

#45

CAPE BRETON HOSPITAL RECORDS

ROY N. EBSARY

MEDIA POOL COPY

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

CASE NUMBER YOB: 1912

(1)

Date

rch 22/82

This 69 year old man, who lives by himself at 68 Falmouth Street, Sydney, was referred here to see me by his lawyer Mr. A. Nicholson and also by Mr. Frank Edwards, Crown Prosecutor.

There are a whole lot of angles in this case which I need not go into here.

I found him rambling, multi-delusional, (most of his delusions were of the grandiose type).

He has been charged with stabbing a drunken friend.

Mr. Ebsary also describes a certain giddiness and ataxia when he walks and his recent memory is poor. Apart from that his story varies from time to time, and I have vague doubts about this man's sequential memory.

Rather surprisingly to me, given the nature of his charge, he was released from the Correctional Centre on his own recognizance.

I do not feel that Mr. Ebsary has much insight into Courtroom procedure, though he understands "due process".

From time to time he gives a history of visual hallucinations in the past, I consider these as occurring in periods when he was coming off heavy wine use.

Possible diagnosis in this man's case are:

- 1) Chronic Brain Syndrome - arteriosclerotic in type
- 2) G.P.I.

I shall be in touch with the Forensic Unit at the Nova Scotia Hospital in Halifax.

CAPE BRETON HOSPITAL
PRIVATE & CONFIDENTIAL

Newt Donovan
C. Donovan, M.D.,
Psychiatrist

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whole or in part without written consent of
the Cape Breton Hospital.

CUMULATIVE THERAPEUTIC RECORD

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Newt Donovan
C. Donovan, M.D.,
Psychiatrist

/pam

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

CASE NUMBER

(2)

Date

2, 1984

This 73-year-old white ^{separated} ~~widowed~~ male was referred to this hospital as a formal person under observation by Dr. T. Krzyski. He was referred here because of his agitated, bizarre, and destructive behaviour at his apartment. For example, Roy was trying to burn his food and his lodgings, and the police arrived at the request of his landlord. There is a history of mental illness in the past, although we have no access to his chart.

Dr. Krzyski, at the time of his home visit, found three empty syringes, which he thinks Dr. Gaum may have left there. Roy was brought into the Cape Breton Hospital via ambulance on a stretcher.

On Examination: He appeared dishevelled and was inappropriately clothed. He was foul smelling, and was wearing a neck collar. He was ambulatory, although he walked with a shuffling gait. There was no odour of alcohol noted on his breath, and he denied any alcohol or drug abuse.

Multiple scratch marks were noted on all four extremities, and there were also burn marks on his fingertips. There was a three centimeter swelling on the right side of his forehead. Pupils were equal and reacting to light and accommodation. Blood pressure was 120/76; pulse was 104/minute (regular, good volume). Rhomberg's =.

Mr. Ebsary was grossly confused. When asked his date of birth, he replied "July 2, 1984". He was unable to carry on a conversation. Speech was rambling and slurred. He was partially alert and fully disorientated to all three spheres. He was unable to answer any questions. Mr. Ebsary looked withdrawn, but there was no evidence of catatonia. A further mental status examination was not possible at the time.

Impression: Acute Confusional State, probably secondary to Organic Brain Syndrome
Rule Out Alcohol and Drug Abuse or other Psychotic State

Recommendations: He was admitted to Diagnostic Assessment Unit for assessment and observations, as it was felt he can be a danger to himself or others.

EX. 112


A. Klonar, M.D.
Psychiatrist

/pm

Audit Checked: Yes No

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

CASE NUMBER

(3)

Date

17/84

Today I spoke with Mrs. John O'Day who lives in the apartment building on Falmouth Street where Mr. Ebsary also has an apartment. Mrs. O'Day stated that she had been providing meals for Mr. Ebsary while he was living downstairs from her. She stated he had been eating well and that she provided three meals a day for him. They have an agreement that he would pay her \$250 a month. She said, however, that he had given her \$150. Mrs. O'Day also stated that she would tidy up his apartment, if she knew when he was going to be discharged. She asked if the hospital would notify her so they could pick Mr. Ebsary up; their phone number is 539-0439. Mrs. O'Day would not comment on whether Mr. Ebsary was drinking or into drugs. She did say however that some of his visitors were not very helpful to him.

Evelyn O'Leary
Evelyn O'Leary, R.S.W.
Social Work Department

/ew

Audit Checked: Yes No

CUMULATIVE THERAPEUTIC RECORD

E Roy Ebsary

NUMBER

(4)

ite

85

Roy Ebsary, aged 73, was initially seen by me on December 18, 1984 while he was at the Cape Breton Hospital on referral from Dr. A. Munshi, M.D. He was later seen by me again on January 7, 1985. The purpose of this referral was to examine if he was showing any memory and sensory-perceptual deficits, or deficits of adaptive abilities on brain functions.

I was able to examine him on the Cognitive Capacity Screening Examination, Stroke Mental Status Examination, Reitan-Aphasia Examinations, Lateral Dominance Examinations, Sensory-Perceptual Examinations, Strength of Grip, Finger Tapping Tests and Wechsler Memory Scale.

The results of the tests carried out generally indicate that his overall cognitive capacity was within the normal range of variations with the exception of short term memory deficits especially under distraction and delayed recall-mode.

The Stroke Mental Status Examination showed that he was well oriented to place, time, and sphere. His social comprehension was average. His ability to carry out simple arithmetical computations were average. He was able to carry out pretended actions on command. No significant loss of long term memory was noted in these tests. But, he showed span of attention deficits.

The Aphasia examinations showed no spelling, naming, or copying problems. Some tremors in the drawing were noted, which might be related to his right hand motor problem. He is right handed. There were no obvious signs of right hand and left hand orientation problem.

The Sensory-Perceptual Examination showed some noticeable deficits. He showed severe auditory imperception, moderate tactile imperception of the left hand fingers and mild tactile imperception of the right hand fingers. Similarly he showed sensory-perceptual deficits of both right and left hand of varying degrees on finger-tip number writing and coin recognition. His strength of grip on the dominant hand was 9 kgs. and on the non-dominant hand was 15 kgs. Both the hand grip strengths are below the normal level of function. His average finger tapping speed on the right hand was assessed as 22, which is far below that of the normal speed of say 50, while his left hand tapping speed was assessed as 54.

The Wechsler Memory Scale test results indicate mild personal and current memory deficits, and mild mental control. On the first memory passages, he did fairly well. But, on the second, he showed moderate recall of logical memory deficits. Also, he got tired easily and became nervous. He also showed a tendency to fill up the "forgotten" lines or words of the memory passages with his own version without admitting that he had forgotten. He did very poorly on the paired associate learning. His ability to learn hard or difficult lists of paired words such as "baby-inch" was found to be

Audit Checked: Yes No

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

CASE NUMBER

(15)

Date

7/85

moderately impaired as compared with easy paired words such as "rose-flower". Also he performed poorly under interference. He was unable to learn or remember words or digits under even a delayed mild interference of say 9 to 18 seconds.

In summary, the above tests do indicate moderate and mild form of short term memory deficits (unable or difficulty in forming new memories, remembering or recall problems under interference, and difficulty with paired associate learning). Such memory losses are often seen in many neuro-behavioural disorders but they can also occur when a person is under considerable anxiety and stress. The present tests are mainly for screening purposes, and are not conclusive in their results. I have another appointment with him on January 15, 1985 to do further testing.

K. Sarwar

Kaiser Sarwar, Ph.D.
Clinical Psychologist

/bb

an. 15/85

He failed to show up for the appointment today.

K. Sarwar

Kaiser Sarwar, Ph.D.
Clinical Psychologist

/bb

Audit Checked: Yes No

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

CASE NUMBER 7059

(6)

Date

8/85

Mr. Roy Ebsary who is a 73-year-old, separated male living by himself was admitted on December 11, 1984, as a formal person at the request of Dr. Krzyski and assessed at the time of admission by Dr. Kumar.

Dr. Krzyski in his formal papers states, "This man tried to burn some food and with it his lodgings. Police arrived at the request of his landlord, the patient does not know what he is doing, he is a danger to himself and to others. In his lodgings, there were found three empty syringes." Dr. Kumar (Psychiatrist) who assessed him at the time of admission found Mr. Ebsary as inappropriately clothed, dishevelled, foul smelling and walked with a shuffling gait. There was no odor of alcohol noted on his breath and he denied use of the same. Also at the time of admission, he was found grossly confused--when asked about his date of birth, he replied July 2, 1984, --and he was unable to carry on a rational conversation, speech was described as rambling and slurred. He was also described as disorientated in all three spheres. Diagnosis of Acute Confusional State was made at the time of admission.

My first contact with Mr. Ebsary in the Cape Breton Hospital was on December 12, 1984, and I found him agitated, disorientated in all three spheres, unable to give his age, date of birth and address. He appeared to be visually hallucinating and was unable to answer questions. In the meantime he was also assessed by Dr. Archibald for his physical problems and he made a diagnosis of Acute Brain Syndrome, Drug Abuse and Fracture Cervical Spine.

Mr. Ebsary was again seen a day later (December 13, 1984) and at this stage his sensorium was clear, gave a reasonable account of himself, was orientated to all three spheres, but complained of being forgetful at times, denied hallucination of any modality (auditory, visual or tactile), did not show any paranoid ideations and his affect was appropriate.

Mr. Ebsary continued to maintain his improvement in his sensorium, speech was coherent and he was able to give detailed background information. There was slight problems in his attention and concentration but clinically he did not show any problems in his short-term memory, for example, he was aware of his surroundings, knew what he had for breakfast that morning, number of days he had been in the hospital and the doctor who he had seen that morning. He also knew about his appointment with Dr. Malik on December 28, 1984.

Audit Checked: Yes No

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

FILE NUMBER 7059

(7)

(Cont'd)

85 While he was on the Diagnostic Unit he complained of a pain in the right side of the abdomen for which he was investigated by Dr. Archibald who treated him for urinary tract infection with antibiotics.

Background Information

Mr. Ebsary was born in St. John's, Newfoundland, left school after completing Grade VIII and later up-graded himself. After working for a few years with a lumber company he joined the Merchant Navy and during World War II he was in the Canadian and possibly the British Navy. He claims that he was gun captain in the Royal Navy and seems to be giving conflicting stories about his experience in the second World War, for example he mentioned that he spent six months in a hospital in Bermuda in 1941 and was also in Camp Hill Hospital in 1942 for a wound in his right leg. He also stated that Sir Winston Churchill personally decorated him with the distinguished conduct medal on May 26, 1941 after sinking the Bismarck. He also states that between 1941 and 1942 he trained boys for about 12 months. He also claims to have received the Distinguished Medal in 1941 in France by rescuing the french army. He was declared physically unfit in 1942 and went back to the Merchant Navy until 1960. He then worked at the Isle Royal Hotel for about 8-10 years as a chef. He finally retired in the early 1970's.

Mr. Ebsary lived common-law for about 30 years and has been separated from his common-law relationship for the last 7-8 years. There are two children, a son and a daughter, with this union. His son lives in Sydney and his daughter lives in Boston. At this stage he has no contact with his family and has been living by himself for the last four years in an apartment.

Mr. Ebsary has a history of heavy alcohol abuse for which he was initially seen in 1972 by Dr. Binnie. In his report Dr. Binnie states that Mr. Ebsary has been a very heavy wine user, although his consumption had tailed off following a chest infection. He was reported to be depressed on and off, poor appetite and would act suspiciously towards his wife and children. Dr. Binnie also noted problems in his recent memory at the time and felt that he could be showing early signs of Korsakoff's disease.

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

CASE NUMBER 7059

Date

(Cont'd):

8/85
From the information available, it seems that there was no contact until 1982 when he was seen in March 1982 by Dr. Donovan at the request of the court to judge his fitness to stand trial. Dr. Donovan recommended transfer to the Nova Scotia Hospital to determine his fitness to stand trial and also found his stories as bizarre, some deficiency in recent memory and found him unsteady on his feet.

He was admitted to the Nova Scotia Hospital between May 7, 1982, to July 30, 1982, and he was assessed by Dr. Akhtar in the Forensic Unit. The diagnosis at the time was:

- (a) Chronic Brain Syndrome (reversible and in remission)
- (b) Chronic Alcoholism
- (c) Congestive Heart Failure
- (d) Chronic Obstructive Lung Disease
- (e) Peptic Ulcer

Mr. Ebsary was seen by myself at City Hospital at the request of Dr. Gaum in May 1984. At that time he was disorientated to all three spheres, was unable to give his date of birth, did not know how long he had been in the hospital, had problems with recognition (for example he told me that he had met me in Halifax), had problems in attention and concentration and showed defects in memory. At that time it was suggested that Mr. Ebsary be further investigated, for example, CAT Scan and be transferred to the Geriatric Unit in Halifax for further investigations.

There was no further contact with Mr. Ebsary until he was admitted to this hospital on December 11, 1984.

Following his discharge from the hospital, Mr. Ebsary was reassessed on January 7, 1985, re his mental status and if there was any confusion which he presented at the time of admission.

ON EXAMINATION: He was rational, coherent, orientated to all three spheres, there was some mild impairment in concentration, but clinically did not show any problems in his short-term memory, for example, he remembered that he had been to City Hospital on Sunday, January 6, 1985, where he was at the outpatient department from 10:00 a.m. to 5:00 p.m., (this was confirmed with Medical Records Department at City

Audit Checked: Yes No

CUMULATIVE THERAPEUTIC RECORD

NAME Roy Ebsary

CASE NUMBER 7059

(1)

Date

(Cont'd):

8/85

Hospital on the telephone. Mr. Ebsary was aware of current events and appeared somewhat anxious possibly due to his forthcoming court trial.

DIAGNOSIS: (1) Organic Brain Syndrome (in remission)
(2) Urinary Tract Infection (treated and currently under investigation by Dr. Schneiderman)

Prognosis:

It has been noted from his history that Mr. Ebsary becomes confused easily, secondary to his physical problems like a combination of pulmonary problems and alcoholism in the past and this time his confusional episode was possibly secondary to abuse of pain killers like Tylenol #3.



