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OVERVIEW

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OVERVIEW

1. It is important at the outset that counsel for Donald Marshall Jr. should express our broad agreement with the analyses and conclusions of Commission counsel. Indeed, it is appropriate to express admiration for the skill with which the document was prepared, the economy and clarity of its language, and the obvious care that was taken in its preparation. It is an admirable job, and except where a specific issue is taken with it, we agree with the submissions made therein.

2. As will be seen by an examination of our submissions, Commission counsel in a few areas have been somewhat more conservative and restrained in their approach and their conclusions than we have been. They have been very cautious in their submissions. In contrast, we feel that it is possible to go beyond their recommendations in certain areas because we believe that, properly analyzed, the evidence leads farther.

3. One such area of disagreement is in the assessment of the response the Commission should make to the evidence concerning the role of the Crown Prosecutors Donald C. MacNeil and Lewis Matheson. It is, in our view, insufficient to merely recommend that "it should have been department policy to require such disclosure by Crown Prosecutors". Whether or not it "was department policy in 1971 for prosecutors to disclose contradictory statements to the defence in the absence of request to do so" is of minor interest. It is our view that the law required it to be done. And so we say that, with respect, Commission counsel have asked the wrong question concerning the role of Crown counsel and the issue of disclosure. Our

analyses of these issues can be seen in the chapters headed "Role of Crown Counsel" and "Crown Disclosure".

4. With respect to the Trial Judge, Commission counsel take the view that the Trial Judge's error in ruling that the statement made out of Court which was not made in the presence of the accused was inadmissable as hearsay was "shared both by defence counsel and by the Prosecutor". This was not the evidence. In fact, defence counsel objected to ruling and argued against it. This reservation is not crucial to their analysis, but it needs to be noted in fairness to defence counsel.

Red Vol. 1/138(g)-138(o)

5. No analysis of the jury and the racism issue can yield any meaningful conclusions because of the absence of evidence. And there is an absence of evidence only because the Commission refused to hear the evidence of Toronto Star reporter Alan Story who could have testified about comments made by the actual jurors in this case which were indicative of complete and utter racism. In this respect the Commission's conclusions will inevitably be flawed.

6. We agree with the position of Commission counsel respecting the communication of the substance of Marshall's 1971 report concerning MacNeil's evidence. The Commission concluded that it was impossible to be certain that the Report itself was transmitted but that the substance of it was communicated to the Attorney General's department. Anybody who received that information, verbally or in writing, had an obligation to see that it was communicated to defence counsel and/or to the Court of Appeal. It is

entirely unlikely that information of this sort would remain with the R.C.M.P. and the local prosecutors. It would have been a subject of great importance, and of great gossipy interest, amongst those in the Attorney General's office who were familiar with the case. It was an extremely unusual occurrence. Indeed, there is no suggestion in the evidence that anyone had ever before come forward after a serious trial and offered to prove that the wrong person had been convicted. The lie detector itself was new then, and would have been a subject of keen interest. No, it must have been communicated to the Attorney General's office.

7. What is startling is that it remained there, and was not passed on as it ought to have been. The difficulty with the state of the evidence is that it is now impossible to tell "with any degree of certainty" which of the present day judges and senior officials of the Attorney General's department are lying under oath when they say they didn't know about it. Quite clearly someone in high position has committed perjury in his own self interest; but it is impossible now to discern which of the present and former officials has done so.

8. Commission counsel "do not support the view that there is a duty on the Appeal Court to identify and raise issues of its own volition and accordingly, we do not criticize the Court which heard Marshall's appeal for failing to identify the error of the Trial Judge". This is a view of the Appeal Court which portrays them as helpless ciphers in the hands of counsel, impotent to do justice -- their only sworn duty. It is a view of the Bench which is inconsistent with their role in a free and democratic society. Moreover we believe it to be inconsistent with the aspirations and

sense of duty of Appellate Court judges.

9. Examples are legion of courts, including the Supreme Court of Canada, doing just this. But one stark example is perhaps sufficient. In R. v. Irwin (1977), 36 C.C.C. 2nd 1, the Ontario Court of Appeal have before it an appellant who had instructed her counsel on appeal, as she had instructed counsel at trial, not to raise the issue of insanity. Both counsel -- I was counsel at trial -- followed her instructions and she was convicted of murder. The Court of Appeal suspected that there might be evidence of insanity, and notwithstanding the instructions of the Appellant to the contrary, it directed a psychiatric examination, heard the resulting psychiatric evidence, and then set aside the accused conviction and found her not guilty by reason of insanity.

10. More usually, the court will find an issue which it thinks ought to be argued, lest there be a failure of justice, and will adjourn the case and direct that counsel prepare argument directed to the issue that concerns them. They do not do this as a matter of whimsy, or only in those cases where they feel like it. They do it as a matter of duty to the Appellant, and of equal importance, as a matter of duty to the administration of justice.

11. With respect to the actions of Gordon Coles, Deputy Attorney General, with respect to the Thornhill matter, and in particular regarding the press release that he issued, we agree with the submission of Commission counsel that "this press release was misleading". Commission counsel does not make it clear whether his action in this and other respects were accidentally or

deliberately misleading. It is our submission that the evidence as a whole makes it clear that these actions were deliberately misleading and included a deliberate deception of the public respecting the press release. The Commission finds that his advice to the Attorney General concerning the Thornhill case "in conjunction with his evidence before the Inquiry must be considered to be misleading". Once again, we would say "deliberately misleading". Looking at Coles' evidence to try to explain this advice, we agree with Commission counsel's submission that:

> "In our view, there is no possible way to glean that intention from Coles' opinion."

Regrettably, it seems quite clear that Mr. Coles has committed perjury before the Commission in order to avoid the embarrassment engendered by the fact that he has written legal opinions to his minister that are legal nonsense. The documentation leads to the conclusion that, for whatever reason, he was determined to see that Thornhill was not charged and that the investigation into his activities was stopped."

12. THE COMMISSION SHOULD RECOMMEND THAT COLES BE CHARGED WITH PERJURY CONTRARY TO s. 132 OF THE CRIMINAL CODE IN CONNECTION WITH HIS TESTIMONY BEFORE THE COMMISSION ON THE THORNHILL MATTER.

13. More significantly, the process by which the decision was made in the Thornhill case was fundamentally flawed and accordingly THE COMMISSION OUGHT TO RECOMMEND:

(A) THAT THE INVESTIGATION INTO THE ISSUE OF WHETHER OR NOT THERE WAS FALSE PRETENCE BY WHICH MR. THORNHILL OBTAINED THE MONEY FROM THE BANKS OUGHT TO BE REOPENED BY THE R.C.M.P. AND INVESTIGATED AFRESH, AND IT OUGHT TO

CONTINUE TO ITS COMPLETION WITH THE NORMAL CONSULTATION OF A CROWN LAW OFFICER.

(B) THAT THE INVESTIGATION INTO THE QUESTION OF WHETHER OR NOT THE BANKS SHOULD BE CHARGED UNDER s. 110(1)(b) SHOULD BE REOPENED AND CONTINUED AFRESH WITH NORMAL CONSULTATION OF A CROWN LAW OFFICER.

(C) THAT A SPECIAL PROSECUTOR, INDEPENDENT OF THE ATTORNEY GENERAL'S OFFICE OUGHT TO BE RETAINED TO EXAMINE THE EVIDENCE INTO THE ALLEGATION THAT THORNHILL ILLEGALLY ACCEPTED AN ADVANTAGE OR BENEFIT, TO CALL FOR FURTHER INVESTIGATION IF IT IS REQUIRED, AND TO MAKE THE DECISION AS TO WHETHER OR NOT, APPLYING RELEVANT FACTORS ONLY AND APPLYING THE PROPER STANDARD, A CHARGE IS WARRANTED. THE INDEPENDENT PROSECUTOR OUGHT THEN TO ADVISE THE R.C.M.P. OF HIS ADVICE IN THE MATTER AND THE R.C.M.P. OUGHT TO APPROACH THE LAYING OF CHARGES INDEPENDENTLY BEARING THAT ADVICE IN MIND.

14. These recommendations are consistent with the view of Commission counsel, but we think fundamental justice requires that formal recommendations be made, and so we have suggested in concrete terms the ways in which the unsettled matters concerning Mr. Thornhill can most fairly be dealt with.

15. With respect to his actions concerning the Billy Joe MacLean matters, Mr. Coles actions once again deserve serious censure. The documents he produced for his minister created the impression that Mr. Gale no longer adhered to the view he had expressed in his memorandum, or joined Mr. Coles in the view that he expressed in his memorandum of April 18, 1984. Were it not for the fact that passage of time has made it difficult, if not

impossible, for the Attorney General to remember whether there was any verbal representation making the truth clear, consideration of a charge of obstructing justice would be warranted in connection with that memorandum.

16. And yet, it is submitted that by no stretch of anyone's imagination could any legally trained person, let alone a Deputy Attorney General, have honestly characterized the criminal infractions that were before him as "more accounting irregularities rather than such as to warrant any further criminal investigation". THE COMMISSION SHOULD FIND THAT COLES BETRAYED HIS OFFICE BY DELIBERATELY FAILING TO DEAL PROPERLY WITH THE MacLEAN ALLEGATIONS.

17. Of equal concern is the fact that over and over again, Mr. Coles reiterated under oath that the responsibility in this matter was that of Mr. Gale. Yet the documents in the file make it clear that this is not true. Nor, given the content of the documents, is it feasible that he could have believed it to be true when he asserted it under oath.

18. Based on the testimony of Mr. Gale, and the documents in the file, it seems clear that Mr. Coles committed perjury before the Commission.

"Q. You said in your evidence that Mr. Gale accepted Mr. MacLean's explanation.

A. Well, that was an assumption I made from my reading of his opinion.

Q. That was wrong too, wasn't it?

A. Well, I saw nothing in his opinion that suggested to me that he did not accept the explanation and I assumed that that being so, that he accepted it.

Q. And that was wrong too, was it not?

A. As it turned out, yes.

Q. That's not a, looking at this letter, a reasonable interpretation of the language which he used, is it?

A. Well that's my interpretation of it.

Q. It was a reasonable interpretation. You still think so?

A. Yes. At the time, yes."

(Vol. 88/15-6, 45-6) On reading the document in question, it is quite clear that this was not a conclusion which he could honestly have come and that his evidence to that effect under oath before the Commission was false. THE COMMISSION SHOULD RECOMMEND THAT CHARGES OF PERJURY CONTRARY TO CRIMINAL CODE s. 132 SHOULD BE INSTITUTED AGAINST MR. GORDON COLES.

AN EFFECTIVE RE-INVESTIGATION AGENCY

"Only a compulsive optimist would believe that Donald Marshall, Jr. was the only mistake that the criminal justice system made and allowed to languish behind bars."

AN EFFECTIVE RE-INVESTIGATION AGENCY

1. The submissions of Commission counsel acknowledge a factual difficulty that we accept as accurate:

> "In respect to the potential investigation of John MacIntyre and the Sydney Police Department, the R.C.M.P.'s view was that they needed permission from the Attorney General's Department to investigate. There can be little doubt, however, that in addition they were reluctant to investigate the work of another police department. In the Thornhill and MacLean cases, they simply seemed to be reluctant to press ahead in the fact of opposition from the Attorney General's Department."

But the implications of this situation are not dealt with in the submissions of Commission Counsel.

Submissions of Commission Counsel, p.149

2. Only a compulsive optimist would believe that Donald Marshall, Jr. was the only mistake that the criminal justice system made and allowed to languish behind bars. We believe there are many similar mistakes. And we have an obligation to them. Police forces cannot effectively re-investigate matters that were originally dealt with by their own officers or those of another police force upon whom they rely for assistance in the day-to-day work of investigating crime.

3. And as the 1971 and 1974 re-investigations show, police officers have little enthusiasm for the task. One police force cannot effectively re-investigate another.

4. The attitude, training and habits of a lifetime play against the likelihood of an effective investigation that will often depend upon unearthing incompetence or corruption in the original investigating police

force.

5. The task of uncovering the injustices of convictions of the innocent is a vital one for a democratic society and we have an obligation to see that institutions are created that are adequate to the magnitude and importance of the task. Let us then examine some of the characteristics that such an agency must have.

A. Independence

6. It may well be that Mr. Steven Aronson was deprived of the RCMP report in 1982 concerning his own client because the Attorney General's department wanted to prevent public disclosure of the ineptitude of the proceedings both at trial and by their own office on appeal. Perhaps they feared a law suit.

