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Australian Miscarriages of Justice

Bernie Matthews Journalist

Introduction

In 1909 Oscar Slater was sentenced to death in Glasgow, Scotland, for the murder of an elderly woman. The sentence was commuted to life imprisonment and he served nineteen years in prison before his innocence was established. Slater was reprieved and given six thousand pounds compensation.

In 1950 Timothy Evans was convicted by an English jury of murdering his baby daughter Geraldine. A second charge of murdering his wife had not been heard by the court. During the murder trial the dull-witted Evans protested that his wife and daughter had been murdered by "the other man" living in the house at 10 Rillington Place, London. "The other man" was John Reginald Halliday Christie, one of the main witnesses for the Prosecution and a witness whom the trial Judge complimented upon for "his clarity of evidence" during the murder trial. Timothy Evans was subsequently hanged in March 1950.

Three years later John Reginald Halliday Christie, "the other man", confessed to murdering eight women in England between 1940 and 1953. One of those women was the wife Timothy Evans who had already been executed three years before. Christie was convicted and hanged at Pentonville Prison 15 July, 1953.

The British Government granted a posthumous pardon to Evans in 1966 but his death epitomises the extremities of miscarried justice. Although the death penalty was abolished in Australia our legal system has not been immune to miscarriages of justice occurring on a similar scale to those in Britain.

The Lindy Chamberlain Case – The Northern Territory.

The disappearance of baby Azaria Chamberlain on August 16, 1980 from a camp site near Ayers Rock in the Northern Territory served to inflame the prejudice of the Australian public after media reports that a dingo took the baby from a tent on that fateful night were ridiculed as being a preposterous solution to the baby's disappearance. Michael and Lindy Chamberlain, Azaria's parents, became prime murder suspects.

Despite the conflicting forensic and scientific evidence a Supreme Court jury returned a guilty verdict against Michael and Lindy Chamberlain on October 29, 1982. Lindy Chamberlain was sentenced to life imprisonment for the murder of Azaria and Michael Chamberlain was sentenced to eighteen months as an accessory. Michael Chamberlain's sentence was suspended and he received a $500 good behaviour bond.

The Chamberlains appealed to The Federal Court but it unanimously upheld the jury's verdict. An appeal to The High Court of Australia on February 22, 1984 was rejected

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in a three to two split decision. The division within the High Court of Australia indicated that there was a significant swing from the original view of Lindy Chamberlain's guilt. The discovery of Azaria's matinee jacket at the base of Ayers Rock on February 2, 1986 rekindled the controversy.

Five days later The Northern Territory government released Lindy Chamberlain and appointed a Royal Commission headed by Federal Court Judge Trevor Morling.

On June 2, 1987 Justice Morling released his report which dismissed most of The Crown's scientific evidence. Justice Morling concluded that a judge, equipped with all the evidence that came before the Royal Commission, would have been compelled to direct a jury to acquit the Chamberlains.

The Chamberlains appealed to The Northern Territory Supreme Court to have the convictions struck from their records and the application was immediately granted. They were both later awarded compensation for wrongful imprisonment and a sordid chapter in one of Australia's greatest travesties of justice was finally concluded.

The Splatt Case – South Australia

A dispute over forensic and scientific evidence was the basis for another Royal Commission that eventually freed an innocent South Australian man, Edward Charles Splatt, after he had served six and a half years of a life sentence for murder.

On December 3, 1977 Mrs Rosa Amelia Simper was found murdered in her home at the Adelaide suburb of Cheltenham, South Australia. Edward Charles Splatt was arrested and charged with her murder on March 3, 1978. The Crown case relied solely upon scientific and forensic evidence to convince a Supreme Court jury on November 24, 1978 that Splatt was guilty. He was sentenced to life imprisonment.

An investigative journalist from *The Adelaide Advertiser,* Stewart Cockburn, took an interest in the Splatt case. He read the trial transcripts, interviewed jurors and began to painstakingly sift through the complex scientific evidence that had helped convict Splatt.

By May 2, 1981 Cockburn was convinced that Splatt was innocent and he wrote the first of a series of articles for *The Adelaide Advertiser* that illustrated how a grave miscarriage of justice had occurred. It was Cockburn's investigative journalism and the continuous flow of feature articles in *The Adelaide Advertiser* that finally forced a Royal Commission into the Splatt case headed by former NSW District Court Judge, Carl Shannon.

After hearing 196 days of evidence The Shannon Royal Commission concluded that; "It would be unjust and dangerous to allow the conviction for murder to stand." On August 2, 1984 Edward Charles Splatt was released from prison and pardoned. He was eventually compensated by the South Australian government for his false imprisonment.

The Geesing Case – South Australia.

The disappearance of 10-year-old South Australian schoolgirl, Louise Bell, in January 1983 forced concerned parents to demand immediate action from the SA Police Force.

Raymond John Geesing was serving time for an unrelated crime in Adelaide Jail when he was charged for the abduction and murder of Lousie Bell. The prosecution rested largely upon the evidence from four prisoner informants who had been in prison with Geesing and alleged that he had confessed to them. Based on their evidence Geesing was convicted and sentenced to life imprisonment.

