

E. ALAN MARSHALL, by Mr. Ruby, by Mr. Pugsley

1 A. I can't recall. I --

2 Q. May I suggest to you that had he done so you could and would
3 hardly have described that investigation as being intensive?

4 A. I don't think I would.

5 Q. Thank you, sir.

6 MR. RUBY:

7 Those are my questions.

8 MR. CHAIRMAN:

9 Mr. Pugsley?

10 MR. PUGSLEY:

11 Thank you, My Lord.

12 BY MR. PUGSLEY:

13 Q. Mr. Marshall, my name is Ron Pugsley and I'm appearing on
14 behalf of John MacIntyre.

15 A. Yes, sir.

16 Q. You didn't see any autopsy?

17 A. I did not see an autopsy?

18 Q. No.

19 A. No, sir.

20 Q. You didn't see any photographs?

21 A. No, sir.

22 Q. No. Did you ask about them?

23 A. I don't recall.

24 Q. No. I take it, sir, that you are not trying to blame John
25 MacIntyre for your failure to carry out a thorough review?

E. ALAN MARSHALL, by Mr. Pugsley

1 A. No, sir. I'm not.

2 Q. No. The fault in carrying out a -- in failing to carry out
3 a thorough review allies with you and with you alone?

4 A. Yes, sir.

5 Q. Yes. It's not the fault of John MacIntyre, it's not the
6 fault of Donnie MacNeil, it's not the fault of Superintendent
7 Wardrop and it's not the fault of your associate Sergeant
8 McKinley?

9 A. The fault lies here on my shoulders, sir.

10 Q. Yes. When you first met John MacIntyre on the day after
11 you took the statements of Roy Ebsary and Jimmy MacNeil,
12 did he not tell you that he was the one who requested another
13 police force be brought in to take an independent look at the
14 matter?

15 A. I can't recall that, sir. He may have; he may not have.

16 Q. When you first came to Sydney -- and was that on November the
17 16th?

18 A. To the best of my recollection, yes sir.

19 Q. You met with John MacIntyre?

20 A. Yes, sir.

21 Q. And where did that meeting take place?

22 A. In his office.

23 Q. And for what period of time did you met with him?

24 A. A couple of hours to the best of my recollection, sir.

25 Q. Yes. And then after that you did what?

E. ALAN MARSHALL, by Mr. Pugsley

1 A. I believe I went down -- I believe we had a look at the scene.

2 Q. Yes?

3 A. Somewhere in there we had a look at the scene. Then I
4 went to our office in Sydney.

5 Q. Yes. Did you see John MacIntyre, again, on that first
6 trip to Sydney?

7 A. I can't recall, sir.

8 Q. Did you see him on the second trip to Sydney when you came
9 up on the 23rd with Smith?

10 A. I'm sure that I did.

11 Q. For what period of time?

12 A. Well, I can't recall. I can't recall whether it was --
13 It seemed to me that it wasn't a long period of time, you know.

14 Q. Would you have seen him before or after the taking of the
15 polygraph?

16 A. To the best of my recollection, afterwards.

17 Q. And where would you have seen him?

18 A. I think in his office, sir.

19 Q. In his office?

20 A. Yeh.

21 Q. And was it after that that you saw Donnie MacNeil?

22 A. You know, I'm not certain whether -- I'm not certain in my
23 mind whether or not I saw Detective MacIntyre on the same
24 day as the polygraph examinations were conducted or the following
25 day or the following day.

E. ALAN MARSHALL, by Mr. Pugsley

1 Q. Do you know how long you were in Sydney?

2 A. I -- No, but getting back to your other question, almost
3 assuredly I saw Mr. MacNeil, the Crown Prosecutor, immediately--
4 for all intents and purposes, immediately following the
5 polygraph examination and to the best of my recollection I
6 -- all I recollect is driving Mr. MacNeil home, having
7 dinner at a restaurant --

8 Q. With Smith?

9 A. Yes. As a matter of fact I think the restaurant was on
10 Townsend Street. And, again, to the best of my recollection
11 we went back to the motel and we went to bed. It was a long -
12 so if I recollect that properly, correctly,-- what I'm saying
13 is correct, then it would have been the next day or the
14 following day that I saw Detective MacIntyre.

15 Q. Why would you have remained in Sydney the day following the
16 polygraph? Why would you have not returned to Halifax then?
17 What was there to be done?

18 A. Well, again, I have a vague recollection of -- What was to
19 be done with this case --

20 Q. Yes.

21 A. -- or what was I doing? This --

22 Q. Well, what was there to be done in Sydney on this case after
23 the polygraph was taken on November 23rd?

24 A. I don't recall doing anything about this case and I can't recall
25 whether I saw MacIntyre that day or the following day and I can't

E. ALAN MARSHALL, by Mr. Pugsley

1 recall if I had any other, sort of, business here in
2 Sydney subdivision. It seems to me that I went down to
3 the subdivision and stayed there for a while. Whether there
4 was a drug lecture or some information that I wanted to talk
5 over with the officer commanding on some entirely unrelated
6 matter, I don't really recall but it seems to me that there
7 was. I went down there and did something else, as I say,
8 an unrelated matter with the officer commanding.

9 Q. Did you see Donnie MacNeil on the first trip to Sydney,
10 on the 16th?

11 A. I beg your pardon, sir?

12 Q. Did you see Donald MacNeil on the first trip to Sydney on
13 the 16th?

14 A. Not that I recall.

15 Q. So you only recall seeing him in the Wandlyn after the
16 polygraph was carried out?

17 A. That's to the best of my recollection, yes sir.

18 Q. What about Lew Matheson, when did you see him?

19 A. Well, you know, I read Mr. Matheson's -- in the press --

20 Q. Evidence. Yes?

21 A. -- and he mentioned a meeting --

22 Q. He did.

23 A. -- and, you know, with great respect to the Judge, who's
24 probably more correct than what I am, I don't recall having
25 a meeting with Lew -- with Mr. Matheson -- Judge Matheson.

E. ALAN MARSHALL, by Mr. Pugsley

1 I don't recall being at a meeting that he was at.

2 Q. John MacIntyre had carried out the original investigation
3 surrounding the circumstances of the death of Sandy Seale,
4 he had placed the material before the Crown Prosecutor,
5 the jury had found Donald Marshall guilty,--

6 A. Yeh.

7 Q. -- surely you would not have expected him to say to you,
8 as a consequence of seeing Jimmy MacNeil the night before
9 you arrived in Sydney, the wrong man was convicted. Surely
10 the opinion he gave you was what you would have expected?

11 A. Absolutely.

12 Q. Yes. You weren't sent there to rubberstamp MacIntyre's
13 investigation?

14 A. No.

15 Q. Did you really do anything else other than rubberstamp his
16 investigation?

17 A. Well, it appears that there was more rubberstamping than
18 what I would have liked to have occur.

19 Q. Yes. There was no limitation expressed by Wardrop on the
20 terms of reference you were to follow in carrying out your
21 review?

22 A. Well, this is where I have the problem and the reason I have
23 the problem is this, going back to his original instructions
24 to me, that for one reason or another I didn't take some --
25 either didn't take or ask him which investigators I should

E. ALAN MARSHALL, by Mr. Pugsley

1 use and I'm having a problem with this quite frankly.

2 And in my mind, without trying to stretch my imagination at
3 all, what could have happened and I'm not saying that it
4 did but what could have happened in trying to reconstruct
5 why I didn't go, (You know, these questions have been bothering
6 me for quite some time as could be expected.) - why I didn't
7 go with a team of investigators and start right at day one,
8 is that I must have drawn an inference from Superintendent
9 Wardrop's remarks that for the time being until there was
10 something more concrete other than MacNeil's statement, until it
11 was checked out, that that is what was required of me. Now --

12 Q. What was required of you?

13 A. What was required was not to start a full-blown investigation
14 at that point in time.

15 Q. But what were you required to do?

16 A. Well, you know, the requirement was to, to use modern words,
17 check out MacNeil's statement and see if there was any
18 substance to it.

19 Q. And what would be the normal way of doing that?

20 A. Well, --

21 Q. Talk to people I presume?

22 A. Yes, talk to people.

23 Q. Well, who would be the kind of people you would talk to
24 to check out MacNeil's statement?

25 A. I think before I came to that conclusion sir, if I may --

E. ALAN MARSHALL, by Mr. Pugsley

1 Q. Certainly.

2 A. I'd already had it for one reason or another in my head that
3 the most expeditious route to take initially -- excuse me --
4 was to see whether or not MacNeil was lying by the use
5 of a polygraph.

6 Q. Why were you concerned with expedition? A man's in gaol
7 for having committed murder.

8 A. Yes.

9 Q. Another man comes forward and says he didn't do it.

10 A. Why was I concerned?

11 Q. With expedition. Why you say 'the most expeditious route'
12 to follow? Why were you concerned with expedition?

13 A. Well, I had to get on with the investigation.

14 Q. Yes.

15 A. Yes.

16 Q. But surely you weren't going to sacrifice thoroughness for
17 speed and, indeed, the polygraph operator was not able
18 to come for a period of seven or eight days.

19 A. Yeh.

20 Q. You could have done a lot of investigation --

21 A. Yes.

22 Q. -- yourself in Sydney --

23 A. Yes, but I didn't sir.

24 Q. -- in seven or eight days?

25 A. Yes.

E. ALAN MARSHALL, by Mr. Pugsley

- 1 Q. You could have seen these people?
- 2 A. Yes.
- 3 Q. MacNeil suggests -- just taking MacNeil's statement by
4 itself, who were the people you could have interviewed as
5 a consequence of what MacNeil said who could bear on the
6 truth to see whether or not he was lying?
- 7 A. Mrs. --
- 8 Q. Ebsary?
- 9 A. Ebsary. The daughter, for starters.
- 10 Q. Donald Marshall.
- 11 A. A few others.
- 12 Q. Donald Marshall?
- 13 A. Donald Marshall?
- 14 Q. Yes.
- 15 A. If he would have seen me, yes.
- 16 Q. Well, you would have presumedly got in touch with his lawyers?
- 17 A. Yes.
- 18 Q. Yes. Donald Marshall would have been the obvious one, would
19 he not?
- 20 A. Yes.
- 21 Q. And yet you missed the most obvious one?
- 22 A. Yes.
- 23 Q. Did you actually interview Ebsary himself? Did you interview
24 Ebsary?
- 25 A. I don't recall. I don't think I did.

E. ALAN MARSHALL, by Mr. Pugsley

1 Q. You certainly didn't take a statement from him?

2 A. No.

3 Q. Did you talk to him?

4 A. Only -- If I did, it would be only very briefly following
5 the polygraph examination, I think, is the way I put it
6 yesterday in my --

7 Q. Well, did you ask him any details about what happened in
8 the park that night?

9 A. I don't believe I did sir, no.

10 Q. That's rather incredible, isn't it.

11 A. Yes, it is sir.

12 Q. Had you ever done a review like this before? I don't mean
13 the circumstances but had you ever done a review involving
14 a review of the work of another police force?

15 A. No, sir. I hadn't.

16 Q. Are there any guidelines that the R.C.M.P. lays down that
17 suggest how a review of this kind should be carried out?

18 A. This particular type of investigation involving another police
19 car -- police force?

20 Q. Yes. Is there a book --

21 A. Are there any written guidelines?

22 Q. Yes.

23 A. Not to my knowledge, sir, no.

24 Q. Did you discuss with Wardrop what your review should be?

25 A. Well, I go back to what I said a few moments ago, that the only

E. ALAN MARSHALL, by Mr. Pugsley

1 reason I can think of not starting down there with a full
2 team of investigators was because of any discussion I might
3 have had with Wardrop about the subject, about how to
4 go about it.

