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# Gail Maney case: The six stunning hours of an appeal that revealed 'no remaining evidence' against convicted murderer

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*The murder convictions of Gail Maney and Stephen Stone appear to be hanging by a thread after more stunning developments in their case. Adam Dudding reports on the day-and-a-half of understated drama at their Court of Appeal hearing this week.*



Gail Maney, whose appeal against her murder conviction was heard this week. Photo: Fairfax Media

There they were, together again - four people bound together in a wild story that may or may not be a fiction; four people who haven't all been in the same room together since a high court trial in 1999 which found them all guilty as charged: Stephen Stone, Gail Maney, Mark Henriksen, Colin Maney.

The reunion wasn't exactly complete: Henriksen and the two Maneys were seated at the back of Courtroom 1 in Wellington's Court of Appeal, but Stone's presence was virtual; he hovered a couple of metres above the others on a TV monitor, live from an AVL booth at Whanganui Prison.

It was Tuesday, 13 August - the first day of a two-day hearing re-examining the convictions arising from a police investigation that, depending on your stance, was a masterful assembly of complex and contradictory evidence into a surprising yet coherent whole; or a staggering saga of police overreach and malpractice which saw a handful of rumours whipped up into a confection of nonsense that has been the ruin of numerous lives.

At stake: decisions that might mitigate some of that ruin.

Will Stephen Stone remain in prison, guilty of two murders and a rape dating back to 1989, or not? Will Gail Maney, who has already served 15 years in prison for commissioning one of those two murders, remain subject to the daily disruption of life parole, or not? Will Mark Henriksen and Gail's younger brother Colin Maney, who have long since served their far shorter sentences for being accessories to that same murder, have their reputations restored, or not?

**\* Listen now to a brand new, bonus episode of [Gone Fishing](#), the 2018 podcast about Gail Maney's case.**

Some of the conclusions are foregone.

Just a month before this hearing, the Crown made a startling concession. Two important documents that would have aided defence cases back in 1999, and at the 2000 retrial of Gail Maney and Mark Henriksen, were not disclosed at the time, so in early July the Crown said [those trials miscarried and recommended that everyone's convictions be quashed](#) by the Court of Appeal.

For Henriksen and Colin Maney, the Crown went even further, recommending that the men also be acquitted: their relatively minor sentences have been served; it wouldn't be in the "interests of justice" to take their cases any further. The acquittals become a reality only once the Court of Appeal makes them so, but frankly they're done deals.

The cases of Gail Maney and Stephen Stone, however? The Crown wasn't willing to fold on those quite yet.

So this hearing really came down to this: for Maney and Stone, would the quashing of each of their cases be followed by an acquittal (ie, formally "not guilty"), or by a permanent stay (almost the same thing, in that there'll be no new trial), or - worst-case scenario for the appellants - a retrial order?

Acquittal or stay would mean they no longer have convictions. A retrial would mean the multi-decade nightmare continues.

There was a mountain of pre-hearing material already in front of the Court, so the hearing was a chance for lawyers to help the panel of three judges - Justices Christine French, Rebecca Ellis and David Collins - navigate that mountain.

They did so in fine lawyerly fashion: passive-aggressive use of the words "with respect" followed by a cutting insult; Dickensian metaphors from the olden days; lots of "learned friends" and "your honour"; an insistence on using the word "endeavour" rather than "try".

It was measured and polite and polysyllabic, but underneath there was still a fierce urgency. The advance submissions meant everyone knew roughly what was coming up, but by the time it was all over, there'd been surprises and revelations, flashes of anger and sorrow, eyerolls and some tears.

It ended, as many appeals do, with a reserved decision, meaning the judges will deliver the punchlines in a written judgement that could take weeks or even months.

But there was nothing stopping others in the courtroom, or those watching via a video livestream, from coming to some preliminary conclusions of their own about New Zealand police practices of the past, and the very strange paths that lead to justice.

*\* Listen to the [Gone Fishing](#) podcast on your phone via [Apple podcasts](#), [Spotify](#), [Google](#) or wherever you get your podcasts.*

## **Six hours for the tip of an iceberg**

Around 10am on Tuesday, just after the registrar's "E tū koa! All stand for their Honours the King's Judges", they were right into it.

