

9.0 1971 NOVEMBER 15, 1971: REINVESTIGATION

The Conviction

9.1 The trial of Donald Marshall, Jr. occupied four days commencing November 2, 1971 and concluding on November 5, 1971 (Exhibits 1, and 2 - R. v. 1, and 2). James William MacNeil had not thought that Donald Marshall, Jr. would be convicted, and did not attend the trial (T. v. 3, p. 624). MacNeil was concerned about the conviction because he knew that Donald Marshall, Jr. had not done the stabbing, he continued to deal with the stress of this knowledge through alcohol and drugs (T. v. 3, pp. 455-456, 582-584, 597). It was only upon the return of his older brother John from Ontario that Jimmy MacNeil was persuaded to discuss the matter, and then persuaded to go to the police (T. v. 3, pp. 456-457). Jimmy MacNeil acknowledged to this Commission that on November 15, 1971 he had been drinking prior to going to the police (T. v. 3, pp. 457-458, 581). At the Police Station Jimmy MacNeil met either William Urquhart or John MacIntyre - he did not know either of them at all (T. v. 2, pp. 458-459). The police whom he did meet treated him well, and gave him a chance to tell everything that he wanted to say (T. v. 3, pp. 469-470).

9.2 Jimmy MacNeil and his brother John also took their brother David with them to the Police Station (T. v. 28, pp. 5313-5314). David MacNeil does not really recall whom he met when the three arrived at the Police Station (T. v. 28, pp. 5315-

5316). As for the statement which David MacNeil gave himself, he indicated that the police "just wrote it down as I told it to them" (T. v. 28, p. 5317). David MacNeil did indicate that once the statement was completed (Exhibit 16 - R. v. 16, pp. 174, 175), he was advised not to mention anything about it to anybody (T. v. 28, p. 5317).

John Joseph MacNeil

9.3 The MacNeil brother who prompted Jimmy and David to go to the police was John Joseph MacNeil who had returned home from Toronto the morning of November 15, 1971. It is apparent that John Joseph MacNeil took charge by getting Jimmy MacNeil to go down to the Police. It also appears reasonable to believe that John Joseph MacNeil was taking the most active and authoritative role when the three MacNeil brothers arrived at the Police Station because it was John Joseph MacNeil who was interviewed first at 6:25 p.m. on November 15, 1971 (Exhibit 16, R. v. 16, pp. 171, 172-173). This initial statement was taken by William Urquhart, and disclosed that another of the MacNeil brothers appeared to know about the stabbing in the park and was asserting the innocence of "a fellow [who] got life for it and he had nothing to do with it" (Exhibit 16, R. v. 16, p. 171). Unlike the typed version of this statement from John Joseph MacNeil, the handwritten version begins with a continuous narrative setting out essentially the whole story which John Joseph MacNeil had to tell before any question was asked (Exhibit 16 - R. v. 16, pp. 172-173).

9.4 William Urquhart took this statement from John Joseph MacNeil with "Black" Michael J. MacDonald as a witness. The statement was hurriedly taken down, lasting a mere fifteen minutes. Unfortunately, no further circumstances surrounding the taking of this statement and John Joseph MacNeil's participation in the events of November 15, 1971 are available since John Joseph MacNeil died approximately three years ago as a result, according to his brother Jimmy, of "excessive drinking" and otherwise not looking after his health (T. v. 3, pp. 607-608; T. v. 28, p. 5313).

9.5 Assuming that the times indicated on the following statements that evening are correct, at least with respect to the MacNeils, after receiving John Joseph MacNeil's essentially hearsay evidence there was a delay of thirty minutes before a brief statement was taken from David William MacNeil, and finally James William MacNeil (Exhibit 16 - R. v. 16, pp. 174-180).

9.6 Given the consistent involvement of John MacIntyre in the taking of important statements with respect to the Seale murder investigation on which he was the principal investigator, it would appear reasonable to assume that he was not present at the Police Station when the MacNeils first arrived or he would in all likelihood have taken the first statement. Every other statement that evening - from the MacNeils and the Ebsarys is taken by John MacIntyre (Exhibit 16 - R. v. 16, pp. 174-194). William Urquhart or "Black" Michael MacDonald must have contacted John MacIntyre in the half hour between the conclusion of John

Joseph MacNeil's statement and the beginning of David William MacNeil's statement. Whether Urquhart and MacDonald were advised to wait until MacIntyre's arrival, or chose to wait until MacIntyre's arrival, it is clear that within an hour of the first statement being commenced the Sydney Police were in a position to take a statement from a new alleged eyewitness to the Seale stabbing.

9.7 The eyewitness was the third witness of the three spoken to by the Police. This allowed them to get the background from Jimmy MacNeil's brothers as to how he suddenly appeared ten days after the trial of the Seale murder had concluded. It is respectfully submitted that this was appropriate procedure to follow in this case - to interview the accompanying "witnesses" before the eyewitness because it would be important to explore the question of why this person was coming forward now when he had not come forward earlier. That is the way the investigation proceeded on that evening.

The Results

9.8 As a result of taking the statements from the MacNeils, the Sydney Police had an eyewitness account of the Seale stabbing which was consistent with the injuries received by the victim, consistent with the racial identification of the two young men involved; consistent with Donald Marshall, Jr.'s initial statement on May 30, 1971 - but most important specifically identifying the individual who committed the stabbing as Roy Absary (Exhibit 16 - R. v. 16, pp. 176-177, 178-180). This was

something no other witness had been able to tell prior to November 15, 1971. Indeed that name first appeared only in the statement of David William MacNeil (Exhibit 16 - R. v. 16, p. 174).

9.9 Assistant Crown Prosecutor Lew Matheson had been notified of the developments in the case, likely as soon as James William MacNeil's statement had been taken. Matheson advised the Commission that one evening a short time after the trial while having a late supper he received a telephone call to go to the Police Station because a new witness had come forward indicating that somebody other than Donald Marshall, Jr. had stabbed Seale (T. v. 27, pp. 5008, 5009). Matheson also indicated that upon arrival within five minutes of the telephone call he was handed "a statement that the police told me they had taken from another gentlemen who was in the building" (T. v. 27, p. 5009). Matheson identifies this as the Jimmy MacNeil statement, which would indicate that he arrived sometime after 8:00 p.m. when that statement had been completed (Exhibit 16 - R. v. 16, pp. 177, 180).

9.10 Matheson became alive to the concern that:

...what was most compelling at the time was people were in and out. The fact that James MacNeil had come forward and made a statement was known, at that point, to my knowledge among enough people that I feared that somebody would get to...Ebsary family and - alert them that they were going to be confronted with this. I didn't want to - them to have time to prepare a story that wasn't true. And I felt that the quicker they were confronted the better and I felt

that had to be regardless of anything else that had to be done that night. (T. v. 27, pp. 5015-5016)

It is respectfully submitted that Matheson would not have had this concern if he were simply dealing with Jimmy MacNeil and the police. It is respectfully submitted therefore that David MacNeil and John Joseph MacNeil were probably still at the police station as well. Given Matheson's feelings, they would be consistent with Matheson having given a direction to David MacNeil not to discuss the case with anyone given the further investigation that needed to be conducted (T. v. 28, p. 5317). Lew Matheson then directed the Sydney Police Officers there to "go and round-up the Ebsary family wherever they were. To isolate them and to confront them with MacNeil's story and to record their answers." (T. v. 27, p. 5016).

The Ebsarys

9.11 Crown Prosecutor Matheson's direction was followed and by 8:45 p.m. the wife of Roy Ebsary was being interviewed by John MacIntyre with William Urquhart as a witness (Exhibit 16 - R. v. 16, pp. 181-185). It will be noted that the statement is warned. It is respectfully submitted that the obvious basis for the warning were the comments made by Jimmy MacNeil in his statement of earlier that evening. MacNeil had advised about Mrs. Ebsary possibly having participated in an attempted intimidation of him with respect to coming forward about his story about Roy Ebsary (Exhibit 16 - R. v. 16, p. 177). Mary Ebsary's statement confirmed what Jimmy MacNeil had attributed

directly to her. However, it was also apparent as the statement progressed that Mrs. Ebsary's concern was primarily domestic. Mary Ebsary at the time commented about the Seale stabbing in relation to MacNeil and her husband by saying:

I don't think Jim or my husband would have anything to do with that. Roy only weighs about 115 lbs.

Q. Was there any discussion about this affair by Jimmy or your husband.

A. No. (Exhibit 16 - R. v. 16, p. 182)

9.12 William Urquhart witnessed this statement, and his signature appears on all three hand written pages of the document (Exhibit 16 - R. v. 16, pp. 183-185). William Urquhart had no further involvement with the re-investigation that night, and the evidence from E. Alan Marshall is that to the best of his knowledge William Urquhart had no further involvement in the 1971 re-investigation of this matter (T. v. 31, p. 5757). Ultimately, William Urquhart found out what the results of the 1971 R.C.M.P. re-investigation had been in a general way, but without ever actually being given an opportunity to read the R.C.M.P. re-investigation report (T. v. 52, pp. 9613-9614, 9616-9618).

Conclusion

9.13 It is respectfully submitted that William Urquhart's limited participation in the 1971 re-investigation was appropriate and proper. He initially received and recorded information which related to the Seale stabbing. Urquhart not only received the information which related directly to the Seale stabbing but also secured information giving background to the

source and potential factors which might have influenced this new eyewitness to first hold back and then come forward. Upon receiving some of this information, Urquhart notified or caused to be notified his superior officer. The Crown Prosecutor became involved and directed that further statements be taken and that this matter not be disclosed further. The testimony before this Commission indicates that disclosure of any of this police information to the Defence would have been through Crown counsel (T. v. 26, pp. 4831-4832). It is respectfully submitted that William Urquhart did everything that it was appropriate for him to do with respect to the new information which he was presented with on the evening of November 15, 1971.

10.0 FURTHER PRACTICO CONTACT

Nova Scotia Hospital Transportation

10.1 The Nova Scotia Hospital is a mental care and treatment facility in Dartmouth, Nova Scotia. In 1971 patients were sent to the Nova Scotia Hospital from the Sydney area for numerous things, including alcohol and drug abuse. The family doctor would make the referral (T.v. 52, p. 9620). The procedure followed was that the Chief of Police would detail a police officer on days off to transport patients, for which payment was received from the County of Cape Breton (T.v. 10, p. 1700). This practice no longer exists (T.v. 10, p. 1699). It was normal practice to leave in the morning quite early (T.v. 52, p. 9619), pick up the patient and a sealed envelope for the hospital, and deliver both to Dartmouth (T. v. 52, p. 9620).

