AUSTRALIA'S CAMUS

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"Gentlemen of the jury, I would have you note that on the next day after his mother's funeral that man was visiting the swimming pool, starting a liaison with a girl, and going to see a comic film. That is all I wish to say."

Prosecutor to the Jury in *The Outsider* by Albert Camus p 95

This month commemorates the 20th anniversary of the disappearance of the infant, Azaria Chamberlain.

R v Chamberlain is Australia's most famous criminal case. Forget all the others; this is the big one. It had almost everything: infanticide v native dog snatching a baby from the base of Australia's most spectacular monolith. The case had the whole Australian community enthralled. It generated enormous public feeling. The community's initial shock and sympathy quickly changed to suspicion and condemnation. At its height the atmosphere was one of furore and witch hunt. Needless to say politicians became involved in the harnessing of the clamour and the case ended up here in Darwin before our most cherished criminal component, the jury. Mr and Mrs Chamberlain were found guilty both still pleading their innocence. Appeals to the Federal and High Court were lost but still the case continued. By that stage the clamour was not all one way: Mrs Chamberlain had gained many supporters; scientists, journalists, politicians, jurists all called for an inquest to no avail. Years went by during which Mrs Chamberlain served her mandatory life sentence here at Berrimah Jail. On 6 February 1986 the child's matinee jacket was discovered close to where the other clothing was found 5 and a half years earlier being approximately four km from the camp site. The NT and Commonwealth Governments passed legislation to have a full inquest into the issue of whether there were any doubts concerning these convictions. That finding was unequivocal: there were serious doubts. That then led to the quashing of both the Chamberlain convictions by the NT Supreme Court in September 1988.

By some strange quirk of fate your humble writer has enjoyed a relationship with the case from day one developing to actually becoming involved in the case.

The first day I arrived in Australia was Monday morning 18 August 1980. My visit was a working holiday before returning to the home country and taking up the practice of law. I was alone. One of the first things that greeted me at Mascot Airport was the somewhat deflating discovery that Rupert Murdoch's media malignancy had spread back to his own Australia. The Sydney Sun greeted me from the newspaper stands. My initial deflation changed quickly to intrigue when reading the headline which went something like this:

A Dingo Snatches Baby at Ayers Rock.

Here was a story that had substance. Mother and infant, native dog, Ayers Rock, tragedy and mystery quickly developing into suspicion.

Like most, I followed with genuine interest the developments in the case over the years. As the case unravelled Lindy's predicament became a talking point due to her conduct unbecoming rather than her plight. We learnt she was religious; a Seventh Day Adventist and, let's be frank, she behaved rather oddly. Likewise her husband, a Pastor no less, who was seen taking photographs the very next day apparently unperturbed by the tragedy that had occurred. In the ensuing years and numerous court cases that followed her conduct unbecoming continued. Of course the media loved it and thrived on it. The public quickly became fired up, developing into what initially became one of Australia's great witch hunts and then debates.

The case from the off intrigued me for legal as well as the human interest. The parallels with Camus' *The Outsider* were very apparent. Camus' Mersault was charged, tried, convicted and sentenced to death for a killing he committed very much in self defence. Mersault went down not for what he did but for what he was: an outsider. The evidence that sealed his fate was about his behaviour, which included that at his mother's funeral: he didn't wish to see the corpse, he didn't cry during her wake and he generally seemed to lack the appropriate and expected, emotional reactions. As the Chamberlain case developed Lindy's predicament to me seemed similar.

The case of course had a colourful history. What also intrigued me was I seemed to be personally linked to the case. Developments in the case coincided with developments in my personal situation here in Australia.

Mind you, unlike some, I can't recall what I was doing on 20 February 1981 when Coroner Barritt delivered his live television finding that Azaria met her death when attacked by a wild dingo whilst asleep in the family's tent at the top camping area at Ayers Rock shortly after 8.00pm on Sunday 17 August 1980. But, of course that wasn't the end of the case. The conduct unbecoming was more important than the evidence and this finding. The case couldn't go away.

Politicians entered the situation. Political decisions were made by NT politicians to continue gathering evidence. The then Chief Minister Everingham was certainly one of them. Much of this was cloaked in secrecy. I understand the author of our Criminal Code, Mr Des Sturgess QC, former Queensland DPP and now retired was consulted by the NT Government for advice. I understand from that the *then* eminent UK Forensic Pathologist Professor Taffy Cameron was given the child's jumpsuit and asked for an opinion. That opinion was to the effect that the markings on the baby's jumpsuit could be a human blood stained hand print. Also the bloodstaining was consistent with the baby's throat being cut. This triggered the gathering of more forensic evidence which generally went to rebut the dingo theory and to support a scenario of homicide. All of a sudden Justice Toohey of our Supreme Court ordered the quashing of Barritt's findings and the second inquest was heard in Alice Springs in August 1981. The finding there was for Lindy Chamberlain to be committed on a charge of murder and her husband on accessory after the fact.

Albeit as an aside something unusual and arguably nasty happened procedurally at that inquest. Contra the norm, instead of the Chamberlains being given the opportunity to see, hear and question the huge body of forensic evidence gathered by the authorities and then give their own evidence they were actually called to give evidence first.

