MAY 16TH 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 16, 1988
Witness: MARTIN HERSCHORN (cont.)
Examination by: Wylie Spicer

Herschorn, Director of Prosecutions, N.S. Department of Attorney General, continued testimony begun on March 24, 1988.

Re Role of Prosecutors: - Cases assigned to individual prosecutors by senior prosecutor of County.
- Attorney Generals Department may be involved in appointment of prosecutor if: a. complaint came through the Department, b. if the department ordered the investigation, c. a complex case needing expertise not available to local prosecutor.
- Normal route is from police to prosecutor in area.
- May have been cases where a prosecutor was removed but none come to mind

Re Marshall Reference: - No independent recollection of discussions, conversations, or notes.
- As director of prosecutions was immediate superior of Edwards, but not involved in day to day 'carriage' of the case.
- In Marshall case Edwards liaison with Department was through Gale.
- Herschorn accepted Edwards views and opinions as appropriate.
- If he disagreed he would have intervened.
- Destruction of AG file on Marshall was in accordance with procedure in effect at the time.
- No part in or discussion of disclosure of files to Aronson.
- Believes most people in AG Department held view that Marshall investigation would have been different if Marshall more candid.
- Not aware of any departmental intervention to cause Edwards to change his stand on Marshall acquittal.
- Edwards could have been removed from the case and was obliged to follow directives of the department.
- Normal practice is for Crown to take position on Appeal.
- Neutral stance urged by Coles appropriate because 'unusual case'.

Re Decision of Court of Appeals: - Herschorn accepted the word of Appeals court, "not appropriate for me to judge the appeal court', no responsibility to analyze the contents of the decision.
- Issue of possible charges of perjury and attempted robbery arose from the decision.
- Issue of possible Police misconduct not a concern because not raised by Appeal decision.

Re Compensation: - No direct involvement, 'that I can recall'.
- General view that Marshall actions a factor in compensation decision.
- No independent recollection of discussions about compensation.
- Not aware of any attempt to build case against Marshall so as to lessen compensation.
- Memos and letters prepared for Giffin, How & Coles because instructed to do so.
End Summary of Testimony, HERSCHORN, May 16, 1988

MAY 17th 1988

SUMMARY OF TESTIMONY

Date: May 17, 1988
Witness: FELIX CACCHIONE
Examination by: David Orsborn

Cacchione, a Judge in County Court was Marshall's lawyer from May. 83 until appointed to the bench in June, 1986. His involvement began after the Reference and concerned the negotiations for compensation and the call for a public inquiry. He also testified about collateral matters including: disclosure, and difficulties perceived by racial minorities in the court system.

COMPENSATION AND PUBLIC INQUIRY:

Federal Initiatives:
- First official request to Dept. of Justice under International covenant because, federal institution and federal laws.
- Refused by MacGuigan who cited N.S.Court of Appeals obiter that Marshall at fault as a disqualifying reason.
- Second, correspondence with House of Commons standing committee on Justice. No action taken.

Province:
- Renewed notice of civil action against Sydney and Police, started by Aronson, to protect Marshall's rights if all else failed.
- Expected Province to take action on Inquiry and Compensation, waited almost a year for action.
- Compensation considered secondary to Public inquiry.
- Felt 'stonewalled' by Province, How & Giffin. Alleged robbery, Ebsary trials and civil suit cited as causes of no action by province.
- Unable to get to see How, did not want to deal with Coles because believed should be handled by AG, responsible for admin. of justice.
- Believed Coles would oppose because of previous actions re Reference.
- Unable to obtain files believed helpful in civil suit. Freedom of Information request denied.
- Dropped civil suit in Jan. '84 to remove impediment to settlement.
- Met with but did not organize group attempting to get Province to take action on public inquiry.
- Did not rely on assurances allegedly made to Fr. Commeau by Premier Buchannan that a public inquiry would follow conclusion of Ebsary.
- May have told Media about meeting with Giffin, did not invite them.

Campbell Commission:
- No prior knowledge Commission to be established.
- Saw appointment of Commission as move to reduce public pressure on the Province for an Inquiry and Compensation.
- Limited mandate of Commission, burden to present the evidence, Marshall's fragile psychological condition led to suggestion of settlement.

Negotiations for Settlement:
- No previous experience in civil negotiations, naive approach, led to unequal negotiations with Endres.
- Believed global award of $550,000. fair offer.
- Did not recommend final settlement of $270,000, advised Marshall.
- Campbell Commission not an alternative because of pressures caused by Marshall's deteriorating condition.

