

1 MR. SPICER

2 My Lords, the next witness is Jack Stewart.

3
4 JACK STEWART, duly called and sworn, testified as follows:

5 EXAMINATION BY MR. SPICER

6 MR. SPICER

7 My Lords, Mr. Stewart is also a representative for the
8 Correctional Service Canada or the Parole Board... Correctional
9 Services Canada, and before I commence questioning him, I just
10 want to refer back to some comments actually that were made by
11 George MacDonald in Volume 40 some time ago dealing with the
12 constitutional problem; that is, to the extent to which we as
13 commission counsel and, in our view, the Commission, would
14 intend to get into areas of federal competence. I bring it up now
15 because I certainly sensed in the examination of Diahann
16 McConkey that my friends from Justice were objecting to certain
17 matters that Mr. Wildsmith was getting into and, in fairness, we
18 have discussed with them the position that Commission counsel
19 would take in the event that we sense that other counsel were
20 getting into the federal area and our view is that we should not be
21 doing that because it was not conceived to be within our terms of
22 reference. George MacDonald had made that point some time ago,
23 in fact, in Volume 40 at page 7454 and had explained to the
24 Commission the agreement that we had reached with the National
25 Parole Service and with Corrections Canada that, in return for

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1 people, and in fact, Diahann McConkey coming forward and
2 speaking about a specific policy and that policy being the
3 guilt/innocence issue, to that extent, we would be getting into
4 areas that would otherwise be federal. But beyond that, we would
5 not and that we would agree with objections that were made if we
6 thought that they were getting into, other counsel were getting
7 into matters of federal jurisdiction. And in that respect, with
8 those two newspapers clippings which Mr. Wildsmith was seeking
9 to put in as exhibits, he had indicated to me some time ago that he
10 would seek to do that and I had told him that, in our view, that
11 those were matters that were outside the terms of reference of
12 the Commission and that we would be objecting to them. And that
13 was the intent of my comment when I said that we had had
14 discussions with Mr. Pringle and Mr. Bissell prior and I wouldn't
15 want to see that happen again. At least happen again in the sense
16 that the commissioners would not be fully aware of the position of
17 the Commission counsel in respect of those matters.

MR. CHAIRMAN

19 I recall the advice that was tendered by Mr. MacDonald as
20 Commission counsel when some witness who was an employee of
21 the Government of Canada, as I recall it, was to give evidence and
22 we fully appreciate that. Clearly, the Province of Nova Scotia does
23 not have the jurisdictional right to, nor did it include in our terms
24 of reference or in our mandate, matters that impinge upon federal
25 jurisdiction. We have been trying as best we can to insure that

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1 we obtain all relevant evidence as it relates to the Donald
2 Marshall, Jr. case and still stay within our own jurisdictional
3 backyard. Counsel will appreciate that on occasion there will be
4 an attempt to go over or under the jurisdictional fence and if we
5 see that happening, we will have to do our utmost to prevent it.
6 So all I can assure you is, assure counsel is that we will do our, use
7 our best efforts. Using our best efforts may not be the answer.
8 We have no choice but to stay within our mandate to insure that
9 we operate within the mandate, the constitutional mandate and
10 otherwise, that is imposed upon us by our terms of reference. So
11 I would ask counsel if they would, all of whom fully appreciate
12 the constitutional niceties if they will follow suit.

MR. SPICER

14 Thank you, My Lord.

BY MR. SPICER

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

17 A. John Alexander Stewart.

18 Q. And you go by "Jack"?

19 A. Yes, I do.

20 Q. What's your current position, Mr. Stewart?

21 A. I'm the Coordinator of Community Resources for Nova Scotia
22 District, Correctional Service.

23 Q. Sorry, could you say that again for us?

24 A. I'm the Coordinator of Community Resources for Nova Scotia
25 District.

1 Q. Community Resources for Corrections Canada?

2 A. Correctional Services Canada, yes.

3 Q. For how long have you been employed with Correctional
4 Services Canada?

5 A. Approximately 15 years.

6 Q. Can you tell us briefly what your career with corrections has
7 been?

8 A. My initial employment with Corrections was in 1970 for a
9 year at the West Georgia Centre, a community correctional
10 centre in Vancouver.

11 Q. Doing what sort of work?

12 A. I was a counsellor at that time and then in '73, I joined
13 Correctional Service Canada, after working in the community
14 with young offenders and people in conflict with the law.

15 Q. That would have been in Halifax?

16 A. Yeah, it was in Halifax, yes. I ran group homes here in
17 Halifax.

18 Q. Would those have been group homes for offenders or group
19 homes for kids?

20 A. No, they were for children between the ages of 14 and 18,
21 both male and female. A number of them had come
22 voluntarily from the courts. There is an option to sentencing.

23 Q. Is this diversion projects and that sort of thing?

24 A. It was a diversion project. It was an alternate
25 accommodation. A number of them had no homes. And then

1 in '73, I joined the Correctional Service again working at the
2 Carlton Centre. I worked at the Carlton Centre as a counsellor,
3 senior counsellor, and ultimately superintendent. And
4 approximately three years ago, I transferred to our district
5 office in my current position.

6 Q. So for what number of years would you have been associated
7 with the Carlton Centre?

8 A. From '73 to '84, '85.

9 Q. Eleven or twelve years?

10 A. Yes.

11 Q. Can you explain to us what the Carlton Centre is, how it fits
12 into the penitentiary system?

13 A. The Carlton Centre is a community correctional centre. It...

14 Q. It's located in Halifax?

15 A. It's located in Halifax near the Charles Tupper Medical
16 Building. It is one of a series of community correctional
17 centres across Canada. They are designated as penitentiaries
18 under the Act. They're run by Correctional Services Canada.
19 Previously, they were run by the Penitentiary Service. They
20 are to facilitate the reintegration of offenders back to the
21 community, with some control. They're primarily used as day
22 parole centres.

23 Q. Can you give us any idea at all over the period of your time
24 with the Carlton Centre how many inmates would have come
25 under your jurisdiction?

1 A. I would say close to 400, 450.

2 Q. Over that entire period of 12 years?

3 A. For the entire period. It's got a bed capacity of 16. The
4 normal turnover time would be an average of four months.
5 That would vary, obviously, with the case. So during that
6 time, I would suspect about 400.

7 Q. How many people from Correctional Service work, were
8 working at the Carlton Centre, what's the staff?

9 A. The staff has changed somewhat. The maximum number
10 would have been seven with some assistance for contract
11 security through the Canadian Corps of Commissionaires.
12 Currently, there would be five with the same security system
13 back-up.

14 Q. At the time Junior Marshall was there, what would the
15 staffing have been?

16 A. The staffing would have been a counsel... three counsellors,
17 senior counsellor, superintendent, and support staff.

18 Q. So five plus the support staff?

19 A. Yes, plus the commissionaire coverage.

20 Q. And the commissionaire coverage is physical security of the
21 building?

22 A. Physical security of the building on the back shift and on
23 weekends with back-up and support from the counsellors and
24 on-call personnel.

25 Q. You said that the bed capacity was 16. Was it 16 at the time

1 Junior was there?

2 A. Yes, it was

3 Q. And would it generally be the situation that you would be
4 filled to capacity?

5 A. Generally filled to capacity and quite often a waiting list.
6 That varies from time to time, depending on the releases.

7 Q. Over your period of years with Corrections Canada, have you
8 then had personal experience in assisting inmates in
9 reintegrating into society?

10 A. Yes.

11 Q. Can you give us some idea of how many inmates you would
12 have so assisted over that period of time?

13 A. Well, as the Carlton Centre worked on a team supervision
14 basis, during the time I was there, it would be close to 400.
15 You'd have varying degrees of responsibility. Each individual
16 is assigned a counsellor. The other counsellors would work as
17 part of that counselling team. The senior counsellor and the
18 superintendent would be involved in all cases and all
19 decisions would be made through them.

20 Q. Do you have any educational background or professional
21 background that you would consider led you into this
22 particular line of work?

23 A. My educational background is a Bachelor's degree in
24 Anthropology that I finished when I was 25. I had worked
25 during my time at university with friends who were running

MR. STEWART, EXAM. BY MR. SPICER

1 like a halfway house for narcotic addicts in Vancouver who
2 were attempting to reduce their habits and...

3 Q. Is it fair to say you learned your work on the street?

4 A. Quite extensively, yes.

MR. CHAIRMAN

6 Mr. Stewart, this centre is the only federal centre of its kind
7 in Atlantic Canada?

MR. STEWART

9 No, sir. The Carlton Centre is located in Halifax. There is a
10 centre called "Partown Centre" in Saint John, New Brunswick and
11 there is a centre in the Parrsboro area called "Sand River" which is
12 operating jointly with Scott Paper where individuals go on day
13 parole prior, usually, to going to a place like the Carlton Centre or
14 Partown. But they are all three considered community
15 correctional centres. But the two major urban centres would be
16 the Carlton Centre in Halifax and the centre in Partown.

MR. CHAIRMAN

18 The arrangement with Scott Paper, as I recall it, starts, often
19 starts very early in an inmate's period of incarceration in
20 Springhill?

MR. STEWART

22 The involvement with Scott Paper, not to bring Scott Paper
23 totally into this...

MR. CHAIRMAN

25 No, but I mean...

MR. STEWART, EXAM. BY MR. SPICER

1 MR. STEWART

2 Scott Paper operates...

3 MR. CHAIRMAN

4 Day parole working with Scott Paper.

5 MR. STEWART

6 Day parole for Scott Paper works through Springhill
7 through a tree nursery system. Now that's on the grounds of the
8 penitentiary. The Sand River Community Correctional Centre is
9 about 16 to 20 miles, as the crow flies, from Parrsboro, right in
10 the middle of the woods. And when individuals are there, they
11 have all the rights and responsibilities of an individual on day
12 parole at a community correctional centre. So they can go out on
13 weekend passes, et cetera. But they ar working cutting paper...
14 pulp for Scott Paper during the day throughout the week. They're
15 actually learning how to use chainsaws, wood safety, et cetera. So
16 it's a contractual arrangement to provide employment.

17 MR. CHAIRMAN

18 Thank you.

19 BY MR. SPICER

20 Q. Can you explain to us how a person gets to the Carlton Centre?

21 A. The individual has to be identified by the case management
22 team in the institution.

23 Q. Could that be either Springhill or Dorchester?

24 A. Springhill, Dorchester, or Westmoreland. They could also be
25 identified by case management teams at any other

1 case management team and developed a release plan that
2 includes day parole, the option of a community correctional
3 centre is examined. If the individual chooses to take that
4 route, then a day parole application to the National Parole
5 Board is filled in. It goes through about four months of
6 processing, on an average, and during that time, the
7 individual is referred for consideration to the community
8 correctional centre, both for a community assessment and for
9 the reaction of the community correctional centre to see if
10 that individual would be suitable.

11 11:50 a.m.

12 Q. So do I understand you correctly then, that in addition to the
13 applicant having to be considered to be suitable for day
14 parole in a general sense by the National Parole Board, in
15 order to arrive at the Carlton Centre they also, that person
16 also has to be acceptable to the receiving institution, that is,
17 the Carlton Centre.

18 A. Yeah, let me clarify. They don't necessarily have to
19 acceptable at that point to the National Parole Board for day
20 parole nor do they necessarily have to be totally acceptable to
21 the case management team. If the individual wants to apply
22 he can apply and be either supported or not supported by the
23 case management team. More often than not they're
24 supported by the case management team.

25 Q. The case management team is a group of individuals who

1 work with the inmate in the institution?

2 A. Within the institution, yeah.

3 Q. All right, but to come back to my question, is it, in fact,
4 though the case the the Carlton Centre itself and the people in
5 it, get to make a judgement themselves as to whether or not
6 they want to accept somebody into that program.

7 A. Yes.

8 Q. Notwithstanding what may have occurred at the other end.

9 A. Yes. And we have input into that.

10 Q. Okay. You've been present for some of Ms. McConkey's
11 testimony and perhaps all of it.

12 A. Most of it.

13 Q. Most of it. If you could help us a little bit, Exhibit 150, we
14 understand that to be two versions of the National Parole
15 Policy in connection with claims of innocence.

16 A. Yes

17 Q. Are you familiar with that?

18 A. I've seen it and read it.

19 Q. Is it the case that the Carlton Centre, notwithstanding the fact
20 than an inmate may have received day parole while
21 maintaining his innocence, does the Carlton Centre have the
22 ability to say, no, we don't want that person because he isn't,
23 still maintaining he's innocent?

24 A. Yes. The National Parole Board is the releasing authority.
25 Correctional Service Canada has the responsibility for

1 administering the sentence. To come to the Carlton Centre
2 from another institution requires a transfer, institutional
3 transfer. We've not gotten up to the point of absolutely
4 refusing an individual while the board's been saying, yes, you
5 will take them. But we've come very close on several
6 occasions. The procedure there is if the National Parole Board
7 grants a day parole, for example. And if it's the strongly held
8 belief of the Carlton Centre that that individual is not suitable
9 then transfer will be refused and it will be referred to the
10 Deputy Commissioner of Correctional Service Canada Atlantic
11 and the chair of the National Parole Board Atlantic. And they
12 will discuss it. They will try and reach a reasonable decision.
13 If the Deputy Commissioner Atlantic says yes, you will accept
14 transfer, then, of course, we do. But we've had a very, I think
15 a very fine working relationship where we haven't had to go
16 up and actually test that.

17 Q. So you've never been in a situation where you've had to
18 consider refusing admission to the Carlton Centre because a
19 person who had otherwise, who had been released was
20 claiming to be innocent.

21 A. No, we'd never run into that specifically.

22 Q. Can you tell us in general terms what it is that you do with
23 the inmates who come to stay at the Carlton Centre? What is
24 it that you're hoping to accomplish and what sort of things do
25 they do?