A.K. Gunshi, M.D.
Psychiatrist

km

Audit Checked: Yes No

Exhib number: 46

Filed on: SEP 25 1987, 1987

At The Hearings of The
Royal Commission On The
Donald Marshall, Jr., Prosecution

Malcolm Williston,
Registrar

#46

DEPARTMENT OF DEFENCE

St. John's, Newfoundland,
August 30th. 1945.

CERTIFICATE OF SERVICE

The bearer (No) JX 247943 (Rank) O.S.

(Name) Ebsary, R. Newman

(Address) 89 South Side Rd. East, St. John's, Nfld.

(Whose signature appears below) was attested in the

Royal Navy 4th Nov. 1940; He served

Overseas from 28th-11-40 to 8th-1-42 when he
was repatriated to Newfoundland.

His discharge is affective from 5-2-42.

W.F. Rendell

W.F. Rendell, Colonel:
Secretary for Defence

Roy H. Ebsary
Signature of R.N. Ebsary

CERTIFIED TRUE COPY

Copy.
JC/WFR.

MEDIA POOL COPY

#48
(See Volume 22)

3 June 1971 Loc # 3
P.C. Walsh.

1969 CHEV - WHITE

Plat 22-14-56 - N-S(71)

Centennial Park - 11:15 P.M.

4 June 1971 Loc # 3
P.C. Walsh

Tom CHRISTMAS. - Cir. 05/06/71 adult

John CHRISTMAS. } juvenile

Lawrence PAUL. } juvenile

If seen must and log.
sec. 119(1) C.C.C.

MEDIA POOL COPY

CURRICULUM VITAE

Maqbul A. Mian
20 Churchill Drive
Sydney, N.S.

#50

I am a registered medical practitioner with the Province of Nova Scotia since 1963. I received my medical degree from Pakistan and did rotating internship and psychiatric training at Presbyterian St. Luke's Hospital (affiliated with University of Illinois, Chicago) and Dalhousie University, Halifax, N.S.

I have been Medical Director of Cape Breton Hospital since 1969.

I am a certified psychiatrist with the Fellowship of Royal College of Physicians and Surgeons of Canada. I am a member of the Royal College of Psychiatrists, London, and am a Diplomate of the American Board of Psychiatry.

I am a consultant to the Department of National Health and Welfare, the Department of Veteran Affairs, and the Department of Social Services. I have testified as an expert witness in the courts of the Province of Nova Scotia.

MEDIA POOL COPY

IN MURDER TRIAL

Marshall Denies Stabbing Seale

The Crown's case of murder against Donald Marshall Jr. of Membertou goes to a Supreme Court jury in Sydney today for a verdict ending a three-day trial.

The court room was crowded yesterday as the 17-year-old Marshall denied that he stabbed Sandy Seale of Westmount in Wentworth Park last May.

The accused testified that one of two men who looked like priests, stabbed Seale with a knife.

Marshall said he had known Seale as a friend for the past three years. He said he met him in the park late on the night of May 23. But he testified, they were not in an argument.

He said the two youths were talking near the bridge when two men appeared asking for a cigarette and a light.

Marshall said they gave the men what they asked for. They said they were from Manitoba. Marshall testified, "I said to them they looked like priests the way they were dressed," Marshall said.

"The younger one said we are," Marshall said. Then they asked if there were any women in the park, and I told them there were a lot.

"One of them replied, 'we don't like niggers or Indians,'" Marshall said.

The older fellow took a knife out of his pocket and drove it into Seale's stomach," Marshall said, "then he swung it at me hitting my arm."

Marshall said, "I didn't stab Seale or lay hands on him."

Mr. Justice J. E. Doherty will address the jury when the trial resumes this morning. Mr. Justice said the jury deliberates on its verdict.

C. M. Rosenblum, Q.C., and Crown Prosecutor Donald MacNeil, Q.C., addressed the jury yesterday afternoon.

The defence counsel said only two of the Crown's 18 witnesses were important and the whole case hangs on their testimony.

Both, he said, acted contrary to what one would expect eye-witnesses to do.

They were at the scene, along with Marshall, when the ambulance and police arrived. Yet neither even hinted to police they knew who had done the stabbing, Mr. Rosenblum said.

It was a week before police arrested Marshall and they had not had a word from the two key witnesses, whose testimony was described by the defence counsel as unbelievable. One of them admitted to being drunk the night of the stabbing, he said.

Crown Prosecutor MacNeil said it was clear why the two teenagers had not told police what they saw earlier. "They were scared." And like many other people these days in Canada and the United States, they didn't want to get involved.

Mr. MacNeil said city police detectives spent long hours of hard work, day and night to bring the case to court. He described the efforts of the Detective Division as brilliant.

The prosecutor said the accused was a good enough actor to fool what he did.

But, he said, when the injured Seale was being placed in an ambulance the accused stayed far enough away so as not to be identified.

He said the two men, who testified they were from Manitoba, said in the trial that Marshall said, "I saw Seale because he was wearing a hat like Mr. MacNeil's."

They asked even though they had the truth, Mr. MacNeil said.

Health Care Is Discussed

Some 60 members of the community voiced their grievances about the health care they receive at Thursday night's Town Meeting at the Metrocentre. Dr. M. A. MacLellan of St. Francis Xavier University and Willie A. Rudy, consultant with Kalev, Prof. Marswick & Co., were principal speakers at the meeting which centered on the work of the Cape Breton Regional Health Planning Project.

Public health nurses have noted respiratory illnesses in young children. Mr. Rudy said and many concerned persons present asked about the extent and cause of such illness. Air pollution was cited as a major contributing cause and information was requested about where the pollution is coming from.

It was noted that classes for pregnant mothers, which help to inform mothers about the needs of their infants, have been poorly attended in the past. But several mothers pointed out that such classes need to be located in more accessible areas for them to be able to attend.

Mr. Rudy broke down present health programs into preventive health, ambulatory care, active treatment, extended care and rehabilitation. The idea of preventive health, a crucial part of health care, is to inform people of the steps they can take to prevent illness.

"We are looking for alternatives to active treatment, which is the most expensive to society," Mr. Rudy said. Many people now kept in active treatment beds in hospitals could better recover, and at less cost, in chronic care and rehabilitation centers.

The lack of specialists who have expert knowledge in different areas of medicine was raised as an important problem of health care in Cape Breton. In 1979, about 2,500 Cape Bretoners went to Halifax to obtain services of different kinds of specialists, Mr. Rudy said.

One woman complained that doctors in certain areas were reluctant to refer patients to specialists, and that some specialists could not be seen without a referral.

Dr. MacLellan stressed the need for continued involvement by the community in making their feelings and priorities known to the project organizers.

Use dental floss to sew the buttons on the clothes that you make for your school children. It is stronger than ordinary thread and will stand the rough play of children's hands.

BONUS PHOTO

EXCLUSIVE AT
ABBASS STUDIOS
AND THEIR DEALERS

Bring your exposed film to Abbass Studios or any of their dealers. You receive over \$2.00 worth of wallet pictures extra with every 12 exposure roll of Kodacolor Film you have processed.



Several faces on City Council last night as the first meeting after electing the oaths of office on the successful candidates in Tuesday. From left to right: Mayor Charles MacNeil, Deputy Mayor John Palmer, and Council members Angus MacKay, Tony Gale and Archie MacLurey. (Abbass Photo)

WHITNEY PIER - Action To Air Pollution

from the minister, I was informed that there could be danger to health from particulate matter, and that monitoring of the Sydney area to collect data with regard to this problem.

Mr. Muir said it was not good enough to have a substantial period of time to determine the extent of the health hazard. "People of Cape Breton have a right to know how serious the problem is, and what they should be doing about it."

NEW ALDERMEN - New Method In Naming Deputy Mayor

The fact that he's a Protestant, Alderman Vance MacNeil and on Catholic in what part of the city he lives in, should be in the background and have no bearing," Ald. Miller said. "The last three years, Deputy Mayor Palmer agreed with the others. He said he hoped council would select the man they think most suited to do the job. It's not a religious or geographic thing," he said.

NONE SERIOUSLY Seven Injured In Separate Mishaps

Seven persons were injured in two separate accidents on Sydney streets yesterday. Six persons were injured last night when a car went out of control and struck a power pole on King's Road on the city side of St. Rita Hospital. Some of the injuries were considered serious.

The car involved was driven by Donald Charles MacNeil, 41, RR 1, East Bay. Passengers were Vance Gillis, East Bay, and James MacNeil, East Bay.

Philip MacLurey, East Bay, in two separate accidents on Sydney streets yesterday. One accident occurred at 9:45 p.m. Earlier on Townsend Street, Chandler's Broomie, 274 Townsend Street, age eight, suffered a broken leg when he was struck by a car driven by Monica MacNeil of Hindley Avenue, New Wolford.

The accident happened at 4:30 p.m.



#58
MEDIA POOL COPY

#39
#52



...ation being held here, met the chairman...
...ppment, Ian Watson, M.P., before Mr. Wat-
...ol Martin, president of United Indian Youth
...olumbia, a son, Delbert Jr.; Chief
... Frazer District, Vancouver, B.C.; and Ian
... (Abbass Photo)

HERE - r s Outlined

tain its teachers, real—rather than for the areas
program designed in which Indians live.
of Indian and Esk-
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... and there has been
... emphasis on a trans-
... for jobs in big
Toronto and Mont-

nda Pageant

press up to date on
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... st — Giancarlo De
... and an interview
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... ay was concluded
... t dinner in the Park
... lloved by a film
... CFTO-TV studios of
... on last year's ac-

SUPREME COURT

C.B. POST
NOV. 4/71

16 Witnesses Give Evidence

A Sydney teenager testified in Supreme Court yesterday he was hiding behind a bush in Wentworth Park late on the night of May 29 when he saw two youths arguing.

John Pratico, 16, said he re-
cognized them as Donald Mar-
shall, Jr., of Memberton and
Sandy Seale of Westmount.
He testified that Marshall had
a "shiny object" in his right
hand which he plunged into the
other youth's stomach.
"That's the last I saw. I ran
up Bentinck Street," Pratico
said.
Donald Marshall is charged
with murder arising out of the
death of Sandy Seale, which oc-
curred next day at City Hospi-
tal.
Pratico was named yesterday
for the Crown when the trial
was adjourned yesterday after-
noon.

assisted in the operations and
he described bleeding from an
abdominal wound caused by a
half inch puncture of the aorta,
main artery from the heart.
Dr. M. S. Varick said he treat-
ed Marshall for what he describ-
ed as a superficial laceration
four inches long on the inside
of his left arm. The wound re-
quired 10 stitches, the doctor
said.
The doctor testified he went
to County Jail later to remove
the stitches and found them al-
... (Continued On Page 9, Col. 1)

Mr. Justice J.L. Dubinsky ad-
vised the teenage witness he
would be allowed to return to
his home but outside of his
family he was to report to
court if anyone attempted to
talk to him about the trial.
The trial goes into its third
day with the jury expected to
deliberate later today.

Red Cross Awards To Be Presented

His Honor Victor deB. Oland,
the Lieutenant-Governor of
Nova Scotia, will present Red
Cross awards this evening at
Branch 12 of the Royal Canadian
Legion, corner of Dorches-
ter and George Sts. in Sydney.
Bringing greetings from the
Nova Scotia Division will be
Justice J. L. Dubinsky, Chair-
man of the Nova Scotia Blood
Transfusion Board.

Regiments of awards should
be there at seven o'clock so
that registration may take place
and final arrangements made
in plenty of time. Guests should
be seated by 7:45.
Following the ceremony, a
lunch will be served.

Pratico testified he saw
Marshall and Seale at a dance
at St. Joseph's Hall, near the
park.
The three youths walked to
the corner of George and Ar-
zule Street, Pratico said, he
walked up Arzule to Crescent
Street while the other youths
went into the park.
The witness said he went be-
hind a bush in the park and
was drinking. He said he look-
ed up and saw Marshall and
Seale talking, "they seemed to
be arguing."
Pratico will resume his evi-
dence as the trial continues to-
day. Marshall is represented
by C.M. Rosenblum, QC and
S.J. Khalifa, QC who cross-ex-
amined most of the 16 witnes-
ses already called by Crown
Prosecutor Donald MacNeil, QC
and Assistant Crown Prosecutor
D. Lewis Matheson.

Will Use St. Mary's Church

Parishioners of St. Nicholas
Church at Whitney Pier, which
was destroyed by fire early last
September, will meet next
Sunday at 10:30 a.m. in St.
Mary's Parish Church, for the
reconstruction Mass by Rev. F.L.
Doherty, pastor of St. Nicholas
Church.
Rev. Doherty said the people
of St. Nicholas Church will be
... (Continued On Page 9, Col. 1)

The 12-man jury under fore-
man James J. Townsend was
required to leave the courtroom
on several occasions yesterday
as legal argument took place.
Three doctors gave evidence
at yesterday's session. Dr. Ma-
hammad Ali Naqvi testified he
treated Seale from midnight
until 4 p.m. next day.
He said the youth was on the
verge of death when he first
saw him in the hospital em-
ergency room.
Dr. Naqvi testified the in-
juries were caused by a sharp-
pointed object penetrating the
abdomen all the way to the
back. The hotels and blood tes-
tels were torn, he said, and a
mass replacement of the
in place of death was used
the coroner taken to the
... (Continued On Page 9, Col. 1)

MEDIA POOL COPY

CITY OF SYDNEY POLICE DEPT.

54

STATEMENT

June 17th 1971 11:40 PM

Statement of Clarence Petrich
Suspect age 20 yrs residing at 2 Tolly
Newport Sydney

Q On May 28th I went to the
Dance at St James Hall Sydney
St. Sydney.

Q Who did you go with?
A With Elda Richs.

Q How long did you stay there?
A Well I saw a fight starting about
10.30 PM I was trying to break it up
and as a result I was asked to stand
by the Police which I did. When I was
getting my jacket I seen Petrich there
there I said they picked me out and
asked me to come along with me
she did. we went to the store and from
there to the Park. we stopped there for
while we were talking to Robert Patterson
He came down from the Park with us
we walked behind the Bandshell
and started to walk up to Crescent
I remember seeing Donald for months
on Crescent St with another man.

Q Did you speak to Jim Marshall?
A Yes I asked him for a match

Q Did you receive it?
A Yes.

Q Did you have any other conversation with him?
A No.

MEDIA POOL COPY

Witness *[Signature]*
Date June 17th Time 12:03 AM

Signed *[Signature]*

CITY OF SYDNEY POLICE DEPT.

