

MARCH 7<sup>th</sup> 1958

SUMMARY OF TESTIMONY

Date: March 7, 1988

Witness: WILLIAM A. URQUHART

Examination by: David Orsborn

Urquhart, 34 year veteran of Sydney Police force, member of the detective division in 1971, worked closely with John MacIntyre in the investigation of Seale murder.

Urquhart has very limited independent recollection. Most responses were related to written records that contained his name or his 'usual practice'. He stated that he conferred frequently with MacIntyre about the case but could not recall the substance of those conversations.

Re: Usual Practice - Two officers present for statement taking, one in charge asked questions and wrote answers, second there as a witness. (most statements in this case only one officer present).

- Always signed name to bottom of statement when he was witness. (No explanation for three occasions when name not on written statement but appears on typed version).
- Juveniles allowed to have parent present, matron called in when woman is questioned.
- Witness always allowed and encouraged to read statement before signing, if refused, note made of that fact.
- Turn over entire file to Crown, no knowledge of MacIntyre's practice.

Re: First Days of Investigation - Briefed by MacIntyre on Monday morning, can't recall details.

- Chief Gordon MacLeod never told Urquhart that MacIntyre did not come out on the night of the stabbing, H.R. MacDonald did not tell either.
- Never heard about Chief being 'mad enough to fire MacIntyre'.
- Didn't know Marshall, Chant, Pratico, Harriss, Gushue.
- Can't recall seeing first statements of Chant or Pratico.
- No recall seeing Telex naming Marshall as suspect.
- No recall Scott Mackay, no signature on statement indicates probably not there for interview, Mackay said Urquhart present, Mackay mistaken.
- No knowledge of pressure from Chief or Community for solution.
- Recalls discussing theory that Marshall wound self inflicted with MacIntyre in early stages, "I did not reach any conclusion".

Re: Pratico and Chant 'Eyes-witness' Statements - Recalls Pratico coming in to make statement, no recall of pressure or threat, all sat during statement taking, anything said would be contained in statement. No independent recollection of details.

- Recalls Chant 'well' because significant, i.e. second eye witness statement in one day.
- 'Clear' recollection - Hedges, Gurle, Mrs. Chant, Chant, Urquhart and MacIntyre all present throughout.
- No pressure, threats, no crying by Chant, Mrs. Chant not asked to leave and did not leave. 'Hot in my presence'.
- Statement reflects total discussion, circumstances of stabbing not outlined as foreshadowed by Hedges.
- No recall of subsequent conversation with MacIntyre or Hedges about who was present at the interview.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Summary WILLIAM URQUHART (cont.)

Re: Bobby Patterson - known to Urquhart and other police from prior arrests.

- Unable to find, Don't recall location, Rest of my knowledge didn't filter in, Positive I didn't interview, Can't remember interview.
- Didn't leave room and return with unsigned statement for him to sign.
- "Initially politely" Patterson approached to chair, "Never seen" anything like that.
- Never saw MacIntyre attempt to manhandle anybody, Patterson incorrect.
- No explanation why Patterson not located in Sept. '71 when he went to the county jail on Galton Street for four months.

Re: Patricia Harriss - Recalls interview but not very clear.

- Can't recall how she got to office, if mother was there, or if other police officer present.
- "If MacIntyre had seen that he would have taken the statement."
- Did not crumple up statements and throw on floor, never happened in my presence.
- No explanation why statement incomplete and unsigned and not typed.
- No Urquhart signature on second Harriss statement therefore "I don't believe I was there"
- No recall Harriss crying, no banging on table "by me or in my presence"

- No knowledge of alleged linkage between Harriss and M. O'Reilly.
- No knowledge why MacIntyre came out later and interviewed Harriss.

Re: James MacNeil - Took statement from brother John MacNeil then called for MacIntyre, Witnessed other statements taken by MacIntyre.

- Discussion with MacIntyre about information resulted in call to Lew Matheson, Asst. Crown Prosecutor.

- Ebsary fingerprint card in record room, no recall of obtaining it.

Re: Miscellaneous - Not unusual to drive Fratico to N.S. Hospital.

- Did not know Dave Ratchford or Donna Ebsary, If he had brought her to me with information I would have recorded it, Never happened to my knowledge.

- Knew Gary Green, RCMP, can't remember ever discussing Marshall case with him, "It never happened".

- Frequent request from Parole officers for assessments, no recall of specific contacts or comments he may have made.

- Remembers Pappy Paul coming in with Ebsary name, told him to try to get more information, took no action, saved info from Paul in his desk until turned over to MacIntyre, Apr. 26, '82 after AG's order.

- No part in Nov. '71 RCMP investigation, heard about polygraph.
- No part in '82 RCMP reinvestigation, does not believe he reviewed file with MacIntyre, or looked at statements he took in '71.

- Recalls discussing affidavit with Edwards, asked for deletions, can't recall exactly what or why.

- Destroyed note books and tapes after retirement in 1983, doesn't believe they had any information about this case.

End (Summary) of testimony, William A. Urquhart, March 7, 1988.