Transporting John Pratico

10.2 John Pratico and his mother both testified that prior to the Marshall trial in 1971, Sydney Detective "Red" M. R. MacDonald drove John to the Nova Scotia Hospital (T. v. 12, pp. 2090-2091; T. v. 13, pp. 2279-2280). This admission had been arranged for Pratico by Dr. A. B. Gaum at Pratico's request:

...Just told him my nerves were really bad and I had a lot of things on my mind and I need to get away...-- and get help (T.v. 12, p. 2091; see also p. 2143).

With respect to this first trip with "Red" MacDonald, Pratico

does not recall any discussions in the car between Sydney and the Nova Scotia Hospital, but does recall that his mother and sister were with him at the time (T. v. 12, p.p. 2090-2091).

10.3 After giving evidence at the trial, Pratico felt that his nervous condition worsened (T. v. 12, p. 2121). Pratico indicated:

That was my breaking point. That's where I broke. My nerves went completely....I went back to the hospital....Very shortly afterwards. (T.v. 12, p. 2103).

John's mother Margaret did not recall exactly when John went back to the Nova Scotia Hospital, and did not go with him that time (T. v. 13, p.p. 2282-2283). Margaret Pratico could not recall either whether John had been picked up at the house or not (T. v. 13, p. 2283). However, she did acknowledge that his nerves were sufficiently bad after the trial that it justified John going back to the Nova Scotia Hospital (T. v. 13, p.p. 2283-2284).

Both John Pratico and Margaret Pratico indicated in their testimony that John had a significant drinking problem at all times in 1971 (T. v. 11, pp. 2005-2008; T. v. 12, pp. 2105-2106, 2131; T. v. 13, pp. 2252-2253).

10.4 John Pratico's medical records from the Nova Scotia Hospital (Exhibit 47) indicate that on November 29, 1971, William Urquhart had occasion to escort John Pratico to the Nova Scotia Hospital (Exhibit 47, p. 83-unpaginated). William Urquhart had no specific recollection of this encounter with Pratico (T. v. 12, p. 9619), but indicated from general practice that he would

have used a private car for the five hour trip and could well have left Sydney at 5:00 a.m. in order to have delivered Pratico for admission by 10:30 a.m. (T. v. 52, p. 9619).

Significance of the Encounter

10.5 It has been suggested that if only Donald Marshall, Jr. or his lawyers had known that John Pratico was mentally unstable, Pratico could have been more convincingly discredited at trial. Simon Khattar, one of Marshall's Defence counsel, expressed the view to this Commission that at the time of the Trial he was of the view that Pratico had been sufficiently discredited that the case was won anyway (T. v. 25, pp. 4733, 4756). Khattar indicated that knowledge of Pratico's stay at the Nova Scotia Hospital between the Preliminary Inquiry in July and the Trial in November might have helped (T. v. 25, p. 4719), but Khattar also acknowledged that in 1971 any information about a Crown witness would have come from and through the Crown Prosecutor:

We didn't go to the police (T. v. 26, p.p. 4831-4832).

10.6 As indicated above, John Pratico's re-admission to the Nova Scotia Hospital occurred on November 29, 1971 (Exhibit 47, p. 83-unpaginated). John Pratico was discharged subsequent to this admission to the Cape Breton County Hospital on March 29, 1972 (Exhibit 47, p. 73-unpaginated). Pratico remained in the Cape Breton Hospital until June 13, 1972 (Exhibit 47, p. 69-unpaginated), was re-admitted to the Cape Breton Hospital on

December 7, 1972, and transferred by Cape Breton Hospital personnel to the Nova Scotia Hospital again on December 12, 1972 (Exhibit 47, pp. 45, 69-unpaginated).

10.7 The Induction Training Officer at Dorchester Penitentiary who prepared the Cumulative Summary for Donald Marshall, Jr. on July 21, 1972 indicated that Donald Marshall had been admitted to that institution on June 20, 1972, and some time within the next month had expressed the view that:

According to inmate, one of the witnesses is presently in the Provincial Hospital in Dartmouth, N.S., under protection for fear of Indian Tribe wanting to kill him. (Exhibit 112-R. p. 35, pp. 2-3).

John Pratico's release from in-patient care had occurred just a week prior to Marshall's transfer to Dorchester Penitentiary from the Cape Breton County Jail. It is reasonable to deduce from all of this documentation that Donald Marshall, Jr. himself was well aware prior to his transfer to Dorchester Penitentiary that John Pratico had been admitted to a mental care institution.

Conclusion

10.8 There is no evidence that William Urquhart would have had any understanding about John Pratico's particular problems when he delivered Pratico to the Nova Scotia Hospital in November of 1971. There is no evidence that it would even have been expected that William Urquhart would convey this kind of information to Defence counsel. Urquhart would not have had information to convey, not knowing the reason for John Pratico's

admission because this information would be contained in a sealed envelope. It is not reasonable in any event to expect that William Urquhart should have breached any medical confidentiality which might attach to the simple fact of admission to a mental care facility, particularly when any supposition about why the admission occurred would have been pure speculation on William Urquhart's part.

10.9 It is respectfully submitted that William Urquhart had no duty or moral obligation to provide the information that he had transported John Pratico to the Nova Scotia Hospital to anyone concerned with Donald Marshall, Jr.'s Defence. It appears that Donald Marshall, Jr. was aware of that information anyway by at least June, 1972. The Appeal of Marshall's conviction was heard on January 31, 1972 (Exhibit 2-R. v. 2, p. 117), and decision was not delivered until September 8, 1972 (Exhibit 2-R. v. 2, p. 117). If Donald Marshall, Jr. and his counsel on the Appeal, Mr. C. M. Rosenblum, Q.C., regarded the information about John Pratico as significant, there was clearly time between the receipt of information and the delivering of the Appeal Division's decision to have made an application for a re-hearing and introduction of such further new evidence as Marshall and his counsel deemed relevant: Criminal Code, R.S.C. 1970, c. C-34, s. 610; e.g., Horsburgh v. The Queen, [1968] 2 C.C.C. 288 (S.C.C.); R. v. Young and Three Others, [1970] 5 C.C.C. 142 (N.S.S.C., A.D.); and as to re-hearing, either through suspension of adjudication of the appeal: Easton v. The Queen (1961), 36 C.R.

392 (Que. Q.B., A.S.), or by reference: Reference re Regina v. Gorecki (No. 2) (1976), 32 C.C.C. (2d) 135 (Ont. C.A.).

10.10 It is respectfully submitted that there is no basis upon which to attribute fault to William Urquhart with respect to his involvement in transporting John Pratico to the Nova Scotia Hospital in November, 1971. This did nothing to contribute to the fact or length of Donald Marshall Jr.'s imprisonment for the stabbing of Sandy Seale.

11.0 1974 - RATCHFORD/EBSARY/GREEN CONTACT

The Nature of the Story

11.1 William Urquhart's next alleged involvement with the Marshall case came in February or March of 1974 (T. v. 24, pp. 4392-4393, 4401). The story essentially reduces itself to the proposition that within one day in the late Winter or early Spring of 1974, Detective Urquhart was visited by David Ratchford, Donna Ebsary, and later by R.C.M.P. Officer Gary Green. The alleged purpose of these contacts was to advise the Sydney Police that Donna Ebsary believed that her father Roy had stabbed Sandy Seale. Very simply, the allegation is that the Sydney City Police, and William Urquhart in particular, did not want to hear anything from these individuals and refused to consider the possibility of this as new evidence casting doubt upon the appropriateness of the conviction of Donald Marshall, Jr.

11.2 This alleged series of events occupies a rather bizarre place in the categories of evidence heard by this Commission. The main protagonist and promoter of the allegation, David Ratchford, is nothing if not an impressario. The key to the allegation is a reluctant witness whom even this Commission chose not to pursue though her attendance had previously been secured in the Nova Scotia Courts. The third actor in these strange events is an R.C.M.P. officer, Gary Green, who does not appear to be an investigator and who kept no notes of his

involvement in this matter at all. According to other R.C.M.P. officers testifying before this Commission, note-keeping is one of the basic things to do (e.g., T. v. 38, pp. 7002, 7003).

11.3 The story which this Commission must assess is made even more mysterious by the fact that essentially the same information which this trio attempted to offer, prompted these same Sydney City Police officers to call upon the Crown in 1971, 1981 and 1982. It is respectfully submitted that this Commission should disbelieve much, if not all, of the evidence given with respect to this incident by Ratchford; that this Commission should consider Gary Green's evidence as unreliable; and finally consider that the sworn evidence of the reluctant witness Donna Ebsary can only really support the great suspicions about whether there was really any event involving William Urquhart to create this story.

Ratchford's Version to this Commission

11.4 One night in early 1974 Donna Ebsary confessed to Ratchford that her father Roy had stabbed Sandy Seale (T. v. 24, pp. 4393-4398ff). As a result of hearing this confession, Ratchford felt "under both a legal and a moral obligation to try to do something" and resolved to inform the "proper authority" - the Sydney Police Department (T. v. 24, pp. 4400-4401). This he and Donna Ebsary did the next morning (T. v. 24, p. 4401). Ratchford walked into the police station, and without having had any prior contact with MacIntyre or Urquhart, and not knowing them, but saying he knew who they were and what they looked like,

asked specifically for both MacIntyre and Urquhart by name (T. v. 24, pp. 4402-4403, 4449, 4453, 4464).

11.5 Ratchford only spoke with Urquhart (T. v. 24, p. 4404), but MacIntyre was in the same office and towards the end of the conversation came out to listen to what Ratchford had to say (T. v. 24, pp. 4404, 4449, 4466, 4467). Ratchford and Donna Ebsary were at the police station for about five minutes (T. v. 24, pp. 4404, 4452, 4466, 4467). Urquhart and Ratchford stood throughout (T. v. 24, pp. 4451, 4467).

11.6 Ratchford says that he introduced himself and said that he had brought "this girl" with information that might help with the Donald Marshall case; that according to her, her father was responsible; that his name was Ebsary (T. v. 24, p. 4403). Ratchford did not testify directly that he had introduced Donna Ebsary although his evidence as led by Commission counsel may be some evidence that he did (compare T. v. 24, pp. 4403, 4453, 4467-4468). However, at one point in cross-examination Ratchford made a remark to the completely opposite effect:

Q. Was the name Ebsary mentioned at all in the conversation with them?

A. Again I have to say that I cannot recall ever bringing his name up to them at all. (T. v. 24, pp. 4454-4455).

1.7 Urquhart's response was apparently official, plain, courteous, and not rude (T. v. 24, pp. 4404, 4483). Urquhart suggested that Ebsary had already been in for questioning and that the case was closed and the police had the person whom they

considered to be the man responsible safely behind bars (T. v. 24, p. 4403). Ratchford also indicated that Urquhart gave the impression that several other people had come forward and that Urquhart did not want to hear any more about it (T. v. 24, pp. 4454-4455, 4468, 4483).

