

September 11, 1981

Mr. Donald Marshall, Jr.
Drawer A and B
Dorchester, N.B. EOA 1MO

Dear Donald:

Since I spoke with you on September 3, 1981, I have contacted my friend in the Solicitor General's Department.

He is at present inquiring into the likelihood of obtaining parole for you, and I should have some information on this by the end of next week.

In addition, I am also attempting to locate a trustworthy investigator to interview the witnesses who testified at your trial. Again, I hope to have some information on the investigator by the end of next week as well.

As soon as I have information I shall be in touch with you. I am by way of a copy of this letter advising Danny Paul as to progress.

Yours very truly,

Stephen J. Aronson

SJA:md
C.C. - Mr. Danny Paul

MEDIA POOL COPY

September 11, 1981

Melinda J. MacLean
Barrister and Solicitor
Post Office Box 126
Truro, N.S. B2N 5B6

Dear Miss MacLean:

Re: Donald Marshall, Jr.

I have been asked on behalf of Donald Marshall, Jr. to inquire into and investigate the circumstances surrounding his conviction for murder.

I understand that you had done some preliminary work on this particular matter late last year. I would appreciate receiving from you the Transcripts of the preliminary hearing, trial and appeal of the case. Roy Gould had indicated that you had this material.

In addition, if there are any outstanding fees owing to you I shall make every effort to see that these are paid.

I look forward to receiving the requested Transcripts at your earliest convenience.

Yours very truly,

Stephen J. Aronson

SJA:md

P.O. Box 128
188 Queen Street
Truro, Nova Scotia
Canada, B2N 5B6
(902) 865-2888

Melinda J. MacLean, LL.
Kirby Eileen Grant, B.A.
Alan D. MacNeill, B.A. L

SEP 22 1981

MacLean + Associates

Barristers, Solicitors,
Notaries Public

September 18th, 1981

Aronson, MacDonald,
Barristers and Solicitors,
Dartmouth Professional Centre,
Suite 305, 277 Pleasant St.,
DARTMOUTH, Nova Scotia.
B2Y 4B7

ATTENTION: Stephen J. Aronson

Dear Mr. Aronson:

RE: DONALD MARSHALL, Jr.

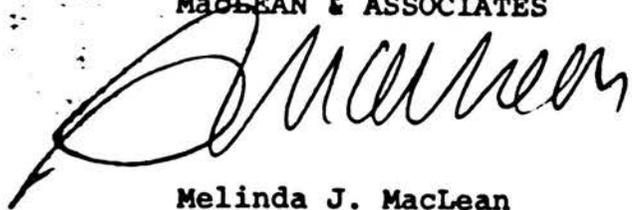
I have your letter of September 11 re the above.

There is an outstanding account on this, with a balance of \$178.89.

I will gather together the materials requested and arrange to forward the same to you, if you would be good enough to see that our account is paid in the interim.

Yours very truly,

MacLEAN & ASSOCIATES



Melinda J. MacLean

MJMacL:jaf

CONFIDENTIAL - SECURITY INFORMATION

CONFIDENTIAL - SECURITY INFORMATION

September 24, 1981

Mr. Stuart Killen
Union of Nova Scotia Indians
Post Office Box 961
Sydney, Nova Scotia B1P 6J4

Dear Stuart:

Re: Donald Marshall, Jr.

Please find enclosed a letter from Melinda J. MacLean. You might wish to speak to Roy Gould who is somewhat more familiar with the dealings with Melinda MacLean than I.

If you would send me a cheque for \$178.89 payable to Melinda J. MacLean, I shall forward the cheque on to her and will then receive the materials requested.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure

Mr. Donald Marshall, Jr.
Drawer A and B
Dorchester, N.B. BOA 1MO

October 23, 1981

Mr. Donald Marshall, Jr.
Drawer A and B
Dorchester, N.B. BOA 1MO

Dear Donald:

For the past please let me know whether you have had an interview with Maude Hody regarding parole and if so what steps have been taken in your application for parole. Please drop me a note.

Yours very truly,

Stephen J. Aronson

SJA:md

November 13-81

Drawer A+B

Dorchester N.B.

BOA-170

Sterne Aronson

277 Pleasant St.

NOV 18 1981

Dartmouth N.S.

B2y - 437

Dear Sir

Sorry for the delay in answering my letter but I haven't had my interview with Maude Hody concerning parole or day parole;

I believe they're waiting on my community assessment from home concerning my Xmas pass. I will write as soon as I have my interview with these people.

I am hoping things will start moving as far as the trial goes because I feel I have a fair chance, now that I have good evidence & I consider my self very fortunate that I collected that information. Because I wasn't getting anywhere; & it's not too pleasant; Now that I have a chance. I hope every thing goes well. The evidence I have now should be enough for grounds; regardless when the murder happened. The facts are there; & if I wanted to take it further; I'd have this guy charged for attempted murder; on my life. The facts are also there; Well. I hope to hear from you as soon as you get some thing going. Until then. Remain. Your Truly.
D. Jr. Marshall

D Marshall Jr.
 Drawer A&B.
 Dorchester N;B.

Mr. Roy N Absary
 68 Falmouth ST.
 Sydney'N,S.

DEC 31 1941

SA 24

Dear Sir.

My name is Donald Marshall Jr. And I,m Serving a life sentence For the Murder of the late Sandy Seale.

It was brought to my attention that you know the circumstances surrounding this important matter. I have Maintained my innocences for 11 years and unfortunately could not get a retrial.

I know the facts. And that is why I,am asking you to come out with what information you may have.

Mr. Absary, I've been locked up for 11 years.

I'am still a young man so believe me when I tell you that I went throught hell dealing with this difficult case.

I suffered long enough my friend for somebodys mistake and knowing I,m an innocent man ' I,m asking you to be sinere and to help me concerning this very important matter.

I will pray that you;ll be honest about it and ask God to give me the strenght to forgive you and to forgive the people that were involed with my Trial.

Thank you for your time.

c/c. Detective J MaHooney.

UNSI. Mr.Roy Gould.

Mr. Steve Aronson B&S.

Sinerely Yours.

Donald Marshall Jr.
 Donald Marshall Jr,

Aronson, MacDonald *AG 204* Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

January 26, 1982

Chief
Sydney City Police
Sydney, Nova Scotia

Dear Sir:

Re: Donald Marshall, Jr.

I have been retained by Mr. Marshall to look into the circumstances surrounding his conviction for the murder of Sandy Seale in Sydney.

I have had several conversations with Mr. Marshall at Dorchester and he continues to declare his innocence. I have also spoken with several other individuals who are concerned with this matter.

One individual - Mitchell Bayne of 11 Twining Street, Pictou who in October of 1979 was living in Sydney with Roy Ebsary. Ebsary, according to Bayne, raised the matter of the Seale murder and told Bayne that it was in fact he (Ebsary) who committed the murder. I spoke with Bayne personally and he told me that Ebsary had indeed confessed to him.

Recently I was advised that Ebsary has been charged with an assault in the Sydney area. May I therefore ask that you look into Mr. Bayne's story to determine whether it warrants further action on your part.

I would appreciate hearing from you once you have looked into this information.

Yours sincerely,

SJA
Stephen J. Aronson

SJA:md
c.c. - Donald Marshall, Jr.

NO 207A.6 nadjett

February 8, 1982

Mr. Donald Marshall, Jr.
Drawer A and B
Dorchester, N.B. EOA IMO

Dear Junior:

This morning I received a call from Staff Sergeant Wheaton of the R.C.M.P. in Sydney. The Sydney City Police have referred ~~my file to them~~ as well as my own to the R.C.M.P.

I will be meeting with Staff Sergeant Wheaton this week to provide him with the transcripts of the trial and the information I have regarding Mitchell Bayne.

I will keep you informed on any progress made by the R.C.M.P.

Yours very truly,

Stephen J. Aronson

SJA:md

JOHN F. MacINTYRE
Chief of Police



Address All Communications To
Chief Of Police

OFFICE OF
CHIEF OF POLICE
SYDNEY, NOVA SCOTIA

February 15, 1982.

Mr. Stephen J. Aronson
Aronson & MacDonald, Barr.etc.
Dartmouth Professional Centre
Suite 305
277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

Re: Donald Marshall, Jr.

Dear Mr. Aronson:

I wish to acknowledge your letter of January 26, 1982 re the above named and wish to advise you that the information contained therein has been duly noted.

Yours very truly,

John F. MacIntyre
Chief of Police

Marshall

- Feb. 9 - Lt. H. ^{Marshall} Ed. - Cape Breton Post - advised he had rec'd info. re case:
 - Sydney City Police have Chief want to H.C. to meet in A.G.'s dept
 - there is another suspect.
- I indicated efforts have been made to re-open the case; that the request had been made to the Sydney City Police; but I have rec'd no communication from them or from A.G.'s dept.
- I also requested that he refrain from reporting this "rumor" to avoid prejudicing any potential investigation.

- 1145 Sydney - F. O. M. P. 539-7121
 - advised G.C. of ed's interest
 - also gave me following info:
- Antigonish RCMP - 363-6500
 - whether in Pitblow

Feb. 10 - Cw D. Manshall - he had also been contacted by the chief of the Post and referred him to me; he will speak in Bay Co. to ask that no reporting be done on story.

Feb. 11 - Cw S/S Harry Lister

- he'll keep me posted

March 11/82 - (Cpl. Connal)

- found guilty Tues. March 9/82 of stabbing
 - I. O'Connell will recommend susp. for 1st year

- H 45 whether ~~is~~ March 11/82

Supt. Christian

- 10 page report + Appendices go to Hqs - RCMP then to Martin Herschorn
by mid-week

- based on the case as they have seen & investigated, "no jury could convict" if they
had all the evidence

- ^{totally} ~~the~~ most different case ^{then} ^{ever} he has been involved in

March 11, 1982

Department of the Attorney-General
Post Office Box 7
Halifax, Nova Scotia B3J 2L6

ATTENTION: Martin Herschorn, Esq.

Re: Donald Marshall, Jr.

Dear Mr. Herschorn:

I wish to advise you that I act for Donald Marshall, Jr. It is my understanding that you are aware of the investigation which has been carried out by the R.C.M.P. with regard to investigating Mr. Marshall's conviction for murder.

I am also aware that you will within the next few days be receiving the final report of the investigation. I would most appreciate receiving a copy of this report.

In addition, I would ask that a meeting be arranged on a most urgent basis between your Department and myself. The purpose of such meeting would be to discuss the report and to establish the best course of action to follow. I do, however, again wish to stress that the matter should be considered on a most urgent basis. I believe that once you have had the opportunity of reading the report of the investigation in full you will be in a better position to understand my request, this being a most unusual case.

I look forward to hearing from you at the earliest possible moment.

Yours sincerely,

SJA:nd

Stephen J. Aronson

DELIVERED BY HAND

March 15, 1982

Carlton Centre
5853 College Street
Halifax, N.S. B3H 1X5

ATTENTION: Mr. J. Stewart

Dear Sir:

Re: Donald Marshall, Jr.

I wish to confirm that I act for Donald Marshall, Jr. who I understand is presently eligible for parole. Certain information has come to me which suggests that Mr. Marshall's conviction for murder may not be proper.

Recently the Sydney Detachment of the R.C.M.P. has completed an investigation of Mr. Marshall's case. The investigation was done by Staff Sergeant H. Wheaton and Corporal Jim Carole. Although the results of the investigation are not primarily concerned with whether Mr. Marshall was guilty or innocent of the murder of Sandy Seale, there was apparently evidence to indicate that the two key witnesses who testified against Mr. Marshall were in fact lying.

It is my understanding that the R.C.M.P. report of the investigation will be in the Attorney-General of Nova Scotia's office some time this week. I have requested a copy of this particular report, but frankly do not expect to receive it.

Mr. Marshall has never during his eleven years in penitentiary admitted to having committed the murder. There would now appear to be support for his denial. I have personally spoken to Sergeant Wheaton who can be reached in Sydney at 539-7121.

I would ask that the Parole Board make every effort to obtain a copy of the investigation to ensure that his request for

Carlton Centre,
Mr. J. Stewart

- 2 -

March 15, 1982

parole takes into account all of the circumstances. In addition, I would also ask that I be present at the Parole Board hearing to assist Mr. Marshall in his Application.

I would most appreciate it if you would be so kind as to keep me advised as to the status of the Application and whether you have obtained a copy of the R.C.M.P. investigation. Thank you for your attention to this matter.

Yours very truly,

Stephen J. Aronson

SJA:md

March 16, 1992

Mr. Donald Marshall, Jr.
Drawer A and B
Dorchester, N.B. EOA IMO

Dear Junior:

Since we spoke on Thursday, March 11th, I have been in touch with the R.C.M.P. in Sydney who have essentially confirmed what you had told me.

Since then, I have spoken to the Director of the Carlton Centre in Halifax, the Attorney-General's Office and your father. I am aware that you have applied for parole to the Carlton Centre. I have requested that I be present at the Parole Board Hearing to help you. The process could take anywhere from four to eight weeks, although we are making every effort to speed it up.

My first concern is to get you out of Dorchester. Once you are in the Carlton Centre we will take the necessary steps to wipe out your conviction although at this point because of the unusual circumstances, this process may take some time.

Please be patient and give some thought to what you wish to do upon your release. It is also of the utmost importance that you keep your case confidential from the other inmates for your own protection.

I shall continue to keep you informed as to the progress of your case and will also be in touch with your father.

Yours very truly,

SJA:md

Stephen J. Aronson

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

March 26, 1982

Minister of Justice
Justice Building
Kent and Wellington Street
Ottawa, Ontario K1A 0H8

Dear Mr. Chretien:

Re: Donald Marshall, Jr.

I wish to confirm that I act for Mr. Marshall as had been indicated in my telephone conversation of today's date with Carole Pressault.

In November of 1971, Marshall was convicted in Sydney of the murder of Sandford (Sandy) Seale. He was sentenced to life imprisonment with no eligibility for parole for ten (10) years. As a result of steps taken on his behalf Marshall will be paroled within the next several weeks.

An R.C.M.P. investigation has brought forward a substantial amount of information, all of which supports the conclusion that Marshall does not appear to have committed the murder. At the time of his conviction he was 17 years old. It is an understatement to say that this is a tragic situation.

The Attorney-General of Nova Scotia has the report of the R.C.M.P. and has, through his office, advised me that representations will be made to you although they have been otherwise most unco-operative. As Mr. Marshall's solicitor I have been given no copy of the report, although I am aware of much of its contents through other sources. A copy of my letter to the Attorney-General's Department is attached.

It is my intention within the next month to make application on behalf of Marshall under one of the available sections of the Criminal Code.(i.e. ss. 617, 683, 686). However, prior

Minister of Justice

- 2 -

March 26, 1982

to making a decision on this particular aspect of the case, I would appreciate the opportunity of meeting with officials of your Department to discuss the appropriate procedure and in particular the effect of a pardon. The only avenue we wish to follow is one which will, ultimately, ensure that Marshall is acquitted, not merely "forgiven" for an act which he did not commit.

In addition there are various aspects of this case which require extreme caution. The media is having a field day and I have already been contacted by media from outside of Canada. It is impossible to state in writing my causes for concern. However, I would like to discuss the implications of the case with a representative of your office. If you are in a position to obtain a copy of the R.C.M.P. report, I most respectfully suggest that you do so at the earliest possible moment.

I shall be in Ottawa on April 5, 6 & 7 and would appreciate the opportunity of discussing some of the details of this case. Feel free to call me at my office to arrange a convenient time.

Yours respectfully,

Stephen J. Aronson

SJA:md

Enclosure



Government
of Canada

Gouvernement
du Canada

19

SA /

National
Parole Board

Commission nationale des
libérations conditionnelles

P.O. Box 1370
Moncton, New Brunswick
E1C 8T6

Your file - Votre référence

Our file - Notre référence

26th March 1982

MAR 31 1982

Mr. Stephen J. Aronson
Arsonson and MacDonald
Suite 305
277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

Dear Mr. Aronson:

Attached you will find information on the Royal Prerogative of Mercy, taken from the Policy and Procedures Manual.

Miss Casey will be in touch with you as soon as more information is available.

Yours truly,

K.A. Hoyt for M. Casey

enc.

Wg. & Gordon Cole - March 24/82

Doug Rutherford - Dg. A.G. - Criminal

- report in Ottawa & RCMP - ^{Justice} they will get report from him today

A.G. uncertain, but will have input into the decision

" never seen such a collection of nuts"

- the ~~my~~ 1st report is dated March 16, 1982

- Chad is sane - st. to RCMP - court not sure

- Pratic is a schizophrenic - " - " - "

- some lab evidence to support Jus' st.

- how evidence on knife located, but problems - photographic

- lab report still awaited

- Ebsary's family + particularly daughter has some "evidence" as well

RCMP & Cole believe that Jus. did not commit the crime.