STATEMENT

Q Did you know the other man
 A No.
 Q Did you know Judy Hale, the Deceased.
 A No.
 Q How long have you known Mr. Marshall
 A 1 year or so
 Q What way were you walking on Crescent St
 A Towards King Rd
 Q What time was this.
 A Between 11.30 P.M. and 12 P.M.
 Q What was the weather like
 A It was nice and
 Q When you met Mr. Marshall and the
 other man were they standing or walking
 A Standing
 Q on the street or sidewalk
 A on the left hand side of street going
 towards King Rd.
 Q were you drinking that night
 A 2 pts. of beer & some wine.

James Huchel

Witness *[Signature]*
 Date June 17th Time 1203 AM

Signed.....

CITY OF SYDNEY POLICE DEPT.

STATEMENT

June 17-71 8:15 PM

#55

Statement of Patricia Harris
 5 Kings Rd, Boerw. Neeris
 I with my friend Jerry
 May 28-71 my boyfriend Jerry
 of us two, 22 Lipp Terrace left
 the dance at 11:45 PM. We sat
 on a bench near the Grandstand
 We sat on a bench. Robert Patterson
 was on the grass. I took a cigarette
 We smoked a cigarette. Jerry and I
 left. Walked back of the Grandstand
 to present street front of the
 big green building we saw and
 talked to Jim Marshall with
 Marshall was two other men

Q
A

Q Describe the other men to you
 A One man was short with a long
 coat. Gray or white hair, with a
 long coat. I was talking to Jerry
 Jerry got a match from Jim
 and he said they are drags.
 they were asking him for a
 cigarette

Q
A

Q Did you see anybody else in
 the park?
 A No.

Q
A

Q Was there any bar in the
 park?
 A Yes, boys and girls walking
 through the park. Music
 Daffin and Henry Barron
 they left when we were
 on the bench

MEDIA POOL COPY

Witness.....

Date..... Time.....

Signed.....

CITY OF SYDNEY POLICE DEPT.

STATEMENT

June 18th 1971 1:30 P.M.

#56

Statement of Patricia Ann Harris
age 14 yrs residing at 5 Kings Rd Sydney

on May 28th 1971 I went to St Josephs Dame Hall. I met Terry Blushie there. we danced for awhile and then a fight started Terry got mixed up in it and he was asked to leave. So I went with him. I got mad at him for drinking & fighting we went to the Park and sat on a bench and started arguing. Robert Patterson came to the Park with us after a while we crossed the Park back of the Bandshell then we went up to Crescent st and by the green apt. building we met J. Marshall Terry got a match of him

Q was there anybody with J. Marshall

A yes

Q who was it

A He had a dark jacket on

Q wasnt hardly dark do you know him

A yes I know hardly and it looked like him

Q Did he speak to you

A no

Q Did J. Marshall say anything else

A He was drinking.

Q How was he dressed

A he had a light jacket on

MEDIA POOL COPY

Witness.....

Date June 18 Time 12:25 P.M.

Signed Patricia Harris

CITY OF SYDNEY POLICE DEPT.

STATEMENT

Q Were they standing or walking when you meet them

A Standing facing one another but when we came closer they sort of parted and Sandy Seale moved back we talked to Jim got a match and left for home.

Q Did you see anybody else in the area

A No not on Crescent St.

Q Did you notice anybody on the Railroad tracks

A No.

Q Where did you learn about the stabbing

A My mother told me.

Q Did you see any weapons on either Jim Marshall or Sandy Seale

A No.

Q How were they facing

A Sandy was facing the house and Jim Marshall was facing the Park.

Q What time would this be

A I would say about 12 PM and left the Park about 11:30 PM.

Naticia Harris

Witness.....

Date June 18th Time 1225/14

Signed.....

LAST NAME

HARRIS PATRICIA ANNE

ADDRESS

5 Kings Road

Nov. 15, 1956 AGE

#57

MARRIED
SINGLE
DIVORCED

V

WEIGHT 130

HEIGHT 5'6

COMPLEXION Med.

RELIGION

NATIONALITY

HAIR Brown

EYES Brown

FACE

OCCUPATION

DATE

CHARGE

GOODS

VALUE

DISPOSITION

BOOK NO.

MAGISTRATE

June 3, 1978

Sec. 235(2) C.C.

June 26th-\$200.00 and costs i/d 30 days

#59308

J.F.McDonald

July 6, 1978

Sec. 294 B C.C. (Private) AAL349 - \$100.00 i/d 30 days

J.F.McD.

July 19, 1978

Sec. 238(3) C.C. \$250.00 and costs i/d 30 days

#59346

J.F.McDonald

Dec 21 '85

Sec 3(1)NCA

\$50 i/d 5 days

#325

Exhibit Number: 57

Filed on:

1987

At The Hearings of the
Royal Commission On The
Donald Marshall, Jr., Prosecution

Malcolm Williston,
Registrar

MEDIA POOL COPY

08OCT87/09:12/32

#58

0006
RE: 0006

Q CR LANG: E
REM: SHAW

LVL: 2

*ROYAL CANADIAN MOUNTED POLICE - IDENTIFICATION SERVICES

*RESTRICTED - INFORMATION SUPPORTED BY FINGERPRINTS SUBMITTED BY LAW
*ENFORCEMENT AGENCIES - DISTRIBUTION TO AUTHORIZED AGENCIES ONLY

FPS: 925971A

HARRIS, PATRICIA ANN
HARRISS, PATRICIA ANN

*CRIMINAL CONVICTIONS AND RELATED INFORMATION

1976-08-10	THEFT UNDER \$200	SUSP SENT & PROBATION FOR
TORONTO ONT		1 YR
1986-01-07	POSS OF NARCOTIC	\$50. I-D 5 DAYS
SYDNEY NS	SEC 3(1) NC ACT (PD SYDNEY NS)	

*END OF CONVICTIONS

*SUMMARY OF POLICE INFORMATION - NOT INTENDED FOR SENTENCING PURPOSES

NO ENTRIES PRESENT

MEDIA POOL COPY

Ev 59
B4D
SPDF

#59

June 7, 1971.

Mr. P.A. Winn
Supervisor
Black United Front
of Nova Scotia
Suite 430 Trade Mart
Scotia Square
Halifax, N.S.

Dear Sir:

Re: Sanford William Seale
and your letter of June 1, 1971

You are no doubt aware at this time that one Donald Marshall, age 17 years, has been charged with Non-capital Murder of the above mentioned Sanford William Seale.

My reason for not replying to your letter immediately was that this case was under intensive investigation, and we were momentarily expecting a break in the case.

Marshall appeared in Court this morning and was remanded without plea until June 14, 1971 at 10:00A.M. for Preliminary Hearing; that is, if the Crown is prepared to go ahead with the Trial at that time.

Yours very truly,

N.D. Macaskill
Deputy Chief of Police

MCA:K

MEDIA POOL COPY

Page I

#60

Procheta M.E

Box 29-1

Dec 24 73.

Dear Gordon

I did, but a nice time to see
 that I must go home. Pic,
 I hope you don't get mad because
 I wrote. I'm sure still healthy,
 even if you. The trouble I'm writing
 if you because I'm some sick &
 cough, so I must go away from
 some of my friends. I wish if I
 have anything you writing to you?
 I'm writing to you but I never
 heard from you in a long time.
 I'll love you always. She was
 ya, to see me in you. I think
 that you're still in your going to
 send me a nice gift for my
 birthday but I'm not allowed to
 send it out. I'll get it for you
 to it. Did you see in when she
 come home?

MEDIA POOL COPY

It's pretty boring in here but I
guess I'll have to take it until
I get my new hat which is
supposed to come up in Feb. I think.
If I can't heat it this time, I
won't know what to do. String
myself in. Tell you one thing, you
may not like me or care. Right?
But I'll tell you something bad.
I never told you, but she
wrote to me & said something on
the letter which made me feel
like a son of a bitch. I won't
tell you what she said. ^{But}
when I read it, I took my knife
& stuck it in my ^{side} out. If you
don't believe me, I'll show you
it if I want you to. I
(I remember me that when I
saw her, I'll see ~~her~~ what she
was when I started in
like a dirty man. But I was

29.3.
think all the time. I'm a different
person now. I'm in a better place.
He's that another man but, in
mind & conviction, I guess by a
good state. I'm a good man
I guess he ~~was~~ was something
in his. & I don't see anything
in him. & I don't get out & if she's
home, I'm going to see her & if
she tells me to wait the road,
I will & I won't put it on her
I'll go & wait some. Maybe had
in. Maybe I'll come back here.
When you there, the first time I
met her, well she said man,
because I was with my wife
Fannie Snow. Well I stopped
Fannie & took her. I got into a
fight with Jim. Jim just
go in because I was called in
a rat. But she's not a rat.
A guy got to be crazy to get
back with a rat that took

4. him, it - court. Remember that!
But it wasn't his fault. The
reason I want back with him
I really liked him & I still do,
even more. But the sounds in
this letter, I guess you think I'm
stupid he. I'm not. That's news to
tell Barbara I said "Hi" & ask in
which is his name with? O.K.
said I got it ~~at~~ church
party - can't get into mass that
day man, I hope you don't turn
me down because I wanna hear
from you & besides it took me
6 months to get your address.
little friend

T.S. JUNIOR MARSHALL
Don't see where P.O. BOX 29-1 = No 1997
my other friends DORCHESTER, N.B.
write to me to

MERRY XMAS

HAVE A
NICE N.Y.

Best for you -
I
w. send soon -

How tall
are you now?
4 feet.
SORRY
only just.

STATEMENT

#61 June 18th / 1971 9.30 AM

Statement of Mary Patricia O'Rielly
age 14 yrs residing at 33 Cross St Sydney

on May 28th 1971 I was at
St Joseph's Dance Hall 50 Cross St Sydney
I was with Theresa Linnell 43 Cross
St Sydney. I left there about 11.45 PM
with Steve Chasmeck 2 Maria Rd.
we went to The Park. we came
back around 11.55 PM to the dance
we were just outside talking Frank
Frank and I were talking about 12.25 AM
we saw the ambulance go by.
we got a drive home.

Q Did you know the late body male

A No

Q Did you know Donald J. Marshall

A yes

Q How long

A 1 yr

Q Did you see him that evening

A No.

Q when did you see him

A He called Saturday morning He
was looking for Peter my sister
He talked to me @. He said

Q what was the conversation

A about what happened down at the
Park the stabbing

Q what did he say

A He said there was a grey haired man

MEDIA POOL COPY

Witness.....

Date June 18th Time 9.50 AM

Signed Mary O'Rielly

CITY OF SYDNEY POLICE DEPT.

STATEMENT

down there. He said 2 men, one
 man asked him for a Cigarette. Then
 lady asked didn't have a Cigarette
 then he said that one fellow - said
 o.k. Blackie and he stopped him

Q Did you ask them what they looked like

A One had grey Hair He said he
 was 30 to 40 years old and when it
 happened he said he tried to Call
 from a messons house and he said
 he Called

Q Did you know those fellows

A He said they were pretty nice first

Q Did he Call anyone

A He Called again my sister I said

Q How did he get your phone no. Is he
 enlisted.

A When I was going with Pius Marshall
 Dr. Swartz I gave it to Pius

Q Did you discuss this matter with
 Patricia Harness

A yes

Q Did you tell her about the grey Hair man

A I told her there was supposed to be
 a grey Hair man there I told her
 if she was questioned by the Police she
 should tell about the grey Hair man
 that I told me about.

Q Did he say anything about his
 own injury

A He said the guy with the grey Hair
 stopped him & the arms

Witness.....

Date June 18th Time 9.50 A.M.

Signed Mary O'Reilly

CITY OF SYDNEY POLICE DEPT.

STATEMENT

#62

June 18th 1971 10.15 AM.

Statement of Catherine Ann O'Reilly
age 16 yrs residing at 23 Cross Street Sydney.

Q Do you know Donald Joe Marshall
A yes

Q How long
A since last summer

Q Do you keep in touch with him
A Several times this year. The last time
about 1 week before the stabbing took place
Q were you talking to him since the stabbing
A yes

Q where
A on the phone almost every day.
until he went to jail. He got his telephone
no. changed.

Q what was the conversation

A He told me he was down the Park
with Andy Seale and 2 guys came over
and asked him for a cigarette and when they
said no, the men started to call them
blackie & that. He said one man was
a good guy. He said he got stabbed
in the arm. He said he wanted to get
help. He went to a house to use a phone
the man did not want him to use
it but then he let him use it.

Q Did he know these fellows

A no.

Q Did you ever see Joe Marshall with a wife

A yes last year down at the Park

Witness *Sgt M. McFarlane*

Date *June 18th* Time *10.15 AM*

Signed *Catherine O'Reilly*

MEDIA POOL COPY

CITY OF SYDNEY POLICE DEPT.

STATEMENT

Q wasn't a large one
A about 5 1/2 inch Block
Q what was he doing with it.
A Striking it with the trees.
Q Did you see Joe Marshall the night of May 28
A yes I was sitting in a Car in John's yard
at the end of St. with Frankie French
Morse John, Marie & Kelly my sister
Joe Marshall, Ardie Paul, Donald Donald
Q what time was this
A Everyone was there till 1245 AM except
Morse John, Frank French & Joe Marshall
they left about 1030 PM.
Q where did they go
A they said they were going to St Josephs Park
Q Did you or anybody else have anything
to drink that night in the Car
A I never saw it.
Q Did John, French and Marshall come back
to the Car
A John and French
Q where did they part from Marshall
A they said they lost him and never found
Q why did Joe Marshall leave you and go
to the Park by himself
A Because I was with Ardie Paul
Q Did anybody have anything to drink in your
presence that night
A yes only Paul, Morse John and Joe Marshall
got a drink
Q Did you see Joe Marshall fighting at any time
A yes with his brother Pico. and the first
time the Park the guys were from Westmount
John was last summer

Witness

Date

Time

Signed

[Signature]

June 18th

10.50 AM

[Signature: Catherine O'Reilly]

Ex 64

vigilantes vs. vandals if police don't police

Vigilantes will be meeting vandals head on at Memberton unless police protection on the Indian Reserve is stepped up. Former chief Lawrence Paul told City Council last week vigilante action is being seriously discussed at Memberton because of mounting problems with vandals.