Ratchford's Version to the R.C.M.P.

11.8 David Ratchford gave a written statement to Staff Sergeant Harry Wheaton on March 29, 1982 (Exhibit 74). Ratchford acknowledged giving this statement, reading the statement through before signing it, and then signing it (T. v. 24, pp. 4510, 4518, 4522). Ratchford also acknowledged on the stand that his recollection in March, 1982 would have been as good or better than it was when he testified before this Commission (T. v. 24, pp. 4518, 4522).

11.9 The germane portion of the statement reads:

I recall that one evening she told me an amazing story about her father.... I felt that this should be reported to the police immediately. I phoned the City Police and talked to Bill Urquhart I believe. He said that the case was over and they were not prepared to re-open the case. I believed this girl and felt that this was most improper. Cst. Gary Green was a good friend so I reported it to him.

I understood that he also ran into a blank wall with the City Police. (Exhibit 74)

11.10 There are three main points of interest in this 1982 statement which affect critical aspects of Ratchford's oral testimony. As with his oral testimony to the Commission, Donna Ebsary related her feelings about her father to Ratchford in the

evening. Unlike his oral testimony to this Commission, Ratchford does not indicate in his R.C.M.P. statement that he waited to contact the City Police until the next day. Instead, he states that:

I felt that this should be reported to the Police immediately. I phoned...(Exhibit 74)

Use of the telephone is a more consistent reaction with "immediately" than is waiting until the next day. The second and perhaps major point of difference in the statements and his oral testimony is the fact that Ratchford says nothing about going to the Police station - either by himself alone or with Donna Ebsary. Instead, in 1982 he told the authorities that he had telephoned the Sydney City Police. There would have been no opportunity to stand face to face with William Urquhart for five minutes, and to be joined by John MacIntyre. Finally, in his 1982 statement to the R.C.M.P., Ratchford is not even sure that it was William Urquhart to whom he spoke.

11.11 When confronted with the statement and these three rather major inconsistencies, Ratchford insisted to this Commission that he did actually visit the Police and did not call as indicated in his statement (T. v. 24, pp. 4517, 4520). The possibility that he had not gone to the Police with Donna Ebsary was "in my humble estimation extremely remote" (T. v. 24, p. 4523). Interestingly, Ratchford did acknowledge that he was uncertain in 1982 that it was William Urquhart with whom he had spoken in 1974 (T. v. 24, p. 4526). Any certainty he had with

respect to Urquhart's identification has come since 1982 - in other words, it is not based on a recollection of events in 1974.

11.12 It is not possible in this written brief to convey the striking change in demeanor of the witness Ratchford when confronted with his 1982 R.C.M.P. statement. Ratchford had already admitted to this Commission that he was a "professional actor" (T. v. 24, p. 4380). In preparing to testify, Ratchford "had forgotten all about this" statement (T. v. 24, p. 4510). Ratchford explained away the inconsistencies of his 1982 statement with his oral evidence on the basis that when he gave that statement to the R.C.M.P., he had not "rehearsed" his evidence (T. v. 24, pp. 4525-4526). That Ratchford does not feel that he was "rehearsed" is puzzling in light of the fact that he acknowledged that he may well have been the one to contact the R.C.M.P. to offer assistance - as appears from Staff Sergeant Wheaton's Report of the context in which the statement was taken (Exhibit 19 - R. v. 19, p. 86; T. v. 24, pp. 4528-4529). Also, Wheaton's Report refers to media coverage prompting Ratchford's offer of assistance (Exhibit 19 - R. v. 19, p. 86). Ratchford's evidence to the Commission was that prior to talking to Wheaton he had heard nothing in the media "and then suddenly - and then after I - had the audience with them at the high school, then things started to unfold" (T. v. 24, p. 4530; emphasis added).

11.13 A further point dealing with Ratchford's reliability as to significant events may be assessed in terms of independently verifiable details which, until confronted,

Ratchford asserted with as much directness and authority as one might expect from a "rehearsed" witness. For example, Commission counsel actually spent a good deal of time dealing specifically with the question of dates, with which Ratchford had some considerable difficulty (T. v. 24, pp. 4436 ff). Dates were also assiduously studied with Ratchford by counsel on behalf of Oscar Seale (T. v. 24, pp. 4497-4498). Before this Commission Ratchford indicated that his confusion about dates was because of the "so many dramatic events" in his life at those particular times (T. v. 24, p. 4428; emphasis added). It is respectfully submitted that where there is not independent verification of the stories related by Ratchford to this Commission, his evidence should be entirely disregarded.

Gary Green's Version

11.14 Gary Green joined the R.C.M.P. in 1967 and served mostly as a detachment constable and on highway patrol before becoming involved in financial services for the Force (T. v. 38, pp. 7076-7077). Green was in Sydney between 1973 and 1977 (T. v. 38, p. 7076). Green kept no notes of this particular matter even though "normally I had a note book" (T. v. 38, p. 7077). It appears that during his time in Sydney Green had no experience with Detective Urquhart (T. v. 38, p. 7081).

11.15 Green placed the time of his contact as the fall of 1974 (T. v. 38, p. 7083). Green's first contact with Ratchford and Donna Ebsary with respect to this matter was to advise them to go down and speak with the City Police (T. v. 38, pp. 7086-

7087). Green does not know whether they did go or not:

Q. Do you know if Mr. Ratchford and Donna Ebsary did go to the Police?

A. I assume that they did because my next contact, if we had more than one, is that they had been done [down?] and they hadn't accomplished anything.

Q. You were aware then at some time that Ratchford and Donna, or one of them, had been to the Sydney Police and had not accomplished anything.

A. It was my assumption or my conclusion that they had both gone down. He to support her and to give her moral support, so to speak. (T. v. 38, p. 7077).

11.16 Upon understanding that Ratchford and Ebsary had not been satisfied with their contact with the City Police, Green went down himself to see the detectives he knew, John MacLeod and Edward MacNeil (T. v. 38, p. 7088). Understanding that they were out of town for a week, Green then met the senior investigator, the Detective Urquhart whom he knew but with whom he had not had a lot of dealings (T. v. 38, p. 7089). Green continued as follows:

I went into the detective office, which is away from the main booking area, down the hall, into the right, and I said, "I have to come down to make sure that certain information was passed on to you, and it concerns Donna Ebsary, on the night of the stabbing she saw her father washing blood off a knife in the kitchen. This is what she's indicated to me....and that they had been down." Some how in the conversation the Marshall file was brought out and put on the table and I indicated that I wasn't there to read

the file or to take the file, I was simply there to pass on this information....and the response to that was that in his opinion Donna Ebsary was a disturbed, disgruntled young lady who had just left home, and he wasn't going to re-open this file or this investigation based on another rumour, the way I recall him saying it.

Green recalls this as a very intense moment, following which Urquhart advised that the R.C.M.P. had already reinvestigated the case. Green left (T. v. 38, pp. 7089-7090). If Ratchford had been to the police and spoken with Urquhart, why would Green need to say "they had been down"?

11.17 Green gave further evidence that he went to the Sydney R.C.M.P. General Investigation Section and had a discussion with an officer about the facts which were prompting him to want to look at the R.C.M.P. file on the matter (T. v. 38, pp. 7090-7094). Green went back and explained to Ratchford that there already had been a reinvestigation involving Roy Ebsary (T. v. 38, pp. 7094-7095).

11.18 Green did not expand upon his direct evidence much under cross-examination. Green's impression was that Urquhart was familiar and aware of Donna Ebsary, but did not agree that it was his impression that Urquhart had already spoken with Donna Ebsary on a previous occasion (T.v. 38, p. 7099, 7109). Green felt that Urquhart was not particularly interested in the information brought about Donna Ebsary (T.v. 38, p.p. 7108-7109). Green acknowledged that the Sydney City Police Marshall file had been made available to him to examine without any

request by him, and Green chose not to examine it. Green disagreed with evidence to the contrary which had been given by David Ratchford (T.v. 38, pp. 7112-7114). Green did acknowledge that at some point during his inquiries he was made aware that the re-investigation by the R.C.M.P. a few years before had involved the same allegation that he was essentially reporting (T. v. 38, p. 7115). Green did indicate that he was speaking with Urquhart for 15 or 20 minutes but could recall little detail of the conversation itself (T.v. 38, p. 7123). Green does not believe that Ratchford ever identified for him the person with whom Ratchford had spoken at the Sydney City Police (T. v. 38, pp. 7124-7125).

11.19 The evidence of Gary Green is that his entire involvement and association with the Marshall case lasted about four hours on one day in 1974, during or after which he took no notes nor made any report in writing to anyone for the next 13 and one-half years. Even his involvement in the 1982 R.C.M.P. re-investigation was limited to a telephone call with Staff Sgt. Harry Wheaton (T. v. 38, p. 7119). Gary Green is unable to confirm whether Ratchford alone or with Donna Ebsary actually went to the Sydney Police Department in 1974. On other points of Ratchford's description about how Green was treated at the Sydney Police station, Green is unable to account for Ratchford's assertions. Green's evidence does not even confirm that if some contact was made by Ratchford and/or Donna Ebsary with the Sydney Police, that Urquhart was the officer with whom they had contact.

11.20 With respect to the contact which Green describes between himself and William Urquhart it is acknowledged that Green showed no deviation from his basic story. However, the Commissioners will have noticed how his evidence often appeared to be following a script which he had composed for himself and which he hesitated to deviate from, even to give a direct answer to a straightforward question (e.g., compare T.v. 38, pp. 7089-7090 with pp. 7111-7112, 7113-7114, 7114-7115, 7122-7123, 7126, 7127-7128).

11.21 It is important, we submit, to note that Green's main point about Urquhart's reaction was that Urquhart was not going to re-open the case on the basis of "another rumour". That is inconsistent with William Urquhart's limited involvement in the 1971 re-investigation, and most inconsistent with William Urquhart's reaction to similar second hand, hearsay information received in 1981 from Dan Paul (see Section 13). William Urquhart has testified as definitively as, and we suggest more definitively than, Green that he did not have any contact with Gary Green in relation to the Marshall case (T. v. 52, pp. 9620-9623). As to which of Urquhart or Green ought to be believed, it is respectfully submitted that considering the demeanour of the witnesses, and the consistency and inconsistency of the various pieces of evidence, that this Commission should prefer the evidence of William Urquhart.