MARCH 8<sup>th</sup> 1988

SUMMARY OF TESTIMONY

Date: March 8, 1988

Witness: DOUGLAS RUTHERFORD

Examination by: George MacDonald

Rutherford, a lawyer with the Federal Department of Justice since 1969, was Assistant Deputy Minister of Justice for Criminal Matters in 1982. As such he was involved in the Marshall case in three ways:

1. Discussions with Officials of AG Department of NS as to how the Minister of Justice would deal with the application for pardon on behalf of Marshall and other issues raised by it, e.g. perjured testimony, allegations of police misconduct, Ebsary trial.
2. Discussions with Officials of AG Department of NS about compensation for Marshall and his attorney fees.
3. Recommendations to the Minister of Justice regarding 1 and 2.

Rutherford's testimony was based on his own involvement and recollection and of Att. Ron Fainstein who worked for him at the time.

1. Discussions about application under Sec. 683 and 617 C.C.C.

- Free Pardon or Conditional Pardon Sec. 683 did not permit full airing of many issues and problems in the case, therefore not favored.
- Under 617(a), a new trial could be ordered. Rejected because RCMP investigation disclosed insufficient evidence to charge Marshall.
- Sec. 617(b) referred to Court of Appeals as if a new appeal. Rejected because it could lead to the same problem as 617(a) if Appeal court ordered new trial.
- Sec. 617(c), a specific question directed to the Court of Appeals and its findings to provide guidance for Minister of Justice, chosen.
- After meetings and phone calls between Rutherford and Gale and Aronson and on one occasion Edwards 617(c) selected as way to provide remedy for Marshall. Minister agreed and papers drawn.
- Justice MacKeigan posed problem of receiving new evidence under 617(c).
- More consultation led to selection of 617(b), a reference to Court of Appeals of NS. Normal to consult widely in 617 cases including but not limited to Defendant, Police, Provincial Attorney General
- Expectation was that Court of Appeals would look at all issues including, alleged police misconduct, possible perjury, compensation.
- Expectation of vigorous cross examination of witnesses where previous testimony in doubt and full exposure of all issues.
- Court of Appeals did not hear evidence of MacIntyre and Urquhart, did not inquire into allegations of badgering of witnesses.
- Decision to acquit Marshall contained obiter that 'miscarriage more apparent than real', Marshall's conduct in part responsible for events and compensation issue not dealt with.

2. a. Compensation:

- Minister of Justice consistently stated that compensation for Marshall was a Provincial matter, believes Province in agreement.
- 617(b) did not foreclose Court from considering compensation.
- Believed AG took on Compensation issue, nature and amount.
- Minister of Justice refused compensation under International Covenant, cites obiter, refers to Marshall as author of own misfortune.
- No Federal role in Marshall miscarriage therefore no Federal responsibility for Marshall compensation.

DOUGLAS RUTHERFORD (cont) March 8, 1988

2. b. Attorney's Fees:

- Recognized large cost to prepare Reference. Discussed Aronson fees with Gale.
- Legal Aid cost shared with Province, not appropriate to set different scale for Aronson.
- Never in a position to commit Justice department to pay but agreed to raise inadequacy of Legal Aid scale for Reference with Gale.

3. Other:

- Compensation award of 270 thousand eventually split by Feds and Province.
- MacGuigan pushed Province on Compensation issue and considered setting up Commission of Inquiry to look into Marshall case.
- Unclear whether Marshall had different burden under 617(b) vis a vis 617(c).
- Uncertain who Marshall, Court or Crown responsible for witnesses called for reference but appears that Court directed.
- No explanation why issue of police misconduct through vigorous cross examination no permitted.

End Summary of Testimony DOUGLAS RUTHERFORD, MARCH 8, 1988.

MARCH 9<sup>th</sup> 1888

SUMMARY OF TESTIMONY

Date: Wednesday March 9, 1988  
Witness: WILLIAM URQUHART (cont.)  
Examination by: Various counsel

The following additional items were provided by Urquhart under examination by counsel for various parties:

- MacIntyre was in charge of the investigation, Urquhart exchanged ideas, kept MacIntyre informed and did what he was asked, no recollection of any particulars discussed or theories of the crime.
- No recollection of investigation to locate grey haired man.
- No recall being told that Marshall was at the station all day Saturday and Sunday.
- Suspicious of wound on Marshall's arm because of location.
  
- In statement taking, Urquhart did not do a preliminary discussion but began recording as soon as he introduced himself and told purpose of the interview.
- After statement an unrecorded discussion might take place.
- Never knew of or used 'good guy/bad guy' interview technique.
- Considered successful at getting statements but never called 'father confessor' to his face.
  
- No recollection of suggestions to Chant, Hagee could be mistaken.
- Had no concern about possible criminal charges against him from '82 reinvestigation and never heard MacIntyre talk about them.
- Described Donnie MacNeil as a fair, competent prosecutor with a good report with the police.
- Does not recall telling Williston that he would get back to Edwards, no intention to re-contact Danny Paul, waiting for Paul to get back to him with more information.
- Not aware of 1st statements of Chant, Pratico or Marshall's statement until 1986. Not aware 'robbery theory' until appeal.
- Not aware Seale told Timmons 'no cops' until heard at inquiry.
- Not involved in any leaks of information, only knew what he saw in press.
  
- Does not believe there was any basis for MacIntyre saying 'possible reprisals by Black Community' - Never heard of any section of Sydney referred to as the Black section.
- Never heard any remarks about ethnic groups in any way, shape or form.
  
- Never fabricated any evidence, investigated to best of ability, 'no cover up by me personally'.

End Summary of testimony WILLIAM URQUHART, March 9, 1988.