5 Q. Do you believe you discussed the polygraph with Wardrop
6 before you went down?

7 A. I don't think I did.

8 Q. When did the idea of the polygraph come into your mind,
9 before you went down or once you got there?

10 A. Probably on the way down.

11 Q. I see.

12 A. You know, as I'm driving along and trying to put things together.

13 Q. But you had never used the polygraph before?

14 A. No, sir. No.

15 Q. What about Smith? What experience did he have in administering
16 polygraphs to people before?

17 A. I believe he'd done close to half a hundred.

18 Q. I see. That was your understanding?

19 A. But I didn't know that at the time. All I know, that he
20 was actively engaged in the polygraph program having taken
21 the formal training at New York and Michigan and --

22 Q. What part did McKinley play in this investigation and where
23 was he? Was he a person located in Sydney?

24 A. Yes, he was in charge of the G.I.S. and he really didn't play
25 that big of a part.

E. ALAN MARSHALL, by Mr. Pugsley

1 Q. Well, did he go with you to see MacIntyre?

2 A. Initially?

3 Q. Yes, or at any time with you?

4 A. I don't recall that he did, sir. I don't think initially.

5 Q. Was he present when you saw Jimmy MacNeil?

6 A. As far as I recall.

7 Q. Did he review the preliminary transcript?

8 A. We had quite a long discussion about it.

9 Q. No, but did he --

10 A. Did he do it?

11 Q. Did he read it?

12 A. I can't say, sir, whether he did or he didn't.

13 Q. Did he read the statements?

14 A. You know, I'm on thin ice, again, with respect to the meeting
15 with McKinley. In the lapse of time, sir, I'm sorry. I can't
16 give a definitive answer.

17 Q. Who enlisted McKinley's assistance?

18 A. Probably me.

19 Q. McKinley could have gone out and interviewed and seen people
20 and take statements while you were doing what you were doing?

21 A. He could have.

22 Q. If you had asked him.

23 A. If I had asked him, yes.

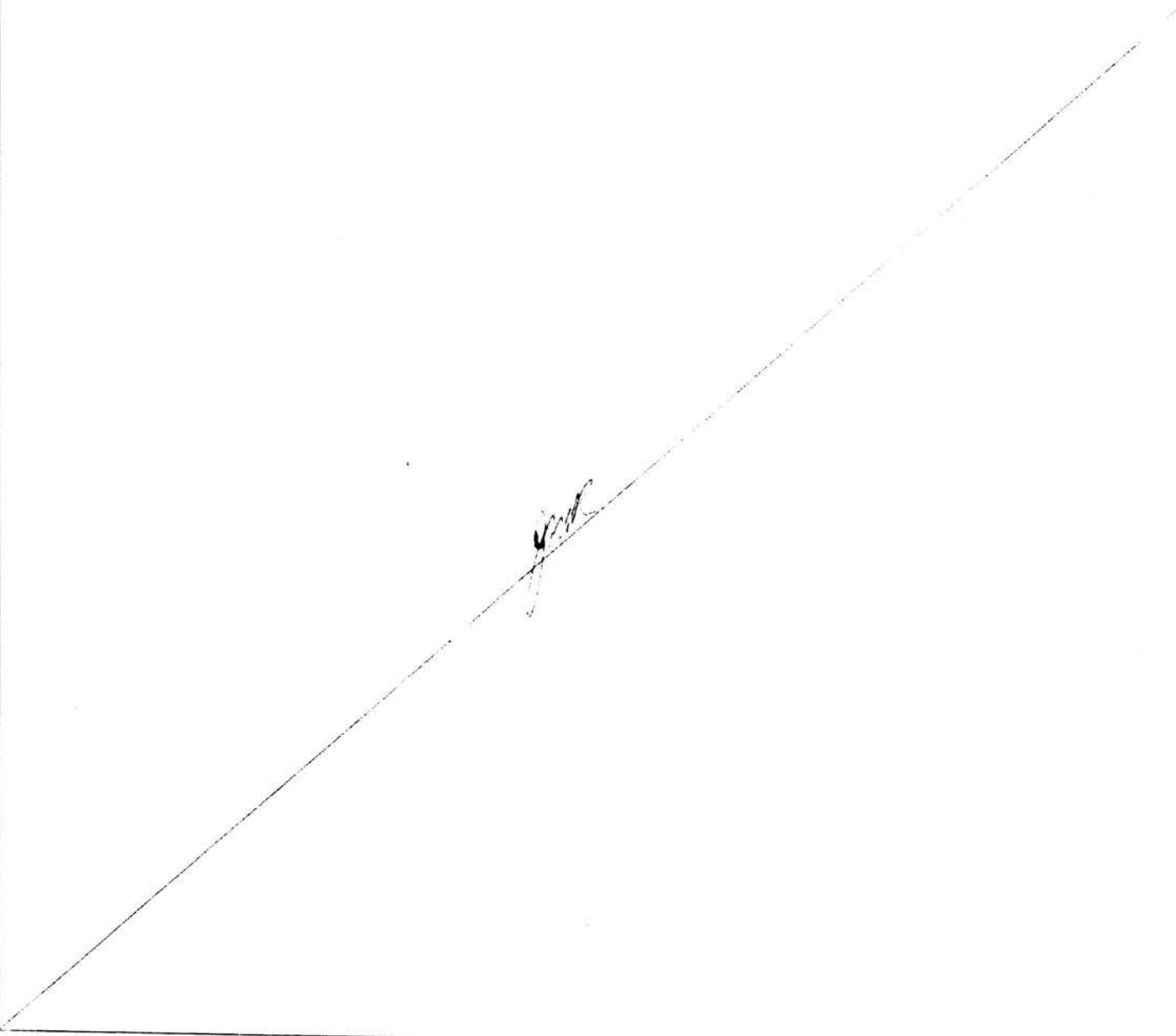
24 Q. And would have.

25 A. And I think probably the extent of my asking him to do anything

E. ALAN MARSHALL, by Mr. Pugsley

1 at that particular time was to see if he had any informants
2 who may be able to find out some information.
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E. ALAN MARSHALL, by Mr. Pugsley

1 Q. You say on page 1 of your report, and the Volume I'm looking
2 at is Volume 18 at -- Do you have Volume 18 or Volume 16 in
3 front of you?

4 A. Sixteen.

5 Q. All right. Take a look at 16 --

6 A. Yeh.

7 Q. -- at page 204. At the bottom of paragraph 3, you say:

8 ...At this point the Force
9 became involved and I went to
10 Sydney on the 16 Nov. 71 where,
11 together with Sgt. G.M.
McKINLEY, i/c Sydney G.I.S., a
thorough review of the case was
conducted...

12 The impression one has from reading that is that McKinley was
13 involved in the thorough review as well. But you say that
14 that's not so.

15 A. No, I didn't say it wasn't so.

16 Q. What do you say?

17 A. I'm saying that I can't recall how long we spent together or
18 where it was.

19 Q. Or what he did?

20 A. Other than look at paper.

21 Q. Well -- I see. What kind of paper did he look at? He was
22 looking at the same paper you were looking at?

23 A. No, wait a minute now. The chronology in this report is not
24 right here.

25 Q. All right. Tell us how it should read.

E. ALAN MARSHALL, by Mr. Pugsley

- 1 A. I don't -- You know, again, to the best of my recollection, I
2 don't recall McKinley being involved at all until I had seen
3 Sergeant MacIntyre.
- 4 Q. All right. What did he do after that?
- 5 A. Well, there again, I don't recall whether he and I again went
6 out and looked at the scene, whether he -- We discussed it
7 and I discussed whether or not he had any informants, and the
8 extent to which he looked at the paper is -- that I got from
9 MacIntyre, which, of course, puts the chronology of this out
10 of whack somewhat.
- 11 Q. Did you read all the evidence at the preliminary.
- 12 A. I believe I did, yes, sir.
- 13 Q. Did you read all the statements you got from MacIntyre?
- 14 A. Did I read them?
- 15 Q. Yes.
- 16 A. Yes, sir.
- 17 Q. How many times do you think you went to the park on
18 November 16th and your return visit on November 23rd?
- 19 A. I'm not sure, sir.
- 20 Q. Give us a rough estimate.
- 21 A. Once or twice.
- 22 Q. And on one occasion with MacIntyre and one occasion without?
- 23 A. To the best of my recollection.
- 24 Q. Did it ever occur to you to go to the park with Jimmy MacNeil
25 and say, "Jimmy show me --

E. ALAN MARSHALL, by Mr. Pugsley

- 1 A. "Show us."
- 2 Q. -- "Show me, Jimmy, where this happened."?
- 3 A. No.
- 4 Q. That would've been a good way of testing --
- 5 A. Yes.
- 6 Q. -- whether or not MacNeil was worthy of belief of not.
- 7 A. Yeh.
- 8 Q. In fact, a very obvious way of testing, would it not?
- 9 A. Yes, sir.
- 10 Q. Because if he couldn't tell you where these things happened,
- 11 that would support your view --
- 12 A. Yeh.
- 13 Q. -- that he was not telling the truth, but if he could tell
- 14 you where he was, that would support his side.
- 15 A. Yes, sir. But that wasn't done.
- 16 Q. You say in paragraph 3 near the top:
- 17 ...McNEIL was interviewed by...
- 18 -- City Sydney --
- 19 ...Police and the Prosecuting
- 20 Officer for Cape Breton County,
- 21 Donald C. MacNEIL...on Monday
- 22 the...
- 22 --15th of --
- 23 ...Nov. 71.
- 24 A. Yeh.
- 25 Q. There's been evidence in these --

E. ALAN MARSHALL, by Mr. Pugsley

- 1 A. Yes.
- 2 Q. -- hearings that --
- 3 A. Yeh.
- 4 Q. -- Donny MacNeil was not there, --
- 5 A. I think --
- 6 Q. -- that it was Lew Matheson.
- 7 A. I think what happened there is I drew an inference that it was
8 the prosecuting officer for -- When I wrote the report -- when
9 actually, I should've said assistant --
- 10 Q. Yeh, all right.
- 11 A. -- prosecuting officer, which would be Mr. Matheson because
12 Mr. MacNeil was away.
- 13 Q. Do you usually -- Did you usually try to take care with reports
14 that you write -- use your words -- choose your words
15 carefully?
- 16 A. Well, ordinarily, yes, sir.
- 17 Q. Yes. In Section 4 at the bottom of page 204:
18 From the outset of our
19 investigation...
- 20 Now, you used the word, "investigation," not review.
- 21 A. Yes.
- 22 Q. Yes. And it was an investigation.
- 23 A. Well --
- 24 Q. Or you described it as such.
- 25 A. Yes, I do.

1 Q. Yes. All right.

2 A. You use the word, "investigation," so much when you're writing
3 reports that --

4 Q. And you've conducted so many?

5 A. Yes.

6 Q. At the top of page 205 -- I've lost track of whether or not
7 you saw MacNeil on your first trip to Sydney or not or whether
8 you just saw him at the time of the polygraph.

9 A. Well, according to this report, at paragraph 5:

10 Sgt. McKINLEY received McNEIL's
11 written permission that he would
undergo...

12 -- a --

13 ...polygraph...We interviewed
14 McNEIL...

15 That's one "we", and there is another "we", pronoun "we",
16 farther on, I think.

17 ...we were certain...

18 Q. Does that help us as to whether or not you saw --

19 A. No, what I'm saying is the same as what I said yesterday. I
20 don't have a recollection of that meeting. I --

21 Q. I see. Why was MacNeil's written permission secured for the
22 polygraph?

23 A. Because, at the time, we -- And I still think to this day --
24 Of course, I've been out of the force for a few years. I don't
25 believe we did any polygraph examinations without the consent.

E. ALAN MARSHALL, by Mr. Pugsley

1 Q. What is the significance of taking the written consent for
2 a polygraph examination from the person who is of sub-normal
3 intelligence and is slightly mental?

4 A. Well, as one of your colleagues said this morning, because I
5 thought that he was of sub-normal intelligence doesn't mean
6 that he couldn't tell the truth.

7 Q. No, my question goes --

8 A. I'm sorry?

9 Q. My question goes to -- Do you not feel that the validity of
10 taking a written consent from a person who is of slightly --
11 sub-normal intelligence and slightly mental is a bit of a
12 waste of time. Does a person who is of sub-normal --

13 A. No.

14 Q. -- intelligence and slightly mental --

15 A. The --

16 Q. -- understand the terms of a written consent?

17 A. The policy was that we couldn't do a polygraph examination
18 without a written consent.

19 Q. Yes. Do you think a written consent from a person who is
20 slightly mental --

21 MR. BISSELL:

22 I object. I think we know what purpose it is. It's -- First of
23 all, the evidence is that it was policy, and secondly, the evidence
24 is that it wasn't this witness that secured that consent in the
25 first place. It was someone else -- Sergeant McKinley.

