

Australia: Contradictory witness testimonies in Julian Moti hearing

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The Queensland Supreme Court resumed hearings yesterday on the application by former Solomon Islands' attorney general Julian Moti for a permanent stay of proceedings in the attempt by Australian prosecuting authorities to try him on charges relating to statutory rape allegations that were discharged by a Vanuatu magistrate in 1998. Moti's counsel is seeking to have the charges thrown out on the grounds that the investigation and prosecution represents a politically motivated abuse of judicial process. During yesterday's proceedings, glaring contradictions emerged between the testimony of defence and prosecution witnesses. These related to the events that led up to Moti's extraction from the Solomon Islands and arrest in Australia in December 2007.

At issue was the irregular nature of the deportation process, in which Australian police and officials played an important and, according to Moti's counsel, unlawful role. For much of the day, evidence was given by Peter Marshall, a New Zealand national who was Solomon Islands deputy police commissioner in 2007 and directly responsible for the involvement of Solomons' police in the expulsion of Moti to Australia. (Marshall now serves as Solomons' police commissioner and appeared from Honiara via video link.) His evidence contradicted, in several areas, that provided by other witnesses, including the sworn testimony of Marshall's superior in 2007, former police commissioner Jahir Khan.

Moti's arrest and extraction to Australia on December 27, 2007 came just days after the Solomons' government of Prime Minister Manasseh Sogavare was brought down through a parliamentary no-confidence motion. This marked the culmination of a protracted regime change operation initiated by Canberra shortly after Sogavare was elected as head of government in May 2006. His administration came to be regarded as a threat to the stability of the Australian neo-colonial intervention force, the Regional Assistance Mission to Solomon Islands (RAMSI), which first intervened in 2003 and ever since has maintained control over the impoverished country's state apparatus. The former government of Prime Minister John Howard regarded RAMSI—just as the current Labor government does today—as the lynchpin of efforts to maintain Australian strategic hegemony in the South Pacific amid intensifying great power rivalries.

The Australian Federal Police (AFP) investigation into the Vanuatu rape allegations against Moti commenced in late 2004, after Australia's High Commissioner to Solomon Islands, Patrick Cole, requested that they be re-examined as a means of assisting his efforts to prevent Moti's pending appointment as attorney general. Moti, an international and constitutional lawyer, was regarded as being hostile to Canberra's agenda in the country, and Cole feared that his legal expertise could be used to constrain RAMSI's operations. The AFP's investigation was later stepped up in mid-2006, when Moti, again, was about to be appointed attorney general. His arrest in Papua New Guinea in September 2006, while en route to take

up the post in the Solomons, sparked the subsequent diplomatic standoff.

Moti is arguing that his arrest and prosecution—on the highly contentious legal basis of Australia's extra-territorial Child Sex Tourism Act—has been driven by political calculations, represents an abuse of judicial process, and has been marked by a series of highly improper and unlawful acts.

The Queensland Supreme Court hearings have so far focussed on the events surrounding his extraction to Australia, with Moti's lead counsel Dyson Hore-Lacey SC yesterday again characterising what occurred as a "kidnapping". Defence argues that the deportation violated a magistrate's order expressly prohibiting such action, and also violated Solomon Islands' deportation laws, which require those subject to deportation to be granted seven days between the issuing of a deportation order and its execution, in order to allow for appeals to be heard.

Peter Marshall, in his capacity as deputy commissioner, played a central role in the events surrounding Moti's deportation. He instructed his officers, working with immigration officials, to serve the deportation order and arrest Moti at his Honiara residence, transport him to the airport where a plane was waiting for immediate takeoff, and accompany him on the flight to Brisbane. Much of yesterday's proceedings focussed on Marshall's knowledge of, and concern for, the legality or illegality of these events.

Marshall acknowledged that he had seen the magistrate's court order forbidding Moti's deportation. The order was shown to him in a meeting convened on December 25, 2007 to discuss the deportation. Present were AFP officer Peter Bond, the minister responsible for immigration Francis Hilly, permanent secretary Jeffrey Wickham, government minister Matthew Wale, and private solicitor Gabriel Suri, who was later appointed attorney general. Marshall testified that in the meeting, Suri advised that the magistrate's order was "fundamentally flawed" and could be disregarded. Two days later, just hours before Moti was arrested, Suri's advice about the "flawed" court order was underscored when Peter Bond told Marshall that Suri had confirmed that the deportation order itself was legal.

In cross examination, Hore-Lacey drew out the extraordinary nature of what had taken place: that a deputy police commissioner chose to violate an unambiguous magistrate's order on the basis of a private solicitor's personal opinion. He noted that constitutionally and conventionally, whenever disputed legal matters arise in the Solomons, senior police chiefs are supposed to seek advice from the solicitor-general. Marshall did not do this, however, and even admitted that he was unsure who the solicitor-general was in December 2007.

