

EXHIBIT VOL. 10

NEWSPAPER ARTICLES AND PHOTOGRAPHS

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BUCHAN, DERRICK & RING

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April 30, 1990

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The Honourable Gregory T. Evans
Commissioner
Royal Commission of Inquiry into
Compensation for Donald Marshall, Jr.
c/o Mr. W. Wylie Spicer
McInnes, Cooper & Robertson
1601 Lr. Water St.
Cornwallis Place
Halifax, NS
B3J 2V1

Dear Mr. Commissioner:

RE: Newspaper Articles and Photographs

This volume, Exhibit No. 10, contains a sampling of newspaper articles from 1971 to 1988 detailing aspects of Donald Marshall, Jr.'s case including the stabbing incident in the park, the murder investigation, numerous court proceedings including those involving Roy Newman Ebsary, Donald Marshall's release from prison, the Court of Appeal reference, the 1984 compensation process and the establishment of the Royal Commission of Inquiry.

This compilation is not intended to be exhaustive, and only some print sources have been sampled, The Cape Breton Post, The Chronicle Herald/Mail Star (Provincial), The Globe and Mail (National), The Toronto Star, Atlantic Insight and The Daily News (Provincial).

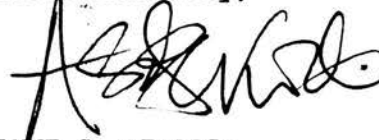
At Tab 1 is the table of contents with respect to the articles.

At Tab 2 are the articles themselves.

At Tab 3 are Donald Marshall, Jr.'s prison photographs for 1972, 1973, 1976 and 1979.

All of which is respectfully submitted,

Yours sincerely,



ANNE S. DERRICK

ASD/har

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GLOBE AND MAIL, TORONTO STAR, DAILY NEWS and ATLANTIC INSIGHT re:
 DONALD MARSHALL, JR.

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| Sept. 26, 1979 | Cape Breton Post | Search Continues for Escaped Murderer Donald Marshall, Jr. |
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| Sept. 12, 1983 | Globe and Mail | Charter cited in Nova Scotia Bid to Stop Manslaughter Trial N.S. |
| Sept. 13, 1983 | Globe and Mail | Man, 71, Not Guilty of Anything says Lawyer in N.S. Slaying Case |
| Sept. 13, 1983 | Chronicle Herald | Jury to be Charged Today in Ebsary Trial |
| Sept. 14, 1983 | Cape Breton Post | Jury Fails to Agree; New Trial Ordered |
| Sept. 14, 1983 | Chronicle Herald | Hung Jury in Ebsary Trial |
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| Nov. 9, 1983 | Globe and Mail | Ebsary is found Guilty in Slaying that Cost Another Man 11 years |
| Nov. 9, 1983 | Cape Breton Post | Ebsary Guilty of Manslaughter; ... |
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| Jan. 10, 1985 | Globe and Mail | Jury empaneled in Ebsary Retrial |
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| Jan. 16, 1985 | Cape Breton Post | Witnesses Robbery in Progress Night Youth Fatally stabbed in Park |
| Jan. 18, 1985 | Cape Breton Post | Ebsary Convicted of Man-slaughter ... |
| Jan. 18, 1985 | Globe and Mail | Ebsary Convicted again in Nova Scotia Slaying |
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| Oct. 10, 1986 | Mail Star | Inquiry to be Held into Marshall Case |

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PARK INCIDENT

Two Men Injured

City Police, led by Detective Sergeant Michael R. MacDonald, are seeking a knife-wielding assailant who attacked two men in Wentworth Park early today.

One of the men, Sandy Seale, of Westmount, underwent emergency surgery in City Hospital for a wound in the abdomen.

The second man, Donald Marshall, Jr., was released from hospital after treatment for a gash in the left arm.

The men were taken to hospital shortly after 12:15 a.m.

CAPE BRETON POST

MAY 29, 1971

LIFE OF STUDENT

- DETECTIVES SEEK ASSAILANT -

Sandy Seale Dies After Two Emergency Operations

City detectives remained on 24-hour duty today in an effort to apprehend a knife-wielding assailant who snuffed out the life of a 17-year-old high school student in a brief but bloody fracas near Wentworth Park early Saturday morning.

The city's first teen-age slaying triggered an intensive manhunt that extended into many parts of the Island Sunday. Seven persons were questioned during the day but all were released.

Sandy Seale, a son of Mr. and Mrs. Oscar Seale, Westmount, died in City Hospital Saturday after he underwent two emergency surgery operations.

The tragedy occurred near the park, now a gathering spot for hundreds of teen-agers. The victim had left a dance at a nearby hall and went to the park where he was joined by 17-year-old Donald Marshall, Jr., of Membertou.

Marshall is believed to have told police that a "white-haired" man approached them and asked for a cigaret or match. When Seale said he had neither the assailant plunged a knife into his abdomen.

Marshall was then attacked and received an arm wound that required 10 stitches. The assailant then disappeared into the darkness.

Seale's stomach wound severed three main arteries.

Seven men were placed in a police line-up at headquarters



SANDY SEALE

Sunday afternoon but Marshall could not identify any of them.

It was the first slaying in the city since the unsolved murder

of restaurant owner Jim Seto almost five years ago.

City Detectives John MacIntyre, M. J. MacDonald, M. R. MacDonald and William Urquhart are working around the clock in an effort to apprehend the assailant.

Sanford William (Sandy) Seale was a son of Mr. and Mrs. Oscar Seale, 985 Westmount Road and was a grade nine student at MacLennan Junior High.

He was a star hockey player and played on defence with St. Theresa's Midget team. He recently made a trip to Hamilton, Ont., as a member of Murray MacIntosh's Kinsmen Midgets.

Besides his parents, he is survived by three brothers, John, Howard and Raymond, and one sister, Elizabeth, all at home.

The body is resting at the F. W. Curry Downtown Chapel, 390 George Street. The funeral will be held Wednesday with services in Trinity United Church at 2:30 p.m.

Interment will be in Forest Haven Memorial Garden.

Press Probe Into Killing

CAPE BRETON POST
June 1, 1971

"Several" Released After Questioning

No new developments were reported Monday as city detectives continued their investigation into the slaying of a 17-year-old junior high school student.

Detective Sergeant John MacIntyre, who is leading the investigation, said last night that "several persons" were questioned Monday but were later released.

Sandy Seale, son of Mr. and Mrs. Oscar Seale, 985 Westmount Road, died in City Hospital Saturday less than 24 hours after he suffered a knife wound in the abdomen in a brief but bloody fracas near Wentworth Park.

Donald Marshall, Jr., 17, of Membertou was also attacked and received an arm wound that required 10 stitches.

Detective Sergeant MacIntyre said the search for the knife-wielding assailant is being concentrated in Cape Breton.

Seven persons were questioned Sunday but all were released.

Marshall is believed to have told police that a "white-haired" man approached them and asked for a cigarette or match. When Seale said he had neither the assailant plunged a knife into his abdomen.

Marshall was then attacked. The assailant disappeared into the darkness.

Seale died in City Hospital Saturday evening after he underwent two emergency operations. Seale's stomach wound severed three main arteries.

Meanwhile, funeral services for the popular Westmount youth will be held Wednesday with services in Trinity United Church at 2:30 p.m.

The body is resting at the T. W. Curry Downtown Chapel. In lieu of flowers, donations can be made to minor hockey.

Detectives Continue Investigation

Sydney police detectives continue their intensive investigation into the slaying of 17-year-old junior high school student Sandy Seale and a police spokesman said last night there were no new developments to report.

Funeral services for the youth, son of Mr. and Mrs. Oscar Seale of Westmount, were held in the city this afternoon.

The number of persons questioned by police increased yesterday as detectives press efforts to obtain information on the person who stabbed the teen-ager near Wentworth Park early Saturday morning.

CAPE BRETON POST
JUNE 2ND, 1971

CAPE BRETON

Knifing-death calls for look at role of police and parents

Last weekend's knifing-death of 17-year-old Sandy Seale may set Sydney residents to re-thinking the roles of both parents and police in the community.

A typical reaction to the killing was; "something like this was bound to happen the way things were going." And there's no doubt that things were going in the direction of a wide-open city as far as the young are concerned.

It seemed to be open knowledge that it was getting popular to carry knives; a few were even caught with concealed weapons; but apparently not enough to discourage the practice. Everybody seemed to be aware the liquor and dope were available for the asking and anyone in the vicinity of a dancehall could tell you that the fighting was more common and more sophisticated than it used to be at the old round-and-square dances. Those citizens who've exchanged pleasantries with

hotshot drivers on the George street speedway know how much respect some of the local cats have for law 'n' order. And Wentworth Park, the scene of last weekend's stabbing is no longer the haven for family outings it once was.

Some observers feel there's a danger in the wake of the slaying that there might be a clamor to take enforcement from one extreme to the other—from the present slovenly, ineffectual policy to a sort of Chicago-style crackdown. The happy medium would seem to be even-handed, thorough-going 24-hour surveillance that puts kids under the sort of discipline the psychologists say they're looking for.

The re-thinking process will also include second thoughts about the efficiency of patrol cars versus the man on the beat in trouble-prone areas. As one teenager put it, "It's hard to respect a policeman who's only in a passing car."

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VC SYDNEY, CAPE BRETON, JUNE 2, 1971 24 PAGES 10¢

BRIEFS

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CAPE BRETON POST
JUNE 2nd, 1971

Murder Charge Laid

Donald Marshall, Jr., 17, of Membertou Reservation, Friday night was charged with non-capital murder in connection with the knife-slaying of 17-year-old Sandy Seale on the fringes of Wentworth Park early last Saturday morning.

City detectives arrested Marshall at a secret hiding place where the Marshall family had been taken Thursday because of a series of threats against the family.

The youth appeared before Judge John F. MacDonald at 10 p. m. last night and was remanded to the County Jail.

The arrest climaxed a six-day investigation that kept police working around the clock.

Marshall had been questioned earlier in the case. He claimed that he was with Seale in the park and both were accosted by two assailants one of which he described as a "white-haired man."

Marshall suffered a gash in the arm which

he said was inflicted by one of the assailants. Seale, a son of Mr. and Mrs. Oscar Seale, Westmount, died in City Hospital less than 18 hours after receiving a stab wound in the stomach.

Both Seale and Marshall attended a dance near the park just prior to the tragedy.

Detectives spent most of the week chasing down several leads, one of which involved two men running from the scene and departing in a small car with an out-of-province license plate.

Police would not elaborate on the break in the case that came suddenly early Friday evening.

The Marshall family had received threatening phone calls and other annoyances during the week. Police took them to a hideout for their own safety on Thursday.

Marshall is scheduled to appear before Judge MacDonald again on Monday.

CAPE BRETON POST
June 5th, 1971

Sydney youth faces charge

SYDNEY — Donald Marshall, 17, of Sydney, will appear in court here this morning in connection with a stabbing incident that claimed the life of a local youth over a week ago.

Marshall was charged late Friday night with the non-capital murder of Sanford William Seale, 17, who died in hospital from knife wounds May 29.

~~Both Seale and Marshall were taken to hospital for treatment following the stabbing incident on residential Crescent Street, near Sydney's Wentworth Park.~~

CHRONICLE HERALD
June 7th, 1971

Murder Charge To Be Heard In Court Today

Donald Marshall Jr., 17, of Membertou Reservation, charged with non-capital murder in connection with the stabbing death of Sandy Seale, will be brought before Provincial Judge John F. MacDonald again this morning.

He was arrested by city detectives Friday night and remanded to County Jail after a brief appearance before Provincial Judge John F. MacDonald.

Seale died in City Hospital, May 29 after he suffered stab wounds in the stomach.

Six days of intensive police investigation led by Sergeant Detective John MacIntyre led to last Friday night's arrest of Marshall.

CAPE BRETON POST
June 7th, 1971



GOES TO COURT—Donald Marshall, Jr., 17, of Membertou Reservation, is seen as he enters court in Sydney yesterday when he was charged with murder in the stabbing death of Westmount teenager Sandy Seale. Constable Charles Wa'll leads the accused, who is flanked by Constables Roy Young and Carl MacDonald. Marshall was remanded to County Jail for one week pending preliminary hearing of the charge by Provincial Judge John F. MacDonald. (Abbass Photo)

Remanded For Week

Donald Marshall Jr., 17, of Membertou Reservation, was arraigned before Provincial Judge John F. MacDonald Monday on a charge of murder arising out of the stabbing death of Sandy Seale of Westmount the night of May 28. He was remanded to County Jail without plea for another week and no date for preliminary hearing has been set. Two lawyers, S. J. Khattar, QC, and C. M. Rosenblum, QC, appeared on behalf of the accused, arrested Friday night by Sydney police detectives. Crown Prosecutor Donald MacNeil, QC, requested the remand and said the Crown was not prepared to go ahead with its case. He said there was much preliminary work to be completed by police before the Crown was prepared to go ahead with its case. Meanwhile police have charged Thomas Christmas of Membertou with unlawfully attempting to obstruct the course of justice by threatening John Pratico not to give evidence in a cause on behalf of the Crown. The accused requested time to get a lawyer and the case was adjourned to Friday. Christmas was remanded to jail by Judge MacDonald.

CAPE BRETON POST
June 8th, 1971

Marshall Remanded Until July 5

Donald Marshall, Jr., 17, of Membertou Reservation, Monday was remanded until July 5 when he appeared in court on a charge of non-capital murder.

He was remanded to the County Jail without plea after Crown Prosecutor Donald C. MacNeil, Q.C., said the crown was not prepared to go ahead with its case.

Provincial Judge John F. MacDonald rejected a request for bail for the youth who is charged in connection with the knife-slaying of Sandy Seale, 17, of Westmount May 28.

The request came from C.M. Rosenblum, Q.C., who along with Simon Khattar, Q.C. appeared in court yesterday on behalf of the accused.

"It's not the fault of the accused that the hearing is not taking place," Mr. Rosenblum said. "Legally he's entitled to bail."

Judge MacDonald rejected the request and suggested that defence counsel could appeal to a higher court for bail.

He said he couldn't grant bail "especially while the investigation is not yet completed."

Mr. MacNeil told court that exhibits will be sent to the police lab this week and that it would be two weeks before the crown was in a position to go ahead.

Mr. Khattar said the defence was prepared to agree to a longer adjournment than eight days.

CAPE BRETON POST
June 15, 1971

Knife-death aftermath has racial undertones

There are rumblings of racial disharmony here, sparked by the stabbing-death of one 17-year-old boy and the charging of another with non-capital murder. Dead is Sandy Seale, who was a Negro; in jail is Donald Marshall, Jr., a Micmac Indian. So far, the rumblings are just rumblings; some idle talk and a few tough-sounding threats. But the case is being watched closely by members of both racial groups, each of which has become much more highly-organized and militant in the last few years in Nova Scotia. There is a real potential to have the case turned into a racial issue, if not by the stabbing-death itself then by the legal aftermath. The courts are treading carefully to avoid any appearance of racial influences.

One incident that appears to have blown over is the alleged refusal by somebody to allow a barber to visit

the County Jail to trim Marshall's hair. He wears it long—an Indian style adopted by many young whites. The reported prohibition on barbering was apparently lifted after vigorous protests by Marshall's lawyers and friends. The warden of the jail had claimed he was only following instructions.

Another potential trouble spot is the presence of Crown Prosecutor Donald C. MacNeil, former Tory MLA and onetime provincial cabinet minister. MacNeil was criticized in a report by the Nova Scotia Human Rights Commission a year ago, for his in-court remarks about Indians and the law. At the time, he was defended by then Tory Attorney-General R.A. Donahoe, who blasted the Human Rights Commission for overstepping its bounds. The Indian community applauded the Commission's findings.

CAPE BRETON POST
June 16, 1971

Decision Reserved On Bail Bid

County Court Judge George Morrison yesterday reserved decision on an application for bail on behalf of Thomas Christmas of Membertou charged with attempting to obstruct the course of justice.

Application was made by defence counsel Frank Elman and objected to by Crown Prosecutor Donald MacNeil, QC, at a hearing before the county court judge.

Christmas has been committed to trial in Supreme Court on the charge following preliminary hearing earlier before Provincial Judge John F. MacDonald. Judge MacDonald rejected request for bail.

The charge against Christmas was laid by Sgt. Det. John MacIntyre in connection with the non-capital murder charge against Donald Marshall of Membertou, arising out of the death of Sandy Seale last month.

Preliminary hearing of the murder charge is scheduled for July 5.

CAPE BRETON POST
June 23, 1971

— MURDER CHARGE —

14 Witnesses Testify; Hearing Is Adjourned

Preliminary hearing of a charge of murder against Donald Marshall, Jr., of Membertou opened before Provincial Judge John F. MacDonald Monday

and after evidence from 14 witnesses the hearing was adjourned to July 28.

Crown Prosecutor Donald MacNeil, QC, said he could not complete the case because exhibits were still at the RCMP crime laboratory in Sackville, N.B.

He said he also wanted to call the doctor who treated the accused at hospital, and who is presently out of the country on holidays.

Marshall was charged by Sydney police after the May 28 stabbing death of Sandy Seale at Wentworth Park.

The courtroom was crowded as the preliminary hearing opened yesterday and was adjourned at noon.

Prosecutor MacNeil was as-

sisted by Assistant Crown Prosecutor Lewis Matheson, C. M. Rosenblum, QC, and S. J. Khattar, QC, appeared for the defence.

CAPE BRETON POST

July 6th, 1971

DONALD MARSHALL

Committed To Supreme Court

Donald Marshall, Jr., 17, of Membertou, Wednesday was committed to stand trial in Supreme Court on a charge of non-capital murder.

Marshall was committed following preliminary hearing before Provincial Judge John F. MacDonald.

He is charged in connection with the May 28 knife slaying

of Sandy Seale, 17, of Westmount.

Marshall is represented by C. M. Rosenblum, Q.C., and Simon Khallar, Q.C. Crown Prosecutor is Donald C. MacNeil.

CAPE BRETON POST
July 29th 1971

up with the influx of residents since the Devco plan was announced this week . . . More than 35 groups occupied the camp grounds at **Broad Cove** last week and **Park Superintendent Rochester** reports an early influx of visitors . . . **Disregard** reports that the **Keltic Lodge beach** will be unsuitable for swimmers this year. A great wall of stone, the worst in years, covered the beach but in the past few days workmen have removed most of the rubble and the sand already has started to sweep in . . . Congratulations to **Thistle Lodge, No. 36** at **Port Morien** for their fine efforts which will lead to a new lished commune near **Meat Cove** in **Victoria County**. **years** after the lodge room was built. **Cyril Barro** deserves much of the credit. The lodge will celebrate with a lobster supper . . . There's a well established commune near **Meat Cove** in **Victoria County**. The 20 resident Americans wintered well. They have caused no trouble and relations with residents of the area are extremely good . . . Vandalism has reached serious proportions at the grounds of the **Miners Museum** at **Glace Bay** . . . There should be some kind of Parliamentary award for **Annapolis Valley MP J. Patrick Nowlan** who had the courage to admit he had been over-zealous in first announcing he wouldn't take the MP's pay raise but now realizes he needs it . . . **The Glace Bay School Board** has failed to release the names of several teachers appointed to the staff last week. The board should face up to its decision against hiring married women and let the public know who has been taken on staff . . . Enrolment in **Glace Bay schools** will decrease next term . . . That **sex case** city police uncovered in a parked car on the grounds of a local school one night this week has repulsive overtones . . . **Sydney Mines Town Clerk Sidney Oram** is seriously ill in the **Victoria General Hospital** . . . Many people in **North Sydney** are up in arms over the fact that census takers were not hired through the **Manpower office**. Several women whose husbands hold good positions were hired while the jobless were ignored . . . More than 1,600 persons have made reservations for the **new liner service** which starts between **North Sydney** and **St. Pierre** early next month . . . A man who claimed he was an **East African prince** living in exile was entertained in **North Sydney** last night while he was waiting to board the ferry to **Newfoundland**. When he arrived at the terminal he didn't have enough money to pay for the ticket. It was a hoax . . . Give **Detectives John MacIntyre, M. J. MacDonald, M. R. MacDonald** and **Bill Urquhart** credit for their work in the **Seale murder case** . . . Teen-agers in **North Sydney** have been watching garbage disposal from **St. Elizabeth Hospital**. They were salvaging the needles which police feared were to be used

CAPE BRETON POST

OPINION PAGE

"CHAT CHAT"

Oct 1, 1971

18 WITNESSES

Murder Trial Is Under Way

The first of 18 Crown witnesses gave evidence Tuesday as the murder trial of Donald Marshall Jr., 17, of Membertou, opened in Supreme Court in Sydney before Mr. Justice J. L. Dubinsky.

The court room was jammed as Marshall pleaded not guilty to the charge arising out of the May 28 death of Sandy Seale in Westmount. The youth died in hospital from stab wounds. First to give evidence were two civilian members of the RCMP crime laboratory in Kentville, N.B.

Crown Prosecutor Donald MacNeil, QC, told court he would not call them first under normal circumstances but they were also needed in criminal court at Kentville.

Sandra Mrazek, a serologist, testified she examined two exhibits, a pair of blue jeans and a piece of facial tissue, delivered to her by Sgt. M. R.

MacDonald of the city police department.

She said she found human blood, group O, on both exhibits.

James Eavers, also of the RCMP laboratory, gave evidence concerning two jackets submitted for testing for hair and fibre content.

The prosecutor, briefing the 12-man jury in advance, said witnesses would be called to recount events happening in Wentworth Park and vicinity late on the night of May 28 following a dance nearby.

C. M. Rosenblum, QC, and S. J. Khattar, QC, appear for the defence.

The trial resumes at 10 a.m. today and the jury was expected to deliberate late Thursday.

CAPE BRETON POST
NOVEMBER 3rd, 1971

SUPREME COURT

16 Witnesses Give Evidence

A Sydney teenager testified in Supreme Court yesterday he was hiding behind a bush in Wentworth Park late on the night of May 29 when he saw two youths arguing.

John Pratico, 16, said he recognized them as Donald Marshall Jr., of Membertou and Sandy Seale of Westmount.

He testified that Marshall had a "shiny object" in his right hand which he plunged into the other youth's stomach.

"That's the last I saw. I ran up Bentinck Street," Pratico said.

Donald Marshall is charged with murder arising out of the death of Sandy Seale, which occurred next day at City Hospital.

Pratico was giving evidence for the Crown when the trial was adjourned yesterday afternoon.

Mr. Justice J.L. Dubinsky advised the teenage witness he would be allowed to return to his home, but outside of his family, he was to report to court if anyone attempted to talk to him about the trial.

The trial goes into its third day with the jury expected to deliberate later today.

Pratico testified he saw Marshall and Seale at a dance at St. Joseph's Hall, near the park.

The three youths walked to the corner of George and Argyle Street. Pratico said he walked up Argyle to Crescent Street while the other youths went into the park.

The witness said he went behind a bush in the park and was drinking. He said he looked up and saw Marshall and Seale talking, "they seemed to be arguing."

Pratico will resume his evidence as the trial continues today. Marshall is represented by C.M. Rosenblum, QC and S.J. Khattar, QC who cross-examined most of the 16 witnesses already called by Crown Prosecutor Donald MacNeil, QC and Assistant Crown Prosecutor D. Lewis Matheson.

The 12-man jury under foreman James J. Townsend was required to leave the courtroom on several occasions yesterday as legal argument took place.

Three doctors gave evidence at yesterday's session. Dr. Mahomad Ali Naqvi testified he treated Seale from midnight until 4 p.m. next day.

He said the youth was on the verge of death when he first saw him in the hospital emergency room.

Dr. Naqvi testified the injuries were caused by a sharp pointed object penetrating the abdomen all the way to the back. The bowels and blood vessels were torn, he said, and a massive replacement of 15 to 20 pints of blood was used. The youth was taken to the operating room twice.

Dr. David Gaum testified he

assisted in the operations and he described bleeding from an abdominal wound caused by a half inch puncture of the aorta, main artery from the heart.

Dr. M. S. Virick said he treated Marshall for what he described as a superficial laceration four inches long on the inside of his left arm. The wound required 10 stitches, the doctor said.

The doctor testified he went to County Jail later to remove the stitches and found them all

(Continued On Page 9, Col. 1)

Nov. 4, 1971
on Post

16 Witnesses Give Evidence

(Continued From Page Three)

ready removed. He said Marshall told him he did it himself.

Dr. Virick said it was possible the laceration was self-inflicted.

Maynard Vincent Chant, 15, of Louisbourg, said he was in the park that night.

He testified under cross-examination that he was not sure the accused was the person who "hauled something out of his pocket and drove it toward the other fellow's stomach."

Chant said he couldn't recognize either of the youths. He said he met the accused shortly after outside the park.

"He said look what they've done to me and showed me a cut on his arm," Chant testified.

"He told me about two fellows in the park," Chant testified, "and he said my buddy's over in the park with a knife in his stomach."

Chant said Marshall hailed a passing car and they drove over to the park where the injured youth was lying in the street.

Other witnesses giving evidence yesterday were: Carl MacDonald, city surveyor who presented a chart of the park; Leo Curry, ambulance operator and funeral director; Mrs. Myrtle Faye Davis, RN; Roy Gould, 124 Membertou Street; Donald Marshall Sr., Sgt. M.R. MacDonald, Oscar Seale, Mrs. Seale, Patricia Ann Harris and Terrence Gushue.

CAPE BRETON POST
NOV. 4th 1971

CAPE BRETON POST, FRIDAY, NOVEMBER 5, 1971 — 3

VERDICT TODAY IN MURDER TRIAL

Marshall Denies Stabbing Seale

The Crown's case of murder against Donald Marshall Jr. of Membertou goes to a Supreme Court jury in Sydney today for a verdict ending a three-day trial.

The court room was crowded yesterday as the 17-year-old Marshall denied that he stabbed Sandy Seale of Westmount in Wentworth Park last May.

The accused testified that one of two men, who looked like priests, stabbed Seale with a knife.

Marshall said he had known Seale as a friend for the past three years. He said he met him in the park late on the night of May 28. But, he testified, they were not in an argument.

He said the two youths were talking near the bridge when two men appeared asking for a cigarette and a light.

Marshall said they gave the men what they asked for. They said they were from Manitoba. Marshall testified, "I said to them they looked like priests the way they were dressed." Marshall said.

"The younger one said we are," Marshall said. Then they asked if there were any women in the park, and I told them there were a lot.

One of them replied "we don't like niggers or Indians," Marshall said.

"The older fellow took a knife out of his pocket and drove it into Seale's stomach," Marshall said, "then he swung it at me hitting my arm."

Marshall said "I didn't stab Seale or lay hands on him."

Mr. Justice J. L. Dubinsky will address the jury when the trial resumes this morning. After that the jury deliberates on its verdict.

C. M. Rosenblum, Q.C., and Crown Prosecutor Donald MacNeil, Q.C., addressed the jury yesterday afternoon.

The defence counsel said only two of the Crown's 18 witnesses were important, and the whole case hangs on their testimony.

Both, he said, acted contrary to what one would expect eye-witnesses to do.

They were at the scene, along with Marshall, when the ambulance and police arrived. Yet neither even hinted to police they knew who had done the stabbing, Mr. Rosenblum said.

It was a week before police arrested Marshall and they had not had a word from the two key witnesses, whose testimony was described by the defence counsel as unbelievable. One of them admitted to being drunk the night of the stabbing, he said.

Crown Prosecutor MacNeil said it was clear why the two teenagers had not told police what they saw earlier. "They were scared." And like many other people these days in Canada and the United States, they didn't want to get involved.

Mr. MacNeil said city police detectives spent long hours of hard work, day and night to bring the case to court. He described the efforts of the Detective Division as brilliant.

The prosecutor said the accused was a good enough actor to do what he did.

But, he said, when the injured Seale was being placed in an ambulance, the accused stayed far enough away so as not to be identified.

Eye-witness, John Pratico, said in the court corridors during the trial that Marshall didn't stab Seale because he was afraid for his life, Mr. MacNeil said.

Later under oath Pratico told the truth, Mr. MacNeil said.

CAPE BRETON POST
NOV. 5th, 1971

HE IN PRISON

PLAN APPEAL

Jury Out Four Hours

Donald Marshall Jr., 17, of Membertou, was found guilty Friday of non-capital murder and sentenced to life in prison.

The youth buried his face in his hands and sobbed when the verdict was returned by a Supreme Court jury after four hours deliberation.

Defence counsel C.M. Rosenblum, QC, said shortly after the verdict was announced that it would be appealed.

Marshall was charged after the stabbing of Sandy Seale of Westmount in Wentworth Park last May.

Extra Sydney policemen were on duty yesterday as the case went to the jury. They were stationed inside and outside the court room as the jury returned with its verdict. The court was again filled to overflow as the verdict was reached.

Mr. Justice J. L. Dubinsky said the sentence of life imprisonment was mandatory and prescribed by law. There is no discretion in this matter, he said.

He said there was no sentence that can be passed on the accused to equal the personal anguish he can carry for the rest of his life because he has taken the life of a fellow human being.

