

Event: Federal Appeal Denied.

Inquests Are Fine, If You're Dead.

A Review of the Chamberlain Inquests by John Bryson
For The Age, Melbourne.

Some inquests are about the living, rather than the dead. Both Chamberlain inquests fell into that class, the second more plainly than the first. Whether Azaria was slaughtered by a dingo or by her mother, it ought to be clear by now that something is wrong with the way we run inquests in this country. The Chamberlains' is a good case against which to judge the Coronial system, for two reasons. Astonishing notoriety is one. Some newspapers increased their circulation by forty thousand copies for every day the trial was on, so anyone who doesn't know something about the case has been out of town a long time. The second reason is this: there is no other case in which two Coroners have used such dissimilar and unusual procedures when inquiring into the same death. The Coroners whose styles we are reviewing here are Denis Barritt and Gerry Galvin. Barritt was once a policeman, took a law course, and practised as a barrister in Melbourne until he moved to the Territory to become a Magistrate. He is a hefty man, who has become heftier since living in Alice Springs. There is no doubt who runs things in his court, and press reports of the first inquest, at which he sat, described him as a frequent participant in proceedings. Gerry Galvin's reputation is not nearly so obtrusive, and profiles written about him during the second inquest relied a good deal on his daily commitment to jogging. He is the Chief Magistrate, and a slight man of quiet but insistent voice.

The way press-artists sketched Barritt and Galvin in their courts is worth recalling. Barritt is leaning over his Bench, sleeves rolled up, head and shoulders into the action. Galvin is seated further back, as ...though available to influence proceedings only if called on by some dispute in the court beneath. Those sketches are a fair depiction of the way

the Coroners approached their identical tasks.

A Coroner's task is that of an inquisitor. The office is old enough to have been complained about in Magna Charta. Coroners may interrogate as they wish, and allow others to interrogate as they wish. They may decide to receive hearsay or rumour. Their powers are wider than those of a Judge at a trial. This is so that rules of evidence won't prevent an inquest from getting to the truth of a matter, for a Coroner is to find how, and when, and why an unnatural death happened. One task is not considered enough. New South Wales is a little different, but elsewhere it is also the Coroner's job, at the inquest, to commit for trial those against whom is a strong presumption of criminal guilt. So both Barritt and Galvin each had conflicting duties: to search out the truth - using whatever inquisitorial method came best to hand - and then to determine if someone should be put on trial - but using only evidence and procedures which fairly safeguard the rights of those to be accused. And that is the first problem, right there. That problem became clearer in the second inquest. There it took less than a day and a half for the trouble to start.

Gerry Galvin's first sitting day was taken up largely by the reading of transcripts from the Barritt inquest. This sort of dull recital could normally be counted on to empty the visitors' gallery, but public interest was saved by a programme of movies, made by researchers at the Adelaide Zoo, where hungry dingoes were filmed feeding on the bodies of small goats dressed as human babies. The excitement this caused evidently ran the length of Alice Springs. By the next morning the court was so crowded that displaced reporters were seated in the jury-box. The part of the second day we are interested in began around midmorning. Michael and Lindy Chamberlain sat behind the barristers Rice and Kirkham. Responding, perhaps, to the similarity in architecture of courts like this with churches they are used to, the Chamberlains sat tidily together and spoke to each other only in whispers. This claim to privacy didn't affect onlookers for a second and, whenever Mrs Chamberlain wrote something in her note-book, people in the pew behind leaned forward to see what it was.

Des Sturgess was briefed to Assist the Coroner. Part of that job is to lead the initial evidence, and his next item of evidence was from Sally Lowe. Mrs Lowe was the closest the police had to an eye-witness, but her testimony supported the Chamberlains' account. Sally Lowe remembers hearing Azaria cry after the time the police say the baby was slain. Sturgess is a senior barrister from Brisbane, whose courtroom stance often results in the lectern supporting much of his weight. It is a mistake to confuse that posture with

nonchalance. There was interest, in the courtroom, in the way Sturgess would handle so unfavourable a piece of testimony. After Sturgess had taken Sally Lowe through four minutes of her evidence, Phil Rice, Council for the Chamberlains with Andrew Kirkham, rose to make his first objection. Rice is a man of wit and charm. This protest was made obliquely.

