

1 investigation. Do you have any recollection of that discussion  
2 with Brooks.

3 A. I don't recall being on vacation with Inspector Brooks.

4 Q. I'm not suggesting that...

5 A. In 1982 or being on the Myra River with him.

6 Q. I'm not suggesting that you were...that you took a vacation  
7 together but that you happened to meet him on the Myra  
8 River in 1982 and had this discussion with him. Do you have  
9 any recollection of that?  
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11 A. No, sir.

12 Q. Thank-you.

13 MR. PRINGLE

14 Is that the one question? I wonder if my friend is going to  
15 call any evidence to establish the...anything in regard to that now  
16 having made the assertion.

17 MR. PUGSLEY

18 This is an instruction I received from my client. I can recall  
19 my client at a later time if Sergeant Brooks is not called by the  
20 Commission. I guess perhaps I'll wait and see if Sergeant Brooks  
21 is going to be called.

22 MS. MELINDA MacLEAN, duly called and sworn, testified as  
23 follows:

24 EXAMINATION BY MR. SPICER

25 Q. What is your full name, please?

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A. Melinda J. MacLean.

Q. And you're a member of the Nova Scotia bar.

A. Yes.

Q. And you were admitted to practice in 1970 I believe.

A. Yes.

Q. And you then opened the legal aid office, Nova Scotia Legal Aid office in Sydney and worked there during the period of '71-72.

A. Yes.

Q. Did you work there later on, as well, or only '71-72?

A. I...actually I think I was there from early 1971 until I guess into '72, yes.

Q. Where did you go after that?

A. I came to or went to Truro and I've practised there since.

Q. Did you work with Legal Aid when you went to Truro?

A. Yes, I did.

Q. Until '76.

A. Yes, that's so.

Q. And in the interim between 1974 and 1978 you were a Provincial MLA.

A. Yes.

Q. In what riding?

A. The County of Colchester. It was a dual constituency. I was one of two members.

1 Q. And since 1976 you've been in private practice in Truro.

2 A. Yes.

3 Q. And you acted for Junior Marshall for a period from late '79  
4 until about the fall of 1981.

5 A. Yes. I wouldn't say the fall of 1981. I think the file became  
6 inactive early in 1981.

7 Q. And you've brought with your file.

8 A. Yes.

9 Q. And we've had a copy of that made and it's now become  
10 Exhibit 97. It was handed that out to counsel yesterday  
11 afternoon.

12 EXHIBIT 97 - COPY OF MELINDA MacLEAN'S FILE

13 Q. Now, before we get to your activities in connection with Mr.  
14 Marshall I'd just like to ask you a few questions concerning  
15 your experience in Sydney. In your capacity as a Legal Aid  
16 lawyer in Sydney did you have occasion to run across Donald  
17 C. MacNeil?

18 A. Yes, I did.

19 Q. And can you give us your impression of him as an advocate?

20 A. He was a crown prosecutor, of course, in Sydney at that time.  
21 He was the crown prosecutor and he had took, I would  
22 characterize it as an aggressive stance regarding prosecution.

23 Q. Did you have an opportunity to observe whether or not in  
24 your view he treated natives any differently than whites in  
25

1 the courtroom?

2 A. I would say so, yes, because the Nova Scotia Legal Aid office  
3 represented a number of individuals from the lower end of  
4 the income scale. Among them would be Indians, blacks,  
5 whites.

6 Q. Right. And if you had that opportunity to observe him in the  
7 courtroom dealing with natives and with whites, what can  
8 you say as to whether or not you thought he treated the  
9 whites any differently from the natives?

10 A. I don't think he treated them any different.

11 Q. Did you have occasion from time to time to seek disclosure of  
12 material from Mr. MacNeil?

13 A. Yes.

14 Q. And what was your experience in that connection?

15 A. I would say that at that time, and this was, of course, 1971  
16 and 1972, that there was no, so to speak, practise of  
17 disclosure on the part of the Crown in Sydney and I can't  
18 speak to other areas of the province or generally as of that  
19 time. When I say "practise" it was not a process of disclosing  
20 anything in particular to the defence. Instead the defence  
21 had to organize itself and ask presumably the right questions  
22 and hopefully get answers, sufficient answers in reply.

23 Q. Would you from time to time go through that process with  
24 Mr. MacNeil?  
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A. Oh, yes.

Q. And how would he deal with you in response to that sort of request?

A. Well, I...my recollection simply is that if I...I, of course, knew if the defendant had made...the defendant, the accused person would indicate to me that they had made the statement, I would seek the statement of the accused through the Crown, and I would get it. That's my recollection. I have no recollection of ever, I shouldn't say ever. I have no recollection that there was ever any practise to supply the defence with anything beyond what, at least in my case, I asked for or knew to ask for.

Q. Other than statements of the accused, would you ever ask for statements of witnesses?

A. My recollection, again, is that we expected, I shouldn't say expected, we wanted to know who would be called in support of a prosecution and if, I think by in large, we were informed who would be called, but that's as far as the exchange went.

Q. Was there ever an occasion when you would ask for a witness statement and not receive it or did you not bother asking?

A. Well, I haven't reviewed any files that would, of course, have been maintained by the Nova Scotia Legal Aid office in Sydney, and obviously they presumably...presumably would refresh my memory. I cannot say that there was an instance

1 where...that there was ever any issue made out of the fact  
2 that material was not forthcoming. My recollection generally  
3 was that, yes, we'd get the defendants, the accused's  
4 statement not with or without difficulty. Sometimes it was  
5 easier than on other occasions. We did not...it was not my  
6 understanding in terms of state of that art defence work at  
7 that time, and given my experience and what was transpiring  
8 in Sydney. It was a new office. Nova Scotia Legal Aid had  
9 just established itself in Nova Scotia I think in 1970-71, that  
10 we were not...we didn't anticipate that we would get anything  
11 more from the Crown than that.

12 Q. Did you ever ask for anything more?

13 A. Oh, I think so, yes. I think that I certainly would have been  
14 most interested in knowing what was in other...statements of  
15 other witnesses.

16 Q. Now, specifically are you able to tell us whether or not you  
17 did ask for statements of witness from Mr. MacNeil?

18 A. I...I...in bringing my mind to it I believe that probably did  
19 from time to time. That's about as far as I could go.

20 Q. Okay. And do you have a recollection as to whether or not  
21 the statements of witnesses were produced in response to  
22 those requests?

23 A. No, by in large we didn't...we didn't see it. It was not part of  
24 any exchange or system of exchange or expectation I suppose.  
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Q. And can I infer from that that the reason that you didn't get it was because you were told you couldn't have it?

A. I'm not so sure I was told I couldn't have it. I suppose if I was told I couldn't have it that would make me want it more. But on the other hand it didn't seem to be a practise at that time that this kind of material was exchanged.

Q. The reason I'm asking is because you indicated a minute ago that you probably did from time to time ask for statements of witnesses. I'm just wondering whether or not you were told by Mr. MacNeil, for instance, that you...in response to that request that you couldn't have them.

A. I don't recall being told that I couldn't have them, we didn't get them by in large.

Q. Well, if you weren't told that you couldn't have them and you didn't get them how was it that it was communicated to you that they weren't going to be forthcoming?

A. We didn't get them.

Q. They just didn't arrive. There was no response.

A. Well, I'm just saying it was not a part of...it was not a practise of this exchange of this...an exchange of this kind of material, at least as far as my practise extended.

Q. Do you ever remember having a discussion with Mr. MacNeil about whether or not he would give you witness statements?

A. I don't remember a discussion in that sense.

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Q. Art Mollon, with whom I believe you were prac...you were practising in the Legal Aid office with him at about the same time, '71-72.

A. Yes.

Q. He had indicated to us that he had a fairly, to paraphrase him, a fairly easygoing relationship with Mr. MacNeil in the sense that he would get pretty well everything he wanted. Was that your experience with Mr. MacNeil?

A. No, I thought he took a different stance.

Q. Can you give us any appreciation as to why the two of you might have been treated differently?

A. I'm not so sure we were treated differently, you know. Art Mollon, if my recollection serves me correctly, was from Sydney. He knew the Sydney people. I was not from Sydney. My family, my mother's family had come from Sydney, but that was the extent of my connection with Sydney to that point.

Q. And are you saying to us that the fact that he was from Sydney would mean to you or seem to you that maybe he'd get along better with Donald C. MacNeil than you could?

A. I don't know. I...

Q. Well, you indicated to me a minute ago that you didn't think you were treated differently. But it would seem from what you've been telling us that if you didn't get witness



1 statements or didn't get material from Mr. MacNeil, and Art  
2 Mollon was telling us that he could get basically everything  
3 that he wanted, that there was some kind of differentiation  
4 going on. I'm just wondering if you can enlighten us at all as  
5 to why you think that might have been the case?  
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7 A. I really don't know why that was. If there was a  
8 difference...if Mr. Mollon got more material than I did I don't  
9 think I was aware of it at that time.

10 Q. Did you from time to time have occasion to see Mr.  
11 Rosenblum?

12 A. Yes.

13 Q. Moe Rosenblum. Can you give us your impression of him as a  
14 lawyer?

15 A. Well, he was certainly an experienced counsel in Sydney at  
16 that time and I would think probably one of the...he was  
17 certainly one of the most senior and experienced and leading  
18 counsel, I suppose I would say.

19 Q. And Mr. Simon Khattar.

20 A. I would say virtually the same thing.

21 Q. Did you have experience with the native court worker  
22 program when you were working with Legal Aid in Sydney?

23 A. Yes.

24 Q. And what can you tell us about whether or not that native  
25 court worker program was of assistance to you as a lawyer

1 working in Legal Aid at that time in Sydney?

2  
3 A. Yes, my recollection is that the native court worker program  
4 was probably active in Sydney sometime after I myself went  
5 to Nova Scotia Legal Aid in Sydney. And, as time passed, yes,  
6 I think it served a useful, a very useful function.

7 Q. What did you understand that function to be? What were  
8 they  
9 doing for you?

10 A. Well, they weren't doing anything for me. They were not  
11 connected with the Nova Scotia Legal Aid office in any way. I  
12 understood that their function was to more or less act as an  
13 agent or big brother, a facilitator, for the native population.

