

1 which this Inquiry has been conducted. It's been a very distinct
2 pleasure to appear before you.

3 Thank you.

4 MR. CHAIRMAN:

5 Mr. Murray?

6 MR. MURRAY:

7 My Lords, I appear before you for the last time on behalf of
8 William Urquhart.

9 In his career as a police officer, Bill Urquhart endeavored
10 to be fair and I suggest he endeavored to do his duty and it's
11 respectfully suggested that the public of Nova Scotia and this
12 Commission can hold no one to any higher standard of human
13 conduct and William Urquhart is prepared to have his record
14 tested on that basis.

15 There are a number of allegations about William Urquhart at
16 the commencement of these hearings that suggested that he was a
17 major player in these events. I am here today to suggest to Your
18 Lordships that what the evidence has shown is that he, in fact,
19 was not a main player. Although Commission Counsel in their
20 brief and in their submissions yesterday regarded him as a main
21 player, I suggest, that a review of what happened in the
22 investigation shows that he was not.

23 In exhibit 16, which is the red volume 16, we know that 29
24 statements were taken from the 30th of May until the 15th of
25 November by the Sydney City Police Force. On only four of those

1 statements were -- was William Urquhart together with John
2 MacIntyre. On three more, it's been suggested that William
3 Urquhart was present because his name is on the typed form of the
4 statement but not on the handwritten. William Urquhart took four
5 statements himself between June 2nd and November 15th. So that's
6 a maximum total of 11 statements and yet Commission Counsel
7 asserts that William Urquhart was present with Mr. MacIntyre
8 during the course of most of the investigation. I suggest that
9 Mr. Urquhart can not be held to be a main player in this. He had
10 nothing to do with securing exhibits before the trial. He has
11 never testified in any court and never been required to testify
12 in any court with respect to the Marshall matter.

13 In the written brief submitted on behalf of William
14 Urquhart, we have taken pains to go at length through a narrative
15 analysis of the evidence as it relates to William Urquhart from
16 1971 to 1982, and I do not propose this afternoon to go through
17 the various parts of that narrative and deal with the criticisms
18 which have been made about Mr. Urquhart at each particular
19 juncture. However, I trust that Your Lordships will weigh the
20 submissions in the written submission which I do not refer to
21 orally today.

22 This afternoon I wish to concentrate primarily on the
23 submission of Commission Counsel yesterday that when it comes to
24 a prima facie case of criminal liability, Bill Urquhart has to
25 sink or swim with other individuals. As Commission Counsel

1 appropriately noted yesterday, an allegation of criminal
2 wrongdoing is not to be made lightly and I would strongly support
3 that position and as a result respectfully suggest that you will
4 need more and indeed that you will do more than conclude that
5 William Urquhart stands or falls on the basis of conclusions
6 about other individuals.

7 My friends have spoken a great deal about fairness and
8 indeed Commission Counsel in opening remarks to this Commission
9 in September of 1987 commented at some length on the doctrine of
10 reasonable doubt and the presumption of innocence in criminal
11 matters. We in this forum today are not finding guilt or
12 innocence. William Urquhart must therefore be entitled to the
13 presumption of innocence at this point.

14 When a suggestion of criminal responsibility is made
15 particularly outside a forum that's been established by
16 Parliament in the Criminal Code, I submit we should be very
17 exact, very sure of our facts, and very sure of the basis of
18 liability that is being proposed.

19 Section 21 of the Criminal Code clearly establishes that you
20 commit an offense when you do it yourself, if you knowingly, and
21 that is important, encourage or assist someone else in committing
22 it, or if you were -- embark on some common unlawful purpose with
23 another person when you knew or ought to have known that some
24 other offense is likely to be committed along the way. I dealt
25 with Section 21 of the Criminal Code at page 22 to 24 of the

1 brief and I submit to this Commission that if you conclude that
2 there is some basis to recommend criminal charges be laid or
3 considered against William Urquhart, a necessary step will have
4 to be the basis upon which liability would be imposed.

