

RG94
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418

**ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION**

Volume 39

Held: January 13, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

Before: Chief Justice T.A. Hickman, Chairman
Assoc. Chief Justice L.A. Poitras and
Hon. G. T. Evans, Commissioners

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
Orsborn: Commission counsel

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:
Counsel for Donald Marshall, Jr.

Mr. Michael G. Whalley, Q.C.: Counsel for City of Sydney

Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre

Mr. Donald C. Murray: Counsel for Mr. William Urquhart

Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for
Donald MacNeil estate

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. Al Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
MacAlpine

Mr. Charles Broderick: Counsel for Staff Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
for Sgt. Wheaton and Insp. Scott

Mr. Guy LaFosse: Counsel for Sgt. H. Davies

Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for
the Union of Nova Scotia Indians

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black
United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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EXHIBIT LIST

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>	<u>Volume</u>
92	Four pages of Mr. Smith's handwritten	6833	37
93	Mr. Smith's record of polygraph examinations	6833	37
94	Copy of Donald L. Burgess' job description dated 1983	7134	38
95	A-5 with related notes and RCMP correspondence	7150	38
96	Copies of pages of Sgt. Cole's notebook	7225	39
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1 JANUARY 12, 1988 - 9:30 a.m.

2 BURGESS, DONALD L., still sworn, testified as follows:

3 EXAMINATION BY MR.. PUGSLEY

4 Q. Mr. Burgess, you first became a reader when? What year?

5 A. '58 or '59, sir.

6 Q. And how did one become a reader in 1958 or 1959? Did you
7 apply for the position?

8 A. No, just a vacancy come open and I was asked if I would be
9 interested and I said I would.

10 Q. At the time you were doing what? Highway work in Halifax?

11 A. No, sir, I was in Antigonish detachment.

12 Q. Doing highway work?

13 A. No, detachment work, sir.

14 Q. Detachment work right. Did you take any training at all
15 before you became a reader?

16 A. No, sir.

17 Q. And then at some point in time you received these guidelines
18 that were introduced yesterday as Exhibit #94.

19 A. Yes, they were published, they were in a book that...

20 Q. Do you have a manual, do you?

21 A. Yes.

22 Q. Were those guidelines in existence when you became a
23 reader?

24 A. I'm not sure, sir.
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Q. But if they did not, at some time prior to 1971, they came into existence and you read them.

A. The date is on the bottom of that, sir.

Q. The date on the bottom of this is 1983.

A. Well, they could have been out before '71 and they may not have. I'm not sure.

Q. Was there anything in these written guidelines that was different than your understanding of what your job was?

A. I'm not sure, sir.

Q. Well, in particular, Exhibit #94 under Function E, Item 3, "Checking that investigational reports are thorough and that they contain information needed to base a charge on or support a decision relevant to the charge." Was that, did you understand that was always one of your functions?

A. Yes, sir.

Q. You said yesterday that you have, as I understand it, you have no recollection of seeing Inspector Marshall's report in your capacity as a reader in 1971.

A. Yes, sir.

Q. Have you made any attempt to ask questions of those who were readers in 1971 whether any one of them had, in fact, read Marshall's report?

A. There's nobody else around now that was here then, sir.

Q. I see. You indicated, I think yesterday, there were five or six

1 readers in '71?

2 A. Yes, sir.

3 Q. Has any attempt been made to determine whether or not
4 those who were there in 1971, even though they may have
5 left the force, whether they in fact had read Marshall's
6 report?

7 A. Not by me, sir.

8 Q. Or by anyone else?

9 A. Well, I wouldn't say that. Now maybe Inspector Murphy or
10 Corporal Grant did.

11 Q. I wonder if we can at some point in time, our friends could
12 advise us as to whether or not that examination had been
13 made and, if so, what results it produced?

14 MR. PRINGLE

15 Certainly we've checked for persons with respect to the telex that
16 exists in Volume 16, page 90, and I've had no success there,
17 obviously. And I think some inquiries have been made to find
18 out where some of those readers are and we'll make further
19 inquiries.

20 MR. PUGSLEY

21 Thank you.

22 BY MR. PUGSLEY

23 Q. Turning to the report, which is found at page 204, and you
24 had an opportunity of reading this again last night, did you?
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A. Yes, I did, sir.

Q. If you would turn to page 204, which is the first page of Inspector Marshall's report. The report after the introductory comments in the first three paragraphs appears to be divided into work that he performed on or about the 17th of November until at page 207 he goes into work that was performed on the 23rd of November. Is that your understanding?

A. Yes, sir.

Q. And if one checks Eugene Smith's polygraph report, it's evident that he carried out that polygraph on the 23rd of November and that certainly is the inference one takes from Paragraph 8 of page 207 of Marshall's report.

A. Yes, sir.

Q. So that the work that was carried out up until Paragraph 8 was work carried out before Smith arrived on the scene.

A. I would assume that, sir, yes.

Q. That's the way I took as well.

A. Yeah.

Q. And under the heading "November 17, 1971," Paragraph 4, Inspector Marshall writes:

From the outset of our investigation, it was apparent the use of a polygraph would be extremely useful.

Did you note that comment?

1 A. Yes, sir.

2 Q. And then if one goes to page 205, apparently on or about the
3 17th of November and before Eugene Smith arrived on the
4 scene, Inspector Marshall, as he says in the second sentence
5 in Paragraph 5:

6 We interviewed MacNeil and it was obvious by
7 his demeanour and speech that he has
8 subnormal intelligence and is slightly mental.

9 When you read that for the first time, did it occur to you that
10 perhaps MacNeil would not be an appropriate subject for the
11 polygraph in view of those comments?

12 A. Yes, it did, sir.

13 Q. Yes, and indeed, when you read that, did it occur to you that
14 the comment that Inspector Marshall said that the use of the
15 polygraph would be extremely useful was not a comment that
16 applied to MacNeil?

17 MR. PRINGLE

18 Well, with respect, this witness is not trained in polygraph use
19 and I think he's testified to that effect and those questions were
20 put to the polygraph operator when he was on the stand the last
21 few days and I fail to see how it's relevant to put them to this
22 witness, who had detachment training and reading, reader
23 training.

24 MR. CHAIRMAN

25 Well, he has told us his, that under the terms of his employment,

1 he is required to check that investigational reports are thorough
2 and that they contain the information needed to base a charge or
3 support a decision.

4 MR. PRINGLE

5 Yes, My Lord.

6 MR. CHAIRMAN

7 It seems to me that the observation, and I take that as an
8 observation of this witness in his capacity as a reader, not as an
9 expert.

