

MR. ARONSON, EXAM. BY MR. PUGSLEY

1 A. But I believe it was also reference to the incident that you've
2 referred to in which Pratico, I believe it was Pratico...

3 Q That's my recollection.

4 A. Was declared a hostile witness.

5 Q No, I think it was Chant declared hostile.

6 A. I'm sorry.

7 Q And Pratico was the one who said, allegedly said to the sheriff
8 and subsequently Mr. Khattar and others, "I didn't see him do
9 it," or something to that effect.

10 A. That's a specific one that comes to mind.

11 Q Did Mr. Rosenblum tell you that he believed that Donald
12 Marshall, Jr. was guilty? In 1971, of course?

13 12:05 a.m. *

14 A. I don't remember. He may have.

15 Q Would you refer to page 47 of Volume 39, Exhibit 134, which
16 is the affidavit of Patricia Harriss? And, in paragraph 6,
17 which is found on page 47 says, "That I recall the night of
18 June 17, 1971, vividly," and it's...focus on the word vividly,
19 did she make any comment to you at the time you took this
20 affidavit, and that was sworn on the 22nd of July, 1982,
21 before you. Did she make any comment to you about the use
22 of the word "vividly"?

23 A. Not that I can recall.

24 Q. Although she did make...yes, go ahead.

25 A. I think when she used the word "vividly" she's speaking

1 solely that particular event in that paragraph as to what she
2 recalls. She doesn't recall necessarily all the events that
3 transpired in terms of her own involvement in the case.

4 Q. She's talking about the night of June 17th.

5 A. That's correct, when she was...

6 Q. Yes.

7 A. ...questioned by the police.

8 Q. It's my recollection, either before this Commission or before
9 the reference, that she wanted to have the word "vividly"
10 deleted because it did not represent an accurate
11 representation of her state of mind in July of 1982. Do you
12 recall that at all?

13 A. No, not at this point.

14 Q. Again, this affidavit was prepared by you in Halifax and
15 taken down and shown to her and she signed it with...

16 A. It wasn't quite that simple with respect to Patricia Harriss.

17 Q. Well, tell me about it then?

18 A. I believe I met with Patricia Harriss who was somewhat
19 reluctant to speak with me. When I did finally manage to
20 speak with her, I don't recall if it was on that particular
21 occasion that I actually put the affidavit to her, but
22 subsequently she retained her own counsel, Mr. North, and it
23 was through Mr. North, I believe, we had some considerable
24 discussions about her evidence and her testimony, although I
25 don't recall whether...

1 Q. That was after the affidavit.

2 A. ...the affidavit is prior to...

3 Q. Yeah.

4 A. ...prior to her retaining counsel or after. Since I took the
5 affidavit I would assume that it was prior to her retaining
6 counsel.

7 Q. Yes, that Mr. North was retained after you had taken the
8 affidavit. And I presume she must have been in Halifax at
9 the time because that affidavit is sworn...

10 A. That's correct.

11 Q. ...to at Halifax. She did, however, make a change in paragraph
12 10, did she? She deleted the words "or elsewhere".

13 A. That's correct.

14 Q. Yes. On how many occasions did you have a discussion with
15 Staff Wheaton concerning the incident in the Chief's office and
16 the statement on the floor?

17 A. I only recall one specific conversation on that.

18 Q. And that would have been at or about the time that occurred?

19 A. Fairly close to the time when it occurred. Like I say I don't
20 now remember the day that I was...that the incident occurred
21 nor the exact day that I was told, but I believe that it was
22 very close thereafter.

23 Q. Yes. Did he indicate that someone went with him to
24 MacIntyre's office?

25 A. I believe he had indicated that there was another R.C.M.P.

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1 officer with him at the time the incident took place.

2 Q. Yes. Thank-you.

3 MR. PUGSLEY

4 That's all the questions I have

5 EXAMINATION BY MR. MURRAY

6 Q. Mr. Aronson, my name is Donald Murray and I'm
7 representing William Urquhart at these proceedings.

8 COMMISSIONER EVANS

9 And you're going to indicate your connection or your client's
10 connection with this.

11 MR. MURRAY

12 That is correct. Mr. Urquhart is referred to in several of the
13 affidavits particularly, and I want to ask about those references,
14 particularly in relation to Maynard Chant and John Pratico and
15 then I would like to ask one question with respect to the
16 statement of claim, which appears at page 130 of Volume 31.

17 COMMISSIONER EVANS

18 In which affidavits?

19 MR. MURRAY

20 John Pratico, Maynard Chant.

21 COMMISSIONER EVANS

22 Taken by this man, by this witness.

23 MR. MURRAY

24 That is correct.

25 COMMISSIONER EVANS

1 All right.

2 MR. MURRAY

3 Were drafted by this witness.

4 COMMISSIONER EVANS

5 Fine, go ahead.

6 MR. MURRAY

7 Q With respect to making up the affidavits, Mr. Aronson, do I
8 take it that the only statements you had access to were the
9 typewritten ones from 1971 and the typewritten ones from
10 1982?

11 A. That's correct.

12 Q You refer to John Pratico and Maynard Chant as quite crucial
13 and if we could turn to John Pratico's affidavit which is
14 Volume 39, page 27, and you refer to William Urquhart in
15 paragraphs 6 and paragraph 9.

16 A. I'm sorry, I have the wrong...Volume 39.

17 Q 39.

18 A. Page.

19 Q John Pratico's affidavit, page 27, 28 and 29.

20 A. Oh, I'm sorry.

21 Q And actually the paragraphs I'm referring to in that affidavit
22 are on page 28.

23 A. That's correct, yeah, yeah.

24 Q Where did the reference to William Urquhart come from?

25 A. I believe it came from one of the statements that he gave to

1 the R.C.M.P..

2 Q. The only statement I'm aware of that John Pratico gave to the
3 R.C.M.P. is on page 30, the same volume, and the first two
4 lines, "In 1971, May, I was questioned by John MacIntyre and
5 I believe Michael R. MacDonald." There's no reference in that
6 statement to William Urquhart.

7 A. I would agree with that.

8 Q. Mr. Urquhart's name would appear on the 1971 statement
9 which is Exhibit C to that affidavit on page 33 and 34. It
10 would be reasonable to assume, I guess, that that is where
11 Mr. Urquhart's name came from.

12 A. Yeah.

13 Q. That's certainly how you were aware of Mr. Urquhart's
14 involvement.

15 A. That's correct and that's the reference in paragraph 6 to
16 Mr. Urquhart or Detective Sergeant Urquhart.

17 Q. Would it be fair to say that John Pratico at the time you
18 talked to him, was it on July 14th or a couple of days later,
19 July 15th, July 15th I understand it, you would have had a
20 discussion with him about the inclusion of Mr. Urquhart's
21 name.

22 A. Yes.

23 Q. And did he...did he raise that with you or did you raise that
24 with him?

25 A. I don't think it was raised other than he was to read through

1 the affidavit, ensure he understood what he said and if he
2 wanted any changes let me know. In other words, this...while
3 I had drafted it I...there was no compulsion or compunction
4 on the part of Pratico to sign.

5 Q. No, I appreciate that. But was it a matter of at some point
6 John Pratico stopping and you explaining, "Yes, William
7 Urquhart as you see on this statement from 1971 is shown to
8 be a witness."?

9 A. I don't have any recollection of that kind of discussion.

10 Q. It was certainly important to John Pratico's credibility,
11 whatever that was, that he could specifically identify the
12 people that he was making allegations about in 1971, is that
13 not correct?

14 A. Yeah.

15 Q. It would be important from your...

16 A. Oh, yeah.

17 Q. ...case presentation. And the same with Maynard Chant.

18 A. That's true.

19 Q. And so it would materially assist your case if these witnesses
20 could put forward that they remembered the specific person
21 and could make a specific allegation about this specific
22 person.

23 A. I was concerned if they could describe specifically what
24 happened.

25 Q. Uh-hum. And who said particular things?

1 A. If that was possible, yes, the more detail the better.

2 Q With respect to Maynard Chant, and his affidavit is on page
3 35, and there is references in paragraph 7, 9 and 11 to
4 William Urquhart. Now, I can show you the references if you
5 like. There is nothing in his first statement to the R.C.M.P. in
6 1982 and nothing in his second statement to the R.C.M.P. in
7 1982 which mentions Mr. Urquhart's name. And, I can be
8 corrected if I'm wrong, I believe his evidence to this
9 Commission was that until you arrived with Jim Carroll that
10 day he did not know who Mr. Urquhart was and that it was
11 explained to him that Mr. Urquhart was the one that came
12 down with John MacIntyre on the second day and was
13 present for the June 4th statement, thus Urquhart's name gets
14 in the affidavit. What is your recollection of that interview on
15 July 14th?

16 A. Other than what I would have in my notes, I don't have any
17 recollection of it now.

18 Q Your notes about that are on page 8 of Exhibit 99, which is
19 volume, red Volume 29.

20 A. What page did you refer to, I'm sorry?

21 Q 8. And about six lines, seven lines from the bottom of the
22 page there is a note, "Second statement, his mother left the..."
23 something, "...because she was asked to by MacIntyre and..." it
24 looks like, U-R-Q.

25 A. The fourth line up I believe is "He indicated that after he told

1 his mother he lied he was going to do something," probably,
2 well, it doesn't say anything. I assume I was going to say do
3 something about it.

4 Q Perhaps you could go three lines above that, the line that
5 starts, "Second statement."

6 A. Yeah.

7 Q "His mother left the interview..."

8 A. Yes.

9 Q "...because she was asked to by MacIntyre and..."is it U-R-Q?

10 A. I see U-R on my copy but...

11 Q Um. Does that assist you at all in understanding what
12 happened when you went to see Maynard Chant?

13 A. Yes.

14 Q Could you explain?

15 A. He is explaining to me the statement indicating that Urquhart
16 was present when the statement was made.

17 Q Uh-hum. Where did he come up with Mr.Urquhart's name?

18 A. I couldn't specifically say where he came up with it, whether
19 it was...

20 Q Did Jim Carroll tell him?

21 A. I don't know.

22 Q I understand that there is some evidence before the
23 Commission that Jim Carroll did. I take it that the sum of
24 your evidence then on Pratico and Chant is that you're not
25 able to recall today exactly how they came to be aware of

1 William Urquhart's name?

2 A. Well, they were shown the statements that they gave in 1971
3 and I believe some of the statements indicate Mr. Urquhart's
4 name is right on the statement.

5 Q. Uh-hum. So, it would be...

6 A. And it wasn't necessary for anybody to tell them that they
7 were with Urquhart. I think from reading they would recall
8 that likely that this was one of...one or more of the individuals
9 who were present when the statement was taken.

