 17th, that MacNeil's  
25 account "was a figment of his imagination"?

26 A. Well, that's, you know, that's difficult too but underlying  
27 all of this is the fact that Marshall had had a jury trial,  
28 that the thing had been to Preliminary Hearing, that  
29 competent counsel had been engaged on both sides of the  
30 cases, and that MacNeil was not credible -- credible to the  
31 extent that it took him sometime to come forward. You know,

E. ALAN MARSHALL, by Mr. Spicer

1           these       are the things that I seem to recall going through  
2           my head at the time.

3   Q.   And this is six days before you gave Mr. MaNeil a polygraph?

4   A.   Yes.

5   Q.   And you concluded on the 17th already without the benefit  
6           of the polygraph, in fact, the very question you say you've  
7           been brought down to Sydney to answer, had already been  
8           answered. That is that you were certain that his account  
9           of the altercation insofar       as it concerned Ebsary, "was  
10          a figment of his imagination"?

11  A.   Well, I thought it was, but -- but I wasn't certain to the  
12          extent that I would not ask the polygraph operator to come  
13          down.

14  Q.   Did you have any discussions with Sergeant MacIntyre on the  
15          17th concerning his 'impression of Jimmy MacNeil?

16  A.   I'm sure we did.

17  Q.   And are you able to tell us today what -- what your impression  
18          was of what Sergeant MacIntyre thought of him?

19  A.   Well, I think -- I think he thought the same as what I did or  
20          I thought the same as what he did. I don't know whether I got the  
21          cart before the horse or the horse before the cart.

22  Q.   What was it that he thought?

23  A.   About it being a "cock-and-bull" story about MacNeil --  
24          MacNeil's statement that -- that Marshall didn't do it, that --  
25          that Ebsary did.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. And were you then -- were you the 17th accepting Sergeant  
2 MacIntyre's impression of Jimmy MacNeil as something that  
3 you would take into account in coming to your conclusion --

4 A. Yes.

5 Q. -- that it "was a figment of his imagination"?

6 A. Sure. Part of it.

7 Q. Well, on the 17th, sir, what else did you take into account  
8 in coming to that conclusion?

9 A. I can't say. I can't remember.

10 Q. Did Sergeant MacIntyre give you the statements that were taken  
11 by him of Jimmy MacNeil and Roy Ebsary?

12 A. Well, I'm pretty certain he did.

13 Q. And those two statements are contained in volumes -- in  
14 volume 16 at 176 and 186. Mr. Ebsary's is at page 186 and  
15 Mr. MacNeil's is at 176. On the 17th, sir, you've now --  
16 you've been to the Park with Sergeant MacIntyre. You spent  
17 sometime reviewing the material. If I understand you  
18 correctly, you've spoken with Jimmy MacNeil. Was there anything  
19 else that you did with respect to this investigation on  
20 November the 17th?

21 A. I called Sergeant Burgess in Halifax on the telephone to  
22 -- to line up the polygraph operator for me.

23 Q. And in volume 16 at 195 --

24 A. And I think I asked him to look -- to check with N. C. I. S.  
25 for criminal records.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. Okay, we'll get to that in a sec.

2 A. Yes, yeh.

3 Q. You're familiar with that document, sir?

4 A. Yes, sir.

5 Q. And is that a direction from your boss, Wardrop, requesting  
6 polygraph?

7 A. Yes, sir.

8 Q. And can you indicate to us in the last three lines of that  
9 transmission, it says:

10 IF EXAMINATION OF MACNEIL REVEALS  
11 HE IS TELLING TRUTH POSSIBLY 3  
12 FURTHER EXAMINATIONS WILL BE  
13 REQUIRED. ADVISE IF EXAMINER AVAILABLE  
14 & ETA SYDNEY.

13 Can you tell us whether or you -- did you speak with -- with  
14 Wardrop on that day?

15 A. No, I spoke with -- with Sergeant Burgess.

16 Q. He would have been the reader?

17 A. If you'll look at the top of the telex it says "Drafter's  
18 name - DLB"?

19 Q. Right.

20 A. He put the thing together on information that I got -- I gave  
21 him.

22 Q. Right.

23 A. And he would have the superintendent sign it because it  
24 required the authority of -- of a C. I. B. officer before we  
25 could use the polygraph.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. Would it have been your suggestion then that:

2 IF EXAMINATION OF MACNEIL  
3 REVEALS HE IS TELLING TRUTH  
4 POSSIBLY 3 FURTHER EXAMINATIONS  
5 WILL BE REQUIRED.

6 A. Yes, sir.

7 Q. Are you able to tell us today who those "3 FURTHER EXAMINATIONS"  
8 would have been?

9 A. I think that, you know, to the best of my recollection, it  
10 would have been Chant, Pratico and Donald Marshall, Junior.

11 Q. At the time, if I'm reading your request correctly, Wardrop  
12 was passing on a request only for an examination for MacNeil?  
13 Had you made any decision at that point in time concerning  
14 Roy Ebsary?

15 A. Yeh, when it -- when it came to -- to the use of the polygraph  
16 I had determined that the first two that should be done, at  
17 least, before we went any further with the review, would be  
18 Ebsary and MacNeil. I don't know whether you have it or not  
19 but you'll note a telex going back from -- from Smith in  
20 Regina to Halifax saying "who's the investigator and where  
21 can I get a hold of him"?

22 Q. Page 197, would that be the telex you're referring to?

23 A. Yes. And then, of course, the subsequent one that came to  
24 -- that came to me at Sydney as a -- an info is the one at  
25 196.

Q. 196? That's indicating to you that the polygraph examiner

1 | had been contacted?

2 | A. Yes, and I'm sure that -- that Smith phoned me and the  
3 | discussion took place over the phone, as to who I wanted  
4 | examined at that time.

5 | Q. And the people that you wanted examined at that time were who?

6 | A. Ebsary and MacNeil.

7 | Q. If you could just now look, since you have the volume in front  
8 | of you, 199 -- 199 and 200. You indicated a couple of minutes  
9 | that you also made a request in connection with criminal  
10 | records?

11 | A. Yes, sir.

12 | Q. And are you able to tell us from those three transmissions  
13 | from 198 to 200, whether or not on November the 17th you  
14 | would have known that Roy Ebsary had had a conviction --

15 | A. Yes.

16 | Q. -- for possession of a concealed weapon?

17 | A. Yeh.

18 | Q. And that's information that would have come to you on the  
19 | 17th of November?

20 | A. Yes, sir.

21 | Q. Do you remember doing --

22 | A. And I -- excuse me.

23 | Q. Sorry.

24 | A. I think also that Detective MacIntyre had already told me  
25 | that -- about Ebsary's conviction. I think.