E. ALAN MARSHALL, by Mr. Pugsley

1 MR. CHAIRMAN:

2 But this witness was in charge of the investigation; so I'm --
3 We're entitled to assume that whatever Sergeant McKinley did, he
4 did under the instructions of his superior officer.

5 MR. BISSELL:

6 Quite so, My Lord, but he's also given his answer to the question
7 as to why the consent was secured.

8 MR. PUGSLEY:

9 Yes, he may have given his answer that it was policy, but I simply
10 question the policy of this witness as to whether or not it's
11 sensible policy to take a written consent from a person who is --

12 MR. CHAIRMAN:

13 That seems to me like a very argumentative type of question that
14 you were so strenuously objecting to, Mr. Pugsley, when Mr. Ruby
15 was --

16 MR. PUGSLEY:

17 Fine, My Lord.

18 MR. CHAIRMAN:

19 Doing the same thing.

20 BY MR. PUGSLEY:

21 Q. You go on to say in paragraph 5:

22 ...Because we were certain that
23 MacNEIL's account of the alter-
24 cation insofar as it concerned
25 EBSARY allegedly stabbing MARSHALL
was a figment of his imagination,
we did not immediately question
him or take any further action

1 with respect to MacNEIL at
2 this time.

3 I take it -- So do I take it from that that there was no
4 questioning of MacNeil on this first visit, that McKinley
5 took the written consent, and is that as far as it went?
6 Although you talk about interviewing MacNeil.

7 A. Gee, you know, I'm sorry, sir, my -- I'm vague. I can't
8 recall that.

9 Q. All right.

10 A. I was asked yesterday the same -- I believe it was yesterday,
11 and I think my answer then was -- You know, I can't remember
12 where we talked to MacNeil and in whose office or -- It's one
13 of those things that have disappeared in the continuance of
14 time.

15 Q. You say in that same paragraph near the bottom of it:
16 ...additionally perusing transcripts
17 of evidence...

18 And do you use the word, "peruse," to mean read?

19 A. Yes, sir.

20 Q. Yes. On page 206, in the first full paragraph, about the
21 middle of the page you say:

22 ...that PRATICO is not too
23 bright.

24 Would it not have been desirable to interview a person who
25 was an eyewitness to a murder to ascertain a judgment about

- 1 his reliability if you were appraised to the fact that he was
2 not too bright?
- 3 A. I'm sorry, sir, I thought that I had testified that -- I missed
4 the question. I'd better have it again, please.
- 5 Q. In view of the fact that you --
- 6 A. Yeh.
- 7 Q. -- knew that Pratico was not too bright --
- 8 A. Yeh.
- 9 Q. -- would it not have been desirable for you to have had first-
10 hand assessment of whether or not this failure affected his
11 reliability as a witness?
- 12 A. Yes.
- 13 Q. You had Smith's report before you wrote your final report.
- 14 A. I'm not certain, sir.
- 15 Q. Well, in -- On page 207, in paragraph 8 you say:
- 16 Cpl. E.C. SMITH conducted the
17 polygraph tests on both McNEIL
18 and EBSARY. His report is
attached...
- 19 A. Oh, well, then I had it.
- 20 Q. Yes. So you were aware of Smith's conclusions with respect
21 to unreliability of using a polygraph on MacNeil?
- 22 A. Yes.
- 23 Q. In paragraph 8 you say:
- 24 ...please note Cpl. SMITH cannot
25 give an opinion as to whether
or not he is telling the truth.

1 Post-examination questioning
2 leaves no doubt in my mind
3 McNEIL is not telling the
truth when he said EBSARY
stabbed SEALE.

4 How long did that post-examination questioning take? And who
5 was it done by?

6 A. Well, it was done by me following the polygraph test, and I'm
7 not certain how long I talked to Mr. MacNeil.

8 Q. Do you know what you asked him?

9 A. I believe I asked him to go over again what happened the night
10 of the stabbing. I can't recall precisely what I asked him.

11 Q. You were not present in the room where the polygraph was per-
12 formed; you were in the next room.

13 A. That is correct, sir.

14 Q. Could you hear the conversation between Smith and MacNeil or
15 Smith and Ebsary?

16 A. I think it would've been very muffled conversation.

17 Q. What were you doing in that room?

18 A. Well, you know, this is what Mr. Spicer was asking me this
19 morning, and I -- You know, I don't really recall whether I
20 was putting together notes, reading material over again, whether
21 I went for a coffee or something.

22 Q. You called Donny MacNeil and asked him to come and meet with
23 you --

24 A. Yeh.

25 Q. -- and discuss the results of the examination?

E. ALAN MARSHALL, by Mr. Pugsley

1 | A. Yes, sir.

2 | Q. Why did you prefer MacNeil over Rosenblum? Why didn't you call
3 | Rosenblum?

4 | A. Good question because once counsel -- Once Crown counsel
5 | becomes engaged in the case, I don't think I have ever gone
6 | to a defence counsel on my own for any reason. If I wanted
7 | something from the defence, once Crown counsel became involved,
8 | it was from lawyer to lawyer, from counsel to counsel, but I
9 | can't ever recall going to a defence counsel on my own once
10 | we had counsel of our own.

11 | Q. What did you want from Donny MacNeil?

12 | A. What did I want from Donny MacNeil? I wanted to -- It's what
13 | I wanted to tell him. I wanted to tell him of the results of
14 | the test.

15 | Q. With respect to the statements that MacIntyre gave to you, I
16 | take it you have no recollection today of what statements they
17 | were?

18 | A. Or how many?

19 | Q. Yes.

20 | A. With no great precision.

21 | Q. You can't say whether he gave you both statements of Maynard
22 | Chant?

23 | A. To the best of my recollection, I did not get two statements
24 | on any -- from -- dealing with any one person. To the best
25 | of my recollection, sir.

E. ALAN MARSHALL, by Mr. Pugsley

1

2 Q. Although you knew that earlier statements had been given?

3 A. Well, I'm not even certain that I knew that the statements
4 that were given were in written form.

5 Q. You didn't ask?

6 A. I'm sorry, that's my answer. I can't -- To the best of my
7 recollection, I seem to recall that the statements were verbal
8 and not written.

9 Q. MacIntyre did not refuse to give you anything?

10 A. No, sir.

11 Q. Have you ever been as "slip-shod" in any investigation you've
12 carried out as you were in this case?

13 A. No, sir.

14 Q. Could you have seen the jacket that Marshall was wearing at
15 the Prothonotary's Office at the court house? Could that have
16 been the location of where you saw the jacket?

17 A. The court house on -- in Ashby?

18 Q. Well, no, the court -- Well, I'm not sure whether it's in
19 Ashby. I mean the court house at Wentworth Park, the Supreme
20 Court building where Donny MacNeil's office was. Could you
21 have seen the jacket there?

22 A. That's a possibility, but I don't really think I did, sir.
23 I think it was at -- in MacNeil's -- in John MacIntyre's
24 office.

25 Q. Were the statements that were given to you by MacIntyre given

E. ALAN MARSHALL, by Mr. Pugsley

1 to Smith to read before he carried out the polygraph?

2 A. Well, we went through this again yesterday, and I don't recall
3 that I gave him the statements.

4 Q. Or the transcript?

5 A. I don't recall what I gave him. I responded to what he
6 required and --

7 Q. Have you discussed this case with Smith since 1971?

8 A. I had one very short conversation with him. I think it would
9 be after I went to Pension; so it would be after May the 9th,
10 1983, over the telephone, and I have had no contact with him
11 since except that I did send him by post a letter from the
12 Commission directed to him, which I received inadvertently and
13 through some mix-up, and I sent it on to him, and I wrote a
14 short note with that and sent it to him in Saint John, and I
15 haven't heard from him.

16 Q. What was the nature of your discussion on the telephone with
17 him?

18 A. I'm sorry?

19 Q. What was the nature of your discussion on the telephone with
20 him?

21 A. As near as I can recollect, I asked him basically why the
22 polygraph examination turned out the way it did on Ebsary.

23 Q. Yes.

24 A. And I can't recall any other conversation with him.

25 Q. Do you recall his response?

A. No, I don't, sir.

E. ALAN MARSHALL, by Mr. Pugsley

- 1 Q. Have you discussed the circumstances of your going to Sydney
2 with Wardrop since 1971?
- 3 A. No, sir.
- 4 Q. You were interviewed by both Wheaton and Carroll?
- 5 A. Carroll, sir.
- 6 Q. Just by Carroll?
- 7 A. Yes.
- 8 Q. On how many occasions?
- 9 A. Once.
- 10 Q. And when was that?
- 11 A. I believe in 1984.
- 12 Q. I see. Yes.
- 13 A. There was --
- 14 Q. Yes.
- 15 A. Yeh. That he came up.
- 16 Q. How long was that interview?
- 17 A. Oh, it was less than an hour, I think.
- 18 Q. And what did you tell him?
- 19 A. I don't recall what I told him. I -- He came to my home in
20 Granville Centre.
- 21 Q. Yes.
- 22 A. And he wanted some information as to what I had done during
23 the investigation, and we had a short conversation about it.
- 24 Q. Was he critical at all of the work that you did in your 1971
25 investigation?

E. ALAN MARSHALL, by Mr. Pugsley

1 A. Was he critical at all?

2 Q. Yes.

3 A. I can't recall, sir. You mean to me --

4 Q. Yes.

5 A. -- was he critical?

6 Q. Was he critical about --

7 A. I can't recall.

8 Q. -- your activities?

9 A. He may have been critical of other people, but I don't recall
10 him being critical of what I did.

11 Q. I guess we've been advised by Commission Counsel that the
12 transcript of the trial evidence was available on or about the
13 16th of December or shortly before your report was dated.
14 Did -- Your report is dated December the 21st. Did you make
15 any efforts to obtain a copy of the trial transcript before
16 you finalized your report?

17 A. I can't recall that I did, sir.

18 Q. In any event, you have not seen it. Have you seen the trial
19 transcript?

20 A. I can't recall that I have.

21 MR. PUGSLEY:

22 My Lords, Mr. Murray could not be here today, and I have a few
23 questions, with your permission, to address to this witness on
24 behalf of Mr. Urquhart.

25

E. ALAN MARSHALL, by Mr. Pugsley, by Mr. Elman

1 MR. CHAIRMAN:

2 Yes.

3 MR. PUGSLEY:

4 Thank you.

5 BY MR. PUGSLEY:

6 Q. Is it a fair assumption that you had no contact with Urquhart
7 at all in 1971?

8 A. That's correct certainly, yes.

9 Q. You were aware that he was involved in some aspects of the
10 investigation?

11 A. Yes, sir.

12 Q. Yeh. But I take it it was your election not to meet with him?

13 A. That's correct, sir, yes.

14 MR. PUGSLEY:

15 Thank you, My Lords.

16 BY MR. ELMAN:

17 Q. Mr. Marshall, I represent the estate of Donald C. MacNeil, and
18 I have just a couple of questions for you. I'm kind of curious
19 about one thing before I get into some of the other questions.
20 You came here on the 23rd with Mr. Smith -- with Inspector
21 Smith to do the polygraph?

22 A. Yes, sir.

23 Q. And you took that at the Wandlyn Motel?

24 A. Yes, sir.

25 Q. What time was it that you called in Ebsary or MacNeil or who

E. ALAN MARSHALL, by Mr. Elman

1 | came first and who came second?

2 | A. We started, I believe, in the early afternoon and the
3 | polygraphist elected to do MacNeil first, to the best of my
4 | recollection.

5 | Q. Did it take any length of time to set up the machine and to
6 | go through an examination with them and then to take the test?

7 | A. It takes some time, yes, sir. Not too long to set it up.

8 | Q. Well, about how long was MacNeil there?

9 | A. I would say a couple of hours.

10 | Q. And --

11 | A. But no more.

