

1 12:08 p.m.

2 MR. ARCHIE WALSH, duly called and sworn, testified as follows:

3 EXAMINATION BY MR. SPICER

4 Q. What's your full name, please, Mr. Walsh?

5 A. Archie Walsh.

6 Q. Archie Walsh. You've been employed by the Correctional
7 Service of Canada since 1974.

8 A. Yes.

9 Q. And in three years prior to that you managed a halfway
10 house, I believe, in London, Ontario.

11 A. Yes, I did.

12 Q. And you're currently employed by Correction Services
13 Canada.

14 A. Yes.

15 Q. In the position of parole officer.

16 A. Yes.

17 Q. And that would be a position similar to the position occupied
18 by Mr. Lynk.

19 A. Yes.

20 Q. And described in his time as parole service officer.

21 A. Yes.

22 Q. There's no difference.

23 A. No.

24 Q. No. Okay. I direct your attention, sir, to Exhibit 69, in
25 particular the very last page of that exhibit, on the very last

1 page, would that be...that's a telex from yourself to (Maude
2 Hoedy?).

3 A. Yes.

4 Q. Who is she?

5 A. She was the case...case preparation officer in I think it was
6 Moncton at the time.

7 Q. And this is in November of 1981.

8 A. Yes.

9 Q. And had you been asked to do a community assessment in
10 connection with a proposed absence for Junior Marshall.

11 A. Proposed TLA, yes, temporary leave of absence.

12 Q. And it would be unescorted.

13 A. Unescorted.

14 Q. Okay. Can you tell us what you did in order to carry out that
15 community assessment?

16 A. I interviewed Chief John MacIntyre. At the time I went to
17 the police station and somebody at the desk ushered me
18 directly into the Chief's office.

19 Q. Before you get there, what would your...would you have had a
20 practise with the Sydney Police Department. Would there
21 have been somebody that you would normally see?

22 A. Normally the designated officer that we spoke to in the
23 Sydney office was Inspector Urquhart.

24 Q. Yeah. And are you able to tell us today whether when you
25 went to the station to enquire concerning Junior Marshall

1 whether you saw Inspector Urquhart first?

2 A. I went there to talk to Inspector Urquhart.

3 Q. Right.

4 A. But I was ushered into the Chief's office.

5 Q. And my question...

6 A. When I indicated why.

7 Q. Yeah, my question was whether or not you were ushered in
8 there by Inspector Urquhart or by somebody else?

9 A. I can't recall if it was Inspector Urquhart or the Desk Sergeant
10 that was on.

11 Q. Okay. Sorry, continue. You had gone into Chief MacIntyre's
12 office.

13 A. Yes. Which was, again, unusual because I had never...I had
14 never discussed any cases with the Chief previous. During
15 the...I think it took roughly forty, forty-five minutes, the
16 length of the interview. Normally it would take maybe ten,
17 fifteen minutes to conduct one of these interviews.

18 Q. What sorts of information were you seeking from Chief
19 MacIntyre?

20 A. At the time the normal information I would be seeking in
21 conducting an investigation would be any background
22 information that the police might have concerning the case.
23 Certain people maybe in the community. I'm trying to think
24 now what, you know, what...in each case it would be different,
25 okay.

1 Q. Sure. Do you have any recollection today of what you re-
2 ...what information you requested from Chief MacIntyre?

3 A. I had no real opportunity to express, you know, once I
4 indicated the purpose of my visit...

5 Q. Yes. What did you indicate...

6 A. ...was here enquiring about Donald Marshall being considered
7 for a temporary leave absence, a three-day visit to the
8 Membertou area.

9 Q. Uh-hum.

10 A. Residing at his parents home. The Chief then proceeded to
11 describe the case in detail.

12 Q. What did he say to you?

13 A. Well, I can't recall word for word what was said in that
14 conversation, but it was a very lengthy conversation about
15 what took place, description of the crime.

16 Q. What did he describe the crime to be to you?

17 A. The murder.

18 Q. Uh-hum. Did he describe it to you though, what happened?

19 A. I also see some photographs that he laid out in front of me.

20 Q. Do you remember what they were photographs of?

21 A. They looked like photographs of people and I can't, as I say, I
22 can't recall...there was an envelope with a bunch of
23 photographs laid out on a desk and normally as part of our
24 investigation, you know, we didn't get into that much detail.
25 So, I can't recall exactly, you know, what the whole thing

1 de...because it wasn't usual for us to gather that type of
2 information.