E. ALAN MARSHALL, by Mr. Spicer

1 Q. When do you recollect that he told you that?

2 A. When do I recollect it? Well, you know --

3 Q. Well, during the day -- did he tell you during the day of  
4 November 17th?

5 A. I think so. He said, "Oh, yes, you might as well know that  
6 Ebsary has got a conviction for a concealed weapon".

7 Q. Do you remember anything else about that conversation?

8 A. No, I don't. Other -- other than the fact that -- no, I  
9 don't. I don't recall. For some reason or other the previous  
10 conviction didn't register too deeply with me. I don't know  
11 whether it was a trivial-- a relatively trivial offense. Like  
12 there's no M. O. on it, eh, it just says "concealed weapon".

13 Q. Did you understand it at any time to have been a knife?

14 A. Well, again, to the best of my recollection, I believe Detective  
15 MacIntyre told me it was a knife involved in that -- in that --

16 BY MR. RUBY:

17 Q. Could you repeat your last phrase, sir?

18 A. Beg your pardon.

19 BY MR. SPICER:

20 Q. Just repeat the last part of your answer?

21 A. I believe it -- that it was Detective MacIntyre who told me  
22 that a knife was involved. That's an answer to that  
23 question.

24 Q. Certainly. Did you follow that up at all with Sergeant  
25 MacIntyre?

E. ALAN MARSHALL, by Mr. Spicer

1 A. Well, no I didn't. At that time -- at any time I don't  
2 think because, again, whether he said that it was a trivial  
3 offense or he knew about it or whatever, it got pushed to  
4 the background of my mind.

5 Q. And you didn't do anything further about it?

6 A. No.

7 Q. Did you do anything --

8 A. Take cognizance of it but put it in the back of my mind and --

9 Q. But it was information that you had at that time, November  
10 17th?

11 A. Say again?

12 Q. It was information that you had that there was a conviction?

13 A. Yes, oh, yes, quite clearly.

14 Q. What else did you do on November 17th in connection with the  
15 investigation?

16 A. I recall MacIntyre showing me the jacket and looking at it  
17 closely. The one that MacNeil -- that Marshall was wearing.

18 Q. Do you remember any discussion concerning that jacket?

19 A. Well, it seemed to me that when we looked at the jacket  
20 we examined the possibility that it was self -- self -- a  
21 self-inflicted wound had caused or Marshall had inflicted  
22 the tear in the jacket himself. You know, it seems to me  
23 we had conversation along that line.

24 Q. Are you able to tell us whether or not that was something  
25 that you thought of or something that was suggested to you

E. ALAN MARSHALL, by Mr. Spicer

1 | by Sergeant MacIntyre?

2 | A. I really can't say how it came up.

3 | Q. Do you know how it was that Sergeant --

4 | A. When --

5 | Q. Sorry.

6 | A. When you look at the jacket, as I recall, it's -- it was  
7 | cut in half -- half sort of half cut and ripped on the left  
8 | inner portion. And it looked like it was the type of --  
9 | the position of the cut was such that it would have been  
10 | quite easy to take the knife in your right hand and just  
11 | run it along -- it looked -- it looked like it would be  
12 | an easy thing to do really.

13 | Q. Was any view expressed to you by Sergeant MacIntyre as to  
14 | whether or not he thought the wound had been self-inflicted?

15 | A. Well, again, I think we talked about it and I believe that  
16 | he did, but my recollection is that he did, yes.

17 | Q. And if he had done so, would that have been something that  
18 | you would have accepted from Sergeant MacIntyre?

19 | A. Well, you know, the man tells me this and I say, yes, that's  
20 | plausible in my own mind. Yeh, it looks -- looks reasonable  
21 | to assume that -- that because of the position of the cut on  
22 | the sleeve, at that time, that that could have been the  
23 | case.

24 | Q. Are you able to tell us whether or not you came away from  
25 | that conversation thinking that perhaps the wound was

E. ALAN MARSHALL, by Mr. Spicer

1 self-inflicted?

2 A. I think I did.

3 Q. Do you know how it was that Sergeant MacIntyre happened to have  
4 the jacket? Did he indicate to you where he got it from?

5 A. No.

6 Q. That jacket had been introduced as -- at the trial as an  
7 exhibit?

8 A. I see.

9 Q. Do you have any idea how it would have got into the possession  
10 of Sergeant MacIntyre?

11 A. I've had exhibits in court, in Magistrate's Court, items that  
12 have been entered as exhibits given to me by a Magistrate  
13 and the Magistrate had said, "Corporal, Sergeant, whatever,  
14 because of the nature of this exhibit, I want you to keep  
15 it in your -- in your possession, in your locked exhibit  
16 locker". That's -- that's happened to me in Nova Scotia.

17 Q. And your locked exhibit locker, would that have been in the  
18 court house?

19 A. No, with the Detachment.

20 Q. With the Detachment?

21 A. Yeh.

22 Q. Would that normally be drugs?

23 A. Drugs and money. Yeh, right on, not jackets, no.

24 Q. Did you leave Sydney on the 17th and come back to Halifax?

25 A. I don't recall, sir. I don't recall what day I came back.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. Your report doesn't indicate anything for any dates between  
2 the 17th and the 23rd?

3 A. Yeh.

4 Q. Are you able to tell us whether you spent that time in Sydney  
5 or whether you spent that time in Halifax?

6 A. I believe I spent most of that time in Halifax. I don't  
7 think -- once -- once I got word that Smith was practically  
8 on his way to all intense in purposes, that it wouldn't be  
9 a long delay, I'm certain that I would have got in the car  
10 and come back to Halifax and tried to re-digest everything  
11 and wait for his arrival.

12 Q. Would you have taken the material that you'd been given by  
13 Sergeant MacIntyre with you when you went back to Halifax?

14 A. Yes.

15 Q. Had you formed any tentative conclusions when you left Sydney  
16 and went back to Halifax?

17 A. I became -- I was starting to get more incredulous as --  
18 that -- put it the other way around. I started to believe  
19 that Marshall was, indeed, the person who committed the  
20 crime.

21 Q. And why at that -- why would you have started to come to  
22 that conclusion?

23 A. Well, I think, you know, on the long drive back when I think  
24 back of going over the thing, what sticks in my mind is the  
25 fact that the case had gone through Preliminary Hearing. The

1 case had gone to trial in the Supreme Court. And I was  
2 starting to say to my self, I don't believe this happened  
3 this way. That is the way MacNeil said it happened. And  
4 I guess that's from spending a long time doing police work  
5 and seeing more people, who I considered guilty, get off  
6 then the other way around, seeing an innocent person being  
7 convicted before a judge and jury, you know, my experience  
8 was the other way around.

