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Preparing the defence - Chapter 21

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The story so far

The police collect statements from two more people implicating the Majore brothers in the killing of Morris Lax. With five such statements, but no physical evidence, detectives Harild and Kavanagh take their case to the Crown attorney, who OKs second-degree murder charges. Lee and Neil Majore are arrested in Smiths Falls in October 1997 and brought to Hamilton to wait in custody for a preliminary hearing.

Who's who

Morris Lax - Hamilton scrap dealer who was killed at his business in December 1992.
Lee and Neil Majore - Brothers charged with murder in Lax slaying.
Beth Bromberg - Hamilton lawyer who represents Neil Majore.
John Abrams - Hamilton lawyer who joins the Majore brothers' defence team, representing Lee.
Larissa Fedak - Hamilton lawyer hired as the junior member of the Majores' legal team.
Frank Harild - Detective sergeant who led the second team investigating the Lax homicide.

Pulling it all apart from the framework in which the police had organized it for their investigation and reshaping it into something they could use to mount a cogent defence was a challenge even greater than in many other murder cases, where the burden on prosecutors and defenders alike is perhaps the greatest in criminal law, because the consequences are so profound.

Beth Bromberg had been the one to take the call about the Majore brothers being arrested in Smiths Falls in October 1997. By then it was not completely surprising to her or to the brothers that they were being charged with the murder of Morris Lax.

There had been many suggestions that the police were looking at them as suspects -- suggestions that had come both directly from the police and indirectly from others who had been approached by the police and who had reported back to Neil and Lee.

Still, enough time had passed that the brothers had dared to hope and had even begun to presume that the police had moved on to other suspects.

Bromberg, a busy downtown Hamilton defence lawyer who also does some work as a Crown prosecutor, knew the Majore brothers very well by the time they were charged with murder.

She had represented each of them several times on other criminal matters that had come up during the five years they had lived in Hamilton -- most of them related to driving offences, some to drugs and some to property crimes.

Neil and Lee Majore had become so familiar with her that they knew her telephone number by memory.

Bromberg, who manages to be both intense and pleasant at the same time, had developed a large client base over the course of her career.

She had known since she was a girl that she wanted to practise law.

"I had a very idealistic view of working for justice, and I'm still idealistic," she says. "I like to work with people, and it may sound trite, but I like to help them. It turns out that I deal with the most disadvantaged and disenfranchised people. I was always interested in working with and helping disenfranchised people achieve justice, and I knew from a very early age that that was what I needed to do."

The work of a criminal lawyer can test one's idealism.

"It's a day-to-day struggle because you are most often working with people who are guilty. You review the case and you can

see very easily that the Crown can prove the case, and you're working on getting them help before sentencing and working on making sure the sentence is fair. It can become tiring seeing the same person getting into trouble the same way over and over again. You try to help them get on the right track and make sure that what happens is fair and that they are working toward their rehabilitation."

Bromberg's practice is divided evenly between clients who have the means to pay privately and those who rely on Legal Aid to fund their defences. The Majores, with their subsistence lifestyle, fell onto the Legal Aid side of the books.

When Bromberg learned on Oct.7, 1997, that both had been charged with murder, she knew immediately that she could not represent both. She had a potential conflict of interest on her hands. What if the evidence against the two brothers was completely different? What if they said contradictory things about what had happened or not happened? What if a deal were offered and one brother wanted to take it while the other didn't?

"You don't know what the evidence is going to be, and you don't know what the defence is going to be," Bromberg says. "If you're working on a case and one accused says, 'He did it and I'll testify to that,' you can't defend both of them. Or if the cross-examinations were to go in such a way that I had to point to one brother as being the actual person who committed the crime, as opposed to the other brother, you can't defend both interests equally vigorously.

"In our case, both brothers were saying: 'I didn't do it. I had nothing to do with it.' Their defences were identical. But as you go through the disclosure and as the case progresses, you don't know what may come up, so they must each have their own counsel who will be 100 per cent committed to defending their interest only."

To avoid a conflict, Bromberg called in a friend, John Abrams, a criminal and immigration lawyer whose office over Tailgate Charlie's at John and Jackson streets was just steps away from Bromberg's in the squat legal building beside the Tim Hortons on Jackson Street.

Abrams, a very bright man whose tranquil manner masks a sharp wit, had applied to medical school, business school and law school after two years in university. Law school was the first to accept him, so away he went.

