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Event: Release of the Martin Report Rejecting Calls for an Enquiry.

A Form of Logic Not Familiar To Me.

John Bryson reviews the N.T. Solicitor-General's Report on the Chamberlain Case

The Chamberlains' solicitor, Stuart Tipple, has a law office in Gosford. The last time I was there was a year ago. When we'd finished the topic I wanted to talk about, he laid a pack of photographs on the desk. "Do you want to see the remains of Azaria Chamberlain?" he said.

He had photographs of the weave in the baby's jumpsuit. They were taken through a microscope, at the High court, where all the exhibits are now. The strands looked tousled and sordid. Here were chunks of something. A piece of flesh, glistening at this magnification, shockingly meaty.

Tipple had also found now a scientist who could distinguish cat hair from the hair of a dog or dingo. At the time of the trial, the hairs on the baby's clothes were thought to be cat, so the likelihood of a dingo is stronger now. But a more exciting discovery was this: Analysts had identified the dark stain, as something other than blood, above the passenger footwell of the Chamberlain car. This stain had been called the Arterial Spray, and was said by the prosecution to be foetal blood from a spurting artery when the baby's throat was cut. The Arterial Spray had held a high place among exhibits at the trial. How could a dingo be blamed, if the baby died in the car? This was the record of the baby's last heartbeats, the very locality of death.

The best the defence could do during the trial was produce a similar spray, from a similar car. It gave the prosecutor little trouble in front of the jury. 'I don't know,' he said, 'if you're asked to find that all Toranas are sprayed under the dash with the blood of an infant, as some sort of benediction, or ceremonial rite, when the cars are sold.' That had made everyone laugh.

'A sound-deadening solution, Tipple told me now, 'sprayed in during manufacture. He had magnified photos of that, too, showing flecks of vivid colour, the overspray of paint. He was waiting on confirmation from General Motors. The Arterial Spray was a material called Dufix. I left him and drove back to Sydney. It had been an astonishing day.

On June 4th this year the Chamberlain lawyers made their submission to the NT Attorney-General. He delegated it to Brian Martin. Martin was the Solicitor-General at the time of the trial. He chose as a scientific advisor Dr. Simon Baxter, the head of the Sydney laboratories responsible for the identification of blood, and a prosecution witness.

The Chamberlains, in their Submission, wanted a judicial review, with power to consider all the evidence, old and new. The point of all this was to allow examination of the whole of the testimony, a review of the entire state of knowledge as it now stands.

The Solicitor-General's answer, the Martin Report, was tabled in the Northern Territory Parliament on November 12th.

It dismisses most of the Chamberlain submissions as unimportant, and considers none of them new. 'No one has suddenly come forward' it says, 'to give evidence which could not have been given at the trial by that person, or somebody else, nor are they putting forward any recent scientific advance.'

So there goes the first of the Chamberlain requests, out already. The Report will steadfastly not look at the current state of knowledge. It will consider only a scientific advance, or evidence which could not have been given at the trial. That is an impossible test to meet. It excludes, for example, the most dramatic example imaginable. If someone were to come forward and confess now, the evidence would not be heard. This can't mean what it says.

The Report is not impressed by the Chamberlain lawyers' enthusiasm. It says: 'There is nothing in the list of 7 items, widely canvassed by those supporting the Chamberlains, which is in any way new.'

Now, that's plainly wrong. At the time of trial no-one had found flesh in the baby's garments, no-one knew the Arterial Spray was really Dufix, and no-one, in prosecution or defence, knew of a scientist who could positively discriminate cat hair from the hair of a dog or dingo. Defence scientists believe that the blood analyst Joy Kuhl used the wrong testing solution to identify old blood, and in any event, her work-notes show that the tests did not find foetal blood. After trial, a defence scientist travelled to the German manufacturers of the testing solution, and returned with a certificate which said, in part, that the solution can behave wrongly if the blood is old, and is not suitable on its own for the identification of foetal infant blood.