14 Q. And would their ability to do that assist you in the conduct of  
15 your own work?

16 A. No, not specifically in the practise of law, no. But in terms of  
17 ensuring that people kept appointments and knew when they  
18 were in court, yes, they were a supporter to the...to Indians  
19 who were before the court.

20 Q. Did you know Bernie Francis?

21 A. Yes, I knew Bernie Francis.

22 Q. And, are you able...are you able to tell us what your  
23 assessment of Bernie was at the time of working as a court  
24 worker in that program?

25 A. I don't think I was in a position to make an assessment. I

1           knew...I had contact with him and I thought the contact with  
2           him, as I understood what his job was, was helpful.

3           Q. Did you ever see him working in a courtroom as an  
4           interpreter?

5           A. I don't have a recollection of that.

6           Q. Did you from time to time represent Indian defendants from  
7           the Membertou Reserve?

8           A. I certainly...Nova Scotia Legal Aid, and I being a part of that  
9           organization, we certainly did represent Indians in Cape  
10          Breton. But in terms of Membertou Reserve I...

11          Q. Membertou as opposed to anywhere else you don't know.

12          A. I can't say that they were from Membertou or Eskasoni or  
13          Whycocomagh. I don't remember that we did or didn't with  
14          respect to Membertou.

15          Q. Are you able to tell us whether or not you sensed that the  
16          native defendants were having any difficulties in the  
17          courtroom in terms of what was going on?

18          A. Again speaking generally.

19          Q. Sure.

20          A. I didn't observe that there was any significant impediment or  
21          problem. I certainly from time to time could see that the  
22          native people were, you know, uncomfortable in the  
23          courtroom setting, the formality of the setting, perhaps  
24          tentative in their ways of dealing with the so-called business  
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before the court. But in terms of language specifically I wouldn't say, no, it was not a problem in a generalized way.

Q. With reference to the factors that you just mentioned did you notice any difference in the degree of difficulty between the native defendants and any of the white defendants?

A. I would say, yes.

Q. What was the nature of the difference?

A. I think that the native population, by in large, was less comfortable than other defendants accused before the court.

Q. If I can just now direct your attention to Exhibit 97 that you have in front of you, which...on page 1 it's a letter to you from Roy Gould on October of 1979. Would that have been your first contact with the Donald Marshall situation?

A. Mr. Gould had...was writing to me at that time in furtherance to a telephone conversation that he and I had had. I would think that that telephone conversation was probably the first contact. Donald's father may have spoken to me about the matter shortly before this date.

Q. Did you know Donald Marshall, Sr.?

A. Yes, uh-hum.

Q. And where did you know him from, from your work in Sydney?

A. Yes, uh-hum.

Q. And what was your impression of Donald Marshall, Sr.?

1 A. I was...while I was in Sydney and after that I understood that  
2 he was the Grand Chief and he had a position of...he was a  
3 prominent Indian and a respected person is my  
4 understanding.

5 Q. And did you share that respect for hm?

6 A. Yes, I did.

7 Q. And Roy Gould, did you know Roy Gould prior to the  
8 telephone conversation and the letter of October 2nd?

9 A. Yes, I had come across Mr. Gould on perhaps several occasions  
10 prior to the date of this letter.

11 Q. Subsequent to that letter on page 6 there's another letter  
12 from Mr. Gould dated October 11th, which he is sending along  
13 some press clippings which we haven't included in the  
14 volume, concerning Donald Marshall. At that point in time, by  
15 the time you received that second letter, had you started to  
16 do any work in connection with Donald Marshall, Jr.?

17 A. No, I would say, not.

18 Q. Then on October 25th you're responding to Roy Gould and  
19 asking Donald Marshall, Jr., or someone on his behalf to  
20 provide you with a retainer in the amount of \$200. Are  
21 you...can you tell us whether or not your request for a  
22 retainer would have reflected your normal practise? That is  
23 would you...would you do that for everybody?

24 A. Yes.  
25

1 Q. And it wouldn't be influenced at all by the fact that Mr.  
2 Marshall was in jail at the time and perhaps didn't have very  
3 much money?

4 A. No. My recollection is that from my conversations with Roy  
5 Gould that he was giving me to understand that certainly he  
6 and others within the native population were concerned  
7 about Donald Marshall being in custody in Springhill and were  
8 giving me to understand that they would like someone to act  
9 on a file and that in due course, presumably satisfactory  
10 arrangements would be made for funding some work. That  
11 was what I was given to understand. So my request for a  
12 retainer at that time would be my standard practise. I would  
13 be just speculating as to what would happen if I didn't  
14 receive the retainer. But I know Donald's father and I had  
15 respect for him and I was now learning of Donald's situation  
16 at Springhill or Dorchester, Dorchester, wherever he was at  
17 that time.

18 Q. At the time that you were...originally received this call and  
19 letter from Roy Gould, were you in...did you have a  
20 recollection for your experience in Sydney of Donald Marshall,  
21 Jr., being tried and convicted?

22 A. No, I think that at the time that I went to Sydney it was  
23 probably within a few months after that trial.

24 Q. That was all news to you at that point then, in '79.  
25

- 1 A. Yes, really, I had no...I had no earlier information of any  
2 specific nature at all about the case.
- 3 Q. You indicate in a letter on page 9 to Mr. Marshall that you've  
4 received \$100 and asking him to provide you with an  
5 additional hundred and then you say "I will make  
6 arrangements to meet with you in Springhill to take up your  
7 instructions," and the subsequent pages reveal that you did  
8 receive the other hundred dollars and a trip was made to  
9 speak to Mr. Marshall. Did you make that trip personally?
- 10 A. No, I did not make that trip.
- 11 Q. Who would have gone on your behalf?
- 12 A. I believe it was Lawrence O'Neill in January of 1980.
- 13 Q. Now, if we could just...
- 14 A. Some...a month or so later, perhaps four to six weeks later.  
15 Lawrence O'Neill was practising with me at that time, was  
16 with my office at that time and he interviewed Donald.
- 17 Q. Was he at that point in time admitted to the bar or was he  
18 articling?
- 19 A. I don't really recall.
- 20 Q. How long was he with your office?
- 21 A. Just a short period of time. Within a month he received a call  
22 from the Premier's office to work with him.
- 23 Q. And he went off and worked in the Premier's office.
- 24 A. Yes.
- 25

1 Q. The notes on page 12, 13 and 14 seem to be in the same  
2 handwriting. Is that your handwriting?

3 A. No, it's not.

4 Q. Are you able to tell us whose it is? Seem to be on...on 12  
5 seems to making arrangements to go up and see Mr. Marshall.

6 A. I would think that that's Lawrence O'Neill's.

7 Q. Okay.

8 A. Writing.

9 Q. And 13.

10 A. I would think again...I would think that again is Lawrence's  
11 handwriting.

12 Q. And 14 outline of interview with Marshall.

13 A. Yes.

14 Q. Now, on page 14 there's a reference to, on the third line,  
15 "Pratico page 194". By that point in time would you have  
16 received the trial transcript of the trial?

17 A. Yes, I believe that that's what that relates to.

18 Q. And would you yourself have reviewed the trial transcript?

19 A. Yes, I would have...when the material came into the office I  
20 would have reviewed in a way prior to requesting Lawrence  
21 O'Neill to go and interview Donald.

22 Q. And would you then have asked Mr. O'Neill to also review it?

23 A. Yes.

24 Q. On page 15 you see a list of questions from Mr. Marshall. Is  
25



1           that also somebody else's other than yourself's handwriting?

2           A. Yes.

3           Q. And again, do you think that's Mr. O'Neill's?

4           A. I think so.

5           Q. And did Mr. O'Neill, in fact, go up to the institution, meet with  
6           Mr. Marshall and come back to you and report?

7           A. It's my understanding that he did.

8           Q. Okay. And the notes on the subsequent pages, 16, 17, 18, 19,  
9           20, would it be your understanding that those are notes that  
10          were kept by Mr. O'Neill of his meeting with Junior Marshall?

11          A. Yes, that is my understanding.

12          Q. Are you able to tell us what Mr. O'Neill told you when he  
13          came back from that meeting as to what Mr. Marshall was  
14          telling him?

15          A. No, I don't have any memo. I made no memo of our  
16          discussions following the interview, so I don't recall.

17          Q. What was your sense of it?

18          A. My sense of it was, as related to me by Mr. O'Neill, was that  
19          there was something to pursue, something worthy of pursuit.

20          Q. Did he indicate to you what it was that was worthy of  
21          pursuing?

22          A. No. I had read the transcripts to a degree. I wouldn't say at  
23          all before Mr. O'Neill went to Springhill that I was fully  
24          conversant with the evidence at trial. I'm not suggesting that  
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1  
2 at all. But I certainly reviewed the transcripts. I gave him  
3 the direction I thought that he ought to have to conduct such  
4 an interview. So I...

5 Q. If I can just stop you there for a sec. What was the direction  
6 that you thought he ought to have to conduct that interview?

7 A. Well, the...the, just the direction. I don't recall what direction  
8 I asked him specifically to take. I requested him to review  
9 the transcripts and I believe that he did, and I believe I  
10 brought, you know, to his attention my impression, certainly,  
11 that there was serious...some serious problems with the  
12 Crown evidence, particularly from Chant and Pratico, and I  
13 did not know anything from Donald directly at that time,  
14 apart from what's disclosed from the file, and I would  
15 probably have been alerting Mr. O'Neill to see exactly what it  
16 is that Donald could say with regard to these...what appeared  
17 to me a serious problems with that evidence.

18 Q. Was your impression that there were serious problems,  
19 particularly with the testimony of Chant and Pratico, was  
20 that gleaned merely from your review of the transcript?

21 A. Yes, yeah.

22 Q. Are you able to tell us today what you thought...what did the  
23 transcript tell you that indicated that there were problems  
24 with that transcript?

25 A. I really can't respond to that at the... I haven't had the

1 transcripts for some considerable period of time and haven't  
2 refreshed my memory from anything that would allow me to  
3 respond.

4 Q. Mr. O'Neill goes up and sees Mr. Marshall. Did you at any  
5 time see Junior Marshall at all?

6 A. I don't think I did, certainly not at Dorchester. I didn't  
7 interview him. I believe I had some telephone conversations  
8 with him.