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ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Date: March 9, 1988

Witness: DOUGLAS CHRISTEN

Examination by Mylie Spicer

Christen, a 34 year veteran of RCMP, was in charge of Criminal Investigations Branch for Nova Scotia during time of RCMP reinvestigation of Marshall case until retirement in June 1983.

- No knowledge of case prior to '82.
- First involvement, call from MacIntyre looking for name of polygrapher in '71 investigation.
- Inspector Scott reported to Christen.
- Christen met weekly with Gale. Related what Scott told him.
- No personal involvement in investigation, independent recollection limited but somewhat refreshed by reading documents and evidence.
- Conclusions of Christen in written reports based on what Scott said.
- Reports sent to Ottawa - policy to keep advised of anything likely to attract media attention or questions on floor of Parliament.
- No recall discussing 'pressure' on witnesses by MacIntyre with Gale.
- Not sure when Insp. Marshall '71 report located. No recall of thinking about investigating why Insp. Marshall missed information.
- Possibly discussed allegations against MacIntyre with Gale but understood first to gather information to settle Marshall case, then Ebsary and the rest, including what to do about Sydney police, wait.
- Believes AG well aware of alleged pressure of witnesses.
- Personal observation - more willing to believe Marshall if told of attempted robbery.
- Vague recall of MacIntyre visit to Gale with documents.
- Aware search warrant discussed between Scott and Edwards. Aware letters sent to get all documents.
- "To my knowledge I was never made aware" of Wheaton allegation that MacIntyre threw document on floor. Should have been at least in written report.
- "held in abeyance" - believed AG would order investigation of Sydney PD later.
- Did not interpret Gale's letter to review files on Police practice as order to investigate Sydney PD. Assumed he was looking into it.
- Believed AG knew all relevant information because copies of reports sent with his summaries.
- No recollection of approach by Wheaton suggesting charges be laid against MacIntyre. Believes he would recall if happened.
- Believes order 'hold in abeyance' reasonable, if not, would have brought up with his CO.
- No authority to go ahead with investigation in face of AG order to hold in abeyance.

End Summary CHRISTEN, March 9, 1988.

MARCH 14<sup>th</sup> 1988

SUMMARY OF TESTIMONY

Date: March 14, 1988

Witness: ROBERT PATTERSON

Examination by: George MacDonald

Patterson, 17 years old in 1971, attended dance at St. Joseph's on May 28th. Left with Harriss and Gushue and went to the park. He was drunk and has no recollection of events that followed. He testified about what happened when he was picked up by the Sydney Police for questioning about the stabbing:

- Picked up at home by two uniformed men, date uncertain.
  - Taken to Detective office adjacent Police Station.
  - MacIntyre and Urquhart present.
  - Handcuffed to chair, questioned by MacIntyre about night of stabbing.
  - Urquhart left room and MacIntyre slapped, punched, pulled hair, slammed him against wall in chair.
  - Urquhart returned shortly with a statement, Patterson refused to sign, not allowed to read, more abuse followed, Urquhart participated.
  - Continued refusal to sign statement, released with a warning not to tell what happened. Told no one. Elapsed time 1 1/2 to 4 hours.
  - Arrested in early Fall '71 sentenced to 4 months in County jail on Welton St. in Sydney. Neil Urquhart, brother of Det. Urquhart deputy warden of the jail.
  - Left Sydney after getting out of jail. Returned following Spring.
  - MacIntyre saw on street and told him to get out of Sydney. Left and did not return.
  - Lengthy criminal record admitted in evidence.
  - Did not come forward on his own, located by Commission Counsel, is not out to get MacIntyre or Urquhart, just to 'tell what I know'.
- End Summary ROBERT PATTERSON, March 14, 1988.

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Date: March 14, 1988

Witness: STEPHEN ARONSON

Examination by: David Ursborn

Aronson became Marshall's attorney in 1981 at the request of the Union of Nova Scotia Indians.

Re: Early Involvement: - Early September '81 met Marshall, Gould, Paul and Saracen at Dorchester Penitentiary.

- After meeting talked privately with Marshall. Made notes of both meetings. No recollection beyond notes.
- Impression of Marshall, a man convinced of his innocence who had poor communication skills.
- Obtained and read transcripts.
- Haude Hoady, Parole, said no parole for Marshall because no remorse and no admission of guilt.
- Sent letter Jan, '82 to Sydney Police with Saracen's information naming Ebsary as person who stabbed Seale. Ebsary assault on Goody Muiridge with knife added stimulus for letter.
- Not aware that Marshall was contacted by Wheaton and Carroll.
- Wheaton would not provide copy of his report. Said it was up to AG.
- Letter to Herschorn asked for report, denied because investigation not complete. Also to try and get Marshall out of Dorchester.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

- Requested RCMP reports from Coles and Gale on numerous occasions, orally and at least once in writing, response consistently negative.
- Aware of contents of RCMP reports through conversations with Wheaton and Carroll.

- Recalls conversation re MacIntyre concealing Harriss statement as happening before AG letter to turn over documents.

Preparing for the Reference: - Free Pardon preferred because it would have meant end of the matter for Marshall.

- 617(c) Question, answer by Court of Appeals to guide Minister of Justice, next choice.

a. Relations with AG Officials: - Wouldn't release, RCMP reports, "Not Policy"

- Attorney General (How) wouldn't offer assistance, considered it a Federal matter because Marshall was an Indian.

- Choice of 617(b) put onus on Marshall, difficult to prepare without availability of information in RCMP reports. Gale offered to discuss the information but not give out report.