Martin and Baxter visited the German manufacturers, and spoke to the same scientists, in July. In the Report, they present the results of their meeting this way: 'The identification of HbF (foetal) in bloodstains, as being from an infant of less than 6 months of age, in the Chamberlain car and items removed from it, *is enhanced* by everything learned since the trial emanating from the manufacturers of the anti-serum.'

.This part of the Report was so wrong that it astonished the German scientists. They might never have happened to hear about it at all, had a quick journalist not put through a call to one of them who had interviewed Martin and Baxter. The scientist said he was surprised his advice to the NT government had not led to a re-opening of the case. He thought the probabilities high that the prosecution's tests were inadequate in the Chamberlain case.

The scientist investigating the Arterial Spray, for the Chamberlains, was L.N. Smith. Smith had found Dufix, where Joy Kuhl had found the blood of a baby. The Martin Report says: 'There is no dispute as to what Mr Smith found,' but avoids embarrassment with a counter-attack. 'The defence were, prior to trial, in possession of evidence that similar patterns were to be found on the same type of motor vehicle.'

The Report's authors must mean, there, that the Dufix discovery is somehow not a new issue. They give then the most arresting example of circular argument: '(The Spray samples) gave a presumptive result of being blood at the time they were removed, and Kuhl's tests on that material revealed the presence of foetal haemoglobin. It therefore appears that the samples taken and analysed by Smith are not samples of the same material analysed by Kuhl.'" So: Smith found Dufix, Kuhl found blood, and blood is not Dufix. What that proves, I can't begin to guess.

The authors say that an analysis of the Arterial Spray would be no help to anybody. 'A positive result identifying HbF (foetal) would not assist the Chamberlains, a negative result would be inconclusive, given that the material is now over 5 years old.'

Quite wrong. It's hard to think, offhand, of any greater assistance to the Chamberlains than a positive result. The Arterial Spray cannot, on any view, be blood, baby's or adult's. The magnified photographs of the stain show overspray of paint during manufacture. If Dufix tests out as foetal blood, it makes a nonsense of the blood testing methods used by the prosecution.

The trial prosecutor made a fuss of the Arterial Spray. He said: 'You see, the importance of this is that the sample was actually taken from the pattern, the spray pattern, by digging into it. It's not something that happens to coincide with the pattern, which is why we assert that the pattern itself is blood.'

Not for a minute does the Martin Report agree now with the prosecutor. The Arterial Spray, it concludes, was of little importance at the trial anyway. The baby's jumpsuit was cut by scissors, so the prosecution said at trial, and not by the teeth of dingoes. The Chamberlain Submissions provide photographs, and offer the originals, of recent experiments with clothing and material bitten by a dog and a dingo. It compares them with the baby's own clothes.

The Report doesn't much argue against some similarities of appearance, but relies on the eminence of the Crown expert, and on the standard of photography. It does not call for the experimental garments. This, too, is a shame, because the jumpsuit chewed in these recent tests shed tufts from the weave, a surprising event because the prosecution said it was impossible from dingo teeth. The Report notes the tufts, but distains them, because 'the ends of tufts were bound together with saliva.' Tufts found by the prosecution on the baby's own jumpsuit were dry, though it's hard to see importance in this, since that garment had spent a week in the desert. The Report's central complaint is put this way: 'In no respect does this (recent) experiment relate to the version put forward by Mrs Chamberlain involving an (i) undomesticated (ii) dingo of unknown age (iii) presented with a live infant (iv) clothed in a jumpsuit and wrapped in blankets (v) in a tent'.

