HEAVY CLOUDS OF SUSPICION still hang over the Ginger Goodwin case. But this much is clear: Justice was neither done nor was it seen to be done. This was because a legal anachronism, the grand jury process, imported from England, short-circuited what should have been due process — a public trial of the manslaughter charge. But the grand jury process, conducted in private, with no record of proceedings, avoided a trial and has left history to judge: Was Dan Campbell guilty as charged, or not? At the time, the law required that indictments be presented to a grand jury, which then decided if there would be a trial. The Provincial Police and the two Justices of the Peace at the Preliminary Investigation decided there was a prima facie case of manslaughter against Campbell — enough evidence to charge him and to warrant a trial. But thirteen grand jurors — or as few as a majority (seven) of them — who would have had little (if any) experience in criminal law, decided there was no case for a trial. It was a perverse decision. Dan Campbell walked away a free man. There was no accounting for what happened when he and Goodwin met on a steep, heavily forested hillside in the Beaufort Mountains west of Cumberland on 27 July 1918. Assume for a moment that the situations were reversed: Can anyone imagine the grand jury returning the same decision for Goodwin, if he had shot and killed Campbell, and was charged with manslaughter? There would have been a trial for Goodwin. There should have been a trial for Campbell.

The grand jury, as an institution, had been criticized in legal circles for decades and there was a campaign under way in 1918 for its abolition. This

---

finally occurred in 1932 in BC and the following year in England. Canadian critics of grand juries had significant grounds for their objections. First, there was the issue of secrecy: the grand jury conducted its business behind closed doors with no record made or kept of the proceedings. Thus, perjury before a grand jury was effectively protected because, from a practical point of view, a conviction was impossible to obtain without a transcript. Second, the grand jury was superfluous because magistrates, especially in urban areas, knew enough to decide whether an accused person should be committed for trial or not. Compared to these magistrates, grand jurors would often have little or no experience with the legal system and could potentially make errors because of their ignorance.

"The Grand Inquest ... occupies the high position of being answerable to no power, no court and no Parliament of the state," said an editorial in the Canada Law Journal of 1891, advocating its abolition. "Its mistakes cannot be rectified." The editorial said that the finding of a magistrate "is really a far greater protection to the public and the accused than are the proceedings before a grand jury. The magistrate is generally a man having more or less experience in dealing with criminal cases, and in this respect he has a great advantage over the jurors. His committals often end in acquittals, but at least there is something apparent on which they are based." A letter in the same journal made the same point: Magistrates are better qualified to sift and weigh the evidence than grand jurors. Acquittal in open court "is a more satisfactory expurgation than the return by a grand jury of a Scotch version of 'not proven'." Should it happen that grand jurors become influenced by public or class prejudices, the letter continued, and should such prejudices favour the accused person, "the power is in the hands of the grand jurors, or a majority of them, to prevent a trial."

In 1892, the Canada Law Journal reported that 48 judges favoured abolition of grand juries, 41 were opposed, and twelve doubtful. Three months before Campbell killed Goodwin, at the 1918 session of the BC legislature, Attorney-General J.W. deB. Farris (who, it will be remembered, in his practising days as a lawyer, defended coal miners after the 1913 riots during the Big Strike on Vancouver Island) moved that a recommendation be sent to the federal government asking it to amend the Criminal Code to dispense with the grand jury. The recommendation passed by a vote of 25-to-9 with no serious objection raised but there was no immediate reaction from the federal government. The BC recommendation said there would be "a substantial saving without impairment of public service."

Some years were to go by before the federal government passed the requested legislation, making permissible the abolition of the grand jury. In 1932, the BC legislature amended the Jury Act and abolished grand juries. Attorney-General Robert Pooley said the grand jury had outlived its useful-
ness. He read comments from articles on the subject where exception was taken to persons who, with no legal knowledge, and behind closed doors, sat as a tribunal to override decisions of magistrates. Fourteen years after the grand jury short-circuited justice in *Rex. v. Daniel Campbell*, it could never happen again.2

The grand jury in 1918 saved Campbell from a trial, one in which he would almost certainly have had to testify. A defence of self-defence practically demands that the accused testify, even though he has no legal obligation to step into the witness box. And, at the Preliminary Investigation, Campbell openly voiced his intention to speak in his own defence. But without his first-hand account, tested by a vigorous cross-examination, what we know about what happened between Campbell and Goodwin is either second-hand or inferential. The problem with both is obvious: Campbell may not have been telling the truth to others; others may not have told the truth; and wrong inferences can be drawn even from the truth.