9 Q. That by the time you went back to Halifax on the 17th,  
10 other than interview Jimmy MacNeil, you hadn't spoken to  
11 Roy Ebsary at that point, had you?

12 A. No, no.

13 Q. You hadn't spoken to Chant?

14 A. No.

15 Q. Pratico?

16 A. No.

17 Q. Gushue?

18 A. No.

19 Q. You had spoken to John MacIntyre?

20 A. Yes.

21 BY MR. CHAIRMAN:

22 Q. Do I understand that you had seen the statements that had  
23 been given by Jimmy MacNeil and Roy Ebsary to the Sydney  
24 Police?

25 A. To the best of my recollection, My Lord, yes.

E. ALAN MARSHALL, by Mr. Spicer

1 MR. CHAIRMAN:

2 Okay.

3 BY MR. SPICER:

4 Q. You've spoken to Jimmy MacNeil, you've looked at those two  
5 statements of Ebsary and MacNeil, you're driving back to  
6 Halifax and you're tentatively reaching the conclusion that  
7 what Jimmy MacNeil's saying, can't be true?

8 A. Yep. As near as I can recollect.

9 Q. That's without having done any -- any interviews at all?

10 A. That's right.

11 Q. Was it you just couldn't believe that a mistake had been  
12 made?

13 A. Well, I was -- I was doubtful that -- not that a mistake couldn't  
14 be made but that this thing could go all through the court  
15 system. Knowing -- knowing that -- knowing the lawyers that  
16 I -- as well as I knew them and Mr. Dubinsky -- Mr. Justice  
17 Dubinsky, I thought -- I thought and incidently I was glad to  
18 see, without being trite about these things, the Supreme  
19 Court of Canada two weeks ago saying, in the polygraph  
20 case that -- that truthfulness of witnesses to be determined  
21 when they're on the stand or words to that effect.

22 Q. Is it fair to say as when you're heading back to Halifax on  
23 the 17th, you didn't want to believe that a mistake could  
24 have been made?

25 A. Well, you're stretching that I think. You know, I really

E. ALAN MARSHALL, by Mr. Spicer

1 think that's putting it a little too -- the wrong light on  
2 it.

3 Q. You certainly hoped one hadn't been made?

4 A. Oh, absolutely. I'd hoped that it hadn't.

5 Q. Between the time you went back to Halifax and then came back  
6 to Sydney with Corporal Smith, are you able to give us some  
7 indication of how much time you would have spent reviewing  
8 the material that you had?

9 A. No. I took it back for the purpose of having another -- of  
10 rehashing it again in the quietness of my own office and I  
11 don't know how busy I was at the time. Whether I had other  
12 -- obviously I had other things to do. I wouldn't have  
13 spent the whole of the time looking at those statements --

14 Q. Are you able --

15 A. -- or the material that I had. But how much -- how much, I --  
16 you know, I think really I was at that stage prepared to say  
17 okay, let's wait till the next shoe drops, that is when --  
18 when the polygraphist arrives.

19 Q. If you're prepared to "wait till the next shoe" dropped, would  
20 it be your recollection that you probably didn't do too much  
21 you were just waiting for Smith to arrive?

22 A. Yeh.

23 Q. Do you know whether or not you discussed the material that  
24 you picked up in Sydney with anybody else in the R. C. M. P.  
25 in Halifax during that period of time?



E. ALAN MARSHALL, by Mr. Spicer

1 A. Well, you know, I could have -- I could have, in fact, I  
2 feel -- I feel that I must have said to Wardrop, "This is  
3 what's happened so far".  
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E. ALAN MARSHALL, by Mr. Spicer

1 Q. Other than that?

2 A. Other than that, no.

3 Q. And what was it that you thought had happened so far?

4 A. Well, not so much as what had happened but how we were  
5 approaching the review of the case. In other words, okay,  
6 we've looked at this, we've looked at that, we'd like to  
7 get the polygraph down, so we'll just sit tight until he gets  
8 here.

9 Q. Would you -- do you recollect whether or not you would have  
10 indicated to Wardrop whether you started to form any conclusions  
11 at all in your own mind?

12 A. No, I -- No. No, I can't recall any.

13 Q. Now you were going to tell us whether you met Corporal Smith  
14 in Halifax and then came up to Sydney or whether you met him  
15 in Sydney?

16 A. I believe we met in Halifax and I can't recall whether we drove  
17 to Sydney or flew. I really can't.

18 Q. Whose decision was it as to who was to get the polygraph?

19 A. Mine, sir.

20 Q. Yours. Are you able to tell us whose decision it was as to  
21 which order the polygraph tests were to be administered in?

22 A. I would leave that up to the polygrapher.

23 Q. And did you leave that up to Corporal Smith?

24 A. Yes.

25 Q. What information did you give to Corporal Smith to enable him

E. ALAN MARSHALL, by Mr. Spicer

1 to properly conduct the polygraph?

2 A. I think we had a verbal discussion. I can't recall giving  
3 him any of the material that I had. This was a new field  
4 for me. He'd been at it for a while and as I recall he would  
5 ask, you know, what about this, what about that, or the  
6 next thing as opposed to me saying, this is what happened.  
7 I think I relied on him to do the asking.

8 Q. Did you -- Do you remember whether or not you discussed with  
9 Smith what you knew at that point in time about the incident  
10 itself?

11 A. I'm sorry. I don't have any recall of it but I did that.

12 Q. Do you know whether or not you would have told Smith that --  
13 about Roy Ebsary's record?

14 A. No, I can't recall that. I can't recall whether I did or I  
15 did not.

16 Q. Do you know whether or not you would have indicated to Smith  
17 any tentative conclusions that -- that you were starting to  
18 reach yourself at that time?

19 A. No, I don't -- I don't think I did to Smith.

20 Q. Would you have said anything to him at all about what you  
21 thought about Jimmy MacNeil?

22 A. I can't remember. I really can't.

23 Q. What was your own state of knowledge of the polygraph at that  
24 time? What did you know about it?

25 A. Smith, you see, had been working for me before he went to polygraph

E. ALAN MARSHALL, by Mr. Spicer

1 school. He went down to the States -- to New York first and  
2 after a period of time there, I believe his family was still  
3 living in the Halifax area, and he came back for a short time  
4 and then went to Michigan I believe. Now if that's right,  
5 we had some discussion about the polygraph then. In any event,  
6 I think he was in Halifax, whether it was between classes or  
7 between schools or whatever and he'd been in the office and  
8 as I recall he was very enthusiastic about the polygraph  
9 program. He was enthusiastic about the school which not only  
10 taught the actual mechanics of the polygraph but which taught  
11 also interrogation technics. Now while -- when Smith -- This  
12 is another context. At that time to my knowledge before --  
13 before Smith was taken as a polygraph operator there was only  
14 one polygraphist in -- in the country, and then the powers-that-  
15 be decided to expand the program and they were looking for  
16 candidates who they thought would do a good job of it. He  
17 qualified and -- and so Smith's name popped up. And he was  
18 eventually selected. And we didn't know, you know -- He  
19 was off -- off and running down in the States, but, you know,  
20 it seems to me that I had a conversation when he came back.  
21 He came down to the office at some time and we were sort of  
22 half kidding him about this mickey mouse machine just in jest  
23 and boy, he wasn't jesting. He was firmly convinced of how  
24 the thing worked, how well it worked and -- and I think we  
25 might have asked him, "Well, can you test this type of person

E. ALAN MARSHALL, by Mr. Spicer

1 | or that type of person, or whatever, and, you know, he was  
2 | very enthusiastic about the polygraph program, having been to  
3 | school.

