

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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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

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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.

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

A. Yes.

Q. And can't find it.

A. Yes, that's right.

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

A. That's right.

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

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

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

A. Yes.

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

A. Yes.

Q. 1980. And you indicate to him there in the third line:

As I indicated to you several times before, appeals to the Supreme Court of Canada can only be undertaken by Nova Scotia Legal Aid with leave of the Commission..."

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

3  
4 A. I don't recall. You know, I feel, when I read these things, I  
5 feel really badly, you know, that... I don't know whether I  
6 discussed that with him in person. I had mentioned in the  
7 previous letter that an appeal to the Supreme Court of Canada  
8 would have to be done through, with the approval of the  
9 Legal Aid Commission but I don't know whether I ever  
10 discussed it personally with him. I probably would have but  
11 I can't say for sure.

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

13  
14 However, you do mention the Parole Board will  
15 not consider you for parole as long as the appeal  
16 is still there. I do have some questions about  
17 that in view of the fact there is no appeal in  
18 existence. It might be a consideration if an  
19 appeal to the Supreme Court of Canada had been  
20 launched and is in the works, but as I  
21 understand it, there has been no such appeal  
22 commenced as yet.

23 And then you say:

24  
25 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

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Q. Did you have any contact with Junior Marshall subsequent to November of 1980?

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

5

6

Q. Thank-you.

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MR. CHAIRMAN

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

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MS. GASS

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

EXAMINATION BY MS. DERRICK

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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

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

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

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

23 A. Yes.

24 Q. ...had ready access to before. When you went to work for  
25

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.

24 MS. DERRICK

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

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 MR. PRINGLE

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

8 MS. DERRICK

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

11 MR. CHAIRMAN

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

14 MS. DERRICK

15 Thank-you. Thank-you, Ms. Gass.

16  
17 EXAMINATION BY MR. PUGSLEY

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

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

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

22 Q. Can you give us an approximation?

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

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.

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

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

Q. There is, yes.

A. In the justice system.

Q. Yes.

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

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

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

Q. Uh-hum.

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

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

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

11 A. Yes.

12 Q. Behind this report.

13 A. Uh-huh.

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

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

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

19 A. No, probably not.

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

22 A. I would say back then it was pretty, although it was starting  
23 to become more open, but there was a time certainly when  
24 you didn't have access to very much at all. It was very  
25 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

1 A. Yes, I was.

2 Q. In what capacity?

3 A. I was a parole service officer.

4 MR. CHAIRMAN

5 What was that again, please?

6 MR. SPICER

7 '71 to '79, My Lord.

8 BY MR. SPICER

9 Q. Can you explain to us in your role as Parole Service Officer  
10 what your functions would have been?

11 A. Generally supervising parolees in the community, conducting  
12 community investigations, doing post-sentence reports for the  
13 institution. That's basically it.

14 Q. You would have been a person responsible for doing  
15 community assessments of, during your tenure with the  
16 Parole Service, or the Correctional Service, rather?

17 A. I did community assessments.

18 Q. And can you explain to us the difference between Correctional  
19 Service of Canada and National Parole Board? How did that  
20 work?

21 A. Well, the Parole Board is responsible for granting paroles.  
22 They're the decision-making body. The Parole Service or  
23 Correctional Service is comprised of the penitentiaries and the  
24 community wing, which is the Parole Service. And we do  
25

1 investigations and make recommendations, but the Parole  
2 Board itself makes the decisions. They grant parole and can  
3 revoke parole.  
4

5 Q. And you, in fact, provide the information that the National  
6 Parole Board make its decisions on.

7 A. Right.

8 Q. And we shouldn't take from the fact that you're called a  
9 "Parole Service Officer" that you worked for the Parole Board,  
10 because you didn't, is that correct?

11 A. I didn't work for the Parole Board.

12 Q. Can you explain to us the scheme of absences from the  
13 institution that an inmate is allowed to take. After he's been  
14 there for a period of time, he starts to get into the process of  
15 getting out again and there are different types of absences to  
16 which he's entitled. Can you explain how an inmate moves  
17 through those different types of absences?

18 A. Well, every inmate doesn't have to move through them. Some  
19 inmates go right out on full parole, but there are different  
20 types of releases. There's an escorted TLA or temporary  
21 leave of absence.

22 Q. Would that be the first type of absence generally that an  
23 inmate would be entitled to?

24 A. I would say a long-term inmate.

25 Q. Let's deal with a person serving a life sentence.

- 1 A. With a life sentence, I would say yes, they would probably go  
2 out on an escorted pass.
- 3 Q. And an escorted pass would be what?
- 4 A. While you're with an officer from the institution at all times.
- 5 Q. An officer from the institution as opposed to, say, for instance,  
6 somebody like yourself?
- 7 A. Right.
- 8 Q. And that would be, for instance, take in Junior Marshall's  
9 case, the sort of pass that he would get to go and play ball  
10 from time to time?
- 11 A. Play ball, play cards, whatever.
- 12 Q. Outside the institution.
- 13 A. Right.
- 14 Q. Is there then a type of pass known as a TLA?
- 15 A. Well, that would be the unescorted TLA.
- 16 Q. Unescorted temporary leave of absence?
- 17 A. Right.
- 18 Q. In the case of a person serving a life sentence, is that the sort  
19 of pass that has to be granted by the Parole Board itself?
- 20 A. At that time, it's my understanding that it would have to be  
21 granted by the Parole Board.
- 22 Q. Would that have been the case with the escorted pass or  
23 could that be done by the institution itself?
- 24 A. I believe that could be done at that time by the institution.  
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Q. And in deciding whether or not an inmate is to be entitled to an unescorted pass, would you from time to time be asked to go out to the community to which that inmate was to be returning and asked whether or not they wanted him there?

A. That's correct.

Q. And would you have done a number of those in respect of various inmates during the years that you worked for Correctional Services?

A. Many.

Q. Many? Is it more than a hundred?

A. Hundreds.

Q. Hundreds? Would you have done those throughout Nova Scotia?

A. Right.

Q. As part of that, would you from time to time go and talk to the police departments in the various cities and towns to which the inmate might be returning?

A. Always.

Q. Always? And would it then be part of your regular duties to go to the police station and sit down and chat with a police officer about his attitudes about whether or not somebody ought be coming back to the community?

A. I usually got the police reaction, what they felt about the person coming back.

1 Q. I show you Exhibit 69. On the fifth page, third, fourth and  
2 fifth pages of that exhibit, there appears to be a document  
3 concerning "Community Assessment in connection with Junior  
4 Marshall"? And then on the last, the third page of that  
5 document, that's you, "Kevin Lynk"?

6 A. That's right.

7 Q. The document which precedes that, "National Parole Service,  
8 Sydney, from Diahann McConkey" indicating what the  
9 community assessment should be. Would you have had that  
10 document before you went and did the community  
11 assessment?

12 A. I would have to have that, yeah.

13 Q. And that document indicates "To NPS", which is what,  
14 National...

15 A. Parole Service.

16 Q. National Parole Service in Sydney. The people that should be  
17 spoken to in this particular case?

18 A. Yeah.

19 Q. And in connection with the community assessment, if you  
20 could turn to page two of the assessment itself, the note that  
21 you spoke with Mr. Rosenblum, who represented Junior  
22 Marshall during the trial. Can you give us, other than what's  
23 in the note, can you give us any indication of the discussion  
24 you had with Mr. Rosenblum?  
25

1 A. Well, it wasn't a very long discussion. He explained that there  
2 wasn't much that could be done with regard to an appeal at  
3 the time. As far as I can recollect, he was of the opinion that  
4 all avenues had been exhausted and that there was nothing  
5 else to talk about with regard to Junior Marshall.

6 Q. Towards the end of the paragraph dealing with Mr.  
7 Rosenblum, you indicate:

8  
9 Mr. Rosenblum indicated that there was  
10 absolutely nothing that can be done and he  
11 is quite frankly sick of hearing Donald  
12 Marhsall's name mentioned.

