

No ordinary prelim - Chapter 22

Hamilton Spectator
(December 15, 2004) --

The story so far

The legal team defending the Majore brothers has to work through a mountain of evidence gathered by two police investigations over nearly five years. The primary focus is on attacking the five witness statements at the core of the prosecution case. For the three lawyers, the way the police collected those statements becomes the heart of the issue. A royal commission examining a wrongful conviction has just questioned the methods police use to develop evidence from informants.

Who's who

Morris Lax - Hamilton scrap dealer killed in 1992.

Rose Lax - Daughter of Morris and Goldie Lax.

Lee and Neil Majore - Brothers charged with murder in Lax slaying.

Beth Bromberg - Hamilton lawyer representing Neil Majore.

John Abrams - Hamilton lawyer representing Lee Majore.

Larissa Fedak - Hamilton lawyer on the Majores' legal team.

Frank Harild - Detective sergeant who led the second team investigating the Lax homicide.

Bob Jamison - Police detective who worked on first team.

Typically, the judge at a preliminary inquiry temporarily bans the publication of the evidence presented there, in part to prevent potential jurors from forming opinions based on what amounts to a walk-through for the formal trial that usually follows. Later, after a trial has been completed, or there has been a decision not to hold a trial, the ban is lifted.

For the Crown, a preliminary inquiry is the first time its prosecutors roll out their cases in public, where witnesses are subpoenaed to testify under oath, where exhibits are entered into the public record. Since the hearing is a test only of the prosecution's case, the defence is not required to present its own evidence.

Typically, the Crown's prosecutor does not probe his or her own witnesses deeply, beyond establishing in a broad sense what their evidence will be.

In modern practice, defence lawyers commonly make the most of their right to cross-examine witnesses at preliminary inquiries, to flush out what the Crown's case will be, to test it for potential weaknesses and to establish a version of witnesses' evidence on the record to compare with other versions for inconsistencies.

The Majore brothers' preliminary hearing that started June 4, 1998, would eventually span 13 court days in total, running intermittently over two and a half months. Judge Peter Mitchell would preside over the case, which moved between the two old courthouses, one on Main Street East, the other on Hunter Street East, predating the opening of the modern John Sopinka Courthouse in operation at Main and John streets today.

Assistant Crown attorney Laverne Urban was appointed to prosecute the case, and as the date of the preliminary inquiry approached, the police officers who had arrested the Majores were quietly wondering how he was planning to handle the case. Urban had a reputation as a bright lawyer who relied more on his considerable intellect than on his preparation in such matters.

The police became aware that their witnesses had not been prepared for the case in the way the officers had become used to seeing. While it is wrong to coach witnesses in advance of their testimony, it is broadly accepted that they can be prepared for the experience of testifying and may review their own statements before taking the stand.

Urban, like most Crowns acting in preliminary inquiries, planned to put his witnesses in front of the court and expose them to the least damage possible. As in most preliminary inquiries, his examination of witnesses would occupy a fraction of the time that the defence lawyers would spend cross-examining the same witnesses.

As expected, the police and other Crown witnesses established the skeleton of the case -- one that would ordinarily have led to the foreseeable conclusion of a murder trial for Lee and Neil Majore. But the preliminary inquiry would turn out to be far



from ordinary.

The defence team's plan was to have senior trial lawyers Beth Bromberg and John Abrams handle the five main witnesses whose statements had led police to arrest the Majores.

Their hope was to find shortcomings and inconsistencies in what the various associates of the Majores had told the police, laying the foundation for the reasonable doubt they hoped to build later at trial, a doubt they hoped would lead jurors to acquit the Majore brothers.

Larissa Fedak, at that time a junior lawyer, would question detectives on their investigation, asking about what they had done and not done. Her job was to seek the foundation for another kind of reasonable doubt by bringing out alternative explanations or unexplored possibilities.

She hoped to exploit the time gap between the two police investigations and the difference in approaches between the two teams.

"I think there was a bit of a conflict in the whole investigation between different groups of officers who had different ideas -- different theories that they wanted to go with, but they didn't quite get it to the end, because something would put them off the case, and everything was readjusted," Fedak says.

"The whole investigation wasn't called the 'Majore investigation' or the 'Lax investigation.' It was called the 'Cameron investigation.'"

Brad Cameron had been the main suspect for about two years.

The decision to launch a full attack on the Crown's case by going after the main witnesses and presenting alternative theories created better opportunities for raising doubt, but it also complicated the preparations for the hearing.

In the jail on Barton Street, Neil and Lee Majore grew apprehensive as the date of their hearing approached. Both had been in jail before and they knew the routines. But neither had faced anything as serious as a murder charge.

Fedak would visit them regularly, briefing them on developments in their case and trying to raise their flagging spirits.

