

Dom Broun

Re: John [unclear] civil suite CBC

DONALD C. MURRAY

ICE

53

BIN	L
BD	

Classification
File No. - N° du dossier P.C.M.P.2 264

STEWART, MACKEN & COVERT
BARRISTERS AND SOLICITORS
19021 420-3200 TELEX 09-22593
DIRECT DIAL 902-420-3341

PURDY'S WHARF TOWER ONE
1959 UPPER WATER STREET
P.O. BOX 997
HALIFAX, CANADA B3J 2X2

FROM - DE	Date 86-05-12
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File

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| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Action
Donner suite | <input type="checkbox"/> Prepare Brief
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| <input type="checkbox"/> Perusal and P.A.
Lire et classer | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

SUBJECT - SUJET

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Above named wants to look at city police file re: Donald Marshall. He represents former city police inspector Billy Arguehart. To check on request.

⁻⁰⁵⁻¹²
:30pm Advised to correspond direct to A.G. since material was handed over on order of A.G.

To save time as trial starts 2 June 86

JFB

Diary Date - Date d'agenda	Meeting Date - Date de réunion	P.A. - A.C.	
		Date	Init./N°

45

82-77

RE - OBJET

BIN - BD

DATE TIME HEURE ACTION TAKEN - MESURES PRISES

86-05-13

Ray Newman Elsay's appeal was denied however instead of serving this year it has been changed to one year.

86-05-14

Checked Collobretay's office & they advised that they have not rec'd anything official on the matter & feel they won't for another thirty days (appeal period).
S.U.D.
Rob

D.D. 86-06-30

<input type="checkbox"/> Concluded Enquête terminée	Date Complainant Notified Date d'avis au plaignant	SUI DD - DA ECE ▶	<input type="checkbox"/> Consulted consulte	<input type="checkbox"/> Attended sur les lieux	<input type="checkbox"/> Advised avisé
Investigator - Enquêteur		Date	SUPERVISOR SUPERVISEUR		Date
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Nova Scotia



Department of
Attorney General

PO Box 7
Halifax, Nova Scotia
B3J 2L6

Our File No

May 14, 1986

C. O. "H" Division
R.C.M.P.
3139 Oxford Street
P.O. Box 2286
Halifax, N.S. B3J 3E1

This will confirm my instructions of May 14th to Superintendent Vaughan that the Sydney Police Department files on the Donald Marshall, Jr. case which were turned over to your force be delivered to Ronald N. Pugsley, O.C. of Stewart, MacKeen and Covert located at Purdy's Wharf, Tower One in Halifax.


Gordon S. Galt
Director (Criminal)

GSG:jd

ADM. REK
B Kull

11/11/86

Rcmp 268

56

May 22

983629

1986

Received from
Reçu de

Sydney Sub-Division RCMP

Copies of documents received from Sydney

City Police relative to the Donald Marshall
Sand Seale case

Dollars

[Handwritten Signature]
Signature

5431175 EQUIPMENT LIMITED OTTAWA K1P 0H1 - 51

[Handwritten note]

Officer i/c C.I.B.

Halifax S/D Section N.C.O.

SECURITY - CLASSIFICATION - DE SECURITE
CONFIDENTIAL
OUR FILE/NOTRE REFERENCE
YOUR FILE/VOTRE REFERENCE
DATE
86-06-05

SUBJECT
OBJET

Canadian Broadcasting Corporation -
Request for Interview -
Donald MARSHALL Case

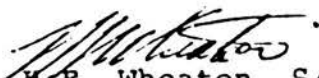
On the 4th June, 1986 I received a telephone call from Mr. Roger BILL, a producer for the CBC. He requested that I do a live interview with Mr. Ian McINTYRE for a CBC current affairs program.

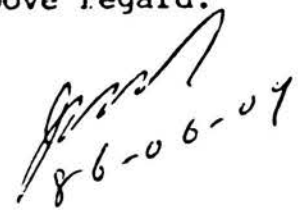
I questioned Mr. BILL as to what the content of this program would be. From the conversation, it is clear that they wish to question me in regards to (1) the actions of the Attorney General's Department during the investigation of the Donald MARSHALL case and subsequent investigations; (2) The actions of the Sydney City Police, particularly, Chief John MacINTYRE and any charges I may have recommended; and (3) My opinions of the judiciary, particularly comments of the Supreme Court; i.e. Donald MARSHALL is the author of his own misfortune.

Mr. BILL offered the use of CBC Lawyer, Mr. MURRANT, to scrutinize and review all questions prior to airing.

In regards to the above, if I were to answer these questions honestly, which I would do, it would undoubtedly cast the Department of the Attorney General in bad light. It would also bring forth the fact that I feel Chief John MacINTYRE should be charged criminally with counselling perjury. Thirdly, I do not feel Donald MARSHALL is the author of his own misfortune. He is the victim of an unscrupulous police officer, John MacINTYRE.

In view of the fact that this would undoubtedly have wide repercussions, I have discussed same with my Officer Commanding and seek your comments in the above regard.


H.P. Wheaton, S/Sgt.,
Halifax S/D Section N.C.O.


86-06-07

O.C. Halifax Sub-Division

Officer i/c C.I.B.

P-111P2 227

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE/VOTRE RÉFÉRENCE
71H-010-6
YOUR FILE/VOTRE RÉFÉRENCE
DATE
86-06-12

SUBJECT / OBJET Canadian Broadcasting Corporation -
Request For Interview -
Donald MARSHALL Case

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I also wonder why he would now make a recommendation that Chief MacINTYRE should be charged criminally with counselling perjury, as over three years have elapsed, and any prosecution action could fail, due to the Charter of Rights. Why, if he felt prosecution should be entered, did he not make the recommendation in his report dated 83-05-30? I would also be interested in any new evidence, which may have come to light, as well as a summation of concrete evidence in support of his view, with report reference please.

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I would strongly advise S/Sgt. WHEATON not to discuss this case at all with any media or other unauthorized persons in any detail whatever. The matter is under appeal to the Supreme Court of Canada and, therefore, should not be discussed.

A.E. Vaughan, Supt.,
Officer i/c C.I.B.

*Original not rec'd by 86-06-16.
Copy by hand from C130*

DLB/lmm

A/Sgt. Wheaton

*For your attention being further
to your discussion with
C130 this date just before
86-06-16.*

*3 P/A
86/06/11*

R.C.M.P. 2200

Officer i/c C.I.B.

Halifax S/D Section N.C.O.

SECURITY - CLASSIFICATION - DE SECURITE
CONFIDENTIAL
OUR FILE/NOTRE REFERENCE
YOUR FILE/VOTRE REFERENCE
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SUBJECT / OBJET

Canadian Broadcasting Corporation - Request for Interview - Donald MARSHALL Case

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I questioned Mr. BILL as to what the content of this program would be. From the conversation, it is clear that they wish to question me in regards to (1) the actions of the Attorney General's Department during the investigation of the Donald MARSHALL case and subsequent investigations; (2) The actions of the Sydney City Police, particularly, Chief John MacINTYRE and any charges I may have recommended; and (3) My opinions of the judiciary, particularly comments of the Supreme Court; i.e. Donald MARSHALL is the author of his own misfortune.

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H.P. Wheaton, S/Sgt., Halifax S/D Section N.C.O.

Handwritten signature and date: 86-06-07

O.C. Halifax Sub-Division

Officer i/c C.I.B.

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE/MOTRE RÉFÉRENCE
71H-010-6
YOUR FILE/VOTRE RÉFÉRENCE
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86-06-12

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A.E. Vaughan
A.E. Vaughan, Supt.,
Officer i/c C.I.B.

cc copy given to you by C.I.B. 86-06-14 86-06-14

HALIFAX
JUN 20 1986
SUB-DIVISION
R. C. M. POLICE

WRITE - ÉCRIRE À LA MAIN

TO - À <p style="font-size: 2em; text-align: center;">CIBO</p>	FROM - DE <p style="font-size: 1.5em; text-align: center;">CIB - Sgt Bentley</p>	Date <p style="font-size: 1.5em; text-align: center;">86/06/13-</p>
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Lire et classer | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

SUBJECT - SUJET DONALD MARSHALL.