3 Q. Uh-hum.

4 A. I was there on a particular request, not to go into detail about
5 witnesses, where they were, what had transpired, some of the
6 things that had gone on. So, this went on, as I say, for the
7 whole conversation.

8 Q. Did he...

9 A. Chief MacIntyre at one point in time was describing the
10 Marshall family. His mother had been under doctor's care.
11 Donald Marshall was regarded very highly by the Chief, he
12 spoke very highly of him.

13 Q. It's Donald Marshall, Sr., you're talking about.

14 A. Senior, yes.

15 Q. Okay.

16 A. His father was highly respected, one of the probably...I think
17 he described him as one of the most highly respected Indians
18 in Nova Scotia, and a hereditary chief of the MicMac Indians
19 in Nova Scotia.

20 Q. Did he express his views as to why or what view did he
21 express as to whether or not he thought Junior Marshall ought
22 to have been granted the three-day leave?

23 A. He felt he definitely shouldn't be coming back. He hasn't
24 admitted that...

25 Q. Shouldn't or should.

1 A. He shouldn't be allowed to come back. He was very
2 concerned about the safety of the witnesses who were still in
3 the area apparently. In fact, he did even mention if I wanted
4 I could get the address of one of the witnesses and interview
5 them and I didn't see it at the time.

6 Q. Do you remember the name of the witness?

7 A. I think this was Chant.

8 Q. Uh-hum.

9 A. And there was a Pubnico, I think.

10 Q. Pratico.

11 A. Pratico.

12 Q. Any other reasons that he expressed to you as to why he
13 didn't think Junior Marshall should be granted the leave?

14 A. The emphasis was on, I think, the safety of the witnesses
15 concerned.

16 Q. What did you know yourself about Junior Marshall at this
17 time?

18 A. Very little other than what I gleaned from reviewing the file
19 before conducting my investigation.

20 Q. I see.

21 A. The request and what they indicated in the request,
22 some...some details about what had gone on prior. The only
23 time he was considered for release was when he admitted
24 guilt and then he was released under that Atlantic Challenge
25 Program.

1 Q. Yes.

2 A. And that's when he went UAL.

3 Q. Uh-hum.

4 A. I recall reading about...

5 Q. That's unlawfully at large, is it?

6 A. Yes.

7 Q. You note in your telex in the last paragraph, "Although the
8 subject has confirmed accommodation on the Membertou
9 Reserve in Sydney," that would be with his parents
10 presumably.

11 A. Yes.

12 Q. "I feel Chief MacIntyre's concern about the safety of other
13 citizens should be considered. Chief MacIntyre has been
14 involved as an investigating officer in the offence of non-
15 capital murder." So, you're taking into account the comments
16 made by Chief MacIntyre in coming to ...in forming your
17 opinion.

18 A. Yes.

19 Q. Did you respect Chief MacIntyre's opinion?

20 A. At that particular time, being the first time I was interviewed
21 by or had interviewed the Chief and he being the
22 investigating officer in the offence, yes. See rarely had we
23 the opportunity of talking to the investigating officers in most
24 of the community assessments that we conducted with the
25 Sydney Police, unless Inspector Urquhart, Detective Urquhart

1 was one of the officers that did the investigating.

2 Q. Had you had experience with other situations where the
3 offence in question was murder and you were going to speak
4 to police officers about whether or not somebody should get
5 out who had been convicted of murder?

6 A. Previous to this investigation.

7 Q. Yes, previous to this one, yeah.

8 A. Yes, I did have a number of investigations.

9 Q. Had you ever had...had you ever had that experience with the
10 Sydney Police Department before going to them in connection
11 with a murder?

12 A. No.

13 Q. Did Chief MacIntyre make any mention to you of whether or
14 not a eyewitness had come forward subsequent to the
15 conviction of Junior Marshall?

16 A. No, he did not, and I don't recall him making any mention of
17 that.

18 Q. You heard the testimony given by Mr. Lynk in connection
19 with the attitude generally of the Sydney Police Department.
20 Would you agree with that or does your opinion differ from
21 his on that as to them being negative?

22 A. Of being, yeah, primarily negative.

23 Q. And would you say that they were more negative than other
24 police forces that you dealt with around the Province of Nova
25 Scotia?

1 A. Yes.

2 Q. When you spoke your telex indicates that you also spoke to
3 Chief Alex Christmas. Do you remember any of that
4 discussion with Chief Christmas?

