

5920 117 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Date: Monday, January 11, 1988

Witness: DONALD JAMES WARDROP

Examination by Wylie Spicer

Wardrop, retired 35 year veteran of the RCMP, In November 1971 was direct supervisor of and ordered Insp. Marshall to conduct reinvestigation of the Marshall case. He offered the following concerning the investigation:

- Received word from Attorney General's department about new information, "MacNeil fingering Ebsary".
- Not certain if he received personally or if call taken by Sgt. Burgess
- Told Marshall to "take all the time you need and look into it".
- Ordered polygraph at Marshall's request, not certain who, beside MacNeil and Ebsary, Marshall wanted to test.
- Did not discuss specifics prior, left to Marshall's discretion.
- Recalls discussing Marshall's findings twice once before and once after reading his report.
- Had no doubt in his mind that Marshall conducted a thorough and competent investigation. Did not question details, relied on Marshall because he was an experienced officer.
- Best recollection re report is that he hand-carried it to A.G. office on one of regular Friday morning meetings. Not sure whether given to Anderson or Gale. Certain that a copy would also have gone through regular routing procedure.
- Does not recall discussing case in weekly meetings but "very unusual if I didn't". No further request for report from A.G. Department.
- Surprised by Marshall's testimony that he botched the job.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

WARDROP (cont.)

- Meetings with Anderson and later Gale were from 1/2 to 1&1/2 hour long, very informal, no notes taken.
- No reason to discuss with Gordon Coles, only admin stuff with him.
- "I depended on Marshall's initiative and ability, his conclusion was enough to convince me." Not policy (Wardrop's) to vet experienced men.
- Not concerned that MacNeil was the only one interviewed.
- Assumed Sgt. Burgess reviewed report very carefully.
- Not aware of any other requests for investigation of case, no further involvement after report handed over to A.G.'s Department.

Witness: EUGENE SMITH

Conducted polygraph examination of MacNeil and Ebsary.

- Recalls MacNeil results inconclusive because he had shakes and readings couldn't be interpreted.
- No specific recall of Ebsary except that results truthful.
- Suggested that Marshall be tested when MacNeil results were inconclusive.
- No other input into who was tested.
- Does not recall specific "control" questions.
- Did not tell Insp Marshall he was "positive" Ebsary truthful.
- Recalls Prosecutor MacNeil coming to Wandlyn and learning results.
- Marshall Case was one of 50 required before certification received by Smith for polygraph operation.
- No further contact until phone call from MacIntyre who asked for information about results.

End Summary WARDROP AND SMITH, JAN. 11, 1988.

STAN 12th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

Date: January 12, 1988

Witness: MILTON VENIOT

Examination by: Wylie Spicer

Veniot was a junior lawyer in A.G.'s department, handled first Marshall appeal, prepared factum and argued before Appeal court.

- Did not know about Insp. Marshall report on reinvestigation.
- Believes procedure of Appeal being handled by Attorney in Halifax preferable, Original crown prosecutor can be contacted if necessary. -
- No conversation with D.C. MacNeil re appeal.
- Careful review of transcript; may have had discussions with other attorneys about factum.
- Noted error of trial judge re admission of Pratico evidence; did not consider because not raised by defense counsel.
- Based on transcript, believes decision of Appeal Court reasonable.
- Believes he would have been made aware of reinvestigation if A.G. department had it.
- Aware of regular meetings between senior A.G. lawyers and RCMP, but not aware of content of meetings.

Witness: GARY GREEN, RCMP

Green stationed in Sydney in '74, told by friend Dave Ratchford about Donna Ebsary's story of seeing her father wash blood off knife on night of the Seale stabbing. Advised them to tell Sydney P.D. They reported no success. He went. Talked with Urquhart. Advised of '71 RCMP investigation. Check with CID Sydney Subdivision about same. Convinced by polygraph matter handled, no further involvement. End Summary Gary Green, Jan 12, 1988.

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

Date: January 12, 1988

Witness: EUGENE SMITH (cont.)

Smith conducted the polygraph examination of MacNeil and Ebsary in Nov. 1971 in connection with reinvestigation by Insp. Marshall, RCMP.

- Smith informed Marshall and D.C. MacNeil that polygraph was only an aid to investigation.

- Not certain if he saw Ebsary and MacNeil statements before test.