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

I have reviewed the file of Donald MARSHALL and there is little doubt that the Sydney City Police used questionable tactics during the investigation of this murder, however, I do not believe that prosecution of MacIntyre, et al, at this stage is warranted. The report submitted by S/Sgt. H.F. WHEATON, dated 83/05/30 and tagged as appendix #1, seems to sufficiently cover a number of the ~~the~~ ^{the} ~~proceedings~~ ^{proceedings} initiated by the Sydney City Police. In addition, when new evidence was relayed to the Sydney City Police, they were not prepared to re-investigate the information to establish its genuineness. As far as I am concerned, MacIntyre's et al, tactics have been common knowledge for a few years now and I would certainly think that Frank EDWARDS, Q.C. Crown Prosecutor as well as the Department of Attorney General, were well aware of any wrong doings by these men and undoubtedly discussed whether charges were warranted. In addition, to my knowledge and from review of the file, I can not find where any of the witnesses, who appeared ~~at~~ ^{at} during the MARSHALL trial, have been or will be charged for this offence.

Diary Date - Date d'agenda	Meeting Date - Date de réunion	P.A. - A.C.	
		Date	Init./N°

WRITE - ÉCRIRE À LA MAIN

TO - A	FROM - DE	Date
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SUBJECT - SUJET

Page 2.

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Furthermore, I do not recommend that this force become involved in the ebe program - current affairs.

Perhaps I might suggest that the Department of Attorney General be approached with the idea that all murder investigations by the City of Sydney be handled by this force - not the City Police. I believe we mean our force, had to take over another murder investigation, since the MARSHALL case, simply because the Sydney Police did a lousy job.

Diary Date - Date d'agenda	Meeting Date - Date de réunion	P.A. - AC	
		Date	Init./N°

O.C. Halifax Sub-Division

Halifax S/D Section N.C.O.

SECURITY CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOTRE RÉFÉRENCE
71H-010-6
DATE
86-07-14

SUBJECT Canadian Broadcasting Corporation
OBJET Request for Interview -
Donald MARSHALL Case

This will acknowledge receipt of memorandum of Officer i/c C.I.B. dated 86-06-12 with your attachment. My memorandum of 86-06-05 was in relation to opinions which would be asked by the captionally noted media and the general direction my answers would take. I will deal with paragraph four of my memorandum as per conversation with yourself and the CIBO. The main point at issue being, what evidence is there to support a charge and/or further investigation of former Chief of Police for the City of Sydney, John McINTYRE? Perhaps the simplest way to break down a rather lengthy and complex investigation would be to take each witness and describe what evidence he or she could give.

Maynard CHANT - Louisburg, N.S.

He can give evidence that on 71-05-29 he was fourteen years old. At approximately midnight, he was walking home at Wentworth Park, Sydney, N.S. He was approached by Donald MARSHALL, who had a cut on his arm and advised Sandy SEALE had just been stabbed on the opposite side of the park on Crescent Street. CHANT and a group of young people drove around the park to the scene where CHANT took off his shirt and placed it on the wound. On arrival of the Sydney City Police, he was sent on his way. He was subsequently checked by Csts. JOHNSTON and MCKENZIE, who had a perimeter check point set up. Because of the bloody shirt, he was taken to the Sydney General Hospital where he was interviewed by Detective M.R. MacDONALD, who he told what he had seen and done. He was taken to the station and his father picked him up and took him home. He was in no way at this point an eye witness to the murder and did not say he was.

On 71-05-30 CHANT will state he was interviewed by McINTYRE. In this statement he will give evidence that he said what McINTYRE told him to say - basically that he saw Donald MARSHALL, Sandy SEALE and two other men on

- 2 -

Crescent Street. This was totally untrue, however, he advises he was afraid of McINTYRE, who threatened him by banging the table and talking loudly.

The next statement CHANT can give evidence on is 71-06-04 when he was again interviewed by McINTYRE and states he saw MARSHALL stab SEALE. Again, he will give evidence that he agreed with the Chief as he feared him; that he pounded the table and threatened to put him in jail, as he was on probation for theft of milk bottle money. He later perjured himself on the stand at Preliminary Hearing of the MARSHALL trial. During Supreme Court he would not say he saw the stabbing. He was declared a hostile witness and finally agreed with what he said in the Preliminary. In February of 1982 he was interviewed by Cpl. CARROLL and myself and readily admitted to his perjury and gave his reason why he lied. During the 1982 investigation, various side issues of the people present during the June 4th statement, Court Transcripts, etc. were checked. In all instances, CHANT's recall has been extremely accurate. When giving evidence since 1982, CHANT has been a very believable witness and has become rather frustrated that the real reason for him perjuring himself as a fourteen year old has never been revealed totally.

John Louis PRATICO - New Waterford, N.S.

Will give evidence that he was sixteen years old at the time of the SEALE murder and under psychiatric care. He will state he was interviewed by McINTYRE on 71-05-30. He told him that he saw SEALE and MARSHALL on Crescent Street and heard a scream. He then observed two fellows run away and jump in a stationwagon. He thought they were bikers.

On 71-06-04 he was again interviewed by McINTYRE and told him what he wanted to hear. He will state he did so out of fear of McINTYRE. He realized he was lying and approached the defense lawyer and Sheriff and told them so. He was then taken to the Crown Prosecutor's office and again threatened with perjury by the Crown and former Chief McINTYRE. Between the preliminary and Supreme Court, he had a nervous breakdown and was admitted to the Nova Scotia Hospital. On 82-02-25 PRATICO was interviewed by Cpl. J. E. CARROLL and readily admitted he lied on the stand and his reason for doing so was fear of the former Chief John McINTYRE. The statement as given was merely the repeating of what he was told to say by the former Chief.

- 3 -

Patricia HARRIS - 5 Kings Road, Sydney, N.S.

Will give evidence that in May of 1971, she was fourteen years old. On the night of 28/29 May she was walking home with Terry GUSHUE. GUSHUE was older and intoxicated. On Crescent Street they met and talked to Donald MARSHALL. She also observed two other men on Crescent Street, one old with white hair and a long coat. She will give evidence that Detective URQUHART did not want to hear about these other two men. She was turned over to McINTYRE who kept badgering her for hours and hours until she eventually told him what he said she saw, that the only two men on the street were SEALE and MARSHALL. She was extremely upset and told her mother. The next day they went to a lawyer, who told her to tell the truth. She felt seized with her story and felt she would be in trouble if she changed it. She therefore lied on the stand as a result of the coercion of former Chief McINTYRE.

These three people all say the same thing, that they were counselled to commit perjury by former Chief John McINTYRE. Various other bits and pieces of evidence can be given by Dr. Mian, PRATICO's Psychiatrist of the day, Sgts. Davies and Carroll, who assisted, and the writer. This evidence will corroborate the three key witnesses and may also show mens rae on the part of the former Chief.

On the 30th May 71 McINTYRE was fresh on the case and had interviewed MARSHALL; therefore, he knew that the principles on Crescent Street at the time were MARSHALL, SEALE and two other men. CHANT's statement and PRATICO's statement of the 30th both reflect this. On the 4th Jun 71 the former Chief was convinced MARSHALL committed the crime and the two men did not exist. PRATICO's statement and CHANT's statement both reflect this and they became eye witnesses to a murder that they never saw. Patricia HARRIS was a different problem for the Chief. She stated she saw the two men but not SEALE. After a five hour interview with the former Chief and Detective URQUHART, she forgot the two men and stated the only people on the street were MARSHALL and SEALE.

