

Presumed Guilty Book Review

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Presumed Guilty is an important and timely book. Whilst it is non-fiction, it has that read-on, page-turning magic that is the hallmark of the best crime or police procedural fiction. (Think Michael Connelly, James Patterson). So it works across several genres: as narrative, as vital historical information, and as a call for important reform in the way the justice system operates.

The research under-pinning *Presumed Guilty* is pain staking, quite literally. The book's thoroughness covers decades of injustice which occurred at the epicentre of the state of WA's law and order, and justice systems. It involves two classic underdogs, Darryl Beamish and John Button who were sacrificed on the career aspirations of a would-be chief of police Leitch, and the then Chief Justice Wolff.

It has taken half a century to correct the fault-lines created by these miscarriages of justices. Many people have been affected and will forever carry the pain and misery of state sanctioned duplicity.

Christian's book is a thorough going manual on the catastrophe that lies at the collision point between over-zealous police desperately seeking to identify a perpetrator in the wake of a shocking crime, and the lack of objectivity in the subsequent court processes. WA in the early 1960s gave rise to both of these conceits, with the prosecutors physically housed in the Supreme Court and close friendships apparent between the highest levels of the police, prosecutors and judiciary.

This book is a salutary reminder of the need for rigorous checks and balances: for crime scenes to be uncontaminated; for police to keep all records; for police officers to share information; for officers to be able to question the evidence, and to keep their superiors accountable, for prosecutors to be objective, and for juries and judges to remain open-minded.

Presumed Guilty should be compulsory reading for every law student in the country, for every police cadet and trainee, and for *re-training* each police officer who is established in the system, and for each person appointed to the judiciary. It should be widely read and discussed; it needs to remain in the public consciousness.

It recounts in great and impressive detail a blight on the criminal justice system in WA; the lessons, however, are clear for any of the nine police and justice jurisdictions operating in Australia.

What took place in WA in the 1960s and has since taken fifty years to put right, is a case study which should never be forgotten. Especially in times of moral panic, the police and justice authorities need to step back and

apply clear, fact based, evidence related analysis.

Instead what occurred was personality driven, ego boosting justice. It was much more about the heady career success of the protagonists than the rights of the two unfortunate men who were convicted. Beamish, profoundly deaf since birth, and Button born with a stammer, and both of them barely able to communicate by ordinary standards and afflicted by disability; and yet these disabilities compounded their guilt in the unenlightened Wild West era of the late 1950s and early 1960s.

There are many fine and important arguments put forward in this book. Brief reference to four of them is made here.

Juries: This is a treatise against the continued use of juries. They are simply too prone to interference and ambiguity in the social media age. Trials and evidence are too complex. The common law of England gave this system to the world; is its time over?

Verballing of suspects: Framing a suspect with a false confession can happen anywhere in the advanced legal systems of the world; it is called 'verballing' in Australia, 'railroading' in the US and 'fitting up' in the UK (p238). If this can and does happen in advanced legal systems, the dangers for it occurring within developing justice systems is obvious.

Miscarriages of justice: Miscarriages of justice have occurred across the developed world. The critical point is that the miscarriages in the UK have led to fundamental reform. UK police have moved from a 'nominative approach' to an 'eliminative approach.' As Christian explains, 'the eliminative system starts on the outside, with the country's entire population being suspected then eliminating all those people who cannot be the culprit, finally arriving in the middle, with one person left' (242).

On the other hand, the 'discredited nominative approach starts with the most suspect then 'squeezing him until he pops" (242). This approach 'continues to surface' especially in times of moral panic after a gruesome crime where the pressure to solve the problem outweighs due process. This discredited approach relies on several variations of the same concept: gut instinct, intuition, belief persistence/perseverance, confirmation bias, cognitive conceit, or most memorably 'copper's conceit wrapped in blue.' (7) As Myers notes 'once a belief forms, we filter information in ways that sustain it.' (quoted at 285)

Misguided mateship: Another key issue Christian raises is that of police tribalism or misguided mateship, where loyalty to the team or a superior officer outweighs a dispassionate, evidence-based and objective approach to crime solving. The 'extreme mateship' of war, the outback and other life and death situations has, according to Christian, 'transferred seamlessly' in to the police force (257). The police protagonist at the centre of this book is George Owen Arthur Leitch, the so-called Mr One Hundred Percent; he is an example of this phenomenon *in extremis*. He appears to have been all powerful for half a century, and has died an old man, never having been brought to account for his actions.

The criminal justice system in Australia has clear fault lines which Bret Christian ruthlessly exposes. Rather than take a historically distant stance to these matters, we need as an enlightened evidence-based society to

make fundamental changes to how the system can best operate to ensure fairness for the *hardest* cases. If we can get them right, the system will be much improved. *Presumed Guilty* provides a clarion call for wise, long-range reform.