5 A. Just a brief...brief conversation with Chief Christmas. In this
6 particular case I certainly wanted his views because I think
7 the plan would be if Donald was confined to the reserve for,
8 you know, I think that was going on in my mind. So, I was
9 getting his feeling on what he probably felt.

10 Q. Would this telex be the sum and substance of your
11 communication concerning this particular UTA? In other
12 words, would you have called anybody subsequently in the
13 National Parole Board to discuss it with them or would they
14 just rely on the telex that you have in front of you?

15 A. I am not sure if I called anybody concerning this. I might
16 have if they wanted a quick, quick response. I can't recall if
17 there was a delay. I haven't looked at the time frames. But if
18 they're...usually when we sent a telex and a brief telex such
19 as this it's usually because of time frames and the CMT want
20 to get off a response to the parole board.

21 Q. CMT is case management team.

22 A. Case management team, sorry.

23 Q. Your telex doesn't really make a recommendation one way or
24 the other. Would that normally be your practise just to state
25 the facts and...

MR. WALSH, EXAM. BY MR. SPICER

1 A. Yes.

2 Q. What would...if you had been asked to recommend on the
3 basis of what you'd heard, what would have been your
4 recommendation?

5 A. My recommendation would have been to deny UTA.

6 Q. And that would have been on the basis of...

7 A. Of the concerns about the Chief for the safety of the people
8 and certainly, as previously indicated in Kevin's report, which
9 I did review.

10 Q. Yes.

11 A. A very strong concern about the guilt and having the
12 information that he had at one time admitted the guilt, went
13 out, went UAL and that's...that certainly did concern me, too,
14 at this particular time.

15 Q. Sure.

16 A. Whether he was dealing with this in a...

17 Q. Concerned you that the same thing might happen, that he'd
18 get out and take off again.

19 A. Yes.

20 MR. SPICER

21 Thank-you.

22 EXAMINATION BY CHAIRMAN

23 MR. CHAIRMAN

24 Mr. Walsh, would you look at the page immediately in front of
25 your telex, on E6, Exhibit 69, the second last page.

7470 MR. WALSH, EXAM. BY CHAIRMAN

1 MR. WALSH

2 Yes.

3 MR. CHAIRMAN

4 I assume from that that the...despite your telex CMT
5 recommended that Donald Marshall, Jr., be granted temporary
6 absence.

7 MR. WALSH

8 I see this is dated I think just...

9 MR. CHAIRMAN

10 I'm not clear, your telex...

11 MR. WALSH

12 Is it not previous to mine, November the 12th. This is the
13 16th of November, yes, you're right. You're right they are a
14 conflict.

15 MR. CHAIRMAN

16 So, they received your telex and other information
17 presumably they had and then based on that they reached
18 the conclusion that "Donald Marshall, Jr., should be granted
19 UTA with the following restrictions: no use of alcohol or drugs;
20 remain on the Membertou Reserve and no contact with
21 witnesses at his trial.

22 MR. WALSH

23 Yes.

24 MR. CHAIRMAN

25 That's how it was disposed of.

7471 MR. WALSH, EXAM. BY CHAIRMAN

1 MR. WALSH

2 Yes. And that was forwarded from the CM...case management
3 team to the parole board.

4 MR. CHAIRMAN

5 To the parole board.

6 MR. WALSH

7 Yes. Who would make the final decision.

8 MR. CHAIRMAN

9 What did they do?

10 MR. WALSH

11 And recommendation.

12 MR. CHAIRMAN

13 What was their decision?

14 MR. WALSH

15 I think they denied the UTA.

16 MR. CHAIRMAN

17 All right. Miss Derrick.

18 MISS DERRICK

19 Thank-you, My Lord.

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M.G.

MR. WALSH, EXAM. BY MS DERRICKEXAMINATION BY MS. DERRICK

- 1
- 2 Q My name is Anne Derrick, Mr. Walsh, and I represent Donald
- 3 Marshall, Jr.. You recall going to the Sydney Police station and
- 4 speaking with Sergeant Urquhart first when you were
- 5 starting to prepare...
- 6 A. I'm not sure if it was Sergeant Urquhart or the Sergeant on
- 7 the desk at the time.
- 8 Q. Okay. Sorry about that. It...is it your recollection that you
- 9 mentioned that you were there for the purpose of discussing
- 10 Junior Marshall's...
- 11 A. That's right.
- 12 Q ...case?
- 13 A. Yes.
- 14 Q. And it was at that point that you were ushered in to see Chief
- 15 MacIntyre.
- 16 A. In to the Chief, yes.
- 17 Q. I see. Thank-you. And after your fairly lengthy discussion
- 18 with Chief MacIntyre were you left with the impression that
- 19 he had strong opinions about the case?
- 20 A. Oh, very strong opinions.
- 21 Q. Did you see Chief Alex Christmas personally?
- 22 A. No.
- 23 Q. That was a telephone contact.
- 24 A. Yes.
- 25 Q. And before you prepared your telex had you read Mr.Lynk's

MR. WALSH, EXAM. BY MS DERRICK

1 community assessment from a couple of years before?