4 | Q. My question --

5 | MR. CHAIRMAN:

6 | We'll rise for a few moments to get out of the heat.

7 |

8 | INQUIRY ADJOURNED AT: 3:39 p.m., AND RECONVENED AT: 3:53 p.m.

9 |

10 | BY MR. SPICER:

11 | Q. Just before we broke, I asked you what the polygraph was and  
12 | I believe you answered in terms of Corporal Smith. I'd just  
13 | like to ask you again at that time in November of 1971, what  
14 | did you understand the reliability, for instance, of the  
15 | polygraph to be?

16 | A. Can I say also that I believed that during a  
17 | Canadian Police College class in 1968 that I mentioned that  
18 | I attended, I believe I attended some polygraph lectures then.

19 | Q. And what was your understanding then of the reliability of  
20 | the polygraph based on what you knew at that time?

21 | A. Well, my best recall is that the combination of the polygraphist  
22 | pre-test interrogation and then the use of the machine that  
23 | it's reliability was quite high. Please don't ask me to put  
24 | a number on it, but that is my impression that between those  
25 | two entities, that is, the pre-test interrogation and the use

- 1 of the machine itself that it was quite reliable.
- 2 Q. But not as the sole investigative technique I take it?
- 3 A. No. No. No.
- 4 Q. It would be an aid to be used in conjunction with other  
5 investigative techniques?
- 6 A. It's an aid definitely.
- 7 Q. And would it also be the case, sir, that in order -- to your  
8 knowledge, in order to conduct a proper pre-test interview, the  
9 person conducting the polygraph test would have to be fully  
10 advised of the circumstances of the offense and the personalities  
11 involved?
- 12 A. I don't think he would go ahead -- you know, I don't -- you know,  
13 I can't see how he could to start with. I don't see how he --  
14 I don't see how he could on the pre-test without having a level  
15 of knowledge which satisfies the polygraphist.
- 16 Q. What does that mean?
- 17 A. Well, the polygraphist's got to know certain details. I don't  
18 know whether he wants to know or should know all the details.
- 19 Q. Did you have any understanding at the time as to what information  
20 you should be trying to give to the polygraph operator in order  
21 that he might be able to carry out a proper test?
- 22 A. Just run -- run that again please.
- 23 Q. Did you have any idea what information you should convey to  
24 Corporal Smith concerning the offense and the personalities  
25 involved?

E. ALAN MARSHALL, by Mr. Spicer

1 | A. No, I -- I -- I believe it worked the other way around.

2 | I relied on Smith to ask me questions.

3 | Q. And you --

4 | A. Sufficient -- Sufficient to -- to get him to a level of  
5 | knowledge or understanding about the case where he could conduct  
6 | his knowledgeable test on the subject.

7 | Q. Do you think he would have asked you or do you have any  
8 | recollection whether he would have asked you about Jimmy  
9 | MacNeil; what he was like? You had interviewed him.

10 | A. I can't recall him asking specifically that. I'm sure that he  
11 | must have but when you ask me in that context I, you know --

12 | Q. And what about Roy Ebsary?

13 | A. The same thing.

14 | Q. But you hadn't even interviewed Roy Ebsary at that point, had  
15 | you?

16 | A. No, only his statement from -- that he gave on the night of  
17 | November the -- whenever it was -- the 15th I think.

18 | Q. Had you had discussions with Sergeant MacIntyre concerning  
19 | Roy Ebsary?

20 | A. I think almost definitely.

21 | Q. Do you have any recollection of what your impression was of  
22 | what you were told by Sergeant MacIntyre concerning Roy Ebsary?

23 | A. Any recollection of what I was told? No, I'm sorry, I don't.

24 | Q. In any event, at this point in time, by the time you came back  
25 | to Sydney to arrange for the giving of the polygraph test, Roy

E. ALAN MARSHALL, by Mr. Spicer

1 Ebsary had not been seen by yourself?

2 A. Correct.

3 Q. Can you tell us where the polygraph test was administered?

4 A. In the Wandlyn Motel in Sydney.

5 Q. Who was present at the testing?

6 A. We had rented a suite of rooms so that there was an adjoining  
7 room to the bedroom. I was there, but not in the room with  
8 the polygraphist and the subject to be examined. I was in  
9 the adjacent room.

10 Q. Did you have an opportunity to speak to either Mr. MacNeil or  
11 Mr. Ebsary prior to them going in for the polygraph?

12 A. No, as I recall, the policy was -- at the time is that once  
13 the polygraphist had agreed to do an examination that the  
14 subjects to be examined were not to be questioned by  
15 investigators.

16 Q. Other than the person doing the polygraph test?

17 A. Yes, sir.

18 Q. Do you remember whether or not you went and picked up either  
19 Mr. MacNeil or Mr. Ebsary?

20 A. I don't believe I did. I think one of the fellows from G.I.S.  
21 picked them up, Sydney G.I.S.

22 Q. Do you remember what Mr. Ebsary was wearing?

23 A. No.

24 Q. With respect to Mr. MacNeil, do you have any idea how long  
25 the test took, how long he was in there for?



E. ALAN MARSHALL, by Mr. Spicer

- 1 | A. The pre-test and test, I would say better than an hour and  
2 | a half.
- 3 | Q. And what about Mr. Ebsary?
- 4 | A. Probably the same time.
- 5 | Q. Did you have occasion to speak --
- 6 | A. Excuse me, if I might just clarify.
- 7 | Q. Sure.
- 8 | A. I think the rule of thumb for the polygraphist back then was  
9 | that he wouldn't do any more than two examinations a day.
- 10 | Q. Two examinations of two different people?
- 11 | A. Right.
- 12 | Q. Did you speak to Mr. MacNeil subsequent to the polygraph?
- 13 | A. Yes, I did. Yes, I did, sir.
- 14 | Q. Was there anybody else present during that interview?
- 15 | A. Well, I don't know where Smith was at the time and whether  
16 | he was there or out getting a coffee or -- but other than --  
17 | the only other person that could have been there was Smith  
18 | and I don't know whether he was -- as I say, whether he was  
19 | there or out getting a coffee.
- 20 | Q. And Corporal Smith had concluded with respect to MacNeil, that  
21 | he couldn't give an opinion, he gave an indefinite opinion?
- 22 | A. That's right.
- 23 | Q. You say in your report, sir, in paragraph eight --
- 24 | A. Inconclusive I think is what the -- He couldn't say yes or no.
- 25 | Q. Right:

