

“Life Stories on Trial”

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(Unpublished manuscript)

This chapter (the 8th of 13) contains the testimony of Justin Clark at the trial.



Chapter 8

I'LL TELL MY OWN STORY

"I wish I had his patience, his endurance

and [despite all this] his hope."

Judge Matheson, Trial, Day 6

The stories we have told about people with disabilities have, themselves, become barriers that are only now being broken down, as the subjects become more insistent that they be the ones to tell their own stories. The power of these efforts, and the determination to tell, is frequently nothing short of devastating. The inescapable truth about personal lives and first-hand descriptions of personal experience, whittles away at the comfortable knowledge of a society which believes it is already compassionate and understanding. Stories by those who have been there, who have seen the world behind institutional walls, cannot be denied. As stories told by others are thus challenged and held up to the glare of the spotlight, the flaws and fissures are revealed.

Now, on the fifth day of the trial, as Justin Clark told the Court his story, the contradictions between the myths, assumptions, and shades of reality, began to sort themselves out. He did it sometimes by voice, sometimes by sign but mostly, by indicating the necessary symbols on his Bliss board and flip cards.

Day 5, November 19, 1982

"Call Justin Clark!" said Mr Baker in a strong clear voice.

There was no need for heads to turn and search the rows from which the witness would come forward: Justin was already there, at the side of the stand, in full view of the Court. To be there when called, Justin Clark had overcome many obstacles. In addition to the legal hurdles he had already surmounted, the trial itself had been producing its own obstacles. The "red flag" that Mr Jacobsen, Counsel for the Ministry of Community and Social Services, had raised that first day, about the possibility of editorial content creeping into the interpretation of Justin's testimony, had been waving furiously during the examination of Shirley McNaughton and Katherine Commodore, who were sitting close by Justin's side, ready to act as his Bliss Receivers. They would be relaying the Bliss testimony to the court in plain English.

The red flag had prevented Justin from having his first choice of receiver, his former teacher Carol MacLauchlan, no longer employed by Rideau regional Centre but then heading a community agency. When Mr Baker, Justin's Counsel, had (again) expressed his concern that the interpreter would not be the person "of Justin's choice," Judge Matheson reiterated the need to

preserve trust in the system, whilst acknowledging that this placed a “higher burden on Justin Clark” and that it put him in a “slightly harder position.” That “higher burden” and that “harder position” are not uncommon for people with disabilities who are constantly faced with barriers that most people cannot recognize or even imagine. For example, had Mr Jacobsen’s suggestion that Justin give evidence in chambers been accepted, it would have erected a barrier to Justin’s inherent right to be heard in open court. If implemented, the offer by Mr Kelly (Counsel for Justin’s father) to release Justin Clark from the responsibility of taking an oath, would have created a barrier to the perception of him as a capable adult.

Ultimately, describing Shirley McNaughton as the “universalist,” Judge Matheson had ruled that she would be the “primary interpreter” who would deal with the questions and answers in the first instance during Justin’s testimony and Katherine Commodore would be the ‘secondary’ interpreter.

Shirley McNaughton, with a B.A. in Psychology and an M.A. in Education from the University of Toronto, was the first person to have used symbol communication with persons with handicaps. She was the Co-Chairperson of the National Advisory Canadian Committee on an International Project of Communication Aids for the Speech Impaired. Her expertise was in “communication with non-speaking persons.” Invited by Mr Baker to tell the court about Bliss Symbolics, Ms McNaughton said that the system was designed in the 1940’s as an international language by Charles Bliss (an Austrian) but had not been put to any purposeful use until 1971 when the team at the Ontario Crippled Children’s Treatment Centre discovered Bliss Symbolics and used it with non-speaking children. It was appropriate for all age-levels, including college level; different kinds of disabilities; and was used internationally. In 1975 the Bliss Symbol Communication Institute was formed to coordinate the research, development and training of the technology in Canada.

Katherine Commodore had been Justin’s Bliss teacher “temporarily” since earlier that year and had worked at Rideau Regional Centre since 1973. She had taken the Mental Retardation Counsellor course in the Centre, had been taught Bliss Symbolics by Carol MacLauchlan and was anticipating taking further refresher training in Bliss Communications in Toronto. She had taken special courses in programming and programme design, physical care, sign language, signs and symptoms observation, and ABS Scale analysis. Ms Commodore agreed that her skills were in “Bliss, sign, facial expressions and vocalization.” Asked to compare her own communication with Justin to that of Ms Mclauchlan, she said that she felt “competent in the Bliss room,” but that “Carol communicates excellently.”