Summary of Testimony, **CACCHIONE** (cont)

MINORITIES IN COURT:

As a Legal Aid lawyer and in private practice, Cacchione worked extensively with clients in racial minorities especially Indians and Blacks.

Indians:

- Difficult to get instructions from them, prepared to plead guilty to get it over with, attitude of distrust of 'white man's system, a sense that the matter was predetermined.
- Native Court Workers very helpful, heavy volume of cases in Legal Aid requires assistance of persons able to understand the system and the client, in particular, language anomalies.
- Marshall distrust of the system consistent with these factors and greatly enhanced by previous experience.

Blacks:

- Approach system with a perception of unfairness.
- Black United Front helpful because more active and vocal in defense.
- Lack of Blacks on juries and jury panels raises perception of unfairness but experience is that perception is unfounded.

DISCLOSURE:

Federal:

- Experience that on all occasions disclosure is unlimited.

Province:

- Relationship between Crown and defense a large factor in the ease and amount of disclosure.
- Policy Manual believed in existence but not available to defense.
- Amount of disclosure varies from County to County.
- No formal complaint to AG department but frequent verbal complaint.

OTHER:

Files and Other Information Received:

- Received Aronson file including thick RCMP report, not certain which of Wheaton's reports contained in file.
- Many conversations with Aronson added to mistrust of good faith of the Attorney General department.
- No documents asked of or received from RCMP.
- No files or documents received from Attorney General.
- Information received form Correctional Services not helpful to pursuit of civil suit.
- Gave RCMP file to Heather Matheson under conditions: no direct quotes and independent verification.
- Did not give RCMP material to Kirby Grant or Michael Harris.

Marshall's Physical and Emotional State:

- Wild fluctuations of mood apparent when court appearance drew near.
- Difficult to obtain instructions but kept fully informed of progress at all stages of negotiation.
- Marshall felt that he was on trial and bore burden of defending himself in all stages of the proceedings including Ebsary trial and Reference Appeal.
- Obiter of Court of Appeals a severe impediment in all stages of the compensation and public inquiry process.

End Summary of Testimony. CACCHIONE, May 17, 1988.

MAY 18th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 18, 1988
Witness: FELIX CACCHIONE
Examination by: Various Counsel

By Mr. Pugsley: Knowledge of MacIntyre and Urquhart based on reading Wheaton report and conversations with Marshall, and Aronson.

By Mr. Saunders: - Edwards demeanor was courteous and professional.
- Not aware Marshall conduct paid to him by Cape Breton County. Belief that Marshall not paid basis for note that 'seemed they didn't want him to appear'.
- Edwards denied he was under pressure from the department in the Ebsary prosecution.
- No evidence that O. Seale laid complaint against Edwards.
- May apply to the court for disclosure if denied by Crown.
- No formal written complaint about disclosure difficulties but often orally to Herschorn.
- Extremely unlikely that time and place of meeting with Giffin given to media.
- Marshall, Harris and Aronson formed partnership to protect Marshall book and movie rights.
- Did not solicit assistance of partner or other counsel in compensation negotiations.

By Mr. Ross: - A procedure like but not as broad as discovery in civil procedure might help with problems of disclosure.
- By limiting disclosure, crown can penalize accused for choice of counsel.
- Never discussed legalities or evidentiary matters with Jack Stewart.
- Discussed how to help Marshall reintegrate into society.
- Did not discuss Sandy Seale with Marshall in any detail.
- If counsel feels racial attitude of a Judge might influence case, he may ask Judge to withdraw or Judge might withdraw on own initiative.

By Justice Evans:
- List of witnesses, statements or in absence of, summaries of expected testimony are minimum expectation in disclosure.
- Disclose everything should be standard but recognizes that exception for safety or security may exist.
- No property in a witness by Crown, defense should interview.
- Allegation of Jimmy MacNeil should have been disclosed and introduced on Appeal as fresh evidence.
- Would have interviewed J. MacNeil and family of Ebsary.
- Comments blaming Marshall in Reference judgement were a factor in negotiations for compensation and in public perception of Marshall.

By Justice Hickman:
- Probable that Justice Campbell could have disagreed with negotiated settlement.
- Agreed with caveat in settlement because the government wanted it.

