JUNE 1st 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: June 1, 1988
Witness: LEONARD PACE
Examination by: David Orsborn

Pace, Justice of the N.S. Court of Appeals, was Attorney General from '70 to '73, and from '76 to Apr. '78 when appointed to the bench. By agreement his present testimony restricted to his role as Attorney General.

Re Role of Attorney General: - Chief Law Officer for province and ultimately responsible for the administration of Justice.
- Accountable to Public, Courts and questions in House.
- Never sought or took directions from Political colleagues about an investigation, laying charges or position in court on a criminal case.
- Department was small, close knit, responsible for day to day operations.
- In Policy matters dealt directly with Deputy AG.
- Recommended Coles to replace MacLeod as Deputy.
- No knowledge of politically sensitive 'green-stripe' files.

Re Disclosure: - No disclosure to defense in 50's & 60's.
- As AG attempted to move toward full disclosure as outlined in Deputy AG Jones '61 letter to RCMP.
- No recollection of memos, letters or directives sent to Crown while AG about disclosure policy.
- As AG could not order or direct Crown Attorneys to disclose.
- Believed in obligation of crown to disclose when requested and to initiate disclosure when interest of justice required.
- If gross error at trial, would expect it to be brought to the attention of the appeal court even in absence of defense raising.

Re Marshall: - Absolutely no recollection of the case or any of the investigations of it.
- "As a fact, I know it (J. MacNeil naming Ebsary) was not brought to my attention."
- D.C. MacNeil did not call me after polygraph examinations. "I am saying it didn't happen".
- Calling in RCMP to assist after J. MacNeil allegation did not require my involvement, Anderson would handle.
- "No I did not" see Insp. Marshall's report on reinvestigation.
- Prior inconsistent statements of Pratico, Chant and Harriss should have been brought to attention of Defense even in absence of request.
- Statements of J. MacNeil and Ebsarys should have brought to attention of defense. Obligation of Crown to disclose.
- Failure of Marshall appeal due to failure of disclosure would be an injustice.
- But disagrees with Edwards that this injustice is the basis of a miscarriage of justice in the case because Jury might reject evidence if it had been disclosed and brought forth.

Re Giovanetti: - Commission Counsel contend Giovanetti conversation not judicially immune, parties agree to defer questions on this issue until ruling on judicial immunity by Justice Glube

End Summary of Testimony, PACE, June 1, 1988.

SUMMARY OF TESTIMONY

Date: June 1, 1988
Witness: AL VAUGHAN

Vaughan, 32 years in RCMP, has been Superintendent of Criminal Operations in Halifax since 1985.

RCMP relations with Attorney General: - Responsible to AG for contract police services, to Ottawa for investigation of federal crimes.
- Meets regularly with Gale and sometimes Herschorn, informal, no notes.
- No need for permission or consent of AG to investigate crime in its jurisdiction.
- Permission needed to investigate in area with incorporated police department.
- Authority to lay charge rests with RCMP, Rely on Crown for advice and rely on that advice if uncertain.
- Disagreement with crown referred through superior to Halifax where he would discuss matter with Gale.
- Can't recall ever being directed or persuaded to lay a charge.

Connection with Marshall Case: - AG permission needed to give Marshall case files to Pugsley because property of Sydney Police.
- Denied Wheaton request to talk with media, directed Wheaton to report on the basis for his allegations against MacIntyre and AG department.
- Reviewed file, assigned 'readers' Bentley and Burgess to review.
- Discussed 'hold in abeyance' with Gale, satisfied nothing improper in AG handling of the matter.
- Wheaton did not present evidence to support charges against MacIntyre or AG.
- Decision that files did not contain sufficient information to justify criminal charges against MacIntyre, Urquhart.
- No report from Wheaton in person or in writing that MacIntyre tried to withhold Harriss statement, contrary to AG order to turn over.
- Permission not needed by Wheaton to interview MacIntyre, Urquhart as part of ongoing murder investigation. Needed for investigation of policy and procedures of Sydney police.
- No reprimand for Wheaton because it was his honest opinion that there was wrongdoing by MacIntyre and AG department.
- MacIntyre tactics not appropriate but typical of time and although aggressive were not criminal.

End Summary of Testimony, VAUGHAN, June 1, 1988.

JUNE 2nd 1988

SUMMARY OF TESTIMONY

Date: June 2, 1988
Witness: AL VAUGHAN (cont.)
Examination by: Various Counsel

Most of the questioning elicited opinions Vaughan formed from his review of the files.