"This act has brought tragedy

to two families," Mr. Justice Dubinsky said.

"All I can hope is that out of this tragedy will come a lesson to others that will tell people violence can only end in heart-break, sorrow and tears," he added.

Mr. Justice Dubinsky lauded defence lawyers C. M. Rosenblum, QC and S. J. Khattar, QC.

Counsel for the defence, he said, have discharged their responsibility for the accused in as capable a manner as any defence presentation he has seen since appointed to the bench.

Mr. Justice Dubinsky said the attitude of the prosecutor presented by Crown Prosecutor Donald MacNeil, QC, and Assistant Prosecutor Lewis Matheson, was equally in the best tradition of the legal profession.

Opinion Page

Cape Breton Post, Nov 6, 1971

NEW 'ALLIES' FOR CANADA

Last week we had Kosygin. This week we have Joseo Tito of Yugoslavia, a puppet of Russia. With more security, even, than his boss got in Ottawa. What message Marshal Tito has for Canada, we do not know. Mr. Kosygin had none, except for a vague reference to better relations with our country, and who knows, Yugoslavia may buy Canadian wheat at cut-rate prices. In return we may provide refuge for their defectors, a greatly desired escape from Communist domination. With all these newly won allies from the eastern world, China, Russia, Yugoslavia, not to omit Cuba, Canada has a fearsome front to present to the United States, which these days is getting plenty abuse from its northern neighbor for setting off a nuclear bomb in the Aleutians and placing a surcharge on imports from low paid labour countries to save jobs for Americans. The sooner Canada follows the U.S. example the better.

WE'RE LOSING GROUND — IN THE AIR

Cape Breton's airline service was downgraded the first of this month. Firstly, the non-stop Air Canada flight from Sydney to Montreal at 11:35 a.m. was dropped. Now we have Air Canada service at early morning — a round 7:30 with connections at Halifax to Montreal and Toronto. Not until 4:20 in the afternoon can you get another AC plane to Halifax and Montreal. Meantime, to take up the slack, EPA leaves a couple of hours later than 9:15 a.m. for Halifax, Charlottetown, and Montreal, and this could well prove to be the most popular flight of the day. You can get an Air Canada plane to Halifax around 8:30 p.m. Not having received or seen the new plane schedules, we cannot surmise the hours of the return flights to Sydney.

Chit Chat

It's too bad more teen-agers did not hear the words of Mr. Justice Louis Dubirsky in Supreme Court yesterday when he sentenced Donald Marshall, Jr., to life in prison. His "heartbreak, sorrow and tears" statement had a visible effect on the youngsters in the packed courtroom. Marshall's sentence, by the way, is subject to review after 10 years . . . County authorities are not too happy keeping the Warren brothers in jail here until next May before they stand trial for non-capital murder. The authorities feel that Victoria County, where the men were arrested, should bear the expense . . . Ald. Angus Currie's campaign expenses totalled exactly \$242 . . . Devco's board-of-directors will meet in Sydney Nov. 24 and 25 . . . The new licence plates are a change from the yellow and black combinations of the last few years . . . Sydney's Al MacNeil and the Nova Scotia Voyageurs continue to be bitterly disappointed by poor turnouts at home games in Halifax, a city that has never been a good sports booster . . . The Cape Breton Post will produce a supplement on drugs Monday. The tabloid contains details on the availability of an outstanding booklet on drugs written by Alton Blakeslee of The Associated Press. We strongly urge parents to acquire a copy of this fine publication . . . Surely the CNR can work out better schedules. The latest timetable changes have the railiner from Halifax and Truro arriving in Sydney at 2:30 a.m. . . . Watch for important changes in mail delivery procedures in Sydney shortly . . . Innis G. MacLeod, Nova Scotia's Deputy Attorney-General and one of the province's most distinguished public servants, has been awarded the service medal of the Order of Canada . . . A local group is studying plans for a new movie theatre in Sydney, one that could be used also for stage attractions . . . The county's tax collection department should show at least a little sympathy in certain cases when a man is down and out . . . With

only one meet left, betting at the Sport Centre this year will exceed \$2,400,000, an all-time record . . . The production of "Fiddler on the Roof," sponsored by the Rotary Club, will be staged in mid-January instead of Dec. 2 . . . If Mayor Carl Neville steps down next year don't rule out the possibility of R. B. Cameron as a candidate now that he has decided to settle here. Others being mentioned are Carl O'Callaghan, who ran a fine campaign last time out, Ald. Jim Lovelace, Ald. Charlie Palmer and former Mines Minister Pinky Gaum . . . There are no plans to rebuild St. Nicholas Church which was destroyed by fire last week. The church served the Italian community well but the congregation has dwindled to 60 families. The Italian congregation and friends will attend Mass in St. Mary's Polish Church Sunday at 10:30 a.m. . . . Jack Stephens, curator of the Alexander Graham Bell Museum at Baddeck, did a fine job publicizing the museum and Cape Breton during a recent trip to Louisville, Kentucky, where he participated in the 60th anniversary of the Telephone Pioneers of America . . . A Sydney firm is prepared to take advantage of the new training on the job program providing its proposal for a new plant is approved . . . The United Church at Glace Bay is seeking a social worker for that town . . . A Sydney firm will be prosecuted for alleged false advertising . . . The people who are working so hard on the very important health study deserve more support and attention. The meeting at Glace Bay this week left something to be desired . . . Premier Gerald Regan plans major cabinet changes shortly, even before the next sitting of the Legislature expected during the first week of December . . . The appointment of Eric Dennis to the post of director of Information Nova Scotia will be a good thing once he gets organized . . . NDP Leader Jeremy Akerman is recovering from an illness . . . Congratulations to Judge Bob Ferguson. He is well qualified for his new position as family court judge.

Youth sentenced to life term, weeps in court

SYDNEY — A 17-year old MicMac youth was sentenced to life in prison yesterday when a Supreme Court jury found him guilty of murdering a friend in an early morning knifing incident May 29.

Donald Marshall Jr. wept in court when the jury brought in its verdict after four hours of deliberation. He had pleaded not guilty.

The victim, Sandy Seale, 17, died in hospital after undergoing two emergency operations for a mortal knife wound that severed a main artery to the heart.

Marshall, who said that he and Seale had been friends for three years, was arrested by Sydney detectives in Whycomagh a week after the stabbing incident. He and his family had left Sydney temporarily because of anonymous telephone threats.

He denied throughout his trial this week that he had stabbed Seale.

He had been in conversation with the victim at Wentworth Park, near downtown Sydney, when two men, who "looked like priests," approached them asking for cigarettes. One of them, Marshall said, subsequently plunged a knife into Seale's stomach.

Chronicle Herald, Nov 6, 1971

CHRONICLE HERALD
NOV. 6th, 1971

Escapes

~~TRURO, N.S. (CP) RCMP~~
say Donald Marshall, 26, a convicted murderer, escaped custody at Alma, N.S., near New Glasgow, on Monday when he overpowered guards and sprinted into nearby woods. Marshall was being returned from Musquodoboit Harbor when the escape occurred at about 3 p.m. ADT. RCMP said Marshall was considered dangerous.

CAPE BRETON POST
SEPT. 25th, 1979

Atlantic Roundup

Search Continues For Escaped Murderer Donald Marshall

MONCTON, N.B. (CP) — Federal correctional service officials reported no success Tuesday in the search for escaped murderer Donald (Junior) Marshall.

A spokesman for the service said Marshall was on day parole participating in an Atlantic Challenge program in the Sherbrooke area of Nova Scotia when he escaped Monday. The program is a survival course involving treks through woods.

After completing the program, he was being escorted back to the Springhill Medium Security Institute when he eluded his escorts as the institute vehicle stopped for gas at Alma, near New Glasgow.

CAPE BRETON POST
SEPT. 26, 1979

Marshall Recaptured

PICTOU, N.S. (CP) — Convicted murderer Donald Marshall Jr., 26, a native of Sydney, N.S., was recaptured here Wednesday night, three days after he had escaped police custody at Alma, N.S.

A police spokesman said Marshall was arrested at a downtown residence after receiving a tip from RCMP at Sydney. Marshall offered no resistance, the spokesman said.

Marshall escaped police at Alma Monday when a car carrying him stopped for gas. Marshall had fled on foot into nearby woods.

CAPE BRETON POST
SEPT. 27th, 1979

CAPE BRETON
POST
SEPT. 29/79

New Doctors, Zoning Wr

Four Sydney businessmen have acquired the Canadian Tire building on Charlotte Street and will convert it into the city's largest restaurant, lounge and discotheque within four or five months. The restaurant will be called Joe's Warehouse, the disco, 'The Garage' and a plush bar and lounge called 'The Rum Runner' . . . It's good to see Mayor Gerry Marsh of New Waterford elected to the executive of the Union of Nova Scotia Municipalities. It's been a long time since the town was represented on the executive . . .

Watch for a strong reaction when the government turfs out about eight directors of the St. Ann's Gaelic College within the next few days. The dismissal notices already are in the mail. It appears that a report by a special committee designed to chart the future course of the college has been consigned to the waste basket . . . A visitor to the area this week was John Lunn, the former boss at Fortress Louisbourg. Mr. Lunn now is assistant deputy minister in Alberta's Department of Culture, Youth and Recreation . . . And speaking of the fortress, the season ends Sunday and indications are about 145,000 persons visited the historic site, just about the same as last year even with a shorter season . . . David Miller, Devco's Vice-President of Industrial Development, deserves accolades for his performance in the small business field. His drive and enthusiasm are most refreshing . . . Police are concerned with the possible results of a running battle between two gangs at Whitney Pier over drugs. It appears that somebody left the area after receiving payment for a shipment of hashish . . . A total of 4,547 aircraft flew in or out of Sydney Airport during 1978, making it one of the nation's 50 most active terminals. Statistics Canada reports that 180,432 passengers went through the airport during the year while the planes that carried them handled 370,000 kilograms of mail and 609,000 kilograms of cargo . . . The NDP thinks it can win a minimum of seven seats on County Council this time and hopes to form the next county administration with support of independents . . . Neptune Theatre's country rock musical, 18 Wheels, will open a four-day engagement at the Savoy Theatre Oct. 23 . . . A major traffic bottleneck develops in Sydney every Friday at 4 p.m. at the corner of Townsend and Inglis Streets. Surely the police department



Mayor Marsh On Executive

can spare a man for 30 to 40 minutes to cut down on the confusion . . . police in the area were breathing easier after RCMP recaptured convicted murderer Donald Marshall, Jr., 26, of Sydney, who escaped prison earlier this week. Marshall is serving a life term for the stabbing death of a young man in Wentworth Park several years ago . . . Watson Mitchell has left for Greece where he will attend a two-day hairstyling conference. Prior to returning home he will also attend the Salon International Show in London . . . Nova Scotia's population on Canada Day was estimated at 847,000 by Statistics Canada. The province remained the most heavily populated in the Atlantic Region, ahead of New Brunswick's 701,700, Newfoundland's 574,800 and Prince Edward Island's 123,000 . . . Sydney lawyer John Gillis is said to be interested in the PC nomination in Cape Breton Nova . . . Several development agencies in Nova Scotia are looking at a business proposal for Port Hawkesbury which will require \$14 million to initiate. About 200 jobs would be created . . . IKEA, the smart national distributor of lifestyle knockdown furniture will soon reach agreement with a Cape Breton company to supply a segment of its product line . . . Cape Bretoner David MacDonald this week accepted the Star of Courage from Gov.-Gen. Ed Schreyer on behalf of his wife Sandra Joan who was awarded the medal posthumously. Mrs. MacDonald drowned while rescuing Judy Nichol-



Mr. MacDonald Accepts Medal From Gov. Gen. Schreyer

son, 10, from Scotch Lake near North Sydney July 20, 1978 . . . Rumors circulating on the steel plant that former president Derek Haysom will soon be back on

CAPE BRETON POST
SEPT 29, 1979

Sydney Man Expected To Get Pardon Soon

Bulletin

The Post has learned late Monday morning that Donald Marshall has been granted day parole and will be transferred to Halifax where he will stay at Carleton House for the next few days.

By IAN MACNEIL
Staff Writer

Against a background of intrigue, falsehoods and born again christians, a Sydney man is expected to be pardoned from Dorchester Penitentiary within several days

after serving 11 years of a life sentence for a murder that police now suspect was committed by somebody else.

Donald Marshall, now 29, may be released as early as Thursday as a special RCMP squad continues to work to obtain evidence in the case that took the life of Sandy Seale, 16, of Westmount, in May, 1971.

Attorney General Harry Howe told the Post, Sunday, he had examined certain parts of the RCMP report but he will have to spend more time on the findings before

he is in a position to make any official comment.

"The solution in this situation doesn't really depend on us," Mr Howe said. "The final decision will be made by the Justice Department in Ottawa."

Asked if compensation would be available for Marshall if he is cleared of the murder charge, Mr Howe said there could be an ex-gratia payment made by government. An ex-gratia payment means money could be handed over with-

out anyone accepting responsibility for any injustice.

While RCMP continued to keep a hot on the investigation it is known that a number of witnesses at the original trial now have admitted they fabricated some of the evidence.

One witness said he wanted to clear his conscience because he was "a born again Christian". No murder weapon was produced at the time of the trial although police combed

every inch of Westworth Park including park waters.

Seale died in hospital about 36 hours after he was stabbed. Marshall was arrested about a week later after police found at least 12 persons and to this day has remained adamant he is innocent.


Donald Marshall Sr., requested chief of the MicMac band in Nova Scotia, has fought to have the case re-opened since his son was sentenced. The Post has learned that if Justice De-

partment authorities are convinced there is solid evidence of wrong doing in the case and Marshall is released, a Sydney man will be taken into custody within a matter of hours.

The investigation appears to focus on a statement made by Marshall at the trial that two men appeared on the scene while he was talking to Seale.

About 13 witnesses testified at the three-day trial. It took a jury four hours to reach a verdict.

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Sydney, Nova Scotia, Apr 29, 1982

CAPE BRETON POST
MARCH 29, 1982

Marshall released on day parole

By JO ANN NAPIER
Staff Reporter

After spending 11 years in a federal maximum security prison for a murder he says he didn't commit, Donald Marshall is quite confident that personal freedom and justice may soon be at hand.

4 MAR 30 1982

During a press conference Monday night, Marshall's lawyer, Stephen Aronson, said a ruling is expected by the end of April from Justice Minister Jean Chretien on the fate of his client, a 28-year-old resident of Membertou Reserve in Sydney.

Sentenced to life imprisonment in the stabbing death of friend Sandy Seale in May, 1971, Marshall was released Monday morning from the Dorchester penitentiary near Moncton. Yesterday he arrived in Halifax to begin a six-month conditional day parole at the Carleton House, a federal day-parole correction institution.

According to his Dartmouth lawyer, the federal justice minister has the power to grant Marshall a pardon in light of specific evidence, or the minister can order a new trial.

Although Mr. Aronson said he "is not in a position to comment on the source of evidence" which will be considered by Mr. Chretien, reports out of Cape Breton say a number of witnesses at the original trial recently admitted they fabricated some of the evidence against Marshall.

See MARSHALL page 2

CHRONICLE HERALD
MAR 30, 1982

Marshall free on bail

By MERLE MacISAAC
Staff Reporter

Donald Marshall Jr., convicted at the age of 17 and imprisoned 11 years for a murder in Sydney he denies committing, is free on bail pending the outcome of his appeal.

Chief Justice Ian MacKeigan granted bail, no cash or sureties required, in a brief Supreme Court appearance by Marshall's lawyer Stephen Aronson in Halifax Thursday.

A new hearing into the 1971 stabbing death of Marshall's friend, Sandy Seale, was ordered by Justice Minister Jean Chretien in a June 19 letter to the province's chief justice.

Mr. Chretien's decision followed an RCMP re-investigation into the case originally handled by Sydney city police which is said to reveal fresh information about the stabbing in Sydney's Wentworth Park.

Marshall was released on day parole in March and, according to his lawyer, was spending two nights a week at Carlton Centre — a Halifax half-way house.

Technically he was still in custody and serving his life term.

Crown prosecutor Frank Edwards and Mr. Aronson agreed Thursday to an Oct. 5 date, when the matter will again come before the courts — on that occasion the appeal court will hear a defence application to introduce the new evidence aimed at showing Marshall did not do the May 28, 1971, stabbing.

A jury, after evidence from two eyewitnesses who said they saw the stabbing, convicted Marshall of second-degree murder after a trial in November, 1971.

The appeal follows an RCMP re-investigation of the case originally handled by Sydney police.

Because the province's appeal court dismissed an appeal launched immediately after the conviction, only the justice minister's intervention could bring the matter back before this court.

Marshall did not appear for the bail hearing, which was attended by his father, Donald Marshall Sr., grand chief of the Atlantic Council of Micmac Indians, who travelled to Halifax from Cape Breton Wednesday night.

Later Thursday afternoon, Donald Marshall Jr., eluding media, arrived at the prothonotary in the law courts and signed a written undertaking to surrender himself into custody on the yet-to-be-determined date of his appeal.

The surrender is an appeal procedure proscribed by the Criminal Code.

He was reported in good spirits by friends who lunched with him and has adjusted "remarkably well" to life on the outside, according to his lawyer.

Mr. Aronson said he has been active, socially and in sports, and has been doing some work and some limited travel.

His movements inside the province are considerably less restricted with Thursday's granting of bail.

Assuming the appeal court rules it will hear the fresh evidence in October, another date will be set to actually hear it in a trial-like situation.

The court of appeal may proceed straight to a verdict, or order the new evidence transcribed, added to the appeal factums, and set another date for the appeal argument.

Three possible verdicts could follow the appeal, an upholding of the conviction, the ordering of a new trial or an acquittal of Donald Marshall.

CHRONICLE HERALD
June 30th, 1982

Donald Marshall Released On Bail

HALIFAX (CP) — Donald Marshall, who spent 11 years in prison for a murder he says he didn't commit, was freed on bail Thursday after a fresh investigation of the case.

The Nova Scotia Supreme Court of Appeal took up the case after an unusual referral by federal Justice Minister Jean Chretien. The court will convene Oct. 5 to consider a defence application to present new evidence.

Marshall was imprisoned on a conviction of second-degree murder. He has steadfastly maintained his innocence in the death of Sandy Seale, stabbed in a Sydney, N.S., park on May 28, 1971, when Seale was 16 and Marshall 17.

Marshall was transferred to a Halifax halfway house and placed on day parole in March after RCMP reopened the case

and presented their findings to Justice officials.

CHRETIEN INTERVENES

Chretien intervened because normal procedures could not be used to reopen the case in court. The appeals court had already turned down a request for an appeal shortly after the 1971 conviction.

The appeals court could proceed to an immediate verdict or could order that the new evidence be transcribed and a further date be set for the appeal argument.

Defence lawyer Stephen Aronson said the court could acquit Marshall, order a new trial or uphold the conviction.

Marshall, who did not appear in court Thursday, signed a routine undertaking to surrender himself into custody on his appeal date. He was not required to make a bail deposit.

CAPE BRETON POST
July 30, 1982

Marshall out of prison but not exonerated

By MICHAEL HARRIS
Globe and Mail Reporter

HALIFAX — After a year of trying to clear his name, Donald Marshall's murder conviction still stands, he owes \$79,000 in legal fees and his job has disappeared.

His lawyer will leave private practice next month and work for the federal Government because he can't afford to carry that legal bill.

This week Mr. Marshall received his first welfare cheque — \$52 to buy groceries — and the first cracks are beginning to appear in the stoicism with which the 29-year-old Micmac Indian has endured his protracted fight for freedom.

Twelve months after walking out of Dorchester Penitentiary after serving 11 years for a murder he has always denied committing, Mr. Marshall said: "I don't know how much longer I can take this. Even the prosecutor told the judges there was enough evidence to charge another man with the murder I went to prison for, but they just keep me waiting."

At the conclusion of his court appearance in February, the Crown prosecutor and Stephen Aronson, Mr. Marshall's lawyer, called on the five justices of the Nova Scotia Court of Appeal to quash the conviction and issue an acquittal. In summing up, Frank Edwards, the Crown prosecutor, told the judges: "There is virtually no evidence that could be called against Donald Marshall. It would be pointless

in the extreme to call a new trial."

Under the rarely used Section 617-B of the Criminal Code, the judges have the power to uphold Mr. Marshall's 1971 murder conviction, acquit him, or send the whole matter back for retrial. They have not yet released their decision.

The pressure on Mr. Marshall increased last week when his father, the Grand Chief of the Micmac Nation, was taken to Halifax after his kidneys mysteriously failed while receiving treatment at a Sydney hospital. He now is on a dialysis machine at the Victoria General Hospital in Halifax with no immediate prospects of returning home.

"It's for my family, not me, that I want them to admit they put the wrong man away. My father suffered a lot through this, and I want him to hear the courts set me free. But they keep waiting for something and he almost died last week."

Mr. Marshall got more bad news when he got back from holidays in March to find that his job at the Department of Indian and Northern Affairs had disappeared.

"I worked there for nine months and I was communicating real good with those people, they told me that. Then they told me the contract was up and they'd try to find me something else." Waving his welfare cheque and smiling bitterly, he added, "All they found me was this."

It has also been a trying year for Mr. Aronson, who has worked



Donald Marshall

almost exclusively on the Marshall case since Sept. 1, 1981, when new evidence surfaced to back up Mr. Marshall's decade-long protest of innocence.

Now no one wants to pay the \$79,000 legal bill, a fact that has prompted Mr. Aronson to leave his law practice for a post in the federal civil service. As of next month, he will be handling the case over to a new lawyer.

"It has taken a lot of my time away from other clients and as a result has left quite a hole in my pocket book. The major consideration in leaving practice is cutting my losses in this case."

Mr. Aronson, who spent \$4,000 of his own money on the case, said he was promised by both the Union of Nova Scotia Indians and the federal Government that

they would pay the bill. So far, neither party has come through.

"It was first raised last March when (federal Indian Affairs Minister) John Munro told me during a land claims settlement in Baddeck (on Cape Breton Island), that the Department of Indian Affairs would pay my fee. My information since is that he would like to do a lot of things for people but can't because of departmental policy."

Mr. Aronson said Mr. Munro has held several private discussions with Nova Scotia about Mr. Marshall's legal bill but that the province has flatly refused to pay, except under the Legal Aid Program where the maximum contribution is \$3,000.

"I can see Ottawa's point. The administration of justice is a provincial matter and they don't want to set a constitutional precedent. I do think it's the province's responsibility. If there's anything that bugs me in this case, it's the total irresponsibility of the province."

The Dartmouth lawyer said that he has thought about setting up a legal defence fund, largely because he thinks the legal fees are part of the debt society owes Mr. Marshall.

"I don't see it as a guilt trip, it's not time for ashes and sackcloth, but society and the justice system do owe Junior something for what happened to him."

Despite the last year's hardships, Mr. Aronson said he doesn't regret having worked for Mr. Marshall's release.

"I will always look forward to seeing this guy. What he's done

in the last year, after spending 11 years behind bars is absolutely amazing. During the last year he's remained normal while I've grown less trusting and more cynical about the workings of the system."



Donald Marshall says, 'I feel good, I feel more than good.'

Acquitted in killing, Marshall is jubilant

By MICHAEL HARRIS
Globe and Mail Reporter

HALIFAX — Donald Marshall was acquitted yesterday of the murder of Sandy Seale, for which he spent 11 years in prison.

A jubilant Mr. Marshall met the press with a smile, saying, "I feel good, I feel more than good. A long time ago I said I was going to beat the system, and I beat the system. As long as you're right, you can prove to people, you're right. I proved my point."

Mr. Marshall learned of the acquittal, given in a unanimous decision by five judges of the Supreme Court of Nova Scotia, when he went to visit his ailing father in Victoria General Hospital yesterday afternoon.

"I walked into the hospital room

and my mother grabbed me and started crying and I wondered, 'Did my father die?'"

Mr. Marshall told reporters that his case should make it easier for the next person who is wrongly convicted.

"It's not just me, it's the next guy that comes along they got to worry about. I hope they don't treat him the way they treated me."

When asked about compensation, he said, "They can pay or they can walk away for all I care, I just wanted to get even."

He said he survived 11 years behind bars because his family never stopped caring and there were people who helped his cause. Singling out his lawyer, Stephen Aronson, he said, "This man is

MARSHALL — Page 2

Marshall finally acquitted

● From Page One

more than my lawyer, he's my friend."

When a reporter asked how he felt about Mr. Aronson's unpaid \$79,000 legal bill, Mr. Marshall smiled and said, "That's his problem."

Mr. Aronson is quitting private practice to work for the federal Government, saying he cannot afford to carry the \$79,000 bill from the Marshall case.

Mr. Marshall told reporters that on Monday he starts work as a plumber with the Department of Indian and Northern Affairs, the same department that let him go two weeks ago.

"They offered me a job," he said, "right after getting criticized in the newspaper."

When asked where he wanted to go now, Mr. Marshall shot back with a grin, "To heaven."

Prosecutor Frank Edwards was asked if he would be laying charges against anyone else for the 1971 slaying of Mr. Marshall's boyhood friend, 18-year-old Sandy Seale. He said the decision wasn't his to make and that "there will be a statement out of Halifax, possibly from the Attorney-General, in the next couple of days."

The court's decision should not be seen as an end to this controversial case, Mr. Aronson said. He said Mr. Marshall wants to see another person charged with the Seale murder.

After three months of examining fresh evidence brought forward at Mr. Marshall's appeal hearings, the appeal judges wrote, "We must accordingly conclude that the verdict of guilt is not now supported by the evidence and is unreasonable and must order the conviction quashed."

But the court had harsh words for Mr. Marshall, a 29-year-old Mic-

mac Indian who began his life sentence for murder at the age of 17.

Declaring that any miscarriage of justice in the case was more apparent than real, the justices wrote: "In attempting to defend himself against the charge of murder Mr. Marshall admittedly committed perjury for which he could still be charged. By lying he helped secure his own conviction."

By planning a robbery with the aid of Mr. Seale he triggered a series of events which unfortunately ended in the death of Mr. Seale."

In July, 1982, after Mr. Marshall's release in March from Dorchester penitentiary, then Justice Minister Jean Chretien asked the Supreme Court of Nova Scotia to review the case because the RCMP had uncovered new evidence involving Mr. Seale's death.

The court found that "the most significant" new evidence brought out by Mr. Aronson, Mr. Marshall's lawyer, was that of James MacNeil, a 37-year-old laborer. Mr. MacNeil testified last December that another man, Roy Newman Ebsary, had stabbed Sandy Seale in Sydney's Wentworth Park on the night of May 28, 1971. He also testified that Mr. Ebsary also stabbed Mr. Marshall after he had attacked Mr. Seale.

Ironically, it was Mr. MacNeil who went to Sydney police 10 days after Mr. Marshall's conviction in 1971 with the same story he told in 1982. His story prompted a brief re-investigation of the murder in 1971 by the RCMP, which concluded the murder conviction was correct.

At a press conference after yesterday's decision, Mr. Aronson said he and his client want a public inquiry into how an innocent man could have been convicted of murder.

Globe & Mail
MAY 11, 1983

Cape Breton Post

SYDNEY, NOVA SCOTIA, WEDNESDAY, MAY 11, 1983

Donald Marshall Acquitted Of Murder

Donald Marshall, acquitted of a murder for which he spent more than a third of his 29 years behind prison walls, said Tuesday he has some animosity for the judicial system which robbed him of those years.

"I put up with their crap," he told a news conference after celebrating his acquittal at a downtown bar called the Jury Room. "It was not me that was wrong. It was the court system that was wrong."

"There will always be an empty spot in my life but whatever I missed, I got back today."

The Nova Scotia Supreme Court appeals division released a 66-page decision Tuesday, formally absolving the young Miemac of all blame for the murder of Sandy Seale in May, 1971.

The unanimous decision for acquittal on a non-capital murder charge came almost 12 years after the young Miemac from a rural reserve near Sydney, was found guilty and sentenced to life imprisonment.

Marshall said he feels he is entitled to some compensation from authorities for his 11 years behind bars and would like to see justice for the man who committed the murder and members of the Sydney police force who originally investigated it.

"They had better wake up before they start putting people away," he said referring to the judicial system and the police.

Although he has not initiated any action for compensation, he said, "I can walk away and live my own life, but if society owes me something, I am going to stick around."

His father, an Indian chief who is in hospital, said he was "stunned when the call came to me from my son's girlfriend."

"I didn't say anything, I just sat here and a few minutes later my wife walked in and I told her... and a few minutes afterwards my son, Junior, walked in and he didn't know what was going on."

"We knew right from the first day that he wasn't guilty."

The court reviewed the case last December after being instructed to do so by then Justice Minister Jean Chretien who had received new RCMP evidence that someone other than Marshall had stabbed a young black man to death in a Sydney park in May, 1971.

The decision said Marshall was largely the architect of his own fate because he and his friend, the dead man, went to the park to rob someone, but Marshall did not tell the truth at the trial. This, the judges said, prevented Marshall's lawyer at the original proceedings from developing a defence.