1 A. Well it varies depending on the length of time the individual's
2 been in and obviously on the offence they've committed. But
3 generally what we're...

4 Q. Let's take a lifer then if that makes it easier.

5 A. A lifer? Okay. What you're attempting to do is sort of two-
6 fold. Test the individual on the street when you still have
7 very, very strong control over his comings and goings. Where
8 you...

9 Q. When you say you have, sorry to keep to interrupting...

10 A. That's all right.

11 Q. When you say you want to test the individual on the street
12 when you have a strong degree of control over their comings
13 and goings what do you mean by that?

14 A. If you assume that protection of society is paramount in
15 Correctional Service Canada, or one of the three major
16 responsibilities we have, you want to insure that when an
17 individual comes out, especially after having done a long time
18 or for a violent offence, that the behaviour you're seeing in
19 the institution is, in fact the real behaviour. So what you're
20 attempting to do is observe them in a number of more natural
21 settings then, say, an institution. I'll give you an example. If
22 an individual has had an alcohol problem or an addictions
23 problem, you can test that to a degree in an institution. But
24 the real test has to come when the individual's out and that is,
25 it's available to him. So if you're walking down the street you

1 can step into a bar, you've got to see that. He passes the bar
2 by. You've got to see that under stress, for example, he
3 doesn't immediately grab a drink or, you know, using that as
4 an example. So one of the things you're trying to do is test.
5 You want to see, for example, without the requirement of
6 gates and things like that, whether he'll stay within a 25-mile
7 limit. You want to start observing the behaviour, but at the
8 same time pick up on things very quickly if you see any
9 deterioration happening. That's one the aspects.

10 Q. What, are you able to generalize and tell us what generally is
11 the situation that, or the characteristics that a lifer presents to
12 you when they come to the Carlton Centre?

13 A. The most overriding first characteristic is they're scared.
14 When they hit the street they're very nervous. Because most
15 of them have been in a very closed situation with some
16 releases, temporary absences by, either escorted or
17 unescorted, or limited day paroles. They've been living in a
18 very structured limited community for often 10, 11, 12 or
19 more years. The whole focus in an institution is attempting to
20 get out the gate, to leave the institution. So a lot of the
21 normal patterns that a lifer would go through are geared to
22 that end. And suddenly when they hit the street they're
23 confronted by a whole lot of things. Like, for example, they
24 are not getting absolute close supervision that they would get
25 in an institution. They're not scrutinized. They can eat a little

1 more freely. They can choose their own food. They suddenly,
2 though, have to start dealing with things like real money.
3 They have to start dealing with rules that are quite different
4 from an institution. If you assume that an institution, if you
5 break them all down, it's maybe got 50 to 100 rules, that
6 control most social interactions and business interactions.
7 When you hit the street those rules change all the time and
8 it's very difficult after you've been out of that for a long
9 period of time to adjust.

10 Q. Is part of what you're trying to do is to facilitate their re-
11 entry into those sorts of situations then?

12 A. Yeah. Both by trying to guide them through certain things as
13 simple, for example, as going into a restaurant and ordering,
14 to giving them a buffered place to come back. There has to be
15 a sanctuary where a person can come back and process and
16 that's one of the major functions in my view of a community
17 correctional centre, the buffering zone.

18 Q. Is there any, what kind of, what period of time does it take
19 for a lifer to make that sort of adjustment in your experience?

20 A. A lot of that depends on the lifer but you're looking a
21 minimum of six to eight months probably in the, a place like
22 the Carlton Centre, where there's daily return and a little
23 increased freedom. Then you're looking at probably a period
24 of five and two which means five days out and two days back.
25 You're looking at a five and two for possibly three or four

1 months. Again, depending on how the individual's
2 responding. But the adjustment process is longer than that.
3 Once an individual leaves it's, to my experience, a lifer tends
4 to go through a number of phases and the other phase is the
5 individual might go through would happen maybe a year
6 after he had left a place like the Carlton Centre. Quite often
7 the supervision is shared between the supervising parole
8 office and the Carlton Centre if the individual is staying in
9 Halifax just simply to help them over the last phase of his
10 adjustment.

11 Q. So could it be the case that after somebody leaves the
12 residential aspect, and leaves the Carlton Centre, that you
13 would still nevertheless have some involvement with that
14 person as a parolee?

15 A. Yes. Yeah, both, if it's decided officially to maintain that and
16 maintain the supervision and also by joining the case
17 management team in the community because you continue to
18 be a resource.

19 Q. And has that been your practice with some parolees?

20 A. Yes.

21 Q. With a lifer is, is a person who has a life sentence now out on
22 parole, is that person ever out of the jurisdiction of
23 Correctional Service?

24 A. No. No. Life sentence means exactly that. The sentence and
25 where the individual does the sentence is, differs. The place

1 of doing the sentence differs. But the sentence is always
2 there. An individual can do it in a federal institution or in a
3 CCC or under parole, but the sentence is still there. And we're
4 simply administering the sentence at that point.

5 Q. So there's always, throughout that person's life there's always
6 a contact with the correctional service.

7 A. Absolutely, yeah.

8 Q. Right up till the time the person dies, if I understand you.

9 A. Yes.

10 Q. Mr. Marshall came to the Carlton Centre in March of '82,
11 March 29th or so, I think, or 1982.

12 A. Yes. To my recollection.

13 Q. When did you first become aware of Junior Marshall?

14 A. The first time I actually became aware of him would have
15 been about September of the previous year.

16 Q. You don't need to look at it but in Volume 27 there's a note of
17 Steve Aronson's that he had started having telephone
18 conversations with you in about the fall of 1981, September,
19 October or so.

20 A. That would be correct, yeah.

21 Q. And was that your first involvement, was a call from
22 Aronson?

23 A. I'm trying to remember back. I believe we entertained an
24 application previously from Donald Marshall, Jr. and I believe
25 we turned him down at that point. But again...

1 Q This is prior to the fall of '81.

2 A. Prior to the fall, but I don't have any documentation on that
3 and I didn't have access to a file so I couldn't check that out
4 but the first real contact that I can recall was with Mr.
5 Aronson in the fall. I got a telephone call and he asked if he
6 could speak to me.

7 Q You knew Steve Aronson, in any event, didn't you?

8 A. Yes.

9 Q At that point.

10 A. Steve, while he was preparing for law school and in law
11 school worked with me with the kids that I talked about
12 earlier. He was working on a street law project and we'd
13 been friends for quite some time.

14 Q Okay. When you were first contacted by Aronson in the fall
15 of '81 what was it that he was saying to you? What did he
16 want you to do?

17 A. He said that he was working on land claims, native land
18 claims in Nova Scotia, and during that time he'd come to know
19 Donald Marshall, Sr. quite well. And he'd been hearing
20 rumblings, rumors, et cetera about the guilt or innocence of
21 Donald Marshall, Jr. He was, at that point, beginning to look
22 into the validity of those rumours and he wanted to know a
23 couple of things from me. One, did I know anything about
24 him and at that point I didn't. Two, would we be open to
25 considering any information on him if it came up. And

1 obviously if we were doing a community assessment or
2 anything else, we'd be looking into everything we could. And
3 three, did I know anybody who was a good investigator.
4 Well, to the last one I had no idea. So I agreed to maintain a
5 communication with him as I would with anybody else.

6 Q. And you did that?

7 A. Yes.

8 Q. Did you meet Junior Marshall prior to him coming to the
9 Carlton Centre?

10 A. The first time I laid eyes on Junior Marshall or spoke to him
11 was when we picked him at the Airport Inn Hotel when he
12 was released.

13 Q. You've got Volume 35 in front of you there, Jack. If you'd
14 look at page 199...

15 A. I have it.

16 Q. A letter from Steve Aronson to yourself and that is within a
17 couple of weeks of Junior Marshall's coming to Carlton Centre.

18 A. [Witness nods "yes".]

19 Q. If you could now flip over to 205, same volume, it's a
20 community assessment which is signed by yourself.

21 A. Yes.

22 Q. And dated, I don't know what the date is. March 24th date
23 completed in any event, in Box 12. What was the reason for
24 this community assessment being done?

25 A. An application for day parole had arrived from the Moncton

1 district office asking us to look into the possibility of
2 accepting Donald Marshall, Jr. as a resident of the Carlton
3 Centre. The reason for referral was listed in the top section,
4 that special instruction. They wanted us to take a look at him
5 because they found that his behaviour was changing
6 somewhat. And they wanted us to take a look to see if he
7 would be a good potential resident.

8 Q. By this stage of the game, that is by the third week of March,
9 was there anything publicly that you knew of, concerning Mr.
10 Marshall's case. Was there anything in the press at that
11 point?

12 A. We were starting to get some phone calls here and there and
13 there was information going through to other people that
14 there was something going on.

15 Q. Right.

16 A. I wasn't getting anything directly on that at all. And we
17 knew there was something afoot, didn't know what it was.
18 From the time we got the request for community assessment
19 in consideration of the Carlton Centre suddenly this, all this
20 other information started pouring in so we held onto the
21 community assessment because we thought it was somewhat
22 relevant.

23 Q. In your community assessment you indicate that you
24 contacted two people, Steve Aronson and Gordon Gale.

25 A. Yes.

1 Q. And in the third paragraph of that section you say, "The area
2 of greatest concern was Mr. Marshall's total denial of guilt in
3 his offence and his frustration with staff attempting to deal
4 with him in this area."

5 A. Yes.

6 Q. Was that your own view?

7 A. That was the view, my view, and therefore, the view of the
8 Carlton Centre. We put, and continue to put a great deal of
9 emphasis on whether or not a person takes responsibility for
10 his offence and would have at that time.

11 Q. And at this stage of the game, in March of '82, did you have
12 any sense that perhaps you were about to get a person who
13 wasn't, in fact, guilty? Or were you still treating him as just
14 somebody who's coming out on day parole?

15 A. We were treating the application, when we got the application
16 we were treating him as an individual who's being referred
17 who was continuing to maintain his innocence. Had we not
18 received additional information, specifically from Mr. Gale
19 and Mr. Aronson, or through Mr. Aronson, we would have
20 treated the file the same way we would have treated anyone
21 else who is coming down with a profession of innocence. We
22 would have gone into a very specific procedure on that on.

23 Q. What would you have done?

24 A. We would have immediately informed Moncton that unless
25 the issue was addressed, we would not entertain him as a

1 resident of the Carlton Centre.

2 Q. What does that mean, the issue was addressed?

3 A. The issue of guilt or innocence, one of the major concerns,
4 again, going back to our mandate, is protection of society. If
5 an individual is not professing guilt or is denying guilt,
6 especially for a serious offence, that can lead to some
7 difficulties for the community later on. For example, we've
8 had other individuals who have stated they were guilty but
9 stated they couldn't remember the offence. Well that would
10 be an equal concern to us. Our procedure with this would
11 have been if the institution and the case management staff
12 was supporting this individual strongly, we would have
13 insisted on moving him to a forensic psychiatrist for a full
14 assessment just to see what we were dealing with. Because if
15 you don't know what you're dealing with then you can't deal
16 with the individual and you can't, in fact, protect society. So,
17 you know, we would go into that procedure immediately.

18 Q. But in this specific case, the information that you refer to, you
19 file in a separate report which appears on page 207 and that's
20 your "Confidential Information Report."

21 A. Yes.

22 Q. And you indicate in that you'd talked to Mr. Aronson, you'd
23 also talked to Mr. Gale, and if I could just take you to the fifth
24 paragraph, you have a quote, I think from Mr. Gale in the
25 fifth line. "He did say that he had 'good reason to believe that

1 Mr. Marshall did not kill Mr. Seale."

2 A. Yes.

3 Q. And that was the information that made your taking Junior
4 Marshall different from taking somebody who was otherwise
5 professing his innocence.

6 A. Yes, when we get, when you get information from the
7 Attorney General's Department and when you know that
8 other investigations are going on, and I believe at that time
9 the Federal Justice Department was starting to get
10 information as well, as well as the National Parole Board,
11 again, you have to take that into consideration. We can't
12 continue to decide the guilt or innocence of individuals who
13 have been found guilty by the court and this seemed to be a
14 very mitigating circumstance to us.

15 Q. Was Mr. Gale supportive of the notion that Mr. Marshall could
16 go to the Carlton Centre or would that even have come up in
17 your conversation?

18 12:10 p.m.

19 A. He knew I was asking for information and he knew why I
20 was asking for it, because I identified myself very clearly. I
21 didn't get any positive or negative response from him, but I
22 assumed that since he was giving me the information, I could
23 certainly utilize it and I don't think he had an opinion one
24 way or the other. I certainly got none out of his voice.

25 Q. In that same paragraph, you say in the line above, the one I

1 just referred to: While I could not receive a copy of the police
2 investigation..." Did you ask Mr. Gale for one?

3 A. Yes, I wanted to document it because I was getting into
4 territory that I had never been into before. So I wanted to
5 have as much documentation as possible. I asked for it. It's a
6 routine procedure to ask for any information you can get. At
7 that point, I can't say whether it was complete or incomplete.
8 But at that time, I think he felt... He probably felt it was
9 inappropriate to give it to me at that point but he was
10 certainly was able to quote from it and I didn't necessarily
11 have to push it at that point. His word was good enough for
12 me.

13 Q. Have you received police investigation reports from the
14 Attorney General's Department in other cases?

15 A. Currently, we receive reports on anyone we ask for, pretty
16 well.

17 Q. From the A.G.'s office or from the police forces?

18 A. From a combination. That's a very recent change in
19 procedure. We, at that time, would routinely ask for police
20 reports and presentence reports. And while we didn't get
21 them directly from the Attorney General's Department, we'd
22 quite often get them from the police departments that were
23 involved. There were very few instances where we had to go
24 directly to the Attorney General's Department for anything.