10 Q. So, that that's the explanation that you're most comfortable
11 with.

12 A. No, it's...I'm not saying comfortable, but that's the conclusion I
13 would come to is where they...at least an initial conclusion
14 without any further knowledge or recollection, that was what
15 I would say.

16 Q. Okay. Now, I'd like you to turn to page 130 of Volume 31,
17 which is a copy of the statement of claim that you had issued
18 against the City of Sydney, John MacIntyre and William
19 Urquhart. And, my question doesn't relate to the substance of
20 that at all, it's, however, the allegations based in that, I take
21 it, were based on information you received from the R.C.M.P.
22 report.

23 12:20 p.m.

24 A. I think certainly there was a factual basis or an apparent
25 factual basis. I don't necessarily say altogether in the R.C.M.P.

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1 report but that certainly formed part of the basis.

2 Q. The R.C.M.P. report then and the interviews you had
3 conducted with the witnesses?

4 A. The interviews I conducted with the witnesses, yeah.

5 Q. Anything else?

6 A. Well, the primary purpose in issuing a statement of claim was
7 with respect to limitation periods. I was somewhat uncertain,
8 given the length of time involved in the case, if, for example,
9 whether the case goes back to 1971 for limitation purposes,
10 those kinds of things, and I felt that it was of some
11 importance to protect Junior's interest in the compensation
12 aspect. And it was that that caused me to issue a statement
13 of claim, which I don't believe was ever served.

14 A. No, I don't think.

MR. MURRAY

15 I have nothing further.
16
17

MR. BARRETT

18 To save you asking, I can just advise you that I have two or
19 three questions and they simply relate to Mr. Rosenblum, the
20 affidavit of Mr. Rosenblum that was prepared by him and, in
21 particular, in respect to disclosure of statements by Crown.
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EXAMINATION BY MR. BARRETT

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Q Mr. Aronson, my name is David Barrett. I represent the Estate of Donald C. MacNeil. You've testified you met with Simon Khattar and you had a telephone conversation with Mr. Rosenblum.

A. That's correct.

Q And both lawyers advised you they were not aware of the earlier statements that particularly Chant and Pratico had given?

A. That's correct.

Q And Mr. Pugsley has pointed out to you the similarity in the affidavit that you prepared for both Mr. Khattar and Rosenblum and, particularly, Paragraph 11 in which they indicate that they had no knowledge of these earlier statements. My question is, you've obviously testified you had the transcript of the original Marshall trial?

A. I didn't catch the last part of the question?

Q You had the transcript of the original Marshall trial.

A. That's correct, yes.

Q And I wonder if that Volume 1, if that can be shown to Mr. Aronson? And I'm referring, Mr. Aronson, to page 151 and 152 of that transcript. In that transcript beginning at the bottom during the cross-examination of Chant by Mr. Rosenblum, Chant testified to telling the police....

1 A. Volume 1?

2 Q. Actually it's Volume 1 of the red.

3 A. Oh.

4 Q. Page 151, the bottom.

5 A. Yes, I'm there.

6 Q. Looking at the bottom of that, this conversation took place or
7 this transcript relates to the cross-examination of Chant by
8 Mr. Rosenblum and Chant testified to telling, or testified that,
9 to telling the police an untrue story on Sunday. That would
10 be the 30th of May, 1971 and he further testified on page
11 152 that he had been questioned by Det. Sgt. MacIntyre for
12 two hours on that Sunday. And I'm wondering in your
13 interview or your conversation with Mr. Rosenblum whether
14 you asked him why he did not request that if any statement
15 was taken on that day it not be produced to Mr. Chant? Did
16 you ask him that question?

17 A. Not that specific question, no.

18 Q. Did you ask him, Mr. Rosenblum, why he didn't ask Chant
19 what untrue story he told the police?

20 A. Not specifically. The concern was with respect to the
21 statements that had been given to the police as opposed to his
22 conduct or Rosenblum's activities at the 1971 trial.

23 Q. So I take it you didn't ask Mr. Rosenblum at that time as well
24 if he had asked Mr. Chant why he gave an untrue statement
25 to the police on the 30th of May.

1 A. Yes.

2 Q. You didn't ask Mr. Rosen...

3 A. That's right, I didn't ask.

4 MR. BARRETT

5 Those will be all my questions.

6 EXAMINATION BY MR. SAUNDERS

7 Q. Mr. Aronson, Jamie Saunders on behalf of the Attorney
8 General of Nova Scotia. I'd like to begin, sir, by asking if you
9 can assist me on the question of what affidavits were filed
10 with the Court of Appeal during the reference. You spoke a
11 number of times on the filing of material in advance by
12 yourself and Mr. Edwards and I'd like to hear it from you as
13 specifically as you can recollect what it was that, in fact, was
14 filed with the court. There is a letter, sir, that you forwarded
15 to the Prothonotary at the Law Courts and this is in red
16 Volume 31, Exhibit 124 at page 109. Do you have it, sir?

17 A. Yes.

18 Q. Volume 31. Could I get you to turn to page 109?

19 A. Yes.

20 Q. This, Mr. Aronson, I presume is your transmittal letter to the
21 Prothonotary in advance of the hearing in October of 1982?

22 A. That's correct. Those are affidavits in addition to ones that
23 had already been filed, I think in July.

24 Q. Can you tell the Commission which affidavits were filed
25 before the court in July?

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1 A. The balance of the affidavits other than these others. There's
2 two batches. The first one in, as I say, in July and the second
3 one in September. So I take it that from my recollection and
4 by the process of elimination, the earlier affidavits would
5 have been Chant, Pratico, Harriss. I believe Mary Ebsary,
6 Greg Ebsary, Dr. Mian. I believe there may have been a
7 couple of more, but those are the ones I recollect.

8 Q. Is it accurate to say that the only affidavits prepared by Mr.
9 Edwards were the ones for Messrs. MacIntyre, Urquhart, and
10 Magee?

11 A. Yes.

12 Q. And that you drafted each and every other affidavit?

13 A. By and large, that's true, yes.

14 Q. And at one time or another, whether July, October or
15 December, you had filed with the court all of the affidavits
16 that you had prepared?

17 A. Yes.

18 Q. And were those affidavits, Mr. Aronson, assembled in some
19 kind of booklet form?

20 A. I believe that there was a booklet prepared at the request of
21 the court, yes.

22 Q. Do you remember if you prepared five copies of that booklet
23 for submission to the court, sir?

24 A. I don't have any actual recollection but I believe that's the
25 case, yes.

MR. ARONSON, EXAM. BY MR. SAUNDERS

1 Q. Thank you. You mentioned this morning that during the
2 argument before the Court of Appeal in February, 1983 and
3 in the written factum that Mr. Edwards filed in advance of
4 oral argument, he seemed to be attempting to persuade the
5 court that the court ought to exonerate the criminal justice
6 system, if I have my note correctly. And you saw that in the
7 written factum prepared by Mr. Edwards in advance of the
8 February argument?

9 A. Yes.

10 Q. You also said in answer to questions put by my friend, Mr.
11 Orsborn, that you considered that issue not to be relevant
12 before the court in February of '83. Did you challenge that
13 position taken by Mr. Edwards, sir, in the oral argument you
14 gave?

15 A. Perhaps not as directly as I might have but I certainly took
16 an opposite approach to it.

17 Q. Certainly in your factum you had taken an opposite approach
18 to that set out by Mr. Edwards in his.

19 A. Yeah, well, I had to do my factum first, yeah.

20 Q. The position that you had set forth was different than the
21 position set forth by Mr. Edwards?

22 A. Yes.

23 Q. When you said in answer to a question put by Mr. Justice
24 Evans how long the argument took, was it 40 minutes in total
25 or 40 minutes per counsel, do you recall?

1 A. Total.

2 Q. You had the opportunity to present the arguments that you
3 chose to present on behalf of Mr. Marshall, did you?

4 A. Yes. Well, the thing is at the very outset with the verdict
5 having been agreed to, there was relatively little need to, it
6 was more the argument about how one arrives at...

7 Q. Exactly.

8 A. Which is perhaps as a result practically limited the nature of
9 the argument. We weren't arguing too much law any more.

10 Q. The bottom line or the result had been determined in
11 advance, correct?

12 A. Well, the submission was agreed to in advance.

13 Q. The procedures as to how to get there were left for argument.

14 A. That's right.

15 Q. Did you feel that you had opportunity to present your
16 arguments to the Court of Appeal in February of '83?

17 A. Yes.

18 Q. Now to take you back in the discussions that you had with
19 officials with the Attorney General's Department in Nova
20 Scotia, you asked the officials to provide you with copies of
21 the R.C.M. Police reports and you made that request of Gordon
22 Gale?

23 A. Yes.

24 Q. And Mr. Gale told you that it was not the policy of the
25 department to release confidential police reports, is that

1 correct?

2 A. It was either "confidential" or "internal", I'm not sure which
3 word.

4 Q. Yes.

5 A. Perhaps both.

6 Q. And Staff Sgt. Wheaton had also told you, sir, that he had no
7 authority to release the R.C.M. Police reports that were
8 prepared for superiors?

9 A. That's correct.

10 Q. And were you also advised by the Department of Justice that
11 they could not authorize or give to you the R.C.M.P. reports,
12 that they did not have that authority?

13 A. No.

14 Q. They did not tell you that?

15 A. No.

16 Q. What was the Department of Justice's position with respect to
17 the police reports?

18 A. That they took the same position but my recollection is that I
19 was advised by the Department of Justice that they would
20 make every effort to insure that the material that I needed to
21 proceed was made available to me if the Attorney General did
22 not provide it. Now I'm not trying to be inconsistent with
23 what you're saying but that's basically what happened. That's
24 my recollection.

25 Q. That Justice would do what it could to see that you were

1 given it, is that fair?

2 A. Yeah, but that did not necessarily exclude them providing me
3 with a copy of it.

4 Q. And I take it Justice never gave you the R.C.M.P. report or
5 reports.

6 A. No.

7 Q. Did you understand, Mr. Aronson, that those reports were
8 internal and/or confidential?

9 A. In general, yes.

10 Q. Did you understand that it made good sense that those types
11 of reports ought not to be disseminated publicly?

12 A. I don't think I was in a situation of being a member of, an
13 ordinary member of the public.

14 Q. In a general sense, were you in agreement that that kind of
15 report ought not to be disseminated publicly but that you in a
16 position for Marshall made some sort of exception to that?

17 A. It seems to me a lot of this kind of material that was in the
18 R.C.M.P. report would have formed part of the Crown case
19 which defence counsel would have been entitled to in relation
20 to disclosure. Now I certainly don't want to split words with
21 you. When we say it is a "report", you know, it's a Crown, in
22 many ways it performs what we call "a Crown sheet" plus
23 many statements.

