

An Execution

It had been a quiet day, an afternoon holiday to celebrate St. Patrick, and Herbert Spratt looked forward to the usual evening visit to his brother Edward's place on Plymouth Road. His fiancée of just a few days, Josephine O'Brien, a young nineteen-year-old from Cape Broyle now working as a domestic in St. John's, accompanied him on this St. Patrick's Day, 1942, sharing an evening walk and ice cream treats before the two would reach their destination. The relationship was just a few months old but family and friends could already see a comfortable beginning, never yet seeing them argue or fall out with one another. No sign of trouble of any kind. Herbert had just recently bought her three items of jewellery: a cross, a watch and an engagement ring. The couple had finalized a wedding date of June 14, a few months away. What was about to transpire in that home on Plymouth Road was a shock to everyone who knew them.

Edward and Maud Spratt arrived back home at about eleven o'clock, expecting to be greeted by the young couple in the family kitchen as they had most nights. Maud was the first to enter the house. Her sudden, terrifying scream could be heard upstairs where the home's owner, a Mr. Lynch, and several boarders lived. Maud had come upon the body of Josephine lying on the couch amid clothes and walls splattered with blood everywhere she looked. Edward Spratt followed close behind and could not believe what he was seeing. Her scream had caused a flurry of response and confusion from the people living upstairs. Someone, no one remembered who, finally called the police.

The shock of what came next began at another brother's residence on Water Street at about 10:45 p.m. Ray Spratt knew nothing until Herbert arrived "covered in blood", raving and showing clear signs of drunkenness, although he was known to be a non-drinker. He cried uncontrollably before finally confessing to brother Ray

that he had killed his girlfriend, blurting out all the while that she had told him that evening that she was having a baby “that he was not responsible for.”

Almost as a foretelling of what was to come in the following days and weeks, the events of the rest of that evening moved more quickly than could be imagined by anyone connected to the Spratt family, and to members of the judicial community itself. Within minutes of his frenzied arrival at his brother Ray’s home on Water Street, a call had been issued for his arrest by Sergeant W.F. Case of the Newfoundland Constabulary. Case, along with a Constable Brazil, had been to the murder scene and within minutes put out a call to find and arrest Herbert Spratt for murder.

At 1:45 a.m., Case arrived at police headquarters to find Spratt already there. Despite the usual caution that he was not bound to make a statement at the time, especially given his heightened and agitated state, Herbert Spratt insisted on giving a statement that night – a lengthy, if confused one. It was to leave no doubt in anyone’s mind as to his obvious guilt in Josephine O’Brien’s murder.

The scene at his arraignment next morning was just as tense and disturbing. Newspapers reported Spratt appeared highly emotional throughout, at times almost uncontrollable, finally collapsing across the bar of the prisoner’s dock. He remained seated for the rest of that hearing.

The formal arraignment took place on April 10, before a full bench of the Supreme Court. A trial date was set immediately for April 27, before Chief Justice W.H. Horwood. Herbert Spratt entered a plea of “not guilty”, a surprising move considering his confession a few weeks before. What was not known at the time was that James Spratt, Herbert’s father, had indicated to the defence counsel that he wanted no reference made to his son’s mental state, regarding it as a further

humiliation on the Spratt family.¹ James Spratt was a prominent political figure in St. John's, with several winning civic elections to his credit, dating back to 1933. His decision to interfere as he did gave all the appearances of being one-sided, a concern more for himself and his family than for his son. In effect, the elder Spratt's decision literally tied the hands of his defence lawyer, allowing the charge of first degree murder to stand. Any lesser plea was now out of the question, including the most obvious: a plea of insanity.

The trial heard 19 witnesses – 16 for the Crown, and three for the defence, the latter all relatives of the accused. At the time of the Spratt trial Sir William Henry Horwood was in his 80th year. Born in 1862, he was called to the bar in 1885 and appointed Q.C. ten years later. The proceedings showed that the Chief Justice conducted matters in a clearly uncompromising manner, solidly tied to a traditional legal past and unlikely to stray any distance from those points of law and its protocols that he was used to.

The trial opened as scheduled on April 27 and ran, short of the defence's final arguments, a mere day-and-a-half. Lawyer for the defence was 38-year-old James A. Power, later to become Member of Parliament for St. John's West, and Director of Public Prosecutions after his retirement from politics. The Honourable L.E. Emerson, K.C., the government's Attorney-General and Commissioner for Justice and Defence, acted for the prosecution.²

¹ According to writer Jack Fitzgerald in his book, *Ten Steps to the Gallows*, defence counsel Power "ran into problems in preparing a defence when Spratt's father insisted that the psychological state of Herbert at the time of Josephine's death not be argued as a defence." (p. 43). Further, on page 51, he writes that Pratt wanted to avoid a plea of insanity "because of the stigma attached to mental illness at the time."