12 | Q. Was there someone there to bring him there and take him back
13 | and --

14 | A. Well, I think somebody from the -- our Sydney office brought
15 | him because I don't recall going and picking him up myself.
16 | I could've but I don't recall, sir.

17 | Q. And somebody took him from there?

18 | A. Yes.

19 | Q. Was -- Were MacNeil and Ebsary there together at any time?

20 | A. Not that I recall, no, sir.

21 | Q. Was that done on purpose?

22 | A. I don't know whether that's an operating technique that the
23 | polygraphist follows or not.

24 | Q. All right. Following Ebsary's polygraph test, it was after
25 | that that you called Donald C. MacNeil?

1 A. Yes, sir.

2 Q. You and Mr. MacNeil, the late Mr. MacNeil, had a friendly
3 relationship, isn't that so?

4 A. Yes, sir.

5 Q. All right. More so than the normal relationship between a
6 police officer and a prosecutor or defence lawyer? It was a
7 little more than that, wouldn't you say?

8 A. Well, I've known other lawyers in Cape Breton in about the
9 same frame of mind, sir, but --

10 Q. But you did have this friendly --

11 A. But I had a friendly -- Yes, we had many knock-down, drag-out
12 battles in court, but when it was over, we -- I like to think
13 that we were on friendly terms.

14 Q. Right. Now, was it part of your mandate or instructions from
15 Wardrop to inform Mr. MacNeil immediately following the results
16 of the test?

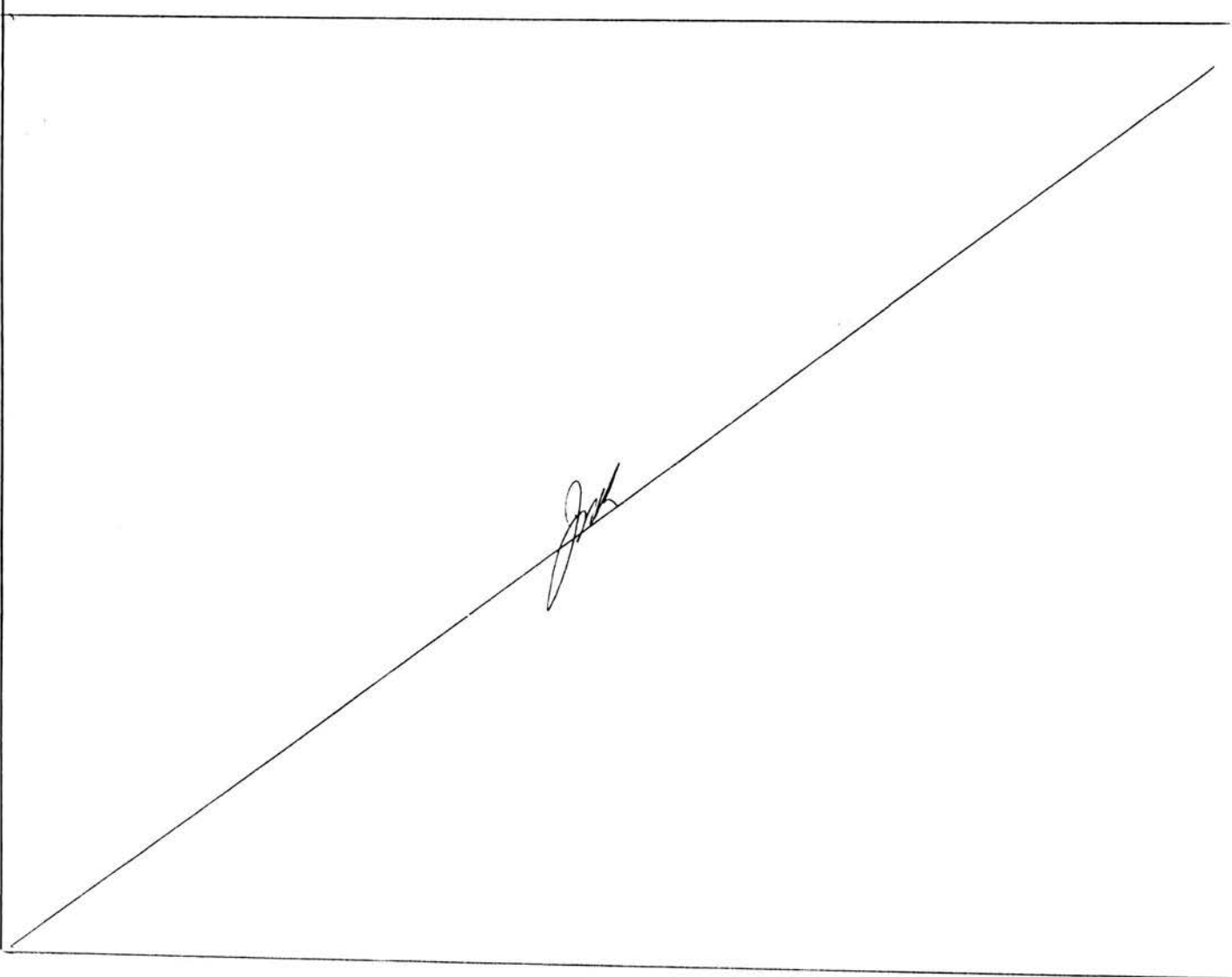
17 A. I received no such mandate, sir.

18 Q. And in fact, isn't it so, Mr. Marshall, that normally police
19 who do their investigations do not involve prosecutors until
20 their investigations had been concluded?

21 A. Well, in normal circumstances and, you know, to avoid the D.A.'s
22 system of the -- our friends down South, that was a rule of
23 thumb for a good number of years. In -- And prior to this
24 particular incident in 1971, I recall one or two cases --
25 criminal cases of -- The government decided to amend the

E. ALAN MARSHALL, by Mr. Elman

1 Bankruptcy Act, and they made three big, eh, in the Bankruptcy
2 Act, and we had a few voyages of Discovery, and we very
3 quickly realized that this type of investigation was complicated
4 to the stage that we had to have counsel with us, not directly
5 from the outset, but certainly long before the investigation
6 was concluded.
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E. ALAN MARSHALL, by Mr. Elman

1 Q. But this type of investigation that you were doing and what
2 you were asked to do was basically the kind of investigation
3 that normal police officers would do in investigating a crime?

4 A. Yes.

5 Q. Yeh. Which does not normally involve Crown Prosecutors or
6 Assistant Prosecutors until after all of the pieces have been
7 put together?

8 A. No.

9 Q. Isn't that so?

10 A. You know this was an exceptional case, Mr. Elman, and that's
11 why I called Mr. MacNeil down and invited him down. I told
12 him that the two tests had been completed and I asked him if
13 he wanted to come down and talk about it.

14 Q. Did you ask him to bring his file with him?

15 A. Oh, I can't remember.

16 Q. And as I recall from your evidence yesterday, when he did
17 come to the motel, and you had your discussions with him,
18 he then went to the phone and called somebody long distance
19 whom you assume was either the Attorney General or someone in
20 that Department?

21 A. I'm -- I'm almost dead certain it was Mr. Leonard Pace -- the
22 Honourable Justice Leonard Pace he's now.

23 Q. What makes you so certain of that?

24 A. I don't know. I don't know.

25 Q. Was there something said at that time?

E. ALAN MARSHALL, by Mr. Elman

1 A. I think Donnie said -- Mr. MacNeil might have said, "Gee, I
2 better call Leonard Pace.

3 Q. Who was then the Attorney General?

4 A. Who was then the Attorney General to the best of my
5 recollection. Now I could be wrong but for some reason or
6 other that -- And you know, when you asked me why I thought
7 it was Leonard Pace, and if I might digress for just a second,
8 sir. It wasn't too many years before -- before Mr. Pace
9 became Attorney General that we'd had a bankruptcy case, a
10 voyage for Discovery under the Bankruptcy Act in Halifax and
11 Mr. Pace was defending as he -- and he could -- did so rather
12 vigorously. And I think what I -- I thought when I got to
13 the motel, now, isn't this strange. It wasn't too long ago
14 he was at our throats in court as is his -- the custom, of
15 course, and practice, and now he's the Attorney General and
16 that struck me as being just slightly odd and that's why I
17 think -- I think -- I think I connect one with the other,
18 and in fact, I think during the voyage of Discovery Mr. Pace
19 kept referring to us -- We'd been out on one of these
20 bankruptcy things and Mr. Pace kept saying (An Inspector
21 or Staff Sergeant I think I was at the time.) "Were you the
22 leader of this gestapo troop", and he said it about three
23 times before -- before the judge. The Superior Court Judge
24 said, "Now, wait a minute" --

25 MR. CHAIRMAN:

I would suggest maybe it would come under Archibald's non-rule

E. ALAN MARSHALL, by Mr. Elman

1 | of relevancy.

2 | THE WITNESS:

3 | Yes, sir. I'm sorry, but I think that's why I connected one with
4 | the other.

5 | MR. RUBY:

6 | Mr. Pace got cut off because he was being argumentative.

7 | THE WITNESS:

8 | But I, you know -- That -- I thought it odd that --

9 | BY MR. ELMAN:

10 | Q. You had good reason to believe that Mr. MacNeil called Mr. Pace?

11 | A. I have reason to believe that Mr. MacNeil called Mr. Pace.

12 | Yes, sir.

13 | Q. Now you were aware that the Marshall case was being Appealed
14 | at that time, were you not?

15 | A. Yes.

16 | Q. Where did you find out that information?

17 | A. Oh, I don't know. I -- Right at that day you mean that we
18 | did the polygraph test?

19 | Q. Well, you knew some time-- at some time that this case was
20 | being Appealed?

21 | A. Well, you lost me, I'm sorry.

22 | Q. Do you recall being told that the matter was under appeal when
23 | you were first in Sydney and had your first meeting with
24 | Detective Sergeant John MacIntyre?

25 | A. I don't recall that, sir. It may have been but I simply don't

E. ALAN MARSHALL, by Mr. Elman

1 recall.

2 Q. Is it possible that you heard it when you went back to
3 Halifax and reviewed the file in the confines of your office
4 in Halifax?

5 A. It's possible but I don't have any recollection.

6 Q. Do you think that your superior Mr. Wardrop may have received
7 that information from the Attorney General's Department?

8 A. Oh, I -- you know, I can't say, sir.

9 Q. I see that it's in your report on -- in paragraph two, the
10 very last line of paragraph two.

11 A. Oh, yeh, well, there it is.

12 Q. ...C.M. Rosenblum, has applied
13 for leave to appeal the
conviction.

14 A. Yes, sir.

15 Q. I was wondering how you knew that or when you found out?

16 A. Well I don't know. Oh, yeh, it's there. I got the information
17 from some place.

18 Q. Mr. Marshall, this report on page 204 is in two parts as far
19 as dates are concerned but I understand you wrote it all at
20 once. Is that correct or am I not correct?

21 A. I wrote the report all at once?

22 Q. Yes, at one time or did you do it at two separate times?

23 A. Well, I -- No, I didn't write two separate reports or -- but
24 it may have taken me some time -- it obviously did take me
25 some time to put it together, but only one report, that of the

E. ALAN MARSHALL, by Mr. Elman

1 21st of December.

2 Q. You didn't write the first part or make notes for the first
3 part up to -- well, that would -- and include -- that would
4 include November 17th and then do the second part after the
5 polygraph test on November the 23rd?

6 A. I think probably I made notes in preparation for that part
7 but I don't -- almost certainly didn't write it then I don't
8 believe.

9 Q. Now you had with you the statements given to you by Detective
10 Sergeant John MacIntyre, isn't that correct?

11 A. Well, I had some statements. Yes. At the time of the
12 polygraph?

13 Q. Well, you got them from Sergeant MacIntyre in Sydney at his
14 office?

15 A. Yes.

16 Q. Did you take them with you to Halifax?

17 A. I believe I did. I believe I looked at them in Halifax.

18 Q. All right. Now you then came back to Sydney on the 23rd?

19 A. Yes.

20 Q. For the polygraph?

21 A. Yes.

22 Q. Did you still have the statements with you at that time?

23 A. Well, I most assuredly would have brought -- I would have
24 a file folder made up and have the information in it to
25 the best of my recollection.

