

August 2, 1983

The Honourable Mark MacGuigan
Minister of Justice
House of Commons
Room 209, Confederation Building
Ottawa, Canada
K1A 0A6

Dear Mr. MacGuigan:

Re: Donald Marshall, Jr.

I represent Donald Marshall, Jr. As you are no doubt aware, Mr. Marshall was on May 10, 1983 acquitted of the murder of Sandy Seale which occurred on or about May 28, 1971 in Sydney, Nova Scotia. The acquittal came about as a result of a reference made to the Nova Scotia Court of Appeal under Section 617(b) of the Criminal Code. This reference was directed to the Court of Appeal by your predecessor, The Honourable Jean Chretien.

In view of the fact that Canada is a signatory to the International Covenant on Civil and Political Rights and more precisely Article 14(6) of the International Covenant which calls upon a signatory nation to provide compensation to persons who have been wrongly convicted or punished for a crime and who have later been exonerated, will the Government of Canada compensate Mr. Marshall for the 10 years and 10 months that he spent incarcerated in Dorchester Penitentiary?

I look forward to having your response. I remain.

Yours truly,

Felix A. Cacchione

FAC/oh

cc: The Honourable John Munroe
The Honourable Allan MacEachen

August 2, 1983

The Honourable Allan MacEachen
Office of the Deputy Prime Minister
and Minister for External Affairs
House of Commons
Room 209-S
Ottawa, Canada
K1A 0A6

Dear Mr. MacEachen:

Re: Donald Marshall, Jr.

Enclosed please find a copy of a letter which I have directed to The Honourable Mark MacGuigan. Since Mr. Marshall's case is a matter which involves the Province of Nova Scotia, any assistance which you could provide for a prompt and equitable solution to Mr. Marshall's situation would be greatly appreciated.

In anticipation of your response I remain.

Yours truly,

Felix A. Cacchione

FAC/oh
enc.



Office of the Deputy
Prime Minister

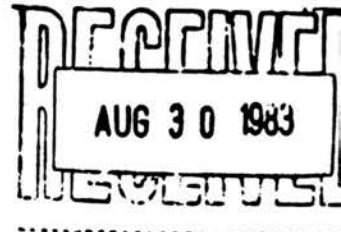
Cabinet du
Vice-premier ministre

28

Secretary of State
for External Affairs

Secrétaire d'État
aux Affaires extérieures

Ottawa, Canada
K1A 0G2



FC 95

August 18, 1983

Dear Mr. Cacchione:

On behalf of the Honourable Allan J. MacEachen, Deputy Prime Minister and Secretary of State for External Affairs, who is presently away from Ottawa, I would like to thank you for your letter of August 2, 1983 and for the copy of the letter you sent to the Honourable John Munro, Minister of Indian Affairs and Northern Development, regarding the case of Donald Marshall, Jr.

Please rest assured that your correspondence shall be brought to the attention of Mr. MacEachen on his return.

Yours sincerely,

Patrick Sullivan,
Special Assistant.

Mr. Felix A. Cacchione,
Barrister & Solicitor,
5194 Blowers Street,
Halifax, Nova Scotia.
B3J 1J4

Minister of Justice and
Attorney General of Canada



Ministre de la Justice et
Procureur général du Canada

September 2, 1983

Mr. Felix A. Cacchione
Barrister & Solicitor
5194 Blowers Street
Halifax, Nova Scotia
B3J 1J4

Dear Mr. Cacchione:

This refers to your letter of August 2, 1983 advising me that you represent Donald Marshall, Jr., and asking that compensation be awarded to your client pursuant to Article 14(6) of the International Covenant on Civil and Political Rights for the time he spent in prison before his conviction for murder was overturned.

Mr. Marshall's conviction and life sentence were registered in 1971; his appeal to the Nova Scotia Court of Appeal in 1972 was dismissed. In late 1981, the R.C.M.P., which had not conducted the initial investigation in this case, was asked to look into the matter and some months later the Force produced substantial evidence casting doubt upon the correctness of the conviction. In June 1982, my predecessor, the Honourable Jean Chrétien, exercised a very special prerogative which is granted only rarely and in compelling circumstances to refer the case back to the Nova Scotia Court of Appeal for a second hearing. Fresh evidence was called and the result, in a sixty-six page judgment, was Marshall's acquittal.