At his original trial, Marshall did not admit he was in the park with the idea of robbing anyone.

Stephen Aronson, Marshall's current lawyer, said Tuesday he will call for a public inquiry into how a teenager can be convicted and sent to jail for 11 years for a crime he did not commit.

He said the matter of compensation to Marshall will be taken up by another lawyer now that Aronson has quit private practice to work for the federal government because he cannot afford to carry the \$73,000 in legal fees Marshall's case has run up.

Aronson also told a news conference he hopes the real killer of Sandy Seale will be brought to justice.

Even more, there remains a dark cloud hanging heavily over the original police investigation in 1971 by the Sydney city police department and many questions remain unanswered, Aronson said at the news conference.

During the review of Marshall's case, Roy Ebsary, who was in the park with a friend the night of the killing and now is in his 70s, was identified as the man who stabbed Seale.

Marshall was convicted largely on the testimony of two so-called eyewitnesses. Both later admitted they had lied and had not seen Marshall kill Seale.

One witness, Maynard Vincent Chant of Louisbourg, admitted to the court that he lied at the original trial because he was scared and pressured into giving a statement that was not true and when I tried to tell the truth, the people taking the statement didn't believe me.

At the 1971 trial, Chant said he saw Marshall take a knife from his pocket and drive it into Seale's stomach.

Chant said during the Supreme Court review he became a born-again Christian about 4 1/2 years ago. Holding up a bible in court he said, "I have learned to live my life according to the teachings of this book; that's why I speak the truth today, I did not see the murder."

"I knew I was doing wrong," Chant said of his original testimony. "I knew my statement was a very damaging piece of evidence, but I believed Marshall was guilty anyway."

The other witness was the original trial whose evidence helped convict Marshall was John Practice, who did not testify at the review because psychiatrists said he was unreliable.

"He suffers from a schizophrenic form of illness manifested by inability to fantasize and



DONALD MARSHALL

distort reality and a rather childish desire to be in the limelight or the centre of attraction," said psychiatrist Dr. M. A. Milan. However, in a signed statement, Practice said he lied in 1971 when he said he saw Marshall stab Seale.

At the end of the review before five appeals division judges, both the defence and the

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PLEA: *Lawyers say the innocents deserve recompense for costs*

The Nova Scotia Supreme Court's acquittal of Donald Marshall Jr. of the old charge of murder has, quite logically, reopened the whole question of compensation for people who have been found innocent of criminal charges brought against them in court.

The president of the Canadian Bar Association, Yves Fortier, has renewed a plea by that organization that courts should be given discretionary power to order the Crown to reimburse such victims for legal expenses. It is a view which deserves serious consideration, as has been urged by many — including this newspaper — in the past.

The case of Mr. Marshall, of course, stands out in a class by itself. Despite the quibbling between Ottawa and Halifax, he is clearly deserving of compensation for the agony of his wrongful conviction and his 11 lost years in penitentiary. In a more general way, there are many who are brought to court and acquitted who plainly should be recompensed, if not for the ordeal, at least for the

inevitably high cost of gaining freedom.

The Bar Association instances the case of nurse Susan Nelles, who was charged with murdering four infants at the Toronto Hospital for Sick Children. Her family spent some \$200,000 through a 44-day preliminary hearing before the prosecution's case collapsed. The Ontario government ducks responsibility on the claim that a preliminary hearing is not set up in such a way as to demonstrate "probable innocence." The Nelles family is left holding the bag for what must stand out as a monumental Crown error.

There are, it is obvious, good reasons why not every acquitted person should be entitled to reimbursement. Which is why the Bar Association is on the proper track in recommending that discretion be placed in the hands of the courts — presumably judges. A supplementary argument in favor of such a system, it might be added, is that it would tend to give second thoughts to over-zealous prosecutors inclined to go into court with insufficient evidence, as was the case with the unfortunate nurse Nelles.

CAPE BRETON POST
MAY 11, 1983

I just want to live my own life'

By PEGGY MacDONALD

Dartmouth Bureau

An alternately subdued and animated Donald Marshall, Jr., said Monday he just wanted "to live my own life" and forget the 11 years he spent in prison for a murder he didn't commit.

Marshall told reporters at a hastily prepared press conference in his lawyer's office he couldn't describe the happiness he felt at hearing he'd been acquitted by the appeal division of the Supreme Court of murdering Sandy Seale in 1971.

He said he had always been confident he would be cleared of the murder conviction, and that he was glad he had finally proved his innocence. Of his 11-year imprisonment, Marshall said: "I don't know what I missed (of life), but whatever I missed, I got it back today."

11 MAY 11 1983

Admittedly embittered by his experience in Springhill and Dorchester penitentiaries, Marshall said he had no longer had any respect for the Canadian justice system. But he wants to "put that all behind me. . . . If they (the courts) want to walk with me, I'll walk with them."

He said he had no immediate plans for the fu-

See I JUST page 2

CHRONICLE HERALD
MAY 11, 1983

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6—Cape Breton Post, Thursday, May 12, 1983

MARSHALL: *Not a time for quibbling about repairing his life*

Nothing can give back the 11 years lost to Donald Marshall Jr. through his conviction for murder, but his final acquittal by the Nova Scotia Supreme Court Appeals Division must impel the provincial and federal governments to act right away to provide him with some compensation for the wasted years and assistance in picking up the broken thread of his life.

Since being freed on parole from penitentiary a year ago, Mr. Marshall has been in a state of judicial and financial limbo. Bills of \$79,000 have been piled up in establishing his innocence, which neither government seems eager to pay. He was given a temporary job with the Indian Affairs Department, which disappeared. Last week he got a welfare cheque for \$52 at Halifax. He has just taken a job as a plumber — a trade he learned in penitentiary — at the Shubenacadie Reserve.

It may well be true; as Chief Justice Ian MacKeigan wrote for the court in its decision, that Mr. Marshall was partly the architect of his own trouble by misleading his lawyer and giving false evidence at his trial in Sydney. Yet

it is difficult to accept the Chief Justice's view that: "Any miscarriage of justice was more apparent than real." The fact remains that a man now found demonstrably innocent of murder was convicted of murder, whatever lesser offences he may be accused of. It remains, too, a principle of our law that there is no onus upon an accused person to prove himself innocent at his trial; the weight is upon the Crown to prove guilt.

That being so, and as the case has turned out, a heavy weight devolves upon government — and particularly the Nova Scotia government, as the administrator of justice in the province — to see that proper amends are made. There is little point in Attorney-General Harry How talking, as he now is doing, about precedent and about Mr. Marshall being "partially the author of (his) own misfortune."

There should be nothing less than a full and open acknowledgement that, "miscarriage" or not, justice in this case was delayed 11 years while a man lived under the shadow of a murder conviction now proven baseless.

Preliminary Hearing Today

A preliminary hearing is set for today for Roy Newman Ebsary, 71, of Sydney, into the stabbing death 12 years ago of local man Sandy William Seale.

Ebsary was charged earlier this year after an RCMP investigation provided new evidence in the murder case.

The man originally convicted of the murder, Donald (Junior) Marshall, formerly of Membertou, served 11 years in penitentiary. Throughout his jail term he pleaded his innocence.

Marshall was released from prison last year after new evidence became available indicating

another person could be charged with the murder.

Marshall was acquitted earlier this year.

The slaying occurred in Sydney's Wentworth Park, May 28, 1971.

CAPE BRETON POST
AUG. 4th, 1983

Ebsary will be tried for manslaughter

SYDNEY — The man charged with the 1971 stabbing death of Sanford (Sandy) Seale, for which Donald Marshall, Jr. of Sydney served 11 years in ~~Dorchester~~ Penitentiary before being acquitted by the appeals division of the Nova Scotia Supreme Court, will stand trial at the next Supreme Court term here on a charge of manslaughter.

ROY NEWMAN EBSARY, 72, of Sydney, had a second degree murder charge dismissed here Thursday, but was committed to trial on the reduced charge, which carries a maximum sentence of life in prison.

Provincial Judge Charles O'Connell ruled at a preliminary hearing here Thursday that there was insufficient evidence to warrant a murder indictment in Ebsary's case.

"There was no evidence of intent, which is an ingredient in a murder offense, but there was evidence of a killing, and therefore, I am discharging the accused on the murder charge but committing him to stand trial for manslaughter," he said.

Judge O'Connell released Ebsary on his own recognizance after rejecting Crown prosecutor Frank Edward's request that the accused be held in custody until next Monday's bail hearing.

As a result of testimony given during the appeal trial in Halifax, Ebsary was charged with the murder two days after Mr. Marshall was acquitted.

The Crown was unable to proceed until yesterday because Ebsary has been in hospital the past several months recuperating from a back injury.

Prior to the hearing, Judge O'Connell placed a ban on publication of evidence.

The first witness was the 29-year-old Mr. Marshall, who was charged and subsequently convicted of the murder of Sanford Seale in Wentworth Park on the night of May 28, 1971.

He was followed on the witness stand by James MacNeil, a 39-year-old unemployed landscaper who was with Ebsary when the incident occurred; Donna Ebsary, daughter of the accused; city police constable Leo Mroz, who was the first officer to arrive on the scene; and Dr. M. A. Naqvi, who attended to the youth at a local hospital.

CHRONICLE HERALD
AUGUST 5, 1983

Charter cited in N.S. bid to stop manslaughter trial

By MICHAEL HARRIS
Globe and Mail Reporter

SYDNEY, N.S. — The lawyer for Roy Newman Ebsary has asked that his client's indictment for manslaughter in the death of a Sydney teen-ager 12 years ago be dismissed on the grounds that it contravenes the Charter of Rights and Freedoms.

On Friday, Luke Wintermans, a legal aid lawyer, argued before Mr. Justice Lorne Clark of the Nova Scotia Supreme Court that too much time has elapsed between the offence and Mr. Ebsary's trial, which begins here today, for "fundamental justice" to be done. Judge Clark will give his decision today.

Mr. Ebsary is charged with the stabbing death of Sandy Seale, 16, in Sydney's Wentworth Park in 1971.

Donald Marshall Jr. was sentenced to life in prison at age 17 for the murder of Sandy Seale. After spending 11 years behind bars, Mr. Marshall was paroled. On the basis of new evidence uncovered by the RCMP, the Supreme Court of Nova Scotia acquitted Mr. Marshall of murder in May.

Days later, Mr. Ebsary, 71, was charged with second degree murder in Mr. Seale's death. The charge was reduced to manslaughter at Mr. Ebsary's preliminary hearing in August. Mr. Marshall is one of the key witnesses at the trial of Mr. Ebsary, a former vegetable cutter in a Sydney hotel.

Eleven men and one woman were named to a jury.

Man, 71, not guilty of anything says lawyer in N.S. slaying case

By MICHAEL HARRIS
Globe and Mail Reporter

SYDNEY, N.S. — The lawyer for Roy Newman Ebsary said yesterday that his client "is not guilty of anything" and asked a Nova Scotia jury to find the 71-year-old man innocent in the stabbing death of 16-year-old Sandy Seale in a Sydney park in 1971.

After Donald Marshall Jr. spent more than 11 years of a life term in prison for Mr. Seale's murder, Mr. Ebsary was charged last May with manslaughter in the stabbing. The charge was based on new evidence uncovered by the RCMP in late 1981.

Part of the new evidence came from Mr. Marshall, who, while still in jail, told the RCMP that he and Mr. Seale had tried to rob Mr. Ebsary and another man, James McNeil, and that Mr. Seale had been stabbed to death by Mr. Ebsary during the attempt.

In his summation to the jury after a one-day trial, defence lawyer Luke Wintermans said Mr. Ebsary was entitled "to protect himself from an actual robbery with violence." He referred to Mr. Marshall as "a bad kid, hanging around the park looking for some easy money."

Mr. Wintermans also described Mr. Marshall as "an admitted robber who spent perhaps a little longer in jail than he would have for what he was really doing that night."

The defence lawyer said that his client, who then was 59 and weighed only 115 pounds, was "in jeopardy of being beaten to a pulp" and that by knifing both Mr. Seale and Mr. Marshall he was protecting himself with the only means he had at his disposal — allegedly a pocket knife.

Crown prosecutor Frank Ed-

wards told the jury that the key question it would have to decide was whether Mr. Ebsary's assault on Mr. Seale was lawful. He said evidence made it "all but obvious" that Mr. Ebsary had assaulted Mr. Seale and that the youth had died from the effects of that assault.

Mr. Edwards told the jurors that Section 34 of the Criminal Code allows a person to repel an assault provided the intention in so doing is not to cause death or grievous bodily harm to the assailant.

Globe & Mail
Sept. 13, 1983

Jury to be charged today in Ebsary trial

SEP 13 1983

SYDNEY — A jury of 11 men and a woman will decide today whether 72-year-old Roy Newman Ebsary of Sydney is guilty or innocent of manslaughter in the stabbing death of 16-year-old Sanford (Sandy) Seale in a park here 12 years ago.

Mr. Ebsary was charged with second degree murder a few days after the appeal division of the Nova Scotia Supreme Court acquitted Donald Marshall Jr., who had served 11 years in penitentiary for the teenager's murder.

But the charge against Mr. Ebsary was subsequently reduced to manslaughter by Provincial Judge Charles O'Connell at a preliminary hearing here Aug. 4. Judge O'Connell ruled, while there was "evidence of a killing, there was no evidence of intent, which is an ingredient in a murder offence."

James William MacNeil, Sydney one of six witnesses called by Crown prosecutor Frank Edwards, testified that on the night of May 28, 1971, he saw Mr. Ebsary "slit him (Seale) open with an upward motion," using what the witness said he believed was a pocket knife.

Mr. MacNeil said he and Mr. Ebsary had been approached on a street near Wentworth Park by Mr. Marshall and Mr. Seale.

"Mr. Marshall put my arm behind my back . . . and I froze," Mr. MacNeil said. "I heard Mr. Seale ask Mr. Ebsary to 'dig, man dig,' and I knew they were trying to rob Mr. Ebsary."

"I had no money. I heard Mr. Ebsary say, 'I got something for you,' and he put his hand in his pocket and then I saw a squirt of blood come out of nowhere. I was in a state of shock. Mr. Seale ran a few yards and fell."

Meanwhile, Mr. MacNeil was being held by Mr. Marshall, who "let me go and made a move toward Mr. Ebsary. Mr. Ebsary made an upward motion at Mr. Marshall; who ran away."

Mr. MacNeil told the court he did not see a knife during the scuffle, but saw Mr. Ebsary wash blood off what appeared to be a pocket knife when they arrived at the home of the accused.

The witness went on to say that the following day he informed Mr. Ebsary the Seale boy had died.

"He told me that it was self-defence, but I didn't think it was, and told him that he didn't have to kill him. But he said it was self-defence."

Mr. Marshall admitted during his testimony that he and Mr. Seale had teamed up at Wentworth Park, "to get some money."

Although Mr. MacNeil said there was never any conversation prior to the incident, Mr. Marshall testified he and Mr. Seale had talked with "a short grey haired man and a taller man," for 20 minutes.

Mr. Marshall, who was convicted of Mr. Seale's murder in November, 1971, added, after the two men had walked away "we called them back, and an argument started."

"I was holding Mr. MacNeil when the older man asked Sandy if he wanted something he had. I didn't know what was going on . . . I saw the old fellow had Sandy bent over. He came after me, and I let Mr. MacNeil go. Mr. Ebsary swung something at me and slashed my left arm."

He told the court he ran down the street and did not see Mr. Seale until he returned with help. After seeing him on the ground, Mr. Marshall ran to a nearby home to summon an ambulance.

While referring to what appeared to be inconsistencies in testimony given by Mr. Marshall yesterday and during previous trials, defense counsel Luke Wintermans suggested to the 29-year-old plumber he is "still worried about the situation because you have a direct financial interest in that you have a lawsuit pending."

"That," Mr. Marshall replied, "is between me and my lawyer. Money or no money, I want to walk away from here. If they want to pay me in dollars that is good."

Donna Ebsary, daughter of the accused, corroborated Mr. MacNeil's evidence when she said she saw her father wash blood off a knife at their home on the night the stabbing occurred.

In his summation of the jury, Mr. Edwards said there was no question Mr. Ebsary intended to inflict bodily harm. He added there was no evidence "of any gesture by Mr. Seale toward Mr. Ebsary. The only evidence of any direct act were the words, 'dig, man, dig.' I submit that Mr. Ebsary took the opportunity to inflict harm on Mr. Seale."

Defense counsel Wintermans contended in his summation that Mr. Ebsary "did not intend to hurt anyone," but was merely "defending himself."

Mr. Wintermans, who did not call any witnesses, suggested to the jury: "You put yourself in Mr. Ebsary's place. Here was an old man in a park being robbed by two men, and he didn't have a lot of time to decide what to do."

Mr. Justice Lorne Clarke will charge the jury this morning before it retires to render a verdict.



EBSARY AND LAWYER

man Ebsary. Wintermans sit outside the jury's decision. lawyer Luke courtroom awaiting the (Post Photo)

Jury Fails to Agree; New Trial Ordered

Mr. Justice Lorne Clarke of Nova Scotia Supreme Court last night ordered that Roy Newman Ebsary, 72, stand trial again in November on a charge of manslaughter in the death of Sanford (Sandy) Seale that occurred in May 1971.

The judge ordered Ebsary stand trial again after a jury could not reach a verdict. After deliberating four hours the jury's foreman, Mike Raoul, told the judge that "we cannot reach a unanimous decision."

Mr. Justice Clarke accepted the statement, but suggested that if another trial has to be set, this could mean a "protracted delay" in the case and possibly make for "worry and inconvenience for all concerned."

The judge asked the jury to reconsider their decision and tell him whether they could return the following morning to deliberate further. But Mr. Justice Clarke added that he was "not trying to pressure" the jurors.

After discussing the judge's request about 15 minutes the jury returned and Mr. Raoul repeated his earlier statement.

"We have unanimously decided that we cannot agree. I feel quite convinced that all those concerned have given very sincere thought and, in all conscience, that's the best we can do."

Mr. Justice Clarke then thanked the jurors for their "diligent and conscientious effort."

"I can tell that you have worked hard and given these matters serious consideration," he added.

The judge also told the jurors that, while he accepted their decision, the court was "a trifle sorry that a verdict has not been achieved and I am sure, Mr. Foreman, that you and the other members of the jury are as well."

Mr. Justice Clarke ordered that Ebsary

be released on his own undertaking and applied the same conditions to his release that Provincial Court Judge Charles O'Connell had set last month after releasing Ebsary following a preliminary hearing.

Mr. Justice Clarke ordered Ebsary to re-appear in court November 1.

The jury was charged by the judge Tuesday morning and was released for deliberations just before noon.

Several times during the afternoon they returned to the courtroom to hear tapes of evidence, among these the testimony of Donald Marshall. Marshall was originally convicted of the Seale murder but, after spending 11 years in federal penitentiary, was acquitted last Spring when RCMP found new evidence to charge Ebsary with murder. That charge was reduced to manslaughter after a preliminary hearing in August.

Throughout the trial, Ebsary sat motionless. He wore a medical collar around his neck due to a recent injury.

On his way out of the courtroom, Ebsary, 72, said he had no comment but, when pressed, laughed and said, "I only hope I live until the next trial."

Six witnesses, all for the Crown, took the stand in the one day trial.

During the trial Donald Marshall testified that he and Sandy Seale went to Wentworth Park on the evening in question and picked Ebsary and another man, James MacNeil, as targets to get some money. He said he and Seale wanted "to roll" them.

But MacNeil testified that when he and Ebsary were accosted by Seale and Ebsary, Ebsary pulled a knife and stabbed Seale. MacNeil told the court that while he thought Ebsary had used too much force, Ebsary told him it was in self-defence.

Seale died in hospital the next day.

Ebsary's Lawyer Seeks Independent Investigation

The lawyer representing Roy Newman Ebsary, said last night he is considering appealing his client's case to the Nova Scotia Appeals Court.

Luke Wintermans said he wants his client acquitted because he believed the Crown does not have sufficient evidence to put Ebsary on trial. He cited a section of the Canadian Charter of Rights and Freedoms which stipulates that an accused person has the right to a fair and speedy trial.

Wintermans requested that the presiding judge at the Ebsary trial this week, Mr. Justice Lorne Clarke, acquit his client on the same ground, but the judge refused.

But now, Wintermans said, the fact the jury wasn't able to reach a decision in the case only adds weight to his claim that evidence is insufficient.

Wintermans said he also wants an independent investigation into the case if his client is to stand trial. He said that he only took on the case a few months ago and has not been able to see all the evidence upon which the Crown based its case.

"The State is holding all the cards in that I've only seen evidence shown to me by the Crown," he said. "I had to rely completely on the police investigation. How can I possibly find out what happened in 1971 compared to the ability of the Crown to present its case?"

Hung jury in Ebsary trial

SYDNEY — The jury was unable to reach a verdict here Tuesday and Roy Newman Ebsary of Sydney will have to face another trial on a manslaughter charge during the November sitting of the trial division of the Nova Scotia Supreme Court.

Ebsary was charged in connection with the death of 16-year-old Sanford (Sandy) Seale in Wentworth Park here 12 years ago. Following the acquittal of Donald Marshall Jr., of Sydney, who spent 11 years in penitentiary for the murder of the Sydney teenager, Ebsary was charged with second degree murder. But the indictment was reduced to manslaughter by Provincial Judge Charles O'Connell during a preliminary hearing last month.

SEP 14 1983
After being instructed for more than 90 minutes by Mr. Justice Lorne Clarke on points of the law pertaining to the charge, the 11 man one woman jury retired at 11:17 a.m. to try to reach a verdict.

CHRONICCE HERALD

SEPT. 14, 1983

Ebsary Trial Opens Today

The trial of Roy Newman Ebsary, 72, of Sydney, opens today in Nova Scotia Supreme Court in Sydney before a five-women, seven-man jury.

The jury was selected yesterday.

There are two more Crown witnesses during this trial, after an earlier trial in September resulted in a hung jury.

Ebsary is charged with manslaughter in the 1971 death of Westmount resident, 16-year-old Sandy

Seale.

The two additional witnesses are Sydney Police Chief John MacIntyre and Deputy Chief Mike MacDonald.

They will join five witnesses who testified during the September trial. These are Donna Ebsary, Ebsary's daughter, Dr. M.A. Nason, Sydney physician, Sydney Police constable Leo Mroz, Jim MacNeil and Donald Marshall Jr.

The last witness, Donald Marshall, was convicted after a 1971 trial of Seale's murder. However, new evidence came to light during Marshall's imprisonment which resulted in his release and eventual acquittal.

Donald Marshall, 17 at the time of the killing, was with Seale when the stabbing occurred and was accused of the slaying. Although he insisted he was innocent, Marshall was convicted of murder and sentenced to life in prison.

The Nova Scotia Supreme Court began hearing a review of new evidence last December and in May the court handed down a decision finding Marshall not guilty of the killing. Marshall had already been released from prison in late 1982 on parole.

By that time, Marshall had served more than 11 years behind bars for a crime he did not commit.

CAPE BRETON POST
NOV 4, 1983

Ebsary is found guilty in slaying that cost another man 11 years

By MICHAEL HARRIS
Globe and Mail Reporter

SYDNEY, N.S. — A Nova Scotia jury has found 71-year-old Roy Newman Ebsary guilty of manslaughter in the 1971 death of a Sydney youth whose teen-aged friend spent 11 years in prison for the crime.

After deliberating for 4 1/2 hours, the jury of 7 men and 5 women returned its verdict in the same courtroom where Donald Marshall Jr., then 17, was sentenced on Nov. 5, 1971, to life in prison for murdering 16-year-old Sandy Seale.

Crown prosecutor Frank Edwards said Mr. Ebsary should be remanded in custody for the public safety, asking "how much strength does it take to use a knife," but Mr. Justice W. McLeod Rogers released the partly crippled man until he is sentenced on Nov. 24.

Defence lawyer John Weston said Mr. Ebsary is "not a dangerous person, but anyone, never was."

Chief Justice Rogers said Mr. Ebsary must be held in custody until he is sentenced on Nov. 24.



Roy Newman Ebsary

Mr. Ebsary's wife and daughter both testified against him at the trial. Doreen Ebsary, his daughter, said she saw her father wash blood off a fixed-blade knife in the kitchen on the night of the murder.

Acted by the judge if Marshall and Seale were not sentenced to life in prison.

Ebsary guilty in slaying

● From Page One

service medals gleaming on his blue blazer, replied in a strong voice, "Yes, my lord, I never broke my word to any man."

Donald Marshall Sr., father of the man mistakenly convicted, raised his fist when the verdict was announced and smiled broadly.

"They should lock him up, just like they did to my son. I'm very happy with this decision."

The father is the Grand Chief of the Micmac Nation in Nova Scotia. The son, who testified last Friday, was not present.

Mr. Ebsary refused comment, but Mr. Wintermans said he will have to decide whether to appeal. "We'll have to wait and see what happens on Nov. 24."

The jury retired at 2:30 p.m. and returned once to ask Judge Rogers whether they had to decide if Mr. Ebsary used too much force in repelling a demand by Mr. Seale for money. The judge told them: "It is not self defense if more force is used than is necessary."

Earlier, Mr. Edwards, describing an abortive attempt by Mr. Marshall and Mr. Seale to rob Mr. Ebsary and a companion, said Mr. Seale made "no overt physical gesture towards Mr. Ebsary."

At the time of the murder, both Mr. Seale and Mr. Marshall were 16 years old. Mr. Ebsary was 59 and his companion, James McNeil, a key witness against Mr. Ebsary at the trial, was 25.

Judge Rogers told the jury: "The evidence is that Seale's arms were at his sides when the knife attack took place."

Mr. Edwards said that in using more force than was necessary to protect himself, Mr. Ebsary "took advantage of an opportunity to kill Seale."

Mr. Ebsary's lawyer said his client was "a little old man" and "a retired veteran" who used his knife, "fairly responsibly" in repelling the two youths, whom he described as "a robber" and "your typical young black guy, who's got this great body."

Mr. McNeil, Mr. Ebsary's companion in the park, testified that neither youth was armed.

The most sensational evidence was an RCMP tape of Mr. Ebsary in his kitchen in October, 1982, describing his role in the stabbing. It contains the words: "By my Christ, by my Christ, I swore that the next man that struck me would die in his tracks."

On the tape, Mr. Ebsary says he had been mugged "umpteens times before" in the park where Mr. Seale was killed, but never bothered to report the muggings to police.

Mr. Ebsary's conviction is the latest in a long line of court cases that began in June, 1982, when Jean Chretien, then federal Minister of Justice, granted Donald Marshall Jr. a new hearing on his murder conviction.

After a December, 1982, hearing in the Nova Scotia Supreme Court, in which two witnesses admitted they lied at the original trial because of pressure from the Sydney City Police, and a new witness supporting Mr. Marshall came forward, the 30-year-old was acquitted and Mr. Ebsary was charged.

Lawyer Felix Cacchione will meet Nova Scotia's new Attorney-General, Ronald Giffin Nov. 18 to discuss compensation for the 11 years Mr. Marshall was in jail.

Mr. Marshall, who works as a plumber on an Indian reserve near Halifax, still owes his former lawyer \$82,000 in legal fees.

Globe & Mail
Nov 9, 1983

Released On Own Recognizance

Nov 9, 1983 Cape Breton

Ebsary Guilty Of Manslaughter; Sentencing Is Slated For Nov. 24

By RON STANG
Staff Writer

A seven-man, five-women Nova Scotia Supreme Court jury yesterday found Roy Newman Ebsary, 72, guilty of manslaughter in connection with the 1971 death of Sandford (Sandy) Seale.

The jury deliberated three and a half hours before bringing in their verdict, minutes before 6 p.m.

This was Mr. Ebsary's second trial in which he stood charged with the same offence. A trial in September resulted in a hung jury.

Mr. Ebsary was charged earlier this year, days after Donald Marshall (Junior), 30, was acquitted of murdering Mr. Seale. Mr. Marshall, who always proclaimed his innocence, spent 11 years in penitentiary until RCMP reopened the investigation into the case last year.

Mr. Ebsary was originally charged with murder but the charge was reduced to manslaughter following a preliminary hearing last August.

Mr. Justice R. MacLeod Rogers yesterday agreed with a request from Mr. Ebsary's lawyer, Luke Wintermans, to release Mr. Ebsary on his own recognizance prior to the sentencing, Nov. 24.

Mr. Wintermans described his client as "practically disabled" because of a neck injury and said he needs so-

meone to attend him at all times.

Cape Breton County Crown prosecutor Frank Edwards agreed, but requested the judge to release him only under certain conditions. The judge ordered Mr. Ebsary to refrain from taking non-prescription drugs and alcohol, abide by a nightly curfew, and not communicate, "molest or annoy" any members of his immediate family.

Asked by the judge if he would consent to the conditions, Mr. Ebsary replied, "yes, my lord, I never broke my word to anybody."

