

1 HERBERT DESMOND, duly called and sworn, testified as follows:

2 EXAMINATION BY MR. MacDONALD

3 Q. Your name is Herbert Desmond?

4 A. Yes, it is, sir.

5 MR. MacDONALD

6 My Lords, I just want to indicate that Mr. Desmond is being
7 called at this time out of the normal sequence at a special
8 request of Mr. Ross, counsel for Oscar Seale. And Mr Desmond
9 will be talking about Sandy Seale, his relationship with him,
10 his general character and things of that nature.

11 Q. Mr. Desmond, at the present time you live in Halifax, sir?

12 A. Yes, I do.

13 Q. And how long have you lived here?

14 A. Since 1972, since I came to university.

15 Q. And you do have a degree in Sociology, is it?

16 A. Sociology and Philosophy.

17 Q. And you're working at the present time in?

18 A. The Halifax City Regional Library.

19 Q. You're a native of Sydney, are you?

20 A. Yes, I am.

21 Q. And when were you born?

22 A. November 3, 1952.

23 Q. I'm interested in talking about your relationship with Sandy
24 Seale. You knew Mr. Seale?

25 A. Yes, very well.

1 Q. He was a childhood friend of yours?

2 A. Yes, we were lifelong friends for as long as he lived, yes.

3 Q. We've heard a little bit about Sandy Seale but would you just
4 tell the Commissioners your general recollections of him. The
5 type of boy he was, the activities he participated in, this sort
6 of thing.

7 A. Well, Sandy was an average black growing up in Sydney. You
8 know, he had his share of problems like most of us in dealing
9 with basically what was a racist and segregated society. He
10 had to overcome a lot of obstacles, whether it was in school
11 and sports, socially and even dating a girl. But he overcame
12 those, he was very outgoing. He was not a bitter individual.
13 He learned to handle things well and let things roll off his
14 shoulder.

15 Q. He was an athlete?

16 A. Quite an exceptional athlete. He excelled in hockey as one of
17 his main sports but he also played baseball. He did track and
18 field.

19 Q. Were you yourself participating in sports?

20 A. Yes, I was, yes.

21 Q. Were you a teammate of Sandy's?

22 A. No, not at any particular time. When we played school
23 hockey in the elementary school league, we played on the
24 same team but as we progressed through the years into the
25 City league, minor league hockey league, we all dispersed to

1 different teams.

2 Q. Did you used to go to the dances and these sort of things with
3 Sandy Seale?

4 A. Well, it wouldn't necessarily be with Sandy. There was a
5 number of us in the community that were close friends. It
6 was a very close-knit community. Sydney was an area where
7 you lived basically in your part of town. We were stuck in a
8 part of the community which they labelled the "Coke Ovens"
9 in a derogatory manner and we were expected and, often
10 times we found most of our livelihood in that area.

11 Q. When you say "we," are you talking blacks?

12 A. Blacks, yes.

13 Q. And so the blacks were congregated or lived in a particular
14 area, at least the majority of blacks, is that...

15 A. Yes.

16 Q. Correct? Was there a particular area where other ethnic
17 minorities lived?

18 A. The immediate area surrounding the, well, it was known at
19 the Coke Ovens was a milieu of ethnic and some racial groups.
20 There were Polish, Ukrainian, Yugoslavian peoples, Italian
21 peoples, basically a working-class district. On the other end
22 you had the Micmac community which would sit on the
23 extreme opposite side of the community of Sydney and they
24 were basically living on the fringes on the reservation.

25 Q. Did you yourself growing up have interaction with members

1 of the Micmac community?

2 A. Yes, I did.

3 Q. Are you able to comment whether there was any friction
4 between those two communities?

5 A. There was not any real animosity or any friction of any sort.
6 There was a realization that we were the only visible
7 minorities within the community. There were some East
8 Indians but they atoned to more taking on the values of the
9 larger white society and, therefore, their reaction towards to
10 us and their attitudes were basically that of the white racist
11 society that existed there.

12 Q. Okay. In particular, did you know Junior Marshall?

13 A. Yes, I knew Junior.

14 Q. And how would you know him? In what circumstances
15 would you know him?

16 A. Well, Junior was an athlete at that time also and we would
17 play sports against each other. We would see each other at
18 social functions. Sydney is not a big community, so it wasn't
19 as if you weren't going to see anybody at any particular time
20 when you went to a certain part of town or whatever.

21 Q. Now did you ever have anyone suggest to you up until the
22 time of Sandy Seale's death that he had been engaged in any
23 criminal activity?

24 A. Junior Marshall?

25 Q. No, Sandy Seale.

- 1 A. No, Sandy was never involved in any crimes.
- 2 Q. Are you aware of whether he was ever involved in, for want
3 of a better word, "bumming" of money in the Park or
4 otherwise?
- 5 A. No, Sandy was in, maybe one step above us in the sense that
6 his father had a real good job. He owned a night club. He was
7 quite able to provide for Sandy things that some of us of
8 Sandy's age in the community weren't able to get from our
9 parents and, therefore, he had no need to even think of
10 committing a crime for profit.
- 11 Q. What the relationship between Sandy and his father?
- 12 A. It was one of love and admiration. I think his father was very
13 proud of Sandy and his accomplishments as an athlete. His
14 father was a strict individual, although very loving and
15 caring. He wanted his family to be on the straight and narrow
16 and basically they were told to do that.
- 17 Q. If Sandy was told by his father to be home at 12, from your
18 experience, would he be home at 12?
- 19 A. He better be.
- 20 Q. He better be?
- 21 A. That's right.
- 22 Q. Were you with Sandy on the night of the, that he was
23 stabbed?
- 24 A. Yes, I was.
- 25 Q. Where did you see him that night?

1 A. Sandy came into the dance at St. Joseph's church hall. I can't
2 remember the exact time but we spent a bit of time there
3 together. At the time he entered the dance, it was sold out so,
4 like most of us did at the time, we snuck into the dance. You
5 know, it was not an unusual sort of thing. It was not a thing
6 that people looked down upon you. As a matter of fact, if you
7 could get into the dance without paying, that was more power
8 to you. It wasn't as if they were out to make a whole out of
9 money off you.

10 Q. Okay. Did you leave the dance with Sandy?

11 A. No, Sandy got kicked out shortly before the dance was over.

12 Q. When did you hear that he had been stabbed?

13 A. Somewhere along the way home. He usually hitch-hiked
14 home from that area of town and somewhere along the way, I
15 can't remember, some white individuals were saying that
16 there was a stabbing in the Park and that "Sandy had got cut"
17 was the expression that was used

18 Q. Were you surprised?

19 A. Very surprised. There wasn't any immediate information
20 available. We couldn't verify it right away sort of thing and...

