

Stories by Helen Murray Sketches by Paul McCusker



The jury at left listens to testimony from a witness being questioned by defence lawyer Peter McWilliams. The judge and other lawyers also listen to the witness as the sensational Dominion Hotel fire second degree murder trial continues.

Monday

Mercuri defends himself

The financial difficulties of the Dominion Hotel came as a complete surprise to its owner, according to his defense lawyer.

In his opening statements in the defense of Cosimo Mercuri on Monday Michael Moldaver said his client sat in silent bewilderment as a forensic accountant testified that Mercuri was about to go broke. The accused felt business was increasing and getting better each week, Moldaver told the jury.

The defense lawyer pointed out his client sat quietly as Kirby linked Mercuri to organized crime in a "callous disregard" of Mercuri, his wife and three children.

Mercuri said he first thought of purchasing the hotel in September, 1976, but it was not until March 1977 the deal was closed.

His first mortgage of \$165,000 was set at the prime interest rate, plus five per cent. When he first started his payments were at \$1,900 but fluctuated weekly, getting as high as \$2,900 monthly when it was refinanced in 1979. His second mortgage was for \$700.

Mercuri said he did not know anything of shares and a shareholder loan bank, which a previous Crown witness said the business was set up with. He said it was just he and his wife and the mortgages.

When the business was first purchased by the Mercuris, he said, it was taking in about \$3,000 a week, which was enough to make the payments, buy the food and pay the rent. By 1979 this was increased to \$5,000.

Tony Fucucciello was the real estate agent for most of his land deals, Mercuri told the court.

Mercuri said it was his 16-year-old nephew who drew plans for a shopping plaza and apartments on the site of the hotel and the house to the north. Mercuri told the court the boy did the drawings on his own, as a thank you to his uncle. The plans were never seriously considered, Mercuri noted. These plans were seized by police in October 1979.

Friday night was the busiest time of the week, Mercuri said with an average of \$1,500 being taken in. Saturday was slow considering the day of the week, and he would only take in \$1,100. The same people seemed to frequent the hotel, he told the jury, consisting of construction workers, welfare recipients and unemployment people.

Because of the 19 per cent tax on his business, the accused said he sometimes took money which did not go on the books.

In July 1979, Mercuri got a telephone call at 10 a.m. and by 6 p.m. he was on a plane going to his gravely ill mother in Italy. He took the money from the Dominion Hotel, he said.

Mercuri denied making a ruckus when the decision came down at an August 9, 1979 hearing that he was to lose his liquor license for two weeks. He said the decision would actually only see him losing about \$200 a week because he would not have to hire a band or pay staff. He still had the dining room and bar license he pointed out.

Business was solid Mercuri testified. His children liked it there, and it gave him and his wife a job. He was not aware of any of the ads in the Toronto Star advertising the business for sale. The hotel was never listed with a real estate agent.

Mercuri admitted to his relationship with Gloria Eckstein, and said it was possible he had fathered her child born in 1978. He never offered to buy the baby, he said.

Mercuri told the court Eckstein was getting more and more involved in the business, against his better judgement. Their friendship was becoming less and less. She knew she wasn't wanted, he said.

Arguments became frequent, usually about the baby and her wanting to know so much about the business. He said he never told her he was fed up with the business, and the people, and that the best thing would be for the hotel to burn down. He also denied saying it didn't matter if anyone died because they were just a bunch of drunks.

Mercuri said he liked the people living in the hotel, and sometimes had them to his home for Sunday dinner. He called the doctor for them when they were sick. "I loved them," he told the court.

A few months before the fire Gibbons was sick and Mercuri telephoned all over trying to get him a place to stay or into the hospital, but he had no luck. He ended up contacting Gibbons' brothers who took him away to the hospital. When he wanted to come back after he checked out of the hospital, Mercuri said no. However, when he found out later Gibbons was sleeping on the parking lot, he took him back in. That was August 1979.

The only time Mercuri was at the restaurant where he was supposed to have met with Kirby and the Mafia family was at his cousin's wedding in 1974 or 1975. He did not know the Mafia family, or Kirby.

Moldaver pointed out at the end of July, Mercuri broke his hand and it was placed in a cast. Mercuri said the cast was not taken off until

August 21 or 22, after the fire. Mercuri does not remember speaking to Kirby at the construction site in Pickering.