- Saw himself in an adversarial role with Gale.

- No recall of discussion re compensation with Gale at this time.

- May have discussed Sydney Police actions but a peripheral issue.

- Believes Gale expressed opinion Marshall partly responsible.

- Gale agreed on acquittal not sure grounds he used. (Edwards note Apr. 5th suggests "miscarriage of justice").

b. Relations with Federal Officials: - Discussed case with Fainstein in Ottawa. Followed with letter, preference Free Pardon, 617(c) 2nd choice

- Payment of Fees discussed, believed not qualified for Legal Aid did not apply. Suggested try to get from Province, if no success Department of Indian Affairs.

- 617(c) favored over 617(b) because Marshall would get his day in court, decision remained with Minister of Justice, Feds more sympathetic than Province. Disappointed when 617(b) selected.

c. Relations with Frank Edwards: - public position, Marshall at least partly to blame, private position not so extreme, suggested "miscarriage of justice".

- Believes in May through Edwards he got copies of the RCMP reports.

- Had discussions with Edwards and used his office during affidavit preparation, Edwards planned to get affidavits from police to rebut allegations of pressure by Chant, Pratico and Harriss.

- Edwards said he was under pressure from AG office because of his approach to the case.

d. Affidavits: - General procedure, had meeting to discuss statement, usually alone, sometimes with RCMP, returned with prepared document for signing. Some prepared beforehand using RCMP statements as basis.

- Names Urquhart and MacIntyre assumed to come from reports not from Chant himself. Certain Chant read before signing.

- Khattar quite certain of a different result to trial if aware of other statements of witnesses.

- Khattar said no investigation done, relied on Marshall and friends. Prevented from raising Pratico out of court denial.

- Rosenbloom not aware of robbery theory.

- Aronson believed witnesses would be called and fresh evidence adduced at Reference.

End Summary ARONSON, March 14, 1988.

MARCA 15<sup>th</sup> 1988

SUMMARY OF TESTIMONY

Date: March 15, 1988

Witness: STEPHEN ARONSON (cont.)

Examination by: David Orsborn

Aronson's testimony mainly concerned the conduct of the Reference to the Court of Appeal. Justice Pace replaced Justice Morrison who sat on bench for hearing on new evidence.

Re Affidavits: - At hearing October 5th to admit new evidence, no affidavits filed by Aronson or Edwards were considered evidence.

- At Reference, only affidavit of Patricia Harriss admitted as evidence.

- Other affidavits not introduced into evidence were referred to during cross examination by Edwards, from the Bench by Pace and Jones, in the Crown factum and cited in the written decision of the Court.

- 'Court very definitely aware of the content of all the affidavits'.

- Affidavits of MacIntyre, Urquhart and Magee prepared by Edwards not admitted, no oral or affidavit evidence from Police before Court.

- Believe police affidavits not admitted because Court did not want to get into question of why witnesses lied.

- Crown depicted Marshall as responsible for conviction at trial.

- Aronson believes evidence about alleged robbery not relevant, certainly prejudicial and would not have gone before a jury.

Re Factum and Oral Argument: - Crown and Appellant agreed acquittal proper outcome.

- Grounds in dispute, Aronson - 'miscarriage of justice', Edwards, 'insufficient evidence to support conviction'.

- Recollection that the argument was mainly about whether the system or Marshall was more responsible.

- About Crown factum- 'very much trying to exonerate the system', but not relevant because 'no evidence before the court on why Marshall was convicted, no police evidence, no knowledge of the '71 reinvestigation, insufficient evidence that the court could use as a basis.'

- No evidence presented about effect of 'robbery theory' on police or defense.

- Oral argument 30 - 45 minutes in Feb, 83

Re Judgement: - Contained statements not supported by the evidence or raised in the oral argument, e.g. Statement and affidavit of J. MacNeil contained in decision never introduced into evidence; Chant affidavit quoted although not introduced in evidence; Pratico affidavit reproduced and Mian affidavit quoted but not introduced in evidence.

- Marshall conviction not supported by facts and quashed.

- Marshall's first reaction was positive because the weight was lifted off his shoulders but was concerned about the onus of 'his fault'.

- No avenue of appeal available.

Re Other: - Marshall case a factor but not overriding in leaving practice of law.

- Called for Public Inquiry in press conference after decision made.

- Fees finally received from compensation paid to Marshall.

- No role in negotiations for compensation.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Summary ARONSON (cont.)

Re: Items on Cross

a. By Ruby - Delay in receiving RCMP reports hindered ability to make submissions based on reports and created pressure to locate witnesses and get affidavits, only about a month.

- Hard to have input in reference procedure without documents.
- Disagree with statement 'any miscarriage more apparent than real', all evidence considered on balance was sufficient to find miscarriage.
- Feeling about decision, disappointed, upset and shocked that the court vindicated the system, put blame upon and 'convicted Marshall of a crime of which he was never charged.'
- Effect of not admitting affidavits was that he was not able to direct submissions about contents, e.g. police pressure on witnesses.
- Marshall under great pressure, 'like a little kid without experience in a non-institutional setting', needed significant counseling to readjust to society.
- No offer of assistance to Marshall by Province except vague job offer first learned of by Marshall in the press.
- Marshall went to Carlton Pre-Release center for three months under agreement with the National Parole Service.
- Native addiction worker Charlie Gould hired by UNSI for counseling and assistance to Marshall on a daily basis for about four months to help him adjust.