End Summary of Testimony, CACCHIONE, May 18, 1988.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 18, 1988
Witness: FRANK EDWARDS
Examination by: George MacDonald

Edwards has been Crown Prosecutor for Cape Breton County since December 1978. In that position he was personally concerned with the '82 RCMP reinvestigation, Marshall Reference and Ebsary prosecutions. He maintained detailed notes of conversations and activities concerning Marshall case since February '82.

Re Role of Prosecutor: - Responsible for carriage of individual cases.
- Herschorn direct superior, must apply to him for Crown Appeal and authority to reduce charge.
- Follow general policy guide lines from Gale and Herschorn.
- Appeals ordinarily handled by departmental solicitors.
- Police responsibility to lay charge, may consult with Crown prior in complicated matter. Permission not needed to lay charge.
- In police and crown disagree charge will not be laid. However RCMP has process to carry disagreement to superiors for consultation with AG personnel in Halifax.
- Prior to plea, Crown may withdraw charge. Once laid carriage rests with Crown. Options Crown: proceed, offer no evidence, enter stay (requires permission of department in Halifax).
- No requirement for police to consult before charge, in complicated cases pretrial meeting between Crown and police is usual.

Re Disclosure: - Advocates complete disclosure, without request in major cases.
- Practice to interview witnesses unless likely to be hostile.
- Expect and no objection to defense interview of witnesses.
- May be asked to respond to complaint in writing to Halifax.

Re Vol. 17 Notes - Began on 21 Feb. with entries for Feb. 3rd and 16th.
- Feb. 3 meeting with MacIntyre & Scott half hour to 45 minutes, not 2 or 2&1/2 hours as asserted by MacIntyre.
- MacIntyre had thick folder containing statements open on his lap.
- Did not take Aronson letter seriously at time.
- Don't know why MacIntyre involved Crown and not just RCMP.
- Agreed to limit sharing of information to press.
- Called Wheaton 11 pm 21 Feb. because wanted independent RCMP investigation and MacIntyre was asking for information.
- Note taking triggered by Wheaton saying no more discussion until report for AG completed.
- Surprised when Wheaton and Carroll updated him on 23 Feb. Felt MacIntyre should be questioned about procedure in Chant statement.
- Believes told about pressure on Chant although not in statement.
- More than once told Wheaton not to brief MacIntyre during investigation. Scott favored telling, Wheaton in middle.
- Believes Crown never disclosed first statements of Chant, Pratico or Harriss. Surprised if Rosenbloom did not request disclosure.
- Defense definitely should have been advised of J. MacNeil statement.
- Responsibility of D.C. MacNeil to disclose.
- If Rosenbloom knew of J. MacNeil evidence he should have brought it up at Appeal.

End Summary, EDWARDS, May 18, 1988.

MAY 19th 1988

SUMMARY OF TESTIMONY

Date: May 19, 1988
Witness: FRANK EDWARDS
Examination by: George MacDonald

Edwards clarified point of previous day: review of Marshall preliminary shows no evidence of two statements by Harriss, but clear indication of one written statement should have cued defense.

Chronological review of copious notes continued, Edwards made following points and assertions:
Re Wheaton: - Recalls and notes confirm Wheaton did not join Scott at meeting with MacIntyre, surprised he did not go.
- At least twice asked Wheaton to question MacIntyre, go from there.
- Definite that Wheaton told of visit by self and Davies to MacIntyre office on 16th April not 26th as Wheaton testified.
- Definite that Wheaton did not say Harriss statement on the floor, Christmas transcript.
- Recalls Wheaton arriving at his office on 19 April with Harriss statement and Ebsary family statements.
- Did not update notes from Wheaton or play catch up with notes. - Wheaton did not demand whole file from MacIntyre.
- Wheaton not anxious to interview MacIntyre and Urquhart because of maintaining relations between Police and RCMP.
- Told Wheaton of 'hold in abeyance' as a result of Gale conversation.
Re MacIntyre: - Saw MacIntyre as common thread, Pratico, Chant, Harriss, concern re pressure in initial investigation.
- Twice saw MacIntyre pound desk. Intimidating.
- Concern that MacIntyre producing statements not given to RCMP.
- Believe MacIntyre was misleading RCMP. Not 'knowingly' because MacIntyre believed Marshall guilty.
- Favored search warrant to get files from MacIntyre. RCMP reluctant.
- No 'obstruction' by MacIntyre because whole file not requested.
- Statement from MacIntyre important part of preparation for Reference.
- RCMP not anxious to go after MacIntyre.
Re Contacts with AG Department: - Regular reports to Herschorn because believed matter required department involvement.
- No specific recollection telling Herschorn that MacIntyre should be questioned.
- Talked with Gale about suspicions raised by MacIntyre visit to AG with statements
- Asked for letter from AG to direct MacIntyre to turn over files.
- Briefed Herschorn and Gale about April 16th events, suggested investigation of Sydney Police.
- Gale response, could be put off, important to deal with Marshall.
- No specific time limit set on investigation of Sydney Police
Re Reference to Court of Appeals: - Preferred 617 (c) because a. inquiry format vs. adversarial, and b. Crown has burden vs. Aronson.
- Surprised by change to 617 (b), phoned Gale.
- Told that concern of Chief Justice about fresh evidence caused change.