Marshall did not emerge untarnished in that process. The court thought it important to add the following comments concerning his role in this affair:

"Donald Marshall, Jr. was convicted of murder and served a lengthy period of incarceration. That conviction is now to be set aside. Any miscarriage of justice is, however, more apparent than real.

In attempting to defend himself against the charge of murder Mr. Marshall admittedly committed perjury for which he still could be charged. By lying he helped secure his own conviction. He misled his lawyers and presented to the jury a version of the facts he now says is false, a version that was so far-fetched as to be incapable of belief.

By planning a robbery with the aid of Mr. Seale he triggered a series of events which unfortunately ended in the death of Mr. Seale.

By hiding the facts from his lawyers and the police Mr. Marshall effectively prevented development of the only defence available to him, namely, that during a robbery Seale was stabbed by one of the intended victims. He now says that he knew approximately where the man lived who stabbed Seale and had a pretty good description of him. With this information the truth of the matter might well have been uncovered by the police.

Even at the time of taking the fresh evidence, although he had little more to lose and much to gain if he could obtain his acquittal, Mr. Marshall was far from being straightforward on the stand. He continued to be evasive about the robbery and assault and even refused to answer questions until the Court ordered him to do so. There can be no doubt that Donald Marshall's untruthfulness through this whole affair contributed in large measure to his conviction."

Article 14(6) of the International Covenant provides for compensation for a person whose conviction has been reversed "...on the ground that a newly discovered fact shows conclusively that there has been a miscarriage of justice... unless...the non-disclosure of the unknown fact in time is wholly or partly attributable to him." (emphasis added). From the above-quoted comments of the Court of Appeal, one might well infer that your client falls within the exception to Article 14(6), and would have no entitlement under the International Covenant to compensation.

It might be argued, however, that Marshall's conduct was not the only element which led to his conviction and that he is entitled to compensation on some other legal or moral basis. That is, in my view, an issue for the provincial and municipal authorities for, although the offence alleged was a

contravention of federal law, the original investigation was carried out by municipal police and the prosecution was conducted by provincial officials. Indeed, I understand from news reports that the issue of compensation is being considered by the Provincial Attorney General and that Marshall has sued the City of Sydney and two of its policemen.

The role played by the Federal Crown in this affair was for the R.C.M.P. to conduct the investigation which uncovered the fresh evidence and for the Minister of Justice to refer the matter for a second hearing by the Court of Appeal. In my respectful view, your client's bid for compensation from the Federal Crown is misdirected.

Yours sincerely,



Mark MacGuigan

Oral Questions

INDUSTRY

MAISLIN TRANSPORT LTD. BANKRUPTCY—GOVERNMENT'S
CONTINGENT LIABILITY

Hon. Bill Jarvis (Perth): Mr. Speaker, my question is directed to the Minister of Industry, Trade and Commerce and is supplementary to earlier questions put by the Hon. Member for Etobicoke Centre regarding the Maislin bailout. If I understood the Minister, in reply to a question he indicated that the taxpayers had not lost \$34 million. I presume because the Government has not written the cheque yet. Is it true, first, that the Government is carrying on its books a contingent liability for \$34 million with respect to Maislin? Second, and more important, what is the Minister's estimate of the taxpayers' loss? I presume his Department must have that estimate. If it is not an estimated loss of \$34 million, by what lesser amount does the Minister estimate the taxpayers will lose over the Maislin bailout?

Hon. Ed Lumley (Minister of Industry, Trade and Commerce and Minister of Regional Economic Expansion): Mr. Speaker, the Hon. Member, being a member of the legal profession, will know that there is almost no way to determine amounts until such time as the receiver makes his report regarding the disposal of the assets and how much money can be raised as a result of the disposition of those assets. The amount of \$34 million, as of this point in time, is incorrect, and we will not know the amount until such time as the receiver makes his final report.

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ADMINISTRATION OF JUSTICE

THE CASE OF DONALD MARSHALL—COMPENSATION SOUGHT
FOR WRONGFUL IMPRISONMENT

(Conservative)

Mr. Chris Speyer (Cambridge): Mr. Speaker, my question is directed to the Minister of Justice. There is a growing sense of outrage at the lack of justice which is being accorded to Donald Marshall, who spent 11 years in penitentiary for a crime he did not commit. If, in a civilized and healthy system of justice, we try to right the wrongs which have been accorded to an individual, what leadership has the Minister of Justice shown in rectifying the injustice done to Mr. Marshall in terms of compensation for the legal fees and for the 11 years which he unjustifiably served in a penitentiary?