5 John Pratico told you there was no significance to William
6 Urquhart's presence at the taking of the June 4th statement and
7 that William Urquhart made no act or gesture or said anything
8 which affected what Pratico told John MacIntyre that day. That
9 appears in transcript volume 12 pages 2217 to 2219. I suggest,
10 respectfully, that unless Your Lordships find some hint in the
11 evidence that William Urquhart knew John Pratico was going to lie
12 on June 4th and attended to insure that John Pratico did lie,
13 there is nothing, I suggest, on which to base criminal liability
14 on William Urquhart in relation to the Pratico statement. And
15 indeed Commission Counsel has not suggested so but other counsel
16 have. And other counsel have, on the basis that Mr. Urquhart
17 even though he may have done nothing, by his presence, and as I
18 understood the statement this morning, quote, "I am making sure
19 the authorities will not respond by being there." Well, that's
20 not what Mr. Pratico said. It may have been what Mr. Chant
21 hinted at but it certainly was not what Mr. Pratico stated. And
22 so on the basis of the evidence, I suggest, that there's no basis
23 to criticize William Urquhart in relation to the John Pratico
24 statement.

25 On Chant, Commission Counsel's brief did indicate on the

1 basis of Urquhart's presence and the assumption that Chant's
2 statement was largely put into Chant's mouth by John MacIntyre on
3 June 4th, quote, and this is from page 67 of the Commissions
4 brief:

5 Urquhart would have to share
6 equally in any blame to be
7 attached to that conduct.

8 I have reviewed the evidence of Maynard Chant, as I am sure Your
9 Lordships will, specifically in relation to the most specific
10 point and the most material point from Maynard Chant's June 4th
11 statement, and that's, of course, the identification of Donald
12 Marshall, Jr., as the person that does the stabbing. At the
13 preliminary and the trial and before this Commission nowhere--
14 and indeed in any of the other times he's testified, nowhere does
15 Chant state that the police told him on June 4th or at any other
16 time that Donald Marshall stabbed Sandy Seale. Indeed he was
17 specifically asked in 1971 by Mr. Rosenblum and at the trial
18 transcript, page 36, (That's in volume one.) Maynard Chant denied
19 that as he denied it to this Commission at transcript volume 6,
20 page 934.

21 Without some prior knowledge on Mr. Urquhart's part or some
22 encouragement by William Urquhart, I respectfully suggest there's
23 no basis, no basis to consider criminal liability on his part in
24 relation to the Chant statement. The Commission Counsel did
25 suggest yesterday and I noted his exact words, "If he..."
meaning Urquhart, "...thought something improper was happening,

1 he should have reacted." With respect, that's not a basis for
2 criminal liability and again I refer to pages 22 and 24 of my
3 brief. If what occurred happened as Commission Counsel suggests,
4 it might be morally reprehensible but it is not criminal, not the
5 basis for a criminal charge.

6 I suggest with respect to the Chant statement that even the
7 idea that William Urquhart was morally reprehensible is
8 untenable, but I detailed my reasons for that in the brief and
9 will not go through them this afternoon. Those would be detailed
10 at page 27 to 58 of the written brief.

11 Patricia Harriss. This was the only instance of positive
12 wrongdoing alleged to have been committed by William Urquhart
13 himself. It's my submission, detailed in the brief and in
14 questioning and Patricia and Eunice Harriss at these hearings,
15 two facts. One, William Urquhart wrote down everything Patricia
16 had to say at 8:15 p.m. which was her first statement, and two;
17 William Urquhart did not participate in any further interview of
18 Patricia Harriss that night. If these facts are considered to be
19 possible there would be no basis, I would suggest, upon which to
20 consider that William Urquhart has any criminal liability here
21 either.

22 I would like to highlight for you this afternoon, as I have
23 attempted to do in questioning various witnesses, the facts
24 which make this position not only possible but probable in any
25 determination of the facts. The original 8:15 statement is

1 exhibit 55 at these hearings and it's -- as you can see it's a
2 long statement form on legal size paper that has been folded.
3 These are not the kind of sheets that Eunice Harriss says she saw
4 being crumpled up at the police station. She says that they were
5 smaller than that, and that's at transcript volume 16 pages 2959
6 to 2960. The other interesting fact about exhibit 55 is that it
7 is in William Urquhart's handwriting. If this Commission is to
8 accept the evidence of Eunice Harriss and perhaps Patricia
9 Harriss, that she was interviewed exclusively by John MacIntyre
10 and William Urquhart, then this is the only statement in the
11 course of the whole investigation or at any time where John
12 MacIntyre allows William Urquhart to actually transcribe the
13 statement. It's inconsistent with every other statement that
14 William Urquhart and John MacIntyre took together. It is
15 consistent with the statements that William Urquhart took with
16 Red Michael MacDonald, and I ask you to look at the Barbara
17 Veniot statement in volume 16, page 74, or rather page 83.