E. ALAN MARSHALL, by Mr. Spicer

1                   And with respect to MacNeil's  
2                   test please note Corporal  
3                   Smith cannot give an opinion  
4                   as to whether or not he's  
5                   telling the truth. Post-  
6                   examination questioning leaves  
7                   no doubt in my mind MacNeil  
8                   is not telling the truth when  
9                   he said Ebsary stabbed Seale.

6   A.   Yeh, that's -- that's

7   Q.   Well --

8   A.   My -- My impression from talking to him, that he was confused,  
9           that -- that he wasn't giving -- telling us -- telling me the  
10          events as they actually occurred.

11  Q.   What made you think that?

12  A.   Well, you know, there it is in the statement. I've talked to  
13          him after the polygraph and not for a very long period of time.  
14          I came to that conclusion and I'm sorry, I -- you know, other  
15          than that fact that he seemed to be wandering and whatnot in  
16          his speech --

17  Q.   Had you not already concluded on November the 17th that  
18          MacNeil's account of the altercation --

19  A.   Yeh.

20  Q.   --insofar as it concerned Ebsary allegedly stabbing Marshall  
21          was a figment of his imagination?

22  A.   Yes, and if you ask me what -- what was the more important of  
23          the two interviews I would have said the first one.

24  Q.   What was the point of the polygraph if you had already made  
25          up your mind that it was a figment of his imagination?

E. ALAN MARSHALL, by Mr. Spicer

1 A. Because he was -- he was coming anyway to do Ebsary.

2 Q. Well, I thought your evidence, sir, was that he was coming  
3 to do MacNeil and Ebsary?

4 A. Yes. Yes, so he's there and let's do him.

5 Q. And my question though is, if you'd already concluded that this  
6 whole thing was a figment of his imagination why would the --  
7 what's the importance of the post-examination questioning.  
8 You already decided that it was a figment of his imagination  
9 six days before?

10 A. Yeh, I wanted to be sure and that's why I had him take the  
11 polygraph test, and because the polygraph test was inconclusive  
12 I wanted to talk to him again and so I did and for a very  
13 short time after the polygraph test.

14 Q. So the polygraph test is inconclusive and all the post-  
15 examination questioning does is confirm what you'd already  
16 decided six days before. Is that fair to say?

17 A. It confirmed the conclusion that I had come to beforehand.

18 Q. Yes. What about Mr. Ebsary, did you speak to him subsequent  
19 to the polygraph, the administration of the polygraph?

20 A. I don't believe I did other than to pass the time of day with  
21 him.

22 Q. And why was that?

23 A. Because after Ebsary was finished and I talked to Corporal  
24 Smith there was no-- there was no doubt in Smith's mind but  
25 what Ebsary was telling the truth so why, you know, go back

E. ALAN MARSHALL, by Mr. Spicer

- 1 and talk to him again.
- 2 Q. Because you've already told us a couple of minutes ago, sir,  
3 that the polygraph was only an aid to investigations --
- 4 A. Yes.
- 5 Q. -- and it was not the sole thing that you would use.
- 6 A. Yeh, I know. That's what I said --
- 7 Q. So why didn't you talk to him?
- 8 A. -- and that's what I mean but --
- 9 Q. But that's not what you did and I want to know why you didn't  
10 do it?
- 11 A. Well, you know, I -- the only thing I can say is that because  
12 Smith was so positive or the results of Ebsary's test, I should  
13 say, as interpreted by Smith were so positive I figured  
14 it was game over.
- 15 Q. Notwithstanding the fact that you knew that a polygraph was  
16 only an aid, you were prepared to ignore that and accept the  
17 polygraph result --
- 18 A. Yes.
- 19 Q. -- as the sole determining factor --
- 20 A. Yes.
- 21 Q. -- in decided whether or not he was telling the truth?
- 22 A. Yep. He was -- that test was so positive that I accepted it.
- 23 Q. Do you consider that's a good investigative technique, sir?
- 24 A. In 1987, no sir.
- 25 Q. Well, you told me a minute ago though, sir, that you knew

E. ALAN MARSHALL, by Mr. Spicer

- 1           that the polygraph was only an aid to investigations?
- 2   A. Yes. Yes, I realise that but you know --
- 3   Q. How could you --
- 4   A. -- I made a judgement in 1971 after the test was made that
- 5       because it was so positive that I would accept that.
- 6   Q. Had you not already partially made up your mind that the
- 7       whole story was as you said to us earlier, a cock and bull
- 8       story and all you needed was--
- 9   A. I had - I --
- 10  Q. -- a polygraph to conclude it for you?
- 11  A. Yeh.
- 12  Q. Answer, yes?
- 13  A. Yes, sir.
- 14  Q. Did Corporal Smith suggest to you that Junior Marshall might
- 15       benefit from a polygraph test?
- 16  A. With respect to Marshall being -- the polygraph with Marshall
- 17       I should leap ahead to events subsequent to the polygraph
- 18       test. After the test of Ebsary I called Donnie MacNeil
- 19       and he came to the motel.
- 20  Q. That's on the same day?
- 21  A. Yes, sir.
- 22  Q. Why did you do that? Why did you call Donnie MacNeil?
- 23  A. Well, --
- 24  Q. You weren't reporting to him?
- 25  A. No, I wasn't reporting to him but, you know, he's heavily

E. ALAN MARSHALL, by Mr. Spicer

1 involved with the case. I came to the conclusion that  
2 now was the time to sit and talk with him again -- or  
3 talk with him about the case in light of what had happened  
4 at the polygraph test so I asked him to come down and he  
5 came.

6 Q. Did you call any of your own superiors before you did that?

7 A. No. My own superiors. I think that in the evening before  
8 MacNeil arrived Inspector Gardiner, who was the O.C.  
9 Halifax subdivision, stopped in at the motel on his way  
10 home. He is theoretically, well, he was senior to me  
11 in rank even though he was an Inspector. I was sub-inspector  
12 you see, and sub-under. And he was interested in the test.  
13 Not that he was involved with the investigation or the  
14 interrogation or anything else but being an old policeman  
15 he -- and not having done many polygraphs, he was interested.  
16 He stopped by the motel on the way home and we told him.