9 Q. Did you see him at any time then, you didn't see him at any  
10 time then during the currency of your retention by...

11 A. No.

12 Q. Now, Mr. Marshall writes to you on March the 2nd of 1980 at  
13 page 22 and then you respond, and then on page 24 there's a  
14 ...which I think is only a draft, because the final version of  
15 that letter then appears on page 27. You're writing to Reg  
16 Maloney at the...the Chief of the Shubie Band Council and the  
17 final version of that letter is on page 27. And you say  
18 towards the bottom of that page, page 27,

19 "Donald, Jr., has apprised us of certain new evidence which, if  
20 it can be substantiated, is material to the issue of his  
21 involvement in the death of the victim Sandy Seale." Can you  
22 tell us what that new evidence was?

23 A. I...in simply rereading the letter, when we met a number of  
24 days ago, didn't recall, I didn't have a recollection of what  
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1 that referred to but I did look at the balance of my file and I  
2 think that what that relates to is Donald's instructions to Mr.  
3 O'Neill in the January interview regarding a Michael Flynn, if  
4 I recall.

5 Q. And the fact that that individual might have been the person  
6 who, in his view, carried out the murder at that point.

7 A. Yes, there seemed to be...this was the sense of it, I guess.

8 Q. And now reconstructing, from having looked at your file then  
9 is that...is that the substance of what you think that certain  
10 new evidence was?

11 A. I think it was.

12 Q. Yeah. That's in April of 1980, and then you then write to  
13 Junior on June 23rd saying, "We'd be pleased to hear further  
14 from you at your convenience. " In the meantime you had  
15 received a letter from Mr. Marshall dated April 24 responding  
16 to the letter you wrote to Mr. Maloney. And, you indicate at  
17 the bottom of page...or Mr. Marshall indicates, rather, at the  
18 bottom of page 29, "I intend to have a blood sample to find  
19 out my blood type. I believe it would be important." Are you  
20 able to tell us whether or not that was a result of a  
21 suggestion of yours?

22 A. No, I don't have memory of suggesting that. Again, my  
23 contact with Donald was limited, and by...limited and it was  
24 by telephone. There may have been some discussion  
25

1 regarding a blood sample between Lawrence O'Neill and  
2 Donald. I don't recall it coming up in the very limited and  
3 sort of contained context of a telephone call from the  
4 penitentiary to me.

5 Q. And then in...

6 A. From me to him.

7 Q. There's then a bit of lapse and you write on June 23rd on  
8 page 31, and then Roy Gould writes you again towards the  
9 end of October. Did anything happen in your work for Mr.  
10 Marshall in the summer of 1980?

11 A. There's nothing that would indicate any activity of the file  
12 during that summer.

13 Q. Do you remember whether or not you did any work for him  
14 during the summer of 1980, further review of the transcript  
15 or discussions?

16 A. I don't recall.

17 Q. Then on November 7, page 36, you're writing to Mr. Gould  
18 indicating that you really haven't heard from Mr. Marshall for  
19 some time. Then there's a handwritten note at the bottom.  
20 Can you tell us what that's about?

21 A. This is in my handwriting and it appears to be a note dated  
22 November the 26th, 1980. It's a reference to Donald's father,  
23 Donald Marshall, Sr., having come in to see me.

24 Q. What does it say? "Was in re file for..." I can't read your  
25

1 writing.

2  
3 A. I have a little difficulty myself. That reads, "Donald Marshall,  
4 Sr., was in re file." I think that reads, "For his band council  
5 chief Alex Christmas. It seems that they are going to fund  
6 this." And, then I make a comment there, I think it reads, I  
7 make a reference to two thousand, twenty-five hundred  
8 dollars plus disbursements as an estimate, and then a  
9 reference to a rate.

10 Q. And would that perhaps have been in response to the  
11 comment in your letter to Mr. Maloney in April on page 28  
12 and the end of the last paragraph before the end, "Before  
13 proceeding further we would require that suitable  
14 arrangements be made with us to assure that this substantial  
15 undertaking can be satisfactorily financed."?

16 A. Yes. Again, throughout this 1980 period from January, when  
17 Mr. O'Neill interviewed Donald at Dorchester or Springhill, I  
18 think it was Springhill, through that spring I certainly  
19 anticipated that something would materialize in terms of this  
20 retainer that I had been given to understand would be sort of  
21 formalized.

22 Q. Right.

23 A. And that's what I was anticipating.

24 Q. And I take it from the comment in your letter of April 15 or  
25 17 that by that point in time you had concluded that if

1 anything was to be done to get Mr. Marshall out of jail it was  
2 going to require a substantial amount of work.

3 A. Yes, that's...I certainly believed that.

4 Q. And you at that time, indeed, adverted to the possibility of  
5 Section 617 of the Criminal Code.

6 A. Yes. I see two references there. 610 and 617.

7 Q. 610 and 617.

8 A. I would say that I...we...I, I knew nothing of the Roy Ebsary  
9 involvement at any time throughout this period.

10 Q. The name was never mentioned to you at all.

11 A. No.

12 Q. No.

13 A. It was certainly never mentioned to me and I didn't hear of it  
14 through Lawrence O'Neill. I have no reason to think that he  
15 ever heard that name. There is nothing in the file to indicate  
16 that.

17 Q. You write again to Mr. Marshall in November 25th responding  
18 to a letter of his November 13 and then asked to be advised  
19 of further developments, and following your file nothing  
20 happens then between then and August of 1981, at which  
21 time you send your account along to Mr. Marshall. Did  
22 anything occur between November of 1980 and August of  
23 1981?

24 A. No. Donald was giving me to understand by his letter of  
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November the 13th, which is on page 37 that he anticipated  
that this work would be funded and he was expressing some  
disappointment that this had not materialized and he gave me  
to understand that he was going to pursue it in his fashion  
with his contacts and his people.

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Q. And between the date of his letter and the following summer  
nothing happened, the summer of '81, August, at least as far  
as you were aware in terms of getting money for your  
continued retainer.

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13  
14  
A. Yes, there's nothing on the file to indicate that anything  
transpired. I wrote to him in November and said I looked  
forward to hearing from him and I didn't hear from him and  
that following summer, eight months or so later I just wrote  
him a letter.

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16  
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Q. Right, and then and finally on September 11, 1981, you get a  
letter from Steve Aronson, at page 42.

18  
A. Yes.

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Q. Mr. Aronson is asking in the last paragraph of his letter, "I  
look forward to receiving the requested transcripts at your  
earliest convenience." You write back to Mr. Aronson on the  
18th of September, 1981, and say that you'll gather the  
materials together and once the account is paid forward the  
material on to him. Was that material, in fact, forwarded on  
by you to Mr. Aronson?



1 A. Yes.

2 Q. And that's the end of your involvement with Donald Marshall,  
3 Jr.?

4 A. Yes.

5 Q. Did you have a sense from your discussions with Mr. Marshall  
6 and what you might have been told by Mr. O'Neill, did you  
7 believe that there was something there?

8 A. Sorry, would you just put the question again.

9 Q. From your discussions with Junior Marshall and from what  
10 you may have gathered from Mr. O'Neill, did you have a  
11 feeling yourself that there may be something there?

12 A. Yes. I didn't have any substantive discussions with Donald.  
13 It was by telephone but I...certainly there was a kind of  
14 significance and not urgency but commitment in my...it was  
15 apparent to me when I dealt with Donald that he was  
16 pursuing something that he firmly believed in and as a  
17 consequence of my reviewing of the transcripts and  
18 subsequently discussing it with Mr. O'Neill, who conducted the  
19 interview, I did feel that there was something there. It's  
20 apparent, I think, now that it wasn't...the something  
21 significant wasn't Roy Ebsary the person, but certainly that  
22 there was something there.  
23  
24  
25

1 Q. Subsequent to the end of your direct involvement with Mr.  
2 Marshall, were you ever contacted by any of the RCMP  
3 officers who conducted the reinvestigation in 1982, Sergeant  
4 Wheaton or Carroll?

5 A. I don't have a recollection of being contacted.

6 Q. Were you contacted by anybody else subsequent to 1981 in  
7 connection with this matter? With the RCMP or with the  
8 Attorney General's Department?

9 A. I don't have a recollection of it.

10 MR. SPICER

11 Thank you.

12 MR. RUBY

13 I have no questions of Ms. MacLean but I wanted to express my  
14 thanks for the efforts you've put in and for coming here today.  
15 Thank you.

16  
17 EXAMINATION BY MR. PUGSLEY

18 Q. Ms. MacLean, I'm Ron Pugsley and I'm acting for John  
19 MacIntyre. You have your original file material with you  
20 today, do you?

21 A. Yes.

22 Q. Could I take a look at the letter from Donald Marshall, Jr. to  
23 Shelley that is found on pages three, four, and five? The  
24 photostatic copy we have in our files is not very good and if  
25

1           you have a better copy. Thank you. You've indicated that  
2           you never met with Donald Marshall, Jr.

3       A. Yes.

4       Q. That is correct.

5       A. I think so.

6       Q. And that an associate in your office by the name of O'Neill  
7           went to Dorchester to meet with him.

8       A. Yes.

9       Q. And that was Lawrence O'Neill?

10      A. Yes.

11      Q. Where is he now?

12      A. I believe he's an MP for, what is it, Cape Breton, The  
13           Highlands, in Ottawa, presumably.

14      Q. The notes that he made consequent upon his interview with  
15           Mr. Marshall are found in pages 15 to 19, I guess, in Exhibit  
16           #97. Is that correct?

17      A. Yes, those were on my file. I believe those to be his notes.

18      Q. And just having had a brief opportunity to examine these  
19           notes and not in any detail suggests to me that Mr. Marshall  
20           was under the impression that the person who attacked him  
21           and stabbed Seale was a D. Mickey Flinn of Sydney. The  
22           reference is at the top of page 16. Is that your  
23           understanding of these notes? At the top of the page, top of  
24           page 16 it appears to say, "D. Mickey Flinn of Sydney may be  
25           dead," I think that word is "dead", "About 50," or something...