- Marshall's 'anti-social' behavior sufficient as basis for suspicion of murder.
- MacIntyre was seeking truth from Pratico and Chant, used forceful tactics but did not counsel to perjury.
- Witnesses lied because they 'incorrectly viewed' MacIntyre's actions.
- No tunnel vision by Wheaton about Marshall innocence or MacIntyre guilt.
- Not aware until Commission that Wheaton had met with Michael Harris.
- Not aware if action against Wheaton for violation of RCMP policy of no talk to media while case before court.
- No basis in file to imply Seale involved in robbery.
- Illegal hunting cases by Indians are referred to AG for determination of charges because of Constitutional issue.
- RCMP maintains green bordered files which indicate material contained is "need to know". Some would go to AG and be kept there.
- Green bordered files, re wiretap cases, undercover operations, 'could be politically sensitive matters', 'more than average public interest' or 'where AG might be involved'.

End Summary of Testimony, VAUGHAN, June 2, 1988.

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Witness: EVA GOULD
Examination by: Wylie Spicer

Gould was a Native Court Worker from early 1972 to Apr. 76 and Coordinator of the program '74 - '76. She was in court often during the period and offered the following observation:

Re D.C. MacNeil - less courtesy to Natives and lower class whites.
- Wanted to get Natives and Court Workers out of the way as quickly as quickly as possible.
- Complained about to Union of N.S. Indians, not aware result.

Re Simon Khattar - very condescending to Natives, no knowledge of his attitudes toward non-Natives.

Re Language - Often acted as intermediary for Natives. Often requested by Judges in rural areas e.g. Baddeck, not much in Sydney.

Re 'Build a Fence' - Recalls said by Judge J.F. MacDonald, Matheson was prosecutor, concurred.
- Recalls meeting in office of MacDonald with angry Bernie Francis.

EVA GOULD (cont).

Re Court Worker Program - Biggest problem was to create awareness and acceptance by other segments of the Criminal Justice System.
- Very effective in helping Natives, but need more Natives in other Agencies to act as liaison and explain programs.
- Program was beginning to receive acceptance in 1976 when it ended.

Re Sydney Police - Many Natives afraid of and didn't trust because some were detained without reason, handled roughly, not believed.
- MacIntyre, 'didn't like us so we didn't have much to do with him'.

End Summary of Testimony, GOULD

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Witness: REINHOLD ENDRES
Examination by: David Orsborn

Endres, a lawyer with the AG's Department since '76, Director of Civil Litigations since '86, negotiated compensation settlement for Marshall on behalf of AG.

- As Crown Prosecutor '76 - '78, not aware of any departmental policy on Disclosure, felt no obligation to disclose if not asked, assumes the process varied with individual prosecutors.
- Dartmouth police invariably asked advice on laying a charge, 'always acceded to my view if I said there was not enough evidence'.
- Complete carriage in civil litigation cases.
- Always try to settle for as little as possible.

Re Marshall Case: - Aware that it was in the department, undoubtedly discussed with others e.g. Herschorn.
- First involvement April, '84 asked if interested in participating in Campbell Commission re Marshall compensation.
- To represent the public interest and make sure Commission had all relevant information before it.

Re Negotiations: - Agreed to privacy so as not to interfere with Campbell Commission.
- No mandate, no set figure, no sense of direction from department.
- No recall advising Coles or Gale of awards in other cases, no relevant Canadian case law.
- Ex Gratia - 'compassion without liability'.
- Position - 'at best, Marshall had a marginal claim' against N.S.

Re Bargaining Chips: - Marshall - public pressure for settlement, commitment from Government in setting up Campbell Commission.
- Endres - debts and deteriorating psychological condition of Marshall, Appeal court decision blaming Marshall, limited mandate of Campbell Commission was fall back position.
- More a battle about figures than principle.
- Fair, 'not a consideration in my mind, only Cacchione worried about fairness'.

End Summary of Testimony, ENDRES, June 2, 1988.

JUNE 6th 1988

SUMMARY OF TESTIMONY

Date: June 6, 1988
Witness: REINHOLD ENDRES (cont.)
Examination by: Wylie Spicer (Note, I wrongly reported David Orsborn as examiner on June 2, 1988.)

Endres described the process used to reach the final figure of compensation for Marshall.

Bargaining Position: - No liability on part of Provincial government.
- No consideration of pre-conviction events.
- Total figure, no concern how it was broken up.
- Lowest possible figure.
- Release for any and all claims.

