

Oct 6th

87

Summary of Testimony

Date: October 6, 1987

Witness: RUDY POIRIER

Examination by: W. Wylie Spicer

Poirier was a neighbor of Pratico. He recalls sitting on steps of Pratico's house on Saturday after stabbing. Marshall went by, stopped and talked briefly about events of past evening.

Sometime in July Poirier gave a statement to the Sydney Police. Believes MacIntyre came to his house and asked him to come to station and give the statement.

-Only very general recall of events other than recorded in statement.

-No recall of pressure to change or alter statement by MacIntyre.

-Recalls Pratico's mental state as "in bad shape, nerves shot, holler and he'd run, made up stories, wouldn't believe what he said half the time because he was so doped up."

-No contact with defense or crown attorneys.

-Did not give Pratico's name to the police.

-Talked with Wheaton in 1982, no recall of details.

-Did not know Marshall prior to Saturday after incident, did not see Marshall again until trial.

On cross-examination Poirier added:

-No recollection of white volkswagon, no knowledge of where info about it came from.

-Not aware of number or time of court appearances by Pratico.

-Saw Pratico during Summer of 71, no recall of discussions with him

about giving evidence.

-Knew Marshall was an Indian when he saw him.

End Summary of Testimony of Rudy Poirier, October 6, 1987.

Summary of Testimony

Date: October 6, 1987

Witness: DR. M.A. MIAN

Examination by: W. Wylie Spicer

Dr. Mian, is Medical Director of the Cape Breton Hospital. He treated John Pratico since March '72 and has knowledge of Pratico's condition from Aug. '70 from his review of the records of the Cape Breton Hospital and Nova Scotia Hospital. Dr. Mian offered these medical opinions about Pratico:

-Pratico's mental condition in 1971 was such that he would have been a very unreliable witness.

-In 1982 Pratico was still unstable and not reliable.

-At present his condition has stabilized and he would be a reliable witness.

-His mental illness would not prevent him from recalling events which took place in 1971.

-Contradictory statements made in 1982 to Wheaton and family of Seale were consistent with his mental state.

-Medication may explain why Pratico was believable on the witness stand during his many appearances. In the formal structure of the courtroom Pratico would be more believable than face to face in the office.

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From Dr. Mian's testimony, the following may be able to shed light on Pratico's mental health history:

- Dr. Johns from Nova Scotia Hospital.
- Dr. Binny, who treated Pratico at C.B. Hospital in '70 & '71.
- Peter MacDonald, retired from Family court, social worker.
- Andy Arsenault, Social worker at C.B. Hospital, (deceased?)

Issue raised - Responsibility for psychiatrist raising issue of credibility if he knows his patient is a witness. At present the contact of Criminal Justice system with Mental Health is limited to an accused's ability to understand the process. Mian said he was never asked about Pratico's credibility, would have provided that info if requested by legal authorities, but would not volunteer it.

Mian also noted his knowledge of special needs of Indians in mental health and the reaction of an Indian to a stressful questioning as contrasted with the reaction of a non-Indian.

End Summary of Testimony Dr. M.A. Mian, October 6, 1987.

Summary of Testimony

Date: October 6, 1987

Witness: DR. M.A. NAQVI

Examination by: George W. MacDonald

Dr. Naqvi was the surgeon who operated on Seale twice as a result of the stabbing on May 28, 1971. Dr. Naqvi had no independent recollection of the events and with few exceptions confined his comments to an

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explanation of the City Hospital records made at the time.

-Cause of death according to Dr. Naqvi was massive blood loss which caused irreversible shock.

-Operations performed were desperation measures and had little chance of success from the outset due to condition of Seale on arrival.

-First had to wait and give fluids to try and raise some blood pressure for the operation.

-1st attempt to close wounds in abdomen, did colostomy, noted hematoma of abdominal artery did not deal with it because, 1. expected pressure of real lining of abdominal cavity to stop bleeding, 2. other damage needed to be taken care of first.

-2nd operation necessary because of continued internal bleeding, suture of abdominal aorta required opening chest to clamp artery and permit suturing.

-Notification of Medical Examiner is policy in these cases, Naqvi believes he would have done so but can not explain absence of notation that M.E. contacted.

-Possible the wound caused by 3 inch long knife. Possible to run 100 feet with injuries.

-Dr. Sandy MacDonald M.E. at that time.

-Dr. Robert Matheson, now retired, was hospital Pathologist and might have been the one to do a post mortem if ordered by M.E.

-Does not believe forensic pathologist could have determined where stab wound ended and scalpel incision continued cut.

-Believes knife went straight in with great force.

End Summary of Testimony, Dr. M.A. Naqvi, Oct. 6, 1987.

