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#17

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

**Volume 71**

Held: May 31, 1988, in the World Trade and Convention  
Center, Halifax, Nova Scotia

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

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

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Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the  
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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 Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel  
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Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for  
the Union of Nova Scotia Indians

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

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

Court Reporting: Margaret E. Graham, OCR, RPR

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MS. McCONKEY, EXAM BY MS. DERRICK

1 MAY 31, 9:30 a.m.

2 MR. CHAIRMAN

3 Ms. Derrick.

4 MS. McCONKEY, recalled and still sworn, testified as follows:

5 EXAMINATION BY MS. DERRICK

6  
7 Q Miss McConkey, my name is Anne Derrick and I represent  
8 Junior Marshall. Now, I believe you said yesterday that a  
9 claim of innocence does not rule out a favourable release  
10 decision.

11 A. Yes, that's right.

12 Q That's the parole policy.

13 A. Yes.

14 Q That's correct? So, in other words, is it correct to say that a  
15 claim of innocence does not act as an absolute bar to a  
16 person being released?

17 A. That's right.

18 Q My question to you then is what does it do, because a  
19 reasonable inference from the policy is that a claim of  
20 innocence sets the release decision back and acts as an  
21 obstacle.

22 A. I would not agree with that. Certainly it was not...it was not  
23 the case with Mr. Marshall.

24 Q The policy states, however, that it does not rule out a  
25 favourable decision.



1 A. Uh-hum.

2 Q. That's couched in rather negative terms as opposed to  
3 positive ones.

4 A. I suppose it...I suppose you're right. It is couched in  
5 negative terms. However, that does not change the fact that  
6 in Mr. Marshall's case he was granted day parole as soon as  
7 he became eligible.

8 Q. I'm going to get to the specifics of Mr. Marshall. What I  
9 wanted to know is are there any stat...is there any statistical  
10 information that you're aware of concerning release, and  
11 obviously holding constant previous records and the offence  
12 involved, for those cases where prisoners have maintained a  
13 claim of innocence versus those cases where prisoners have  
14 admitted to the offence?

15 A. Not any statistics that I'm aware of. Certainly I have, over  
16 the years that I was involved, worked with a number of  
17 individuals who claimed innocence and a number who did  
18 not, and I would agree that probably for those individuals  
19 convicted of serious offences who were maintaining their  
20 innocence, that claim of innocence may well have slowed  
21 down their release.

22 Q. And without any proper statistical analysis, you can't really  
23 know with any degree of certainty the actual effect that  
24 making a claim of innocence has?

25 MR. PRINGLE

MS. McCONKEY, EXAM BY MS. DERRICK

1 Well, My Lord, with respect I wonder how this relates  
2 directly to my friend's client. We certainly have no objection and  
3 we put the witness forward to talk about the policy and  
4 specifically as it relates to Mr. Marshall and his experiences and so  
5 on. But I really doubt whether it's relevant to get into a general  
6 examination of the system in the country.

MR. CHAIRMAN

8 Well, I'm assuming what Miss Derrick is leading up to is to  
9 enquire as to whether there was any departure from the normal  
10 policy as it related to her client, and in that regard I would  
11 suggest it is relevant.

MS. DERRICK

13 Q. Did you hear my question?

14 A. Would you mind repeating it?

15 Q. I just wondered whether you would agree with me...I  
16 wondered whether you would agree with me that without a  
17 statistical analysis of the actual effect of making a claim of  
18 innocence whether one can know with any degree of  
19 certainty the effect that such a claim has on release?

20 A. I don't think one could know either way.

21 Q. What you've said is your impressions from working with  
22 lifers and from dealing with people with serious offences is  
23 that a claim of innocence may, in fact, slow the process  
24 down.

25 A. In some cases.

1 Q. In some cases. And that is, in fact, consistent with saying  
2 that it's not a bar but that it may indeed be an obstacle.

3 A. It may.

4 Q. Now you've said that an admission of guilt is not a  
5 requirement for release but that it's an indirect factor, is  
6 that what you said yesterday in your evidence?

7 A. I don't think that's quite the way I expressed it. I think the  
8 way I expressed it was that it's not a direct factor in  
9 considering whether an individual is going to be released or  
10 not. But it may be an indirect factor in some of the  
11 considerations that the board members make in ascertaining  
12 whether or not an individual represents a risk.

13 Q. And so an admission of guilt is desirable as a way of a  
14 prisoner dealing with defects in his personality or  
15 inadequacies that may have resulted in the offence, is that...

16 A. It's not the admission of guilt that's desirable. It's a  
17 recognition of the factors that may have led to the offence  
18 that's desirable.

19 Q. Does remorse figure into this?

20 A. Yes.

21 Q. So is remorse for the offence seen as a positive and well-  
22 adjusted response?

23 A. In some cases, depending upon the offence.

24 Q. And I'm talking about a serious offence like murder.

25 A. Yes, it probably would be.

MS. McCONKEY, EXAM BY MS. DERRICK

1 Q. And is it therefore believed that a remorseful person will  
2 reintegrate into society better than a person who is not  
3 remorseful?

4 A. All other factors being equal, yes.

5 Q. Yes. I'm just speaking about this one aspect.

6 A. But certainly, you know, remorse is not a major factor. The  
7 major factor is the appreciation of the negative factors that  
8 led to the offence and whether or not the individual has  
9 dealt with them in such a way so as not to represent a risk.

10 Q. But is it fair to say that remorse may be considered as part  
11 of that appreciation?

12 A. Yes.

13 Q. Do you accept that this is, in fact, a very primitive penal  
14 theory that there should be repentance and expiation?

15 MR. PRINGLE

16 I object, My Lord, with respect.

17 MS. DERRICK

18 Well.

19 MR. PRINGLE

20 Are you giving...my friend seems to be giving evidence.  
21 Couching the question and the term of the answers and the  
22 question or at least the answer she'd like.

23 MR. CHAIRMAN

24 Keep the questions in line with the interest of your client,  
25 Miss Derrick, and that's not an appropriate question.

MS. McCONKEY, EXAM BY MS. DERRICKMS. DERRICK

1 Thank-you, My Lord. I am attempting to show that the issue  
2 of remorse is connected with...

MR. CHAIRMAN

3 Whether it's a primitive theory or not, that certainly...it is  
4 not...that's not the way to elicit it and there may be some very  
5 interesting arguments. I've seen a large number of pre-sentence  
6 reports and I can only recall one where the convicted person  
7 wasn't remorseful.

MS. DERRICK

8 But I take your ruling, My Lord, is that you're not  
9 interested...

MR. CHAIRMAN

10 Yes.

MS. DERRICK

11 ...in evidence relating...

MR. CHAIRMAN

12 My ruling is that it is not relevant at this point.

MS. DERRICK

13 Q. Miss McConkey, it's accurate to say, is it not, that the parole  
14 board policy considers that risk to society is the most  
15 important factor in deciding about release?

16 A. Yes, that is accurate.

17 Q. Is that correct? And, it's important that the prisoner show a  
18 good understanding of the offence in terms of its gravity  
19

1 and its effect?

2 A. In the case of serious offences, yes.

3 Q. Yes. And, I think you can assume from my questions that  
4 that's what I'm dealing with. I'm dealing with an offence  
5 like murder. So, in the parole process, is it important for a  
6 convicted murderer to demonstrate an appreciation for the  
7 factors that led to the offence in order to be a good risk for  
8 parole and not a bad risk to society? Is that a fair way to  
9 put it?

10 A. Probably, yes.

11 Q. So, the board is, in effect, saying to a prisoner "You're  
12 claimed innocence is not a factor to be considered," I think  
13 that's what the policy says, but it's important that you have  
14 an understanding of the offence and, as well, the board  
15 accepts the integrity of the verdict, is that correct?

16 A. Certainly the first part and the last part of that are correct.  
17 In terms of it's important that you have a good  
18 understanding of the offence, I think a better way to  
19 express that is that it's important that you have a good  
20 understanding of the problem areas of your personality at  
21 the time of the offence.

22 Q. That may have led to the offence.

23 A. That may have led to the offence, yes, without dealing with  
24 the guilt or innocence issue.

25 Q. But my question is how can those three aspects of the

MS. McCONKEY, EXAM BY MS. DERRICK

1 process stand together? How is it possible to reconcile  
2 claimed innocence not being a bar or not being a factor to be  
3 considered, the need for the person to have insight into their  
4 personality, and the board respecting the integrity of the  
5 verdict?

6 A. I've never encountered it to be a problem. The board  
7 members themselves have a great deal of discretion in the  
8 factors that they consider in making a decision. And, in any  
9 of my experiences I have never encountered them having  
10 any difficulty in combining those three factors.

11 Q. It be a difficulty for the innocent prisoner though, is that...is  
12 that not fair to say, that the innocent prisoner cannot accept  
13 the verdict of the court which says that he committed the  
14 offence and, therefore, he cannot have an appreciation of the  
15 factors which led to it.

16 A. Granted, he cannot accept the verdict of the Court. There is  
17 no reason why he cannot have an appreciation of the factors  
18 in his personality at the time regardless of whether he was  
19 guilty or innocent of the offence. There may well have been  
20 problems in his personality at the time.

COMMISSIONER POITRAS

22 I have a problem, Miss McConkey, and I think it's the same  
23 as Miss Derrick's, and that is if the accused has to acknowledge the  
24 factors that led to the offence, and if he indeed did not commit  
25 that offence, how then can he acknowledge the factors that led to

1 it?

2 MS. McCONKEY

3 I think perhaps I'm not making myself clear. I'm not saying  
4 that he has to acknowledge the factors that led to the offence. I'm  
5 saying that he has to acknowledge the factors in his personality  
6 that may have led him to become involved in that type of an  
7 offence.

