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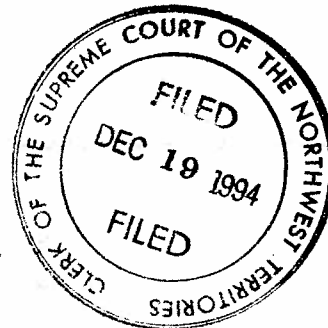
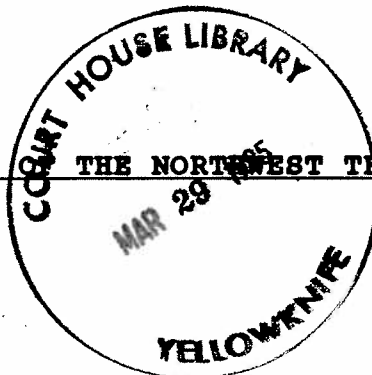
IN THE SUPREME COURT THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ROGER WALLACE WARREN



Transcript of the Voir Dire Evidence of Mr. Austin Marshall, heard before The Honourable Mr. Justice M.M. de Weerd, in Yellowknife, in the Northwest Territories, on the 6th day of October, A.D., 1994.

**APPEARANCES:**

Mr. P. Martin, Q.C./ For the Crown  
Mr. D. Guenter

Mr. G. Orris, Q.C./ For the Defense  
Ms. G. Boothroyd

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1 MS. BOOTHROYD: Thank you, My Lord. The next witness  
2 for the defence is Austin Marshall please.

3 THE COURT: Was Mr. Marshall subpoenaed to be  
4 here today?

5 MS. BOOTHROYD: No he wasn't, My Lord.

6 AUSTIN MARSHALL, sworn, examined by Ms. Boothroyd:

7 THE COURT: I take it you've come here by  
8 arrangement and not under subpoena, Mr. Marshall?

9 A That is so, My Lord.

10 THE COURT: Yes, Ms. Boothroyd?

11 MS. BOOTHROYD: Thank you, My Lord.

12 Q MS. BOOTHROYD: Mr. Marshall, you're a lawyer  
13 practising in Yellowknife; is that correct?

14 A I am.

15 Q And you've been -- how long in October of last year  
16 were you practising in the Territories?

17 A I had come to the Territories to practice in January  
18 of 1983 and I've been here continuously since then.

19 Q Sir, if I can ask you to think back to the period of  
20 May '92 at the beginning of a labour dispute between  
21 the CASAW Union and Royal Oak Mine. Did you become  
22 involved in some way as acting as counsel for one or  
23 other of those parties?

24 A It was after May of 1992, it was August of 1992 and I  
25 became involved at the invitation and retainer of the  
26 union which I'll call CASAW Local 4, Canadian  
27 Association of Smelter and Allied Workers and the

1 retainer was to act on behalf of individual members  
2 and so I take my instructions from those individual  
3 members on criminal charges laid against them, and  
4 then the retainer also involved acting on behalf of  
5 members and the union in certain activities relating  
6 to the injunction that was in place at the time  
7 relating to the picketing activity out at the mine  
8 site.

9 Q All right, sir, and through the course of those  
10 dealings with the union and its members, did you come  
11 to know Roger Warren?

12 A I did.

13 Q All right. Now, at the time that you were dealing  
14 with the union and its members from August '92  
15 onwards, did you have any feelings about the nature of --  
16 the privacy of your phone communications?

17 A There had been discussion from time to time. I had  
18 been cautioned about talking on the telephone, and  
19 when I say cautioned, it had been advice given to me  
20 from others I was working with in the course of my  
21 retainer that there was the possibility of telephone  
22 conversations being listened to, so I was aware of  
23 that possibility. I didn't think at any time that it  
24 was happening to me.

25 Q All right. Now, when you say there had been  
26 discussions, can you tell us amongst whom?

27 A I can't remember who, quite frankly, but if I can -- I

1 think I can remember to the point where I can safely  
2 say I was working along with Leo McGrady and Gina  
3 Fiorillo, they were counsel out of Vancouver who were  
4 retained to handle the labour relations issues and in  
5 discussions with them, I know we had discussions that  
6 in these kinds of situations it was not unknown that  
7 your telephones could be, could be -- your telephone  
8 conversations could be listened to and so they were  
9 indicating to me to be cautious about what you  
10 discussed on the telephone. And some of the union  
11 members, as well, had that concern that their  
12 telephone conversations might be listened to.

13 Q All right. Were those --

14 THE COURT: I think I heard you say you didn't  
15 think that at any time it was happening to you?

16 A I didn't think at any time it was happening to me, My  
17 Lord.

18 THE COURT: Had you any reason to believe that  
19 your telephone was being tapped apart from what Mr.  
20 McGrady and Ms. Fiorillo may have said?

21 A No, I didn't.

22 Q MS. BOOTHROYD: All right, so can I -- in terms of a  
23 time frame that you're talking about there in  
24 reference to His Lordship's question, what time frame  
25 are we talking about when you say you didn't have any  
26 reason to believe that your phones were being tapped?

27 A I didn't have any reason to believe it up until I

1 believe December the 2nd of 1993 and on the -- I think  
2 that's the right date. If my memory, if my memory  
3 serves me right it was on the evening of a Thursday  
4 night which I think is December the 2nd of 1993, I  
5 became aware that my telephone conversations had been  
6 listened to.

7 Q And how did you become aware of that, sir?

8 A Someone arrived at my door who I think was from the  
9 post office with a letter for delivery to me and that  
10 letter contained statements about interception of my  
11 private communications.

12 Q Do you have, do you have that letter with you today  
13 sir?

14 A I've got the one that I received, and I've also got a  
15 photocopy of it here in my file which you gave me a  
16 little earlier.

17 MS. BOOTHROYD: My Lord, what I'm going to ask, what  
18 I'm going to ask is that the photocopy, in fact, is to  
19 be entered as an exhibit, is the one to be entered. I  
20 understand that Mr. Marshall wishes to hang onto the  
21 original for his own files.

22 MR. MARTIN: I have no difficulty with that.

23 THE COURT: That will be satisfactory?

24 MR. MARTIN: Yes, Sir.

25 Q MS. BOOTHROYD: Before we deal with the entering of  
26 it, I wonder if you could just refer to that, Mr.  
27 Marshall?

1 A I have it in front of me.

2 THE COURT: You've compared the copy to the  
3 original have you, Mr. Marshall?

4 A I have, My Lord.

5 THE COURT: Is it a true and accurate copy?

6 A It is. There is photocopies of hole punching on the  
7 photocopy, but the typewritten portions of it are all  
8 the same. It's the same -- it's a copy of the same  
9 document.

10 THE COURT: All right. Do you wish to place a  
11 copy of that before me?

12 MS. BOOTHROYD: Yes please, My Lord, I wonder if that  
13 might go in. And that would be exhibit number?

14 THE CLERK: 49.

15 THE COURT: 49, a defence exhibit.

16 [EXHIBIT 49 - NOTICE CONCERNING WIRETAPS DATED  
17 NOVEMBER 29, 1993]

18 Q MS. BOOTHROYD: Mr. Marshall, the exhibit, the notice  
19 that you've referred to is dated November 29, 1993; is  
20 that right?