17 Then I --

18 Q. That was just happenstance wasn't it?

19 A. Yes, I --

20 Q. Yeh. You didn't report the results --

21 A. No.

22 Q. -- of your test to Wardrop, for instance, before you talked  
23 to Donnie MacNeil?

24 A. No, I didn't. No.

25 Q. And when did you call Donnie MacNeil? Pretty shortly after you

E. ALAN MARSHALL, by Mr. Spicer

1 | got the results from Smith?

2 | A. Yes, as I recall it's in the vicinity of five-thirty or  
3 | quarter to six.

4 | Q. What did you tell him?

5 | A. I asked him -- I told him that the polygraph tests had  
6 | been completed and asked him if he'd like to come down  
7 | and discuss them.

8 | Q. And did he come down?

9 | A. Yes, sir.

10 | Q. And was there anybody else there?

11 | A. Smith, I and MacNeil -- Donnie MacNeil.

12 | Q. Donnie MacNeil?

13 | A. Yeh.

14 | Q. Tell me what happened at that meeting? What did you tell  
15 | him?

16 | A. Well, Smith did most of the talking with respect to the  
17 | polygraph results. As I recall Mr. MacNeil wanted to have  
18 | some more information about how the polygraph worked and  
19 | I think Smith explained to him the operation of the polygraph  
20 | and because I wasn't aware of the policy I said to  
21 | Smith; "Do a quick check on Donnie MacNeil just to show him  
22 | that the thing works"; which he didn't do of course because  
23 | that was contrary to policy or whatever. They don't give  
24 | demonstrations with polygraph and under -- so he didn't do it.

25 | Q. Why did you even suggest that to him at this stage of the game?

E. ALAN MARSHALL, by Mr. Spicer

1 Surely you're -- are you not in a situation where you're  
2 reporting to -- you're telling Donnie MacNeil --

3 A. Yeh.

4 Q. -- the results of a very serious matter?

5 A. Yeh.

6 Q. That is that you've concluded that somebody is telling  
7 the truth and that somebody has been, in fact, rightfully  
8 convicted for a murder offense?

9 A. Yeh.

10 Q. Why would you even get into the --

11 A. He got into it.

12 Q. He got into it?

13 A. He got into it. He wanted to know more about the  
14 instrument and how it worked.

15 Q. What did you tell Donnie MacNeil about what you had  
16 now concluded?

17 A. Well, I think I said to him, that's, you know, that appears  
18 to be it. Ebsary's telling the truth. MacNeil was only  
19 50/50 one way or the other and because of the results of  
20 Ebsarys tests are so positive that taking into consideration  
21 the other matters of the thing having gone through preliminary  
22 hearing and court and whatnot and now we're at the stage that  
23 Ebsary when he says in his polygraph examination that -- that  
24 he's being truthful at the polygraph examination. I said that,  
25 you know, that must -- it convinces me that the right man has



E. ALAN MARSHALL, by Mr. Spicer

1       been convicted.

2       Q. Did you tell Donnie MacNeil at that meeting that other  
3       than administer those polygraph tests and review the material  
4       that had been given to you and discuss the matter with  
5       Sergeant MacIntyre; that you'd done no other investigation at all?

6       A. Yes, I did. Yeh.

7       Q. You told him that?

8       A. Sure.

9       Q. What did he say?

10      A. Well, I think he was impressed with the polygraph results too.

11      Q. Did you indicate to him at that meeting that it is your  
12      understanding as a member of the R.C.M.P. that the polygraph  
13      was only an aid to investigation?

14      A. I don't think we got into that.

15      Q. You wouldn't have told him that?

16      A. I don't think we got into that.

17      Q. You'd already made up your mind at that point?

18      A. And then -- Do you want me to continue?

19      Q. Yes. Yeh, please.

20      A. And after we talked about this, discussed the case and the  
21      polygraph for some time, to the best of my recollection Donnie  
22      MacNeil called the Attorney General, Mr. Pace.

23      Q. Do you know for certain whether or not he spoke to Mr. Pace?

24      A. I am not one hundred percent certain. Of this I am certain,  
25      he made a long distance telephone call from my room to a person

E. ALAN MARSHALL, by Mr. Spicer

1 in the Attorney Generals Department and to the best  
2 of my recollection it was Mr. Pace.

3 Q. And that's based on something Donnie MacNeil told you,  
4 is that --

5 A. Yes.

6 Q. Okay.

7 A. The polygraph -- He wanted to report the polygraph results  
8 to Mr. Pace.

9 Q. Tell us what you heard --

10 A. If that's who it was. Now, I'm about 99 percent certain  
11 and don't ask me why but that sticks in my mind. I can  
12 remember him making the telephone call. You know, he --

13 Q. Did you make the call for him?

14 A. No.

15 Q. No?

16 A. He used -- we had sort of a friendly rivalry. He was -- you  
17 know, Donnie was sort of a -- he had a sense of humour  
18 all of his own in certain circumstances and he would rib  
19 me about being from Upper Canada. He was a fiercely proud  
20 Cape Bretoner himself and he would rib me about being from --  
21 being one of those guys from Upper Canada and as a matter  
22 of fact he was the first one to tell me of Premier Angus  
23 L. MacDonald's famous statement about the Mounted Police.  
24 I think when the Mounted Police first came to Nova Scotia the  
25 great Mr. MacDonald referred to us as those fellows from the

E. ALAN MARSHALL, by Mr. Spicer

1 west with the strange sounding names. Anyway we had  
2 a little bit of a friendly rivalry or camaraderie or whatever  
3 and I recall -- the reason I recall him calling long distance  
4 is I -- you know, I said to him, don't stick that on my  
5 bill and that's why, you know, that sticks in my mind.