Contradictions: - No provision to pay Aronson bill except through Legal Aid, but could have been taxed directly or could have been settled without taxing from AG's discretionary funds.
- Settlement had to be approved by Cabinet, but other settlements did not need Cabinet approval and AG could have paid out of general fund.
- Only incarceration after conviction considered, but Marshall's alleged action before conviction a factor in lower award.
- Campbell Commission not party to final figure, but report of Commission written to imply prior awareness and approval.
- System presumes innocence until convicted, but wrongfully convicted person is only 'not guilty', does not regain presumption of innocence?

Re Coles and Giffin: - Fully informed at all stages of negotiation.
- Aware of negotiating position, no objections.
- No direct orders re negotiations, would have followed if given.
- Understanding that compensation was for incarceration only.
- Coles sought advice and then drafted report for Campbell Commission.
- Roughed out press release for Coles.

End Summary of Testimony, ENDRES, June 6, 1988.

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Witness: GORDON GALE
Examination by: George MacDonald

Gale, Director Criminal, Department of Attorney General since '72, succeed Anderson. Position has changed over the years so it now includes all criminal matters except prosecutions.
- No policy on disclosure, acts on complaints, no proactive direction.
- No written policy on discretion of Crown to stay proceedings.
- No dealing with Natives except for policing matters.
- No dealing with Native Court Worker program, Jim Crane and R.A. MacDonald involved in that program.
- More efficient for all appeals to be handled in Halifax.
- Some contact with Judges re points of law.
- Prosecutors receive on the job training with more senior Crown.
- No regular meetings with Deputy.
- Giovanetti did not talk to Gale about problem with Pace.
- If Giovanetti came to him he would have gone to AG.
- Coles and Pace long time friends.

End Summary of Testimony, GALE, June 6, 1988.

JUNE 7th 1989

SUMMARY OF TESTIMONY

Date: June 7, 1988
Witness: GORDON GALE (cont.)
Examination by: George MacDonald

Relationship of Department to Prosecutors:
- No policy of consultation, Crowns may seek advice of Department.
- If notoriety, Dept. may seek information for AG
- Dept. 'occasionally' suggests range of sentence.
- In Plea Bargaining, no directive but understood Crown will ask before accepting guilty plea in exchange for lesser offense.
- In dispute, AG has final authority.
- No recall ever going to AG for resolution of dispute.
- Recalls one case where AG (Giffin) directed a fine in exchange for guilty plea.

Appeals:
- Not practice to advise Crown on position to take on appeal.
- If Crown has difficulty deciding whether to appeal, may seek advice in Department
- Never went to Appeal Court without a position on case, but often has argued an Alternative position.
- Often agreed with position of Appellant on Appeal.
- Would tell Appellant's Counsel if significant argument missed.

Performance, Decision to Charge and Assignment:
- No regular appraisal of Employees, only for merit raises.
- No formal monitoring, 'I'm aware of what they do',
- Feed back received from other counsel and sometimes judges.
- No quota on cases to be handled.
- Assignment by senior crown in area, senior counsel in Dept.
- One case when RCMP reports went direct to Dep.AG for assignment.
- Dept. may assign Crown where cases complicated or crosses boundaries.
- Dept. may occasionally recommend a charge be laid.
- Shoplifting case, Coles ordered no prosecution for humanitarian reasons, not political, just Crown discretion.
- No association of Prosecutors, few Dept. lawyers belong C.B.A.

Relations with Police and RCMP:
- Regular Thursday meeting, Gale, C.I.B. Officer & sometimes Herschorn.
- No minutes, no report to Deputy or AG unless decision required at that level, or matter AG may be asked about.
- "Green Stripe", RCMP 'Secret' files, come to Gale, on to regular files, understanding of Dept. lawyers not to look without permission of Gale or Herschorn.
- Police have discretion to lay charge.
- Dispute with crown about laying charge referred up to Gale and C.I.B.
- No resolution, goes to AG and RCMP Commissioner. Aware one such case.
- Overzealous police lay charge, remedy not to prosecute.
- Police Act makes AG chief law officer and gives power over municipal police forces, no regular reports but AG may request.

GALE (cont.)

Marshall Case, 1971:
- No briefing by Anderson. Not aware of J. McNeil's allegation, request for reinvestigation, or Marshall case at all.
- May have been aware of appeal, No recollection.
- No recall of Insp. Marshall report from Wardrop.
- Breach of duty by D.C. MacNeil if statements not disclosed.
- Breach of duty in Dept. if defense not advised re J. MacNeil.