In conclusion, I feel this investigation has taken various phases. The first phase proved MARSHALL's innocence to the satisfaction of the Court. The second phase proved EBSARY's guilt pending any appeal. The third phase, which has not been completed, is the investigation of former Chief McINTYRE. I would respectfully submit that an offence has been committed by the former Chief and it bears further investigation to ascertain if it will stand the test of the courts. Certainly, there is a prima facie case here.


H.F. Wheaton, S/Sgt.

71H-010-6
1510-1-1 (S/D)

- 4 -

Officer i/c C.I.B.

FORWARDED 86-07-18 for your information and attention,
having reference to correspondence of 86-06-12.

The matter of further investigation and possible
charges which could be laid against Chief McINTYRE
was addressed by S/Sgt. Wheaton in his report dated
86-06-05.

Halifax, N.S.

J.M. Penney, Supt.
O.C. Halifax Sub-Division.

O.C. Halifax Sub-Division

Officer i/c C.I.B.

F. 1112 227

SECURITY - CLASSIFICATION - DE SECURITE
CONFIDENTIAL
OUR FILE/NOTRE REFERENCE
71H-010-6
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SUBJECT Canadian Broadcasting Corporation -
 OBJET Request For Interview -
 Donald MARSHALL Case

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A.E. Vaughan, Supt.,
 Officer i/c C.I.B.

*Original not rec'd by 86-06-16.
 Copy by hand from C130*

DLB/lmm

S/Sgt. Wheaton

*For your attention being further
 to your discussion with
 C130 this date just forget
 8/10/86*

*by P/A
 86/06/11*

WRITE - ÉCRIRE À LA MAIN

TO - À	FROM - DE	Date
CIBO	CIB - Sgt Bentley	86/06/13-

<input type="checkbox"/> Comments Commentaires	<input type="checkbox"/> Action Donner suite	<input type="checkbox"/> Prepare Brief Préparer un exposé	<input type="checkbox"/> Return with Current File Retourner avec le dossier actuel
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SUBJECT - SUJET

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TO - À	FROM - DE	Date
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SUBJECT - SUJET

DONALD MARSHALL

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

I have again reviewed this file and can only reiterate my earlier comments that this murder investigation, under the direction of John MacIntyre, Sydney City Police, was carried out by investigators who had no qualms about using questionable tactics. Whether or not their maneuvers can be construed as imprecise to the offence of counselling a witness to commit perjury is a matter for a court to decide. To specifically isolate certain statements given in evidence by CHANT, PRACTICO or HARRIS, and categorically state that the witnesses were under a threat by the Police if they did not co-operate, is almost impossible.

I believe that based on what is contained in S/Sgt. Wheaton's reports dated 83/05/30 and 86/07/14, sufficient suspicion has been raised to warrant further investigation for the offence of "counselling to commit perjury" following which the determination by the Department of Attorney General should be forthcoming concerning charges. I think that both MacIntyre and URGUNAR should be interviewed, as well as the three witnesses, CHANT, PRACTICO & HARRIS, to establish exactly what statements were made at the instigation of the Police. Furthermore, I think that:

Diary Date - Date d'agenda

Meeting Date - Date de réunion

P.A. - A.C.

Date

8/6/08/01

Init./N

RB

WRITE - ÉCRIRE À LA MAIN

TO - À	FROM - DE	Date
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- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Comments
Commentaires | <input type="checkbox"/> Action
Donner suite | <input type="checkbox"/> Prepare Brief
Préparer un exposé | <input type="checkbox"/> Return with Current File
Retourner avec le dossier actuel |
| <input type="checkbox"/> Perusal and P.A.
Lire et classer | <input type="checkbox"/> Prepare Reply
Rédiger une réponse | <input type="checkbox"/> Make File(s)
Ouvrir un dossier | <input type="checkbox"/> Check Records
Vérifier les dossiers |

SUBJECT - SUJET

DONALD MARSHALL

REMARKS (Use same A-5 for Reply when space permits) - REMARQUES (Si l'espace le permet, répondre sur cette formule)

Both MacIntyre and URRUHART should be questioned in depth as to why a further investigation was not carried out when it was learned the wrong person had been convicted. This information was relayed to Detective URRUHART by MAVIC RATCHFORD, as well as Cpl Gary GREEN, RCMP. Also, CHANT openly admitted in court that he was lying and had not seen the murder, but, this did not seem to sway/influence the crown to re-investigate the matter.

Perhaps, to investigate the ~~the~~ offence of Covering up, may never provide the ingredients necessary to lay charges against MacIntyre or URRUHART, but it ~~is~~ would ~~be~~ must at least try, particularly in light of the fact that MARSHALL has been acquitted and Roy DESSARY has been convicted of the murder.

Diary Date - Date d'agenda	Meeting Date - Date de réunion	P.A. - AC	
		Date	Init./N°

CONFIDENTIAL

The Deputy Attorney General
 P.O. Box 7
 Halifax, Nova Scotia
 B3J 2L6

71H-010-6

August 1, 1986

Attention: Mr. Gordon S. Gale
Director (Criminal)

Dear Mr. Gale:

Re: Roy Newman EBSARY
Manslaughter
Sydney, Nova Scotia
71-05-28/29

Attached is a copy of my memorandum of 86-06-12 directed to the O.C. Halifax Sub-Division and the subsequent response from S/Sgt. Wheaton dated 86-07-14. The latter outlines the views of S/Sgt. Wheaton regarding the evidence to support a charge and/or further investigation of the former Chief of Police for the City of Sydney, John MacIntyre for counselling perjury.

I have now completed my review of the entire matter. To begin with, I should like to clarify the import of paragraph 1 of my memorandum of 86-06-12. Regrettably, your suggestion of 82-05-20 to hold the matter in abeyance was unintentionally misinterpreted to mean that the investigation from a police perspective should be stopped. For your information and record purposes, I have found no evidence whatever to support such an interpretation. I fully appreciate that the suggestion you made to hold the matter in abeyance was related to events occurring at the time, e.g., consideration of an inquiry, etc. It should not have been construed in any way as precluding a police investigation at a later date if such was deemed necessary and warranted.

The three witnesses at the MARSHALL trial: Maynard CHANT, John Louis PRATICO and Patricia HARRIS, have admitted that they gave perjured testimony during the trial proceedings allegedly because of coercion and threats made by former Chief MacIntyre. Further, they claimed that

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"H" Div. File No. 71H-010-6

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their testimony was in fact based on what MacIntyre told them to say. While these allegations are indeed serious, I do not support a further investigation at this time for the following reasons:

- 1) In his memorandum of 83-06-17, the O.C. Sydney Sub-Division suggested that while there were numerous flaws and variances from standard police practices and procedures, he concluded that this was an example of policemen identifying a person they think is responsible for an offence and then setting out to prove the theory by gathering the necessary evidence; moreover, he was of the view that the actions of the Sydney Police investigators was one of overzealousness.

In his memorandum of 83-06-24, the then CIBO took the position that the investigators (MacIntyre and Urquhart) believed MARSHALL to be responsible and in their zealously, together with the evidence available, placed too much reliance on the evidence of certain witnesses, hence, incorrect conclusions were drawn. On 84-01-06 the then CIBO wrote to the O.C. Sydney Sub-Division advising him that no further action should be taken and the matter should be considered closed at that time.

In the correspondence referred to, the police managers involved in the review of this matter made no suggestion whatever that MacIntyre or Urquhart may have counselled perjury.

- 11) There appears to be no independent relevant or material evidence available which would tend to corroborate the statements of CHANT et al. In essence, therefore, any prosecution of MacIntyre, or others, for counselling perjury would have to be based on the recollections of three self-confessed perjurers. Moreover, their recollections would be based on precisely what was said to them by MacIntyre, or others, during interviews which occurred fifteen years ago.

"H" Div. File No. 71H-010-6

- 111) While the prosecutor, Donald MacNeil, may have had relevant and material evidence in relation to this matter, he has since deceased. As well, a Sydney policeman, one, MORZ, who may also have had some knowledge of this matter is deceased.