25 Q. On the next page of that report on page 208, in the first full

1 paragraph, it says:

2
3 Mr. Aronson and Mr. Marshall's family are
4 understandably very anxious to get him out of
5 prison...

6 The next sentence:

7 In addition, the press in Cape Breton are aware
8 that an investigation by the R.C.M.P. was
9 conducted into the Marshall case...

10 Had you been contacted at this point, that's March 24th, by
11 the press in Cape Breton?

12 A. I honestly don't know. We were starting to get phone calls
13 from the press. Now I can't say if it was from the press in
14 Cape Breton, but the press were certainly starting to look into
15 it.

16 Q. They were what?

17 A. They were aware that there was an investigation. I don't
18 know if they were aware of what the contents of it were but
19 they were certainly starting to track what the possible routes
20 would be if the individual was released, and the Carlton
21 Centre was one of the logical places to check.

22 Q. As a result of the community assessment and the Confidential
23 Information Report, I believe the materials will show that on
24 page 209 that it was the following day, the 25th of March that
25 day parole was granted to Junior Marshall.

A. Yes.

1 Q. And March the 29th, I believe, that he came to the Carlton
2 Centre.

3 A. Yes.

4 Q. Can you tell us how Mr. Marshall got to the Carlton Centre,
5 who brought him and where he came from?

6 A. Yes, he was... Arrangements were made for him to be picked
7 up by his parents at Dorchester Penitentiary. I believe they
8 picked him up in the morning. He was to report to the Carlton
9 Centre, I will say by four o'clock, and I'm purely picking that
10 one out of the air, but a reasonable amount of travel time was
11 given to allow him to proceed from Dorchester to the Carlton
12 Centre. We were in touch with the Marshall family and the
13 individuals at Dorchester that were responsible for releasing
14 him. We made arrangements for them to call us when they
15 were halfway down. We made arrangements then, Mr.
16 Aronson and myself, to pick him up at the Airport Inn, near
17 the Halifax International Airport.

18 Q. Why were you going... Why were you doing that?

19 A. Why were we doing that?

20 Q. Yeah.

21 A. Because by the time he was being released, we had a press
22 contingent like I'd never seen before. They were all around
23 the Carlton Centre. One of the concerns we had was that we
24 were, again, getting into unfamiliar territory. We didn't know
25 what the case plan was going to be. If we were bringing

1 somebody out that we knew we were going to have for a
2 period of time and we knew why we had him there, you
3 know, for a very specific offence, et cetera, we would have
4 been able to plan a little more easily. This way, we were sort
5 of playing it on the wing. One of the things we were intent on
6 was not making Junior Marshall a celebrity within the Carlton
7 Centre. Because, remember, we still had 15 other people that
8 were in there trying to get on with their reintegration. And I
9 know Mr. Aronson wanted to limit contact with the press as
10 much as possible. Then we considered that, or I considered
11 that an extremely reasonable request. I also wanted to have
12 Mr. Marshall walk in the same way everybody else did,
13 carrying his own bags without a whole bunch of flash bulbs
14 and things like that. So what we did was a little roust. We
15 picked him up, after we lost the press, we went out and
16 picked him up there. He had a chance to say good-bye to his
17 parents. We put him in the van. When we got close to the
18 Carlton Centre, Mr. Aronson called and set up a press
19 conference for seven-thirty at the Parole offices, Parole
20 supervision offices in the boardroom. The press left for there
21 and at twenty-five after seven, we walked Junior Marshall
22 into the front of the Carlton Centre with his bags in his hand.

23 Q. They can be tricked.

24 A. No comment. We felt it was important. We felt it was
25 important because we were starting the person's

1 reintegration and it might sound foolish, but it seemed
2 important at the time and I still believe it was, to have the
3 individual taken in without the notoriety, because that caused
4 a lot of problems later on.

5 Q. Give us your impressions of Junior Marshall during the first
6 few days that he was at the Carlton Centre?

7 A. He was confused. He was nervous. He was very happy to be
8 out of Dorchester. He was sort of in a state of shock, is the
9 best way to say that.

10 Q. Did he present himself as... Or can you distinguish between
11 the way he presented himself and the way a normal lifer
12 would seem to you coming to the Carlton Centre? Is there
13 any difference?

14 A. It's really hard to say because he had the same sort of
15 understated euphoria that everybody has when they first
16 walk out. And he also had the nervousness of it. But it was
17 very difficult to judge because, again, we had, we had a lot of
18 cameras and we had a lot of people always around. A normal
19 lifer, you could take out for a walk. You could go and have a
20 cup of coffee or do something like that. That wasn't possible
21 at that time. We were surrounded. And so it was very
22 difficult to try and figure out his reactions to us, because he
23 was meeting us for the first time. His reactions to us, the
24 reactions to the other people in the house because he had to,
25 you know, establish himself there, and his reactions to just

1 what was going on. Because it really was quite stressful for
2 everyone at that point, simply because everybody, and
3 understandably, people wanted to get a picture of him, talk to
4 him and everything else like that. We had to sort of keep the
5 door barred and... So it was very difficult to figure out what
6 his real reactions were at that point. I know he was also very
7 tired, because I don't, you know, he hadn't slept for several
8 days before coming out.

9 Q. Were you able to take him out, though, for walks and stuff, or
10 were you just not able to do that at all?

11 A. Oh, no, we got him out. Again, I'm sounding like a bit of a
12 marshaller of resources, but at one point, to get him out, we
13 got all the fellows to put on their jackets and leave at the
14 same time. And when the press said, "Hey, Donald,"
15 everybody said, "Yes," and we walked out the back door with
16 him. So, you know, it was that kind of situation. It seems
17 very humorous at this point, but, believe me, at the time, it
18 wasn't humorous. It was anything but humorous. So we
19 were able to get him out from time to time. And I'm not
20 saying he was held prisoner by the press. I don't want to
21 give that impression. I want to hint at it a little bit, but it
22 made the whole thing unreal. He didn't have the same, nor
23 did any of the other guys and that started causing some
24 problems after awhile because, again, as I say, he was the star
25 as far as everybody was concerned. However, we had 15

1 other people there that we were trying to do exactly what we
2 had them there to do-- get them out on the street.

3 Q. Were you then trying to treat him the same way you would
4 treat any other lifer who was at the Carlton Centre?

5 A. Yeah, that was the thing that when we talked as a staff, that
6 was the thing that was absolutely critical. The only thing that
7 had changed was that there was, at that point, a very clear
8 indication from people that we had to listen to that the issue
9 of guilt or innocence was not impacting on protection of
10 society, okay? What we had to do, however, we still had to
11 administer the sentence because it didn't matter what the
12 Attorney General said or Justice Department said or anything
13 else until that individual was dealt with. We still had that
14 sentence to administer. So we had to walk again that fine line
15 and it put us in a bad spot, as individuals because, as I say,
16 we were going into unfamiliar territory. We had never run
17 into this before. So we had to sort of strain everything
18 through. How do we deal with this? How do we deal with
19 that? Well, the obvious thing was we deal with him the same
20 way we deal with everybody else. Again, otherwise, you've
21 got a dynamic happening in a very small unit that's not
22 beneficial for anybody.

23 Q. How did he react to being treated the same way as everybody
24 else?

25 A. At times, positively; at times, other times, he was very angry.

1 Q. Could you sense why he was angry?

2 A. Oh, he said, "Look, I'm out. I didn't do it. Now why don't you
3 just let me go?" Right? And the answer to that was obvious,
4 "We have no authority to do that," and at that point, even if
5 we had the authority, if I had had anything to say about it,
6 we wouldn't have acted that way because he still had to come
7 out. He still had a lot of time...

8 Q. What does that mean, "He had to come out"?

9 A. Well, he had to come out of... He had to come out of a very
10 structured institutional setting, okay? And he had to start
11 learning how to deal on the street again.

12 Q. What had he lost over that period of years, in your
13 assessment, when he came out?

14 A. The normal sort of evolutionary socialization that takes place.
15 You notice it with a lot of long timers. The ability to interact
16 with people. The ability to think in sort of a critical fashion as
17 opposed to necessarily a paranoid fashion. To be a little less
18 focused. Most fellows that come out, they're focused very
19 much on rules, regulations. Am I going to get into trouble? Et
20 cetera. Well, to give you an example, if you consider, take
21 yourself at age 18, 17 or 18, and then consider yourself at age
22 28 or 29. What are the differences in your life between then
23 and now and what did you learn? And what real situations
24 did you get up against? If you wind up in a community that's
25 a fairly isolated, by design an isolated community, you miss a

1 lot of just the normal socialization.

2 Q. What sort of things are you talking about?

3 A. Well, example, a lot of people who've done a long time, men
4 go out and they try and date a woman. If a 28, 29, or 30-
5 year-old man walks up and has the same social skill
6 development as, say, a 17 or 18-year-old, then it becomes
7 obvious fairly quickly. And you find an awful lot of difficulty
8 just in establishing normal male/female relationships, even
9 on a dating basis. Because you don't have the same
10 socialization experience.

11 Q. Did you sense that in Junior?

12 A. Oh, yeah. Yeah, very definitely, yeah. You sense that in most
13 lifers that come out.

14 Q. During the time that Junior Marshall was at the Carlton
15 Centre... You don't need to look at it, it's in a different
16 volume, but there were a number of weekend passes, I
17 believe, that he got over that...

18 A. Yes.

19 Q. Period between March and... I think he left the Carlton Centre
20 in July.

21 A. Uh-huh.

22 Q. And during that period of time, there were a number of
23 weekend passes that were granted.

24 A. Yes.

25 Q. What would have been the purpose for granting those passes?

1 A. Twofold. One was to allow him to participate in certain
2 events, okay? For example, there was, as I recall, a gathering
3 at Chappell Island, and it was fairly important to him and to
4 his family, and I guess to the rest of the Micmacs. So that
5 would be like a resocialization, reintroduction, reorientation.
6 Some of them were purely to give him some time where he
7 could put his feet up and, again, be out of the spotlight with
8 people that could be reasonable models for him, to address
9 some of the issues. He had to be able to socialize and, again,
10 that's not just peculiar to him. That's to most lifers. They
11 have to be in a situation where they can be in a
12 noninstitutional setting.

13 Q. Was the weekend pass program for him any different than it
14 would have been for any other person at the Carlton Centre?

15 A. Not in frequency, no. No.

16 Q. In some other way?

17 A. Yeah, we were a little more... We were, I think, a little more
18 sensitive to why he was going out and we would talk to him
19 about why he was going out a little more than we talked to
20 somebody going out on a recreational pass.

21 Q. Did you see any noticeable change in Junior Marshall during
22 the time he was at the Carlton Centre from March until July,
23 in terms of the way he was dealing with being out of
24 Dorchester?

25 A. Yeah, there were a number of things and I'm trying to cast

1 back. First of all, being very happy he was out. That's a very
2 normal first reaction. Then a frustration that out didn't mean
3 what he thought it would mean.

4 Q. Didn't mean free.

5 A. It didn't mean free. And that's a very, again, a very common
6 thing with long-term offenders. That first couple of weeks to
7 the first month, it's like, you know, Christmas every day but,
8 suddenly, they're saying, "Well, I'm not free. I'm still
9 incarcerated. I'm still in a jail." And with Junior Marshall, it
10 was again sort of clouded by everybody having free advice
11 for him. You know, like everybody had advice. He was trying
12 to deal with people that maybe he hadn't seen for a number
13 of years who said, "I've been with you all along," and the
14 question there was, "Well, where were the letters?" Trying to
15 go out and date. Again, trying to avoid the press, and I don't
16 want to keep coming back to that, but it was very difficult
17 because he didn't have the anonymity, okay? And most
18 people when they come out after a very long time feel that
19 everybody is looking at them, anyway. You know, the first
20 thing they want to do is get rid of their institutional clothing
21 and things like that. So they're feeling very much on display
22 and very fragile. He also had the issue of lack of anonymity
23 to go with that. The other was, he just... None of us at that
24 point, and I'm sure some people did, but a lot of us didn't
25 have any idea where this was going. So when he would ask a

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1 question, "How long am I going to be here?" Well, nobody had
2 any answers to that. And those things continued to cloud the
3 ability of the staff of the Carlton Centre to get him focused in
4 the way we normally try to focus a long-term or life offender.

5 MR. SPICER

6 It would be a good time to break perhaps.

7 MR. CHAIRMAN

8 Okay, until two o'clock and at two o'clock, we will deal with
9 an application of Mr. Pugsley with respect to the issuing of certain
10 subpoenas.

11 12:30 p.m. INQUIRY RECESSED UNTIL 2:00 p.m. INQUIRY RESUMES

12 - 2:00 p.m

13 MR. CHAIRMAN

14 What I propose to do with the...with respect to our ruling on
15 the application of Mr. Pugsley is to read it, but to omit the
16 quotations which will be...but the quotations will be contained in
17 the transcript.

18 We've been asked by Mr. Ronald Pugsley, Q.C., to subpoena
19 two journalists - Michael Harris and Heather Matheson - to testify
20 before this Inquiry. Mr. Harris is the author of a book concerning
21 Donald Marshall, Jr., entitled Justice Denied and Ms. Matheson is a
22 CBC reporter who researched and produced a documentary on the
23 Marshall case for the show "Sunday Morning" which was aired in
24 November, 1983. Mr. Pugsley argues that the evidence of these
25 two individuals will assist the Commission in assessing the

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1 | credibility of Staff Sergeant Wheaton, and further that the
2 | mandate of the Commission should extend to consideration of the
3 | appropriate limits, if any, that should be placed on members of a
4 | police force regarding disclosure to the media during the course of
5 | an investigation.

6 | The Rules of Practise and Procedure adopted by this
7 | Commission at the commencement of its activities outline the
8 | procedure for calling witnesses. Article 5(5) provides that
9 | persons with standing may apply to Commission counsel to call a
10 | witness. In the event Commission counsel choose not to call that
11 | witness, the party asking that the witness be called may apply to
12 | the Commission for directions.