- MacNeil - no conclusion, Ebsary - "Indications of truthfulness"

- Never met and no recollection of Lou Matheson at meeting after test.

- No knowledge of who D.C. MacNeil called from the hotel that night.

- Met Insp. Marshall in Halifax, travelled to Sydney with him and returned to Halifax with Marshall after test.

- No further involvement except to suggest that Donald Marshall be tested.

- Not aware of any difficulties in administering the test to Indians.

End Testimony Eugene Smith, Jan. 12, 1988

Witness: STAN CLARK

Examination by: George MacDonald

Clark, RCMP Constable in 1971 stationed at Baddeck, accompanied MacIntyre and Urquhart to arrest Donald Marshall.

- No independent recollection; from notes: Marshall sobbing and said "I did not do it."

- Marshall handcuffed because no screen between passenger and driver of Patrol Car, and doors could be opened from inside.

End Testimony Stan Clark, Jan. 12, 1988

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

Date: January 12, 1988

Witness: DONALD BURGESS, RCMP

Burgess, Supervising NCO, Halifax Subdivision, CID, a "reader" explained his job description.

- Wardrop was wrong when he said a reader would go off and order certain information not contained in a report.
- No recall of Insp. Marshall's report.
- If Marshall report was sent to A.G., file would have memo to that effect attached. Nothing to indicate Marshall file went anywhere.
- Reading Marshall report it is apparent that all he did was review files and order polygraph, not a reinvestigation.
- Often had contact with A.G.'s department, always responded to their requests. Gale and Anderson often called.
- "If Marshall report went directly to Wardrop with a transmittal slit then it would by pass readers and might not get to the file."
- Marshall file "perhaps less thorough because we were assisting on the case rather than if it was one of our own cases."

End Summary Burgess, Jan 12, 1988

End Summary of Testimony January 12, 1988 - Eugene Smith (cont.), Stan Clark, Milton Veniot, Gary Green, Donald Burgess.

STAN 13th 1944

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: January 13, 1988

Witness: DONALD BURGESS (cont.)

Burgess reiterated previous testimony that to the best of his recollection he never saw Insp. Marshall's report.

- Had the report been received it was of the type that would have been forwarded to the A.G.'s office.
- Content of the report determines where it is sent.
- Readers check for completeness, if information lacking a memo is sent to originator asking for additional work or information.
- If satisfactory, distribute. File copy would show distribution.
- Sometimes covering memo attached, most block stamped for signature.
- Wardrop sometimes took reports directly to A.G.'s office.
- If Wardrop took directly, it would not have gone to the readers.
- Marshall report should have gone to readers even though he was a senior investigator.
- Many factors influence the readers decision on "thoroughness" including: Serious nature of offense, length of sentence, prominence of accused, Investigator, Media attention.
- No recall of request from A.G.'s department for the Marshall report.

End summary Donald Burgess, Jan. 13, 1988

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

Witness: EUGENE COLE

Cole, a 26 year veteran of RCMP worked GIS Sydney in 1975. Had series of notes concerning Marshall case in his notebook.

- No independent recall of why the notes were made, who ordered the investigation which was done or whether files or reports were generated as a result of his notes.

- No recollection of discussion of case in 1982 with Sgt. Brooks.

End Summary Eugene Cole, Jan. 13, 1988

Witness: MELINDA MacLEAN

MacLean, an attorney, was approached by Roy Gould in 1979 to act on behalf of Donald Marshall, Jr.

- No direct communication with Marshall about substance of case.

- Her associate Lawrence O'Neill went to Springhill Penitentiary and interviewed Marshall, his notes contained in MacLean's file.

- Approximately 7 hours of work over 2 year period, most by O'Neil.

- Disagreed with previous testimony of Art Mollin about practice of disclosure by Crown, D.C. MacNeil.

End summary Melinda MacLean, Jan. 13, 1988

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

Witness: INNIS MacLEOD

MacLeod was Deputy Attorney General in 1971. He was the direct superior of Robert Anderson who ordered the RCMP reinvestigation of the Marshall case after J. MacNeil accused Ebsary in November, 1971.