2 A. I would imagine, yes. I usually review the...case
3 management's direction and some of the reports from the
4 institution on his performance and behaviour and also
5 previous reports.

6 Q. I see. Would that constitute a file that you would...

7 A. Yes.

8 Q. ...have to review?

9 A. Yes.

10 Q. And it would be continually added to as...

11 A. Yes.

12 Q. ...as years went by. And had there...I think you mentioned
13 something about time constraints being a concern that the
14 case management team wanted to move this matter along to
15 the parole board.

16 A. I suspect that that's why the telex was sent off, either that or
17 I was unduly delayed in completing my report and they
18 wanted it a, you know, a certain time.

19 Q. I see. Because you would assume that otherwise had time
20 constraints not been a concern that you would have
21 submitted a report similar to Mr.Lynk's in terms of format
22 and...

23 A. In more detail, yes.

24 Q. Yes, I see. Thank-you.

25

MR. WALSH, EXAM. BY MR. PUGSLEYEXAMINATION BY MR. PUGSLEY

1
2 Q Mr. Walsh, my name is Ron Pugsley. I act for Chief
3 MacIntyre. Did you have...you say that the concern that Chief
4 MacIntyre expressed to you was fear of reprisals against
5 witnesses at the trial in 1971.

6 A. Yes.

7 Q. Correct.

8 A. Yes.

9 Q. Yes. Did you have the last two...or the last four pages, sorry,
10 going back three and four pages from the end of the
11 document that is in front of you, we come across a progress
12 summary report dated the 19th of October, 1981, which pre-
13 dated your investigation. Did you have that? Was that sent
14 to you? A document signed by Mr. M. MacWilliam and also
15 by, I can't read the other name. Would you have had that
16 before you went to see Chief MacIntyre?

17 A. I can't recall.

18 Q. Under the...let me just address one part of it to you. On the
19 first page under the heading "Personal Development" about
20 five lines from the top, referring to Junior Marshall,

21
22 Besides being immersed in his appeal,
23 Junior has been a bit too active in
24 institution life at Springhill. He as a high-
25 profile inmate whom other inmates and
staff, as well, turned to because of his
control over a large part of the population.

MR. WALSH, EXAM. BY MR. PUGSLEY

He was involved in muscling inmates for debts and drugs.

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Was that...

A. Yes, I recall reading that.

Q. You recall reading that.

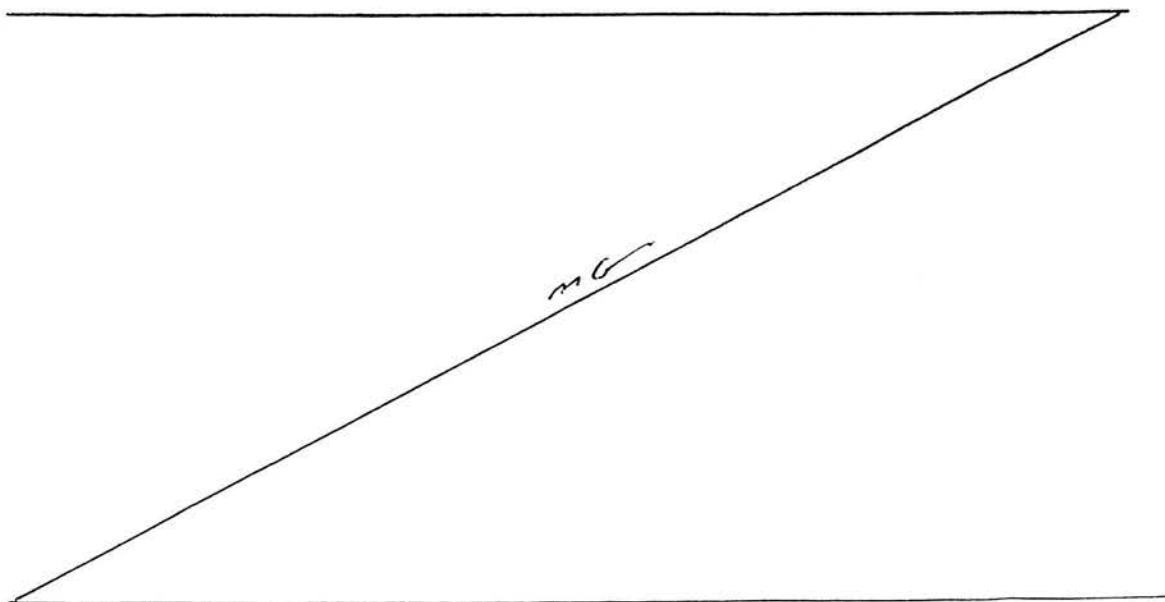
A. I recall reading that before conducting my investigation.