11.22 Preference for the evidence of William Urquhart does not require the entire disregard of the evidence of Gary

Green. In particular, the only point upon which this Commission needs to have suspicions about Green's evidence is in his identification of Detective Urquhart as the Sydney police officer with whom he spoke. Why would Green remember that it was Urquhart when he could not remember the officers on his own force with whom he dealt on that same day about the same matter? In addition to the other factors of Green's reliability about which reference has been made above, this Commission may note that when Green was initially asked whether he had "any experience with either Sgt. MacIntyre or Detective Urquhart" in his time in Sydney, Green said no (T. v. 38, p. 7081). He did know MacIntyre and Urquhart to see them but that was it (T. v. 38, p. 7082). It is respectfully submitted that this is an ambivalence which ought to be considered by this Commission in the identification of Urquhart, given all the other circumstances but particularly Urquhart's Paul contact in 1981.

11.23 This Commission may also consider on the point of identification that William Urquhart has not otherwise been shown in evidence before this Commission to be the kind of police officer to indulge in the kind of sneering remark attributed to him about Donna Ebsary. As this Commission has observed, William Urquhart is not the kind of police officer who chooses to engage in the criticism of others (T. v. 54, pp. 9894-9896). Also, Donna Ebsary has consistently testified in statements and under oath that she did not leave home until 1978 or 1979 - which would also demonstrate the absolute unreliability of Green's recall

about Urquhart's alleged sneer (Exhibit 15 - R. v. 15, pp. 298, 300, 316, 355). The date when Donna Ebsary left home - four or five full years after this alleged event - has been independently confirmed in evidence to this Commission by Donna Ebsary's mother (T. v. 25, p. 4582).

Donna Ebsary's Version

11.24 Donna Ebsary of course did not testify before this Commission, but she has given sworn evidence before the Nova Scotia Supreme Court on more than one occasion. Donna Ebsary also gave a statement to Staff Sgt. Harry Wheaton during the course of his 1982 re-investigation, which is an appropriate place to begin. In that statement, Donna Ebsary indicates with respect to her speaking with David Ratchford in 1974 that:

We got a hold of the Sydney City Police and apparently they would do nothing. We also got a hold of Cst. Gary Green of the R.C.M.P. and they apparently got nowhere with the City Police either. (Exhibit 15 - R.v. 15, p. 298).

This statement does not indicate whether or not Donna Ebsary went to the Sydney City Police Department. This statement does indicate that "we" contacted the Sydney City Police, but also states that "apparently" the Sydney City Police would do nothing. If Donna Ebsary had been in personal contact with the Sydney City Police, any action or inaction by the Police would not be "apparently" -- she would have been able to say that the Police would do nothing. This suggests Ratchford either went to the Police himself, which he denies, or that he simply made a

telephone call, which he also denies. Donna Ebsary does not relate the Sydney City Police contact to any particular officer.

11.25, In the Nova Scotia Supreme Court, Appeal Division Reference in 1982, Donna Ebsary testified that:

I myself did not speak with the police but I spoke with a friend who suggested that I --...go to the police. (Exhibit 15 -- R.v. 15, p. 306).

In 1983 Donna Ebsary testified to the Nova Scotia Supreme Court, Trial Division (the first Ebsary trial) that at a previous time her efforts to report this matter to the police consisted of:

I talked it with a friend of mine and my friend went to the police but I myself did not. (Exhibit 15 -- R.v. 15, p. 332).

In the final Ebsary trial in November 1985, Donna Ebsary again testified in the Nova Scotia Supreme Court, Trial Division that on an unknown date a few years after the Seale stabbing she told David Ratchford about her feelings, but did not go to the police after that conversation with David Ratchford (Exhibit 15 -- R.v. 15, p. 357). Donna Ebsary at that time said nothing about Ratchford doing anything.

11.26 This Commission has no reason to disbelieve the evidence given by Donna Ebsary under oath before the Courts of this province. It is clear that Donna Ebsary does not confirm David Ratchford's testimony about actually going down to the Sydney Police Department, because Donna Ebsary did not go down to

the Police Department. If Donna Ebsary did not go down to the Police Station with David Ratchford, there is nothing before this Commission which could independently confirm that David Ratchford himself went down to the Police Station. In some of the evidence given by Donna Ebsary there is not even a mention about following through and contacting the Sydney Police in any way. This may or may not be due to the fact that certain questions were not asked in the Supreme Court. However, that is the sworn evidence which this Commission has in evidence here.

11.27 From Donna Ebsary's other evidence, which it is unnecessary to detail here, she was obviously well aware that the Sydney Police had been aware of her father in November, 1971. Donna Ebsary felt that what was needed to bring this crime home to her father was to find the knife that she suspected had been used on the night of the stabbing to kill Sandy Seale (Exhibit 15 - R. v. 15, p. 298). Donna Ebsary did not have that knife in 1974, and therefore would have had no particular reason to establish contact with the Sydney Police at all. On this point Donna Ebsary's written statement to the R.C.M.P. goes farther than any of her sworn evidence. As between the sworn evidence and the statement, if a judgment needs to be made, it is respectfully submitted that the sworn evidence should be taken for what it says -- no more and no less.

Conclusion

11.28 It is respectfully submitted that having reviewed all of the evidence in relation to this alleged report in 1974 to

the Sydney City Police, this Commission should conclude that either it did not happen or, if it did happen the facts and circumstances must have been so radically different that an acceptance of the version of David Ratchford would be an acceptance of a grossly distorted version of events. Gary Green's evidence is troubling because of its incompleteness and the witness' own apparent uncertainty at times before this Commission. Considering the whole of this matter as presented to this Commission, it is respectfully submitted that this Commission ought to make no factual findings adverse to William Urquhart's interests on the basis of this alleged incident. It is respectfully submitted that other evidence before this Commission can give the Commissioners confidence that if indeed William Urquhart had received the kind of information which Ratchford says he presented -- whether or not this was in the presence of Donna Ebsary -- that Urquhart would have taken steps to obtain from Donna Ebsary what information she had to give and he would have kept the Crown advised throughout.

12.0 1971-1981: PAROLE CONTACTS

Contact With Correctional Officials

12.1 Like his other contacts with the Marshall case, William Urquhart's contacts with Correctional Services and associated institutions was irregular and intermittent. Urquhart's first contact in this regard was to respond to a letter from the National Parole Board dated August 24, 1973, confirming Donald Marshall, Jr.'s arrest date and whether or not bail had been granted in connection with the matter at any time (Exhibit 112 -- R. v. 35, p. 8).

12.2 Urquhart's next involvement appears to have been in May or June, 1978 (Exhibit 69, p. 3). Kevin Lynk was directed by Diahann McConkey on March 3, 1978, to prepare a Community Assessment in relation to Donald Marshall, Jr.'s "future management" (Exhibit 69, pp. 1-2). Part of Lynk's directions included speaking with Chief John MacIntyre of the Sydney Police Department as "the Detective involved in the investigation of the murder events" (Exhibit 69, p. 2). Kevin Lynk testified that despite this direction he went to Inspector Urquhart with whom Lynk usually dealt even on cases where Urquhart had not been personally involved. (T. v. 40, p. 7412). Urquhart's reaction to the stated purpose of Lynk's visit was:

Well, if you're talking about Jr. Marshall, we go in to see the Chief" (T. v. 40, p. 7412).

Urquhart showed Lynk into Chief MacIntyre's office and then left

(T. v. 40, p. 7413). According to Lynk, that was the extent of William Urquhart's involvement at that time.

12.3 About two years after Lynk had made his Community Assessment, a further Community Assessment was directed on August 26, 1980, and completed on September 24, 1980 (Exhibit 112 - R. v. 35, pp. 149-151). The Parole Service Officer involved was a Robert W. MacDougall, who did not testify before this Commission. At issue was whether a three day temporary leave of absence should be granted to Donald Marshall, Jr. to permit him to return to Membertou Reserve "with hopes of gaining support for his appeal". MacDougall's report indicates that he interviewed Inspector William Urquhart, in accordance with the direction from Diahann McConkey to make contact with the "relevant police department". MacDougall reported that:

As expected, the police reaction in this case is quite negative, as they are very concerned about the risk the subject presents should he return to the area. Inspector Urquhart feels that the subject is a high risk for re-offending and should not be given that opportunity to do so. As earlier stated, the reaction of the Sydney Police to the subject's return to the Membertou Reserve is negative. (Exhibit 112 - R. v. 35, p. 151)

Assuming that this report is accurate, it is respectfully submitted that all it shows is that William Urquhart was concerned about a convicted murderer returning to the area where the crime had been committed "with hopes of gaining support for his appeal".

12.4 Urquhart's alleged reaction should be considered in

the context of what had been communicated to the Parole Service Officer by the inmate's relatives - in particular that one of the Crown's witnesses had been coerced into making a false statement at the original trial (Exhibit 112 - R. v. 35, p. 150). There is an indication in the report that Chief Alex Christmas needed to talk to Donald Marshall, Jr. before the Membertou Band Council could make any decision about soliciting funds for Marshall's appeal. Still, the inmate's expressed purpose in coming to Membertou in conjunction with concerns about witnesses could reasonably be seen to create a risk of interference with witnesses who had testified at the original trial.

12.5 According to MacDougall's report, William Urquhart assessed the risk of Marshall re-offending as "high" (Exhibit 112 - R. v. 35, p. 151). MacDougall does not explicitly connect Urquhart's feeling about re-offending with the interference with witnesses. It is, however, respectfully submitted that this is the only reasonable inference to take from the document as a whole.

12.6 In the absence of any knowledge on the part of William Urquhart about whether any Crown witness had been coerced into lying at the trial, or indeed in the absence of any evidence of William Urquhart's motivations in allegedly expressing the views contained in MacDougall's report, it is respectfully submitted that the views are not unreasonable. Such views appropriately reflect a judgment being made about the need for public safety and the prevention of breaches of the peace:

The Act to Incorporate the City of Sydney, S. N. S. 1903, c. 174, s. 334; Criminal Code, R. S. C. 1970, c. C-34, s. 31. See: Blanchard v. Galbraith (1966), 10 Crim. L. Q. 122 (Man. Q. B.); Hayes v. Thompson et al (1985), 18 C.C.C. (3rd) 254 (B.C.C.A.).