Chief Roy Gould suggested special Indian constables to patrol the small reserve. Paul disagreed. He said making constables out of reserve residents would flop because of patronage and favoritism. He wanted regular city police patrols and charged that Memberton residents weren't being taken seriously by police when they make complaints.

In a letter sent to the Justice Department and Nova Scotia Attorney-General as well as to the Police Commission. Paul and a group of Memberton residents faulted the band council as well as the police. (Earlier 46 residents signed a council-approved petition for better police protection.) The group charges in the letter that in a tightly-knit little community like Memberton (54 families), good behavior and citizenship could be successfully encouraged by the chief and council. They say Roy Gould and his council hadn't held a public meeting for a year and a half, despite vandalism and other problems. Poor street lighting, one of the major factors contributing to vandalism, is one of the problems that has remained unattended.

The group says home-brew is making a comeback on the reserve and calls on the RCMP to nip this in the bud. They say they would not like to take a step toward vigilante action unless absolutely necessary. (The letter, accompanied by a band council-approved petition was first cleared by Chief Gould for presentation to Police Commission. After conferring with advisors, the Chief reversed his decision and had the item removed from Police Commissioner's agenda at the last minute. Paul



Lawrence Paul

went ahead on his own at Thursday's council meeting.)

The Police Commission ordered an investigation into the alleged police disinterest in Memberton complaints and set up a committee to talk over the problem with reserve residents and authorities. There was some confusion as to whether or not city police actually had jurisdiction on Memberton which is a federal Indian reserve located within Sydney's boundaries. City solicitor Michael Whalley said the Indian Act makes it clear the RCMP has jurisdiction and that he was unable to come up with any evidence of an agreement on police services between the city and the Indian Affairs Department.

Former Chief Paul had observed that it was always

believed at Memberton that some agreement reached and a document signed. But he told T lander he's only been able to find signed agreements on garbage collection and water and sewer Nothing on fire or police. The regulations to the Act designate the RCMP as the police of Indian reserves but does allow for appointing Indian Constables or special agreements with police departments.

COPY

September 7, 1970

Mr. Gordon McLeod
Chief of Police
City of Sydney
Sydney, Nova Scotia

Re: Confidential, Special Constable Progress Report

Dear Chief:

It has come to our attention that they are areas Constable Fred Googoo may need clarification for the best interests of the community.

-- Constable Googoo has apparently been informed at several occasions by a desk sergeant that he should not answer house calls. A number of families have complained to the Council and feel any police constable's job is to answer all calls whether they be family disturbances or calls similar.

Therefore, Constable Googoo has at several occasions refused to answer the calls. I personally feel that these calls should be answered and a proper assessment be made at the scene whether an arrest or not. But at least, it would put a stop to whatever disturbance is going on.

- There was also a complaint received from several persons who had the opportunity to see Constable Googoo using his fists on another person. Most recent is a case at a ball game on the reserve. Constable Googoo was not in uniform as he was playing on the team. A fight was engaged with him and a fellow member of the same team. It created some controversy which was reported to me on my return from Halifax.

There were no charges laid by either party.

Any police constable to my sense must act accordingly anywhere. They are police officers twenty-four hours a day and in Constable Googoo's case especially. I am inclined to think that Const

September 7, 1970

Googoo may tend to push his weight around rather than lay a charge when necessary. This may be caused by the time element of his training. If daily contact is made by your staff (Dept. Chief MacNeil) This would, I think, clear up most of the knots that are increasing in his profession.

-One other item and that is calling the station for assistance. When Constable Googoo was appointed, it was felt this could lessen the police calls to the station. Constable Googoo at several occasions called the station for assistance when I personally feel he could have answered the call or investigate a complaint. This may be good, I don't know, but I feel that if he should need assistance, myself or anyone of my Councillors are available to assist him. There is, however, a question of authority. Does the Council have authority to answer a call - especially when the Constable is not available or if he should refuse to answer a call. Most recently, we have been asked if we had the arresting power and would it stand in the court if ever there was a protest. There may be a need to at least carry a county constable's position and duties if required.

I hope that I have made a good summary for you in relation to Constable Googoo's position to date. He has done a good job except for these most recent incidents. I hope that this will lead to a "fresh start" class for Constable Googoo and a consideration for the Council to carry a "County Constable's" position in order that we may be able to assist Constable Googoo more effectingly.

This report, I hope, will remain strictly confidential as I have not informed Constable Googoo of my writing to you in form of a progress report. I would appreciate also if he didn't know about it.

Yours respectfully,


Roy Gould
Chief

/jcm

Sydney Reserve



Band Council

February 13, 1970

*Chief of Police, Sydney
Sup. 200. [unclear]
The [unclear] [unclear]
The [unclear] [unclear]*

RE: Sydney Reserve Policing

Gentlemen:

We received word from the Dept. of Indian Affairs, Ottawa, in regards to policing and the possible availability of financial assistance for the hiring of one part time reserve Police Constable.

There are, however, several items of importance which the Council suggested on our request for the assistance required. Briefly, I will out-line the most important items:

1. That the Reserve Constable be of Indian decent and that such a position be advertized as a competition and those persons would be screened by the representatives of the Council, representative from the City Police (preferably the Chief Police), and the R.C.M.P.
2. That the Constable be under the direction of the Council and for that person to be trained on all aspects of police work by the City Police Staff, and for that Constable to work and assist the City Police in carrying out the policing on the reserve.
3. The Constable will also be requested to enforce Band By-laws that are existing presently; such as, school curfew, ordinance By-laws, and the enforcement of disorderly conduct on the reserve.
4. The Constable will work out of the Band Administration Office and shall be paid semi-monthly from the Band for his services.
5. (City Police, however, will patrol and carry out its duties in a normal manner using the Band Constable when necessary.)

February 13, 1970

It is suggested here that we meet sometime in the near future for a more meaningful discussion concerning the policing and the hiring of such a Constable.

I would suggest that the meeting will be held at the Band Administration Office at Membertou for February 20th at 2:00 p.m. A reply to this request would be appreciated. This should give you enough time to discuss the above suggestions with your colleagues for a meaningful and interesting meeting.

Yours truly,

Roy Gould
Chief

/jm

c.c.

65

Sunday Oct 11/70. We walked out of the Paramount Theater for some ~~fresh~~ fresh air and took a stroll around the theater. At the corner six police with two police cars stepped out and asked where we were going. They also inquired about our names. Then they left. Then we continued to the fence of the Y.M.C.A. and stood there to have a smoke and then the police again came about two minutes later and wrote down our names. We asked why and one officer stated, "It's none of your business." "Was this none of our business?"

Wed 14/70: On Wednesday one of the two boys was picked up at the park, in fact the other boy was picked up and they were taken to the graveyard by St. Anthony Daniel and was asked several questions. One of the boys was kicked in back and in a sense manhandled. "Had the police had the right to take student to someplace where nobody could see them and give them a rough going over?"

Sunday Oct 11/70 - After the police found out the girlfriends of the boys were with them, they went to the parents and told them not to go with the Indian boys because we were bad. "This I see, the cops are prejudiced towards us or either they planning a trick that will make all of us hauled in."

Also in several occasions the police checked
the park every or practically every fifteen minutes
to see what the Indian boys what they were
doing and what were the names of the people
that we were involved.

This comes to the conclusion that police are
losing most of our friends because most
of them say to the police are always on our
tail tail and it is not safe to hang
around the Indian boys.

Also one incident that occurred a few
weeks ago that one of the boys who seen
the police car coming ran away because
he feared they might take his name down
and one of the policeman threw a belly club
at him and knocked him down. This
boy was not intoxicated and the police charged
for resistance arrest. They were ignored
story but took him in because he was on
dian. Is this justice



Exhibit # 66

COMMUNITY RELATIONS
AND
THE LAW

SUBMITTED BY:

NATIVE COMMUNICATIONS SOCIETY OF NOVA SCOTIA

MEDIA POOL COPY

INTRODUCTION

POPULATION FIGURES FOR INDIANS IN THE CAPE BRETON-SYDNEY CONSTITUENCY TOTAL AROUND 1900 FOR ESKASONI AND 400 AT MEMBERTOU. FOR SMALL POPULATED INDIAN COMMUNITIES THE CRIME RATE IS NOT CONSIDERED SERIOUS BUT IN MANY CASES INDIAN PEOPLE ARE MAJOR USERS OF POLICE LOCK-UPS AND JAILS. MANY INDIAN PERSONS PRESENTLY IN JAIL ARE THERE FOR OFFENCES THAT MIGHT BE BETTER DEALT WITH IN OTHER WAYS AND THEY ARE NOT, ON THE WHOLE, REHABILITATED AS A RESULT OF THEIR SENTENCE. MOST, IN FACT, REFLECT THE "REVOLVING DOOR" ASPECT OF THE JAILS: THEY GO IN, SERVE THEIR TIME LEAVE THE INSTITUTION, AND ARE SOON BACK IN JAIL AGAIN.

WHEN NATIVE PEOPLE FACE THE COURTS, MANY FACE JAIL TERMS BECAUSE THEY CANNOT AFFORD TO PAY FOR THE FINE. MORE OVER, MANY INDIAN PEOPLE WOULD RATHER PLEAD GUILTY RATHER THAN BE REMANDED FOR SENTENCE LATER. SOME PLEAD GUILTY BECAUSE THEY ARE ENCOURAGED BY POLICE OFFICERS ON THE GROUNDS THAT THE COURT WOULD BE MORE LENIENT.

FOR A GREAT NUMBER OF INDIANS, THEY ARE CONSTANTLY PICKED UP BY POLICE OFFICERS. THEY DON'T HAVE TO BE DRUNK...THEY COULD BE STANDING ON A STREET CORNER, DRIVING AROUND THE CITY OR HIGHWAYS AND THEY LOOK INDIAN. POLICE OFFICERS OFTEN FEEL THREATENED BY MINORITY GROUPS AND THEREFORE SINCE THEY HAVE THE UPPER HAND, THEY ENFORCE THEIR AUTHORITY.

.....

.....2

IN GENERAL, RELATIONSHIPS BETWEEN THE POLICE AND THE INDIAN PEOPLE HAVE REACHED A STAGE WHERE BITTERNESS PREVAILS ON BOTH SIDES. THE CONSTANT SURVEILLANCE SOMETIMES REQUIRED BY THE INDIAN PEOPLE CAN, UNDER THE CIRCUMSTANCES HARDEN INTO OPEN DISLIKE ON THE PART OF THE POLICE. WHERE THIS OCCURS, THE INDIAN PEOPLE, IN TURN MAY RESPOND BY BEING WITHDRAWN, AND UNCOMMUNICATIVE WHEN SOBER AND HIGHLY BELLIGERENT AND AGGRESSIVE WHEN DRUNK.

THIS UNFORTUNATE COMMUNITY ATTITUDE IS OFTEN ACQUIRED BY THOSE WHO SEE THE INDIAN PEOPLE AT THEIR WORSE. IT IS ALL TOO TRUE IN THAT INDIAN PEOPLE, LIKE OTHER MINORITIES, DRAW POLICE ATTENTION BECAUSE OF DRESS, PERSONAL HYGIENE, PHYSICAL CHARACTERISTICS MAKING THEM CONSPICUOUS.....RESULTING IN MORE FREQUENT ARRESTS. THE FEELING IS WIDE SPREAD AMONG INDIANS....POLICE PUSH THEM AROUND AND ARREST THEM ON THE SLIGHTEST PROVOCATION.

PROGRAM

THE PURPOSE OF THIS SIX MONTH RESEARCH STUDY WILL BE MULTI-PURPOSE WITH AN AIM THAT A POSITION MAY BE OPEN FOR A COMMUNITY RELATIONS WORKER (NOT A COURT WORKER) WHO WILL WORK BETWEEN INDIANS AND LAW ENFORCEMENT OFFICERS.

FIRST STAGES OF THIS PROJECT WILL ENTAIL A SURVEY WHICH WILL BE CONDUCTED ON THE MEMBERTOU AND ESKASONI INDIAN RESERVES ON NATIVE PEOPLE WHO HAVE TROUBLE WITH THE LAW. (THE SURVEY WILL BE GEARED SO THAT INFORMATION RECEIVED WILL BE USED TO ACCESS COMMUNITY-POLICE RELATIONS AND/OR POSSIBLE RACIAL DISCRIMINATION CHARGES WITH NO PLANS OF TAKING ANY ACTION.) HOWEVER AS A RESULT OF THE SURVEY AND INFORMATION RECEIVED, FACTS WILL BE PUT TOGETHER AND PRESENTED TO LAW ENFORCEMENT AGENCIES, THE NOVA SCOTIA HUMAN RIGHTS COMMISSION, JOHN HOWARD SOCIETY AND TO THE BAND COUNCILS INVOLVED.

THE SECOND STAGE OF THIS PROJECT AND AS A RESULT OF THE FINDINGS PUBLIC EDUCATION SEMINARS WILL BE CONDUCTED WHERE POLICE AND INDIANS WILL BE BROUGHT TOGETHER TO DISCUSS COMMON PROBLEMS AND FUTURE GOALS OF BETTER COOPERATION AND UNDERSTANDING OF THE POLICE WORK AND THE VARIED PROBLEMS OF INDIAN PEOPLE. BY BRINGING THESE PEOPLE TOGETHER, THEY MAY GET BETTER UNDERSTANDING OF LEGAL RIGHTS, COURT PROCEDURES OR OF RESOURCES AVAILABLE SUCH AS LEGAL AID OR THE INDIAN COURT WORKERS PROGRAM AND THE WORKS OF THE HUMAN RIGHTS COMMISSION. IT WILL NOT BE THE PURPOSE OF THIS PROJECT TO PROVIDE LEGAL AID OR A COURT WORKERS SERVICE. IT WILL MAINLY BE PUBLIC EDUCATION WITH ITS AIMS GEARED AT PROVIDING A CLOSER WORKING RELATIONSHIP WITH POLICE OFFICIALS, COURT OFFICIALS AND INDIANS.

.....7

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IT WILL HOPEFULLY BRING POLICE OFFICERS TO UNDERSTAND THE INDIANS AND THEIR PROBLEMS AND AVOID POSSIBLE RACIAL DISCRIMINATION WHICH COULD EXPLODE IF NOT BROUGHT INTO THE OPEN.