10 MR. PRINGLE

11 Fine, My Lord.

12 MR. CHAIRMAN

13 In that field.

14 MR. PUGSLEY

15 That's all I intended, My Lord, from the question.

16 BY MR. PUGSLEY

17 Q. So that Inspector Marshall's comments of the use of the
18 polygraph would be extremely useful would not appear to
19 apply to MacNeil.

20 A. Well, I really don't know what he meant, sir, but I see, we
21 usu...they usually leave it up to the polygraph examiner to
22 decide if a person is...

23 Q. Yes. A couple of sentences later in Paragraph 5, Inspector
24 Marshall goes on to say:
25

1
2 Because we were certain that MacNeil's account
3 of the altercation insofar as it concerned Ebsary
4 allegedly stabbing Marshall was a figment of his
5 imagination, we did not immediately question
6 him or take any further action with respect to
7 MacNeil at this time.

8 In view of that conclusion reached by Marshall before Smith
9 came on the scene some six days later, did you not consider it
10 rather odd that they proceeded with a polygraph examination
11 when Marshall had concluded that the stabbing was a figment
12 of his imagination?

13 MR. PRINGLE

14 Well, again, I hate to rise, but this witness had not read that
15 report in 1971.

16 MR. CHAIRMAN

17 It's not dated. Because I understand from this witness
18 he has not read the report or seen it until recently.

19 MR. PUGSLEY

20 Quite so, My Lord.

21 MR. CHAIRMAN

22 What you're looking for now, I gather is his opinion as a reader,
23 having read this last night and probably on one or two occasions
24 recently.

25 MR. PUGSLEY

That is all that I'm seeking, My Lord. That's quite right.

BY MR. PUGSLEY

1 Q I'll just rephrase the question, Mr. Burgess. Do you presently
2 not consider that it was unusual for the polygraph to proceed
3 at all in view of Marshall's conclusion that this story was just
4 a figment of MacNeil's imagination?

5 A. Yeah, I assume he was just trying to confirm his reasoning or
6 his thoughts.

7 Q. Through the polygraph.

8 A. Yes, sir.

9 Q. I see.

10 MR. CHAIRMAN

11 While you're still on that point, Mr. Pugsley. Mr. Burgess, if you
12 had been given this report in, when it was prepared by Inspector
13 Marshall in December '71, as it come to you in the normal
14 course of events as a reader, would you have made any
15 notations or made any inquiries with reference to the comments
16 of Inspector Marshall concerning the, what he, the demeanour and
17 level of intelligence of MacNeil?

18 MR. BURGESS

19 A. It's awful hard to say 16 years after the fact when now I
20 know that Marshall wasn't guilty and that witnesses lied as to
21 what I would think back in those days. I really don't know,
22 sir.

23 MR. CHAIRMAN

24 Well, forget the Marshall report for a second, Inspector Marshall's
25

1 report. In your capacity as a reader and now as a very senior
2 reader, is it part of your responsibility when reading a report of
3 this kind to query or point out any loose ends or ask for any
4 explanations that you feel are necessary to make the report
5 complete?

6 MR. BURGESS

7 A. Yes, it is, sir, but as far as polygraph, it's pretty well left to
8 the polygraph operator as to whether or not the person is
9 suitable for a polygraph examination. It's not something that
10 we go back and say...

11 BY MR. PUGSLEY

12 Q. In your capacity as a reader, did you not consider it unusual
13 that Inspector Marshall thought so little of MacNeil that he
14 didn't even question him or take a statement from him? A
15 man who says he saw another man commit a murder,
16 Inspector Marshall didn't even bother taking a statement
17 from him. Did you not consider that unusual?

18 A. Well, reading the report now, I do.

19 Q. Yes, quite. And if you had read this report in 1971 or if this
20 report had just come across your desk today, would you not
21 point this out as being a loose end or something unusual in
22 writing to the author of the report?

23 A. It's awful hard to say, sir. I know what happened in this case
24 now and it's difficult to read and figure out what you would
25

1 do in similar circumstances. I'm really trying to help and I'm
2 trying to be as honest as I can. I'm not trying to evade the
3 question. I just don't know.
4

5 Q I appreciate that. I guess my astonishment is that a man goes
6 down to Sydney to investigate or review a matter where an
7 independent witness comes forward and says, "The man who
8 was convicted of murder didn't do it all. Another man did it.
9 I was with the man in the park who did it." And that
10 investigator thinks so little of this independent witness that
11 he does not even question him, except to interview him,
12 whatever that may mean. But he does not even question him
13 or take...

14 MR. PRINGLE

15 I'm not sure if this is a statement of argument or a question.

16 MR. PUGSLEY

17 Well, it's a...

18 MR. CHAIRMAN

19 Well, it's a combination of both, I think, to help this witness
20 understand what Mr. Pugsley is leading to.

21 MR. PUGSLEY

22 Thank you, My Lord.

23 BY MR. PUGSLEY

24 Q Don't you think that's rather extraordinary?

25 A. I don't know, sir.

1 Q You say you don't or don't know?

2 A I do not know, no.

3 Q You do not know, I see, okay. Except for any
4 communications you've had with your solicitor, has this
5 report been the subject of discussion among the readers who
6 are presently employed by the RCMP in Halifax?

7 A Not in the recent past, anyway, sir.

8 Q You haven't reviewed this matter with the other readers and
9 say, "Look it, here's a report that a reader should make a
10 comment on if it was presented to him afresh."

11 A No, I didn't, sir.

12 Q Or, to the best of your knowledge, that has not been done in
13 the department.

14 A I don't know, sir. I just, I didn't find out I was coming until
15 yesterday.

16 MR. PUGSLEY

17 Thank you. That's all the questions I have.

18 MR. MURRAY

19 No questions on behalf of William Urquhart.

20 MR. BARRETT

21 No questions.

22
23 EXAMINATION BY MR. PINK

24 Q Sergeant Burgess, my name is Darrel Pink and I represent the
25

1 Attorney General's Department and I'd just like to ask you
2 some questions about the procedures relating to transmittal
3 of reports to the A.G.'s department. What type of reports
4 were forwarded to the Attorney General's Department in the
5 late sixties, early seventies?

6 A. Anything of interest that, newsworthy, anything that the
7 Attorney General's Department may have been contacted on,
8 all fatal accidents, any murders, of course, or serious rapes,
9 more serious types of offences.

10 Q. At that time, the RCMP was doing serious crime investigation
11 in all of the province except the cities of Halifax/Dartmouth
12 and Sydney, am I correct?