13 Was that something that he said to you?

14 A. That's right.

15 Q. The next paragraph indicates that you also spoke with Chief  
16 John MacIntyre.

17 A. That's correct.

18 Q. Of the Sydney Police Department. Had you from time to time  
19 gone to the Sydney Police Department in connection with  
20 other cases and spoken to people there?

21 A. Many times.

22 Q. Many times. Would there be a person that you would  
23 normally see when you went to the Sydney Police  
24 Department?

25 A. The majority of the contacts were with Detective Urquhart.

1 Q. And would you be speaking to Detective Urquhart concerning  
2 cases that he had investigated or cases other, cases that would  
3 include...

4 A. All cases.

5 Q. All cases. So that would include ones that he didn't have any  
6 personal involvement with himself?

7 A. Right.

8 Q. On this particular occasion, did you go then to Inspector  
9 Urquhart?

10 A. Yes, I did.

11 Q. What happened?

12 A. He took me into Mr., or Chief MacIntyre's office.

13 Q. Before you got to Chief MacIntyre's office, did you, when you  
14 went to see Mr. Urquhart, what did you say to him?

15 A. I told him that I was doing a community assessment with  
16 regard to Junior Marshall and the possibility of him coming  
17 home for three days and he said, "Well, if you're talking about  
18 Junior Marshall, we go in to see the chief."

19 Q. Did that surprise you?

20 A. Yeah.

21 Q. Why did it surprise you?

22 A. Well, it was the only time I was ever in the chief's office,  
23 really, on any case.  
24  
25

1 Q. So you went in the chief's office. Did Mr. Urquhart stay or did  
2 he leave?

3 A. He left.

4 Q. He left? And tell us what happened when you went in to see  
5 the chief?

6 A. Well, to the best of my recollection, it was a long time ago, but  
7 he was generally against Junior Marshall coming home  
8 basically because he feared reprisals, either against the  
9 witnesses or the black community against Junior Marshall or  
10 whatever. He was just basically against it all the way around.

11 Q. How long were you in Chief MacIntyre's office?

12 A. I would say approximately 45 minutes.

13 Q. And during the course of that 45 minutes, did he go through  
14 the original case with you in any detail at all, the trial?

15 A. Yes, he was talked about the case and the inconclusive  
16 evidence that appeared to be there. There was no grounds  
17 for appeal. He had spoken about problems with the Marshall  
18 family, in general, which I don't know if he mentioned  
19 particular names, but...

20 Q. What sorts of things was he indicating to you?

21 A. Well, just that there would be, it wasn't a good move to bring  
22 him back. There'd be trouble. It wasn't a good idea.

23 Q. Did you get a feeling as to what his attitude was toward  
24 Junior Marshall himself?  
25

1 A. I can't remember particular words or conversations, really,  
2 but the attitude was not good.

3 Q. Did he seem particularly keen on getting over to you the  
4 question of the trial and evidence that had been heard at the  
5 trial?

6 A. Yes, he spoke about the trial, which to me, was rather  
7 different because usually after that long a time, you don't go  
8 into the trial. You're more interested in what is happening to  
9 the inmate now or what plans does he have, why is he coming  
10 for three days, that type of thing.

11 Q. Was it a conversation between the two of you or was Mr.  
12 MacIntyre essentially giving you his views?

13 A. Well, it was, I would say, mostly a one-way conversation, him  
14 giving me his views.

15 Q. Did you query him about those views as to why he didn't  
16 think Mr. Marshall should be coming back?

17 A. Well, I did but the types of things that he was saying about  
18 the family or the victim, the witnesses and that type of thing,  
19 I just didn't go into any detail because I wasn't living in the  
20 area at the time of the conviction, I didn't know that much  
21 about the whole thing. I hadn't read any transcripts. I just  
22 didn't, I never heard any talk of any reprisals. I had no  
23 knowledge of anything like that.

24 Q. You didn't know anything at all about Junior Marshall?  
25

1 A. Not really.

2 Q. At the time?

3 A. Not really.

4 Q. Did you, from your experience, did you think it was peculiar  
5 that Chief MacIntyre went into the detail that he went into  
6 with you?

7 A. Well, I thought it was very peculiar that I was in his office in  
8 the first place and then to go into detail about the airtight  
9 case and that type of thing that they had against him. I  
10 wasn't really interested in that at that particular point.

11 Q. Are there circumstances where you would expect in going to  
12 speak to a police officer that something about the  
13 circumstances of the actual trial or case would be related to  
14 you? Is there a time, for instance, if the person has recently  
15 been convicted?

16 A. Oh, very recently. Before I left the Parole Service, we would  
17 do a post-sentence report and then we would get very  
18 involved in the offence and that type of thing. But not after  
19 eight years or whatever. You generally don't discuss the  
20 guilt or the offence itself.

21 Q. Over the years, you would have spoken to Detective Urquhart  
22 on other occasions.

23 A. Yes.

24

25

1 Q. And you would have also spoken to other police forces around  
2 the province.

3 A. Right.

4 Q. Was the Sydney Police Department, can you tell us from your  
5 experience, was the Sydney Police Department more prone to  
6 say, "We don't want this person back," than other  
7 departments would be?

8 A. The Sydney Police, the contacts that we had there, the Sydney  
9 Police were, I would say, generally against parole itself. Not  
10 necessarily the particular individual you were talking about  
11 but they were generally more negative than most police that  
12 I've dealt with.

13 Q. After you left Chief MacIntyre's office, did you go back and  
14 see Detective Urquhart on the way out or did you just leave?

15 A. I just left.

16 Q. On the next page of your report in the "Appraisal" section, you  
17 comment:  
18

19 While there appears to be support for  
20 Marhsall in the community and little or no  
21 negative reaction to his case on the  
22 Membertou reserve, there still remains the  
23 problem of Marshall himself denying his  
24 guilt and being supported in this by an  
25 overprotective mother. Time does not  
appear to diminish their feelings in this  
regard but I would suggest it is quite  
important for Marshall to open up and

1 discuss the offence before he is considered  
2 for temporary leaves of absence or parole.

3 Why did you feel that way?

4 A. Well, supervising parolees in the community, I find that if  
5 people are not truthful in the institution, it seems to carry  
6 right through the, to the community and then they're not  
7 truthful when they're under supervision outside the  
8 institution. And it's not my job to second guess the courts.  
9 It's not uncommon to hear somebody say that they're not  
10 guilty, especially in certain types of crimes and I thought at  
11 the time that it was important for him to discuss the offence  
12 and to be honest, which he was being, but I mean I didn't  
13 know this at the time.

14 Q. You didn't know that at the time.

15 A. It just makes for a, and I think he was just eligible for an  
16 unescorted TLA and I felt that this might be a good  
17 opportunity to get him at this point to discuss it.

18 Q. Is it fair to say that your experience, generally, is that it's  
19 easier to work with somebody who you think is come to  
20 terms with their crime and has admitted his guilt than it is  
21 with somebody who doesn't.

22 A. Well, to me I can equate it as far as working with an alcoholic,  
23 you can try to work with an alcoholic but if he doesn't  
24 recognize that he's an alcoholic, then you can't work with him.  
25

1 Q. How would you describe your report, Mr. Lynk, in terms of  
2 whether or not you're supportive of Mr. Marshall or not?

3 A. Well, with the exception of the comments that I made about  
4 that, I feel that it was, it is a positive report. There's, with  
5 the exception of the objection of the police, everybody else  
6 that I contacted was, they were not against the three-day  
7 pass.

8 Q. How seriously would you take the objection of the police?

9 A. I wouldn't take it very seriously.

10 Q. Why not?

11 A. This particular police force, I, these particular individuals, I  
12 would not, I just had too much experience with them. They're  
13 negative too much. If it was another police force where there  
14 was a fair exchange between, you know, if they asked, "How  
15 is the inmate getting along?" Or, "What's he going to do?" Or  
16 whatever, instead of just blanket, "No, we're not interested in  
17 having the guy back here."