21 Q. When did you first hear the suggestion that Sandy had been
22 involved in a robbery attempt?

23 A. A few years ago, actually. No more than two or three years
24 ago.

25 Q. And what was your reaction to that?

MR. DESMOND, EXAM. BY MR. MacDONALD

1 A. I think it's a goddamn lie.

2 MR. MacDONALD

3 That's all the questions I have, thank you.

4 MS. EDWARDH

5 No questions.

6 MR. PUGSLEY

7 No questions, My Lord, thank you.

8 MR. MURRAY

9 No questions.

10 MR. PRINGLE

11 None.

12 MR. SAUNDERS

13 No questions, My Lord.

14 CHAIRMAN

15 Mr. Wildsmith?

16 EXAMINATION BY MR. ROSS

17 Q. For the record, Mr. Desmond, my name is Anthony Ross, and I
18 want to ask you a couple of questions about your relationship
19 with Sandy Seale and I will also ask you one or two about the
20 black community in the Sydney area. I take it that you went
21 to school with Sandy?

22 A. Yes, I did.

23 Q. And which school did you attend at that time?

24 A. Eastmount Junior High and I think Whitney, Eastmount
25 Elementary and Whitney Junior High.

1 Q. And where are these two schools located one with respect to
2 the other? Are they just across the road? Close by?

3 A. Well the junior high as in terms of (Dombasco?) and Whitney
4 were in very close proximity. Dombasco School which is
5 another junior high was a Catholic school and Whitney School
6 was no more than a parking lot away from that.

7 Q. I see. They shared almost a common parking lot, did they?

8 A. Yes, they did.

9 Q. And I take it you went to one of these schools and Sandy
10 went to the other?

11 A. Yes, he did.

12 Q. But as far as the community is concerned, you had your own
13 little group within that common parking lot concept.

14 A. Well, because we went to different schools together didn't put
15 us in any special social class as far the other larger
16 communities are concerned. We were still blacks, we still
17 lived in Cokes Ovens and that was their attitude.

18 Q. Yes. As far as Sandy is concerned, did he live down in the
19 Coke Oven section also?

20 A. He lived a few streets up which was considered part of the
21 uppity, sort of white district as you moved up along your
22 proximity to the black community, the affluence is more
23 apparent.

24 Q. And as far as Sandy is concerned, I take it that you visited his
25 house quite often.

1 A. Yes, when he lived in the Pier up on Mt. Pleasant Street it
2 was, we frequently visited each other's homes, yes.

3 Q He visited yours and you visited his.

4 A. Yes.

5 Q And I take it you would have had meals at his house...

6 A. Yes.

7 Q And he would have had meals at yours?

8 A. Yes.

9 Q Did he ever stay over at your house?

10 A. No, that was not a common thing that, our parents weren't
11 that lenient.

12 Q Sure. And did either of you have any friends on the reserve?

13 A. We had acquaintances on the reserve. There was no, per se,
14 friendship involved with the Micmac Indians. We respected
15 them they respected us and we kept our mutual distances.

16 Q And did you, in fact, visit the reserve from time to time?

17 A. I visited the reserve once, I believe it was in 1970, with a
18 group who were involved with, a program involved with
19 community relations between the RCMP and the City Police.

20 Q But prior to that you hadn't visited the reserve?

21 A. No.

22 Q Although you lived in Sydney.

23 A. Yes.

24 Q And what about Sandy, do you know whether or not he had
25 any friends who lived on the reserve?

1 A. Like I said, we had a lot of acquaintances that we would
2 interact with in the community, in school, at dances and that
3 sort of thing, but friendship was a rather strong word.

4 Q. And your knowledge of Junior Marshall, what did you know
5 of Junior Marshall personally?

6 A. Well, Junior was a big bully of a boy. He pushed his weight
7 around. He was basically a teenage alcoholic when I look
8 back upon it now and in terms of past work in the years just
9 gone by. Like most of the Indians on the reservation, there
10 was a deep social problem in terms of alcoholism that wasn't
11 being addressed by the larger community. It was rather
12 ignored, but still it existed.

13 Q. Was there anything else in particular that you could recall
14 about Junior?

15 A. Well Junior was an abusive individual. We know that he
16 carried a knife. A lot of the Indians carried knives for one
17 reason or another. And that he was dangerous and not to be
18 trusted.

19 MS. EDWARDH

20 With the greatest of respect I think the witness is going way
21 beyond what he can attempt to...

22 MR. DESMOND

23 I'm giving my personal opinion on my experience.

24 MS. EDWARDH

25 Excuse me, sir, but of his own personal knowledge.

1 CHAIRMAN

2 Your personal knowledge.

3 MR. DESMOND

4 Well, that is my personal knowledge.

5 MS. EDWARDH

6 Well, I think my friend might have better laid a foundation or
7 just move on to another area.

8 CHAIRMAN

9 Yes. Would you tell us on which, how you, the kind of, you
10 say interaction...

11 MR. DESMOND

12 Well this is based on observation and of being there in the
13 time and place. There was areas, times when Junior would be
14 at a dance, he'd start being an asshole, he'd start fighting with
15 people. He might pull out a knife, he might not. He might
16 beat up somebody smaller than himself. You know, that's an
17 observation.

18 CHAIRMAN

19 But have you seen him pull a knife?

20 MR. DESMOND

21 I've seen him with a knife, yes.

22 MS. EDWARDH

23 No, that's not the question.

24 CHAIRMAN

25 Well, pull a knife.

1 MR. DESMOND

2 Pardon?

3 CHAIRMAN

4 Pull a knife.

5 MR. DESMOND

6 Well, I've seen lots of people with knives out, whether they
7 were pulling them for any useful purpose or not is irrelevant. The
8 fact that he had a knife is...

9 CHAIRMAN

10 But have you seen him with a, at a dance when there's
11 fighting or animosity apparent, have you seen him with a knife in
12 his hand?

13 MR. DESMOND

14 I've seen him with a knife on his person, maybe not with a
15 knife in his hand.

16 MR. ROSS

17 Q. And what can you tell us about the likelihood of Junior
18 Marshall and Sandy Seale being involved in a fracas and you,
19 in the black community, not knowing about it?

20 11:02 a.m.

21 A. It would be pretty well impossible, even though Sandy had
22 lived in Westmount at that time, we still kept in frequent
23 contact because, as I said, the community was quite small.
24 You still had to go into the shopping centre to shop, so to
25 speak, so, and to socialize into town. There was only one

1 shopping district. So, therefore, like, I've seen Sandy quite
2 regularly and he at no time ever mentioned to me that, you
3 know, as I've heard, that he had...that Junior had beat him
4 up because he was arguing with his girlfriend or something.
5 The likelihood of Junior being a friend of Sandy is nil as far
6 as I'm concerned.