Oct 7th 87

SUMMARY OF TESTIMONY

Date: October 7, 1987

Witness: EDWARD MacNEIL

Examination by: David Orsborn

MacNeil joined the Sydney Police Department in 1955, spent 22½ years there before joining the Nova Scotia Police Commission where he is now employed. He was selected for the detective division in 1974 on the basis of seniority and received Ident training.

About the arrest of Ebsary in 1970 for carrying a concealed weapon MacNeil said:

- No recall of the incident other than from records.
- Knew Ebsary by sight, did not consider him unusual.
- Neither Ebsary nor Knife sparked him to consider Ebsary at time of Seale stabbing.

About failure to accept RCMP assistance:

- It was normal for assistance to be requested in serious cases.
- No explanation for failure to request Ident in this case.

About notes of Sgt. Murray Wood, RCMP:

- No recollection of conversations recorded. Accepts Wood's notes as valid. Suggests rumors around station may have been source of suggestion of Marshall as responsible since he had no knowledge of incident except reading reports on arrival.

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About investigation of Seale murder:

- MacNeil (t/a) party at summer cottage of Dr. Naqvi in Mira on Fri. night May 28th, '71.
- Recalls no personal involvement in the investigation except for participation in search for weapon when creek dammed.
- Believes working traffic at that time.

About people and prejudice:

- No recall of personal involvement with Marshall but knew him as a trouble maker, "Chief", not considered a derogatory nickname.
- Did not know Seale, nor Pratico, not sure about Chant.
- Marshall might have been suspect "because he was there".
- Aware of suggestion that Indians broke dam but not source of the suggestion.
- Aware that some men on the Sydney Police force were prejudiced and that this was known to most other officers on the force.
- Gangs were groups of youths who lived in same area, not organized gangs. Not aware of any 'racial' incident in Wentworth Park. Not aware of complaints by Indians.
- Familiar with 'Wagon Burners' and 'Broken Arrows' as names which Indians were called, but did not believe derogatory.

MacNeil attended the 1982 re-trial of Marshall on behalf of the N.S. Police Commission and from personal interest. The Commission had no formal role in the case, nor any authority to investigate complaints about police which happened before the Commission was empowered.

End Summary of Testimony, Edward MacNeil, Oct. 7, 1987.

SUMMARY OF TESTIMONY

Date: October 7, 1987

Witness: TERRANCE GUSHUE

Examination by: George W. MacDonald

Gushue's current recall of the night of the Seale stabbing is as follows: He attended the dance at St. Josephs. There he got involved in a fight and was asked to leave. He was drinking wine and beer at the time, was "feeling good but I could walk". He was joined by Patricia Harriss and they went down George St. to Wentworth Park. He met Marshall in or near the park, asked for and received a light for his cigarette. He and Harriss walked to Harriss' home. He left her and went to his home on upper Terrace Street in Ashby area.

Where statements made by Gushue differ from above account, he was not able to recall details.

Gushue knew Marshall because he was in a fight with Marshall prior to that time. Gushue described injuries received.

About his statement(s) to Sydney P.D.:

- In 1st statement given to MacIntyre and Urquhart at the station he denied he was in the park. (whereabouts of this statement unknown)
- 2nd. statement, dated June 17, '71, has his signature but he recalls little of how it came about.
- Admits trying to tell truth at the time.

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-Afraid at time because he had been caught drinking, was in the place where the murder was committed and generally afraid of the police because they were asking "hard questions".

-Recalls visit by RCMP person in '82 but no details of affidavit.

About Racial situation at the time, Gushue offered that he felt Indians got a harder time from the police than he would have, but could not cite specific names or occasions.

-Fights between groups and at dances were not racial but rather boy girl related. "Whoever has the overactive hormones".

End Summary of Testimony, Terrance Gushue, October 7, 1987

SUMMARY OF TESTIMONY

Date: October 7, 1987

Witness: PATRICIA HARRISS

Examination by: George W. MacDonald

Harriss was 14 in 1971. She recalls her activities on the evening of May 28th that year as follows:

-Left dance before it was over and walked down George St. with Terrance Gushue. Bought cigarettes. Went to park, sat on bench with Gushue.

-Met Marshall in Crescent Street as she and Gushue were walking to her home. Gushue got a light for his cigarette from Marshall and they continued to Harriss' home.