E. ALAN MARSHALL, by Mr. Elman, by Mr. Saunders

1 Q. What did you do with those statements, Mr. Marshall?

2 A. Eventually or --

3 Q. Yes, eventually.

4 A. I returned them to Detective MacIntyre to the best of my
5 recollection.

6 Q. Do you remember when that was?

7 A. No, sir, I don't.

8 Q. Was it before you made your report up on December 21st?

9 A. Well, you know, this was asked yesterday and -- and I'm as
10 unsure today as what I am -- was yesterday.

11 MR. ELMAN:

12 I have no further questions. Thank you, My Lord.

13 BY MR. SAUNDERS:

14 Q. Mr. Marshall, my name is Jamie Saunders and I have a few
15 questions for you on behalf of the Attorney General?

16 A. Yes, sir.

17 Q. Did you keep any notes, sir, of your conversation in the
18 Wandlyn Motel with Mr. MacNeil and Corporal Smith?

19 A. Did I keep them for how long?

20 Q. Did you keep any notes as to the --

21 A. I'm sure I did.

22 Q. -- conversation you had in the motel with Mr. MacNeil and
23 Corporal Smith that night, November 23rd?

24 A. I'm sure that I must have had notes.

25 Q. Do you have the notes today, sir?

E. ALAN MARSHALL, by Mr. Saunders

- 1 A. No, sir, I don't I'm sorry.
- 2 Q. Did you get any record from the motel or the phone company
3 as to what number it was that was called by Mr. MacNeil?
- 4 A. No, sir, I didn't.
- 5 Q. No. You said yesterday in your evidence that once the call was
6 made by Mr. MacNeil you certainly didn't wish to eavesdrop on
7 the call and began to converse instead with Corporal Smith.
8 Is that correct?
- 9 A. That's as I recall, sir, yes.
- 10 Q. I take it, sir, it's correct that there was nothing said during
11 the conversation by Mr. MacNeil confirming to whom the call
12 had been made?
- 13 A. Run that by me please again.
- 14 Q. Yeh. There was nothing that you overheard said by Mr. MacNeil
15 during the phone conversation --
- 16 A. That would confirm that it was Mr. Pace?
- 17 Q. --that would have confirmed that it was Mr. Pace that he was
18 talking to?
- 19 A. Not that I recall.
- 20 Q. And after the call was completed, you were asked yesterday
21 what, if anything, Mr. MacNeil said to you and your answer
22 was, "I'd like to go home", or "Take me home". So I take it
23 there was nothing said by Mr. MacNeil after the call
24 indicating to whom it was that he had called -- to whom he
25 had called?

E. ALAN MARSHALL, by Mr. Saunders

1 | A. No, sir.

2 | Q. All right. Mr. Marshall, your purpose in going to the
3 | Wandlyn Motel that evening or at least after calling Mr. MacNeil
4 | to come there to join you, your purpose to get him there I take
5 | was to explain the results of the polygraph examination to
6 | him?

7 | A. Yes, sir.

8 | Q. And after he arrived he became interested in the polygraph
9 | machine itself and got into discussions with Corporal Smith
10 | about that?

11 | A. Yes, sir.

12 | Q. Am I correct in saying that after November 23, 1971, you had
13 | no further communication, either verbal or written with
14 | Donald C. MacNeil about your Marshall investigation?

15 | A. That's correct to the best of my knowledge.

16 | Q. Thank you. During any of your questioning of Jimmy MacNeil,
17 | did you ascertain whether he was on any medication between
18 | May of '71 and November 23, 1971?

19 | A. I can't recall, sir.

20 | Q. When you were in the presence of Corporal Smith, did you hear
21 | him ask any questions of Jimmy MacNeil as to whether he had
22 | been using and was still using medication either prescribed
23 | or illicit?

24 | A. I don't recall a conversation about medication, sir.

25 | MR. SAUNDERS:

Thank you. Those are my questions.

E. ALAN MARSHALL, by Mr. Ross

1 MR. CHAIRMAN:

2 Mr. Ross

3 BY MR. ROSS:

4 Q. Mr. Marshall, my name is Anthony Ross and I'd like to ask you
5 a couple of questions. I note in volume 18 at page 12 there's
6 a reference in a letter from Eugene Smith to his personal
7 ledger and in the third paragraph he says:

8 As a result of that request I
9 attended at Sydney...on
November...

10 -- Volume 18, page 12, third paragraph, first line. Smith is
11 writing and he's saying that as a result of a request he attended
12 in Sydney on November the 23rd and he writes:

13 ...my personal ledger shows that I
14 gave (a) polygraph examination...

15 --etcetera. What I want to ask is whether or not it was a
16 standard practice for R.C.M.P. officers to maintain a personal
17 ledger?

18 A. Was it a standard practice to maintain a ledger. I'm not
19 quite sure that I know what he means by a ledger.

20 Q. I take it he means some personal record, something that was
21 his.

22 A. Personal records?

23 Q. Yes.

24 A. Any of the policemen that I dealt with usually had their
25 personal notebook, you know, with their cases in it.

E. ALAN MARSHALL, by Mr. Ross

1 Q. Yes. Did you make it a --

2 A. Some -- Excuse me --

3 Q. Go ahead.

4 A. Some people would on their own maintain a diary of sorts but
5 I don't think I would ever consider that standard practice.

6 Q. I see.

7 A. Now it may -- it may have been an instruction that applied
8 specifically to polygraph operators. I don't know.

9 Q. I see. What about you, did you maintain a personal notebook?

10 A. Yes, sir.

11 Q. And what happened to that over the years?

12 A. Oh, they're -- you know, they were destroyed. The retention
13 period at that time I -- I can't recall but -- but in the --
14 our operating manuals today there's -- now that we've become
15 more sophisticated there's a retention period for notebooks
16 and you're supposed to maintain them for whatever the retention
17 period is but there was certainly nothing like that when I --

18 Q. I see, and I take it then that any records which you might have
19 made back in 1971 as it relates to the matters before this
20 Inquiry are totally lost?

21 A. Any of the notes that I made?

22 Q. Yes.

23 A. Yes, sir, that's fair.

24 Q. Now tell me what about the practice. I am referring here
25 again to page -- sorry, I'm referring to volume 18, page 25.

E. ALAN MARSHALL, by Mr. Ross

- 1 And it appears as though you're interviewed by J.E. Carroll
2 sometime in December of 1983?
- 3 A. Yes, I'd said '84, but it was --
- 4 Q. Eighty-three, yes.
- 5 A. --it was --
- 6 Q. And do you indicate -- You told him about your trip to
7 Sydney?
- 8 A. Yeh.
- 9 Q. Now this prompts me to ask whether -- about the practice of
10 maintaining expense accounts. Did you have to file an expense
11 account as an R.C.M.P. officer when you got back to Halifax?
- 12 A. Yes, sir.
- 13 Q. And if you, in fact, had to file an expense account it would
14 show the particulars of your hotel bill, wouldn't it?
- 15 A. Yes, sir.
- 16 Q. And if there were long distance calls, these would be also
17 shown on your expense account?
- 18 A. Yes, sir.
- 19 Q. So that if we can get hold -- Do you know whether or not these
20 expense accounts are maintained for any length of time?
- 21 A. No, sir.
- 22 Q. What happens to them?
- 23 A. Oh, our expense account? Well, again there's the -- the operati na
24 manual lays out the retention periods for all types of --
- 25 Q. Of documentation?

E. ALAN MARSHALL, by Mr. Ross

1 A. --of documentation, yes.

2 Q. Do you know whether or not any of this information is stored
3 on microfilm or microfiche?

4 A. I have no idea at all, sir.

5 Q. Thank you.

6 A. I've been out of the force for four years now and I don't
7 presume to know what they do now.

8 Q. I see. There are one or two things I must ask you about the
9 circumstances of putting together your report. Would it be
10 fair to say that the problems (As I glean from your report)
11 stems from an error in judgement on your part set in motion
12 by your reliance on information given by John MacIntyre?

13 A. Well, it was certainly an error in judgement on my part, sir.

14 Q. Yes, but wouldn't you agree with me that had this review
15 been done in Yarmouth or a place that you'd never been assigned
16 to, you would not have relied on the former investigating
17 officer and you would have gone out on your own.

18 A. That's a fair statement, sir.

19 Q. And then I will ask again, would you then agree with me based
20 on what we've just covered that you're -- you're -- you
21 relied to a large degree on John MacIntyre?

22 A. That's correct.

23 Q. You had a relationship with him for years?

24 A. Yes, sir.

25 Q. And as far as Sandy Seale is concerned, you didn't ask -- you

E. ALAN MARSHALL, by Mr. Ross

1 | didn't ask for any police information on Sandy Seale, did
2 | you?

3 | A. I can't recall. I can't recall if I did or I didn't, no,
4 | sir.

5 | Q. I must ask you very directly --

6 | A. Obtain police information on --

7 | Q. Yes.

8 | A. Or a record of Sandy Seale?

9 | Q. Yes.

10 | A. I can't recall that I did, sir, no.

11 | Q. Did John MacIntyre tell you that in his view Sandy Seale and
12 | Marshall were down in the park intent on robbing somebody?

13 | A. Well, we -- we -- my report says we came to that consensus
14 | and I think that's probably what happened.

15 | Q. He would have given you that information?

16 | A. I believe so.

17 | Q. Well, did you ask him anything more about Sandy Seale or you
18 | just accepted the information that he gave you?

19 | A. You know, I can't recall, sir, whether I did or I didn't.

20 | Q. Is it fair to say that the time you spent doing this review
21 | was merely an effort to confirm information that had already
22 | been given to you by John MacIntyre?

23 | A. That's one way of putting it.

24 | Q. Is there another way to put it?

25 | A. Well --

E. ALAN MARSHALL, by Mr. Ross

1 Q. Or I should ask you, but did I put it correctly?

2 A. Yes.

3 Q. As far as this robbery theory is concerned, is it fair to
4 say that it was easy to accept the robbery theory for no
5 reason other than Sandy Seale was black?

6 A. Oh, I wouldn't say that, sir.

7 Q. Was there any other reason?

8 A. Was there any other reason? Not that I recall.

9 Q. Now as far as this Inquiry -- this review is concerned, it
10 appears as though you came from the Halifax area to Sydney
11 and you were involved in a review in which there was a
12 friendly Crown Prosecutor who had prosecuted this matter in
13 the first instance?

14 A. Yes.

15 Q. And a friendly investigator?

16 A. Yes.

17 Q. Who had done the work which led to the prosecution?

18 A. Yes.

19 Q. Would you agree that if there's a lesson to be learned from
20 what happened to you and your report, is that in circumstances
21 of a review it needs a fresh mind and fresh thinking unfettered
22 by any former relationship?

23 A. Yes, sir.

24 Q. Now after the polygraph had been administered to MacNeil and
25 then Ebsary, I take it was quite soon after the results were

E. ALAN MARSHALL, by Mr. Ross

1 known to you that you contacted Donnie MacNeil?

2 A. Yes, sir.

3 Q. And did you, in fact, tell him over the phone what the results
4 were?

5 A. I can't recall doing that, sir. I don't think I did.

6 Q. So then I take it that you would have called him and indicated
7 to him then that you have completed your work and if he wanted
8 to he can come and discuss the results?

9 A. To the best of my recollection that's what happened, yes,
10 sir.

11 Q. And you don't ever recall any further discussion with respect
12 to those results on the telephone that is?

13 A. Oh, on the telephone, no, sir.

14 Q. I see. Now, Mr. Marshall, I take it you'd agree with me that
15 anybody reading your report and reviewing the evidence today
16 could easily conclude that the -- the whole review exercise
17 was handled rather carelessly?

18 A. I've already said that, yes, sir.

19 Q. And with indifference to the people who were involved?

20 A. Well, that's stretching it, I think.

21 Q. Let me ask you, is it fair to say or is it a correct -- is it
22 correct to say that the R.C.M.P. when they became involved
23 in November, 1981, saw this whole review process more as an
24 annoyance than for a good basis for reinvestigation?