Hon. Mark MacGuigan (Minister of Justice): As I believe the Hon. Member may know, those precise questions were asked and answered in this House last week. The fact of the matter is that Mr. Marshall was prosecuted by a Crown prosecutor in the Province of Nova Scotia under the direction of the Attorney General of Nova Scotia, after the investigation of his crime by police of the City of Sydney, Nova Scotia, which, of course, falls under the jurisdiction of the Province of Nova Scotia. Therefore, there is no federal involvement of the Department of Justice in the investigation or trial of Mr. Marshall.

• (1450)

Although we certainly have no responsibility to do anything, because I am so concerned that the Province of Nova Scotia has not yet assumed any responsibility in this important case, I have discussed the matter with the Attorney General of Nova Scotia and asked him to consider very seriously the responsibilities I believe the Province should undertake.

REQUEST THAT MINISTER ACT

Mr. Chris Speyer (Cambridge): Mr. Speaker, if the Province of Nova Scotia takes no action to correct this injustice, in those circumstances will the Minister of Justice act?

Hon. Mark MacGuigan (Minister of Justice): Mr. Speaker, the Hon. Member was elected in the Province of Ontario and knows, I am sure, that Province, which has analogous problems in the field of justice, appears to be prepared to assume its responsibilities. Is he suggesting that, when a provincial Government does not fulfil its responsibilities in matters within its jurisdiction, the proper course for the federal Government is to play "Big Brother" and take over the whole of provincial jurisdiction? If that is the position of the Opposition on this, I would like to hear about it.

Some Hon. Members: You hypocrite.

Some Hon. Members: Order.

Mr. Deputy Speaker: Order, please. The Chair has recognized the Hon. Member for Haldimand-Norfolk.

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ENVIRONMENTAL AFFAIRS

USE OF IRON ORE SLAG IN HARBOUR PROJECT AT PORT DOVER,
ONT.

Mr. Bud Bradley (Haldimand-Norfolk): Mr. Speaker, my question is for the Minister of the Environment who will know that the Department of Public Works has approved the use of iron ore slag for break-wall fill in the harbour project at Port Dover, Ontario. Can the Minister advise us whether his Department has carried out studies on the effects of the slag on fish species found in Lake Erie?

Hon. Chas. L. Caccia (Minister of the Environment): Mr. Speaker, I know that to give an adequate reply to that question, I will have to review the report if it is with us at the present time.

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MEDICAL CARE

REQUEST FOR INTRODUCTION OF NEW CANADA HEALTH ACT

Hon. Edward Broadbent (Oshawa): Mr. Speaker, my question is directed to the Deputy Prime Minister. For a year and a

December 13, 1983

The Honourable Mark MacGuigan
Minister of Justice
House of Commons
Ottawa, Canada
K1A 0A6

Dear Mr. MacGuigan:

RE: DONALD MARSHALL, JR.

It has now been seven months since Mr. Marshall was acquitted by the Nova Scotia Supreme Court, Appeal Division, of the murder of Sandy Seale. To date no one has come forward to compensate Mr. Marshall for the ten years ten months he spent in a federal penitentiary as an innocent man, nor for the legal expenses he incurred in having his case reinvestigated and brought to Court.

Premier John Buchanan in a statement to the press dated December 1, 1983, said that his government would not deal with the issue of compensation for Mr. Marshall until all matters presently before the Courts relating to Mr. Marshall had been resolved. He specifically referred to the appeal launched by Roy N. Ebsary against his conviction and sentence for the manslaughter of Sandy Seale and to the civil action Mr. Marshall has filed, but not served, against the Sydney City Police, Chief John MacIntyre and Detective John Urquhart. Premier Buchanan made absolutely no reference to the only request made of his government so far by Mr. Marshall for a full and impartial public inquiry presided over by a Justice of the Supreme Court of Nova Scotia and empowered to inquire into the police investigation of the 1971 case.

