

R044
Vol. 23
#1

**ROYAL COMMISSION ON THE
DONALD MARSHALL, JR., PROSECUTION**

Volume 40

Held: January 14, 1988, in the Imperial Room, Lord Nelson Hotel,
Halifax, Nova Scotia

Before: Chief Justice T.A. Hickman, Chairman
Assoc. Chief Justice L.A. Poitras and
Hon. G. T. Evans, Commissioners

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David
Orsborn: Commission counsel

Mr. Clayton Ruby, Ms. Marlys Edwardh, and Ms. A. Derrick:
Counsel for Donald Marshall, Jr.

Mr. Michael G. Whalley, Q.C.: Counsel for City of Sydney

Mr. Ronald N. Pugsley, Q.C.: Counsel for Mr. John F. MacIntyre

Mr. Donald C. Murray: Counsel for Mr. William Urquhart

Messrs. Frank L. Elman, Q.C., and David G. Barrett: Counsel for
Donald MacNeil estate

Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the
Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. Al Pringle: Counsel for the R.C.M.P.
and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and
MacAlpine

Mr. Charles Broderick: Counsel for Staff Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel
for Sgt. Wheaton and Insp. Scott

Mr. Guy LaFosse: Counsel for Sgt. H. Davies

Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for
the Union of Nova Scotia Indians

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black
United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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MS. GASS. EXAM. BY MR. SPICER

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2 JANUARY 14, 1988 - 9:32 a.m.

3 MS. DEBORAH GASS, duly called and sworn, testified as
4 follows:

5 EXAMINATION BY MR. SPICER

6 Q. What's your full name, please?

7 A. Deborah Gass.

8 Q. You're a member of the Nova Scotia Bar?

9 A. Yes, I am.

10 Q. And you graduated in 1974?

11 A. Yes.

12 Q. When were you admitted to the Nova Scotia Bar?

13 A. I was admitted to the Nova Scotia Bar in the spring of 1977.

14 Q. And, in the meantime, you had gone out west for some
15 period of time, is that right?

16 A. Yes, I went to Edmonton and was admitted to the Alberta Bar
17 in 1975 and then I took some time and traveled before I
18 came back to Nova Scotia.

19 Q. When you came back to Nova Scotia and were admitted to the
20 Bar in 1977, where did you start working?

21 A. Immediately after I was admitted to the Bar, I went to
22 Sackville, New Brunswick, where I began working with
23 Penitentiary Legal Services Association.

24 Q. Can you explain to us what "Penitentiary Legal Services
25 Association" was?

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A. "Penitentiary Legal Services Association" was a legal aid
program that had been started as a result of a project at
Dalhousie Law School when I was student there. It was a
pilot project to provide legal services exclusively for
penitentiary inmates.

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Q Did you work with Penitentiary Legal Services for a period of
time?

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A. Yes, basically for that year. The funding was running out for
P.L.S. when I began to work there and I spent a good deal of
that year trying to get continued funding for the program.
But it ended in the spring of 1978.

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Q And for a period of time, you had some involvement with
Junior Marshall.

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A. Yes.

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Q You've brought the original of your file with you and we've
made a copy of it and it's now in Exhibit 97, which is Volume
36 and I'll show that to you. Your first document is a letter
from Art Mollon to Doug Shatford of Nova Scotia Legal Aid.
When did you actually come in contact with Junior Marshall's
case?

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A. I would have been in contact with him before that date.
Penitentiary Legal Services closed down about that time in
May of 1978. So my contact with him would have had to
have been just prior to that because the project ended, I

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think, at the end of May. Which I think is why Mr. Mollon probably wrote to Nova Scotia Legal Aid because they would have been hopefully picking up where P.L.S. left off.

Q. How was it that you came in contact with Junior Marshall?

A. I've thought about this a lot and I can't really recall how I first came in contact with him. We looked back through the P.L.S....The P.L.S. files have long gone. They're stored somewhere at Dalhousie. But we did keep a scribbler with the names of all of the people we had dealt with from 1973 right through to the conclusion of the project, and oddly enough, Donald Marshall's name does not appear in that scribbler. So it would appear that we never really had a file for him. I think, although I can't be certain, that his transcript might have been brought to me by a paralegal. There were paralegals who were working in the program. And I certainly remember reading the transcript, but I don't remember exactly how I got it.

Q. Do you remember whether you spoke to Junior Marshall before you read the transcript or subsequently?

A. I don't think I spoke to him before, although I may have on the telephone. But I certainly did speak to him at some point, either during the course of reading it or afterwards, sometime during that time.

Q. Do you remember what it was that you talked to him about?

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A. Again, it's so hard to distinguish what I, my own recollection and what I have read and heard over the ensuing years, but certainly we discussed his version of what had happened.

Q. What was his version of what had happened?

A. Well, again, my recollection, and again it's hard to tell what I remember from actually talking with him and what I have read and heard since, but my recollection was that he had been in the park with Sandy Seale and these other two people, I believe approached him for a light, approached them. And I remember distinctly the discussion about the man who had stabbed him wearing a long cloak, that he looked like a monk, and that something about him saying they were from Manitoba. And I remember him telling me that he thought there were boats in Sydney Harbour at the time and that maybe this is where that person had come from and just, certainly that he didn't do it.

Q. Did he ever say anything to you about he and Sandy Seale being in the park to roll anybody that night?

A. No, absolutely not. I was quite surprised when I read that many years later.

Q. When you spoke to him or after you had a chance to review the transcript and spoke to him, what did you do?

A. I guess basically I did nothing. The project was ending but I don't know whether that really had a lot to do with it,

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although I suppose it did. But I did a lot of appeals during that period of time, that was the bulk of the work that we were doing. Most of them were sentence appeals but some were conviction appeals. When I look back and think about it, I think, well, just to try to understand it all, I suppose I approached it with a narrow mind because it was seven years after the fact. The appeal had already been dismissed by the Court of Appeal. So I suppose I may not have approached examining the transcript with as much zeal as I would have if somebody had just been, had come into the penitentiary and brought it to me and said, "I didn't do it."

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Q. On page 47 of that volume in front of you, there's a series of notes which seem to be July of 1978. Whose handwriting is that?