Before he began his examination, Mr Baker informed the Court that Ms McNaughton was not familiar with sign language and that her particular strength did not lie in interpreting vocalization. Judge Matheson noted that Mc Commodore would also be contributing to the interpretation.

The Clerk then recited the Standard Interpreter’s Oath:

“Do you swear that you do understand the English language and that you will well and truly interpret the questions and answers to all questions put to Justin Clark to the best of your skill and understanding?”

Hearing these words Ms McNaughton quickly reminded the Court of her understanding that she would be the “Receiver” of Justin’s responses. As “Receiver”, she would not be interpreting the questions put to him and, therefore, not be “well and truly interpreting” as demanded by the Oath. Judge Matheson adapted the Oath to the unique circumstances:

“Do you swear that you understand the Bliss Board and such things that will be required of you and that you will well and truly interpret the answers of Matthew Justin Clark to all questions put to him to the best of your skill and understanding?”

Ms McNaughton and Ms Commodore were sworn in. At last it was Justin’s turn. The Bible was placed near his right hand. In the same manner as any other citizen called to the stand in a public court, Justin Clark took the oath.

All questions were posed directly to Justin by Counsel. Sometimes his response was vocal, sometimes he signed, or pointed to himself or others. But in answering most questions, he used his Bliss Board, watched closely by everyone in the room, most particularly, by his two Receivers. Having “interpreted” his response, Ms McNaughton then relayed it to the Court. When a response involved a significant strategy or construction, Ms McNaughton explained the process to the Court. The impact of “hearing” testimony by these means is not easily conveyed by use of the written word, alone. Even a linear reproduction of the symbols that Justin used would not provide an accurate portrayal of the process. The fact is that although the Bliss Board is designed to facilitate logical construction of sentences, the component symbols in a sentence could be anywhere on the Board or, as in Justin’s case, on additional “flip cards”. Consequently, the construction of what to the listener in Court (or the reader) might appear to be a relatively simple sentence could require numerous “pointing” (indicating) actions on the part of the user. Each of these actions placed extreme physical demands on Justin Clark. His determination and perseverance in meeting these demands in order to be heard could only be admired by those who were witness to his effort. That it was happening in circumstances which by their very nature could not have been without stress, left observers feeling profoundly humble.

Mr Baker rose first to examine his witness.

MR BAKER: “Are you the Justin Clark everyone has been talking about?”

JUSTIN CLARK: [Indicating ...]

SHIRLEY MCNAUGHTON: “Yes!”

Question: How old are you?”

Answer: [Indicating...]

Interpretation: “I am twenty.”

Q. “Where were you born?”

A. [Indicating ...]

Int. "I was in city "0" (Ottawa)."

To make that response, Justin had pointed to the symbol for "past", the symbol for "(to) be", the symbol for "in", the symbol for "city" and the letter "0".

Q. "Justin, we know that you communicate with Bliss. What else do you communicate with?"

A. [Indicating ...]

Int. "With my mouth and eye and hand."

Q. We have heard, Justin, you started to use Bliss in 1974. Can you tell the Court what that meant to you?

A. [Indicating ...]

Int. "They not understand."

Here Justin had used an homonym; he had combined the symbols for "to stand" and "not". He had then indicated that he wanted to "do it again".

Judge Matheson suggested that Justin wanted to repeat his response, for emphasis. He turned to Justin and winked by way of checking that such was, indeed, Justin's intention. Justin laughed in affirmation. There was immediate laughter in the Courtroom and Mr Baker quickly stated, "I'd like to have that on the record, Your Honour!" He turned again to resume his examination of Justin.

Q. "I understand that you went on a couple of trips with Norm?"

A. [Indicating ...]

Int. "Yes."

Q. "Can you tell us where you went on those trips?"

A. [Indicating ...]

Int. "I went to city 'S' (Sudbury)."

Q. "Anywhere else, Justin?"

A. [Indicating ...]

Int. "And I went to a farm."