"Even most of the way through law school, I still wasn't sure I wanted to be a lawyer," he says with a smile, before turning serious. "It sounds a bit hokey, but I like solving people's problems. They come to me with seemingly insurmountable problems -- either criminal or immigration -- and it's nice to be able to sort them out. They come to you sort of desperate and you can help them to see light at the end of the tunnel and get out of it."

Bromberg left it to the Majores to make the decision on which of them would remain with her and which would go to the less familiar Abrams. Lee had always been the protective elder brother, and he volunteered to let Neil stay with Bromberg.

Before the team could begin in earnest, however, there would need to be more help. Legal Aid would not fund a separate junior lawyer for each of the defendants, but it would pay for them to share one.

At that time, Larissa Fedak was just starting out as a criminal and family lawyer. She had been drawn to the profession after being treated discourteously by a succession of lawyers on a family court matter. She felt clients deserved better treatment and determined that she would try to do better. She had left behind eight years of university-level study in mathematics and science and switched into law school at the University of Toronto, and took to the new discipline naturally.

"I went to four different lawyers and I didn't like any of them, so I applied to the University of Toronto law school and became a lawyer. I just had this belief: if someone comes to you as a lawyer, you should give them an answer. One way or another -- good, bad, or indifferent -- give an answer and a direction and go with it.

"In science, there was always a direction or an answer, and when I went to a lawyer, I couldn't believe there wouldn't be an answer, a strategy, a level of confidence, so I changed my career path and went to law school and became a lawyer."

Fedak was eager to get involved in a murder case, but it wasn't easy.

Before they put junior lawyers to work on murder cases, most senior lawyers want them to have experience working on other murder cases, which means the first one is the hardest to get. Fedak had been offering her services everywhere she felt there might be a need.

She called Bromberg and Abrams, and the timing of her call put her in the perfect position to be hired on as the third member of the defence team.

"I didn't know any other way to learn it, so that's what I did. When I heard that they needed help, I said, 'Can I help?'"

Fedak, an athlete who trains regularly, was known to apply the same intensity to her work as a lawyer, and had strong organizational skills -- qualities that were essential to working on a particularly complicated murder case.

A review of the case and the evidence showed there was no conflict of interest and it also turned out that there was no conflict between the brothers' defences, so their lawyers could prepare their defence together.

The three would be entering one of the most intense periods of their careers, one in which their combination of personalities

and approaches would serve them well.

One of Fedak's primary duties was to organize the material for the defence. Each morning at 8:45 she would appear at the central police station downtown to go through the police files on the case. In a criminal trial, the Crown is required to disclose its evidence to the defence. In practical terms, it means that the defence must gather that evidence from the police and copy it.

Because the Lax investigation had covered nearly four years, involved two separate teams of detectives and had explored many theories, the evidence was not all stored in one specific place at the police station, nor was it all filed under the same heading.

The bulk of the boxes, Fedak says, were then labelled "Cameron," since Brad Cameron had been the leading suspect for so long. The police were helpful and courteous, the lawyers say, but finding all the information was a task for everyone.

Even for a murder case, the Majore case was complicated. There were many layers to sift through and the information had to be organized in such a way that the lawyers could duplicate the police investigation and then try to find holes they could use to raise at least a reasonable doubt about the guilt of their clients.

The Majore brothers had been absolute in their mandate to the lawyers: they would not plead guilty, they would not admit any lesser offence and they would not take any deals. Their clear and simple defence was that they had not been there and they had not killed Morris Lax.

Having such a categorical direction from their clients made the job of the lawyers easier as they combed through the mountain of information.

"The best part was that the clients were consistent in their instructions, which is always a godsend to a lawyer," Fedak said. "You don't have to weigh a deal as opposed to going ahead. We had our one focus, which I really liked. The defence was, 'It was not us.' That was great. You hardly ever get that."

The lawyers drew up flow chart after flow chart, lining up the people, places and times, trying to piece together the witnesses the police had spoken to, what they had said, when they had said it and why.

But all the files needed deciphering and organizing to fit the work they were doing. Fedak remembers papering the walls of her home with Post-It notes to help her visualize the investigation, the supporting information and the allegations.

