
Thunder Bay Trip - Personal Journal

April 20-22, 2009

Student's Name: Megan Vuksic

Project Assignment: Ontario Justice Education Network (OJEN) Jury Project

Thoughts and observations of Megan Vuksic, student in the Constitutional Rights course. Megan completed a placement with the Ontario Justice Education Network researching and developing resources on the issue of Aboriginal people participating in the jury process. As part of the placement, Megan facilitated an OJEN justice education project at a high school in Thunder Bay in April, 2009. Details, similar projects and photos can be found at www.ojen.ca.

Monday, April 20, 2009

I woke up at 3:30am this morning to catch a 6am flight from Toronto to Thunder Bay. The flight went smoothly and I arrived at the Thunder Bay airport in plenty of time to grab a coffee and take a taxi to Dennis Franklin Cromarty High School. The students at this school are all aboriginal kids from remote fly-in communities in northern Ontario. Their reserves have no high schools, so they come to Thunder Bay and live with boarding families while completing their education. My mock jury trial will be presented on Tuesday and Wednesday to the "Current Aboriginal Issues" class in Room 107 from 9:15am-10:30am. Thursday and Friday, when I'm back in Toronto, they'll learn about sentencing. Teacher (and my contact at the school) is Tara Beacham.

I'm by myself! It's my first business trip ever and although I'm neither a lawyer nor an educator, somehow I'm in charge here. I've spent hours over the past few days setting up a detailed schedule for the week and prepping for this first Monday class. (Note: I'm pretty excited about getting my own hotel room. Thinking about it, I've never actually had a hotel room to myself before!)

"Prepping," means getting ready for the Justice 101 session that took place during this morning's class. Justice 101 is a name coined by OJEN; it refers to a student education initiative in which students get to interact with justice sector participants. As the OJEN facilitator, I was responsible for deciding on the content of the lesson. Obviously, I picked "roles in the justice system" and "how a trial works" so that the students would

have some background understanding before taking part in the mock jury trial on Tuesday and Wednesday. The goal of this session was to recruit as many justice sector volunteers as were able to come in. My job was then to moderate an informal panel discussion so that all the necessary information emerged during the course of the session. The justice sector volunteers who came today were Justice Zelinski, a retired judge of the Superior Court, Bobbi-Jo Freeman, a probation officer and former corrections officer and Simon Owen, a Thunder Bay defence lawyer. The session alternated between substantive teaching (done by me), anecdotes and information from the volunteers, time for questions and some practical activities.

The first thing that struck me when I got to the school was that everyone was late (except the justice sector volunteers). Class starts at 9:15 but the students – only 5 of them! – trickle in anytime between 9:25 and 9:30. One came at 10am. The atmosphere at DFC is very different from that in most high schools – schools I am familiar with seem almost military by comparison! Classroom doors are always open and kids are free to eat, wear hats, read the paper and wear earphones. It kind of makes sense – after all, these kids grew up in remote communities and reserves in northern Ontario, where schooling was more informal. I met some (although not in my class) who aren't yet fluent in English.

Sarah (Executive Director of OJEN) and Tara the DFC teacher had prepared me beforehand for some of the cultural differences I'd encounter at DFC, in terms of the way students react (or don't react in many cases!), process information and engage with material and questions. S and T told me that many of these kids might not seem to be responding and would not actively engage, but that I should be confident they were taking it in and considering it thoughtfully. I did think the kids were quiet today. But then at the end of the class, Tara told me she'd never seen her students so animated!

I dutifully covered everything the students would need to know for the next two days – they're going to be the jury in a mock trial conducted by real Crown and defence counsel in front of Justice Zelinski. We talked about the presumption of innocence, direct and cross-examination, reasonable doubt, the Crown's burden of proving the case, the various players (lawyers, judge, clerk, court reporter). I had a picture of the layout of a courtroom, and, as we talked about the different roles and processes that arise in a criminal trial, I had the students rearrange the classroom to mimic the set-up of Superior Court of Justice.

Most of the student interest during this first class (and remember, I had thought there wasn't much) focused on two areas: (1) sentencing and (2) jobs in the justice system. I had come prepared with a lot of questions/anecdotes, thinking the students might not be very vocal. When I asked them how they felt about the fact that a person's sentence might depend on available community resources (so that a person from Deer Lake might get a different sentence from a person convicted of the same offence in Toronto), they reacted pretty visibly to the idea of arbitrary environment-based punishment.