Q. Yes. And was that...would you have had that in mind when Chief MacIntyre spoke to you about his concern that Marshall might take reprisals against witnesses?

A. Certainly I would have that in mind if I read it previous to, you know, my conducting the investigation.

Q. Yes. On the second-last page of the exhibit, the appraisal that was completed on the 16th of November, some few days after your report was sent in. Did you receive this...this report, the 16th of November report?

A. No.



1 Q. Have you ever seen that before?

2 A. I don't think so. My report was sent in previous to this
3 report. Mine is dated the 12th of November '81.

4 Q. That is correct.

5 A. And this is the 16th of November '81.

6 Q. That is correct. I wondered if you ever got it after you sent in
7 your report.

8 A. Possibly I've seen it but, you know, I don't recall. I wouldn't
9 be involved in it after completing my job because, like Mr.
10 Lynk, somebody else might be involved in the next
11 investigation.

12 Q. Yes. The author of that report; that is, the 16th of November,
13 writes at the bottom of the page under Item #3, under the
14 heading, "Of course, there are concerns with an escorted
15 temporary absence," and then Point #3:

16
17 Junior has not spent a lot of time dealing
18 with his main problem areas--alcohol and
19 violence.

19 Do you know what those comments refer to?

20 A. That he is not taking part in any programs in the institution
21 that would help assist him in dealing with his problems of
22 alcohol and violence. He was, I think, had a reputation for
23 drinking and getting into fights.

24 Q. That's my question. Are you saying that that is what you
25 heard?

MR. WALSH, EXAM. BY MR. PUGSLEY

MR. WALSH, EXAM. BY MR. MURRAY

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A. Well, I read, previously, we addressed that report previously and that indicated that he had been, you know, muscling people in the institution.

Q. Yes.

A. So that's...

Q. But you had no other information about his background concerning alcohol and violence apart from that earlier report of October the 19th, or did you?

A. None other than a general, how will I say, description that he had been involved in problems with the law previously.

MR. PUGSLEY

Thank you.

EXAMINATION BY MR. MURRAY

Q. Mr. Walsh, my name is Donald Murray. I appear on behalf of William Urquhart. I take it you dealt with Mr. Urquhart on a number of occasions?

A. Yes, I have.

Q. And, in fact, he had been the one to usher you into Chief MacIntyre's office on this visit that you made...

A. I'm not positive on that.

Q. It's likely that it wasn't; otherwise, you would have remembered him.

A. Yeah.

1 MR. MURRAY

2 I have no further questions.

3 EXAMINATION BY MR. ROSS

4 Q. Mr. Walsh, my name is Anthony Ross and I'd like to clarify
5 something. Perhaps you could have a look at Exhibit 69.
6 Have you got that handy? I think that's it in your hand.

7 A. Okay, yeah.

8 Q. There is a Progress Summary that's dated November 16, 1981.
9 Mr. Pugsley referred you to it, signed by "M. MacWilliam."
10 Have you got that?

11 A. 16th of November '81?

12 Q. Yes.

13 A. Yes.

14 Q. This appears to be page two of two. Do you know whether or
15 not there was a page one?

16 A. No.

17 Q. I see. How long had you worked in the Sydney area?

18 A. I moved here in 1980, just after Mr. Lynk left and I was the
19 replacement later on.

20 Q. You succeeded him.

21 A. Yes.

22 MR. ROSS

23 Thank you very much. I have no more questions.
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EXAMINATION BY MR. WILDSMITH

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Q. My name is Bruce Wildsmith and I'm here for the Union of Nova Scotia Indians. A couple of questions. I'm looking at the Progress Summary Report written by Mr. MacWilliam. Can you clarify a couple of points for me? On the portion that is at the top of this page, Item #7 or Block #7, it says: "TA eligibility date." Am I correct in thinking that that is the date at which Mr. Marshall was eligible for a temporary absence?