- No recollection of separate sensitive files as per Veniot.
- Although regular daily meetings of lawyers in the department were held he had no recollection of any discussion of the accusation of Ebsary by MacNeil, the ordering of the RCMP reinvestigation, the report of Inspector Marshall and/or its absence.
- Did not oversee or direct the orderly transfer of information from Anderson to his successor Gordon Gale.
- Was not aware of any policy of the A.G.'s department with respect to disclosure to the defense.
- Reported to the Attorney General when needed and expected Anderson to report to him when needed.
- Agrees that information re MacNeil accusation of Ebsary should have been type to be reported to him and by him to A.G. he has no recollection of this. "Almost sure it was not talked about at morning meetings (coffee)".
- "No recollection at all of that period of time." (replacement of Anderson by Gale as Director Criminal Division.

End summary Innis MacLeod, Jan. 13, 1988.

End Summary of Testimony January 13, 1988, Burgess, Cole MacLean and

MacLeod. *****

STAN 14th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: Thursday January 14, 1988

Witness: DEBORAH GASS

Gass, a lawyer with N.S. Legal Aid in Amherst, represented Marshall on charge of being unlawfully at large after he left the Atlantic Challenge program in 1979.

- No record that Marshall was assisted by Penitentiary Legal Services a special program for Inmates which ended in 1978.
- Marshall's case may have been brought to her attention by PHIL MacNEIL, para-legal for PLS who came to Legal Aid when PLS ended.
- Gass reviewed Marshall trial transcript, interviewed and had phone conversations with him but unable because of budget and manpower limitations to do any active investigation for his case.
- Aware that Marshall was not considered for Parole because he insisted on innocence and therefore no remorse.
- Believed Marshall assertion that he went UAL in order to get before the court again to plead his case.
- Advised Marshall that Appeal not feasible and his best bet was to try for Parole.
- Gass believes Penitentiary Legal Services was a worthwhile program of benefit to inmates. N.S. Legal Aid not able to provide same service.
- Not aware of different treatment of Blacks or Natives by legal system

Date: January 14, 1988

Witness: KEVIN LYNK

Lynk, a Parole officer in Sydney did a community assessment in connection with a request by Marshall for a Temporary Leave of Absence from Springhill Institution in 1978.

- Urquhart, normally seen by PO's to get police reaction, took Lynk to MacIntyre, then chief of Sydney PD.
- MacIntyre discussed case in detail and was opposed to release plan.
- Other areas of community generally favorable but recommended that Marshall accept responsibility for offense.
- Asserted that Sydney Police were generally more negative toward parole than other police departments.
- Not uncommon for an inmate to maintain innocence but uncommon to do so for seven or eight years after conviction as with Marshall.
- No awareness of threat of reprisals as asserted by MacIntyre.
- Dealt with many Native clients, no specific cross-cultural training.

Witness: ARCHIE WALSH

Walsh, a Parole officer in Sydney did a brief community assessment in connection with request by Marshall for an Unescorted Temporary Absence

- Discussed case with MacIntyre who opposed release of Marshall because of possible threat to safety of witnesses.
- MacIntyre assessment plus Marshall unauthorized absence from Atlantic Challenge program factors in Walsh's negative recommendation
- Agreed with Lynk that Sydney PD attitude toward parole generally more negative than other police forces.

End Summary of Testimony, Gass, Lynk, Walsh, January 14, 1988.

JAN 18~~th~~ 1968

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: January 18, 1988

Witness: Stf. Sgt. Harry Wheaton

Examination by: David Orsborn

Wheaton was in charge of 1982 RCMP reinvestigation which led to Marshall's release. He made few notes of his investigation and relied upon his written report, and some independent recollection for his testimony.

At this point, Wheaton's testimony seems to have three components,

1. Investigation relating to Marshall's innocence.
2. Investigation relating to Ebsary's guilt.
3. Dealings with MacIntyre which is interconnected with number one.