7. Their conflict of interest could have been avoided by having an independent agency doing the re-investigation and reporting to the subject of that investigation as well as to the authorities. In this case the report was withheld from Mr. Aronson during a crucial period of the case, when he should have been using it to prepare for the next steps he would take on behalf of Donald Marshall Jr. (Vol. 55/10103,10107-11)

8. The Attorney General's office had a vested interest in the correctness of the original verdict, and in avoiding having its own incompetence and neglect of duty publicly disclosed. It follows inexorably that it should

have had no part to play in the 1982 re-investigation. Mr. Edwards, who was directing the 1982 re-investigation, from time to time sought the approval of his department in Halifax for steps such as apprising Chief MacIntyre of what witnesses had said and giving him a chance to explain his actions. He should not have had to do so. Investigations are better conducted, from the point of view of their efficacy, if such time consuming double checking is unnecessary. (Vol. 41/7590-91)

9. It is also better for the Attorney General's office if they are not involved in such re-investigations. Frank Edwards said that he had basically "gotten along well with the Sydney City Police Force. That since his involvement in this case and the RCMP report...the relationship had been diminished somewhat. That it had been affected by the case." (Vol. 55/10153)

10. Independence also needed to ensure that people do come forward even if they fear the original police department. It will encourage cooperation on the part of ordinary citizens.

B. Professional Skills Above the Ordinary

11. All investigating officers are not of equal ability, nor all prosecutions conducted with the same skill. But a single small agency dedicated to re-investigation can insist upon and obtain a staff with investigative skills above the ordinary.

12. In many cases, it will be found that it was the low level of investigative skill that caused the miscarriage of justice in the first place. It is vitally important that the level of skill brought to bear on a re-investigation should be of a vastly higher order. Adequate funding for such an agency would have to be arranged. Access to modern scientific techniques, and expert evidence of a sophisticated sort would be required. This level of sophistication is not available within many police forces in this country, but it is not unavailable.

13. It is significant that the only existing resources for re-investigation lie within the Justice Department (Government of Canada) and it is one which does not seem to have adequate staff in this respect. There are two or three lawyers in the Department of Justice at Ottawa who have the expertise to deal with this kind of case, but they are "responsible for other criminal law matters, too" and in some years "we are very, very hard-pressed". (Vol. 53/977-9)

C. Openness to the Subject of the Application

14. In this case, it was quite tragic that until the intervention of Mr. Edwards, Mr. Aronson was unable to obtain a copy of the RCMP report for many months, after the investigation was completed. There should be nothing to hide from the subject of the investigation once the investigation is concluded.

D. Powers

15. In cases such as the present, those who know the truth very often have reason to fear disclosure of it. Those who have committed perjury cannot normally be expected to come forward and admit that perjury, knowing that they themselves are subject to prosecution for perjury. It is far more important that the innocent should be freed, and cleared, than that the perjurer should be prosecuted, if it comes to that. Here, it did not, but this case seems anomalous in that regard.

16. Accordingly, the agency should have the power to grant immunity from prosecution for crimes committed in the course of the proceedings being investigated. No doubt that discretion will be exercised with caution. But people should know that they can go to this agency and, in appropriate circumstances, speak without fear of prosecution.

17. Even witnesses who did not commit any wrongdoing in the course of the first prosecution may have fears, even if unfounded, that ought to be formally assuaged. James MacNeil thought that he might get in trouble for "failing" the lie detector test. His misconceptions were profound:

> "I thought they were going to lock me up or some darn thing"

because he had failed that test. (Vol. 3/478, lines 5,16-25)

E. Mixed Civilian and Police Investigative Teams

18. An investigative agency composed of police officers only would not command support from the public, nor confidence from those who are minded to come forward. Moreover the differing perspectives of police and non-police personnel are both valuable in understanding and evaluating an earlier investigation and prosecution. Inspector Marshall's evidence illustrates the problems that arise when purely police investigators act in such a context:

> "Probably not and probably I didn't go there, you know, initially with the intention of just listening to...Detective MacIntyre and accepting his word cart blanche but I tell you this, that if you work with a man over the years and grow to respect him as a policeman, as an honest man than I think that preys on your mind whether you want to believe it or not, in other words subliminally." (Vol. 30/5617)

Staff Sgt. Wheaton's actions were generally exemplary and effective. But it is important not to lose sight of the fact that complaints to the R.C.M.P. in 1971 and 1974 were utterly ineffective.

F. The Agency Must Be Widely Publicized

19. In this case it was clear that many people had no idea of where to go or what to do in order to right the wrong that had been done to Mr. Marshall. In 1979 Maynard Chant went to his pastor about it, but he:

> "...wasn't really sensitive towards it so it sort of hushed me up again, and I had to carry it a little more and I just continued to pray to God that He would cause a circumstance that I might be able to get the whole thing out."

David Ratchford was frustrated when he came forward once Mr. Urquhart, in the presence of Sgt. MacIntyre said "the case was closed":

"I knew that they didn't want to hear about it so we left."

Similarly, Sandra Cotie, Barbara Floyd and Joan Clemens knew from newspaper reports that John Pratico had lied at Marshall's trial. If there had been an investigative agency known to them that to which they could have turned, calling Mr. Rosenblum's office fruitlessly would not have been all that they could do. Miss Floyd said that they discussed whether they ought to do anything further after that:

"We didn't know what else to do".

(Vol. 5/939, lines 11-20)
(Vol. 24/4453-5)
(Vol. 18/3142, lines 5-18; pp.3138-42)
(Vol. 18/3233, lines 1-14)

20. It would seem sensible for the provinces to work with the federal government to set up a jointly-funded provincial- federal government agency to do this task. This agency would operate with the common-sense knowledge that mistakes do happen, and would quickly develop an expertise in this area. THE COMMISSION SHOULD RECOMMEND THAT THE PROVINCE OF NOVA SCOTIA COMMENCE DISCUSSIONS WITH THE FEDERAL GOVERNMENT AND THE OTHER PROVINCES TO ESTABLISH SUCH AN AGENCY. Alternatively, a provincial agency with these characteristics is necessary and its establishment ought to be recommended.

CORRUPTION

"Interpreter: Just a moment, sir, he would like to say something to this person, to this gentleman. Are you working for Johnny MacIntyre now?

Mr. Pugsley: Yes, I'm his lawyer.

Interpreter: He wishes for you to tell him that he does not want his apology or forgiveness, is what I want to tell you.

Mr. Pugsley: Thank you."

(Vol. 82/14,442;lines 14-25)

"I do not feel Donald Marshall is the author of his misfortune. He is the victim of an unscrupulous police officer, John MacIntyre."

(Vol. 43/7920) Staff Sergeant Wheaton

unscrupulous adj. not scrupulous; not restrained by ideas of right and wrong; unprincipled.

Webster's New World Dictionary, 1979

corrupt adj., v. --adj. 1 dishonest; especially, influenced by or involving bribes: a corrupt judge. 2 depraved or wicked.

Gage Canadian Dictionary, 1983

corrupt adj. 1 orig., changed from a sound condition to an unsound one; spoiled; contaminated; rotten 2 deteriorated from the normal or standard; specif. a) morally unsound or debased; perverted; evil; depraved b) taking bribes; venal

Websters New World Dictionary, 1979

CORRUPTION

A. Introduction

1. It is important to be able to properly characterize, from an ethical perspective, the actions of MacIntyre and Urquhart. MacIntyre and Urquhart are corrupt and unscrupulous. They are also inept and incompetent -- see Police Investigation Standards - 1971. Do not confuse the two. They suffer from no mere problem of "tunnel vision". If "tunnel vision" can in one aspect properly be defined as reaching premature conclusions without any foundation of fact, i.e., focusing an investigation on one particular individual and then building a case around that person, it is crucial to see that this is not what MacIntyre and Urquhart are up to.

2. MacIntyre and Urquhart are not "building" a case; they are fabricating it. And it is this which is the crucial distinction between mere "tunnel vision" and genuine "corruption" or "unscrupulous" activity.

3. Similarly, if "tunnel vision" in its other aspect is seeing only the facts that support guilt and refusing to see those that exculpate, MacIntyre and Urquhart's behaviour is far removed from that.

4. It is clear from the notebook of Constable Wood that as early as Saturday morning MacIntyre had formed two related views about this matter: (1) that Marshall was possibly responsible; and (2) that the incident happened as a result of an argument between Seale and Marshall. He came to

these conclusions before there was the slightest smidgen of evidence to suggest either of these. As Commission counsel point out, the fictional argument that witnesses were later procured to substantiate, existed first in MacIntyre's mind.

5. This is not "tunnel vision". This is commencing under an assumption of guilt, inventing a state of affairs that would account for guilt ("the argument") and then, as we shall see, creating out of whole cloth the facts to support that assumption. (Vol. 32/5939-40;5940, lines 1-16)

6. It is respectfully submitted that Commission counsel was too charitable in examination when he suggested to MacIntyre that he was acting with "tunnel vision"

> "...the concept that you made up your mind and then you distilled the facts to support your conclusion."

unless we pay attention to the word "distilled". "Distilled" means having been turned from wine to hard spirits. To effect a similarly dramatic change in evidence is corruption, not "tunnel vision". (Vol. 33/6074)

7. Refusing the proffered help from the RCMP between 9:30 and 11:00 that Saturday morning would perhaps make sense if evidence had been gathered which was pointing towards the suspect at that time. But MacIntyre had no leads, and no information. So there is simply no explanation for the telex:

> "...circumstances presently being investigated by Sydney P.D. investigation to date reveals Marshall as possibly the person responsible..."
>
> (Vol. 32/5954-5,5959, lines 20-24)

8. The refusal of RCMP assistance is utterly inexplicable by a "tunnel vision" theory. That perspective would have MacIntyre accepting the proffered help, but then refusing to see any resulting evidence that was inconsistent with his preconceived view. But when he rejects the help while he himself has no evidence whatsoever one way or the other, that act speaks only of a decision not to allow any evidence that might exculpate Marshall to be sought. Edward MacNeil can think of "no logical explanation" for MacIntyre's refusal to accept that assistance from the R.C.M.P. But he is unwilling to accept that MacIntyre and Urquhart are dishonest policemen.

(Vol. 15/2650-1)

B. An Analysis of the Evidence Gathering Process

9. We will not seek here to repeat our canvass of the ways in which the investigation was inadequate. [Police Investigation Standards - 1971] Instead we propose now to examine a different matter. The issue we seek to discern is whether or not they were honest police officers doing their inadequate best, or whether in fact they were corrupt and unscrupulous. We will try to focus on those issues which illuminate that question. Our approach is similar to that of Commission counsel, but we go somewhat further then they, and we wish to focus on the criminality of MacIntyre and Urquhart in somewhat more detail than time permitted them.

B.(i) The Jacket

10. Similarly, MacIntyre maintains that during the first week of the investigation he didn't get the jacket that Marshall was wearing on the night of the murder. On examination of that jacket, he says, he was suspicious of what Marshall had told him because there were a number of cuts that he saw in the jacket that did not coincide with the injury to Marshall's arm.

11. However, the expert evidence of Mr. Evers given at trial makes it quite clear that there were only two separations in that jacket: a cut 1" long on the left arm (coinciding with the injury) and a single large separation 8" long (made to relieve the pressure on the injured arm), of which 6 1/2" was a cut, and 1 1/2" was torn. There were also a number of tiny cuts but as they could only be seen by a microscope, MacIntyre could not have been aware of them. There were no cuts, therefore, that did not coincide with the injury to Marshall's arm. (Red Vol. 1/103,104; Red Vol.2/33)

12. And so one is forced to conclude that MacIntyre, before the Royal Commission, tried to persuade the Commission of his good faith by lying about this evidence.

13. Of equal importance, if the "extra" cuts in the jacket which MacIntyre said he saw were in fact not visible, there was no reason for him to attach suspicion to Marshall based upon that jacket, as he claims he did. It is

respectfully submitted that the "extra" cuts in the jacket are a lie made up after the fact to conform to the image that MacIntyre wants to project: that of a police officer who kept an open mind by looking at all of the evidence until the jacket did in fact turn up to provide evidence incriminatory of Marshall.

(Vol. 33/6055-7;6059, lines 1-18;6060, line 1 to 6061, line 23)

14. Unfortunately for MacIntyre he did not get that jacket until June 2, 1971. The evidence is clear that he made Marshall a suspect on May 30, 1971. The jacket is simply not available at that time to innocently explain why Marshall was placed under suspicion. (Vol. 33/6064, lines 1-10)

B.(ii) Harriss

15. Patricia Harriss is an admitted perjurer, and a person of bad character. She may have tried to conceal the full extent of her minor criminal record, though it is more likely that she simply forgot the details of many years ago. But her evidence should be approached with caution and evidence that strengthens it should be sought.

16. Fortunately, there is intact an abundance of supporting evidence. There can be no doubt that by the ethical standards expected of police officers, the concealing of exculpatory evidence in a murder case is a corrupt act. And if the evidence of Harriss is analyzed, that is exactly what is disclosed. Her original evidence was crucial in that she confirmed the existence of the two men and her observations are fundamentally

supportive of the evidence of Donald Marshall Jr. regarding these two men, one of whom was dressed so peculiarly.

17. To repeatedly tear up statements every time that exculpatory evidence was mentioned, and to repeat that act until the child witness gives up communicating the exculpatory evidence, is an act that can be interpreted only as corrupt. The officers know that they are acting to conceal exculpatory evidence; they are not merely ignoring it. When they tear up her statement, they are concealing it.