18 There's also William Urquhart's habit, I suggest, to
19 transcribe the statement when he was in the presence of Michael
20 J. MacDonald as happened with John Joseph MacNeil's statement
21 which is the first statement taken in the reinvestigation and
22 that's at page 172 of exhibit 16.

23 The other interesting fact about exhibit 55 is that it
24 exists. It hasn't been crumpled up. It hasn't been thrown away.
25 It hasn't been ripped up. It describes two men. It says--

1 talks about two men and then one is described. The statement
2 then continues with further questions. The statement, unlike the
3 evidence of Patricia Harriss, unlike the evidence of Eunice
4 Harriss, continues after mention of the two men is made and the
5 matter goes on to other subjects. It's not a point of getting to
6 the two men and at that point the statement gets crumpled up and
7 thrown away and there's a starting again.

8 My friend, this morning, suggested that clear evidence that
9 this statement was designed to be suppressed from the beginning
10 is evident, in fact, that it wasn't signed and it's incomplete.
11 No signatures appear at the bottom of exhibit 55 but I suggest
12 that that fact is not conclusive of anything. William Urquhart
13 did not sign the bottom of the statement he took from Mr. French
14 at page 29 of exhibit 16. Mr. French did. The comparison we
15 have for an unsigned statement unfortunately is only one page
16 long and that's in exhibit 48, which is red volume 22, page 8.
17 But that leaves open the possibility, I suggest, that if indeed
18 this was the first of two pages and they got to a second page and
19 Patricia Harriss choose not to sign that statement that Bill
20 Urquhart's notation to that effect may only appear on the second
21 page. The last line on exhibit 55 is not used. The last line of
22 no page on which a statement is taken in this investigation is
23 used to start a question except one and that's Jimmy MacNeil's
24 statement taken by John MacIntyre that William Urquhart has
25 nothing to do with.

1 Often when William Urquhart took statements, as can be seen
2 by comparison with the ones he took in this investigation, he
3 would not use the last line whether he was in the middle of an
4 answer or not. He'd skip the last line and go to a new page.
5 John MacIntyre had the same habit and the references for Your
6 Lordship to consider and compare exhibit 55 with would be exhibit
7 16 at pages 20, 32, 57, 67, 72, 76, 80, 183, 184, 189, 193, all
8 examples of statements that were continued but the last line on
9 the previous page was not used.

10 Patricia Harriss does say that William Urquhart was present
11 and Patricia Harriss did say that William Urquhart was one of the
12 people who was mainly questioning her. We do have Patricia
13 Harriss' evidence from the preliminary inquiry in 1971. My
14 friend dealt with that earlier and I will not detail that for you
15 but it does suggest and the conclusion, I suggest, that the
16 preliminary inquiry evidence gives is that having the opportunity
17 to see Red Michael MacDonald, having the opportunity to see John
18 MacIntyre in the courtroom, Patricia Harriss knows, "Yes, those
19 are the two officers that I gave the last statement to and I--
20 one of the officer's I gave the statement to the first time."
21 And the one officer she gave the statement to on both occasions
22 is Michael MacDonald. She also says there was a third officer
23 and I suggest that we know that that third officer was William
24 Urquhart because he, in fact, took the first statement at 8:15
25 but that was his only contact.

1 I would not want it to be suggested that I am simply
2 shifting blame from Urquhart to Red MacDonald because being
3 unrepresented here as he is, Red MacDonald's a convenient
4 repository for blame. Please make no mistake. I am not
5 assigning blame and it would be inappropriate for me to do so.
6 Similarly though, it would be irresponsible for me to allow
7 William Urquhart to be presumed or inferred to have berated
8 Patricia Harriss throughout the evening of June 17th, 1971, if
9 that is not what the evidence shows. No one can change or indeed
10 change the fact that Patricia Harriss identified two detectives
11 by sight in 1971, within three weeks of being interviewed by
12 them, and the officer not identified even by name is William
13 Urquhart. It would be an absurd suggestion, I suggest, that
14 William Urquhart must take responsibility for things that may
15 have happened in 1971 because he's been represented here but Red
16 MacDonald has not.