1. Regarding Marshall's innocence:

- Began with letter of complaint from Aronson naming Ebsary on information from one Mitchel Baines (Saracen) in Pictou.
- Believed he was looking into possible collusion between Saracen and Marshall. Spoke with MacIntyre for background of case.
- Investigation led to Chant who volunteered that he lied in 1971.
- Not later than Feb 22, 1982, Wheaton was convinced that Marshall was innocent and expressed this view to Frank Edwards, Crown Prosecutor.
- Twice asked MacIntyre for any additional files or information, "I felt he was misleading us in our investigation."
- Other witnesses (Pratico and Harriss) recanted '71 testimony claiming pressure by MacIntyre.
- Throughout the investigations had frequent phone conversations with Frank Edwards to bring him up to date on the investigations.
- How to deal with Marshall's innocence was a small "p" political matter that involved the Attorney Generals office.
- Met Rosenbloom who was "amazed" that Marshall was innocent. Said he did his best to get him off but always believed he was guilty.
- Rosenbloom told Wheaton that he was never offered a chance to have Marshall take a polygraph, nor did he know about the first statements of Chant and Pratico.

2. Regarding Ebsary's guilt

- learned that Ebsary was "a dangerous drunk" in 1971.
- Saw J. MacNeil many times, took statement.
- Made many visits to Mary and Greg Ebsary's house
- Greg found basket of his father's knives in basement and turned over.
- Mary Ebsary identified two as Ebsary's favorites. Knives sent off for blood analysis, negative. Then sent to fibers lab, positive. No handled as usual exhibit because no expectation of positive results.
- Statement taken from Ebsary did not contain admission.
- Discussed stabbing of Goodie Mugridge by Ebsary with Detective Woodie Woodburn.
- On visit to RCMP station, Ebsary wore his regalia of blue 'burbury', captain's hat, and medals.

End Summary of Testimony, Harry Wheaton, day 1, Jan. 18. '88

JAN 19th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: January 19, 1988

Witness: HARRY WHEATON (2nd day)

Wheaton's testimony mainly concerned three areas: 1. building case against Ebsary, 2. possible investigation of Sydney Police Department and specifically MacIntyre, 3. comments about the role of the Attorney General's Department in connection with #2.

1. Regarding Ebsary prosecution:

- Unable to explain discrepancies in number of fibers reported found on knives and basket submitted to lab for analysis, poor math?
- Most principals connected with first investigation were interviewed and where he considered pertinent, Wheaton included the information in his report.
- Ebsary's coat seized and sent to lab for analysis of cuts, report noted one cut.
- Harriss first statement important because it said four men on Crescent street including one like Ebsary.
- Donna Ebsary a credible witness.
- Interviewed Sydney PD officers who took part in first investigation except MacIntyre and Urquhart, for evidence in Ebsary case, not as an investigation of Sydney PD.

2. Sydney PD and MacIntyre

- Believes MacIntyre impeded RCMP investigation.
- Believes Chant, Fratico and Harriss were induced by MacIntyre to give false testimony.
- "Absolutely no doubt" that document MacIntyre picked up off floor of his office when confronted after Davies saw him try to hide it was Patricia Harriss' first statement.
- "Absolutely no doubt" I did not sit at his (MacIntyre's) desk.
- "I'm stating the man perjured himself before this Commission."
- Has submitted verbal report to his superior (Vaughn) regarding what he believes to have been an offense.
- Unable to clarify with certainty the discrepancy between the 16th and 26th of April in relation to the time that he obtained the files from MacIntyre, Believes it was the 26th although this is contradicted by Edwards notes and the fact that he showed Mary and Greg Ebsary their prior statements when he interviewed them on the 19th.
- When MacIntyre questioned about aspects of his original investigation he offered no explanation or changed the subject.
- Made no inventory of files received from MacIntyre through Scott or directly from MacIntyre so not able to say for certain when certain files such as '71 statements of Mary & Greg Ebsary were received.
- Discussed obtaining search warrant to obtain files from MacIntyre, Edwards in favor, Scott opposed, Wheaton uncertain.
- Reported attempt by MacIntyre to hide Harriss statement to Scott and Edwards, believes Edwards notified Gale in AG's office. Edwards notes incorrect when they say the file was about Christmas.
- Did not report in writing (three different reports) this allegation about MacIntyre attempting to hide Harriss file.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

3. Attorney General's Department

- During course of investigation complaints about MacIntyre were received. Complainants were advised to take complaint to Mayor of city or to Attorney General.
- In early April was awaiting instructions from the Attorney General's office about a possible investigation of Sydney PD and MacIntyre in connection with original investigation
- In cases of Police Department, public figures like the Chief or other items which would be subject to Media attention it was customary to await the instructions of the Attorney Generals department before conducting an investigation.
- MacIntyre's visit to Gale in Halifax with complaints about the conduct of the RCMP investigation was relayed to Wheaton via Scott and Christen. Wheaton told Edwards but believes Edwards already knew.
- Eventually MacIntyre was ordered by Gale to turn over all files on Marshall case to RCMP.
- Possible investigation of MacIntyre by RCMP held in abeyance
- Made Scott aware of his belief that MacIntyre and Sydney Police should be investigated.
- Believes Edwards made officials in Attorney Generals Department aware of problems in connection with MacIntyre and Sydney PD.