Once Bobbi, Simon and Justice Zelinski started sharing more stories, the kids became interested in how these volunteers had come to hold the jobs they did. We talked about

how some careers are accessible without much schooling (clerk, court reporter). OJEN has a lot of materials on different justice sector careers, so when I got back from class, I told Sarah (who will be teaching the class on Thursday (24th) and Friday (25th)) to bring some of these materials to Thunder Bay with her.

Overall, the class went pretty well. Walking home, I thought about why the students might have been, according to Tara, more animated than usual. After considering all the purely strategic answers to that question (changing topics/speakers/activities at least once every 10 minutes, opportunities for visual or hands-on learning, etc.), I decided that at least part of the engagement had to do with the fact that most of those youth had been touched by the justice system in some way – usually negative. They want to let lawyers and law students know that they have this familiarity with the justice system and they want to make sure they are recognized for their bit of expertise. It's poignant that for some students, negative experience in court is a source of pride. It reinforces the importance of OJEN's task, both in general and in this particular project – giving students who otherwise view themselves as people to whom the justice system “happens” the opportunity to engage positively with that system.

Tomorrow is the first half of the mock jury trial. The lawyers will give their opening statements and the jury will hear all the witnesses. I get to be the clerk.

Tuesday, April 21, 2009

Today was the first day of a fictional trial for a young person “Dylan Desmoulin” - charged with assault bodily harm against the unfortunate (and also fictional) Grade 9 student Jared Kakebanik. Justice Zelinski presided, Neil McCartney appeared for the defence and Trevor Jukes for the Crown. Our 5-person class – slow to arrive, like yesterday – made up the jury. Due to the last-minute non-arrival of one of our volunteer witnesses, Jared Kakebanik ended up looking much more like a female law student from Toronto than a Grade 9 boy from Sandy Lake reserve.

One of today’s goals was to impress the students with the formality of the justice system – formality being, of course, symbolic of the fact that concepts like “justice” and the “fair trial” are important in Canadian society. We wanted to make sure they understood the magnitude of the jury’s role in this setting.

So the lawyers were wearing their robes, Justice Zelinski has his robe and sash, the student jury had reluctantly removed their headphones and hats and everything was going according to plan. Until His Honour fell backwards off his makeshift dais into a cupboard full of art supplies. (Note: This is an art room, and the Justice is 76 years old.) I was convinced that he’d broken a hip and that my legal career was over before I’d even graduated, but thankfully no injuries were sustained. Apparently this wasn’t even the first time in his career that Justice Zelinski had falled off a dais, which might explain why, as he tipped over, he cried out “Not again!” The only real harm may have been to the dignity of the proceedings; watching a fully turned-out judge topple over seems kind of like a metaphor for “The Downfall of Justice!” or something equally dramatic.

The trial proceeded smoothly after that. The main issue was identity: Jared Kakebanik had picked Dylan Desmoulin out of a photo line-up and identified him as his attacker. Only problem was that the attack took place in the dark and Dylan swore he was playing basketball at the rec centre at that time. I was happy to see that the scenario was fairly evenly balanced, with cases of similar strength on both sides. I was also happy to see the jury remain fairly attentive.

I was in an interesting position because, in test-running this scenario at the Faculty of Law’s Aboriginal High School Student conference last Friday, I’d had to play the defence counsel. Today, playing a Crown witness, I was cross-examined by a REAL defence counsel and was humbled by how much more effective his cross was than mine had been last week. I think I learned as much about trial advocacy today as I did about justice education. The other fascinating thing about playing a witness is experiencing first-hand the stress of cross-examination. No matter how sure you are that you saw/heard/knew something, a good lawyer can make you doubt yourself. If a law student who technically knows many of the tricks involved in oral advocacy felt this way, imagine how a real witness without any legal training would feel?

I want to connect this last thought with a point I made yesterday – that these aboriginal students from fly-in reserves have a method of learning that differs from that of many

other students. They may process information differently and react differently to rules and questions in the classroom; as a result, their school has developed a different atmosphere and operates at a different pace. If this is true, how can we ever expect these students to present as capable or believable witnesses in a western-based court proceeding, with its rapid questions and its emphasis on demeanour? The same reactions that might make an educator think an aboriginal student wasn't paying attention in class might lead a jury to think that this person, as a witness, was being evasive or dishonest.

We had a question period after all the witnesses had been called and we asked the students how they felt about the adversarial process and their thoughts on whether examination and cross-examination were the best ways to get the truth from a witness. They weren't as talkative as yesterday, and we only got a few non-committal responses. At least they were paying attention to the trial.