18. And this evidence is amply corroborated by her mother. Patricia Harriss was not alone. She began to cry and break down, and this happened while the questioning was being done by Detective Urquhart. He was the one who had crumbled the papers somewhat impatiently, tossed it to the floor whenever she mentioned "two men". On the other hand, it was Detective MacIntyre who suggested that Mrs. Harriss leave the room, presumably after he had observed the unsuccessful questioning by Urquhart. Mrs. Eunice Harriss testified that during the hour or hour and one-half that she was in the room while her daughter was being questioned, statements were in fact torn up; and the fact remains that in the final statement these two men were never mentioned.

(Vol. 47/8659, lines 21-25) (Vol. 16/2955-6)

19. It is significant that this process is similar, although there was no actual tearing up of the statements, to the verbal interrogation of Deborah Timmins. The questioning was "more or less really suggestive". She

had to reiterate quite a few times in the face of strong suggestions as to where she was, and what she saw there, "no, that isn't where I went" and "that isn't how I went." That questioning did not stop until her brother, who was present at the interview, spoke up and indicated that the police should not proceed in this fashion by insisting "Well, if she didn't see nothing, she didn't see nothing." (Vol. 4/714-15)

20. The significance of this suppression of evidence was never lost on MacIntyre. When he met with Mr. Edwards of the Attorney General's office he strongly put forward the misleading statement he obtained from Harriss. Edwards said that Chief MacIntyre:

> "Pinned his argument on the fact that Marshall had met Harriss and Gushue in the park and they said there was only one other person."

According to Edwards:

> "...this seemed critical in Chief MacIntyre's mind, and this proved Marshall was lying."
>
> (Red Vol. 19/31 and Red Vol. 17/5)

21. The fact that MacIntyre failed to put to Edwards, in all fairness, that Harriss had previously given a statement which described two men, and not one, and which therefore supported Marshall rather than contradicted him, not only shows his corruption even at that stage, but underscores the importance which he attached to the evidence that he had so corruptly obtained. The statement does two important things: first, it establishes that Marshall was with two other men, rather than alone with Mr. Seale; and second, it describes Mr. Ebsary. (Vol.43/7967-8)

22. It is in this context that Wheaton and Davies' evidence about MacIntyre trying to physically "bury" the exculpatory Harriss statement should be evaluated. It is part of a single course of conduct. The acts are two sides of the same coin. (Vol. 35/6517)

23. This episode with Harriss exemplifies the kind of corruption we adverted to above. Whether or not they had made up their minds as to Marshall's guilt, they are determined to prevent any evidence coming forward which will interfere with the view that Marshall was guilty. This is corruption, and it was persisted in even during MacIntyre's visit to Mr. Edwards office.

24. In Harriss' case, as in the case of others, threats of perjury were used to keep her from changing her mind. This is a common feature of many interviews. MacIntyre and Urquhart told her:

> "about perjury and that if I change anything or say anything different from what I was in the statement, I would -- I would go to gaol."

and:

> "...maybe an easier way of putting it is that if I would mention these two men, I will be charged with perjury."
>
> (Vol. 15/2006, lines 1-24) (Vol. 16/2822, lines 23-25)

25. The fact that this statement is not signed is a matter that Sgt. Urquhart, under oath, finds inexplicable. In fact, it is quite explicable. The 8:15 p.m. June 17 statement, the first of the two, did not confirm what Urquhart and MacIntyre were creating as a theory of the murder. It was

exculpatory, and therefore not worth anything to them. That is why it stops in the middle, why it was not signed by her, and why it was not signed by Urquhart. They intended from the beginning to suppress that statement.

(Vol. 52/9581, lines 14-20;9579, lines 1-4)

26. If corroboration were needed for the evidence that MacIntyre attempted to physically suppress the exculpatory Harriss statement by hiding it from Wheaton and Davies that corroboration exists. MacIntyre prepared a detailed inventory list of all the statements that he was giving to Wheaton. Clearly it was a matter of some concern to him to prepare that inventory carefully. He had just received an unprecedented written order from the Attorney General's Department to produce the entire file. He wanted no mistake about what he was giving to Wheaton.

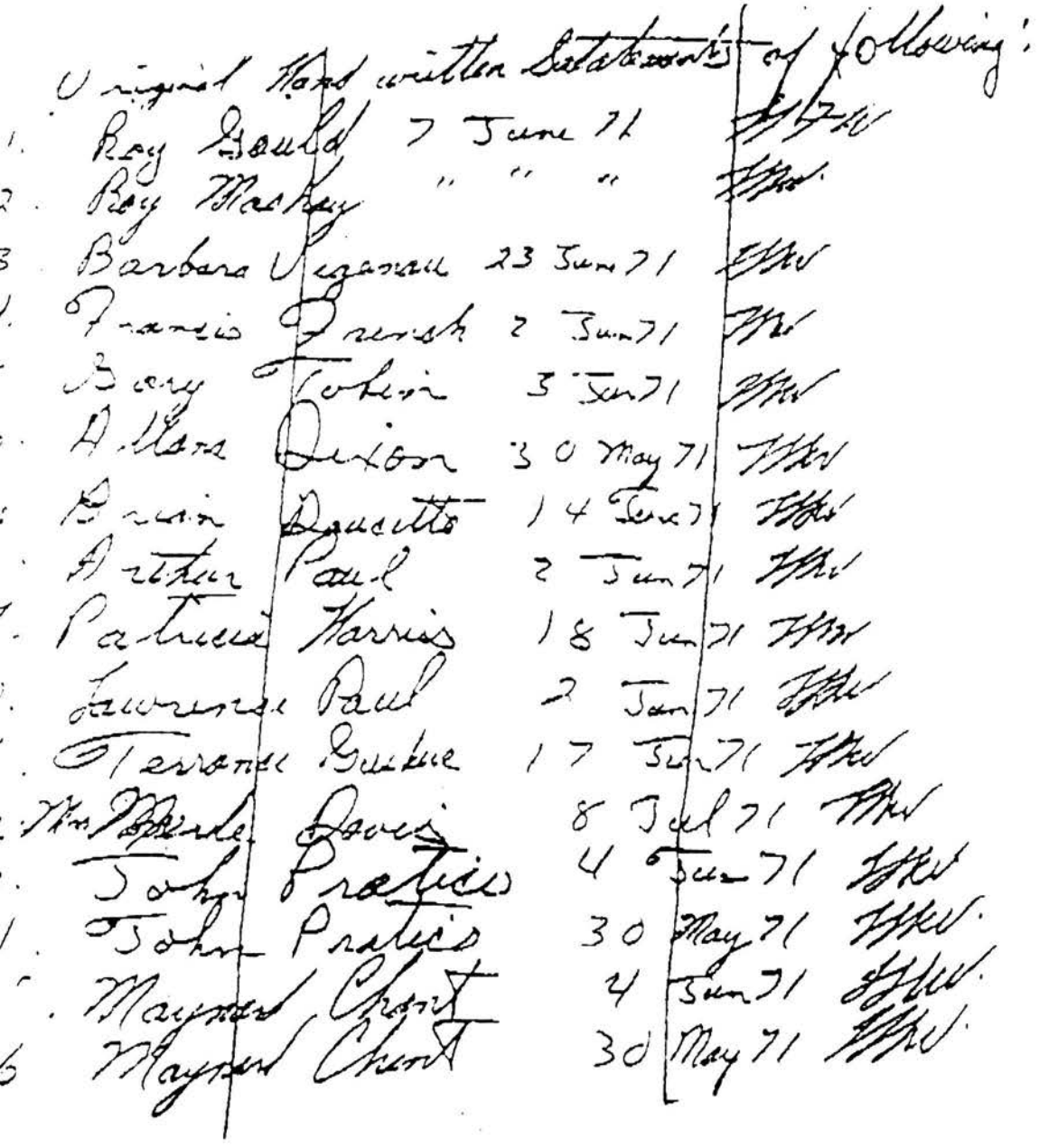
Exhibit 88

27. Commission counsel, in their submissions, focus upon the entry in Exhibit 88, the inventory, that reads:

"P.A. Harriss one statement given to S/S Wheaton already."

Wheaton's comment on this seems perfectly acceptable; he had indeed already been given one Patricia Harriss statement (dated June 18, 1971), on an earlier occasion, February 26, 1982. This accords with the plain meaning of the entry. But Commission counsel do not advert to the fourth page of Exhibit 88A. Staff Sergeant Wheaton was taking note in his own handwriting of what was being given to him by way of original handwritten statements. Those notes were given to MacIntyre's sister to type up, together with a verbal indication respecting Patricia Harriss that Staff Sergeant Wheaton

had already been given the statement referred to in the handwritten notes. The typed copy can be seen as the last page of Exhibit 88A and Exhibit 88. If there was any question as to what statement was given to Staff Sergeant Wheaton at this meeting "already", the answer lies in the handwritten notes of Staff Sergeant Wheaton in Exhibit 88A. MacIntyre's sister did not transcribe onto the typed copy the full handwritten notation: in each case she omitted the date the statement bore on its face. The full entry is worth examining.



(Vol. 44/8175-8) (Exhibit 88 and 88A)

27A. The only other entry regarding Harriss is also a reference to the second statement only:

"Statements of Patricia Ann Harriss -- June 18, 1971."

[No significance should be attached to the use of the plural; Marvel Mattson and Terrence Gushue's statements are also referred to in that document in the plural, though they each gave only a single statement.] There was no entry referring to the statement of June 17, 1971. The reason seems clear. He never intended to produce it. And when Exhibit 88A is examined, we can also see that it was not in fact produced -- only the June 18, 1971 statement that incriminates Marshall was handed over. The crucial exculpatory statement went under the table. (Vol. 42/7769) (Exhibit 88)

28. It would be surely a most unfortunate coincidence if two independent police officers chose to lie -- and indeed "frame" -- a fellow police officer over the concealment of a statement that, by pure chance, he omitted to describe in detail in the inventory he himself prepared!

29. Commission counsel state:

> "We have been unable to reach a conclusion as to which version of these events should be believed."

We believe this is unduly reticent. If corroboration were needed for Sgt. Wheaton's evidence, it is provided by the evidence of Sgt. Davies, and officer who was only briefly and incidently involved in this matter and who has no reason to lie. And lie it would be, for the statement he overheard "I might just as well give you it all" uttered by MacIntyre is damning in the extreme and is not capable of being easily misconstrued or misunderstood. Minor discrepancies as to the exact date can hardly be crucial and the absence of contemporary reports to superiors reflect no more than the often seen reluctance of one police force to investigate another.

30. MacIntyre had every reason to continue to try to conceal the exculpatory Harriss first statement dated June 17, 1971. The extravagant assertions he made to the Attorney General's office were based on the inculpatory second statement dated June 18, 1971. At that time he concealed the existance of the earlier statement in his protests about Wheaton's

investigation and in urging upon the Attorney General's office the clear guilt of Marshall.

31. Neither of these aspects of the matter were considered by Commission counsel and it is respectfully submitted that they enable the formation of a firm conclusion that Wheaton and Davies told the truth, and did not lie under oath about this matter. ACCORDINGLY THE COMMISSION SHOULD RECOMMEND THAT MACINTYRE BE CHARGED WITH PERJURY UNDER s. 132 OF THE CRIMINAL CODE.

32. Harriss is a good illustration of a witness for whom the statement taking process itself reaches the level of corruption. It is not merely a process of steering her away from statements that the officers did not want to hear because they supported Marshall's innocence. The officers go farther. They actually supply her with, and insist on her reiterating information that she could not possibly know and which incriminates Marshall and is corroborative of details given by other witnesses whom they are treating in a similar way.

33. Examine her statement (Vol. 16, p.65 dated June 18). She confirms that most of the information in it could not have come from her and could only have come from the police: (1) she says of the man she saw "I know Sandy and it looked like him." But she did not know Sandy Seale. So that information had to come from the police. (2) She said that Marshall was "drinking". This is evidence that helps to explain an otherwise inexplicable murder. (Vol. 16/2841-2)

34. The significance of this is underscored by Commission counsel, Mr. MacDonald, when he asked the following question:

> "Q. ...Can you offer any other possible, reasonable explanation for the fact that these guys came up with identical stories, other than this, either that they are telling the truth that they did see Marshall stab Seale or that someone told them -- put the evidence in their mouth?
> A. No, I can't."

And there is no common link between the witnesses except MacIntyre and Urquhart. (Vol. 33/6178, lines 14-19)

35. It is an obstruction of justice. It is criminal. It remains, regrettably, unpunished. THE COMMISSION SHOULD RECOMMEND THAT MACINTYRE AND URQUHART BE CHARGED WITH PERJURY AND OBSTRUCTING JUSTICE RESPECTING THEIR ACTIONS IN CONNECTION WITH MS. HARRISS CONTRARY TO ss. 132 AND 139 OF THE CRIMINAL CODE.