I share the view that this is a classic case of policemen focussing their efforts on one suspect to the exclusion of all other possibilities. This, I submit, reflects poor judgement rather than conduct involving criminal acts. In this regard, the following factors must also be taken into consideration.

- a) MacIntyre and his investigator(s) certainly had grounds to suspect Marshall in that during the previous year (1970/71), he had been "picked up" on seven different occasions in the park area where SEALE was murdered.
- b) It was not until the EBSARY trial in the 1980's that MARSHALL finally disclosed the full circumstances surrounding his presence in the park on that occasion. This non-disclosure at the time of the investigation no doubt influenced MacIntyre's belief that MARSHALL was in some way involved in the crime.
- c) The polygraph examination of EBSARY in 1971 showed him to be truthful. As well, the polygraph examination of another witness, MacNEIL, proved inconclusive. Again, the results of these examinations may have influenced MacIntyre in his belief that MARSHALL was in some way involved in the crime.

There is one other point to be considered in the overall analysis of MacIntyre's actions in the investigation of the SEALE murder. MacIntyre's position would undoubtedly be that although his methods of interrogation may have been somewhat irregular or forceful, they were intended to elicit truthful statements from the three witnesses referred to earlier. Furthermore, that the three witnesses incorrectly misconstrued the intent of his methods to be threatening or coercive leading them to provide false information.

"H" Div. File No. 71H-010-6

For all these reasons, it is my view that no useful purpose would be served in initiating a further investigation into the allegations of counselling perjury. It is my understanding that some form of public inquiry will be held following the decision of the Supreme Court of Canada in the EBSARY case. Should such public inquiry identify any evidence of probative value warranting further police investigation, the appropriate action would be taken.

Your advice in this matter would be appreciated. Should you require further clarification on any of the points made, please do not hesitate to contact me.

Yours truly,

A. E. Vaughan, Supt.
Officer in Charge
Criminal Investigation Branch

Encls.

3139 Oxford Street
P.O. Box 2286
Halifax, Nova Scotia
B3J 3E1

AEV/rjb

TO
A

O.C. Halifax Sub-Division

FROM
DE

Halifax S/D Section N.C.O.

SECURITY CLASSIFICATION / DE SÉCURITÉ
CONFIDENTIAL
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOTRE RÉFÉRENCE
71H-010-6
DATE
86-07-14

SUBJECT
OBJET

Canadian Broadcasting Corporation
Request for Interview -
Donald MARSHALL Case

This will acknowledge receipt of memorandum of Officer i/c C.I.B. dated 86-06-12 with your attachment. My memorandum of 86-06-05 was in relation to opinions which would be asked by the captionally noted media and the general direction my answers would take. I will deal with paragraph four of my memorandum as per conversation with yourself and the CIBO. The main point at issue being, what evidence is there to support a charge and/or further investigation of former Chief of Police for the City of Sydney, John McINTYRE? Perhaps the simplest way to break down a rather lengthy and complex investigation would be to take each witness and describe what evidence he or she could give.

Maynard CHANT - Louisburg, N.S.

He can give evidence that on 71-05-29 he was fourteen years old. At approximately midnight, he was walking home at Wentworth Park, Sydney, N.S. He was approached by Donald MARSHALL, who had a cut on his arm and advised Sandy SEALE had just been stabbed on the opposite side of the park on Crescent Street. CHANT and a group of young people drove around the park to the scene where CHANT took off his shirt and placed it on the wound. On arrival of the Sydney City Police, he was sent on his way. He was subsequently checked by Csts. JOHNSTON and McKENZIE, who had a perimeter check point set up. Because of the bloody shirt, he was taken to the Sydney General Hospital where he was interviewed by Detective M.R. MacDONALD, who he told what he had seen and done. He was taken to the station and his father picked him up and took him home. He was in no way at this point an eye witness to the murder and did not say he was.

On 71-05-30 CHANT will state he was interviewed by McINTYRE. In this statement he will give evidence that he said what McINTYRE told him to say - basically that he saw Donald MARSHALL, Sandy SEALE and two other men on

- 2 -

Crescent Street. This was totally untrue, however, he advises he was afraid of McINTYRE, who threatened him by banging the table and talking loudly.

The next statement CHANT can give evidence on is 71-06-04 when he was again interviewed by McINTYRE and states he saw MARSHALL stab SEALE. Again, he will give evidence that he agreed with the Chief as he feared him; that he pounded the table and threatened to put him in jail, as he was on probation for theft of milk bottle money. He later perjured himself on the stand at Preliminary Hearing of the MARSHALL trial. During Supreme Court he would not say he saw the stabbing. He was declared a hostile witness and finally agreed with what he said in the Preliminary. In February of 1982 he was interviewed by Cpl. CARROLL and myself and readily admitted to his perjury and gave his reason why he lied. During the 1982 investigation, various side issues of the people present during the June 4th statement, Court Transcripts, etc. were checked. In all instances, CHANT's recall has been extremely accurate. When giving evidence since 1982, CHANT has been a very believable witness and has become rather frustrated that the real reason for him perjuring himself as a fourteen year old has never been revealed totally.

John Louis PRATICO - New Waterford, N.S.

Will give evidence that he was sixteen years old at the time of the SEALE murder and under psychiatric care. He will state he was interviewed by McINTYRE on 71-05-30. He told him that he saw SEALE and MARSHALL on Crescent Street and heard a scream. He then observed two fellows run away and jump in a stationwagon. He thought they were bikers.

On 71-06-04 he was again interviewed by McINTYRE and told him what he wanted to hear. He will state he did so out of fear of McINTYRE. He realized he was lying and approached the defense lawyer and Sheriff and told them so. He was then taken to the Crown Prosecutor's office and again threatened with perjury by the Crown and former Chief McINTYRE. Between the preliminary and Supreme Court, he had a nervous breakdown and was admitted to the Nova Scotia Hospital. On 82-02-25 PRATICO was interviewed by Cpl. J. E. CARROLL and readily admitted he lied on the stand and his reason for doing so was fear of the former Chief John McINTYRE. The statement as given was merely the repeating of what he was told to say by the former Chief.

- 3 -

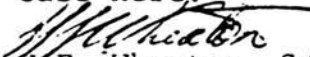
Patricia HARRIS - 5 Kings Road, Sydney, N.S.

Will give evidence that in May of 1971, she was fourteen years old. On the night of 28/29 May she was walking home with Terry GUSHUE. GUSHUE was older and intoxicated. On Crescent Street they met and talked to Donald MARSHALL. She also observed two other men on Crescent Street, one old with white hair and a long coat. She will give evidence that Detective URQUHART did not want to hear about these other two men. She was turned over to McINTYRE who kept badgering her for hours and hours until she eventually told him what he said she saw, that the only two men on the street were SEALE and MARSHALL. She was extremely upset and told her mother. The next day they went to a lawyer, who told her to tell the truth. She felt seized with her story and felt she would be in trouble if she changed it. She therefore lied on the stand as a result of the coercion of former Chief McINTYRE.

These three people all say the same thing, that they were counselled to commit perjury by former Chief John McINTYRE. Various other bits and pieces of evidence can be given by Dr. Mian, PRATICO's Psychiatrist of the day, Sgts. Davies and Carroll, who assisted, and the writer. This evidence will corroborate the three key witnesses and may also show mens rae on the part of the former Chief.

On the 30th May 71 McINTYRE was fresh on the case and had interviewed MARSHALL; therefore, he knew that the principles on Crescent Street at the time were MARSHALL, SEALE and two other men. CHANT's statement and PRATICO's statement of the 30th both reflect this. On the 4th Jun 71 the former Chief was convinced MARSHALL committed the crime and the two men did not exist. PRATICO's statement and CHANT's statement both reflect this and they became eye witnesses to a murder that they never saw. Patricia HARRIS was a different problem for the Chief. She stated she saw the two men but not SEALE. After a five hour interview with the former Chief and Detective URQUHART, she forgot the two men and stated the only people on the street were MARSHALL and SEALE.