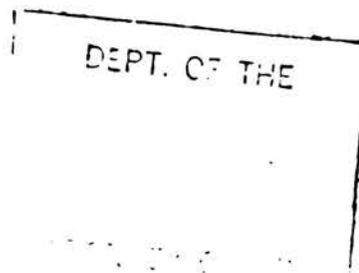
S.617^(a) - re-trial - probably insufficient evidence to prosecute



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N.S.

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
April 5, 1982

Mr. Gordon S. Gale
Director (Criminal)
Dept. of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6



Dear Mr. Gale:

RE: Donald MARSHALL Jr.

As requested, I am enclosing a memorandum re the above named. For convenient reference, the memo is divided as follows:

| | |
|-----------|-----------------------------|
| Section A | Background |
| " 1 & 11 | Chant and Pratico |
| " 111 | Patricia Harris |
| " 1V | New Evidence (Highlights) |
| " V | Conclusions |
| " VI | Recommendations: |
| | (a) RE: Donald Marshall Jr. |
| | (b) RE: Roy Newman Ebsary |

I trust this is satisfactory.

Very truly yours,

F.C. Edwards
CROWN PROSECUTOR

FCE:ami

Enc.



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N.S.

M E M O R A N D U M

TO: Gordon S. Gale, Director (Criminal)
FROM: F.C. Edwards, Crown Prosecutor
RE: Donald Marshall Jr.
DATE: April 5, 1982

A. BACKGROUND:

I would confirm that I have been involved with the case since February 3, 1982, when Chief John MacIntyre of the Sydney City Police and Inspector Donald Scott, R.C.M.P. attended at my office. Since then I have read the complete transcript of the trial, the transcript of the Preliminary Inquiry, the Appeal Facts and the Appeal Decision, S.C. No. 17800. I have also been kept fully briefed on the progress of the investigation by S/Sgt. Harry Wheaton and I have reviewed S/Sgt. Wheaton's report with enclosures. I, therefore, submit the following for your consideration:

I. The case against Marshall hinged primarily on the evidence of Maynard Chant and John H. Pratico, both of whom were presented by the Crown as eyewitnesses to the murder. At the trial, the evidence of each was unsatisfactory.

Chant was cross-examined by the Crown presumably under Section 9 of the Evidence Act (transcript p. 97 et seq.) He also admitted under cross-examination by the Defence that he had lied to the police. (Transcript p. 114 line 37 et seq.). Chant now says he did not see the murder (statement 82-02-16).

Pratico's evidence at trial was suspicious because of his conversation with defence lawyer Khattar and others (transcript p. 149 et seq.) wherein he stated that Marshall had not killed Seale. Pratico admits that he did not witness the stabbing in his statement of 82-02-25. He retracted the latter story in a radio interview March 26, 1982, saying he told the truth at trial. The statement of psychiatrist Dr. M.A. Mian (82-02-19) is a polite summation; Pratico is "...a very unreliable witness."

II. The existence of written statements dated May 30, 1971, by Chant and Pratico was obviously not known to defence counsel. Both statements are consistent with the theory advanced by the defence and it is inconceivable that they would not have been used had their existence been known. Today, April 5, 1982, I personally questioned C.M. Rosenblum, Q.C., in this regard. He stated that he and Khattar were definitely not aware of the May 30, 1971, statements of Chant and Pratico.

III. Patricia Harris: At trial, she stated that she saw only one other person in the park with Marshall on the night in question. (Transcript p. 79 line 16). Her evidence was used with devastating effect by Crown Prosecutor MacNeil in his address to the jury. (Transcript pp. 234-5). Marshall's evidence that he and Seale had met two other individuals "who looked like priests" was thus severely shaken. (See also p. 4 of the appeal decision.)

Harris now says "...there were other people on the street in this area." (Statement 1, March 82). After she had given her statement to police, I personally interviewed Miss Harris at my office. She told me that she has been troubled by her testimony and has discussed it on several occasions with her parents. I was impressed by her and believe that her recent statement is truthful.

IV. New Evidence (Highlights): In addition to the revised statements of Chant, Pratico, and Harris referred to above, we now have:

- (a) Donald Marshall's admission that he and Seale were attempting to "roll" the two strangers in the park on the night in question. This he says he did not previously tell the police or his lawyers. Obviously, the truth is more plausible than the lie he told at trial.
- (b) Ebsary's admissions to Mitchell Bayne Sarson (statement #17-83-02-09) and to S/Sgt. Wheaton. (RCMP Report Para 26)
- (c) Statements (oral at the time of writing) by Ebsary's common-law wife and daughter concerning the arrival home of MacNeil and Ebsary on the night in question. Their stories I submit corroborate the statements of James William MacNeil, November 15, 1971, (attachment #12) and February 8, 1982, (attachment 14 c.)
- (d) The knives turned over to police by Mary Ebsary and the fiber analysis done by Adophus Evers. This evidence provides corroboration for Marshall's story and is a direct link to Ebsary.

AG 35

V. CONCLUSIONS:

- (a) RE: Donald Marshall Jr.: I submit that there is now no doubt, Donald Marshall did not murder Sandy Seale. Even a complete sceptic would have to agree that had the evidence which is now available been available in November, 1971, the jury would have had a reasonable doubt and acquitted.
- (b) RE: Roy Newman Ebsary: Sufficient evidence points in his direction to charge him with non capital murder. I will return to this matter below under "Recommendations".

VI. RECOMMENDATIONS:

- (a) RE: Donald Marshall Jr.: I submit that the Attorney General should advise the Minister of Justice that his preference is to have the case referred to our Appeal Division for hearing and determination by that court as if it were an appeal by Marshall. (Code s. 617(b)).

If the Minister of Justice agrees, then I submit that the most desirable result of the reference would be a direction by the Appeal Division that a verdict of acquittal be entered (s. 613 (2)(a)) on the basis that there had been a miscarriage of justice (s. 613(a)(iii)). Marshall would thus have had the opportunity to call fresh evidence (s. 610) and would have been vindicated of the murder. He would also have avoided being placed in jeopardy by the ordering of a new trial either by the Minister (s. 617(a)) or by the Appeal Division (s. 613(2)(b)).

The latter option would place the Attorney General in a very unenviable position. He would have to choose between putting Marshall through another trial or offering no evidence. Neither choice would be fair to Marshall as the former puts him in jeopardy and the latter prevents his name from being cleared. Even if Ebsary is charged, the likelihood is that he is not fit to stand trial and thus all the new evidence may never come to light.

Naturally, the local community is very interested in this case and I submit that the suggested procedure would go furthest in allaying public concern.

For these reasons, it is clear that the Attorney General should be personally represented on any reference to the Appeal Division.

.....

AG 35

- (b) RE: Roy Newman Ebsary: As mentioned in Section V (b) of this report, it is my submission that Ebsary should be charged with non capital murder. If you wish, I will write a separate report detailing my impressions of the evidence. For now, I will simply highlight some initial considerations.
- (i) Timing: (i.e. when should the charge be laid) After considerable thought, it is my feeling that Ebsary should be charged only after the courts have finished with Marshall. I see no advantage in charging him before that time and, in fact, it may be legally impossible to proceed against him before Marshall is cleared.
- (ii) Fitness: As you are aware, Ebsary is presently on remand to the Nova Scotia Hospital. He was assessed locally by psychiatrist Dr. C. Donovan who recommended the remand in his report of March 23, 1982. Based on Dr. Donovan's report and the bizarre behavior exhibited by Ebsary, it is most unlikely that he will be found fit to stand trial. (Copy of Dr. Donovan's report enclosed)
- Fitness was not raised by the defence at any time in the proceedings involved in the recent charge against Ebsary. He did not take the stand at the trial on March 9, 1982, and it was on the motion of the Crown that he was referred to Dr. Donovan prior to sentence.
- (iii) Self-Defence Re Seale: I submit that notwithstanding the provisions of Section 34(2)(b) of the Code, Ebsary would have extreme difficulty in successfully pursuing this line of defence. I submit that he has a 50/50 chance of having the jury reduce murder to manslaughter because of provocation.



F.C. Edwards
CROWN PROSECUTOR

FCE:ami
Enc.



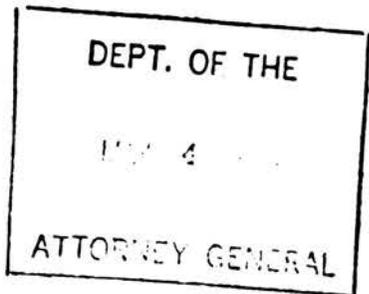
CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

04-84-0254-09

26

AG 38

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
May 3, 1982



Mr. Gordon S. Gale
Director (Criminal)
Dept. of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Gale:

RE: Donald MARSHALL Jr.

Attached herewith is a summary update of my report of April 5, 1982. It was written between April 22 and May 3, as new evidence and developments came to light.

To facilitate reference, I have numbered the paragraphs consecutively and the following is a brief index:

- | | |
|----------------|--|
| Paragraphs 2-7 | Position re pardon v reference |
| 8 | Public reaction generally |
| 9 | Chant |
| 10 | Pratico |
| 11 | Harris |
| 12 | Harris and O'Rei-ly |
| 13 | Consideration re perjury |
| 14-15 | Knife and Fibre evidence |
| 16 | Donna Ebsary (daughter) |
| 17-18 | Mary Ebsary (common-law wife) |
| 19 | Roy Ebsary: Statement 71-11-15 & Polygraph |
| 20 | Polygraph considerations |
| 21 | Competing interests |
| 22 | Seale Family |
| 23 | Marshall culpability |
| 24-25 | Charter of Rights, S. 11(h) |
| 27 | Postscript |

I trust this is satisfactory.

Very truly yours,

F.C. Edwards
CROWN PROSECUTOR

FCE:ami

ATTORNEY GENERAL
NOVA SCOTIA

Our File: 09-82-0236-08

P. O. Box 7
Halifax, Nova Scotia
B3J 2L6

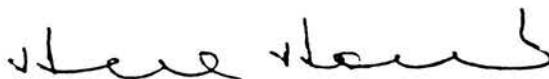
April 20, 1982

Mr. John MacIntyre
Chief of Police
Civic Centre, Esplanade,
Sydney, Nova Scotia
B1P 6H7

Dear Mr. MacIntyre:

Pursuant to Section 31(2) of the Police Act I hereby request you to deliver to Staff Sergeant H. F. Wheaton of the Sydney Sub-Division of the R. C. M. Police all warrants, papers, exhibits, photographs and other information or records in your possession or under your control dealing with the Donald Marshall, Jr. case commencing with the initial investigation in 1971.

Yours very truly,



Harry W. How, Q.C.

ATTORNEY GENERAL
NOVA SCOTIA

2000-2 311

Our File: 09-82-0236-08

P. O. Box 7
Halifax, Nova Scotia
B3J 2L6

April 20, 1982

Mr. Manning MacDonald
Mayor of Sydney
P. O. Box 730
Sydney, Nova Scotia
B1P 6H7

Your Worship Mayor MacDonald:

I am writing to you in your capacity as Chairman of the Sydney Board of Police Commissioners. Under Section 31 of the Police Act I wish to advise you that I am removing from the Sydney Police Department the investigation of the Donald Marshall, Jr. case and any matters arising therefrom and the R. C. M. Police will assume all matters connected with that investigation.

I am also writing to the Chief of Police requesting that he deliver to the R.C.M.P. all matters in his possession or under his control relating to the Donald Marshall, Jr. case.

Yours very truly,



Harry W. How, Q.C.



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N.S.

AG 38

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
April 22, 1982 - Date Commenced
May 3, 1982 - Date Concluded

Mr. Gordon S. Gale
Director (Criminal)
Dept. of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Gale:

RE: Donald MARSHALL Jr.

(1) This is further to my memorandum dated April 5, 1982, re the above named.

(2) You will recall that at that time, I recommended a Reference under Section 617(b) of the Code. Since then there has been some indication that a free pardon under Section 683 is favored by Marshall's counsel, I wish to set forth some reasons why I believe that this option has serious disadvantages.

(3) Apparently, the attraction is subsection (3) which would mean that Marshall would "...be deemed...never to have committed the offence." He would thus be legally vindicated without having been placed in jeopardy by a new trial or, to a more limited extent, by a Reference to the Appeal Division. I submit that such a procedure would nevertheless ultimately prove unsatisfactory both to Marshall and to the Department.

(4) First, I submit that Marshall will require more than legal exoneration if he is to successfully re-enter society. He must be perceived as being innocent and the only way this can possibly be accomplished is by the scrutiny of the new evidence in a court of law.

AG 38

(5) If Ebsary were fit to stand trial, then his trial in combination with a pardon for Marshall would achieve the desired result. Unfortunately, it is likely that Ebsary will be found unfit, thus precluding revelation of the new evidence via his trial.

(6) Second, from the Department's vantage point, it would at first blush appear desirable that events proceed as follows: that Marshall be pardoned under S. 693 and Ebsary charged with Seale's murder. Ebsary, being unfit to stand trial, would be held at the pleasure of the Lieutenant-Governor and the case would be effectively closed.

(7) Unfortunately, there would remain too many unanswered questions and, I submit, the Department would be cut off from the best avenue of answering them, i.e. in a court of law.

(8) Judging by public reaction to date, the most serious question remaining would relate to the apparently perjured testimony given in the November, 1971, trial. Several members of the community have already volunteered their opinions that perjury charges are expected. This type of talk is so prevalent in the community that I am confident in saying that addressing this issue will be unavoidable. Indeed, one can assume that Marshall and his counsel will pursue the matter until they learn the reasons why Chant, Pratico and Harris testified as they did. A recent edition of the CAPE BRETON POST quoted C.M. Rosenblum, Q.C., counsel at the trial, as wanting to know the reasons why witnesses had lied under oath.

(9) In Sections 1 and 11 of my April 5th memo, I outlined the inconsistencies in the stories of both Chant and Pratico. In addition, it should be emphasized that Chant now says, "I had not quite made it to the park..." when Marshall caught up to him. (Statement 82-02-16) In other words, he was not even in the park before the stabbing took place. He, therefore, did not see the stabbing nor could he have seen Pratico crouched behind the bush as he said in 1971.

(10) More significant than the inconsistencies in Pratico's stories is the fact that apparently he had a reputation at the time for being a liar. It is hard to believe the police did not know this by the time he was put forward as a credible witness.

(11) Patricia Harris' evidence was also outlined in my memo, Section 111. Her statement of March 1, 1982, is her explanation of why she testified as she did, and why she gave the statement of June 18, 1971, (attachment 7 in RCMP Report). As you know, on April 16, 1982, we obtained a copy of a statement given by Harris

on June 17, 1971, to the City Police. This statement mentions a person who could have been Ebsary. "One man was short with a long coat. Gray or white hair, with a long coat..."

122 MP 10
d, (12) On April 16, 1982, R.C.M.P. were also given a statement of an O'Reilly girl by Chief MacIntyre. This statement says that O'Reilly told Harris to describe the man with the white hair and long coat. O'Reilly has since been contacted by telephone in Calgary by S/Sgt. Wheaton. She now denies that she ever told Harris any such thing. (Harris will be re-interviewed on this point). It may be significant that O'Reilly gave her statement after Harris gave her June 18, 1971, statement. In other words, Harris had already recanted her June 17, 1971, account before O'Reilly gave her written statement. It is likely, however, that the City Police will say that O'Reilly had given them an oral version of her June 18, 1971, statement before Harris changed her story.

(13) From the foregoing, it is clear that any consideration of perjury charges necessarily involves an examination of police conduct in the investigation. That examination will likely make it equally clear that perjury charges are not appropriate. Rather than try to explain why such charges will not be laid, I submit that the better course is to call the evidence in court and let the chips fall.

(14) The other unanswered questions would pertain to the weight of the new evidence, especially the knives and fibres (Crime Lab Reports of A.J. Evers 82-04-01 and 82-04-05 enclosed), and the evidence of Ebsary's common-law wife and daughter, Donna Ebsary.

(15) As far as the knife and fibre evidence is concerned, it is likely that it will be met with a fair amount of public skepticism. It is my belief, however, that the evidence is extremely compelling and that, given the opportunity, the Appeal Division would confirm that belief. In addition to reviewing his reports, I also telephoned Mr. Evers on April 8, 1982. As a result of that conversation, I am satisfied that there are no continuity problems with the evidence. After questioning Mr. Evers closely on the matching of the fibres, I am convinced that his evidence will be very strong.

(16) With respect to Donna Ebsary, she gave a written statement to the R.C.M.P. on April 17, 1982, (copy enclosed). I personally interviewed Miss Ebsary at my office following completion of her statement. She is obviously intelligent, articulates very well and has a vivid recollection of the events described. She has assured me of her continued cooperation though I fear that harassment by the press may dampen her resolve.