"I will make an observation that might help the general conduct of proceedings before your Worship." He was concerned, he said, that usual procedures were not being followed. The Chamberlains had not yet received an outline of the evidence, nor a list of the witnesses. "We are shadow sparring," he complained. "Mr Sturgess is proposing, for reasons best known to the Authorities who instruct him, to simply call witnesses without giving a summary, even to your Worship at this stage, of the nature or extent or of their purpose in being called." "Mr Sturgess?" the Coroner asked.

"I will bear that in mind, and see what I can do," Sturgess said.

In the normal course of inquests, those who may be in jeopardy of trial are first shown proofs of the evidence against them. After all that evidence is heard, they may be asked to testify themselves. If Rice and Kirkham were wondering how much information they might be given before each new witness entered the box, the answer was not long coming. Sturgess turned to summon his next witness. "Call Michael Leigh Chamberlain," he said.

Kirkham was on his feet. "We object to the calling of Mr Chamberlain at this point. Mr and Mrs Chamberlain, in certain circumstances, have rights in these proceedings as to whether or not to give evidence. It can only be a real choice if it is known what evidence is going to be called."

He knew, he said, of a Supreme Court judgement which recently confirmed that principle. A copy was on its way from Melbourne. He had sent for it at 9.30 yesterday.

This was an interesting comment. Andrew Kirkham's face is capable of wonderful innocence, but he has been a barrister a long time and had, evidently, some early suspicion this might happen. Kirkham's documents had not yet arrived. Des Sturgess leaned further over the lectern. "This is a totally unparalleled application." He intended to call each of the Chamberlains forthwith. Scientific evidence would then follow. If the Chamberlains wished to claim privilege against self-incrimination, they must announce their choice now. "I am subject to your Worship's direction, but apart from that," he said, "I control who shall be called, and when they shall be called, and the order in which the evidence is presented."

By lunch-time, some radio stations already had this exchange wrong. They were reporting that Michael Chamberlain had claimed privilege, refusing to give evidence at all, on the grounds of self-incrimination. Rice complained about it, when court resumed, but conceded this was a grievance without remedy, for the damage was done. Some other, short, evidence ran into the afternoon. But Kirkham's supporting authorities did not arrive. Rice conceded he could not insist on further delay. He could rely now, he said, only on principles of fairness.

Gerry Galvin ruled against him. In the absence of authorities, the Coroner said he was "prepared on that basis to go along with Counsel Assisting."

Michael Chamberlain gave evidence then, despite the order of witnesses. He was examined by Sturgess. Rice and Kirkham continued to protest. They protested again when Sturgess began a style of questioning they considered unfair. "This is cross-examination," Rice complained, a point with which the later Trial Judge would agree. And they objected, on the same grounds, when Mrs Chamberlain was called.

"I see no reason to change the ruling," Galvin said, "or the nature of the questions. I do not feel I am doing anything wrong."

To understand the heat in those exchanges, we need to review the way the police case got this far. The first inquest, you will remember, began at the Alice Springs Courthouse in December '80. The Chamberlains are Seventh-day Adventists, the father an ordained Pastor. This was reason enough for some press reports to link the baby's death with sacrificial ritual and witchcraft. Letters threatening death to the Chamberlains were posted to their home, to the police, and to the courthouse in such volumes that police later used wheelbarrows to move them about. The levels of notoriety, rumour, and misreporting so concerned the first Coroner, Denis Barritt, that he agreed to telecast his findings, on condition that they not be edited or rearranged. Early on a Friday morning, two months after that hearing began, cameras were set up in the courtroom. Their cables were linked to a mobile transmitter parked on the footpath outside. A policeman directed traffic around the block so that large trucks could cause no interference.