Marshall Case, 1982:
- Told by Herschorn after his conversation with Edwards, also by Christen.
- Treated seriously, AG informed. Coles aware early RCMP report, not sure when AG advised of details of report.

MacIntyre Visit:
- No recall of specific details. MacIntyre concern, RCMP not getting full understanding of case.
- Recalls MacIntyre producing a number of statements.
- No recollection. 'Marshall author of own misfortune', laying on of hands not my style.

Aronson:
- Not policy to release Department files. Waiting for complete file.
- Would have given statements but he wanted police file.
- When Aronson got carriage on change to 617(b), approved Edwards request to give reports as well as statements.
- No part in decision on Aronson's fees.

Hold in Abeyance:
- May have said, meant hold off questioning MacIntyre until issue of file resolved, by letter directing turn over.

Reference:
- Agreed to and preferred 617(c), wider inquiry possible to get all facts and reasons why witnesses recanted.
- Direction from AG through Coles not to include compensation.
- 617(b) more restricted but fresh evidence possible.
- Edwards had carriage, my policy no interference. Kept advised through Herschorn, no personal involvement.
- Meeting with Edwards in Halifax did not get into issues Edwards wanted to stress. Became argument between Edwards and Coles about whether Crown should take a position. Supported Edwards.
- Never heard anyone in the Dept. express opinion, no miscarriage.
- Blame should not have been part of the factum or decision of Court.

Perjury & Charges Against Police:
- No useful purpose going after teenagers for perjury.
- Oral instructions to Edwards to review file and give opinion about any other charges, none suggested.
- Believed Police action would come out in Inquiry.
- Looked at and decided no criminal acts by Police, improper.
- If RCMP felt charges against police warranted, they could lay.
- If MacIntyre withheld document, expect Wheaton would point it out.
- No deliberate malice but mistakes were made and people have to bear responsibility.

End Summary of Testimony, GALE, June 7, 1988.

JUNE 8th 1988

SUMMARY OF TESTIMONY

Date: June 8, 1988
Witness: GORDON GALE (day 3)
Examination by: Various Counsel

Re Coles:
- Left day to day criminal matters to others.
- Said no useful purpose or public interest served by examination of role of Sydney Police in Marshall case. Perhaps for sake of argument.
- Told Coles he authorized Edwards to release RCMP report to Aronson.
- Style, didn't hesitate to become involved, express his opinion and give directions without consultation. Some felt, high handed.
- Coles order to stop shoplifting case could be interpreted by some as political interference.

Re Disclosure:
- Coles order to Edwards not to release police reports in conflict with rules of disclosure.
- Took no steps and aware of no steps taken to look into allegation of non-disclosure.
- Obligation to disclose but discretion remains with various Crowns.
- Refused disclosure to Aronson because final RCMP report not done.
- Aronson was not stonewalled by me.
- Not aware of any complaints of non-disclosure.

Re Hold in Abeyance:
- Sent Vaughan letter about 'misunderstanding of hold in abeyance' to Coles for response to avoid appearance of conflict.
- Can't say why Edwards and RCMP thought it was a permanent halt.

Re MacKeigan:
- Proper for MacKeigan to ask advice on possible contempt charge.
- Conclusion, Donham article not contemptuous.
- Request for transcript not attempt to 'chill'.

Sydney Police:
- No departmental consideration of Edwards' suggestion that murder investigations be taken from Sydney Police and given to RCMP.
- No knowledge if N.S. Police Commission considered investigation of Sydney PD, or if they were asked to do so.
- Reactive policy to complaints, insufficient manpower to be proactive.
- Never spoke to Wheaton, no one in RCMP told that he wanted to charge MacIntyre.
- Not aware of any steps to educate Sydney Police.

Natives:
- No involvement in Native Court Worker program.
- AG approved concept of 3(a) Native constable program, asked Gale to follow-up, no recollection of what was done.
- Just relays the position of AG and Coles on Native Policing.

End Summary of Testimony, GALE, June 8, 1988.

JUNE 9TH/1988

SUMMARY OF TESTIMONY

Date: June 9, 1988
Witness: GORDON COLES
Examination by Wylie Spicer

Coles was Deputy Attorney General from 1972 to 1987. Appointed when Pace was AG. No special briefing or file turnover by predecessor. 20 years prior experience at the bar, 90% non-criminal.

Surprises:
- Gale's description as high-handed, interfering, forming opinions without advice and disregarding advice.
- Giovanetti's concern when moving to have Pace removed from Ebsary appeal panel
- Edward's concern about interference in shoplifting case.
- Cacchione's complaints to Herschorn about disclosure.