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About her statement taken by the Sydney, Police:

- No recall of how she got to station or why she went there.
- Remembers being questioned by MacIntyre, starting numerous statements which were torn up when she reached the point where she said that she recalled two other men in the park near Marshall.
- Harriss became very upset over the tone of the questioning, banging of fists on the desk, refusal to take her story as she gave it.
- At one point began to cry and was allowed to leave room and talk with her mother who was outside.
- Doesn't remember how long she was in room but recalls it as a long time.
- At times the atmosphere in the room was calm and she was offered food, other times it was very tense with banging on the table .
- Harriss "was trying to get out, to give them what they wanted and go home". It was clear to her that her statement about two men was not acceptable.
- No recollection of signing statement.
- Was threatened with perjury charge, going to jail if I changed statement.
- Did not tell her mother about the lies.
- When taken by mother to Lawyer A.O. Gunn did not tell him.
- Never discussed case with Mary O'Riley
- Told true story to Wheaton at RCMP station on Alexandra St.

End Summary of Testimony Patricia Harriss, October 7, 1987.

Oct 8th 87

SUMMARY OF TESTIMONY

Date: October 8, 1987

Witness: PATRICIA HARRISS (cont.)

Examination by: George W. MacDonald

Harriss added the following to her previous testimony:

- Was not drinking the night of May 28, '71 and does not believe she drank at that time.
- Believed that if she gave evidence at trial that differed from statement she would be charged with perjury.
- Not a good friend of Junior Marshall, knew of him.
- Did not know Sandy Seale, can not account for statements wherein she said she saw him at the dance and he tried to remove her stamp.
- No recollection of conversation with Mary or Margaret O'Riley about telling "story about gray-haired man."
- Did not discuss her statement with Gushue before going to police.
- Reluctantly admitted to her own minor criminal record.
- Knew Urquhart because she was picked up by him one time.
- Certain that MacIntyre was other policeman who questioned her, although she did not identify him on a number of previous occasions.
- No present recollection, relies on first statement for detail about people she saw in park.
- Did not tell anyone about giving untrue statement and testimony for fear of being charged with perjury.
- Met Chant when she worked in Louisbourg but denies she was person on Byng avenue who gave Marshall a kleenex as Chant said.

Cross-examination by various counsel added the following:

- Harriss could not have known some details contained in her June 18th statement to police, only other source of details was police.
- No recall of conversation with Crown or Defense
- At one time was taken from the courthouse to the park to clarify question about trees. Not sure why.
- At one point during her June 18th statement, Gushue was allowed in the room to talk with her. No recollection of conversation.
- Can't explain why in 1982 she said she knew Sandy Seale.
- Doesn't recall whether Gushue sober or not, "he walked me home".
- Did not hold hands with Marshall on that night.
- Not able to explain why some corrections made in affidavit and other things e.g. knowledge of Seale, allowed to remain.
- Relieved to be able to tell truth to Wheaton.
- Tearing up statements by Urquhart maybe just tearing the pages off a pad and discarding.
- No recall of stabbing being a big subject of conversation at school.
- Not aware of treatment of Indians.
- Admitted an additional criminal charge of theft in Toronto, when asked on further examination by Orsborn.
- Possible that she discussed with O'Riley before her statement.
- Does not think Wheaton offered any assurance that she would not be charged with perjury.

End Summary of Testimony, Patricia Harriss, October 8, 1987.

SUMMARY OF TESTIMONY

Date: October 8, 1987

Witness: MRS. EUNICE HARRISS

Examination by: David B. Orsborn

Mrs. Harriss, adoptive mother of Patricia Harriss, testified about interview of Patricia at Sydney police station on June 17, 1987:

-Received phone call for Patricia to come to police station to discuss something about the park.

-Drove Patricia to station and remained with her during first hour to hour and a half of questioning by MacIntyre and Urquhart.

-Urquhart sitting at desk asked questions, MacIntyre standing.

-Urquhart writing statement would tear off sheets, crumple them and throw to floor when Patricia stated that she saw two men in park with Marshall on night of stabbing of Seale.

-Patricia upset by repeated questions, crying, eyes swollen, nose red.

-Left room at request of MacIntyre, waited outside for another hour to hour and a half. Didn't ask to go back in, felt she couldn't.

-Patricia worse when she came out. Did not discuss much except to say that "they got what they wanted." Later Patricia said that "she didn't hold to the story of the two men in the park." Never saw statement which Patricia gave.

-Arranged meeting with Lawyer A.O. Gunn, who said not to worry about perjury if she told truth.

-Attended Patricia's testimony at Preliminary and Trial, moral support.

-Did not raise Patricia's failure to tell about two men in the park

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with any of the parties concerned after the trial. "Just happy she was out of it."

-Did not occur to her to question MacIntyre about the way Patricia was treated. "I was there to cooperate."

-Knew MacIntyre from childhood. Had favorable opinion of him.

-Knew Urquhart from seeing his picture, following his appointment as a detective.

-Patricia was troubled off and on until she talked to Sgt. Wheaton.