21 A Yes, it is.

22 Q And this is the document that you received, you  
23 believe, on the 2nd of December, '93?

24 A Yes, to the best of my recollection that's the date  
25 that I got it.

26 Q And, just generally speaking, can you tell us what it  
27 indicated to you?

1 A It indicated to me that my private communications had  
2 been intercepted and that this had come about pursuant  
3 to court order. And if I didn't mention it earlier, I  
4 received this at home. It was delivered to me at my  
5 residence and it's addressed to me at my residence.

6 THE COURT: I take it you've read the letter?

7 You have read the letter?

8 A Yes I have, My Lord.

9 THE COURT: As I read it, it says that  
10 authorizations were issued permitting the interception  
11 of your private communication?

12 A It does say that.

13 THE COURT: Does it say anywhere that your  
14 communications were, in fact, intercepted?

15 A It doesn't use those exact words, My Lord.

16 Q MS. BOOTHROYD: And just for clarity, Mr. Marshall,  
17 the date on which the authorization -- for which the  
18 authorizations were made is from September 27th, '92  
19 'til October 31st, '93; is that right?

20 A Yes, it is.

21 Q And what did you believe as a result of receiving that  
22 notice?

23 A I believe that over that period of time private  
24 communications of mine had been intercepted. I  
25 believe that's why I got the notice.

26 Q And what have you done with respect to this notice,  
27 have you taken any further steps?

1 A Yes, yes I have. I have instructed counsel to make an  
2 application to the Court to obtain disclosure of the  
3 material that would support this authorization so I  
4 can see for myself what was, in fact, done.

5 Q All right. And has that matter been -- is it before  
6 the courts now?

7 A Yes, it is.

8 Q And can you tell us what progress has been made in  
9 that?

10 A It was scheduled for argument in August.

11 Q Sorry, of which year?

12 A Of 1993. The Crown --

13 MR. MARTIN: I'm sorry '93?

14 A '94, pardon me. It was scheduled for argument in  
15 August of 1994 and the Crown indicated that it was  
16 going to, going to raise some objections which would  
17 be procedural -- preliminary, if I might put it that  
18 way, in nature challenging my right to bring the  
19 application and then raising, as well, that the matter  
20 should be brought before the Court in a different  
21 matter than by way of petition. So we adjourned,  
22 rather than getting into the expense of having my  
23 counsel come up from Vancouver.

24 THE COURT: I take it I should understand then  
25 that this application has not, as yet, been heard?

26 A No, it has not.

27 THE COURT: Do we need to go further, Ms.

1 Boothroyd?

2 MS. BOOTHROYD: No, My Lord, I just wanted to make  
3 sure that I understand.

4 Q MS. BOOTHROYD: Your application is still then before  
5 the Court, it hasn't been in any way abandoned?

6 A No.

7 Q All right, sir, following the receipt of this notice  
8 did you have any discussions with the police or the  
9 Crown in terms of ascertaining whether or not you had  
10 been intercepted?

11 A Yes, yes, I did. And there has been, there has been  
12 two times when anything has, has been said to me that  
13 would give me some inkling of what might have actually  
14 happened here. One of those was -- I think it was a  
15 copy of a letter I received from my co-counsel on a  
16 charge that was before this court awhile ago, the riot  
17 charge, and my co-counsel had some discussions with a  
18 local Crown about this wiretap. So I got, I got  
19 second-hand information via that.

20 Q We don't want to get into that then, but did you  
21 personally have any discussions with anybody?

22 A Yes, I did.

23 Q And what was that about?

24 A That was a discussion, and I think it was in February  
25 of this year, with Inspector MacIntyre.

26 Q Can you tell us about that?

27 A Inspector MacIntyre asked if he could speak with me



1 for a minute, I was over listening to part of the  
2 preliminary inquiry and Inspector MacIntyre and I saw  
3 each other so he asked if he could speak with me for a  
4 minute. And the content of it was he wanted to assure  
5 me, and I'm paraphrasing because I don't have his  
6 exact words, but he wanted to ensure me that I wasn't  
7 a target of these interceptions and there was a little  
8 bit of conversation around that, and I took it from  
9 the way he was talking to me that he just wanted me to  
10 know that there wasn't a wiretap authorization  
11 directed at me specifically. That was what I -- that  
12 is what I was taking from it.

13 Q All right, and that's something that Mr. MacIntyre  
14 told you?

15 A Yes.

16 Q And were you assured by that advice?

17 A No.

18 Q Why not?

19 A I want to see the material that is the basis of this  
20 letter. And when I see that material, then I can be  
21 satisfied. But at this point I'm not satisfied.

22 Q All right, sir, did you leave -- did you say or do  
23 anything with respect to Inspector MacIntyre that  
24 would have left that impression that you can think of  
25 that you were satisfied?

26 A No, no. I was cordial with him, but I received his  
27 information and left it at that.

1 Q Mr. Marshall, the date that you received this notice,  
2 I'm sorry, can you just -- I don't have a note of  
3 that?

4 A I think it was December the 2nd of 1993.

5 Q Thank you.

6 MS. BOOTHROYD: My Lord, at this point, if I may,  
7 what I would like to do with Mr. Marshall is ask him  
8 some questions pertaining to his dealings with the  
9 police on October 16, '93, October 17th, '93 when Mr.  
10 Warren was arrested. Now, that evidence does not  
11 pertain directly to the intercept issue, it pertains  
12 to the 10(b) argument in general and rather than --  
13 I'm suggesting, if I may, could I do it now rather  
14 than have Mr. Marshall come back at some later time?

15 THE COURT: I take it there is no objection to  
16 that?

17 MR. MARTIN: No, My Lord.

18 THE COURT: Very good.

19 MS. BOOTHROYD: Thank you, My Lord.

20 Q MS. BOOTHROYD: Mr. Marshall, I just want to ask you  
21 to think about October 16th of '93 that was a date we  
22 heard -- 15th, 16th, when Mr. Warren was arrested on  
23 these charges. Did you have any dealings with Mr.  
24 Warren on either of those days?

25 THE COURT: Let us be clear about the dates.

26 MS. BOOTHROYD: I'm sorry.

27 THE COURT: October of '93, what date?

1 MS. BOOTHROYD: October 15th or 16th of '93.  
2 THE COURT: Thank you.  
3 A I spoke to Mr. Warren on October the 16, 1993.  
4 Q MS. BOOTHROYD: All right, and can you tell us how  
5 that came about?  
6 A He phoned me -- I was at home at the time and it was  
7 in the evening that he called and he phoned to tell me  
8 that he would need a lawyer. There were previous  
9 events in the day --  
10 Q Sorry, if I could just stop you?  
11 A -- but this was the first with Mr. Warren.  
12 Q I'm sorry, if I may just stop you for a moment.  
13 MS. BOOTHROYD: My Lord, Mr. Marshall is referring to  
14 some notes that he made and I'm wondering, with Your  
15 Lordship's leave, if he could refer to those?  
16 THE COURT: I take it there is no objection?  
17 MR. MARTIN: No, My Lord, I assume they were made  
18 some what contemporaneously with the events so I have  
19 no objection on that basis.  
20 A They were, Mr. Martin.  
21 THE COURT: Very good, you'll just testify from  
22 memory refreshing it from your notes.  
23 MR. ORRIS: Excuse me, excuse me, My Lord.  
24 A Thank you, My Lord.  
25 Q MS. BOOTHROYD: Mr. Marshall, can I get you just to  
26 back up then and tell us about the events that  
27 preceded your conversation with Mr. Warren on Saturday