1 Pardon?

2 MS. DEFERRICK

3 Non-Indian.

4 MR. PUGSLEY

5 Q Oh, Non-Indian, I'm sorry. "He was trying to protect himself,  
6 thought Marshall was going to rob him." And then about half  
7 a dozen lines down or so, it says, "Flinn stabbed Marshall.  
8 Marshall ran. Flinn ran." And then about two-thirds of the  
9 way down page 16 after No. 3, "Flinn wasn't poor. Met him in  
10 Sydney jail after murder," it looks like," Flinn in there for  
11 stealing coal. Flinn was in line-up but did not wear glasses in  
12 line-up but had them with him in Sydney jail. Not sure of  
13 after or before trial Flinn was living with Pratico's mother."  
14 Now is it your understanding from your conversation with  
15 Mr. O'Neill from reading these notes that this chap, Flinn, who  
16 is referred to in this page is the person who Marshall fingered  
17 is the fellow who stabbed Seale?

18 A. From my looking at the notes again now, that seemed to be so.

19 Q. And then the next page, page 17, after the heading No 7,  
20 "Flinn had just got out or prison for murder. Dorchester  
21 income from jewelry hobby in prison. Was Flinn's...:" I don't  
22 know if that's "modus" or something...And then at the bottom  
23 of page 17, at the bottom of page 17 after Point No. 17,  
24 "Became suspicious of Flinn when I met him in Dorchester for  
25 parole violation '72." And that, presumably, would be

1 Marshall became suspicious of Flinn when he, Marshall, met  
2 Flinn in Dorchester for parole violation in 1972. It goes on to  
3 say, "Spent two years there with him," indicating Marshall  
4 spent two years with Flinn. "He was on protective floor since  
5 he had ratted on an inmate who killed a guard." Again, do I,  
6 is this, is my interpretation the same as yours, that Marshall  
7 was under the impression in 1980 when he was interviewed  
8 by Lawrence O'Neill in Dorchester that the fellow who stabbed  
9 Seale was this chap, Flinn, who Marshall had been in prison  
10 with for two years?

11 A. Presumably.

12 Q. Yes. And that is the...

13 A. I might say if perhaps I could.

14 Q. Yes.

15 A. The first suggestion, so to speak, of this Mickey Flinn,  
16 whoever he was or wasn't, came through me as a consequence  
17 of Lawrence O'Neill's interview. I did not know of this name  
18 independently.

19 Q. No, but I guess the significance of it is that Marshall is not just  
20 making a mistake about a name. He's not describing a Mickey  
21 Flinn that he believes was the fellow who was in the park  
22 that night, but he describes this fellow with some detail  
23 because he had been in prison with Marshall for a couple of  
24 years. Presumably someone that Marshall had seen in prison  
25 not someone that he had only glimpsed in Wentworth Park on

1 the night of May 30th, 1971, but someone who he had some  
2 continued association with.

3 A. I really can't respond.

4 Q. No.

5 A. The notes are there for what they mean.

6 Q. Of course. And perhaps Mr. O'Neill is the appropriate person  
7 to address those questions to.

8 A. Yeah.

9 Q. But that is the person who you had in mind when you wrote  
10 on April 15th, 1980, at page 24 of this Exhibit 97, and said,  
11 "Donald, Jr., has apprised us of certain new evidence which, if  
12 it can be substantiated is material to the issue of his  
13 involvement in the death of the victim Sandy Seale." Flinn is  
14 the guy you had in mind.

15 A. The new, the reference to "new", yes.

16 Q. Yes.

17 A. That's my recollection from the file.

18 Q. Uh-hum. If you'll just give me a moment, My Lord, until I  
19 read this letter. Perhaps if I may just stand beside Miss  
20 MacLean and read this letter along with you because, as I say,  
21 my copy is not very good. This is found in Exhibit 97 and it's  
22 the letter to Shelley which is found at pages 3, 4 and 5, and  
23 in particular the second page which is page number 4 in the  
24 book where Mr. Marshall writes. He said, and perhaps we can  
25 read along together,

1 I knew who killed the guy that night and  
2 everyone put the blame on me. I couldn't finger  
3 this guy because I was fighting for my own life.  
4 I hope this isn't too hard for you. I'm having a  
5 hard... writing this down. I'm not a rat and I  
6 can't take any more and I did seven years for  
7 that bastard. I know, Shelley, I talked to this guy  
8 when they put him in the county jail. He gave  
9 me too many stories and he know that I knew  
10 who he was and he got into...

11 something,

12 ...many details just to cover himself up. I even  
13 asked him once but I kept it all to myself  
14 because like I said if I could have gotten out on  
15 appeal I was going to get him. This guy did me  
16 wrong and I wanted him for myself; that's why I  
17 didn't finger him.

18 Is that a fair reading of what would appear to be here?

19 A. Yes, it would seem so, yes.

20 Q "I'm not going to say any names, just one, until I get my  
21 lawyer."

22 MR. PUGSLEY

23 Thank-you, very much, Miss MacLean. That's all the  
24 questions I have.

25 MR. RUBY

Perhaps I can clarify this, My Lord, by indicating to you  
that I'm advised that Mr. Flinn had nothing to do with this. Mr.  
Flinn resembles Mr. Ebsary. I wouldn't want anyone to think that  
Mr. Flinn has done anything wrong in the correspondence. Nor

MS. MacLEAN, EXAM. BY MR. PUGSLEY

1 | would I want my friend, if you look at page 16, one passage about  
2 | Mr. Flinn that he didn't read, would not want my friend to think  
3 | that Sergeant MacIntyre and Pratico really were talking about  
4 | setting him up. That didn't happen either.

5 | MR. CHAIRMAN

6 | Page 16.

7 | MR. RUBY

8 | Yes, about the sixth last line. My friend read down to it and  
9 | then stopped.

10 | MR. PUGSLEY

11 | I guess the significance is not so much that Flinn may or  
12 | may not have been involved in it. I guess the significance is that  
13 | Donald Marshall said that Flinn was the man. Donald Marshall.

14 | MR. CHAIRMAN

15 | At that time.

16 | MR. PUGSLEY

17 | That's right. Yes.

18 | MR. CHAIRMAN

19 | Mr. Barrett.

20 | EXAMINATION BY MR. BARRETT

21 | Q. Miss MacLean, my name is David Barrett. I represent the  
22 | estate of Donald C. MacNeil, and I'll just ask you a few  
23 | questions in respect to Crown procedure in Sydney while you  
24 | were there. I believe you've indicated that it was the Crown  
25 | procedure that if you requested a statement of an accused



1 that that statement would be provided to you by the Crown.

2 A. Yes.

3 Q. And you've indicated that the Crown, as well, would provide  
4 you with a list of witnesses that they propose to call in any  
5 case?

6 A. Not so much a list in the formal sense, in writing.

7 Q. But they would provide you with the names of these people.

8 A. By and large.

9 Q. And I'm just wondering...I'm just wondering at any time did  
10 the Crown and, in particular, Donnie MacNeil ever tell you  
11 that you couldn't speak with any of these witnesses?

12 A. It was certainly my belief at the time that the Crown didn't  
13 have any property and any particular individual, whether...

14 Q. So, he didn't.

15 A. ...the Crown or otherwise.

16 Q. So, he didn't instruct you that you couldn't speak with any of  
17 these witnesses.

18 A. No, I don't believe so.

19 Q. Did you ever go to Donnie MacNeil's office requesting  
20 particulars or statements and have Mr. MacNeil refuse to  
21 speak with you?

22 A. No.

23 Q. And, I understand you're familiar then with Arthur Mollon.

24 A. Yes.

25 Q. And would he have been senior to you or...at that time?

1 A. I don't think so. I think...senior at the bar or senior with Nova  
2 Scotia Legal Aid.

3 Q. Senior at the bar.

4 A. No, I think I was senior to him.

5 Q. But he had practised or had he practised longer in the Sydney  
6 area than you?

7 A. I don't think so. I think...I don't recall what his practise was  
8 before going with Nova Scotia Legal Aid.

9 Q. Had...do you know if he had articulated in Sydney?

10 A. I don't know.

11 Q. Do you know if Mr. Mollon shared your views in respect to  
12 Donnie MacNeil's practise?

13 A. I don't know what has transpired at this...at this proceeding  
14 and I haven't discussed any matters like this of this kind with  
15 Mr. Mollon since. Cer...

16 Q. Okay. I'm sorry to cut you off. Finish.

17 A. At the time while in Sydney I think it came up from time to  
18 time between us.

19 Q. Okay. So, you then did discuss some concerns you may have  
20 had with him, with Mr. Mollon, some concerns you had with  
21 the Crown procedure.

22 A. I think so, yes.

23 Q. Did you ever say to Mr. Mollon, "Art, will you come over and  
24 discuss these problems with Donnie?"

25 A. No, I don't have a recollection of that.

1 Q. Perhaps I'll just refer you to volume 29. This is the evidence  
2 that Mr. Mollon gave before the Commission here and perhaps  
3 I can just get some comment from you on these.

4 A. Do you have a copy of that?

5 Q. It would be page 5420.

6 A. Page 5420.

7 Q. 5420, that's correct. And I'm referring to line 18 in which  
8 Commission counsel, Mr. MacDonald, asked Mr. Mollon,

9  
10 There has been some difference of opinion or  
11 difference of perception anyway in the evidence  
12 here by some people who practised in Sydney in  
13 1971 as to what the practise was between the  
14 defence bar and the prosecutor's with respect to  
15 disclosure and the ability to find out what the  
16 Crown case was about, you...was against your  
17 client. Could you tell the Commission what your  
18 experience was, please?

19 And he starts off about disclosure and I'll refer you to line 4.

20 My practise has been that anything that I  
21 wanted from the Crown if I was defending  
22 someone that I called the Crown prosecutor and  
23 indicated to them that I was defending a person.  
24 They would provide if they had the material  
25 there they'd provide me with what they had.

And it goes on to say:

It was complete cooperation is what...how I  
would describe it with the Crown.

In particular they refer to...Commission counsel refers to the

1 late Donald C. MacNeil and Mr. Mollon replies at line 16,

2 "And I'd go in and see Donnie and tell him who I  
3 was defending. He'd tell me what...what the  
4 Crown evidence they had, what witness they  
5 were calling and as a result of those sometime  
I'd go back to my client.