18 Q. And was the, "No, we're not interested in having the guy back  
19 here," are you expressing your perception of the attitude of  
20 the Sydney Police Department, generally?

21 A. Generally, and if we put too much emphasis on their opinion,  
22 there would be very few come back to Sydney.

23 Q. I'll just ask you one more question. Within the scheme of,  
24 "No, we don't want somebody back," as you expressed as a  
25

MR. LYNK, EXAM. BY MR. SPICER

1           general attitude of the Sydney Police Department, would you  
2           say that in your interview with Chief MacIntyre that it was  
3           anything more than that?  
4

5           A.    Would you repeat that, please?

6           Q.    Was it anything more than just the general, "Well, we don't  
7           want this person back," in respect of Junior Marshall?

8           A.    I don't know.    Maybe, because he showed such an interest in  
9           the case, there might have been something in particular, but  
10          it's not for me to say, I don't know.

MR. CHAIRMAN

11          Before you leave there, Mr. Spicer, I would be interested in  
12          hearing what effect or the information or the opinion of Mr.  
13          Bernie Francis, who is referred to in some detail    on page two of  
14          his report had upon Mr. Lynk in this?

MR. SPICER

15          Q.    Do you see the reference to your contact with Bernie Francis  
16          on    second page?  
17

18          A.    Right.

19          Q.    Mr. Chairman is asking you what effect Mr. Francis' opinion  
20          would have had on you?  
21

22          A.    Well, two different effects.    He, at the time, seemed convinced  
23          that Marshall was guilty.    But then, again, from a security  
24          point of view, Mr. Francis didn't foresee any problems with  
25          Marhsall going to the reserve.    So I tried to be, in this report,

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I think as far as possible. He was welcomed on the reserve.

There wasn't a, he didn't appear to be a security risk there.

Q. Did you know Mr. Francis before you carried out this particular assessment?

A. Yes, I did.

Q. Was he a person whose views you respected?

A. Definitely.

Q. Can you give us any reason why that was?

A. Well, he was a court worker with the, I believe he was working with Union of Nova Scotia Indians, and he's a well respected person in the community.

Q. And you had no reason to second guess his views.

A. Not really.

MR. SPICER

Thank you.

11:00 a.m. INQUIRY RECESSED.

MR. LYNK, EXAM. BY MS. DERRICKINQUIRY RESUMES - 11:17 a.m.EXAMINATION BY MS. DERRICK

1  
2  
3 Q Mr. Lynk, my name is Anne Derrick and I represent Donald  
4 Marshall, Jr.. You have Exhibit 69 in front of you, do you?

5 A. Right.

6 Q The covering document, you would have received that in  
7 advance of going into the community to do your assessment,  
8 is that correct?

9 A. I must have.

10 Q And that indicates on page 2 in paragraph 5 in the sentence  
11 referring to, "Chief MacIntyre recently expressed strong  
12 opposition to the possibility of Marshall returning home for  
13 his grandmother's funeral." Do you recollect that being the  
14 reason why Mr. Marshall desired a temporary leave of  
15 absence from the institution?

16 A. I don't recollect why he wanted, at this point in time, why he  
17 wanted to come back, no.

18 Q That would be a common reason, visiting one's family for a  
19 reason like that would be a common purpose for a temporary  
20 leave of absence in your experience.

21 A. Yes, common, yes.

22 Q And this would have been an escorted leave, is that correct?

23 A. I don't know what it was now. I'd have to...this is the first  
24 time I've seen that in how many years, ten years.

25 Q And you don't recollect when you were doing the community

MR. LYNK, EXAM. BY MS. DERRICK

1 assessment whether you were doing one with respect to a  
2 leave that would have been escorted?

3 A. My understanding would be unescorted, but I could have  
4 been wrong, I don't know.

5 Q. At the time you did the community assessment back in 1978  
6 you would have known that then which kind it would have  
7 been.

8 A. I would have read this letter.

9 Q. Yes, I see.

10 A. And it should say in this letter.

11 Q. Now, in the conclusion of your report...the conclusion of your  
12 report which is page 3, actually page 5 in that exhibit, it  
13 would seem to indicate that Mr. Marshall wasn't considered a  
14 security risk for the purpose of this leave. You refer to Alex  
15 Christmas and to Bernie Francis and Mr. Rosenblum, none of  
16 who expressed any concern about Mr. Marshall harming  
17 anybody if he was released.

18 A. That's correct.

19 Q. Is that correct?

20 A. That's correct.

21 Q. So, is it accurate to say then that the principal concern in your  
22 report was not security but the fact that Mr. Marshall refused  
23 to admit his guilt?

24 A. True.

25 Q. And you've said, I think, that's it not uncommon for people to

MR. LYNK, EXAM. BY MS. DERRICK

1 say that they're not guilty, in your experience.

2 A. Not uncommon.

3 Q. Pretty uncommon for someone to maintain their innocence  
4 after seven years, wouldn't you agree with that?

5 A. Yeah, I haven't had too much experience with people going on  
6 that long with it, no.

7 Q. Any experience at all other than this case if you can recollect?

8 A. Not that I can recollect, no.

9 Q. Now, if you didn't take the police objection very seriously or  
10 that objection of not wanting Mr. Marshall back in the  
11 community for this purpose, because you felt that they were  
12 negative too much, why didn't you say so in your report?

13 A. Well, I guess, the fact that I didn't say it was probably  
14 conspicuous in it's absence. I mean I didn't put much ...in my  
15 appraisal didn't...I didn't mention their objections or give it  
16 much strength. It was already mentioned, I guess, in the  
17 request. It was a foregone conclusion that the, apparently,  
18 that the Chief of Police in Sydney would be against his  
19 release.

20 Q. That's true, and you indicate what Mr. MacIntyre's views  
21 were on that, but you don't say anywhere in your report what  
22 sort of weight you would attach to that view.

23 A. No. I leave that up to the people granting the pass to  
24 determine themselves what weight, because they have his  
25 views.

MR. LYNK, EXAM. BY MS. DERRICK

1 Q. But you're the one with the experience in doing community  
2 assessments.

3 A. Right.

4 Q. Why wouldn't you have been the one to indicate that in your  
5 experience the Sydney Police were very negative, more  
6 negative than other police forces?

7 A. Well, like I say, I think it's just a foregone conclusion. I know  
8 that I prepared an awful lot of cases and they don't, I know  
9 that they don't...I wouldn't have to put that in there, they  
10 know that the Sydney police, or whatever police, they know  
11 the different police departments and I think that they...that's  
12 not a determining factor anyway whether the police are  
13 against it. It doesn't make it or break it.

14 Q. So, what made it or broke in this circumstance was that Mr.  
15 Marshall wasn't prepared to admit his guilt?

MR. BISSELL

17 Objection. He has no idea what made it or didn't make it.

MS. DERRICK

19 Well, he seems to express an opinion now that it wasn't the  
20 police opinion that made it or didn't make it.

MR. LYNK

22 Well, see I wasn't there. I didn't grant it or deny it. I just  
23 give them information from the community.

MR. CHAIRMAN

25 Your responsibility is to provide information and based on

MR. LYNK, EXAM. BY MS. DERRICK

1 | that information then the parole board makes its decision.

2 | MR. LYNK

3 | That's correct.

4 | MR. CHAIRMAN

5 | And reach certain conclusions.

6 | MR. LYNK

7 | That's correct.

8 | MS. DERRICK

9 | Q. So, it wouldn't be common for you to put in your view that  
10 | the police took a negative view of these sorts of things, these  
11 | types of release. That wouldn't be the kind of information  
12 | you'd include in a report like this.

13 | A. I did include it. They are against this...

14 | Q. No, I know, but you've already said that you didn't put much  
15 | weight in that yourself, their objection, because you felt that  
16 | they would just predispose to feeling negative anyway. And,  
17 | what I'm asking you is was it not your practise then to put  
18 | that assessment on your part into your report?