1 night?  
2 A Early in the afternoon I was at my office and I  
3 received a telephone call. I received it from Harry  
4 Seeton asking me if I could come and meet with him and  
5 could I meet him across the street from the Polar Bowl  
6 and it was evident from, from his manner of speaking  
7 with me that it was something important, so I said I  
8 would and I went over and I met with him across from  
9 the Polar Bowl.  
10 Q All right. If I could just ask you, sir, without  
11 going into too much detail in terms of the  
12 conversation with other individuals, as a result of  
13 the meeting with Mr. Seeton, what did you do next?  
14 A I went into an apartment residence which was a  
15 residence where Helen Warren and her friend Kathy were  
16 present and Helen's daughter, I believe, was present  
17 as well. She was in another part of the apartment.  
18 Q All right.  
19 A We were in the kitchen.  
20 Q And I take it you had a conversation with those  
21 individuals?  
22 A Yes, I did.  
23 Q And what happened after that?  
24 A As a result of that, I had, I had some telephone calls  
25 with certain persons and then I went back to my  
26 office.  
27 Q And did anything of significance happen at your



1 office?

2 A There was a message on my answering machine to call my  
3 wife, and I called her and what I learned from her is  
4 that the police had called and it was about Roger  
5 Warren. It was a message about him.

6 Q Do you know what time it was that you received that  
7 message from your wife?

8 A I don't have, I don't have a precise time on that I'm  
9 afraid. It would be somewhere between 2 o'clock was  
10 when I went over to meet with Helen Warren and I was  
11 there for some time and then went back to my office  
12 and shortly before 4 is --

13 THE COURT: So these are all times on the 16th  
14 are they, Mr. Marshall?

15 A They are. Shortly before 4 is when I went to the  
16 detachment so that telephone call and telephone  
17 message were inbetween.

18 Q MS. BOOTHROYD: All right. Before going -- I take it  
19 you went to the Yellowknife R.C.M.P. Detachment?

20 A I did.

21 Q All right. Do you know what time you arrived there  
22 sir?

23 A Approximately 3:55 in the afternoon.

24 Q And that's October 16th?

25 A It is.

26 Q Prior to going to the police detachment, had you made  
27 any efforts to contact the police by phone?

1 A I believe I had phoned. This is by recollection only  
2 because I think I just dealt with the receptionist, if  
3 I can call the person that. I wanted to speak with  
4 Mr. Warren and I couldn't get through to him so I said  
5 I will come over and I did go over.

6 Q So you arrived about 3:55 p.m.?

7 A Yes.

8 Q And what happened?

9 A I spoke at the wicket just inside the door with an  
10 officer by the name of Steggles, I took that off his  
11 badge.

12 Q And what happened?

13 A He told me that -- I wanted to see Roger Warren. I  
14 told him that I was there to see Roger Warren, I was  
15 counsel and wanted to speak to him and he told me that  
16 the members had Warren out for a drive. I asked him  
17 would he please contact those members and so he left.  
18 He went away from the wicket and he came back. He  
19 told me that they'll be back by 6 o'clock and could I  
20 leave a number where I could be reached. I wasn't  
21 content with that so I said I have a phone message  
22 that Corporal White had called about Roger Warren to  
23 indicate to me that he was at the station and I wanted  
24 to see Mr. Warren. So he left again, Officer Steggles  
25 left again and came back, and he told me that White is  
26 with Warren and that Warren hasn't asked for me, would  
27 I leave a number. And I -- so I said to him well I

1 want to talk to him right away, but I didn't. I think  
2 I left him numbers. I told them that I'll be either  
3 at my office or my home.

4 Q All right.

5 A And that was as far as I was getting at the time.

6 THE COURT: Can I just get the name of that  
7 officer, was it Staples?

8 A It's Steggles, My Lord, S-T-E-G-G-L-E-S.

9 THE COURT: Thank you.

10 Q MS. BOOTHROYD: Mr. Marshall, I take it you then left  
11 the detachment?

12 A I did.

13 Q All right, and what was your next contact with the  
14 police or Mr. Warren that day?

15 A Well, my next contact was with the police and this  
16 would be back at my office. I went back to my office  
17 and I received a telephone call from a Dean Ravelli. I  
18 wrote it down at the time, it was Ravelli, and he  
19 identified himself as from the task force and what he  
20 told me is that Vern White and Roger were doing a  
21 reenactment and that they were at Cameron Lake Falls  
22 some 30 miles out of town.

23 Q Do you know what time that phone call happened?

24 A I would place it somewhere around five or maybe a  
25 little bit later. I didn't mark down the exact time  
26 of that phone call.

27 Q And that was at your office?

1 A It was at my office.

2 Q All right, and following that phone call what did you  
3 do?

4 A I had -- I received a telephone call from another  
5 solicitor. I was aware at the time that we were going  
6 to be retaining other counsel or assisting Mr. Warren  
7 to retain other counsel because it was evident to me,  
8 from what was going on, what this was all about.

9 Q So you spoke to some other lawyer I take it then?

10 A A little later, a little later after 5 o'clock I spoke  
11 with another lawyer, yes.

12 Q All right. Can I just ask you then about your next  
13 contact then with the police or with Mr. Warren?

14 A Mr. Warren called me at home. Shortly, shortly after  
15 speaking with Officer Ravelli and then I had the  
16 telephone conversation with the other solicitor, I  
17 went home and then I received a telephone call from  
18 Roger Warren.

19 Q All right. And that, again, was about what time?

20 A To my recollection again it didn't -- I didn't put a  
21 time on my memo about this, but I think it was some  
22 time after 7 o'clock.

23 Q And that was the phone call that you referred to at  
24 the beginning of the discussion of this evidence?

25 A Yes.

26 Q Without getting into the details of that conversation,  
27 sir, did you have any further contact with the police

1 or Mr. Warren that night?  
2 A Yes, I did.  
3 Q And when was that?  
4 A Later in the evening around 10 o'clock and my note on  
5 this one indicates ten after ten I spoke with Corporal  
6 White. He called me, he called me at home.  
7 Q All right. And what was the gist of that discussion  
8 that you are talking about?  
9 A He was talking about a search they were doing at the  
10 apartment, the Warren apartment.  
11 Q All right. And you made some inquiries about the  
12 search or general inquiries about what was going on?  
13 A I had already been aware something was happening and so  
14 I, I did want to know if I could, from the police,  
15 what it was about so that I could advise Helen Warren.  
16 Q All right. And did you have anymore --  
17 MR. MARTIN: I'm sorry, so that you could advise  
18 who, I didn't hear that?  
19 A Helen Warren.  
20 THE COURT: That would be Mr. Warren's wife?  
21 A Yes, My Lord.  
22 Q MS. BOOTHROYD: Mr. Marshall, did you have any further  
23 conversations with either Mr. Warren or the police for  
24 the balance of the 16th or October 17th?  
25 A I had one further call from Vern White. We spoke at  
26 some length around ten after ten in the evening and  
27 then he called me back, and this time I did record the

