AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ
RUTLAND EXCHANGE No. 304
031 225 2595 Extn. 306

JJ & RJ

H M Advocate v Raymond [redacted] and
[redacted] - 83/11/702906/87
- 83/11/705130/87

[redacted] went together and burst into a house in Paisley and had there an affray with four men, one of whom sustained fatal injuries from a weapon. The two were indicted together without any distinction for murder of the one, assault on all four and attempting to pervert the course of justice. The two maintained to the police, consistently thereafter, and at the trial from the witness-box, that they had gone to the house without any weapon, that [redacted] alone, for reason given, had been actively engaged in the affray, and that [redacted] had been concerned only to protect his brother's back. [redacted] pleaded self-defence. Initially proceedings were taken against [redacted] alone: Mr Joseph Beltrami represented him, a Legal Aid Certificate in his nomination being effective from 23rd April 1987. When Robert was charged several weeks later, he insisted that he wished Mr Beltrami to act for him too: not without due consideration Mr Beltrami agreed and applied for Legal Aid again in his own name, that certificate being effective from 9th July 1987. The case went forward to trial on a fresh common indictment.

At the trial in Greenock, which lasted for seven days, Mr D R Findlay acted as leading Counsel for both accused, with the support of separate Counsel for each, Mr I W Donaldson for [redacted] and Mr William Dunlop for [redacted]. Mr Beltrami attended for most of the trial personally, focussing his concern and his labours to the defence of Raymond; he arranged that one of his partners would attend throughout with Counsel for [redacted] In the single account which the Board requires to have submitted by a solicitor acting for more than one accused, Mr Beltrami claimed full fees for his own and his partner's attendances in Court. The Board declined to accept these charges as a basis for adjustment and agreement of the account, and the matter was referred to the Auditor. No other question arises for the Auditor's consideration, and parties have undertaken to agree on the details in the light of his decision on the principle.

At/

At the diet Mr Beltrami explained that he had concluded that, given the extent of his necessary involvement with the defence of [redacted] he could not ensure that he could give also to the defence of [redacted] the committed attention to which he, as a client, was entitled. There was no question of his being inhibited by conflict of interest: he had considered the possibility when he was asked to represent Robert as well as [redacted] but the evidence as ascertained at enquiry did not disclose any basis for conflict, nor had the evidence as it came out at the trial. But neither was there here a common defence: while the charges against the two accused were identical and arose out of one incident in which both were, in a sense, on the same side their separate and distinct defences reflected and indeed highlighted the difference in their involvement as they had maintained from the outset. For [redacted] the crucial matter was one of fact, whether he had gone to the house with a weapon; for [redacted] it was whether the evidence added up to what in law would amount to consent. The verdicts of the jury did indicate a significant degree of acceptance of the testimony of the two accused, but the concessions implicit in that testimony left little room for acquittal of [redacted] and no certainty of acquittal for [redacted] The Auditor was satisfied that the decision made by Mr Beltrami proceeded upon a reasonable assessment of relevant considerations and that the Fund must meet at the appropriate rate the charges of the two solicitors attending respectively on behalf of the two accused.

Parties properly drew to the attention of the Auditor the decision by the previous Auditor in the case of H M Advocate v [redacted] The account submitted by Mr Beltrami in that case in which again he had represented two accused [redacted] was sustained on taxation on 18th February 1982 to the effect of allowing charges for the attendance of a qualified solicitor attending on each of the separate junior Counsel for the two accused. At this taxation Mr Beltrami admitted that he had regarded [redacted] as authority for the charges he proposed in this case and indeed as authority personally binding on the Fund by reason of the Fund's failure to challenge on appeal the then Auditor's decision. In [redacted] the Auditor did not record the reasons for his decision. The recollection of parties extended only to the facts that Frame and Macintosh were two of about a dozen persons charged with terrorist offences; that the cases against these two accused were distinct, the two not even being known to one another; and that there was no material overlap in the evidence variously incriminating the two. The position is so unsatisfactory that the Auditor is not prepared to regard [redacted] as authority for any proposition more purposeful/

purposeful than that where a solicitor acts for two accused who are indicted on very serious counts, it may be appropriate to have the counsel for each accused attended by a separate solicitor.

The Auditor considers that it is not practicable to seek to enumerate the considerations which will in any given case bear upon the decision made by the solicitor in this case. The line between cases on either side is necessarily a fine one. In one case the solicitor will succeed in meeting the requirement of having reasonable regard to the financial interests of the Fund by so increasing his own personal input to the very high level demanded of the qualified solicitor,as personally to provide proper service to both the clients who have personally sought his services: in another case will take the view that proper service to the client so clearly requires the services of another solicitor as to make acceptable the additional burden on public funds. The decision will be made and can only be made by the solicitor shortly before the trial when he has before him a sufficiently full picture of the needs and demands of both clients: it will be a considered exercise of discretion on the basis of reasonable anticipation; and it will be well-nigh impossible for any other person to approve or disapprove of the decision at the stage at which it must be made. After the trial it may appear that anticipated requirements were over-fancifully assessed and in some cases it may be appropriate to disallow charges for the additional attendance as falling outside the proper test for the agent-and client fund paying situation. The decision to multiply attendance charges must be made only in circumstances of definable specialty, and must never be made lightly.

EDINBURGH
6th January 1988