NO COMMENT

After court was adjourned, a normally talkative Mr. Ebsary refrained from speaking to reporters. As he was led from the courtroom all he would reply was "no comment" when asked his feelings about the verdict.

During the trial, the diminutive former seaman, who likes to be addressed as "Captain," sported a navy blue jacket and ribbons and medals from war service. He also wore a neck brace because of his recent injury and walked with a cane.

Donald Marshall, Sr., Grand Chief of the Miqmac Indian Nation and father of Donald Marshall, told reporters that his family "looked forward" to the verdict.

"We knew that some day, someone else would be convicted," he said. "I

still can't get over it."

Mr. and Mrs. Marshall and members of their family, attended the court proceedings throughout.

Donald Marshall, Jr., had returned to his home in Halifax after giving testimony during the trial last week. Mr. Marshall said he believed his son "will be happy also," especially because the verdict "will give him a stronger case in his fight

for compensation."

Donald Marshall is seeking compensation from the government because of his wrongful imprisonment, which lasted 11 years.

Asked about legal proceedings begun by Donald Marshall, Jr., against the City of Sydney police department over its handling of his case, Mr. Marshall said he had no comment.

But Mr. Marshall took

exception to yesterday's court decision to free Mr. Ebsary until his sentencing. He said Mr. Ebsary "should not have been" released because his son "never got out" after the jury found him guilty in 1971.

Mr. Ebsary's lawyer, Luke Wintermans, said he "probably" would appeal the jury's decision after sentencing.

During one point in their deliberations the jury returned to the courtroom for clarification of points of law and in the evidence.

Earlier, during his charge to the jury, Mr. Justice Rogers told jurors that they must find Mr. Ebsary guilty if they believed he used excessive force to defend himself.

During his summation, Crown prosecutor Frank Edwards told the jury they should find Mr. Ebsary guilty because he used more force than was necessary to protect himself against Mr. Seale, who was robbing him.

Mr. Ebsary's lawyer, Mr. Wintermans, told the jury to consider the circumstances surrounding the events of that night 13 years ago. He said the park was dimly lit, that Mr. Ebsary, "an old man," was being attacked by a stronger "well-built" young man and that, at the same time,

"He used his only avenue of defence, a small knife," Mr. Wintermans said. "I would say, rather responsibly."



Talks To Reporters

Donald Marshall, Grand Chief of the Miqmac Indians and the father of Donald Marshall (Junior), the man who

spent 11 years in penitentiary for a murder he did not commit, talks to reporters

CAPE BRETON POST
NOV. 9th, 1983

Marshall not giving up fight for money

SYDNEY — Donald Marshall Jr. and his family will continue to seek compensation from the federal government despite arguments against it by Justice Minister Mark MacGuigan, says the head of the Union of Nova Scotia Indians.

Marshall, a Micmac from the Membertou Indian Reserve in Sydney, spent 11 years in prison for a slaying committed by Roy Ebsary. After amassing \$82,000 in legal bills, Marshall, now 30, was acquitted in May.

Noel Doucette said the union, which is helping in the compensation fight, is unimpressed by MacGuigan's contention that Ottawa cannot help Marshall because the case is a provincial responsibility.

"This is the royal runaround that the government always gives Indians if there is money involved," Doucette said.

"We're a political football."

Doucette and other Indian leaders met Marshall and his father Wednesday to discuss seeking money from both levels of government for Marshall and his family.

Doucette said there is no firm figure being sought, but it could be as high as \$4 million.

He said the family has endured severe financial and emotional hardship for the last 12 years. Marshall's father, as grand chief of the Micmac Indian nation, is the spiritual leader of Micmacs in the Maritimes.

CHRONICLE HERALD
NOV. 17, 1983

Ottawa asked not to tax Marshall

By ALAN JEFFERS
Provincial Reporter

The Nova Scotia legislature doesn't want the \$25,000 awarded earlier this week to Donald Marshall Jr. to be taxed by Revenue Canada.

A resolution to ensure the interim payment would not be taxed by either the provincial finance department or the federal government was passed without debate Thursday in the House.

Introduced by Liberal leader Sandy Cameron, the resolution said the provincial finance department and department of national revenue "should ensure the Donald Marshall payment is not taxable."

Earlier this week, Attorney-General Ron Giffin told the House that Prince Edward Island Supreme Court Justice Alex Campbell recommended the province make an interim payment of \$25,000 to Mr. Marshall who spent 11 years in

prison after being wrongfully convicted of murder.

Revenue Canada spokesman Francis Whyte said in Halifax yesterday it has not yet been determined if the payment awarded to Mr. Marshall is taxable.

He said the department must wait until Mr. Justice Campbell has finished his deliberations and compensation is complete before making a ruling on whether the money is taxable.

"It's our understanding that Justice Campbell's ruling is of an interim nature, therefore we would not be able to provide Mr. Marshall with an interpretation on the taxability of any payments received from the province until Justice Campbell's final judgement is made."

He said the department does not have a general rule to follow and will have to research the question of taxability of compensation payments. That is why the depart-

APR - 6 1984

CHRONICLE HERALD
APRIL 6, 1984

Neither side will comment

SEP 11 1984

By DEAN JOBB
Staff Reporter

Nova Scotia's attorney-general and the lawyer for Donald Marshall Jr. declined comment Monday on a report the provincial government will offer \$270,000 in compensation to the Micmac Indian who served 11 years in prison before being cleared of murder.

CBC News, quoting anonymous sources, said Monday night Marshall will get \$170,000 to compensate for time wrongly spent behind bars and a further \$100,000 to cover the legal fees needed to prove he was innocent of a 1971 Sydney stabbing.

Reached at his Truro home last evening, Attorney General Ron Giffin said "I don't know where they got that," but refused to comment on the accuracy of the figures.

Giffin said the government would not be making any announcements on the Marshall case "until we're ready," adding he expected an official statement would be made, probably at a press conference, "in the very near future."

Marshall's lawyer, Felix Caccione, would say only "the matter is not resolved," and to his knowledge, was still being dealt with by the attorney-general's department and Mr.

Justice Alex Campbell of Prince Edward Island, the one-man commission appointed in March to study the compensation issue.

According to the CBC report, Mr. Justice Campbell had approved of the amount of compensation, which was to be made conditional on Marshall agreeing not to bring a lawsuit against the City of Sydney.

At the request of Mr. Justice Campbell, the provincial government paid the 30-year-old Marshall a \$25,000 advance in April pending the commission's final report, originally slated for completion this fall.

Serving a life sentence for the second-degree murder of teenage friend Sandy Seale, who was stabbed to death in a Sydney park, Marshall was acquitted in May, 1983, by the Appeal Division of the Nova Scotia Supreme Court.

Evidence that witnesses had committed perjury at Marshall's trial, coupled with indications information was withheld from the defence, led to calls for a full investigation of the circumstances surrounding the case.

After a long silence the Nova Scotia government responded with the appointment of Mr. Justice Campbell, who was directed to concentrate on the issue of compensation.

CHRONICLE HERALD
SEPT. 11, 1984

Offer reported to be \$270,000

Province compensates Marshall

More than two years after he stepped out of prison and into the public eye, Donald Marshall has accepted compensation for the 11 years he spent locked up because of a wrongful murder conviction.

His lawyer, Felix Cacchione, said Tuesday that Mr. Marshall accepted an undisclosed offer from the Nova Scotia government because he wanted to get on with his life after the pressure of the last two years.

Mr. Cacchione would not confirm reports that Marshall will get \$270,000 and said he would release details of the settlement today. Attorney-General Ron Giffin was also planning a statement. Mr. Marshall, now 31 and living in Halifax, was

not available for comment.

He was 18 when he began serving a life sentence in prisons in Dorchester, N.B., and Springhill for the murder of a friend, Sandy Seale, in a park in Sydney in 1971.

Mr. Marshall, a Micmac Indian from a reserve outside Sydney, always maintained he was innocent and in March 1982 was released on parole after the RCMP turned up evidence that cast doubt on his conviction. He was acquitted of murder last year by the Nova Scotia Supreme Court.

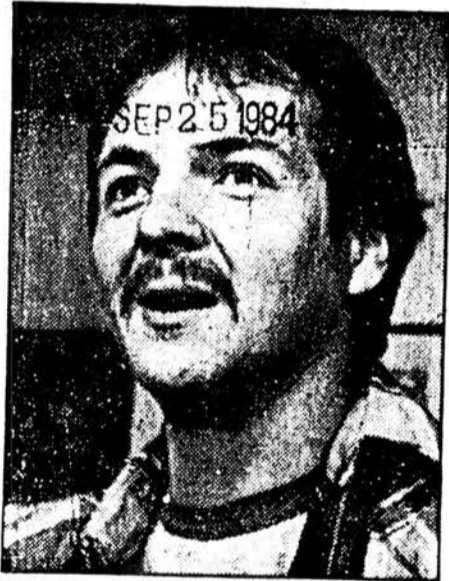
In April, the province bowed to public pressure and appointed Mr. Justice Alex Campbell of the P.E.I. Supreme Court to assess legal costs and compensation for Mr. Marshall.

An interim payment of \$25,000, recommended by Mr. Campbell, was an acknowledgment there was a miscarriage of justice, Mr. Cacchione said at the time.

After Mr. Marshall was acquitted, Roy Newman Ebsary, 72, was convicted of manslaughter in Seale's death. Mr. Ebsary appealed the decision and the three-year sentence and recently won a new trial.

The Supreme Court said Mr. Marshall was partly to blame for his troubles because he, in addition to other witnesses, lied at the original trial. Mr. Seale and Mr. Marshall were attempting to mug Mr. Ebsary and another man when the stabbing occurred.

Mr. Marshall dropped a suit against the City of Sydney and two police officers in January because the province had called the legal action an impediment to compensating him.



Donald Marshall . . .
compensation deal reached

CHRONICLE HERALD
SEPT 25, 1984

N.S. awards \$270,000 to Marshall

By MICHAEL HARRIS
Globe and Mail Reporter

HALIFAX — Donald Marshall Jr., who spent 11 years in prison for a murder he did not commit, has settled for \$270,000 in compensation from the province of Nova Scotia for his wrongful imprisonment.

In return, Mr. Marshall has agreed to waive any further legal action against the Crown for his ordeal.

The *ex gratia* payment, confirmed yesterday by Mr. Marshall's lawyer, Felix Cacchione of Halifax, will be made this week and will bring to an end Mr. Marshall's 2½-year struggle to clear his name.

"I had to do it," Mr. Marshall said in an interview. "There's a lot about this thing I don't like, but to go on fighting would mean more legal bills and more time in court. I've had enough court."

Mr. Marshall was 17 when he was convicted of the 1971 murder of a 17-year-old black youth, Sandy Seale, in Sydney, N.S. — a crime he repeatedly denied, during his years in

MARSHALL — Page 5

Marshall settles for \$270,000

● From Page One

prison, that he committed. In 1981, new evidence in the case was uncovered by Mr. Marshall and his original lawyer, Stephen Aronson, which led to a new RCMP investigation.

The new investigation resulted in Mr. Marshall's release from Dorchester Penitentiary on March 29, 1982, and his subsequent acquittal on May 10, 1983.

Shortly after that decision was announced, 72-year-old Roy Ebsary, a former vegetable cutter at a Sydney hotel, was charged with the murder of Mr. Seale.

Last November, Mr. Ebsary was convicted of manslaughter in the stabbing death of Mr. Seale, but that conviction was subsequently overturned by the Nova Scotia Supreme Court Appeals division on the grounds that the presiding judge misdirected the jury on the law of self-defence.

Nova Scotia Attorney-General Ronald Giffin is currently considering whether to order a new trial for Mr. Ebsary.

Mr. Cacchione, who has represented Mr. Marshall since the Nova Scotia Supreme Court acquitted him in 1983, said the settlement is "definitely in the low range," but that he had to consider his client's wishes and his general state of mind. Mr. Cacchione said he has an actuary's report that shows Mr. Marshall's jail term cost him more than \$330,000 in lost wages alone.

"Donald made very clear to me that he wanted this thing settled by the end of summer and that's what we've done. Apart from his personal wishes in the matter, one of my greatest concerns was his general state of mind. I don't think it bears saying that, after 11 years in prison and 2 years in the public eye since his release, that this man has been under incredible amounts of pressure. It's time to begin a new life."

Tomorrow, Mr. Marshall will receive a cheque for \$270,000. Earlier this year, he was given a \$25,000 interim payment that the Government considered as part of his over-all compensation of \$270,000.

Mr. Marshall will have to pay the legal costs incurred in proving his innocence, and Mr. Cacchione says that his client will be left with approximately \$173,000 after the bills are paid.

Both Mr. Cacchione and Mr. Aronson reduced their bills in the interests of their client.

In addition, Mr. Marshall will receive about \$45,000 from a trust fund set up by a United Church minister Robert Hussey of Montreal, who took an interest in Mr. Marshall's plight after it became a national issue in 1982.

Among other things, the settlement means that the one-man inquiry into the Marshall case by Chief Justice Alex Campbell of the Prince Edward Island Supreme Court will be disbanded without a report being issued. The inquiry was set up last summer by the Nova Scotia Government.

Judge Campbell was charged specifically with inquiring into the compensation issue surrounding the case and nothing else — including the role played by the Sydney police in originally charging Mr. Marshall in Mr. Seale's murder.

Two alleged witnesses to the murder swore in affidavits in 1982 that the Sydney police had pressed them into giving perjured evidence at the 1971 trial that resulted in Mr. Marshall's conviction. The policemen involved have denied the allegations and neither of the two witnesses has been charged with perjury.

In its 1983 decision, the provincial Supreme Court placed the blame for the course that justice took in 1971 on Mr. Marshall, saying he was involved in an attempted mugging at the time of Mr. Seale's death. Mr. Marshall has admitted that he was planning to mug someone in Wentworth Park on the night of May 28, 1971, but denied that he and Mr. Seale tried to rob Mr. Ebsary and his companion James McNeil.

Mr. Cacchione said the province of Nova Scotia began its negotiations on the compensation package after they were told by Judge Campbell that the cost of running a full inquiry could reach \$300,000.

Mr. Marshall, now 31, said he plans to send his legal bill to the federal Government, on the grounds that John Munro, the former Liberal minister of Indian and northern affairs, had agreed to pay it.

Mr. Cacchione said he will administer Mr. Marshall's award, which will be put into a trust fund for his client.

Globe & Mail
Sept. 26, 1984

Cape Breton Post

SYDNEY, NOVA SCOTIA, WEDNESDAY, SEPTEMBER 26, 1984

35 CENTS

Marshall Receives \$270,000 Payment

More than two years after he stepped out of prison and into the public eye, Donald Marshall has accepted compensation for the 11 years he spent locked up because of a wrongful murder conviction.

His lawyer, Felix Cacchione, said Tuesday that Marshall accepted a \$270,000 offer from the Nova Scotia government because he wanted to get on with his life after the pressure of the last two years.

"It could have dragged on for months and months," Cacchione said. "He wants to get on with his life . . . not to

look at the past . . . but look to a good future. He is happy."

He was 18 when he began serving a life sentence in prisons in Dorchester, N.B., and Springhill, N.S., for the murder of a friend, Sandy Seale, in a park in Sydney in 1971.

Marshall, a Micmac Indian from a reserve outside Sydney, always maintained he was innocent and in March 1982 was released on parole after the RCMP turned up evidence that cast doubt on his conviction. Marshall was acquitted of murder last year by the Nova Scotia Supreme Court.

Settlement Won't Compensate Marshall For Years Spent In Prison, Says Lawyer

The \$270,000 settlement from the provincial government won't compensate Donald Marshall for the 11 years he spent in prison for a murder he didn't commit, his lawyer said Wednesday.

"You could have given this man \$10 billion," Felix Cacchione told a news conference in Halifax, "and that would not have been enough to make up for the outrage and injustice that he has had to live through."

Marshall, who now lives in Halifax, didn't attend the news conference because he wants to retire from public view and get on with his life, his lawyer said.

Marshall, a Miqmaq Indian, was 18 when sent to prison for the stabbing of his friend, Sandy Seale, in Wentworth Park. Protesting his innocence, Marshall spent time in prisons in Dorchester, N.B., and Springhill, N.S., before being acquitted by the appeals division of the Nova Scotia Supreme Court.

After Marshall was acquitted, Roy Newman Ebsary, 72, of Sydney was convicted of manslaughter in Seale's death. Ebsary appealed the decision and recently won a new trial.

The court which acquitted Marshall said he was partly to blame for his plight because he lied at his original trial. Witnesses said Marshall and Seale were attempting to mug two men when the murder took place.

Marshall signed a release form, exempting the province from any liability. The release doesn't apply to the City of Sydney or the Sydney police who conducted the murder investigation. But

Cacchione said Marshall has indicated that he wants the entire matter to end.

Cacchione said it now is up to the Canadian public to pressure the Nova Scotia government to order a full-scale inquiry into Marshall's conviction and imprisonment. He said the case is also a strong argument against capital punishment.

Cacchione said Marshall, now 31, is working with native youth on a program funded by the

federal government. In the program, youth are taken into wilderness settings where they must use survival skills they have learned.

Cacchione said the agreement, announced Wednesday in a terse government release, was reached two weeks ago after months of negotiations. Attorney General Ron Giffin cancelled a scheduled news conference and his secretary said he would be out of town until next week.

Cacchione said Marshall expected an apology from the province but didn't receive one.

In March, the government bowed to public pressure and appointed Mr. Justice Alex Campbell of the P.E.I. Supreme Court to assess legal costs and compensation for Marshall. Campbell recommended an interim payment of \$25,000 for Marshall and approved the final settlement.

Cacchione said Marshall, who received no

psychological or emotional counselling after his release, still "has a lot to work out of system" but is "doing amazingly well."

Cacchione said about \$100,000 of the settlement will go to legal bills that Marshall built up trying to prove his innocence.

The rest of the money, along with a \$45,000 defence fund raised by concerned citizens, will be invested.



MARSHALL GETS COMPENSATION

Donald Marshall has reached an agreement with the provincial government for compensation for 11 years he spent in jail for a murder he didn't commit. This is a file photo of Mr. Marshall. He didn't

attend yesterday's press conference in Halifax where details of the agreement were unveiled by his lawyer.

CAPE BRETON POST
SEPT 27, 1984

No Decision Reached On Probe Into Donald Marshall Conviction

HALIFAX (CP) — Premier John Buchanan said Thursday the Nova Scotia government has not decided whether to hold an inquiry into the wrongful murder conviction that sent Donald Marshall to prison for 11 years.

Buchanan said questions about the Marshall case should be addressed to Attorney-General Ron Giffin, who has refused comment.

A compensation agreement between Marshall and the province was announced Wednesday. Marshall accepted \$270,000 and he has signed a release exempting the province from any liability.

His lawyer, Felix Caccione, has said it is up to the Canadian public to put pressure on the government to order a full-scale inquiry into Marshall's conviction and imprisonment.

Marshall, a Miqmaq Indian, was convicted of the stabbing death of his friend, Sandy Seale, in a Sydney park. He was released from prison in 1982 when new evidence threw his conviction in doubt and was acquitted last year by the appeals division of the Nova Scotia Supreme Court.

After he was acquitted, Roy Newman Ebsary, 72, of Sydney was convicted of manslaughter in Seale's death, but re-

cently won a new trial.

Opposition parties and citizens groups have argued the government should not only compensate Marshall, but find out how he was convicted in the first place given the evidence that later turned up.

Marshall and several witnesses did not tell the truth at the original trial and the key witness at the second trial was testifying for the first time. Testimony showed Marshall and Seale were attempting to mug Ebsary and another man when the stabbing occurred.

CAPE BRETON POST
SEPT. 28, 1984

New Witnesses

Ebsary's Third Manslaughter Trial Opens Here Next Week

The third manslaughter trial of Roy Newman Ebsary, charged in the 1971 stabbing death of 16-year-old Sandy Seale, is scheduled to open in Sydney next week before Mr. Justice Merlin Nunn of the Supreme Court of Nova Scotia.

Mr. Ebsary, free on bail since the day after his conviction on the charge in November, 1983, is to appear Tuesday for plea. Jury se-

lection is to take place the next day.

His lawyer, Luke Wintermans, said Friday that he learned only two days ago that the crown intends to call several new witnesses. The trial is expected to take four or five days.

The killing of Sandy Seale in Sydney's Westworth Park became the most famous case in Nova Scotia legal history when Don-

ald Marshall, Jr., convicted of the crime at the age of 17, was finally cleared in May, 1983, shortly after his release on parole. He had served 11 years for murder.

Mr. Ebsary was immediately charged with murder, later reduced to manslaughter after a preliminary hearing. His first trial in September, 1983, ended with a hung jury.

A second jury found him guilty of manslaughter in November of that year and Mr. Justice R. MacLeod Rogers sentenced him to five years. Mr. Ebsary was released on bail the next day after spending one night behind bars, pending the outcome of an appeal.

Last year, the appeals division of the Supreme Court ordered a new trial, citing one error by trial judge Mr.

Justice Rogers in admitting evidence and another in his instructions to the jury.

Thirty-eight criminal cases are on the docket for Mr. Justice Nunn, who is to sit in Sydney until the end of the month. Pleas will be heard Tuesday followed the next day by the start of the Ebsary case, but only about half a dozen trials are expected to be completed during the sitting.

All next month, Mr. Justice A.M. Macintosh is to hold a special Supreme Court session in Sydney to attack a huge backlog of civil cases.

CAPE BRETON POST
JAN. 5, 1985

Jury impaneled in Ebsary retrial

SYDNEY, N.S. (CP) — A jury of seven women and five men was ~~selected yesterday for the third~~ trial of Roy Newman Ebsary, 73, charged in a controversial slaying 14 years ago.

Mr. Ebsary is charged with manslaughter in the 1971 stabbing of Sandy Seale, 16, in a city park. Donald Marshall Jr. was convicted of murdering his friend and served 11 years in prison before being acquitted. He recently received \$270,000 in compensation from the provincial Government, a large part of which had already been spent on legal fees.

Evidence will be presented today in Mr. Ebsary's trial.

~~The former seaman, who is in falling health, wears war medals and a beret to most of his court appearances.~~

Mr. Ebsary's first trial ended in a hung jury. He was convicted in his second trial and sentenced to five years in prison, but he appealed and won the third trial.

The facts surrounding Sandy Seale's death are still unclear 14 years after the event. Evidence at previous court hearings indicated Mr. Seale and Mr. Marshall were ~~attempting to rob Mr. Ebsary and another man when Mr. Seale was killed.~~

~~Mr. Marshall's lawyers have demanded a full investigation into the handling of the case.~~

Globe & Mail
Jan. 10, 1985

Ebsary's Trial

Seven Women, Five Men Are Selected As Jurors

A Supreme Court jury of seven women and five men is expected to hear the first witnesses today in the manslaughter trial of Roy Newman Ebsary, 73, of Sydney, charged with the 1971 stabbing death of 18-year-old Sandy Seale.

Jury selection was completed shortly after noon on Wednesday and the jurors were dismissed for the rest of the day while defence and crown lawyers presented legal arguments to Mr. Justice Merlin Nunn.

Late in the day, a voir dire trial within-a-trial started on the admissibility of some evidence. That was expected to wrap up this morning before the jury returned to the courtroom.

Fifty three prospective jurors were called during selection, starting with a panel of 10 men and two women. Crown prosecu-

tor Frank Edwards stood aside 34 prospective jurors during selection, almost all of them men, and defence lawyer Luke Wintermans challenged seven, almost all of them men.

The court excused 34 of the 100 prospective jurors before selection began.

In his preliminary instructions to the jury, Mr. Justice Nunn noted the extensive publicity the case has received and cautioned jurors to ignore media reports of the trial and not to discuss the case until they retire to deliberate.

The crown intends to call at least 19 witnesses and possibly as many as 24 during the trial that is expected to conclude Tuesday. Among them will be Donald Marshall, Jr., the man convicted of murdering Seale in 1971.

He was acquitted of the crime in 1983 after serv-

ing 11 years in prison. This is Mr. Ebsary's third trial on the manslaughter charge.

CAPE BRETON POST
JAN 10, 1985

Marshall testifies Ebsary stabbed Seale

JAN 12 1985

SYDNEY — Claiming that parts of testimony he had given at previous trials were untrue, Donald Marshall Jr. told a Supreme Court jury here Friday that Roy Newman Ebsary of Sydney stabbed the late Sandy Seale near this city's Wentworth Park on the night of May 29, 1971.

Marshall, acquitted of murdering Seale by the Nova Scotia Appeal Court in May, 1983, after serving 11 years in penitentiary, said during the first day of testimony in Ebsary's third manslaughter trial that he heard Ebsary ask the victim if he "wanted everything he had."

Ebsary, he added, put one hand on Seale's shoulder, removed the other hand from his pocket and then stabbed the teenager. He said Seale "bent over and fell down."

In the meantime, Marshall said he grabbed Jim MacNeil, who was with Ebsary, and "threw him down."

After striking Seale, he testified that Ebsary said, "I got something for you too, Indian," and the accused came toward him with something in his hand. With the Crown prosecutor using a ruler as a knife, Marshall demonstrated to the jury how he pushed Ebsary's hand aside, and how the accused stabbed him in the lower arm, leaving a five-inch scar.

Marshall said that neither he or Seale was armed, and that the whole thing started when either Ebsary or MacNeil had asked him for a cigarette.

Under cross-examination by Ebsary's lawyer, Luke Wintermans, Marshall said that most of a statement he gave to the RCMP in penitentiary in 1982 was not true, particu-

larly the portion in which Marshall said he and Seale had agreed to "roll somebody" in the park on the night of the incident.

Marshall also said references made by Wintermans to evidence he gave on previous occasions were also untrue. When asked by Wintermans why his testimony was different from other court appearances, Marshall replied that he stuck to his story for eight or nine years and nobody believed what had happened, so he changed his story to what he thought people wanted to hear.

"I told the truth the first time," he said. "I didn't go there to rob them. I was forced to say that I didn't roll or rob anybody, a person bummed a cigarette and that's what happened."

The frail-looking 31-year-old Micmac, bothered by a cold that often made his voice inaudible, was one of 10 witnesses heard by the seven-woman, five-man jury.

Among the others who took the stand were Ebsary's son Greg, who identified 10 knives seized from the Ebsary home by the RCMP in 1982, and Maynard Chant of Louisbourg. Chant, who was 14 at the time of the stabbing, admitted to giving a false statement in 1971 in which he said he saw Marshall stab Seale. The witness said that when he tried to tell the truth, city police would not accept it. He went on to testify that when approached by RCMP in 1982 he had come to realize that "I did wrong and felt it was time to tell the truth."

When the trial resumes Monday, Marshall will be back on the stand for redirect examination by Edwards.

CHRONICLE HERALD
JAN. 12, 1985

Marshall Denies Ebsary Was Being Robbed Night Sandy Seale Stabbed

By Doug McGee
Staff Writer

Donald Marshall, Jr., 31, who served almost 11 years of a life sentence for the 1971 murder of Sandy Seale, denied to a Supreme Court jury Friday that Roy Newman Ebsary was being robbed the night Seale was stabbed near Sydney's Wentworth Park.

Mr. Marshall is the only one of 10 witnesses testifying so far who has said that Mr. Ebsary, on trial a third time for manslaughter, stabbed the 17-year-old Seale.

Also on Friday, the third day of trial, knives were introduced to a jury for the first time in the history of the Seale case. However, the crown has yet to complete chains of evidence on the knives and on items of clothing that have been described but not introduced.

Mr. Marshall, 17 at the time of the killing, was questioned Friday for about three hours by crown and defence lawyers. Prosecutor Frank Edwards, who told the jury he intends to prove the 73-year-old Mr. Ebsary did not act in self-defence, will conduct direct examination of Mr. Marshall on Monday.

Defence lawyer Luke Wintermans skimmed over the account of the stabbing itself to grill Mr. Marshall on whether he and Seale intended to rob Mr. Ebsary and his companion, James MacNeil.

Contradictions
Since the RCMP reopened the Seale case in early 1982, Mr. Marshall has given signed statements to police and testified at two hearings and the two previous Ebsary trials. Mr. Wintermans quoted repeatedly from records of those accounts to suggest contradictions several of which Mr. Marshall admitted.

Mr. Marshall's brief replies, often preceded by long silences, were spoken so softly that the judge had trouble hearing him. The witness said he had a cold.

Mr. Marshall explained at one point that he had stuck to his story for eight or nine years and no one had believed it, "so I had to twist it around." He agreed with Mr. Wintermans that he has changed his story to say what people wanted to hear, but he also said he has not told untruths under oath.

He said his March 3,

1982, statement to the RCMP that he and Seale had intended to "roll" or "rob" someone was "not true," although he had told the previous trial that the statement was true.

"I wasn't out to rob him (Mr. Ebsary)," Mr. Marshall said Friday. "But I was forced almost to say that. That's what it boiled down to."

The most explicit references to the intent to rob are contained in the statement made to police while Mr. Marshall was still serving time in Dorchester penitentiary for the Seale murder. In testimony given after his release, he drew a distinction between robbing and rolling, saying the first would involve a weapon and the second would not.