1 time, at 10:21 to tell me they should be finished the  
2 search by 11:30, which I took to be 11:30 that night.  
3 Q And that was a search of the Warren residence?  
4 A That's the search we were talking about.  
5 Q Thank you, sir.  
6 THE COURT: Mr. Martin?  
7 **MR. MARTIN CROSS-EXAMINES THE WITNESS:**  
8 Q Good morning, Mr. Austin. I'm sorry, Mr. Marshall.  
9 Forgive me, for some reason I refer to you as Mr.  
10 Austin and that is not intended to be a slight. I  
11 know a man named Austin and I am sometimes confused.  
12 I take it, sir, when you received this notification  
13 that you have shown us and is now exhibited, you were  
14 quite surprised?  
15 A I was.  
16 Q Right. And, as a lawyer, I take it not only surprised  
17 but taken aback?  
18 A I was very disturbed. I thought they were tapping my  
19 home phone, quite frankly, and so I told my wife and  
20 my kids about it and there was real upset in the  
21 household.  
22 Q And I take it something like this has never happened  
23 to you before, that you've received a notice such as  
24 this?  
25 A It's never happened that they have ever told me about.  
26 Q Right, that was my question. Whether you received a  
27 notice like this, you had not; is that right?

1 A I have not received a notice like this before.  
2 Q And when you read the notice, you realized it was  
3 signed by Ron Reimer who apparently is a Crown  
4 prosecutor?  
5 A Well actually, Mr. Martin, it's interesting you should  
6 raise that because one of the first things that really --  
7 THE COURT: Can I see the letter?  
8 A -- disturbed me about this -- my first reaction was  
9 one of dismay and upset.  
10 Q MR. MARTIN: Could I just ask you -- Mr. Marshall,  
11 I'm sorry, could I just ask you did you realize that  
12 that letter was signed by Mr. Reimer, the prosecutor?  
13 A Well, I'm just getting to that, I'm just getting to  
14 that. No, I did not. This letter that came to me is  
15 on plain bond and down in the, down in the signature  
16 portion of it, there is a signature, which I can't  
17 read, and there is no identification of who signed it.  
18 Q Okay.  
19 A Other than as an agent specially designated in writing  
20 by the Solicitor General of Canada.  
21 Q And --  
22 A But there is no letterhead on this and and I did not  
23 know who wrote it.  
24 Q All right. In that case the author of the advice to  
25 you is unknown to you. Now, something like this has  
26 never happened before and I am trying to put myself in  
27 your shoes if I were to receive a letter like this I

1 would be anxious to get to the bottom of it, I gather  
2 you were as well?  
3 A I thought about it and made that decision that I  
4 would, that I would try to find out what this -- what  
5 was the basis of this letter.  
6 Q Yes. I understand there is a Department of Justice  
7 office here in Yellowknife?  
8 A There is.  
9 Q And do you know all of the lawyers in that department?  
10 A I wouldn't say that I know them all.  
11 Q How many lawyers do you think are there approximately?  
12 A I don't know presently how many lawyers there are.  
13 Q Ten, twenty?  
14 A Around the ten figure.  
15 Q Okay. Do you know most of the ten?  
16 A Well, they change alot.  
17 Q Okay, and did you know the senior prosecutor?  
18 A Yes, I knew the senior prosecutor.  
19 Q That is Pierre Rousseau?  
20 A Yes.  
21 Q You know him well?  
22 A I know him well enough to talk with him, we've dealt  
23 with each other.  
24 Q Certainly. When did you go with Mr. Rousseau with  
25 this letter to ask him to explain it?  
26 A I didn't go to Mr. Rousseau.  
27 Q You didn't make any inquiries at Justice at all?

1 A No, I didn't.  
2 Q Okay, thank you. When did you go --  
3 A You're talking the local office?  
4 Q Yes?  
5 A Yes, I didn't make any inquiries of the local office.  
6 Q With the Department of Justice, anyone there at all to  
7 ask them if they could explain this?  
8 A Not at the local office, no.  
9 Q All right. Which Department of Justice office did you  
10 direct your inquiries to?  
11 A It was my counsel -- I retained counsel and he made  
12 the inquiries on my behalf and he made the inquiry to  
13 the same office that is indicated on this letter.  
14 Q So your counsel made inquiries and determined that Mr.  
15 Ron Reimer was the author of the letter?  
16 A Well we learned that, yes.  
17 Q And you learned that Mr. Ron Reimer is a Federal Crown  
18 prosecutor?  
19 A That's my understanding.  
20 Q Did you --  
21 A Now I don't -- bear with me, I don't know the full  
22 organization of the Federal Department of Justice, but  
23 I understand he's a Federal -- I would take it he's a  
24 Federal employee attached with the Federal office.  
25 Q Did you know him before you received this letter?  
26 A No, I don't know, I've never met the gentleman.  
27 Q Okay. And I take it the purpose for retaining counsel

1 and making the inquiries was to find out what was  
2 behind this?  
3 A That is so.  
4 Q And you have now received assurances as to what was  
5 behind this as I understand it?  
6 A Well no, no I haven't, Mr. Martin.  
7 Q Did I hear you say that you had been personally  
8 advised by Inspector MacIntyre, who you believe to be  
9 the leader of the Homicide Task Force looking into  
10 this matter, that -- explaining this letter that your  
11 phones were not tapped? I'm just wondering if you --  
12 didn't you tell us that --  
13 A If you say he's the leader I'll accept that. Again,  
14 I'm not going to say how your organization or your  
15 investigation is set up, but he did speak with me  
16 about it and I told you what he said but that doesn't  
17 satisfy me.  
18 Q No, that's fine.  
19 THE COURT: The question is were you told that  
20 your telephone had not been tapped by Inspector  
21 MacIntyre?  
22 A I don't remember him saying it that way, My Lord.  
23 THE COURT: All right.  
24 Q MR. MARTIN: Were you told -- were you given  
25 assurances by a local prosecutor, a Federal prosecutor  
26 also that your home and office phones were not tapped?  
27 A No, I didn't speak, I didn't speak with a local



1 prosecutor about this.  
2 Q You didn't at all? Could you tell us -- it upset you  
3 but you didn't make personal inquiries?  
4 A The inquiries were made by my counsel.  
5 Q Your counsel Mr. --  
6 A Mr. Kemp.  
7 Q Mr. who.  
8 A Mr. Kemp.  
9 Q I see. Can I just show you a letter and could you  
10 tell me if you have you seen this before, it's dated  
11 January 9, 1994 and it's address by Mr. Pringle, it  
12 appears to be signed by a Federal prosecutor named  
13 MacDonald?  
14 A Yes.  
15 Q A copy directed to Inspector MacIntyre?  
16 A Yes.  
17 Q That's the police officer you spoke to?  
18 A Yes, that's right.  
19 Q All right. And it has to do apparently with a trial  
20 of one Ivan Brien et. al.?  
21 A That's the riot trial.  
22 Q Yes, and apparently Mr. Pringle wrote a letter on  
23 January the 26th with this being answered on January  
24 the 29th; have you seen this letter?  
25 A Yes, I have.  
26 Q So you're familiar with the second paragraph of this  
27 letter?

