

Event: The Chamberlain Case Symposium, Macquarie University.

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CELEBRITY TRIALS MAKE BIGOTS OF US ALL.

Not long ago we read this sorrowful cry in our newssresses: “I feel like my heart has broken into a thousand pieces.” This was the cry of Mrs Maria Menezes, speaking of the death of her son who was shot dead in London, suspected as a terrorist.

The officer who killed him was diligently carrying through his orders, which were to execute anyone who seemed to pose a terrorist threat, orders issued by his commanding officer, the Chief Constable, whose own orders came from government. Britain is at war, a terrible time and in moments of apparent danger the peacetime levels of certainty of guilt, of individual rights, are judged too ponderous by governments whose need is to be seen to be taking purposeful action. No time for a trial. And even when we have time, when the suspects are in custody, in a terrifying age chances of a fair trial are low. At a lesser level of

seriousness, in civilian criminal trials, if the cause is celebrated, or if the accused is a celebrity, the chances of an aberration in the delivery of what we like to call justice is higher than the plainer run of trials. Often this is because prosecution teams are under pressure to be seen as expert and purposeful, sometimes because government is under public pressure.

Why, in the peacetime early 80s, in Australia, would someone in government, or someone in its bureaucracy, strive to deny fairness in a trial to parents suspected of the murder of their swaddling baby Azaria? And why would a government like that be so applauded on radio, in newsspresses, in sports clubs, in hotel bars?

Much of the answer lies with the progression of a celebrated story on television. Radio broke the news, a baby taken by a dingo from a tent, never found, voice interviews with police, with searchers, then quickly to television, reconstructions of the activity at the Uluru campsite, interviews on camera with locals, with rangers, then the heartrending shock of an interview with the bewildered parents. From then on, television took control of the Chamberlain story, while word of mouth carried the rumours.

Remember the rumours? The first, and most decisive for the rest of the story, was ‘Dingoes don’t behave like that’ and soon afterward, ‘A dingo couldn’t run with such weight in its mouth.’ These were certainly believed by most of the first reporters on the scene, and began to affect the slant of television reports, even the camera angles. Close shots of the Chamberlains in interviews came nearer and nearer.

Then to the more bizarre. ‘Seventh Day Adventists believe in sacrifice of a child to atone for sins.’ And, ‘Baby Azaria was always dressed in black to represent a devil’s child.’ And, ‘The Chamberlains’ bible has a child sacrifice passage underlined in red.’ And, ‘The name Azaria means Sacrifice in the Wilderness.’ And on and on.

The first of these is important in the scheme of the developing television storyline. The inaugural suspect was not Mrs Lindy Chamberlain but Pastor Michael. The first scenario to come through to the capital cities had baby Azaria slaughtered on the Rock at Uluru as a sacrifice for the sins of the world. Some folk in the Northern Territory police and public believe it to this day.

Bigotry was in full cry now. Television crews had become fluent in the techniques of filming this drama, which had already established its central characters, held an anticipation of a satanic storyline, and I believe it's not unimportant to the popular culture receiving it, that the '70s and early '80s had seen a saturating number of satanic horror films, including Exorcist 1 to Exorcist 6 and other siblings of these. We were well familiar with horror entertainment.

More importantly, more effectively, the Chamberlain case had entered more than our world of news, it had entered our world of television drama, and would be ruled by drama's conventions. I deeply believe that from here on, most of us judged the characters, particularly the Chamberlains, according to the judgements we would appropriately make watching drama. We, who live in the modern social world, are now trained to use a particular 'grid of recognition' watching drama, and judging the characters in it, according to particular conventions, which we and directors and actors agree upon. We know whom to trust, whom to distrust, who is good or evil, and that murder will out. Away from the stage or the screen, face to face in the true social world, we judge character and events using a far more sophisticated set of skills.

Looking back, it seems we judged the Chamberlains, particularly Mrs Chamberlain, using judgement and evaluations appropriate to drama, rather than social human judgement, because we watched these events as television drama.