In conclusion, I feel this investigation has taken various phases. The first phase proved MARSHALL's innocence to the satisfaction of the Court. The second phase proved EBSARY's guilt pending any appeal. The third phase, which has not been completed, is the investigation of former Chief McINTYRE. I would respectfully submit that an offence has been committed by the former Chief and it bears further investigation to ascertain if it will stand the test of the courts. Certainly, there is a prima facie case here.


H.F. Wheaton, S/Sgt.

R. L. M. P. 2 3 7.

71H-010-6
1510-1-1 (S/D)

- 4 -

Officer i/c C.I.B.

FORWARDED 86-07-18 for your information and attention,
having reference to correspondence of 86-06-12.

The matter of further investigation and possible
charges which could be laid against Chief McINTYRE
was addressed by S/Sgt. Wheaton in his report dated
86-06-05.

Halifax, N.S.

J.M. Penney, Supt.
O.C. Halifax Sub-Division.

O.C. Halifax Sub-Division

Officer i/c C.I.B.

P. MP2 227

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE/NOTRE RÉFÉRENCE
71H-010-6
YOUR FILE/VOTRE RÉFÉRENCE
DATE
86-06-12

SUBJECT / OBJET Canadian Broadcasting Corporation -
Request For Interview -
Donald MARSHALL Case

I am very concerned with the contents of paragraph four of memorandum from your Section N.C.O. dated 86-06-05. I am not sure from perusing the file, just why S/Sgt. WHEATON feels he would cast the Attorney General's Department in a bad light.

I also wonder why he would now make a recommendation that Chief MacINTYRE should be charged criminally with counselling perjury, as over three years have elapsed, and any prosecution action could fail, due to the Charter of Rights. Why, if he felt prosecution should be entered, did he not make the recommendation in his report dated 83-05-30? I would also be interested in any new evidence, which may have come to light, as well as a summation of concrete evidence in support of his view, with report reference please.

I also do not totally agree that Donald MARSHALL was not the author of his own misfortune. It is mentioned numerous times throughout the file that MARSHALL refused to admit he was planning to commit a robbery at the time of the death. If he had told the truth from the beginning, the case may have been handled completely different.

I would strongly advise S/Sgt. WHEATON not to discuss this case at all with any media or other unauthorized persons in any detail whatever. The matter is under appeal to the Supreme Court of Canada and, therefore, should not be discussed.

A.E. Vaughan, Supt.,
Officer i/c C.I.B.

*Original not rec'd by 86-06-16.
Copy by hand from C130*

DLB/lmm

S/Sgt. Wheaton

*For your attn being further
to your discussion with
C130 this date just forget
x/ 06-16.*

*3 P/A
86/06/11*

MESSAGE

Daily No - N° quotidien	Precedence - Priorité IMMEDIATE	Location - Lieu "HQ" OTTAWA	Date 86-08-01	Security Classification - Classification adhésive UNCLASSIFIED
C.O. "E" DIVISION				
PERSONAL ATTENTION OF: C.I.B.O.				
DIRECTOR, GENERAL ENFORCEMENT AND SUPPORT SERVICES				
Original's Reference No. - N° de référence de l'auteur DGESS/1/554	Our File - Notre n° de dossier	Your File - Votre n° de dossier		

CPS
OF

RE "E" DIVISION FILE 71H-010-6

THIS WILL CONFIRM TELEPHONE DISCUSSION A.M. THIS DATE BETWEEN SUPT. VAUGHAN AND ASSISTANT COMMISSIONER SCHRAMM IN RELATION TO A WORD OMISSION AND TYPOGRAPHICAL ERRORS IN THE AMENDED DRAFT FORWARDED ON 86-07-31. ATTACHED IS CORRECTED VERSION FOR YOUR INFORMATION AND FILE RECORD.

DELIVER TO SUPT. VAUGHAN UPON RECEIPT.

PA 86/08/05 RB

TO BE DELIVERED BY À LIVRER D'ICI LE	Date	Time - Heure	Authorizing Signature <i>[Signature]</i>	Phone No. - N° de téléphone	Date
REPLY REQUIRED BY			RE: Schramm, A/Comm'x.		Time - Heure



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

82

F. 0112 232

Votre file votre référence

Our file Notre référence

Mr. Gordon Gale,
The Deputy Attorney General,
P.O. Box 7,
Halifax, Nova Scotia.
B3J 2L6

71H-010-6

Re: Roy Newman KESARY
Manslaughter
Sydney, Nova Scotia
71-05-28/29

Dear Mr. Gale:

Attached is a copy of my memorandum of 86-06-12 directed to the O.C. Halifax S/D and the subsequent response from S/Sgt. Wheaton dated 86-07-14. The latter outlines the views of S/Sgt. Wheaton regarding the evidence to support a charge and/or further investigation of the former Chief of Police for the City of Sydney, John MacIntyre for counselling perjury.

I have now completed my review of the entire matter. To begin with, I should like to clarify the import of paragraph 1 of my memorandum of 86-06-12. Regrettably, your suggestion of 82-08-20 to hold the matter in abeyance was unintentionally misinterpreted to mean that the investigation from a police perspective should be stopped. For your information and record purposes, I have found no evidence whatever to support such an interpretation. I fully appreciate that the suggestion you made to hold the matter in abeyance was related to events occurring at the time e.g. consideration of an inquiry, etc. It should not have been construed in any way as precluding a police investigation at a later date if such was deemed necessary and warranted.

The three witnesses at the MARSHALL trial: Maynard CHANT, John Louis PRATICO, and Patricia HARRIS, have admitted that they gave perjured testimony during the trial proceedings allegedly because of coercion and threats made by former Chief MacIntyre. Further, they claimed

Addressed copies to:
Commissioner, RCMP
1300 Allé Viate D'Est
Ottawa, Ontario

À adresser aux répondants à
Le commissaire de la G.R.C.
1800, prom. Allé Viate
Ottawa (Ontario)

R1A 098

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Canada

that their testimony was in fact based on what MacIntyre told them to say. While these allegations are indeed serious, I do not support a further investigation at this time for the following reasons:

- i) In his memorandum of 83-06-17, the O.C. Sydney Sub-Division suggested that while there were numerous flaws and variances from standard police practices and procedures, he concluded that this was an example of policemen identifying a person they think is responsible for an offence and then setting out to prove the theory by gathering the necessary evidence; moreover, he was of the view that the actions of the Sydney Police investigators was one of overzealousness.

In his memorandum of 83-06-24, the then CIBO took the position that the investigators (MacIntyre and Urquhart) believed MARSHALL to be responsible and in their zealotness, together with the evidence available, placed too much reliance on the evidence of certain witnesses; hence, incorrect conclusions were drawn. On 84-01-06 the then CIBO wrote to the C.C. Sydney Sub-Division advising him that no further action should be taken and the matter should be considered closed at that time.

In the correspondence referred to, the police managers involved in the review of this matter made no suggestion whatever that MacIntyre or Urquhart may have counselled perjury.

- ii) There appears to be no independent relevant or material evidence available which would tend to corroborate the statements of CHANT et al. In essence, therefore, any prosecution of MacIntyre, or others, for counselling perjury would have to be based on the recollections of three self-confessed perjurers. Moreover, their recollections would be based on precisely what was said to them by MacIntyre, or others, during interviews which occurred fifteen years ago.

iii) While the prosecutor, Donald MacNeil, may have had relevant and material evidence in relation to this matter, he has since deceased. As well, a Sydney policeman, one, MOSE, who may also have had some knowledge of this matter is deceased.