Denials:
- Informed by Gale that he approved release of RCMP report to Aronson by Edwards.
- Action in shoplifting case was interference, 'exercising my responsibility'.
- 'I would not think it (Pace AG in '71) grounds to challenge.'
- Kept aware of progress of Marshall investigation or 'if I was I don't recall.'

Re Disclosure: - Didn't turn my mind (to disclosure) until the mid-eighties.
- At the ministerial level there was understanding that there was disclosure. Not aware of complaints of non-disclosure.
- Failure to disclose today would be an injustice: failure to disclose in '82, 72' & '71, 'don't know if there was a duty to disclose then'.
- Aronson's request for RCMP reports was an unusual situation, he would have been assisted by the reports, would not have disclosed because of policy of not releasing confidential police reports.

Re Marshall Investigation: - No recall Marshall case prior to 1982.
- 'Didn't address my mind to' of allegations of police pressure.
- Aware of charge that MacIntyre 'not forthcoming', not sure when.
- Involved with AG and Gale in suggesting that compensation should be separate from the Reference.
- Generally aware of handling of Reference from the press.

Re Aronson: - No recall of Aronson request for RCMP reports.
- Did not consider any option except Legal Aid for paying Aronson.
- 'Didn't consider it in that context', (whether $4,400 a reasonable fee for Aronson).

COLES (cont.)

Re Edwards: - Telephone call from senior lawyer in Sydney was 'proper basis' for exercising discretion and ordering shoplifting charge dropped.
- Now agrees with Edwards 617(c) would have been better than 617(b).
- Did not tell Edwards that belief in Marshall innocence premature.
- Just relayed Whalley concerns about appearance of partiality.

Re Role of Attorney General: - AG, ultimate authority over police, can stop an investigation especially if he ordered it started (but not criminal matter)?
- Decision to prosecute is with local Crown, except if AG or Deputy took charge and police understood matter taken by them.
- Recalls only 1 case when police reports ordered to go direct to AG.
- No practical difference between crown prosecutors with order in Council appointment vs. Civil Service.
- AG has control of Prothonotaries except in court function.
- AG provides all administrative and support services for judges.

Re Natives:
- Supported Native Court Worker Program, financial restraint caused program to die, not high enough on the list of priorities presented to the treasury board.
- No recall of Gale complaint that all native matters assigned to him. 'Not a matter of great consequence as far as I was concerned.'
- Native Policing option 3(b) now in effect in Nova Scotia, being evaluated to rationalize funding differences between provinces.

Re Other Matters: - No awareness of green stripe files, and if I were it wouldn't have meant much to me.
- No recall situations similar to request to see if Donham article contemptuous.

End Summary of Testimony, COLES, June 9, 1988.

JUNE 20th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: June 29 1988
Witness: GORDON COLES
Examination by: Wylie Spicer

Coles response to many questions was a. he did not turn his mind to the issue, b. has no recollection, c. did not discuss.

Did not turn my mind to: - Marshall's innocence.
- Issues except position of Crown in Edwards' letter.
- If Issues were vital, i.e. blame to Marshall or police bona fides.
- Robbery theory, no opinion on that.
- Whether failure to disclose was fault of Crown in 71.
- Edwards' position that there was no fault in the System.

No recollection: - Discussions or conversations about Edwards' position between phone call in July and meeting in January.
- If AG agreed with his position that Crown not support acquittal.
- Of much participation by Gale and Herschorn in meeting with Edwards.
- If aware of Edwards' position in April or before Whalley called.
- Forming an opinion on whether 'miscarriage more apparent than real.'
- If factors in compensation were conveyed to How, No personal follow-up to Herschorn memo.
- If How shared view that Marshall was not guilty.
- Discussing with Herschorn his response to request to look into role of Crown in Marshall case.
- Discussing AG's response to CBC broadcast.

Did not discuss: - Edwards' position with Gale or Herschorn between July, '82 and Jan. '83.
- Reference hearing, just informal conversations with Herschorn & Gale.
- Other issues in Edwards' letter.
- Taking Edwards off case with Gale, not enough time.
- Reference decision with Attorney General.
- With How the issue of innocence vs not guilty, and no knowledge of discussions between How and Herschorn and/or Gale.
- With Herschorn about his 'inadequate' response to How's request for information about compensation.