1 A I am.  
2 Q And it would say Mr. Marshall has never been a primary  
3 target in regard to any intercepted communications,  
4 neither his office phone nor home phone have ever been  
5 tapped. Any intercepted communications involving Mr.  
6 Marshall were only the result of his communications  
7 with a primary target?  
8 A Yes, I've seen that.  
9 Q I take it you don't believe this either?  
10 A I'm not accepting that --  
11 Q I see.  
12 A -- until I see the packet.  
13 Q Okay.  
14 A That's what I was referring to earlier, Mr. Martin.  
15 Q I see.  
16 A The conversation between my co-counsel on the riot  
17 trial and another, and another lawyer.  
18 MR. MARTIN: My Lord, I will be moving to another  
19 area and and frankly I need no more than a five-minute  
20 adjournment if I may.  
21 THE COURT: We'll take five minutes. You'll  
22 understand the usual rule, Mr. Marshall?  
23 MR. MARSHALL: Yes, My Lord.  
24 (ADJOURNMENT)  
25 THE COURT: Mr. Martin.  
26 MR. MARTIN: My Lord, thank you.  
27 Q MR. MARTIN: Mr. Marshall, this letter I just showed



1 you a moment ago here dated the 29th of January to Mr.  
2 Pringle, he was your co-counsel in this riot trial?

3 A Yes, he was.

4 Q You have read the entire letter?

5 A Yes, I have.

6 Q And you received it, was it late January or the early  
7 part of February?

8 A It would be around the time of its date.

9 Q Do you want to have a look at this to see that it's  
10 the letter that you actually read? And how about if  
11 we make an exchange, I'll give you this letter and you  
12 show me your notes?

13 MR. ORRIS: Excuse me, My Lord, as far as Mr.  
14 Marshall's notes are concerned, those notes may  
15 contain communications which are privileged and I  
16 would be somewhat concerned that -- about turning them  
17 over to the Crown in that regard.

18 THE COURT: To the extent that they have been  
19 referred to in these proceedings, I should have  
20 thought that waiver of privilege was evident.

21 MR. ORRIS: Well, as far as the extent that they  
22 have been referred to I have no difficulty with that,  
23 but Mr. Marshall has not referred to his notes and  
24 disclosed any communications between himself and Mr.  
25 Warren. So what I would suggest, My Lord, is that Mr.  
26 Marshall extract from the notes any references to  
27 communications he had directly with Mr. Warren. The

1 balance of the notes I have no difficulty going to the  
2 Crown, but I'm just concerned about the direct  
3 communications between Mr. Warren and Mr. Marshall.

4 MR. MARTIN: At this stage, My Lord, at least at  
5 this time, I have no difficulty with that. I was not,  
6 at this time, interested in looking at the notes for  
7 that purpose.

8 MR. ORRIS: Yeah, no I'm not suggesting --

9 MR. MARTIN: Mr. Marshall referred to them and I  
10 would like to see them.

11 MR. ORRIS: No, I understand that, and I'm not  
12 suggesting that my friend was intending to look at  
13 that.

14 THE COURT: Well, can they be edited?

15 MR. ORRIS: I believe -- well I'm sure -- well I  
16 assume they can.

17 A They can be, My Lord.

18 THE COURT: Then if you would undertake to do  
19 that, Mr. Marshall, so as to leave visible that to  
20 which you referred in giving your evidence and any  
21 other related material which does not include  
22 communications that are subject to privilege. Could  
23 you do that?

24 A I can do that, My Lord.

25 THE COURT: Then we'll have that material turned  
26 over to Mr. Martin. Would that suffice your purposes,  
27 Mr. Martin?

1 MR. MARTIN: It would. I assume this will be done  
2 over the noon hour; is that the idea?  
3 THE COURT: I take it we can do it over the noon  
4 hour?  
5 MR. MARTIN: All right. It's -- excuse me, My  
6 Lord, for stepping before you but it just leaves me in  
7 an awkward situation in the sense that my -- Mr.  
8 Marshall has referred to these notes in giving his  
9 evidence and I would like to know what's there in  
10 preparing for my cross. Could he give us some idea as  
11 to how long this might take? Is it a matter of a few  
12 minutes or -- in other words, can we do it within the --  
13 THE COURT: You can have access to the copier in  
14 the court house, Mr. Marshall, it would save you going  
15 back to the office.  
16 A If we can do that I can do it fairly quickly, My Lord.  
17 THE COURT: And I'm sure that Mr. Clerk will see  
18 that you are given every assistance there.  
19 MR. ORRIS: Can we do that now?  
20 THE COURT: Shall we break then so that that can  
21 be done? We'll break then and I'll await to hear from  
22 you.  
23 (ADJOURNMENT)  
24 THE COURT: Yes, Mr. Martin?  
25 MR. MARTIN: Thank you, My Lord.  
26 Q MR. MARTIN: Mr. Marshall, you've had a chance to  
27 read this letter that I referred you to earlier?

1 A Yes, I have.  
2 Q And that's the letter that you had seen earlier?  
3 A Yes, I had seen that letter.  
4 Q And even though it's a -- a xerox was the exhibit Ms.  
5 Boothroyd showed you of your notice, you would agree  
6 that this is the letter you looked at? This is the  
7 letter that Mr. Pringle showed you signed by  
8 MacDonald?  
9 A Yeah, I got a copy of that letter actually.  
10 Q Okay.  
11 A Around about, around about that date.  
12 Q Okay, thank you very much.  
13 MR. MARTIN: My Lord, could it become the next  
14 exhibit please?  
15 THE COURT: That will be 50?  
16 MR. CLERK: Yes, My Lord.  
17 MR. ORRIS: My Lord, before it becomes an exhibit,  
18 frankly I don't know what the purpose of it is? The  
19 contents speak of a number of things, some of which  
20 actually I welcome but I don't know how it assists  
21 Your Lordship in the sense that it's communication  
22 from one lawyer to another, not Mr. Marshall, although  
23 he gets a copy. It is an indication that -- I take it  
24 my friend is concerned about the second paragraph.  
25 That, of course, is --  
26 THE COURT: Pandora's box seems to have opened and  
27 now everything is jumping out.

1 MR. ORRIS: Well, My Lord, I don't have any  
2 difficulty with it being filed as an exhibit, my  
3 position I would take is that if my friend is  
4 intending to rely upon its contents as being the  
5 truth, then I would object to that, that's all. As  
6 far as --

7 THE COURT: Perhaps you can indicate to me what  
8 your purpose is, Mr. Martin?

9 MR. MARTIN: Well, My Lord, at this stage in these  
10 proceedings it appears to me the Crown will be calling  
11 Mr. Reimer, the author of the notice, to explain, to  
12 explain the notice, and I expect that will happen so  
13 if Mr. Orris has some concerns about this letter, I  
14 don't mean to take more time in debating this issue,  
15 it doesn't have to be exhibited. Mr. Marshall  
16 referred -- was referred to the paragraph that I  
17 wished to refer him to and he agreed that he was aware  
18 of it and not persuaded. That's all I wanted to do,  
19 it doesn't have to be exhibited.