(17) You have no doubt read the joint statement, dated April 4, 1982, by Mary P. Ebsary and Gregory A. Ebsary, respectively the common-law wife and son of Roy Newman Ebsary. (Attachment 14(b) in R.C.M.P. Report). That statement confirms that Ebsary was with James MacNeil on the night of the murder. Mary Ebsary was re-interviewed by S/Sgt. Wheaton on April 19, 1982, and a written statement was taken (copy enclosed).

(18) It should be noted that Mary Ebsary also gave a written statement to the City Police on November 15, 1971. (copy enclosed) In that statement she was asked if she remembered the night that Seale was stabbed. Her answer: "Not particularly. I remember reading of it in the paper." She was then asked: "Was Jimmie back and forth to your house at that time?" Answer: "Not after. He came about 15 times over a period of a couple of months." Mary Ebsary appears to have said something different then from what she is saying now. She now says that on the night of the murder, MacNeil started to tell her about an incident in the Park but was stopped by Mr. Ebsary. Donna Ebsary gives a similar account in her recent statement.

(19) Perhaps, at this point, reference to Roy Ebsary's statement of November 15, 1971, (copy enclosed) would be helpful. Note that his story is consistent with the most recent account of Donald Marshall Jr., Mary Ebsary, Donna Ebsary and the statements of James William MacNeil (attachments 12 & 14(c) in the R.C.M.P. Report). He describes an altercation in the Park which in all respects, except the actual stabbing, matches the stories of the aforementioned. Eight days after giving his statement, November 23, 1971, Roy Ebsary passed a polygraph test. (Attachment 14(a) R.C.M.P. Report) He was deemed truthful when he answered "No" to the following test questions:

1. Around the end of May this year, do you know for sure who stabbed Sandy Seale?
2. Around the end of May this year, did you stab Sandy Seale?
3. Around the end of May this year, were you right there when Sandy Seale was stabbed?
4. Around the end of May this year, did you wash blood off a knife?

(20) There is little doubt that the polygraph results will eventually become public knowledge. There is no doubt that Roy Ebsary fooled the polygraph. Experts in polygraph use will admit the possibility and, I believe, will agree that the polygraph is

an investigational aid only and certainly not proof. Our courts, of course, do not admit polygraph evidence. But public acceptance will be most unlikely unless the knowledge of Ebsary's polygraph result is weighed against evidence which has been tested in Court.

(21) In this unusual case perhaps more than in any other, it is vitally important that justice be seen to be done. A variety of competing interests will cling to views long held and unfortunately will compete for public sympathy. One need only speculate upon the varied and conflicting feelings, opinions and interests of the Marshall and Seale families, the original investigators, and even the twelve jurymen. Every effort must be made to erase as many suspicions and uncertainties as possible. The best means of attaining that goal is by subjecting as much of the evidence as possible to judicial scrutiny preferably, in my view, by means of a Reference.

(22) The Seale family will find this experience traumatic but they must know the truth. Mr. Oscar Seale, the victim's father, visited me at my office on April 26, 1982. He was very upset with press coverage to date and finds it hard to believe that Marshall could possibly be innocent. Obviously, I could not be specific with him but I assured him that every possible consideration would be given to the feelings of he and his family. There is no doubt that the revelation that his son was attempting to rob Ebsary will produce a very negative reaction from Mr. Seale and his family. Better that the revelation be by way of courtroom evidence than official explanation. Some thought might be given, however, to preparing Mr. Seale for what is to come.

(23) As far as Marshall is concerned, his counsel will no doubt argue that he should not even be exposed to the limited jeopardy of a Reference. The answer regrettably is that Marshall is not exactly blameless. After all, he and Seale were trying to rob Ebsary; and Marshall withheld this information from defence counsel at the time. In fact, his own evidence at the trial omitted this crucial information which may very well have altered the course of subsequent events.

(24) In conclusion, I wish to comment upon the possible implications of Section 11(h) of the Charter of Rights and Freedoms. It provides that a person "...if finally found guilty and punished for the offence, not...be tried or punished for it again."

(25) It is possible that Marshall's counsel could attempt to use this section to strengthen his argument for a pardon. I submit that such an argument might stop the order for a new trial by the Minister of Justice. It might also be argued that it would prevent the Appeal Division from ordering a new trial under S. 613(2)(b) on a Reference. In no way would it effect the Minister's ability to order a Reference.

AG 38

(26) The foregoing is submitted for your consideration. If you have any questions, please do not hesitate to contact me.

Very truly yours,

F.C. Edwards
CROWN PROSECUTOR

FCE:ami
Encs.

P.S. (27) Ebsary returned to court on Friday, April 30, 1982, at which time a fitness hearing was scheduled for Friday, May 7, 1982, at 2:00 p.m. Ebsary was remanded to the Correctional Centre.



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N.S.

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
April 5, 1982

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers & Solicitors
Dartmouth Professional Centre
Suite 305
277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

APR 6 - 1982

Dear Mr. Aronson:

RE: Donald Marshall Jr.

Enclosed please find the following transcripts relating to the above noted individual:

1. Volume #1 Trial Transcript
2. Volume #2 Trial Transcript
3. Appeal Factum
4. Preliminary Inquiry

Trusting this is satisfactory.

Very truly yours,

F.C. Edwards
CROWN PROSECUTOR

FCE:ami

Encs.

Thank you for your patience.
F.C.

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

PG 66

Dartmouth Professional Centre - Suite 305 - 277 Pleasant Street - Dartmouth, N.S. Canada B2Y 4B7 - (902) 463-9131
Deputy Attorney General

RECEIVED

APR 14 1982

Nova Scotia

April 13, 1982

Attorney General of Nova Scotia
Post Office Box 7
Halifax, Nova Scotia

ATTENTION: Gordon Gale, Q.C.

Dear Mr. Gale:

Re: Donald Marshall, Jr.

Subsequent to our meeting of March 31, 1982, I met in Ottawa with Ronald Fainstein, of the Department of Justice. After reviewing the facts of the case Mr. Fainstein and I discussed the possible remedies available to Mr. Marshall.

As you are aware it is the Minister of Justice who has the powers provided for in Section 617 of the Criminal Code. In addition, a very real possibility exists that Marshall will be granted a free pardon. A free pardon is given only when the innocence of the convicted person is established and it may be granted under the Royal Prerogative of Mercy contained in the letters patent constituting the office of Governor General of Canada. A free pardon is quite different from a pardon under the provisions of the Criminal Records Act. In this particular case the Minister of Justice will be responsible for looking into the matter of a free pardon and will draw on the Solicitor General's Department as and only if necessary.

It is my understanding that both the Attorney General and myself will be asked for our views by the Minister of Justice. It might also be pointed out that the Minister of Justice, the Solicitor General of Canada and the Minister of Indian and Northern Affairs have each received memorandums respecting the facts of the Marshall case. They are, to say the least, most concerned about the implications of this case.

...2

Attorney General of
Nova Scotia

- 2 -

AS 66
April 13, 1982

I have only recently received from Frank Edwards copies of the transcript of the trial and Facts on Appeal. Copies of this material will be sent by me to Ottawa today for review by the Department of Justice. The report of the R.C.M.P. investigation has also been reviewed by the Department of Justice.

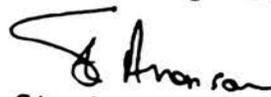
It would be most appreciated if you might keep me advised as to your Department's position. In particular, I have expressed and continue to express my concern over the leaks to the press of information relating to the Marshall investigation. I do not believe that such leaks serve the interests of justice. This is particularly true as the source of the leaks appear to come from the Sydney City Police and officers of your own Department, including the Attorney General himself. I appreciate that it is difficult for you to stem the flow of information; however, I am also of the belief that you agree with the view I have expressed.

The Marshall family has requested that I seek payment of my legal fees from your Department. This request is made largely on the basis that Mr. Marshall is not in a financial position to pay me. I would anticipate that these fees and expenses will be of a substantial nature, no account having been sent as yet to anyone. My instructions are not to apply for legal aid or financial assistance from legal aid. I would most appreciate your response to this particular request at your earliest convenience and we shall govern ourselves accordingly.

Finally the matter of compensation for Mr. Marshall must be addressed. Once Mr. Marshall has been found not guilty of the murder of Sandy Seale, Mr. Marshall will be looking to the Attorney General of Nova Scotia for compensation for 11 years in prison for an act which he did not commit. The Attorney General has already made some comments to the press regarding compensation. I would appreciate receiving from you your Department's position on this particular point, in order to avoid any misunderstanding as the case unfolds.

I trust we shall continue to co-operate and I look forward to hearing from you on the issues raised in this letter, all at your earliest convenience.

Yours very truly,


Stephen J. Aronson

SJA:md
C.C. - Department of Justice

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

VIA PUROLATOR

April 13, 1982

Department of Justice
Criminal Law Section
Ottawa, Ontario K1A 0H8

ATTENTION: S. Ronald Fainstein

Dear Mr. Fainstein:

Re: Donald Marshall, Jr.

Further to our discussion in Ottawa on April 1, 1982, I am pleased to enclose the following material:

1. Transcript of the trial of November 2, 3, 4 and 5, 1971, in two Volumes;
2. The Appellant's Factum in the Appeal Division of the Supreme Court of Nova Scotia, the Decision of the Appeal Division; and the Respondent's Factum;
3. The reported Appeal Decision in R. v. Marshall (1973) 4 N.S.R. (2d) 517;
4. A copy of a letter dated April 13, 1982, to the Attorney General's Department of Nova Scotia.

I trust these materials will assist your Department in its deliberations.

FACTS

As a result of my discussion with you on April 1, 1982, you prepared a Memorandum of Facts for your Minister. In addition, you are now in receipt of the R.C.M.P. investigation, which I am not privy to. However, I shall briefly summarize the facts to the best of my knowledge and belief.

...2

Department of Justice,
S. Ronald Fainstein

- 2 -

April 13, 1982

On May 28, 1971, Sanford William (Sandy) Seale, was stabbed in Wentworth Park, in the City of Sydney, Nova Scotia. Several witnesses testified to having seen Donald Marshall, Jr. both before the murder took place and after the murder took place. Only two witnesses, acting independently, claim to have seen Donald Marshall, Jr. actually stab Sandy Seale. These two witnesses are Maynard V. Chant, 14, and John Pratico, 16. Based solely on the testimony of these latter two witnesses, Marshall was convicted of non-capital murder pursuant to S. 206(2) of the Criminal Code, 1971. He was sentenced to life in prison without eligibility for parole for a period of ten years.

Marshall's story both at the Preliminary and at the Trial are consistent. He testified that he was in the company of Sandy Seale on the night of May 28, 1971. They were approached by two gentlemen who appeared to be dressed like Priests. These gentlemen asked Marshall and Seale for a cigarette, a match and the whereabouts of any women in the Park. Then, for no known reason, one of the gentlemen stabbed Seale and made an attempt to stab Marshall as well. Seale fell to the ground and Marshall left the scene to obtain assistance.

It is my understanding that no effort was made by the Sydney City Police Department to investigate Marshall's story. Further, no murder weapon was ever found, despite an intensive search of the Park.

Subsequent to the Trial in November of 1971, a gentlemen by the name of McNeil went into the Sydney City Police Station and indicated that Roy Ebsary, and not Donald Marshall, Jr., had committed the murder. The R.C.M.P. using polygraph equipment, were unable to come to any conclusion on the veracity of Ebsary would appear to have passed the polygraph with flying colours.

There were further investigations as the years passed but to no avail.

In August of 1981, I was retained by the Marshall family to look into the conviction. I spoke with Mitchell Bayne Sarsen. Sarsen informed me that he had stayed with Roy Ebsary in 1979 and had been advised by Ebsary that he had committed the Seale murder and not Marshall. In the late fall of 1981, Ebsary was charged with another stabbing in the Sydney area. As a result of this information I requested that the Sydney City Police look into Marshall's case. The Sydney Police passed the file on to the R.C.M.P. in Sydney for further investigation.

Department of Justice,
S. Ronald Fainstein

- 3 -

April 13, 1982

The results of this investigation are fairly clear. Both Chant and Pratico have given statements to the R.C.M.P. in which they indicate that they were not telling the truth at either the Preliminary Hearing or Trial. In fact, they did not see Marshall do anything to anyone on the night of May 28, 1971. Both witnesses indicate that the reason why they told the story which they did at the Preliminary and Trial was as a result of Police pressure. It would appear that these pressures were exerted on the two witnesses by Detective Sergeant John MacIntyre of the Sydney City Police Department. MacIntyre is now the Chief of the Sydney City Police.

In addition, Roy Ebsary's former wife provided the R.C.M.P. with three knives belonging to Roy Ebsary. After a lab examination by the R.C.M.P., one of these knives appeared to contain fibres from clothing worn by Sandy Seale on the night of May 28 as well as fibres from the yellow jacket worn by Donald Marshall on the night of May 28.

Donald Marshall, Jr. gave a statement to the R.C.M.P. in which he indicated that he and Seale were attempting to rob Ebsary and McNeil on the night of May 28, 1971. It would appear that there were no weapons of any sort being used by them in this particular attempt. This of course is a separate matter from the guilt or innocence of Marshall with respect to Seale's murder. Based on the information I have provided to you along with other facts contained in the R.C.M.P. investigation, Staff Sergeant Harry Wheaton of the R.C.M.P. and Gordon Gale, Deputy Attorney General of Nova Scotia, had indicated to me that they believe Marshall to be innocent of the murder of Sandy Seale. For almost 11 years now Donald Marshall, Jr. has also proclaimed his innocence.

SUBMISSION

Based on my research and discussions with the Department of Justice, it would appear that there are two potential ways of establishing Marshall's innocence. The Minister of Justice has certain powers under Section 617 of the Criminal Code, to order a re-Trial or a reference to the Appeal Division of the Nova Scotia Supreme Court. The alternative is a free pardon.

On behalf of my client, I should like you to consider this letter as an Application for a free pardon. It is my understanding that a free pardon is given only when the innocence of a convicted person is established and is in fact a recognition of his innocence. In support of this Application, the R.C.M.P.

Department of Justice,
S. Ronald Fainstein

- 4 -

April 13, 1982

reports of March 16, 1982 and subsequent reports by them are called in aid.

In the alternative I would ask that your Department consider options under Section 617 of the Criminal Code. With respect to Section 617(a) Mr. Gordon Gale has advised me that he would be reluctant to lay a charge of murder against Donald Marshall, Jr., as there is no reliable information which would support such a charge. I would ask that you confirm with Mr. Gale the view on the re-Trial. So far as the other options available under Section 617, the Court of Appeal essentially has the powers to deal with the reference under Section 613. The difficulties of such a reference are that the outcome is uncertain and the admissibility of new or fresh evidence is wholly within the discretion of the Court of Appeal. In addition there are several individuals who may be charged with criminal offences arising out of the Marshall investigation. It is my view that the Attorney General's Department is somewhat uncertain as to whether or not other charges can be laid and if so whether they may proceed through the Courts with the charges. I believe they would prefer to see the Department of Justice O.K. a decision on the Marshall case before actually proceeding to the Courts on charges against other individuals. If a reference is made to the Court of Appeal under Section 617, it is unlikely to go before them until at least June, and in all likelihood not until the fall of this year.

I have discussed these alternatives at some length with Mr. Marshall and as he is presently on a parole for a six-month period is not overly concerned with the speed in which your Department makes a decision. Indeed his preference is that no decision be made as a result of pressures from the media or otherwise. He needs a reasonable length of time to make plans for his own future and to bridge the gap between 11 years in a Federal Penitentiary and the responsibilities that freedom requires.

I look forward to being in close contact with you in your deliberations. If you should require any further information or submissions please let me know. I look forward to hearing from you on the Application made in this letter.

Yours very truly,

Stephen J. Aronson

SJA:md

Enclosures

C.C. - Dept. of Indian
& Northern Affairs

Aronson, MacDonald **Baristers & Solicitors**

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

April 13, 1982

Department of Indian
and Northern Affairs
Les Terrasses de la Chaudiere
Ottawa, Ontario K1A 0H4

ATTENTION: Michel Bouliane,
Minister's Office

Dear Sir:

Re: Donald Marshall, Jr.

Please find enclosed copies of letters to the Attorney General of Nova Scotia and the Department of Justice, both dated April 13, 1982. I wish to reiterate the fact that Marshall is not in a hurry for a decision by the Department of Justice. However, insofar as the House of Commons granting the free pardon, it is our view that it would be preferable to have the resolution passed before the summer recess.

My only request at this point is that I continue to be kept advised by the Minister of Justice's office as to the progress being made by them in resolving this case and that my submissions on behalf of Marshall be seriously considered.

I would like to thank Mr. Munro and yourself for your interest and concern in this case which is greatly appreciated by the Marshall family and myself.

Yours sincerely,

Stephen J. Aronson

SJA:md
Enclosures



NOVA SCOTIA POLICE COMMISSION
P.O. BOX 1573, HALIFAX, N.S.
B3J 2Y3

13 April 1982.

AG 16

Honourable Harry W. How, Q.C.,
Attorney General,
Province of Nova Scotia,
Halifax, Nova Scotia.