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A. That's the handwriting of Philip MacNeil. After Penitentiary Legal Services closed, Nova Scotia Legal Aid, in an attempt to try to meet some of the needs of inmates, hired Phil MacNeil to work with Nova Scotia Legal Aid, who had been with P.L.S. as a paralegal throughout the entire program. So he would have been working with Nova Scotia Legal Aid in July of 1978. He's still with Nova Scotia Legal Aid.

23
Q. As a paralegal.

24
A. Yes.

25
Q. And do you know what it was that would have caused him to

1 interview Junior Marshall in July of 1978?

2
3 A. Well, again, I wasn't there but I presume that it was as a
4 result of the letter that Mr. Mollon had written to Doug
5 Shatford who was the staff lawyer with Nova Scotia Legal Aid.
6 And because Phil MacNeil was the paralegal who was going
7 back and forth to the Institution, he probably would have
8 gotten him to go out and talk to Donald.

9 Q. The beginning of his notes indicates "as requested by Art
10 Mollon." I was just wondering whether it would have been
11 Art Mollon from the Sydney office that would have been able
12 to make that request directly or whether that would have
13 gone through Doug Shatford, to get Phil to go up and see him.
14 And because Phil MacNeil was the paralegal who was going
15 back and forth to the Institution, he probably would have
16 gotten him to go out and talk to Donald.

17 Q. The beginning of his notes indicates "as requested by Art
18 Mollon." I was just wondering whether it would have been
19 Art Mollon from the Sydney office that would have been able
20 to make that request directly or whether that would have
21 gone through Doug Shatford, to get Phil to go up and see him.

22 A. Good question. Mostly people contact Phil directly to do
23 things. He gets referrals from lawyers all across the province
24 to go see inmates about particular matters.

25 Q. Did you discuss the substance of Mr. MacNeil's interview with

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Junior Marshall with him when he came back?

A. When I came back?

Q. No, did you talk to MacNeil about his discussions with Junior?

A. No, because I wasn't working with Legal Aid then. That was during the period of time I was studying Theology that whole year. But I came back and worked with Legal Aid in Amherst and then, yes, I'm sure Phil and I discussed Donald Marshall's case because it was in the fall of 1979, which was just a few months after I began working with Legal Aid that he had the unlawfully at law charge.

Q. Okay, we'll get to that.

A. So he would have come...

Q. Towards the bottom of page 47, there's a note in Mr. MacNeil's handwriting:

Marshall is having problems applying for parole. The Parole Board wants him to admit to the crime before they will give proper consideration to his parole application.

Did you know anything about that yourself?

A. Probably not right at that moment. Well, no, I wouldn't have known probably then but certainly when I came back to work for Legal Aid, yes, it was a subject that we had talked about, the fact that...

Q. What was your understanding of the problem?

A. My understanding was that he wasn't getting the support

1
2 from within the system for paroles and things like that
3 because of his refusal to admit that he was guilty of this
4 crime.

5 Q. Was that information that you were...

6 MR. PRINGLE

7 That's, excuse me, Mr. Spicer, I think I'll put an objection on the
8 record on this because we've had many discussions about this,
9 Commission counsel and ourselves, and I hardly think it's the
10 time for a witness who is giving really hearsay evidence on
11 someone else's notes to get into this issue of parole policy and
12 so on. I can assure the Commission that we are, on instructions
13 from our clients, producing a witness from Ottawa or locally
14 who is fully familiar with that practice aspect policy, whatever
15 one wants to call it, of parole, admission, guilt, whatever that
16 might be. And that witness will be here in February sometime.
17 I'd just like to object to this sort of thing being introduced, which
18 I suppose strictly constitutionally lies outside the scope of this
19 Commission, but we're not objecting to is so long as it comes to
20 the proper witness.

21 MR. SPICER

22 Well, I wasn't intending to get into the policy and I was about to
23 ask the witness whether or not her understanding of that, what
24 she's just said, came through Junior Marshall, and I don't intend
25 to get into the policy. I just want to know where that information

MS. GASS. EXAM. BY MR. SPICER

1 came from and whether that was something that was expressed
2 to her by Junior Marshall.

MR. CHAIRMAN

4 Well, I take it that you were and we'll carry on. But I should
5 for the benefit of counsel, I need not repeat this, that the Rules
6 of Evidence that are properly and strictly applied in the court of
7 law will not be enforced with the same rigidity in this kind of
8 hearing and we, as Commissioners, will have to separate the
9 wheat from the chaff at the appropriate time and some of the
10 testimony that's coming from Ms. Gass at this time may, indeed,
11 fall under the category of being hearsay. But that would not
12 preclude us from hearing it.

MR. PRINGLE

14 I understand that, My Lord, and my objection, I think, went
15 partially to that also partially to the, all the discussions that
16 we've had with Commission counsel about the question of
17 examination of the practices and policies of the federal
18 institution and the undertaking and assurance that were given
19 them that we were producing a witness on instructions to talk
20 about that aspect. And at that time I thought that would be
21 raised.

MR. SPICER

23 And I certainly don't intend to violate that understanding and I
24 don't intend to get into the policy with this witness.
25

1
2 BY MR. SPICER

3 Q. I was about to ask if your understanding of the issue of
4 having to admit guilt was something that was expressed to
5 you by Junior Marshall himself?

6 A. Again, it's hard to remember exactly. I'm sure we had those
7 discussions because I mentioned them at the time that he
8 went unlawfully at large in court and as well I recall a
9 discussion after that with someone in the institution about the
10 concerns that if somebody didn't admit, more in general
11 terms, but because of his situation, that just because you're
12 found guilty in a court of law, does that mean you have to be
13 found guilty or to accept your guilt when you may not be
14 guilty and the concern that was raised at the time was that,
15 well, if somebody doesn't accept their guilt and feel remorse,
16 then there is a risk in letting them out because they may seek
17 revenge or whatever.

18 Q. You represented Junior Marshall in respect of the unlawfully
19 at large charge in the fall of 1979, I believe?

20 A. Yes, I did.

21 Q. And it's towards the end, in fact, the very last page of that
22 volume, page 60, there's an application for Legal Aid by
23 Donald Marshall, Jr.