12.7 William Urquhart did not recall the interview referred to in MacDougall's report and disassociated himself from the remarks attributed to himself in that report (T. v. 52, pp. 9625-9628). The report contains Robert MacDougall's words which, when closely considered, are ambivalent in meaning. For example, was the negative police reaction "as expected" because the offence was murder, or because Donald Marshall, Jr. was involved, or was it because the Sydney Police simply were negative on all cases of potential temporary leave? We have already reviewed the uncertainty as to what the "high risk for re-offending" referred to - whether generally or in relation to the Crown witnesses from the original trial.

12.8 It is recognized that this Commission may have great difficulty if it attempts to determine an issue of credibility without there having been an opportunity to hear directly from the author of this report. It is respectfully submitted that so far as the objectives and concerns of this Inquiry are concerned, any need to approach the question of how much of the report to believe as it relates to William Urquhart can be put aside in light of oral evidence from another Parole Service Officer - Kevin Lynk.

12.9 Counsel for Donald Marshall, Jr. drew out the

evidence before this Commission that the opinion of police departments is not a determining factor in whether or not temporary leaves are granted:

It doesn't make it or break it. (T. v. 40, p. 7424).

Whatever weight may be attached or not attached to Kevin Lynk's opinion, it appears from the documentation available that the requested temporary leave was not granted for October 1980, because Marshall was "in disassociation for the good order of the institution" at that time (Exhibit 112 - R. v. 35, p. 148), after a summer of deteriorating behaviour at Springhill Institution, leading to a return to Dorchester Penitentiary (Exhibit 112 - R. v. 35, p. 153). Thus, even if everything Robert MacDougall said in his Community Assessment was true, and any factors which would tend to demonstrate the reasonableness of William Urquhart's apparent responses are rejected, there was no effect upon Marshall's institutional experience.

12.10 William Urquhart's possible final contact with Parole Officers in relation to the Marshall case came in November, 1981, when Archie Walsh prepared a Community Assessment in relation to a request by Donald Marshall, Jr., for an unescorted Temporary Absence to visit his family at Christmas (Exhibit 112 - R. v. 35, pp. 164-167; also Exhibit 69, pp. 6-9). Archie Walsh testified before this Commission that normally he spoke with Inspector Urquhart when preparing a Community Assessment with which the Sydney Police Department would be involved (T. v. 40, p. 7461). With respect to this Community

Assessment, Walsh went to the Police Station to talk with William Urquhart but ended up speaking with Chief John MacIntyre and does not recall that he had any contact with William Urquhart at all (T. v. 40, pp. 7462, 7477). Indeed, Walsh conceded that he likely did not have contact with William Urquhart on this occasion or he would have remembered it (T. v. 40, p. 7477).

Other Issues

12.11 Both Kevin Lynk and Archie Walsh testified that in preparing Community Assessments and speaking with the Sydney Police, Inspector William Urquhart was the "designated officer" with whom Parole Service Officers spoke - whether or not William Urquhart had been involved in the investigation of the original crime (T. v. 40, pp. 7411-7412, 7461). Both agreed with assertions by Commission Counsel made through leading questions that the Sydney Police were more prone than other police departments to have a negative attitude about parole (T. v. 40, pp. 7416, 7467). Similar leading questions were asked by their own counsel on behalf of the Correctional Service of Canada and the National Parole Board (T. v. 40, pp. 7458-7459). Depending upon the weight the Commission may wish to give these responses, and the weight which this Commission may wish to give Robert MacDougall's Community Assessment report and his phrase "as expected, the police reaction in this case is quite negative" (Exhibit 112 - R. v. 35, p. 151), it would be open to this Commission to conclude that for some reason William Urquhart himself as the so-called "designated officer" was more prone to

be negative about parole than other police forces around Nova Scotia would have been.

12.12 None of the two Parole Officers who testified in this case had ever dealt with the Sydney Police on a murder case before their involvement in this matter (T. v. 40, pp. 7438, 7467). Lynk stated that he did not give much weight to opinions given to him by the Sydney City Police (T. v. 40, pp. 7418, 7423-7425), even though in the particular case under discussion the concerns which had been expressed to him by John MacIntyre were not regarded as unreasonable (T. v. 40, p. 7440). Walsh restricted his opinion to the contact made in relation to the Marshall case and indicated respect for Chief MacIntyre's opinion (T. v. 40, p. 7466). If it had been his place to do so, Walsh would have recommended a denial of leave on the basis of concerns expressed by the Chief (T. v. 40, p. 7469). Lynk acknowledged that he only worked in the Sydney area between 1975 and 1979, and was one of three Parole Officers doing Community Assessments involving the Sydney City Police (T. v. 40, pp. 7443-7444). Lynk was not assuming to speak for the experiences of the police attitude by other Parole officers (T. v. 40, p. 7443). Lynk testified that he did not always make an appointment with the Sydney Police before coming to speak with them for a Community Assessment, indicating that any perceived negative attitude may simply have been a reflection of the lack of time which the police were given to consider the appropriateness of temporary absences in particular cases (T. v. 40, p. 7443). It is

respectfully submitted that the sum of this evidence gives this Commission precious little upon which to base any generalized conclusion that the Sydney City Police or William Urquhart were more negative towards parole than was the experience elsewhere.

12.13 Indeed, it is respectfully submitted that this Commission has other cogent evidence upon which it may come to the conclusion that William Urquhart was certainly not, in the words of Kevin Lynk, "generally against parole itself" (T. v. 40, p. 7416). Of course, there is William Urquhart's own evidence with respect to the regard with which he held the parole system (T. v. 52, pp. 9627-9628). If William Urquhart's sworn testimony to this Commission were not enough, this Commission does have before it William Urquhart's record of involvement on the Board of Directors of Howard House in Sydney, between 1978 and 1986, a term which extended well beyond his retirement from the Sydney City Police Force on June 30, 1983 (Exhibit 119).

12.14 Howard House was, at one time, an operation of the John Howard Society. It is now jointly funded by the Federal and Provincial Governments to house people on parole (T. v. 54, p. 9886). The House has ten or twelve beds, and provides meals, counselling, and a location from which parolees may look for work in the community (T. v. 54, p. 9887). William Urquhart was originally appointed from the Sydney Police Department to sit on the Board, which he did with Parole Review Officer Robert MacDougall (T. v. 54, p. 9887). When Urquhart retired from the Sydney City Police he had intended to resign, but the Chairman of

the Board at the time, Father John Graham, asked Mr. Urquhart to stay on - which he did until moving out of Sydney (T. v. 54, p. 9887).

Conclusion

12.15 It is respectfully submitted that all of this gives substance to a conclusion that William Urquhart had a positive and useful view of parole. Otherwise, it can be presumed that William Urquhart would not have been asked to remain on the Board of Howard House after the end of his career as a police officer. It is respectfully submitted that Kevin Lynk's personal views about Urquhart's sincerity with respect to parole were the result of one initiative which Lynk took outside the scope of his employment for an ex-inmate. This one initiative foundered upon the disagreement of William Urquhart (T. v. 40, pp. 7444-7445). Thus, it is respectfully submitted that William Urquhart can be subject to no criticism or suspicion by this Commission that he did not conduct himself appropriately in his contacts with Parole Officers - either with respect to this case or as a general practice.

13.0 AUGUST OF 1981 MESSAGE FROM DAN PAUL

Receipt of Information

13.1 Late in the afternoon of August 26, 1981, Dan Paul gave William Urquhart a piece of paper on which was written Roy Ebsary's name, age, and address, together with a further notation that this information related to Jr. Marshall (Exhibit 16 - R. v. 16, p. 215). Unknown to Urquhart this note was in the handwriting of Roy Gould made as a result of a telephone conversation which Gould had received from Donald Marshall, Jr. (T. v. 21, p. 3836). Roy Gould turned the note over to Court worker Paul that same day and it was delivered to Urquhart the same day (T. v. 21, p. 3836).

13.2 Dan Paul told William Urquhart that Donald Marshall, Jr. had indicated that Roy Ebsary stabbed Sandy Seale (Exhibit 16 - R. v. 16, p. 215). It appears from the plain words which William Urquhart added to the note from Dan Paul that Marshall had received the information about Roy Ebsary from some third person. It may be inferred that Dan Paul did not know who this third person was or that name would have been indicated orally or in Paul's note. If indicated orally Urquhart would have written the name down. William Urquhart encouraged Dan Paul to obtain this unknown information.

13.3 The raising of Rob Ebsary's name in connection with the Seale stabbing was not new information. Indeed, by August, 1981, it was information which was almost ten years old. It was

information that had been provided to the Royal Canadian Mounted Police at least once (e.g., Exhibit 16 - R. v. 16, p. 204ff), and perhaps more than once (e.g., David Ratchford to R.C.M.P. officer Gary Green). It was the possibility that there was now a third person who could implicate Roy Ebsary which would be important. At the same time, the possibility existed that the third person would be Jimmy MacNeil - about whom the police were already aware. The third person could also have been someone conveying a rumour without any personal knowledge about the stabbing or the principals involved. One would have thought that the discovery and disclosure of the identity of this third person would have been a relatively straightforward matter.

Urquhart's Response

13.4 The fact that William Urquhart was put in a position where he was alerted about the possibility of receiving some new reliable information about the Seale stabbing, is confirmed by a memorandum of Crown Prosecutor Brian Williston (Exhibit 129). As stated in his own note, Urquhart immediately contacted the Prosecutor's office in Sydney to advise of the possible development in the case. According to Urquhart's own note, he apparently informed the Crown Prosecutor before notifying his own superiors through Deputy Chief M.J. MacDonald about mid-day on August 27, 1981.

13.5 Williston's note shows that in his conversation with Urquhart, Urquhart would have apprised him of who Ebsary was in relation to this matter. William Urquhart received no special

instruction from the Crown despite the fact that Urquhart must have impressed Williston with the potential significance of such information. Otherwise there would be no reason for Williston himself to prepare a memorandum on the point. In an ordinary case the Crown would leave memoranda and reports about the initiation of an investigation to the police. (Compare Frank Edwards in 1982, who only commenced his note-taking several days after the start of the re-investigation: T. v. 65, pp. 11710-11711).

13.6 Although the Commission does not have Brian Williston's viva voce evidence, and this is perhaps regrettable from all points of view, it is respectfully submitted that the known facts lead to an inference that further communication would be received by William Urquhart from Dan Paul. This inference is supported by a subsequent reporting memo between Brian Williston and Frank Edwards (Exhibit 17 - R. v. 17, pp. 35-36) where it is stated that Urquhart said that he would advise Frank Edwards "if their investigation turned up any facts in support of this allegation". At that point the new information could be passed along through the Crown to the R.C.M.P. to re-involve themselves in the case - as they had become involved in 1971, and as they were to become involved in 1982. This Commission will recall that on both occasions the R.C.M.P. became involved after the communication of new information to the Sydney Police, and then from the Sydney City Police to the Crown Prosecutor's office.