IN CONCLUSION, THE OLD SAYING " INDIANS ARE WORTHLESS DRUNKS" COULD EASILY CHANGE AROUND TO THE NON-INDIANS OLD SAYING: "THE REAL SWINGERS."

IT IS OUR ANTICIPATION THAT A CROSS SECTION OF PEOPLE WILL BE INVOLVED DURING THIS RESEARCH. E.G. CITY POLICE, R.C.M.F., INDIAN CONSTABLES, NATIVE WOMEN, URBAN INDIANS, SOCIAL WORKERS, HUMAN RIGHTS OFFICERS, THE OFFENDERS, COURT WORKERS AND OTHERS WHO FEEL THAT THERE IS A PROBLEM.....A PROBLEM THAT CAN BE OVERCOME. WHO KNOWS THE RESULTS FROM THIS PROJECT COULD RESULT IN FUTURE EMPLOYMENT FOR INDIANS WHO CAN BE CAPABLE OF WORKING IN COURTS, THE HIRING OF MORE INDIAN POLICEMEN OR SPECIAL CONSTABLES FOR INDIANS. LONG TERM OBJECTIVES OF THIS PROJECT WILL BE THE APPOINTMENT OF INDIANS TO THE POLICE COMMISSION OR THE APPOINTMENT OF A COMMUNITY WORKER.

#68

Department of Social Services

P. O. BOX 696, HALIFAX, N. S.

SCOTIA

November 28, 1974

MEMORANDUM

TO: Hon. Allan Sullivan - *minutes of SS*
 Dr. F. R. MacKinnon - *dep "*
 Mr. Gordon Coles - *" "*
 Mr. Gerri Bell - *" "*
 Mr. Ronald MacDonald
 Mr. J. B. Marshall ✓
 Mr. Bernard Francis
 Mr. Peter Christmas
 Mr. William Greatorex
 Mr. Dave Gourley
 Mr. James L. Crane

RE: Minutes of the Advisory Committee,
Native Courtworker Program

The attached Minutes are of the meeting of the Advisory Committee, Native Courtworker Program, which took place in Halifax on November 18, 1974.

E. B. S. Miller

E. B. S. Miller, *pal pal*
 Prov. Government's
 Liaison Officer,
 Indian Affairs

EBSM/pal
 Attach.

MEDIA POOL COPY



MINUTES OF THE ADVISORY COMMITTEE, NATIVE COURTWORKER PROGRAM,
HELD IN THE BOARD ROOM, ADULT PROBATION SERVICE, 1521 DRESDEN
ROW, HALIFAX, NOVA SCOTIA, ON NOVEMBER 18, 1974, AT 10:00 A.M.

Those present were: Mr. E. B. S. Miller
Mr. Bernard Francis
Mr. Peter Christmas
Mr. J. B. Marshall
Mr. William Greatorex
Mr. James L. Crane

Mr. E. S. B. Miller was nominated and acted as Chairman of the meeting. Mr. Miller expressed reservation accepting the Chairmanship as he felt that a native should possibly act as Chairman. It was unanimous, however, that Mr. Miller accept the Chairmanship.

Mr. Bernard Francis informed representatives of the Committee that Mr. Michael A. Francis, Courtworker for the Micmac, Truro, Pictou and Afton area, with headquarters at Shubenacadie, resigned his position. Mr. Bernard Francis is currently seeking candidates for the position, and it is expected a replacement will be appointed in the very near future. The name of the newly-appointed person will be forwarded to the Committee members at the earliest possible date.

Those presently employed as Courtworkers are:

Mr. Fred Phillips, Cambridge, Hantsport and Wildcat Reserve, with headquarters at Shubenacadie.

Ms. Eva Bernard, Membertou, Eskasoni, Barra Head, with headquarters at Sydney.

Mr. Bernard Francis, Whycomagh, Wagnatkook, with headquarters at Sydney.

It was requested of Mr. Bernard Francis that he submit a financial statement to Mr. James L. Crane within the next week, who, in turn, will forward it to the Department of the Attorney General. The statement was requested in order that arrangements can be made to advance moneys to cover operating expenses incurred by Courtworkers in this endeavour. It was stated by Mr. Francis that no previous financial report was filed because funds have only been made available since October, 1974.

It was decided by the Committee that Mr. James L. Crane and Mr. R. A. MacDonald, Department of the Attorney General, will draft a letter for the signature of the Attorney General, which will be sent to all judges in the Province outlining briefly the nature of the Courtworker Program, the identity of the Courtworkers, their role and the objectives inherent in the program. *

Considerable discussion took place in the area of monitoring the program, and it was generally decided that this question did not refer to the Province of Nova Scotia controlling the program, but the Advisory Committee would request from time to time an evaluation of the program, cost analysis, problem areas encountered, etc., in order that the Advisory Committee would act as a meaningful and effective resource. It was generally agreed that the Committee would receive from time to time a report on the effectiveness of the Native Courtworker Program, need for additional resources; such as, training needs and any concern which may develop in future, which would impede the continued effectiveness of the program. The Advisory Committee made it known that it was quite prepared to assist the Coordinator of the program in every way possible.

In relation to the composition of the Advisory Committee, some concern was expressed that there was no representative from the Federal Government, who, in part, is financing this program. Committee representatives decided that there would be no need for federal representatives but that conditions of the Agreement would be fulfilled by simply providing requested information; such as, financial statements.

The Committee members were informed during the closing stages of the meeting that Mr. Bernard Francis, Coordinator of the Native Courtworker Program, would resign his position in the near future. Members expressed their regret, and were informed by Mr. Francis that a replacement would be made in the near future. Mr. Francis has a candidate in mind and upon finalizing, the name will be forwarded to Committee members.

In closing, Mr. Bernard Francis, provided the Advisory Committee members with the background of the development of the Courtworker Program and its existing role in relation to native peoples and the courts. Representatives felt that this information provided some insight into the program and that sometime in the future, they would like to meet the Courtworkers in person.

With no other matters to be discussed, a further meeting date was set for January 14, 1975, at 10:00 A.M., in the Board Room, Adult Probation Service, 1521 Dresden Row, Halifax. Prior to the next meeting, notice will be sent out to all members by the Chairman.

The meeting adjourned at 11:15 A.M.

Respectfully submitted,

Alice Dempsey
.....
Alice Dempsey
Recorder

APPROVED:

E. B. S. Miller
.....
E. B. S. Miller
Chairman

Ex 69

MEMORANDUM

NOTE DE SERVICE



SECURITY - CLASSIFICATION - DE SECURITE
OUR FILE - N/REFERENCE
YOUR FILE - V/REFERENCE
DATE March 2, 1978

TO
A N.P.S., Sydney

FROM
DE Diahann McConkey

N.P.S., Truro

SUBJECT
OBJET MARSHALL, Donald Jr.
FPS 410491A

Please refer to the writer's Lifer's Project Report dated October 21, 1977 for background information on this case. The situation has changed little since that time. Marshall continues to protest his innocence and has been in contact both with his lawyer and with penitentiary legal services in an attempt to get support for an appeal. From preliminary indications, it would appear that an appeal will not be forthcoming in this case.

On February 28th, 1978, a rather lengthy case conference was held at Springhill Institution involving Marshall, the writer, Marshall's Range Officer, Chuck Stonehouse, and his LUDO, Kim Thompson. The purpose of the case conference was to attempt to pin down the present status of the case and to reach some agreement as to future management of the case. It was decided that once all avenues of appeal are eliminated, the case will be discussed with the Parole Board in order to ascertain if they would, at some future date, be willing to consider a gradual release program possibly leading up to full parole for Marshall even though he persists in maintaining that he is innocent of the murder charge. However, prior to doing so, it was felt that some community input is required. Consequently, the writer agreed to request a Community Assessment from the Sydney area. The proposed Community Assessment would in part be a Post-Sentence one as neither a Post-Sentence Community Assessment nor a Pre-Sentence Report were completed at the time of the offence and would also in part take into consideration the possibility of future T.L.A.'s to the Sydney area.

In conducting the Community Assessment, contact should be made with:

1. Marshall's parents, Mr. & Mrs. Donald Marshall, 38 Mic Mac Street, Sydney, N.S. We would be particularly interested in knowing Mr. & Mrs. Marshall's feelings about the guilt or innocence of their son as well as their present feelings towards him and the possibility of him eventually returning home.
2. Chief Alex Christmas, Membertou Reserve Band Council, 111 Membertou Street, Sydney. Chief Christmas has previously requested that any Community inquiry conducted in this case in the Sydney area include contact with the Band Council.
3. Contact with Marshall's lawyer, C. M. Rosenblum, 197 Charlotte Street, Sydney. Mr. Rosenblum acted for Marshall at his trial and has written a letter to the parole board supporting Marshall for release on parole. However, according to Marshall, Mr. Rosenblum is unwilling to handle an appeal of his case.

MEDIA POOL COPY

N.P.S., Sydney
Page 2
March 2, 1978

4. According to Marshall, a lawyer by the name of Murphy has expressed interest in handling an appeal of his case. Mr. Murphy's address could likely be obtained from Marshall's parents as Marshall's information came through them.
5. Chief MacIntyre of the Sydney Police Department. Chief MacIntyre was the Detective involved in the investigation of the murder offence. According to Marshall, he has always had trouble with Chief MacIntyre and in fact Chief MacIntyre recently expressed strong opposition to the possibility of Marshall returning home for his grandmother's funeral.
6. Contact should also, if possible, be made with Burnie Francis, court worker. Mr. Francis was a court worker at the time of Marshall's trial and to the best of our knowledge still is. Thus he might perhaps be able to shed some light on the subject.

The writer realizes that completion of this Community Assessment may well take quite some time. However, in view of the fact that Marshall is not presently involved in a T.A. program there is no urgency involved. Rather, we are requesting the Community Assessment in order to get as much community input as possible for our assistance in the future management of this case.


Diahann McConkey
Parole Officer

DMcC:ifk

Dictated March 2, 1978 - Typed March 3, 1978

cc N.P.B., Moncton
Springhill Institution - Att: Kim Thompson, Unit 11

0	FPS - SED	NAME - NOM	DATE COMPLETÉ DATE DE COMPLETION
		FAMILY - FAMILLE	
05	4 10 4 9 1 A	MARSHALL, Donald Jr.	0 5 0 6 7 3
CASE AND PAROLE FOR A. PREPARE EN ALY DE		NPS OFFICE - BUREAU DE SMLC	DATE OF REFUSAL DATE DE LA REFUSAL
1. NAME OF SUBJECT		2. DATE OF REFUSAL	3. CODE
4. MARSHALL		5. DATE OF REFUSAL	8 1 3 0 3 0 3 7 0
6. NAME OF SUBJECT		7. DATE OF REFUSAL	8. CODE
8. NAME OF SUBJECT		9. DATE OF REFUSAL	
IF COMPLETED BY OTHER THAN NPS OFFICE, SPECIFY AGENCY COMPLETING - S'IL EST COMPLETÉ PAR UNE AUTRE AGENS, INDICER SON NOM		DATE REFUSAL DATE DU CAS REFUSAL	
REFERRAL CAS REFUSAL			

PLEASE REFER TO INSTRUCTIONS ON BACK - PRIÈTE DE VOUS REFERER AUX INSTRUCTIONS AU VERSO

CONTACTS:

- Mrs. Donald Marshall - Subject's Mother - Personal Interview
- Chief Alex Christmas - Membertou Band Council - Telephone Interview
- Mr. C. M. Rosenblum - Defense Lawyer - Telephone Interview
- Chief John MacIntyre - Sydney City Police - Personal Interview
- Mr. Dermie Francis - Union of Nova Scotia Indians - Personal Interview

FINDINGS:

Mrs. Donald Marshall was interviewed at her home at 38 Micmac Street on the Membertou Indian Reserve in Sydney, Nova Scotia. Mrs. Marshall is extremely defensive of her family in general and in particular, our subject Donald. Mr. & Mrs. Marshall have 12 children, 8 of which are living at home at this time. The oldest, Pius, is 23 years old and is unemployed. David, 20, is in grade 12 at Sydney Academy, and Josephine, 19, is in the same grade. Terry, age 16, quit school and is now unemployed. John, age 14; Laura, age 13; and Simon, age 11, are all in grade school. A grandchild, Steven, also resides in this home.

This office has had a considerable amount of contact with the Marshall family over the past few years, as Mr. Marshall is Honorary Chief of the Micmac Tribe in the Province of Nova Scotia and is a well-respected individual. One of the Marshall's sons, David Peter, who has mentioned above was recently an inmate at the Cape Breton County Correctional Center and received a Parole to return to high school. The involvement with the Marshall family through David left us with the impression that Mrs. Marshall is an overprotective mother to the point where she will not accept reality and maintains all of her children are innocent of any wrongdoing whatsoever. She becomes high-strung and emotional and will not accept the truth under any circumstances.

At the time of my interview, Mr. Marshall was not at home, but my name and telephone number were left with Mrs. Marshall. The band council elections had taken place just the day before, and there was a great deal of drinking and celebrating on the Reserve the night before. Our subject's brother, Pius, arrived home during my visit suffering from the after effects of the previous night's celebration and quickly helped himself to a couple of pints of beer in the refrigerator. He indicated, at this time, that he had been involved in a brawl the night before but was not sure who he was involved with. Even though Pius himself did not know much of the details about the night before, Mrs. Marshall immediately advised me that somebody must have hit him and provoked him and immediately took Pius home without knowing any more detail than I did.

Needless to say, the Marshalls would be willing to accommodate our subject if he were released under any release program. Our subject seems to have both parents convinced that he is innocent. Although the father did not attempt to return my call, it seems as though he accompanies his wife on various visits to lawyers, police, etc., proclaiming our subject's innocence, and if he does not believe he is innocent himself, he is completely dominated by his wife in this matter.

Chief Alex Christmas could not be reached on the day of my visit as he also was celebrating his re-election to the position of Chief of the Membertou Reserve. He subsequently telephoned me, however, as I had left a message and indicated that there would be positive support and no negative reaction from anyone on the Reserve to MARSHALL'S returning there. He could foresee no problems.