At precisely nine-thirty, Darwin time, Barritt walked to his place at the Bench, and was beamed directly into the television stations of every capital city. His first words were these: "On the 13th of August in 1980, Pastor and Mrs Chamberlain and their three children Aiden Lee, six years, Reagan Michael, four years, and Azaria Chantel Loren, then nine weeks, left their home in Mt Isa for a holiday...." His findings exonerated the Chamberlains. He accepted, on the evidence he then had, that the baby was taken by a

dingo, but found there was human intervention in disposal of the body. Near the end of that nation-wide broadcast, Barritt spoke critically of the Northern Territory's police forensic-science division. He thought it an unskilful and negligent body. So dissatisfied was he that he recommended the re-establishment of the entire division with other personnel.

What happened next, happened secretly.

Pieces of the Chamberlains' tent, of their clothing, and the baby's clothing were examined in laboratories in Darwin, Adelaide, Sydney, and London. They were photographed through microscopes and under ultra-violet light. Botanists and soil analysts were flown to Ayers Rock to collect samples of vegetation and bags of arid sand. In Sydney, textile scientists dug holes in baby-clothes with knives, with scissors, and with teeth from the jaws of dried dingo-skulls. At the south face of Ayers Rock, an entomologist watched for hours the behaviour of desert flies as they crawled over a cloth he had moistened with blood.

On September 17 1981, Northern Territory police left Darwin by plane for Sydney. There they were granted a New South Wales search warrant. On the 19th, police parked two cars outside a house in College Drive, Cooranbong, and knocked on the door. This was a house owned, like others nearby, by the Seventh-day Adventist Church. The Chamberlain family had moved here, since their house in Mt Isa had become a tourist attraction. It was around ten past eight in the morning. The knocking was answered by Aiden Chamberlain. He was then seven years old. He left to find his father. This was a Saturday, their Sabbath, so all the family was home. Michael Chamberlain was told the police had new evidence about the disappearance of Azaria. The evidence was not disclosed. The warrant was displayed but, due to some oversight or other, his attention was not drawn to the grounds endorsed on it. Those grounds disclosed their inquiry into a murder. Lindy Chamberlain joined them. The Chamberlains agreed to the search, and to the confiscation of their car.

The police cars were piled with clothes and camping gear. Sergeant Charlwood then warned them that his Chief Minister had called a press conference to announce the reopening of police investigations. The Chamberlains were already notified of this to some extent by the presence of a Channel Seven helicopter circling their roof.

On October 21 Brian Martin arrived in Alice Springs. Martin was the Crown Solicitor. His department would be in charge of any moves to reopen proceedings. Surrounded by TV cameras, he commented no further than to agree he was in Alice

Springs. Denis Barritt had been recalled already to Darwin. Newspaper reports of evidence that Azaria was decapitated were denied.

On radio, the Chief Minister admitted flying to Ayers Rock on October 24 but refused to say why. Rumours were strong of a Crown application for a fresh inquest, but Supreme Court notices did not list it. Sometime, most likely mid-November, Mr Justice Toohey heard that application. The Crown's new evidence was produced. It was taken in closed chambers, and without notification to the Chamberlains. The Chief Minister told the press of the result on November 19. The Chamberlains were told by the press. The Court Order bore the date of the 18th.

That legal tempers were short, by the time of the second hearing, should not have surprised anyone.

Des Sturgess examined Michael Chamberlain for four hours and Lindy Chamberlain for three. He was much interrupted by Rice and Kirkham, disputing the fairness of the questioning. Here is a typical, but shortened, scene: Michael Chamberlain is in the witness-box. Rice is not so vigorous getting to his feet now, as if his energy is diminished by the fate of earlier objections.

"This has all been gone through in the first sitting. It is all on record. It is taking on the semblance of a very dexterous cross-examination, your Worship."

"Can we get this one straight, Mr Rice," Galvin says. "As far as I am concerned, this is a new matter and I would have thought I have to see the witness." Rice persists. In his view, the Crown is here to compel evidence from Michael Chamberlain, in public, at a time when silence would amount to a publicised declaration of guilt.