Anyway, Mrs Chamberlain was committed for trial which was heard here in our former Supreme Court from 13 September to 30 October 1982. *Coram* Muirhead J; Barker QC and Pauling for the Crown; Phillips QC and Kirkham for the defence with Margaret Rischbieth, Judge's Associate.

The trial and subsequent appeals created national and legal history. The High Court Judgment is still the law on circumstantial and expert evidence. It also addresses entitlement to bail when convicted of murder. The trial provides a good example of advocacy at its best. In some respects it was Ian Barker QC's ability as an advocate which resulted in the convictions and their retention in both Federal and High Courts. His closing address should be read by all aspirant criminal lawyers.

Meanwhile my relationship and its proximity to the case continued. By October 1982 I was travelling around Australia before heading home. On the night of Friday 30 October I, with my travelling mates, arrived in Darwin. Of course, our first port of call was the late great Green Room. Unbeknownst to me when I was sitting by the pool the jury were across the road deliberating upon their verdicts. I discovered later that night the verdicts as I was watching TV.It flashed across the screen much like cyclone warnings are given these days. She was sentenced there and then to mandatory life imprisonment. Michael was sentenced on the Monday for his crime of accessory after the fact to 18 months fully suspended.

The case and controversy raged on. The country was now becoming split. They now had supporters and they were growing. Appeals to the Federal Court and High Court were lost.

I continued my interest in the case. Sometimes people asked me my view. After all, I had a law degree. I thought then that according to Scots evidence law she probably would not have been charged as there was a stricter requirement of proof requiring corroboration of circumstantial evidence by some real evidence. I must say now I think I may have been wrong about that but it helped me deflect the question in a way. My real intrigue was always with the similarities to Mersault's plight. At its height the frenzied clamour of the masses was like a witch hunt. Stories and more stories abounded: Azaria meaning "sacrifice in the wilderness"; Seventh Day Adventists countenanced child sacrifices; Lindy kept a child's coffin in their Mt Isa home.

Lindy's behaviour often put kerosene on the flames. Appearing outside one of the court cases with a great blown up photograph of her deceased, Azaria, was strange to put it mildly. During a 4 Corners program she described in graphic detail, using a doll, how the dingo would have taken the clothes from her dead baby. Try as she did her efforts invariably compounded the prejudice the masses felt against her.

Meanwhile my trip home didn't happen. In the month after the trial I met my now wife. Australia was to become my home and in particular, Darwin. I scraped into Melbourne University to read law and I scraped through getting the degree to return to Darwin to do my articles with the Crown.

It was 1986 when I started work. My first day at work, 6 February 1986, was the day Azaria's matinee jacket was found at the base of the rock. That proved the clincher. There was to be a Royal Commission of Inquiry into the convictions. It would open up in Darwin but most of it would be heard in Sydney. *Coram*: Morling J; Barker QC with Michael Adams for the NT Crown; Winnecke QC with Ken Crispin for the Chamberlains. It took about 10 months. Our paths were drawing closer. After about three months articles in the Public Trustees Office and Civil Litigation I was drowning in the Commercial Section. I was asked by Tanya Heaslip, a junior Crown prosecutor allocated the task of instructing the Crown team, to do a brief assist for her team. It was to make up an aide memoire on all the forensic evidence gathered and the results with references to transcript from trials and coronials, etc. At the time I was trying to work out how to extinguish a sewerage easement! I wasn't backward in coming forward. My two week secondment lasted the entire case. I spent the balance of my articles on the case carrying Ian Barker's bags and spectacles and being involved in Australian history. It has all been up hill ever since but still who can complain? Not only was I fortunate enough to serve such unusual articles but I suspect I was the highest paid articled clerk in the history of the common law. Back then in 1986 my salary was only a couple of grand less than the poor blighters enjoy now. Plus, and this is a big plus, I enjoyed the bonus of interstate travel allowance for the best part of nine months! This literally meant silk shirts for every day of the week. Happy days indeed.

What followed from the Royal Commission is also history. The convictions were eventually quashed in the Northern Territory Supreme Court in September 1988. The circus disbanded and the players moved on.

Barker QC is still the humble and best pleader. His junior, Adams, is now a New South Wales Supreme Court Judge. Winnecke QC is now President of the Victorian Court of Appeal. Crispin is now an ACT Supreme Court Judge. I went to Prosecutions and Lindy went to the USA via the media and it would appear rather rude health.

Of course the case is important in illustrating the great dangers of slavish adherence and acceptance of scientific/ forensic evidence. Crucial scientific conclusions then were subsequently found to be unfounded. It's not without irony that contemporary forensic scientists are suggesting the use of our present day, apparently failsafe panacea in forensic evidence, DNA, be used to re-visit the case.

My initial attraction and reason for intrigue in the case remains. It illustrates the difficulties even a time served and sophisticated justice system can encounter when faced with large scale prejudice.As a criminal lawyer looking at the evidence at trial there was ample to raise a reasonable doubt at least. Indeed Justice Muirhead charged the jury accordingly. Nevertheless it was open for them to accept the Crown's version of murder.

That election by the jury, I suspect, was done, not so much on the evidence but on the *Outsider* factor evinced by both Lindy and Michael Chamberlain. The case is, perhaps, an illustration that even our time served and sophisticated justice system, replete with protections and safeguards, won't always produce the goods. When Outsider meets prejudice, look out!

Footnote: your humble writer's present shirt is a cotton polyester mix.