13 A. That's correct.

14 Q. And serious crime investigations would include murder,
15 attempted murder, rape, attempted rape, and that type of
16 offence?

17 A. Yes, sir.

18 Q. So all those reports would go to the Attorney General's
19 Department.

20 A. Yes, except now there's always the odd one that is reported
21 that when we get it, it sounds like a serious offence when it
22 begins and it turns out that there was nothing to it, we
23 wouldn't bother sending that over to them.

24 Q. Sure. So reports regarding serious offences and serious crime
25

1 investigation went to the Attorney General's Department.

2 What other types of reports went to the Attorney General's
3 Department?

4 A. It's hard for me to recall then but I'm just saying what goes
5 now and that's just what it says. All fatal accidents go, for
6 example. Anything that the Attorney General's Department
7 has been contacted on and they request us to look into it.
8 Anything that's newsworthy that may, or come before the
9 house or anything like this, we send that over.

10 Q. And now you're talking about criminal matters.

11 A. Oh, yes, that's all we deal with.

12 Q. And you had no involvement and the readers had no
13 involvement in the administrative matters of the RCMP.

14 A. No, sir.

15 Q. Was there any decision-making as to what report went to the
16 Attorney General's Department. In other words, did
17 somebody say, "Send this report over or don't send this one."

18 A. Yes, well, the individual reader would make that decision or if
19 he couldn't, he would go to his superior. There was a staff
20 sergeant in charge. And if he couldn't, he would go to the
21 criminal investigation branch officer.

22 Q. Were relations with the Attorney General's Department solely
23 through "H" Division in Halifax or would the individual
24 subdivisions also communicate with the A.G.'s Department?
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A. No, all through...

Q. All through...

A. 99% through, there may be something, but...

Q. So when; you were a reader...

A. But basically through "H" Division.

Q. So when you were a reader in Truro, you didn't communicate directly with the Attorney General's Department.

A. No, sir.

Q. That would all be funnelled through "H" Division.

A. Yes, sir.

Q. And was there any policy or criteria which determined what report went? You said that somebody made a decision but what was the basis for that decision?

A. Just the contents of the report, sir.

Q. Now you told Mr. Pugsley yesterday afternoon that there was a review process, and I just didn't quite follow you. Let's assume that there is a report completed by an investigator, a sergeant in the field who is carrying out an investigation. What happens to that report?

A. Now things have changed a bit over the years. You want me to back...

Q. I'd like to try and...

A. To '71?

Q. I'd like to try as best you can to identify it in 1971?

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A. Well, the investigator would, a lot of times was a constable or a corporal with a sergeant in charge or staff sergeant in charge, it depends on the size of the detachment. The investigator would put in his report the man in charge of the detachment or unit would review it and then he would, I'm not sure if subdivision readers were there at that time or not. But if they were, they'd send it into the subdivision. They would review it and then send it in to division headquarters.

Q. And when they sent it to division headquarters, who was it directed to?

A. Well, the officer in charge, the criminal investigation branch officer.

Q. So it would go to the C.I.B. officer.

A. Not really.

Q. Okay, that's my next question. In reality, although it was directed to the C.I.B. officer, whose desk did it land on?

A. Okay, first it would come into our records management section. They keep all our files. And if it was a new report, they would open a file and then send it up to the readers. If it was an old report, they'd put the new correspondence on the file and send it up to the readers.

Q. The record department, that was also in the RCMP headquarters on Hollis Street?

A. Yes, sir.

1 Q. So it would come to them, they would send it to the readers.

2 A. Yes, sir.

3 Q. And what did the readers do with it?

4 A. Well, they would read it to see, peruse it to see if it followed
5 policy and if the investigation was done properly.

6 Q. Assume that it did not comply with the policy in terms of, in
7 the thoroughness or the content didn't quite comply with
8 your rules and regulations, what was done with it then?

9 A. A memo was written back to the unit asking why it wasn't
10 done or if it was done and they forget to mention or...

11 Q. That memo was generated by the reader?

12 A. Yes, sir.

13 Q. Without the C.I.B. officer seeing it?

14 A. It would be under his signature and would go into him for
15 signature.

16 Q. Okay, but he probably wouldn't review the report. He would
17 reply on the reader to do that.

18 A. Yes, except in very serious cases or if we asked a lot of
19 questions, he would likely go through the report to make sure
20 that what we said was right. I really don't know.

21 Q. So if it wasn't satisfactory, that memo was generated and it
22 was sent back to the field?

23 A. Yes, sir.

24 Q. They would follow up, I would assume they would follow up
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and then it would come, follow the same route back?

A. Yes, sir.

Q. Now assume that the report is satisfactory, it does comply with the policies and procedures, what then happens to it?

A. Well, if it was one that supposed to go to another department, we would prepare correspondence and send it or we would stamp it, like we send stuff to the Motor Vehicle Branch on accidents. We used to send correspondence to the Liquor Commission. We don't very often now. And, of course, a lot of material goes to the Attorney General's Department.

Q. The procedures that you've just described for me as they were in place in 1971, have they changed appreciably between then and now?

A. The way we handle the files are done a little different, yes.

Q. Again, focusing on the 1971 period, the stamp that you've referred to, can you explain that to us? What was that stamp and where would it go?

A. Well, for example, the Attorney General, it would say "Deputy Attorney General forwarded" and then a place for the date and then a place at the bottom for the officer in charge's signature.

Q. And did that go on the original and on all the copies or just on a copy?

A. No, it would go on the copy that was going to the Attorney

1
2 General Department, and if that's the only place it was going,
3 we'd put the other copy on the file and put a stamp on the
4 file, on the file copy.

5 Q. So the filed copy, the copy that remained in the permanent
6 record of the RCMP would show the distribution of that
7 report.

8 A. Yes, sir.

9 Q. And if it went to the Motor Vehicle Branch or the Attorney
10 General's Department or the Liquor Commission, it would
11 show that on the original in your file.

12 A. Yes, sir.

13 Q. And it was the readers who were responsible for actually
14 doing that.

15 A. Yes, sir.

16 Q. Now you also said yesterday, I believe, that sometimes it
17 wouldn't just be the stamp, there would sometimes be a
18 memo or a covering letter generated.

19 A. Yes, sir.

20 Q. What determined when it was just a stamp or when a letter
21 was generated?

22 A. Routine matters were more, were stamped more often than
23 something that was a little more serious than, when it was a
24 little more serious, we usually put a little forwarding memo
25 on with a comment.