7 Q. And perhaps you could just tell the Commission about your
8 experiences as far as the general policing of your area in
9 Sydney, of the Coke Oven section of Sydney. Was there an
10 obvious police presence?

11 A. It was an intimidating police presence. It was no unusual
12 for a police squad car to drive through our street on Tupper
13 Street twenty, thirty times a day and to continue that
14 through the night. This was not because of any particular
15 concern for our community. Their presence there was not a
16 friendly presence. They sneered at you. Sometimes they
17 might call you nigger, sometimes they...you know, if you
18 were playing hockey on the road they might turn around
19 and tell you to get off the street, you know, although if you
20 went up to the white streets, you'd notice like the kids
21 played hockey up there with no problem at all.

22 Q. The night that Sandy Seale was stabbed, I take it that you
23 saw him being escorted from the dance by Officer John
24 Maloney.

25 A. Yes, I did. We were in the bathroom at the time. We were

1 sharing what was left of a little bit of wine and we were sort
2 of carrying on and we expected to go back out to the dance.
3 At that time Officer Maloney entered. He had previously
4 kicked out Sandy so he had identified him right away, and it
5 was just another trip to the door.

6 Q. I see. Did Sandy resist?

7 A. No.

8 Q. Was he in any way belligerent?

9 A. Never...not belligerent at all, you know, he...in most cases
10 like that, there's more people than him that got kicked out
11 that night, let me look at it that way, and it wasn't as if he
12 was...he felt that he was being singled out in particular, it's
13 just that he didn't have a stamp and what he had was a bit
14 of a makeshift thing and it was common practise for the
15 cops to go around and check your stamp, and if you didn't
16 have a proper stamp, then out you go.

17 Q. I see. So, he wasn't...Maloney was not specifically picking on
18 Sandy. He was making sure that those who didn't pay get
19 out.

20 A. Well, John Maloney was what I would consider one of the
21 more fairer policemen in the city at that time. He had a
22 different outlook and perspective on black people. He spoke
23 to you in a friendly manner. He didn't sneer at you. If he
24 seen you in a part of town, he wouldn't stop the police car
25 and ask you like, well, what are you doing in this part of

MR. DESMOND, EXAM. BY MR. ROSS

1 town, you know, and these sorts of things and he knew, I
2 believe, most of our parents, and so there was a bit of
3 respect on their part.

4 Q. What about other police officers? Did you know of Chief
5 MacIntyre?

6 A. Yes, I did.

7 Q. Did you have any personal knowledge of him?

8 A. MacIntyre was...

MR. MacDONALD

9
10 Perhaps, again, My Lord, in fairness to other counsel who
11 missed the opportunity, the witness should answer that first
12 question, did he have any personal knowledge, any personal
13 dealings. And, if he's only going to be giving evidence based on
14 hearsay, the question should be identified.

MR. CHAIRMAN

15
16 Very definitely.

MR. MacDONALD

17
18 He has not answered the first question.

MR. DESMOND

19
20 A. Yes, I did have personal knowledge of John MacIntyre.

21 Q. What was your personal knowledge of John MacIntyre?

22 A. Well, sometime after the stabbing, John MacIntyre and I
23 believe it was MacNeil, I'm not sure, or Urquhart and they
24 came down to an O.F.Y. project we were working on on
25 Laurie Street at the time. They asked us if we had been at

1 the dance, something that they already knew, and they
2 asked us if we would come over and identify some clothing
3 that belonged to Sandy and to give them some information.

4 Q. How did they treat you?

5 A. They were rude.

6 Q. Tell me, did you have plans to see Sandy the day after he
7 was stabbed?

8 A. Yes, I did.

9 Q. What plans did you have?

10 A. We had planned to...Sandy had invited us out to his father's
11 property to clear some land, clear some trees off a wood lot.
12 His father had just purchased the property just shortly
13 before that and he had invited us out to come to spend the
14 Saturday or...the Saturday to just carry on and do some
15 work.

16 Q. And when he was being escorted out by Maloney, did he tell
17 you anything about the next day or where he was going?

18 A. He said he was going home and he said, "I'll see you
19 tomorrow."

20 Q. Did you attend Sandy's funeral?

21 A. Yes, I did.

22 Q. Did you see Junior Marshall around the funeral parlour at
23 any time?

24 A. Yes, I did.

25 Q. Did you speak with him?

MR. DESMOND, EXAM. BY MR. ROSS

1 A. Yes, I did.

2 Q. Could you tell us the nature of the conversation?

3 A. Well, basically it was...I asked Junior what the hell happened
4 and what was going on. He was very nervous and tense. He
5 started to...muttering things about two people who looked
6 like priests, you know, him and Sandy walking through the
7 park together, which never really made any sense because
8 he wasn't at the dance, and never seen Sandy.

9 MS. EDWARDH

10 Now, we're getting a running commentary. At least the
11 witness could confine himself to the words he recalls actually
12 spoken.

13 MR. DESMOND

14 Could you repeat the question, please?

15 MR. CHAIRMAN

16 What was your question again? The question, I think the
17 question, well, let me put it. The question, as I understand it, was
18 did you see Donald Marshall, Jr., at Sandy Seale's funeral?

19 MR. DESMOND

20 Yes, I did.

21 MR. CHAIRMAN

22 And you said "Yes".

23 MR. DESMOND

24 Yes.
25

14227 MR. DESMOND, EXAM. BY MR. ROSS

1 MR. CHAIRMAN

2 And the next question was...

3 MR. ROSS

4 Did you speak to him?

5 MR. CHAIRMAN

6 Did you speak to him?

7 MR. DESMOND

8 Yes, I did.

9 MR. CHAIRMAN

10 And you did.

11 MR. DESMOND

12 Yes, I did.

13 MR. CHAIRMAN

14 And the question was what was his...what did he say?

15 MR. DESMOND

16 Like I said he was...

17 MR. ROSS

18 I think it was a little broader than that, My Lord. I think I
19 asked what was the nature of the conversation.

20 MR. CHAIRMAN

21 Well, the nature of the conversation, but that means what
22 did he say, in my mind.

23 MR. DESMOND

24 A. Well, we discussed the circumstances surrounding Sandy's
25 death and what involvement or any knowledge that he had

1 of that incident on that night.

2 Q. I see. And, did you see Junior Marshall after that and prior
3 to his trial?

4 A. In the courtroom was the last time I saw him after that, yes.

5 Q. Mr. Desmond, there are some reports before the Commission
6 and some of them suggest situations of gang warfare
7 between the blacks and the Indians. Would you be aware of
8 any such gang warfare?