Appellants and onlookers were in the public seats at the back; the judges were at the front, spaced metres apart at a stupendously wide bench.

Between them, rows of two-person desks were populated by a horde of lawyers: three for Stone, three for Gail Maney, two sharing Henriksen and Colin Maney duties and finally, one lonely desk for the two Crown lawyers.



Inside Courtroom 1 at the Court of Appeal for this week's hearing. Photo: RNZ / Kate Green

It's impossible to overstate how complicated this case gets.

The police theory was that in August 1989 Gail Maney called for the death of Deane Fuller-Sandys, then Stephen Stone carried out the hit in broad daylight in a garage in West Auckland in front of eight or so others. He then raped and murdered one of those witnesses, Leah Stephens, a week later. If you want a primer on how police came to believe this, and how they built the case that led to the convictions of Stone, Maney, Maney and Henriksen, it's set out briefly in [this recent article](#), and at great length in the 2018 podcast [Gone Fishing](#).

But all you need to know to follow along for now, is that there were a hell of a lot of problems with that investigation. Which meant there was plenty for the appellants' lawyers to talk about.



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At first, there was some muttering of numbers and document names, to ensure everyone was literally on the same page, but eventually Paul Wicks KC, acting for Stephen Stone, began to work his way through some of the many reasons why an acquittal or stay made sense, and a retrial didn't: key witnesses lied; others recanted; the police bullied and coerced; evidence was contaminated when witness statements were swapped.

Sam Galler, for Stone, walked judges through the reasons why they could safely forget about Stone's temporary admissions to his crimes in 2012 while in custody. (Stone later retracted, and said he'd falsely confessed to improve his odds with the parole board).

Annabel Maxwell Scott, also acting for Stone, dug deep into the kaleidoscopic fabrications of key witnesses. "These accounts are fantastical and make no sense, are tainted, are unreliable, inconsistent, and lack any sort of sensible analysis," she said.

Kincade, for Gail Maney, dispatched the evidence of what she called the "rumour and gossip witnesses" - people whose initial contacts with police sparked the entire investigation.

Jack Oliver-Hood, also for Maney, rolled out some carefully planned zingers about the extent of police malpractice. "Police knew that [the witness] had lied over and over and over again. But now they wanted him to lie in a new way, and he cooperated," he said.

The two lawyers for Mark Henriksen and Colin Maney - Kerry Cook and Nick Chisnall KC - had relatively light duties. They knew in



advance their clients were guaranteed acquittal. But Chisnall gamely chipped in with some constitutional precedents and other densely legalistic stuff I frankly couldn't follow at all.

Late on Tuesday, the Crown's Mark Lillico finally got his turn to develop the arguments in the Crown's submissions, but he'd barely got past the throat-clearing when someone noticed it was almost 4pm - bedtime. Court adjourned.

It started up again at 10am Wednesday, and by 11.20am it was all over. Accounting for morning teas and lunch, the hearing to determine the fate of Maney, Stone and co took just under six hours.

It was able to move that fast because, as Kincade described it to me a few months ago, the hearing itself is only the tip of an information and communications iceberg. For many months - for years in some instances - the appellants' teams and the Crown and police have been going back and forth: requests, disclosures, refusals, redactions, re-requests, memos, phone conferences with appeal judges, submissions to the court, counter-submissions, resubmissions, on and on and on and on.

## **The fax and the job-sheet**

It was during this protracted paper war that two particular pieces of paper came to light: a fax, and a police job sheet, which the Crown conceded should both have been disclosed to defence teams all the way back in 1999, but weren't.

Those two disclosure failures were the reason that the Crown conceded, just last month, that the 1999 and 2000 trials had miscarried.

No surprise then that the fax and job-sheet got a lot of air-time at the appeal hearing.

The fax showed that in 1998, lead detective Mark Franklin sent the full statement of one key witness (his name is suppressed but in the Gone Fishing podcast we renamed him "Martin") to Barry Hart, who was the lawyer for another key witness (aka "Neil"). Soon after the fax was sent, "Neil" made drastic changes to his own statement, in ways that brought it in line with "Martin's".