On Friday, he said he could "not really" explain the difference, but he denied repeatedly that he either rolled or robbed anyone the night of the stabbing.

Asked if he had ever rolled or robbed anyone before that night, Mr. Marshall said: "I'm going to say no."

He told the court he and Seale first approached Mr. Ebsary and Mr. MacNeil in Wentworth Park near midnight on May 28, 1971, after one of the older men had called to the two teenagers for a cigarette. The oldest man, who Mr. Marshall now identifies as Mr. Ebsary, described himself as a sea captain and sort of priest, Mr. Marshall said.

Moments later, the two pairs were going their separate ways when one of the teenagers called to the older men to come back. Mr. Ebsary approached Seale, asked him if he "wanted everything he had," and made an upward sweeping motion with his right hand, Mr. Marshall said.

Seale showed the court a three-inch scar on his forearm which he said resulted from a wound Mr. Ebsary inflicted on him a moment after stabbing Seale.

Mr. Marshall said he clearly remembers that Seale said nothing to Mr. Ebsary as the two met the second time. Mr. Wintermans brought up previous testimony in which Mr. Marshall said he couldn't understand their conversation.

Maynard Chant, 28, of Louisbourg testified that he did not witness the



Roy Ebsary

Seale killing as he had testified he had in the 1971. During the proceedings that convicted Mr. Marshall, Mr. Chant had twice testified that he saw Mr. Marshall do the stabbing.

Mr. Chant, 14 at the time of Seale's death, didn't testify in detail about why he made statements in 1971 that he now retracts.

"They (police) took me down to a room in the town hall in Louisbourg," he said. "The thing was that I was on probation."

At some point, which he didn't specify Friday, he tried to correct his account, he told the court.

"When I tried to tell the truth, they wouldn't accept it," he said, without explaining whom he meant.

During the new RCMP investigation in 1982, he retracted his 1971 account because he had become a Christian and wanted to straighten out a "tragedy," he said.

Oscar and Leatha Seale, parents of the victim, described the brown jacket their son was wearing the night he was stabbed.

Mr. Seale, describing Sandy as "a very good athlete," recalls that his son was conscious when he saw him in City Hospital after the stabbing. The young man didn't speak but recognized his father by nodding, and Sandy wasn't asked who stabbed him.

"I wish I had known he was going to die," Mr. Seale said. "I certainly would have asked him."

Donald Marshall, Sr., father of Donald, Jr., and

Roy Gould testified briefly to start a chain of evidence on a yellow jacket that the young Marshall was wearing on the night of the stabbing. Mike MacDonald, retired deputy chief of the city police force, also took the stand to add continuity to exhibits of clothing the prosecution intends to introduce.

Knives

Gregory Ebsary, son of the accused, told the history of an assortment of 10 knives which RCMP Staff Sergeant Harry Wheaton seized in 1982 as part of the investigation that led to Donald Marshall's acquittal.

In 1971, some of the knives were kept in Roy Ebsary's room in the family residence at 126 Rear Argyle Street while others were in the kitchen, the son testified. The knives eventually ended up in the basement of a house on Mechanic Street shared by the son, daughter, and wife of the accused.

Roy Ebsary has not lived with his family since he and his wife separated several years ago.

The crown has yet to complete evidence on the knives. RCMP forensic specialist Richard McAulpine told the court he was unable to find blood on any of the knives, but he also said it wouldn't be hard to wash fresh blood off a knife.

Gregory, a 31-year-old cab driver, handled three of the knives in court and described alterations to them that he attributed to his father. He identified two butter knives which had each been sharpened on both edges, and other of his father's "creations" that had handles made of copper or rubber pipe.

Under cross examination, Gregory said both his parents were working as cooks in 1971.

The son also described his father as a "bad drinker" during that period, and told how Roy would usually go out dressed in slacks, white shirt and sport coat, with a scarf tied like an ascot and a topcoat draped over his shoulders.

"All his off-time he was drunk," Gregory recalled.

The trial is scheduled to continue for two days next week. The crown has about 10 more witnesses to call.

Cape Breton Post January 12, 1985

Ebsary Admits Stabbing Victim; Says He Was Being Robbed At Time

By Doug McGee
Staff Writer

A Supreme Court jury heard both an admission and a defence Monday in the spoken words of Roy Newman Ebsary, 73, charged with the 1971 stabbing manslaughter of 17-year-old Sandy Seale in Sydney's Wentworth Park.

"So thugs become heroes and honest men become what?" Mr. Ebsary asked RCMP Corporal James Carroll in a 1982 taped statement as he described how he was being robbed the night he took a single "blind swipe" at Seale with a knife.

"Probably I got him in the guts," Mr. Ebsary said.

The statement highlighted the fourth day of a trial that was again marked by frequent legal sparring in the absence of the jury. The tape was also played at the previous Ebsary trial in 1983, the second on the same charge, which resulted in a conviction that was later overturned.

Also on Monday, defence lawyer Luke Wintermans had a brief but aggressive second crack at Donald Marshall, Jr., a key crown witness who was acquitted in 1982 after serving almost 11 years for the murder of Seale.

Famous

Under renewed cross-examination, Mr. Marshall, 31, agreed that he has become famous through the media as "the man who spent 11 years in jail for a murder he didn't commit." He also acknowledged that he got \$70,000 in provincial government compensation for his years in prison — about \$100,000 of which went to lawyers — and another \$50,000 raised through a private fund.

But he denied the defence proposition that he has changed his story "for the purpose of making yourself appear like a saint, like you were completely innocent at the time."

On Friday, Mr. Marshall renounced portions of a statement he made to the RCMP at Dorchester penitentiary in 1982 in which he said he and Seale had set out to rob Mr. Ebsary and his companion James MacNeil the night of the stabbing. In the previous two Ebsary trials, Mr. Marshall had acknowledged the statement to be true.

He testified Friday he was "almost forced to say" to the RCMP that he was out to rob. Asked to elaborate Monday, he said he had heard what others were saying in 1982 about the incident and it seemed the only way for him to challenge was to agree with the robbery story.

In his taped statement, Mr. Ebsary maintained that his knife was too short to inflict the injury to Seale that was later described, and he convinced himself that Mr. Marshall had "finished Seale off" to keep him quiet. He asked Cpl. Carroll why Mr. Marshall didn't go for help at first when he realized Seale was hurt.

Weeping

There was a sound of

weeping from the recording as Mr. Ebsary explained why he felt obligated to come forward after he himself spent nine months in jail and realized what Mr. Marshall had gone through for 11 years.

"Listen," he told Cpl. Carroll. "I'm telling you the truth. I'm levelling with you."

Explaining why he didn't come forward at the time, he said: "It was only an incident. It didn't



Donald Marshall

matter to me one way or the other."

Mr. Ebsary said he was emptying his pockets after Seale demanded everything he had when he "found" a pen knife. He said he "didn't believe the boy was hurt" because Seale ran after he was stabbed.

"I didn't believe I did it," Mr. Ebsary said, recalling news of the death the next day. "I couldn't convince myself I did it. Do you understand that?"

He said it would have

been "very easy" to put a second knife into Seale's wound.

"The rip that guy got in the guts didn't come from a three-inch blade. It's impossible."

Single Wound

Dr. Mahomed Naqvi, who attended Seale at City Hospital, testified that a pointed object of three to 3½ inches could have caused the single wound. Seale's small intestine was protruding almost completely from the abdominal cavity when he was admitted, and the abdominal aorta artery in front of the spine was torn.

The doctor said Seale died of shock and hemorrhage about 18 to 20 hours after he was admitted. Surgery was performed twice and he was given 27 pints of blood — almost the entire volume of blood in his body.

Mr. Ebsary told Cpl. Carroll he had been mugged "umpteenth times" in the park but had always given in and had never gone to the police.

"But I swore by my Christ that the next man that struck me would die in his tracks."

He stabbed Mr. Marshall in the arm because Mr. Marshall was "strangling" Mr. MacNeil.

He insisted the knife he used was not among the 10 seized by police in 1982, and he described as lies a statement that he was seen washing blood off a knife the night of the stabbing.

The crown completed forensic evidence on the 10 knives Monday and called Mr. Ebsary's daughter Donna to testify she saw him washing a knife in the kitchen of their home the night of the stabbing. She was unable to pick out the knife with certainty from among 10 seized in 1982, but she pointed to one she said was similar.

RCMP crime lab expert Adolphus Evers identified the same knife as the one among the 10 that provided the largest number of possible fibre sample matches with jackets worn by Seale and Mr. Marshall. Of 17 fibres taken from the knife, nine were "consistent with" samples taken from Seale's brown wool coat and three could have come from the yellow jacket worn by Mr. Marshall.

The most possible matching fibres he found on any other of the knives was four.

Washing Knife

"Dad was washing a knife off in the sink," said Donna Ebsary, 27, who also testified her father carried a knife in those days. "It appeared to me there was blood on it."

She said the knife had a fixed blade, but her father said in his taped statement he "opened" his knife in his pocket before stabbing Seale. He also insisted that he later buried the blade in a garden near his home and threw away the handle.

Commenting on the alterations to the knives presented in evidence, Ms. Ebsary said her father was good at fixing things. She explained the sharpened double edges on some of them by saying her father had used such knives in the garden.

Ms. Ebsary, 13 when Seale was stabbed, also quoted a "very excited" Mr. MacNeil as telling her father that night: "You did a good job back there." She said her father told him to shut up.

The defence lawyer was unable to shake the witness despite persistent cross-examination.

"No, my imagination is not filling in details," she told Mr. Wintermans.

The trial is expected to run into a sixth day on Wednesday.

"Let's Take Pride"

CAPE BRETON POST
JAN. 15, 1985

CAPE BRETON POST JAN 15 1985

Witness Says Robbery In Progress Night Youth Fatally Stabbed In Park

By Doug McGee
Staff Writer

James MacNeil, 20, of Sydney told a Supreme Court jury Tuesday that he and Roy Newman Ebsary, 73, were being robbed by Sandy Seale and Donald Marshall, Jr. the night Seale was fatally stabbed.

He is the only witness to testify at the current Ebsary manslaughter trial that a robbery was in progress the night of May 28, 1971. The case is expected to go to the jury today after one more brief defence witness, final summations, and the judge's instructions on law.

On the critical point of whether a robbery was taking place, Mr. MacNeil's story agrees with Mr. Ebsary's 1982 taped statement that the jury heard Monday. But it conflicts directly with Mr. Marshall's denial earlier in the trial that there was any plan to rob the two men.

Mr. Marshall told police in 1982, while still serving time for the murder of Seale, that he and his companion were out to commit robbery. In later sworn testimony he acknowledged the statement to be true but he denied it this time, explaining that he felt compelled to admit robbery to clear himself of the killing.

Mr. MacNeil testified that at the moment of the stabbing his arm was being held behind his back by Mr. Marshall as Seale told Mr. Ebsary: "Dig, man, dig." Mr. Ebsary replied, "I've got something for you." Mr. MacNeil testified, and then "came up with his right hand."

Mr. MacNeil said he knew it was robbery as soon as his arm was thrust behind his back, although Mr. Marshall "never said a word" to him. Seale's own hands were at his sides as he spoke to Mr. Ebsary in "not really like a violent tone," Mr. MacNeil said.

He said he doesn't recall Mr. Ebsary handing any valuables to Seale.

Drinking

Mr. MacNeil remembers drinking six or seven drafts of beer at a George Street tavern with Mr. Ebsary that evening, and he described himself as "strait" and "really con-

used" during the incident in Westworth Park.

He was "hyper" when he and Mr. Ebsary arrived at the Ebsary home at Rear Argyle Street about 15 minutes after the stabbing.

He described his state of mind as "like a dream" and recalled an image of Seale's intestines protruding from his stomach. However, in his testimony a moment earlier he said he remembers Seale screaming but can "barely visualize" him running away, holding his stomach.

Mr. Ebsary's wife and daughter have testified they were in the living room when the two men entered the house, but Mr. MacNeil said he doesn't recall anyone being there. He said he does recall Mr. Ebsary washing at the kitchen sink.

"There was an awful lot of blood on his hands."

He said he told Mr. Ebsary the next day, after learning of Seale's death: "You should have gave him the money."

Mr. MacNeil said he went to city police shortly after Mr. Marshall was sentenced for the murder of Seale in 1971. He "hit the bottle real hard" after the stabbing and felt "terrible, terrible" about what had resulted.

Trial judge Mr. Justice Merlin Nunn heard arguments in the absence of the jury after prosecutor Frank Edwards told the court before the lunch break that his case was

closed. In the afternoon, Mr. Edwards called Mr. MacNeil and Mary Ebsary, wife of the accused, as the last two crown witnesses.

Very Excited

Mrs. Ebsary, who separated several years ago from her husband, recalled a "very excited" and "very talkative" Mr. MacNeil arriving at the house around midnight. She said he told her: "Roy did a good job on that fellow tonight. He saved my life."

Mr. Ebsary rushed into the kitchen in an "agitated manner," she said.

She also testified her husband had complained twice previously that he had been accosted in the park, and she had told him to stay away from there.

"There was never any physical signs that he had been attacked or whatever."

RCMP Corporal James Carroll told the court he was present in 1982 when part of a flower bed was dug up at Mr. Ebsary's home the day after the accused had given his taped statement admitting to the stabbing and claiming he had buried the blade of his knife in his garden. No blade was found.

Cpl. Carroll was also questioned about a Jan. 26, 1982, letter to John MacIntyre, former Sydney

police chief and officer in charge of the 1971 investigation of Seale's death. The letter on behalf of Mr. Marshall from Dartmouth lawyer Steven Aronson sought to reopen the case, naming Mr. Ebsary but making no mention of Mr. MacNeil or robbery.

The letter, which prompted the investigation that led to the acquittal of Mr. Marshall, was not read in court.

Cpl. Carroll also said the "general outline" of the RCMP investigation was told to Mr. Marshall when he was interviewed in Dorchester penitentiary, but the officer couldn't recall telling him any details of what others had recently said.

The references to robbery in the 1982 statement came from Mr. Marshall himself, Cpl. Carroll said.

As part of crown evidence, Mr. Justice Nunn read to the jury previous trial testimony of the late

Leo Mroz, a city police constable who attended the scene of the stabbing in 1971.

The constable testified that five to seven minutes after arriving at the scene he first noticed Mr. Marshall leaning against a tree, 200 to 300 feet from where Seale was slumped

in the street. He said Mr. Marshall was clasp his arm and was apparently hurt.

The judge also read as defence evidence the testimony of Brian Doucet to the 1971 preliminary hearing in the Marshall case. Mr. Doucet, then living at 130 Crescent St., said Mr. Marshall and another young man came to his door to ask for an ambulance because a person was hurt.

Mr. Doucet said he would call the police first and then an ambulance. He said Mr. Marshall showed a wound on his arm but there was no blood.

Defence witness Merle Davis, night supervisor at City Hospital, recalls seeing "a very superficial open wound" on Mr. Marshall's arm when he arrived at the hospital. She said it was not bleeding but she believes it was later stitched.

Frederick Decker, officer in charge of the Sydney weather office, testified for the defence that, based on local records, it was probably overcast in Sydney around the time of the stabbing, with very light drizzle or possibly very light rain.

Legally Blind
Sydney optometrist Dr.

Edward Ryba testified that Mr. Ebsary is "essentially legally blind" without glasses now, but would have about 85 per cent of normal vision with glasses. In 1971, he would have had about 80 per cent of normal vision without glasses.

Revere Slowbridge, who said she has been taking care of Mr. Ebsary since August, 1983, explained to the court that Mr. Ebsary has not been wearing his glasses during the current trial because they were misplaced.

Mr. Justice Nunn, in one of his rare comments on evidence in the presence of the jury, questioned the relevance of defence testimony about glasses.

Defence lawyer Luke Wintermans also called David Hatchford, who described himself as an author and actor, and began to question him about what Donna Ebsary, daughter of the accused, had told him after they met in 1974.

The prosecution objected and the jury was excluded from a brief courtroom discussion. Mr. Wintermans ended his questioning of the witness when the jury returned.

CAPE BRETON POST
JAN. 16, 1985

Ebsary Convicted Of Manslaughter; Sentencing Set For Jan. 30

By Doug McGree
Staff Writer

Roy Newman Ebsary, 73, was found guilty for a second time Thursday of the stabbing manslaughter of 17-year-old Sandy Seale near Sydney's Wentworth Park in 1971.

Mr. Ebsary sat impassively at the front of the courtroom and Donald Marshall, Jr., wept softly at the back as the jury foreman delivered the verdict.

Making his way through the crush of TV cameras and reporters outside the courtroom, a smiling Mr. Ebsary said he had expected the verdict. His first trial ended with a hung jury and the second with a conviction.

Mr. Ebsary remains free until sentencing by Mr. Justice Merlin Nunn on Wednesday morning, Jan. 30.

The seven-woman, five-man jury retired at 2:34 p.m. and rendered a verdict at 8:16. They spent a total of just over 3 1/2 hours in the jury room.

Mr. Marshall, 31, who served 10 years and 10 months of a life sentence for the murder of Seale, said he feels justice has been done.

"I'm glad it's over. I hope this will do it this time," he said.

Lawyer Shaken
Defence lawyer Luke Wintermans appeared shaken by the verdict, slumping in his chair and shaking his head.

"There's no justice, no goddamn justice," he said moments later outside the courtroom. "I'm quitting. There's no justice in this world."

Going down the stairs, he hurried his court gown ahead of him to the landing of the stairway, then kicked it the rest of the way to the bottom.

Earlier in the day, Mr. Wintermans had ended his summation to the jury on a less dramatic emotional note. Vigorously attacking Mr. Marshall's actions on the night Seale was stabbed and his credibility since then, Mr. Wintermans concluded his 90-minute summation by saying: "I feel sorry for Sandy Seale because he got mixed up with Donald Marshall."

The lawyer paused, drank some water, then sat heavily in his chair and rested his head in his arms on the desk, telling the court he could say no more.

Over At Last
Donald Marshall, Sr., father of the man once convicted of the killing, pointed out after the verdict that Mr. Ebsary was convicted once before, and the case is "up in the air" at least until sentencing.

"I hope this will do it this time," he said. Caroline Marshall, mother of Donald, Jr., said she feels her son's name has finally been

cleared.
"I wish my son had had a fair trial like this in 1971," she said. "It would have been dismissed today."

She said references to her son during the trial as famous, and accusations that he is trying to appear like a saint, hurt both her and Donald, Jr.

Oscar and Leobha Seale, parents of Sandy, attended much of the trial but were absent for the verdict.

Prosecutor Frank Edwards said he couldn't offer a guess at whether the verdict turned the verdict.

"It's a tragic hope this is the end," Mr. Justice Nunn said. "I feel sorry for the jury because they were turned" by the jury.

Prosecutor O'Neil said he would be pleased to leave the room for conviction of the prosecutor of terms" as soon as the jury retired.

Saying it would be to imagine a charge could be more unfair Edwards objected the judge had overruled the crown summation and had instructed the jury incorrectly on law of self-defence.

jury there was no explanation of why the older men were called back.

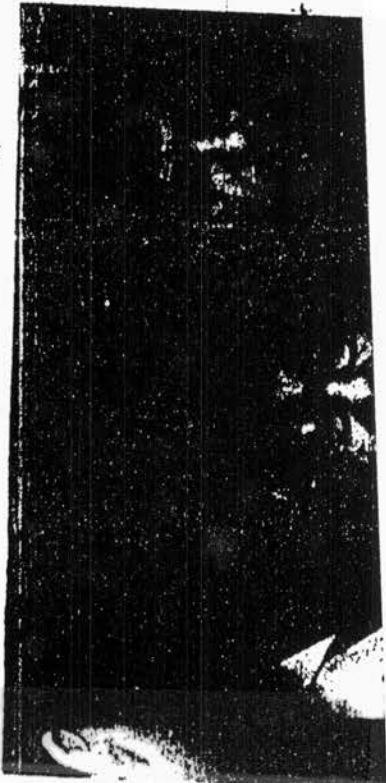
As the jury retired, Mr. Edwards objected that the judge had painted the issue as a black and white choice between accepting entirely either the MacNeil or the Marshall account.

"Those stories as presented in this trial are not irreconcilable," he argued. He was referring particularly to Mr. Ebsary's fatal stab to be justified, he would have had to be "under reasonable apprehension of death or grievous bodily harm."

not believe on reasonable grounds "that there was no other way to preserve himself. The judge stressed that any reasonable doubt had to be resolved in favor of the accused.

"There was no apprehension whatever on the necessary part, let alone on the apprehension of grievous bodily harm or death."

Mr. Edwards told the jury that he was referring particularly to Mr. Ebsary's fatal stab to be justified, he would have had to be "under reasonable apprehension of death or grievous bodily harm."



CAPE BRETON POST
JAN. 18, 1985

Ebsary convicted again in Nova Scotia slaying

SYDNEY, N.S. (CP) — Donald Marshall wept softly at the back of the courtroom yesterday as a jury found another man guilty in the slaying for which he had spent 11 years in prison.

Roy Ebsary, a frail 72, showed no emotion as the jury declared him guilty of manslaughter in the 1971 stabbing of Sandy Seale in a Sydney park.

Mr. Ebsary will be sentenced on Jan. 30. It was his third trial on the same charge, the first ending in a hung jury and the second in a conviction that was overturned. He had been sentenced to five years before the conviction was successfully appealed.

Mr. Marshall, 31, tired of the long road toward vindication, expressed the hope his journey

was finally complete.

"I'm glad it's over," he said. Asked whether justice had been done, he said simply: "Yeah."

After Mr. Marshall's determined effort over the years to prove the justice system had failed him, Thursday's verdict left Mr. Ebsary's lawyer crying foul.

"There's no justice," declared Luke Winterman, who threw his lawyer's robe on the landing of a staircase outside the courtroom and then kicked it the rest of the way down the stairs.

Mr. Marshall was convicted of murdering Mr. Seale in 1971 but continued to protest his innocence until finally, in 1982, the RCMP came up with new evidence casting doubt on the verdict.

Globe & Mail
Jan 18, 1985

Ottawa paying half of Marshall compensation

OTTAWA (Staff) — The federal government has agreed to pay a half of the \$270,000 compensation granted Donald Marshall Jr. by the provincial government last fall, federal Justice Minister John Crosbie announced Tuesday.

Mr. Crosbie said in a statement issued here that the federal cabinet has authorized "an ex gratia payment of \$135,000" to the provincial government.

The minister said the federal contribution comes "as part of the federal involvement vis-a-vis financial compensation of Donald Marshall Jr."

Mr. Marshall was wrongfully convicted in 1971 of the murder of Sandy Seale and had subsequently served 11 years of a life sentence when he was retried and acquitted in 1983.

The Buchanan government announced the \$270,000 compensation to Mr. Marshall last fall two days before the provincial election call.

CHRONICLE HERALD
APRIL 17, 1985

How Donald Marshall case unfolded

TS JUN 8 1986

Was Marshall framed or was he the victim of a belief honestly held by police that he was the murderer?

By Alan Story/Toronto Star

HALIFAX — In mid-June 1971, John MacIntyre, staff sergeant of detectives of the police department in Sydney, N.S., was tying up the loose ends of a murder case.

It was a case that would make national headlines for the next 15 years.

The sergeant had arrested Donald Marshall Jr., a 17-year-old Micmac Indian who lived up on the Membertou Reserve at the edge of town. It was the first murder since 1966 in Sydney, the small and usually pretty quiet, Cape Breton steel city of 30,000 people.

MacIntyre had no reason to believe the case against Marshall would not produce a conviction.

Two young fellows had told him they had been in Wentworth Park near midnight on May 28 and seen Marshall stab Sandy Seale.

Another local girl could also put Marshall and Seale, and no one else, in that section of the park after the Friday night dance across the street in St. Joseph's church hall.

Still, MacIntyre decided he needed more evidence. He thought he needed a sample of Marshall's blood to link him more directly to the murder.

MacIntyre believed that Marshall had stabbed Seale and had then turned the knife on his own arm and made a long gash.

Marshall's self-inflicted wound, MacIntyre thought, was intended to cover up his involvement and instead put the blame on an older, white-haired man in a long coat Marshall kept saying was responsible.

At the time, MacIntyre had in his possession the knife-punctured jackets Seale and Marshall had worn that night. But, while there was sufficient blood on Seale's jacket to get a blood sample, there wasn't enough on Marshall's.

Might clinch case

Getting Marshall's blood might clinch Detective MacIntyre's case.

Upon talking to a Sydney doctor, MacIntyre learned that the doctor would soon be removing the stitches from Marshall's arm wound at the Sydney hospital.

Could the doctor surreptitiously get a sample of Marshall's blood while he was taking out the stitches? MacIntyre asked. The doctor said he would try.

But Marshall never kept his appointment at the hospital. Instead, he stayed inside the Cape Breton County Jail where he removed the 10 or 12 stitches himself with a pocket knife.

As it turned out, MacIntyre did not really need a sample of Marshall's blood to convict him five months later in November, 1971, on evidence that later was shown to be perjured.

Marshall ended up spending 10 years and 10 months in prison for a murder he did not commit.

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This surreptitious attempt at getting Marshall's blood is part of the new evidence in the intricate, 15-year Marshall saga that is yet to end.

The incident, and other startling evidence, was expected to be revealed here in Halifax during a defamation suit launched by now-retired Sydney police chief Mac-



Roy Ebsary: This man was convicted of Sandy Seale murder 12 years later.

Antagonists: Donald Marshall, above, spent 10 years and 10 months in prison for a murder he didn't commit. Sydney, N.S., police officer John MacIntyre, right, helped to put him behind bars.



MacIntyre against the Canadian Broadcasting Corp.

The two-year-old suit resulted from comments made in November, 1983, on the CBC Radio program *Sunday Morning* about why Marshall had spent 10 years and 10 months in prison for a murder he did not commit.

On the program, several young Indians said the young Indian was the victim of racism, fabricated evidence and perjured testimony at his 1971 trial.

MacIntyre's defamation suit was expected to last three weeks and was to hear evidence from more than 50 witnesses, and could, in effect, have become an inquiry into the controversial Marshall case.

Over the past four years, citizens' groups, native organizations and opposition politicians in Nova Scotia and across the nation have been demanding such a probe. But the Tory government of Premier John Buchanan has always turned them down.

It was thought that perhaps MacIntyre's suit would finally bring out the whole complex story. The trial would provide an opportunity to examine how Marshall was, and still is, the victim of one of the worst miscarriages of justice in Canadian judicial history.

The trial was not to be. It was to start here last Monday

morning. But at 11.30 the night before, unknown to most people, MacIntyre's lawyer Ron Pugsley told lawyers for the CBC that his client would not be going to court. After a day of spinning out various deals and proposed settlements, MacIntyre had abandoned his suit. The CBC had won.

It was a partially pyrrhic victory. After spending more than \$100,000 in legal costs to prepare for the trial and lining up many witnesses, the CBC was, in effect, denied a chance to present its case for the defence.

More importantly, "the rotten things in this case from top to bottom that need to be exposed," as Cape Breton journalist Parker Barrs Donham put it, will again stay locked up in RCMP files and witnesses' memories.

However, the defamation suit does provide a new opportunity to

examine the case. In preparing for it, lawyers for both sides discovered, under oath, numerous witnesses and interviewed, in depth, many people who were about to give evidence.

The Toronto Star has examined that discovery evidence. The incident about the blood, for example, is detailed in one section of the 240 pages of discovery evidence MacIntyre gave under cross-examination to CBC lawyers in Halifax on Sept. 4 and 5, 1984.

It is already well-documented that Donald Marshall did not murder Sandy Seale.

But, as we examine this new evidence and the interviews, questions arise the foremost of which is: Was Marshall framed? Or did he become a victim of an honestly held belief by police that he really was the murderer?

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The fateful connection between Marshall and MacIntyre actually began a few years before May 28, 1971, when 17-year-old Sandy Seale was fatally stabbed.

Emily Clemens of Sydney, now 63, tells of an incident involving MacIntyre and Marshall that took place about a year before the Seale murder.

Clemens spoke about the incident in an interview with The Toronto Star last week.

Some young Sydney high school girls, including Clemens' daughter Joan, then about 14 at the time, had been seen drinking and MacIntyre was convinced Marshall had supplied the girls with the liquor, Emily Clemens recalled.

MacIntyre and another officer came up to the Clemens' home to find Joan.

She was at school. But as soon as Joan got off the school bus that afternoon, MacIntyre picked her up and drove her down to the police station.

For several hours, the large, burly detective questioned her alone about the drinking incident.

But according to Emily Clemens, despite MacIntyre's pressure, Joan refused to say what he wanted to hear: that Donald Marshall had given her and her friends the liquor.

Instead, Joan said the girls had chipped in some money and bought the liquor.

At one point during the interrogation, an agitated Emily Clemens barged into MacIntyre's office to tell him to stop badgering her daughter.