24 Q. And there are facts contained in any kind of police report but
25 there is also a commentary, I suggest, on the part of writers

1 of such reports.

2 12:35 p.m. *

3 A. Yes, some commentary I guess.

4 Q. Yes.

5 A. And would you agree generally with me, sir, that that kind of
6 commentary confidentially expressed by an investigating
7 police officer to superiors ought not to be disseminated
8 publicly?

9 A. I would agree it shouldn't be disseminated publicly. I don't
10 necessarily...I would exclude counsel from the definition of
11 public though.

12 Q. He who were in the role of defence counsel...

13 A. That's correct.

14 Q. ...in this case on behalf of Marshall. Correct?

15 A. That's right.

16 Q. Now, was your basis for writing that the Attorney General's
17 Department was uncooperative with you the fact that they
18 had not provided you with copies of the R.C.M. Police reports?

19 A. They had provided me with copies of nothing.

20 Q. Yes.

21 A. No statements and no reports and I think when I refer to the
22 report I think you have to understand I didn't know what
23 was in the report other than what I was told. I didn't know
24 that there was a commentary in it. I wasn't aware of the
25 substance of it.

1 Q. Yes. But was that the basis for you saying, sir, that the
2 Department was uncooperative with you?

3 A. Yes.

4 Q. All right.

5 A. One of the basis.

6 Q. Now, you said yesterday that Gordon Gale, that you sensed
7 that Gordon Gale would have discussed the details of the
8 report with you but not have actually provided the report to
9 you.

10 A. Yeah, we discussed some of the contents of the report during
11 our...

12 Q. Yes.

13 A. ...meeting.

14 Q. And did he indicate to you some of the contents of those
15 reports, sir?

16 A. Maybe a very, very small number of facts, many which I...had
17 already been advised of anyway.

18 Q. Yes. Advised by Messrs. Carroll and Wheaton for example.

19 A. Yes.

20 Q. Yes. Did you ever ask Mr. Gale, "Look, if you can't give me the
21 entire report could you give me a synopsis or some kind of
22 report that has vetted the confidential material from it?" Did
23 you ever ask him that?

24 A. No.

25 Q. Why not?

1 A. Because I'm not so sure that that's...that isn't really what I
2 wanted. What I wanted was copies of the statements and the
3 information that had been collected and a synopsis wouldn't
4 really have been satisfactory.

5 Q. In any event...

6 A. I had a synopsis.

7 Q. The synopsis provided to you by the R.C.M.P..

8 A. Yes.

9 Q. Yes. In any event on June 23rd, 1982, you met with Mr.
10 Edwards and he provided you with those police reports, sir.

11 A. Yes.

12 Q. And would you say that you had complete cooperation of Mr.
13 Edwards in the exchange of information between the two of
14 you?

15 A. Yes.

16 Q. He provided access, I think you said yesterday, to his office
17 and his facilities when you needed it.

18 A. As and when it was required, yeah.

19 Q. All right. When Mr. Edwards gave those reports over to you
20 he told you, I gather, that they were given in confidence.

21 A. Yeah.

22 Q. What did you understand that to mean?

23 A. Well, that they were to be used for the purposes of assisting
24 in the appeal.

25 Q. Did you think it permitted you to show them to other

1 persons?

2 A. Once they were made public through the affidavits it was a
3 matter of public record in any event.

4 Q. But the R.C.M. Police reports were never as a report made
5 public.

6 A. Not as such, no.

7 Q. Did you ever show those reports to any other person, sir?

8 A. Yes.

9 Q. To whom?

10 A. To other counsel and eventually I believe a copy of it was
11 given to Michael Harris.

12 Q. And when you say to "other counsel" who is that?

13 A. When the case went from me to Felix the...he received a copy
14 of my file which included a copy of the police report.

15 Q. I understand. Did you indicate to Mr. Cacchione or any other
16 counsel the expression of Mr. Edwards that they were passed
17 to you in confidence?

18 A. I have no recollection of doing that, no.

19 Q. Who passed the copy of the report or R.C.M. Police reports to
20 Mr. Harris?

21 A. I did.

22 Q. When did you do that, sir?

23 A. It was quite some time after I received a copy and when I
24 say "some time", I mean quite a number of months and
25 perhaps six, eight months after.

- 1 Q. From the date of June 23rd, 1982.
- 2 A. Yeah.
- 3 Q. Did you express to Mr. Harris that they had been given to you
4 by Mr. Edwards in confidence?
- 5 A. I'm fairly certain I did, yes.
- 6 Q. Do you know, sir, how they came to allegedly be in the
7 possession of a lawyer in Truro named Kirby Grant?
- 8 A. No, I have no knowledge of that.
- 9 Q. Besides making the R.C.M. Police reports available to your
10 successor counsel, Mr. Cacchione, and to Mr. Harris, did you
11 make copies available to anyone else?
- 12 A. No.
- 13 Q. You spoke yesterday of the undertaking that you thought you
14 had from the federal Minister, Mr. Munro, to pay your fees,
15 sir.
- 16 A. Yes.
- 17 Q. Yes. And you gathered that undertaking from a private
18 discussion that you and he had had on an occasion in Cape
19 Breton, do I have that correct, sir?
- 20 A. That's correct.
- 21 Q. Did you ever indicate to officials within the Attorney
22 General's Department that you felt you had an undertaking
23 from the federal ministry to pay your fees?
- 24 A. I have no specific recollection of it, but I believe Frank and I,
25 Frank Edwards and I may have discussed it, not in the sense

1 of saying in a formal kind of sense, but just in passing.

2 Q. For example, when you spoke to Mr. Gordon Coles and he
3 suggested to you that you make application for Nova Scotia
4 Legal Aid, did you advise Mr. Coles that you thought you had
5 an undertaking from the federal Minister to pay your fees?

6 A. I guess perhaps the undertaking might be described more
7 accurately as a contingent undertaking.

8 Q. In what way was it contingent?

9 A. Contingent on pursuing every other avenue including the
10 Attorney General and Nova Scotia Legal Aid plan and so on,
11 and ...

12 Q. Is that the way it was put to you by Mr. Munro?

13 A. He undertook to pay the fees but at the same time he asked
14 that I make every effort to look at other sources including the
15 Attorney General of Nova Scotia and he himself, I believe,
16 undertook to write to the Province in respect to that.

17 Q. But you thought you had a flat commitment from the federal
18 Minister to pay your account.

19 A. Well, it turned out that I thought I had a flat one since the
20 contingency didn't turn out, yes.

21 Q. Yes, thank-you. Did I hear you say yesterday that Gordon
22 Gale indicated to you his belief that the best outcome for
23 Junior Marshall would be an acquittal?

24 A. It was either an acquittal or a free pardon. I believe the
25 acquittal was one of the alternatives he mentioned.

1 Q. Yes. Did he mention to you his quandary, and it was a
2 quandary shared by Mr. Rutherford, who spoke last Tuesday
3 on behalf of the federal ministry, of what would happen if the
4 Court of Appeal were to order a new trial?

5 A. Oh, yeah. We had discussed a lot of implications of the case
6 and the concern that I had and which I had raised with
7 Rutherford is the...if we go through these proceedings that
8 this is a Crown case against another individual, it's not just a
9 case for the benefit of Donald Marshall, Jr..

10 Q. Yes.

11 A. And, it...I found that to be a pretty awkward kind of situation
12 to be in and I believe that both the Attorney General of Nova
13 Scotia, as well as the Minister of Justice in Ottawa were aware
14 of the...that it is a very awkward situation.

15 Q. Thank-you. And Gale had those concerns as expressed to you
16 directly.

17 A. I believe so, but I don't have a specific recollection of that. I
18 think we're pretty well aware of it though.

19 Q. Was it a common goal that you and Mr. Gale on the one hand,
20 and you and Mr. Rutherford or Mr. Fainstein on the other,
21 were working towards, that is to accomplish the acquittal of
22 Junior Marshall as quickly, expeditiously as you could, and
23 then deal with the matter of compensation?

24 A. It was certainly we would deal first with this disposition of
25 the conviction and subsequently deal with the compensation.

- 1 Q. And in your discussions with officials with the provincial
2 Department of the Attorney General did you sense that they
3 were as concerned as you with the uniqueness of the Donald
4 Marshall case and uncertainty in terms of procedures of how
5 to get to this result you both wanted?
- 6 A. I think so, but I think that they perhaps had other concerns
7 as well.
- 8 Q. Messrs. Gale and Edwards with whom you dealt, were they
9 sympathetic to Junior Marshall's case, sir?
- 10 A. I never really thought of it that way. I...you could probably
11 say that though.
- 12 Q. Thank-you. And the province, I thought you said yesterday,
13 favoured the free pardon route.
- 14 A. That's what it says in my notes, yeah.
- 15 Q. Yes. Did you recognize that...that if you had the public airing
16 that from time to time Junior Marshall that he would then be
17 opening himself to cross-examination?
- 18 A. We had discussed that.
- 19 Q. That is you and Junior...
- 20 A. Oh, yes.
- 21 Q. ...had discussed it.
- 22 A. Yeah.
- 23 Q. And you recognized, I suggest, sir, that by going the route of
24 having the public airing before a Court of Appeal that Mr.
25 Marshall would be obliged to take the stand and talk about

1 what happened in 1971.

2 A. That's correct.

3 Q. And that by doing so he would be faced with cross-
4 examination by Crown counsel.

5 A. Yes.

6 Q. Was it Staff Wheaton who first disclosed to you that Junior
7 Marshall had admitted to him of a robbery or an attempted
8 robbery in Wentworth Park?

9 A. I couldn't say for sure if it was Staff Wheaton or Jim Carroll.

10 Q. All right.

11 A. It was one or the other.

12 Q. And, one or the other indicated that to you after their visit
13 with Junior at Dorchester Penitentiary.

14 A. It was sometime after they visited. It was not immediately
15 after.

16 Q. Yes.

17 A. I believe the Attorney General was made aware of it well in
18 advance of myself.

19 Q. I took from your answer yesterday that you felt let down as
20 Marshall's solicitor that that information came to you from
21 the police rather than from your client.

22 A. Perhaps not so much let down because of that, in other words
23 the statement, as that in our discussions that...discussions I
24 had with Junior that he had certainly not indicated this, but I
25 at the time never had an opportunity to discuss with him the

1 statement until after he was released, which was towards the
2 end of March.

3 Q. Yes. I take it you had no specific discussions with either Mr.
4 Rosenblum on the phone or Mr. Khattar in person as to what
5 they would have done as defence counsel or what they might
6 have done differently had they known of this back in 1971.