9 A. No, I would not.

10 Q. And specifically I'm, for the record, I'm referring to Volume
11 35, page 71, under the heading, "Precipitating
12 circumstances," relate to gang warfare. Further, at some
13 stage when Marshall was applying for leave to come back to
14 Sydney, the police, the Sydney police advised that there
15 might be reprisals from the black community. Were you
16 aware of any problem which existed which could lead to
17 reprisals?

18 A. No, there was no problem. That is basically consistent with
19 the racist nature and the attitude of the Sydney police at
20 that time.

21 Q. Do you know whether or not Sandy Seale ever carried a
22 knife?

23 A. No, he'd never carry a knife.

24 Q. And you're sure of that.

25 A. Positive.

MR. DESMOND, EXAM. BY MR. ROSS

1 Q. In your discussion with Junior Marshall around the time of
2 the funeral was there any suggestion or any statements to
3 the effect that there might have been self defence involved?

4 A. No, he never indicated anything of that sort. He kept to his
5 story of these two men dressed like priests who attacked
6 him and Sandy and he got cut and Sandy got stabbed.

7 Q. Sure.

MR. ROSS

9 Thank-you, very much, Mr. Desmond. My Lord, recognizing
10 that Mr. Desmond was called pursuant to my request, I think it
11 might be appropriate if other counsel have got any arising from
12 my leading him through this, it might be appropriate to have a
13 response.

MR. CHAIRMAN

14 Well, let me first go to Mr. Wildsmith and then we'll come
15 back.
16

EXAMINATION BY MR. WILDSMITH

17
18 Q. Thank-you. I do have a couple of brief questions. Mr.
19 Desmond, my name is Bruce Wildsmith and I'm here for the
20 Union of Nova Scotia Indians. I'd like to ask you a couple of
21 questions related to Indians in general. We've had some
22 evidence that Sydney in 1971 was what one might call a
23 "red-necked town" in the sense that racial prejudice was
24 widespread. I take it from what you've said so far you
25 would agree with that view?

1 A. Yes, I do.

2 Q. And with respect to that racial prejudice, is it your
3 observation that Mic Mac Indians suffered as well as black
4 members of the community?

5 A. Yes, that's true.

6 Q. Did you have occasion to observe the treatment of Mic Mac
7 Indians by the Sydney police at dances or other occasions?

8 A. Well, I can remember police picking up people off the street
9 and I can honestly say, yes, that I've seen them pick up
10 some Indians up off the street when they were drinking or
11 inebriated, so to speak.

12 Q. I'm wondering if you have any experience with
13 discriminatory treatment of Indians by Sydney police?

14 A. Have I observed such treatment?

15 Q. Yes.

16 A. Yes, I have.

17 Q. And can you tell us the nature of that form of
18 discrimination?

19 A. Well, basically, you know, it's...rather than maybe an
20 approach where they would ask a gentleman if he's all right
21 or anything like that, if he's sitting on the sidewalk, I
22 remember one incident, a guy was walking down Charlotte
23 Street and he was maybe tilting a little bit and the police
24 stopped him and they didn't ask him like, you know, any
25 particular questions, they just grabbed him. He resisted a

MR. DESMOND, EXAM. BY MR. WILDSMITH

1 bit and they put him in a choke hold. They, you know, put
2 his arm behind his back and they shoved him into the car.

3 Q. And that individual was an Indian, was it?

4 A. Yes, it was.

5 Q. And, you mentioned something about Sydney police cruising
6 the Coke Ovens and referring to blacks in disparaging terms.

7 A. Yes.

8 Q. Did you observe Indians being referred to in disparaging
9 terms by the Sydney police?

10 A. Well, the common term for Indians at that time throughout
11 the whole larger white community, they were referred to as
12 "wagon burners".

13 Q. Yes. And did you hear Sydney police using that term?

14 A. Yes.

15 MR. WILDSMITH

16 Thank-you. Those are the questions.

17 MR. CHAIRMAN

18 Now, there is some...this witness was called ostensibly as a
19 character witness with respect to Sandy Seale. There were
20 questions put by Mr. Ross that could not have been anticipated by
21 some other counsel. So, I would give any other counsel an
22 opportunity to cross-examine on these areas other than the
23 character witness.

24 MS. EDWARDH

25 With your permission, My Lord, I would seek an

1 opportunity to ask a couple of questions.
2

3 EXAMINATION BY MS. EDWARDH

4 Q Mr. Desmond, if I can just go back to some initial comments
5 you made. I take it that as far as you were concerned, you
6 had no direct knowledge of any kind that there was any
7 animosity or hostility or difficulty between Mr. Marshall and
8 Mr. Seale? There wasn't any indication of that.

9 A. Well, they didn't like each other.

10 Q You had said they were people who played hockey...

11 A. They were acquaintances.

12 Q They were acquaintances.

13 A. Just like you knew each other, that doesn't mean that they
14 particularly liked each other. Junior was an intimidating,
15 bully sort of fellow. Sandy was not the type of guy that
16 would befriend such an individual. As a matter of fact we
17 even talked about various members of the community that...

18 Q Let me just stop you.

19 A. ...we stayed away from and Junior was one of those people.

20 Q Let me just stop...

21 COMMISSIONER EVANS

22 Don't give speeches. Answer her questions.

23 MS. EDWARDH

24 Q There was...I'm not suggesting that Mr. Seale and Junior
25 Marshall were close friends.

MR. DESMOND, EXAM. BY MS. EDWARDH

1 A. No, they weren't.

2 Q. What I'm suggesting to you, sir, is those two had never been
3 in a physical fight to your knowledge that you observed?

4 A. Not according to Junior Marshall in the statements that he
5 made in Springhill.

6 Q. I'm asking in terms of your knowledge when you saw them
7 play hockey together, when you'd pass by them in the
8 street.

9 A. There were altercations on the ice, yes, there were, there
10 were altercations.

11 Q. Between Sandy and Junior?

12 A. Yes, there was.

13 Q. Were you ever in any position, sir, to see any hostility on
14 the street between the two of them, and I'm talking about
15 hostility?

16 A. You mean did they actually fight?

17 Q. On the street, yeah.

18 A. No.

19 MS. EDWARDH

20 All right. Those are my questions.

21 MR. MURRAY

22 Nothing, My Lords.

23 MR. PRINGLE

24 No.

25

SUBMISSION - MS. DERRICK

1 MR. SAUNDERS

2 No, My Lords.

3 MR. CHAIRMAN

4 Mr. MacDonald.

5 MR. MacDONALD

6 My Lords, the only thing remaining for today is the
7 application that my friends wanted to make with respect to Mr.
8 Marshall. Would you like to adjourn for a brief break and come
9 back to do that? They're prepared to do it at that time.

10 MR. CHAIRMAN

11 All right, fine.

12 BREAK

13 11:42 a.m.

