

DONALD MARSHALL

Introduction

The Donald Marshall case is as straightforward as it is tragic. Marshall is a Micmac Indian who spent eleven years in prison for a crime that he did not commit. The subsequent inquiry showed evidence that discrimination and incorrect procedures led to this miscarriage of justice. It was discrimination, not the evidence, that led to Marshall's wrongful conviction. The justice and police systems not only failed Donald Marshall, they indicted, tried, convicted, and, ultimately, sacrificed him.

The findings of the government inquiry were profoundly disturbing. Basic rules of law were violated as was the fundamental legal principle of the presumption of innocence. It was assumed that, because Marshall was an Indian, that he must be guilty. The government's compensation package for Donald Marshall may be as much a balm to soothe the system's own troubled conscience as it is a payment to Marshall for the pain and suffering he has endured. His case is a chilling reminder, as one of his own lawyers stated, that our legal system is not perfect and that there may be more cases of injustice waiting to be discovered.

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Skill Exercise 1

Comprehension/Recall

1. Donald Marshall was charged with _____.
2. The alleged crime took place in a park in _____, Nova Scotia.
3. When the crime took place in May of 1971, Marshall was just _____ years of age.
4. The man who was murdered was _____.
5. The murder weapon was a _____.
6. In their investigation, the police _____ any evidence that Marshall was innocent.
7. Marshall eventually spent _____ years in prison.
8. Marshall was jailed in one of Canada's toughest penitentiaries located at _____.
9. His sentence was _____.
10. Marshall was released in 1982 because of an investigation conducted by the _____.
11. The fifteen-year-old who lied when he told the police that he had seen Marshall commit the crime was _____.
12. A device oftentimes used in investigations that proved useless in this case was the _____.
13. The real killer was _____.
14. The murderer received a sentence of _____ years and served _____.
15. The man who led the original investigation was _____ of the Sydney police force.
16. Marshall received a total compensation package of _____ dollars.

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Skill Exercise 2

Graphing Exercise

Representatives from native groups testifying before the Marshall Inquiry painted a bleak picture of native crime. Here are some of their statistics:

Region	Native % of Population	Native % of Jail Population
Maritimes	1	4
Quebec	1	1
Ontario	1	9
Manitoba	6	54
Saskatchewan	6	64
Alberta	3	30
British Columbia	3	16
Yukon	18	58
Northwest Territories	58	85

1. Create a bar graph to represent the above information.
2. Which province has the highest percentage of native Canadians?
3. Which province has the lowest percentage of native Canadians?
4. Which province has the highest percentage of native Canadians in its jails?
5. Which province has the lowest percentage of native Canadians in its jails?
6. Account for the highs and lows in Questions 4 and 5.

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7. Which province has the highest ratio of native Canadians in jail compared with native Canadians in its total population? Which province has the lowest ratio? What is the ratio in both cases? Give reasons for both the high and the low.

8. Suggest possible causes for such a high overall incidence of native crime in Canada.

9. What overall significant conclusions can be derived from these statistics?

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Skill Exercise 3

Compensation Calculation Exercise

You are the presiding judge at the Donald Marshall Inquiry. You have heard all the testimony of all the witnesses. Your job now is to determine how much financial compensation Marshall should receive for what he has gone through. You are aware that he was jailed in 1971 and spent eleven years in prison for a crime that he did not commit. You also know that Marshall has already received \$270 000 from the provincial government in 1982. You also know that over half of that amount went to pay Marshall's legal costs. Calculate how much Marshall should now be awarded in 1990 in each of the following categories. (The figures for each category can be anywhere from nothing to \$1 million.)

- (a) Legal expenses \$ _____
- (b) Lost educational opportunities \$ _____
- (c) Lost wages/no career \$ _____
- (d) Time spent in jail \$ _____
- (e) Pain and suffering \$ _____
- (f) Psychological damage \$ _____
- (g) Wrongful arrest \$ _____
- (h) Deprivation of enjoyment of life \$ _____
- (i) Suffering of relatives \$ _____
- (j) Other (specify) _____ \$ _____
- (k) Other (specify) _____ \$ _____
- (l) Other (specify) _____ \$ _____

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Discussion or Essay Questions

1. Many native Canadians and other minorities claim that they suffer from institutional discrimination in a far less obvious way than Donald Marshall did. List some examples. Analyze and explain why they might exist.
2. One of the principles of the Canadian legal system is “equality before the law,” that is, all individuals regardless of race, age, sex, or nationality are treated equally in the eyes of the law. Why was this fundamental principle violated in Donald Marshall’s case?
3. Another basic principle of the Canadian legal system is the presumption of innocence, that is, an individual charged with a crime is assumed to be innocent and the burden rests with the prosecution who must prove him or her guilty beyond a reasonable doubt. Why was this principle violated in Donald Marshall’s case?
4. Can any amount of compensation adequately make up for one individual’s suffering? Who can legitimately determine the amount?
5. Analyze the changing way in which the print media (newspapers and magazines) covered the Donald Marshall case by locating one article per month over the last year. Compare this coverage to articles from 1982 and 1971. What changes are there in the coverage? Why are there changes? Compare the print coverage with the electronic media’s coverage? What are the similarities? What are the differences?
6. Where does the primary responsibility for the Donald Marshall affair lie?
7. Could we experience another miscarriage of justice like the Donald Marshall case? Why or why not?
8. What is the significance of the Donald Marshall case?

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Creative Writing Assignments

1. You are a reporter and have followed the Donald Marshall case closely, reporting on each of the key moments. Write a brief report covering the following key times in the history of the affair:
 - (a) the day after Marshall's arrest in 1971;
 - (b) his trial;
 - (c) the day after his being sentenced to life imprisonment;
 - (d) after his first six months in jail;
 - (e) after his tenth year in jail;
 - (f) after his release in 1982;
 - (g) in June 1990, after receiving an official apology from the RCMP and the provincial government, as well as having been awarded \$715 000 in compensation.
2. Imagine that you are Donald Marshall. Write a half-page diary entry for each of the above time periods. Examine your emotional state. How do you feel in each case?

Enrichment Questions

Should everyone who is wrongfully imprisoned be financially compensated? Should everyone who is wrongfully arrested be financially compensated? Should everyone who suffers some form of institutional discrimination or loses his or her rights at the hands of some governmental authority be financially compensated? Is there a limit to this policy of compensation? Are there any dangers to it?

Research Topic

Susan Nelles was a nurse at Toronto's Sick Children's Hospital who was wrongly accused in the case of the multiple infant deaths at that hospital. She was eventually exonerated and subsequently fought for and won the right to sue the Attorney General and two Crown prosecutors for malicious prosecution. Research this case and compare it with the Donald Marshall case and the subsequent inquiry.