I share the view that this is a classic case of policemen focussing their efforts on one suspect to the exclusion of all other possibilities. This, I submit, reflects poor judgement rather than conduct involving criminal acts. In this regard, the following factors must also be taken into consideration.

- a) MacIntyre and his investigator(s) certainly had grounds to suspect Marshall in that during the previous year (1970/71), he had been "picked up" on seven different occasions in the park area where SEALE was murdered.
- b) It was not until the ESSARY trial in the 1980's that MARSHALL finally disclosed the full circumstances surrounding his presence in the park on that occasion. This non-disclosure at the time of the investigation no doubt influenced MacIntyre's belief that MARSHALL was in some way involved in the crime.
- c) The polygraph examination of ESSARY in 1971 showed him to be truthful. As well, the polygraph examination of another witness, MacNEIL, proved inconclusive. Again, the results of these examinations may have influenced MacIntyre in his belief that MARSHALL was in some way involved in the crime.

There is one other point to be considered in the overall analysis of MacIntyre's actions in the investigation of the SEALE murder. MacIntyre's position would undoubtedly be that although his methods of interrogation may have been somewhat irregular or forceful, they were intended to elicit truthful statements from the three witnesses referred to earlier. Furthermore, that the three witnesses incorrectly misconstrued the intent of his methods to be threatening or coercive leading them to provide false information.

#15/

- 4 -

RCMP 232

For all these reasons, it is my view that no useful purpose would be served in initiating a further investigation into the allegations of counselling perjury. It is my understanding that some form of public inquiry will be held following the decision of the Supreme Court of Canada in the EBERRY case. Should such public inquiry identify any evidence of probative value warranting further police investigation, the appropriate action would be taken.

Your advice in this matter would be appreciated. Should you require further clarification on any of the points made, please do not hesitate to contact me.

Yours truly,

A.E. Vaughan, Supt.
Officer in Charge
Criminal Investigations Branch



Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

86 RCMP 232

Your file Votre reference

The Deputy Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Our file Notre reference

71H-010-6

Attention: Mr. Gordon Gale

July 30, 1986

Re: Roy Newman EBSARY
Manslaughter
Sydney, Nova Scotia
71-05-28/29

I am attaching for your information a memorandum which I forwarded to the O.C. Halifax Sub-Division dated 86-06-12 and a response from S/Sgt. Wheaton relative to his views that an investigation should be conducted into the alleged matter of former Chief of Police, John MacIntyre, counselling perjury.

By way of explanation of paragraph 1 of my memorandum, ^{ON 82-06-20} ~~S/Sgt. Wheaton~~ ^{REGRETTABLY} ~~feels that your suggestion is to hold the matter in abeyance~~ ^{UNINTENTIONAL MISINTERPRETATION} ~~be interpreted as stopping the investigation from a police perspective.~~

For the record, I have found no evidence whatsoever to support any such interpretation and am fully aware that the suggestion to hold the matter in abeyance was related to events occurring at the time such as consideration of a public enquiry, etc., but that in no way would preclude a police investigation later if it was deemed essential and warranted by this Force.

I have reviewed this file thoroughly and I would offer the following for your consideration and advice please. The three witnesses, Maynard, CHANT, John PRATICO and Patricia HARRIS, have stated that they lied in the MARSHALL trial as a result of coercion and threats by former Chief MacIntyre and that their testimony was in fact what MacIntyre told them to say. On the surface this appears highly suspicious, however, for the following reasons I do not feel that further investigation is warranted.

- i) The C.I.B. Officer on 83-06-24 took the position that the investigators (MacIntyre and Urquhart) believed MARSHALL to be responsible and in their zealously together with the evidence available placed too much reliance on the evidence of certain witnesses together

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"H" Div. File No. 71H-010-6

1) continued.

with the fact that wrongful conclusions were drawn by the investigating team. The C.I.B. Officer on 84-01-06 wrote to the O.C. Sydney Sub-Division and told him no further action should be taken and the matter should be considered closed at this time. The O.C. Sydney Sub-Division on 83-06-17 suggested that while there were numerous flaws and variances from standard practices and procedures on the part of the police, this is an example of policemen identifying a person they think responsible for the offence and then setting out to prove the theory and gain evidence against the person and moreover, the actions of the Sydney Police investigators was overzealousness. Nowhere is there a suggestion in these reports that these managers felt the former Chief or his assistance had counselled perjury.

ii) Any prosecution of the former Chief or others for counselling perjury would be dependent on the recollection of three self-confessed perjurers. Moreover, they would be required to recall quite precisely what was said to them during interviews which occurred over fifteen years ago. I would suggest this would be a defense field day.

iii) Certainly the prosecutor of the day, Donald MacNeil, would have pertinent information and testimony in this matter, however, he is deceased. It is my view that this in fact may, in part, prevent or present a defense. *MOREOVER, ANOTHER POSSIBLE MATERIAL WITNESS SYDNEY POLICEMAN MORZ IS ALSO DECEASED.*

The pursuit of MARSHALL as the person responsible for the SEALE murder by MacIntyre et al was in fact reinforced by polygraph examination given EBSARY in 1971. The polygraph examination showed EBSARY to be truthful. Another witness by the name MacNEIL was also given a polygraph examination which proved inconclusive.

MacIntyre and his investigators certainly had justification to suspect MARSHALL since during the previous year, 1970/71, he had been picked up on seven different occasions for offences in the park area where SEALE was murdered.

MARSHALL, until the EBSARY trial in the 1980's, did not tell the truth about his motives about being in the park which in itself would reinforce MacIntyre's belief of his guilt.

MacIntyre and others would logically in any proceeding suggest that their tactics were forceful and that in fact, while they may be suggestive, desk pounding

THERE APPEARS BE NO INDEPENDENT INFORMATION OR MATERIAL PARTICULAR WHICH WOULD TEND TO CORROBORATE THE RECOLLECTION OF CHANTE

IT APPEARS TO BE A CLASSIC CASE OF POLICEMEN MAKING AN ONE SIDED ARGUMENT TO THE EXCLUSION OF OTHER POSSIBILITIES. REFLECTS A LACK OF JUDGEMENT AND CONDUCT WITH A MINIMAL CONNOTATION.

BUT ASSESSED

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"H" Div. File No. 61H-010-6

vii) continued.

tactics were intended to elicit a truthful statement from CHANT, PRATICO and HARRIS that they had in fact observed MARSHALL commit the murder and ~~They~~ ~~that~~ would undoubtedly allege that this was interpreted by the young witnesses as a suggestion that they lie.

It is my view that under the foregoing circumstances there would be no useful purpose served in proceeding further with an investigation into an allegation of counselling perjury. ~~however, before concluding the matter here, I would appreciate your advice on my analysis of the facts.~~ IT IS MY UNDERSTANDING THAT SOME FORM OF ENQUIRY WILL BE HELD FOLLOWING EBSARY'S SUPREME COURT HEARING. IF, AT THE CONCLUSION OF THE HEARING FACTS ARE ESTABLISHED WHICH WOULD WARRANT FURTHER ACTION BY THIS FORCE THAT AVENUE IS OPEN TO US.

YOUR ADVICE IN THIS MATTER WOULD BE APPRECIATED.

MORA
~~CHITRE~~


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CONFIDENTIAL

Your file Votre référence

The Deputy Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Our file Notre référence

71H-010-6

Attention: Mr. Gordon Gale

July 30, 1986

Re: Roy Newman EBSARY
Manslaughter
Sydney, Nova Scotia
71-05-28/29

I am attaching for your information a memorandum which I forwarded to the O.C. Halifax Sub-Division dated 86-06-12 and a response from S/Sgt. Wheaton relative to his views that an investigation should be conducted into the alleged matter of former Chief of Police, John MacIntyre, counselling perjury.