The Honourable Mark MacGuigan
December 13, 1983
Page 2

It appears to the writer that the provincial government is again trying to cover up for the injustices committed in 1971 by persons for whom it is responsible. The government has refused to follow recommendations made to it by R.C.M.P. Staff Sergeant Wheaton and Crown Prosecutor Frank Edwards, both of whom were asked to submit reports and opinions on what transpired in 1971. From my reading of the materials in this case and from conversations with persons close to the reinvestigation in 1982, it seems that Mr. Marshall was "framed" by the perjured evidence of three key crown witnesses. Two of these witnesses filed Affidavits and testified viva voce in the Supreme Court of Nova Scotia in 1982 to the effect that they were pressured by the Sydney City Police (read MacIntyre and Urquhart) into testifying to a set of facts they knew were false.

Perhaps you have not been fully briefed on this matter and for this reason, I would like to point out the following facts. I have also enclosed copies of the statements and police reports together with Affidavits that I am relying upon in the following paragraphs.

1. Maynard Chant gave the Sydney City Police two statements in 1971. The first, on May 30, 1971 indicated that he was not present and had not seen the murder in the park. The second statement taken from him under threats by the Crown Prosecutor and police that he would go to jail for perjury if he did not tell the police what they wanted to hear, indicated that Mr. Marshall and Mr. Seale were the only ones in the park and that Maynard Chant saw Mr. Marshall stab Mr. Seale. The second statement, allegedly taken in the presence of Mrs. Chant, the Chief of the Louisburg Police, and Mr. Chant's probation officer and signed by them is questionable at best. The signatures, on a separate piece of paper attached to the statement, allegedly being those of the persons present at the taking of the statement are all in the hand writing of then Detective John MacIntyre. It was only this second statement which was disclosed to defence counsel at the time of the 1971 trial. Defence counsel were at no time made aware of the first statement which indicated Mr. Chant saw nothing of the incident.

The Honourable Mark MacGuigan
December 13, 1983.
Page 3

2. John Pratico, the second "eye witness" was known to both the Crown and police to be suffering from a mental illness and an unreliable witness. He as well gave two statements, the first which was never made known to the defence. In his second statement, he states seeing Marshall stab Seale after the two had an argument.

3. Patricia Harris testified in 1982 that in 1971 at the age of 14, she was forced to give the police what they wanted to hear. She as well gave two statements, the first again was never made known to the defence. It is interesting to note that in her first statement, she describes two men, one matching Roy Ebsary's description as being with Marshall in the park. This was not what the police wanted to hear so after four or five hours of questioning without her parents being present and with the police banging on the desk and screaming at her, she told them what they wanted to hear; i.e., that Marshall and Seale were alone in the park.

4. Shortly after Mr. Marshall's conviction in 1971, James MacNeil went to the Sydney City Police and told them that they had the wrong person. He stated that he was with Roy Ebsary the night of the Seale murder and that he saw Ebsary stab Seale when the two were confronted by Marshall and Seale. He further stated that after the stabbing, he went to Roy Ebsary's house where he saw Ebsary wash the blood off his knife. MacNeil and Ebsary were both asked to take polygraph examinations which they did. MacNeil's examination was found to be "doubtful" whereas Ebsary's examination showed that he was "truthful". During the polygraph examinations, the examiner asked Dectective MacIntyre if Marshall was to be tested but Dectecitve MacIntyre indicated that Marshall through his counsel had refused to take the test. The points of interest here are that:

(a) Marshall's lawyers were not made aware that MacNeil had come forward and pointed to a different person as the murderer. This was at the time when Marshall's lawyers were preparing his appeal and certainly this evidence would have been of major importance to the determination of that appeal.

The Honourable Mark MacGuigan -
December 13, 1983
Page 4

(b) That neither Marshall nor his lawyers were ever contacted with a view to having Marshall take the polygraph examination.

(c) That the mini reinvestigation conducted in 1971 was never brought to the attention of Marshall or his lawyers.

5. In 1974, Donna Ebsary, daughter of Roy Ebsary, went to the Sydney City Police and told them that on the night of Seale's murder shortly after the time of the incident, she saw her father in the company of James MacNeil come into the house, go to the kitchen sink and wash a knife. She also overheard a conversation between her father and James MacNeil. The Sydney City Police told her in 1974 that there was nothing they could do. The fact that she came forth with this evidence was never communicated to Marshall or his lawyers.