8 COMMISSIONER POITRAS

9 But he wasn't, for purposes of this particular argument. Let  
10 us say that he was not involved in the offence.

11 MS. McCONKEY

12 Uh-hum.

13 COMMISSIONER POITRAS

14 He was no where there for purposes of an abstract concept.  
15 He's in jail. He pleads innocence. He contends he's innocent. And  
16 here we are trying to get him to acknowledge the factors that led  
17 to the offence which he says he didn't commit. As it turns out,  
18 eleven years later or so he didn't commit.

19 MS. McCONKEY

20 Uh-hum.

21 COMMISSIONER POITRAS

22 Are we not then asking him, direct or indirectly, to  
23 acknowledge an offence that he never committed and is that not,  
24 as I think you indicated yesterday, predicated on the assumption  
25 that when a person is sent to jail, he is sent to jail because he is



MS. McCONKEY, EXAM BY MS. DERRICK

1 found guilty and accordingly is guilty of the offence. And, I  
2 would suggest to you that the system, therefore, is that if a person  
3 is found guilty, the only way that he can obtain any form of  
4 release is to at one point come to terms with that guilt,  
5 acknowledge it, and, indeed, acknowledge the factors that led to  
6 the commission of the offence.

MS. McCONKEY

8 I would not agree with the last statement, Your Lordship.  
9 There have been, in my experience, quite a number of inmates  
10 convicted of very serious offences who have maintained their  
11 innocence throughout and been released, and been released on  
12 parole.

COMMISSIONER POITRAS

14 Well, how about converse?

MS. McCONKEY

16 I beg your pardon?

COMMISSIONER POITRAS

18 How about to the converse? Have you come across other  
19 inmates who have contended they were not guilty and, indeed,  
20 were proved not to be guilty at the end of the line as has been the  
21 case with this fellow Marshall? Was this the first time you have  
22 ever encountered a convict who, indeed, was proved not to be  
23 guilty at the end of the line?

MS. McCONKEY

25 In this serious an offence, yes, but certainly not the first

MS. McCONKEY, EXAM BY MS. DERRICK

1 time that someone has proven to be guilty...proven to be not  
2 guilty.

3 COMMISSIONER POITRAS

4 You've have that in other offences.

5 MS. McCONKEY

6 Oh, yes.

7 COMMISSIONER POITRAS

8 Yes.

9 MS. McCONKEY

10 Or at least the Appeal Courts decided so.

11 COMMISSIONER POITRAS

12 Yeah.

13 MS. McCONKEY

14 But it seems like people are taking the opinion that guilt or  
15 innocence is the only factor being considered by the board  
16 members. It is my no means the only factor. It is one. The lack  
17 of an admission of guilt may well, in some cases, be one negative  
18 factor, but in a great many cases and certainly in Mr. Marshall's  
19 case, as well as a number of others, it was overridden by the  
20 positive factors in the case.

21 COMMISSIONER POITRAS

22 Yeah. My reflection or understanding, I think, is that  
23 obviously in order to allow a person to be released, you want him  
24 to come to terms with the various factors again which led to the  
25 commission of the offence. And that makes sense, it seems to me.

MS. McCONKEY, EXAM BY MS. DERRICK

1 Because after all if a man is in jail and has been found guilty of an  
2 offence, then you have to assume that he is guilty of the offence.

3 But there is just that small possibility that he may not be guilty of  
4 the offence, yet during the entire length of his stay in jail, you  
5 have to presume that he is guilty and accordingly get him to come  
6 to terms with the factors that led to that offence. You've got to act  
7 that way.

MS. McCONKEY

9 To a certain extent, yes. And if he does not ever  
10 acknowledge his guilt, it may well be seen as one negative factor,  
11 but by no means an overriding factor, ever at any time.

COMMISSIONER POITRAS

13 No. Thank-you.

MS. DERRICK

15 Q. But surely, Miss McConkey, the effect of this approach is  
16 that for the prisoner claiming innocence, he has a harder  
17 time getting released.

18 A. I would think so, yes.

19 Q. Now, in Mr. Marshall's case you've said it was important for  
20 you to understand what happened on that night, the night of  
21 May 28th, 1971.

22 A. Uh-hum.

23 Q. But what had happened had already been decided by a  
24 court, a Judge and jury, is that not correct?

25 A. Yes, but Mr. Marshall did not accept that.

MS. McCONKEY, EXAM BY MS. DERRICK

1 Q. And, the parole policy says that it accepts the integrity of  
2 the courts or it respects the integrity of the court's decision.

3 A. It must.

4 Q. And the person, in Mr. Marshall's case, has been convicted  
5 and sentenced. So, why isn't that sufficient? Why do you  
6 need to understand what happened that night?

7 A. Because I'm the person charged with making a  
8 recommendation to the board whether or not this is a safe  
9 individual to release, and part of what I need to know and  
10 understand in order to make that assessment is where he  
11 was coming from at the time, where he is coming from now.

12 Q. Are there any statistics that you're aware of that show that  
13 parolees who have maintained their innocence are worse  
14 risks as re-offenders than parolees who admit guilt?

MR. PRINGLE

15 My Lord, I ...

MS. McCONKEY

16 I'm not aware of any either way.

MR. PRINGLE

17 I had to keep rising but my friend, we assumed, was going  
18 to get to the particulars of her client's interests and she has to  
19 some extent, but she's back now on the general statistics and I'm  
20 not sure it's helpful to anybody.

MR. CHAIRMAN

21 Miss Derrick, would you give me some indication as to how  
22  
23  
24  
25

MS. McCONKEY, EXAM BY MS. DERRICK

1 you're tying this into your client's...your client's interest?

2 MS. DERRICK

3 Well, certainly, My Lord. I mean I...Ms. McConkey has said  
4 that it was important for her to understand what was happening  
5 that night so that she could assess what kind of risk Mr. Marshall  
6 was, and I'm interested in knowing whether in applying these  
7 parole policies there is any basis for saying that that is an  
8 important concern. That there are some statistical studies that  
9 show that a parolee who...or a prospective parolee who adamantly  
10 maintains his innocence is, in fact, a worse risk, and she said no.

11 MR. CHAIRMAN

12 Right.

13 MS. McCONKEY

14 I didn't say no, there aren't any.

15 MS. DERRICK

16 No, no, I know, you said....

17 MS. McCONKEY

18 I said none that I'm aware of.

19 MS. DERRICK

20 None that you're aware of, sorry, that's correct.

21 MR. CHAIRMAN

22 Well, that question is answered, isn't it?

23 MS. DERRICK

24 Yes, I know, and I was going to proceed on to another  
25 matter.

MS. McCONKEY, EXAM BY MS. DERRICK

1 MR. CHAIRMAN

2 Well, all right proceed on to the next matter, please.

3 MS. DERRICK

4 Q. The approach that an offender must come to grips with his  
5 offence is based on an assumption that crime originates  
6 from within the individual and is based on psychological  
7 dysfunction, is that correct?

8 A. No, not entirely. At least certainly I don't believe that crime  
9 originates entirely within the individual based on  
10 psychological disfunctions. I think I and most other people  
11 in the field of criminology believe that it is a combination of  
12 a number of factors. The individual being one, the  
13 environment being another.

14 Q. And the policy that makes it desirable to explore the person  
15 coming to terms with the offence relies heavily on emphasis  
16 on the individual, is that...

17 A. And his reaction to the society around him.

18 Q. And the circumstances at the time.

19 A. Yes.

20 Q. Now, you said that you felt Mr. Marshall had to work  
21 through the factors which led to the offence and that the  
22 board needed to be satisfied that those factors had been  
23 dealt with. That was your evidence yesterday.

24 A. Yes.

25 Q. As I recall it. And you said, I believe, that this requirement

1           could be satisfied either by an admission of guilt or by a  
2           general discussion of the factors surrounding the offence  
3           and the unacceptable aspects of behaviour and dealing with  
4           those.

5       A.    Yes, I think.

6       Q.    Would you like me to repeat that again?

7       A.    No, I'm not sure that that's exactly what I said, but it's  
8           probably close enough, yes.

9       Q.    So, it's fair to say, is it not, that in having Mr. Marshall work  
10          through the factors which led to the offence, it would have  
11          been satisfactory if he had admitted his guilt.

12      A.    It would have been helpful. We were not trying to get him  
13          to work through the factors that led to the offence. We were  
14          trying to get him to work through the factors in his life and  
15          in his personality at the time that might have led to him  
16          being involved in that offence. That's the distinction I'm  
17          trying to make.

18      Q.    There were many discussions on many occasions with Mr.  
19          Marshall concerning whether or not he was guilty. That's  
20          accurate, is it not? These materials in Volume 5 show over  
21          and over again that this matter was brought up and  
22          discussed. "Marshall continues to argue that he is not  
23          guilty," that's found in...

24      A.    I would not say there were many discussions on many  
25          occasions. I did not have many interviews with Marshall,

1 and on many of them the subject never came up, on many  
2 that I did have.

3 Q. Certainly your reports disclose this as being of central  
4 concern. Is that not fair?

5 A. No, I would say that is not fair. It was not a major issue.

6 Q. I've...I guess that's why I'm not...

7 A. At least not with me, all right?

8 Q. I guess why I'm asking you this, Ms. McConkey, is because  
9 I...it seems to me the materials contradict that. That in  
10 Volume 35 of the materials we have, which are reports  
11 written by you, refer to it on every occasion and I could  
12 take you through that...

13 A. Oh, I agree that the reports that I wrote, which, you know,  
14 admittedly at the rate of two or three reports a year over a  
15 three-year period, which I would not call many occasions,  
16 and I would admit that those reports refer to it on each  
17 occasion. But I would also suggest that those reports are  
18 two, three, four pages in length and the issue of innocence is  
19 maybe one or two sentences in those reports. So there are  
20 many other factors, many other elements that are referred  
21 to in those reports on every occasion as well.