13 | A request to call these witnesses, pursuant to our Rules, was
14 | made by Mr. Pugsley to Commission counsel, which was refused
15 | by letter of March 10, 1988. The reasons given by Mr. MacDonald
16 | in his letter of refusal were that, and they're quoted:

17 | The only possible reason to have such
18 | persons appear would be to test the credi-bility
19 | of Staff Sergeant Wheaton. He has been
20 | questioned concerning his discussions with these
21 | individuals and has provided his answers. It is
22 | my recollection that Staff Sergeant Wheaton
23 | admitted speaking to each of these individuals,
24 | but could not recall the details of the discussion.
25 | In our opinion, no useful purpose could be
served by having these witnesses, assuming they
would [sic], testify concerning the details of the
discussion as we are concerned and we want to
make every effort to limit the evidence to be

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1 called before the Commission to issues which are
2 directly relevant to the points under
3 consideration.

4 Mr. Robert Murrant appeared on behalf of Mr. Harriss, Ms.
5 Matheson and their employers (in Mr. Harris' case, his former
6 employer) and argued against Mr. Pugsley's application. He has
7 placed before us affidavits of Mr. Robert Martin and Mr. Claude
8 Vickery, two local journalists. Mr. Murrant's submission is that
9 both Mr. Harris and Ms. Matheson object to giving evidence at this
10 Inquiry as it would,

11 constitute an invasion of their confidentiality as
12 journalists (and that of their employers),
13 together with an abuse of their functions were
14 they to be used as instruments of impeachment.

15 His written submissions refers to recent cases on "freedom of the
16 press," including those which consider the protection provided to
17 "freedom of the press" by s.2(b) of our Canadian Charter of Rights
18 and Freedoms. These cases confirm that a balance must be struck
19 between the right of the press to protect their sources and their
20 ability to gather information and the right of the courts to hear all
21 evidence relevant to its inquiry. See: Democratic National
22 Committee v. McCord; Pacific Press v. The Queen; Descoteaux v.
23 Mierzwinski; Coates v. The Citizen. Mr. Murrant refers also to the
24 judgement of Tidman, J. in Rocca v. Great Eastern News Company.
25 In Coates, MacKeigan J.A. stated that:

Relevancy is the first and paramount

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1 requirement for an Order compelling a witness
2 to testify. Despite the breadth of our rules, the
3 acid test for compellability, the test which must
4 be applied before entering upon any balancing of
5 public interest, is whether the answer sought is
6 relevant at all and appears 'reasonably
7 calculated to lead to the discovery of admissible
8 evidence.'

9 At page 60, Tidman J. quotes extensively from Coates, including
10 the following passages:

11 The judgements delivered by Lord Denning, M.R.,
12 Orr and Scarman L.JJ. lend valuable assistance in
13 the difficult problem of dealing with the rights of
14 the free press in the Courts. I quote a passage
15 from Lord Denning's judgment at Page 34, with
16 which I am in respectful agreement:

17 'Next there is the special position of the
18 journalist who gathers news of public concern.
19 The courts respect his work and will not hamper
20 it more than is necessary. They will seek to
21 achieve a balance between these two matters.
22 On the one hand there is a public interest which
23 demands that the course of justice should not be
24 impeded by the withholding of evidence. : See
25 Rogers v. Home Secretary; Gaming Board for
Great Britain v. Rogers, [1973] A.C. 388 at 401,
[1972], 2 All E.R. 1057, by Lord Reid. On the
other hand, there is the public interest in seeing
that confidences are respected and that
newsmen are not hampered by fear of being
compelled to disclose all of the information
which comes their way. " See Democratic
National Committee v. McCord [1973] 356 F. Supp.
1394, in the United States. As we said in this
Court as to the oral testimony of a newsman:

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proper and indeed necessary question in the course of justice to be put and answered.' : See A.G. v. Mulholland; A.G. v. Foster, [1963] 2 Q.B. 477 at 489, [1963] All E.R. 767.

It is clear that no absolute privilege exists which would permit journalists to place their professional loyalties above their responsibility to assist the courts where their testimony is relevant and necessary to further the interests of justice. The approach of the courts in dealing with journalistic privilege mirrors the approach taken recently by Madam Chief Justice Glube of the Supreme Court of Nova Scotia, Trial Division, in dealing with the obligation of Cabinet Ministers to testify where their evidence might be relevant to the matter in issue. A balancing must be done, weighing the relative importance of the interest being protected by the privilege, and the interest in the administration of justice. This balance is struck on an individual basis, and with relevance being a key factor.

In the question now before us, it is clear that even where some relative journalistic privilege may exist, it may be waived by the source. This was admitted by Mr. Murrant in his oral argument. It must be noted that Staff Sergeant Wheaton in his evidence before this Inquiry released Mr. Harris and Ms. Matheson from their obligation to protect him as a "source". [See: Volume 44, page 7986]. Given that the source himself does not wish to be protected, we cannot accept the suggestion that the two journalists in question have any legal basis on which to make

1 their claim that giving evidence before this Inquiry will interfere
2 with their function as journalists.

3 Mr. Murrant has noted that requiring Mr. Harris and Ms.
4 Matheson to testify in this case would be improper if the purpose
5 was to impeach the credibility of sources, and also that it may, in
6 effect, put their 'work' on trial, particularly in the case of Mr.
7 Harris. We do not consider it relevant to the issues raised by this
8 Inquiry to deal with the merits of that submission.

9 In summary, no absolute privilege exists in Canada to
10 protect journalists, and even where a relative privilege does exist,
11 it can be waived by the source. Staff Sergeant Wheaton has
12 released both journalists from any protection that might attach to
13 communications with him, and since such privilege exists to
14 protect the source and not the journalist, Mr. Harris and Ms.
15 Matheson cannot now claim immunity from testifying on that
16 basis.

17 We have carefully considered whether the evidence of Ms.
18 Matheson and Mr. Harris is relevant to the Commission, or
19 whether such evidence raises collateral issues which should not be
20 pursued. The primary focus of the application by Mr. Pugsley to
21 question these individuals is to attack the credibility of Staff
22 Sergeant Wheaton, since Wheaton's evidence contradicts that of
23 Chief MacIntyre in material ways. It is clear that the conflicts in
24 evidence between Wheaton and MacIntyre must be resolved by
25 the Commission. John MacIntyre and Harry Wheaton are key

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1 the Commission. John MacIntyre and Harry Wheaton are key
2 witnesses in the Inquiry.

3 The Terms of Reference define the Commission's mandate.
4 The scope of the mandate has been further clarified through
5 various statements from the Commission. We have stated that the
6 1982 RCMP reinvestigation is part of our examination into the
7 circumstances surrounding the death of Sandford Seale and the
8 prosecution, conviction and eventual acquittal of Donald Marshall,
9 Jr. The reinvestigation of Staff Sergeant Wheaton and Corporal
10 Carroll has been the subject of intense discussion in this Inquiry.
11 We note, for example, that Harry Wheaton himself was on the
12 stand for six days, almost two days of which were taken up by Mr.
13 Pugsley's cross-examination. After hearing many witnesses on
14 this subject, there is still one key matter in issue, namely, an
15 incident in April 1982 in which John MacIntyre allegedly slipped
16 Patricia Harriss' first statement under his desk in an attempt to
17 conceal it from the RCMP investigators. This is a matter which is
18 germane to the issues before the Commission and which bears
19 materially on the credibility of both MacIntyre and Wheaton.

20 Mr. Pugsley suggested in his written submission that we
21 adopt the test of relevancy as stated by Howland, J.A. for the
22 Ontario Court of Appeal in Re Bertolucci et al and the Ministry of
23 Housing which states:

24
25 ...A full and fair inquiry in the public interest is

COMMISSION RULING

1 opinion, any evidence should be admissible
2 before the Commission which is reasonably
3 relevant to the subject matter of the
4 Inquiry.

5 While the test of relevancy in Bertolucci is fairly broad, it
6 must be noted that we already have before us the evidence of
7 Staff Sergeant Wheaton, who admitted discussing the Marshall
8 case with journalists before the investigation was concluded. We
9 have also received as evidence Exhibit II, Exhibit 3, no Exhibit
10 11000, which is the RCMP policy on disclosure of information
11 gathered during an investigation to media...to members of the
12 media. We conclude that we are able to deal with the issue of
13 Staff Sergeant Wheaton's alleged disclosure to the media of
14 information gathered during the RCMP reinvestigation of the
15 Marshall case without hearing further evidence.

16 The Wheaton/MacIntyre credibility issue is of concern to us,
17 but we do not think that calling Ms. Matheson and Mr. Harris as
18 witnesses would be of assistance to us in making any
19 determination in this area with one important exception. Ms.
20 Matheson has...had only one meeting with Harry Wheaton and, to
21 our knowledge, spoke to John MacIntyre only briefly in an
22 unsuccessful attempt to set up an interview with him. She has
23 been examined for discovery in the libel action taken by John
24 MacIntyre against the CBC, and this testimony is before us as
25 Exhibit 106 (Volume 37). Based on these factors, we will not
order that a subpoena be issued to compel Ms. Matheson to come
before us and will not pursue her testimony in other ways.

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1 Mr. Harris, on the other hand, had several interviews with
2 Staff Sergeant Wheaton who is specifically acknowledged for his
3 assistance in preparation of Justice Denied by Mr. Harris in the
4 preface to the book. It appears that he did not interview John
5 MacIntyre. While Mr. Harris' book is not before us as an exhibit,
6 it has been referred to by counsel on several occasions during the
7 examination and cross-examination of witnesses before this Royal
8 Commission. The conclusions reached by Mr. Harris as to factual
9 matters, while of interest, are not necessarily the same as those
10 that will be reached by this Royal Commission. Mr. Harris' purpose
11 in writing Justice Denied may be different from our purpose
12 which is, in short, to hear all relevant evidence, to decide the
13 issues fairly on the material before us, and to make
14 recommendations related to those findings. No relevant purpose
15 can be served by questioning Mr. Harris in detail about the
16 information contained in his book, how he reached that
17 information or the basis on which he reached his conclusions.

18 There is one matter, however, on which we would like
19 information from Mr. Harris. Considering the extensive research
20 which was obviously done in preparing his book and considering
21 the interviews which he had with Staff Sergeant Wheaton and
22 others, Mr. Harris may be able to assist us in considering the
23 allegation by Harry Wheaton that in April 1982 John MacIntyre
24 attempted to conceal the first Patricia Harriss statement, an
25 allegation which John MacIntyre has denied. It is relevant to our

MR. STEWART, EXAM. BY MR. SPICER

1 Inquiry into these matters to know whether Mr. Harris was told of
2 this alleged incident by Harry Wheaton. If the answer is "no," the
3 questioning of Mr. Harris stops there. If the answer is "yes," we
4 would like to know the details of this disclosure, noting that it was
5 not included in Justice Denied.

6 We would like to follow the same procedure in obtaining the
7 answer to this question (or questions) as was followed with Mr.
8 Alan Story. If Mr. Harris declines to answer, a subpoena will be
9 issued to require him to appear as a witness.

MR. CHAIRMAN

11 Mr. Spicer.
12 2:15 p.m.

MR. SPICER

13 Q. When we broke at lunch, we were just talking about the
14 weekend passes that had been issued from time to time for
15 Junior. The next matter that I wanted to raise with you, if
16 you turn to page 214 of that volume. I believe this refers to
17 an incident in July when Junior Marshall didn't come back or
18 came back late. Can you tell us what happened on that
19 occasion and how it was dealt with by the Carlton Centre?

20 A. There was a softball tournament in Restigouche, New
21 Brunswick, where a number of teams from a number of
22 reserves got together. I guess it's an annual event. Mr.
23 Marshall asked permission to go. He said he was going with, I
24 believe it was Noel Doucette. I'd have to double-check. We
25

1 saw no reason not to grant the pass. He was eligible for a
2 pass. It was an event that would be in line with his sports
3 actions within the institution and the person he was going
4 with was of solid reputation. We didn't get him back when
5 we expected him to come back. So we immediately started
6 making telephone calls as fast and furiously as we could.

7 Q. Was there a time when he was required to be back?

8 A. Yes, it would be the time noted on the pass. I don't have it in
9 front of me.

10 Q. Yeah, he wasn't there, anyway.

11 A. He wasn't there. We had 24 hours to, after violation of
12 curfew to take action. What we did was we tracked him
13 down and got word back that the game had, in fact, gone a
14 little over. The tournament was carrying on a little further
15 and there had been neglect at phoning in and checking in.
16 When the game was over and when the tournament was
17 rolled up, it was too late to, for the group to travel, because he
18 was traveling with a group, and we were satisfied he was in a
19 safe place that night in reasonable care of the individuals he
20 was traveling with who were responsible. When he got back
21 to Halifax, he went to an apartment as opposed to coming
22 directly into the Carlton Centre. We, again, got him and said,
23 you know, very clearly, "Get in here." He came in, we sat
24 down and talked to him about it. He made...

25 Q. Was he intending to come prior to you making that call to him

1 at the apartment, or do you know?

2 A. Yes, he was intending to call. He just, he was having a shower
3 and a few other things like that. We reconfirmed the events,
4 dressed him down quite considerably. Not... simply because
5 he had disobeyed and hadn't follow the rules and regulations
6 as he agreed to. We were satisfied that nothing untoward had
7 happened and instead of taking any action, like suspending
8 his day parole or sending him back, we followed a course that
9 we normally took with people if we felt there was some
10 reason to be applied and we disciplined him internally. We
11 grounded him, I believe, for two weeks. That meant he had
12 to be in each night at six o'clock. He didn't go out. And he
13 had to do extra working duties around the house.