By Pugsley - Interpretation of Wheaton report basis for affidavits.

- No reference in Marshall affidavit to 'rolling or robbing' because Marshall said it was not true and only said it because he felt he had to give RCMP that kind of statement.
- Marshall felt blame because Sandy Seale died, took the position that there was no robbery or rolling but they were together. 'Based on what he said to me, he did not have specific intent to rob.'
- Pratico an unpredictable witness, vis a vis unreliable.
- Best recollection of Wheaton telling about MacIntyre putting paper on floor was that it happened before AG letter ordering turnover and was a statement of Patricia Harriss.

By Saunders - Gave Michael Harris a copy of RCMP reports 6 or 8 months after getting them from Edwards in confidence. Fairly certain given to Harris in confidence. Copy went with file to Cacchione, no others.

- Undertaking of Minister of Indian Affairs, John Munroe to pay Aronson legal fees 'contingent' on trying to get Province and Legal Aid first.

By Ross - Job was to show that Marshall was innocent and wrongly convicted not to reinvestigate the original matter.

- Ebsary not summoned because of possible prejudice to his trial.

By Wildsmith - Assessment of Sydney as 'Redneck' based experience working with Indians, on legal research into Indian land claims and treaty rights.

- Historical example of 'Redneck' atmosphere was expropriation of Reserve land along Sydney River.
- 'Redneck' attitude more blatant on mainland NS. 2 examples cited.
- Believes if Marshall not an Indian, a greater amount of effort would have been used in early investigation.

End Summary ARONSON, March 15, 1988

MARCH 16<sup>th</sup> 1988



SUMMARY OF TESTIMONY

Date: Wednesday March 16, 1988

Witness: RON GIFFIN

Examination by: Wylie Spicer

Giffin, present Minister of Education was Attorney General of Nova Scotia from 1983-87. He defined the role of AG as being law officer of the crown, providing legal advice to all departments and Cabinet and representing the Province in legal matters.

Re Power and Procedure - Criminal prosecution matters are not taken to Cabinet nor discussed with Cabinet or the Premier.

- Cabinet would and did discuss a matter such as compensation for Marshall.

- Able to end RCMP investigation by staying prosecution, and as person ultimately responsible, AG could tell RCMP to stop investigation.

- Able to direct local police investigation by stay of proceedings, not certain if power to stop investigation.

- No legal liability for actions of a local police force.

- Advised of ongoing investigations by senior department staff.

- Staff: COLES, GALE, HERSCHORN - Criminal, CONRAD - Civil, MacDONALD - Administrative, expected to do paper work after decision reached.

- Personal involvement of AG in any matter senior staff deems important enough and things "I inquire into myself".

- Contact with Judges through MacDONALD or between Chief Judge and AG.

- Not aware of practice to keep separate "green stripe files".

- Directed full disclosure to defense as department policy.

- No recall of complaints of non-disclosure.

- Recalls allegation of racism in Weymouth falls 1985 murder case, reviewed and found no grounds in law for appeal.

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QUESTION: Any discussion of Marshall case in Cabinet before reference order of June 16, 1982?

OBJECTION AND ARGUMENT re Cabinet privilege. DECISION reserved.

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Position of Government re Marshall - no miscarriage of justice.

- Marshall partly to blame, author of own misfortune.

- Marshall blame a factor in considering possible compensation.

- Giffin: did not hold that Marshall partly responsible, does not recall ever publicly disagreeing with that position.

- Did not instruct that "Marshall blame" should not be considered in deciding on compensation.

- Not aware of Aronson request for public inquiry, or Cacchione letter requesting same.

Compensation: - Felt argument could be made for Federal responsibility.

- Discussed with MacGuigan, can't specifically recall details.

- Civil suit against City of Sydney and police officers and Ebsary case reason for caution in pursuing compensation settlement. Inquiry into compensation could prejudice matter before the courts.

- No intention to get Marshall to drop civil suit.

- Compensation considered ex gratia including attorney fees, no legal obligation.

- Does not recall any advice from staff whether request of Cacchione was reasonable.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

- Set up Campbell Commission to determine compensation, relied on Campbell to decide matter of compensation and attorney fees.
  - Mandate for Campbell to consider incarceration after conviction.
  - 'I did not have any discussion that I can recall' with government before \$25,000 interim payment.
  - Negotiations for final figure, reasonable not the consideration, just a set of negotiations. Marshall represented by competent counsel.
  - Did not agree with Anders position that it was in the public interest to pay as little compensation as possible.
  - Settlement \$270,000 was 40 to 50 thousand less than authorized.
  - Can't recall why releases were required from both Marshall and his parents.
  - A precaution against future claims, on advice of staff.
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- Despite claim of Cabinet Privilege, Giffin made three direct references to matters discussed in Cabinet.

End Summary GIFFIN, March 16, 1988.

MARCH 17<sup>th</sup> 1958

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RULING: Past and Present members of Cabinet may be asked about discussions of the Marshall case but not individual opinions or comments expressed in Cabinet meetings.

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### SUMMARY OF TESTIMONY

Date: March 17, 1988

Witness: RON GIFFIN (day 2)

Examination by: Wylie Spicer

Giffin testimony was mainly concerned with the issue of compensation for Marshall and how the amount was determined.