"Why has he not been charged, and the normal procedures of justice allowed to proceed, instead of putting him in the witness-box and cross-examining him under the guise of an inquest?"

"A coronial inquiry is an inquisitorial matter," Sturgess says, and argues that his questions are "of considerable materiality." "At this stage," Galvin says, "I say that it is relevant to the"

"Thank you," says Sturgess. At the end of those examinations the Chamberlains stand down, but not with relief, for Sturgess now announces he may recall them later for another round.

But Rice has had enough. The step he then takes is not made public. He, and Sturgess, and the Coroner, are concerned at the sensation it cause. By letter dated December 23, the Chamberlains claim their right to silence.

The document Kirkham had summoned from Melbourne finally arrived and, though late, was handed up to the bench. It was Alexander's case. There, of an inquest in Victoria, Mr Justice Gray said this: "I am somewhat surprised at the course of events in this case because, to my knowledge, there has been a long standing practice in the Coroner's Court not to call a witness who is likely to be implicated in a serious crime.... It is in my opinion a wise practice." But Coroners are not bound to follow advice like this. Their powers are wider. In a Coroner's Court, these judgements have the authority of a fire-side chat.

When the Chamberlains were brought to trial, the Crown was not permitted to use the evidence taken from them at the second inquest. Trial Judge Muirhead ruled that it was unfairly taken. The Chamberlains' evidence was given voluntarily, and given according to law, but the Judge thought two things interfered unfairly with their ability to choose whether or not they should give it at all. The first was the unusual secrecy with which the Crown treated the evidence to be heard against them. The second was the likelihood of irremediable public prejudice should they choose to remain silent. He described the problems facing Rice and Kirkham at the later Trail this way:

"The accused were the focus of national interest and national curiosity. Counsel involved in the inquest must well have known the extent of that interest. In looking to the future, the possibility of prejudice to their clients by a refusal to answer further questions about largely unknown subject-matter was a very real, albeit almost novel, consideration. ...What were the prospects of their clients receiving a fair trial by an unprejudiced jury in the Northern Territory according to law?"

The national curiosity was thought troublesome by the Crown, by the Coroner, and by the Trial Judge. The Crown is known to have preferred an inquest held, at least in part, in camera. But closed courts are not good remedies. We need to know what happens in our courts, more rather than less.

It is simply that running an inquest together with a committal for trial is not good procedure. It should not be permitted. Where the police file indicates someone may be in jeopardy of trial, the inquest should give way to a committal. There the rules of procedure are better established. Those who are, as Trial Judge Muirhead later described the Chamberlains, "very much under suspicion of a grave crime," should be called last. Then the allegation against them is known. Otherwise the privilege against self-incrimination favours only the guilty, for they know better than others the evidence they may have to face.

As rules presently stand, a witness who stays silent, whether innocent or not, seems to be guilty. We should be trying to achieve precisely the opposite. Gerry Galvin understood the dilemma posed by this mode of inquest. He referred to it often. His duties were conflicting. He must hear relevant evidence, but he should not allow the unfair treatment of witnesses. He should not allow public prejudice to influence the minds of future jurors. And he must do this while the nation hangs on every word. It was a problem he was unable to solve.

Galvin took the course offered by Des Sturgess. It is the right of the Coroner to be guided by the Counsel Assisting, since there are no rules which must strictly be followed. It is time to consider how well that works. Counsel who Assist Coroners should not be prosecutors. Their duties are more complex. They are to choose, to organise, and to lead the evidence. They are also the Coroners' advisors, but are not engaged by the Coroners they assist. Des Sturgess' own duties were various. His duty to the court, and his

duty to forensic fairness, was complicated by his responsibility for the police case. He was briefed by the Crown. The Crown it was which had authorised police investigation of the Chamberlains. The Crown applied to quash the Inquest which had exonerated them. The Crown it was which later appointed Sturgess a Counsel for the prosecution at their trial

Ours is a ragged system. This might be forgivable at simple inquiries into death, but at inquisitions of the living the complications are far too many.