17 In 1982, Patricia Harriss did not mention William Urquhart
18 specifically to Harry Wheaton according to her evidence and
19 that's at volume 16 -- transcript volume 16 at page 2916. The
20 same day, she spoke to Frank Edwards and Frank Edwards'
21 recollection and his notes in exhibit 17 are that Harriss
22 remembered Urquhart's name from 1971 but couldn't associate him
23 particularly with that statement and Frank Edwards thought that
24 was a fair characterization of his note, transcript volume 69,
25 pages 12245 - 12246.

1 Eunice Harriss only met William Urquhart once and that was
2 back in 1971. Eunice Harriss doesn't even recall ever meeting Red
3 Michael MacDonald, and that's at transcript volume 16, page 3000.
4 Why is the name Urquhart then the one that endures since 1982?
5 Eunice and Patricia Harriss have discussed this matter, as I
6 understand the evidence, and the events of June 17th to 18th
7 several times. The convenient name hook was probably Urquhart
8 because Patricia Harriss said that she had had other dealings
9 with him and remembered the name from the 1971 era.

10 The courts have indicated how suspicious we must be of self
11 re-enforcing identifications. I refer Your Lordships to the
12 Queen v Sophonow (No.2) and that's 25 C.C.C. (3d), 415, and
13 particularly -- and this is the Manitoba Court of Appeal
14 decision, particularly at pages 439 to 440 and with your
15 indulgence I will read a brief passage.

16 The warning given to the jury as to
17 the frailties of visual
18 identification, was in the
19 following terms:

20 and then there is a quoted portion. The Manitoba Court of Appeal
21 then went on.

22 The learned trial judge at no time
23 pointed out the reason for the
24 danger of mistaken identification
25 which, to use the language of Mr.
Justice Belzil in R. v. Atfield, at
p. 98, ...lies in the fact that the
identification comes from witnesses
who are honest and convinced,
absolutely sure of their
identification and getting surer
with time, but nonetheless

1 mistaken.

2 The Manitoba Court of Appeal explained why this kind of direction
3 was necessary.

4 The need for giving the reasons for
5 the warning as to the dangers of
6 mistaken identification is a matter
7 of elementary psychology. A
8 warning of danger will often be
9 disregarded unless the reason for
10 it is explained. If a climber is
11 told simply that a cliff is
12 dangerous, it surely will allure
13 his spirit of adventure and will
to climb it regardless of the risk,
but, if he is told also that it is
dangerous because the rock face is
crumbling, he will exercise greater
discretion before deciding to make
the climb and even if he decides to
do so, he will search for secure
foot holds at every stage of the
ascent.

14 And I suggest that this Commission should look for secure foot
15 holds also with respect to the identification of William
16 Urquhart.

17 To conclude that issue of Patricia Harriss. Her evidence
18 was that she did not know and could not give this Commission a
19 personal recollection today of who was present at the final
20 statement that was taken on June 18th. The original
21 documentation which is Exhibit 56, contains no signature or other
22 writing indicating that William Urquhart was present. Only two
23 people have written -- appear to have written on this document
24 and that would be Sergeant John MacIntyre and Patricia Harriss.
25 William Urquhart's name does appear on the typewritten version,

1 but as commission counsel quite clearly points out, we don't know
2 why and we don't know for what reason. Therefore, I suggest
3 there is no basis to conclude certainly that William Urquhart was
4 there at the end.

5 There are two specific points in the brief of the Union of
6 Nova Scotia Indians which I feel compelled to comment on behalf
7 of William Urquhart. At page 26 the assertion is made that
8 William Urquhart must have known of MacIntyre's fabrication of
9 evidence and the weaknesses of the case. I object to that
10 assertion on behalf of William Urquhart and challenge counsel to
11 demonstrate to this Commission that Urquhart must have known.
12 Where is the reliable and compelling evidence of knowledge on the
13 part of William Urquhart.