B.(iii) Patterson

36. Patterson is a person of bad character by reason of his criminal record. He has been put in jail by Sgt. MacIntyre and Sgt. Urquhart and may bear a grudge against them. It would therefore be prudent to approach his evidence with caution. However, he did not seek the Commission; Commission staff sought him out. His evidence is worthy of belief when looked at in context. (Vol. 55/10,018-29)

37. Though he has had no contact with Donald Marshall Junior in the intervening years, his evidence that he was interviewed by MacIntyre and

Urquhart is corroborated by the evidence of Donald Marshall Junior that when they were in jail together before the murder trial, he did in fact see Patterson in that jail and Patterson told him then that he had told the City Police that he did not remember what had taken place.

(Vol. 82,14,383, line 14)

38. MacIntyre and Urquhart would have known that Robert Patterson was a potential witness from the moment they got their first statement from Terrance Gushue.

39. Pratico's statement also names him. By May 30, not only they but Junior Marshall had referred to him as well. MacIntyre says:

"Q. Did you ever speak with him?
A. No.
Q. Why not?
A. I didn't locate him.
Q. Did you try?
A. Well my men were out looking for him, and it wasn't brought to my attention.

...

Q. ...It would seem to me that given what you knew on May the 30th, Patterson would be a pretty important person to find and talk to. Wouldn't you not agree with that?
A. No, I think Patterson was over on the other side of the park. There is no evidence to state that Patterson was over around Crescent or that Patterson was involved with any of those people that I talked to."

(Vol. 33/6010-6012) (Vol. 15/2720)

This is itself quite a lie because Pratico and Marshall said that they talked to him and Marshall had said that he and Seale were together when

they saw Patterson.

40. MacIntyre's response to questions suggesting that the failure to find Patterson was less than competent police work is typical of his response to any criticism:

> "I don't -- I didn't see anything wrong with it. I don't know what Patterson could tell me except that what other people were telling me that he was on the bench on the other side of the park, if he was sober enough to realize that and that -- I had no information that Patterson seen anything from anybody."

This is of course a complete lie put forward on the witness stand with his usual assurance. Further:

> "A. ...and my men tried to contact him with no success at that time.
> Q. Have you ever spoken to him?
> A. No, I haven't. No."

And once again, when questioned about why he didn't find Patterson, he repeats,

> "A. I am saying today that my men looked for Bob Patterson and we didn't find him...." and "Well, I am saying that we couldn't locate him".
> Q. Patterson couldn't be that hard to find.
> A. Well, we -- my men couldn't locate him. That's all I can tell you, sir.
> Q. Now are you saying that you told your men specifically, "Go and find Bob Patterson for me"?
> A. Yes, I would -- during this investigation his name came up and I would say that the men were looking for him to the best of my recollection.
> Q. You would have --
> A. And they never came up with him and in -- and the RCMP were looking for the man too and didn't come up with him."
>
> (Vol. 33/6013, lines 15-20;6014, lines 18-24;6017;6018)

He has no recollection that he ever told Urquhart that he wanted Patterson to talk to him. And then he's asked the following question:

"Q. ...Do you know him, Robert Patterson?
A. No.

(Vol. 33/6020)

41. It seems very likely that this too is a lie under oath because there has been an extensive involvement between himself and Patterson. Certainly, Urquhart knew Robert Patterson and did not find him or interview him.. Urquhart is surprised that Patterson would "be well-known to John MacIntyre." Interestingly enough, the arrest in September for defective credit cards has the prosecutor shown on the document as Detective Sergeant MacIntyre: the date of it is February 1, 1971. Again on March 17, 1971, he was charged with break and enter and theft and Sergeants MacIntyre and Urquhart were the prosecutors according to the documents.

(Vol. 52/9550-1;9556, line 24)

42. These two officers are locked into that hopeless and untenable position but the objective evidence completely refutes it. It is their convoluted set of lies about Patterson that gives his account of their involvement with him its greatest credibility.

43. Patterson swears under oath before the Commission that a typed statement was prepared, obviously an incriminatory one which he was not allowed to read and that he refused to sign, even when pressed with physical force and violence as well as threats. The problem for the two officers is that if they acknowledge that there was in fact an interview, there would have to be a note of that interview, some record of it. In this case the statement Patterson refers to is obviously no longer with the materials

produced to the Commission and it is a fair conclusion that it has been destroyed by MacIntyre and Urquhart.

44. Since Patterson was in the local county jail serving a four-month term of imprisonment in September, just before Mr. Marshall's trial, the claim under oath before the Commission by these officers that they could not find him is quite impossible to believe. The very first place they would look for a man with Patterson's background is the local jail!

(Vol. 52/9566)

45. The description of the interview that Patterson gives is consistent only with officers who are corrupt. It contains many features similar to the interviews recounted by other witnesses. Logically enough he is picked up by two uniformed police officers at his home and questioned. The pattern of question is familiar:

> "They said that they knew that I was with Junior that night and that I had seen Junior doing the stabbing..."

He was handcuffed to the chair and MacIntyre started screaming at him when he denied knowledge of the incident and put to him the following:

> "Yes, you do, because we have already got two statements saying that you were there."

MacIntyre began pulling his hair, pushed the chair up against the wall, slapped him around and physically abused him to the head, face, stomach and ribcage. Physical abuse is a new feature, not found in other questioning accounts; but then, only Patterson had a serious criminal record at that

point, and that may explain the liberties they took with him.

(Vol. 55/10,055)

46. This physical abuse is punctuated by MacIntyre stopping from time to time and saying "Now, do you admit it?" Then Urquhart came back into the room. He had a statement already typed out, and though he didn't see it, Urquhart told him that it was a statement where he would assert that he saw Junior doing the stabbing. Patterson refused to sign it and MacIntyre slapped him around some more, this time in the presence of Urquhart.

47. Patterson was also warned, before he left the police station "not to talk to anyone about it" by both Urquhart and MacIntyre.

(Vol. 55/10067, lines 6-16)

48. We would go further than Commission counsel. Patterson should be believed. AND THE COMMISSION SHOULD RECOMMEND THAT MACINTYRE AND URQUHART BE CHARGED WITH PERJURY AND OBSTRUCTING JUSTICE BEFORE THE COMMISSION WITH RESPECT TO THEIR EVIDENCE IN CONNECTION WITH PATTERSON CONTRARY TO ss. 132 AND 139 OF THE CRIMINAL CODE.

B.(iv) <u>Mary O'Reilley</u>

49. There is a significant passage in the statement that Mary O'Reilley allegedly gave to MacIntyre:

> "A. I told her there was supposed to be a grey-haired man there. I told her if she was questioned by the police, she should tell about the grey-haired man that Junior told me about."

That statement was never made to MacIntyre and there never was such a conversation between Mary O'Reilley and Patricia Harriss on this subject. Mary O'Reilley is quite clear about this:

> "Somebody must have put it there because I didn't."
>
> (Vol. 18/3304-5;3301-2;3323, lines 1-7)
> (Vol. 15, p.2813-4) (Vol. 16, p.2850, lines 5-10,15-18)

It is significant that Mary O'Reilley recalls having had the statement read back to her by MacIntyre; yet quite clearly, if the part concerning the fictitious conversation had been read back to her accurately, she would have repudiated it then and there.

50. There is only one possible explanation for this peculiar fabrication: MacIntyre and Urquhart thought that they had a frail reed in Patricia Harriss, and that she might at any time break and tell the truth about the two men she had seen and might describe Ebsary in a manner that would support Mr. Marshall. This was a reasonable fear given her repeated reluctance to refrain from mentioning the two men in her statement. The assertion that there was only one man there was the only lie in her statement. So it was that lie that had to be "covered" by the police, in case she reverted to her original and truthful statement.

51. The Mary O'Reilley statement, once created, does two things. First, it conveniently blames Marshall for any change in her evidence and thus provides incriminating evidence against him in and of itself. It is evidence of a consciousness of guilt on his part. Second, and more importantly for our present purposes, it is a convenient statement

discrediting her evidence on this crucial point if Patricia Harriss ever decided to tell the truth.

52. This episode shows a deliberate fabrication of evidence, corruption of a most serious variety, and is supported by the peculiar note in MacIntyre's own handwriting indicating that the night before he saw the O'Reilley twins, Patricia Harriss had told him that:

> "In school last Thursday, the O'Reilley twins told me [Patricia Harriss] to tell the story about a grey-haired man."

MacIntyre, when asked for an explanation, was unable to give one:

> "Really I can't, no."
>
> (Vol. 34/6235-7;6238, line 5)

53. There is an obvious explanation. The note in his own handwriting was clearly not from an interview with Patricia Harriss at all. Rather it was a note of what he intended to attribute to Patricia Harriss if she began to tell the truth, and to use to discredit her in Court if that happened.

54. The Commission counsel take "no firm position" on this issue. It is respectfully submitted that the logic of their own argument impels inexorably toward the conclusion urged above. When all possible innocent explanations have been ruled out, then that which remains must be true. We have analyzed this incident in more detail than have Commission counsel, and we believe the evidence fairly leads to the conclusion that this too was part of an obstruction of justice.

Submissions of Commission Counsel, p.59

55. THE COMMISSION SHOULD RECOMMEND THAT MACINTYRE BE CHARGED WITH PERJURY AND OBSTRUCTING JUSTICE BEFORE THE COMMISSION WITH RESPECT TO THEIR EVIDENCE IN CONNECTION WITH O'REILLEY CONTRARY TO ss. 132 AND 139 OF THE CRIMINAL CODE.

B.(v) Chant

56. Chant is a witness who has committed perjury, and so his evidence should be approached with caution. The pattern of police corruption in the obtaining of Chant's statements is similar to that seen regarding Harriss, and corroborates her evidence in that regard.

57. Information given in Chant's statement could not have come from him, and could only have come from the police: (1) he said that the man he saw in the bushes was a "dark-haired fellow". But he didn't know Pratico, and didn't know whether he was dark haired or not. (2) He describes Pratico as "hiding in the bushes" -- not near the bushes, nor behind the bushes. This was congruent with Pratico's false evidence, and could not have come from anyone but the police. (3) He identified the bushes as being those that were opposite the apartment. Once again, only the police knew that this is where Pratico had falsely stated he was. (4) The police must have told him that Pratico had been in the police office in Sydney on Sunday afternoon; he could not have know that. (5) His statement was that the taller man of the two was facing the houses. There is no way that he himself would know that this information was consistent with what Pratico was going to say. (6) He states that Marshall's jacket sleeves had been

rolled down at the time. Only the police know that the jacket has a slash mark that indicated that the jacket sleeves had in fact been rolled down at the time of the stabbing. He could not have known this, let alone know it was a significant fact. Chant acknowledges that "the objective effect of it was to help him tell a false story convincingly."

(Vol. 6/968-9;970, lines 1-17;973, lines 20-25;974, lines 1-12; 975-7;981, lines 18-25;982, lines 1-12)

58. Once again, threats are used to see that he sticks to his story once the words are put in his mouth:

> "It was said that he was on probation and he could be in a lot of trouble if he didn't tell the truth."

The suggestion was made by MacIntyre that he could have committed perjury and "if he was lying, he could be charged." And again, the familiar ruse is used wherein they "said that they had a witness to prove that he had been in the park." (Vol. 20/3451, lines 12-25;3533, lines 17-21)

(Vol. 5/855, lines 11-17;856,859, lines 1-2;860, line 2)

59. Chant is only too willing, again and again, to suggest that he himself created the evidence that he found in his statement and that he "conjured it up." This is clearly not possible. When it was suggested to him that the reasoning exhibited in his statement seemed to be more sophisticated than a 14 year old under some stress would be capable of achieving, he said:

> "Yes. It's quite a story. Looking back at it now I don't believe it was me, but -- like from the statement that I'm looking at now, the story -- I don't picture myself as being that type of a person that would use words or use that type of -- tell that type of a thing. Basically, like I said, I found myself in a jam and somehow through the evidence that Mr. Marshall had given that night and through some other type of evidence that I had heard this is the only thing that I can

think of right now that I would come up with this story."

(Vol. 5/834, lines 1-10;917)

60. The faking of the case by the police continued past the statement taking process. When he was taken to the park, unidentified officers told him that he couldn't say "knife, that I could say shiny object". This kind of coaching is consistent only with corruption. Chant agrees "[MacIntyre and Urquhart] must have, at that point, told you the basics of the story you are to tell."

(Vol. 5/898, lines 1-10;900, lines 1-6,23-24;905,965, line 6;964)
(Vol. 12/2066, line 11;2080, line 8;2129)
(Vol. 19/3358-9)

61. THE COMMISSION SHOULD RECOMMEND THAT MACINTYRE AND URQUHART BE CHARGED WITH PERJURY AND OBSTRUCTING JUSTICE BEFORE THE COMMISSION WITH RESPECT TO THEIR EVIDENCE IN CONNECTION WITH CHANT CONTRARY TO ss. 132 AND 139 OF THE CRIMINAL CODE.

B (vi) Pratico

62. Pratico is a witness who has committed perjury and whose mental status is uncertain. His evidence therefore ought to be approached with caution. In this case there is an abundance of common features in the story now being told by Pratico and other witnesses which makes his evidence credible.