Mr. C. M. Rosenblum who represented MARSHALL during his trial in 1971 was contacted. Mr. Rosenblum was quite cynical in discussing this case and indicated that the mother and father were still trying to appeal the case and that they had set up an appointment with him about two weeks ago and then did not show up. As far as an appeal goes, Mr. Rosenblum stated that there were no grounds whatsoever for appeal, and he had attempted an appeal to the Supreme Court of Nova Scotia, but this was turned down. In Mr. Rosenblum's opinion the case was proven conclusively by the Crown and in this instance there were two eye-witnesses. He states that they may as well have had the incident on videotape. Mr. Rosenblum indicated that there was absolutely nothing that can be done, and he is, quite frankly, sick of hearing Donald MARSHALL'S name mentioned. I see no benefit in continuing any contact with Mr. Rosenblum from our point of view.

Chief John MacIntyre was the investigating detective. He was contacted at his office at the Sydney City Police Department and recalled the incident quite clearly. There is no doubt in his mind whatsoever about the guilt of our subject. The case was proven conclusively in Court with two eye-witnesses and also conclusive evidence from the Identification Section of the Royal Canadian Mounted Police. According to Chief MacIntyre the cuts on our subject were self-inflicted and were not inflicted by either party at the scene of the murder. Chief MacIntyre would be opposed to MARSHALL coming to this area on a three-day Temporary Leave of Absence. He feels that there might still be some reprisals from the black community and recalls that the entire MARSHALL family had to move out of Sydney because of possible reprisals. During my house visit at the Marshall home, Pius recalled that he had to sit in the upstairs window alone with a shotgun while his family resided in M'koccomach.

Mr. Bernie Francis who was a court worker at the time of the murder was contacted. He indicated that at the time he obtained the transcripts of the case but could not get anyone to take an interest in the case, as there was apparently no grounds for appeal. He is convinced that MARSHALL is guilty of the offence.

According to Mr. Francis, who has known our subject from childhood, the mother is a key problem area in this instance. He remembers our subject as a rather bold kid who needed more attention than others in the family. He recalls one instance when our subject was about 12 years old, he damaged a pop machine at the community center on the Reserve in front of about 12 adults. When Mrs. Marshall was advised of subject's actions, she denied that he did this as did our subject and incidents such as this continued and became more serious as time went on. Mr. Francis recalls MARSHALL as being an excellent liar and is able to convince almost anyone of his innocence. He agrees that MARSHALL should not be released from the Institution until he comes to grips with reality and admits to the murder. He sees no point in his returning to the Reserve proclaiming his innocence and making everyone believe that he was an unfortunate victim of the white-man's law. He feels that returning in this manner would do no one any good.

From a security point of view, however, Mr. Francis does not foresee any problems with MARSHALL'S coming to the Reserve. The offence was not committed against anyone on the Reserve and, in fact, was not even committed on the Reserve at all. He does not feel that anyone on the Membertou Reserve would oppose such a release. He does not feel that MARSHALL would harm anyone during a Temporary Leave of Absence.

I would suggest that Mr. Francis was one of the better and more reliable contacts in this community assessment, and he is a well-respected individual both on the Reserve and in the Sydney area, in general.

The lawyer mentioned in the request for a community assessment, Mr. Murphy, could not be contacted as no one seemed to be aware of such a person.

APPRAISAL:

While there appears to be support for MARSHALL in the community and little or no negative reaction to his case on the Membertou Reserve, there still remains the problem of MARSHALL himself denying his guilt and being supported in this by an overprotective mother. Time does not appear to diminish their feelings in this regard, but I would suggest that it is quite important for MARSHALL to open up and discuss the offence before he is considered for Temporary Leaves of Absence or Parole. I feel that as time nears his P.E.R. Date, he will feel some pressure and perhaps begin to speak honestly and openly about the offence. Until he does so, it will be difficult to supervise him on Temporary Leaves of Absence or Parole as he will have the opinion as will his mother that he has done no wrong. If and when MARSHALL comes to grips with the offence in realistic terms, there would appear to be more than adequate support for him in this community.

With regard to MARSHALL'S interest in Atlantic Challenge I would suggest from reviewing the file that he has not been a settled inmate. Unless his attitude and behaviour has recently taken a turn for the better I would not see him as a good candidate for Atlantic Challenge. If he should be considered, however, I would suggest that he take part in the program in an area removed from Cape Breton Island. As stated above, I would suggest that our efforts in this case be more directed towards bringing MARSHALL face to face with the offence for which he is incarcerated and in so doing provide him with the necessary guidance and counselling to help him cope with this.


R. Kevin Lynk
Parole Service Officer


J. Bernard MacNeil
A/District Director

RKL/ds

cc: Regional Secretary - Atl.
Systems Co-ordinator - Ott.
D.D. Truro
Springhill Institution
File

RECEIVED
COMMUNICATIONS
SECTION
JUL 10 1978

JUL - 7 - 7 PM 9 45

BOARD

PROGRESS SUMMARY / RAPPORT RÉCAPITULATIF
SUR L'ÉVOLUTION DU CAS

1. Name - Nom MARSHALL, Donald John, Jr.			2. FPS No. - N° S.E.D. 410491A			3. Inmate No. - N° du détenu 1997			4. Institution - Etablissement Dorchester								
5. Length of sentence Durée de la peine Life			6. Date of admission Date d'admission 72 06 20			7. T.A. exp. date Date d'admissibilité à l'A.T. 75 06 20			8. Parole exp. date Date d'admissibilité à la p.c. 81 06 04			9. M.S. date Date de S.O. N/A			10. W.E. date Date d'expiration du mandat N/A		
11. Purpose of report - But du rapport			B. Temporary Absence Absence Temporaire			Escorted Sous escorte			Rehabilitative Resocialisation			12. Date completed Date de rédaction					
A. <input type="checkbox"/> Transfer Transfèrement			<input type="checkbox"/> Day De jour			<input checked="" type="checkbox"/> Unescorted Sans escorte			<input type="checkbox"/> Humanitarian Humanitaire			81 10 19					
C. Parole L.C.			<input type="checkbox"/> Full Ordinaire			D. <input type="checkbox"/> Mandatory supervision Surveillance obligatoire			<input type="checkbox"/> Medical Médicale			13. Operational Unit Unité d'opérations					
14. Work location - Pay level Endroit de travail - niveau de paye School			15. Date of last C.A. Date de dernière E.C. 80 09 24			16. Med./Psych clearance required Certificat méd./psych. requis <input checked="" type="checkbox"/> No Non <input type="checkbox"/> Yes Oui			17. T.A. experience - A.T. précédente <input type="checkbox"/> No Non <input checked="" type="checkbox"/> ETA Sous escorte <input checked="" type="checkbox"/> Yes Oui <input type="checkbox"/> UTA Sans escorte			18. Earned Remission during current sentence Réduction méritée de peine au cours de la peine actuelle					
Earned remission Réduction de peine méritée			<input type="checkbox"/> Full Entière			<input checked="" type="checkbox"/> Partial Partielle			<input type="checkbox"/> None Aucune			<input type="checkbox"/> Yes Oui			19. Institutional Offence Convictions during current sentence Condamnation pour infraction Institutionnelle au cours de la peine actuelle		
												15			Number - Nombre		

20. SUMMARY OF PROGRESS - RÉCAPITULATION DU PROGRÈS ATTEINT

EDUCATIONAL/VOCATIONAL TRAINING - Junior upgraded his education to grade 10 in Dorchester. He has taken Plumbing and Welding trades, and is now working on getting his ticket for Plumbing. He has been in the School for the past 7 weeks, studying the math he will need to write the examination.

EMPLOYMENT - He has worked in several shops over the years, and has received good work reports. Since his most recent admission to Dorchester he has been with Maintenance Plumbing, and his current work placement is at the School.

PERSONAL DEVELOPMENT - During the past 9 years Junior has been preoccupied with his appeal - working for it, trying to get money to pay for it, giving up on it, following up new leads for it. He denies committing the offence and consequently has not put much effort into the area of personal development. Besides being immersed in his appeal, Junior has been a bit too active in institutional life at Springhill. He was a high profile inmate whom other inmates, and staff as well, turned to because of his control over a large part of the population. He was involved in muscling inmates for debts and drugs. He did well and followed case plans for periods of time, but would become frustrated and end up in Dissociation and Segregation. Because of this he will probably never be able to return to Springhill (see Memo dated 81-06-24 for notes on the Case Conference held at Springhill). The realization that he has cut off one (probably the best) avenue of release seems to have made him a lot more serious about working on himself. He has contacted the psychologist and is scheduled for another interview in the near future, and he is finally taking the necessary steps to prepare for his plumbing exam. Unfortunately, his abandonment of hope for his appeal was short-lived. A visitor has been talking about proof that one of the witnesses lied, and Junior is once again hard at work.

FAMILY/COMMUNITY - Junior has maintained contact with his family and friends. They correspond, he phones, and they visit him.

TRANSFER/RELEASE/SUPERVISION - MARSHALL was admitted to Dorchester 72-06-20 and transferred to Springhill 74-11-04. He was granted a day parole to attend the Atlantic Challenge Program in 1979. The first time (August 8 - 18) went well. Ten days after his release the second time (September 14), he was declared Unlawfully At Large. He was returned to Springhill, then transferred to Dorchester (81-02-11), transferred back to Springhill (80-04-22), and once again transferred to Dorchester (80-10-31).

LEISURE - Junior is involved in sports activities and goes to Church. Early in this sentence he was involved with the Native Brotherhood.

CURRENT TEMPORARY ABSENCE PLANS - Junior has applied for an Unescorted T.A. to visit his family for Christmas. He plans to leave the institution at 0900 hours December 23. His family will provide transportation.

INTERIM ASSESSMENT - Junior MARSHALL, 28 years old, is serving a Life sentence for Non-Capital Murder. He has served 10 years. His F.P.S. sheet dates back to 1970, when he was charged with Theft under \$50. He was Unlawfully At Large in 1979. According to his file, he also has a juvenile record.

Junior is certainly a high risk case because of his escape history, but it should be noted that he did it in order to check into his appeal. He still maintains that he is not guilty, and he has renewed hopes of an appeal.

On the positive side, his institutional performance has been very good. He is not suspected of being involved in the sorts of things that led to his downfall at Springhill. He has begun to take an interest in his personal development, and is following a case plan that should lead to a parole to Carlton Centre. A UTA at this time might give an indication of the extent of his commitment.

A Community Assessment is being requested.

M. MacWilliam
M. MacWilliam
C.M.O.I.

Date 81-10-19

J. P. F. [Signature]
A/Case Management Supervisor

Date 20 Oct 1981

/bp

157. MARSHALL, Donald John, Jr. FPS 491A

APPRAISAL - MARSHALL's CMT is supporting his application for a 3 day Unescorted Temporary Absence to visit his family for Christmas for the following reasons:

1. The Community Assessment is reasonably positive. Mr. Alex Christmas, Chief of the Membertou Indian Reservation, has no objections. Junior's mother is looking forward to having him visit and has a place for him to stay.
2. Junior has volunteered to take Antabuse, and has agreed to abide by any restrictions placed on him.
3. His institutional behavior has been very good. He has settled down considerably since his return to Dorchester. He has been preparing to write his journeyman plumber's examination.
4. He is involved in case planning and is making plans for a Day Parole for the near future.
5. He has recently placed his Appeal in the hands of his lawyer and is optimistic because of a new witness.
6. While U.A.L. for 2 days in 1979, he did not commit new offences.

Of course there are concerns with an Unescorted Temporary Absence:

1. Police Chief MacIntyre, who was the investigating officer in MARSHALL's case, is strongly opposed to the visit. His concern is for public safety.
2. Junior escaped while on Day Parole in 1979. According to file material, he claimed at the time that he was on his way home to check into his Appeal. He now admits that he was heading for the United States.
3. Junior has not spent alot of time dealing with his main problem areas, alcohol and violence.

However, his CMT believes that he is in a good frame of mind and will be able to handle an Unescorted Temporary Absence.

19. Recommendation - Recommandation

CMT recommends that the Christmas UTA be granted. The following restrictions are also recommended:
 (1) No use of alcohol or drugs.
 (2) Remain on the Membertou Reserve.
 (3) No contact with witnesses at his trail.

Completed by - Complété par <i>M. MacWilliam</i> M. MacWilliam	Title - Titre CMOI	Date 81-11-16
Offender's signature Signature du délinquant	Date	Case Management Supervisor Surveillant, gestion des cas <i>[Signature]</i>
		Date 11/16

T
♦
PAROLESVC MCTN

PAROLE BRD SYD

NOV 12, 1981.

ATTN: MAUD HODY

RE: MARSHALL, DONALD JOHN JR.

FPS: 410491-A

PRELIMINARY INVESTIGATION REVEALS STRONG REACTION FROM
CHIEF OF POLICE SYDNEY TO A PROPOSED UTA.

CHIEF ALEX CHRISTMAS HAS NO OBJECTION TO SUBJECT VISITING
THE MEMBERTOU RESERVE.

SUBJECTS MOTHER MRS DONALD MARSHALL WOULD LIKE TO HAVE HER
SON VISIT AT XMAS. MRS MARSHALL INDICATES THAT HER SON IS
INNOCENT OF THE CRIME.

ALTHOUGH THE SUBJECT HAS CONFIRMED ACCOMMODATION ON THE
MEMBERTOU RESERVE IN SYDNEY I FEEL CHIEF MACINTYRE'S
CONCERN ABOUT THE SAFETY OF OTHER CITIZENS SHOULD BE
CONSIDERED. CHIEF MACINTYRE HAS BEEN INVOLVED AS AN
INVESTIGATING OFFICER IN THE OFFENCE OF NON CAPITAL MURDER.

ARCHIE L WALSH
PAROLE OFFICER

JOHN D MACDOUGALL
DIST DIRECTOR
CSC SYDNEY NS

♦
PAROLESVC MCTN

PAROLE BRD SYD

MEDIA POOL COPY

PS: 16,202
FPS: 441932A

CONDITIONS OF PAROLE CONDITIONS DE LA LIBERATION CONDITIONNELLE

The parolee shall abide by the conditions of his parole and all instructions which may be given by his supervisor from time to time.

Le libéré conditionnel doit se conformer aux conditions de sa libération et à toutes les directives que peut lui donner à l'occasion son surveillant.

and shall abide by this special condition:
et il doit se conformer à cette condition spéciale:

to abstain from the use of
all intoxicants.