Dear Mr. Minister,

I am enclosing an article by Alan Story which appeared in the Globe & Mail on Monday, April 12, 1982, for your information.

You will note that in the final paragraph he makes some statements about me and the Nova Scotia Police Commission.

Mr. Story telephoned me the middle of last week when he was presumably drafting this article. He made mention of the research he had done in the Marshall case and some of the concerns he felt about the involvement of the Sydney Police Department and, in particular, the present Chief of Police. He then asked me if the Nova Scotia Police Commission was going to investigate the efficiency of the Sydney Police Department. I replied that such an investigation was not under consideration and would only be undertaken if requested by the Board of Police Commissioners of the City of Sydney or directed by the Attorney General. I went on to say that neither you nor the Board had discussed the matter with me.

He then asked me that if we were tasked with such an inquiry, whether it would be public. I replied that in every case to date in which we have conducted such an inquiry it has always been public. His quotation, which he presumably attributes to me, "so that the air can be cleared", is one that I have used in conversation with him when referring to the New Waterford Inquiry. I do not recall using it when I spoke with him last week.

Yours very truly,

Harry Porter
Harry A. Porter,
Chairman.

*May 24
Tape*

*Apr 13
Gordon C.
your views
in this
Require a reply a
st*

Attach.

lobe & Mail
Saturday April 10, 1982
Monday April 12/82

AG 16

Evidence points to new suspect in 1971 murder

By ALAN STORY

Special to The Globe and Mail
SYDNEY, N.S. — The RCMP has gathered enough evidence to charge a new suspect for the 1971 murder of a Sydney youth that resulted in an Indian teen-ager being sent to prison for 10½ years.

Without revealing the suspect's name, Nova Scotia Attorney-General Harry How said yesterday: "We have very strong suspicions about another suspect."

Donald Marshall Jr., the Micmac Indian originally found guilty by a jury of the 1971 murder, was released on day parole from Dorchester Penitentiary on March 28. Mr. Marshall, now 28, has maintained his innocence.

The Sydney police department and the RCMP were given information in 1974 about the suspect's alleged role in Sandy Seale's murder but failed to act.

The RCMP finally reopened the investigation of the case two months ago and a report by Sydney's General Investigative Section indicates that Mr. Marshall is innocent.

That investigation has also uncovered the alleged murder weapon, a knife, and a second Sydney man who allegedly accompanied the suspect on the night of the murder.

During the November, 1971, murder trial, Mr. Marshall testified he was talking with 16-year-old Sandy Seale, his black friend of three years, in Westworth Park on May 28, 1971 at about 11 p.m. Two men dressed in long blue coats approached them and started a conversation filled with racial slurs.

Then, Mr. Marshall testified, the older of the two men stabbed Mr. Seale in the stomach and slashed his arm.

Fibres from Mr. Seale's clothing and Mr. Marshall's were found on the alleged murder weapon.

The RCMP is interviewing the suspect's daughter, who lives outside Canada.

The exhibits used as evidence during the trial were kept by the RCMP crime laboratory in Sackville, N.B., and could be used again in a second trial.

It is not yet clear when the suspect will be charged with Sandy Seale's murder.

Stephen Aronson of Halifax, Mr. Marshall's lawyer, said it will be at least two weeks before the federal Department of Justice informs him of its decision on Mr. Marshall's original conviction.

While legal experts and Mr. How have said a suspect could be legally charged before Mr. Marshall is found innocent, a trial of anyone else would likely be delayed until Mr. Marshall is exonerated.

Under Section 617 of the Crimi-

nal Code, the Minister of Justice can order a new trial or refer the matter to an appeal court. Mr. Marshall's conviction was appealed in 1971, but that appeal was turned down.

Mr. Aronson says he would prefer the federal Cabinet grant his client a free pardon, which would declare him innocent of the murder. "Why drag Junior through another year and a half of trials after all he has been through?" he asked in an interview yesterday.

If Mr. Marshall is exonerated, it would be the first time in Canada that a murder conviction has been overturned after a person has served a long prison term. Mr. Aronson and one of Canada's top criminal lawyers in Toronto, who did not want to be identified, said the case was without precedent.

Mr. Marshall was convicted primarily by the eyewitness testimony of one 16-year-old youth who was drunk at the time of the murder and who had been a psychiatric patient of the Nova Scotia Hospital, less than a month before the trial began.

His mother has said he should not have been called as a witness and his psychiatrist was reportedly shocked that the youth's testimony was believed.

RCMP investigators are asking how Sydney police officers obtained statements from this youth and other witnesses about the murder.

One witness, John Practico, recently told a Sydney reporter: "The police were out to get Marshall." Another witness has alleged he was pressured by the Sydney and Louisbourg police to concoct a story.

A Sydney man who has known the suspect for eight years says he went to the Sydney Police Department and the RCMP in 1974, gave them the suspect's name and evidence allegedly linking him with Sandy Seale's murder. "But ... they already had their man behind bars," the local resident, who did not want to be identified, said in an interview on Friday.

The Union of Nova Scotia Indians also gave the suspect's name to police in June, 1981, but the police again refused to reopen the case then. It was reopened after December, 1981.

However, Attorney-General How said yesterday he had "not even considered" an investigation of the role of the Sydney Police Department in convicting Mr. Marshall "We've never investigated the investigators before."

Harry Porter, chairman of the Nova Scotia Police Commission, said that, if his agency conducts an investigation, it would likely include a public hearing "so that the air can be cleared."

level:

I think the attached can go
 to file. I think Mr. Pitzer letter
 is for information only and
 requires no further action by AG

APR 23 1982

ATTORNEY GENERAL

JTB

AG 16

~~41-518~~ 592-3-4
 (Att R Feinstin May 2/82

- has read through material

- spoke to Gordon Luke & requested their view of the matter, not as rec'd

A.G. - conducting a vigorous investigation; have heard other statements which have been requested by R.F.

- R.F. will complete summary & rec. by the end of the week & have

to A.D.M. & then to Minister - prob. by mid-May

- decision in June, although good idea by end of May

- he's leaning to a pardon, but up to Minister

- they won't give out report:

1. they have been req. not to - A-G?
- RCMP.?
2. confidentiality - protecting sources
3. considered an internal doc.

May 3, 1982

Department of Indian
and Northern Affairs
Les Terrasses de la Chaudiere
Ottawa, Ontario K1A 0H4

ATTENTION: Michel Bouliane,
Minister's Office

Dear Sir:

Re: Donald Marshall, Jr.

I enclose a copy of the letter from Gordon F. Coles, dated April 23, 1982, which relates to the payment of legal fees and the possibility of compensation for my client.

This is for your information only. I have not as yet obtained a copy of the R.C.M.P. Investigation. If you are able to obtain a copy of the complete report it would be of the greatest assistance to me to receive it as well.

By the time you receive this note I hope to have been in touch with the Department of Justice to establish the present status of the Marshall case. I shall be in touch with you to let you know the result.

Yours very truly,

Stephen J. Aronson

SJA:nd
Enclosure



ATTORNEY GENERAL
NOVA SCOTIA

Our File No. 09-82-0236-08

April 23, 1982

Mr. Stephen J. Aronson
Aronson, MacDonald
Barristers & Solicitors
Dartmouth Professional Centre
277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

APR 27 1982

Dear Mr. Aronson:

Re: Donald Marshall, Jr.

Mr. Gale has copied to me your letter of April 13th since it seemed appropriate that I should reply to your request that this Department pay your legal fees and your notice that Mr. Marshall will be looking to the Attorney General of Nova Scotia for compensation in respect to his commitment to prison should he be found not guilty of the offence for which he was sentenced.

In respect to the first request, you will understand that Mr. Marshall is undoubtedly eligible for legal aid. Although there may be a question whether the proceedings which you contemplate would entitle Mr. Marshall to a choice of counsel under the provisions of the Canada-Nova Scotia Agreement in respect to legal aid in criminal matters, I understand from Mr. Gordon Murray, Q. C., that in the present circumstances he would be prepared to recommend that Mr. Marshall have a choice of counsel. Accordingly, I suggest that you acquaint Mr. Marshall of this and take the necessary steps to establish his eligibility and right to a choice of counsel. In this manner legal fees and disbursements in accordance with the scale approved by the Legal Aid Commission will be paid.

In respect to the question of possible compensation in the event that Mr. Marshall should be found not guilty of the offence for which he was convicted, I can only say in the event of such a happening, Mr. Marshall, or counsel on his

....2

Mr. Stephen J. Aronson

- 2 -

April 23, 1982

behalf, may make such submissions in the matter of compensation as are thought appropriate. There is no authority for this Department to entertain any such claim, although the Attorney General has indicated that if such an event should come to pass he is prepared to present any such representations to his cabinet colleagues for their consideration.

Yours very truly



Gordon F. Coles
Deputy Attorney General



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

FE 71

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
May 4, 1982

M E M O R A N D U M

TO: Frank C. Edwards, Crown Prosecutor
FROM: Brian D. Williston, Asst. Crown Prosecutor
RE: Donald Marshall Case

My only involvement re the above was a telephone call I received late on the afternoon of August 26, 1981, from William Urquhart of the City Police who stated that one Dan Paul of Membertou had come into his office that day. Mr. Paul was a Native Court worker at that time and stated that he had a message from Donald Marshall that Roy Ebsary of Falmouth St., was the one who murdered Sandy Seale.

Inspector Urquhart indicated that it was his intention to re-interview Dan Paul to gather information regarding witnesses who could support this allegation. At the same time, he indicated that the name of Roy Ebsary had surfaced in 1971 but he was cleared at that time as the investigation proved negative. He indicated that he was not looking for advice on the case but only wanted to say that Dan Paul had come in with this information and he would check it out. He further indicated that he would apprise you of the situation if their investigation turned up any facts in support of this allegation.

On that note, I made a brief memo to file in the event that further information was uncovered. Some time later, I was informed by Inspector Urquhart that Dan Paul did not return as

requested to supply the police with background information regarding the allegation. As far as I knew, the Sydney Police would keep the matter open pending further particulars and information from Dan Paul. At no time was I informed that the Sydney Police had received any other information on the Donald Marshall case nor was I shown any information in their files concerning the case.



Brian D. Williston
ASST. CROWN PROSECUTOR

BDW:ami

H Garden Cole - May 11/82 - 11.50 - 12.00

- final report yesterday re Marshall

- have spoken to Frank Edwards

- suggested an appeal - 5.617 4 - N.S

- free + unconditional pardon - O'Hara

- sometime this week

- briefs indicating what witnesses would say

- 1/5.

H Garden Cole - May 11/62 - 11.50 - 12.00

- final report yesterday re Marshall
- have spoken to Frank Edwards

- suggested an appeal - 5617 7 - N.S.

-- see - conditional pardon - Olan

- sometime this week

- briefs indicating what witnesses would say

- 45.

ATTORNEY GENERAL
NOVA SCOTIA

P.O. BOX 7
HALIFAX, NOVA SCOTIA
B3J 2L6

OUR FILE NO 09-8 4-22

May 17, 1982

The Honourable Jean Chretien, P.C., M.P.
Minister of Justice and
Attorney General of Canada
Room 438N, House of Commons
Centre Block
Ottawa, Ontario
K1A 0A6

Dear Mr. Chretien:

I am writing in regard to the application under Section 617 of the Criminal Code by Donald Marshall, Jr. so that you may have my suggestions and recommendations for any assistance they may provide in arriving at your decision.

I now have the benefit of having received the final reports from the R.C.M.P. and the Prosecuting Officer at Sydney in regard to the re-investigation of the 1971 murder and both the police and the Prosecutor are satisfied that on the basis of the information now known, Mr. Marshall should not have been charged with the murder and certainly that the jury would not have convicted him. In fact, the evidence would now support a charge against Roy Newman Ebsary. Thus, it would appear, from the comments of the R.C.M.P. and the Prosecutor, that the application should be granted.

The next consideration is if the application is granted should it be by way of one of the procedures set forth in Section 617 or by way of a free pardon. Presumably the courses of action would be either a pardon or the hearing of the matter as an appeal by our Appeal Court. There are certain advantages and disadvantages to either course which I would like to point out. If the matter is proceeded with by the granting of a pardon there will not be any airing of the facts of the case and there may be some lingering doubt as to whether or not Mr. Marshall was innocent of the offence of murder. However, this would undoubtedly be resolved by the fact that the police would lay a charge of murder against Mr. Ebsary. Unfortunately, Mr. Ebsary was recently before the Courts in Sydney on

a stabbing charge and found not fit to stand trial and has been remanded to the Nova Scotia Hospital to await the pleasure of His Honour the Lieutenant Governor. Indications are that Mr. Ebsary will probably remain unfit although there is a possibility of his returning to fitness. So long as he remains unfit then the charge cannot be proceeded with. If there is no Court hearing on the matter of Marshall then there is unlikely to be any public material which I can rely on to indicate why charges of perjury may not be proceeded with.

If the matter is dealt with as an appeal then evidence will come forth which may help to reconcile the matter in the minds of the Marshall family, the Seale family, the jurors and the general public. However, there is a disadvantage to this in that the Appeal Court may well decide to order a new trial on the basis that Marshall and the witnesses Pratico, Chant and Harris have admitted that their testimony was false and that the best forum to decide the credibility of these people is the usual method, namely trial by judge and jury. If this were to occur, it could result in a situation where I might conclude the evidence insufficient to warrant proceeding against Marshall on a new trial and yet, notwithstanding the evidence against Ebsary, a charge could not be proceeded with because of him not being fit to stand trial. Such a development would not provide the public airing of the matter which the Court of Appeal might intend should it order a new trial.

There does not appear to be any collusion between Marshall and those witnesses who have admitted to lying at the trial and that the statements now given mesh together very well and are supported by the finding of the fibre evidence on the knife. There is no doubt from our examination of the report that relief should be granted to Marshall. The most expedient route would appear to be a pardon but there is much to recommend proceeding under Section 617(b) in the interests of giving some public hearing to the matter particularly where the charge against Ebsary may never be proceeded with.

I have not included the investigational reports from the R.C.M.P. because I understand that arrangements were made to have copies of these made available to your Department. If there is any material needed please advise.

Yours very truly,

Harry W. How, Q.C.

DEPARTMENT OF ATTORNEY GENERAL

MEMORANDUM

AG 70

FROM:

AAG

TO:

AG.

- ① Attached is telex from Jean Chretien.
- ② G. Gale is attempting to reach Douglas Ruthford to inform him that you agree with the action proposed by Chretien. Gale + Ruthford will work out procedure for referring the case to our Court of Appeal.
- ③ Perhaps any comment by you at this time should be limited to the effect that the Federal Minister has recommended that the matter be referred to our Court of Appeal pursuant to →

DEPARTMENT OF ATTORNEY GENERAL

MEMORANDUM

AG 70

FROM: LRG

TO: AG.

- ① Attached is telex from Jean Chretien.
- ② G. Gale is attempting to reach Douglas Ruthford to inform him that you agree with the action proposed by Chretien. Gale + Ruthford will work out procedure for referring the case to our Court of Appeal.
- ③ Perhaps any comment by you at this time should be limited to the effect that the Federal Minister has recommended that the matter be referred to our Court of Appeal pursuant to

Section 617 (6) of the Criminal Code, "for hearing and determination by that court as if it were an appeal..." and that you have concurred in the ~~see~~ matter, and staff have been instructed to proceed with the reference.

TELETYPE UNIT

JUSTICE A OTT
DO YOU HAVE A TELEX AND/OR TELECOPIER NUMBER FOR
THE HONORABLE HARRY W. HOW
ATTORNEY GENERAL OF NOVA SCOTIA

RECEIVED
JUN 3 1982
ATTORNEY GENERAL

TELETYPE UNIT

JUSTICE A OTT

JUNE 2, 1982

THE MINISTER OF JUSTICE HAS SENT A LETTER TO YOU YESTERDAY WHICH STATES AS FOLLOWS:

MAY 31, 1982

THE HONORABLE HARRY W. HOW, Q.C.
ATTORNEY GENERAL OF NOVA SCOTIA
1723 HOLLIS STREET
HALIFAX, NOVA SCOTIA

DEAR MR. HOW:

THIS IS IN REPLY TO YOUR LETTER OF MAY 17, 1982 REGARDING DONALD MARSHALL, JR.

I HAVE NOW HAD THE BENEFIT OF REVIEWING THE EVIDENCE RELATING TO THE MATTER AND ON THE BASIS OF THE INVESTIGATION REPORT, THE CORRECTNESS OF THE CONVICTION IS NOW VERY DOUBTFUL.

HOWEVER POPULAR THE IDEA OF A FREE PARDON MAY SEEM, I SHARE YOUR CONCERNS ABOUT THE APPROPRIATENESS OF THAT ACTION.