63. MacIntyre contends that he was engaged in honest questioning of Pratico. He asserts that he was not knowingly engaged in creating false

evidence. Commission counsel seemed to understand that this was not consistent with his own account of events. Speaking of Pratico's statement, MacIntyre said:

"Q. You thought you were getting the truth?
A. I thought I was, yes.
Q. Did you ask him why he told you an untrue statement earlier?
A. No.
Q. Why not?
A. Well, I didn't, sir.
Q. But that would be a -- I would think -- just a fundamental question you would ask him.
Q. Weren't you interested?
A. It would've been here if I'd asked him that question.
Q. Well, weren't you interested?
A. Well, I was interested. Yes, I was, but I didn't ask him the question there."

(Vol 33/6166, lines 11-24)

The significance of this is that any police officer who had honestly thought upon re-questioning that he was now getting the truth would, of course, ask the question why there had been a lie earlier. Indeed you could not be satisfied you were getting the truth without understanding why the truth had not been forthcoming earlier. The failure to ask this question is explicable only on the theory that MacIntyre knew that he was not getting the truth but also knew he was getting precisely what he had set out to get: evidence that would convict Donald Marshall Jr.

64. It is MacNeil, the prosecutor who joins in this process. He and MacIntyre tell Pratico the lie that "they found a couple of beer bottles with my fingerprints on it. And I was never fingerprinted by the City Police in my life." This was said by either MacIntyre or MacNeil, but it was clearly said in the presence of each other. It took place after the incriminating statement had been given, so it was clearly intended to induce

him to stick to his false story. There would have been no need for such a false threat unless they knew his evidence was itself false.

(Vol. 12/2079;2131, lines 1-8)

65. THE COMMISSION SHOULD RECOMMEND THAT MACINTYRE AND URQUHART BE CHARGED WITH PERJURY AND OBSTRUCTING JUSTICE BEFORE THE COMMISSION WITH RESPECT TO THEIR EVIDENCE IN CONNECTION WITH PRATICO CONTRARY TO ss. 132 AND 139 OF THE CRIMINAL CODE.

B.(vii) Credibility

66. The strength of the case against MacIntyre is precisely that which made the case against Marshall so strong. Witnesses who are otherwise of suspect credibility -- because they are of bad character, have a history of mental illness, or are perjurers, become credible because they tell strikingly similar stories having had no chance to concoct their evidence in consultation with one another, and there is nothing to indicate that the police investigators, acting as intermediaries, gave them that opportunity. It is ironic!

67. If MacIntyre is telling the truth in important respects, almost everybody else is lying.

68. MacIntyre denies everything and admits no fault. His investigation was flawless -- if only you could believe him.

(Vol. 32/5843, lines 21-25;5854, lines 22-25)

69. It is probably true that MacIntyre's motive for all this is now concealed by the mists of time. At this late date, it seems impossible to discover it. There are interesting hints at the motive, but nothing conclusive. His motive may well have been a distasteful mixture of racism, self-interest, arrogance, and a desire for advancement. He is a man who, as we have seen, wilfully distorts evidence in order to seek advantage.

(Vol. 32/5887-8)

70. His animosity towards Marshall seems to have commenced before Marshall's arrest for murder. In November, 1970 MacIntyre himself swears an information against Marshall charging him with damaging a headstone in a graveyard. But it seems clear that Marshall should have never have been charged at all. Prior to the charge, Tom Christmas had given a statement to the police which resulted in charges against him, stating that he had done it with "two other white guys". MacIntyre was unable to give any explanation as to why a man who, on the evidence that he had available, was totally innocent ought to be charged and taken to trial only to have the charges against him dismissed for a lack of evidence that was apparent from the very beginning.

(Vol. 32/5882-3;5900-5903)

71. Even before the Commission, MacIntyre was at pains to try to paint Marshall as a violent man, based on his criminal record. In trying to explain his testimony in 1984 "that it wouldn't alarm me if he [Marshall] stabbed somebody...because of [my] previous knowledge of him", MacIntyre

puts forward a distorted and untrue version of the statement "from one of the O'Reilley girls that he [Marshall] was over in the park in fights and that he carried a knife on him." In fact, the knife is an innocuous folding pocket knife of the sort carried by countless young boys, and there was nothing said to suggest that he was in any fight in the park.
(Vol. 32/5887-8)

72. As early as November, 1970, MacIntyre informs Mrs. Emily Clemens that Junior Marshall is an "unsavory character" telling her that he "wasn't the proper person that my daughter should be associating with." He felt so strongly about it that he referred to her, in this context, as being an unfit mother.

(Vol. 19/3460, lines 1-7;3461, lines 17-25;3467, lines 4-11)

And, he went so far as to tell her that Marshall "would make a mistake sometime in the future, that he could probably get him -- pick him up on it." MacIntyre "felt that if they didn't get him on one thing, well, they could have gotten him on another."

(Vol. 19/3474, lines 3-8;3475, lines 7-12)

73. And again, in March of 1978, when Marshall was being considered for a temporary pass to return to Sydney, MacIntyre prevented it. He told the authorities, inter alia, that if Marshall was granted a three-day leave of absence for return to Sydney there would be "reprisals from the black community." And, when a project was put forward it got support from almost every quarter in an effort to "bring officers to understand the Indians and

their problems and...avoid possible racial discrimination", MacIntyre was the only figure who refused to endorse the project. All that was wanted was a study to find out whether or not there was racial discrimination by police forces. He refused to endorse this project essentially because he did not like the manner in which the problem was presented, and, one may think, the fact that the issue was raised at all. His actions in these two respects suggest racial prejudice.

74. Fortunately the Commission does not have to determine motive. As in any criminal case, motive is interesting, but not essential.

75. It is clear that MacIntyre and Urquhart are unscrupulous and corrupt. That sad state of affairs is compounded by the improper and inexplicable refusal of the Attorney General's office to act on the recommendation that Staff Sgt. Wheaton made to Mr. Edwards: MacIntyre should be charged with obstructing justice then and now. By creating untrue evidence, and the suppression of true evidence in the original investigation, and the attempt to suppress and conceal evidence from Staff Sgt. Wheaton and Sgt. Davies are serious crimes which have gone unpunished far too long. (Vol. 46/8390-2)

POLICE INVESTIGATION STANDARDS - 1971

POLICE INVESTIGATION STANDARDS - 1971

1. The investigation of the killing of Sandy Seale by the Sydney Police Department was thoroughly flawed and in a number of significant respects failed to meet standards for competent police investigations of serious crimes.

I. The Early Investigation

A. The Description

2. The earliest evidence as to the identity of Sandy Seale's assailant was provided by Junior Marshall to the police at the scene shortly after the stabbing took place. This initial description of two men was not recorded at the time by the police who spoke with Marshall, but written down later in a occurrence report back at the station. Later on, at the hospital, Marshall supplied M. R. MacDonald with a description, this description being recorded by MacDonald when he reached the police station but not at the time that Marshall gave it to him. This description does not appear to have been formally circulated among other police officers.

3. Patrolmen searching for individuals matching a description they had cannot have been assisted by the fact that some of them had a wrong description describing the taller man as having white hair and the shorter man as having dark hair, rather than the other way around (Vol.

9/1163). For example, Ambrose MacDonald testified to looking for the two men described to him by either Constables Walsh or Mroz on the night of Friday, May 27 and on Saturday, May 28. Constable Ambrose MacDonald had the wrong description. Although he had seen a short order cook at the Esplanade Grill, whom he now knows was Roy Ebsary, at the time he was not looking for a short man with white hair like Mr. Ebsary, but rather a tall man with white hair. Constable Dean also remembered the description as being of a tall man with white hair and a short man. The wrong description was also recorded in a continuation report (Vol. 16 at p.10) filed by Constable Mroz.

4. Although some constables had occasion to talk to Marshall following the stabbing and after receipt of the initial description, they did not review the description with him nor seek any greater elaboration by asking Marshall questions about the two men. Therefore, they did not discover that the description they had of the assailants was, in fact, incorrect.

5. Errors in communicating the correct description to the patrolmen were compounded by the fact that when Detective Sergeant MacIntyre took over the investigation there was no effort made by him to seek or issue a formal and accurate description of the assailants. MacIntyre believed it sufficient to rely on the talk around the station with respect to the description being sufficient. (Vol. 32/5933) Patrol officers on patrol in police vehicles on Saturday, Sunday and Monday were not provided with a description of the assailants. (Vol. 9/1586).

B. The Searches

6. Patrolmen were not assigned by any superior officers to conduct a search for the individuals in question even with the faulty description. Patrolmen such as Ambrose MacDonald did go down to the Government wharf, a couple of restaurants, and the Isle Royale Hotel on the night of the stabbing but did so without formal direction from any superior officer, and then continued on his routine patrol with his partner.

7. Searches for a weapon or other evidence also took place in an unsystematic and undirected fashion. The first search was probably conducted by M. R. MacDonald on the night of the stabbing. M. R. MacDonald went down to the park area, drove through it, and walked along the sidewalk near the houses. He did not, however, go to the spot where Seale was found, probably because he did not know exactly where this was, not having had it described to him. He found nothing. (Vol. 10/1660, 1661)

8. MacDonald gave no directions to anyone to search the park on the night of the stabbing and it was not until the Saturday morning following that Constable Mullowney was detailed either by his Sergeant or by Detective Sergeant MacIntyre to search the park for a knife. This search was conducted with Constables Young and Crawford, but the only item seized in the whole park was a blood-stained tissue. This tissue was not placed in a container, nor were the searchers aware that potential exhibits should not be handled with bare hands. (Vol. 9/1578)

9. The officers conducting the search had no specialized training, no particular directions, and no equipment to assist in the search such as magnets, vacuums, etc. Detective Sergeant MacIntyre and M. R. MacDonald also examined the park area on Saturday, probably to look for a weapon. Neither did this search appear to be organized: M. R. MacDonald testified to having gone back to the park three or four times that Saturday as there was a chance that "something might pop up." (Vol. 10/1676)

10. On the Sunday or Monday following the stabbing, Wentworth Creek was drained and a visual search was conducted by walking along the shoreline and looking for a weapon. No metal detecting equipment was used.

11. The search involving Constable Mullowney consisted of just walking up and down the park without any precise instructions being given and without the patrolmen having any idea of the object of their search. Constable Young who assisted Mullowney did not even have an idea where the actual stabbing had taken place. (Vol. 17/3109)

12. Ambrose MacDonald and Boots Walsh conducted a visual search of the park on the Monday or Tuesday following the stabbing in an attempt to find the murder weapon. This search was not conducted at the direction of any superior officer but rather at the initiative of the patrolmen themselves.

13. Therefore, none of the searches for the murder weapon in Wentworth Park involved any methodical or systematic efforts, nor did the searchers rely on rakings, vacuumings or the use of metal detectors. No reports were made of any of the searches. (Vol. 9/158Ø)

C. Failure to Make Contemporaneous Notes

14. Another notable error in the conduct of the murder investigation was the failure of any police to make notes of conversations they had had with people or of observations they had made. For example, several police officers spoke with Junior Marshall on the night of the stabbing and yet no one made notes contemporaneously with those discussions. One explanation offered for this was that patrol officers in 1971 did not do investigative work because this was the domain of the detectives. If patrolmen did conduct any investigations of their own, they had to be discreet about it and therefore would not keep notes.

D. The Description of Ebsary and Missed Opportunities

15. There is evidence that members of the Sydney Police Department knew of Roy Ebsary by description or reputation but did not know his name. Ambrose MacDonald had seen him working as a short order cook at the Esplanade Grill. Before the Seale investigation in 1971, M. R. MacDonald had heard of a man who walked Charlotte Street with a bunch of medals and told people he was in the Royal Navy. (Vol. 1Ø, 1667, 1668) Norman MacAskill, who was the Deputy Chief of Police in 1971, testified to having seen Ebsary prior to 1971 and recalls him being notable because of the unusual nature of his dress. He recollects Ebsary as

striking an odd appearance. (Vol. 17/3057) For some reason, the description of Ebsary as one of the individuals in Wentworth Park on the night of the stabbing did not result in any of these police officers making any connection with the man they had taken note of on previous occasions.

E. Poor Communication

16. Two significant features that characterized the murder investigation were the lack of communication among the police officers, particularly between the patrol officers and the detectives and the overall lack of leadership and direction to the investigation.

17. The primary vehicle of communication between the constables and the detectives in 1971 were the occurrence reports and any verbal reports to the detectives.

18. At least one patrolman, Boots Walsh, has no recollection of being questioned by any members of the detective division concerning his knowledge of the events surrounding the stabbing. He was one of the first officers at the scene. This was not the case in all investigations, as Walsh has some recollection of conversing with detectives in other cases. However, these would have been informal meetings in the hallway of the Police Department and not structured briefing sessions. Constable Dean, another one of the first police officers to arrive at the scene, also testified to having no recollection of discussing the events of the evening with any of the

detectives when he went off his shift. At the conclusion of his shift he made no attempt to get in touch with any of the detectives and none of the detectives made any attempt to get in touch with him. (Vol. 9/1488)

19. It was routine for there to be no briefings of patrol shifts, either from the detective department or by one shift going off duty to another coming on duty. Arthur Woodburn, a constable with the Sydney Police Department in 1971, testified that there was not a free exchange of information between constables and detectives and that communication was very poor. In the instant case, patrol officers were not given information as to possible suspects or the type of weapon that was used in the stabbing.