"It's sort of like if you had gone to university for a year and put all your notebooks in boxes and you had some of your friends' notes in there too, all in different boxes, and someone had to go back and look at it all, not knowing what courses you took, not knowing that some of those were your friend's notes and that you hadn't bothered putting his name on them, but it had some connection somewhere," Fedak says. "That's what it was like. Some of them were just coming out of their little binders, so you put them all on the ground and started looking. It was like someone finding the notes for several different courses you had taken in university, and it had been put away and was covered in dust and no one really knew how it all got arranged to begin with or whether that was all of it, and it was your job now to do an exam on all the courses. That's what it felt like.

"That's what made it so stressful. You knew the end result you had to have and you knew the beginning, and at first you couldn't see the rest. It was just too much. But once we got it honed down, it got simpler and simpler and simpler and it didn't seem so bad."

The lawyers met often in the boardroom of Bromberg's office on Jackson Street East, organizing, deciphering, and plotting strategy.

"We had to put together the investigation many different ways," Bromberg says. "We had to look at it together, chronologically, to figure it out. Where did they go wrong? What caused what to happen, in what sequence? When they'd go to a witness, what prompted them to go to the next witness? What happened in between? You'd have to compare one officer's notes with the next to put together a gigantic web of how the whole thing transpired, to figure out what caused what. We had to compare the notes, for example, between the different investigations. We had to look at the different investigations.

"They did a good job of giving us all the disclosure, but it's not like they put it all together for us to say, 'This is the evidence and these are the defences and these are the other suspects.' We had to figure all that out."

The defence team developed a trial book that summarized every issue, every witness and everything they had said to police and everything that had been said about them, so that from the index they could instantly access the information from any angle during cross-examination.

While there were many angles to the case, the prosecution came down primarily to the five witnesses who had attached the Majores to the murder in one way or another: Phil Martin, George Conohan, Diane Schneider, Mike Vienneau Jr. and Randy Raworth.

"The evidentiary obstacles were those five witnesses," Abrams said. "They were the only ones who had any incriminating

evidence to give. Those were the main focus. The big obstacle was the volume of the material we had to get through."

With the organization complete, the lawyers went through the whole investigation together and split up the witnesses. Bromberg and Abrams would take the civilian witnesses whose statements had implicated the Majores. Those witnesses had the potential to contradict their previous statements or to break down altogether, so they became the responsibility of the more experienced trial lawyers. The detectives were going to be Fedak's primary responsibility. The officers' evidence was more predictable, since the lawyers had copies of their notes to review. The strategy was to explore as much information as possible at the preliminary inquiry, even though such hearings almost always end with a decision to go to trial.

Rather than throw up all the alternative theories the police had investigated, the lawyers decided to simplify matters by concentrating on the two most prominent: the Brad Cameron theory and the so-called conspiracy theory, sometimes called the hit theory.

The defence team's hope was to show that Brad Cameron was a plausible alternative suspect and that the hit theory had not been investigated sufficiently for it to have been dismissed outright.

"We were never going to say, with any of the alternative theories, 'This is what happened,' " Bromberg says. "We were going to say, 'This Cameron theory is just as plausible, maybe more so, because there's no evidence against the Majores.'

"In terms of the Usarco connection, we would never have pointed the finger at them. We would have looked at the quality of the police investigation about them. That's where the cross-examination of Detective Jamison came in. He went so far as to say, 'We didn't have the money to do that kind of investigation.' We would have said, 'There were other theories that weren't properly investigated and who's to say what happened?' "

With Cameron, they hoped to show that the police investigations had shown him to be as viable a suspect as the Majores because the detectives had used the same techniques and gathered statements of similar weight against Cameron as they had gathered against the Majores.

"There were statements where Brad Cameron did it, using the same technique of investigation: presenting a statement that said so-and-so said, 'You did it,' to try to get a statement to come out," Fedak says. "It was important that if it did go to a jury, the jury could see that sometimes people could point the finger at another person and say they heard all these things, because that happened a number of times," Fedak said.

The police had talked to one person who said that Cameron, for example, had made a full confession, compared to others who had said the Majores confessed partly or indirectly.

"The whole point is that from the get-go all those were possibilities and none of them was any less probable than the Majores," Fedak says. "There's nothing more compelling about just picking the Majores or just putting everybody else on trial. There's nothing more that I saw through this whole thing. You could have run it on Brad Cameron -- though I wasn't convinced it was him, either."

The methods of the police -- making repeated visits to the same witnesses, making especially provocative statements to some of them to elicit responses -- were the heart of the issue to the lawyers.