-Talked with Wheaton but was not asked for a statement.

-This is the first time she has testified about the incident

-Did not care for Gushue as boyfriend of Patricia, his drinking concerned her and that is why she "drove him away".

-Never heard Gushue tell Patricia to say she wasn't in the park.

-Didn't know M.R. MacDonald

-Didn't know Khattar, but knew Rosenbloom to see him.

-Donald C. MacNeil arranged papers for Patricia's adoption but she did not know him well enough to talk with him about Patricia's problem.

End Summary of Testimony, Mrs. Eunice Harriss, Oct. 8, 1987

Oct 9th 87

SUMMARY OF TESTIMONY

Date: October 9, 1987

Witness: NORMAN DANIEL MacASKILL

Examination by: David Orsborn

MacAskill, Deputy Chief Sydney Police force, 1971, retired in 1973.

-No independent recollection of Seale stabbing.

In charge of Detective division '46-'66. two man division, MacIntyre other detective from '50. Promotion by seniority.

Deputy Chief had no direct responsibility for investigation except in absence of Chief, "In general responsible for the conduct of the force."

Questions by counsel resulted in the following observations by

MacAskill about the Sydney Police force and its practices:

-Little general police training available, no investigative training.

-RCMP Ident. help available on request, usual practice to ask.

-RCMP Ident. help sought in previous murder cases.

-Except for Occurrence and Crime reports, information about cases passed informally in conversation around station.

-Complaints about police handled by Chief, taken before Police Commission if serious enough.

About the Seale stabbing and Marshall investigation:

-Any notes he made at time left in Chief's office.

-Heard talk of possible racial problems at the reserve after the

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stabbing, surveillance of Reserve and extra patrols ordered.

-Not aware of pressure by politicians to solve case.

-Allegation that MacIntyre refused to come out on the night of the stabbing was first heard by MacAskill when MacIntyre himself raised the issue in a conversation around 1982.

-Practice of interviewing juveniles depended on the juvenile and how aware he/she seemed to be. Parent not necessarily present.

-Autopsy was usual in previous murder investigations to determine the cause of death. Ordered by Medical Examiner after consulting with Crown and Police.

-Would have called out extra men and secured area of stabbing if he had been running the case, "the proper thing to do".

-Recalled chance meeting with Ebsary because of his captain's cap and row of medals. No part in decision to turn investigation over to RCMP after MacNeil's accusation of Ebsary.

-No recall of letter from Black United Front or his response.

-Not aware of specific complaints from Native community about Police misconduct.

-No Indians on Sydney Police force in his memory.

-MacIntyre a dependable, hard working detective.

End Summary of Testimony, Norman MacAskill, October 9, 1987.

Inspector ARTHUR WOODBURN called but testimony deferred at request of Counsel Edwardh for time to prepare for his testimony.

SUMMARY OF TESTIMONY

Date: October 9, 1987

Witness: WYMAN YOUNG

Examination by: David Orsborn

Young was Constable on Sydney force '57-'75. Transferred to Sydney Fire department because he "got fed up with" Labor Management problems as a member of Union executive on the force.

-Had "run-ins" with MacIntyre, who as Deputy and then Chief of the force was not in Union.

-No recall of any conversation of Murray Wood, RCMP. No recall of having held opinion that Marshall responsible.

-Involvement in Seale stabbing - search of park with Mulrowney, directed to sit in old courtroom with Marshall, no conversation.

-No recall of special briefing about investigation.

-No knowledge of police hassling Indians with White girls.

-Denied allegation he chased Tom Christmas and hit with club.

-No knowledge of different treatment for Blacks and Indians.

-Was not the Constable Young reported at the dance on May 28, '71, suggests it may have been Roy Young.

End Summary of Testimony, Wyman Young, Oct. 9, 1987.

OCT 26th 1957

SUMMARY OF TESTIMONY

Date: October 26, 1987

Witness: BARBARA FLOYD

A. Night of May 28, '71: Floyd, age 16, went to the dance at St.

Joseph's with friends Joan Clemens & Sandra MacNeil.

- Left dance near midnight, heard talk outside that something happened in the park.
- Saw John Pratico in parking lot in a spat with Ricky Risk.
- Floyd and MacNeil walked Clemens part way home (down George to Argyle and a short way down Argyle parted from Clemens and returned with MacNeil back to George St and on to Cottage Road and home.
- No activity, lights, police, etc., seen in park.

B. Saturday May 29, '71: MacIntyre came to house with Mallowney,

MacIntyre questioned about being in park. Said witness saw her, described clothes she was wearing. Floyd denied being in park despite insistence by MacIntyre. Parents present, no statement taken.