The police chief also admitted that he was not aware at the time of the legal right of deportees to issue an appeal within seven days. Marshall said that he first heard about this after Moti and his colleagues and supporters raised it when remonstrating with police and immigration officials as he was being arrested and taken to the airport. Nevertheless, Marshall insisted, this did not concern him, because of Suri's advice. Confident in the opinion of the private solicitor, the stance of the government ministers involved in the December 25 meeting, and the determination of senior immigration officials to deport Moti, Marshall said he made no effort to check the allegations that he and his officers were committing illegal acts. He said he could not comment on the evidence provided to the court by Solomon Islands' police and immigration officers who were involved in the deportation that they knew they had been breaking the law.

Hore-Lacey asked whether Marshall believed the reason why the deportation order was signed on December 24, but not served until three days later, was that a plane to Australia was unavailable before then, and that those seeking to deport Moti did not want to allow him any time to appeal the deportation order in the courts. Marshall admitted that this "would follow logically" from the immigration department's standpoint, but insisted that the matter had not been discussed with him at the December 25 meeting or any time afterwards.

When questioned about his role at the airport on December 27, overseeing Moti's expulsion from the Solomons, Marshall's evidence again diverged from that of other witnesses. Hore-Lacey raised the testimony of Moti's lawyer at the time, Wilson Rano, that he witnessed the AFP's Peter Bond pass what he believed to be travel documents for entry to Australia to Marshall, who in turn passed them to Solomons' immigration officials. Asked if Bond passed him documents at the airport, Marshall replied, "Not that I recall". Asked if he delivered documents to immigration officials, he answered, "I have no recollection of that".

Hore-Lacey later read out parts of Police Commissioner Jahir Khan's sworn affidavit, in which Khan insists that Marshall had deliberately kept him out of the deportation operation, and that the first time he learned of Moti's flight to Australia was when he heard the news on the radio. Marshall insisted, on the contrary, that he had kept Khan informed throughout. Asked if the police chief had given the green light to the deportation, Marshall replied, "Absolutely". Marshall also insisted that even if he had wanted to sideline Khan, it would have been impossible given the tight-knit nature of the Solomons' police force and the small size of Honiara.

Marshall could not explain, however, why he and not Khan had been placed in charge of Moti's deportation, given the prominence and significance of the case. Hore-Lacey put to Marshall that he had never briefed Khan on December 27, pointing to the absence of any mention of the police commissioner in Marshall's notes of that day's events. Marshall insisted that he had such a good memory of the discussions that there was no need to record them, but did not explain why he had included other important conversations he had been involved in that day, such as the one with Peter Bond.

Marshall was also asked about the alleged intimidation last month of Solomon Islands' police officers prepared to give evidence for Moti's counsel.

Earlier in the day Selwyn Akao confirmed evidence given to the court last month by his colleague Sam Kalita that Walter Kola, the Solomons' deputy police commissioner and Honiara police commander Nela Mosese had threatened them both with the loss of their jobs if they testified in

court. (See: "Australian court told witnesses were threatened in Julian Moti case")

Akao also testified that last Tuesday, Walter Kola arranged a meeting with him at police headquarters and told him to write a statement denying that any threats had been made and accusing Kalita of lying. Akao said that Kola told him that such a statement was required by Peter Marshall. Akao explained that he did not provide the requested statement; he was dissatisfied that his suspension from the police force had not been lifted despite the fact that he had heeded the earlier alleged threat, and had not appeared at the hearing last month to give evidence.

Peter Marshall later admitted that he had previously received a list of the defence witnesses, including Sam Kalita and Selwyn Akao, who were to appear on September 17 from Honiara via video link. He said that he instructed his deputy, Walter Kola, to inform Kalita and Akao that they could not be compelled to give evidence. Marshall said that in addition to being concerned with the officers' welfare, he was concerned that they had not informed him of their intention to appear as defence witnesses in the Moti case, and that he had a "natural curiosity" about their evidence given that he was going to testify after them. He did not want to be "blindsided".

Asked by Hore-Lacey if he thought that Kalita and Akao might interpret an approach from Kola in relation to giving evidence as intimidation, Marshall replied: "No, I don't think that this is appropriate terminology."

Hearings are expected to continue at least until Friday, with cross examination of AFP officer Peter Bond scheduled to begin later today. Presiding Supreme Court Judge Debra Mullins declined a request from Moti's counsel to postpone hearings until next Monday in order to allow the defence team sufficient time to examine hundreds of pages of AFP documents released in the last few days. If Moti's permanent stay application is rejected, a trial is due to commence early next month.



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