25 MR. BISSELL:

He can't give you an answer --

E. ALAN MARSHALL, by Mr. Ross

1 MR. ROSS:

2 Shall I ask him or leave it out?

3 MR. CHAIRMAN:

4 Pardon?

5 MR. ROSS:

6 I'll ask him these questions and you can direct me --

7 MR. CHAIRMAN:

8 He's not the R.C.M.P.

9 THE WITNESS:

10 Not an annoyance -- It wasn't an annoyance to me.

11 MR. CHAIRMAN:

12 Well, that's the answer.

13 MR. ROSS:

14 That answers my question.

15 BY MR. ROSS:

16 Q. Now there was some questions about reinvestigation and as I
17 understand your evidence this is the first time that, to your
18 knowledge, the R.C.M.P. was involved in this area in
19 reinvestigating work done by another Police Department?

20 MR. BISSELL:

21 I'm going to object to that because there's no evidence from this
22 witness that this witness was ever involved in reinvestigating
23 the work done by another Police Department. He has testified
24 that he was sent down here to check out a story or a statement
25 given by Mr. MacNeil. It is not the same thing as investigating

1 the work of another Police Department.

2 MR. ROSS:

3 Is there deference, My Lord?

4 MR. CHAIRMAN:

5 There's deference.

6 COMMISSOINER EVANS:

7 Like an internal investigation of a Police Department, the Sydney
8 Police or something.

9 MR. ROSS:

10 The difference, My Lord -- My notes indicate that this officer
11 yesterday said that prior to 1971 they did not go into the review
12 of the work of another Police Department.

13 COMMISSIONER EVANS:

14 He didn't.

15 MR. ROSS:

16 He didn't. That's fine. I'll take that.

17 BY MR. ROSS:

18 Q. As far as reinvestigation is concerned, were you ever involved
19 in any reinvestigation even of other R.C.M.P. files?

20 A. Yes, sir.

21 Q. So there was a reinvestigation procedure that you had accepted
22 prior to this -- this assignment?

23 A. A reinvestigation procedure?

24 Q. Yes. You must have had some procedure for it, didn't you?

25 A. Normal police practices, sir.

1 Q. I see. So you were involved in a reinvestigation before and
2 employed normal police practices?

3 A. Now wait a minute. I think I should explain the one case
4 that I did and then it might clarify. There was an
5 investigation of a murder down in Antigonish County, the
6 perpetrator was not identified and I went down to see whether
7 or not we could locate the -- identify who had committed the
8 murder. That's the only case that I can ever recall that
9 comes close to something like this.

10 Q. And did you go and start from scratch and do your own
11 investigation?

12 A. On that particular case, no, sir, I didn't.

13 Q. I see. What did you do? Did you just accept other information
14 also and come to conclusions?

15 A. Well, it was my own force -- our own force and -- and
16 the -- I had the N.C.O. in charge with me -- the N.C.O. in
17 charge of the detachment with me and we went over the ground
18 that had already been gone over and we still couldn't
19 identify who had committed the murder.

20 Q. I see.

21 A. That was the only case.

22 Q. I must ask you something that I'm -- about police training.
23 Now my experience -- I must ask you, as far as the R.C.M.P.
24 is concerned, in general training is there any classification
25 or difference between people, for instance -- and I think I

E. ALAN MARSHALL, by Mr. Ross

1 can best ask the question by giving you a personal experience.

2 In a recent --

3 MR. CHAIRMAN:

4 We're in enough trouble now with getting evidence from witnesses.
5 We can't have counsel testifying.

6 MR. ROSS:

7 Well, no, as a matter of fact, I'm not going to go onto -- I'm
8 not giving evidence, My Lord, but I will ask you to permit me to
9 set the question up and then rule it.

10 MR. CHAIRMAN:

11 Okay.

12 BY MR. ROSS:

13 Q. Mr. Marshall, in a recent case in Bedford, Nova Scotia;
14 the Queen versus Kelsey, a police -- an R.C.M.P. officer
15 on the stand identified an accused as a non-White person.
16 When asked why he used the designation non-White as opposed
17 to a positive identification he indicated that it was standard
18 police -- R.C.M.P. training to see people as White or non-White
19 regardless to their racial background. Has that been your
20 experience?

21 A. That's -- If that is the case, then it's certainly developed
22 since I left the force.

23 MR. ROSS:

24 Thank you very much.

25 MR. CHAIRMAN:

Do you have some questions to ask on behalf of the Union of Indians,

E. ALAN MARSHALL, by Mr. Wildsmith

1 Mr. Wildsmith?

2 MR. WILDSMITH:

3 Yes, I do, My Lord, not very many.

4 BY MR. WILDSMITH:

5 Q. My name is Bruce Wildsmith and I am here on behalf of the
6 Union of Nova Scotia Indians.

7 A. Sure.

8 Q. You've already indicated to the Commission that you had during
9 this review or investigation no contact with Mr. Marshall's
10 lawyers?

11 A. That's correct.

12 Q. That's correct. And no contact with Mr. Marshall himself?

13 A. That correct, sir.

14 Q. And I think we know -- Did you know at the time that they were
15 both here in Sydney?

16 A. You know, I presume Mr. Rosenblum was here and I didn't know
17 about Mr. Marshall.

18 Q. Yes. Can you tell me whether it was part of your intention
19 to see if a polygraph could be administered to Mr. Marshall?

20 A. Was it part of my intention to see whether or not --

21 Q. Yes, to --

22 A. Did we --

23 Q. --include Mr. Marshall in the group that you wanted to administer
24 a polygraph to?

25 A. Well, again going back to my evidence yesterday, you know, I

E. ALAN MARSHALL, by Mr. Wildsmith

1 | have a vague recall that we wanted to do a polygraph test
2 | on Marshall -- Mr. Marshall, but that -- but that -- my recall
3 | is that his lawyer would not permit it, and I realize that's
4 | vague but I'm sorry, that's the best I can do, sir.

5 | Q. What I'm trying to get at is this, it would have been your
6 | preference to administer one to Mr. Marshall?

7 | A. Yes, sir, that's a fair statement.

8 | Q. And here's my real question to you, do you know whether or not
9 | any special consideration should be taken into account in
10 | administering a polygraph test to an Indian?

11 | A. I have no idea, sir. That's the polygraphist's field.

12 | Q. As far as you were concerned --

13 | A. As far as I know the only restrictions when I was in the force
14 | on polygraph was that we were not to do pregnant women.

15 | MR. CHAIRMAN:

16 | I'm not going to ask you why.

17 | THE WITNESS:

18 | Well, if I may, My Lord, the restrictions were --

19 | BY MR. WILDSMITH:

20 | Q. Perhaps we could just stick to this question, were there any
21 | special instructions or --

22 | A. No.

23 | Q. --or information you had in respect to Indians?

24 | A. No, sir.

25 |

E. ALAN MARSHALL, by Mr. Wildsmith

1 Q. You knew Mr. Marshall was an Indian?

2 A. Yes, sir. To the best of my knowledge, he was an Indian.

3 I didn't have any documentary proof he was a --

4 Q. Yes, that was your understanding?

5 A. That's my understanding, yes.

6 Q. And your understanding that he came from the Membertou

7 Indian Reserve here in Sydney?

8 A. Yes, sir.

9 Q. Did you have any contact with any members of the Indian
10 community in carrying out your review?

11 A. No, sir.

12 Q. Do you not think that some useful information might have
13 been gathered from the Indian community?

14 A. Yes, sir.

15 Q. Can you give us examples?

16 A. Well, his standing in the community, whether or not he's
17 a trouble-maker or considered a trouble-maker or whatever,
18 information like that. His credibility --

19 Q. His credibility would have been an issue?

20 A. Yes, sir.

21 Q. Might have been interested to know whether he carried knives
22 on a regular basis?

23 A. May have done that, yes, sir.

24 Q. Yes. Whether the community in itself thought that he was
25 capable of doing this kind of act?

E. ALAN MARSHALL, by Mr. Wildsmith

- 1 A. Yes, sir.
- 2 Q. Might have useful to contact an Indian Court Worker who
3 had some dealings with Mr. Marshall and with the court
4 system?
- 5 A. I'm not sure of that -- I'm not sure that we had a Court
6 Worker back then.
- 7 Q. Well, we've received some testimony to the effect that
8 there was one.
- 9 A. Well, I'm mistaken then but --
- 10 Q. All right. But that would have been the kind of information
11 that you would have sought out, could usefully have
12 sought out?
- 13 A. It would have been useful. Yes, sir.
- 14 Q. Okay. Is it fair to think that you had some reservations
15 as to whether you could get reliable information from
16 Mr. Marshall, directly or from the Indian community?
- 17 A. Any reservations? I don't believe so.
- 18 Q. So there was no reason connected to that for you to fail
19 to contact the Indian community?
- 20 A. No.
- 21 Q. And what you, in fact, did choose to do was to rely exclusively
22 on sources connected to the police in one way or another?
- 23 A. Yes, sir.
- 24 Q. And you had no reservations about relying upon that
25 information?

E. ALAN MARSHALL, by Mr. Wildsmith

1 A. Not at the time, no sir.

2 Q. Thank you. Now, I want to ask you one for question that
3 I feel compelled to ask.

4 MR. WILDSMITH:

5 And Your Lordships perhaps can advise me if you consider this
6 an unfair question but I think it's in the interest of my client
7 to ask the question and perhaps in the public interest as well.

8 BY MR. WILDSMITH:

9 Q. What I want to know from you, Mr. Marshall, is whether it
10 would have made a difference in the thoroughness of your
11 investigation if Junior Marshall had, in fact, been your
12 son?

13 A. Wow!

14 COMMISSIONER EVANS:

15 That's getting personal, isn't it?

16 MR. CHAIRMAN:

17 That's right.

18 COMMISSIONER EVANS:

19 He wouldn't be investigating his own son, I wouldn't think.

20 MR. WILDSMITH:

21 All right. Let me move on then to --

22 COMMISSIONER EVANS:

23 You know, take one of mine. I have several.

24 BY MR. WILDSMITH:

25 Q. Would it have made a difference in the thoroughness of your

E. ALAN MARSHALL, by Mr. Wildsmith

1 investigation if this had been the son of the Chief Justice
2 of Nova Scotia?

3 A. I -- You know, you're asking me if I'm discriminating
4 between --

5 Q. I'm asking if it makes a difference?

6 A. No.

7 Q. You would have been equally sloppy, if I can use that term?

8 A. Oh, --

9 MR. BISSELL:

10 I object to that.

11 BY MR. WILDSMITH:

12 A. I don't think it would have made a difference. No, sir.

13 Q. Why would that be, sir? Why wouldn't you have taken
14 more care if this had been the son of somebody of stature
15 in Nova Scotia?

16 MR. CHAIRMAN:

17 How can he possibly answer that!

18 BY THE WITNESS:

19 Geez, that's a --

20 MR. CHAIRMAN:

21 He said that he would -- He has said that he would take the
22 same care or lack thereof or whatever if he was investigating
23 Indian or a son of --

24 COMMISSIONER EVANS:

25 The Chief Justice of Nova Scotia.

E. ALAN MARSHALL, by Mr. Wildsmith

1 MR. CHAIRMAN:

2 The Chief Justice of Nova Scotia, if he has one. How can he
3 say why?

4 MR. WILDSMITH:

5 Okay, I won't pursue this any further.

6 MR. CHAIRMAN:

7 Now, Mr. Pringle, you're last and I can -- We can -- It's ten to
8 one and I don't want to restrict you but I'm conscious of the fact
9 that Mr. Marshall has been in the witness box along time and --

10 MR. BISSELL:

11 Yes, My Lord.

12 BY THE WITNESS:

13 That's no problem for me, sir.

14 MR. CHAIRMAN:

15 -- we're prepared to sit until you've finished if you'd like
16 to get the examination.

17 MR. BISSELL:

18 I appreciate the need to -- not to extend this any longer than
19 necessary. He's been in the stand for a while and I might
20 be forty-five minutes or so. It might be appropriate at least
21 to take brief break.

22 MR. CHAIRMAN:

23 All right. Well, that's fine. We'll break for lunch but I --
24 whichever is more accommodating. On the basis of that we'll
25 adjourn until two-fifteen.

INQUIRY ADJOURNED: 12:51 p.m.