End Summary of Testimony, EDWARDS, May 19, 1988.

MAY 24th

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 24, 1988
Witness: FRANK EDWARDS
Examination by: George MacDonald

Edwards testimony (3rd day) mainly concerned the Reference to the Court of Appeals. In essence the testimony was a statement of Edwards' position about the Marshall case and how it was altered by events and individuals up to the point of the decision by the Court of Appeals.

Elements of Edwards' position:

1. Marshall was innocent,
2. 617(c) best for bringing out all factors,
3. Acquittal because of miscarriage of justice desired result,
4. Crown should support acquittal,
5. Adversarial role limited to testing witnesses,
6. Important for police to be called,
7. Marshall considerably responsible.

1. Marshall innocent: - maintained throughout, no change.

2. 617(c) best process for Reference: - Agreed upon at meeting of Gale, Rutherford, Edwards, recommended and accepted by Cretien.
   - Changed to 617(b) after intervention by Chief Justice MacKeigan.
   - Case goes to Court of Appeals as if ordinary appeal.
   - Carriage shifts from Crown to Appellant.
   - Edwards gives Aronson materials including Wheaton report to assist in preparing. Not to make public.
   - Process becomes less of Inquiry more adversarial, scope limited to Marshall's innocence (or guilt). New trial possible result.
   - No interest by court in Why, therefore no police testimony.

3. Miscarriage of Justice: - Still held by Edwards.
   - Not supported by Coles.
   - Felt possibility new trial would be ordered if strong argument made for acquittal because of miscarriage.
   - Believed Pace not inclined to acquit, so argue insufficient evidence as ground easier for Pace to agree with.
   - Result, 'miscarriage more apparent than real', blame laid upon Marshall.
   - No responsibility laid to system for Marshall conviction.

4. Crown should support acquittal: - Normal practice for Crown to take position.
   - Complaints to Coles by Whalley and MacIntyre that Edwards too partial.
   - Coles position, Crown should take no position, let court decide.
   - Edwards chastised by Coles, maintained position that Crown should join Aronson and argue for acquittal.

5. Adversarial Role: - Because of agreement about Marshall's innocence, role limited to testing evidence of witnesses.
- Edwards chastised by Pace for not being adversarial enough.
- Introduction of Marshall statement to Wheaton concerning 'rolling' and past 'criminal activities' perhaps too adversarial.
- Affidavits not evidence before the court unless adopted by witness.

6. Calling Police: - Important to raise inquiry about why witnesses perjured themselves at trial.
- Believed actions of Police should be investigated.
- Believed actions of Police wrong but not malicious.
- Court narrowed scope of Reference, refused to hear police testimony.

7. Marshall Responsibility: - Still believes that investigation would have proceeded differently if Marshall candid about alleged 'rolling or robbery'.
- Still believes Marshall must bear 'some' responsibility but not 'considerable' responsibility.

End Summary of Testimony, EDWARDS, May 24, 1988.

MAY 25TH 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 25, 1988

Witness: FRANK EDWARDS (day 4)

Examination by: MacDonald/Derrick

Edwards offered little new information. His testimony consisted mainly in explaining why he acted in ways which seem to conflict with his stated beliefs.

Miscarriage: - Believed 'miscarriage of justice' but did not argue it.
- Marshall is simultaneously the victim of the miscarriage and a partial cause of it.
- Argued strongly for position that Marshall's action a cause of the miscarriage.