6 Then he goes on to indicate that he'd discuss it with his client.  
7 I'll just refer you to one other section of Mr. Mollon's evidence  
8 and then perhaps I can have your comment on it. At page  
9 5422, line 18. Again, Commission counsel is referring to the  
10 evidence of Mr. Khattar. Now, you weren't present or don't  
11 know of that evidence. But Mr. Khattar seemed to think it  
12 was not the practise to go and talk with the prosecutor. "Now  
13 look what kind of case do you have against him?" This is the  
14 evidence that Mr. Khattar gave. "I take it it was your practise  
15 to go and ask that type of thing." Referring to whether Mr.  
16 Mollon would go in and speak directly with Donnie MacNeil.  
17 Now, page 5423, I'll refer you then to line 7.

18  
19 I remember talking to Mr. MacNeil one day. I  
20 said, we werere talking about it and I said, 'God,  
21 I was embarrassed in that.' I said, 'I didn't know  
22 that.' He said, 'Why in hell didn't you ask me?'  
23 From then on I just used to call and I never felt  
24 that my case would be prepared unless I knew  
25 just what the Crown had against me, what I had  
to meet and I always made it a practise to find  
out from the Crown everything that I could find  
out from them, and I had absolutely no problem  
with Mr. MacNeil. If I called him up...now there

MS. MacLEAN, EXAM. BY MR. BARRETT

1                   wasn't a situation where Mr. MacNeil would call  
2                   me and offered stuff, but any time I asked him  
3                   for anything or went to his office it was always  
4                   full cooperation.

5                   And would you indicate that those were not the views that  
6                   you shared?

7                   A. No, not at the time that I was in Sydney. Just to perhaps find  
8                   out again, the Nova Scotia Legal Aid office was just opened in  
9                   Sydney the spring of, I think it was, '71, and I was there in  
10                  that office for, I think, until late '71. I...piecing it together  
11                  now it seems to me I wasn't there in 197...pardon me. I don't  
12                  recall exactly what period of time now I was in Sydney. But  
13                  at that time the office was very newly established and I think  
14                  as time passed things became more formalized. I can recall  
15                  that Mr. Mollon and I were involved in two murder cases in  
16                  Baddeck very early on and Mr. MacNeil was prosecuting and  
17                  Mr. Crosby, Howard Crosby, who was the Executive Director of  
18                  Nova Scotia Legal Aid at that time, was...if I could characterize  
19                  it shocked and most disturbed that the conduct of the Crown's  
20                  case at that time. And, there was a very significant, I think,  
21                  conflict regarding the conduct of that matter. And, I think  
22                  things improved after that. By that time I was leaving Nova  
23                  Scotia Legal Aid in Sydney. Art Mollon stayed in that office  
24                  and I have no reason to think that what he says there in his  
25                  testimony was not the practise that was then taken up.

Q. Okay. But he seems to indicate from this very early in his

MS. MacLEAN, EXAM. BY MR. BARRETT

1 career he realized that he could go into the Crown and ask  
2 them for the information that he wanted.

3 A. Uh-hum.

4 Q. You never progressed to that point while you were in Sydney.

5 A. Progressed to that point. The...

6 Q. Well, perhaps...

7 A. I would say that figuratively speaking the altercation which  
8 transpired over the conduct of the murder cases in Baddeck  
9 was a turning point for Nova Scotia Legal Aid and Mr.  
10 MacNeil.

11 Q. And you've, perhaps you can just enlighten me a bit, Ms.  
12 MacLean, how many women lawyers would there have been  
13 in Sydney at the bar in the 1972?

14 A. I don't think there were any others at the time.

15 Q. So there were no others practicing criminal law?

16 A. I don't think so.

17 Q. And I take it at this time Mr. MacNeil would have been senior  
18 or experienced counsel. He'd been the Crown prosecutor since  
19 1968?

20 A. Yes.

21 Q. And you've indicated that in 1971 that you were new to the  
22 Sydney area at that time?

23 A. Yes.

24 Q. And is it fair to suggest that you were probably one of the  
25

MS. MacLEAN, EXAM. BY MR. BARRETT

1 junior lawyers at the criminal bar in Sydney at that time?

2 A. Well, yes, I was, had been admitted to practice in 1970 and  
3 this was a year, year and a half later.

4 Q. Is it fair, then, to suggest that ...

5 A. I had no reason to believe that I was treated by Mr. MacNeil  
6 and the prosecutor's office any differently than they treated  
7 anybody else.

8 Q. In 1971, or '72.

9 MR. BARRETT

10 Those would be all my questions.

11 EXAMINATION BY MR. SAUNDERS

12 Q. Ms. MacLean, Jamie Saunders on behalf of the Attorney  
13 General's Department. In the booklet of material from your  
14 file, Mrs. MacLean, page 1 is the letter to you from Mr. Gould  
15 dated October 2nd, 1979, and in the first paragraphs he refers  
16 to a telephone conversation he had with you, obviously prior  
17 to writing the letter to you. Do you recall when the  
18 conversation was with Mr. Gould?

19 A. I would think it was shortly before that.

20 Q. Had you had discussions with Mr. Gould about becoming  
21 involved in the Junior Marshall case prior to receiving  
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MS. MacLEAN, EXAM. BY MR. SAUNDERS

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the letter of October 2nd?

A. In a very preliminary way. I would say.

Q. And is it the best of your recollection that those discussions with Mr. Gould would have been pretty close to the date of his letter, October 2nd?

A. I would think...

Q. Within weeks.

A. I would think it was probably within ten days or so.

Q. All right. He passes on to you in that letter, the letter from Junior Marshall to Shelly, dated April 24, 1978. Do you know, Mrs. MacLean, when it was that Mr. Gould received the copy of the letter from Marshall to Sarson?

A. Do I know when...

Q. Yes.

A. Mr. Gould received the letter from Mr., from Donald?

Q. Yes.

A. No.

Q. Do you know, Mrs. MacLean, if Mr. Gould showed the letter to anyone else besi-, before he passed the copy on to yourself?

A. I would have no way of knowing that.

Q. Mr. O'Neil, your associate, went to the institution and interviewed Junior and I take it before he went you and Mr. O'Neil discussed the line of questioning that Mr. O'Neil should pursue with Mr. Marshall?



MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 A. Yes.

2 Q. All right. And at page 12, I believe Mr. O'Neil's notes begin.  
3 And at page 13 of those notes there's reference to Marshall  
4 being in the Air Cadets and that he recalls seeing an officer of  
5 the Air Cadets in the park that evening and suggests that that  
6 person in the park may have seen other people in the park  
7 and I'm wondering, Mrs. MacLean, when Mr. O'Neil returned  
8 from his interview with Junior Marshall did you and he  
9 discuss this information about a person with Air Cadets  
10 having been in Wentworth Park that night?

11 A. I don't recall the detail of our discussion.

12 Q. Do you recall any mention, either by Junior Marshall to you  
13 directly, or passed on to you by Mr. O'Neil, about someone  
14 from the Air Cadets being in the park that night who might be  
15 able to shed information on the incident?

16 A. No, not in particular. I didn't receive any substantive  
17 communication from Donald respecting his case.

18 Q. Yes.

19 A. Directly from him.

20 Q. Yes. And in the alternative, did you ever receive information  
21 from Mr. O'Neil about someone from the Air Cadets being in  
22 the park who might have useful information on the incident?

23 A. No, just what is disclosed in the notes.

24 Q. As far as you know there was no follow-up by your office as  
25

MS. MacLEAN, EXAM. BY MR. SAUNDERS

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to a potential witness having been associated with Mr. Marshall and the Air Cadets.

A. No, there wasn't any.

Q. Page 14 of the notes, my photocopy, the third line down, there's some word before meeting. What's the word?

A. I don't know. It's Mr. O'Neil's handwriting, I ...

Q. You can't decipher it for me?

A. I thought it read, I think it read "denies".

Q. Denies meeting?

A. That's what I think it is.

Q. Page 15, are obviously questions that, if it's Mr. O'Neil's writing, he prepared in advance of his interview with Junior Marshall. Do you have in your file the original of those notes, Mrs. MacLean?

A. I did at one time. I believe Mr. Ruby's office would have that now.

Q. The original of the notes.

A. Or Ms. Derrick's office. Pardon?

MR. SAUNDERS TO MS. DERRICK

Do you?

MS. DERRICK

Yeah.

A. The originals.

Q. I'm interested, Mrs. MacLean, that there are some check

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 marks after some of the questions and some answers  
2 recorded after the questions as well. That is to some of the  
3 questions, whereas in other questions no answers are given.  
4 And it would be helpful, I think, to see the originals if they're  
5 still available.\*

6 Question number two in the notes of Mr. O'Neil is "Who did  
7 it?" And then there's a check mark after the question, but no  
8 answer is recorded, correct?

9 A. Yes.

10 Q. And question number three is, "You did lie at trial?" And the  
11 word "no" is recorded with a check mark.

12 A. Yes.

13 Q. And number 15, well first of all 14, the question is, "Did you  
14 tell your lawyers at trial who did it?" There's no answer  
15 recorded after that question is there.

16 A. No, just a check.

17 Q. Just a check. And the fifteenth question is, "Did your lawyers  
18 at trial know you were holding out?" And then after it  
19 appears, "No, I wasn't then." Is that right.

20 A. That appears to be what it is, yes.

21 Q. Yeah. Did you ever review the answers given by Junior  
22 Marshall to Mr. O'Neil when he returned from his trip to the  
23 institution?

24 A. Yes, I believe we did.  
25

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 Q Did you ask him whether he answered Question number 2?  
2 That is, "Who did it?"

3 A. Yes, I believe I did.

4 Q And did you ask him about the answer recorded to Question  
5 number 15, that is, "No, I wasn't then." Did you pursue that  
6 with Mr. O'Neil? That is, the holding back of information from  
7 his counsel at trial.

8 A. I don't have any specific recollection of the discussion that  
9 Lawrence O'Neil and I had following this.

10 Q Thank you. Did Junior Marshall ever tell you, Mrs. MacNeil,  
11 what it was he was doing in the park that night?

12 A. No, I had no substantive conversation with Donald at any  
13 time.

14 Q You refer to a telephone call...

15 A. Yeah.

16 Q Or telephone conversations, and I'm wondering if at any time  
17 Junior Marshall told you what he was doing in the park.