24 A. Yes, and that's actually my handwriting. What would happen
25 in Springhill court, and still does now, is that often a number

1 of inmates would be brought into court at one time, many
2 without standing charges, and then amongst those people
3 would be people with new charges like being unlawfully at
4 large. Everything happened on that date. So it would appear
5 that I filled this out, spoke with him briefly, he pleaded guilty
6 to the charge, I spoke to sentence, and he was sentenced all at
7 the same time.

8 Q. And if you flip back to page 58.

9 A. This is the kind of, in the old days when inmates were being
10 brought in from the Institution, they used to bring in pre-
11 sentence reports even before the person had actually pleaded
12 guilty in the anticipation that that's what they were going to
13 do. This practice doesn't happen anymore. But this would
14 have been brought to court with Donald Marshall when he
15 came that day.

16 Q. This document indicates in the last three lines:

17
18 Marshall has really not accepted his guilt for his
19 offence and claims now this recent incident
20 [presumably that's the unlawfully at large], was
21 a means to "get his day in court" and managed to
get his story heard and case reviewed.

22 What did you understand that to mean?

23 A. Basically, just that. I listened to the tape just a few days ago
24 to try to get a sense of what happened on that day and,
25 basically, that was the thrust of the argument on his behalf,

1 that he had consistently maintained his innocence for, by then
2 it was eight years, to his own detriment in some respects
3 because he wasn't getting the same privileges that he would
4 have gotten perhaps otherwise and that he had tried to
5 appeal further and hadn't gotten anywhere with that. So he
6 saw this as a means of getting himself in front of a judge
7 again and expressing his innocence.

8 Q. And did he, in fact, do that on that day?

9 A. He was, I indicated to the judge that he was prepared to
10 answer any questions that he, that the judge might have and
11 he did respond to some questions, although I basically said
12 that part for him and I can't, a lot of what he said, I couldn't
13 make out on the tape. So I can't remember exactly what he
14 said except that he was not from Pictou, which was where he
15 had been arrested and that he had gone from the Atlantic
16 Challenge.

17 Q. And the note at the bottom of the page, is that also your
18 handwriting, "Four months to sentence consecutive."

19 A. Yes.

20 Q. Would you have some confusion at the time as to how you
21 could have something consecutive to a life sentence?

22 A. Yes, it was, I raised the matter of whether the sentence could
23 be consecutive or concurrent in sentencing and wondered
24 just, you know, whether you could have a consecutive
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sentence to a life sentence and didn't think there was anything to be gained by doing that. The judge basically indicated that he felt that the mitigating factors weren't that mitigating and imposed the sentence as being consecutive, which in reality, doesn't mean a whole lot, I don't think, because you can't have a sentence following a life sentence.

Q. What did you consider that the mitigating circumstances were that the judge didn't think were...

A. Well, I suppose it made an impression on me that somebody would, for all that period of time, insist on their innocence, even jeopardizing their chances of perhaps getting out earlier or getting out more often on passes and things like that. That that had to be the motivation for going unlawfully at large. I mean I guess I believed that was a valid, that was his reason. It may not have been a defence or anything like that.

Q. Did you suggest to the court that one of the mitigating circumstances was the fact that here's a guy who has been in jail for eight years and now when he leaves a program, he's doing it in order to try and get himself back into court, essentially.

A. That was essentially what I was trying to say.

Q. Did you talk to Mr. Marshall on that day after he was sentenced? Did he express any views as to...

A. I can't really recall talking to him afterwards.

1 Q. Unfortunately, some of these pages have gotten put in here
2 out of order, but if you'd look now at page 56. You're writing
3 to Mr. Marshall on November the 16th, and I believe you've
4 told me that you've looked for that letter of November 10th?

5 A. Yes.

6 Q. And can't find it.

7 A. Yes, that's right.

8 Q. The gist of this letter is that you're not going to be able to
9 help Mr. Marshall.

10 A. That's right.

11 Q. Did you speak to him at or about this time, or is it simply
12 that...

13 A. I don't believe I did. I think it was all by letter at that time.
14 I don't recall having a direct discussion with him.

15 Q. And then again in, he wrote to you, on page 53, in February of
16 1980. And again in November.

17 A. Yes.

18 Q. 1980. And then your last letter to him would have been on
19 November 13th on page 55.

20 A. Yes.

21 Q. 1980. And you indicate to him there in the third line:
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23 As I indicated to you several times before,
24 appeals to the Supreme Court of Canada can only
25 be undertaken by Nova Scotia Legal Aid with
leave of the Commission..."

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Et cetera. Had you discussed this question of the appeal with Junior?

A. I don't recall. You know, I feel, when I read these things, I feel really badly, you know, that... I don't know whether I discussed that with him in person. I had mentioned in the previous letter that an appeal to the Supreme Court of Canada would have to be done through, with the approval of the Legal Aid Commission but I don't know whether I ever discussed it personally with him. I probably would have but I can't say for sure.

Q. In the second paragraph of that letter, you indicate:

However, you do mention the Parole Board will not consider you for parole as long as the appeal is still there. I do have some questions about that in view of the fact there is no appeal in existence. It might be a consideration if an appeal to the Supreme Court of Canada had been launched and is in the works, but as I understand it, there has been no such appeal commenced as yet.

And then you say:

It would appear that your best bet would be to pursue your case through the Parole Board and abandon the idea of an appeal outright. It may be worthwhile to explore further what your situation is with respect to the Parole Board and what is expected of you in order for you to be granted parole.

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Are you suggesting there to Junior Marshall, essentially, that he give up and try and get out on parole?

Q. And if he did forget about would it have been your understanding that he then would have been able to get himself through the parole process and effect the same thing as get out of jail?

A. Well, certainly from my experience if you have a parole in progress.

Q. Uh-hum.

A. I've...it seems to be that if there's a parole in progress or an appeal in progress then you don't get out on parole while it's pending. So,I thought if that was out of the way then that would maybe clear the route for him to get out on parole. But then obviously there had been some...I think when I wrote that "It would be worthwhile to explore further what your situation is with respect to the parole board and what is expected of you in order to be granted parole," that was in light of my understanding that there were some concerns about the lack of remorse, and that being a factor in getting support for a parole.

Q. Did you discuss that particular point, that is giving up on his appeal? Did you discuss that directly with Junior Marshall?