WHERE THERE HAS BEEN SO MUCH CONTRADICTION IN SO MUCH OF THE EVIDENCE AND WHERE THE SHADOW OF GUILT MAY NOW PASS TO OTHER PEOPLE, IT SEEMS TO ME THAT THE SAFE AND PROPER MANNER IN WHICH TO DEAL WITH THIS CASE IS TO REFER IT TO THE COURT OF APPEAL IN NOVA SCOTIA.

WITH A MANDATE TO HEAR THE EVIDENCE NOW AVAILABLE, THE COURT CAN REVIEW THE TESTIMONY OF THE KEY WITNESSES AND THE ENTIRE MATTER CAN BE EXAMINED IN THE LIGHT OF A PUBLIC COURTROOM. IF EXECUTIVE ACTION IS REQUIRED FOLLOWING THE DECISION OF THE COURT, THERE WILL BE NO ROOM FOR DOUBT OR SPECULATION AS TO THE BASIS FOR THAT ACTION. ADDITIONALLY, WITNESSES AND PARTIES TO THE PROCEEDINGS WILL HAVE ALL THE PROTECTIONS AND ADVANTAGES NORMALLY ACCORDED IN JUDICIAL PROCEEDINGS.

IF YOU AGREE WITH THIS COURSE OF ACTION I WOULD PROPOSE THAT DONALD RUTHERFORD, ASSISTANT DEPUTY ATTORNEY GENERAL DISCUSS THE DETAILS OF THE PROPOSED REFERENCE WITH YOUR OFFICIALS SO THAT THE CASE CAN BE REMITTED TO THE COURT AT THE EARLIEST POSSIBLE TIME.

YOURS SINCERELY,

JEAN CHRETIEN

TELETYPE UNIT

JUSTICE A OTT

John Gale please attend upon and keep AG informed of each step of matter and time table June 4 JTB
He has his brother advised that we agree with his position.



AG 65

May 31, 1982

The Honourable Harry W. How, Q.C.
Attorney General of Nova Scotia
1723 Hollis Street
Halifax, Nova Scotia
B3J 2L6

~~CONFIDENTIAL~~

JUN 4 1982

ATTORNEY GENERAL

Dear Mr. How:

This is in reply to your letter of May 17, 1982 regarding Donald Marshall, Jr.

I have now had the benefit of reviewing the evidence relating to the matter and on the basis of the investigation report, the correctness of the conviction is now very doubtful.

However popular the idea of a free pardon may seem, I share your concerns about the appropriateness of that action.

Where there has been so much contradiction in so much of the evidence and where the shadow of guilt may now pass to other people, it seems to me that the safe and proper manner in which to deal with this case is to refer it to the Court of Appeal in Nova Scotia.

With a mandate to hear the evidence now available, the Court can review the testimony of the key witnesses and the entire matter can be examined in the light of a public courtroom. If executive action is required following the decision of the Court, there will be no room for doubt or speculation as to the basis for that action. Additionally, witnesses and parties to the proceedings will have all the protections and advantages normally accorded in judicial proceedings.

If you agree with this course of action I would propose that Douglas Rutherford, Assistant Deputy Attorney General discuss the details of the proposed reference with your officials so that the case can be remitted to the Court at the earliest reasonable time.

Yours sincerely,


Jean Chrétien

AG 70

AG 70

June 5th
8:30 P.M.

Gordon hole,

Please send
formal reply to
Mr. Lutten in my
name even though
we have sent
advice through
Mr. Rutherford.

H

- Court - a "classical" 617 (b) as if it were an appeal by Donald Marshall

- MacKenzie spoke to Rutherford ^{#R. on June 15/82} & referred her under (c) as no new evidence
 ↳ - I take an just as an appeal - maybe even "Notice" of appeal
- H. A. G., advising her & requesting a copy of "evidence" for me.

- existing record & any other evidence which court in its discretion reviews & considers as if it were an appeal by Donald Marshall Jr.

- Conclude: p. 611 - each case in its circumstances

PHONE CALL

Date 4.6.82 Time 9:57

To Blair

PHONE NUMBER 945-2517

of Blair

Phone 945-2517

Telephoned Please call

Called to see you Will call again

Wants to see you Returned your call

MESSAGE URGENT

Operator AMS

FORM No. 24

Q.

Feeq - if no statement accompanied, Justice will do what it can.

Report, should get it

- in light of your return to be addressed give Min. do opinion

- will wait to sign in q today - refer





FE 65

June 16, 1982

The Honourable Harry W. How, Q.C.
Attorney General of Nova Scotia
1723 Hollis Street
Halifax, Nova Scotia
B3J 2L6

Dear Mr. How:

I am pleased to enclose an originally signed copy of the Reference to the Nova Scotia Court of Appeal in the Donald Marshall, Jr. case.

I have refrained from specifically raising the issue of possible compensation to Marshall at the request of your Department on the grounds that the question of whether compensation is appropriate in this case and if so, its nature and quantum, is a matter for you and your government to decide.

I have arranged for delivery of this Reference to the Chief Justice of Nova Scotia and also to Mr. Aronson, counsel for Donald Marshall.

John M. Bentley, Q.C., General Counsel and Director of our Atlantic Regional Office in Halifax will be available to assist the Court in this matter to whatever extent seems appropriate. I understand, however, that your officials intend to meet with Mr. Aronson and make available the necessary information to enable the appropriate evidence and witnesses to be brought before the Court in an effective manner.

Yours sincerely,

Jean Chrétien

IN THE APPEAL DIVISION OF THE SUPREME COURT OF NOVA SCOTIA

SA 46

IN THE MATTER OF A REFERENCE PURSUANT TO SECTION 617 OF THE CRIMINAL CODE BY THE HONOURABLE JEAN CHRETIEN, MINISTER OF JUSTICE, TO THE APPEAL DIVISION OF THE SUPREME COURT OF NOVA SCOTIA UPON AN APPLICATION FOR THE MERCY OF THE CROWN ON BEHALF OF DONALD MARSHALL, JR.

WHEREAS Donald Marshall, Jr. was convicted on 5 November, 1971 by a court composed of Mr. Justice J. L. Dubinski and a jury that he, on or about 29 May, 1971 at Sydney, in the County of Cape Breton, Province of Nova Scotia, murdered Sandford William (Sandy) Seale and was on the same date sentenced to a term of life imprisonment.

AND WHEREAS an appeal from that conviction to this Honourable Court was dismissed on 8 September, 1972.

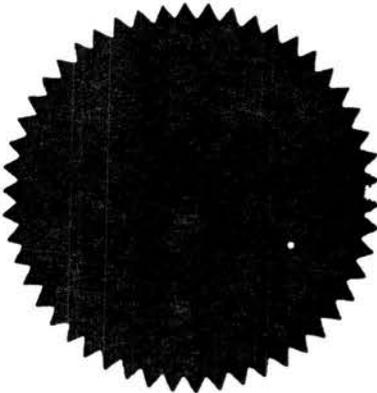
AND WHEREAS evidence was subsequently gathered and placed before the undersigned which appears to be relevant to the issue whether Donald Marshall, Jr. is guilty of the crime of which he stands convicted.

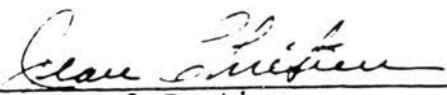
AND WHEREAS application for the mercy of the Crown has been made on behalf of Donald Marshall, Jr., pursuant to section 617 of the Criminal Code.

AND WHEREAS the Attorney General of Nova Scotia and counsel acting on behalf of Donald Marshall, Jr. agree with the undersigned that this new evidence is of sufficient importance to be considered by this Honourable Court.

NOW THEREFORE, the undersigned pursuant to paragraph 617(b) of the Criminal Code, hereby refers the said conviction to this Honourable Court for hearing and determination in the light of the existing judicial record and any other evidence which the Court, in its discretion, receives and considers, as if it were an appeal by Donald Marshall, Jr.

DATED at Ottawa this 16th day of June, 1982.




Minister of Justice

3.

66

IN THE APPEAL DIVISION OF THE
SUPREME COURT OF NOVA SCOTIA

SA 46

IN THE MATTER OF A REFERENCE
PURSUANT TO SECTION 617 OF THE
CRIMINAL CODE BY THE HONOURABLE
JEAN CHRETIEN, MINISTER OF
JUSTICE, TO THE APPEAL DIVISION
OF THE SUPREME COURT OF NOVA
SCOTIA UPON AN APPLICATION FOR
THE MERCY OF THE CROWN ON BEHALF
OF DONALD MARSHALL, JR.

The Honourable Jean Chretien
Minister of Justice
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8



Minister of Justice and
Attorney General of Canada

Ministre de la Justice et
procureur général du Canada

June 16, 1982

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers & Solicitors
Suite 305, 277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

JUN 17 1982

Dear Mr. Aronson:

Pursuant to your application on behalf of Donald Marshall, Jr. for the Mercy of the Crown, I am pleased to advise you that in the unusual circumstances of this case, I have decided to refer the matter to the Appeal Division of the Nova Scotia Court of Appeal for hearing and determination as if it were an appeal by Donald Marshall, Jr.

Enclosed is a copy of the Reference which has been transmitted to the Chief Justice of Nova Scotia and to the Honourable Harry How, Attorney General of Nova Scotia.

John M. Bentley, Q.C., General Counsel and Director of our Atlantic Regional Office in Halifax is knowledgeable concerning the circumstances of this case and will be available to assist the Court as required.

It will now be appropriate for the Court to review all the relevant evidence and to determine what further action, if any, is warranted in the circumstances.

Yours sincerely,


Jean Chrétien

with
 On Wednesday, June 23, 1982, I met/Frank Edwards to discuss the Marshall case. He provided me with all copies of the information he received from the R.C.M.P. together with certain material including psychiatric reports relating to Roy Newman Ebsary. He provided me with a copy of the letter from Gordon Gale dated April 21, 1982, enclosing a letter from Harry How to Chief John MacIntyre of the Sydney City Police. Edwards also referred to a statement from Chant taken in Louisburg at which MacIntyre, Chant and several other individuals were present. The statement was hand written and then typed and according to MacIntyre signed by the various individuals present, including Chant and Chant's mother. ^{Both} It was the typed statement which was used by the Crown at/the preliminary hearing and trial to ensure Chant provided the story.

The letter from How to MacIntyre of April 20, 1982, is in response to MacIntyre's meeting with Gale according to Edwards. According to Wheaton it is response to MacIntyre's meeting with Harry Porter.

There is some *problem*. related to the Harriss statement particularly as regards the account of the Riley girl presently living in Calgary. Every effort should be made to obtain copies of the latter statement to the Sydney City Police in 1971 as well as her present view.

Dorothy Bezanon, Port. in Sydney

= would it be possible to X with the ... can they ... ? go.

July 2, 1982

Department of the Attorney
General
Crown Prosecutor's Office
77 King's Road
Sydney, Nova Scotia B1S 1A2

ATTENTION: Mr. Frank C. Edwards

Dear Mr. Edwards:

Re: Donald Marshall, Jr.

I have now had the opportunity of reviewing the R.C.M.P. Report and the Statements of witnesses and other material which you had provided to me on June 23. There are several documents which I would appreciate receiving at the earliest possible moment.

More specifically, the Statements of Bratico and Chant dated 71-06-04 have not as yet been received by me and I would appreciate copies of same. I assume that the Statements of Maynard Chant referred to in the R.C.M.P. Report of 82-05-4 is the same as Chant's Statement of 71-06-04. If not then a copy of that Statement would be appreciated. In addition the Statements of Larry Burke and Wayne McGee referred to in the R.C.M.P. Report of 82-05-04, Paragraph 3 would be of the greatest assistance.

In addition a copy of the Statement of Mary Patricia O'Reilley, presently of Calgary, referred to in the R.C.M.P. Report of 82-05-4, Paragraph 4, is also requested. I am also wondering whether there is a written Statement of O'Reilley arising from her recent conversation with the R.C.M.P., as well as Patricia Harris's response, in writing, to the 1971 O'Reilley Statement.

...2

Department of the
Attorney General,
Mr. Frank C. Edwards

- 2 -

July 2, 1982

In the R.C.M.P. Report of 82-05-2 a reference is made to a Statement of Robert MacLean (Ebsary) of St. John's, Newfoundland. May I have a copy of this Statement as well.

Another point that comes to mind is whether or not George MacNeil and Sandy MacNeil, whose Statements are numbered 13 in the R.C.M.P. Report, have been located. Their description of the same men fitting the appearance of Ebsary and MacNeil talking to "a fellow and girl" on a park bench on the night of the murder, is most interesting.

Finally, has Pratico ever been asked how he became involved with the Sydney City Police in the first place. Was he picked up - if so, why. It may be that several of the questions in this letter would have to be dealt with by the R.C.M.P. directly but they are questions which come immediately to my own mind.

I would also confirm that I have arranged for you and I to attend before Chief Justice MacKeigan in Chambers on Thursday, July 8, 1982, at noon. I would hope that you will be able to bring the material requested herein at the time of the Application for directions. I have by the way filed no documents with the Court of Appeal but wish clarification as to the procedure they wish to follow in the reference. Once we have received those directions you and I might wish to sit down to discuss same and the interviewing of witnesses and taking of Affidavits.

Thank you for your attention to this matter.

Yours very truly,

Stephen J. Aronson

SJA:md

AG 18

CONFIDENTIAL

June 29, 1982

Gordon S. Gale, Esq., Q.C.
 Director of Criminal Law
 Department of the Attorney General
 Provincial Building
 Halifax, Nova Scotia
 B3J 2L6

Dear Mr. Gale: *Gordon*

Enclosed is a photocopy of a letter that arrived here last week in a plain envelope postmarked Sydney, Nova Scotia.

I thought you should see it and be aware of its contents in view of the proceedings now pending in the Nova Scotia Supreme Court (Appeal Division).

Yours sincerely,



Douglas J. A. Rutherford
 Assistant Deputy Attorney General

/mp

encl.

June, 14, 1982.

10-2
No. 11

Dear Mr. Chretien,

I am writing to give you some information about the Junior Marshall case. I am afraid to reveal my identity because there could be serious repercussions against me for speaking out.

The real murderer of Sandy Seale is Roy Ebsary. The police in this area feel that Ebsary is responsible for many unsolved murders in this area, including a Chinese man who owned a restaurant on Charlotte Street in Sydney. In any case Ebsary is old and will probably never stand trial.

Roy Ebsary's daughter Donna told the police that she had seen her father and another man wiping a knife ~~in the toilet~~ the night Sandy Seale was murdered and she knew her father had killed the youth. You may be wondering when Donna Ebsary told the police this, it was in 1974. That is correct, the police have known that Junior Marshall was innocent for 8 years. Donna told the present police Chief, John Mac Intyre, about her father and he said he wasn't interested, and that they had their man behind bars. John Mac Intyre was not Chief of police when this crime was committed but he worked on the case and was considered a "Hero" for solving the murder so quickly.

2.

John Pratico one of the witness in the Marshall case suffered from mental illness. He had been in Dartmouth mental hospital shortly before he gave his testimony at the trial. His Psychiatrist and his mother both stated that he was not fit to give evidence but they took his evidence anyway. Pratico was intoxicated when he claimed to have seen the crime committed.

Chant, another witness has since confessed that he lied at the Marshall trial because John Mac Intyre told him he was going to be sent to Dorchester if he didn't help him get a conviction.

It all boils down to an innocent man spending 11 years in prison for a crime he did not commit. There is no way that the State can ever make restitution for the crime against Junior Marshall, and in some ways we are all guilty for turning our backs on him.

Finally you must be wondering, Why would John Mac Intyre, Donald Mac Neil (the Crown Prosecutor) and his brother Ian Mac Neil (of the Cape Breton Post) want to fabricate evidence to convict Donald Marshall Junior. Anyone in Sydney can tell you Donald Mac Neil was a racist, he made many racist remarks about Indians and only Ian Mac Neil his brother saved him by not allowing them to print anything unfavourable about his brother. However there are a couple of other possibilities:

3.

1. John Mac Intyre was breathing down Alex Goldie's neck because Goldie was police Chief and Mac Intyre wanted his job. Mac Intyre was seen as such a Hero in this case and the Cape Breton Post were writing articles congratulating him for his fine investigative police work. So in other words he was trying to win points with the citizens of Sydney.

2. Ebsary might have been valuable to the police. He may have been a squeeler and been useful to them in terms of providing information. Originally, the police were looking for a man of Ebsary's description for this murder. They asked Junior to look in a line up and they had older men who fit a close resemblance to Ebsary. Then for some reason they turned the whole case around and started accusing Junior Marshall of the murder, a few days later.

3. Another possibility is the fact that Roy Ebsary is a homosexual. I am not saying that there is anything wrong with being gay but he may have had evidence about other prominent homosexuals that he threatened to reveal. Let's face it, in a city the size of Sydney no one would be very broad minded if they found out that a prominent member of the community was gay.