14 Q. How did he deal with that?

15 A. The same as everybody else. He was very upset and angry,
16 but knew why it was there. And because that was the
17 standard operating procedure at the Carlton Centre, he
18 accepted it.

19 Q. On page 215 in the first full paragraph, there's some
20 comments, "It's understandable under the prevailing
21 circumstances..." Now at this point, we're in July of '82.

22
23 The subject is undergoing severe bumps and, at
24 various stages, he simply shuts down and begins
to cope.

25 What does that mean?

1 A. Okay, that's terrible jargon. What that means is that he was
2 starting at that point to wonder what was happening. There
3 was a tremendous air of, I'm searching for the word... Nobody
4 knew what was going on at that point. Everything seemed to
5 change day to day. It was almost like if you hadn't heard a
6 rumour by nine, start one. And so he had a real problem
7 dealing with that. That, of course, caused a great deal of
8 stress and instead of actively participating in anything we
9 were actually trying to do at that time, he'd sort of go back
10 inside himself and he'd try and just deal with the situation.
11 You see it quite often. People will just sort of go into
12 themselves and sit around and become noncommunicative,
13 sometimes angry.

14 Q. Deal with it alone.

15 A. Deal with it alone. They go back, they handle it very much
16 the same way as you might in an institution.

17 Q. And that's what you mean by "shutting down and beginning
18 to cope"?

19 A. Yeah.

20 Q. In the last paragraph you mention that Junior Marshall was
21 working full-time during the summer months with the
22 Department of Northern and Indian Affairs and wants to live
23 out in the community and report to the Centre. You go on to
24 say you're "not fully prepared to support this request and are
25 intent on protecting subject from himself and others, thus

1 allowing subject to adjust more easily in a free community."

2 Was that the substance of the reason why you didn't want to
3 let him out on his own at this point?

4 A. Yeah, he wasn't ready at that time. He was too new out. He
5 was too new out. He was not able to cope with some little
6 things. You know, some of the timing aspects. Just some of
7 the things we saw with him sort of going back inside himself.
8 We wanted to make sure that if he was undergoing any kind
9 of stress, we had him close by. That's what we were looking
10 for.

11 Q. And yet it was only, what, three weeks later, a little more
12 than three weeks later on July 29th when he got out on bail?

13 A. Yeah, things were going awful fast.

14 Q. Yeah, at that stage of the game when he was released on bail,
15 which I think the documents will show was on the 29th of
16 July or about that time...

17 A. Obviously.

18 Q. Where did he go then?

19 A. He either went... Now I'm not positive. He either went to
20 Ogilvie Towers or the Quinpool Court apartments. I can't, for
21 certain, say which location he went.

22 Q. In either event, he was no longer under the direct supervision
23 of Carlton Centre in terms of further...

24 A. No, because he was out on bail and, again, that's something
25 we'd never experienced before. He was no longer our direct

1 responsibility. We had no authority over him at that point.

2 Q. Was he, in your view, was he any more ready to be out on
3 July 29th than he was on July 5th when you made this note?

4 A. No.

5 Q. Did you have any involvement, any supervisory involvement
6 of Mr. Marshall subsequent to him leaving the Carlton Centre?

7 A. Not supervisory involvement. I have had involvement with
8 him since I first met him, but not...

9 Q. You spent a fair amount of time with Junior Marshall, didn't
10 you?

11 A. Yes, I did.

12 Q. After he left the Carlton Centre?

13 A. Yeah.

14 Q. What sort of shape was he in when he left the supervision of
15 the Carlton Centre in July?

16 A. He was very hopeful, thankful to be out of there. He felt that
17 this was another step in him being "free". He was, I believe at
18 that time, maintaining a relationship with a young woman
19 and felt that he could pursue that a little more openly. He
20 still didn't have a lot of the coping skills that we felt that he
21 had to have.

22 Q. Was he getting in any trouble at this stage of the game
23 outside?

24 A. No. He started getting into, well, trouble, to use your word, a
25 little later.

1 Q. What word would you use?

2 A. I think he was becoming a little more self-destructive. For
3 example, the one issue I would pick up would be the more
4 that went on and the further away he got from immediate
5 support, the more, for example, alcohol started playing a part.
6 And so you'd see him a little more hung over from time to
7 time, et cetera.

8 Q. What was your sense of his drinking habits at the time he
9 came to the Carlton Centre in March?

10 A. Moderate to nonexistent and that was maintained for a large
11 period of the time there, primarily, I believe, because of the
12 efforts of Charlie Gould.

13 Q. Who was Charlie Gould?

14 A. Charlie Gould was an individual who came down from Sydney
15 who was sent by, I believe, a number of the chiefs that had
16 gotten together and asked Charlie to go down to give him
17 community support. I don't think there was a full
18 understanding of what the Carlton Centre was at that time
19 specifically. So Charlie was sent down officially to support
20 him. When we found out who Charlie was and checked how
21 he had gotten there and why he was there, we incorporated
22 him into the case management team at the Carlton Centre,
23 which we had every right to do, and he became Junior's
24 shadow, primarily. So he had access to...

25 Q. Did he continue to shadow him after he left the Carlton

1 Centre, as far as you know?

2 A. Less directly. Again, Charlie had a life in Sydney and
3 eventually had to go back. And, again, nobody had any idea
4 how long this was going to go. So at a given point, Mr. Gould
5 had to go back to Sydney, but I know he did come down on
6 occasion and did host Junior at his place.

7 Q. Did you have any discussions with Junior Marshall at or
8 around the time when he appeared in the Court of Appeal on
9 the reference in December of '82?

10 A. I had discussions with him. I'm not sure...

11 Q. Did you talk to you about his appearance in court and how he
12 felt about that?

13 A. I'm sure I did.

14 Q. Do you have any recollections now?

15 A. The biggest recollection I have about going to court was he
16 was very angry at having to go to court because he felt that
17 he was being put on trial again and he had a very clear
18 picture in his mind that when he came out, that was the end
19 of it. That would be the end of it.

20 Q. When he came out of...

21 A. Of Dorchester. It would start to wind down and in his
22 frustration, a lot of his frustration seemed to be that instead
23 of winding down, it was winding up and that was his
24 overriding feeling at that point, as I recall.

25 Q. Did you have any involvement with Junior and with Felix

1 Cacchione during the time that the compensation matter was
2 being dealt with?

3 A. Yes, I did.

4 Q. Can you describe to us from your own experience what sort of
5 condition Junior Marshall was in at about that time?

6 A. Very bad, very bad condition. His drinking had increased.
7 His relationship, previous relationship had broken down. I'm
8 not sure if he had been through another short relationship or
9 not. And again, was just a little further into that feeling is
10 this never going to end. Why are these proceedings
11 continuing, continuing, continuing?

12 Q. Did he express that view to you from time to time?

13 A. Yeah, in a number of words from time to time I would get
14 that from him, a lot of frustration.

15 Q. Did you spend any time with Junior Marshall at about this
16 time when the compensation thing was going on late at night,
17 early in the morning? Was it that kind of a relationship at
18 that time?

19 A. It would depend. Sometimes I would run into him. Other
20 times, I'd get a phone call. On one occasion, I got a phone call
21 from Felix because there had been an incident near the Clyde
22 Street Liquor Store and it had been a dispute in his
23 relationship that was, to my knowledge, there was
24 intervention by a police officer and I believe Junior threw the
25 officer away or pushed him away and was arrested. That was

1 at the time, I believe, when the Pope was visiting and security
2 was very high around Halifax. Felix and I wound up at the
3 City lock-up that night and the police officer was very
4 understanding, very supportive of Felix's discussion with him
5 and we took him from there back to the Carlton Centre and I
6 believe we watched a hockey game or something like that.
7 Basically, we sat there for several hours and the content of
8 our discussion was let's get you into some treatment program
9 or something that's going to give you a hand to start dealing
10 with all of this.

11 Q. Was he accepting of that idea?

12 A. Alternately accepting and rejecting.

13 Q. Can you give us any sense as to why he was rejecting?

14 A. I think he was, at that point, so confused, you know, he
15 was... I don't think he was very clear at that point. I think
16 he was at the point where you were doing crisis
17 intervention. It was crisis intervention more than any long-
18 term planning.

19 2:30 p.m.

20 Q. You indicated to me a couple of minutes ago that you didn't
21 think that he was ready to be out on the street in July of '82.
22 What would your assessment have been of whether or not
23 he was ready to be out on the street at the time the
24 compensation matter was being dealt with with regards to
25 how he could deal with it?

1 A. Oh, he was...well you're dealing with almost two different
2 things, one, you know, one is just knowledge of the
3 community, and just handling the idea of being back out in a
4 larger community, but the other one that was, I think, after
5 a great deal of deterioration and I don't think he was
6 capable of handling it either when he got out or when the
7 compensation was going on.

8 Q. If he had been a person over which the Carlton Centre had
9 continued to exercise some control, that is if a bail
10 application hadn't been successful and he continued to be a
11 lifer on parole, can you give us any assessment of how long
12 you think it would have taken to reintegrate him into the
13 community so that he could handle things?

14 A. I could only guess. I would have kept him probably the
15 better part of six or eight months, minimum, at the Carlton
16 Centre. Probably would have kept him on a five and two or
17 a limited release for four or five months, I think, as again
18 with hindsight and that's what I'm struggling with. I think
19 had he started to display some of the, sort of relief drinking
20 patterns that I think he was starting to get into I think I
21 would have been moving very strongly to get him into a
22 good program.

23 Q. And if he was still under your control is that something that
24 you could exercised a little more control over whether or not
25 he got into it?

1 A. Yes, yeah, we could have moved him, for example, to
2 another location. We could have kept him at the Carlton
3 Centre. You know, I have looked in, since that time, to
4 programs across the country. There aren't that many but
5 there are some very good ones here and there and I think I
6 would have been tempted to try and move him into one of
7 those.

8 Q. Have you looked into those in connection with Junior
9 Marshall or just generally?

10 A. No, in connection with Junior Marshall and I still have a
11 concern, you know.

12 Q. Are you able to tell us whether or not after Junior passed
13 out of the formal control of the Carlton Centre in the
14 summer of '82 whether or not any formal offers were made
15 to him by Correctional Service or, yeah, by the correctional
16 service people to say, "Look, you still need help, we'd like to
17 offer you the following assistance."

18 A. Yeah, I made that offer to him. One of things I think you
19 have to understand is that our job is to work with people
20 that are released from institutions and reintegrate them into
21 society, and it also...there is a little line that says "Offenders
22 and ex-offenders".

23 Q. Right.

24 A. Now, that seems to me that that's an open book. We get
25 people calling us, last week I had four different people call

1 me that are no longer on parole. And I'll think you'll find
2 with most parole officers, and especially people who work in
3 a residential setting for a period of time, you get
4 very...you're working in very close quarters. You see more
5 of them than you would, say in a normal parole supervision.
6 That continues on.

7 Q. And insofar as your own contact with Junior Marshall was
8 concerned, subsequent to July of '82, was that your own
9 personal initiative because you still had a concern about
10 Junior Marshall?

11 A. It was my personal initiative, at the same time I have kept
12 my superiors and supervisors, you know, involved, not in
13 detail, but I'd certainly say that I'm continuing. So it's very
14 common knowledge that I'm continuing to respond if I get a
15 telephone call, et cetera.

16 Q. Did you ever have any discussions during the time
17 that...during the discussions you had with Mr. Marshall
18 about his...there was evidence earlier today that at some
19 stage of the game he admitted committing this offence in
20 1975 at one point when he was in Dorchester. Did he ever
21 talk to you about that?

22 A. Not to my recollection. I read the report while I had the file
23 at the Carlton Centre, obviously I was interested in reading
24 the file. Again, by the time he came to the Carlton Centre
25 there were a number of legal possibilities being put around

1 and one was a Royal prerogative of mercy another was an
2 appeal. We weren't sure what was going on. So, we felt our
3 most prudent course of action since we had heard from the
4 Attorney General's Department and since so many levels
5 seemed to be involved that we had better take the prudent
6 route and not try and influence one way or the other. So
7 that sort of precluded a lot of probing. Again, Mr. Marshall's
8 lawyer was there quite often and we felt it was better to
9 leave it to the people that were going to sort the thing out
10 and not get in the middle of it.

11 Q. And would that comment then also apply to whether or not
12 you would have had any discussions with him about the
13 attempted robbery and the rolling and that business in the
14 Park?

15 A. Again, where does it start and where does it stop. We were
16 more interested in his behaviour and his re-establishment
17 in the community than going over things that we felt were
18 going to be dealt with later on by the courts.

19 Q. Did you ever speak to him, to Junior Marshall, about the
20 adequacy of the compensation about the dollars and cents of
21 it?

22 A. No. By that time...by the time compensation came through
23 that wasn't something that was a point of discussion.

24 Q. At that point in time what were the points of discussion
25 with Junior Marshall, this would have been in '84?

MR. STEWART, EXAM. BY MR. SPICER

1 A. A number of the points of discussion would be around when
2 is this going to end, where is it going to go, things like what
3 kind of job can I do? We talked about, you know, drinking
4 or not drinking beer, you know, most of them were around
5 situations. If he, for example, didn't have a job and was
6 very frustrated with that it, it was around, you know,
7 options for jobs and things like that. I know he tried
8 involvement with a youth group, I think, at Shubenacadie
9 and we talked about that. Some of them were very hopeful.
10 Sometimes he was up, sometimes he was down, other times
11 he'd just call me to say "Hello".

12 Q. Other than the matters that I've asked you about are there
13 any other significant aspects of your involvement with
14 Junior Marshall over that period of time that you want to
15 comment on?