E. ALAN MARSHALL, by Mr. Bissell

1 INQUIRY RECONVENED: 2:15 p.m.

2 MR. CHAIRMAN:

3 Mr. Bissell.

4 MR. BISSELL:

5 Thank you, My Lord.

6 BY MR. BISSELL:

7 Q. Now, sir, you've testified that your purpose in coming to
8 Sydney in November of 1971, was not to re-investigate the
9 murder of Sandy Seale from scratch, but to check out the
10 story that James MacNeil gave to Sydney City Police on
11 the 15th of November, 1971; in other words, to substantiate
12 or disprove his claim. Is that essentially correct?

13 A. Yes, sir.

14 Q. And if you had concluded that James MacNeil was truthful
15 or that you believed his story, substantially, what would
16 you have done?

17 A. Well, clearly I would have contacted my superior officer
18 with a recommendation that -- that the case be re-opened
19 and investigated from scratch.

20 Q. You had conducted murder investigations before, is that
21 correct?

22 A. Yes, sir.

23 Q. Yeh, now when you met with Mr. D. C. MacNeil, the Crown
24 Prosecutor on the 23rd of November along with Corporal
25 Smith, you're inquiry, review, probe or investigation,

E. ALAN MARSHALL, by Mr. Bissell

1 | whatever word one wants to use, was pretty much completed,
2 | is that not also true?

3 | A. Yes, sir.

4 | Q. And you made known to Donald MacNeil the results of what
5 | you had done, is that correct?

6 | A. We had a discussion.

7 | Q. Yes, now did Mr. MacNeil or anyone else at that meeting
8 | express any dismay to you at what you had done?

9 | A. Not that I recall.

10 | Q. Were any suggestions offered to you by anyone there about some
11 | other things that you might do?

12 | A. Not that I recall, sir.

13 | Q. Did he or anyone else there that night complain to you that
14 | you had not carried out your assignment or your instructions?

15 | A. No, sir.

16 | Q. If I could just ask you a few more questions about your
17 | report and what the internal routing of a report such as
18 | the one that you prepared. Could you just explain to
19 | Their Lordships, what the routing was of such a report
20 | coming from a Sub-inspector?

21 | A. Coming from a Sub-inspector such as myself the report would
22 | be forwarded to the C. I. B. Office. We have a -- we had a
23 | an office staff there of reader/analysist whose job it was
24 | to take these reports, check them over to more that the
25 | policy had been -- any policy implications had been followed.

E. ALAN MARSHALL, by Mr. Bissell

1 Q. Yes.

2 A. To re-route them to wherever they may have to go.

3 Q. Okay. Were the reports also perused to make sure that what
4 was done according to the report was what was expected or
5 what's usually done?

6 A. Generally, that's my understanding of their function, yes,
7 sir.

8 Q. Yes, would that report go to the C. I. B. Officer himself,
9 Superintendent Wardrop?

10 A. I would expect that it would.

11 Q. Okay, and did you have some discussions as well with
12 Superintendent Wardrop during the course of your activities?

13 A. Well, I'm sure that when I got back from -- from Sydney we
14 would have discussed the results of the test but I can't
15 recall specifically when I did that.

16 Q. Certainly, now were you reprimanded or challenged by your
17 superior officers for not having done what the Attorney
18 General had asked them to have done by the R. C. M. P.?

19 A. No, sir.

20 Q. Were you reprimanded or challenged by your superior officers
21 for not having done what they had asked you to do?

22 A. No, sir.

23 Q. Can you tell us from your experience and knowledge of the
24 practices of the R. C. M. P. back in 1971, would you expect
25 your report of this nature and it's findings to be

E. ALAN MARSHALL, by Mr. Bissell

1 | communicated to the Attorney General's Department?

2 | MR. SAUNDERS:

3 | My Lord, before the witness answers the question, I would
4 | question the usefulness of whatever information the witness can give to
5 | the question. It seems to me that he said yesterday that
6 | the only thing he can say to this Commission as to what
7 | happened to his report, is that he put a slip on it and
8 | attached the transmittal slip to his report and put it in
9 | the mail and he thought it went on to his superior, Mr.
10 | Wardrop. I say with deference to my friend and the greatest
11 | respect, that it's sheer speculation for this witness
12 | to be asked to say that whether it went any other place and I
13 | can't imagine what usefulness conjecture on the part of this
14 | man would be.

15 | MR. CHAIRMAN:

16 | Well, my recollection is that Judge Matheson also dealt with
17 | that same issue. We were trying to ascertain or someone
18 | was from him the -- what he had expected would happen to the
19 | report that had been prepared by the -- the R. C. M. P.
20 | officer charged with the responsibility of investigating or
21 | re-investigating or whatever the correct phrase is, this issue.
22 | And I see, in fact, I think it is in the -- it is an appropriate
23 | question. The weight of the answer is something else.

24 | MR. SAUNDERS:

25 | Just in reply to what you've said, Mr. Chairman, my recollection

E. ALAN MARSHALL, by Mr. Bissell

1 | of Mr.- of Judge Matheson's answer was that he expected it went
2 | to Halifax and I believe that later it was elicited that --
3 | that what that meant as far as he was concerned was that it had
4 | gone to the superiors of the R. C. M. P. But it was later on
5 | that he said he was -- he was surprised --

6 | MR. CHAIRMAN:

7 | That's right.

8 | MR. SAUNDERS:

9 | -- certainly surprised that it had not gone. In other words,
10 | he was giving an answer to you in the negative; but in any
11 | event, that's -- that's our position with respect to this
12 | witness' anticipated answers.

13 | MR. CHAIRMAN:

14 | This witness who had many years in the R. C. M. P. and who was
15 | in charge of the investigatory arm of the R. C. M. P. at this
16 | particular time, I would think would have some idea, should
17 | have some idea as to what happens to invest -- reports at the
18 | end of an investigation vis-a-vis the Crown's chief law officer
19 | who has the ultimate responsibility for instruction. And who
20 | in this case had asked that the investigation be carried out.
21 | So would you re-ask the question.

22 | MR. BISSELL:

23 | Yes, thank you, My Lord, I will.

24 | BY MR. BISSELL:

25 | Q. So from your experience and knowledge, sir, of R. C. M. P.

E. ALAN MARSHALL, by Mr. Bissell

1 | procedures and practices in 1971, would you expect your
2 | report or it's findings to be communicated to the Attorney
3 | General's Office?

4 | A. Yes, sir.

5 | Q. Would that be especially so when the request for what you did
6 | emanated from the office of the Attorney General?

7 | A. Yes, sir.

8 | Q. Were you ever pressed for this report or told that it had
9 | not been received by -- by Robert Anderson?

10 | A. No, sir.

11 | Q. By Gordon Gale?

12 | A. No, sir.

13 | Q. By Milton Venoit?

14 | A. I'm sorry, I'm not acquainted by Milton Venoit.

15 | Q. Okay, so I take then you didn't hear from any --

16 | A. No, sir, I did not hear from any of them.

17 | Q. -- from Milton Veniot? Or by anyone in the Attorney General's
18 | Office?

19 | A. No, sir.

20 | Q. Did anyone from the Attorney General's Office either directly
21 | or indirectly ever suggest to you that you had not done what
22 | was asked of you?

23 | A. No, sir.

24 | Q. When you submitted your report in November of 1971, did you
25 | then feel that you had done what was asked of you?

E. ALAN MARSHALL, by Mr. Bissell

1 A. Yes, sir.

2 Q. If I could just switch or ask you a few questions about what
3 you did. Now when you went to Sydney around the 14th or
4 15th of November of '71, in your mind was John MacIntyre
5 under suspicion at that time?

6 A. I beg your pardon, sir.

7 Q. Was John MacIntyre under suspicion at that time?

8 A. Under suspicion?

9 Q. In your mind, yes?

10 A. No, sir.

11 Q. Was anybody in the Sydney Police Department under suspicion
12 by you in November of '71?

13 A. Not to my knowledge.

14 Q. When John MacIntyre gave you what you described as the
15 crucial pieces of evidence adduced by witnesses surrounding
16 the eyewitness accounts, did you expect that he would
17 give you anything but accurate and complete details of
18 the investigation?

19 A. No, sir.

20 Q. Did you in November of '71 have any reason to suspect or
21 doubt to the integrity of John MacIntyre?

22 A. No, sir.

23 Q. Okay, any reason to disbelieve him?

24 A. No, sir.

25 q. Any reason to think that he was the type of person who would

E. ALAN MARSHALL, by Mr. Bissell

1 | intimidate a witness to the point of lying?

2 | A. No, sir.

3 | Q. Now I know that over the course of your evidence that you've
4 | given here this morning and yesterday, that you have
5 | indicated some of the factors that had bearing on how
6 | you approached and came to your conclusion. What -- I'd
7 | just like to see if we can capture as many of them at one
8 | -- one place as possible. Did you believe that the original
9 | investigation had been done by a highly regarded and a
10 | diligent investigator?

11 | A. Yes, sir.

12 | Q. You believed that and knew, I guess, that the two people who
13 | purported to be eyewitnesses, namely Chant and Pratico, had
14 | testified at the trial, is that correct?

15 | A. Yes, sir.

16 | Q. You knew that the trial judge, Mr. Justice Dubinsky, you
17 | knew him when he was a defense counse, is that correct?

18 | A. Well, when he was practicing law in Glace Bay, yes, sir.

19 | Q. You knew him to be a highly regarded -- you -- you held
20 | him in high regard yourself, I take it to be so?

21 | A. I did so. Even though the only cases he, that I can recall,
22 | he had he was acting for the defense and not for the Crown.

23 | Q. The same true for the two defense counsel that were
24 | involved?

25 | A. Well, in that respect, I had worked with, on cases with --

E. ALAN MARSHALL, by Mr. Bissell

1 -- with -- in which Mr. Rosenblum had defended and I had
2 a high regard for his ability. Not -- I hadn't -- I
3 can't recall any cases that Mr. Khattar and I were
4 involved in together.

5 Q. You -- you knew the Crown Prosecutor, D. C. MacNeil?

6 A. Yes, I did, sir.

7 Q. And held him in high regard and knew him to be fair-minded,
8 did you?

9 A. Yes, sir.

10 Q. And did you believe or you were under the impression, I gather
11 from your report, that you felt the eyewitnesses had not had
12 an opportunity to collaborate?

13 A. That's correct.

14 Q. That's the opinion that you held or believed? Then Corporal
15 Smith came and assisted you by performing the polygraph
16 examinations, correct?

17 A. Yes, sir.

18 Q. And Corporal Smith as well in the course of doing that spent
19 time with both Mr. Ebsary and Mr. James MacNeil, is that --
20 is that correct?

21 A. That's correct, sir.

22 Q. What can you tell us about the opinion that you had of a
23 Corporal Eugene Smith?

24 A. Well, he had -- he had worked for me in the Halifax C. I. S.
25 and I considered him an extremely capable policeman and an

1 expert interrogator and a hard working man.

2 Q. Indeed, his expertise in interrogation was one of the
3 prerequisites for his being selected to become -- to take
4 the polygraph course, is that not correct?

5 A. Yes, that's correct, sir.

6 Q. And Sergeant McKinley also assisted you to some degree,
7 is -- is that fair to say?

8 A. Yes.

9 Q. And what were your thoughts of Sergeant McKinley?

10 A. Well, again, he was in my opinion hard working, good qualified
11 N. C. O.

12 Q. The three of you I share -- I gather at no point disagreed
13 on your assessment of any of the -- of either Mr. MacNeil
14 or Mr. Ebsary to the extent that all three of you saw both
15 of them, is that fair to say?

16 A. Did we disagree amongst ourselves?

17 Q. You didn't disagree among yourselves as to the assessment
18 or your opinion of the people that you saw?

19 A. No, sir.

20 Q. Do you recall today whether you were told in November when
21 you went down that the Sydney Police Department had
22 suspected Donald Marshall and his friends of approaching
23 different witnesses and telling them what to say?

24 A. I can't recall that, sir.

25 Q. If you were told this in November of '71, would it have been

E. ALAN MARSHALL, by Mr. Bissell

1 a factor in your mind in assessing James MacNeil's story?