Mercuri recalls Kirby coming to his door January 1982, along with another person who was dressed sloppily. He told the men to leave, he said.

The accused told the court of his activities the day of the fire. He explained he was short staffed and did not have a chance to get home for supper.

The night of the fire everything was normal, he testified.

Moldaver questioned him about Whitey Engleby. Mercuri said he asked the man to leave to avoid a fight with three other men over a girl. Engleby was not happy about being asked to leave and threatened him as he left, Mercuri said.

Most of the time Mercuri was watching the goings on in the hotel from the bar area. He remembers going outside and having a cigarette while sitting on the ledge of the IGA.

Mercuri denies having an affair with Heather Moreland. He said she was a good employee, did her job and didn't talk too much.

At 1.30 a.m., one hour before the fire, only the staff was left at the hotel. There was trouble with one of the band member's car and he helped boost the battery, he said. While helping the band member he moved his car from around the back to the front of the hotel.

Moldaver wanted to know if someone was able to get into the kitchen, would they be able to get into the rest of the hotel. He said yes. The kitchen windows were old wooden frames. Was there anyway to the bar from the basement? Moldaver asked. Mercuri revealed there was a hole from the basement to the bar in which beer was transported from the basement to the bar. He had closed it up however, one strong push could have opened it.

Everyone left the hotel about 2.05 a.m., he said. Mercuri had just had time to take his shoes off and make a coffee when the telephone rang at home. At the same time, he said, he heard the town fire alarm blaring. He got back to the hotel about 2.35 a.m.

Mercuri said he lost silver, photographs and about \$1,900 in cash in the fire. He said he used to keep cash in a tomato juice tin in some crates in his office. Other money was kept in the safe beside the bar.

The defendant said he never told police with the land free and clear he would be able to get money, as had been previously testified by other witnesses. He never mentioned anything about rebuilding, he said.

On August 19, the business records were all in the office, he said, leading him to believe they had been destroyed in the fire. He told police and his insurance company duplicates could be found with his accountant in Hamilton. He later spotted his filing cabinet in the rubble and had the police give them to him. They remained in his home until seized in October 1979.

Upon his arrest, Mercuri said he did not say "I'm caught," to the arresting officers.

"Mr. Mercuri, did you set fire to the Dominion Hotel?" Moldaver asked.

"No," he replied.

"Did you have the fire set that night?"

"No sir."

In his cross-examination, Crown Attorney asked Mercuri if he was aware he was from the same part of Italy as the Toronto Mafia. Mercuri said he was not aware of it.

Stunt pointed out Mercuri kept very detailed records from everything to ledgers and his own car expenses.

"By the time you bought the Dominion Hotel, you had owned six or seven houses, and two hotels," Stunt counted. He continued that Mercuri must be familiar with negotiations of buying and selling land, and of financing. Mercuri said his lawyer did all that. He said he knew nothing of shares.

Stunt pointed out Mercuri let people think he was the manager and not the owner. The accused said he always had done this. That way, he said, if someone wanted something, he could tell them the owner was against it, without revealing he was the owner. The LLBO, and the police knew the truth.

At the trial during the time he was the hotel owner, Stunt pointed out, Mercuri told the court, while under oath he was the manager of the hotel.

Mercuri said Fucucciello was not a business associate, just a real estate agent with whom he had had dealings with in the past.

Stunt said Mercuri had loaned him over \$5,000, interest free. Mercuri said sometimes the agent would sign a letter cutting people off the hotel, if he knew the person. He told people sometimes Tony was the owner, he said and he was just the manager.

Stunt pointed out Mercuri cashed a \$1,000 cheque for Fucucciello. Mercuri said he cashed cheques for many people, out of the cash register.

Stunt noted Mercuri said the people who frequented the hotel were poor. Mercuri said he did not say poor. He said there were construction workers, and people on welfare and unemployment insurance.

Frank Pugliese was not considered by Mercuri to be a business associate, he said, he just rented the kitchen. Stunt pointed out in his earlier testimony of the day the kitchen helped bring in the 50/50 food, alcohol split. Mercuri said a couple times a week he would see how Pugliese was doing, but he did not count the money. Some \$150 rent was being charged to Pugliese.