22 Q. I don't dispute that. But it is a fact that this issue is referred  
23 to consistently in these reports.

24 A. Yes, as are many other issues.

25 Q. And it's your evidence, I believe, that he didn't initiate these



1 discussions about claims of innocence.

2 A. Yes, that's right.

3 Q. In fact, some of the language that's used with respect to  
4 these claims suggests that Mr. Marshall was resisting the  
5 official version of reality. For example, I'm looking at  
6 Exhibit 69 which Mr. Spicer referred you to yesterday. It's a  
7 March 2nd, 1978, report, and in the second paragraph, I'm  
8 reading in the middle of the second paragraph, "It was  
9 decided that once all avenues of appeal are eliminated, the  
10 case will be discussed with the parole board in order to  
11 ascertain if they would at some future date be willing to  
12 consider a gradual release program, possibly leading up to  
13 full parole for Marshall, even though he persists in  
14 maintaining that he is innocent of the murder charge."

15 A. Uh-hum.

16 Q. That language suggests to me that Mr. Marshall persisting in  
17 claiming innocence was causing concern.

18 A. For me at that time, I had not had an individual doing a life  
19 sentence maintaining his innocence who had been released  
20 on full parole. I knew what the parole board policy was. I  
21 knew that this was not an absolute bar to being released on  
22 full parole. I did not know at that time, since I had never  
23 discussed Mr. Marshall's case with the parole board,  
24 whether or not that policy of theirs would include right up  
25 to parole, full parole for a lifer claiming innocence of

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1 murder. Once Mr. Marshall appeared before the parole  
2 board for the first time in June of that year and we did  
3 discuss it, I discovered that, yes, that policy would allow him  
4 to be released on full parole. But at that point I did not  
5 know that.

6 9:52 a.m.

7 Q. Until you had concerns about how it might affect him.

8 A. Yes.

9 Q. And would you agree with me, Ms. McConkey, that the system  
10 really doesn't allow for an innocent or other words wrongfully  
11 convicted person. It makes a blind assumption that anyone...

12 MR. PRINGLE

13 Objection. Objection. The blind assumption is based on the  
14 system's court system and it's not a blind assumption, I hope it's a  
15 very valid assumption.

16 CHAIRMAN

17 I would hope so.

18 COMMISSIONER POITRAS

19 Reword the question I think.

20 MS. DERRICK

21 Q. Ms. McConkey, perhaps I'll ask the first question first. Would  
22 you agree that the system doesn't acknowledge that a person  
23 may be wrongfully convicted.

24 COMMISSIONER EVANS

25 What system?

1 MS. DERRICK

2 The prison system, the parole system.

3 A. I don't think it can. It must accept the verdict of the courts.

4 It's not there to retry the case.

5 Q. And in the course of dealing with Mr. Marshall you did not  
6 question the issue of his guilt. You accepted that he was  
7 guilty.

8 A. I did not question the courts. I questioned it in my own mind  
9 initially until I became convinced at that time that he was, in  
10 fact, not innocent. I'll admit I was wrong but I did become  
11 convinced that he was guilty.

12 Q. And you did not interpret his maintaining of his innocence  
13 and the fact that he was becoming increasingly frustrated and  
14 angry as indications that he was wrongfully convicted...

15 A. No.

16 Q. And an innocent man. And would you agree, perhaps because  
17 of your experience in this case that no matter how carefully  
18 the legal rules are designed, the truth won't be established in  
19 every case?

20 A. Well they weren't in this one anyway.

21 Q. Were you aware in this case that there seemed to have been  
22 some doubts expressed about Mr. Marshall's guilt and I just  
23 want to refer you to Volume 35 at page 110. Perhaps you can  
24 identify what this is. It's a telegram, a telex to Regional  
25 Secretary in Moncton.

1 Q. And you based your insights into his behavioural problems on  
2 that belief.

3 A. No, I based my insights into his behavioural problems on the  
4 behaviour I saw in the institution. The attitudes I saw in the  
5 institution. The information I received from him as to what  
6 his behaviour on the street was like at the time and the  
7 information I received from the community assessment about  
8 what his behaviour on the street was like.

9 Q. Would you agree with me that assessing someone's  
10 institutional behaviour is not a reliable indicator of their  
11 behaviour as a potentially law-abiding person on the street?

12 A. Alone it isn't, no, but it is one factor.

13 Q. And that might be particularly true in the case of a person  
14 who's wrongfully convicted.

15 A. It might be, yes.

16 Q. So if I understand you, what you're saying in July 1978 is not  
17 that you gave up trying to get Mr. Marshall to admit his guilt  
18 and try a backdoor approach, you're saying that that's not  
19 what you were doing.

20 A. Certainly not.

21 Q. But you were basically saying, Mr. Marshall, you won't admit  
22 to this murder but at least admit that you could have  
23 committed such an offence.

24 A. I suppose so, yes.

25 Q. And isn't the effect of this really the same. That you're no

1 longer requiring Mr. Marshall to admit to a particular offence  
2 but you're requiring him to admit that he has particular  
3 tendencies.

4 A. I'm requiring him to admit that there are elements in his  
5 personality that could lead him to be involved in a violent  
6 offence in the future.

7 Q. Would it be a fair suggestion that by this time Mr. Marshall  
8 had given up trying to convince you that he was innocent?  
9 That he gave up arguing with you about it.

10 A. Mr. Marshall rarely ever argued with me about it, prior or  
11 after, this time.

12 Q. He just quietly maintained that he hadn't committed this  
13 offence.

14 A. He never maintained he hadn't committed the offence, at least  
15 in talking to me. He simply never said he had. There's a  
16 difference.

17 Q. But he maintained his innocence to you.

18 A. No, he never admitted his guilt to me.

19 Q. I thought you told us yesterday that there were various  
20 versions and they consisted of him saying, "I wasn't there..."

21 A. Yes.

22 Q. Him saying, "I came back and found Sandy stabbed," to him  
23 saying, "I was there, we were both stabbed by an unknown  
24 assailant."

25 A. All right. If you interpret those as maintaining his innocence

1       then, yes, you're right.

2       Q. Well it's the same thing as saying...

3       A. He maintained his innocence.

4       Q. "I didn't do it."

5       A. Okay. But he never said, "I didn't do it."

6       Q. But you don't have to...

7       A. He said those sorts of things.

8       Q. You don't have to if you've said that.

9       A. No, you're right.

10      Q. Right?

11      A. Okay.

12      Q. Are temporary leaves of absence not used to reward  
13         prisoners who admit to their crime and accept the  
14         institutional version of reality?

15      A. No.

16      Q. I'd like to just ask you about a statement in Volume 35 at  
17         page 101. Now you didn't write this letter I just want you to  
18         tell me whether or not this statement can be interpreted that  
19         way. It's a letter to Chief Christmas from Rod Blaker. And it  
20         says in the second paragraph,

21                               Information provided by the Canadian  
22                               Penitentiary Service indicates that it is common  
23                               practice for the professionals of the service to  
24                               help the inmate realize the seriousness of the  
25                               crime for which he was convicted prior to  
                             benefiting from a temporary leave of absence

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program or a parole.

1 That sounds like it's held out as a benefit.

2 A. It certainly sounds like it's what Mr. Blaker believed.

3 Q. But you're saying that's an inaccurate representation.

4 A. I would say that is inaccurate, yes.

5 CHAIRMAN

6 Mr. Blaker, is he with the National Parole Board?

7 MS. McCONKEY

8 No, he was an MP.

9 MR. SPICER

10 I think he's the parliamentary secretary of the Solicitor-  
11 General.

12 CHAIRMAN

13 Oh, I see. I see, yes, he was a member of Parliament.

14 MS. DERRICK

15 Q. Now Ms. McConkey...

16 A. But certainly that was not my understanding, no.

17 Q. Thank you. Ms. McConkey, you said yesterday and we just  
18 mentioned a minute ago, that in your discussions with Mr.  
19 Marshall there were several different versions of the events  
20 on May 28th.

21 A. Yes.

22 Q. And I suggest to you that there was one single immutable  
23 theme in all these versions and that was that Mr. Marshall  
24 didn't kill Mr. Seale and that whoever did, he didn't know  
25

1        who they were.

2        A. Yes.

3        Q. Is that accurate?

4        A. That is accurate.

5        Q. And he didn't deviate from that.

6        A. No.

7        Q. And that's really the central issue, in fact.

8        A. Yes.

9        Q. And it was later proved, would you agree with me, that Mr.  
10        Marshall and Mr. Seale were, in fact, stabbed by an unknown  
11        assailant.

12       A. Yes.

13       Q. So that central part of Mr. Marshall's representation of the  
14        events was accurate.

15       A. Yes.

16       Q. Now is it not fair to suggest that no matter what Mr. Marshall  
17        told you wouldn't have believed him unless he had told you  
18        that he, in fact, killed Mr. Seale?

19       A. No, that is not fair.

20       Q. So how is it that despite the fact that he never changed from  
21        this central version of the facts you still believed he was  
22        guilty throughout your dealings with him?

23       A. If Mr. Marshall's version of what happened that night had  
24        been consistent in the majority of the details and if he had  
25        not had a reputation in the community of not admitting to



1 offences he was involved in, then it is quite likely that I  
2 would have come to believe that he was innocent.

3 Q. And this second part, you got that information from  
4 community assessment reports?

5 A. Yes.

6 Q. That I think we've seen.

7 A. Yes.

8 Q. In the materials. So it was the peripheral details that  
9 changed, that maintained your belief in his guilt is that...

10 A. Yes.

11 Q. Correct? But if he had told you that he had committed the  
12 offence you would have started to believe he was coming to  
13 grips with the offence, is that not fair to say?

14 A. If he had suddenly told me that he had committed the offence  
15 I would not have been likely to believe he was coming to  
16 grips with it. I would have thought it was the same sort of  
17 thing as when he said in Dorchester that he had committed  
18 the offence because he wanted to get transferred to  
19 Springhill. I would have continued talking to him about the  
20 factors going on in his life at the time. His behaviour at the  
21 time. His unacceptable behaviour, aside from the offence,  
22 which was what was of chief concern to me.