1 Q. So there might be some explanation or commentary in that
2 letter.

3 A. Yes, sir.

4 Q. "The forwarding memo" you call it.

5 A. Yes, sir.

6 Q. And is that on a separate piece of paper or is it just attached
7 to the bottom of the report or could it be either?

8 A. Mostly it would be a separate sheet of paper. Occasionally if a
9 report stopped quarter way down, it would be put on the
10 bottom. But that would be unusual.

11 Q. And, again, a permanent copy of that forwarding memo would
12 remain in the file of the RCMP.

13 A. Yes, sir.

14 9:50 a.m.

15 Q. That's the process. Was there any other way that documents
16 would be forwarded from the readers other than one of those
17 two methods?

18 A. I don't think so, sir.

19 Q. So can we assume that if Inspector Marshall's report had
20 come to the readers and was forwarded by the readers to the
21 Attorney General's Department that one of these two paper-
22 trail indicators would exist?

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

24 Q. Now, we heard some evidence yesterday or earlier in the
25

1 week, pardon me, from Mr. Wardrop, who indicated that he
2 may have delivered the report personally to the Attorney
3 General's Department.
4

5 MR. PRINGLE

6 That was his best recollection.

7 MR. PINK

8 Sorry, I didn't mean to misstate the evidence.

9 Q. But it was his best recollection that he personally took the
10 report to the Attorney General's Department. Would that
11 sometimes happen?

12 A. Yes, sir.

13 Q. I believe his evidence was, as well, that even though he might
14 have done that it would still fall into the normal procedure
15 for the readers to then transmit it appropriately. Is that your
16 understanding of what the...what would happen?

17 A. I would be surprised, sir, that we'd do that.

18 Q. Now, let me just refer you to what he said. And, I'm...it's one
19 question on page 6784 from Inspector Wardrop's testimony.

20 Q. Yes. But your evidence also was that even if
21 you delivered it by hand you would still expect
22 the readers to put it through the normal
23 distribution network.

24 A. Exactly.

25 Do you disagree with that?

1 A. Yes, I do, sir.

2 Q. So, the...is it a fair inference from your testimony that because
3 there is no record of transmittal the report of Inspector
4 Marshall was not forwarded by the readers to the Attorney
5 General's Department?

6 A. Yes, sir.

7 Q. Sergeant Burgess, a couple of questions about timing. The
8 report would come to the readers from the record
9 department. How long would the readers have to review the
10 report?

11 A. Only as long as it took them. They would have, you know,
12 they would get fifty or sixty files and they'd just go through
13 them as they could.

14 Q. Okay. Would a report ever go directly from the records
15 department to the CIB officer?

16 A. Oh, yes, certainly.

17 Q. What kind of situations would...in what kind of situations
18 would that occur?

19 A. Maybe somebody would ask about something and he was
20 curious about a certain case that he wanted and he could tell
21 him "When that report comes in, may I see it?"

22 Q. And how would he know that it had arrived?

23 A. Oh, you know, he would tell the records that, "When that
24 report comes in I want to see it."
25

1 Q. Okay. I'd like to ask you then about the report that was
2 prepared by Mr. Marshall, by Superintendent Marshall, in this
3 particular situation, or SubInspector Marshall in this situation.
4 I believe you indicated yesterday that his office was also in
5 the same general area.

6 A. My recollection it was somewhere in the same building, yes.

7 Q. And, would the report that he prepared, the investigative
8 report that he prepared, follow a similar route to the one
9 you've already described?

10 A. I don't know. I saw a transmittal slip from Inspector
11 Marshall to the CIB officer so that would go to...would go to
12 the CIB officer I would think.

13 Q. Now, just make sure...look at page 201 in Volume 16. Is that
14 the transmittal you're referring to, because that's from the
15 polygraph?

16 A. No, no, that's not the one I was thinking...

17 Q. Sir, can you just look through those pages and see if you can
18 identify that transmittal that you think you saw?

19 A. I'm sure I saw it, sir, but I can't...I can't locate it here.

20 Q. If anybody could assist me I'd appreciate, because I'm not
21 sure that there is such a thing. There is on the top of
22 Inspector Marshall's report just a direction to the CIB, but I
23 don't see anything that directs it to the CIB officer.

24 A. I must have been mistaken, sir, I thought I saw one
25

1 somewhere but I guess I didn't.

2
3 Q. Okay. So, my question then was what would the normal
4 routing for an investigative report prepared by Inspector
5 Marshall be?

6 A. I'm not sure. He didn't do an awful lot of investigations if my
7 recollection... He may have taken into the CIB officer by hand
8 and to discuss it with him or he may have sent it down to
9 records. He could have done it either way.

10 Q. Would you expect that an investigative report by somebody
11 like Inspector Marshall would still be reviewed by the
12 readers?

13 A. Oh, yes.

14 Q. So, that you would expect the routing that you've already
15 described to be followed.

16 A. Yes, I would think so unless it was taken direct into the CIB
17 officer and he just kept it and took it by hand like he said.

18 Q. But it's your view that there would still be a function for the
19 readers even for an investigative report prepared by
20 somebody of the seniority and stature of Inspector Marshall.

21 A. Normally all reports or ninety-five to ninety, you know, a
22 very high percentage of all...of reports go through us.

23 Q. Now, that was...I wanted to come back to the question of
24 timing again. You say you might have fifty or sixty reports on
25 your desk and how long would it take you to go through, can

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you give any indication of how long it would take for a report to arrive on your desk until it left your desk?

A. Well, again it depends on the seriousness of some of them, like...which are very straightforward it would only take ten or fifteen minutes. Some you may have to spend a few hours on.

Q. Okay. And what time lag would there be from the arrival until you got to spend the ten or fifteen minutes?

A. Well, you go to work in the morning and you start working on your files and...

Q. My question probably wasn't clear enough. I'm trying to understand how long it would take from the time a report arrived in the readers' office until it left the readers' office and went to the CIBO?

A. Oh, normally the same day or the following day.

Q. So, one could...

A. Within one or two days.

Q. ...expect that if Inspector Marshall's report is dated the 21st of December, if it came to the readers can you give any approximation of when it might...might be ready to leave the readers?

A. That's a rather awkward time, 21st, right around Christmas and that could have been...it may have been after Christmas, I don't know, before... By the time, if it went to records management and they opened the file and by the time they

MR. BURGESS, EXAM. BY MR. PINK

1 opened the file and sent it up to us because of the particular
2 time it could have been after Christmas.