18 A. No, I didn't have any substantive conversations with Donald.  
19 I believe I talked with him by telephone on perhaps two or  
20 three occasions. I, no doubt, contacted him by telephone  
21 before Lawrence O'Neil went there to explain, you know, what  
22 we were going to do and how it was going to be handled and  
23 making arrangements. I believe I received a telephone call or  
24 two from Donald later on. But in terms of discussion of the  
25

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 case there wouldn't be anyone to telephone.

2 Q. At any time did you...

3 A. There was...

4 Q. At any time did Junior Marshall tell you that he was in the  
5 park intending to obtain money from people in some fashion  
6 or another?

7 A. No, Donald never told me that.

8 Q. Never did. All right. At page 16 of the notes, again, presume  
9 to be...

10 A. I have no recollection of Donald ever saying anything like  
11 that. Anything substantive to me.

12 Q. At page 16 of the notes, presumably in Mr. O'Neil's writing, I  
13 can read it.

14  
15 It's reported Mickey Flynn...(and I'm reading at  
16 the top) Mickey Flynn of Sydney may  
17 be...(something about 50) non-Indians. He was  
18 trying to protect himself, thought Marshall was  
19 going to rob him...(and then on the line below  
that)...asked them where they were going, called  
them back and then he yelled names at Marshall.

20  
21 And there's an arrow going down from the phrase, "Asked  
22 where they were going" and then the arrow connects with,  
23 "This made them think of robbery."

24 A. I'm, I don't know.

25 Q. Can you help me out at all with that?

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 A. No, I can't.

2 Q. I'll have to ask Mr. O'Neil.

3 A. I think you'd have to ask Mr O'Neil.

4 Q. All right. There's a comment towards the bottom of page 17,  
5 Mrs. MacLean, line, which is number 12, reference to a Donald  
6 Joe, 23, why he didn't testify, and then the comments,  
7 "Lawyers were supposed to tell him to come." Do you see  
8 that?

9 A. Yes.

10 Q. Did you ever have any contact with either Mr. Rosenblum or  
11 Mr. Khattar about that reference to Donald Joe and whether  
12 they were supposed to call Mr. Joe.

13 A. No, the file was not active in the office. We were, I was asked  
14 to open a file. We interviewed him and we, I, thereafter,  
15 awaited a retainer as I understood would be forthcoming or  
16 formalized in some way.

17 Q. I understand.

18 A. And, consequently, no work was done on the file apart from  
19 what is disclosed by the file.

20 Q. So there was no contact with Messrs. Rosenblum and Khattar  
21 about that or anything else, correct?

22 A. Certainly not by me.

23 Q. All right. At page 18, five lines from the top, the comment is  
24 made, "I am the second person to know..."(I presume that  
25

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 means that O'Neil is recording that he's the second person to  
2 know), did you ever ask Mr. O'Neil who the first person was?

3 A. No, I don't recall asking him that.

4 Q. The bottom of page 19, the last two lines, the comment,  
5 "Elastic band on jacket was cut there because of pressure on  
6 the wound." I take it that that was a comment recorded by  
7 Mr. O'Neil during his conversation with Junior Marshall. Did  
8 you or Mr. O'Neil ever pursue that with Mr. Marshall and find  
9 out whether or not that was disclosed at trial?

10 A. I don't know. I didn't.

11 Q. All right. Page 20 of the notes, about halfway down, under  
12 the heading "Chant" there's the phrase, "We stopped car." Do  
13 you see that?

14 A. Yes.

15 Q. All right. Did you or Mr. O'Neil ever pursue with Junior  
16 Marshall the information with respect to the car that was  
17 stopped or the people in the vehicle and follow that up in any  
18 way?

19 A. No. We weren't retained to do any of this unfortunately.

20 Q. In your experience at the Legal Aid office in Sydney, and just  
21 so that I'm clear on the dates as best as we can recall them,  
22 the trial involving Mr. Marshall was, of course, in November  
23 of 1971 and at the beginning of your direct evidence you said  
24 that you thought you started at the office in Sydney in early  
25

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 1971 and went through till 1972. A little later on in your  
2 evidence this morning you indicated that you thought you  
3 started a few months after the Marshall case, which suggests  
4 to me that you began sometime around February of 1972. Is  
5 your recollection that you did start in Sydney, at the Legal  
6 Aid office, around February of 1972 and continued there in  
7 that that office until the latter part of 1972?

8 A. Yes, right. I think you're right, Mr. Saunders. My recollection  
9 is it's a year later. I was with Nova Scotia Legal Aid for four  
10 years, '72 to '76.

11 Q. But less than a year at the Sydney office.

12 A. Yes. Yes.

13 Q. And did you proceed directly from the Sydney office of Legal  
14 Aid to open the Legal Aid office in Truro?

15 A. Yes.

16 Q. And during your term at the Legal Aid office in Sydney you  
17 had occasion to represent Legal Aid candidates both white,  
18 black and native persons?

19 A. Yes.

20 Q. And did you ever have difficulty understanding the  
21 instructions you were being given by native person clients?

22 A. As a generalization, no. I think there are, were probably a  
23 very few occasions were, that there were a few occasions,  
24 when I say few, I do mean few as I recall it now, where  
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MS. MacLEAN, EXAM. BY MR. SAUNDERS

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language was an impediment.

Q. Was there ever a time when you required a translator from MicMac to English or vice versa?

A. I don't have a specific recollection of requiring one but I, it was fairly common, as I recall it, when the, when meeting with clients, that they might have a, so to speak, a facilitator with them. It might be a family member. It might be somebody else who's more conversant with, you know, legal matters, so to speak.

Q. On matters in court, that is in-court proceedings.

A. Oh, in court.

Q. Do you remember a case that you required a translator?

A. I...I can't independently recall of one but...

Q. Thank you.

A. On the other hand I wouldn't be surprised if my memory could be refreshed and that there were an occasion or two or three where it may have occurred. Where it did occur, I mean.

Q. Was your experience as a defence counsel in Sydney that there wasn't automatic disclosure of information by the Crown office unsolicited...

A. That's right.

Q. In other words, you saw your task as defence counsel, I take it, to do your homework and to ask whatever questions of the

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 Crown you thought important to your case. Is that a fair  
2 statement?

3  
4 A. That would be a part of it, yes.

5 Q. Yes. And as you, as defence counsel you would seek out  
6 whatever information from the Crown you thought was  
7 important to the defence of your client.

8 A. Again, I refer to state-of-the-art, at that time, 15 years ago as  
9 to what it would be now. I do believe that there was a need  
10 for the establishment of a defence system such as Nova Scotia  
11 Legal Aid, some kind of a legal aid program...

12 Q. Certainly.

13 A. In Nova Scotia. I would say that the practice at that time was  
14 certainly much less formalized than it is now. Defence work  
15 has moreso come of age, I would say, in Nova Scotia in the last  
16 six or eight years. But we're talking 15 years ago and I would  
17 say that there was no prac-, I would stand by my statement  
18 that as far as my experience in Sydney was concerned, that  
19 there was no practice of disclosure at that time.

20 Q. No, I'm not suggesting anything different than what you've  
21 said. What I'm asking you is that as defence counsel  
22 representing an accused, you would do your homework,  
23 figure out to the best of your ability what information you  
24 needed from the Crown and would go to the Crown asking for  
25 it.

MS. MacLEAN, EXAM. BY MR. SAUNDERS

1 A. Yes, I would, I suppose one's expectations are significant in  
2 determining what one would seek from the Crown.

3 Q. But that didn't restrain you from going to the Crown and  
4 asking for information.

5 A. No.

6 Q. All right. In your experience with the Commission in Sydney  
7 and acting for various accused, natives and whites and blacks,  
8 did you perceive any difference in sentencing of those races?

9 A. No, I didn't. You speak in terms of the Commission I, what  
10 you're referring to...

11 Q. Legal Aid Commission. Legal Aid office.

12 A. My work with Legal Aid. Legal Aid. Yes.

13 Q. Yes. And you did not.

14 A. No.

15 MR. SAUNDERS

16 Thank you, Ms. MacLean.

17 MR. PRINGLE

18 No questions.

19 MR. ROSS

20 I've got some questions, My Lord.  
21  
22  
23  
24  
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1  
2 12:30 p.m.

3 EXAMINATION BY MR. ROSS

4 Q. Miss MacLean, my name is Anthony Ross. I'd ask you please  
5 to refer to Exhibit 97 and turn to page 41. It appears as  
6 though this is the total amount of time which was spent on  
7 this file that you were invoicing was seven hours.

8 A. Yes.

9 Q. And I take it this would have included the time spent by Mr.  
10 Lawrence O'Neill.

11 A. I believe so, yes.

12 Q. Is it fair to say that this...the contents of your file reflect more  
13 the involvement of Mr. O'Neill than your involvement in this  
14 matter?

15 A. I would say so, yes.

16 Q. Sure. And as a matter of fact when one takes a quick look  
17 through the file and, for instance, on page 14 where there  
18 appears to be a reference to a transcript page 217, this would  
19 be as a result of Mr. O'Neill's review rather than your review.

20 A. These are Mr. O'Neill's notes so I would presume that would  
21 be reflective of his review of the transcript at that time.

22 Q. I see. And as far as the seven hours that was being invoiced  
23 for is concerned I'm returning again to page 41, there is two  
24 hours for perusal of material and three hours for travel to,  
25 and I would take that to be Springhill for the interview with

1 Donald Marshall. Would it be fair to say that of the seven  
2 hours invoiced for at least five hours would have been spent  
3 by Mr. O'Neill and something...and perhaps the other two  
4 spent by you.

5 A. I think that's probably fair. But by the same token I guess  
6 what I was suggesting at that time that the file reflect the  
7 obvious work.

8 Q. Sure. And the person who is best able to talk to this file  
9 would be Mr. O'Neill.

10 A. Yes, he was involved with Mr. Marshall, with Donald on it.

11 Q. Thank-you. Perhaps you'd just assist us as far as your  
12 experience with Legal Aid is concerned. When you were in  
13 Sydney...

14 A. Perhaps, Mr. Ross, if I could just go back to that for a moment.

15 Q. Sure.

16 A. The apparent, the obvious so-called work on the file was done  
17 by Mr. O'Neill because it was he that traveled to see Donald.