23 Q. You got to the point, may I suggest, where you didn't expect  
24 that he was going to tell you anything different though, is that  
25 correct?

1 A. No. Nor was it important.

2 Q. In your reports that are found in Volume 35, I only noticed,  
3 and please correct me if I'm wrong, your noting the version  
4 whereby Mr. Marshall said that he and Mr. Seale were  
5 stabbed by a third unknown assailant. Is that correct?

6 A. In the reports that are in here, yes, I believe so.

7 Q. And you had an impression that Mr. Marshall had no faith in  
8 the system.

9 A. Right.

10 Q. Would you agree that that's consistent with his being  
11 innocent? That is, a wrongfully convicted person would have  
12 no faith in the system that wrongfully convicted him?

13 A. In retrospect, yes.

14 Q. Would it not be fair to suggest that he also might have no  
15 faith in you, that you would represent the system to him?

16 A. He might have. I don't know.

17 Q. He didn't express that...

18 A. No.

19 Q. Directly to you?

20 A. He, the closest he ever came to that was when he expressed  
21 the opinion that the parole service were supposed to be there  
22 to help the inmates and I wasn't helping him. And I  
23 explained to him, at the time, and this is in one of the reports,  
24 that we were there both to help the inmate and also to  
25 represent and protect society and I had to play both roles.

1 Q. But those expressions indicated, at least an initial expectation  
2 from him, that you would help him...

3 A. Yes.

4 Q. And he obviously misunderstood the role you occupied within  
5 the process.

6 A. I tried to help him by referring him to people who might help  
7 him appeal his sentence.

8 Q. But that wasn't your sole function and he...

9 A. Yes, and I explained to him that was one of my functions but  
10 that was not my only function. And he accepted that. At  
11 least I felt that he accepted that.

12 Q. And I, if I'm correct, I think you told us yesterday that, in  
13 fact, your principal function was to prepare reports for cases  
14 going to the Parole Board on behalf of the Parole Board.

15 A. Yes. I never accepted or felt that I was preparing those  
16 reports solely on behalf of the Parole Board. I felt that it was  
17 a dual on behalf of, in part as an advocate of the individual  
18 and in part on behalf of the Parole Board.

19 Q. Your principal responsibility, though, was with respect to the  
20 Parole Board, is that not correct?

21 A. I, 60-40 maybe.

22 Q. In the parole process if a prisoner had wanted an advocate I  
23 take it that there was provision that they could either have a  
24 friend or a relative assist them or penitentiary legal services  
25 when it existed or Legal Aid?

1 A. Not at that time. They can now. But at that time the right to  
2 have an assistant had not yet come into the parole system.

3 Q. Is that right. So between 1976 and 1979, perhaps I should  
4 ask you this. Are you familiar with the penitentiary legal  
5 services...

6 A. Yes.

7 Q. We heard some evidence about it.

8 A. Yes.

9 Q. And I believe, am I not correct, that it existed...

10 A. It did exist, yes.

11 Q. During those years...

12 A. But at that stage they never appeared at Parole Board  
13 hearings.

14 Q. So that was not one of their functions.

15 A. No. Not then.

16 Q. And was the same true of Legal Aid?

17 A. Yes.

18 Q. As well.

19 A. The same was true of Legal Aid. The only time there was  
20 ever an assistant at a parole hearing in those days was in the  
21 case of native offenders where occasionally a native liaison  
22 worker, employed by the parole service would be with the  
23 individual at the hearing.

24 Q. So any advocacy that a prisoner received would be provided  
25 by the parole service, either in the form of yourself or in the

1 case that you've just mentioned...

2 A. Yes.

3 Q. With native prisoners.

4 A. That's right, yes.

5 Q. And so that's where you would have derived a portion of  
6 your role as you've described it as being on behalf of the  
7 prisoner.

8 A. Yes. That's why it was very important, for example, to me  
9 and to most other parole officers at the time that the prisoner  
10 knew exactly what we were recommending to the Parole  
11 Board and why.

12 Q. You testified yesterday that you understood from the  
13 community assessment reports that Chief MacIntyre of the  
14 Sydney Police opposed Mr. Marshall's release into the  
15 community.

16 A. Yes.

17 Q. Is that correct?

18 A. Yes.

19 Q. And I believe you said that it was generally the case that the  
20 police did not oppose release into the community.

21 A. Yes, that is right.

22 Q. Is that generalization true, or was it true of the Sydney Police,  
23 in your experience?

24 A. I can't tell you absolutely yes or no. I do not have a memory  
25 of the Sydney Police generally opposing parole, no.

1 Q. So this opposition by Chief MacIntyre was a deviation from  
2 the norm as you recall it.

3 A. As I recall it, yes.

4 Q. Was any attempt made to explore the basis for that  
5 opposition as a result of it being a deviation?

6 A. No, because the basis for it was outlined in the reports that  
7 expressed it.

8 Q. I see.

9 A. Chief MacIntyre didn't simply say, "I'm opposed period" for  
10 no reason.

11 Q. No, I'm aware of that. So the position that he took wasn't  
12 explored further...

13 A. No, there was no need to.

14 Q. Beyond what was...And that wouldn't have been your function  
15 anyway, is that correct?

16 A. No, it would not.

17 Q. Now, I just have a few more questions, Ms. McConkey,  
18 concerning some of the reports at Volume 35 at page 120, I  
19 can just refer you to it although I'm not going to be going  
20 through it in any detail. You describe this as a cumulative  
21 document.

22 A. Yes.

23 Q. Does, and that means that it was prepared over time by  
24 reference to earlier materials in Mr. Marshall's file, is that  
25 correct?

1 A. Yes.

2 Q. So the material in here isn't all original material obtained by  
3 you.

4 A. No, it's prepared after reading his file, reading all of the  
5 documentation in his file up to that point. Talking to him to  
6 clarify anything that may not have been clear. And then  
7 writing a summary document.

8 Q. So is it fair to say that actual parts of the text would have  
9 been taken from earlier reports and incorporated into this  
10 cumulative summary?

11 A. Yes. Yes.

12 Q. I think you said yesterday that Mr. Marshall spoke softly and  
13 he was sometimes hard to understand.

14 A. Hard to hear.

15 Q. Hard to hear. Did you ever find yourself having to piece  
16 together things that he told you because they didn't come out  
17 particularly clearly?

18 A. No.

19 Q. And did you understand that he spoke Micmac as a first  
20 language?

21 A. Yes, I did.

22 Q. You refer in this cumulative report at page 121, Mr. Spicer  
23 drew your attention to it yesterday, robbery with violence as  
24 being one of the criminal activities Mr. Marshall was engaged  
25 in prior to going to the penitentiary.

- 1 A. Um-hmm.
- 2 Q. Now am I correct that those are your words.
- 3 A. Yes.
- 4 Q. So you took from what Mr. Marshall said and described it in  
5 those terms.
- 6 A. Yes.
- 7 Q. Did Mr. Marshall give you any more details on this as to, I  
8 think you've described them as grabbing drunks in doorways  
9 and getting money from them. Did he say when this  
10 happened? How old he was?
- 11 A. It would have been after he turned 16 so, and he was in the  
12 penitentiary by the time he was 19 so it had to be in between  
13 there.
- 14 Q. Did he say that it happened on the reserve?
- 15 A. No, he told he did not get into trouble on the reserve that he  
16 only got into trouble in town.
- 17 Q. Well, in fact, the reports, I think, say that he wasn't much  
18 trouble on the reserve.
- 19 A. Wasn't much trouble on the reserve, okay.
- 20 Q. So did he specifically say these incidents happened in town  
21 or...
- 22 A. They were in town, yes.
- 23 Q. You recall that, do you?
- 24 A. Yes.
- 25 Q. Was he prone to expressions of bravado or acting tough?



1 A. He may well have been, yes. In retrospect, that may have  
2 been what he was doing then.

3 Q. And do you feel that he was capable of, in a sense, enhancing  
4 his own trouble-making status? Embellishing it?

5 A. I never thought about it before as to whether, it does not  
6 impress, it does not come, I can't think of the word I want...It  
7 is not consistent with Donald Marshall as I knew him, that he  
8 would have done that. That he would have tried to make  
9 himself be more of a desperado than he was. That isn't  
10 consistent with how I knew him.

11 Q. Did inmates receive status in prison for adopting that kind of  
12 position?

13 A. No. Not in my experience, they didn't.

14 Q. Not in your experience. Have you ever seen Mr. Marshall's  
15 criminal record and did you refer to it when you prepared  
16 any of the reports?

17 A. I have seen it and I know there is no robbery with violence  
18 on it.

19 Q. In fact, no violent offences at all with the exception of the  
20 wrongful conviction for murder.

21 10:15 a.m.

22 A. Yeah. I am also aware of the fact that unfortunately criminal  
23 records are an inaccurate description of what someone has,  
24 in fact, been convicted of. They rely on the police reports  
25 sending the convictions into the RCMP, otherwise they don't

1 appear on the record. Many local police forces do not.

2 Q. Well, there's been no evidence in front of this Commission  
3 that this record inaccurate.

4 A. No.

5 Q. I don't believe.

6 A. That may well be, but I'm saying that at the time many  
7 criminal records were inaccurate.

8 Q. I believe you said that Mr. Marshall was active in the  
9 institution. Is that correct? He was involved in upgrading,  
10 involved in the native brotherhood.

11 A. I didn't say that, but he was.

12 Q. I'm sorry, I thought perhaps you had. He was involved in  
13 sports, as well.

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. And I believe did he also run the canteen in the institution?