6. The reinvestigation of the Marshall case began after Marshall's lawyer, Stephen Aronson, sent a letter to Chief MacIntyre on January 26, 1982 indicating that new evidence had come to light and would the Chief look into the situation. On February 3, 1982, a meeting was held in the Crown Prosecutor's Office to discuss the reinvestigation at which time, Chief MacIntyre turned over all the statements taken in 1971 to Staff Sergeant Wheaton. Unfortunately MacIntyre did not turn over the entire file. It was only after a letter was directed to MacIntyre on April 20, 1982 by the then Attorney General, Harry How, ordering MacIntyre to hand over the entire file to Staff Sergeant Wheaton was this done. It would appear that there was considerable reluctance on the part of MacIntyre in turning over the file to Staff Sergeant Wheaton and from the comments of the investigators, it would appear that MacIntyre was standing in the way of their investigation.

The foregoing is but a brief outline of some of the disturbing facts about this unusual case. In light of these facts, it is hard to understand how you can conclude that Mr. Marshall cannot avail himself of Article 14(6) of the International Covenant on Civil and Political Rights.

The Honourable Mark MacGuigan
December 13, 1983.
Page 5

In your letter to this office dated September 2, 1983, you indicated at page 2 that "Article 14(6) of the International Covenant provides for compensation for a person whose conviction has been reversed . . . on the ground that a newly discovered fact shows conclusively that there has been a miscarriage of justice . . . unless . . . the nondisclosure of the unknown fact is wholly or partly attributable to him. From the above quoted comments of the Court of Appeal, one might well infer that your client falls within the exception to Article 14(6), and would have no entitlement under the International Covenant to compensation".

The only problem with this statement is that your letter omits the most important words in Article 14(6) and that is that "unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him." How can it be said then that the nondisclosure of a fact is attributable to Marshall since he was completely unaware that the facts indicated in points 1 and 5 of this letter were available. These facts if they had been made known to the defence, would have most assuredly have led to Marshall's acquittal in 1971. Even if you do not agree with my interpretation of this covenant, surely you should re-assess your position in light of the contents of this letter and its enclosures.

Mr. Marshall had absolutely no knowledge that the facts indicated above were available. In fact, he and his counsel were misled by both the Crown and the police into assuming that the evidence presented at the original trial was the only evidence available and known to them at the time.

I would further point out that even if Mr. Marshall had testified in 1971 to attempting to roll Ebsary and MacNeil, this would have made absolutely no difference in the outcome of his trial since he was being pointed out as the murderer by two supposed "eye witnesses" who were perjuring themselves.

The Honourable Mark MacGuigan
December 13, 1983
Page 6

The Nova Scotia Court of Appeal cast a shadow over Mr. Marshall by saying that he was the author of his own misfortune "and that any miscarriage of justice was more apparent than real". However the Court failed to comment in any way on the police and Crown conduct throughout this case. Had it not been for the police manipulation of the evidence in this case, the Crown would have had no case against Mr. Marshall. This is where the miscarriage of justice occurs. An innocent man even after being acquitted is still being blamed for the offence.

I should also bring to your attention that Mr. Marshall has never been charged with nor convicted of either perjury or attempted robbery as a result of the comments of the Court of Appeal. Even if Mr. Marshall had acknowledged an attempted robbery in 1971, this certainly would not have resulted in his acquittal on the murder charge since there were two eye witnesses who testified to his being the murderer. A conviction for attempted robbery would certainly not have carried with it a term of life imprisonment in a federal penitentiary.

There has been a miscarriage of justice done in relation to Donald Marshall, Jr. and the miscarriage is continuing to date with no one wanting to acknowledge that the system failed in the Marshall case and that its failure was not the responsibility of Donald Marshall, Jr.

It is with this in mind that I write to you as Minister of Justice, the one person empowered in Canada to minister justice and to right the wrongs committed to date in respect to Donald Marshall. Our Provincial government is unwilling to deal with these issues for fear, I believe, that if the truth be known about how an innocent man came to spend the better part of eleven years in a federal penitentiary, the entire system of the administration of criminal justice in Nova Scotia would fall into disrepute.