Public opinion was so hot by the time of the inquest that security there was increased, tension peaking with death threats to the Chamberlains and their lawyers, then a threat to bomb the courthouse.

Coroner Denis Barritt was so moved by the plight of the Chamberlains, and by public hatred that he arranged for television to broadcast live the delivery of his findings. His identification of the dingo as the slayer, his criticism of Rangers for failing in a duty to protect visitors from dingoes, and his apology to the Chamberlains for appalling public bigotry, went out to the livingrooms of the nation.

His words angered many in government, in Parks and Wildlife, in police, and Territorians. Is it fancy to suppose, around this time, a decision at some quickly called meeting to press on with their suspicions against the Chamberlains? Certainly a forensic scientist was sent to London with the baby's clothing, seeking out the celebrated pathologist Professor Cameron at Scotland Yard.

We now know that a task force was set up to carry the investigation, not named for any connection with Azaria Chamberlain, but dubbed Operation Ochre to disguise its purpose. This comprised detectives, bureaucrats, and at least one lawyer. The expense account covered salaries, interstate and international travel, the commissioning of private pathology firms, and interstate forensic specialists. One of these was commissioned to locate a file recording child abuse by the Chamberlains when living in Tasmania, a folder rumoured to be as fat as a briefcase. He spent a long time fruitlessly searching.

Should we suspect expenditure this size on a specialist task may have been expressly authorized by Cabinet? And as Professor Cameron pronounced, in secret, that Azaria's singlet bore the bloodied mark of a hand the size of Lindy Chamberlain's, and a bloodflow which showed the baby's throat had been cut

through with some small weapon, all this disclosed at some meeting of inner government, may we imaging some brief spatter of applause?

The energy with which Cabinet and the Ochre team tracked after the Chamberlains was in reaction to two forces: a deep belief in the guilt of these parents, which is as strong today as ever it was in those quarters, and the insistence every celebrity case carries, always, that it be brought to a popular conclusion.

It's at this time we come to feel the presence of a supremely interesting character in the shaping of the case against the Chamberlains, someone we never quite see, other than the movement of a hand behind the curtain, and will not know if this is a member of Ochre or outside, is the one person throughout, or a succession.

This is the Tactician.

The goal of the Tactician is to secure a conviction. This was a popular cause nationwide, but at first the task must have seemed daunting. The Chamberlain case is remarkable in many ways, but particularly for this dimension: every witness to the happenings at the Uluru campsite knew Azaria to have been taken by a dingo, knew the Chamberlains to be guiltless. Every one of them to be called to the witness stand by a prosecution was a witness for a defence.

From this it followed that a jury must be offered evidence to justify rejecting the campsite group. Since this couldn't be drawn from direct witnesses, only science could provide a plausible alternative. No Australian scientist would agree to the handprint and the cut throat, so the load must be borne by exotic sources.

Did it occur to the Tactician that the most effective way to convince a jury beyond all reasonable doubt was to first convince the public beyond all reasonable doubt?

The Barritt inquest ended the television show we could call 'The Disappearance of Azaria No. 1.' Secretly the sequel was in the making.

In a murder mystery, as we know, the clever development of an early plot is to be intriguing: the seeding of clues to arrest our attention, the possibility we might miss something important, and finding leads to a gripping solution.

Was it a Tactician's decision to have detectives invite a television team to a demolition of the plumbing in a motel room where the family had slept after the search for Azaria? Rumours of her tiny remains in the septic system were wrong, but spread like a brush fire.

To prove that a baby's clothes would have collected burrs and debris if the body were rushed through bush by a dingo, a small effigy was dragged through on a lanyard, paced by a television news camera and bathed in its floodlights.

The Chamberlains discovered all this activity like everyone else, by television and newspress. Their alarmed solicitor, Stuart Tipple, and colleague lawyers, asked detectives for information. They were refused. They asked it from the offices of Crown Law. They were refused. Rumours of Professor Cameron's analysis of bloodstains began to make an appearance on the newswaves which the Ochre team first would not confirm, but persistence allowed them to concede some evidence like this did exist. Chamberlain lawyers flew to London and Professor Cameron, who said he was forbidden to speak.