16 A. None that I can think of at this point.

MR. SPICER

18 Thanks very much.

MR. CHAIRMAN

20 Mr. Stewart, do you hear from Donald Marshall, Junior,
21 now?

MR. STEWART

23 The last time I heard from him was about four or five
24 months ago. He gave me a call and said, "I haven't seen you for
25 awhile, can we get together for an afternoon? " So we got

MR. STEWART, EXAM. BY MR. SPICER

1 together and chatted for awhile.

2 MR. CHAIRMAN

3 Does he ever drop by the centre, Carlton?

4 MR. STEWART

5 Well, I'm no longer at the Carlton Centre.

6 MR. CHAIRMAN

7 I see.

8 MR. STEWART

9 He called me at my office.

10 MR. CHAIRMAN

11 I had forgotten that. So, the...the other...during the period
12 that he was with you at the Carlton Centre and you were involved
13 with him in an official capacity, for want of a better word, the
14 issue of guilt or innocence or facts surrounding the occurrences in
15 1971 were not part of your discussions.

16 MR. STEWART

17 That wasn't, I didn't consider that part of my job at that
18 time.

19 MR. CHAIRMAN

20 All right. Ms. Derrick.

21 COMMISSIONER EVANS

22 I understand that you considered or you did discuss with
23 him the possibility of him entering into some treatment house,
24 house for treatment, I take it that was for alcoholism, was it?

25

MR. STEWART, EXAM. BY MR. SPICER

1 MR. STEWART

2 That...yes, that was after we had had our, after he was out of
3 my jurisdiction.

4 COMMISSIONER EVANS

5 Right.

6 MR. STEWART

7 We had a discussion at one point and...because the publicity,
8 the ongoing legal processes, et cetera, he asked me what I thought
9 about it and my suggestion was he go some place where he could
10 be, you know, one, out of the public eye; two, get some addiction
11 assistance; and three, primarily put the whole thing in some sort
12 of perspective because at some point it's got to be let go.

13 COMMISSIONER EVANS

14 I take it nothing came of that conversation or discussion.

15 MR. STEWART

16 Very positive at the time, didn't carry over past twenty-four
17 hours, which is not unusual with anyone in that situation.

18 COMMISSIONER EVANS

19 Right, thank you.

20 MS. DERRICK

21 Thank you, My Lord.

22 EXAMINATION BY MS. DERRICK

23 Q. Mr. Stewart, my name is Anne Derrick, and I represent
24 Donald Marshall, Jr.. Just so that I understand something
25 you said earlier in your evidence, I believe you said that

1 you have never...when you were at the Carlton Centre
2 you've never refused anyone being released to the Carlton
3 Centre because they were making a claim of innocence, is
4 that correct?

5 A. I never refused anyone.

6 Q. Never refused anyone on that basis.

7 A. Well, I had never had anybody claiming innocence. I've had
8 people claiming that they couldn't remember.

9 Q. I see.

10 A. But certainly if there is any doubt what I was saying is we
11 would not...we not take the person if there was any doubt,
12 we'd want to find out why they couldn't remember, why
13 they were claiming innocence.

14 Q. So as you're describing it then, at least in your experience, a
15 claim that...or some doubt cast on the person's guilt might
16 stand as an obstacle or would stand as an obstacle to the
17 person being released to the Carlton Centre.

18 A. Repeat that, please.

19 Q. You never actually had someone say, "I'm innocent, I didn't
20 do this."

21 A. Yes, I've had one other person do that and we refused
22 acceptance and as it turned out the person eventually did
23 admit and there was evidence that came up that he had
24 done it. But that was on a fairly minor offence. But this was
25 the only clear statement of "I am innocent," and being

1 maintained that I had run across. I've certainly run across
2 people referring to the accident or saying, "I can't recall. I
3 remember before and after but not during," but this is the
4 first time I had run into this.

5 Q. So anything short of accepting responsibility for the offence
6 caused you concern.

7 A. Absolutely.

8 Q. Would that be fair?

9 A. Yeah.

10 Q. And here it wasn't a problem because there was some
11 official expression of doubt as to Mr. Marshall's guilt, is that
12 correct, coming from Mr. Gale?

13 A. Yeah, yeah.

14 Q. So it didn't act as an obstacle to your accepting Mr. Marshall
15 because you had had this discussion with Mr. Gale.

16 A. That had resolved...that had resolved a concern, the same as
17 a forensic assessment may resolve a concern with an
18 individual that couldn't remember a crime. The same
19 principle is at work, again concern about protection of
20 society was at work initially on the selection. That was...that
21 to me was resolved sufficiently with Mr. Gale's statements.

22 Q. When you talked to Mr. Gale did he read portions of the
23 RCMP or police report to you?

24 A. My impression is that he wasn't reading them specifically,
25 he was referring to sections.

- 1 Q. So he gave you details as to the new evidence that had come
2 forward with respect to the witnesses...
- 3 A. That's...
- 4 Q. ...that had lied and...
- 5 A. That's what satisfied me, more the physical evidence, et
6 cetera, and the sequence of the investigation.
- 7 Q. So you came away from that discussion with some
8 understanding as to the basis for this case being reopened.
- 9 A. Yes.
- 10 Q. I'd like to ask you some general questions about penal
11 institutions. I think you've said that you have worked with
12 Correctional Services for twelve years, is that...
- 13 A. Twelve or fourteen years.
- 14 Q. And you've had very considerable experience with inmates
15 coming out of penal institutions.
- 16 A. Yes, I have.
- 17 Q. And have you also had experience actually in the
18 institutions themselves?
- 19 A. I've worked in...primarily on a special task forces in
20 Westmoreland, which is a minimum security farm camp on
21 the surrounding grounds of Dorchester. I was there for four
22 months to assist the superintendent because they were
23 having some difficulties with the inmate population. I did
24 several task forces in Springhill and in 1980 I was taken to
25 Dorchester for five months to plan and coordinate the

1 opening of Dorchester after the security lockdown that
2 lasted between four and six months. So, that's my
3 experience within the institutions.

4 Q. Can you give us some idea of what prison life is like
5 generally? What are some of the stresses that an inmate in
6 prison experiences. For instance, is it a violent
7 environment?

8 A. That would, again, depend on the institution you were
9 talking about.

10 Q. If we're talking about Dorchester, for example.

11 A. If you're talking about Dorchester I think the overriding
12 feeling in Dorchester is boredom. I think that's it. You've
13 got an area there approximately the ground size of the
14 Public Gardens. It covers a little over seventeen acres and
15 you have up to, at times, four hundred people in there,
16 including staff. So it gets a little bit crowded. There is not
17 an awful lot to do. There aren't enough positive work
18 locations for everyone. It's rather like being on a ship. It's
19 sort of a grind that's every so often interdispersed with
20 visits, sports activities, work activities, et cetera. But I think
21 the overriding thing is boredom. In terms of violence, not
22 the popular notion of violence. From time to time you might
23 have disturbances that are going on, but they're usually
24 very specifically related to something or are quite usually
25 quelled quickly.

MR. STEWART, EXAM. BY MS. DERRICK

1 Q Are there examples of individual inmate violence, one
2 inmate against another?

MR. PRINGLE

4 Well, My Lord, I rise again I gather that there's going to be
5 an argument by my friend that this relates to her client, and
6 certainly it does.

MS. DERRICK

8 Yes.

MR. PRINGLE

10 He spent the time in there. But perhaps the best person to
11 give the evidence would be her client on the specific examples of
12 what he may to talk about and not be...not the general from this
13 witness.

MR. CHAIRMAN

15 That is an appropriate objection, and this is one of the
16 reasons why I asked this witness as to what occurred with respect
17 to some of these issues when Mr. Marshall was in his custody, so
18 that we would not have cross-examination on areas that he is not
19 in a position to testify on and also into areas that are coming...that
20 fall outside the mandate of this Commission, and that does.

MS. DERRICK

22 My Lord, if I can just respond to that. I'm not suggesting for
23 a minute that this Commission should, because of the
24 jurisdictional issue, be making recommendations to Corrections
25 Canada concerning its institutions. What I am interested in

MR. STEWART, EXAM. BY MS. DERRICK

1 bringing out through this witness is the kind of experiences that
2 an inmate would have in an institution such that those can then
3 be contrasted with the kind of experience an inmate then has
4 when he is on the outside. And I think that understanding what
5 the inmate experiences inside is very significant in terms of
6 understanding how that inmate then responds to being outside.

MR. CHAIRMAN

8 Well, he's told us that...we have that and I didn't interrupt
9 him when he was giving us his general views as to what one could
10 expect to find in a federal penal institution such as Dorchester,
11 where Donald Marshall was incarcerated for a period of time. And
12 he's given us that. But now when you move into the area of
13 policy, I must ask you to cease and desist. I have heard from Mr.
14 Stewart the kind of evidence that I consider to be relevant as it
15 relates to your client and his period of incarceration at Dorchester.
16 The boredom, the lack of activity, the...some instances of violence.
17 And that covers that area.

MS. DERRICK

19 Well with the greatest respect, My Lord, I wasn't intending
20 to explore policy. I'm simply intending to explore the
21 environment and I was intending to ask him about issues of
22 violence, issues of high degrees of tension as a result of...

MR. CHAIRMAN

24 Well, he's covered the first three. If you want to put a
25 question about tension within a federal institution of the kind that

MR. STEWART, EXAM. BY MS. DERRICK

1 Donald Marshall was incarcerated in I'll certainly allow that.

2 MS. DERRICK

3 Thank you, My Lord. I also wish to ask him about the effect
4 of being separated from family and friends and the denial of
5 affectional bonds.

6 MR. CHAIRMAN

7 Well, that's a very general question that could apply to any
8 institution, custodial institution, I have no problem with that.

9 MS. DERRICK

10 Thank you, My Lord.

11 Q You've described the boredom, Mr. Stewart, and you've said
12 that's a predominant feature of, I think you said Dorchester,
13 is that true as well of Springhill where Mr. Marshall was also
14 incarcerated?

15 A. I, again, think it's general to institutions both penal and
16 otherwise.

17 Q And otherwise. In terms of the atmosphere, is the
18 atmosphere in Springhill and Dorchester, a fearful one? Are
19 there higher levels of tensions as a result of crowding or
20 other factors?

21 A. There is always a level of tension in institutions and if you
22 were at a higher security level institution you get
23 correspondingly, usually higher tensions, partially because
24 of the environment, partially because of the population that
25 is there. For example, if you have a very high proportion of

MR. STEWART, EXAM. BY MS. DERRICK

1 violent offenders you're probably going to have a higher
2 degree of tension than if you have high number of property
3 offenders, for example.

4 Q So would there be different levels of tension between
5 Dorchester, for instance, and Springhill based on what you're
6 saying?

7 A. Generally, yes.

8 Q Dorchester being the maximum security institution.

9 A. At that time, yes, it would have had a higher level of tension
10 than Springhill.

MR. CHAIRMAN

11 How do you categorize Springhill? Is that medium?
12

MR. STEWART

13 Springhill institution is a medium-security institution. It's
14 built on an open-plan concept, so it covers a much larger acreage.
15 The living units are separated. You have double-security fencing
16 as opposed to thirty foot walls. So, it's...just visually it's different
17 and it's a medium security, high medium security penitentiary. So
18 you're getting, or you were getting at that time because they are
19 changing right now, you were getting less volatile offenders there.
20 You were getting more volatile offenders in Dorchester. I don't
21 know if that's answering the question.
22

MR. CHAIRMAN

23 Yes, I believe it used to be, I presume still is, a fairly
24 extensive rehabilitation training and courses available at
25

MR. STEWART, EXAM. BY MS. DERRICK

1 Springhill that you would not necessarily find in a maximum
2 security institution.

MR. STEWART

4 Again, you ...the lower your security, generally the lower
5 security your institution the more leeway you have for innovation
6 in courses, et cetera, and often you have an awful lot more
7 freedom of movement than you would, say, in a maximum
8 security institution. So that, you know, by its very definition
9 provides more resourcing. Springhill has more space, they have
10 more shops, they have a fairly extensive, extensive program of
11 living units and counseling, et cetera. Living unit officers, for
12 example, who don't work in uniform. In Dorchester at that time
13 you had classification officers and correctional officers, CX's who
14 were more security. So there was more interaction in Springhill
15 on a face-to-face basis than you find in Dorchester. You, in
16 Springhill, ate in communal dining rooms. In Dorchester you ate in
17 your cell after picking up your tray, tier by tier. So there are
18 those difference. You could go on for quite a long time discussing
19 them.

2:52 p.m.

20 Q Mr. Stewart, it's a fact that there is very considerable
21 separation from family and friends with respect to either
22 institution, is that correct?

23 A. More than you find in a community, yes, definitely.

24 Q But there is visiting that's permitted?
25

1 A. There is visiting in all federal institutions. Dorchester had a
2 combination of closed and open visits. Closed visits being
3 where you made no physical contacts and closed[sic] visits
4 being in a room approximately this size under supervision
5 with tables. Springhill had primarily open visits. At the time
6 we're discussing, there were not, the family visiting facilities
7 that we have now at all the institutions, which allow weekend
8 visits for families.

9 Q. They didn't exist?

10 A. They didn't at that time, as I recall, no.

11 Q. And closed visits for someone like Mr. Marshall at Dorchester,
12 would he have been entitled to have open visits?

13 A. I'm sure he would have. Closed visits are generally only used
14 if there's a real concern that, say, contraband is going to be
15 passed or if there is some other reason. But that, they are
16 used very sparingly in the federal system.

17 Q. And used as a security measure then.

18 A. For the security in the institution, yes.

19 Q. In your experience, have you made any observations that
20 would suggest that incarceration affects a native inmate in a
21 particular way that's different from a white inmate?

22 A. No, I can't honestly say I have. I think incarceration,
23 especially over a long period of time, affects everyone. You're
24 subject to the same things. You're subject to removal from
25 family, removal from the community, and some of the issues

1 I've mentioned to Mr. Spicer in terms of just loss of skills and
2 trends. I think that affects everybody. It doesn't matter
3 what culture or ethnic group they're coming from.