A. Again, I can't recall whether I had personal discussion with him about that.

MS. GASS. EXAM. BY MR. SPICER
EXAM BY CHAIRMAN

1
2 Q Did you have any contact with Junior Marshall subsequent to
3 November of 1980?

4 A. No, I don't believe I did. I think that was the last
5 communication I had with him.

6 Q Thank-you.

7 MR. CHAIRMAN

8 Miss Gass, before you leave, the letter of November the 13th
9 and November the 16th, 1979, the reference to an appeal to the
10 Supreme Court of Canada, were you thinking of an appeal in the
11 usual term or because it is eight years later, it would be
12 extraordinary to find an appeal being launched. Or were you
13 thinking of applying for a direction from the appropriate
14 authority to ask the Supreme Court of Canada to review this case?

15 MS. GASS

16 Quite frankly, My Lord, I don't think I even gave it
17 that...that kind of consideration. I had never done an appeal to the
18 Supreme Court of Canada. It all...it just seemed like that would be
19 the logical next step to me, but it also seemed impossible. So, I
20 don't know what I was...what I was thinking at the time. I just
21 assumed that that would be the next step and it seemed like it
22 was just something that really would have been out of the
23 question to do. There would have been very little chance of
24 getting anywhere.

EXAMINATION BY MS. DERRICK

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2
3 Q. Miss Gass, my name is Anne Derrick and I represent Donald
4 Marshall, Jr., and just picking up on that last point. I take it
5 what you're saying that going to the Supreme Court of Canada
6 seemed like the logical next step, but you hadn't got to the
7 point of considering how that might be accomplished.

8 A. That's correct.

9 Q. Is that correct?

10 A. I hadn't even addressed that.

11 Q. When you went to work with Penitentiary Legal Services how
12 many people were working there?

13 A. When I first began working there there were two paralegals,
14 there may have been three paralegals initially and one staff
15 lawyer. I think there were just two paralegals when I came
16 there.

17 Q. Two paralegals, one staff lawyer.

18 A. On staff lawyer.

19 Q. And then you...

20 A. And a secretary.

21 Q. And you joined.

22 A. Yes.

23 Q. So, there were then two lawyers.

24 A. No, no. There were never two lawyers at any time.

25 Q. I see.

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A. The staff lawyers, the last staff lawyer had left and I took that person's place.

Q. I see.

A. I was the executive director.

Q. That was my next question. So, you were really the person in charge then...

A. Yes.

Q. ...of the program. And, what sorts of services did it provide to inmates?

A. Just the full range of legal services that were required. There were people in prison who were having family problems, they were receiving petitions for divorce. They...a lot of it was appeals. I would say probably the large majority of the work was appeal work. Some institutional matters, although those were the days when you really couldn't do very much about things of that nature, administrative matter, but medical care. Just the general run of complaints and concerns that people in prison had.

Q. And was there an Amherst Legal Aid office at that time?

A. Yes, there was.

Q. So, was Penitentiary Legal Services like a legal aid service just for the penitentiaries?

A. Yes.

Q. And did you service then the inmates in Springhill and

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Dorchester?

A. Yes.

Q. And who provided the funding for this service?

A. It began with a grant from the Donner Foundation to...when it initially started and then the Department of Justice and Solicitor General took over joint funding of the program.

Q. And had it had a mandate, like a five-year program or...

A. No, it basically went from year to year that's how it had operated.

Q. And...

A. I'm sorry, I think the initial Donner funding was for a specific period of time on the understanding that we would try to obtain funds elsewhere. So, it was for a fixed period, but then after that it just limped along each year.

Q. When you joined, I think you said that the funding was running out.

A. Yes.

Q. And that you spent a lot of your time as the executive director trying to find some replacement funding.

A. Yes. Is that...

Q. Is that correct?

A. Yes, that's certainly correct. It was very frustrating to be there supposedly providing a legal service when a lot of your time was spent lobbying for money and not doing the job that

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you were really put there to do. I was just trying to keep the thing going.

Q. So, that during the time you were there really the only lawyer associated with the service was involved in this basically administrative function of trying to keep the service going.

A. Yes, that was...

Q. What other sorts of things could you identify that restricted your ability to look into Mr. Marshall's case?

A. Well, I basically just had the information that was before me. What...you know, what he said and the transcript. I don't know. I can't really say beyond that.

Q. Do you think if public legal services had had secure funding at that time you could have done more?

A. I'm not really sure whether I could have done more or would have done more. I suppose in retrospect one would think that maybe hiring a private investigator would have been something that would have been appropriate, I don't know.

Q. Was that ever done within the scope of work that you did?

A. No, never.

Q. Or that was done there.

A. Never. The...

Q. So that would be...

A. ...funding was extremely limited. It was a bare-bones budget,

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and we were just...

Q. So even with funding it was still a very stripped down operation in terms of what...

A. Oh, yes.

Q. ...sorts of services could be provided.

A. Yes.

Q. Was that true, as well, when you went to work for Legal Aid?

A. Yes, I would say, yes. It has certainly improved over the years, but funding was always...money was never...there was never a lot of money there to do a lot of investigative work and that sort of thing.

Q. So, to some extent or to a considerable extent your efforts were constrained by institutional restrictions, built-in restrictions with respect to funding and staffing and...

A. Yes, I would have to say that, but I would...I suppose I would also have to admit that even if there had been perhaps more of that advisable I'm not sure whether I would have felt very optimistic about being able to do anything for him at that time. It's hard to say but I really wonder if even if there were more resources available whether it would have made a difference in my own approach to it.

Q. Was case load also a concern? I believe in one of your letters, in fact I have it in front of me, the November 13th letter, you say, "I do intend to come to the institution and talk you but I

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must warn you that it will be some time as the list of requests is extremely long at the present time."

A. Yes, yeah. That may have been, although I can't recall specifically as well. There was...and it may not have even been at that point in time. See when we had Penitentiary Legal Services we were able to do that work exclusively, you know, travel to Dorchester, Springhill, spend the time talking with people and just doing that kind of work. But then with Legal Aid and the pulling out Penitentiary Legal Services and only having one paralegal to actually physically go and talk to people, plus the work that you had to do with people on the street it just...it became, well, clearly you weren't able to have the same kind of ongoing contact that you could when you were there just for penitentiary inmates. And, the requests would come in but you still had the other work that was there. We were also more limited too, I suppose, in that the mandate of Nova Scotia Legal Aid is to provide legal services to Nova Scotians or inmates who were serving time in Nova Scotia. So, we were able to cull some of the people that way, but...