Re Crown Should Not Support Acquittal: - Knew Edwards position about Marshall's innocence, didn't think his position should be Crown position.
- Reached this view before consulting with Herschorn and Gale and before receiving Edwards letter.
- No consultation with Gale or Herschorn, no advice to the contrary.
- Concern, how helpful Crown would be in the Reference.
- "I wasn't sure they would consider themselves competent." (Court of Appeals)
- Meeting with Edwards was only to discuss issue of supporting acquittal not other items raised by Edwards.
- Gale and Herschorn concurred. Never expressed otherwise.
- Did not review factum, only looked at conclusions.
- Upset that Edwards did not change his position.

COLES, June 20, (continued)

Re Marshall Blame: - Must bear some blame because he didn't tell every thing when he agreed to talk and take stand.
- Could have told more, not sure what.
- Discussed with How after Reference but was not basis of statements in How's letters.
- Not considered a factor in the issue of Compensation at that time.
- Surprised that Gale did not feel responsibility to deal with Edwards about issues in the case.
- Did not consider as contributory negligence in compensation issue and sure Endres was aware of my view.

Re Marshall Perjury: - AG requested it be looked into, I passed to Herschorn. Didn't have a view on the matter.

Re Investigation of Sydney Police: - Not sure of involvement in decision to ask RCMP to look into police actions in '71.
- Did not address the issue passed to Gale, police his responsibility.

Aware: - No police testimony at Reference, important because needed to determine voluntariness of Chant Harriss statements.

Asserts: - There was no fault with the system.
- Miscarriage not caused by system, but by witnesses lying.
- Civil suit was never a bar to an Inquiry.
- Ebsary matter before court a bar to compensation. 'Maybe erring on the side of caution.

Disagrees: - With Pace that Crown should have disclosed statements and J. MacNeil allegation. Not sure if obligation.
- Did not tell Giffin that Marshall had a poor employment record.
- Did not tell How that Marshall secured his own conviction by lying.
- How never expressed to me that he agreed with Edwards' position.

Re Release of Info to Cacchione: - Denied without review of file. All information we had was protected. 'I thought my response was appropriate.'
- Had authority to turn over but did not. 'No reason in this particular case, just my interpretation of the Act.'
- Did not tell Giffin that the file had been reviewed.
- No recollection of discussing denial of information with AG prior to his letter denying appeal.

Re Compensation Negotiations: - Left to Endres, no instructions to get for as little as possible, no order to contrary.
- Not aware of Marshall's condition.
- No recollection of Endres advising of progress of negotiations.
- Approval of Campbell Commission just a way to wrap up properly.
- 'Can't answer specifically why release included period prior to incarceration.

End Summary of Testimony, **COLES**, June 20, 1988.

JUNE 21ST 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: June 21, 1988
Witness: GORDON COLES
Examination by: Spicer, Edwardh, Wildsmith

By Spicer:

Coles stated that he had no direct involvement in the normal progress of the Marshall case.

Spicer offered a list of actions taken by Coles which taken together worked to the detriment of Marshall and his counsel, e.g.

- Could have furnished information to Aronson, did not.
- Could have paid Aronson account, did not.
- Could have supported Edwards in favor of acquittal, did not.
- Could have directed Edwards not to take position of 'no fault' by the system, did not.
- Could have provided information helpful to Cacchione, did not.
- Could have told Cacchione what information not available, did not.
- Could have directed soft line by Endres in compensation, did not.
- Could have said that Civil suit not a bar to public inquiry, did not.
- Could have conceded partial blame of crown, did not turn mind to.

Coles said he acted on issues which he deemed important, did what he thought proper and had no intention to be cumulative.

By Edwardh:

Coles suggested the Marshall case does not show a failure of the justice system. Rather, it worked because it had mechanisms which allowed Marshall's eventual release.

- No fault attributable to system fault requires a breach of duty.
- Admitted fundamental duty of Crown to disclose, but no breach of duty because not sure if individual crown prosecutors knew of duty.
- Agreed that ultimate responsibility for failure to disclose rested with him, but stated he was not aware of any concerns in the area of disclosure.
- Not aware of any institutional failures.
- His failure was in reliance on others for discharge of their duties.
- Cited annual one day workshop and conferences as steps to educate prosecutors.
- No open competition for Crown Prosecutor position until after Coles removed from position of Deputy Attorney General in 1987.
- Debated whether Edwards should have released RCMP report to Aronson.
- Refusal to release information to Cacchione under Freedom of Information act had nothing to do with the Marshall case.
- Coles letter to Campbell Commission directing restricted mandate not copied to Cacchione, matter of oversight.

By Wildsmith:

- Coles supports the concept of Native self-government subject to definition identifying jurisdiction.
- Not aware of any specific action taken by province as a result of recommendations of national conference on Natives and the Justice System or N.S. Communication Project on Criminal Justice.