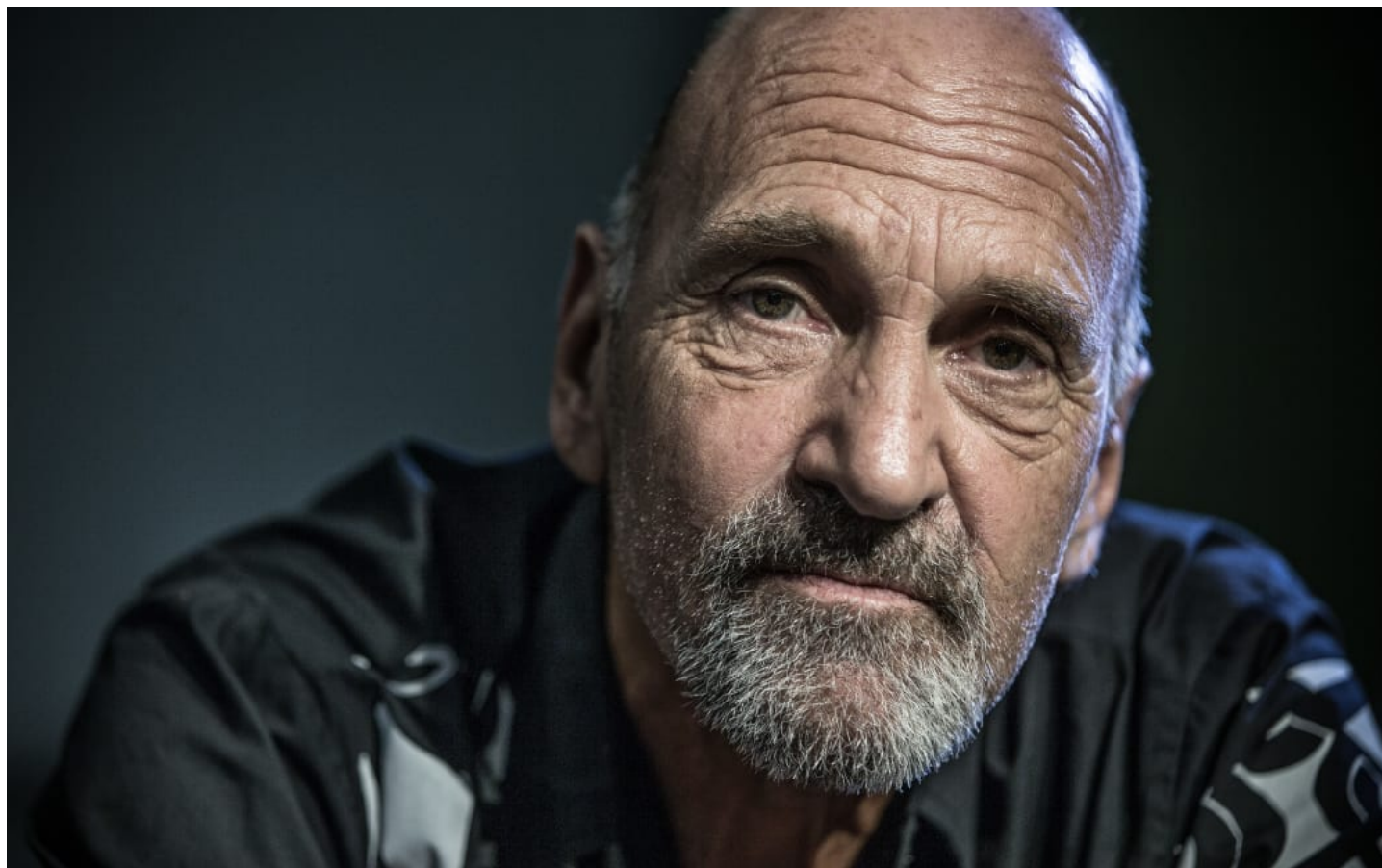
Deane Fuller-Sandys was, in the police telling, murdered at the request of Gail Maney. His body has never been found. Photo: Supplied

The fax is the smoking gun that explains how two supposedly independent witnesses suddenly ended up with near-identical accounts of the murder of Deane Fuller-Sandys, and the rape and murder of Leah Stephens, when previous statements had been wildly divergent.