² Emerson's role in the Spratt case went well beyond trial proceedings. When Governor Humphrey Walwyn was eventually asked to consider commuting the sentence, Emerson, in his role as Commissioner of Justice, was then called upon to advise the governor on the matter. A series of lengthy written reports were to follow, including, for the first time, a medical assessment of Spratt's mental capacity.

The testimony was straightforward: witness after witness recalled conditions they came upon at the murder scene, together with what had transpired later that same night at Spratt's brother's home on Water Street. Statements from police officers offered a careful time-frame of the evening's events, including the circumstances of his arrest and his insistence, despite their precautions at the time, of writing a confession on the spot. Equally undramatic, James Power's cross-examination of witnesses merely confirmed much of what was already known or had been entered into evidence. It appears there was little room for contradiction or few points of law to challenge what had been presented.

Herbert Spratt did not take the witness stand. His testimony was nothing more than a reading of the statement he had given police. He offered no evidence beyond that and he was not cross-examined. His account begins with his description of what appeared to be a typical evening together: a quiet walk just before supper, the usual visit to his brother's place and moments of intimacy between the two, a most striking detail in the light of the gruesome events that would follow:

We bought some ice cream before going in and sat down eating it. We intended going to a show at the Capitol but she was feeling kind of sick. We sat down on the couch talking and kissing like a fellow and girl are. We then laid down on the couch. We were talking about one thing and another and she told me she was going to have a baby.

What follows is a rambling description of the attack and the actions he took immediately thereafter, much of it disordered and unclear:

I am not sure if she if she were lying or sitting. She made a scream as I had the iron in my hand ... I think I took her scarf or mine. I left the scarf in some beer parlour. I went to different places. I don't know what happened after that. We were talking about getting married on June 14th, that is when I was at the house first. I was at my brother's 144 Water Street, when police found me. That is all.

Events continued to move quickly on the second day of trial. The last of the Crown's witnesses was called before adjournment at 2:30 p.m. Defence Counsel Power called only one witness, a shipmate of Spratt's, Lieutenant Kevin Maher. Maher simply verified Herbert's war record, good conduct and sea time aboard British battleship *H.M.S. Rodney*. *Rodney* was one of four British warships which first engaged the mighty German battleship *Bismarck* the year before in one of the most important and fiercest battles of the war.

The Rodney battle group had engaged the *Bismarck* for a full day, firing over one thousand shells and twelve torpedoes before the actual sinking of Germany's most fearsome battleship. One can only imagine the fury of that battle and the overwhelming life-and-death prospects which every man on the *Rodney* faced during those twenty-four terrifying hours. Doomed though she was when hit in her propeller by a British torpedo, and thereby losing all practical maneuverability, the *Bismarck* fought on, never an easy mark for whatever the *Rodney* could throw at her (of the twelve British torpedoes fired at her that day, only one found its mark).

The plight of the *Bismarck* and the heroism and gallantry displayed by the crew of *H.M.S. Rodney*, only one year past, was certainly still very fresh in the mind of every jury member in that spring of 1942, but had no effect in the sentencing of Herbert Spratt. Again, the court was remarkably inconsiderate of Spratt's involvement in that famous battle, and the fallout it may have had on the mental condition of the 19-year-old Newfoundland.³

There is little of significance in the Crown's concluding statement to the jury. When his turn came, Power took forty-five minutes addressing the jury, attempting for the first time to enter the issue of Spratt's mental condition on the night of the murder. There was no premeditation on the part of the accused, he said, rather he acted "flushed with rage" and "instantaneously". He continued with reference to the effect

³ Spratt had contracted pulmonary tuberculosis while at sea and was being taken home on board *Rodney* when the call came to engage *Bismarck*.

the *Bismarck* campaign had had on Spratt's state of mind, concluding that since "he had been provoked by Miss O'Brien", the charge should be reduced to manslaughter.