Robbery Theory: - Marshall's Dorchester statement to RCMP 'highly unlikely' to be admitted in court of law because of inducement.
- Used statement to cast blame on Marshall at the reference.
- Permissible because Marshall was a witness not accused at reference.

Jimmy MacNeil: Testimony at Reference, 'I didn't try to devastate him because I believed him.'
- Third Ebsary, Marshall testimony more credible.
- Marshall committed 'technical perjury' at his trial by not telling all the facts.
- Marshall testimony at third Ebsary consistent with his trial.
- Marshall testimony only offered and claimed credible on the issue of self-defense, conversation before alleged robbery.

EDWARDS, May 25, 1988, continued. ...2

Perjury: - Pratico, Chant and Harriss committed 'technical perjury'.

- All three claim they lied because of pressure from MacIntyre.

- MacIntyre not counselling perjury because he believed Marshall guilty. (why not 'technically counselling technical perjury').

Cacchione: - Presented receipts for Marshall transport and expenses at Ebsary trials, Marshall subpoenaed to appear.

Wheaton: - Never said that charges should be laid against MacIntyre.

Michael Harris: - No recollection I told him anything not on the public record.

Compensation: - No involvement, direct or indirect.

Disclosure: - Duty of Crown to disclose, would disclose Wheaton report again despite Coles letter directing him to obtain permission first.

Retreat: - Admits that Marshall telling of attempted robbery before Jury unlikely to have changed the verdict in the face of perjured testimony by Pratico, Chant and Harriss.

- Police approach to investigation did not change when they learned of alleged robbery attempt from Jimmy MacNeil, because of the Polygraph.

Maintains: - 'Can't agree' that defense lawyers could or should have done more because Marshall didn't tell them all.

Coles: - Twice directed Edwards to take a position on a case. Marshall, take neutral position rather than support acquittal. Shoplifting, offer no evidence.

Court of Appeals: - Believe they would not acquit unless they could blame Marshall and thereby exonerate the justice system.

- More interested in what Marshall did than in how the system worked.

End Summary of Testimony EDWARDS, May 25, 1988, (day 4).

MAY 26TH 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 26, 1988
Witness: FRANK EDWARDS (day 5)
Examination by: various counsel

By Derrick: - Order from Coles to drop prosecution in shoplifting case may have been proper but process raised questions.

By Pugsley: - MacIntyre had some foundation for his belief that Marshall was guilty.
- Wheaton decision that Marshall innocent may have been premature.
- Prepared affidavit for Magee, not certain if Magee presence at 2nd Chant statement was discussed.
- Concerned that MacIntyre was showing statements to Gale that had not been given to Wheaton, indicated MacIntyre holding back.
- Whalley's concern was that police not being treated fairly.

By Murray: - Notes do not imply improper involvement by Urquhart, merely 'reportorial'.
- Affidavit for the Reference was the only formal response of Urquhart.
- Specific recollection of Urquhart at July 12 meeting limited to notes.
- 'Fair comment' that Harriss knew Urquhart name but not associated with actual statement taking.

By Barrett: - No personal knowledge of D.C. MacNeil.
- Opinion that Defense did not have first statements of Pratico, Chant and Harriss based on conversation with Rosenbloom and reading transcript.
- Rosenbloom remiss if he did not request disclosure.
- Would request mistrial if major witness (e.g. Pratico) had retracted testimony. Or not put that witness on stand and let chips fall. Neither option used by MacNeil.

By Bissel: - Purpose for questioning MacIntyre was to properly assess why Chant Pratico and Harriss lied in the first place, not general look at means and methods of Sydney Police.
- 'Our department recognized the reluctance of the RCMP to question MacIntyre and so put it aside.' (hold in abeyance).
- Believe search warrant best way to get entire file from MacIntyre.
- Mandate from Attorney General not necessary, MacIntyre gave mandate when he requested their assistance.

By Outhouse: - Noted discrepancy in Edwards' March notes which suggest possibility Wheaton may have attended meeting with MacIntyre and Scott as he (Wheaton) said, i.e. not on surveillance.
- Edwards rejected suggestion that other dates may be inaccurate.

End Summary of Testimony, EDWARDS, May 26, 1988. (day 5)

MAY 30th 1988

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 30, 1988
Witness: FRANK EDWARDS (day 6)
Examination by: various counsel

By Ross: - No reason to doubt good character of Sandy Seale.
- Maintains 'robbery theory' as basis for incident.
- Holds 'miscarriage' despite robbery attempt.