13.7 As to what Urquhart actually planned to do, it is

acknowledged that his notation is open to two interpretations, as may Brian Williston's report memo of May 4, 1982. One reasonable reading of Urquhart's note is that Urquhart planned to "interview Dan Paul for further details and information supporting this allegation" when Dan Paul got back to Urquhart with the new information. It appears from his own note and Williston's that William Urquhart's intent was to put this "new" information into the hands of the Crown when Urquhart received it. Urquhart's apparent statement in Williston's note that Urquhart would get back to Frank Edwards regarding "the results of his inquiry" refers, we suggest, to Dan Paul's inquiry - not any inquiry by William Urquhart. That is certainly a reasonable interpretation since William Urquhart had nowhere further to go than Dan Paul himself unless he were to actually commence a reinvestigation by speaking with Donald Marshall, Jr. or Roy Ebsary themselves. Also, it cannot be forgotten that the discovery or disclosure of the source of new information should have been a straightforward matter for Dan Paul or Donald Marshall, Jr. William Urquhart felt, in 1981, that his response was sufficient and it is respectfully submitted that nothing more could have reasonably been expected of William Urquhart at that time (T. v. 54, p. 9866).

13.8 An alternative interpretation of Williston's memorandum was put forward by counsel on behalf of the Union of Nova Scotia Indians and was not supported by the evidence (T. v. 54, pp. 9881-9885). This alternative interpretation was that

William Urquhart fully intended to re-interview Dan Paul after speaking with the Crown Prosecutor, without there necessarily being any new information to gather from Dan Paul about the note on the Seale stabbing. It is respectfully submitted that this is not a reasonable interpretation of Williston's memorandum. Any information which Dan Paul had to give would have been conveyed at the first contact with William Urquhart. The only justification for re-interviewing Dan Paul would be to secure new information which Dan Paul could provide and which Dan Paul obtained after that first meeting with Urquhart. It is not reasonable to suggest that William Urquhart undertook to simply re-interview Dan Paul in the abstract.

Native Reaction

13.9 This Commission does not have any evidence from Dan Paul, under oath or otherwise, about his contact with William Urquhart on August 26, 1981. This Commission does have some evidence from Roy Gould that Dan Paul and many others were disappointed in William Urquhart's reaction to the information supplied (T. v. 21, p. 3837-3838). However, the evidence before this Commission is that at least Roy Gould did not know in 1981 that the R.C.M.P. had investigated Roy Ebsary for the stabbing of Sandy Seale ten years earlier (T. v. 21, p. 3864). In short, Roy Gould, and perhaps the others who were described as disappointed, did not know and were not informed that the information which had been supplied was not new information. It is respectfully submitted that if Roy Gould and others had been aware of that

fact, their emotion might not have been one of disappointment.

13.10 It is also unclear that William Urquhart's interest in receiving further new information which might lead to some connection between Roy Ebsary and this crime was ever communicated by Dan Paul or Roy Gould to others. Gould knew that "Urquhart wanted more information". (T. v. 21, p. 3837; see also pp. 3864-3865). It is respectfully submitted that the best inference is that William Urquhart's interest on behalf of the Sydney City Police was not communicated because no efforts were made by Paul or others to provide Urquhart with this further information.

Points of Criticism

13.11 One can perhaps be critical of William Urquhart on two points with respect to this encounter with Dan Paul and its aftermath. First, one might be tempted to criticize William Urquhart for not apparently disclosing to Dan Paul, and therefore the wider native community, the fact that Roy Ebsary had been investigated in 1971. One might be tempted to criticize Urquhart for not being explicit that what he felt was needed to justify reinvestigation of the matter was some new information, some other reasons that had not been canvassed to his knowledge in 1971, which could connect Ebsary with committing the crime. This is a difficult issue to deal with. Essentially it comes down to a question of whether a police officer is justified in advising an interested member of the public that some other private citizen has been investigated for a criminal offence but not

charged and tried.

13.12 To put the matter fairly, the issue should be dealt with in the context of what would have been required in this case: public disclosure of an imputation of a particularly serious personal injury offence. We suggest that an officer wishing to make such disclosures would first have to consider very carefully the laws of libel and slander, and then choose his words very carefully, before commenting on alleged criminal involvements where a charge had never even been laid. The judgment exercised not to disclose in this case may have been unfortunate in its consequences, but it is not a judgment which can easily be described as wrong. To say that Urquhart was wrong here would be tantamount to saying that Harry Wheaton's disclosures about a certain fire in Port Hawkesbury were appropriate (T. v. 43, pp. 7952ff.). The only difference, we submit, may be in the size of the public audience.

13.13 The second ground upon which William Urquhart might be criticized in relation to the Dan Paul incident is that when he did not hear from Dan Paul, Urquhart did not seek Paul out about the further information about the unknown third person. Commission counsel diligently pressed this point (T. v. 52, pp. 9628-9633). The information which Paul had conveyed was skeletal at best. It was a name. In 1981 Urquhart had not reviewed the 1971 R.C.M.P. report but knew that this person named Ebsary had been cleared as a result of that R.C.M.P. investigation. William Urquhart relied upon that knowledge in not making an

investigative initiative himself without there being something more, something that Urquhart could take to the Crown and say "Was this angle looked at in 1971?".

13.14 Thus, the question on this issue comes down to whether Urquhart can be criticized for relying upon the result of the 1971 R.C.M.P. investigation. At that time there was no apparent cause to question the reliability of E.A. Marshall's report. The R.C.M.P. and perhaps the Attorney-General's Department had never questioned the report's reliability at that point (e.g., T. v. 37, pp. 6769, 6791, 6798, 6801-6802). In the context of the circumstances known in August, 1981, it was reasonable for Urquhart to have relied upon E.A. Marshall's conclusion about Roy Ebsary until there was something apparently new to connect with the Ebsary name. It should have been a straightforward matter to provide the new information to William Urquhart if it existed.

Conclusion

13.15 As we know from both the 1971 and 1982 R.C.M.P. reinvestigations, the effective starting point for such an investigation is new information (e.g., MacNeil or Sarson) rather than information which has already been dealt with by the authorities or the Courts at some previous point in time. Also, if there had been justification to take an investigative initiative on the basis of the information supplied by Dan Paul, it would appropriately have fallen to the R.C.M.P. on direction of the Crown rather than upon the Sydney City Police Detectives

once the new information was identified. This would be so for the same reasons as it was appropriate for the investigation to be handled by the outside force in November, 1971 and in February-April, 1982. William Urquhart's appropriate role as a Sydney City Police Detective would have been limited to accepting any new information which anyone could provide and turning that over to an outside investigation through the Crown Prosecutor's office.

13.16 Certainly, it is unfair to describe this whole incident as either an unsuccessful attempt to cover up evidence or even a refusal to reopen the case as has been asserted by some (Exhibit 130, p. 2). Whether or not William Urquhart misconceived his appropriate role after meeting with Dan Paul, and whether or not there was some misunderstanding as between Urquhart and Paul or as between Urquhart and Williston about what Urquhart was to do, the key remains the ease with which William Urquhart could have been put in possession of the new information by Paul or by Donald Marshall, Jr. himself (e.g., Exhibit 16 - R. v. 16, p. 214; T. v. 9, pp. 1592-1594). This Commission has no reason to single out William Urquhart for some special criticism on this matter.

14.0 FEBRUARY-JULY, 1982: R.C.M.P. REINVESTIGATION

Contact with Staff Sergeant Harry Wheaton

14.1 Staff Sgt. Harry Wheaton was assigned to re-investigate the Marshall case on or about February 3, 1982, after his immediate superior Donald Scott had met with Chief John MacIntyre and Crown Prosecutor Frank Edwards (T. v. 41, p. 7508). The steps taken in Wheaton's re-investigation at least so far as what statements were taken from what witnesses and where is well documented (e.g., Exhibit 19 - R. v. 19, pp. 5-123). At no time during this investigation was a statement taken in which William Urquhart was specifically named or identified by name with a particular problem in the original investigation. Staff Sgt. Harry Wheaton had worked closely with William Urquhart in investigations, and indeed had participated on a joint investigation with William Urquhart shortly before this re-investigation (T. v. 41, p. 7499).

14.2 Staff Sgt. Harry Wheaton waited to interview members of the Sydney City Police Force until May, 1982, and at that time left much of the interviewing to his assistant, Corporal James Carroll. In the reports which Staff Sgt. Harry Wheaton forwarded to his superiors, it is apparent that, unlike John MacIntyre, there was no consultation with William Urquhart at different points during the course of the re-investigation.

14.3 The first mention of William Urquhart in connection with the investigation was as a witness to the Chant second

statement (Exhibit 19 - R. v. 19, p. 23) in a report dated March 12, 1982. Wheaton's view at that time of the Chant situation was that:

He [Chant] advises that he repeated the story to the police because when he was checked on George Street near Shadwick he advised he saw it all meaning the wound, blood, intestines, etc. From that point, he was interviewed by the police and felt obligated to say something so he repeated the story told him by MARSHALL in the car around the lake and at the scene and waiting for the police. On the 4th of June, when interviewed by the Police he was told he was seen in the Park so he agreed to it and from thereon he was afraid not to agree. He emphasized that he was fourteen turning fifteen years of age at the time and pressured into helping the Police and Prosecutor. He advised that the Prosecutor threatened him with a charge of perjury if he changed his story after the Lower Court hearing. (Emphasis added) (Exhibit 19 - R. v. 19, p. 26)

14.4 There is no mention of Urquhart in relation to Patricia Harriss who is described in that same March 12, 1982 report as having stated that:

...she was pressured into saying that two other people were not present. She was quite upset with the way she was treated by the Police, and felt forced to lie on the stand because she had given a written statement. (Emphasis added) (Exhibit 19 - R. v. 19, p. 28).

Wheaton said she mentioned Urquhart in the discussion prior to the statement (T. v. 41, pp. 7609-7610). Patricia Harriss says she did not (T. v. 16, pp. 2916-2917).

14.5 Inspector Donald Scott's addendum to the March 12, 1982 report also makes no specific reference to William Urquhart

- just that "our two eyewitnesses to the murder lied on the stand and, that the other main witness, HARRISS, lied as well, under pressure from the Sydney City Police." (Exhibit 19 - R. v. 19, p. 31). The non-attribution of any complaint to William Urquhart in particular is consistent with the formal statements taken by Staff Sgt. Harry Wheaton and Corporal James Carroll to that point.