Mr. Chretien I am only offering some suggestions as to why Junior Marshall ^{was framed} No one will probably ever know the real reason an innocent man went to prison.

The scary part of this story is that two teenage friends one black and the other Indian walked home one night from a dance and all at once many lives would never be the same again. Another point for reflection is that it could happen to anyone if the police needed a conviction badly enough.

I hope some of the information will be of assistance to you when you make the your decision. I hope you will give Donald Marshall Junior a new trial so that he can prove his innocence. All of the information I gave you can be documented. Junior Marshall deserves the chance to live the rest of his live free and innocent in the eyes of all.

A deeply concerned
Citizen



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

76

AG 148

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
June 25, 1982

Mr. Gordon S. Gale
Director (Criminal)
Dept. of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Gale:

RE: Roy Newman EBSARY

Thank you for your letter of June 18, 1982.

Accordingly, I now enclose copies of the following statements:

Roy Newman EBSARY dated Dec. 5, 1981
Blanche DUNN dated Dec. 5, 1981 (3 statements)
Blanche DUNN dated Dec. 13, 1981
Wilfred MUGRIDGE dated Dec. 6, 1981
Susan Elizabeth BISHOP dated Feb. 9, 1982
Thomas Elmer MUGRIDGE dated Feb. 22, 1982

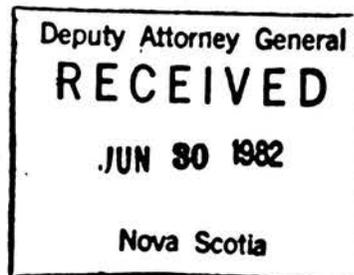
Unfortunately, the police did not submit a Crown Sheet or Police Report despite my persistent efforts to encourage the practice of submitting same.

I trust this is satisfactory. If I may be of further assistance, please do not hesitate to contact the undersigned.

Very truly yours

F.C. Edwards
CROWN PROSECUTOR

FCE:ami
Encs.



AG 136

file Ronald

Marshall

Frank Edwards

July 9

Let down

Mac Keyon - cautious in his approach.

Aranson, Clark, and Frank.

1) Return July 29 for Aranson and F.E. to file affidavits from supposed witnesses as to what their evidence would be.

M.K. suggested re Frank to suggesting that Pobra witnesses be called. Put the thing in perspective.

Frank to meet with Mac Keyon ^{Monday July 12} to indicate he is to complete own affidavits.

Aranson's affidavits on Frank's lands by Wed.

Date to be set July 29 on time to ~~decide~~ in Sept or Oct as before full bench re what witnesses would be called.

Time home - Nothing in Aug.

Then, assuming they will hear re. voice evidence, a Nov. date, then final argument later.

AG 136

July 29, to reply for release re. appeal.

M.K. also indicated that on July 29, brief outlines what is indicated to be done by each side. Frank to respond to this.

Wed, July 19. Garrison came down to take the affidavits, accompanied by R.C.D. 1

- 1) Restructure - 1979. of all files
- 2) We see to my what took place then.
- 3) " have been able to get a copy present to the call on by Lyden & Rubin. Contents of report
- 4) Report reform now at Marshall
- 5) Any evidence relevant to the matter ought to be disclosed to the Prof.
- 6) We do to view ourselves in an adversarial relationship with P. Marshall.



DEPARTMENT
OF
ATTORNEY GENERAL
NOVA SCOTIA

P. O. BOX 7
HALIFAX, NOVA SCOTIA
B3J 2L8

Our File: 09-82-0236-08

July 13, 1982

Mr. Frank C. Edwards
Prosecuting Officer
77 Kings Road
Sydney, Nova Scotia
B1S 1A2

Dear Mr. Edwards:

Enclosed is a copy of a letter dated June 29th from Douglas J. A. Rutherford enclosing a copy of an anonymous letter sent to the Minister of Justice concerning the Marshall case. I have not sent a copy to Mr. Aronson as you are the one dealing directly with him.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Gordon S. Gale".

Gordon S. Gale
Director (Criminal)

GSG:jd
Enclosure

July 19, 1982

Keith Beaver
P.O. Box 400
Baddeck, Victoria County
Nova Scotia B0E 1B0

Dear Constable Beaver:

Please find enclosed the original and two copies of an Affidavit in relation to the Donald Marshall, Jr. case. I would most appreciate it if you might complete this Affidavit before a Barrister or Commissioner of the Supreme Court of Nova Scotia, and ensure that each of the copies is executed as well as the Exhibit attached to each Affidavit.

These Affidavits will be filed with the Court of Appeal. I cannot tell you whether or not you will be required to attend as an actual witness, or whether the court will be satisfied with your Affidavit. However, if your attendance is required, you will be given as much notice as possible.

Please return the executed Affidavits to me at your earliest convenience. If you are required to pay any fee to have your Affidavit sworn, please forward a receipt and I shall send, by return mail, funds to reimburse you. Thank you for your cooperation.

Yours very truly,

Stephen J. Aronson

SJA:erd

Enclosures

JUL 23 1982

82

TELEPHONE
AREA CODE 902
539-1463

MACINTYRE & KHATTAR

BARRISTERS & SOLICITORS

H. F. MACINTYRE, B.Sc., M.M., LL.B.
J. G. KHATTAR, B.Sc., LL.B.

463 PRINCE STREET
P.O. BOX 788

SYDNEY
NOVA SCOTIA
B1P 6J1

20 July 1982

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers & Solicitors
277 Pleasant Street
Suite 305
Dartmouth, Nova Scotia
B2Y 4B7

Dear Mr. Aronson:

RE: Donald Marshall, Jr.

Enclosed is an Affidavit in triplicate of Dr. Mian.

The Affidavits are identical to those which you provided Dr. Mian, but for paragraph 4, which he has changed to properly describe his diagnosis.

Yours very truly,



John G. Khattar

JGK/bh
Encls.

July 20, 1982

Donna Ebsary
Apartment 5A
180 River Street
Waltham, Massachusetts
USA

Dear Miss Ebsary:

You Will have spoken with a Staff Sargeant Harry Wheaton regarding an affidavit which is required in the Donald Marshall, Jr. case. I have enclosed the original and two copies of an affidavit which I would ask you to read carefully.

If the affidavit meets with your approval, it would be appreciated if you might take all the copies of the affidavit to a lawyer who is a notary public, and execute the affidavit in his or her presence. Please ensure that the notary also completes the notation on the third page of Exhibit "A".

Your affidavit will be filed with the Court of Appeal in Nova Scotia, and your early attention to my request would be most appreciated. If you are required to pay any fee to have your affidavit sworn, please forward a receipt and I shall send, by return mail, funds to reimburse you. If you have any questions, please give me a call collect. Thank you for your kind cooperation.

Yours very truly,

Stephen J. Aronson

_SJA:erd

Enclosure

July 20, 1982

RCMP Crime Detection
Laboratory
Sackville, NB

ATTENTION: A. J. EVERS

Dear Mr. Evers:

Re: Donald Marshall, Jr.

Further to our telephone conversation of July 19, 1982, please find enclosed the original and two copies of an affidavit which I have drafted. I would ask that you read the affidavit over carefully, and assuming you are able to swear to its contents if you would be so kind as to arrange for its execution before a Notary Public in the province of New Brunswick. In addition, you will note that I have referred to a photograph to be attached to your affidavit consisting of the knives which you examined.

Would you be so kind as to attach one photograph of the knives to each of the affidavits, and place an Exhibit stamp on the back of each photograph and ensure that it executed by the Notary Public.

I would certainly appreciate having the executed affidavits returned to me at your earliest convenience. I cannot tell you at this point in time whether your personal attendance will be required in court as that will be a matter for the court to decide. I would, however, not anticipate that your attendance would be required much before November of this year and will certainly advise you if that is the case.

Thank you for your kind attention to this matter.

Yours very truly,

Stephen J. Aronson

SJA:erd

Enclosures

(85 11 AG 146 1615A
DEPARTMENT OF ATTORNEY GENERAL

MEMORANDUM

Our File No. 09-82-0311

FROM: Gordon S. Gale, Q.C.
Director (Criminal)

TO: Martin E. Herschorn
Assistant Director (Criminal)

We have received a report from the Board of Review recommending that Roy Newman Ebsary be released from the Nova Scotia Hospital and returned to Sydney for trial on the stabbing case which gave rise to the Lieutenant Governor's Warrant. I have advised Frank Edwards of this and in turn he has advised Aronson. Aronson feels that we should lay the murder charge involving Seale at this time so that we could be fairly well assured that he would be remanded into custody. Frank and I are of the opinion that the Seale murder charge should not be laid unless Ebsary is granted bail on the stabbing case. Frank also indicated that the evidence in the stabbing case is not very good and in all possibility he could be acquitted.

GSG:jd
July 22, 1982



July 23, 1982

The Department of The Attorney
General Crown Prosecutors
77 Kings Road
Sydney, Nova Scotia
B1S 1E2

ATTENTION: FRANK C. EDWARDS

Dear Mr. Edwards:

Re: Donald Marshall, Jr.

Please find enclosed an application for the release of Donald Marshall, Jr. from custody, together with the affidavits of Donald Marshall, Jr., Jack Stewart, and Stephen J. Aronson.

In addition, please find enclosed a copy of an application for setting a date for leave to adduce fresh evidence. I have already provided you with most of the affidavits and enclose the affidavits of Dr. M. A. Mian and Patricia Ann Harriss in addition thereto.

As you are aware the matter will be heard before Mr. Chief Justice MacKeigan of the Appeal Division on Thursday, July 29, at noon.

I have sent affidavits to Donna Ebsary, Keith Beaver, and E. J. Evers and may have some of them returned to me prior to the 29th. I have yet to draft affidavits for Khattar and Rosenblum.

I will give you a call next week to bring you up to date on the status of the affidavits and to discuss the applications for the 29th.

Yours very Truly,

Stephen J. Aronson

SJA:erd

Enclosures

July 28, 1982

George W. MacNeil
3536 Elsworth Avenue
New Waterford, NS
B1H2R66

Dear MR. MacNeil:

Please find enclosed the original and two copies of an affidavit regarding the Donald Marshall, Jr. case. I would most appreciate it if you might complete this affidavit before a Barrister or Commissioner of the Supreme Court of Nova Scotia (ie. any lawyer), and ensure that each of the copies is executed as well as the Exhibit attached to each affidavit.

These affidavits will be filed with the Supreme Court of Nova Scotia Appeal Division. I cannot tell you at this point in time whether or not you will be required to attend as a witness, or whether the Court will be satisfied with your affidavit. However, if your attendance is required, you will be given as much notice as possible.

Please return the executed affidavits to me at your earliest convenience. If you are required to pay any fee to have your affidavit sworn, please forward a receipt and I shall send, by return mail, funds to reimburse you. If you have any questions regarding the affidavit please give me a call collect. Your cooperation in this matter would be most appreciated, and it would be of the greatest assistance to Mr. Marshall.

Yours very truly,

Stephen J. Aronson

SJA:erd

Enclosures

July 28, 1982

REGISTERED

City of Sydney
P.O. Box 730
Sydney, NS
B1P 6A7

ATTENTION: CITY CLERK

Dear Sir:

Re: Marshall vs City of Sydney

Please find enclosed a Notice of Intended Action. Would you be so kind as to acknowledge receipt of the same.

Yours very truly,

Stephen J. Aronson

SJA:erd

Enclosure

IN THE MATTER OF: An Act to Incorporate City of Sydney, S.N.S. 1903, c. 174, as amended.

- and -

IN THE MATTER OF: DONALD MARSHALL, JUNIOR;

Intended Plaintiff

- and -

THE CITY OF SYDNEY, a body corporate, and JOHN F. MacINTYRE and WILLIAM URQUHART;

Intended Defendants

NOTICE OF INTENDED ACTION

TAKE NOTICE that the above-mentioned Intended Plaintiff intends to commence proceedings in the Supreme Court of Nova Scotia, Trial Division, sitting at Sydney, County of Cape Breton, in the Province of Nova Scotia, against the City of Sydney and John F. MacIntyre and William Urquhart, employees of the said City. The cause of action will be for negligence, false and malicious arrest, malicious prosecution, defamation, false imprisonment and abuse of process committed by the Intended Defendants in the investigation and prosecution of the Intended Plaintiff in connection with the Sanford Seale murder investigation. (A)

DATED at Dartmouth, Nova Scotia, this 25th day of July, A.D. 1982.

Intended Plaintiff: Donald Marshall, Junior

Place of Abode: Halifax, County of Halifax, Province of Nova Scotia.

Solicitor for Intended

Plaintiff: Stephen J. Aronson, 277 Pleasant Street, Dartmouth, Nova Scotia.



CITY OF SYDNEY
P O BOX 730
SYDNEY, NOVA SCOTIA
B1P 6H7

July 30, 1982

BUG 4 - 1982

Mr. Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers and Solicitors
277 Pleasant Street, Suite 305
Dartmouth, Nova Scotia

Re: Marshall vs City of Sydney

Dear Mr. Aronson:

I wish to acknowledge receipt of the Notice of Intended Action regarding the above which was forwarded to the City Clerk under date of July 28, 1982.

I wish to advise you that I am authorized to accept service on behalf of any and all of the intended defendants in this matter.

Yours very truly,


Michael G. Whalley
Solicitor

MGW:cae

DELIVERED BY HAND

August 3, 1982

Mr. Jack Stewart
c/o Carlton Centre
College Street
Halifax, N.S.

Dear Mr. Stewart:

Re: Donald Marshall, Jr.

Please find enclosed a certified copy of an Order releasing Donald from custody, together with a signed Recognizance and Undertaking. I trust you will provide copies of these to whoever requires them.

I should also like to thank you and the staff at the Carlton Centre for your kind assistance and support of Donald while he was at the Centre.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

August 4, 1982

Simon J. Khattar, Q.C.
Post Office Box 397
Sydney, N.S. B1P 6H2

Dear Mr. Khattar:

Re: Donald Marshall, Jr.

Please find enclosed the original and two copies of an Affidavit in the above-noted matter. I believe all items in the Affidavit are sufficiently clear to avoid any explanation on my part.

As you may be aware in order to have fresh evidence adduced we must provide the Court with Affidavits referring to the evidence to be adduced together with solicitors' Affidavits indicating the efforts made by them to obtain the truth at the trial. I believe this Affidavit complies with the requirements. May I therefore ask that you read the Affidavit and Exhibits referred to carefully and assuring you have no difficulty with same, it would be appreciated if you might return to me three executed copies of the Affidavit. It would be appreciated if you might return the executed copies to me at your earliest convenience.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

- trial by jury - on Thurs. 3/82.

- L.W. acting for Eddy, would
preliminary, reviewed by constant
- E. is surprised he is in jail &
been 11 weeks, he's seen & concerned; concern
with his health; E. E. would call

knives - incident - continuity

- search for site of being for D.D. after

August 4, 1982

C. M. Rosenblum, Q.C.
Post Office Box 332
Sydney, N.S. B1P 1C5

Dear Mr. Rosenblum:

Re: Donald Marshall, Jr.

Please find enclosed the original and two copies of an Affidavit in the above-noted matter. I believe all items in the Affidavit are sufficiently clear to avoid any explanation on my part.

As you may be aware in order to have fresh evidence adduced we must provide the Court with Affidavits referring to the evidence to be adduced together with solicitors' Affidavits indicating the efforts made by them to obtain the truth at the trial. I believe this Affidavit complies with the requirements. May I therefore ask that you read the Affidavit and Exhibits referred to carefully and assuming you have no difficulty with same, it would be appreciated if you might return to me three executed copies of the Affidavit. It would be appreciated if you might return the executed copies to me at your earliest convenience.

If you have any questions with regard to this matter please let me know.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

KHATTAR & KHATTAR
Barristers and Solicitors

94

AREA CODE 902
TELEPHONE 539-9896

S. J. KHATTAR, Q.C.
S. B. KHATTAR, B.A., LL.B.
J. V. MACDONALD, B.A., LL.B.
LEO A. MACPHEE, B.A., LL.B.

P. O. BOX 387
378 CHARLOTTE ST.
SYDNEY, NOVA SCOTIA
B1P 6H2

August 9th, 1982

Mr. Stephen J. Aronson
Barrister & Solicitor
Dartmouth Professional Centre
Suite 305
277 Pleasant Street
DARTMOUTH, Nova Scotia
B2Y 4B7

AUG 12 1982

Re: Donald Marshall, Jr.

Dear Mr. Aronson:

I am returning herewith my Affidavit and accompanying materials which was received this date.

Yours very truly,

KHATTAR & KHATTAR


S. J. Khattar, Q.C.

SJK:smc
encls.

C. M. ROSENBLUM, Q. C.
BARRISTER & SOLICITOR

TELEPHONE 564-8244

197 CHARLOTTE STREET
SYDNEY, NOVA SCOTIA
B1P 6H2

August 9, 1982

AUG 11 1982

Aronson, MacDonald,
Barristers & Solicitors,
Dartmouth Professional Centre,
277 Pleasant Street,
DARTMOUTH, N. S.
B2Y 4B7

Attention: Stephen J. Aronson, Esq.