It also implies, Stone's lawyers say, Franklin lied in court when he denied witnesses had been shown full versions of each other's statements.

And it's a smoking gun that clearly should have been disclosed to defence lawyers, but for some reason wasn't.

As Wicks argued, the key witnesses were "led and fed information to bring them to cohesive accounts"; then a fax which proved this was happening was "deliberately concealed from the public"; and then it was "lied about under oath at trial".



Former police detective Mark Franklin Photo: Jason Dorday / Stuff

The other disclosure failure, the job sheet, was buried in an archive of witness protection documents that were never seen by trial defence lawyers, and it only came to light because of some extraordinarily dogged digging by investigator Tim McKinnel, who's been fighting to prove Gail Maney's innocence ever since the release of *Gone Fishing*.

The job sheet showed that the same police officer, detective senior sergeant Franklin, was having secret meetings with another key witness (another suppressed name, but we called her "Sonia" in *Gone Fishing*) and those meetings weren't appropriately logged.

The inference to be drawn, the defence lawyers suggested, is that yet another so-called independent witness actually had her story fed to her by police. As Kincade put it: "There was a relentless pressure placed on them by the police. It did not relent until they said - not the truth, but the story that the police crafted and had honed out of rumours and gossip."

### **'There is no remaining evidence against Miss Maney'**

The Crown's pre-hearing concessions meant the appellants were sometimes pushing on an open door. But it seemed that wasn't enough: they wanted to crash right through, then find some more doors to knock on. The instinct for overkill was clearest in a remarkable moment shortly after morning tea on the first day.

Kincade was handing around copies of a printed document when she mentioned, almost in passing, that during the morning break Crown counsel Mark Lillico had conceded to her that, as Kincade put it, "the current state of the crime case is that there is no remaining evidence against Miss Maney in respect of the homicide".

Before I'd quite had time to process this surprising sentence, Justice Collins piped up: "Is that because the only witness who ever said that Miss Maney ordered a hit is now dead?"

They were talking about Tania Wilson - Maney's childhood friend and one of the four key witnesses who once propped up the Crown case. Tania Wilson recanted her evidence way back in 2003, but her death in late 2023 puts her already shaky evidence totally out of reach for a possible retrial.





Tania Wilson, pictured in 2018 during the making of the *Gone Fishing* podcast. She died in late 2023. Photo: Jason Dorday / Stuff

That being the case, Justice Collins asked Kincade, "Is that not the end of the story from your perspective?"

In other words, you're done: there's no murder case left against your client, so maybe you should sit down?

But Kincade didn't want to take the win or take her seat. Because in the Crown's submissions, she'd spotted a worrying loophole. There were claims in there about the Crown seeking fresh evidence. It was looking at taking some old DNA samples back to ESR for testing with newer, more sensitive methods. Apparently, there was some new information "from the public" in response to recent media coverage.

While apparently vague, it was "still a risk ... still a jeopardy" to her client, Kincade said. So thanks all the same, but she was going to stay on her feet a little longer and keep picking the case apart.

Justice Collins and Kincade went back and forth on this a couple more times, but by then I was looking around the courtroom, trying to see if I'd really heard what I thought I'd heard, and whether everyone else had heard it too: this was an appeal judge stating, clear as a bell, that there didn't seem to be a case for retrying Gail Maney. This was it, surely?

I looked over to Maney at the back of the room. She was dabbing at her eyes with a tissue. She knew what she'd just heard.

### **The Crown's shrinking corner**

But still, Kincade had a point. Even though the Crown had made concessions left, right and centre, it wasn't quite giving up. Lillico had a small and shrinking corner to fight, yet still he fought it.

He was conceding that sure - the defence was deprived of the opportunity to use the "Barry Hart fax" and the "Sonia" witness protection job sheet back in 1999 and 2000, so those trials miscarried.