Date: July 7/72 Signature: Sam Christinas
Date Signature - Parolee/Libéré

PAROLE CERTIFICATE
CERTIFICAT DE LIBERATION
CONDITIONNELLE

NATIONAL PAROLE BOARD
COMMISSION NATIONALE DES
LIBERATIONS
CONDITIONNELLES

Parole Act - Loi sur la libération conditionnelle de détenus
S.R.C. 1970 c. P-2

This is to certify that Thomas J. CHRISTMAS
Le présent certificat atteste qu'Thomas J. CHRISTMAS
who was serving a term of imprisonment in Boringhill
qui purgeait une sentence d'emprisonnement à
Institution was granted
a libération conditionnelle

on June 28, 1972
le 28 juin 1972
provided parole is not suspended, revoked, annulled or terminated,
à condition que cette libération conditionnelle ne soit pas suspendue,
it will expire on October 4, 1973
révoquée, frappée de déchéance ou terminée, elle prendra fin le

Issued on - Délivré le June 28, 1972 Secretary - Secrétaire George Vincent

INSTRUCTIONS

You must proceed directly to Sydney, Cape Breton, Nova Scotia
Vous devez vous rendre directement à Sydney, Cape Breton, Nova Scotia
and report to your Parole Supervisor Mr. D. F. Smith, Executive Secretary,
vous rapporter à votre surveillant The John Howard Society,
100 St. John's St., SYDNEY, Nova Scotia.

Pursuant to the conditions of your parole you must obey these instructions. Failure to do so may result in suspension and revocation of parole.
En conformité avec les conditions de votre libération, ces instructions doivent être suivies. Tout manquement peut amener la suspension et la révocation du certificat.

Mr. J. W. MacLean,
District
Representative - Représentant

Mr. D. F. Smith, J. H. Soc.,
Parole Supervisor - Surveillant

ACKNOWLEDGEMENT - RECONNAISSANCE

I understand that the parole certificate is the property of the National Parole Board and must be delivered on demand of the National Parole Board or of my supervisor. I also understand that I am still serving my term of imprisonment and that parole has been granted to allow me to resume my activities as a citizen at large in the community under supervision.

I fully understand and accept all the conditions (including the conditions printed overleaf), regulations and restrictions governing my release on parole. I will abide by and conform to them strictly. I also understand that if I violate them I may be recommitted.

Je comprends que le certificat de libération conditionnelle appartient à la Commission Nationale des Libérations Conditionnelles et doit être retourné sur demande de la Commission Nationale des Libérations Conditionnelles ou de mon surveillant. Je comprends aussi que je continue de purger ma sentence mais que je suis libéré conditionnellement et sous surveillance afin de ne permettre de poursuivre dans la société mes activités de citoyen.

Je comprends parfaitement et j'accepte toutes les conditions (y compris les conditions imprimées au verso), les règles et les restrictions auxquelles est assujettie ma libération conditionnelle. Je m'y conformerai complètement. Je comprends également que si je ne les respecte pas, je puis être réincarcéré.

Certificate Dated Date du certificat <u>June 28, 1972</u>	Released on - Date libéré <u>July 5, 1972</u>	Paroled Inmate - Libéré <u>Sam Christinas</u>	Date <u>July 7/72</u>
		Witness - Témoin <u>[Signature]</u>	

Report To Police

W. J. ... July 4-92.

Report To Superior

B. J. Smith July 7/92

FPS # 441932A

NAME CHRISTMAS TOM JOSEPH

ADDRESS 27 Maillard St. Membertou

MAY 4, 1954 AGE

FRONTALITY	HAIR Black	EYES Brown	FACE	OCCUPATION Unemp.	RELIGION R.C.
WEIGHT 134	HEIGHT 5'5	COMPLEXION Dark	DISPOSITION	BOOK NO.	MAGISTRAT

DATE	CHARGE	GOODS	VALUE	DISPOSITION	BOOK NO.	MAGISTRAT
pt. 25, 1970	Sec. 110 C.C.		\$20.00	and costs or 20 days	#55014	J.F. McDonald
Nov. 17, 1970	Sec. 373 C.C.	Two Years Probation		- Nov. 24th	#55099	R.J. McDonald
Nov. 11, 1970	Sec. 85 L.C.A.		\$10.00	and costs or 10 days	#11818	R.R. MacIntyre
Feb. 26, 1971	Sec. 160 (a)(1) C.C.		\$20.00	and costs or 30 days	#55226	J.F. McDonald
June 5, 1971	Sec. 119-1 C.C.C.	2 Years		Dorchester Pen. <i>(withdrawn)</i>	#55553	J.F. MacDonald
Sept 21, 1971	Sec. 85 L.C.A.		\$10.00	and costs or 10 days	#376	R.R. MacIntyre
Nov. 4, 1972	Sec. 85 L.C.A.		\$10.00	and costs	#597	J.F. McDonald
Jan. 26, 1973	Sec. 85 C.C. - Feb. 19th	3 months		County Jail	#56006	J.F. McDonald
Jan. 26, 1973	Sec. 85 L.C.A.		\$10.00	and costs or 10 days	#744	R.R. MacIntyre
April 28, 1973	Sec. 85 L.C.A.		Bail \$15.00		#769	
Nov. 11, 1973	Sec. 228 (a) C.C.	Dec. 20, 1974		- 3 yrs. Dor. Pen. <i>(Appealing)</i>	#56835	J.F. McDonald
Nov. 18, 1974	Sec. 86(a) C.C.	(2 chgs.)	March 3-County Court	3 mos. on sen. chg. to run conc. to sen. being served by Judge Morrison <i>(over)</i>		

11 #

MEDIA POOL COPY

April 6, 1976 Sec. 421 C.C. Withdrawn and Sec. 388(1) C.C.
laid - arrested in Fredericton, N.B. -
May 12, 1976 2 Months C.B.C. Centre #57744 J.F.

Oct. 12, 1976 - Assault-Aug. 20th-Eighteen Months C.B.C. Centre
#58120 R.J. McDonald

May 19, 1978 - Sec. 245(1) C.C. June 1st-\$75.00 and costs
i/d #59233 R.J. McDonald

Nov. 18, 1978 - Sec. 3(1) N.C.A. \$100.00 i/d 20 days #1186 O'Connell

July 21, 1983 Sec 3(1)NCA Aug 8'83 \$50.00 i/d 5 days #1455
O'Co-nnell

Oct 9'85 Sec 41(1)FDA Oct 22'85 \$400 i/d 50 days #302
O'Connell

April 18'86 Sec 245. CC May 26'86 \$900 i/d 70 days
2 yrs probation-~~probation~~ #63958 O'Conn.
terms

C.B. Post, Oct. 6, 1971 - pg. 3

#72

Sentenced To Penitentiary

Thomas Joseph Christmas of Membertou was sentenced to two years in Dorchester Penitentiary Tuesday for breaking into a dwelling house with intent to commit indecent assault.

He pleaded guilty to the charge before Provincial Judge John F. MacDonald after his lawyer, Frank Elman, said he wished to re-elect trial in lower court. Christmas had previously elected trial in Supreme Court.

Crown Prosecutor Donald MacNeil, Q.C., offered no evidence on a second charge against the youth.

The second charge, which alleged Christmas obstructed justice by threatening witnesses in a murder case now before the court, was dismissed by the court.

The prosecutor told court that Christmas was on probation when he forced entry into the home of a Membertou woman.

MEDIA POOL COPY

29 Mar 82

Statement of: David F Ratchford
#14
Biggs Ave, 49, 2961 Charlottes
St Sydney N.S. - 539-9502.

974
During the period of Approx
Donna Ebsary began attending
my Marshall Arts Studio here in
Sydney. We became rather good
friends over a period of time. She
had a rather turbulent relationship
with her father. She appeared to
get along with her mother.
I recall that one evening
she told me an amazing story about
her father. She said that at
the time of the Seal murder she
was home when her father and
another guy came home. She stated
that her father had blood on his
shirt and a knife in his belt.
She saw him wash blood off
his hands and he mentioned
stuffing a rag in the back.
Donna hated her father
but still had a strange respect for
him.

MEDIA POOL COPY

I felt that this
should be reported to the police
immediately in Sydney. The
City Police was talked to

Bill Traubart, I believe. He
said that the case was over and
they were not prepared to re-open
the case. I believed this girl and
felt this was most improper. friend
St. Gary Green was ~~attending my classes~~
so I reported it to him. I
also ran into a blank wall with
the City Police. In the years
following Dozma occasionally brought
it up and found it strange that
the Police were not doing anything.
Dozma, and I discussed the possibility
of her father admitting to me;
that he committed the murder. I
got to know him but he never
admitted it to me.

Off Wheeler
David L. Patch York

Donna Ebsary - 1-617-2449645

- Tiger Crane Kung
Fu Club
P O Box 114
Essex Station, Boston

STATEMENT

Nov 15th 1971 845 PM

Statement of Mrs Mary Patricia Elsary residing at 126 Beaumont St Sydney NSW

Q Did you have a conversation with anybody in regard to the Sandy Seal Case

A yes I did

Q With whom

A a boy called Jim I don't know his second name

Q where does he live

A He lives off Leary near the Country Down near a hill

Q where did this conversation take place

A It took place in my car on Kings Rd

Q where on Kings Rd

A at the point of the road by 200th

Q when was this

A on or about 6 weeks ago

Q what took place in the car

A The conversation was about this boy Jim and my husband being attacked that night coming home by the Park Dr I thought that it may be the same two the Marshall Boy and the Seal Boy I told him making statements to the effect I would prefer he stay away from my house after that

Q was anybody else present

A yes

Q who

A my son

MEDIA POOL COPY

Witness Sgt M. J. Hart

Date Nov 15 1971 Time 8:45 PM Signed Mary P. Elsary

CITY OF SYDNEY POLICE DEPT.

STATEMENT

Q Did you see Jimmie before that night?

A quite frequently.

Q Where?

A at my home.

Q What was he doing there?

A Drinking with my husband.

Q Do you remember the night that he was stabbed?

A Not particularly, I remember reading of it in the paper.

Q Was Jimmie Bucha found at your house at that time?

A Not after he came about 15 times over a period of a couple of months.

Q How did Jimmie happen to meet you near the warehouse district?

A I don't know.

Q Why?

A My husband had not been drinking and Jimmie came to my house one day I was getting ready to go out and he told my husband he would return on the weekend and I did not want my husband on the booze again I sent Jimmie and told him to stay away from my home and it was at this time the conversation about the Seale Boy came up. I don't think Jimmie or my husband would have anything to do with that. I only recall about 15 calls.

Witnessed by Mary P. Elsbary

Date 2-15-54 Time 9:20 PM

Signed Mary P. Elsbary

CITY OF SYDNEY POLICE DEPT.

STATEMENT

Q was there any discussion about this affair by Jimmie or your husband?

A No.

Q when Jimmie came with you son to the hotel near your work?

A I was.

Q what time of the day was this?

A about 6.30 P.M.

Mary P. Elsey

SEARCHED
SERIALIZED
INDEXED
FILED
MAY 15 1957
FBI - SYDNEY

Witness *[Signature]*

Date *May 15 1957* Time *9:07 PM*

Signed

#76



MEDIA POOL COPY

CITY OF SYDNEY POLICE DEPT.

STATEMENT

12-15th 1971 P. 5.5 P.M.

Q Detention of Greg Allan Elbury
age 17 residing at 126 Bearcamp
by my name -

Q Do you know James L. Neil
A yes.

Q where does he live
A off Hardwood hill near The Century
A were you ever at his house

Q yes
Q what for
A I had to go up and get him for my mother
Q where did you take him

A to the road you noted
Q what took place there
A my mother and him talked she told him
not to come back any more because
a bit of drinking

Q He goes to your home quite often
A He has not been there for a long while
Q when did you pick him up at his house

A about 2 months ago. I don't remember
Q what was the conversation about in the
Car

A subject said it would be better if
he did not come back any more
Q was there any conversation about a
disturbance at the Park

A no.
Q did you tell James L. Neil if he told
the Police what happened he would have
to go to Court
A I can remember saying that

Witness John A. Lynch

Date 12-15-71 Time 10:20 PM

MEDIA COPY
Signed Greg A. Elbury

CITY OF SYDNEY POLICE DEPT.

STATEMENT

Q was there any talk in the car what Roy done

A I said - there would be trouble. (Court)
I meant that Jimmie would go back to the house anyway.

Q Did you see Jimmie when he came to your house the following day after the Seale stopping

A yes

Q Did he talk to your father

A yes.

Q Did he tell him that was dead

A I don't know what they talked about.

Q Did you know your father and Jimmie were attacked that night in Crown St the last night as the Seale stopping

A I found out about a week after

Q who told you

A my mother said they were attacked

Q by whom

A 2 fellows were going to beat them up for cigarettes or something

Q Did you ask your father

A no I never said anything about it

Greg A. Ebsary.

Witness Glenn A. Fayk

Date Nov 15th Time 1:20 PM

Signed _____

Hig
#78
Cos

Education Minister Nicholson says it would be "listen to the risk demand for proof that education we have to offer is the high cost."

Mr. Nicholson said today that this proof can be limited to the sounding finality of nation grading, a fact makes it the more obtain and the more that it be creible evidence.

"One has to hesitate the Legislature for more money for education," Nicholson said in an address to the Sydney Rotary Club.

He said education has risen 419 percent since 1950. This year's projected budget is \$142.3 million.

"I have to consider whether output has expanded at the same rate — or whether we can afford to let it do so," he said.

Mr. Nicholson said the Commission on education public services has pointed to help a system of accountability administrative structure.

He told Rotarians government cannot afford financial prospect of if "we act as though nothing wrong."

MORE MONEY

"The process of whereby the solution emerges and failure is more and more in hopes of improvement to all good principles," he said.

The minister said government cannot control the taxpayers' motivation unless the tax itself is satisfied of its obtaining for his benefit.

Apparently, he said, the man could have suffered a concussion and could have suffered loss of memory as a result.

Questioned about the man's condition after the accident, particularly about liquor, Dr. Tomkins testified he did not notice any effects — "the thought of liquor never entered my mind."

"We must explore the use of teacher resources as wisely and try to evaluate performance constantly of our education system. It must be made very clear to the public the responsibilities and sources of our educational system."