The Honourable Mark MacGuigan
December 13, 1983
Page 7

The Provincial Attorney General was aware in 1971 that someone had come forth and indicated that the wrong person had been convicted. He was also aware in 1974 that another person again came forth and pointed the finger at Roy Ebsary yet these facts were never seen to be important enough to be brought to the attention of Mr. Marshall or his counsel. Last but not least in the long list of disturbing events surrounding the Marshall case, is the fact that one of the Judges who sat on the Reference Hearing in 1982 was the Attorney General in 1971. Even though this was the case, the Judge saw fit not to disqualify himself from sitting on this Reference Hearing.

Mr. Minister as you well know justice must not only be done but must appear to be done. In the present case, justice has not been done nor has it been given the appearance of being done. An innocent man was wrongfully convicted and imprisoned for over ten years yet no one will accept any responsibility for this. The Provincial government asks that Mr. Marshall barter away his civil claim against the Sydney City Police for the possibility of compensation being paid to him. The injustice continues. Mr. Marshall is again being put to the task of proving his case if he wants any form of financial compensation to result. This is a heavy burden to bear for someone who has suffered both physically and psychologically for eleven years in trying to prove his innocence, who has incurred legal fees to one lawyer in the amount of \$82,000.00 and who is incurring more legal fees in an attempt to obtain compensation. When one considers the resources available to him as opposed to the resources available to the intended defendants and to the Provincial government, it is clear that this is not a fair fight. The time has come to put an end to Mr. Marshall's suffering. He should be justly compensated for his pain and suffering and for his legal expenses. He also deserves a public apology from the government of Nova Scotia for the failure of its system of justice. It appears that the government of Nova Scotia is not prepared to listen to anyone regarding Donald Marshall including yourself, Mr. Minister. I would, therefore, ask for the opportunity of meeting with you with a view to resolving this most unfortunate situation.

The Honourable Mark MacGuigan
December 13, 1983
Page 8

A reply at your earliest convenience would be greatly appreciated.

Yours truly,

Felix A. Cacchione

FAC/oh
enc.

January 10, 1984

The Honourable Mark MacGuigan
Minister of Justice
House of Commons
Ottawa, Canada
K1A 0A6

Dear Mr. MacGuigan:

RE: DONALD MARSHALL JR.

To date I have not received an acknowledgement of receipt of my letter to you dated December 13, 1983. Would you please advise if this letter has been received by your Department and if it has not, I will forward a copy to you.

Your attention to this matter at your earliest convenience would be greatly appreciated.

Yours very truly,

Felix A. Cacchione

FAC/oh

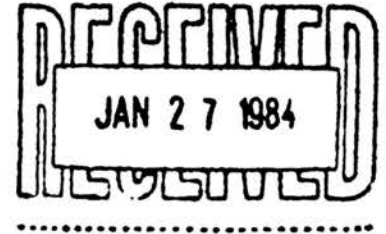
Minister of Justice and
Attorney General of Canada



Ministre de la Justice et
Procureur général du Canada

FC 19

January 24, 1984



Mr. Felix A. Cacchione
Lambert & Cacchione
Barristers and Solicitors
903 - 1649 Hollis Street
P.O. Box 547
Halifax, Nova Scotia
B3J 2R7

Dear Mr. Cacchione:

Thank you for your recent letters concerning the case of Donald Marshall, Jr. I am well aware of the background of this matter, but nevertheless appreciate having received your detailed comments.

I am not unsympathetic to your client, but I feel constrained to let the provincial government undertake and fulfill what I believe to be its proper responsibility.

I have already spoken to the Honourable Ronald C. Giffin, the new Attorney General of Nova Scotia, and expect to be in further touch with him about this case and its further developments in the very near future. Would you have any objection to my providing him with a copy of your letter to me?

Yours sincerely,

Mark MacGuigan

February 3, 1984

The Honourable Mark MacGuigan
Minister of Justice
House of Commons
Ottawa, Canada
K1A 0A6

Dear Mr. MacGuigan:

RE: DONALD MARSHALL, JR.

Thank you for your letter of January 24, 1984.

I do hope that your communications with the Honourable Ronald C. Giffin are useful in achieving some positive results in this matter. I have no objection to you providing Mr. Giffin with a copy of my letter to you.

Should you have any questions or should you wish to meet with me to discuss this matter, please do not hesitate to contact me.

Yours truly,

Felix A. Cacchione

PAC/oh