2 A. Yes, I suppose it would, sir.

3 Q. Now Mr. Judge or Judge Lewis Matheson testified that when
4 he was in the Sydney Police Department in November, the day
5 that Mr. MacNeil came forward, that he was told by the
6 Sydney Police Department that Mrs. Ebsary and her son and
7 daughter had been interviewed that night and denied James
8 MacNeil's claim. He also testified that he had been told
9 by members of the Sydney Police Department that Mrs. Ebsary

10 was the anchor of the household so to speak, not a person
11 to be party to protecting a coverup for Mr. Ebsary. Do
12 you recall today if you were told this by anybody at the
13 Sydney Police Department?

14 A. I can't recall that, sir.

15 Q. If you were told that in November of '71, do you think that
16 would have been a factor in your assessing Mr. MacNeil's
17 story and what to do?

18 A. Yes, sir.

19 BY MR. CHAIRMAN:

20 Q. You've lost me there, Mr. Marshall; why would the -- if
21 you had been told that Mrs. Ebsary was the quote "anchor
22 of the household" end quotation marks, this would have
23 changed your assessment and that she had -- and that she
24 had denied -- and that she had denied the allegations
25 of James MacNeil?

E. ALAN MATHESON, by Mr. Bissell

1 | MR. BISSELL:

2 | My Lord, I think the point of the question was that she wouldn't
3 | have been -- that the police had said she wouldn't be a party
4 | of a coverup -- a coverup for Mr. Ebsary.

5 | BY MR. CHAIRMAN:

6 | Q. And this was, I see, and this would add --

7 | A. Credence to.

8 | Q. -- credence to Mr. -- to your conclusion that Jimmy MacNeil
9 | is not to be believed?

10 | A. Yes, sir.

11 | Q. Okay.

12 | BY MR. BISSELL:

13 | Q. Sir, when my friend was asking you questions this morning,
14 | Mr. Spicer, he directed you to certain conclusions that --
15 | that you came to in your report and I'm not going to go
16 | all over all of the reasons that you came to what conclusions
17 | that you did; but there are a few things that I would like
18 | to draw to your attention. And the first one relates when
19 | you were -- in your report when you indicated that there
20 | was a superficial cut on -- on Mr. Marshall's arm which was
21 | not bleeding at the time. Do you recall that part? Do
22 | you recall that in your conclusion in your report?

23 | A. Yes, sir.

24 | Q. I would ask you, do you have volume 1 in front of you there.

25 | A. Yes, sir.

E. ALAN MARSHALL, by Mr. Bissell

1 Q. I ask you to turn to page 50. That's a transcript of the
2 Preliminary, the evidence that was given by a Mr.
3 Brian Doucette.

4 A. Page 47 or page?

5 Q. No, page 50, sir.

6 A. Yeh.

7 Q. And he was being questioned on that page by Mr. Rosenblum?

8 A. Yes.

9 Q. And there was a question and it looks like about line 8:

10 And was there any blood?

11 And do you see what his response was?

12 A. Yes, sir:

13 There was no sign of blood.

14 Q. And I believe you testified that you had the Preliminary
15 transcript and reviewed it when you took --

16 A. Yes, sir, I have it in my note here too that I see I made
17 the other night.

18 Q. You also in your report when Mr. Spicer asked you about
19 this, it said that "Marshall took care not to stand where
20 Sandy Seale could see him", and he asked you how you came
21 to that conclusions and you mentioned a few --

22 A. Yeh.

23 Q. But I would also refer you to a little further down the page
24 there, page 50 of volume 1 to the question at line 25:

25 When you came to see where Mr. Seale

E. ALAN MARSHALL, by Mr. Bissell

1 was lying on the ground, was
2 Marshall there then?

3 A. Answer, "No".

4 Q. The -- another area in which you were questioned by Mr.
5 Spicer related to the concenses of opinion when -- that
6 Mr. Seale and Mr. Marshall went into the Park that night
7 they were going there to "roll someone". "Bent on
8 robbing someone", I believe is what you said in your report.
9 Would you look at volume 16, please, at page 41. That's the
10 second statement of John Pratico. The -- you see the
11 paragraph that starts -- Have you got it now, sir?

12 A. Yes, sir.

13 Q. I believe you testified that this was one of the statements
14 given you by John MacIntyre?

15 A. Yes, sir.

16 Q. And the para -- the second -- the paragraph that starts:

17 I met Donald Marshall and Sandy
18 Seale.

19 Do you see that also?

20 A. Yes, sir:

21 We walked to the corner of
22 Argyle St. (and) Donald (and)
 ...John (came into) the Park
 in a rough voice.

23 I said:

24 ...come to the Park in a rough
25 voice.

E. ALAN MARSHALL, by Mr. Bissell

1 Q. Or could that have been the reference to the rough voice
2 something you would believe was considered?

3 A. Yes, I believe it was, yes, sir.

4 Q. And Mr. Spicer also asked you a number of questions about
5 whether or not you -- are you all right, sir?

6 A. Yeh. Yes, go ahead please. I just have a little problem
7 breathing, sir. Yes, go ahead, sir.

8 Q. Okay.

9 A. It's all right; I just have a little bronchial asthma, that's
10 all.

11 Q. Okay.

12 A. Heat in here, I guess.

13 Q. You were asked whether you came to any conclusion about
14 Mr. Pratico's ability to make an observation thirty to
15 forty feet away that night. And I want to direct you to --
16 Sir, I want to direct your attention to some pieces of
17 evidence --

18 A. Yes, sir.

19 Q. -- if you would. The first if you have volume 1 in front
20 of you?

21 A. Yes, sir.

22 Q. Page 33. That's the Preliminary evidence of Mr. Gushue.

23 A. Terry Gushue, yeh.

24 Q. There's a question about line 22, where Mr. Gushue testifies
25 about seeing Mr. Marshall that night there?

E. ALAN MARSHALL, by Mr. Bissell

1 A. Yes, that's where he says:

2 Twenty or thirty feet.

3 Q. Yes, where he first saw Donald Marshall, is that correct?

4 A. Yes, sir.

5 Q. Would you turn to page 42 of the Preliminary transcript.

6 The evidence given of Mr. Chant at the Preliminary, sir.

7 The question at line nineteen:

8 Do you know if there were
9 any lights in the area?

10 Do you see that?

11 A. Yes, sir.

12 Q. And what is his response?

13 A. Two, maybe three...

14 Q. Right, and would you carry on?

15 A. ...I guess there was a street
16 light, fifteen or twenty feet
17 away from where we were
standing at.

18 Q. And if you would flip back to page 14 as well of this
19 Preliminary transcript, that's the evidence of the
20 suveyor who prepared the plan, sir. Carl MacDonald I
21 believe was his name.

22 A. Yes, sir.

23 Q. Do you see a reference there as well at around line 17 or
24 18 about "power poles and lights"?

25 A. Question:

1 Now you show on your legend
2 some power poles 125 M.V.
light?

3 Whatever that means?

4 Would you point out to the
Court where these poles are?

5 There is two poles just
6 inside the curb on Crescent
7 Street, one is located across
from a house occupied by
8 N.A. McQuinn and the other
...is across from the Crescent
9 Apartments.

10 Q. Okay, thank you, sir. My friend, Mr. Spicer, also asked you
11 in his evidence and suggested that if you had read the
12 and looked carefully at the evidence in the statement of
13 -- at volume 16, pages 47 to 48. I direct your attention
14 to page 48, of volume 16; that's the statement of Maynard
15 Chant. There's a question there:

16 Was there any other conversation
17 between you and (Mr.) Marshall
at that time

18 (Why)He said (that) there were
19 2 men -- tall one had brown hair
done the stabbing.

20 Do you see that?

21 A. Yes, sir.

22 Q. And Mr. Spicer pointed that out to you and suggested that
23 had you seen that that you would have known of the presence
24 of other men in the Park. I wonder if you would just read
25 what the next question and answer is, out loud?

E. ALAN MARSHALL, by Mr. Bissell

1 A. This of course is not true

2 Q. And what -- how does the --

3 A. A. No.

4 Of course, it's not, you know, in effect.

5 Q. I take it, sir, that it was -- you said it on a number of
6 occasions that it was significant to you that -- that
7 the eyewitnesses and the other witnesses had gone through
8 a trial with a judge and jury, correct?

9 A. It was significant to me, yes, sir, at the time.

10 Q. I take it part of the significance was that they had maintained
11 their story in front of a judge and jury and subject to
12 cross-examination by capable defense counsel, is that part
13 of what your thinking was?

14 A. Yes, sir.

15 Q. It's also been suggested to you, sir, that by some of my
16 learned friends, that if you had spoken to Mr. Chant and
17 Mr. Pratico and others, that you -- that might have lead
18 you to discover that they had lied. But I would ask you
19 if you agree -- would agree as well that that's based on
20 the premise that they would have changed the story that
21 they gave some few days earlier, a story that they had
22 maintained more or less for some months before that.

23 Would you agree with that?

24 A. That's my feeling about it, yes, sir.

25 Q. And indeed, all you had in front of you, sir, I would suggest

E. ALAN MARSHALL, by Mr. Bissell

1 is to contradict them was the statement of James MacNeil.
2 The statement of somebody whom you found to be unreliable?

3 A. Yes, sir.

4 Q. Is that correct?

5 A. That's correct, sir.

6 Q. And who Sergeant McKinley found to be unreliable?

7 A. Yes, sir.

8 Q. And when you prepared your report, you had the assessment of
9 Sergeant Smith in front of you that said he was quite ready
10 to admit he was lying, is that correct? James MacNeil
11 said that?

12 A. In Smith's report?

13 Q. Yes.

14 A. Yes, I had it before me when I prepared my report.

15 Q. And would you look at Mr. Smith's report. At page 203 of
16 volume 16.

17 COMMISSIONER POITRAS:

18 What page is that again?

19 MR. BISSELL:

20 203.

21 BY MR. BISSELL:

22 Q. In the area of remarks. And:

23 This subject was inter-
24 viewed after the examination
25 and on a number of occasions
was quite ready to admit that
he was lying and that he was

E. ALAN MARSHALL, by Mr. Bissell

1 only "joking" when he said
2 that EBSARY had stabbed
 SEALE.

3 Do you see that?
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E. ALAN MARSHALL, by Mr. Bissell, by The Chairman

1 A. Yes, sir.

2 Q. That was the evidence, the material that you had in front
3 of you, when you prepared your report. Is that correct?

4 A. I had this before me when I prepared the report. Yes, sir.

5 Q. Thank you, sir.

6 MR. BISSELL:

7 Those are all the questions that I have.

8 BY MR. CHAIRMAN:

9 Q. Just one thing before, Mr. Marshall. H Division, does that
10 include all of Nova Scotia?

11 A. Yes, it does sir.

12 Q. And you were the Detective Inspector in charge of the
13 entire province, from -- for the investigations by the
14 R.C.M.P.?

15 A. Oh, no sir.

16 Q. You weren't?

17 A. No. But my mandate covered the province. That's why it's
18 Detective Inspector H Division. In other words, any senior
19 officer if he felt that he needed my services would get them.

20 Q. All right. You say that you had been called in by your
21 superior officer and asked to come to Sydney to check on the
22 truthfulness of a statement that had been made by Jimmy
23 MacNeil?

24 A. Yes, sir.

25 Q. Ordinarily, for that kind of work, would a -- would you take

E. ALAN MARSHALL, by The Chairman

1 | it upon yourself or would you send a Constable to check
2 | on that?

3 | A. Well, he told me to go, sir, with respect.

4 | Q. He told you to go?

5 | A. Yes, sir.

6 | Q. Would that indicate to you that this was a -- that this
7 | was not a routine --?

8 | A. This was not a routine case, no.

9 | Q. All right. And it would have -- And you would be expected
10 | to treat it as such?

11 | A. As --Yes, My Lord.

12 | MR. CHAIRMAN:

13 | That's all. Thank you very much, Mr. Marshall. We stand
14 | adjourned until December 7th.

15 |
16 | INQUIRY ADJOURNED AT 2:46 o'clock in the afternoon on the 19th
17 | day of November, A.D., 1987

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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 19th 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