One of the alternative theories that the defence team planned to raise was the so-called conspiracy theory. Their hope was not necessarily to show that the business people involved with Morris Lax in an ill-fated, three-way copper deal were responsible for his murder -- an idea that had chewed up considerable resources but had never achieved much traction -- but rather that the police had not investigated the theory to its conclusion, thereby leaving at least a theoretical doubt as to how it would have turned out.

Fedak probed witness Frank Harild, one of the two detectives who had conducted the second investigation, on why it seemed he had not pushed Robert Waxman, Chester Waxman's son and one of the parties to the Usarco copper deal, when he went to interview him.

Fedak: "When you commenced the interview, you approached Mr. Bobby Waxman about dealings that created an indebtedness to Mr. Lax? You had confronted him about the indebtedness?"

Harild: "Yes."

Fedak: "And Mr. Waxman corrected you and said, 'perceived indebtedness'?"

Harild: "Exactly."

Fedak: "And he made you correct yourself?"

Harild: "Because apparently it was the other way around."

Fedak: "So Mr. Waxman told you that, in fact, Mr. Lax owed him money?"

Harild: "That's right."

Fedak: "And at that time you didn't truly believe that Mr. Robert Waxman was a suspect?"

Harild: "No."

Fedak: "And you tell him that you want to clear him so that you can clear everyone that was raised, to eliminate any defence issues?"

Harild: "Right."

Fedak: "So why would you tell him that?"

Harild: "Why not? I have nothing to hide from him."

Fedak: "So you're saying, 'We're only here because we think defence counsel will one day ask the question, Why didn't you

talk to Bobby Waxman?"

Harild: "Certainly. Certainly."

Fedak: "So you sort of say to him: 'Don't worry about it. We don't think it's you. We're just going to talk to you anyway, so play along?'"

Harild: "More or less, sure."

Fedak: "So you told him that you really weren't there investigating him. You just wanted to talk to him and sort of ..."

Harild: "... get a feel for what it was all about, and there was no doubt in his mind that he heard the scuttlebutt that was going around and he was actually very frank and open with us. It was an unannounced visit in the middle of the day, so we want his slant on it."

Fedak: "And then you asked him about the Usarco deal and he tells you that he heard Lax lost around \$2 million in that deal, correct?"

Harild: "That's what he says."

Fedak: "Did you ask him whether or not he got the copper, that his company, IW&S, received the copper?"

Harild: "No."

Fedak: "Why not? Why not confront him with that piece of information?"

Harild: "He's probably more aware of what's going on in the back rooms than I am and he would certainly be more aware, I would think, of what was involved in the Usarco dealing than I am or anybody ever will be. I don't know."

As they questioned the detectives, the defence team came back several times to the decision by police not to dig deeper into the so-called conspiracy theory.

The police believed that since an earlier investigation of the Usarco collapse by the RCMP's commercial crime section had not led to charges, that there was probably no fraud -- and a fraud was central to the theory. The defence lawyers were trying to show that the police may have dismissed the possibility of fraud too easily.

Bromberg grilled detective Bob Jamison on the issue.

Jamison: "There's nothing to show that there was actually a fraud. It's all speculation."

Bromberg: "Correct me if I'm wrong: you're the investigator. Wouldn't it be your job to find out?"

Jamison: "I'm not a fraud investigator and it's over my head, these frauds. I'm not a paper man in relation to that."

Bromberg: "And so you specifically didn't investigate whether or not there was a fraud involved in this bankruptcy?"

Jamison: "No, I didn't. Other officers had at other times and there was nothing to justify it."

Bromberg: "OK, and you would have thought that hearing from two people that (Morris Lax) was talking about going to the police about this, didn't connect it to the homicide at all and didn't merit your investigation on it?"

Jamison: "It made me think, but it wasn't enough. It didn't go along with the theory, obviously."

Jamison told Bromberg that the first team of investigators did not revisit the conspiracy theory for a combination of reasons.

The detective referred to the report by the RCMP commercial crime section following its investigation into the Usarco deal, a report that did not indicate a fraud in the copper trade.

Bromberg: "So that would be the specific report that you'd be referring to that caused you to believe that there was no fraud at Usarco?"

Jamison: "I didn't say there was no fraud. There was not a fraud to be proven, my impression was."

Bromberg: "I'm sorry. There was not a fraud that..."

Jamison: "There was no evidence to substantiate a charge of fraud."

(He said there was no investigation of which he had been aware after the RCMP report in 1990.)

Bromberg: "Would it be fair to say that you don't have a specific report to tell you that there was a conclusive investigation -- one that tells you there was no fraud?"

Jamison: "That's correct. I had indicated that to my knowledge, it wasn't proven whether there was or there wasn't a fraud. I'm not a fraud investigator. I was investigating a homicide, not a fraud."