Today, the question is further complicated by a massive number of missing records, some of them deliberately destroyed: from Goodwin’s first medical examination and classification as temporarily unfit for war duty in the fall of 1917 right up to his death, and beyond. Justice Lyman Duff of the Supreme Court of Canada (who was to become chief justice) took it upon himself (as we have seen) to destroy all the conscription records because, he said, of the divisions caused to national unity. Goodwin’s final appeal against conscription was among those rejected by Duff, who was the final arbiter of appeals under the Military Service Act.

E.L. Newcombe, later a Supreme Court of Canada judge, who was at the time deputy minister of justice and chairman of the Military Service Council which supervised the Military Service Act, like Duff, destroyed all his conscription records. This wanton destruction of the historical record (including Goodwin’s file among many others) prevents us from knowing the nature and extent of Goodwin’s illness. We will also never know just who sent the telegram ordering his re-examination (and the subsequent reclassification to A, fit to fight at the front) during the strike which he was leading at CM&S in Trail, a major supplier of war matériel. But the circumstantial evidence and the direct evidence of Dick Marshall (see Chapter Five) point to CM&S being involved in running Goodwin out of Trail during the strike — and having a reason to do so. Gone, too, are any relevant records from the Dominion Police and its Military Police component that was assigned the

---

job of rounding up draft dodgers under the Military Service Act. Although it was reported that Campbell was to have been taken before a military tribunal for an inquiry into all the circumstances of the shooting, no record can be found of any such internal inquiry. The Bill of Indictment, which would have provided the list of witnesses called before Campbell's grand jury, cannot be found. Because no record was made of what was said by witnesses to this (or, indeed, any) grand jury, we cannot know how similar, or dissimilar, the testimony was compared with the Preliminary Investigation hearing in open court.

Missing, too, are the records of the Trail Mill and Smeltermen's Union, Local 105. The CM&S records do not contain the 1916 letters that allegedly constituted the labour agreement which CM&S claimed was violated by the 1917 strike. The records that Cominco (formerly CM&S) turned over to BC Archives and Records Service in Victoria contain nothing for the 1917 strike period.

Lists of employees as far back as Goodwin's time do exist but Cominco refused to allow public inspection, on the grounds of confidentiality (and this nearly a century after the fact).

The records of the Cumberland local of the Socialist Party of Canada are lost and the records of the United Mine Workers of America are sparse for the Big Strike. Official records for the period immediately following World War I when there was considerable government spying on unions and left-wing groups have been pared. For example: an application under the Freedom of Information Act for 20 files (taken from lengthy indexes in *RCMP Security Bulletins: The Early Years, 1919-1929*, by Gregory S. Kealey and Reg Whitaker) resulted in a reply from National Archives Canada that all but one of the files were either: destroyed (two files), “cannot identify” (two files) or “no record” (15 files). Interestingly, the one remaining file of the twenty requested consists of 1,500 pages about Communist Party activity in Trail. Documents do survive to show the remarkably deep penetration by police of unions and political groups.

The ‘smoking gun’ theory is popular especially among those with the ‘golden key syndrome’ — the belief that, out there somewhere, there is a piece of evidence which will prove the case, if only it can be found. If the smoking gun is (or was) there in the Goodwin case, no one has found it, despite many efforts by professional and amateur researchers and Access to Information applications. It is either well hidden or destroyed. Perhaps it never existed.