19 | A. No, I didn't feel that it was necessary, no.

20 | Q. I see. So, you knew in your heart or in your experience that  
21 | the police were negative and that would explain their  
22 | reaction, but you didn't typically reflect that in your reports.  
23 | Is that your answer?

24 | A. That's true. That's right.

25 | Q. Now, in the preparation of this report you didn't speak to Mr.

MR. LYNK, EXAM. BY MS. DERRICK

1 Marshall, Sr., is that correct?

2 A. That's correct.

3 Q. Had you had contact with him before, because you're saying...

4 A. No.

5 Q. Not you personally.

6 A. Not me personally.

7 Q. You knew him to be the honorary Chief of the MicMac tribe in  
8 the province.

9 A. Uh-hum.

10 Q. Which is what you've said here. And you knew him to be a  
11 well-respected individual, is that correct?

12 A. That's true. That's right.

13 Q. Now, you do emphasize in your report that the Marshall  
14 family, Mr. and Mrs. Marshall did not accept their son's  
15 conviction. Did it not occur to you that their refusal to accept  
16 his conviction might be a genuine expression that an injustice  
17 had been done?

18 A. It didn't occur to me.

19 Q. So, you assumed that it was simply an inability to come to  
20 grips with the reality and that in Mr. Marshall's case that if he  
21 didn't genuinely believe it then he was being dominated by  
22 his wife, which is the sort of thing you say in your report.

23 A. That's what I thought at the time.

24 Q. Did Mr. Rosenblun or anyone else discuss any of the case's  
25 weaknesses with you?

MR. LYNK, EXAM. BY MS. DERRICK

1 A. The case.

2 Q. Yeah, the actually...he discusses the trial referring to the two  
3 eyewitnesses and saying...

4 A. No, they did not.

5 Q. So, there were no discussions of the fact that one of the  
6 eyewitnesses was very drunk on the night of the incident.

7 A. I wasn't into discussing the case anyway. I wouldn't have.

8 Q. No, I appreciate that. It's just that you...

9 A. No, they did not, no.

10 Q. You refer to the fact that Mr. Rosenblum told you about the  
11 two eyewitnesses and I was wondering if he gave you any  
12 detail about them.

13 A. No, he didn't. Not that I can recall at this time anyway, no.

14 Q. So, you don't recall Mr. Rosenblum telling you that one of  
15 them recanted during the trial.

16 A. No.

17 Q. You also refer on page 2 to Chief MacIntyre stating that the  
18 case was proven conclusively in court, I'm looking at the third  
19 paragraph, with two eyewitnesses, "And also conclusive  
20 evidence from the identification section of the Royal Canadian  
21 Mounted Police." Do you remember what that was? Did he  
22 tell you what that identification evidence was?

23 A. No, because I wasn't interested in discussing the case. I  
24 wasn't after that. So, he was more or less talking at me, and I  
25 wasn't interested in going into the details or the, you know, it

MR. LYNK, EXAM. BY MS. DERRICK

1 was a long time ago and it wasn't my mission to go into that  
2 case again. So, I...

3 Q. So, but information provided to you about the case was just  
4 provided voluntarily by them and you didn't explore it in  
5 any...to any degree.

6 A. No.

7 Q. Now, in your section on Mr. Francis you indicate that, "Mr.  
8 Francis sees no point in his..." Junior Marshall's, "...returning to  
9 the reserve proclaiming his innocence and he agrees that he  
10 should not be released from the institution until he comes to  
11 grips with reality and admits the murder. Was that, the fact  
12 that Mr. Francis felt that way, very influential to your  
13 appraisal at the end of your report?

14 A. No, I wouldn't say.

15 Q. So you had already come to that conclusion yourself and Mr.  
16 Francis simply happened to agree with it.

17 A. No, I hadn't come to any conclusions because Mr. Francis was  
18 only one step in the invest...in my community assessment.

19 Q. I see, but...so you came to a conclusion independently then of  
20 Mr. Francis. It just happened to be the same conclusion.

21 A. And the file, the file or the covering letter that...whatever  
22 information I had at the time, they send me the file and what  
23 I read and the people I talk to.

24 Q. In your training for your job as a parole service officer, were  
25 you given any formal instruction in preparing these kinds of

MR. LYNK, EXAM. BY MS. DERRICK

1 reports?

2 A. Yes.

3 Q. And what did that involve? How were you...in essence how  
4 were you trained to prepare these reports?

5 A. Mostly through experience with a supervisor. I had quite a  
6 few years of experience before coming to the parole service.  
7 I was a probation officer for a good number of years before  
8 this, so I was provided with an outline of types of things we'd  
9 be looking for, and through constant supervision in the  
10 preparing of the reports.

11 Q. So, someone reviewing a report you prepared and making  
12 comments on what it should contain or should have contained  
13 or...

14 A. That's right.

15 Q. ...what it might include. Was there a format that you would  
16 have followed?

17 A. Yes, there was.

18 Q. Can you recollect what that involved?

19 A. Yes, I can.

20 Q. Could you describe it for us?

21 A. It was a very general format because each case is different.  
22 We would prepare a community assessment for some inmates  
23 who are not from the particular area at all. So there would be  
24 no parents to contact for example. Potential employers.  
25 Sometimes the guy would be going to work. You'd have to

MR. LYNK, EXAM. BY MS. DERRICK

1 contact them. Each case was different so that the general  
2 outline you would have to look at and pick from that what  
3 would apply in this particular case and follow it as closely as  
4 you could.

5 Q. So, the general outline would identify the types of people you  
6 would go and speak with, is that correct?

7 A. Types of people and, also, we followed whoever...what they  
8 asked for in the request for a community, purpose for it.  
9 They would ask us to contact particular people or look into  
10 certain situations.

11 Q. And would there be anything in addition to what's included in  
12 this memorandum on the first page, as to what you should  
13 look for from the individuals you are going to go and talk to?  
14 Any direction on how to approach them, how to interview  
15 them and what information to get from them for your report.

16 A. No. Basically we'd go by what the institution wants, the  
17 purpose of the community assessment, and then you'd use  
18 your common sense as to what types things, with regard to  
19 the offence, the inmate, the family, what you're going to give  
20 back.

21 Q. What sorts of things you felt would be relevant.

22 A. Right.

23 Q. To your mandate. And were these reports intended to be  
24 objective?

25 A. Objective.

MR. LYNK, EXAM. BY MS. DERRICK

- 1 Q. Yes. Was that a goal that you were to try and achieve in  
2 preparing them?
- 3 A. No, I wouldn't say.
- 4 Q. So, in fact, they were intended to be subjective.
- 5 A. No, I don't think they were intended to be either. I think  
6 some people might write a more subjective report than  
7 others.
- 8 Q. And...
- 9 A. Yeah, it's not really like a pre-sentence report, you know.
- 10 Q. And so whether it was to be objective or subjective wasn't  
11 laid down anywhere as being the proper way to prepare...
- 12 A. Not to my knowledge.
- 13 Q. And what was...what was your understanding of what these  
14 reports should be? When you prepared them did you  
15 consider you were preparing an objective-type report or a  
16 subjective report?
- 17 A. I would say I'm more objective, except for the guilt, my  
18 opinion that he should...that could be considered subjective, I  
19 guess.
- 20 Q. Your opinion that he should accept his guilt.
- 21 A. Yeah, that's probably a subjective thing on my part, but I  
22 would say that the rest of the report to me is a good report.  
23 It's up to the people that are granting the TLA to make that  
24 decision.
- 25 Q. Would you ever be called in by them once you prepared this..

MR. LYNK, EXAM. BY MS. DERRICK

1 A. No.

2 Q. ...and they were reviewing it, to discuss it any further?

3 A. No.

4 Q. So nobody would contact you once you had completed it to  
5 say, "Well, what did you mean by that, or where did you get  
6 that information or why do you think that's relevant?"