6 Q. What do you remember of the call, what you heard of it?

7 A. Well, I don't think I was paying too much attention to the  
8 call. You know, it's his call and he's in the corner and  
9 he talks to the A.G. or, as I say I'm almost dead certain  
10 it was the Attorney General, and hung up and I really didn't  
11 want to eavesdrop on -- not eavesdrop but I didn't want to  
12 listen particularly into what he said to the --

13 Q. Did you hear anything that you remember?

14 A. I can't recall.

15 Q. Do you remember what he said when he hung up?

16 A. After he hung up?

17 Q. Yes.

18 A. Drive me home, I think. By this time it's getting quite  
19 late in the evening and --

20 Q. What time would it have been by then, sir?

21 A. Well, you know, it's in the fall of the year. It was certainly  
22 dark. Of course it's dark now at five o'clock or six o'clock.  
23 I think it was getting on beyond the normal supper hour --  
24 dinner hour, pardon me, because to the best of my recollection  
25 and I should have checked this out but I didn't, I think he

E. ALAN MARSHALL, by Mr. Spicer

1 | used to live in a big white house. I'm not exactly sure  
2 | but it -- a big white house partly on the hill. I think  
3 | I drove him home. I think Smith and I had supper -- dinner  
4 | at the -- dinner or supper at the -- at a restaurant on  
5 | Townsend Street and I think we went right back to home and  
6 | went to bed -- right back to the motel and went to bed.  
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E. ALAN MARSHALL, by Mr. Spicer

1 Q. Did Donny MacNeil say anything to you after he got off the  
2 phone about whether or not anything else had to be done or  
3 what --

4 A. No. No.

5 Q. What did he say to you?

6 A. Well, I -- You know, I can't recall what he said. He said,  
7 "I told them," and I can recall him being immensely relieved  
8 that Ebsary was telling the truth, you know, according to the  
9 machine. And then I said -- I think he said, "No, let's go  
10 home; it's getting later."

11 Q. Did anybody have a drink at that meeting at all?

12 A. Well, I seem to recall that I did, but Smith doesn't; so it  
13 must be my mind that's playing tricks on me.

14 Q. No, not necessarily. That's your recollection that you --

15 A. Yeh. If we had a drink -- Put it this way, I never -- It was  
16 not my practice to take liquor to -- on an investigation or  
17 to have it there. It was, however, not routinely  
18 a fact that I would have a drink before my dinner, you know,  
19 like people anywhere. I don't recall ordering any room  
20 service, and if we had a drink, I would think that it would  
21 be limited to one or two at the outside and that MacNeil  
22 must've brought the bottle with him.

23 Q. Is that your recollection?

24 A. Yes, sir.

25 Q. After you dropped Mr. MacNeil off, you went back to the hotel?

E. ALAN MARSHALL, by Mr. Spicer

1 A. No, I think we went to the restaurant.

2 Q. Went to the restaurant and had dinner?

3 A. Yes, sir.

4 Q. What about Junior Marshall's polygraph? I asked you that a  
5 few minutes ago --

6 A. Yeh.

7 Q. -- and I don't think you've answered that.

8 A. Okay. My memory is vague on this. It seems that we -- to the  
9 best of my recollection, that we considered doing Marshall some-  
10 where along in the bet -- somewhere in the time frame of Smith  
11 arriving with his equipment and departing -- somewhere along  
12 somebody had suggested -- whether it was me, whether it was  
13 Smith, whether it was Mr. MacNeil -- that we do Marshall on  
14 the polygraph. I'm vague. I don't really recall this myself.  
15 What I do recall is that again somewhere in the piece, Marshall's  
16 lawyer had refused us permission to conduct --

17 Q. Do you have any recollection who told you that?

18 A. No, I don't. I'm sorry, and, you know, you asked me this  
19 question some time ago and I've done everything except,  
20 take hypnosis. I, you know, certainly thought about it  
21 first thing in the morning and last thing before I went to bed  
22 to rack my brain because this sort of is a very decisive piece  
23 of information if this in fact is what happened that Rosenblum  
24 was contacted and refused permission. I realize the import  
25 of that type of evidence. It changes things.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. But you can't remember?

2 A. But I can't remember. I --

3 Q. Did you then go back to Halifax the next day -- 24th?

4 A. I can't recall, sir, whether I went back then or the following  
5 day or -- I can't recall.

6 Q. Other than writing up your report, which is dated December 21,  
7 did you do any further work on the case?

8 A. No.

9 Q. Why is there a lapse of time from the time you left Sydney to  
10 December 21, the time when the report was written up?

11 A. Why was there a lapse of time? Well, three weeks is a normal  
12 time frame -- Three, three and a half weeks is a  
13 normal time frame for submitting reports to the best of my  
14 recollection. Now, I think the urgency, if there was any, of  
15 writing the report went out of the picture when -- because my  
16 boss, Wardrop, knew about what happened. When I got back, I  
17 told him the results of the polygraph; so he was -- I don't  
18 know if satisfied is the right word or not, but he was aware,  
19 and Donny MacNeil certainly was aware and again, I think the  
20 Attorney General was aware; so there was no great urgency and  
21 whether I was busy on other duties, whether it took sometimes  
22 three weeks to prepare, you know, I'm not prepared to say now  
23 what it was that -- other than the fact that it was fairly  
24 normal in those circumstances to submit a report, you know,  
25 about twenty-one days later.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. The report itself is --

2 A. Because, you know -- Let's remember, too, that I didn't get  
3 any direction from either my superior or as far as I know,  
4 the Attorney General's Department to, say, submit a report, eh.  
5 "What's going on. Submit the report," you know, like you  
6 might expect, you know. If there was a lapse in reporting  
7 the thing, you know, it's reasonable to assume that if it was  
8 a very important matter, that somebody up there would start  
9 asking questions. "Where's the report?" you know or "Get in  
10 gear, and get this thing done," and --

11 Q. That didn't happen?

12 A. That didn't happen.

13 Q. Did you discuss the contents of your report with anybody in  
14 the R.C.M.P. prior to preparation of it other than to tell  
15 Wardrop?

16 A. Wardrop. Other than to tell Wardrop, no.

17 Q. Okay. And what was it that you told him?

18 A. Well, basically that we had -- the results of the polygraph  
19 examination and then, you know, I can't recall exactly how  
20 much I went through with him, but the main thing was the poly-  
21 graph examination.

22 Q. At the time that you prepared your report, would you still  
23 have had possession of the materials that you'd been given  
24 by Sergeant MacIntyre?

25 A. No, I recall driving back -- Before I left Sydney, I drove



- 1 back to -- I drove around the the police station and gave him  
2 those materials back.
- 3 Q. So at the time you prepared your report, you didn't have that  
4 material with you?
- 5 A. I don't know whether I had extracted notes off it or -- But it  
6 seems to me that I had given the material back before I left  
7 Sydney. Now, I could be mistaken.
- 8 Q. What's your recollection?
- 9 A. That's my recollection.
- 10 Q. You gave it back; so that when you came to prepare this  
11 report, which is really quite detailed, on the 21st of  
12 December, you were doing that from memory?
- 13 A. No. No, I said I might've -- I probably made notes off it -- off  
14 the material.
- 15 Q. Okay. So you might've had some notes from the material that  
16 you'd been given earlier.
- 17 A. Yes.
- 18 Q. I see.
- 19 A. I think almost assuredly because I couldn't remember all that.
- 20 Q. What did you do with the report, sir, when you completed it?
- 21 A. I had the steno -- My secretary typed it. I put a transmittal  
22 slip on it and sent it to the C.I.B. office.
- 23 Q. Would that be your normal practice?
- 24 A. Yes, sir.
- 25 Q. Did you hear anything further about your report at that time?