Missing records prompted author Susan Mayse to wonder, “Ginger Goodwin might as well not have existed. It began to seem as though some-

\(^3\)Victoria *Daily Times*, 1 August 1918.
body planned it that way.⁴ But the Goodwin story is not alone in prompting this kind of thought over missing records. Author Terry Recksten, while researching the Dunsmuirs, wrote: “Perhaps it was only researcher paranoia, but at times it seemed as if the Dunsmuirs had carefully covered their tracks.”⁵

Suspicion, deeply rooted in the difficulty and sometimes impossibility of obtaining information, leads to speculation. Second-hand stories, often repeated come to be accepted as truth, or a version of the truth called folklore. “Tradition and truth often have different stories to tell,” writes author and broadcaster Laurier LaPierre. He points out, for example, that most of the Battle of the Plains of Abraham actually took place to the west of the plains, and that the plains never belonged to Abraham Martin.⁶

The Goodwin story has been the victim of too much advocacy writing with too few facts. Several books state that what happened was murder, even that Campbell was charged with murder. It has been said that Goodwin was shot in the back, which he wasn’t; that there was a conspiracy to murder him because he was a threat to the business and political establishment.

It was speculated that Goodwin was killed by a dum-dum bullet, a British army bullet made at an arsenal in India called Dum-Dum, and designed to expand on impact. Similar speculation was raised in the ambush slaying in 1922 of Michael Collins, the Irish nationalist, and dismissed as a myth by author James MacKay.⁷ A dum-dum bullet (.303-calibre) would not have fitted Campbell’s .30-30-calibre rifle anyway. In fact, the fatal bullet was an ordinary soft-nosed hunting bullet fired from a fairly common lever-action rifle used mainly for hunting deer. Such a rifle has been described as a favourite with farmers “who liked to have a rifle of some consequence handy beside the door.”⁸ Given the very close range (approximately ten feet) at which Goodwin was shot, it would probably not have made any difference if Campbell had been carrying a .22-calibre automatic rifle.

But was Goodwin carrying a gun? Testimony and personal notes from two policemen who arrived at the scene within a few minutes of the shooting place Goodwin, dead, pitched forward on his face, with a rifle in his hands.

Second-hand accounts claim he was unarmed. Louvain Brownlow, a daughter of the Provincial Police Constable in Cumberland, Robert Rushford, gave a credible interview years later in which she said her father always told the family that Goodwin, who was a friend, was unarmed. “He said, ‘The poor little bastard. He wasn’t armed.’ I heard the story often

⁴Mayse, Ginger.
⁵Recksten, The Dunsmuir Saga.
⁷James MacKay, Michael Collins: A Life (Edinburgh, 1997).
enough," she said. But, how would Rushford know? He wasn't there when the shooting happened and he left no indication of this knowledge at the time. It certainly would have been very relevant to the case against Campbell — shooting an unarmed man. Mrs. Brownlow recognized the troublesome credibility of her story and was straightforward: "I can only vouch for what my father told us. My father was a very honest upright man. He would not exaggerate it. I can't prove it."

If Goodwin was armed, what was he doing with a rifle? Second-hand accounts say the deserters used the .22 (which may have been owned by Joe Naylor and given to them) for shooting small game, that Goodwin had stayed behind the others after fishing on the fateful afternoon to pick berries, and was returning to their camp — perhaps the lean-to police reported was only 200 yards from the shooting and at which there were recent signs of cooking.

Should Campbell have been carrying a rifle anyway? The regulation weapon of the Dominion Police was a revolver. This was never properly explored in court but if it was improper to carry a rifle (and, where was the regulation revolver?) it was not brought out in testimony. Campbell's fellow searcher and policeman, George Henry Roe, had a rifle. Almost certainly trappers Janes and Anderson would have carried rifles.

Were Campbell and Goodwin facing each other when the fatal shot was fired, as suggested by Campbell's lawyer in questions at both the inquest and Preliminary Investigation, as well as in comments recorded by Devitt and Roe from Campbell immediately after the shooting? Friends of Goodwin said a bullet can't turn corners (to enter his neck from the left-side and end up in the right shoulder the bullet would have to take a 45-degree turn). That assumes, however, that at the vital moment Goodwin and Campbell were standing exactly face-to-face and that Goodwin was not turning his head. If Goodwin had a rifle, and if he was bringing it to an aiming position, his head would be turned somewhat to the right. Or, was he turning his head away from what he knew was about to happen? Or, was he stumbling?