18 Q. Sure.

19 A. So, the bill that was prepared at that time was, I think, was a  
20 modest one.

21 Q. Absolutely.

22 A. And I was simply suggesting that the account reflect Mr.  
23 O'Neill's work more so than my sort of...my overall  
24 supervision of the matter.  
25

1 Q. Sure.

2 MR. CHAIRMAN

3 I take it that rate still prevails for senior counsel in Nova  
4 Scotia. [Laughter]

5 MS. MacLEAN

6 No.

7 MR. ROSS

8 My Lord, I almost fainted when you made that remark. Oh,  
9 please don't, please don't.

10 Q. Miss MacLean, tell me about your time in Sydney for a  
11 minute, please? Working for Legal Aid you would have been  
12 representing people on the lower end of the so-called socio  
13 economic scale.

14 A. Yes.

15 Q. Yes. And as far as the black people you represented is  
16 concerned, was it ever disclosed to you that these people had  
17 the perception that in going to court they expected something  
18 less than fair treatment from the justice system? Was that  
19 ever expressed to you?

20 A. I'm sorry, expressed by whom?

21 Q. By the black people that you represented.

22 A. Black people.

23 Q. Yes. I'm not asking for the fact. I'm asking about their  
24 perception...  
25

1 A. Yes.

2 Q ...as may have been disclosed to you.

3 A. At that time in Sydney, no, I don't recall that being advanced  
4 to me as a perception.

5 Q Sure. And what about your time in Truro? Was there any  
6 difference in attitude?

7 A. My recollection of Sydney was that at the time that I was  
8 with Nova Scotia Legal Aid in Sydney, before I went to Truro,  
9 that my work and our work was more so in relation to the  
10 native population and white population and not so much in  
11 relation to blacks in Sydney.

12 Q That is...

13 A. When I went to Truro there was a more... a larger black  
14 population and a smaller Indian population, so to speak, that  
15 went to that Truro office of Nova Scotia Legal Aid.

16 Q Sure. But with respect to your experiences in Sydney. That's  
17 consistent with Mr. Mollon. And, I'm asking you again about  
18 Truro. Did you find that the black people who came to Legal  
19 Aid in Truro expressed any concerns about getting a fair  
20 shake with the legal system?

21 A. I think that that was advanced, yes.

22 Q Sure. You also made reference to the native court worker  
23 program that was in place in Sydney. In your experience  
24 would you suggest...  
25

1 A. Could I just deal with that Truro one for a moment?

2 Q. Sure.

3 A. I think that there...I think that in some quarters there was  
4 that perception when I went to Truro. My experience,  
5 however, in Truro would not substantiate that perception.

6 Q. Thank-you. Now, as far as the native court worker program  
7 is concerned, recognizing that this Commission is going to be  
8 making recommendations, and with your experience working  
9 for Legal Aid, would you be prepared to go as far as to  
10 suggest that a program, a similar program to the native court  
11 worker program be instituted with respect to black people,  
12 from your experience?

13 A. From my experience in Sydney.

14 Q. Perhaps Sydney and in Truro.

15 A. No, I don't think so.

16 Q. It isn't necessary. Thank-you very much. I have no more  
17 questions.

18 A. From my experience I wouldn't draw that that was necessary.

19 MR. CHAIRMAN

20 Mr. Wildsmith, do you anticipate being very long.

21 MR. WILDSMITH

22 Ten to fifteen minutes I would expect, My Lord. Would you  
23 like to do it now?

24 MR. CHAIRMAN

25



1 I suspect Miss MacLean would like to get back to her practise  
2 in Truro.

3 MISS MacLEAN

4 If I could, My Lord, yes.

5 MR. CHAIRMAN

6 Fine.

7 MISS MacLEAN

8 Thank-you.

9 EXAMINATION BY MR. WILDSMITH

10 Q. Miss MacLean, my name is Bruce Wildsmith...

11 MR. RUBY

12 I'm going to abstain myself. Mr. Wildsmith for part of the  
13 afternoon will represent our interests. Thank-you.

14 MR. WILDSMITH

15 Q. Miss MacLean, my name is Bruce Wildsmith and I'm here  
16 representing the Union of Nova Scotia Indians. You indicated  
17 that you represented Indians through your work in Nova  
18 Scotia Legal Aid, both in Sydney and in Truro, is that correct?

19 A. Yes.

20 Q. And I believe you indicated that you knew Roy Gould prior to  
21 the telephone conversation that initiated your work on behalf  
22 of Junior Marshall. That's correct, is it?

23 A. Yes.

24 Q. And you also knew Grand Chief Marshall.  
25

1 A. Yes.

2 Q. In what connection would you have come into contact with  
3 those people or with other Indians outside of your work with  
4 Nova Scotia Legal Aid?

5 A. I was with Nova Scotia Legal Aid again between 1972 and  
6 1976 out...during that period of time I don't think I knew  
7 either of those individuals outside my work with Nova Scotia  
8 Legal Aid.

9 Q. I see.

10 A. After 1976 I think I did ...I did do some work for Mr. Gould  
11 on an occasion or more than that.

12 Q. Fair enough. I guess my real question to you is whether you  
13 had any contact with the native population in Sydney or  
14 Truro outside of your official work with Nova Scotia Legal  
15 Aid?

16 A. A contact, I don't know what...really.

17 Q. On a social basis for example, belonging to clubs or  
18 organizations, businesses.

19 A. No, not when I was with Nova Scotia Legal Aid, I wouldn't say  
20 so. I was a member of the legislature between '74 and '78  
21 and I did come across a lot of people...a lot of ...a lot of people  
22 while I was a member of the legislature.

23 Q. Including members of the native community.

24 A. Oh, yes.  
25

1  
2 Q. Thank-you. Now, I'm wondering how it was that, at least to  
3 what extent you can help us, as to why Mr. Gould came to you  
4 originally after you had moved to Truro?

5 A. I had done some work for him and I thought that he had  
6 confidence in me and wanted me to get involved with this  
7 matter if it.

8 Q. All right.

9 A. ...was useful.

10 Q. Fair enough. In, I believe it's the second letter that he sent to  
11 you, it's in Volume 36, Exhibit 97, at page 6. He included in  
12 that letter some copies of press clippings. Is that correct?

13 A. Yes, he did.

14 Q. And the press clippings related to something called the  
15 National School Committee Conference. Do you understand  
16 that to be a national conference on Indian education that  
17 was...

18 A. I don't know, Mr. Wildsmith.

19 Q. I see. Well, if we go along in that sentence he indicates that  
20 this conference took place the same week as the Supreme  
21 Court trial and then he makes the remark "Which could have  
22 caused some tension and mixed feelings on the case." Can you  
23 help us out as to what you understood that to be a reference  
24 to?

25 A. No, not really beyond what's contained...contained in that

1 paragraph. I think the media that file that he sent on to me  
2 contained clippings from both the trial and this conference  
3 and I just understood the reference simply to be that matters  
4 of this kind were very visible and prominent in Sydney at  
5 that point.

6  
7 Q. Would it be fair to suggest that this was an attempt to draw  
8 to your attention the fact that racial considerations might  
9 have been a factor in the original conviction of...

10 A. I think that that's what Mr. Gould was focusing his attention  
11 on, yes.

12 Q. So, is it fair to say that you would have been sensitive to this  
13 issue if your work had progressed?

14 A. Yes, yes.

15 Q. Thank-you. You talked about a discussion with Mr. O'Neill  
16 prior to his trip to Dorchester Penitentiary to visit Junior.  
17 Would you have drawn the racial factor to his attention prior  
18 to visiting Junior?

19 A. I don't think per se. Lawrence O'Neill had the file, he could  
20 see what was before us. I asked him to review it all. We  
21 discussed it but as an item on the agenda, so to speak. I don't  
22 recall asking him to consider that in a priority way.

23 Q. As I look at the notes that he made of his interview with Mr.  
24 Marshall, at various point in these notes he refers to whether  
25 somebody was an Indian or not an Indian. For example, in

1 relation to this chap, Mickey, and in relation to Donald Joe,  
2 and indeed on page 15, question 9, about the two men that  
3 were in the park. Would that assist you at all in whether  
4 perhaps you had drawn this factor to Mr. O'Neill's attention?  
5

6 A. No, I don't think on think...in thinking of the matter now, but  
7 in virtue of your question, no, I don't think so. I would think  
8 that Lawrence was simply trying to identify people for  
9 himself. There were numerous parties called at trial. He had  
10 read the transcript. He didn't know the Sydney territory to  
11 the best of my understanding and he was simply finding out  
12 who was who and identifying them as Donald described them.

13 Q. I see. So, you don't attach any particular significance to those  
14 comments.

15 A. Not in terms of the legal matters and in terms of whether or  
16 not there was something that was going to be pursued.

17 Q. Okay. Now, coming back to your experience in Nova Scotia  
18 Legal Aid in Sydney, would you have come into contact with  
19 any other prosecutors besides Donald MacNeil?

20 A. Yes.

21 Q. Lou Matheson.

22 A. yes.

23 Q. Anybody else.

24 A. It seems to me there was another assistant prosecutor.  
25 Certainly we...oh, yes, there were others. I'm thinking in

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terms of Glace Bay, I believe in...

Q. I meant in Sydney itself.

A. In Sydney. I think there was a third in Sydney, but...

Q. Okay.

A. ...I don't recall who it was.

Q. You've described Mr. MacNeil as having an aggressive stance, I believe. Would you make any differentiation between Mr. Matheson and Mr. MacNeil in the way that they approached the role of being a prosecutor?

A. Yes. I found Mr. Matheson, as he then was, not as vigorous a personality.

Q. Yes. Anything with respect to the degree of disclosure?

A. No, I think it was more so in keeping with the practise as it then existed, as I knew it.

Q. Okay. You've indicated that at the time you came to the Sydney office of Nova Scotia Legal Aid you were reasonably new to the bar and the only woman barrister practising criminal law in the Sydney area. That's correct, is it?

A. I think I was.

Q. Yes. Do you feel there was any difference in the way that you were treated by Mr. MacNeil or any of the other prosecutors by virtue of the fact that you were a woman?