7 A. Yeah, we had some discussion. I think that's the basic tenor of
8 one of the paragraphs in their respective affidavits.

9 Q. But that is to say with respect to this knowledge that Mr.
10 Marshall was engaged in a robbery or attempted robbery. I
11 take it you did not talk to Rosenblum or Khattar about what
12 they might have done or done differently had that knowledge
13 been in their minds, correct?

14 A. I suspect we did, but I don't have any recollection of it or
15 what the discussion consisted of.

16 Q. There is nothing in your notes on that, Mr. Aronson.

17 A. No.

18 Q. For example, did you discuss with either gentlemen whether
19 they would have put their client on the stand had they known
20 what he and Mr. Seale were allegedly about that evening?

21 A. No.

22 Q. You did not.

23 A. We did not discuss it.

24 Q. All right. I'm interested in your comment in your notes at
25 page 8, Exhibit 99, sir, where you write, "Money was not a

1 problem". It's midway down the page. Volume...red Volume
2 29, and it's Exhibit 99 at page 8.

3 A. Yes.

4 Q. And these are your notes made July 14, '82.

5 A. That's correct.

6 Q. And just above that phrase that I've quoted, you've written
7 "Khattar says the band," is it?

8 A. Yeah, that would have been the...

9 Q. The band paid him.

10 A. That's correct.

11 Q. Yes. And, what "D/A Rosenblum," what does that refer to?

12 A. It's actually "D-I-A Rosenblum", in other words, the
13 Department of Indian Affairs paid Rosenblum.

14 Q. Thank-you. And, "K" would that be Khattar, "Not involved in
15 '72 appeal"?

16 A. That's correct.

17 Q. Yes. And then you write, "Money was not a problem."

18 A. Yeah.

19 Q. "Does not appear to have done a lot of investigation, they
20 acted on information from 'Indians' on witnesses."

21 A. Yes.

22 Q. Yes. How did that...first of all, I take it it's Mr. Khattar's
23 answer to you, "Money was not a problem."

24 A. It was either an answer or a comment made.

25 Q. During your discussions.

1 A. Yeah.

2 Q. Yeah. And how did that arise, sir, why were you interested in
3 finding out from Mr. Khattar whether money presented any
4 problem?

5 A. I can't recall specifically even if I asked them. I think maybe
6 the discussion, it was one of the things that he mentioned in
7 passing.

8 Q. Were you concerned whether there were any limitations on
9 what Rosenblum and Khattar did to defend Junior Marshall
10 and if there were limitations or reasons for why they didn't
11 do certain things whether the reason was money?

12 A. Not particularly, no. I think the reason perhaps we may have
13 got on to that particular subject was there had already
14 been...I think it had been fairly widely known that there was
15 some difficulties in getting the fees and it was just something
16 that was raised to say, something like, "Hey, I didn't have, we
17 didn't have the same kind of problem because it was before
18 Nova Scotia Legal Aid," and at that time in 1971 the
19 Department of Indian Affairs at the request of the band paid
20 the fees and...

21 Q. I understand.

22 A. And that there was no, how can I say it, upward limit
23 necessarily.

24 Q. So, you did not put a question to either Khattar or Rosenblum
25 as to whether or not their defence of your client had been

1 limited by lack of funds?

2 A. No, it was not limited by lack of funds.

3 Q. It was not.

4 A. No.

5 Q. And the clear indication you had from them is that they did
6 not do any investigation themselves.

7 A. That's correct.

8 Q. Thank-you. That's all.

9 12:50 p.m. ADJOURNED TO 2:17 p.m.

10 2:17 p.m. INQUIRY RESUMES.

11 **EXAMINATION BY MR. ROSS**

12 Q. For the record, sir, my name is Anthony Ross and I would like
13 to ask you one or two questions and at first I'm primarily
14 interested in this robbery theory which you spoke about in
15 your direct evidence. When did you first learn that there was
16 a robbery theory in which Donald Marshall and Sandy Seale
17 might have been involved?

18 A. When I had gotten an indication of the story that Jimmy
19 MacNeil, of his statement or statements.

20 Q. That would be quite early in your retainer?

21 A. I believe so. It probably would have been the time when I
22 spoke to Harry Wheaton and Jim Carroll in Sydney. I believe
23 it was some time early mid April.

24 Q. Around February? Well, perhaps we can get you to refer to
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one or two of your own records. Have you got Volume 29 with you?

A. Yes.

Q. Have you got Volume 27? Volume 27 is Exhibit 113. I'd ask you first to turn to Volume #27 at page 32. Have you got it?

A. Yes.

Q. I take it, sir, that pages 32 through 40 represent your activities on this file between September 1981 and the date that it was issued, February 28th, 1983.

A. Yes.

Q. Now I ask you, I need to clarify something. On page 40, there's an indication, "Balance owing on fees - August 4, 1982." Should that have been 1981? Is that '82?

A. I couldn't really say. It was to reflect the previous billing that had been issued.

Q. Yes, but I ask you then to turn, just to compare pages 32 with 40, it might help.

A. Okay.

Q. Page 32 picks up on August 27, 1981.

A. Right.

Q. And it goes right through to page 39, which is February 16, 1983. And the invoice is rendered on February 28th, 1983.

A. Yeah.

Q. Now there appears to be two explanations for the entry on

1 page 40 to which I referred you. One is that it should be
2 August 4, 1981 instead of August 4, 1982.

3
4 A. No, I believe it was August 4th, 1982. What that was, it was a
5 previous account to the file but this particular exhibit of
6 February 28th is a detailed accounting from the very
7 beginning, whereas the previous billing referred to as August
8 4th, '82 is a fairly short capsule as opposed to a detailed
9 billing.

10 Q. I see. So then the entry or the number for August 4, 1982
11 would have covered really the information on pages 32 to 36,
12 the end of that first big paragraph?

13 A. I believe so, yes, yes.

14 Q. I see. Okay, as far as your retainer is concerned, just let me
15 get something, you were retained by the Union of Nova Scotia
16 Indians?

17 A. Yes.

18 Q. And later on, your account was further guaranteed by the
19 Minister of Indian Affairs.

20 A. Yes, he made an undertaking to pay.

21 Q. Now when you got involved, as I understand it, you assumed
22 a file from Melinda MacLean?

23 A. At the time I was retained, I wasn't even aware that Melinda
24 MacLean was involved in or had had any involvement.

25 Q. But you got her material shortly after.

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A. Some time later, yes.

Q. Now as I look through her material, it appears as though the name that Junior Marshall identified as the killer was Mickey Flynn. Does that ring a bell with you?

A. Not at all, no.

Q. Did you get an opportunity to look through a memorandum done by an associate of Melinda MacLean, a memorandum of his visit to Junior Marshall while in the penitentiary?

A. No, I have not seen that before.

Q. And I take it that when you became involved back in August of 1981, you had some understanding that there might have been a rumour about a robbery.

A. No, when I first went to see Donald Marshall, Jr. at the penitentiary in early September of '81, I went in cold. I had never even heard of the case before.

Q. Okay, what did he tell you as far as Sandy Seale was concerned?

A. Essentially the story he told me was the same story in his original statement to the police in 1971 in which there was no alleged robbery referred to.

Q. And I take it you had advised Donald Marshall that it was very important that he tell the truth if he ever had to take the stand once again?

A. Yes.

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Q. And I take it further that prior to the reference you had copies of the statements that Donald Marshall had given to the R.C.M.P?

A. That's correct.

Q. And I take it then you would have had Exhibit 110, which is, I'll get it for you. Exhibit 110, which is a one-page statement of Donald Marshall? Sorry...

A. I have it in front of me, Exhibit 110.

Q. Sorry, Exhibit 101, not 110, sorry, my mistake. You've got Exhibit 101?

A. I do.

Q. And I take it that Wheaton or Carroll or somebody would have given you a copy of this at some time before the reference?

A. Yes.

Q. And I look at the four words, the last line, it says: "I called them back," referring to Ebsary and MacNeil. Now this is Donald Marshall. The last sentence, "They started to walk away from us. I called them back."

A. Oh, I see, yeah, at the very end, the last sentence.

Q. Yes. Now your evidence was that when you spoke to Donald Marshall, he told you that Sandy Seale called them back. Do you recall giving that evidence today?

A. Yeah, I believe that that's what he told me.

1
2 Q Did you quiz Marshall on why he would tell you Seale called
3 them back and why would you tell Wheaton that he called
4 them back?

5 A. The reason, I tried to express previously, perhaps not as well
6 as I could have, that Marshall indicated to me that when he
7 gave the statement, #101, that he felt a certain amount of
8 guilt for what had happened that night or that is in
9 Wentworth Park and he was willing to take the responsibility
10 for it. And the second aspect was that he felt that he had to
11 say that to the police; otherwise they weren't going to help
12 him or nothing would work out positively for him.

13 Q So he was going to make up a story and he was going to tell
14 that to the police, is that it?

15 A. I don't know if you could say "make up a story." He felt that
16 that was the only thing that would help him is if he gave a
17 statement along those lines. In that sense, perhaps you're
18 correct.

19 Q I take it that when he gave evidence at the reference, he also
20 was not quite willing to accept that there was a robbery or
21 attempted robbery. Do you recall that?

22 A. Yes.

23 Q And as a matter of fact, in the decision on the reference, the
24 judges found that Marshall was still unwilling to acknowledge
25 his role in a robbery or in an attempted robbery. Do you

1 recall that?

2 A. Not specifically.

3 Q. Well, perhaps I can, I wouldn't bother taking you through it.
4 It's going to be a matter of record. Now, sir, are you aware
5 that Marshall has since recanted the entire robbery theory?

6 A. Since?

7 Q. Since the reference?

8 A. No.

9 Q. Perhaps then I'd ask that you be shown Exhibit Book #9.
10 Have you got it?

11 A. I have it.

12 Q. Perhaps you can go through with me. I'm going to start at
13 page 37. This is on the direct examination of Junior Marshall
14 by Mr. Edwards and I will tell you that this is in the third
15 Ebsary trial, at page 37 at the bottom, Mr. Edwards says to
16 him:

17
18 Q. Just take your time. What, if anything,
19 did the two of you decide to do or did you
20 go your separate ways at that time?

21 A. We did not go our separate ways.

22 MR. RUBY

23 I take exception to this because I can't see what the
24 significance is for this witness. I can see in the end that argument
25 will have to be directed to Your Lordships on this point of view.