To make that response, Justin had pointed to the symbol for "and"; the symbol for "I"; the symbol for the past tense and the symbol for the verb, "to go"; the symbols for "to" and "a" and then, because there is no symbol for "farm", he had indicated the symbols for "I am about to create a new symbol". He had then combined the symbols for "animal" and

"house". He had continued his response by saying that he was "going on holiday". His Receiver had asked if she could use the word "went". Justin had answered, "No."

Q. "Do you remember where the holiday was to be?"

A. [Indicating...]

Int. "City 'Q' (Quebec)."

Q. But you didn't go on that holiday?"

A. [Indicating...]

Int. "No."

Q. "Do you remember how you felt when you couldn't go on that holiday?"

A. [Indicating ...]

Int. "I felt very angry."

Q. "Do you feel that you have any handicaps?"

A. [Indicating...]

Int. "Yes."

Q. "Can you live on your own?"

A. [Indicating...]

Int. "No."

Q. "Do you know what help you need?"

A. [Indicating ...]

Int. "I need help to wash and to dress and I need help to go to the toilet."

Q. "Do you know who Jim Sutton is?"

A. "[Indicating ...]"

Int. "Yes."

Q. "Is he here today?"

A. [Indicating...]

Int. "Yes"

Q. "Do you know what he does?"

A. [Indicating...]

Int. "Yes, He works with physically handicapped."

Q. "Do you want to work with Mr Sutton?"

A. [Indicating...]

Int. "Yes."

Q "Now, Mr Clark. Shall I call you Mr Clark? I have only one more question for you. Who is going to win the football game this weekend?"

A. [Speaking] "Ottawa!"

The Court: "Do you want to rest?"

Justin Clark: "Yes."

Judge Matheson announced a recess. When Court reconvened shortly after 2:00 PM., Justin Clark was examined by Counsel for the Ministry, Mr Jacobsen.

Mr Jacobsen: "Justin, I understand you like to watch T.V.?"

Justin Clark: [Speaking] "Yes."

Q. What programmes do you watch?"

A. [Indicating...]

Int. "I watch the News and watch Family Brown."

Here, Justin had pointed to the colour to indicate "Brown".

Q. "Do you watch sports?"

A. [Indicating...]

Int. "A little."

Q. "Justin, do you believe the only way you can leave Rideau Regional Centre is by being found competent?"

A. [Indicating...]

Int. "Sorry, not understand."

Q. "Justin, do you understand the word 'competent'?"

A. [Indicating...]

Int. "No."

Q. "Justin, do you believe the only way you can leave Smiths Falls is if you win this court case?"

A. [Indicating...]

Int. "Yes."

Q. "Do you believe if you lose this court case, you will have to stay in Smiths Falls forever?"

A. [Indicating...]

Int. "Yes."

Q. "Where do you want to go if you leave Smiths Falls?"

A. [Speaking] "I want to go to Ottawa."

Q. "Where do you want to live in Ottawa?"

A. [Indicating...]

Int. "Man 'N'".

The Receiver had asked if that meant "Normand". Justin answered, "Yes", and "Woman 'D' (Danielle)."

Q. "Justin, will you need money if you go to live at Normand and Danielle's place in Ottawa?"

A. [Indicating...]

Int. "I need money."

Q. "Where would you get the money?"

A. [Indicating...]

Int. "Bank."

For this response, Justin had combined the symbols for 'store' and 'money' to describe 'bank'.

Q. "How would the money get into the bank?"

A. [Indicating...]

Int. "I don't know yet."

A. [Signing...]

Int. "I am thinking."

The Court: "I wonder too and I have a Masters Degree in Economics!"

Mr Jacobsen: "Do you know who would give you the money?"

A. "My parents."

Q. "If you lived at Normand's, who will make your decisions?"

A. [Speaking] "I". [Signing] "I."

Q. "What would you do if you were not happy living at Normand's?"

A. [Indicating...]

Int. "I come back."

For this answer, Justin had combined the symbols for "opposite of" and "forward".

Q. "When you say you would come back, do you mean to Smiths Falls?"

A. [Speaking] "Yes."

Q. "Do you know what a Committee is?"

A. [Indicating...]

Int. "No."