Wheaton stated repeatedly that he had no notes other than those provided. Where comments in his formal reports went beyond what was in statements, he relied upon his memory. When his recollection of events differed from notes compiled by Frank Edwards, he suggested the notes were in error in most cases; in a few instances he had no recollection and accepted Edwards notes.

End Summary of Testimony, Harry Wheaton, day 2, Jan. 19, 1988

STAN 20th 1988

SUMMARY OF TESTIMONY

Date: January 20, 1988

Witness: HARRY WHEATON (day 3)

Wheaton continued to rely on his recollection of unrecorded conversations to expand upon or support statements made by him in various reports, letters and memos:

- "Red Mike" MacDonald told him that MacIntyre was under pressure to solve the Seale murder; Former Chief Gordon MacLeod spoke of firing MacIntyre if he didn't do his job more thoroughly.
- Ian MacNeil formerly of Cape Breton Post was the source of information about the "public outcry" over unsolved Seto murder and "racial problems" in Wentworth park.

Wheaton asserts: - MacIntyre decided Marshall was guilty and set out to get the evidence to prove it.

- MacIntyre should have been investigated for counselling perjury and such an investigation would have led to charges.
- He expressed this opinion to his superiors and Crown Prosecutor Frank Edwards on a number of occasions.
- The Attorney General's department interfered with the possible investigation by refusing to order the RCMP to do it.
- His opinion about the investigation was not included in any of his reports because his reports did not deal with investigating MacIntyre or the Sydney Police Department.
- The Attorney General's department released an RCMP report on the Marshall case to Aronson.
- The Attorney General's Department released at least one other RCMP report to the person under investigation in a politically sensitive case. (based on information from Stf. Sgt. Dole in Port Hawksbury).
- Joking remarks by AG Giffin indicated a lack of appreciation of the serious nature of the Marshall case and the personal suffering of the people involved.
- Marshall's failure to tell of attempted robbery should not have influenced the course of the investigation.
- MacIntyre has a habit of pounding on things for emphasis.

Wheaton denies that he gave RCMP reports to anyone, specifically mentioned were, Roger Bill, Michael Harris, and Heather Matheson.

Wheaton disagreed with statements made by various of his Superiors in communications concerning the Marshall case, e.g. MacIntyre merely overzealous, charges against MacIntyre not warranted, Marshall author of his own misfortune.

Wheaton recommended: - a system of checks and balances so that overzealous police officers could be report to an independent body for investigation.

- Investigations of serious offenses or sensitive matters should automatically go to an independent reviewer like RCMP readers section.
- More support for Crown Prosecutors from AG's department.

End Summary of Testimony, Harry Wheaton, (day 3) January 20, 1988

NOTE: Ruling as to whether to allow questions about details of other investigations to show pattern of handling certain matters by the AG was deferred.

STAN 2574 1944

SUMMARY OF TESTIMONY

Date: January 25, 1988

Witness: HARRY WHEATON (day 4)

Examination by: RON PUGSLEY

Testimony of Wheaton consisted of responding to apparent inconsistencies in his various formal reports and his recent testimony when compared with written statements and testimony of other witnesses. His testimony contained the following:

- Denied being "source" for Heather Matheson or Alan Storey
- Observed general policy guidelines of RCMP re release of information and would only talk about what was already public knowledge.
- Retracted previous testimony re first Chant statement, now says that Chant told him he was pressured by MacIntyre then as well as 2nd time.
- Name MacIntyre not in Chant statement but told during the narrative.
- Agreed that only Pratico identified MacIntyre by name in 1982 and that he (Wheaton) did not consider Pratico reliable at the time.
- Disagreed that he was "Knocking" MacIntyre or the Sydney Police force, always tried to present a "balanced" view.
- Reference in his report that D.C. MacNeil threatened Chant with perjury if he changed testimony after preliminary came from narrative and was a mistake not to include in Chant's statement.
- Wheaton formed opinion that Magee was not present at the interview of Chant in Louisbourg, based on recollection that Mrs. Chant told him she couldn't remember him being there. Mrs. Chant testified he was there.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