Confiscation of the family car, and removal for blood tests, began rumour that the sedan was ‘awash with blood,’ again wrong but useful in reassuring public prejudice.

Secrecy as a tactic to weaken the Chamberlains was by now quite clear. The irony was, since leaks flowed to favoured journalists and trickled through to gossip columnists and radio jocks, it seemed the world knew more than did the Chamberlains.

The most spectacular early success for the Tactician, whoever that was now, took place in the Supreme Court. This was spectacular only in retrospect since it took place in secret. Operation Ochre now wished to reopen the inquest. A method must be designed which would not alert the Chamberlain lawyers, which could take place without notice to any other party, especially the next of kin of the deceased, would not air any reasons for the proceeding or disclose any evidence on which it was based, would remove the incumbent Coroner Dinny Barritt who might insist on giving notice and right of reply to Chamberlain lawyers, and must proceed entirely in secret.

It was, as the saying now has it, a big ask.

How it succeeded we may not know until freedom of information deadlines pass. The Crown’s application was made to the Supreme Court, no notice of it appeared in Court Lists, it was heard in camera, which is in secret, in a Chambers court, and was successful on every count. What evidence, what arguments persuaded Justice Toohey to grant those orders we must wait to find.

The Chamberlain family was first given notice that the case was reopened by the arrival of a television crew in a helicopter over the house. Coroner Barritt was assigned to urgent work in Darwin and magistrate Gerry Galvin appointed Coroner in Alice Springs.

Usual practice in inquests is for all parties, including the next of kin of the deceased, to see copies of statements to be given in evidence. This was refused. Usually all parties have access to interview witnesses. This was refused. The Crown applied to have this Coroner import evidence from the Barritt inquest into this inquest by accepting the transcript. Only the new evidence would be given in person. This meant that the direct evidence from campsite witnesses would not find a way into the news reports. News from this inquest was to be about murder.

The Tactician was having a dream run.

The greater coup was yet to come. In the normal course, and this was too much a celebrity case for that, we would have expected the Chamberlains to be charged as soon as evidence in police hands justified it. Not this Tactician. The disadvantages of the usual forms had been well thought through: once charged, an accused has some rights, a mere witness has less.

So all detail of all evidence was to be kept secret from all witnesses other than Ochre's witnesses. When this inquest opened the barrister for the Crown declined to give an opening summary. Protests against the unfairness of all this were overruled. Then came the tactical king-hit. The Crown barrister said, 'Call Michael Chamberlain to the stand.'

This caused delighted uproar on the press benches, and astonishment around the Chamberlains. If charged already they could not have been compelled to the witness box. Even a person vulnerable to prosecution is normally allowed to hear the evidence they must answer before they are called on for interrogation here. Legal objection about convention and usual procedure were turned down. Rather than publicly claim a right against self-incrimination the Chamberlains insisted on giving evidence.

By the time of the next adjournment we knew some radio stations had begun announcements that the Chamberlains had refused to give evidence. So again here, were we watching the selective leaking of the tactical scheme? Did this misreporting suggest that not everything was happening according to plan?

No matter. Operation Ochre was well ahead in the race for a jury's verdict, and perhaps uncatchable.

At trial its prosecution team had science to show infant's blood in the passenger footwell of the family car, although really an automotive spray called Dufix 101, blood elsewhere, although really from accidental sources pre-dating Azaria, and much in the driver's footwell, although really the spill of an old milkshake.

From our later vantage we see the dye was cast early, but the Tactician had one more flashy trick to show off. The defence team had been blocked from having the reputed infant blood re-analysed by others because, far from the sedan being awash with blood, the Crown now said that its analysis destroyed all there was. So the defence was left only the hope that independent scientists may interpret differently the opinion of the prosecution's blood analyst. The blood tests were preserved between glass plates and showed the shuddering reaction of the blood with other chemicals. When the prosecution's analysts told the trial that the glass plates of blood from the car had been routinely destroyed, and those she held in her hand were samples of other blood for exhibition at this trial, most legal observers gasped, but perhaps commentators did not yet grasp the enormity of this move away from past standards of fairness.