Dear Mr. Aronson: Re: Donald Marshall, Jr.

As requested in your letter of the 4th instant, I return herewith my Affidavit with Exhibits attached, in triplicate.

I would appreciate it if you would send a copy of such documents to me for my file as you only sent three copies to me and you requested the return of the same.

I am very hopeful that you will be successful on the Appeal and that an acquittal will be the result.

Yours very truly,



C. M. ROSENBLUM

CMR/cmi

Encls.

AUG 16 1982



Box 400, Baddeck, N.S.
82-08-11

Aronson, MacDonald
Barristers & Solicitors
Dartmouth Professional Centre
Suite 305, 277 Pleasant Street
Dartmouth, N.S.
B2Y 4B7

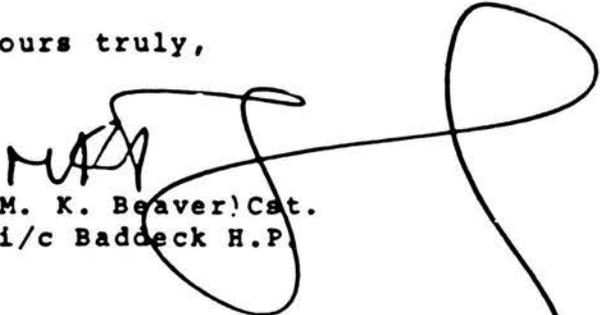
Attention: Mr. Stephen J. Aronson

Dear Sir;

Re: Donald MARSHALL, Jr. - Affidavit

As per your request, enclosed are the executed Affidavits re
the above case.

Yours truly,



(M. K. Beaver) Cat.
i/c Baddeck H.P.

MKB/dmo

Enc.

August 17, 1982

C.M. Rosenblum, Q.C.
Barrister & Solicitor
197 Charlotte Street
Sydney, N.S. B1P 6H2

Dear Mr. Rosenblum:

Re: Donald Marshall, Jr.

Thank you for your letter and enclosures of August, 9, 1982.

I enclose a photo-copy of your Affidavit with Exhibits attached.

I should also like to thank you for your kind wishes of success in this matter.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre • Suite 305 • 277 Pleasant Street • Dartmouth, N.S. Canada B2Y 4B7 • (902) 463-9131

DELIVERED BY HAND

August 30, 1982

S/Sgt. Harry F. Wheaton
Royal Canadian Mounted Police
3139 Oxford Street
Halifax, Nova Scotia

Dear S/Sgt. Wheaton:

Re: Donald Marshall, Jr.

Further to our telephone conversation of this morning please find enclosed the original and two copies of a draft form of Affidavit. In addition, I have enclosed copies of the Affidavits referred to in Paragraph 4 of your own Affidavit.

If you are satisfied with the draft I would ask that you execute all copies and return them to me. I might add that Mr. Evers' Affidavit is an original and although you are perfectly welcome to have a copy of it, I need the picture. If you have any problems or wish any changes or amendments to be made please let me know.

Thank you for your attention and co-operation.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

DELIVERED BY HAND

July 9, 1982

Mr. Jack Stewart, Director
Carlton Centre
College Street
Halifax, Nova Scotia

Dear Mr. Stewart:

Re: Donald Marshall, Jr.

As you are no doubt aware the Minister of Justice has referred the Marshall case to the Nova Scotia Supreme Court, Appeal Division, pursuant to Section 617(b) of the Criminal Code. The procedures to be followed are not written in stone however I can give you a general idea as to how the matter should unfold.

The first step in acting under the reference application to the Appeal Court is to have new evidence or fresh evidence admitted. This particular application will contain the statements and facts of the witnesses who are able to testify as to the circumstances of the Seale murder. We are now looking for that particular hearing on July 29, 1982. There is a substantial amount of material to be reviewed, witnesses to be interviewed and Affidavits and other material to be prepared.

In addition to this application, it is our present intention to apply under Section 608 of the Criminal Code to the Court of Appeal for a release from custody for Donald. Marshall must establish on a balance of probabilities that:

- (a) the Appeal is not frivolous;
- (b) he will surrender himself into custody in accordance with the terms in the Order; and,
- (c) his detention is not necessary in the public interest.

I have spoken with Donald and he is somewhat anxious to leave

...2

Mr. Jack Stewart, Director - 2 -

July 8, 1982

the Carlton Centre. However, he would like to continue to have the support of the staff of the Centre. It would therefore be appreciated if you might advise me as to whether the Centre and the Parole Board would be willing to support Marshall's application for release. If the Appeal Court decides to release Marshall the Parole Board would no longer be responsible for him, but rather the release would be on terms provided in the Order of the Court. The Order could certainly contain terms requiring Marshall to report to two or more members of the Carlton Centre at regular intervals but this would, in my mind, be solely for the purposes of support and counselling.

Would you please let me know whether you could provide me with your Affidavit which would be discussed of course to support Marshall's application for release.

Whether or not Marshall is released from custody by the Court of Appeal, there will be a hearing at which time evidence will be called. I anticipate that this hearing will take place in November, but frankly do not expect a decision from the Court until at least the end of the year. It is as you are well aware a rather complex and awkward procedure and it will be the end of July before we will be in a position to know the date of the actual hearing.

Should you require any further information or wish to discuss the matter please let me know.

Yours very truly,

Stephen J. Aronson

SJA:md

C.C. - Donald Marshall, Jr.

September 1, 1982

Department of the
Attorney General
Crown Prosecutor's Office
77 King's Road
Sydney, N.S. B1S 1A2

ATTENTION: Frank C. Edwards

Dear Mr. Edwards:

Re: Donald Marshall, Jr.

I am enclosing for your information a draft of the brief which we propose to submit to the Appeal Court on September 14. It is not expected that any major revisions will take place. However, I intend to draft an over-view of the facts in the form of introductory material to the brief as well as to add conclusions and submissions.

In addition, I enclose one copy each of the executed Affidavits of Donna Ehsary, A.J. Evers, Keith Beaver, George MacNeil, Simon Khattar and M. Rosenblum. I do not expect to file the Affidavits with the Court until September 14. Would you be so kind as to acknowledge service of same.

Finally, I enclose drafts only of the Affidavits which I will be taking from Harry Wheaton and Donald Marshall, Jr.

Regarding Donald Marshall, Jr.'s Affidavit, you will note that there is no admission or indication by him that he was committing any illegal act. My major reason for omitting such a reference is simply that in the event ~~khateke~~ to be charged in the admission on his part could be used as evidence against him. However, should he testify, and I expect he will,

...2

SA 67

Frank C. Edwards

- 2 -

September 1, 1982

he may take advantage of the provisions of the Canada Evidence Act and the Canadian Charter of Rights and Freedoms.

I will provide you with the final copy of the brief to be submitted as well as the executed Affidavits of Marshall and Wheaton around the 14th of September. If you have any questions or wish to discuss this matter further please let me know.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures



Royal Canadian Mounted Police Gendarmerie royale du Canada

82-09-07

Your file Votre référence

Our file Notre référence

Messrs. Aronson and MacDonald
Barristers & Solicitors
Dartmouth Professional Centre
Suite 305
277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

SEP 8 - 1982

Attention: Stephen J. Aronson

Re: Donald Marshall, Jr.

Dear Mr. Aronson:

Further to our telephone conversation of recent date and your letter dated August 30, 1982, attached are corrected copies of my Affidavit as requested.

Yours truly,


Harry F. Wheaton, S/Sgt.

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

Enclosures



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

SA 68
SEP 13 1982

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
September 9, 1982

Stephen J. Aronson, Esq.
Aronson & MacDonald
Barristers & Solicitors
Suite 305, 277 Pleasant St.
Dartmouth, Nova Scotia
B2Y 4B7

Dear Mr. Aronson:

RE: Donald MARSHALL Jr.

Receipt is acknowledged of your letter of September 1, 1982, with enclosed affidavits.

I note with interest your comments respecting Donald; his affidavit, and the probability that he will testify. Your draft brief makes no mention of your intention to call Marshall. I expect that you would have to seek leave from the Court on October 5th to have Marshall give viva voce evidence. Is this your intention?

I will be providing you with a copy of my brief within a few days. (I'm late getting it together).

Very truly yours,

F.C. Edwards
F.C. Edwards
CROWN PROSECUTOR

FCE:ami

Marshall

Id# F.E. Sept. 13/02

Frank:

Viva Voce Evidence

Chant

Harriss

Evers

Gregory Ebsary

Marshall

James MacNeil

Donna Ebsary

Wheaton

MacIntyre, Unsubstantiated

- I think H. W. must be called with regard to the evidence of MacIntyre re his credibility

I take the position that all witnesses should be called

September 13, 1982

Mrs. Doug Landry
Post Office Box 147
Sydney, N.S. B1P 6G9

Dear Mrs. Landry:

Please find enclosed the letter from the Nova Scotia Police Commission of November 19, 1976, which you had sent to me. I have taken a copy of the letter and thank you for your assistance.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure



NOVA SCOTIA POLICE COMMISSION

XXXXXXXX
HALIFAX N S

P.O.Box 1573
B3J 2Y3

November 19, 1976

Mrs. Doug Landry
Paul's Hotel
10 Pitt St.
P. O. Box 147
Sydney, Nova Scotia

Dear Mrs. Landry,

Thank you for your letter of November 9, 1976 on the subject of the selection of Mr. J. MacIntyre as the Chief of Police of the Sydney Police Department.

As you probably know, the Nova Scotia Police Commission became a legal and operational organization with the proclamation of the Police Act on October 15, 1976. Prior to that, while the Commission (designate) could make plans it could not perform the duties and responsibilities given to it by the Police Act.

The responsibility for the selection of a Chief of Police is ultimately that of the City Council which in turn can be advised by the Board of Police Commissioners of the City of Sydney and any other body the Council chooses to ask for advice and assistance.

Now that the Nova Scotia Police Commission is in operation, whenever a new Chief of Police or Deputy Chief of Police is required by a City or Town, the Commission is prepared to organize a board of Chiefs of Police to review the credentials of and interview all candidates and to submit a report to the City Council. As I stated before, the choice is their responsibility.

In the case of Mr. MacIntyre, the Nova Scotia Police Commission was not able to be of assistance because the City Council made its choice before the Commission officially came into existence.

The Police Commission also has a responsibility to advise and assist Chiefs of Police to improve their knowledge and performance, in particular, management and leadership performance. Mr. MacIntyre, having been chosen as Chief of Police, will receive the full co-operation of the Nova Scotia Police Commission and its staff.

.../2

There is also, of course, provision in the Police Act for the Police Commission to hold public inquiries into "the conduct of or the performance of duties by any Chief of Police". This would be done when directed to do so by the Attorney General or when requested to do so by the majority of members of the Board of Police Commissioners of the City or the City Council.

Please do not hesitate to call me at 424-3246 here in Halifax, if you wish to discuss this matter further.

Yours truly,
Harry A. Potter
Harry A. Potter,
Chairman

HAP/pac

September 13, 1982

The Prothonotary
The Law Courts Building
1815 Upper Water Street
Halifax, N.S. B3J 1S7

Dear Sir:

Re: Reference Re R. v. Marshall - S.C.C. No. 00580

Please find enclosed with this note the following material in the above-captioned matter:

1. The Affidavits of Donna Ebsary, A.J. Evers, Keith Beaver, George MacNeil, Simon Khattar, Q.C., M. Rosenblum, Q.C., B/Sgt, Wheaton, and Donald Marshall, Jr.

In addition to the originals of these Affidavits, five copies of the Case of Appeal, the Transcript of the November, 1971 trial in The Queen v. Marshall in two Volumes and the Affidavits filed by the Appellant and a Brief submitted on behalf of the Appellant in one Volume.

I have by way of a copy of this letter provided the materials not already in Mr. Edward's possession to him.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures
C.C. - Mr. Frank Edwards

September 13, 1982

Frank Edwards,
Crown Prosecutor's Office
Cape Breton County
77 King's Road
Sydney, N.S. ~~B1B~~ 1A2

BIS

Dear MR. Edwards:

Re: Donald Marshall, Jr.

Please find enclosed a copy of a letter which I have sent to the Prothonotary, together with the Case on Appeal and a book of Affidavits and Brief. In addition I enclose the original of Donald Marshall, Jr.'s Affidavit and Harry Wheaton's Affidavit.

In response to your letter of September 9, 1982, I wish to advise you that we shall be seeking leave from the Court on October 5th to have Marshall give vive voce evidence.

Yours very truly,

Stephen J. Aronson

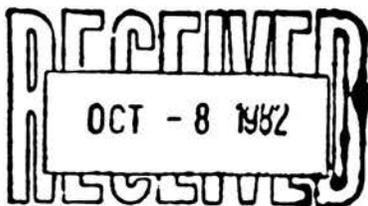
SJA:md
Enclosures

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson

Leo I. MacDonald

Dartmouth Professional Centre • Suite 305 • 277 Pleasant Street • Dartmouth, N.S. Canada B2Y 4B7 • (902) 463-9131



October 7, 1982

Supreme Court of Nova Scotia
 Appeal Division
 The Law Courts Building
 1815 Water Street
 Halifax, N.S. B3J 1S7

ATTENTION: Mr. Eric Vandervoort

Dear Mr. Vandervoort:

Re: Reference Re Donald Marshall, Jr. - S.C.C. No. 00580

Further to our attendance in the Supreme Court, Appeal Division on October 5, 1982, I am attaching a list of the names and addresses of the seven witnesses, as requested by Mr. Chief Justice MacKeigan.

I have by way of a copy of this letter advised Mr. Edwards and would add that if there is any difficulty in locating these witnesses Mr. Edwards and I would be glad to assist.

Yours very truly,

Stephen J. Aronson

SJA:md
 Enclosure

c.c. - Mr. Frank Edwards ✓

1. Maynard V. Chant
Main Street
Louisbourg, N.S.
2. Patricia Ann Harriss
5265 Sackville Street, Apt. 5
Halifax, N.S.
3. James William MacNeil
222 Mount Pleasant Street
Sydney, N.S.
4. Gregory Allan Ebsary
46 Mechanic Street
Sydney, N.S.
5. Donna Elaine Ebsary
180 River Street, Apt. 5A
Waltham, Massachusetts, U.S.A.
6. Adolphus James Evers
R.C.M.P. Crime Detection Laboratory
Sackville, New Brunswick
7. Donald Marshall, Jr.
Department of Indian Affairs
Sir John Thompson Building, 6th Floor
Barrington Street
Halifax, Nova Scotia

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson

Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

October 8, 1982

R.C.M.P.
Crime Detection Laboratory
Sackville, New Brunswick

ATTENTION: A.J. Evers

Dear Mr. Evers:

Re: Donald Marshall, Jr.

As you may be aware, the Appeal Division of the Supreme Court of Nova Scotia will issue an Order requesting your attendance as a witness in the Marshall Reference. As this situation is rather novel, I will be examining you in Chief and Mr. Edwards will be cross-examining you with respect to the hair and fibre evidence to be used.

I had spoken with a gentleman in your section on October 7, and was advised that you would not be back in your office until after Thanksgiving. My purpose in writing is to request that you and I get together, possible in Sackville, to review the evidence which you will be able to give at the hearing on December 1 and 2.

Specifically, it would be a good idea to meet before the hearing to discuss generally the expert area of hair and fibre analysis, and in particular its application to the knives and cardboard basket which you had examined, to discuss the strength of the evidence and to get your views as to how to best handle the evidence from the legal point of view.

If you are able to meet with me, I would very much prefer .

...2

R.C.M.P.,
A.J. Evers

- 2 -

October 8, 1982

to go to Sackville on an afternoon before the end of this month, in order that I may have sufficient time to prepare. If you would be kind enough to give me a call we should be able to arrange a convenient day.

Yours very truly,

Stephen J. Aronson

CC: [unclear]

October 13, 1982

Miss Donna E. Ebsary
180 River Street, Apt. 5A
Waltham, Massachusetts
U.S.A.

Dear Miss Ebsary:

Re: Donald Marshall, Jr.

On October 5, 1982, the Appeal Division of the Supreme Court of Nova Scotia commenced a hearing on the question of Donald Marshall, Jr.'s conviction for the murder of Sandy Seale in May of 1971.

The Court of Appeal has not decided anything at this point in time. However, the Court ordered that seven witnesses appear in person before the Court on December 1 and 2 of this year in Halifax. One of the witnesses who they ordered to attend is you, as your evidence, as contained in your Affidavit, is of the utmost importance in deciding the matter before the Court.

