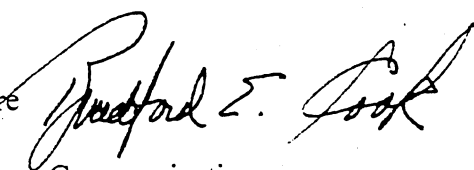


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TO Reverend John B. McCormack
Bishop of Manchester

FROM Bradford E. Cook, Esquire 

RE Gordon J. MacRae – Recent Communications

DATE November 14, 2001

I have reviewed the materials you had Father Arsenault fax to me constituting the communications you received from Gordon MacRae dated September 24 and a memorandum dated September 22 responding to your memorandum of August 29.

In reviewing these materials, I have also referred to the materials I previously submitted to you in bound form dated August 28, 2000 (authored by Bishop Francis Christian, the late Monsignor Norman Bolduc and me).

My comments are as follows:

1. I agree with MacRae's conclusion in his first paragraph that after all the time that has elapsed, it is unlikely that any proof of lying could be forthcoming, absent a change of heart by one of the [REDACTED] who would voluntarily come forward and admit to lying, a possibility that is unlikely. Throughout the process, it was obvious that all of the [REDACTED] were expansive in their testimony and it was aimed at getting a certain result and frankly, none of the attorneys involved in the criminal or civil cases trusted their testimony to be completely accurate. Whether it was all trumped up or totally manufactured is impossible to know, but unlikely. That is was embellished was clear.

The other matter addressed in paragraph 1 about the best use of funds is finding a legal error rather than new facts. I would agree with MacRae on that point. His

characterization as to whether he is asking the Diocese for funds or not seems to be somewhat academic or strained and I will not respond to it.

2. Detective McLaughlin has been the instigator of many cases in the Keene area and seems to be a crusader on sexual abuse cases, engaging in questionable activities which border on entrapment on occasion. It is more likely that [REDACTED] brought his charges to McLaughlin who arranged for him to go to a lawyer but that probably is inconsequential on the question of guilt or innocence. The basic problem from a legal perspective in the question is that on appeal, facts allowed and findings of fact made by the jury are binding on an appellate court and absent fraud on the court and the process, there is no reason to think it would have any effect on overturning the conviction. Inconsistencies between [REDACTED] recollection of the order of events and McLaughlin's would not overturn a conviction unless it could somehow show a conspiracy of which there is no evidence.

2b. MacRae's assertions in 2b are true in the fact that corroborating evidence outside of the [REDACTED] family was not forthcoming. I do not know what he is talking about in reference to evidence that money came from some other priest and was attributed to MacRae although there was evidence of money coming and the suggestion that it was from MacRae in order to buy silence. He is right that those assertions this far after trial would probably not have any effect on overturning the conviction since an appeal was already taken and these issues were not raised.

2c. He is right in his assertion that an appeal would be on legal matters and the sufficiency of evidence, not on the motivation of evidence unless a real conspiracy and fraud could be proven.

2d. I have no knowledge of the pretrial testimony by MacRae that he references in 2d(A) and have no reason to dispute what he says in that paragraph.

2d(B) His assertion as to why he did not take the stand in paragraph 2d(B) seems reasonable. There were procedural problems in how the judge handled the case and no judge should ever tell a jury to conclude anything from a defendant's exercising his constitutional right not to testify in a criminal trial. Nevertheless, whenever a defendant does not testify, for whatever reason, a jury is going to think he has something to hide. Therefore, while I have no reason to doubt MacRae's explanation as to why he did not testify, and while there were certainly imperfections in the judge's handling of the matter, those would be pure legal defenses which could be investigated and perhaps raised, although again, the fact that an appeal has already been taken and so much time has gone by makes it

unlikely that the supreme court or the federal courts would review the conviction. However, there does seem to be some substance in this paragraph as to legal imperfections.