3
4 Q. The...am I correct in assuming that the problem of the
5 Christmas-New Year's period is the same in the RCMP as
6 everywhere else, that things just kind of slow down and
7 everything takes a little longer to get through the system?

8 A. Yes, sir.

9 Q. And that one wouldn't necessarily expect that if Inspector
10 Marshall's report was dated and prepared on the 21st of
11 December that it arrived on Mr. Wardrop's desk on the same
12 or the next day.

13 A. It may or may not have, yes.

14 Q. But simply because it's dated the 21st doesn't mean it would.

15 A. No, that's right, sir.

MR. PINK

16 Those are my questions, thank-you.

MR. CHAIRMAN

17
18 Mr. Ross.

EXAMINATION BY MR. ROSS

19
20 Q. Just one or two questions, please, Mr. Burgess. My name is
21 Anthony Ross. I'm going to ask you some questions on behalf
22 of Oscar Seale. Now, I take it you had an opportunity to quite
23 closely review the report of Sub Inspector Marshall.

24 A. Yes, sir.
25

1
2 Q. And, I'm asking you to turn please to page 207. I'm referring
3 to paragraph 9 in the conclusions. Consistent with the terms
4 of reference of your job description and, in particular,
5 function number 3 checking that investigations or reports are
6 thorough or that they contain information needed to base a
7 charge on or support a decision relevant to the charge. With
8 respect to that function would you agree with me that from
9 the reading of the report there is nothing, absolutely nothing
10 in the report, to sustain the conclusion that "Marshall and
11 Seale entered Wentworth shortly before midnight intent on
12 rolling somebody."?

13 A. I don't know why he came to that conclusion.

14 Q. But it's not supported in the report, is it?

15 A. Not...no, I guess not, sir.

16 Q. Sure. And further "That Ebsary and MacNeil somewhat
17 intoxicated happened to walk through the park and were
18 accosted by Marshall and Seale." Again, there is nothing to
19 support that conclusion, is there?

20 A. No, I assumed he got that from the city police, sir.

21 Q. Yeah, but from the reading...you see I'm looking at it through
22 your eyes as a reader.

23 A. Yes.

24 Q. I recognize your job function.

25 A. Okay.

1 Q. And my understanding is that you will read this report and
2 the conclusions would be consistent with the...whatever else is
3 in the report.

4 A. Yes, sir.

5 Q. Yeah. And further,

6
7 "That their attempts were not successful and
8 following the altercation a violent argument
9 ensued between the two attackers culminating in
10 Marshall stabbing Seale and then inflicting a
11 superficial wound on his own forearm to divert
12 suspicion from himself before he made the
13 pretence of summoning aid for Seale."

14 There's nothing in the body of the report to support that
15 conclusion, is there?

16 A. I think maybe he'd get that from...from...from Pratico's
17 evidence.

18 Q. Just from...just taking directly out of Pratico's evidence before
19 the Court.

20 A. Yes, sir.

21 Q. And as a reader recognizing that this, according to Sub
22 Inspector Marshall, as given on page 1, the concluding line of
23 paragraph number 3 that this was "a thorough review of the
24 case" wouldn't you agree that a thorough review requires
25 more than just relying on something that has already been
before the court?

A. Oh, every investigation certainly you...if he was doing a

1 reinvestigation he certainly should have interviewed all the
2 witnesses and done a lot more.

3
4 Q. And you would agree with me that back in 1971 attempted
5 robbery was classified as a serious crime.

6 A. Yes, sir.

7 Q. And as such if there was a conclusion that there was
8 attempted robbery there should have been something to be
9 referred to the prosecutor to determine whether or not
10 charges should be laid for attempted robbery, wouldn't you
11 agree with me there?

12 A. Well, sir, it happened in the City of Sydney. I don't know,
13 they likely maybe mentioned it to the city...Sydney City
14 Police.

15 Q. But it should have been mentioned to somebody.

16 A. I don't know.

17 MR. PRINGLE

18 Just in fairness to the witness there is a reference on page
19 204 in paragraph 3 to something about a robbery. Just too look at
20 the question in context, in MacNeil's evidence.

21 MR. ROSS

22 I don't understand the nature of your objection. I was just
23 stating...

24 MR. PRINGLE

25 I just think the question should be put forward to the

MR. BURGESS, EXAM. BY MR. ROSS

1 witness. We all know that there's been lots of comment and about
2 this sort of thing and Inspector Marshall testified and so on, so I
3 don't think it's a big point. But in fairness to the witness if you're
4 going to say to him there's nothing in the report to indicate that
5 there was a robbery, you should look to paragraph 3 on page 204
6 where indeed there is a reference to Jimmy MacNeil and Ebsary's
7 statements in the reference to an altercation and a robbery.
8

MR. ROSS

9 I note what you say and I thank-you.
10

11 Q. However, Mr. Burgess, you'd agree with me that a substantial
12 amount more work should have been done to support these
13 conclusions?
14

15 A. Well, certainly.
16

MR. ROSS

17 Very good. Thank-you kindly, sir. No more questions.
18

MR. CHAIRMAN

19 Mr. Wildsmith.
20

EXAMINATION BY MR. WILDSMITH

21 Q. Just a couple of questions. My name is Bruce Wildsmith. I'm
22 here on behalf of the Union of Nova Scotia Indians. I noted
23 yesterday in your testimony, Mr. Burgess, you indicated that
24 the thoroughness of the review could be affected by a variety
25 of factors, is that a fair statement?

A. I don't recall saying that but there...there is, yes.

1 Q. Well, for example, there was some discussion about whether
2 if you are working the work of the RCM as opposed to the
3 Sydney Police Department a more thorough review might
4 have been undertaken. Is that a fair statement?
5

6 A. I...I don't know, sir.

7 Q. Well, I'm just reading from the transcript yesterday at page a
8 hundred, sorry, 7173, and you say something like if
9 something happens in your area you do put a little more
10 attention to it than you do when you're assisting somebody
11 else.

12 A. I think what I was trying to impart there, sir, was that if
13 this...if this murder had been investigated by us initially then
14 when it came in to us in a report we would expect complete
15 statements, autopsy reports, scenes of the accident...of the
16 thing, photographs and everything.

17 Q. Perhaps I'm misunderstanding you, but is it fair to conclude
18 that you would have expected the report from Inspector
19 Marshall to have been more thorough.

20 A. Well, from reading that report I assume, now I'm just
21 assuming, that he was...he went down to Sydney and did what
22 he was told to do and no more. If he was told to reinvestigate
23 he certainly didn't.