Q. "Do you know what a guardian is?"
A. [Indicating...]
Int. "Yes."
Q. "What is a guardian?"
B. [Indicating...]
Int. "If I not able to go out of hospital."
Q. "Do you mean, Justin, that you wouldn't have a guardian if you weren't in hospital?"

The Court: "Could you clarify that question for me; I'm thinking slowly this afternoon."

Mr Jacobsen: "Do you mean you would only have a guardian if you stayed in Smiths Falls?"

A.. [Indicating ...]
Int. "I don't know."
Q. "Would you like Normand to be your guardian if you lived at Normand's place?"
A. [Indicating...]
Int. "No."
Q. "Why not?"
C. [Indicating...]
Int. "I am a teenager."
Q. "What is a teenager?"
A. [Indicating...]
Int. "I turned eighteen."

At this point, Justin turned to the secondary Receiver, Ms Commodore, and asked her, "How are you doing?" Judge Matheson sought verification that Justin's last answer had, in fact, been "I turned eighteen". And Justin, who was clearly tiring, turned to his Receiver and confided, "I feel like crying." He was asked if he would like to rest. "Take a rest, Justin", said Judge Matheson, "and when you are ready, we'll be ready." After a short break, Mr Baker rose to say that Justin was ready to continue. Judge Matheson assured Justin that he had only to indicate whenever he felt the need to rest. Mr Jacobsen resumed.

Mr Jacobsen: "Do you know who the Prime Minister of Canada is?"

A. [Indicating...]
Int. "Man 'G'" (and as Justin indicated the correct letter), "No, strike that! Man 'T' (Trudeau)."

Q. "Do you know what a cheque is?"
A. [Speaking...] "Yes, money."
Q. "Do you remember last Hallowe'en there was a problem with candy being handed to children?"
A. [Indicating ...]
Int. "Yes."
Q. "Do you remember what the problem was?"
A. [Speaking...] "Poison!"
Q. "Thank you."

Now it was Mr Kelly's turn to examine Justin. At first, he was reluctant to do so. He said he did not think it was "appropriate". He was otherwise persuaded by Judge Matheson.

MR KELLY: "Justin, if you lived with Normand, where would you go if Normand moved?"

A. [Indicating ...]
Int. "I not know."
Q. What if Normand stays and other friends leave?"
A. [Indicating...]
Int. "I go to a different place."
Q. "Where, Justin?"
A. [Indicating...]
Int. "I don't know."
Q. "Do you know about other places, Justin?"
A. [Indicating ...]
Int. "Yes."
Q. "What do you know about other places?"
A. [Speaking...] "Ba....." (Parkway House).

Not understanding his speech, the Receivers suggested that he respond with symbols. After he did so the answer was clarified.

Int. "House where people go with wheelchairs."
Q. "Justin, do you like the doctors at the hospital?"
A. [Indicating ...]
Int. "Yes."
Q. "Will they go to Ottawa with you, Justin?"

A. [Indicating ...]
 Int. "No."
 Q. "Do you know who will help you in Ottawa?"
 A. [Indicating...]
 Int. "Man, and 'N' (Normand)"
 Q. "How big is Ottawa, Justin?"
 A. [Indicating...]
 Int. "Big."
 Q. "How big?"
 A. Indicating...]
 Int. "Much. Many." (Same symbol for both words)
 Q. "Justin, do you go to school?"
 A. [Indicating...]
 Int. "Yes."
 Q. "What will you do when you are done in school?"
 A. [Indicating ...]
 Int. 'I would like to work."
 Q. "What will you work at? What will you do?"
 A. [Indicating...]
 Int. "I don't know."
 Q. "Does someone help you to dress, now?"
 A. [Indicating...]
 Int. "Yes."
 Q. "Who will help you to dress in Ottawa?"
 A. [Indicating ...]
 Int. "Man 'N' (Normand)."
 Q. "Will living at Normand's be like a holiday?"
 A. [Indicating ...]
 Int. "I would like some time to think." (Pause) "No."
 Q. "Why not?"
 A. [Indicating...]
 Int. "I go to school and therapy."
 Q. "Justin, will you go on holidays. too?"
 A. [Indicating ...]

Int. "Yes."

Q. "Mr Curzon said you liked baseball and football."

A. [Indicating...]

Int. "Yes, a little."