The shooting could have occurred in the physical manner suggested at the inquest and the Preliminary Investigation. One of the foremost forensic medical authorities of the 20th century, pathologist Sir Sydney Smith, has said that the behaviour of bullets at short range is both extraordinary and little known. Bullets can deflect at right angles to the line of flight and Dr. Smith cited a case where this happened.

It is clear that Campbell fired one shot and the bullet creased Goodwin's left wrist and then broke into two parts, both striking his neck on the left,

---

9 Author's interview with Louvain Brownlow, 28 February 1995.
one of them severing the spinal cord. Friends of Goodwin have speculated, variously, that he was turning away at the time he was shot; that he was sitting on a log with his head in his hands and was ambushed from the side; that he had raised his hands in surrender (perhaps also holding up his rifle). What was needed was direct testimony from Campbell. Thorough cross-examination would have gone into these points. The purpose of the inquest was simply to establish who the deceased person was, and how, when, and where he came by his death. The Preliminary Investigation’s purpose was simply to establish whether there was enough evidence to warrant a trial. Two Justices of the Peace said there was. What was needed was a trial itself where the issue of criminal responsibility could be thoroughly tested.

Murder is one thing: The unlawful killing of another person with malice aforethought. In 1918, it was punishable by hanging. Manslaughter is the unlawful killing of a person but without malice aforethought. The punishment was up to life in prison. Self-defence, if believed, is a complete defence to both charges.

Campbell told his self-defence story consistently for the rest of his life. It came through very clearly in the line of questioning pursued by his lawyer, William Moresby. Campbell maintained his story to his family all his life. After his death, his widow, Florence, said publicly in 1957 that her husband was in great distress over the shooting which he had told her was done in self-defence. She said he told her that he ordered Goodwin, rifle in hand: “Get your hands up and walk over here.” But Goodwin suddenly dropped his rifle to his shoulder when he was 13 feet away. Campbell fired the fatal shot.

Manslaughter covers almost every kind of unlawful killing, from near-accident to near-murder. The Provincial Police said this was a case of manslaughter, believing perhaps that Campbell reacted wrongly to a situation which confronted him, rather than from any evil intention of his own, which would make it murder. The defence of self-defence can be seen as self-serving. There were no witnesses. An immediate charge was inevitable, especially since the killing occurred at very close range.

Later, police learned (thanks to Joe Naylor telling Const. Rushford) that six men had heard Campbell say on three occasions in the weeks leading up to the shooting that he would “get” (or “shoot”) the deserters, “dead or

---

11 Jimmy Ellis, Karl Coe interviews, in Masters, “The Shooting of Ginger Goodwin”; Author’s interview with Jean Letcher, 16 March 1988; William A. Pritchard manuscript, University of BC Library, Special Collections and University Archives Division; Vancouver Sun, 31 July 1918.
12 Victoria Daily Colonist, 25 August 1957; Author’s interview with Eva Harris and Billy Conway, niece and nephew of Dan Campbell, 7 April 1990.
alive," that they would not get away. These statements go to Campbell's mental state at the time.

Campbell's lawyer was right when he told one of the witnesses, in exasperation, that the testimony made the case against his client "very strong." Campbell's statements indicated a cavalier attitude to the consequences of any action he might take to arrest deserters. Or, they could have simply been hot air from a braggart who thought another policeman (Rushford) had previously let one of the deserters (Taylor) escape. They could be interpreted as a general intention to inflict serious harm, even death. Campbell's words do not indicate a specific intention to "get" or "shoot" Goodwin. The reference was to deserters, in the plural, or to the earlier incident which involved a deserter other than Goodwin. This is in accord with Devitt's story that he had no special instructions about Goodwin in particular; their job was to arrest deserters.