1 This was a certain time frame of involvement on what he did.
2 Why on earth would we care whether he knew there had been a
3 changing of evidence, if that's the allegation?
4

5 MR. ROSS

6 I can respond very quickly, My Lord. All I want to do is to, I
7 propose to question this witness a little further. One of the things
8 that he did indicate was that the lawyers for Junior Marshall in
9 1971 did not do a detailed investigation as far as the facts were
10 concerned. That was his evidence. Now we know that and we
11 know the situation in 1982. And I wanted to take the story that
12 Marshall had given him on the one hand, take another story that
13 Marshall had given on the second hand and then with this
14 witness, go through what Marshall allegedly did the night in
15 question as disclosed to this witness and find out about what he
16 did or could have done as far as an investigation is concerned.

17 MR. CHAIRMAN

18 Well, you...

19 MR. ROSS

20 I can find another way to do it. I can find another way to do
21 it. You know, there's an easier way.

22 MR. CHAIRMAN

23 No, but my understanding to this witness says that he's never
24 heard this story.

25 MR. ROSS

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Fine. Well, then that's fine.

MR. ARONSON

Well, I'm certainly not aware of this statement. I've never had the opportunity to read it before. I'm not aware of it.

MR. CHAIRMAN

So how can he respond to it?

MR. ROSS

Well, if he's not aware, then I'll just abandon that question, My Lord.

BY MR. ROSS

Q. Now tell me something, Mr. Aronson, when you were involved in doing the investigation, at least you did an investigation of the facts and you were satisfied with certain facts prior to the reference, weren't you?

A. Oh, yes.

Q. And in that regard, you had the statements of Keith Beaver?

A. Yes.

Q. And there was reference in them to Alanna Dixon.

A. Yes.

Q. And as a matter of fact, you contacted Alanna Dixon by telephone.

A. I did.

Q. And in your notes, you've got her listed as a potential witness. Do you recall what she told you about Sandy Seale the night

1 in May, 1971?

2
3 A. I recall having spoken to her. I believe she may have been in
4 Edmonton or somewhere out west. If that's not Alanna Dixon,
5 then I don't really remember her. I remember her name and
6 I remember the statement and I do remember speaking to
7 her. I don't recall the contents of the conversation. Unless
8 there's a note on file, I would have no recollection of it.

9 Q. Did you get any indication from her or from anybody that
10 Junior Marshall and Sandy Seale were friends?

11 2:35 p.m.*

12 A. Oh, yes.

13 Q. Who?

14 A. Well, Donald Marshall, Jr. himself acknowledged that they
15 were acquainted with one another.

16 Q. And anybody else?

17 A. Not that I can specifically think of, no.

18 Q. And in your investigation, the statement of Keith Beaver's
19 statements is that he left the dance and Sandy Seale was with
20 him, Alanna Dixon until they reached the section at Pollett's
21 Drugstore on the corner of George and Argyle Street. Is that
22 your recollection generally?

23 A. I have no recollection and I take it that what you're saying is
24 correct.

25 Q. I see. What about Marvel Mattson. Had you heard that name?

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A. No.

Q. What about Scott MacKay, had you heard that name?

A. It certainly rings a bell.

Q. We understand that Scott MacKay was the one who came along and found Sandy Seale lying on the ground?

A. OK.

Q. Do you recall that now?

A. I recall some...the first witness on the scene who saw Sandy Seale, yes.

Q. Did you try to interview him?

A. No.

Q. Can I take it, sir, that the reason for this is that your job was to bring evidence before the Court which would satisfy the Court that Marshall might have been convicted on perjured testimony and it was not really your role to go out and reinvestigate the entire case and bring the facts to the court?

A. I would agree with that, yes.

Q. Well, the evidence of Staff Sergeant Wheaton was to the effect that when he became involved after he had interviewed MacNeil and Maynard Chant that he was of the view that Marshall was convicted on perjured testimony. Did he communicate that to you?

A. Perhaps not at that particular point in time, but certainly when we met in mid-March or when we spoke in mid-March

1 and again in early April, yes.

2
3 Q. Is it fair to say that as far as the reference is concerned, what
4 you wanted out of the reference was for the Court to actually
5 find that Marshall might have been convicted on improper or
6 perjured testimony?

7 A. That was certainly one aspect, yes.

8 Q. Did you form the view that Marshall was innocent?

9 A. I did form that view, yes.

10 Q. Innocent of what?

11 A. That he was innocent of the...well, that he had not stabbed
12 Sandy Seale.

13 Q. That he was not the person who had the knife in the hand?

14 A. That's right.

15 Q. Your evidence, as I recall it today, was that Marshall indicated
16 to you that he and Sandy Seale knew that Ebsary and MacNeil
17 didn't have any money. Do you recall that?

18 A. Yes.

19 Q. And having told you that, didn't you find it strange that
20 people who knew that victims didn't have any money was
21 still going to rob them?

22 A. I personally find it somewhat strange.

23 Q. Did you quiz Marshall on that?

24 A. Yeah, and as I say, he indicated to me that he didn't have any
25 actual intent to rob these specific people, roll them or ask

1
2 them for money. In fact, my recollection is and his statement
3 indicates that they did carry out a conversation prior to
4 Ebsary and MacNeil leaving or beginning to leave the park
5 and I don't know whether they were talking about bumming
6 some cigarettes, whether it was from Seale and Marshall to
7 Ebsary and MacNeil or the reverse, I don't recall, and being
8 aware that they had just come from a tavern, that they had
9 been drinking and basically didn't have any money anyway.

10 Q. That would come from them, that's Ebsary, MacNeil?

11 A. Ebsary, MacNeil.

12 Q. And just so that I get the correct framework, with all of your
13 involvement in the reference, I take it your thrust was just to
14 establish that Marshall should not be in jail because of the
15 admissions that Chant and Pratico had perjured themselves, if
16 for no other reasons?

17 A. Yeah, well, I certainly had no interest in a purely legal sense
18 as to whether or not Sandy Seale and Donald Marshall had in
19 fact committed a robbery since that wasn't what the
20 reference was about.

21 Q. Sure. Would you then say, sir, that as far as the findings and
22 as far as the reported decision on the reference is concerned,
23 it went substantially further than you had expected or even
24 anticipated in that it addressed the robbery theory and came
25 to certain findings?

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A. I think that's a fair statement, yes.

Q. And is it fair to say that your concern was to have the evidence before them so that they could be satisfied that by excluding the evidence of Pratico and Chant from the trial testimony, they could then determine on the basis of the rest whether or not there could have been a finding of guilt?

A. That's right.

Q. Would that have been part of the reason why the police evidence would not have been introduced in the reference in 1982?

A. Which evidence are you speaking of?

Q. The police evidence from the 1971 investigation, calling the City of Sydney police.

A. Yeah, in other words their evidence didn't...they couldn't say one way or another whether Donald Marshall, Jr. was or was not guilty of the murder of Sandy Seale?

Q. And I take it that that was, though important to you, it was not something that you pursued, the investigation of that, with any vigour whatsoever?

A. That's correct.

Q. And the evidence of Staff Sergeant Wheaton was further that when he believed Marshall was innocent, he discussed it with the prosecutor Edwards who also believed that Marshall was innocent and then discussing it with you, you also believed

1 that Marshall was innocent. Is that a fair statement?

2
3 A. Well, with respect to what you said about me, yes. I would
4 have no knowledge...

5 Q. O.K. fine. But did you find that there was much variance
6 between your impression of the innocence of Marshall and
7 that of Frank Edwards?

8 MR. SAUNDERS

9 Sorry, My Lord, just so that I'm clear on what the question is
10 getting at. Is the witness being asked to compare his impression
11 with what he took to be Mr. Edwards' impression?

12 MR. ROSS

13 Well, I'll take it further. It's obvious that these people had
14 discussed the case. They discussed it quite intimately and I'll ask
15 a direct question for your benefit, Mr. Saunders.

16 Q. Did Mr. Edwards at any time prior to the reference indicate to
17 you that he was of the view that Marshall was innocent?

18 A. Yes.

19 Q. And Wheaton, I guess, also indicated to you that he thought
20 Marshall was innocent?

21 A. That Wheaton thought Marshall was innocent, yes.

22 Q. And is it fair that all three of you, you, Wheaton and Edwards
23 then had a common interest, which was to get Marshall out of
24 jail?

25 A. I think Marshall was already out of jail.

1 Q. Oh, sorry, to get him to get an acquittal entered?

2 A. I perhaps couldn't indicate that we had the precise same
3 interests. We certainly agreed with what the bottom line, so
4 to speak, was, but perhaps we had some differences,
5 obviously, as to how one arrived at that bottom line.

6 Q. As far as the events of the night of May, 1971, is concerned,
7 the only person that was not called, the only person that was
8 left, that wasn't called, was Roy Ebsary. Is there any reason
9 why he wasn't summonsed to give evidence at the reference?

10 A. Well, there was a reason. It was because we didn't want to
11 put him in the position of having to testify about his own role
12 in the trial which could have certainly prejudiced any case he
13 might have developed if charges were laid against him in
14 connection with the murder. I think that part of the way the
15 system works is on fairness. And while I had no great
16 difficulty in pointing the finger in Mr. Ebsary's direction, I
17 certainly wasn't going to call him as a witness. I think it's a
18 pretty serious thing to call somebody as a witness and ask
19 them whether they committed the murder, so...

20 Q. Well, as a matter of fact, what about asking what happened?
21 There was the robbery theory.

22 A. No, I didn't really consider that as being the most important
23 aspect of the case, although I would acknowledge that it had
24 some significance.
25

1 Q. And during the investigation and prior to the reference, did
2 you make any inquiries to people from the penitentiary
3 services as to what they might have on record as far as
4 statements given by Donald Marshall, Jr., is concerned?
5

6 A. Yes.

7 Q. And did they give you these statements?

8 A. I believe I received a fair bit of material from Correction
9 Services primarily relating to psychiatric assessments and
10 applications for...for example, temporary absences or leaves.

11 Q. Out of these, do you recall, did you see in any of these
12 statements that Marshall had given very many different
13 versions of what happened that night in May of 1971?

14 A. He may very well have. I don't recall the substance of the
15 documents now.

16 Q. In any event, I take it that whatever statements were given
17 to you, you focused just on the narrow issue of having it
18 established that he was convicted on perjured testimony
19 rather than investigating the truth of all these statements
20 that were given to you?

21 A. Yes, certainly more the former than the latter.

22 Q. Now tell me something else, please, Mr. Aronson. With
23 respect to your experience as defence counsel in this area,
24 now you indicated and it comes from your notes, that you
25 found a bit of a redneck atmosphere in Sydney. Do you recall

1 that?