Q. So, that made it more difficult to deal with people in Dorchester that you might have...

A. Yes.

Q. ...had ready access to before. When you went to work for

MS. GASS. EXAM. BY MS. DERRICK

1 Nova Scotia Legal Aid who...how many other lawyers were
2 working there when you joined?

3
4 A. In this office, Doug Shatford was the only other lawyer there
5 when I started. There had been a lawyer there previously.
6 There were...it was a two-person office, yes.

7 Q. And it is accurate to say, is it not, that you were doing not just
8 criminal work, but civil work, as well, family work?

9 A. Oh, yes, a lot of family work, yes.

10 Q. As someone who has had a lot of experience working with
11 inmates in federal institutions, both at Penitentiary Legal
12 Services and at Legal Aid, what can you say about the ability
13 of an inmate to work on his own case? What restrictions does
14 the inmate face?

15 A. It's extremely difficulty, virtually impossible. I know that
16 when Penitentiary Legal Services closed we gave some of our
17 materials to the penitentiary, legals texts and things of that
18 nature, but I mean the legal system is complex to an educated
19 person, and most of the people who are in prison are not.
20 There are some and there are some jailhouse lawyers, people
21 who are educated who help other inmates work on appeals
22 and things like that, but access to information, legal resources
23 is very limited.

MS. DERRICK

24 Thank-you. Before I sit down, My Lord, certainly on behalf
25

MS. GASS. EXAM. BY MS. DERRICK

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1 of Mr. Marshall we are critically interested in some of these issues
2 that have been just touched upon with respect to parole policies,
3 and I'd just like to confirm that a witness is being provided by the
4 National Parole Service and that the Commission counsel will, in
5 fact, be calling this person.
6

7 MR. PRINGLE

8 We wouldn't have given that assurance if that wasn't so.

9 MS. DERRICK

10 No, I appreciate your assurance, but I just want to make
11 sure...

12 MR. CHAIRMAN

13 That takes of that. I'm satisfied that we will here evidence,
14 I'm sure we will.

15 MS. DERRICK

16 Thank-you. Thank-you, Ms. Gass.

17
18 EXAMINATION BY MR. PUGSLEY

19 Q. Miss Gass, I'm Ron Pugsley and I'm acting for John MacIntyre.

20 On how many occasions did you meet with Donald Marshall,
21 Jr.?

22 A. I can't really say how often I met with him.

23 Q. Can you give us an approximation?

24 A. Probably three times, maybe four times, but I really can't be
25 certainly of that.

1 Q And these...

2 A It would have had to have been at least...at least twice and
3 probably one or more times after that.

4 Q And these would be between what dates would you say?

5 A It would have been probably in the spring, sometime early in
6 1978 between then.

7 Q Yes.

8 A And 1980. And, as I say, I can't remember whether I
9 actually met with him in '79 and '80 or whether it was all
10 correspondence.

11 Q Did he advise you at any time that he knew the identity of
12 the person who had stabbed Sandy Seale and who had made
13 an attempt to stab him?

14 A No.

15 Q In particular, I'd like you to address your attention to page 16
16 of Volume 36 that is in front of you, which we understand are
17 notes made by Lawrence O'Neill, who was then working with
18 Melinda MacLean and went to meet with Mr. Marshall in
19 Springhill. And at the top of page 16 Mr. Marshall apparently
20 told Mr. O'Neill that the person who had committed the
21 murder was a D. Mickey Flinn of Sydney. Was that name
22 ever mentioned to you by Mr. Marshall?

23 A I can't recall. I really can't recall. I don't believe that it was,
24 but I...

25

MS. GASS. EXAM. BY MR. PUGSLEY
EXAM. BY MR. PINK

1
2 Q. But you have no recollection of him telling you that he knew
3 the identity of the person who had committed the deed?

4 A. No, no, there were possibilities, but no...nobody, no name, I
5 don't...I don't recall any name ever given to me at all.

6 Q. How was he planning to get a rehearing in that event then?
7 How was...what was the basis?

8 A. Well, I suppose that was the problem that I felt existed that...

9 Q. Yes.

10 A. That there didn't seem to be anything to go on.

11 Q. I see. Thank-you.

12 MR. MURRAY

13 No questions.

14 MR. BARRETT

15 No questions.

16 10:07 a.m.

17 EXAMINATION BY MR. PINK

18 Q. Miss Gass, if you could just look at the pre-sentence report at
19 page 58. Is that a report that's prepared by someone in the
20 institution or is it, like other pre-sentence reports, prepared
21 by the corrections branch or the corrections division of the
22 Province?

23 A. This was prepared within the institution by an employee of
24 the Correctional Service of Canada.
25

EXAMINATION BY MR. ROSS

1
2
3 Q. Miss Gass, my name is Anthony Ross and I'll ask you a couple
4 of questions on behalf of Oscar Seale and the Black United
5 Front. If you look at Exhibit 97. There's one thing I'm a bit
6 confused on and perhaps you can help it. As I understand
7 your evidence turning to page 60 it appears, as I understand
8 it, that Marshall is brought into court and on that date he
9 pleaded guilty at being unlawfully at large and was
10 sentenced.

11 A. Yes.

12 Q. That's your recollection. But if you turn to page 58 you see
13 that there's a pre-sentence report that's dated October 10,
14 1979, and if you look at the application for Legal Aid and that
15 date appears to be October 18th. Would it be standard
16 practise to prepare a pre-sentence report before there is a
17 plea of guilty?

18 A. As I mentioned earlier, it was what they used to do when
19 they anticipated the person was coming and pleaded and...and
20 pleading guilty. They used to send along these institutional
21 reports with them. That has since changed and, in fact, the
22 Correctional Service of Canada no longer does these reports.
23 They are done by the probation service after a person has
24 made a plea. But, yes, that's what they used to do.

25 Q. And, during your time that you had discussions with Junior

1 Marshall did he ever mention the name Mickey Flinn to you?
2

3 A. I can't recall that.

4 Q. Well, perhaps I'll take it a little further. Did he ever mention
5 that he knew that Mickey Flinn had stabbed Sandy Seale?