24 Q. Yes.

25 A. I understand now that he was, but I didn't know that and you

1 can't determine that from the report.

2 Q. Well, part of your function as a reader is to check the
3 thoroughness of the report that is done, is that correct?

4 A. That's correct.

5 Q. And, I also understood you to say yesterday that in
6 evaluating the thoroughness of the report one of the factors
7 you might take into account is how serious the offence was
8 that the report relates to. For example, if it was murder you
9 might pay more attention to it.

10 A. Well, it would take longer and you would expect more
11 information in it, yes.

12 Q. Yes. So, my point to you is that the thoroughness that you
13 would expect as a reader is a relative concept.

14 A. Yes. Yes.

15 Q. And there are a variety of factors that you might take into
16 account in deciding whether the report had really been
17 thorough enough.

18 A. Yeah, I guess.

19 Q. Yes.

20 A. Yes, sir.

21 Q. And the seriousness of the offence, you indicated yesterday
22 and you're indicating again today, would be one such factor.
23 Yes.

24 A. Yeah.

25

1 Q. And would the sentence of the person whose alleged crime
2 was being investigated would that be a factor as well?

3 A. I'm sorry, I didn't get the first of...

4 Q. The length of time that somebody was sentenced to spend in
5 prison and if somebody was sentence to life, if somebody was
6 sentenced to ten years, somebody was sentenced to one
7 month, would that make a difference in how thorough you
8 would expect the investigation to be?

9 A. Well, I suppose that would...that would...if somebody was
10 sentenced for life would be committing a much more serious
11 offence than somebody committing a...

12 Q. Yes, the two are certainly linked.

13 A. ...month. Yes.

14 Q. What about if the request for the reinvestigation had resulted
15 from an Inquiry by your own Minister.

16 A. Who do you mean by that, sir?

17 Q. The Solicitor General of Canada.

18 A. Ah...

19 MR. PRINGLE

20 I wonder if this is going to be relevant, My Lord. It is in the
21 area of hypothetical and...

22 MR. CHAIRMAN

23 There's certainly no evidence. Maybe you have evidence or
24 something you're aware of that Solicitor General...

25

MR. BURGESS, EXAM. BY MR. WILDSMITH

1 MR. WILDSMITH

2 No, I certainly don't. I certainly don't. And my...the point
3 that I'm interested in are what sorts of factors might influence
4 how thorough the report was that he would be reviewing. What
5 standards of expectations he would have...

6 MR. CHAIRMAN

7 Well, again there is some evidence that we...there is a memo
8 that indicated that Solicitor General Caplan.

9 MR. WILDSMITH

10 Yes. Not at the time of the Marshall report.

11 MR. CHAIRMAN

12 Not at this time, but asked for a comment and there seemed
13 to be some activities as a result thereof.

14 MR. WILDSMITH

15 Yes, My Lord. In Exhibit 95 there is a reference to Solicitor
16 General Caplan enquiring.

17 MR. CHAIRMAN

18 That's a fair question. How it relates to client is what's
19 causing me some concern.

20 MR. WILDSMITH

21 I'm coming around to that.

22 MR. CHAIRMAN

23 All right.

24 MR. WILDSMITH

25

1 Q. So, if the Inquiry had been initiated by the Solicitor General
2 of Canada might you have held to a higher standard of
3 thoroughness?
4

5 A. I...excuse me, I really don't know, sir. It depends what...if the
6 Solicitor General of Canada come down and said you are to
7 reinvestigate that murder I'm sure we would have done so, a
8 reinvestigation rather than...

9 Q. Yes.

10 A. ...what was done as a review. And I...

11 Q. Would the reader have ensured that a more thorough report
12 had been done than Inspector Marshall's in this case?

13 A. Well, if he knew that he was...Inspector Marshall was asked to
14 do a reinvestigation. But if the reader was satisfied that the
15 Attorney General asked Inspector Marshall to do a
16 reinvestigation he would also have queried him about
17 statements and...

18 Q. Okay. What about the degree of confidence that you would
19 have in the report writer? Would that influence how
20 thoroughly you reviewed the report?

21 A. I...it may, sir, I don't know. It shouldn't. You should take the
22 report as it is.

23 Q. I see. What about media attention to the issue that's under
24 reinvestigation?

25 A. Well, that...I don't know what the media...they don't get copies

1 of our report is what I'm trying to say.

2 Q. Yes.

3 A. It may put...may place a little higher priority on the
4 investigation than we would expect.

5 Q. Yes.

6 A. If it was more fully covered.

7 Q. Okay. And, for example, in Exhibit 95, which I believe is
8 under your signature concerning Solicitor General Caplan's
9 Inquiry this was initiated as a result of an interview on TV.

10 A. Yes, sir, yeah.

11 Q. Yes. And so media attention to an issue is something that
12 would influence your actions.

13 A. Yes, sir.

14 Q. You will agree with me that it's fair to say that if there was a
15 lot of media attention to an issue, the thoroughness that you
16 would expect would be of a higher standard.

17 A. I suppose that's fair to say.

18 Q. And is it also fair to say...

19 MR. CHAIRMAN

20 I defer to your expertise in Constitutional Law. Would the
21 Solicitor General have the authority to order reinvestigation of
22 a crime committed in the province, breach the Criminal Code of
23 Canada?

24 MR. WILDSMITH

25

1 Well, my question was really more about whether the Solicitor
2 General had expressed an interest in it. Now whether he had...

3 MR. CHAIRMAN

4 We'll leave that question for you and your students.

5 MR. WILDSMITH

6 Thank you.

7 BY MR. WILDSMITH

8 Q. So I think you're agreeing with me that there are external
9 factors that might influence how thorough the standard of
10 reinvestigation is that you would expect as a reader.

11 A. Yes, sir.

12 Q. Okay. And would you also agree with me that if the person
13 who was alleged to have committed this offence, the person
14 who was sitting in jail in this case, had been the son of some
15 high profile person in Nova Scotia that that might have
16 influenced how thorough your investigation was?

17 A. That's speculation but I suppose there would have been more
18 pressure put on us to.

19 Q. Thank you. And, therefore, you would have reviewed the
20 report a little more thoroughly?

21 A. Well, I don't know if I even saw the report, sir.

22 Q. Yes, but you would expect to review it a little more
23 thoroughly if the person was the son of a high profile Nova
24 Scotian?
25

1 A. Well, if he was, I'm sure if he was a son of a high profile Nova
2 Scotian, it would have had great media attention and...