14 The second point is in relation to the Dan Paul information.
15 And that's dealt with at pages 37 to 38 of the Union of Nova
16 Scotia Indians brief. All it says is the information was passed
17 along but Dan Paul came back pretty disgusted. There is no
18 reference to the fact that the same witnesses referred to, know
19 that Mr. Urquhart requested further information. There's no
20 reference to the fact that it would have been simplicity itself
21 for Dan Paul or Roy Gould or even Donald Marshall himself as he
22 did on another occasion by sending a letter to John Maloney, to
23 give the source of this new information to Bill Urquhart for
24 forwarding to the Crown. And the insinuations about William
25 Urquhart's involvement here are not supportable I suggest, nor

1 are the broad brush criticisms of counsel from Donald Marshall,
2 Jr., supportable in relation to William Urquhart. I will not go
3 into detail, but I suggest that their reference this morning to
4 the fact that, well, we should consider criminal breach of trust
5 in relation to William Urquhart was an admission that they know
6 and they can appreciate that under Section 21 of the Criminal
7 Code you're not going to have a basis of liability against
8 William Urquhart.

9 Now, finally commission counsel during the hearings and in
10 its final submissions here have attached the credibility of
11 William Urquhart. Referring to one claimed recollection
12 yesterday as non-sensical. Well, all that Bill Urquhart can
13 tell this Commission is what he remembers. His memory isn't
14 self-protective. There may well have been more evidence about
15 the June 4 statement from Pratico or the June 17th statement of
16 Patricia Harriss. You know, I suggest that William Urquhart is
17 not prone at all to overstatement. We know that he answered
18 certain questions or had certain knowledge attributed to him at a
19 July meeting with Frank Edwards in 1982. And that appears at
20 pages 12 to 14 of Exhibit 17. An affidavit was prepared. That
21 affidavit appears in Exhibit 134 at pages 96 and 97, and the
22 following pages were exhibits. We know at the time that the
23 affidavit was prepared at the time of the meeting with Frank
24 Edwards, that there had been no file form to review at the Sydney
25 City Police station. He had the opportunity to review many

1 materials before testifying here, but his evidence remained
2 essentially unchanged. There was nothing memorable about
3 Pratico. Chant, he did remember and Harriss he did not remember
4 for the quite proper reason that with Harriss, he was scarcely
5 with her.

6 Now commission counsel used Bill Urquhart's 1982 affidavit
7 to cross-examine him as to his memory. And two points of
8 difference with his recollection, before the affidavit and since,
9 were put to him. Frank Edwards acknowledged in evidence before
10 this Commission that he perhaps overstated one of Mr. Urquhart's
11 positions. And that's at transcript Volume 67, page 11903. And
12 that was with respect to the -- Pratico's statement. William
13 Urquhart had no recollection and the -- what appeared in the
14 affidavit was:

15 At no time did anyone in my
16 presence or to the best of my
17 knowledge make any threats or
18 promises or offer any inducements
19 to Mr. Pratico.

20 The second alleged inconsistency was an obvious error based
21 on the type-written rather than the handwritten version of the
22 second Patricia Harriss statement. There's a reference in
23 paragraph nine of the affidavit to the fact that:

24 ...on the 18th day of June at
25 approximately one-twenty a.m. I
took a second written statement.

On page 105 of Exhibit 134 we see the Exhibit to that affidavit
and it's the type-written version of the June 18th statement. If

1 Mr. Urquhart had had Exhibit 56, the handwritten version to
2 consider, he would have appreciated that it's not in his
3 handwriting. He would have appreciated that it wasn't one-twenty
4 in the morning but rather twelve zero seven a.m. And he also
5 would have appreciated that his name appeared nowhere on that
6 statement.

7 I suggest that as a result Mr. Urquhart's credibility and
8 his integrity have not been undermined by counsel for any party
9 or by commission counsel. I suggest that despite the unfortunate
10 events of May 28th, 1971, which lead to Donald Marshall, Jr.'s,
11 imprisonment, this Commission has little basis upon which
12 attribute culpable blame to William Urquhart. William Urquhart
13 is not happy to have been involved in this long series of events,
14 but I suggest that he assisted this Commission to the best of his
15 ability. He's humble enough not to take any pride in the fact
16 that numerous suspicions and allegations against him have not
17 been made out, but he should end his involvement here, I suggest,
18 with a clear conscience. And this Commission should support
19 that.

20 I have no further submissions.

21 MR. CHAIRMAN:

22 Mr. Barrett, if you would give us five minutes before you start.

23
24 INQUIRY RECESSED AT: 3:51 p.m., AND RECONVENED AT: 4:11 p.m.