- At Paul's store on Membertou that evening with group including Marshall when report of Seale's death heard on radio. All present including Marshall seemed upset.
- Marshall told what happened in park: 2 old men, one stabbed Seale and cut Marshall, showed wound.

C. About Pratico: Learned from newspaper that Pratico was witness at trial, believed Pratico could not have seen incident because he was in parking lot.

- Called Rosenbloom's office, told man there about info on Pratico;

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was told it was too late.

- Later told Mrs. Marshall about it, not aware of any further action taken about the information.
- Floyd knew Pratico from hanging around park, considered him strange because of way he looked and talked. No conversations with him.
- Heard Pratico on radio say he lied at trial. Called RCMP to tell them about seeing Pratico at St. Josephs parking lot.

D. RCMP Investigation and Aronson affidavit: Wheaton came to her house with Cst. MacQueen. Wheaton asked questions, Statement if best recollection of events of 1971.

- Floyd recalls reading the statement but doesn't know why she did not object to part saying that Pratico followed the three girls down George Street.
- Aronson called, then came over, said affidavit was just what she said to Wheaton. No recall of signing or reading or having read to her.

E. Relations with Indians: Floyd hung around with a group of Indian teenagers. They drank in the park and graveyard, usually on weekends before going to dance.

- Felt hassled by Police, ran and hid when patrols came to park.
- some boys would "bum" money for cigarettes or drink, never heard of violence used, amounts small, a quarter here and there.
- Indians her friends, not aware being shunned by others because of it.
- Clemens was going out with Marshall, Floyd dated J.P. Kabatay, her parents discouraged the relationship.
- Not personally hassled by police because of hanging out with Indians.

END SUMMARY OF TESTIMONY, BARBARA FLOYD, October 26, 1987.....

SUMMARY OF TESTIMONY

Date: October 26, 1987

Witness: SANDRA (MacNEIL) COTIE

Cotie, age 16 in 1971, was at dance with Floyd and Clemens.

Repeats essence of Floyd's account about Pratico's presence in parking lot of St. Josephs.

- Not contacted by police, no statement given.
- Didn't know Seale. Knew Marshall. Knew Pratico as a person who hung out at the park and was friendly with Indians.
- Hung out at park and graveyard with Indians, drinking, usually on weekends, before dances.
- With Floyd when she called Rosembloom's office after newspaper account of Pratico as witness to stabbing, confirms Floyd.

Cotie was with Clemens, girlfriend of Marshall when Clemens was picked up by MacIntyre about charge that Marshall gave liquor to Clemens.

- Cotie ordered out of car by MacIntyre.
- Later told by Clemens that she and her mother were given a hard time by MacIntyre.

Cotie had no clear recollection of details about when she gave statement to Wheaton or affidavit to Aronson.

Relations between Indians and Police:

- Cotie felt Indians were hassled by police, kept a file of newspaper clippings and noted names of her Indian friends who were picked up for drinking. No recall of any specific incident

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Feelings between police and Indians were mutual.

Not much contact with Indians after stabbing, received letter from Marshall at Christmas '73, did not reply.

End Summary of Testimony Sandra (MacNeil) Cotie, Oct. 26, 87.

SUMMARY OF TESTIMONY

Date: October 26, 1987

Witness: MARY (O'RILEY) CSERNYIK

Csernyik, age 15 in 1971, at dance on May 28. Gave statement at Police station in June.

Csernyik confirmed her signature on statement but denied that the following information recorded in the statement was provided by her:

- that she went to the park after the dance.
- that she had a conversation with Marshall the following day, Marshall phoned for Mary's sister Katherine, Mary answered but did not have conversation described in statement.
- that she discussed case with Patricia Harriss.

Csernyik recalls MacIntyre asking questions, perhaps one other policeman in room. She had no further contact with the investigation or subsequent investigations. Does not know how the information attributed to her got into the statement.

End Summary of Testimony Mary (O'Riley) Csernyik, Oct. 26, 1987

OCT 27th 1967

COUNSEL

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: October 27, 1987

Witness: CATHERINE (O'RILEY) SOLTESZ

In 1971, Soltesz was 16 years old, attended Sherriff Jr. H.S., was one of three sisters who hung around with Indian boys at Wentworth Park.

Soltesz' recollection of the evening of May 28, 1971:

- Was in abandoned car on Intercolonial St. with Artie Paul, Moose Tobin, Frankie French, her sister Mary and Junior Marshall.
- A pint bottle of rum was passed around but she could not say who had how much to drink from it.
- Marshall left by himself about 9:30 - 10:30 to go to the dance. She usually went but does not recall going that night.
- Informed about stabbing by her mother when she arrived home later in the evening.