20. These poor communications further hampered an investigation which was already being conducted in a haphazard and undirected fashion. When M. R. MacDonald arrived on the investigation as the senior police officer on the night of the stabbing, he received no information from the officers who had been at the scene other than a very brief conversation with Martin MacDonald at the hospital about Marshall's injury. (Vol. 10/1650)

21. MacIntyre testified that upon assuming conduct of the investigation on Saturday morning he has no recollection of talking with the officers who were on duty the night of the stabbing. (Vol. 32/5931) MacIntyre therefore assumed control of the investigation without the benefit of information from any of the men who had been on duty the

night before. MacIntyre's evidence is that he did not see or talk to M. R. MacDonald on Saturday, May 29th, and that although he saw M. R. MacDonald on Sunday, he did not ask him what he had or had not done during the time that he was in charge of the investigation. (Vol. 32/5968)

22. In addition to the inadequacies of the investigation as already set out, the investigation generally lacked leadership and direction. There were no on-going briefings with respect to the investigation and no updating of any physical description.

II. Further Errors on the Night of the Stabbing and Days Following:

A. Poor Directions

23. On the night of the stabbing, there were no police officers at the scene with any training of what to look for at the scene of a crime. None of the police officers on duty that night, including M. R. MacDonald, had ever investigated a murder before.

24. Boots Walsh testified that in his opinion their problem was lack of direction from somebody at a higher level. (Vol. 8/1329)

25. No instructions were received by the constables with respect to preserving the scene of the crime or with regard to any other matter. In fact, no direction was received from senior police officers with respect to doing anything on the night of the murder. Consequently, the

scene was not secured, people present at the scene were not interviewed, statements were not taken, and evidence was not gathered. The position of Seale's body was not marked or outlined. (Vol. 10/1728)

B. No Special Allocation of Personnel

26. Despite the seriousness of the crime, the prevailing attitude was that the constables on duty that night had the responsibilities of their regular patrol. Howard Dean testified that after they left the hospital that night he and his partner went out on regular patrol and did not go back to the scene of the stabbing. They had received no directions from anybody in the detective division to do anything specifically related to the stabbing, although on their own initiative they watched out for the erroneous description they had. (Vol. 9/1485)

27. M. R. MacDonald testified that on the night of the stabbing the police had other work to do. "You know, they could have had calls, they could have had breaks, they could have had anything that you couldn't spend too much time right in that park area." (Vol. 10/1647) This was the view of the senior man on duty the night Marshall and Seale were stabbed. No additional officers were requested to assist in the fulfillment of regular duties.

28. Some attempts were made to obtain the help of senior officers, principally Detective Sergeant MacIntyre and the Chief of Police. Sergeant MacGillivary, the desk sergeant, told M. R. MacDonald that Detective Sergeant MacIntyre had been called but that he was not coming

out. M. R. MacDonald did speak to the Chief of Police at his home where they had a short briefing, but the Chief of Police said that it was late in the night and that the investigation should be stopped until 8 a.m. Following this, M. R. MacDonald went home for the night, leaving instructions with Sergeant MacGillivary to tell the men in patrol cars that if they had a few minutes to spare away from their regular patrol they could look around the park area to see if they saw anyone fitting the description that they had. M. R. MacDonald did not, however, direct Sergeant MacGillivary to inquire of the patrolmen concerning whether names or addresses were taken of anyone around the scene, nor were any of the patrolmen directed by M. R. MacDonald or through Sergeant MacGillivary to contact any such people. The investigation was put on hold until Sergeant MacIntyre arrived in the morning. (Vol. 10/1758)

29. When MacIntyre arrived at the police station the next morning he testified that he did not see M. R. MacDonald and did not call him, nor did he have a written report from him. MacIntyre expected that M. R. MacDonald would be in touch with him but does not recall talking to Sergeant MacDonald until Sunday when M. R. MacDonald came into the station (Vol. 32/5915-5920).

C. No Solicitation of Available Extra Resources

30. In view of the fact that there was an obvious lack of expertise in the Sydney Police Department with respect to conducting murder investigations, it was a critical error that Detective Sergeant MacIntyre failed to avail himself of assistance from the R.C.M.P.

Identification Service and General Investigation Service. There was no reason why MacIntyre did not avail himself of the RCMP Indentification Services except that, as discussed elsewhere, he did not want any outside involvement in the case. Sergeant Urquhart testified to having used the Identification Services himself with respect to a 1973 murder investigation in which he was involved. (Vol. 52/9507)

31. In 1971, the Sydney Police Department did not have its own identification section. Even Sydney Police employed by the department at the time and involved in the initial stages of the murder investigation think that identification services should have been obtained from the RCMP. Boots Walsh testified that he wouldn't hesitate to call in the RCMP: "I'd call for everything available, every piece of expertise I could have gotten." (Vol. 8/1407).

32. Inspector Ryan of the R.C.M.P. testified to having called MacIntyre on the Monday following the stabbing in 1971 to offer the services of the R.C.M.P. to the Sydney Police Department, with MacIntyre's response being that they did not require their assistance at that time. (Vol. 7/1259) No assistance was obtained despite the fact that crime scenes should be, amongst other things, photographed and measured, the sooner the better, because of the chance of losing whatever photographic evidence may be available at the scene or of missing any measurements that may be required. In fact, no photographs were taken of the scene until mid-August, 1971, when Inspector Ryan of the R.C.M.P. accompanied Urquhart and MacIntyre to Wentworth Park for the purpose of taking a series of photographs.

33. Inspector Ryan of the R.C.M.P. testified that he was available on an on call basis and stated that he would have gone out on the night of the stabbing if he had been so requested. Normally, an identification member of a police force is the second or third officer at the scene after a serious incident. This was the standard that Inspector Ryan followed himself when investigating cases in 1970 and was a principle that he was familiar with even as far back as the late 50's. (Vol. 7/1268)

34. However, at no time during the investigation did MacIntyre ask the R.C.M.P. or M.C.I.S. for any assistance.

D. No Canvassing of Persons in the Park or of the Neighbourhood

35. There was a general failure by the police officers involved on the night of the stabbing to obtain statements from anyone who might have been of assistance. In particular, no statement was obtained from Sandy Seale, despite the fact that he was still conscious when police arrived at the scene. In fact, none of the police officers accompanied Seale in the ambulance to the hospital. (Vol. 10/1728) Furthermore, the ambulance attendants were not questioned concerning anything Mr. Seale may have said on route to the hospital.

36. Police officers at the scene did not even solicit the names of individuals gathered in the park. As the dance at St. Joseph's Hall had just ended, there were people in the area, but the only name taken of

anyone was that of Maynard Chant by Constable Walsh. Walsh did not question Chant at all when he met him on the night of the stabbing. He failed to take a statement from Chant and made no notes of any conversation he may have have with him. (Vol. 8/1400) Chant was later taken to the hospital where M. R. MacDonald had a brief conversation with him. However, no statement was taken and no notes were made. (Vol. 10/1659) Neither was Chant's blood-stained shirt seized for analysis.

37. None of the people living in houses along Crescent Street or Byng Avenue were questioned that night and the police still had no statements from anyone by Saturday morning following the stabbing. (Vol. 10/1673)

38. Mr. Doucet, a resident of Crescent Street who accompanied Mr. Seale in the ambulance, was not interviewed in a timely fashion. There is no explanation for Doucet not being interviewed until a little over two weeks after the stabbing. (Vol. 52/9546) Most significantly even when he was interviewed he was never asked about any observations he may have made during his ambulance trip with Seale to the hospital.

39. MacIntyre testified that he talked to some of the neighbors on Crescent Street but there is no evidence that this was done in a careful manner, and MacIntyre in his evidence confirmed that there was no systematic approach to these individuals asking if they had seen anything. Such inquiries would have been a standard part of a thorough and competent police investigation. (Vol. 32/5975) Even Marshall on his own attempted to make some inquiries the police should have been making. The morning after the stabbing, Marshall returned to the park to look

for the men who had stabbed him and Seale. He started to knock on the doors of houses that lined Crescent Street asking people if they had seen the men he was describing. The police arrived while he was doing this and took him to the police station. They told him not to go looking for the men that they would do that. Marshall testified that it was John MacIntyre who said that to him. (Vol. 82/14,373)

E. Deficiencies in the Taking of Statements

40. Even Junior Marshall was not questioned with any degree of thoroughness on the night of the stabbing. No statement was taken from him until May 30. Once he was questioned, MacIntyre and Urquhart who had a keen interest in certain cuts in Marshall's jacket never asked Marshall how the jacket was cut.

41. M. R. MacDonald testified that it was his practice not to actually take a statement from a witness until he had a suspect in mind. This muddled reasoning, the fact that constables traditionally did not do investigative work, and the lack of direction from superior officers help explain why so little information was obtained from individuals at the scene.

F. Failure to Collect or Preserve Physical Evidence

42. There are many examples of the Sydney Police Department's failure to properly collect or preserve evidence. The scene of the crime was never secured, not by the constables at the scene who all left to go to

the hospital with Marshall and Seale, nor subsequently by MacIntyre when he took charge of the investigation on Saturday.

43. Although a Sydney police officer attended at the Outpatients Department at the hospital and helped undress Mr. Seale, this clothing was not preserved at the time for forensic purposes.

44. No one searched Seale's clothing, or his wallet. No list was made of Seale's clothing nor were any inquiries made of hospital personnel on whether anything had been found in his pockets. (Vol. 9/1634, 1635)

45. M. R. MacDonald did receive clothing from Mrs. Seale on June 3, but he did not ask her to identify the items of clothing or give him any information about them. He simply took it for granted that this was the clothing that Seale had been wearing that night, although no inquiry was made to this effect. He also did not inquire as to whether the jacket or the pants had been washed or whether anything else had been done to them to change their condition.

46. No one searched Marshall on the night of the stabbing nor were his clothes examined in any way at that time. (Vol. 9/1525) The jacket should have been taken then. No one questioned Marshall as to whether he was carrying a knife that night, nor was he searched to determine if he had a knife in his possession. (Vol. 10/1684)

47. When M. R. MacDonald received from Roy Gould on June 2 the yellow jacket Marshall had been wearing on the night of the stabbing, he made

no inquiries as to whether the jacket had been washed or its condition otherwise altered. (Vol. 10/1718)

48. No forensic evidence was gathered at the scene where Seale was found, either on the night of the stabbing or subsequently. There was no swabbing of blood from the street. When M. R. MacDonald went back to the park on the night of the stabbing, he did not determine where the blood was nor mark it in any way or see if there was a trail of blood in any direction. In fact, it would appear he did not even know where Seale had been located testifying, "I just couldn't pinpoint the area at that time where Seale was laying on the street." (Vol. 10/1729)

49. Police officers later searching the area were given no instructions nor had they any training with respect to how to handle any possible evidence they uncovered.

50. No request was made by the Sydney police at the hospital of any of the doctors to have Mr. Seale's blood analyzed for alcohol or drugs. No post mortem examination of Seale was ever ordered by the police.

G. Failure to Pursue Other Potential Sources of Information

51. The Sydney police also failed to pursue other avenues of investigation that may have been helpful. M. R. MacDonald did not instruct anyone to review the police records to see if someone had been recently convicted of using or carrying a knife in the Sydney area. (Vol. 10/1731) Neither did MacIntyre carry out any such review when he

took over the investigation. (Vol. 32/5947) Cst. Edward MacNeil had filed a crime report after picking Ebsary up in April 1970 which detailed his arrest for carrying a concealed weapon, notably a large butcher knife. The Commission heard evidence that MacIntyre used to read these reports and it is logical to infer that he would have seen this one. MacIntyre was noted for having an excellent memory. (Vol. 8/1392, 1393)

52. Chant gave the police information which they also failed to pursue. After Chant met Marshall on Byng Avenue, they met up with two couples and Marshall began telling these four individuals what happened. The Sydney police never attempted to locate these people.

III. Competent Standards of Crime Investigation

53. The Commission heard from two witnesses who were particularly well-qualified to comment on police investigation standards. Terrance Ryan of the R.C.M.P. was with the General Investigation Services for the R.C.M.P. in Cape Breton in 1971 and had experience in investigating serious crimes. Inspector Ryan described the appropriate procedure for the first police officer on the scene of a serious stabbing. A police officers first concern would be to provide assistance for the victim, following which he would preserve the scene, separating or removing people from the scene, preserving evidence, taking names of witnesses and any persons who had been there, notifying superior officers about the incident and bringing in as much assistance as possible. Inspector

Ryan advised the Commission that an Investigator should be assigned to go to the hospital immediately or to accompany the victim to the hospital and to stay with the victim until the seriousness of the incident had been determined. If the incident was serious, this investigating officer would stay at the hospital, to preserve evidence and be present in case the victim made any statements as to what had taken place (Vol. 11/1862,1863).