The Report's authors can't have been thinking carefully here. Can they really mean that the most credible experiment the Chamberlains could make is with an undomesticated dingo, of unknown age, presented with a live infant, clothed in a jumpsuit and wrapped in blankets, in a tent? Hans Brunner, who identifies hair from the baby's garments as those from a dog or a dingo, and positively not from a cat, has a happier run. But the Report does not call for an analysis of the hair. It meets the problem a familiar way now: 'The question of the original source of the hairs detected on the singlet and jumpsuit carries little weight in the overall context of the case.' This might be a surprise to the chief prosecutor at the trial, who said: 'The Crown says the absence of hairs, like the absence of saliva, is negative evidence pointing to a positive conclusion, which is this - that the baby was not taken by a dingo. Therefore she was murdered.'

Then follow three items in the Report, to do with witnesses: the campsite witnesses who want to give evidence which was not permitted at the trial, prosecution witnesses who are under further attack now, and witnesses to previous dingo attacks, who were excluded by the trial judge. The Report treats all these as issues raised in some way at the trial, which is not to the point.

A fine instance is the section on dingoes: 'The capabilities of Ayers Rock dingoes was fully canvassed before the jury, and following the Judge's summing up they would have been left with no illusions about the behaviour and propensity of dingoes.'

Those illusions came clearer within a fortnight of the Report, when a juror, Yvonne Cain, spoke to the press. She called for a judicial inquiry. 'I wish the evidence of people who came forward later, to talk of other dingo attacks on children near Ayers Rock, had been available at the trial,' she said.

An important question at the time of trial was this: If the baby was abducted by a dingo, why wasn't there any fleshy debris on the clothes? The Chamberlain photographs of tissue in the weave offer a dramatic solution. But the Report begins warily. These meaty fragments were not 'seen under microscopic examination, or otherwise, by any of the experts who gave evidence at the trial. Now, this is so, the defence had the garments for a time before trial, but if we're apportioning blame here let's not forget the prosecution scientists.

But the real point is: Are these pieces of Azaria Chamberlain? The Report's authors don't think so. 'In any event, it can hardly be flesh or any other body-tissue dated from 17 August 1980, given the natural effect of deterioration, such as dehydration, in the intervening period. Contamination of the jumpsuit by some other material during the lengthy period after its examination by sundry experts cannot be excluded.' This might prove true, but the technology exists to test it. Yet the Report stops short of suggesting any sort of analysis.

But there's a small advance, here. Nowhere does the Report contend that the findings wouldn't matter.

What has the Martin Report achieved? Its authors have refused to allow a review of the entire state of knowledge as it now is. They have excluded most of the evidence as not sufficiently new, by proposing a test no one could pass. They decline to examine the originals of the Chamberlain experiments, the materials chewed by dingo teeth, the work on Dufix. They shun any further analysis of the High Court exhibits, the hairs, the flesh in the weave, the Arterial Spray. And at the end, the Report makes no recommendation to the Attorney-General who called for it. That is not a system of logic I'm familiar with.

The Martin Report closes, uneasy about the usefulness of a Review Tribunal, even if one were set up. The authors see a problem if the Tribunal were to decide in favour of the Chamberlains. How, even then, could the government issue a pardon?

The warning is given in the clearest of terms. 'From the public point of view, however, the granting of a pardon may well be taken as indicating that the jury was wrong to convict, and that Mr and Mrs Chamberlain were innocent.' I think we have a glimpse of the truth, just there: No chance.

New Chief Minister Tuxworth had said much the same already, off the record, but an outraged journalist reported it anyway. He made it clearer during a political campaign around Ayers Rock in October, by handing out a press release complaining of 'a reservoir of antagonism towards the Northern Territory, which it seeks to portray as hard, cruel, and lacking in compassion.'

He rounds off: 'At stake is law and order, faith in the due processes of a legal system recognised as the fairest in the world, and the maintenance of the institutions upon which our democratic society is based. Those who would have the Northern Territory Government forgo these principles to suit the circumstances of a particular case, are the same forces which will work, perhaps unwittingly, for the breakdown of society.'

Within a month, the NT News ran a report that 51% of Territorians polled supported calls for a judicial inquiry.