14.6 After the reports of March 12, 1982, the next specific mention of William Urquhart is in relation to the "attempt" by David Ratchford to interest Urquhart in the Donna Ebsary story, and the discussion subsequently which is alleged to have occurred between Constable Gary Green and Urquhart (Exhibit 19 - R. v. 19, pp. 86-87). That situation was examined earlier in this brief (Part 11, supra).

14.7 Staff Sgt. Harry Wheaton next refers to William Urquhart in a report dated May 4, 1982, only with respect to the fact that Urquhart's name appears on the June 4, 1971, Chant statement and the June 18, 1971, Mary O'Reilly statement (Exhibit 19 - R. v. 19, p. 108).

14.8 Finally, on May 20, 1982, Staff Sgt. Harry Wheaton prepared a report in which he expressed the following conclusion:

It would appear that this juncture that all interviewing, compiling of the case and interviews with Crown Prosecutor, Donald C. MacNeil were handled by Chief MacIntyre and Det. Inspector William Urquhart. The only evidence given by these two officers was by Chief MacIntyre at Preliminary Hearing and not at Supreme Court...

...Discussions were held with Crown Prosecutor, Frank C. Edwards, in regards to interviewing Chief MacIntyre and Insp. Urquhart in regards to the allegations of CHANT, PRATICO and HARRISS that they were induced to fabricate evidence in the original trial in this matter. Mr. EDWARDS has advised me that he further discussed the matter with Mr. Gordon, GALE of the Attorney General's Department, and it was felt that these interviews should be held in abeyance for the present. (Exhibit 19 - R. v. 19, pp. 120-121).

14.9 Despite the limited comments about William Urquhart and his role in the 1971 investigation, Wheaton and his superior, Donald Scott, prepared a "Red Book" (Exhibit 21 - R. v. 21) for the purpose of allowing readers of the book "to judge for himself why the witnesses lied in their statements to the police and during the trial of Marshall." (Exhibit 19 - R. v. 19, p. 111). This "Red Book" was forwarded from Sydney on May 5, 1982. The "Red Book" did, however, contain one direct and specific criticism which it made in relation to William Urquhart:

Patricia Harriss will state that she.... It is interesting to note that in regard to her claim of police distortion of her statement, an unsigned statement which appears uncompleted, was found written in Insp. W.A. Urquhart's hand. This statement is dated 17 June 71, time 8:15 p.m., and in it she states...thus corroborating the length of time held, and the fact that the police, at least at 8:15 p.m., were aware that a man answering Ebsary's description, was on Crescent Street. It would appear that, as she now states, the Inspector did not want to hear this. (Exhibit 21 - R. v. 21, p. 3).

This criticism was apparently included in the "Red Book" in error

(T. v. 51, pp. 9395-9408).

14.10 In May, 1983 the R.C.M.P. re-investigators were asked to comment about any instances of improper police practices or procedures based upon the information available to them (Exhibit 20 - R. v. 20, p. 4). Wheaton discussed the Patricia Harriss June 17, 1971 statement at that time. Wheaton says that Harriss was actually interviewed commencing some time prior to 7:00 p.m. - even though there is no documentation to support this (Exhibit 20 - R. v. 20, p. 11). Wheaton considered the Harriss situation and concluded:

Again, in regards to proper police practice, I feel the police felt they had a rather mature fifteen year old on their hands, however, be that as it may, if Miss HARRIS' story is accepted and there is documentation in the form of two statements as well as my interview with her mother, then this is certainly not proper police practise and using her as a witness is unethical.

Although the conclusion is strong, it is couched in conditional terms. Wheaton concluded that report indicating that:

This case was investigated solely by Chief MacIntyre with some help from Detective Urquhart and was basically solved in one day....(Exhibit 20 - R. v. 20, p. 13).

As part of the same review process, Corporal James Carroll pointed out as improper police practice the threatening of Chant by MacIntyre and Urquhart with perjury and that the penalty would be Dorchester Penitentiary (Exhibit 20 - R. v. 20, p. 14). That comment is not supported by the documentary evidence nor by the viva voce evidence given before this Commission. The third

officer in line was Plain Clothes Co-ordinator Tom Barlow who added that:

In August, 1971, Det. Urquhart received information Ebsary was responsible for the murder. Then, in November, 1971 James MacNeil came forward....(Exhibit 20 - R. v. 20, p. 22).

Barlow acknowledged in evidence to this Commission that he had realized his error on this date shortly after preparing the document but did not take any steps to correct it (T. v. 71, p. 12772). It is significant that no R.C.M.P. officer involved in the 1982 reinvestigation ever suggested that William Urquhart's conduct could in any way be described as criminal, or as even raising a suspicion of criminal conduct (Compare Exhibit 20 - R. v. 20, pp. 59, 63-65).

14.11 At these Commission Hearings, Staff Sgt. Harry Wheaton testified that he had discussed the Marshall matter with Inspector William Urquhart during the course of the re-investigation, even though this does not appear in any report. Indeed, Wheaton recalls speaking with Detective Urquhart "several times" (T. v. 42, p. 7790) during the re-investigation. Wheaton indicated that no formal statement was taken from William Urquhart because he had been one of the principal investigators in the Marshall matter (T. v. 42, p. 7790). However, when Wheaton also acknowledged that he had taken a formal statement from "Red" M. R. MacDonald who was "certainly a principal investigator". Wheaton indicated that his reasoning had been that:

William Urquhart could really not give any evidence in relation to Roy Ebsary's guilt or innocence to the best of my knowledge. (T. v. 42, p. 7792)

Still later, Wheaton advised that he had been directed not to proceed with interviews of Detective Urquhart and was not offered any reasons for this (T. v. 42, p. 7796).

14.12 Staff Sgt. Harry Wheaton indicated that one of the several times that he spoke about this investigation with William Urquhart was when they both flew to Halifax to attend a meeting in relation to some "province-wide roundup", stayed together, and then flew back the following day (T. v. 43, p. 7842). Wheaton could not be specific that this was at the time of the re-investigation but it was "during the period" (T. v. 43, p. 7843).

14.13 Apparently during those discussions William Urquhart expressed the view that he felt that Marshall was guilty in 1971, and Urquhart offered no explanation for why witnesses were recanting (T. v. 43, p. 7843). At no time did the suggestion that there may have been a mistake in the Marshall case creep into the discussions with Detective Urquhart (T. v. 43, p. 7847). The statement-taking approach of Urquhart and Wheaton was discussed. While Urquhart's approach was different than Wheaton's approach, it was in no way improper (T. v. 43, pp. 7855-7857).

14.14 It is respectfully submitted that William Urquhart was not consulted about the 1982 reinvestigation except perhaps in a casual way, and the R.C.M.P. assessment of his participation

based upon information which they gathered has really left no issue which remains unanswered by evidence given at this Commission. From time to time suspicions were expressed about William Urquhart which went beyond the documentation or information available to the R.C.M.P., but William Urquhart's interests before this Commission are satisfied if this Commission indicates that they were indeed suspicions which have now been shown to be unfounded.

Contact With Frank Edwards

14.15 The evidence discloses that during the time of the R.C.M.P. re-investigation of the Seale stabbing, there was intermittent contact between William Urquhart and Crown Prosecutor Frank Edwards. On February 15, 1982, Urquhart called Edwards with advice that journalist Parker Donham had been to the Cape Breton Post to dig out old news clippings regarding the Seale stabbing (Exhibit 17 - R. v. 17, pp. 1, 22). Edwards related this information to a discussion with Staff Sergeant Harry Wheaton in the presence of Corporal James Carroll to limit any information given to the media to a minimum. Indeed, it appears that Edwards had a phone call to return to Parker Donham (Exhibit 17 - R. v. 17, pp. 2, 22) when the discussion with Wheaton and Carroll occurred. Urquhart's advice had been useful.

14.16 As the Seale re-investigation was beginning, Frank Edwards and William Urquhart were in contact with respect to an existing murder investigation known as the "Weatherbee Case". Edwards met with Urquhart about this investigation on Sunday,

February 21, 1982, at the Sydney Police Station. It appears that at some point Chief John MacIntyre was present at the police station and "kept me back", according to Edwards, after the Weatherbee meeting. In the presence of William Urquhart, John MacIntyre inquired about the re-investigation but Edwards told him that he was not able to say much about it. There was apparently discussion and expression of concern that the media were questioning witnesses (Exhibit 17 - R. v. 17, pp. 2, 23).

14.17 On Friday, March 5, 1982, Frank Edwards spoke with William Urquhart on a matter unrelated to the R.C.M.P. re-investigation. At that time, apparently John MacIntyre came on the phone asking about the re-investigation and again Edwards indicated that he was not at liberty to discuss it (Exhibit 17 - R. v. 17, pp. 6, 12, 31, 43). It is unclear whether William Urquhart was included as part of the conversation.

14.18 On Monday or Tuesday, March 8 or 9, 1982, William Urquhart was at the Crown's office. Urquhart apparently asked about the R.C.M.P. re-investigation but Edwards told him that he was not at liberty to discuss it (Exhibit 17 - R. v. 17, pp. 6, 31).

14.19 Two weeks later, on Monday, March 22, 1982, Frank Edwards had a telephone conversation with William Urquhart who was disturbed about hearing about the Marshall case on the street. Edwards continued to take the position that because he was privy to the investigation, Edwards could not comment (Exhibit 17 - R. v. 17, pp. 6, 32).

14.20 The "story broke" on March 24, 1982. On Thursday, March 25, 1982, William Urquhart called Edwards to determine whether Roy Ebsary was being charged the next Tuesday. Frank Edwards gave a negative response (Exhibit 17 - R. v. 17, pp. 6-7, 33). The case was still a Sydney City Police matter at that time (Exhibit 16 - R. v. 16, p. 22). There is no notation or other evidence about any further contact between William Urquhart and Frank Edwards until July 12, 1982, after the entire contents of the Sydney City Police file had been turned over to the R.C.M.P.

14.21 Before dealing with the meeting of July 12, 1982, there are only two other notations about William Urquhart in Frank Edwards' notes (Exhibit 17 - R. v. 17, pp. 5, 7, 30, 33). These notes were the result of Edwards receiving information about alleged contact between Patricia Harriss and Urquhart, as well as about alleged contact by Ratchford and Green with Urquhart.

14.22 Reviewing William Urquhart's role or activity with respect to all of the contacts with Edwards described above, it appears clear that William Urquhart was not injecting himself into the re-investigation in any way or pressing the Crown unduly for information. The context of the time was that information about the case was appearing on a fairly regular basis in the media. The information was such that even Edwards himself as an experienced prosecutor found the revelations intriguing (T. v. 69, pp. 12241-12242). It is not unreasonable for this Commission to consider that William Urquhart would have been at least as

intrigued, and in some circumstances greatly concerned because of the criticisms being put forward about the Sydney City Police (See generally Exhibits 130, and 131 - R. v. 38). By making notes of the contacts which William Urquhart had with him which related to the Marshall case, Frank Edwards meant no suggestion that these contacts were in anyway improper (T. v. 69, p. 12242).