18 A. I don't recollect. He may well have.

19 Q. Would you agree that these were strategies for survival, this  
20 was Mr. Marshall coping with his environment?

21 A. It may well have been, yes.

22 Q. Now, that you've had an opportunity to look back on this  
23 case, would you agree, and I believe you yesterday  
24 described Mr. Marshall as a difficult inmate, would you  
25 agree that that could be substantially attributed to the fact

1           that he was a wrongfully convicted person?

2       A.    I did not describe him yesterday as a difficult inmate. I did  
3           not consider him to be a difficult inmate.

4       Q.    I'm sorry. I had thought you had.

5       A.    I may have been misunderstood. I did not consider him to  
6           be a difficult inmate. I said he was a typical inmate.

7       Q.    I'm sorry. Well, I heard difficult when you said typical. I'm  
8           glad to hear that you don't think he was a difficult inmate.

9       A.    No, I felt that I along very well with him and I did not  
10          consider him a difficult inmate.

11      Q.    So, he wasn't, in fact?

12      A.    No.

13      Q.    You said that Mr. Marshall, and I hope I'm hearing this  
14          correctly, that Mr. Marshall would have more adjustment  
15          problems than an average lifer because he had fewer  
16          releases.

17      A.    Yes.

18      Q.    Would you also not agree that any difficulties Mr. Marshall  
19          may have experienced or may still be experiencing now  
20          would be compounded by the fact that he had served a long  
21          sentence for something he didn't do?

22      A.    Certainly the result of serving a long sentence, I would think  
23          that if you served a long sentence for something you, in fact,  
24          didn't do, it might add to the problems that you have, yes.

25      Q.    So, it would be reasonable from your experience in prisons

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1 that that would result in a very difficult adjustment.

2 A. Yes, I would think it would be harder to serve a long  
3 sentence for something you didn't do than it would be to  
4 serve a long sentence for something you did do.

MS. DERRICK

6 Thank-you. Those are my questions.

MR. PUGSLEY

8 I have no questions, My Lord, thank-you.

MR. MURRAY

10 No.

MR. CHAIRMAN

12 Mr. Pink.

MR. PINK

14 No, My Lord.

MR. CHAIRMAN

16 Mr. Wildsmith. Mr. Ross.

EXAMINATION BY MR. ROSS

18 Q Miss McConkey, my name is Anthony Ross and I will be  
19 asking you some questions on behalf of Oscar Seale. I  
20 propose to refer to some documents in exhibit book number  
21 35, have you got it?

22 A. Yes.

23 Q I take it that the reports in this volume you would have  
24 reviewed yourself, and would have discussed with Donald  
25 Marshall, Jr..

1 A. Yes.

2 Q I'd ask you to look at page 3, the second last paragraph, the  
3 last line it is written here, "When questioned in regard to  
4 the appeal, subject stated that he would be prepared to  
5 plead guilty to a charge of manslaughter for reasons of a  
6 reduced sentence." Did you discuss that with Donald  
7 Marshall, Jr.?

8 A. No.

9 Q But you read this before?

10 A. I read this, but that report was written five, six years before  
11 I ever met Mr. Marshall.

12 Q Understandable, but I also understand when you referred to  
13 the report on page, I think it's 120, the cumulative report,  
14 what you indicated to Miss Derrick was you reviewed the  
15 entire file and discussed it with Marshall.

16 A. I didn't discuss every sentence in every report, no.

17 Q But you discussed the file in general?

18 A. Yes.

19 Q But in your general discussion you did not discuss that  
20 particular statement with him.

21 A. No.

22 Q I see. At page 71 there is another cumulative summary and  
23 there is a section where it refers to "precipating  
24 circumstances - gang warfare - states he was stabbed  
25 because of self defence, he stabbed a person with his own

1 knife and resulted with death." Did you discuss that  
2 statement with Donald Marshall, Jr.?

3 A. Yes, I did, and...

4 Q. Yes, and what did he tell you?

5 A. What he told me is that that is the story that he gave the  
6 staff at Dorchester Penitentiary in order to get a transfer to  
7 Springhill Institution.

8 Q. I see.

9 A. But that the story was not true.

10 Q. I see. And over on page 76 there is another reference, and  
11 this is in November of 1975 and in paragraph 2 it says,  
12 "Subject admits to having killed the victim but in self-  
13 defence." Does all this relate to the same story?

14 A. It all relates to the same situation, yes.

15 Q. Yes. And on page 81 there is a case conference report, did  
16 you discuss this report with Donald Marshall, Jr.?

17 A. Yes.

18 Q. Yes, here it says that, "The victim," who I take is Seale, "Of  
19 the crime was a black man and Donald (Marshall) knew the  
20 man quite well for over two years prior to the offence." Did  
21 he tell you that?

22 A. I was not at the case conference.

23 Q. Yes. Did you discuss it with him?

24 A. I discussed in general with him whether or not he knew Mr.  
25 Seale.

1 Q Well, here he indicates further that they had played hockey  
2 together on the same team. Did he ever tell you that  
3 personally?

4 A. He did not specifically say they played hockey on the same  
5 team. He said they played sports together.

6 Q I see. He further says, "Approximately two weeks prior to  
7 the murder Marshall claims that he was having an argument  
8 with his girlfriend on the street, the victim just happened to  
9 be walking by and tried to interfere." Did you discuss  
10 that...that scenario with him?

11 A. I don't...I do not remember discussing that with him, no.

12 Q I see. Later on he claims that he was pretty well jumped by  
13 Seale and there was a fight and he happened to get Seale's  
14 knife and stabbed him in that report.

15 A. That is the same story that he told in order to get the  
16 transfer from Dorchester to Springhill. It's repeated in a  
17 number of different reports.

18 Q And all for the same purpose.

19 A. All for the same purpose.

20 Q I see. Over on page 90.

21 MR. CHAIRMAN

22 Before you leave there, Mr. Ross. This report on page 81,  
23 cumulative report, where did that go, Miss McConkey?

24 MS. McCONKEY

25 That was a ...that report on page 81 was completed by the

MS. McCONKEY, EXAM. BY MR. ROSS

1 psychiatrist who examined Mr. Marshall at that time. A copy of  
2 that would have gone on his institutional file, a copy would have  
3 been sent to the parole service and a copy would have been sent  
4 to the parole board.

5 MR. CHAIRMAN

6 These are the only three institutions.

7 MS. McCONKEY

8 Those are the only three copies that would have been  
9 prepared, yes.

10 MR. CHAIRMAN

11 So, no one else would have had access to that report?

12 MS. McCONKEY

13 No. As I said it was a psychiatric report so it would, in fact,  
14 have been on his medical file at the institution.

15 MR. CHAIRMAN

16 Fine, thank-you.

17 MR. ROSS

18 Thank-you, My Lord.

19 Q Over on page 90 this was the request for a community  
20 assessment for temporary absence. Down in paragraph  
21 number 3 at the bottom it says, "Halifax City Police opinion  
22 of the proposed T.A. should be sought."

23 A. Yes.

24 Q Do you know whether or not such opinion was ever sought?

25 A. I don't remember it being sought, no.



1 Q Would it be re...would it be a normal thing to require to seek  
2 this opinion?

3 A. Not on an escorted temporary absence, no, and that's what  
4 this was for.

5 Q I see. Over on page 102, there is something under the  
6 caption "Police and Judiciary Comments" it says, "Sydney  
7 Police would be opposed to subject's going to the area on  
8 T.A. They feel there might be reprisals from the black  
9 community." And it goes on. Did you ever discuss with  
10 Junior Marshall that there might be reprisals from the black  
11 community?

12 A. Yes.

13 Q And what was his reaction to that?

14 A. He agreed that there had been problems between the native  
15 community and the black community following the events.

16 Q I see. And, then I'd ask you to refer, please, to page...to  
17 Exhibit 69, have you got that handy?

18 A. Yes.

19 Q Yes. Over on, I think it is the evaluation report, page 2, and  
20 I'd refer you to paragraph 3. Near the end of that  
21 paragraph there is a report, as I understand it, of statements  
22 given by MacIntyre and I've noted a section where he said,  
23 "He feels that there might still be some reprisals from the  
24 black community and recalls that the entire Marshall family  
25 had to move out of Sydney because of possible reprisals."

1 Did you discuss that with Junior Marshall?

2 A. He said his family did move, yes.

3 Q. And then it goes on, the next sentence it says, "During my  
4 home visit," would that be your visit?

5 A. No, that was the visit of the person who wrote this report.

6 Q. It's also signed by you.

7 A. No, it's signed by Kevin Lynk from Sydney.

8 Q. I see. Oh, sorry. Did you discuss this report with Junior  
9 Marshall?

10 A. Yes, I did.

11 Q. Well, he goes on to speak about the...in this report, "Pius  
12 having to..." is it ...the words are, "During my home visit at  
13 the Marshall home, Pius recalls that he had to sit in the  
14 upstairs window alone with a shotgun while the family  
15 resided in Whycocomagh." Did you discuss that with Junior  
16 Marshall?

17 A. I wouldn't say I discussed it. I told Junior Marshall what  
18 the community investigation said.

19 Q. I see. And was there any reaction to that?

20 A. He said that his family did experience a rough time  
21 following the events.

22 Q. I see. Did he elaborate, tell you what the rough time  
23 constituted?

24 A. Not any more than is in the report, no.

25 Q. I see.

MS. McCONKEY, EXAM. BY MR. ROSS

1 A. He simply agreed that what was in the report was accurate.

2 MR. CHAIRMAN

3 Would this report have been shown to Donald Marshall?

4 MS. McCONKEY

5 No, it wouldn't have been shown to him, but I paraphrased  
6 it to him. At that point we were not allowed to show them the  
7 reports, now you are, and so I would have paraphrased to him  
8 what it said.

9 MR. CHAIRMAN

10 And would you have also discussed with him the views of  
11 the court worker, the native court worker...

12 MS. McCONKEY

13 Yes.

14 MR. CHAIRMAN

15 ...Bernie Francis?