20 THE COURT: I have made a very short note to the  
21 effect that he did not accept Paragraph 2 of the  
22 letter until he has seen the contents of the packet.

23 MR. MARTIN: That's right.

24 THE COURT: So I take it then you are withdrawing  
25 that.

26 MR. MARTIN: Thank you.

27 Q MR. MARTIN: Mr. Marshall, did I hear you to say

1 that as of August of 1992 you were retained by the  
2 CASAW Union?

3 A That's when I, that's when I got my retainer, Mr.  
4 Martin and, as I indicated, it's the union that -- the  
5 union came to me to ask me to act, but they asked me  
6 to act on behalf of members who were charged with  
7 criminal offences. So for each of those members, my  
8 client was that individual. But, as well, I did, I  
9 did consider that I was retained by the union for  
10 certain other things that really were union business  
11 or union business with members being affected.

12 Q Okay.

13 A But on the criminal matters the client was the  
14 individual who was charged and the union was taking  
15 responsibility for paying for his defense.

16 THE COURT: I appreciate the detail but your  
17 answer is yes, you were retained in August 1992 by The  
18 Canadian Association of Smelter and Allied Workers?

19 A Well, I think you have to take my answer as I  
20 described it, My Lord. They came to me and asked me  
21 if I would act.

22 THE COURT: I see.

23 A And the terms of the retainer were --

24 THE COURT: Were you retained by them at that  
25 time?

26 A Yes, I was.

27 THE COURT: All right.

1 Q MR. MARTIN: Thank you. And the last part of your  
2 answer was, if I understood you correctly, you said  
3 your fees to provide legal services to the union and  
4 their members were paid by the union?  
5 A The union looked after those, Mr. Martin, yes.  
6 Q Thank you. And so we're clear, it's this union which  
7 was at that time on strike, their members were on  
8 strike or had been locked out of the Giant Mine, this  
9 is the union we're talking about?  
10 A Yes.  
11 Q And the charges you are talking about arose as a  
12 result of that strike?  
13 A Yes, they did.  
14 Q And the union business you are talking about arose as  
15 a result of that strike as well?  
16 A It did.  
17 Q All right. And so it was in that context of  
18 representing the union and its striking members that  
19 you were retained; do I have that right?  
20 A Yes.  
21 Q And they were paying, the union was paying for your  
22 fees?  
23 A Yes.  
24 Q Thank you. And if I just understand the extent of the  
25 retainer, you were doing business with the union and --  
26 on the one hand, you were acting for members who had  
27 been charged criminally; is that correct?

1 A Yes.  
2 Q Is that all members who had been charged criminally?  
3 A I'm not aware that anyone charged criminally was  
4 represented by anybody else.  
5 Q All right.  
6 A When we got to Mr. Warren's situation, that became  
7 different.  
8 Q All right.  
9 A But up until then, anyone who was charged criminally  
10 came to me.  
11 Q All right. And in terms of going anywhere else, since  
12 the union was paying for you to represent those boys  
13 free, you were their lawyer free of charge to them?  
14 A Well, they had that benefit, yes.  
15 Q Right. And you were also, I take it, as I understand  
16 it, there to advise union members with regard to other  
17 legal matters, in particular police investigations and  
18 other potential criminal charges that might be laid?  
19 A There were -- once the explosion, the investigation of  
20 the explosion came up, that became -- at times that  
21 became an issue because the union, the union was not  
22 wanting to, to get involved in business that really  
23 went beyond the picket line and with the investigation  
24 there were other kinds of legal problems about a  
25 person's individual rights, about whether they had to  
26 go to the police or not, whether they had to take a  
27 polygraph or not, and we gave, we gave some advice but

1 frequently the advice was you should go and retain a  
2 lawyer of your own choice if you have any concerns  
3 about being investigated or asked for statements.

4 Q I'm still talking about August of '92 and so we're  
5 clear, you're attending to the union's business?

6 A Yes.

7 Q You're representing, so far as you think now, all of  
8 their members who had been facing criminal charges and  
9 you are available to all of their striking members to  
10 offer free legal advice?

11 A Well, it wasn't free.

12 Q But the union was paying for it, free to the members?

13 A The union was paying for it.

14 Q Right, so free to the members?

15 A That would be fair, yes.

16 Q All right. And during that time one of your clients  
17 was Mr. Warren, Roger Warren?

18 A Yes, he was.

19 Q And that's this man sitting right here?

20 A Yes, Mr. Warren is here.

21 Q Right. And that was the situation then for some time  
22 and you say that after the blast things changed a  
23 little bit?

24 A In the way I -- in the way I've just described it.

25 Q Right.

26 A People, people were having concerns about how they  
27 were, how they were being approached by the police.

1 Q And, so I understand it, and it is your understanding  
2 that the union then, in addition to having you do its  
3 legal work, also had other lawyers available to their  
4 striking members who would offer free legal advice  
5 with regard to criminal investigations or dealings  
6 with the police?

7 A I can't help you on that. I'm not able to tell you  
8 what other arrangements there were.

9 Q Well, I want to put it to you did you know, for  
10 instance, that my learned friend, Mr. Orris, was  
11 working in that capacity for the union? So that  
12 striking members could call him or his office to  
13 obtain free legal advice?

14 A I can't -- I'm not able to help you on that, Mr.  
15 Martin.

16 Q You don't know? Who could tell us that?

17 A I don't know. It's not for me to answer that  
18 question.

19 Q I see, all right. I take it, sir, you were still,  
20 even after the blast, giving legal advice which was  
21 free to the striking members; is that correct?

22 A Yes, it carried on until the matters that I was  
23 dealing with --

24 Q Right.

25 A -- would be finished.

26 Q And, in particular, and I don't want to get into the  
27 confidential nature of this, but in particular you,



1 throughout this time, from September of 1992 until let  
2 us say the 18th of October, 1993, during that time you  
3 were available to give free legal advice to Mr.  
4 Warren, and by that I mean free to Mr. Warren, with  
5 regard to strike-related matters, criminal  
6 investigations arising from those matters and so on?

7 A Yes, I would be.

8 Q Thank you.

9 THE COURT: What date was that again now?

10 MR. MARTIN: That was from September of 1992 until  
11 October the 18, 1993.

12 THE COURT: Is that correct, Mr. Marshall?

13 A Yeah, the better date would be October 16th, that's  
14 the day that the situation crystalized.

15 Q MR. MARTIN: You want to say that some time after  
16 you spoke with Mr. Warren the situation crystalized?

17 A It became, it became clear on October the 16th that  
18 Mr. Warren would now be in a different situation.

19 Q Well, let's -- we have this choice here, we get into  
20 these communication and we get into them and if we  
21 don't, we don't. And all I'm asking you, and I think  
22 you've answered the question, that at least until you  
23 spoke with Mr. Warren on the night, night of October  
24 the 16, 1993, you were available to give him legal  
25 advice which was free to him?

26 A That is so.

27 Q And there is no question about that in your mind,

1 right? That is so, you've just said that?