By way of explanation of paragraph 1 of my memorandum, your suggestion on 82-05-20 to hold the matter in abeyance was, regrettably, unintentionally misinterpreted as stopping the investigation from a police perspective. For the record, I have found no evidence whatsoever to support any such interpretation and am fully aware that the suggestion to hold the matter in abeyance was related to events occurring at the time such as consideration of an enquiry, etc., but that in no way would preclude a police investigation later if it was deemed essential and warranted by this Force.

I have reviewed this file thoroughly and I would offer the following for your consideration and advice please. The three witnesses, Maynard CHANT, John PRATICO and Patricia HARRIS, have stated that they lied in the MARSHALL trial as a result of coercion and threats by former Chief MacIntyre and that their testimony was in fact what MacIntyre told them to say. On the surface this appears highly suspicious, however, for the following reasons I do not feel that further investigation is warranted.

- 1) The C.I.B. Officer on 83-06-24 took the position that the investigators (MacIntyre and Urquhart) believed MARSHALL to be responsible and in their zealotry together with the evidence available placed too much reliance on the evidence of certain witnesses together

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"H" Div. File No. 71H-010-6

i) continued.


with the fact that wrongful conclusions were drawn by the investigating team. The C.I.B. Officer on 84-01-06 wrote to the O.C. Sydney Sub-Division and told him no further action should be taken and the matter should be considered closed at this time. The O.C. Sydney Sub-Division on 83-06-17 suggested that while there were numerous flaws and variances from standard practices and procedures on the part of the police, this is an example of policemen identifying a person they think responsible for the offence and then setting out to prove the theory and gain evidence against the person and moreover, the actions of the Sydney Police investigators was overzealousness. Nowhere is there a suggestion in these reports that these managers felt the former Chief or his assistance had counselled perjury.

- ii) There appears to be no independent information or material particulars which would tend to corroborate the recollection of CHANT et al. Any prosecution of the former Chief or others for counselling perjury would be dependent on the recollection of three self-confessed perjurers. Moreover, they would be required to recall quite precisely what was said to them during interviews which occurred over fifteen years ago. I would suggest this would be a defense field day.
- iii) Certainly the prosecutor of the day, Donald MacNeil, would have pertinent information and testimony in this matter, however, he is deceased. It is my view that this in fact may, in part, prevent or present a defense. Moreover, another possible material witness, Sydney Policeman MORZ is also deceased.
- iv) This appears to be a classic case of policemen locking in on one individual to the exclusion of all other possibilities. It reflects poor judgement rather than conduct with criminal connotations.
- a) The pursuit of MARSHALL as the person responsible for the SEALE murder by MacIntyre et al was in fact buttressed by polygraph examination given EBSARY in 1971. The polygraph examination showed EBSARY to be truthful. Another witness by the name MacNEIL was also given a polygraph examination which proved inconclusive.

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- iv) b) MacIntyre and his investigators certainly had justification to suspect MARSHALL since during the previous year, 1970/71, he had been picked up on seven different occasions for offences in the park area where SEALE was murdered.
- c) MARSHALL, until the EBSARY trial in the 1980's, did not tell the truth about his motives about being in the park which in itself would reinforce MacIntyre's belief of his guilt.
- v) MacIntyre and others would logically in any proceeding suggest that their tactics were forceful and that in fact, while they may be suggestive, desk pounding tactics were intended to elicit a truthful statement from CHANT, PRATICO and HARRIS that they had in fact observed MARSHALL commit the murder and they would undoubtedly allege that this was interpreted by the young witnesses as a suggestion that they lie.

It is my view that under the foregoing circumstances there would be no useful purpose served in proceeding further with an investigation into an allegation of counselling perjury. It is my understanding that some form of enquiry will be held following EBSARY'S Supreme Court Hearing. If, at the conclusion of the Hearing facts are established which would warrant further action by this Force, that avenue is open to us. Your advice in this matter would be appreciated.


A. E. Vaughan, Supt.
Officer in Charge
Criminal Investigation Branch

Encls.

3139 Oxford Street
P.O. Box 2286
Halifax, N.S.
B3J 3E1

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RB*

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MESSAGE

Dist. No. - N° de distribution IMMEDIATE	Location - Lieu "HQ" OTTAWA	Date 86-07-31	Security Classification - Classification adéquate UNCLASSIFIED
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C.O. "H" DIVISION

TO
A
PERSONAL ATTENTION OF: C.I.B.O.

INFO.
REMS.

FROM
DE
DIRECTOR, GENERAL ENFORCEMENT AND SUPPORT SERVICES

Originator's Reference No. - N° de référence de l'auteur DGESS/1/552	Our File - Notre n° de dossier	Your File - Votre n° de dossier
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RE "H" DIVISION FILE 71H-010-6.

ATTACHED IS AMENDED DRAFT OF YOUR PROPOSED CORRESPONDENCE TO MR. GALE FOR YOUR CONSIDERATION. PLEASE REVIEW IT TO ENSURE THE ESSENCE OF ALL ESSENTIAL DETAILS HAVE BEEN APPROPRIATELY CAPTURED.

DELIVER TO SUPT. VAUGHAN UPON RECEIPT.

86 JUL 31 15:00

CPS RF 196
1 OF 5

ADM. SERV.

PA 5/10/86
RB

TO BE DELIVERED BY À LIVRER D'ICI LE	Date	Time - heure	Authorizing Signature Signature de l'expéditeur <i>[Signature]</i>	Phone No. - N° de téléphone	Date
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Royal Canadian
Mounted Police

Gendarmerie royale
du Canada

93

P. 233

p2 of 5

Your file Votre référence

Our file Notre référence

Mr. Gordon Gale,
The Deputy Attorney General,
P.O. Box 7,
Halifax, Nova Scotia.
B3J 2L6

71H-010-6

06 JUN 31 15:5

Re: Roy Newman ESBARY
Manslaughter
Sydney, Nova Scotia
71-05-28/29

Dear Mr. Gale:

Attached is a copy of my memorandum of 86-06-12 directed to the D.C. Halifax S/D and the subsequent response from S/Sgt. Wheaton dated 86-07-14. The latter outlines the views of S/Sgt. Wheaton regarding the evidence to support a charge and/or further investigation of the former Chief of Police for the City of Sydney, John MacIntyre for counselling perjury.

I have now completed my review of the entire matter. To begin with, I should like to clarify the import of paragraph 1 of my memorandum of 86-06-12. Regrettably, your suggestion of 82-05-20 to hold the matter in abeyance was unintentionally misinterpreted to mean that the investigation from a police perspective should be stopped. For your information and record purposes, I have found no evidence whatever to support such an interpretation. I fully appreciate that the suggestion you made to hold the matter in abeyance was related to events occurring at the time e.g. consideration of an inquiry, etc. It should not have been construed in any way as precluding a police investigation at a later date if such was deemed necessary and warranted.

The three witnesses at the MARSHALL trial: Maynard CHANT, John Louis PRATICO, and Patricia HARRIS, have admitted that they gave perjured testimony during the trial proceedings because of coercion and threats made by former Chief MacIntyre. Further, they claimed that

...2

Address replies to:
Commissioner, RCMP
1200 Alta Vista Drive
Ottawa, Ontario

Adresser ses réponses à:
Le commissaire de la G.R.C.
1200, prom. Alta Vista
Ottawa (Ontario)

K1A 0R2

RCMP 233

p3 of 5

- 2 -

this testimony was in fact based on what MacIntyre told them to say. While these allegations are indeed serious, I do not support a further investigation at this time for the following reasons:

- i) In his memorandum of 83-06-17, the O.C. Sydney Sub-Division suggested that while there were numerous flaws and variances from standard police practices and procedures, he concluded that this was an example of policemen identifying a person they think is responsible for an offence and then setting out to prove the theory by gathering the necessary evidence; moreover, he was of the view that the actions of the Sydney Police investigators was one of overzealousness.