16 MS. McCONKEY

17 Yes.

18 MR. CHAIRMAN

19 Who apparently was not in favour of a release at that time  
20 either.

21 MS. McCONKEY

22 Yes, that's right.

23 MR. CHAIRMAN

24 What was his reaction to that? Did he know Bernie Francis?

25 MS. McCONKEY

1 He knew Bernie Francis. He was annoyed. He felt that  
2 Bernie Francis should have been on his side.

3 MR. ROSS

4 Q So, I take it then, Miss McConkey, that as far as the  
5 institution was concerned, any variations, any different  
6 stories advanced by Junior Marshall, we're looking at it in  
7 retrospect, was for the purpose of being transferred from  
8 Dorchester to Springhill.

9 A. Yes.

10 Q I see. At page 166 of Volume 35. The paragraph number 3  
11 refers to the escape, and it reads, "Junior captured while  
12 on..." Sorry, "Junior escaped while on day parole in 1979.  
13 According to file material he claimed that at the time he was  
14 on his way to check into his appeal. He now admits that he  
15 was heading for the United States." Did you discuss that  
16 with Junior Marshall? Did you have an opportunity to?

17 A. No, sir, this report was written in 1981 at which point Junior  
18 Marshall was in Dorchester Penitentiary and I no longer had  
19 any involvement with him.

20 Q I see. I see. Were you aware though that he had made this  
21 statement that he was on his way to the United States?

22 A. I never saw his file after he left Springhill Institution.

23 Q I appreciate that, but I just wanted to know if you were  
24 aware that he had made that statement.

25 A. Was I aware when?

MS. McCONKEY, EXAM. BY MR. ROSS

1 Q. At any time around 1981.

2 A. No.

3 Q. Okay. Thank-you.

4 A. I had no contact with him.

5 Q. Sure. Thank-you.

6 MR. ROSS

7 Thank-you very much, Miss McConkey, no more questions.

8 MR. CHAIRMAN

9 Mr. Wildsmith.

10

11

EXAMINATION BY MR. WILDSMITH

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Q. Miss McConkey, my name is Bruce Wildsmith and I'm here for the Union of Nova Scotia Indians. Could you begin by indicating whether the fact that Mr. Marshall is an Indian was a factor at all in his assessment or evaluation?

A. Never at any time. I'm sorry, that's not an accurate answer. Generally, no, it was not a factor. However, one or two of the day parole programs he applied for were day parole programs specifically for native inmates and thus, yes, certainly in assessing him for those, the factor that he was a native was a factor because he couldn't have gone on them if he was not. But other than that, no, generally it was not.

Q. The reports appear in various places to draw attention to the fact that he's an Indian. For example, you don't have to look these up, but just for the record, pages 2, 3, 4, 44, 72,

1 89. Is there anything that we should draw out of the fact  
2 then that attention was called to the fact that he's an Indian  
3 if it's not a factor in the assessment or evaluation?

4 A. I don't think so. None of those were my reports, but in any  
5 of my reports I would...my opening statement on any report  
6 on any individual would say he's a twenty-five year-old  
7 native inmate or he's a twenty-five-year-old Caucasian  
8 inmate or he's a twenty-five-year-old black inmate or  
9 whatever.

10 Q. So, you would say it's just a point of description.

11 A. It's just a description, yes.

12 Q. Okay. Maybe I could call your attention to page 3 in Volume  
13 35, under the heading of "Evaluation" the last paragraph  
14 says, "Marshall is the typical young Indian lad that seems to  
15 lose control of his senses while indulging in intoxicating  
16 liquors." Can you comment on the validity of that  
17 statement?

18 A. I cannot comment on it. I did not write it. I do not know  
19 the individual who did. It is not something I would have  
20 ever written.

21 Q. Do you agree that it's a racist remark?

22 A. I would agree it is, yes.

23 Q. And inappropriate.

24 A. Yes, I would agree it's inappropriate.

25 Q. Okay. Direct your attention to page 72. In the what looks

1 likes box number 29 on this cumulative summary for brief  
2 comments it says, "This young Indian serving a life sentence  
3 for non-capital murder appears to have a great propensity  
4 to proving his self-worth - three acts of violence (partly a  
5 matter of culture and environment). Can you help us out as  
6 to whether this reference to culture and environment is a  
7 reference to the prison culture and environment or a  
8 reference to his native culture and environment?

9 A. I do not know.

10 Q. Because you're not the author.

11 A. Exactly, and I don't know the person who is or it was.

12 Q. If it's a reference to his native culture and environment,  
13 what would you say?

14 A. I would say that if it is a reference to his native culture and  
15 environment then it represents the opinion of Mr. Leslie  
16 who wrote it about...

17 Q. One that you would share or not?

18 A. That I would share? I would not say that acts of violence  
19 are a feature of native culture and environment, but it is...it  
20 does appear to be the case that for the natives who appear  
21 in the penitentiary, more often than not they are there as a  
22 result of violent crimes rather than non-violent ones.  
23 Whether that's because they engage more in violence or  
24 whether it's because they don't get sent to penitentiary  
25 unless they engage in violence, I don't know.

- 1 Q. What about the comment "proving his self worth"?
- 2 A. There are many inmates with a great propensity for proving  
3 their self-worth, native and non-native.
- 4 Q. Would it be fair to say that the prison culture and  
5 environment aggravates those particular traits?
- 6 A. I would think it might in some cases.
- 7 Q. As part of the kind of norms of conduct in the institution.
- 8 A. Violence is not encouraged in the institution.
- 9 Q. No, no, but would it be part though of the culture of the  
10 inmates?
- 11 A. I would not think so, no.
- 12 Q. Prisons are not a violent place.
- 13 A. Not particularly, no.
- 14 Q. Okay.
- 15 A. Not in my experience. There are some acts of violence in  
16 prison just as there are in society but not primarily a violent  
17 place, no.
- 18 Q. Perhaps you could move on to page 158 in the volume.  
19 Towards the bottom of page 158, the last large paragraph.  
20 It says, "Perhaps Mr. Marshall will be able to reach some  
21 form of understanding of himself, both as a human being  
22 and as an Indian, during the time he is likely to be required  
23 to spend at Dorchester." Can you help us out with what that  
24 may be a reference to? I'm referring particularly to as a  
25 human being and as an inmate?



1 A. I can't help you out a great deal. I can help you out some in  
2 that the native inmates who were in the penitentiary  
3 certainly felt very much like they were out of their element  
4 and that because they were a minority group, the particular  
5 aspects and values that were of most importance to them  
6 and their culture were not necessarily respected in the  
7 larger white man's culture of a penitentiary, and thus had  
8 some difficulties in trying to maintain their traditional  
9 values and not get subsumed into the white man's culture,  
10 and I would suspect that when Maud Hoady wrote that,  
11 that's what she was referring to.

12 10:37 a.m.

13 Q. So it would be fair to say that it's calling attention to the fact  
14 that there are particular cultural attributes associated with  
15 Indians that caused them difficulty in prisons?

16 A. That what?

17 Q. Cause them difficulty in prisons?

18 A. No, I wouldn't say it caused them difficulty, no, but that are  
19 not respected in...

20 Q. Okay.

21 A. In prisons because they are not understood.

22 Q. By the other inmates or by the staff?

23 A. Both. Although, you know, many staff, virtually all staff, but  
24 there are probably some exceptions, have take courses from  
25 native leaders to help us understand and appreciate some of

1 the different aspects.

2 Q. Okay. So if I can summarize that. What I'm hearing you say  
3 is that there is some recognition of the part of the correction  
4 service of the need to foster native culture while within  
5 prisons.

6 A. Yes.

7 Q. Perhaps you could now turn to page 170. This appears to be  
8 part of a psychological report and in the first paragraph it  
9 seems to be referring to the results of some tests that were  
10 conducted and it says something about,

11  
12 Mr. Marshall having received from psychologists  
13 information to the effect that his test results  
14 were not valid. He never did understand this  
15 interpretation and I went to great lengths to  
16 explain the exact definition of the term. I  
17 indicated to him that because he is a native he  
18 probably does not understand several of the  
19 items and that cultural differences probably  
20 account for that fact that he cannot fit into white  
21 Caucasian American norms.

18 Am I correct in thinking that what this paragraph is telling us  
19 is that test, psychological tests were applied to Mr Marshall...

20 A. Yes.

21 Q. And that the psychological tests were based on white  
22 Caucasian American norms.

23 A. Yes.

24 Q. And that he did not fit into those norms.  
25

1 A. Yes.

2 Q. And that, therefore, the test results were not valid because he  
3 was a native person and not a white Caucasian American.

4 A. Yes. They were standard psychological tests, the MMPI, that  
5 are applied to all inmates. They don't fit in, they don't work  
6 when applied to native inmates. They don't work when  
7 applied to black inmates. They don't work when applied to a  
8 lot of inmates, but they are the standard tests that are used  
9 on all inmates.

10 Q. Maybe I could just inquire about that a little bit. Why would  
11 the test be applied to be Mr. Marshall, who was well known to  
12 be an Indian, if you're saying the tests would not be valid in  
13 any event?

14 A. They're routinely applied to every inmate who walks in the  
15 front door. In some cases although an individual may be a  
16 native, either an Indian or an Inuit or black or one of the  
17 other ethnic groups, they may still be valid. They're not  
18 routinely automatically not valid because the person isn't a  
19 white. But the MMPI test results, as to what is the norm, is  
20 based on a largely white Caucasian population. And some  
21 aspects of it will be valid, some will not.

22 Q. Okay, well that was really my question. Whether it's possible  
23 to garner useful information ...

24 A. Yes, it is.

25 Q. And that's why it was applied.

1 A. It is.

2 Q. And is it also fair to think that the more Indian you are, the  
3 more you're into Indian culture, the less likely it is that valid  
4 information would be acquired by the test.