By Wildsmith: - No personal knowledge of D.C. MacNeil.
- Common misconception that Crown orders police to lay charges.
- Very few Indians on Jury Panels despite change in method of selecting panel.
- Not privy to deliberations of Jury Selection Committee, believes municipal counselors serve on this committee.
- Racial bias could be a factor which shows up in jury just as it is possible to show up in a judge.
- Believes Appeal Court's statements about Marshall not telling truth based on personal demeanor not race.
- Mental condition of Pratico should have been disclosed.
- No specific investigation of racial attitude, no evidence of racist remarks by MacIntyre.

By Pink: - Never discussed Marshall case with any Attorney General.
- Weakness of witnesses at Reference caused change of approach in argument.

By Orsborn: - Failure to disclose to defense, basis of 'miscarriage'.
- Urged 'acquittal for insufficient evidence', contrary to personal belief, 'acquittal for miscarriage of justice'.

End Summary of Testimony, EDWARDS, May 30, 1988. (day 6)

****

Witness: DANA GIOVANETTI
Examination by David Orsborn

Giovanetti, appellate lawyer with the Department of Attorney General since 1978 had carriage of third Ebsary appeal.

- Found out Pace to sit on panel, recognized possible appearance of bias because Pace was AG at time of Seale murder.
- Conferred with Edwards, Nicholson (Ebsary counsel) and Giffin.
- Did not confer with Gale (immediate superior)
- Did not confer with Coles 'belief their prior association might make it uncomfortable for Coles'.
- Advised Chief Judge of intent of motion for Pace's removal.
- New panel struck, new date set.
- Called to Pace's office and chastised.
- Apprehension of bias became awareness of actual bias in Pace comment that he knew from the time poor old Ebsary was charged that he couldn't have been guilty.
- Report to Giffin, 'Len's like that, (chuckle).
- Aware that in other Ebsary appeals, Court seemed aware of Marshall Reference evidence.

End Summary of Testimony, GIOVANETTI, May 30, 1988.

ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

SUMMARY OF TESTIMONY

Date: May 30, 1988
Witness: DIAHANN McCONKEY
Examination by Wylie Spicer

McConkey, employee of the National Parole Service appeared to testify about: 1. NPS policy on claim of innocence as bar to parole and, 2. her dealings with Marshall at Springhill prison, 1976-79.

1. Policy: - Claim of innocence does not preclude consideration for parole
   - Claim of innocence not a direct factor in consideration, may be 'indirect' factor in serious cases, e.g. murder.
   - Board accepts verdict as a given, applicant must consider factors in life that lead to the offense (even if innocence claimed).
   - Applicant must deal with perceived problems, e.g. impulsiveness, alcohol or drugs.
   - Claim of innocence may be factor if applicant determined to return to home community to prove innocence and find guilty.
   - Strong negative reaction to release by police a serious concern.
   - Escorted Temporary Absence (ETA), approved by institution, less than 24 hours, for sports, medical treatment, bereavement, etc.
   - Unescorted Temporary Absence (UTA), approved by institution, 48 hour length, mainly for 'resocialization'.
   - ETA & UTA also called Temporary Leave of Absence TLA.
   - Day Parole, approved by Parole Board, allows inmate in community for specified period, may lead to Full Parole.
   - Full Parole, approved by Board, inmate serves remainder of sentence in community under various degrees of supervision.

2. MARSHALL: - Unusual for 'lifer' to continue to maintain innocence after more than 3 - 4 years.
   - Assumed he was guilty, would have been easier to deal with if he had admitted guilt.
   - Tendency to violent response caused disciplinary action within Institution.
   - Pending Appeal was bar to parole and to UTA.
   - Considered an escape risk because of his feeling that he couldn't do more time.
   - Told many versions of offense with different details.
   - Did not take Marshall's claim of innocence seriously.
   - Marshall TLA program for participation in sports curtailed because of displays of aggressiveness.
   - Goal of 'lifers program' to change personality and attitudes.
   - Marshall making progress in lifers program, on the road to release when he escaped from Day Parole release for Atlantic Challenge.
   - Marshall told of standing in doorways and grabbing drunks to get money.
   - After escape, no longer had trust of Staff, prove self over again.
   - No difference in treatment perceived because Marshall an Indian.

End Summary of Testimony, McCONKEY, May 30, 1988.