In his memorandum of 83-06-24, the then CIBO took the position that the investigators (MacIntyre and Urquhart) believed MARSHALL to be responsible and in their zealously, together with the evidence available, placed too much reliance on the evidence of certain witnesses; hence, incorrect conclusions were drawn. On 84-01-06 the then CIBO wrote to the O.C. Sydney Sub-Division advising him that no further action should be taken and the matter should be considered closed at that time.

In the correspondence referred to, the police managers involved in the review of this matter made no suggestion whatever that MacIntyre or Urquhart may have counselled perjury.

- ii) There appears to be no independent relevant or material evidence available which would tend to corroborate the statements of CHANT et al. In essence, therefore, any prosecution of MacIntyre, or others, for counselling perjury would have to be based on the recollections of three self-confessed perjurers. Moreover, their recollections would be based on precisely what was said to them by MacIntyre, or others, during interviews which occurred fifteen years ago.

86.11.31 15:5

- 3 -

- iii) While the prosecutor, Donald MacNeil, may have had relevant and material evidence in relation to this matter, he has since deceased. As well, a Sydney Policeman, one, MORZ, who may also have had some knowledge of this matter is deceased.

I share the view that this is a classic case of policemen focussing their efforts on one suspect to the exclusion of all other possibilities. This, I submit, reflects poor judgement rather than conduct involving criminal acts. In this regard, the following factors must also be taken into consideration.

- a) MacIntyre and his investigator(s) certainly had grounds to support Marshall in that during the previous year (1970/71), he had been "picked up" on seven different occasions in the park area where SEALE was murdered.
- b) It was not until the EBEARY trial in the 1980's that MARSHALL finally disclosed the full circumstances surrounding his presence in the park on that occasion. This non-disclosure at the time of the investigation no doubt influenced MacIntyre's belief that MARSHALL was in some way involved in the crime.
- c) The polygraph examination of EBEARY in 1971 showed him to be truthful. As well, the polygraph examination of another witness, MacNEIL, proved inconclusive. Again, the results of these examinations may have influenced MacIntyre in his belief that MARSHALL was in some way involved in the crime.

88.MR.31 15:

There is one other point to be considered in the overall analysis of MacIntyre's actions in the investigation of the SEALE murder. MacIntyre's position would undoubtedly be that although his methods of interrogation may have been somewhat irregular or forceful, they were intended to elicit truthful statements from the three witnesses referred to earlier. Furthermore, that the three witnesses incorrectly misconstrued the intent of his methods to be threatening or coercive leading them to provide false information.

psq/s

RCMP 233

For all these reasons, it is my view that no useful purpose would be served in initiating a further investigation into the allegations of counselling perjury. It is my understanding that some form of public inquiry will be held following the decision of the Supreme Court of Canada in the EBSARY case. Should such public inquiry identify any evidence of probative value warranting further police investigation, the appropriate action would be taken.

Your advice in this matter would be appreciated. Should you require further clarification on any of the points made, please do not hesitate to contact me.

Yours truly,

A.E. Vaughan, Supt.
Officer in Charge
Criminal Investigations Branch

Nova Scotia

**Department of
Attorney General**

Deputy Attorney General

Gordon F. Coles, Q.C.

PO Box 7
Halifax, Nova Scotia
B3J 2L6

902 424-4223

File Number

09-86-0371-09

August 11, 1986

Supt. A. E. Vaughan
Officer in Charge
Criminal Investigation Branch
Royal Canadian Mounted Police
P.O. Box 2286
Halifax, Nova Scotia
B3J 3E1

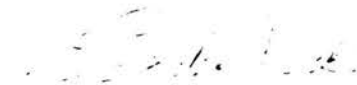
Dear Supt. Vaughan:

Re: 71H-010-6
Roy Newman EBSARY

✓ Mr. Gale has referred to me your letter of August 1 for my consideration and reply.

Your review in this matter concurs with my own understanding of the events and I agree with your conclusions and advice in the matter.

Yours very truly


Gordon F. Coles

RECEIVED

PA 56/08/21
RB

MESSAGE

Priority No. - <i>Précédence - Priorité</i>	Location - <i>Lieu</i>	Date	Security Classification - <i>Classification sécuritaire</i>
URGENT	C.I.B.	86-08-21	UNCLAS

COMMISSIONER, OTTAWA
 ATTN: A/COMM'R SCHRAMM, D.G.E.S.S.
 SUPT. BEATHAM, PUBLIC RELATIONS

~~SECRET~~

C.I.B.O.

Originator's Reference No. - <i>N° de référence de l'auteur</i>	Our File - <i>Notre n° de dossier</i>	Your File - <i>Votre n° de dossier</i>
CIB 389/1		

RE: ROY NEWMAN EBSARY FILE 71H-010-6 (DONALD MARSHALL)

THE FOLLOWING RELEASE WILL BE MADE TO MEDIA THIS DATE:
 "THE MATERIAL ON HAND HAS BEEN ASSESSED AND IT HAS BEEN
 DETERMINED THAT THERE IS INSUFFICIENT BASIS TO WARRANT
 FURTHER CRIMINAL INVESTIGATION BY THE RCMP."

DP REV.

PA 86/08/21
 RB

TO BE DELIVERED BY À LIVRER D'ICI LE	Date	Time - <i>Heure</i>	Authorizing Signature <i>Signature de l'approbateur</i> A. E. VAUGHAN, SUPT., OFFICER I/C C.I.B.	Phone No. - <i>N° de téléphone</i>	Date
	REPLY REQUIRED BY RÉPONDRE D'ICI LE				

Commissioner, Ottawa
Attn: A/Commr. Schramm
D.G.E.S.S.

Officer i/c C.I.B.
"H" Division

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE 71H-010-6
YOUR FILE/VOTRE RÉFÉRENCE
DATE 86-08-26

SUBJECT
OBJET

Roy Newman EBSARY
Manslaughter
Sydney, Nova Scotia
71-05-28/29

Attached is a copy of correspondence from the Department of Attorney General dated 86-08-11, which is in response to correspondence I submitted on 86-07-30.

The Department of Attorney General has agreed that further investigation against the former Chief of Police, John MacINTYRE, is unwarranted.

A.E. Vaughan, Supt.,
Officer i/c C.I.B.

Encl.

RCLB/lmm

ADM. REV.
Keel
PA 86/08/26
RM



**Department of
Attorney General**

Deputy Attorney General
Gordon F. Coles, O.C.

PO Box 7
Halifax, Nova Scotia
B3J 2L6

902 424-4223

File Number
09-86-0371-09

August 11, 1986

Supt. A. E. Vaughan
Officer in Charge
Criminal Investigation Branch
Royal Canadian Mounted Police
P.O. Box 2286
Halifax, Nova Scotia
B3J 3E1

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Yours very truly


Gordon F. Coles

REC-1

PA 6/10/86/21
RMB

CONFIDENTIAL

The Deputy Attorney General
 P.O. Box 7
 Halifax, Nova Scotia
 B3J 2L6

71H-010-6

August 1, 1986

Attention: Mr. Gordon S. Gale
Director (Criminal)

Dear Mr. Gale:

Re: Roy Newman EBSARY
Manslaughter
Sydney, Nova Scotia
71-05-28/29

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their testimony was in fact based on what MacIntyre told them to say. While these allegations are indeed serious, I do not support a further investigation at this time for the following reasons:

- 1) In his memorandum of 83-06-17, the O.C. Sydney Sub-Division suggested that while there were numerous flaws and variances from standard police practices and procedures, he concluded that this was an example of policemen identifying a person they think is responsible for an offence and then setting out to prove the theory by gathering the necessary evidence; moreover, he was of the view that the actions of the Sydney Police investigators was one of overzealousness.

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"H" Div. File No. 71H-010-6

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"H" Div. File No. 71H-010-6

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Your advice in this matter would be appreciated. Should you require further clarification on any of the points made, please do not hesitate to contact me.

Yours truly,

A. E. Vaughan, Supt.
Officer in Charge
Criminal Investigation Branch

Encls.

3139 Oxford Street
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AEV/rjb