4 Q. And you made no observations about differences in the
5 native culture that might be particularly affected by being in
6 an institution for a long period of time.

7 A. Not in particular. I imagine if we discussed it for a period of
8 time. Not specifically, no.

9 Q. Are you able to say whether there are any differences
10 between how native inmates cope with institutional life as
11 opposed to white inmates, from your experience and
12 observations?

13 A. Mmm. Native inmates in the institutions tend to form groups
14 that are identifiable, but I don't think that that's totally
15 because they're native inmates. I think people from
16 Newfoundland form the same groups.

17 Q. The membership being cultural or regional?

18 A. Cultural, regional, people from the same families will form
19 groups. I think that's the most identifiable thing. I think, you
20 know, over the last number of years, the Correctional Service
21 has been trying very strongly to support some of the values
22 that have been stated by representatives of various ethnic
23 and religious groups and have made changes over the past
24 few years from everything from diet to access to ceremonies,
25 et cetera. But I think that's in response to requests and I

1 don't think it's been because of anything observable
2 necessarily in the institution. I don't know.

3 Q Have these developments happened since Mr. Marshall left
4 these institutions?

5 A. Some of them have. Some of them were ongoing beforehand.

6 Q So, in your observations, there's been a developing cultural
7 sensitivity on the part of the Correctional Services?

8 A. Oh, yes, yeah.

9 Q Can you make any comment as to what additional
10 institutional stresses there might be on an inmate who
11 professed his innocence? In your observations, what is the
12 institutional reaction to an inmate who maintains his
13 innocence?

14 A. Well, you accept that statement. You don't necessarily believe
15 it because most, I won't say all, but a great number of the
16 inmates in the federal institutions either didn't do it, were set
17 up, doing it for a friend, it was misinterpreted, they had a bad
18 lawyer. You know, all of that stuff comes rolling in. So when
19 you hear this stuff, you have to sort of put it through your
20 screen and say how much do I buy. And once that's all been
21 said, fine, were do we start. That's what we have to do. We
22 have to get back to a starting spot and say, "Okay, if we can
23 agree to disagree. If you're doing your time for your friend,
24 you're here, let's start dealing with it. Let's see how you can
25 avoid doing it for your friend next time." So the ordinary

1 reaction is to accept it and say, "Okay, if that's what you need,
2 but let's get down to business."

3 Q But to treat it as a further rationalization in a range of
4 possible rationalizations.

5 A. Generally.

6 Q Is it fair to say that there is very limited ability of an inmate
7 to have a case reopened if they are in prison. They have very
8 limited resources, limited ability to have something
9 investigated?

10 A. I'm in an area where I'm not sure. I mean there are
11 correctional investigators. There are access to lawyers. There
12 is access to legal aid. Certainly I've seen classification officers
13 who've taken it upon themselves to investigate small things.
14 We, as a matter of course, try and clear up outstanding
15 charges simply so the person has got a clear shot on the
16 outside. I believe an inmate has a number of resources, more
17 now maybe than in the past, but that continues to evolve.

18 Q Can you make any comment as to what the institutional
19 reaction is to an inmate who seeks to have his case reopened?

20 A. Generally okay, and if there is assistance... I've seen, again,
21 classification officers and other inmates assist an individual
22 who can't write very well, type out applications. You're
23 dealing with a dual function of helper/jailer, if you care to use
24 those two terms.

25 Q Is it your experience that it's to a prisoner's benefit to have

1 temporary leaves of absence or other forms of release in the
2 duration, in the course of a long sentence?

3 A. Oh, yeah, definitely.

4 Q. And for all intents and purposes, the Carlton Centre was and
5 is, it's an institutional facility.

6 A. Yes.

7 Q. Now I want to ask you about the issue of difficulties with
8 respect to adjustment on the outside. Particularly, I want to
9 get around to talking about Mr. Marshall. I believe you said
10 in your evidence that there are different rules on the street
11 than exist for the prisoner in the institution. Now is it fair to
12 say that the rules in the institution are fixed? The prisoner
13 knows what they are? That there's a greater degree of
14 certainty for the prisoner than with respect to existing on the
15 street?

16 A. I would say that, yeah. Rules of interaction, heirarchies,
17 there's certain individuals that have higher status than
18 others.

19 Q. So we're talking both in terms of institutional rules and social
20 rules.

21 A. Oh, of course.

22 Q. If I can say that.

23 A. You have a formal and an informal system in any institution
24 and they are always at play in federal institutions. The
25 informal being primarily the inmates.

1 Q. And in both instances, they are both more predictable and
2 less variable for the inmate...

3 A. Yeah.

4 Q. Than on the outside.

5 A. Yeah.

6 Q. Now with respect to Mr. Marshall, when Mr. Marshall came to
7 the Carlton Centre, did you have concerns that it was essential
8 that he be accepted by the other residents in the centre? Was
9 that part of your motivation to treat him like any other
10 person and not allow him to become, you know, too much of a
11 celebrity as much as you could prevent that?

12 A. Yes, there were two parts to that. Well, actually, three. We
13 didn't want him to feel that he was a celebrity. We also didn't
14 want the residents to feel that he was getting special time or
15 attention that they wouldn't get. Because, as I say, we still
16 had 15 other men there that all were trying to deal as clearly
17 with their life as he was with his. So that was extremely
18 important. Also, as the superintendent, I wanted to insure
19 that the staff, all of the staff were following my direction in
20 terms of administering the sentence. Because, again, when we
21 had indication that protection of society was at least assured
22 with the information we were getting from the officials, then
23 administration of the sentence had to continue. We had to
24 deal with Junior Marshall as a resident of the Carlton Centre
25 until it was resolved officially. And I wanted to make very

1 sure that we followed all of the procedures just so if it ever
2 happened again, we wouldn't get ourselves in a bind so the
3 other residents couldn't call "foul" or, you know, all of those...
4 Again, we were making it up as we went along. We were
5 trying to stick with our three guiding principles.

6 Q. So you wanted to insure that management of his case was
7 consistent both with respect to him and also with respect to
8 the other inmates.

9 A. Absolutely. The other thing is, you know, we had the
10 information. You know, we didn't know how anything was
11 going to go. If it all fell apart a year down the line, you want
12 to make sure that you haven't painted yourself into a terrible
13 corner as well.

14 Q. I think you said that when Mr. Marshall was released, he had
15 the expectation that things would now wind down and be
16 resolved, I take it, in fairly short order.

17 A. Mmm.

18 Q. Is that correct? Did he have any other expectations,
19 expectations in terms of how the community would react to
20 him? Expectations that he would be treated as an innocent
21 man now that he was out?

22 A. Sure, yeah. Those were the overriding feelings I believe he
23 had.

24 Q. Did he have expectations with respect to himself?

25 A. I think he expected to be declared, again, innocent. Have

1 people say, "Sorry this happened to you. What can we do to
2 give you a hand?" And then carry on and set up his life as he
3 perceived it.

4 Q. So he expected that now that it was beginning to be
5 acknowledged that a mistake had been made, that people
6 would rally around.

7 A. Yes.

8 Q. And get him back on his feet.

9 A. And normalcy would set in and everything would end
10 happily, yeah.

11 Q. Did he feel that life had left him behind? Did he feel out of
12 step with his friends, with the rest of the community?

13 A. Certainly he felt he had missed a great deal in terms of his
14 immediate family growing up and things changing there.
15 Certainly a number of the events that had gone on in the time
16 he was in the institutions. Again, some of his friends stayed
17 fairly loyal to him. Other friends sort of disappeared. Yeah,
18 he felt fairly, I think fairly isolated from all of that.

19 Q. And did this affect his feelings of self worth?

20 A. I think so, yeah. I think they contributed to his feelings of,
21 lack of feelings of self worth.

22 Q. Did you come to know Mr. Marshall as, and I don't want to
23 suggest words to you, but as an unassuming and shy person?
24 Would that be a fair description of how you would have found
25 him to be?

1 A. Yeah, he certainly was with me. You know, very... I, quite
2 frankly, didn't know what to expect when I went out to get
3 him. And I was, to echo Diahann McConkey's statement, I
4 found him to be extremely soft spoken, interested in a
5 number of things. Like he was interested in going smelt
6 fishing and a bunch of things like that. That's not really what
7 I expected. I don't know really what I expected because I
8 hadn't seen him before. But, yeah, he was a fairly soft
9 spoken, self assuming person at that point... Self effacing
10 person at that point.

11 Q. Did you find him to be not very communicative about his
12 feelings, someone who wouldn't be very forthcoming about
13 how he was feeling?

14 A. He wasn't very forthcoming with me. I think he was much
15 more forthcoming with Charlie Gould. But, again, that was
16 very understandable.

17 Q. Understandable because Mr. Gould was an Indian?

18 A. Also he wasn't part of the system and was sent there to
19 support him. There's an inherent conflict with starting to
20 trust a person who is also responsible for your incarceration
21 at that time so , you know. And that happens with everyone,
22 not just, not with just Junior Marshall. But, no, Charlie Gould
23 was by far and away the person he trusted the most at that
24 time.

25 Q. Did you ascribe any of the characteristics you've observed

1 about Mr. Marshall to the fact that he was Indian?

2 A. At a couple of points, yeah. Primarily because he told me
3 that. He said on a number of times he wanted to just go for a
4 walk. Instead of, say, going down to Barrington Street, he'd
5 like to go out smelt fishing or something. And I can't
6 remember the, I can't remember the fish that runs. It's a
7 small...

8 Q. Gasperaux?

9 A. Gasperaux. Every year the gasperaux would run and that was
10 something he looked forward to because that had great
11 association with family. I guess I got more a sense of him
12 being a very tight family person, as opposed to an Indian
13 person, if you catch my drift.

14 Q. Yes.

15 A. But certain things he said, you know, "This is traditional. This
16 is what we do." So if he told me that, I bought it. If that's
17 what you're saying. And I had no reason to disagree.

18 Q. So you found him to be very connected to his traditions and
19 his family.

20 A. Very much so. As a matter of fact, that's one of the reasons
21 Charlie Gould was very important for him because he
22 preferred when he was really upset to speak in Micmac, and
23 to be understood in Micmac because there were certain
24 points.... At one point, he said to me, and I'll try and quote
25 him, he said, "I wish you could speak Indian because I've got

1 some stuff to tell you." Okay? Now that was in the context of
2 him feeling up and down, okay? So his communication was
3 with Charlie Gould and that's, I think, where the real
4 discussions went on and Charlie continued to bring back in
5 some of the things that Donald's father had told him. Again,
6 understanding that Donald's father's position in the Micmac
7 nation. So, does that make sense?

8 Q. It does to me.

9 A. It all worked together, okay?

10 Q. So what you're saying as well then is Mr. Gould was a central
11 factor in Mr. Marshall's adjustment to coming out of prison?

12 A. In my view, he represented Mr. Marshall's culture and that's
13 why he was sent there.

14 Q. Do you feel that Mr. Marshall's shy nature made his
15 adjustment that much more difficult? For instance, did it
16 make the notoriety even harder for him to cope with?

17 A. Yeah, he didn't like the press. He liked to stay away from
18 them as much as he could and they made him irritated. He
19 wanted to stay away from them.

20 Q. Was he the type of person that it was harder for him to seek
21 help or to admit that he was having problems coping?

22 A. I'm not sure if it was any more than most lifers I've seen. I
23 think most lifers have that difficulty because there is a
24 difficulty in opening up after a long period of time. So I'm not
25 sure if he had any more difficulty than anyone else.

1 Q. So that's a characteristic of lifers, not necessarily especially of
2 Mr. Marshall.

3 A. That's my opinion, yeah.

4 Q. Can you comment on whether the types of skills that a lifer
5 develops to cope with institutional life are a help or a
6 hindrance when that person then comes out of the prison, or
7 are they, as an alternative, a neutral factor?

8 A. No, they're not really neutral. This is purely from my
9 observation and my experience.

10 Q. Yeah, that's what I'm asking.

11 A. A lifer, when he goes into an institution, has to establish
12 himself, simply because that's going to be his place for a very
13 long time. A lifer has to be maintained in a higher security
14 level over the first, say, three or four years because you
15 definitely don't want him while he's trying to cope with the
16 concept of a life sentence to bolt and run, because that's,
17 again, a danger to society. So a lifer has to go through, in the
18 first three or four years, sort of an almost an acceptance
19 transcendence into doing a life sentence and during that time,
20 the other inmates and the other lifers either defer or support
21 him in that. Because a lifer, that's his house. Everybody else
22 is coming in or out. He's staying there. So you're in his house
23 sometimes, if you're in the inmate population. So there's a
24 deference to lifers almost in a lot of cases by the other
25 inmates into the population, which makes it easier to do that

1 time. Now when the lifer comes out, that status or assumed
2 status doesn't carry out on the street, okay? He's gone from
3 some sort of the high part of his informal hierarchy in there,
4 the informal system. He comes out and suddenly here he is
5 at, say, 28 or 40 or whatever age it is, and he's not really
6 qualified. He's not really a high point on anybody's status
7 group out here. He's looking at people that are his
8 chronological age and he still hasn't got the same things they
9 have. Very happy to be out for the first little while but then
10 the reality starts setting in. That causes a lot of confusion,
11 okay? And you see an awful lot of difficulty for a lifer during
12 that period from, say, four months to a year. Usually after a
13 year, they're settled in and have at least accepted parts of
14 that. But what we've noticed is that, in the second year, there
15 seems to be another little bump that comes along, right?
16 Because suddenly they've lost their position. They've been
17 out of the institution for, say, a couple of years. It's very
18 difficult to walk back into that institution when everything is
19 changed, okay? Administration, staff, the whole works, and
20 re-establish yourself. So then... I've had lifers tell me that's
21 like a little fear reaction. I don't really belong here and I
22 don't really belong there now, okay? I don't know if that
23 addresses it.