2 A Yes, he could --

3 Q Yeah?

4 A -- he could contact me --

5 Q Right.

6 A -- about strike-related matters.

7 Q Right. You are a lawyer who lives here in  
8 Yellowknife?

9 A Yes.

10 Q And you are -- are you designated in the phone book as  
11 a lawyer?

12 A I think I am, yes.

13 Q So if we looked up Austin Marshall in the white pages  
14 we would see lawyer and your home number there?

15 A My home number is there as well as my office number.  
16 Whether they're one under the other, I just don't --  
17 I'm not able to tell you, Mr. Martin, but you can look  
18 it up.

19 Q Thank you. And I take it that your name is there in  
20 bold black print?

21 A It is.

22 Q Standing out from the other names around it?

23 A It is.

24 Q Yes. Are you also in the Yellow Pages under lawyer?

25 A I think I have a listing there too.

26 Q And this was so in October of 1993?

27 A To my knowledge, yes.



1 Q Yes. The -- referring to the month of October of  
2 1993, Mr. Marshall, were you aware that your name was  
3 on a list of lawyers that was -- of criminal lawyers  
4 who -- that the police regularly gave to prisoners?

5 A Yes, my name has been on that list for sometime, Mr.  
6 Martin.

7 Q Okay. And that list would contain, as well, your home  
8 number and your office number?

9 A Both of them should be there and I get calls at both.

10 Q Thank you.

11 THE COURT: So just so that I am clear, where is  
12 this list kept?

13 A The R.C.M.P. detachments would have it, My Lord. To  
14 my knowledge they have it around the Territories.

15 THE COURT: All right, thank you.

16 Q MR. MARTIN: And the idea is that you are available  
17 then to give legal advice to people who call you  
18 effectively night and day?

19 A Yes.

20 Q And Mr. Warren, obviously, would be among those people  
21 and indeed he would get his advice free until the  
22 night of October the 16th at least?

23 A Mr. Warren would know, from our relationship, that if he  
24 had a legal problem that had anything to do with the  
25 strike he could call me.

26 Q Thank you. And that included, obviously, criminal  
27 charges arising from the strike since you were

1 representing him on one?

2 A Well, that's really the matters that people were  
3 dealing with me on, those and any breaches of  
4 injunction.

5 Q Thank you. Just a final question, did I hear you to  
6 say, and I didn't take note of this, that you weren't  
7 aware if there were other lawyers who were also  
8 retained to act in that capacity; that is, to offer  
9 free legal advice to striking union members after the  
10 blast that killed the nine men on September the 18th?  
11 You don't know whether or not there were?

12 THE COURT: Are you referring to October 1993?

13 Q MR. MARTIN: No, I was referring to September 18,  
14 1992. I'm just wondering -- you have indicated that  
15 to that time you were the only one offering free legal  
16 advice and after that you continued. I just want to  
17 know were there other lawyers as well who were  
18 retained in that same capacity to give free legal  
19 advice to striking union members?

20 A M'hm.

21 Q If you don't know it's fine?

22 A Well, Leo McGrady and Gina Fiorillo, to my knowledge,  
23 would be in a similar relationship to the union local  
24 as I was. We were doing different aspects of the  
25 work.

26 Q Thank you. Just a very small detail, I take it also  
27 that Mr. Warren had your business card as of August of --

1 or indeed June of '92?  
2 A I don't know whether he had my card or not.  
3 Q You don't ordinarily pass out your card to your  
4 clients?  
5 A If a client needs it, if I know a client might be  
6 wanting to call me and they haven't got my letterhead  
7 handy, then I would give them a card. But I don't, I  
8 don't hand it out each and every time I meet a client.  
9 Q Thank you. And I would like to take you now to the  
10 afternoon of October the 16th, you went to, to see  
11 Mrs. Warren; is that correct?  
12 A I saw Mrs. Warren. I went first to meet somebody  
13 because of the phone call I got and then we went to  
14 the Warren apartment.  
15 Q Okay. Harry Seeton was then the president of the  
16 CASAW Union?  
17 A Yes, he was.  
18 Q He contacted you and as a result of that conversation  
19 you went to see Mr. Warren?  
20 A Yes, that's how it happened. I met him first and we  
21 went into the apartment.  
22 Q That's fine. And so Mrs. Warren did not get a hold of  
23 you directly, Mr. Seeton did?  
24 A He called me, yes.  
25 Q And when you spoke to Mrs. Warren there was another  
26 lady there?  
27 A Yes.

1 Q That lady was not your client?  
2 A No, she was not.  
3 Q You were having a general conversation with Mrs.  
4 Warren and another person who was not your client or  
5 you were not giving her legal advice?  
6 A That would be right.  
7 Q She was clearly within earshot and heard the  
8 conversation?  
9 A Yes, she was sitting with us.  
10 MR. MARTIN: My Lord, I would like to ask some  
11 questions with regard to this conversation and there  
12 are very few and indeed, I'll tell you this, it's  
13 simply whether or not Mrs. Warren told him that she  
14 had been informed by the police as to what had been  
15 going on with her husband.  
16 MR. ORRIS: Well, My Lord, I don't think I'm in a  
17 position to take, to take a position on that. My  
18 friend is asking about communications between Mr.  
19 Marshall and Helen Warren obviously not in the  
20 presence of my client. I don't know whether he  
21 considers those to be privileged or not, I don't think  
22 I can take a position on that. If he --  
23 THE COURT: We don't want to intrude on any matter  
24 which is privileged, that's the usual course, isn't  
25 it? Where is this taking us, Mr. Martin?  
26 MR. MARTIN: Let me again withdraw. All I wanted  
27 to establish was, in effect as a courtesy, that Mrs.

1 Warren had been kept informed and I will not press it  
2 here.

3 Q MR. MARTIN: Sir, after you left the Warren  
4 apartment, did you say you went back to your office?

5 A Yes, I did.

6 Q And sometime after that you went to the police  
7 detachment?

8 A Yes.

9 Q And you were then advised that Mr. Warren was not  
10 present, indeed he was some distance out of  
11 Yellowknife?

12 A That's what I learned in the course of that  
13 conversation with the officer who I understand is  
14 Officer Steggles.

15 Q Thank you. Were you told prior to that, sir, that  
16 Corporal White of the R.C.M.P. Task Force had been  
17 trying to get in touch with you?

18 A I think I was. I think I was aware that it was  
19 Corporal White who had tried to get me at home and  
20 then when I spoke with my wife, I think at that point  
21 I was aware that Corporal White was in the picture.

22 Q So at the time you went to the police station do I  
23 understand the situation was this, you were aware that  
24 Corporal White had been trying to reach you through  
25 your wife?

26 A Yes, and that's what I told Officer Steggles is that  
27 it was Corporal White that was trying to get me.

1 Q Right. And so you were -- the answer is yes to that  
2 question?

3 A Yes.

4 Q And I'm just wondering, do you have an answering  
5 service at your office?

6 A Yes.

7 Q Do you have a recording machine there?

8 A I do.

9 Q So if people want to call you, let's say if somebody  
10 wanted to reach you that Saturday, how would that be  
11 done?

12 A If they phone the office number they can leave a  
13 message on the answering machine if it's on.

14 Q Was there a message on your answering machine from  
15 Roger Warren?

16 A No, I don't recall a message from Roger Warren on the  
17 answering machine.

18 Q So the message was -- had been left for you to contact  
19 Corporal White and that, you understood, was with  
20 regard to Mr. Warren, that was the message. In other  
21 words, Corporal White didn't want to invite you to go  
22 bowling, he wanted you to call him regarding Mr.  
23 Warren, I think actually you said that in your direct  
24 evidence?