Received phone call from Marshall sometime in a.m., following day.

- First phone call ever from Marshall. He related events of previous evening during 20 minute call.
- Surprised by call, did not know why Marshall chose to call her.
- May have discussed call with sisters but no recollection.

Picked up by the Police sometime later and taken in for questioning:

Recalls it as being before Marshall was charged.

- Identified her signature on statement but had no recollection of some items contained. e.g. knife with 5&1/2 inch blade, (said she saw

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Marshall on occasion with a pocket knife), called Marshall on phone every day, Marshall in fight with group from Westmount.

- MacIntyre, seated, did questioning, one other present, not aware of whether her mother was there, believes not.

Regarding other people involved in matter:

- Knew Pratico to see, was aware that he was 'eye witness', believed he was 'a little off', wouldn't believe what he said, was allowed to tag along with the group of Indians who hung out in the park.
- Knew Patricia Harriss to see, saw her at dances, did not discuss Marshall or stabbing with her.
- No other contact with lawyers or police or RCMP.

About the general racial situation in Sydney at the time.

- Her parents did not approve of her being with Indian boys. Were upset when Police came and told them she and sisters were with them.
- Sherriff had Blacks, Indians and Whites, boys and girls. On occasion had Black girls home for lunch with no opposition from parents.
- Both Indians and Whites in group in park, but no Blacks. Not aware of Blacks in park. No recollection of Indians being picked on by police more than whites.
- Park was just a place to hang around, no recollection of racial incidents in the park.
- After the stabbing incident the group just broke up, perhaps the girls were afraid to go there.

id Summary of Testimony, Catherine (O'Riley) Soltesz, Oct. 27, '87.

SUMMARY OF TESTIMONY

Date: October 27, 1987

Witness: MRS EMILY CLEMENS

Mrs. Clemens is the mother of Joan Clemens, girl friend of Marshall in 1971. Joan's testimony resulted in Marshall's conviction for the offense of giving liquor to a minor.

Mrs. Clemens was upset when Joan was being interrogated by MacIntyre, who tried to get her to say that Marshall gave her liquor. At first, Mrs. Clemens stayed outside the door of the interrogation room. She went in when she heard the tone of the questioning become more severe and the threat of 'juvenile court' if Joan didn't tell the truth, was made by MacIntyre.

An argument and name calling ensued. Mrs. Clemens had no recollection of how the interview terminated. MacIntyre drove her and Joan home.

Mrs. Clemens added the following during her testimony:

- Did not know Joan testified against Marshall until this time.
- Never saw her daughter when she thought Joan had been drinking.
- Had an "open" relationship with Joan.
- Did not know Marshall was an Indian.
- Insists Sandra Cotie never was in Police car with Joan.
- Believes MacIntyre was trying to get something on Marshall.

Summary of Testimony, Mrs. Emily Clemens Oct. 27, 1987

OCT 28th 1987

SUMMARY OF TESTIMONY

Date: October 28, 1987

Witness: BEUDAH CHANT

Examination by: David Orsborn

Beudah Chant, mother of Maynard Chant, recalled the following about the police interrogations of her son and related matters:

- Early morning of May 29, 71, call received to pick Maynard up at the police station in Sydney.
- Mr. Chant picked Maynard up and returned home. No recall of bloody shirt or conversation about the incident at that time.
- Sunday afternoon MacIntyre and another police officer came to the house and talked with Maynard. Mrs. Chant told Maynard to tell truth.
- Maynard said he met Marshall on the road by the park and had not seen the stabbing, police did not seem to believe.
- Police asked permission and took Maynard out in their car for a short period of time. No recall of Maynard going to Police Station in Sydney.
- Same two policemen returned later in the week and took Maynard and Mrs. Chant to the Louisbourg Town Hall.
- Wayne Magee, Louisbourg Police Chief, MacIntyre, other Police officer, Mrs. Chant and Maynard at the interview.
- He recollection of the interview was that Police said they had a witness who saw Maynard in park, Maynard kept saying he wasn't there, the police didn't seem to be getting anywhere, MacIntyre asked her to leave, She waited in the hall.
- Later when they came out they had a statement, she did not see it nor

did she sign it.

- She did not recognize the handwriting on top of last page which says Mrs. Beudah Chant, Mother.
- Recalls MacIntyre doing questioning, does not recall Maynard crying, was not upset by conduct of the interview.
- Did not attend court with Maynard, did not talk about his role in the case or his testimony.
- Sometime in 1980 Maynard told her he had lied at the trial, no action taken as a result because thought Marshall must be guilty despite fact that Maynard lied at the trial.

End Summary of Testimony, Mrs. Beudah Chant, Oct. 28, 87.