End Summary of Testimony, COLES, June 21, 1988.

JUNE 22nd 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: June 22, 1988
Witness: ROLAND PERRY
Examination by: George MacDonald

Perry, Chief Medical Examiner, Province of Nova Scotia, testified about the role of the medical examiner in Nova Scotia, his relationship to the justice system and medical records of the death of Sandy Seale.

Re Role of Medical Examiner: - Only full time medical examiner.
- About 105 part time examiners around province, fee for service.
- 18 pathologists on call for autopsy, also fee for service.
- M.E. job, examine body to determine a. cause of death, b. manner of death. Autopsy not required but may be ordered if death unexplained.
- Distinguish: Clinical Pathologist - generally looks for course of disease in body; Forensic Pathologist - medical/legal aspects of unexplained, sudden or violent death.
- Authority, N.S. Fatalities Inquiry Act.
- If death sudden, unexplained or violent, M.E. must be notified.
- Some hospitals require autopsy if death occurs within 24 - 48 hours after admission.

Re Legal System
- If violent culpable death, despite obvious cause of death, autopsy usually ordered to avoid questions.
- Almost all homicides are autopsied, if M.E. notified.
- Visit scene when possible. Okay of M.E. needed to remove body.
- Autopsy usually of less value than careful external examination in homicide cases.

Re Sandy Seale Death: - No record that M.E. notified.
- Wound, single stab into belly, vertical, upward, cut large and small intestines, puncture rear cavity lining and aorta.
- Cause of death, extensive bleeding from wounds, especially aorta.
- Manner of death, homicide.
- Can't tell length of knife because belly yields.
- No mention of other bruises or injuries to suggest fight.
- Autopsy would not have given more info because of extensive rearrangement of the body during hospital stay.
- Diagram of wound would have been helpful.
- Would have repaired aorta first, pressure would not stop bleeding.
- Better medical/legal training for M.E.s and Pathologists desirable.

End Summary of Testimony, PERRY, June 22, 1988.

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Witness: HERBERT DESMOND

Desmond, a Native of Sydney, personal friend of Sandy Seale.
- Seale described, typical Black youth in a racist segregated society.
- Outstanding athlete, never involved in criminal activity.
- Rejects robbery theory, asserts Marshall not friend of Seale.
- Strict but loving and caring home life. 'Better be' home on time.
- Police displayed racist attitude toward Black and Indians.
- Marshall described as bully, dangerous, teen age alcoholic.
- Planned to go to Seale's home day following stabbing.

End Summary of Testimony DESMOND, June 22, 1988.

JUNE 27th 1988

ROYAL COMMISION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: June 27, 1988
Witness: **Michael Harris**

Harris declined to appear at the request of Commission to answer limited questioning regarding his knowledge from Harry Wheaton of the alleged incident of concealing a document.

Commission Counsel was directed to subpoena Harris in Newfoundland and restrictions on questioning will not apply.

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Witness: **RICHARD WALSH**
Examination by: George MacDonald

Walsh, Chief of Police, City of Sydney since Jan. 1985 was recalled to discuss the present practices of the police force and changes since 1971.

- Qualifications for entrance to the force and promotion have been upgraded as a result of a study by the Nova Scotia Police Commission in 1979 and a subsequent restructuring.
- Graduation from Atlantic Police Academy or previous police experience now requisite.
- Promotion on merit and competitive exams vs seniority alone.
- Increased emphasis on training, 3 month field training for recruits.
- Four qualified field trainers on force.
- Courses for senior staff at Canadian Police College, Ottawa.
- Fully staffed and trained Identification section.
- Two Blacks (1 on long term disability), no Indians or Women on force.
- No special training for sensitivity to minorities.
- No special recruitment program for Women or Indians.
- Recognizes Police lay charge, Crown prosecutes. Advises on charges.
- No knowledge of cases stopped by Attorney General department.
- No personal action to implement Affirmative Action program.
- Complaints handled by Chief but reported to N.S. Police Commission.

End Summary of Testimony, **RICHARD WALSH**, June 27, 1988

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MOTION:

By Derrick, Counsel for Donald Marshall, Jr. to TV cameras, lights and still cameras during the testimony of Marshall. Relying on information from Psychologist Kris Marinic that lights and cameras would adversely affect, speech, concentration and memory of Marshall and thereby affect quality of testimony before the Commission.

Opposed by CBC and ATV.