MacIntyre finally drove Emily and Joan home. As Joan got out, MacIntyre asked Emily to stay in the police cruiser. He then war-

ed her that her daughter "was hanging around with the wrong crowd," and particularly Donald Marshall.

And in a parting shot, MacIntyre said, "if I can't get him this (the liquor charge), I will get him on something else," Emily Clemens recalled.

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A year later, on Saturday afternoon May 29, 1971, MacIntyre found himself dealing with a case involving Marshall.

He took charge of an investigation in the stabbing of Sandy Seale the night before.

MacIntyre believed the circumstances of the murder pointed Marshall as the chief suspect, according to a 1982 RCMP re-investigation of the case.

The Mountie probe followed a letter by Marshall's lawyer saying there was new evidence that Marshall had been wrongly jailed. The inquiry was conducted by Sgt. Harry Wheaton and C James Carroll under the supervision of Inspector Don Scott, commanding officer of the Sydney detachment.

Telex to RCMP

MacIntyre's almost instant suspicion of Marshall was reflected in a police telex sent from Sydney at 3.11 a.m. on Sunday May 30 to the RCMP headquarters in Halifax.

It read: "Alexander Seale (Negro) a 17 yrs of Westmount Cape Breton County died approx 8p 29-5-71 at Sydney Hospital as a result of abdominal stab wound. Seale located at Wentworth Park Sydney 12.15am 29-5-71 in unconscious state and admitted in critical condition."

"Donald Marshall Jr Indian, age 17 yrs Gallagher Street, Membertou, Sydney also located same area in park. Also admitted to hospital with severe laceration to right arm. Condition satisfactory. Circumstances presently being investigated Sydney PD. Investigation to do reveals Marshall possible person responsible."

"However Marshall states and deceased were assaulted and unknown male approx 5'8" 6" tall grey hair approx 50 yrs who stated he did not like Indians or Negroes and assault both persons with a long knife."

If MacIntyre had believed what Marshall had told him when first questioned him that weekend, there never would have been

See TRIAL'S page 14

TORONTO STAR
June 8, 1986

Tral's star witness had a 'liability to fantasize'

Continued from page H1

Donald Marshall's story. Marshall's description of this "unknown male" wearing glasses and a long dark coat, in fact, fit Roy Newman Ebsary, then 39, and the man who 12 years later would be convicted of killing Seale.

As we shall see later, MacIntyre regularly received more and more evidence from late May until mid-November that year which would also strongly point to Ebsary. It was ignored. It was "superceded in importance" by other evidence, MacIntyre explained in his discovery testimony.

Certainly, little effort was expended in checking out what later proved to be the first lead about the case which Marshall had given him, according to MacIntyre's own admission during the discovery hearing.

According to the Cape Breton Post of May 31, 1971 "seven men were placed in a police lineup at headquarters Sunday afternoon, but Marshall could not identify any of them."

Ebsary, a well-known knife man in the Sydney area, was not in that lineup. And, as far as it can be determined by RCMP officers from the shoddily kept documents in the case, no further efforts were undertaken to locate or question him.

Instead, the police department focussed its energy on building a case against Marshall.

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Three local youths — John Pratico, 16, Maynard Chant, 15, and Patricia Harris, 14 — would become MacIntyre's key eyewitnesses as he began to solve the Seale murder.

Of the three, Pratico became the most important. At Marshall's trial in November, he was the crown's only eyewitness to the killing.

Pratico testified that, while crouching in some bushes and drinking a beer that night in the park, he had heard Marshall and Seale get into an argument and seen Marshall stab Seale with a shiny object.

Pratico was even sure, according to his evidence, that Marshall held the shiny object in his right hand.

The truth is that, as Pratico and his mother admitted in interviews with The Star, he first heard about the Friday night stabbing down in Wentworth Park the next morning on the 8 o'clock radio news. But Pratico still knew very little, as the report didn't give many details.

Close to: Sauntering macmillan

story, who should soon come along but Marshall himself. Seale's stabbing was the talk of the streets and Marshall filled in Pratico on what had happened.

Pratico then passed the story on to several other boys. One of those boys, it turned out, was an informant for the Sydney police department.

The informant, who remains unnamed, went to the police. MacIntyre was told Pratico knew how Seale had been stabbed. MacIntyre and his assistant on the case, Det. Billy Urquhart, had their first break in the case. MacIntyre, however, could not have picked a worse eyewitness for a murder trial.

Pratico loved to be the centre of attention. A friend who grew up with him says, "John was always telling the best stories on the street, but no one ever believed him."

Pratico's problems, however, went much deeper. Since August 1970, he had been a psychiatric patient of Dr. M.A. Mian, medical director of the Cape Breton Hospital.

At the time, Mian's diagnosis of Pratico, as stated in a sworn affidavit for the 1982 RCMP probe, was that he suffered "from a schizophreniform illness manifested by a liability to fantasize and thereby distort reality" and a "rather childish desire to be in the limelight."

As well, Pratico has said in an interview with The Star, "I was almost blind in one eye."

'Wholly unreliable'

And in the 1982 probe, Mian told RCMP Pratico was "a wholly unreliable informant and witness."

Acting on the tip from his informant, MacIntyre called Pratico down to the police station on Sunday May 30 to talk about the stabbing of Seale.

Pratico was scared "Geez, I thought they might blame me," Pratico recalled later.

MacIntyre, as the discovery evidence indicates, got nowhere during that first interview. All Pratico knew was what Marshall had told him the day before.

MacIntyre did not believe Pratico and, four days later on June 4, he interviewed Pratico again.

In a sworn statement given to the RCMP in 1982, Pratico alleged that the Sydney police department pressured him into lying about what he saw on the night of the murder. RCMP Insp. Scott said following his inquiry that he was convinced that Pratico, as well as the other youths, Chant and Harris,



A young Donald Marshall is escorted into court where he was convicted of non-capital murder. CP PHOTO

admitted for psychiatric treatment at the Nova Scotia Hospital in Dartmouth, 400 Filmon Street (267) in 1968.

The trial's star witness might not be able to testify.

A Sydney police vehicle was involved in the case — to drive to the hospital. And in the trial, two young boys, Pratico and Chant, were interviewed about the case. Pratico was interviewed in 1982, Chant in 1983. MacIntyre said he was "convinced" that Pratico, as well as the other youths, Chant and Harris,

admitted for psychiatric treatment at the Nova Scotia Hospital in Dartmouth, 400 Filmon Street (267) in 1968.

CP PHOTO

At 1:20 a.m. the next morning, however, Harris changed her statement.

She did not remember seeing the old man. And, she told MacIntyre, yes, she had indeed seen Sandy.

Harris' version no longer agreed with Marshall's. And she was also ready to support a key part of Pratico's and Chant's version of events.

In an affidavit to the RCMP given in December 1982, Harris — the most articulate of the three youth — describes her experience during that long night at the police station.

"I found they (MacIntyre and Urquhart) were needlessly harping at me, going over and over telling me what they thought I should see... They took statements and changed them... My parents were not allowed in... I recall them banging their fist on the desk..."

"There was long hours of going over it and the word 'perjury' was brought up a lot" by Urquhart and another officer whose name she could not recall, she told the RCMP probe.

After that night, MacIntyre's case against Marshall went fairly smoothly for the next few months. ☆☆☆

The young Miamae, in custody since June 4, had his preliminary hearing July 28. He was committed to stand trial for non-capital murder during the fall session of the Supreme Court of Nova Scotia.

Visit in jail

On the eve of the trial, Marshall had a visitor in jail — Bernie Francis, a social worker from the Membertou Reserve.

He told Marshall that the murder weapon had just been found and that he should change his plea to guilty.

In fact, no murder weapon had been found.

Why did Francis, then, say that? "On whose instructions did he do that?" MacIntyre asked CBC lawyer Robert Murrant at the Sept. 5, 1984 discovery hearing.

"That is what I'm attempting to determine," Murrant told MacIntyre.

"I never heard about anything like that, sir," MacIntyre responded.

Now that MacIntyre's defamation case is not proceeding, there will not be testimony and cross-examination of Francis to find out the truth, at least for the immediate future.

Tomorrow: The 1971 legal cha-

The tangled trial of Donald Marshall

18 JUN 9 1986 A 8

Racial prejudice and perjury helped put him behind bars

18 JUN 9 1986 A 8

When Donald Marshall was released from prison in March, 1982, after serving 11 years for a 1971 murder he did not commit, one of the biggest questions of Canadian judicial history was: How and why was he ever charged and convicted?

New evidence has been unearthed as part of a defamation case against the CBC by former Sydney, N.S. police chief John MacIntyre — the man who arrested Marshall.

The CBC alleged, and MacIntyre denied, that Marshall was a victim of racism, police misconduct and coercion of witnesses. The case that was to start last week was, however, dropped by MacIntyre at the 11th hour.

The CBC spent \$100,000 gathering evidence and interviewing more than 50 witnesses. Alan Story, The Star's Atlantic correspondent, who has been reporting on the complex Marshall saga for years, has examined that discovery evidence and interviewed subpoenaed witnesses.

The only defence witness Rosenblum called was Donald Marshall, who turned out to be a poor one. Several times, the trial judge, Mr. Justice J.L. Dubinsky, had to order the soft-spoken Marshall to speak up. It is far from certain that the jury heard much of his testimony.

Finally, Rosenblum had to overcome the racial prejudices of at least one juror.

Interviewed by The Star after Marshall's innocence was proved, the juror denied any discrimination was at work in the case.

But, then he added: "With one redskin and one Negro involved, it was like two dogs in a field — you knew one of them was going to kill the other."

"I would expect more from a white person," he said. "We are more civilized."

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The Marshall trial began Nov. 2 in the Cape Breton County Court-house near Wentworth Park where Seale was stabbed.

Prosecutor MacNeil, who died in 1978, told the jury that MacIntyre had conducted "a brilliant" investigation of the case being presented to them.

Pratico testified that he was sitting in bushes in Wentworth Park drinking beer when he saw Marshall and Seale get into an argument. Then Marshall pulled out a shiny object and stabbed Seale, he said.

Under cross-examination, Pratico did mention that in the three hours before the killing, he had consumed half a bottle of wine, six quart bottles of beer and three pints of beer.

Talking about that evidence 12 years later, Pratico said he put in the part about the heavy drinking so that no one would believe him. He knew in his heart that he was giving the wrong evidence and wanted the jurors not to believe him.

In the end, Pratico would be in crown's only firm eyewitness.

Wasn't there

The truth — which the jury, of course, never heard — was that Pratico was in his home down the street at the time of the murder.

Not surprisingly, the fiction Pratico was repeating was almost exposed.

During a recess, Pratico began talking with Marshall's father, Donald Marshall Sr.

With MacNeil, MacIntyre and Marshall's other lawyer, Simon Khattar, listening in, Pratico blurted out that Marshall had not stabbed Seale.

Asked back in court to explain, Pratico said: "I was scared." He did not say why, or who it was he feared.

Chant did not give the evidence MacNeil and MacIntyre expected or wanted. While Chant had testified at the July 28 preliminary hearing that he was sure it was Marshall who had stabbed Seale. At the trial, he said he was not sure.

Chant was declared a hostile witness.

Patricia Harriss' testimony was of some value to the crown. Although she wasn't an eyewitness, she was able to substantiate Pratico's story that no one else, besides Marshall and Seale, was on the scene just before Seale was killed.

Marshall, in his evidence, told of how two men came up to him and Seale in the park that night and asked for cigarettes.

Then, the older of the two men



Wrongly jailed: Donald Marshall leaves the Nova Scotia Court of Appeal during the 1982 retrial that saw him cleared of murder after 11 years in prison. Witnesses, pressured by police, fabricated evidence in the original 1971 trial that saw Marshall wrongly convicted of stabbing a friend.

said, "we don't like niggers or Indians," took out a knife, stabbed Seale in the stomach and slashed him on the arm, Marshall testified.

Marshall, as we shall find out, was not telling the whole truth either.

The jurors deliberated for four hours. Their verdict: guilty of non-capital murder.

Young Marshall buried his hands in his face and sobbed. Justice Dubinsky sentenced him to life in prison.

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There is one seemingly small piece of evidence which jumps out at you when you go back over the transcripts and talk to the surviving members of that Cape Breton jury.

So long after the trial, they cannot be expected to remember many details. And few do. But one piece of prejudicial evidence made an impact on most of the jurors.

One of the trial witnesses was Merle Davis, a nurse. She was at Sydney City Hospital when Marshall was brought with the knife wound on his arm after Seale was stabbed.

At the trial, she was asked by MacNeil whether she had noticed anything, besides the wound, on Marshall's arm.

Yes, she said. She had seen a tattoo.

"Can you tell us what that tattoo is?" MacNeil asked.

"I hate cops," she recalled.

The evidence, left unchallenged, was admitted.

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Less than two weeks after Marshall was convicted the focus of the Seale case switched, however briefly, back to 39-year-old Roy Ebsary, a former seaman and vegetable cutter who lived two blocks from Wentworth Park.

Since MacIntyre had begun his investigation in late May, he had received evidence suggesting two other men, besides Marshall and Seale, were in Wentworth Park the night Seale was stabbed.

MacIntyre first got details of a man fitting Ebsary's description on May 30 from Marshall.

A detailed description was given to Sydney police the next day by George MacNeil, 11, and

Roderick MacNeil, 17.

On May 28, they left a Friday night dance for teenagers at St. Joseph's church hall and walked across the street to Wentworth Park where they saw "two men hanging around."

One man had gray hair, a round fat face, was "trampish looking" and in his late 50s (Ebsary).

The other man was tall, had dark hair and a thin face, was in his late 30s or early 40s, and was wearing a short brown jacket (This was the fourth man).

And in her first statement of June 17, Patricia Harriss also said she saw Marshall talking with two other men, one of whom was short, had white or grey hair, and was wearing a long coat.

This evidence not only substantiated Marshall's version of what happened and who was on the scene, but it also contradicted what the witnesses against him were to say in court.

But the problem as far as the police were concerned was that no one had come forward with any names to match these descriptions.

Then, on Nov. 15, MacIntyre got the names. It was a startling, almost Hollywood-style development.

In the days following Marshall's conviction, Jimmie MacNeil, 25, an honest laborer who lived down in Sydney's working class district of Whitney Pier, was having a lot of trouble sleeping. His conscience was bothering him.

He knew Marshall had not stabbed Seale. He was there that night. He was the fourth man. His drinking buddy, Roy Ebsary, had stabbed Seale.

Plucking up his courage, MacNeil went to MacIntyre Nov. 15 to tell him what had really happened on May 28. Marshall would be cleared when the police heard his story, MacNeil thought.

He said Marshall and Seale had tried to roll Ebsary for his wallet while he and Ebsary were on their way home from the State Tavern.

His statement to MacIntyre reads:

"The colored fellow said 'dig, man, dig.' Then Roy Ebsary said, 'I got something for you.' He put his hand in his right pocket and took out a knife and drove into

the colored fellow's side."

MacIntyre called Ebsary in for questioning. Ebsary admitted he had been in Wentworth Park on May 28, the same night this boy was stabbed, and that there had been a fight between him and a short, young fellow and between MacNeil and a tall, young fellow.

"Did you stab the man you were wrestling with?" asked MacIntyre.

"Hell no," replied Ebsary. "Why would I stab him?"

If MacNeil's story didn't give enough impetus to re-open the Seale investigation, a new disclosure, which appears in MacIntyre's discovery evidence in the defamation suit, should have triggered alarm bells.

After Ebsary and MacNeil were questioned, a check was made with the RCMP computer in Halifax to see whether either man had a criminal record.

The answers came back Nov. 17. MacNeil had no prior convictions. Ebsary had one breach of liquor laws and, more importantly, a criminal conviction for possession of a concealed weapon — a knife.

In 1971, a year later, the memory of Ebsary had faded for at least some members of the Sydney police. MacIntyre turned over the file containing MacNeil's evidence to Lewis Matheson, then the assistant prosecutor at Marshall's trial and now a judge in Nova Scotia.

Matheson passed the file on to the RCMP. He also informed Robert Anderson, then Nova Scotia deputy attorney-general and now also a provincial judge.

Neither Marshall nor his lawyer was ever told of MacNeil's story.

The RCMP conducted a minimal investigation. The only thing done was to give polygraph tests to Ebsary and MacNeil on November 23.

The examiner concluded that Ebsary was telling the truth. But he said he had "an indefinite opinion" about MacNeil's test.

The RCMP investigation was complete. Case closed.

In January, 1972, Marshall failed to win his appeal. He was transferred to Dorchester Penitentiary and his long wait for justice began.

By Alan Story Toronto Star

HALIFAX — When you look back at Donald Marshall's 1971 trial in Sydney, it's quite astounding that the three-day proceeding went as smoothly as it did.

The foundation of the crown's murder charge against Marshall was, after all, the testimony of three teenagers that was to prove perjured.

Keeping such a charade on the rails and convincing a jury to convict an innocent man is seldom an easy task.

The police officer who had gathered most of the evidence about the stabbing death May 28, 1971, of Sandy Seale was John MacIntyre, then sergeant of detectives of the Sydney police force.

In the three weeks after Seale's death, MacIntyre had convinced John Pratico, 16, and Maynard Chant, 15, that they had seen Marshall fatally stab Seale. And he had lined up 14-year-old Patricia Harriss to corroborate the story they were about to give.

Still, there were some major holes in the case MacIntyre handed over to experienced crown attorney Donald C. MacNeil.

MacIntyre had no found murder weapon. Nor did he have an autopsy report, because no autopsy was done on Seale's body after he died May 29. And MacIntyre did not have any photographs of the crime scene.

As well, MacIntyre had no confession from the young Micmac Indian. And any possible motive for the killing was weak. Marshall and Seale, both 17, were known to be good friends.

No crown brief

But Moe Rosenblum, the Sydney criminal lawyer defending Marshall, also had several problems to overcome.

For a start, MacNeil had not given Rosenblum access to a key trial document — the crown brief, which includes statements taken by police from witnesses who are to testify.

There was no crown brief to give because Detective MacIntyre never prepared one, as the Royal Canadian Mounted Police found out in 1982 when they re-investigated the case.

If the contradictory police statements of the three youths had been given to Rosenblum, "the case would never have gone beyond a preliminary hearing," says Felix Coombs, 61, 117

Epilogue: What the players are doing now

Donald Marshall: It was not until March, 1982, that he would be freed and not until May, 1983, that he would be officially acquitted of the murder. Last year, he received \$270,000 compensation for his 11 years in prison, much of which went toward paying his legal fees.

He now lives and works in Dartmouth, N.S.

John MacIntyre retired as chief of the Sydney police force in 1984 after a 41-year career.

Prosecutor Donald C. MacNeil died of a heart attack during a plane trip over New Jersey in 1978. At the time, it was no longer a crown attorney. Ironically, on the day he died, the Progressive Conservative government of Premier John Buchanan had re-appointed

Jimmie MacNeil still lives in Sydney's Whitney Pier and works, whenever he can find a laboring job.

Harry Wheaton, a Royal Canadian Mounted Police staff-sergeant and the man who re-investigated the Marshall case in 1982, has since been transferred to the divisional headquarters in Halifax.

TORONTO STAR
June 9, 1986

Jailed 11 years for a murder he didn't commit: why?

The case of Donald Marshall Jr.:

Marshall was jailed for murder in 1971 on the word of a mentally disturbed youth who fabricated a story under police pressure

Roy Ebsary was identified as the true murderer by Jimmie MacNeil, who was standing beside him when the killing occurred. MacNeil was not believed. His testimony lay in files in the Nova Scotia Attorney-General's office for a decade.

Someone in the Attorney-General's office blocked a 1982 RCMP investigation of the role of the Sydney police in the Marshall conviction

Several members of the Attorney-General's office at the time of Marshall's imprisonment are now judges. What did they do? Will the justice system come clean?



white-haired man in a long coat

INSIGHT, AUGUST 1986

Things were coming together nicely for John MacIntyre, head of the detective division of the Sydney police force in mid-June, 1971. He had finally been able to arrest Donald Marshall Jr., a 17-year-old Micmac Indian who lived on the Membertou Reserve at the edge of Sydney. But this was no small charge, such as giving liquor to a minor or vandalism, the charges MacIntyre had tried — and failed — to arrest Marshall for in the past. Now he had Marshall for murder.

Murders weren't — and still aren't — a common occurrence in Cape Breton's steel city of 30,000. The last one, still unsolved, had taken place in 1966. The Sandy Seale case, however, looked more promising. Two young fellows said they had been in Sydney's Wentworth Park near midnight on May 28 and seen Marshall stab Seale. A young girl could corroborate that Marshall and Seale — and no one else — were in that section of the park after the regular Friday night teen dance across the street in St. Joseph's church hall.

Still, MacIntyre wanted additional evidence — specifically a sample of Marshall's blood to link him more directly to the murder. MacIntyre believed Marshall

had stabbed Seale and then turned the knife on his own arm and made a long gash. Marshall's wound, MacIntyre thought, was intended to cover up his own involvement and put the blame on an older, white-haired man in a long coat Marshall said was responsible. The detective had the knife-punctured jackets Seale and Marshall had worn that night. There was enough blood on Seale's jacket to get a sample, but not enough on Marshall's. Getting Marshall's blood — then checking if any of it was on Seale's jacket — might clinch the case.

MacIntyre learned that a Sydney doctor would be removing the stitches from Marshall's arm wound at the Sydney City Hospital in a few days. Could the doctor surreptitiously get a sample of Marshall's blood at the same time? MacIntyre asked. But Marshall skipped his hospital appointment and removed the 10 or 12 stitches himself in prison with a pocket knife and MacIntyre never did get his blood.

Never mind. It wasn't needed. Five months later at Marshall's trial perjured evidence was an acceptable substitute. Marshall was convicted of second-degree murder. His sentence was life imprisonment. His appeal, three months later, was turned down. At Dorchester Penitentiary, Marshall was promised that if he confessed he could get an early parole. He refused. Finally in March 1982, after serving ten years and ten months, Junior Marshall was let out.

It had all been a mistake. MacIntyre, prosecutor Donald C. MacNeil and 12 Cape Breton jurors had got the wrong man.

• • • •

In the summer of 1986, many people are still wondering how it all happened. How Junior Marshall became the first Canadian known to have served a lengthy prison term for a murder he did not commit. How and why the Sydney police so bungled the case. How cover-ups prevented Marshall or his lawyer from getting access to new evidence two weeks after his 1971 conviction that would have immediately freed him and led to the conviction of another man. Why RCMP officers, who re-opened the Marshall case in 1982, were prevented from completing their investigation and examining the conduct in 1971 of MacIntyre and his assistant on the Seale case, Det. Billie Urquhart. And what, if anything, has been changed in our criminal justice system to try to prevent another such miscarriage of justice from occurring.

Answers have been meagre since Marshall's release. Despite repeated pleas from the press, native groups, opposition politicians, Marshall's lawyer and Marshall himself, Nova Scotia Premier John Buchanan and two successive attorneys-general have consistently refused to es-

COVER STORY

establish an independent, no-holds-barred, public inquiry, although an inquiry of some form has now been promised. In early June, hopes were also dashed that a libel suit, launched by MacIntyre, might become, in effect, such an inquiry. MacIntyre had launched the suit against the Canadian Broadcasting Corporation as a result of critical comments made in a November 1983 radio documentary about his handling of the case. But the night before the case was to come to trial on June 2, MacIntyre abandoned his libel action. More than 50 witnesses subpoenaed by the RCMP would not get a chance to tell their stories.

But details and new outrages of the Marshall saga continue to trickle out. The attempt at taking Marshall's blood without his knowledge, for example, is detailed in MacIntyre's own discovery evidence given in preparation for the libel trial. The 1982 reports of the RCMP re-investigators give other insights. So do the witnesses who were scheduled to testify in the MacIntyre vs. CBC case. The following account is based on these sources plus earlier trial transcripts and many interviews.

* * * *

The fateful connection between Marshall and MacIntyre actually began before Sandy Seale was killed. A year or so previous, MacIntyre suspected that Marshall had supplied liquor to some Sydney high school girls who had been seen drinking.

MacIntyre and another officer came to the home of Emily Clemens, one of the witnesses subpoenaed for the CBC libel suit, and asked to talk with her daughter, Joan, then 14 or 15, about Marshall. MacIntyre took Joan to the police station for several hours of questioning. The interrogation got heated. Joan refused to tell the large, burly detective what he wanted to hear: that Marshall had supplied her and her friends with the liquor. (In fact, the girls had got the liquor themselves). At one point, Emily Clemens burst into MacIntyre's office and told him to stop badgering her daughter. Later, MacIntyre warned Emily that Joan was "hanging around with the wrong crowd," and especially Donald Marshall.

Emily Clemens still remembers what MacIntyre said next. "If I don't get him on this (the liquor charge), I will get him with something else."

That "something else" fell into MacIntyre's lap on Saturday, May 29, 1971 when he came into work to take charge of the investigation of Sandy Seale's stabbing the night before. Less than 18 hours later, Marshall was already the chief suspect even though, at the time, MacIntyre had no murder weapon, no motive, no eyewitnesses, no photographs and no confession.

The almost immediate suspicion of

Marshall is evident from the contents of a police telex sent from Sydney to RCMP headquarters in Halifax the next day. "Investigations to date reveals Marshall possible person responsible..." the telex said in part, and concluded: "Marshall states he and deceased were assaulted by an unknown male approx. 5'8 to 6' tall gray hair approx. 50 years who stated he did not like Indians or Negroes (Seale was black) and assaulted both persons with a long knife."

There never would have been a Donald Marshall story if the Sydney police had believed Marshall. Marshall's description of Roy Ebsary, then 59, matched other descriptions of an old man wearing glasses and a long coat in Wentworth Park that night which Sydney police received from at least five other people in subsequent months. This evidence was ignored. It was "superseded in importance" by other evidence, MacIntyre explained in his discovery evidence for the libel trial. This was the evidence which MacIntyre would begin to assemble against Marshall in late May and June of 1971.

* * * *

Three Cape Breton youths — John Pratico, 16, Maynard Chant, 14, and Patricia Harriss, 14 — became MacIntyre's and the prosecutor MacNeil's key witnesses to the Seale killing. Of the three, Pratico became the most important. At Marshall's trial in November, 1971, he was the only witness who could testify that he was in the park on May 28, that he had heard Marshall and Seale get into an argument, and had seen Marshall stab Seale with "a shiny object." Pratico was even sure Marshall held "the shiny object" in his right hand.

But in fact, Pratico had learned about the Friday night stabbing the next morning on the radio news. Later that Saturday morning, Pratico went outside and, in one of the many ironies of the Marshall case, who should soon come along but Marshall himself. Marshall filled in Pratico about the details of the stabbing and Pratico, in turn, started spreading — and embellishing — the story to other youths. One teenager he told was an informer for the Sydney police, who in turn told the police Pratico knew how Seale had been stabbed. MacIntyre called in Pratico for questioning. It became the first break — in reality, botch — in the case.

MacIntyre could not have picked a worse eyewitness to a murder. On the streets of Sydney, John Pratico had a reputation for "telling the best stories, but no one ever believed him," recalls a boyhood friend. Pratico's problems went much deeper. Since August, 1970, he had been a psychiatric patient of Dr. M.A. Mian, medical director of the Cape Breton Hospital. According to Mian's statement to the RCMP in 1982, Pratico in

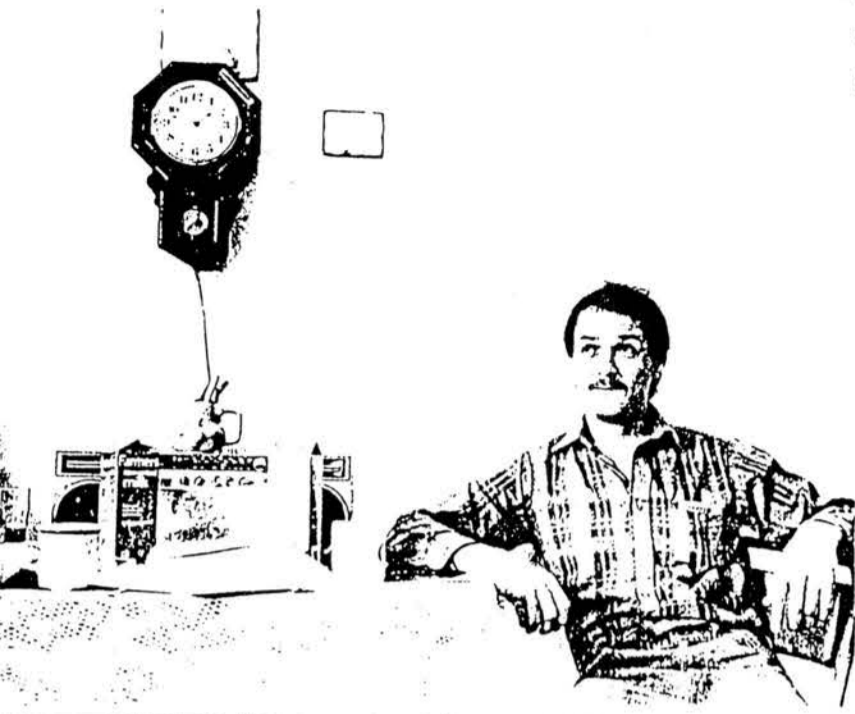
1971 suffered "from a schizophrenic form of illness manifested by a liability to fantasize and thereby distort reality" and a "rather childish desire to be in the limelight." Pratico, Mian concluded, was "a wholly unreliable informant and witness."