14 CHAIRMAN

15 Ms. Derrick.

16 MS. DERRICK

17 Thank you, My Lord.

18 My Lords, we're applying to Your Lordships for the right to
19 call the evidence of our client, Donald Marshall, Jr. in chief when
20 he is scheduled to testify as a witness before this Inquiry. Of
21 course, all other counsel representing parties with standing and
22 Commission counsel would have the right to cross-examine Mr.
23 Marshall on his evidence. Our reasons for making this application
24 is because we believe it to be in Mr. Marshall's and the
25 Commission's best interest that his evidence be brought out in the

SUBMISSION - MS. DERRICK

1 first instance through his own counsel. Mr. Marshall's evidence
2 will be enhanced, I submit, if it is elicited in this fashion.

3 I submit that the principal concern for Your Lordships is
4 that the best and most effective evidence is before you so as you
5 assist you in your difficult task.

6 Mr. Marshall is a native person for whom testifying in court
7 or in a court-like setting is an alienating and oppressive
8 experience.

9 Your Lordships have heard considerable evidence of his
10 being an ineffective witness in such settings and evidence of how
11 such proceedings cause him to experience great anxiety. These
12 proceedings will certainly be very stressful for Mr. Marshall.

13 Over a period of two years Mr. Marshall has developed a
14 good and trusting relationship with his own counsel. I submit that
15 the primary objective in calling his evidence is to ensure that it be
16 adduced in a way most compatible to his nature and character and
17 that means knowing and trusting the person to whom he is
18 speaking. Having his evidence elicited in chief by his own counsel
19 is what Mr. Marshall desires.

20 In determining this question, it's important to look at the
21 nature of this inquiry. It is an inquiry constituted by Order-in-
22 Council under the Public Inquiries Act and a public inquiry with
23 the power to make recommendations to the government.

24 According to the terms of reference, and I'm referring to clause 5
25 of the terms of reference,

1 The Commissioners may adopt such rules,
2 practices and procedures for the purposes of the
3 inquiry as they from time to time may consider
4 necessary for the proper conduct of the inquiry
5 and may vary such rules, practices and
6 procedures from time to time as they consider
7 necessary and appropriate for the purposes of
8 the inquiry.

9 Therefore I submit that although it has been the practice for
10 Commission counsel to directly examine witnesses testifying
11 before Your Lordships, this procedure is not chiseled in stone.
12 Your Lordships have the discretion to vary the practices,
13 procedures and rules as you deem necessary and appropriate for
14 the purposes of the inquiry. And I urge you to do so in this
15 instance.

16 Mr. Marshall may well be affected by the findings of this
17 Inquiry and, indeed, by his own evidence.

18 There has been evidence before this Commission, whether
19 you accept it or not is another matter, that there was an
20 attempted robbery in progress the night that Sandy Seale was
21 stabbed. In other proceedings Mr. Marshall has denied this.
22 However, a number of witnesses before Your Lordships have
23 testified to believing that an attempted robbery was under way
24 and that, further, that Mr. Marshall's failure to disclose this in
25 1971 contributed to his wrongful conviction and incarceration.
26 Most particularly, this assertion has been advanced by
27 representatives from the Attorney General's Department, for

SUBMISSION - MS. DERRICK

1 example, Mr. Edwards and Mr. Coles.

2 As a result of these views this issue has, in fact, been
3 commented upon by Your Lordships and if I may refer you to
4 Volume 68 of the transcribed evidence, page 12102, this was
5 when Mr. Edwards was being examined by Mr. MacDonald in
6 direct and had put forth the theory that by not disclosing this
7 alleged robbery, Mr. Marshall contributed to his wrongful
8 conviction and Justice Poitras said,

9
10 Just a question, Mr. MacDonald. Assuming for a
11 moment that it is still possible today to query
12 whether Marshall was involved or not in an
13 attempted robbery...

14
15 Mr. Edwards said yes.

16
17 JUSTICE POITRAS

18 If, in fact, Marshall was not involved in an
19 attempted robbery, what would that do to the
20 theory that at not disclosing the intended
21 robbery he contributed to his conviction.

22
23 Mr. Edwards said, That would destroy the
24 theory.

25
JUSTICE POITRAS

I think so, so there is still something to be
proved, I leave that open.

It is within the mandate of this Commission to make
findings of fact. These findings might include a finding of fact that

SUBMISSION - MS. DERRICK

1 there was an attempted robbery. Mr. Marshall could, therefore, be
2 affected both in reputation and by the possibility of criminal
3 sanctions.

4 As he stands in some peril I respectfully submit that he is
5 entitled to testify in chief through his own counsel thereby
6 providing him with the best opportunity to tell his story and
7 giving the Commission the benefit of having the best evidence
8 available.

9 The practice of allowing parties to testify in chief through
10 their own counsel has considerable precedent and I just want to
11 refer Your Lordships to three cases which you have before you
12 which I'll only be referring to briefly but they support our
13 assertions.

14 In the Re The Children's Aid Society of the County of York,
15 this involved allegations of negligence and incompetence which
16 were leveled at the Children's Aid Society and it was
17 acknowledged by the Ontario Court of Appeal that the function of
18 the commission looking into these matters at the request of the
19 government was not to try a case or charge against anyone and
20 that the purpose of the commission was to inform people
21 concerning the facts of the matter to be inquired into and that
22 remedies might then arise in response to any of these findings.

23 And it was held, and this is at page 420 that,

24
25 It is usual and proper to have counsel appointed

SUBMISSION - MS. DERRICK

1 to assist in the inquiry but that does not imply
2 that he alone has the right to call witnesses or to
determine what witnesses are to be heard.

3 And in that case the counsel for the local superintendent of
4 the Children's Aid Society was therefore held to be entitled to call
5 witnesses and to examine them in chief in the interest of the
6 fullest inquiry possible which is what we are seeking before Your
7 Lordships.

8 In the Re Public Inquiries Act and Shulman, also an Ontario
9 Court of Appeal case, a public inquiry in that instance as well, the
10 essential object was to inquire into allegations made by a former
11 government employee which was Dr. Shulman of misconduct in
12 office on the part of senior government officials.

13 And the court held that, "Dr. Shulman having made
14 allegations was liable to be discredited if the allegations were
15 proved to be unfounded." And I submit to you that that's an issue
16 of reputation. He was therefore held to be entitled to have his
17 evidence elicited in chief by his own counsel. And that reference
18 is found on page 378.

19 The final case I wish to refer Your Lordships to is the, Re the
20 Crime Commission ex parte Feeley and McDermott, again the
21 Ontario Court of Appeal. This was a Royal Commission inquiry
22 investigating the existence of certain alleged crime conditions in
23 Ontario and there were grave allegations of serious criminal
24 involvement certain named individuals.