- Agreed that MacIntyre initiated the RCMP involvement in 1982 and furnished statements some of which were favorable to Marshall.
- Believes statements of Mary & Greg Ebsary received April 16th, but insists he is certain that he did not see P. Harriss statement (#1 Harriss by Urquhart) until April 26th when "discovered" on the floor.
- Hand written version of page four of inventory of documents prepared by MacIntyre noted by Wheaton in testimony was located and entered. According to Wheaton he wrote and initialed and gave to K. O'Handley who typed and returned. Some changes on typed copy perhaps because of conversations at the time. Confusion as to meaning of some notes written on it. Both copies initialed and signed by Wheaton.
- Hand written notes believed to be D.C. MacNeil's trial notes were found by Wheaton in his office in Halifax and will be brought in tomorrow.
- No explanation why Edwards notes refer to April 16th mention Patricia Harriss statement. Insists not obtained until April 26th.
- Denied that statements of Mary and Greg Ebsary were given to him directly by MacIntyre on April 16th. Asserts all statements he received prior to April 26th came through Scott.
- Did not mention attempt by MacIntyre to hide Harriss statement in report to Christen about police practice, he did consider it important.
- Asserts that naming Billy Joe MacLean was done just to answer the question posed by Orsborn.
- In response to question of whether Supt. Vaughn could get a distorted view of MacIntyre from his (Wheaton's) report, He responded "That's how I felt about it, Sir".

End Summary of Testimony, Harry Wheaton (day 4), Jan. 25, 1988.

JAN 26th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

*Note- handwritten notes mentioned by Wheaton on Mon. Jan 25, to be brought in today were not D.C. MacNeil trial notes as I stated but his own notes taken at the Reference.

SUMMARY OF TESTIMONY

Date: January 26, 1988

Witness: HARRY WHEATON (day 5)

Under cross examination by various counsel Wheaton reaffirmed testimony previously given and added the following:

- Wheaton participated in the decision not to call Fratico as a witness in Reference because of his mental problems.
- Relied on Cst. O'Hara of RCMP plain clothes section for information about Chant since O'Hara from Louisbourg and knew him.
- Met Michael Harris 8 or 9 times, one long meeting at Harris home, was open frank and candid with him, does not feel he violated RCMP guide lines on release of information.
- Had agreement with Harris to read before publication and change if he wished, Wheaton read rough and offered no changes.
- No specific recall of matters discussed with Heather Matheson, stated that many things noted in her discovery were consistent with his belief.
- No disciplinary action taken against Wheaton by superiors for release of information to media in this case or any other.
- Wheaton described his recollection of the meeting of 26 April in MacIntyre's office and strongly denied the suggestion that he received the Harriss statement along with material about Tom Christmas and the statements of Greg and Mary Ebsary on 16 April.
- Asserted that he was not disciplined by his superiors for his investigation of the Marshall case or any other case. Proud of his service record.
- Favorable opinion of D.C. MacNeil as prosecutor but maintains impression that he did not like Indians.
- Was not directed to investigate role of Prosecution in Marshall case

- Wheaton agreed to release any person in the media with whom he may have an understanding not to disclose his identity, from that understanding.

- Request that Wheaton's service record be provided was denied after argument.
- Attempt to raise case previously investigated by Wheaton to attack his credibility, decision deferred, request later withdrawn.

End Summary of Testimony (day 5) Harry Wheaton, January 26, 1988..

JAN 27th 1988

SUMMARY OF TESTIMONY

Date: January 27, 1988

Witness: HARRY WHEATON (day 6)

Under cross examination by various counsel for parties, Wheaton added the following information to his testimony:

Re: Aronson - Met Aronson 2 or 3 times. No recall of specific details of conversation.

- No role or discussion with Aronson of civil suit by Marshall against MacIntyre and City of Sydney.

- Aronson prepared Wheaton's affidavit for Marshall Reference.

- After investigating he believes Aronson's assertion that Sydney was a "red-neck" town in 1971.