The prosecutors' case began with this premise: dingo attack is an implausible excuse for the disappearance of a baby, an unprecedented suggestion, unworthy of belief. The Crown and its prosecutors were duty bound to disclose to the defence any evidence it had to the contrary, so we can suppose it had none in

its custody. Yet, close to the trial, a copy of a memo to the Parks authority was anonymously sent to the defence team. It warned of increasing danger to visitors from the current pack of dingoes around the campsite. It advised a cull because, in its own chilling language, 'small children can be considered possible prey.' The memo was dated some weeks before the disappearance of Azaria Chamberlain. It was signed by the Chief Ranger Derek Roff. My own delicious supposition is the whistle blower was Roff himself, who has now vanished from public view, a candid man, unlikely to stomach the chess moves of a Tactician.

Just before verdict every journalist expected acquittal. Police told solicitor Stuart Tipple they had no doubt of a conviction. Later, the prosecutors were applauded in the press for their effort in a complicated and difficult trial. No, instead, theirs was the easiest ride a prosecutor could imagine. We had all been watching the progression to an inevitable end, led by a tactical plan designed well away from the courtroom.

Two and a half decades on what is changed? Can we be prouder of our justice system? Perhaps so, but improvement may be short lived. Western governments are attracted to unjudicial tribunals for the most serious of crimes, and eventually this will alter the standards of even-handedness we presently demand from our judicial courts.

Of the professions culpable in the Chamberlain proceeding, science was the first to make improvements, largely because the Australian scientists refused to be as cavalier as the notorious Professor Cameron, and were right. Defence QC John Phillips returned to Melbourne as DPP and later Chief Justice, to persuade government there to set up an independent forensic science centre.

But disturbing reports come now from trial lawyers that juries are increasingly prone to follow the lead of forensic scientists in criminal cases, a reliance attributed to the popularity of dramas like Crime Scene Investigation.

We need to revisit the rules setting the level of certitude required of expert witnesses. At present the ‘professional opinion’ of a qualifying expert is accepted, and perhaps the standard should be higher. A jury is held to a standard ‘beyond reasonable doubt’ and courts might like to set a matching standard for the opinion of expert witnesses. The rivalry between experts in court can reach highly egotistical levels. The stench of testosterone can make our eyes water. And the men are even worse.

Politicians are beyond change. The pressures on them to pretend to moral standards they can nowhere near reach is overwhelming. They admire tacticians. They put them on staff.

Journalists? Well, we will always be suckers for a scoop. And the tactic of secrecy in this case disabled journalists’ useful cynicism. They reported news for the side which fed it to them because the other side knew nothing.

Our hope lies with the judges. True, some judges in this case did not always perform at their finest. Trial Justice Muirhead, a fair-minded and even-handed man, did not react as he should at the destruction of blood evidence. He was even-handed there, when something more like judicial anger was appropriate. Scientific method relies for validity on each fresh conclusion being thrown open to the science community at large, to repeat or disprove. Destruction of the physical evidence produced during the performance of tests disqualifies all claim to a legitimate conclusion.

Judges don’t need to wait on statutes to regulate standards of practice like this. They may design and publish rules setting an acceptable standard of technological behaviour in experts’ testimony, just as judges in Britain set the Judges’ Rules setting a minimum standard of police behaviour in interrogation.

Politicians fear an independent judiciary, which is why they so often try to stack appeals courts with lawyers they hope are like-minded with them. High standards of fairness can be protected by the collective will of independent judges. Truly, we should wish them luck.

Part of my brief here is to treat reasons for my beginning the journey of Evil Angels. I had declined to do that, but the writing of this piece recalled a memory I had lost. Of course important was the fact that the bereaved mother should not at the time be in Berrima Gaol. And important was the fact that most of my community had this case terribly wrong. But now comes back to me an angry and aggressive drive I'd forgotten about: I longed to defeat the Tactician.

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