6 A. No, I would have to say no, because I think if there had been
7 a name like that...

8 Q. Did he ever discuss Sandy Seale with you?

9 A. Not really, except that he was his...a friend, his friend.

10 Q. He had put it in the category that they were friends.

11 A. Yes.

12 Q. Yeah. I see. The evidence that we've had so far, and nobody
13 can link Sandy Seale and Junior Marshall as friends, do you
14 find that surprising in light of the information that you
15 have...might have received from Junior Marshall?

16 A. I never really thought about it, I guess. I mean friends cover,
17 I suppose, a wide...a wide and there can be very good friends
18 and there can be casual friends that encompasses an
19 acquaintance even perhaps. One might use the word "friend".

20 Q. I see. But there was no substantial discussion about any long-
21 term friendly relationship between Junior Marshall and
22 Sandy Seale, was there, to the best of your recollection?

23 A. Not that I recall, no.

24 Q. Thank-you. Now, tell me something about Penitentiary Legal
25 Services? You worked for that group for how many years?

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A. Just one year.

Q. Just one year. And during that year did you work for...did you work for black people from time to time?

A. Yes, yes. I would have.

Q. And in your experience in working for black people, did they at any time give you the impression that they had a perception that they got less than a fair shake from the legal system?

A. I would have to say that everybody who I talked to in penitentiary perceived that they got less than a fair shake.

Q. I see. I see. Well, perhaps I'll just narrow it down, including the black people.

A. I'm serious. That...I would have to say that perhaps no more than anyone else I talked to.

Q. I see. And these are people who had been found guilty and incarcerated. Now, tell me about your experience. You've been working for legal aid for...since 1975, is it?

A. No. No, since... I've been working for Nova Scotia Legal Aid since 1979.

Q. '79, sorry. And in...and you were stationed in the Amherst office.

A. Yes.

Q. And do you represent black people in that area?

A. Yes, occasionally, but not very often, but yes.

1 Q. Yes. And as far as...and this is the other category...those who
2 have not yet gone to jail. Do you find that there is a general
3 perception among black people that they do not get a fair
4 shake from the legal system? Has that been expressed to
5 you?

6 A. An immediate prejudice to them personally because of
7 their...because they're black.

8 Q. There is, yes.

9 A. In the justice system.

10 Q. Yes.

11 A. And you're talking about people on the street as opposed to
12 people who are incarcerated?

13 A. No, people who come to Legal Aid before being...winding up
14 on the inside. And I'm asking you about a perception that
15 they might have expressed to you.

16 A. Oh, golly, I can't...I can't really say that there's even been a
17 perception expressed to me that the system discriminates, the
18 legal system discriminates against them. I suppose I would
19 have to say that there are probably situations that brought
20 them to court that may have resulted or they may feel
21 resulted because of prejudice on the street, like an assault or
22 a fight or something like that.

23 Q. Uh-hum.

24 A. That brought them, you know, resulted in them being charged
25

1 and brought to court. But their treatment, I can't...I can't say
2 that I was ever told that they felt that the system was
3 treating them unfairly.
4

5 Q. And as far as...yes. And as far as attitudes in court are
6 concerned, do you find that they are up against any more
7 problems than the average person charged with a similar
8 offence?

9 A. I would say no. I think that if a person is uneducated and
10 poor or whatever, regardless, they have...they're at an
11 extreme disadvantage.

12 Q. I see.

13 A. But I don't think that it's because the person is black. At least
14 from my experience and in the area where I've worked, that
15 they have been treated any differently if that's what you're
16 asking me.

17 Q. That's precisely what I was asking you.

18 A. I would say now.

19 MR. ROSS

20 Thank-you very much.
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EXAMINATION BY MR. WILDSMITH

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2
3 Q. My name is Bruce Wildsmith and I'm representing the Union
4 of Nova Scotia Indians. I take it you felt that the Penitentiary
5 Legal Services did provide a valuable service to the inmates
6 of Dorchester?

7 A. Oh, yes.

8 Q. And is there anything like that now being provided?

9 A. No, the only thing that's like that that's being provided now is
10 Philip MacNeil, who works with me who goes out and does
11 work exclusively with inmates. But that's one person.
12 There's a lot of people to deal with.

13 Q. One point that I'm a little bit interested in is the fact that
14 Dorchester is located in the Province of New Brunswick and
15 you worked for Nova Scotia Legal Aid in the Province of Nova
16 Scotia.

17 A. Uh-huh.

18 Q. Is there a problem in providing, in Nova Scotia Legal Aid,
19 providing legal services to inmates in Dorchester?

20 A. Yes, but I suppose we've been able to get around that by
21 providing services to people who are Nova Scotians. For
22 example, if you've been sentenced in a Nova Scotia court and
23 you're a Nova Scotian who may be incarcerated in Dorchester.
24 As well, I believe Phil does parole hearings and he tried to
25

1 provide as much as he can without going outside the mandate,
2 I suppose, of Nova Scotia Legal Aid.

3 Q. So is the notion that if you were sentenced in a Nova Scotia
4 Court or otherwise a Nova Scotia resident, you could obtain
5 legal services while in Dorchester from Nova Scotia Legal
6 Aid?

7 A. Yes, if it was something that we could do something about in
8 the Province of Nova Scotia, like an appeal.

9 Q. I see. But problems within Dorchester itself, disciplinary
10 problems, for example?

11 A. We could do that, too, if it went to the Federal Court, for
12 example, if it was something that, yes, we could do those
13 things as well.

14 Q. Okay, and would that always be done out of the Amherst
15 office?

16 A. Yes, pretty well, yes.

17 Q. Well, for example, if you were convicted in Bridgewater and
18 you were rendering an appeal from that conviction, would
19 that be done by Bridgewater office or by Amherst?

20 A. It would depend. Sometimes the lawyer who had originally
21 represented them would do the appeal. Occasionally, we
22 would do one.

23 Q. What if, instead of it being an appeal as such, that it was the
24 kind of thing that happened with Junior Marshall? That is, it
25

1 was an application for review as a result of new evidence
2 being available? Is that the kind of thing that Nova Scotia
3 Legal Aid could do?