Re: Edwards - Told Edwards his opinion that MacIntyre should be charged for counselling perjury, did not suggest charge of obstruction for attempt to withhold Harriss statement.

- Confirmed events recorded in Edwards notes about weekend of 16 April regarding interview and statement of Donna Ebsary except regarding receipt of Harriss statement from MacIntyre which he asserts took place on 26 April.

- Told Edwards that directions from Attorney General needed in order to get warrant to search Sydney PD for files of Marshall case.

Re: Attorney General - "Personal knowledge" of release of RCMP report by Attorney General to suspect is what he was told by Sgt. Dole, "not that I was there and saw".

- Dole told him this sometime shortly after March 82 investigation completed.

- Information that no RCMP report received by Attorney General until December 1982 causes him to question his assertion.

- Knew about difficulties of Attorney General's department about handling Marshall case from press.

- Understood that Attorney General's office wanted Marshall investigation not to be held up for other investigations.

- Understood this to mean that he was not to proceed with investigation of MacIntyre or Sydney Police department.

Re: RCMP reports - No written report saying MacIntyre concealed papers a cause of difficulty for Vaughn in 1986. But asserts that superiors knew of details from oral reports.

- Directive to hold other investigation in abeyance and close Marshall case affected content of later reports.

- Disagrees with superiors about effect on investigation if Marshall had admitted attempted robbery.

- Wheaton did not direct Davies to make notes or report about attempt of MacIntyre to conceal paper from file.

Re: Miscellaneous - Conditions at Chant home (front portion a funeral parlor) a factor in need for second interview of Chant, (conducted by Carroll).

- Not aware of incidents of overt racism in the administration of criminal justice.

- Did not observe racial intolerance in Sydney when stationed there 1973-75.

End Summary of Testimony, Harry Wheaton (day 6), Jan. 27, 1988

JAN 28th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: January 28, 1988

Witness: HARRY WHEATON (day 7)

Re: Policy on sensitive investigations - Not aware of written RCMP policy which requires that investigation be held up while awaiting instructions from the Attorney General's office.

- Aware of policy which tells type of offenses which must be reported to Attorney General's office.

- Practice to wait for instructions before proceeding in cases involving prominent individuals

- Did not see written documents to "hold investigation of MacIntyre and Sydney Police in abeyance".

- Understood that no further investigation would be conducted until instructions were received.

Re: Miscellaneous - Very difficult to discern racial prejudice.

- Never received typewritten version of Harriss 17 June statement.

- Stationed in Halifax at time of Reference, not Sydney.

- Answer with word perjury by young witnesses being questioned about meaning of oath is unusual.

- Cst. Gaudet took statements about restaurant fire, not sure if statements seen or just told about them by Gaudet.

- Never been criticized for improper leaks to the media either before or after 1982.

End Summary of Testimony, HARRY WHEATON (day 7), Jan. 28, 1988.

Witness: Sgt. HERB DAVIES

Davies, 24 year RCMP veteran accompanied Wheaton to MacIntyre's office on day when Marshall file turned over.

- Certain it was 26 April because: 1. saw and read letter from Attorney General How prior to going, and 2. Inventory prepared by MacIntyre is dated April 26, but 3. no independent recollection of date.

- Saw MacIntyre slip document on floor, informed Wheaton who confronted MacIntyre and then received it.

- While driving back to RCMP office Wheaton read document, details not recalled by Davies.

- Certain that Wheaton mentioned name Patricia Harriss in connection with the document.

End Summary of Testimony, Herb Davies, Jan 28, 1988.

Witness: Sgt. JAMES CARROLL

Carroll, 26 year RCMP veteran stationed in Sydney Subdivision 618 in 1982, was main associate of Wheaton in the Marshall investigation.

- Carroll maintained a notebook which assists his recollection.

- First involvement, review of trial transcripts, 4 Feb, 82

- With Wheaton in Pictou to interview Saracen, impressed by Saracen, felt he was telling what Ebsary told him.

- Very surprised by statement of Chant, believes he was interviewed same evening after seeing him briefly at work in fish plant.

- Met frequently to discuss developments in case with Wheaton and appraise him of investigation conducted. Wheaton responsible for writing reports and contact with superiors.

End Summary of Testimony, James Carroll, Jan. 28, 1988.