Negotiations: - Position that if agreement on amount could be reached, fine; if not, proceed with the Campbell Inquiry.

- No recall being told of Marshall's mental condition.
- Position in the negotiations was to make the best possible settlement on behalf of the Province.
- Fair comment that the process was more adversarial than when set up.
- At no time said that dropping the civil suit was a condition of the settlement.
- Fair because both sides represented by competent counsel.
- \$25,000 interim payment recommended by Campbell was attempt to ease pressure on Marshall.

Settlement: - Not aware if Cacchione told that settlement was subject to the approval of Campbell.

- Release from liability signed by Marshall and parents a routine procedure, did not affect 'ex gratia' nature of payment.
- Release was beyond terms of reference of original inquiry but 'I didn't think of it at the time'.
- Report approving settlement drafted by Coles for Campbell signature.
- No recall of discussion with Campbell about the adequacy of the settlement.
- Doesn't believe Campbell inquired about conditions of settlement.

Release of Report: - Concerned about release of RCMP report to Aronson.

- Aware of Gale chastising Edwards and Edwards response.
- Believes Edwards should have cut out items not relevant.
- No recall of concern about release of confidential police information to Pugsley, assumed Gale excised sensitive material.
- Not necessary to be as cautious about Ebsary case at this time.

Investigation of Sydney Police: - Position that RCMP did investigation of Sydney Police in response to Gale letter to review practice.

- Permission of AG needed to investigate a Police force but in this case permission not needed because RCMP already involved.
- Did not see any request for investigation of Sydney police officers or any statement that charges should be laid.
- 'Can't recall if Coles and I discussed it' (charge MacIntyre for counselling perjury).
- 'hold in abeyance' simply a matter of setting priorities.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Summary GIFFIN (day 2) (cont.)

- Freedom of Information: - No intention to be unfair to Cacchione. Cautious about Marshall case and did not want to take action until position of Government on compensation issue decided.
- Rejection of appeal not unfair because looking for other ways to get information to Cacchione, he could have gotten from Campbell after Inquiry was set up.
  - Appeal rejected without reading file but discussed and generally aware of file.
  - Problem is the legislation, doesn't allow a realistic appeal process.
  - Freedom of Information Act is unchanged and still in full force and effect today.
  - Agreed that Department guidelines for full disclosure in adversarial proceedings, give more than provided to Cacchione in this matter.

- Miscellaneous: - Perjury charge against Marshall discussed with staff, no action because a. uncertain charge could be supported, b, broader issue - a travesty of justice to charge.
- No recall refusal to speak with or have visit from Mrs. Marshall.
  - No recall humorous remarks or 'trivializing' Marshall case at RCMP regimental dinner. Not the type of comment I would have made.
  - Not aware that researcher in AG department prepared memo on civil liability of police under Police Act.
  - Caucus: - 'I can not safely under oath tell you one single statement that I recall.'
  - Edmund Morris release of information about job for Marshall to the press: If it happened now I would be upset.
  - No minutes, recordings or secretary at Cabinet meetings, only formal documents released after the meeting. Private notes destroyed at meeting end.
  - Did nothing as AG to find out why information of J. MacNeil not made available to defense in 1971.

End Summary of Testimony GIFFIN, March 17, 1988.

MARCH 21<sup>ST</sup> 1944

SUMMARY OF TESTIMONY

Date: March 21, 1988

Witness: RON GIFFIN (3rd day)

Examination by: Various Counsel

Giffin finished his testimony subject to recall if Court rules against claim of 'Public Interest Immunity' for Cabinet discussions.

By Derrick: - Marshall compensation taken out of the Political arena by appointment of Justice Campbell. No guide lines drawn up so as not to interfere with Campbell's discretion

- A cautious approach to the compensation issue necessary so as not to trespass on the Ebsary case.
- Did not talk with Pace about compensation or civil suit of Marshall against Sydney and Police.
- Doubts he would, a. negotiate after appointing a Commission of Inquiry and, b. appoint the Commission in the first place.
- Guide lines and legislation would be helpful in resolving future claims for compensation.

By Pringle: - Authority to stop an RCMP investigation 'Inherent in the responsibility for the administration of justice.' Did not research the issue at the time.

- Gale's letter asking for a review of practice of Sydney Police not a clear request for further investigation.

By Ross: - Allegations of Racism in murder case at Weymouth Falls.

- Jury selection, satisfied that jury selection by Justice Burchell conducted fairly.
- Jury panel not identified by race.
- Allegation against Judge Vickers referred by Mr. How to the Judicial Council where it was heard and dismissed.
- Did not look into "mean drunk" statement about deceased, did not take a racial connotation.
- Herschorn said no grounds for appeal in law, presume he got information from Crown.
- Responded to concerns of BUF and Weymouth Justice Committee in a letter and in a lengthy meeting. Did not see as a matter that would require public inquiry.
- Did not personally review the Weymouth Falls matter.
- No authority as Attorney General to direct the Judicial Council, only refer complaint to it.
- No program to recruit Black lawyers in Legal Aid.

By Wildsmith: - Clause #4 in current RCMP agreement with Province says RCMP acts under direction of AG.

- Favored Native self-government but concerns about "third order of government" and "control over the administration of justice".
- Province originally not supportive but "the attitudes of my Cabinet colleagues tended to progress as we learned more".
- Legal Aid contribution from Feds higher for N.S. than other provinces.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Summary, GIFFIN (cont.)