NICHOLSON SPEAKS—Education and Finance Minister Nicholson was guest speaker Tuesday at the regular luncheon meeting of the Sydney Rotary Club. Shown here are, left to right: John MacNeil, Q.C., Mr. Nicholson, Club President Bruce McDonald and Roland MacIntyre, Q.C. (Abbass Photo)

Criminal Negligence Case Is Nearing End

The Crown's case of causing death by criminal negligence against Roderick Joseph MacGillivray, 32, of 5 Cassey's Lane Glace Bay, will go to a Supreme Court jury this morning for verdict.

The Crown and defence completed evidence before Mr. Justice F. M. Bissett yesterday afternoon after summations are scheduled as the trial resumes this morning.

Charge against MacGillivray

was laid by RCMP following a two-car crash at Kyte's Hill on the Sydney-Glace Bay highway the evening of Oct. 30. Helen Rita McNamara, driver of one of the vehicles, was killed in the accident.

Chief witnesses for the Crown were Miss Florence McNamara, sister of the victim and driver of the car in which she was a front seat passenger and Miss Marguerite McNeil, another passenger.

They both testified the second car was travelling on their side of the highway and approached from the opposite direction without its headlights on.

The McNamara car was travelling from Glace Bay towards Sydney about 6:30 p.m.

Miss McNeil, a passenger in the rear seat, said she saw the approaching car just before the impact — "there was the car with no lights on and on our side of the road."

Under cross-examination by defense counsel S. J. Khattar, Q.C., she said she was not able to say where the McNamara car was in relation to the white line "but we were on our right

side of the road." RCMP officers testified it was raining on and off the evening of the accident and the pavement was wet.

Cpl. H. L. Wilson said driving conditions were not good, but when questioned by Mr. Khattar he said he "wouldn't say it was dangerous."

C.M. Rosenblum, Q.C., appeared with Crown Prosecutor Donald MacNeil, Q.C., as special prosecutor.

MacGillivray testified he had no recollection of the accident and the last he could remember was travelling by the bypass highway, about a mile from the accident scene.

He testified he heard many

stories about the accident that people tell him "but I can't say for sure what happened."

Court heard evidence the Glace Bay man went to the Ashby Legion after work at the Rockcliffe development on Welton Street. He was waiting for a garage to complete work on his car.

McGillivray said he had two drinks while at the Legion, the second he did not finish before leaving to go get his car.

He testified he remembered backing his car out of Cape Breton Chrysler and turning onto Welton Street.

Dr. James R. Tomkins of Dominion testified MacGillivray was his patient and he examined him after the accident at St. Joseph's Hospital.

He said the man could have suffered a concussion and could have suffered loss of memory as a result.

Questioned about the man's condition after the accident, particularly about liquor, Dr. Tomkins testified he did not notice any effects — "the thought of liquor never entered my mind."

Convicted Of Causing Damage

Earl Skinner, 22, of 92 Tupper Street, was convicted Tuesday of causing damage at the Chicken Coop Restaurant, scene of an early morning fight last month.

Provincial Judge R. J. MacDonald, Q.C., fined him \$50 and costs and assessed \$65 of the total damage against him.

Union Found

2-Month Term

smooth expect this day. commitments woods, potato and for. infor- parade app at con- Mer- les at

on

of of issued be- lster mcl-

meet- alga- uly," e. of

offi- a of sur- of n top

corporal Arm- Dart- t. Fill- ydney. day at inter- Hard-



#79

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S.C.C. No. 00580

IN THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

IN THE MATTER OF A REFERENCE PURSUANT TO SECTION 617 OF THE CRIMINAL CODE BY THE HONOURABLE JEAN CHRETIEN, MINISTER OF JUSTICE, TO THE APPEAL DIVISION OF THE SUPREME COURT OF NOVA SCOTIA UPON AN APPLICATION FOR THE MERCY OF THE CROWN ON BEHALF OF DONALD MARSHALL, JR.

FILED...
CHARGES...
SEP 14 1982
ENTERED...

AFFIDAVIT

I, Simon J. Khattar, Q.C., Barrister, of 378 Charlotte Street, Sydney, in the County of Cape Breton and Province of Nova Scotia, make oath and say as follows:

1. That I have personal knowledge of the matters herein deposed to, except where otherwise stated.
2. That C.M. Rosenblum, Q.C., and I were retained by Donald Marshall, Jr., the Appellant herein, to act as his counsel with respect to his indictment for the non-capital murder of Sandford William (Sandy) Seale, contrary to S.206(2) [then] of the Criminal Code, said murder having occurred on or about May 28, 1971.
3. That C.M. Rosenblum, Q.C., and I acted as counsel for the said Donald Marshall, Jr., at the trial on the said charge of non-capital murder which took place from November 2 to November 5, 1971.
4. That Maynard v. Chant, John L. Pratico and Patricia Ann Harris were Crown witnesses who testified at the said trial.
5. That I have now been provided by Stephen J. Aronson, present counsel for Donald Marshall, Jr., with copies of the Affidavits of: Maynard v. Chant, sworn to July 14, 1982, produced herewith and marked Exhibit 'X'; John L. Pratico, sworn to July 15, 1982, produced herewith and marked Exhibit 'Y'; and Patricia Ann Harris, sworn to July 22, 1982, produced herewith and marked Exhibit 'Z'.

MEDIA POOL COPY

6. That I have read the Affidavits referred to in Paragraph 5 herein and the Exhibits attached to the said Affidavits.

7. That I was not provided with copies of any of the Statements referred to in the said Affidavits, purportedly taken by the Sydney City Police prior to the said trial in November, 1971, nor was I, at the time of the said trial aware of the Statements.

8. That the Affidavit of Maynard V. Chant, referred to as Exhibit 'X', indicates that the said Maynard V. Chant did not in fact witness the murder of Sandy Seale by Donald Marshall, Jr. or any other person on May 28, 1971.

9. That the Affidavit of John L. Pratico, referred to as Exhibit 'Y', indicates that the said John L. Pratico did not in fact witness the murder of Sandy Seale by Donald Marshall, Jr. or any other person on May 28, 1971.

10. That the Affidavit of Patricia Ann Harriss referred to as Exhibit 'Z', indicates, inter alia, that the said Patricia Ann Harriss saw Donald Marshall, Jr. and two other men, neither of whom was Sandy Seale, on the night of May 28, 1971.

11. That every possible effort was made at trial to obtain the truth from the witnesses Maynard V. Chant, John L. Pratico and Patricia Ann Harriss, but there was no indication at that time that they were willing to change their original testimony, and I believe that if evidence of the contents of the Statements and Affidavits referred to herein, had been adduced at trial, then the jury might reasonably have been induced to change its views regarding the guilt of Donald Marshall, Jr.

SWORN TO at Sydney, in the County)
of Cape Breton and Province of)
Nova Scotia, this 9th day of)
August, A.D., 1982, before me,)

Leo A. MacPhee)
A Barrister of the Supreme Court)
of Nova Scotia)
Leo A. MacPhee

Simon J. Khattar)
SIMON J. KHATTAR, Q.C.)

26.
27.
28.
29.
30.

#80

WITNESSES

CANADA,
PROVINCE OF NOVA SCOTIA,
COUNTY OF CAPE BRETON

IN THE SUPREME COURT
CROWN SIDE

HER MAJESTY THE QUEEN
against

DONALD MARSHALL, JR.

- clif* Dr. Mahomad Naqvi •
- clif* Dr. David Gaum •
- clif* John Carl MacDonald •
- Roy Gould •
- Donald Marshall, Sr. •
- clif* Sgt. Michael R. MacDonald •
- clif* Patricia Ann Harris •
- clif* Terrance Patrick Gushue •
- clif* Maynard Vincent Chant •
- clif* John Lawrence Pratico •
- clif* Robert S. MacKay •
- Brian Doucette
- Leo Curry •
- Pearl McMillan, R.T. •
- clif* Dr. Mohan S. Virick •
- Mrs. Merle Faye Davis, R.N. •
- Adolphus James Evers •
- Sandra Catherine Mrazek •
- Cst. John Mallowney
- clif* Det.-Sgt. John F. McIntyre
- M. D. Mattson •

THE BILL

William B. Stenevick
Foreman of Grand Jury
Criminal Sitings,
November 1971

MEDIA POOL COPY

EAH-81

16 Nov 87

Daniel Pink
(Lou Matthews)

Halifax, March 23, 1961.

CC "H" Division, R. C. M. P., Halifax.

Re: H T S (B: - -33)
Louisdale, N. S. - et al -
Conspiracy to Commit Fraud (408-1-d C.C.)
Louisdale, Richmond County, N.S.
(ST. PETERS ATTACHMENT CASE)

This will acknowledge receipt of your letter of March 20th. As a number of cases have arisen recently where requests have been made for release of information received as the result of Police inquiries, I believe that it is desirable to outline briefly the general views of the Department on this question.

Co-operation between the Police, the Department and practising Solicitors has always been at a very high level in this Province and needless to say we have every desire that this should continue. Additionally, the Crown has an obligation to assist the Courts in the administration of justice not only in criminal but also in civil cases.

The problem is limited, I think, to statements given to the Police either by a person accused of a crime or by persons having information which may be material to a particular inquiry. These statements can only be used in judicial proceedings in very limited circumstances. In the case of parties to a civil action or the accused in criminal proceedings, statements may be used as admissions of liability or of guilt and, therefore, can be produced as such. Where a person who is not a party to proceedings has given a statement, it can only be used where he gives evidence to the contrary, to show that he has stated something different on a previous occasion. This can be very material, of course, on the issue of credibility.

No sufficient reason of privilege or otherwise can be put forward for refusing the production of any statement in a Court which may be material in determining the issue before the tribunal. Whether any document or statement is material must generally be determined by the courts as arbiter between individual litigants or the Crown and the subject. Even assuming that it

MEDIA POOL COPY

March 23, 1961.

were desirable to withhold information at the complete discretion of the Crown, it is doubtful whether any privilege exists in the Crown to prevent the production of evidence in view of the decision of the Supreme Court of Canada in the case of Regina v. Snider (1954) 4 D.L.R. 483. As pointed out by Rand, J. the privilege against disclosure requires as its essential condition that there be a public interest recognized as overriding the general principle that in a court of justice every person and every fact must be available to the execution of its supreme function. In view of this decision, it is very doubtful whether privilege extends beyond matters affecting a very limited field of government activity such as national defence. While these general observations are particularly applicable to civil actions they also apply in the case of criminal proceedings.

Where a subpoena is received in a civil action by a member of your force, there is no alternative but to comply with the order of the Court. While an order to appear may require the production of reports, I do not believe that any difficulty will be experienced if original statements are kept separate from the reports. The member producing the evidence can explain to the Court that the report only contains, in addition to copies of statements, the observations of the witness as to his own investigation. The report is inadmissible not by reason of any privilege which may be claimed but because it is not a document which a Court will generally accept as evidence of matters therein contained.

In criminal proceedings additional considerations apply because the Crown is a party and accordingly has a greater duty to see that justice is done. In some jurisdictions such as Ontario and in England, it is the practice in many courts for the Crown to make copies of all statements made by witnesses to the Police available to defense counsel. While the courts have not gone so far as to order the Crown to produce statements before trial, I do not think there is any doubt that the Courts have the authority to do so after the arraignment of the accused. While Section 512 has reference to statements obtained under Section 454 (2), it does not refer to statements which have not been produced by the Crown. While the Courts have not ordered the production of documents before trial, they have left little doubt as to what the duty of the Crown is in the exercise of its discretion in this matter or what the consequences will be if the failure to produce leads to a miscarriage of justice.

The duty of the Crown is thus set forth by Richards, C.J., in Regina v. Cunningham 15 C.R. 167 at page 175:

" As a measure of fairness and justice the Crown ought to furnish to the accused in some form the names of the witnesses intended to be called in chief in support of the Crown's case. As a general rule this information is sufficiently given by the

depositions taken on the preliminary hearing. Any witness there examined should be made available to the defence if the Crown does not intend to call him unless his evidence is unquestionably immaterial. And the name of any additional witness not examined at the preliminary inquiry which the Crown proposes to call in chief ought, as a matter of fairness at a reasonably early period, at any rate if asked for, to be made known to the accused. But there is no law laying down any definite rule in this matter, which must be left to the presiding judge to deal with in such a way as to give all necessary protection to the accused and to give him a fair opportunity to defend himself against the charge."

In his book The Road to Justice, Sir Alfred Denning, L.J., states at page 41:

"The duty of counsel to see that justice is done is, however, best shown by what is expected of prosecuting counsel. If he knows of a credible witness who can speak of facts which go to show the prisoner's innocence, he must himself call that witness. Moreover, if he knows of a material witness who can speak of relevant matters, but whose credibility is in doubt, then although he need not call him himself, he must tell the prisoner's counsel about him so that he can call him."

In Baksh v. The Queen (1959) A.C. 167 the Privy Council ordered a new trial where the Crown failed to give defence counsel statements of witnesses which varied from oral testimony. To the same effect is the decision in Mahadeo vs. R. (1936) 2 A.E.R. 813. From these authorities, it is clear that the Crown must either introduce evidence which is material to the charge whether for or against the Crown or else make the same available to the defence.

Different considerations apply in the case of a statement made by the accused. If the Crown does not consider it desirable to introduce such a statement in evidence, then it may be withheld for the purposes of cross-examination, although even in this case there may be instances where a copy should be given to the defence. Generally, no miscarriage of justice can occur in these circumstances as the accused is in the best position to know the truth so far as his own actions are concerned and accordingly should have nothing to fear from any previous statement which he may have given to the Police.

It is clearly a matter for the Crown to decide, guided by these principles, as to what action should be taken in each particular case. No general proposition prohibiting the production of statements can therefore be safely relied upon in all

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cases. This is entirely a matter for the Prosecuting Officers to determine, subject to the instructions of the Attorney General, and they should be guided by their advice in each particular case where criminal proceedings have been instituted.

In the present case, the matter should again be referred to the Prosecuting Officer for Richmond County for his instructions.

Malachi C. Jones,
Senior Solicitor.

MEJ:AJN

See also: 1955 Criminal Law Review 700;

Regina vs. Silvester & Tracy 31 C.R. 190;

Regina vs. Finland 31 C.R. 364;

R. vs. Summers 2 Criminal Law Quarterly 452;

1953 C.B.R. 509.

(1959) 31 CR 364
125 C.C. 186
31 CR 190