And sure - the Crown was no longer relying on Tania Wilson's evidence, which meant there was currently not enough evidence to rebuild a murder case against Gail Maney.

And sure - another of the four key witnesses, "Sonia", had recanted her evidence.

And sure - when police recently visited another of the four, "Neil", to check out his availability for any future retrial, he was uncooperative and colourfully abusive, so he might be hard to drag back into a witness box.

But all the same, Lillico argued that the judges could still order a retrial (which, confusingly, wouldn't mean there must be a

retrial; rather it would punt the matter to the intray of the Crown solicitor who would then make the final call).

"I say on behalf of the Crown that there is a case as at today," said Lillico. The judges should make a retrial order because for all the flaws there was still usable evidence left in the statements of "Neil" and "Martin", and one might conceivably use that to reassemble a case against Stone.

Plus, there were a bunch of other smaller-scale independent witnesses who haven't been discredited, whose evidence, while not central to the case, still tends to support the police theory of what happened.

Plus, there was the fact that 14 years ago Stephen Stone briefly admitted to the two murders, before retracting and claiming he'd done so only to improve his chances with the Parole Board.

Plus - and this was the bit that drew unfeigned eyerolls from just about every other lawyer in the room - the Crown was chasing down this new DNA analysis, and the new information from the public.

He couldn't actually specify, here and now, what the "new information" consisted of, but still - why not order a retrial and let the Crown solicitor take a good old look at it all?

That last point - letting the Crown solicitor deal with the future arrival of some hypothetical evidence - clearly didn't impress Justice Collins, who asked a barrage of questions that, in summary, amounted to: Seriously, dude?

Though being an appeal judge, he put it like this: "I have to say that speaking solely for myself, I don't find that a particularly edifying approach."

## The 2am immunity question

Of the three judges on the panel, it was Collins who seemed most ready to get into the weeds of this case. Collins was solicitor general between 2006 and 2012 and is an acting appeal court judge, having attempted retirement earlier this year.



Justice David Collins. Photo: RNZ / Samuel Rillstone

Late on the Wednesday morning he admitted that he had been awake at 2am the night before, "fretting" over something.

"There is," he said, "another limb to this that I want to explore."

The issue was this: two crucial witnesses, the men we're calling "Neil" and "Martin", each gave evidence that they were present, and closely involved, when Stone committed two murders and a rape. In order for them to be able to give evidence against Stone

at trial, they were given immunity from prosecution for their own involvement.

But the "Barry Hart fax" shows that their evidence was in fact developed with inappropriate involvement by police.

So the question keeping Collins awake at 2am was whether the solicitor general in 1999 was "properly informed of the basis upon which this evidence was developed".

Because if not, "there is a reasonable likelihood the solicitor general would not have granted immunity to these two witnesses. And absent such immunity, they would not have given evidence.

"And if they hadn't given evidence, then on what basis would they be able to give evidence now?"

It was another one of those moments when everyone in the court looked around to check: Did I hear that right? Does it mean what I think it means?

Was this a Court of Appeal judge suggesting that these two witnesses (whose evidence was utterly essential in the convictions that put Stephen Stone in jail for 26 years and Gail Maney for 15) should perhaps have never received immunity at all, which means they wouldn't have given evidence, which means there simply wouldn't have been any trial at all?

## Waiting, again

Not long after that, Lillico wrapped things up. The appellants' lawyers made brief responses. Justice French said the judges' decisions would be reserved "but rest assured that we will endeavour to get a decision out as soon as we possibly can because we know how important it is to everybody, and the significance of it".

Wicks asked if Stephen Stone would be granted bail or not, and the judges said they'd get back to him on that.

The lack of a clear outcome on the day made for a strange sort of anticlimax.



In the courtroom, Maney wiped away tear after hearing the Crown had admitted there was no evidence left against her for homicide. Photo: Jason Dorday/Stuff.

Outside the courtroom, surrounded by half a dozen friends who'd been there to support her, Gail Maney said she was disappointed not to have had a clear result, but she took huge comfort from the fact that "the Crown admitted yesterday that there is no case against me ... I'm smiling".