July 12, 1982

14.23 July 12, 1982, was the day John MacIntyre, Michael Whalley, Frank Edwards, and Staff Sergeant Harry Wheaton met in Frank Edwards' office to discuss the case, or, in Staff Sergeant Harry Wheaton's words:

...to afford the Chief the opportunity to speak to these various accusations and what have you. (T. v. 42, p. 7803).

Staff Sergeant Harry Wheaton does not recall Urquhart being there (T. v. 42, p. 7807). Frank Edwards' notes indicate that John MacIntyre, Mike Whalley, and Harry Wheaton were present at his office (Exhibit 17 - R. v. 17, pp. 12, 44). However, the second, third, fourth, and fifth pages of the notes attribute remarks to Urquhart (Exhibit 17 - R. v. 17, pp. 13, 45, 46, 47, 48).

Michael Whalley was never directly asked the question as to whether William Urquhart was present at the July 12 meeting, though the inference from Whalley's evidence is that Urquhart certainly was (T. v. 62, pp. 11150, 11153-11160). Whether or not William Urquhart was present, it appears that if present, he took little active participation in the meeting, limiting himself to advising about his position on particular statements on the basis

of his own recollection.

14.24 It appears from the notes of Frank Edwards that Urquhart expressed views, or had views attributed to him, that: he had recollections with respect to the Chant statement on June 4, 1971; he could not recall the Harriss or O'Reilly interviews; there were no pressure tactics on the statements he witnessed June 4, 1971, from John Pratico; he had no knowledge of Roy Ebsary prior to the Seale stabbing; and he could not recall any line up. At this time the Sydney City Police file had been in the possession of the R.C.M.P. for some three months - since April, 1982 (T. v. 69, p. 12243). As to what materials from the file, if any, Urquhart may have been shown during that July meeting, there is no evidence to assist (T. v. 69, pp. 12243-12244).

14.25 On the basis of the discussions held in Frank Edwards' office on July 12, 1982, a further meeting took place on July 22, 1982 to deal with the Affidavits which Edwards had drafted for MacIntyre and Urquhart based on the July 12 meeting (Exhibit 17 - R. v. 17, pp. 14, 50). The Affidavits drafted by Edwards were forwarded to Mike Whalley to review with MacIntyre and Urquhart. According to Whalley, both MacIntyre and Urquhart had the opportunity to read these Affidavits and indeed made some corrections (T. v. 62, pp. 11162-11163). This appears to be confirmed by Frank Edwards' notes (Exhibit 17 - R. v. 17, pp. 14, 50). It appears from the notes that William Urquhart, like MacIntyre, wanted to delete a paragraph regarding his lack of

knowledge of John Pratico in 1971. John MacIntyre indicated that it was possible that John Pratico's mother would have told him that her son was on pills at the time. No basis is given as to why William Urquhart wanted the paragraph deleted on his own behalf. Suppositions on this point are not really fair or possible in the absence of a copy of the draft paragraph which was rejected. At the conclusion of this meeting, Edwards advised that he would make the changes requested and then get the Affidavits signed (Exhibit 17 - R. v. 17, pp. 14, 50).

14.26 Edwards thinks that the exhibits referred to in the draft Affidavit had been attached for William Urquhart's review prior to the July 22, 1982 meeting (T. v. 69, p. 12244). Edwards felt that the Affidavits accurately reflected the account which the officers had given him (T. v. 67, pp. 11898-11900). Commission counsel put to Edwards William Urquhart's sworn Affidavit (Exhibit 14 - R. v. 14, pp. 237-238), and contrasted it with evidence given by William Urquhart at these Commission hearings (T. v. 67, pp. 11902-11906).

14.27 On the basis of the evidence put to Edwards, Edwards agreed that William Urquhart appeared to have had changed his position from what was put forward in the 1982 Affidavit. With respect to the Pratico statement referred to in paragraph 7, Edwards explained what had been meant by that paragraph, given Edwards' own note of July 12, 1982 (Exhibit 17 - R. v. 17, pp. 13, 47; T. v. 67, p. 11903). Indeed, Edwards indicates that he perhaps overstated Urquhart's expressed position with respect to

Pratico.

14.28 Commission counsel also raised with Frank Edwards the fact that William Urquhart gave evidence in his Affidavit about being present for the second statement of Patricia Harriss. It is clear that if at the time of making up this Affidavit William Urquhart had access to any version of the second Harriss statement, he must have had access to the typewritten version the time error of 1:20 a.m. (rather than 12:07 a.m.) is stated, and the person who actually wrote out the statement is misstated as well. If William Urquhart had had an opportunity to review the original of the second Patricia Harriss statement (Exhibit 56), he would not have sworn an affidavit indicating that he was the one to take the statement and that it occurred at approximately 1:20 a.m. Urquhart would not have mistaken John MacIntyre's handwriting for his own, nor will anyone with more than a passing familiarity with the documentary evidence before this Commission.

14.29 Given that William Urquhart was forced to rely upon the typewritten version of the June 18 of Patricia Harriss, and given the fact that the Sydney City Police file was no longer in the possession of that force for William Urquhart to review, William Urquhart would not have had the opportunity to discover that on the hand written version of the second statement his name does not appear at all. Had that documentation been available to him in 1982 as it was in 1988, his Affidavit may well have been different.

14.30 It is respectfully submitted that all of this evidence demonstrates sufficient question about circumstances involved in the preparation of Urquhart's affidavit, and his misconceptions about having been involved in Harriss' second statement, that it would be unfair to William Urquhart to impute to him any intent to misrepresent or mislead, then or now, on the strength of that affidavit. Whatever problems may have been involved in transposing William Urquhart's views to the affidavit, it remains clear that William Urquhart's testimony to this Commission was consistent with every attributed recollection in Frank Edwards' notes of July 12, 1982 (Exhibit 17 - R. v. 17, pp. 13, 44-48). That is, we submit, the persuasive point for this Commission to consider in relation to William Urquhart's reliability.

15.0 CONCLUSION

15.1 This narrative analysis of William Urquhart's association with the Marshall matter from 1971 until 1982 demonstrates in our submission that no serious allegation against William Urquhart has been substantiated. William Urquhart performed his tasks with respect to this matter to the best of his ability, in a spirit of fairness towards those with whom he came into contact, but also with all reasonable vigour to ensure that the public interest in the efficient and effective detection of crime was satisfied to the extent of his appropriate role as a police officer. William Urquhart was called upon from time to time to perform different functions and throughout each of these there can be no finding in any of the evidence any clear malice, misconduct, or misbehaviour on William Urquhart's part.

15.2 Undoubtedly, some will earnestly attempt to fix blame upon individuals such as William Urquhart so that the procedures of the criminal justice system in the Courts and in the correctional facilities can be absolved. That would not be justified here. It is respectfully submitted that nothing more can be expected of police officers such as William Urquhart than that they act in good faith and, where authorized by law, on reasonable and probable grounds. Not even the most circumspect investigator making constant notes can avoid the fact that some citizens will choose to lie, and do so convincingly. So long as the finding of fact in the Court system depends on the same thing

as a police officer does in taking down a statement - upon human assessments of credibility - there will be opportunities for the scientific truth to be misinterpreted and untruths to prevail.

15.3 Two final quotations are apposite. Our system of justice depends upon witnesses to act as responsible citizens. And yet, as Timothy Findley wrote in his novel The Telling of Lies, Penguin Books Canada (1987), at pp. 131-132:

The order of events - with all its obvious importance - depends on witnesses; on testimony. I testify according to my witness. Whatever happens next to me creates my personal sense of order. Whatever happens next to someone else will, necessarily, create a different sense of order and, therefore, a different sequence of events.

This, in part, was the meaning of Joel's encounter with his interrogators out in the lane. They wanted to impose a sequence of events that didn't jibe with his experience; his witness. Their motive was sinister; yes. But it need not have been. I, too, have rearranged the order of events - according to my ability to grasp their meaning.

Memory is like that. It buffets you with stories out of sequence. It harries you with the past and it blinds you to the present. It seems to take all its cues at random - failing to deliver what you want to know, while it offers up data that seems to have no bearing on the moment.

Of course - I know better.

Memory is also a shield. A form of self-protection. There are things we do not want to know. Only now am I beginning to grasp what I have not wanted - of these years - to know about Bandung. And only now am I beginning to understand what I do not want to know about Calder's death.

I did not want to know that anyone could die the way my father died - before my eyes. And now, I do not want to know that anyone can kill the way I fear they have - before my eyes.

To be a witness is to be accountable.

And I do not want to know that.

This passage recalls to mind Chant, Pratico and perhaps Harriss. The frailties of recollection or even the willingness to recollect on some basis of personal responsibility are formidable foes for William Urquhart to contend against.

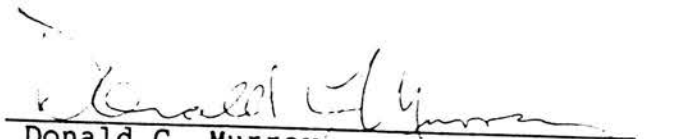
15.4 Finally, while there may be a great outcry when a great wrong has been done, it would be simplistic - though easier on the consciences of all of us - to rush in heaping blame upon new victims, other individuals, rather than the inherent weaknesses of our justice system itself. As Hannah Arendt explained in Eichmann in Jerusalem: A Report on the Banality of Evil, Penguin Books (1978), at p. 276:

They knew, of course, that it would have been very comforting indeed to believe that Eichmann was a monster, even though if he had been Israel's case against him would have collapsed, or, at the very least, lost all interest. Surely, one can hardly call upon the whole world and gather correspondents from the four corners of the earth in order to display Bluebeard in the dock. The trouble with Eichmann was precisely that so many were like him, and that the many were neither perverted nor sadistic, that they were, and still are, terribly and terrifyingly normal.

What is horrifying to contemplate is that a great wrong was

perpetrated on Donald Marshall, Jr. without the intervention of positive misbehaviour. This is not to suggest that this Commission cannot recommend improvements to the system of justice in Nova Scotia to protect the innocent as well as the guilty. The point is that the public must not expect that the system of justice which we have and which committed this harm to Donald Marshall, Jr., can be cured by pursuing vengeance upon specific individuals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



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Dated October 28, 1988