During MacIntyre's first interrogation of Pratico on May 31, he got nowhere. Pratico simply repeated what Marshall had told him the day before. Pratico was scared. "Geez, (I thought) they might blame me," he would say later. But on June 4, during a second interview, Pratico changed his story under pressure from MacIntyre. In a sworn statement given 11 years later to the RCMP, Pratico says "MacIntyre asked me what happened in the park that night. I said I didn't know... MacIntyre said I did know and, if I didn't tell him, I would be put in jail." Pratico remembers the questioning sessions well. During June, police officers sent for him at all hours. "They bought me hot sandwiches and cigarettes and coffee. They kept going after me... It was like a ping pong game," Pratico was to say later. But could all of this be one of Pratico's wild stories? MacIntyre insists it is. The RCMP doesn't think so. Following the 1982 re-investigation, Insp. Don Scott, head of the Sydney RCMP subdivision, concluded that, at Marshall's 1971 trial, Pratico, Chant and Harriss had "lied... under pressure from the Sydney police department."

Pratico almost didn't get to give his fabricated evidence. In August he suffered a nervous breakdown and was admitted to the Nova Scotia Hospital in Dartmouth. A Sydney police vehicle drove him there. Less than two weeks before the trial, a Sydney police car brought him back to Sydney from Dartmouth. Asked at the 1984 discovery hearings about the police car trips and his star witness' mental condition in 1971, MacIntyre said all he knew was that Pratico was "a nervous type chap."

Police questioning of Maynard Chant and Patricia Harriss took a similar approach. Chant, who lived in nearby Louisbourg, was, unlike Pratico, actually in Wentworth Park near midnight on May 28. But he didn't see Seale being knifed. He learned of the stabbing when Marshall, bleeding from the arm, ran up to him on a nearby street and said he and a friend had been stabbed. Marshall and Chant went back to where Seale was lying on the ground. Chant stayed while Marshall went for an ambulance (would a murderer get an ambulance for his victim?) and then left to hitch-hike home to Louisbourg. Sydney police, searching for possible witnesses, met Chant on a nearby road. But all Chant could tell them was what Marshall had told him a few minutes before: an old man had stabbed Seale.

To MacIntyre, Chant's story, like Pratico's was tainted: both had talked to Marshall. On June 4, hours after breaking Pratico down, MacIntyre and Urqu-



Marshall relaxing at home: a long ordeal and a controversy far from ended

... Marshall went to Louisbourg to question Chant again. At first, the 14-year-old youth refused to change his story. According to Chant's testimony in a 1982 appeal of Marshall's conviction, the officers then told him he had committed perjury on his first statement. "They began to tell me my record of probation and the trouble that I was into." They also told him that someone else (Pratico) had seen him at the park. Finally Chant blurted out that he had watched Marshall stab Seale.

At his 1984 discovery hearing, MacNeil denied he or Urquhart pressured Marshall or had even known of Chant's record of juvenile offences. He said he didn't know for sure that Chant was on probation in 1971. But yes, he said, Chant's probation officer was in the room while Chant was being questioned in Louisbourg.

Unlike Pratico and Chant, Patricia Harriss really did see something important that night in Wentworth Park. Unfortunately for the police's case, what she saw corroborated Marshall's version. What she saw would soon change.

In a statement taken on June 17 at 8:15 p.m. at the police station, Harriss told Urquhart she saw a short, white-haired man wearing a long coat in the park. When asked by Urquhart if she had seen Seale, Harriss replied "no." Five hours later, at 1:20 a.m., Harriss told MacIntyre that "yes," she had seen Seale, and that "no" she did not remember seeing an old man.

In 1982, Harriss recalled the long night she had spent in the Sydney police station years earlier. "I found they (MacNeil and Urquhart) were needlessly harping at me, going over and over telling me what they thought I should see," she told RCMP staff-sergeant Harry Wheaton. They took statements and changed

them... the word 'perjury' was brought up a lot... I recall them banging their fists on the desk... my parents were not allowed in."

On June 4, hours after Pratico and Chant became MacIntyre's eyewitnesses, Marshall was arrested and after a preliminary hearing was committed to stand trial for non-capital murder at the fall session of the Supreme Court of Nova Scotia.

The Crown's case against Marshall thus rested on testimony of three young teenagers. There were major holes in the case MacIntyre, a 28-year police veteran, handed over to prosecutor Donald C. MacNeil, a former cabinet minister in the Stanfield government. MacIntyre had no murder weapon. Nor, amazingly, was an autopsy done on Seale's body after he died May 29 in Sydney City Hospital. Nor did MacIntyre have any photographs of the crime scene. These are the types of evidence that often make favorable impressions on jurors. MacIntyre also had no confession from Marshall and the motive for the killing of Seale was weak: the two youths were known to be good friends.

Defence lawyer, Moe Rosenblum also had problems. The most critical was that he was not given access to the contradictory statements to police of Pratico, Chant and Harriss. Such statements are usually contained in a legal document known as a crown sheet, but as RCMP investigators learned in 1982, none was ever prepared for the Marshall trial. "From start to finish, the trial was a travesty of justice," commented Halifax lawyer Felix Cacchione while he was acting for Marshall between 1983 and 1986. (Cacchione is now a Halifax County court judge). If Rosenblum had been given the youths' various statements, "the case

would never have gone beyond the preliminary hearing," says Cacchione.

Rosenblum himself did not check out the background of witnesses, such as Pratico, who "was a very sick boy at the time," as his mother would say later, and who "should not have been allowed to testify." Marshall, the only defence witness called, also turned out to be a poor witness. Justice J.L. Dubinsky, the trial judge, repeatedly told the soft-spoken youth to speak up, and it's far from certain the jury heard much of his testimony.

Overcoming the racial prejudices of some of the 12 male jurors was Rosenblum's final problem. Interviewed 12 years later — and after Marshall's innocence was established — one juror denied there was any discrimination at work in the case. Then he added, "with one redskin and one Negro involved, it was like two dogs in a field — you knew one of them was going to kill the other." The juror continued, "I would expect more from a white person. We are more civilized."

At Marshall's trial, a total of 18 witnesses were called to give evidence at Marshall's three-day trial, but, as MacNeil said to the jury, the testimony of only two — Pratico and Chant — were important. As well, MacNeil added, MacIntyre had conducted a "brilliant investigation." Pratico testified he had been sitting in the bushes of Wentworth Park drinking beer when he saw Marshall and Seale get into an argument. Then Marshall pulled out a shiny object and stabbed Seale, Pratico said.

Under cross-examination, Pratico said that in the three hours before the stabbing he had consumed half a bottle of wine, six quart bottles of beer and three pint bottles. Talking about this evidence 12 years later, Pratico said he mentioned the large quantity of liquor because he didn't want the jurors to believe his testimony.

They did. And they did despite an incident during a trial recess in which Pratico blurted out to Marshall's father, Donald Sr., that Donald Jr. had not stabbed Seale. Later, on the witness stand, Pratico was asked to explain why he had changed his story outside the courtroom. He said "I was scared... of my life being taken." MacNeil got him to say he was afraid of certain local Micmacs. MacNeil was used to fishing in such waters. Two years earlier, he had been investigated by the Nova Scotia Human Rights Commission for racist comments made about native people.

As it turned out, Pratico's eyewitness account would become the only one that jurors heard. While Chant had testified at the July preliminary hearing that he was sure it was Marshall who has stabbed Seale, he admitted at the trial he was not sure. He was declared a hostile witness.

Harriss' testimony, however, was of some value to the Crown. Though not an eyewitness, she corroborated Pratico's testimony that no one besides Marshall and Seale was on the scene in the park when

COVER STORY



Talking to reporters in 1985: questions about the Nova Scotia system of justice

the black youth was stabbed in the side.

As for Marshall's testimony, he said that night and asked for cigarettes. Then, the older of the two men said "we don't like niggers or Indians," took out a knife, stabbed Seale in the stomach and slashed him in the arm. Marshall, as it turns out, wasn't telling the entire truth either.

After a four-hour deliberation, the jury's guilty verdict was read out. Young Marshall buried his face in his hands and sobbed. Justice Dubinsky sentenced him to life imprisonment.

So long after the trial, the still-surviving members of Marshall's original Cape Breton jury can't be expected to remember many details of the hearing. And few do. But one piece of highly prejudicial — yet, seemingly inconsequential — evidence is remembered by almost all of them. One of the trial witnesses was Merle Davis, a Sydney nurse, who was on duty May 28 when Marshall was taken to the hospital for the knife wound on his arm. In her testimony, Davis was asked by MacNeil whether she had noticed anything, besides the wound, on Marshall's arm. Yes, she said, she had seen a tattoo. "Can you tell us what that tattoo is?" MacNeil asked. It was "I hate cops," Davis recalled. Marshall was as good as convicted.

Ten days after Marshall was convicted, the focus of the Seale case switched, but only briefly, to 59-year-old Roy Ebsary, a former seaman and hotel kit-

chen worker who lived a few blocks from Wentworth Park.

From the beginning of his investigation, MacIntyre had been given evidence that two other men, besides Marshall and Seale, were in the park on the night of May 28. Marshall's May 30 description of a man matching Ebsary's appearance was backed up the next day by two local teenagers. George MacNeil, 18, and Roderick MacNeil, 17, told police investigators they had seen "two men hanging around" in the park and gave detailed descriptions, one of which matched Ebsary. Patricia Harriss gave similar descriptions in her first police statement. No one, however, had come forward with any names to match these descriptions.

On November 15, MacIntyre got the names. It was a startling development. In the days following Marshall's conviction, Jimmie MacNeil, 25, a Sydney laborer, was having trouble sleeping. His conscience was bothering him. He knew Marshall had not stabbed Seale. His drinking buddy, Roy Ebsary, had stabbed Seale.

Plucking up his courage, MacNeil went to the police station on November 15 and told MacIntyre what had really happened. Surely this would clear Marshall, MacNeil thought. He told MacIntyre that Marshall and Seale had accosted them on their way home from the State tavern. Seale had tried to roll Ebsary for his wallet while "the Indian put my right hand up behind my back." MacNeil's statement continues, "The colored fellow said, 'dig, man, dig'. Then Roy Ebsary said, 'I got something for you.' He pulled out a knife and drove it into the colored

fellow's side."

"What happened then?" MacIntyre asked. "Roy went home and I was with him," MacNeil replied. "He washed off the knife under the tap and washed his hands off. Then he told me not to say anything about it."

MacIntyre found Ebsary and called him in for questioning the same night. Ebsary admitted in his police statement he had been in Wentworth Park "the same night this boy was stabbed" and that there had been a struggle between him and a short young fellow and between MacNeil and a tall young fellow. "Did you stab the man you were wrestling with?" asked MacIntyre. "Hell, no," replied Ebsary. "Why would I stab him?" After Ebsary and MacNeil were questioned, a check was made with the RCMP computer in Halifax to see if either man had a criminal record. The response was that MacNeil had no prior convictions. Ebsary had one breach of the Liquor Control Act and — more ominously — one criminal conviction for possession of a concealed weapon, a knife. In a 1982 statement given to the RCMP, Mary Ebsary, Ebsary's estranged wife, said she called police many times "when Roy was in one of his destructive rages." She added: "I turned him in in 1970 for carrying a knife as he was going to stab the chef at the Isle Royale Hotel." Incredibly, none of this managed to call the case against Marshall into disrepute. MacIntyre turned over the Seale file, containing MacNeil's new evidence, to Lewis Matheson, then the assistant prosecutor at Marshall's trial and now a judge in Cape Breton. Matheson, in turn, passed the file on to the RCMP and to Robert Anderson, then a senior official in the Nova Scotia attorney general's department and now also a judge in Nova Scotia. Whether the file ever made it to Leonard Pace, then Nova Scotia attorney general and now a justice in the appeal division of the Nova Scotia Supreme Court, has never been established. Reprehensibly, the two people who were not told MacNeil's story were Marshall and his lawyer.

The RCMP conducted the most minimal of investigations — polygraph tests given to Ebsary and MacNeil on November 23. "It is my opinion, based on Ebsary's polygraph examination, that he was telling the truth" and had not killed Seale, concluded RCMP Cpl. E.C. Smith, the polygraph examiner. About MacNeil's test results, Smith had "an indefinite opinion."

The RCMP investigation was complete. Case closed.

Marshall failed in his January 1972 appeal and was transferred to Dorchester Penitentiary in New Brunswick. His long wait for justice had begun.

Marshall was finally freed from Dor-

chester on March 30, 1982. An RCMP re-investigation, begun two months earlier, has established that Marshall was innocent of killing Seale and that instead, Roy Ebsary had stabbed the youth. The probe had started after Ebsary stabbed — and almost killed — another man in Sydney in December 1981.

The controversy over the Marshall case is far from resolved. After uncovering Marshall's innocence in the spring of 1982, RCMP officers then wanted to investigate the actions of MacIntyre and Urquhart. A senior official in the Nova Scotia Attorney General's department halted that line of inquiry. It took another 14 months for Marshall to be officially cleared by the appeal division of the Nova Scotia Supreme Court. Its decision has become the only official comment on the case. The May 1983 judgment was silent on the role of MacIntyre (who shortly after the Marshall case became chief of the Sydney police), of prosecutor MacNeil (who died in 1978) or of any other officials in the criminal justice system. Rather, the five appeal court justices said Marshall's "untruthfulness through this whole affair contributed in large measure to his conviction" and concluded that "any miscarriage of justice is, however, more apparent than real."

In 1983, Marshall received \$270,000 in compensation for his wrongful imprisonment. The no-fault award was meant only as financial compensation for potential lost earnings over 11 years; it was not a normal damage award based on who was to blame for his ordeal. Out of the \$270,000, Marshall paid almost \$100,000 to lawyers who had helped to free him.

As for Roy Ebsary, he was charged with murder, later reduced to manslaughter. He has been convicted twice. The first conviction was overturned in an appeal. Ebsary, now 73, is trying to appeal his second conviction to the Supreme Court of Canada. The court is scheduled to hear arguments Sept. 29 on whether it will allow the appeal to go ahead.

Nova Scotia Attorney General Ron Giffin says a public inquiry into the Marshall case will be announced "within a week or two" after Ebsary's case finally clears the courts. If the Supreme Court denies Ebsary the right to appeal the inquiry would start in late fall. If it allows the appeal, the inquiry could be delayed for months or even years. Giffin says he doesn't want an inquiry while anything connected with the Seale case is still before the courts, for fear of interfering with justice. Critics charge that the Ebsary case is something apart and a poor excuse for not calling an inquiry. They also question whether Giffin's inquiry will be a full one.

At any rate, with the new information from the CBC libel suit, a major book on the Marshall case due out next month (see next page) and the Ebsary court actions due to end sometime one way or the other, the full truth surrounding this amazing story of miscarried justice may yet be known.

Fine Dining

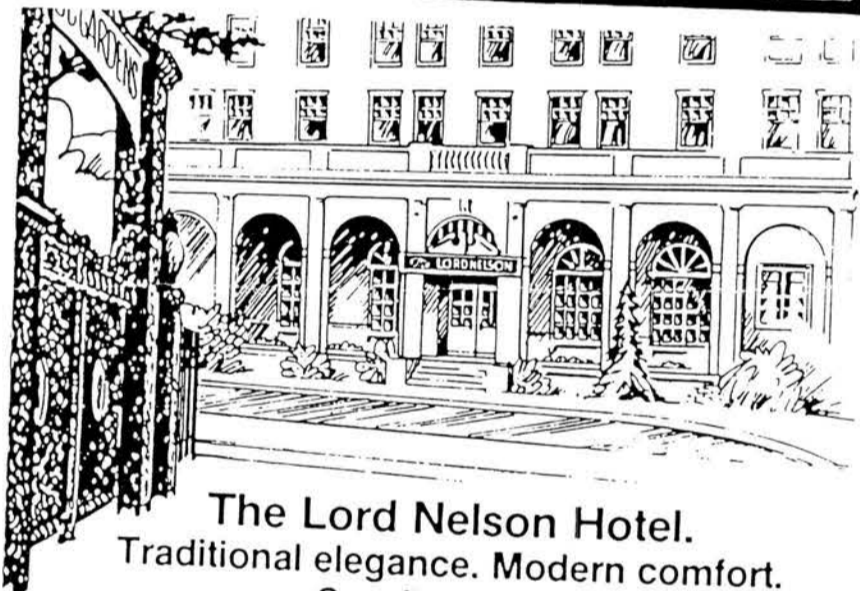
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THE PROVINCE

SEP 04 1986

Marshall case inquiry 'absolutely essential'

By LAURA KING

A public inquiry into the Donald Marshall case, the Sydney man who spent 11 years in jail for a crime he didn't commit, is "absolutely essential," says Michael Harris, author of Justice Denied: The Law Versus Donald Marshall.

Mr. Harris, who covered the Marshall trial for the Toronto Globe and Mail, said Wednesday in an interview is confident the Nova Scotia government will call an inquiry after the Ebsary appeal has cleared the courts, "but it can't be like the Alex Campbell inquiry. It can't be one that doesn't look at the obvious things. For example, we know that what happened to Junior Marshall to jail was argued testimony," Mr. Harris said. The provincial government com-

missioned Alex Campbell, a former P. E. I. premier and now a Supreme Court justice, in 1984 to look into compensation and legal costs of the case, but the inquiry did not delve into the legal technicalities and ethics of the way the trial was conducted. "We have spent how many millions of dollars on the Sinclair Stevens inquiry on a matter that is far from life and death. This matter was life and death," Mr. Harris said.

Mr. Marshall was released from Dorchester penitentiary March 30, 1982, after an RCMP investigation established Roy Ebsary, and not Marshall, was the man they were looking for in connection with the 1971 murder of 17-year-old Sandy Seale in Sydney's Wentworth Park.

Mr. Harris described the case as

a "miscarriage of justice" in which "somehow, the system had transferred responsibility from the system to prove his (Marshall's) guilt to Marshall to prove his innocence.

"The worst moment in the whole scandal was when the system shifted the responsibility," he said.

Although Mr. Marshall has been declared innocent in the stabbing death of Seale, "every little thing this guy does from now until the day he dies" will be made public, "simply because there's an audience out there who want to have their worst suspicions confirmed," said Mr. Harris.

Last week, Mr. Marshall pleaded guilty in a Sydney courtroom to creating a disturbance almost a month ago on the Micmac Indian reserve in Sydney.

"The fact is that he never pretended to be a saint," Mr. Harris said. Mr. Harris would not say whether he thinks Sydney police wanted to convict Marshall because of his native status, but "I would like to have them explain why they did what they did. I don't think you can simplify it to that level," he said. "I've tried in the book to document, rather than blame, and let the reader decide," he said.

CHRONICLE HERALD
Sept. 4, 1986

Decision reserved

OTTAWA - An inquiry into the Donald Marshall case was stalled further Tuesday when the Supreme Court of Canada reserved decision on a motion by Roy Ebsary for leave to appeal his manslaughter conviction in the slaying for which Marshall spent 11 years in prison.

It's expected the ruling will be handed down later this year.

Attorney General Ron Giffin of Nova Scotia said this week an inquiry would be called into the Marshall case once Ebsary's appeal process is completed.

Ebsary, 74, was convicted last year of manslaughter in the stabbing of Sydney teenager Sandy Seale in 1971. He was sentenced to three years in prison but the Nova Scotia Court of Appeal reduced that to one year.

"Error and unfairness persist as dominant characteristics of this case," Alan F. Nicholson, Ebsary's lawyer told three justices Tuesday. "This case is not going to go away. It must be resolved." He noted the miscarriage of justice suffered by Donald Marshall Jr. "It is incumbent on us now to at least treat Mr. Ebsary fairly," he said.

CAPE BRETON POST

Oct. 1, 1986

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Wednesday, October 1, 1986

THE CHRONICLE-HERALD

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Ruling stalls Marshall inquiry

By STAFF — CP

An inquiry into Donald Marshall's wrongful murder conviction has stalled while the Supreme Court of Canada decides whether to hear Roy Ebsary's appeal against his manslaughter conviction in a 1971 Sydney slaying.

The court reserved decision Tuesday after hearing a motion asking for leave to appeal the conviction, Ebsary's second in connection with the stabbing death 15 years ago of Sydney teenager Sandy Seale.

In a two-stage process, lawyers must convince the court their cases merit a full airing before leave, or permission, to appeal is granted. The Supreme Court could take a month or more to decide whether the Ebsary case has cleared that initial hurdle.

Attorney General Ron Giffin has said an inquiry would be called into the Marshall case once Ebsary exhausts all avenues of appeal.

Ebsary, 74, was convicted in January of manslaughter and sentenced to three years in prison. The Appeal Division of the Nova Scotia Supreme Court upheld the conviction but reduced the sentence to one year.

"Error and unfairness persist as dominant characteristics of this case," Alan Nicholson, Ebsary's legal-aid lawyer, told three Supreme Court judges during the leave hearing Tuesday in Ottawa.

Nicholson said that despite remarks by the Crown prosecutor that Nova Scotia's appeal court described as deplorable and unfortunate, Ebsary was refused another trial.

Dana Giovannetti, a lawyer with the Attorney-General's department, agreed that the Crown prosecutor may have made a mistake but it was merely a slip.

The statement, by prosecutor Frank Edwards, concerned Marshall's original 1971 trial. It became the subject of one of the jury's questions after deliberations began at Ebsary's trial.

Marshall was sentenced to life in prison for Seale's murder and spent 11 years behind bars before the investigation was reopened. He was

cleared by the Nova Scotia Appeal Division in 1983.

He was given \$270,000 compensa-

tion but no inquiry has ever been held into how he was convicted of a crime he did not commit.

Inquiry to be held into Marshall case

OCT 10 1986

By Alan Jeffers
Provincial Reporter

The provincial government will launch a public inquiry into the events surrounding the wrongful conviction of Donald Marshall Jr., the nationally known Nova Scotia fisherman who spent 11 years in prison for a murder he did not commit.

Attorney General Ron Giffin announced Thursday that the government will outline details of the inquiry in two to three weeks, including which out-of-province judge will head it and what its terms of reference will be.

"I don't want to get into details at this point," he told reporters after a cabinet meeting. "I would simply want to say that the inquiry will be judicial, it will be independent and it will be comprehensive."



Roy Ebsary



Donald Marshall Jr.

Mr. Giffin's announcement came only hours after the Supreme Court of Canada refused Roy Ebsary leave to appeal a manslaughter conviction for the death of Sandy Seale — the youth Mr. Marshall was wrongly convicted of murdering.

The inquiry is expected to take several

months, be open to the public and completely independent of government that Mr. Giffin and Provincial Court Judge Harry How, a former attorney could be called upon to testify, for example.

"The main focus of the inquiry on the 1971 conviction of Mr. Marshall of the events that transpired at 1 However it would not be our intent to restrict the inquiry to those events."

It is necessary to go out of the province to select a judge to head the inquiry, he said, adding that Prince Edward Island Supreme Court Justice Alex Campbell, who headed the inquiry to set compensation for Mr. Marshall, is too busy for the job.

"It is my view that so many law judges have been involved... with the Marshall case and with the Ebsary case

See Inquiry page 2

Inquiry to be held

continued from page 1

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Mr. Marshall was convicted in 1971 of murdering his friend Sandy Seale in Sydney's Wentworth Park. He was released from Dorchester Penitentiary in 1982, was cleared of the murder the next year, and after a long battle was awarded \$270,000 in compensation by the Nova Scotia government.

Among others questions, the inquiry should address:

- the exact role of the Sydney police department in Mr. Marshall's conviction, and
- why evidence was withheld from defence counsel at trial and why fresh evidence that pointed to Mr. Ebsary was withheld before an appeal in 1972.

Thursday's Supreme Court decision was the 74-year-old Ebsary's last avenue of appeal and he now must begin serving his one-year manslaughter sentence. He had been free on bail awaiting appeal.

Calls for an inquiry have come in from across the country but Mr. Giffin has not

tained that the government could not act until the courts had finished with Mr. Ebsary.

The inquiry "must not be limited only to the events leading up to his 1971 trial," but should also deal with events affecting the case after Mr. Marshall went to prison, Steve Aronson, Mr. Marshall's lawyer, said today from Ottawa.

Mr. Aronson said the inquiry should investigate what happened to witness Jimmy McNeill's statement clearing Mr. Marshall which was given to police 10 days after Mr. Marshall's conviction.

He said other important aspects include an in-depth review of the original investigation by Sydney police, the extent of the attorney general's involvement in the 1982 RCMP investigation of the case, and the obligation of the Crown to supply all evidence and statements to the defence.

"The whole question of interrogation of youths" should be investigated, Mr. Aronson said.

Marshall case

Judicial inquiry ordered

Cape Breton Post - October 10, 1986

HALIFAX (CP) — People have long wondered why Donald Marshall spent 11 years in prison for a crime he didn't commit. The Nova Scotia government confirmed Thursday it will set up a judicial inquiry to find the answer.

Attorney General Ron Giffin said a date for the inquiry will be announced by the end of the month. The inquiry will be conducted by a judge from outside the province.

"It's my view that so many lawyers and judges in the province of Nova Scotia have been involved that the only prudent course of action on our part is to get someone from outside," Giffin said.

The announcement was made hours after the Supreme Court of Canada had refused Roy Ebsary leave to appeal a manslaughter conviction in the 1971 stabbing death of Sandy Seale — the teenager Marshall was wrongly convicted of killing.

Giffin said his department is working on terms of reference for the inquiry, which will probably last several months.

The Nova Scotia government eventually paid Marshall \$270,000 in compensation. About \$100,000 went to pay legal bills.

Since Marshall, now 33, was cleared of the crime, there have been numerous calls for a judicial inquiry amid allegations of misconduct by police. Giffin maintained it would be improper to act while Ebsary's case was still before the courts.

Marshall was released from New Brunswick's Dorchester Penitentiary in 1982 after being cleared of Seale's murder.

Ebsary, 74, is serving a one-year sentence.

CAPE BRETON POST
OCT. 10, 1986

Inquiry to be held into Marshall case

OCT 10 1986

By Alan Jeffers
Provincial Reporter

The provincial government will launch a public inquiry into the events surrounding the wrongful conviction of Donald Marshall Jr., the nationally known Nova Scotia fisherman who spent 11 years in prison for a murder he did not commit. Attorney General Ron Giffin announced Thursday that the government will outline details of the inquiry in two to three weeks, including which out-of-province judge will head it and what its terms of reference will be. "I don't want to get into details at this point," he told reporters after a cabinet meeting. "I would simply want to say that the inquiry will be judicial, it will be independent and it will be comprehensive."



Roy Ebsary



Donald Marshall
JR.

Mr. Giffin's announcement came only hours after the Supreme Court of Canada refused Roy Ebsary leave to appeal a manslaughter conviction for the death of Sandy Scale — the youth Mr. Marshall was wrongly convicted of murdering.

The inquiry is expected to take several

months, be open to the public and will be completely independent of government. That Mr. Giffin and Provincial Court Judge Harry How, a former attorney, could be called upon to testify, for example, was not said.

"The main focus of the inquiry will be on the 1971 conviction of Mr. Marshall and the events that transpired at that time. However it would not be our intent to restrict the inquiry to those events."

It is necessary to go out of the province to select a judge to head the inquiry, he said. He is suggesting that Prince Edward Island Supreme Court Justice Alex Campbell, who headed a commission to set compensation for Mr. Marshall, is too busy for the job.

"It is my view that so many lay judges have been involved... with the Marshall case and with the Ebsary case. See Inquiry page 2

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continued from page 1

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"The whole question of interrogation of youths" should be investigated, Mr. Aronson said.

NOVA PROVINCE

Giffin panelist at public forum on Marshall case

OCT 11 1986

Nova Scotia Attorney General Ron Giffin will give his views about the Donald Marshall case at a special public forum — Donald Marshall: A Question of Justice — on Friday, Oct. 24 at 8 p.m. in the Weldon Law Building at Dalhousie University.

Other panelists at the public session will be journalist Michael Harris, author of the book *Justice Denied*, about Mr. Marshall's life; and Steven Aronson, the lawyer who defended Mr. Marshall.

The moderator will be Walter Stewart, journalist and former director of the University of King's College School of Journalism.

Mr. Marshall is the 33-year-old MicMac Indian who served 11 years in penitentiary for a murder he did not commit.

Although Mr. Marshall was exonerated, questions remain about how his case was handled by Nova Scotia's justice system.

The debate is sponsored by the Centre for Investigative Journalism and the University of King's College School of Journalism.