7 A. No.

8 Q. I see. So, it went out of your hands and that was then end.

9 A. It went back to Moncton or Truro office and that's basically it,  
10 unless I left something out and they would call to follow up  
11 on something.

12 Q. So that would sometimes happen that there would be a piece  
13 missing that they wanted pursued further.

14 A. Seldom.

15 Q. Seldom. Okay. Thank-you, Mr. Lynk.

16 11:32 a.m.

EXAMINATION BY MR. PUGSLEY

17  
18 Q. Mr. Lynk, my name is Ron Pugsley. I'm appearing for John  
19 MacIntyre. Did you say in response to a question from my  
20 friend a moment ago that you thought this was a good report?

21 A. Did...do I think it's a good report?

22 Q. Yes.

23 A. It's not one of my best, but it's not bad.

24 Q. Not one of your best. I see. In what way is it delinquent or  
25 deficient?

MR. LYNK, EXAM. BY MR. PUGSLEY

1 A. I have no idea.

2 Q. I see. But you say it's not one of your best. Is that what you  
3 said?

4 A. I guess I said that.

5 Q. How old are you now?

6 A. How old am I?

7 Q. Yes.

8 A. Forty-three I think.

9 Q. And what do you do now?

10 A. I own my own business.

11 Q. And where is that?

12 A. In Sydney.

13 Q. And what kind of a business is that?

14 A. Restaurant business.

15 Q. And how long have you been in that business?

16 A. Since I left the parole service.

17 Q. And when was that?

18 A. In 1979.

19 Q. Some of us have been in Sydney for awhile. What restaurant  
20 is it?

21 A. Burger King.

22 Q. Pardon.

23 A. Burger King.

24 Q. Burger King, right. How long had you been with the service  
25 before 1971?

MR. LYNK, EXAM. BY MR. PUGSLEY

1 A. How long was I with the service before '71?

2 Q. Yes.

3 A. I wasn't.

4 Q. I'm sorry. When did you join the service?

5 A. 1971.

6 Q. Yes. The communication that you received from Diahann  
7 McConkey, this was the only communication you had with  
8 respect to this particular case, I take it. This was the only  
9 instruction you received with respect to this particular case.

10 A. Yeah.

11 Q. Yes.

12 A. Well, there probably was a file with it.

13 Q. I beg your pardon.

14 A. There probably was a file with this covering letter.

15 Q. I see. But as far as instructions were concerned these would  
16 be the only instructions?

17 A. That's right.

18 Q. Yes. And the only response that you would make would be  
19 the written response, that is your three-page report?

20 A. That's all the response there would be, yeah.

21 Q. Yes. You were living in Sydney at the time, were you?

22 A. Yeah.

23 Q. So, it wasn't difficult for you to contact the people that are  
24 referred by Miss McConkey in the first two pages of her...of  
25 her instruction. It's not difficult for you to see these people.

MR. LYNK, EXAM. BY MR. PUGSLEY

1 A. It wasn't.

2 Q. No, you lived in the same city. But the fact is you didn't see  
3 them all, did you?

4 A. Who didn't I see? I don't know. I never saw this letter in ten  
5 years. I don't know. Can you...

6 Q. Well, let's take a look. Presumably Miss McConkey would  
7 expect you to go to see these people and interview them  
8 personally, I take it.

9 A. Well, who did...who didn't I see?

10 Q. Well, no. Just answer my question. I take it that Miss  
11 McConkey would expect that you would go to see these people  
12 to discuss these matters with them, would she?

13 A. She asked me to contact them.

14 Q. Well...

15 A. "In conducting a community assessment contact should be  
16 made with..."

17 Q. What do you take that to mean?

18 A. Contact.

19 Q. You mean to see them personally, interview them.

20 A. Well, who didn't I see?

21 Q. Did you anticipate that her instruction was for you to see  
22 these people personally?

23 A. No.

24 Q. I see. You thought that a telephone interview would have  
25 been good enough.

MR. LYNK, EXAM. BY MR. PUGSLEY

- 1 A. Who did I have the telephone interview with?
- 2 Q. We'll get to that in a moment. But my...you lived in Sydney, a  
3 request is made to you to contact people. Miss McConkey, I  
4 take it, does not live in Sydney. Where does she live?
- 5 A. I have no idea.
- 6 Q. I see. But in any event, since you lived in Sydney one would  
7 anticipate that if a request is made for you to contact people  
8 you are to go see them. Did you not take...
- 9 A. Not necessarily.
- 10 Q. Not necessarily. Okay. Well, there's a total of six different  
11 points that you should check and since there's two in number  
12 1 there's a total of seven people you were to contact. Now,  
13 how many of those people did you see?
- 14 A. Okay. The first one, I spoke with...I went to the home and I  
15 spoke with Mrs. Marshall.
- 16 Q. Right. You saw her. Okay. That's one out of two. You didn't  
17 see Mr. Marshall. Did you see Chief Alex Christmas.
- 18 A. I spoke to him on the telephone.
- 19 Q. Telephone. So you didn't see him.
- 20 A. I wasn't asked to see him.
- 21 Q. I see.
- 22 A. I was asked to contact him.
- 23 Q. All right. Okay. And you...and you defined that as being  
24 either a telephone call or seeing him.
- 25 A. Yeah, I do.

MR. LYNK, EXAM. BY MR. PUGSLEY

1 Q. Okay. All right. You didn't see Rosenblum.

2 A. No.

3 Q. Just talked to him on the phone. You didn't see Murphy. You  
4 didn't even contact Murphy.

5 A. Who is Murphy?

6 Q. Well, look at the top of page 2.

7 A. And who is he?

8 Q. I have no idea.

9 A. Neither do I.

10 Q. Okay. Did you make any effort to find out?

11 A. Yeah.

12 Q. And what did you find out?

13 A. Nothing.

14 Q. You found nothing, I see.

15 MR. CHAIRMAN

16 Referred to at the bottom of page 2, was he?

17 MR. PUGSLEY

18 At the bottom of page. Of his report, My Lord, or, I beg your  
19 pardon.

20 MR. CHAIRMAN

21 "The lawyer mentioned in the request for a community  
22 assessment, Mr. Murphy could not be contacted."

23 MR. PUGSLEY

24 I see.

25 MR. CHAIRMAN

MR. LYNK, EXAM. BY MR. PUGSLEY

1 "No one seemed to be aware of such a person."

2 MR. PUGSLEY

3 Thank-you. I'm sorry. I missed that point.

4 Q. Did you make any attempt to find out whether or not a  
5 lawyer was acting for Marshall?

6 A. Was acting for him?

7 Q. Yes.

8 A. No, I didn't.

9 Q. Okay. How many parolees in the Sydney area had been  
10 charged with murder and had been convicted of that offence  
11 or an offence almost as significant as that, apart from Donald  
12 Marshall?

13 A. How should I know?

14 Q. Well, I guess my question is were there any and would this  
15 perhaps have been one of the reasons why you saw Chief  
16 MacIntyre was because of the serious nature of this offence?

17 A. Could be.

18 Q. I see. MacIntyre discussed the case with you and Rosenblum  
19 did as well.

20 A. Uh-hum.

21 Q. Correct.

22 A. That's right.

23 Q. Yes. And the reason that MacIntyre offered...the reason that  
24 you have in your report is that there might be some reprisals  
25 from the black community.

MR. LYNK, EXAM. BY MR. PUGSLEY

1 A. If that's what it says in my report.

2 Q. Yes. Did you think this was a significant reason, and  
3 important reason?

4 A. No.

5 Q. You did not. You did not think there would be any reprisals  
6 from the black community.

7 A. I had no reason to think that there would be.

8 Q. Did you cause any investigation to determine whether or not  
9 there would be?

10 A. No, I didn't.

11 Q. Didn't interview anyone?

12 A. If I did they'd be in the report.

13 Q. We can take it you interviewed no one then. Although you  
14 felt...you must have felt there was some significance in  
15 MacIntyre's remark because you write, "During my house  
16 visit at the Marshall home Pius recalled that he had to sit in  
17 the upstairs window alone with a shotgun while his family  
18 resided in Whycomomagh." What's that all about?