This brings us to the theory that there was an establishment plot to murder Goodwin. It is a huge mountain to climb to suggest that otherwise law-abiding people would conspire to commit the greatest crime of all, murder. Conspirators, of course, rarely leave detailed notes. Certainly, Selwyn Blaylock knew Noble Binns and they both knew Goodwin. Blaylock and Binns also knew William Devitt (who certainly must have known, at the very least, of Goodwin from the time he was police chief in Rossland and Goodwin was the leader of the smelter union in nearby Trail who visited Rossland frequently). Blaylock knew Robert Scott Lennie, the former (until 1910) Nelson lawyer — the two men corresponded in 1915 about the Workmen's Compensation Act after Lennie had moved to Vancouver. Lennie had practised in Nelson with Edmund Carlyon Wragge. Wragge later practised in Nelson with Charles Robert Hamilton who provided legal advice in 1917 to CM&S about the eight-hour day. Lennie was the BC conscription registrar under the Military Service Act from 1917 to 1919 and organized the military police component of the Dominion Police in Vancouver. The main task of the military police was to enforce the conscription law and arrest draft dodgers. Lennie thus knew Devitt from 1917 though the two men would have known each other from Nelson days when Devitt was police chief there and Lennie was a prominent lawyer. Now Devitt was the number two man in BC in the military police component of the Dominion Police. Lennie described Devitt in 1920 as "a very efficient member." Lennie would know at the very least of Goodwin — for whom an arrest warrant was issued for dodging the draft. But something more than the mere fact of various people knowing each other is needed to show a conspiracy.

The forensics of the case do not support the conspiracy theory, as historian Mark Leier has shown in his investigation. Leier notes that Goodwin

13Leier, "Plots, Shots, and Liberal Thoughts."
was not shot in the back (which would be *prima-facie* evidence of murder) and Campbell did not (indeed, could not) fire a dum-dum or expanding bullet. Leier says powder marks testified to by Dr. Harrison Millard (suggesting a range of as little as two feet, indicative perhaps of ambush) may have been something else, making it impossible to know the range. Leier notes that there is no record, testimony, or document that even hints at a conspiracy to murder Goodwin. There is no forensic evidence that disproves Dan Campbell's story or that makes a conspiracy theory more plausible, he writes. "Since there is no documentary evidence, testimony or forensic evidence proving conspiracy, we are not justified in believing that Goodwin was the victim of a conspiracy," he concludes.

Leier sees the murder/conspiracy focus as too narrow, arguing for a wider view: "In sending police after Goodwin, politicians were operating normally. Immorally, of course, but in their usual fashion, following their usual rules and orders. The real criminality is that they were simply doing their day-to-day, regular jobs, maintaining a capitalist order and ensuring the smooth operation of an exploitative system."

The conspiracy theory falls down for another reason: There was no motive to 'eliminate' Goodwin in July 1918. The smelter strike had ended seven months before. Goodwin had left Trail and ceased all union activities for five months. Even his Socialist friends at the Vancouver Trades and Labour Council in March 1918 would not support his final appeal against conscription. The smelter union was rapidly disintegrating and soon would disappear. A conspiracy to commit murder made no sense.

One theory, however, fits the two main points of the tragedy. The first point is Campbell's claim of self-defence, that Goodwin was about to shoot him. The second point is Goodwin's well-known reputation, even to police, as a peaceable person, who according to a later account had said he would not shoot if cornered, and thus was unlikely to be attempting to shoot Campbell in a premeditated manner. These two points are not mutually exclusive and can be reconciled: What happened might have been neither murder nor manslaughter but, perhaps, mistake. Campbell and Goodwin, both armed with rifles, met each other in dense forest on a steep hillside — the hunter and the hunted. A movement by either man in such a circumstance could easily and quickly be mistaken by the other and trigger, literally, a fatal response. Campbell did believe Goodwin was about to shoot him. But Goodwin believed Campbell was about to shoot him. Panic. Both men raised their rifles mistaking the other's intention. It took only a split second. The man who could shoot the eye of a needle lived. The man who would not go to war died.

This, of course, is speculation. The question has remained: Was Campbell guilty of the crime for which he stood charged, or not? Can we even say
— beyond a *reasonable doubt* — which is the test in criminal law? Let's turn the evidence over to a leading BC criminal lawyer, Adrian Brooks of Victoria.