If someone came into the dining room and wanted food, Pugliese would prepare and sell it, Stunt said, making him a business partner. Mercuri said he did not stick his nose into the kitchen business. Stunt pointed out Pugliese was Eckstein's baby's godfather. Mercuri said he did not know.

He attended the Christening to deliver some wine. He said there was lots of people there.

Stunt challenged Mercuri's claim that the hotel was selling 55,000 gallons of alcohol a year. He showed a beer purchase schedule for a one year period which did not come anywhere near the testified rate. Mercuri said he did not know how these figures were added up. It was the retailers who came up with the numbers, not he.

Stunt noted that after Mercuri had retrieved his records from the rubble of the hotel he did not contact his insurance agent or police who had been asking for them. Mercuri told him he had told the agent of the duplicates in Hamilton, and felt when the police were the people who gave him the records from the rubble he saw no need to tell them he found them.

Business was down for a couple of months in the winter, Mercuri said, at that was normal.

Stunt asked if he was tired of Howard Gibbons. He pointed out in Mercuri's statement he said he was tired of looking after him.

Mercuri said the man was sick and he could not offer him the proper help.

Room keys were kept behind the bar, Mercuri said in response to a question by the Crown Attorney. The lounge door to the lobby had an Allan key, and not a conventional lock, he said.



Leonard Cripps was acquitted Monday.

Cripps acquitted

Leonard Cripps has been acquitted of second degree murder charges in the fiery August 19, 1979 death of Howard Gibbons.

Cripps was charged in December 1979 along with co-defendants Cosimo Mercuri and Michael McCristall after fire leveled the Dominion Hotel, resulting in the death of Gibbons.

Monday, as the now infamous trial entered its fourth week, Mr. Justice Coulter Osborne told the jury he had reviewed the evidence of the trial as it relates to Cripps and reached the conclusion that "evidence cannot be elevated to the point of justifying conviction."

He directed that a verdict of not guilty be returned. The jury all nodded their heads in agreement and Cripps was allowed to leave the courtroom.

Cripps' lawyer Peter K. McWilliams made the application for dismissal of the charges. Following the decision he pointed out the case is "illustrative of the fact more than just presence at the scene is required, especially where evidence is based on circumstantial evidence." He told reporters in the hall afterwards, "there has to be some evidence of some act of commission."

McWilliams said when he made the application for dismissal he was hopeful Cripps would be released.

Granting of directed verdicts does not happen often, McWilliams said.

Cripps feels good his name is cleared, he said later. When asked if he was glad to be able to go back to Acton and tell people "I told you so (that he was innocent)," Cripps smiled and quietly chuckled as he said "Yes."

McWilliams pointed out what did not come out in the trial was the fact Cripps had had a mild stroke two weeks before the fire and had only returned to work the night before the fire.

Mr. Justice Osborne in delivering his decision on the application, pointed out to the jury if his decision is wrong, a court of appeal can correct it.



Defence lawyer Peter McWilliams.

Thursday

Mercuri said "I'm caught" when he was arrested

When police went to the Mercuri home December 28, 1979, to arrest the Dominion Hotel owner, the accused threw his hands behind his head and exclaimed "I'm caught."

Detective Bruce Richards of the Halton Regional police took the stand late Wednesday afternoon and Thursday morning and told the jury of Mercuri's reaction when he and his partner arrived at the door.

Crown Attorney, Paul Stunt asked the officer at what point in the investigation of the August 19 fire did Mercuri become suspect. Richards said when he returned from a vacation on September 4 he was told Mercuri was a suspect. The arrest wasn't made until 5.40 p.m. December 28 he said.

Richards told the court co-defendants Mike McCristall and Leonard Cripps were originally arrested October 21, but the Crown Attorney told them to release them pending further investigation. All three were arrested in December.

Under questioning by Stunt, Richards said he arrested McCristall for the second time at 1.55 p.m. in downtown Acton. The man was sober at the time of arrest, the policeman said. McCristall asked to call his mother and then said "Lord Jesus, I guess I bear the brunt." Richards had no involvement in the arrest of Cripps, he said.

Later that afternoon, Richards said he telephoned Mercuri to warn him they were coming over to his home on Highway 25 south of town, but did not tell him why. Richards said Mercuri started to raise his voice and wanted to know why they couldn't have waited, he was broke and had a family to feed. He was then taken to 12 Division in Milton, where they taped the interview.