5 A. I would think so, yes.

6 Q. And, therefore, one thing we learn from this is that Mr.  
7 Marshall's Indian background was a predominant feature of  
8 his personality.

9 A. I would expect it would be.

10 Q. Yeah, okay. I call your attention now to page, it's really going  
11 backwards now, page 75, and again, this appears to be  
12 another case conference and the author of this on page 75,  
13 third page of the case conference is talking about various  
14 personality features. It says, "He does not talk too freely.  
15 Tended to be monosyllabic in his answers. Tense, anxious.  
16 Began to sweat somewhat. Had great difficulty in verbalizing  
17 his thoughts and feelings."

18 A. Um-hmm.

19 Q. Are those attributes that could be attributed to his Indian-  
20 ness as much as to him as an individual?

21 A. Some of them could have been. Some of them were probably  
22 a reaction to the fact that in this case conference there would  
23 have been a large, not a large number, but maybe half a  
24 dozen people in the room at the time that Mr. Marshall was  
25 being interviewed by the psychiatrist. And from my

1 recollection of Mr. Marshall, he would not have felt  
2 comfortable in that kind of a setting.

3 Q. And some of the reason for his lack of comfort, if you will, is  
4 to do with his Indian culture?

5 A. Some...

6 Q. Fair assumption?

7 A. I cannot assess how much was related to his Indian culture  
8 and how much was related to his basic personality of being  
9 shy.

10 Q. Okay, well that brings up another area I wanted to inquire  
11 about. And that's, you've mentioned something about many  
12 of the staff in the correction service having taken courses or  
13 seminars or something to sensitize them to native culture.

14 A. Um-hmm.

15 Q. I take it you've taken such a course?

16 A. Yes.

17 Q. And can you tell us, just quickly, what kinds of things happen  
18 in that seminar or workshop?

19 A. Some of the things that they try to convey to us and train us  
20 in would be, for example, for Caucasians a pause in a  
21 conversation of more than 20, 30 seconds is very  
22 uncomfortable, for natives it is not. It is not unusual. So not  
23 to become uncomfortable if you ask a question of a native  
24 inmate and you get a long pause before the answer or if  
25 there's a long pause in the conversation. Another example

1 would be to make us aware of the fact that the sense of time  
2 that natives have is not the same rush-rush, go-go, hurry-  
3 hurry of white man's society. So not to be putting pressure  
4 on the native inmates to do things at our speed and at our  
5 pace.

6 Another aspect is that the sense of family and tradition is  
7 much greater for native people than it is for white people. So  
8 that while it might be quite reasonable to suggest to a white  
9 inmate that he should relocate to another part of the country  
10 and have a better chance of succeeding, that that is not a  
11 reasonable option to try to impress upon a native. Those  
12 sorts of things.

13 Q. Fair to say then that you would take those kinds of factors  
14 into account when evaluating a native inmate like Mr.  
15 Marshall?

16 A. Yes, I would hope so.

17 Q. Some reference to the Native Brotherhood. Could you just  
18 indicate what that is?

19 A. To, I have never attended a Native Brotherhood meeting but  
20 to the best of my understanding from what the native  
21 inmates have told me, it's, in Springhill at that time it was  
22 primarily a social group for native inmates whereby the  
23 natives could get together and natives from outside would  
24 come into the institution and meet with them and also help  
25 them deal with their problems by allowing them to talk about

1 their problems to people who understood where they were  
2 coming from better, perhaps, than the staff did. Since that  
3 time Native Brotherhood, as I understand it, has evolved  
4 considerably whereby it is now much less of a social group  
5 and more oriented around the elder system and the sacred  
6 ceremonies, those sorts of things. I have much less  
7 familiarity with that.

8 Q. Okay. The Native Brotherhood operated throughout the piece  
9 that Mr. Marshall was in Dorchester and Springhill?

10 A. To the best of my recollection, yes.

11 Q. And it still operates today?

12 A. Yes, as far as I know.

13 Q. You mentioned something about a native liaison service.

14 A. Yes.

15 Q. Was that something that was run by the Union of New  
16 Brunswick Indians?

17 A. I don't believe so. What I was referring to was during the,  
18 much of the time that I was employed as a parole officer in  
19 Truro, we also employed a native worker to work with the  
20 inmates at Springhill.

21 Q. I see. What about at Dorchester? Do you have any  
22 knowledge of that?

23 A. I never worked at Dorchester.

24 Q. Okay. Is that still done? I had the impression that you said it  
25 worked at one point but it's not operative today.

MS. McCONKEY, EXAM. BY MR. WILDSMITH

1 A. No, it is, to the best of my knowledge it is not operating now,  
2 no.

3 Q. Okay. And I'm looking at a report which was, the chairman of  
4 the national Parole Board's presentation to the standing  
5 committee on justice and to the Solicitor-General in December  
6 of 1987, and it refers to a low parole rate...

MR. PRINGLE

7  
8 Well, My Lords, I'm not, excuse me if I may. My learned  
9 friend is now referring to some national reports that appears from  
10 the Parole Board and I'm wondering, first of all, what he's  
11 referring to, and what relevance it may have to his clients and  
12 this witness.

MR. WILDSMITH

13  
14 I think I've identified what the document is. These are the  
15 comments of the national, of the chairman of the National Parole  
16 Board to the standing committee on justice and the Solicitor-  
17 General. It is a report that is put out by the National Parole Board  
18 and put out by the Government of Canada, December of 1987. I  
19 just wanted to refer her to one of the statements of the chairman  
20 of the National Parole Board.

CHAIRMAN

21  
22 I would assume that any statement made by the chairman  
23 of the National Parole Board would be the official policy of that  
24 board.  
25



1 MR. PRINGLE

2 Oh, I'm not objecting to that, My Lord. Certainly I'm  
3 questioning the relevance at this time when my friend stands up  
4 with this document as to what it may have to do with this witness  
5 and his client.

6 CHAIRMAN

7 Well...

8 MR. WILDSMITH

9 Well, obviously, it has to do with...

10 CHAIRMAN

11 Mr., you may have been thrown because a lot of Mr.  
12 Wildsmith's questions have been relating to Donald Marshall, Jr.  
13 when his clients are the Union of Indians.

14 MR. PRINGLE

15 I understand that.

16 CHAIRMAN

17 He may be getting closer now to pursuing relevant questions  
18 from his client's point of view than he was earlier.

19 MR. PRINGLE

20 Yes. Well my other concern, My Lord, is how far this  
21 examination is intended to go by my friend. If he intends to get  
22 into an examination of the National Parole Board policies and so  
23 on...

24 CHAIRMAN

25 Well I'm sure this witness can't help us on that but...

1 MR. WILDSMITH

2 Quite so.

3 CHAIRMAN

4 But the question that is about to come I can't rule on it  
5 unless and until I hear it.

6 MR. WILDSMITH

7 Q. Very good. In this report at page 34, the chairman of the  
8 National Parole Board says, "It is recognized that natives have  
9 a high rate of incarceration and a low parole grant rate." My  
10 question to you is, is that statement, in fact, correct, that  
11 natives have a low parole grant rate in applications to the  
12 National Parole Board?

13 A. It is my understanding that natives statistically have a lower  
14 parole grant rate than non-natives, yes.

15 Q. Okay.

16 CHAIRMAN

17 Has that been your experience working in Nova Scotia?

18 A. Yes, I think that that is true. I think, in large part, it's true  
19 because they do not apply for parole either at the same rate  
20 than non-natives do. And it's, without being facetious, it's  
21 difficult to be granted parole if you don't apply for it.

22 CHAIRMAN

23 Is there any reason for that, you know, why the natives do  
24 not apply for parole at the same rate as others?

25

DISCUSSIONMR. WILDSMITH

1  
2           It might be helpful to Your Lordships, I have some  
3 photocopies here of material, I think there may be an objection  
4 about it, but it relates to other comments of the chairman of the  
5 National Parole Board and refers exactly to the issue that you've  
6 been speaking about and that the witness referred to. That is, the  
7 lack of applications by natives to the National Parole Board. And I  
8 had intended, at a later date, to seek to introduce as an exhibit  
9 this one page with two clippings from the newspaper.

CHAIRMAN

11           All right. We'll leave that for another day then, I guess.

MR. WILDSMITH

12  
13           Well I mean I was intending to do it with this witness today  
14 and concerning the issue that Your Lordship just raised.

MR. PRINGLE

15  
16           Well, I guess we'll state our objection in respect to these  
17 newspaper articles that my friend is tendering or purports to  
18 tender with this witness.

CHAIRMAN

19  
20           Well this witness obviously had a great deal of experience  
21 and has a lot of skills in the parole and/or corrections system and  
22 I have no quarrel with taking advantage of her presence to solicit  
23 from her any professional advice she may wish to advance.

MR. PRINGLE

24  
25           I trust My Lordship is not saying that we're going to be

DISCUSSION

1 examining the National Parole Board and its system, but rather,  
2 some aspect of my friend's client's interest, am I correct in that  
3 assumption? Because we take the position, with respect My Lord,  
4 that the provincial inquiry has no constitutional mandate to  
5 examine the National Parole Board. The case law is quite clear on  
6 that and, however, we'll put the witness forward to speak about  
7 the certain, particular matters that are directly relevant to this  
8 Commission and we certainly want to assist in that regard.

CHAIRMAN

10 We'll take note of the pre-Charter decisions in that regard.

MR. SPICER

12 My Lord, if I might say, that was a position that we have  
13 discussed...

CHAIRMAN

15 I realize that and...

MR. SPICER

17 With our friends.

CHAIRMAN

19 And I understand that this witness, and maybe some others,  
20 are here without prejudice to the sacred jurisdictional rights of  
21 provinces...