24

25

MR. STEWART, EXAM. BY MS. DERRICK

3:14 p.m.

1 Q. Would it be fair to say that, in fact, a lifer leaving prison
2 acquires something of a negative status in the general
3 community for having done time for an offence?

4 A. To a degree, but with some people, he assumes a slightly
5 higher status because they think you've got to put more time
6 into a lifer. Some of the ex-offenders tend to give him a little
7 more status. But then it's very hard to sell a lifer, say, to a
8 businessman or to anyone else, you know.

9 Q. So does this mean that lifers and, in fact, other people who
10 have done time in prison become an isolated group in society
11 and look to each other for support and affirmation?

12 A. I'd say on the inside, that's probably accurate. I think, on the
13 outside, they become slightly more isolated than most of your
14 population because, again, a lifer always knows he's got more
15 to lose than a person who has, say, done time for break and
16 enter. They tend to be a little more isolated, I believe, on the
17 street. That's my experience.

18 Q. I believe Mr. Spicer touched on this. Are you aware, Mr.
19 Stewart, of Judge Cacchione's evidence with respect to his
20 dealings with Mr. Marsahll and that around the crucial times
21 like court appearances, Mr. Marshall became increasingly
22 anxious and tense and frustrated? I wanted to ask you...

23 A. I didn't hear Judge Cacchione's evidence. I know that at the
24 times as things came closer, if there was an appearance or
25

1 anything of significance, yeah, the agitation grew. That's
2 usually when I got a call.

3 Q. So that would be consistent with your experience with Mr.
4 Marshall as well?

5 A. Yes.

6 Q. In fact, is it fair to say that during the period you had
7 involvement with Mr. Marshall through the Carlton Centre,
8 and I'm just going to read you something out of Volume 35.
9 This, I think, is a telex. It's on page 189. It just says, and it's
10 dated, it's dated in April of 1982.

11
12 This is to inform you that we are granting a
13 weekend pass to the subject, Mr. Marshall, to run
14 from April 3rd, 1982 to April 5th, 1982 with the
15 activities of the past week, Mr. Marshall has
16 reached a point where he is exhausted and
17 somewhat confused and it is felt that he needed
18 some time away from the centre.

19 So is it accurate as well that this experience of being released
20 was an exhausting one for Mr. Marshall?

21 A. Yes, and if I can just refer to that telex. One of the things that
22 made it very exhausting for him, as well as the other
23 residents at the Centre, was at that time, Steve Aronson was
24 trying to keep him as far away from everyone-- press, old
25 friends, et cetera, as he could and it was like a constant game
of hounds and hares. So that also was something that just
made it almost intolerable at times.

1 Q. Did you ever discuss with Mr. Marshall the Court of Appeal
2 decision that acquitted him?

3 A. I didn't discuss it with him. I certainly watched him during it
4 and he's made comments about it to me.

5 Q. What was his reaction to the decision?

6 A. He felt that he was being put on trial and was very angry
7 with that and very frustrated with that.

8 Q. And that was his reaction once the decision came out in May
9 of 1983, is that what you're referring to?

10 A. I'm referring to the... Once the decision was made, even
11 during the process, he had referred to that as... He felt that
12 he was being put back on trial.

13 Q. I think the effect of your evidence is that the drawn out
14 proceedings-- the reference, the Ebsary matters, the
15 compensation, were all very stressful to Mr. Marshall. Is that
16 correct?

17 A. Yes.

18 Q. Is it accurate as well to say that all of this preoccupied him a
19 great deal?

20 A. I think it would be more than fair to say, yes.

21 Q. And this was in addition to the already stressful experience
22 that he was having as a lifer, effectively, in adjusting to
23 coming out of the prison.

24 A. Yes.

25 Q. You've referred to, I think you remarked on "relief drinking

1 patterns" and I just want to ask you what you meant by that.
2 Do you mean drinking in order to provide himself with relief,
3 effectively?

4 A. Yeah, when it's, when it got too much. You know, there's one
5 way to get away from it. You know, have a good stiff belt or a
6 number of them, either alone or with friends. And if you're
7 feeling at all, and I don't think it's just operational with him, I
8 think for a lot of people, the one place you can get away from
9 people while being in a crowd and socializing is going to a
10 tavern. Because all you need is the price of a draft and
11 you've got all sorts of friends. And I think that was the
12 method of coping, one of his methods of coping. But that's
13 something that I think a lot of our people do.

14 Q. In Volume 35 at page 216, there's a progress summary. I just
15 want to read you a short portion of it. Page 216, under
16 "Personal Development." This is July 6th, 1982. You say:
17 "Subject enjoys a social drink and occasionally embibes, never
18 to excess." So is it accurate to say that these drinking
19 patterns developed in response to the increasing stress of this
20 case, effectively?

21 A. Certainly as it....Certainly as everything dragged on and as
22 Charlie Gould left and where it became increasingly
23 complicated for everyone involved in it. Certainly that's
24 when the drinking really started to pick up. You know,
25 before that, it was, as I say, the tutelage of Charlie Gould and

1 the newness of being out and all. But as it progressed, yes,
2 and you could see it almost going lock step.

3 Q. In your opinion, was Mr. Marshall's adjustment to society
4 made even harder by the fact that he had been wrongfully
5 incarcerated for a long period of time?

6 A. Let me answer it this way, if I could. If an individual has
7 committed an offence, part of the getting out of the institution
8 is dealing with the offence and starting to set up plans to put
9 that offence behind. Right up until several days before he
10 came to the Carlton Centre, his focus, unlike the normal lifer,
11 if we can say that, was on getting out the gate to prove that
12 he was not guilty. So I think the normal institutional process,
13 that sort of natural evolution was missing. So I think if one
14 accepts that, yes. I would answer yes to that question.

15 Q. Was it your experience that Mr. Marshall, as a result of the
16 experience, had his, any faith he may have had in society and
17 in institutions fundamentally undermined? Did he ever
18 express that to you or discuss that with you?

19 A. He's made some cynical remarks that would indicate that.

20 Q. And would you agree that that might not also contribute to it
21 being harder to adjust?

22 A. Oh, yeah.

23 Q. Is it fair to say as well that Mr. Marshall never experienced
24 the degree of post release support that he would have had
25 had he been just a regular lifer?

1 A. No, he didn't.

2 Q. And so, therefore, this made it more difficult for you to help
3 him.

4 A. Yeah, it was... Here's the good news, here's the bad news,
5 okay? The good news is that your appeal came through. The
6 bad news is we cannot access resources for you. You know,
7 and I'm not saying that very specifically, but, you know, once
8 an individual is away, you lose access to the resources, the
9 federal resources, because we have no authority to expend
10 once a person is out of our system and their warrant is
11 expired.

12 Q. So he was on his own, effectively.

13 A. In terms of our ability to put him into specific programs, yes.

14 Q. Other than what personal initiatives you may have taken to
15 assist him beyond that.

16 A. Yes.

17 Q. Could you tell me who paid for Mr. Gould's services, if they
18 were paid for?

19 A. I couldn't say that with any assuredness.

20 Q. Was it the Correctional Services?

21 A. No. No, it was not, no. The only thing that Correctional
22 Services did was insure that we incorporated Mr. Gould in the
23 case management team and gave him the same access and
24 privileges that any other management, case management
25 team member would have.

MR. STEWART, EXAM. BY MS. DERRICK

1 Q. And that was to enable him to assist Mr. Marshall more
2 effectively?

3 A. Yes.

MS. DERRICK

4
5 Thank you, Mr. Stewart. Thank you for your help with
6 respect to Mr. Marshall. Those are my questions.

MR. PUGSLEY

7
8 I have no questions, My Lord. Thank you.

MR. MURRAY

9
10 I have no questions, My Lord.

MR. CHAIRMAN

11
12 Mr. Pink?

MR. PINK

13
14 We have no questions.

MR. DROLET

15
16 No questions.

MR. CHAIRMAN

17
18 Mr. Wildsmith?

MR. WILDSMITH

19
20 Just a couple, My Lord.

MR. CHAIRMAN

21
22 Ms. Derrick has pretty well covered your area.

MR. WILDSMITH

23
24 Certainly, at my invitation.
25

MR. STEWART, EXAM. BY MS. DERRICKMR. CHAIRMAN

1
2 That's the kind of cooperation we've been trying to instill
3 into counsel.

EXAMINATION BY MR. WILDSMITH

4
5 Q. I take it from your testimony so far... Or I guess I should
6 identify myself. I'm Bruce Wildsmith for the Union of Nova
7 Scotia Indians. I take it from your evidence so far that in
8 your work with Mr. Marshall, you felt that it was important to
9 take into account the fact that he was Micmac Indian?

10 A. Yes.

11 Q. Can you help us out in the various ways in which you thought
12 it was important?

13 A. I don't know if I could very... hit things very specifically.
14 Given that I knew that he came from a very spiritual family,
15 simply by the position his father holds, and my knowledge
16 that he had a first language of Micmac and enjoyed a number
17 of the cultural activities... I don't know if I can be any more
18 specific than that. I'm having difficulty with the question, I
19 guess.

20 Q. I was giving you an open invitation to talk about whatever
21 you thought was appropriate, but I take it that whenever an
22 opportunity arose, such as the ball tournament at Restigouche,
23 or the gathering at Chappell Island, that you were supportive
24 of his efforts to attend.

25 A. Well, of course. I guess if you got right down to the bottom of

1 it, if you're attempting to reintegrate a person into their
2 community, you certainly ask their community for support as
3 often and as clearly as you can. And if your community
4 happens to be a Micmac community, then certainly you access
5 that as often and as deeply as you possibly can.

6 Q. I'm wondering if you or anyone else in the Correctional
7 Service made efforts to access the community or whether it
8 was more a matter of the opportunities coming to your
9 attention and you simply being supportive?

10 A. I'd like to say that we accessed them. I'd be more honest to
11 say that Mr. Gould showed up on our doorstep uninvited and
12 we certainly took advantage of that. The Restigouche ball
13 tournament came up. We took advantage of that. Yeah, we
14 used whatever came our way as opposed to going out and
15 hunting that up. That doesn't preclude us doing that on
16 occasion.

17 Q. And I would take it from your comments that you think that
18 it's generally helpful to involve the Indian community in the
19 process of reintegrating native offenders into society?

20 A. If it'll assist, yes.

21 Q. Is there any way in which that is done in an activist sense
22 today?

23 A. Certainly the institutions across Canada have contracts and
24 financially support the attendance of elders in the
25 institutions.

MR. STEWART, EXAM. BY MR. WILDSMITH

1 Q. Yes?

2 A. There are...

3 Q. "In the institutions," meaning at places like Dorchester and
4 Springhill?

5 A. Dorchester, Springhill. I believe they had sweet grass
6 ceremonies, sweat lodges, special diets. I believe, I was
7 chatting with a friend from out west and I believe they had
8 participation in Indian games out west. I think at this point if
9 the institutions or the correctional services community is
10 approached, we'll certainly entertain most requests for
11 participation or access.

12 Q. Fair enough. You mentioned alcohol. This is sometimes a
13 problem with offenders at the point of their release?

14 A. It's one of the major problems we've got with offenders right
15 across Canada. If you do a needs analysis survey, you'll find
16 that alcohol and drug use is right up there, the number one
17 problem.

18 Q. Despite the fact that they spent a number of years in an
19 institution?

20 A. Your addiction...

21 MR. PRINGLE

22 Well, My Lord, I think we're back into the policy, practices,
23 and procedures of the federal institution again.

24 MR. CHAIRMAN

25 Close, yes.

MR. STEWART, EXAM. BY MR. WILDSMITHMR. PRINGLE

1
2 I'm sure we'll recognize we recognize that there are
3 problems in the institutions, but I do't think this is the forum to
4 canvass them across the country.

MR. WILDSMITH

5
6 Q. Okay, well, let me move on from there then. Accepting that it
7 is a problem and you mentioned various treatment programs
8 that Mr. Marshall might have had access to, are you familiar
9 with the existence of something called the "Micmac Lodge at
10 Eskasoni"?

11 A. Yes, I am.

12 Q. And is that a treatment centre for native people who have
13 alcohol and drug problems?

14 A. Yes, it is.

15 Q. And would that have been one of the kinds of treatment
16 programs that you thought would be advisable?

17 A. It would have been one of the type of programs, yes.

18 Q. Is that a program that is run by Micmacs?

19 A. Yes, it is.

20 Q. How is it regarded?

21 3:31 p.m.

22 A. It's regarded very highly. I don't believe at the time Mr.
23 Marshall was coming out that it was fully operational.

24 Q. And finally let me move on to a different area. With respect
25 to his communication skills in English, I take it from your

MR. STEWART, EXAM. BY MR. WILDSMITH

1 evidence that they were not as good as they might be?

2 A. No, I didn't say that. I said that his first language is MicMac
3 and he felt more comfortable in expressing certain things in
4 MicMac. His skills in English are remarkably good. If when
5 he was talking with Mr. Gould there were certain things that
6 couldn't be translated, I had talked to Mr. Gould and Mr.
7 Marshall about that. There were certain things that...or it
8 would be colloquialisms or references that I don't think
9 could be adequately translated.

MR. WILDSMITH

11 Thank-you, no more questions.

MR. CHAIRMAN

13 Mr. Pringle.

MR. PRINGLE

15 No questions, thank-you, My Lord.

MR. CHAIRMAN

17 Thank-you very much, Mr. Stewart. A very helpful witness.
18 Is there another witness?

MR. SPICER

20 No, we have another witness, My Lord, but we need a shift
21 change up here so if perhaps we could have a break.

22 BREAK - 3:32 p.m. to 3:57 p.m.

MR. CHAIRMAN

24 Mr. Orsborn.

MR. ORSBORN