- Not sure of effectiveness of Court Worker program.
- No research done about effectiveness of Court Worker, just general discussions.
- Can't specifically recall if he did anything as AG to promote the Court Worker program.
- Supports the idea of Indian Police.
- No development of Indian Police while AG because of 'very severe financial restraint.
- Does not recall that Native constables were 100% funded by Feds.
- Can't recall who suggested that Marshall's parents should sign release when compensation made. Suggestion that it was Coles' idea is consistent with his recollection.
- No reason why Chief Judge could not act on own initiative to refer allegation of racial remarks to the Judicial Council.
- Indian issues discussed at Cabinet? "Oh yes".
- A possibility that something should be done to prepare against possibility of racism in makeup of jury when a Black or Indian is a defendant.



MARCH 22 1988

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ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: March 22, 1988

Witness: HARRY HOW

Examination by: David Orsborn

How, Attorney General from 1978 to 1983, is now Chief Provincial Court Judge. He was AG during the 1982 RCMP reinvestigation and Reference to the Court of Appeals.

Re Disclosure: - In private practice 59-78 disclosure by Crown unheard of in early days, toward end, practice to give some info.  
- After becoming AG extended the practice 'upon request' of defense except where witness might be placed in jeopardy.

Re AG Function: - Dual, Minister of Justice and Chief Prosecutor.  
- Didn't draw distinction between the two functions.  
- Did not consider subject to Cabinet or caucus solidarity.  
- Did not discuss cases in Cabinet, caucus or with Premier.  
- Consult Cabinet on policy direction and expenditure of funds.  
- Delegated much, kept hands on complaints.

Re Senior Staff and Files: - Most communication through deputy but door open to other staff and would take advice.  
- Can't remember 'Green Stripe Files'. Policy not to release any police files.

Re Reinvestigation: - Feb '82 first knowledge of Marshall case.  
- No direct involvement with RCMP or decision to investigate.  
- Regular briefing from senior staff because of uniqueness of case.  
- Most info on Marshall from Gale who got from RCMP, did not attend regular Thursday meetings with RCMP, Not aware daily coffee meetings.  
- No recall, directions or advice to staff.  
- View, RCMP had unfettered right to investigate, No need AG permit.  
- Not aware MacIntyre & Urquhart not interviewed.  
- Not aware of 'hold in abeyance' until later. Learned from Gale it meant to delay until after Marshall and Ebsary cases settled.  
- No recall of MacIntyre visit to Department, but believes Gale's requested letter ordering turn over of Sydney police files to RCMP.

Re Reference to Court of Appeals: - 'Not sure I was aware' of Aronson request for RCMP report.  
- 'Would have thought they (statements of witnesses from RCMP report) were released', No explanation if not released.  
- Favored Reference over Free Pardon to allow vindication of Marshall.  
- Not aware and no discussion about shift from 617(c) to 617(b).  
- Not aware of intervention by Judge Mackeigan.  
- Agreed with Edwards on 'miscarriage of justice'.  
- Not aware of failure to raise 'miscarriage of justice'.  
- 'Can't remember a consistent opinion' about miscarriage of justice.  
- 'Didn't express a preference', but 'agreed to my satisfaction' that Marshall was at fault and not the system.  
- Not aware Police not called.  
- Aware of dispute between Coles and Edwards over the role of Crown.  
- Not aware of call for public inquiry by Aronson.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Summary, HOW (cont)

Re Compensation: - Marshall's fault position in the Reference not connected to compensation.

- Whether a person is partly responsible is a factor for consideration in determining the amount of compensation.
- Deferred consideration of compensation because of civil suit against the City of Sydney and Police.

Re Investigation of Sydney Police:

- 'Probably did have' briefings from his officials about alleged actions of Sydney Police.
- 'Don't think we decided' if there was enough evidence to lay charges against the Sydney police.
- 'Can't say I came to a positive view.'
- 'Frankly didn't know if the court had information to address possible Sydney Police Department conduct.'

Re Miscellaneous: - 'Not in the overall interest of justice to charge Chant and Pratico with perjury.

- No clear recollection of details of being asked to consider contempt charges against Parker Donham.
- No public inquiry while civil suit before the court.

End Summary of Testimony, HOW, March 2, 1988.

MARCH 23 1968

SUMMARY OF TESTIMONY

Date: March 23, 1988

Witness: HARRY HOW (day 2)

Examination by: Various Counsel for Parties

Argument rather than testimony might more aptly describe much of the day's events.

Re Role of Attorney General: - Would not discuss cases in Cabinet and would caution and withdraw if raised.

- Difficult to separate roles of AG from politician's role.
- No need to separate job of AG from that of Solicitor General.
- No recall of caucus discussion of Marshall case in '82.

Re Juries: - No recall that ethnic and racial composition of juries was an issue when he was AG.

- Impressed over the years by integrity of juries.

Re Disclosure: - Obligation of the Crown to disclose all material favorable to the defense is 'our policy' not law.

- Statement of J. MacNeil went to issue of guilt, important for defense and should have been disclosed.

- Practice and tradition that police reports were for AG department.

- No recall if learned at the time that Aronson had trouble getting files. Learned later from Coles or Gale.

Re Reference: - Understood Edwards would call new evidence.