With no physical evidence to back up the statements -- since none existed -- the issue was whether they had been too aggressive or too suggestive.

"Harild's theory was to shake the trees again five years later and see if anything new fell out," Abrams says. "The difficulty was that without any physical evidence to corroborate, it becomes very dangerous to rely on just the statements of these various witnesses trying to remember."

The other side of the equation was that the police might simply have been using the best tactics available in the circumstances -- given that they were dealing with a circle of friends who were familiar with police and may have done almost anything to avoid sharing information with the investigators.

"The process of how they investigate to get witnesses, perhaps, to say certain things -- they don't make the witnesses say it, but they have a way of investigating that seems to always end up in the same result: someone points a finger at somebody," Fedak says.

She says the police would box in their witnesses by telling them it was either them or the other guy, and the witnesses would naturally say it was the other guy.

"You offer up your buddy on a platter because you just don't want it to be you."

Though the Crown's case boiled down to the five acquaintances who had said they heard or saw things that implicated the Majores, the defence team's decision to probe alternative theories made preparations significantly more complex.

"At its nub, the case came down to five witnesses who claimed to hear different things. In that sense, it was very simple, but there was all this extraneous material we had to work through, first of all, to find out what was of value and what wasn't,"

Abrams said. "We could have made it a very simple case essentially by allowing the Crown to call its witnesses and trying to destroy those witnesses. What would make it really complicated was to try to also bring in one or two, or even more, alternative suspects."

As they went through the material, the lawyers started to make discoveries they considered to be very important.

Those discoveries linked to others.

"What was exciting was going through all this stuff and coming up with nuggets of evidence that contradicted the Crown's case, or that we could use to impeach the Crown's witnesses, and especially finding more angles to point at other suspects," Abrams says.

"It was satisfying," Bromberg remembers. "Every time we did something, we got feedback. We got a result. Every time we looked at more disclosure or went deeper into the investigation, we got another beautiful nugget we could use. We got feedback. It wasn't drudgery. Moment by moment by moment, we were finding more stuff that we could use."

Soon, the lawyers were convinced they were working on a case that carried with it the possibility of a miscarriage of justice, potentially along the lines of David Milgaard, Donald Marshall or Guy Paul Morin. All three men had their murder convictions overturned years after being sent to prison by Canadian courts.

Former Quebec appeal court judge Fred Kaufman led a royal commission that examined the case of Morin, who had been convicted of murdering his young neighbour Christine Jessop. The Durham man's 1992 conviction was based largely on statements from jailhouse informants. Kaufman's influential report called for stricter standards for investigative procedures, particularly concerning the motives and reliability of informants. It questioned methods police had used to develop evidence from informants.

The report, released in April 1998, was fresh in the minds of lawyers and judges alike around the time of the Majores' preliminary inquiry, which opened two months later.

The Majores' lawyers referred frequently to the report as they prepared for the preliminary inquiry, as a reference on how far Kaufman thought police procedures could go before they became counterproductive.

In a climate where Milgaard, Marshall and Morin were being called the Three Ms, the Majores' lawyers became convinced they were facing a potential fourth, and they pushed harder.

"That's why we all became defence counsels: we had a belief that sometimes people were wrongfully convicted, and that's what we were working on. We had a real one," Fedak says. "This was extremely exciting. The case for the Crown did not seem strong. Our clients were adamant and that just gave you 100 per cent energy to keep going."

The defence team's strategy for the witnesses who said the Majores had made incriminating statements was to find out why those witnesses would lie, or to establish that they were mistaken.

Fedak would try to find out why the police seemed not to have followed up all the threads of the investigation to their conclusions.

Lawyers are usually reluctant to discuss their personal opinions about the guilt or innocence of the people they defend.

As Abrams points out, it's not a personal matter. It's a professional one.

"You often get clients who say, 'You believe me, don't you?' The right answer is, 'It doesn't matter whether I believe you or not, because what I believe doesn't matter,'" he said. "It's what we do with the evidence."

But this case felt different to the Majores' team.

"I did believe them," Bromberg says. "It's important, though, to remain as dispassionate as possible in order to be absolutely objective and not become so embroiled in the case, in the humanity of your clients, that you lose your objectivity. So as much as I believed them, I was able to keep some distance and some objectivity. I did feel very, very passionately about this case and that they weren't guilty."

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