3 Q. The two may have been linked.

4 A. And, yes, likely there would have been a more thorough
5 investigation on it.

6 Q. Thank you. Now in evaluating the thoroughness of the report,
7 do you think that racial factors should be taken into account?

8 A. In what way, sir?

9 Q. Well, for example, if the report was containing information on
10 somebody who is, shall we say, a French Canadian that some
11 concern might be paid to whether the investigating officer
12 was familiar with French and whether the discourse was in
13 French and had been properly translated.

14 A. Well, if he couldn't speak English, yes, it would have to be.

15 Q. So language could be an important factor.

16 A. Yes.

17 Q. And, indeed, in your Exhibit 94 dealing with special
18 requirements for readers, there's a reference to bilingualism
19 in Divisions A, C, and J.

20 A. Yes, sir.

21 Q. So if, for example, you were obtaining a statement or the
22 report was based on a statement from an Indian now, you
23 would expect to pay some attention to whether the Indian
24 properly understood English.
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A. Oh, yes, sir.

Q. And you would evaluate that in the report?

A. I don't know if it would come up in the report.

Q. Okay.

A. I think the investigator would, you know, if a person can't speak English, then he would get an interpreter.

Q. Well, if you were evaluating a report that was based on statements that were given by a variety of people, most of whom were Indians, would that not be the kind of question that ought to pop into your mind as a reader, whether the Indians giving the statements had properly understood what was going on?

A. From my knowledge of the Indians of Nova Scotia, I, any dealings, I understand they all speak English.

Q. I see. So you were satisfied that language isn't a problem.

A. Not to my knowledge, sir.

Q. Okay. I note under Exhibit 94, the first item under "Functions" is "Reviewing the reports to see if they're consistent with force policy." Could you tell us whether there is anything in the force policy then or now relating to taking racial factors into account?

A. I'm not really sure, sir. There is certainly something there about getting an interpreter if people don't understand English or don't understand what your question is.

1 Q. What about whether prejudice is a factor in the subject being
2 investigated?

3 A. How do you mean, sir?

4 Q. Well, for example, whether somebody may be making up a
5 story or somebody may be not coming forward and not being
6 truthful because of prejudice of a racial nature on the part of
7 that person. Is there any way that you can take that into
8 account?

9 A. I don't know how, I really can't follow you. I'm not too sure
10 of just what you mean.

11 Q. Okay, let me put it to you a different way. This
12 reinvestigation concerned a crime alleged by an Indian. Now
13 would you not think it appropriate to take into account in re-
14 examining the events that happened whether racial prejudice
15 played any role?

16 A. In the investigation?

17 Q. Yes.

18 A. I, I...

19 Q. The original investigation and the original conviction.

20 A. I don't think that even, you know, there was nothing in the
21 report to indicate that there was any prejudice, or I didn't see
22 anything.

23 Q. My point to you is that shouldn't somebody like yourself, a
24 reader, have that factor in mind in evaluating the
25

1 thoroughness of the review of the original investigation and
2 conviction?

3 A. I don't know, sir.

4 Q. I take it from that that it wasn't the kind of thing that you
5 would have thought of and that you would have done.

6 A. No, sir, not in 1971.

7 Q. Is there any reason to think that it's different today?

8 A. No, we, that is more or less left up to the investigators, not
9 something that we as readers go back and say, "Were you
10 prejudiced against this person?"

11 Q. So, to the best of your knowledge, there's no way that this is
12 taken into account today.

13 A. Not by the readers. It should be done by the individual.

14 Q. And not as a result of directions by the RCMP.

15 A. I'm not too sure just what their policy says, if it says anything
16 on that, sir.

17 Q. And if there is, it hasn't reached your attention.

18 A. Well, if it has, it may have reached my attention, I forgot
19 but, you know, it's just, we've got loads of books.

20 MR. WILDSMITH

21 Fine. Those are my questions. Thank you.
22

23 EXAMINATION BY MR. PRINGLE

24 Q. Staff Burgess, you spoke yesterday in your evidence about
25

1 the review procedures in Exhibit 94 that a reader performs of
2 investigative reports, correct?

3 A. Yes, sir.

4 Q. And you also gave evidence and in response to questions by
5 Mr. Spicer that there are audits performed with respect to
6 investigations in the field at least three times a year, correct?

7 A. More so now, but in those days, yes, sir.

8 Q. And there are more now.

9 A. Yes.

10 Q. More audits.

11 A. Yes, sir.

12 Q. In addition to that, sir, would there not be a review function
13 with respect to investigations at the detachment level by the
14 individual detachment commanders and so on?

15 A. Oh, yes, certainly, they, they're supposed to review all
16 investigations.

17 Q. And that would be ongoing?

18 A. Oh, yes, sir.

19 Q. You answered questions from Mr. Pink with respect to the
20 paper flow and so on. Do you understand, sir, that the paper
21 flow in this case with respect to the 1971 Al Marshall
22 reinvestigation review, wasn't the paper flow, in fact, at
23 initiation, it started with a phone call from the Attorney
24 General's Department?
25

1 A. Yes, sir.

2 Q. And do you understand, sir, that Inspector Marshall was then
3 directed verbally to go down to Sydney to look into the
4 matter?

5 A. That's my understanding of it now, sir, yes.

6 Q. And do you understand, sir, that it was in Mr. Wardrop's
7 evidence that he received the report from Al Marshall, that it
8 was handed to him.

9 A. Oh, I...

10 Q. Okay. Where in those circumstances would the opportunity
11 arise for the normal paper flow to come into existence?

12 A. Well, unless Superintendent Wardrop gave it to us or sent it
13 down to records, we wouldn't get it.

14 Q. I suggest, sir, that this was not a usual type investigation that
15 the readers would normally be involved in

16 A. Well, it's an unusual, yes, we don't go out and do
17 investigations like this.

18 Q. Would it have helped, sir, in your opinion, would it have
19 helped the whole procedure if the initial request from the
20 Attorney General's Department had been in writing?

21 A. It may, there would have been a paper flow then, that's...

22 Q. Exactly, there would have been a paper flow.

23 A. Yeah, and we would have a file.

24 Q. And a record kept.
25

1 A. Pardon me?

2 Q. Is it your testimony, sir, that you, as a reader in 1971, do not
3 recall receiving any requests from anyone in the Attorney
4 General's Department for a copy of Al Marshall's report or
5 anything about Al Marshall's report?