54. Inspector Ryan testified that with respect to the scene itself it would be important to notify the appropriate identification section to assist at the scene by taking photographs and searching for evidence. He suggested that the services of a police service dog could assist in the search for evidence at the scene.

55. Ryan testified that in the event that the victim died it would be an R.C.M.P. priority to have a post-mortem done for reasons of having blood samples for alcohol and drug analysis, examination of the type of stab wounds, number of wounds, direction of wounds, depth of wounds, in an effort to enact the crime and determine which direction the person had been stabbed from, as well as obtaining some idea of what kind of weapon was used. A post-mortem would also enable evidence to be gathered from under the fingernails and the victim's stomach.

56. The officer assigned to the victim would have as one of his prime purposes obtaining the victim's clothing at the earliest possible time.

57. Ryan testified that if at the scene there were enough resources, a police officer would try and separate people and obtain at least enough information in his or her notebook to determine who was there first and if there was somebody there at the time of the incident. If these things could be determined, then statements should be obtained as soon as possible before those witnesses have an opportunity to talk to other people. Certainly enough information should be obtained to enable the police officer to go back to witnesses on an urgent basis to obtain statements.

58. In a residential area, police officers should do a door-to-door canvass and make notes of whatever information was obtained from residents.

59. The Identification Section would visit the scene to try and obtain evidence and photographs, including information which determined the position of the body.

60. It was Ryan's evidence that all the above, none of which were done by the Sydney Police Department, were in 1971, standard procedures and common sense. (Vol. 11/1877) He testified that he would be surprised to learn that these procedures were not followed by Sergeant MacIntyre at the time of the incident or the next day after the stabbing. The evidence before the Commission shows that MacIntyre followed none of these routine investigative procedures.

61. These procedures were confirmed as standard practice by Douglas Wright, retired from the R.C.M.P. in 1982 after 35 years in the Force. He also testified that an immediate search of the area using metal detectors and other equipment should be conducted following a serious incident. He said that if the Sydney Police had requested this equipment, the R.C.M.P. could have brought these items for them from Halifax. As noted, no such request for any assistance from the R.C.M.P. was made by the Sydney Police.

62. Mr. Wright testified that the types of procedures described were those he would expect to be followed by a competent police officer in 1971.

63. He testified that police investigating a serious incident should obtain a statement from the victim as quickly as possible, although being able to do this depends on the doctor's willingness to permit it.

64. Mr. Wright testified that the failure to follow the standard procedures described did not demonstrate competence and that Detective Sergeant MacIntyre should have asked for assistance from the Identification Service of the R.C.M.P.

IV. CONCLUSION: Police Incompetence as Part of a Chain of Errors

65. Given that in 1971 there were clear standards of competence for police investigations into serious crimes, the failure of the Sydney

Police Department to conduct its investigation in accordance with these standards was an egregious and unjustifiable error which proved to be extremely prejudicial to Donald Marshall. Crucial errors and ommissions were committed by the Sydney Police officers in the performance of their duties as investigators of crime.

66. As stated by Scott, L. J. in Dumbell v. Roberts et al., [1944] 1 All E.R. 326 at p.329, the established duty of the police requires them to be "...observant, receptive and openminded and to notice any relevant circumstance which points either way, either to innocence or to guilt."

67. Scott, L. J. goes on to say:

> I am not suggesting a duty on the police to try to prove innocence; that is not their function; but they should act on the assumption that their prima facie suspicion may be ill founded. . . . The duty attaches, I think, simply because of the double-sided interest of the public in the liberty of the individual as well as in the detection of crime.

68. A thorough and competent investigation of the killing of Sandy Seale was not in any sense beyond the grasp of anyone who carefully and logically analyzed the tasks involved in investigating a serious crime, be he or she a lay person or an experienced police officer. The utter failure to bring such common sense investigative procedures to bear in this case are deserving of nothing less than severe condemnation by this Commission.

69. The failure of the Sydney Police Department to discharge its duties in accordance with accepted police procedures in 1971 not only

underscores the incompetence of the Sydney Police, at that time, but was also the first in a series of critical and inexcusable systemic errors that contributed to Donald Marshall, Jr.'s wrongful conviction and imprisonment, as canvassed in the Submission of Commission Counsel.

RECOMMENDATIONS: POLICE INVESTIGATION STANDARDS

The following recommendations should be made to the Provincial Government for implementation by the appropriate bodies governing education and management of municipal police forces:

1. Each Police Department should have guidelines to determine which cases should not be investigated by that Department. This necessitates deciding the outer limits of the particular force's investigative capability: e.g. small municipal forces should not investigate homocides.

2. Each force should develop a plan for using outside resources, including RCMP resources.

3. A comprehensive checklist system for investigative standards to be developed: these standards should embrace both technical, investigative capabilities as well as have reference to appropriate human rights standards.

4. Departmental plans should be established by Municipal police departments to include written recruitment, training, promotions guidelines, and formalized job descriptions, job standards, and job performance evaluations.

5. Regular compulsory workshops should be established to minimize prejudice, stereotypes and assumptions made about visible minorities, women, homosexuals and other groups. Such workshops ought to encourage an understanding of the rule of law, the Charter, and the nature of our pluralistic society.

6. Salary increments for serious and continuous committment to professional development by individual officers.

7. Development of a disciplinary code that embraces prohibitions:

a) against conduct which is bigoted, racist or sexist;

b) failure to meet the standards of a competent investigator;

c) against any corrupt conduct.

8) Establishment of an independent civilian-run complaints agency to investigate complaints with respect to the disciplinary code referred to in Recommendation No. 7 and to provide discipline up to and including the termination of employment.

THE ROLE OF THE CROWN COUNSEL CONDUCTING DONALD MARSHALL, JR.'S PROSECUTION IN 1971

THE ROLE OF THE CROWN COUNSEL CONDUCTING DONALD MARSHALL, JR.'S PROSECUTION IN 1971

1. The Prosecution of Donald Marshall, Jr., by Donald C. MacNeil and Lewis Matheson is a disturbing chronicle featuring many of the worst faults that can be displayed by Crown Prosecutors bringing cases in the name of the Queen.

I. The Preparation for and Conduct of the Trial

2. The conduct of Donald Marshall, Jr.'s prosecution was characterized by an aggressive posture on the part of Donald C. MacNeil that seemed designed to secure Mr. Marshall's conviction, not a fair and dispassionate presentation of all relevant evidence to the Court. This outlook and behavior significantly contributed to the miscarriage of justice in Donald Marshall, Jr.'s case. The Commission should decide that Mr. MacNeil's conduct of the prosecution went beyond merely inappropriate behaviour and was in fact a case of wrongdoing - the deliberate or reckless manufacture of evidence.

3. The evidence before the Commission demonstrates that the tactics of Crown Counsel in the prosecution of Donald Marshall Jr. included pressuring young witnesses, manipulating and concealing evidence and mis-stating the evidence to the jury. It is our submission that such conduct should be condemned by this Commission.

4. Several witnesses testified to the Commission that Mr. MacNeil had an aggressive prosecutorial attitude and style. (Bernie Francis, Vol. 13/922, Melinda McLean, Vol. 39/1714).

5. Lewis Matheson, Mr. MacNeil's close and long term associate, testified that MacNeil wanted to win badly (Vol. 48/4937).

6. This attitude was present in the conduct of Marshall's prosecution. The prinicipal witnesses at Marshall's trial were three juveniles. Pratico, at least, was seen as being afraid of Mr. MacNeil. This was observed by Simon Khattar when Pratico tried to recant his earlier evidence from the preliminary hearing. (Vol. 26/4816) Mr. MacNeil was a big man physically and must have been an intimidating presence to these young witnesses although after seventeen years memories cannot now bring into sharp relief all the details of contact with Mr. MacNeil.

7. Chant recalls MacNeil going over and over his evidence prior to going to Court. (Vol. 5/900, Vol. 6/982-986). Although later on cross-examination he testified to not being sure whether he met with MacNeil before the preliminary, (Vol. 6/1062, 1063). He recalls being told by MacNeil not to use the word knife (which appears in his evidence at the preliminary, Red Exhibit Vol. 1/37) but rather "shiny object", (Vol. 5/905), (which appears in his evidence at the trial, Red Exhibit Vol. 1/146). Chant also remembers MacNeil emphasizing the importance of the knife and which arm was used by Marshall to stab Seale. In Chant's

recollection he remembers being questioned to make sure that he got the story right before appearing in court. (Vol. 6/929).

8. Chant recalls MacNeil rehearsing Pratico's evidence with him with the object being to get it right as Pratico did not seem to have his story straight (Vol. 6/929). Pratico remembers MacNeil questioning him prior to Court about his story and correcting him "...in [an] around about way..." (Vol. 12/2132, 2133).

9. Pratico recalls being in the park with McIntyre and MacNeil before the preliminary hearing and being shown where Seale's body had been and where Marshall had been standing. MacNeil knew Pratico was supposed to have been in the park as an eyewitness to the incident, and he would have known that Pratico would not have to be shown where the incident was to supposed to have taken place.

10. Pratico testified to having been afraid of the whole system. MacNeil, because of who he was and because of all the power he had personified Pratico's fears. Pratico felt that MacNeil had the power to put anyone in jail, and he was afraid that MacNeil had that power in relation to him if he did not perform in accordance with MacNeil's expectations and demands (Vol. 12/2123).

11. We submit that MacNeil's and Matheson's conduct of the actual trial and subsequent actions failed to meet ethical standards for prosecutors in 1971.

12. MacNeil relied for one of his key witnesses upon a juvenile whose emotional condition was unsound. Pratico was treated between August and November, 1971, prior to Marshall's trial, at the Nova Scotia Hospital in Dartmouth, a psychiatric facility. Although Lewis Matheson, the assistant Crown prosecutor, testfied that Pratico's treatment related to his anxiety over threats he had received, there was no good evidence that Pratico was threatened by anyone and no one was convicted with respect to any such allegations. MacNeil must have known that Pratico was receiving serious and intensive psychiatric care; it is simply implausible that Matheson would know and MacNeil would not.

13. Matheson testified to having discussed with MacNeil the witnesses to be used in the prosecution, and stated that MacNeil was concerned about Pratico's testimony in particular. MacNeil was concerned, says Matheson, because Pratico had given inconsistent statements and "we were afraid he might be threatened, and that dear knows what he might say." (Vol. 26/4971)

14. No inquiries were made by Matheson or MacNeil with respect to the nature of Pratico's mental illness. Neither of them attempted to evaluate what effect his mental disability might have had on the reliability of his evidence. (Vol. 27/5084). It is shocking that this information was not provided by MacNeil and Matheson to Marshall's lawyers. Matheson agreed when questioned that if Pratico's mental disability made him unreliable, this would have tended to reduce the likelihood of Marshall's conviction, because Pratico would not have been able to testify, or at the very least, his mental disability was

something that the jury should have known about. (Vol. 27/5086, 5087). No attempt was made by the prosecution to adduce this evidence at the trial.

15. Another factor that has made Pratico's testimony unreliable was the fact that he had a considerable amount to drink on the night in question. MacNeil did not bring out in his examination the quantities that Pratico had to drink. Pratico's degree of intoxication may have been viewed by the jury as engendering unreliability as a witness, and therefore, would have diminished the persuasiveness of the Crown's case. This evidence was held back, and was never put before the jury by the Crown. It was not sufficient for the Crown to rely on the defence to bring this out especially as it was not something that Crown Counsel disclosed to them. It is not enough for the Crown to presume, as they apparently did, that the defence knew that Pratico had been severely intoxicated. (Vol. 28/5186).

16. In addition to the above, there was a considerable amount of other information withheld from the defence by MacNeil and Matheson. The principle witnesses for the Crown, Chant, Pratico, and Harriss, all gave prior inconsistent statements but none of these were disclosed to the defence by the Crown. In fact in the Statement of Facts prepared by MacNeil for the trial judge, there is no reference to Pratico having previously advanced a different story to the police and Matheson had no explanation as to why this was omitted (Vol. 27/5040). It is no answer to say that we were never asked. In this case, a fair trial could not be achieved without disclosure of these statements. Crown Counsel

failed in their duty to conduct themselves in such a way as to make the trial fair.

17. The effect of Crown's failure to disclose the prior inconsistent statements of Chant, Pratico and Harris, statements that exculpated Donald Marshall, and the failure to disclose that Pratico suffered from a mental illness, was that the jury was left without this knowledge and was unable to consider it in assessing whether the Crown had proved its allegations. When it closed its case, Crown Counsel had to know that they had substantially misled the jury as to the strength of their case.

18. MacNeil was also guilty during Marshall's trial of eliciting irrelevant and highly prejudicial evidence, a practice inconsistent with his ethical duty as a prosecutor. When defence counsel had Marshall expose his arm to Dr. Virick and the jury (see the trial transcript, Red Exhibit Vol. 1/117), to show his wound which was located on his inner forearm, MacNeil, later examining Nurse Davis, who was present during this, asked whether she had noticed anything else and she testified that she noticed a tattoo "on the outer aspects of his arm." MacNeil pursued this by asking Davis to identify the tattoo and she stated it read "I hate cops." We submit that these tactics were grossly improper and designed by MacNeil to simply prejudice the jury against Marshall.