Decision: Remove TV cameras and lights. One 'still' camera permitted in unobtrusive setting.

End Summary of Testimony, June 27, 1988.

June 28th, 1988

39010

SUMMARY OF TESTIMONY

Date: June 28, 1988
Witness: DONALD MARSHALL, JR.
Examination by: Wylie Spicer

Marshall spoke in MicMac with Noel Knockwood as interpreter.

Recollections of May 28, 1971: - Entered park on footpath at George & Byng, saw Ebsary and MacNeil (unknown to him) standing near bench where friend from Air Cadets and his girl friend were seated.
- Walked toward bridge, met Robert Patterson. Saw Seale coming from direction of George and Argyle.
- Marshall, Seale and Patterson stood talking together and then Marshall helped Patterson lie down out of sight.
- Walked over bridge talking with Seale, said dance over & going home.
- Ebsary and MacNeil ahead standing on Crescent Street.
- Met Gushue and Harriss on Crescent and gave Gushue a match.
- Walked to where MacNeil, Ebsary and Seale were standing.
- Talked with Ebsary for period of time (half-hour)
- Ebsary spoke of being a soldier and in the priesthood.
- Heard Ebsary say words to the effect, if you want everything in my pocket, you can have it, stabbed Seale.
- Did not hear Seale say 'dig man dig'.
- Threw MacNeil aside as Ebsary advanced toward him and stabbed on arm.
- Ran Crescent to Bentinck met Chant, ran on to Byng, met two couples, flagged car, got in with Chant (Mike Jameel in car) returned to scene via Byng, George, Argyle and Crescent.
- Went to house with Chant seeking help.
- Police arrived and he was taken to hospital.
- At hospital statement and description of assailants taken.
- Driven home by police.

Denied: - Approached Ebsary and MacNeil from behind and twisting MacNeil's arm behind his back.
- He or Seale called Ebsary & MacNeil back.
- He or Seale planned or attempted to rob Ebsary or MacNeil.
- Doing anything to provoke the attack by Ebsary.
- Fighting with or stabbing Seale.
- Telling Oscar Seale about a white volkswagon.

Asserted to be Untrue: - All statements and testimony that he and/or Seale intended to rob or roll Ebsary.
- All statements that he was involved in Seale's death (manslaughter).

Re Defense: - Believes two meetings with Rosenbloom and Khattar together before preliminary.
- Told incident and description of men. Thinks he told about Harriss.
- Believes $5000 paid for defense, not sure total or apiece.
- Recalls that Rosenbloom told him that Pratico planned to change story and they would take the charges off.
- Did not ask if he would take polygraph.

MARSHALL, JR. (cont.)

Re Bernie Francis: - Visited at jail, said police found his knife with his fingerprints and Seale's blood on it.
- Suggested plea of manslaughter.

Re Bobby Patterson: - Met in jail, Patterson said police questioned him and he told them he did not remember what happened.

Re O'Riley: - Phoned one of sisters Saturday morning, 'don't believe' told her to tell police about two men.
- May have spoken to both Mary and Katherine.

No Recollection: - Name of Air Cadet sitting on bench in park.
- Struggle before stabbing, kicking or struggle during stabbing except to push MacNeil aside.
- When statement given to MacIntyre, Was at station most of Saturday and Sunday. If statement read before signing.
- Telling Chant 'remember there were two men'.
- Specifics of conversations with Rosenbloom and Khattar, length or when they took place.
- Telling lawyer that Chant not at scene as testified in Preliminary.
- Being told he would testify at trial or being prepared for testimony by his lawyers.
- Having seen statements taken by Wheaton & Carroll before.
- Telling Aronson that he intended to roll or rob.

Allegation: - Justice Pace was intoxicated during the two days of the Reference hearing.

Other: - Micky Flynn, suspected because of being present in lineup.
- Accepted Compensation because he was told that if he did not he would not get anything.
- Money went to pay bills, not interested in money but in getting person responsible and public inquiry.

End Summary of Testimony, DONALD MARSHALL, JR., June 26, 1988.

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Closing statement of Commission Counsel George MacDonald, intention to resume hearings on September 12, 1988 regarding other cases.

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Assurance from Attorney General's counsel, Saunders, that appeal of Commission ruling will be limited to cabinet confidentiality and will not raise issue of Mandate of the Commission as suggested by the Notice of Appeal.

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Closing statement of Justice Hickman, including intention to seek agreement of parties to appeal decision of Justice Glube on immunity of judges of Court of Appeals directly to Supreme Court of Canada.

Hearings recessed until September 12, 1988.