Tomorrow, we have closing arguments and the charge to the jury, after which the jury gets to deliberate and render a verdict.

Wednesday, April 22, 2009

Dylan Desmoulin is guilty!

If I had to rank the days of this trip as more or less “successful,” I’d say that today was the least successful, in terms of apparent student interest and involvement in the project. Half our jury actually didn’t show up today. We waited, but our lawyers eventually had to get to court, so we convened with a two-person panel. Students gradually trickled in after that.

I think the important thing to remember is that lack of attendance today in no way detracts from the fact that students were interested in the project during the past two days. Tara told me that yesterday, after the morning trial, members of the class kept coming back to her between periods to talk about the project and offer their opinions on Dylan’s guilt. She even heard two of them talking about the trial outside during recess. It seems like they just needed to process and weigh what they heard yesterday from the witnesses and the lawyers on their own time. Interestingly, this might explain why there wasn’t as much interest in today’s half of the proceedings. If the students really put so much energy into thinking about the trial and the evidence yesterday, and had already drawn their conclusions, the exercise of listening to closing arguments and sequestering themselves for deliberation could have easily seemed redundant and forced.

One of the reasons I think today might not have gone very smoothly is the fact that the proceedings were less attention-grabbing. The closing arguments and charge to the jury meant the students had to sit for about half an hour just watching, not interacting. This carries interesting implications re: how much information a REAL jury retains. When you are a mere observer, unable to ask questions or even take notes, is it ever realistic to expect that a trial will hold your attention?

The jury was out for only about 6 minutes – which was kind of what I expected. I think many of the students did just want to get the process over with, although there was one in particular who I think struggled with the concept of certainty beyond a reasonable doubt. They returned with a guilty verdict.

Interestingly, when we ran this scenario last Friday, the students also found the accused guilty after a very short deliberation. I wonder if this is coincidence or a sociological pattern. One lawyer told me that some lawyers actually try to avoid aboriginal jurors when the accused is himself aboriginal; they are perceived as being harsher judges when it comes to members of their own community.

In general, speaking with counsel about jury selection has been one of the more informative parts of this trip. Stereotypes tend to govern selection. Race is not the only thing that can keep a person off a jury. Apparently some defence counsel try to avoid doctors and teachers as well. Teachers especially, said one lawyer, like to dole out discipline and are very good at taking control of a room. So not only do they think the accused is guilty, they are able to impose this view on other members of the jury.

That discussion, and the way the DFC students have interacted with us in general, made me wonder about the constitutional challenge which claims that aboriginal under-representation on juries is a violation of the accused's right to a trial by a jury *of his or her peers*. Do we want this because it will give rise to more favorable results? There is no evidence that an aboriginal accused is more likely to be acquitted by a member of his or her own race. Maybe we want aboriginal representation simply because it increases the likelihood that certain cultural truths will be recognized and taken into account. But is this actually true? If the adversarial system and the jury trial are processes that aboriginal communities have not adopted as their own, will an aboriginal person ever feel empowered enough to bring their cultural concerns and observations to the table in this forum? What guarantee are they given by our justice system that these cultural intricacies will matter or be taken into account?

Maybe this shows the importance of justice education. Clearly, putting a native person on a jury is only half the battle. If that person is going to bring something to the process, only a background of understanding and respect for the justice system will make it worth it to them to do so. If this mock trial accomplished anything, it might be laying a foundation for this kind of understanding.

I have to check out of my hotel now. Back to Toronto and studying!

Addendum – by OJEN

Following Megan's facilitation of the mock jury trial, the students sentenced Dylan, first in a conventional court-based process and then on the Friday in a sentencing circle. On the Thursday all five of the original juror members showed up and debated the appropriate sentence. Some students argued for a rehabilitation approach and some thought that Dylan needed harsher punishment. The discussion revealed, as Megan hypothesized, that the students had been thinking carefully about the case. On the Friday, students were randomly assigned roles in a Sentencing Circle, some playing the family and friends of either the offender or the accused, others playing community members such as Elders or youth workers. The lawyers who had argued the trial also played different roles. Two additional students who had heard about the week-long project joined the class. The students discussed the different approaches and saw benefits and drawbacks to each. At the end of the class each of the volunteers were given a painting done by one of the students in the Art class. Students received a certificate of completion from OJEN. They stayed behind after class ended asking more questions. Most importantly, they asked if OJEN would come back next year to do the program again!