19 A. Just about what it says.

20 Q. Does that indicate the fear of reprisals from the black  
21 community?

22 A. Eight years ago.

23 Q. Yes. But in any event it was related to you.

24 A. Yeah, and I put it in the report.

25 Q. By Pius Marshall.

MR. LYNK, EXAM. BY MR. PUGSLEY

1 A. Yeah.

2 Q. And you not only put it in the report, you put it in  
3 immediately after Chief MacIntyre's comments about his fear  
4 of reprisals. So you presumably felt there was some  
5 significance in Pius' remark.

6 A. Or I wouldn't have put it in there.

7 Q. Yes. There's nothing in your report to indicate that you felt  
8 that this was an unreasonable concern on the part of the  
9 police chief.

10 A. No.

11 Q. Did you feel that it was an unreasonable concern?

12 A. No, I wouldn't say it was unreasonable, but I didn't put too  
13 much emphasis on it.

14 Q. You didn't say that, did you, didn't say that anywhere?

15 A. Well, my saying nothing I didn't put much emphasis on it.

16 Q. I see.

17 A. But I did mention it.

18 Q. Yes. How long had you known Mr. Francis?

19 A. Oh, probably since 1975.

20 Q. Yes. Had a great deal of respect for him.

21 A. That's true.

22 Q. And toward his opinions.

23 A. Yeah.

24 Q. Yes. Okay. Your comment about two-thirds of the way down  
25 the page, "Mr. Francis recalls Marshall as being an excellent

MR. LYNK, EXAM. BY MR. PUGSLEY

1 liar and is able to convince almost anyone of his innocence."

2 The comment that Francis recalls Marshall as being an  
3 excellent liar relates, does it, to a knowledge of Marshall over  
4 a lengthy period of time?

5 A. Well, apparently Bernie Francis and Junior knew each other  
6 for years.

7 Q. For years, yes. And was Francis' opinion not an isolated  
8 opinion with respect to this particular occurrence, but an  
9 opinion obtained over knowing Marshall for his life?

10 A. I understood it was over a number of years he formed that  
11 opinion.

1 11:42 a.m.

2 MR. PUGSLEY

3 Thank you.

4 EXAMINATION BY MR. MURRAY

5 Q. Mr. Lynk my name is Donald Murray, I represent William  
6 Urquhart. At the time you were working in Sydney with the  
7 Parole Service between 1971 and was it '77?

8 A. '71 to '79.

9 Q. '71 to '79. The National Parole Service had an office in  
10 Sydney, did they?

11 A. Yes, they did.

12 Q. And how many people were working in that office?

13 A. Which year?

14 Q. At the time this report was prepared, '78.

15 A. I don't know. Maybe four.

16 Q. And that would be four people doing the same kind of  
17 community assessments that you did?

18 A. Well, I think there was a Director and three parole officers,  
19 yeah.

20 Q. And by parole officers you mean people such as yourself.

21 A. Yeah.

22 Q. Would the Director do any assessments?

23 A. No.

24 Q. With respect to particular files each parole officer, I take it,  
25 would go down and deal with the police individually?

1 A. Yeah.

2 Q. So with respect to the community assessments that were done  
3 by other parole officers, you can't say that the police attitude  
4 was the same as what you experienced.

5 A. Not on their particular cases, no.

6 Q. You stated in your direct evidence that your main contact  
7 throughout your years there was with William Urquhart.

8 A. He was the designated contact.

9 Q. Would you call him beforehand and make an appointment or  
10 would you just go down on an informal basis and if he had  
11 time you'd have a discussion.

12 A. Sometimes I would call him.

13 Q. Sometimes you'd drop in?

14 A. Sometimes I'd drop down.

15 Q. So it's not invariable that he knew you were coming.

16 A. Not invariable.

17 Q. Yeah. He would not always know that you were on your way  
18 down.

19 A. No.

20 Q. Do you recall specifically whether he knew you were coming  
21 on this particular occasion for the preparation of this report.

22 A. I can't recall. I can't recall.

23 Q. In your discussions with him generally, and I take it you  
24 contacted him on hundreds of these cases...

25 A. No, not hundreds. I've done hundreds but they weren't all

1 with him. They weren't all in Sydney.

2 Q. What was your area?

3 A. Which years?

4 Q. What areas did you cover between '71 and '79?

5 A. Pictou County, Colchester County, Cumberland County,  
6 Antigonish County, Guysborough County, Inverness County,  
7 Victoria County, Richmond County, Cape Breton County.

8 Q. And was your work in Cape Breton County restricted to any  
9 particular years?

10 A. Yes. '75 to '79, I was in Cape Breton.

11 Q. Now between 1975 and '79, then, when you were dealing,  
12 you'd be dealing with William Urquhart during that time.

13 A. For cases in Sydney.

14 Q. And I take it that you expected him to be candid with you  
15 when you came in?

16 A. That's right.

17 Q. And he was.

18 A. Candid?

19 Q. Yes. Gave you his reasons for his feelings.

20 A. That's right.

21 Q. And he was sincere?

22 A. I don't know about that.

23 Q. What was your impression?

24 A. My impressions were that he wasn't always sincere.

25 Q. He was not always sincere. Is that what you're saying?

MR. LYNK, EXAM. BY MR. MURRAY

1 A. That was my impression. You asked me for my impression  
2 and...

3 Q. Yes. And why was that, sir?

4 A. Why?

5 Q. Yes.

6 A. Well in one case I took an ex-inmate down for a taxi driving  
7 license and Mr. Urquhart, the guy hadn't been in trouble for  
8 quite some time and Mr. Urquhart told me that he would not  
9 get a taxi driving license in Sydney ever. So I didn't really  
10 think he had the interests of some of these offenders....

11 Q. Is that part of your duties as a parole officer or was this  
12 something you were doing...

13 A. Was that in my job description?

14 Q. Yeah.

15 A. No.

MR. MURRAY

17 I have no further questions.

VOICE

19 No questions, My Lord.

VOICE

21 We have no questions for Mr. Lynk.

22 11:47 a.m.

23

24

25

EXAMINATION BY MR. ROSS

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Q Mr. Lynk, my name is Anthony Ross and I'd like to ask you one or two questions with respect to your discussions with Chief MacIntyre and the home visit at the Marshall family. Before I get into that, did you grow up in Sydney, Mr. Lynk?

A. No, I didn't.

Q Where did you grow up?

A. Outside Sydney. Dominion.

Q I see. I take it that you would be quite familiar with the City of Sydney, in any event.

A. Now I am.

Q And you were working in Sydney from '71 to '79.

A. No, '75 to '79. I was in Truro before that.

Q I see. '75 to '79. Now in your experience in Sydney, could you rationalize the opinion of John MacIntyre that if Junior Marshall was brought back to the community there would be reprisals from the Black community?

A. No, I couldn't.

Q And in truth and in fact that appeared to be a sort of a far-fetched knowing the Black community, wouldn't that be correct?

A. Well, I had no direct knowledge of any possibility of any reprisals or, I hadn't heard of anything and I thought it was a little far-fetched.

1 Q. Sure. And when you visited the Marshall home, did you  
2 spend much time speaking with Pius, Pius Marshall?

3 A. Not too much time.

4 Q. Now where he indicates that he had to spend, he had to sit up  
5 in the upstairs window alone with a shotgun while the family  
6 resided in Whycomomagh, I guess you got this information  
7 from him.

8 A. I guess I did.

9 Q. Yes. Did you follow it up to find out whether or not he was  
10 the only person on the, in the Membertou area who was  
11 armed, and for whatever reason, attempting to protect the  
12 reserve or...

13 A. No, I didn't follow it up.

14 Q. You didn't follow it up. Did you, yourself, have any reason  
15 from your experience as a Parole Services officer to believe  
16 that under any circumstances any group would want reprisals  
17 as indicated by Chief MacIntyre?