4 A. I would say so, yes.

5 Q. In your experience, have they ever done that?

6 A. Not to my knowledge.

7 Q. So putting this in a slightly different way, is there any reason
8 why Nova Scotia Legal Aid would not have been available to
9 Junior Marshall?

10 A. Not that I can think of, no.

11 Q. Now you became an employee of Nova Scotia Legal Aid in
12 1979, you've indicated. Is there any reason why you or
13 someone else with Nova Scotia Legal Aid in the Amherst
14 office could not have provided the same services that Steve
15 Aronson ended up providing?

16 A. Well, I think it would, we never could have devoted
17 exclusively our time to one case. That would be impossible.
18 The resources just wouldn't have been there. So I suppose in
19 that sense they would have had to probably take one lawyer
20 to do it. But I don't know whether Nova Scotia Legal Aid was
21 ever approached at that point in time.

22 Q. All right. Would you have had the budget to hire a private
23 investigator to round up the kind of witnesses and evidence
24 that would have been available on such an application?
25

1 A. I would doubt that we would. In fact, at that time, it was
2 around that time that the freeze went on and a lot of people
3 were laid off and Legal Aid was kind of put at a standstill and
4 it was just a matter of hoping that it would be able to
5 continue. There was a budget freeze that lasted for a couple
6 of years and a number of lawyers were laid off and they were
7 not hiring any new lawyers. So I would imagine that at that
8 time, although I can't say for sure, that that wouldn't have
9 been a possibility.

10 Q. So is it fair to put it this way that to the best of your
11 understanding in theory, Nova Scotia Legal Aid could have
12 provided the same services, but as a practical matter, they
13 did not have the resources to devote to it?

14 A. I would say that would be the case.

15 Q. All right. You mentioned the pre-sentence report that's on
16 page 58 in this volume in front of you. And that this was
17 prepared by employees of Corrections Canada. Would you
18 expect that Corrections Canada has more information on an
19 inmate than is disclosed in that one page?

20 A. Oh, I know they do. I would suspect that there'd be.

21 Q. Is there a reason why that additional information would not
22 have been provided to the judge?

23 A. Well, normally, for sentencing purposes, the court is really
24 only interested in knowing how a person is getting along and
25

1 | how, you know, how they're doing within the Institution.
2 | Very often the reports are longer than this but they deal
3 | mainly with the things, programs they've been involved in
4 | and that kind of thing. Alcoholics Anonymous or, you know,
5 | various groups within the Institution, work, that kind of
6 | thing, their general performance is what they would put in it.

7 | Q. Well, in Mr. Marshall's case, there would have been eight
8 | years worth of assessments or various reports within
9 | Corrections Canada, I assume?

10 | A. Yes.

11 | Q. Behind this report.

12 | A. Uh-huh.

13 | Q. Were you, as a lawyer representing Mr. Marshall, given access
14 | to that information?

15 | A. I didn't even ask for access to it, quite frankly.

16 | Q. Would it have been the practice to try to obtain more
17 | information?

18 | A. No, probably not.

19 | Q. Do you know whether if you had requested, there was a
20 | practice of giving or not giving the additional information?

21 | A. I would say back then it was pretty, although it was starting
22 | to become more open, but there was a time certainly when
23 | you didn't have access to very much at all. It was very
24 | protective about the information that they had. Now that
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certainly has changed and there is more access to institutional files or information that you might be seeking.

Q. Have you yourself sought additional information from Corrections Canada?

A. Not me personally, no.

Q. Your office?

A. Yes.

Q. With what result?

A. I have seen additional information that years ago one would never have seen.

Q. Was this all the information that was requested?

A. I don't know because I didn't request it.

Q. Okay. Now you indicated that today these pre-sentence reports are prepared by, I believe you said the Probation Service?

A. Yes.

Q. Is that the Probation Service of the province?

A. Yes.

Q. So with respect to inmates in Dorchester, would that be done by the Probation Service of New Brunswick or of Nova Scotia?

A. Well, that probably wouldn't arise now because...Well, except in a situation where somebody came into court in Springhill and pleaded guilty to some charges and then subsequently got transferred over to Dorchester. And then they'd have to

1 reappear in Nova Scotia for sentencing. In those cases, it
2 would still be the Probation Service, the local Probation
3 Service that would prepare the report for the court.

4 Q. So wherever the court is sitting, the Attorney General's
5 Department of that province provides the pre-sentence
6 report.

7 A. Yes.

8 Q. Now you mentioned, maybe I misinterpreted this, that the
9 feeling with respect to Junior Marshall took place in
10 Springhill, the one that this report relates to.

11 A. Yes.

12 Q. Was that in the Institution itself?

13 A. No, that was in the Provincial Court in Springhill.

14 Q. So as a matter of practice, inmates are taken from the place
15 where they're incarcerated and taken into a regular
16 courtroom.

17 A. Yes.

18 Q. For these proceedings, okay. Now you indicated that at this
19 particular hearing, in addition to you speaking to the issue of
20 guilt or sentence, that Junior Marshall himself spoke.

21 A. Yes.

22 Q. And you indicated that you listened to the tape but you had
23 some difficulty making Mr. Marshall out.

24 A. Yes.
25

1 Q. Would it be fair to say that Mr. Marshall experienced some
2 difficulties in properly communicating and making himself
3 understood to the court?

4 A. I would say there would be no question that he's not, he
5 didn't speak loudly, he wasn't very articulate. He did speak
6 but...

7 Q. Tended to have his head down and his hands around his face?

8 A. I can't remember that but on a one-to-one situation, he
9 communicated well. But I just remember listening to the
10 tape and that you could hardly hear what he said.

11 Q. Yes.

12 A. I would imagine that would be very intimidating.

13 Q. Fine. Now you've also indicated that you had discussions with
14 someone about the fact that he did not accept his guilt and I
15 didn't quite catch whether that discussion was with Mr.
16 Marshall himself or with other people in authority.

17 A. Well, it was clear from Mr. Marshall all along that he didn't,
18 he maintained that he was not guilty. But subsequent to that,
19 there were discussions within the Institution, like a case
20 worker...