6 A. That's right, sir.

7 Q. And, to your knowledge, did any of the other readers receive
8 such a request?

9 A. Not to my knowledge.

10 Q. Now, sir, you've been here testifying for quite a period of
11 time and you've had a variety of questions put to you. When
12 did you first learn that you were going to appear at this
13 Commission?

14 A. I guess it was noon Monday they called and said that I'd
15 likely be called.

16 Q. Right. This may not be relevant to anything but your own
17 personal comfort, but I think it's important. How much time
18 did you have to be interviewed by a Commission counsellor or
19 anyone before you came on the stand yesterday?

20 A. Well, I talked to you...

21 Q. In the morning.

22 A. In the morning, and then I talked to Commission Counsel...

23 Q. At quarter to two yesterday afternoon.

24 A. Quarter to two for about 15 or 20 minutes or so.
25

1 MR. PRINGLE

2 Thank you very much.

3
4 EXAMINATION BY MR. SPICER

5 Q You indicated in a response to a question from Mr. Pringle
6 that a detachment officer would have responsibility for the
7 review of all investigations.

8 A. Yes, sir.

9 Q Would there be a detachment officer that would have had the
10 responsibility for reviewing Al Marshall's report?

11 A. No, sir.

12 Q You also indicated that it was your understanding that the
13 initiation of this whole process was by a phone call from the
14 Attorney General's office.

15 A. Yes, sir.

16 Q From where did you get that understanding?

17 A. Oh, I... just from hearing over the years. I can't say that I
18 knew that back then. I must have known back then because
19 I did some telex messages. I assume somebody told me that
20 he was going down.

21 Q Do you have any idea to whom the call was placed?

22 A. No idea, sir.

23 Q Bob Anderson, I think, has a recollection that he may have
24 called you to initiate that process, do you...
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A. I don't, certainly don't recall it.

Q. My friend asked you a question as to whether or not it would have been better if this process had started in writing from the A.G.'s Department as opposed to a phone call. And I think you indicated that it would have been, that there would have a paper trail.

A. Well, yes, but if a letter come, would come over from the Attorney General's Department asking for the investigation, we would have sent it down and we got it, and I presume we would, we would have sent it down for a file and then we would have delegated the file for the report.

Q. Would it not have been the practice that even if it came in by way of a phone call that somebody should have made a note of that and that would have started the same paper trail as if there had been a letter?

A. Well, I, normally when I get a phone call from the Attorney General's Department on anything, I make a note on the main file.

Q. And that would have started the same paper trail that a letter would have started.

A. That's right, sir.

Q. Would you have understood that to have been the practice of the other readers at the time?

A. I assume, I don't know.

1 MR. SPICER

2 Thank you.

3
4 EXAMINATION BY MR. CHAIRMAN

5 Q Staff Sergeant Burgess, I'm still having some difficulty in
6 understanding whether it is your opinion that the report of
7 Inspector Marshall is the kind of report which, in your view,
8 would have gone to a reader in 1971.

9 A. In normal circumstances, yes.

10 Q. In normal, but am I to conclude, then, that you are putting
11 this into a different category, that this was not a normal
12 circumstance?

13 A. Well, the difference being that Inspector Marshall, it's not like
14 coming from an outside detachment. He was right there in
15 the building and if, as Superintendent Wardrop said, he
16 delivered the report to him, then it bypassed us. It was a
17 little unusual.

18 Q. Ordinarily, would you have expected Superintendent Wardrop
19 to have left a copy of that report with a reader?

20 A. Yes.

21 Q. Even though it was handed to him by Subinspector Marshall?

22 A. Yes, sir, I would.

23 Q. Would you have, and even if that was not done, would you
24 have expected Superintendent Wardrop, regardless of what
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he did with the original report, to leave a copy in records?

A. Yes, well, it must have been left in records, sir.

Q. Are we entitled to assume that that is a firm irrevocable policy of the RCMP that everything you have eventually goes into records?

A. Yes.

Q. It is?

A. Yes.

Q. So we're therefore entitled to assume that a copy of this report did get into the hands of records?

A. Yes, sir.

Q. In your opinion, is this report of Subinspector Marshall of 1971 of the nature and kind which in your opinion would or should have been sent to the Department of the Attorney General of Nova Scotia?

A. Yes, sir, it is.

Q. Reading this report now, and I appreciate that you have not seen it until recently, and the reference to the thorough review that was required or conducted, would you have had any difficulty from reading this report in concluding that none of the persons referred to, and most of them, none of them except, had been interviewed by Subinspector Marshall?

A. Well, from what I know now, sir, certainly not.

- 1 Q. No, but from reading it? You're turning to it for the first time
2 and you'd never heard anything about it.
- 3 A. I would take it that he went down and did what he was told
4 to do and that's all he did. In other words, he was told to go
5 down and make a cursory review of the...
- 6 Q. Make a what?
- 7 A. A cursory, just a, not a detailed...
- 8 Q. But he uses the word "thorough".
- 9 A. Pardon me?
- 10 Q. He uses the word "thorough" here.
- 11 A. I know he does, but I think what he was saying, I can't know
12 what he was thinking, that he thought he did a thorough
13 review when he went over the evidence.
- 14 Q. Would you have accepted, as a reader, would you have
15 accepted that report upon reading it as a thorough review?
- 16 A. No, sir.
- 17 Q. Would you thereupon then have brought that to the attention
18 of your superior officer?
- 19 A. Taking that report just on itself and not knowing anything
20 else about it, like I say, I would have thought that he was told
21 to do just what he did and then, and that's all. And then if I
22 got the report, I would likely would have put a forwarding
23 memo on it or stamp on it to the Attorney General's
24 Department and sent it to, for signature to Superintendent
25

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1 Wardrop and if he then read it and found out that it wasn't
2 what he had asked Inspector Marshall, then he would have
3 come back to us.

4 Q. But would there have been any comment from you when you
5 sent it along for forwarding.

6 A. Likely not, sir. I'm trying to put myself in this position, that
7 I've never saw it before an I didn't know anything about it.

8 Q. Would the fact that you, as a reader, had been asked, this is a
9 supposition, but a reader had been asked to review the
10 report of a senior officer made any difference in your
11 approach or your comment then to Superintendent Wardrop?

12 A. It may, sir, it may, because you're reading a report of
13 somebody that's very highly qualified. But I don't know.

14 Q. Would you have put this report and the request in a category
15 of one of a very serious nature?

16 A. Yes, sir.

17 MR. CHAIRMAN

18 Thank you very much. That's all.

19 MR. MACDONALD

20 The next witness is not particularly long, I don't believe. Eugene
21 Cole.
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