II. Crown Counsel's Knowledge During Marshall's Appeal of New Evidence Tending Toward Innocence

19. Subsequent to Marshall's conviction, neither MacNeil or Matheson disclosed to the defence in November, 1971, the statements of Jimmy

MacNeil and the Ebsarys. (Vol. 27/5042). Although there is evidence from Inspector Al Marshall (Vol. 30/5652) that MacNeil contacted Leonard Pace, the Attorney-General at the time, in November, 1971, with the results of Ebsary's and MacNeil's polygraph tests, there is no evidence that MacNeil ever followed this information up to ensure that it reached Rosenblum who was conducting Marshall's appeal at the time.

20. Matheson, who encountered Khattar and Rosenblum frequently in the course of prosecuting cases, never told them that Jimmy MacNeil had come forward with evidence exculpating Marshall of the murder charge. Wrongly, he did not feel that it was his place to make such a disclosure nor did he inquire to see whether MacNeil had done so or encourage MacNeil to do so or take it upon himself as the assistant Crown in the case to ensure that Khattar and Rosenblum had this information.

21. It is our respectful submission that Matheson, as an officer of the court and as Crown counsel, had an equal responsibility with MacNeil to see that the information about Jimmy MacNeil was effectively communicated to Marshall's lawyers. Not to have done so was a dereliction of the ethical and legal duty of Crown Counsel.

22. Felix Cacchione also testified that he would have expected the fact of Ebsary and MacNeil being interviewed by the police to be disclosed to the defence counsel. In his opinion this evidence would fall under the Fresh Evidence rules (where an application is made by an accused on appeal for the Court of Appeal to hear evidence not known at the trial), so as to be admissable at the appeal and if not admissable

at the appeal, was evidence which should be in the possession of defence counsel at any possible retrial. The non-disclosure of that evidence in Judge Cacchione's opinion, was one of the factors that led to Junior spending almost 11 years in jail (Vol. 65/11682).

23. Frank Edwards also testified that in his opinion two critical reasons why Marshall spent 11 years in jail was the failure by the Crown to disclose to the defence the prior inconsistent statements in 1971 and the new evidence that arose in November, 1971. (Vol. 68/12,Ø54, 12,173)

III. The Jury Address

24. MacNeil's charge to the jury is fraught with errors and omissions, and on balance is very substantially misleading.

25. During the jury address, MacNeil referred to "the alibis of the accused." MacNeil, in referring to Patricia Harriss' evidence of encountering Marshall in the park, (where Harriss testified Marshall was alone except for one other person), MacNeil stated to the Jury "...there's a very important witness that just took the legs right clean out from under the story and the alibis that is given to you by the accused!" (Red Exhibit Vol. 2, pp.54-55) Marshall, of course, had consistently said that he was in the Park with Sandy Seale and that they encountered Ebsary and MacNeil, an account which was at variance with Harriss' evidence. Marshall never said at any time that he was anywhere else other than at the scene when the stabbing took place and put forward no alibi. MacNeil's erroneous characterization of Marshall's

testimony must have left the impression that Marshall had put forth an unsupported explanation. This is peculiarly careless language for experienced counsel. Viewed in context of his conduct throughout, it is part of a pattern of mistatements calculated to mislead.

26. MacNeil told the jury that there was no evidence of Marshall calling an ambulance (Red Exhibit Vol. 2/61) Marshall, however, had testified at trial that he ran to a house to get an ambulance for Seale (Red Exhibit Vol. 2/12 and 28), and Robert McKay and Brian Doucette at the preliminary hearing had both testified that Marshall went to get help. (Red Exhibit Vol. 1/37,38) These witnesses were not called at Marshall's trial.

27. MacNeil told the jury that Nurse McMillan and Doctor Virick said there was no blood coming from Marshall's wound. (Red Exhibit Vol. 2/62). MacNeil made no reference however to Maynard Chant's testimony at the trial that he observed blood flowing from Marshall's wound (Red Exhibit Vol. 1/138). He remembers giving Marshall a handkerchief to staunch the blood. (Red Exhibit Vol. 2/27). The false impression left by MacNeil is, of course, that the harm done to Marshall was minimal as the wound was self-inflicted.

28. MacNeil, by innuendo, suggested that Mr. Marshall, Sr. pressured Pratico into changing his story (Red Exhibit Vol. 2/56,57,64) and that other people had threatened Pratico (Red Exhibit Vol. 2/67,65) There was no evidence at all that Donald Marshall, Sr. pressured Pratico. Practico testified at the trial to being scared of his life being taken,

but there was no suggestion from any witness implicating Mr. Marshall, Sr. (Red Exhibit Vol. 1/206). Practico, in his evidence, did mention the names of Tom Christmas, Theresa Mary Paul and Artie Paul (Red Exhibit Vol. 1/205, 208) but there was no evidence before the jury that any of these people threatened him. In fact, Tom Christmas had been charged with obstruction with respect to an alleged threat against Pratico, although the jury had no knowledge of this. The withdrawal of the obstruction charge took place prior to Marshall's trial, and Crown Counsel were obviously of the opinion that there was not a sufficient evidentiary basis on which to proceed against Christmas. Nevertheless, MacNeil advanced the suggestion to the jury that Pratico had been threatened by Indians.

29. MacNeil also tried to falsely make it seem as though Marshall had intimidated Pratico himself. MacNeil referred to Marshall speaking with Pratico on the Sunday following the stabbing and suggested that Marshall did this because he knew that he was seen by Pratico going into Wentworth Park with Sandy Seale. MacNeil asked the jury: "Why was there this display of brotherly love and going back on Sunday if it wasn't to get some kind of message across to Mr. Pratico!" (Red Exhibit Vol. 2/64-65). However, Pratico had stated in his evidence that he was not scared by reason of anything that the accused had said to him anytime. (Red Exhibit Vol. 1/207).

30. MacNeil told the jury that Pratico was not drunk on the night of May 28th when on Pratico's own evidence, he was clearly intoxicated. (Red Exhibit Vol. 2/68-69)

31. To support Chant's credibility, MacNeil referred to Mattson's evidence which he said corroborated Chant's story (Red Exhibit Vol. 2/60). This evidence, however, also corroborates Marshall's testimony of meeting Chant but no reference was made by MacNeil to this aspect of the evidence. (Red Exhibit Vol. 3/11,12)

32. MacNeil suggested to the jury that when Marshall returned with Maynard Chant to where Sandy Seale was lying on Crescent Street, he deliberately stood so that Seale could not see him. (Red Exhibit Vol. 2/61). This allegation is not supported by the evidence. Maynard Chant, at the preliminary, (Red Exhibit Vol. 1/41) and at the trial, (Red Exhibit Vol. 1/138) testified that Marshall stood behind Seale's body for a minute and then flagged down a police car. There was no evidence to indicate that Marshall's actions demonstrated a guilty mind, and there should have been no suggestion that they did.

IV. Standards for Crown Prosecutions

33. By 1971 the duty of a Crown Prosector with respect to prosecution of cases had been clearly enunciated by Canadian courts. In the case of Boucher v. The Queen (1954), 110 C.C.C. 263, the Supreme Court of Canada at page 270 stated the following of the role of Crown's counsel in criminal trials:

> It cannot be overemphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant

> to what is alleged to be a crime. Counsel have the duty to see that all available legal proof of the facts is presented: It should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than (sic) which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

34. Mr. Justice Locke, writing in the Boucher case, made the following comments about the role of the prosecutor at p. 271:

> ...it has always been accepted in this country that the duty of persons entrusted by the Crown with prosecutions in criminal matters does not differ from that which has been long recognized in England.

35. In R. v. Thursfield (1938), 8 Ct. App. R. at p.268, 173 E.R. 490, counsel for the Crown stated in the following terms what he considered to be his duty:

> That he should state to the jury the whole of what appeared on the despositions to be the facts of the case, as well those which made in favour of the prisoner as those which made against her, as he apprehended his duty, as counsel for the prosecution, to be, to examine the witnesses who would detail the facts to the jury, after having narrated the circumstances in such way as to make the evidence, when given, intelligible to the jury, not considering himself as counsel for any particular side or party.

36. Baron Gurney, presiding, then said:

> The learned counsel for the prosecution has most accurately conceived his duty, which is to be assistant to the Court in the furtherance of justice, and not to act as counsel for any particular person or party.

37. Justice Locke, having noted these passages with approval, referred at page 272 of his decision to the comments of Riddell J. A. in the case of R. v. Chamandy, 61 C.C.C. 224 (Ont.C.A.) at page 227:

> It cannot be made too clear, that in our law, a criminal prosecution is not a contest between individuals, nor is it a contest between the Crown endeavoring to convict and the accused endeavoring to be acquitted; but it is an investigation that should be conducted without feeling or animus on the part of the prosecution, with the single view of determining the truth.

38. Mr. Justice Locke also noted with approval that in Archbold's Criminal Pleading, Evidence and Practice, 33rd ed., p. 194, the author stated that "Prosecuting counsel should regard themselves rather as ministers of justice assisting in its administration than as advocates."

39. Even before the Boucher case, the Supreme Court of Canada had unequivocally commented on the role of Crown counsel. In Wu v. The King (1934), 62 C.C.C. 90 (S.C.C.) Lamont J. at p. 101 stated:

> ...I have always considered that counsel for the Crown was in the position of an officer of the

> court whose duty is to get at the truth irrespective of whether or not the evidence supports the Crown's case.

40. These strongly stated judicial pronouncements were reflected in the "Canons of Legal Ethics" (adopted by the Council of the Canadian Bar Association, on September 2, 1920) which in 1971 included the general ethical standards required of Crown prosecutors. Rule 1 in the "Canons" stated:

> When engaged as a public prosecutor his primary duty is not to convict, but to see that justice is done; to that end he should withhold no facts tending to prove either the guilt or innocence of the accused.

41. In the case of Crown Counsel's address to a jury, the Ontario Court of Appeal in the case of Regina v. Lucas (1962), 38 C.R. 403 at page 406 held:

> "...In no case should Counsel say or suggest to a jury that...evidence has been given or that any...fact has been proved when that is not so..."

42. It is unthinkable that this rule of conduct was not followed by a Crown Counsel as experienced as Donald C. MacNeil in 1971.

V. The Prosecution of Donald Marshall Jr. - A Substantial Contribution to the Miscarriage of Justice

43. It is plain from an examination of the clear, well-established legal and ethical standards in 1971 that Crown counsel prosecuting

Donald Marshall, Jr. were, in the preparation and conduct of the trial and thereafter, gravely derelict in their duties as officers of the court. If a complaint had been made at the time about their conduct to the Barristers' Society, they should have been severely disciplined their departure from proper ethical and legal standards should be repudiated now by this Inquiry.

RECOMMENDATIONS: ROLE OF CROWN COUNSEL AS PROSECUTOR

These recommendations should be presented to the Provincial Government for implementation by the appropriate bodies governing hiring, education and planning for the Crown Counsel office.

1. All positions for Crown Counsel to be advertised publicly and subject to an open competition.

2. Implementation of a formal orientation program for new Crown Counsel regardless of seniority at the Bar upon hiring.

3. Regular attendance by Crown Counsel at Continuing Legal Education Seminars, National Conferences, Law Society of Upper Canada Seminars, etc.

4. The appointment of two new Assistant Deputy Ministers or Senior Crown Officers in the Attorney General's Department, one responsible for planning and development with respect to Crown Counsel and the other responsible for advice, monitoring and complaints.

5. Planning responsibilities to include a yearly review of practices and policies in Nova Scotia as compared to those in other provinces.

6. Development responsibilities to include:

a) designing in-house programs to sensitize Crown Prosecutors to the presence and effects of prejudice based on race, ethnicity, economic status and gender (see further Recommendation #24 Bruce Archibald's paper on Prosecuting Officers and the Administration of Criminal Justice in Nova Scotia;

b) designing other attitudinal workshops relating to the rule of law, role of Crown Counsel, etc.;

7. Monitoring responsibilities to include:

a) random and regular checks of the conduct of both major and minor cases by Crown Counsel and normal workload;

b) development of checklists for conduct of cases, both with respect to the proof required for offences and adherence to policy and ethics considerations, such as disclosure;

8. Salary increments to be established for post graduate study, law school lecturing and other major signs of professional vitality and improvement.

9. Crown Counsel to be encouraged to participate in community organizations which interface with the administration of criminal law. This experience would tend to make them more sympathetic and informed about social conditions of accused persons and social justice issues generally. Such involvements could include the Elizabeth Fry Society, John Howard's Society, transition houses for battered women.

10. A Code of conduct governing prosecutors in their conduct of criminal cases should be developed. This Code must be enforced not only by the Bar Society but as well by the Attorney General's office.