

The Marshall case is one of Canada's most famous examples of wrongful conviction and racism against native peoples.

- In 1971, Donald Marshall Jr. and his friend Sandy Seale were walking in Wentworth Park in Sydney, N.S. They struck up a conversation with two strangers, Rob Ebsary and Jimmy MacNeil. Ebsary pulled a knife and fatally stabbed Seale in the stomach. But Ebsary was not charged for the crime. Marshall was.
- Marshall, then 17, was convicted of the murder and sentenced to life in prison. The trial took just three days.
- Ten days after the conviction, Jimmy MacNeil came forward to say he was with Ebsary and had seen him commit the murder. In 1974, Ebsary's daughter Donna told Sydney police that she had seen her father washing blood from a knife on the night of the murder.

In both cases the information was not passed along to either the Crown or the defence team.

DONALD MARSHALL JR: **1971 WRONGFULL MURDER CONVICTION**

In 1971 Donald Marshall Jr. was charged, tried and convicted for a murder he didn't commit. He was guilty of only one thing, presumably not a crime, being a Mi'kmaq. The Marshall Report issued by the Royal Commission on the Donald Marshall Jr. Prosecution in December 1989 castigated the Nova Scotia justice system, and society in general, for the injustices carried out against an innocent and defenseless Mi'kmaq boy.

However, in the final analysis, it wasn't the justice system that failed Junior, it was society. For without the racism that was all too prevalent throughout the province, and country, the justice system would not have dared to do what it did to him in the first place. Hearing his appeal in the 1980s, the Nova Scotia Supreme Court Appeal Division's judges felt compelled to blame and humiliate Junior, telling him that he was the author of his own misfortune. Their opinion provides a measure of how deeply held society's racist views are.

As a human rights activist, I consider this case to be the most significant milestone in the battle for human and civil rights by First Nations Peoples during the Twentieth-Century. The most positive fallout in Nova Scotia from it has been the transformation of the Province's antiquated justice system into a highly equitable modern system.

Anne Derrick, Q.C., Co-counsel to Donald Marshall Jr. at the Royal Commission of Inquiry into his wrongful conviction, offers these comments about *The Marshall Inquiry*.

"On January 26, 1990, the Royal Commission of Inquiry on the Donald Marshall Jr. Prosecution released its much-anticipated report on Mr. Marshall's wrongful conviction for murder. (Commissioners' Report – Findings and Recommendations 1989) For the Mi'kmaq community the most significant finding of the Inquiry's three years of work (public hearings, roundtables and independent research studies) was the conclusion reached by the Commissioners that Donald Marshall Jr. was "convicted and sent to prison, in part at least, because he was a Native person." The Commissioners described the evidence supporting this "inescapable conclusion" as "persuasive" and said, "That racism played a role in

Marshall's imprisonment is one of the most difficult and disturbing findings this Royal Commission has made."

On May 28, 1971 Donald Marshall Jr., walking through Sydney's Wentworth park, met up with Sandy Seale, a Black youth from Whitney Pier. Marshall and Seale were casually acquainted. Proceeding through the Park together they encountered two men who struck up a conversation. One of these men, Roy Ebsary, described by the Commissioners' Report as "an eccentric and volatile old man with a fetish for knives" with no provocation or warning, fatally stabbed Sandy Seale in the stomach. He died on May 29, 1971. On June 4, 1971, Donald Marshall, only 16 and still living at home on the Membertou reserve was arrested and charged with non-capital murder. The Royal Commission of Inquiry found that the fact that "Marshall was a Native is one reasons why John McIntyre [the Sydney Police Chief heading the Seale murder investigation] singled him out so quickly as the prime suspect without any evidence to support his conclusion."

Donald Marshall's journey through the criminal justice process proceeded with breathtaking speed, unthinkable today. Arrested on June 4, 1971, his preliminary inquiry occurred in one day on July 5, 1971 and his trial was heard over only three days from November 2 – 5, 1971. The justice system took only that short time to convict Mr. Marshall, by then just 17, and sentence him to life imprisonment for a murder he did not commit.

Mr. Marshall's wrongful conviction occurred because of police and prosecutorial misconduct, the incompetence of his defence counsel, perjured testimony, jury bias and judicial error. It took 12 years for his wrongful conviction to be overturned and a total of nearly 20 years to exonerate him because, as the Royal Commission of Inquiry found: "The criminal justice system failed Donald Marshall, Jr. at virtually every turn, from his arrest and wrongful conviction in 1971 up to – and even beyond – his acquittal by the Court of Appeal in 1983."

Donald Marshall, Jr. never relented in his struggle to free himself and clear his name. His courage and resilience are a beacon of inspiration to all Canadians, and especially to First Nation Canadians who knew long before the Royal Commission report that justice in Canada has not been indifferent to colour or social status. The 82 Recommendations of the Royal Commission dealt with - wrongful conviction, - Mi'kmaq and the criminal justice system, - Blacks and the criminal justice system, - police and policing.

The findings and conclusions of the Commission have been cited in subsequent Commissions of Inquiry, scholarly articles and by the Supreme Court of Canada. The struggle and integrity of Donald Marshall, Jr., has left an indelible mark on Canadian criminal justice.

**Anne Derrick
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On February 7, 1990, the Nova Scotia government officially apologized to Donald Marshall Jr. for his wrongful conviction.