Q. "I think he said you went to baseball and football games with him?"

A. [Indicating ...]

Int. "Yes."

Q. "Are they different?"

A. [Indicating...]

Int. "Yes."

Q. "How are they different?"

A. [Indicating...]

Int. "He plays baseball."

Q. "Justin, I believe you said if your friends moved and Normand stayed that you would move. Am I right?"

A. [Indicating ...]

Int. "Yes."

Q. "Do you want to remain with the friends?"

A. [Indicating...]

Int. "Yes." (pause) "I am hot!"

A window was opened immediately by Courthouse staff and Judge Matheson asked Justin if he would like to rest. Justin said that he would. After a short break, Mr Kelly rose again to complete his examination.

Mr Kelly: "Do you know what a loan is?"

A.
[Indicating...]

Int. "What?"

Q. "A loan, to lend?"

A. [Indicating...]

Int. "Yes."

Q. "What is it?"

A. [Indicating ...]

Int. "To give money."

Q. "Do you do that, Justin?"

A. [Indicating...]

Int. "Sorry, would you repeat the question?"

Q.

"Do you do that, Justin?"

A.

[Indicating...]

Int. "Yes."

Mr Kelly had no further questions for Justin but before stepping down Justin was questioned by Judge Matheson, himself.

The Court: "You have a lot of friends, do you?"

A. [Indicating ...]

Int: "Yes."

Q. "Some of these friends live at Rideau Hospital now?"

A: [Indicating...]

Int: "Yes."

Q. "And some have moved to other places?"

A: [Indicating]

Int "Yes."

Q.: "Is there anybody that you don't like, Justin?"

A: [Indicating ...]

Int: "I like them, the Counsellors."

Q.: "Do you love your brothers and sisters, Justin?"

A. [Speaking] "Yes."

Q. "Yes?"

A. [Speaking...] "Yes."

Q. "And you know they love you?"

A. [Speaking] "Yes, yes."

Q. "And you know that your father and mother love you, too?"

A. [Speaking] "Yes."

Q "You know that?"

A. [Speaking] "Yes, I know."

Q. "You know that!"

A. [Speaking] "Yes!"

Q: "And you know that's why we're here today?"

A: [Speaking] "Yes."

Q. " - and that your father loved you enough to want to be sure you were protected? You understand that?"

A. Yes! Yes, I know!"

Q. "You know that."

A. [Speaking] "Yes!"

Q. "Justin, do you think you need to be protected?"

A. [Indicating...]

Int. "I like to go out. That's what I want to do."

(The Receiver said that she had inserted the "that").

Q. "Justin, it's hard for You seem to understand what we are saying?"

A. [Speaking] "Yes."

Q. "You have heard different people speak. Did you think you understood what they were saying?"

A. [Indicating ...]

Int. "A little bit."

Q. "So, Justin, you know that you didn't understand everything?"

A. [Indicating...]

Int. "I think yes."

Q. "When you need help, Justin, do you tell people?"

A. [Indicating...]

Int. "Yes."

Q. "You don't try to hide it?"

A. [Indicating...]

Int. "No."

Q. "Justin, you are a truthful person? Honest?"

A. [Indicating..].

Int. "Yes."

Q. "And you trust people, don't you?"

A. [Indicating ...]

Int. "Yes."

Q. "Do people try to fool you, sometimes play tricks on you?"

A. [Indicating ...]

Int. "Yes."

Q. "When they do, can you tell they are playing tricks?"

A. [Indicating...]

Int. "Yes."

Q. "Can you tell which people you can trust? Do you know these people?"

A. [Indicating...]

Int. "Yes."

Q. "Thank you, Justin."

At this moment, Justin's parents applauded. They were quickly joined by many others in the Courtroom. Judge Matheson offered an explanation to Justin:

"What they are trying to say, is that they are all very proud of you. Before Justin goes, just one question. Justin, take a moment to think about this. Please. Is there anything that you want to say, yourself? Now, think for a moment."

There was a pause while Justin responded, using his Bliss Board. His Receiver, Shirley McNaughton, relayed his message to the Court: "Thank you for helping." To which Judge Matheson replied, "Well, on behalf of us all, Justin, thank you!"