21 Q. Discussions that you had with the case worker?

22 A. Yeah. It's, again, you think about this over and over over the
23 years and Mr. MacNeil, the paralegal who would have been
24 going in and out of the Institutions, and I discussed it. I recall
25

1 that. And he recalls us talking with, I mean I really shouldn't
2 be testifying as to what he recalls, but I do specifically recall
3 being advised that part of the reason why he wouldn't be
4 supportive for parole or release programs was because if you
5 didn't accept your guilt and you didn't show remorse, then
6 there was a potential danger to society because if you were
7 let out, you'd be out looking for the person who did it, that
8 kind of thing.

9
10 Q. Yes, and what I'm trying to draw out of you is whether that
11 kind of information came from the caseworker or someone in
12 authority in the prison.

13 A. That would have come from someone in the prison in
14 authority, not...

15 Q. Yes, and can you suggest who it might have been besides the
16 caseworker?

17 A. Well, again, the name that comes to mind is Kim Thompson,
18 who had worked with him in Springhill.

19 Q. Is that a caseworker?

20 A. He was, yes.

21 Q. And you suggested that not accepting guilt would work to the
22 detriment of the inmate and that the inmate would not
23 receive privileges that they might have otherwise had access
24 to. Can you elaborate a little more on what those privileges
25 may be?

1 A. Well, temporary leaves of absence, either escorted or
2 unescorted...

3 MR. PRINGLE

4 My Lord, I'm going to object to this again. We have objected to it
5 earlier and I stated the reasons then. There's two reasons. It's
6 hearsay. Strictly speaking, it is a matter that comes within the
7 practices and procedures of the federal institution and under the
8 bases of the Keable case and Scoubie and, recently, O'Hara of the
9 Supreme Court of Canada, those are all constitutionally outside the
10 scope of this Honourable Commission. However, as I stated
11 earlier, we do have instructions and we have discussed this with
12 Commission Counsel, and I understood they were going to support
13 us on this, but I guess they're not, that we would...

14 MR. SPICER

15 We haven't had an opportunity to say anything yet.

16 MR. PRINGLE

17 Well, you haven't. There's been all kinds of evidence and no
18 objection to it.

19 MR. MACDONALD

20 Well, we didn't say we objected, My Lord. We say we will
21 certainly support my friend in any objection he took on a
22 constitutional basis.

23 MR. PRINGLE

24 Well, I took one earlier and I didn't get any support.
25

1 MR. MACDONALD

2 You were upheld. We'll support you if you start to fall.

3 MR. CHAIRMAN

4 I don't propose to get into the constitutional niceties at this time.
5 My understanding from Ms. Gass' evidence is that from the point
6 of view of Junior Marshall, his insistence upon innocence may
7 have mitigated against him. Now if you're going to embark upon
8 whether it mitigates against all inmates, then this is not the
9 witness to give us that evidence, I would suggest.

10 MR. WILDSMITH

11 I was simply trying to get at what kinds of things are available to
12 inmates that he may have been deprived of as a result and I...

13 MR. CHAIRMAN

14 That Junior Marshall may have been deprived of.

15 MR. WILDSMITH

16 Sure, the things that are available to Junior, which I presume are
17 the same as other inmates.

18 MR. CHAIRMAN

19 I'm not sure that Ms. Gass is in a position to, from her evidence so
20 far, to tell us this.

21 BY MR. WILDSMITH

22 Q. Perhaps she could help us out as to whether she has any
23 experiences that would allow her to comment?
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A. Well, from my experience working with people who are in prison, that there are certain privileges that you can obtain through your performance within the system and that kind of thing, like temporary leaves of absences to go out bowling or to go out to AA meetings or to go on a trip somewhere or to go home for Christmas. You sort of earn those kinds of things as time goes on.

Q. For example, in Mr. Marshall's case, if he wished to return back to the Membertou Indian Reserve, that would be the kind of thing that would be available under a temporary leave?

A. Yes, home visits and things like that.

Q. And if I'm understanding your evidence correctly, it was his perception that not admitting to guilt mitigated against getting a temporary leave to be able to go home and visit the reserve?

A. Well, just recalling what I said in 1979 when I was in court and having listened to the tape, certainly it was very clear in my mind from what I said that he had suffered as a result of his insistence on his innocence and that, as a result, he had not gotten those privileges. I said that back in 1979. And, in fact, to the extent that the judge thought that he had actually escaped from Springhill and then it, we clarified that he had actually, he had, ironically, actually been out on this Atlantic

1 Challenge. But I understood that that was, you know, it was
2 quite something that he actually got that and it was eight
3 years after the fact that he got to go out on that, eight years
4 after he had been incarcerated. So he was, in fact, out on a
5 TA at the time but it was the first thing that he had been out
6 on in eight years.

7 MR. WILDSMITH

8 Thank you, no further questions.
9

10 EXAMINATION BY MR. PRINGLE

11 Q. Just a couple of questions, Ms. Gass. My name is Al Pringle
12 and I've a few questions for you with respect to Correctional
13 Services. You worked a fair amount with inmates and their
14 parole and their release and temporary leaves and that sort
15 of thing, I assume?

16 A. Yes, I worked a fair bit with inmates. I didn't have a great
17 deal to do with temporary leaves and that kind of thing.
18 Those were things that would just come up in conversation.

19 Q. Sure. Is it your understanding that there's a fixed period of
20 time by legislation before a person sentenced to a life
21 imprisonment can be eligible for parole?

22 A. Yes.

23 Q. And that period is ten years? Correct?

24 A. Yes.
25

MS. GASS, EXAM. BY MR. PRINGLE

1 Q For a person sentenced to a life sentence, is it your
2 understanding that there's a fixed period of time by
3 legislation before that person can be considered for an
4 unescorted temporary pass by regulation?

5 A. I believe there are, but I'm not terribly familiar with those,
6 and I certainly don't remember what they are now. I think
7 they've changed from time to time.

8 Q Do you remember it being seven years by regulation at the
9 time of 1979 and so on?

10 A. No, I don't.

11 Q You don't know that.

12 A. No.

13 MR. PRINGLE

14 Okay, thank you very much.

15 MR. CHAIRMAN

16 Thank you very much.

17
18 KEVIN LYNK, duly called and sworn, testified as follows:

19
20 EXAMINATION BY MR. SPICER

21 Q What is your full name, sir?

22 A. Kevin Lynk.

23 Q Mr. Lynk, from 1971 to 1979, were you employed by the
24 Correctional Service?
25