With Richards reading from the transcript of the tape, the jury heard Mercuri's version of what happened the night of the fire, and also of his financial situation.

During the interview Mercuri said he did not remember telling people he was going to burn the hotel down. He said he had no plans for the land.

When Richards told him they would come up with damaging evidence against him, Mercuri replied "I have been waiting for you," Richards read.

When told Cripps and McCristall were also in custody, Mercuri replied "I don't care what you think about me, but do you really think Len and Mike would have anything to do with something like that. . . would you really believe deep down in your hearts Len and Mike are smart enough to do something like that."

Stunt asked Richards what Mercuri's attitude was like throughout the interrogation. The detective described the accused as being very guarded, very evasive and very hesitant.

Richards told the court on October 15, 1979, at 2 p.m. he went to a real estate firm in Toronto and talked to real estate agent Tony Fucucciello who turned over to police copies of advertisements which appeared in the Toronto Star for the sale of the Dominion Hotel. Just days before the beginning of the trial, on March 3, Richards went to the Toronto Star and got copies of the ads from the microfilm machine. In seven ads, the name Acton appeared five times. The ads all ran in 1979, he pointed out.

Stunt asked Richards when he became aware Cecil Kirby, the self-confessed arsonist, was being called as a witness. Richards said he found out in October, 1981.

Moldaver suggested the hesitancy in Mercuri's voice that night was the Italian trying to find the proper words.

Moldaver also suggested when Mercuri was first arrested, rather than saying "I'm caught," he said "Oh my God" and Richards heard wrong because of the accent. The detective said he distinctly heard the word caught.

Debbie (Gagnon) Fredericks told the court the night of the fire she was in a car in front of the taxi stand, which was located down the street from the hotel. She and a friend, Norma Quee were talking, before Mrs. Fredericks went into her apartment across the road. About 2.20 a.m. she saw smoke coming from the hotel. She said she saw Whitey Engleby come running out of the taxi stand shouting the hotel was on fire, and started to follow him to the scene.

Stunt pointed out to the court Fredericks was a waitress at the Station Hotel that summer, and had known McCristall.

Under questioning by Stunt, Fredericks told the court how on the Thursday after the fire, there was a telephone call from the fire marshal wanting to speak to Bert Eade. She asked McCristall if he had seen Eade. McCristall got panicky and nervous and ran around trying to find the other man. She eventually found Eade in the dining room and led him to the kitchen phone. McCristall joined him.

"We just have to cover up for Cosimo a little while longer," was overheard by Station Hotel employee Kim (Timbers) Allan the Thursday following the fire.

Allan testified she was working in the kitchen of the town's only remaining hotel when Bert Eade



Cosimo Mercuri took a telephone call in that room.

As Eade was talking on the telephone to the fire marshal's office, McCristall stood beside him. Allan said she thought it odd when Eade said over the phone, "No, I have not seen Mike." McCristall told Eade to remember to tell the fire marshal he had been knocking on doors, waking people up. At this point, McCristall said to Eade, "We just have to cover up for Cosimo a little while longer."

Smith pointed out Allan had just presumed Eade meant Mike McCristall when talking on the phone, or suggested she heard it wrong. Moldaver suggested to her that Eade had been asked if he had seen Mike the night of the fire, and he said "I had not seen Mike." Allan said this was possible.

Moldaver asked Allan if it was possible McCristall said "We just have to cover for Cosimo," instead of "We just have to cover up for Cosimo." By taking the one word (up) it changes the meaning he contended.

During the summer of 1979, Brenda Adams worked the midnight shift at Jeannette's Rest Home across the street from the hotel. At 12.30 the night of the fire, she said she was shampooing the carpets. Sometime between 12.30 and 1 a.m. she saw Engleby standing in front of the main lobby door, and watched him cross the street and head south.

She had seen Mercuri at the trunk of his car, and then go back into the hotel. About 1.50 she said, she sat down at the window to have her lunch. She was joined by Catherine McIntosh, another night shift employee.

About 1.55 she said, she saw McCristall come out of the hotel at the north lobby door and feel the air conditioning unit at the front of the building. Mercuri had just driven away, she told the court. McCristall returned inside the hotel, and about one minute later she saw a gush of black thick smoke billowing out of the unit.