I would anticipate that before the end of October or early in November you will be receiving a Subpoena, requiring you to attend the hearing before the Court of Appeal on December 1, 1982, at 10:00 A.M. Please understand that because you are presently in the United States, you are not required legally to appear in Court in answer to the Subpoena. However, as I have noted your attendance in Court is of substantial importance and I wish to assure you that your out-of-pocket travelling expenses from Halifax to Boston and return together with one night's accommodation and Halifax would be paid.

...2

Miss Donna E. Ebsary

- 2 -

October 13, 1982

In addition it is quite important that I have the opportunity of meeting you, as I will be in fact questioning you at the hearing. I am aware of your status in the United States, as told to me by Sgt. Wheaton as well as your mother, and wish to assure you that I have no desire of affecting that status. However, I would appreciate the opportunity of coming to the Boston area before the end of October to sit down, talk to you and go over the evidence that you will be giving to the Court at the beginning of December.

It would be appreciated if you would give me a call collect at my office or home (Area Code 902-422-5352), upon receipt of this letter to advise me whether or not you are willing to attend the Court hearing on December 1 and whether you are willing to meet with me before the end of October in Boston. Please be assured that I have no difficulty in getting into the United States as an ordinary visitor. I look forward to hearing from you at your earliest convenience.

Yours very truly,

Stephen J. Aronson

SJA:md

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

October 27, 1982

Mr. Maynard V. Chant
Main Street
Louisbourg, Nova Scotia

Dear Mr. Chant:

Re: Donald Marshall, Jr.

As we had discussed during our conversation in Louisbourg, I am pleased to enclose a photocopy of your Affidavit of July, 1982. Please note that the Affidavit includes the two Statements which you had given to the Sydney City Police and the recent Statement to the R.C.M.P. In addition, I am enclosing a photocopy of the testimony which you gave at Donald Marshall, Jr.'s Trial in 1971 for your information.

Thank you for your co-operation in this matter.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

October 27, 1982

Mr. Gregory Ebsary
46 Mechanic Street
Sydney, N.S. B1P 2W7

Dear Mr. Ebsary:

Re: Donald Marshall, Jr.

As I indicated to you during our recent conversation in Sydney, I am enclosing a copy of your Affidavit which you had sworn to in July of this year. Please note that the Affidavit has attached to it the Statement which you gave to the Sydney City Police in 1971 as well as your recent 1982 Statement to the R.C.M.P.

Thank you for your co-operation in this matter.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

October 28, 1982

Mr. James MacNeil
222 Mount Pleasant Street
Sydney, N.S. B1N 2G6

Dear Mr. MacNeil:

Re: Donald Marshall, Jr.

As we had discussed during our recent conversation in Sydney, I enclose a photocopy of your Affidavit which was sworn to in July of this year. Please note that the Affidavit has attached to it copies of your Statement to the Sydney City Police in 1971 as well as your most recent Statement to the R.C.M.P.

Thank you for your co-operation in this matter.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures

December 22, 1962

Frank C. Edwards, Esq.
Crown Prosecutor
County of Cape Breton
77 King's Road
Sydney, N.S. B1S 1A2

Dear Mr. Edwards:

Re: Reference Re Donald Marshall, Jr. - S.C.C. No. 00580

Further to our telephone conversation of December 17, 1962, please find enclosed a Notice of Application to set the matter down for hearing.

I anticipate receiving copies of the Transcript within the next week or so and will send a copy to you at that time.

It would also be appreciated if you might send me a photocopy of Chant's Statement which we had discussed at the hearing on December. I should also like to wish you Compliments of the Season.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure

January 7, 1983

Frank Edwards, Esq.
Crown Prosecutor
County of Cape Breton
77 King's Road
Sydney, N.S. B1S 1A2

Dear Mr. Edwards:

Re: Reference Re R. v. Donald Marshall, Jr. - S.C.C. No. 00580

Please find enclosed a copy of the Transcript of the Hearing of December 1 and 2, 1982, before the Appeal Division.

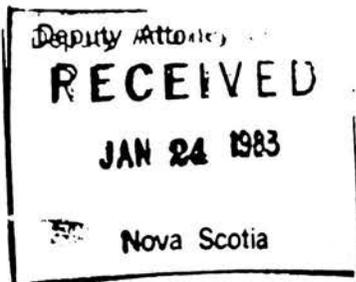
Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.



77 Kings Road
Sydney, Nova Scotia
B1S 1A2
January 18, 1983

Mr. Martin E. Herschorn
Asst. Director (Criminal)
Dept. of Attorney General
P.O. Box 7
Halifax, Nova Scotia
B3J 2L6

Dear Mr. Herschorn:

RE: Donald MARSHALL Jr.

As you know, the above matter has been set down for final argument on February 16, 1983.

Among the points which should be emphasized before the Court are the following:

- (a) The Appellant must bear considerable responsibility for the predicament in which he finds himself. Had he told either the police or his lawyers in 1971 that he and Seale were attempting a robbery, the subsequent investigation and/or defence would have taken different directions. In all likelihood, Marshall would never have been convicted.
- (b) The police investigators in 1971 bona fide believed they had the guilty party in the person of Donald Marshall Jr.; they certainly were not motivated by malice toward either the accused or, as has been suggested in some press reports, prejudice toward his race.

Beyond emphasizing the foregoing, the Crown has virtually no option respecting a position on the ultimate disposition of this case. To verify that proposition, one has only to pose two questions:

First, if the evidence now available had been known in 1971, would Donald Marshall have been charged with Seale's murder? Where all the evidence now available points toward someone other than Marshall, the answer has to be no, Marshall would not have been charged.

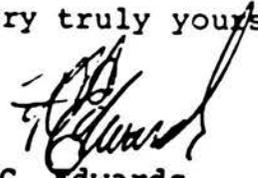
Second, if a new trial for Marshall were now to be ordered, who would the Crown call? There does not now exist a single scrap of evidence which points toward Marshall. The Crown would have to offer no evidence at a new trial.

I have considered the possibility of the Crown attempting to take no position re ultimate disposition. I do not believe that such a posture is either tenable or appropriate. The court will want to know the Crown's position and it would be an abrogation of the Crown's responsibility not to take one.

In view of the foregoing, the submission of the undersigned to the court will be that Donald Marshall Jr. should be acquitted. Where, in my professional opinion, enough evidence exists to charge another individual with Seale's murder, I could not and would not go to court and argue anything else.

I trust I will hear from you on this matter. In the meantime, I remain

Very truly yours,



F.C. Edwards
CROWN PROSECUTOR

FCE:ami

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson
Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

January 19, 1983

The Prothonotary
Post Office Box 475
Crescent Street
Sydney, N.S. B1P 6H4

JAN 27 1983

Dear Miss Bezanson:

Re: Marshall v. The City of Sydney et al

Please find enclosed the original and one copy of an Originating Notice (Action) and Statement of Claim in the above-noted matter. Would you kindly issue the Originating Notice (Action) and Statement of Claim and return to me.

Yours very truly,



Stephen J. Aronson

SJA:md
Enclosures

Walter T. Deegan
PROTHONOTARY
AG 242

129

ORIGINATING NOTICE (ACTION)

19 83

S.N. No. 62796

IN THE SUPREME COURT OF NOVA SCOTIA,
TRIAL DIVISION
Between DONALD MARSHALL, JUNIOR; PLAINTIFF

and-
THE CITY OF SYDNEY, a body corporate;
and John L. MacIntyre and William Urquhart DEFENDANT

TO THE DEFENDANT:

TAKE NOTICE that this proceeding has been brought by the Plaintiff against you, the Defendant, in respect of the claim set out in the statement of claim annexed to this notice.

AND TAKE NOTICE that the Plaintiff may enter judgment against you on the claim, without further notice to you, unless within TEN days after the service of this originating notice upon you, excluding the day of service, you or your solicitor cause your defence to be delivered by mail or personal delivery to,

- (a) the office of the Prothonotary, at
The Court House, Sydney, Nova Scotia, and
- (b) to the address given below for service of documents on the Plaintiff:

provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the Plaintiff or his solicitor within six days from the service of this notice on you, then this proceeding will be stayed.

ISSUED the day of January A.D. 19 83.

Solicitor for the Plaintiff - Stephen J. Aronson, Esq.
whose address for service is: 277 Pleasant St., #305
Dartmouth, N.S. B2Y 4B7

TO: City of Sydney
c/o Michael G. Whalley, Esq.
Post Office Box 730
Sydney, N.S. B1P 6H7

AND TO: John L. MacIntyre and William Urquhart
c/o Sydney City Police

1983

AG 142
S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA,
TRIAL DIVISION

BETWEEN:

DONALD MARSHALL, JUNIOR;

Plaintiff

- and -

THE CITY OF SYDNEY, a body
corporate, and John L. MacIntyre
and William Urquhart;

Defendants

STATEMENT OF CLAIM

1. The Plaintiff, Donald Marshall, Junior, resides in Halifax, in the County of Halifax and Province of Nova Scotia.
2. The Defendant, City of Sydney, is a body corporate, incorporated by an Act to Incorporate City of Sydney, S.N.S. 1903, c. 174, as amended, and is located in the County of Cape Breton, in the Province of Nova Scotia.
3. The Defendants, John F. MacIntyre and William Urquhart are employees of the Defendant City, and reside in the City of Sydney.
4. On or about the month of June, 1971, the Plaintiff was investigated and subsequently charged with the murder of one Sanford Seale, by the Sydney City Police Department.
5. The Defendants, John MacIntyre and William Urquhart, were employed by the Defendant City as police officers and at all material times hereto were involved in the above-mentioned investigation of the Plaintiff.
6. As a result of the investigation and prosecution by the Defendants, the Plaintiff suffered damages, caused solely by the negligence of the Defendants, MacIntyre and Urquhart, for which the Defendant, City of Sydney, is vicariously liable, particulars of which are as follows:

- (a) The Defendants were negligent in that they

- 2 -

failed to fully investigate the facts surrounding the events of the evening of May 28, 1971, and in particular the version of events related to them by the Plaintiff.

- (b) The Defendants gave false and misleading information to Maynard Chant, a witness for the Crown at the trial of the Plaintiff in November, 1971, to the effect that the former had been seen in the vicinity of the murder by the Crown witness, John Pratico.
- (c) The Defendants exerted pressure on Mr. Chant to state falsely that he had witnessed the Plaintiff stab the deceased.
- (d) The Defendants coerced John Pratico, a witness for the Crown at the trial of the Plaintiff in November, 1971, through threat of imprisonment to state falsely that he had witnessed the Plaintiff stab the deceased.
- (e) The Defendants pressured Patricia Harriss, a witness for the Crown at the trial of the Plaintiff in November, 1971, by means of lengthy and persistent interrogation on the eve of June 17, 1971, to contradict her initial statement and falsely testify to a version of events as suggested to her by the said Defendants.
- (f) Such other negligence as may appear.

7. By the actions referred to in Paragraph 6 herein, the Defendants were negligent in their duties and were instrumental in the fabrication of false and misleading evidence which proved detrimental to the Plaintiff and the Plaintiff's Defence.

8. As a result of the testimony of the Crown witnesses, in particular, that of the aforementioned Chant, Pratico and Harriss, the Plaintiff was convicted of the murder of Sanford Seale on November 5, 1971, and sentenced to a term of life imprisonment.

9. That the tortious actions committed by the Defendants were not made known to the Plaintiff until the Spring of 1982

upon the completion of an investigation conducted by the R.C.M. Police under the direction of S/Sgt. Wheaton.

10. The Plaintiff therefore claims as relief:

- (i) damages for false imprisonment, abuse of process, defamation, negligence and malicious prosecution perpetrated upon the Plaintiff by the actions of the Defendants;
- (ii) costs of this action;
- (iii) such further and other relief as the Court might deem appropriate.

PLACE OF TRIAL: Sydney, Nova Scotia

DATED at Dartmouth, in the County of Halifax and Province of Nova Scotia, this day of January, A.D. 1983.

STEPHEN J. ARONSON
Aronson, MacDonald
277 Pleasant St., Suite 305
Dartmouth, N.S. B2Y 4B7

TO: City of Sydney
c/o Michael G. Whalley, Esq.
Post Office Box 730
Sydney, N.S. B1P 6H7

AND TO: John L. MacIntyre and
William Urquhart
c/o Sydney City Police
Sydney, Nova Scotia

IN THE SUPREME COURT OF NOVA SCOTIA,
TRIAL DIVISION

BETWEEN:

DONALD MARSHALL, JUNIOR;

Plaintiff

- and -

THE CITY OF SYDNEY, a body
corporate; and John L.
MacIntyre and William Urquhart;

Defendants

STATEMENT OF CLAIM

Stephen J. Aronson, Esq.
Aronson, MacDonald
Barristers and Solicitors
277 Pleasant St., Suite 305
Dartmouth, N.S. B2Y 4B7

VIA PUROLATOR

January 24, 1983

Frank Edwards, Esq.
Crown Prosecutor
County of Cape Breton
77 King's Road
Sydney, N.S. B1S 1A2

Dear Mr. Edwards:

Re: Donald Marshall, Jr.

Please find enclosed a copy of the Appellant's Factum in the above matter which will be filed on January 25, 1983.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure

January 28, 1983

Terry Hatcher
Carlton Centre
5253 College Street
Halifax, N.S. B3H 1X5

Dear Terry:

Re: Donald Marshall, Jr.

Enclosed, as you requested, is a photocopy of the Order and
Recognizance releasing Junior.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosure

Aronson, MacDonald Barristers & Solicitors

Stephen J. Aronson

Leo I. MacDonald

Dartmouth Professional Centre · Suite 305 · 277 Pleasant Street · Dartmouth, N.S. Canada B2Y 4B7 · (902) 463-9131

January 28, 1983

Miss Karen Brown
5651 Ogilvie Street, #113
Halifax, N.S. B3H 1B9

Dear Junior:

I have recently filed a legal document with the Court in Sydney commencing legal proceedings against the City of Sydney, John MacIntyre and William Urquhart. Please understand that the only purpose in filing the document, a copy of which is enclosed, is to protect your interests. At this point in time and certainly until after a decision on your murder conviction is received, we have no intention of actually serving the document and formally commencing the proceeding.

The main reason why I have filed this document with the Court is to protect your interests in the event that a limitation period applies to any civil action which you might take against the City of Sydney for the wrong done to you.

In addition, I enclose a copy of a proposed partnership Agreement between Harris, you and I which I would ask you to read over. If you have any comments or suggestions please let me know. I am going out of town from February 1 to February 5, inclusive, and would be happy to sit down with you again upon my return to discuss these matters or the Appeal Hearing which is on February 16, 1983.

I would confirm that your attendance is required at the Hearing on February 16 at 2:00 P.M.

Yours very truly,

Stephen J. Aronson

SJA:md
Enclosures



DEPARTMENT
OF
ATTORNEY GENERAL
NOVA SCOTIA

P. O. BOX 7
HALIFAX, NOVA SCOTIA
B3J 2L8

February 1, 1983

Our File No.
08-83-0003-00

REGISTERED MAIL

Mr. Stephen J. Aronson
Aronson, MacDonald
Barristers & Solicitors
Dartmouth Professional Centre
Suite 305
277 Pleasant Street
Dartmouth, Nova Scotia
B2Y 4B7

FEB 2 - 1983

Re: Donald Marshall, Junior

Dear Mr. Aronson:

Further to your letter to me dated December 16, 1982, I enclose a Provincial cheque in the amount of \$1,274.92 respecting witness fees at the hearing of the above-named.

Yours very truly,

A handwritten signature in cursive script that reads "Martin".

Martin E. Herschorn
Assistant Director (Criminal)

MEH:if
Enclosure



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
February 7, 1983

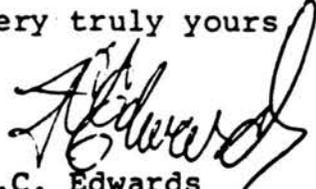
Stephen J. Aronson, Esq.
Aronson and MacDonald
Barristers and Solicitors
277 Pleasant St., Suite 305
Dartmouth, Nova Scotia
B2Y 4B7

Dear Mr. Aronson:

RE: Her Majesty The Queen
- vs -
Donald Marshall Jr.

Enclosed please find a copy of the "Factum of The Respondent" in the above noted matter.

Very truly yours


F.C. Edwards
CROWN PROSECUTOR

FCE:ami
Enc.

COPY



CROWN PROSECUTOR'S OFFICE
CAPE BRETON COUNTY
SYDNEY, N. S.

77 Kings Road
Sydney, Nova Scotia
B1S 1A2
February 22, 1983

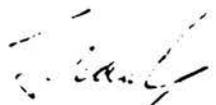
S/Sgt. Harry Wheaton
R.C.M. Police
P.O. Box 2286
Halifax, Nova Scotia

Dear, Sgt. Wheaton:

RE: Her Majesty The Queen
- vs -
Donald MARSHALL Jr.

Please find the factum which I prepared in the
above noted matter.

Very truly yours,


F.C. Edwards
CROWN PROSECUTOR

FCE:ami
Enc.