Bromberg: "So as far as you're concerned, there might have been a fraud?"

Jamison: "It's possible, yes."

Bromberg: "And Mr. Lax might have been upset about the fraud?"

Jamison: "That's possible."

Bromberg: "And you've heard witnesses saying that Mr. Lax is threatening to go to the police about that fraud?"

Jamison: "There was indication of that."

Bromberg: "People telling you, in fact, that they had heard that?"

Jamison: "I believe that happened, yes."

Bromberg: "Wouldn't you think it would be important to have a specific investigation to find out if there was a fraud so you would know if there was a motive?"

Jamison: "A fraud of this nature, we, as a police department, we just don't have the financing or the equipment to handle it. It's a separate investigation and it would involve years of accountant work and we just are not capable of doing that, not with our financing."

Bromberg: "And that was the reason why you didn't investigate whether or not there was a fraud at Usarco involving Mr. Lax?"

Jamison: "That's not me personally."

Bromberg: "Is that the reason why it wasn't done?"

Jamison: "I would imagine so, yes."

Jamison said that whatever consideration there may have been for the conspiracy theory in the first investigation was set aside when another suspect had entered the picture: Brad Cameron, the former battery smasher who had worked for another man who leased space on the Lax compound. Starting in July 1994, informants had said Cameron was upset over work-related lead poisoning and money he felt he was owed.

Cameron would be the focus of the investigation for the next two years, before being cleared outright. The detective agreed with Bromberg that the conspiracy theory had been set aside because the police had never taken it very seriously anyway, and because Cameron, whom they considered a more viable suspect, had come into the picture.

Rose Lax remembers her brief turn in the witness box as a very difficult but very important time.

She declared there, publicly, that she had once wanted to believe Chester and Robert Waxman had had a hand in her father's death, and that she had since given it up.

Rose knew her practice of presenting theories as facts and holding back information from the police had impeded the early stages of their investigation.

"It was the wrong thing to do, for a lot of reasons," she said during tearful testimony, which was marked by long, uncomfortable pauses.

She said it had been true that her father and Robert Waxman had been having "pretty bad arguments" around the time of her father's death, but that she didn't know what they had been about.

Beth Bromberg asked Rose if she wanted it to be true that Neil and Lee Majore had killed her father.

Rose Lax: "No. Actually, I wanted it to be true that Chester Waxman and Bobby Waxman and some huge conspiracy, that would be befitting a man like my father, would be true. That's what I wanted to be true. I didn't want to believe that two scrap cowards killed a man like my father. I wanted to believe that Bobby Waxman and Chester Waxman killed my father."

Bromberg: "Who do you believe now about who killed your father?"

Rose Lax: "I don't know. That's why this (hearing) is going on. I no longer believe that Bobby Waxman and Chester Waxman killed my father."

Bromberg: "So you believe it was a robbery?"

Rose Lax: "I don't know. That's what this (hearing) is for."

Early in the preliminary inquiry, Detective Sergeant Frank Harild, who had led the second investigation, and Fedak found themselves in a lively exchange over the Cameron investigation. She was working to establish that Cameron had been as viable a suspect as the Majore brothers. Harild was working to show that Cameron had been justifiably cleared after police had picked him up in the Yukon and brought him back to Hamilton for a voluntary polygraph test, which Cameron had passed.

Fedak: "Why didn't you charge Brad Cameron?"

Harild: "With what?"

Fedak: "The murder of Morris Lax."

Harild: "Because he didn't do it."

Fedak: "All right. What makes you say that?"

Harild: "Show me one shred of evidence. I would have (had) unsubstantiated hearsay opinion from friends."

Fedak: "So after these two years of investigation, you felt you had no evidence against Brad Cameron, yet you go out to arrest him and bring him back to Ontario?"

Harild: "What do we have on Brad Cameron?"

Harild said the statement from Randy Mulvihill recalling a full confession by Cameron was flawed and had been motivated by Mulvihill's quest for the reward. Fedak reminded him that Cameron's former wife had said Cameron threatened to kill Morris Lax because Lax owed him money, and that she had passed a polygraph test. She reminded him that the police did not ask any of the five main witnesses against the Majores to take polygraph tests.

"The fact of the matter," Harild said, "is we had nothing that I could use in a court of law to arrest Brad Cameron. I mean, there wasn't even a shred of anything we could call reasonable and probable grounds or evidentiary value. And Brad Cameron is taken by surprise (in the Yukon) and he's in a situation where he denied it vehemently -- and, again, you have to be there to see this -- and we gave him options to take the easy way out. He insisted on taking a polygraph. Again, you have to be there."

Contact Wade Hemsworth at 905-526-3254

or whemsworth@thespec.com (mailto:whemsworth@thespec.com)