On April 12, 1985 The South Australian Court of Criminal Appeal unanimously upheld an appeal by Raymond John Geesing. South Australian Chief Justice, Mr Len King, ruled that Geesing's 1983 trial had miscarried and its guilty verdict for the murder and abduction of Louise Bell must be set aside.

Chief Justice King said that the prisoner informants were unreliable and untrustworthy witnesses. One prisoner retracted his original statement. The evidence of another prisoner informant was declared inadmissible. The Court of Criminal Appeal ordered that there be no retrial and Geesing walked to freedom after serving seventeen months for a crime he had not committed.

The McDermott Case – NSW. (ALJR:1947. NSWLR 1947-1948).

One of the first cases of wrongful imprisonment to be chronicled in Australia was that of Frederick Lincoln McDermott in NSW.

The murder of William Henry Lavers on September 5, 1936 had baffled NSW police for over ten years. Witnesses identified a car leaving the scene of the crime with two men in it and in 1947, ten years after the murder, the owner and driver of the car was identified as itinerant labourer Frederick Lincoln McDermott. The Crown advanced a motive for the murder that McDermott and another man had elicited petrol from Lavers without having any money to pay for it. It was then alleged the pair then killed Lavers and carved up his body before disposing of it.

McDermott was convicted of murder and sentenced to death. The sentence was later commuted to life imprisonment. While he was serving his life sentence in Goulburn Jail, NSW, a Methodist chaplain at the prison became convinced that McDermott was innocent of the murder. The chaplain's unshakeable belief eventually led to a Royal Commission being announced on August 10, 1951 to investigate the McDermott conviction.

The main evidence given at McDermott's trial was from a witness who saw "an old sedan driving away from the garage." The Royal Commission unearthed evidence that, although McDermott did have a similar car described by the witness, at the time of the murder the car was at the local garbage dump minus its engine and wheels. McDermott had been sleeping in the wreck during the nights.

The Royal Commission found that there was insufficient evidence to warrant sustaining the conviction for murder. The innocent McDermott was freed in January, 1952 after serving five years in prison. McDermott was paid 500 pounds compensation by the NSW Government for wrongful imprisonment.

The Pohl Case – NSW.

Johan "Ziggy" Pohl spent ten years in prison for a crime he did not commit. He was convicted of his wife's murder in their Queenbeyan home during 1973 and was sentenced to life imprisonment. Throughout the prison sentence Ziggy Pohl maintained his innocence. After being a model prisoner for over a decade he was released on licence in 1983.

On September 8, 1990, Roger Bawden walked into

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Queanbeyan Police Station and confessed to the 1973 murder of Kum Yee "Joyce" Pohl. Bawden was charged and eventually jailed for the murder Ziggy Pohl had already done time for. On May 29, 1992, the NSW Governor granted Ziggy Pohl an unconditional pardon. He was eventually compensated by the NSW Government for the ten years of wrongful imprisonment.

The Condren Case – Queensland.

Kelvin Ronald Condren, was jailed for life in 1984 for the murder of Patricia Carlton at Mt Isa on September 30, 1983. The conviction was based on a confession which Condren denied at his trial.

Another man, Andy Christopher Albury, confessed to Carlton's murder when he was charged with the murder of another Aboriginal woman in Darwin on November 25, 1983. At Condren's trial Albury recanted the confession he had given to Northern Territory police but admitted that he had been in Mt Isa at the time of Carlton's murder.

Condren was convicted and sentenced to life imprisonment. He served seven years inside the Queensland prison system before new evidence revealed that the victim was seen alive while Condren was in police custody for being drunk and disorderly. Several petitions for a pardon to the Queensland Governor failed and because the Queensland Criminal Code only allows one appeal against conviction Condren seemed doomed to remain in jail.

The conviction was only quashed after Attorney-General Dean Wells had the new evidence presented to the Full Court. On June 29, 1990 Kelvin Condren was freed from Townsville Jail and was later awarded compensation from the Queensland government.

Questions:

1. How can the media be restricted from creating prejudice against an accused but still maintain its role to accurately report the news? (Analyse the Lindy Chamberlain case and compare with at least two current cases that have received widespread publicity).

2. Do you think pre-trial publicity can create a miscarriage of justice? Explain your reasons.

3. Should the media have a role in correcting miscarriages of justice? (See the Splatt case).

4. Is the death penalty a deterrent and should it have a role in the Australian criminal justice system? (See the British cases of Slater and Evans and the Australian case of McDermott)

5. What weight should be placed on the evidence of prisoner informants and/or should they retain a role in the criminal justice system? (Refer to the Geesing case.)

6. Do you think undue pressure is placed on law enforcement agencies to clear up crime quickly? If so, where do you think such pressure emanates from and do you think that the pressure can contribute to miscarriages of justice?

7. Should police investigations be transparent? Would transparency hinder and obstruct police investigations or would transparency effectively alleviate the accusations of corruption and the fabrication of evidence? Explain your reasons.

8. From the cases cited, list the main causes that have created miscarriages of justices and explain how you would implement effective mechanisms to stop similar miscarriages of justice from occurring.

9. How would you evaluate the eligibility and the amount of compensation that should be awarded to those people who have been wrongfully convicted and imprisoned for a crime? Should there be any criteria for who should receive compensation – should the parents, wife or children of the wrongfully imprisoned person be also compensated for their loss? Explain your reasons.

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