MR. PRINGLE

23 Yes, My Lord.

CHAIRMAN

25 And the Government of Canada. But we, it is relevant with

DISCUSSION

1 respect to this Inquiry as to the treatment afforded Donald  
2 Marshall, Jr. whilst an inmate in a federal institution.

MR. PRINGLE

3  
4 Yes, My Lord, but I understand that the newspaper clippings  
5 that my friend now purports to put in don't relate to the Maritime  
6 provinces at all, they're some other part of the country and I'm  
7 questioning how that can be relevant.

CHAIRMAN

8  
9 Well that may not be. I don't know what papers...

MR. PRINGLE

10  
11 I've had some advance knowledge that my friend tends to  
12 put forth, put forward these documents and we've taken  
13 instructions on the matter and I may say, My Lord, that there is at  
14 least one post-Charter decision that's very relevant to the  
15 constitutional issue decision of the Supreme Court of Canada last  
16 fall, O'Hara and The Queen, where the Supreme Court once again  
17 reaffirmed the constitutional principles of provincial inquiries in  
18 federal...

COMMISSIONER EVANS

19  
20 What are these reports? To what these newspaper reports,  
21 or whatever they are, do they refer to the Maritimes, refer to  
22 Nova Scotia?

MR. WILDSMITH

23  
24 I believe they refer to the country as a whole.  
25

DISCUSSION

1 COMMISSIONER EVANS

2 But was she talking about natives here?

3 MR. PRINGLE

4 My Lord, if I may, one more point. This witness has  
5 testified, and it's borne out in Exhibit 35 at page 105, 106 and 113  
6 that Mr. Marshall, received day parole within weeks after his first  
7 eligibility. He was eligible on June 4th, 1978, as I recall and he  
8 applied and was recommended prior to that date and received it  
9 within weeks after. So I'm not sure how the statistics that my  
10 friend refers to are relevant directly to, at least, Donald Marshall.

11 COMMISSIONER EVANS

12 That's the problem.

13 MR. WILDSMITH

14 Should I mark it as an exhibit, My Lord?

15 CHAIRMAN

16 No, let's take a look at that.

17 MR. WILDSMITH

18 It's in the second column that the witness, that the National  
19 Parole Board chairman comments on the issue that my, that the  
20 witness referred to.

21 CHAIRMAN

22 I'm concerned about these, you know, clippings from  
23 newspapers going in which represent, to a large extent, a  
24 summary as the writer, or reporter sees it of what a person is  
25 saying. It may be not the intention of the speaker...

DISCUSSION

1 MR. WILDSMITH

2 Yes, and my intention was to ask this witness whether she  
3 can verify the information that is in the clippings so that we can  
4 have it from a reliable source rather than simply what the  
5 reporter says.

6 CHAIRMAN

7 Without referring, without putting the Whig-Standard  
8 clipping before us, because we are stretching the rules of  
9 relevancy, I see nothing wrong with your putting to this witness  
10 certain questions arising out of what you have read from there.

11 MR. WILDSMITH

12 Yes, fair enough.

13 CHAIRMAN

14 The source is not that important to know, it's the, so try it  
15 that way and we'll listen carefully to make sure it's relevant.

16 MR. WILDSMITH

17 Q. This discussion began with the comment in the official  
18 document where the national chairman, chairman of the  
19 national board, is representing to the standing committee on  
20 justice that there is a low parole grant rate for native  
21 offenders. And I think your evidence is that you understand  
22 that to be the case statistically.

23 A. Yes, sir.

24 Q. Are those statistics based on the country as a whole?

25 A. I believe they are, yes.

10:58 a.m.

1 Q. And can you tell us what those statistics are, in rough terms,  
2 if not exact?

3 A. To the best of my recollection, and I may be wrong, I believe  
4 that the grant rate for natives is approximately 10% lower  
5 than the grant rate for non-natives.

6 Q. Okay. My learned friend quite properly draws to my  
7 attention, when we speak about "native" and "non-native,"  
8 when you're referring to "non-native," are you including  
9 blacks and members of other minorities?

10 A. Yes, sir.

11 Q. In the non-native category?

12 A. Yes, sir.

13 Q. Are you able to relate the statistics between Indians and  
14 whites?

15 A. No, I don't. To the best of my knowledge, they're not broken  
16 down by ethnic group. They're simply... I have only ever  
17 seen them broken down between natives and non-natives.

18 Q. Okay. This report also indicates that the Chairman of the  
19 National Board chairs an interdepartmental working group  
20 comprised of representatives of the Ministry of the Solicitor  
21 General and the Ministry of Indian and Northern Affairs to  
22 identify means to more effectively meet the needs of native  
23 offenders. Do you know if that's the case?

24 A. It is my understanding that it is the case, yes.  
25



1 Q. And it indicates that this working group is examining the  
2 process which native offenders go through from the time of  
3 admission to a federal penitentiary until the expiry of the  
4 warrant and that the working group focuses on improving  
5 penitentiary placement for natives, improved institutional  
6 programs for natives, improved preparation for all forms of  
7 conditional releases, and improved and innovative  
8 supervision. Is that also your understanding?

9 A. It is my understanding that that is the mandate of that group,  
10 yes.

11 Q. Yes, and it also indicates that the working group will examine  
12 and propose ways of involving the native community in the  
13 reintegration of native offenders, also correct?

14 A. I believe so, yes.

15 Q. Has anything come out of the working group, to your  
16 knowledge?

17 A. I don't think their final report has been submitted at this  
18 point. It is my understanding that their report is due in the  
19 near future.

20 Q. Coming back to the newspaper clipping, a quote... I should  
21 say, is Aullie Ottinger still the Chairman of the National Parole  
22 Board?

23 A. To the best of my knowledge, yes.

24 Q. And in 1987, according to this clipping, he stated "There  
25 seems to be, in general, a systematic negative discrimination,"

1           there referring to native prisoners.

2           MR. PRINGLE

3           Well, I'm going to object to that. He's quoting from a  
4 newspaper articles and we've had objections before to that sort of  
5 thing and as to the accuracy to those sort of quotations. And  
6 whether it be right or wrong, it's just that it's highly dubious  
7 whether you can trust it as being completely accurate to be  
8 quoting and putting questions to his witness.

9           MR. CHAIRMAN

10           The phrase "negative discrimination" seems to me to be  
11 open to all sorts of interpretation. So I disallow that question, Mr.  
12 Wildsmith.

13           MR. WILDSMITH

14           Fair enough. Maybe I can reword it and accomplish a  
15 similar purpose.

16           BY MR. WILDSMITH

17           Q. Is it common knowledge or discussion within Correction  
18 Services that you work with that the treatment by the Parole  
19 Board of native offenders does amount to systematic  
20 discrimination?

21           A. No, sir.

22           Q. The report also indicates that, this newspaper clipping, that  
23 "departmental statistics show natives waive their right to  
24 appear before the parole hearing more often than other  
25 federal prisoners." Is that correct?

MS. McCONKEY, EXAM. BY MR. WILDSMITH

1 A. That is my experience, yes.

2 Q. Also attributed to the Chairman, it says: "When they do  
3 appear, they are more likely to be denied parole." I guess  
4 we've just gone over that.

5 A. Statistically, that appears to be true. That was not my  
6 experience when I worked in Nova Scotia, no.

7 Q. Okay. And "if they are released, they had a better chance of  
8 having their parole revoked." What about that?

9 A. I suspect that if the Chairman said that, then statistically that  
10 must be true.

11 Q. Okay. Also suggests that a native advisory council...

MR. CHAIRMAN

12  
13 Before we leave there, Mr. Wildsmith. What was your  
14 experience in Nova Scotia?

MS. McCONKEY

15  
16 When I worked in Springhill Institution, we did not have a  
17 large number of native inmates there. I think we had a total of  
18 ten out of 400 inmates. So we're not talking a large number of  
19 individuals.

MR. CHAIRMAN

20  
21 I see.

MS. McCONKEY

22  
23 So it's heard to make generalities based on such a small  
24 group.

1 MR. CHAIRMAN

2 I appreciate that.

3 BY MR. WILDSMITH

4 Q. I take it there are no statistics available on that issue either?

5 A. On which issue, sir?

6 Q. On the parole grant rate for native prisoners at Springhill?

7 A. None that I've seen, no.

8 Q. It also suggests that a native advisory council will be  
9 established and that the Board will continue to support  
10 "culturally sensitive programs to assist natives to prepare for  
11 release." Can you help us out as to whether there is a native  
12 advisory council?

13 A. I'm not certain.

14 Q. And I take it from your previous evidence that culturally  
15 sensitive programs is an issue supported by the Corrections  
16 Service?

17 A. Yes, and has been for the last ten years at least.

18 Q. It's suggested that one of the problems might be that natives  
19 are confused about what is required of them in parole  
20 hearings, do you agree with that?

21 A. I think that is accurate, yes.

22 Q. And it's added that natives may be intimidated by the  
23 process.

24 A. They, and many other inmates.

25 Q. Fair enough.

MS. McCONKEY, EXAM. BY MR. WILDSMITH

1 A. It's a pretty intimidating process.

2 MR. WILDSMITH

3 Thank you. Those are my questions.

4 MR. CHAIRMAN

5 Mr. Pringle?

6

7 EXAMINATION BY MR. PRINGLE

8 Q. We'll keep it very brief. I don't think anyone asked you, Ms.  
9 McConkey, what your background educational degrees are  
10 and so on with respect to the work that you do?

11 A. I have a Masters degree in Criminology from the University of  
12 Toronto.

13 Q. When did you obtain that?

14 A. In 1973.

15 Q. And since that time, you've been working with the  
16 Correctional Service or the Parole Board?

17 A. Yes, sir.

18 MR. PRINGLE

19 That's all I have. Thank you.

20 MR. CHAIRMAN

21 That's all. Thank you, Ms. McConkey.

22 11:05 a.m. INQUIRY RECESSED UNTIL 11:36 a.m.

23

24

25