A. That's, is that the one dated 16th of November '81?

Q. It's signed in October of 1981 by Mr. MacWilliam. It's what's called a "Progress Summary".

A. Yes.

Q. And I'm looking at Block 7.

A. Okay.

Q. And that says "TA Elig. date." Is that the date at which Mr. Marshall was eligible for a temporary absence?

A. Yes.

Q. And so that was in 1975, some three and a half years after his conviction?

A. Yes.

Q. And I take it from reading this report in 1981 that the community or assessment or evaluation that Mr. Lynk just gave evidence in relation to did not result in a temporary absence, escorted or unescorted.

A. No.

1 Q. That's right, is it?

2 A. That's right.

3 Q. And I also see on page one of this document where, under the
4 heading of "Transfer Release Supervision," it refers to being
5 granted a day parole? Is that the same or something
6 different from what Mr. Lynk described as an unescorted...Or,
7 sorry, as an escorted temporary absence?

8 A. That's different from an unescorted temporary absence. It's a
9 day parole for a specific block of time.

10 Q. That's different than an escorted temporary absence?

11 A. Yes, that's granted by the board.

12 Q. Now with respect to the recommendation of the case
13 management team as disclosed in this report, one of the
14 items, Item #2 at the bottom of the last page was that Mr.
15 Marshall was to remain on the Membertou Reserve?

16 A. On this same report you're referring to?

17 Q. Yes.

18 A. Okay.

19 Q. Block #19 on this form.

20 A. Remain, yes, remain on the Membertou Reserve.

21 Q. In your experience in dealing with native inmates whose
22 home is on an Indian reserve, is it common to restrict such a
23 temporary absence to the reserve itself?

24 A. Repeat your question?

25 Q. I'm wondering whether it's common when dealing with a

1 native inmate whose home is on an Indian reserve to restrict
2 the temporary absence to the reserve itself? That is to limit
3 their degree of mobility to the reserve community?

4 A. It would depend, yes, it would depend on the case. It would
5 depend on the reaction of police towards this person being in
6 the community at large. It would depend on the severity, as I
7 indicated, of the offence. And if we could use a perimeter as
8 a, well, you deny him coming to your community, in
9 particular, how about a restriction to this reserve and if he
10 moves off it, we will suspend him right away.

11 Q. Is it fair to say, then, that the case management team must
12 have thought that restricting Mr. Marshall to the reserve was
13 a reasonable compromise between...

14 A. Yes.

15 Q. The fact that the reserve was receptive to him but Mr.
16 MacIntyre and the Sydney Police force were not receptive...

17 A. Yes.

18 Q. To him in the community at large. And I guess it's fair to say
19 that with respect to assessment, like Mr. Lynk's assessment,
20 the reaction of the reserve community itself is very
21 important.

22 A. Yes.

23 Q. And that's why you contacted Chief Christmas, for example.

24 A. Yes.

25 Q. I'm also wondering whether it would be of assistance in

1 making a decision like that to have someone on the reserve, a
2 regular resident of the reserve who would have some
3 additional responsibility to see that a condition like this were
4 met?

5 A. Yes, it would be very valuable.

6 Q. Do you have any experience with anyone on any Indian
7 reserve, to your knowledge, being given such additional
8 responsibilities to insure that somebody on a leave of absence
9 like this does meet the conditions?

10 A. We utilize people on reserves, some people, maybe the police
11 on that particular reserve, as in Eskasoni. He may be a
12 member of the Band Council. Maybe a drug counsellor, an
13 active member in Alcoholics Anonymous who we use as a
14 liaison person, and who we deem trustworthy and will give us
15 information, act as a support, a volunteer, a support person
16 for us.

17 Q. I take it that none of those people have an official
18 appointment to carry out that function but it's more an
19 informal liaison.

20 A. Informal.

21 Q. Would such informal liaison take place during the time that
22 the prisoner is on the temporary leave?

23 A. Yes.

24 MR. WILDSMITH

25 Thank you. Those are all my questions.

7483 MR. WALSH, EXAM. BY MR. WILDSMITH

1 MR. CHAIRMAN

2 Thank you, Mr. Walsh.

3 12:38 INQUIRY ADJOURNED TO MONDAY, JANUARY 19TH AT 0930.

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REPORTER'S CERTIFICATE

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I, Margaret E. Graham Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



Margaret E. Graham

DATED THIS 14th day of January , 1988, at Dartmouth,
Nova Scotia