25 The Court of Appeal observed that the commission was not

SUBMISSION - MS. DERRICK

1 bound to observe the strict rules of evidence or all of the niceties
2 of practice and procedure which I submit has been the case here.
3 And they went on to say at page 896, and because of the quality
4 of the photocopying I apologize, that is, in fact, the third page
5 from the back for ease of finding it.

6 In that first paragraph the court said,

7
8 It is true that they (the individuals) are not
9 being tried by the commissioner but their
10 alleged misconduct has come under the full glare
11 of publicity and it is only fair and just that they
12 should be afforded an opportunity to call
13 evidence to elicit facts by examination and cross-
14 examination of witnesses and, thus, being able to
15 place before the commission of inquiry a
16 complete picture rather than incur the risk of its
17 obtaining only a partial or distorted one. This is
18 right to which they are, in my view, fairly and
19 reasonably entitled, and it should not be denied
20 them. Moreover, it is no less important in the
21 public interest that the whole truth rather than
22 half truths or partial truths should be revealed
23 to the commissioners.

18 And I submit to Your Lordships that this is directly on point
19 with our submissions. That Donald Marshall, Jr. testifying through
20 his own counsel in chief is the best way to ensure that the
21 Commission is not left with a partial or distorted picture of the
22 truth.

23 Finally, there is precedent in other Royal Commissions in
24 Canada with respect to this issue and I just wish to refer Your
25 Lordships to the Grange Inquiry where Susan Nelles' evidence was

SUBMISSION - MS. DERRICK

1 elicited through her own counsel, John Sopinka, in that instance.
2 In the Chamberlain Inquiry which took place in Australia, Mrs.
3 Chamberlain who was alleged to have killed her own child was
4 called and testified through her own counsel. In what's commonly
5 known as the Stevens' Inquiry, both Noreen Stevens and Sinclair
6 Stevens testified in chief through their own separate counsel. I
7 referred you already to the case involving Dr. Shulman and in the
8 Estey banking inquiry, the inspector of banks was called and
9 testified through his own counsel. And I believe in all those
10 instances, with respect to all other witnesses called to testify
11 before the commission, they testified through commission counsel
12 but the individuals against whom there were allegations were
13 entitled, were held to be entitled to testify through their counsel.
14 And, in fact, in the Grange Inquiry there were no outstanding
15 allegations, in fact.

16 I would submit, therefore, that there is ample precedent for
17 Your Lordships exercising your discretion in permitting this
18 variation of what's been the customary practice in this inquiry
19 and that it is in the interests of the fullest and best evidence
20 coming out before Your Lordships that Mr. Marshall be able to
21 testify in chief through his own counsel. Thank you.

MR. MURRAY

22
23 My Lords, on behalf of Ronald Pugsley for John MacIntyre
24 and myself for William Urquhart, we have no problem with our
25 friend's application. We've discussed it with them. Our

SUBMISSION - MS. DERRICK

1 understanding would be that it would be evidence in chief and not
2 cross-examination but in those circumstances we have no
3 objection.

CHAIRMAN

5 Prior to asking Mr., let me go through, counsel for the RCMP?

MR. BISSELL

7 I guess we'd like to hear with Commission counsel had to
8 say first, if that's...

CHAIRMAN

10 All right. Well we'll hear from Commission counsel then.

MR. SPICER

12 My Lord I did a check this morning and to date, including
13 this morning's evidence, Commission counsel have conducted
14 direct examination of 102 witnesses. I don't want to tell you how
15 many pages of transcript that that takes but it's been 102 witness.
16 Many of those witnesses have been represented by counsel with
17 standing at this inquiry and I'm certain that some of those would
18 have much preferred to have had their direct examination
19 conducted by their own counsel.

20 Indeed, Commission counsel has refused on other occasions
21 to accede the requests of counsel who have made such requests to
22 examine their own witnesses.

23 Commission counsel view it as our responsibility to conduct
24 the direct examination of witnesses so that the Commission hears
25 the full story from a witness during that witness' first

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1 examination. That is, that the first evidence that is heard by the
2 Commission is not the evidence that that person necessarily
3 wishes to tell but it is, in fact, Commission counsel's attempt to
4 elicit the full picture from that witness.

5 It's our view that that procedure also benefits the other
6 counsel who having then heard Commission counsel elicit the
7 story from the witness may decide that they don't have any
8 questions to ask.

9 Ms. Derrick's argument would make sense if they weren't
10 allowed to examine Donald Marshall. To say that you're only to
11 get the full story if they are entitled to conduct the direct
12 examination of Mr. Marshall, with all due respect to her, really
13 doesn't make much sense. It would make sense if that was the
14 only, if there was to be no opportunity by anybody else and, in
15 particular, by their counsel, by Donald Marshall's counsel, but
16 that's not the case and, in fact, they get to examine last. So if
17 they're concerned about Mr. Marshall's story as seen from their
18 perspective being told to this Commission, then they are in
19 absolutely no jeopardy in the facts of, in the circumstance of this
20 Commission because they do get to go last.

21 In preparing to conduct direct examinations, Commission
22 counsel has naturally met with as many of the witnesses as
23 possible in advance. And as counsel responsible for the
24 examination of Donald Marshall, Jr. I've met with Mr. Marshall on
25 a number of occasions in Sydney and in Halifax. And I'm not at all

SUBMISSION - MR. SPICER

1 | worried about the possibility of eliciting testimony from Mr.
2 | Marshall on behalf of the Commission.

3 | My friend's referred to the Shulman case. I think it's
4 | important to note in the Shulman case that there are a number of
5 | factors which distinguish that case from this one. First of all, Mr.
6 | Shulman was the person who made the allegations in that case.
7 | He was the person who, in the words of the Ontario Court of
8 | Appeal, "The Commission itself was, in essence, if not all together
9 | directed to those allegations." That's at page 375 of the Ontario
10 | Court of Appeal decision. And more importantly in the Shulman
11 | case, counsel for Mr. Shulman would not have had any
12 | opportunity at all to examine his own witness had it not been for
13 | that application. Examinations were conducted exclusively by
14 | commission counsel and the opportunity for Mr. Shulman's case to
15 | be put from his perspective, through questioning by his own
16 | counsel, was therefore not a right that he had.

17 | That information is contained in, I have the Ontario Reports'
18 | version of the, yes, it's the same one that Ms. Derrick has given
19 | you. If you look at the material on page 376 in the small type,

20 |
21 | Any person being examined may be
22 | accompanied by his own counsel. If any
23 | evidence is given which alleges any misconduct
24 | that person's counsel may request the
25 | commission counsel to further examine the
witness or request the commission to accord him
the right to examine the witness with respect to
such allegations. When commission counsel has

SUBMISSION - MR. SPICER

1 examined all the witnesses whom he proposes to
2 call commission will hear and examine any
3 further witness.