SUMMARY OF TESTIMONY

Date: October 28, 1987

Witness: LAWRENCE BURKE

Examination by: David Orsborn

Lawrence Burke, Youth Court Worker for Family Court was Maynard Chant's probation officer in 1971.

Burke said he was not present at the interview of Chant in the Louisbourg Town Hall. He was asked to sit in. He checked with Judge Edwards who said it was not necessary for the probation officer to sit in if a parent were present. Name on the last page of statement is his but it is not his signature. He would remember if he had been there.

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- Burke provided the following information based on his eighteen years experience as Youth Court Worker and Juvenile Probation Officer.
- Found the younger children he supervised to be much the same regardless of race or ethnic origin.
 - He was aware, through reading, of studies about cultural differences and ways to approach different cultural groups more effectively.
 - His case load ranged from 35 to 45 with Blacks, Indians and Whites represented.
 - He tries to treat each young person individually taking into account cultural differences
 - Agreed that Indians have different norms of conduct in regard to concepts of Time, Sharing, and Strictness of Parental discipline.
 - No Indians employed by probation in the court in which he works.

End Summary of Testimony, Lawrence Burke, Oct. 28, '87

Brief discussion of letter from Commission Counsel about the need for certain parties to be represented when particular witnesses were being questioned. To be discussed in spirit of cooperation at weekly meeting of all counsel.

SUMMARY OF TESTIMONY

Date: October 28, 1987

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Witness: WAYNE MAGEE

Examination by: David Orsborn

Magee, High Sheriff of Cape Breton County, was Chief of Police in Louisbourg in 1971. He knew Maynard and the Chant family.

Magee was present when MacIntyre and Urquhart interviewed Chant in Louisbourg Town Hall on June 4, '71. Magee offered the following about the interview:

- Magee went to Chant house, brought Maynard and Mother to town hall.
- Present at the Interview: Maynard, Mrs. Chant, MacIntyre, Urquhart, Magee and Lawrence Burke. All stayed throughout.
- Burke and Urquhart stood at back of room by the door.
- Others sat, MacIntyre across table from Maynard, Mother behind.
- Interview lasted about 50 minutes. MacIntyre quizzed Maynard and recorded when he was satisfied with answer.
- MacIntyre was calm and polite throughout, no shouting, fist pounding, threatening or promises of favor. No suggestion of evidence to Chant.
-

End Summary of Testimony, Wayne Magee, Oct. 28, 87

Summary: Inspector Arthur Woodburn

- Was not present when Pratico talked with Butterworth on Charlotte St. and described stabbing.
- Made notes about a conversation with BROOKS McGUIRE, turned over to RCMP. Does not know McGuire well enough to assess credibility.

End Summary of Testimony, Arthur Woodburn, Oct. 28, 87.

OCT 29th 1987

SUMMARY OF TESTIMONY

Date: October 29, 1987

Witness: ROY GOULD

Examination by: Wylie Spicer

Gould, age 41, a Micmac, was Band Chief of Membertou Reserve at the time of the Seale stabbing, Also a personal friend of Marshall.

Gould's information can be divided into three sections:

1. History and development of the Membertou Reserve.
2. Personal involvement in "Marshall case".
3. Relations between the Reserve and the City of Sydney Police.

1. Membertou Reserve

Gould described the physical conditions of Membertou when he was growing up as "pretty deplorable".

- No water or sewer service until mid 50's, few had electricity.
- No street paving until 60's and then only main streets. Only one road entering the reserve
- One room school house serving Primary to grade four, earlier it was grade six and still earlier grade nine. Although Micmac was the language of the reserve, only English was allowed at the school with no attempt to teach the English as a second language. The language problem slowed and in some cases ended progress of Indian youth in school.
- Still no sidewalks or gutters in streets of the Reserve.
- Although within boundaries of City of Sydney, improvement in facilities only came with a special program of the St. Francis Xavier

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University Extension Department

- Later a contract for municipal services was negotiated, Sydney provides the services, paid for by the Bureau of Indian Affairs.

2. "Marshall case"

Gould as a friend of Marshall and as Band Chief was continuously involved from May 28th '71 until Marshall was released in '82.