The jury deliberations were swift, taking no more than a further 30 minutes to return a verdict of guilty in the first degree. Despite the gruesome details which they had just heard during testimony in the two-day trial, the guilty verdict was attended with a plea for mercy for Herbert Spratt, a plea which was swiftly ignored by the Chief Justice.⁴ Further, in addressing defence lawyer James Power's argument that the killing had all the earmarks of "a crime of passion", Justice Horwood's response astonished all present. He said the argument did not apply in this case, since the couple were merely engaged, not officially married. The law, he concluded, could only apply to married people. The plea for mercy on two seemingly relevant points in Spratt's favour did not stir Chief Justice Horwood in the least. He remained unmoved by both arguments.

The execution order was issued by Horwood on May 9, and the date set for execution as Friday, May 22, at 8:00 a.m., a little more than two months from the time of the murder.

II

42-year-old Father John Power was serving his fifth year as curate at St. Joseph's Parish in the east end of St. John's. Part of the parish mandate was to provide chaplaincy to His Majesty's Penitentiary, located almost next door to the parish headquarters on Quidi Vidi Road. The relationship was mostly an "on-call" arrangement, with infrequent liturgy services as might be requested, or required, as

⁴ The recommendation of the jury read as follows: "In view of the prisoner's youth and indifferent health, as well as the fact that he served with a good record for his King and country, we wish to couple this verdict with a sincere recommendation for mercy at the hands of the law or at the hands of the representative of his majesty the King."

happened in the case of Herbert Spratt. Pratt was Catholic and, as the parish curate, the responsibility for his spiritual well-being fell to the gentle and emotionally vulnerable Father Power. The affair proved to have distressing consequences for Power; no one at the time could know, nor ever be prepared, for what was suddenly placed before this young curate, nor the effect these circumstances would portend for the rest of his life.

Father Power was ordained to the priesthood in 1925 and had served mostly in city parishes, with some little time in Petty Harbour and Trepassey in his early ministry. It was not until 1951 that he was finally appointed parish priest. As the one in charge, he was said to be uncomfortable with the day-to-day responsibilities that came with parish work. Nervous by nature, he impressed colleagues as ill-fitted for the demands of most parish responsibilities: overseeing church and school maintenance, fund-raising, and bookkeeping were outside the world of spiritual affairs that he had been ordained to perform, and which he relished.

Altars boys from that time remember Father John as easily likeable, very simple in his ways, his demeanour unchanged from day to day. They remember, too, the great difficulty he had in saying mass, the daily struggle he faced during the consecration of the host, his body convulsing as he tried to maintain his composure during this most revered moment. Over time, they became accustomed to his ways, and often felt sympathy for him as they watched him approach the altar, knowing, as they did, what lay ahead. Each morning, at least in their young minds, the struggle seemed to become more and more obvious.

They were too young to probe at any length into the cause of his condition. It was hardly ever spoken of. Their curiosity went no further than to simply wonder why it was happening. Even at so young an age, they were aware that they could never ask. The discomfort he showed in offering mass was never seen publicly outside of that moment at the altar, and it was not openly discussed with anyone close to him. His colleagues recognized his difficult situation and quietly made adjustments in his

schedule accordingly: when asked to serve mass for Father John, altar boys would be excused from fasting before Holy Communion because they never knew how long each mass would take.

The hanging was scheduled for eight o'clock. Father John arranged to be at the penitentiary by six, to pray with him and accompany him as he was led from his cell and taken to the warden's office for the last acts of clemency he would receive: a chance to sit with the warden and the priest, to write letters to his family and to the family of Josephine O'Brien, expressing his deep remorse to each.

The newspapers report Spratt remained remarkably calm throughout those last hours, finally thanking the warden and those who were responsible for his welfare throughout his confinement. Prison officials, accompanied by his priest, then led him to the scaffold where he was placed in the hands of "an unmasked executioner from Canada."

Father John was to experience yet another unsettling moment before the end - the timing assigned to administer the Last Rites of the church. He was told by his superiors that the Rites could not be administered on the scaffold, but only at the moment of death or dying, i.e., after the body had fallen.

In the end it was not surprising that this man could not cope with the situation in which he found himself. Minutes after the execution, after the burial and a brief liturgy at graveside, Father John had barely left the penitentiary premises when he collapsed on the sidewalk outside the main entrance. He remembered nothing until awakened later that day at his mother's residence on Freshwater Road.

Did his role as spiritual advisor during those final two months of Spratt's life and his presence on that terrible last morning somehow leave its mark? Other than a few brief sketches left from that era, we have no record of what might have been their

personal relationship, or its possible effect on him. As well, newspaper reports make no reference to their brief association, apart from his visit with Spratt the night before, and those last few hours prior to the execution itself. What remains of Father John's story, his role in the days and weeks leading up to Spratt's execution, is anecdotal at best and sketchy in detail. Fellow priests also left little behind of what he might have said about that traumatic experience, or how he might have shared in Herbert Spratt's emotional state in those last days.