E. ALAN MARSHALL, by Mr. Spicer

1 A. I heard lots about it since, but I didn't at that time.

2 Q. Well, we'll get to that, but at that --

3 A. Yes.

4 Q. -- time, what would the transmittal slip have said on it?

5 A. Well, it's just a -- Cripes, haven't we got one here? 315011,  
6 it's a little form that says from, to, file caption --

7 Q. Perhaps, is that -- If you look on page 201 of that Volume,  
8 would that be the sort of thing?

9 A. 201.

10 Q. That's a correspondence. I don't know if that's what you're  
11 talking about.

12 A. Yeh.

13 Q. It would be that form of document?

14 A. Either that or a very -- Either that or one about half the  
15 size that conveys the same information essentially. We have  
16 two different forms.

17 Q. And that particular one is dated the 30th of November and  
18 probably the transmittal slip that accompanied Corporal Smith's  
19 polygraph test results, which are on the following pages.

20 A. Yeh.

21 Q. Okay.

22 A. From, to --

23 Q. But that would've been the extent of what you would've done,  
24 sir? You would've completed the transmittal slip and sent it  
25 off to C.I.B.?

E. ALAN MARSHALL, by Mr. Spicer

- 1 | A. Yeh.
- 2 | Q. And to which person would that've been?
- 3 | A. The officer in charge of C.I.B.
- 4 | Q. And that would've been him?
- 5 | A. Superintendent Wardrop.
- 6 | Q. At the time.
- 7 | A. But the -- Let me say, too, that -- you know, just to clarify.
- 8 | That stuff goes into his mailbox, and he has a chief clerk
- 9 | that sorts it out and all this, that, and the next thing, you
- 10 | know. Whatever that paper trail is, I never got too involved
- 11 | in it ever. I hated paperwork and so exactly how they run the
- 12 | C.I.B. office, I can't swear to.
- 13 | Q. Did Inspector Wardrop ever come back to you and query you about
- 14 | anything in your report?
- 15 | A. No, sir.
- 16 | Q. Did you receive any confirmation that Inspector Wardrop even
- 17 | had the report?
- 18 | A. No.
- 19 | Q. To your knowledge, was the report ever forwarded to the Attorney
- 20 | General's Office?
- 21 | A. I have no direct knowledge of that.
- 22 | Q. Were you ever told it had been?
- 23 | A. Sorry, sir?
- 24 | Q. Were you ever told that it had been by -- forwarded to the
- 25 | A.G.'s Office by anybody?

- 1 | A. No.
- 2 | Q. No? You had no knowledge of it at all?
- 3 | A. No.
- 4 | Q. So it goes --
- 5 | A. And I'll tell you why I assumed that it had, if that's your  
6 | next question?
- 7 | Q. No, I -- No. It goes out of your office with a transmittal  
8 | slip, and that's the last you see of it?
- 9 | A. Yes, sir.
- 10 | Q. And you never asked any questions about it?
- 11 | A. No, sir.
- 12 | Q. Can you give us any idea of how much time, not including your  
13 | travel time or the time you spent sitting around while MacNeil  
14 | and Ebsary were taking the polygraph -- how much time you,  
15 | sir, spent personally on this investigation?
- 16 | A. The total time I spent excluding travelling time.
- 17 | Q. Not counting your travels but the actual time --
- 18 | A. Yeh.
- 19 | Q. -- you spent working, going through material.
- 20 | A. Yeh.
- 21 | Q. And excluding the time you -- unless you were working when you  
22 | running the polygraph.
- 23 | A. I would say three and a half or four days.
- 24 | Q. Full working days?
- 25 | A. Yes. Possibly longer. Possibly a little longer.

E. ALAN MARSHALL, by Mr. Spicer

1 Q. In the years since 1971, have you ever received any direct criticism  
2 for this report from within the R.C.M.P.?

3 A. No, sir.

4 Q. All right. I'm going to move on to another area and then I'll --  
5 whether you want to -- It's going to be some time before I  
6 would finish.

7 MR. CHAIRMAN:

8 All right. There's not much point in your moving into another area.  
9 There's just one thing I wanted to clear up from this witness at  
10 this point.

11 BY MR. CHAIRMAN:

12 Q. Did I understand you to say that you had concluded, based on  
13 the polygraph test, that Jimmy MacNeil was not telling the  
14 truth, and Roy Ebsary was?

15 A. Yes, sir.

16 Q. Was that the conclusion of Smith?

17 A. I'd have a tough time answering that one, My Lord.

18 Q. Why I ask you that is because --

19 A. Yeh.

20 Q. -- in his report, he says that as a result of his analysis,  
21 that he can render no opinion as to whether or not MacNeil  
22 is telling the truth.

23 A. Yes.

24 Q. Did you interpret that as meaning that MacNeil was not telling  
25 the truth?

E. ALAN MARSHALL, by Mr. Spicer

1 A. I interpreted it as being a fifty-fifty possibility that he  
2 was telling the truth or lying.

3 Q. So the --

4 A. In other words, My Lord, there is a fifty-fifty chance that  
5 he was telling the truth, and there's a fifty-fifty chance  
6 that he was lying. Does that make sense?

7 Q. It's not for me to respond to that. So that your conclusion  
8 was based upon your two interviews, a report that Ebsary was  
9 telling the truth, and that there's a fifty-fifty chance that  
10 MacNeil was not telling the truth?

11 A. Yes, sir.

12 Q. And that concluded the investigation?

13 A. Yes, sir.

14 MR. CHAIRMAN:

15 Rise until nine-thirty tomorrow.

16

17 INQUIRY ADJOURNED AT 4:29 o'clock in the afternoon on the 18th  
18 day of September, A.D., 1987.

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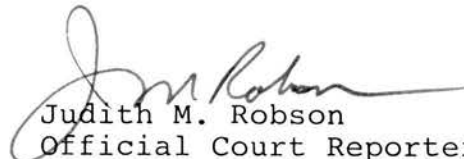
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COURT REPORTER'S CERTIFICATE

I, Judith M. Robson, an Official Court Reporter, do certify that the transcript of evidence hereto annexed is a true and accurate transcript of the Royal Commission on the Donald Marshall, Jr., Prosecution as held on the 18th day of November, A.D., 1987, at Sydney, in the County of Cape Breton, Province of Nova Scotia, taken by way of recording and reduced to type-written copy.



Judith M. Robson  
Official Court Reporter  
Registered Professional Reporter