She immediately ran across the road and into the lobby and met McCristall. He told her he knew about the problem. She did not hear an alarm. She went back to the rest home, and by the time she crossed the street smoke was pouring out of the fourth window of the second floor, directly above the air conditioner.

Stunt asked about the appearance of McCristall when she met him in the lobby. She answered that he appeared calm and she did not think there was anything wrong because he was not upset.

All three defense lawyers had Mrs. Adams repeat that she saw Engleby standing in front of the north lobby door.

McIntosh, also an employee of Jeannette's Rest Home, told Stunt she made her 2 a.m. rounds just after two. She had seen Engleby just before making her rounds and she watched him walk from directly in front of the north lobby door and go into the bushes just to the north of the hotel. She said many hotel customers went in there. When he came out he headed north. McIntosh recalled. The next time she saw him he was running towards the hotel.

After her 2 a.m. rounds, she said, she sat down with Adams and watched someone, who she presumed by his dress to be a waiter, go out and touch the sides and top of the air conditioner. She said the car and truck she had previously noticed in front of the hotel were no longer there. She watched the man go back into the hotel. A few minutes later, she told Stunt, she saw smoke being blown out of the unit. When Adams ran over to see what was happening she could see the man standing inside the lobby door with smoke around his head. At about 2.25 to 2.30 she heard the town fire alarm.

Sergeant Michael Eacrette told the court he attended a hearing on August 9 in Toronto and the Licence Board of Ontario to testify against the Dominion Hotel. When the decision came down, the officer told the court, Mercuri was irate and pointed his finger at Eacrette and said he had ruined his business. Mercuri had to be restrained by his lawyer, the witness said.

Wednesday

First man on hotel fire scene says rescue efforts in vain

William (Whitey) Engleby was the first person on the scene of the Dominion Hotel Fire August 19, 1979, with Terry Winters following close behind.

The two men testified last Wednesday they arrived on the scene after seeing smoke pouring from the second floor, but efforts to rescue people were in vain because of the dense smoke.

Engleby told Crown Attorney Paul Stunt he had been drinking at the hotel at around 7 p.m. Saturday, August 18. An argument followed a few hours later over the pool table and Mercuri asked him to leave.

From there he went the few blocks to the Station House Hotel. He stayed there until closing time, about 1.30 a.m. he said, and returned to the Dominion Hotel. Engleby told the court he had no ride home to Georgetown and had been told to sneak into the hotel and knock on one of the room doors and he would be let in by a friend.

However, Engleby said, because of his disagreement with Mercuri earlier in the evening, he did not want the owner to see him. He saw Mercuri's car parked out at the front and proceeded up the street. He then went back towards the hotel on the opposite side of the street and watched Mercuri leave in his car.

Once he saw the owner leave, Engleby said, he decided to go up the street to the taxi stand and get a sandwich. As he was coming out the front door with his meal in a bag he spotted smoke coming out of the front of the hotel, about the fourth window down, he testified. He ran back into the taxi stand and told them to call the fire department then sprinted up the street to the hotel. Attempts to get up to the second

floor were hampered by the dense smoke he said.

In his cross examination, Michael Moldaver told Engleby he threatened to get back at Mercuri for kicking him out of the hotel. Engleby denied the charge.

McWilliams inquired if Engleby had ever gone into the parking lot of the hotel that night. The answer was no. He revealed he was planning on spending the night with Joe Mathieson and Howard Gibbons.

On her second day on the witness stand, Heather Moreland admitted she perjured herself at the preliminary hearing when she claimed the police put words in her mouth and were acting "superior."

Moldaver pointed out that during Tuesday's testimony, Moreland said Mercuri treated McCristall and Cripps like dirt. Moreland said her boss appreciated them staying there because they spent money there, but he sometimes did treat them poorly.

Moldaver noted it was a free country and employees could come and go as they pleased. He said they did not have to stay and work at a place if they were unhappy. Moreland rhymed off names of employees who had left because of Mercuri, and admitted she also had quit three times. However, because of financial difficulties she was forced to return.

Moldaver charged that Moreland was afraid of the police after she testified at the preliminary hearing, that they had "gouged" her. He suggested they frightened her into saying she had perjured herself. Moreland said it had never entered her mind. She knew she had done something wrong and felt guilty about it. She went to the police and admitted her lies.



Crown Attorney Paul Stunt.