III

Such was the reaction to the execution that morning that the Dominion of Newfoundland abolished the death penalty almost immediately and without opposition, years ahead of similar action taken by the Dominion of Canada in 1976.

Local newspapers reported an overwhelming public outcry against the sentencing and death of Herbert Spratt. The Commission of Government at the time ignored all pleas for clemency and merely stood by while a hurried judicial process ran its course – in all, a matter of sixty-six days from the day of the murder, March 17, to the day of execution on May 22. In the public's view, too many questions remained as to why such an unusual and, in the minds of many, questionable public prosecution should have gone that way. In effect, a kind of fascination surrounding the trial and its misgivings began to surface in the public mind almost immediately.

Many believe Herbert Spratt was a victim of the times. To begin with, there were concerns with the city's overwhelming military presence. American and Canadian troops were present on almost every corner; restricted access areas were commonplace, often in the most unlikely places in the city. One local paper went so far as to describe the city as a "garrison town", with problems which must be

“seriously considered.”⁵ A frightened population was coming to grips with an upswing in crimes and misdeameanours throughout the city. Many people felt there was an understanding put in place by those in authority that some kind of example had to be shown these visitors, a lesson to be quickly shown that criminal behaviour would not be tolerated. In such a mindset, they wondered, was the execution of Herbert Pratt the first, and most striking example of such thinking?

Still others advocated that the case developed the way it did because Spratt was Roman Catholic, and religious sensitivity at the time played an important part in most public and political affairs, sometimes to the point of outright bigotry. In legal circles, questions arose as to why so obvious a case of a “crime of passion” was allowed to proceed as a capital offence in the first place? Why was Herbert Spratt allowed to plead guilty to first degree murder? Why not manslaughter or a plea of insanity? Why were the appeals from both James Power and the jury so easily and quickly dismissed? In the opinion of many, both then and now, the first degree charge was an “unheard of” act of injustice.

Most interesting, and intriguing, was the re-emergence in this story of the father of the accused, James Spratt. Spratt continued to stand for election to city hall until 1945 when he was appointed Deputy Mayor, having garnered the highest vote count among all other councillors that year. He retired in 1949 to take up the cause for Confederation with Canada and landed a cabinet position in the first Liberal government of Joey Smallwood. Elected in the district of St. John’s West, Spratt would find himself confronted once again with the matter of his son’s execution. As told by Newfoundland writer, Harold Horwood,⁶ in his 1989 biography, JOEY, an embarrassing document was introduced at the cabinet table by Attorney-General Leslie Curtis while Spratt sat there as one of Smallwood’s ministers. Horwood describes the moment this way:

⁵ *The Evening Telegram*, February 3, 1941.

⁶ Horwood was also appointed a minister in this cabinet.

“ ... an unusual petition was introduced to Cabinet by Attorney-General Leslie Curtis. The hangman who had been brought to Newfoundland from Quebec to spring the trap under young Spratt claimed that the Commission of Government had never paid his fee in full. He was now petitioning for the balance.”

According to Horwood’s recollection, it was Smallwood himself who tried to intervene in that awkward moment, nudging Curtis to remind him of Spratt’s presence:

“ ... but Curtis turned and inquired. ‘What’s the matter with you?’ then went on to explain what the letter was all about – it was as though he didn’t realize that the man whose son had been hanged was sitting across the table. Spratt rose from his place, his face white, shuffled from the room, and never attended another Cabinet meeting.”

This incident confirmed once again that despite the several years that had passed since the trial and execution, the notoriety gained from the tragedy that befell the lives of Herbert Spratt and Josephine O’Brien would not easily be lost to history.

It seems, too, that suspicions of injustice and insensitivity will forever haunt the trial of Herbert Spratt. His was the last execution: the death of a young war hero somehow lost in a world of circumstance and conflict, a world to which he had suddenly and unwittingly returned and in which he could no longer find himself.

(Author’s Note: One final and personal moment of interest surrounding the execution of Herbert Spratt is associated with the family of a close friend of mine. He told me that Stella O’Brien, a sister of the murder victim, was a guest soloist at his parents’ wedding on the night of March 17, 1942. The ceremony was held at seven o’clock in the evening, near the established time of Josephine’s death. Stella O’Brien is said to have stopped in the middle of her performance that evening and without explanation abruptly left the stage, exclaiming “I have to go, something terrible has happened.”)