MAY 31 ST 1988

SUMMARY OF TESTIMONY

Date: May 31, 1988
Witness: DIAHANN McCONKEY (cont.)
Examination by: Derrick/Wildsmith

By Derrick: - Marshall's refusal to admit guilt referred to consistently, but no effect because he was released on Day Parole when eligible.
- Claim of innocence not a bar, may be an obstacle to parole.
- Need to recognize factors which led to commission of offense, even if innocent.
- Remorse probably a factor.
- Risk to the community the most important factor, good risk if he has appreciation of circumstances of offense.
- Claim of innocence a negative factor, not an overriding factor.
- System can't admit that a person may be wrongfully convicted.
- Later changed to requiring him to admit that there are factors in his personality that could lead to this type of offense.
- Dual role, prepare cases for Parole Board and inmate.
- No legal aid, penitentiary legal assistance available to Marshall at that time.
- No memory of Sydney Police consistently opposing Parole.
- Long sentence plus innocence might cause more problems of adjustment in the institution.

By Wildsmith: - Fact of being an Indian not generally a factor.
- More Native inmates serve time for offenses involving violence.
- Prison no more violent than on the street.
- MMPI Psychological tests routinely administered to all inmates despite recognition they don't apply to Natives, Blacks and other Ethnic minorities. May provide some information.
- Marshall showed high level of awareness of his Native culture.
- Native Brotherhood, previously more social, now oriented on Elder system and religious ceremonies.
- Agree, Natives have lower 'parole grant rate' than non-Natives.
- Lower application rate and more Natives waive right to appear before Parole Board for hearing. Confused about what is required.

End Summary of Testimony, McCONKEY, May 31, 1988.

****

Witness: JACK STEWART
Examination by: Wylie Spicer

Stewart was Director of the Carlton Center, a Community Correctional Center in Halifax when Marshall was released from Dorchester Penitentiary on Parole awaiting Reference hearing.

Stewart testified about three areas, 1, Purpose and operation of Carlton Center, 2. Problems of Inmates released after long periods of incarceration and 3. Dealings with Marshall.

1. Carlton Center - Claim of innocence in ordinary case would be a bar to admission to Carlton Center.
- Purpose, protection of society by providing supervised place to test inmate on the street, provides sanctuary and buffering zone for inmate while readjusting to society.

STEWART, continued

2. Adjustment Problems - Time, 6 to 8 months of daily return to the Center followed by 3 to 4 months return on weekends.
   - Happiness at release mixed with fear of adjustment process.
   - Social Skills, e.g. ability to interact with other people, ability to think independently, have lost normal evolution.
   - Loss of status as 'lifer' in institution, mixed with feeling of being highly visible in the public eye.
3. Marshall - All above plus intense press interest, celebrity status and uncertainty over length of stay and future made Marshall more difficult to work with at Center.
   - Tried to treat Marshall same as other residents.
   - Release on bail, too soon to allow proper adjustment.
   - Charlie Gould, Native Addiction Worker a shadow for Marshall, provided extra help and joined case management team.
   - Assistance continued after release on bail, Marshall progress up and down, noticeably affected at times of court appearances.
   - No discussions of offense, robbery theory or compensation.

End Summary of Testimony, STEWART, May 31, 1988.

****

Witness: STF. SGT. BARLOW, RCMP
Examination by David Orsborn

Barlow, 29 year veteran of RCMP, followed Wheaton as Plain Clothes Coordinator in Sydney. Directed by Insp. Scott to review file re Marshall investigation and report on practice and procedures of Sydney Police for Attorney General.

- Limit to existing files, no independent investigation.
- Wheaton, Carroll, Scott and someone in Halifax doing same.
- Discussed case with Carroll and Wheaton before and during review.
- Read Wheaton and Carroll reports and used them to compile his.
- Difficult task because of volume of material and other duties.
- Strong comments in Barlow's draft report re Improper treatment of witnesses, case 'rammed through court', failure to follow up on two men in the park, lack of objectivity in police investigation.
- Comments appear softened in final draft. No pressure or direction to change.
- Report written for Police officers who would understand his meaning in the words of the final version.
- Did not include some things because he knew they were in reports of Wheaton.
- At some point Barlow was told by someone, Wheaton, Davies or Carroll about MacIntyre trying to conceal Harriss statement.
- Would have recorded such an event if happened to him.
- Not surprised that Wheaton did not record in any report.

End Summary of Testimony, STF. SGT. BARLOW, May 31, 1988.