- Arrived from Bedford with Marshall 8:30 - 9:30 May 28, believes he dropped Marshall off on the Reserve.
- Awakened by Marshall 8 or 9 Saturday morning. Marshall told about incident, asked for drive.
- Drove around park area then dropped Marshall at Detective office.
- Several contacts with Marshall over weekend. Contact with Marshall, Sr. during the next week over threatening phone calls about possible violence. Reported threats to Police and prepared Reserve to resist.
- Following weekend, volunteers manned a road block, Police provided backup. W. Young & J. Mullowney in unmarked car, No incidents.
- Marshall arrest a surprise. Hired Rosenbloom to defend.
- Later got yellow jacket, previously loaned to Marshall, from his father and gave to police. Gave statement to Police about jacket, its condition before and after and circumstances of loan. Signed not read.
- No contact with Marshall between June 4th and preliminary.
- Did not know who police interviewed, did not know Chant or Pratico.
- No contact by Defense or Crown prior to Preliminary or Trial.
- No recall of telling Bernie Francis that knife found.
- Worked to help Marshall win release for home visits and parole.
- Maintained contact by letter and did "research" on behalf of Marshall

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including trying to identify possible suspects for Seale stabbing.

- Contacted: Ombudsman, Correctional Investigator, Parole Officials, and Lawyers during Marshall's eleven years in jail.

3. Relations between Reserve and City Police

As Band Chief, Gould was involved in negotiating with Sydney for Police services for Reserve.

- City Police patrolled reserve and provided service "on-call".
- Complaints from Reserve residents that Police were slow to respond.
- Negotiated for services of an Indian Constable to be paid by Band and trained by Police.
- Part time Constable position approved by City Council, Complaints by incumbent about slow response time and lack of assistance by Police. Resigned after short period. No replacement.
- Youth on Reserve complained about attitudes of and treatment by Police. Letter composed by Youth and sent to Police Chief. Not aware of any investigation of complaints.
- Letter reflected a wider problem. Lack of recreational facilities on Reserve led to complaints of vandalism, Youth hang out in town, Police chase them back to the Reserve.
- Negotiations between City and Reserve about provision of services is on-going even at this time. Police patrol Reserve as part of regular patrol duties.

End Summary of Testimony, Roy Gould October 29, 1987.

NOV 2nd 1987

SUMMARY OF TESTIMONY

Date: November 2, 1987

Witness: BERNIE FRANCIS

Examination by: Wylie Spicer

Francis, age 39, a Micmac, was a Native Court Worker at the time of the Marshall case, teaches applied linguistics (Micmac) at the University College of Cape Breton.

Francis' information can be divided into three areas: 1) Personal involvement in Marshall case, 2) The problem of language for Micmacs in the non-Indian setting, 3) Problems experienced in Courts during work as Native Court Worker.

1. Marshall Case: As the Native Court Worker, Francis advised about getting a lawyer and interviewed Marshall twice before the Preliminary.

- Marshall was consistent in his story of the unprovoked attack.
- Told by Marshall, Sr. about Pratico's retraction in court house, relayed information to lawyers.
- Tried to obtain counsel to press for appeal, Art Mollon, Legal Aid and Dave Lowry, Dal Law School contacted, no action
- Believes Roy Gould told him a knife was found on top of the drugstore, called Police to verify.
- Wrote to Marshall about the alleged knife, Marshall responded with an angry denial of responsibility. Broke contact.
- Aware of charges against Tom Christmas for threatening witness. Surprised at conviction and sentence.

- Both Marshall and Christmas could have been aided by an interpreter.

2. Language Problems: Francis is fluent in both English and Micmac. He pointed out why Indians whose first language is Micmac may misunderstand spoken English, especially in the formal courtroom setting:

- Some words may have no direct equivalent translation, e.g. guilty to a Micmac means I have been blamed, Not I accept responsibility.
- Some concepts differ, e.g. time: a specific hour such as 7 a.m. may fit the Micmac concept of "After the sun has risen".
- Sentence structure differs, Micmac may have subject, predicate and object of a sentence all in one word, such a sentence, translated directly sounds funny to the non-native ear.
- Stress or emotion of the speaker not expressed changes of inflection but by very flat uniform tone of words.
- Micmac consider English language fluency a matter of pride, may not admit lack.
- Difficulties of understanding are greater when the language is formal as used in courts.
- In an adversarial setting, a Micmac who does not understand the question may seek to please the one asking the question.

3. Legal System Problems: Francis cited examples of prejudicial behavior toward and/or cultural misunderstanding of problems of Micmacs in a non-Indian legal system.

- Services of an interpreter refused on basis of simple questioning which does not reflect the confusion of formal court language.

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- Guilty pleas may be entered by not guilty persons as a way of ending the uncomfortable court experience.
- Impatience of court officers when dealing with Micmacs or their legal representatives.
- Racist comment which is allowed to pass in court, e.g. Put a fence around the reserve, etc.
- Confusion as to the role of various court officers.
- Confusion extends to the reading of rights by an arresting officer which may not be understood.
- Attempts to raise the level of awareness and support to deal with Micmac problems with the system were often met with indifference or lack of funding.

End Summary of Testimony, Bernie Francis, November 2, 1987.