2 A. Yes.

3 Q. And this was when you were involved in the reinvestigation
4 in 1982?

5 A. That's when I made the statement, yes.

6 Q. Did you find that this attitude existed prior to the 1982...did
7 you become conscious of it prior to 1982?

8 A. Oh, most definitely, yeah.

9 Q. Around when would you have become conscious of this
10 attitude?

11 A. I can't say that there is a specific day when suddenly the idea
12 popped into my head. I think it was after having some
13 experience in dealing with some of the land claims in Cape
14 Breton, particularly in the rural areas, that I came across
15 those views.

16 Q. And was this an attitude that was specifically directed toward
17 just Indians or did they apply to Indians and any other
18 minority groups?

19 A. My involvement was primarily with Indians and I really
20 couldn't comment in respect of attitudes towards other racial
21 groups.

22 Q. And you practiced in Dartmouth for a while?

23 A. I did.

24 Q. How many years were you practicing in Dartmouth?
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A. Seven, I think.

Q. And for a substantial time your offices were located in the courthouse?

A. Yeah, in the Dartmouth magistrate's court.

Q. And when you were located over there, did you have an opportunity to represent black people from time to time?

A. Yes, I did.

Q. And to the best of your recollection, was there a perception, to any degree among black people, that they felt they were not getting a fair shake as far as the justice system was concerned? A perception?

A. I was certainly never given to believe that by black people who I acted for that they had that feeling. In relation to my own personal dealings with my clients, I have no recollection. Perhaps, when I think about it, I remember just a couple of criminal charges where I recall the clients having been black or other than Indian or white.

MR. ROSS

Thank you very much, Mr. Aronson. No more questions.

EXAMINATION BY MR. WILDSMITH

Q. You and I know each other, Mr. Aronson, but for the record, my name is Bruce Wildsmith and I'm here representing the interests of the Union of Nova Scotia Indians. Let me take the last point that Mr. Ross touched on first. With respect to this

1 rednecked atmosphere that apparently prevailed in Sydney
2 in 1971, it's fair to say, is it not, that something like that
3 doesn't just turn on and off like a light?
4

5 A. Well, I would agree with that statement, yeah.

6 Q. And so it was there in 1971, probably also there through the
7 seventies and into the eighties?

8 A. Yes.

9 Q. Probably also there today?

10 A. I haven't been to Cape Breton for about five years, but I have
11 no knowledge of any change.

12 Q. Thank you. Now I'd like to turn your attention for a moment
13 to Junior Marshall as a witness at the reference hearing and I
14 think I understood you to say so far that Junior Marshall was
15 not a very articulate person?

16 A. That's correct.

17 Q. As I look through the beginning of his testimony in front of
18 the appeal division in Volume 3 at Pages 10, 11 and 13, I see
19 several times at the outset that the appeal court seems to say
20 to him directly "Please speak up."

21 A. Yes, he spoke very softly and was difficult to hear unless he
22 was either very close to the microphone or he spoke louder.

23 Q. Would it be fair to say that Junior Marshall did not make a
24 very good witness on his own behalf?

25 A. Perhaps so, yes.

1 Q Would you say, based on your experience of some ten years
2 working on Indian issues in Nova Scotia, that that might be
3 typical of Indian accused and Indian witnesses?
4

5 A. It was certainly common, yes.

6 Q I'd like to turn to Volume 29, Page 2, where the note appears
7 on rednecked atmosphere. Volume 29, Page 2. Mr. Orsborn
8 directed your attention to that yesterday and I'm looking at
9 the transcript and it may be helpful if we looked at the
10 transcript of yesterday's proceedings, Volume 55, Page...if you
11 can believe it 10124. Does somebody have a copy of that for
12 you? Volume 55? page 10124.

13 A. 124?

14 Q 124, the very last line at the bottom and I believe it's part of
15 Mr. Orsborn's question to you. He's translating, I think, that
16 comment at the top of Page 2. And I wonder if you could
17 take a look at your notes and I'm particularly referring to the
18 last phrase which Mr. Orsborn has put down as...or translated
19 as "but cleared by MacNeil's post." And as I read it, but of
20 course it's your notes, I read "blamed by MacNeil's past."

21 A. Oh, flamed by MacNeil's Post, Cape Breton Post being the daily
22 newspaper we had spoken about, I believe in my testimony
23 yesterday.

24 Q So the first word in that expression is "flamed" is it?

25 A. "Flamed" and that is a reference to when Sandy Seale was

1
2 killed in 1971, the way it was portrayed or my understanding
3 of the way it was portrayed that it involved some racial
4 element and that the newspaper, in other words, Mr. MacNeil,
5 editor of the Post did nothing to prevent that impression from
6 being made.

7 Q. And these notes at the top of Page 2, are they the comments
8 that Harry Wheaton would have made to you then?

9 A. That one would have been because I have never read the
10 Cape Breton Post in 1971.

11 Q. Is it fair to take from this and I think on Page 125 now, if you
12 turn the page, there's some sense of this in your testimony
13 that Harry Wheaton was agreeing with you about these
14 points?

15 A. I believe that's correct, yes.

16 Q. And that he had concluded...indeed, he testified in front of the
17 commission this way, that he agreed that a rednecked
18 atmosphere did prevail in Sydney in 1971.

19 A. Yes.

20 Q. Did you or did he indicate anything to you about how he
21 informed himself or brought himself around to this view?

22 A. I believe he spoke about it very briefly but I don't have any
23 recollection of the reasons other than the indication of racial
24 tension, but I remember having discussed the early 1970's in
25 Nova Scotia when the...how can I put it, there was a growing

1 movement among blacks in the province as well as amongst
2 the Indians in the province, to improve their situation.

3 Organizations like the Union of Nova Scotia Indians were
4 formed in 1969. The Black United Front, I believe, is roughly
5 in that same time period. And Sydney having a population, a
6 black population as well as a native population within a fairly
7 small city, there was some tension and he was aware of that.

8 Q. Going down a little farther on this page in the transcript from
9 yesterday, when you were asked what you meant by "red
10 neck", your answer was "intolerant". But I take it from your
11 explanation later on that when you used this word
12 "intolerant", you're including tolerance or intolerance based
13 on race.

14 A. Yes.

15 Q. In other words what you were referring to was racial
16 intolerance.

17 A. Racial cultural intolerance.

18 Q. Okay. Could you elaborate on the difference?

19 A. No, I think it's just like when I think of the Micmac language
20 being spoken in front of nonMicmac people, the feeling on the
21 part of Indians that they were ashamed of their language,
22 they weren't allowed to teach it in their schools, and they
23 were basically not in a legal sense forbidden from speaking it
24 but made to feel ashamed to speak it. That perhaps is, I don't
25

1 know whether you want to say that that's racial or cultural
2 because, to me, language is an important part of Micmac
3 culture, certainly.

4 Q. Thank you. A little farther down in that page towards the
5 bottom, you indicate "considerable experience in dealing with
6 native people both in Cape Breton and in mainland Nova
7 Scotia." And then in the last sentence you refer to "finding
8 the attitude towards Indians in Cape Breton to be quite poor
9 and quite intolerant." I'm wondering if you intend to make
10 the same comment in relation to the mainland of Nova Scotia
11 or whether you were singling out Cape Breton?

12 A. I found it in my experience perhaps somewhat more in Cape
13 Breton than on mainland Nova Scotia but I am aware and I
14 have been involved in some situations, perhaps more blatant
15 on mainland Nova Scotia than in Cape Breton.

16 Q. Perhaps I could pursue that for a moment because I think
17 you did answer in the same way yesterday to Mr. Orsborn but
18 did not elaborate.

19 MR. SAUNDERS

20 Before my friend does, I must rise with an expression of
21 caution. I think we all well recall the difficulties that we
22 encountered in the middle of Staff Wheaton's direct examination
23 when certain revelations were made by that witness and I'm
24 concerned that if my friend pursues this line of questioning with
25

MR. ARONSON, EXAM. BY MR. WILDSMITH

1 Mr. Aronson without Mr. Aronson being advised of the danger, if
2 specific instances or names are to be mentioned, that will run a
3 grave risk of harming people who aren't here represented and I
4 have no idea what Mr. Aronson's answer will be and I'm not
5 prejudging that in any sense of the word, but I am awfully
6 concerned that there may be indications given by this witness or
7 some subsequent witnesses that will have that impact. And we're
8 all here. We've spent some 55 days looking at one wrongdoing
9 and I'm sure none of us want to see that something else is done
10 improperly. So I express that concern before Mr. Aronson is
11 asked this kind of question.

MR. CHAIRMAN

13 So far I've seen nothing from Mr. Aronson that would lead me
14 to the conclusion that he would place himself in that kind, in that
15 position. And I'm sure that Mr. Wildsmith won't put that kind of
16 question to him. The line of questioning so far has been, I think
17 arising out of the obvious experience that this witness has had in
18 dealing with natives. Now I agree with you that this is not a
19 forum for, you know, creating gossip or making statements that
20 may be harmful to people who are not before us.

MR. SAUNDERS

22 Thank you, My Lord.

MR. CHAIRMAN

24 But I so far have seen no sign of that from this witness.
25

MR. ARONSON, EXAM. BY MR. WILDSMITH

1 We're always alert to these things but sometimes they catch us
2 before we can stop them.

MR. WILDSMITH

4 Perhaps I could also comment on that because I did want to
5 direct his attention to two particular cases or instances that he
6 has some knowledge of. Hopefully do that in a way that shows
7 some specifics instead of generalities, but without naming people,
8 if that is agreeable to the Commission. It's always a danger to talk
9 in generalities without getting down to any specific cases that
10 might be available. On the other hand, I understand my friend's
11 concern.

BY MR. WILDSMITH

13 Q. So at this particular point, Mr. Aronson, you were indicating
14 that you had some experiences on mainland Nova Scotia that
15 might be suggestive of racial intolerance, and I take it in the
16 administration of justice you're referring?

17 A. Yes.

18 Q. And without naming names, could you tell us what transpired
19 in that case or cases?

20 A. The one case that strikes me as being fairly blatant was a case
21 that I recall as vividly as if it had happened yesterday and it
22 happened, I believe, in the late 1970's in Magistrate's Court in
23 Windsor, Nova Scotia. It was a preliminary hearing of two
24 Indians charged with assault causing bodily harm and the
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victim was also an Indian from the Shubenacadie Indian Reserve. During the course of my cross-examination of the witness, who had been called by the Crown, I asked the witness, "What do you do for a living?" And before the witness had an opportunity to respond in testimony, the Crown Prosecutor blurted in, "They're all on welfare." I was somewhat upset at having heard that. I immediately asked the judge to strike it from the record and it was stricken from the record in the same preliminary hearing. At the conclusion of the preliminary hearing, the accused were held over for trial, released on their own recognizance and the last comment that the Crown Prosecutor made to them was, between the time of the preliminary and the time of their actual trial date, "Don't go potato-picking down in Maine." Which was a reference to a custom among many Micmac people in Nova Scotia who go down to Maine towards the end of the summer and early fall, partly as vacation, partly as a small income earner to pick blueberries and potatoes as essentially farm labour.