4 It's the impression that from that situation is far, far
5 different from the situation before Your Lordships.

6 We have not been persuaded by the representations that
7 were made to us by counsel for Mr. Marshall that the
8 circumstances of his testimony, the giving of his testimony, should
9 be done in any other way than through Commission counsel and
10 it's our intention as with the previous 102 witnesses to try and
11 elicit the full story from all perspectives, not from the perspective
12 of one party, and that's the perspective that we would intend to
13 adopt with Mr. Marshall as with everybody else.

CHAIRMAN

14 Mr. Spicer when you're interviewing perspective witnesses
15 are the interviews conducted in the presence of counsel, with
16 their counsel?

MR. SPICER

17 Yes, if those witnesses have representation they are.

COMMISSIONER POITRAS

18 So that in this case you would not be examining Mr.
19 Marshall could you would have seen him beforehand.

MR. SPICER

20 Yes, in the presence of Ms. Derrick on a number of occasions.

COMMISSIONER POITRAS

21 And if you had to see the witness again between now and
22
23
24
25

SUBMISSION - MR. SPICER

1 next Tuesday, you would not be adverse to having Ms. Derrick
2 with you throughout those examinations.

MR. SPICER

4 No, quite the contrary.

COMMISSIONER POITRAS

6 Thank you.

MR. SAUNDERS

8 We support the submission made by Commission counsel,
9 My Lord. I thought that the application by my friend, Ms. Derrick,
10 was going ahead on Monday and so hearing it today for the first
11 time I haven't had the opportunity to review the cases which she
12 cited.

13 In listening to comments by her and by my friend, Mr.
14 Spicer, my concern was that Mr. Spicer might have, or sense some
15 difficulty in his ability to question on direct, Mr. Marshall. Having
16 heard the submission of Mr. Spicer and the number of times that
17 he's met with the witness, I foresee no such difficulty and so on
18 that basis I say that he ought go forward as we have with the
19 other 106-odd witnesses to this point.

MR. BISSELL

21 On behalf of the RCMP, My Lords, I would also support the
22 position that has been taken by Commission counsel on this
23 particular matter.

24 The only other thing that I would point out, it would seem to
25 me that Mr. Marshall would have the benefit of protection under

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1 Section 13 of the Charter respecting the evidence that he gives
2 here on anything that might jeopardize him or threaten him with
3 a criminal sanction.

CHAIRMAN

5 Mr. Ross?

MR. ROSS

7 My Lord, I would rise to support the position taken by
8 Commission counsel. While the reasons as given by counsel for
9 Donald Marshall, Jr. revolves around the question of whether or
10 not there might have been an attempted robbery and I would
11 respectfully submit that that puts him in a very similar category
12 to Sandy Seale. Recognizing that I could not call Sandy Seale
13 personally it might very well be that according to the evidence of
14 Mr. Marshall if brought out by his own counsel, it might very well
15 put us in a position where I would be requesting that other
16 witnesses be called that I can take through personally. I think it
17 pretty well opens a Pandora's box. I've got no difficulty with the
18 way Commission counsel has conducted all examinations to date.

19 The other thing is the question of notice. I do not know
20 what was the notice as given in the Shulman or other cases. I do
21 not know whether or not there was any attempt to reach an
22 agreement between the different solicitors and counsel but at this
23 late date, before the final witness is to be called for the Halifax
24 phase, to be learning of this application I think that it's catching
25 some of us by surprise and I do not know that it can serve any

SUBMISSION - COUNSEL

1 real useful purpose.

2 CHAIRMAN

3 I think my recollection is Ms. Derrick gave notice to this
4 Commission when we were sitting, at least two days ago, of her
5 intention of raising this argument on, she didn't. She just gave it
6 to us.

7 MR. ROSS

8 Oh, I see. Thank you very kindly, My Lord.

9 MR. WILD SMITH

10 I guess, My Lords, I'm in the minority position here again
11 supporting the application. It seems to me that your objective
12 ought to be to obtain the best evidence from Junior Marshall that
13 he's capable to giving. And it seems to me that the record has
14 been quite clear, Ms. Derrick pointed this out, that every other
15 time that Mr. Marshall has given evidence there have been
16 difficulties. And it's been part of my submission to the
17 Commission that Mr. Marshall suffers the same kind of difficulty
18 that many native people suffer when giving evidence in a kind of
19 formal setting like a court or before this Commissions. And so it
20 seems to me that Your Lordships should keep in mind the fact
21 that he is a native person and ask yourselves the question of how
22 it is that you could best obtain evidence from this native person.

23 Obviously Mr. Marshall is a key person, a vital person, and
24 that his evidence is going to be extremely important. Perhaps
25 more important than those other native witnesses who've given

DISCUSSION

1 evidence. And it seems to me, at least in my submission, that the
2 kind of trust or rapport that exists between Mr. Marshall and Ms.
3 Derrick and his own counsel will be of great assistance to him in
4 terms of coming over the formality and the hostility of the kinds
5 of proceedings that are going on here. And for that reason I think
6 that he will be able to give better testimony to this Commission if it's
7 done in this fashion.

8 I should also comment on what I think is a central point in
9 the evidence or in the position being given by Commission
10 counsel, this fact that 102 other witnesses have been treated in
11 one particular way. I think what this assumes is that justice and
12 equality is achieved by treating everyone in the same fashion.
13 And, of course, the essence of what the Union of Nova Scotia
14 Indians is doing here and what our position has been is that there
15 are reasons for treating different cases differently. And that the
16 position of the native witnesses is a difference, and a vital
17 difference. And, therefore, makes all the sense in the world to me
18 at least to treat a native witness in a different way than the 102
19 other witnesses have been treated. And, indeed, if I can add the
20 editorial comment that to take that position seems to me has
21 indicated the futility of my appearance in front of the Commission.

22 12:05 p.m.

MR. SPICER

23
24 Well, in fairness, I was the person who has handled all the
25 native witnesses, and I think that's really not a particularly

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1 appropriate comment to make.

2 MR. CHAIRMAN

3 Do you wish to say something? Yes, go ahead.

4 MS. DERRICK

5 Thank-you, My Lords, just very briefly I'd like to respond to
6 some of the comments that were made. Perhaps I could say, first
7 of all, that this issue, in my recollection, that is the issue of us
8 calling Mr. Marshall ourselves and examining him in chief was
9 raised some considerable time ago with counsel by us indicating
10 that we wished to reserve our right to do so, commission counsel.

