

Nova Scotia

Justice Denied

Despite the media preoccupation with getting a "story" and then going on to the next one, and the next one, and the next... there are some stories that simply won't go away. That's because, for better or for worse, wrapped up within them are the bitter truths of a society, a people or a civilization and, like the mythical serpent which sprouted two heads when one was cut off, they reappear with greater frequency the more avidly we try to destroy them.

The sad tale of Donald Marshall Jr. is such a story. Drawn into one tragic amalgam are the elements of murder, racial intolerance and bigotry, the perceived corruption of a justice system, a plethora of wrong decisions, and the suppression of evidence. All this is set against the backdrop of the poverty of a decaying Cape Breton urban landscape peopled by a society that increasingly has little to offer its youth, and a native population ground into despair by centuries of poverty, neglect, and the destruction of its spiritual and material basis of life.

Forgive me my extreme bleakness, but I find little which is uplifting in this 'story' where an innocent man was sent to a maximum security prison for over a decade of his young life. The problem continues to fester like a blister which refuses to be properly lanced. If there is any sign of optimism it might be in the results of the recently completed inquiry into the matter, which has yet to release its findings, and in the film, *Justice Denied*, shot this past Fall in Nova Scotia. If there is anything to be gained from this tragedy it might be an awareness of the circumstances which permitted it to happen and perhaps, an ability to avoid its repetition.

Produced by Adam Szymansky and directed by the NFB's Paul Cowan, a man who has never shunned controversy (*See No Evil, The Morgentaler Affair*), *Justice Denied* is a curious sort of film. While not a documentary (it is based quite closely on Michael Harris's book of the same name) it nevertheless features some of the real characters of the events which transpired. These include Donald Marshall, Sr. and his wife in their roles as the parents of Donald Marshall Jr.

In a series of conversations between set-ups in a north-end Halifax bed-and-breakfast, which was serving as a location in the film, Cowan told me that the close involvement of the Marshall family was a key to the successful production of the film. In the course of researching the film he spent a great deal of time with them on their Micmac reserve which has been swallowed up by the ragged sprawl of urban Sydney. While introductions had been formal and tentative

(they flew in a mutual acquaintance from New Brunswick especially to introduce Cowan to the Marshalls), once accepted he was welcomed into the house cum drop-in centre where people were continuously coming and going, preparing meals, sleeping, talking, partying and getting over hangovers. This acquaintance led to his eventual decision to cast them in the film. "In fact I think they would have been disappointed if I'd had anyone else play them," he adds. Their shyness and lack of familiarity with the film process led to some difficulties, however. Cowan ultimately had them play many of their scenes in Micmac since he found that they could only feel at ease in front of the cameras when speaking their native language.

In the background, first assistant director John Houston, pale as a sheet, is climbing into a coffin, "To call the shot from beyond the grave," according to amused crew-members. Hands crossed over his chest he explains that his role as a corpse is incidental to the main action of this scene in which the RCMP investigators arrive at a home to question a woman about the murder of Sandy Seale - the crime for which Donald Marshall Jr. was wrongly convicted. It so happens that there has been a death in the family and since no one had been hired to play the deceased...

Meanwhile Cowan rehearses the actors in the front hall trying to bring out the right quality in their meeting under these grim circumstances. Lights need to be reset and extras shown where and when to weep. I ask Cowan if he's pleased with the way the film is taking shape thus far.

From behind tired eyes (this is the final week of principal photography) he tells me that he likes what he's seen in the rushes but it's hard to keep a perspective. In the throes of production it's difficult to see beyond the moment-by-moment, day-by-day pressures. What he has learned on this project, however, is that a film can only, at best, be as good as its script "If you haven't resolved a problem in the script, it won't disappear in production," he says with a certain wry smile. Houston, speaking from the grave, chimes in to say; "You sometimes think 'Well, I'll solve that when I have time during the shoot,' but inevitably the best time is before production since there is no time during the shoot," before lapsing back into existential silence as the makeup lady applies a little more powder and entwines the fingers on his chest.

Casting director John Dunsworth comes rushing through with cheques for the extras before disappearing once again, this time to marshal people to a exterior location where the crew will film tonight. Line producer Mike Mahoney also materializes on set, conducts hurried conversation with a half dozen people, and is gone. In contrast, soundman Hans Oomes is a picture of sedateness and concentration surrounded by tape recorders and cables, carefully adjusting the settings of his mixing board.

Although the events which form the basis of the story transpired in Sydney, the entire production is being shot in Halifax. Cowan explains that, given the high level of emotion about the issue in Cape Breton, and that certain

of the people portrayed in the film are still in their respected positions in that community, he felt uncertain that he would be able to do what he wanted if he had attempted to film there. As a result Cowan and his crew have pulled themselves through some of the grittiest parts of Halifax. One morning I found them at a sleazy downtown tavern frequented primarily by stevedores, and the crews of ships from a dozen nations. In the back room, around what could only be described as a miniature version of one of Barnum and Bailey's rings set in a smokey bar, they were hurrying to get their shots since they had to pack up and pull out before the clientele and the barely clad dancing-girls came in. Dimly lit parks and sleazy movie theatres on Halifax's Gottingen Street had also seen the crew standing out in the dark trying to avoid frostbite during the distinctly brisk November evenings.

How is he dealing with a script which touches on so many sensitive issues and which involves so many real characters? "Well," Cowan replies, "I've tried to stick pretty close to the facts, although there are scarcely more than three facts in this entire case that everyone could agree upon. I've tried, in fact, to take a middle course not, for instance, casting (Police Chief) MacIntyre in a particularly dark light." He admits that there may be those who will take umbrage at the conclusions of the film. Has the script been vetted by lawyers? "Yes it's been seen several times by several sets but that doesn't necessarily make me feel any more comfortable. At most they can judge whether what I've done is 'reasonable' and that, of course, is subject to interpretation."

Second assistant director Peter D'Entremont appears and tells Cowan that the actors are ready. Outside, huge lights illuminate the house belying the early dark which has descended upon the city. Passing pedestrians look up curiously as they pick their way past the grip trucks parked in a long line on Gottingen Street. DOP David DeVolpi calls Cowan and he rushes up the stairs to look at the scene one last time through the camera perched on a landing above the foyer. "Quiet on the set!" barks D'Entremont, "Sound." "Speed! Frame!" come the replies. "Action," says Cowan. Houston takes a deep breath and closes his eyes.

The film is scheduled to be telecast next fall. In the meantime the Marshall Inquiry may have released its report. Will the justice system in Nova Scotia have changed in any significant respect? Will the Micmac people in the province be any better off? Will Donald Marshall Jr. and his family and his people feel any more satisfaction? Will justice have been done and have seen to be done? In this climate of uncertainty *Justice Denied* has the opportunity to ask, once again, some of the pressing questions about justice, due process, and innocence and guilt which have been asked so often, and have yet to be fully answered.

Christopher Majka •



1st. a.d. John Houston directs extras from a unique vantage point

PHOTO: CHRIS MAJKA