- Can't recall precisely my advice to senior officials of the department, they certainly knew my feelings.
- Doesn't know if charges against Marshall for robbery was an issue.
- Assumed that decision not to charge Marshall for robbery was conveyed to his attorney.
- I don't know what Edwards urged on the court then or now.
- I was not privy to their plan then or now.
- All those proceedings before the court were on the basis of a common position of competent parties. Left development of the case in the hands of senior officials of the department.

Re Aronson Fee: - We had no machinery, mechanism or policy to pay extraordinary expenses.

Re Investigation of Sydney PD: - 'I don't know if there was or not.'

- following an orderly and reasoned process.
- Thought RCMP would be looking into police misconduct when investigating in '82 because one would be associated with the other.
- civil action interrupted, police misconduct would be handled by the civil action.
- Not aware of non-service and renewal in civil action.

- Noted with surprise that research on the law about municipal responsibility for tortious actions of municipal police was compiled in the department. Did not see it. Don't recall asking it to be done.

Re Compensation: - In general agreed that statutory framework to address the issue of compensation would be helpful, perhaps a body like the workman's compensation board.

Re Indians: - 'I myself have not seen evidence of prejudice against Native peoples.'

- Supported Native Court Worker program, couldn't get money from Treasury Board to continue.
- No recall of involvement in negotiations about 3(a) option for Native Police forces.

End Summary, HARRY HOW, March 23, 1988.

MARCH 24 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: March 24, 1988

Witness: MIKE WHALLEY

Examination by: George MacDonald

Whalley, lawyer since 1949, Sydney City Solicitor since 1958, also Solicitor and ex-officio member of Police Commission.

Re MacIntyre: - Known since early 50's, saw on daily basis as stipendiary magistrate when MacIntyre was informant on cases before him. Opinion - a capable, strict police officer, Not aware of any complaint against MacIntyre.

- Never heard Chief MacLeod say he would fire MacIntyre, 'undoubtedly' would have discussed action with Whalley if contemplated. (Red Mike)

Re Sydney Police Commission: - Until '75 made up of elected city councilmen, from '76 (Police Act) consists of 6 elected councilmen, 2 citizens (appointed) 1 provincial appointee.

- Function: management and control of Police department, hires and fires all except Chief, Investigates complaints in accordance with Police Act.

- Complaints go to chief first, but council usually aware (small city), has power to start investigation and subpoena witnesses.

- No investigation of Marshall because comfortable that RCMP handling.

Re Disclosure: - D.C. MacNeil would show what he had if lawyer went and asked also give copies if asked. (Khattar)

- Present, Crown provides whole case file.

Re Marshall Case: - No knowledge of '71 investigations.

- '82 investigation, only involvement, meeting with Edwards, MacIntyre, Urquhart & Wheaton. No knowledge except through press.

- Advised MacIntyre to turn over Aronson letter to RCMP.

- Read all statements during course of investigation, No recall of unsigned Harriss statement, but definite two Harriss statements in file

- Not aware of suggestion that investigation focus on Sydney Police.

- Told MacIntyre to make list when ordered to turn over files to RCMP.

- Attended meeting in Edwards' office to advise on affidavits. Aware of later changes.

- Denies he and MacIntyre pointing fingers and shouting at Edwards during meeting. (Wheaton)

- Visited Coles because the Mayor felt we should report to the AG that no one was looking after the interests of the police,

- Attended Reference on instructions of city. Surprised MacIntyre told not to go. No recall that he expressed the view that there was no point in calling police witnesses.

- Asked Coles to appoint another prosecutor because felt Edwards was going along with Wheaton's opinion of the police.

- No involvement in compensation discussions.

- Not aware of AG memo on liability of a city for police actions.

- Believes Marshall guilty.

Re 'Redneck' Atmosphere: - City has a good relationship with Indians and Blacks. No Indians employed, 'Don't believe any who were qualified ever applied'.

End Summary, WHALLEY, March 24, 1988.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: March 24, 1988

Witness: MARTIN HERSCHORN

Examination by: Wylie Spicer

Herschorn, a lawyer since 1970, employed by AG since 72, Assistant Director Criminal in 82, Present, Director of Prosecutions.

- In '82 reported to Gale. Met daily with Gale to discuss serious criminal matters. Met less often with Coles.
- Now, responsible for forty full time & 29 part time prosecutors.

Re Role of AG Department in Criminal Prosecution: - Decision to prosecute or not is local matter. May be referred where Crown not certain of proper charge.

- Decision not to prosecute where prima facie case exists, only in exceptional circumstances e.g. additional harm to victim.
- Complaint received by AG would be assessed then referred to police for investigation.
- Gives Policy direction on sentencing in some matters, e.g. second offense drinking and driving.
- Could, but no recall of ever taking conduct of a case from local Crown.
- No policy re amount of evidence at preliminary.
- Stays of Prosecution usually referred to department for guidance.
- Disclosure, generally full disclosure info helpful to defense.
- May vary in extent depending on local prosecutors.
- AG can not order an investigation stopped.

Re Marshall Case: - First involvement, phone call from Edwards shortly after his Feb. 3, '82 meeting with Scott and MacIntyre.

- Advised Gale of info from Edwards, no recall specifics.
- No key role in the discussions of release of reports or focus of the RCMP investigations.
- No independent recollection of conference call with Edwards and Gale on April 19th.
- No role in decision to order MacIntyre to turn over file.
- No recollection of active role or discussion of framing the Reference for Marshall Appeal. Gale coordinated, 'I was kept advised'.

End Summary of Testimony, HERSCHORN, March 24, 1988.