21 Q. Do you know the latter experience to be a cultural experience
22 for Micmac people?

23 A. For Micmac people, it is.

24 Q. Do you know enough to elaborate on why it would be that
25 way?

1 A. Well, for Micmac people, their, part of it has to do with their
2 relationship and part of it has to do with historically they
3 have no...Nova Scotia is a political boundary but, historically,
4 Micmacs have, their territorial area encompasses now what's
5 part of Maine and they have traditionally traveled and at
6 certain seasons of the year to various parts of the Maritime
7 Provinces as well as the New England, northern New England
8 states.

9 Q. Is it fair to describe this experience as kind of a community
10 gathering?

11 3:05 p.m. *

12 A. Oh, very much so. I think just to say that if the prosecutor
13 had wanted the accused to remain he just could have said,
14 "And I'd ask you not to leave the jurisdiction." Instead he
15 made a comment that was, in my view, uncalled for,
16 unnecessary and blatantly racist.

17 Q. Were there other experiences on mainland Nova Scotia that
18 you had in mind?

19 A. None quite as clear as that or that I could with any honesty
20 say was evidence of racism.

21 Q. Okay. Now, you have a reasonable degree of experience in
22 working with Indians and working on Indian issues. We've
23 already heard evidence of some time employed with the
24 Union of Nova Scotia Indians, some ten years experience of
25 working in private practise in Nova Scotia, working with the

1 Union of Nova Scotia Indians, although not directly employed
2 by them, some time with the Department of Indian Affairs in
3 Ottawa, I believe also with the Department of Justice in the
4 native law section.

5 A. That's correct.

6 Q. And, indeed, you have a Masters Degree in Law from Monash
7 University in Australia.

8 A. I do, yes.

9 Q. And your work there was based on...

10 A. Aboriginal land claims.

11 Q. Now, based on that experience and that background, would
12 you say that getting limited glimpses of racial attitudes as
13 through this case you've just elaborated that these kinds of
14 glimpses are, indeed, significant?

15 A. Oh, yes, I think they're...to me they're significant
16 when...because to me it appears that that's just one incident
17 and that there are likely other incidents that we're not aware
18 of or perhaps aren't quite as blatant as that.

19 Q. And indeed, that it's very difficult to get at racial attitudes.

20 A. Oh, very difficult. It's...the common thing you hear and which
21 I had heard several times in Cape Breton is when you would
22 talk with white people in terms of land claims that you acted
23 for the Indians the first thing you would hear is "Well, one of
24 my best friend is an Indian," where...and perhaps they didn't
25 think of it in those terms, but I found myself somewhat

1 sensitive to that kind of a comment.

2 Q. What did you take by that comment?

3 A. Well, that somehow they wanted to say, "Look, I'm a...you
4 know, I have friends that are Indians and I don't have
5 anything against them."

6 Q. And so there is something significant about denying...

7 A. Yeah, sort of like taking an opposite kind of attack. But that's
8 how it impresses me.

9 Q. Yes.

10 A. I don't want to suggest that that's, in fact, what other people
11 would take from a comment like that.

12 Q. Well, something else you indicated yesterday and it's on page
13 10126 in the transcript, when you were asked these kinds of
14 questions by Mr. Orsborn you started out by referring to
15 history. And you say in answer to his question, "Why would
16 you reach a conclusion about an intolerant attitude towards
17 Indians?" you say, "As much from historical research as from
18 actual experience." Could you elaborate on why your
19 historical research might be relevant?

20 A. Well, I think racism is something that you have...you do not
21 have one day and then suddenly one has it the next day. It's
22 built up through attitudes, through misunderstanding,
23 through ignorance, that's developed over a fairly lengthy
24 period of time. And I don't think one can say that if there
25 was any racial tension or racial difficulties in Cape Breton that

1 it started on the night that Sandy Seale was stabbed in
2 Wentworth Park. It had always...or it had been there for
3 some period of time before that. When dealing with Indian
4 people in Nova Scotia if one goes back to look at how...when
5 Nova Scotia was a British colony how the Indians were dealt
6 with in Nova Scotia, how the reserve system was set up in
7 Nova Scotia, the pleas on the part of Indian people to treat
8 them in accordance with the laws that the province had
9 passed, to get the sheriffs to enforce their rights to their
10 reserves, rather than helping the squatters. That there was
11 a...they were not part of the system. They were outside the
12 system and they were second class and that's historical
13 treatment of Indians in the Province of Nova Scotia.

14 Q. Do you see any evidence to suggest a change?

15 A. I think perhaps some attitudes have changed. But I think it's
16 perhaps less easily established today then it is in the
17 historical record. I don't think people are going to get up on
18 the stand or going to testify, "Yes, I'm a racist and I'm proud
19 of it." I think that's a difficult thing to establish.

20 Q. Okay. Let me take you back to one other episode that you
21 commented on yesterday and that was to do with Sydney and
22 with the Sydney Reserve...or Sydney Indian Reserve case that
23 appeared in the Exchequer Court Reports dealing with an
24 expropriation not too long after the turn of the century. Can
25 you help us out a little more as to what happened then and

1 why that might be significant today?

2 A. Well, in Cape Breton the reserve that was expropriated as a
3 result of the Exchequer Court decision is that part of the City
4 of Sydney on which the Holiday Inn currently exists. It's a
5 very valuable piece of land, was a very valuable piece of land
6 at that time. It's on the main road, Kings Road going into
7 Sydney. It's currently owned by, I believe, DEVCO. The re...

8 Q. Is that on Sydney Harbour, on the waterfront?

9 A. On Sydney River.

10 Q. Sydney River.

11 A. I think of it as where the Holiday Inn is because to me it's a
12 main landmark in the City. Sorry.

13 Q. We're all familiar with that location.

14 A. In any event, in the early part of this century the City was
15 developing and starting to encroach all around the reserve
16 and there was a section in the Indian Act, the federal Indian
17 Act at the time which permitted an application to be made by
18 the Exchequer Court to expropriate Indian reserve land for
19 such reasons, I think, as the Court thought just. The
20 application was taken and purported to remove Indians from
21 the influences of white people and liquor. Indians took no
22 part whatsoever in the case, in the hearing of the case, they
23 had a representative, a solicitor appointed to act on their
24 behalf and, as I recall the case, and it's a reported decision,
25 the court commented on how well counsel for the native

1 people had acted in the case. There was no testimony given
2 by any Indian person. All the testimony was given by non-
3 Indian people in terms of ministers or priests or business
4 people, municipal leaders and so on saying that this was in
5 the best interest of Indian people. The decision was to
6 expropriate, the compensation was paid and the current
7 Indian reserve or a large portion of the current Indian
8 reserve in Sydney, which, by the way, is now also in the City
9 of Sydney, was purchased with the proceeds of the sale of
10 that land. The land is far less valuable and while there is
11 greater size, the band itself has since that reserve was created
12 expanded in population beyond the boundaries of that
13 reserve.

14 Q. So, is it fair to think that that's a lingering source of
15 discontentment on the part of the Indian people?

16 A. Certainly the Indian people in Cape Breton and in Sydney feel
17 that way.

18 Q. Okay. Coming back to this difficulty of getting at racial
19 attitudes. Is it fair to think that a kind of lack of
20 responsiveness or a lack of cooperation on the part of people
21 would be one sign or one indication that there may be a racial
22 problem?

23 A. It's possible, yes.

24 Q. Are there other kinds of signs or forms of acting that you
25 might take into account?

- 1 A. I don't think I can really think of any...I'm sort of a little
2 vague on that question, I guess.
- 3 Q. Okay. It's a difficult issue to ask questions about. Let me
4 direct your attention to volume 31, page 10. This is the letter
5 that you received back from Chief John MacIntyre.
- 6 A. I don't think I've got it.
- 7 Q. It's coming. Volume 31.
- 8 A. I have it, thank-you.
- 9 Q. Okay. Page 10. It is Exhibit 123 though.
- 10 A. 124.
- 11 Q. Yes. Do you have that letter in front of you now?
- 12 A. I do.
- 13 Q. Yeah. I take it this is the response that you received to your
14 enquiry for the City of Sydney Police Department to look into
15 the new information in relation to Junior Marshall?
- 16 A. Yeah, that came after I had already received a phone call
17 from the R.C.M.P. so I was aware of it.
- 18 Q. Did you have any particular reaction to the tone of the letter?
- 19 A. Other than the fact that it wasn't even signed, ah, it sort of
20 made me wonder. I...just a short note just to indicate that it
21 had been received.
- 22 Q. But it doesn't provide you with any information.
- 23 A. No, but as I've indicated when I had received...
- 24 Q. Yes.
- 25 A. ...this letter dated February 15th I had already spoken with

1 the R.C.M.P. on February, I think it was February 8th or 9th
2 and knew that they had received the information. So, this is
3 more or less confirmation, so I...it was of no great significance
4 to me at the time.

5 Q. Okay. Fair enough. We also have some testimony that a man
6 named Dan Paul paid a visit to Detective Urquhart in August
7 of 1981, I believe. You know who Dan Paul is?

8 A. Yes.

9 Q. Because you copied some of your letters to Dan Paul.

10 A. That's correct.

11 Q. Did you ever have any discussions with him about his
12 meeting with Detective Urquhart bringing forward Roy
13 Ebsary's name?

14 A. I recall having had conversations with Danny Paul. I have no
15 specific recollection of that particular conversation.

16 Q. Okay. Now, this is all leading up to really one question that I
17 want you to respond to and that question is this, I'm
18 wondering whether in your view the fact that Junior Marshall
19 was an Indian had anything to do with the events that
20 surrounded him, anything to do with what happened to him?

21 A. It's my belief that it did.

22 Q. Can you help us out as to why that might be?

23 A. I think perhaps the...well, the murder of Sandy Seale was no
24 doubt a serious case in Sydney at the time. I believe that if it
25 would have been other than...it would have been a person

1 other than an Indian, perhaps there would have been a
2 greater amount of time and effort spent both on the part of
3 the police and others in the system.

4 MR. PUGSLEY

5 I object to this, My Lord, I don't know how this witness can
6 possibly give this kind of evidence.

7 MR. RUBY

8 Well, because it explains why this man worked the way he
9 did, why he made the decisions he did, why he approached the
10 problem in the way he did and without that kind of perception on
11 his part you can't understand his evidence in a full way.