A. No, I don't think so. I had articulated in B.C. and was first admitted to the B.C. bar and as a junior at a large firm in

1 Vancouver I've had experience in the Vancouver criminal  
2 courts, in the New Westminster criminal courts. I before  
3 those courts in dealing with those individuals throughout that  
4 year of articling. And, after I came back to Nova Scotia I was  
5 in Shelburne and dealt with the prosecutor there and then to  
6 Sydney. So, with that background I didn't...I didn't feel that I  
7 was being dealt with any differently by Mr. MacNeil or other  
8 prosecutors. I certainly didn't.

9 Q. Okay. So, you had no sense of that.

10 A. No.

11 Q. That's, I take it then, not an explanation as to why you may  
12 have been...why you did not receive the same degree of  
13 information as Mr. Mollon.

14 A. I believe Mr. Mollon, if the extent of the disclosure to him was  
15 greater than to others I think it came later, because again I do  
16 recall the notorious conflict. I would now characterize it as  
17 notorious because in fairness to the episode it was notorious.  
18 There was a great deal of strife and conflict between the  
19 Executive Director of Nova Scotia Legal and the crown  
20 prosecution in Sydney over these two Warren brothers  
21 murder trials conducted in Baddeck.

22 Q. Was that...

23 A. And that was at a time after...after that office in Sydney was  
24 established and I think some decks were cleared and  
25

1  
2 consequently flowed from that a greater disclosure as a  
3 consequence of that...of that conflict. And it was...I left  
4 Sydney several months later to come to Truro and I would  
5 think that the disclosure to Mr. Mollon that he speaks of here  
6 would have, I think, flowed from that, at least in part, a  
7 significant part.

8 Q. The conflict in Baddeck you're speaking about was obviously  
9 after the Junior Marshall then.

10 A. Yes. I...

11 Q. Okay. And was that conflict over the degree of disclosure by  
12 the crown?

13 A. Generally the conduct of...of the trial, the crown's conduct of  
14 the prosecution.

15 Q. And that was a prosecution by Mr. MacNeil.

16 A. Yes.

17 Q. Donald C. MacNeil. Did that result in...was there any  
18 involvement of anybody besides the Nova Scotia Legal Aid  
19 Commission and Mr. MacNeil over that issue?

20 A. I really can't say, Mr. Wildsmith. Mr. Crosby I think could  
21 speak to that.

22 Q. You don't know anything about involvement of the Barristers'  
23 Society or the Attorney General's Department at a higher  
24 level.

25 A. I don't have a recollection that it became a formalized thing.



1 As I say, a few months later, it was later that fall, I think,  
2 three or four months after the Baddeck prosecutions that I  
3 then came...then went to Truro and with Nova Scotia Legal  
4 Aid.

5  
6 Q. Okay. And do you have any knowledge of any other changes  
7 in Mr. MacNeil's practise that might have resulted from that  
8 conflict?

9 A. No, I don't because I didn't have any experience with it.

10 Q. Okay. Do you have any knowledge of any racially-based  
11 remarks that Mr. MacNeil or any other prosecutor may have  
12 made in Court?

13 A. No, I don't have a recollection of that, of anything like that.

14 Q. And an earlier stage in your testimony I didn't quite catch the  
15 thrust of what you said about any difference in the treatment  
16 of Indians than white accused. I thought that initially you  
17 said there was a difference and then to a subsequent question  
18 you said there was not a difference. Could you now  
19 elaborate...elaborate as to whether you thought Indians were  
20 treated in any different way by the justice system, be it a  
21 prosecutor, be it the police, or be it a judge?

22 A. I didn't have any sense of that when I was in Sydney.

23 Q. And what about in Truro?

24 A. I...I didn't observe any...any differences in coming to Truro.

25 Q. Now, you somewhat hesitated in your answer. Is there a

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sense that you have but you can't put you finger on it?

A. No, I was simply thinking in terms of my answer to Mr. Ross that there was a perception in some quarters when I came to Truro that...that blacks were...

Q. Perceived that they wouldn't be treated fairly.

A. In some quarters that perception existed.

Q. Were you going to say...

A. Among blacks is what I mean.

Q. Yes. Were you going to say anything about a similar perception on the part of Indians?

A. In Truro.

Q. Yeah.

A. No.

Q. Was there a court worker in place in Truro?

A. In relation to the...

Q. Native population.

A. I believe there was.

Q. Throughout your time with Nova Scotia...

A. I can't say with certainty. I haven't thought about these matter.

Q. Okay.

A. That part for...at all since the last ten years.

Q. All right. You've indicated though that native people were more uncomfortable and more tentative in dealing with a

1 court situation than other accused, is that correct??

2 A. Yes.

3 Q. Was anything done by judges or prosecutors to settle, shall  
4 we say, the accused, make the accused feel more comfortable  
5 to ensure that the accused had a good understanding of what  
6 was happening?

7 A. I think...I think what I would say in relation to prosecutions  
8 in Sydney in that period of time that I was with Nova Scotia  
9 Legal Aid there weren't any...there wasn't any quarter, so to  
10 speak, given because of any problem that may have existed.  
11 I think on the part of the Court...

12 Q. This is no quarter you're saying on behalf of the prosecution.

13 A. Yeah. No special consideration.

14 Q. Yes.

15 A. Is what I'm saying. In relation to the Court itself I think  
16 there was a...certainly a will to ensure that the defendant  
17 understood, the accused understood what it was that was  
18 transpiring, certainly.

19 Q. Can you recall any occasions when the accused did have  
20 problems in...

21 A. Without refreshing my memory from those files I really can't  
22 respond.

23 Q. Now, you indicated that in your view Indians received no  
24 harsher sentence than a non-Indian from the courts. Do you  
25

1 have an understanding that Indians, nevertheless, are  
2 disproportionately represented in the jails in this province?

3 A. Do I now have?

4 Q. Yes.

5 A. I really don't practise in this area and haven't for some time.

6 Q. Did you have any impression about that back in '72 through  
7 '76?

8 A. I think Indians had difficulty with the justice system. It was a  
9 different culture. When I say "difficulties with the justice  
10 system" I think that they...it was perhaps a clash of cultures.  
11 I think that they were certainly a significant part of the  
12 caseload that Nova Scotia Legal Aid had when I was with  
13 them.

14 Q. Much more so than their numbers in the general population  
15 would suggest?

16 A. I...that's what I'm suggesting, isn't it, but I haven't scrutinized  
17 this and I have nothing to support what I'm saying other than  
18 a general impression.

19 Q. Okay. One last question for you. When an Indian came to  
20 Nova Scotia Legal Aid to seek Legal Aid assistance, did you  
21 more or less automatically assume that the Indian required or  
22 was eligible for the services of Nova Scotia Legal Aid or did  
23 you go through the process that the last document in Volume  
24 36 would suggest? This is at page 60.  
25

1 A. No, I don't think any assumption was made by us at all.

2 Q. So, what...

3 A. It was a new program, new offices were opening up. We had  
4 a...there was a practise as to how a person became entitled to  
5 Nova Scotia Legal Aid services and individuals were required  
6 to complete the application and then from there we'd go.

7 Q. Was any assistance provided in filling out or providing the  
8 kind of information that is required on...

9 A. Yes.

10 Q. By whom was that provided?

11 A. Well, in the very early stages of my participation in the Nova  
12 Scotia Legal Aid program the lawyers actually from time to  
13 time would be involved in that.

14 Q. Yes. And so were you involved yourself?

15 A. Oh, I would think, yes.

16 Q. Okay.

17 A. Not always but what often happened was, as I recall, the  
18 name would be at the top and the signature might be at the  
19 bottom but there was very little information of a medium  
20 order required by the application, and, you know, these forms  
21 are forms. You have to work your way through them, and so  
22 from time to time we would assist individuals, not necessarily  
23 just Indians or whatever, but we would have to assist in  
24 order to get this application completed.  
25

1 Q. Is it fair to say that in the vast majority of cases Indians  
2 would be unemployed?

3 A. The vast majority, I really can't react to that. I know that  
4 they had...that they were frequently not employed, but a lot  
5 of Indians work seasonally and they might be on  
6 Unemployment Insurance in the wintertime but working in  
7 the summertime or vice versa, and things of that order. But I  
8 don't think we made any assump...I didn't make any  
9 assumptions about this, that or the other thing because it was  
10 a, for example, and Indian who was applying.

11 Q. Fair enough. With respect to the question of financing and  
12 obtaining a retainer, did you think that it was any part of  
13 your role to correspond with the Department of Indian  
14 Affairs, for example, or communicate with Nova Scotia Legal  
15 Aid as to whether there was some assistance that might be  
16 provided to Mr. Marshall through those avenues?

17 A. When I was approached in '79 and '80?

18 Q. Yes.

19 A. No. As I indicated, I was given to understand that funding  
20 existed in some quarter. I wasn't asked to concern myself  
21 with that at all.

22 Q. Fair enough.

23 A. And I think my file would indicate some correspondence  
24 from...from Donald himself who indicates that he considered it  
25

1 his responsibility to get his forces mustered, so to speak.

2 Q. And from your experience with Nova Scotia Legal Aid you  
3 know of no way in which he could have obtained assistance  
4 through Nova Scotia Legal Aid?

5 A. I really don't know. That wasn't under consideration, that  
6 was not on the basis that Mr. Gould approached me in the  
7 first instance.

8 Q. But.

9 A. And of Mr. Gould, the Nova Scotia Legal Aid program was well  
10 established by '79 or so I would...and he was well versed in  
11 matters of this kind from...

12 Q. All right.

13 A. I...it wasn't a part of our...

14 Q. So, you don't have any background knowledge that would  
15 suggest that he might have obtained Legal Aid assistance?

16 A. That Donald might have?

17 Q. Yes. From your knowledge of....

18 A. Well, no, I would have had the impression that Roy Gould was  
19 probably correct, that funding probably was in place  
20 somewhere to pursue this item.

21 Q. Okay. Did you have any other contact with this case  
22 subsequent to the material that's disclosed in your file here,  
23 all the way through say to the end of the compensation  
24 issue?  
25

1

A. I don't have any recollection of any subsequent contact.

2

Q. Okay. Thank-you those are my questions.

3

MR. CHAIRMAN

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That's all, thank-you. Now, it's one o'clock. We should...two-  
thirty.

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INQUIRY ADJOURNED TO 2:30 p.m.

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