11 Also, with respect to the issue of the remaining counsel,
12 almost all remaining counsel were informally canvassed earlier
13 this week concerning this issue, so I believe everybody did have
14 notice. It may be that Mr. Ross was missed in that canvass, and if
15 that is the case I certainly sincerely apologize. There have been
16 periods of time when he has been absent and perhaps as a result
17 of that we, you know, missed speaking with him.

18 I'd like to point out that there has certainly never been a
19 request brought forward to this Commission of this type. It may
20 well have been that there were some informal discussions with
21 Commission counsel but certainly nobody has ever made an
22 application to your Lordships. So, I don't feel that that position by
23 Commission counsel has any merit with the greatest respect.

24 With respect to the issue of bringing out areas of concern to
25 Commission counsel, we're certainly respectful of the need to do

DISCUSSION

1 that, and as a result have discussed with Commission counsel what
2 areas they would seek elicit or would be interested in eliciting
3 from Mr. Marshall and are certainly prepared to undertake to
4 explore those areas. So that that should not be a concern.

5 It is our position that this application makes sense because
6 of the distinct possibility that Mr. Marshall will become upset and
7 agitated by this experience, which will be, I believe, his seventh
8 time testifying concerning these issues. And we do believe that
9 this will be modified by his talking to someone, in the first
10 instance, that he knows well and has developed a bond of trust
11 with.

12 It is certainly not our concern that we would not get to
13 question him at all. Of course we understand that whatever the
14 process we would have our opportunity to question him. But it is
15 our concern that his story will not unfold as fully or as effectively
16 because of the barriers of some strangeness and distance that he
17 will experience if he is examined by Commission counsel. And
18 certainly Mr. Spicer has spent some time with Mr. Marshall, but I
19 respectfully submit that it is insignificant by comparison with the
20 time and the quality of time that Mr. Marshall has spent with his
21 own counsel.

22 And our...the purpose of our application, if I may just
23 reiterate, is to assist the Commission in obtaining the fullest and
24 most effective evidence from Mr. Marshall and so we believe that
25 it is in the interests of the public inquiry and Mr. Marshall

DECISION

1 himself. Thank-you.

2 MR. CHAIRMAN

3 We'll rise for about twenty minutes.

4 BREAK - 12:09 p.m.

5 INQUIRY RESUMES - 12:31 p.m.

6 MR. CHAIRMAN

7 Counsel for Donald Marshall, Jr., asked that the Commission
8 depart from its well-established practise of having all witnesses
9 who have or who will testify before this inquiry examined first by
10 Commission counsel, and that she, as counsel for Donald Marshall,
11 Jr., be permitted to conduct the examination-in-chief of her client
12 when he testifies before this Commission with the right of all
13 counsel, including Commission counsel, to cross-examine Mr.
14 Marshall.

15 The grounds advanced inter alia by counsel for Mr. Marshall,
16 in support of her application, is that in order to obtain the best
17 and most effective evidence from Donald Marshall, Jr., that he will
18 be more comfortable and productive if she first examines him.
19 She expressed the view that Mr. Marshall's reputation is at risk,
20 but in our view that same risk may apply to several witnesses
21 who have already testified and whose examination-in-chief was
22 conducted by Commission counsel.

23 Commission counsel are under an absolute obligation to
24 bring before us all relevant evidence. Up to this time we are
25 satisfied that Commission counsel have fully discharged their

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1 responsibilities in that regard. We have no reason to believe that
2 Mr. Marshall will receive other than the full and scrupulously fair
3 treatment and examination which has been afforded by
4 Commission counsel to all other witnesses.

5 The object of this Commission is to elicit all relevant facts
6 and not to try anyone appearing before it. We are satisfied that it
7 is in the best interest of all concerned that Commission counsel
8 first examine Donald Marshall, Jr., and that the first evidence of
9 Mr. Marshall's shall be a full picture of all relevant facts elicited in
10 a manner which will ensure a broad perspective of the issues
11 before us.

12 This Commission is conscious of the difficulties which may
13 have been experienced by Donald Marshall, Jr., when giving
14 evidence in prior proceedings which were more adversarial in
15 their nature than the hearings before this Commission, which has
16 none of the attributes of a trial. We note that Mr. Spicer, who will
17 conduct the examination-in-chief, has met with Donald Marshall,
18 Jr., on several occasions, and that between now and next Tuesday,
19 when Donald Marshall, Jr., will appear Mr. Spicer will meet with
20 him, in the presence of Miss Derrick, which in our view should
21 ensure that such examination-in-chief will be conducted in a
22 manner which will not unduly inhibit Donald Marshall, Jr., in
23 giving his testimony.

24 For these reasons the application on behalf of Donald
25 Marshall, Jr., is denied.

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1 Now, can Commission counsel indicate where we stand with
2 respect to witnesses.

3 MR. MacDONALD

4 With respect to Monday, My Lord, we will be calling...

5 MR. CHAIRMAN

6 Well, firstly, are there any other witnesses to be called
7 today?

8 MR. MacDONALD

9 No, My Lord.

10 MR. CHAIRMAN

11 All right.

12 MR. MacDONALD

13 There are not. Monday we may be having Michael Harris, a
14 cameo appearances, the...

15 MR. CHAIRMAN

16 I didn't get that.

17 MR. MacDONALD

18 He will...

19 MR. CHAIRMAN

20 All right.

21 MR. MacDONALD

22 We will also be calling evidence from the Sydney police, two
23 members of the police, the Chief of Police and the sergeant or
24 Inspector Woodburn. As we had indicated earlier or when
25 these...some Sydney police witnesses were giving evidence, when

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1 they were being questioned about the current state of affairs,
2 they were stopped and told that we would deal with that at a
3 latter date. We propose dealing with that topic on Monday. And,
4 that will be the extent of the evidence. And then the only
5 evidence remaining to be called will be Mr. Marshall himself.

MR. CHAIRMAN

7 For the benefit of counsel, it is the intention of the
8 Commission to conclude this phase of our hearings on Tuesday
9 next at 4:30 p.m.. We will hear the witnesses that you have
10 indicated, Mr. MacDonald, will be called on Monday on that date
11 and we will set aside all of Tuesday to hear the evidence of Donald
12 Marshall, Jr.. We will adjourn until... If our...we will most likely,
13 in fact, it is our intention, unless we're convinced otherwise to
14 start...to sit on Tuesday commencing at 9:00 in the morning. Miss
15 Derrick has given notice of an application on Monday with respect
16 to television lights and/or cameras. That will be heard first at
17 9:30 when we sit on Monday morning and then we will follow the
18 evidence. So, we stand adjourned until Monday next at 9:30.

19 INQUIRY ADJOURNS - 12:37 p.m.

20
21
22
23
24
25

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 22 day of June

19⁸⁸ at Dartmouth, Nova Scotia