Cape Breton Post, October 16, 1986

Marshall inquiry welcomed

There's no doubt the Marshall affair has "cast a shadow" over Sydney and its police department, says Mayor Manning MacDonald.

The mayor, who is also chairman of the city's Police Commission, says he welcomes the coming inquiry into the affair "providing it's going to



MacDonald

clear the air once and for all." There's no doubt this unfortunate case cries out for clarification in a number of areas. Now we have a second man — Roy Newman Ebsary — protesting his innocence although he was convicted of the crime Donald Marshall was wrongfully imprisoned for.

The 74-year-old Ebsary, now serving the last of his sentence for manslaughter in the death of Sandy Seale, has denied the crime in an interview with CBC Television.

"As regards our police department, you have to remember we're talking about events of 15 years ago," said the mayor in an interview. "The city council of that day didn't put a high priority on police protection and police had to work without proper quarters, without the ident section and the facilities, equipment and training they have today."

"That's all been changed. We put a high priority on policing. Our department underwent a complete restructuring in the early 1980s and we make sure it has the proper funding and the expertise that's required."

Attorney General Ron Giffin has indicated that the details of a promised inquiry into the Marshall case will be announced with a couple of weeks.



Marshall

CAPE BRETON POST
OCTOBER 16, 1986

Giffin Out of Marshall Forum

A scheduled public forum, during which a panel of journalists have questioned provincial Attorney-General Ron Giffin on his views in the Donald Marshall case, may have to go ahead without its star panelist.

Mr. Giffin was to have been questioned during a public forum, Donald Marshall; A Question Of Justice, scheduled for the Weldon Law Building, Friday, Oct. 24.

A spokesman for the attorney-general said Friday: "The attorney-general will not attend (the forum) on the recommendation of those putting the Marshall inquiry together because the case is at the inquiry stage and those officials have strongly recommended that no further public comments be made."

It has been learned that more than one senior judge, possibly from the Atlantic region, may preside at the hearing.

The source declined to identify the jurists.

During the open forum, Mr. Giffin was to have been a panelist, along with journalist Michael Harris, author of Justice Denied, a book about Mr. Marshall's life, and Steven Aronson, the lawyer who defended Mr. Marshall.

Walter Stewart, journalist and former director of the University of Kings College School of Journalism, is to moderate the panel.

The debate is sponsored by the Centre for Investigative Journalism of Kings College School of Journalism.

CHRONICLE HERALD
OCT. 18, 1986

Cape Breton Post

EIGHTY-SIXTH YEAR, NO. 248

SYDNEY, NOVA SCOTIA, FRIDAY, OCTOBER 24, 1986

Judges from three provinces to conduct Marshall inquiry

HALIFAX (CP) — Judges from three provinces will conduct an inquiry into the Donald Marshall affair, the Nova Scotia government said Thursday.

Attorney General Ron Giffin said Alex Hickman, chief justice of the Newfoundland Supreme Court's trial division, will lead the inquiry into why Marshall spent 11 years in prison for a murder he didn't commit.

Marshall, 33, was released from penitentiary in 1982 after being cleared in the 1971 stabbing death of 16-year-old Sandy Seale in Sydney.

Giffin promised earlier this month to call an inquiry after the Supreme Court of Canada refused Roy Ebsary, of Sydney leave to appeal his manslaughter conviction for

Seale's death. Ebsary, 74, is serving a one-year sentence.

The attorney general had also said the only "prudent course of action" would be to have an inquiry headed by judges from outside the province because "so many lawyers and judges in the province of Nova Scotia have been involved . . . with the Marshall case and with the Ebsary case."

Giffin said Thursday the other members of the inquiry are Associate Chief Justice Lawrence Poitras of Quebec Superior Court and Chief Justice Gregory Evans of Ontario Supreme Court.

No date has been set for the inquiry.

Marshall commission judges 'high profile'

OCT 25 1986

By DEAN JOBB
Court Reporter

Three high-profile judges with a combined experience of more than 40 years on the bench have been named to untangle the events surrounding the 1971 conviction of Donald Marshall, Jr., for a murder he didn't commit.

"They've certainly set a good tone here that this is going to be an objective inquiry," Dalhousie University law professor Wayne MacKay said Friday of the government's choice of commissioners.

Attorney-General Ron Giffin this week named Chief Justice T. Alexander Hickman of the trial division of the Newfoundland Supreme Court, chairman of the royal commission into the 1982 Ocean Ranger disaster, to head the long-awaited inquiry into the Marshall case.

Also appointed were Mr. Justice Gregory Thomas Evans, who recently stepped down as chief justice of the trial side of the Ontario Supreme Court, and Mr. Justice Lawrence A. Poitras, associate chief justice of the Quebec Superior Court.

"They're all very high profile," said MacKay, who is putting together a book on the careers and work of

several Canadian judges.

Chief Justice Hickman, 61, is a Dalhousie Law School graduate who held the justice and finance portfolios in the Newfoundland government before his appointment in 1979.

He chaired the three-year inquiry into the loss of the drilling rig, Ocean Ranger, and 84 crew men, which involved sifting through testimony from hundreds of witnesses who appeared during 18 months of intermittent public hearings.

"He does have experience dealing with high-profile and controversial inquiries," noted MacKay.

Mr. Justice Evans, described by local lawyers as one of the best legal minds on the Ontario bench, is a 73-year-old native of McAdam, N. B.

Appointed to the High Court of Justice — the equivalent of the Nova Scotia Supreme Court's trial division — in 1963, he joined the Ontario Court of Appeal two years later.

He returned to the High Court as chief justice in 1976, but retired a year ago. He remains a supernumerary, or part-time judge of the High Court.

The third commissioner, Mr. Justice Poitras, was named to the Quebec Superior Court in 1975 and has

been associate chief justice of the court for three years.

The youngest member of the commission at age 55, he worked part-time for the defunct Montreal Star newspaper before becoming a lawyer.

The commission's mandate empowers it to delve into all aspects of the investigation of the March, 1971, stabbing death of Sydney teenager Sandy Seale, the prosecution and conviction of Marshall for Seale's murder and "such other related matters which the commissioners consider relevant."

Marshall, now 33, served 11 years of a sentence of life in prison before being released and acquitted based on new evidence. Roy Newman Ebsary, 74, has been convicted of manslaughter in Seale's death and sentenced to one year in jail.

The commission's report will be made public.

Lawyers have yet to be hired by the commission, and Chief Justice Hickman said he expects public hearings will begin in the new year.

CHRONICLE HERALD
OCT. 25, 1986

THE PROVINCE

Investigation of Marshall case begins

Inquiry judges meet

By DEAN JOBE
Court Reporter

NOV 04 1986

The three judges charged with the task of getting to the bottom of Donald Marshall, Jr.'s wrongful conviction for murder met Monday night in Halifax for their first strategy session.

Chief Justice Alex Hickman of the Newfoundland Supreme Court's trial division, chairman of the commission inquiry into the Marshall case, said the meeting will sort out staffing, location of public hearings, and other logistics.

"It doesn't just fall into place," Chief Justice Hickman, who headed a lengthy inquiry into the Ocean Ranger oil rig disaster, said when reached Monday at his hotel room in Halifax. "There's a tremendous amount of organization that goes into it."

It is the first time Chief Justice Hickman and his fellow commissioners — Mr. Justice Gregory Evans of the Ontario Supreme Court and Mr. Justice Lawrence Poitras of the Quebec Superior Court — have met since they were appointed to the inquiry about two weeks ago.

The three had reservations at the same hotel for Monday night.

Marshall served 11 years in prison before being cleared of murder in the 1971 stabbing death of a Sydney teenager. The Nova Scotia government has asked the commission to delve into any matter it feels is relevant to his arrest, prosecution and conviction.

"They're pretty broad," Chief Justice Hickman said of the terms of reference, and the meeting should determine

"what, at first blush, seem to be the areas to which we should direct our attention."

He suggested more than one lawyer could be named to present evidence before the commission but declined to speculate whether Nova Scotia lawyers or lawyers from outside the province would be chosen.

"You need people who can be on tap at all time," said the judge, who is based in St. John's.

Working "night and day" should enable the commission to begin public hearings next spring, he added. Hearings should be held "wherever the preponderance of evidence is to be found," he said, making Sydney and Halifax "two rather obvious places."

Another subject to be addressed, Chief Justice Hickman said, is the hiring of "skilled, impartial investigators," probably retired policemen, to gather evidence.

"There's been a tremendous amount of investigation and hopefully that will help us a lot," he conceded. Marshall's case was investigated initially by the Sydney police and the RCMP conducted probes in 1971 and 1982, after his conviction.

The provincial government is covering the cost of the inquiry and Chief Justice Hickman said staffing has been left totally in the commission's hands.

"We simply hire them and send in the bill."

The three commissioners are prohibited by law from receiving money for outside work but the federal government will pay their judges' salary while they work on the inquiry.

CHRONICLE HERALD
NOV. 4, 1986

THE
Chief counsel named
in Marshall inquiry

NOV 05 1986

By DEAN JOBB
Court Reporter

Chief Justice Alex Hickman has chosen a St. John's lawyer he worked with on the Ocean Ranger inquiry as chief counsel to a three-man commission beginning to delve into the Donald Marshall Jr. case.

David Orsborn's appointment was announced Tuesday in Halifax by Chief Justice Hickman of the Newfoundland Supreme Court's trial division, commission chairman and the man who headed the probe into the 1982 loss of the oil rig.

Orsborn's selection came at the first meeting of the three judges appointed last month to inquire into the arrest, prosecution and conviction of Marshall for a murder he didn't commit.

**'We will take
Marshall from
the day he was
investigated'**

Marshall, now 33, served 11 years of a sentence of life in prison for the 1971 murder of a Sydney teenager. He was cleared in 1983 based on new evidence and another man has been convicted of manslaughter in the stabbing death.

Chief Justice Hickman, Mr. Justice Gregory Evans of Ontario and Mr. Justice Lawrence Poitras of Quebec gathered Monday night at the Halifax Sheraton hotel to discuss how the inquiry will be conducted.

"We'll take Marshall from the day he was investigated (in 1971) right up to the present day," Chief Justice Hickman said in an inter-

view Tuesday after the meeting ended.

Public hearings, expected to be concentrated in Sydney and Halifax, "hopefully" will begin in May, he added. While adjournments will be kept to a minimum once hearings begin, he could not say how long the inquiry would take.

Orsborn, who graduated from Dalhousie law school in 1979, acted as associate counsel on the three-year inquiry into the sinking of the Ocean Ranger off Newfoundland, which claimed 84 lives.

A chartered accountant before entering the law, he is senior partner with a St. John's law firm.

A second lawyer will be hired to assist Orsborn in presenting evidence at public hearings, Chief Justice Hickman said.

"There's a very strong possibility the second counsel will be from outside Nova Scotia, but we're not restricting our search."

If the choice is a Nova Scotian lawyer, the judge added, "we have to ensure it's someone competent who has not been involved" in any aspect of the Marshall case.

The meeting also determined that the commission will set up a Halifax office once investigators and a secretary have been hired.

Television cameras will be allowed to film the public hearings. "It's not uncommon" to allow filming of public inquiries, Orsborn said, and "at this stage we see no reason to treat this one any differently."

Chief Justice Hickman said Orsborn's salary will be negotiated between the lawyer and the government. The province is picking up the tab for the inquiry, which has no specified budget.

CHARONIC HERALD
NOV. 5, 1986

An open letter to the Marshall inquiry

TOMORROW MORNING, the 25 lawyers with official standing before the Marshall Commission begin their final arguments in the case. It's their last chance to influence the deliberations of Commissioners T. Alexander Hickman, Lawrence A. Poitras, and Gregory T. Evans. Journalists have no official standing before the inquiry. The commission views us as an irritating distraction, like deer flies at a picnic: unavoidable, perhaps, and annoying, but hardly significant. Since the commission hasn't set aside any time to hear final arguments from us, I'll just have to devote a column to that purpose.

Kempt Head,
Boularderie, C.B.
30 October 1988

Dear Alex, Larry & Greg:
I have to admit you surprised me. There were facts and issues in the Marshall case that I assumed you'd paper over with the usual tissue of bureaucratic excuses. Instead, you pursued them with the tenacity of bloodhounds.

Take the 1983 decision of the Nova Scotia Supreme Court Appeals Division — in some ways the most disgraceful episode in the entire Marshall saga. Struggling for a way to reverse Marshall's wrongful conviction, federal Justice Department officials had asked the court for an advisory opinion. Instead, in an extraordinary intervention, Chief Justice Ian MacKeigan bullied the Justice Department into using a different procedure, one that would leave the final decision with his court, while at the same time narrowing the scope of the inquiry.

Having thus hijacked the case, MacKeigan's court refused to explore evidence of malfeasance by the Sydney Police Department and the 1971 Crown prosecutor. Failing to hear that evidence didn't stop the court from exonerating those officials, however, or from blaming Junior Marshall for his own conviction. The court ruled that "any injustice was more apparent than real." It was a shameful piece of work, made even more disgraceful by the fact that Mr. Justice Leonard Pace took part in the decision, even though he had been attorney general in 1971, when the AG's department covered up evidence of Marshall's innocence.

With greater vigor than anyone could have anticipated, your inquiry has explored these facts and pursued the judges, undeterred by their claim of judicial immunity. Perhaps the explanation is simple. You are, after all, judges yourselves. The actions of MacKeigan, Pace *et al* must offend you deeply, as they would anyone who cherishes judicial fairness.

The inquiry held other surprises, not least of which was the strange hostility with which the commission's own law-



Parker
Bars
Donham

yers treated Harry Wheaton, the RCMP staff sergeant whose investigation freed Junior. What accounts for the snide, insinuating tone of commission lawyer David Orsborne's interrogation of Wheaton? Was he just bending over backwards to create an artificial impression of fairness? Was it merely childish pique at Wheaton's refusal to meet privately with commission lawyers before speaking his piece in public, under oath?

Sure, Wheaton's a bit of a showboat, and under six days' interrogation by the cleverest lawyers in the province, his tone became defensive at times, even unctuous. Picking over the bones of his investigation, it's not impossible to find flaws. But let's not forget whose work freed Junior from prison.

Don't fall into the trap being laid for you here. Apologists for those who put Junior Marshall in jail and kept him there will attempt to argue that, by recognizing Junior's probable innocence early in his investigation, Wheaton fell victim to the same tunnel vision that caused Junior's wrongful conviction. This comparison insults reality. Wheaton's investigation was thorough, intelligent and professional. He succeeded in finding the truth where dozens before him failed. Light years separate his work from the ignorant brutality of Sydney police in 1971, and comparing the two makes a parody of the commission's purpose.

WISH YOUR inquiry had examined the role of the press in the Marshall case. The press did come up its own time to time in testimony, only to be flicked away, like a piece of lint from a cashmere sweater. Lawyers scolded officials suspected of speaking to reporters about the case, betraying no understanding of the role such leaks played in keeping the case alive during the long period when the provincial government tried to slam the lid on the Marshall affair.

This isn't to say you should have pandered to the press, a la Clayton Ruby, who seemed to spend more time currying favor with reporters than doing the research necessary to prepare his client's case adequately. The press is an important institution in a free society; one of its roles is to keep a watchful eye on government wrongdoing. How well it performed that role in the Marshall case — where it succeeded and where it



failed — would have been a useful line of inquiry for the commission.

The one area where your conduct of the inquiry failed to inspire confidence was the issue of racism. You seemed uncomfortable with the problem. So evident was your impatience with lawyers for the Black United Front and the Union of Nova Scotia Indians that we in the press quickly nicknamed their section of the room "the leper colony." Again and again, you cut off lines of questioning that might have helped you to perceive the pattern of racial bias that runs through the Marshall affair from beginning to end.

PERHAPS YOUR discomfort is understandable. Racism doesn't lend itself to ordinary evidentiary procedures. It is too subtle, too insidious, too easily denied or masked by rationalizations. Even with this inherent difficulty, however, you have more than enough evidence to reach firm conclusions about the role that racism played. That evidence all points in one direction.

Hundreds of times during the Marshall case, government officials made decisions that hurt Junior's cause. You

heard from most of those officials. You heard their rationale for not letting Junior out on parole, for not giving him access to his files under the Freedom of Information Act, for not meeting with his lawyers, for not releasing the RCMP report on his case, for not investigating the police who falsely charged him with murder, for not offering compensation, for not apologizing, for not calling an inquiry.

The officials were always just doing their jobs. They always had an explanation — often one that involved a matter of principle. And yet, their decisions invariably hurt Junior's cause. With the exception of Harry Wheaton and two or three others, you will search in vain for a government official who carried out his duties in a way that helped Junior Marshall.

Isn't it odd? Doesn't it stretch credulity to argue that race had nothing to do with the one-sidedness of this official reaction to Junior's situation? Isn't it time to face the obvious truth here — that Junior's inferior racial status was the main reason for the white system's treatment of him?

Yours sincerely,
Parker Bars Donham

Marsha case 'abrica ed' Ruby

By CATHY NICOLL
The Daily News



CLAYTON RUBY

SYDNEY — Former Sydney city police chief John MacIntyre and his deputy William Urquhart are corrupt and unscrupulous and they fabricated a case against Donald Marshall Jr. in 1971, Marshall's lawyer told the inquiry yesterday.

"What jumps out is a case that is littered with false and perjured evidence," Clayton Ruby argued.

"All the witnesses were independent; the only common link is MacIntyre. There can be no other explanation for all these people who produced evidence indicative of Marshall's guilt — the evidence was false and taken from children."

The inquiry, composed of

three out-of-province judges, is looking at why Marshall, 34, spent 11 years in prison for a murder he did not commit.

But MacIntyre's lawyer Ron Pugsley said there are no villains in the story "but rather a number of completely unrelated events which happened to coincide, and combined to send Donald Marshall Jr. to prison and to keep him there," he said.

Pugsley said RCMP Staff Sergeant Harry Wheaton, who proved Marshall innocent in 1982, needed to put the blame on someone and chose MacIntyre as the target.

He argued MacIntyre had every reason to disbelieve statements given by John Pratico and Maynard Chant and to try and

get the truth out of them. But Ruby argued MacIntyre deliberately set out in 1971 to convict Marshall.

For example, he said, police interrogated 14-year-old Patricia Harriss for four hours on June 17, 1971, until she told them what they wanted to hear.

Harriss tried to tell MacIntyre and Urquhart she saw two men in Wentworth Park on May 28, 1971, with Marshall when Sandy Seale, 17, was fatally stabbed.

Eventually Harriss gave police a statement saying there was only one man with Marshall.

Should be charged

Ruby said MacIntyre should

be charged with lying to the commission when he testified he never tried to hide Harriss' first statement from Wheaton in 1982 by slipping it under his desk.

He said Wheaton's version of events is backed up by RCMP Sgt. Herb Davies, who was only briefly involved in the case.

"It would be a rare occurrence when two police officers choose to frame a fellow officer. You can reach a conclusion whether Wheaton or MacIntyre lied — do it by looking at Davies," argued Ruby.

Ruby said he rejected the notion Urquhart was only a passive observer. He said by just being there and doing nothing, Urquhart gave the witnesses the message nobody in authority would do anything to help them out.

Ruby also said both men should be charged with perjury and obstruction of justice for telling the commission they did not know Robert Patterson and never interviewed him in 1971.

"Why did MacIntyre and Urquhart tell such obvious lies about Patterson, unless they knew they had something to hide?"

Testifying at the inquiry in February, Patterson said he was questioned by the two officers who beat him in an effort to get him to say he had seen Marshall stab Seale.

Patterson said he refused to do so. He said he had been in the park that night, but he had passed out from drinking too much and didn't see anything.

Yesterday, Ruby said MacIntyre's belief Marshall was guilty was based on racism.

"There was no other basis to the decision. He held it without evidence for quite some time. MacIntyre and Urquhart had to know the case they had created was false," he said.

Ruby said MacIntyre was not afraid to call in the RCMP in 1971 to re-investigate the case after Jimmie MacNeil came forward, because he knew he could rely on old boy chumminess to hide the truth.

But in 1982, Ruby said, MacIntyre did not count on Wheaton being too sharp, too honest and too dedicated to just rubber stamp the 1971 investigation.

Coles misled inquiry — Marshall's lawyer

SYDNEY — Charges of perjury should be laid against former deputy attorney general Gordon Coles for false evidence he gave at the Marshall inquiry, lawyer Clayton Ruby said yesterday.

Representing Donald Marshall Jr., Ruby said Coles deliberately misled the inquiry about the Roland Thornhill and Billy Joe MacLean cases.

In 1980, Thornhill, then minister of development, was investigated by the RCMP for settling \$140,000 in bank loans by repaying 25 cents on the dollar. The investigation was called off by Coles.

Without consulting the RCMP, Coles drafted a press release for then attorney general Harry How which exonerated Thornhill.

The RCMP believed Thornhill should have been charged with illegally gaining a benefit because of his position in government.

Ruby said Coles' actions were misleading and included a deliberate deception of the public.

He said Coles' incorrect legal advice to How and his evidence before the inquiry must also be considered misleading.

When Coles testified at the

inquiry in September, he said Thornhill was not charged because he did not have the necessary intent to be found guilty of the offence.

But the province's highest court had earlier ruled merely accepting a benefit is enough to constitute guilt; no intent is required.

"Regrettably, it seems clear that Mr. Coles committed perjury before the commission in order to avoid the embarrassment engendered by the fact that he had written legal opinions to his minister that are legal nonsense," Ruby argued yesterday.

"The documentation leads to the conclusion that, for whatever reason, he was determined to see that Thornhill was not charged and that the investigation was stopped."

Ruby said Coles should be charged for his actions in the Billy Joe MacLean case.

MacLean was a Tory cabinet minister when the Auditor General noticed irregularities in his MLA expense account.

The matter was taken to the RCMP. But when Coles found out, he became annoyed and took the matter over himself.

Coles testified in September

he asked director of criminal prosecutions Gordon Gale to see if charges should be laid. In his report, Gale said if MacLean's explanations were to be believed, charges should not be laid.

Testifying at the inquiry in September, Gale said he found MacLean's explanations incredible.

But, Ruby said yesterday, Coles wrote a memo to then attorney general Ron Giffin creating the impression Gale no longer adhered to the view he expressed in his memo.

And Coles told the AG these were more accounting irregularities than anything to warrant criminal investigation.

"The commission should find that Coles betrayed his office by deliberately failing to deal properly with the MacLean allegations," said Ruby.

He said Coles should be charged with perjury for repeatedly telling the commission that the MacLean case was Gale's responsibility, not his.

He went on to suggest a special prosecutor, independent of the AG's office, should examine the evidence to see if



GORDON COLES

Thornhill accepted a benefit and to call for further investigation, if necessary.

Ruby said the banks should also be investigated to see if they received a benefit for allowing Thornhill to settle his debts in such a fashion.

DAILY NEWS
Nov 24, 1988

Marshall must share blame — lawyer

Ruby raps attitude of AG office

Donald Marshall's lawyer has blasted the Attorney General's Department for continuing to "blame the victim."

A day before the department's final submission to the Marshall inquiry yesterday, Clayton Ruby gave it an early and scathing review.

"The Attorney General's Department in its submission, to my deep regret, recycles the blame-the-victim theory. It says don't blame the system, things happened because of what he told Wheaton," Ruby told the inquiry Tuesday.

In 1982, Marshall told RCMP Staff Sgt. Harry Wheaton that he and Sandy Seale were robbing two men in Wentworth Park the night of Seale's murder. But Marshall later testified he only used the robbery story to help get out of jail.

Ruby said the AG's office has



CLAYTON RUBY

used the robbery statement against Marshall since 1982.

"They say he lied to get out of prison — it's not our fault, it's Marshall's fault," Ruby said.

"He may have been in prison for 11 years, but he told a lie to get out — bad boy. . . . To blame Marshall at this late stage for the failures of this government is unconscionable."

By CATHY NICOLL
The Daily News

SYDNEY — Although the Attorney General's Department accepts that Donald Marshall Jr. was the victim of a miscarriage of justice, it still thinks he was partly to blame for his 1971 wrongful murder conviction.

"There was a major hemorrhage in the justice system — each check and balance failed Donald Marshall. But he contributed to it by not telling the full truth," said AG lawyer Darryl Pink at the inquiry in Sydney yesterday.

"We believe there was a robbery in the park that night. We accept the system failed Donald Marshall, but we do not accept that he does not bear any responsibility.

"We do not accept the system was or is corrupt, was or is racist, or was and is insensitive to its flaws."

Pink said the system does not need a major overhaul as suggested by Marshall's lawyer Clayton Ruby.

"The system works extremely well. Only in some areas where weaknesses have appeared are repairs necessary," said Pink.

Marshall, 35, a Micmac, was convicted of stabbing Sandy Seale, 17, in Wentworth Park on May 28, 1971. The evidence used to convict him was false. He spent 11 years in prison before being proved innocent in 1982.

But yesterday AG lawyer Jamie Saunders went on to berate Marshall for not telling his defence lawyers in 1971 that he and Seale were attempting to rob Roy Newman Ebsary and Jimmie MacNeil.

THE MARSHALL INQUIRY



DONALD MARSHALL

But Newfoundland Chief Justice Alexander Hickman, heading up the three out-of-province judges hearing the inquiry, said it was their role to decide if Marshall told the truth in 1971 when he described two other men who attacked Seale and him.

As for the handling of the Roland Thornhill and Billy Joe MacLean cases, Saunders said that then deputy attorney general Gordon Coles only exercised bad judgment, and did not do anything criminally wrong.

"They may be criticized for giving confusing instructions or not showing adequate initiative when faced with a task, for

failing to follow the advice of a colleague, or for deferring to a poorly conceived opinion when it may not have been warranted.

"But there is no evidence to suggest any *mala fides* by anyone in the department," Saunders said.

He said there is no evidence to show any motivation of personal bias when dealing with the two former Tory cabinet ministers.

He said Coles did not appreciate that the Thornhill file should not have been taken from the local Crown prosecutor.

And Coles exercised poor judgment by writing a legal opinion for then AG Harry How without the benefit of a memo from another lawyer and then making a public statement exonerating Thornhill, he said.

It would be naive, he said, to think that cases involving prominent people would not receive a special degree of attention because of the notoriety.

"In fact, it was the desire to deal properly with Mr. Thornhill that led the system astray, not any corruption or improper motives," said Saunders.

And he said the same poor judgment applied to the MacLean case, except the RCMP was at fault for not doing the first investigation, despite opposition from Coles and then AG Ron Giffin.

He also argued that the commission does not have the power to recommend that criminal charges be laid against Coles or former Sydney city police chief John McIntyre, as suggested by Marshall's lawyer on Monday.

Appeal court judges defended

SYDNEY — The lawyer representing the Attorney General's Department at the Marshall inquiry yesterday sprang to the defence of the five appeal court judges who heard Donald Marshall Jr.'s case in 1982.

Although Jamie Saunders said he was not there to defend the court, he said he must speak out when a judge is held up to ridicule and contempt.

He then pointed out a column written by Parker Barss Donham and published in the Oct. 30 *Sunday Daily News*.

In an open letter to the inquiry, Donham said former chief justice Ian MacKeigan of the Nova Scotia Supreme Court appeal division bullied the federal Justice Department into referring the Marshall case to the high court.

Donham described it as in some ways the most disgraceful episode in the entire Marshall saga because it left the final decision with MacKeigan's court.

And it narrowed the scope of the inquiry because the judges refused to hear new evidence that former Sydney city police chief John MacIntyre bullied teenage witnesses into lying and saying they had seen Marshall stab Sandy Seale.

"I say for the record that the evidence heard here rejects that preposterous and contemptuous allegation," said

Saunders yesterday.

He also attacked Marshall's lawyer Clayton Ruby for describing the appeal court as a disgrace to justice.

"His comments are intemperate, offensive and is conduct unbecoming a barrister," said Saunders.

Ruby was not present at the inquiry yesterday, but Saunders said he had told Ruby what he thought personally and privately, and told him that he intended to make the comments publicly.

"Mr. Ruby said he had no reply to make to the commission," said Saunders.

On Tuesday, Ruby raked the appeal court judges over the coals for their part in branding Marshall as a robber, which has haunted him ever since.

In the decision which acquitted Marshall, the judges wrote that he was partly to blame for his conviction for not telling his lawyers that he was intent on robbery.

Micmacs seek own tribal justice system

SYDNEY — Micmacs should have their own tribal justice system, the lawyer representing the Union of Nova Scotia Indians told the Marshall inquiry yesterday.

"Indians should be masters in their own house and not be subject to the dominant society. The dominant society must let go of some of the levers of power," said Bruce Wildsmith.

In tentative recommendations to the inquiry, Wildsmith said the separate justice system should be a full service providing police, prosecution, defence, counselling, sentenc-

ing, penalties, parole, and aftercare.

But in the interim, Wildsmith said non-Indian law officers dealing with Indians should receive training on Indian culture and other special considerations. And the provincial court should sit at reserves when handling on-reserve offences.

He also called for a Micmac court worker service, and said each reserve should be asked to form a group of advisers (probably elders) to assist courts in sentencing.

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