3. MacRae seems to have the procedural process and likelihood of success correct in his paragraph #3. The likelihood of any success in state courts is remote and the way to get into the federal system would be from an adverse final state decision. If there is any hope, it is in the federal system, although I cannot see much hope. If this can be done for \$40,000, only Rosenthal would have been able to estimate how much he would charge and I have no reason to dispute it. The number seems low, however, given the degree of research, paperwork and the like that would be involved. Interestingly, MacRae has the motivations of all of those possible funding sources other than the Diocese to whom he refers correctly analyzed. You can't trust the press not to take off after Church hierarchy or raise the discussion of celibacy, church law, "cover-up", other archdiocesan and diocesan problems in other parts of the country. Those with particular agendas, whether canonists or priests on a tear after the Church as a unified evil, are not helpful in an individual case. Therefore, in a somewhat clever fashion, he is stating he won't take the money unless the "Diocesan leadership agrees that the situation is unjust and warrants such investment" which puts the Diocese in the position of saying this looks unjust and therefore providing the money or implicitly saying they don't think the situation is unjust which may not be accurate, either. He has thus used rhetoric to somehow get you in a logical box on the payment issue. I think the matter set forth in this paragraph as to Attorney Rosenthal needs to be verified in a conversation with Rosenthal and possibly in a conversation with Rabinowitz, as well.

4. As to the strain in the relationship with the Diocese, it was more than a strain before, during and after the 1994 trial as MacRae had Deible call Bishop Christian and threaten him, and call me and threaten me. MacRae said he would only use Koch as his lawyer and not anyone who was suggested in New Hampshire. While it is sad that Mr. Koch has passed away, he made it clear that he wasn't going to listen to any advice from anybody else on how to handle the case which was his right and they did everything they could to implicate the Diocese. I do not believe that Attorney Koch was treated caustically and with disrespect by anyone and Father Deible was clearly in a situation where he was threatening the Diocesan leadership.

MacRae is right that the public defender did not do a good job with his state appeal.

The material about Marcia Clark and the National Justice Committee is all news to me and I cannot comment on it other than to say that I can understand why the prison commissioner and the governor did not want to get involved in a circus on television.

The only thing we can do to verify anything about the Rosenthal situation would be to contact him as I indicated above.

As to the involvement of Father Scruton or anyone else at St. Barnard's or elsewhere, clearly there were several members of the clergy located at that church who had problems and it is impossible to discount that one or more of them may have been involved with one or more of the [REDACTED]. However, it is somewhat convenient for MacRae with all of his background of problems and prior activities before the [REDACTED] situation, to try to put blame off on deceased priests. The truth or falsity of these matters is impossible to determine, however. Certainly the timing of the [REDACTED] cases and other highly publicized cases in the country, including Porter, was not helpful to the environment in which MacRae was tried. Whether Ms. Rabinowitz seeks to avoid certain publicity or not is impossible to determine from the MacRae memorandum and would have to be verified with her.

MacRae is right that there is no hope of the governor and council commuting his sentence.

5. Much of this is just speculation about what more money would have done or would have not done. However, regarding the assertions that no one at the Diocese ever answered his questions as to whether we thought he was guilty, all the Diocesan priests I know of who discussed situations with him said was they hoped he was not. There was an extensive effort to identify everyone referred to by the [REDACTED] including the two priests in Hudson and I believe Bishop Christian identified who they most probably were. We did investigate everything that was suggested.

6. I think he is right that the sentence will not be reconsidered by the court as we have previously indicated to you. The decision made in 1996 as to helping was considered and rejected since we had already provided everything that we agreed to provide and I assume his quote of Jim Higgins' letter is accurate. However, the background to that was that MacRae wanted to control how the appeal was going to go and use our money to do it and the Church did not believe that it would be successful. It is apparent that the public defender did not do a good job for MacRae, regardless of the outcome.

In conclusion, MacRae raises a lot of new detail in this matter but the issues remain the same. I think the time has come for us to contact Rabinowitz and Rosenthal and get an independent reading on the situation. Otherwise, MacRae will continue to have you in a logical and personal "box" from which it is necessary to extricate you and the Diocese as soon as possible.

/ppd

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