18 A. No.

19 Q. Did you form any opinion as to why Chief MacIntyre would  
20 make such a statement?

21 A. No, I didn't form any opinion of it at the time, no.

22 Q. I see. I guess he just gave you the statement, you accepted it  
23 and reported it, but in your view it was inconsistent with  
24 what you would have expected personally.

25 A. That's right.

MR. LYNK, EXAM. BY MR. WILDSMITHMR. ROSS

Very good. Thank you kindly, sir.

11:50 a.m.EXAMINATION BY MR. WILDSMITH

Q. Mr. Lynk, my name's Bruce Wildsmith, I'm here for the Union of Nova Scotia Indians. I'm wondering about what other things you did as a Parole Service officer. I have the impression now that you were stationed in Truro and stationed in Sydney. Are those the only two locations?

A. Yes.

Q. And that operating out of those offices you prepared reports like this for various inmates of both federal and provincial institutions or just federal?

A. That's right.

Q. What other kinds of things would you do that might put you into contact with prisoners in federal penitentiaries?

A. Well for a time in Truro we would have to go and interview the inmates at Springhill.

Q. Interview for what purpose?

A. Parole.

Q. Is it fair to say that all of your work was directed towards the granting , or the questions of granting parole or questions of granting leaves of absence?

A. All of my work?

Q. Yes. Is that the kind of thing that you primarily...

MR. LYNK, EXAM. BY MR. WILDSMITH

1 A. No, I had a caseload to supervise besides doing these.

2 Q. People who were on parole?

3 A. Yeah.

4 Q. I see.

5 A. And mandatory supervision.

6 Q. Are you at all familiar with what happened within  
7 penitentiaries? Inmates lives in penitentiaries and the  
8 institutional structure in penitentiaries?

9 A. Yeah.

10 Q. For example, I've seen a reference in documents to something  
11 called the Office of Correctional Investigator. Do you know  
12 anything about that?

13 A. The Office of Correctional Investigator?

14 Q. Yes. I assume it's some kind of ombudsman kind of...

15 A. I've heard of the ombudsman but I...

16 Q. Within a penitentiary?

17 A. Within the penitentiary system?

18 Q. Yes. What are they supposed to do?

19 A. I have no idea.

20 Q. That's not something....

21 MR. BISSELL

22 I don't know how this witness...

23 CHAIRMAN

24 You've never heard of the Office of Correctional...

25 A. No, I've heard of an ombudsman but I don't know that much

MR. LYNK, EXAM. BY MR. WILDSMITH

1 about it.

2 Q. Okay. I take it you're not a native person yourself.

3 A. That's right.

4 Q. Are there native people employed, to your knowledge, within  
5 Nova Scotia doing the same kind of work you are?

6 A. In restaurants?

7 Q. No, in the, in connection with parole.

8 A. Not to my knowledge.

9 Q. And weren't, in the years 1971 through '79, when you were  
10 so-employed?

11 A. You mean working for the Federal Government.

12 Q. Working in preparing assessments like this on inmates for  
13 parole or release purposes.

14 MR. BISSELL

15 I don't know what relevance these types of questions have to  
16 something that's within the scope of this inquiry.

17 CHAIRMAN

18 Relevancy, as it relates to Mr. Wildsmith's clients have been  
19 stretched that far because they're granted standing on a  
20 different basis than others so it's a, you know, I'm not saying  
21 that it is the kind of question that would be appropriate by  
22 some of the other parties, counsel for some of the other  
23 parties who have standing, but in this, I think the question is  
24 does he know, I presume you mean Nova Scotia ...

25 MR. WILDSMITH

1 Yes.

2 CHAIRMAN

3 During your period did you know any native, whether any  
4 natives were employed in Nova Scotia?

5 A. Not that I can think of. Not that I can think of.

6 CHAIRMAN

7 Well that's the answer to that question.

8 Q. All right. And your reports were directed towards the  
9 National Parole Board, I take it, in many instances.

10 A. Right.

11 Q. And do you know whether other people on the receiving end  
12 of these reports would have been of native ancestry in any  
13 way?

14 A. Yes, I think there was one.

15 Q. Yes.

16 A. From BC.

17 Q. And, that was in British Columbia.

18 A. I think so.

19 Q. Thank you. Nobody from Nova Scotia.

20 A. Not that I know of.

21 Q. With respect to your background in writing these reports, did  
22 you receive any form of cross-cultural training?

23 A. No, I didn't.

24 Q. And by that I mean any training with respect to dealing with  
25 people of native ancestry and their particular cultural

MR. LYNK, EXAM. BY MR. WILDSMITH

1 background.

2 A. No, I had no training in that, no.

3 Q. Okay. But I do take it that you have some experience in  
4 dealing with at least one Indian reserve, the Membertou  
5 Reserve in Sydney?

6 A. All of them.

7 Q. All of the reserves in the province?

8 A. Almost, yeah.

9 Q. Yes. Okay. Are you aware of any special programs with  
10 respect to native offenders that would relate at all to your  
11 work?

12 A. Well that's how I became familiar with Bernie Francis. At  
13 that time he was a native court worker.

14 Q. Any services that were provided to be of assistance to you in  
15 preparing these reports?

16 A. Yes. MicMac Friendship Center.

17 Q. And court workers like Bernie Francis.

18 A. I'm talking... pardon me?

19 Q. And court workers like Bernie Francis.

20 A. Yes.

21 Q. I'm particularly referring to programs that might have been  
22 created by Corrections Canada.

23 MR. BISSELL

24 The services of Correctional, Corrections Canada, I don't...

25 CHAIRMAN

MR. LYNK, EXAM. BY MR. WILDSMITH

1 I agree. Look, you didn't have to, that is not a relevant  
2 question. It's so far beyond our mandate that I can't allow it.  
3 This witness can only give us evidence as to what he knows in  
4 his line of work at that time and...

MR. WILDSMITH

5  
6 Perhaps I could get some clarification from the Chairman or  
7 from Commission counsel on what the Commission sees its  
8 role as being in relation to these matters of Corrections  
9 Canada, National Parole Board and activities with  
10 penitentiaries. And of course from the standpoint of an  
11 offender, these jurisdictional questions are...

CHAIRMAN

12  
13 Well we could argue for a week on the Constitutional, where  
14 the lines, Constitutional lines overlap. My understanding is  
15 that at the request of Commission counsel, and as Commission  
16 counsel are aware, that we are interested in hearing of the  
17 Correctional Service as it applies to our mandate and that the  
18 counsel for the Correctional Service have undertaken to bring  
19 before this Commission a person or persons who have the  
20 expertise who can give us the information we required. And  
21 I don't think that Mr., that this witness falls into that  
22 category. And if we follow the best evidence rule we want to  
23 hear from the people who have that expertise and they're  
24 coming. Am I correct, and Commission counsel can tell me  
25 that but I...

MR. G. MacDONALD

1  
2 Lest there be any confusion, My Lord, we are going to be  
3 dealing, by agreement, with one policy applied by the the  
4 National Parole Services or the Correctional Services and I'm  
5 not quite sure what the distinction is myself but, and that is  
6 the policy that is applied, which we understand, whether it's a  
7 policy or a principle or whatever, that inmates are required  
8 to, or for want of a better word, required to admit their guilt  
9 before they are then eligible or considered for parole. And  
10 we are having someone who is going to attend to speak to  
11 that policy, the requirement for the policy or the perceived  
12 requirement for the policy. We will not be getting into, in  
13 general, services of the National Parole Board or the  
14 Correctional Services of Canada for very good reasons and  
15 that has to do with Constitutional issues as you will  
16 appreciate. That has been done by agreement with counsel  
17 and, for the Correctional Services. We considered that that  
18 policy had direct relevance and impact on Mr. Marshall.  
19 Whether or not the parole board of the correctional services  
20 have native workers or treat natives differently or whether  
21 there's more blacks and natives in the penal system than  
22 otherwise are not to be dealt with by this Commission. We  
23 thought it completely outside of your mandate. That is a  
24 federal jurisdiction, nothing to do with the administration of  
25 justice in Nova Scotia. At least to the extent that we could see

MR. LYNK, EXAM. BY MR. WILDSMITH

1 and to avoid a clash in the courts, going up and spending  
2 three years or so trying to get an answer on that from the  
3 Supreme Court of Canada. So there's the limit that we intend  
4 to go with those two services by agreement.