Kincade said it was a relief that the Crown had given assurances they will not pursue another trial, "but we do need the court to



make this official, so we will wait for that".

Maxwell Scott said: "I'm very pleased with how the case went. My priority now is to get Stephen out of prison and hopefully get the result as soon as possible, and put an end to this matter."

From inside the courtroom, we couldn't hear any audio from the small booth in Whanganui prison where Stephen Stone had sat with folded arms and dark sunglasses for a day and a half, but he could hear us.

Just before the video call was disconnected, Wicks looked up at the screen then leaned into one of the court microphones to make sure his client - a man who's been in prison ever since his trial in 1999 - could hear him.


"Stephen, we'll give you a call very shortly."

*\* Adam Dudding is the co-producer of Gone Fishing, a podcast about the Gail Maney case, released in 2018. Listen to a bonus episode of the hit podcast from Dudding and co-producer Amy Maas, out today on **RNZ and Stuff** and wherever you listen to podcasts.*

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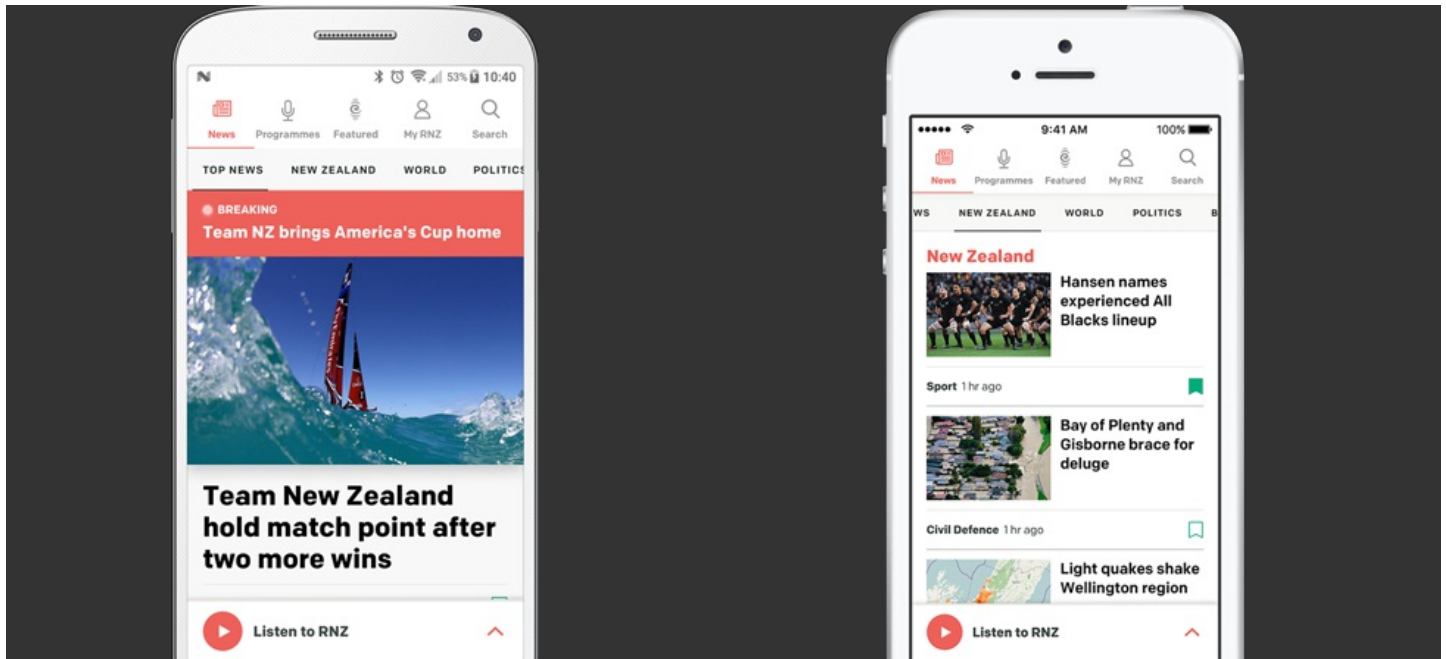
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