12 MR. WILDSMITH

13 Not only that, but Commission counsel asked the same
14 question of Sergeant Wheaton.

15 MR. PUGSLEY

16 My objection goes to the fact that this witness does not have
17 the background or the experience in Sydney in 1971 to speak
18 knowledgeably and in an informed matter concerning those
19 events.

20 MR. CHAIRMAN

21 I am treating what he is saying as an opinion of his based on
22 his review of the events that occurred in 1971. He can't go any
23 further than that.

24 MR. WILDSMITH

25 Indeed my question was broader than that though and I

MR. ARONSON, EXAM. BY MR. WILDSMITH

1 think goes to his own experience in working on behalf of Junior
2 Marshall in this case.

MR. CHAIRMAN

4 Well, but as to what...obviously as to what happened in 1971,
5 that is something beyond his direct knowledge but based upon his
6 review of the files and, as you say.

MR. WILDSMITH

8 Yes.

MR. CHAIRMAN

10 ... subsequent involvement with Donald Marshall, Jr., as his
11 counsel, and...

MR. PUGSLEY

13 No personal knowledge of Chief MacIntyre. I don't even
14 know whether he's ever met him or Mr. Urquhart, how can he
15 possibly say whether they would have...

MR. CHAIRMAN

17 I don't think he's...so far he hasn't said anything that I could
18 directly attribute to an attitude on the part of your client or Mr.
19 Urquhart.

MR. PUGSLEY

21 I think the witness was starting to say that...

MR. CHAIRMAN

23 Well, if he's...

MR. PUGSLEY

25 ...if Mr. Marshall had not been an Indian then the police would

1 have worked harder. I don't know what his basis...

2 MR. CHAIRMAN

3 But that's police, yes, but that's a more generalized statement.
4 I'll listen very carefully to his answer. Now what...where were
5 we...

6 MR. WILDSMITH

7 Q. Yes, I was asking you the question about whether the fact
8 that Junior was an Indian had anything to do with any of the
9 events that surrounded him and I think your answer is "yes".
10 I asked for some elaboration and you started by referring to
11 the work of the police.

12 A. And others in the law enforcement system, whether it was
13 the...perhaps the Crown or other actors, perhaps would have
14 taken it in my view more seriously.

15 Q. Yes. And moving into the time of your own experience in
16 trying to get the system of justice to work on Mr. Marshall's
17 behalf, what would you say about whether the system would,
18 in your view, have been more responsive or the actors in the
19 system more responsive if Mr. Marshall had not been an
20 Indian?

21 A. I'm a bit more uncertain about that. I personally believe that
22 it would have happened somewhat quicker in terms of the
23 province's involvement in it, but I have no real basis to
24 suggest that.

25

MR. ARONSON, EXAM. BY MR. WILDSMITH

1 3:20 p.m.

2 Q Let me direct you to one factor. I believe we will be hearing
3 evidence later on that a common position taken by the
4 Department of the Attorney General is that Indians were a
5 federal responsibility and, therefore, they should not act. Can
6 you tell us whether in your experience...

7 MR. SAUNDERS

8 But that's not the evidence, My Lords. I'd like to know where
9 my friend gets that as being a common position throughout the
10 Department. I don't know that to be the evidence.

11 MR. WILDSMITH

12 Well, it's evidence I'm anticipating but let me stop that and
13 move back a stage and ask the witness whether this is part of a
14 response that he received?

15 MR. CHAIRMAN

16 His evidence is that early he went to the Minister of Indian
17 Affairs and asked if he would assume responsibility for his legal
18 fees.

19 MR. WILDSMITH

20 Yes, that's one component.

21 MR. CHAIRMAN

22 Did you assume at that time that there was responsibility for
23 the Department of Indian Affairs?

24 MR. ARONSON

25 Oh, I made no such assumption at all. What was involved

MR. ARONSON, EXAM. BY MR. WILDSMITH

1 | there was that the Union was saying that their funding came from
2 | by and large Department of Indian Affairs and when we discussed
3 | the issue of fees, it was in the company of the then president of
4 | the Union of Nova Scotia Indians. I don't know if I've...

BY MR. WILDSMITH

5 |
6 | Q. Well, my question to you, really, is, part of my question to
7 | you is whether in your experience in working on Junior's
8 | behalf whether a response that you received from the
9 | Attorney General's Department was that you ought to look to
10 | the federal government because Indians were a federal
11 | responsibility?

12 | A. The departmental officers of the Attorney General never
13 | made that statement. The then Attorney General made the
14 | statement.

15 | Q. Okay, and what do you say about that kind of statement?

16 | A. I found it to be made perhaps out of, I found it difficult to
17 | believe that an attorney general of a province would make a
18 | statement like that, particularly given the constitutional fact
19 | that the provinces are charged with responsibility for
20 | administration of justice in a province and that does not
21 | exclude Indian people.

22 | Q. Thank you. I'd like to move on now and direct your attention
23 | to the work of the Appeal Division on that reference. I take it
24 | that one of the issues that was not put to the Appeal Division
25 | was this question of whether Marshall's race was a factor in

1 his conviction.

2 A. That's correct.

3 Q. When you suggested at the press conference on the date of
4 this decision that there be a public inquiry, I take it you
5 would have anticipated that allegations of racism would have
6 been part of the work of that public inquiry.

7 A. I think that's a correct assumption. It would have been one
8 aspect, certainly.

9 Q. Is it fair to think that the comments by the Appeal Division
10 referring to any miscarriage of justice having been more
11 apparent than real, would have the impact of diminishing the
12 energy towards a public inquiry?

13 A. I guess one could read it that way. I certainly didn't.

14 Q. You did not. Okay. At one point in your testimony, you
15 indicated a preference for Sec. 617(c) of the Criminal Code as
16 being the appropriate course of action on the part of the
17 Minister of Justice. That's correct?

18 A. That's correct.

19 Q. And I take it that one of the consequences of that provision in
20 the Criminal Code is that the ultimate decision would rest
21 then with the Minister of Justice.

22 A. That's right.

23 Q. Can you indicate why you had a preference for the Minister of
24 Justice making the decision rather than the appeal division?

25 A. It was not the kind of remedy that would be available; that is,

1 a free pardon was only a prerogative that could be exercised
2 by the Crown and a court could acquit. And perhaps it had
3 the same technical effect but, personally, I was in favour of
4 the free pardon which was available through the federal
5 crown.

6 Q. Okay. One last question. When you came in front of the
7 Appeal Division, we've had evidence that the make-up of the
8 panel of the Appeal Division sitting then was different than
9 on the application for fresh evidence.

10 A. Yes.

11 Q. And that difference was the presence of Mr. Justice Pace
12 instead of Mr. Justice Morrison.

13 A. That's correct.

14 Q. Did you have any reaction to that change in the make-up of
15 the panel?

16 A. I don't know how to make this into a short answer. When the
17 panel walked in the morning of the reference, my client had
18 not appeared and I realized because it was Mr. Justice Pace
19 who was the first to enter the courtroom, I also realized that
20 he had been the Attorney General of this province. I was not,
21 it flashed through my mind that he had been Attorney
22 General of the province but I just did not recall the period of
23 time during which he was the Attorney General. To me, it's
24 sort of like keeping track of regnal dates. I'm not too good at
25 it. But as I say, I was more concerned with the fact that my

MR. ARONSON, EXAM. BY MR. WILDSMITH

1 client was not there as he was going to be the first witness.

2 That's the only comment I have on that one.

3 Q. So I take it you didn't, it didn't enter your mind to suggest
4 something ought to be done at that particular point.

5 A. No.

MR. WILDSMITH

7 Thank you then. Those are my questions.

EXAMINATION BY MR. RUBY

9
10 Q. I have one further question arising out of the Attorney
11 General's question. The question is, the counsel for the
12 Attorney General asked you were the Attorney General's
13 officials as concerned as you with getting the acquittal and
14 then going on to the compensation issue and you answered,
15 "Yes, but I think they had other concerns as well." I'd like to
16 ask, My Lord, what those other concerns were?

17 A. Oh, the concerns would have been directed primarily, I guess,
18 at compensation, various other aspects of the case including...I
19 had even raised, as I recall, the question of public inquiry at
20 that time with the Attorney General's office. They were
21 concerned about procedure and process, that type of thing.

MR. RUBY

23 Thank you.

MR. CHAIRMAN

25 Mr. MacDonald.

DISCUSSION

1 MR. MACDONALD

2 No questions.

3 MR. CHAIRMAN

4 I really haven't any questions to put to you, Mr. Aronson, but
5 I'm intrigued by your response to Mr. Wildsmith's question about
6 your studies in Australia. Could you tell us, and I have a reason
7 for asking that, and it may become apparent over the months.

8 MR. ARONSON

9 How did I end up in Australia?

10 MR. CHAIRMAN

11 No, no, but the nature of the work you did there and where,
12 what university?

13 MR. ARONSON

14 I attended Monash University which is in Melbourne,
15 Australia.

16 MR. CHAIRMAN

17 What's the name again?

18 MR. ARONSON

19 Monash, M-O-N-A-S-H. It's named after an Australian
20 general during the First World War who led the Australian
21 Expeditionary Force. It was at the Faculty of Law at that
22 university which claims to be the largest law school in the British
23 Commonwealth. I studied under a woman named Dr. Elizabeth
24 Eggleston, who was heading an institute, the Aboriginal Legal
25 Affairs Institute, which was quite a small operation and she was

DISCUSSION

1 also a professor at the law school. She was my supervisor and my
2 work was largely in the area of Aboriginal title, native land rights
3 in Australia compared to the treatment in Canada and the United
4 States. Because there had just been a generally well known
5 decision in Australia called Miller v. Nabalco Proprietary Limited,
6 which was a major land claim case in Northern Australian and it
7 had happened approximately the same time as the Calder case in
8 British Columbia, which the Supreme Court handed down its
9 decision in 1973...No, I'm sorry, it would have been a little later
10 than that, 1975 Supreme Court of Canada. The Miller decision was
11 handed down by the Northwest Territories Supreme Court in 1974
12 and it was an extremely lengthy and exhaustive decision, perhaps
13 one of the most exhaustive discussions of the components of
14 Aboriginal title claims and proof of Aboriginal title claims in the
15 British Commonwealth. And that's the main reason why I was,
16 that's what I was studying and the reason for it.

MR. CHAIRMAN

18 Thank you very much. Thank you so much for coming down
19 from Ottawa.

20 **THE WITNESS WITHDREW.**

22 **INQUIRY ADJOURNED UNTIL MARCH 16th AT 9:30 a.m.**

REPORTER'S CERTIFICATE

I, Margaret E. Graham, Court Reporter, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



Margaret E. Graham

DATED THIS 15 day of March 1988 at Dartmouth, Nova Scotia