CHAIRMAN

5  
6 But we as a Commission are having research carried out by  
7 skilled people in these areas which is not part of viva voce  
8 evidence and a lot of that knowledge, I suspect, is already the  
9 subject matter of publication.

MR. G. MacDONALD

10  
11 Much of that information is statistical information that  
12 obviously can be obtained and put before the Commission,  
13 you're correct.

CHAIRMAN

14  
15 Fine. Mr. Wildsmith.

MR. WILDSMITH

16  
17 I'm still kind of collecting my thoughts about this.

CHAIRMAN

18  
19 I'm sure none of us want, I take judicial note of Mr.  
20 MacDonald's comment that the last thing this Commission can  
21 afford, and I'm sure the last thing that the taxpayers of Nova  
22 Scotia can afford is for this Commission to have to sit around  
23 for two or three years waiting for some Constitutional issues  
24 to be, to work its way through the system. So we will  
25 assiduously avoid that kind of argument if we can. And

MR. LYNK, EXAM. BY MR. WILDSMITH

1           anyway, it's obvious that our mandate deals with the justice  
2           system in Nova Scotia. We'll leave some other generation and,  
3           or body to look at the whole justice system of Canada.

MR. WILDSMITH

4           I guess what I'm trying to reflect on is what is the relevance  
5           of anything that this man has said today or of his report that...

CHAIRMAN

6           Well it is relevant. His report is, indeed, relevant because it  
7           deals with Donald Marshall, Jr. and that is a very relevant  
8           piece of evidence and his testimony as to how he prepared  
9           the report and the conclusions he reached, we've heard that  
10          now in some details and it's evidence that I'm sure the  
11          Commission wanted to hear and will consider. But when we  
12          get into the question of policy of a federal institution, I don't  
13          think this is the witness that could give us acceptable and  
14          credible evidence. He's told us that there were no native  
15          workers in the Province of Nova Scotia with his department  
16          during his period of employment. That's as far as he can go.  
17          What he knows about Saskatchewan or British Columbia, I  
18          doubt if it would be very acceptable or credible. Now where  
19          were we?  
20          were we?

MR. WILDSMITH

21          I have no further questions then, My Lord.

22          12:02 p.m.

EXAMINATION BY MR. BISSELL

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Q. Mr. Lynk, I just have a couple of questions to ask you on behalf of the Correctional Service of Canada and the National Parole Board. You indicated that there were various types of absences or leaves that could be granted and you described the escorted TLA and the unescorted TLA. And are you aware of any time limitation that existed back in the timeframe that we're talking about, in the 70's, by regulation that determined when a person sentenced to a period of life imprisonment first became eligible for what you called the "unescorted TLAs"?

A. I believe it was seven years, but I'm not positive.

Q. And so the, when you prepared your report in June of 1978, that was at about the seven-year mark, is that correct, from the time that Mr. Marshall was sentenced?

A. That was (inaudible) ...

Q. You described, as well, the attitude that you felt the Sydney Police Department presented when you were preparing this particular community assessment and other community assessments, and you compared that with the assessment, or the attitude of other police forces. Did you interview other police forces around the province in the various counties that you listed off to one of my learned friends at few moments ago?

A. Everywhere.

MR. LYNK, EXAM. BY MR. BISSELL

1 Q. Everywhere. Did, how did the attitude compare or contrast  
2 with those other police forces to that of the Sydney Police  
3 Department?

4 A. Well the attitude towards parole I think, in general, of the  
5 Sydney Police Department was very negative with relation to  
6 many other police departments.

7 Q. So more...

8 A. They seemed to be more negative and opinionated against  
9 early release.

10 Q. Than other police departments.

11 A. Than other police departments.

12 Q. And when you say other police departments do those other  
13 police departments include the RCMP?

14 A. Yes.

15 Q. When you were talking to John MacIntyre in preparing your  
16 community assessment, did he indicate to you when he was  
17 telling you about the evidence that an eye witness had come  
18 forward following Mr. Marshall's conviction?

19 A. No, he didn't mention that.

20 Q. You also, in some questions from my learned friend, Ms.  
21 Derrick, indicated you didn't feel it was necessary, I believe,  
22 to make your observations about the Sydney Police  
23 Department. Did you feel that the people to whom you were  
24 reporting knew from their own experience about the attitude  
25 of that particular police department?

MR. LYNK, EXAM. BY MR. BISSELL

1 A. I had a feeling that they, they get many, many reports and  
2 after while they get to know the different people in the  
3 different police departments and I think, in particular, the  
4 Sydney Police, they know that they're quite negative on many  
5 cases anyway.

6 Q. And just one further question. How many years has it been  
7 now since you were last associated with the Correctional  
8 Service of Canada?

9 A. 1979.

10 Q. So it's been about 9 years.

MR. BISSELL

12 Thank you, sir, those are all the questions that I have.

CHAIRMAN

14 Thank you, Mr. Lynk.

MR. SPICER

16 My Lord, the next witness and, indeed, the last witness for  
17 today is Mr. Archie Walsh.  
18  
19  
20  
21  
22  
23  
24  
25

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.

20  
21  
22  
23  
24  
25

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.

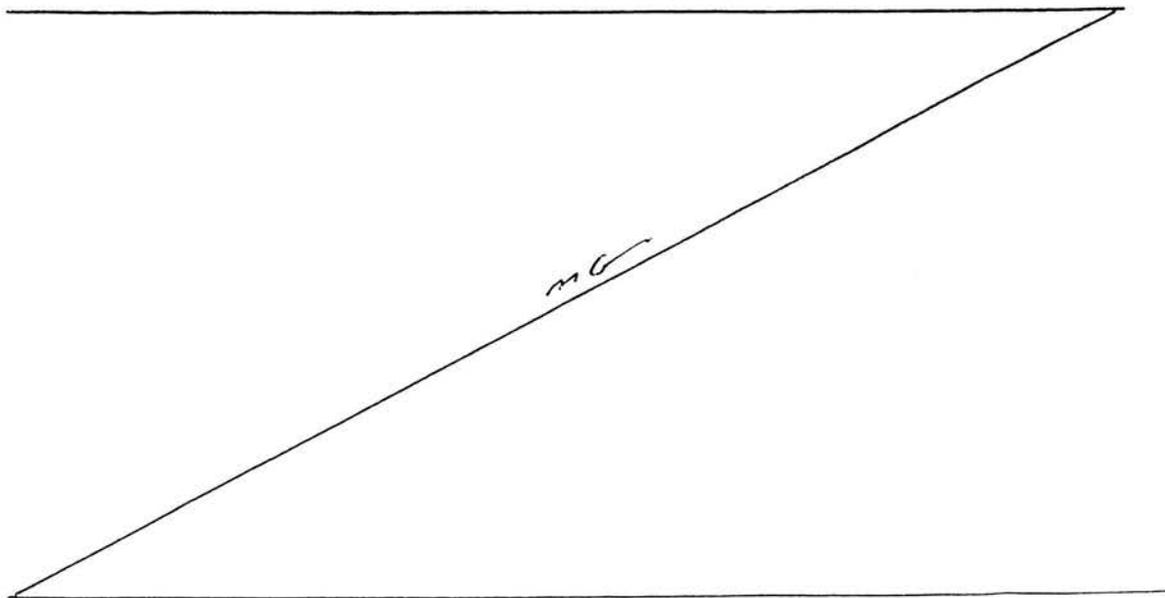
A. I recall reading that before conducting my investigation.

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.

  
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Margaret E. Graham

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