25 A That's what I, that's what I understood.

26 Q Right. And you left the R.C.M.P. detachment, when you  
27 left, you left a message for White to call you; is

1 that correct?

2 A I wanted to, I wanted to talk to Roger Warren. I  
3 wanted to see Roger Warren but I was told I couldn't  
4 because he was not there. So the message was that I  
5 wanted to see Roger Warren, but they were telling me  
6 that I would get a phone call when they were back.

7 Q Yeah.

8 A Where could I be reached.

9 Q Okay. My question was, when you left the detachment  
10 did you leave a message for Corporal White to phone  
11 you?

12 A Well no, no, I wanted to talk to Roger Warren.

13 Q You left no message for White to call you?

14 A No, I didn't leave that message. They asked me for my  
15 phone numbers where I could be reached.

16 Q I see.

17 THE COURT: Let me try to understand, Mr.  
18 Marshall. When you were at the police barracks and  
19 you didn't succeed in reaching Mr. Warren, did you  
20 then arrange that they would call you when they came  
21 back?

22 A That's the way -- it got left that way, My Lord,  
23 because they asked where I could be reached.

24 THE COURT: All right. Thank you.

25 A So I told them where I would be.

26 THE COURT: Thank you.

27 MR. MARTIN: Just one moment please, My Lord.

1 THE COURT: I notice it's about five minutes after  
2 the usual lunch break time, would this be a good time  
3 to break?

4 MR. MARTIN: You're very indulgent, My Lord, yes,  
5 thank you very much.

6 THE COURT: We'll break then and we'll come back  
7 at 2 p.m.

8 (COURT ADJOURNS TO 2 P.M.)

9 THE COURT: Yes, Mr. Martin?

10 MR. MARTIN: My Lord.

11 Q MR. MARTIN: Mr. Marshall, I have only very few  
12 questions remaining. Can I clarify one matter here,  
13 when you mentioned to us this morning that you were  
14 giving free legal advice to the striking members of  
15 the CASAW Union with regard to their obligations or  
16 lack of obligation of taking a polygraph examination;  
17 I heard you say that this morning?

18 A That came up in part of my testimony, yes.

19 Q Yes. And those polygraph examinations were an  
20 investigative aid into the homicide which occurred on  
21 September the 18, 1992?

22 A That's what we understood.

23 Q They were not used before that time?

24 A I don't know, but I began to hear about them after  
25 September the 18th.

26 Q Thank you very much. Sir, neither my friend nor I, as  
27 you know, are from here and I just -- could I ask you

1 if you had a prisoner call you let us say on a  
2 Saturday morning and advise that he had just been  
3 arrested and in custody, where would you go here in  
4 Yellowknife to see him?

5 A You would expect him to be at the detachment if he's  
6 just been arrested.

7 Q Okay. And do you understand the procedure is that on  
8 weekend arrests or weekend arrivals from other  
9 communities outlining Yellowknife, if they arrive on  
10 the weekend they go to the Yellowknife Detachment and  
11 stay there until Monday morning?

12 A That's often what will happen. I'm not fully familiar  
13 with the procedure, perhaps a prisoner could end up at  
14 Y.C.C., but I think normally they would stay until  
15 they are dealt with by a judge and then the judge --  
16 the judge's order would lead them to Y.C.C. if they're  
17 going to remain in custody.

18 Q The judge on the Monday morning court appearance you  
19 mean?

20 A Yes.

21 Q All right. And so it would be exceptional to find  
22 that person, an arrested prisoner on -- in custody on  
23 the weekend at Y.C.C. but you say it can happen?

24 A Well, it's my experience that they would be at Y.C.C.

25 Q Oh, I'm sorry?

26 A I'm not in a position -- at the detachment, I'm not in  
27 a position to speak authoritatively about the

1 administrative procedure.

2 Q All right.

3 A Only what I've experienced.

4 Q And that's been your experience since '83 you've been  
5 here you said?

6 A Yes, I have.

7 Q All right.

8 THE COURT: You said at Y.C.C. there and then you  
9 said in the detachment, I'm not entirely clear which  
10 you meant?

11 A The detachment, My Lord.

12 THE COURT: The detachment, thank you.

13 Q MR. MARTIN: And just a final point with regard to  
14 these weekend remands, they would be -- as you  
15 understand it these people would be seen by a J.P. and  
16 still held here on the weekend and then on Monday  
17 morning come to a judge and then go to Y.C.C.?

18 A If they're going -- if their detention is going to  
19 continue, they should be seen by a Justice of the  
20 Peace promptly --

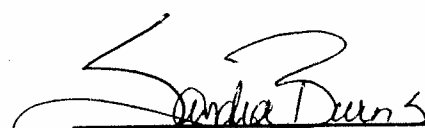
21 Q M'hm.

22 A -- after their arrival.

23 Q And that's been your experience that -- let's take a  
24 Saturday morning arrest, somebody calls you on  
25 Saturday at noon, it would be your experience that  
26 that person you would find him at R.C.M.P. cells and  
27 that person would be seen by a J.P. over the weekend



1 within the appropriate time?  
2 A He's supposed to be.  
3 Q Kept in cells, brought to a court, a Territorial Court on  
4 Monday morning and, if appropriate, released or turned  
5 over to Y.C.C. at that time; is that a fair  
6 description?  
7 A That's the way the procedure should operate in my  
8 understanding, yes.  
9 Q Right. And has since about '83, since you came here?  
10 A I've been -- in my first few years I was here I was  
11 working as a legal counsel at the Territorial  
12 Government so I didn't do any criminal law, but from  
13 1987 onwards that's been my understanding of how the  
14 system is supposed to work.  
15 Q Are you primarily engaged in criminal law, sir?  
16 A No, actually my practice is primarily litigation but  
17 not, not exclusively criminal law. The last couple of  
18 years criminal law has dominated by practice, but the  
19 civil side of my practice is what's flourishing at the  
20 moment.  
21 Q Thank you very much, I appreciate it.  
22 A Let me make one comment, you've repeatedly referred to  
23 free legal advice, I think you're clear in what I've  
24 said it's not free.  
25 THE COURT: No we understand that, Mr. Marshall.  
26 MR. MARTIN: Yes. Thank you, sir.  
27 THE COURT: Free to the individual but not free as

1 far as you were concerned.  
2 A Yes.  
3 THE COURT: All right.  
4 A And it went beyond advice, it was representation.  
5 MR. MARTIN: Thank you very much, sir.  
6 THE COURT: Yes. All right, Mr. Orris?  
7 MS. BOOTHROYD: Nothing arising, Your Honour.  
8 THE COURT: Or Ms. Boothroyd?  
9 MS. BOOTHROYD: Thank you, I have nothing arising.  
10 THE COURT: All right. Thank you, Mr. Marshall,  
11 you may step down.  
12 A Thank you, My Lord.  
13 (WITNESS STANDS DOWN)  
14 -----  
15  
16  
17 Certified correct to the best of my  
18 skill and ability.  
19  
20  
21   
22 Sandra Burns  
23 Court Reporter  
24  
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