

Judge 'underplayed' case's racial problem

Continued from D1

Midanik maintains Trafford "underplayed the problem" of the jail guards' treatment of the three black men.

"The racial factor played a much larger role in the mistreatment of the defendants than outlined in Trafford's ruling," he insists.

"The victim was white and the alleged perpetrators black, and (the shooting) occurred in a white, upper-middle class neighbourhood... The justice system is not impervious to the wake of public opinion, including racist and anti-immigrant sentiment."

He says the case was delayed because of the system's reaction to his attempts to fight that mistreatment at the preliminary hearing.

Queen's Park politicians yesterday refused to comment on the specifics of Trafford's report.

Mindful of the publication ban in the case, and the fact a jury hasn't been chosen yet, Midanik chose his words carefully during a wide-ranging interview yesterday.

And as Trafford has raising the issue of race in his report, Midanik says it's a topic that should be discussed.

"Most judges try very hard to be fair. But the unconscious racism is still there," he said.

Though he is no longer connected to the case, the 47-year-old, one-time cab driver still says he would do it all again.

"I would hope that as a result of defence efforts to highlight

the mistreatment that it will be a long time before black defendants are ever treated this way again by the criminal justice system."

Midanik knows that he is going to take a lot of heat over his beliefs, even from other defence lawyers.

Gary Clewley, for instance, is a lawyer acting on behalf of the jail guards who were criticized for their actions during the preliminary hearing.

He scoffed at the notion that racism was a factor in the men's treatment.

'Colour of their skin had nothing to do with security measures employed in this case'

"The colour of their skin had nothing to do with the security measures employed in this case," he said.

"There's no evidence of any racist language or racist behaviour by the courthouse officers. The security measures adopted were for the security of the officers, the public and the accused themselves."

Despite his outspoken views, Midanik doesn't feel he is a rebel.

The Toronto native has spent most of his 20-year-career trying to "level the playing field" by making sure the underdog gets a fair shake from the justice system.

If that means being critical of the arena in which the divorced

father of two makes his liv then so be it.

"People in authority have learn that they just don't get respect. Their conduct determines whether or not they worthy of respect," he said.

He paid his way through school driving a cab at night and teaching tennis.

Not surprisingly, his hero Robin Hood, a legendary English outlaw who stole from the rich and gave to the poor.

But he knows there is a price to pay for attacking the system.

"Whenever you fight for the underprivileged minority, the weight of the system is against you," he said.

Despite Trafford's accusation that his "misconduct undermined the quality of the administration of justice," Midanik says he was just acting in the best interests of his clients.

Ontario's leading criminal law organization agrees.

The Ontario Criminal Lawyers Association said in a statement yesterday that it wants to make it "absolutely clear" that "vigorous lawyering" is essential to the proper administration of justice.

Midanik doubts that the law society will take any action against him over his courtroom tactics in the case.

"I'd be astounded if I was charged, but even if I were I'm certain I'd be exonerated. I'm convinced I was right in what I did."

With files from Tracey Tyler and Kellie Hudson

'Unconscious racism' in courts, lawyer says

Ex-counsel in Just Desserts case speaks out

By Nick Pron
Staff Reporter

An Ontario Court judge has thrown open the door to a public debate on the issue of race in the province's justice system.

And defence lawyer David Midanik is the first person to walk in and speak his mind on the sensitive issue.

"The courts are a reflection of society," says Midanik, the lawyer who has taken much of the blame for why the Just Desserts case has been delayed in the courts for more than four years.

"They do make an honest attempt to be fair, and more often than not they are. But it's still true that a poor black defendant doesn't get the same breaks from the criminal justice system that a wealthy, white defendant does."

The three black men charged in the slaying of Georgina "Vivi" Leimonis at the Just Desserts cafe on Davenport Rd. more than four years ago were the victims of "racial insensitivity" from courthouse guards during their preliminary hearing, Mr. Justice Brian Trafford said in a report on the case.

Old city hall security staff unlawfully kept the three, Lawrence Augustus Brown, Gary George Francis and O'Neil Grant, shackled dur-

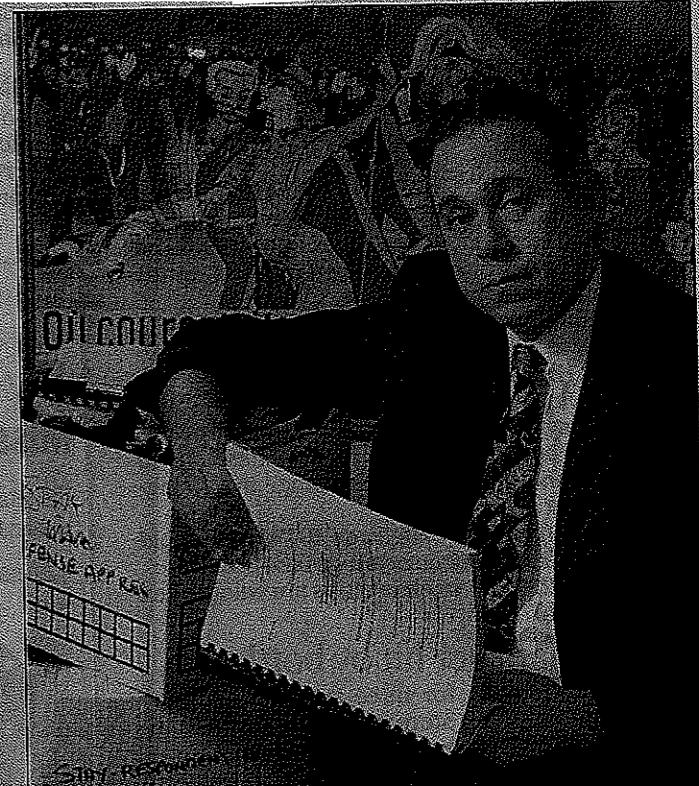
ing court appearances, the Ontario Court, general division judge said.

"The value of the racial sensitivity to the use of restraints on black people in custody and the duties to train the court officers assigned to this case... were all breached in this case," the judge wrote.

That abuse, coupled with misconduct of defence lawyers, such as Midanik and law authorities, connected to the case, led to a breakdown in the justice system, Trafford wrote. Despite all that, the trial should still go ahead, he ruled, dismissing a defence motion to free the men because the delay in getting the trial started was a violation of their constitutional rights.

Please see Judge, D5

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RON BULL/TORONTO STAR

STRONG OPINIONS: Defence lawyer David Midanik says the courts are a reflection of society and, although usually fair, sometimes they are not.